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# Counting and Coding the Magistrates: A Report on a Project to Identify the Justices of the Peace of Van Diemen's Land, 1804-1860 <sup>1</sup>

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Between 1804 and 1860, the Justices of the Peace (JPs) of Van Diemen's Land (Tasmania from 1856) were the mainstay of local administration and the key arbiters of lower-level justice and convict discipline. As in Ireland, England and Wales, they were entrusted with an extensive array of responsibilities and wielded significant power over the island's fledgling communities, emerging as the most complicated and controversial agents of colonisation. And yet, despite their instrumental role in colonial society, the JPs remain incomprehensively identified and understudied. With a few notable exceptions, most Vandemonian magistrates have received little more historical attention than a brief entry in the *Australian Dictionary of Biography* or passing mention in histories concerning other aspects of the Tasmanian past.<sup>2</sup> Some have been recovered in local histories or in the research of family historians. Only a few have been the subject of full-length biographies or are immortalised through the publication of their own writing.<sup>3</sup> Otherwise, most Vandemonian magistrates have disappeared from memory, and overall they seem, with some notable exceptions,<sup>4</sup> less studied than their New South Wales counterparts.

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<sup>1</sup> D. A. Roberts and M. H. Strike, 'The Magistrates of Van Diemen's Land, 1804-1860: Identified, Counted and Coded', Research UNE Dataset, 3 December 2021, DOI: 10.25952/8jrs-zq37 <<https://hdl.handle.net/1959.11/32412>> (11 December 2021).

<sup>2</sup> To date, at least 216 of the Van Demonian magistrates are the subject of an ADB entry, according to Trudy Cowley from Digital History Tasmania. Magistrates feature in convict studies such as T. Dunning and H. Maxwell-Stewart, 'Mutiny at Deloraine: Ganging and convict resistance in 1840s Van Diemen's Land', *Labour History*, No. 82, 2002, pp. 35-47; H. Maxwell-Stewart and M. Quinlan, 'Voting with Their Feet: Absconding and Labor Exploitation in Convict Australia', in M. Rediker, T. Chakraborty and M. van Rossum (eds), *A Global History of Runaways: Workers, Mobility, and Capitalism, 1600-1850*, California, 2019, pp. 156-177.

<sup>3</sup> For example, R. Knopwood, 'Diary of Robert Knopwood, Van Diemen's Land, 1805-1808', University of Tasmania Library Special and Rare Materials Collection, Australia; A. W. H. Humphrey, (J. Currey ed.), *A Voyage to Port Phillip and Van Diemen's Land with Governor Collins*, Malvern (Vic), 2008; H. M. Hull, *The Experience of Forty Years in Tasmania*, London, 1859; E. Robin, *Swanston: Merchant Statesman*, North Melbourne (Vic), 2018.

<sup>4</sup> Notable exceptions include A. C. Castles, *Lawless Harvests or God Save the Judges: Van Diemen's Land 1803-55: A legal history*, S. Petrow (ed), Melbourne, 2007; M. C. Dillon,

This article reports on our efforts to compile a complete list of every individual commissioned as a JP in Van Diemen's Land between 1804 and 1860. The temporal span of our data incorporates the very first commissions issued during the establishment of the initial settlement on the River Derwent in early 1804, and takes in the several years following the cessation of transportation to Van Diemen's Land in 1853. The choice of 1860 as the end date is largely arbitrary, although it does align with other existing datasets, derived from gazetted absconding notices for example (by Digital History Tasmania). The timeframe also reflects emerging research priorities which include a desire to examine possible changes in the composition and behaviour of the magistracy in the post-transportation years. The list can easily be extended beyond 1860, using the method explained below. The successful and (we believe) complete identification of all of the magistrates commissioned in this period — 734 in total — has allowed for the dataset to be coded, with each individual given a unique identifier (UID) number which also captures the commissions in chronological sequence. We submit this as the authoritative and universal coding system for the purposes of future data analysis and record linkage, beginning with the accelerating research being undertaken jointly by the University of New England and Digital Histories Tasmania.

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The establishment of a magistracy vested with extraordinary and wide-ranging authority was one of the defining features of the convict settlements of early Australia. Their powers, as one Governor put it, 'would certainly be out of place in any but a Slave Code'.<sup>5</sup> Initially, on the founding of New South Wales in 1788, commissions were given to the colony's three most senior administrators — the Governor, the Lieutenant Governor and the Deputy Judge Advocate, the 1787 Charter of Justice giving them 'the same power ... as Justices of the Peace have within that part of the Great Britain called England'.<sup>6</sup> By the same authority the Governor was empowered to appoint additional

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'Convict labour and Colonial Society in the Campbell Town Police District, 1820-1839', PhD thesis, University of Tasmania, 2008, which thoughtfully considered the background of the Campbell Town magistrates and their role in controlling a local convict workforce in which they themselves had a stake.

<sup>5</sup> Bourke to Stanley, 15 January 1834, *Historical Records of Australia*, Series 1, Vol. 17, Sydney, 1923, p. 323.

<sup>6</sup> New South Wales Charter of Justice, 2 April 1787, State Records New South Wales, <<https://www.foundingdocs.gov.au/item-sdid-70.html>> (4 June 2021).

JPs, and to dismiss them — powers which soon precipitated some the greatest power struggles and controversies in the early history of New South Wales. As new settlements emerged outside of Sydney, more civil officers were made magistrates, especially at Parramatta and on the Hawkesbury, and on Norfolk Island. Before long, most aspects of local administration were entrusted to magistrates, including the administration of the constabulary and the maintenance of good order and discipline amongst convicts. Magistrates thus quickly became one of the most formidable powers in the colony, and frequently the most despised.<sup>7</sup>

While the magistrates accumulated a wide variety of powers and responsibilities, they are best remembered for the summary jurisdiction they exercised over the colony's convict population. Although there was no explicit directive to establish a lower-tier court in New South Wales in the foundation period, a 'Judge Advocate's Bench' began operating immediately on the mainland within weeks of the arrival of the 'First Fleet'. It was intended, according to David Collins, to 'examine all offences committed by the convicts, and determine on and punish such as were not of sufficient importance for trial by the criminal court'.<sup>8</sup> In Van Diemen's Land, from 1804, magistrates took on a similar role, although there, in the early decades, the sheer distance from the superior court in Sydney obliged the magistrates to take an even greater role in adjudicating high-level offences, including some which in law might have attracted much harsher sentences. That suboptimal arrangement was noted on many occasions, not least by a former Vandemonian magistrate giving evidence before George Eden's House of Commons Select Committee on Transportation in 1812. That was not addressed until a local Supreme Court was established in 1824.<sup>9</sup>

However, in effect, both before and after 1824, magistrates in Van Diemen's Land (as in New South Wales) dealt with both a wide range of poorly-defined 'convict offences' — drunkenness, absconding and

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<sup>7</sup> D. Neal, 'Law and Authority: The Magistracy in New South Wales, 1788-1840', *Law in Context: A Socio-Legal Journal*, Vol. 3, 1985, pp. 45-74; D. A. Roberts, 'Masters, magistrates and the management of complaint: The 1833 convict revolt at Castle Forbes and the failure of local governance', *Journal of Australian Colonial History*, Vol. 19, 2017, pp. 57-94.

<sup>8</sup> D. Collins, *An Account of the English Colony in New South Wales*, Vol. 1. London, 1798, p. 13.

