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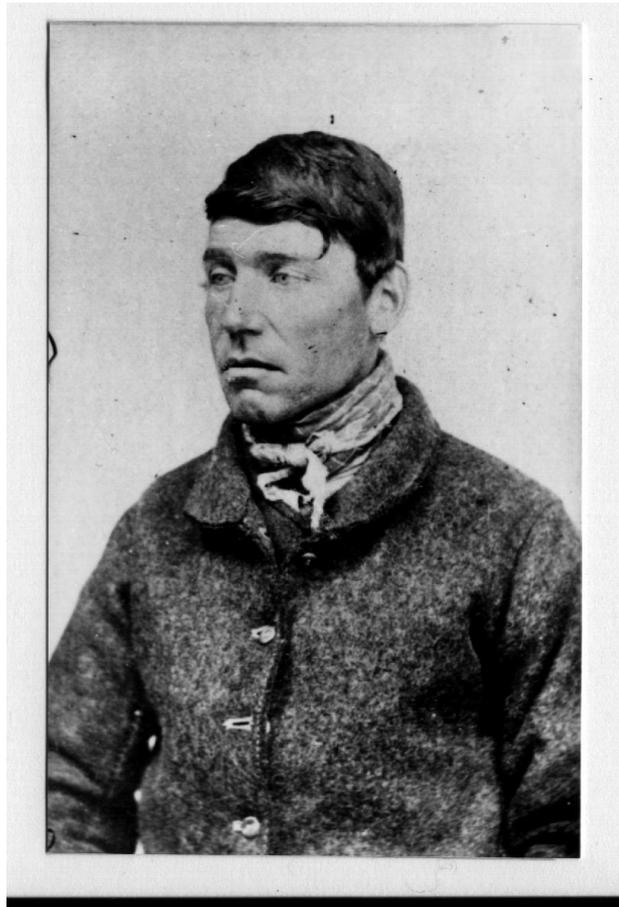
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**‘Through a Glass, Darkly’: the Camera, the Convict
and the Criminal Life¹**

**Julia Christabel Clark
B.A. (Hons.)**



Thomas Fleming
Taken at Port Arthur 1873-4
Photographer: probably A.H. Boyd
Queen Victoria Museum & Art Gallery

**Submitted in fulfilment of the requirements for the
Degree of Doctor of Philosophy (Ph.D)**

**University of Tasmania
November 2015**

¹ ‘For now we see through a glass, darkly; but then face to face: now I know in part; but then shall I know even as also I am known.’ 1 Corinthians 13:12, *King James Bible*.

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Julia C. Clark, 14 November 2015

ABSTRACT

A unique series of convict portraits was created at Tasmania's Port Arthur penal station in 1873 and 1874. While these photographs are often reproduced, their author remained unidentified, their purpose unknown. The lives of their subjects also remained unexamined. This study used government records, contemporary newspaper reportage, convict memoirs, historical research and modern criminological theory to identify the photographer, to discover the purpose and use of his work, and to develop an understanding of the criminal careers of these men.

The photographer was probably the penultimate commandant of Port Arthur, Adolarius Humphrey Boyd. Rather than representing the entire inmate population at the time of the station's closure, the project photographed only the men who were probably regarded as a risk to the community. The purpose of these photographs was assumed to be associated with policing but, unlike the practice in Britain and Europe, this turned out not to be the case. Instead, these images were adhered to each man's Hobart Gaol record. Tasmanian police refused to adopt the practice of circulating images of offenders, claiming that their local knowledge was sufficient. This confidence was misplaced. Most of these men were arrested by members of their own community, exploding the myth of mateship.

In asking why these men continually reoffended, I developed criteria based on modern theories of recidivism, and tested the life experience of these men against them. I found that this group of men met all the pre-conditions developed by criminologists for recidivism. In Britain and Tasmania they were chronically disadvantaged. In Tasmania they were brutalised as convicts, tainted forever by their time at Port Arthur and, as a result, rejected by society as emancipists. The criminal sub-culture, defiantly opposed to conventional standards of respectability, offered them acceptance.

These photographs played their part in a society and a regime fated to create recidivists. They proved to their subjects, and to the world, that the subjects were outcasts. Almost 150 years later, they continue to affirm the criminal identity of these former Port Arthur inmates.

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Hugely grateful thanks also go to Sylvia Carr, then Pictures Reference Librarian at the National Library of Australia: Alan Davies, then Curator of Photography at the Mitchell Library, State Library of New South Wales: Vicki Farmery, Manager of the Photograph Collection of the Tasmanian Museum and Art Gallery in Hobart: Susan Hood, Resource Centre Co-ordinator at the Port Arthur Historic Site Management Authority and her then assistant Ken Lee: Chris Long, photographic historian: Rhonda Hamilton, then Librarian, at the Queen Victoria Museum and Art Gallery in Launceston: Brian Rieusset, then Curator of the Penitentiary Chapel, Hobart: Kim Simpson, then Assistant History Curator at the Queen Victoria Museum and Art Gallery in Launceston. They all contributed their enormous expertise with unfailing generosity and good humour and I cannot thank them enough.

This project has been going on for so long that many of these wonderful people have now either retired or moved on to new positions, and I wish them all the best. Those who remain continue to support and assist research like mine, which indeed would be impossible without their deep and broad knowledge. In this regard I would particularly like to thank Susan Hood, who has been involved since the beginning and has never flagged in her interest and support, even though I have tested her patience sorely at times!

I would also like to thank Tony Marshall and Ian Pearce at the Tasmanian Archive and Heritage Office, who answered weird research queries with great forbearance. The Director of the Port Arthur Historic Site Management Authority, Stephen Large, and

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PREAMBLE

While walking down a street in a poor area of Calcutta in 1972, I saw a small crowd gathered around a shiny new billboard. On the left hand side of the picture it featured a couple with two children; all were well-fed, well-dressed and looked pleased with themselves. On the other side stood a couple with six children; all were dressed in rags and looked undernourished and depressed. I asked a little boy of about ten what it meant. He explained carefully that the couple on the left had put all their efforts into obtaining worldly goods, and so had only had two children, and one a useless girl at that, to support them in their old age. The other family, while poor now, could look forward to a secure old age because they had three sons. This was obviously not the message that the executives of the advertising agency, probably based in swank offices far from this slum, intended to send. For them, limiting the size of families meant prosperity, health and security. Those at whom the campaign was aimed, however, were not persuaded. While they understood perfectly well what the campaign was trying to say, it was not a message that had any value or meaning for them, and so they had 'read' it according to their own world view. It struck me then that photographs must be read in the same way that we read documents, within their own contexts, and that we must also bring to that reading an awareness of our own theoretical position. It was that Damascene moment that ultimately led to this research.

INTRODUCTION

As the Port Arthur penal station was being broken up and its inmates transferred to various institutions in Hobart, someone decided to take photographs of some of the last remaining men. These photographs are now very familiar to anyone interested in Tasmanian convict history but, despite their wide currency, they remain shrouded in mystery. The first question to be asked is who took them? Looking for the answer, I will investigate the claims of the two main candidates, the penultimate Commandant and enthusiastic amateur photographer, Adolarius Humphrey Boyd, and Thomas Nevin, a professional photographer known to have done work at Hobart Gaol. Why were they taken? In Britain, Europe and in the other Australian colonies such ‘mug shots’ were used to identify suspected offenders. Was this the case in Tasmania, and if not, why not? How did police identify offenders otherwise?

The subjects of these images were men who had been sent thousands of miles across the globe to provide free, or cheap, labour, in a world very different from the one in which they had grown up. They spent many years, sometimes almost their whole adult lives, in and out of gaols of various kinds, and endured appalling punishments. Given the boundless fields of new opportunity to which they were delivered, what went wrong for them? Were they bad men, or was the system bad? To answer that question, I will use modern criminological theory that addresses the issue of recidivism to illuminate, and to reflect upon, their historical experiences. I will show that these experiences created men who were physically and psychologically damaged, angry and alienated. I will interrogate the society into which they were liberated, to show that these men not only bore the burden of their convict experience in both Britain and Tasmania, but that added stigmatisation of being known as old Port Arthur lags. This guaranteed that they would be feared and, ultimately, rejected. And what of those photographs? As they have travelled down the years to us, they have provoked many reactions – repulsion, dread, pity – but what did they mean for their subjects and their society? I conclude that they were key contributors to the eternal social exclusion of the last men of Port Arthur.

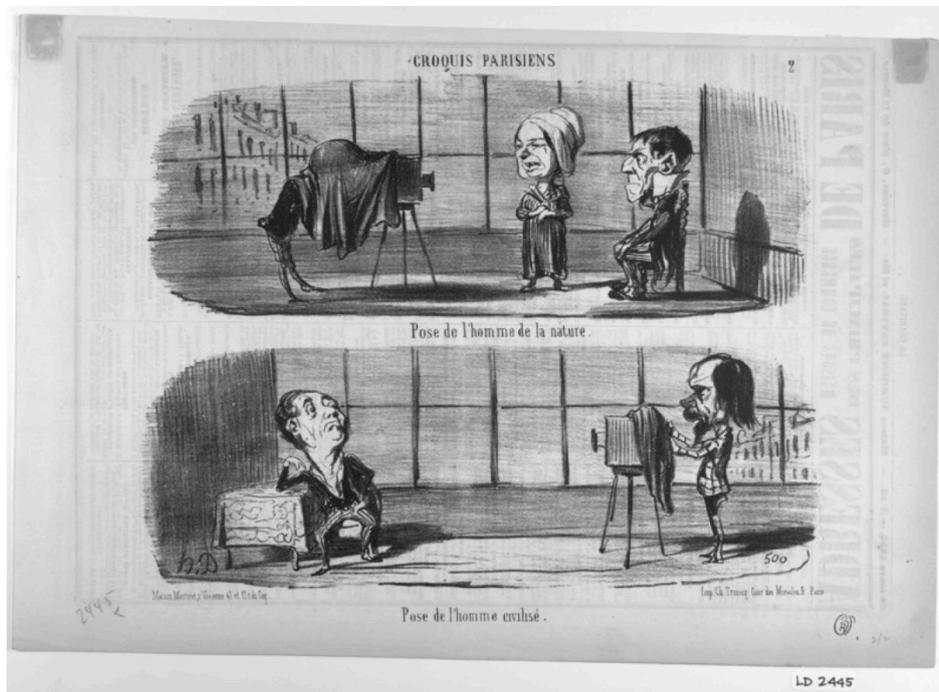
This project is presented in two interlocking parts. In the first, I wish to address the mysteries around this series of photographs. In the second, I will look at the subjects of these photographs to try to understand why they appeared unable to extricate themselves from the convict system and its later manifestation, the colonial justice system. In the first part, the convict is framed as passive subject of an invasive and oppressive technology. In the second, he steps from that frame to represent himself, with the assistance of modern criminological theory, as actor in his own story, and he turns the camera back upon the surveillance system and the society that it served.

Chapter One establishes a theoretical framework for considering these photographs. It will inform the ways in which the images, their use and meanings can be usefully interrogated. This will also include discussions of the evolution of what I will call ‘criminal photography’ and its relationship to other genres that developed concurrently. In Chapter Two I look at the historical research on the convict period and at modern criminological theories around recidivism, to establish a frame of reference for understanding why these men spent much of their lives incarcerated. Chapter Three establishes the international context within which this work was created, the purpose/s which such images were intended to serve and the uses to which they were put in the mid-late nineteenth century, mainly in Europe and Britain but glancing occasionally at other Imperial possessions and the United States. Chapter Four examines the Australian colonial context of production and use. Chapter Five posits an identity for the Port Arthur photographer, and explores the relationship of these images to the operations of the Convict Department and the Gaol Department. In Chapter Six I turn my attention to the ways in which these images were used in Tasmania as a weapon in the surveillance arsenal of the state. This involves a consideration of the ways in which the police were organised and operated in Van Diemen’s Land/Tasmania.

In the final three chapters I explore the nature of recidivism using these men as a sample of recidivists in the last phase of Tasmanian convictism. Chapters Seven and Eight interrogate their failure to reform, through the prism of previous historical research and modern criminological theory. Running through this work are the voices of these men and others like them; although they may not be verbatim, having been filtered through the accounts of others, these accounts surely represent at least the germ of attitude and statement as heard by officials and reporters, the gist of what was

actually said. These provide an opportunity to tease out ideas about prisoner sub-culture, which are also reflected in convict narratives. Chapter Nine forms the conclusion to this study. It is in this section that all of these threads are brought together. My intention is to use new understandings of the convict experience in the dying days of the convict system in Tasmania and to explore why this group of men remained in the clutches of the penal administration for most of their adult lives. As often as possible, I want these understandings to be shaped by what the men themselves say. I wish the evolution of convict administration to be seen not simply as an engine of repression but as a dynamic system in which both administrators and convicts were actively engaged. The camera, once trained with such devastating effect on the rejects of Britain, will turn to depict the system, and the society, that rejected these men in Tasmania.

CHAPTER 1: ‘Through a Glass Darkly’: convict photographs in their historical context¹



‘Pose de l'homme de la nature. Pose de l'homme civilisé’, 1853
 Artist: Honoré Daumier
 Bibliotheque Nationale de Paris

The photograph as historic mystery

In this cartoon we see what Sekula calls ‘the double system’ of portrait photography at work. The top image shows us photography as a repressive force, in which ‘photography came to establish and delimit the terrain of the *other*’. The bottom image showcases its honorific aspect, ‘providing for the ceremonial presentation of the bourgeois *self*’.² Daumier does not seem to think much of either, the one brutish and requiring supervision, the other overweeningly arrogant and vain.

Until recently historians have not paid the same scholarly attention to early images as they have to text, perhaps because of the kinds of potential ambiguities and

¹ 1 Corinthians, 13:12, *King James Bible*.

² Sekula, A., ‘The Body and the Archive’, in R. Bolton (ed.), *The Contest of Meaning: Critical Histories Of Photography*, (Cambridge Mass.: MIT Press, 1992), 346.

uncertainties depicted in the cartoon above.³ Or perhaps because, like the early adopters of photography, they felt that images were simple, literal representations of what had been and so, unlike texts, they would not reward nuanced and imaginative scrutiny and analysis. Relatively few historical journals carry illustrations, and often they only serve to break up text on the page and offer a little light relief from the strain of reading.⁴ They are usually offered to the reader as though they are unproblematic and literal representations of what has been described in the text, despite the fact that, as Roy Stryker argued, ‘The moment a photographer selects a subject he is working upon the basis of a bias that is a parallel to the bias expressed by a historian’.⁵ Images are rarely treated to the same kinds of interrogation as texts. They are unlikely to be treated as sources of information, they rarely prompt questions or answers. While there are rare exceptions like the Bayeux tapestry, which by the 18th century was already respected as a unique source of historical information, the paucity of such examples serves to illustrate the point.⁶ As Peter Burke put it: ‘Not until the mid 1960s did social historians in the English speaking world become aware of the value of photographs as evidence for 19th century social history’.⁷ This, despite the importance of such records to the history of the poor, the marginalised, the ‘other’, who left so little written documentation of their own.

But still photographs are commonly used to illustrate what has already been concluded from texts.⁸ They remain uninterrogated as unique sources of information, and as a result, are largely undisturbed in their bias. Clare Anderson expressed her concern in her 2007 review of *Discipline and the Other Body: Correction, Corporeality, Colonialism*⁹, questioning

³ The dichotomy of choice versus coercion, proudly relaxed pose versus humiliating, supervised directed pose, is not in fact borne out in criminal photography at this time, although authorities may have intended it to be the case. A great deal of latitude was allowed at many gaols and prisoners often made the most of it, adopting poses that sometimes seem downright subversive..

⁴ P. Bourke, *Eyewitnessing*, (London: Reaktion Books, 2001), 10.

⁵ Photographer Roy Stryker quoted in P. Burke, *Eyewitnessing*. (London: Reaktion Books, 2001), 23.

⁶ Burke, *Eyewitnessing*, 10.

⁷ Burke, *Eyewitnessing*, 12.

⁸ Burke, *Eyewitnessing*, 10.

⁹ S. Pierce and A. Rao *Discipline And The Other Body: Correction, Corporeality, Colonialism*, (Durham: Duke University Press, 2006).

the use of the postcard ‘Les Prisonniers à la Cangue’, from colonial Vietnam, on the front cover of the collection. There is no note in the text about the production or consumption of this image, or any mention of its place in the significant genre of colonial postcards illustrating ‘exotic’ punishments more generally. It is not dated or otherwise discussed. Images like this are not simple ‘illustrations’, but are themselves social texts, and as such are worthy of deconstruction and analysis.¹⁰

The collection of images taken of convicts at Port Arthur in 1873-4 forms a unique colonial record of a large group of convicts. The Port Arthur Penal Settlement opened in 1830 as a timber-getting camp using convict labour. After 1833 it became a secondary punishment station for repeat offenders, and quickly gained a reputation as a desperately harsh place. Transportation ended in 1853 and the now-static convict population began to enter middle and old age. By the 1870s, Port Arthur’s population was increasingly composed of paupers and invalids, the wreckage of the system, although the majority of inmates remained men under sentence. They ranged from men who had been in the system for up to forty years to native-born first offenders. Most of the men in these photographs had been transported, but some arrived free to the colony or were native-born. All were reconvicted in the third quarter of the nineteenth century and were sent to Port Arthur.

Almost 200 *cartes de visite* (often referred to as ‘*cdvs*’) and contact prints, depicting 163 identified individuals and eight so far unidentified, form this series. The *cdvs* are inscribed with the name of the man, his ship and the fact that the photograph was taken at Port Arthur in 1874. Some of the contact prints bear an inscription of the man’s name and a number in reverse, on others this has presumably been trimmed off when they were stuck to backing sheets.

¹⁰ C. Anderson, Review of S. Pierce and A. Rao *Discipline And The Other Body: Correction, Corporeality, Colonialism, Journal Of Colonialism And Colonial History*, Vol.7/3, (2006), http://muse.jhu.edu.ezproxy.utas.edu.au/journals/journal_of_colonialism_and_colonial_history/v007/7.3anderson.html, 4, viewed 12 December 2013.

Until now they have figured in three main contemporary contexts. The first is within the framework of an often-heated debate as to the author of these images. The second is as exemplars of early colonial *cdvs*. And the third context is as exemplars of the category ‘convict’; images of individuals from this series have often been published when an image of a male convict, any male convict, is required. The aim of this thesis is to place these images, remarkable in an Australian context, within the wider context of nineteenth century photography and to explore the circumstances surrounding their creation and use, to more fully understand their place in the world across space and time.

This category of photographs, sometimes called judicial or criminal photographs – that is, portraits of convicted lawbreakers – has received some scholarly attention in terms of their evolution as tools of the law and justice systems, affording a supplement to written records for ready and reliable identification of offenders. As it evolved through the second half of the nineteenth century, photography was rapidly adopted in the service of other disciplines like phrenology and anthropology, and criminal photographs share some of the same preoccupations and stylistic conventions, although the differences are possibly more significant and will be explored later in this chapter.

What can be done with such photographs?

For curators of collections, photographs often inhabit an ambiguous position, sometimes lodged in Art collections, sometimes in History or Anthropology. These photographs, however, are the product of no great artistic vision, of no pre-eminent photographer, and since they are of white subjects they are unlikely to end up in Anthropology. They proclaim their status as the raw material of History. But this is not to say that they can be taken at face value as simple illustrations of this or that period, individual or event. Elizabeth Edwards offered salient advice, that photographs are ‘to think with’ more importantly than ‘to look at’.¹¹ According to Edwards and Hart, this thinking about photographs encompasses ‘processes of intention, making, distributing, consuming, using, discarding and recycling’.¹² The ‘intention, making, distributing,

¹¹ E. Edwards, *Raw Histories: Photographs, Anthropology And Museums*, (Oxford: Berg, 2001), 2.

¹² E. Edwards and J. Hart (eds.), *Photographs, Objects, Histories: On The Materiality Of Images*, (London: Routledge, 2004), 1.

consuming and using' of these images will be employed as a framework for the first part of this thesis. The second part will refer to their 'recycling' but, in the absence of any evidence regarding their journey between their making and their arrival in various collections, 'discarding' was an imponderable.

For almost 150 years they have been subject to different readings. As Nuno Porto argued, they exist between 'image and object, their position along this arc shifting according to the position assigned to them by distinct agents according to their own interests, agency and subjectivity'.¹³ The aim of this second part of my study is to identify those agents, and their interests, agency and subjectivity. I wish to try, as Edwards encouraged, to see if these 'images in the archive can ... [acquire] new status through new contextual links'.¹⁴

This emphasis on contingency, context and hermeneutics in 'thinking with' photographs is a relatively new phenomenon. In the nineteenth century a photograph was thought of as a literal rendering of an unproblematic reality. While artists were acknowledged as interpreters of the reality that they depicted, photography – mediated as it was by a machine – 'established itself as having a unique relationship with Truth'.¹⁵ Invented at a moment in history when positivism held sway, as Scott McQuire had it 'in an age in which machines held the promise of the future, the development of photography perfectly fulfilled the desire to invest truth in the disinterested gaze of an optical machine'. This kind of objectivity was achieved because it was now possible to let nature 'speak for itself', by bypassing the human observer.¹⁶ It not only bypassed but surpassed the human observer, because it appeared to be infallible and free from bias or emotion.¹⁷ Henry Fox Talbot marvelled: 'it is not the artist who makes the picture, but the picture which makes itself'.¹⁸ And for René Descartes: 'I cannot doubt that which natural light causes me to believe to be true'.

¹³ N. Porto, 'Under the gaze of the ancestors': photographs and performance in colonial Algeria', in Edwards and Hart, *Photographs, Objects, Histories*, 113.

¹⁴ Edwards, *Raw Histories*, 13.

¹⁵ S. McQuire, *Visions of Modernity: Representation, Memory, Time And Space In The Age Of The Camera*, (London: SAGE Publications, 1998), 30.

¹⁶ McQuire, *Visions of Modernity*, 33.

¹⁷ McQuire, *Visions Of Modernity*, 34.

¹⁸ McQuire, *Visions Of Modernity*, 33.

Light, coming as it did from God, could not be otherwise but True.¹⁹ The camera was acclaimed as ‘vision without mediation, a medium in which the signifier effaced itself before the force of the signified’.²⁰ Albert Donné, who exhibited the first Daguerreotype portrait in Europe on 14 October 1839, proclaimed that ‘... we shall let nature reproduce herself ... We are determined to support each observational fact on a rigorous representation safe from any illusions or preconceived ideas’.²¹

Raymond Barthes continued to express complete faith in the indexical Truth of the image. For Barthes, the photographer has simply presented what Barthes calls the ‘*noeme*’, the ‘that-has-been’, ‘that *necessarily* real thing that had been placed before the lens, without which there would be no photograph’.²² ‘What matters to me’, wrote Barthes, ‘is ... the certainty that the photographed body touches me with its own rays. From the real body, that was there, proceed radiations that ultimately touch me, who am here’. He goes on; ‘The photograph does not call up the past, but attests that what I see has indeed existed’.²³ He described his reaction to a photograph that moved him deeply. It showed a former slave named William Casby, taken by Richard Avedon: ‘... the man I see has been a slave; he certifies that slavery has existed ... and he certifies this not by historical testimony but by a new, somehow experiential order of proof ... the historian was no longer the mediator...the fact was established without method’.²⁴

But Barthes went beyond this apparently simplistic reading to argue that context is crucially important for any understanding of meaning. While he says that photography never lies about the existence of a thing, it can lie about its meaning.²⁵ Beyond the ‘this has been’ Barthes stressed the defining power of the institutional framework: ‘just as a social context makes certain readings possible, it can make other readings impossible. Institutions authorise certain meanings and dismiss, even silence, others ... To interpret

¹⁹ Mcquire, *Visions Of Modernity*, 30, 28.

²⁰ Mcquire, *Visions Of Modernity*, 30.

²¹ Mcquire, *Visions Of Modernity*, 33.

²² R. Barthes, (trans. Richard Howard) *Camera Lucida: Reflections On Photography*, (London: Jonathon Cape, 1982), 79-80.

²³ Barthes, *Camera Lucida*, 81-82.

²⁴ Barthes, *Camera Lucida*, 79-80.

²⁵ Tendentious may mean either biased or rebellious and although Barthes seems to intend it to mean biased he may wish to have it both ways. Barthes, *Camera Lucida*, 87.

a photograph is to negotiate a sea of choices already made'.²⁶ Others agreed that a photograph has no inherent truth; it is contingent upon context, and it is only with a close and informed analysis of various contexts that its various meanings can be deconstructed and articulated. Edwards defined two configurations of context – the 'originating' (who, what, why and when) and the 'dense context' – not linked to the reality effect of the image, but emerging through the relations of the photograph.²⁷ Each image 'finds itself at the intersection of numerous contexts', which are 'creative, suggestive and provocative'.²⁸ These multiple histories may contest and subvert the ideological discourses of the image's creation.²⁹ Geoffrey Batchen agreed:

The meanings of any individual photograph are ... contingent, being entirely dependent on the context in which that photograph finds itself at any given moment. A photograph can mean one thing in one context and something else entirely in another. The identity of a photograph is thereby not equated with some kind of inherent photographic qualities, but with what that photograph actually does in the world.³⁰

John Tagg also argued that the meaning of photographs is vested in their contexts and their instrumentality: 'The photograph as such has no identity ... Its nature as a practice depends on the institutions and agents which define it and set it to work. It is a flickering across a field of institutional spaces'.³¹ This is not to say that it has no relationship to 'Truth'. The men in the Port Arthur images certainly testify as to the existence of transportation, the convict system and Port Arthur. They appear to testify to their status as oppressed, dominated, controlled. But in following the ideas of Barthes *et al*, in establishing them in their various historical and contemporary contexts, what more may they tell us?

²⁶ R. Barthes in R. Bolton, 'In the American East: Richard Avedon Inc', in R. Bolton (ed.), *The Contest Of Meaning: Critical Histories Of Photography*, (Cambridge, Mass.: MIT Press, 1989), 281.

²⁷ Edwards, *Raw Histories*, 5.

²⁸ Edwards, *Raw Histories*, 5.

²⁹ Barthes, *Camera Lucida*, 109.

³⁰ G. Batchen, *Burning With Desire: The Conception Of Photography*, (Cambridge Mass.: MIT Press, 1997), 6.

³¹ J. Tagg, *The Burden Of Representation: Essays On Photographies And Histories*, (London: MacMillan Education, 1988), 11-12.

Surveillance and the State

The photography of the dispossessed exists within a particular institutional framework that shapes meaning in ways pre-determined by the state. Tagg took an explicitly Marxist position in a 1979 essay in which he identified photography as ‘an apparatus of ideological control under the central “harmonising” authority of the ideology of the class which, openly or through alliance, holds state power and wields the state apparatus’.³² Under this relentless gaze the powerless are pinned like entomological specimens, constituted as objects of knowledge, analysis and control. It is not only the state that pins the powerless down. According to Jonathan Schroeder, everyone who looks at the image, from the originating photographer to the twenty-first century researcher, participates in the subject’s oppression; to gaze ‘implies more than to look at – it implies a psychological relation of power in which the gazer is superior to the object of the gaze’.³³

Nowhere is this more clearly expressed than in the photography of the deviant, including the criminal. Batchen cautioned that ‘A history of police photography could not, for example, be separated from a history of the practices and institutions of criminology and the justice system’.³⁴ While it is not the purpose of this thesis to produce a history of the Tasmanian justice system, it will be critical to illuminate the place of this series of photographs within it, and to develop an understanding of the ways in which they were shaped by institutional requirements.

Michel Foucault argued that the control of space was an essential constituent of this technology, since ‘discipline proceeds by the organization of individuals in space...this procedure facilitates the reduction of dangerous multitudes or wandering vagabonds to fixed and docile individuals’.³⁵ The walls of the panopticon, the hospital, the factory or the school are the most obvious manifestation of this control, but once the individual has escaped the physical confines of the institution, the state had to find means to continue to exercise its control. Increasingly through the nineteenth century it did this

³² Tagg, *The Burden of Representation*, 63.

³³ J. Schroeder, ‘Consuming Representation: a visual approach to customer research’, in B. Stern (ed.), *Representing Consumers: Voices, Views And Visions*, (London: Routledge, 1998), 208.

³⁴ Batchen, *Burning With Desire*, 5.

³⁵ H.L. Dreyfus and M. Rabinow, *Michel Foucault: Beyond Structuralism And Hermeneutics*, (Chicago: Chicago University Press, 1982), 154.

by compiling ‘a vast, meticulous documentary apparatus [that became] an essential component of the growth of power’.³⁶ The compiling, dissemination and perusal of these records might be said to represent the state’s control of intellectual space, where the subject is fixed in the minds of others as unruly, suspect, dangerous. ‘One can speak of the formation of the disciplinary society’, argued Foucault, that ‘stretches from the enclosed disciplines, a sort of social “quarantine”, to an infinitely generalisable mechanism of “panopticism” ... Our society ... is one of surveillance’.³⁷ Beyond an architectural solution, the panoptic principle ensured that ‘no part of the Empire is without surveillance’, in short, the formation of ‘a disciplinary society’.³⁸

In 1864 the American portrait photographer Marcus Aurelius Root welcomed this extension of the panoptic principle because convicted offenders ‘would not find it easy to resume their criminal careers, while their faces and general aspects are familiar to so many, especially to the keen-sighted detective police’.³⁹ Now the public were to act in concert with the police as agents of the state in becoming alert, through the conscientious perusal of rogues’ galleries, to the presence of the criminal in their midst. ‘The criminal [had been] designated as the enemy of all, whom it is in the interest of all to track down ...’⁴⁰

Foucault even suggested that the prisoner or former prisoner then became ‘the principle of his own subjection’ by assuming responsibility for its constraints, in effect, by policing himself on behalf of the state.⁴¹ While this seems theoretically persuasive, if it were in fact true there should be no recidivists. This model seems to take no account of the psychology of the criminally inclined, often characterised by poor impulse control, a sense of alienation from the society that seeks to constrain him/her, and an indifference to the effects of the law. As John Briggs, Christopher Harrison, Angus McInnes and David Vincent said, for ‘the large majority of casual thieves, [their] activities are a measure not of extensive planning and calculation but rather of

³⁶ Dreyfus and Rabinow, *Michel Foucault*, 159.

³⁷ M. Foucault, *Discipline And Punish: The Birth Of The Prison*, (Middlesex: Penguin, 1975, trans. 1977), 216-7.

³⁸ Foucault, *Discipline And Punish*, 218.

³⁹ M.A. Root, *The Camera And The Pencil*. (Pawlett VT: Helios, 1864, reprinted 1971), 420-21.

⁴⁰ Foucault, *Discipline And Punish*, 101.

⁴¹ Foucault in Batchen, *Burning with Desire*, 190.

their complete absence'.⁴² In the social and economic contexts in which many crimes are committed, the existence of a circulating image would surely exercise as little restraint as would the presence of bystanders or even a patrolling policeman.

Despite these caveats, Foucault's framing of criminal photography as the tool of this kind of society was persuasive. As Anderson noted in her work on Indian convicts, most of whom looked the same to their colonial gaolers, 'The power of the state to produce an increasingly totalising web of control over the entire population was increasingly intertwined with and dependent on its ability to produce a specification of individuality'.⁴³ Tagg also saw the development of criminal photography as part of the apparatus of an increasingly powerful state:

The coupling of evidence and photography in the second half of the nineteenth century was bound up with the emergence of new institutions and new practices of record-keeping: that is, those new techniques of representation and regulation that were so central to the restructuring of the local and national state in industrialised societies at that time and to the development of a network of disciplinary institutions – the police, prison, asylums ...⁴⁴

Within the specific technology of the new penal system, criminals were objects to be manipulated towards state ends. The body was to be trained, exercised and supervised; there was 'a meticulous assumption of responsibility for the body and the time of the convict, a regulation of his movements and behaviour by a system of authority and knowledge', of which his record, eventually including his photograph, was a key element.⁴⁵ Since 'the key to the populace's social and political unruliness and also the means of combating it lies in the "opacity" of the populace to the forces of order', those who compiled the archive – the record and its constituent elements of text,

⁴² J. Briggs, C. Harrison, A. McInnes and D. Vincent, *Crime And Punishment In England: An Introductory History*, (New York: St Martin's Press, 1996), 245.

⁴³ C. Anderson, 'Indian convicts in Mauritius' in I. Duffield and J. Bradley (eds.), *Representing Convicts: New Perspectives On Convict Forced Labour Migration*, (London: Leicester University Press, 1997), 171.

⁴⁴ Tagg, *Burden Of Representation*, 5.

⁴⁵ Dreyfus and Rabinow, *Michel Foucault*, 152.

photograph and later, fingerprints – intended it to be one of the most important tools in the arsenal of the state.⁴⁶

The development of criminal photography

Many historians have linked the development of photography to the development of the modern state. As Tagg put it, ‘The incentive to develop the existing scientific and technical knowledge as a means of fixing the image of the *camera obscura* came from the unprecedented demand for images among the newly dominant middle classes, at a stage of economic growth in Britain when organised industry ... was laying the basis for a new social order’.⁴⁷ In Henry Fox Talbot’s magnificent 1844 volume *The Pencil of Nature*, the first book to be illustrated with photographic prints, he ‘lays claim to a new legalistic truth, the truth of an indexical rather than textual inventory’.⁴⁸ He reproduced a picture of valuable china on a shelf, noting that if they were to be stolen and a suspect arrested, ‘if the mute testimony of the picture were to be produced against him in court – it would certainly be evidence of a novel kind’.⁴⁹

Photographic documentation of prisoners was not common until the 1860s although, as Chapter Three will demonstrate, it had been in use on an *ad hoc* basis since the early 1840s, a mere two years after photography had first burst upon an enthusiastic public. These early efforts were part of a series of new and increasingly systematic attempts ‘to regulate the growing urban presence of the “dangerous classes”’, a chronically unemployed or underemployed class seen as a threat to public order and social prosperity.⁵⁰ It is no coincidence that the first criminals to be photographed all over Europe and Britain were vagrants, vagrancy being generally believed to be the hotbed for all crime.⁵¹ Although they did not yet know it, the noose was beginning to tighten

⁴⁶ J. Minson, *Genealogies of Morals, Nietzsche, Foucault, Donzelot, And The Eccentricity Of Ethics*, (New York: St Martin’s Press, 1985), quoted in T. Bennett, *The Birth Of The Museum: History, Theory, Politics*, (London: Routledge, 1995), 62.

⁴⁷ Tagg, *Burden of Representation*, 412.

⁴⁸ A. Sekula, ‘The Body and the Archive’, in Bolton (ed.), *The Contest Of Meaning*, 344.

⁴⁹ Sekula, ‘The Body and the Archive’, 344.

⁵⁰ Foucault, *Discipline and Punish*, 100.

⁵¹ C. Anderson, *Legible Bodies: Race, Criminality And Colonialism In South Asia*, (Oxford: Berg, 2004), 17; J. Davis, ‘Urban Policing and its objects’ in C. Emsley and B. Weinberger (eds.) *Policing Western Europe: Politics, Professionalisms And Public Order, 1850-1940*, (USA: Greenwood Press, 1991), 2.

around the necks of the world's lawbreakers. Those responsible for upholding the law had heretofore relied on a variety of unreliable or undesirable methods of identifying wrongdoers. Branding, tattooing and mutilation had all been employed to both distinguish the criminal with the shame of his crime and to render him more visible as an offender for future reference by authorities. In France at the end of the eighteenth century recidivists were branded with the letter 'R'.⁵² Nineteenth century British deserters were tattooed with a 'D' on their left side, while Indian convicts transported by the British were tattooed with their crimes on their foreheads. This strategy of bodily marking was low cost and effective but visible and irreversible, and so precluded the reintegration of the individual into society and thus might weaken his motivation to reform. It was only used sporadically.

Early police efforts relied substantially on networks of personal acquaintance; they believed that they knew and could identify with certainty everyone in their area.⁵³ While this may have once been true, with the advent of the industrial revolution and an increasingly mobile population this simple system began to collapse. A written description, while an advance on previous approaches, was subject to all of the weaknesses that human subjectivity is heir to. Despite the introduction of a standardised vocabulary and a common list of descriptive terms that clerks could consult, they still had to exercise individual judgement as to whether a man's complexion was fair or sallow, his eyes brown or hazel. Even if the terms could be rigorously applied, since the records were listed alphabetically all a man had to do was present himself under another name and the clerk would have no hope of retrieving his record.⁵⁴ The addition of photographs appeared to promise new certainties in identification for authorities.

Foucault argued that the aim of punishment is to turn the body into 'a useful force', which can only be achieved if the body is 'both a productive body and a subjected body'. Knowledge of the body is power exercised over the body.⁵⁵ Schroeder agreed, stating that 'to gaze implies more than to look at – it implies a psychological relation

⁵² S. Cole, *Suspect Identities: A History Of Fingerprinting And Criminal Identification*, (Cambridge Mass.: Harvard University Press, 2001), 7.

⁵³ Cole, *Suspect Identities*, 8.

⁵⁴ Cole, *Suspect Identities*, 11.

⁵⁵ Foucault, *Discipline And Punish*, 26.

of power, in which the gazer is superior to the object of the gaze'.⁵⁶ This subjection was extended to the population as a whole, when Foucault argued that 'the key to the populace's social and political unruliness and also the means of combating it lies in the "opacity" of the populace to the forces of order'.⁵⁷ The circulation of these images renders the populace less opaque both to itself and to the forces of law and order. Criminal photographs were designed to distinguish individuals in order to manage and control them.⁵⁸ They became one of the 'omnipresent forms of surveillance' to which the convicted were subjected.⁵⁹

Susan Sontag agreed that 'photographs ... became a useful tool of modern states in the surveillance and control of their increasingly mobile populations' being 'enrolled in the service of important institutions of control, notably the family and the police, as symbolic objects and as pieces of information'.⁶⁰ The symbolism might extend to persuading the respectable folk of a Europe undergoing immense pressure for change that they should, as the famous wartime slogan had it, 'Keep calm and carry on', the state had everything under control. Such official reassurance was not new. In Dutch still life painting of the tumultuous and unstable seventeenth century, valuable items like gorgeous fabrics and immensely expensive tulips were often included, so that 'the instability and volatility of their material culture could appear as regulated and stabilised'.⁶¹ The convict photograph in the archive appeared to assure society that the causes of social instability were being effectively controlled and managed. Beloved of all crime procedurals on television, today's CCTV surveillance camera is everywhere, sees everything, remembers, fills blank space. The *cartes de visite* camera and the circulation of its products may be seen as a primitive attempt to achieve the same ends.

The relationship of criminal photographs to other, contemporary genres

As Allan Sekula observed, 'photography came to establish and delimit the terrain of the *other*, to define both the generalized look – the typology – and the *contingent*

⁵⁶ Schroeder, 'Consuming Representation', 208.

⁵⁷ Bennett, *The Birth of the Museum*, 62.

⁵⁸ P. Hamilton, and R. Hargreaves, *The Beautiful And The Damned: The Creation Of Identity In Nineteenth-Century Photography*, (Farnham: Lund Humphries Publishers, 2001), 15.

⁵⁹ Foucault, *Discipline And Punish*, 115-6

⁶⁰ S. Sontag, *On Photography*, (New York: Penguin, 1977), 5, 22.

⁶¹ N. Bryson, *Looking At The Overlooked: Four Essays On Still Life Painting*, (Cambridge Mass: Harvard University Press, 1990), 132.

instance of deviance and social pathology'.⁶² But photography's indexicality was not only concerned with the other and with deviants. With the development of this cheap and accessible technology, it became possible to position *all* members of society within it. Sekula warned against a simple equation of photography with the power of the state: 'We are confronting, then, a double system ... capable of functioning both *honorifically* and *repressively*'.⁶³ The portraits of the great and the good were distributed widely to act as role models for all citizens. Family portraits, including those taken of the newly deceased and even of their graves, served to reinforce the bonds of family and so the bonds of society.⁶⁴ These were Sekula's honorific uses. But hand-in-hand with the need to define those who were *inside* the fold was the need to define and recognise those who were *outside* – the mentally ill, the criminal, the racially inferior. Once defined and recognised, they could be managed.

In the 1840s and 1850s the twin 'sciences' – perhaps 'dark arts' is a more appropriate term – of physiognomy and phrenology had found widespread acceptance as tools in the attempts to separate outsiders from insiders. Urgency was given to this project by an increasing conviction on the part of government that crime was committed by a single class of person, the habitual criminal. This class became an object of scientific study and the search began for the physical markers of these offenders.⁶⁵ It was assumed that the habitual criminal would look different from the law-abiding citizen; his pathological behaviour would manifest itself in physical features that would be visible to the naked eye, were one to know where and how to look. Physiognomy assigned a particular suite of personality traits to each part of the face and head, and individual character could then be read from a confluence of these readings. Phrenology used a similar approach to the topography of the skull and assumed correspondences between observable physical features and specific mental faculties. Phrenology in particular, accompanied by widely distributed two- and three-dimensional guides to reading your loved one's character from their skull, became a

⁶² Sekula, 'The Body And The Archive', 345.

⁶³ Sekula, 'The Body And The Archive', 345.

⁶⁴ Sekula, 'The Body And The Archive', 345.

⁶⁵ Cole, *Suspect Identities*, 14-15.

popular entertainment at home and on the stage. In the 1840s, candidates for employment in the United States often had to submit to a phrenological analysis.⁶⁶

As soon as photography emerged to record the identification of known criminals, enthusiasts began to experiment with their images, hoping to see common physiognomic attributes that would identify potential criminals.⁶⁷ Phrenology, prisons and photography came together for the first time in 1846, when Eliza Farnham, the matron of the women's prison at Sing Sing in the United States, commissioned photographer Mathew Brady to make a series of portraits of prison inmates. She added engravings of these portraits to her new edition of *Rationale of Crime*, a previously un-illustrated book by Marmaduke Sampson. She was particularly concerned to distinguish between those whom she categorised as 'reformable' and those whom she believed were incorrigible, on the basis of her reading of the topography of their skulls.⁶⁸ Her work was not concerned with the identification and apprehension of individuals, but with the identification of types.⁶⁹

Gradually phrenology and physiognomy evolved into 'criminal anthropology', most fully articulated by the followers of Cesare Lombroso after the publication in 1876 of his seminal text *L'Uomo Delinquente (Criminal Man)*.⁷⁰ Lombrosians believed that criminals came from 'bad stock' and so must be biologically distinctive.⁷¹ Lombroso superimposed multiple negatives of photographs of convicted offenders to arrive at a generalised portrait of the criminal type. Although a laudable attempt to prevent crime rather than simply react to it, these efforts were doomed to failure.

Pursuing his interest in the improvement of the human race, which culminated in his development of eugenics, Francis Galton followed Lombroso's approach in combining in one print the negatives of portraits of a number of thieves or murderers. His purpose was, however, far more sinister than Lombroso's. Rather than simply identifying the

⁶⁶ Sekula, 'The Body And The Archive', 348.

⁶⁷ Cole, *Suspect Identities*, 26.

⁶⁸ Sekula, 'The Body And The Archive', 349-50.

⁶⁹ As philosophers began to think about the causes of crime in the mid eighteenth century the science of Criminology was born. According to the Oxford Dictionary, criminology is 'the scientific study of the nature, extent, causes, and control of criminal behaviour in both the individual and in society'.

⁷⁰ C. Lombroso, *L'uomo delinquente : studiato in rapporto alla antropologia, alla medicina legale ed alle discipline carcerarie*, (Milan: Hoepli, 1876).

⁷¹ Cole, *Suspect Identities*, 22-23.

‘typical’ thief or murderer for his easy apprehension, he sought to produce his portrait so that he could be identified and eliminated from society.⁷² The work of Alphonse Bertillon, a clerk in the Paris Police Department in the 1890s, had more in common with the Port Arthur photographer than with Galton. He sought to individualise rather than to generalise through the compilation of a vast dossier of the physical characteristics of each convicted offender, accompanied by photographs taken from different angles. This was a practical response to the exigencies of urban police work amid an increasingly mobile society. His method, never very successful because of the huge amount of inconsistent data generated and inadequate systems for retrieval, was eventually superseded by Galton’s development of fingerprinting as the first really reliable method of identification.

Anthropological photography also initially sought to identify and define types. Since the late 18th century, pre-evolutionary thinking had defined a descending hierarchy of race based on head types, with the upright Caucasian brow showing the closest conformity to the ideal expressed by Classical Greek sculpture. The low African brow was thought to be closest to the primates.⁷³ With increasing access to photography by the mid-1850s, physiognomic portraits, arranged according to race, provided for many scholars irrefutable evidence of different racial types that could then be arranged hierarchically.⁷⁴ As an anonymous author wrote in an 1873 panegyric to photography and its multifarious uses, ‘Ethnologists fix by a similar agency [that is, the photograph] the characteristic portraiture of nations and tribes’.⁷⁵ Men and women of colour were photographed posed directly facing the camera and often also in profile, usually naked or semi-naked, as ‘types’, specifically of a stage in human evolution but less explicitly as the type of ‘the other’.

Somewhat later, in a period of rapid colonial expansion, some concern was also directed at what were characterised as vanishing races. The ‘People of India’ project, initiated by the first Viceroy of India, Lord Canning, and published in several volumes between 1868-75, was a photographic survey designed to capture ‘a memory of the

⁷² Sekula, ‘The Body And The Archive’, 353.

⁷³ B. Wright, ‘Back Talk: recoding the body’, *Callaloo*, Vol. 19/2, (1996), 403.

⁷⁴ Wright, ‘Back Talk: recoding the body’, 403.

⁷⁵ Anon., ‘Criminal Photography’, *All The Year Round*, Vol. 11, (1873), 9.

peculiarities of Indian life'.⁷⁶ Officers of the Indian colonial service were required to photograph the racial, caste and occupational 'types' characteristic of their area. Their subjects are not identified by name, but by the title of the type they represent – 'a typical Parsee', 'a laundry wallah'. Lindt's 1870-72 photographs of Aboriginal people from the Clarence River area in northern New South Wales likewise are also not concerned with their subjects as individuals, but as 'representative' of vanished or vanishing people and culture, 'carefully selected to show a range of age, sex or status'.⁷⁷

Photography was also applied to anatomical studies of the human body; this was first done in 1840, only two years after the camera was invented, when Alfred Donné of Paris photographed sections of bones, teeth, and red blood cells.⁷⁸ During the American Civil War (1861–1865), surgeons pioneered new types of surgery to deal with the appalling new types of wounds caused by the new cylindrical lead bullet, the large and heavy Minie ball. More complete records on medical and surgical activities were kept during this war than ever before, and they were illustrated with countless photographs.⁷⁹ The applications of this technology were also integrated into pioneering research. One of the first to do more than simply illustrate known conditions was *Guillaume-Benjamin-Amand Duchenne de Boulogne*, a French neurologist. In his *Mechanisme de la Physionomie Humaine*, published in 1862, he presented 'the first published physiological experiments to rely on photographic

⁷⁶ R. Poignant, 'Surveying the Field of View: the making of the RAI A photographic collection', in E. Edwards (ed.), *Anthropology And Photography 1860-1920*, (New Haven and London: Yale University Press, 1992), 49.

⁷⁷ S. Jones, *J.W. Lindt, Master Photographer*, (Melbourne: Currey O'Neil Ross for the Library Council of Victoria, 1985), 25, 4.

⁷⁸ S. Larsson and J. Brane, *Medical Photography - Introduction, A Brief History of The Medical Photographer*, (undated) in <http://encyclopedia.jrank.org/articles/pages/1156/Medical-Photography.html>, viewed 17 March 2010.

⁷⁹ Some of the most significant were those taken by Dr Reed Bontecu. Between 1863-66 he was in charge of the Harewood General Hospital and it was during his time there that he made hundreds of photographs of injured soldiers. Dr Rogers credits him with being the first to apply photography for clinical purposes, showing the condition of the wounded when the soldiers were first admitted to the hospital, and many times when they were discharged. Indeed, the photographs were invaluable in qualifying disabled veterans for pension payments. B.O. Rogers, 'The First Civil War Photographs of Soldiers with Facial Wounds', *Aesthetic Plastic Surgery* Vol. 19, (1995), 9. <http://www.ncbi.nlm.nih.gov/pubmed/7668176>, viewed 11 September 2013.

illustration'.⁸⁰ Seeking to 'study and discover the mechanisms and laws of human facial expression', Duchenne applied a small electrical current to the facial muscles of his models, which enabled him to identify each muscle or muscle group associated with a given expression – pain, joy, grief etc – as it was stimulated. He documented each expression photographically because, as he wrote, 'Photographs furnish evidence . . . something seems proven when we're shown a photograph'.⁸¹

Psychiatric photography straddled both codes of practice. On the one hand its focus was essentially medical. It sought to generalise, to define types of mental affliction. The first examples of this kind of photography are photographs of 'cretins' taken by 'alienist' Jules Baillarger in 1851, closely followed in the same year by Dr. Hugh Welch Diamond, who photographed mental patients at the Surrey County Asylum in England.⁸² By the 1850s photography was also being applied in a judicial capacity to the inmates of mental institutions. They were posed as were many criminals, full-frontal with the emphasis on their hands and their faces, and these images were attached to their records so that they were known by name, to assist in their recapture should they escape.⁸³

In summary, these other disciplines – anthropology, criminology, and to some extent psychiatry – did not seek to know their subjects as individuals. Within the psychiatric, medical and criminal spheres the photographic portrait established and laid bare to the world the *other* – the foreign, the deviant, the insane, the mutilated and the criminal. They were now fixed, both publicly and privately, as appropriate candidates for control and repression by the state.⁸⁴ But such generalities were of no use to the police; they needed the certainty of recognition of an individual, the correspondence of the man in the photograph with the man in front of them, a unique 'likeness'.⁸⁵

⁸⁰ K. Gonzales-Day, 'Analytical Photography: Portraiture, from the Index to the Epidermis', *Leonardo*, Vol. 35/1, (2002), 23.

⁸¹ Duchenne quoted in Gonzales-Day, 'Analytical Photography: Portraiture, from the Index to the Epidermis', 24.

⁸² 'Alienist' was the original term for a psychiatrist. Larsson and Brane, *Medical Photography*, unpaginated.

⁸³ Tagg, *Burden Of Representation*, 80.

⁸⁴ Sekula, 'The Body and the Archive', 345.

⁸⁵ Jackson, B., 2009 *Pictures From A Drawer: Prison And The Art Of Portraiture*, Temple University Press, Philadelphia, 11.

CHAPTER 2: The convict stain: anatomising recidivism



Thomas Cahill, taken at Port Arthur 1874,
Photographer: probably Commandant A.H. Boyd
National Library of Australia

As the Great Famine began to bite in 1845, 12-year-old Irish orphan Thomas Cahill was transported for vagrancy. Already convicted twice before for theft, he pleaded, ‘I had no home to live in’. According to his gaol report, the homeless lad was ‘very bad, convicted several times before’.⁸⁷ By the time that he died in 1886, aged 54, he had accumulated another 26 convictions, ranging from assault to idle and disorderly, for offences committed in 21 different locations.⁸⁸ As far as we know he never settled anywhere for long, never married, formed a de facto relationship or had children. His is an extreme case, in terms of his youth when first convicted and the number and seriousness of his known offences in Tasmania. Despite these caveats, his career is similar in its general features to that of most of the men who were photographed at Port Arthur in 1874.

Raymond Evans and William Thorpe exhorted historians not to silence the convict voice by disregarding sources of information like ‘court depositions, petitions, ballads, press accounts, letters and associated ephemera’.⁸⁹ Throughout this project I have, as far as

⁸⁷ CON33/1/65, page 45, Tasmanian Archive and Heritage Office (TAHO).

⁸⁸ RGD35/1/10, image 379, TAHO.

⁸⁹ R. Evans and W. Thorpe, ‘Historical Reconsiderations IX: Power, Punishment and Penal Labour: Convict Workers and Moreton Bay’, *Australian Historical Studies*, Vol. 25/98, (1992), 95.

possible, applied that individualising principle to these men. I wanted to see them not simply as the passive, anonymous subjects of the gaze of the powerful, as faceless representatives of a class of deviants called ‘criminal’, but as people with real life experiences, personalities and stories of their own. To do this, I also need to turn my gaze onto the system that produced both the photographs that were taken at Port Arthur in 1873-4, and the society that used them. I wish to show that the relationship between Cahill’s life, the convict system and Tasmanian society was not a simple one; it was complex, dynamic and shaped anew by each stage of the evolution of the convict colony of Van Diemen’s Land to the free colony of Tasmania. By using historical newspapers, convict records, modern historical research and criminological theory, I hope to explicate that relationship, to understand why Thomas Cahill and his fellows spent most of their lives in one form of incarceration after another.

The prisoners who were photographed at Port Arthur in the early 1870s had committed serious colonial offences, and were then awarded a spell at Tasmania’s only remaining secondary punishment station. This was not a first offence for the vast majority of them. Most had originally been transported on long ocean voyages to places far from their countries of origin. A minority were free arrivals or native-born. About 100 of Britain’s convicts had been leaving her shores under compulsion each year since 1660, but after the Transportation Act of 1717 around 50,000 convicts were sent to North America.⁹⁰ The American Revolution brought that trade to a halt in 1777, and thereafter the British government was forced to find another destination for those it no longer wanted.⁹¹ Eventually, it turned to the new Australian colonies; some 160,000 convicted offenders were sent there from Britain and its Empire between 1787 and 1868.⁹² Their minimum sentence was seven years, but in effect transportation meant life, for few were able to return.⁹³ The transported men in the Port Arthur photographs were some of those 76,000 men and women who had been sent to Van Diemen’s Land/Tasmania between 1803 and

⁹⁰ H. Maxwell-Stewart, ‘Convict Transportation from Britain and Ireland, 1615-1870’, in *History Compass*, Vol. 8/11, (2010), 1226.

⁹¹ Maxwell-Stewart, ‘Convict Transportation from Britain and Ireland, 1615-1870’, 1227.

⁹² Maxwell-Stewart, ‘Convict Transportation from Britain and Ireland, 1615-1870’, 1224.

⁹³ Maxwell-Stewart, ‘Convict Transportation from Britain and Ireland, 1615-1870’, 1228.

1853; they were managed there by a system that gradually evolved from an earlier regime of physical punishments, ranging from flogging to execution, into a later regime based around incarceration and punishment that was increasingly psychological.⁹⁴

At first, most newly arrived male prisoners were subject to the Assignment System, under which they were allocated to free settlers, who then became responsible for feeding, clothing, employing and disciplining them. If they behaved themselves, they could earn a ticket-of-leave, and could then move around the colony and work for a wage. But if they committed further offences, they could be flogged or sent to a road party or a chain gang for a term of hard labour. For a serious offence they would be sent to one of the secondary punishment stations at Norfolk Island, Port Arthur and Macquarie Harbour.⁹⁵

After 1840, under the influence of a Whig Government that abhorred slavery and was building new penitentiaries at home, a new Probation System was introduced. It combined elements of the penitentiary system with ganged labour, which was designed to maximise the value of an unfree workforce. Men had to undergo a probationary period of labour on public works, after which they could be hired by private employers.⁹⁶ Later, they served their probationary period in solitary confinement in Britain's new penitentiaries.⁹⁷ Of the 134 men in these photographs who were not native born or who had not come free to the colony, 112 arrived during the probation system, so my analysis will largely focus on that regime.

