

Chapter 2: The Magistrates: agents of the machine and gentlemen farmers.

The first generation of free settlers with capital who arrived in the 1820s were largely drawn from that part of the British middle class who saw a reduced future for themselves in the post Napoleonic period as the post war economy slowed.¹ Their modest capital, most came with between £1000 to £3000 in cash and goods, was not enough to guarantee their families' continued prosperity in Britain, but combined with the lure of land grants in Van Diemen's Land, might provide the means to establish a prosperous future for them and their children. They were drawn from a wide range of different backgrounds: some were merchants; others were bankers, small manufacturers or half-pay naval and army officers. Very few of them had farming experience and the experience they possessed would be tested by the climate, soils, workforce, restrictive colonial laws, embryonic banking infrastructure and shortage of official coinage.

All would start with their grant of one acre per pound of certified capital, but many would not succeed, making space for the successful to buy out those who failed and increase their holdings.² By the end of the 1830s, this process had ensured that some, who had started with 2,500 acres, fifteen or so years earlier, owned 5000 acres and leased as much again.³ This was an exceptional period of growth and opportunity for the Midlands settlers and by 1840, the first generation of settler society had completed its task: the successful had established their estates, although much of this success could be put down to the physical work of their convict workforces.

¹ Leonore Davidoff & Catherine Hall, *Family Fortunes: men and women of the English middle class 1780-1850*, (London, Hutchinson, 1887), *passim*, ch.1.

² Anne McKay (ed), *Journals of the Land Commissioners for Van Diemen's Land 1826 – 1828*, (Hobart, University of Tasmania, 1962), *passim*, August to October 1826 entries. These entries include land along the Isis, Macquarie, South Esk and St Pauls rivers in the Campbell Town police district. The whole journal provided numerous examples of settlers selling their land grant to newcomers, either to take profits from speculation rather than farming, or because their initial attempts at farming had failed and they wished to return home.

³ Some district examples include John Bayles who originally was granted 500 acres in 1824 and by 1828 he held 2000 acres in grants, another 3000 purchased acres and 2600 rented. Capt. William Bunstun who increased his grant of 2560 acres to 5066 granted acres and an additional 1434 purchased acres. Robert Harrison was granted 2000 acres in 1823 and was also renting 6880 acres by 1828.

The social elite of colonial settler society consisted of a small group close to the governor who occupied local and Colonial Office appointments. Most were professional colonial officials whose careers took them to a number of British colonies and so they had less of a personal stake in Van Diemen's Land. They tended to keep themselves apart from the rest of settler society, which according to one contemporary, consisted of three other groups: "the respectable free inhabitants" or large land holders; "free persons of an inferior status" who were both free migrants and emancipists; and the convicts.⁴

The social landscape of the Midlands was more complex than a first glance might suggest. While some amongst the large landowners were politically Tory, others were not. Many included those whose religious, political and social views were considered radical. Amongst their ranks were Whigs, religious non conformists such as Quakers, Methodists, Presbyterians, Unitarians and Wesleyans, and economic and political reformers who were anxious to advance the cause of the middle classes for more political participation in government. Neither were the lower orders particularly unified. Some became tenants or owner-farmers; others developed small businesses or were self employed. Some were politically aware or adopted agendas of self improvement, while others remained socially excluded or experienced significant poverty. This lack of social and political cohesion in Midland's society reflected the complex social and economic divisions in Britain.⁵ At the same time, the colony offered new opportunities to some men and women from all classes.

In Van Diemen's Land the magistracy was tightly controlled by Governor George Arthur whose son-in-law, Matthew Forster, was also the Chief Police Magistrate. Rather than publicly protesting, magistrates who significantly disagreed with the governor took action by resigning their commission. In 1834, Peter Murdoch was appointed acting magistrate at Richmond by the governor, and also served for a year at Oatlands before resigning, because he believed the magistrates were too strictly

⁴ Henry Walter Parker, *The Rise, Progress and Present State of Van Diemen's Land with Advice to Emigrants*, p.68. Parker acknowledged this description was "rather highly colored...though it contains much truth" and attributed it locally to the author of the 'Van Diemen's Land Almanack'. Parker was probably referring to Dr James Ross, owner and printer of the *Hobart Town Almanack*.

⁵ Asa Briggs, *The Age of Improvement*, (London, Longmans, 1962), Third impression, pp. 397, 411-412, 443.

disciplined by the governor and no gentleman could be expected to tolerate that.⁶ By 1835, the first of the land owner-magistrates in the Campbell Town Police District were just starting to consolidate their wealth and build their first permanent residences. If they held strong views on social and political issues that differed from the governor's, they largely kept these to themselves.

Arthur selected magistrates whose farms were strategically located across the rural districts, especially on the outskirts of the settlements and in areas that were still considered dangerous, where settlers were open to attack by Aborigines or bushrangers. Barlow argued that New South Wales was over policed with a ratio of 1 magistrate for 540 persons in 1836.⁷ In the same year, the Campbell town police district had a ratio of 1 magistrate for 178 persons.⁸ Local settlers had far better access to magistrates than they did in New South Wales, and lower court sittings in Campbell Town and Ross were regular and always attended by one or more of the magistrates who were rostered to preside.

About half of the Campbell Town magistrates had former military experience. Arthur appointed three former officers, Major William Gray and Captains William Serjeantson and James Crear to control the remote South Esk valley and the St Pauls Plains near Avoca. But he also appointed civilians to the bench from a variety of backgrounds including farming, banking and commerce. After 1827 Arthur started to select younger men with talent like James Sutherland and Charles Viveash. They were more politically reformist than the older magistrates, whom they sometimes mocked privately. Viveash was a Unitarian with a farming background from the north of England and Sutherland was a Scot.

⁶ Great Britain, Parliament, House of Commons, Select Committee on Transportation, *Report from the Select Committee of the House of Commons on Transportation*, Sir William Molesworth, chairman of the committee, (Adelaide, Libraries Board of South Australia, 1967), Vol. 1, p. 116.

⁷ Lorraine Barlow, "'Corrupt and diseased' or 'gentlemen for evermore'? The controversy over the magistracy in nineteenth-century New South Wales.", *Push from the Bush*, No.25 (1987), p. 59-60.

⁸ Population (free and convict) in the Campbell Town police district on 1 January 1836 was 2320 persons. James Ross, *Van Diemen's Land Annual Hobart Town Almanack for 1836* (Hobart, James Ross Publisher, 1836), p. 46. There were 13 magistrates in the district: 11 non-stipendiaries, 1 police magistrate and 1 magistrate superintending the Ross Bridge gang.