<sup>9</sup> Evidence of Edward Lord, *Report from the Select Committee on Transportation*, London, 1812, p. 79.

indecent language for example — and more serious crimes that ought to have been adjudicated in a superior court. Over time, these tiers of magisterial jurisdiction became blurred. Parliament's 1823 Act for the Better Administration of Justice in New South Wales and Van Diemen's Land, which formalised and 'materially enlarged' the powers of magistrates through the establishment of Courts of Quarter and General Sessions, did little to solve the confusion. Indeed, the Act of 1823 has been identified as generating immense legal confusion and heavy doses of injustice, especially around magisterial sentencing practices involving colonial penal stations.<sup>10</sup>

The first JPs appointed in Van Diemen's Land from 1804 were intended to assist the Lieutenant Governor in all aspects of local administration, including convict discipline. The first three — George Prideaux Harris, Reverend Robert Knopwood and William Sladden — were commissioned 'to be His Majesty's Justices of the Peace for the Island of Van Diemen & Islands lying in Bass's Straits' at the request of Lieutenant Governor David Collins in March 1804.<sup>11</sup> Within twenty years, another forty individuals were commissioned, appointed or at least nominated by the Lieutenant Governor, with precepts issued by the Governor in New South Wales. There was some confusion over who could make these appointments. At one point, in 1814, as the island authorities battled a serious law and order crisis generated by the Howe gang, Governor Macquarie demanded that no more JPs be appointed without his approval.<sup>12</sup> Occasionally the Justices were given a limited jurisdiction; for Port Dalrymple and the County of Cornwall in northern Tasmania, for example, or for Buckinghamshire County, or Macquarie Harbour in the case of the founding Commandant of the penal settlement, Lieutenant John Cuthbertson in 1821.<sup>13</sup>

From 1827, when Lieutenant Governor George Arthur established his police system, some stipendiaries were commissioned as Police Magistrates or Assistant Police Magistrates, each to a specific Police District, these individuals usually being commissioned separately as JPs.<sup>14</sup> Previously, from at least 1818, there had been Superintendents of

<sup>10</sup> This was noted, for example, in Gellibrand to Arthur, 29 May 1824, *Historical Records of Australia*, Series 3, Vol. 5, Sydney, 1922, p. 241.

<sup>11</sup> Government and General Orders, State Records New South Wales, SZ992, p. 25.

<sup>12</sup> Macquarie to Davey, 18 August 1814, *Historical Records of Australia*, Series 3, Vol. 2, Sydney, 1921, p. 65.

<sup>13</sup> *Hobart Town Gazette and Van Diemens Land Advertiser*, 8 December 1821.

<sup>14</sup> S. Petrow, 'Policing in a penal Colony: Governor Arthur's Police System in Van Diemen's Land', *Law and History Review*, Vol. 18, No. 2, 2000, pp. 351-395.

Police: in Hobart Town the long serving JP, A. W. H. Humphrey,<sup>15</sup> and from 1822 Peter Archer Mulgrave at Port Dalrymple, who was appointed to the post shortly after being commissioned as a JP by the Governor of New South Wales.<sup>16</sup> These roles involved extra responsibilities undertaken 'in addition to their ordinary duties as Justices of the Peace', including the control of the constabulary and the daily hearing of complaints brought before them.<sup>17</sup> At least some of the early Lieutenant Governors also acted as Justices of the Peace, as did the colony's first Deputy Judge Advocates, beginning with Samuel Bate who was appointed to the magistracy after landing in Hobart Town without a patent authorising him to administer a higher court of record. While Bate appears to have had little if any role in the administration of justice and discipline (he was dismissed and departed the colony in 1814) but his successor, Edward Abbott, became an active and controversial figure in that regard. Our research has identified him as being involved in at least 306 cases with the Hobart Bench between December 1815 and December 1821, many resulting in the removal of convicts to the mainland penal settlement at Newcastle.<sup>18</sup>

Some magisterial powers were also, from 1826, vested in the Principal Superintendent of Convicts. Local legislation — in fact the first ever act of the new Legislative Council of Van Diemen's Land — gave that officer the same summary powers over convicts under sentence of transportation as were exercised by JPs.<sup>19</sup> It was soon determined that those extra powers were 'conducive to the discipline of the convicts'.<sup>20</sup> A later Act, in 1827, gave the Commandants at Macquarie Harbour and Maria Island the same powers to punish convicts under a colonial sentence of transportation.<sup>21</sup> As defined by a New South Wales law of 1825, these authorities could issue 'moderate

<sup>15</sup> *Hobart Town Gazette and Southern Reporter*, 24 January 1818.

<sup>16</sup> *Hobart Town Gazette and Van Diemens Land Advertiser*, 17 August 1822.

<sup>17</sup> *Ibid.*, 6 May 1826.

<sup>18</sup> M. H. Strike, "'Kind fortune set me free': The Penal Relocation of Convicts from Van Diemen's Land to Newcastle, 1815-1821", BA Hons thesis, University of New England, 2019.

<sup>19</sup> *An Act For The Summary Punishment Of Disorderly Conduct In Female Offenders ... And For Vesting In The Principal Superintendent Of Convicts The Like Powers And Authorities As Are Given To The Several Justices Of The Peace*, 1 August 1826 (7 Geo IV, No. 1).

<sup>20</sup> Arthur to Attorney General, 25 April 1828, Letter Book of Lieutenant-Governor's Correspondence addressed to Crown Law Offices, Tasmanian Archives, GO55, p. 41.

<sup>21</sup> *Act for the Transportation of Offenders from Van Diemen's Land*, 21 September 1827 (8 Geo 4, No. 4).

punishments' such as time of the treadmill, flogging up to fifty lashes, solitary confinement or confinement with hard labour.<sup>22</sup> At the time the 1826 Act was passed, the Principal Superintendent of Convicts, since his appointment in July 1820, was John Lakeland, who was likely involved in sentencing convicts between 1826 and 1828, especially women confined the factory and men in public works and chain gangs.<sup>23</sup> But Lakeland was not, to the best of our knowledge, formally commissioned as a JP before he died at Pittwater in November 1828.<sup>24</sup> His replacement, James Gordon, on the other hand, had been a long-serving JP, since 1814 when he had arrived in Hobart Town as the Naval Officer. He was later the Police Magistrate at Launceston, and then at Richmond until his resignation/removal amid suspicions of embezzlement in early 1832.<sup>25</sup> Thereafter, Principal Superintendents of Convicts, like Josiah Spode, were commissioned as magistrates before assuming the position of Principal Superintendent, or, like Roger Henry Woods, were commissioned simultaneous to taking the appointment.<sup>26</sup> Woods, like Gordon before him, was ignominiously removed from the position after a short term.<sup>27</sup>

But overwhelmingly the JPs were laymen, based in their local district but with a jurisdiction over the entire island of Van Diemen's Land (Tasmania from the beginning of 1856) and its dependencies. As such, there were frequent interventions from the local legislature to define and regulate their powers. In 1828 for example, a local Act was required to prevent the 'inconveniences' that were arising from imperfect proceedings among magistrates in the interior, especially in relation to summonses, fines and appeals, which canny lawyers could

<sup>22</sup> *Male Convicts Punishment Act*, 8 February 1825 (6 Geo.4 No. 5).

<sup>23</sup> *Colonial Times and Tasmanian Advertiser*, 15 September 1826, p. 2, noted that Lakeland had 'commenced his operations under the new powers granted to him'.

