

*Duplicate*

*Van Diemen's Land  
Government House  
28<sup>th</sup> September 1848*

*No. 195*

*Executive*

*My Lord,*

*I have the honor to acknowledge the receipt of Your Lordship's Despatch No.66, dated 27<sup>th</sup> April 1848, detailing the views of Her Majesty's Government on the subject of the system of punishment to be adopted as regards offenders sentenced to Transportation.*

*Your Lordship at the close of the Despatch observes "We are far from supposing that upon this most difficult subject after so many attempts to contrive effective methods of punishment, and it is painful to add so many failures we are likely to have yet succeeded in devising a system which does not still require very great improvement. On the contrary we are fully sensible of the need there will be of such improvement and we shall be most anxious to receive any suggestions for effecting them which your experience and observation may enable you to offer.*

*Your Lordship having thus authorized me to offer an opinion on the subject I will proceed to consider the plan as detailed in Your Lordship's Despatch, pointing out what is likely to be its operation upon these Colonies and offering such suggestions as will I think be likely to make the measure more effectual when considered with reference to the Interests of the Prisoners themselves, of the Mother Country from whence they are removed, and those Colonies where they are to pass the remainder of their existence.*

*The Plan, as stated in Your Lordship's Despatch appears to be as follows:—*

*All offenders who have rendered themselves liable to the punishment of Transportation are to be subjected for a certain period to a system of separate confinement.*

*After being released from this, all those the length of whose sentences does not exceed seven years are to be at once or very shortly transmitted to Van Diemens Land, as holders of Tickets of Leave. Others whose sentences are of longer duration will be retained in England, or at Gibraltar or Bermuda and employed upon Public Works, a system of encouragement being held out to them by the adoption of Task work. At the expiration of half the period of their sentence they will also be sent to this Colony as holders of Tickets of Leave.*

*There is however a condition attached, namely that the Convict in consideration of the Indulgence of a Ticket of Leave should be called upon to repay to the Home Government the expense incurred in sending him to the Colony and the grant of a Conditional Pardon is to be made contingent upon the repayment of this sum.*

*With a view to the benefit of the Convicts themselves and also of the Colony, it is proposed that the Wives and Children of the Convicts should be sent out to join them, on condition that half the cost of their conveyance be provided either by their friends or the Parishes to which they belong, or else by being taken as an advance to be repaid by the Convicts on the same terms as the debt incurred by their own removal, the remaining half of the expense will be defrayed from the Funds applicable to free Emigration.*

*It is also proposed that certain measures should be taken with the view of maintaining a current of free Emigration to the Colony sufficient to neutralize the evil effects of a continuous accession of persons who have incurred the sentence of Transportation—the Funds for this purpose being provided partly by the payments made by the Ticket of Leave holders for their passage out of the Land Fund of the Colony.*

*This I believe to be a correct outline of the scheme as proposed by Her Majesty's Government, the objects of which I assume to be first the punishment of offenders not as a retribution for the offences committed, but as an example and warning to others. Second the reformation of these offenders. Third their expatriation, and removal to this Colony, which may be looked upon partly as a means of punishment partly of reformation, but the main object of which is to get rid of men who from their habits and connections may in all probability become burthensome to Society in the Mother Country, while in*

*these Colonies where their labour is valuable they will be removed from many of the temptations to offend which would meet them at every step at Home, and be placed in positions to earn an honest livelihood, should they feel inclined so to do.*

*First, then, as to Punishment.—*

*There is no plan which has yet been devised which operates so efficiently as an example as the Separate system more especially when carried out to its full extent, not merely as a punishment for the more serious description of Offences, but for all those minor breaches of the Law to which Imprisonment with or without hard labour is now awarded. In these the example comes fully into operation, for the offender after having undergone his two or three months separation goes out of Prison and communicates to his fellow the nature of the punishment he has received, and its effects upon himself.*