The first five local settlers to accept positions as non stipendiary magistrates prior to 1827 had arrived in 1823 with their families and between £2000 and £3000 in cash and goods. Lieutenant Samuel Hill RN was 62 years old and a half pay officer who had sold his commission when he arrived on the *Berwick* and took up 2000 acres on the Elizabeth River east of Campbell Town. Henry Jellicoe, another early justice of the peace, settled beside him on a similar acreage close to the town. Three others lived a little further away, but still within ten miles of Campbell Town. To the north, Richard Willis settled along the Main Road near Hyland's Lagoon. Willis was a West Indies merchant who sold his share of the family business to his brother when the economic recession in Britain threatened the prospects of his large family of 13 children. He emigrated in 1823 with £3000 but was delayed in embarking for Van Diemen's Land. With only days to spare after landing at Hobart, Willis and his two eldest sons rode furiously to arrive at their grant and claim it just within the required twelve month period. They built a sod hut with a canvas roof, as proof of their "improvement" of their grant. This type of first dwelling was common amongst the early settlers and many families lived in these makeshift structures or simple huts for a number of years. Willis and his sons and several convict labourers spent the rest of 1823 constructing three log cabins that would house his convict workforce and his family. Early in 1824 the older daughters joined them to get the place ready for their mother and the younger children, who had remained in Hobart.⁹

The first years on the land were physically hard despite the assistance of convict workers and a characteristic of those who succeeded was a willingness to adapt to manual labour.¹⁰ Willis rapidly extended his original acreage through purchase and additional grants, including one of 1000 acres for capturing the bushranger Priest in

⁹ Willis Edward, *Willis – Origin of Family*, (manuscript not dated), p. 18, Correspondence File, AOT. This manuscript was written by Richard Willis's GG/ grandson descended from his 11th child.

¹⁰ The Parramores of Wetmore and Beaufront farms near Ross provide similar information about their first year establishing their farms. See Parramore, William Thomas, *The Parramore letters : letters from William Thomas Parramore, sometime private secretary to Lieutenant Governor Arthur of Van Diemen's Land, to Thirza Cropper, his fiancée in Europe and England, the majority from 1823-1825*, transcribed and edited by D.C. Shelton, (Epping, New South Wales, D.& C. Shelton, 1993). Contemporary travelers who wrote guidebooks for future emigrants commented on the rough physical conditions for the whole family when establishing a farm. One early surveyor in the Midlands praised the Gatenby's on the Isis River in 1826 for the willingness of the whole family, including the wife and daughters, to work at establishing the farm. See McKay, *Journals of the Land Commissioners*, p. 22.

1826.¹¹ Other potential dangers included local Aboriginal tribes who defended their land against the invaders. Benjamin Horne selected his first 2000 acres north of Ross on the Macquarie River in 1823, but later handed back other land he had tendered for in 1828, when his shepherd was killed by local Aborigines on the first day he occupied it.¹² There were other physical dangers for settlers too. Horne's third son, Benjamin junior was killed in 1831 while defending an overseer from a convict servant. His second son Edward drowned in 1839.¹³ Despite the risks to life of colonial farming, by 1832 Horne had increased his property to over 4000 acres through additional grants and purchases.¹⁴

Captain William Serjeantson, formerly of the 40th Foot, settled on the South Esk River and married Richard Willis's daughter Marianne in 1826. Although Hanlith farm, Serjeantson's grant, was only ten miles from his father-in-law's farm, the South Esk was the district's northern border and was still reputedly occupied on its northern banks, by Aboriginal people from the Ben Lomond clan.¹⁵ Serjeantson's military background may have made him a good choice to help guard the safety of this area. James Cubbiston Sutherland, a Scot, also arrived in 1824 with capital of only £500 which secured him a small grant of 1000 acres on the Isis River. This was another remote area of the district, which was still recording attacks between settlers and Aborigines as late as 1828. In 1827 George Taylor's eldest son was killed by Aborigines near their Valley Field farm on the Isis River, not far from Sutherland's place.¹⁶ Sutherland had to supplement his farming income for the first decade by obtaining some local paid appointments including Coroner from 1825 to 1831 and Inspector of Distilleries in 1827.¹⁷ It took him longer to accumulate holdings of a similar size to those of other successful Midlands farmers.

¹¹ Correspondence File, *Richard Willis*, AOT. Notes in the file are by P.R. Eldershaw for his entry on Willis. See also *Australian Dictionary of Biography*, (ed. D. Pike) (Carlton; Victoria, Melbourne University Press), Vol.2, pp. 604-605.

¹² LSD 1/9/ p. 91-92, AOT. Letter from Horne to the Lands Department.

¹³ Correspondence File, *Horne Family*, (manuscript), AOT. Both deaths of his sons are recorded.

¹⁴ Horne Benjamin, *Wayne Index*, AOT. Card file of land acquisitions.

¹⁵ John Helder Wedge, *Diaries of John Helder Wedge 1793-1872*, (eds) W.F. Ellis, George Hunter Crawford & George Hawley Stancombe, (Hobart, Royal Society of Tasmania, 1962), pp. 55, 62 and *passim* for reports of Aborigines in South Esk & St Pauls rivers and Mills Plains area.

¹⁶ Correspondence Folder, George Taylor, Query No. 1963/296, AOT. See also *Colonial Times*, 17 November, 1826. See also NS 61/1, Diary of J.C. Sutherland, AOT, 13 November 1826.

¹⁷ CSO 50/1-7, Blue Book 1827, AOT, pp. 72, 107, 183. See also CO 284/51, 1828, AOT.

After 1827 Arthur made a series of further appointments to the non stipendiary magistracy to assist the first paid police magistrate of the district. Captain William Wood, formerly paymaster of the 15th Foot, where he had served in the West Indies and at Waterloo, was appointed a magistrate in 1830. His commission was given to him only a year after he arrived in Van Diemen's Land. His grant of 2000 acres was located at Snake Banks, north of Campbell Town on the Main Road. As this was an excellent vantage point to control all passing foot and vehicle traffic, a police outpost was later established there.¹⁸ Absconders and those convicts traveling without passes had to detour through the bush to avoid the police checks.

Charles Viveash of Baskerville farm arrived in 1831 and was made a magistrate in the following year. He and his brother converted from the Anglican to the Unitarian church, after which they were rejected by their family. Charles arrived with £3000 and obtained one of the last land grants on the Isis. Charles and his wife Ellen were in their early thirties and appeared to have been young idealists who hoped to create a different society from the one they had left in Britain. They were determined to show that their decision to change their religion and migrate was based on sound judgment. They believed Charles' experience at farming would ensure that they had economic and social success.¹⁹

The last of the non stipendiary magistrates to be appointed before 1835 was the former Royal Naval Captain James Crear. He traveled back to Van Diemen's Land in 1831 with the Viveashes on the *Drummore*, although he had first visited the colony in 1824, and had already secured his land grants.²⁰ Over time he took up additional grants of land between the South Esk River and Epping Forest on the Main Road. He

¹⁸ PWD 266/1713, 1838, AOT. Map, Site of land Wood made over to the Crown for the site of police office.

¹⁹ *The Tanner letters: a pioneer saga of Swan River & Tasmania, 1831-1845*, (ed) Pamela Statham, Nedlands, University of Western Australia Press, 1981), Introduction, pp. xv, xvii.

