THE MOLESWORTH COMMITTEE AND NEW SOUTH WALES

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INTRODUCTION

Sir William Molesworth saw in transportation the brazen mockery of all his ideals of punishment, and in New South Wales, the nemesis of irresponsibility. Transportation had incited, rewarded, and further corrupted British criminals, and the colony it had given birth to was visited a thousandfold by the sins of its fathers. In England and in New South Wales there were many who agreed, but there were others who thought the system a gift of Providence and New South Wales, the promised land.

To the question of the truth about New South Wales and transportation one can give no more than a sensible compromise. In this thesis I have offered such an answer, but my chief concern has been less with the compromise than with an evaluation of the evidence. I have examined the wildly conflicting beliefs about the colony and its penal system and attempted not so much to reconcile them as to make plain their grounds. The reality that was New South Wales was not and is not comprehensible but the passions which coloured the sight of the men who saw it may be guessed at and must be guessed at before any sensible compromise is possible.

In New South Wales the colonists divided into two consistent though wavering bodies of opinion. They saw
for themselves the system and its offspring but they could not agree because they looked through different eyes, experience and hopes.

From among them ten men told Molesworth and his Committee about it. None of these men had seen it either as the mass of the colonists or as each other for each of them saw only what his own self admitted.

Molesworth and his Committee listened to these men and to others who had considered the question and again saw a different vision. They saw the evidence of their witnesses through a lens, distorted by their own preconceptions, the witnesses held the opinions of the colonists, adjusted by their own experiences and the colonists saw their land and their demiurge through their own desires.
PART ONE

NEW SOUTH WALES
CHAPTER I

THE FIRST OPPOSITION TO TRANSPORTATION

In opening a new session of the Legislative Council in May 1835, Sir Richard Bourke laid upon the table an extract from Spring Rice's portentous despatch of November 1834. The despatch conveyed the wish of the Lords Commissioners of the Treasury that New South Wales should pay for such charges as are now defrayed from the Military Chest, for the Police Establishments, for Gaols, and for a certain portion of the Colonial Marine, the expense of which is estimated at about £25,000 per annum, the Commissariat still continuing to pay from funds provided from this country, all charges immediately connected with the Custody and Superintendence of the Convicts.¹

Rumour of this measure had reached the colony in 1834 and by May 1835 the press had recognised its significance and was already, though tentatively, declaring that it would be better to end transportation than to

¹ Spring Rice to Bourke, 15 November 1834, in N.S.W. V & P 1835 p.264-5.
submit to so gross an imposition.¹

As a body the Legislative Council gave approval to the measure by a majority of one, but of the fifteen members, nine recorded protests. These and a petition presented on 31 July 1835 contended that, as it would be necessary to use the land fund, sacred to immigration, to cover the expense, its imposition was not only a breach of faith, but a sacrifice of the best interests of the colony, and further, because it implied the use of a temporary fund for a permanent and increasing expense, a very impolitic move.²

The imposition they said, was especially unjust because the magnitude of the expense was due to the importation of British criminals, not to the law-abiding settlers who must pay.³ The colony, by maintaining assigned convicts and paying for the judiciary was already doing its share.


See also Australian 7 July 1835 p.2. The Gazette 21 May 1835 p.2 did not protest.

2. The petition is on p.399, 400 and the protests p.257-262 in N.S.W. V & P 1835.

3. The Hon. John Stewart, Secretary to the Treasury, had attempted to cover this point by explaining that the prosperity of the settlers was a result of convict labour and that much of the expense was due to the necessity for extensive police establishments because of the 'dispersion of Convicts for the accommodation of Settlers'. Stewart to Sir George Grey (CO) 23 September 1834 in N.S.W. V & P, 1835 p.265, 6.
Only one protest, that of Messrs Campbell and Close, went on from a deprecation of the moral state into which society had sunk from the want of virtuous free immigrants, now quite cut off, to argue that they should, rather than help to perpetuate it, end transportation altogether.

Some of the newspapers accepted the implications of the imposition more readily. They saw that the police and gaols expenses were only a beginning: that as the prosperity of N.S.W. grew, an increasing proportion of the convict expenses would be charged to it, and that convict labour would soon be no cheaper than immigrant labour. The Sydney Herald, organ of the ancient aristocracy, wrote

The convicts of Great Britain live upon the industry and talent of the freemen who are compelled to pay the gaol expenses for both themselves and their idle convicts. Who will deny after this statement that the only effectual relief we can expect must come from the abolition of penal servitude and the establishment of a system of free labour.¹

The Rev. J. D. Lang's journal the Colonist, founded at

¹ Herald 9 July 1835 p.2, also 20 July 1835 p.2, 'the public have already begun to enquire what necessary connexion subsists between the continuance of convict labour and the prosperity of Australia.'
the beginning of that year to bring light into dark places, saw clearly that 'the peculiar duty of the present crisis is therefore to petition the Home Government that the transportation of convicts to this territory may be discontinued forthwith.'

Though the Herald had as early as 1833 advocated the end of transportation, and though the imposition of the police and gaols expenses did not lead invariably to opposition to transportation, yet by making convict labour no longer free, it sparked off the first considerable discontent.

1. Colonist 28 May 1835 p.170. In August the Colonist itself proposed a petition, objecting to the effect of transportation on the moral state of society and 'praying for the discontinuance of transportation to this colony and for the exclusive appropriation of the revenue arising from the sale of waste land to the encouragement and promotion of emigration.' 6 August 1835, p.249.


3. The police and gaols expenses proved a continuing grievance: in 1836 the colony was mollified by the adequacy of the general revenue but in 1837 and 1838 the Governors' despatches spoke of the improbability of a continued surplus of revenue and the ill feeling in the colony - H.R.A. series I vol19 p.81 (Bourke to Glenelg 8 September 1837), p.609-10 (Gipps to Glenelg 12 October 1838).

The Colonist ran a series of outraged editorials in 1838 and 1839 and in November 1839 the Herald attacked the proposals of the Monitor and the Patriotic Association for a poll tax on assigned convicts, paid by assignees, to cover the expense. - Australian Patriotic Association, Letter to Charles Buller 31 May 1839 (Sydney, 1839), p.14 par.55. This notion was developed in 1840 by Jamison and Blaxland - 'Petition presented by J.Jamison and J. Blaxland... 16 October 1840,' M.S. ML A286 p.5-11.
To the large landowners, convictism lost still more of its allure with the promulgation of Bourke's new assignment regulations in the same month, May 1835. The regulations were designed to substitute for the invidious discretion hitherto more or less vested in the officers entrusted with the duty of assigning convicts to private service, strict rules of qualification, intelligible alike to the dispenser and receiver of penal labour [and] to reconcile many interests that were thought incompatible.

Bourke designed an iron system by which the eligibility of settlers for assigned convicts was graduated in favour of small farmers.¹

Glenelg, Secretary of State for the Colonies, entirely approved this principle, perceiving that Bourke had 'maturely weighed and considered the suggestions of various parties in

1. Bourke to Glenelg 26 June 1835, CO.201/246 p.242-3 and 252-4. Persons holding land under approved tenure were allowed one labourer for every 160 acres with a maximum of eight, and after this, two for every 640 acres. In addition they were allowed one for every 40 acres cultivated with a maximum of 16 and a total maximum of 70 assigned convicts at any one time. Those holding less than 160 acres were allowed for 20 acres cultivated, one man; for 40, two men; for 80, three men and for 120, four men. Further regulations defined the number of labourers equivalent to various mechanics, the nature of convicts assignable in towns and in the country and the proceedings by which assignments should be made.
the colony.' The **Herald**, representing the 'intelligent settlers, whose property is placed in jeopardy' did not share this perception. It was infuriated by the underlying principle of an onslaught on the large landowners' monopoly of labour though, in order to popularize opposition among the free settlers as a whole, it argued on less exclusive grounds. The regulations, it asserted, derived 'from a wish to satisfy the cupidity of the Whig Government by forcing an extended sale of land' the only means of acquiring labour, and it identified the favoured small settlers with dissolute ex-convicts.¹

¹ Glenelg to Bourke, December 1835 CO.201/246 p.247-8. Herald 25 May 1835 p.2 - 'A Dungaree or small settler just emancipated ... is allowed an assigned servant for every 20 acres of cultivation while the respectable emigrant gets one for every 40 acres only ... the poor emigrant therefore will have to conduct his cultivation with only half the number of hands allowed to his convict neighbour.'

This raised a long standing dissension concerning the suitability of ex-convicts as assignees and more widely, their rights to land and labour. The small emancipist settlers, supported by the Australian and the Gazette insisted on the Macquarie conception of N.S.W. as a colony founded for convicts, maintaining that 'our hard working and industrious habits are the best school for prisoners' and giving the regulations their unreserved approval. **Herald** 4 June 1835 p.2. (Original Correspondence); **Australian** 19,29 May 1835 p.2 ; **Gazette** 26 May 1835 p.2.

The Monitor's policy (see 6 June 1835 p.2) was fuddled by its editor Hall's attachment to Mudie, it approved the equitable principle of the regulations but insisted that large employers made the best assignees. See Sir Richard Bourke to his son Richard 21 April 1834 in 'Bourke Papers' M.S. ML A1733 p.2.

On this question generally see Alexander Harris, **Settlers and Convicts** 1847 (M.U.P., 1964),p.68 and **PP.(HC) 1831 Vol.7 Paper** 276 Q.1623 (Major Edward Macarthur) and TC 1837 Q.3023 (James Macarthur).

Had Bourke been less stubborn this frugal peasantry might have been completely annihilated for it was opposed by powerful interests, interests which Major Edward Macarthur represented when in 1831 he told the Select Committee on Secondary Punishments that large settlers should be given a legal monopoly of convict labour. **PP.(HC) 1831 Vol.7. Paper** 276 Q.1622.
Loopholes were found in the regulations and the ancient nobility did not suffer unduly. The vigilant liberal newspapers dutifully exposed grosser abuses, among them that perpetrated by James Bowman, son-in-law of John Macarthur and eligible, like all settlers, for only seventy convicts. Bowman, said the Australian, had about 150 convicts assigned to him, and his two sons aged ten and twelve years, forty nine.¹

Even so the large landowners saw that convict labour was inadequate for the exigencies of the colony and that under the new regulations it would be less easy for them to engross the lion's share that was sufficient for their own needs. Not only were there not enough convicts but also, because assignees could not afford to reject unsuitable ones, their efficiency deteriorated.² This visitation was ascribed by many to Bourke's pampering of the felonry.

1835 too was the year of the Watt scandal, in itself exceptional but in the use that was made of it, as a focus for dissatisfaction with Bourke's convict discipline, of great importance.

Under Bourke, the exclusives maintained, convict

2. TC 1837 Q.2465* - 2470* (James Macarthur).
discipline had been so dangerously relaxed that not only was the chastity of their wives and children threatened, but also, the labour to which convicts could be coerced without indulgences equal to the wages of free emigrants, was reduced almost to nothing.¹

The soothing or sugar plum system was promulgated in 1832 in the Act 3 Will.4, No.3, which limited the powers of single magistrates to the infliction of 50 lashes. The magistrates of the Hunter River, Newcastle and Port Stephens were incensed by this aspersion on their responsibility, a reaction which Bourke did not consider extraordinary 'as it requires much judgement and moderation to overcome the instinctive love of power.' They organized petitions from the free settlers protesting that unprecedented lawlessness had arisen from the consequent lenity of punishment and loss of magisterial respect.²

In defence of his action Bourke called for detailed flogging returns and reports on the state of the colony for September 1833, forwarding these to the magistrates and to the Colonial Office as a demonstration of the sufficient severity of punishment under the new law. The callous brutality of the returns and the almost unanimous assurances

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2. Herald 12 October 1837 p.3; TC 1837 Appendix p.78 (Bourke to Stanley 15 January 1835).
by the Police Magistrates of the tranquil state of the colony convinced the Colonial Office of the efficacy of Bourke's measures, but the Hunter River clique was not satisfied. A new petition to the King's Most Excellent Majesty repeated the allegations.

Roger Therry, a Government Officer and a compassionate Irish Catholic, attacked the petition in a pseudonymous pamphlet addressed as a letter to Stanley, Secretary of State for the Colonies, from an Unpaid Magistrate. It led to virulent counter attacks on both Therry and Bourke, to a revision of the already signed petition and its consequent rejection by the Colonial Office. Bourke emerged triumphant from this first major skirmish but though he satisfied the Colonial Office, the gentry of the Hunter River were in no way appeased.

In 1835 the notorious case of the convict William Watt gave them fuel for his pyre. Watt was convicted of embezzlement and in 1828 transported for 14 years. After a brief term at Wellington Valley, penal settlement for educated convicts, he was employed as a clerk in the Corporation

1. H.R.A.1.18.23-4 (Glenelg to Bourke, Separate, 11 July 1835). Roger Therry, Observations on the 'Hole and Corner Petition' ... (Sydney, 1834).

2. D.W. Rawson, 'Factions in N.S.W. Politics' p.123 suggests that E.A. Slade (later a witness before the Molesworth Committee) was dismissed in 1834 because of his extreme severity. See Part Two below for evidence against this.
Office under the Archdeacon, at some time obtaining a ticket of leave. Later he became sub-editor of the Gazette and was allegedly responsible for much of its vehement support of Bourke and opposition to the exclusives: for disseminating doctrines 'utterly subversive of convict discipline and subordination.'

The first attempt to suppress him was engineered not by the righteous Hunter River disciplinarians but by George Cavenagh, a clerk in the Gazette Office and after Watt's downfall, editor. The Governor, the Principal Superintendent of Convicts and the magistrates at Hyde Park declined to act on Cavenagh's charges of immorality and the case was left for Major Mudie of Castle Forbes.

1. James Mudie, The Felony of New South Wales 1837 (Walter Stone ed. Melbourne, 1964), p.75. The details are obscure, Mudie (ibid p.74-5, 104-5) was confounded by his conflicting intentions: in showing the scandalously short time in which Watt received employment in Sydney and a ticket of leave, he pushed the date back into Darling's governorship, unwittingly accusing the wrong man of leniency. Marginal notes published in Walter Stone's edition suggest that he was transferred to Sydney under Darling (ibid p.75 n.99) and given a ticket of leave under Bourke (ibid p.104 n.114). Cf. W. Molesworth, Report from the Select Committee of the House of Commons on Transportation; Together with a Letter from the Archbishop of Dublin ... and Notes by Sir William Molesworth Bart. (London, 1838), footnote p.18. This copy of the report was published for Molesworth's constituents at Leeds and is hereafter referred to as Leeds Report.

2. Cavenagh and Mudie (Mudie Felony p.85) attributed Bourke's inaction to Watt's support of him in the Gazette but Cavenagh's odd career affords grounds for distrust. see J.D. Lang's prospectus - Ferguson Vol. III no.3025, and A.D.B. Vol. I p.216. Watt said that he was actuated by personal feeling and in the light of Wilson's good report of Watt's character and his assurance of the remoteness of the offence, Bourke's inaction seems justifiable - H.R.A. 1.18.31 3-4 (Enclosure no.2 in Bourke to Glenelg 28 February 1836.)
James Mudie, most spectacular of the witnesses before the Molesworth Committee, was outstanding among Bourke's opponents. Watt's Humanitas pamphlet and articles in the *Gazette*, censuring him severely at the time of the trial for mutiny of six of his convict servants, enraged him.¹ In 1835, though not without further humiliation, he revenged himself on both Watt and Bourke.

Watt had allegedly replied to attacks in the *Herald* by arranging for a proof copy of an article, suppressed by that paper to avoid a libel case, to be stolen. This, it was said, he sent by public post to the gentleman maligned, that being in law sufficient publication for legal action. The *Herald* was accordingly charged with libel but not only did the action fail, it also led to a suspicion of Watt's implication. He was charged with felony in the Supreme Court and acquitted though, on the representation of Judge Burton, ordered by the Governor.

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'Emigrant of 1821', *Party Politics Exposed in a Letter addressed to the Right Hon. the Secretary of State for the Colonies...* (Sydney, 1834). The letter is signed 'Humanitas'. Sir John Ferguson, *Bibliography of Australia* Vol. II (Sydney, 1945), p.133 is satisfied that Watt was the author.
to be removed to Port Macquarie.¹

Yet unsatisfied, Mudie charged him before a bench of magistrates 'with being a man of infamous character and an habitual liar, living in a state of adultery with a female runaway convict, and with having falsely slandered the complainant during his defence before the supreme court.'²

The bench for this trial was abnormally large, several rural magistrates having, according to Mudie, 'joined their brethren the paid police magistrates of Sydney ... probably with the view of seeing that justice should be impartially administered.' These men, explained Therry, were 'most of them prominent in their opposition to Sir R. Bourke's Act for defining the duties of magistrates.' Wilson, the presiding magistrate, reported that 'there were always four at least who were prepared to outvote the Police Magistrates' and though he felt bound to state that some of them were

1. HRA. 1.18.315. (Report from Wilson, enclosure 2 in Bourke to Glenelg, 28 February 1836). Therry Reminiscences, p.171 said that Mudie's vindictiveness was responsible for the charge of felony before the Supreme Court, as a more proportionate charge would have resulted only in the loss of his ticket of leave and his removal from Sydney. Mudie, though convinced of Watt's guilt, said that he was in no way connected with the case. (Mudie Felonry p.86). These men were violently prejudiced against each other, but Mudie wrote only two years after the event and was less likely to be confused than Therry who wrote nearly 30 years later. Wilson in his report mentioned only Stephens, editor of the Herald, laying charges but it is possible that Mudie was the instigator.

2. Mudie Felonry, p.86.
genuinely outraged by Watt's alleged writings, he was 'compelled to believe that some gentlemen were greatly actuated by a desire to inculpate the head of this Government.'

After two weeks all charges were abandoned save that of Watt's failure to attend ticket of leave musters and he was removed to Port Macquarie where with consistent flamboyance, he married a rich widow and then drowned.

His indiscretions were not in themselves important. It is highly probable that in retaining his ticket of leave he escaped his just deserts, but it was on Bourke's not Watt's conduct that the case turned. The Watt affair provided a splendid opportunity for exposing the corruption of the Government but at most it shewed some laxity, culpable in a penal settlement but inevitable in the bustling free colony that N.S.W. had become; and it did not entirely remove the imputation that Bourke was not always strictly impartial in his reconciliation of the interests of the convicts and the sometimes irritating free settlers. It is

1. Mudie Felonry, p.87; Therry Reminiscences, p.172; HRA.1.18.318.
2. It is unlikely that Bourke did even tacitly encourage Watt.

In November 1834, after Watt had been some time on the Gazette and before the scandal, Bourke told his son that he would send him copies of the Australian 'the fairest and best written of the papers'. 24 November 1834. 'Bourke Papers' Vol.6. M.S. ML A1733 p.6.
important as a further demonstration of the dissatisfaction of the free settlers over the trimming of magistrates' powers and over the insubordination which they alleged resulted. Insubordination considerably reduced the value of convict labour.

This conflict continued throughout Bourke's rule and with the dismissal in 1836 of a number of magistrates, including those involved in the Watt affair, with the petitions of 1836 and with much of the evidence taken by the Molesworth Committee, it came prominently before the British Government.

In the colony it contributed to the growing opposition to transportation. It is unlikely that convict discipline and thus the value of convict labour were in fact greatly undermined by Bourke's policy. He himself told his son, 'I wish I could give any probable account of the Hunter River hostility ... insubordination is no longer the theme to gull the silliest grazier on Liverpool Plains' and that its roots must lie in personal ill-feeling.¹

It is probable that the efficiency of assigned labour did decline but the decline was due to the inadequacy of the supply, which forced settlers to accept even the most

¹ Sir Richard Bourke to his son, 26 September 1834. 'Bourke Papers' Vol. 6 M.S. ML A1733 p.12.
refractory convicts, not to Bourke's leniency. Some of
the malcontents may have been aware of this but their
constant harping on insubordination created a widespread
belief in it. This belief, irrespective of the facts,
helped shape opposition to transportation. In June 1835
H. H. Macarthur, unlike his more gracious relatives a stern
disciplinarian, articulated this feeling before the Committee
on Immigration.

By the present system of convict discipline there is
not a sufficient restraint upon these men, to prevent
the indulgence of their vicious propensities. It is
therefore desirable to obtain free men at liberal wages
for all agricultural purposes as the stoppage of wages
for losses occasioned by neglect of duty, operates as
a better check upon the free than the present convict
discipline on the bond.¹

By 1835 convict labour was no longer free, adequate
nor efficient. The imposition of the expenses of the police
and gaols, the attack on the exclusives' virtual monopoly of
assigned convicts, and the declining usefulness of the con-
victs reduced greatly the advantages of convict labour and
of transportation to N.S.W.

¹ 11 June 1835 in N.S.W. V & P 1835 p.315 - referred to
in D.W.A. Baker, 'The Squatting Age', in Business
Archives and History, Vol.5 1965, p.113.
Douglas Heath, an English Lawyer, saw with lucidity in his paper on Secondary Punishments that 'exactly in proportion as convict labour becomes less valuable, public feeling will be aroused to a sense of its moral evils, and at the same time be annoyed by the restraints which the necessities of a convict colony place upon all its inhabitants.'

Opinion in N.S.W. followed this pattern. In its editorials protesting against the imposition of the police and gaols expenses on the colony, the Herald complained that 'convict labour is not only expensive but destructive of moral comfort and political rights' and that 'our country is a gaol yard, our Governor and Council are a standing committee to regulate the prison; all the inhabitants are prisoners', while the Colonist declared that N.S.W. was 'the great dunghill of the British Empire.'

To argue a direct causal connexion between the decreasing value of convict labour and Judge Burton's consequential charge of 1835 would be a gross distortion. It is unlikely that it was anything more than a profound horror at the moral state of the colony, the most depraved part of which constantly occupied him, which provoked him, yet his charge

and its reception by the colonial press reflected the growing awareness of the evils of transportation.¹

Burton himself was an upright abstemious man. Religion, was to him 'a people's sole security for their peace and good order - for their worldly prosperity and their highest happiness', democracy was 'not far apart from anarchy.'² These attitudes were cliches but Burton was distinguished by the rigidity of his conception of religion and justice. In 1837 a man was charged in the Supreme Court with forcibly violating an orphan girl aged about 13 or 14 years. Ever conscientious Burton questioned her on religion before hearing her evidence, and finding her completely ignorant of it, refused to accept her oath and dismissed the case.³

While the 'other Judicial physicians ... slumbered on in careless indifference to the moral health of the colony', he saw and performed his duty.⁴ In discharging the jury at the close of the sessions of the Supreme Court for 1835, Judge Burton delivered a charge concerning crime in the

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1. Wentworth said 'it was not at all surprising that the learned Judge Burton, for the first time in his life domiciled in a convict colony, should have felt horrified at the amount of crime that came under his observation.' Colonist 14 April 1836 p.115.

2. The Charge is printed in TC 1837 Appendix p.289-93; Australian 26 March 1839 p.2 (Burton's reply to a farewell address); Burton to James Macarthur, 23 February 1853 in 'Macarthur Papers' Vol.27 M.S. ML A2923 p.148.


colony. He read to the jury returns of capital convictions for the past three years, giving details of those of the present sessions and of several lurid undiscovered crimes and miscarriages of justice. These he attributed to 'an overwhelming defect of religious principle in the colony'; to the disorderliness of road parties; to the unauthorized occupation of waste lands by improper persons; to the assignment of convicts in towns; to the laxity in the licensing of public houses and to the almost total want of superintendence by masters of their assigned servants.

The colony reacted in a predictable manner; there were those who felt, like the poor but honest emancipist farmer 'Sir that's a good man - Sir that's an honest man', to others he was a base 'political judge.' The Colonist followed the farmer, warmly welcoming Burton as a new recruit to its mission of laying 'open the wounds and bruises and the putrifying sores with which the body politic of this country has hitherto been most unhappily covered'. It was gravely displeased by his proposal that 'innocent and rational

1. Convicts were worked on the roads both in and out of irons. I shall refer to those in irons as ironed or chain gangs and to those out of irons as road parties.

English amusement' should be provided on the sabbath and it felt that he attributed too much to the want of religious principle and too little to the importation of ardent spirits, for while the Government sponsored the work of the devil, religion could not but fight in vain. Despite these qualifications it was delighted that Judge Burton had taken up arms against transportation.¹

The Herald shared this enthusiasm, attesting the truth of Burton's remarks on the state of the colony and, with the Colonist, deploiring the transportation of convicts 'the date of whose banishment from Botany Bay would be kept as a Jubilee for generations yet to come.' It too postulated additional and predictable causes: the Jury Laws which made no distinction between the free and the freed and by leading to improper verdicts, encouraged crime, and the Summary Punishment Bill, 3 Will 4, No.3 of 1832, which the Herald claimed had given birth to gross insubordination and 'blackest crime'. These were particular manifestations of Bourke's general policy of favouring and encouraging convicts, a policy whose fruits were seen most clearly in the Watt case, a policy abhorred by the exclusives as the prime cause of the wickedness of the colony.²

² Herald 30 November 1835 p.2.
It was this preconception which led the Herald, while endorsing Burton's remarks on the state of the colony, to disagree with his remedy. Not religion but a tightening of convict discipline was the editors' panacea. They forgave the Judge for as 'a public officer he could not advocate a contrary principle.'

They were also induced to impute to Burton an assertion that there had been an increase in crime, for if Bourke's leniency had utterly undermined the harmonious convict discipline of Darling's stern rule, as they were convinced it had, then crime must have increased. In their first editorial on Burton's Charge they merely alluded to the increase in crime but in the second they assumed that 'the Judge has clearly proved the increase of crime' and that 'it is now admitted by a Judge on the Bench and by reference to the Trials in the Supreme Court that crime is on the increase'. The Herald converted Burton's Charge into a political issue.

The Australian, though it pointed out that Burton's statistics clearly shewed that there had been no increase in crime, denounced the charge as a 'mischievous and dangerous' attack on the Governor and the Gazette followed suit,

labelling it a 'political and party bench declamation'. It was not, they protested, a sincere and responsible appeal but a cry for mutiny.¹

With the charge converted into an attack on his Government, Bourke found it necessary to defend himself. He told Glenelg,

I do not indeed imagine that Mr. Burton intended all that has been attributed to him by those who have perverted his language to party purposes. Yet, as his address has been open to misrepresentation, and the Judge has been said to cast blame upon the Government for the unhappy condition in which he has described the Colony, it becomes necessary that I should endeavor to obviate the effect of such

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¹ Australian 24 November 1835 p.2; Gazette 15 December 1835 p.3 and 5 December 1835 p.3 - in the latter article the Herald's effusion was attributed to 'the Major's fertile brain'. It judged Burton's pious justification for his Charge insufficient. Had it really been necessary 'it should have been addressed to the parties more intimately concerned - to wit, the Judges themselves and His Majesty's law officers'.
misrepresentation.¹
That there should be a large amount of crime was, he argued, inevitable in a penal colony. The only valid charge that could be laid against him would be that it had increased in greater proportion than the population, and this Burton's own statistics disproved. In 1833, he had said, there had been 135 capital convictions, in 1834, 148 and in 1835, 116.

Not only the amount of crime, but also those causes of it which Burton had postulated were used as charges of Bourke's maladministration.

In defending himself against the first imputation, that

1. HRA.1.18.228, 18 December 1835. It is possible that Burton did intend the implications of his charge. Certainly despite their difference in temperament, Bourke admired Burton and requested when appointed from the Cape to N.S.W. that Burton should accompany him, (Bourke to Howick 21 July 1831 private, CO. 201/221) and 'from their private letters they appear to have been on terms of intimate friendship. This relationship continued for a time after Burton came to N.S.W. In 1835, however, a coldness developed between them. Burton took offence because Bourke did not acquiesce in his claim to take seniority on the bench over Dowling.'

It seems unlikely that Burton would have demeaned himself by using his responsible position to attack the Governor but he was from the first prejudiced against N.S.W. by the reluctance with which he left the Cape and this further disappointment may have vitiated his impartiality. For this information, though not for the construction which I have put upon it, I am indebted to Dr. Hazel King.

Burton's letter to Bourke 24 December 1835 may be interpreted in either way - 'Bourke Papers' Vol.11 M.S. ML A1738 No.116,7.
the defect of religious principle derived from the indifference of the proper authorities, he reminded Glenelg of his assiduity in requiring a chaplain for Norfolk Island and of his controversial but comprehensive and generous measures for the material support of religion in the colony. In 1837 the Gazette, having suffered a sea change and dedicated itself to the interests of the ancient nobility, published a criticism of this despatch, commending with some surprise its 'tone of moderation and candour' and fully approving Bourke's encouragement of religion, questioning only his tolerance of popery.¹

Road parties, Bourke said, were not as ill disciplined as Burton implied. They were no worse than under the previous Governor and moreover they were at present being diminished.

In admitting the prevalence of squatting and the extraordinary difficulty of controlling it, Bourke managed to strike a blow at his adversaries by referring to the root of the trouble. The depredation of the forbidden interior was headed not by the cattle stealer and sly grog seller but by 'the most influential and unexceptionable Colonists' who were no more eager than their humbler colleagues to pay for

the use of the land.¹

The great number of low public houses was he argued, an unavoidable evil for any greater restriction in licensing would lead only to a proliferation of illicit liquor sales.²

He was supported by the Gazette and the Herald in his dismissal of Burton's proposal for masters to act as gaolers of their assigned servants as at once 'an impolitic and fruitless attempt'. They confined their criticism to the assignment of convicts to improper persons and to 'the laxity of discipline that is characteristic of our present Government.'³

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¹ H.R.A. 1.18.230 (Bourke to Glenelg, 18 December 1835). Burton's case was supported by the evidence taken by the 1835 Committee on Police and Gaols - almost all of the witnesses complained about the squatters (N.S.W. V & P 1835 p.325-6, 332, 334-5.) but as Roberts points out, most of these landowning witnesses also squatted and it was in their interest to exclude their rivals and to divert attention from their own illegality by exaggerating the importance and blackening the characters of the poor squatters. S.H. Roberts, The Squatting Age in Australia 1835-1847 (M.U.P., 1935), p.81. Jamison and Rankin were most explicit in revealing their interests - N.S.W. V & P 1835 p.337,350. See also D.W.A. Baker op. cit. p.110 and James Macarthur's admission - TC 1837 Q.2884.

² Gazette 14 October 1837 p.2. His assertion that the matter was in the hands of the magistracy and no concern of the Government provoked an enigmatic reference to his interference in the case of a public house on the Cowpastures Road.

³ H.R.A. 1.18.231 (Bourke to Glenelg, 18 December 1835). Gazette 14 October 1837 p.2; Herald 5 October 1837 p.2.
Bourke's was a well reasoned defence, in some places revealing his bitterness towards the exclusives, but on the whole satisfying the Colonial Office and later, though less so, even the Herald and the Gazette. Meanwhile attacks within the colony continued and early in 1836, accepting the extrapolation of their seer the Herald, the exclusives used Burton as an authority on the increase in crime in their petition to the House of Commons. In his defence Bourke sought the opinions of Burton's fellow judges on his Charge and on the increase in crime.

Both Forbes and Dowling insisted that the Charge was Burton's own personal opinion, that they had not been consulted, that they were ill equipped to criticize it and would thus refuse to comment. They both however, emphatically denied that there had been any increase in crime out of

1. HRA.1.18.576 (Glenelg to Bourke, 21 October 1836); Herald 5 October 1837 p.2. 'We are willing to admit that some parts of the Despatch are written in a fair spirit and that in some instances it affords sufficient answers to objections made by Mr. Justice Burton.'

2. HRA.1.18.396 (enclosure A2 in Bourke to Glenelg, 13 April 1836) 'Your Petitioners would in the first place entreat the attention of your Honourable House to the fearful increase of crime that has of late years taken place in this Colony; the particulars of which are fully set forth ... in a Charge delivered by the Honorable Mr. Justice Burton ... These, Your Petitioners conceive, afford full proof of the alarming increase and extent of crime in the Colony, and clearly establish the necessity for some change in a system that produces such results.'
proportion to the population, opining rather that crime had decreased.¹

In the same month, April 1836, Bourke received a letter from Burton in which he denied 'in the most unqualified manner having upon any occasion, either in public or private, expressed an opinion that there has been an encrease of crime in this Colony,' indeed, he said the records showed that the number of cases in the Supreme Court had declined.² The subject once broached was not so easily quashed. The dispute continued, receiving most exhaustive treatment in Bland's criticism of James Macarthur's book in 1839. In 1840 Burton re-entered the debate only to be again countered, by Whately, Archbishop of Dublin.³

In 1835 the Charge and its reception proved a manifestation of the opposition to Bourke and of the growing awareness of the evils of transportation. Later Glenelg's judgement that 'Mr. Burton's statements are material rather as arguments for the discontinuance of the system than as

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1. TC 1837 App.p.293-6. Despite his refusal to commit himself, Forbes managed to imply that some of Burton's judgements were a little hasty.
2. HRA.1.18.456-7 (Bourke to Glenelg, 25 July 1836).
3. These will be treated in Part III, in reference to the Molesworth Committee's unquestioning acceptance of the Charge.
proofs that it has been ill administered' was to be justified by the Molesworth Report.¹

¹ HRA.1.18.576 (Glenelg to Bourke 21 October 1836). Actually James Stephen's judgement - see minute CO.201/248 p.236.
Earlier in 1835 there had been another event of significance in the development of opinion on transportation in N.S.W., the establishment of the Australian Patriotic Association. It seemed at first to have little overt connexion with the question of transportation beyond the platitudinous fact that the changing character of N.S.W. from a penal settlement to a free colony inspired it, yet it was the formation of the A.P.A. which led eventually to the institutionalization and consistency in the late thirties of support for and opposition to transportation.  

1. A.C.V. Melbourne, Early Constitutional Development in Australia 1934 (Q.U.P., 1963), Part III Chapter IV, argues that the A.P.A., formed in anticipation of a new N.S.W. Act in 1836, was a direct result of efforts by the liberals and emancipists, particularly since 1828, to gain representative government and civil equality for emancipists. On 26 January 1833 they had held a turbulent meeting at which, despite James Macarthur's courageous attempt to oppose to the rabble his very reasonable views on the present unfitness of the colony for free institutions, it was agreed to petition for them. When Bulwer received the petition in September 1834 he replied at once, expatiating on the apathy with which Britain viewed her colonies and the need for a representative in the Imperial Parliament to press colonial interests. For this position he offered his services, requiring only that the expenses of his office and of a secretary should be defrayed by the colony. When this reply reached the colony another meeting, the first of the A.P.A., was called.

Le Roy however argues that the meeting of 1833 was a manifestation of 'mutual cooperation' between the factions and that even James Macarthur backed the struggle 'in the abstract though he felt that...the colony was not yet ready.' P.E. Le Roy, 'The Emancipists, Edward Eagar and the Struggle for Civil Liberties', in J.R.A.H.S., Vol.48 1962 p.291-3.

The narrowly based Committee Macarthur proposed (Colonist 2 June 1836 p.174) does not suggest great sympathy with the objects of the meeting, but that its callers included Mudie and Savage and that the Herald, though contemptuous of the tone of the meeting, supported the petition, indicates that Melbourne has oversimplified. For Herald see J.D. Lang, Historical and Statistical Account of N.S.W. (London, 1834), Vol.I p.333-5.
The first meeting on 29 May 1835 was given wide support by the representative character of its callers and by its comprehensive objects. Of the eight magistrates who called it, two later signed the opposing exclusives' petition and the inclusion of Bingle in particular testified to its want of factionalism. Bingle, already notorious in his own right for Bourke-baiting was also involved later in 1835 with Mudie in the Watt affair, for which he was dismissed from the magistracy in January 1836. ¹

The avowed objects of the meeting and the discussion at it also avoided the most controversial issues. The Colonist, an exclusive sympathizer, heralded its approach with enthusiasm: 'the object of the meeting is to facilitate the attainment of free institutions for the colony ... one in reference to which there is but one opinion among all sensible people in N.S.W., to whatever division of our anomalous society they may respectively belong.' Both the Herald and the Colonist later virulent in their opposition to the A.P.A., commended the respectable attendance at the meeting.²

1. Bingle and Johnson; HRA.1.16.719-23 (Bourke to Goderich, 24 August 1832).
2. Colonist 28 May 1835, p.172 and 4 June 1835 p.179, Herald 1 June 1835 p.2. It said that 'a consideration of the extreme vitality of the matters treated of in that communication [from Bulwer] drew from their seats in the interior a number of gentlemen in order that they might be present at the discussion.'
Wentworth, the main speaker, concentrated on uncontro-
versial issues: the need for N.S.W. to exercise greater
influence in her own affairs; the solution, representative
and responsible government; and the means, a colonial
advocate in the British Parliament. To give force to his
argument he used the present bête noir, the unjust imposition
of the Police and Gaols expenses on the colonial treasury,
declaring that a colonial agent would 'interpose between
their interests and the rapacity of the minister, the weight
of his influence.'

He proposed too that membership of the newly formed
association should be restricted to those subscribing at
least £1 per annum for four years for the expenses of the
colonial advocate, and eligibility for the managing committee
to those subscribing £5. The qualification was necessary,
he said, because 'the important measures which they had under
consideration were more likely to be forwarded by the united
talent and intelligence which property naturally combined
with itself.' Though by making no distinction between free
and freed, this did not correspond entirely with the gentry's
criterion of worthwhileness, yet it was sufficiently illiberal
to provoke one Hipkiss to object that 'it was unwise to
exclude a considerable share of intelligence ... on the
score of pecuniary consideration' and to retain the support
of some exclusives. Of the 194 subscribers advertised in
the Herald in 1835 at least 24 signed the exclusive petition which the A.P.A. provoked in 1836.¹

Despite so 'plausible and innoxious' a beginning, by the end of the year the real democratic objects of the leaders became evident and 'the association was deserted ... by all its members of wealth and character.'² They saw that the fundamental platform of the A.P.A. was the extension of civil equality to ex-convicts.

It was the awareness of the objects of the A.P.A. and of its efficient and purposeful organization that instigated the counter organization of the exclusives and led both to greater militancy, a militancy which was extended from its avowed object, the attainment of free institutions, to the question of transportation. This process was a logical extension of the cardinal concern of the two parties, but followed a path at times made tortuous by the presence of

1. Colonist 4 June 1835, p.179-80, Herald 8 June 1835, 15 June 1835, 6 August 1835, 7 September 1835.
2. Mudie Felony p.161-2. By August some were aware of this. The Colonist 13 August 1835 p.259, printed a letter from 'Humphrey Hear-all' parodying A.P.A. resolutions; '¹ That no member shall vote for any person ... unless it shall be notorious that he either is or has been living with a concubine; it being the intention of this club to support liberal men ... 2. That no member of this club shall refuse to vote for any candidate for office in the Patriotic Association merely because he is a Port Macquarie or second-sentence man; it being a fundamental principle of this club that all men are equal.'
factors conflicting with the basic political aims.

1835 marked the birth of significant opposition to transportation. The economic value of convict labour, its main justification, was reduced by the imposition on the colonial revenue of convict expenses, by the increasing inadequacy of the supply of convicts and by their allegedly increasing inefficiency. Its effect on the moral state of society too was subjected to critical analysis and the organization that was to embody and develop opinion was founded.
CHAPTER II

THE COLONY DIVIDED

Contemporaries accepted that the division of opinion on transportation in the late thirties corresponded with the exclusive emancipist split. William Bland wrote in 1850 that 'the abolition of transportation to this colony was carried out at the instance of a small body of colonists whose names (about 427) were appended to a petition', identifying most explicitly, opposition to transportation with the exclusives. In 1839 'Junius' told the editors of the Herald that the defenders of transportation were Demagogues pretending to be the 'promoters of the political and moral regeneration of their country', advocates of equal rights and clamourers for self-government.¹

This division was not a direct consequence of the avowed objects of the two parties. The Patriotic Association was founded to hasten the achievement of free institutions and the petition of 1836 which confederated the exclusives, to delay this. The exclusives' aims were consistent: they maintained that while transportation continued free institu-

tions were undesirable and should be postponed until trans­portation was abolished, but the A.P.A. persisted in advocating the continuance of a system so ill calculated to promote its apparent object. The channelling of opinion depended not on the manifest objectives of the two parties but on the basic political question that divided them. This was reinforced by economic and moral considerations but at the core of opinion on transportation was the emanci­pist struggle for power in N.S.W.