*When, however, the system is brought into operation as a punishment for Crimes of a deeper die, it loses some of its efficacy, inasmuch as it cannot be continued long enough to satisfy justice and must necessarily therefore be conjoined with punishment of a less efficient character. When combined with Transportation for instance the friends and fellows of the offenders are apt to look upon the whole as merely a sentence of expatriation.*

*It is therefore desirable that the punishment or what may be intended as such should not cease on the release of the Convict from Prison, that Transportation should not be looked upon as a banishment which hundreds and thousands in England would gladly undergo, but that it should be accompanied in all cases with such restrictions upon the Convicts liberty of action as may make him feel and make his friends sensible also that his Punishment is not over when he lands in the Colonies.*

*This it is proposed to effect to a certain extent by retaining the Convicts at Home or sending them to Gibraltar or Bermuda, and compelling them to labour on the Public Works. To this no objection can be made, and if the labour be carried out upon a good system, there can be no doubt both of its efficiency as a means of punishment, and also to a certain extent of reformation.*

*With respect to certain classes of Convicts, however, namely those sentenced for seven years, it is proposed to do*

*away with this portion of the punishment, and these who form by far the largest proportion of the men sentenced to transportation escape with a short confinement at Pentonville or elsewhere, and are then to be sent out with a Ticket of Leave to this Colony avoiding thereby a residence in the working gangs for upwards of three years.*

*I would submit therefore that the Penal portion of the measure is deficient as regards these men, who will be placed on their arrival in the Colony in a position little if at all inferior to that of the free Emigrants who are to be sent out by the Government, practically indeed the position of the convict will be the best of the two, for he as in all probability a single man, or at all events not burthened at the time with a wife and children will most assuredly find his labour more in request than that of the free Married Emigrant.*

*Your Lordship is hardly aware of the extent to which the preference of the single to the married prevails among the Settlers both here and in New South Wales. I regret the existence of the feeling as leading to many and great evils, but it is my duty to lay the fact before Your Lordship, as it is one which must have a very great influence upon the social condition of the labouring classes in these Colonies.*

*The second object contemplated is the reformation of the offender. Here again no system that has yet been devised can compare with the separate system for breaking down evil habits leading a man to think upon his past life, and sowing seeds which may perhaps produce good fruit hereafter, but I am still of opinion as I expressed to Your Lordship in my Despatch No.83 of the 10 July 1847, that to return a man into the Labour Gangs after he has undergone the preparatory course of moral training is in point of fact to neutralize most of the good effects of the system.*

*It would be more advisable as far as the reformation of the Prisoner is concerned to send him immediately on his conviction to the Gang paying of course every attention to him while he is thus employed, and at the expiration of this portion of his sentence, however the duration of it may be decided, to subject him to a period of separate treatment, and after that to expatriation, than to reverse the earlier periods of his punishment by placing the Imprisonment first, and the labour second.*

*It is the full conviction of the evils which are necessarily consequent upon the congregation of men, especially of such men in large Gangs which leads me to doubt the policy of adopting a measure of this kind as part of a reformatory system. No means which it is possible to employ, having any consideration to the expense entailed by them, will be adequate to prevent the contamination of the young offender by his hardened and reckless companions, no system of classification which can be adopted is sufficient to meet and remedy this, the necessary evil of the system. I have looked to the arrangements proposed by Colonel Jebb and I find that they are similar to those which have been adopted in this Colony, and which were found ineffective. I speak however of this as part of a system of reformation, for which purpose I think it unsuited, but as a portion of the punishment of the offender it may be made very effective.*