²⁰ Three sets of Campbell Town magistrates had met on ships bringing them to Van Diemen's Land: Lieut Samuel Hill and James Sutherland on the *Berwick* - 1823; Benjamin Horne and John Leake on the *Andromeda* - 1823; and Viveash and Crear on the *Drummore* in 1831. This enforced ship-board society for several months was sometimes the beginning of life friendships between early settlers.

maintained a lower profile than some other magistrates after he accepted a commission in 1833, concentrating on farming and his extensive land acquisitions.²¹

The two most important non stipendiary magistrates appointed after 1827 period were John Leake and Major William Gray of St Pauls Plains. These men were the most useful to the civil administration and were called upon to take up additional duties when a need arose. Leake had first settled in the district in 1823 but concentrated on his business and farming interests before accepting a commission from the governor in 1832. Leake had a background in banking from north Germany and had arrived with very complementary letters of recommendation to Arthur from the British Consul General in Hamburg.²² By 1832 he had proved himself a diplomatic and conciliatory man in his dealings with neighbors.²³ An astute businessman, he was able to establish a career as a colonial banker.²⁴ He impressed Arthur from the start and managed to persuade him to approve a further grant of 2000 acres in 1828. This grant was situated between Leake's farm and Richard Willis's property. Leake confessed to Arthur that he knew Willis wanted it and would buy it if the land came to auction, but Leake could not afford to do so. Arthur granted him the land, but chose not to gazette it publicly as he feared it could lead to stricter limits on the ways grants were made.²⁵ This grant remained a contentious

²¹ James Crear, *Wayne Index*, AOT. See also 1824/ GO 33/18/ p. 832 –application for grant at Epping Forest – 700 acres; 1829/ LSD/89/ p.59 with map of land p. 258/ application for grant on South Esk River – 1860 acres; 1836/ LSD1/76/ p.19 application for town lot in Campbell Town; 1839/LSD1/2/ p. 95 purchase of 640 acres; 1839 LSD1/691,699; OD vol. 32, p.587,1839.

²² CSO 1/114/2861, found in John Leake, *Correspondence Folder*, AOT. John Mellish, the British Charge D'Affairs and Consul General in Hamburg wrote: "I am satisfied you will always be satisfied with the integrity of his conduct, and his mild and gentlemanly manners. Was a member of one committee for managing church affairs of the established church here of which I am chairman. Your excellency will find his lady a very agreeable genteel woman..."

²³ CSO 1/28/497- 23/3/1826/ Leake to Col. Sec. See also John Leake, *Correspondence Folder*, ATO. 1826 –23 March. Leake complained to the Colonial Secretary because Lieut. Samuel Hill, the local magistrate, had illegally granted a ticket of leave to one of Leake's convict workers who had not served sufficient time for it. Leake's correspondence to Col. Secretary Montagu and Arthur's response shows Leake "a careful, encouraging and considerate master, diplomatic" to Samuel Hill and to Arthur. Arthur agrees he could not give the servant a TL until he has been 3 years in service to Leake. Arthur commends the delicate way Leake has handled this issue.

²⁴ John Leake, *Wayne Index*, AOT. See also *Australian Dictionary of Biography, 1788 – 1850*, Vol.1, p.100.

²⁵ CSO 1/114/2861, AOT.

issue between Willis and Leake, and Willis later appealed unsuccessfully to Governor Franklin, in an attempt to gain compensation.²⁶

There is no doubt that Leake was popular with the civil establishment because of his diplomacy and business acumen. Within a year of accepting a commission of the peace, Leake was offered a promotion to the post of acting stipendiary police magistrate at Campbell Town, which he held until 1834.²⁷ He continued to demonstrate his ability to please the Hobart bureaucracy at the expense of falling out with another two of his fellow magistrates, Viveash and Sutherland. As Matthew Forster, the Chief Police Magistrate observed: “In justice to Mr Leake I am bound to add that in every case of dispute which has yet passed through this office I think he has been in the right.”²⁸ While this incident could demonstrate Leake’s ability to implement justice without fear or favor, even at the expense of the feelings of his fellow magistrates on the bench, it also suggests that his popularity with the civil establishment may have also been because of his usefulness to them as a banker.

The other local magistrate who proved especially useful to the civil establishment was Major William Gray of Rockbank farm at St Pauls Plains. Gray and his family had arrived in the colony in 1827. He and his two brothers came from an Irish military family and he had cashed in his commission in the 74th Regiment and selected 2560 acres in the remote St Pauls Plains area off the Fingal road. At 35 years of age Gray threw himself into the work of developing his farm with zeal and his industry greatly impressed Arthur.

²⁶ Richard Willis, *Correspondence File*, (Manuscript, P. R. Eldershaw, *Notes on Richard Willis*), AOT. Eldershaw mentions this issue more briefly in his entry on Willis in *Australian Dictionary of Biography*, Vol 2, p. 605.

²⁷ Leake held the position of accountant with the Derwent Bank in Hobart, from around 1825 and left his son in charge of his farm. The Derwent Bank was instrumental in attracting investment capital into Van Diemen’s Land from India and Britain: it also issued salary payment orders to public servants on behalf of the administration. Government officials were instrumental in its structure. Later, Leake took a director’s position on the board of the Commercial Bank. See *Australian Dictionary of Biography*, op.cit., for further details.

²⁸ CSO 1/723/ 15, 959, *Forster to Arthur*, AOT. Leake accepted the word of one of Viveash’s convict workers over Viveash’s in an incident about a bullock. Certainly in 1835 there is evidence that Arthur, who reviewed all cases that came before the magistrates courts, wanted to be assured that the police magistrates acted scrupulously fairly when hearing cases. This is a good example of Leake taking a cautious approach. He may well have felt the evidence was in the convict’s favor, but he also would have known that it would be seen to his credit in Hobart that he had done so.

In 1828 Gray applied to have 1500 acres of Crown Land he was renting granted to him. The improvements, he claimed, included having cleared 50 acres, and the running of 360 cattle, 1700 sheep and 5 horses. He had built a £600 brick house, three and a half miles of fencing, outbuildings, stockyard and gardens.²⁹ Arthur was so impressed with Gray's energetic approach that he increased the Land Board's recommendation to 2560 acres.

Gray's military background was even more useful to the civil establishment as he had a reputation for maintaining strong discipline over his convict servants. The remoteness of St Pauls Plains created problems for some settlers, who found it difficult to manage their convict servants and found it too far to access the Police Magistrate in Campbell Town. The isolated nature of the district also encouraged sheep stealing and was a lure for absconders who could hide in rugged country from police and military detachments. Arthur made Gray a non stipendiary magistrate in 1827, just a year after his arrival in the district. From then on Gray dispensed tough sentences to local convict servants from the court that was held at his home. Sentences of flogging and ganging were common punishments from Gray.³⁰ Some of these may have been commuted by Arthur, but on the whole Gray's strictness impressed the governor. In 1835, when the local convict police force in Campbell Town was suffering from low morale, poor behavior and a loss of confidence from the community, Arthur offered Major Gray the position of acting Chief District Constable and he was appointed to apply some strict military discipline to improve the situation.³¹

A complex relationship of reciprocity existed between Arthur and his non stipendiary magistrates. They held expectations that the governor would reward them with further grants of land and increases to their convict workforces. As well, other non material benefits existed for magistrates. Their closeness to the civil establishment in

²⁹ LSD 1/4/ p.821-825, AOT.

³⁰ LC 83/1, Return of Cases Heard, Magistrate's Court, Campbell Town, 1835, AOT, Trials of Bile, Preece and Fisher, 12 Dec 1835, stealing potatoes - road gang ; Hall, 20 July 1835, impertinent to overseer - 25 lashes; Riddle & McMann, stealing - 24 lashes ; Shapton, 24 Nov 1835, disrespect - 24 lashes ; Donnelly, 25 Nov 1835, disobedience and neglect of work - road gang ; Leoy, 22 October 1835, insubordination - road gang ; Stell, 28 Oct 1835, insolence - road gang.

³¹ *Hobart Town Gazette*, 27 August, 1835, Police Appointments, Mr William Gray, p.701.