The most vocal discussion on the economic value of trans­portation came in the forties after the threat of the thirties had become a reality, but in response to the changing character of the colony and to the enforced recognition of the actual effects of the discontinuance of transportation, the personnel of the two sides had altered. During the thirties there was considerable free immigration which by the forties formed a body, exempt from the social and politi­cal squabbles of the two older parties, its energies concen­trated rather on wresting from them their established economic power. The emancipist battle for equality had been virtually won under Bourke so, faced with a common danger, the old parties put by ill feeling and cooperated for mutual protec­tion. With the acute depression of the early forties these men either sank into insignificance or merged with the new
rich - the squatters. It was between these men and the free emigrant labourers that the question was debated in the forties.¹

The defence was led by the squatters, unable to attract free men to the intimidating loneliness of the Australian bush, and supported by men like James Macarthur, one of the most formidable opponents of transportation in the thirties, converted in the forties when free immigration proved insufficient to satisfy the demand for labour. Opposing them were the emigrant labourers and mechanics, fighting to keep out convict labour and to maintain the high rate of wages which lack of competition had allowed them.²

These elements, though present in the thirties were as pressure groups, negligible. The emancipist exclusive

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² D.W.A. Baker op. cit. p.112-3 points out that this division was not clear cut but the problem is yet unsolved and as an admitted oversimplification, the distinction has some truth.
rivalry dominated N.S.W. until the late thirties.¹

The clearest division of opinion on the economic value of assigned convicts² fell between small and large landowners and to a great degree corresponded with the two parties. The exclusives, to maintain their aristocratic life were


In December 1835 a number of immigrant workers who had arrived since 1830 organized a memorial to the British Government protesting that they had been misled by false propaganda about wages in N.S.W. and asking for compensation but the petition was lightly dismissed and the organization it implied, an isolated example in the thirties. HRA.1.18.516-25 (Enclosure in Bourke to Glenelg 2 September 1836), 730-1 (reply 14 April 1837).

The squatters too, though by their vigorous expansion forcing themselves on the attention of the government, did not assert themselves in the thirties as a defined interest group. Before the Act of 1836 this was natural not only because of the inchoate nature of the movement and of its main existence merely as an extension of freehold landownership but also because most squatting was illegal. In 1836 leasehold outside the 19 countries was introduced but though some wealthy squatters advocated the continuance of assignment in 1838 they had no real power before the 40's. (Roe *Quest for Authority* p.71).

2. I shall not treat in detail here attitudes to the use of convicts on public works. A few visionaries opposed transportation in its entirety but most settlers recognised the value of this labour and the impossibility of its early replacement by free labour. They felt too that the moral effects of convicts working in gangs was far less than that of convicts insinuated throughout the community.
necessarily wealthy which in N.S.W. generally implied the
ownership of land, while the bulk of the A.P.A. lay in
merchants and small settlers. The value of convict labour
to both groups declined sharply in the thirties through its
increasing inadequacy, inefficiency and expense.

Though in the twenties the Government had given land to
those who relieved them of the maintenance of convicts,
inevitably the slow growth in the numbers transported soon
failed to satisfy the rapidly increasing demand. As
Wakefield had seen in 1829 so James Macarthur saw in 1837
that 'the portion falling to the share of each assignee must
in every succeeding year become less and less'. All employers
suffered from this inadequacy but by the Assignment Regula-
tions of 1835 the small settlers were saved from the ruin
which would have followed from a distribution by acreage,¹
and the brunt was borne by the larger settlers.

The colony as a whole, in paying the expenses of the
police and gaols from the colonial revenue, shared much of
the increased cost of convict labour but it was the larger

1. L. Robson, The Convict Settlers of Australia (M.U.P.,
1965), p.168 gives figures showing an increase of little
more than 52% in the numbers transported.
E. G. Wakefield, A Letter from Sydney 1829 (Everyman,
London 1929), p.38,42. James Macarthur to the Sydney
Petition Committee, 11 January 1837 in 'Petitions to
the King 1835-7', M.S. ML A284 p.28.
settlers, among them the Macarthur's, James Mudie and Sir Edward Parry, who argued that Bourke's sugar plum system had made it impossible to exact any satisfactory labour from convicts without giving them indulgences almost equal to wages of freemen. ¹

Major Mitchell, Surveyor General, disagreed, insisting that assigned convicts were cheaper than free labour, and Alexander Harris estimated that,

their cost might be about half that of free labourers; whilst between fear of being flogged and hope of getting a little indulgence in the matter of ration, their labour was nearly or quite equal. ²

Hannibal Macarthur's dogmatic opinion may be attributed to peevishness engendered by Bourke's interference with his tyrannous conception of convict discipline, a grievance under which James Mudie also laboured. Moreover both Mudie and Parry were disenchanted by N.S.W. and with no further financial interest in it, may have exaggerated the position in a very natural desire to impress the Molesworth Committee. Even so it is unlikely that James Macarthur would have

1. e.g. Herald 12 October 1837 p.3 (Sandy Macalpin) and TC 1837 Q.601-6 (Mudie), TC 1838 Q.66 (Macarthur), Q.628-33 (Parry).

2. TC 1838 Q.903-9 (Mitchell) and Alexander Harris, Settlers and Convicts p.66-7.
opposed assignment in which he retained an interest, had it been as cheap as Harris thought.¹

Both the Macarthurs and Harris may have been right. The Macarthurs may have exaggerated because their opposition to transportation rested on other grounds and this supplied an additional argument, and Harris, because he did not consider the question from the experience of a master who had to pay for indulgences and at the same time suffer his convicts' laziness and vindictiveness. Nevertheless the cost of indulgences would have varied considerably between masters. James Macarthur, because he found that convicts worked best under generous treatment and because of his own humanity, probably paid more than most. Dungaree settlers exercised greater personal supervision and used cheaper incentives, rewarding their convicts not with wages but with passes for a few days illicit freedom. In this manner it is likely that small settlers benefited more from convict labour than did the large landowners.²

Not only did the large settlers benefit less, they could also afford free labour. This caused further diver-

¹ D. W. Rawson, 'Factions in N.S.W. Politics' p.34 accepts this view but it seems an oversimplification.
² TC 1837 Q.598-9 (Mudie) 2356 (Breton) A. Harris, Settlers and Convicts p.68.
gence in attitudes to transportation. While the owners of large established properties were making each year great profits, which could be diverted to paying free labour, the replacement of convict with free labour was impracticable for small settlers. Not only would the extra amount necessary for wages have been greater than that for large settlers, but in any case, they did not have available viable resources.¹ The large landowners went on from the inescapable fact that the inadequacy of convict labour necessitated the employment of free labour, to ask, Is it practicable that free labour and convict labour should be carried on with advantage upon the same establishment. Or is it justifiable to bring the labourer of unblemished character and conduct into competition with one who is expiating his crimes — thus subjecting innocence not only to the danger of

¹. Australian 15 October 1839 p.2 and TC 1837 Q.4191 (Macarthur). Most settlers accepted without question the superiority of free over convict labour but some preferred convicts. (e.g. James Walker PP HC 1831 Vol.7 Paper 276 Q.816,1387-9; Campbell in Roe, Quest for Authority p.71).

The Australian insisted that free labour 'from inexperience of the country is not worth a fifth part of the labour of an assigned convict'. Ex-convicts certainly were more familiar with Australian conditions but the only advantage of a newly arrived convict over a new immigrant was that he could be forced into, and retained on unpalatable jobs like shepherding. These arguments generally subserved polemics for or against transportation.
contamination, but in some degree to the penalties of guilt.¹

The core of this problem lay less in the precious innocence of the village labourer than in the fear that labour would be discredited by its association with convictism, that the present aversion of free emigrants to partake in the rewards of crime would continue.

As convict labour by itself was increasingly expensive, inadequate and, used concurrently with free labour, contaminating, many concluded that as soon as possible it should be dispensed with altogether.

A necessary accompaniment of this decision was a confidence in Britain's competence to supply the ensuing deficiency by free emigration.

In 1837 while James Macarthur was in London pressing a vigorous attack on assignment, an Immigration Committee in N.S.W. was calculating that 10,000 extra labourers were necessary to supply the existing demand. Confronted by this crisis the militancy of the exclusives and the Herald faltered but they quickly latched onto the new panacea, indentured labour from India, and the drought of 1838 and 1839 enabled them to reaffirm their opposition. When the

¹. James Macarthur to Petition Committee 11 January 1837 in 'Petitions to the King 1835-7' M.S. ML A.284 p.28-9 ; TC 1838 Q.736-7 (Parry).
end of transportation was announced in October 1839 the Herald greeted the news with unequivocal delight. ¹

By the early forties Macarthur and many of his fellow exclusives were advocating a return to assignment. The Australian defended his position,

He thought in 1837 and he obviously thinks the same now, that transportation and assignment should not be discontinued until such an amount of emigrants had been introduced as would prevent any deficiency of labour... it is clear that we have not that adequate supply of labour, which in Mr. Macarthur's eyes would alone justify the discontinuance of assignment.²

The opposing attitudes of the exclusives and the large landowning liberals Jamison and Wentworth have been attributed in view of this volte face by the exclusives, to the accuracy of the liberals' estimate of the situation, 'they realized that whatever the disadvantages of transportation, the pool of free labour was still so small that the overall result of

1. Herald 22 February 1838 p.2, 5 April 1838 p.2, 7 May 1838 p.2, 16 October 1839 p.2, 20 November 1839 p.2. It ridiculed the Monitor's suggestion for a tax on assignees to pay for the continuance of convict labour when the money would obviously be far better spent on the introduction of free labour.

the abolition of transportation would be against their interests.¹

This argument could be supported by attributing the exclusives' blind faith and the liberals' accurate judgement to their general attitudes towards the British Government but though it is true that the volte face of the exclusives was basically a recognition of their inaccurate judgement, it was a judgement of more than the probable tide of immigration. During this period there was an important development whose influence this argument ignores: the decline of exclusive emancipist ill feeling. Though it is true that the leaders of the A.P.A. did not continue to benefit from transportation in the same degree as their humble supporters, yet to explain the opposing positions of the two parties purely in terms of economic interest and accuracy of judgement is to ignore important moral and decisive political considerations.

¹ D. W. Rawson op. cit. p. 34.
As the debate on the economic effects of transportation on N.S.W. changed in the forties so did that on its moral effects. In the thirties it subserved the political interests of the exclusives and in the forties, the economic interests of the free immigrant workers. Though the latter used the rhetoric of the moralists, their real interest lay in maintaining high wages rather than in shielding their children from depravity. The squatters were even less moved by this consideration. Although many of them stayed to found great dynasties in Australia, most of them in the forties, regarded themselves as Don Juans exploiting a virgin and unsophisticated land. The moral implications of convict labour, irrelevant to these men and subordinate to the economic interests of those of the older parties who supported them, were developed by the churches and adopted by those whose economic interest made their use expedient.

In the thirties too, opinion on the social effects of transportation did not entirely correspond with that on its economic value but, excluding the clergy who very naturally opposed so depraving an institution, the groups involved differed from those of the forties.

There was firstly, a platitudinous division between the upper and lower classes, a division overridden and obscured in the forties by economic interests. The upper classes of
colonial society though no less vicious than the commonalty, from a deep sense of their responsibility as leaders of the community and by their influence, tended to have more restrained conventions of conviviality and to keep their indiscretions private. The riotous and public drunkenness abhorred by the opponents of transportation as an inevitable result of that system, was mainly a prerogative of the lower orders whose appreciation of its vileness was dulled by long familiarity.¹

More important was the influence of men's criminal or law abiding past. Unlike the forties when the squatting supporters of transportation were distinguished by having no 'stake in the land', in the thirties both sides were committed to N.S.W. This commitment, channelled in different directions by the persisting influence of the penal origins of the colony, led to the incompatible claims in which the debate on the social issue lay.

The patriotism of the exclusives was best exemplified

1. In 1836 Dr. Thompson, Deputy Inspector of Hospitals, told Glenelg that if he intended 'to make this new world anything but what it is at present, a perfect earthly Pandemonium' he should 'increase the proportion of free emigrants of good character, while a total stop should be put to the further importation of convicts.' 16 June 1836 CO.201/258 p.599. Thompson most clearly demonstrated his pretensions in his account of education in the colony. See letter to Glenelg 24 July 1836 CO.201/258 p.617.
by the Macarthurs. Of James, head of the family and leader of N.S.W. Society, the Australian wrote with perspicuity,

New South Wales is the land of his birth, beneath the surface of its soil are inhumed the remains of those who gave him his birth and it must be his daily ... prayer that the relics of his own mortality may be left at rest under the same clods - riches and rank have arisen to him that (according to all human conception) it was impossible he could have inherited, enjoyed or entailed on any other spot on the terrestrial globe but the Cowpastures of Australia.¹

Australia offered to many a chance to carve out places in the sun denied to them in Europe; to the exclusives it offered social eminence, to the masses, meat and drink.

Having tasted the manna of power and prestige the exclusives were not only jealous of their hold on so bountiful a land and their primacy within it, but also, after reaching the top of a rather sordid penal colony the only means by which their prestige could yet increase was the conversion of that colony to one free and respected.

In 1836 Major Edward Macarthur reminded the Colonial Office of 'all the pains my family have gone to, to render

¹. Australian 13 April 1839 p.2.
New South Wales a place for sons of honourable condition.' Later in the same year, agitating for an increase in free emigration he warned that unless 'it be the desire of the Government ... to render Crime triumphant and this now valuable colony intolerable as a place of residence for reputable men, something must be done to mitigate the growing evil.'

The exclusives' petition of 1836 to the King's Most Excellent Majesty most humbly shewed that the prosperity of the colony was counterbalanced by the most appalling degradation, arising 'more than all from the continual influx of transported criminals'. They prayed that the abomination should cease before the introduction of free institutions that they might receive them in their 'constitutional purity, and transmit them in that purity to their children; so that this distant land of their adoption may be rendered worthy of the parent state.'

It was not only the desire to hold onto and increase the lustre with which the peculiar origin of the colony had

1. Edward Macarthur to Sir George Grey, 21 April 1836 and 27 November 1836 CO.201/258 p.139, 203.
2. H.R.A. 1.18.393-4 (Enclosure A1 in Bourke to Glenelg, 13 April 1836); see also Gazette 14 October 1837 p.2, Herald 23 November 1835 p.2; Colonist 15 January 1835 p.21, 5 March 1835 p.75; Gazette 25 November 1837 p.2.
invested them which provoked the exclusives' commination on
the moral state of N.S.W. Their basic intention was to
smear the bumptious ex-convicts who were threatening their
monopoly of power in the colony, but their protests were
couched in the language of the moralists. With the editors
of the Herald they insisted that they could not 'understand
the patriotism or the moral feeling of that man who would
desire to perpetuate the system whereby his native country
is rendered the receptacle for the outcasts of the British
Empire.'

The emancipists derived their patriotism from the same
source as the exclusives, from the penal origin of the
colony and from their commitment to it.

In 1813 Macquarie had warned Bathurst that free
settlers coming to N.S.W. 'Should Consider that they are
Coming to a Convict Country, and if they are too proud or
too delicate in their feelings to associate with the Popu-
lation of the Country, they Should Consider it in time and
bend their Course to some other Country.' This notion that
N.S.W., founded for convicts and 'by their Labour, Industry
and Exertions ... converted from a barren Wilderness of
Woods into a thriving British Colony,' was thus the heritage

1. Herald 27 March 1839 p.2 - see M. Roe Quest for
Authority Chapter 2.
and just reward of the emancipists, was fully developed by Macquarie and his minions.¹

The vision survived, in 1835 a small emancipist settler protested against the Herald's attack on the new assignment regulations,

What was this country originally? Has not convict labour ... improved it and settled it and made it what it is? Or are we to be told that it has been done by your beloved emigrants? ... So long as the Government do not immediately pay the passage home of the prisoner who becomes free, he has a natural claim on the land of the country, which fact was constantly recognised by Governor Macquarie.²

This conviction of their inherent right to the land, combined with their ostracism by the exclusives, created among the emancipists a strong corporate spirit and a perverted pride in their position. Alexander Harris frequently remarked on this and Dr. Lang was harrowed by their 'actually glorying in the recollection of having once been outcasts from society for their crimes.'³

1. H.R.A. 1.7.775-6 (Macquarie to Bathurst, 28 June 1813); H.R.A. 1.10.551 (Emancipists' Petition, enclosure in Macquarie to Bathurst, 22 October 1821).

The emancipists saw that their honour was bound up with transportation, that in denigrating transportation the exclusives were casting aspersions on them, the human beings represented by the abstract term. In defending themselves and their eligibility for civil rights, they found it necessary to defend transportation.

The division in the debate on the social effects of transportation corresponded with economic interest in so far as many small free settlers supported the ex-convicts. The defence of transportation was extended however by the inclusion of emancipist artisans who, though their wages in the acute labour shortage of the thirties were little affected by the competition of convict labour, did not share the small settlers' interest in assignment. Nor did the wealthy and respected emancipists join their natural economic group, the exclusives, for dissension on the moral implications of transportation accorded with criminal record. This debate too, helps to explain the positions of some of the leaders of the A.P.A.

William Charles Wentworth, by his paternal lineage and his worldly estate seemed destined not merely for the ranks, but for leadership of the exclusives yet he fell into the clutches of the ex-convicts and into a defence of transportation. His own motives for this unseemly course lay
mainly in his desire for power and station. Denied acceptance by the exclusives and convinced of the need for representative government, he adopted liberal doctrines and consequently the emancipist cause, seeking to gain eminence in a changed system. His initial rejection however had been a result of his mother's convictism and for long after his discovery of this he was imbued with a determination to revenge himself on those who had so contemptuously used him.\(^1\) This certainly was not a manifestation of the emancipists' pride in convictism but it blended with their resentment at being dismissed on such grounds and led him to a perverse espousal of the role thrust upon him.\(^2\)

William Bland too was influenced not only by his

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1. In 1818 John Macarthur senior, previously a close friend, by refusing to allow Wentworth to marry his daughter, opened the breach. It continued until 1840 when, the strife between the old parties dissipated, Wentworth was reconciled with John's son James. A.C.V. Melbourne, W. C. Wentworth (Brisbane 1934) p.23,31,60.

2. His consistently indecorous behaviour would indicate this, particularly the riotous party he held at Vaucluse two days before Darling sailed in 1831. See J. Mudie Felonry p.40, Sir W.E. Parry 'Australian Journal' Vol.II M.S. ML A631 p.102-3 (19 October 1831). J.D. Lang, Historical and Statistical Account 1837, Vol.II p.384 says he 'uniformly identified himself with the views and claims of the emancipists.' By 1836, though still loyal, he shed some of his most extreme tenets and admitted his belief that there was some correlation between property and intelligence - Herald 9 May 1836 p.2.
commitment to liberal ideas but also by his exclusion from polite society. As a naval officer in India in 1813 he had killed a man in a duel and was transported for seven years. After little more than a year in Australia he was pardoned and began private practice but although his conviction had been honourable, his enforced association with the convicts had unfitted him for intercourse with the genteel. His natural inclination to liberalism reinforced, he developed attitudes so extreme that in 1819 he complained to Bathurst of the illiberality of Macquarie's land grants to emancipists and in 1820, to Bigge, of Macquarie's vanity in declining to admit him to Government House.¹ During the twenties and thirties he involved himself in the emancipists' struggle for civil rights and representative government, becoming in 1835 Chairman of the Committee of Correspondence of the A.P.A., responsible for all communication with its Parliamentary Agent in London. Bland did not share Wentworth's noble lineage but he was widely respected as a doctor and as a philanthropist and he had considerable property acquired by grants for services rendered to the colony. He was a

¹ Bland to Bigge 3 October 1820 and 6 June 1820 Bonwick Transcripts Box 24 p.5179-80 and Box 22 p.4316-8. Probably Macquarie was trying to avoid associating with ex-convicts while Bigge was in N.S.W. For this information I am indebted to John Ritchie ANU.
gentleman but in the letters he wrote for the A.P.A. he supported on every ground the monstrous evil of transpor- tation.¹

Edward Smith Hall, secretary of the A.P.A. and editor of the Monitor, himself free, 'young, generous and disinterested but imprudent'² and of 'unexceptionable character' had so far committed himself to the emancipist cause that Lang alleged that he had expressed a wish at an emancipist dinner in the early twenties that he himself had been a convict. Hall emphatically denied this in 1837 but by then he had moderated his views, admitting in 1836 in an attack on the exclusive petitions that their protest against the eligibility of emancipists was 'not an unfair representation.'³

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1. Though some of this land (more than 2,000 acres) was stocked he paid little attention to it, much of it he never visited and he lost most of it in 1839 for failure to pay quit rents. For this information I am indebted to Mr. P.D. Thompson ANU. See also A.D.B. Vol.I p.115, and his Letters to Charles Buller Junior M.P. from the Australian Patriotic Association (Sydney, 1849). As the 1849 edition omits some passages of importance, I have throughout used the original publication of the letter of 31 May 1839 - Australian Patriotic Association, Letter to Charles Buller 31 May 1839 (Sydney, 1839 - Ferguson no. 2698a).


3. J. D. Lang - TC 1837 Q.3706-10 and Transportation and Colonisation p.67; Monitor 24 November 1837 p.3, 16 April 1836 p.4.
He continued nevertheless, to defend transportation and its effects on the moral state of society by arguing incessantly that the depravity of the colony was due not to the convicts but to the disproportion of sexes.\(^1\) Wentworth and Bland espoused the emancipist cause not merely because of their conviction of the need for representative government but also because of their very provoking exclusion from the beau monde. Though Hall had a specific remedy for the ills of the colony he had no particular grievance, he was a visionary who did not mature into complacency and in N.S.W. his most agreeable home was with the emancipists.\(^2\)

The 'rampant Patriot' Sir John Jamison, the Hospitable Knight of Regentville and a man of wealth, irreproachable character and taste had not been spurned by the ancients. That he had little sympathy for emancipists for their own sake was obvious from his attack in 1835 on the ticket of leave squatters: his espousal of their cause was intellectual rather than emotional, a logical consequence of his political beliefs. Even so he could not join his exclusive friends in attacking the men who shared his faith. His

1. e.g. Monitor 25 August 1837 p.3, 13 September 1837 p.2, 15 November 1837 p.2.
2. Cf. letter from Brewer in Ferguson op. cit. p.163.
commitment to the A.P.A. and thus to transportation was determined by his devout liberalism.¹

These men, socially and economically nearer to the exclusives than the emancipists, joined the rabble in defending transportation against exclusive diatribes partly because the exclusives exaggerated wildly, primarily because, for varied reasons they wished to see the exclusives' monopoly of power broken, and the means lay in the extension of civil rights to ex-convicts.

Politicking in the thirties determined alignment on transportation, and gave coherence to the two parties. Support for and opposition to transportation were identified with the emancipist and exclusive parties and the core of these parties with the opposing petitions of 1836.

The first two petitions, organized by the exclusives early in 1836 were provoked by the approaching expiry of the N.S.W. Act and by the militancy of the emancipists and liberals in the A.P.A. These petitions were signed not by the myriad rabble who supported the A.P.A., but by 427 persons of respectability, by six out of seven of the nominee members of the Legislative Council, 57 Justices of the Peace, four clergymen, five solicitors and 355 landholders, merchants and other bastions of the community. Their feelings represented, James Macarthur claimed in the book he published in their support, 'the sentiments of a large majority of the property, intelligence and respectability of the colony'.

The A.P.A. replied at once by preparing a counter petition and presenting it at a public meeting. Nearly

1. In proof of their genuiness the residence of each petitioner was recorded with his name - James Macarthur N.S.W. Its Present State and Future Prospects p.12-13. (The book was actually written by Edward Edwards).

2. Colonist 14 April 1836 p.115-6, Herald 14 April 1836 p.2-3. This meeting was not officially sponsored by the A.P.A. but contained the same personnel. Macarthur said that 'the managing members of the association...prepared a counter petition'. Macarthur op.cit. p.267. A.C.V.Melbourne Early Constitutional Development p.211 identifies the two and it would seem from the correspondence of the A.P.A. that Sweetman is correct in saying that the 'petition...was adopted by the Patriotic Association'. E. Sweetman, Australian Constitutional Development (M.U.P., 1925), p.117. I have used the terms A.P.A. and Counter-Petitioners interchangeably.
6,000 signed this petition while, as 'A.B.' insisted, 'the facts remain as stubborn as ever, that out of 20,000 adult males, whose subscription bye the bye, would have been thankfully received [by the exclusives] but little more than 400 signatures could be obtained, though the colony was scoured for that purpose'.

Sir Richard Bourke, the most

1. Mudie said (TC 1837 Q.1818) that some signatures were rejected but it is unlikely that the organizers were unduly discriminating. They certainly had to ask some petitioners to sign (Macarthur to Jenkins, 27 June 1836 in 'Papers on Education 1804-1868' M.S. ML A357 p.254) and Macarthur defended their fewness on grounds of dishonest emancipist propaganda, not of discrimination ( - N.S.W. Its Present State and Future Prospects p.269-270.

The mixed character of the final list does not imply much selection. Spark, Treasurer of the petitioners and Lamb, Bingle, Edye Manning, Thos. Barker, Archibald Mcleod and H.C. Sempill had supported Mudie in his attack on Bourke in 1835. Bingle too had supported R. Scott, F. Little, W. Dumaresq, G. Townsend and W. Dunn in the earlier attack using convict discipline and with Lamb, McLeod and McLaren was incensed by his dismissal in Jan. 1836 from the magistracy. Some like R.G. Moffat, W.H. Moore and H. Dangar held more personal grievances against Bourke, others like George Cavenagh who by his persecution of Watt had risen from a mere clerk in the Gazette office in 1835 to be its editor and John McLaren who had neither 'wealth station nor talents were blatantly social-climbing. Together with these were Archibald Bell MLC and Robert Campbell junior, men of indisputable respectability who had nevertheless distinguished themselves by their support for the jury laws. For all these see HRA.1. 17 and 18 passim.

Rusden, eminent Australian Tory historian pointed out that 'While yet many of that generation are living this fact is remembered, but in a few years the recorded names will be but unknown quantities, the value of which only deep research could ascertain; but it was as representative in the colony at the time as would be a petition in England, signed by all members of both Houses of Parliament.' G.W. Rusden, History of Australia (Melbourne, 1897), Vol.II p.61.
influential of the supporters of the counter petition, told Glenelg that,

If public opinion is to be judged of by a comparison of the number of signatures ... the Counter Petition ... must be declared to speak the sentiments of the People of New South Wales ... It can not, I believe, be denied that a vast majority of the Colonists capable of forming sound opinions, desire the Establishment of Trial by Jury and a Legislature either wholly or in part representative.¹

Confronted by so numerically powerful an opposition, the exclusives were obliged to attack its respectability, to dispute Bourke's phrase 'capable of forming sound opinions.' Macarthur declared that 'in many instances the signatures to the Counter Petition were the gatherings of tap-rooms' and the Herald, that it was 'signed by a troop of the greatest vagabonds in the colony - Ticket of Leave men, sly grog sellers etc.'² That many of the counter-petitioners deserved this abuse is certain, but numbered among the 6,000 were others of indisputable wealth, respectability and

¹ H.R.A. 1.18.456 (Bourke to Glenelg 25 July 1836).
and intelligence. The unthinking nature of much of its support did not imply that the patriots' petition was any less discerning than that of the exclusives.

The petitions were concerned with the political and legal question of the emancipists' pretensions to power. Although transportation was considered in this course, the main emphasis was on the propriety of instituting representative government and on the restoration of civil rights to ex-convicts. There were other points on some of which, immigration, land titles and judicial tenure, the two parties agreed, others such as the power of the governor to appoint and dismiss magistrates\(^1\) on which they disagreed, but on the central concern of the petitions there could be no agreement.\(^2\)

This struggle was concretised first in the question of the jury laws. The exclusive petitioners, seeing that admission to juries gave the emancipists a strong foothold in their claim to civil equality, protested that the law

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1. This was a reference to Bourke's dismissal in January 1836 of a number of magistrates on whom he could not rely to act in accordance with his policy, among them most of those involved with Mudie in the Watt affair. HRA.1.18.306-9 (Bourke to Glenelg, 28 February 1836). See Gazette editorials throughout February 1836 for protests.

2. Gazette 7 December 1837 p.2, said on Bourke's departure, 'in a penal colony like this it is absolutely impossible that he could be ... the "friend" of both parties.'
'was intended merely as an experiment, the failure of which they have reason to believe is now fully admitted by the supporters of the measure'. They maintained that although the measure was legally in accord with British law, in principle it was utterly repugnant for its practical effects were perverted by the nature of the colony: the presence of emancipists on juries had discouraged the attendance of respectable jurors and led to an infamous record of unsatisfactory verdicts.¹

In reply to this charge Bourke sought the opinions of the Judges of the Supreme Court and the Law Officers of the Crown, four out of five of whom insisted that the verdicts of civil juries had answered the ends of law and justice and that the occasional admission of improper persons was...

¹. Petition to Commons, enclosure A2 in Bourke to Glenelg, 13 April 1836 in H.R.A. 1.18.396; James Macarthur, N.S.W., Its Present State and Future Prospects p.69-127; Macarthur to George Grey, 9 February 1837, CO.201/267 p.516-22; Forbes' commentary CO. 201/266 p.481-93. Darling introduced civil juries in 1829 as an alternative to military juries in civil cases. Bourke arrived in 1831 in favour of and empowered to extend them to criminal cases. Noting the opposition of the exclusives, he acted cautiously, introducing in 1832 civil juries for only a few criminal cases. By 1833, convinced of the righteousness of his cause, he used his casting vote to force through a bill allowing civil juries as an alternative to military in all criminal cases. A.C.V. Melbourne, Early Constitutional Development p.192-6; D. W. Rawson, 'Factions in N.S.W. Politics' p.114.
due to the laxity of magistrates in preparing jury lists.¹

Complaints of improper verdicts and of verdicts improperly reached were in some cases justified but it is probable that they were rare. Of the five authorities Bourke appealed to, only one, the notoriously conscientious Burton, expressed dissatisfaction. Macarthur himself was reduced to gossiping with bakers to learn of abuses and in any case, emancipists with sufficient property to qualify were unlikely to jeopardize the cause of justice.²

Nevertheless Macarthur, accredited representative of the exclusives, went on to argue that the jury system was 'generally considered to have a strong tendency to favour

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1. TC 1837 Appendix p.296-303. On receipt of these opinions Bourke sent out a circular to all magistrates requiring them to take more care in the preparation of jury lists. This was abused as an attempt to shift the blame from his own very culpable shoulders. J. Mudie, Felony p.140-1; Herald 21 December 1835 p.2 and 30 June 1836 p.2; Colonist 14 April 1836 p.115.

the impunity and consequently the increase of crime', an increase fully proved by Mr. Justice Burton's charge and by supplementary statistics. The Counter-petitioners categorically denied this increase, using as evidence Burton's own figures.¹

The failure of the exclusives to prove an increase in crime undermined their entire case for they had used it as their basic premise in alleging not only the inefficacy of the jury laws but also the unfitness of the colony for representative government and the failure of transportation. In the bewildering mass of statistics presented by both parties this was not clear at the time and did not prejudice their case. The Molesworth Committee later made a similar mistake, and had a similar reprieve.

The propriety of introducing representative government was closely involved with the question of the jury laws for the exclusives feared that if emancipists were considered proper jurors they would also be considered proper electors. They argued that as the increase of crime demonstrated the failure of the jury laws, so did it demonstrate the unfitness of the colony for free institutions.

Both parties were dissatisfied with the existing

¹ CO.201/267 p.516.
Legislative Council, both felt that it was 'inadequate to the exigencies of the Colony' and that it had 'no hold upon the public confidence.' To the exclusives' nostrum, an increase in the proportion of the nominated members, the liberals replied that it would be preferable to return to the old system of a dictatorial governor rather than to continue with the present system or to adopt the plan of the exclusives for a 'still more numerous and irresponsible Non-elective Council.'\(^1\) Their ideas had been set forth in a petition in 1835, the petition which had roused the exclusives to action, in the form of two bills providing for elected members either in a blended house or in the lower house of a bicameral legislature. The bills, Macarthur explained, followed almost exactly the Quebec Act with the significant omission of Section 23 which excluded those attainted for treason or felony from the franchise and from membership of the Assembly.\(^2\)

The A.P.A. had been founded to get free institutions, an objective which it now endangered by including with it in the same petition, a defence of transportation. Certainly

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1. H.R.A. 1.18.398,400 (Enclosures A2 and B in Bourke to Glenelg, 13 April 1836).
2. J. Macarthur, N.S.W. Its Present State and Future Prospects p.266.
in shewing that the exclusives had failed to prove that crime had increased out of proportion to the population they covered the most concrete evidence against both the jury laws, representative government and transportation, but they did not give due consideration to the pervasive belief that no matter how prosperous and virtuous a convict colony might be, it was per se ineligible for free institutions.

The exclusives in their petitions launched a rather tentative attack on transportation, adverting to its inefficiency and entreating an enquiry into the propriety of continuing it. At the public meeting held on 12 April 1836 Wentworth accused them of insincerity in their opposition. Convict labour was far too profitable, he declared for them to want to dispense with it, 'it was their object to delay if possible, the passing of a new Act until the Tories were in power' for, 'they know that if they do not ... delay ... they will dwindle into the insignificance they were originally intended for.' Forbes developed this argument in a letter to the Colonial Office,

The clause of relaxation of convict discipline is purely political ... the watchword of the opponents of the existing government has been 'relaxation of convict discipline' and consequent increase of crime in the Colony and decrease of the terrors of trans-
portation. The cause of this is very superficial - it is the only cry which it is supposed will be heard or attended to in England. ¹

The exclusives attacked transportation because, as James Macarthur admitted in the Legislative Council in 1850, 'it was feared that the portion of the population who had been convicts might obtain the political ascendancy'.² Transportation was certainly declining in economic value and it was this which had first provoked their attacks, but it was in itself insufficient to sustain them. Though the vehemence of their opposition varied with the seasons, dwindling in the acute labour shortage of 1837 and 1838 and growing stronger with the discovery of an alternative solution in Indian labour and with the drought of 1838 and 1839, yet economic considerations were merely a variable in determining opposition to transportation. The constant and decisive root of opposition was the emancipist threat. The exclusives' attacks were designed to smear these aspirants for political power and to stop any further importation

2. James Macarthur, Speeches of James Macarthur and W.C. Wentworth Esq.s ... on the Question of the Resumption of Transportation (Sydney, 1850), p.9.
which would only strengthen the position of the rabble.

The Counter Petition denied that transportation was inefficient, insisting that the life of a convict in Australia, if truly represented, could hold out no encouragement to criminals, and that the cause of the increase in crime in Britain lay rather in the economic conditions there.

To the question of the compatibility of transportation and free institutions, they adverted only indirectly, maintaining that 'the several subjects ... propounded by the exclusives] as proper for inquiry, previous to further legislation, have not any connexion with the fitness of the Colony for the reception of these rights.' Later after Charles Buller, then Parliamentary Agent in London for the A.P.A., had made quite clear the Government's attitude, that transportation was 'the obstacle that has mainly thwarted all my efforts to obtain you what you desire', the Patriots attempted to defend their indefensible position. Bland ineptly explained to Buller that,

If the colony were even as vicious as it has been represented ... it is clear that it is so much the more in want of the most perfect form of a Free Constitution for its reformation. While on the other hand, if it is, as we assert it to be, equal in the moral conduct of its inhabitants, to any other part
of the British Dominions with which we are acquainted, it has a full claim in the present advanced state of its population and means, for those free institutions for which it has so frequently and so earnestly prayed. ¹

The apparent folly of the platform the A.P.A. assumed, jeopardizing its avowed objective by advocating the continuance of transportation, was an inevitable result of its fundamental purpose. The Patriots were certainly influenced by the economic value of convict labour but free institutions would be a mockery without extending civil rights and the franchise to the huge proportion of ex-convicts in the population, and to oppose transportation would be to condemn these men. Support for transportation, which at the foundation of the A.P.A. seemed irrelevant, became one of the party's main platforms and, but for the great influence in Britain of its opponents, might have led to the frustration of its avowed concern.

In 1837 Edward Eagar who considered himself the 'acting agent of the Patriotic Association', wrote from London of the Molesworth Committee that 'its enquiries, to a great

¹ H.R.A. 1.18.402 (Enclosure B in Bourke to Glenelg, 13 April 1836) ; Charles Buller to the A.P.A., 21 April 1838 in 'Papers on Education 1804-68' M.S. ML A357 p.188 ; A.P.A., Letter to Charles Buller ... 31 May 1839 (Sydney, 1839), p.13 par.49.
degree turned upon local politics, facts and personal character ... respecting which the evidence given was ... nearly all on one side.' Despite the overwhelming numerical majority of the Patriots, they were almost sunk out of view, there was neither agent, friend, advocate nor materials on the spot to support their interests ... while the chiefs of your Tory party were here, fully prepared for and taking advantage of this committee.'

1. Eagar to Grey, 18 July 1838 and to Glenelg, 21 July 1838 CO.201/281 p.434,438; Eagar to the colony, Monitor 5 January 1838 p.4.
PART TWO

THE WITNESSES
In 1836 the two colonial parties laid their cases before the British Government. N.S.W. was a wealthy colony boasting of theatres, libraries and balls, producing a rapidly increasing share of Britain's wool imports, and at the same time it was a gaol. Within it the free settlers who had so long held power as gaolers were being challenged by their former charges. Britain was faced with the two closely related questions of whether N.S.W. was to continue an unhappy amalgam of a gaol with a free colony and of who should hold power within it.

The first problem was handed over to the radical colonial reformer Sir William Molesworth. He and his committee were appointed in April 1837 to enquire into the system of Transportation: its efficacy as a punishment, its influence on the moral state of society in the penal colonies and its susceptibility to improvement. His enquiries concerned more than a penal system: because of the intimate involvement of the free community with the prisoners and because of his own obsession with colonial reform, he examined the whole of the anomaly that was N.S.W. He read despatches from the Governors, reports from officials, books written by settlers and travellers, and he called witnesses who had seen the system in action.
Ten of these men had lived in N.S.W.\(^1\), some of them had acted as gaolers of assigned convicts, others of government convicts; some had interests there to protect, others had been merely transients. Each of them had seen the colony from a unique position.

In 1837, 1838 and 1839 copies and reports of their evidence and of books and pamphlets enlarging on it reached N.S.W. In their newspapers, in public meetings, in petitions and in the Legislative Council, the colonists cried out in anger.

The exclusives were satisfied with its general character, totally denying 'that there is any difference of opinion between the great bulk of the Emigrant Colonists of N.S.W. and the witnesses examined before the Transportation Committee\(^2\) and confining their criticism to Slade's immorality, Ullathorne's popery, Mudie's extravagance and Forbe's ineptitude. It was by the use made of the evidence

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1. I have not included Peter Murdock, Superintendent of Emu Plains till 1824 as he left then for VDL and last visited his property in N.S.W. (run by his brother) in 1828. TC 1838 Q.1333, 1358, 1404. Other witnesses gave evidence concerning N.S.W. but as this was restricted to specific subjects I discuss it, with the great mass of evidence contained in the appendices, in Part Three.

2. Herald 7 June 1838 p.2. See also Colonist 26 May 1838 p.2.
in the Committee's final report rather than by the evidence itself that they were most annoyed.

The Patriots however were incensed. In 1839 with the exclusives they directed most of their fury at the Committee but in 1838 it was concentrated almost wholly on the witnesses and their evidence. Although of the ten witnesses only Macarthur had signed the exclusives' petition of 1836, yet Slade, Parry, Breton and Wright had left for England before it was available, Mudie approved and advocated their objects, Mitchell was away exploring and Lang and Ullathorne agreed with neither petition. Only Forbes was in sympathy with the emancipists and his support had lost much of its conviction since his departure from the colony. Bulwer, accredited agent of the A.P.A., reported in 1837 that 'the persons hitherto examined have only been on one side and I fear there is difficulty in procuring any testimony on the other.'

Bulwer was primarily concerned with the pertinence of the evidence to the struggle for free institutions, but in N.S.W. the indignation of the Patriots was extended to the aspersions cast on their morality and to the threatened discontinuance of Transportation.

The witnesses themselves were attacked as men who 'from

1. Monitor 12 February 1838 p.4.
their judgement and Christianity not having kept pace with
the increase of their flocks and herds ... have not only
abused but calumniated their adopted country.' They were
'persons of decidedly biased opinions smarting under real
or supposed injuries', some interested aspirants to 'feudal,
sacerdotal or aristocratic domination and ascendancy here',
others 'hesitating at no testimony ... to gratify the vilest
passions that can either agitate or harden the heart of
man.'