*I have read with every attention the letter of the Reverend Godfrey Kingsford which was enclosed in Your Lordship's Despatch. It is the production of a good, earnest and zealous man impressed with a proper sense of the responsibilities of his position, but Your Lordship must be aware that when the Reverend Gentleman demands that the Officers and Overseers should be Christian indeed examples of Godliness,—a terror not to the good but to the evil only—regular communicants from conviction not constraint, from sincerity, not expediency above all not easily provoked, prompt to detect a fault, and strict yet “humane in correcting it” and at the same time that they should be “refined in mind and of gentlemanly Deportment,” he demands an impossibility. These qualities are not such as can be ascertained except by long and intimate acquaintance with the individuals, and it would be a hopeless task for any one to be called up on to select a number of men so qualified, and a still more hopeless task to attempt to persuade them to accept employment of the kind in question. Any arrangements, therefore, which might be attempted with a view to the reformation of the Convicts must be of such a nature as to allow of its being carried out by men of ordinary qualifications.*

*I look forward, I confess, with my little hope to the result of the experiments which are making for the reformation of Offenders.*

*When we call to mind the difficulties which meet us at every step when we attempt to correct the evil habits of the Boy at School such habits I mean as are abhorrent to the feelings of the Society in which he lives, as for instance lying and theft. When we recollect how very rarely a change takes place for good, how can we expect that when the boy becomes the man when the evil influences which have operated upon him for years have engrained his vices upon him till they have become part of his nature, he will yield to reasons or influences which were so ineffective while he was young.*

*Any attempt to induce men to amend their lives or alter their habits by a relaxation of punishment consequent upon such a change will produce hypocrites innumerable but scarcely one true Penitent. I should strongly object therefore to anything which tended to diminish the terror by which punishment must act, to be punishment, to any frittering away in the shape of bribes for good behaviour of the only effective check which we possess upon Crime.*

*The Separate System is effective—most effective—as a punishment from the very dread which it inspires. It is also an efficient Agent in reforming offenders. It would be wise therefore to adopt it, and to extend its operation as much as possible, but we ought not on the plea that an offender may have thrown off his evil habits in the Cell, and[?] let him loose upon Society again as a reformed man until he has undergone the full sentence which the Law has inflicted upon him.*

*Let the man be placed in Gangs, and the full amount of labour which they are capable of performing be exacted from them by a well managed system of Task work, by this a positive and effective punishment will be inflicted upon most of those who are likely to subject themselves to such a state of things, for it is the incorrigibly idle that are generally thieves and breakers of the Law in other ways.*

*Let the Convicts be transported to these Colonies where a demand for their labour exists, the Mother Country will then be relieved from their presence, and they will be placed in situations where temptation will not so readily assail them as at Home, but when all this has been done, we must not expect to see a change in the character of the men, they are placed in very different circumstances to those under which their habits were formed, the temptations to which they are subjected are*

*fewer and weaker, but when a sufficient temptation is presented to them, they will in nine cases out of ten yield to it as before.*

*It will be found I believe on reference to the records of crime in this country that (as a general rule) the offences which the convicts commit in this Colony are similar to those for which they were transported. The thief still steals, the burglar remains a Burglar, the man transported for offences of violence against the person still is found liable to commit the same offence here.*

*I have directed a Return to be prepared which will shew to what extent this is the case, and I forward it herewith.*

*The inference I should draw from this, combined with the results of my observation during the long period which has elapsed since the subject of Convict discipline and management were brought under my notice, is that although individual instances of reformation do sometimes occur, they are exceptions and rare exceptions to the general rule, and that the Crimes for which those who do repent and amend their lives have been transported may be said to consist more of breaches of legal enactment than of those great moral Laws which prevail in all Countries, whatever may be the form of Government or the constitution of Society.*

*The Third object which Her Majesty's Government propose to themselves is the expatriation of the Convicts who have been sentenced to transportation. I have already alluded to this as forming a part, both of the system of punishment, and reformation, the only question which it would appear desirable to discuss here is the mode in which this Expatriation should be carried out so as to make it most effective as a means of attaining these objects, and most conducive to the interests and prosperity of the Mother Country, and these Colonies to which the Convicts are to be sent.*