The historian, the criminologist and the problem of recidivism

As is the case among modern theorists of crime, until recently historians had been little interested in the phenomenon of recidivism. Just as late twentieth-century theorists were most interested in the causes of the initial commission of crime, so most historians have

⁹⁴ H. Maxwell-Stewart, 'Convict Labour Extraction and Transportation from Britain and Ireland, 1615-1870', in C.G. De Vito and A. Lichtenstein (eds.), *Global Convict Labour*, (Leiden/Boston: Brill, 2015), 190-1.

⁹⁵ Maxwell-Stewart, 'Convict Labour Extraction and Transportation from Britain and Ireland, 1615-1870', 185.

⁹⁶ Maxwell-Stewart, 'Convict Labour Extraction and Transportation from Britain and Ireland, 1615-1870', 193-4.

⁹⁷ H. Maxwell-Stewart, 'Convict Transportation from Britain and Ireland 1615-1870', *History Compass*, Vol. 8/11, (2010), 1226, 1228, 1231-3.

focused their attention on the essential nature of the offenders, and the causes of the crimes that had sent them to the colonies. Their interest in reform, where it is apparent, was determined by whether they viewed the person, or the system, as so bad and/or damaging that reform was impossible. Wood, Nicholas and Shergold, Evans and Thorpe plumped for a bad system whereas Clark, Shaw and Hirst had no doubt that the problem was bad men.⁹⁸ Robson seemed to have it both ways.⁹⁹ I discuss the work of these historians in the following paragraphs.

In his passionate defence of the convict, George A. Wood introduced us to the innocent man who was driven by poverty to steal a loaf of bread for his starving family. According to Wood, ‘the atrocious criminals remained in England, while their victims, innocent and manly, founded the Australian democracy’. While he conceded that some were ‘professional criminals’, he argued that ‘the society created by the English ruling classes made criminality inevitable’. In the colonies, with a more favourable environment and new opportunities, men would be able to live lives of greater prosperity and moral worth.¹⁰⁰ Wood felt that reform was to be achieved by taking the ruling-class foot off the working-class neck, thereby liberating a man to reach his full potential.

Manning Clark would have none of this argument.¹⁰¹ To demolish it, he uncritically accepted the nineteenth century sources – convict records and ‘informed opinion’ – that did not have a good word to say for the convict. The ‘convict types’ were described as profane, vicious and demoralized, characterised by mental imbecility, low cunning and ignorance. On the hulks they ‘were corrupting and confirming each other in “every

⁹⁸ C.M.H. Clark, ‘The origins of the convicts transported to eastern Australia, 1787–1852’, *Historical Studies*, Vol. 7/26 and 27, (1956), 121-5; A.G.L. Shaw, *Convicts And The Colonies: A Study Of Penal Transportation From Great Britain And Ireland To Australia And Other Parts Of The British Empire*, (London: Faber and Faber, 1966), 147; J. Hirst, *Convict Society And Its Enemies, A History Of Early New South Wales*, (Sydney: Allen and Unwin, 1983), 32-3. G.A. Wood, ‘Convicts’, *Royal Australian Historical Society*, Vol. 8/4, (1922), 187-8, 196; S. Nicholas and P.R. Shergold, ‘Convicts as Workers’, in S. Nicholas (ed.), *Convict Workers: Reinterpreting Australia’s Past*, (Cambridge: Cambridge University Press, 1988), 3, 7, 9, 199; R. Evans and W. Thorpe, ‘Historical reconsiderations IX: Power, punishment and penal labour: Convict workers and Moreton Bay’, *Australian Historical Studies*, Vol.25/98, (1992), 109.

⁹⁹ L. Robson, *Convict Settlers Of Australia*, (Melbourne: Melbourne University Press, 1965), 3.

¹⁰⁰ Wood, ‘Convicts’, 187-8, 196.

¹⁰¹ Clark, ‘The origins of the convicts’, 121-5.

Practice of Villainy”’. They rebuffed kindly attempts to show them the light, ‘scorned all attempts at their regeneration’, and treated with brutal contempt any man who appeared inclined to reform. Clark concluded that they were men and women who were permanently outcast from society by choice, which he characterises as a ‘psychological aberration’. He found that most of them were urban workers, the city being a by-word for vice and corruption throughout history.¹⁰² These were men for whom crime was an occupation like plumbing, although it cannot have been very remunerative because Clark also described the appalling poverty in which they lived. They had complete contempt for the law, a ‘pride in their criminal record’, ‘a deep seated resistance to work’, ‘a sense of comradeship with each other’ and ‘a snarl on their lips for the rest of the world’, which boded ill for the colonies.¹⁰³

By contrast, Clark accepted the argument favouring desperate poverty and cruel law to account for the small numbers of political prisoners like the Luddites, the Tolpuddle Martyrs, the perpetrators of the agricultural revolts in southern England between 1830 and 1831, and the Irish; these groups he described as ‘the unfortunate victims of circumstance ... casual rather than professional criminals’. But despite this exoneration, rural labourers were finally condemned because of their brutalised and degraded natures, witness their fondness for cruel pursuits like cockfighting.¹⁰⁴ Clark gave reform only a passing glance when he referred to the British Parliament’s acceptance of the arguments of criminal law reformers, that savage punishment was a bar rather than an incentive to reform.¹⁰⁵

A.G.L. Shaw also rejected Wood’s appraisal of the convicts as ‘more sinned against than sinning’.¹⁰⁶ He characterised the entire cohort as ‘the dregs of society ... trained to crime

¹⁰² Clark, ‘The origins of the convicts’, 125, 130.

¹⁰³ This is an excellent description of convict sub-culture. Clark, ‘The origins of the convicts’, Vol. 7/26, 124-5, 132-3; Vol. 7/27, 314, 316, 327.

¹⁰⁴ Clark, ‘The origins of the convicts’, 320.

¹⁰⁵ He discussed it only in the context of law reform, which reduced the number of capital offences and substituted short gaol terms for transportation between 1832 and 1840. Clark, ‘The origins of the convicts’, 325.

¹⁰⁶ Shaw, *Convicts And The Colonies*, 147.

from the cradle'.¹⁰⁷ However, his 'small random sample' of convict records revealed that about a third of the English and half of the Irish transported to Tasmania between 1841 and 1853 had either not been convicted before or had only one record of prior offence, generally for trifling matters. In Tasmania, only five or six per cent of them committed a crime each year, making the great majority law-abiding.¹⁰⁸ Like Clark, Shaw did not take into account the large proportion of the absolutely and relatively inoffensive, but rather structured his analysis around the nineteenth century understanding of offenders as members of a criminal class. Shaw touched lightly on two factors that he believed accounted for the apparent success of transportation and the reform of the convict: 'his removal to an environment where he was more likely to be able to live honestly', far from the temptations to crime of Britain's cities, and the assignment and ticket-of-leave systems, which dispersed the men and provided an opportunity for a man to 'work his way back into society'.¹⁰⁹ This sounds remarkably like Wood's prerequisites for reform. Neither Clark nor Shaw explained how a man who was naturally inclined to vice and whose only training had been in the criminal trade would find either the motivation or the skills to do either of those things.

In dealing with the view of early New South Wales as seen by its enemies, it is often hard to tell whether John Hirst was simply repeating negative nineteenth century judgements or endorsing them. Ironically, although he set out to demonstrate that early New South Wales was not the Sodom and Gomorrah described by its enemies, he seemed to reflect their views by apparently accepting their idea that the convict population was largely composed of professional thieves. These were urban dwellers, (by implication vicious and degraded), unused to regular hours, regular employment and hard manual labour.¹¹⁰ I shall argue that elements of this characterisation are certainly accurate for a proportion of the transported, but that a consideration of the social, political and economic context from which these men sprang reveals that their irregular and peripatetic lifestyles and

¹⁰⁷ Shaw, *Convicts and the Colonies*, 12.

¹⁰⁸ Shaw, *Convicts and the Colonies*, 343-4.

¹⁰⁹ Later theorists would describe these events as the prevention of the formation of a convict sub-culture and a man's identification with its oppositional nature, and the obtaining of 'honest, well paid' work. Shaw, *Convicts And The Colonies*, 149, 359.

¹¹⁰ Hirst, *Convict Society And Its Enemies*, 32-3.

employment pattern were not always of their choosing, that they did have respectable occupations even if they could not always follow them, and that the conclusion that they were professional thieves is entirely unwarranted.

As to reform of offenders, Hirst did not entertain the idea because presumably he believed, as did their enemies, that these men were congenitally incapable of it. Instead, he presents without comment the argument of the clergy, governors and officials of the day that only their death could achieve reform for the colony as a whole, provided that it left in its wake native-born children.¹¹¹ They ‘did not inherit the vices of their parents’, but with good plentiful food, good health and a shortage of labour they grew up law-abiding and sober, strong and hard-working.¹¹² It was a miracle that ‘in the midst of degradation and hopelessness had grown this wholesomeness’.¹¹³ Hirst did not make the imaginative leap to ask what would have happened if these advantages had been available to their parents before they were transported from Britain.

Lloyd Robson opened the first chapter of his important *Convict Settlers of Australia* with two nineteenth century quotes, the first referencing G.A. Wood’s ‘village Hampdens’ and the second from Governor Arthur’s unflattering description of the convicts as largely ‘Idiots, madmen and cripples, ... boys, ignorant clerks and weakly idle pickpockets’.¹¹⁴ He did not come down clearly on either side, although one half to two thirds of his sample, more than in Shaw found, had previously been convicted; 80 per cent of them, however, were only petty thieves rather than dangerous criminals.¹¹⁵ Many were persistent offenders who had started on their lives of crime at an early age, coming from families where crime was ‘a way of life and the principal source of income’.¹¹⁶ He concluded that those from Britain’s towns were ‘accustomed to a St. Giles-like existence, in which the most important features were idleness, a battle of wits with those robbed and

¹¹¹ Hirst, *Convict Society And Its Enemies*, 193.

¹¹² Hirst, *Convict Society And Its Enemies*, 193.

¹¹³ Hirst, *Convict Society And Its Enemies*, 193.

¹¹⁴ Robson, *Convict Settlers Of Australia*, 3.

¹¹⁵ Robson, *Convict Settlers Of Australia*, 9.

¹¹⁶ Robson, *Convict Settlers Of Australia*, 14-5, 13.

a lack of any sort of supervision'.¹¹⁷ He seemed again to have a bet each way on the convict character when he prefaced his final chapter with quotes from two contemporary sources, one which identifies 'want' as the driving cause of crime and the other drunkenness, without offering a conclusion of his own.¹¹⁸

Robson was, however, more interested in reform than were Wood, Shaw and Clark. He mounted a refreshing argument that lays considerable blame for reformatory failure at the feet of the system, rather than expecting the convict to shoulder the entire burden. He saw as contributing factors 'the character and origins' of the transportees, particularly the town-bred younger men, who were unaccustomed to unflinching discipline and unable to adapt to it.¹¹⁹ In addition, 'profligacy and drunkenness' ran rampant throughout society, including those charged with administering the system, and provided no incentive for or modelling of a law-abiding life.¹²⁰ But he reserved the lion's share of blame to three particular aspects of the system, the lash, the chain gang and the penal settlement. He hypothesised that the brutality of the punishments and the inflexibility of the system endured by convicts in Van Diemen's Land created repeat offenders. He described the lash as a device unrivalled in its capacity to harden the hearts of those who endured it.¹²¹ The chain gang also proved 'degrading to all concerned'.¹²² Sentence to penal settlements, where a man was forced to mix with 'the most depraved and vicious criminals thrown up by the jungle-like cities of nineteenth century Britain', continued the process of alienation and brutalisation.¹²³ The result was desperate men who lashed out blindly because they were almost driven mad by suffering. Another exacerbating factor was the imbalance of the sexes, as a result of which the majority of male convicts never married.¹²⁴

To account for the success of some individuals in pre-1821 New South Wales, he advanced the theory that this was because at home they were a cut above the general run

¹¹⁷ Robson, *Convict Settlers Of Australia*, 111.

¹¹⁸ Robson, *Convict Settlers Of Australia*, 143.

¹¹⁹ Robson, *Convict Settlers Of Australia*, 111.

¹²⁰ Robson, *Convict Settlers Of Australia*, 111.

¹²¹ Robson, *Convict Settlers Of Australia*, 111.

¹²² Robson, *Convict Settlers Of Australia*, 112.

¹²³ Robson, *Convict Settlers Of Australia*, 112.

¹²⁴ Robson, *Convict Settlers Of Australia*, 127.

of transportees, being ‘landholders or business proprietors, or [those] who had risen above the occupation of labourer’.¹²⁵ Certainly the circumstances in early New South Wales provided opportunities for the entrepreneurial, skilled man and with Macquarie’s encouragement and support, and the example of other successful men before him, his chances to reform were enhanced.¹²⁶ Unfortunately, few of those who were sent to Port Arthur in the latter part of the nineteenth century answered that description, nor was there support from on high. As I will show in Chapter 7, this group of men were considerably less literate and less skilled than transportees to New South Wales and those left behind in Britain. They were also unlucky enough to arrive in the colony when attitudes to emancipists were less accepting than they had been in the early years. Few emancipists in Tasmania reached the dizzy heights of the early Sydney entrepreneurs like Simeon Lord, and so there were few inspirational examples to spur on the efforts of men who were clever and prepared to work hard. Although not overtly informed by modern psychological or sociological theory or sophisticated statistical analysis, Robson identified a number of important contributors to recidivism to which I will return. These included brutalising punishment, the creation and reinforcement of a convict subculture characterised by an inversion of the values of the wider society (particularly habitual drunkenness), the convict’s awareness that the system was deeply flawed, failure to marry, lack of social acceptance and the difficulty of imagining a better life.

Using larger statistical samples than had previous historians, in their seminal study of convict workers Stephen Nicholas and Peter Shergold sought to exorcise the spectre of the professional criminal. They argued instead that convicts were simply a subset of ordinary working class British men and women, the majority of whom were first offenders transported for petty theft.¹²⁷ While this may have been true for Van Diemen’s Land’s earliest transportees, I shall show that by the time that most of my sample of men were transported the vast majority were not first offenders, possessing a mean of 1.7 previous and a range of 1 to 11 convictions as a group, although petty theft was still the crime for which most of them were transported. Almost 60 per cent of them did, however,

¹²⁵ Robson, *Convict Settlers Of Australia*, 118-9, 126.

¹²⁶ Robson, *Convict Settlers Of Australia*, 128.

¹²⁷ Nicholas and Shergold, ‘Convicts as Workers’, 3, 7, 9, 199.

lay claim to skills, while almost 34 per cent are described as ‘unskilled’, although even manual and agricultural labourers did undoubtedly possess some skills. In their focus on the convicts’ experience before and during sentence to the Australian colonies, Nicholas and Shergold did not address the issue of recidivism and desistance. Evans and Thorpe were in broad agreement with this new view of convicts as ordinary members of the British working class, despite serious reservations about Nicholas and Shergold’s methodology and some of their conclusions.¹²⁸ They only touch on the issue of reform as it was conceptualised by its contemporary supporters like Charles Darwin, who imagined that it would happen automatically as a result of the sentence of transportation.¹²⁹

In a clear departure from earlier writers, Braithwaite, Godfrey and Cox used modern criminological theory to open a welcome window onto the issue of recidivism. Criminologist John Braithwaite did not investigate the character of the convict population; indeed, he seems to treat them like a *tabula rasa*. If they were assigned to a good master they went straight, if they were brutalised by severe and unjust punishment they continued to offend.¹³⁰ He based his conclusions on New South Wales and Tasmania in the 1830s, where ‘the majority story is one of assignment to work in the Australian bush or as a servant in town ... [for] masters who were fair to those who worked well’.¹³¹ His conclusions are therefore probably less applicable to those transported after 1840, whose sentences were served in institutions and gangs. He stressed the importance of restorative justice in Australian convict society.¹³² He founded his main analysis on

¹²⁸ Most significantly for my project, they reproach Nicholas and Shergold for failing to value convicts’ own accounts of their experiences, and for assuming that while human beings may lie, numbers do not. Evans and Thorpe, ‘Historical Reconsiderations IX’, 99.

¹²⁹ Evans and Thorpe, ‘Historical Reconsiderations IX’, 109; C. Darwin, *The Voyage Of The Beagle*, (London: Dent, 1959, first published 1839), 449.

¹³⁰ J. Braithwaite, ‘Crime in a Convict Republic’, *The Modern Law Review*, Vol.64/1, (2001), 25.

¹³¹ Braithwaite, ‘Crime in a Convict Republic’, 24.

¹³² His theoretical framework is derived from, among others, D. Van Ness and K.H. Strong, *Restoring Justice*, Cincinnati: Anderson, 1997); E. Weitekamp, ‘The History of Restorative Justice’, in G. Bazemore and L. Walgrave (eds.), *Restorative Juvenile Justice*, (New York: Criminal Justice Press, 1999); R. J. Sampson and J.H. Laub, *Crime In The Making: Pathways And Turning Points Through Life*, (Cambridge, Mass.: Harvard University Press, 1995); E. Weitekamp, H-J. Kerner, W. Stelly and J. Thomas, ‘Desistance from Crime: Life History, Turning Points, and Implication for Theory Construction in Criminology’ in K. Bassman and S. Karstedt (eds.), *Social Dynamics Of Crime And Control: New Theories For A World In*

Heimer and Staffen's research, which uses labelling theory to demonstrate that 'reintegration and procedural fairness are found to arise in conditions where the powerful are dependent on the deviant', as was the case in the early colonies which experienced labour shortage and had few sources of free labour.¹³³ Lind and Tyler found that people who expect procedural fairness exhibited 'a high level of compliance with the law'.¹³⁴ As a result of the regime of procedural fairness to which colonial employers were (theoretically) forced under this hypothesis, Braithwaite found that both colonies at this time experienced a low rate of crime. Since Braithwaite based his analysis on the records of superior courts, which were restricted to more serious cases, his principal finding that 'the Australian convicts and their children turned away from a life of crime' needs to be qualified.¹³⁵ Former convicts may have been infrequently prosecuted for violent, serious crime, but it is clear from their records that they still kept the lower courts busy with low-level offences.

In an approach that provided a welcome departure from the simplistic bad person/bad system dichotomy, Barry Godfrey and David Cox looked at Braithwaite's conclusions in the light of the experiences of 218 men transported to Western Australia in 1868. This cohort was significantly different from those sent to other colonies, in that these were 'middling and serious, rather than trivial offenders. Most were recidivists as well'. More than a quarter had committed serious crimes of violence, including sexual crimes, and a similar number had committed serious property crime.¹³⁶ Many continued to offend; ex-pirees and holders of conditional pardons or tickets-of-leave were responsible for

Transition, (Aldershot: Dartmouth, 2000), 207-29.

¹³³ C.A. Heimer and L.R. Staffen, 'Interdependence and Reintegrative Social Control: Labeling [sic] and Reforming "Inappropriate" Parents in Neonatal Intensive Care Units', *American Sociological Review*, Vol. 60/5, 1995, in J. Braithwaite, 'Crime in a Convict Republic', 11.

¹³⁴ Braithwaite, 'Crime in a Convict Republic', 18, 20. E.A. Lind and T.R. Tyler, *The Social Psychology Of Procedural Justice*, (New York: Plenum Press, 1988), in Braithwaite, 'Crime in a Convict Republic', 21.

¹³⁵ Braithwaite does, however, qualify his blanket statement by admitting that 'a brutalised minority . . . responded to injustice with escalated defiance'. Braithwaite, 'Crime in a Convict Republic', 19, 25.

¹³⁶ B. Godfrey and D.J. Cox, "'The Last Fleet": Crime, Reformation and Punishment in Western Australia after 1868', *The Australian And New Zealand Journal Of Criminology*, Vol.41/2, (2008), 240.

three-quarters of the offences recorded in 1854 and in 1870, (despite being only 8.5 per cent of the population by that time), and remained ‘unfree’ for decades.¹³⁷

Although Godfrey and Cox employed the same concepts drawn from modern criminological theory as did Braithwaite, they arrived at somewhat different conclusions for their respective cohorts of convicts.¹³⁸ While they identified the same factors that contributed to desistance – individual achievements like marriage, employment, stability of residence – they argued that such individual achievements were not sufficient for desistance. There were cultural and structural factors beyond the individual’s control, like the persistence of the notion of the ‘convict stain’, and the labelling and stigmatisation that persisted down the generations.¹³⁹ Respectable society also needed to make a cultural change, so that men prepared to desist from crime might be accepted and integrated into the general population; social agencies like churches, workplace organisations and political organisations also needed to be prepared to play a supportive, rather than an exclusive, role.¹⁴⁰ They found some evidence for this change in Western Australia. While respectable colonists continued to insist on intense and intrusive surveillance on emancipists well into the 1880s, and to regard them as morally deficient and responsible for the high rates of crime, those who managed to rise to positions of some wealth and prominence were accepted into polite society and this trend accelerated through the 1880s.¹⁴¹ They also found that the judiciary exhibited a similar level of tolerance towards former convicts; they agreed with Braithwaite in attributing it to the

¹³⁷ Godfrey and Cox, “‘The Last Fleet’”, 242-4.

¹³⁸ In particular, S. Farrall and A. Calverley, *Understanding Desistance From Crime: Theoretical Directions In Resettlement And Rehabilitation*, (Maidenhead: Open University Press, 2006); J.H. Laub and R.J. Sampson, ‘Understanding Desistance from Crime’, in M. Tonry (ed.), *Crime And Justice: An Annual Review Of Research*, (Chicago: Chicago University Press, 2001), Vol. 26, 1-69; S. Maruna, *Making Good: How Ex-Convicts Reform And Rebuilt Their Lives*, (Washington D.C.: American Psychological Association Books, 2001).

¹³⁹ Godfrey and Cox, “‘The Last Fleet’”, 236.

¹⁴⁰ Godfrey and Cox, “‘The Last Fleet’”, 250.

¹⁴¹ In this they were not mistaken. While crime rates began falling overall in Western Australia between the end of transportation and the immigration boom of the 1890s, in looking at the records of the lower courts where ‘everyday offences’ like petty larceny, drunkenness and fighting were tried, they found that ‘at least three-quarters of the offences recorded were committed by ticket-of-leave men’. Godfrey and Cox, “‘The Last Fleet’”, 243, 248, 249, 254.

colony's need for labour.¹⁴² Magistrates did not hand out cumulative sentences, and focused on the offence rather than the offender and his criminal career. Relatively lenient sentences, often of small fines or a few days in gaol, kept men in the labour market.¹⁴³

Hamish Maxwell-Stewart and Rebecca Kippen also found that the need for labour often determined the treatment of men under sentence in Tasmania.¹⁴⁴ Maxwell-Stewart analysed rates and types of punishment in the Tasmanian convict labour market to demonstrate that the picture was far more dynamic and contingent than previously imagined. He showed that both positive and negative outcomes for a convict were highly dependent on how his skills and potential as a worker intersected with the needs of the labour market at any given time.¹⁴⁵ The previous focus on raw figures for offending and punishment had obscured the fact that the market might even determine whether or not an offence had been committed, and what the appropriate punishment might be.¹⁴⁶ A man who brought a useful trade to the colony was far less likely to be flogged. Clerks for example, whose literacy was essential to the efficient running of the convict system, were three times less likely to be flogged than weavers, whose skills were not of any use to the emerging economy. On average, these same weavers received nearly 60 lashes over the course of their sentence, whereas a carpenter received only 19.¹⁴⁷

Masters of skilled assigned servants were reluctant to prosecute such a scarce resource and risk losing them to road gangs or penal stations, so these servants were more likely to be well treated to keep them happy and inoffensive.¹⁴⁸ Men without useful skills, or those whose skills were in over-supply like tailors, were more likely to be given the hardest

¹⁴² Braithwaite, 'Crime in a Convict Republic', 22.

¹⁴³ Godfrey and Cox, "'The Last Fleet'", 250-2.

¹⁴⁴ H. Maxwell-Stewart and R. Kippen, "'What is a man that is a bolter to do? I would steal the Governor's axe rather than starve': Old lags and recidivism in the Tasmanian penal colony", in J. Campbell and V. Miller (eds.), *Transnational Penal Cultures: New Perspectives On Discipline, Punishment And Desistance*, (London and New York: Routledge, 2014), 182.

¹⁴⁵ H. Maxwell-Stewart, 'Convict Labour Extraction and Transportation from Britain and Ireland, 1615-1870', in C.G. De Vito and A. Lichtenstein, *Global Convict Labour*, (Leiden/Boston: Brill, 2015), 190.

¹⁴⁶ Maxwell-Stewart, 'Convict Labour Extraction and Transportation', 191.

¹⁴⁷ Maxwell-Stewart, 'Convict Labour Extraction and Transportation', 187.

¹⁴⁸ Maxwell-Stewart, 'Convict Labour Extraction and Transportation', 188.

physical work, and their transgressions were unlikely to be overlooked since they could be easily and cheaply replaced. Thus they were more likely to find themselves with another entry on their record of punishment.¹⁴⁹ Men sent to gangs were also far more likely to be punished for an offence than assigned servants, since they were under the eagle eye of a supervisor at all times; this supervisor might also seek to maintain the rate of production by doling out random punishments, *pour encourager les autres*.¹⁵⁰

The timing of an offence introduced yet another variable into the punishment system; if a convict perhaps staged a go-slow during the busiest time of the year at harvest to gain extra privileges, he was more likely to be dragged before a magistrate when tempers were already frayed than if he offended at another time. But rather than sending him to a road gang, the use of his valuable skills was only momentarily interrupted by giving him a flogging.¹⁵¹ A master might also defray his costs by sending a man off to government service when his services were not required during the winter months or when the cost of his feeding and care rose to unacceptable levels.¹⁵² Within this complex context it becomes very difficult to know whether a man was ‘bad’ or ‘good’, given that the record of his performance was shaped by so many factors that were unrelated to that performance. It is also easy to see that the convicts themselves must have been aware that the system was ‘bad’; it was not based on ‘procedural fairness’, but calculated to serve the interests of private employers and the state. As a result, it was calculated to produce a low ‘level of compliance with the law’ and to increase the rate of crime.¹⁵³

Maxwell-Stewart and Kippen approached the question of recidivism through an extensive statistical analysis of the records of 1,124 probation-era convicts. They found significant recidivism rates among these men, but found them impossible to distinguish from their more law-abiding fellows in terms of height, literacy, religion, native place or level of

¹⁴⁹ Maxwell-Stewart, ‘Convict Labour Extraction and Transportation’, 188, 191.

¹⁵⁰ Maxwell-Stewart, ‘Convict Labour Extraction and Transportation’, 188-9.

¹⁵¹ Maxwell-Stewart, ‘Convict Labour Extraction and Transportation’, 189-90.

¹⁵² Maxwell-Stewart, ‘Convict Labour Extraction and Transportation’, 190, 192.

¹⁵³ Lind and Tyler, *The Social Psychology Of Procedural Justice*, in Braithwaite, ‘Crime in a Convict Republic’, 21.

skill.¹⁵⁴ Although the evidence here was inconclusive, they seemed no less likely to marry, but nor did marriage automatically lead to desistance.¹⁵⁵ Indeed the opposite might be the case, as my analysis appears to show for the Port Arthur men. An important difference did, however, emerge. Men who spent longer doing hard labour on road gangs or in solitary confinement were more likely to reoffend.¹⁵⁶ Maxwell-Stewart and Kippen concluded that the probation system, with its heightened surveillance and harsh punishment regime, and its practice of concentrating repeat offenders in probation stations and hiring depots, formed a barrier to desistance.¹⁵⁷ In later chapters I shall test their hypotheses.

Shayne Breen described another systemic strategy to control the labour market for probation-era emancipists in a master's interest. These men were subject to aggressive and intrusive Master and Servants Acts (1840, 1854 and 1856), the primary aim of which was to 'efficiently subordinate servants to the power of their masters'.¹⁵⁸ Their employment mobility was severely restricted; they had to give a month's notice to quit and, since wages were paid quarterly, it was difficult to escape a cruel master. If a man did leave before his contract was up, he could not seek work elsewhere because he was still bound to his existing employer.¹⁵⁹ Absenteeism, drunkenness, and abusive, obscene or profane language could earn a man three months with hard labour and forfeiture of wages.¹⁶⁰ He could be held in solitary confinement for up to 30 days with hard labour without trial and could not appeal against his treatment.¹⁶¹ At most, his master would only incur a fine for an infringement, and it seems that even that mild rebuke was rarely

¹⁵⁴ Maxwell-Stewart and Kippen, "What is a man that is a bolter to do?", 176-177.

¹⁵⁵ Maxwell-Stewart and Kippen, "What is a man that is a bolter to do?", 180.

¹⁵⁶ Maxwell-Stewart and Kippen, "What is a man that is a bolter to do?", 180.

¹⁵⁷ During WWII the Nazis managed to enormously increase the rate of successful and attempted escapes by concentrating all the accomplished escapers in the supposedly escape-proof Colditz Castle. P.R. Reid, *Colditz: The Full Story*, (London: Pan, 1984), 12, 21; Maxwell-Stewart and Kippen, "What is a man that is a bolter to do?", 182.

¹⁵⁸ This was the only such colonial act that failed to distinguish between civil and criminal jurisdictions and could gaoil a servant without charge. S. Breen, *Contested Places: Tasmania's Northern Districts From Ancient Times To 1900*, (Hobart: Centre for Tasmanian Historical Studies, 2001), 107-8.

¹⁵⁹ Breen, *Contested Places*, 102.

¹⁶⁰ Breen, *Contested Places*, 103.

¹⁶¹ Breen, *Contested Places*, 102-3.

meted out.¹⁶² While a master could not hear his own case, it would be heard by another magistrate. He was likely to be a man of his own class who also employed ex-convict labour and so was not disinterested in the outcome.¹⁶³ Their servants must have been aware of these biases in the Act.¹⁶⁴ Parliamentary attempts to reform and ameliorate the 1856 Act to base it on civil rather than criminal principles and strengthen servants' rights failed, 'largely because of opposition of masters in the Northern Districts'.¹⁶⁵ Their reaction was shaped by their 'considerable distrust and even fear of the emancipist working class'.¹⁶⁶ The Act was not liberalised until the 1880s.¹⁶⁷

The criminal life

It is against this background of a more nuanced set of explanations, transcending the bad man/bad system dichotomy, that I wish to lay the groundwork for a framework of later, detailed analysis of the Port Arthur men's experience of recidivism. The concepts that Braithwaite, Godfrey and Cox found useful will be amplified and extended through the work of other recent researchers. In what I hope will be a departure from previous approaches, I wish to treat Tasmanian convicts, not as isolated or collective examples of deviance and failure, but as members of a group bearing its own culture; this culture had meaning for them, expressed certain values and determined their offending behaviour in particular ways. I will argue that that culture was not formed in isolation but, rather, in a dynamic relationship with the power exerted by the state and, importantly, by the wider society.

A number of theorists have taken this approach to understanding crime. John Tagg reminded us that, since 'power is relational, there is no power without resistance'.¹⁶⁸ It is this resistance that created a convict sub-culture, and drove re-offending. But this re-offending should not be seen as random or occurring in a vacuum, for as Howard Zehr

¹⁶² Breen, *Contested Places*, 104.

¹⁶³ Maxwell-Stewart and Kippen, "What is a man that is a bolter to do?", 168.

¹⁶⁴ Breen, *Contested Places*, 101-4.

¹⁶⁵ Breen, *Contested Places*, 104.

¹⁶⁶ Breen, *Contested Places*, 105.

¹⁶⁷ Breen, *Contested Places*, 107.

¹⁶⁸ J. Tagg, *The Burden Of Representation: Essays On Photographies And Histories*, (London: Macmillan Education, 1988), 93.

argued: ‘If [offending] fulfils a function for the individual it may express something about the nature of the society...’¹⁶⁹ So we should be able to read that society off a close scrutiny of offending. This argument was supported by sociologists Ian Taylor, Jock Young and Paul Walton who also stressed that ‘deviant action must always be explained in terms of its meaningfulness to the deviant actor’, since ‘society has a set of alternative realities, all with an authenticity and meaningfulness of their own’.¹⁷⁰ Following from that, deviancy theorists ‘took seriously the “vocabularies of motive” used by the deviant as an expression of belief that might be related, in a meaningful fashion, to his involvement in deviance’.¹⁷¹ All these theorists encouraged a close examination of such expressions, not simply as examples of failure, vice and deviance, but as holding up an inverted mirror to society.

Recidivism is still poorly understood. Stephen Farrall and Adam Calverley cautioned that ‘desistance from crime ... is something of an enigma in modern criminology’, as until the 1970s most researchers were interested in why people started, rather than why they stopped.¹⁷² There seems to be general agreement about why individuals embark on a life of crime. Terence Thornberry, working with juvenile delinquents, proposed a model that focused on ‘the interrelationship between six concepts; attachment to parents, commitment to school, belief in conventional values, associations with delinquent peers, adoption of delinquent values and delinquent behaviour’.¹⁷³ This interactive process is dynamic and develops over a person’s life cycle.¹⁷⁴ Looking at all of the factors that lead to a high risk of offending, Bryan Vila painted a picture of the offender as an individual who tends to be ‘impoverished in the skills, status and knowledge required to gain

¹⁶⁹ H. Zehr, *Crime And The Development Of Modern Society: Patterns Of Criminality In Nineteenth Century Germany And France*, (London: Croom Helm, 1976), 29.

¹⁷⁰ I. Taylor, P. Walton and J. Young, ‘Critical Criminology in Britain: review and prospects’, in I. Taylor, P. Walton and J. Young (eds.), *Critical Criminology*, (London: Routledge and Kegan Paul, 1975), 6.

¹⁷¹ Taylor, Walton and Young, ‘Critical Criminology in Britain’, 7.

¹⁷² Farrall and Calverley, *Understanding Desistance From Crime*, 1.

¹⁷³ T.P. Thornberry, ‘Towards an Interactional Theory of Delinquency’, in P. Cordella and L. Segel, *Readings In Contemporary Criminological Theory*, (Boston: Northeastern University Press, 1996), 225.

¹⁷⁴ Thornberry, ‘Towards an Interactional Theory of Delinquency’, 238.

through conventional means the adult resources that they value'. This individual is 'less constrained by personal attachments, and harbour[s] anti-social attitudes'.¹⁷⁵

David Farrington identified the acquisition of this anti-social personality as the biggest predictor of offending, and identified three major contributing factors – economic deprivation, school failure and poor parenting. His multifactorial analysis of crime showed that the more of these variables that are present, the greater the likelihood of career criminality.¹⁷⁶ An early start to a career in crime was also important. Boys who were first convicted between the ages of 14 and 18 increased their offending afterwards, in comparison with the subsequent offending of a matched group of un-convicted boys.¹⁷⁷ According to Farrall and Calverley, the boys who were first convicted when they were young were likely to feel that they could not stop offending even if they wanted to.¹⁷⁸ By the 1980s, however, theoretical attention began to turn to the thorny question of why some offenders seemed unable to stop offending. Farrall and Calverley offered an existential approach to this problem; they used ecological, sociological, psychological, biological and economic factors, integrated into a coherent approach, to capture 'both the internal changes in self-identification and the processes that foster such changes, but yet does not lose sight of the wider social world and the problems which it can create for those wishing to change important aspects of their lives'.¹⁷⁹ With Benjamin Bowling, Farrall described how 'the process of desistance is ... produced through an interplay between individual choices and a range of wider social forces, institutional and societal practices that are beyond the control of the individual'.¹⁸⁰ In support of this argument in the nineteenth-century Tasmanian context, Maxwell-Stewart and Kippen's analysis of the

¹⁷⁵ I shall come back to this idea in the discussion on social capital. B. Vila, 'A General Paradigm of Criminality', Cordella and Segel, *Readings In Contemporary Criminological Theory*, 277.

¹⁷⁶ D.P. Farrington, 'The Development of Offending and Antisocial Behaviour from Childhood to Adulthood', 107-123, in Cordella and Segel, *Readings In Contemporary Criminological Theory*, 117.

¹⁷⁷ The boys least likely to offend were shy boys with few or no friends at age 8, those without convicted parents or behaviour problem siblings at age 10, and boys rated positively by their mothers at age 10. Farrington, 'The Development of Offending and Antisocial Behaviour', 114-115.

¹⁷⁸ Farrall and Calverley, *Understanding Desistance From Crime*, 20.

¹⁷⁹ Farrall And Calverley, *Understanding Desistance From Crime*, 78.

¹⁸⁰ S. Farrall and B. Bowling, 'Structuration, Human Development and Desistance from Crime', *British Journal Of Criminology*, Vol. 39/2, (1999), 252-67, 261.

dynamics of the colonial labour market elegantly demonstrated how easily and unpredictably men, even those who might have desired to lead law-abiding lives, could be drawn into the maelstrom of offence and punishment because of such external and systemic factors.¹⁸¹

Braithwaite discussed recidivism and desistance in the context of Labelling Theory, in which he was supported by the work of Raymond Paternoster and Lee-Ann Iovanni, who put forward two major premises.¹⁸² First, that ‘the economically and politically powerful groups use their influence to define as unlawful those behaviours that they find offensive’, and so determine what and who are labelled as deviant.¹⁸³ Despite their relative powerlessness, these groups are feared and rejected by the relatively more powerful.¹⁸⁴ In a nineteenth-century context, Henry Mayhew was highly critical of the way in which poor children were convicted and incarcerated for ‘crimes’ like throwing stones that would merely have been regarded as ‘acts of thoughtlessness’ by the middle class boys that he and the magistrates had once been.¹⁸⁵ We do not have to look far for such procedural unfairness in twenty first century Australia, where Aboriginal people are incarcerated at 14 times the rate of their presence in the general population.¹⁸⁶ Second, the experience of being labelled is instrumental in the creation of a more deviant personality and lifestyle. Two aspects of this process drive further deviance. One is a

¹⁸¹ H. Maxwell-Stewart and R. Kippen, “‘What is a man that is a bolter to do? I would steal the Governor’s axe rather than starve’: Old lags and recidivism in the Tasmanian penal colony”, in J. Campbell and V. Miller (eds.), *Transnational Penal Cultures: New Perspectives On Discipline, Punishment And Desistance*, (London and New York: Routledge, 2014), 182, 188, 189-90, 191-92.

¹⁸² Braithwaite, ‘Crime in a Convict Republic’, 11. R. Paternoster and L. Iovanni, ‘The Labeling [sic] Perspective and Delinquency: an Elaboration of the Theory and an Assessment of the Evidence’, in Cordella and Segel, *Readings In Contemporary Criminological Theory*.

¹⁸³ Paternoster and Iovanni, ‘The Labeling [sic] Perspective and Delinquency’, 173

¹⁸⁴ Paternoster and Iovanni, ‘The Labeling [sic] Perspective and Delinquency’, 126, 179.

¹⁸⁵ H. Mayhew and J. Binny, *The Criminal Prisons Of London And Scenes Of Prison Life*, (London: Griffin, Bohn and Company, 1862), 406.

¹⁸⁶ Julian Burnside QC, pers. comm., 4 September 2015. Recently a former Secretary of the Tasmanian Liberal Party was found to have used \$48,000 of party funds for his personal expenses. The Liberal Party’s state director dismissively described it as an ‘administrative oversight’ and declined to report it to police. *Tasweekend magazine, Mercury*, 5 September 2015, 30. A recipient of Centrelink benefits accused of the same offence would be unlikely to be given such leniency.

hostile social audience that makes negative assessments of character, which may lead to the subject being excluded from normal activities and opportunities.¹⁸⁷ When an actor is publicly identified as a deviant, he is shamed, stigmatised and segregated; his deviant identity comes to be seen (both by himself and by others) as reflecting his ‘essential’ self.¹⁸⁸ The other is the presence of a supportive deviant audience that makes the actor’s acceptance of a deviance role less isolating, while opening up deviant routines and opportunities.¹⁸⁹

This situation is reversible, under the right conditions. If a non-deviant audience rejects the label of deviant, it leaves the individual able to return to normal life.¹⁹⁰ But if not, as John Laub argued, ‘crime and deviance are more likely when an individual’s bond to society is weak or broken’.¹⁹¹ He found that this social bond might be restored at what he called ‘turning points’.¹⁹² Braithwaite, Laub, and Godfrey and Cox described these as the attainment of marriage and employment, and stressed that it is the quality of those bonds, not simply their existence, that determines a pro-social outcome. A spouse must be non-offending, the relationship must be close and supportive; employment must be of good quality and characterised by ‘security’, and by ‘job stability, [the subject’s] commitment to work and mutual ties binding workers and employers’.¹⁹³ There are also negative turning points that propel the individual into further offending, in particular prolonged incarceration, heavy drinking and job instability.¹⁹⁴ Laub, Farrall and Calverley agreed that imprisonment increases the risk of offending as a result of the loss of relationships with spouse and children, loss of job and home, and the imposition of stigma with

¹⁸⁷ Paternoster and Iovanni, ‘The Labeling [sic] Perspective and Delinquency’, 172.

¹⁸⁸ Paternoster and Iovanni, ‘The Labeling [sic] Perspective and Delinquency’, 174-5.

¹⁸⁹ Paternoster and Iovanni, ‘The Labeling [sic] Perspective and Delinquency’, 174.

¹⁹⁰ Paternoster and Iovanni, ‘The Labeling [sic] Perspective and Delinquency’, 175.

¹⁹¹ J.H. Laub, ‘Crime in the Making: Pathways and Turning Points through Life’, in Cordella and Segel, *Readings In Contemporary Criminological Theory*, 246.

¹⁹² Laub, ‘Crime in the Making’, 248. Farrall and Calverley agree, saying that this is particularly relevant for those whose bonds with the state and civil society are broken early on in their lives, as when they were first convicted and experienced social exclusion and stigma. Farrall and Calverley, *Understanding Desistance From Crime*, 132.

¹⁹³ Godfrey and Cox, “‘The Last Fleet’”, 242, 253; Laub, ‘Crime in the Making’, 248.

¹⁹⁴ Laub, ‘Crime in the Making’, 248.

devastating consequences for future employment.¹⁹⁵ They added that the acquisition of ‘prison culture’, in other words membership of a supportive deviant audience, might also predispose the offender to further offending. While incarceration leaves him with fewer resources and also confirms his self-identification as deviant, he gains increased criminal networks and knowledge.¹⁹⁶

Anthropologists have observed similar processes at work among first peoples, marginalised in a manner disquietingly similar to convicts, subject to ready identification as deviant and producing recidivists in the same systemic and structural manner. Laurence Deane, Denis Bracken and Larry Morrissette described a person’s life as ‘an interplay between structure, culture and biography’.¹⁹⁷ In their study of marginalised Aboriginal people in Canada, they saw the acquisition of Social Capital as a critical element in an individual’s desistance. They defined it as ‘a store of resources in common norms and mutual trust developed across social networks. Individuals utilize such resources to access opportunity and to accomplish social tasks’, building networks of trust with those outside the group.¹⁹⁸ However, as Vila also pointed out, it is difficult for marginalised groups to acquire enough social capital to overcome the structural constraints that may operate as barriers for successful desistance.¹⁹⁹ Those without social capital are disproportionately represented in the criminal justice system, are more likely to be denied bail, to spend more time in pre-trial detention, to be charged with multiple offences and more than twice as likely to be incarcerated.²⁰⁰

¹⁹⁵ The kind of long-term incarceration endured by the Port Arthur men leads to stigma or structural labelling, with highly destructive effect. Laub, ‘Crime in the Making’, 252; Farrall and Calverley, *Understanding Desistance From Crime*, 182.

¹⁹⁶ Farrall and Calverley, *Understanding Desistance From Crime*, 71, 77, 182.

¹⁹⁷ They define culture as learned ways of ‘thinking and acting that embody beliefs, values, notions of right or wrong’. Biography interacts with structure as a ‘network of personal circumstances, decisions, and misfortunes that occur within a situation that is already highly structured and with a limited number of available cultural options’.

¹⁹⁸ D. Bracken, L. Deane and L. Morrissette, ‘Desistance and social marginalization: the case of Canadian Aboriginal offenders’, *Theoretical Criminology*, Vol. 13/1, (2009), 75.

¹⁹⁹ This study seems particularly relevant since convicts, after the effective elimination of Tasmania’s Aboriginal people, occupied the position of most marginalised group in the colony. Bracken, Deane and Morrissette, ‘Desistance and social marginalization’, 62-4; Vila, ‘A General Paradigm of Criminality’, 277.

²⁰⁰ Bracken, Deane and Morrissette, ‘Desistance and social marginalization’, 65.

The Aboriginal Canadians with whom Bracken *et al* worked suffered not only racism but also the legacy of colonialism.²⁰¹ Bracken *et al* defined colonialism as ‘complete domination of one group by another and the exercise of power through formal institutional arrangements’ and ‘the denigration of the customs, values and mores of the colonized and the deliberate replacement of them by the conventions and values of the colonizers’.²⁰² In the Australian colonial context, this has been referred to as ‘convictism’, that Maxwell-Stewart described as a powerful ‘ideological mechanism’ for keeping the convict in his place.²⁰³ Convictism was also ‘racially’ inflected.²⁰⁴ Although the Port Arthur convicts were not racially different from the broader society, the Irish were distinguished as a separate cultural group and suffered particularly intense discrimination. Maxwell-Stewart found that, while they were regarded as obliging, in contrast to the English prisoners, ‘their labour was not always valued’ because they possessed fewer skills.²⁰⁵ Their reputation as troublemakers ‘made them difficult to deploy alongside other convicts’ and they were also thought likely to take off to go bushranging when employed in the bush.²⁰⁶ David Meredith and Deborah Oxley found that in urban areas they were paid less than their English counterparts, and employers preferred to hire the more skilled

²⁰¹ Bracken, Deane and Morrissette, ‘Desistance and social marginalization’, 66-7.

²⁰² Chronic, systemic and hopeless poverty, poor health, illiteracy, unemployment and transience, should arguably also be seen as the products of structural and cultural colonisation, of the working class by the upper classes. Bracken, Deane and Morrissette, ‘Desistance and social marginalization’, 66-7.

²⁰³ Hirst, *Convict Society And Its Enemies*, 107, 153. H. Maxwell-Stewart, “‘Like poor galley slaves . . .’: slavery and convict transportation”, in M.S.F. Dias (ed.), *Legacies Of Slavery: Comparative Perspectives*, (Newcastle: Cambridge Scholars Publishing, 2007), 57.

²⁰⁴ In the nineteenth and early twentieth centuries the Irish were regarded as a separate race, inferior to the Anglo-Saxon. M.A. Kibler, *Censoring Racial Ridicule: Irish, Jewish And African American Struggles Over Race And Representation 1890-1930*, (Chapel Hill: University of North Carolina Press, 2015), 4.

²⁰⁵ H. Maxwell-Stewart, “‘And all my great hardships endured’?’: Irish Convicts in Van Diemen’s Land’, in N. Whelehan (ed.), *Beyond The Island: Transnational Perspectives In Modern Irish History*, (United Kingdom: Routledge, 2015), 69-70.

²⁰⁶ Maxwell-Stewart demonstrates that none of these assumptions are in fact justified. Maxwell-Stewart, “‘And all my great hardships endured’?’, 72, 77.

English workers.²⁰⁷ Their labour was apparently most highly valued in the police force, where they were more likely to be recruited than were their English fellows.²⁰⁸

In a comparison with plantation racism, Maxwell-Stewart found that ‘a form of paternalism more usually reserved for non-European plantation workers was used to keep the Irish in line who, like children, required the firm guiding hand of the colonial state to direct them ...’²⁰⁹ Many spoke only Gaelic, and most were Catholic, generally believed to be mired in ignorance and superstition.²¹⁰ The English feared that their loyalty to the Pope and other Catholics would always transcend their loyalty to their employers.²¹¹ The differences between Irish and English must, however, be seen as matters of degree rather than kind. Like slavery, convictism identified the transported as ‘distinct and therefore as fit subjects for exploitation, it also served to normalise those who had arrived free and make all others less than fully human’.²¹²

Historian Alan Atkinson described both slaves and convicts as living ‘within a restricted, oppressive and exotic culture of their own’.²¹³ A consequence of this is the formation of gangs of the marginalised, who develop an oppositional culture as a justification for crime.²¹⁴ Gillian Cowlshaw also noted this kind of identity formation among the Australian Aboriginal groups that she studied.²¹⁵ Aboriginal people from widely scattered populations were members of a post-colonisation culture in which they were ‘bound together by ... meaningful conflicts as much as by a notion of common purpose’.²¹⁶ The values of this culture were inversions of those in the broader society. They included

²⁰⁷ D. Meredith and D. Oxley, ‘Contracting Convicts: the convict labour market in Van Diemen’s Land 1840-1857’, *Australian Economic History Review*, Vol. 45/1, (2005), 61-2.

²⁰⁸ Maxwell-Stewart, “‘And all my great hardships endured’?”, 77.

²⁰⁹ Maxwell-Stewart, “‘And all my great hardships endured’?”, 70.

²¹⁰ Maxwell-Stewart, “‘And all my great hardships endured’?”, 71.

²¹¹ Maxwell-Stewart, “‘And all my great hardships endured’?”, 72.

²¹² G.M. Frederickson, *Racism: A Short History*, (Melbourne: Scribe, 2002), 73.

²¹³ A. Atkinson, *The Europeans In Australia*, Vol. 1, (Oxford: Oxford University Press, 1997), 44.

²¹⁴ Bracken, Deane and Morrissette, ‘Desistance and social marginalization’, 73-4.

²¹⁵ One needs only to substitute the word ‘convict’ for ‘Aboriginal’ to see how apposite such analysis is for that marginalised group.

²¹⁶ G.K. Cowlshaw, ‘The materials for identity construction’, in J. Beckett, (ed.), *Past And Present: The Construction Of Aboriginality*, (Canberra: Aboriginal Studies Press, 1988), 97-8.

‘contempt for property and authority, immediate impulse gratification instead of impulse control, apathy instead of ambition, toughness instead of control of aggression’.²¹⁷ This culture is characterised by ‘the rebellious display of disreputable behaviour’, which becomes an aggressive assertion of low status – rather than being ashamed of imprisonment, men boasted about convictions for drunkenness, and expressed contempt for an unjust law.²¹⁸

Cowlshaw saw that ‘The awareness of the disapproval of the whites is accompanied by defiant refusal to comply with their judgements or even to pay lip service to their standards’.²¹⁹ Such a culture is ‘highly resistant to intervention’, since it is founded in truth; its members are right to see themselves as marginalised, stigmatised and oppressed.²²⁰ In later chapters I will argue that contemporary accounts of convict behaviour, convict records and accounts of court proceedings express these values sufficiently frequently for them to be identifiable as belonging to a specific sub-culture of this type.

Early nineteenth-century evangelical Christians and prison reformers were keen on the idea of *shame* as a driver for repentance and reform. It ‘justified and reinforced the power of governance ...’²²¹ The architecture and regimes of penitentiaries like Pentonville and Port Arthur’s Separate Prison were designed to engender shame in the convict. If he felt shame he would acknowledge society’s right to punish him, and clear the way for repentance, and an identification of the things within himself that had led to his offending, that he needed to change in order to conform to society’s expectations of a good person.²²² Shaming may be reintegrative, culminating in rituals to welcome the individual back into society ‘through words or gestures of forgiveness or ceremonies to decertify the

²¹⁷ J. Braithwaite, *Crime, Shame And Reintegration*, (Cambridge, Cambridge University Press, 1989), 22.

²¹⁸ Cowlshaw, ‘The materials for identity construction’, 94.

²¹⁹ Cowlshaw, ‘The materials for identity construction’, 95, 97-8.

²²⁰ Bracken, Deane and Morrissette, ‘Desistance and social marginalization’, 73-4.

²²¹ D. Nash and A-M. Kilday, *Cultures Of Shame: Exploring Crime And Morality In Britain 1600-1900*, (England: Palgrave Macmillan, 2010), 6.

²²² Nash and Kilday, *Cultures Of Shame*, 175.

offender as deviant'.²²³ What characterised the justice system in Van Diemen's Land/Tasmania, however, was the opposite, stigmatising shaming. Here the degradation ceremony of court appearance casts the individual out of society, where 'his deviance is allowed to become a master status', the essence of who he is.²²⁴ According to Braithwaite, such shaming is 'crime-producing ... [it is] person-oriented rather than offence-oriented ...' with maximum prospects for stigmatization.²²⁵ In denying the prospect of reintegration, it neutralises the power that social disapproval can wield over the offender, who believes that he has nothing left to lose by continuing to offend. That convicts continued to offend despite severe and frequent punishment is testament to the crime-producing power of stigmatising shaming. That they resisted the system and its machinations in many different ways, both subtle and overt, demonstrated their refusal to accept its judgement upon them.

Giving up a career of crime and re-entering the fold of respectable society is a difficult and indeed traumatic process. Those who achieve it do not simply stop offending but 'go through lengthy periods of rebuilding, remodelling or remaking their own social identities ... most always propped up by partners and parents and offspring'.²²⁶ The offender must be able to imagine a life without crime, and see his way to achieving it. He had to develop new ideas of 'who' he is and the sort of person he now wishes to be.²²⁷ According to David Lee, this belief that one could stop offending was the most important deterrent to recidivism.²²⁸ The desister begins to feel that he is not a 'bad' person, but a

²²³ J. Braithwaite, 'Crime, Shame and Reintegration' in Cordella and Segel, *Readings In Contemporary Criminological Theory*, 35.

²²⁴ Braithwaite, 'Crime, Shame and Reintegration', 36; Nash and Kilday, *Cultures Of Shame*, 175.

²²⁵ Braithwaite, *Crime, Shame And Reintegration*, 4.

²²⁶ We recall that Laub identifies the non-offending, supportive spouse as a key figure in the emancipist's struggle towards desistance. Laub, 'Crime in the Making', 246, 248.

²²⁷ When 'Sandra', the subject of Farrall's study got a good job, this gave her a new view of herself and her future as not destined for offending, and transformed her relationships with others in her life. A key role in 'Sandra's' transformation was played by social institutions represented by her probation officer, her employer and her work mates. Farrall and Calverley, *Understanding Desistance from Crime*, 2.

²²⁸ D.E. Lee, 'The Self-Deception of the Self-Destructive', *Perceptual And Motor Skills*, Vol.65/3, (1987), in S. Farrall, 'On the Existential Aspects of Desistance from Crime', *Symbolic Interaction*, Vol. 28/3, (2005), 381.

‘good’ person who has done ‘bad things’.²²⁹ As his self-identity is transformed, so his relationships with others must change, in terms of who he could and should associate with, and who he could or should not. He may also desire new relationships and willingly discard the old.²³⁰

Such a transformation would involve the convict being able not only to imagine a new self, but a new set of interactions with the world. Narrative Theory deals with identity formation within a framework of psychology rather than sociology, emphasising that past experience plays a central role in imagining and shaping the present and the future. Based on the seminal work of George Herbert Mead, Douglas Ezzy suggested that ‘Both memories of the past and anticipations of the future are symbolically organised and manipulated to form a coherent self-concept that serves to direct current action’.²³¹ Paul Ricoeur agreed that ‘lived experience creates a narrative, and narrative shapes practical action’.²³² If that experience is consistently and overwhelmingly negative and destructive, a person will see the future through the same lens. Narrative identity constructs a sense of continuity and characterisation in the plot of the story a person tells about himself or herself.²³³

The project of developing a narrative identity is not entirely self-generated but is a dynamic process of interaction with ‘social networks and larger institutions’.²³⁴ Margret Somers agreed; ‘We come to be who we are ... by being located, or locating ourselves, in

²²⁹ The prisoner, on the other hand, sees himself as doomed to offend, and as a ‘bad’ person. Farrall and Calverley, *Understanding Desistance From Crime*, 7, 13.