A memorial to the Legislative Council adopted by a
public meeting in May 1838 and signed by 67 magistrates
and more than 500 other respectable persons, expressed these
views more temperately, attacking not the witnesses but
their evidence. It complained that extraordinary examples
had been used to illustrate supposed general principles,
that 'effects having their origin in causes either wholly
or partially obsolete are spoken of as if those causes were
still in full operation', and that N.S.W. was changing so
rapidly 'the testimony of persons who have quitted this
country though but for a short period cannot safely be
relied on.' It asked for a committee to take evidence in

1. N.L. Kentish, The Political Economy of New South Wales
(Sydney, 1838), p.19; T.P. Macqueen, Australia, as
She is and as She May Be (London, 1840), p.5-6; Australian 22 May 1838 p.2.
the colony in order to disabuse the British Government of the unsavoury impressions it had received. The Members of the Legislative Council, confronted at the same time by a calamitous labour shortage, and infuriated because in London the allegations which they had made about the moral effects of Transportation on the Patriots had been extended to themselves, sympathized with the memorialists. They passed a series of resolutions in which, though they refused the request for a colonial committee, they unequivocally condemned the evidence.¹

In England, despite occasional sceptism of the more extravagant witnesses, most newspapers were overcome with credulous horror. *Bells Weekly Messenger* declared that 'never was such a scene of depravity, corruption and misrule exhibited to the startled eye of humanity'; the *Atlas* 'that we cannot help regarding it [N.S.W.] as one of the last places however tempting in clime and soil - to which we should advise an emigrant to repair'; and the *Spectator* that 'the tendency' of the evidence 'preponderates very strongly against the efficacy of transportation as a penal

¹. *Herald* 28 May 1838, p.2, 20 July 1838, p.2. The petition was refused because of the discord such a committee would cause in the colony, the lack of time and the Council's faith that the Commons would see the truth despite false witness.
instrument and exhibits the baneful effects of it as a means of colonization'. Their opinions however depended primarily on their political sympathies, on their attitude to the radical Molesworth rather than on the reliability of the witnesses, and even when their judgement was not dictated by party politics it was ill informed.²

The Molesworth Committee too, with few dissidents, accepted the most extreme views of the witnesses. Its prophet, the Archbishop of Dublin was convinced that the necessity of abolishing Transportation 'is a conclusion I can hardly understand any man's failing to draw from the Evidence - or even any 20 or any 10 pages of it taken at random.' When the colonists protested that the evidence belied them, he dismissed them disdainfully, asserting that 'if we are to believe the documents brought forward of late ... we must conclude that all the evidence given in 1837 and again in 1838' was 'from first to last a series of falsehood

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2. The Colonial Magazine and Commercial - Maritime Journal Vol.5, 1841, p.292, wrote that 'the stalks of pears which we are accustomed to see attached to the narrow end, with a tenacity of reverse peculiar throughout that country [N.S.W.] proceed only from the broader end.' This journal was specifically concerned with colonial affairs.
and misrepresentation.¹

The evidence was not false but it was fashioned by the interests and intentions of the witnesses, distorting mirrors all of them.

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¹ R. Whately, Substance of a Speech on Transportation, (London, 1840), p.37,44. The original reads 'we must conclude all that the evidence ...' Assuming that this is a misprint, I have transposed 'all that'.
CHAPTER III

THE COLONIAL POLITICIANS

When Macarthur and Forbes left N.S.W. in 1836 the Colonists believed that in London they would be the chief advocates of the opposing petitioners, yet like wild flowers, colonial politics, transported to England lost their native flamboyance. In these men the political debate came before the Molesworth Committee purged of its ranting magniloquence. This mollification derived in part from the change in location. Certainly at Camden James Macarthur walked on Brussels carpet and wrote poetry, but the men who pulled their forelocks to him were convicts and the conversation of his friends dallied on their insolence and abominations, incomprehensible to the English gentry. For Forbes, living as Chief Justice in Sydney, there had been no escape from the Colony's convictism but under the soft dim skies of Cambridge, in the intimacy of country weekends, and in the decorum of the Houses of Parliament, Sydney's dusty streets, its sullen convicts and its frantic demagogues were four months and ten thousand miles away.¹

¹ CO.201/257. p.584-5, Forbes mentions the problem of dislocation.
More palpably, the restraint was imposed by the characters and the relations with the petitioners of the two protagonists, and by the intercourse between them in England.

JAMES MACARTHUR, said Mr. Plunkett the liberal Attorney General of N.S.W.,

went to England as the advocate of a party; he wrote a book taking as his text two petitions which were signed by a party ... a great portion of his evidence consisted of quotations from this book and therefore he could not be looked upon as an unbiased witness.¹

To regard Macarthur merely as the spokesman of the petitioners is to neglect their diversity, Macarthur's own character and ideas and his relations with the Molesworth Committee.

The petitioners, loosely called 'exclusives' or 'emigrants' comprehended men of widely different opinions, interests and breeding, with little more in common than a determination to fetter the influence of the emancipists on N.S.W. Within the ancient nobility there was decorous dissension on convict discipline, on the jury laws, on the legislature and on Transportation, and ranged with them were many whose gentility was of recent and uncertain assumptions:

¹. Herald 6 July 1838 p.2.
social climbers, malcontents and troublemakers.

Accurate representation of so motley a crew by one man was impossible, a problem which Macarthur himself recognised in 1836 when he said, 'I think I may say the same ... of all who assisted in framing the Petitions, at all events I can for myself most unequivocally declare that' they were not intended as an attack on the Governor. In writing to his son, Bourke noted, with some relief, Macarthur's independent stand,

He is not violent in his politics and though a Tory has I believe no objection to my government. We have always been on the best terms and I understand he made it a point that the Tory petition should not say anything abusive though he could not prevent indirect attack from Messers Jones, Walker and others.¹

James Macarthur at 39 was unchallenged leader of the

1. Report of the Proceedings of the General Meeting of the Supporters of the Petition to His Majesty ... 1836, (Sydney, 1836), p. 75, see also Lamb on juries, ibid p. 22; Bourke to his son, 21 July 1836 in 'Bourke Papers' M.S. ML A1733 p. 52. See also Macarthur to Jones, 26 April 1836 where he qualifies his support for the Petitioners; and to C.H. Jenkins, 20 June 1836, in which he tells of alterations he has made to Lamb's and Jones' speeches before publication - 'Papers on Education 1804-68' M.S. ML A357 p. 232, 243a. See also Speeches of James Macarthur ... on the Question of the Resumption of Transportation, (Sydney 1850) p. 9 - he refers to 'the party with whom I acted.'
exclusives, strong and politically discerning yet gentle and humane. As third son of John Macarthur he had been born and educated to wealth and power but it was not until the death in 1831 of his elder brother John that leadership of his family and thus of N.S.W. devolved upon him. He did not share his father's ruthless ambition and unlike John had not been nurtured in it but as they had already secured pre-eminence James could afford to indulge his paternal and aristocratic inclinations. So detached was he from the bickerings of colonial politics that even the splenetic convict William Watt allowed him to be 'the only one of the name [Macarthur] who possesses reasonable or consistent politics.'

Sir Francis Forbes' relations with the counter-petitioners were equally ambiguous. Unlike Macarthur he was not an accredited representative, but the opinions and sympathies

1. Volume 3 of the 'Macarthur Papers' (M.S. ML A2899) contains John Macarthur's letters to his sons, in a great many of which he writes virulently of local politics. Some are addressed to Edward, the eldest son, a few to James, but the vast majority to John. When John died Edward had already settled in England and the army.

2. Emigrant of 1821, Party Politics Exposed..., p.66. See also Oxley to James Macarthur, 26 January 1858, in 'Macarthur Papers' M.S. ML A2920 p.207-9. Oxley suggested that in 1858 James' paternalism blinded him to the realities of politics in the differently constituted society.
he had expressed in N.S.W. had convinced the Patriots that although it was improper for him as Chief Justice to commit himself openly to party politics, he would yet advocate their views.

Born in Bermuda in 1784, Solicitor General and Judge Advocate there in 1813 and Chief Justice of Newfoundland in 1816, Forbes arrived in N.S.W. in 1824. His relations with Brisbane and at first with Darling were very amicable, but the latter friendship foundered on their professional relationship. As Chief Justice he was obliged to judge the compatibility of all the Governor's and the Council's acts with English law and his constant and usually just disagreements with Darling alienated them. With Bourke he agreed both professionally and personally. In 1837 James Mudie told the Molesworth Committee that Forbes 'was idolized by ... the convict party' and that he belonged to the 'felony (sic) party', a gross distortion but a colonial cliche.¹

Forbes was accused on many grounds of a rabid libera-

lism\(^1\) but his previous alienation of the Governor of Newfoundland by his rigorous administration of the law, his widely admitted competence and discernment as a judge and his later moderation suggest that he had rather a genuine tolerance, notable in so introverted a colony, and a deep veneration for the law. By chance and Darling's character, those actions which Forbes considered illegal were almost all distinguished by exclusivist tyranny; he was therefore

1. Mudie, Felonry p.28 attributed it to profound conviction derived from his American birth and education, a doubtful interpretation of the ideas of one who grew up in a slave-owning society in the most loyaly British of the West Indian islands, indeed T.H. Scott called him 'that West Indian planter'. T.H. Scott to James Macarthur, 10 March 1837 in 'Macarthur Papers' M.S. ML A2955 p.176.

The Herald 5 May 1836, p.2, suggested that he 'was Governor Darling's Prime Minister (for a time) and that it was not until he found the Governor was not to be conducted by "leading strings" that he became restive. It was said of someone, by JUNIUS, that he became a patriot when he could not be a peer, and thus it was that Mr. Forbes became a "man of the people" when he found that General Darling was not disposed to become a "cypher". It suggested too that his support of the jury laws and of Bourke's soothing system might be merely his duty as a public servant, and again, that Bourke had purchased it by land grants - 30 June 1836 p.2 and 2 May 1836 p.2.

The charge of bribery is untenable: Dumaresq brought it before the Colonial Office and Glenelg, although 'firmly persuaded that General Bourke would scarcely have been less solicitous to respect, than you would have been anxious to maintain that personal independence which your high judicial situation rendered so indispensable', asked for an explanation. It was found completely satisfactory. GO.201/257 p.587, 591.
adopted by the Patriots as their champion, and under Bourke's regime he did nothing to disabuse them of their faith.¹

Even had he wished it his position as Chief Justice made open espousal of a political party impossible. As it was although he did not figure at meetings of the A.P.A. he was constantly abused by the Tory press for being 'tainted with filthy political principles' and it was generally assumed that it was only his judicial office that kept him from supporting the Patriot's Association or Petition.² At his departure in April 1836 in the midst of the furore over the petitions Patrick Leslie, a recent and gentle immigrant, told his parents that the counter-petitioners were supported 'by a few of the Whigs of good standing in the colony, first of whom stands Mr. Chief Justice Forbes ... a desperate Whig and quite a man of the Mob.' On Sir John Jamison's advice that it 'would not be agreeable to the Chief Justice', the A.P.A. did not officially address him. Even so the character of those who called the public meeting to attend him as he embarked, prompted the Herald to 'ask Mr. Forbes whether he could have received any such "address" without rendering


². Herald 16 January 1837 p.2; see also Herald 16 April 1838 p.2, and Gazette 1 August 1837 p.2 and 26 September 1837 p.2. They were particularly aroused by his seat on the legislature.
himself justly liable to the imputation of political partizanship'\(^1\) and later in discussing the counter-petitioners it referred to Forbes as 'their Champion'. Probably in its mordant sarcasm it came closer to the truth saying 'we think he must be ashamed of his convict friends.'\(^2\)

Forbes left for England on the 'Brothers' which carried too, to the Colonial Office, advance copies of the petitions. The coincidence gave plausibility to Mudie's suggestion that 'the real cause' of his departure was not his own health but 'his solicitude for the health of the colonial government': that Bourke sent him with the petitions to answer their charges\(^3\).


Certainly of the forty seven callers, six signed the exclusive petitions, and though of the leaders of the A.P.A., only Bland was among them, yet Wentworth, Blaxland and Jamison figured at the meeting.


3. Mudie, Felony p.171. Forbes had been intending since February 1834 to take a year's leave for his health, but because of a dispute over the claims of Burton and Dowling to fill his office in his absence, he persevered in his duties for two years. (H.R.A. 1.17.370 - Forbes to Bourke, 7 February 1834, in Bourke to Stanley, 14 February 1834. H.R.A. 1.18.110,216 - Bourke to Glenelg, 3 October 1835, and 1 December 1835).

Finally, early in April 1836, before Glenelg's confirmation of Bourke's opinion on the precedence had been received, the 'sole motive' of Forbes' delay, and after Bourke had heard of the exclusive petitioners' attack, it became necessary, Bourke wrote, for Forbes' health that he should leave in two weeks. (H.R.A. 1.18.364,368 - Glenelg to Bourke, 29 March 1836, and Bourke to Glenelg, 2 April 1836).
Though Bourke had for the last year been genuinely worried by Forbes' ill-health and when he left had little confidence that he would be well enough to attend to business, his departure may have been hastened by the expediency of having in London a more respectable defence than the Counter-Petition.¹

On his arrival in August he undertook at once to assist in the preparation of the new N.S.W. Bill. His main commentary on the petitions was not written until March of the next year but in October 1836 he explained his views to James Stephen. In this letter he denounced the exclusives' complaints about convict discipline and an increase in crime as 'purely political': as a rather hackneyed platform used since Macquarie by opponents of the Government because by taking it further to indicate a decrease in the terrors of Transportation it had relevance to Britain. He spoke favourably too of Wentworth's dissection of the Tory petitions, but he concentrated on defending Bourke's Government rather than on advocating the views of the Counter-

¹ See Bourke's letters to his son in 'Bourke Papers' M.S. ML A1733, especially p.17, 4 February 1835; p.20, 11 April 1835; and p.45, 2 April 1836 - 'The Chief Justice is unwell ... Dr. Maude is hurrying him to England ... if the N.S.W. business is not arranged before he arrives and ... his health permits him to remain in London and think of business, his assistance will be invaluable.'
Petitioners.¹

He forwarded too to the Colonial Office in late November, a Paper in which, while defending Transportation in terms of its moral and economic effects on N.S.W. and of the possibility of increasing its power as a deterrent by introducing a more precise classification of offences and punishments, still he accepted its inevitable discontinuance, arguing only that it should be done gradually.²

Four days earlier James Macarthur had arrived in England intending to forward his family's business and dynastic³ interests and to chaperone the exclusive petitions.

1. Forbes to Stephen, 18 October 1836, in CO.201/257, p.583-586. Also A.C.V. Melbourne Early Constitutional Development, p.233 says that a draft bill now lost, which he prepared at the same time was 'somewhat less liberal' than that which he had drawn up for Bourke in 1835. Melbourne uses this as an argument for Macarthur's influence but as James did not reach England till November 1836 it would seem that his influence was not revolutionary; that Forbes, never a radical, was in any case less liberal away from the ranting colonial Tories.

2. Enclosed in Forbes to Stephen, 28 November 1836, in CO.201/257 p.592-609. There is no evidence to indicate that he had come under Macarthur's influence when he wrote to the Criminal Law Commissioners, 31 December 1836, on the susceptibility of Transportation to improvement and its applicability to specific classes of British Criminals. TC 1837 Appendix p.283.

3. 'Macarthur Papers' M.S. ML A2922 p.80 - S.M. Thompson to James Macarthur, 16 April 1838.
The subversion of Forbes was one of the means he chose for the discharging of this commission. By a number of legal judgements in the twenties Forbes had lost the trust and goodwill of the Macarthurs¹ and though when James reached London Forbes seemed quiet, it was, he presumed 'like gunpowder'. The Chief Justice was the only colonial liberal of any influence in London and his delousing would remove one of the most formidable obstacles to the exclusives' designs.²

In March 1837 Forbes told the Colonial Office that after 'some unrestrained conversation with Mr. James Macarthur' on the questions of the legislature and civil rights 'I am happy to find that we do not differ upon these main, indeed I should say only, points for the interposition of Parliament.' In his commentary on the petitions for the Colonial Office he treated the exclusives with some

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¹ Their initial friendship (see A.D.B. Vol.I p.393-4) soon deteriorated. John Macarthur Senior told his son John that 'the reptile shall not escape'. 20 May 1830, in 'Macarthur Papers', M.S. ML A2899 p.187, see also p.152a, 171, 206-7.

² James Macarthur to William, 9 December 1836, in 'Macarthur Papers', M.S. ML A2931 p.275. Macarthur conspired with T.H. Scott, former Archdeacon of N.S.W., in this seige. Though Scott declined a personal meeting because 'I do not think I could keep my temper or be tolerably civil to him if we met', he offered any other assistance. Scott to James Macarthur, 10 March 1837, in 'Macarthur Papers' M.S. ML A2955 p.176.
He accepted that pardoned convicts and expiries should not automatically assume full restoration of civil rights, and both he and Macarthur proposed to the Molesworth Committee the discontinuance of Transportation over a period of 5 years.

Macarthur was well satisfied, in June he told his brother William that 'Forbes is hors de combat and confesses himself beat'. Though T.H. Scott suggested that he had been 'trying to make you believe he is sincere in his support to your views' yet that Forbes, who had been so unequivocal a

1. Forbes to James Stephen, 31 March 1837, in CO.201/266 p.468,474. He used the terms 'emigrants' and 'liberals', explaining that his change was intended as a clarification of the terms 'emigrants' and 'emancipists' in view of the mixed composition of the latter party, but though his use of 'liberal' implied a desire to increase the Patriots' respectability it would have been more in their interests to have used the general colonial term 'exclusives' for the other party. It is unlikely considering his retention of the one label that his conversion of the other is an indication of his commitment to the Patriots. He referred specifically to Bourke's use of these terms in his despatch of 25 September 1833 but there are no despatches of this date in either H.R.A. or CO.201/233.


3. James Macarthur to William, 7 June 1837, in 'Macarthur Papers', M.S. ML A2931 p.319a; Scott to Macarthur, 10 March 1837, ibid ML A2955 p.176. A.C.V. Melbourne, Early Constitutional Development, p.234, argues that Macarthur was liberalized in the process. He bases this on Macarthur's admission of elected representatives and on Forbes' assertion that 'generally James Macarthur accepted his proposals'. However the terms on which Macarthur accepted the principle of election were no more liberal than his previously expressed opinions and were consistent with the essential exclusive demands; Forbes' opinion may be taken as no more than an effort to sustain his self-esteem.
champion of the jury laws, should admit the wisdom of qualifying the restoration of civil rights to ex-convicts was a great triumph. Forbes undoubtedly backed down on this question, yet the civil rights issue, so clear cut in the colony, did allow from a detached view some modification, and by his unwavering stand on the state of crime and the overall success of civil juries, he remained faithful if not to the Patriots, to Bourke.¹

Macarthur attacked the liberal cause by subverting not only Forbes but also Charles Buller, H.L. Bulwer's successor as agent for the A.P.A. Without detailed instructions from his constituents Buller was vulnerable to Macarthur's wiles: he knew not where to turn for witnesses to confound Mudie's sputum, 'the only person who afforded me any assistance on this point was Mr. James Macarthur, and to the witnesses suggested by that gentleman I was indebted for the only evidence called before the committee to speak favorably on the colony'.² Macarthur guided Buller away from Transportation and to a much less liberal form of Assembly than the Patriots

1. See CO.201/257.P584-5 for the effect of detachment on Forbes. Melbourne (op. cit p.234) attributes this compromise to Forbes character saying that though a 'thorough-going emancipist' under Wentworth he fell easily under Macarthur's influence and 'always a poseur' endeavoured in this way to satisfy both parties. Melbourne writes bitterly of one who betrayed his cause.

had proposed, sabotaging thus their two chief ends.

He further discharged his commission as advocate for the Tory petitioners by arranging at once for a book **New South Wales, Its Present State and Future Prospects** to be written in support of the petitions, a book used as a basic text by the Molesworth Committee. It differed slightly from the petitions in its greater emphasis on Transportation and in its development of the questions of the jury laws and the legislature, but as the petitions were vague and general, though Macarthur's interpretation reflected his personal views, it did not conflict with them. The book was well received by the colonial Tory press but denounced by the Patriots, particularly for its insidious and insinuating tone of moderation. The **Literary News** however, while deploring its bias and its sophistical arguments implied

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1. For the authorship of the book, see Transcripts of letters from Macarthur to Edward Edwards, January to June 1837, in ML (Am 43-1/21) and John Metcalfe's monograph, Edward Edwards, His Association with N.S.W., (Public Library of N.S.W., 1952). Unless it can be shown that Edwards' ideas had any influence on the views expressed in the book, the matter seems significant only as an indication that Macarthur, though conscientious, was not sufficiently dedicated to write it himself.

2. **Colonist** 2 November 1837 p.354; **Herald** 9 November 1837 p.2; **Gazette** 14 November 1837 p.2; **Australian** 21 November 1837 p.2, and series of articles May to June 1839; **Monitor** 15 November 1837 p.2,3, and series of articles, November 1837 to January 1838.
that its moderation was not merely clever politicking, 'he is too benevolent and too conscientious as well as too politic a writer to let this appear with any demonstration of virulence or personality'.

By using his family's influence and his own comity and acumen to gain the approval of the Colonial Office and to persuade Lord Glenelg and Sir George Grey to present the petitions, he further guarded the exclusives' interests. This led to an endless succession of interviews with people interested in emigration, churches, education and business, sent by Glenelg, Grey and Stephen 'all tending to give weight to our cause however and therefore I grudge not the hours thus bestowed'.

The appointment of the Molesworth Committee gave him another opportunity to press the objects of the petitions. So cordial were his relations with the Committee that he

1. Literary News 16 December 1837 p.1, see also 9 December 1837 p.1,2.
2. He had to justify the petitions at length to secure Glenelg's approval. See his letters in CO.201/267 p.500-544. His success is demonstrated by Glenelg's reaction, 'I shall send for you frequently ... on these and other subjects connected with the colony', and by the familiarity with which James Stephen, generally so distant, avowed 'that as for the convicts and radicals of Sydney, he wished he could send them to Canada as a free gift to Mr. Radical Papineau'.
   James Macarthur to William, 18 December 1836, 9 December 1836, 18 March 1837, in 'Macarthur Papers', M.S.
   ML A2931 p.294, 291, 272, 314b.
quizzed them and dined with them\(^1\) and Eagar, unofficial agent of the Patriots, judged that his testimony made a 'considerable impression'. The *Colonist* however suggested that the 'radical constitution and temperament of the Committee' and its directed questioning modified Macarthur's expression of his views.\(^2\)

In his examination on the jury laws he admitted the possibility of allowing emancipists as jurors after a rigorous probation but although the Committee attacked him on this question and although the concession had not been made in the petitions, his earlier acceptance of it in his book\(^3\) showed that it was not a compromise forced by the

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1. When Macarthur cited a republican spirit as evidence of the disorderliness of the currency (TC.1837 after Q.2642) this was thought so pointed ... that the other members of the committee set up a complete shout' and Lord Howick suggested that the next question should be 'Do you consider our Chairman as coming under your definition?' Such jollity proved too much for the shorthand writer and the evidence was struck out. James Macarthur to William, 7 June 1837, in *Macarthur Papers* ML A2931 p.322a-23a.

2. *Monitor* 5 January 1838 p.2. In Sweetman's view the Committee's Report made four statements: that crime had increased out of proportion to the population; that the price of land should be raised; that Transportation should be ended and 'that all the opinions of James Macarthur were worthy the most attentive consideration'. *Australian Constitutional Development*, p.138; *Colonist* 10 January 1838 p.2.

Committee. His plan for an extension of the Legislature by the addition of representatives elected from the magistracy by the untainted free, though more liberal than that which the petitions so covertly implied, had also been anticipated in his book. ¹ He did however make clear that he considered emancipists unfit for civil equality, and by referring to their means of acquiring wealth as an existing monstrosity rather than one virtually eliminated by the increase in the free population, supported his assertion that a property qualification was inadequate for the franchise.

On the moral state of the colony he fought again with

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¹ Macarthur, N.S.W., Its Present State and Future Prospects, p.132-9. The petitioners felt that 'it is still questionable, whether the colony is prepared to enjoy the free institutions of Great Britain; many experienced persons being of the opinion that that much-wished-for period has not yet arrived, whilst those who hold an opposite opinion, have proposed no satisfactory basis for the Elective and Representative franchises'. H.R.A. 1.18.394 (Enclosure A1 in Bourke to Glenelg, 13 April 1836).

Macarthur's cooperation and agreement with Buller came after his examination and after his book, and was due to his own moderate views and to Bullers' amenability and ignorance of his constituents desires, rather than to his liberalizing effect on Macarthur. See Buller to the A.P.A., 21 April 1838 in 'Papers on Education, 1804-68', M.S. ML A357 p.171-4; James Macarthur to Glenelg, 10 April 1838, in CO.201/282 p.301; Report of the ... Meeting of the Supporters of the Petition to His Majesty ..., 1836, p.12.
the Committee, for though they delighted in his statistics shewing a general increase in crime, they were unwilling to accept that the free emigrants and the currency had not been contaminated by the penal system.¹ Macarthur, convinced of the evil effects of Transportation on the colony as a whole could not allow that he and the freemen he represented were tainted. Even so he rejected the extreme Tory position in his approval of the regulations on convict discipline.²

The continuance of road parties under a much stricter superintendence would greatly benefit the economy of the colony, have little effect on its morals and would make Transportation more formidable.³ The assignment system however, Macarthur and his henchmen were convinced, failed to reform the convict, cost more than free labour and discouraged free immigration. Even so he insisted that its cessation should be gradual for a withdrawal of all assigned convicts or even too abrupt a discontinuance of the supply would endanger the economy of the colony, and by restricting the sale of land would seriously diminish the funds available for immigration.⁴ Free immigration, incompatible both with

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1. TC 1837 Q. 2415*-7*, 2638 - 49.
2. TC 1837 Q. 4204-5, see also ibid Q 3047-50. His judgement that bushranging was not a sign of general insubordination but rather a result of occasional tyranny by masters was also an independent opinion.
3. TC 1837 Q.3120-3332.
4. TC 1837 Q.2558-9, 2614, 2629, 4184-94 ; 1838 Q.113-5.
the continuance of assignment and with its abrupt discontinuance, was essential to the welfare of the colony, but though Macarthur paid tribute to the Regulations of 1831, he strongly opposed the Committee's bid for an increase in the price of land, arguing that sales would decrease so greatly as to lower the total revenue.¹

In the 1840's when he had become chief advocate of a renewal of Transportation and assignment, the Australian argued that his opinions were not inconsistent, quoting at length from the passages in his evidence where he had insisted on the importance of a very gradual discontinuance, but as all hope of suppressing the emancipists was lost and as he had since bought a controlling interest in the Australian it is probable that he had in 1837 and 1838 genuinely intended a less gradual cessation than he later claimed.²

¹ TG 1837 Q.2565-2613.
² Australian 28 December 1841 p.2, 4 January 1842 p.2. Certainly though the British Government did not withdraw assigned convicts it did stop the supply abruptly while Macarthur had suggested a diminution over 5 years 'perhaps a considerably less period, I am taking that as the outside' (TG. 1837 Q.4194). However it is probable that even this was too short. In 1850 while denying any conflict between his opinions he said 'even if there were such variance as is asserted - I would ask, is there nothing in the entirely altered circumstances ... of this colony which would justify a change of opinion?' Speeches of James Macarthur ... on the Question of the Resumption of Transportation, p.8.
That Macarthur's evidence was appreciably influenced by the views of either the petitioners or of the Committee is unlikely. Certainly the temperance with which he presented his testimony was due in part to a very politic strategy. So tenaciously did he adhere to his maxim of 'honesty temper and no personalities'¹ that the parochial and Patriotic Australian reluctantly conceded that his evidence was 'of a more statistical and speculative character than' was susceptible to its own crude methods of attack. Nevertheless Eagar's judgement that Macarthur spoke sincerely,² his character and his independently expressed opinions suggest that he was not being unduly artful when he said

I am not conscious of any bias ... towards any particular class of society. Attached to the colony by ... all those ties which should bind a man to the land of his birth, I have ever looked to the advancement of its interests as the height of my ambition. Actuated

1. James Macarthur to William, 2 January 1837, in 'Macarthur Papers' M.S. ML A2931 p.308, also p.299 18 December 1836 where he tells his brother William in reference to Mudie's unseemly display of his own scrofula that 'I shall studiously refrain from mixing myself up in such personalities and stick to the main principles avoiding ... local politics of Sydney'.

2. Australian 25 May 1838 p.2. See also Herald 28 May 1838 p.2 - Gisborne found it 'impossible to give any particular part of Mr. Macarthur's evidence that would show the colour of the views which' Mr. Gisborne was convinced 'he holds'. Eagar - letter in Monitor 5 January 1838.
by these feelings and after most mature reflection,
I have arrived at the opinions before expressed.¹

His estimate of the 'true interests' of N.S.W. was not
shared by the 6,000 who signed the Counter-Petition and only
in part by Forbes.

Sir Francis Forbes was knighted just before the appoint­
ment of the Molesworth Committee. His evidence was little
affected by his relations with either James Macarthur or
the Counter Petitioners as of their particular concerns :
the jury laws, the Legislature and the civil rights question,
only on the jury laws, and that cursorily, was he specifi­
cally examined. As the first witness called and as a
settler of 12 years he was examined at length on the general
condition of convicts from their departure from England to
their emancipation; as Chief Justice, on detailed points
of criminal law; and as a land-holder of 10,000 acres, on
the assignment system and the economic effect of Transpor­
tation on the colony. He suffered great humiliation during
the four days of his examination from his own reluctance to
commit himself and from the inquisitorial methods of the
Committee.

His critics attributed this to his equivocation in the

¹. Report of the ... Meeting of the Supporters of the
Petition to His Majesty 1836, p.20.
face of questions hostile to the interests of the Counter-Petitioners, for most of Forbes' wrangling with the Committee centred on subjects germane to a defence of Bourke's Government and consequently to the Patriots, but there was only one clear case of equivocation and that venial. They suggested too that his newly acquired knighthood and consequent and disproportionate self-esteem might have been behind his unwillingness to cooperate and they dismissed his fatal malady as a feeble excuse. Though his health had troubled him since his term in Newfoundland and was the reason for his presence in England, though the day before his examination on Burton's Charge, the peak of his degradation, he had written to the Colonial Office asking to

1. Letter - Herald 25 September 1837 p.2, see also Gazette 26 September 1837 p.2. Mudie had made a point in his book, of which, the Herald's correspondent said in the same letter, there were several copies on the Committee table 'constantly' used 'for the purpose of suggesting questions', of the congruence between the term 'absentee', used in Bourke's native country Ireland for English proprietors and in N.S.W. as a euphenism for runaway convicts. (Felonry P.xiv). Forbes' asseveration of his ignorance of the term was a foolish attempt to defend Bourke against the laxity it implied, unfortunately, within half an hour, he used it himself. (TC 1837 Q.345,380).

2. E.g. Herald 17 August 1838 p.3 ; Gazette 5 September 1837 p.2 ; T.H. Scott said in his annotations to Macarthur's N.S.W., Its Present State and Future Prospects (Copy in the National Library, Canberra) p.12 - 'he was cross examined, broke down under it, pretended sickness and retired'. Roger Therry used it as a defence Reminiscences p.337.
resign on these grounds, and though he died four years later, his hesitancy was due only in part to his debility.

He was offended by the prurience of much of his examination and he was at times flustered by the intransigence of the Committee, but his wariness, his equivocation and his forgetfulness were due less to his political commitment, his pride and his illness than to his inbred legal caution. The Committee, convinced of the inefficacy of Transportation to deter, punish or reform criminals or to do ought but deprave N.S.W. and greedy for lurid accounts of the colony, were much vexed by Forbes' legal approach. He had had too much experience in the courts eliciting facts from rambling and exaggerated testimony to allow his own to be distorted to the purposes of the Committee. The evidence he gave was marked generally by caution, strict honesty and common-sense rather than by equivocation, but particularly in his examination on Burton's Charge it seemed otherwise.

Molesworth read the Charge to him paragraph by para-

1. Forbes to Glenelg, 27 April 1837 CO.201/266. p.510,511; and Herald 25 September 1837, p.2.

2. Richard Bourke, who saw Forbes after his examination, told his father that 'To his great disgust he found that Sir William Molesworth had been crammed (by Mudie evidently) with tales and fables of insubordination and lenient practices from masters to their assigned servants and that the examination was becoming one into private histories, and not into the general principle and system of convict discipline'. 27 May 1837, in 'Bourke Papers' Vol.12 M.S. ML A1739 p.62.
graph, asking on each his opinion. As most of it consisted of highly coloured descriptions rather than controvertible facts, he could only reply that he had no personal experience of the abuses named, but trusted that Burton would say only what he knew to be true. The usefulness of the charge depended on the catholicity of the abuses it described and as Forbes, the first witness, refused to rely on gossip, the Chairman who had placed so much faith in it treated him harshly.

Despite his unkind reception Forbes persevered with the light of truth and reason. He insisted that a description of road gangs as 'beehives' of robbers though not incorrect, was overdrawn. He distinguished between the spiritual condition and assessable actions of convicts in support of his claim that assignment was reformatory. He answered to the emotional plea from Mr. Buller for him to agree that it would be better to burn convicts alive than to send them to Norfolk Island, and by Mr. Leader that their sufferings there were more than human nature could bear, the very sensible observation that 'human nature will endure a great deal'.

1. TC 1837. Q.1127-1129.
2. TC 1837. Q.1300-1320.
3. TC 1837. Q.1363,1369, 1377.
His continual insistence on the banal truth must have been very provoking, but if the reports of deleted evidence are true, Molesworth was unduly brutal. The Friend to Australia said that at one stage he exclaimed, 'You are not aware of your own knowledge! I might say that I am not aware of my own knowledge that London Bridge is now standing because it may have fallen down!' and An Observer that he asked 'Is a person whose memory is so defective as yours appears to be qualified to perform the highly responsible duties of Chief Justice?'

Despite Forbes' honourable intentions and demeanour, his was an ignominious performance. Molesworth used his evidence, distorting it at times, even quoting him in support of Burton's description of road gangs as beehives, and continuing impenitent in his disrespect. His Committee did however strike out his snide reference in one of the draft reports to 'the cautious and deliberate opinions of a judge (by most persons considered to be one of eminent

1. Herald 25 September 1837 p.2 and 17 August 1838 p.3. Saxe Bannister, an embittered ex-colonial judge, accused him quite baselessly, of having 'wilfully and corruptly misrepresented the experience of British Colonisation to the Committee on Transportation'. Bannister to the Colonial Office, 2 May 1837, CO.201/266 p.83.
The colonial Tory press gloated over his degradation and the Patriot press, at first by its silence and later by its opposition to his proposed pension, seemed deeply disappointed in its champion. A few weeks after the Chief Justice's last examination Bulwer told the A.P.A. that 'the persons hitherto examined have only been on one side'. Partly because of the subjects of his interrogation but primarily because he was not committed to them, Forbes' evidence was not a defence of the Patriots.

The Molesworth Committee was not unaware of the virulent nature of colonial politics but it was the evidence of Mudie and Slade rather than of the accredited advocate of the Petitioners or the 'champion' of the Counter-Petitioners which revealed it to them.

2. Colonist 10 January 1838 p.2 ; Gazette 26 September 1837 p.2 ; Herald 17 August 1838 p.3.
3. Monitor 24 August 1838 p.2 ; Australian 17 August 1838 p.2.
CHAPTER IV

THE DEFENDERS

His life threatened and his character most cruelly aspersed, JAMES MUDIE quitted N.S.W. for England in 1836 seeking 'speedy reparation for the deep injuries inflicted upon me by the wanton oppression of Sir Richard Bourke.' To achieve his object, like James Macarthur he corresponded with the Colonial Office, he wrote a book and he gave evidence before the Molesworth Committee.

His wild denunciations of Bourke in his letters to the Colonial Office were received with sceptical distaste, but in his book The Felony of N.S.W., with wonder in Britain and great anger in the colony. A 'mass of plagiarism, of nonsense, of frivolity, of low anecdote and of gross slander', reviewers almost feared to soil their fingers in

turning over its vile pages.\textsuperscript{1} His evidence, some of it too disgusting to be printed, invoked universal horror in both the credulous and the informed. It was Mudie’s phillipics which brought before the Committee the spitefulness and ferocity that distinguished the political and social life of N.S.W.

He had emigrated to N.S.W. in 1822, a widower with a step-daughter and three daughters, intending like so many others to take advantage of its free land and labour to achieve the wealth and station denied him in Britain. He had been an officer in the Marines and during the peace, had attempted to win fortune by making medals of War Heroes.\textsuperscript{2}

\textbf{1.} \textit{Australian} 8 September 1837, p.2; \textit{Sydney Times} 2 September 1837 p.2.
Most of the British reviews reprinted by the Gazette though horrified by his disclosures were uncritical, but a letter to the Editor of The Times from 'An Old Colonist' who declared that 'I differ entirely from the critics. I find no personalities whatever in the book' suggests that the Spectator's contempt for 'the narrow views, the local prejudices, the personal likings and antipathies and the exaggerated and heated notions' which characterized the book, was fairly general. Reprinted in - Gazette 14 October 1837, p.2, and \textit{Australian} 29 August 1837, p.2.

\textbf{2.} Mudie was probably a lieutenant, but certainly not a Major. In all of his writings, the only reference he made to his former life was to the medal speculation. Mudie to Glenelg, 6 December 1836, CO.201/258 p.282.

The Gazette's request for information on this matter was made with the hope not of finding truth, but of conjuring unwholesome doubt. \textit{Gazette} 26 November 1835 p.2.
When his court failed he was assisted by Sir Charles Forbes to emigrate.

On his arrival in N.S.W. he was given 15 convicts and, near the Hunter River, 2,560 acres which he named Castle Forbes in faith and gratitude to his patron. By 1833 he had been made a Justice of the Peace and with his son in law, employed free and bond 100 servants. In that year one of his convicts absconded from Castle Forbes and presented himself at Government House, complaining of harsh treatment. To the insurbordination consequent on Bourke's general convict policy and inflamed by the mild treatment accorded this runaway by the Governor's son, Mudie attributed the mutiny which followed.¹ One night, in his absence, some of his assigned convicts looted his castle and assaulted his son in law, Larnach. Of the six who were caught, five were hanged and one sent to Norfolk Island but in their defence they pleaded the intolerable harshness they had suffered and an inquiry was instituted into Mudie's treatment of his servants. Eight of them testified against him and though the rest, about 60, expressed satisfaction, Mudie received a mild

¹. James Mudie, Vindication of James Mudie and John Larnach from Certain Reflections on their Conduct..., (Sydney, 1834), p.i-ii.
Bourke, in a letter to his son, 30 July 1834, ridiculed this reason with a levity that appears genuine. 'Bourke Papers', M.S. ML A1733 p.9.
reprimand from the Governor instead of the complete exculpation he expected.

Mudie was without doubt a strict master yet in his Vindication he claimed that there had been only one outrage and that venial at Castle Forbes before Bourke's Summary Punishment Act; that the eight convicts selected by the commission as witnesses against him were those he had complained of previously; that no others were allowed to testify in any detail; and that portions extracted from the evidence of the eight hostile witnesses answered the main charges. One said that 'Mr. Mudie spoke mildly to me always', another that he 'was an indulgent master' and yet another spoke of his kindness to those who were sick.¹

Despite his severe discipline,² in 1833 he was not unduly harsh or intolerant, but the violent attacks made on him by the convict William Watt in the Gazette and in the pseudonymous pamphlet from 'Humanitas', roused him first to a Vindication in September 1834 and in 1835, to a ruthless persecution. He became obsessed by his injuries, by the convict who scratched at them and by the Governor who had

1. Mudie, Vindication, p.iii, 52, 64-7.
2. Therry accused him of inflexible Calvinism - 'The reformation of a convict found no place in his philosophy. He looked upon perpetual punishment as the natural state of all persons who had once erred'. Reminiscences p.165-6.
inflicted them, who encouraged both his officials and Watt to inflame them,\(^1\) who degraded him by dismissing him from the Commission of the Peace, and who refused to protect him when his life was threatened.

In these years Mudie hardened, from a stern but tolerant man who in 1834 held 'Free and freed men ... on a perfect equality as to civil rights' to an inflexible believer in 1837 that it was 'not enough that the felon pay the immediate penalty which the law awards to his crime ... that a convicted felon is unworthy both of future trust and of mingling with ... his ... fellow subjects'. He justified his opinion that emancipists should never by admitted to civil equality by shewing the ease with which ex-convicts acquired wealth and apparent respectability, but he used as evidence means which though prevalent under Darling, he was forced to admit no longer existed and the case of Samuel Terry, even forty years before, an anomaly.\(^2\) His opinions were essen-

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1. Bourke probably did, even if only by his silence, encourage these attacks. In 1834 he told his son that the Major 'has written four sheets of twaddle to me in the form of advice to the government on the management of convicts, but evidently for the purpose of giving offence ... If it would not be a breach of official decorum I would send the letter to some of the papers to publish'. 21 April 1834, in 'Bourke Papers' M.S. ML A1733 p.2. He did not however support Watt or the Gazette - see Chapter I, p.15.

tially those of the exclusives and though he did not sign their Petitions of 1836, he lauded them in his book and in his evidence before the Molesworth Committee.¹

His hatred of Bourke too intensified. In 1834 his object had been 'not to cast reflection on this administration but to vindicate my own character'. Three years later, 'the chief object of' The Felonry was 'to arraign at the bar of public opinion, the conduct of His Excellency General Sir Richard Bourke'.²

The elaborate indictment of Bourke which he submitted to the Colonial Office in December 1836, corresponded closely with The Felonry. It gave eight charges including his suppression of Goderich's exoneration of Darling, his moral responsibility for the mutiny at Castle Forbes and his unjustifiable dismissal of Mudie from the magistracy, but concentrating primarily on his indulgence to the convict Watt, by all of which he,

has deteriorated the moral feeling and the British

1. Mudie, Felonry p.165, TC 1837 Q.1813-9. The reasons for his not signing are obscure. He told the Committee that they were being signed when he left the colony, and he certainly approved them. (Q.1813) As it was not until 1837 that his invective became entirely indiscriminate and in view of his praise of the Petitioners it is unlikely that his signature was not accepted (especially when Bingle's was), or that it was struck off, as it does not appear on the list Bourke forwarded in July 1836.