<sup>24</sup> *The Tasmanian*, 28 November 1828, p. 3. His brief death notice gives him as a JP, but we cannot find any announcement of a commission being notified in any of the contemporary Gazettes.

<sup>25</sup> *Sydney Gazette and NSW Advertiser*, 2 April 1814, p. 1; *Hobart Town Courier*, 6 December 1828, p. 2; *Hobart Town Courier*, 4 July 1829, p. 2; 15 January 1831, p. 2; 7 April 1832, p. 2; A. Rand, 'Gordon, James (1779–1842)', *Australian Dictionary of Biography*, Vol. 1, Melbourne, 1966, <<https://adb.anu.edu.au/biography/gordon-james-2106>> (1 October 2021). Gordon nonetheless appeared on a general commission a few months after his resignation. *Hobart Town Gazette*, 31 August 1832, p. 459.

<sup>26</sup> *Hobart Town Courier*, 30 August 1828, p. 2; *Colonial Times*, 19 February 1830, p. 4.

<sup>27</sup> J. R. Morris, 'Woods, Roger Henry', *Australian Dictionary of Biography*, Vol. 2, Melbourne, 1967, <[adb.anu.edu.au/biography/woods-roger-henry-2814](https://adb.anu.edu.au/biography/woods-roger-henry-2814)> (1 October 2021).

easily have used to embarrass the colonial establishment.<sup>28</sup> As in New South Wales there was considerable debate in the 1820s about what legal powers magistrates actually possessed, especially in relation to sentencing convicts to penal settlements.<sup>29</sup> In 1829, when serious doubts arose over the validity of the commissions of all magistrates currently serving in the colony, it was determined to keep the matter quiet for fear that 'the most alarming disorder' and 'a state of general anarchy' might ensue if the doubts 'become known to the convicts'.<sup>30</sup> Unsurprisingly, at numerous times, Acts were passed to give magistrates indemnity from all illegal sentences they may have issued.<sup>31</sup> An Act proposed in 1835 was intended by Lieutenant Governor Arthur to be an authoritative and practical overhaul of the colony's penal laws, hopefully acting as a much-needed 'manual for the guidance of the magistrates'.<sup>32</sup>

Toward the end of our study period, in 1857, there were substantial changes to the office of Justice of the Peace. Simultaneous pieces of legislation in June 1857 allowed some of the extensive powers vested in the Chief Police Magistrate to be transferred to other authorities,<sup>33</sup> and extended to all Justices aspects of the jurisdiction of Police and Assistant Police Magistrates, which had hitherto been exclusive to those stipendiaries.<sup>34</sup> In December 1857 the mayors of Hobart Town and Launceston were given the same powers as a Police Magistrate.<sup>35</sup> Shortly after, the Hobart Town Corporations Act made the Mayor of Hobart Town a JP *ex officio*, with precedence over all JPs

<sup>28</sup> *Act to Regulate Summary Proceedings before Justices of the Peace*, 12 September 1818 (9 Geo. 4, No. 3).

<sup>29</sup> For example, Pedder to Arthur, 1 June 1829, *Historical Records of Australia*, Series 3, Vol. 8, Melbourne, 2003, pp. 397-399.

<sup>30</sup> Executive Council Minutes, 30 April 1829, in *ibid.*, pp. 433-435.

<sup>31</sup> For example, *Act to Institute General and Quarter Sessions*, 20 January 1830 (10 Geo 4, No. 2).

<sup>32</sup> Arthur, Minute to the Legislative Council, 18 June 1835, Tasmanian Archives, GO33-1-20, pp. 504-508. The bill referred to was the *Act To Consolidate And Amend Certain Of The Laws Relating To The Courts Of General Quarter Sessions And To The More Effectual Punishment And Control Of Transported And Other Offenders*, 4 August 1835 (6 Will 4, No. 2).

<sup>33</sup> *An Act To Transfer Certain Duties Appertaining To The Office Of Chief Police Magistrate To Other Officers*, 5 June 1857 (20 Vic, No. 23).

<sup>34</sup> *An Act To Abolish The Exclusive Jurisdiction Of Stipendiary Magistrates, And To Extend The Power Of Taking Bail In Certain Cases Of Petty Misdemeanours*, 5 June 1857 (20 Vic, No. 26).

<sup>35</sup> *An Act To Confer Certain Powers Upon The Municipal Councils Of The City Of Hobart Town And Town Of Launceston*, 22 December 1857 (21 Vic, No. 22).

when sitting in any Police Court or Court of Petty Sessions held within the city. That act also allowed the Governor to commission city aldermen as JPs, granting them full magisterial powers for as long as they remained in office.<sup>36</sup> From 1858 a number of individuals were commissioned as Justices for the City of Hobart pursuant to that Act, including the mayor of Hobart, David Lewis (in office 1858 to July 1859).<sup>37</sup>

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The central role of JPs in administering justice and maintaining convict discipline highlights the need for a larger and more multifaceted study of the colonial magistrates of Van Diemen's Land. Such a study would look not only at their role in managing convict discipline over an extended period, but also at their broader range of duties as local administrators and employers, in the context of changing laws during the nineteenth century. But first, we must know who the magistrates of Van Diemen's Land were. To date there has been no systematic attempt to compile an exhaustive list of individuals. The best effort is that undertaken by the Female Convicts Research Centre (FCRC) in Tasmania.<sup>38</sup> Their list, freely available on their website, delivers (by our count) 345 names across 404 locations (some magistrates are known to have served in different districts across the course of their careers, and some were dispatched temporarily as 'Visiting Magistrate' to a particular district). That list is a monumental achievement; there has been nothing comparable, as far as we are aware, produced by researchers in any other Australian state. But the FCRC list is also understood to be partial in that it captures only magistrates who were involved in the punishment of female convicts. It flows from a massive volunteer community project which transcribed the Conduct Registers of most of the 13,500 female convicts transported to Van Diemen's Land before 1853. Reflecting those original Registers, the FCRC list probably began as a collation of the initials of the sentencing magistrates, with supplementary research undertaken to establish the identity of each individual based on the initials provided. The FCRC list is also particularly valuable in offering a location for each

<sup>36</sup> *Hobart Town Corporation Act*, 23 December 1857 (21 Vic, No. 14).

<sup>37</sup> His predecessor John Leslie Stewart, who served as Mayor of Hobart in 1857, was commissioned Justice of the Peace in February that year, before the Act. *Hobart Town Gazette*, 17 February 1857, p. 141.

<sup>38</sup> Female Convicts Research Centre, 'Magistrates and Justices of the Peace in Van Diemen's Land', 2013 <[www.femaleconvicts.org.au/administration/magistrates](http://www.femaleconvicts.org.au/administration/magistrates)> (3 June 2021).

magistrate and a time period in which they are known to have operated, as per the data extracted from the Conduct Registers.