²³⁰ H. Ebaugh, ‘Leaving the Convent’, in J. Kotarba and A. Fontana, *The Existential Self in Society*, (Chicago: Chicago University Press, 1984), 171-2.

²³¹ George Herbert Mead (1863–1931) was an American philosopher, sociologist and psychologist. He is regarded as one of the founders of social psychology and the American sociological tradition in general. No author, ‘George Herbert Mead’, https://en.wikipedia.org/wiki/George_Herbert_Mead, viewed 20 August 2015. D. Ezzy, ‘Theorizing Narrative Identity: Symbolic Interaction and Hermeneutics’, *The Sociological Quarterly*, Vol. 39/2, (1998), 241.

²³² P. Ricoeur, *Time And Narrative*, vol.1, trans. by K. McLaughlin and D. Pellaeur, (Chicago: Chicago University Press, 1984), in Ezzy, ‘Theorizing Narrative Identity’, 244.

²³³ Ricoeur, *Time And Narrative*, vol.3, 247.

²³⁴ Ezzy, ‘Theorizing Narrative Identity’, 246, 250.

social narratives rarely of our own making'.²³⁵ There are instructive parallels between the convict experience and that of the institutionalised mental patients studied by Erving Goffman. He exposed the pivotal role that power and politics play in the narrative construction of identity.²³⁶ He said that 'The self, then ... is not the property of the person to whom it is attributed, but dwells rather in the pattern of social control that is exerted in connexion with the person and with those around him'.²³⁷ In the emancipists' case, as in the case of Goffman's mental patients, their identities are constructed through the judgements of more powerful others who control them.²³⁸ They are a litany of failure, of their status as incorrigibly bad or mad. If they were to attempt to transform that identity, this must be a mutually reinforcing process; if society and its institutions refuse to accept that a person has given up offending, or become sane, he may feel he may as well continue as he was.²³⁹

In the exclusive, conservative and judgemental society of mid-late nineteenth century Tasmania, this presented the convict with an enormous challenge. For others to have faith in his new identity, he would have to give up his favourite recreations – particularly going to the pub and drinking – his emancipist friends and perhaps even his wife and children, with no guarantee of acceptance into respectable society. And how was he to reimagine his social narrative – helpless subjection to the whip, the chains, the terrors of the solitary cell, the humiliation of being totally controlled by hostile others – to frame a positive future? When social control is cruel and procedurally unjust, according to Bracken *et al* the individual must be helped 'to understand unjust structures in ... society and to develop non-hostile responses to such injustice ... to make cognitive sense of traumatic experiences and to build positive associations with their new identity'.²⁴⁰ Who was to help the emancipist to accept such injustice, to see his traumatic experiences in a fruitful light?

²³⁵ M. Somers, 'The Narrative Constitution of Identity', *Theory And Society*, Vol. 23, (1994), 606.

²³⁶ E. Goffman, *Asylums*, (Harmondsworth: Penguin, 1976), 149, in Ezzy, 'Theorizing Narrative Identity', 249.

²³⁷ Goffman, *Asylums*, 154, in Ezzy, 'Theorizing Narrative Identity', 249.

²³⁸ Goffman, *Asylums*, 141, in Ezzy, 'Theorizing Narrative Identity', 248.

²³⁹ Farrall and Calverley, *Understanding Desistance From Crime*, 181.

²⁴⁰ Bracken, Deane and Morrissette, 'Desistance and social marginalization', 75.

A framework for analysis

How to marshal all this relevant theory into a coherent approach to the Port Arthur convicts and their apparent determination to cleave to a career of crime? Based on their work among young offenders in the late twentieth century, Donald Andrews and James Bonta offered a structure for analysis that incorporates many of the foregoing ideas.²⁴¹ They identified eight risk factors for crime, four that they call Moderate and four that they identify as the Big Four.²⁴² Looking at the lives of the men photographed at Port Arthur within this framework permits me to marshal all available data, to disentangle official recorded opinion and lived experience, and to arrive at some kind of understanding of the dynamics between them. Data from throughout these men's lives given shape by this framework may shed light on why they began to offend, and why they failed to stop.

But since I set out to employ an existential approach, this structure seems to me to be insufficient because it focuses on the individual, on his individual experiences, personality, actions and reactions. It fails, except perhaps by implication, to address 'the wider social world and the problems which it can create for those wishing to change important aspects of their lives'.²⁴³ Accordingly, I have supplemented Andrews and

²⁴¹ D.A. Andrews and J. Bonta, *The Psychology Of Criminal Conduct* (5th edition), (New Jersey: Anderson Publishing, 2010), 10. See for example Bracken, Deane and Morrisette, 'Desistance and social marginalization', 63; Braithwaite, 'Crime, Shame and Reintegration', 39; J. Rowbotham, 'Turning away from criminal intent: reflecting on Victorian and Edwardian strategies for promoting desistance among petty offenders', *Theoretical Criminology*, Vol. 13, (2009), 120-22; Farrington, 'The Development of Offending and Antisocial Behaviour', 49, 111-13; R. Stark, 'Deviant Places: A theory of the Ecology of Crime', in Cordella and Segel, *Readings In Contemporary Criminological Theory*, 129-30; Vila, 'A General paradigm of Criminality', 277. Thornberry, 'Towards an Interactional Theory of Delinquency', 225.

²⁴² Andrews and Bonta, *The Psychology Of Criminal Conduct*, 58-9. Maruna's research arrives at the same conclusions as Andrews and Bonta, summarising 'the risk factors and social obstacles' facing the emancipist in the twenty-first century: they sound only too familiar to the historian of the convict experience in nineteenth century Tasmania: 'They include the following: impoverished background, ... long criminal histories and the stigma that accompanies them: long term use of addictive substances like alcohol and heroin: personality traits that favour adventure and excitement over routine and responsibility: residence in an area notorious for its limited economic opportunities'. Maruna, *Making Good*, 11.

²⁴³ Farrall and Calverley, *Understanding Desistance From Crime*, 78.

Bonta's framework with the following concepts gleaned from the theories discussed above, and reused much of the same data to develop a more structural and systemic focus, in which Braithwaite, Maxwell-Stewart and Kippen, and Godfrey and Cox have been particularly influential. While I have tried to disentangle these concepts in order to lay stress on particular aspects, they are all of course inextricably interrelated.

1. Shaming, labelling and stigmatisation, in particular the role of the convict system, police and the courts, and the popular press²⁴⁴
2. The acquisition of social capital²⁴⁵
3. Development and shape of convict culture²⁴⁶
4. Narrative theory and important preconditions for identity transformation²⁴⁷

The details of each man's life course provided by convict records are by nature patchy, incomplete and shaped by a hostile hand. The psychological outcomes of these processes are largely inaccessible except by inference through what is presented to us by authorities as the men's own words, filtered through the prism of modern theory. Despite these caveats, this approach does offer a way to begin to use the available data to construct theories about why these men continued to offend. Finally, I shall return to the photographs that began this project, and propose that they formed a significant psychological obstacle to desistance by confirming the man's criminal identity to himself.

²⁴⁴ Paternoster and Iovanni, 'The Labeling [sic] Perspective and Delinquency', 172; Laub, 'Crime in the Making', 252; Farrall and Calverley, *Understanding Desistance From Crime*, 181-2.

²⁴⁵ While much of Anrews and Bonta's work addresses the acquisition of social capital through an investigation of domestic and social bonds, educational and work attainments etc., others have useful things to say. See Bracken, Deane and Morrissette, 'Desistance and social marginalization', 73-4; Vila, 'A General Paradigm of Criminality', 277.

²⁴⁶ Bracken, Deane and Morrissette, 'Desistance and social marginalization', 73-4.

²⁴⁷ Laub, 'Crime in the Making', 246, 248; Farrall and Calverley, *Understanding Desistance From Crime*, 7, 188, 191; Ricoeur, *Time And Narrative*, 244; Somers, 'The Narrative Constitution of Identity', 247-8.

CHAPTER 3: ‘... rendering our criminal procedures more perfect’, criminal photography in Britain, 1840-90²⁴⁸



Illustrated London News, 15 February 1873

This scene might have been played out in any number of gaols in Britain in the 1870s. The prisoner sits on an ordinary chair in his street clothes, hat at knee and equipped with whiskers and longish hair. Behind him is a head clamp, often used for long exposures to keep the subject's head still, although not in this case. Such images were taken on admission, before the obligatory shave and haircut, and the issuing of prison dress. His pose is also typical of the period. Judging by surviving examples, it was not until the mid-late 1880s that images showing the subject with hands crossed on chest begin to

²⁴⁸ Sir Walter Crofton, 'The Present Aspect of the Convict System', *National Association For The Promotion Of Social Science With Which Is United The Society For Promoting The Amendment Of The Law*, paper read at a Special Meeting, London, (1864), 4.

appear in some prisons. Others, but not all, did not introduce this pose until the 1890s, and even then it was not invariably used.²⁴⁹

As Tagg reminded us:

The coupling of evidence and photography in the second half of the nineteenth century was bound up with the emergence of new institutions and new practices of record-keeping: that is, those new techniques of representation and regulation that were so central to the restructuring of the local and national state in industrialised societies at that time and to the development of a network of disciplinary institutions – the police, prison, asylums ...²⁵⁰

This was an era of intensive wall-building. Physical walls went up around the poor, the young, the sick, the deviant and the mad as workhouses, factories, hospitals, schools, asylums and gaols sprang up around Britain and Europe. As Foucault argued, the control of space was an essential constituent of these new techniques of representation and regulation, since ‘discipline proceeds by the organization of individuals in space...this procedure facilitates the reduction of dangerous multitudes or wandering vagabonds to fixed and docile individuals’.²⁵¹

The space within which individuals were contained was not simply physical. Within those physical walls, mental walls also were erected, as these institutions evolved extensive and elaborate codes of rules designed to obtain compliance and manage deviant behaviour. Sometimes photography assisted in the domestication of these potentially unruly elements. Even when the forces of philanthropy wielded the camera they might still use it to answer the need to contain and control. Thomas Barnardo opened his first photographic department in his ‘Home for Destitute Lads’ in 1874. Here

²⁴⁹ Hull, for example, did not apparently introduce it until the 1890s. The Mary Evans Picture Library and other on-line photograph collections hold some such images, although many more no doubt exist.

²⁵⁰ J. Tagg, ‘The Burden of Representation’ in *The Contest Of Meaning: Critical Histories Of Photography*, ed. R. Bolton, (Cambridge, Mass.: MIT Press, 1989), 5.

²⁵¹ H.L. Dreyfus and P. Rabinow, *Michel Foucault: Beyond Structuralism And Hermeneutics*. (Chicago: University of Chicago Press, 1983), 154.

he obtained ‘an exact likeness’ of each child, not only to trace his career or to rescue him if he were abducted, but also to catch the runaway and to identify the child with a criminal record so that he could be turned over to the police.²⁵²

Outside the institutions an increasingly invasive and repressive legal system brought its weight to bear on citizens as police forces evolved and diversified, and employed increasingly sophisticated and far-reaching technologies of detection and surveillance. Photography is commonly assumed to have played a key role in the armoury of these technologies. It was invented in 1839, and entered the criminal’s ken a mere two years later. Not only were criminals to be cowed by the knowledge that their portraits were circulating widely to be seen by law-abiding citizens, but those good citizens were to be impressed, and perhaps deterred from offence, by the state’s ability to monitor, publicise and search out the wrongdoer.²⁵³ ‘Many police forces published the numbers of persons photographed in their annual reports, creating the impression of efficiency’ and of the inescapable gaze of the state.²⁵⁴ Citizens may also have been alarmed by the publication of such images, as they saw the way in which their fellows had publicly been identified as dangerous; this may have fuelled demands for more repressive legislation and practices. But while photography certainly had obvious potential to ensnare and control criminals, and was increasingly introduced into gaols and prison to this end, its effectiveness is debateable.

Photography and the criminal in Europe

The Brussels police are said to have been the first in Europe to undertake the photographic recording of prison inmates.²⁵⁵ The earliest surviving daguerreotypes of prisoners were taken in 1843 and are located in the registers of the prison in Brussels.²⁵⁶

²⁵² Tagg, *The Burden Of Representation*, 82.

²⁵³ J. Jäger, ‘Photography: a means of surveillance? Judicial photography, 1850-1900’, *Crime, History And Societies*, Vol. 5/1, (2001), 4.

²⁵⁴ Jäger, ‘Photography: a means of surveillance?’, 10.

²⁵⁵ G. Buckland, *First Photographs: People, Places, And Phenomena As Captured For The First Time By The Camera*, (New York: Macmillan, 1980), 160.

²⁵⁶ C. Moenssens, ‘The Origin of Legal Photography’, first published in *Finger Print And Identification Magazine*, January 1962, reprinted at www.forensic-evidence.com/site/EVID/LegalPhotog.html, viewed 6 July 2010, 2.

However, France may have beaten them by two years. In an article in the *Philadelphia Public Ledger* of 1841, only two years after the invention of photography, the writer describes the French practice of photographing ‘any suspicious person or criminal’ upon arrest, and putting the daguerreotype in a cabinet ‘for future reference’. The article went on to describe how the subjects attempted to subvert the process by resorting to ‘contortions of the visage and horrible grimaces’.²⁵⁷ The portrait was also said to have been copied and circulated to other police departments, so that the man could be recognised as a previous offender if he were to relocate and re-offend.²⁵⁸ Even at that early date, offenders seemed to have realised that the photograph had the potential to fix them permanently and powerfully in the public gaze as criminal. This inventive use of the new technology seemed not to have caught on immediately, however, for 13 years later the Inspector General of Prisons, Louis-Mathurin Moreau-Christophe, published an article in a magazine dedicated to photography, *La Lumière*, suggesting that criminals be photographed.²⁵⁹ The usefulness of photography in apprehending wanted offenders must have struck someone in high places at this time, for the first wanted notice illustrated with a photograph was created in France in 1854, carrying a picture of Pianort, the man who had tried to assassinate Napoleon III; it was widely circulated to police forces in France and other countries.²⁶⁰

Moreau-Christophe’s confidence in photography was supported in 1856 by *La Lumière*’s editor, Ernest Lacan, who recommended the usefulness of a photographic register to the

²⁵⁷ Buckland, *First Photographs*, 160.

²⁵⁸ B. and P. Heathcote, ‘The Custodial Photograph’, in K. Collins (ed.), *Shadow And Substance: Essays On The History Of Photography In Honour Of Heinz K. Hensich*, (Michigan: The Amorphous Institute Press, 1990), 115.

²⁵⁹ In 1854 Moreau-Christophe proposed a four-part archive, his *system biométrographique*. Four *signalements* were to be taken of the prisoner – a *signalement photographique*, an anthropometrically derived *signalement graphométrique*, a *signalement biographique* of private life and previous record, and a *signalement pénitentière* recounting behaviour under detention. Taken together, they formed an inescapable net of identification. In the development of such a comprehensive and multivariate system he was thirty years ahead of Bertillon, but unlike Bertillon he did not engage himself with the problems of processing and retrieving data. A. Broeckmann, ‘A Visual Economy of Individuals: the use of portrait photography in nineteenth century human sciences’, Ph.D. thesis, (University of East Anglia, Norwich, England, 1995), unpaginated. <http://www.mikro.in-berlin.de/abroeck/phd>, viewed 2014.

²⁶⁰ Buckland, *First Photographs*, 248.

police. In 1863 the governor of Clairvaux Prison also suggested photography, meeting either deafening silence or resistance from prison administrators and police. The President of the *Conseil de l'inspection générale des prisons* at the Ministry of the Interior raised several objections. It was 'an aggravation of the penalty not approved by the law'.²⁶¹ He also claimed that it was of no use because the human face changed so much over time; and it could work against the main aim of punishment, that is the moral improvement of the criminal.²⁶² But if the report in the Melbourne *Argus* of December 1864 is to be believed, not everyone shared his view. A grisly murder had been committed in Toulouse. The suspect was 'an escaped convict who had already been in prison for nine years and his photograph was in every considerable police station in France'.²⁶³ It was not, however, until 1871 that photography was introduced as a regular feature of French law enforcement. But, unlike in the early days in Europe and much of Great Britain, the peripatetic population that initially aroused French anxieties was not vagrants or railway thieves, but sailors. Every offender sentenced by maritime courts to more than six months imprisonment was to be photographed, his picture filed with the court records and a copy of both to be sent to the archives of the *Ministère de la Marine et des Colonies*, which combined the administration of the navy, the colonies and seaborne trade.²⁶⁴ Deported communards were also to be photographed at the main ports as they were being shipped out to the colonies, thereby 'facilitating the investigations of the police and permitting the definite application of the punishment for recidivism'.²⁶⁵

²⁶¹ Jäger, 'Photography: a means of surveillance?', 6.

²⁶² Jäger, 'Photography: a means of surveillance?', fn26.

²⁶³ *Argus*, 28 December 1864, 6.

²⁶⁴ Jäger, 'Photography: a means of surveillance?', 9.

²⁶⁵ Broeckmann, 'A Visual Economy', unpaginated.

An unexpected and certainly undesired side-effect of the photography of these political prisoners soon emerged: their mug shots began to circulate as portraits of popular heroes and martyrs. Their circulation was quickly forbidden, thus barring other citizens from any role in their recapture if required. This is an excellent example of a single image functioning both honorifically and repressively as described by A. Sekula, 'The Body and the Archive', in R. Bolton (ed.), *The Contest Of Meaning: Critical Histories Of Photography*, (Cambridge Mass.: MIT Press, 1992), 354. They apparently circulated even more widely as curiosities or perhaps to frighten the children. An article appeared in, of all unlikely places, the *Wagga Wagga Advertiser* titled 'Likenesses Of Female Communists':

There has been a great demand in Paris for likenesses of female Communists – the "petroleuses" as they were called, although their throwing petroleum was never proved. A gentleman who had purchased a number of these photographs was

The Ministry of War immediately adopted the procedure for the army. Offenders' images were to be collected in the central judicial archives of the Ministry and filed under the name of the culprit.²⁶⁶ It did not seem to have occurred to anyone that recidivists might give false names.

After the turmoil of the Paris Commune of 1871, there was a dominant and widely expressed belief that, although its leaders may have held sincere political convictions, popular support had been derived not from 'honest working men' but from the dangerous classes of 'professional criminals', 'malefactors', 'vagrants' and the 'cosmopolitan dregs' who took the opportunity to indulge in violence and looting. The political challenge was translated into 'an apolitical deviance by an outcast and criminal group'.²⁶⁷ Cut adrift from the honest ways of the country and so vulnerable to urban moral corruption, 'Their refusal to work or to own property threatened to undermine the twin pillars upon which the Third Republic was built'.²⁶⁸ More energetic measures were needed to contain this threat. They included the establishment of a photographic register in 1874 by the *Préfecture de Police*; from that time, every offender was to be photographed and the image sent to the *Préfecture*.²⁶⁹ However, by 1879-80, the police had accumulated an unwieldy collection of more than 75,000 portraits of those who had either committed serious crimes or ignored banishment. They were archived in disorderly piles still organised by name, and thus useless for identifying anyone who changed his or her name.²⁷⁰

surprised to find among them the portrait of his mother-in-law. Accompanied by a couple of police officers, he "interviewed" the photographer and extracted from him an avowal that he had availed himself of the negatives of some of his former clients least remarkable for personal attractions, in order to form collections of portraits representing the inmates of Versailles prisons and Brest hulks. (6 January 1872, 5)

²⁶⁶ Broeckmann, 'A Visual Economy', unpaginated.

²⁶⁷ J. Davis, 'Urban Policing and its objects' in C. Emsley and B. Weinberger (eds.) *Policing Western Europe: Politics, Professionalisms And Public Order 1850-1940*, (USA: Greenwood Press, 1991), 5.

²⁶⁸ Davis, 'Urban Policing and its objects', 2.

²⁶⁹ Jäger, 'Photography: a means of surveillance?', 9.

²⁷⁰ Photographs were taken unsystematically, 'from various angles and with varying degrees of expertise . . .' J. Caplan and J. Torpey (eds.), *Documenting Individual Identity: The Development*

Alphonse Bertillon was a statistician and clerk in the Paris *Préfecture de Police* in the 1870s. He despaired that ‘one photographed people to be able to find out their name, but in order to locate a previously taken photograph, we needed the name of the offender’.²⁷¹ These enormous, unwieldy and, ultimately, generally useless archives inspired him to attempt to solve this problem. Bertillon worked out rules for a scientifically exact system of identification photography, and these were published in Paris in 1890. An individual would be photographed full face and in profile, with the face well lit and the ear clearly visible in the profile image. Bertillon insisted that the conventions of commercial portraiture should be completely excluded from judicial photography. He designed a complex system of different measurements, minute descriptors of the colour of hair, eyes and skin, and a standardised format for photographs, designed to guarantee reliable identification even when the name of an individual was unknown.²⁷² While with a computerised database his system would have been a great advance, it proved a clerical nightmare. The fundamental flaw remained; from the vast numbers of sheets that were generated there was still no way of organising and retrieving information and linking it reliably and efficiently to the warm body in the police station. Despite this basic problem, his physical measurement system and photographic rules gained acceptance and by the turn of the century Bertillonage, as it became known, had been introduced all over Europe. While body measurements were replaced soon after 1900 by fingerprinting, his standardized method of making photographs endured.²⁷³

In Switzerland in 1852 the Attorney General, Jacob Amiet, commissioned a local photographer to take pictures of every vagrant arrested and brought to Bern for questioning. These images were distributed to the police forces throughout Switzerland

Of State Practices In The Modern World, (Princeton: Princeton University Press, 2001), 124: Jäger, ‘Photography: a means of surveillance?’, 9.

²⁷¹ Moenssens, ‘The Origin of Legal Photography’, 3; Broeckmann, ‘A Visual Economy’, unpaginated.

²⁷² A. Sekula, ‘The Body and the Archive’, in R. Bolton (ed.), *The Contest of Meaning: Critical Histories Of Photography*, (Cambridge Mass.: MIT Press, 1992), 358-9.

²⁷³ C. Sengoopta, *Imprint Of The Raj: How Fingerprinting Was Born In Colonial India*, (London: Macmillan, 2003), 115.

and added to the files, to help in identifying that person when s/he was arrested again.²⁷⁴ Vagrants, living a life outside the forces of social order, were seen as a particular threat to an already fragile Swiss Republic, which had suffered a civil war in 1847 and gained a new constitution the following year.²⁷⁵ Amiet's project was not a new general approach to fighting crime, but was part of the enforcement of an 1850 law that was intended to deal with the threat posed by a peripatetic population. With their mobility obstructed in this way, vagrants would be forced to settle down.²⁷⁶ By 1854 the republic must have been in a more robust condition, for the scheme had been discontinued.²⁷⁷ But others apparently still had confidence in this new approach. In an 1854 issue of the *Journal de Tribunaux* a Swiss lawyer described how a sophisticated gang of thieves was arrested, and among their number was a man whom no-one knew.

The Justice had a portrait taken of the prisoner, who was considered to be dangerous ... He sent copies of it to the police of all the Swiss cantons and to law enforcement agencies in the neighbouring countries ... finally news came in from the Grand Duchy of Baden that the suspect had been recognised in the village where he had lived.²⁷⁸

In Germany in 1837, a magistrate named Rademacher sought to transcend the uncertainties and inaccuracies of verbal description by having 'portraits drawn of the most dangerous individuals'.²⁷⁹ These were to be published in police journals. His visionary scheme was not taken up until around 1855-60, when a couple of police publications began to publish lithographic images made from photographs of wanted or unidentified (but not necessarily criminal) persons on the request of public prosecutors, judges or police officers. The police were responsible for making the images, rather than prison administrators as was the practice at that time in England. The scheme, however, did not receive wide support. Few images were published in such publications even after

²⁷⁴ Jäger, 'Photography: a means of surveillance?', 4.

²⁷⁵ Jäger, 'Photography: a means of surveillance?', 5.

²⁷⁶ Jäger, 'Photography: a means of surveillance?', 4.

²⁷⁷ Jäger, 'Photography: a means of surveillance?', 5.

²⁷⁸ R. Reiss, *La Photographie Judiciaire*, (Paris: Charles Mendel, 1903), 9.

²⁷⁹ Caplan and Torpey, *Documenting Individual Identity*, 154.

the practice of photography became widespread; occasionally a photograph of a particularly dangerous offender was published on his release from gaol but most of those featured were vagrants.²⁸⁰ Not until 1876 did police in Berlin begin systematically to collect photographs of offenders, classified by crime. Unlike in France and England, the Berlin police restricted the growth of their archive, so that only 550 of the 4,000 people convicted in 1878 had been photographed. While this discipline was admirable, it only postponed the collapse of the system.²⁸¹

While I am not suggesting that police and prison photography in Britain sprang directly from any European root, I think that it is useful to note that, while English and Irish prison authorities and, to a lesser extent, the police force emerging from the reorganisation of the 1840s, were wrestling with the problem of how to identify recidivists, they were not alone. This becomes more significant in light of the pivotal role played later in Britain in the adoption of criminal photography by the Association for the Advancement of Social Science. From its inception in 1857 this was an international association, welcoming foreign delegates and even forming chapters on the continent and in the United States. While I can find no record of such delegates advocating or even mentioning photography in formal papers or even notes to discussions, I think it fair to surmise that they may have contributed their experiences to informal discussions among their colleagues in the relevant ‘department’ of the association.

Policing and the Habitual Criminal in the early-mid 19th century England and Ireland; constructing the photographic subject

With widespread industrialisation beginning at the dawn of the nineteenth century, older patterns of settled life had begun breaking down, and Britain’s working men and women increasingly took to the road in search of work. But, alarmed by the apparent breakdown of old patterns of authority and social organisation, the police and the middle classes became convinced that all such so-called ‘vagrants’ were potential or actual criminals.

²⁸⁰ Jäger, ‘Photography: a means of surveillance?’, 8.

²⁸¹ Jäger, ‘Photography: a means of surveillance?’, 10.

They became the focus of assiduous official pursuit.²⁸² Well before the advent of applicable photographic technologies, there was a spate of governmental inquiries and legislation designed to professionalise and standardise police and penal procedures to deal with this worrying category of person. The most important of these in England and Wales were the Gaols Act of 1823 and the Metropolitan Police Acts of 1829 and 1839²⁸³, the Municipal Corporations Act of 1835 and finally the County and Borough Police Act of 1856, which reorganised rural police.²⁸⁴ In the wake of this legislation, the new force became known as the New Police.²⁸⁵

In Scotland, David Barrie contends, it is not possible to identify a dividing line between ‘old’ and ‘new’ police as has been posited for England, although others have argued that that line could be drawn in 1800 with the police forces that were established in the early 19th century under local statutes like the Glasgow Police Act of 1800. These, rather than influence from London, shaped police reform. National legislation in the form of the Burgh Police (Scotland) Act of 1833 suggested, rather than mandated, that Scottish authorities establish full-time police forces, but most large Scottish towns chose to ignore it and continued with their own police acts.²⁸⁶ Despite important differences in structure, practice and legislation, however, Scottish police had powers and preoccupations similar to those of their English counterparts.²⁸⁷ Like police in England, they sought to impose greater control over the behaviour of the lower orders, resulting in the criminalisation of Scottish working-class pursuits that had not previously been found objectionable. Even more acutely than in England, Scottish cities reeled under huge numbers of immigrant

²⁸² B. Godfrey and P. Lawrence, *Crime And Justice 1850-1950*, (Devon: Willan, 2005), 122.

²⁸³ D. Barry, ‘A typology of British Police: locating the Scottish Municipal Police Model in its British context 1800-1835’, *British Journal Of Criminology*, Vol. 50, (2010), 261.

²⁸⁴ Under one of the provisions of the 1839 act vagrants could be taken into custody simply because they were homeless people ‘whose name and residence [could] not be ascertained’. Sekula, ‘The Body and the Archive’, 344.

²⁸⁵ Godfrey and Lawrence, *Crime And Justice 1750-1950*, 14-15.

²⁸⁶ Barrie, ‘A typology of British Police’, 261-2.

²⁸⁷ Unlike their English counterparts, however, they also had responsibilities for managing ‘services and measures relating to the built environment’ and public health, such as street lighting, cleansing, paving, water supply and sewerage systems. Barrie, ‘A typology of British Police’, 263, 268.

Irish and rural Scots in search of work. Scottish police, like their southern colleagues, became intensely focused on supervising, managing and controlling the migrant poor.²⁸⁸

All over Britain, as the century progressed, these folk, with their unsettled ways and their resistance to social and legal control, were subsumed in broader categories variously called ‘habitual offenders’, ‘professional criminals’, or members of the ‘dangerous classes’. In the early years of the nineteenth century, frequent offenders had been characterised as simply ‘poor and indigent’.²⁸⁹ But in 1828 a witness to the Select Committee on Police described young criminals as having been ‘trained up’ to become adult criminals.²⁹⁰ Thereafter, ‘the idea that criminals formed a separate section of the community was general’ and by the early 1830s this view was well established.²⁹¹

Thomas Wontner, writing of his experiences serving on a jury in 1826 at the Old Bailey in London, described a class of prisoners whom he called ‘Habitual Offenders who have all their lives engaged in crime’ and for whom special laws should be made since there was no chance of reforming them.²⁹² In 1838 a British Parliament Select Committee Report on Transportation referred to this category of repeat offenders as those who ‘have lost all moral aversion to crime’ and so needed ‘special regulatory attention’. They were contrasted with the ‘accidental criminal’, whose crime had occurred in ‘a moment of temptation’.²⁹³ A year later, the Royal Commission’s report called for the compilation of detailed information on these people, so that they could be watched more closely.²⁹⁴ It is against this background that the vast majority of the men photographed at Port Arthur were arrested, convicted and transported in the 1830s, 1840s and early 1850s. All had at least one conviction on their record, some had more than one, but few had more than three; it must be stressed that these numbers represent only known convictions. Many

²⁸⁸ Barrie, ‘A typology of British Police’, 265-6.

²⁸⁹ J. J. Tobias, *Crime And Industrial Society In The Nineteenth Century*, (London: Batsford, 1967), 52-3.

²⁹⁰ Tobias, *Crime And Industrial Society*, 53.

²⁹¹ Tobias, *Crime And Industrial Society*, 54.

²⁹² T. Wontner, *Old Bailey Experience. Criminal Jurisprudence And The Actual Working Of Our Penal Code Of Laws. Also, An Essay On Prison Discipline, To Which Is Added, A History Of The Crimes Committed By Offenders In The Present Day*, (London: J Fraser, 1833), 8.

²⁹³ Pavlich, G., ‘The emergence of Habitual Criminals In 19th Century Britain’, *Journal Of Theoretical And Philosophical Criminology*, Vol. 2/1, (2010), 8.

²⁹⁴ Pavlich, ‘The emergence of Habitual Criminals’, 8-9.

were convicted far from their place of origin, and may have been living as, or at least classed as, vagrant. Some gave a notorious thieves' rookery like St Giles in London as their native place. Many were the casual poor, either unskilled or low skilled, most in seasonal occupations like agricultural labour or displaced by factory mechanisation or economic depression. All, however, claimed a respectable former occupation of some kind.

By the middle of the nineteenth century, perceptions of criminality had shifted from a belief that the whole working class was a threat to social order to recognition that the majority were in fact law-abiding and productive members of society. The crime that remained was therefore believed to be committed by a small number of intractable elements, incapable of reform.²⁹⁵ This group was composed of 'habitual criminals', vagrants, lunatics and paupers.²⁹⁶ These intractable elements were men, women and children who habitually preferred crime over honest work; they were 'indolent', 'unable to resist temptation', immoral and vicious, and usually driven by 'a passion for intoxicating drink'.²⁹⁷ Henry Mayhew, that great chronicler of the seamy side of London, saw the vagrant and the habitual criminal as one and the same person. Alarmed by the presence of what he calculated to be 4,000 vagrants in London, he warned 'that vagrancy is the nursery of crime, and that the habitual tramps are first beggars and then thieves, and finally the convicts of the country, the evidence of all parties goes to prove'. They were 'at war with all social institutions' and were 'a distinct race of individuals ... the criminal classes'.²⁹⁸ Charles Darwin also laid the blame for crime at the vagrant's feet. In describing the alchemical process set in motion by transportation, he enthused that 'as a means of making men more honest – of converting vagabonds, most useless in one

²⁹⁵ B. Weinberger, 'The Criminal Class and the Ecology of Crime', *Journal Of Historical Social Research*, Vol. 15/4, (1990), 122.

²⁹⁶ By the 1880s this group was commonly called the 'residuum'. Godfrey and Lawrence, *Crime and Justice 1850-1950*, 115.

²⁹⁷ Godfrey and Lawrence, *Crime And Justice 1750-1950*, 112-3.

²⁹⁸ H. Mayhew, *The Criminal Prisons Of London And Scenes Of Prison Life*, (London: Griffin, Bohn and Co., 1862), 43, 45.

hemisphere, into active citizens of another, and thus giving birth to a new and splendid country ... it has succeeded to a degree perhaps unparalleled in history'.²⁹⁹

With the growth of the Temperance movement and evangelical Christianity as the century progressed, another shift occurred in the community's perception of the role of the police. Now they were also appointed as the moral guardians of society. A petition to the local council from 200 good burghers of Portsmouth in 1858 describes that community's law and order priorities. They called upon the police to concentrate on:

... drunken and disorderly soldiers, sailors, marines and prostitutes, who are permitted, without molestation, to infest this street [the Hard] at all hours of the day. Their coarse and indecent demeanour; their blasphemous and obscene language; their disgusting appearance and riotous conduct, are most injurious to the business of the neighbourhood, to the safety of our persons, to the security of our property, and to the character of the town; and are such as to shock the delicacy of our wives, and to endanger the moral character of our children.³⁰⁰

Workers lounging and smoking along the street were also felt to be a police matter.³⁰¹ Respectable folk in London made similar demands; they were no longer prepared to ignore brawling, drunkenness and petty theft and insisted that these offences against moral order be dealt with summarily and harshly.³⁰²

Generalised anxiety about crime was brought to boiling point with the cessation of transportation to Van Diemen's Land in 1853. Serious offenders now had to be dealt with

²⁹⁹ C. Darwin, *The Voyage Of The Beagle*, (London: Dent, 1959, first published 1839), 449.

³⁰⁰ J. Field, 'Police, Power and Community' in V. Bailey (ed.), *Policing And Punishment In Nineteenth Century Britain*, (London: Croom Helm, 1981), 51.

³⁰¹ Field, 'Police, Power and Community', 51.

³⁰² W.B. Miller, *Cops And Bobbies: Police Authority In New York And London, 1830-1870*, (Columbus: Ohio State University 1973), 6. Also D. Taylor, *Crime, Policing And Punishment In England 1750-1914*, (New York: St Martin's Press, 1998), 43-44. The same was true in northern England, see D. Philips, *Crime And Authority In Victorian England: The Black Country 1835-60*, (London: Croom Helm, 1977), 84-86.

at home. Community anxiety about ‘bands of able-bodied criminals roaming the country’ increased throughout the 1850s and 1860s.³⁰³ In 1860 the Reverend John Davis, Ordinary of Newgate Prison, described them as those who were ‘addicted to crime, who make a trade of it, and who are lost to shame [for whom] all light punishments are nonsensical ... incapable of reformation ... incorrigible delinquents’.³⁰⁴ New acts set out to define those offenders more precisely and to give police increased powers to deal with them.³⁰⁵ John Martin and Gail Wilson agreed that ‘the great emphasis in police work throughout the nineteenth century was the preservation of public order. The detection of crime was secondary and did not assume prominence until much later in police history’.³⁰⁶ According to Barbara Weinberger, the yardstick by which the policeman’s efficiency was measured was ‘the absence of crime in his district, not the number of arrests he made. The detection of crime ... received very low priority’.³⁰⁷ Conveniently, as far as the under-resourced police and the courts were concerned, offenders defined themselves by their place of residence. Either they had none, in the case of the vagrant, or they congregated together in slum areas.³⁰⁸ These areas were characterised by a large number of people living in lodging houses, many brothels, a high rate of under- and unemployment and sundry social misfits who had washed up there.³⁰⁹ Irish immigrants were a particular focus of attention in this regard; not only were they likely to be poor and fond of a drink, but they were characterised as backward, uncivilised, possessing an

³⁰³ J.P. Martin and G. Wilson, *The Police: A Study In Manpower: The Evolution Of The Service In England And Wales 1829-1965*, (London: Heinemann, 1969), 8: see also L. Goldman, *Science, Reform And Politics In Victorian Britain: The Social Science Association 1857-1886*, (Cambridge: Cambridge University Press, 2002), 152.

³⁰⁴ A report by the Reverend John Davis, Ordinary of Newgate Prison, published in *The Times* in November 1860, quoted in Pavlich, G., ‘The Accusations of Criminal Identity’, address to Legal theory Workshop, McGill University, November 2006, 3.

³⁰⁵ Davis, ‘Urban Policing and its objects’, 4.

³⁰⁶ Martin and Wilson, *The Police*, 7. Also D. Taylor, *The New Police In Nineteenth Century England: Crime, Conflict And Control*, (Manchester: Manchester University Press, 1997), 96.

³⁰⁷ B. Weinberger, ‘Are the Police Professionals? An Historical Account of the British Police Institution’, in C. Emsley and B. Weinberger (eds.), *Policing Western Europe: Politics, Professionalisms And Public Order, 1850-1940*, (USA: Greenwood Press, 1991), 79.

³⁰⁸ Weinberger, ‘The Criminal Class and the Ecology of Crime’, 122.

³⁰⁹ Weinberger, ‘The Criminal Class and the Ecology of Crime’, 127. Also D. Taylor, *The New Police In Nineteenth Century England: Crime, Conflict And Control*, (Manchester: Manchester University Press, 1997), 94-95.

alien religion and dubious national allegiance.³¹⁰ The Irish clashed regularly with rival ethnic gangs and with the police, further inflating their rate of arrest.³¹¹

So the constable felt himself to be justified and efficient if he adopted a regime of constant surveillance and arrests for minor matters, concentrating on those districts whose inhabitants were seen to be the major threats to public order. As Clive Emsley said, ‘The easiest arrests to make, except where there was a positive identification of a thief or a violent offender, were those for petty public order offences ... The creation of the new police force saw an increase in these statistics’.³¹² When these statistics were published, respectable people were reassured that the police were keeping the streets safe. The police principally focused on those whom they already knew to be offenders and those whom they deemed not to be ‘respectable’. As well as slum dwellers in general, they targeted itinerant traders, gypsies, youths hanging about the streets and female factory workers. The vagrant remained a favoured subject for arbitrary arrest; one witness to a Select Committee reported on this ‘great source of crime ... they begin by being vagrants and end by becoming thieves’.³¹³ By focusing on these people, the police and the courts both created and reinforced the popular stereotype of the habitual criminal.³¹⁴ The more often they were up in court, the more society’s judgement was reinforced that they were to be feared as habitually criminal, the more they were kept under surveillance and control, the more likely they were to be rearrested.³¹⁵

Weinberger compared the number of arrests made in Birmingham’s slum areas with those in middle class streets in 1868, 1871, 1874 and 1877; she demonstrated that, of 239 defendants appearing in court, 232 were from the slums.³¹⁶ One Manchester magistrate

³¹⁰ Davis, ‘Urban Policing and its objects’, 6.

³¹¹ Weinberger, ‘The Criminal Class and the Ecology of Crime’, 129.

³¹² C. Emsley, *Crime And Society In England 1750-1900*, (Harlow: Person Longman, 3rd edition 2005), 239-40.

³¹³ Emsley, *Crime And Society In England 1750-1900*, 244-45.

³¹⁴ Davis, ‘Urban Policing and its objects’, 2.

³¹⁵ Taylor, *Crime, Policing And Punishment In England*, 69-70; Weinberger, ‘The Criminal Class and the Ecology of Crime’, 125.

³¹⁶ Weinberger, ‘The Criminal Class and the Ecology of Crime’, 127.

commented approvingly that these people were rarely free for more than six months.³¹⁷ It was no different in London: as Taylor reported, ‘Between 1861 and 1891 the unskilled young man in East London probably had a one in six chance (or less) of falling foul of the law’.³¹⁸ Once a person was ‘known to the police’, if he were found in what was described by a policeman as suspicious circumstances, perhaps hanging around in a street or outside a shop, he could be taken up and sentenced to three months by a cooperative magistrate.³¹⁹ Emsley continued, ‘The sentence of penal servitude gave magistrates and judges the opportunity to inflict ferocious sentences on persons who, while undoubtedly pests in that they were continually being brought before different courts, never carried out any particularly serious offence’.³²⁰ But some commentators like Henry Mayhew, although very vocal on the need for law and order, were highly critical of the way in which poor children were convicted and incarcerated for ‘crimes’ like throwing stones.³²¹ Consequences for families of adults repeatedly arrested could be dire. Even the most law-abiding might be driven to crime by the incarceration of adult breadwinners.³²² Once released, convicted felons found it extremely difficult, if not impossible, to obtain honest work because of their criminal record, almost guaranteeing that they would appear yet again before a magistrate.³²³

Rural police were similarly occupied with the ‘daily routine maintenance of order and repression of petty crime ... In all counties, they placed heavy emphasis on vagrancy, the clearance of gypsies and a large number of small public order problems and regulatory offences’. In contrast to the more laissez faire arrangements of the 1830s and 1840s, pubs, sporting events, fairs and other places where the labouring classes gathered were subject to much increased surveillance. Eisner described this as ‘the disciplining grip on daily life that originates in the impressive flood of ordinances regarding appropriate clothing, the

³¹⁷ D. Philips and R.D. Storch, *Policing Provincial England 1829-56: The Politics Of Reform*, (London: Leicester University Press, 1999), 225.

³¹⁸ Taylor, *The New Police*, 105.

³¹⁹ Emsley, *Crime And Society In England 1750-1900*, 284.

³²⁰ Emsley, *Crime And Society In England 1750-1900*, 285.

³²¹ Mayhew and Binny, *The Criminal Prisons Of London*, 406.

³²² Tobias, *Crime And Industrial Society*, 58.

³²³ Tobias, *Crime And Industrial Society*, 209-10.

consumption of alcohol, the fulfilment of religious duties etc.’.³²⁴ This gave police the opportunity to crack down vigorously on minor incidents of disorderly behaviour. Increasingly, as Stefan Petrow said, police were expected to enforce laws against ‘clearly defined outcast groups’, whose behaviour had been deemed to be in some way threatening to the health, security and morals of society, rather than devoting themselves to fighting serious crime.³²⁵ Rates of arrest and committals to trial soared for offences like vagrancy, petty larceny, being drunk and disorderly or highway offences.³²⁶ Certain individuals were marked down as ‘habitual thieves’, and routinely harassed and brought in for questioning after any theft. Prostitutes came in for especially repressive attention.³²⁷

This anxiety about the potential dangers posed by these ‘habitual criminals’ and the peripatetic classes, often described as one and the same, spawned a search for ever more comprehensive strategies for keeping track of and containing them.³²⁸ The identification of a specific class as responsible for crime was an advantage for those charged with its

³²⁴ M. Eisner, ‘Modernisation, self-control and lethal violence; the long-term dynamics of European homicide rates in theoretical perspective’, *British Journal of Criminology*, 41, (2001), 631.

³²⁵ S. Petrow, *Policing Morals: The Metropolitan Police And The Home Office*, (Oxford: Clarendon Press, 1994), 41.

³²⁶ Philips and Storch, *Policing Provincial England*, 225; C. Emsley, *The English Police: A Political And Social History*, (Hemel Hempstead: Harvester Wheatsheaf, 1991), 5-6.

³²⁷ Taylor, *The New Police*, 103.

³²⁸ The Rev F.E. Witts had summed it up in 1836: ‘the facilities of moving from one place to another [has been] greatly augmented, and in like proportion the ease of removing stolen property is greater . . .’ MS Diary of the Rev. F.E. Witts in Philips and Storch, *Policing Provincial England*, 44. Fifteen years later, Henry Mayhew developed an anthropological division between criminals and other ‘wandering tribes’ who made their living in the streets. He described two racial types, the wanderers and the settlers: the first were characterised by, among other moral deficits, their ‘repugnance to regular and continuous labour’ and light fingers. They lived by preying on the settlers. H. Mayhew, *London Labour And The London Poor: A Cyclopaedia Of The Conditions And Earnings Of Those That Will Work, Those That Cannot Work, And Those That Will Not Work*, (London: Griffin, Bohn and Co., first published 1851, enlarged 1861-2), Vol. 1, 1. See also Gardiner writing in 1852, “‘It is well known to all who have been concerned in criminal administration, that the most cunning, the most skilled, and the most daring offenders, are migratory in their habits . . .’” in The Hon. J. William Strutt, ‘Photography: its History and Applications’, *The British Quarterly Review*, Vol. 44, No. 88, (1866), 380.

containment: that class could then be treated as a fixed and delimited object, amenable to scientific criminological study.³²⁹

The New Police and criminal photography

Under new legislation in the early-mid 19th century, a new approach to policing generally known as the New Police had emerged.³³⁰ The change in the provinces was particularly dramatic. Under the County and Borough Police Act of 1856, all counties were compelled to establish their own forces.³³¹ The formerly diverse and uncoordinated forces of law and order in towns and hamlets were now amalgamated to cover the whole county. This new unified force was controlled by county government through a powerful Chief Constable. As David Philips and Robert Storch observed, ‘In matters of operations, organisation, deployment, standards, and training and discipline, the freedom of action of early chief constables was practically unlimited ... chief constables were generally left alone to get on with it’.³³² But since one quarter of the county forces’ funding was to come from Parliament, three Inspectors were appointed to authorise such payments based on their findings as to each force’s efficiency.³³³ According to Martin and Wilson, ‘the emphasis was on the police as a local service dealing with local disorders and local criminals’.³³⁴

Tentative and limited moves began to incorporate photography into policing. Jens Jäger insisted that ‘police officials did not care about photography until the 1860s/1870s’.³³⁵ One of the key elements of this new approach was that each force should compile information on individuals in their jurisdiction who were likely to ‘cause problems or commit criminal acts ... Constables were to note such individuals in their diaries and ‘Bad Character’ books were maintained’.³³⁶ But unlike in the earlier decades, the

³²⁹ Pavlich, ‘The emergence of Habitual Criminals’, 6.

³³⁰ Godfrey and Lawrence, *Crime And Justice 1750-1950*, 14-15.

³³¹ Martin and Wilson, *The Police, A Study In Manpower*, 11.

³³² Philips and Storch, *Policing Provincial England*, 222.

³³³ Godfrey and Lawrence, *Crime And Justice 1750-1950*, 16.

³³⁴ Martin and Wilson, *The Police, A Study In Manpower*, 11.

³³⁵ Jäger, ‘Photography: a means of surveillance?’, 1.

³³⁶ Philips and Storch, *Policing Provincial England*, 224.

familiarity with his community formerly possessed by the constable on the beat was lost. He was now the gatherer but not the holder of this knowledge. He was no longer part of his community but was regularly moved on to new postings, unlike superintendents and inspectors who were not often moved. They built up an essential body of knowledge of local deviants, and briefed new recruits. According to Philips and Storch, 'Creating the reliable flow and recording of such information was an early preoccupation of chief constables ... this information collection and analysis was a key to the effectiveness of the New Police'.³³⁷ In 1867 the Chief Constable of Cheshire ordered that photographs be taken of Fenians in his district, so it would seem that the practice was at his discretion.³³⁸

But little of that information flowed between the originating force and other forces or Scotland Yard. Martin and Wilson argued that 'The various forces tended to develop in isolation, although there was a certain amount of mobility at the top and bottom levels of the command structure ... Policing continued to be essentially a local activity, organised in small units with little contact between forces. Co-operation between neighbouring forces was reserved for emergencies'. Not until after 1900 did the 'most advanced forces [begin] collecting and exchanging information on fingerprints ...'³³⁹ Eventually photographs became part of this system of sharing information, but as late as 1936 one of the Inspectors of Constabulary lamented that the use of modern equipment depended on the interests of the Chief Constable concerned and, as a result, 'there are still forces, some of moderate size, where there is no provision within the force for the taking of a photograph'.³⁴⁰

Despite the accumulation of huge amounts of information, the use of technology like photographs apparently did nothing to change policing methods or improve clear-up rates throughout this period, which remained constant.³⁴¹ It is clear that the process of apprehension of offenders would always be most effective where police either already

³³⁷ Philips and Storch, *Policing Provincial England*, 224.

³³⁸ A. Barrett and C. Harrison, *Crime And Punishment In England: A Sourcebook*, (London: UCL Press, 1999), 249.

³³⁹ Martin and Wilson, *The Police, A Study In Manpower*, 33, 35.

³⁴⁰ Martin and Wilson, *The Police, A Study In Manpower*, 53.

³⁴¹ Davis, 'Urban Policing and its objects', 10.

had a good idea as to the identity of the suspect or knew everyone in their area and so could make good use of any description from a member of the public. Briggs *et al* argued that early photography was a natural extension of the basic work of the constable, walking the beat and getting to know the faces of all those in his neighbourhood.³⁴²

Indeed as Spearman lamented as late as 1894, ‘Personal recognition is, however, the main thing on which the English detective or prison warden relies’.³⁴³ Detectives and prison officers continued to have their highest success where the victim knew the offender.³⁴⁴

Failing that, the most common method of identifying an offender was the decades-old practice of sending police officers and warders to prisons to check out the recently admitted, depending on their memories of the faces of habitual offenders known to them.

³⁴⁵ According to Edmund Spearman, all of the prisoners remanded in London were sent to Holloway to be inspected, and then ‘thirty police officers from various quarters of London visit Holloway Prison three times a week, and each week they obtain, on average, four identifications’, an average of ninety hours per identification.³⁴⁶ Otherwise they watched and searched people whom they already believed to be suspicious, or relied on informants. Failing that, they rounded up ‘the usual suspects’, the poor and the previously convicted. But these methods were only applied to certain types of crime. White-collar crimes, where the culprit would have appeared respectable or had no previous record, were rarely solved by these methods.³⁴⁷

Prisons and photography; before the Habitual Criminals Act of 1869

According to Jäger, photographs ‘taken between the 1840s and the 1860s, at prisons or at the request of a judge or public prosecutor, were not intended for the use of the police in

³⁴² J. Briggs, C. Harrison, A. McInnes and D. Vincent, *Crime And Punishment In England: An Introductory History*, (New York: St Martin’s Press, 1996), 218.

³⁴³ In Pavlich, ‘Emergence of Habitual Criminals’, 12.

³⁴⁴ Davis, ‘Urban Policing and its objects’, 10.

³⁴⁵ Anon., *Kirkdale Gaol: Twelve Months Imprisonment Of A Manchester Merchant*, (Manchester: Heyward and Son, 1880), 17; J. Dawson, *Imprisoned In The House Of Detention For Libel*, (London: John and Robert Maxwell, 1887), 110; G. Bidwell, *Forging His Chains: The Autobiography Of George Bidwell*, (Hartford: SS Scranton, 1888), 264. Jäger, ‘Photography: a means of surveillance?’, 9.

³⁴⁶ E. Spearman, ‘Known to the Police’, *The Nineteenth Century: A Monthly Journal*, (September 1894), 358.

³⁴⁷ Davis, ‘Urban Policing and its objects’, 12.

the first place'.³⁴⁸ Instead, prison authorities more generally embraced the use of photography, although even that was slow and patchy. Across the Channel in France, photography began to be enlisted in the quest for identification in 1841, but its earliest use in Britain seems to have been in 1844, when Richard Beard made a daguerreotype of the great Irish leader Daniel O'Connell while he was detained in Richmond Gaol in 1844; he then produced lithographic copies for sale and for reproduction in newspapers. In 1848 a Dublin photographer Leone Gluckman produced a series of daguerreotypes of Young Irelanders, which he then mass-produced for sale.³⁴⁹ In 1849 daguerreotypes were made of a couple charged with murder at Southwark Police Court, London, and in this celebrated case too the photographer then sold lithographs of the portraits.³⁵⁰ It seems that these images were not made at the behest of either police or the gaol authorities, but rather were initiated by a local photographer who saw a commercial opportunity. In another murder case in 1850 two young accused men were photographed at the request of the local Police Superintendent at Newport, South Wales, and their image circulated in case they were known elsewhere. The photographer put the images on display in his studio window, and they were also displayed in the window of the local watch and clock maker; both venues attracted large crowds. After they were executed, an illustration based on the daguerreotype was published in the local newspaper.³⁵¹

This commercial appropriation of images of murderers, and the appetite for their consumption was not a new phenomenon. Since the seventeenth century the reading public had been greedily devouring the biographies of notorious criminals, cheaply printed in newspapers or pamphlets, or even as large books, sometimes in several volumes.³⁵² Horace Walpole, who had himself attended the hanging of a glamorous young highwayman in 1750, spluttered indignantly:

You can't conceive the ridiculous rage there is of going to Newgate; *and*

³⁴⁸ Jäger, 'Photography: a means of surveillance?', 10.

³⁴⁹ This series included William Smith O'Brien, sentenced to die a traitor's death but instead sent to Port Arthur. J. Carville, *Photography And Ireland*, (London: Reaktion Books, 2011), 23.

³⁵⁰ Heathcote, 'The Custodial Photograph', 115.

³⁵¹ Heathcote, 'Custodial Photographs', 116.

³⁵² P. Rawlings, *Drunks, Whores And Idle Apprentices*, (London: Routledge, 1992), 1.

the prints that are published of the malefactors [my emphasis], and the memoirs of their lives and deaths set forth with as much parade as – as – Marshal Turenne’s – we have no generals worth making a parallel.³⁵³

By the early nineteenth century the cheap single sheet broadsheet had almost replaced the more expensive and detailed printed periodicals like the *Newgate Calendar*.³⁵⁴ Executions took place at ‘Hanging Fairs’ in front of festive crowds that attracted as many as 80,000 spectators but more commonly reached 30,000, and these broadsheets were hawked through the crowd as a ‘gruesome souvenir program’.³⁵⁵ A single illustration commonly showed the execution. If the broadsheet carried more than one image, it would most likely be that of the manacled person in the condemned cell.³⁵⁶ The commercial photographers who displayed and sold images of famous convicts tapped into a popular market already more than 150 years old, and one that endures today.

This was not, however, the purpose which James Gardner, the Governor of Bristol Gaol, had in mind when he appeared in print to promote the use of criminal photography among his fellow prison governors. An 1866 report in the *British Quarterly Review* reproduced at length his 1852 encomium on the efficacy and desirability of the use of photography in apprehending the most signal threat to public order and safety, the peripatetic habitual offender. He stressed the importance of preserving a photographic record of prisoners so that they could be conclusively identified when they re-entered gaol. He said that it was common knowledge to everyone involved in criminal administration ‘that the most cunning, the most skilled, and the most daring offenders, are migratory in their habits; that they do not locate themselves in any particular town or

³⁵³ D. Gonzalez, ‘The Culture Of Crime: Representations Of The Criminal in Eighteenth-Century England’, PhD Dissertation, (Louisiana State University and Agricultural and Mechanical College, (2002), 3-4.