Hobart conferred on them a certain status, even though it was not likely to impress everyone in the district. They were the local source of legality and power, especially over all convicts and other members of the lower orders but this did not always confer upon them a higher social status than their peers.³² Others were as wealthy, some more so, and they too had social and business access to the governor and the civil establishment. Indeed, some settlers were offered the commission of the peace and refused it due to business pressures while others accepted it for several years only to relinquish it later.³³ This suggests that many of the large land owners in the district were prepared to put their own financial interests first and civic responsibilities were clearly perceived by some to be more trouble than they were worth. A position on the bench may have carried expectations of further land grants but this was not the only way to acquire additional holdings.

Apart from the status of belonging to the first group of the district, it is difficult to find conclusive evidence that Arthur offered substantially more material patronage to the non stipendiary magistrates as a general group than he did to other local settlers. If a settler could satisfy the Lands Board and Arthur that he had made sufficient improvements to his dwelling, barns, fences, and the area of land brought under cultivation, he would be likely to get additional land grants as an increased incentive to continue to expand. Morgan argued that further land grants were widely spread amongst the various groups of settlers. One third (37%) of the further grants went to men who had held some form of public office but wealthy settlers, former military men, publicans and Irish and Scottish settlers also received further grants. Arthur supported the colonial born too. Over 50% of those born in the colony, who had received one land grant, received further grants. The key criteria appeared to be that the applicant was under forty years of age and successful at farming.³⁴ Arthur believed that individual success had the effect of increasing the communal wealth of the colony, even though he sometimes found the settlers' constant badgering for additional land grants tiresome. While there is little conclusive evidence that magistrates, as a group, had access to substantially more patronage than other

³² Neal, *Rule of Law*, p.131.

³³ CSO 5/71, 1837, AOT.

³⁴ Sharon Morgan, *Land Settlement in Early Tasmania: Creating an Antipodean England*, (Cambridge, Cambridge University Press, 1992), pp. 34-5.

successful settlers, there is some evidence that this was a strong perception amongst some settlers.³⁵

Patronage issues, politics, pride and the management of relationships with the civil establishment seemed to have been handled with differing degrees of subtlety within the group of magistrates and with little sense of solidarity. Their shared public role of enforcing the convict regulations did not prevent them competitively vying for land and wealth. These roles could often bring them into conflict with each other. They were likely to remain fiercely competitive in their private pursuit of wealth. Regardless of this, most locals of all ranks perceived that after 1828, the local non stipendiary magistrates did not differ much in power from other landed settlers, and that they had become primarily reduced to being assistants to the local police magistrate.³⁶

This was in strong contrast with local magistrates in New South Wales who belonged to a well established land owning class that held a more conservative social and political agenda and appeared to hold a lot of personal power in their districts. By the 1830s they formed an effective and organized opposition to the governor and Legislative Council.³⁷ Some were able to manipulate the charges and sentences they handed down, either with the collusion of their fellow magistrates or by ignoring the requirements of the 1832 Summary Jurisdiction Act. In the Campbell Town district, by comparison, few magistrates had been in the colony longer than three or four years which did not allow them time to form factions to try to entrench themselves in power or challenge the administration's regulations. In any case some of the

³⁵ Melville Henry, *The History of Van Diemen's Land from the Year 1824 to 1835*, first published 1836, (ed) George Mackenness, (Sydney, D.S. Ford, 1959), Part 2, p.49.

³⁶ R.W. Giblin, *The Early History of Tasmania, The Penal Settlements Era: 1804 – 1828*, (Melbourne, Methuen & Co., 1939), pp. 585-586. David Neal, *Rule of Law*, pp. 134 – 136. Neal argues that the Summary Jurisdiction Act of 1832 attempted to further reduce the magistrates' power in NSW by specifying the offences over which they held jurisdiction, but vague catchall charges like 'offensive language' and 'neglect of work' remained. Punishments were also more tightly specified. In VDL, Arthur required all magistrates to send weekly returns of charges and punishments to the Chief Magistrate's office, where they were reviewed before being forwarded to him. He intervened to change some sentences, and this process probably created a unifying effect across the different sentencing strategies of his police magistrates. Certainly Peter Murdoch, a one time police magistrate, land owner and witness at the Molesworth Commission, cited this as his reason for resigning his commission.

³⁷ Michael Roe, *Quest for Authority in Eastern Australia 1835-1851* (Melbourne, Melbourne University Press, 1965) pp. 41-42.

regulations opposed in New South Wales appeared of immediate benefit to magistrates and settlers in Van Diemen's Land. The establishment of a paid convict police force under the control of a police magistrate gave local justices more time to devote to their farms and an instrument through which their convict workforces could be controlled. Neither were they particularly keen to be public advocates for either trial by jury or wider middle class participation in colonial government and did not oppose Arthur's opposition to introducing these reforms.³⁸

Only much later did one of their number play an active role in politics. In 1846 six appointed settler representatives on the Legislative Council, the Patriotic Six, resigned because they opposed the use of local revenue for the payment of police and jails, believing that Britain should continue to fund this expense.³⁹ Governor Eardley-Wilmot accepted their resignations and appointed others in their place. It is significant that one of the replacements was former local magistrate John Leake, who was prepared to act as the governor's nominee on the Legislative Council until the British Colonial Office resolved the issue by recalling the governor and reinstated the former members of the Council. Leake became a government nominee again in 1848 and served on the Legislative Council during governor Denison's term of office. His political actions were generally seen to be independent and constructive rather than self serving or conservative.⁴⁰ The only other local justice of the peace to take a political stand was Captain James Crear and that also was many years later. Crear acted on his own convictions in 1850, when he chaired an anti-transportation meeting and returned his convict servants to the Crown, in a public gesture of defiance.⁴¹

³⁸ Neal, *Rule of Law*, pp. 131-132 and see Roe, *Quest for Authority*, p. 42. This position is supported by Roe who acknowledges the differences between the political actions of magistrates in N.S.W. and V.D.L.

³⁹ One of the six was a local Campbell Town elite settler, William Kermode, a wealthy farmer from Ross, who supported many agricultural improvements and introduced a system of irrigation in the district.

⁴⁰ Douglas Pike, *Australian Dictionary of Biography*, Vol.1, p.100.

⁴¹ *Guardian*, 21 Sept 1850, p. 3, col. 4; *Chronicle*, 3 Oct 1850, p. 4, col. 2; James Crear Naval, *Wayne Index*, AOT. Crear was chairman of the Campbell Town and Oatlands Committee public meeting that resolved to send a petition to Britain to the Secretary of State requesting the abolition of transportation. This was the petition that was criticized by the Governor as its tone was considered inappropriate to the petitioner's self respect and to the Secretary of State.