*The plan as detailed in Your Lordship's Despatch is that the Convicts after undergoing a certain portion of their punishment at Home should be sent out to Van Diemen's Land as holders of Tickets of Leave, that they should be compelled to set aside a portion of their earnings in order to repay to the Government the cost of their passage to the Colony, as well as a portion of the passage money for their Wives and Children should they be married.*

*The position of a Ticket of Leave holder approximates very closely to that of a Free man. He has the power of*

*employing himself in any manner he may choose. He can hold personal property. The limitations on his right of free Agency are as follows:— He must let the Police know the place of his residence. He is subject to the summary jurisdiction of the Magistrattes. He cannot hold real property and he is liable to have his indulgence revoked by the Lieutenant Governor in case of misbehaviour.*

*All these limitations, however are practically of little effect upon the man who is disposed to labour industriously, and they can therefore hardly be considered as operating much as an enhancement of the punishment of Transportation, or as placing the Ticket of Leave holder in so much worse a position than the free man as to justify the Government in defraying the cost of the transport of the one, and not of the other.*

*It would be in every way better that the convict should be sent out to this Colony in the condition of a Passholder, that is, of a person who having earned a mitigation of his sentence by his industry and good conduct is now allowed to employ his industry to a certain extent for his own benefit, by being employed by a Master for wages, and I should strongly recommend that the Passholder while serving that portion of his sentence should not be allowed to change his Master, but should be apprenticed or assigned for the whole period of his compulsory service to the same master. There are objections, I am aware, to this arrangement, but they are such as could easily be obviated—the authorities would of course be empowered to step in between the servant and his Master when any just cause of complaint was apparent, and under no circumstances should the power of the Master over the indented servant extend beyond the original period of assignment, no extension of sentence should be allowed to lengthen the period of compulsory service to that Master, by this arrangement one of the main objections to the system will be removed.*

*The present system which allows men to be hired for periods in no case exceeding 12 months is very injurious both to the men and the Master, and causes I think a great expense to the Government. The men are indifferent as to the mode in which they perform their work—they care not about pleasing their Master. The Master is unwilling to waste time and pains in teaching the men who by the time they have just learned to make themselves useful will be able to leave their situations and*

*to make the most of their newly acquired knowledge or skill elsewhere. The Government has to support the men who are not employed, and although at certain periods of the year it may be that more men are cleared out of the Depôts being hired for temporary purposes, than would be the case under the proposed system, yet I am convinced that many more men would be permanently hired and placed therefore in situations more favorable to the development of any good qualities they may possess, could the master depend upon retaining their services until they might obtain their Tickets of Leave.*

*With regard to the proposal that these Ticket of Leave holders should be compelled to pay a portion of their earnings to the Government in order to defray the cost of their passage out, and that no Pardon should be issued to them until they had paid this debt, I beg to observe that such a regulation could not be enforced as a general rule. Some few Convicts might be found who, rather than drag out the full amount of their sentence with the modified amount of freedom enjoyed by the Ticket of Leave holder would be willing to pay over a portion of their earnings to the Government, but the number of them would be few especially among the Convicts sentenced for Seven years, who form the large majority. These men would in most instances prefer remaining as Ticket of Leave holders till they became free by servitude, to laying by so large an amount of their earnings for such an object. The cost of transporting a single man may be stated roughly at £20, his wages as a common labourer in this Colony would not on an average exceed 12/- a week, out of which he would have to clothe, feed and lodge himself, or should he be hired by a Master who would feed and lodge him his wages would amount from £9 to £12 a year, out of which he would have to provide clothes and any little gratification he might feel disposed to allow himself. It is evident that many years would elapse before he would be able to lay by sufficient to allow him to claim his Conditional Pardon.*

*The practical effect of this regulation would be to retain in the Colony for the whole period of their sentence by far the greater number of these men, thus preventing them from seeking a market for their labour in the other colonies and checking that natural tendency to the equalization of the price of labour which has operated so beneficially for the last two or three years.*