³⁵⁴ M. Field and T. Millett (eds.), *Convict Love Tokens: The Leaden Hearts The Convicts Left Behind*, (South Australia: Wakefield Press, 1998), 40.

³⁵⁵ Gonzalez, ‘The Culture Of Crime’, 29; Field and Millett (eds.), *Convict Love Tokens*, 40.

³⁵⁶ Field and Millett (eds.), *Convict Love Tokens*, 44.

district, but extend their ravages to wherever there is the most open field for crime'.³⁵⁷ He went on:

This migratory, or Bohemian tendency, diminished the risk of identification in the exact ratio in which it brought the criminals within fresh judicial districts and under fresh official inspection, and often permitted expert professional thieves, hardened criminals, to pass off lightly as first offenders, only just stepping out of the path of rectitude. Written descriptions were rarely found sufficiently precise for identification ...³⁵⁸

And so he had tried photography, which had enabled him to identify prisoners with certainty, and which he 'strongly recommended for systematic adoption to his brother governors'.³⁵⁹ He lamented the fact that the mandatory use of photography had not been adopted in the Prisons Act of 1866, despite the recommendation of the Select Committee of the House of Lords, and was currently 'only employed where the governors of gaols themselves see its importance ...'.³⁶⁰ Where the practice had been adopted, every accused criminal was photographed as soon as s/he entered the gaol, and a print was attached to a form bearing the details of the person's age, height, complexion, hair, eyes, nose, whiskers, and specific marks, place of birth, last residence, education, trade, religion and any other relevant information. This form was then forwarded by the governor of the admitting gaol to the governor of a neighbouring gaol, asking if s/he was known to them and, if so, that they would forward any record of previous convictions. That gaol then forwarded the form to the next gaol according to a specified route.³⁶¹

Thus the document passes through a prescribed route, receiving, as it travels, the testimony of various governors, intimating that the prisoner is "not

³⁵⁷ Anon., 'Photographing Criminals', *The Photographic News*, Vol. 10, (1866), 524.

³⁵⁸ Anon., 'Photographing Criminals', 524.

³⁵⁹ Anon., 'Photographing Criminals', 524.

³⁶⁰ Strutt, 'Photography: its History and Applications', 380.

³⁶¹ Anon., 'Photographing Criminals', 525.

known”, or that he was convicted at any former period, generally under some other name than that now assumed, and is finally returned to the gaol from whence it was issued, furnishing at times curious facts in the statistics of crime, and in the biography of gaol-birds.³⁶²

Gardner gave evidence along similar lines to the Select Committee on the House of Lords on the Present State of Discipline in Gaols and Houses of Correction in 1863, in which he claimed to have been the first to introduce daguerreotyping of prisoners.³⁶³ He claimed to have ‘got it introduced into 20 or 25 gaols’, but unfortunately he does not tell us which ones they were or how he achieved this.³⁶⁴ I have been unable to discover what inspired him to adopt this new technology at this early date and well in advance of his brother governors. He was already a keen amateur photographer, and by 1852 he was using a stereoscopic camera. These cameras had become enormously fashionable since Queen Victoria and Prince Albert had been much taken with one at the 1851 Great Exhibition. Gardner, an early adopter of this new technology, soon saw its usefulness in his line of work. The identification of recidivists was important since the law stipulated higher penalties for repeat offenders.³⁶⁵ He only photographed railway thieves and strangers to the city, again a group seen as too mobile to be subject to identification through the personal knowledge of local police, but thought likely to have already committed a crime similar to the one for which they had been arrested in Bristol. The Irish came in for his particular attention. In one case he circulated a man’s image to 40 or 50 gaols, and the offender was finally recognised at Dover.³⁶⁶

In another early successful use of photography, reported admiringly in the *Hobart Courier*, two young escapees from the Manchester and Salford Reformatory were recaptured in 1859. Photographs were taken of boys on admission and, if they absconded,

³⁶² Anon., ‘Photographing Criminals’, 525.

³⁶³ J. A. Gardner, evidence, *Report from the Select Committee on the House of Lords on the Present State of Discipline in Gaols and Houses of Correction: Together With The Proceedings Of The Committee, Minutes Of Evidence, And Appendix*, (London: H.M.S.O., 1863), xvii.

³⁶⁴ Gardner, evidence, *Report From The Select Committee*, 337.

³⁶⁵ Jäger, ‘Photography: a means of surveillance?’, 6.

³⁶⁶ Strutt, ‘Photography: its History and Applications’, 380.

these were circulated to the principal seaports and large towns. The Master of the Mendicity-office in Leeds immediately recognized them as

having been relieved there, under fictitious names, stating that they were “mill hands”, from Bury, on their way to York and Hull. Communications conveying this intelligence were at once addressed to these towns, and two days afterwards they were captured at Hull by an officer, who instantly recognized them from having seen their photographs.³⁶⁷

When they were brought to the Police-office, they denied all knowledge of Manchester or its Reformatory. ‘Suddenly the police superintendent held up before each of the boys his own photograph. Like an electric shock, the effect was instantaneous; they changed colour, and in a few moments one of them very doggedly exclaimed, “I’m beaten; we’ll give in now”’.³⁶⁸

This account demonstrated that the power of photography was already known and feared by criminals. This seems remarkable considering that the *carte de viste* format, which made it possible for photography to become part of the life of the lower orders, had only been invented five years before and was not to become really popular until Queen Victoria and her family embraced it in 1861.³⁶⁹ Gardner described how, as he raised his camera in that same year, men would protest, ‘I know what you are at; I have been in gaol; I will tell you all about it’, rather than have their photograph taken.³⁷⁰ Yet another writer described how another miscreant resisted; “No, no!” exclaimed an eminent thief, when he was placed before the machine, stretching forth his hands so as to hide his face -

³⁶⁷ The Mendicity Society was a charitable organisation set up in 1834, ‘to give meals and money, supply mill and other work to applicants, investigate begging-letter cases, and apprehend vagrants and impostors’. P. Cunningham, *Hand-Book Of London Past And Present*, (London: John Murray, 1850), 329-30. <http://www.victorianlondon.org/charities/mendicitysociety.htm>, viewed 13 August 2010: *Courier*, 29 January 1859, 2.

³⁶⁸ *Courier* 29 January 1859, 2.

³⁶⁹ Q. Bajac, *The Invention Of Photography: The First Fifty Years*, (UK: Thames and Hudson, 2002), 55-6.

³⁷⁰ Gardner, evidence, *Report From The Select Committee*, 337.

– “No, no; you are taking away my bread!”³⁷¹ In 1863 the Conservative Parliamentarian the Right Honourable C.B. Adderley, who published a book in 1851 with the no-nonsense title of *Transportation Not Necessary*, noted that ‘ Mr Perry, one of the Inspectors of Prisons in England, has reported that the few gaols in which prisoners are photographed are avoided by the criminals’.³⁷²

Foucault, in his insistence on the service to which the state puts such images, appeared to have created a closed system, which affords only limited possibilities for reading these images. So far, the subjects of this totalising control have been depicted as passive and helpless under the relentless gaze of the state and its functionaries. But ‘power is relational, there is no power without resistance’.³⁷³ Lawbreakers might have been aware that they were subject to someone else’s control, but they also found ways to resist it.³⁷⁴ They did this most often by changing their name – thus disassociating themselves from their previous criminal history, which had implications for sentencing – and the superficial elements of their appearance, like shaving or growing a beard – or their place of residence. Some subjects tried to disguise themselves by contorting their features or constantly moving during the plate’s exposure.³⁷⁵ An 1866 article from *The Photographic News* described the interaction between photographer and unwilling subject:

Some treat the attempt with open defiance, resolutely refusing to sit still during the operation; others, with a mock air of submission, sit perfectly quiet during the preliminary arrangements and focussing operation, but move sufficiently at the vital moment of exposure; others, who pretend to have no objection to be portrayed, contrive to produce such an amount of

³⁷¹ Anon., ‘The Irish Convict System and Why it has Succeeded’, from an undated article in the *Cornhill Magazine* reprinted in the *Sydney Morning Herald*, 3 July 1861, 3.

³⁷² Adderley, C.B., ‘On the late Reports on Transportation and Penal Servitude: and on Prison Discipline’, *Transactions Of The National Association For The Promotion Of Social Science*, Edinburgh meeting, (1863), 407.

³⁷³ Tagg, *Burden Of Representation*, 93.

³⁷⁴ Dreyfus and Rabinow, *Michel Foucault*, 212.

³⁷⁵ Anon., ‘Criminal Photography’, *All The Year Round*, Vol. 11, (1873), 9.

facial contortion, by squinting, twisting of the mouth, &c, as will effectually destroy identity in the portrait.³⁷⁶

Fenian prisoner Jeremiah O'Donovan Rossa refused to have his photograph taken in Millbank prison in 1867 unless 'the Queen write to me for it, and promise that she will not let it out of her own possession ... I would not give them the satisfaction of letting them make a picture of me'.³⁷⁷ But the authorities developed ways of dealing with such resistance. Men were threatened that they would have no dinner unless they complied, or tricked into thinking that the photographer had given up. Then, after they had relaxed and were watching a more compliant subject undergoing immortalisation, a hidden camera did its work. This stratagem was said to work particularly well with women.³⁷⁸ In another case of pre-emptive resistance in 1866, the suspected perpetrator of a ghastly domestic murder on the Isle of Dogs had removed his portrait, and that of his brother, from the family album before fleeing the scene. The report in the *Times* concluded that he had done so 'to prevent copies being multiplied'.³⁷⁹

But even though criminals quickly learned to fear this new technology, authorities only gradually came to understand its potential. According to the London Metropolitan Police website, 'from 1862 copies of photographs of criminals taken by prison governors were sent to Scotland Yard, and formed a "Rogues Gallery"', but Table 3.1 indicates that they were taken earlier than that.³⁸⁰ This table lists all of the gaols, prisons and police forces so far identified that had used photography, no matter how sporadically, before it was

³⁷⁶ Anon., 'Photographing Criminals', 525.

³⁷⁷ O'Donovan Rossa, J., *O'Donovan Rossa's Prison Life*, (New York: P.J. Kennedy, 1874), 262-3, <https://archive.org/details/odonovanrossaspr00odon>, viewed 6 March 2015.

³⁷⁸ Anon., 'Photographing Criminals', 525. In one case, a convict at Shrewsbury made 'such horrible contortions as to spoil the plate, and then a second'. At a third attempt, the photographer appeared to give up in frustration, and left the room. The convict relaxed, and a hidden camera operated by a second photographer captured his normal face. He added that sometimes photographs might be taken in the yard when the prisoner was off his guard, but that generally threats of reduced rations or longer work hours achieved compliance. Anon., 'Criminal Photography', *All The Year Round*, Vol. 11, (1873), 10.

³⁷⁹ J. Lock, *Scotland Yard Casebook: The Making Of The CID 1865-1935*, (London: Robert Hale, 1993), 38.

³⁸⁰ London Metropolitan Police, <http://www.met.police.uk/history/archives.htm>, viewed 24 August 2010.

mandated under the Prevention of Crimes Act of 1871. Dates refer to the earliest examples known. References from David Hawkings are from registers that have survived, and so may not represent the full story.

Table 3.1 A chronology of the adoption of photography in British gaols

LOCATION	DATE
Richmond Bridewell, Ireland ³⁸¹	1848
Police Superintendent, Newport, Wales ³⁸²	1850
Bristol Gaol ³⁸³	1852
Durham Gaol ³⁸⁴	1855
Mountjoy Prison, Dublin ³⁸⁵	1857
Bedford Gaol ³⁸⁶	1859
Manchester and Salford Reformatory ³⁸⁷	1859
Birmingham Gaol ³⁸⁸	1850s
Millbank Prison ³⁸⁹	1861
Leicester Gaol ³⁹⁰	1861
Ruthin Gaol, Wales ³⁹¹	1862
Portland Gaol	c1863
Portsmouth Gaol	c1863

³⁸¹ G. Baylis, 'A few too many? Some considerations on the digitisation of historical photographic archives', 3. <http://web.mit.edu/comm-forum/mit6/papers/Baylis.pdf>

³⁸² Heathcote, 'Custodial Photographs', 116.

³⁸³ Gardner, evidence, *Report From The Select Committee* 1863, xvii.

³⁸⁴ 'Jottings in Illawarra', *Sydney Morning Herald*, 16 October 1855, 8.

³⁸⁵ Sir Walter Crofton, *A Few Observations On A Pamphlet Recently Published By The Rev. John Burt (Late Assistant Chaplain Of Pentonville Prison) On The Irish Convict System*, (London: William Ridgeway, 1863), 19.

³⁸⁶ D.T. Hawkings, *Criminal Ancestors: A Guide To Historical Criminal Records In England And Wales*, (Gloucestershire: The History Press, 2009), 410.

³⁸⁷ *Courier*, 29 January 1859, 2.

³⁸⁸ The images of the prisoners who were photographed in Birmingham in the 1850s and 1860s were each mounted in an ornamental frame identical to that used for straight commercial commissions. Tagg, *Burden Of Representation*, 74.

³⁸⁹ *Courier*, 29 January 1859, 2.

³⁹⁰ Sir H. Parkes, 'Letter to the Colonial Secretary 12th November 1861', *Sydney Morning Herald*, 22 September 1862, 3.

³⁹¹ Hawkings, *Criminal Ancestors*, 424.

Wakefield Prison ³⁹²	c1863
Leeds Gaol ³⁹³	c1863
Chatham Prison ³⁹⁴	c1864
Dartmoor Prison ³⁹⁵	c1864
Winchester Gaol ³⁹⁶	c1864
Woking Prison ³⁹⁷	c1864
Marlborough Street Police Office, London ³⁹⁸	c1865
Carlisle Gaol ³⁹⁹	c1866
Northampton Borough Police ⁴⁰⁰	1867
Scotland Yard ⁴⁰¹	1868
Reading Gaol ⁴⁰²	1869
Aylesbury Gaol ⁴⁰³	1870

³⁹² Sir Walter Crofton, evidence, *Report From The Select Committee On The House Of Lords On The Present State Of Discipline In Gaols And Houses Of Correction: Together With The Proceedings Of The Committee, Minutes Of Evidence, And Appendix*, (London: H.M.S.O., 1863), xvi.

³⁹³ Crofton, *Report From The Select Committee*, xvi.

³⁹⁴ Portsmouth Prison, Governor's Report, *Report Of The Directors Of Convict Prisons*, 1864, 122.

³⁹⁴ Chatham Prison, Governor's Report, *Report Of The Directors Of Convict Prisons*, 1864, 148.

³⁹⁵ Dartmoor Prison, Governor's Report, *Report Of The Directors Of Convict Prisons*, 1864, 191.

³⁹⁶ Crofton, *Report From The Select Committee*, Xvi.

³⁹⁷ Woking and Broadmoor Prisons, Governor's Report, *Report Of The Directors Of Convict Prisons*, 1864, 234.

³⁹⁸ This is the earliest reference so far of photographs being lodged in a police station, even though the practice was said to date from 1862 (see previous page). In an 1865 Melbourne forgery case, a man was arrested on the strength of a deposition taken at Marlborough Street Police Office in London. This deposition, with photograph attached, had been sent to Melbourne to assist police there in identifying the culprit. *Argus*, 5 December 1865, 1.

³⁹⁹ Anon., 'Photographing Criminals', 524-5.

⁴⁰⁰ Hawkings, *Criminal Ancestors*, 419.

⁴⁰¹ At this time only 'notable criminals' were photographed. P. Thurmond Smith, *Policing Victorian London: Political Policing, Public Order, And The London Metropolitan Police*, (Westport, Conn.: Greenwood Press, 1985), 121. I am indebted to Dr Neil Davie for drawing this reference to my attention.

⁴⁰² P. Southerton, *Reading Gaol By Reading Town*, (Reading: Berkshire Books, 1993), 40: E. Hughes, 'Light in Dark Places: photographs of prisoners in Reading Gaol', *Berkshire Family Historian*, (1999), www.berksfhs.org.uk/jpjournal/Dec1999/dec1999/ReadingGaolPhotographs.html viewed 9 July 2009.

⁴⁰³ Alexandra McCulloch, Centre for Buckinghamshire Studies, pers. comm., email 28 June 2007.

Oxford Gaol ⁴⁰⁴	1870
Huntingdonshire County Gaol ⁴⁰⁵	1870
Dorset Police ⁴⁰⁶	c1870
City of London Police ⁴⁰⁷	1870

Sir Walter Crofton, the Director of Irish Prisons from 1854 throughout the 1860s, was one of the most energetic advocates of the adoption of photography in prison work. In that capacity, he had been influential in the establishment of prison photography in Ireland. In a pamphlet published in 1863 Crofton said that photography had already been employed in Irish prisons ‘for some years’.⁴⁰⁸ It is not known how widespread this use was at that time, nor exactly when it was first used, but Kevin O’Doherty’s 1848 image is the earliest that I have so far located. It was certainly in use at Mountjoy Prison by 1857 under Crofton’s aegis. Mountjoy Prison in Dublin opened in 1850 and was considered to be Ireland’s ‘model prison’; it was both a gaol for those serving short sentences, and a holding station for convicted prisoners awaiting transportation. A commercial photographer undertook the task of immortalising these men; three prints of the sitter were produced for 1 shilling, with additional copies available at 4d a copy. Gail Baylis described how ‘Of the original prints, one copy was attached to the prisoner’s record at Mountjoy, another was held by the Home Office and the third by the Irish Office, London’.⁴⁰⁹ Images were also distributed to regional gaols across Ireland.⁴¹⁰ They can be found in two albums, now held at the New York Public Library in the Larcom Collection.⁴¹¹ Sir Thomas Larcom was Under Secretary for Ireland (1853-1869), ‘responsible for maintaining both law and order in Ireland and also for providing information to London, the seat of British imperialism’.⁴¹² As part of this process, he

⁴⁰⁴ Hawkings, *Criminal Ancestors*, 420, 453.

⁴⁰⁵ Hawkings, *Criminal Ancestors*, 415.

⁴⁰⁶ Hawkings, *Criminal Ancestors*, 462.

⁴⁰⁷ Hawkings, *Criminal Ancestors*, 463.

⁴⁰⁸ Crofton, *A Few Observations*, 19.

⁴⁰⁹ Baylis, ‘A few too many?’, 3.

⁴¹⁰ Carville, *Photography And Ireland*, 97.

⁴¹¹ New York Public Library Digital Collections,

<http://digitalgallery.nypl.org/nypldigital/dgabout.cfm>, viewed 24 August 2010.

⁴¹² Baylis, ‘A few too many?’, 3.

provided ‘photographic likenesses of suspects to the Home Office, Irish Office, London and police divisions in Ireland and Britain’.⁴¹³ He presumably gained possession of these photographs in his official capacity.

In Album 1, dated August 1857, we find 64 oval portraits. Strangely, if surveillance and control both inside and outside the prison were the aim, only ten of the sitters are named, with five of these having question marks after their name. These are all tried and convicted short-sentence criminals, and all wear prison garb and are posed with a high degree of uniformity. Album 2 contains 344 portraits, taken in November 1866, of those associated with the Fenian movement. Men who have been arrested but not tried or convicted are the subjects of 320 portraits; they wear their own clothes and manifest a range of poses and expressions. This Album also contains 24 portraits of Fenians who had been convicted as early as 1865. The captions demonstrate that surveillance procedures were becoming more elaborate. These men are all named, and any known pseudonyms are also given. They are also annotated with details of any service in the British army or the American army, and/or membership of the Fenian organisation in Ireland and the United States. As Baylis explained, ‘It was, at the time, the potentially liminal status of those who had not been convicted that posed the greatest threat to law and order. Their portraits provided an important means for tracking procedures to be operational. This context helps explain why it is this type of portrait that is given priority in this Album’.⁴¹⁴ With regard to the photographs of the 24 men sentenced to transportation she says; ‘Embedded in the establishment of prison photography in Ireland was the requirement that within that institutional framework the image needed to be transferable for colonial policies to be operative. In this corrective institution, then, it became not only the prisoner's corporal status that was transferable but also his visible likeness (the prison portrait)’.⁴¹⁵ Not until November 1867, after the completion of these albums, was it mandatory in Ireland for all untried political prisoners to be photographed.

⁴¹³ Baylis, ‘A few too many?’, 6.

⁴¹⁴ Baylis, ‘A few too many?’, 4-6.

⁴¹⁵ Baylis, ‘A few too many?’, 3.

Crofton was very active in the National Association for the Promotion of Social Science, also known familiarly as the Social Science Association (SSA), founded in 1856. It was a forum for the most powerful and influential men in the land, and a few women, to discuss all the great social and political questions of the day.

[It] gathered together leading figures from the political, administrative and professional classes of mid-Victorian Britain and brought them into communication with the public ... its annual meetings captured national attention for a generation. Held in all the major cities of Britain and attended by thousands, they were a focus for social and institutional reform in mid-Victorian Britain ... in the words of Lord Brougham, its first president, it was ‘to aid legislation by preparing measures, by explaining them, by recommending them to the community, or, it may be, by stimulating the legislature to adopt them ... Lord John Russell, the mid-Victorian Prime Minister described it as “a yearly Council for national and local government to go by”’.⁴¹⁶

When it disbanded in 1886, *The Times* provided a eulogy: ‘Not a single amendment in law, police, education and the art of national health has ever been carried into effect which had not been first inculcated in season and out of season by the Social Science Association’.⁴¹⁷ Criminal photography could not have had a better advocate in the widely respected and experienced Crofton, or a more influential forum in which to plead its case. The Association was much interested in prison reform, so much so that one of its five ‘departments’ was devoted to the ‘prevention and repression of crime’. The Liberal administration of 1868-1874 was particularly receptive to its ideas on penal reform.⁴¹⁸ So influential were these ideas that, according to Goldman, the Association ‘dictated the terms of the Habitual Criminals Act of 1869 and the Prevention of Crimes Act of

⁴¹⁶ L. Goldman, *Science, Reform And Politics In Victorian Britain: The Social Science Association 1857-1886*, (Cambridge: Cambridge University Press, 2002), 1-2.

⁴¹⁷ Goldman, *Science, Reform And Politics*, 21.

⁴¹⁸ Goldman, *Science, Reform And Politics*, 143.

1871'.⁴¹⁹ It seems likely that we can attribute the eventual adoption of criminal photography in the latter Act to its activities.

This was a time of passionate debate around prison regimes, with an emphasis on reformatory strategies, and around criminal law. As Goldman said, because of the cessation of transportation

the requirement for a new penal regime was all the greater in the 1850s and 1860s ... it necessitated a transformation of penal organisation, including the construction of new prisons. It was in the context of the critical, transitional years of mid century, extending from the 1853 Penal Servitude Act to the 1871 Prevention of Crimes Act that the Social Science Association was active.⁴²⁰

Its 1862 congress visited Ireland to inspect Irish prisons at Crofton's invitation and members were apparently mightily impressed. Indeed, as Lawrence Goldman says, Leading members of the SSA believed that they had found a regime of prison discipline adapted to ideas of reformation in the 'Irish System' introduced by Sir Walter Crofton. They 'clung to the Irish model with a theological fervour and turned the SSA into a vociferous lobby for its adoption'.⁴²¹ Photography was a key component of this system.

Crofton served on its Council in 1862. At the SSA meeting in Edinburgh in 1863, he delivered an address in which he described photography as 'of the greatest importance to secure the identification of prisoners ... It is well known that photography has for several years formed a portion of the Irish prison system ...'⁴²² In a paper to a meeting in February 1864, Crofton reminded his audience of the recommendation to government put forward by the Association, '... that photography should be introduced into our penal

⁴¹⁹ Goldman, *Science, Reform And Politics*, 3.

⁴²⁰ Bailey, *Policing And Punishment*, 20; Goldman, *Science, Reform And Politics*, 150.

⁴²¹ Goldman, *Science, Reform And Politics*, 155.

⁴²² Sir Walter Crofton, 'Organised Associations on the Part of the Public Necessary for the Satisfactory Development of our Secondary Punishment', *Transactions Of The National Association For The Promotion Of Social Science*, Edinburgh meeting, (1863), 407.

system, for the purpose of, as in Ireland, assisting the identification of habitual offenders, and rendering our criminal procedure more perfect'.⁴²³ He also reminded them that 'the Royal Commissioners, and the Lords' Committee confirm the views of the Association ... [they] have also recommended the immediate introduction of photography ... [and further] urge the importance of some effectual means being taken to bring before the Court the previous convictions of habitual offenders'.⁴²⁴ They did not, however, specify how this should be achieved.

He went on to claim, not entirely accurately, that 'The Government have [sic] since established photography in the English convict prisons' and that 'each convict has his likeness taken before liberation'.⁴²⁵ This may have been as a result of a memorandum issued some time in 1864 or possibly 1863 by the Home Secretary, Sir George Grey, to the governors of convict prisons.⁴²⁶ The author of the Sydney newspaper report in which this memorandum is reported pays homage to 'Sir Walter Crofton and his friends' as the architects of the reforms listed in the memorandum. Among them are a requirement that every prisoner be photographed the day before his discharge and two copies of that photograph 'will be sent to the chief constable of the city, town or county to which he goes ...'.⁴²⁷ There were nine convict prisons in England at that time – Chatham, Dartmoor, Leicester, Millbank, Pentonville, Portland, Portsmouth, Wakefield and Woking. Leicester and Millbank had both already introduced photography in 1861. Of the remaining seven, six introduced it at around the time of Grey's memorandum. I have been unable to discover the date of introduction at Pentonville. Crofton also noted that the Lords' Committee had similarly recommended the introduction of photography into the county and borough gaols.⁴²⁸

⁴²³ Crofton, 'The Present Aspect of the Convict System', 4.

⁴²⁴ Crofton, 'The Present Aspect of the Convict System', 5-6.

⁴²⁵ Crofton, 'The Present Aspect of the Convict System', 6.

⁴²⁶ These were prisons designed to hold 'serious offenders sentenced to longer terms', in lieu of transportation. N. Morris and D. Rothman (eds.), *Oxford History Of The Prison*, (New York: Oxford University Press, 1995), 336.

⁴²⁷ J. Plummer, 'Social Affairs in England, written expressly for Sydney Morning Herald', *Sydney Morning Herald*, 13 October 1865, 5.

⁴²⁸ Crofton, 'The Present Aspect of the Convict System', 15.

At the September 1864 meeting in York, in his address as Chairman of the section on penal reform, Crofton continued his crusade, quoting from the recently released report of the Directors of Convict Prisons that stated that ‘Every convict previous to discharge is photographed, and the photograph attached to the description sheet which is forwards to the chief of police of the place to which he goes ...’⁴²⁹ The Governor’s Report from Millbank mentioned that ‘the Clerk of Works has taken charge of the photographic department with much success’, and the Governor of Portland Gaol reported that every licensed prisoner was photographed on discharge.⁴³⁰ At Portsmouth Gaol the same practice had been instituted that year, and photographs were circulated to the county where the prisoner was going.⁴³¹ ‘The requisite rooms for photography’ were under construction at Chatham Prison and also at Dartmoor and Woking.⁴³²

Other Prison Governors did not mention photography despite Crofton’s claim, presumably made on the strength of this report, that ‘photography has been introduced in English prisons’. He went on to suggest that ‘the introduction of photography into our prisons is a measure which, I think, all will agree should be concurrent with legislation ... directed at the management of habitual offenders’.⁴³³ This seemed to imply that legislation had not yet been passed, and that therefore the use of photography was still informal and not universal, despite his claim that it was. In another address at the same conference he claimed that photography had now been introduced into Winchester

⁴²⁹ *Report Of The Directors Of Convict Prisons On The Discipline And Management Of Pentonville, Millbank And Parkhurst Prisons, And Of Portland, Portsmouth, Dartmoor, Chatham, And Brixton Prisons With Fulham Refuge, And The Invalid Prison At Woking, Also Of The Criminal Lunatic Asylum At Broadmoor, For The Year 1864*, (London, Her Majesty’s Stationery Office, 1865), 11.

⁴³⁰ Governor’s Report, Millbank Prison, *Report Of The Directors Of Convict Prisons*, 50: Governor’s Report, Portland Prison, *Report Of The Directors Of Convict Prisons*, 89.

⁴³¹ Governor’s Report, Portsmouth Prison, *Report Of The Directors Of Convict Prisons*, 122.

⁴³² Governor’s Report, Chatham Prison, *Report Of The Directors Of Convict Prisons*, 148: Governor’s Report, Dartmoor Prison, *Report Of The Directors Of Convict Prisons*, 191: Governor’s Report, Woking and Broadmoor Prisons, *Report Of The Directors Of Convict Prisons*, 234.

⁴³³ Sir Walter Crofton, ‘Address on Our Improved Treatment of Criminals in 1864’, *Transactions Of The National Association For The Promotion Of Social Science*, York meeting, (1864), 227-8

Gaol.⁴³⁴ Crofton had supporters at the highest level of government. Mathew Davenport Hill, the Recorder of Birmingham, declared in reference to the new Penal Servitude Act of 1864 that ‘The Home Office, I am happy to say, has further ensured the identification of convicts ... by a distribution of photographic portraits to chiefs of police’.⁴³⁵ He described the Act as a means by which the Association has ‘zealously assisted in bringing over the largest part of the Irish system into our own island’, but they had not, it would seem, succeeded in mandating the use of photography.⁴³⁶ There is nothing in this Act regarding the introduction of new means for identifying criminals.

At their 1865 meeting the Reverend W. L. Clay lent his support to the use of photography in reference to the difficulties encountered when trying to establish whether the criminal now facing charges had ever been convicted before and what sentence he had received; ‘With appliances like photography at our command, this difficulty should soon be overcome’.⁴³⁷ The eighth resolution adopted by their Section was ‘That it is desirable that photography should be adopted in the county and borough prisons’.⁴³⁸ But the Prison Act of that year did not make a recommendation in favour of photography, and its official introduction would have to wait another five years. Crofton continued to promote photography at the Association’s 1868 meeting in Birmingham, quoting from his 1861 pamphlet on ‘The Immunity of Habitual Criminals’. In it he stressed the fact that ‘The worst class of criminals are essentially migratory’ and advocated the adoption of the Irish system of a centralised authority to keep track of licence holders, ‘in communication with the Police of different localities, and thus enabled [them] to establish a Register recording the movements of all convicts on licence ... Can we overestimate the importance of such

⁴³⁴ Sir Walter Crofton, ‘Observations on the Discipline and Classification of Prisoners recently introduced into Winchester Gaol’, *Transactions Of The National Association For The Promotion Of Social Science*, York meeting, (1864), 312.

⁴³⁵ Actually the Penal Servitude Acts Amendment Bill, amending the 1855 Act.

⁴³⁶ M. D. Hill, ‘On the Penal Servitude Acts’, *Transactions Of The National Association For The Promotion Of Social Science*, York meeting, (1864), 241-242.

⁴³⁷ The Reverend W. L. Clay, ‘On Recent Improvements in our System for the Punishment and Reformation of Adult Criminals’, *Transactions Of The National Association For The Promotion Of Social Science*, Sheffield meeting, (1865), 195.

⁴³⁸ Recommendation 8, Jurisprudence Department, *Transactions Of The National Association For The Promotion Of Social Science*, York meeting, (1864), 313.

a Register, made complete, for the purposes of identification, by photographic portraits, and its effect on the criminal classes?'⁴³⁹

Crofton pursued the establishment of photography in English prisons through other channels too. During the crisis period following the abolition of transportation, there was considerable public anxiety that prisons were too lenient and unreformed offenders were being unleashed on a vulnerable community. As a result, a Royal Commission was appointed in 1863 to consider penal discipline, and Crofton gave evidence to this 'Select Committee of the House of Lords on the Present State of Discipline in Gaols and Houses of Correction' on the efficacy of photography both in identification and in deterrence.

In Ireland for many years we have ... a photograph taken of every man who comes into the prison, and ... I can assure the Committee that the effect of the knowledge of that on the minds of those people can scarcely be exaggerated ... I am quite satisfied it has a very great effect upon them, because the police then know them all, and can trace them by this means ... We have an arrangement in Ireland in all the county prisons ... whenever they have any offender whom they either suspect or know to be a convict, they send to the Directors' office the particulars of the man ... which description is sent to every county gaol in Ireland.⁴⁴⁰

It is worth examining the evidence that he and others gave to this Select Committee in some detail, since it gives us a picture of the current understandings and state of play regarding the use of photography in prisons. Important evidence was given to the Select Committee by twenty-six public officials, including the two prison inspectors and the governors of gaols ranging from the largest prison in the kingdom, Coldbath Fields, to the tiny lock-up of New Radnor Gaol, with a population of two during the hearing. One

⁴³⁹ These were 'habitual criminals' who had been released from their most recent sentence but were now subject to seven year's monitoring by police. Sir Walter Crofton, 'Address on the Criminal Classes and their Control', *Transactions Of The National Association For The Promotion Of Social Science*, Birmingham meeting, (1868), 302-3.

⁴⁴⁰ Sir Walter Crofton, evidence, *Report From The Select Committee*, xvi-xvii.

rather startling fact to emerge from evidence was that English local prisons were not run according to a uniform set of rules.⁴⁴¹ While they were legally bound to follow whatever was enshrined in Acts of Parliament, the Lords were aghast to discover there was no way to ensure that individual prisons actually did so. The Secretary of State had issued the Code of Rules, but ‘their acceptance is left to the discretion of the local authorities, and a comparatively small number of gaols in England and Wales have adopted [them] ...’ In some prisons there were no rules at all, and the governing body apparently ran things as they pleased.⁴⁴² One key recommendation to emerge from the report of this Select Committee was that a uniform system for prison administration and management should be embodied as a schedule in an Act of Parliament, and that Treasury should withhold funds from any prison that failed to comply.⁴⁴³ This lack of any centralised control of local prisons explains why the early introduction of photography relied on the enthusiasm of individual governors.

Only one of the two inspectors was quizzed on the use of photography, and he was not enthusiastic, saying that it ‘does not seem so effective in practice as it was thought that it would be. I refer to sending around photographs of the prisoners, but that is only done on a small scale ...’⁴⁴⁴ Of the witnesses who were asked about photography, only Crofton, Gardner (Governor of Bristol Gaol) and C.A. Keene (Governor of Leeds Gaol) were strong supporters. Sir Joshua Jebb, Surveyor-General of Prisons, did not ‘attach much importance to photography’.⁴⁴⁵ Four witnesses dismissed it as useless or of limited or unproven usefulness, and one thought it would be most useful to the police. These five still preferred the old system of personal identification through the regular visits of experienced prison officers. These eight men were also asked if they thought that branding would be a better idea. Five were strongly in favour, two were equally strongly against and one was not prepared to rule it out. Jebb also was in favour of inflicting

⁴⁴¹ The many fewer convict prisons had been run by a central authority for almost one hundred years, but local prisons were still run by local authorities in 1863. S. McConville, *English Local Prisons 1860-1900: Next Only To Death*, London: Routledge, 1995), 5.

⁴⁴² John George Perry, Inspector of Prisons, evidence, *Report From The Select Committee*, 5-6.

⁴⁴³ Recommendation XIII, *Report From The Select Committee*, xiv.

⁴⁴⁴ J. G. Perry, evidence, *Report From The Select Committee*, 14.

⁴⁴⁵ J. Jebb, evidence, *Report From The Select Committee*, 129.

‘some indelible mark’ on habitual offenders.⁴⁴⁶ So in fact at this time, among prison administrators branding was more popular than photography as a means of solving the problem of identifying prisoners. By branding, one witness meant tattooing with Indian ink rather than the application of a hot iron.⁴⁴⁷ The Royal Navy tattooed deserters on the chest with a ‘D’, and did not abolish this practice until 1879. Michael Ignatieff dates the abolition of branding with a hot iron in prisons to 1779, although according to the Old Bailey website the last branding there was in 1789.⁴⁴⁸ While marking the body in these ways might have been cheap and effective, its permanence meant that it did not sit well with the mid-nineteenth century ambition of reintegrating an offending individual into society.

Perhaps because of this, the Select Committee recommended in favour of the introduction of photography, claiming that ‘the Governors of Bristol, Wakefield and Leeds Gaols corroborate the advantage of the use of photography’, although the Governor of Wakefield Gaol had actually said ‘I have tried the system of photography and marks and other things, and I am sorry to say that I have not much faith in it’.⁴⁴⁹ The Select Committee ‘strongly recommended the further extension of this system, which is inexpensive, effective and wholly free from objection’, despite the fact that the majority of witnesses with real experience had raised objections to its usefulness.⁴⁵⁰ Photography obviously had powerful friends, and a particularly tireless advocate in Sir Walter Crofton, who was apparently supported by his powerful patron, Lord Carnarvon, the Chair of this

⁴⁴⁶ Jebb, evidence, *Report From The Select Committee*, 129.

⁴⁴⁷ E. Shepherd, evidence, *Report From The Select Committee*, 296. According to a lecturer in Anatomy and Physiology in the School of Medicine at Leeds, the branding of deserters with the letter ‘D’ was done, not with a hot iron as had once been the practice, but ‘with three or four needles tied together, and the letter D is pricked out in the skin under the left arm: a little gunpowder rubbed in, which does better than caustic: in fact, it is the same as tattooing’. J. Ikin, ‘Medical Notes on the Militia’, *British Medical Journal*, Vol. 1/2, (1857), 25.

⁴⁴⁸ M. Ignatieff, *A Just Measure Of Pain: The Penitentiary In The Industrial Revolution 1750-1850*, (New York: Pantheon Books, 1978), 90: The Proceedings of the Old Bailey, London’s Central Criminal Court, 1674-1913,

<http://www.oldbaileyonline.org/static/Punishment.jsp#branding>, viewed 24 August 2010.

⁴⁴⁹ E. Shepherd, evidence, *Report From The Select Committee*, 289-90.

⁴⁵⁰ Recommendation XV, *Report From The Select Committee On The House Of Lords On The Present State Of Discipline In Gaols And Houses Of Correction: Together With The Proceedings Of The Committee, Minutes Of Evidence, And Appendix*, (London: Her Majesty’s Stationery Office, 1863), xvii.

Select Committee.⁴⁵¹ According to Sean McConville, one of the key issues that Crofton had been called before the Select Committee to address was photography.⁴⁵² This seemed to imply, given Carnarvon's tight control of the evidence given, the manner in which it was given and the outcomes of the report, that Carnarvon agreed with him as to its efficacy.⁴⁵³ This is confirmed by the fact that, 'Carnarvon prevailed against the Duke of Richmond who wished to delete references to Crofton's observations on the use of photography to identify recidivists'.⁴⁵⁴ The results of the deliberations of this Royal Commission were, first, the Habitual Criminals Act of 1869 and then its amendment, the Prevention of Crimes Act of 1871.

Someone in high places must have been convinced by Crofton's strenuous promotion of photography, because an article in the *Sydney Morning Herald*, a month before the passage of the Habitual Criminals Act of 1869, described a legal process involving both the prisons and the police. In an album at Scotland Yard reposed

the carte of every ticket-of-leave man in the country ... Before leaving the prison his photograph is taken by the prison authorities, for the purposes of identification ... One carte de visite is kept in the police album in Scotland Yard, another at the station-house of the metropolis in which he may elect to reside, and a third is forwarded to any country district he may wish to remove to. When the carte de visite and the prisoner arrive at Scotland Yard, a sergeant of each division of the force is called in to inspect both portrait and sitter, in order the better to identify him by the aid of the little carte in case he should fail to put in an appearance ... Appended to each carte de visite, there is a most graphically written description of each prisoner ...⁴⁵⁵

⁴⁵¹ Mcconville. *English Local Prisons 1860-1900*, 87.

⁴⁵² Mcconville. *English Local Prisons 1860-1900*, 116.

⁴⁵³ Mcconville. *English Local Prisons 1860-1900*, 104-125.

⁴⁵⁴ Mcconville. *English Local Prisons 1860-1900*, 125.

⁴⁵⁵ *Sydney Morning Herald*, 7 July 1869, 3.

This process had been instituted by a recommendation from Sir Richard Mayne, Commissioner of Police of the Metropolis, shortly before his death in 1868. Photographic equipment had been set up in Scotland Yard, but only ‘notable’ criminals were to be photographed, and only with the Commissioner’s permission. Fenian ‘prisoners of note’ were also to be photographed.⁴⁵⁶

Photography and the Habitual Criminals Act of 1869

As discussed earlier in this chapter, opinion-shapers had been convinced since the 1820s that there was ‘a great army – an army making war on society’.⁴⁵⁷ That army was supposed to be composed of a separate class of ‘professional criminals’.⁴⁵⁸ Belief in this ‘criminal class’ persisted throughout the nineteenth century and resulted in the transportation of the men depicted in the Port Arthur photographs. According to Barry Godfrey and Paul Lawrence, community anxiety about it peaked in the 1850s and 1860s, finding legal expression in 1869 in the Habitual Criminals Act.⁴⁵⁹ Under this Act, the Habitual Criminal was defined as one who had been once previously convicted and who should, upon this second conviction, now be subjected to police scrutiny for seven years or whatever the court should decide, ‘exclusive of the time during which he is undergoing his punishment’. The Act required a register of all persons convicted of crime in England, with ‘evidence of identity’, to be kept in London by the Commissioner of Police for the Metropolis.⁴⁶⁰

While most writers attribute the beginning of compulsory and systematic photography to the 1871 Prevention of Crimes Act, where photography was indeed mandated, ‘evidence of identity’ was apparently construed by some in 1869 to mean the inclusion of a photograph despite the fact that photography was not specifically mentioned.⁴⁶¹ This is

⁴⁵⁶ Thurmond Smith, *Policing Victorian London*, 121.

⁴⁵⁷ Lord Kimberley in a speech when the Bill was introduced into Parliament, in Weinberger, ‘The Criminal Class and the Ecology of Crime’, 123

⁴⁵⁸ Tobias, *Crime And Industrial Society In The Nineteenth Century*, 52.

⁴⁵⁹ Godfrey and Lawrence, *Crime And Justice 1750-1950*, 110.

⁴⁶⁰ Habitual Criminals Act (1869), Part III, paragraph 8.

⁴⁶¹ Similar confusion seems to persist among scholars today, for example see C. Anderson, *Legible Bodies: Race, Criminality And Colonialism In South Asia*, (Oxford: Berg, 2004), 145: M. Bullock, ‘The Evolution of Surveillance Technology beyond the Panopticon’, M.F.A. thesis,

curious if, as I have argued, Crofton was so intimately involved in penal reform, his system was so powerfully supported by the SSA and it was in its turn highly influential in the drafting of this Act. In fact Crofton had led an SSA deputation to the sympathetic Home Secretary, Henry Bruce, in December 1868 to suggest, among other things, that ‘a central register of ticket-of-leave men, on the Irish model, be maintained to assist surveillance’.⁴⁶² But it seems that the Act was cobbled together in about two hours; its authors, including Crofton, recognised its many deficiencies and were confident that it would not be brought before Parliament before they had had a chance to improve it. They were both horrified and delighted when it was not only brought in February 1869 but passed, although with some ameliorating amendments.⁴⁶³ It may be that the specific inclusion of photography as an essential component of the register simply slipped through the cracks. Undeterred, however, the SSA ‘continued to memorialise the Home Office about its defects’, among which was presumably one of Crofton’s favourite hobby horses, the omission of photography from the process of surveillance and management of habitual offenders.⁴⁶⁴

The Home Secretary may have decided to remedy the situation himself and one can imagine that his friend Crofton’s hand held his pen.⁴⁶⁵ In a Surrey Quarter Sessions Book of February 1870 officials in Surrey declared that ‘the Commissioner of Police of the Metropolis should be furnished with a Photographic Likeness of all such Offenders’ to be provided by ‘the Governor of any Prison within that jurisdiction ... ’ (i.e. the County

(University of California, Santa Cruz, 2009), 10: Jäger, ‘Photography: a means of surveillance?’, 9. Even the National Archives of the UK’s website describes the Act as requiring a photograph. www.nationalarchives.gov.uk/catalogue/displaycataloguedetails.asp, series reference MEPO6, viewed 13 September 2010.

⁴⁶² Goldman, *Science, Reform And Politics*, 164.

⁴⁶³ Goldman, *Science, Reform And Politics*, 164.

⁴⁶⁴ Goldman, *Science, Reform And Politics*, 165.

⁴⁶⁵ According to this circular of February 1870, ‘Governors of Prisons were instructed to send photographic likenesses of all offenders convicted of felony and certain misdemeanours, as laid down in the first schedule of the Habitual Criminals Act, to the Commissioners of the Metropolitan Police’. HO 12/184/854459 in L. Radzinowicz and R. Hood, ‘Incapacitating the Habitual Criminal: the English Experience’, *Michigan Law Review*, Vol. 78/8, (1980), 1347.

of Surrey).⁴⁶⁶ This sounds like it was initiated by the local Surrey authorities, but the anonymous writer of 1873 attributed the initiative to the Home Secretary, whom he said had ordered that magistrates should send the photographs taken of ‘all offenders in county prisons, whose offences brought them within the statutory meaning of the Habitual Criminals Act’ to the Commissioners of Police in 1870. Surrey was apparently one of many in its early adoption. Jäger dated the beginning of the collection of photographs for the Habitual Criminals Register to November 1870, and says that they had already been provided by 115 penitentiaries in England and Wales, but unfortunately he does not give references or details for either of these assertions.⁴⁶⁷

The experience at Reading Gaol may be typical of these early and scattered efforts. After the passing of the 1869 Act, authorities at Reading seemed to have assumed that a photograph was either required, or would be useful, as evidence of identity. As Hughes wrote: ‘Thomas Wood, a local photographer, was employed to take a portrait and profile of prisoners. When it proved difficult to take the pictures in the open air, a small studio was erected in the exercise yard. This venture only lasted six months, after which it was discontinued for financial reasons, and the studio turned into an execution chamber’.⁴⁶⁸ It seems from the context of this anecdote, although no date is given, that this was for a short period in 1869.

Although it was by no means a systematic practice, momentum seemed to have been building for its more rigorous adoption. According to a report by the Chief Commissioner of Police in 1870, ‘the system had not been so well carried out as had been expected’ but with the ‘more general use of photography’ and greater co-operation between all the parties involved he looked forward to ‘the frequent identification of old

⁴⁶⁶ ‘Such offenders’ were those referred to in the first schedule of the Act as those unable to prove that they were not gaining their livelihood by dishonest means. Habitual Criminals Act (1869), Part III, paragraph 8. Hawkings, *Criminal Ancestors*, 244.

⁴⁶⁷ Jäger, ‘Photography: a means of surveillance?’, 9.

⁴⁶⁸ Southerton, *Reading Gaol By Reading Town*, 40. This change of use from studio to execution room seems gruesomely appropriate, echoing Barthes’ characterisation of every portrait photograph as ‘a catastrophe: the subject is going to die’. R. Barthes, (trans. Richard Howard), *Camera Lucida: Reflections On Photography*, (London: Jonathan Cape, 1982), 96.

offenders'.⁴⁶⁹ This implied that photography was still voluntary rather than required by law. The identification of old offenders was now particularly important because, under the Habitual Criminals Act, for the first time an offender's general conduct and personal history, including their criminal record, came under consideration during the trial and might influence the sentence.⁴⁷⁰ It became critical to prove whether or not the individual in the dock had indeed been convicted before and, if so, that the individual present was actually the same person as that previous offender.⁴⁷¹ But at this stage, while a register of all persons convicted in England was to be held in London, and a similar register of all Irish felons was to be held in Dublin, both supervised by the respective Commissioners of Police, photographs were not specified.⁴⁷² Until legislative requirements in 1871 compelled it, photography of prisoners seems to have been random and uncoordinated and remained uncommon throughout the 1860s.⁴⁷³

Photography and the Prevention of Crimes Act 1871

This Act was supplementary to the Habitual Criminals Act of 1869. Under the Prevention of Crimes Act of 1871 it became a legal requirement in Britain to photograph all prisoners. Finally Crofton had achieved his aim. The section dealing with the establishment of a Register of Criminals declared that, as part of the compilation and maintenance of such a register,

in Great Britain the Secretary of State, and in Ireland the said Lord Lieutenant, may make regulations as to the photographing of all prisoners convicted of crime who may for the time being be confined in any prison in Great Britain or Ireland, and may in such regulations prescribe the time or times at which and the manner and dress in which such prisoners are to be taken, and the number of photographs of each

⁴⁶⁹ Anon., 'Criminal Photography', 10.

⁴⁷⁰ Broeckmann, 'A Visual Economy', unpaginated.

⁴⁷¹ Broeckmann, 'A Visual Economy', unpaginated.

⁴⁷² Habitual Criminals Act (1869), Part II, para. 5.

⁴⁷³ Sekula, 'The Body and the Archive', 344.

prisoner to be printed, and the persons to whom such photographs are to be sent.⁴⁷⁴

Regulations made by the Secretary of State in England and Scotland, and the Lord Lieutenant of Ireland, regarding the photography of prisoners in any prison in those places, were to be binding on all concerned. Whether or not individual prison governors believed in the efficacy of the practice, they were now obliged by law to undertake it. Those who failed to comply would be committing an offence against prison discipline. Police were to keep an 'Alphabetical Registry' under the person's name, cross-referenced to a 'Distinctive Marks Registry' describing 'scars, tattoos, birthmarks, balding, pockmarks and other distinguishing features'.⁴⁷⁵ Under this new Act, however, a photograph was also to be taken and lodged in the Alphabetical Register. In an address to the 1875 meeting of the SSA, the former Home Secretary Henry Bruce celebrated the 'improvement in the registration of criminals, and also in their supervision' enshrined in the 1871 Act, and praised Crofton as being 'entitled to a great share in the authorship of these measures'.⁴⁷⁶

A Habitual Criminals Register was established at the Metropolitan Police Office at Scotland Yard in London under the control of the Commissioner of Metropolitan Police to hold and manage all information gathered, including photographs. The register had two purposes, pre-sentence identification and post-sentence supervision.⁴⁷⁷ Copies were sometimes also sent to police or a magistrate, but generally only one image was created.⁴⁷⁸ According to a Home Office circular of 3 November 1871, only prisoners convicted of crimes mentioned in the Prevention of Crimes Act should be

⁴⁷⁴ Prevention of Crimes Act 1871: Register of Criminals para. 6

⁴⁷⁵ M.L. Bullock, 'The Evolution of surveillance technology', 10.

⁴⁷⁶ Goldman, *Science, Reform And Politics*, 166.

⁴⁷⁷ McConville. *English Local Prisons 1860-1900*, 393.

⁴⁷⁸ Anon., 'Criminal Photography', 11.

photographed.⁴⁷⁹ The costs associated with this project were considerable. According to the parliamentary paper quoted by the anonymous writer in *All the Year Round*, the 43,000 photographs taken so far had cost one shilling and four pence each.⁴⁸⁰ This was about 20% of the weekly wage of a skilled tradesman, which was then about 7 shillings a week. These registers were later transferred to the Home Office, where the Chairman of Directors of Convict Prisons acted as its Registrar.⁴⁸¹

But a number of objections were raised to the introduction of this new technology of identification. A rather whimsical objection had been raised as early as 1853, when a correspondent to the journal *Notes and Queries* had warned that ‘it will bring the art of photography into disgrace and people’s friends will inquire delicately where it was done, when they show their lively effigies’. Others also voiced concerns that respectable gentlefolk, were they to be in possession of a self-portrait, might be confused with criminals.⁴⁸² Another harked back to the black arts of phrenology and physiognomy – since all criminals looked the same, it was pointless to try to distinguish them in this way. Others said that it was unfair to photograph a man against his will. A photograph would also stamp him for all time as criminal, militating against his reform. And finally, the results were not to be trusted because of the deviousness of the criminal subject. ‘An ingenious rogue’ could distort his features so that the photograph looked nothing like him.⁴⁸³ The anonymous writer of 1873 summarised these objections, which he scorned as

⁴⁷⁹ Register and Photographing of Criminals, Paras 1-12, Prevention of Crimes Act 1871, Chapter 112, 34 and 35 Vic. In England and Ireland offences denoted as ‘crime’ included ‘altering or issuing counterfeit gold or silver coins: obtaining goods or money by false pretences: conspiracy to defraud: being armed with intent to break and enter any house by night: possessing housebreaking implements: being disguised, or being found by night with intent to commit any felony’. McConville. *English Local Prisons 1860-1900*, 393 fn2. And in Scotland, it meant ‘any of the pleas of the Crown, any theft which, in respect of any aggravation, or of the amount in value of the money, goods, or thing stolen, may be punished with penal servitude, any forgery, and any uttering of any forged writing, falsehood, fraud, and wilful imposition, uttering base coin, or the possession of such coin with intent to utter the same’. Jäger, ‘Photography: a means of surveillance?’ 9, fn49.

⁴⁸⁰ Anon., ‘Criminal Photography’, 11.

⁴⁸¹ Anon., ‘Criminal Photography’, 11.

⁴⁸² Jäger, ‘Photography: a means of surveillance?’, 6.

⁴⁸³ Anon., ‘Photographing Criminals’, 525.

coming only from ‘some sections of the press’, and went on to declare breezily, ‘These objections were without difficulty removed’.⁴⁸⁴ But one objection should not have been so easily dismissed. At that time there were more than eight thousand criminals in gaol, so the more prescient critics realised that they would generate far too many photographs to be manageable. This objection was well-founded and was to plague the endeavour for many decades to come, seriously compromising its efficacy to the point where it was virtually useless.

After the 1871 Act; the impact of photography on criminal justice and management

Despite its apparently limited usefulness, criminal photography still had its adherents. In 1878 William de Wiveleslie Abney wrote the final words in his monumental book on the techniques of photography. In his opinion, photography had been ‘exceedingly useful in the repression of crime. The portrait of every convict is taken by an authorised photographer in each convict establishment, and when necessity arises prints from such negatives are produced by the hundreds and distributed ...’⁴⁸⁵ Abney was obviously not alone in his enthusiasm, for the use of photographic documentation expanded rapidly in the 1870s as attitudes to criminal photography changed. As photography became simpler, cheaper and more effective its applicability to different fields of human endeavour deepened and broadened. People became accustomed to seeing it used in branches of the sciences, especially medicine and anthropology.⁴⁸⁶ Now that portrait photography was such a widespread phenomenon, respectable people need no longer fear that the mere possession of one’s portrait might cast doubts on one’s respectability. Indeed, once Queen Victoria, Prince Albert and their children were photographed in 1860, photographic portraiture became wildly popular and by the end of that decade no bourgeois home was complete without a family photo album.⁴⁸⁷

⁴⁸⁴ Anon., ‘Criminal Photography’, 11.

⁴⁸⁵ W. de Wiveleslie Abney, *A Treatise On Photography*, (New York: D. Appleton and Co., 1878), 314.

⁴⁸⁶ A. Broeckmann, ‘A Visual Economy of Individuals: the use of portrait photography in nineteenth century human sciences’, Ph.D. thesis, (University of East Anglia, Norwich, England, 1995), unpaginated. <http://www.mikro.in-berlin.de/abroeck/phd>, viewed 2014.