To provide a more comprehensive list of magistrates, we have undertaken an extensive search of digitised colonial records, principally Tasmanian newspapers or Gazettes, cross-checked against a number of contemporary almanacs and some bench records. The principle source is the *Hobart Town Gazette*, established in June 1825, although complete and regular volumes of that journal were only available to us from 1832, thanks to Libraries Tasmania's impressive online collection.<sup>39</sup> Some coverage for the earlier years was provided by prior iterations of the *Gazette*, namely the *Hobart Town Gazette and Southern Reporter* (1816-1821) and the *Hobart Town Gazette and Van Diemen's Land Advertiser* (1821-1825). The period before the establishment of the Vandemonian gazettes required the use of the *Sydney Gazette and New South Wales Advertiser*, which published colonial appointments from its inception in March 1803 and announced the three earliest appointments to Van Diemen's Land (noted above) a year later.<sup>40</sup> Every magisterial appointment in Van Diemen's Land appears to have been gazetted, with the exception of two cases — one being Hugh Piper, who was evidently installed as a magistrate at Port Dalrymple during the 'Rum Rebellion'.<sup>41</sup>

Initially, use was made of another remarkable resource already in existence, again thanks to Tasmanian volunteers. An *Index to Government Appointments* (mostly of magistrates, constables, postmasters and pound keepers) has been recently compiled from various Tasmanian gazettes by the Hobart Branch of the Tasmanian Family History Society (TFHS), covering the years 1814 to 1838.<sup>42</sup> The creation of this index was an astonishing labour of love intended to support the study of family history and to provide high-quality reference material for researchers interested in colonial Tasmania. The down side for us was that the TFHS Index references the date on which

<sup>39</sup> *Hobart Town Gazette*, <stors.tas.gov.au/TGG>. Some earlier volumes are accessible via the National Library of Australia's online Trove repository, <nla.gov.au/nla.news-title22> (3 June 2021).

<sup>40</sup> *Sydney Gazette and New South Wales Advertiser*, 18 March 1804, p. 1.

<sup>41</sup> Piper signed himself JP on an affidavit made by the merchant and pastoralist, Alexander Riley (also a magistrate at Port Dalrymple). Affidavit of Alexander Riley, 10 December 1808, Stae Archives and Records New South Wales, 4/1722, p. 16.

<sup>42</sup> Tasmanian Family History Society, *Index to Government Appointments from Tasmanian Gazettes, Including Constables, Magistrates, Postmasters, Poundkeepers, etc.* Vol. 1, 1814-1833, Hobart, 2019, and Vol. 2, 1834-1838, Hobart, 2019.

each gazette was published, rather than the date when notification of a commission was actually given. The difference between the dates of notification and publication were usually very small (and often they are the very same date), but in the interests of establishing precise dates of appointment we worked from scratch, using the original notices in the gazettes. We can report from cross-referencing our subsequent dataset with the TFHS index that the latter, as far as capturing the number and names of justices commissioned in the period the society members surveyed, is extremely accurate.

The *Hobart Town Gazette* was published on a weekly basis, at roughly fifty-two volumes a year. A manual read-through of the vast number of pages would be prohibitively time-consuming and susceptible to human error. Although most volumes have indexes, which from 1844 are printed, these reference the page numbers on which notifications appear rather than providing the details we require, such as the date of notification. Using the digitised run of *Gazettes* recently released by the Tasmanian Archives we applied search terms such as 'justice', 'commission', 'JP', 'magistrate' and 'the peace'. We also skimmed each page as a check for accuracy, detecting some incidences where the optical character recognition software employed by the Archives had failed to read the content of a printed page. The quantity of pages to be searched is immense. The combined issues of the *Hobart Town Gazette* from 1832 to 1839 (Volumes 17 to 24), for example, amounts to just under 8,900 pages, mostly triple columned, with notifications of magisterial appointments being sometimes no more than three lines long. In that corpus alone we found 98 notices pertaining to 286 different individuals, including 46 notices pertaining to just a single individual.

Other notices took the form of what we might call a general commission of the peace — moments when the authorities issued a 'new commission' to all the existing JPs in the colony, re-appointing them, as it were, with notification given in a large, published list. One of these, in April 1825, naming thirty-two individuals, coincided with the holding of the first Sessions courts in Hobart Town and Launceston. A general commission published in July 1828 named sixty-three individuals, the occasion apparently used to de-commission William Gellibrand (the father of Joseph Tice Gellibrand, the first Attorney-General of Van Diemen's Land who was recently dismissed) and Thomas George Gregson (a free settler who descended into dispute with Lieutenant Governor Arthur), who were excluded from

the list.<sup>43</sup> Another, in December 1830, was recommended by the Executive Council, on advice from the Colonial Office in London, following the ascension of King William IV.<sup>44</sup> As illustrated in Figure 1, these were also occasions for issuing new commissions to bolster the colony's magisterial class, as in 1837 and 1847, when over fifty new Justices of the Peace were commissioned simultaneously. These general lists were extremely valuable to our task, providing snapshots of the magistracy that allow us to see who and how many JPs were holding a commission at a particular point in time – 110 commissions in August 1832, for example, 223 in October 1837, and 248 in October 1855.<sup>45</sup>

The lists also helped us ascertain whether we had captured all the individuals commissioned prior to that particular date, in some cases sending us back searching for names that had been missed. They also revealed another case where a commission was apparently not notified in the gazettes — that of Thomas Daunt Lord who was Commandant at Maria Island from September 1825. We know from his own evidence to an Executive Council inquiry in March 1827 that Lord was issuing corporal punishments at Maria Island (at the rate around twenty-three floggings a month, by his own account), and yet we are certain that his commission was not published until the general list of 1828. Documents in the New South Wales Colonial Secretary's Papers do confirm that Lord was commissioned by the New South Governor in October 1825.<sup>46</sup> It will probably be discovered that there were other commissions that were not published, most likely in the early period (as in the case of Hugh Piper, described above). In such cases the general commissions allow us to identify those individuals, although the dates of first appointment may in some instances be inaccurate in our dataset.

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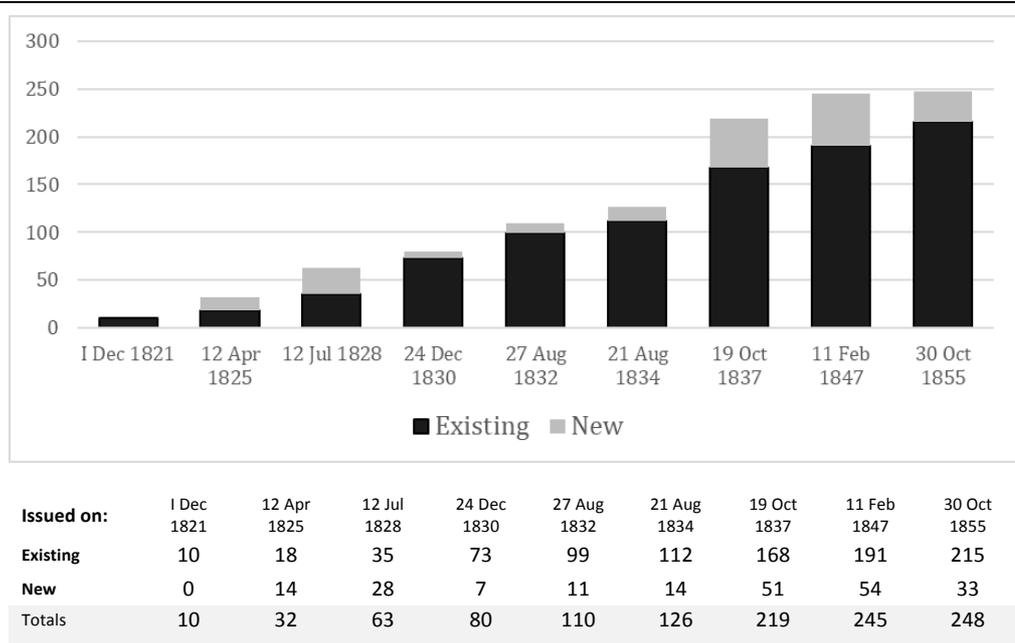
<sup>43</sup> *Hobart Town Courier*, 12 July 1828, p. 1. William Gellibrand was reappointed in 1832. *Hobart Town Gazette*, 27 July 1832, p. 408.