Only occasionally did one of their numbers displease a governor. William Wood, in a letter to his British cousins in 1858, referred obliquely to a matter which had incurred the displeasure of Governor Franklin. Wood wrote that he had chaired:

every special meeting of magistrates in the district until I retired, on account of a supposed, in fact a real affront offered to them by Governor Franklin, until then my familiar (I may say friend) however continued his usual civility – but never slept at my house afterwards – for this resignation I was offered a piece of plate, but would not accept it, thinking that it was more the aggrieved person’s affair than mine and that the aggrieved should also have resigned.⁴²

Captain Wood, who “always possessed the rank and reputation of a gentleman”, obeyed a social custom more punctiliously than the unnamed colleague, probably not a military man, who kept his position as magistrate and allowed Wood to take the blame.⁴³

The early Van Diemen’s Land magistrates also came from a broader set of backgrounds than those of New South Wales and remained pragmatically middle class. Many had been touched by the reform agenda before leaving Britain and knew that change to both political and social institutions was likely. In that respect they were more in tune with the post Napoleonic war climate of Britain than those who settled New South Wales thirty years earlier. Although there were conservatives within their ranks, it would be a mistake to regard the Midlands justices as universally conservative. They were men with varied opinions and abilities, most of whom were committed to using their power in the lower courts to act in the public interest.⁴⁴

The magistrates were firstly farmers and their main workforce was convict, supplemented by some ticket of leave men and free labour. Like their neighbors, they had to train a high turnover of young convict men into the regular habits of industry and punctuality. As one convict put it when arraigned for lack of competency as a

⁴² William Wood, *Correspondence File*, AOT. Letter dated 20 August 1858, Wood to his cousins in Britain.

⁴³ *Ibid.* Wood to his cousins, letter dated 9 March 1858.

⁴⁴ Roe, *Quest for Authority*, pp. 35, 41, 42, 204.

gardener, “I have never worked a day in my life.”⁴⁵ The magistrates and the large scale farmers more broadly, required the services of a competent, cheap workforce in order to secure their colonial status. By the mid 1830s the most established of them had only amassed fifteen years or so of farming wealth, while Charles Viveash and William Wood had only occupied their farms for four or five years. They lacked the security of having one or more generations of family wealth behind them and many had sons for whom they still had to provide farms and futures. They had to extract as much surplus value from the labour of their convict servants as they could as this was the basis of their expanding wealth.

As masters of labour the magistrates mostly behaved within the scope of the convict regulations in managing their convict workers, but as a group they could be divided into those who managed their men with incentives and those who managed by enforcing the convict regulations more actively. Some like Willis, his son-in-law Captain Serjeantson and Jellicoe used the courts more frequently to return unsatisfactory workers or vigorously prosecute poor work and misdemeanors. Others like Crear, Sutherland and Viveash preferred to manage their workforce themselves and each only brought one or two prosecutions against their workers during 1835. In 1835, eleven local magistrates, between them, brought 87 prosecutions against their workers, with Richard Willis setting the district record for the year with 35 prosecutions. While some hard manual work, like clearing timber and grubbing out stumps, may have caused some convicts to refuse work, most prosecutions by settlers were against convicts who sometimes refused to conform to orderly work habits, left stock to die or gates open, wasted stock feed, or slipped away from work without permission.⁴⁶

Magistrates sometimes experienced resistance from harder men who had been in the system for years and held no fears of flogging or ganging. One such was James Simmons, who refused to work the longer hours that Captain Crear required getting the harvest in. Simmons would work government hours only, a contested issue for

⁴⁵ LC 83/1, Return of Cases Heard, Magistrate’s Court, Campbell Town, 1835, AOT, Trial of William Aust, *Strathfieldsaye*, 1 October 1835.

⁴⁶ LC 83/1, Return of Cases Heard, Magistrate’s Court, Campbell Town, 1835, AOT, Trial of George Laycock, *Surrey* 3, 9 February 1835. See also LC 81/1, Return of Cases Heard, Magistrate’s Court, Campbell Town, 1835, AOT, Trial of George Bland, *York* 2, 9 February 1835.

many farm workers who felt they should not have to work longer hours than the government ganged men. Crear offered his men extra rations and inducements but Simmons was reported for running away from his work and leaving it to others. When challenged, he defied Crear and abused the man who reported him, asking him, “Why don’t you speak out like a man?” He scoffed at Crear’s decision to put him on government rations and to get him to grub out trees. He later demanded his meal break and rations and spent the afternoon in his hut. Crear believed Simmons was attempting to persuade his other workers to join his campaign for shorter hours. He told Crear that he could always get what he liked in the Launceston chain gang and had no fear of the lash.⁴⁷ He received a sentence of six months in a chain gang, one of the punishments reserved for persistent recidivists or workers who attempted to seriously undermine the authority of their master.

Very few common law offences were discovered and prosecuted. The most common was the theft of work clothes. Five men were charged with selling spare trousers, probably to get cash for drinking, gambling or to fund absconding. Only three bolder schemes were discovered. Two of Willis’s gardeners had been stealing fruit trees and seeds for some time and sending these on to Hobart for sale.⁴⁸ One was remanded to the Quarter Sessions, the other received eighteen months with a road party. Another convict, Isaac Wood forged Major Gray’s signature on a memorial to Hobart begging an indulgence, instead he received six months in a chain gang.⁴⁹ John Rossiter, a carpenter and one of Charles Viveashes’ convicts, managed to get credit of £51.18.6 from Gavin Hogg, the publican, after convincing him he had a letter of credit for £1010. Hogg said he gave all convict tradesmen credit and laid the charge after Rossiter told him he had lost the letter of credit. Rossiter was both trading and drinking with the money.⁵⁰ This series of transactions demonstrated that it was not unusual for some assigned men to have access to quite substantial sums of cash,

⁴⁷ LC 83/1, Return of Cases Heard, Magistrate’s Court, Campbell Town, 1835, AOT, Trial of James Simmons, *Strathfieldsaye*, 25 February 1835.

⁴⁸ LC 83/1, Return of Cases Heard, Magistrate’s Court, Campbell Town, 1835, AOT, Trials of Morris Barnett, *Isabella* and George Fisher, *Emperor Alexander*, 7 October 1835.

⁴⁹ LC 83/1, Return of Cases Heard, Magistrate’s Court, Campbell Town, 1835, AOT, Trial of Isaac Wood, *Manilaus 1*, 2 February 1835.

⁵⁰ LC 83/1, Return of Cases Heard, Magistrate’s Court, Campbell Town, 1835, AOT, Trial of John Rossiter, *Atlas*, 25 February 1835.

certainly Hogg did not initially quibble about the sums involved. Rossiter received eighteen months with a road party.

The types of charges that the local magistrates brought against their convict workers were very similar to those laid by other farmers. They were mostly brought to settle work and personal disputes and exert control over leisure activities. Sturma found a similar pattern of cases tried in the magistrates' courts in New South Wales.⁵¹ However, there is little evidence that local magistrates used their positions of power in the lower courts to inflict harsher punishments on their own convict servants. In general, the police magistrate sat on charges against the servants of non-stipendiary magistrates, although he considered depositions from them and generally had them in the court to take questions from the bench or the accused. Only one local case was raised in the press, where Willis, the sitting magistrate and father-in-law of Captain Serjeantson, heard a case brought by the latter. George Rew, a carpenter with a conditional pardon, was given 21 days in the stocks for being found in bed with Captain Serjeantson's black (Caribbean) female servant.⁵²

The punishments handed down for this group of 87 charges followed the general pattern of punishments across the district for all convict workers. Control of the workforce was the primary concern of the local courts and consequently the most severe punishments were reserved for those workers who tried to escape by absconding. The most floggings were given to men who were persistent absentees and absconders: eight of the magistrates' servants attracted between 25 and 60 lashes for this and another four were sentenced to between three and twelve months in chain gangs. Convicts who were merely incompetent or idle were more often admonished or returned to government service. Men and women whose leisure activities offended the sensibilities of their employers by being drunk, engaging in sexual acts or brawling were mostly reprimanded, with more women than men sent back for re-assignment or punishment at the female prison if they continued to offend in this way. However, common law crimes were viewed severely. If the police magistrate believed the charge of theft was warranted, the convict was remanded to appear at

⁵¹ Michael Sturma, *Vice in a vicious society: crime and convicts in mid-nineteenth century New South Wales*, (St. Lucia: Queensland, University of Queensland Press, 1983), pp. 124, 126.