B. Wright, ‘Back Talk: recoding the body’, *Callaloo*, Vol. 19/2, (1996), 397-8.

⁴⁸⁷ Anon., National Media Museum website, <http://www.nationalmediamuseum.org.uk/~media/Files/NMeM/PDF/Collections/Photography/CartesDeVi>

Despite new official enthusiasm for its adoption, in practice for a long time police photography remained limited to big cities. Only there did the scale of police organization and the existence of a scientific infrastructure make it feasible. The photographic Habitual Criminals Register was established at the Metropolitan Police Office in London, to collect the images generated by prison administrators.⁴⁸⁸ Large urban prisons like London's Wandsworth, Millbank and Pentonville set up their own studios and employed staff photographers.⁴⁸⁹ Smaller institutions employed commercial photographers.⁴⁹⁰ In the 1870s the first attempts were also made to standardize the images. But although the anthropological practice of using profile and full-face shots was suggested, it seems that it took nearly two decades to be universally accepted.⁴⁹¹

Our anonymous writer gave us two interesting examples of the system at work in 1873:

... two men stole some sheep in the north of England, drove them south, and ... sold them in London ... ; but the detectives ferreted them out, and lodged them in Shrewsbury Jail. As a means of obtaining evidence, the police required that the thieves should be identified in the districts through which they had passed. A photographer took their likenesses; copies of these were sent to the several districts [which] led to the conviction of the offenders. In another instance, where a murder had been committed at Durham, a photograph of a suspected man was sent by the police to the house of one John Owen, a tailor, in a distant part of England. It was immediately recognised by Owen's daughters ... "Oh, it's our Jack; there is no doubt about it now"; and Owen himself also acknowledged that the photograph was a portrait of his son ... who proved to be the murderer.⁴⁹²

siteAndCabinetCards.pdf, viewed August 2012, February 2016: H. Gernsheim, *The Rise of Photography, 1850-1880: The Age of Collodion*, (London: Thames and Hudson, 1988), 192, 194, 200.

⁴⁸⁸ Jäger, 'Photography: a means of surveillance?' 9.

⁴⁸⁹ Tagg, *The Burden of Representation*, 82.

⁴⁹⁰ Jäger, 'Photography: a means of surveillance?' 10.

⁴⁹¹ The earliest such images that I have been able to locate all date from the early 1890s.

⁴⁹² Anon., 'Criminal Photography', 9.

He went on, however, to describe a system that still seemed disorganised and patchy, as well as overwhelmed with information. Quoting from a parliamentary paper ‘recently issued’, the author told us that in just over two years the governors of one hundred and two county and borough jails and convict prisons in England, and thirteen in Wales had sent more than 73,000 photographs of criminals to the Commissioners of Metropolitan Police; these had been deposited in the Habitual Criminals' Office.⁴⁹³ No returns from Scotland and Ireland were reported. The House of Commons inquired as to how many times the existence of these photographs had led to the identification and conviction of offenders. The governors were frequently unable to furnish information on this point. ‘Some said “not known”, some “no record kept”, some “not recorded”, some “cannot ascertain”, many of them plainly said “none”, while the rest furnished instances of successful application’.⁴⁹⁴

Those instances seemed few and far between. The five prisons that reported numbers of successes for that two-year period could only point to a total of 62. According to the 1873 Parliamentary Report on which ‘Anon’ seemed to base his figures, from the 43,634 photographs taken so far in England and Wales under the Act only 156 had resulted in the identification and arrest of suspected offenders.⁴⁹⁵ Of 150,000 entries on the Register, only 1,000 offenders were identified as a result of a police inquiry in 1875.⁴⁹⁶ Part of the problem was that the Register, first published in 1877 and thereafter only published on

⁴⁹³ Anon., ‘Criminal Photography’, 10.

⁴⁹⁴ The Bedford County Prison reported : " Of the hundred and five county prisoners, twenty have been detected through the aid of photography." Cornwall said: "In many cases information received from the Habitual Criminals' Register—by photographs sent on jail forms for recognition— has led to the identification of old offenders." Dorset could tell of "six cases known:" while Herefordshire reported that "three who have been in custody here were recognised by the police elsewhere through their photographs." The authorities at the Holloway City Prison had no means of knowing accurately the number of cases in which photographs had led to the identification and detection of criminals: but, "at any rate, they can say that about thirty of the number have since come under their observation, and have been re-dealt with for fresh offences . . ." At Leicester Borough Prison three male prisoners had been detected, before trial, by means of portraits sent round to different counties, of having been previously convicted of felony. At Newgate many prisoners had been identified by means of photographs received from the government convict prisons.’ Anon., ‘Criminal Photography’, 11-12.

⁴⁹⁵ Tagg, *Burden Of Representation*, 7.

⁴⁹⁶ Radzinowicz and Hood, ‘Incapacitating the Habitual Criminal’, 1348.

an annual basis, did not cover all known offenders, but only those who had offended during the previous year. So a habitual offender would only appear in the volume issued in the year that he was last released from prison. It came out late in the year after some offenders were released and so was not available during the period after release, when re-offence was statistically most likely.⁴⁹⁷ As a partial solution to this problem, descriptions with photographs were published twice yearly by Scotland Yard, and entries in the *Police Gazette* advised that ‘a photograph can be supplied’ to police who suspected that a person in custody might have a record or might have given them a false name.⁴⁹⁸

Despite these drawbacks, a Home Office memo of 1888 expressed qualified enthusiasm for the use of photography, subject to some improvements.⁴⁹⁹ However, according to Spearman, by 1894 it had become apparent that the registers were not serving their purpose, due to the sheer volume of information that they contained by this time: ‘copies of both registers are distributed to all police forces, but they do not appear to be consulted to any great extent, or at least with much advantage’. Not only did they ‘tell very little and too much’, they were still not available until ‘nine to twenty months after [the offender’s] release’.⁵⁰⁰ The shortcomings of these registers so frustrated the Metropolitan Police that they began keeping their own, complete with albums of photographs. Initially they were arranged chronologically but by 1894 they were divided according to age and stature, and the class of crime to which the person was addicted.

⁴⁹⁷ McConville, *English Local Prisons 1850-1900*, 396-7.

⁴⁹⁸ Radzinowicz and Hood, ‘Incapacitating the Habitual Criminal’, 1349. The *Police Gazette* was a weekly newspaper that the Home Office produced giving details of crimes committed and information wanted by the police. It was sent to every police force in the United Kingdom. Six supplements were issued on a regular basis. Supplement A was issued fortnightly and contained particulars of active travelling criminals. Supplement B was issued weekly and gives the particulars of convicts on licence, persons under police supervision and other wanted people. Supplements C and D contains aliens wanted for crime and alien offences. Supplement D was issued fortnightly and alternatively with Supplement A. It provides the particulars of absentees and deserters from HM Forces. Not until 1933 was Supplement E first issued to supply the forces with photographs of active criminals. <http://libraryarchive.open.ac.uk/ead/html/gb-2315-polgaz-p1.shtml#id2484513>, viewed 4 October 2011. Guy Woolnough, Keele University, pers. comm., email, 7 May 2011.

⁴⁹⁹ McConville, *English Local Prisons 1850-1900*, 395.

⁵⁰⁰ Spearman, ‘Known to the Police’, 357-8.

This system prefigured Bertillon by some years, though it lacked his mathematical precision and special instruments.

By 1894 the Home Office Committee had concluded that ‘Even with more photographs and more exact descriptions we are agreed that the present system will leave much to be desired’.⁵⁰¹ Authorities lamented that poorly educated or dim policemen had trouble recognising people from photographs, and the quality of photographs was still not uniformly high.⁵⁰² It seems clear that, while the prisons and the police service were slowly coming to grips with the potential and the technology of this new technique, they were having much less success in finding ways to use the information generated. Bertillonage was adopted by Scotland Yard in 1895, but it was not until the introduction of fingerprints in 1901 that police attained any prospect of incontrovertible identification of offenders. It was no longer necessary to send CID officers to the weekly prison identification parades, and uniform officers no longer needed to search albums of photographs.⁵⁰³

Conclusion

Scholars appear to agree that the patterns of crime in the nineteenth century reflected both concern about the threat posed to respectable society by a perceived breakdown in social order and a connection between economic necessity and theft. These lead to what Emsley described as ‘the reorganisation and rationalisation of criminal law, the changes in punishment, and the creation of new organs of containment and social control’.⁵⁰⁴ The widespread but not universal adoption of photography within English and Irish prisons, which was then mandated by the Prevention of Crimes Act of 1871, formed an element of those ‘new organs’. Enforcement against the types of offences that attracted greatest police and judicial attention selected those whose photographs would be taken in prisons or by police. They were almost exclusively members of the poorest classes in society, both urban

⁵⁰¹ Spearman, ‘Known to the Police’, 359.

⁵⁰² Anderson, *Legible Bodies*, 148.

⁵⁰³ Petrow, *Policing Morals*, 96-7.

⁵⁰⁴ Emsley, *Crime And Society In England 1750-1900*, 302.

and rural, who had committed offences against public order like public drunkenness or fighting, or minor theft. Despite their anxieties, they had little to fear from photography. Throughout the nineteenth century it was used in a manner that was so disorganised, and embedded in a system that was so intractable, that it failed to provide that degree of control, coercion and surveillance described by Foucault as essential to a disciplined society.⁵⁰⁵

⁵⁰⁵ M. Foucault, *Discipline And Punish: The Birth Of The Prison*, (Middlesex: Penguin, 1975, trans. 1977), 218.

CHAPTER 4: ‘ ... a police system without [photography] is obviously incomplete’: criminal photography in the Australian colonies⁵⁰⁶



Portrait of Ned Kelly, 1880
Photographer: William F. Burman
State Library of Victoria

The law and the colonial criminal

In order to track the introduction and evolution of the photography of offenders in the colonies, it is necessary to understand the legislative context within which the practice arrived. Upon invasion, the British brought with them the laws then current in Britain. These are known as the Foundation Law: they formed the initial framework for the colonial legal system and still exert an influence over government to this day.⁵⁰⁷ These

⁵⁰⁶ Superintendent Nicholson to an unnamed Sub Inspector, and forwarded with note to Chief Commissioner Standish, 19 April 1872, Police Photography file, Victoria Police Historical Unit.

⁵⁰⁷ A.C. Castles, *An Australian Legal History*, (Sydney: The Law Book Company, 1982), 1.

laws were taken to be those in force in 1788: as Webb explains, ‘the date of original settlement marks the period of time at which the law so introduced by them is to be ascertained: those who emigrate subsequently do not carry with them into the colony any law of later date, but they and the descendants of the original settlers are subject to the same laws and the same rights as were originally introduced, except so far as they have been altered by competent legislative authority’.⁵⁰⁸

Subsequently, some confusion arose about the precise terms on which Imperial statutes passed after that date would be received in New South Wales and Van Diemen’s Land. A new Act was passed to clarify the situation: the Australian Courts Act of 1828 provided that Imperial statutes would only be binding in New South Wales and Van Diemen’s Land up until the passing of that Act. Any Imperial Acts passed after 1828 were inapplicable unless they applied by paramount force, that is, if ‘they were expressed to apply to the colony in question’.⁵⁰⁹ After 1828 colonial legislatures had the power to accept or to ‘remodel’ English statutes as their special or changing circumstances warranted. They could also reject these new statutes entirely as not appropriate to conditions in the colony.⁵¹⁰

This Act apparently failed to provide the clarification required, for in the decades following its passing ‘the relationship between colonial legislation and English law was shrouded in some uncertainty’.⁵¹¹ The Colonial Laws Validity Act 1865 finally provided the necessary clarification: it gave colonial legislatures the power to ‘pass whatever laws they wished, adopting, rejecting or ignoring general English laws and statutes as they chose’, unless those colonial laws conflicted with paramount force acts of Imperial

⁵⁰⁸ T.P. Webb, extract from *A Compendium Of The Imperial Law And Statutes In Force In The Colony Of Victoria*, 2nd edition (Melbourne: Charles F. Maxwell, 1892), 14-18, in J. Bennett and A.C. Castles, *A Source Book Of Australian Legal History: Source Materials From The Eighteenth To The Twentieth Centuries*, (Sydney: The Law Book Company, 1979), 249.

⁵⁰⁹ B. Kercher, *An Unruly Child: A History Of Law In Australia*, (Sydney: Allen and Unwin, 1995), 75.

⁵¹⁰ Australian Courts Act 1828, 9 Geo. IV, c83, section 24. Webb in Bennett and Castles, *A Source Book*, 250, 271.

⁵¹¹ P. Parkinson, *Tradition And Change In Australian Law*, (Sydney: Lawbook Company, 2005), 131.

parliament.⁵¹² Those acts were defined as ‘those which applied to the colony concerned, by express words or “necessary intendment”’.⁵¹³ Any English law passed after 1828 would need to be adopted specifically in each colony unless it applied by paramount force.⁵¹⁴ The Prevention of Crimes Act 1871, including the section on provisions for photography, was expressly applied only to persons in Great Britain, Scotland and Ireland: the colonies were not mentioned.⁵¹⁵ This Act, therefore, did not apparently satisfy the requirement of paramount force and was not received in the colony. A number of colonial acts were passed in the 1860s and 1870s related to police and gaols, none of which mention photography.⁵¹⁶ If photography were used as part of the suite of identification techniques in the colonies, it must have been because, as in the early years in Britain, some gaol governor or high-ranking policeman thought it was a good idea and implemented it from existing funds, leaving no paper trail.

Despite this lack of colonial legislative *imprimatur* regarding photography, Anderson observed that ‘... it is clear that there were very many parallels between developments in Britain and its colonies both in the conceptualisation of the “criminal classes” and in the treatment of prisoners, convicts and habitual offenders’.⁵¹⁷ Barry Godfrey and Graeme Dunstall agreed, saying that ‘Overall, the criminal justice systems that developed in the British settler colonies during the nineteenth century broadly mimicked the English system in ideology and practice. The degree of institutional convergence suggests that the colonial experience of crime and crime control can be compared with that of England’.⁵¹⁸

⁵¹² Kercher, *An Unruly Child*, 98-9.

⁵¹³ Kercher, *An Unruly Child*, 99. According to the Macquarie dictionary, intendment means ‘The true meaning as fixed by law’. The Merriam-Webster dictionary amplifies by defining it as encompassing both true meaning and intention.

⁵¹⁴ Parkinson, *Tradition And Change*, 132.

⁵¹⁵ Prevention of Crimes Act 1871, 35 Vict, 6, para 1.

⁵¹⁶ South Australia’s Habitual Criminals Act of 1870 is the only colonial legislation that is similar to the English legislation of the same name, but this predates by one year the first English Act to include a requirement for photography. S. White, ‘Howard Vincent and the development of probation in Australia, New Zealand and the United Kingdom’, *Historical Studies*, Vol. 18/73, (1979), 613.

⁵¹⁷ C. Anderson, *Legible Bodies: Race, Criminality, And Colonialism In South Asia*, (Oxford: Berg, 2004), 9.

⁵¹⁸ B. Godfrey and G. Dunstall, *Crime And Empire 1840-1940: Criminal Justice In Local And Global Context*, (Devon: Willan Publishing, 2005), 5.

Mark Finnane confirmed that the spectre of the habitual criminal also haunted the colonies, as he said ‘Early police rule books or guides ... display a presumption that there are ready made distinctions to be drawn between the class of respectable citizens and those groups, the criminal classes, which need to be carefully watched’.⁵¹⁹ These were the same classes of people who had been its subjects in Britain – the poor, the unskilled, the ‘habitual criminal’.⁵²⁰ These presumptions also found their way into criminal legislation in some colonies, following the English legislation of 1869 and 1871. Police and magistrates used the Vagrancy Acts as a particular scourge of the emancipist.

As Godfrey and Dunstall went on to observe, the transfer of British values and systems was ‘generally a slow and often incomplete process’.⁵²¹ This process was importantly shaped by the evolving state of understanding among administrators, both at home and abroad, of the nature of the society on which they were attempting to exert some control.⁵²² As a result, there were significant differences in policing arrangements between colonies and, in particular, between Tasmania and the other colonies. Finnane said, of policing in the Australian colonies generally, that public anxiety about the threat posed by a large convict population, a recalcitrant indigenous population, the upheavals caused by the discovery of gold, and serious outbreaks of bushranging propelled the formation of powerful, centralised forces.⁵²³ But this applied less in Tasmania, as I shall describe in the next chapter. As in England, in Tasmania policing remained decentralised and in the hands of local government: centralisation was not achieved in Tasmania until 1898, with the Police Rate Act and the Police Regulation Act.⁵²⁴

⁵¹⁹ M. Finnane, *Police And Government: Histories Of Policing In Australia*, (Melbourne: Oxford University Press, 1994), 75.

⁵²⁰ M. Finnane (ed.), *Policing In Australia: Historical Perspectives*, (Sydney: University of New South Wales Press, 1987), 17.

⁵²¹ Godfrey and Dunstall, *Crime And Empire 1840-1940*, 2.

⁵²² Godfrey and Dunstall, *Crime And Empire 1840-1940*, 3.

⁵²³ Finnane, *Police and Government*, 23-30.

⁵²⁴ B. Godfrey and P. Lawrence, *Crime And Justice 1850-1950*, (Devon: Willan, 2005), 14-15; J.P. Martin and G. Wilson, *The Police, A Study In Manpower: The Evolution Of The Service In England And Wales 1829-1965*, (London : Heinemann, 1969), 11; D. Philips and R.D. Storch, *Policing Provincial England 1829-1856: The Politics Of Reform*, (London and New York : Leicester University Press, 1999), 222; S. Petrow, ‘Tolerant Town, Model Force: the Launceston Municipal Police 1858-1898’, *University Of Tasmania Law Review*, Vol. 16/2, (1997), 264-5.

Crime and photography in the Australian colonies

It appears that New South Wales was the first colony to use a photograph to assist in the identification of criminals in 1859, followed by Victoria in 1862. South Australia was close behind in 1866, and Tasmania in 1873. Queensland did not introduce the practice until around 1897 and Western Australia not until 1902 and then only at one gaol.⁵²⁵

Victoria was the first colony to employ a police photographer in 1865: South Australia allocated the task to the Government Photolithographer in 1866 and finally employed a police photographer in 1880.⁵²⁶ Arrangements in New South Wales and Tasmania seem to have been rather *ad hoc* in the early decades, as I can find no record of an official photographer in either of those colonies. Rather, it seems that the task may have been delegated either to commercial photographers on contract or to prison officials.

New South Wales

The first use of a criminal photograph or ‘mugshot’ in New South Wales may have been that of Frank Gardiner, taken ‘when he was confined on Cockatoo Island’.⁵²⁷ Gardiner was released on parole from Cockatoo Island in December 1859, so if the newspaper’s informant was correct this was a very early criminal portrait. This article goes on to say that ‘Sergeant Whelan, in charge of the police here [Daylesford], has long had [his emphasis] a photograph of the famous bushranger in his office’, indicating that the photograph had been taken long before 1864, making an 1859 date possible.⁵²⁸ Since a government photographer had not yet been appointed, it was probably taken by a

⁵²⁵ Several decades passed before these states began to photograph prisoners. In Queensland Acting Sergeant John Thompson was paid extra to ‘attend to photographic work’ in 1897 and at the turn of the century photographs of offenders began to appear in an illustrated supplement to the *Police Gazette*. (W.R. Johnston, *The Long Blue Line: A History Of The Queensland Police*, (Brisbane: Boolong, 1992), 143). Johnston claims that photographs began to appear in 1897 but according to the ‘Police Gazettes, Brief Guide 34’, Queensland State Archives, Queensland Police Gazettes only carried photographs after 1900. It was not until 1902 that the Western Australian Government stationed a photographer in Fremantle Gaol. He was a policeman whose sole task was to photograph all the prisoners there. Photography was not employed in any other Western Australian gaol until after 1929. P.W. Thomas, ‘A Brief History and Functions of the WA Police Photographic Section’, *The Western Australian Police Historical Society*, http://policewashistory.org.au/HTML_Pages/Photo_Section-history.html, viewed 28 April 2009.

⁵²⁶ R. Clyne, *Colonial Blue: A History Of The South Australian Police Force 1836-1916*, (Netley: Wakefield Press, 1987), 158.

⁵²⁷ *Argus*, 6 April 1864, 6.

⁵²⁸ *Argus*, 6 April 1864, 6.

commercial photographer on contract to the prison, or as a special commission. There was money to be made from the likeness of such a notorious prisoner.⁵²⁹ Bushranger Ben Hall's 1863 *carte de visite* portrait may have been next. Accompanied by a written description, it was circulated through the *New South Wales Police Gazette* for the police who were searching for him.⁵³⁰ When Gardiner was captured in March 1864 he was identified by a photograph, although it was said not to look much like him. Detective McGlone went on to describe the ways in which police accessed photographs: 'that likeness was issued to the police of New South Wales, together with the description alluded to, for their information and guidance: the Crime Report is issued to the police once a week...'⁵³¹

On 7 July 1869 the editor of the *Sydney Morning Herald* republished a long article on *cartes de visite* by Andrew Wynter, first published in Britain in *Good Words*. Included in it was an account of a photographic album at Scotland Yard,

in which may be seen the carte of every ticket-of-leave man in the country ... Before leaving the prison, his photograph is taken by the prison authorities, for the purposes of identification ... One carte de visite is kept in the police album at Scotland Yard, another at the station house of the division of the metropolis in which he may select

⁵²⁹ The popular appetite for images of infamous criminals dated back at least 150 years, beginning with the broadsheets hawked at public executions. M. Field and T. Millet (eds.), *Convict Love Tokens: The Leaden Hearts The Convicts Left Behind*, (Adelaide: Wakefield Press, 1998), 40.

⁵³⁰ A. Davies, *An Eye For Photography*, (Sydney: Miegunyah Press and the State Library of New South Wales, 2000), 14.

⁵³¹ Detective McGlone also described the identification process: 'I have also in my possession a photograph likeness of the prisoner. It corresponds with his appearance: and I consider it to be a fair likeness of him. - This photograph (produced) is also a likeness of Francis Gardiner alias Clarke, for whom a warrant has been issued by a magistrate, of New South Wales. (The photograph was here handed to the Bench for inspection. It certainly could not be said to bear a striking resemblance to the prisoner, and nearly everyone who saw it remarked that it could scarcely be called a likeness at all,) I am perfectly certain from that likeness, and from the description, given of Francis Gardiner, *alias* Clarke, that the prisoner in the dock is that man ...'. *Empire*, 19 March 1864, 8.

to reside, and a third is forwarded to any country district he may wish to remove to.⁵³²

Attached to each photograph was a written description. Wynter went on to describe two prominent cases in which an arrest was made as a result of identification using such a *carte de visite*. While the details of procedure regarding the distribution do not tally exactly with other descriptions, the article offered a promising approach to the knotty and enduring issue of identification, particularly for the colonies with their widely scattered population and under-resourced police forces.⁵³³ Since this was the major newspaper in the colony, it may be safe to assume that Harold Maclean, then Inspector of Prisons in New South Wales, read this article and so was alerted to the potential of photography in criminal management. Soon he was to meet Britain's most passionate and indefatigable advocate of criminal photography.

Maclean was a reformist and moderniser, determined to improve the inhuman conditions of the colony's prisons. He began his career by inspecting the recently improved gaols of Victoria in 1865 where photography was already in use. In 1869-70 he toured prisons in Britain to study prison management, visiting Scotland, Ireland and England. His report to the Colonial Secretary Charles Cowper was published in the *Sydney Morning Herald* of 23 September 1870. Of the prisons that Maclean says he visited at the suggestion of the Home Office, one of the four Irish prisons and six of the twelve English prisons had already introduced photography by the time he got there.⁵³⁴ Most importantly, he met Sir Walter Crofton whom he described as 'the first authority in Europe upon prison

⁵³² *Sydney Morning Herald*, 7 July 1869, 3. *Good Words* was a 19th-century monthly religious periodical published in the United Kingdom principally aimed at lower middle class evangelicals and nonconformists. The magazine included overtly religious material, but also fiction and nonfiction articles on general subjects, including science. The standard for content was that the devout must be able to read it on Sundays without sin. http://en.wikipedia.org/wiki/Good_Words, viewed 22 June 2007. Andrew Wynter was a doctor who specialised in treatment of the wealthy insane. He was also a frequent contributor to periodicals.

http://en.wikipedia.org/wiki/Andrew_Wynter, viewed 22 June 2011.

⁵³³ Others describe photographs only being available on request, or published too infrequently to be of much use.

⁵³⁴ *Sydney Morning Herald*, 23 September 1870, 3. Mountjoy in Ireland, and Manchester, Millbank, Portland, Portsmouth, Chatham and Winchester in England had all been using photography since the early 1860s.

matters'.⁵³⁵ Maclean's report, which was well received in Australia, recommended five 'major objects to be brought about in the further progress of prison administration in the colony'. The fifth and final point was 'The introduction of a system of photography for the assistance of police and prison authorities in identification – a most material aid in the suppression of crime'.⁵³⁶ This recommendation echoes the last of Crofton's 'three simple principles which govern the system':

... That the institution of appliances to render the criminal calling more hazardous will surely tend to the diminution of crime: and therefore that police supervision, photography and a systematic communication with the Governors of county gaols, with a view to bring ... former convictions against offenders ... are matters of gravest importance and deserving of the most minute attention.⁵³⁷

Maclean was also very impressed with Crofton's Intermediate Prison at Lusk, where prisoners enjoyed considerable freedom and trust while preparing for release, and Winchester Gaol's application to short-sentence prisoners of Crofton's marks system, derived from Alexander Maconochie's radical system of 1840-43.⁵³⁸ He also discussed at some length the advantages of a tiered system in which prisoners move through stages from solitary confinement to a Public Works Prison, another feature of Crofton's system.⁵³⁹ These all represented significant reforms, both philosophically and in terms of capital investment, so it seems interesting that Maclean discussed photography in the same context, treating it as though it were of a similar order of importance.

In the final paragraph of his report Maclean returned to the subject of photography, reassuring the Colonial Secretary that:

⁵³⁵ *Sydney Morning Herald*, 23 September 1870, 3.

⁵³⁶ *Sydney Morning Herald*, 23 September 1870, 3.

⁵³⁷ M. Carpenter, *Reformatory Prison Discipline As Developed By The Rt Hon. Sir Walter Crofton In The Irish Convict Prisons*, (London: Longman, Green, 1872), 5.

⁵³⁸ Maconochie was Governor of Norfolk Island when he replaced a regime of brutal terror with a system of marks, under which convicts could achieve a reduction in their sentence with good conduct and hard work. See J. Clay, *Maconochie's Experiment*, (London: John Murray, 2001).

⁵³⁹ Carpenter, *Reformatory Prison Discipline*, 5-11.

... a System of photography may be established without any great expense or difficulty, and it is my intention shortly to submit a recommendation for its commencement. A prison officer in each establishment where it may be introduced can be taught to take photographs for a trifling sum, and then a small allowance – it is 10d at home – made for each photograph. Beyond the cost mentioned for the materials, there need be no further expense.⁵⁴⁰

The Colonial Secretary must have been both persuaded of its usefulness and reassured as to its cheapness, for soon after Maclean returned from Britain in 1871 he built a small weatherboard photographic studio at Darlinghurst Gaol.⁵⁴¹ In a memo Maclean sent to the Principal Gaoler at Darlinghurst on 5 August 1871 he described the system that he wished to be implemented:

Portraits will be taken of all prisoners convicted at the Superior Courts, except those convicted of trifling misdemeanours and who do not belong to the Criminal Class.

Portraits will also be taken of prisoners summarily convicted where the Police require it, or the Principal Gaoler thinks it desirable to secure a perfect description.

These portraits will be photographed after conviction and fourteen (or more) days prior to discharge, in private clothing where practicable...

The figures are to be taken $\frac{3}{4}$ size unless in exceptional cases where there may be reason for taking them in full. The negatives will be numbered to correspond with the Photographic Register, and carefully packed away under lock and key.

⁵⁴⁰ *Sydney Morning Herald*, 23 September 1870, 3.

⁵⁴¹ D. Beck, *Hope In Hell: A History Of Darlinghurst Gaol And The National Art School*, (Sydney, Allen and Unwin, 2005), 37, 45.

Twenty-five copies of each portrait are to be printed and furnished to the Inspector General of Police through this Office.⁵⁴²

This was such a novelty in New South Wales that it received a mention in the press. According to an article in the *Sydney Morning Herald* on 10 January 1872,

... at the direction of Inspector-General McLerie, Mr Harold McLean, the Sherriff, has recently introduced into Darlinghurst Gaol the English practice of photographing all criminals in the establishment ... When mounted in the police album, the cartes-de-visite ... are placed between two columns, one containing a personal description of the offender, and the other a record of his criminal history ... Copies of these photographs are sent to the superintendents of police in the country districts, and also to the adjoining colonies'.⁵⁴³

How carefully were Maclean's instructions followed? He specified that the following categories of prisoners were to be photographed in particular ways.

1. Those convicted of trifling misdemeanours and who do not belong to the Criminal Class.
2. After conviction and fourteen (or more) days prior to discharge, in private clothing where practicable.
3. They were to be taken $\frac{3}{4}$ size.

All of those Darlinghurst prisoners whose photographs appear in the early volumes of Series 2138 held at the State Archives of New South Wales had received sentences of

⁵⁴² Photographic Description Books, [Darlinghurst Gaol], 1871-1914, NRS 1824, 4/6478, p. 496, no. 71/2676, State Records Authority of New South Wales

⁵⁴³ In 1864 Maclean had been appointed Sherriff of New South Wales, giving him overall responsibility for all of the colony's prisons. S. Edgar, 'Harold Maclean', <http://adb.anu.edu.au/biography/maclean-harold-4122>, viewed 22 March 2012. *Sydney Morning Herald*, 10 January 1872, 4.

two years or more, mainly for theft and the occasional assault.⁵⁴⁴ This would seem to satisfy the first criterion. The next criterion is problematic. The vast majority of records bear only one photograph and, according to the dates when the man was tried and when his photograph was taken, most appear to have been taken on discharge although some are taken during a lengthy sentence. Quite a few were even apparently taken before trial, which may indicate either an over-confident officer or the convenient presence of a photographer on site. Most wear prison clothing, but some are bearded and do not sport a short back and sides prison haircut but wear their hair long and often shaggy. These men were either awaiting release and thus allowed to regrow hair and beards, presumably so that they could avoid being stigmatised as ex-gaolbirds when they were freed, or were ‘well-conducted prisoners, as in the Irish Crofton System [who] were allowed to wear beards or moustaches and permitted to wear their hair at the length of the prevailing fashion outside’.⁵⁴⁵ The third criterion is satisfied initially: all are taken ‘¾ size’, which is presumably ¾ length, until about June 1894 when the portraits became head and shoulders only and a profile image was added.

The photographing of prisoners appears to have been confined to Darlinghurst Gaol (the principal prison in the Colony) until the mid-1870s, after which it began to be introduced at the major country gaols. The New South Wales State Records Office holds books from 17 different prisons or gaols in New South Wales, containing an individual record for each prisoner with photographs and personal information. With the exception of Darlinghurst, photography at all of these prisons post-dates the photography carried out at Port Arthur.⁵⁴⁶

⁵⁴⁴ Photographic Description Books, [Darlinghurst Gaol], 1871-1914, Series 2138, Reel 5097, State Records Authority of New South Wales.

⁵⁴⁵ J. Ramsland, *With Just But Relentless Discipline: A Social History Of Corrective Services In New South Wales*, (Sydney: Kangaroo Press, 1996), 42.

⁵⁴⁶ Albury NRS1966: Armidale NRS1989: Bathurst NRS1998: Berrima NRS2021: Biloela NRS2027: Broken Hill NRS2057: Darlinghurst NRS2138: Deniliquin NRS2191: Dubbo NRS2202: Goulburn NRS2232: Grafton NRS2258: Maitland NRS2326 and 2327: Parramatta NRS2397: Long Bay NRS2467 and 2496: Trial Bay NRS2549: Young NRS2605.

In a general order on 27 July 1871 to the Gaolers at Parramatta, Mudgee and Windsor, Maclean dealt with some of the practical aspects of implementing photography of prisoners in transit:

Prisoners to be photographed

Prisoners convicted at the Superior Courts and being forwarded to serve their Sentences in Darlinghurst Gaol, or to Darlinghurst Gaol en route to Berrima or other prisons, will not be shaved and their private clothing will be sent with them in order that they might be photographed as nearly as practicable in their ordinary appearance.

Harold Maclean

Acting Inspector of Prisons⁵⁴⁷

How closely was this directive followed at Albury (1876) and Bathurst (1874), the earliest gaols to implement photography outside Sydney? The earliest surviving photographs from Bathurst are a group of 18 men who were photographed on 22 December 1874.⁵⁴⁸ As Maclean had requested, most of the men wear their own clothes and choice of facial hair, and so were photographed just after admission. Other photographs, however, are highly inconsistent in terms of the ways in which the men are clothed and barbered, a variation that does not correspond with their dates of admission or discharge. Some men close to the end of their sentence are in uniform and neatly barbered, others are in uniform but with long hair and whiskers. One man in the middle of a two-year sentence wears a uniform but has long hair. Of the ten men photographed in the next tranche on 25 March 1875, conviction dates range from 1873-1875. Some are in their own clothes, some in uniform. After July 1878 all are in uniform. The earliest surviving images at Albury date to 1880 and, like Bathurst, throughout the decade they vary between those taken on admission and those on discharge, in uniform or their own clothes.⁵⁴⁹ Photographs at Bathurst are more clearly dated, and taken in groups of ten or

⁵⁴⁷ Photographic Description Books, [Darlinghurst Gaol], 1871-1914, NRS 1834, 5/1826, p.144, no. 71/31, State Records Authority of New South Wales

⁵⁴⁸ Photographic Description Books, [Darlinghurst Gaol], 1871-1914, Series 2138, reel 5084, State Records Authority of New South Wales

⁵⁴⁹ Photographic Description Books, [Darlinghurst Gaol], 1871-1914, Series 2138, reel 5082, State Records Authority of New South Wales

more subjects about three or four months apart. Albury appears to exhibit the same pattern. This may indicate that there was no one on staff who could undertake the work, and so authorities waited until they had enough men whom they needed to photograph to make a visit by a commercial photographer economical. This would also explain why some men were taken at the end of their sentence, some at the beginning, some in the middle and one or two even before they had been tried.

There was no legislation in this period that mandated the use of photography in the management of prisoners. Under the Prisons Act of 1874, passed to make better provision for the control of prisons and for the custody of prisoners, the position of Comptroller of Prisons was created. This position was charged with ‘the care direction and control of all prisons within the Colony and also the custody of all convicted prisoners’.⁵⁵⁰ Harold Maclean was appointed to the position in March 1874, retrospective to 1 January of that year, at a salary of £800 per annum.⁵⁵¹ Although there is no mention in the Act of the use of photography, by the end of that year photography had been introduced in Bathurst Gaol. In July 1875 Maclean reported to the Colonial Secretary that ‘I continue to receive from the Inspector-General of Police assurances of the valuable aid he derives from prison photography, introduced here in August 1871, and now in use in others of the Australian colonies’.⁵⁵² Maclean seems to be claiming that these other colonies had followed his lead.

His report of 1878 reiterates the usefulness of prison photography to the Police Department, unfortunately without saying how it was being used.⁵⁵³ Since the Police Regulation Act of 1862 the New South Wales police had been organised into police districts, each under a superintendent, and the whole presided over by an Inspector-General. Between 1866 and 1904 this force was controlled by the ‘far-sighted and progressive’ E.W. Fosbery, whose administration was widely admired and respected.⁵⁵⁴

⁵⁵⁰ Prisons Act, No. 14, 37 Vic., An Act to make better provision for the control of Prisons and for the custody of Prisoners. [27th May, 1874], 107-8.

⁵⁵¹ *New South Wales Government Gazette*, 14 April 1874, No. 84, 1081.

⁵⁵² *Sydney Morning Herald*, 6 August 1875, 8.

⁵⁵³ *Sydney Morning Herald*, 4 November 1878, 3.

⁵⁵⁴ E.W. O’Brien, *The Australian Police Forces*, (Melbourne: Oxford University Press, 1960), 26.

Despite his reputed efficiency and progressive tendencies, and the assertion in the *Sydney Morning Herald* of January 1872 that ‘copies of these photographs are sent to the superintendents of police in the country districts, and also to the adjoining colonies’, I can find no evidence that these photographs were distributed or used for identification.⁵⁵⁵

The only mention of the use of photography in identifying elusive offenders in the *New South Wales Police Gazette* for the 1870s are items forwarded from the *Victorian Police Gazette*.⁵⁵⁶

Despite the fact that the government regularly published very junior appointments, tenders for the erection of minor new buildings and procurement of supply items in the *Gazette*, there is no mention of the erection of photographic facilities, the purchase of photographic equipment or chemicals, the employment of a photographer or the engagement of a photographer under contract. None of the Appropriation Acts for the years in which each prison began to photograph its prisoners list any expenditure that can be linked to the introduction of this technology. Annual recurring expenditure for each prison is listed only as a lump sum. Under ‘Repairs, construction and maintenance’, again only lump sums are set against any prison mentioned. This is despite the fact that often very small non-prison based projects were listed in the Acts with specific expenditures. For example, in 1872, the year after photography was introduced at Darlinghurst Gaol, there is an entry for ‘the publication of the Sixth Volume of Bentham's work on the Flora of Australia’, costing £50.⁵⁵⁷ Yet other types of photography are listed in the 1880s, years in which photography was introduced at four gaols. For example, in 1886, the year photography was introduced at Biloela Gaol, the following two expenditures appear in the Appropriation Act for that year: ‘To meet the cost of Photographs of Public Works and Buildings in the City and Colony Generally’ and ‘Expense of photographing views of New Guinea scenery and preparing presentation Albums of same &c’.⁵⁵⁸ Nor is it possible to identify any small increase in annual expenditure at a particular gaol as an indication that photography has been introduced there, since each year the sums seem to

⁵⁵⁵ *Sydney Morning Herald*, 10 January 1872, 4.

⁵⁵⁶ For example, *New South Wales Police Gazette*, 5 December 1877, 402; 10 January 1877, 16.

⁵⁵⁷ Appropriation Act 1872, 36 Vic No 3, 11.

⁵⁵⁸ Appropriation Act 1872, 50 Vic No 27, 102, 95.

vary by small amounts as part of the natural cycle of expenditure.

Since no photographer seems to have been appointed to the prison service, presumably Maclean was permitted to act on his suggestion that serving prison officers be trained to the job.⁵⁵⁹ This might account for the variability in the pose and the quality of work that is apparent in the 1870s and 1880s at Darlinghurst. Men were invariably photographed in an ornate carver chair with curved wooden arms, against a plain canvas backdrop. This was presumably adjacent to the photographic studio, since plates had to be developed within two or three minutes of exposure. But sometimes their heads are turned to the left and sometimes to the right: sometimes the image is presented as a rectangle, sometimes it is vignetted in an oval mount: some are slightly underexposed, some over exposed, some are just right.⁵⁶⁰ This variability occurs between the small groups of men all taken at one sitting, rather than within the group. It seems to indicate a number of different and more or less amateurish hands at work, perhaps corresponding with changes in personnel or availability, rather than the consistent presence of a skilled photographer.

It seems significant that none of the prisons listed above introduced photography before Harold Maclean was appointed to the position of Comptroller of Prisons. Given the lack of any official paper trail, it would seem that this innovation was undertaken at his discretion. Maclean seems to have been the presiding genius over the introduction of this new technology, with Sir Walter Crofton looking over his shoulder.

Victoria

The use of photography in colonial Victoria in particular seems to have had its origins in the same kind of moral panic that saw increasing attempts to identify and contain a ‘criminal class’ in Britain. Modelled closely on London’s Metropolitan Police, even ordering their uniforms from London, the Victorian force shared its preoccupations with moral issues and offences against public order. The police were seen as ‘vital cogs in this

⁵⁵⁹ *Sydney Morning Herald*, 23 September 1870, 3.

⁵⁶⁰ Series 2138, reel 5097, State Records Authority of New South Wales.

new moral machine'.⁵⁶¹ They also shared the British conviction that a 'criminal class' was responsible for crime and their regular patrols were designed to make these miscreants aware that their every move was under scrutiny.⁵⁶² As Wilson and Finnane observed, 'The initial formation of a detective force in Victoria in the 1840s was justified by the belief that a nascent "criminal class" was forming in the back lanes and alleys of Melbourne'.⁵⁶³ 'Old lags' from Van Diemen's Land were a particularly feared menace. The Detective Force was established in 1844 primarily to monitor these men and the Convicts Prevention Act of 1852 was designed to prevent those holding conditional pardons from entering Victoria.⁵⁶⁴

To deal with those who had already infiltrated law-abiding Victoria, as well as the home-grown article, Charles Hope Nicholson proposed an expansion of the police force in 1862. He believed that there were more than twice as many criminals in Victoria as in England, estimating that there were 'at least 1,000 thieves, prostitutes and persons who get their living breaking laws' and also 3-4,000 more 'questionable persons' whom the detectives 'would have an eye upon'.⁵⁶⁵ Among them were 'bankrupts, embezzlers, ex-prisoners, oyster sellers and fish hawkers'.⁵⁶⁶ Why the last two occupational groups should be particularly suspect is unclear, but it seems apparent that the 'questionable types' of colonial Victoria were close kin to those who enjoyed the regular attentions of British police, and appeared in British Rogues' Galleries.

The earliest surviving image of a Victorian prisoner may be that of William Jones, convicted of robbery with violence. His is the only photograph in one early volume of

⁵⁶¹ D. Wilson, *The Beat: Policing A Victorian City*, (Beaconsfield: Circa, 2006), 45-6, 48.

⁵⁶² Wilson, *The Beat*, 44, 52.

⁵⁶³ D. Wilson and M. Finnane, 'From Sleuths to Technicians? Changing images of the detectives in Victoria', in C. Emsley and H. Shpayer-Makov (eds.), *Police Detectives In History 1750-1950*, (Aldershot: Ashgate, 2006), 136.

⁵⁶⁴ Wilson, *The Beat*, 52.

⁵⁶⁵ C. Hope Nicholson, 'Report from the Select Committee on the Police Force 1863', 106, in Emsley and Shpayer-Markov, *Police Detectives*, 137.

⁵⁶⁶ Hope Nicholson, 'Report from the Select Committee on the Police Force 1863', 137.

records.⁵⁶⁷ The date on which it was taken is uncertain, since Jones was twice convicted, once in 1853 and again in the 1860s. The photograph itself is undated. There are extant photographs taken between 1862 and 1865, including four of convicted men taken in 1862, in the Capital Case Files Series of the Public Records Office of Victoria.⁵⁶⁸ If the photograph of Jones were taken in 1853 it would be among the earliest criminal photographs taken anywhere in the world. But given that other early 1860s Victorian images exist, and there are no others as early as 1853, it seems most likely that this was also taken in the 1860s. A couple of anecdotes from a serving police officer seem to confirm that photography was not in use in Victoria in the 1850s. In early 1853 a man had been arrested who refused to give up his name but whom detectives believed to be the infamous bushranger Dalton. They paraded him casually through the prison until another inmate called out ‘By G--, they’ve got Dalton!’⁵⁶⁹ On another occasion, a man had been arrested on suspicion of being a member of a gang of bank robbers. In order to identify him, ‘Every detective and policeman in the city made it his business to see the prisoner ...’⁵⁷⁰

But by the end of that decade, there is some evidence that photography had been established in at least some gaols. Readers of the popular press in Victoria, and presumably therefore their government, were made aware of it in an early 1864 article in the *Argus* that reported that ‘It is well known that the likenesses of all prisoners in gaol are now taken by the photographic process’.⁵⁷¹ The photographer was probably Charles Nettleton, who had first set up his own studio in 1858, where he carried out many commissions for the government, including the only reliably identified photograph of Ned Kelly.⁵⁷² Nettleton is said to have held the contract for police work for over 25 years. Since he retired in 1890, the contract must date from around 1865 at the latest.

⁵⁶⁷ Pers. comm. Lauren Bourke, Reference Services, PROV, email 12/9/2006: VPRS 515/P, unit 2, Prisoner 765.

⁵⁶⁸ VPRS 264, P0001, Public Records Office of Victoria.

⁵⁶⁹ J. Sadleir, *Recollections Of A Victorian Police Officer*, (Melbourne: Penguin, 1913), 251-2.

⁵⁷⁰ Sadleir, *Recollections*, 255.

⁵⁷¹ *Argus*, 6 April 1864, 2.

⁵⁷² J. Gittens, ‘Charles Nettleton’, <http://adbonline.anu.edu.au/biogs/A050376b.htm>, viewed 8 June 2011; J. Cato, *The Story Of The Camera In Australia*, (Melbourne: Georgian House, 1955), 33.

However, there is also evidence that photography was not generally introduced into Victoria's prisons until October 1872, as a result of the exertions of Chief Commissioner Frederick Standish.⁵⁷³ The Royal Commission into Penal and Prison Discipline in Victoria in May 1871 had recommended that the central police office should keep a register of all persons convicted of a crime

containing full particulars for identification, as well as the gaol history, and photographic likenesses of each prisoner, taken when admitted and discharged. Copies of this register and of the photographs should be sent to all the gaols throughout the colony, and a sufficient time prior to each criminal sessions a properly qualified officer specially appointed for the purpose, should visit the gaols, to ascertain whether any of the prisoners awaiting trial have been previously convicted.⁵⁷⁴

However, it appeared that this recommendation was not immediately implemented. Standish wrote to George Duncan, the new Inspector General of Penal Establishments in late October 1871, describing his unsuccessful efforts in 1868 and 1869 to get Duncan's predecessor, William Champ, to establish a system of photography. Champ had refused because, among other problems not specified by Standish, he said he could not get 'an operator' cheaply enough.⁵⁷⁵

It seems that Nettleton was not working for the Department of Penal Establishments at this time, although he may have been working for the Police, since Standish goes on to say that photographs have been taken 'in the last year or two' of the most dangerous

⁵⁷³ A controversial figure, with a less-than-spotless past and a reputation for many forms of corruption during his time as Chief Commissioner, Standish did however initiate reforms that made the Victoria Police more efficient. Among his initiatives were the use of 'new technology in the form of the electric telegraph and the railway'. He may also have seen the usefulness of photography, particularly since he was operating during a period of budgetary stringency that saw the police force reduced in numbers and spread over a wider area, including 60 new stations in the country districts staffed by a single constable. R. Haldane, *The People's Force: A History Of The Victoria Police*, (Melbourne: Melbourne University Press, 1986), 58-9.

⁵⁷⁴ *Argus*, 31 May 1871, 7.

⁵⁷⁵ Chief Commissioner Standish to the Inspector General of Penal Establishments 27 October 1871, Police Photography file, Victoria Police Historical Unit.

offenders at Pentridge, at his department's expense. As an example of the inefficiencies of the current system he asserted that, if police had known what the bushranger Power actually looked like, he would have been arrested much sooner.⁵⁷⁶ In February 1872 Standish wrote plaintively to Superintendent Nicolson that he was unable to enter into a reciprocal arrangement with John McLerie, Inspector General of Police in Sydney, who had sent him photographs of criminals likely to enter Victoria and proposed such a relationship in September 1871.⁵⁷⁷ Standish lamented that 'the plan of photographing prisoners had not yet been adopted in the Penal Establishments of this Colony'. He did, however, have a few likenesses that he could send, although he did not say how he came by them.⁵⁷⁸ According to an April 1872 letter to Nicolson from a Sub-Inspector, these were likenesses of long-sentence men at Pentridge, and Nicolson forwarded them to Standish with his support for the introduction of photography, adding that 'a police system without it is obviously incomplete'.⁵⁷⁹ Finally, in October 1872, Standish was able to report triumphantly to McLerie that he was sending him 'the first four photographs taken at Pentridge Prison'. Standish appears to have gained Duncan's support, since he reported that 'an operator' was now employed in the Department of Penal Establishments.⁵⁸⁰

Was this operator Charles Nettleton? The evidence is not clear. Nettleton specialised in outdoor work, and is said to have taken his subjects posed against a stone wall outdoors near a cell at Pentridge that he had fitted out as a dark room, a necessary facility when working with photographic plates that had to be developed within two to three minutes

⁵⁷⁶ Power was arrested in June 1870, and the photograph taken by Nettleton is dated '1870'. I. McLaren, 'Henry (Harry) Power, 1820-1891', *Australian Dictionary Of Biography*, Vol. 5, (Melbourne: Melbourne University Press, 1974), <http://adb.anu.edu.au/biography/power-henry-harry-4412>, viewed 20 June 2012.

⁵⁷⁷ John McLerie, Inspector General of Prisons in New South Wales to Chief Commissioner Standish, 2 September 1871, Police Photography file, Victoria Police Historical Unit.

⁵⁷⁸ Chief Commissioner Standish to Superintendent Nicolson, 23 February 1872, Police Photography file, Victoria Police Historical Unit.

⁵⁷⁹ Superintendent Nicolson to an unnamed Sub Inspector, and forwarded with note to Chief Commissioner Standish, 19 April 1872, Police Photography file, Victoria Police Historical Unit.

⁵⁸⁰ Chief Commissioner Standish to John McLerie, Inspector General of Prisons in New South Wales, 10 October 1872, Police Photography file, Victoria Police Historical Unit.

after exposure.⁵⁸¹ The fact that Nettleton appears to have had a more or less permanent facility at Pentridge implies that he was officially employed there, and two unusual outdoor portraits survive.⁵⁸² They are, however, dated August 1870, more than two years before Standish sent those first photographs to McLerie, and they are stamped Office of Copyright Registry of Victoria, 5 August 1870 (Power) and 11 August 1870 (Lowry). In order to register copyright, a copy of the photograph, print or illustration was lodged with the Victorian Patents Office at the Melbourne Town Hall. A number was assigned and the photographs were mounted in scrapbooks. The notoriety of at least two of Nettleton's subjects, Power and Kelly, obviously made them very saleable, feeding the popular appetite for ripping yarns of violent crime and punishment.⁵⁸³ If Nettleton had taken these images during his government employment, was he entitled to copyright?

Another of Nettleton's images raises questions about the exact nature of the relationship between commercial photographer and government. One of his most famous commissions is the well-known head and shoulders portrait of Ned Kelly or 'prisoner number 10926', titled 'Ned Kelly the day before he was hanged 1880' and lodged in the Central Register of Male Prisoners (now held in Victoria's Public Record Office').⁵⁸⁴ Another photograph, full length and taken outdoors against a massive stone wall, shows Ned wearing chains and civilian clothes and striking a poignant pose redolent of both bravado and resignation.⁵⁸⁵ It seems that both images were taken on the same occasion,

⁵⁸¹ J. Kerr, (ed.), *Dictionary Of Australian Artists, Painters, Sketchers, Photographers And Engravers To 1870*, (Melbourne: Oxford University Press, 1992), 567: Cato, *The Camera In Australia*, 12.

⁵⁸² One is catalogued 'the convict "Lowry" taken by photographer Charles Nettleton', full length, leaning against a fence (State Library of Victoria H96.160/1583). Another shows the same man as a vignette bust (State Library of Victoria H96.160/1584). Nettleton also photographed 'the bushranger Power' twice, one a portrait bust in civilian clothes, and the other standing against a stone wall at what may be Pentridge Gaol, wearing the same clothes and leg irons and leaning on a chair. (State Library of Victoria H96.160/1579 and H96.160/1578).

⁵⁸³ I have not been able further to identify Lowry. Gretton, G., 'Last dying speech and confession', in Field and Millett, *Convict Love Tokens*, 39-41. Rawlings also demonstrates that today's popular market for stories of crime and its perpetrators, fictional and non-fictional, has been with us since the late seventeenth century. P. Rawlings, *Drunks, Whores And Idle Apprentices: Criminal Biographies Of The Eighteenth Century*, (London: Routledge, 1992), 1.

⁵⁸⁴ 'Ned Kelly, the day before he was hanged, 1880', <http://trove.nla.gov.au/version/182151320>, viewed 8 June 2011: State Library of Victoria, H18202.

⁵⁸⁵ Held in the University of Melbourne Archives, UMA/1/5753.

for in both Ned wears the white scarf he asked to wear at his trial and his hair and beard are identically styled. Since the close-up version is signed by Nettleton, the full-length one must also be his work. According to the *Argus*, ‘At his [Ned’s] own request his photograph was taken by a departmental operative and copies will be given to his friends.’⁵⁸⁶ Nettleton, obviously the ‘departmental operative’, carried out what was in effect a private commission, although Ned’s head and shoulders portrait was also attached to his prison record.⁵⁸⁷

While Nettleton’s appointment, his preference for outdoor work and at least some of his work is well documented, his hand is not apparent in the prisoner photographs in the earliest volume of records held by the Public Records Office of Victoria.⁵⁸⁸ These are now digitised apparently for the convenience of family historians: they are presented as individual digitised files by name rather than being presented in the date order in which the volume was created. This makes it very difficult to ask questions of the series as a whole. I sampled every sixth listing in the earliest volume, and also searched any entries with aliases listed, in the expectation that over a long criminal career a man’s record may include photographs. Given that we know that photography began in late 1872, it seems strange that none of the men whose only offences occurred in 1873 were photographed. The record of one man provides a *terminus ante et post quem* for his photograph: John Robshaw was sentenced to four years in April 1874 and died in July 1876⁵⁸⁹, almost ten years after Nettleton’s appointment. Unlike Nettleton’s reported outdoor practice, all seem to be conventional studio portraits. None show the Pentridge wall backdrop that is apparent in his bushranger photographs as late as 1880. Even though Nettleton’s practice

⁵⁸⁶ *Argus*, 11 November 1880, 4.

⁵⁸⁷ VPRS 515/P0001/volume 17 Central Register of Male Prisoners, No.10926, Public Records Office of Victoria. Several other images of Ned Kelly exist, including one that may have been taken in March 1871 when he was aged either 20, 19 or 15, there being some doubt about his birth date. Interestingly another photograph, taken in 1873, was touched up by another photographer, William Burman, and his head pasted onto the body of another bushranger to make him appear older and pass it off as a ‘last portrait’. Burman registered copyright of this doctored image in 1880. Catalogue entry, image title ‘Portrait of Ned Kelly’, image number H96.160/200, State Library of Victoria.

⁵⁸⁸ VPRS 515/P0001/volume 17 Central Register of Male Prisoners, Public Records Office of Victoria.

⁵⁸⁹ John Robshaw 10646, VPRS 515/P0001/volume 17, Central Register of Male Prisoners, Public Records Office of Victoria.

spanned the period c1865-1890, there is the same internal inconsistency across the images that I observed in the early New South Wales examples. Some are vignettted, some are not: some look left, others right. Some are frontal. Some seem underexposed, more are overexposed. They do not seem to me to be the work of one hand, and not necessarily a professional hand.

From Standish's correspondence it seems clear that he saw these photographs as making a major contribution to police work: he had multiple copies made and presumably intended at least some for circulation.⁵⁹⁰ There is, however, no evidence that images were transmitted through the *Victorian Police Gazette*, which was already regularly circulated to all police stations. The earliest photographs printed in the *Victorian Police Gazette* do not appear until 27 April 1898, reflecting the limitations of late nineteenth century newspaper printing technology. Nor do earlier issues refer frequently to the use of photographs. The earliest mention of the circulation of photographs relates to an escaped prisoner in March 1876.⁵⁹¹ Following that, another appears in December of that year, one more in early 1877, two in late 1878, three in 1879 (including the photographs of Ned Kelly already discussed), and two in 1880.⁵⁹² Given that over this period at least 42 prisoners escaped from penal institutions, not counting those who escaped from lunatic asylums, photography seems to have played a very small role in attempts to recapture absconders.⁵⁹³ Written descriptions continued to be the norm. Notices concerning some of these bolters had been syndicated from the *Tasmanian Police Gazette*, and included some of the Port Arthur subjects. Curiously, despite the fact that we know that photographs had existed since late 1873 or early 1874 of George Nutt or White, John Smith, George Fisher, Michael Gilmore and Thomas Fleming, no mention is made of their existence in notices related to their having absconded in either the *Tasmanian* or the *Victorian Police Gazettes*.