2. Mudie, Dedication to Vindication; Felonry p.52.
Spirit of the colony - has loosened the bonds of convict subordination, and has injured - deeply injured - the efficacy of Transportation to N.S.W. as a Secondary Punishment inflicted for and calculated upon as a means of preventing the increase of crime at home.

This insidious method of gaining vengeance, though used in The Felony could not be developed before the Molesworth Committee as his examination concerned rather those subjects with which he was acquainted.

Mudie's condemnation of Bourke and of Transportation rested on the decreasing efficiency and increasing cost of convict labour, on its discouragement of free immigration and on its moral effect on the colony. He implied the wickedness of Bourke's humane policy by harping on the insubordination, the debauchery and the uncontrollable thieving of the convicts. In support of these charges he used exceptional and often dated anecdotes but it was in

2. TC 1837 Q.539, 596-600, 1648-1649.
3. His example of the ease with which convicts obtained spirits, dated he admitted from Governor Brisbane's time (TC 1837 Q.546, 550), that with which he illustrated the prevalence of convicts living as free men was more than seven years out of date (TC 1837 Q.1412, 1418), and he was forced to allow that it was eight, nine or ten years since the employment of educated convicts as teachers had prevailed (TC 1837 Q.1706, 1709).
telling of the people of N.S.W. that he lost all reason.

By 1837 he had become so incensed by his humiliations in N.S.W. that before the Molesworth Committee he extended his ranting denunciations from Watt, Roger Therry and Bourke to the whole of N.S.W. society. He slated not only the immorality of the convicts and the tawdry grandeur of the emancipists, but also the corruption of the Assignment Board and of the Female Factory, the debauchery of the native-born and the affectation of the Ancients whose intimacy had been denied him. His characterization of N.S.W. as a people having all the appurtenances of civilization: wealth, bookshops, theatres, concerts, carriages and fine houses, but utterly destitute of that poise essential to their proper use, was a blind and desperate flailing of the society which had replied to his commitment to it only hurt and rejection.¹

As Mudie used the Committee to exhibit his wounds, so

1. In 1831 W.E. Riley considered that 'Mr. Mudie's cottage is of a very humble description', (quoted by Rawson 'Factions in N.S.W. Politics' p.145) and later Therry wrote with crude sarcasm of the huts and wigwams which composed Castle Forbes. Reminiscences p.167. Mudie never achieved the image he coveted. That the conclusion of The Felonry, published only a few weeks before his first examination should state that 'the useful and more refined arts of life ... at once attained a high state of perfection as compared with their condition even in the parent state' (p.187-8) supports Walter Stone's suggestion, in his Preface to his edition of The Felonry, p.xi, that that part was not written by Mudie.
the Committee used Mudie. He was their second witness and after the struggle to get Forbes to say anything more than that, from his own knowledge he did not know, it was a relief to have a man eager to talk, an authority on everything who answered their scepticism with the assurance that all his facts were quite notorious in the colony. Even more delightful was the congruence of his denunciations of the moral state of society with their own preconceptions of the effects of Transportation. Molesworth almost pruriently pressed him to elaborate on the conduct and chastity of female convicts, on the prostitution of convict's wives and native women, on the incidence of venereal diseases and on unnatural crimes.¹

Mudie was useful, not only for his evidence but also in

1. TC 1837 Q.622-7 ; 650-55 ; 675-81 ; 717-23. Molesworth and Mudie behaved like voyeurs. Mudie's offer to 'draw the curtain more than I have done' (Q.812) was enthusiastically accepted and though much of his evidence including his account of unnatural crimes (Q.725-8) was struck out, still it covered 62 pages, second only to Macarthur whose evidence covered 77 pages. In July 1837 Joseph Wright, a solicitor in Sydney and one of Mudie's neighbours on the Hunter, then in England, wrote to the Colonial Office offering to controvert many statements in The Felony. He was advised to write to Molesworth and assuming that he did and was refused, for he was not examined, it would seem that Molesworth was unwilling to hear evidence which promised to contradict Mudie's extravagant assertions. J.J. Wright to Glenelg, 4 July 1837, in CO.201/268 p.339-40. It is possible that Wright returned to N.S.W. before he could be examined but there is no reference to his voyages in any of the catalogues or indices in the Mitchell Library.
the examination of other witnesses: his book was used constantly to suggest questions and he himself, one of Molesworth's two 'Counsel and Purveyors of information', was consulted by the Committee on the desirability of recalling Forbes to give further evidence on the jury laws.¹

He believed that after the bitterness of N.S.W. and the curtness of the Colonial Office, he had at last found sympathy and respect. He told Major Thomas Wright, former Commandant of Norfolk Island whom he recruited as a witness 'that he was very intimate with Sir William ... to whom he suggested most of the questions and objects of enquiry and with whom ... he was a very considerable personage'. When Wright called at his apartment he 'was offered one of a heap of copies of Sir William Molesworth's speech on the Canada Question [and] nauseated with fulsome panegyrics of his eloquence and ability'.²

Mudie was betrayed again. During his examination though Sir George Grey constantly attacked him and to Eagar, ridiculed him; though Peel was a little short with him,

¹. TC 1837 Q.1966-7; Herald 25 September 1837 p.2; Monitor 5 January 1838 p.2; see also Colonist 10 January 1838 p.2 - 'He was ever at Sir William's elbow ... ever at hand to put him on the right scent.' See also Gazette 5 September 1837 p.2, 'Major Mudie we hear was present during the time the Chief Justice gave his evidence and kept His Honour's memory a jogging'.
². T. Wright to Glenelg, 18 April 1838, in CO.201/283 p.298, 299.
telling Buller that he 'told such improbable tales he could place no reliance on such evidence'\(^1\), yet Molesworth stayed warm and friendly. On the second of June a few weeks after Mudie's last examination, Molesworth shewed his real opinion. He asked Dr. Lang to read and confirm Mudie's tale of Samuel Terry's career, and in the final report, though Mudie was referred to, the detailed account given was attributed to Lang.\(^2\) There were few references to Mudie in the Report, all of them on minor and corroborated subjects which could safely be associated with him. A footnote on the exclusives in the edition published for his constituents at Leeds probably reflects Molesworth's estimate of his devotee,

Some members of this party are persons upon whose characters and dispositions the domestic slavery and penal nature of the colony has had the worst possible effect, by rendering them harsh, peremptory and overbearing, and by converting them into cruel and hard-hearted slave-owners, with feelings of hatred, suspicion and ill-disguised contempt for all who have

\(^1\) Monitor 5 January 1838 p.2 ; Therry, Reminiscences p.177. Mudie wanted to expound on his outrageous dismissal from the magistracy but Grey told the Committee that if they were interested they could read the pertinent despatches and refused to hear Mudie's jeremiad. Richard Bourke to his Father, 27 May 1837, 'Bourke Papers', M.S. ML A1739 p.62.

\(^2\) TC 1837 Q.4044 ; Report from the Select Committee on Transportation 1837-8, PP.HC Vol.xxii Paper 669, (hereafter referred to as 'Report') p.xviii.
had the misfortune of incurring the displeasure of
the criminal tribunals of their country.¹

Mudie returned to N.S.W. in 1840 but the publication of
his Felonry and his evidence had disgusted not only the
Patriots but even his former friends. Though sympathizing
with his stand on convict discipline the Herald deplored his
bad taste, the Gazette his 'rancorous malignity' and the
Colonist his 'vindictiveness'. The modern Baron Munchaussen²
was horse-whipped in the streets of Sydney and returned to
England to die in obscurity some time in the 1850's.

2. See Sydney Times 2 September 1837 p.2; Australian
   8 September 1837 p.2, 11 May 1838 p.2. The Monitor,
   whose policy had been confused by the liberal Hall's
   friendship for Mudie, kept silent. See Monitor 12
   March 1836 p.2; and Bourke to his son, 21 April 1834,
   'Bourke Papers', M.S. ML A1733 p.2; Herald 11 Sep­
   tember 1837 p.2; Gazette 31 August 1837 p.2, Colonist
   7 September 1837 p.289; Charles Campbell in the Herald
   28 May 1838 p.2.
ERNEST AUGUSTUS SLADE came before the Molesworth Committee unlike Mudie an unwilling witness, but like him appearing 'to have been not very well used either by the Colonial or the Home Government [and he] detailed a state of immorality, corruption, crime and bribery ... the contemplation of which is perfectly frightful'.

The sixth son of General Sir John Slade, he had gone to N.S.W. first in 1828 as a lieutenant in the 40th Regiment and in 1832 he returned with a recommendation from Goderich for a civil appointment. Bourke made him Superintendant of the Hyde Park Barracks in December 1832, in October 1833, Third Police Magistrate in Sydney, and a year later dismissed him. Slade made desperate appeals to Bourke and to the Colonial Office, protesting that he had not realized the gravity of his delinquency, that he had been, in any case, about to change his way of life and that his disgrace would break his father's heart.

To the Molesworth Committee he gave a detailed account of the circumstances of his dismissal: of his living in concubinage, of his employment of a young emigrant Lavinia

1. TC 1837 Q.967; Bells Weekly Messenger 30 April 1837 reprinted in Gazette 7 September 1837.

Winters to care for his ailing mistress and child, and of the sensational and unjust exposure of these domestic arrangements. In his defence, finding them unimpressed by either the great propriety he shewed in sleeping in his drawers or by his youth, he went on to implicate the conduct of the other magistrates and of Sir Richard Bourke. Immorality he argued was rife in N.S.W. and was merely his nominal offence, the real reason for his dismissal was his opposition to the Governor's soothing system.

Sir George Grey, Undersecretary of State for the Colonies, rose, as he had done with Mudie, to the Governor's defence. He reminded Slade of his proposal to reduce the number of lashes from 50 to 25 for certain offences, of the satisfaction Bourke had expressed after his dismissal with his discharging of his public duties, and of his approbation of Slade's treatment of the assigned servants of an emanci-pist, Cooper.¹ By shewing examples of Slade's own humanity and of Bourke's approbation he suggested that Slade had invented a disagreement to clear his character by assigning his dismissal to political reasons.

Sir Robert Peel came to Slade's rescue, pointing to the notorious severity of the floggings he had so conscientiously superintended and to his development of a more efficient cat.

¹ TC 1837 Q.878-882.
In attempting to establish his severity, Peel came close to convicting him of brutality. The examination turned again therefore to Bourke's approval, to the need for a strict superintendence of flogging because of the frequent corruption of scourgers and to the reason for Bourke's unexpressed disfavour, the bitter attacks by the convict press. Slade, he implied, was a strict and scrupulous official but he had been given the character of a bloodhound, a plausible but misleading reconciliation.\(^1\)

Slade had referred to the Gazette as the Government paper and Grey again broke in to defend Bourke against the unjust imputation of connivance with the convict press. He went on to question Slade closely on the secrecy with which he had surrounded his affair, encouraging him to claim that even his most intimate friends had not known of it until its unlucky disclosure: evidence that the Governor must have been ignorant of it and thus innocent of disregarding it until its exposure gave him an opportunity to dismiss him, as Slade had implied.\(^2\)

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1. TG 1837 Q.883-897. Bourke's rather jocular reference to the affair in a letter to his son implies that whatever Slade's views on convict discipline were, they were no more than an excuse for his disgrace, 'Mr. Slade' he said 'lately got into such a scrape with regard to an emigrant girl as to make it imperative on me to remove him from his situation of Police Magistrate'. 24 November 1834, in 'Bourke Papers' M.S. ML A1733 p.5-6.

2. TG 1837 Q.899-913.
Slade further defended himself by referring to the prevalence of such immorality among the other magistrates and civil officers. Though his evidence concerning his fellow magistrates and Sir Richard Bourke appears to be characterized by a remarkable sense of propriety, he was less of a gentleman than the published records suggest. In his first examination he told the Committee that Richard Bourke, the Governor's son, had cohabited with and had a child by Miss Gordon, daughter of the Matron of the Female Factory and a common prostitute, a tale cited also by Mudie in his *Felonry* as an example of the corruption of Bourke's government.\(^1\) James Macarthur, whose intentions did not coincide with those of all the exclusives, proved to Sir George Grey by shewing him the dates of Richard's departure and his namesake's birth, that the story was false and after re-examination it was expunged. Nevertheless, complained Richard to his father, 'it is most atrocious that any Committee of the House of Commons should listen to such evidence for what could my moral character have signified to the question?'\(^2\)

Not only Richard's corruption but also that of the

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2. 27 May 1837, in 'Bourke Papers' ML A1739 p.62.
magistracy, more harshly treated than the records shew, and of the lower orders, subserved Molesworth's purpose. He listened with delight to Slade's lurid account of their morality, exaggerated by his own character and by the disproportionate view he had received in his official positions. Drunkeness, Slade said, was almost universal amongst the convicts, the emancipists, the currency and the lower class of free immigrants.

Grey tried to inclulpate Slade, as a magistrate, for the laxity in the licensing of public houses, the root of Sydney's debauchery, and when Slade deftly shifted the responsibility to the Governor and the constabulary, threw doubt on his claim that members of that body were convicts without tickets of leave. Undaunted by Grey's sanity and unremitting defence of the colonial government, Molesworth encouraged Slade to dilate on the prostitution of juveniles, of female convicts and of convict's wives and on the prevalence of

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1. Accounts of his evidence which reached the colony in September 1837, referred with great horror to his description of the scandalous behaviour of magistrates and their concubines. It is not included in the Minutes of Evidence but as Mudie's evidence on this was not given until 5 May 1837 (Q.1501-3) and the extract from Bells Weekly Messenger is dated 30 April 1837 it is impossible that its account could be a confusion of his with Slade's evidence. See Letter to the Herald 25 September 1837 p.2. and the Gazette 7 September 1837 p.2.
unnatural crimes. He even asked him to agree that sodomy was 'more common in Sydney than in any part of the civilized world.'

Slade had been an extravagant and unruly youth, hastened by his father into the Army in the hope of disciplining him and of getting him out of England. His unprintable evidence concerning his brother officials and the Colonial Government and his remarks on convict discipline were a knavish attempt to defend himself by convincing the Committee that his improprieties had been venial and his dismissal unjust.

Though he proved a pliant witness and though he may have been useful in indicating areas for future questioning, he himself was completely discredited and in the final Report no reference was made to his evidence. Indeed, by the end, the Committee probably agreed with the outraged Colonial press which fulminated against his scurrilous falsehoods and asked why so infamous and worthless a character should be regarded as a fit person to give evidence on N.S.W.

1. TC 1837 Q.1061.
2. A.D.B. Vol. II.
3. Gazette 7 September 1837 p.2; Australian 12 September 1837 p.2, 22 May 1838 p.2; Colonist 13 June 1838 p.2.
In 1837 MAJOR THOMAS MITCHELL assured Lord Glenelg 'that my life has been passed laboriously in the pursuit of fame rather than of wealth', a claim which Darling had accepted without approving six years before: 'His object appears to be his own fame, that everything should originate with or be improved by him.'

His unpretentious birth and rigorous Scottish education had stirred and equipped him to increase his worldly station. To this end he joined the army in 1811 in the Peninsular War. There his natural ability enabled him to gain some distinction as a surveyor, and in 1818, the daughter of a General as a wife. He was employed after the war preparing plans of battlefields and in 1826 though he managed to buy promotion to Major, was reduced to half pay and a few months later accepted a position as a surveyor in Sydney.

He succeeded Oxley as Surveyor General in 1828, but pre-eminence in his department was not enough, he wanted to achieve fame as an explorer of the unknown, a distinctly personal ambition which Darling declined to indulge. Even

1. Mitchell to Glenelg, 30 January 1837, CO.201/267 p.439; H.R.A. 1.16.125 - Darling to Murray, 28 March 1831, he spoke also of Mitchell's 'arrogant pretensions'.
within his department he incurred the Governor's displeasure by replanning roads at the expense of his proper duties: their construction and maintenance. Less than a month after Darling's departure he set off on his first expedition and when he came before the Molesworth Committee in 1838, he had completed his third, he had prepared their journals for publication, and by his cavalier disregard for the duties of his department, he had succeeded in alienating Darling's successor, Bourke. Like Darling and like his subordinates, Bourke found him 'a difficult man to manage', intolerant of interference and apparently indifferent to the needs of the colony for surveying and road-building. Of this Mitchell was acutely aware and in pressing his claims to a knighthood, he insisted that he had deserved honour by his services as a surveyor 'independently of General Bourke's opinion.'

On his first request in August 1837, shortly after his arrival in England, enquiries into his conduct were instituted.

1. H.R.A. 1.18.287, Bourke to Hay, 1 February 1836; see also H.R.A. 1.17.555-6, 116, Bourke to Stanley, 10 October 1834, and N.L. Kentish to Bourke, 8 April 1833 in Bourke to Goderich, 10 May 1833.
   See also Stapleton's opinion, 'I was duly apprised by a friend of the atrocious temper and disposition of the man I had to deal with and yet I had the folly to comply with his invitation' to join his third expedition, 17 September 1836 in 'Journal' M.S. ML A332 p.125.
   Sir Edward Parry (q.v.) also clashed with him.
2. Mitchell to Glenelg, 8 September 1837, CO.201/267 p.481.
and despite his assiduity, his petition was not granted until 1839. The enquiries turned primarily on his slaughter of a number of natives during the third expedition. His callous reference to the incident in his report had led to a colonial enquiry which, though it acquitted him did regret his apparent indifference to the sacrifice of human life, a verdict 'most cruel and distressing' to Mitchell but not unjust.¹ The Colonial Office was displeased too by his failure to persevere in his efforts to conciliate the aborigines, a failing, like his thoughtless reference to the incident, and like his neglect of his department, symptomatic of his ruthless pursuit of fame.²

Mitchell's examination before the Molesworth Committee centred on road parties and chain gangs, a subject pertinent both to his office and to the task of the Committee. As a defence his evidence was much less explicit than that of Slade or Mudie and was manifest in his surprising answers

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². CO.201/282 p.447-451. note also Bourke to his son 1 January 1836, in 'Bourke Papers' ML A1733 140. He wrote with amusement of the means by which Mitchell secured unmerited credit for the building of the Landsdowne Bridge.
rather than in the Committee's questioning. The previous witnesses had almost all corroborated Burton's lurid account of road parties. Forbes had suggested that the term 'beehives' was overdrawn but he admitted their depredations and though Macarthur had been careful to absolve Mitchell from any responsibility he testified strongly to the truth of Burton's remarks. Mitchell was desperately anxious to avoid anything prejudicial to his knighthood and knowing that both Darling and Bourke had complained to the Colonial Office of his neglect of the department of roads and bridges, was concerned to parry even so indirect an attack.

Though road parties had been considerably reduced in recent years, he claimed that the robberies attributed to them had not correspondingly diminished: that in fact convicts in road parties had not been responsible for them, but instead clever bushrangers were operating in their vicinity knowing that their activity would be automatically attributed

1. Had Sir George Grey been present his conduct may have been more closely scrutinized, but in any case by 1838 the questioning was more disciplined. Though Molesworth was as always in the chair the examination was opened and almost wholly conducted by Buller. This was one of the only three times that Molesworth did not open the proceedings and possibly, considering Buller's kindly questioning, was the result of some agreement. There is no evidence of this and it would probably be unduly crafty to attribute it to anything more than gout.

2. TC 1837 Q.1129 (Forbes); 3135-3143, 4141 (James Macarthur).
to the road parties.¹ This sophistical, unsupported interpretation completely absolved Mitchell of any possible responsibility for Burton's horrors but in doing so, cast doubt on its own objectivity.

He went further, defending himself on another and more solid ground used previously by Macarthur. The unsatisfactory road parties could he claimed, be made more efficient as a punishment and as a labour force only by the provision of a reliable body of overseers and by the admission of more summary punishment.

Since 1832 Bourke had been endeavouring to replace the uncontrollable road parties by building up the numbers in chain gangs. At the end of 1836 he told the Colonial Office that road parties, already much reduced, were to be discontinued altogether and that, for the more efficient superintendence of the convicts, the construction and repair of roads was to be transferred to the charge of the Commanding Royal Engineer. This arrangement was an agreeable relief to Mitchell because he considered the duties extraneous to his office and had been acutely aware of the incompetence of the civil overseers available.²

¹ TC 1838 Q. 798-802.
² H.R.A. 1.18.625-8 (Bourke to Glenelg, 29 December 1836), ibid p.693-4 (Correspondence between Mitchell and the Colonial Secretary, 29 December 1836, and 3 January 1837, in Bourke to Glenelg, 19 February 1837). That he had objected in 1830 and 1831 to Darling's attempt to relieve him of these duties was due in part to his ignorance of their tiresomeness and in part to his ruling passion for self-aggrandizement.
The chain gangs, though well disciplined and efficient, were far less mobile than unchained convicts. Mitchell emphasized therefore the desirability of reviving road parties under better superintendence. The Committee, in their blind opposition to Transportation, condemned this plan on the grounds of the great expense of supplying adequate superintendence, proposing at the same time as a substitute, the employment of free labour, a measure whose cost Mitchell shewed conclusively would be prohibitive. The great demand for labour in the colony would, he said, necessitate either impossibly rigorous supervision or else impractically high wages. The Committee were sceptical, pointing out to him the adequacy of the system in America and completely ignoring the very basic distinction which Mitchell so clearly made between the two countries. The geographical nature of Australia whereby good land was situated in patches at considerable distances from each other entailed a completely different pattern of land settlement, cost of road building and willingness to pay for roads. The nostrums of a closely settled and consistently arable land were inapplicable to Australia. By ignoring this both Wakefield and the Molesworth Committee made quite inappropriate recommendations on matters of greater consequence than road building.
Mitchell was examined too on the character of the convicts and the emancipists, both of which he commended. The convicts who had accompanied his expeditions he had found uniformly trustworthy and the emancipist shopkeepers of Sydney, as honest as the free. He was not a Patriot but he was aloof from the bitterness of colonial politics.¹

Though a landowner, Mitchell had not concerned himself with the management of his estate and his opinions on the conduct and comparative expense of convict labour were uninformed. Like most of the other witnesses he made the indecisive recommendation that assignment should be discontinued gradually.²

¹ That he did not sign the exclusives' petition is poor evidence of his politics. It was certainly being signed by the end of March but may not have been available when he left in the middle of that month on his third expedition, even if it had been it is probable that his desperate preparations absorbed all his attention. See W.L. Havard, 'New Light on Mitchell's Third Expedition', in J.R.A.H.S. Vol.22 1936 p.103-110. Stronger evidence lies in his sending his sons to the Patriot controlled Sydney College (TC 1838 Q.930-1) and in the Australian's approval of his evidence. See 8 January 1839 p.2, 22 January 1839 p.2, 9 November 1839 p.2. The colonial press did not divide on political lines in its reaction to his massacre of the aborigines – the Gazette 14,17,21 January 1837 p.2, and the Australian 24 March 1837 p.2, deplored the incident while the Herald 23 January 1837 p.2, and 20 March 1837 p.2, and the Monitor forgave him in their general praise.

² TC 1838 Q.905-7. He had tried to sell his house in Sydney before he left but as he sold it on his return his first attempt was no indication that he had intended to remain in England. He did not build a house on his estate until his return from England. Cumpston Thomas Mitchell p.144-5.
The Committee's examination was rather flat, Molesworth roused himself occasionally to enquire into the reformation of convicts and the sale of land, but of the few Members who attended, most were listless and apparently insensible to the importance of some of Mitchell's observations. In their review of road parties in the final report they quoted Burton's opinion and referred in its support to the 'unanimous testimony of every witness who has been examined claiming that] Every one of those witnesses spoke in the strongest terms of the disorders, crimes and demoralization' of the road parties.

This was untrue but perhaps in view of Mitchell's obviously biased opinion, more justifiable than their unduly slight reference to Bourke's recent improvements. Mitchell was disregarded, they referred to him directly only once, and that briefly in the midst of a eulogy of Macarthur.

Some of his evidence was grossly distorted by his desire to clear himself of any imputation of neglect of his proper duties, a charge so often preferred against him

2. Report p.xi. This also belied Forbes to whose evidence the Committee had the temerity to refer directly.
by his superiors and he feared, prejudicial to his ambition for a knighthood. It was indeed discerning of the Committee to recognise this and to place no reliance on either his evidence or that of Mudie or Slade but it was unfortunate that his perceptive and very seminal remarks on the peculiar nature of N.S.W. were also ignored.
CHAPTER V

THE CLERGY

The Reverend Dr. **JOHN DUNMORE LANG** a minister of the Church of Scotland, like Paul 'sent ... forth among the nations as some bold pioneer to prepare the way for those who were to follow'¹, was required in 1837 to give evidence before the Molesworth Committee. Since 1824 he had pressed his frequently unwelcome ministrations on N.S.W. and was in 1837 on his fourth mission to England seeking relief for the spiritual poverty of the colony. He sought not merely funds, books and a dedicated clergy but also sturdy Scottish emigrants, for he was impressed by the needs not only of his own flock but of the whole colony for a cleansing insemination of virtue and industry. During the voyage from Australia he had made a close study of this question in his book

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'Transportation and Colonization'.

Lang came before the Committee, a man of God licensed to use any means for the regeneration of a fallen people; familiar with every guise of N.S.W.; confident in his comprehension of the past failure of Transportation and of its susceptibility to improvement; 'one of the ablest men in the colony and one of the greatest benefactors to N.S.W.', yet said the Attorney General 'at the same time he is imbued with prejudice. He went home to England to effect particular objects and naturally shapes his evidence according to the bias of his mind.' For three days the Committee listened, they 'particularly desired' him to expound his own theories on Transportation, but though his 'smooth and oily manner at first took a good deal' he left 'altered and humbled'.

1. The work, which he trusted would 'do the colony much good and me no harm' (Lang to his mother and wife, 24 November 1836, in 'Lang Papers', M.S. ML A2223 p.22.), was favorably reviewed in both England and N.S.W., even by the Monitor (6 November 1837 p.3), some months later Lang's most bitter opponent. See also review from the Atlas 9 April 1837, in the Gazette 31 August 1837 p.3; Sydney Times 26 August 1837 p.2 and 2 September 1837 p.2-3; Colonist 31 August 1837 p.285-6. The personalities of the second edition of his Historical and Statistical Account of N.S.W., also published in London in 1837, were not so well received.

2. Herald 6 July 1838, p.3.

3. Colonist 17 January 1838 p.2; Monitor 5 January 1838 p.2.
He was examined, as a clergyman, primarily on the moral effects of Transportation on the convicts and on N.S.W.

On the first subject of enquiry, the condition of convicts, he said that the impossibility of keeping assigned servants under adequate restriction, the facility of obtaining ardent spirits and the inequality arising from the absolute dependance of the convict on the character of his master, made assignment inherently incapable of reforming convicts. Road parties however, under better superintendence and employed outside the colony would prove he believed, highly reformatory, and the continued transportation of females would help to redress the disproportion of sexes. His conclusions, that assignment should be abolished but Transportation continued, though 'evidently influenced by a sense of the profits of convict labour, and by a curious mixture of the prejudices of a Scotch Priest and an Australian planter', were vastly irritating to the colonists. The Monitor objected to his qualifications for judging the issue,

Dr. Lang never got his living by farming. All he knows practically about 'convict discipline' and the management of convict servants is what he has gained

by overseeing his convict cook and boot-cleaner.

It is therefore a piece of abominable presumption in him and excites indignation in the real settler's breast, to see such a one putting himself forward by pamphlets and by statements to the House of Commons and causing the Home Government to destroy at one fell blow the very basis of our agriculture.¹

Lang, with many others, placed too much faith in the efficacy of free immigration to supply the labour demand. He was not unqualified to speak on assignment, he had travelled over much of the colony and was familiar with his brother Andrew's property Dunmore on the Hunter River, but without doubt his ignorance of other methods of punishment and his obsession with eternal souls made his criticism unduly damning.

He was examined more closely on the transportation of educated convicts, one of his five reasons for the failure of the system. He mentioned first the employment of con-

¹. Monitor 7 March 1838 p.2. It argued further that without assigned convicts to enable and encourage the buying of land, there would be no funds to finance the emigration he envisaged. Monitor 21, 25 and 30 May 1838 p.2. He may indeed be considered to have had a financial interest in assignment for on his voyage to England in 1836 he had learnt that legally Dunmore was his and it was not until 1838 when he returned to N.S.W. that, under heavy family pressure, he transferred the ownership for a token fee of one Spanish dollar to his brother. Gilchrist John Dunmore Lang p.230-1.
victs as tutors, later elaborating on the case of the convict Edward Eagar who was present at the meetings of the Committee as unofficial advocate of the A.P.A. Eagar had been transported in 1811 for perjury and employed by Richard Cartwright, an Anglican clergyman, to tutor his sons, one of whom had recently been transported to V.D.L. for cattle stealing.¹ This evidence which the Colonist declared was received by the Committee with 'amazement and horror as ... if a large black snake had suddenly emerged from under the mass of papers on the Committee table'², concerned an incident which had occurred 25 years before when other means of education were not available. Since then there had been a proliferation of schools, among them Lang's own Australian College. Eagar's history, though deeply affecting, had little relevance to the workings of the system in 1837.

1. In Transportation and Colonization (London, 1837) p.104-6, Lang said further that another son was keeping a concubine. It is possible, considering that Lang dealt with the case after a bitter attack by Bulwer under Eagar's guidance, that he brought it up as a counter attack but the fact that he had used the case already in Transportation and Colonization would make it natural for him to use it again and supports the Colonist's assertion (10 January 1838 p.2) that he gave it in ignorance of Eagar's presence. There is a melancholy irony in the later trial of Lang's own son for embezzlement, though acquitted his character was not wholly cleared - Gilchrist op. cit. p.568-602.

2. Colonist 10 January 1838 p.2 - that this report probably came from Lang is no guarantee of its accuracy.
Lang's other illustration of these evils was the connexion of educated convicts with the press, and their consequent power to influence their readers against 'all the moral distinctions that the law of God has established in society'. His evidence of this prodigious evil was the case of the ticket-of-leave man William Watt and the Gazette, a case which he admitted was not an 'instance of the general character of convicts' and after the public indignation it had aroused, highly unlikely to be repeated. ¹

From Watt's infamy Lang went on to discuss the general condition of emancipists. Bulwer, Agent for the A.P.A., questioned him on the principles and readership of the convict press in order to discredit him as an intolerant exclusivist.² His bid was in part successful, for the examination turned to the propriety of admitting emancipists as jurors, a course which most members of the Committee supported and Lang, except with a formidable probationary qualification, dogmatically opposed. Molesworth himself fiercely attacked Lang on this point, forcing him to admit, despite his objections to the emotional connotations of the word, that exclusion from juries implied degradation.³

Lang's opinion on the franchise for the proposed free

1. TC 1837 Q.3621; 3837-40, 3832.
2. TC 1837 Q.3655, 3738-3752, 3758-60.
3. TC 1837 Q.3763-76.
institutions, though it did little to mollify the Committee, proved that his objection to emancipists as jurors was based on moral not political grounds. For the exclusives the two questions were intimately related as different aspects of civil rights for ex-convicts and thus of the threat to their ascendancy. Lang however insisted that though the moral welfare of the colony depended to a large extent on the administration of justice, it did not depend on the few emancipists who would be eligible to vote or stand for a House of Assembly. If Lang had wished to support the Tory regime he must have opposed all pretensions of the emancipists to civil equality. In fact he supported neither of the petitions of 1836: he was governed by a mixture of liberal and moral beliefs and in the convict ridden society of the 1830's the former often suffered for the latter.  

On the general character of the emancipists he was less  

1. TC 1837 Q.3788-90. Bourke told his son (2 April 1836, in 'Bourke Papers', M.S. ML A1733 p.45) that Lang wrote the exclusive petitions but Lang's explicit disavowal of support for either (Historical and Statistical Account of N.S.W. 1837, Vol.I p.338-40) casts doubt on this, though he may have written a superseded first draft. His equivocal attitude was probably due in part to the exclusives' anglicanism. He wrote, 'their profession of Christianity - a sort of fashionable accompaniment of gentility wherever there is a dominant state church - is unquestionably far more hurtful than beneficial to the cause of pure and undefiled religion', and 'the influence of the higher classes in New South Wales has been for the most part, decidedly unfavourable to the morals and religion of the country'. Historical and Statistical Account of N.S.W. 1837, Vol.II p.217,8.
categorical, confirming their dissolute habits and the exceptionable means by which some acquired wealth\(^1\) but emphasizing the virtuous and industrious lives of others. Bulwer made one attempt to defend them but as Lang readily admitted their diversity, it was to little purpose. His cardinal point concerned the ubiquitous temptations to dissipation, the profusion of public houses and the unrestricted importation of ardent spirits, evils which few denied but which obsessed the Scottish Missionary.

The influence of transportation on the moral state of society he treated even more tentatively. He believed that it had a demoralizing influence on the whole community but did not demoralize the currency whose 'moral principles' nevertheless were 'not very strong' and that the higher classes were less moral than in England but more so than in the West Indies. N.S.W. had been sullied by the convict system and was being further debased by the unprecedented prosperity which produced 'among the higher classes a much greater disposition to gaiety' and allowed to the lower classes the means of dissipation.\(^2\)

Eagar, incensed by Lang's opposition to the jury laws and the convict press and by his general denigration of the

\(^1\) Though he insisted that these were rare cases, he did not point out that the facilities for acquiring wealth were no longer open to emancipists.

\(^2\) TC 1837 Q.4030-41.
emancipists, furnished Bulwer with a brief for an attack on Lang's personal credit as a witness.\(^1\)

Earlier, when Lang had given a detailed account of the political platforms, the circulation, the financial position and the subscribers of the colony's five major newspapers, Bulwer had laid into him. He had fired at him repeated questions on the finances of the Colonist\(^2\) in an attempt to imply that his hostility to the convict press rested on mercenary and not moral considerations. Bulwer was wrong, in Lang's insistence that his paper had succeeded in its intended purpose, in his later enthusiastic acceptance of the loss of £500 through his advocacy of the Synod of N.S.W. during the schism in the Presbyterian Church and throughout his life, he did shew a consistent financial irresponsi-

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1. The Colonist 10 January 1838 p.2, said that Eagar's action was a result of Lang's exposure of him but the exposure was made after Bulwer's attack and thus cannot have provoked it. Eagar's account (Monitor 5 January 1838 p.2), corresponds with the Minutes of Evidence. The whole series of articles in the Colonist abounds in such delinquencies which destroy all its reliability. e.g. 13 January 1838 p.2 it said that after Bulwer's attack on the Colonist had failed, the case was taken up favourably by Sir William Orde and Mr. Baring. Neither of these men was present at the relevant sitting, the one time Orde attended Lang's examination, he asked no questions, and of the three Baring asked, none pertained to the matter. It would seem that in his reports home Lang tried to avoid disappointing his flock.

In his second attack Bulwer was more successful. He endeavoured by eliciting details of the prosecutions for libel brought against it, to impugn its and thus Lang's character of morality and respectability. In extenuation of his vehemence Lang pleaded the cause of righteousness. Following Bagar's brief, Bulwer delved further into the pestilential state of colonial Presbyterianism. He read an extract from a protest by two ministers and an elder in which Lang was accused of a 'deliberate and malignant attempt to ruin and degrade a fellow-labourer and disperse his flock'. The infamous schism of the church did not take place until

1. Gilchrist op. cit. p.210, also p.xiii, 140. For his indignation against the convict press see his letter to his mother and wife 10 May 1837 in 'Lang Papers' ML A2223 p.38-9. In his annotations to Macarthur's book, T.H. Scott accused Lang of 'rapacity and selfishness' (N.S.W., Its Present State and Future Prospects (Copy in A.N.L.) p.244). It was not an unjust criticism but though his rapacity at times embraced personal financial gain, generally it was directed at the material and moral health of his church.

2. TC 1837 Q.3852-3878.

3. TC 1837 Q.3908. It was printed in the Herald 12 May 1836 p.3, for his accusations see Gilchrist op. cit. p.309. Note also his letter to his mother, sister and brother 10 May 1836, in 'Lang Papers' M.S. ML A2223 p.19—'If ever Divine Providence called upon a single individual to act in such circumstances for the preservation of the life of the whole body, that individual is myself. Why did the care of all the churches of Asia Minor rest on Paul alone? Why because it so pleased his Divine Master who had fitted his shoulders for the burden. Why did the other ministers not share with him the toil and the responsibility? Why, just because they sought their own things and not the things that are Jesus Christ's'.

Lang returned to the colony later in 1837 but its causes were already apparent. He had accused first the Reverend Garven and then the Reverend Cleland, guilty of drunkeness, of gross immorallity, an exhibition of moral intolerance and despotism quite insupportable to his brethren. Before the Molesworth Committee he tried to palliate this revelation by referring to even worse delinquencies in other churches, a course which prompted

'The Archbishop of Dublin (who tood great interest in the proceedings and frequently attended)... to suggest .. to the Chairman to ask a series of questions tending to show that such was the state of society in the colony that no respectable clergyman, would go there or if he did, that he would in time be contaminated'. 1

Lang insisted that the recent increase in the proportion of free emigrants and Bourke's Act of 1836 ensuring stipends to all ministers, were now sufficient inducement for respectable ministers. His assurance may have been influenced by the purpose of his visit to England, the recruiting of clergy, but it was not unreasonable.

This examination not only confirmed the Committee's conviction of the corrupting effect of the convict system on the moral state of N.S.W., but also it is possible that it shook the Committee's faith in its reverend witness. Ignorant of the real nature of the offences in question, the Members

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probably did not fully appreciate Lang's depths of moral intolerance but, though they asked him to return and expound his views on Transportation and colonization, they paid him little respect.

Though the tenets of his theory of colonization corresponded closely with those of Molesworth and Wakefield and though his plan for the establishment of penal settlements in which convicts would be worked in gangs preparing the land for free emigrants, was taken from Wakefield's *Letter from Sydney*, the Committee refused to listen to any elaboration and in their Report, completely ignored it.¹

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1. In 1834 Lang had strongly opposed Wakefield, but in 1837 he went so far as to justify an increase in the price of land in N.S.W. on the grounds of considerations for the new colony of South Australia. See *Historical and Statistical Account of N.S.W. 1834*, Vol.II p.39-40 footnote; *ibid 1837 Vol.II* p.453-4; *Transportation and Colonization 1837*, p.144-6. His plan (TC 1837 Q.4045-6) was taken from Wakefield's *Letter from Sydney* (Everyman, 1929) p.87. In the late 1840s he was on terms of personal friendship with Wakefield but it is unlikely that Lang knew him in 1837. See correspondence from Felix and Edward Wakefield, in 'Lang Papers', M.S. ML A2226 p.410-436.

The reasons for the Committee's dismissal of Lang's plan are obscure. There are three accounts of this third examination, in Lang's *Reminiscences* written in 1877 ('Lang Papers', M.S. ML A2244 p.160-1), in the Monitor 5 January 1838 p.2, 4, and in the Colonist 20 January 1838 p.2. The first, written forty years afterwards is vague to the point of uselessness. Eagar in the Monitor, argued that his and Bulwer's exposee so discredited Lang that the Committee refused to listen, but he weakened his case by saying that the great exposee occurred during this examination. Unless it was expunged, Bulwer made no attack at Lang's third hearing. The Colonist, presumably on Lang's authority, said that despite the interest of Howick and Grey, the South Australian men refused to listen, that they cleared the room and having put it to the vote, heard no more of Lang's plan. Though it is cast into doubt by the gross inaccuracies in the other articles the Colonist published on the Committee, this account is the most consistent with the Minutes of Evidence. The Committee must have known that Lang's plan was lifted from Wakefield and must thus have deliberately ignored it. It is possible that though in 1829 Wakefield had cherished the idea, yet in 1837 when he and the Committee were deeply involved in other Australian colonies, they were unwilling to start a new one with such superior advantages.
Lang was ever bold in his absolute certainty of his divine inspiration, from 1821 when he had first seen himself as a missionary to N.S.W. it was as the apostle Paul. At times he was Christ, using terror and violence to purge the press of the colony as his master purged the temple at Jerusalem and suffering disloyalty in the schism of the church as Christ did in his last hours, but mostly it was Paul. With Paul he persevered while others faltered, though all turned from him 'he counted it a joy that he was deemed worthy to suffer such things', and after his death his wife nourished the vision of how like Paul 'he wrought single handed and alone.'