<sup>44</sup> Minutes of Proceedings of the Executive Council, 22 December 1831, Tasmanian Archives, EC4-1-1, p. 608.

<sup>45</sup> *Hobart Town Gazette*, 31 August 1832, p. 460; 20 October 1837, p. 1036; 30 October 1855, p. 1199.

<sup>46</sup> Goulburn to Arthur, 11 October 1825, SANSW, 4/3522, p. 181. A copy of Lord's Commission is at 4/5782, pp. 366-367.

**Figure 1: General Commissions of the Peace, showing the total number of JPs at given points in time (being existing and new appointments)**



Sources: *Hobart Town Gazette* and *VDLA*, 29 June 1822, p. 1, and 29 April 1825, p. 1; *Hobart Town Courier*, 12 July 1828, p. 1; *Hobart Town Gazette*, 25 December 1830, 31 August 1832, p. 460, 21 August 1834, pp. 586-587, 20 October 1837: 1037, 16 February 1847, p. 193, and 30 October 1855, p. 1200.

A sample of the *Gazette* notices and the data extracted from them are given in Figure 2. In sum, our search of the *Gazettes* between 1804 and 1860 resulted in precisely 1,900 spreadsheet rows of data regarding the appointment, reappointment, transfer, resignation and dismissal of magistrates. These 1,900 entries relate to a total of 734 individuals. That is, between 1804 and 1860, 734 men were commissioned as Justice of the Peace in Van Diemen's Land. Our list, we believe, is thorough and complete. Further, by recording the date on which a commission was notified, we can arrange the appointments chronologically. There may be some minor errors here, if we have missed earlier iterations of an individual's appointment, although some sample testing of fourteen names recorded for the first time on a general commission of 21

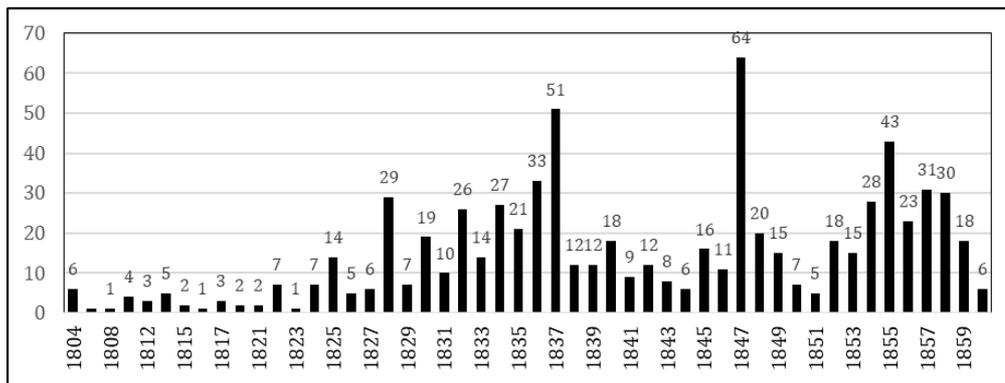
August 1835 gives us confidence in the accuracy of our data.<sup>47</sup> Being able to identify all new commissions chronologically allows us to chart the annual rates of appointments, showing notable peaks in 1837, 1847 and 1855. In those three years alone some 168 individuals were commissioned for the first time, being 22.5% of the entire number of commissions across the fifty-six-year period of our study (Figure 3).

Figure 2: An example of a gazetted notice of the appointment of JPs, and the data extracted from it.

Surname	First Name	Position	Jurisdiction	Event	Date Day	Date Month	Date Year	Reference
Jones	Algernon Burdett	Justice of the Peace	Van Diemen's Land	appointed	10	November	1835	HTG 20, 13 November 1835: 945
Paton	William	Justice of the Peace	Van Diemen's Land	appointed	10	November	1835	HTG 20, 13 November 1835: 945
Sharland	John Frederick	Justice of the Peace	Van Diemen's Land	appointed	10	November	1835	HTG 20, 13 November 1835: 945
Smith	James	Justice of the Peace	Van Diemen's Land	appointed	10	November	1835	HTG 20, 13 November 1835: 945
Weston	William Pritchard	Justice of the Peace	Van Diemen's Land	appointed	10	November	1835	HTG 20, 13 November 1835: 945

Source: *Hobart Town Gazette*, 13 November 1835, p. 945.

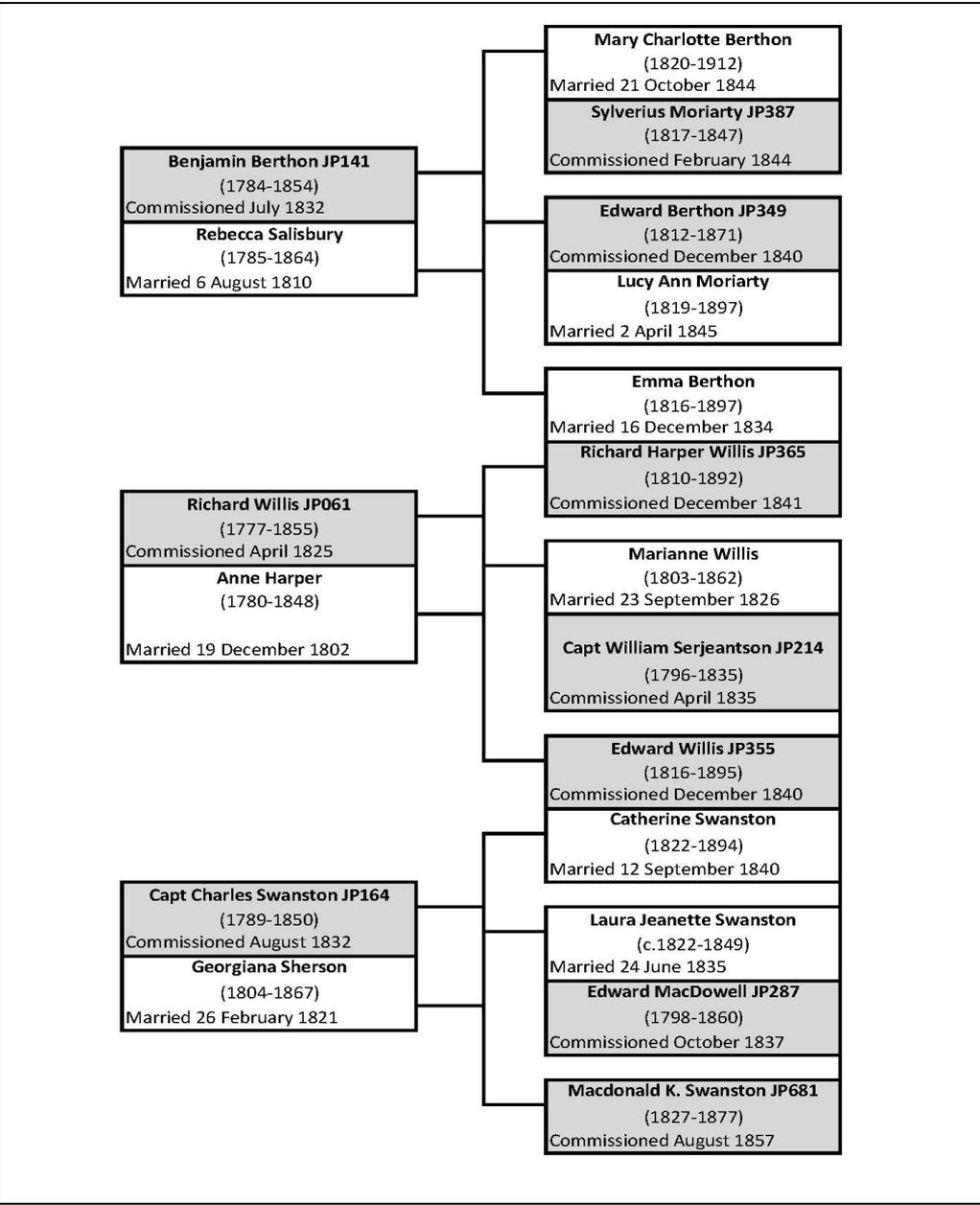
<sup>47</sup> *Hobart Town Gazette*, 21 August 1834, pp. 586-587.