⁵⁹⁰ Chief Commissioner Standish to John McLerie, Inspector General of Prisons in New South Wales, 10 October 1872, Police Photography file, Victoria Police Historical Unit.

⁵⁹¹ *Victorian Police Gazette*, 7 March 1876, 65.

⁵⁹² *Victorian Police Gazette*, 13 December 1876, 317: 3 January 1877, 4: 27 November 1878, 324: 31 December 1878, 365: 15 January 1879, 7 (Ned Kelly): 29 October 1879, 273: 10 December 1879, 307: 12 May 1880, 129: 3 November 1880, 292.

⁵⁹³ I have excluded these inmates because I do not know if they were photographed, especially if they had not also been charged with a crime.

Unlike in Britain, where a similar recommendation made its way into legislation, there is no mention of the use of photography in any of the nineteenth century Victorian acts related to the police. There is also no mention of the use of photography in the Statute of Gaols Act 1864 nor in its amendment passed in November 1871, nor in any later act related to gaols.⁵⁹⁴ However, in the *Rules and Regulations relating to Penal Establishments and Gaols*, published in Melbourne in 1888, there is a section on ‘Photographing and Description of Prisoners’. Prisoners were to be photographed upon admission and at any other time the Inspector General decreed. These photographs were not to be given or sold to any person ‘other than those whose public duty it may be to receive and use it for the purposes of identification’.⁵⁹⁵ While it was the responsibility of the police to maintain a register that included photographs for the purposes of identification, these Rules and Regulations assign responsibility for the creation of the photograph to the Inspector General of Prisons, as Standish had wished. The earliest reference that I can find to the use of photographs for identification in the *Victoria Police Gazette* is 10 January 1877, alerting readers that photographs of an escaped prisoner from Williamstown had been lodged at eleven rural police stations in that area and in the Melbourne Detective Office.⁵⁹⁶ In 1878 a supplementary report from Victoria Police, compiled by the Detectives Office in Melbourne, listed all the police stations to which photographs of Edward ‘Ned’ Kelly had been sent.⁵⁹⁷

South Australia

In South Australia the idea of employing a prison photographer had been mooted by the Premier the Hon. Henry Bull Templar Strangways in the House of Assembly on 14

⁵⁹⁴ An Act to consolidate the Law relating to Gaols, [2nd June, 1864.], CCXIX, 27 Vic, 209, para. 7. Under this Act, a new position was created, the Inspector General of Penal Establishments. This person was to have ‘care, charge and control of all gaols’.⁵⁹⁴ The day-to-day management of individual institutions seems to have remained in the hands of a ‘superintendent overseer’. 36 Vict. No 431, 17 Dec. 1872: 37 Vict. No. 463, 29 Oct. 1873: 51 Vict. No. 921, 3 Oct. 1887: 52 Vict. No. 976, 3 Dec. 1888.

⁵⁹⁵ *Rules And Regulations Relating To Penal Establishments And Gaols*, Melbourne, 1888, 22.

⁵⁹⁶ *Victoria Police Gazette*, 10 January 1877, 16.

⁵⁹⁷ Listings of police stations where photos of Kelly were sent, 8 January 1879: VPRS 4965 Consignment P0 Unit 4 Item 52 Record 1 Document.

September 1866.⁵⁹⁸ He saw that improvements were both necessary and possible regarding ‘the discharge of prisoners from the stockade’. A notorious thief named Cooper had stepped up into the big league by stabbing a constable. Strangways pointed out that, although the man had been convicted many times, he was ‘unknown to many of the police force, the new hands having no opportunity of acquiring a personal knowledge of him’. Strangways suggested that South Australia should follow Victoria's lead, where ‘It was the practice...to take a prisoner’s photograph before he was discharged, and these likenesses were placed in the hands of the detectives’.⁵⁹⁹ Strangways’ suggestion bore fruit, and in December 1866 Frazer Crawford of the Adelaide Photographic Company was appointed government photolithographer.⁶⁰⁰ In a letter to the Surveyor General three months after his appointment, Crawford proposed that, out of the total of 257 prisoners then at the stockade (Yatala) and at the Gaol, he (or his assistant Mr Perry) should photograph

190 such characters as the Sheriff or Commissioner of Police might desire to have photographs of for police purposes ... The best method to be adopted would be to take vignette portraits of them in the open air on the shady side of one of the courts, using a blanket for a background. Such portraits would be little inferior as works of art to those taken in the best lighted studios, and the work might be proceeded rapidly in fine, tolerably calm weather. A dark cell would do for a photographic dark room ... I do not think that more than 10 negatives on the average could be taken daily ... When once the prisoners in the stockade are taken such might be kept at the gaol to

⁵⁹⁸ A photograph had been used to establish identity in a fraud case in 1863, but the circumstances are unusual. The photograph was sent to England to establish the man’s identity, of which there was some doubt. At that stage, he was still on trial and had not yet been convicted. *South Australian Register*, 14 October 1863, 3.

⁵⁹⁹ *South Australian Register*, 15 September 1866, 3.

⁶⁰⁰ Crawford was appointed to the Survey and Crown Lands Department. *South Australian Advertiser*, 14 December 1866, 2. His section’s main function was to print maps for all Government departments but it also printed photographs to illustrate Government publications. State Records of South Australia website, <http://143.216.32.39/archivessrsa/t1tbmain.asp>, viewed 25 February 2012.

be used when required. The cost of printing each card picture would amount to about two pence ...⁶⁰¹

By the end of August 1867 Crawford had supplied 150 *cartes de visite* portraits of prisoners to the Commissioner of Police.⁶⁰² According to Clyne, ‘two photographs of each convicted felon’ were supplied to police, taken before and after their hair was cut. Clearly the practice was found to be a valuable one, for a police photographer was appointed in 1880.⁶⁰³

Despite Crawford’s appointment, however, no legislation passed at that time relating to gaols or to the police makes any reference to photography. There is nothing in the Police Act of 1869 or in the Habitual Criminals Act of 1870 to establish the practice formally.⁶⁰⁴ At this time, the police force consisted of six police divisions, each controlled by an inspector and the whole controlled by a commissioner.⁶⁰⁵ Despite the fact that throughout the 1870s the force was desperately overstretched and under strength, given such centralised control the circulation of photographs should have been possible, but I can find no evidence that this occurred.⁶⁰⁶ Unfortunately, I have been unable to discover the whereabouts of these early photographs, and so I cannot establish a context for their production or use. The Art Gallery of South Australia lists 24 photographs by Crawford, none of which are of prisoners. The State Library of South Australia’s catalogue lists no images by Crawford of prisoners. The catalogue at State Records of South Australia does not list a Frazer Crawford. According to their website, confirmed by their staff, photographs are to be found on the record sheets of prisoners at the Yatala Labour Prison

⁶⁰¹ Noye, R., ‘Government photolithographer’, http://www.artgallery.sa.gov.au/noye/Misc/Misc_set.htm letter dated 25 March 1867. This information on this website was compiled by South Australia’s highly respected photohistorian Robert James ‘Bob’ Noye in the late 1990s. When Bob Noye died in August 2002 his website was still at the developmental stage and, other than an introduction and some links, has not been altered since his final update. The Art Gallery of South Australia now owns the R.J. Noye Collection of Photography.

⁶⁰² R. Noye, http://www.artgallery.sa.gov.au/noye/Misc/Misc_set.html.

⁶⁰³ Clyne, *Colonial Blue*, 158.

⁶⁰⁴ Police Act 1869, Vic 15. Habitual Criminals Act 1876.

⁶⁰⁵ G.M.O’Brien, *The Australian Police Forces*, (Melbourne: Oxford University Press, 1960), 72.

⁶⁰⁶ Clyne, *Colonial Blue*, 169-70.

after 1883.⁶⁰⁷ Photographs are not mentioned on records from any of the other South Australian prisons until the mid twentieth century.⁶⁰⁸

Conclusion

Like every other technology used to identify offenders, photography was only as useful as the system in which it was embedded. As Finnane observed: '[These] technologies depended on the organisational characteristics of the police department, with its capacity for communication and for record-keeping'.⁶⁰⁹ A fragmented, decentralised force, as Tasmania's was, seems on the face of it less likely to make efficient use of a resource like photography than, for example, a centralised, effective force like the Victorian police. But it seems that no colonial force was able to utilise the potential of photography, despite the existence of bureaucratic structures that should have facilitated it in every colony except Tasmania. All colonies had Police Gazettes, but printing technology did not allow the publication of photographs until the late 1890s. Police stations were, however, in touch with one another and able to exchange documents, as is apparent in the occasional reference to photographs being circulated to numbers of stations. But given that photographs were being generated in gaols of men who fell into the class of 'habitual criminals', as attested by the multiple convictions on their record sheets, it seems that little use was made of them to identify and catch escapees or repeat offenders. The only use that I can confirm is that they were stuck on the prison record sheet. On occasions, this was presumably so that prison staff could make sure they had been sent the right man. But other photographs were taken on discharge. Perhaps this was so that when the man returned to prison, as he inevitably must, his identity could again be confirmed and his list of convictions attached to him, to follow him wherever he went.

⁶⁰⁷ Register of Prisoners, Yatala Labour Camp 1866-1931, GRG54/41, <http://143.216.32.50/archivesrsa/t1tbmain.asp>, viewed 10 June 2012, State Records of South Australia.

⁶⁰⁸ Register of Prisoners, Gladstone Gaol 1953-63, <http://143.216.32.50/archivesrsa/t1tbmain.asp>, viewed 10 June 2012, State Records of South Australia.

⁶⁰⁹ Finnane, *Police And Government*, 79.

CHAPTER 5: ‘ ... a mania for Amateur photography’: the authorship of the Port Arthur photographs⁶¹⁰



‘Port Arthur during occupation’, c1875
 Inscribed lower left, ‘Enlarged from a stereoscopic negative by AH
 Boyd Esq.’
 Mitchell Library, State Library of New South Wales

The use of photographs in other colonies to identify absconding miscreants was known in Tasmania as early as 1863. An embezzler from Melbourne had fled, and a photograph had been lodged in the Commissioner’s office in Hobart in case he turned up there.⁶¹¹ Over the next decades, wrongdoers and ‘missing friends’ from as far away as California and London who sought anonymity in Tasmania took the risk that a photograph of themselves might be lodged in the Hobart Commissioner’s Office.

⁶¹⁰ E. M. Hall, ‘The Young Explorer’, typed script of a story read at a literary society meeting c1930, unpaginated, Tasmanian Archive and Heritage Office (TAHO).

⁶¹¹ *Tasmanian Police Gazette*, 26 June 1863, 99.

As it had in New South Wales, the local newspaper seems to have played a role in disseminating to Tasmanians a knowledge of, and enthusiasm for, the use of photography in criminal management. In October 1872 the *Mercury* reprinted an article from the *Law Magazine* in London under the heading ‘General Extracts’, a grab bag of widely disparate topics that the Editor presumably thought would be of interest to his readers. After the results of the Cambridge University Entrance exams for women and a report on working men’s strikes in New York came ‘Crime in the Metropolis’. This dealt with improvements in policing, and particularly the beneficial impact of police supervision of prisoners and habitual offenders through the use of photography. It enthused: ‘The system of supervision by the police, the accurate registration and photographing of prisoners, although still in its infancy and requiring further development, has given the police a greater knowledge of the previous life of criminals and a considerable control over their actions ...’⁶¹² A mere ten months later, someone began to photograph the prisoners under sentence who remained at Port Arthur.

A question of attribution: the maker of Port Arthur’s convict portraits

Founded in 1830 as a timber getting camp for a small team of convict axe-men, sawyers and their guards, by the middle of the nineteenth century the Port Arthur Penal Establishment was an industrial settlement of almost two thousand people, including almost 1100 convicts. These men had reoffended since arriving in the colony and received long sentences. They produced huge quantities of goods for the government and the private market, ranging from nails to ships. But by the 1870s, while most of the inmates were men still under sentence, there was also an increasing population of paupers, lunatics and invalids, many the product of the convict system. By the time the settlement began to wind down, it was a shadow of its former self. It could not muster enough able-bodied men to pull the fire wagon when one of the buildings caught fire in 1877.⁶¹³ It closed in that year.

⁶¹² *Mercury*, 24 October 1872, 3.

⁶¹³ *Launceston Examiner*, 26 February 1877, 2.

Commandant Adolarious Humphrey Boyd, the penultimate commandant, arrived in June 1871 and was given the unenviable task of beginning to wind up the settlement. The men still able to work were to be shipped off to serve the rest of their sentences at Hobart Gaol, while the paupers, lunatics and invalids were destined for various grim welfare establishments. This was the setting for Tasmania's first forensic photographic project, although its genesis and purpose remain shrouded in mystery.

The photographer who made the portraits of Port Arthur's convicts did not sign his work (see Appendix 1 for a complete list of images). His (and I think that given the exclusively male nature of the convict system's administration it is safe to say 'his') identity is not conclusively known. In this chapter, however, I will argue for one of the two men who have been proposed as the originators of this work. But first the question must be asked - does it matter who took these images? Are they not in themselves sufficient as documents? I do not believe that this is the case. As I have argued in Chapter 1, the photographer's experiences, opinions, obsessions and prejudices shape his work just as surely as they do the work of a documentary historian. As E.H. Carr reminds us, the making of history 'is a selective process, in which some facts are thought worthy of accumulating and preserving and others are not'.⁶¹⁴ A photographer, in the case of a portrait, dresses and poses the subject to express his understanding of what is necessary and meaningful to include. So, as Carr puts it, 'It follows that when we take up a work of history, our first concern should be not with the facts that it contains but with the historian who wrote it'.⁶¹⁵ And further, 'We must not only study the historian but his social and historical environment, because he is a product of both'.⁶¹⁶ As a result, in order to understand why the men in the photographs appear as they do, we must understand what the photographer thought about both his subject matter and the process in which he was engaged. Since we do not know for certain who the photographer was, this may seem like a daunting, indeed an impossible, task.

⁶¹⁴ E.H. Carr, *What Is History?*, (London : Macmillan, 1972), 10.

⁶¹⁵ Carr, *What Is History?*, 10.

⁶¹⁶ Carr, *What Is History?*, 24.

The first component of that task, therefore, is to attempt to identify the photographer. Two men have been credited with the job – Adolarus Humphrey (A.H.) Boyd and T.J. or Thomas Nevin. Boyd was Commandant from June 1871 to 1 April 1874. Nevin was a Hobart photographer, who ran a studio in the late 1860s and early 1870s. The documentation surrounding, or rather not surrounding, these images in public collections cannot arbitrate in this contest. There is a considerable range of attributions on the databases of the holding institutions, none with a firm foundation in nineteenth century records. This is all the more surprising when many of these images are held in some collections only as photocopies obtained from a single common source, the Queen Victoria Museum and Art Gallery (QVMAG). When I began this research in 2006, QVMAG attributed the work as follows: ‘Photographer unknown but possibly taken by A.H. Boyd or T.J. Nevin’. This had not always been the case however. In the past, they attributed them only to Nevin.⁶¹⁷ The Tasmanian Archive and Heritage Office (TAHO) obtained their images from QVMAG, but followed only the Thomas Nevin attribution. The Tasmanian Museum and Art Gallery (TMAG) attributes their images to A.H. Boyd. The Port Arthur Historic Site Management Authority (PAHSMA) makes no attribution on its own holdings, but the copies obtained from QVMAG are attributed to A.H. Boyd. The National Library of Australia (NLA) initially also followed the Thomas Nevin attribution, but have now changed their database to read ‘Formerly attributed to Thomas J. Nevin, the portraits are now considered more likely to have been taken by A.H. Boyd’.⁶¹⁸ QVMAG also now attributes the work as follows: ‘Formerly attributed to Thomas J. Nevin, the portraits are now considered more likely to have been taken by A.H. Boyd’. Unfortunately, none of the institutions involved have any documentation that can shed light on this confusion. This material entered their collections during the first half of the twentieth century with no documentation other than, occasionally, the name of the collector who donated it.

⁶¹⁷ A.M. Willis, *Picturing Australia: A History Of Photography*, (Sydney: Angus & Robertson, 1988), 98 note 49.

⁶¹⁸ My paper on this topic apparently convinced library staff that Boyd was more likely than Nevin. J. Clark, ‘A Question of Attribution: Port Arthur’s Convict Portraits’, *Journal Of Australian Colonial History*, Vol. 12, (2010), 77-97.

A number of scholars have expressed an opinion about the identity of the photographer and what follows is a survey of those attempts. In the exhibition at QVMAG in 1977, curated by John McPhee, the images were attributed to Nevin. McPhee corresponded with the librarian of the then Tasmaniana Library (now the Tasmanian Archive and Heritage Office), the late Geoffrey Stilwell, to obtain biographical information about Thomas Nevin, but in the absence of any documentation related to the exhibition it is not possible to tell whether McPhee carried out further research or simply accepted QVMAG's attribution. At that time, he had no reason not to do so. Like McPhee, Stilwell accepted this attribution; he also would have had no reason to question it, unless he had any information that pointed elsewhere. There is no evidence that he did.

Over the ensuing 35 years matters seem to have crawled towards some resolution. It is worth canvassing what little has been written about this intriguing body of material to see where researchers have tended, and on the basis of what evidence. Some have simply repeated the attribution supplied to them by the institution from which they sourced the image. As a result, some attribute the images to Boyd, some to Nevin, and some have a bet each way. One or two others have attempted a comprehensive appraisal of the available evidence to try to clarify matters.

Ann Marie Willis discussed two convict *cartes de visite* (*cdvs*) in her exhibition catalogue, those of John Nestor and Emmanuel Blore, and attributed them to 'A.H. Boyd/T.J. Nevin'.⁶¹⁹ She also noted that 'Examples held by the Queen Victoria Museum and Art Gallery, Launceston, had until recently been attributed to T.J. Nevin, a photographer who had worked with Alfred. Chris Long suggests that they were taken by the Commandant of Port Arthur, A.H. Boyd'.⁶²⁰ Willis did not scrutinise the evidence for either of these attributions but indicated that, in her view, the authorship remains unproven and unclear.

Chris Long, one of Australia's pre-eminent historians of photography, has published extensively on Tasmanian photographers. According to Long:

⁶¹⁹ Willis, *Picturing Australia*, 98.

⁶²⁰ Willis, *Picturing Australia*, 98 note 49.

A.H. Boyd, Superintendent of Port Arthur from June 1871 to March 1874, was a very keen amateur photographer and is known to have had a room fitted up in his garden as a studio and darkroom ... From the amateurish nature of the convicts' poses in their official photographs, it is quite possible that Boyd may have been the photographer.⁶²¹

To support this attribution, he presented the following evidence, based on the few facts that were known at that time.

1. Boyd brought photographic gear to Port Arthur at exactly the time of the earliest known convict photographs (1873-74).
2. The number of photographic glasses despatched to Port Arthur, in July [actually August] 1873 represents a scale of photographic activity rather greater than that which an amateur, taking photographs purely for pleasure, would require.
3. The wet-plate process then in vogue required that the plate should be developed immediately after exposure. For convict photography on the scale indicated by the number that survive, a permanent darkroom must have been available on site. It is highly likely that the photographs were taken at Port Arthur, and highly unlikely that there would have been a darkroom there apart from the Commandant's own.⁶²²

While Long acknowledged that Nevin may have taken some of the convict photographs, he cautioned that 'commercial photographers sometimes printed and mounted photographs from amateurs' negatives. So such examples may also be by Boyd'. His

⁶²¹ C. Long, *Tasmanian Photographers 1840-1940, A Directory*, (Hobart: Tasmanian Historical Research Association, 1995), 35.

⁶²² Long, *Tasmanian Photographers*, 36.

conclusion was that ‘Boyd’s authorship remains the most likely interpretation of known fact, unless some hard evidence is found to support a contrary conclusion’.⁶²³

In *The Dictionary of Australian Artists; painters, sketchers, photographers and engravers to 1870*, the entry on Nevin by Joan Kerr and Geoffrey Stilwell was not definitive. The image used to illustrate their article was sourced from QVMAG but, despite the fact that the institution was not backing Nevin exclusively by the date that this book was published, they tentatively attributed the images to him alone. Perhaps the entry was written some time before 1988. They said:

Some of the cartes-de-visite identification photographs of Port Arthur convicts taken in the 1870s ... have been attributed to Nevin because they carry his studio stamp. He possibly held the government contract for this sort of criminal recording ...⁶²⁴

In fact, only three of the almost 200 *cdvs* bear Nevin’s stamp.⁶²⁵ I have searched the *Government Gazette* for 1873 and 1874, where all government tenders were advertised, for any government tender to photograph convicts. I can find no evidence for the existence of such a tender.

In examining these images for his Master’s thesis, Warwick Reeder noted that the only clues to the photographer’s identity were one *cdv* at QVMAG bearing Nevin’s stamp, three held at TMAG bearing the stamp of the Anson studios, and one stamped J.R. Milner.⁶²⁶ While Nevin worked intermittently as a photographer in Hobart between 1867

⁶²³ Chris Long, pers. comm., 12 March 2006.

⁶²⁴ J. Kerr (ed.), *The Dictionary Of Australian Artists: Painters, Sketchers, Photographers And Engravers To 1870*, (Melbourne: Oxford University Press, 1992), 568. Several technically accomplished photographs by Boyd have since been located.

⁶²⁵ The Mitchell Library, State Library of New South Wales, holds two, James Mullins and William Smith. QVMAG holds another copy of William Smith. Neither man was at Port Arthur in 1873-4.

⁶²⁶ W. Reeder, ‘The Democratic Image: the carte-de-visite photograph in Australia 1859-1874’, M.A. thesis, (Australian National University, 1995). Two more have since been located at the Mitchell Library, but I shall argue in chapter six that none of these *cdvs* were taken at Port Arthur.

and 1875 and perhaps for a brief period again some time in the early 1880s, and the Anson Brothers were well known between 1878 and 1895, nothing is known about Milner. Based on his consideration of the available evidence, Reeder concluded that ‘the evidence strongly suggests that they were made by Boyd’.⁶²⁷ To account for the range of studio stamps, he postulated that the Port Arthur plates might have been acquired by commercial photographers, such as Nevin, the Anson Brothers or John Watt Beattie after Port Arthur closed in 1877.⁶²⁸ Anson Brothers worked in Hobart until 1895 and Beattie began business in his own name in 1891 (by taking over Anson Brothers). Beattie bought up many collections of glass plates over the years, printed them and sold them under his own name, thereby causing generations of confusion among photographic historians.⁶²⁹ Beattie’s postcards and framed images could not have been produced until the early 1890s at the earliest. This coincided with the burgeoning of the tourist trade at Port Arthur.⁶³⁰ The vast majority of the *cdvs* are not presented as postcards, however, and Reeder felt that ‘It seems more likely that the surviving copies may have come directly from Boyd’s tenure at Port Arthur, Boyd making copies to circulate to police authorities as directed by the Colonial Secretary in 1874’.⁶³¹ This hypothesis will be discussed later in this thesis.

Helen Ennis accepted Long’s and Reeder’s attribution to Boyd. Isobel Crombie attributed a *cdv* of convict Henry Smith to A.H. Boyd, an attribution with which she was supplied by the holder of the image, TMAG. She also referenced Helen Ennis who supported that

Also then unknown to Reeder were the collections at the Tasmania Archive and Heritage Office and the Port Arthur Historic Site, which also include Beattie postcards.

⁶²⁷ Reeder, ‘The Democratic Image’, 71-2. In fact Boyd quit his post on 25 April 1874, *Mercury* 25 February 1874, 3.

⁶²⁸ Reeder, ‘The Democratic Image’, 72.

⁶²⁹ Some of the photographs once attributed to Beattie include those taken of Aboriginal people at Oyster Cove by Bishop Nixon in the 1850s, before Beattie arrived in Tasmania in 1878.

⁶³⁰ D. Young, *Making Crime Pay: The Evolution Of Convict Tourism In Tasmania*, (Hobart: Tasmanian Historical Research Association, 1996), 59-83.

⁶³¹ Young, *Making Crime Pay*, 73

attribution.⁶³² She concluded: ‘A.H. Boyd ... used the camera to take an inventory of the men incarcerated in the penal system of Tasmania ...’⁶³³

In summary, while some consideration was given by scholars to Nevin’s claim to authorship, no writer who had carried out any detailed research seemed inclined to award the palm to him. Eight scholars have expressed an opinion through their attribution of these images. Those who have undertaken some research – Long and Reeder – find pretty definitely for Boyd. Ennis followed Long and Reeder, and Crombie took her attribution to Boyd from the TMAG catalogue. Willis remained undecided and found neither case proven. McPhee, Stilwell and Kerr plumped for Nevin, but I can find no evidence of the presentation of supporting documentation or original research on their part. Since McPhee was working with the QVMAG collection, he may have taken that information from their catalogues. Stilwell may have had access to some persuasive documentation, but no one else has sighted it and so far it cannot be found. Support for Nevin seems to rest solely on acceptance of an attribution supplied by QVMAG, which may have rested on their holding of one *cdv* with Nevin’s studio stamp. On balance, scholarly opinion backed by an active enquiry into the evidence favoured Boyd.

Surviving archival documents seem to support Boyd’s claim and shed further doubt on Nevin’s. Boyd was at Port Arthur between 1871 and early 1874, finishing his almost three-year tour of duty on 31 March 1874.⁶³⁴ There is evidence that this photographic project was in the planning, if not actually begun, well before the date of 1874 inscribed on the back of the cartes de visite. The necessary infrastructure was in place by late 1872. In a list of work and repairs to buildings at Port Arthur, dated 6 November 1872, is an entry ‘repaired lock, photographic house’.⁶³⁵ On 15 July 1874, work was ordered on ‘fittings at Photograph House’. The earlier works were ordered by the Commandant, rather than as was usual by the Overseer of Works, indicating Boyd’s proprietorial

⁶³² I. Crombie, *Body Culture: Max Dupain, Photography And Australian Culture 1919-1939*, (Melbourne: Peleus Press, 2004), 16 fn.44, 39, 44.

⁶³³ Crombie, *Body Culture*, 46 fn.54.

⁶³⁴ Tasmanian Papers 320, Reel CY4529, Mitchell Library, State Library of New South Wales.

⁶³⁵ Tasmanian Papers Vol. 16, Mitchell Library, State Library of New South Wales.

interest.⁶³⁶ The evidence strongly suggests that the studio was established at Port Arthur before November 1872. Given the nature of early photography, which required the wet-plate to be developed immediately after exposure, it must have contained both a studio space where photographs could be taken and the requisite darkroom facilities.

Unfortunately, the request for works did not give a location for this building, but a contemporary account placed it in the garden of Boyd's house. In 'The Young Explorer', her autobiographical account of visits to Port Arthur when she was a child, Edith Mary Hall, a Boyd descendant, recalled that Commandant Boyd

[had] a mania for Amateur Photography. He had a room fitted up in the garden and was always on the lookout for sitters. The young explorer was a proud and constant occupant of the only available chair ...⁶³⁷

Further evidence for its general location may be established through a later entry. In December 1877, after the site closed, a report by the caretaker to the Colonial Secretary William Moore listed damage done during a visit by 'day-trippers'. This includes 'Photographic House; small window at back forced in'.⁶³⁸ The damaged buildings are listed in order, moving from the east to the west along the hill on the south side of Mason Cove. From this we may deduce that the photographic house was located among the other administrative buildings between the Commandant's House and the Hospital, somewhere near the Reading Room in the Law Courts. This fits a putative location in the Commandant's garden.

We know that Boyd was a keen amateur photographer from a number of other references to his hobby, both direct and indirect. A letter to the editor of the *Mercury* newspaper in

⁶³⁶ A.H. Boyd, 'Report on the Establishment of Port Arthur for 1873, *House Of Assembly Journals* Vol. XIX, Paper 26, see for example repairs ordered for the Penitentiary on 24 May 1873.

⁶³⁷ This must be the 'Photographic Room' that underwent repairs in 1872 and 1874. Hall, 'The Young Explorer', unpaginated.

⁶³⁸ CSD10/58/1360, 30 December 1877, TAHO.

1873 jeers at Boyd as ‘the Commandant, who desires to make for himself a name ... as an amateur photographer of the day ...’⁶³⁹ The author signed himself only as ‘Querist’, but he went on to enumerate the many failings of Boyd’s administration as though he were very familiar with the inside workings of the site.⁶⁴⁰ He criticised the state of the buildings, staff appointments, the state of the settlement’s flocks and ‘improvements’ that Boyd was in the process of making. Clearly he was familiar with the hobby which Boyd was obviously then pursuing at Port Arthur.

Given the significance, and the novelty, of this undertaking it is somewhat surprising to find so little official documentation extant. In one index of correspondence is listed ‘11 February 1873: chemicals for photographing prisoners’ but frustratingly the letter itself is missing.⁶⁴¹ The indent of the cargo carried from government stores in Hobart via the government schooner *Harriet* shows the arrival of a series of items later the same year that are either clearly or possibly associated with photography. They are listed as government orders. On 28 January 1873 the Port Arthur storekeeper received two bottles of ‘acids’; on 11 February 1873 ‘chemicals for photographing convicts’; on 12 April ‘two bottles of acids’; on 14 July 1873 two thermometers; on 30 July 1873, ‘288 photographic glasses’ and ‘one bottle of crystal varnish’; on 12 August 1873 one case of ‘photographic material’; on 28 August 1873 one ounce of ‘pyrolignite acid’ and one pound of ‘acetate of soda’.⁶⁴² These two substances, more correctly named pyroligneous acid and acetate of soda, were used to develop and fix cadmium collodion images.⁶⁴³ In August 1873 at the latest, Boyd could have been equipped to undertake a large-scale photographic project.

⁶³⁹ *Mercury*, 20 June 1873, 2. I am indebted to Michael Wadsley for drawing this to my attention.

⁶⁴⁰ It has not been possible to identify the writer of this letter. His *nom de plume* was in common use in many newspapers, simply meaning ‘one who questions’ and it would seem from the date spread of the use of this name in the *Mercury*, from 1860-1945, that several Tasmanians used it.

⁶⁴¹ CSD8/2/890, TAHO.

⁶⁴² CSD Index 9, TAHO. The location given for this document is CSD7/46/890, which includes a number of other documents relating to requisitions and damage to the government boat *Harriet*. Unfortunately, the document that relates to this shipment and so might have given us more details is missing, but the entry in the Register is abundantly clear. Pyrolignite acid was used to coat collodion plates. Alan Davies, Curator of Photography, Mitchell Library, State Library of New South Wales, pers. comm., 9 May 2008. CSD7/1/60 file 1470, TAHO.

⁶⁴³ J. Towler, *The Silver Sunbeam*, (New York: Joseph H Ladd, 1864), 133.

There are a number of references confirming Boyd's status as an amateur photographer. He received several private orders of photographic materials via the Harriet at the same time as the government orders were arriving: on 28 January 1873 '1 box night light' (for a dark room?): on 21 April '1 case with glass': on 30 July 1873 '1 box glass'.⁶⁴⁴ Shortly before his departure from Port Arthur, on 10 March 1874 he personally sent 'a bottle of negative varnish' to a Hobart chemist, Mr Henry Hinsby.⁶⁴⁵ This chemical was used to preserve negatives. Perhaps the government had purchased it from Hinsby and Boyd now returned this as surplus to requirements. In the list of Boyd's household effects that were shipped from Port Arthur on 2 April 1874, there were listed 'a photographic stand' and 'a photographic tent', so we know that he had his own equipment.⁶⁴⁶ Few surviving images from his apparently prolific output have so far been positively identified. TMAG holds a photograph of the Isle of the Dead attributed to Boyd and the Mitchell Library holds a photograph inscribed 'Port Arthur under occupation/enlargement from a stereoscopic view by AH Boyd Esq'.⁶⁴⁷ Two similar images also exist; one shows a scene slightly to the left of the Mitchell's image and taken from a very similar vantage point; the other shows the same scene but from a slightly lower vantage point.⁶⁴⁸ These were apparently taken on the same day and at the same time. Smoke billows from the same chimneys and three figures appear on the hospital veranda in each image. These may therefore also plausibly be attributed to Commandant Boyd. All three images are the work of a very competent photographer and developer.⁶⁴⁹

⁶⁴⁴ CSD7/1/60 file 1470, TAHO.

⁶⁴⁵ Tasmanian Papers 320 Reel CY4529, 10 March 1874, Mitchell Library, State Library of New South Wales.

⁶⁴⁶ Tasmanian Papers 320 Reel CY4529, 2 April 1874, Mitchell Library, State Library of New South Wales.

⁶⁴⁷ PXD 511/ f 10, 'Anson Bros, Views in Tasmania', Vol. II, Mitchell Library, State Library of New South Wales: TAHO, NS 1013/1830 and NS 30/4153/1: Tasmanian Museum & Art Gallery Q1647 & Q12929: Port Arthur Historic Site Management Authority 996.0033 & 998.0633.

⁶⁴⁸ NS 1013/1830, TAHO: Q1647 & Q12929, Tasmanian Museum & Art Gallery: also held NS 30/4153/1, TAHO: Port Arthur Historic Site Management Authority 996.0033 & 998.0633.

⁶⁴⁹ Interestingly, the two latter images are captioned 'Port Arthur during occupation, AD1860, Beattie, Hobart'. The photographer John Watt Beattie bought glass plates produced by others and made many prints from them which he sold over his name, and it may be that a number of images currently attributed to Beattie may also be Boyd's.

Eleven of the men who were photographed in this series left Port Arthur for Hobart Gaol on 23 August 1873. Unless there is reason to doubt the inscription on the back of each *cdv*, ‘Taken at Port Arthur’, all of those who had left by this date must have been photographed by Boyd (if Boyd was indeed the photographer) at Port Arthur by 23 August 1873 at the latest, meaning that his project must have begun by that date. Apart from the shipment on 28 August 1873, all of the equipment listed in the indents from the *Harriet* had arrived by this date. Boyd may already had his own, personal, supply of the chemicals in the 28 August shipment, enough to begin the project while awaiting a larger supply from government. Indeed, he would have had to start before they arrived, as these men were to be removed. Someone had certainly begun to photograph the men of Port Arthur in that year. A notice in the *Tasmanian Police Gazette* for December 1873 advised that John Smith per *Mangles* had escaped from Port Arthur, and that ‘photographs [had been] distributed’, presumably to police stations.⁶⁵⁰ A John Smith arrived on the *Mangles* on 1 August 1835 but his record stops for lack of room in the 1840s and I have not been able to find any further record of him. No image inscribed ‘John Smith’ has been found and he does not appear in the supplementary lists of probable Boyds which I shall discuss later in this chapter, or men removed from Port Arthur before closure.⁶⁵¹

So who could this photographer have been? There is no record for this period in the *Government Gazette* of a tender being let to employ a photographer at Port Arthur or in any other gaol in the colony. Boyd already had a reputation as an amateur photographer and was on the spot. It is significant that the *Harriet*’s indent clearly separates government orders from Boyd’s private orders. Apart from his personal practice, of which we have several examples and the testimony of one of his subjects Miss Hall, another large project was clearly afoot at the behest of government, and surely this is the photographic documentation of inmates. Boyd is the obvious candidate for the work. One might then expect that there would be some mention of this project in Boyd’s reports and official correspondence for 1873 and/or 1874; none has so far been found, which is curious. But it is clear that those in authority did know about the project and were making

⁶⁵⁰ *Tasmanian Police Gazette*, 12 December, 1873, 203.

⁶⁵¹ GD36/1, TAHO.

use of its output. Shortly after the December 1873 notice in the *Tasmanian Police Gazette*, the Assistant Colonial Secretary B. Travers Solly wrote to Boyd on 9 January 1874 to ask him for

half a dozen copies of the photographs of the two “Greigsons” who absconded yesterday from the gang employed in the Domain. It will be a good plan to send up photographs of all prisoners transferred to Hobart Town and I would esteem it a favour if you will do so at your early convenience.⁶⁵²

By December 1873 it would seem that Boyd had already taken at least some photographs of the men in his charge and had sufficient skill and facilities to make multiple copies of them. It seems likely that he had already taken the photograph of the errant John Smith and of others, since Travers Solly asked for more than just the two Gregsons. In March 1874 Boyd wrote to the Colonial Secretary, advising him that he was forwarding photographs of ‘Alfred Harrington and James Kilpatrick, suspected of an intention to abscond’.⁶⁵³

Boyd does not mention photographs in his Annual Reports from Port Arthur, which seems strange given that they include quite detailed accounts of expenditure that note, for example, what it cost to feed the working dogs.⁶⁵⁴ Perhaps photography was seen as an inexpensive, one-off project rather than a recurring expenditure. It may have been set up using Boyd’s personal equipment and his existing studio, so there was no initial large

⁶⁵² This refers to two young native-born men, John (aged 21 in June 1873) and Francis (aged 17) Gregson. On 21 October 1871 they had been sentenced in Launceston to five and six years respectively for housebreaking and robbery. CSD8/1/2, 578-1655, 1470, TAHO.

⁶⁵³ The Colonial Secretary was right to be worried about these two. James Kilpatrick had already absconded from Port Arthur in February 1872. After admission into Hobart Gaol on 23 August 1873 he did in fact abscond in late April 1874, three or four weeks after Solly asked for his photograph. He was recaptured almost immediately but absconded again in late October and again in March 1875. CON33/1/108, 145: GD36/1/1, TAHO. Alfred Harrington also absconded in March 1874 but was remanded on the Governor’s Pleasure thereafter. CON37/1/10, 5813, TAHO.

⁶⁵⁴ Coverdale, J., ‘Report of the Establishment of Port Arthur for 1874’, *Legislative Council Journals*, Vol. XXI, 1875, Paper 12, 6.

capital outlay. Using English figures from 1871, each image would probably have cost between about 10d and one shilling and four pence to produce.⁶⁵⁵ Approximately 200 images would therefore have cost between £8-12. Using the estimate of 2d per image provided by Frazer Crawford in South Australia in 1866, the Port Arthur project would have been very small beer indeed at less than £2, although this seems suspiciously low.⁶⁵⁶ Such small expenditure may well have been subsumed under some other more general budget line and thus rendered invisible.

There are some additional arguments that weigh in Boyd's favour. While we can prove that Boyd was at Port Arthur throughout this period, we cannot show that Nevin had visited Port Arthur before December 1873 by which time photographs of John Smith already existed. If Nevin were the photographer officially engaged to carry out this work, he would have travelled, as did other government functionaries, by government schooner. Access to the site was strictly controlled and all passengers, including infants, were carefully listed.⁶⁵⁷ Upon arrival, this list was then checked and signed as correct by the Wharfinger and the Civil Commandant. Nevin does not appear as a passenger on the government schooner *Harriet* at any time in 1873.⁶⁵⁸ On 8 May 1874 a name that may be 'Nevin' or 'Niven' appears on the *Harriet*'s passenger list; this person does not appear to have left Port Arthur before records of these lists cease, on 30 December 1874.⁶⁵⁹ He may have been a member of staff, which cannot be confirmed because staff lists are not exhaustive. But by this date, a large number of the men who appear in the *cdvs* had left Port Arthur, so this possible sighting cannot help Nevin's case. At the Tasmanian Archive and Heritage Office there is a ledger that records hopeful visitors' applications, and the granting of approvals, for permission to visit Port Arthur, the Tasman Peninsula

⁶⁵⁵ *Sydney Morning Herald*, 23 September 1870, 3. Anon., 'Criminal Photography', *All The Year Round*, Vol. 11, (1873), 11.

⁶⁵⁶ Letter dated 25 March 1867, http://www.artgallery.sa.gov.au/noye/Misc/Misc.set_.html.

⁶⁵⁷ 'The first thing was to have a permit or pass from the Chief Secretary, without which no-one dared go within two miles of the shores of the Peninsula.' Gruncell visited some time between 1874 and 1877. G. Gruncell, 'Riegel – Reminiscences of Port Arthur and the Tasman Peninsula', *The Clipper*, 22 April 1893, 4.

⁶⁵⁸ Tasmanian Papers 320 CY4529, Mitchell Library, State Library of New South Wales.

⁶⁵⁹ Tasmanian Papers 320 CY4529, Mitchell Library, State Library of New South Wales.

and the Forestier Peninsula to the north. Nevin's name does not appear in this record for 1873-74.⁶⁶⁰

A further piece of anecdotal evidence is also of interest. At an open day at Port Arthur in the early 1990s Kim Simpson, a historian and Assistant Curator on the Port Arthur staff, met a woman who identified herself as Boyd's granddaughter. She confirmed that her grandfather had indeed been a photographer and added that her brother, then in his 80s, was annoyed that the convict images were on display. He felt that they were only 'internal documents' and should not be treated as 'art' and displayed publicly. Boyd's granddaughter had no hesitation in attributing these images to her grandfather.⁶⁶¹ While this would carry more weight if it had been substantiated by a more formal interview, it is not without significance.

A descendant of Nevin's, Dr Kerry Williams, has assiduously promoted the claims of Thomas Nevin, whom she believes to be her ancestor, through her various websites, including *tasmanianphotographer.blogspot.com*. She has advanced numerous pieces of 'evidence' to make her case, none of which stand up to scrutiny and which I will discuss below.⁶⁶² On one iteration of this website, she pointed to the presence of a 'Mr Clifford' on the site as demonstrating Nevin's involvement.⁶⁶³ The photographer Samuel Clifford was a business partner of Nevin's and the name Clifford appears several times in the passenger lists on the *Harriet*. The first occurrence, in September 1871, is probably Samuel Clifford; he took a photograph on site that included Lady Fergusson, wife of the Governor of South Australia. Lady Fergusson died shortly after that visit, in October 1871, so this is too early for the *cdv* project. The other Cliffords seem to be the family of Mrs Whittington, née Clifford, wife of an overseer.⁶⁶⁴

⁶⁶⁰ CSD7/22/1198, TAHO.

⁶⁶¹ Kim Simpson, formerly Assistant Curator of Collections, Port Arthur Historic Site, email 2 November 2005.

⁶⁶² I have found it impossible to reference these claims, as they appear only briefly on her website before they are taken down.

⁶⁶³ *Tasmanianphotographers.com*. This website no longer exists.

⁶⁶⁴ Margaret Whittington had nine children: Mr D Clifford travelled alone to Port Arthur in January 1873 for an extended visit, and when he returned to Hobart Mrs Whittington and a child were also on board. In August that year a Mr Clifford travelled to Port Arthur, and returned to

Some further confusion as to the identity of the maker of these images has arisen because the NLA held an album of Port Arthur *cdvs* known as the 'Nevin Album'. This title implies that this was an album that Nevin himself had compiled or that was at least composed of work known to be Nevin's. In fact, the NLA compiled it in preparation for an exhibition on colonial photography in 2003, 'In a New Light; Australian Photography 1850s-1930s', curated by Helen Ennis. In doing so, they were following their attribution of these images to Nevin.⁶⁶⁵ However, when the album was taken apart it was discovered that not one of the images bore the Nevin stamp.

The backs of every *cdv* held in public ownership have been examined to investigate the oft-repeated claim that large numbers of these *cdvs* bear Nevin's studio stamp; in fact it can be found on only three *cdvs*, one of James Mullins and two copies of a portrait of William Smith. Unlike every other man reliably located in the series, William Smith is bearded with long hair and is not wearing prison uniform; he apparently wears his own clothes, a dark jacket and white shirt, with a dark and light checked short fringed scarf tied as a cravat. James Mullins is in convict uniform but is also wearing a cap, unlike any other image in the Port Arthur series. The format of the inscriptions is also different. In contrast to the rest of the series, the inscription on both is recorded in portrait format, 'William Smith/Gilmore (3)' and 'James Mullins/Neptune (2)'; running up the side at right angles to the inscription on the QVMAG image of William Smith and in a different hand, there is a date that is his arrival date '20/8/43'. The Mitchell Library image only has Smith's name and ship. Neither bears the familiar 'Taken at Port Arthur in 1874'. Both images are taken close-up and almost full-frontal, in contrast to the three-quarter, rotated pose of those clearly associated with Port Arthur.

Hobart two weeks later accompanied by a Miss Whittington. Margaret had at least four daughters by this date. Two months later a Mrs Clifford returned to Port Arthur accompanied by 'a child', and returned alone to Hobart some weeks later. A Mr D Clifford also received many parcels throughout this period sent to Hobart by his son-in-law George Whittington. Tasmanian Papers 320 CY4529, Mitchell Library, State Library of New South Wales.

⁶⁶⁵ Sylvia Carr, National Library of Australia, pers. comm.

Smith came up from Port Arthur on 2 September 1873, and was freed two days later.⁶⁶⁶ While it is possible that he was among the first men photographed by Boyd in mid-late August 1873, it seems unlikely given that the style in which he was taken differs so dramatically from the images inscribed ‘Taken at Port Arthur 1874’ which I am suggesting were taken by Boyd, and which are very consistent in style. Mullins, reconvicted as John Conlon, began a three-year sentence at Hobart Gaol in July 1875, but his record is notated ‘cannot be traced by Convict Department’.⁶⁶⁷ As a result we cannot confirm whether or not he had ever been at Port Arthur. However, he is not listed in the returns of prisoners on the station for 1873 and 1874.⁶⁶⁸ Alan Davies, Curator of Photography at the Mitchell Library, State Library of New South Wales, also does not believe that Mullins and Smith are Port Arthur photographs. He wrote that ‘if Nevin took those two prison portraits, they are *so* different in style from the ‘Port Arthur’ group that it is a strong indicator to me that Nevin *didn’t* take the Port Arthur images’.⁶⁶⁹ The peculiarities of these images are, however, accounted for if they were taken later and at Hobart Gaol, as will be discussed later in this chapter.

Could Nevin have been employed at Port Arthur by Superintendent Coverdale following Boyd’s departure on 1 April 1874, as Dr Williams has asserted? Of those who can be traced through the official records (which are not always complete or consistent), 97 of the men who sat for their photographs were gone from Port Arthur by this time and did not return in 1874. Another three men left between 1 April 1874 and 5 May 1874, making a total of 100 who had departed before the putative arrival of Nevin. The conduct records of a few of these men have not been located or are too incomplete to be able to pronounce with any confidence on the man’s whereabouts, but the movements of the vast majority can be accounted for with some degree of certainty. If Nevin was employed by Coverdale after he assumed office in 1 April 1874, he may arguably be the person who arrived on 8

⁶⁶⁶ GD36/1/1, TAHO.

⁶⁶⁷ CON37/1/10, 5942, 601, TAHO.

⁶⁶⁸ Boyd, A.H., ‘Report of the Establishment of Port Arthur, Report for 1873, *House Of Assembly Journals*, 1874, Vol. XVII, Paper 26: ‘Report Of The Commission Into Penal Discipline’, *House Of Assembly Journals*, 1875, Vol. XXVIII, Paper 49, Appendix 42, 30.

⁶⁶⁹ A. Davies, pers. comm., email 8 July 2010, emphasis in his original.

May 1874. If this is the case, however, he did not have access to almost half of the subjects featured on these *cdvs*.

It seems unlikely that Nevin photographed these men at Port Arthur, but he did supply 'four dozen photographs of prisoners' to Hobart Gaol in September 1875. He charged a little more than 1/- for each photo.⁶⁷⁰ Given that the next photographer to undertake a similar commission charged 5/- per photo, this seems ridiculously cheap, unless Nevin supplied duplicates of a smaller number of men, rather than original portraits of 48 men. The file containing inward correspondence to the Attorney General's Department in 1875 has not survived, so unfortunately any correspondence from Nevin regarding the commission of the work is lost. Nevin's brother worked at Hobart Gaol at that time, and may have employed Thomas to photograph inmates. Sadly, it appears that Nevin's life was beginning to fall apart around this time. In June 1875 the following advertisement had appeared in the newspaper; 'TO LET, those eligible BUSINESS PREMISES in Elizabeth-street, presently occupied by Mr. Nevin, photographer'.⁶⁷¹ Was he simply moving, or had he ceased to operate his business? He appeared once more in the newspaper in September 1875 identified as a photographer, at the same time as he submitted his invoice to the Gaol.⁶⁷²

Three months later, in January 1876, a notice appeared in the *Mercury* stating that Thomas Nevin, photographer, had been employed as Keeper, or caretaker, at the Town Hall. This job was described as a 'minor office'.⁶⁷³ At the same time his premises were

⁶⁷⁰ Payment, Mr T. Nevin account, 13 September 1875, Letterbooks, Attorney General's Department, AGD56/1/9, 45, TAHO.

⁶⁷¹ *Mercury*, 24 June 1875, 1.

⁶⁷² *Mercury*, 20 September 1875, 1.

⁶⁷³ Dr Williams has claimed that Nevin was employed at the Town Hall to photograph prisoners convicted in the courts which were located there. According to this theory, the men were not photographed at Port Arthur but in the Town Hall. The plans of the Town Hall do not show any room set aside as a studio/darkroom, although there is a small room adjacent to the court where prisoners and constables waited. I can find no record that any such appointment or position ever existed, and Nevin is consistently referred to solely as Keeper of the Town Hall. *Mercury*, 5 January 1876, 2. In addition, each *cdv* is clearly and consistently marked 'Taken at Port Arthur 1874' and there is at this stage no reason to doubt that information.

advertised to let.⁶⁷⁴ A notice appeared the next week, informing his clients that he was retiring as a photographer and passing all of his negatives to his former partner Samuel Clifford.⁶⁷⁵ In March 1877 Samuel Clifford submitted an account ‘for taking photographs of ten convicts at her Majesty’s Gaol, with negatives and one proof at 5/- each, £2.10.0’.⁶⁷⁶ The Anson Brothers Studio submitted a further account for ‘photographs of men convicted at the Supreme Court’ in July 1879.⁶⁷⁷ It seems that the Gaol employed commercial photographers as and when required. Nevin’s career continued its sad decline. Between early 1877 and late 1880 he is referred to in his various newspaper appearances simply as ‘the Town Hall keeper’ and on one occasion, the Town Hall Porter’.⁶⁷⁸ After many warnings, he was sacked from the Town Hall in December 1880 for what was clearly a serious drinking problem of some long standing.⁶⁷⁹

Thereafter, he appeared several times a year in the *Mercury* court lists for being drunk and disorderly, disturbing the peace and using abusive language. By 1886, during one of his court appearances for disturbing the peace, the report noted that ‘an order is in force forbidding publicans to serve him with drink’.⁶⁸⁰ Although in the *Hobart Directory* of 1887 he was listed as a photographer living in George St, Hobart, court appearances on either side of that list attest to his on-going problem with the demon drink.⁶⁸¹ One wonders how potential clientele for his photographic services, if they were still offered, would have viewed his frequent public troubles. Several of his convictions relate to his use of obscene language in his home, and he admitted that one such offence occurred during a quarrel with his wife.⁶⁸² This seems not to have been the first such incident.⁶⁸³ In

⁶⁷⁴ *Mercury*, 4 January 1876, 1.

⁶⁷⁵ *Mercury*, 14 January 1876, 1.

⁶⁷⁶ Mr S Clifford account, 1 March 1877, Letterbooks, Attorney General’s Department, AGD56/1/9/, 126, TAHO.

⁶⁷⁷ Anson Brothers account, 21 July 1879, Letterbooks, Attorney General’s Department, AGD56/1/9/10, 136, TAHO.

⁶⁷⁸ *Mercury*, 8 May 1877, 2; *Mercury*, 22 July 1878, 2; *Mercury*, 14 February 1879, 2; *Mercury*, 4 December 1880, 2,3; *Mercury*, 6 December 1880, 2

⁶⁷⁹ *Mercury*, 7 December 1880, 2.

⁶⁸⁰ *Mercury*, 8 December 1880, 2; *Mercury*, 6 Feb 1886, 2.

⁶⁸¹ *Mercury*, 21 May 1886, 2; *Mercury*, 29 March 1887, 2.

⁶⁸² *Mercury*, 8 Dec 1888, 1; *Mercury*, 4 May 1892, 2; *Mercury*, 23 Aug 1893, 2.

1895 she took out a '12 month prohibition order' against him, which may mean that his intemperate behaviour had escalated to violence towards her.⁶⁸⁴ By 1897, after yet another appearance in front of him, the judge observed that Nevin seemed to be insane and ought to be in the Lunatic Asylum.⁶⁸⁵

Between 1896 and 1898 his place of residence was given as Warwick Street rather than as previously at Melville Street, indicating that he and his wife had separated permanently. By this time he had also been 'fined and imprisoned over and over again', having incurred at least 18 convictions for using obscene language in a public place by August 1897.⁶⁸⁶ In September 1898 he reportedly incurred his 34th conviction for the same offence, although he must have been swearing a blue streak to earn an extra 16 convictions in just over 12 months!⁶⁸⁷ Whatever the number of convictions, it is clear that Nevin had become a notorious nuisance. Although he might conceivably have taken some pictures at Hobart Gaol after 1 April 1874, when Boyd left Port Arthur, it seems somewhat unlikely that at any time after January 1876 he was either equipped or in a fit state to be awarded a government tender, and to carry it out.

While it seems likely that A.H. Boyd was the Port Arthur photographer, the source of his timely enthusiasm for photography is as yet shrouded in mystery. There seemed to nothing in his personal history that might yield clues to support or disprove such a hypothesis. His parents Phillis and Ambrose Boyd had emigrated from London to Van Diemen's Land in 1822. Their son Adolarius Humphrey was born in Hobart in 1827.⁶⁸⁸ For many years Ambrose Boyd was Chief Clerk in the Police Court at Hobart. He apparently received sponsorship from Adolarius William Henry Humphrey, the Chief Police Magistrate, for whom baby Boyd must have been named. A.W.H. Humphrey's

⁶⁸³ 'The language defendant used all the time was very bad, and an annoyance to passers-by. For the defence Nevin stated that the disturbance arose out of a quarrel with his wife.' *Mercury*, 8 December 1888, 1.

⁶⁸⁴ *Mercury*, 15 March 1895, 2.

⁶⁸⁵ *Mercury* 26 May 1897, 2.

⁶⁸⁶ *Mercury*, 28 January 1897, 2; *Mercury*, 12 August 1897, 2.

⁶⁸⁷ *Mercury*, 21 September 1898, 2.

⁶⁸⁸ I am indebted to a descendant of A.H. Boyd, Michael Wadsley, for much of what follows.

wife was Harriet Sutton and A.H. Boyd's eldest sister, born in Tasmania in 1823, was also named Harriet.