Following 'the way that Providence dictates with the assurance of a sleepwalker' he rained blows on Anglicans, Catholics and Heathens, a sad failing some felt, which 'compromises both the judgement and the piety of the minister.'

His appearance before the Molesworth Committee was abused as 'a union of the priest the politician and the


author' and unjustly, as a parade of 'affected sanctity'.¹
He did at times distort the truth and though his delineation
of N.S.W. was touched by nothing baser than a fanatic moral
fervour, it was in places unduly ugly.

1. Australian 25 May 1838 p.2 ; Gisborne in the Colonist
13 June 1838 p.2.
WILLIAM BERNARD ULLATHORNE Vicar General of N.S.W., went before the Molesworth Committee believing that 'my being examined would be of great advantage as well to our cause as to the giving correcter views of the workings of Transportation'.

Molesworth, believing with Bacon that Transportation was a 'shameful and unblest thing' was gratified by Ullathorne's paraphrase, 'an ungracious and an ungodly thing' and he larded his Report with the Priest's fetid evidence. This contribution to the abolition of Transportation was considered by his biographer Butler, to be 'in some aspects, the great achievement of Ullathorne's life.'

To obtain priests and money for the Australian Mission it was necessary to show its already palpable effect, so Ullathorne had been careful to point out that most of the abominations he disclosed had in recent years been mitigated, but the Committee contrived to bury their con-


scientious references to this in an overwhelming mass of ordure.

Seeing the Committee as a means for propagating the ideas that had brought him to England, Ullathorne, like Mudie, answered their questions eagerly and at length, fearing neither to use evocative language nor to assume authoritative knowledge on all subjects. He spoke with such rapidity that he had to be repeatedly stopped by the members so that the reporter might be able to record the words.¹ He plunged forward, testifying in successive questions to the case of a convict who received 1600 lashes in three years (later he said four years), to employment in road parties (instead of chain gangs) as a punishment for assigned servants, to the 18 inch square sleeping places for convicts in chain gangs and to 'the hard and fixed traces of crime on' the convicts faces.²

The two pamphlets he published at this time, *The Catholic Mission in Australia* and *The Horrors of Transportation* were characterized by the same profound compassion and by the same rhetoric. 'The daughter of crime' he said

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² Ullathorne – TC 1838 Q.201, and *The Horrors of Transportation*, (Dublin, 1838), p.27-8; TC 1838 Q.203; 207-8 – in his second examination, TC 1838 Q.319, he admitted that he had been mistaken about the size of sleeping spaces; TC 1838 Q.273.
'has burdened my ear with her tale of folly and woe', an assertion difficult to reconcile with Dr. Waugh's account of his refusing to sail in the same ship as a prostitute. This man, haunted by the 'shrunken forms' of the convicts, 'an army of distress reproaching' his delays, advised convicts whose kneeling to pray was ridiculed by their ungodly fellows 'to perform their religious duties ... while they were walking, when nobody was observing them', eminently sensible advice which ignored the mission of the church and its commandment that its people should be witnesses for Christ.

By the colonists he was considered 'a dapper little gentleman of exceedingly mild and fascinating manners' and compared 'to a sturdy beggar who puts a solution of copperas

1. Ullathorne, Catholic Mission, p.iii; D. L. Waugh said, 'We had two cabin passengers, Mr. Ullathorne and Miss King - the latter a strumpet who had been refused a passage in the Bardaster and Jessie ... Ullathorne would not go in the Jessie because she was there and coming with us, met her - Mr. Ullathorne is a nice, intelligent, gentlemanly man, but a bit of a Jesuit withall.' 27 June 1834, in 'Diary', M.S. ML B292, p.168-9.

2. Ullathorne, Catholic Mission p.55; TC 1838 Q.166.
on his eyes to make them red in order to excite ... compassion'. 1 In the Legislative Council his 'dear old friend' the Catholic Attorney General Mr. Plunkett found his florid descriptions in the Catholic Mission reminiscent of Ossian and Telemachus, and publicly declared that 'he did not believe there is a town in the world in which there is so little music as in Sydney'. 2 Even his superior, Bishop Polding, found some parts 'rather highly coloured' and suppressed the 5000 copies he had had printed. 3

Ullathorne's compassion was detached and intellectual, though his writings suggest an unrestrained love, his feelings differed little from those of the complacent Quaker James Backhouse who called religious meetings because it was his

1. Gazette 12 July 1838 p.2; W. Mann, Six Years Residence in the Australian Provinces, (London, 1839), p.210. See also Herald 13 July 1838 p.2, Colonist 11 July 1838 p.2. In 1838 when only The Catholic Mission had reached N.S.W., the liberal Australian supported him against attacks by the Herald and Gazette. In 1839 however after copies of his evidence had arrived and its relevance to the continuance of Transportation was made clear, the newspapers reversed their positions. Gazette 12 July 1838 p.2, 15 January 1839 p.2, Australian 15 January 1839 p.2.


Though Polding feared that it would 'give offence in some quarters' he rejoiced in its probable 'sinister effect on the temporal prosperity of the large Tory landholders'. For the suppression of The Catholic Mission, see Ullathorne, Autobiography p.149 et seq. and Birt op. cit. Vol.I p.397,8.
'duty' and who disapproved of religious enthusiasm. Ullathorne suffered personal discomfort and indeed endangered his health for the convicts, but he thanked God that he was not a sinner.

He had come to N.S.W. in 1833, 26 years old and a singularly youthful looking Vicar General, with the authority of the Church and the British Government to take charge of the Catholic Mission there and to heal its dissensions. To some extent he mollified the three bitter priests but only to develop instead a very distressing feud with the kindly Father John Joseph Therry who had fought successive Governors to found the Church in Australia. Their estrangement, which led finally to Therry's euphemistic appointment as Vicar General in Tasmania and its underlying causes to Ullathorne's rejection of the whole Australian Mission, derived in part from Therry's reluctance to submit to his young and inexperienced superior and to Ullathorne's impatience with Therry's incompetence in business matters and in his relations with the government. In later years Ullathorne was known as 'Monsignor Ego Solus' and in 1887 he claimed that as 'a mere youth' he had laid 'the foundation of the Church in Australia.'

In the 1830's his arrogance was little tempered by the humility proper to youth, but the grounds of the rupture lay deeper.

Father Therry was an Irish Catholic, he was not an intellectual, he was inept in business and diplomacy but he was imbued with an overpowering love which his Vicar General, an English Benedictine could not apprehend. Though highly intelligent and enthusiastic in his desire to save mankind, Ullathorne could not accept its essential brotherhood. His search for priests in 1837 and 1838 was primarily for Benedictines and it was only when he failed in this that he turned, ungraciously, to Ireland, recognizing then that he could not long continue in an Hibernicised mission.¹

His Australian congregation however was almost uniformly Irish, Roman Catholicism was identified with the Irish and thus in his pamphlets and in his evidence before the Molesworth Committee, he defended them with a 'furious bigotry' anathema to the colonists.² The Irish, he said, were mainly transported 'for agrarian offences and minor delinquencies, whilst those from England are with rare exceptions, punished for direct aggression on property or

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¹ He discussed the failure of his plan for 'Benedictinizing' N.S.W. in his letters to Dr. Brown in July and August 1838 printed in Birt op. cit. Vol.1, p.371,2, and his opinion of Therry in a letter to his Bishop, Dr. Morris in 1833 - ibid. Vol. 1 p.161.
² Herald 6 August 1838 p.2.
the person'. Not only were their offences milder, they were not steeped in the iniquity of the monsters from the English hulks. With halting accents he told of the dreadful corruption wrought by the English on the crowded convict ships and of the young boy who had observed so simply that the unnatural offences which prevailed in the prisoners barracks were not known in Ireland whence he came. He explained too the inaccuracies of the census figures which gave the Irish as only one quarter of the population. They were he claimed, at least one third, implying in this way their greater need for additional clergymen.

It was the plight of the Irish too which prompted him to write his second pamphlet The Horrors of Transportation. He had made it his duty to preach everywhere on this subject, disabusing the starving paupers of their 'monstrous delusion', but it was in Dublin at the instigation of the Secretary of the Lord Lieutenant that he wrote his exhaustive account of

3. Ullathorne - TC 1838 Q.304-8, also Catholic Mission p.7, and J. D. Lang, Transportation and Colonization p. iv,v, who agreed, using it as an argument for Scottish immigration.
its moral and corporeal horrors.¹ He quoted Sir Francis Forbes on the essential slavery of assigned convicts and on the laws peculiar to them which admitted punishment short only of death on the mere deposition of 'a passionate and brutal overseer'.² The wealth of emancipists, he argued, was a past anomaly, a result of the shortage of free settlers, and the encouraging letters from convicts were untruths designed either to console grieving families or to entice them to N.S.W. The various deployments of convicts in the colony he shewed in their most terrifying aspects.³

After devoting the three months preceding his examination to the propagation of these views among the poor in the North of England, Ullathorne came before the Committee acutely aware of the failure of Transportation to prevent


² Ullathorne, Horrors p.9, also p.25. In desperation he attacked the notion of their personal comfort: 'Well clothed! and is not a thick, heavy garment an irksome load in a hot climate? and do not the very shape and stuff of his clothing mark him out as a criminal? ... Well fed! ... Bread then is given to increase the convict's blood, that the doomed blood may be exhausted anew for his master's profit'. Lest this argument should fail, he concluded with a plea for his readers to consider the greater importance of their souls than their bodies. (Only convicts in government service wore regulation clothing).

³ In interviewing prospective immigrants James Macarthur too had seen a want of fear of transportation - TC 1838 Q.59-63.
crime in England. He was one of the few witnesses from N.S.W. who did not consider the question from an entirely parochial point of view, but his examination concerned mainly his experience as a priest in Australia. Like Lang's it centred on the effects of Transportation on the convicts, their voyage from England and Ireland, their reception in the convict barracks in Sydney, their lives as slaves to private settlers or the government, their punishment in chain gangs and penal stations and the possibility of their emerging penitent.

In this course, though he commended Bourke's policy of firm but humane discipline, opining that the severer system in V.D.L. roused convicts to defiance,¹ he utterly condemned Transportation. It not only failed to deter or reform criminals but corrupted the colonists and particularly the currency who were led into evil before their moral powers were developed sufficiently 'to enable them to resist their animal spirits.'²

His most sensational evidence, that which Molesworth had been so eager to elicit, concerned Norforlk Island and the prevalence of unnatural crimes. Sodomy he said, began

1. Ullathorne, TC 1838 Q.293-8, also Catholic Mission p.25. The Herald, 6 August 1838 p.2, was vastly irritated by this part of his evidence.

2. Ullathorne TC 1838 Q.226. See also Catholic Mission p.28,9. He developed this by adventing to the destruction of the assignees' humanity - ibid p.22-5.
among men crowded in hulks on the Thames; in the convict ships it spread from these monsters to their bedfellows and in the barracks in Sydney where they were lodged on arrival the innocent Irish lads too were corrupted. A population so disproportionately male provided no cure so that in the penal settlements, in the chain gangs, and even in assignment the convict had no recourse but to his fellow men or to the beasts of the field.

Ullathorne's knowledge of these crimes was derived from the confessional from, said the Australian 'the wretched convicts who sought his favour by slandering their own associates in guilt and suffering.'¹ His authority was probably more reliable than this incisive criticism implied, for sodomy and bestiality were likely to be common among men deprived indefinitely, and by circumstances rather than by religious conviction, of other means of relief. Ullathorne justified himself by explaining that the prisoner seeking counsel in the absolute confidence of the confessional 'will communicate that very freely which he would not communicate to other persons'.² Criticism would more justly have been levelled at the Committee's interest in and use of the preva-

2. TC 1838 Q.262.
lence of unnatural crimes than at the evidence concerning it.

Ullathorne used similar sources for his account of Norfolk Island. He had gone there first in 1834 to give religious consolation to the prisoners condemned for their part in the mutiny earlier that year. On his arrival he had hastened at once to the thirty-one condemned men in the gaol and as he named the thirteen who were not reprieved they 'dropped on their knees and thanked God that they were to be delivered from that horrible place, whilst the others remained standing mute and weeping'. Such was the dread of Norfolk Island that men preferred death to incarceration there, it was 'a very common thing' he said 'to find prisoners on their way to the scaffold thanking God that they were not going to Norfolk Island'. Its depravity was most eloquent in the 'complete subversion' of moral standards evinced by their calling a man 'ready to perform his duty' bad, and bad men good.¹

The Committee were deeply impressed by Ullathorne's tale and they quoted him at length and disingenuously in their report. They ignored not only his immediately subsequent account of the improvements since executed by the zealous Commandant Major Anderson and by the concern which the church had shown, but also the distortions in Ullathorne's own

1. TC 1838 Q.267 ; 268 ; 271.
conclusions. The vileness of Norfolk Island was indisputable but the rejoicings of condemned convicts in Sydney were probably to a large extent due to bravado, and the subversion of moral standards he so deplored is almost universal among school children. The evidence of the confessional too was probably more susceptible to the general criticism of its being designed by prisoners to insinuate themselves into his powerful care.¹

Ullathorne's evidence was consistently distorted by his youthful enthusiasm and his keen intellect. In his passion to show the absolute failure of Transportation to deter or reform criminals or to create even an indifferent colony, and to shew a feasible nostrum for the consequent cesspool, he made factual mistakes, he gave outdated examples and he selected lurid and exceptional abuses. The Committee shared his horror of Transportation but not his belief that the importation of Catholic Priests had had any effect on so foul a society. In their Report they used only those parts of his evidence which subserved their object, the abolition of Transportation.

CHAPTER VI

THE TRANSIENTS

Sir WILLIAM EDWARD PARRY spent four years in N.S.W.; his children were suckled by Governor Darling's wife; he earned the enmity of Major Mitchell and a reproof from Sir Richard Bourke; he was accused of attempting to unseat both Bourke and Chief Justice Forbes and a few weeks before his departure, prosecuted as was the custom of N.S.W., for libel. In 1839 Bourke's advocate, the Australian, coupled his evidence before the Molesworth Committee with that of Forbes and Mitchell in its approbation, for both Parry and N.S.W. had forgotten their differences. Before the Committee he gave freely of his knowledge and experience asking nothing in return, for neither his purse nor his reputation depended on N.S.W.

The son of a fashionable Bath doctor, he had found fame, a knighthood and an honorary D.C.L. from Oxford on his voyages in search of a North West Passage, and though a little too rough and blunt to be a fine gentleman he had married into the aristocracy. These prizes were not enough, peace was irksome for officers without private incomes and in 1829 he reluctantly accepted a four year appointment as
Commissioner for the Australian Agricultural Company. The Company, founded in faith and a flourish of trumpets in 1824 had soon faltered, and to salvage it from a failure attributed by the colonial committee to the agent and by the agent to the dynastic and doublefaced committee, Parry was hired to use the authority he had shown and the repute he had won.

In N.S.W. he confronted the resiting of the million acre grant, a shortage of labour and the assertion of his authority over a large and unco-ordinated staff, the last of which provoked the acrimonious attacks on him in the colonial courts.2

With Dangar, the surveyor, Parry set at once to find better pastures for the Company but it was not until after the sympathetic Darling's departure that he laid his request before the Government. Bourke had not long arrived and while unaware of the British Government's unstinting encouragement of the Company, had seen clearly the disfavour


2. It was in the contumacy of Barton, the Company's misanthropic accountant, that the attack on Parry's character in the Supreme Court in 1831 and the libel case of 1834, originated. In 1834 Barton was awarded only one farthing's damages, his vindication is an exhibition of petty malevolence, luxuriating in distortions and untruths. W. Barton, Report of a Trial upon an Indictment Promoted by Captain Sir W.E. Parry (London, 1832), and Ann Parry op. cit. p.175.
with which it was held in the colony and was yet reliant on his Surveyor General. Mitchell, ostensibly concerned for the squatters who would be ejected, and for the disaffection which would be excited among less favoured settlers by the alienation of so much uniformly good land, advised the Governor to refuse the application. Parry, 'in his zeal to promote the best interests of his company', annoyed Bourke by criticizing Mitchell with some asperity and it was only the direct intervention of the Colonial Office which secured his selection late in 1833.

He clashed with Bourke too over the price to be paid by the Government for coal from the mines at Newcastle, over the maintenance of clergy on the Company's estate and over the supply of assigned convicts. 'Nothing' he chafed, 'can be more obvious than the Governor's determination to refuse the Company every claim'.

2. H.R.A. 1.16.732, 740, 742 (Bourke to Goderich, 17 September 1832, and enclosures - Parry to Bourke, 15 June 1832, and Colonial Secretary McLeay to Parry, 27 July 1832). H.R.A. 1.17.57-8 (Goderich to Bourke, 23 March 1833).
Clergy: H.R.A. 1.17.374-5 (Bourke to Stanley, 18 February 1834, and enclosures).
Convicts: H.R.A. 1.17.568-71 (Spring Rice to Bourke, 6 November 1834, and enclosures); Parry, entry 7 June 1832, in 'Journal' M.S. ML A631 p.288.
Parry, representing a Company whose uncertain prosperity depended on the support of the Government, found Bourke, protector of both the settlers and the British Government, buffeted about by their incompatible and inflexible purposes, and convinced that the Company, whose profits were channelled to a few wealthy colonists, was consuming a disproportionate share of the good land, labour and revenue of N.S.W. Parry unwittingly excited enmity in the colony not only as an intimate of the Darlings, the Dumaresqs and the McLeays, but also as the embodiment of a great cuckoo.

In March 1834 the convict William Watt arraigned him as one of the Governor's three chief enemies committed to his withdrawal,

Mr. James Mudie proceeds to England instanter to give the first sturdy blow - the Venerable Archdeacon Broughton ... seconds the attack with his clerical auxiliaries; and the Hero of the Pole, Sir William Edward Parry, directs the naval armament with all the influence he can command.¹

Parry had signed and indeed helped to organize the 1833 petition from the settlers of Newcastle protesting against the Governor's convict policy and in 1834 it was 'generally

¹. 'Emigrant of 1821', Party Politics, p.74.
believed that Sir Edward Parry is the agent on behalf of the Hunter's River petitioners ... that he will add the weight of his own personal influence' to reverse the policy 'which Governor Bourke has pursued.' He had said in 1833 'It seems to be the fashion to treat gentlemen like convicts and convicts like gentlemen under the present local government' but he refused not only to take home the final Hole and Corner petition to the King, but also to sign it, for though he concurred in some of its sentiments he 'wholly disapproved of the temper and language'. Both his personal gratitude for Bourke's kindness and his conception of his duty to the Company prohibited him from involving himself in the party politics of N.S.W. While Watt was venting his infinite bile, Sir Richard Bourke was entertaining the Parrys at Parramatta and writing to his son, 'I am sorry the colony is to lose two such valuable people'.

Parry's only other gratuitous involvement in the colony had been his assumption of responsibility for the moral welfare of the Company's employees. In this cause he had

1. Australian 13 May 1834, p.2.
4. 21 April 1834, in 'Bourke Papers' ML A1733 p.2.
preached every Sunday and built at his own expense a chapel at Stroud on the Port Stephens Estate.

He came before the Molesworth Committee in 1838, Comptroller of Steam Machinery for the Admiralty, secure in the esteem of his fellows, unmoved by personal feeling, interested only in the continuing prosperity of N.S.W.¹ and in its expurgation. He opposed Transportation on every possible ground, insisting only that its discontinuance be gradual. The assignment system which had so plagued him he utterly condemned: its twofold objects of punishing the criminal and profiting the gaoler were incompatible for the gaolers were private settlers who could exact labour only by cossetting their convicts. He told the Committee of the indulgences automatically granted to all the Company's assigned servants and of the liberal wages paid to those distinguished by their skill or reliability. These criminals lived in far greater comfort, he declared, than the honest labourers of Norfolk whose poverty had been so impressed on him during his recent term as Poor Law Commissioner.

Assignment, so impotent to punish or deter, was he said, little better in reforming the convict. Though many emancipists conducted themselves unexceptionably, in his evangelical

¹. He had shares in the Bank of Australia giving him a general rather than partizan interest in the economy of the colony.
piety he could not accept this as evidence of the health of their souls. Not only were the convicts eternally sunk in depravity, their presence deterred most respectable people from emigrating and those who did became insensible to the evil around them. Buller, newly appointed agent for the A.P.A. and eager to show the eligibility of the colonists for representative institutions, broke in on Molesworth at this point to suggest that as in slave colonies 'the feelings of the freeman are higher', so in N.S.W. 'there would be a higher moral feeling among those ... not tainted by crime'.

Though Parry refused to acquiesce in this, arguing that the absence of any distinction in clothing made the convict influence more insidious than that of slaves, he did agree with Buller later that the emancipist shop-keepers were as honest professionally as their free competitors. He agreed too that by a system of double elections it would be safe to enfranchise not only the tainted freemen but also the ex-convicts. This admission earned him, despite his uncompromising opposition to Transportation, the favour of the Australian.

Much of Parry's evidence supported the Committee's preconceptions on the failure of Transportation and his name would have given weight to the opinions expressed, but perhaps

1. TC. 1838 Q.733.
because the Report was by then virtually written, he was little used and then foolishly. ¹

Parry's evidence, untainted by personal interest, was marked by a confusion of increasing piety and his general commonsense and intelligence. Though he saw clearly that the colony, bred from England's excreta was not a pandemonium, that its people were fit to elect from among themselves men who would legislate wisely, yet he feared for their souls. In 1834 he had cried out in his Journal against 'this horrible, this disgusting, this awful place'. ² In 1838 he was convinced that unless Transportation was abolished N.S.W. would continue a people apparently honest and industrious, but underneath, rotten.

1. They used his account of wages given to convicts assigned as domestic servants as a general rule rather than as the specific practice of the A.A.Co. and his probably careless remark that the most skillful mechanics were the worst-behaved and most drunken (Report p.vi). They misquoted his statement that the condition of convicts varied with their masters, using it in reference to the conduct and not the condition of convicts. (Report p.vii). He was directly quoted only once, in reference to the behaviour of female convicts, a subject on which his testimony was superfluous. (Report p.ix).

Major **THOMAS E. WRIGHT**, like Parry was attacked by the colonial liberals during his term of duty in N.S.W. and like Parry's, his evidence before the Molesworth Committee won their approval.¹ Parry was taxed with opposition to the Governor but the assaults on Wright were indirectly aimed at the Governor because, during most of Wright's time in the colony from 1826 to 1832, Darling had been in power.

Wright came to N.S.W. as a Captain commanding a detachment of the 39th Regiment then assigned to the colony, accompanied not only by a shipload of convicts but also by his mistress, smuggled on board in blatant contravention of regulations. The Governor was displeased but Wright secured forgiveness by seeking an appointment to Norfolk Island, a demonstration of his penitence and of his desire to rid himself of the woman.²

During the year and eight months he spent at Norfolk Island he was a wise and conscientious commandant, faithfully performing 'the Arduous and Unpleasant duties' of his office.³

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2. H.R.A. 1.12. 781-2 (Darling to Taylor, 18 December 1826, and enclosures), ibid 1.15.643 (Darling's reply to E.S. Hall's accusations, enclosed in Darling to Murray, 27 July 1830, separate).
He spent the first month personally supervising the labour of convicts in all departments, timing their work and assessing their capabilities: acquiring the information necessary for judging and punishing the frequent charges of idleness brought against them.¹ His method of punishment, congruent with that later put forward by Archbishop Whately, was based on the theory of the eighteenth century authority Dr. Paley. Punishment he contended, should be moderate but certain: he gave the convicts a fair trial, allowing them every means of defence and once convicted, a moderate sentence, but an inescapable sentence. Convicts knew that once caught they could not gamble on a reprieve. So successful was this policy that though at first he was obliged to order frequent punishments, in the last three months he was on the Island, as far as he remembered, he never inflicted a lash and had the gaol doors open the whole time.²

On the 16th October 1827, a few months after his arrival, Wright was assaulted with a great club by a convict Patrick Clynoch who had been sentenced for armed robbery in England and burglaries in N.S.W. to Transportation to Norfolk Island and hard labour in chains for life. After dodging the first

1. TC 1838 Q.1677.
blow Wright fled to the barracks and Clynch to the bush where for four days he escaped capture, making occasional sorties armed with a crude pike. On the last the guard was called out and Clynch was shot. In this way, the convicts told Wright, a mutiny to be launched with the murder of the commandant was stillborn.

Early in 1829 Wright returned to N.S.W. and was at once fallen upon by 'as foul a conspiracy as ever was engendered' and charged with the murder of Clynch. The charge was fabricated for revenge by Lieutenant Cox whom Wright had had courmartialled and as an indirect attack on the Government by Wentworth, E.S. Hall and Captain Robinson, all violently opposed to Darling. Despite its unequivocal failure the case was used by Hall in his impeachments of Darling in June 1829 and May 1830. The second of these concerned also Wright's appointment as a Police Magistrate at Emu Plains. Hall accused him of unfitness for this office not only on the grounds of the Clynch affair, whose termination he refused to accept, but also of his alleged trafficking in convicts' and soldiers' rations and of his keeping a concubine. Darling was attacked for paying from the colonial Treasury the costs of Wright's defence and for 'unlawful and unconstitutional

1. H.R.A. 1.15.594 (Darling to Murray, 21 July 1830, separate).
interference in his trial, for all of which both Darling and Wright were completely exonerated by the British Government.\footnote{H.R.A. 1.15.629-31 (E.S. Hall to Murray, 19 May 1830, in Darling to Murray, 27 July 1830, separate); ibid p.863 (Goderich to Darling, 23 December 1830); H.R.A. 1.16.33 (Goderich to Darling, 22 January 1831).}

In June 1831 yet another attempt was made to inculpate Wright in Clynch's death and again both the Governor, the Judges, the Executive Council and the Colonial Office supported him.\footnote{H.R.A. 1.16.278 (Darling to Goderich, 20 June 1831, and enclosure); ibid p.510 (Goderich to Bourke, 25 January 1832).} A few months later Darling left the colony and with him, all reason for Wright's persecution. When the 39th Regiment was moved on to India in 1832 Wright left N.S.W., guilty of impropriety in his domestic affairs but cleared of the charges that had been laid against him.

In 1838 he met Mudie in Europe and 'with the curiosity natural to residents and travellers in remote countries' he renewed their slight acquaintance 'in order to learn the history and progress of the settlement'. Mudie told him that the Molesworth Committee 'were anxious to find a Commandant from Norfolk Island, regarding which they were much in the dark, and as I had been two years there in that capacity they would be glad of my evidence.'\footnote{Wright to Glenelg, 18 April 1838, in 00.201/283 p.298.}
Wright told the Committee of the attempted mutiny and the trumped up charges against him, of his theory of convict discipline and of the convicts themselves. He confirmed their general depravity but he refused to speculate on the prevalence of unnatural crimes. Later he explained to Lord Glenelg, 'There is a deep cunning in raising a clamour of this nature - because from the very delicacy of the subject most men have a repugnance to advert to it - Both knave and fool take advantage of this'.

To the Committee he maintained that although it was widely believed by the soldiers that those crimes were committed, it was merely in the same way 'as we have an opinion that they are in Italy', during his term at Norfolk Island only one charge had been placed and that entirely fabricated. He told the Committee too that the convicts were great hypocrites, that during the evangelical Captain Donaldson's term of office they had insinuated themselves into his favour by affecting piety and spending Sundays Bible-reading in conspicuous places, and at the same time conspiring to mutiny. He would be very sceptical, he said, of any accounts 'of the sudden effects on the character of the convicts, from religious intercourse.'

1. Ibid CO 201/283 p.299.
2. TC 1838 Q.1725, 1737.
some proportion to Ullathorne's sensational account of the Island, but,

Mr. Mudie informed me that it was much regretted I had been examined - that my testimony had done mischief being totally at variance with that of a Catholic Priest on the subject of the unnatural offences commonly perpetrated at Norfolk Island - and in short that it did not answer the object he and his friends had in view.¹

Molesworth refused to authorize the payment of Wright's expenses, he referred to him only once in the final report and then only to his account of the mutiny that had taken place under Donaldson. Wright was an emminently impartial witness, his conduct in N.S.W. had been wholly vindicated and he was in no way involved in the colony. Since his time there he had served with honour in India and despite his youthful indiscretion, he was to die a Lieutenant-General and Commander of the Bath.² There was however, some justification for ignoring his evidence, as he himself had observed, it was ten years since he had been at Norfolk Island and 'the establishment was then different from its present state'.³

1. CO.201/283 p.299
3. TC 1838 Q.1753.
When the Fourth or King's Own Regiment replaced the 39th in 1832, Wright left N.S.W. and Lieutenant Colonel Henry William Breton, then a Major, arrived. He married there but his wife soon died and he did not buy land or involve himself in colonial politics. His evidence before the Molesworth Committee, like Parry's and Wright's, was given with detachment and well received by the Patriots.¹

Breton was called before the Committee to expose another area of the horrifying effects of Transportation, the demoralization of military troops sent to guard the convicts. Though, he said, they had no communication with the convicts they guarded either on the prison ships or in the chain gangs in Sydney, yet the separation of a regiment into individual detachments for each ship and in Sydney, the broiling heat,

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¹ TC 1837 Q.2351, 2392; A.P.A. Letter to Charles Buller, 31 May 1839 p.7, paragraphs 24-5; Monitor 5 January 1838 p.4; Australian 8 January 1839 p.2, and 9 November 1839 p.2; T.P. Macqueen, Australia— as She is and as She May Be, (London, 1840), p.6.

Sir John Ferguson in Bibliography of Australia (Sydney, 1945) Vol.II, cites a work Excursions in N.S.W., W.A., and V.D.L. During the Years 1830, 1831, 1832 and 1833 (London, 1833), by W.H. Breton. There were two Bretons in N.S.W. in the thirties, one William Henry and the other Henry William, the former a retired lieutenant in the Navy. On his second visit to N.S.W., William Henry arrived in the same year as the Major. In the forties he lived in Van Dieman's Land as a magistrate and as an active member of the Tasmanian Society of Natural Science. See ML Australian index, ML A579 p.78-84 and ML 505/5 p.121,317.
the long hours, and the proximity of public-houses had injurious effects on their discipline. Their deployment over the whole colony was even worse for, away from the inspiring regimental discipline and out of sight of their superiors, they fraternized with the convicts, a practice difficult to put down for in 'many instances' the favoured prisoner 'was the man's own brother or near relation'. Stricter superintendence had almost wholly prevented communication of soldiers with the ironed convicts they guarded, but with assigned convicts it was impossible to suppress. This was the greatest evil, for even Breton saw that the condition of assigned convicts was preferable to his soldiers' ill-paid and irksome duties. Two of his men he said, had deserted in order to be transported. In addition the extraction of the best men from each regiment for the mounted police not only deprived the rest of their good influence but also, the necessary freedom and initiative allowed them, destroyed their own sense of discipline. Though he was trivially misquoted in the Committee's Report, the lurid account which it gave of the demoralization of the military did not misrepresent him. 

1 TC 1837 Q.2042, 2103, 2105.
2 Report p.xiv - 'no less than 16 soldiers' were transported for drunkeness. Breton TC 1837 Q.2016 - said 'I think I have had about 16 soldiers transported, most of them for being drunk on sentry.'
Breton testified further to the condition of assigned convicts. For this he was qualified not only by the three months he had served as Police Magistrate in Argyle but also by his intimacy with the gentry and particularly with John Blaxland whose daughter Elizabeth Maria he had married in November 1832. She died a year and a half later in April 1834 leaving Breton with a daughter four weeks old who was brought up by her aunts Jane and Louisa Blaxland until she was old enough to accompany her father in his peripatetic service. In his evidence he several times referred from his experience as a magistrate to his knowledge of the customs of his 'own connections'.

His evidence on assignment corresponded with that of most of the other witnesses. The regulations for summary punishment and for the protection of the convicts, he deemed adequate but generally ill-executed and hampered by the sparsity of magistrates. He was reluctant to accept Burton's strictures on the superintendence of masters over their assigned servants, insisting that it was as efficient as their rather anomalous positions as neither employers nor gaolers admitted, and maintaining that although there were a few

1. 'Blaxland Family Pedigree' M.S. ML B770, p.14. For references to Breton and the child, Eliza (Missy), see 'Blaxland Papers' M.S. ML A1322 p.17, 49, 76, 86.
2. e.g. TC 1837 Q.2287, 2335.
cases of assignment to improper persons, these were exceptional. On the necessity of giving indulgences to convicts to exact from them any profitable labour, on the facility of their obtaining ardent spirits, on the lewdness of the female convicts and on the superiority of the condition of convict labourers over their honest English brethren, he merely corroborated the mass of evidence.

His views on the society of N.S.W. though influenced in part by his own considerable station as an officer and consequent intercourse with the upper classes,¹ and by his detachment as a temporary resident from the bitter struggle for power, were also influenced by his relations with the Blaxlands. Not only was it necessary that he should defend his choice of a colonial wife and the fair name of his daughter but also, the liberal views of his father-in-law and friends, among them Sir John Jamison, may have affected his judgment of the emancipists.² The upper classes he equated without

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1. TC 1837 Q.2359.

2. Breton spent part of his honeymoon with Sir John Jamison at Regentville. This friendship rested primarily however, on his connection with the Blaxlands. See Jamison to Piper, 12 November 1832, in 'Piper Papers' M.S. ML A255 p.142; and George Blaxland to Jamison, 15 April 1834, in 'Jamison Papers' M.S. ML D38-1, p.56,7.

He may have been further influenced by the need to confute Mudie who had so grossly libelled the Blaxlands and the paid magistracy in The Felony p.144-5, 126-132.
reserve with those in England, the middling classes including the emancipist shopkeepers he commended for good character, only the lower classes and the currency, of whose definition he was unsure, did he charge with depravity. ¹

In 1839 he returned to N.S.W. and though he was appointed a magistrate it is unlikely that he intended to settle, for he did not buy land and he soon left with his daughter to serve his queen as Colonel, Brigadier General and General in Mauritius, India and England. ²

Breton's evidence was at times influenced by the connections he had formed in the colony but although his reputation was more closely involved with it than either Wright's or Parry's, he achieved distinction and financial competence independently of N.S.W., and though he sympathized with the exclusives on questions of table manners, by his detachment from their reactionary stand, he pleased the liberals.

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1. In damning the currency, he unwittingly damned his own daughter, TC 1837 Q.2395-8.
The evidence of these men, settlers, clergymen, public servants and army officers, 'produced a very considerable sensation' in N.S.W. It was, said the colonists, 'prejudicial partial and improper': the witnesses, some with 'the most reckless mendaciousness' had distorted the truth in order to further their own designs.¹

Many of the witnesses were guilty of this charge. Sir Francis Forbes in a vain attempt to defend the Governor, feigned ignorance of the term 'absentees'; James Macarthur in pursuit of a wisely governed society, failed to make clear that the means of acquiring wealth were no longer available to emancipists; Mitchell to clear himself, gave a singular explanation of the crimes committed by road parties; Lang and Ullathorne, partly because of their own acute sensitivity to depravity, partly to make clear the needs of their own communions, gave caricatures of N.S.W. and Mudie and Slade vomited forth gross slanders. Ullathorne may have wittingly exaggerated, Mitchell must have been aware of the sophistical nature of some of his evidence, at times Mudie and Slade deliberately dissembled and Forbes prevaricated at least once, yet the proportion of the evidence intentionally false was

¹ H.R.A. 1.19.504 (Gipps to Glenelg, 18 July 1838) Colonist 26 May 1838 p.2; Australian 2 November 1839 p.2; 11 May 1838 p.2.
insignificant. The pervasive distortions were due in part to the witnesses very natural desire to interest and impress the Committee and in part to their preconceptions, for as Bourke had seen, very different opinions could sincerely be held.¹

The evidence was not just a pack of deliberate lies but still the colonists declared that it was 'as false as hell - being ... not positively and palpably the opposite of truth, but infamous exaggerations of circumstances based on admitted and incontestable facts - mountains raised out of molehills'.² The colonists were probably right, that the witnesses found it necessary to support their assertions by using examples whose causes were obsolete or which were themselves long past or exceptional would suggest that the rules they were intended to illustrate were not general. Lang, in deploring the effect of transportation on the moral state of society, adverted to the employment of convicts as tutors of the young and in particular to the case of Edward Eagar. In some cases children had undeniably been corrupted by their tutors and it was probable that even in the late 1830's a few convicts were so employed, but the great increase in the proportion of free

¹ Bourke to Stanley, 15 January 1834, in TC 1837 Appendix p.77; see also Herald 28 May 1838 p.2.
emigrants by then had rendered it unnecessary. With its cause entirely gone it could not justly be used as a criticism of the present workings of the system. The constant reiteration of the tale of Samuel Terry's fortune too, though pertinent as a legend to the efficacy of transportation as a deterrent in England, had little relevance to the system in N.S.W. in the thirties. Terry had made his fortune as Eagar had wrought his corruption, when the paucity of the free had given almost unlimited opportunities to convicts and ex-convicts. His success was not only a result of a past phenomenon, it was further, like the case of the convict Watt, exceptional. Watt's influence through the press over public opinion was of course deplorable, but that the witnesses used it so often would suggest that cases of convicts living and acting as free men were not common.¹

The witnesses, perhaps inevitably, presented a caricature rather than an accurate account of Transportation and of N.S.W. but their passions and goals probably distended it more than was necessary.

¹. The other cases cited were that, by Mudie, of a convict managing a tan-yard in Sydney which he admitted to be ten years out of date and that of the man Gough, assigned to Forbes and living with his (Gough's) wife. So constantly did Mudie and his fellow witnesses refer to sensational but long past examples of abuses that at times it would seem that the Committee might well have taken advantage of the labourers of the 1831-2 Committee on Secondary Punishments and merely appropriated its evidence.
In May 1837 Bulwer told the A.P.A. that the testimony so far received was all on one side, and in writing to his successor Charles Buller in May 1839 the Association denounced it as 'mere party evidence'. Macarthur however was the only witness who signed the exclusive petition and despite Forbes' disappointing performance, the Patriots commended Breton's evidence and that of three of the four witnesses examined after Bulwer's communication: Wright, Parry and Mitchell.  

It is impossible to classify the witnesses according to the colonial factions. Macarthur, though accredited representative of the exclusives was far more moderate than many of his constituents. Mudie and Slade though they did not sign the petition, though they had no stake in the future of N.S.W., and though their extremeness was cankerous, were in some ways more representative of the Tory position. Of the others whose station in life implied sympathy with the exclusives, Mitchell, though he shared their dislike of Bourke, was like the transients Breton, Parry and Wright and the clergymen Lang and Ullathorne, uninvolved in colonial politics, and Forbes, though Bourke's advocate, was not as liberal as

1. Monitor 12 February 1838 p.4; A.P.A. Letter to Charles Buller, 31 May 1839 p.8 paragraph 29. Bagar said that the Committee's enquiries 'to a great degree turned upon local politics'. Monitor 5 January 1838, p.4.

the colonists believed."

The complexity of the platforms of the colonial parties and of the characters and motives of these men make it more valuable to examine the concurrence of the distinct ideas they expressed with those of the two parties. The crude opinions which they proffered on the desirability of continuing Transportation are of little use as few ventured anything more specific than that Transportation should be gradually discontinued, a proposal so vague that it could apply equally to both parties. Their attitudes were more intelligible in their estimate of the people of N.S.W. In this the evidence of Ullathorne and Lang who were not in sympathy with the exclusives' desperate desire to retain power, weighed most heavily. Macarthur, Mudie and Slade too gave powerful witness to the deplorable effects of the system and though the rest, equal in number, commended the character of the colonists, their evidence was not sufficiently explicit to prevent its being used to support the exclusives' views. The evidence on the indulgences given to assigned servants, almost universally corroborated, strongly militated against the efficacy of Transportation as a punishment and the very equivocal testimony concerning the reformation of convicts was easily turned to a condemnation of the system. Another Committee, prejudiced in favour of Transportation, might by discrediting the more partial and exaggerated evidence, have
deduced from the whole a favourable impression of Transportation, but it was very susceptible to Molesworth's purposes.