*The complaints of the Colonists would be reiterated and with justice, for a large sum might be extracted annually from the Colony for the purpose of paying for the importation of labour of which it would be already in possession and a glut would be created in the market which could not be remedied but by the emigration of all the free labour.*

*I would submit that a preferable arrangement would be that the Home Government should secure the amount of the cost of transporting the offender by arranging the system of labour in the Gangs at Home in such a manner as to hold out Transportation as a Reward to industry and good conduct, or to speak more correctly as a step in the road to freedom, only to be gained by the exercise of these qualities.*

*This might be done by the introduction of a system of Task work, which the Task should be so arranged as to allow a maximum amount of gain to the extent of half a day. By placing a money value upon the days task, sufficient at least to cover the cost of the maintenance and superintendence of the Prisoner, taking care of course that this should in no case exceed the cost for which a similar amount of work could be performed by free people, by crediting the Convict with the value of the time he has gained it may be expected that in the course of 18 months or two years the will if industrious have earned sufficient to pay the expense of his passage to these Colonies, and under ordinary circumstances no Convict would remain it is to be hoped longer in the Gangs than three years.*

*The Government would thus be relieved from the cost of their maintenance and from that of their removal to this Colony for they would have received a full equivalent in labour for the amount of the outlay for these purposes.*

*I have now considered all the details of the Scheme as laid down in Your Lordship's Despatch with reference to certain considerations which I have assumed to be those which induced Her Majesty's Government to bring it forward. It remains now that I should consider it in relation to its operation upon the great question of the distribution of labour in these Colonies.*

*The facility of communication between the different Australian Colonies is so great even now and the means of transport from one to the other are increasing so rapidly as to render it absolutely necessary that in any arrangement which*

*may be attempted for supplying the increasing demand for labour, these Colonies should be looked upon as a whole.*

*In my former Despatch No.83, dated 10<sup>th</sup> July 1847 I called Your Lordship's attention to the position in which this Colony stood with regard to New South Wales and South Australia and I pointed out the injury which would be done to Van Diemen's Land, and the Australian Colonies generally were a supply of labour amounting to nearly 4,000 adults per annum suddenly withdrawn from the Market. The suggestions in that Despatch were based upon the idea that the only Colony to which Convicts could be sent was Van Diemen's Land, and I therefore proposed that the whole of the Convicts should be forwarded here first, leaving the other Colonies to draw off their supply of emancipated Convicts by the operation of higher wages and other inducements.*

*I see now, however, that the Legislature of New South Wales has adopted a proposition submitted to it, by Your Lordship that Convicts should be forwarded to that Colony upon conditions similar to those enumerated in Your Lordship's Despatch namely that their wives and children should be sent out with them, or after them, and that an equivalent number of free Emigrants should be forwarded at the same time.*

*The whole state of things is altered by the adoption of this Scheme.*

*The demand for labour is very great in New South Wales, the prices which the Settlers are now paying are such as to absorb a large proportion of the profit of their Capital.*

*Capital, therefore, no longer flows into that Colony as it used to do, and great distress exists among the Land holders, with us this is not the case, though were emigration to continue from hence at the same rate at which it has done for the last few years, a similar state of things would be produced.*

*An importation of labor whether Convict or free into New South Wales would bring down the price of labour there, would create a more wholesome state of things as regards the relation of Masters and servant, would induce a flow of capital into the Country and promote in every way its prosperity.*

*As regards this Colony the effect would be to check the Emigration from hence for as soon as the price of labour was reduced in New South Wales, the temptation held out to persons to leave this Colony would cease.*

*I would submit therefore to Your Lordship that it would be desirable to forward all the Convicts under whatever name they may be transported, whether Passholders or Ticket of Leave holders at once to New South Wales, and to continue this until the rate of labour in that Colony is reduced nearly to that which prevails here.*

*We have at present sufficient labour to answer our purposes, and the natural advantage of Climate, and the artificial advantage of better means of communication which we possess will be sufficient to enable us to participate in all the benefits which would by this measure be conferred upon the Sister Colony.*