**Figure 3: Number of New Commissions of the Peace Annually, 1804-1860**

Source: Derived from various sources between 1804 and 1860, especially the *Hobart Town Gazette*.

Under the guidance of Digital History Tasmania, we devised and applied a coding system to apply a UID to each of the 734 individuals who were commissioned as Justices of the Peace in Van Diemen's Land, using the suffix 'JP' and numbering which arranges them chronologically in order of appointment, from Reverend Robert Knopwood in March 1804 (JP001), through to Augustus Nash Spong whose commission was notified on 23 November 1860 (JP751). The intention was for the coding to represent the precise order of one's appointment. So, John Burnett, as JP080, could be understood as the eightieth JP commissioned in Van Diemen's Land (in July 1828). However, some codes were subsequently deleted after the discovery of a few double entries (as explained below). As this occurred after the codes had been absorbed by Digital Histories Tasmania, there are some gaps in the numbering. Further, the discovery that a few JPs were appointed earlier than originally thought created a few more anomalies in the numbering.

**Figure 4: JPs and Familial Connections: An example of intergenerational appointments and networks formed through marriage (JPs are highlighted in the shaded boxes).**



Genealogical research by Margaret H. Strike, University of New England

Duplicate names posed a separate challenge in the identification and coding process. While it was apparent from appointment dates that there were father and sons who had become magistrates, identities were less obvious when an individual used several versions of his name, or when names were shared by a father and a sibling, or when misleading descriptors were used. For example, we have entries for a 'William Archer', appointed various times between 1835 and 1855, and a 'William Archer the younger', appointed in 1852 and again in 1855. Genealogical research confirmed that these were two separate individuals, both relatives of the commissariat officer and landowner, Thomas Archer (1790-1850), who was an early magistrate at Port Dalrymple (JP020).<sup>48</sup> One William Archer (JP220) was Thomas' brother who followed him to the colony and settled at Brickendon. His burial record in 1879 confirmed that he had been one of the colony's 'oldest magistrates', appointed in 1835 and said to have been 'unremitting in the performance of his magisterial duties'.<sup>49</sup> The other (JP538) was Thomas' son (1820-1874), a landowner and politician born at Launceston who was designated as 'the Younger' to distinguish him from his uncle.<sup>50</sup>

Samuel Robinson Dawson provided another problem, there being seven notifications of a commission for an individual of that name between 1830 and 1855. Again, genealogical research was required to determine that a Samuel Robinson Dawson, a settler at Brushy plains, near Richmond, died in 1842, and that he had a son of the same name, born in 1831, whose status as a Justice of the Peace is confirmed by a birth record in the 1850s.<sup>51</sup> Neither father (JP113) nor son (JP752) appears to have regularly distinguished themselves as senior or junior. The identification process was further complicated by discrepancies in the names and titles given to certain individuals during the course their life. This practice was not unique to elite citizens, of course: family historians are well acquainted with the challenges created by ancestors whose names and titles varied across time and across record sets. For example, additional research was required to discover that

<sup>48</sup> G. T. Stilwell, 'Archer, Thomas (1790-1850)', *Australian Dictionary of Biography*, Vol. 1, Melbourne, 1966, <adb.anu.edu.au/biography/archer-thomas-1475> (1 October 2021).

<sup>49</sup> *Examiner*, 25 March 1879, p. 2.

<sup>50</sup> G. T. Stilwell, 'Archer, William (1820-1874)', *Australian Dictionary of Biography*, Vol. 3, Melbourne, 1969, <adb.anu.edu.au/biography/archer-william-1460> (1 October 2021).

<sup>51</sup> *Launceston Examiner*, 7 April 1855, p. 2, being a notice of the birth of a daughter at Claremont, Clarence Plains.

magistrate John Butcher (JP049) was also known as John Hunt Butcher, the notifications of his Commission in the Gazettes referring to him by both names. That was one of several discoveries late in the process that resulted in the removal of a second, obsolete code or UID, creating a gap in our numbering. Where duplicates were discovered, the earlier entry and code was retained so as to preserve the sequential, chronological ordering of the appointments. By and large, the chronological coding remains intact, and we have maintained a separate column which gives, precisely, the sequential ordering of the 734 appointments.

\* \* \*

It remains then to briefly outline the next stages in this research project, and to anticipate some of the possible applications of our dataset and coding. First, as indicated, genealogical research is now underway, to build a collective demographic portrait of the Vandemonian magistracy via basic data on lifespans and place of origin, but also more challengingly to trace a range of familial connections. It was immediately evident, just from the compilation of individual names, that commissions could be intergenerational, as sons followed their fathers into the magistracy. The possibility that the magistracy could be hereditary is indicated in a 1942 newspaper article on the retirement of a Mr C. L. Willes of Launceston (that is, Charles Henry Leofwyn Willes) where it was boasted that he was of a family that had 'furnished an unbroken line of Justices of the Peace for 144 years' (two of his great grandfathers, on his mother's side, were magistrates in the early 1800s).<sup>52</sup> Moreover, it is apparent that many Justices of the Peace were united through marriage — through their own marriages, and the marriages of their children. For example, Hezekiah Harrison (1797-1860), the son of JP Robert Harrison (1769-1860), followed his father into the magistracy and married the daughter of another JP, Lieutenant Samuel Hill (1760-1840).<sup>53</sup> George Prideaux Harris JP (1763-1810)

<sup>52</sup> *Mercury*, 29 October 1942, p. 4. Willes' mother was Eliza Susan Vicary. His father was Charles Nimrod Willes who was commissioned in September 1857. The two great-grandfathers were Thomas Daunt Lord, commissioned three years after he arrived in Van Diemen's Land in 1825, and Michael Vicary, first commissioned in 1829.

<sup>53</sup> Marriage Certificate of Hezekiah Harrison and Catherine Matilda Hill, 21 May 1825, Libraries Tasmania Online Collection, RGD36/1/1 No. 801; Death Certificate of Hezekiah Harrison, 11 July 1860, New South Wales, Births, Deaths and Marriages, 500511/1860; Death Certificate of Robert Harrison, 14 July 1860, Libraries Tasmania Online Collection, RGD35/1/29 No. 877; Death Certificate of Samuel Hill, 18 December 1840, Libraries Tasmania Online Collection, RGD35/1/16 No. 446. Robert

married Ann, the sister of another magistrate Lieutenant James Hobbs (1792-1880).<sup>54</sup> When Harris died, Ann married another JP, George Weston Gunning (1773-1845).<sup>55</sup> Another series of examples are illustrated in Figure 4, using the Berthon, Willis and Swanston families, suggesting that through genealogical research we can trace something akin to the development of an early colonial aristocracy.