The evidence on specifically political questions was even less explicit. Forbes, strongest supporter of a representative government was not examined on it, and of those who were, most advocated a compromise which would mollify the Patriots without admitting them to real power. The jury laws however were condemned by all but Forbes and even he was prepared to consider their amendment. Perhaps more important than the witnesses' stated opinions on these measures were their indirect estimates of the fitness of the colony for free institutions, estimates which show most clearly the Committee's twisting of the evidence. The duplicity with which convicts acquired wealth and the horrifying effects on the moral state of society were used to support the Committee's condemnation of Transportation and yet not considered of sufficient importance to exclude emancipists from juries. Though Transportation was characterized by 'the monstrous evil of calling into existence ... the germs of nations most thoroughly depraved' and though Macarthur and Burton were undoubtedly right in their judgement of the injurious effects of admitting emancipists as jurors, yet the radical Committee considered it safe to entrust mens' lives to them.¹

¹. Report p. xli, xxix.
That Transportation should be abolished was a possible but not inescapable conclusion from this evidence but that emancipists should be admitted to civil rights was an improbable inference and to this extent the Patriots were justified in their protest that the evidence was one-sided. Even so their accusations that the witnesses were 'packed' by the Chairman appear to be little more than an extension of their general indignation.¹

A Committee considering the condition of a colony of only 80,000 people four months away at the antipodes, had to depend on Englishmen who had served there and on chance visits home by colonists. It was impossible for them to select from a wide range the most suitable witnesses. Forbes and Macarthur, both in close communication with the Colonial Office were automatically chosen, Ullathorne's pamphlet on the Catholic Mission prompted the historian Dr. Lingard to propose him and Major Wright was acquired by a chance meeting with Mudie. The selection was not entirely indiscriminate, in May 1837 James Mudie's brother George, a British journalist, offered his services and was presumably refused because of phrenetic tone of his application² and Eagar, Buller, Macarthur

¹. *Australian* 8 January 1839 p.2, 9 October 1838 p.2; *Monitor* 11 February 1839 p.3.
². George Mudie to Sir George Grey, 8 May 1837, in CO.201/267 p.567-9. It is possible that the decision was also influenced by his brother's previous exhibition.
and Richard Bourke Junior tried to find witnesses to balance Mudie and Slade. Though the witnesses were not chosen at random there is little evidence to support the Patriots' imputations that the selection did not manifest a scrupulous regard for truth. Even so Molesworth's patent manipulation of his witnesses and his use of their evidence to justify his report were governed less by a search for knowledge than by a determination to abolish Transportation.

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1. Monitor 2 May 1838 p.2; Buller to the A.P.A., 31 May 1840, in Sweetman, Australian Constitutional Development, Appendix p.435; Richard Bourke to his father, 27 May 1837, in 'Bourke Papers' M.S. ML A1739 p.62. The only evidence lies in the letter Joseph Wright wrote to the Colonial Office in July 1837 - see above p.112 note 1.
PART THREE

THE REPORT
CHAPTER VII

MOLESWORTH AND HIS COMMITTEE

To avoid any cavilling over the credibility of the witnesses, said Sir William Molesworth, his final report was not based on their evidence. This was true but his assurance that it was founded rather on official documents was less certain. He rode through the volumes of evidence plucking out whatever suited his immutable convictions, that Transportation should be abolished and that Wakefield's principles should be applied to N.S.W. He was guided said the colonists, not by 'any desire to benefit this colony, but on the contrary', imbued 'with the most sinister views' his purpose was 'to promote the interests of the scheming land jobbers of South Australia'.

The report supports their construction. The grotesque

depiction of the moral state of N.S.W. would succeed 'in turning the tide of emigration towards the new colony of South Australia'. The abolition of Transportation would 'deprive the colonists of convict labour and thus' not only 'reduce this splendid colony to a level with their own province', but also, with the recommended increase in the price of land, would stop land sales almost completely. Without accessible land and labour, the land fund would dry up and there would be neither attractions nor money to bring emigrants to N.S.W. The enormous loan which would then be necessary to provide for emigration would so involve N.S.W. in debt that 'the ruin of the colony should be irredeemable and complete.'

The Colonization Commissioners for South Australia may have approved so iniquitous a proceeding, not in gratuitous malice but in an attempt to destroy the older colony's allure. Though there is little evidence of their responsibility for the increase in the price of land in N.S.W. in 1838, they did exert pressure on the Colonial Office in 1836

to raise the price in Port Phillip,¹ and in advertising for
emigrants they exploited N.S.W.'s convictism. In books,
pamphlets and lectures, South Australian advocates dilated
on the dreadful deprivacy of N.S.W., using to deter emigrants
from going there Mudie's Felonry and even the Molesworth
Report itself.²

1. In October 1836 they protested that the dependence of the
land price in Pt. Phillip on the Governor's discretion
would 'prove destructive to the Colony of South Australia'
for although their labourers would fear 'to associate
their virtuous families with a convict population' in
N.S.W., yet the cheap land and clean living of Pt. Phillip
would entice away the labour for which the S.A. settlers
had paid 12/- per acre. H.R.A. 1.18.682-3 (Torrens to
Glenelg, 12 October 1836, in Glenelg to Bourke, 15
February 1837).
Roberts Squatting Age p.130, said that the publication in
the Australian 10 January 1839 p.2, of the correspondence
between Bourke, the Colonial Office and the Commissioners
'certainly proved the direct connection between the new
colony and the rise in price' in N.S.W., and the editor
of the Sydney Standard 11 February 1839 p.2, remembered
'having been present at a meeting of the Commissioners
for South Australia ... when the propriety of urging the
Colonial Secretary to issue the order that has been
extorted from him was discussed.' The Legislative
Council too in 1847 was convinced that the interests of
N.S.W. had been sacrificed to those of S.A. See
C.M.H. Clark, Select Documents in Australian History
There is no record in the correspondence of the Commis­
sioners with the Colonial Office of any such application
(C0.13/4,8,12) and the correspondence printed in the
Australian does not prove its existence. The correspon­
dence may be found in H.R.A. 1.18.684-6 (James Stephen
to Colonisation Commissioners, 27 October 1837, in
Glenelg to Bourke, 15 February 1837), H.R.A. 1.19.78-9,
537-8 (Bourke to Glenelg, 6 September 1837, and Glenelg
to Gipps, 9 August 1838).

2. Australian 9 February 1839 p.2; J. Stephens, History
of the Rise and Progress...of South Australia (London,
1839), p.3, 215-8; D. Pike, Paradise of Dissent
(Melbourne, 1957), p.146.
If Molesworth intended his report to be used to divest N.S.W. of all its attractions and to divert emigrants to South Australia, he was guilty of the most abominable unscrupulousness for he insisted repeatedly that it was for 'the moral well-being and economical prosperity of the penal colonies' that Transportation should be abolished and Wakefield's principles established.¹

His report subserved the interests of South Australia, he patently manipulated the witnesses and their evidence, and he was deeply involved in the new colony but it is unlikely that his intentions were dishonourable.

Sir William Molesworth, eighth baronet, was the first and sickly result of the union of a Whiggish gentleman from Cornwall with a Scottish lady descended from David Hume. Unable to withstand the rigours of Eton, he was educated at home and for three years in Edinburgh and in 1827 he was dispatched to St. John's Cambridge. Irritated by his vulgar tutors he removed himself almost at once to Trinity but he was ill fitted for collegiate undergraduate life and it was with little regret that he found his studies there cut short.

after less than a year. He was not yet 18 when, on behalf of a friend, he challenged his tutor to a duel. He was expelled from the university and with his tutor bound over to keep the peace for twelve months at the end of which their honour and lives were saved by an inaccurate exchange at Calais. Molesworth had left Cambridge for Germany and until he was twenty-one he immersed himself in the social and intellectual delights of the small courts there and in Italy. In 1832 his home constituency East Cornwall elected him unopposed to the House of Commons. He represented them until 1837, until his radical platform had so alienated the Whig gentry that he transferred his favours to the people of Leeds.¹

In the Commons Molesworth distinguished himself as a radical and as a colonial reformer. This course was determined by two men, Jeremy Bentham and Edward Gibbon Wakefield, both of whom had launched attacks on the system of Transportation.

Molesworth's radicalism has been traced to the influence of his Italian master at Edinburgh, Signor Demarchi, to his


Mrs. Fawcett (1847-1929), a lady of advanced views on the rights of women and widow of a radical Member of Parliament, was prompted to write this biography by her disgust with the colonial policy pursued by the British Government in the Boer War. R. Strachey, Millicent Garrett Fawcett (London, 1931) p.186.
close study of Scottish and German metaphysics and to his experience in the small courts of Germany and Italy. More immediately, he had read Bentham as an undergraduate at Cambridge\(^1\) and in London, as a Member of Parliament, he came under his domination. Bentham died in 1832 but Molesworth formed a close friendship with the Grotes and with Charles Buller and he worked with John Stuart Mill, Hume, Roebuck and the rest of the Philosophical Radicals.

In June 1834 he seconded Roebuck's motion on education and in 1835, Grote's motion for a secret ballot. At this time too Molesworth approached John Stuart Mill and 'spontaneously proposed to establish a Review'. The *London Review*, which became the organ of the Radicals and an important journal with articles by both of the Mills, Carlyle, Roebuck and other distinguished writers, existed on Molesworth's generous support until 1837.\(^2\)

He was more than a slavish disciple of the older Radicals, in 1834, less than two years in Parliament and 24 years old, he determined to organise them. With John Temple Leader he rented a house in Eaton Square, trusting that some cohesion

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1. Fawcett Molesworth p.13, 45, 17.
would emerge from his unstinting hospitality. By 1835 his conception of a Radical caucus had taken the form of a club but despite its successful foundation in 1836, the Reform Club did not answer his dreams. In 1836 with Grote, Hume and Roebuck he formed the Anti-Corn Law Association but by the end of the year the Radicals were as apathetic as ever.

In the Commons he persevered in his bombardment of property, privilege and the Whig Government, denouncing in 1836 the Orangemen and the Government's tolerance of abuses and in 1837, the Corn Laws and the property qualification for the franchise. 'The free choice of intelligent men' he said was 'a better qualification ... than the possession of any amount of landed property.' He told the Representatives of the City of Bath that 'It had been made apparent to the country by the conduct of the House of Peers that the hereditary government of the aristocracy was bad,' and that 'the

1. Fawcett op. cit. Chapter 4. Edward Eagar said 'his flatterers laugh in their sleeves and eat his dinners'. Postscript, 31 July 1837, in Monitor 5 January 1838 p.4.


4. PD. GB. 3rd Series Vol. xxxvi col. 552, xxxvii col. 597 - 'The object to be obtained is the happiness of the people'. He spoke again on the Corn Laws in 1838 Vol. xli col. 923-32.
conflict between the conservative and popular party, being one of principle, could never be reconciled; it was a contest between the people and the aristocracy.\(^1\)

This was Bentham's message, translated from the desk to the pulpit, but Molesworth took more than his radicalism from the master. Following the Italian synthesist Beccaria, Bentham had extended his principle to an examination of criminal law and in 1792, proposed a new method of punishment, the Pantopticon. Ten years later he published two letters to Lord Pelham, Pantopticon Versus New South Wales. In these he laid down the lines for later attacks on Transportation: its failure to deter or reform criminals and its huge expense. James Mill, Richard Whately and later Molesworth fashioned their polemics according to Bentham's model.\(^2\)

Bentham and Mill had a further argument against Transportation which Molesworth did not use. They had read Adam Smith and seen the American fiasco and were convinced of the inherent absurdity of having any colonies at all. Not only was Transportation the worst means of colonisation, colonisation in itself was a bad thing. Molesworth explicitly

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1. The Times (London) 7 January 1837 p.3.
rejected this dogma. In 1839 he told the House of Commons that Bentham was wrong, for his second mentor was Wakefield.  

He had met Wakefield shortly after joining the Philosophical Radicals. In 1834 he became a member of the committee of the South Australian Association, in 1836 he offered Wakefield £1,000 towards election expenses for a seat in the Commons and in 1837 he accepted Wakefield's assistance in his fight against Transportation.  

Wakefield's interest in both Transportation and colonisation had begun when he was cast into Newgate in 1826. His rakish progress was abruptly cut off and into the vacuum came memories of his Quaker family, of his father's friends James Mill and Francis Place and of his cousin Elizabeth Fry.  

There came too the tales of prisoners, some sentenced to be transported to N.S.W., others returned from there. He read

widely on the colonies and listened to the felons and in 1829 published *A Letter From Sydney*. Two years later he attacked Transportation again in his study of *The Punishment of Death* and in his evidence before the Select Committee on Secondary Punishments. Though he turned then to put into practice his convictions on colonisation, he did not forget Transportation and the colony it had produced. In 1836 he told the Committee on Waste Lands in the Colonies, 'I hardly look upon New South Wales as a colony' and in 1837 he argued with great force in his little volume *Popular Politics* that Transportation had failed to prevent crime in England.¹

In that year too he organized Molesworth's committee and amassed for it suitable evidence. 'Mr. Gibbon Wakefield' wrote Eagar 'was a constant attendant upon the early meetings of the Committee and in open and perpetual communication with the Chairman; suggesting questions, conferring with and as it seemed, advising him.'² Molesworth referred in the Commons in 1839 and 1840 to the opinions of 'my friend

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Mr. Wakefield' and in 1853 he said that it was to Buller and Wakefield that 'this country is indebted for sound views of colonial policy with respect to Canada and Australia, and on the subject of Transportation.' Wakefield's name was not mentioned in either Molesworth's Report or in his speech on Transportation in 1840 but his indisputable influence led many to see in the Committee, a South Australian plot. ¹

These allegations were not groundless. The report, in the short term at least, succoured the new colony. In 1836 Wakefield told the Committee on Waste Lands in the Colonies that land in N.S.W. and V.D.L. should be put under the same minimum price as that in South Australia, not he insisted, to profit the new colony but because already its 'numerous and extraordinary advantages' were attracting settlers from the older colonies. In March 1836 while the Committee was sitting Molesworth declared that 'I feel a deep interest on public grounds' in South Australia 'and have proved it by incurring personal risk as a trustee responsible for the safety of considerable funds'. ²

1. Molesworth Speeches p.59, 87, 428. His name was mentioned once in the evidence, by Arthur. TC 1837 Q.4349.

2. PP.HC 1836 Vol.11 512. Q.802. Molesworth Speeches p.3. see also Fawcett op. cit. p.137, 162-3; Once in examining Forbes he absently said 'South Australia' instead of 'New South Wales' TC. 1837 Q.412.
Wakefield's opposition to Transportation was even so, independant of his hopes for South Australia: It preceded his involvement with the colony and it continued on after he had put by that first experiment. In 1835 a disagreement with the Commissioners over the land price ended his active participation in the affairs of South Australia. In great anger he withdrew 'from all responsibility as to the success of this undertaking.' The following year he began with Mr. Francis Baring to plan a new colony in New Zealand and while he helped Molesworth to examine his first witnesses, he was eagerly enrolling prospective colonists. When he received his copy of Molesworth's report in 1838 he wrote in triumph that the 'unclean thing' had got its death warrant.

Molesworth's defence was undertaken by his biographer, Mrs. Fawcett. Aware of these allegations, she attempted to present an alternative explanation of his interest in transportation and N.S.W. She based it on the delightful speech of February 1836 in which he seconded Hume's motion for the suppression of the Orange Lodges. He argued that as the Tolpuddle Martyrs had been transported for administering secret oaths, so the titled hierarchy of the Orange Lodges, the Duke of Cumberland, Lords Kenyon and Chandos and Thomas Bishop of Salisbury, should be subjected to the laws of England. Mrs Fawcett maintained that it was the 'rage

awakened by the Transportation of the incipient Trade Unionists that provoked this speech and his future career: 'Molesworth set out to protest against the iniquity of the sentence passed on the Dorsetshire labourers and found his life's work. First the destruction of transportation as a secondary punishment, and secondly, the establishment of the principle of Colonial self-government'.

This speech was not the main spring of his career, and he was not before the appointment of his Committee, prominent among the critics of Transportation, yet he had since 1835 at least, given some attention to the question.

More pertinent to his defence was his wide interest in colonial affairs. Though it had been kindled by Wakefield's

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1. M. Fawcett, Molesworth p.87. This is inconsistent with other statements in her book - p.137, 9 - she said that his active interest in colonies dated from 1833; p.67 that he published an article on N.S.W. in 1835 in an early number of the London Review (referred to in an article reprinted from the Spectator, in the Gazette 5 September 1837 p.2); p.93-8 - she printed letters concerning the speech, none of which support her construction. She made constant errors of fact - e.g. p.137 (date), 140-1 (date and Lenox), 145 (Burton).

2. The only time Molesworth mentioned either Transportation or N.S.W. in the Commons before March 1838 was in the Orangemen Speech. On 23 March 1837, only two weeks before the appointment of the Committee, Russell referred to Whately's but not to Molesworth's opposition to the system, PD.GB. 3rd Series 1837 Vol.xxxvii col. 727.
first venture he was not a South Australian bigot but a visionary colonial reformer. Of the four speeches he made on colonial subjects in the House of Commons in 1837 and 1838, three were on Canada. Early in 1837, six weeks after the appointment of his Committee, he became a member of the committee of an association formed to colonise New Zealand, and in his tremendous attack on Glenelg's administration of the colonies in March 1838 he spoke not only on N.S.W., V.D.L., South Australia, New Zealand and Canada, but on Mauritius, South Africa, Sierra Leone and the West Indies. Lord Glenelg he said, 'neglectfully' presided over the Colonial Office by 'doing nothing reduced to a system'. In place of this 'imbecile and oppressive' government he offered not only to N.S.W. but to the whole world Wakefield's vision. Though


2. Molesworth Speeches p.28,48; PD. GB 3rd Series Vol.xli Col.47 (22 February 1838) This speech caused some consternation among the Tories: if they supported it as an attack on the Whigs they must follow a desperate radical and if they opposed it they must support the Whigs. In the end they moved an amendment. See C.S. Parker (ed.) Sir Robert Peel from His Private Papers (London, 1899), Vol.II p.359-367. Edith Dowie op. cit. passim has attempted to show that Molesworth's attack was unjustified, suggesting that it was provoked by Glenelg's support of the Church Missionary Society's opposition to the N.Z.A. She does not notice Greville's opinion. Though he had no sympathy for Molesworth he recorded the Whig Government's estimate of Glenelg 'He was incompetent to administer colonial affairs'. C.C.F. Greville, The Greville Memoirs, Second Part, A Journal of the Reign of Queen Victoria (London, 1885), Vol.I p.32, 161-2.
there are some unanswered questions, it is unlikely that
either Wakefield or Molesworth intrigued to use the Trans­
portation Committee to succour South Australia on the blood
of New South Wales.¹

Richard Whately, Archbishop of Dublin and in the thirties
foremost opponent of Transportation, shared Wakefield's
horror of colonising with felons. To his Thoughts on
Secondary Punishments in 1832 he had appended an essay on
colonisation by his chaplain Dr. Samuel Hinds, later a member
of the Committee of the New Zealand Association, and to his
Remarks on Transportation in 1834, the prospectus of the
South Australian Association.² Indeed he considered it 'his

¹. The unanswered questions are firstly, why did the
Committee ignore Lang's plan for new convict colonies?
(see above p.142 note 1) and secondly, why was Wakefield
so scrupulously disassociated from the Committee? He was
certainly involved but he was not called as a witness and
Molesworth did not mention him in either his Report or in
his speech of 1840. His abduction of Ellen Turner does
not explain this for he was considered reputable enough
to give evidence before Ward's Committee on Waste Lands
in the Colonies in 1836 and Hawe's Committee on Metropolis
Police Offences in 1837 and his evidence would have been
as relevant to Molesworth's Committee as to Hawe's. This
apparently deliberate exclusion suggests some sinister
purpose.

². Garnett op. cit. p.138 ; E.G. Wakefield, A View of the
Art of Colonisation (London, 1849), p.54, 706 ; TC 1838
Appendix p.302- in Whately's letter to the Rev. H. Bishop,
2 March 1838, he said that Hinds wrote the article, it
is unsigned in the appendix to Thoughts on Secondary
Punishments (London, 1832).
Hinds published On the Colonisation of New Zealand in
1838 and in 1849 was made Bishop of Norwich. See D.N.B.
Vol.IX p.897.
religious duty' to discourage emigration to N.S.W. and grossly unfair to South Australia to send convicts anywhere near that colony. In 1820 he had published a theoretical article on 'Emigration to Canada', from 1829-31 he was Drummond Professor of Political Economy at Oxford, and he corresponded on colonial matters with Nassau Senior but his interest in Transportation derived, he said, from his experience as a parish minister. His attempts to inculcate morality had been frustrated because 'the law afforded not only no adequate discouragement to crime, but even in many instances, a bounty on it.'

He concentrated primarily on the failure of Transportation to prevent crime in England. Of the four necessary


See also Gazette 19 December 1835 p.2. It said that his interest arose from the Transportation of his own brother, in N.S.W. 1798-1804. This smears his character and supports the criticism that his evidence was outdated. E.g. G. Arthur, A Defence of Transportation (London, 1835), p.105. There is however no Whately in the list of convicts in the colony from 1788 to 1819, or of convicts transported. HO.10/1, HO.11/1. Journalism in N.S.W. in the thirties was not distinguished by its reliability.
characteristics of punishment, that it should be formidable, humane, corrective and cheap, in all of which Transportation had failed, the first was indisputably the most important. 'To think of diminishing crime' he said 'by simply removing the criminals, without holding out an effectual terror to future offenders, is like undertaking to empty a lake by baling out the water, without stopping the river which flows into it.' Punishment must prevent crime and Transportation had failed in this because of its lack of certainty.  

In 1833 Arthur, Governor of V.D.L. and Broughton, Archdeacon of N.S.W. attacked this argument, in the next year Whately replied and in 1835 Arthur returned to defend Transportation and by inference, his administration. These attacks indicated most of the basic fallacies in Whately's reasoning. The uncertainty of Transportation which Whately so abhorred was due, said Arthur, to the confusion of Britain's criminal law and would not be remedied by Whately's proposal for a number of different Penitentiaries.  

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1. Whately, Thoughts p.6-7, 84, 58. Sir John Ferguson (no.2264) attributes the Account of an Expedition to the Interior of New Holland (London, 1837), edited by Lady Mary Fox, to Whately. It is an account of an Utopia, according to the advertisement to the second edition in 1849, 'compiled by more than one person'. Its adversions to N.S.W., formed 'from the scum and refuse of mankind' and 'the sweepings of our gaols' and its general rationale of punishment, repeat Whately's ideas and fallacies. Ibid, 1837 edition, p.30, 169, 164-8.

was convinced that the removal and reform of criminals was the prime object of punishment and at times he came close to a defence of this view, adverting to other 'causes of crime prevention' without developing the role of the police, and to the basic causes of crime in Britain: not viciousness but overpopulation and unemployment.\(^1\) He argued that the interests of England and of her penal colonies were complementary, that England's unemployed could be salvaged from crime to benefit the colonies by their labour and Britain by reducing competition there. Broughton supported him in this, contending that though in England poaching had increased because fast coaches had made it easy to dispose of game, in N.S.W. fast coaches were unknown and so not only the incentives but also the opportunities for crime were fewer than in England.\(^2\)

In support of his thesis Whately used Wakefield's evidence, given before the Committee of 1831 and in The Punishment of Death, of the careless enthusiasm with which convicts faced Transportation. Wakefield however, yet tainted by the stench of Newgate, was a dubious authority so the Archbishop used him little.\(^3\) Though Whately's course

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3. Whately Thoughts p.18 and Appendix II.
of reasoning followed Wakefield's, differing only in emphasis, he preserved his cause from any possible smear. He remained a prominent and impeccable opponent of Transportation but he was not unwilling to assist a Committee whose connection with Wakefield was not overt. He 'took great interest in the proceedings and frequently attended'. To the edition of the Report which Molesworth published for his constituents at Leeds, he appended Whately's review of the evidence and in the Dedication, acknowledged his debt to the Prelate's admirable works.  

Whately was not an original thinker, his principles were those of Beccaria and Paley and his application of them to Transportation echoed Bentham, Mill and the Reverend Sidney Smith but he gave Molesworth a respectable foundation for his condemnation of the system.

In 1837 Molesworth was a young man of twenty-seven with a passion for democratic notions, colonial reform and flowered dressing gowns.  

His wealth and his remoteness from power absolved him from the need to consider the banalities of

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1. Eagar in Monitor 5 January 1838 p.2; Molesworth Leeds Report p.iv, 49, Whately's letter was also published in TC 1838 Appendix p.299.

2. Ullathorne Autobiography p.138; see also the opinions of Cobden and Thackeray in Fawcett op. cit. p.244, 17; also Weekly Herald (Edinburgh) 27 October 1855, in T. Woolcombe (ed.), Notices of the Late Sir William Molesworth (London, 1857), p.94.
moderation, and he was fired by the solutions of Wakefield and his philosophical friends to the problems of the world. An irresponsible infidel in his own little world, he assumed responsibility for all mankind. Sustaining his passionate moral fervour, he had a mind 'possessing neither quickness of apprehension nor brilliancy of imagination, but remarkably clear, sound, logical and comprehensive.'¹ It was a mind suited to the great task he had begun of editing the works of Thomas Hobbes, England's first Utilitarian who had, more than a century before, anticipated the master Bentham.

At a meeting of the Workingmen's Association in the Crown and Anchor, three days before the appointment of his Committee, he delivered in simplicity and sincerity and sartorial elegance, a fastidiously prepared speech advocating Universal Suffrage for Canada. It was a gospel which The Times regretted, savoured 'very strongly of wickedness, imbecility or insanity'.²

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1. The Times (London) 23 October 1855, in T. Woollcombe (ed.), Notices of the Late Sir William Molesworth p.24. See also Examiner 27 October 1855, and Morning Chronicle 23 October 1855, in ibid p.66, 38. The latter said 'What industry could do, he did. His case is a remarkable instance of the effect of careful cultivation on a thin soil of intellect.'

2. The Times (London) 5 April 1837 p.4.
It was necessary in 1837 to do something about N.S.W. A new Act was due for its governance and agitation both in England and the colony demanded a rethinking. Lord John Russell, Home Secretary, agreed that the system should be amended and so when Molesworth asked for his help in gaining a Committee to enquire into Transportation, he acquiesced. Together they drew up a list of members, choosing from the Commons men of respect, Officers of the Government, men interested in the reform of the penal code, of the police and of the colonies and very naturally, Molesworth's own Radical colleagues.

When news of this Committee reached the colony the Gazette was delighted because 'all shades of political opinion' were represented. Its editors anticipated 'the most beneficial results from the enquiry' but when they heard those results in 1839 they agreed with all of the other colonial newspapers that 'the term Transportation Committee was in effect but another name for the South Australian Colonization Commissioners'. Even the Colonist, overjoyed

1. Molesworth Speeches p.23 - He said that he addressed Russell because he feared the 'proverbial indecision and supineness of' Glenelg. Russell was however equally if not more suitable for the task. Fawcett op. cit. p.140-1 refers to a letter from Russell dated 5 April 1837 agreeing to support Molesworth.
by the 'blessed deliverance' of N.S.W., accepted the judgment and used it as a compliment. ¹ The Australian went further, with swaggering sophistication it explained to the colonists that they were the victims of a Radical plot to overthrow both Whigs and Tories, that the Committee was a 'powerful engine of party power.'²

Of the twenty men who sat on the Committee, eight were Radicals and four of these, Molesworth, Buller, Ward and Leader, prominent in the party.³ Some of the Radicals were chosen for the attention they had given to colonial policy and to the problem of crime in Britain but primarily they were chosen because they were Molesworth's friends and were prepared to support the venture of a young extremist. Leader and Hawes were active and consistent but Hutt, at first a regular attendant at the examinations, was not reappointed in the second session. Buller, so charming and brilliant, came spasmodically in the first session and though after his

3. The others were H.L. Bulwer, B. Hawes, W. Hutt and W.H. Ord. Parties were not clearly delineated but these men voted consistently with the Radicals on Radical measures. E.g. PD. GB. Vol. xxxvi col. 552-4,Vol.xxxvii co 615-7, 1150-1.
appointment as agent for the A.P.A., regularly in the second session, his attendance was cut short by his departure for Canada with Durham and Wakefield. Ord and Ward were neglectful of the examinations and Bulwer, Buller's predecessor as agent for the A.P.A. was more concerned with his career as a diplomat. He was not an original member of the Committee, even after his appointment he came only under pressure from Edward Eagar and he left before the second session for Constantinople.¹ Though the radicalism of Molesworth and some of the members of his Committee was clearly impressed on the report, their selection was not a political manoeuvre. Had the Committee been intended as a powerful engine of party power it would have included the leading Radicals, Hume, Roebuck and Grote but the Radical cause which had seemed invincible in 1832 had faltered. Despite its favour with the electorate the Tories were too strong.² The moderate Radicals were turning to the Whigs and in addition Molesworth had lost the support of Grote. Molesworth was ever willing to discomfort the pusillanimous Whigs but he was impotent to do more.³

3. Fawcett op. cit. Chapter 7, also p.80 - Buller's famous remark to Grote, soon 'only you and I will be left to "tell" Molesworth'. (1836).
An interest in Colonial affairs was more pertinent to the subject of enquiry. The Radicals, except for Leader and Ord, were all Wakefieldian colonial reformers, all members of the Committee of the South Australian Association formed in 1834 and all save Buller and Bulwer, of the New Zealand Association formed in May 1837. With them were Sir Charles Lemon, a member of the S.A.A.; Francis Baring, Chairman of the N.Z.A.; Sir George Grey, Undersecretary of State for the Colonies; and Viscount Howick, Secretary for War, who had accepted Wakefield's arguments in 1831 and though he had since fallen out with the master was still convinced of his principles. Grey only was untouched by Wakefield, but

1. 'Papers - South Australia' M.S. ML A272 p.7 - Provisional Committee of the S.A.A., 7 July 1834. Some lists of the Committee do not include Bulwer and Lemon, e.g. Pike Paradise of Dissent p.87.
N.Z.A. Committee — E.G. Wakefield and J. Ward, The British Colonisation of New Zealand (London, 1837), p.viii. Garnett op. cit. p.142 includes Buller but he was not one of the 1837 members though active in 1840. See W. P. Morrell, British Colonial Policy in the Age of Peel and Russell (London, 1930), Chapter V.

2. Baring was first captivated when, as a member of Ward's Committee on Waste Lands in the Colonies in 1836, he heard Wakefield's testimony. Garnett op. cit. p.127, Wakefield Art of Colonisation (1849) p.51.

William Hutt who attended none of the important policy meetings of the Committee and had not been a member in the second session was, as one of the Colonization Commissioners, the only member still actively concerned with South Australia. New Zealand and Canada were their present obsessions but as Hutt's loss of interest cast doubt on the conception of the Committee as a South Australian intrigue, so Baring's complete indifference discounted any direct connection with their hopes for New Zealand. The colonial reformers on the Committee were evangelists not astute financiers.

On the 14th April 1837, a week after Molesworth had obtained his Committee, the Commons appointed another, to enquire into the Police of the Metropolis. Its Chairman was Benjamin Hawes and with him were Viscount Howick, Sir Robert Peel and later Mr. Ward, all important members of Molesworth's Committee. Also concerned with the prevention of crime in Britain were Mr. Powell Buxton, active in the Society for the Reform of Prison Discipline and in the reform of the penal code, Mr. Lennard who had applied himself to the reform of criminal law, Lord John Russell and Mr. Hutt. Buxton ignored the Committee and was discharged after two weeks and

Lennard and Hutt were not reappointed in the second session. Russell and Peel, the leaders in the Commons of the two great parties, had little time for the rambling examination of the witnesses but with Grey and Howick they were careful to attend the crucial meetings in which the report was hammered out.

On 6 April 1838, after examining their last witness, the Committee members met to discuss their report. They were all steeped in a climate of opinion much opposed to Transportation. From its inception there had been powerful opposition; Bentham, Mill, Wakefield and Whately were only a few of those who had attacked the system for its undue lenity or its severity or for the uncertainty which comprehended both.¹ Substantiating these attacks were the lurid accounts of the colony which they had heard from its excreta.

Even so the Whig members of the Government and the Tory leader objected to Molesworth's intention of recommending the complete abolition of the system. As Home Secretary in the twenties Sir Robert Peel had become acutely aware of the inadequacy of existing measures for the prevention of crime. He had consolidated and amended much of Britain's obsolete criminal law, against the cries of the upholders of civil liberty he had reorganized the police in the metropolis and

1. A.G.L. Shaw, Convicts and the Colonies (London, 1966), Chapters 6 and 12; Klaus E. Knorr, British Colonial Theories 1570-1850 (Toronto, 1944), Chapter XIII.
he had thrown up his hands in despair at the question of Transportation.¹

Lord John Russell, current Home Secretary, had chaired the Select Committee of 1828 which gave approval to Peel's measures and to Transportation as a punishment for grave offences.² In October 1836 and in March 1837 he had reiterated this opinion. He told the Commons and the Commissioners on Criminal Law that assignment was totally bad, failing by its uncertainty to deter criminals, succeeding by its character of slavery to degrade them, and utterly depraving the community in which they were placed. Transportation he said, should be abolished for all but the gravest offenders and these should be visited not by assignment but by hard labour in gangs on public works. He did not, he told the Commons, wish 'to go the length of Archbishop Whately' and abolish it entirely.³ On 10 April 1837, three days after the appointment of Molesworth's Committee, he brought in a bill to amend the law concerning offences punishable by Transportation for life, on 15 May his Undersecretary Mr. Phillips

told the Colonial Office that Russell wanted the abolition of assignment, a reduction in the number of convicts transported and their employment on public works, and on 26 May, Lord Glenelg gave his instructions to Bourke. Russell had decided to act on the question of Transportation independently of Molesworth's crusade. He did not bother to listen to the witnesses Molesworth called and though he attended the proceedings of the Committee, it was to check the enthusiasts. He had made up his mind and in 1839 though he supported his recommendations, by referring to the evidence brought before the Committee, they were little affected by it. In the debate on Transportation in 1840 'he rather concurred with the report of the Committee of which the Hon. Baronet was the able Chairman than with the proposal which' Molesworth made for the complete abolition of Transportation. With Peel, Howick and Grey he accepted Molesworth's condemnation of the present workings of Transportation but, aware of the immense trouble which its total abolition would cause, kept faith in

1. Journals of the House of Commons 1837 Vol.92 p.245; H.R.A. 1.18.763-4 (Glenelg to Bourke, 26 May 1837) James Stephen felt that 'this letter relates to a subject so intimately connected with the enquiries of the Transportation Committee that it seems to me scarcely possible to act upon it until that Committee shall have made their report'. Minute to Sir George Grey, 18 April 1837, in CO.201/264 p.322.

the possibility of its amendment. At the vital Committee meetings in 1838 these men presented a solid block against any extremism.¹

After the initial fight on 6 April 1838 over the question of total abolition, Howick presented a paper and a series of resolutions insisting on the retention of Norfolk Island, Port Arthur and Bermuda as penal stations. With Hawes and with his faithful radical ally John Temple Leader who had stood by him over the Reform Club, been the most conscientious member of his Committee and with great abandonment supported the most extreme radical measures, Molesworth fought against the Government's iniquitous compromise.²

1. For the Opposition to Molesworth see Monitor 24 October 1838 Supplement p.1 (Letter from London); Australian 2 March 1839 p.2.

I have compiled the following account of the Proceedings of the Committee from miscellaneous evidence of the views of the members (individually documented); from the record of attendances of members published in PP. HC. 1837-8 vol.xxii Paper 669 (see below Appendix Two); and from the collection of Draft Reports and other papers bound in Papers on Transportation 1837-8 (Ferguson nos.2501 a-h, Copy in National Library, Canberra). The volume contains draft reports of 31 May 1838 (Paper 20), 16 July 1838 (Paper 26), and 31 July 1838 (Paper 26b). I shall hereafter refer to them only by their dates.

2. Hawes must have sided with Molesworth or the Opposition would have had a clear majority on 31 May 1838 which is doubtful because Molesworth's draft of 16 July 1836 does not include the recommendations they made then.

J.T. Leader - see D.N.B. 1901-11 p.431-2; Fawcett op. cit. p.28, 71, 80, 243; Harris Radical Party p.289, 293, 301, 322, 488; Woolcombe op. cit. p.90. He attended almost all the meetings except those held toward the end of the first session when he was out of Parliament. After nine years of uninhibited involvement in radical politics, he retired to Italy in 1844 and remained there until his death in 1903.
Howick's paper was presented on 31 May and his analysis of the economy of N.S.W. and his recommendation for an increase in the price of land were included almost verbatim in the Draft Report which Molesworth wrote after this meeting. His proposals concerning Norfolk Island and Port Arthur were accepted less eagerly. Throughout July of 1838 the Committee stripped Molesworth's draft of much of its impassioned rhetoric and, applying unremitting pressure, forced him to accept Howick's conclusions. On 3 August 1838 they agreed with very slight amendment, to his final draft and Leader brought before the Commons a Report with whose recommendations Molesworth emphatically disagreed.

1. Howick's Paper 31 May 1838 p.7-8 ; Draft Report 16 July 1838 p.44 ; Final Report p.xxxv-i. Molesworth too presented a draft on 31 May 1838, it recommended very briefly, the abolition of Transportation and an enquiry into the best means of replacing it.


Another Report, undated and presumably a draft, was printed in the Australian 9 October 1838 p.2.
CHAPTER VIII

THE MOLESWORTH REPORT

Molesworth's Report is a thorough and impressive study of Transportation and New South Wales.

The industry and logic which distinguished his mind, endowed his Report with a comprehensiveness and clarity. Even so, the Report was not characterized by the meticulous pedantry of his work on Hobbes. Freed from the necessary limitations of an editor, he was aflame with the conviction of a St. George, or a Wesley. In his determination to destroy so foul a monster as Transportation, he wrote a passionate, carelessly documented polemic.¹

He began with a comprehensive account of the workings of Transportation, and then examined its effects on the convicts, the free settlers, and the colony, its expense and its susceptibility to improvement.

¹ The marginal references and even facts included in the body of the Report are frequently ill-chosen or wrong. E.g. p.iv, his convict statistics are inconsistent with his references. P.v, he discusses the Act 30 Geo. 3 c.47, actually 31 Geo. 3 c.47 and does not make clear that it was superseded by 9 Geo. 4 c.83. P.vi, he refers to Mudie and Parry. Mudie's relevant evidence was in Q.538-9 not 601. Unless they are significantly misleading, I shall ignore these mistakes.
The System

Molesworth opened his Report with a brief review of the development of the punishment of Transportation, of the laws pertinent to it and, with splendid insobriety, the early history of N.S.W.

He went on to survey the progress of convicts from the courts to the colony and their assignment to private settlers. 'The demand' he said, 'has exceeded the supply; the obtaining of convict labourers has become, therefore, to a certain degree a matter of favour'. In this Molesworth made insidious use of the present tense to cast doubt on the efficacy of Bourke's recent regulations. Mudie was his only authority and though the Herald and its correspondents, so violently opposed to Bourke agreed, his omission of any reference to Forbes' emphatic denial was reprehensible. ¹ The various occupations of assigned servants he covered briefly and, despite his emphasis on the indulgences given them, impeccably. ² Even

2. He lifted his account of their rations from a paper on Transportation written in 1836 by D.D. Heath, probably Douglas Denyon who had no other apparent interest in Transportation, colonisation or penal reform - D.N.B. Vol.22 p.833-4, TC 1837 Appendix p.263. Molesworth's dogmatic assertion that convicts assigned as domestic servants were given wages from £10-£15 a year was specifically the practice of the Australian Agricultural Company and no authority is given for its universal application but it is unlikely that it was very misleading.
his favourable comparison of the condition of convict servants with that of their free counterparts in Britain was supported not only by Parry and by Bourke's opponents but by the most ardent advocates of Transportation.¹

The fate of the assigned servant was not always so tolerable. There were laws ensuring him a basic food supply, laws enabling his master to prosecute him for insolence, insubordination and other actions illegal only for the bond, and laws enabling him to charge his master with ill treatment. Even so, as his food supply, so his whole life was governed by the temper of his master. He was, as Wakefield had pointed out in 1829, a slave. Both Bourke and Arthur too used this argument, but as a defence of their systems against charges of excessive leniency.² It was impolitic defence,

1. See Gazette 27 May 1837 p.2, Arthur TC 1837 Appendix p.17, T.P. Macqueen Australia as She is and as She May Be, p.14-5.

2. TC 1837 Appendix p.15 (Arthur to Goderich, 8 February 1833, in reply to criticism by the 1831-2 Select Committee), ibid p.77 (Bourke to Stanley, 15 January 1834, in reply to criticism in the Hole and Corner petition; Arthur Observations p.3; K. Fitzpatrick Sir John Franklin p.93-4 criticises Arthur for giving up his previous support of Transportation to ingratiate himself with the Committee. He was consistent but rendered impotent by the leading questions of the Committee, and further, most of their references to him in the Report were to despatches in which he had said things susceptible to their interpretation but otherwise intended. See A.G.L. Shaw 'Origins of the Probation System' p.18.
Whately whose criticism had provoked Arthur, replied not by disputing the question but by contending that assignment was even worse than slavery because the assignee had no permanent interest in his convicts.