⁵² *Colonial Times*, 20 October 1835, Letter to paper from 'Veritas'.

the next Quarter Sessions. Other common law felonies considered proven resulted in a flogging or a sentence to a road party or chain gang. In general the punishments delivered to magistrates' convict servants were similar to those given to other convict workers in the district, and within the sentencing options of the Summary Jurisdiction Act of 1832. There were few if any punishments such as multiple floggings or unwarranted extensions of a convict's original sentence, as was still common in some rural jurisdictions in New South Wales.⁵³

A degree of uniformity in sentencing existed across Van Diemen's Land because lower court sentences were reviewed twice. The weekly returns from the courts were reviewed by the Chief Police Magistrate in Hobart before being sent to the governor for final approval. Arthur frequently altered sentences he thought were inappropriate or sent convicts to road parties or chain gangs, different from the ones recommended by his police magistrates. He had fewer sentences to review than governors in New South Wales and probably viewed around 12,000 lower court sentences per year in the mid 1830s.⁵⁴ By comparison in New South Wales in 1841, over 25,500 cases were heard by the lower courts.⁵⁵

Arthur also achieved greater control over his magistrates, all of whom had been chosen by him, often because they shared his evangelical and Benthamite outlook. Even local magistrates like Crear, Sutherland and Viveash, who appeared to support the new social and political reform agenda and rarely brought their own servants before the courts, were still prepared to accept the commission from Arthur and participate in a court process that relied on using the terror of flogging and ganging to enforce compliance from convict workers. Despite the severity of the punishments, even the younger magistrates appeared to endorse sentences that were only rarely given to felons in Britain, where ganging and working men in chains would not be tolerated by the British public, as it smacked of continental

⁵³ Michael Sturma, *Vice in a Vicious Society*, p.120 and Alexander Harris, *Settlers and Convicts*, p.13.

⁵⁴ Hamish Maxwell-Stewart, *Study of 1 in 25 Convict Conduct Records*, This study counted 465 offences for the year 1835, suggesting a total of 11,625 hearings involving convicts. Additional charges laid against free persons were likely to round off the total charges in lower courts to around 12,000.

⁵⁵ Sturma, *Vice in a Vicious Society*, p.125.

despotism.⁵⁶ Although it is impossible to determine if any large land owners declined to accept a commission from Arthur, when Governor Franklin arrived, he wrote to over 180 wealthy land owners enquiring who wished to be considered for appointment to the magistracy. Over sixty declined the offer, a surprisingly high number, although only one gave his farming commitments as the reason for his refusal.⁵⁷ While the others may have had many reasons for refusing the office, the choice of not participating in a sentencing regime that some considered cruel and distasteful, was likely to have been one of them.

While Arthur was largely supported by his magistrates, Whitefoord, the acting police magistrate, attracted only varying degrees of support from the local justices. His temporary appointment may have encouraged some of his peers to hope that his destabilization would create an opportunity of promotion for them. Speculation about such moves grew in the district after a public meeting in May 1835 that was called to show support for Whitefoord and ask the civil administration to increase his acting salary to the full salary of a police magistrate. Willis, Hill, Viveash, Sutherland and Jellicoe were amongst other distinguished locals who called the meeting and supported the subsequent address to the Governor. Leake, Horne, Serjeantson, Wood, Gray and Crear were all noticeable absentees.⁵⁸

McKenzie has argued that the colonial middle class was “an invention of its own social and economic ambition” whose boundaries were fluid, transcended individuals’ antecedents and so created a sphere for opportunity and anxiety. The anxiety was heightened by their knowledge that visitors sometimes regarded them as “parvenus, cultural incompetents, morally suspect and fictive Europeans”.⁵⁹ This anxiety and sensitivity to status can be seen in the lack of solidarity amongst the group of local magistrates and their quarrels with one another. Although these were mostly kept in check, they were likely to be known and talked about throughout the

⁵⁶ Clive Emsley, ‘Detection and Prevention: the old police and the new’ in *Crime and Society in England 1750-1900*, Harlow: England, Longman/Pearson, 2005, p. 222.

⁵⁷ CSO 5/71, AOT. John Hedlam senior, in the Campbell Town district wrote that pressure of business caused him to decline the offer.

⁵⁸ *Cornwall Chronicle*, 16 May 1835, p. 3. Report of a public meeting in support of Police Magistrate Whitefoord.

⁵⁹ Kirsten McKenzie, *Scandal in the Colonies* (Melbourne, Melbourne University Press, 2004), pp. 4-5.

district. Horne, Willis, Hill, Jellicoe and Viveash all engaged in quarrels with each other, mostly over land and status issues. Lieutenant Samuel Hill R.N. was central to many of these squabbles. He entered into long standing border disputes with both his neighbors, Henry Jellicoe and Benjamin Horne. Further, he had insulted Richard Willis while they were both sitting on the bench and had incensed John Leake who claimed that Hill had illegally granted one of Leake's assigned servants an early ticket of leave, possibly so that Hill could employ the man himself.⁶⁰

These quarrels festered on and in 1835 a number of new ones were aired in the magistrate's court. The trivia of the cases no doubt amused the district and was the focus of continued gossip. Henry Jellicoe charged John Grindell, one of Hill's assigned workers, with insolence after some of Hill's cattle strayed into Jellicoe's oat crop. Jellicoe ordered Grindell to tell his master to remove the cattle before morning and arrange suitable financial compensation for the damage. The convict eventually agreed he would report it to his master but "would not mention anything about compensation for I know how to deliver a message to a gentleman."⁶¹ Jellicoe argued before the bench that it was not only the convict's words that were insolent, but also his manner that angered him. Apparently Grindell turned his horse's head and rode off in a different direction from his master's house. The real insult, however, was that Grindell had implied, that in contrast to his master, Jellicoe was not a gentleman. Whiteford reprimanded the servant and dismissed the case. Grindell and Hill thus won the day.

Charles Viveash had maintained a dispute with John Leake over several years, and like some of his fellow justices, had appealed persistently and unsuccessfully to the civil administration in Hobart to have matters resolved in his favor. He claimed his honor had been tarnished when Leake, as acting police magistrate, dismissed a case that Viveash brought against one of his convict workers over some working bullocks.⁶² By dismissing the case Viveash believed Leake had taken the word of a convict in preference to his own. Other disagreements had also taken place between

⁶⁰ CSO 1/28/497, 23/3/1826, AOT. Also a copy in John Leake, *Correspondence Folder*, AOT.

⁶¹ LC 83/1, Return of Cases Heard, Magistrate's Court, Campbell Town, 1835, AOT, Trial of John Grindell, *Red Rover*, 13 January 1835.