To that end, it will also be important to place commissions into the context of a broader range of individual careers. Using a similar method of extracting appointment data from the *Gazettes*, it will be found that some JPs served in other civil roles, such as Churchwarden, Coroner, Registrar of Deeds and Commissioner of a district Court of Requests. Some we know became members of the legislative council, and at least one, Sir Francis Villeneuve Smith (JP585), first commissioned in 1854, was later the fourth Premier of Tasmania. Further research into property accumulation and inheritance recorded through probates will throw much light on the role played by magisterial commissions in the generation of wealth and power in early Tasmania.

A challenge we face is to pinpoint the JPs to physical locations, also incorporating possible movement, understanding that JPs may have officiated in different locations during their tenure. For us this is particularly important to the extent that it feeds into ongoing projects and priorities at the University of New England involving spatial mapping.<sup>56</sup> One of our ultimate aims is to produce a 'magistrates map'

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Harrison and Samuel Hill were further connected by the marriage of other children: Matilda Harrison (1813-1894) to John Sleath Hill (1792-1863).

- 54 Marriage of George Prideaux Harris and Ann Jane Hobbs, 17 February 1805, 'Australia, Marriage Index, 1788-1950', Ancestry.com, Provo, UT, USA 2010; Death Certificate of George Prideaux Harris, 20 October 1810, Libraries Tasmania Online Collection, RGD 34/1/1 No. 98.
- 55 Marriage of George Weston Gunning and Ann Jane Harris, 25 April 1820, Libraries Tasmania Online Collection, RGD36/1/1 no 377; Death Certificate of George Weston Gunning, 31 August 1845, Libraries Tasmania Online Collection, RGD35/1/2 No. 807.
- 56 See especially R. Tuffin and M. Gibbs 2019, 'Repopulating Landscapes: Using Offence Data to Recreate Landscapes of Incarceration and Labour at the Port Arthur Penal Station, 1830-1877', *International Journal of Humanities and Arts Computing*, Vol. 13, No. 1-2, 2019, pp. 155-181; R. Tuffin, M. Gibbs, D. Roe, D.A. Roberts, H. Maxwell-Stewart, J. Steele, and S. Hood, 'Convict labour landscapes, Port Arthur 1830-1877', 2019, doi:10.25952/5de58b5512209, <www.convictlandscapes.com.au> (4 June 2021); R. Tuffin, M. Gibbs, 'Convict Landscapes: Locating Australia's Convicts, 1788-1868 - Van Diemen's Land', doi:10.25952/5f449b94d3e1f <www.convictlandscapes.com.au> (4 June 2021).

of Van Diemen's land, locating each JP in a particular location, at a particular time. Late in our study period, from around December 1855, the published notifications of commissions frequently located a magistrate in a particular place — Torquay on the Murray River, Grove at George Town, Ellenthorpe Hall, or Carrington near Richmond, for example — although most of the commissions still gave JPs a jurisdiction for the entire Island. A search for supplementary notifications in the *Gazettes* will also help locate the JPs as belonging to a district or place, in cases where individuals were also appointed to serve as a Commissioner, or a Churchwarden, or a Coroner etc in a particular district. Jury lists, published in the *Hobart Town Gazette* from December 1854, have also proven useful in locating magistrates geographically.

We have already had some luck in locating magistrates through cross-referencing our dataset with various Almanacs. Hugh Munro Hull's monumental *Guide to Tasmania* (1858) was useful here, providing a list of 303 JPs currently serving in that year, giving the date of their appointment (which also helped us with the identification of individuals and the detection of duplicates in our original dataset), but also stating (in most cases) a JPs residence and 'Nearest Post Station'.<sup>57</sup> That information, however, covered less than fifty percent of our cohort, and its captures one year across our fifty-six year period. Two volumes of Walch's *Tasmanian Almanack and Guide to Tasmania* (for 1863 and 1869, being a sample of the volumes produced for the period 1862 to 1869) provided similar information on 256 of the individuals in our cohort (although by 1869 there were only 175 of our cohort still serving). Of course, the location details given here are for a later time period.<sup>58</sup>

Ultimately, the best way to locate magistrates, in both time and place, will be through analysis of the various records of the lower benches and Sessions courts which heard complaints and charges against convicts and other colonial citizens. These records can be supplemented by, or work in conjunction with, data extracted from the

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<sup>57</sup> H. M. Hull, *The Guide to Tasmania: Containing Information respecting the government and Public Institutions*, Tasmania, 1858, pp. 16-22.

<sup>58</sup> *Walch's Tasmanian Almanack and Guide to Tasmania for 1863*, Tasmania, 1863, pp. 93-100; *Walch's Tasmanian Almanack and Guide to Tasmania for 1869*, Tasmania, 1869, pp. 41-48. These two volumes also tell us, in shorthand, that at least 138 Justices of the Peace were commissioned in the decade after our study, although a search of the gazette's such as we executed for the period 1804 to 1860, will likely reveal identities that are not in the Almanacs consulted here.