Slavery in British colonies was abolished in 1833 and despite wide disgruntlement over the huge compensation paid to slave-owners, opposition to slavery had become a cliché. To equate assignment with slavery was to condemn it. The Committee justified its equation by an account of the floggings administered in the penal colonies, horrifying but probably no less brutal than those dispensed for equally venial offences in the army. More forcefully, it cited Breton's assurance that, because of the composition and distribution of the magistracy, legal redress was 'rarely sought for and still more rarely obtained by the injured convict.' They were right that assignment was slavery, but it was not the gratuitous slavery of America.

The convicts said Molesworth, behaved as they were treated, sometimes well but on the whole, very badly. In confirmation of this he appealed to the despatch of 1832 in

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1. Report p.vii; Whately Speech on Transportation p.24. It was argued that any form of penal discipline was a form of slavery, a point answered by Whately in Remarks on Transportation (London, 1834) p.36-7. See also A.P.A. Letter to Charles Buller 31 May 1839 p.2, paragraph 7.
which Arthur had protested against the imposition of a tax on convict labour. This threat had led him, despite his consistent advocacy of Transportation and of the efficiency of his system, to argue that as the settlers suffered so much from the conduct of their convicts, they would refuse to take them if they had to pay. The Report on V.D.L. by Captain Maconochie too was produced in evidence.

Alexander Maconochie had gone to V.D.L. late in 1836 as private secretary to the Lieutenant Governor, and with a commission from the Society for the Improvement of Prison Discipline to report on the convict system. By March 1837 he had broken with Franklin and, perhaps piqued by his rejection and anxious to assert himself, he confronted the assignment system and the free community with some jaundice. To Franklin's complacency he opposed a fanatic indignation. In February 1838 his reports reached the Colonial Office and in March and April, at Lord Russell's instigation they were printed as Parliamentary Papers. The Molesworth Committee received them with enthusiasm and used them liberally, delighted to have evidence at once so congruent with their
own opinions and carrying the stamp of authority.¹

Molesworth's account of the assignment system was partial but not false and though his conclusion 'that the most contradictory statements on the subject may be made with perfect truth', was irreproachable, even the Gazette whilst advocating the abolition of the system considered that 'in this, as in every other matter touched upon in the Report, the extreme view of the case is taken instead of the average.'²

His review of the assignment of female convicts was universally corroborated but his opinion that the abuses of convicts assigned to their wives, as teachers in schools and as clerks to the Government, to attorneys and to the press 'appear, to a greater or less degree, to be inherent in the system of assignment' was based on the flimsiest evidence. Even the Colonist, so vigorously opposed to the system, insisted that

1. J.V. Barry Maconochie p.28-30, 55; K. Fitzpatrick Sir John Franklin p.126-8, 155, says that Maconochie came to V.D.L. a penal reformer and Philosophical Radical ('an ideology which precludes perfect honesty'), strongly prejudiced against assignment. Barry op. cit. p.17-21 produces evidence sufficient to satisfy himself that Maconochie came biassed if at all, in favour of the system. Neither give any evidence of his association with the Philosophical Radicals. Fitzpatrick's argument (op. cit. p.224) that 'the Committee failed to make proper investigation of the status' of Maconochie, and so over-estimated his authority is answered by Barry op. cit. p.15-17, 63-64 and Chapter 2 Parts III and IV.

those evils had been redressed and Herman Merivale, Drummond Professor of Political Economy at Oxford, said that assignment had been condemned on its abuses. ¹

Less than a third of the convicts were under the immediate charge of the government. Of those not serving additional sentences most had been employed in Road Parties, on whose conduct Molesworth judged Burton's Charge to be 'the best possible evidence'. For his purpose it was, he extracted a long passage dilating on the depredations of these convicts, a passage sufficient he felt to excuse him from referring in detail 'to the unanimous testimony of every witness who has been examined', or to the refutations juxtaposed to the Charge in the Appendix. Molesworth's implied evaluation of the evidence was less venal than the brevity of his notice of the discontinuance of Road Parties since January 1837, and his extrapolation of a remark which Bourke had made four years earlier, referring to the necessity of using convicts in this way. By concluding with this he managed to imply that Road Parties were an abomination intrinsic to the system. ²


². Report p.xi-xii; Forbes and Mitchell had disagreed, see TC 1837 Q.1129, TC 1838 Q.798-801; Criticism of the Charge by Bourke and the judges is in TC 1837 Appendix p.287-93; Bourke's despatch to Stanley, 15 January 1834 in TC 1837 Appendix p.74.
Molesworth was not aware of the occasional criticism in the colony of the control of Chain gangs in which ironed convicts serving additional colonial sentences were employed on public works. He complained only of their barbarity and of their demoralizing effect on the soldiers guarding them.¹

Prisoners convicted in N.S.W. for graver offences were transported to Norfolk Island where the hills were stripped of their orange groves lest the benevolence of nature should obscure the righteousness of God and where 'a man's heart is taken from him and there is given to him the heart of a beast.'² Molesworth produced strong evidence of the extreme severity on the Island and was astounded when in the debate on Transportation in the Commons in 1840, Lord John Russell extracted from the Appendix to the Report, evidence that the discipline on the Island suffered rather from excessive leniency. These contradictory statements were but partially reconciled by Ullathorne's assurance that the recent provision


2. Report p.xvi. From V.D.L. convicts were sent to Macquarie Harbour, characterized said Molesworth, by murder and cannibalism. As the unfortunate incidents to which he referred were more than ten years old and the Harbour itself abandoned in 1833 it was hardly pertinent to the present workings of the system. Report p.xvii:
for religious instruction and the enlightenment of the new commandant Major Anderson, had meliorated the horrors of the Island. In his Report Molesworth noticed only the first of these blessings and that briefly.¹ It is probable that the genuine horror evinced by Forbes, Burton, Ullathorne and the convicts who had been there derived less from the harshness of the Island than from its depravity, that as James Backhouse concluded in 1835, it was rendered 'a place of torment to these men, not so much by the punishments of the law, as by their conduct to one another.'² The depravity of the Island was indisputable but Molesworth was unduly impressed by Ullathorne's account of its manifestation in the speech of the convicts and in their sexual mores.

In April 1838 Major Thomas Wright, the former Commandant

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¹ Report p.xvi; PD GB. 3rd Series Vol.liii col. 1288 (note Molesworth's interjection). Thomas Arnold, an official there said that convicts released from the island, committed crimes in order to return. TC 1838 Appendix p.274, Arnold to Bourke, 27 September 1837. In 1839 Russell reconciled this with Ullathorne's account by attributing them to two different periods 1834 and 1837 - PF. HL 1839 Vol.vi p.9. If as Arnold said 'many prisoners' were there 'for second and third time' they must have first succumbed to its allure before 1834. Barry's account op cit. p.91-9 is coloured by his desire to emphasize Maconochie's humanity and is given some proportion by A.G.L. Shaw Convicts and the Colonies p.206-8.

² Report p.xv, xvi; see also J. Platt The Horrors of Transportation (Birmingham, no date, but concerns his life from 1834 to 1842 - p.15), p.7-8 and D. Waugh Three Years Practical Experience as a Settler in New South Wales (Edinburgh, 1838), p.37; Backhouse quoted in Shaw Convicts and the Colonies p.206.
of Norfolk Island who had so irritated Molesworth by his refusal to dilate on unnatural crimes, wrote to the Colonial Office. He argued, quite improbably, that unnatural crime was rather 'an aberration of vitiated appetite than a propensity generated by circumstances' but in doing so he raised pertinent points. 'One never hears these insinuations against our sailors or soldiers' though they too were for long periods reliant on their own resources, 'why then should the convict be the object of this extreme solicitude?' Possibly it was because Sir George Grey received this timely warning that much of Molesworth's elaboration of the subject was cut out by his Committee. In the debate in 1840 Russell pointed out that the same inequality of sexes and the same results were to be found in the prisons of England. Only Molesworth and Whately utterly condemned Norfolk Island.¹

Convicts in the penal settlements were given no remission of sentence but the others, after serving approximately half of their sentence without unduly misbehaving, were eligible for Tickets of Leave. Molesworth pointed out the ways in which this practice of allowing convicts a qualified freedom had been abused and in the edition of the Report which he

published for his constituents, elaborated on the well-worn case of the convict William Watt. He told them that the case gave 'not an incorrect idea of life in New South Wales', but his criticism of the Ticket of Leave system itself was admirably restrained. He judged that the institution had a useful and beneficial effect'. He agreed further, with Bourke and Forbes that the subjection of these men to convict attain should be removed, but much of his radical rhetoric concerning this was cut by his Committee.

After the expiration of their sentences convicts had, said Molesworth 'every facility for making an honest livelihood'. Some like Samuel Terry whose singular career he related in detail and deviously attributed to Lang, had acquired huge fortunes by honest but odious means. He did not make clear the singularity of Terry's rise nor the fact that the increase in the free population had since closed such opportunities to emancipists. The last was a venial


2. Report p.xvii, Draft Report 16 July 1838 p.22, and 31 July 1838 p.15. See Herald 16 April 1838 p.2, it protested against Forbes' criticism of this law, deploring 'so extra-judicial an observation', a reception rather different from that which it gave in 1835 to Burton's extra-judicial observations.

sin for none of the witnesses had told him. Unfortunately the British criminals were not aware of it either and their faith in the new colony was commensurately high.

1. Ullathorne made this clear but in his Horrors of Transportation p.11-12, published in 1838, after his examination.
Its Terror

Since 1786 when Dalrymple had warned the Government that Transportation would not deter British criminals, critics of the system had harped on this point. For Bentham, Mill, Sidney Smith and Whately this had been the decisive argument. Behind lay the centuries in which Britain had had no means but the fear of punishment to keep her criminals in check.

In France an extensive police force had been developed in the eighteenth century but in Britain until the 1830's there was strong opposition to any such infringement on civil liberty. Some early reformers, among them Bentham, Patrick Colquhoun and Sir James Mackintosh, favoured this means of preventing crime but most feared a police state and almost all agreed with Sidney Smith that they should seek 'the diminution of offences by the terror of punishment'. Peel's reforms of the twenties and their extension in the thirties so helped to dispel this fear that in 1840 Whately could say, 'It is hopeless to attempt repressing crime by any modifications of punishment, without such a systematic, well arranged and vigorous system of Police, as shall cut off in a great

degree the hope of escaping detection.¹

In America Dr. Channing, in V.D.L. Governor Arthur and Frederick Maitland Innes, and in N.S.W. the press and the settlers, protested that crime could be prevented only by an amelioration of social and economic conditions and by an efficient police force, that the chief end of punishment was the reformation of the offender.² These were not popular opinions, Whately's insight was a temporary aberration and as the 1831-2 Committee on Secondary Punishments had been

1. Whately Speech on Transportation p.36. Wakefield considered a well directed and defined police 'one indispensable means and besides being indispensable as one of the most efficient' for the improvement of the morals of Britain. PP. HC 1837 Vol. xii Paper 451 Q.1249. A.G.L. Shaw Convicts and the Colonies p.267-8 says that 'The Select Committee on Metropolitan Police Offences in 1837 ... reported that no form of secondary punishment would achieve all the objects that were wanted and insisted that London crime was not merely due to the defects of Transportation and that good conduct in prison might betoken hypocrisy rather than reformation'. Were this so Molesworth (in view of the close connection in both subject and personnel between the two committees) could be severely criticized for ignoring Hawes' findings. In 1837 Hawes' Committee reported only that its enquiry was not complete and their 1838 Report, printed only a few weeks before Molesworth's, did not say this. At most its complete ignoring of punishment may be construed as a denigration of its importance as a deterrent to crime. PP. HC 1837 Vol. xii Paper 451, 1837-8 Vol.xv Paper 578.

2. For Channing see Australian 4 May 1839 p.2 ; Arthur Observations p.11, Defence p.56-61 ; F.M. Innes Secondary Punishments p.24-5 ; Herald 5 April 1839 p.5 -(Original Correspondence).
convinced that punishment should be 'an object of terror to the evil doer', so he, Lord John Russell and Viscount Howick still believed that though the deterrence of criminals was the concern of means other than punishment, yet it was the chief end of punishment.¹

The eighteenth century terrorists they followed, Beccaria, Paley and Bentham, had been anticipated by Thomas Hobbes. In the seventeenth century Hobbes had written in his Leviathan that punishment 'if not great enough to deter men from the action, is an invitation to it.' In 1838 Molesworth divided his time between Hobbes' ideal Commonwealth and N.S.W.² In his Report, though he secured his case by condemning Transportation on every ground, yet he maintained that it was on its efficacy as a deterrent that the system should stand or fall. 'The most important question' he said was not 'the actual amount of pain inflicted, but the amount which those who are likely to commit crime believe to be inflicted.'³

³ Report p. xix. See also PD. GB. Third Series Vol. liii Col. 1247.
He used again those despatches in which Arthur and Bourke had defended themselves against charges of leniency. They shewed he said, that people in Britain were ignorant of the true condition of convicts in N.S.W. He used too Arthur's contention before the Committee that favourable accounts sent home by convicts were sent either by the few who had prospered or by those whose pride prevented them from acknowledging their suffering, or who wished to seduce their friends to the colony. In this way, he said following Whately, the British knew nothing of the terrors of Transportation. It excited no greater fear than did simple exile.¹

He was not wholly correct, there were broadsides printed in 1835 giving extracts from the letters of suffering convicts, in September 1836 the Weekly Post referred to a letter written by a convict and detailing his misery, and though most of the books concerning the horrors of Transportation were published in the forties, there were some in circulation in the thirties. In 1836 William R.S in The Fell Tyrant and the Suffering Convict and in 1837 George Loveless in his

¹. Report p.xix ; Whately, TC 1838 Appendix p.300, Thoughts p.3, 73, Remarks p.48 ; Much of this section is lifted almost directly from Heath, TC 1837 Appendix p.265, it is probable that Heath had read Whately. See also E.G. Wakefield, Facts Relating to the Punishment of Death (London, 1831), p.187, and PP. HC. 1831 Vol.vii Paper 276 Q.1395, 1420.
Victims of Whiggery deplored the slavery and degradation of transported convicts. There were cases too of criminals who failed to maintain their bravado when sentenced to Transportation but there was strong evidence to which Molesworth did not refer which supported his thesis.²

Having established that the greatest dread caused by Transportation was that of exile, Molesworth, following Whately and Heath, considered its different effects on distinct classes of criminals. Habitual criminals had no fear of voyaging to a country populated by their intimates and where they would be fed and clothed by the Government. Only the simple countrymen feared to leave the land of their birth, a fear which the Committee members thought unwise to encourage in view of their conviction that the salvation of Britain lay in the emigration of her surplus labour.³ Habitual criminals were not deterred by the threat of Transportation but neither


the Committee nor any of the British reformers considered the very sensible suggestion made in 1833 by Arthur and in 1841 by F.M. Innes, that habitual criminals were not deterred by any punishment, even capital, and that their permanent removal to a situation where they would have a chance of earning an honest living was the utmost that could reasonably be attempted.¹

Molesworth accepted the possible severity of Transportation but insisted that it was useless. Arthur had argued in 1833 that punishment at a distance held greater dread than a familiar punishment in penitentiaries at home but Molesworth agreed with Bentham, with Whately and with James Stephen of the Colonial Office that it was absurd to create 'unprofitable because unknown misery on the one side of the globe in order to prevent the perpetration of offences on the other side of it.'² He maintained with some reason that the publication by the Government of its terrors as Arthur had suggested would fail, for criminals would be far more inclined to trust the personal testimony of their friends. Homilies by judges too would be impracticable for no one could predict with any

¹ Arthur Observations p.49-50; F. M. Innes Secondary Punishments p.10-13; Robson Convict Settlers p.15.
certainty the fate of a transported convict. The uncertainty of Transportation gave hope to the criminal: it was only said Molesworth, 'by diminishing the number of chances in the criminal's favour', rather 'by the certainty than by the severity of punishment, that apprehension is produced and thus Transportation sins against the first and acknowledged principles of penal legislation.'

Transportation in 1838 was indisputably an uncertain sentence but Molesworth oversimplified when he condemned the whole system on this ground. Some of his critics like Viscount Mahon insisted that the inequality so deplored in assignment was inherent in any punishment, that even 'imprisonment would be a punishment more or less severe to different men.' Most, with Forbes and Russell and the opposition within the Committee, agreed that the uncertainty of Transportation was a defect but believed that it could be remedied. In 1833 and 1835 Colonel Arthur attributed it to the confusion in Britain's criminal law, in 1836 Forbes agreed recommending that degrees of Transportation should be defined for greater or lesser offences and that assignment, the great obstacle to this end, should be abolished. Russell with

2. PD. GB. Third Series Vol. liii col. 1296; see also Herald 6 July 1838 p.2 (Berry), 13 March 1839 p.2, 5 April 1839 p.5 (Original Correspondence).
Peel, Howick and Grey adopted Forbes' scheme and insisted that the very blatant evils of the system were not inherent.\footnote{Forbes' Paper on Transportation in letter to Stephen, 28 November 1836, in CO.201/257 p.601-4, and letter to Amos, 31 December 1836 in TC 1837 Appendix p.284; Arthur Observations p.65-6, and Defence p.76 et seq.; Russell, Note on Transportation, 2 January 1839 p.8 in PP. HL. Vol.vi.}

Transportation was continued in an amended form and in the 1850's a retired London pickpocket told Henry Mayhew that he had given up his profession because 'I knew if I had been tried at this time and found guilty, I should have been transported.'\footnote{Mayhew London Labour and the London Poor Vol.IV p.323.}
Its Suasion

With Jeremy Bentham, James Mill and Richard Whately, Molesworth believed that the second object of punishment was the reformation of the offender. In 1824 Mill thought N.S.W. 'the place where there is least chance for the reformation of an offender and the greatest chance of his being improved and perfected in every species of wickedness'. In 1838 Molesworth judged that it would be 'contrary to the experience of all nations in the science of punishment' to hope for any moral reformation from Transportation. He thought it superfluous to refer to 'the almost unanimous testimony of every witness examined' to support Maconochie's assurance that 'by transportation the prisoners are all made bad men instead of good'.

There were some witnesses who agreed. Ullathorne, Mudie and Slade thundered against the unspeakable depravity of the felons and Macarthur felt that the necessity of accepting all convicts irrespective of their character, had destroyed the reformatory effect of assignment. Most were more tentative, distinguishing between the purging of a man's heart and an improvement in his conduct and emphasizing the

1. J. Mill The Article Colony p.14; Report p.xxi; Wakefield did not believe that thieves could ever be reformed - Punishment of Death p.75.
opportunity for reformation which the system offered rather than its actual accomplishment.\(^1\)

From the time the convicts embarked for N.S.W. they were subject said Molesworth, to the most vile corruption. Since the early days precautions had been taken against the demonic pestilences which had ravaged convict ships but 'no diminution' had taken place in the moral evils which Archbishop Whately had so adequately described. His Committee prevailed upon him to modify this to 'little diminution' and to shear off some of his rhetoric\(^2\) and despite the protests of a few optimistic surgeon superintendents, they were probably justified in going no further.

Arthur had insisted from the first that the four long months could be splendidly devoted to moral improvement, and Broughton the Archdeacon, considered that he had seen great success in this. Doctor Browning later induced half the convicts on the 'Earl Grey' to demonstrate their remorse by pledging themselves to pay £10 each 'as a small contribution which is most justly due from us towards the defraying of

\(^1\) TC 1837 Q.2470*-8* (Macarthur), 2428 (H.W. Breton), 1292-1320 (Forbes); TC 1838 Q.314 (Ullathorne), 686-8, 695, 707 (Parry), 849-54, 898-902, 916-7 (Mitchell).

\(^2\) Report p.v, Cf. Draft Report 16 July 1838 p.3; Report p.xxii - He copied Whately almost verbatim (TC 1838 Appendix p.300), and was disciplined here too, see Draft Report 16 July 1838 p.26; Whately Thoughts p.79-80, Remarks p.48 et seq.
those expenses to which we have most unhappily put our country and Government.¹ There is no apparent record of these payments perhaps because of the premium which Dr. Galloway said was put on hypocrisy. Both Galloway and Morgan Price, the two naval surgeons examined by the Committee, attempted to defend their labours and though they refused to assent to Molesworth's extreme views, they admitted that the convicts were not improved.² Ullathorne and Edward Lilburne, an unhappy felon, were probably a little led astray by their own eloquence but their descriptions of the behaviour of the convicts were essentially congruent with the more genial accounts of the Surgeon Peter Cunningham and the adventurer James O'Connell who were impressed by the convicts careless merriment.³ It is unlikely that several hundred convicts closeted together for four months would do anything but cheer

1. Arthur Observations p.21-3, Broughton ibid p. 102-3, and Defence p.69-70 ; For Browning see Anon, Benevolence in Punishment or Transportation Made Reformatory (London, 1845), p.79, also his comments on the conduct of the convicts on the 'Elphinstone' in TC 1837 Appendix p.332-3.

2. TC 1837 Q.2824, 2770-2825 (Galloway), 4124-30 (Price) also TC 1838 Q.1736-7 (Wright) and Haslem in A.G.L. Shaw Convicts and the Colonies p.122.

themselves with memories of their past glories and welcome newcomers into the camaraderie of the initiates.

There was little disagreement on the contamination of convicts in the charge of the Government. Ullathorne did say that the convicts on Norfolk Island had been awakened by his kindness and by the message he had brought to them but he forgot this in his other impassioned pronouncements. Some hoped that a different supervision of Government men would restrain their evil propensities but it was almost universally agreed that Government service was calculated to produce rebellion rather than reformation.¹

Assignment was very different. Convicts were taught useful skills and released into a market where those skills were in great demand and well paid. The naval surgeon Peter Cunningham who had no interest in convict labour said in 1827 that it was 'only in a distant colony such as New South Wales that a convict stands any chance of reform.'² When Molesworth's diatribes reached N.S.W. not only the stoutly emancipist Australian but even the Gazette defended the character of the felonry and offered to point out many 'good citizens who had they not had the good fortune to meet with Transportation

¹ Report p.xxii - This section is copied almost entirely from Howick's Paper 31 May 1838 p.2.
would have finished their careers on the scaffold'. The Legislative Council resolved that Transportation was more reformatory than any other secondary punishment because the reform of the convict was in the interest of his assignee, because he acquired 'not only habits of industry and labour, but the knowledge of a remunerative employment' and because the 'partial solitude and privations incidental to a Pastoral or Agricultural life' broke his vicious connections. Sir John Jamison, John Blaxland and the A.P.A. protested that assignment was 'the most reformatory and humane punishment that has hitherto been adopted,' and Mr. T. Potter MacQueen, before his emigration to N.S.W. a member of the House of Commons, extolled the virtues of his own convicts. Herman Merivale told his students at Oxford that the moral regeneration of convicts was a delusion but their rehabilitation a commendable object and nowhere more practicable than in the colonies, sufficient reason he said 'to

induce the nation to pause' before abolishing Transportation.1

Arthur had been arguing this since 1833 but he was contemptuously dismissed. Assignees, said Molesworth, would exact work from their convicts by punishment and by 'vicious indulgences' rather than by the arduous process of purifying their souls.2 Unlike slave-owners, assignees had no permanent interest in their servants and could if they proved refractory, exchange them for others. Molesworth's opinion of assignees has been modified but not entirely discounted by

1. C.M.H. Clark, Documents Vol.I p.155-6; Jamison's and Blaxland's Petition, 26 October 1840, M.S. ML A286 p.7, 12-3; A.P.A. Letter to Charles Buller 31 May 1839 p.8-11, par. 31-40; T. P. Macqueen Australia as She is and as She May Be p.12-14; Merivale Lectures p.367-8; also Herald 6 July 1838 p.2; Bourke's Memorandum 26 December 1838 in PP. HL. 1839 Vol.vi p.13.

C.S. Blackton in a sweeping and inaccurate survey of 'Convicts, Colonists and Progress in Australia, 1800-1850' in S. C. McCulloch, British Humanitarianism (Church Historical Society, 1950), argues that the colonists were so preoccupied with material matters, they felt no real concern for the reformation of the convicts. This seems likely, and also that their defence of the reformatory influence of Transportation derived from their economic interest in it, but Blackton's assertion that the Molesworth Committee cared deeply about the convicts is suspect. With Whately, Molesworth considered that compassion for society was more admirable than compassion for criminals. Whately Thoughts p.12-33.

recent research.¹

The system was further defended on the grounds of its flexibility which allowed the punishment to be suited to the convict. This, like the interest of the assignee was only in some cases valuable. Assignment was essentially variable and though it was probably no worse than any other secondary punishment then in practice, without a more rigid selection of assignees, it was vulnerable to all of Molesworth's criticisms.

His description of the increasing depravity of the convicts as they graduated towards freedom was less venial. The supposition he said, that the opportunities in the colony for making an honest living would be accepted by the convicts, was 'not borne out by facts'. He completely ignored the considerable evidence of the trustworthiness of the emancipists which had been offered and proved his case by referring to one fact: that in V.D.L. seventy five per cent of the crimes brought before the superior courts had been committed by emancipists.² This may have been deeply affecting but

¹. Miss Anne McKay 'The Assignment System of Convict Labour in Van Dieman's Land 1824-42' (M.A. Thesis University of Tasmania, 1954), p.355 quoted in Shaw Convicts and the Colonies p.226, says that one-fifth of assignees showed sincere concern for the rehabilitation of their convicts, two-fifths encouraged convicts for their own interests, one-fifth relied on punishment rather than encouragement and one-fifth were 'almost pure slave drivers'.

it signified nothing. More relevant to his purpose would have been the proportion of these backsliders to the whole emancipist body but as there are statistics for neither crime nor population distinguishing between the untainted free and the emancipists, such an analysis is virtually impossible. Even so, recent research and common sense would suggest that Molesworth was as usual unduly unequivocal.¹

The convicts' life in Australia depended on their own backgrounds, on their masters and on their new environment. Some settled back into honesty and industry and a few into their old fellowship of thieves but probably most wavered, savouring the high wages and great demand for their labour and occasionally yielding to the ubiquitous temptations to benefit from others' folly and to seek communion in ardent spirits. Others with less guarded passions fought off death in chain gangs and penal settlements. Cleverly Molesworth concluded his analysis of the effect of Transportation on the convicts with a coloured but unimpeachable account of the degradation of these men. Nowhere did he notice the remark which he quoted a few pages later on in his Report, 'singular

¹ A.G.L. Shaw Convicts and the Colonies p.217, 227-8, 244-7, 359. Robson found the subject 'not readily amenable to quantitative analysis' but considered that 'there is evidence that this shock treatment was not unsuccessful'. Convict Settlers p.128, 157.
instances of reformation are very rare' Captain Cheyne had said and 'the only cause of this that we are aware of, is the depravity of human nature generally'.

Its Moral Evils

Transportation said Molesworth, had utterly failed. As a penal system it had encouraged crime and further corrupted offenders and as a means of colonisation, it possessed 'extrinsically from its strange character as a punishment, the yet more curious and monstrous evil of calling into existence ... the germs of nations most thoroughly depraved.'

The moral state of N.S.W. not only further established the failure of the system to reform offenders, it also showed the perversion of Britain's panacea.

In 1829 Wakefield had said that the system, so 'unjust and wicked', was 'calculated to do the' colonists 'and their posterity a great moral injury' and Archbishop Whately had applied to N.S.W. Lord Bacon's maxim, 'It is a shameful and unblessed thing to take the scum of the people and wicked condemned men to be the people with whom you plant'. Arthur attempted to overthrow this by arguing that the criminals of the 1830's were not inherently vicious like those of Bacon's merrie England but victims of the Industrial Revolution, ideal


2. Wakefield Letter from Sydney (Everyman, 1929), p.49; Whately Thoughts p.94, also Speech on Transportation Title page and p.17. See also Lady Mary Fox Account of an Expedition p.30-31, 169.
settlers eager to grasp the chance of making an honest living. He was right that many of these criminals had been thrown up by England's chaotic economy but most of them were habitual offenders\(^1\) and though their souls may have been unstained, their previous avocations had ill-fitted them to subdue a virgin and unpliant land. Wakefield and Whately were justified in adhering to their conviction that transported convicts made unsuitable pioneers but a little commonsense would have told them that the material prosperity of the colony could not have been achieved without some considerable exercise of bourgeois virtues.

Molesworth had come to Transportation and N.S.W. possessed by Wakefield's vision, determined to confer on Britain's bastard child all those privileges so long denied. To the abductor's end he had enlisted the Archbishop and his vision of the colony was their vision.

His examination of the effects of Transportation on the moral state of society in the penal colonies began respectably with a statistical account of summary punishments in V.D.L. and of graver offences in both V.D.L. and N.S.W.\(^2\)

1. Arthur Defence p.56-8; see also F.M. Innes Secondary Punishments p.26; Robson Convict Settlers Chapter III.
2. His statistics for summary punishments in V.D.L. in 1834 do not correspond exactly with the returns he cites from the Principal Superintendent of Convicts.
The statistical record of unnatural crime was disappointingly meagre but the evidence of Maconochie and Ullathorne and the great disproportion of sexes in the colonies justified Molesworth's assertion that such crimes were much more common than their convictions suggested. The peculiar system of colonisation had doubtless resulted in sexual aberrations and a want of stability in society, a moral which E.S. Hall flogged incessantly in his journal the Monitor. This was however characteristic to some extent of all new colonies, lurid cases were atypical and despite Wakefield's conviction that it was a self-perpetuating evil, as Merivale predicted, it eventually righted itself.

With his favourite hobby horse rescued from the oblivion in which it seemed destined to be cast by the vexatious statistics, Molesworth went on to demonstrate the 'frightful degree of crime' his tables expressed, by a proportionate comparison with Britain. As Forbes had pointed out in November 1836, a high crime rate was inevitable, yet Molesworth's

1. Statistics - Report p.xxx; his long dissertation on the effects of the inequality of sexes, and his story of the multiple rape of a young child, were cut out by his Committee - Report p.xxvii, Draft Report 16 July 1838 p.31-33.

2. Monitor 13 September 1837 p.2-3, 15 November 1837 p.2; Wakefield Letter from Sydney (Everyman, 1929), p.51-3 - his reason was that 'early prostitution occasions barrenness'. Merivale Lectures p.361.
manipulation of it had great force and was strongly bolstered by the distinction which he made between the two countries, the one oppressed by unemployment and the other bribing men with high wages to sell their labour.¹

Horrifying though his figures were, Molesworth quoted Burton to show that they only skimmed the surface of the cesspool. In addition there were the 'mass of offences which were summarily disposed of by the magistrates', offences peculiar to convicts and as relevant to the moral state of N.S.W. as the whipping of schoolboys to that of England. There were too the 'numerous undiscovered crimes' which, considering the relative extensiveness of the police forces in Britain and N.S.W., would be far less than those in Britain. With Burton, so piqued by his failure to assert his seniority on the Sydney bench, Molesworth concluded that 'the main business' of N.S.W. was 'the commission of crime and the punishment of it'.²

His statistics showed too a relative increase in crime in N.S.W. 'indicating too plainly the progressive demorali-

¹. Forbes' Paper in CO.201/257 p.606-7; see also Bourke to Glenelg, 18 December 1835, in TC 1837 Appendix p.287. Molesworth avoided the gross mistake which Colonel Forsell had made in failing to distinguish between criminal offences and offences peculiar to convicts - see Australian 8 June 1839 p.2.

sation of both the bond and the free inhabitants of that colony. Molesworth here entered on dangerous ground. In the colony the crime rate had become a political question. He recognized this and though he accepted the increase he rejected the political grounds of its enthusiastic propagation. He gave a very fair account of the two parties, showing clearly the mixed composition of extremists and respectables within each and the virulence of their clashes in the colonial press.

The Summary Punishment Act and the Jury Laws were, he agreed with the exclusives, partly responsible for the increase in crime but with the emancipists he strongly commended them.

Governor Arthur had reduced the number of grave crimes in V.D.L. but at the cost of a horrifying brutality and though the Committee disciplined Molesworth's excesses they agreed that Bourke's relaxation of convict discipline was justified.

1. Report p.xxvii. The unanimity of the Committee on this point is doubtful. In January 1837, Macarthur referred in a letter to Sir George Grey, to Glenelg's disbelief in the increase in crime. As Glenelg was little more than titular head of the department it is probable that it was Grey who disagreed and I have found no evidence of his opinion being changed. CO.201/267 p.502. Buller too disagreed - TC 1838 Q.731-3 and PD.GB Third Series Vol.iii col. 1301.

2. His account of the exclusives and the press was cut out by his Committee but included in the Leeds Report p.31. See Report p.xxvii, Draft Report 16 July 1838 p.34-5. His account of the emancipists, lifted from Heath (TC 1837 Appendix p.262) annoyed the exclusives - Gazette 26 February 1839 p.2.
by its checking of unnecessary suffering. More surprising was their approval of the Jury Laws. The only evidence in their favour had been the Despatch from Bourke with its enclosures from Forbes, Dowling and the two Law Officers of the Crown and even Forbes had since withdrawn his unqualified support. Burton and Macarthur had 'abundantly established' the 'injurious effect' of the laws and the Friend to Australia who attended the examinations assured the colonists that they might 'consider the Jury Law of the colony as being entirely at an end'. Even so the Radicals on the Committee and even Sir George Grey felt that the undeniable evils would be 'adequately counterbalanced by' the prevention of a caste ridden society.  

Neither of the colonial parties were satisfied with this analysis. The exclusives, with some justification, pointed to Molesworth's dogmatic assertion that Transportation had been successful in further corrupting rather than reforming convicts and demanded to know why such brutes should hold


power over men's lives.¹

Molesworth's inclusion of the untainted free in the increase of crime was even more irritating. In the paper he wrote for the Colonial Office in February 1837 and in his evidence, Macarthur had produced statistics to prove that the great bulk of crime was committed by convicts and ex-convicts. Court records did not distinguish between the free and the felony so rather irrelevantly, he quoted the opinion of the former Attorney General Saxe Bannister who had left the colony in 1826 when the proportion of freemen in the population had been very much less and more pertinently, the committals to the Sydney Gaol. These specified origins and showed an increase in the proportion of free persons from less than one per cent in 1833 to more than twenty per cent in 1835. Macarthur attributed the great increase to a rash of cattle stealing and to the character of the single female emigrants sent to the colony, the percentage in 1833 supported his case.² Judge Burton too, when he found that the Committee had used his Charge to damn him and his friends, leapt forth armed with

¹ Gazette 26 February 1839 p.2.
² Macarthur's Paper, 9 February 1837, in CO.201/267 p.514-5, TC 1837 Q.2415#.
figures for the Sydney Gaol, and from his notes of trials. He spent some time confirming the overall increase in crime but his primary purpose was to defend the free population. Though his statistics, like Macarthur's shewed a disproportionate increase in the free committals yet from his notes he attempted to extenuate this by explaining that none had been committed for atrocious crimes and that the few women amongst them were originally harlots. These free female emigrants, sent out to domesticate the Colonists, whom Whately and Molesworth used to prove the contagion in N.S.W. do not account, according to Burton's figures, for the huge increase in free committals. Nevertheless the position of women and the image of N.S.W. in England in the 1830s suggest that the colonists were right in believing that they were whores from the first.

Archbishop Whately replied using Burton's own figures to prove that one in every 207 of the free emigrants had fallen,

1. **Colonial Magazine and Commercial - Maritime Journal 1840 Vol. II p.52-3** - the statistics did not entirely correspond with those that Macarthur had given; according to Burton the proportion of the free increased from almost 3 per cent in 1833 to only .14 per cent in 1835.

2. **Molesworth Leeds Report p.36**; **Whately TC 1838 Appendix p.301** and **Speech on Transportation p.54**; **Burton in Colonial Magazine 1840 Vol. II p.52-3**, says that in 1835 and 1836 only six free female emigrants were committed each year. **Colonist 8 January 1835 p.9-10**, see also p.17, 57, 60, 68, 74.
a proportion nearly three times as high as in England and Wales. In the absence of census returns distinguishing the free and the felonry a statistical proof not only of the reformation of convicts but also of the corruption of the free is impossible.¹

The Patriots were more fortunate, they were concerned not with the free settlers but with the aspersions cast on the colony as a whole so, without putting up any new statistics to be shot down, they discredited those which Macarthur and Molesworth had used. With their letter of May 1839 to Charles Buller they sent a copy of William Bland's anonymous critique of Macarthur's work. He showed clearly that administrative changes and primarily Bourke's Summary Punishment Act of 1832 had transferred a great proportion of legal business from the magistrates to the judges and that in consequence, the increase in convictions before the superior courts could not with any certainty be attributed to an

1. Whately, Speech on Transportation Appendix B. p.101-2. He not only presumed a knowledge of the composition of the population, but also that the proportion of free emigrant criminals in the country districts would have been the same as in Sydney, and that there were gaols throughout the colony. Macarthur said that the Sydney gaol was the only one in the colony, TC 1837 Q.2647.
increase in crime.¹ This very pertinent qualification had been pointed out in the return from which Molesworth derived his statistics² but, as with most of the evidence which did not further his purpose, he ignored it and went on from so apparently stable a base to shew the vileness which his statistics implied.

Sydney so various, so beautiful, so new was a festering sore. It seethed with abandoned women and with the most debauched and violent of men whose sole occupations were thieving and carousing in public houses hosted by 'obscene persons'. Molesworth's account was not unfounded, not only Burton's Charge and Chief Police Magistrate Wilson's report which he cited, but also the evidence of Mudie, Slade and Ullathorne and the unsolicited testimony of Dr. Thompson,

1. A.P.A. Letter to Charles Buller 31 May 1839 p.7 par. 23; [W. Bland], An Examination of Mr. James Macarthur's work, 'New South Wales, Its Present State and Future Prospects.' (Sydney, 1838), p.60-80, also printed in the Australian 11 May 1839 to 8 June 1839. See also Petition from Jamison and Blaxland, 16 October 1840, M.S. ML A286 p.9-11. They did not bother to use the argument concerning the increased efficiency of the police, which Macarthur had so ably anticipated in a letter to Grey: 'Were an enquiry instituted it would I am satisfied be found that there exists a diminished efficiency in the police: and an increased chance of escaping from punishment, each of which circumstances must have greatly tended to swell the amount of crime in the colony'. CO.201/267 p.513. Grey apparently was not convinced - TC 1837 Q.963-7.

2. TC 1838 Appendix p.319.
Deputy Inspector of Hospitals supported his frenzy.¹

There was on the other hand strong and opposite testimony. In 1827 Cunningham the naval surgeon had been impressed by the quietness and order which prevail in the streets and 'the security wherewith you may perambulate them at all hours of the night', and Lieutenant W. H. Breton in 1833 found reports in Britain a most ridiculous exaggeration. Before the Molesworth Committee Lieutenant Colonel H.W. Breton maintained that Sydney was no worse than any other sea port and when the Report reached N.S.W. even the Gazette indig­nant­ly agreed that in Sydney life was 'safer and property more secure than in any one of the larger towns in England' and that the Committee's description was 'lying trash'. The Colonist which had so castigated the immorality of the colony gave a detailed refutation of the Committee's calumny and in 1840 Burton, moral physician to the colony, insisted desperately on its perfect health.² Testimony which was essentially a defence was hardly impartial but the evidence of disinterested travellers who might well have captivated their readers by affording them vicarious and delightful


horrors, confirmed the colonists protestations.

Though the Colonist defended Sydney it admitted the melancholy truth of Molesworth's account of the country districts. It was confirmed too and that without reserve by the Monitor which had so consistently deplored the rapes, robberies and beastly drunkenness which resulted from the vicious disproportion of sexes in the interior. There was other supporting evidence from the interested squatters in 1835 before the Legislative Council's Committee on Police and Gaols, from Molesworth's witnesses and from Burton's Charge, but Ullathorne considered the country districts more moral than Sydney. Lieutenant Breton and Mr Thomas Walker were amazed by the security of life in the bush and Alexander Harris found the poor squatters lacking nothing but the niceties of etiquette. ¹ Though Molesworth gave undue emphasis to the remarkable series of crimes with which Burton had supported his own polemic and though his conclusion is at variance with later evidence, he was justified in deducing from the evidence before him a low opinion of the moral state

1. Monitor 18 March 1839 p.6, also 25 August 1837 p.3, 10 September 1838 p.2; TC 1837 Q.531-85 (Mudie), 2290-2309 (H.W. Breton), 2918-30 (Macarthur); TC 1838 Q.184 (Ullathorne); W.H. Breton Excursions p.323; T. Walker, A Month in the Bush of Australia (London, 1838), passim; Harris Settlers and Convicts passim. See also Ward The Australian Legend Chapter IV, and Baker 'The Squatting Age' in Business Archives 1965 p.109-11.
of the interior.¹

His splendid finale, prudently cut out by his Committee was included as a footnote in the edition for his constituents. Following Wakefield's Letter from Sydney in matter, syntax, and even phraseology, he outlined the probable career of a respectable free emigrant. Finding Sydney as depraved as 'the lowest purlieus of St. Giles' he would go at once into the bush. He would lose to higher wages all the servants he had brought with him and turn perforce to convicts. The insolence and the unreliability of these his slaves would brutalize him and his children, and his daughters would grow up amidst the most horrid depravity, corrupted by the convict women and seduced by the convict men. His 'every kind and gentle feeling' would be 'outraged by the perpetual spectacle of punishment and misery'. He would be denied the rights of an Englishman and he would see the shiploads of young women sent out to purify the colony, plying their precious wares on the streets of that Sodom and Gomorrah.²


Burton was provoked to argue that the Committee had made a gross logical fallacy, that they had investigated the system of Transportation and applied their results to the whole of N.S.W.,

That the picture presented to the Parliament and to the nation ... no more represents the true state of society in New South Wales than an enquiry into the horrible particulars of an ill regulated gaol in England would represent the state of society in the county in which it was situated.¹

This powerful argument was weakened by the nature of assignment which in effect made the whole colony a gaol. With more force Bourke maintained that though some immorality was inevitable, the gross and pervasive debauchery which Molesworth alleged was incompatible with the material prosperity of the colony.