⁶² Pamela Statham, *The Tanner Letters*, p. 85. Ellen Viveash in a letter to her mother dated 4 May 1834. For details of the quarrel see CSO1/723/15959, AOT.

them, while Leake had been acting police magistrate. Ellen Viveash confided to her mother that Leake was unpopular in the district and only convicts liked him. He had been asked to resign from his position of acting police magistrate, but he had refused as he wanted to:

...put the District in order. What confusion that it wants putting in order! Charles has always been victorious and observed to be so in all cases in dispute with him. I think it must have raised Charles in the opinion of the Government and has certainly infinitely lowered his opponent (Leake), as he has been detected in a falsehood and unjustifiable interference with Charles (sic) decisions.⁶³

In a later letter Ellen remarked that:

A gentlemanly person, a young married man named Whitefoord...is coming in his (Leake's) place. We are more interested in this change as anything which happened here out of our house...we are going to get rid of our worse than useless Acting Police Magistrate...Leake has offended all the magistrates. He has behaved very ill to Charles a long time past. Mr Crear, we think, has at last ousted Leake. Mr Crear was here yesterday, he is sincere and honest and the exact reverse of Leake.⁶⁴

Other seemingly minor disputes were important enough for some non stipendiary magistrates to write to the Chief Secretary's Office complaining or explaining their actions. Willis sent one such letter explaining his misunderstanding with Benjamin Horne about a gardener appointed to him.⁶⁵ More publicly Willis, Leake, Hill and Jellicoe used the local Court of Requests to collect small unpaid accounts of less than £5, including accounts they sent to each other.⁶⁶

The smell of discord hung about the magistracy in the Campbell Town district in 1835. There was a sense that the control of the district may have been fragmenting.

⁶³ *Ibid*, Statham, p. 85

⁶⁴ *Ibid*, Statham, p.109. Ellen Viveash to her mother in a letter dated 12 October 1834. A different view of Leake is given in *Australian Dictionary of Biography*, Vol.2, p. 100, in which he is described as handling disputes with kindness and consideration while acting police magistrate, and winning the support of his superiors who acknowledged that his decisions were always right.

⁶⁵ CSO 1/9886, ATO, Correspondence summary for Richard Willis.

⁶⁶ LC 75/1, Court of Requests, 1835, AOT.

Rumours suggested that John Whitefoord would be passed over for the permanent appointment to police magistrate. Three different chief district constables had been in charge of the convict police that year and the district constable in charge of the Ross police station, Edward Freestun, had been charged with embezzling five window frames and had been remanded to the Quarter Sessions.⁶⁷ Voices of dissent started to appear in the local press and their target was the police magistrate, John Whitefoord. Four or five disgruntled local residents, some almost certainly emancipists, maintained a letter writing campaign in the months leading up to the permanent appointment being announced. They wrote to the *Cornwall Chronicle* under such names as ‘A Constant Reader’, a ‘Campbelltonian’ and the more literary ‘Zetis’ and ‘Veritas’. Their identities may have been apparent to local readers, as they sometimes hinted at personal details that could identify them. Their letters used ridicule, robust criticism and innuendo to undermine confidence in Whitefoord’s management of the court and police.

‘Veritas’, a self confessed Scot, storekeeper and possibly a butcher, directly attacked Whitefoord’s performance of his duties as police magistrate. He accused Whitefoord of being absent from duty for ten days, frequently failing to arrive at the police office before midday and adjourning the Court of Requests for fourteen days, causing financial distress to plaintiffs who were trying to recover small debts. These messages to Hobart were driven home very bluntly when ‘Veritas’ compared Whitefoord unfavorably with the former police magistrates, England, Simpson and Horne, “who would have sat till daylight in the morning to clear it all” (that is, cases waiting in the Court of Requests).⁶⁸

Both ‘Veritas’ and ‘A Constant Reader’ criticized Whitefoord for allowing police to run a private business that competed with other traders while supposedly on duty. ‘Veritas’ claimed the two police in charge of the Pound were permitted to run a butchers shop, which also implied they helped themselves to impounded cattle for

⁶⁷ LC 83/1, Return of Cases Heard, Magistrate’s Court, Campbell Town, 1835, AOT, Trial of Edmund Freestun, 1835 Magistrates Bench Book, Campbell Town, 20 June 1835.

⁶⁸ *The Colonial Times*, 28 June 1835, 11 August 1835, 20 October 1835, letters to paper signed ‘Veritas’

slaughter.⁶⁹ ‘A Constant Reader’ claimed they also slaughtered the cattle without getting the required inspection from the government inspector.⁷⁰

Both letter writers accused Whitefoord of using convict mechanics for his private purposes. A convict plasterer was alleged to have been working in Whitefoord’s own house and other convicts were sent to build the jailer’s stables while they were waiting to be transported to another district.⁷¹ It was also alleged that convict police had been observed working as Whiteford’s gardeners and carpenters.⁷²

More seriously, hints of corruption were aired when ‘Zetis’ accused Whitefoord of allowing his clerk, George Emmett junior, to make out police pay orders to be cashed exclusively at the local store owned by Emmett’s father.⁷³ This was a perceived favoritism, as previously, other storekeepers had cashed the pay orders but at a discount to their face value. A local policeman, writing as ‘John Doe’ replied that this practice benefited the police as Emmett’s store obliged them by cashing the orders at their full value.⁷⁴ Despite this public explanation, Whitefoord wisely stopped this practice from continuing, probably concerned about the local suspicions that surrounded Henry Emmett senior, who had previously been accused of misappropriating government funds when he had worked as a public servant in Hobart.⁷⁵

While these main thrusts were directed at Whitefoord, a few of the non stipendiary magistrates were also targeted. Richard Willis was commonly referred to as ‘Dick

⁶⁹ *Ibid*, 11 August 1835, letter to paper signed ‘*Veritas*’.

⁷⁰ *Ibid*, 15 September 1835, letter to paper signed ‘A Constant Reader’.

⁷¹ *Colonial Times*, 11 August 1835, letter to paper signed ‘*Veritas*’ and 26 June 1835, letter to paper signed ‘A Campbelltonian’.

⁷² *Colonial Times*, 15 September 1835, letter to paper signed ‘A Constant Reader’.

⁷³ *Colonial Times*, 6 October 1835, letter to paper signed ‘*Zetis*’.

⁷⁴ *Courier*, 11 September 1835, p. 4, letter to paper signed ‘John Doe’.

⁷⁵ Henry J. Emmett, *Correspondence Folder*, Files 165/234 and 1970/259, AOT. This charge could well have had some substance. The Emmett family, although from the elite settler class, were involved in a number of cases of misappropriation of government funds. George senior was rescued by friends who made restitution of the money he embezzled, but Arthur forced him to retire. His son George, the magistrate’s clerk in Campbell Town, was charged, but not proceeded against, in 1837 with embezzling funds from the collection of Quit Rents in Campbell Town. George’s brother was removed from a civil service position in Launceston for a similar alleged offence in the Survey Office. These cases illustrate the different treatment members of the settler class received when they committed crimes against property, compared with emancipists, convicts and poorer free settlers.

Last', a reference to an incorrect rumor that his family had been shoemakers before emigrating and becoming district notables.⁷⁶ Given the pseudonym 'H. Sillycove Esq.', Henry Jellicoe was lampooned for his new ostentatious carriage, a chaise and four, and its use by Whitefoord to drive through the township waving farewell to the people when he was leaving the district.⁷⁷ The *Cornwall Chronicle* insultingly described Whitefoord as "a large white faced ourang-outang (sic) nearly six feet high, branded JW on the right shoulder and JP on the other; slender make, sandy whiskers, rather long in the back and legs and had on a blue coat and white gloves."⁷⁸ That the caricature was clearly modeled on a convict indent description only added insult to injury. The alienated working class voice could be heard loudest in the press in Van Diemen's Land, where local magistrates could be satirized as animals, idiots and pretenders, who were engaged in swindles and abuses of the law for which other men were sent to chain gangs.