Ambrose's son, A.H. Boyd, also spent almost his entire career in government service, much of it in the Convict Department. At 19 he entered the Comptroller-General's Department as a clerk, and two months later he was appointed Government Storekeeper at Salt Water River on Tasman Peninsula.⁶⁸⁹ Between 1851 and 1859 he served as the accountant at Port Arthur and he was also Deputy Registrar of Births, Deaths and Marriages from 1856. Between March 1861 and August 1862 he was Superintendent of the Hobart City Police.⁶⁹⁰ Between 1862 and 1864 he was Superintendent and Purveyor of the Queen's Orphan School, New Town, but he briefly left government service in 1865 to own and run a shop in Latrobe.⁶⁹¹ Returning to the public sector, he was appointed Council Clerk of Evandale Municipality in 1867 and remained there until he was appointed Civil Commandant at Port Arthur in 1871.⁶⁹² Shortly after taking up that post he married Henrietta Selina Giblin.⁶⁹³ Henrietta Giblin was a sister of William Robert Giblin, a lawyer and politician who became Premier of Tasmania. Boyd's relationship with Giblin led to accusations that he owed his subsequent public appointments to nepotism rather than ability.⁶⁹⁴ He left Port Arthur to take up the position of Superintendent of the Cascades Pauper Establishment, Gaol and House of Corrections for Females, and Reformatory for Males, where he remained between early 1874 and 1877. After he left that position he served variously as a Magistrate, Registrar of Births, Deaths and Marriages, Registrar in the Court of Requests and Coroner in northern, southern and west coast Tasmania until his death after falling from his horse in the course of his duties in 1891, aged 64. There seems to be nothing in this official record to indicate an interest or previous experience in photography. None of the many reports of his activities, public and private, including his many honorary positions, mentions the subject.

⁶⁸⁹ *Colonial Times*, 4 July 1848, 3.

⁶⁹⁰ *Mercury*, 30 March 1861, 2.

⁶⁹¹ *Mercury*, 6 October 1865, 2.

⁶⁹² *Launceston Examiner*, 21 November 1867, 3.

⁶⁹³ Tasmanian Marriage Register No. 143/1871, TAHO.

⁶⁹⁴ *Tasmanian Tribune*, 17 September 1873, 2; *Mercury*, 10 March 1881, 2.

There do not appear to have been any personal and professional networks through which Boyd might have become interested and proficient in photography. Since he was born in Hobart, he was not a career prison officer, unlike his predecessor James Boyd, and never visited England or Europe, so it seems unlikely that he had personal contacts in the prison service overseas. Any contacts in the colonial prison service, particularly in Victoria and South Australia but also perhaps in New South Wales, have not yet been discovered. While he was Commandant, like others before him he supplied each meeting of the Royal Society of Tasmania with meteorological readings from Port Arthur, but he is not listed as a Member or Fellow in any of the annual lists for the 1860s and 1870s.⁶⁹⁵ In none of the *Papers and Proceedings* of the Society in this period is there any relevant paper on, or indeed any relevant mention of, either photography or criminal identification.⁶⁹⁶

Only two professional photographers are known to have visited Port Arthur before the photographic documentation of inmates began to be organised in early 1873. Alfred Bock, photographer son of painter Thomas Bock, visited Port Arthur and made some images there in 1866, but at that time Boyd was in Latrobe. Samuel Clifford visited in September 1871, when Boyd was Commandant. The timing of this visit may have been fortuitous, since it coincided both with the introduction of mandatory photography in Britain under the *Prevention of Crimes Act* of 1871 and followed the introduction of photography in other Australian colonies, particularly in New South Wales in late 1871.⁶⁹⁷ Perhaps Clifford introduced Boyd to photography. By June 1873 he had become sufficiently keen and/or prolific to be publicly derided for his photographic aspirations.⁶⁹⁸

⁶⁹⁵ For example, *Papers And Proceedings Of The Royal Society Of Tasmania*, (1871), 54.

⁶⁹⁶ The only mentions of photography in this period are the following: Morton Allport exhibited a photograph of a fossil in *Papers And Proceedings Of The Royal Society Of Tasmania*, June 1868, 26. In a list of items presented in June 1869 there is a group of '79 photographs of machinery from the Leeds Exhibition', and a paper by Francis Abbott in which he notes the potential of photography to reveal the structure of diatoms in microscopic detail, *Papers And Proceedings Of The Royal Society Of Tasmania*, (1869), 23 and 37-38. In 1871 a photographic copy of a document was presented, *Papers And Proceedings Of The Royal Society Of Tasmania*, (1871), 23.

⁶⁹⁷ Said to have been 'recently introduced' in a report in the *Sydney Morning Herald*, 10 January 1872, 4. This story was reprinted only three days later in a provincial newspaper, the *Maitland Mercury And Hunter River General Advertiser*, 13 January 1872, 3, so it was presumably big news at the time and may well have reached Boyd's ears.

⁶⁹⁸ *Mercury*, 20 June 1873, 2.

Boyd must have become aware of the application of photography to criminal identification through publications readily available to ordinary citizens. Sadly, we do not know what books he had in his library, but he would probably have read his local newspaper. The *Mercury* carried a story on 20 January 1863, implying that photographs had just made their appearance in Tasmania and singing their praises as a ‘very valuable and interesting invention’.⁶⁹⁹ Also in 1863, as mentioned previously, the *Mercury* reported that a photograph had been lodged in the Commissioner’s office in Hobart in case an elusive embezzler turned up there.⁷⁰⁰ This was just a year after Boyd had left his position as Superintendent of Police, so he may not have had contact with photography in that capacity. In October 1872 the *Mercury* reprinted an article extolling the beneficial impact of police supervision of prisoners and habitual offenders through the use of photography.⁷⁰¹ It seems that Boyd already had his studio set up by then (as it was repaired in November 1872). A mere ten months later, someone began to photograph the prisoners under sentence remaining at Port Arthur.

The images themselves may reveal something of the context in which they were taken, and thereby give a clue to the identity of the photographer. As Christopher Pinney and Nicholas Petersen reminded us: ‘the photographic image is a record of a space of complex negotiation’.⁷⁰² Henry Baden Pritchard of the Photographic Society in Britain

⁶⁹⁹ *Mercury*, 20 January 1863, 2.

⁷⁰⁰ *Tasmanian Police Gazette*, 26 June 1863, 99.

⁷⁰¹ *Mercury*, 8 October 1872, 3.

⁷⁰² C. Pinney and N. Petersen (eds.), *Photography’s Other Histories*, (North Carolina: Duke University Press, 2003), 10.

⁹⁸ J. Richardson, ‘Picturing the landscape’, *Continuum: The Australian Journal Of Media & Culture* vol. 6 no 2 (1991), Section II (no page numbers)

<http://www.mcc.murdoch.edu.au/ReadingRoom/6.2/Richol.html>, viewed 16 April 2014.

⁹⁹ It seems that this kind of latitude in choosing one’s pose was also characteristic of early English prison photographs. A prison registration card held for Ann Graham, a young woman convicted in Newcastle in September 1873 (reference number 10416236, held in the Science and Society Picture Library in Britain), shows the young woman in a pose that is coquettish and confident rather than cowed by her situation or the photographer’s gaze. She sits turned sideways in her chair, her left arm placed provocatively on her hip, her right hand resting on the back of the chair and cupping her chin. She gazes at the lens with her face in three-quarter view. A pose that she might have selected in a portrait taken for her sweetheart could not be more inviting. This image is a world away from an image produced according to the later Bertillon formula of prison

visited Pentonville Penitentiary in 1882, to research the techniques of prison photography. He said:

Some little experience has shown us that a more docile body of sitters than our convicts do not exist ... so far as we have seen, they sit quieter and steadier, and are more ready to fall in with the exigencies of photography than their brethren in freedom.

Later he remarked: 'One cannot easily conclude that the presence of the camera in itself somehow solicits obedience'. Obedience is already ensured, according to Pritchard, by the threat of withdrawn privileges.⁷⁰³ The Port Arthur portraits do not, however, indicate such complete passivity and servile obedience. The images printed straight off the plates include more information than those framed with an oval vignette, and seem to reveal something about the atmosphere in which they were composed. In the quarter plate print it is possible to see that there was a degree of variation in the original pose assumed by the sitter. Sometimes the arms are almost jauntily placed at the hips, some hang loosely, in others the hands are placed submissively in the lap.⁷⁰⁴ Jackets are buttoned to varying degrees. These signs of agency are only hinted at in the heavily cropped images. The variation in individual expression permitted by the photographer hints at a relaxed relationship between him and his subjects, born perhaps of a longer familiarity than a visiting photographer would achieve in one sitting. None of the men pull strange faces in an attempt to render the photographs useless. Their demeanour is passive, pensive, apparently trusting. Boyd had known many of these men for at least two years by 1873, and did not have a reputation for brutality. Perhaps this accounts for their calm demeanour. Or perhaps, after decades of incarceration, they had had all resistance beaten or crushed out of them.

photography, in which the subject is rigidly posed in proscribed ways to exhibit 'diagnostic' features like profile, hands and ears.

While we may never know for certain who took these images, in view of the foregoing Boyd seems the most likely candidate. There is no evidence for the presence of any other photographer on site at this time. There is no such compelling body of evidence in support of a rival claim. Boyd was an enthusiastic amateur with his own camera and tent, always on the lookout for subjects. He was a more than competent photographer, with a studio and fully equipped darkroom to hand. He was active as a photographer at just the right period, when photography was being introduced to manage convicted men in prison in Britain and in the colonies. He had privileged access to his subjects, and the support of the Colonial Secretary and the government, which supplied him with large quantities of photographic materials. Although these images are relatively late within the ‘mug shot’ tradition, they are more like the very earliest images from the 1840s, which in turn are more like Victorian portraiture than institutional instruments of surveillance. This suggests that they may be the work of an enthusiastic amateur like Boyd, more accustomed to taking portraits of friends and family, than a professional.

As an amateur, he may have turned for advice to local, professional practitioners. Thomas Bock, a Tasmanian portrait painter and, according to Chris Long, ‘the first Australian artist of repute to practice photography professionally’ between around 1847 and 1855, left manuscript notes on portrait posing. His surviving work shows that he followed his own advice to the letter, with results that must have been very satisfactory to his clients. He advised that light should come only from the side, and ‘If the portrait is only the bust, the sitter will be placed upon a chair with the face turned a little to one side, so that the drawing (daguerreotype) may be in the position which painters designate by the term ‘three-quarter’.⁷⁰⁵ Boyd seems to have followed this plan and produced images that would not have looked stylistically out of place in any portraitist’s studio. They seem to fuse the honorific and the repressive, in that they do not seek to show the subjects as monsters or obvious deviants, but as ordinary men, but their uniform, of course, reveals that the images are part of a repressive arsenal. Boyd seems to draw on his experience in

⁷⁰⁵ C. Long, ‘Thomas Bock as a Photographer’, no editor named, *Thomas Bock: Convict Engraver, Society Portraitist*, exhibition catalogue, (Launceston: Queen Victoria Museum and Art Gallery, 1991), 63, 67.

portraying family members rather than the tradition of criminal photography developed in Britain.

What and how; the Boyd project and subsequent photography at Hobart Gaol

The photographs bear a series of inscriptions that may help to shed light on the relationship between these two phases. The inscription on the back referring to the man's name, ship and the place where the photograph was taken, 'Taken at Port Arthur 1874', has been treated as unambiguous since no evidence has arisen to the contrary. Other notations are more cryptic. Most of the photographs bear an identifying number on the front and the back; these two numbers are different and written in different hands. They would appear to be part of two different systems of record keeping. The 'Alphabetical Register of Prisoners Admitted' lists names and numbers of men entering the Hobart Gaol and House of Correction.⁷⁰⁶ Numbers in the column headed 'Date when received', which are the numbers of photographs according to an annotation in the front of the register, are the same as the numbers on the front of each *cdv*. The name in the register that belongs to each number matches the name on the back of each *cdv*. The number on the back is still a mystery. None of the numbers match the convict's record number as entered on their conduct sheet.

It is clear that the numbers on the front of the photographs are not a complete series; there are big gaps. As a result, it was not possible to know how many men were photographed, nor where the number on the front may have come from. The 'Alphabetical Register of Prisoners Admitted' provided the missing evidence.⁷⁰⁷ Each man photographed by Boyd at Port Arthur was admitted to the Gaol with the number on the front of his *cdv* beside his name. There were, however, also 57 men whose photographs no longer exist but whose numbers fell within the Port Arthur sequence. When the two lists were combined the photographic numbers of the men whose photographs we do not have merged seamlessly

⁷⁰⁶ Alphabetical Register of Prisoners Admitted, Hobart Gaol, GD35/1/6, TAHO.

⁷⁰⁷ Alphabetical Register of Prisoners Admitted, Hobart Gaol, GD35/1/6, TAHO.

into the numbered sequence of men with photographs.⁷⁰⁸ Four numerical gaps remain in the sequence that presumably relate to four unknown men who must have been photographed. Within the certain Boyd cohort (identical in style to the numbered, identified and inscribed images) are 11 unidentified and unnumbered men, whose names must be on the list of those 57 men for whom we have names and numbers but no images, or perhaps the unknown four whose numbers form gaps in the sequence. Sadly, we will probably never know who they were.

Their records demonstrate that all of the men who form the ‘probable’ cohort – those for whom we have numbers and names but not photographs – were at Port Arthur while Boyd was Commandant. There are also two portraits that bear numbers that are higher than the Boyd sequence (282 and 369) belonging to men who were at Port Arthur when Boyd was there. They exist only as contact prints of quarter plate negatives, so do not bear the inscription ‘Taken at Port Arthur’. They are, however, identical in style to others that do and that exist both as similar prints and as vignettted images. These have been included in the total of ‘certain’ plus ‘probables’. It is now possible to state with some certainty that Boyd photographed at least 218 men. This is the total of the highest number in the sequence (196) plus the 20 unnumbered images that bear the ‘Taken at Port Arthur’ inscription, and the two whose numbers fall out of sequence but which are stylistically identical to the numbered and identified men. We know that ‘288 photographic glasses’ were delivered to Port Arthur, which would be sufficient to take all these men with some allowance for breakages or other misadventures.⁷⁰⁹

It is tempting to assume that they were photographed in order of their departure from Port Arthur, but this does not seem to be the case. The Day Book of Admissions and Discharges to and from Hobart Gaol lists men, with the number of their image where

⁷⁰⁸ There are some men, whose photographs we have but which did not bear numbers on the front, who were given numbers in the Register that filled in gaps in the sequence. I can see no reason not to trust these numbers so I have included them.

⁷⁰⁹ CSD7/1/60 file 1470, TAHO.

known, grouped under their date of departure as recorded.⁷¹⁰ Even factoring in a degree of randomness allowing for missing numbers in the sequence it is clear that this was not the organisational principle at work. Boyd's project was not conducted in tandem with the lists that were being drawn up of groups of men to go. Many did not leave until after Boyd had left, but still have numbers that fall inside what I am assuming to be his sequence. At this stage, it seems that Boyd photographed his subjects in an order known only to him. Perhaps it was entirely random, depending on which men were available when he was free to take their photographs.

Using both the Register of Admissions and the Day Book together, a comparison of the numerical sequences of Boyd photographs and post-Boyd photographs shows that Hobart Gaol seems to have admitted the men from Port Arthur using Boyd's numbering and then to have continued the sequence without a break. This now seems to indicate that the numbers on the Port Arthur *cdvs* were given to them by Boyd. Had they been Hobart Gaol numbers, they would presumably have been in order of admission. It appears that Boyd began the numbering system and Hobart Gaol continued it.⁷¹¹ The sequence of later numbers that fall beyond the Boyd sequence does not begin until May 1874, which rules out Boyd as the photographer of these images. Can these records identify any other photographer with any certainty? Nevin was paid for four dozen images on an invoice submitted in September 1875. His studio stamp appears on two images, William Smith per Gilmore 3 and James Mullins per Neptune 2. Smith was reconvicted several times after he left Port Arthur, and may have had his photograph taken by Nevin in July 1875

⁷¹⁰ These lists do not include every man photographed. Day Book of Admissions and Discharges with statistical Returns of the Daily State of the Prison, GD36/1/1, TAHO.

⁷¹¹ Their system is, however, not very obvious. Taking the first two sequences, covering groups of men admitted in 1874 and 1875, the first two numbers are in correct order, although the 1875 sequence has skipped a number, but the man who is last convicted carries the earliest number in both cases. In 1876 a similar pattern continues, with the interesting addition that two men convicted on the same day, and in the same court, bear numbers several digits apart. Initially I thought that perhaps men were only photographed in Hobart, and, as there might have been a delay in forwarding them to Hobart Gaol from other jurisdictions, this might account for their numbers being later than might have been expected according to their date of conviction. For this to be true, some men were being held in minor jurisdictions like Beaconsfield for many months before being forwarded to Hobart, which seems unlikely. Numbers for subsequent years also show some neat sequences, but more are apparently random sequences. Date of admission does not seem to determine number.

when he was sentenced to 18 months for larceny.⁷¹² Mullins also began a sentence at Hobart Gaol in July 1875.⁷¹³ These two men may be among the cohort covered by Nevin's invoice and this would account for his stamp being on both of them. Clifford submitted his invoice for photographs of ten men in March 1877, but only four men are listed as convicted and admitted in early 1877, in late February. Those photographs apparently no longer exist.

Anson Brothers submitted their invoice for an unknown number of images on 21 July 1879, and gaol records show that twelve men were admitted on 22 July.⁷¹⁴ The Tasmanian Museum and Art Gallery holds three images bearing the Anson studio stamp. Two images of James Cronin, frontal and profile, bear the inscription on the back 'Murdered his father and mother/a bad case'. Although his convict record attests to his violent proclivities, it does not carry any such charge.⁷¹⁵ He died in the Hospital for the Insane on 16 July 1885. Cronin may have been convicted for something else around July 1879, although nothing is recorded, but the subject of the third photograph, Walter MacFarlane, was also a 'lunatic' who seems to have been institutionalised since 1860. Neither man appears in the Alphabetical Register of Prisoners Admitted to Hobart Gaol, or in the *Police Gazette* where crimes and convictions were reported.⁷¹⁶ One wonders why Anson Brothers photographed two 'lunatics'. Neither man had become a popular *cause celebre*. Despite Cronin's putative shocking crime, there is no mention of it in the newspapers, and Macfarlane's only public appearance is a pathetic account of his being found sleeping in a sty with two pigs at the Slaughterhouse Yards and being charged with vagrancy.⁷¹⁷ Yet here they are.

⁷¹² CON33/1/39, p207, TAHO.

⁷¹³ CON37/1/10, 5942, 601, TAHO.

⁷¹⁴ Alphabetical Register of Prisoners Admitted, Hobart Gaol, GD35/1/6, TAHO.

⁷¹⁵ His original charge was shooting at a James Hogan: he had once struck a policeman, and while on board ship he stabbed a fellow prisoner, but thereafter he was only convicted of minor crimes. TMAG Q156238 & Q15629: CON33/1/106, page 70, TAHO.

⁷¹⁶ Alphabetical Register of Prisoners Admitted, Hobart Gaol, GD35/1/6, TAHO.

⁷¹⁷ Having served his one-month sentence he was found to be of unsound mind and classified as a 'Lunatic Convict' in September 1860.⁷¹⁷ He died in the Hospital for the Insane seven years after Cronin, having been in the Asylum at New Norfolk since March 1862 and transferred to the new Port Arthur Asylum in October 1862. His name and 'Separate Treatment' are written on the back of his image. *Mercury*, 14 July 1860, 2: TAMG Q15630: CON33/1/43, page 125, TAHO.

Seventeen other photographs have often been included by collecting institutions in the Boyd series, although even a cursory inspection reveals how different in style they are. The inscriptions and the records of these men where they have been located make it clear that all were convicted in the late 1870s and early 1880s, and thus must have been photographed either at the Supreme Court or at Hobart Gaol. Unfortunately, it is not possible to link them to any of three photographers whose invoices we have; their dates of conviction and discharge do not even come close to the dates on those invoices, although it is always possible that they were photographed during their sentences. This is impossible to verify.

Why were these men photographed? The Boyd project and Hobart Gaol

We must now turn to the question of why these men were photographed. I believe that the answer to this lies in their capacity for work. In what follows I have used both the records of the men in the existing photographs and of the ‘probable Boyds’. The status of the men on the *cdvs* has not previously been interrogated, and judging by the contexts in which they have often been reproduced it may be fair to conclude that most people have assumed that they represented all the convicts remaining at Port Arthur pending closure. The prison population at Port Arthur as the settlement limped towards closure was classified under four headings. ‘Effectives’ were men under sentence still capable, if only just, of work. ‘Lunatics’ were men who were suffering from a range of mental complaints so severe that they proved too disruptive in the general population. Most were probably former convicts. ‘Paupers’ were men now too old or disabled to fend for themselves in the outside world, most of whom were also former convicts. Finally, ‘Invalids’ were men under sentence undergoing treatment in the hospital. Men floated between these four categories according to their current state of physical or mental health. If these photographs represented the whole Port Arthur prison population, one would expect a representation of men from all four categories. But in fact, when the list of individuals in this series is compared with the returns listing all men on the settlement in 1873-74, we find that almost all of the photographed men are classified as ‘Men under sentence’ or

‘Effectives’.⁷¹⁸ Only nine men are listed as ‘Invalids’, one is a Pauper and none are identified as ‘Lunatics’. Of these invalids, all but three were admitted to the Hobart Gaol, implying that they were well enough to work, and so, practically speaking, were ‘Effectives’. Given that the ‘Effectives’ so dominate this series, we must assume that the photographs have something to do with their status.

One hundred and six of the men who were photographed appear on the lists of those transferred to the Hobart Gaol between 1873 and 1877, sent to satisfy the demand for ‘able bodied men to keep up the strength of the gangs’ on public works and skilled men needed for the Hobart Gaol workshop.⁷¹⁹ The Superintendent of the Government Gardens, Francis Abbott, wrote to the Minister of Lands and Works on 30 July 1873 complaining that the strength of his gangs had been so reduced as a result of the construction of the Alexander Battery that the work of the gardens was being neglected, and asking for men from Port Arthur.⁷²⁰ On 9 September 1873 the Colonial Secretary acknowledges the receipt of 20 men from Port Arthur, asks Boyd for 20 more by name, and gives him ‘early warning that you will lose the number of your “efficient” convict laborers [sic]’.⁷²¹ Boyd did not take this lying down, and several times complained that he no longer had sufficient able-bodied men to run the settlement, and particularly to collect firewood for the next winter, but his protests fall on deaf ears. Occasionally Boyd attempted to assert his authority by withholding certain men, or by only sending eight when he was ordered to send 20, but to no avail. The relentless removal of ‘Effectives’ continued.⁷²²

It is clear from the correspondence surrounding the relocation of the Port Arthur men that they were the cause of a great deal of anxiety on the part of those charged with their management in Hobart. Many records refer to the need to provide more secure accommodation for these ‘criminals of the worst description’ and ‘desperate men’, more

⁷¹⁸ Annual Return of Prisoners, in Coverdale, J., ‘Report of the Establishment of Port Arthur for 1874’, *Legislative Council Journals*, 1875, Vol. XXI, Paper 12, 7.

⁷¹⁹ Day Book of Admissions and Discharges with statistical Returns of the daily State of the Prison, GD36/1/1, TAHO: CSD8/1, Vol. 27, 2.12.71, 250, TAHO: CSD8/1, Vol. 27, 2.12.71, TAHO: CSD7, Vol. 27/250, 7.7.73, 21.7.73, 30.7.73, 16.7.73, 10.10.73 TAHO.

⁷²⁰ CSD7/27/250, TAHO.

⁷²¹ CSD7/27/250, TAHO.

⁷²² CSD7/27/250, TAHO.

than half of whom ‘were unfit for any but separate treatment’. There were also requests for more constables and a higher level of supervision, and a plea that warders and constables be armed.⁷²³ The mad, the weak and the sick were also sent to Hobart, to the invalid depot at the Cascades and to the New Norfolk Lunatic Asylum. Stronger institutional security at these places and the poor physical condition of the inmates may have rendered them less likely to abscond. If they were to abscond, perhaps they were not seen as a threat. If so, that would explain why only three or four of this group were photographed at Port Arthur.

When the able-bodied men arrived at Hobart Gaol, they were sent to work either in the workshops, where they made a range of goods including shoes and clothing for the Convict Department, or to a variety of public works sites outside the Gaol, like the Botanical Gardens or road parties.⁷²⁴ Both workshops and public works sites were insecure. The workshops were built next to the perimeter wall so that a man had only to climb onto the roof and he was away.⁷²⁵ Security was also deficient in the accommodation areas, since men also escaped from the day room and the mess room.⁷²⁶ Outside parties were insufficiently supervised because of staff shortages, and as a result short-sentence prisoners were employed as supervisors.⁷²⁷ James Smith, the Under Gaoler at Hobart Gaol, claimed that the ‘men sent up here from Port Arthur abscond so as to be sent down again; for they would rather do two years down there than one year up here’.⁷²⁸ Extensive records confirm that a number of former Port Arthur men did abscond,

⁷²³ R.R. Atkins, Superintendent of the House of Correction and Gaol in Campbell Street, Evidence to ‘Convict Buildings: Report of the Select Committee, with minutes of proceedings and evidence’, *House Of Assembly Journals*, 1874, Vol. XXVII, Paper 79, 6. A.H. Boyd, Gaoler and Superintendent of the Cascades Establishment, Evidence to ‘Convict Buildings: Report of the Select Committee’, 9. J. Forster, Inspector of Police, Evidence to ‘Convict Buildings: Report of the Select Committee’, 9.

⁷²⁴ For example, CSD7/250, 16.7.73, 21.7.73, 24.7.73, 30.7.73, 25.11.74, TAHO.

⁷²⁵ GO 108/1/1, 26.1.74, 19.7.76, 29.3.78, 30.8.77, 28.2.79, TAHO.

⁷²⁶ GO108/1/1, 30.8.77, TAHO: GO108/1/1, 29.3.78, TAHO.

⁷²⁷ R.R. Atkins, Evidence to ‘Convict Buildings: Report of the Select Committee’, 5.

Commissioners’ summary, Evidence to ‘Convict Buildings: Report of the Select Committee’, v.

⁷²⁸ J. Smith, Under Gaoler Campbell Street Gaol, Evidence to ‘Convict Buildings: Report of the Select Committee’, 7.

some repeatedly.⁷²⁹ In light of these known security deficiencies, and the justifiable anxiety that Port Arthur men were likely to abscond and pose a serious threat to the community, it seems that these images were probably concerned with security. They would supplement the written physical descriptions on their records and provide additional, visual information that would aid in their speedy recapture if necessary, as the letter to Boyd from the Colonial Secretary regarding the missing Gregson boys and from Boyd regarding Harrington and Kilpatrick demonstrate.⁷³⁰ We have several extant copies of the photographs of the Gregson boys, native-born petty thieves, but images of Harrington and Kilpatrick have not yet been identified.

So far I have been unable to discover how the photographs might have reached the hands of those charged with apprehending any bolters. When photographs were mentioned in the *Tasmanian Police Gazette* for the 1870s-90s, they invariably referred to people listed under Missing Friends or to those sought but not yet convicted of an offence. In both cases they were presumably family snaps taken in happier times, since it seems that people in these two categories were either not offenders at all, or were not already known to be previous offenders. Occasionally, notices syndicated from other sources, including an entry for January 1879 in the *Victorian Police Gazette* for Ned Kelly, mentioned that a photograph is available at the police office; this is presumably the Victorian police office. When the *Tasmanian Police Gazette* notified all police that a convict had escaped, a written description only was supplied, even though in several cases the escapees were former Port Arthur men whose photographs had already been taken in 1873-4. It is also clear from the records of admission to the Hobart Gaol and House of Correction that new

⁷²⁹ For example, George Fisher, 30 August 1877, 10 September 1877: John Langton (attempted escape), 11 April 1876: Joseph Walmsley, 19 July 1876: George White, 29 March 1878, 28 February 1879, GD108/1/1, TAHO. Thomas Griffin (second escape), *Mercury* 5 December 1873, 2.

⁷³⁰ This refers to two young native-born men, John (aged 21 in June 1873) and Francis (aged 17) Gregson. On 21 October 1871 they had been sentenced in Launceston to five and six years respectively for housebreaking and robbery. CSD8/1/2, 578-1655, 1470, TAHO: CSD7/1/60 file 1470, TAHO.

inmates were routinely photographed, and original records bear photographs pasted onto them.⁷³¹ Some of these photographs are copies of those taken at Port Arthur 1873-4.

Others were taken in the late 1870s-1890s, judging by the date on which the subject's record started. So throughout the period 1873-1900 photographs did exist of large numbers of men. There is an apparently unique example of a Tasmanian escapee whose photograph has been 'distributed' (although it does not say where to or how) – John Smith per *Mangles*, escaped 12 December 1873.⁷³² His photograph must have been virtually still warm from the darkroom, if photography began as I have suggested some time around August of that year, and its existence is contemporaneous with the photographs of the Gregsons, Harrington and Kilpatrick requested by Travers Solly. Tasmania did not keep a Register of Habitual Criminals and so far no other mechanism for their distribution has been discovered. Jackman found that many police records were lost in the wholesale destruction of municipal records in the twentieth century, and the period 1857-98 was particularly hard hit.⁷³³ But the Colonial Secretary sought six copies of the Gregsons' portraits – what did he do with them, where did they go?

Given the examples from mainland *Police Gazettes*, surprisingly few though they are, we might assume that photographs were circulated in a similar manner in Tasmania. Unfortunately, so little evidence remains of the activities of the Tasmanian police in this period that no conclusions can be reached about any use of photographs here to capture bolters.⁷³⁴ Trawling through what does remain for the period – letterbooks inward and outward, duty and occurrence books, circulars, daily journals and warrant books, Annual Reports to the Legislative Council from both the Territorial or Municipal police – turns

⁷³¹ Alphabetical register of prisoners admitted, GD35/6, TAHO: For example, William Temple, 998.0683; William Foreman, 998.0688; Michael Heffernan, 998.0733, Port Arthur Historic Site Management Authority.

⁷³² ABSCONDED: On the 5th instant, from Port Arthur, whilst undergoing a sentence of Life passed on him at S.C., Outlands, 26th September, 1860, for assault and robbery. John Smith, per *Mangles*. aged 60, 5 feet 11, sallow complexion, brown to grey hair, hazel eyes, long nose, medium mouth, round chin, native of Hampshire, England, 2 blue marks inside right arm. Photographs distributed. *Tasmanian Police Gazette*, 12 December 1873, 203.

⁷³³ Jackman, 'Development of police administration in Tasmania', x, xi.

⁷³⁴ Jackman, 'Development of police administration in Tasmania', x.

up a single mention of photography. The Letterbook for 1 May 1871-30 April 1892 of the Sub Inspector of Police at Wynyard, a north-western rural police district, does not mention the existence of photographs in its day to day entries until the final page, which lists two escapees from Hobart Gaol on 2 April 1892. The book notes when a photograph had been taken of each man, but not that Wynyard had received it.⁷³⁵ A volume from another rural station at Kingston, south of Hobart, records that they received a telegram alerting them to the escape of George White or Nutt but, although we know a photograph exists of this man, there is no mention of it.⁷³⁶ Stephen White, referring to the more effective administration of probation under the strongly centralised Irish Constabulary as opposed to the locally controlled English police, concluded that ‘central and unified control facilitated the supervision of offenders prone to move around the colony’.⁷³⁷ Tasmania’s was the most fragmented and scattered police force in all the colonies, and so the least able to keep track of old lags, a similarly mobile cohort. This may also have militated against the effective circulation of photographs.

None of the 1870s legislation in Tasmania pertaining to either the police or the Gaol Department mentions the establishment of an Habitual Criminals Register, either with photographs or without, as had been established by the Prevention of Crimes Act 1871 in Britain. While surviving police records are patchy, Inspectors reported each year to Parliament and these reports were published in full. No such register is ever mentioned throughout the mid-late nineteenth century. Gaol Department records are comprehensive but again, there is no mention of the existence of such a register.

Conclusion

At this stage, it seems most likely that Commandant A.H. Boyd took these photographs in 1873-4. The numbering sequence was begun by Boyd and carried on by Hobart Gaol. It does not relate to dates of admission, or the order in which men were removed from

⁷³⁵ Arthur Ward, Date of photograph February 1890: Charles Ford, Date of photograph July 1886. Letter book of the Sub Inspector of Police, Wynyard, AB262/1/1, TAHO.

⁷³⁶ Circulars and Inward correspondence, Kingston Police Department, 29 March 1878, POL405/1/1, TAHO.

⁷³⁷ S. White, ‘Howard Vincent and the development of probation in Australia, New Zealand and the United Kingdom’, *Historical Studies*, Vol. 18, (1979), 599.

Port Arthur. It is apparently random, and may relate to when each man was available to be photographed. The subjects of these images were, almost without exception, men who represented a security risk once they were transferred to Hobart. The method of dissemination and the use that was made of them is so far unknown but one might assume, based on usage in other colonies, that they were intended for distribution to the police to assist in the recapture of any escapees. Strangely, no surviving police records make any mention of this practice. I shall explore this issue in the next chapter.

CHAPTER 6: ‘Well-known here as a daring burglar’: policing Tasmania⁷³⁸

George Brown, escaped from the Launceston House of Correction and rearrested at Longford in 1869



George Brown per *Maria Somes*
Taken at Port Arthur 1874
Photographer: probably Commandant A.H. Boyd
National Library of Australia

The preceding four chapters have left us with a mystery. We know that photographs were taken of Tasmanian convicted men as early as 1873 and thereafter until the present day. We know that in other colonies, and in Britain and Europe, they were circulated to police stations to assist in the recapture of escapees and the arrest of known offenders. Although it seems reasonable to assume that photographs in Tasmania would have been circulated in similar fashion, there is only one reference in police records to that practice having been embraced in the nineteenth century.⁷³⁹ We know that in the last decades of the nineteenth century photographs were adhered to the man’s criminal record compiled at

⁷³⁸ *Launceston Examiner*, 20 July 1869, 3.

⁷³⁹ *Tasmanian Police Gazette*, 12 December 1873, 203.

Hobart Gaol, and hypothesise that they were used to make sure that the man received after subsequent sentencing was the same man identified on the original paperwork. Perhaps that was their only function in Tasmania. If that is the case, how were escapees and offenders captured in the nineteenth century without the photographic means to identify them? Did police simply rely on written physical descriptions? In order to attempt an answer to these questions, it is necessary to revisit the context for the use of forensic photographs in Britain. In what follows, I am not interested in whether or not these men were or were not vagrants or professional or habitual criminals. I am concerned with whether or not they might be perceived to fall into those classes by 'respectable' people and so inspire criminal sanctions.

As discussed in Chapter 3, in Europe photographs were widely circulated to assist the police in identifying criminals from as early as 1841.⁷⁴⁰ When photography was introduced as a regular feature of law enforcement after 1871, the initial target population was vagrants, those with rootless existences, and the subject of intense official and public concern. Given their peripatetic lives, they could not be properly surveilled and controlled.⁷⁴¹

British authorities shared this continental anxiety. The new legislation that re-organised the police force in the 1820s -1850s had vagrants firmly in its sights. They became either identified with or subsumed in a class of persons called variously 'habitual offenders', 'professional criminals', and 'members of the 'dangerous classes'. These folk, who had supposedly chosen a life of crime over a life of respectable endeavour, were deemed to be a dire threat to an orderly society.⁷⁴² Henry Mayhew, that great chronicler of the seamy side of London, saw the vagrant and the habitual criminal as one and the same person. Alarmed by the presence of what he calculated to be 4,000 vagrants in London, he

⁷⁴⁰ G. Buckland, *First Photographs: People, Places, And Phenomena As Captured For The First Time By The Camera*, (New York : Macmillan, 1980), 160.

⁷⁴¹ J. Davis, 'Urban Policing and its objects' in C. Emsley and B. Weinberger (eds.) *Policing Western Europe: Politics, Professionalisms And Public Order, 1850-1940*, (USA: Greenwood Press, 1991), 2.

⁷⁴² J. J. Tobias, *Crime And Industrial Society In The Nineteenth Century*, (London: Batsford, 1967), 54.

warned ‘that vagrancy is the nursery of crime, and that the habitual tramps are first beggars and then thieves, and finally the convicts of the country, the evidence of all parties goes to prove’.⁷⁴³ Charles Darwin also attributed crime of all kinds to the vagabond, that rootless, shiftless and mysterious ‘other’ who drifted in and out of the lives of ordinary people, leaving mayhem and distress in their wake.⁷⁴⁴ Within this context, the introduction of some form of visual identification, more reliable than the old, handwritten descriptions, seems like a very good idea.

To what extent could the men transported to Australia be identified with these wandering, unskilled ‘habitual criminals’? In *Convict Workers*, Stephen Nicholas, Peter Shergold *et al* examined prevailing myths about the colonial convict population.⁷⁴⁵ For the purposes of my study, the two relevant fields of inquiry are ‘professions’ and ‘mobility’. The group of men photographed at Port Arthur (see Appendices 1 and 3) was largely transported between 1831 and 1851, a time of widespread anxiety about an increasingly peripatetic population.⁷⁴⁶ If there were any evidence that they would have been described as vagrants and/or habitual criminals in Britain, it makes the failure to employ photography in Tasmania even more mysterious. Of the 163 identified men whose photographs we have from Port Arthur, those identified as native Tasmanians, soldiers and sailors at the time of conviction leading to transportation have been eliminated from the discussion on vagrancy, since they could not have been wandering about in Britain. Men who came ‘free to the colony’ are also not included because they do not have records illuminating their lives prior to their conviction in Tasmania, so that we cannot know either their professions or their mobility. Two men have also not been included because their records cannot be located. This leaves 123 men.

⁷⁴³ H. Mayhew, *The Criminal Prisons Of London And Scenes Of Prison Life*, (London: Griffin, Bohn & Co., 1862), 43.

⁷⁴⁴ C. Darwin, *The Voyage Of The Beagle*, (London: Dent, 1959, first published 1839), 449.

⁷⁴⁵ S. Nicholas (ed.), *Convict Workers*, (Cambridge: Cambridge University Press, 1988), 4-6, 8, 9.

⁷⁴⁶ Seven men were transported between 1823 and 1830.

The professional or habitual criminal - those who prefer crime to work

All these men claim trades or occupations on their convict indent (see Appendix 2).

Unfortunately we have no way of knowing if these claims were true but Nicholas and Shergold, using ‘several tests of its reliability ... find that the convicts’ stated occupations provide a reliable guide to their skills’.⁷⁴⁷ Their ‘statistical tests confirm that the convicts came from the same occupational population as the free workers in England’.⁷⁴⁸ Hamish Maxwell-Stewart and James Bradley also found that when new arrivals were interrogated on board ship they were told that the authorities already knew the answers to the questions and they would be punished if they lied: thus it seems safe to accept their self-descriptions.⁷⁴⁹ Following their approach, it is apparent that these men do not conform to the stereotype of the professional criminal who had chosen crime as a career over work. At some time, all had worked at something. Only one man among this sample of transported Port Arthur men, a silk weaver named James Brocklehurst, brought a trade that would have been of no conceivable use in the colony. Three others brought skills that would have been of limited use in the 1840s and 1850s: weaver Patrick Grant, spinner Thomas Molineux, and watch finisher Thomas Sanders. One hundred and nineteen of these men also conform to Nicholas and Shergold’s conclusions that convicts brought with them skills of immediate value to an emerging society.⁷⁵⁰

If they were not professional criminals, could they be defined as habitual criminals?

Under the British Habitual Criminals Act of 1869, a habitual criminal had committed two or more offences.⁷⁵¹ Of the 115 men whose records are sufficiently clear, only 23 or 20% had no known convictions prior to committing the offence that sent them to Van Diemen’s Land: 48 or 41.7% had one known previous conviction, 24 or 21% had two, and 17.5% had more than two. If we include the known previous conviction/s plus the one for which the offender was transported, in our sample 79.5% would have been defined as ‘habitual criminals’.

⁷⁴⁷ S. Nicholas and P. Shergold, ‘Convicts as Workers’, in Nicholas (ed.), *Convict Workers*, 62.

⁷⁴⁸ Nicholas (ed.), *Convict Workers*, 9.

⁷⁴⁹ H. Maxwell-Stewart & J. Bradley, ‘“Behold the Man”: Power, Observation and the Tattooed Convict’, *Australian Studies*, Vol. 12/1, (1997), 75–6.

⁷⁵⁰ P. R. Shergold and S. Nicholas, ‘Unshackling the Past’, in Nicholas (ed.), *Convict Workers*, 9.

⁷⁵¹ 32 and 33 Vict. Cap. 99.

The vagrant - on the tramp in Britain

If it appears that the first criterion for the class of professional criminal cannot be satisfied, what of the second – mobility? Shergold and Nicholas estimated in their study of men transported to New South Wales 1817-1840 that at least 38% of English and Irish convicts had left their county of birth before being convicted and transported.⁷⁵² The overall picture is of a highly mobile working class population, which may have given the impression that the country was being overrun with vagrants.⁷⁵³

In what follows I have excluded soldiers, who were often not in control of their movements, natives, one man whose record does not show his native place and those who came free to the colony. Forty-two of the remaining Port Arthur sample of 123 men or 34% were tried in a county different from his birth county and so might have been regarded as ‘vagrant’. This accords closely with Shergold and Nicholas’ estimate of at least 38% of the British and Irish men transported to New South Wales a few years earlier.⁷⁵⁴

In attempting to determine the relative mobility of skilled and unskilled occupations in this sample, the exercise has been slightly complicated by the fact that some men are described as having two strings to their bow: Bewley Tuck, for example, is listed as both labourer and shoemaker. In these cases I have counted the man as a shoemaker, since he presumably only turned to labouring when he could not get work at his trade. The 76 workers with a trade, here called skilled, make up almost 68% of the Port Arthur sample: 22 or almost 30% were tried in a county other than their county of origin. Of the 32 men simply called ‘labourers’, 26% of the sample, 10 or 26.3% were not tried in their county of origin. The 14 farm labourers make up only 11.4% of the total sample, and 6 or 42.8% were tried in a county other than their county of origin. This does not agree with Nicholas and Shergold’s finding that ‘the greater the degree of occupational skill . . . the greater the likelihood of intercounty movement’, the possession of skills providing better job

⁷⁵² Some Irish, Scots and Welsh convicts may have immigrated as children and thus technically have offended far from their place of birth without being vagrant. Since I cannot identify such men I have perforce counted them in the same way as the English-born.

⁷⁵³ Shergold and Nicholas, ‘Unshackling the Past’, 54.

⁷⁵⁴ Shergold and Nicholas, ‘Unshackling the Past’, 54.

opportunities even in hard times.⁷⁵⁵ The skilled workers were apparently the least mobile of this sample, but the sample sizes may be too small for significant results.

Interestingly, skilled men on the tramp did not enjoy a good reputation among their fellows. Although this population might certainly include ‘good men with migratory habits’, it also included ‘a very large number of the marginal and sub-standard workers: the first to be sacked the last to be set on’.⁷⁵⁶ It also included those men whom a member of the Manchester Typographical Society in 1856 called ‘incorrigibles’, men unable or unwilling to settle to steady work.⁷⁵⁷ Even though more than half of the Port Arthur men had skills, they may not have been the *crème de la crème* of their professions, and so they had still found it difficult to obtain work, or even found bouts of petty crime more lucrative.

Old ways of thinking in the New World

Many of the Port Arthur men in these photographs may have experienced life as a mosaic of periods of casual employment, interspersed with episodes of petty thievery and brief stints in gaol, before they finally tried the patience of the British courts too far, and made the long journey south. As James Boyce argued, there were two societies rubbing up against one another in this island so far from Britain. ‘Tasmania’ was the ‘new society the free immigrants sought to superimpose on the convict homeland of Van Diemen’s Land’.⁷⁵⁸ But how new could this society be, when the prejudices of the Old World had been imported unchanged? This is apparent in the labelling of convicts as both vagrant and habitually criminal in the pages of annual reports by Inspectors of Police in the 1860s and 1870s. Their terminology and attitudes read as though directly imported from Britain. Both Inspector John Swan and Inspector John Forster appeared deeply frustrated by the continued high rate of minor crime: in the 1860s, Swan attributed it to habitual criminals, describing them as ‘the crime-committing class in our community, whose long

⁷⁵⁵ S. Nicholas and P.R. Shergold, ‘Convicts As Migrants’, in Nicholas (ed.), *Convict Workers*, 56.

⁷⁵⁶ E.J. Hobsbawm, ‘The Tramping Artisan’, *The Economic History Review*, New Series, Vol. 3/3, (1951), 316.

⁷⁵⁷ Hobsbawm, ‘The Tramping Artisan’, 316.

⁷⁵⁸ J. Boyce, *Van Diemen’s Land*, (Melbourne: Black Inc., 2008), 158.

experience allowed them to evade detection.⁷⁵⁹ Ten years later, Inspector Forster also raised the spectre of that other Old World bogeyman, the vagrant. He fretted over the increase in the rate of petty thefts, that he believed were ‘confined to the vagrant classes’. These vagrants were members of ‘the old convict class’ who were spread ‘throughout the colony’.⁷⁶⁰

Vagrants and habitual criminals were also the primary subject matter of the *Police Gazettes* in Tasmania throughout the second half of the nineteenth century and even well into the twentieth century. These weekly publications record a dismal litany of repeat offences by ‘old offenders’, ranging from habitual drunkenness through larceny to the occasional violent crime like rape and murder. In descriptions issued in the aftermath of an offence, the wanted man is often characterised as ‘vagrant’ or ‘itinerant’. As late as October 1939 Ernest William Enslow was ‘declared a habitual criminal’, and in November of the same year James Marshall was referred to as ‘a rogue and vagabond’.⁷⁶¹ Given the large population of men who were technically habitual criminals (with two or more offences) and vagrant (with no fixed abode) at large in Tasmania, it seems surprising that photography was not used in Tasmania as it had been in Britain since its development, to keep track of such men. Were there other surveillance techniques available at that time to fill the gap?

Colonial surveillance

Australian colonial governments had at their disposal a number of alternative surveillance strategies in the early nineteenth century. These strategies became increasingly sophisticated as the century wore on, in the quest for ever more reliable methods of identifying offenders and linking them to their criminal pasts. While the Australian

⁷⁵⁹ Report by the Inspector of Municipal Police, *House Of Assembly Journals*, 1873, Vol. XXV, Paper 20, 3.

⁷⁶⁰ Report by the Inspector of Territorial Police, *House Of Assembly Journals*, 1873, Vol. XXV, Paper 20, 3. As a solution, he recommended a more stringent enforcement of the Vagrancy Act of 1824, in which poverty and homelessness had been made crimes. The homeless, the desperately poor, drunkards, beggars, petty criminals and prostitutes could be arrested and detained for ‘being without lawful means of support’.

⁷⁶¹ *Tasmanian Police Gazette*, Supplement, 6 October 1939, 44; *Tasmanian Police Gazette*, Supplement, 3 November 1939, 51.

colonies may have lagged behind Britain and Europe, they nevertheless generally proved prepared to adopt new technologies – eventually. In the days before more ‘scientific’ methods like fingerprinting and criminal photography were introduced, colonial surveillance appeared to rely on strategies that were rudimentary in comparison to these later techniques.⁷⁶²

One of the the major weapons in the government’s surveillance arsenal throughout the nineteenth and into the twentieth centuries was the written description. These began with the record that was created when the convict arrived in the New World. Each man was described under the following headings: age (at transportation), trade or occupation, religion, marital status, level of literacy, place of native origin: then followed physical characteristics – height, complexion, head, hair, whiskers, visage, forehead, eyebrows, eyes, nose, mouth, chin, marks including scars, moles and tattoos. As Maxwell-Stewart and Ian Duffield point out, this involved parading them ‘degradingly near naked, under the omnipotent-seeming official eye, [where] prisoners starkly experienced themselves as humiliated subjects of disciplinary knowledge’.⁷⁶³

Apart from the collection of useful information, this experience would seem to have been designed to impress upon its subject that there would be no escape from surveillance. To some extent, this was an illusion. The non-physical traits might yield useful information: age at transportation would enable a rough estimate of age to be made when the man was rearrested: a man’s trade might have resulted in physical changes like missing fingers. But it seems likely that more reliance would be placed on physical traits, and these too were not immutable. As time passed, men might acquire scars or tattoos, lose arms or fingers, become stooped with age or injury. Their hair colour might fade or go grey. Some of the descriptors might also be ambiguous: one man’s round face might be another man’s oval face. Perhaps these descriptions should be regarded as indicative rather than

⁷⁶² Such strategies included supervision by masters and mistresses of convicts on assignment until 1842 in Van Diemen’s Land, regular musters and the issue of distinctive clothing, making it difficult for bolters to remain inconspicuous.

⁷⁶³ H. Maxwell Stewart and I. Duffield, ‘Skin Deep Devotions: Religious Tattoos and Convict Transportation to Australia’, in J. Caplan (ed.), *Written On The Body: The Tattoo In European And American History*, (Princeton, NJ: Princeton University Press, 2000), 120.

definitive. They were, however, clearly believed to be of use since written descriptions continued to appear in the *Police Gazettes* well into the twentieth century.

Circulated each week to all police in each colony beginning with Victoria in 1853, the *Police Gazette* played an important role in keeping an eye on offenders past and present.⁷⁶⁴ It alerted each station to people who were wanted for crimes and, apart from the physical description, provided other information that might assist their apprehension. These might include where the person had last been seen or might be heading, where she or he might be expected to seek work and even her/his distinctive personality traits and favourite pursuits. For example, Henry O. Martin was ‘aged about 24, 5 feet 11 inches high, slight build, dark brown straight hair, dark brown whiskers, blue eyes, and no moustache: likely to take contracts in mining shares or in road making: a great frequenter of dancing-houses and shanties’.⁷⁶⁵ John Redmond O’ Hanlon was ‘a frequenter of public-houses, and a noisy talker’.⁷⁶⁶ Tattoos and scars were always described in detail, being less mutable than other physical markers. Patrick Nolan bore ‘a sailor dancing having a bottle in hand on right arm, left thumb injured, large scar and mole on left arm near elbow, three moles and scar on right cheek, two moles above left eyebrow’.⁷⁶⁷ The journalist for the *Colonial Times* gave credit to Thomas Moran who, ‘compassionating the extreme stupidity of the constabulary, has furnished them with a slight clue to his discovery’ through his numerous elaborate tattoos, which the journalist then described.⁷⁶⁸ Another series of records tracked the man’s movements by listing the masters to whom he had been assigned.

The other major weapon in the surveillance arsenal was the local knowledge of the police.

⁷⁶⁴ Victoria introduced a circulating *Police Gazette* in 1853: Tasmania was the first to follow suit eight years later in 1861 but the other colonies lagged even further behind. South Australia and New South Wales, the latter usually a driver of innovation, did not start their gazettes until 1862, Queensland in 1864, and Western Australia not until 1876. Perhaps Tasmania initially felt, as it did when it came to the proposed introduction of Bertillonage some 35 years later, that its insularity and small population of serious offenders meant that there was no need for change.

⁷⁶⁵ *Tasmanian Police Gazette*, 2 February 1866, 18.

⁷⁶⁶ *Tasmanian Police Gazette*, 20 September 1878, 152.

⁷⁶⁷ *Tasmanian Police Gazette*, 28 January 1876, 15.

⁷⁶⁸ *Colonial Times*, 26 May 1853, 2.

In 1893-4, evidence given to a British committee investigating the best way to identify habitual criminals was that visual inspection by police or prison officers was still the best method, ‘though its scope may be extended by photography and it is in some cases aided by such devices as the registers of distinctive marks’.⁷⁶⁹ This practice was not finally superseded in Britain until fingerprinting was introduced in 1903.⁷⁷⁰ Police knowledge was certainly in use in at least one colony in the mid-late nineteenth century. A Royal Commission into Penal and Prison Discipline in Victoria in May 1871 recommended that ‘a properly qualified officer, specially appointed for the purpose, should visit the gaols, to ascertain whether any of the prisoners awaiting trial have been previously convicted’.⁷⁷¹

The nineteenth century saw the efflorescence of an enthusiasm for and faith in the benefits of science and three new surveillance techniques were developed during this golden age of experimentation and innovation. As discussed previously, criminal photography was introduced into the mainland colonies in the 1860s, Tasmania lagging behind and not adopting the technology until the early 1870s. While it went some way towards achieving the certainty of identification so badly needed, two other techniques became available in the final 20 years of the century that promised an even higher degree of confidence.

Harold Maclean, Comptroller of Convicts in New South Wales and responsible for the introduction of photography in that colony in 1871, had apparently maintained his connections with police forces overseas and his interest in new surveillance technologies, for in 1888 he heard of *Bertillonage* from colleagues in Paris and began promoting its adoption among his colonial colleagues.⁷⁷² Despite the system’s fundamental problems,

⁷⁶⁹ *Identification Of Habitual Criminals. Report Of A Committee Appointed By The Secretary Of State To Inquire Into The Best Means Available For Identifying Habitual Criminals*, 1893-1894, LXVII, 5, C7263.

⁷⁷⁰ C. Sengoopta, *Imprint Of The Raj: How Fingerprinting Was Born In Colonial India*, (London: Macmillan, 2003), 182.

⁷⁷¹ *Argus*, 31 May 1871, 7.

⁷⁷² The Bertillon system was first developed in 1883 in France and, although it was rapidly adopted by British, European and American police forces, problems similar to those experienced with written descriptions soon made it apparent that this system also had its limits. Its 243 body measurements might be taken in slightly different ways and obtain different results. Age and

the New South Wales government adopted the method in 1894 and advocated its general adoption in the Australian colonies, with the aim of establishing a ‘uniform system for the registration and identification of habitual criminals’.⁷⁷³ Queensland declared that it was willing to join New South Wales in this innovation: they had already been trained in the use of the system by French prison warders, in order to assist in the recapture of escapees from their nearby dreaded prison colony at Nouville in New Caledonia.⁷⁷⁴ While Finnane and John Myrtle saw the expense of the system as standing in the way of its general adoption in 1895, the conservatism of some colonies may also have played a role.⁷⁷⁵ South Australia and Victoria did not see the need for change, and Tasmania declared that ‘any alteration in the system in force [there] is unnecessary in consequence of its insular position and the small field that it affords for criminals of the worst kind’.⁷⁷⁶ With Federation in 1901 came an increased likelihood that criminals would cross state borders, a practice that had frustrated colonial police for decades: despite this, and although the New South Wales and Queensland governments pushed for more co-operation between the various police forces, including the adoption of *Bertillonage* as a standard for identification, the other state governments did not change their positions. Meanwhile, another development was taking place that would initially attempt to make *Bertillonage* more efficient, but would ultimately render it obsolete.

In 1901 the New South Wales government sent Deputy Controller-General Samuel McCauley to study systems of criminal identification in France, Britain and Ireland. On his return, McCauley recommended the adoption of a combination of *Bertillonage* and the ‘Galton system’ of fingerprinting, so that ‘the prisoner would know that there would

accident might also change measurements taken years before. Since records were filed by name, an alias made identification impossible, and the sheer number of records accumulated soon made it too unwieldy to be useful in rapid identification. M. Finnane and J. Myrtle, ‘An Exercise in Police Co-operation? The Origins of the Conference of Australian Police Commissioners’, *Australian Journal Of Politics And History*, Vol. 57/1, (2011), 9-10.

⁷⁷³ *Sydney Morning Herald*, 12 December 1895, 3.

⁷⁷⁴ Finnane and Myrtle, ‘An Exercise in Police Co-operation?’, 11.

⁷⁷⁵ Finnane and Myrtle, ‘An Exercise in Police Co-operation?’, 10.