Men who spent all their time and money drinking and whoring, who lived only by thieving could not have created so thriving an economy.²

There is no doubt that Molesworth exaggerated the moral effects of Transportation on N.S.W. It is possible that he

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himself recognised the inconsistency between his account and his concurrent recommendations of the Jury Laws and of some form of representative government.¹ Though there was immorality there existed with it a considerable body of solid middle class ethics, though some masters were brutalised there were others like James Macarthur, and though many of the currency may have indulged in a little cattle stealing, overall they were remarkably unlike their parents.²

As the exclusives had damned themselves in their efforts to show the evil effects of Transportation, so the colonists as a whole convicted themselves of vileness in attempting a defence. All their protests were dismissed in London as interested lies or as manifestations of their own moral insensibility.³

1. Report p.xxix, and Speech on Glenelg, 6 March 1838, in Molesworth Speeches p.27.
3. PD. GB. Third Series Vol.liii col. 1258 (Molesworth), 1298-9 (Ward); Whately Speech on Transportation p.42; Russell, Note on Transportation, 2 January 1839, PP. HL 1839 Vol.vi p.2; also Rusden History of Australia Vol.II p.76.
Its Economic Evils

Molesworth went on to examine the effects of Transporta-
tion on the economy of the penal colonies, in effect to
demolish, as Wakefield had done in his Letter from Sydney, the argument that the colony would sustain a greater moral
ingury from the economic dislocation which would result from the abolition of Transportation, than from its continuance. He agreed that N.S.W.'s prosperity had been built on convict labour but argued that this was no longer sufficient, that other means must be found, and that these were incompatible with the continuance of Transportation.¹

From the beginning he said, following Wakefield, the Government had provided the settlers with slave labour and bought back from them their produce to feed the soldiers and Government men. With more than adequate convict labour and a voracious market, N.S.W. had, at enormous cost to the British Government, become very wealthy very quickly. This extraordinary prosperity had undone them, capital had increased far more rapidly than the supply of labour and by 1837 the situation was critical. A Committee of the Legislative Council reported

that in addition to the anticipated 3,000 convicts, 10,000 labourers could be instantly absorbed. It seemed clear that without an appalling increase in crime in Britain, the labour deficiency must be supplied from sources other than Transportation.¹

Such was the desperation of the colonists that early in 1838 the Herald, in N.S.W. the most ardent opponent of Transportation, was defending it as the best possible means of punishing and reforming criminals and advocating its continuance. By May it had recovered from this aberration and though some of its correspondents continued to support Transportation, the Herald, converted to the coolie scheme, reverted to its former steadfast opposition.² Free immigration from Britain had been utterly insufficient, everywhere sheep were being indiscriminately bundled together in vast unmanageable flocks and it was with a desperate enthusiasm that the colonists embraced the idea of Indian labour.³

3. TC 1838 Appendix p.172-213, 261-2 (Enclosures in Bourke to Glenelg, 17 June 1837, and Bourke to Glenelg, 22 November 1837); H.R.A. 1.19.401 (Gipps to Glenelg, Confidential, 1 May 1838); K. Fitzpatrick op. cit. p.223, says that 'the abolition of transportation to New South Wales had become a political necessity; it had become evident that the New South Wales colonists would abolish it from below if action were not taken from above', because of the lowering of wages of the free immigrant labourers. This is inconsistent with the desperate shortage of labour.
Molesworth saw that this was an expedient born of impotence. If as the propagators of the scheme intended, the coolies were returned to their native Hindustan after six years they would provide no permanent solution to N.S.W.'s labour problem, if they remained in the colony they would form a deplorable slave caste. Neither Sir Richard Bourke nor the Colonial Office could consent to the introduction of such a proven evil in a colony already excessively cursed.\(^1\)

The only possible solution lay in free emigration from Britain. Since Lord Goderich's regulations of 1831 emigration from Britain had been paid for with the proceeds of colonial land sales, a valuable system but one in need of amendment. It seemed obvious to the Committee as it had to their prophet Wakefield, that the minimum price of 5/- per acre had not checked the facility with which labourers became landowners and had depleted the already inadequate supply of labour. This axiom, 'sufficiently proved by the papers laid before' the Committee, papers to which they did not bother to refer, was disputed in the colony and by later historians.\(^2\)

\(^1\) Report p.xxxv; TC 1838 Appendix p.172-9.

\(^2\) Report p.xxxv; Wakefield Letter from Sydney (Everyman, 1929), p.12, 14, 34, 43. In England and America (in same volume) p.136-7, he glimpsed the real answer to the shortage: the influx of capitalists, but he did not recognise its significance and in A View of the Art of Colonisation (in the same volume) p.203, he persevered in believing that the settlers were metamorphosed immigrant labourers. See K. Buckley, 'E.G. Wakefield and the Alienation of Crown Land in New South Wales to 1847', in Economic Record Vol.33 1957 p.80-83. See also Gazette 7 February 1839 p.2.
Committee members conversant with colonial affairs however, only Grey and Howick were not convinced Wakefieldians and though Howick had broken with the extremists, he retained their basic principle and fallacy about the desirable proportions of land and labour. Indeed Molesworth readily accepted his diagnosis and included it in his Report. The price fixed in 1831 had been experimental and should now be raised to £1 and eventually considerably higher still. For it is obvious, that by raising the price of land the tendency of population to undue dispersion over an almost unlimited territory, which is the cause of the want of labour now so much complained of, may be checked as much as may be desired. 1

The witnesses had told the Committee quite plainly that land in N.S.W. was very different from land in England and America and that the vagaries of its climate made it a pastoral rather than an agricultural country. Sir Richard Bourke in his despatch of 6 September 1837, laid before the Committee, had said that colonists unable to afford land for their flocks and herds did not work as labourers but squatted on Crown Land, and that an increase in price would lead only to greater dispersion. The Committee may not have recognised the pertinence

of land to land settlement but their ignoring of Bourke's recent and seminal observations, even though they were embedded in such a vast mass of evidence, can be attributed only to the blindness of their faith. On 8 August 1838, six days after the Report was presented to the Commons, Lord Glenelg wrote to Gipps saying that because 5/- had failed to check dispersion the minimum price of land would be increased to 12/-.

The colonists were incensed. The Herald declared that 'all the talk about' dispersion was 'mere moonshine', that N.S.W.'s staple product, wool, was not suited to Wakefield's plan of concentration. The Gazette agreed that an increase in price would defeat its own end and stood back amazed at the proposal to raise the land price even higher than that in South Australia. Unanimously the press cried out against the Report so clearly stamped by 'the cloven hoof of the South Australian land jobbers'.


2. Herald 8 March 1839 p.2; Gazette 7 February 1839 p.2, 2 March 1839 p.3; Colonist 6 February 1839 p.2; Sydney Standard 11 February 1839 p.2; Australian 8 January 1839 p.2. It is the recommendation to increase the price of land and apply the proceeds to emigration which 'prove conclusively' to K. Fitzpatrick op. cit. p.222 and A.C.V. Melbourne op. cit. p.245 that the Committee were 'disciples of E.G. Wakefield'. Not only is the peculiarity of the principle to Wakefield at present being cast into doubt but it is ironic that this was one part of the Report written by Howick who had, by 1837 become 'one of our most zealous opponents'. *Wakefield View of Art of Colonisation* (London, 1849), p.26-7.
Molesworth's comments on emigration were even more annoying. He had already explained that because emigration reduced the terror of Transportation and because Transportation stigmatised emigration 'by associating with it the idea of degradation and punishment', the two were incompatible. Now he went further, arguing that in addition, innocent emigrants would be corrupted in the penal colonies and that labour would be made despicable by its association with convictism. If the Government was to encourage free emigrants to supply the labour shortage in N.S.W., Transportation must end.

It was this question of the relation between Transportation and free immigration which had prompted the Herald's vacillation in 1838. Much as its editors wanted a nation of free and virtuous immigrants they feared that if Transportation should end and employers forced to pay wages to labourers, their means of buying land would be cut off. The land fund would dry up and there could be no assisted immigration. The introduction of free labour, they reluctantly conceded was

1. Report p.xx, xxxv, xxxvi. B. Fitzpatrick, The British Empire in Australia (M.U.P., 1941) p.89-90 argues that this was the reason for the abolition of Transportation - the need for suitable fields of emigration and p.91-2 he quotes contemporaries who agreed with their incompatibility. Molesworth used too a very peripheral argument, presumably because of the notice Whately had taken of it - the evil reputation which Britain had acquired in the South Pacific from escaped convicts. Report p.xxxvi ; Whately Thoughts p.94 and TC 1838 Appendix p.299. See also TC 1837 Appendix p.262 (Heath).
incompatible with the end of Transportation. Though they turned again from convict labour to the Hill Coolies of India, the argument was taken up by the other newspapers and by the Legislative Council in its Resolutions of July 1838. In 1839 when they heard that the Committee intended not only to discontinue Transportation but also to raise the price of land the Gazette agreed with the rowdy democrats that, with all hope of free immigration cut off by the 'iniquitous recommendations' of the Committee, 'we must hesitate before we give it as our opinion that, under such circumstances, Transportation should cease.'

As the Colonist had seen that Mudie's Felonry would deter potential emigrants, so the Gazette and the Herald suggested that Molesworth would, by exposing the depravity of the colony, turn the tide of emigration to South Australia but they did not know how far he had attempted to go. After deploring the

1. Herald 22 February 1838 p.2 ; Monitor 25 May 1838 p.2, 30 May 1838 p.2 ; C.M.H. Clark Documents Vol.I p.156. B. Fitzpatrick British Empire p.90-1 says the abolition of Transportation was the indirect but not the direct cause of the inability to pay for land in the early forties.

2. Gazette 2 March 1839 p.3 ; Monitor 11 February 1839 p.3 ; Australian 22 January 1839 p.2 ; Herald 8 March 1839 p.2 expressed a fine indignation but adhered to its opposition to Transportation.

3. Colonist 31 August 1837 p.281 ; Gazette 18 January 1838 p.2 ; Herald 27 March 1839 p.2 ; also Therry Reminiscences p.489.
fact that Transportation had brought labour into disrepute, he had gone on to compare the poor free emigrants in N.S.W. with the poor whites of America and to express his firm conviction,

that if the system of Transportation continue, the strongest temptations will be held out, not only to mere capitalists and labourers, but to all the more respectable classes, to migrate from New South Wales and Van Dieman's Land to the other Australian colonies.¹

Wakefield, Buller and Sir Edward Parry were convinced that the penal character of N.S.W. deterred emigrants but though James Macarthur felt sure that some respectable people might be unwilling to risk contagion, he found the people in the South of England very eager to emigrate. There may have been some loathe to touch pitch but in 1841 Merivale said that the number of emigrants since 1838 had been 'great beyond all anticipation - proof positive ... that the Committee were doing an unmerited honour to the moral delicacy of our peasants'. In 1840 Lady Franklin noticed that the South Australians were much vexed by the migration of their labourers to N.S.W. and

Clearest proof may be found in Molesworth's own words and in the ensuing activity of Archbishop Whately.

His own Committee struck out his imprudent remarks and substituted a paragraph rejoicing in the Government's encouragement of emigration and suggesting that for the moral welfare of these emigrants Transportation should be discontinued. Molesworth's concern had led him to ask 'whether, if transportation be to continue, the legislature ought not rather to prohibit emigration to the penal colonies and convert them into vast lazar houses, in which the morally tainted should dwell alone, and to which the innocent should never approach for fear of contagion.'

Such intemperance gave weight to the colonists accusations about South Australian schemists but it is unlikely that if Molesworth had been guilty of more than a fanatic faith, he would have acted with such an extraordinary lack of subtlety. Moreover in his speeches on Ward's motion on Colonial Lands

1. Wakefield *Art of Colonisation* (London, 1849), p.180-1; Felix Wakefield, brother of Edward Gibbon, to J.D. Lang, 20 November 1849, in 'Lang Papers' M.S. ML A2226 p.431-6; Buller to the A.P.A., 31 May 1840, in Sweetman Australian Constitutional Development Appendix p.437; TC 1838 4.729 (Parry), 59-61, 90-92 (Macarthur, as he was in the midst of persuading Miss Emily Stone to return with him, was not vehement); Merivale Lectures p.360; G.Mackaness (ed.) *Some Private Correspondence of Sir John and Lady Jane Franklin* (2 Parts, Sydney, 1947), Part 1 p.110; Russell agreed with Merivale, see PD. GB. Third Series Vol.iii col. 1290.

in 1839 and on Transportation in 1840, his intention to abolish Transportation was intimately bound up with his scheme for promoting extensive and immediate emigration to the penal colonies. Further, though a high price of land was inappropriate for N.S.W., it was a basic tenet of the Wakefieldian creed and was applied to South Australia and New Zealand, colonies in which Molesworth and his Committee had undeniable interests. Molesworth believed in the principle of a sufficient price and cannot have conceived that he might hurt N.S.W. by imposing it. Though he was guilty of exceeding the bounds of good taste, he may be acquitted of jobbing.

Whately had been deeply moved by the fate of the pure young girls from the streets of London who had been so corrupted in the colony. He descanted on the futility of pouring good wine into vinegar or cupfuls of water into a London sewer, ignoring the equally plausible analogy of diluting poison with water. To the delight of his pupil Molesworth, to the horror of Lord John Russell and to the fury of the colonists he fulfilled his 'religious duty' by exciting among the poor in Ireland a dread of emigration.

The Remedy

Molesworth had completed his tour de force. He was satisfied that in its every aspect Transportation had perverted every possible end of punishment,¹ and he was happy to conclude with a final rhetorical denunciation of the system and an appeal for an enquiry into the best form of punishment in penitentiaries. His Committee was not satisfied with his devastation. Before he was allowed to return to his editing of Hobbes he was forced to rebuild on the ruins of Britain's system of secondary punishments.²

He began by extracting from his drafts, passages in which he had considered future action. Assignment warranted no further consideration: its failure was proven and already the Government had warned the colonies of its imminent

¹. Molesworth had discussed too the expense of Transportation but that briefly because it was one argument in favour of Transportation and against penitentiaries. He was however careful to include an average cost per head derived from the total expenses of the colony, including the huge expense of the early years when the settlement was being established, and bearing little relation to the present. Report p.xxxvi-vii. Russell at least, kept faith in its cheapness - PP. HL. 1839 Vol.vi p.4, 5.

abolition.¹

If Transportation were to continue convicts would have to remain in the hands of the Government. Mitchell and Macarthur had suggested that convicts should be employed in building the roads so necessary to the gangling colony and because of his respect for Macarthur, Molesworth spent some time in refuting his arguments.

Macarthur had proposed a modified form of the Sing Sing system. Convicts were to be worked with downcast eyes in complete silence. Their overseers were to be armed in readiness for attempted escapes but summary punishment would be exercised not by them but, to accommodate the delicate sensibilities of the Australian settlers, by the head of the department. The prisoners would sleep in wooden stockades and be preserved from contamination by the vigilance of constables instead of solitary cells. By day and by night the convicts would be in virtual isolation.

Though Molesworth approved Macarthur's scheme of graduated punishments he was justifiably sceptical of the effectiveness

¹ This part, Report p.xxxvii–xxxviii, was in Draft Report 16 July 1838 p.9.

The instructions concerning the end of assignment derived from a letter from the Home Office dated 15 April 1837, only eight days after the appointment of the Committee and due not to it but to Russell's independent dissatisfaction.
of a nightly vigil and he saw that the curtailment of their arbitrary disciplinary powers would entail a greater number of overseers. The consequent increase in expense could be avoided only by accepting the unadulterated brutality of Sing Sing or by reverting to the old lax and much abused system. Moreover argued Molesworth, the colonists would be further corrupted and, with an irrelevance born of desperation, 'large quantities of public stores liable to damage, waste and misapplication would be apt to be accumulated', and the labour might be directed to the satisfaction of the aesthetic rather than the economic needs of the colonists. As a conclusive refutation he compared the cost of assignment with the estimated cost of employing convicts in road parties, a comparison more eloquent than a more pertinent one, between road parties and penitentiaries would have been. His Committee acquiesced in his condemnation of this system probably less because of his exhortations about its expense than because of the recent reports of adverse effects on the character of convicts subjected to the silent system.¹

The only other means of continuing Transportation said Molesworth, was the ridiculously expensive idea of establishing penitentiaries in the penal colonies. He completely ignored

the very sensible plan which Lang had borrowed from Wakefield and by which convicts would be made the pioneers of new settlements. They would be sent in gangs to promising unsettled districts to build roads and prepare the land for settlement. When they were finished and the new settlers arrived, those who had conducted themselves with propriety would be allowed to remain as ticket of leave men and the rest would go elsewhere. This plan, later advocated by Herman Merivale and Sir Richard Bourke, was free from the inequality of assignment and would create new and unexceptionable colonies. Molesworth's rejection of it would suggest that his crusade had lost all rationality.¹

Transportation he said, was inherently incapable of improvement and should be discontinued at once. A substitute not an amendment must be found.² The remainder of the Report, a consideration of this subject, was lifted almost directly from Howick's paper.³

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Howick felt that a number of different punishments for different crimes should be adopted, that on account of their cheapness, Macanochie's system and the old method of hulks might be used along with the more expensive separate system of America which 'the experience of all nations' had conclusively proved to be the best. The advocates of penitentiaries did not bother to defend them, they were the current nostrum and it was almost universally accepted that 'seclusion and silence have greater terror for the wicked than the gallows and the gibbet. It is in solitude and silence that the still small voice of conscience is heard.'

The colonists, mindful of their neglected flocks, protested with vigor and at times with perspicacity against the adoption of so expensive, so inappropriate and so inhuman a punishment. The penitentiaries unfitted prisoners for normal social intercourse, they were enormously expensive, and were used in America only because that country had no colonies. America was not crowded with starving paupers so crime there was of a different nature, the labour to which convicts were forced did not take work from honest, unemployed men and on their release ex-convicts had every opportunity to earn an

honest living.¹

In their enthusiastic espousal of the new system the British reformers had indeed overlooked the evidence, accepted by the 1831-2 Committee, of Captain Basil Hall who had visited prisons in twenty-one of the twenty-three United States and who 'heard many Americans, competent to answer such a question, regret' that they had no penal colonies.² Even William Crawford, commissioned by the Government to report on the American penal system and quoted by all the supporters of penitentiaries, had said quite unequivocally that it was to America's resources of productive industry, to her unsettled land and demand for labour

is principally to be attributed whatever degree of success has attended some of her penitentiaries ... It is obviously the interest of Great Britain, who has no means of profitably employing her criminals at home, to transfer them to her colonies, where labour is in

¹ Australian 23 April 1839 p.2 - 'The backsettlements of America are to the United States what Australia is to Great Britain,' also 8 June 1839 p.2, 18 May 1838 p.2; Herald 20 March 1839 p.2; A.P.A. Letter to Charles Buller 31 May 1839 p.5 par. 16-17; Petition from Blaxland and Jamison 16 October 1840, M.S. ML A286 p.12; T.F. Macqueen Australia as She is and As She May Be p.9; F.M. Innes Secondary Punishments p.30,35; TC 1837 Appendix p.17 (Arthur to Goderich, 8 February 1833); Herald 1 March 1839 p.2.

great demand. In the United States the respective legislatures, having no such necessity and possessing no similar resource, resort to long periods of imprisonment.¹

To appease Molesworth the Committee gave to the penitentiaries a central position in their recommendations for a substitute but a few months later Howick had reduced it to a minor place and in January 1839 Russell, doubtful if results would justify the expense, relegated it to those criminals too old or too ill to travel or too wicked for normal measures. He proposed a penitentiary with accommodation for only 500-1000 convicts, convicts with short sentences were to be punished with hard labour in the hulks.²

Molesworth and Whately were vastly irritated by this all-powerful and so casual dismissal of their labours. They insisted that penitentiaries would be no more expensive and probably cheaper than the Committee's substitute, and that all possible mutations of transportation had 'been shown to be the very worst of all' punishments.³ At the core of their

¹. PP.HC 1834 Vol. xlvi Paper 593 p.50.
². PP.HL 1839 Vol. vi p.10-12 (Howick), 4,8,10 (Russell) ; PD.GB. 3rd Series Vol. liii col.1289-91.
³. PD.GB 3rd Series Vol. liii col. 1266, 1278-9 ; Whately Speech on Transportation p.31.
fury was Howick's euphemistic resolution to establish peni­
tentiaries abroad, in effect to continue the transportation
of convicts with longer sentences not certainly to N.S.W. and
the settled parts of V.D.L. but to the penal settlements of
Norfolk Island and Port Arthur.¹

Howick had examined the comparative advantages of peni­
tentiaries in England and abroad and concluded that, provided
the convicts were completely isolated from free settlements,
penal colonies might fruitfully be continued. A vacant
island close to England would combine the advantages of both,
but frustrated in his search he settled on the penal settle­
ments of Australia and gave but a shallow pretence of using
them only as a temporary expendient.

¹. K. Fitzpatrick Sir John Franklin p.222-3 says that Trans­
portation was abolished to N.S.W. and not to V.D.L.
because the latter was not susceptible to a Wakefieldian
purge as its best land had been alienated. She does not
see that the Committee intended by abolishing Transpor­
tation to 'the settled parts of V.D.L.', to continue it
only to Pt. Arthur which was effectively quite separate
and was to V.D.L. what Norfolk Island was to N.S.W. She
also accuses the Committee of abolishing assignment with­
out making any suggestion for a replacement and attributes
this to 'the hasty and slapdash way in which the Moles­
worth Committee reached its conclusions and ... the
inadequate and untrustworthy evidence on which it based
them.' There is some truth in her criticism of the
Committee's method but her ignorance of any proposed sub­
stitute for assignment lies in her confusion about the
term 'settled parts of V.D.L.' Certainly Transportation
was continued to the settled parts but against the
recommendations of the Committee.
The main body of the Report seemed to Whately "to spring naturally out of the Evidence like a tree growing from its own roots" but this conclusion looked 'like a graft, with totally different foliage and fruit'. Molesworth had been outvoted on this question and though he submitted to the Committee's Report, he explained his own position to his constituents at Leeds in 1838 and in 1840 to the Commons. He agreed that all possible systems of punishment were open to some objection but insisted that all, 'save only and except always that of penal colonies' had some real advantages. Transportation had proved a complete failure, even its boasted economy was illusory and the only possible thing to do was to turn at once to penitentiaries as Bentham had warned from the first.1

1. Whately Speech on Transportation p.49; Molesworth Leeds Report p.44-5 footnote, and PD. GB. Third Series Vol.liii col. 1261-6, 1278. Coghlan Labour and Industry Vol.I p.195, K.Fitzpatrick Sir John Franklin p.228, Rusden History of Australia Vol. II p.82, and T.P. Macqueen Australia As She Is and As She May Be p.5 - have all wondered that Norfolk Island and Government service in general, whose horrors had been so clearly exposed, should be continued. This was in part because the Committee was concerned primarily to deter British Criminals. See A.G.L. Shaw 'Origins of the Probation System in Van Dieman's Land' p.24. Also Government service by its nature was more capable of being reformed than assignment whose evils were inherent. The decisive factors were probably expediency and Russell's conviction that Molesworth had given a false picture of Norfolk Island. PD. GB. Third Series Vol.liii col. 1288, PP. HL. 1839 Vol.vi p.9 (Note on Transportation, 2 January 1839).
Convicts might be governed Howick thought, according to Captain Maconochie's scheme, in gangs of six with mutual responsibility for punishments and rewards. The pressure of those who must suffer with him would be a greater incentive than arbitrary authority to good conduct and would instil in the convict a sense of his social and moral obligations. Maconochie had arrived at this conception through a conviction that both the silent and separate systems then in favour, completely unfitted a convict to assume on his release those social responsibilities for whose violation he had been imprisoned.

Molesworth, so wedded to the current fad, protested vehemently that the scheme outraged every law of human motives so the Committee compromised, refraining not only from recommending that part of the plan but also from pronouncing 'an absolute and unqualified condemnation'.

The apparatus of his plan, the replacement of purely animal punishments and indulgences by marks whose total would determine the length of sentence, was accepted more readily. It would place responsibility for his future in the prisoner's own hands and avoid the brutalisation consequent on the old

system, it would systematize and define the remission of
convicts' sentences, and moreover, it had been anticipated
by Archbishop Whately.¹

Having appeased Molesworth, the Committee returned to
Howick's paper. They passed briefly over the necessity of
providing adequate moral and religious instruction for the
convicts and the folly of depriving them of all hope and thus
incentive to reform by sentencing them for life.

In conclusion they considered the fate of the ex-convicts.
They repeated the first part of Howick's argument that ex­
convicts unable to support themselves, should remain in the
colonies: his consideration of the greater opportunities for
earning an honest living there than in Britain. After this
they allowed Molesworth to include Whately's recommendation
that convicts released from penitentiaries should be 'furnished
with means of emigrating to various colonies, British or
Foreign'.² This last suggestion, the Transportation of a
convict after his sentence had been completed, seemed a
realistic acceptance that crime in Britain was due in great

1. J.V. Barry Maconochie Chapter IV, p.19, 77 - accepts
Maconochie's assertion that he was ignorant of Whately's
advocacy of the system, but this seems doubtful in view
of his statement that he was familiar with the Whately -
Arthur controversy - ibid p.18, 70. Whately Thoughts
p.100, Report p.xlv.

2. Report p.xlvi; Howick referred to their remaining in
the Australian colonies after completing their sentences
in the penal settlements, Whately to their emigrating
from Britain after release from penitentiaries.
measure to the economic chaos there, that the still small voice evoked by penitentiaries was insufficient to convert prisoners to honest and industrious habits, and that only in the colonies might a convict be reformed. Nevertheless Molesworth insisted that it would be less expensive to punish them at home and then transport them than to reverse the process, and more sensibly, that they should emigrate to colonies which had not been used for Transportation.

This problem, that in England ex-convicts would have no alternative but to return to their wicked ways and that in N.S.W. they would 'render that Noxious Atmosphere more foul by the Addition' was still troubling Lord John Russell in 1839 but by 1840 he was less worried by the hypothetical permanent moral injury to the colony and more convinced of the bracing effect of a labour demand.

The Report's uneasy synthesis of the two systems brought protests that the Government sponsored emigration of ex-convicts would give convicts an unjust advantage over the starving yet innocent paupers, and would drive them to crime. It was a confused conclusion of a confusion of idealism and common sense. The dissidents on Molesworth's Committee would not submit to his blanket and unrealistic proposals for a substi-
tute but they could not exclude them entirely.¹

The Committee concluded with a series of resolutions in which they agreed that Transportation to N.S.W. and to the settled parts of V.D.L. should be discontinued as soon as possible; that it should be replaced by an undefined punishment at home or abroad, at all events in complete isolation from the vulnerable free; that convicts should be governed by a system of marks and that those punished in Britain should be encouraged to emigrate and those in the penal settlements should be compelled to leave them. These were essentially Howick's resolutions, modified to accommodate though not to conciliate the disparate Committee members.

¹ Molesworth PD. GB. Third Series Vol.liii col. 1272 1262; Russell ibid col. 1287, 1281-3 and PP. HL. 1839 Vol. vi p. 5-6 (Note on Transportation, 2 January 1839); Herald 8 March 1839 p.2, 20 March 1839 p.2, 15 March 1839 p.3 (reprint from John Bull).
CHAPTER IX

THE COLONISTS

In September 1837 news of the appointment and the first examinations of the Molesworth Committee began to filter back to N.S.W. but the colonial press was too much engrossed with the simultaneous news of the books published in London by Lang, Ullathorne, Macarthur and especially Mudie, to give more than passing references to its future obsession.¹ Eagar's letter, published by the Monitor in January 1838, provoked a few indignant outbursts against the machinations of the Radicals and South Australian Men, and in February, a poorly attended and ill publicized meeting was held of those in favor of Transportation.² By May the evidence taken by the Committee in 1837 and their non-committal interim Report had arrived. Very annoyed, the colonists prepared a memorial asking for a Committee of the Legislative Council to take evidence in the colony in order to show the British Government the truth about Transportation and N.S.W. The Councillors


2. Monitor 5 January 1838 p.2,4 ; Colonist 10 January 1838 p.2, 20 January 1838 p.2 ; Gazette 18 January 1838 p.2 ; For the meeting of 18 February 1838 see Burton in Colonial Magazine 1840 Vol.I p.426.
made 12 resolutions. They shared the irritation of the colonists but refused their prayer because they feared that the inquisitorial nature of such a Committee would cause discord in the colony and that there was insufficient time, and because they had confidence in the discernment of a Committee of the House of Commons. At this stage their fury was directed against the scurrilous evidence which the Committee had received rather than the Committee itself. Only the editors of the *Australian* attacked the Committee, and their specious allegations about its being a political intrigue were not taken up by the colonists.¹

When the final Report arrived in January 1839 the witnesses were forgotten, all the major newspapers including even the *Colonist*, lashed out at the Committee. William Bland composed a petition protesting against its judgements and praying that the House of Commons would postpone any decision until the colonists had had a chance to disabuse them of their misapprehensions. A public meeting, called to consider his petition, was addressed in a traditional manner by W. C. Wentworth who gave yet another of his 'characteristic speeches - coarse but powerful' and by E. S. Hall who offered

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an alternative petition arguing that the evils of the colony were due to the disproportion not of thieves but of males. Wentworth thundered against the iniquitous South Australian Schemists and their unreasonable condemnation of so admirable a penal system and, after the threat to introduce coolie labour had been rescinded, the petition was accepted. ¹

Accompanied by a long and intemperate exposition contending that Transportation was the best of all possible punishments and compatible with the introduction of free institutions into N.S.W., the petition was forwarded by the Australian Patriotic Association to their agent Charles Buller. Buller was in a difficult position, as he had not been appointed until after his predecessor Bulwer had left for Constantinople, he had not been able to confer with him, and he himself had left for Canada a few months later. Though aware of the A.P.A.'s primary object, the attainment of free institutions, he had not known of its support for Transportation and with both the Wakefieldians and the rest of the Commons, he was convinced of their incompatibility. He

presented the petition knowing it a lost cause and unable to do more than defend the morality of the colonists.

The petition was easily dismissed, both Molesworth and Whately said that the only value of it and other protests lay in their demonstration of the moral insensibility of those unfortunate settlers who could not see the depravity which Molesworth had so clearly discerned from the other side of the earth. They were brutal slave owners who had accepted the horrifying accounts of their society until the obvious conclusion had been drawn, that Transportation was a bad thing. Only then, in order to destroy the premise that would deny them convict labour, did they object to the representations that had been made about their society. Had they believed that the evidence was untrue, they would have sent witnesses to refute it.¹

In using this argument Whately ignored the very seminal distance between England and Australia. News from England took four months to reach Australia and longer to return. It was not until 1838 that the colonists knew that the Committee was continuing its examinations and by then it was too late,

¹ A.P.A. Letter to Charles Buller 31 May 1839; Buller to the A.P.A. 31 May 1840 in Sweetman Australian Constitutional Development Appendix p.435-9 (He neglected the time problem too, see p.435); Whately Speech on Transportation p.42-6; FD. GB. Third Series Vol.1111 col.1301 (Buller), 1258 (Molesworth).
even Sir Richard Bourke who left N.S.W. in December 1837 was not examined. They did not know either that the new N.S.W. Bill would be so long delayed.

Whately's proof was invalid but his opinion of the petitioners was not unjust. Though they were furious about the aspersions cast on their morals, they were at the same time interested in the continuance of convict labour. Even so these men did not represent the majority of the colonial critics of the Report.

The rains had not come in 1838 and the colony was paralysed by severe drought. Both wheat and maize failed, food was being imported and sold at huge prices and newly arrived immigrants loitered in the streets of Sydney, unemployed in their promised land. In 1837 the colonists had cried out for 10,000 labourers but in 1839 the call to fight for convict labour attracted few to the meeting of the petitioners.

3. Colonist 9 February 1839 p.2, Gazette 12 February 1839 p.2, Herald 11 February 1839 p.2, Australian 12 February 1839 p.2; Sir Ernest Scott 'Transportation' in Cambridge History of the British Empire Vol.II p.429 assumes that because the Legislative Council was in favour of Transportation in 1838, the exclusives were wholly behind the system. The Resolutions of 1838 were an aberration from their usual, though diffident opposition and were provoked by the catastrophic labour shortage. It was not known in July of 1838 that the winter rains would not come, their failure finished the labour crisis and allowed the exclusives to return to their accustomed position.
Denunciation of the Report was not restricted to the brutal slave owning Patriots, a great many of the Colonial critics were as eager as the Committee to be rid of the system. Not only the Australian and the Monitor but all the major newspapers were critical, even the Colonist which greeted the Report with heartfelt joy, was constrained to reprimand its rhetorical exaggeration and its insidious use of obsolete abuses. The Gazette and the Herald both advocated the abolition of Transportation and at the same time deplored the arguments which the Committee had used in arriving at this conclusion. As Lang had done in his journal, each published a series of articles in which the liberals' accustomed monopoly of their fury was shattered by the Committee. They bludgeoned every part of the Report and particularly the character of Molesworth and his Committee, stopping short occasionally to reassure their readers of their continuing opposition to the system. They were ably supported by Sir Richard Bourke who, with a temperance becoming his position, like the Gazette and the Herald stood firm in the opinions he had held since 1834 but disapproved of the lengths to which the Committee had gone in affirming them. Judge Burton too,

1. Colonist 26 January 1839 p.2,6, 9 February 1839 p.2; Herald 8, 13, 20, 27 March 1839; Gazette 7, 9, 14, 16, 19, 26, 28 February 1839, 2, 7 March 1839 - the Gazette's staunch opposition to the continuance of the system faltered when its editors read of the proposal to increase the price of land - 2 March 1839 p.3.
in his articles in the *Colonial Magazine* earned Whately's scorn for his tergiversation.¹

These critics were provoked not by the threat to their cheap labour but by the appalling things that had been said about their morals and by the Committee's determination to raise the price of land. They extended their attacks however, to the whole of the Report and to the character of the men who wrote it.

They condemned the Report for its inconclusiveness and its inconsistencies, real failings, comprehensible only in the light of Molesworth's fixed preconceptions and of his failure to touch the hearts of all members of his Committee.² With equal merit they accused Molesworth of using extreme and dated illustrations to give weight to his arguments and with less justice, of making wilful falsehoods.³ He was charged too, with condemning the system on its abuses. As Lord John Russell said in 1840, the system of imprisonment in Britain thirty years before had been disgraceful but that no more

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2. *Gazette* 26 February 1839 p.2; *Herald* 8 March 1839 p.2; *Monitor* 23 January 1839 p.2; also PP. HL 1839 Vol. vi p.4 (Russell).

formed a decisive argument against imprisonment altogether than did the abuses which Molesworth had picked at, against the whole system of Transportation.¹

This opened the question of whether N.S.W. in the late thirties had become more or less suited for Transportation. The supporters of the system argued that the great increase in the number of free respectable settlers allowed a selection of the best assignees, and a sufficient number of free overseers, constables, teachers and clerks without the employment of convicts,² but probably Molesworth was right. Though his lurid representation of assignment was indisputably heightened and though assignment was capable of great improvement yet at a time when there were no other adequate measures for preventing crime, Transportation to a flourishing free colony to which emigrants were eager to go voluntarily, was no punishment.³ Even so his only arguments against Norfolk Island were the horrors that had resulted from having no system of convict management and the contaminating effects of the voyage, neither


3. Colonist 13 June 1838 p.2; Herald 13 March 1839 p.2; P.P. HL. 1839 Vol.xi p.13 (Bourke); See also Pilorgerie in B. Fitzpatrick British Empire in Australia (M.U.P., 1941), p.91-2.
of them inherent evils. Transportation was not an impeccable solution but neither was it an unmitigated evil and to a country, seething with domestic crises it was an inescapable answer.

To Molesworth, a young and idealistic reformer free from the burden of government and fired by his equally irresponsible prophets, it seemed insupportable. He was accused of alchemy, of suppressing and of distorting the evidence, but it is probable that in his enthusiasm he unconsciously passed over or discredited anything which cast doubt on his faith. The great masses of evidence were not mines which he quarried for truth but buttresses to support his beliefs.¹

CONCLUSION
In May 1840 New South Wales was struck off the list of penal colonies and in July 1841, assignment was abandoned. Behind these decisions lay the disturbing unrest among the poor in Britain, the Government's enthusiastic espousal of peniten­tiaries, and the wool industry which had converted New South Wales from a gaol to a thriving free colony, and so compelled a rethinking.¹

There lay too, Molesworth's attack. Though he said nothing new, he marshalled forcefully and authoritatively, forty years of criticism. Indeed it may have been his chief contribution, his damnation of Transportation as a means of colonisation, which determined the complete cessation of Transportation to New South Wales.

In October 1836 and in March 1837, before the appointment of the Committee, Lord John Russell had proclaimed his

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¹ The end of Transportation to N.S.W. has been attributed to various historical movements and people. Roberts (see D.W.A. Baker op. cit. p.111-3) argued that it was incompatible with squatting; K. Fitzpatrick Sir John Franklin p.222-3, that N.S.W. would tolerate it no longer; Garnett Wakefield p.238, 243, that Wakefield slew it and Mrs. Fawcett Molesworth p.152-3, and Gordon, Strathearn and Cocks, in a grossly inaccurate eulogy — A People's Conscience (London, 1952) p.250 et seq, that Molesworth was responsible. B. Fitzpatrick, in a stimulating but undocumented interpretation, attributed it to Britain's need to convert N.S.W. from a convict to a pauper quicksand. British Empire p.89-90.
intention of subjecting all convicts to labour on Government works and of transporting only those convicted of grave offences and sentenced for more than ten years. Transportation had failed as a punishment he said, but by the rigid control of a smaller number of felons he was convinced that it could be made an object of dread. A week after the appointment of the Committee he told the Colonial Office of his decision, but in view of Molesworth's deliberations, Glenelg did no more than issue a warning to the Governors. He sent further warnings in June 1838 and in July ordered the discontinuance of the assignment of convicts as domestic servants.¹

In August the Report was presented. Its conclusions differed significantly from those of Russell only in the determination to apply the new rigour solely in the penal settlements of Norfolk Island, Port Arthur and Bermuda. Russell accepted this modification probably because of the growing insistence of colonial demands for representative government, but perhaps also because, at this point, he was touched by Molesworth's fervour.² In his Note on Transpor-


tation in January 1839, in his speech in the Commons in May 1840, and in the Orders which followed, though he retained his confidence in Transportation, he limited it to the unsettled areas.

Molesworth's main achievement was to bring before the Government a vision, coloured by Wakefield, of society in the penal colonies. Russell's remedy may have been quicker without Molesworth but at the same time, less comprehensive.

Molesworth may have delivered N.S.W. from a frightful pestilence but he mangled without slaughtering the system itself. The thousands of convicts shut out of N.S.W. were diverted to V.D.L. and Port Phillip. With assignment abandoned no-one knew what to do with them but the overflowing British prisons had to be emptied somewhere so Stanley devised a Probation system, Howick, by then 3rd Earl Grey, an Exile system, and in 1847 a Select Committee decided that Transportation was really quite an admirable punishment.

The colonists formed angry anti-transportation associations and Molesworth persevered in the Commons but still the stream of offal flowed out to the colonies. When Molesworth, at last Colonial Secretary, died in 1855, Transportation to Eastern Australia was two years ended, but it was the discovery of gold and not his mission that had finished it off.
APPENDIX ONE - THE WITNESSES

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<th>Name</th>
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References to the sources from which this information is compiled may be found in the text.

* These men stayed only for a short time.
APPENDIX TWO - THE COMMITTEE

Some Members of the Committee were obscure men so I have included on p.295 some basic information and sources. More detailed references are cited in the text.

On p.296 and p.297 I have tabulated their attendances at the examinations of witnesses and on p.298, at the Proceedings of the Committee. The important meetings at which the Report was decided are those from 6th April 1838 to 3rd August 1838.

Abbreviations -


D.N.B. - Dictionary of National Biography.

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* = present
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B. Later Works.
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