*What I wish most particularly to impress upon Your Lordship is the necessity of looking upon these Colonies as one great whole, with reference to this subject.*

*Should the supply of labour under the arrangements proposed above, cause a glut in the market of New South Wales (an occurrence not likely to happen, for, as I have elsewhere pointed out to Your Lordship, there is even now an annual demand for additional labour to a greater amount than all the convicts in England can supply) this Colony and South Australia are at hand with an increasing demand to carry off the surplus, and the emigration of free labour could not be sufficient in amount to alter the proportion in New South Wales between the Bond and the Free to an injurious extent as has been the case in this Colony.*

*There is one more point mentioned in Your Lordship's Despatch to which I am called upon to allude.*

*Your Lordship says it is intended that "the claims of the British Treasury to the Revenue derived from the sale of Land in return for the annual grant by Parliament for Police and Gaols should be abandoned, so that a part of the produce of these Sales may again become available for emigration, but as at first there can be little or no receipts from these Sources, Parliament will be asked this year to provide the funds necessary for sending out a certain number of free Emigrants to Van Diemen's Land."*

*I rejoice to hear that Her Majesty's Government have decided to make this concession which will be most favorably received in this Colony, but I would observe to Your Lordship that to forward free Emigrants to Van Diemen's Land while the*

*price of labour in the market of New South Wales and South Australia is so much greater than it is here, would be merely to make this Colony a stepping stone to the others, and to spend the Land fund of this Colony in providing labour for New South Wales.*

*It is true that were the Land funds amalgamated so as to form one general fund applicable to Emigration (such portions of the proceeds I mean as it is intended to devote to such a purpose) there would be less reason in the objection, but at present such a disposal of the Funds would be looked upon as tantamount to a present to the other Colonies. We shall require but little extra labour this year, especially if, as I anticipate, a large emigration from the United Kingdom to New South Wales is to take place.*

*I would therefore suggest that such arrangements should be made with regard to those Emigrants who may be sent to this Colony as will leave it in my power to decide whether or no they should be landed here or sent forward to New South Wales, and that the Land fund of this Colony should only be charged with the expenses of those who are actually landed here.*

*As soon as the price of labour is by immigration or any other means brought to a level in all the Colonies it will then be time to consider whether or no it would not be advisable to apportion a certain amount annually from the proceeds of the Land Fund of each Colony to keep up a steady influx of free Emigrants sufficient to counterbalance the injury which would arise were we left solely dependent for labour upon a Convict population.*

*I am convinced that much injury has been done in New South Wales to the character of the working Class by the very high wages which every man has been able to procure.*

*The price of food is very low, the Climate requires but a small outlay for clothing, fuel &c, so that man can provide all the necessaries of life with a very small amount of labour, thus a general habit of indolence prevails all work is done in a slovenly manner, and the contrast between that Colony and this is very striking in these respects, though even here we have nothing to boast of. The remedy for this is to reduce the cost of labour to bring it to a nearer relation to the cost of the necessaries of life, which can only be done by pouring in a steady supply commensurate with the demands occasioned by the rapid*

*development of the Agricultural and Commercial interests of the Colonies.*

*It is not necessary that I should make any allusion to the treatment of the female Convicts. In Your Lordship's Despatch it is proposed to send them to the Colony as holders of Ticket of Leave. Should this plan be carried out the Probation System on board the Anson will be at an end that expensive and I may say worse than useless Establishment will be broken up for which I trust in a very short time to receive authority from Your Lordship.*

*I have entered very fully into all the points of this most important question, and have extended the Despatch to a greater length than I had originally contemplated, but I have been induced to do so by my wish that Your Lordship should be in possession of the fullest information both as to facts and opinions which it is in my power to afford.*

*I have the honor to be,*

*My Lord,*

*Your Lordship's most obedient,*

*humble servant,*

*W Denison*

*Right Hon<sup>ble</sup>  
Earl Grey  
&c &c &c*