For some large land owners in Van Diemen's Land, the magistracy was a temporary advantage that did not necessarily signify they were committed to the young colony. Six of the eleven Campbell Town magistrates sold up, took their profits and returned to Britain. This is an unexpectedly high number who achieved status and wealth in the colony, but chose to give it up and return to a country where they would live in obscurity as part of the general middle class; where their level of wealth would buy them a comfortable life, but no particular status.

Lieutenant Samuel Hill R.N. was the first to leave aged seventy-six. He and his wife had been planning to leave in 1834, but had wanted more than £1 per acre and had to wait for a buyer.⁷⁹ Ellen Viveash recorded that the Jellicoes were also appraising their potential profits in 1834. They planned to sell most of their land and only keep several hundred acres round Camelford Cottage near Campbell Town, where they had recently added a large new salon to the house and Ann had supervised the

⁷⁶ *Colonial Times*, 20 October 1835, letter to paper signed 'Veritas'.

⁷⁷ *Independent*, 4 August 1832, Jellicoe appeared to be prone to blunders and misadventures. In 1832, he was reported in this newspaper, blundering into the ladies dressing rooms at a concert in Hobart, accompanied by Charles Arthur.

⁷⁸ *Colonial Times*, 27 October 1835, Domestic Intelligence Column.

⁷⁹ Samuel Hill, *Correspondence File*, Archives of Tasmania. See also Samuel Hill in the *Wayne Index*, AOT.

planting of an extensive garden.⁸⁰ Jellicoe expected to get an income of £400 a year from his profits and sold 6000 acres in 1837 and returned to England alone, where he lived with his father in Brighton until he died of smallpox in 1841.⁸¹ Ann stayed on at Camelford Cottage until she offered it for sale in December 1842. In April 1844, she too sailed for England.⁸²

Ellen Viveash discussed their retirement hopes with her mother in 1834. Most of their friends and relatives in India intended to return to Britain and were speculating about how much money was needed to live comfortably in England. Most were aiming for “a fairly modest life” as were Ellen and Charles. They did not want to live in a “pension place” like Portsmouth but were favoring a town like Clifton where they could keep a pair of horses and a curricule and “jaunt about”. To do this, they calculated they needed £500 a year. They were hoping they would clear £12,000, when they sold up after settling their debts.⁸³ In fact they could not sell at this price, as their land was likely to fetch only £1 acre and the sheep 17 pence each, so Charles leased out the land instead and they left for England in 1836, to live on their rental income.

The Willises sold up and left in 1840, initially to set up their sons in farms on the mainland in the new Port Phillip District, while they planned to farm on land near Warrnambool in the Western District of Victoria. Their sons established themselves successfully in the area that became Ivanhoe on the Yarra River near Melbourne, but Richard and his wife left for England when it became apparent that the local Aborigines were hostile and resisted his encroachment on their traditional lands at Warrnambool. Willis had arrived in Van Diemen’s Land with £3000 capital but sold his farm, Wanstead Park, 8000 acres, stock and many improvements in 1840 for £60,000.⁸⁴ Major Gray reputedly had been offered £20,000 for Rockford Farm at St Pauls Plains in 1838 and refused the offer. He eventually sold at a much lower price

⁸⁰ Statham, *The Tanner Letters*, p. 86.

⁸¹ *Ibid.*, and the *Courier*, 7 Sept 1841, Obituary.

⁸² *Courier*, 5 April 1844. As cited in Wayne Index, AOT.

⁸³ Statham, *The Tanner Letters*, pp. 83-5, 100, 104-108.

⁸⁴ *Australian Dictionary of Biography*, Vol. 2, entry Richard Willis p.604 - 605. See also Richard Willis, *Correspondence File*, AOT, undated manuscript by Edward Willis, *Origin of Family*, AOT.

in 1842 and returned home.⁸⁵ Last to leave was James Sutherland who took longer to build his wealth. His modest £500 capital of 1823 eventually returned him a fine profit, despite his initial alleged poor farming techniques.⁸⁶ He sold his extensive acres in 1855 to return to Britain.⁸⁷

None of these settlers had ambitions to settle permanently in the colony and achieve personal political power or lasting social status—their aims were more modest. They wished for a comfortable and obscure retirement amongst their own countrymen.⁸⁸ Those who did stay, Leake, Horne, Wood and Crear remained district notables and farmers and in various ways contributed to the creation of the new and politically powerful middle class. Not all of them remained financially successful. Wood lost most of his capital in the late 1830s, after mortgaging his land to finance his sons' failed farming ventures in the Port Phillip District. He had to sell his land to repay the debts, but leased it back from the new owner, and with one of his sons, he continued to farm it as a tenant, until he died aged in his eighties.⁸⁹

The men elevated to the magistracy by Arthur had acted as his agents to exert control over the convict men and women working in the district. Arthur chose these men because they were respectable, wealthy and had farms that were strategically situated so that the whole district could be closely controlled. It is less clear why all of them

⁸⁵ *Courier* 25/3/1842, also cited in William Gray, *Wayne Index*, AOT. Gray offered Rockford for sale as he intended leaving the colony. It consisted of 2560 acres free of quit rent and 2560 acres adjoining that was clear of quit rent and an additional 640 acres adjoining with large deposits of limestone that was purchased. Also 2 grants consisting of 400 acres on St Pauls River and 2560 acres in 4 lots near Heaney's farm, with the Elizabeth River running through. See also *Murray's Review* 17/5/1843, as cited in William Gray, *Wayne Index*, AOT. On 17 May 1843 Gray sold up for 17/6 acre due to the economic depression.

⁸⁶ Statham, *The Tanner Letters*, p.84. The Viveashes were critical of Sutherland's farming skills and application to the task. Ellen claimed he preferred to spend his time on his duties of Coroner and Inspector of Breweries. For a different view, see also Anne McKay (ed.), *Journals of the Land Commissioners for Van Diemen's Land 1826 – 1828*, facsimile edition (Hobart, University of Tasmania, 1962), pp. 79-86. The first surveyors who inspected Sutherland's farm noted how astute he was at acquiring control over Crown land bordering his grants.

⁸⁷ *Examiner*, 24 Nov 1855 as cited in J C Sutherland, *Wayne Index*. AOT. Paper reported Sutherland was offering Rothbury farm of 3469 acres for sale as he was returning to England.

⁸⁸ Roe, *Quest for Authority*, p.81. "Transient money seekers" according to Roe were scorned especially by the native born in New South Wales. However there are many examples of them from the first fleet onwards in both colonies. For them, the harsh physical and social conditions of the colony were less appealing than England, where they returned as soon as they had enough money to live there comfortably.

⁸⁹ William Wood, *Correspondence Folder*, AOT. A typed copy of a letter to his cousins dated 20 August 1858.

accepted the governor's commission, especially those younger men, who in other ways had indicated their support for the social and political changes sweeping Britain. Was it to gain pecuniary advantages from the governor? Or elevate themselves to be amongst the first citizens of the district? Or because of a sense of public duty? Regardless of their personal reasons for accepting their commissions, they effectively found they could exercise little personal power as Arthur's machinery of justice enclosed them as tightly as it did the convict defendants in the courts. Their freedom lay in their ability to make and retain wealth.