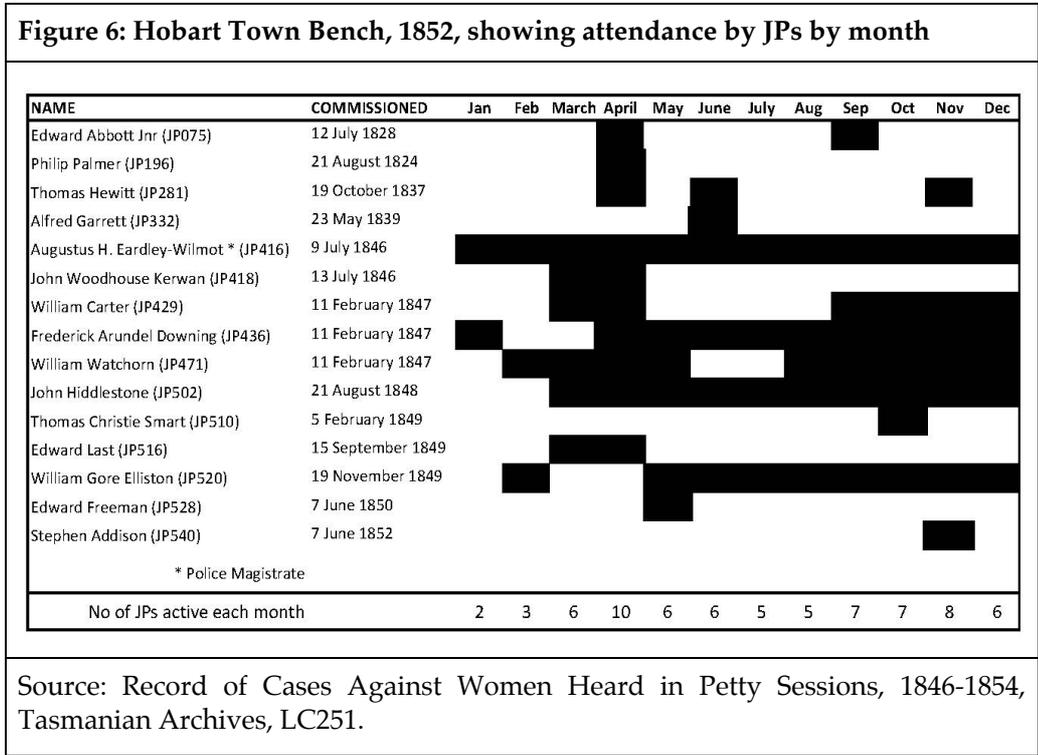
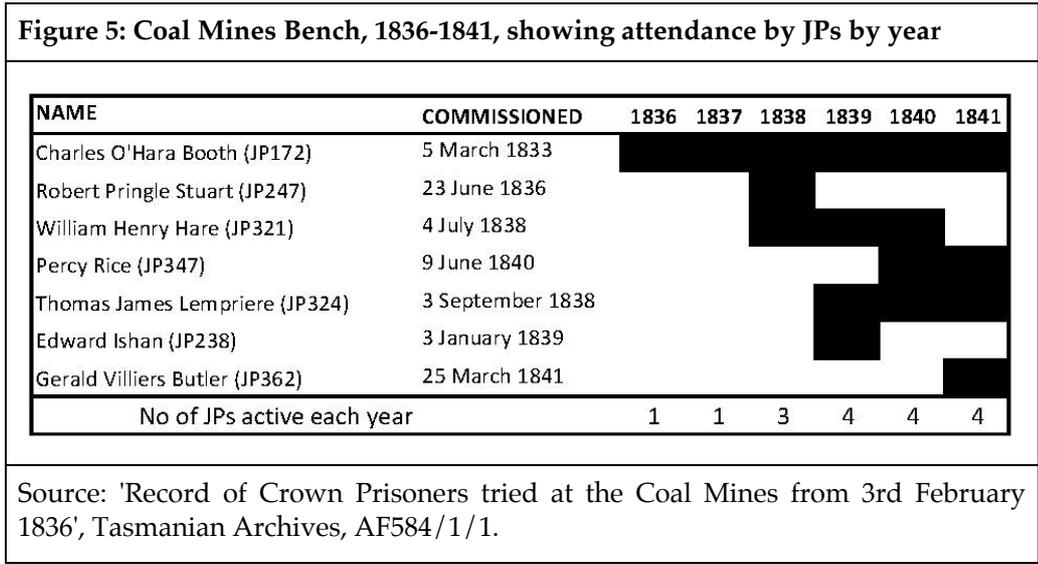
monumental Convict Conduct Registers. These Registers, which are now part of the United Nations Educational Scientific and Cultural Organisation's Memory of the World Register, record offence and punishments episodes for each individual convict (often across various jurisdictions and over a long period of time).<sup>59</sup> The latter tend to record the sentencing magistrate by the use of initials, or by reference to an official title (such as PM [Police Magistrate] or DJA [Deputy Judge Advocate]). The former, however, often consisting of returns of punishments or minutes of proceedings, provide more detail and certainty about the presence and behaviours of Justices of the Peace identified in our study. Using data provided by the University of New England's Landscapes of Production and Punishment project, based on magistrate's bench books from the Tasman Peninsula Coal Mines, Figure 5 shows individual magistrates sitting locally across the years 1836-1841, locating those individuals in time and demonstrating the increasing number of magistrates active on the local bench toward the end of that period.<sup>60</sup>

That is extremely broad brushed. Figure 6 uses data provided by Digital History Tasmania — from the records of the Hobart Magistrates Court (or Hobart Lower Court) in cases involving women, for the year 1852 allows us to identify and map the contribution of fifteen magistrates on a monthly basis across the course of the year. We can see that the contribution of magistrates was uneven, and that the number of magistrates active in any one month ranged from two (in February 1852) to ten in April (Figure 5). In terms of the time since they were commissioned, their experience in 1852 ranged from twenty-four years to a few months, and some of the longest serving magistrates appear to have been the least active. Again, this analysis is very simple. The data provided by the 1852 Hobart Town bench records is actually more granular, allowing us, for example, to track magisterial sittings on a daily basis, including their sitting in combinations.

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<sup>59</sup> A list of core convict records, including those inscribed on the Memory of the World Register, can be found on the Libraries Tasmania website at < [libraries.tas.gov.au/family-history/Pages/Convict-life.aspx](http://libraries.tas.gov.au/family-history/Pages/Convict-life.aspx) > (4 June 2021).

<sup>60</sup> R. Tuffin, M. Gibbs, D. A. Roberts, H. Maxwell-Stewart *et al.*, "'Landscapes of Production and Punishment: Convict labour in the Australian context', *Journal of Social Archaeology*, Vol. 1, Issue 18, 2018, pp. 50-76. For more research based on this dataset, see R. Tuffin, H. Maxwell-Stewart and M. Quinlan, 'Integrating Historical Records through Digital Data Linking: Convicts Prosecuted for Collective Action in Van Diemen's Land', *Journal of Australian Colonial History*, Vol. 22, 2020, pp. 49-84.



The research potential of the data becomes even more exciting when we start to factor in the individuals and the offences being tried, and the punishments being issued. Immediately, our dataset and coding will facilitate some interesting quantitative research and data linkage exercises through integration with existing and emerging datasets, predominantly those being generated and curated by the University of New England and Digital Histories Tasmania. Already, Trudy Cowley from Digital History Tasmania has laboriously matched our JPs to an existing dataset of Vandemonian employers of convict labour, which is currently also being linked to entries in the Australian National University's *Australian Dictionary of Biography*.

By positively identifying and locating the magistrates, we may begin to track variations in sentencing patterns between different JPs, and between those that sat on rural and urban benches. We are interested in exploring variations in sentences that involved a flogging as opposed to solitary confinement and punitive labour. We are also curious about the rates at which different magistrates acquitted defendants or were likely to issue warnings rather than formal punishments. A key issue is the extent to which magistrates tried the servants of other magistrates. The latter question is already being approached via a project that is identifying the geographical location of places of convict employment, in tandem with our intention of locating the houses and offices of the JPs. We will be able to track magistrates as they moved from houses, to public offices to road gangs and other worksites to administer punishments. If we can pin down the places where offences occurred, we can rectify a core omission in the Conduct Registers, which tend to identify many public works locations vaguely as having occurred, for example, in 'a chain gang'. Knowing the location of the magistrate who heard the case will help to pinpoint that site that where the offence occurred.

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This article reported on a project to compile a complete list of every individual commissioned as a JP in Van Diemen's Land between 1804 and 1860. The result is a list of 734 individuals, their commissions ordered chronologically. A coding system has been applied giving each individual a unique identifier number (UID) that reflects the chronological sequence of appointments. This data can be cross-referenced with other existing and emerging datasets, such as those being generated by Digital History Tasmania and the University of New England. This list fills a gap in our knowledge and opens the way

to new and modern forms of analysis which will help us better appreciate the fundamental and controversial role which magistrates played in the establishment of European settlement in Tasmania.

Our own interest primarily lies in the role and behaviour of magistrates as the arbiters of lower justice and convict discipline, but our data and coding may have broader applications, to the study of liquor licensing for example, or the administration of the police, the management of convict assignment or the operations of Courts of Requests. What we have presented here is large undertaking that was not necessarily complicated or sophisticated, but we hope it represents a worthy and valuable contribution to the application of new technologies and techniques to the study of the past, understanding that the digital history revolution is, in Tasmania, proceeding more rapidly and in more interesting directions than almost anywhere else.

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#### **Research UNE Dataset**

Title: The Magistrates of Van Diemen's Land, 1804-1860: Identified, Counted and Coded

Contributor: Roberts, David Andrew (creator) <<https://orcid.org/0000-0003-0599-0528>>; Strike, Margaret (creator)

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