⁷⁷⁶ *Sydney Morning Herald*, 12 December 1895, 3.

be no chance ... of his ever again posing as a first offender'.⁷⁷⁷ This is an unusual case of an innovation arising in a colony and being adopted by the mother country.⁷⁷⁸ A form of fingerprinting was developed by the British administration in colonial Bengal in the 1850s and 1860s, where it was struggling to fix and authenticate the identities of the teeming millions that it was attempting to regulate. The initial use of the system was in ensuring that people could not give false witness, repudiate contracts or forge documents. Signatures were of no use since most were illiterate and, leaving aside the sheer scale and expense of an attempt to photograph everyone who might want to enter into a contract, the British found it difficult to tell Indians apart visually anyway. After 1893, fingerprinting was also used to identify criminals.⁷⁷⁹ Francis Galton, known as the father of fingerprinting and its most passionate and indefatigable promoter, persuaded Bertillon to add it to his system in the same year⁷⁸⁰, but within a few years *Bertillonage* was abandoned in British India when it became clear that fingerprints alone were the best way to establish identity.⁷⁸¹ Using a classification system developed by Edward Henry, Inspector-General of Police in Bengal, that grouped whorls, loops, composites and arches into only 1,024 possible combinations, multiple searching was far quicker with prints than with measurements or photographs.⁷⁸² The system was adopted in Britain in 1901 and by 1903 officers were no longer being sent to Holloway to identify recidivists.⁷⁸³

⁷⁷⁷ This system should perhaps more properly be called 'the Herschel system', after William Herschel who began pioneering work on it in 1858 in India. In 1880 Scottish missionary Henry Faulds, who had observed fingerprints on ancient Japanese pottery, became the first person to suggest that fingerprints might be used in criminal identification but was not able to muster enough scientific evidence to prove it, and he has since been largely written out of the story. With Herschel's help, Francis Galton later developed and disseminated the technique, establishing it in Britain and revivifying it in India, thus becoming known as the man who invented it. He however, acknowledged Herschel's pioneering role, as Herschel had acknowledged Faulds'. Sengoopta, *Imprint Of The Raj*, 58, 86, 92; J. Ramsland, *With Just But Relentless Discipline: A Social History Of Corrective Services In New South Wales*, (Sydney: Kangaroo Press, 1996), 168-9.

⁷⁷⁸ As Sengoopta points out with justifiable pride, Britain also derived those staples of its culture, curry and Worcestershire sauce, from India. Sengoopta, *Imprint Of The Raj*, 4, 6.

⁷⁷⁹ Sengoopta, *Imprint Of The Raj*, 51, 134; C. Pinney, *The Social Life Of Indian Photographs*, (Chicago: University Of Chicago Press, 1997), 69.

⁷⁸⁰ Sengoopta, *Imprint Of The Raj*, 113, 139.

⁷⁸¹ Sengoopta, *Imprint Of The Raj*, 139.

⁷⁸² Henry's two Indian assistants, Azizul Haque and Hem Chandra Bose, also made important contributions to the development of this method. Sengoopta, *Imprint Of The Raj*, 141: Sengoopta, *Imprint Of The Raj*, 141-5.

⁷⁸³ Sengoopta, *Imprint Of The Raj*, 182.

The Australian colonies were not far behind. The issue at the top of the agenda for the State Police Commissioners conference in 1903 was the identification and tracking of criminals. The conference recommended that a common system of photography, personal description and fingerprints be adopted throughout the new nation, to be undertaken and managed by the Prison Departments in each state.⁷⁸⁴ Fingerprinting began to be implemented in mid-1902, beginning at Darlinghurst Gaol in Sydney.⁷⁸⁵ Soon, representatives from other states began dropping in to inspect this new system, and they were duly impressed.⁷⁸⁶ It was adopted in Victoria in 1902 or 1904, in South Australia in 1904, in Tasmania in 1904-5, and in Queensland in 1904 or 1906.⁷⁸⁷ In New South Wales this function was handed over to the police in mid-1903, and it seems that other states followed suit within one or two years.⁷⁸⁸ Tasmania was the exception, where the police did not take over fingerprinting from the Gaol Department until the early 1920s.⁷⁸⁹

Surveillance in Tasmania

In the second half of the nineteenth century, the records containing written descriptions were also front line strategies in Tasmania. As in other colonies, they were published in the *Tasmanian Police Gazette* when a man was sought on suspicion of an offence. It does seem strange that the *Police Gazette* could be efficiently circulated but that photographs

⁷⁸⁴ Finnane and Myrtle, 'An Exercise in Police Co-operation?', 20.

⁷⁸⁵ <http://www.australianpolice.com.au/dactyloscopy/fingerprint-identification-in-australia/>, viewed 17 September 2013.

⁷⁸⁶ Ramsland, *With Just But Relentless Discipline*, 171.

⁷⁸⁷ Police Management Services Bureau, *Police In Victoria 1836-1980*, (Melbourne: Victoria Police Force, 1980), 44; R. Haldane, *The People's Force: A History Of The Victoria Police*, (Melbourne: Melbourne University Press, 1986), 130; <http://www.australianpolice.com.au/dactyloscopy/fingerprint-identification-in-australia/>, viewed 17 September 2013: an officer from Hobart Gaol was sent to Pentridge to learn the art, and when he returned 'a bureau was established for the identification of offenders by the Finger Print system' bringing Tasmania into line with the other states and New Zealand. Police Department Report for 1904-5, *Police Gazette Supplement, Tasmanian Police Gazette*, 1 September 1905, 147; <http://www.australianpolice.com.au/dactyloscopy/fingerprint-identification-in-australia/>, viewed 17 September 2013; W.R. Johnston, *The Long Blue Line: A History Of The Queensland Police*, (Brisbane: Boolarong, 1992), 144.

⁷⁸⁸ <http://www.australianpolice.com.au/dactyloscopy/fingerprint-identification-in-australia/>, viewed 17 September 2013.

⁷⁸⁹ There is some confusion as to the exact year, as the Gazette is somewhat ambiguous and documentation is missing. *Tasmanian Police Gazette*, 15 December 1922, 225. *Tasmanian Police Gazette*, 21 March 1924, 55.

were not. It was not because Tasmanian police were unaware of the value of photographs. From the early 1890s photographs of men wanted on warrant, including from other Australian colonies, South Africa, America or New Zealand, had been lodged in the office of the Commissioner of Police, but not either circulated or lodged in offices beyond Hobart. Apart from the one entry in late 1873 already mentioned, the first definite evidence that a photograph of a Tasmanian offender had been lodged in a Tasmanian police office outside Hobart or Launceston was on 13 September 1901: Robert Smallhorn was wanted on suspicion of incitement to murder in Zeehan, and his photograph was lodged in the Macquarie District Police Office.⁷⁹⁰ There is no similar entry until November 1910, alerting officers that a photograph of Charles Adams, wanted on warrant for deserting his de facto wife and child, was lodged in the Brighton Office.⁷⁹¹ It seems that images were still not regularly circulated: in June 1909 the *Police Gazette* published the only notice that I have found to inform police that ‘a photograph has been forwarded to each Superintendent *for circulation to members of the Police Force*’ (my italics). Like Charles Adams, John Maitland had also left his wife and child and failed to pay maintenance: he was not, however, wanted on warrant but listed as a Missing Friend.⁷⁹² Perhaps Mrs Maitland was of a more forgiving nature than Mrs Adams. Apart from this case, it seems that until the early twentieth century officers still had to visit central offices to view photographs, although in May 1913 they were told that in the case of absconder Ernest Johnston they could apply for copies of photographs if needed.⁷⁹³

Only three photographs were published in the *Police Gazette* between the availability of suitable printing technology in the 1890s and 1921. The earliest was of escapee Robert Carter, published in August 1913: the next was not until more than three years later, another escapee George Hudson in November 1916, and finally Wilfred Colley, wanted for murder in New South Wales, in January 1921.⁷⁹⁴ I also found a loose sheet of

⁷⁹⁰ *Tasmanian Police Gazette*, 12 December 1873, 203; *Tasmanian Police Gazette*, 13 September 1901, 164.

⁷⁹¹ *Tasmanian Police Gazette*, 11 November 1910, 248.

⁷⁹² *Tasmanian Police Gazette*, 25 June 1909, 128.

⁷⁹³ *Tasmanian Police Gazette*, 13 June 1913, 143 .

⁷⁹⁴ *Tasmanian Police Gazette*, 22 August 1913, 193; 17 November 1916, 288; 28 January 1921, 22.

photographs of discharged men, double sided with profile and full-frontal image of each man, tucked into a volume of earlier gaol records.⁷⁹⁵ Titled 'Supplement to the Police Gazette 1924', it suggests that photographic supplements were published annually from at least this date, although so far this is the only example that I have managed to find. Monthly photographic supplements began in October 1937, when a General Instruction of 1 October 1937 directed that 'Commencing from the first instant, the photographs of criminals will be reproduced monthly as a supplement to the Police Gazette . . . particulars of each photograph should be entered in a manuscript index, to be kept in front of the Gazette files'.⁷⁹⁶

From January 1910 onwards, tables were published in the *Police Gazette* listing men either convicted or discharged: these contained a column titled 'Distinguishing Marks and No. of Photograph', although nothing appears in the General Instructions for that year regarding a new policy of including photographs.⁷⁹⁷ The numbers have a 'B' suffix or prefix and appear similar to those on Hobart Gaol register sheets in that period. This connection was confirmed two weeks later when a photograph was entered as a 'Hobart Gaol Photo'.⁷⁹⁸ Between 1910 and 1912 the number of references to photographs steadily increased so that by late 1912 almost every newly convicted man appeared to have a photograph. But from then on this column is increasingly sparsely populated until by the end of the decade many of these tables recorded only one or two, or even no, photographs at all. Despite this, Hobart Gaol records continued to bear a photograph of each man discharged, apparently often taken on admission judging by the date of the photograph and the date convicted.⁷⁹⁹ From the beginning of 1910 lists of discharged prisoners also occasionally sport a photograph number, and by March 1910 most do.

While the potential of photography apparently largely failed to engage the interest of the police force, in this period they did embrace fingerprinting. Fingerprint data had been

⁷⁹⁵ Photographs of discharged prisoners organised by discharge dates, 9 May 1913-11 February 1914', POL708/1/4, TAHO.

⁷⁹⁶ *Tasmanian Police Gazette*, 1 October 1937, 177.

⁷⁹⁷ *Tasmanian Police Gazette*, 14 January 1910, 9.

⁷⁹⁸ *Tasmanian Police Gazette*, 28 January 1910, 19.

⁷⁹⁹ Photographs of discharged prisoners organised by discharge dates, POL708, TAHO.

appearing on Hobart Gaol record sheets since the early twentieth century. Although it is sometimes difficult to tell exactly when the data was added to the record sheet, and the series of registers is also incomplete, it seems that the earliest entries may have been 1904-5.⁸⁰⁰ In a General Instruction of December 1922, police officers were instructed to ‘make themselves conversant with the finger print system’, with instructions contained in a supplement to that edition of the *Police Gazette* that unfortunately has apparently not been preserved. Officers were also notified that books and forms were available at stations.⁸⁰¹ This seems to indicate that police were now to take fingerprints. But in a General Instruction of March in 1924, Commissioner Lord informed officers that, as Hobart Gaol was no longer taking fingerprints, the police must now do it for themselves.⁸⁰² In the absence of the 1922 supplement it is not possible to be certain of the year in which police took over this responsibility. In the only surviving record of day-to-day Tasmanian police practice in the early twentieth century, *Regulations (with index) under the Police Regulation Act, 1898*, reprinted from the *Tasmanian Government Gazette* in 1939, there is an entire section devoted to the taking, storing and managing of fingerprints, but no mention of taking or using photographs.⁸⁰³ This seems curious given that the Police Force had been taking excellent forensic photographs of convicted men and women since at least 1924.⁸⁰⁴

Thus the only surveillance techniques in use in Tasmania in the late nineteenth century were written descriptions published in the *Police Gazette* and police knowledge. In order to understand how critical police knowledge actually was, it is necessary to make an assessment of the effectiveness and efficiency of the Tasmanian police force.

⁸⁰⁰ Photographs of discharged prisoners organised by discharge dates, 31 May 1904 -24 June 1908’, POL708/1/1, TAHO.

⁸⁰¹ *Tasmanian Police Gazette*, 15 December 1922, 225.

⁸⁰² *Tasmanian Police Gazette*, 21 March 1924, 55.

⁸⁰³ *Regulations (With Index) Under The Police Regulation Act, 1898*, (Hobart: H.H. Pimblett, Government Printer, 1940), 25.

⁸⁰⁴ ‘Head Office Police - photographs of convicted criminals’, 1 January 1890 – 31 December 1931’, POL708/1/5, TAHO. The date range refers to the series, not to this individual volume. The image series that begins in 1927 is highly competent and consistent throughout: each image is a composite sheet measuring about 140mm high x 120mm across, with a standing full length figure at left, occupying half the width and the full height of the sheet and, dividing the left hand half of the sheet, a right profile on top and a full-frontal below. This sophistication may indicate that the series started before that date.

Policing Tasmania in the nineteenth century

As it was in other colonies, the role of the Tasmanian police force was ‘the preservation of peace and the prevention of crime’.⁸⁰⁵ Stefan Petrow demonstrated that, until 1858, Tasmania’s police force had been centralised under the control of the Lieutenant Governor, George Arthur. This organisation had been foisted on a suspicious population in Tasmania, as it had in New South Wales, as a result of one of the recommendations of the Bigge Report. In 1823 J. T. Bigge, charged with making transportation more of a deterrent for English criminals, reported to the Colonial Office that police organization in New South Wales was defective. He recommended centralized control rather than leaving local control in the hands of unpaid magistrates. Governor Arthur, always in favour of tightly centralised organisation, was strongly influenced by Bigge’s recommendation. As Petrow said, ‘He created a more highly centralised policing system and controlled the police ... through paid magistrates, responsible directly to him’.⁸⁰⁶ By 1851, stations were said to be found every 5-10 miles along every main or by-road. With about 130 stations, police were plentiful and within reach of every citizen.⁸⁰⁷

But, as Petrow has demonstrated, this centralised police force was not an efficient crime-detection force. Its mainly convict and ex-convict constables were notorious for having ‘abused their powers and infringed liberties’.⁸⁰⁸ They were criticised for ignoring crimes and conferring ‘relative immunity to real criminals’.⁸⁰⁹ According to one prominent and irate colonist who made his frustration felt in the highest circles, they showed a ‘really lamentable’ inability to deal with felonies.⁸¹⁰ While those in the rural districts had appreciated the improved security provided by Arthur’s system, those in urban areas chafed at a system that was riddled with corruption and placed convicts over free men.

⁸⁰⁵ Inspector-General of Police, *General Government And Discipline Of Members Of The Police Force*, (Sydney: NSW Government Printer, 1877), 2.

⁸⁰⁶ Petrow, S., ‘Policing in a Penal Colony: Governor Arthur’s Police System in Van Diemen’s Land, 1826-1836’, *Law And History Review*, Vol. 18/2, (2000), 355.

⁸⁰⁷ A.K. Jackman, ‘Development of police administration in Tasmania, 1804-1960’, Dip. Pub. Admin., (University of Tasmania, 1967), 74.

⁸⁰⁸ S. Petrow, ‘Economy, Efficiency and Impartiality: Police Centralisation in Nineteenth Century Tasmania’, *Australian And New Zealand Journal Of Criminology*, Vol. 31/3, (1998), 243, 245.

⁸⁰⁹ ‘A Citizen of Tasmania’, *Cornwall Chronicle*, 26 July 1856, 5.

⁸¹⁰ Thomas Prosser of Patterson’s Plains to the Governor, His Excellency Sir Henry Fox Young, 21 November 1855, CSD 1/46/902, TAHO.

According to the furious editor of a Launceston newspaper, the government's reckless policy of rapidly reducing police numbers after 1856 also helped criminals and resulted in an increase of offences such as pilfering and sly-grog selling.⁸¹¹

As the feeling against transportation grew, this system of policing was finally rejected as part of the hated convict system. Unlike the other colonies, Tasmania was socially relatively stable, the Aboriginal population had been largely destroyed and those who survived represented no threat, there were no goldfields, bushrangers were by now rare and, despite the alarmist ravings of the anti-transportationists less than a decade before, 'the ex-convict population did not seem particularly threatening'.⁸¹² There seemed no pressing need for an expensive centralised force, and the government, ever keen to reduce expenditure, concurred.⁸¹³

In 1857, shortly after the granting of self-government, the Municipal Police Act established a decentralised force.⁸¹⁴ There were two 'arms' of the Tasmanian police force, the Territorial and the Municipal, to be managed by a single Inspector. The Municipal Police served municipal areas, including the two urban centres of Hobart and Launceston. Each local community was to control its own force, which would be managed by their municipal council and paid for out of a rate to be levied on residents. In Hobart, the police took on additional responsibilities for pursuing requests by neighbouring colonies, dispensing relief to paupers and admitting indigent folk to charitable institutions.⁸¹⁵ Most of the 21 rural municipalities were very small: only two contained more than 5,000 people and many had only four or five officers.⁸¹⁶ Only one had ten or more police.⁸¹⁷ Their authority was strictly limited to their own municipality and they would not, or

⁸¹¹ Editorial, *Cornwall Chronicle*, 4 March 1857, 4. This paper supported the continuation of transportation and was no friend of the government. It was generally read by the shopkeeping classes, including licensed publicans.

⁸¹² S. Petrow, 'Tolerant Town, Model Force: the Launceston Municipal Police 1858-1898', *University Of Tasmania Law Review*, Vol. 16/2, (1997), 236.

⁸¹³ Petrow, 'Tolerant Town, Model Force', 236.

⁸¹⁴ Petrow, 'The English model? 125: Jackman 'Development of police administration', 60.

⁸¹⁵ Jackman, 'Development of police administration', 74.

⁸¹⁶ Jackman, 'Development of police administration', 67.

⁸¹⁷ Petrow, 'The English model?', 127.

could not, chase offenders across municipal boundaries.⁸¹⁸ The establishment of municipal forces was initially piecemeal, with some municipalities dragging their feet, but all 21 had their own forces by 1866, spurred on by the Police Regulation Act of 1865.⁸¹⁹ The Territorial Police force had 92 officers to serve in those eight districts that were not part of a municipality.⁸²⁰ The Detective Force was abolished under the Municipal Police Act of 1857 and not reinstated until 1904-5.⁸²¹

According to Mark Finnane, ‘Centralised direction was far from absent. The appointment of an inspector-general provided a means of monitoring police forces in the different localities, establishing general rules for the guidance of police, but adapting them as necessary to the particular circumstances of a municipality’ and this also applied to the Territorial force after 1867.⁸²² This may have been the theory, but it seems that in fact each force operated more or less independently. Police administration was now in the hands of penny-pinching amateurs jealous of their own power base and unwilling to co-operate across municipal boundaries.⁸²³ Pastoralists were particularly incensed that sheep thieves went unpursued across municipal boundaries. To try to combat this major scourge, Bothwell Council invited neighbouring Steppes, Ross and Oatlands Councils to develop a joint approach involving the strategic deployment of their combined police forces. They declined, although an individual officer might occasionally use his initiative to pursue

⁸¹⁸ Motion brought before Parliament by the Hon. Charles Meredith in favour of the centralisation of the police, *Mercury*, 1 October 1869, 3; Jackman, ‘Development of police administration’, 65.

⁸¹⁹ Jackman, ‘Development of police administration’, 66.

⁸²⁰ Petrow, ‘Tolerant Town, Model Force’, 239.

⁸²¹ Their head station was at New Town and they carried out some duties in the District of Hobart: Territorial Police stations were located at New Town, Sandy Bay, the Queen’s Domain, Knocklofty, Cascades (South Hobart), a portion of the Huon Road and Queensborough (Sandy Bay to Brown’s River). They were also stationed at Kingborough, the Huon, Selby, George Town, Port Sorell, Horton (including Wynyard and Emu Bay), and Great Lake. A force was created at George Town in 1870 to cope with the influx of population following the discovery of gold. Jackman, ‘Development of police administration’, 102.

⁸²² M. Finnane, *Police And Government: Histories Of Policing In Australia*, (Melbourne: Oxford University Press, 1994), 18.

⁸²³ *Mercury*, 7 November 1872, 2.

offenders wherever he needed to, even if it involved transgressing municipal boundaries.⁸²⁴

Even the Superintendents of each municipal force resisted co-operation with the Inspector. Jealousies between Superintendents and other officers also served as barriers to agreement and cooperation between forces.⁸²⁵ To compound these organisational difficulties, the low rate of pay, unsociable hours, job insecurity and the absence of a superannuation scheme all contributed to high staff turnover, low morale and difficulty in recruiting men of high calibre.⁸²⁶ Due to the scattered nature of both forces, senior officers found it extremely difficult to train their men.⁸²⁷ Interference by councillors exacerbated tensions within the force whose salaries they paid. One policeman complained that he had been ‘hampered, humbugged, or misruled by men, the majority of them wholly illiterate, and as much competent to manage a police force as I am to be Attorney-General’.⁸²⁸ This kind of culture provided a field day for criminals, especially mobile ones. In the 1880s these tensions boiled over, and open hostilities broke out between the various police forces.⁸²⁹ In 1886 Inspector Shaw complained that ‘I have no practical authority whatever over the municipal police’.⁸³⁰ As a result of this unworkable situation, in 1886 a Parliamentary committee recommended a move towards

⁸²⁴ S. Petrow, ‘Policing in Rural Tasmania: Bothwell 1863-1898’, *Tasmanian Historical Research Association*, Vol. 47/2, (2000), 116-7.

⁸²⁵ General opinion expressed by MHAs, including the Attorney General, during a debate on the necessity of (re)centralising the police force. *Mercury*, 1 October 1869, 3. The only exception to this picture of fragmentation and disarray appears to have been the *Tasmanian Police Gazette*, compiled by the Inspector, in which each municipality could advertise free of charge. It was distributed weekly throughout the island. J. O’Sullivan, *Mounted Police Of Victoria And Tasmania*, (Adelaide: Rigby, 1980), 198-9.

⁸²⁶ O’Sullivan, *Mounted Police*, 198.

⁸²⁷ The Launceston railway riots in 1874, in which men from Territorial and Municipal forces from as far away as Hobart were brought in to help control the situation, offered a rare opportunity for Inspector Forster to give them some drill and training. According to O’Sullivan, ‘For some it was a novel experience’. O’Sullivan, *Mounted Police*, 196.

⁸²⁸ A Police Officer of Twelve Years Standing, ‘Local Control of Police in Tasmania’, *Cornwall Chronicle*, 22 June 1867, 5.

⁸²⁹ O’Sullivan, *Mounted Police*, 202.

⁸³⁰ O’Sullivan, *Mounted Police*, 198.

centralisation. A single force was finally created under the Police Regulation Act of 1898, which brought the Tasmanian force into line with its centralised mainland equivalents.⁸³¹

To what extent might criminals, ‘habitual’ or otherwise, expect to find themselves on the end of the long arm of the law? The answer to this may lie in a consideration of the competence and the size of the local force. Prior to this Act, local police were drawn from small local populations, and it was obvious that this might pose a problem in the fearless discharge of their duties. In 1875 the Inspector of Police, John Swan, suggested that officers should be regularly transferred from one district to another ‘as a safeguard against personnel becoming identified with local practices or interest’.⁸³² Unfortunately, the drastic financial cutbacks that had occurred two years earlier made this very difficult.⁸³³ If a transfer from one district to another meant increasing the strength of that district, the transferred officer’s salary could not be paid until approved by Parliament, which might take months.⁸³⁴

Despite this drawback, the situation did have an upside, in that local police knew their communities very well. They knew the habitual offenders, their style of operation and their networks of support. In addition, if officers were known and liked in the local community this might engender trust and a willingness to co-operate in law enforcement. If they were disliked, however, their situation would be very difficult. But local knowledge could also be a double-edged sword. Inspector Swan was certainly alive to the possibility that officers might become compromised by becoming too familiar with the locals when he recommended that men be transferred regularly.⁸³⁵ In Victoria, when in 1882 ‘Constable James Arthur . . . made a deliberate effort to get to know the selector community, believing that effective policing in rural districts depended on a knowledge of both the country and the people’, he was dismissed as a Kelly sympathiser for his

⁸³¹ G.M.O’Brien, *The Australian Police Forces*, (Melbourne: Oxford University Press, 1960), 35-6.

⁸³² Report by the Inspector of Territorial Police, *Legislative Council Journals*, 1875, Vol. XXI, Paper 21, 3.

⁸³³ Jackman, ‘Development of police administration’, 71.

⁸³⁴ Jackman, ‘Development of police administration’, 78.

⁸³⁵ Jackman, ‘Development of police administration’, 68-9.

conscientiousness.⁸³⁶ Needless to say, no penalty attached to his superior officers, who hobnobbed with squatters.

The question of the effectiveness of the police must be addressed through a consideration of the size of each local force, the area they had to cover, and their stability. Useful records begin with the formation of Municipalities in 1862-3, and the Inspectors of Police thereafter made annual reports to the House of Assembly and Legislative Council. The years that I used for comparison in the period 1861-1882, the peak period for offending by the Port Arthur men, were randomly selected across this range. In terms of numbers, with the exception of Launceston, which lost ten officers between 1862 and 1867, strength in each Municipal Police Force only varied by between one and two over the entire period 1862-1881. With the exception of Selby, which declined over the period from 14 to ten, the same situation applied to the Territorial Police. In 1875 Inspector Swan noted that the strength of the Territorial Police had remained almost unchanged over the past ten years, and that ‘the defects in the Force arise chiefly from its weakness in numbers’.⁸³⁷

So police numbers remained low and relatively stable, while the population grew in some areas and declined in others. The population in Hobart stagnated between 1861 and 1881 at around 25,000, whereas Launceston grew from 10,000 in 1870 to almost 18,000 in 1891, or 22,000 counting the suburbs.⁸³⁸ The Launceston police force, however, remained stuck at 18 men, while the number of people for whom they were responsible almost doubled. Few rural areas saw anything like that kind of population increase. While changes in boundaries sometimes make comparisons difficult, it is clear that some areas saw significant growth in population, whereas others declined. The numbers of police, however, remained static. In some areas this chronic understaffing became a critical problem. The area over which each Municipal and Territorial constable had to spread

⁸³⁶ J. McQuilton, ‘Police in Rural Victoria’ in M. Finnane (ed.), *Policing In Australia: Historical Perspectives*, (Sydney: New South Wales University Press, 1987), 47-8.

⁸³⁷ Report by the Inspector of Territorial Police, *Legislative Council Journals*, 1875, Vol. XXI, Paper 21, 3.

⁸³⁸ G. Davison, ‘Urbanisation’, in A. Alexander (ed.), *Companion To Tasmanian History*, (Hobart: Centre for Tasmanian Historical Studies, 2005), 493.

himself seems enormous. The beat in urban areas like Hobart and Launceston was smaller than in a rural municipality, but the concentration of population was vastly greater. It seems clear that police were very thin on the ground in both rural and urban areas.

Since they were paid for by reluctant rate-payers, they had the power to meet any local economic exigency by sacking police and further reducing their pay, as first happened in 1866 when the Dry ministry reduced grants-in-aid to municipalities.⁸³⁹ The resulting general level of understaffing that Forster had lamented in his report of 1868 was exacerbated throughout the 1860s and the early 1870s, the last years of a recession of some 30 years duration.⁸⁴⁰ There were retrenchments in ‘several wealthy and populous Municipalities’, with offices amalgamated and the strength reduced ‘below the level of efficiency’.⁸⁴¹ Rates of pay varied from municipality to municipality and were often too low for a man to support a family. This opened the door to bribery, and also meant that only men of low calibre with few other options would be likely to apply.⁸⁴² As a result, officers were demoralised and ‘display[ed] a lack of energy in the performance of their duties’. In some Municipalities officers had to provide their own horses and, when the forage allowance was reduced by almost half, Forster feared that this would ‘naturally tend to a relaxing of energy in the performance of duties involving the wear and tear of horseflesh’.⁸⁴³ In 1881 Inspector Swan lamented that ‘the increase in population has not been followed by an augmentation in police numbers’. Where in 1858-9 there had been one constable for every 269 people on average in rural districts, by 1881-2 it was one constable per 368 people.⁸⁴⁴ Ratepayers still sought to wriggle out of their

⁸³⁹ G. Rootes, *A Chaotic State Of Affairs : The Permissive System Of Local Government In Rural Tasmania 1840-1907*, Ph.D. thesis, (University of Tasmania, 2008), 351.

⁸⁴⁰ Boyce, *Van Diemen's Land*, 228.

⁸⁴¹ Boyce, *Van Diemen's Land*, 228: Report by the Inspector of Municipal Police, *House Of Assembly Journals*, 1875, Vol. XVIII, Paper 22, 3.

⁸⁴² Petrow, ‘Economy, Efficiency and Impartiality’, 249. Newspaper references initially came from this article although I did follow them up.

<http://www.lexisnexis.com.au.ezproxy.utas.edu.au/cui/unilogin/default.htm?login.asp?uni=unitas>
⁸⁴³ Report by the Inspector of Territorial Police, *Legislative Council Journals*, 1873, Vol. XXV, Paper 19, 3.

⁸⁴⁴ Report by the Inspector of Territorial Police, *House Of Assembly Journals*, 1881, Vol. XLI, Paper 106, 3.

responsibilities with cuts, amalgamation of duties and the loading of other municipal duties onto police personnel. Inspectors and Sub-Inspectors became Inspectors of everything from Weights and Measures to Thistles, from Livestock to Weighbridges. Some even had to carry out the duties of the Council Clerk whose position had been abolished to save money.

Beyond simple numbers, the efficiency of the local force also rested with the way in which it was organised and with its familiarity with its local community. According to Timothy Shakesheff, writing of English policing prior to the New Police: ‘Policing, under the old [parish-based] system, was based on bonds of kinship, friendliness and neighbourliness. Constables knew the villagers of their particular parish . . .’⁸⁴⁵ Although Tasmania’s system was similarly decentralised and municipalities might be seen as equivalent to parishes, albeit very large parishes, were constables able to acquire this kind of knowledge of their communities? *Walch’s Almanacs* published figures for the size of municipalities, the number of police that each had, and where they were stationed. In the two years 1864 and 1880 that bookend our period, in both municipalities and in police districts a major town outside Hobart and Launceston might have had 2-4 police, but the vast majority of townships and villages had either one or no officer stationed there.⁸⁴⁶

These lonely constables were responsible for a minimum of 75 people (Spring Bay) to a maximum of 693 (Westbury) in the late 1860s. These ratios could only get worse as the population increased and economic stresses increased. Obviously the more numerous the population, the less likely it was that the constable would know each person in their part of their district or municipality. These smaller centres were often widely separated, so that if a miscreant moved from one settlement to the one next door he might not be known there. This problem would be either ameliorated or exacerbated depending on

⁸⁴⁵ T. Shakesheff, *Rural Conflict, Crime And Protest: Herefordshire 1800-1860*, (Suffolk: Boydell Press, 2003), 58.

⁸⁴⁶ These figures were probably taken from the annual reports printed by Parliament. (Petrow, pers comm.). It includes front line police only, like sergeants and constables. *Walch’s Almanac*, (Hobart: J Walch & Sons, 1864), 118-188; *Walch’s Almanac*, (Hobart: J Walch & Sons, 1880), 213-257.

how stable the police force was. With each resignation, transfer or dismissal went a corresponding amount of local knowledge.

In summary, Tasmania's police forces were understaffed, under resourced and overstretched during the second half of the nineteenth century. Once a crime had been committed it seems clear that the police had few resources in equipment, training or personnel to enable them to find and arrest the culprit. Inspector Swan fell back on the *Police Gazette*, which he lauded in 1863 as meeting 'his most sanguine expectations as a means of affecting the apprehension of criminals and the detection of crime'.⁸⁴⁷ This seems to imply that forces did not directly share information, but waited for the *Police Gazette* to tell them what was going on in the Municipality next door, and even in other parts of their own Municipalities. It came out every week, but a week was a long time in a criminal's life. He could be at the other end of the island by the time anyone but the victim or his/her family knew that a crime had been committed. While photographs could not be distributed via telegraph, it is certainly possible that they could have been sent by the railways that had begun to creep across the landscape. Unfortunately, there seems to be no way to investigate this.

Arrests 1856-1895: the police and the victim

In the hard years of the 1860s and 1870s arrest rates among Port Arthur men peaked but in order to examine how efficient the police were we need to look at how those arrests were made. It seems unlikely, given the foregoing, that the decentralised force was any more efficient than its predecessors. Unfortunately, it is only possible to examine their arrest rates impressionistically. Many of the detailed records from the Courts of Petty Sessions have disappeared, and although I interrogated a large sample of those that do survive I found none of my sample of Port Arthur men. Some Supreme Court records survive, but such serious cases were extensively reported in the newspapers and I have relied on these accounts for the discussion that follows. I have not included the many charges of drunk and disorderly, indecency and other minor public order offences that the

⁸⁴⁷ Report by the Inspector of Municipal Police, *House Of Assembly Journals*, 1862, Vol. VIII, Paper 43, 4.

Port Arthur men accumulated. The reports of such offences lack any detail as to how arrests were made. Some more serious offences also lack sufficient detail for analysis so they too have been excluded. There were useful reports of 198 offences, committed by 96 men, which are sufficiently detailed to tell us how the offender was caught. In none of the cases reported in the papers were photographs said to play a role in establishing identity.

In 21 of the 198 offences, police made an arrest by simply being in the right place at the right time and having their wits about them. Constable Houghton was walking down the road at Cleveland when he ran into Philip Burton, who was carrying a bundle: when Burton saw Houghton, he dropped the bundle and scarpered, but Houghton was too quick for him.⁸⁴⁸ Burton had shocking luck: on another occasion, Thomas Reece was chasing him up Bathurst Street in Hobart after he had caught him burglarizing his house. Burton ran straight into Constable Wilkins, who promptly arrested him.⁸⁴⁹ Constable Hines actually saw Philip Aylward sexually assaulting 10-year-old Agnes Reilly, which was fortunate because the child was very reluctant to give evidence against her attacker. Constable Wilkinson happened to be passing John Hollington's butcher's shop when he saw a light struck on the door of the shop. He searched the yard and found Thomas Owens crouched down between two sheds, armed with a chisel and a screwdriver.⁸⁵⁰

Incidents like these appear to have been pure luck, but on other occasions the police followed suspicious-looking individuals when they happened to see them in the street. When William Dawson was making off with a large bag containing meat he had just lifted from Robert Creswell's butcher's shop, he was unlucky enough to pass Detective Morley. Morley may have followed the smell of meat, or perhaps he had a very finely tuned nose for the smell of guilt – and he probably knew Dawson of old – for he followed him into the *White Swan* public house near where Dawson lived and heard him say that he had some food for the publican's pigs. His suspicions further aroused, Morley got a search warrant and found the stolen meat under Dawson's bed.⁸⁵¹ Constable Burke saw

⁸⁴⁸ *Mercury*, 3 September 1873, 3.

⁸⁴⁹ *Launceston Examiner*, 11 January 1872, 3.

⁸⁵⁰ *Cornwall Chronicle*, 28 October 1874, 3.

⁸⁵¹ *Mercury*, 15 September 1869, 2.

Cornelius Gleeson lurking about in the street at night, judged him to be ‘a suspicious character’ and followed him for a while until he found him crouched in George King’s yard in Argyle Street, where he arrested him for being on premises for an unlawful purpose. Constable Elbert was not as perceptive as his colleague. He had also seen Gleeson acting suspiciously and tapping on a window, but he only thought Gleeson was drunk and told him to stop it and go away.⁸⁵² Under Section 62 of the Police Act of 1865 a police officer could enter a public house if he had ‘reason to believe or suspect that persons accused or reasonably suspected of having committed any offence in respect of which imprisonment may be awarded’ were on the premises. Given the predilection of old lags for drink as well as for thieving, this must often have been like shooting fish in a barrel.

In the decentralised, municipality- and territory-based Tasmanian system of police organisation, we might also expect the local knowledge of the constable to be of significant assistance. But in only two cases is it clear that the constable already knew his man and was not simply relying on eye-witness accounts from the victim or on suspicious behaviour that he witnessed and that had aroused his policeman’s instinct. In the first case, Constable Hodges clearly knew his community, and knew that Thomas Jackson had been in the neighbourhood for two weeks. He had heard on the grapevine that Jackson went to pubs, invited men to drink with him and then robbed them. Jackson had only one arm, the other ending in a fearsome hook, which made him very intimidating but also easy to identify. Finally, Hodges pounced and caught him with a shawl that its owner later identified as having been stolen.⁸⁵³ In the second case, Richard Pinches, alias Henry Singleton, lived in Oatlands, where he was notorious for helping himself to the property of others. In two cases involving Pinches/Singleton that were reported in the paper, the local police said that they knew him well. In fact, the Chief Constable said that in a case of pig stealing, ‘as soon as he received the report of the loss of the pigs, he obtained a search warrant, and proceeded to the residence of the prisoners at the Blue Hills when he

⁸⁵² *Mercury*, 9 April 1873, 2.

⁸⁵³ *Mercury*, 28 April 1862, 2.

found a quantity of newly cured pig meat, which he seized, and at once took the prisoners into custody'.⁸⁵⁴

Sometimes local knowledge was not enough to galvanise a lazy or dim-witted constable into action. When Joseph McMahon's store was burgled and Pinches/Singleton arrested, one of the arresting officers testified that 'he had known Singleton for 4-5 years, and personally he knew nothing against him, but he had heard very bad things about him'.⁸⁵⁵ Despite this, he did not interview or arrest him. There were a few other cases in which the police applied speedily for a search warrant, but it is not clear how their suspicion had fallen on the man whom they eventually arrested. Even if all of these cases were solved through the local knowledge of the police, they were still a small minority.

Cases were primarily solved in other ways. Offenders were often caught because they were hopelessly inept. George Johnson paraded around Fordon, near Cressy, wearing a waistcoat he had recently stolen from his neighbour John Henderson. Without this peacocking he might have got away with it. Constable Marshall had searched a number of houses for the stolen goods but had not suspected Johnson. Unfortunately for Johnson, he then ran into him in the street and, recognising the waistcoat, arrested him.⁸⁵⁶ Charles Jones saw James Martin lurking in some bushes wearing his coat after he had allowed Martin to sleep in his hut the night before.⁸⁵⁷ Many were seen and caught in the act, often because they were too drunk to get away. Alfred Maldon, who shot Constable Eddie while he was arresting another man, was clearly carried away by the excited crowd that had surrounded the two struggling men and fired his pistol. On being charged with shooting with intent, he pleaded, 'I did fire the pistol: but I had no intention to murder him, or do the constable any harm: I did it through the effects of drink'. In further mitigation he claimed that, since he had been struck by lightening some time before, he found that drink made him 'unable to know what I am doing', although he then admitted

⁸⁵⁴ *Mercury*, 8 September 1860, 2.

⁸⁵⁵ *Launceston Examiner*, 8 November 1883, 3.

⁸⁵⁶ *Launceston Examiner*, 20 September 1864, 3.

⁸⁵⁷ *Mercury*, 2 November 1865, 2

he had been drinking spirits all day.⁸⁵⁸ Peter McKay, who was found under publican Henry Harris's bed, said that he was so drunk that he did not know what he was doing or how he came to be there.⁸⁵⁹

On at least three occasions, offenders were caught because there was no honour among thieves. Henry Singleton was only arrested for burglary because one of his co-accused dobbed him in.⁸⁶⁰ John Appleby and John Glen pulled off a big plate robbery but then seem to have got cold feet. They both went to the police to turn in the other and then fell over each other in court in their eagerness to incriminate their mate.⁸⁶¹ Henry Bramhall stole a watch and then blamed his mate Harding, to whom he had tried to sell it.⁸⁶²

In at least 100 of the 198 crimes, members of the community played the main role leading to arrest. They were ideally placed to do so, since most petty crime was committed within the working class, and the victims had no hesitation in incriminating their fellows. The Old Bailey records of ten of the Port Arthur men reveal that six of them stole from people whom they knew, three of whom were drinking buddies.⁸⁶³ Contrary to the long held romance of mateship and working-class solidarity, victims of crime in Victorian England increasingly showed 'a greater willingness on the part of the public to prefer charges', despite the fact that offences were very often committed by members of

⁸⁵⁸ *Mercury*, 28 April 1862, 2.

⁸⁵⁹ *Mercury*, 3 June 1871, 2.

⁸⁶⁰ *Launceston Examiner*, 8 November 1883, 3.

⁸⁶¹ *Mercury*, 3 March 1871, 2; 5 July 1871, 2.

⁸⁶² *Mercury* 22 August 1862, 8.

⁸⁶³ John Appleby stole from his next door neighbor.

<http://www.oldbaileyonline.org/browse.jsp?id=def1-2576-18411025&div=t18411025-2576#highlight> William Burton and his wife stole from a man with whom he was drinking.

<http://www.oldbaileyonline.org/browse.jsp?id=def1-1194-18440408&div=t18440408-1194#high>.

William Curtis stole from a man who lived in his neighbourhood.

<http://www.oldbaileyonline.org/browse.jsp?id=def1-2074-18430703&div=t18430703-2074#high>.

Thomas Griffin stole from a publican who knew him.

<http://www.oldbaileyonline.org/browse.jsp?id=def1-207-18471122&div=t18471122-207#highlight>.

Michael Murphy stole from a man with whom he had been drinking, although he said that he did not know him <http://www.oldbaileyonline.org/browse.jsp?id=def1-1840-18490917&div=t18490917-1840#highlight>.

Thomas Ryan also stole from a man who had worked for his father, with whom he had been drinking,

<http://www.oldbaileyonline.org/browse.jsp?id=def1-1484-18490702&div=t18490702-1484#highlight>.

All viewed 10 September 2015.

their own class'.⁸⁶⁴ According to David Philips, by the 1830s the working class 'valued their rights to what little property they had, and when they were infringed they accepted that the infringements should be dealt with through the machinery of the law rather than by the informal use of violence and forcible repossession of the property'.⁸⁶⁵ The victim and his/her friends often identified the culprit and arrested them. Police only entered the picture when the offender was handed over to them, or if the victim wanted the police to get a warrant to search the lodgings of the person he suspected.⁸⁶⁶ Jennifer Davis also identified this phenomenon in her work in working-class Victorian London. She found that the police were constrained by 'their small numbers and their relative inability to prevent and detect crime'. They 'could only bring offenders to book if the public were willing to cooperate by reporting crimes, identifying offenders and prosecuting them in court'.⁸⁶⁷ Many prosecutions also resulted from the victim calling police. A substantial number of assault charges could only be brought to court through summons since the police were probably not present at the time.⁸⁶⁸

It was the same in Tasmania, where that same working class had been transplanted. Offenders were caught in 100 clear cases because the victims or other witnesses reported crimes to the police with sufficient information to point the police in the direction of the offender. Around ten other arrests were probably made in the same way but the details are a little unclear. Often the offender was known to the victims of crime or to those who saw the crime committed. Richard Pinches aka Henry Singleton was identified by a young woman who saw him while he was driving some pigs (that turned out to be stolen)

⁸⁶⁴ E.P. Thompson did not believe that the working class would prefer charges against their own, and nor did Russell Ward. D. Philips, *Crime And Authority In Victorian England: The Black Country 1835-1860*, (London: Croom Helm, 1977), 127-8; R. Ward, *The Australian Legend*, (Melbourne: Oxford University Press, 1958), 2; Philips, *Crime And Authority In Victorian England*, 41, 101.

⁸⁶⁵ Philips, *Crime And Authority In Victorian England*, 128.

⁸⁶⁶ Philips, *Crime And Authority In Victorian England*, 97.

⁸⁶⁷ J.S. Davis, 'Law Breaking and Law Enforcement: the creation of a criminal class in mid-Victorian London', Ph.D. thesis, (Boston College, USA, 1984), 264-5.

⁸⁶⁸ J.S. Davis, 'Prosecutions and their Context: the use of criminal law in nineteenth century London' in D. Hay and F. Snyder (eds.), *Policing And Prosecution In Britain 1750-1850*, (Oxford: Clarendon Press, 1989), 413, 421.

towards his home and recognised him as a former employee of her father's.⁸⁶⁹ George Fisher made the mistake of trying to rip off his former employer, sawmiller Joseph Risby, and John King, the publican of the hotel where he was then living. Fisher presented King with a forged money order in his name, drawn on Risby, to pay for his lodging. When King took Fisher around to Risby's to verify the order, Risby declared it to be a forgery and called the police.⁸⁷⁰

Thomas Fleming absconded from a gang at the government gardens wearing a hat belonging to Robert Stabb, the stonemason with whom he was working.⁸⁷¹ When he was escorted through the prison gates some time later, he strolled in still wearing Stabb's hat. Stabb saw him and reported it. The journalist, hardened though he must have been by having constantly to report the peccadillos of old lags, was evidently impressed by this piece of bravado, and honoured it with an exclamation mark.⁸⁷²

In at least twelve cases the victims made the arrest themselves and handed the offender over to the police. In yet another bungling attempt at a robbery, the aforementioned luckless Philip Burton visited Thomas McEnroe's establishment in Wellington Street, Launceston, and asked to try on a coat. When McEnroe went to get a light to assist in its inspection, Burton and the coat bolted up the street. Unfortunately, being by then in his mid-60s, he was not as quick off the mark as he had been, and McEnroe chased him down and handed him to police.⁸⁷³ William West, who worked on William Hartnoll's farm at Evandale, was woken by the dogs barking: he saw some bags being thrown over the fence which turned out to be full of food and clothes from the store. He went out with Hartnoll and his gun, found John Finlay trying to hide in the dark and, tying his hands together, delivered him to the police.⁸⁷⁴

⁸⁶⁹ *Mercury*, 3 October 1860, 2.

⁸⁷⁰ *Mercury*, 1 November 1874, 2.

⁸⁷¹ Robert Stabb senior was a contractor and the boys Thomas, John and Robert jnr were all builders, presumably in the family-owned company. RGD37/1/37, no. 203; RGD37/1/43, no. 226; RGD37/1/33, no.200; RGD35/1/10, no.2279, TAHO.

⁸⁷² *Mercury*, 25 March 1873, 2.

⁸⁷³ *Launceston Examiner*, 22 October 1882, 6.

⁸⁷⁴ *Cornwall Chronicle*, 10 September 1872, 3.

Conclusion

Given their mobility and their previous convictions, coupled with the convictions that they accumulated while in Tasmania, the men in these photographs seem to satisfy all criteria for both vagrancy and habitual criminality. Why did the British and European strategy for dealing with such people not follow them to Tasmania? This is doubly surprising given that the forces were chronically understrength, under-resourced and over-stretched, having to cover vast areas in both urban and rural municipalities and often dealing with highly mobile offenders. Decentralisation certainly proved a significant obstacle to crime detection. Little information, including photographs, was apparently shared between the different forces, apart from the weekly circulation of written descriptions in the *Police Gazette*.

But there was a wild card in the surveillance pack – the community. To a large extent, it did its own policing. In contrast to the belief expressed by Inspector Swan in 1863 that offenders possessed the ‘facility of gaining harbour’ within their communities, and to the ethos of solidarity in mateship that has long been regarded as an integral part of the Australian identity, members of their own class and community frequently not only failed to shelter offenders, but often readily participated in their arrest and prosecution.⁸⁷⁵ By the late 1860s, any tolerance that might earlier have existed between old lags and the broader community had faded, to be replaced by the economic exigencies of the tenant and the small shopkeeper or artisan. People struggling on the margins economically could ill afford constant petty thefts and property damage. The large number of prosecutions against the idle and disorderly, the drunk and the indecently behaved showed the new priorities of a community straining after respectability in a newly gentrifying society. I shall discuss these ideas in the next two chapters.

⁸⁷⁵ Report by the Inspector of Municipal Police, *House Of Assembly Journals*, 1862, Vol. VIII, Paper 43, 4.

CHAPTER 7: ‘I always worked hard for my living but hunger drove me to it’: life after Port Arthur⁸⁷⁶

John Finelly/Finlay, accounting to the court for his theft of pork and clothing at Evandale in 1872



John Finelly/Finlay
 Taken at Port Arthur 1874
 Photographer: probably Commandant A.H. Boyd
 National Library of Australia

Irishman John Finlay/Finelly was one of the minority of transportees who reoffended, and his defence in court shed light on his struggle to survive in Tasmania. After conviction for a previous, minor offence he was banished from Hobart, where he had been ‘idling about town’ and ‘formed bad connexions’.⁸⁷⁷ He had presumably been consorting with other ex-convicts like himself. So he had to go to the country, far from his friends and where he received no government rations or support as he would have if

⁸⁷⁶ *Cornwall Chronicle*, 18 September 1872, 3.

⁸⁷⁷ *Cornwall Chronicle*, 18 September 1872, 3.

he had been allowed to stay in town.⁸⁷⁸ So in 1872, even though the police informed the judge that his character was ‘not bad’, he was sentenced to seven years at Port Arthur for housebreaking and stealing.⁸⁷⁹ Port Arthur convicts like Finelly had bounced in and out of the convict system for between 30 and 40 years, long enough finally to have their photographs taken. What had turned them into subjects for the implacable gaze of the camera? What had led to the meeting between this group of offenders and this pioneering technology? Until now, they have been passive objects for us to use, to manipulate, to interpret as we wished. Can we now turn them into active subjects? As the eye of the camera saw them, can we now see through their eyes?

Until this point, everything that we know about them has been produced by those whose job was to surveil, judge and punish them. These sources are infused with the opinions, the prejudices, the hopes and disappointments of those who produced them. They say ‘this is what we believe that these men are’ as much as they say what they did, and much of it is not very pretty. From this remove, it is very difficult to know what the subjects of this photographic exercise would have said in response if they had been asked: we have not yet heard them say ‘this is what I am’. But however tenuous it might be, it is possible to reconstruct a possible response. Using modern criminological theory and social history, and contemporary sources including pamphlets, newspapers and parliamentary papers, we may know something of these men whose images have occupied our collective imagination as ‘typical convicts’ since 1874, but about whose real lives we have been so incurious. As Bradley and Maxwell-Stewart said, I am not seeking to ‘substitute one act of incarceration for another’, to pronounce upon them as yet another disapproving or romanticising ‘authority’, but ‘to posit an alternative story’ of these men’s lives both in England and in Van Diemen’s Land, and to try to understand how these experiences shaped each man, predetermining him to failure and suffering.⁸⁸⁰ During this exploration,

⁸⁷⁸ ‘Select Committee Report on the system under which convicts are discharged from Port Arthur with tickets of leave’, *House Of Assembly Journals*, 1860, Vol.V, Paper 98, 5.

⁸⁷⁹ *Launceston Examiner*, 21 September 1872, 3: Sentenced under his alias, ‘John Brown’. CON37/1/8, page 52, Tasmanian Archive and Heritage Office (TAHO).

⁸⁸⁰ J. Bradley and H. Maxwell-Stewart, ‘Alexander and the Mother of Invention’, in L. Frost and H. Maxwell-Stewart (eds.), *Chain Letters: Narrating Convict Lives*, (Melbourne: Melbourne University Press, 2001), 198.

I hope to show that the records and the accompanying image may be read in new ways, which may in turn restore to their subjects some of the identity that the constant judgements of others have almost stolen from them.

In order to understand why they acted as they did, and why they arrived in the ageing penal station of Port Arthur, we need to know how the world appeared to them. In Britain, crime may have been a better option for them than a series of unpalatable alternative survival strategies. Some contemporary observers commented, often disapprovingly, that transportation offered opportunities for a man that he would never have had at home.⁸⁸¹ While Braithwaite claims that by the 1880s, Tasmania was ‘one of the most serene places on earth’, every resident may not have enjoyed an equal portion of that happy state.⁸⁸² We cannot simply assume that ex-convicts bounded onto the sunlit plains of Tasmania resolved to sin no more, to be welcomed with open arms by its inhabitants.⁸⁸³ Unlike 1830s New South Wales, mid-late nineteenth century Tasmania did not welcome them with open arms. In fact, I will argue that this colonial society relentlessly and remorselessly drove old Port Arthur lags like John Finelly into lives composed of cycles of poverty, offending and incarceration.

The ‘habitual criminal’ in Tasmania

According to Hamish Maxwell-Stewart and Rebecca Kippen, only 21% of transported convicts reoffended in Tasmania.⁸⁸⁴ The men in these images were part of that cohort:

⁸⁸¹ L. Robson, *The Convict Settlers Of Australia*, (Victoria: Melbourne University Press, 1965), 129, 132; J. Braithwaite, ‘Crime in a Convict Republic’, *The Modern Law Review*, Vol.64/1, (2001), 17-18.

⁸⁸² He refers to the low crime rate. Braithwaite, ‘Crime in a Convict Republic’, 18.

⁸⁸³ The mores of Sydney in the 1830s ‘were those of the prisoners – a confident, hard-drinking, blasphemous and humorous society, but energetic and optimistic, confident that they had found a place that they could make their own’. B. Smith, *Australia’s Birthstain: The Startling Legacy Of The Convict Era*, (Sydney: Allen & Unwin, 2008), 139. Braithwaite claims that, for the earliest convicts to New South Wales, the bounty of the land was theirs to claim. ‘Emancipated convicts were given substantial free grants of land, animals, tools and seeds, sufficient for them to become economically viable settlers.’ Van Diemen’s Land had no Lachlan Macquarie. Braithwaite, ‘Crime in a Convict Republic’, 27.

⁸⁸⁴ H. Maxwell-Stewart and R. Kippen, “‘What is a man that is a bolter to do? I would steal the Governor’s axe rather than starve’: old lags and recidivism in the Tasmanian penal colony”, in J. Campbell and V. Miller (eds.), *Transnational Penal Cultures*, (UK: Routledge, 2014), 1.

they were photographed because they were recidivists, men who seemed unable or unwilling to stay on the right side of the law.⁸⁸⁵ The literature on definitions of offenders seems to oscillate between nineteenth and twentieth century understandings. In their major longitudinal study of offenders in Crewe and Birkenhead between 1841 and 1911 Barry Godfrey *et al* identified two classes of recidivists or ‘habitual offenders’ – serious and minor. They define serious offenders as those who have committed at least five indictable offences, but the Habitual Offenders Acts of the mid-nineteenth century defined recidivists as having committed at least two recorded offences: they do not distinguish between serious and minor offences.⁸⁸⁶ Today, we might define a serious offender as one who committed any crime that involved violence, such as some burglaries, assault, murder, rape and grievous bodily harm, or a crime that involved large sums of money. That definition seems most useful when assessing these men from a modern perspective. Godfrey *et al* define minor habitual offenders as petty thieves, drunks and vagrants, whose crimes largely were committed against public order, and that definition usefully squares with modern expectations.⁸⁸⁷

In the sample of Port Arthur men ‘serious offenders’ constituted slightly less than one third.⁸⁸⁸ Of the 17 men transported for a first offence, only two were serious offenders, both rapists. More than two thirds could be classified as minor habitual offenders, with only offences like minor theft, vagrancy or drunkenness behind them. By the time that they were transported, 83 per cent were already recidivists or minor habitual criminals, with at least one previous conviction. So it should come as no surprise that 100 per cent of this sample reoffended in Tasmania, although they often committed only minor offences like those that had sent them to Van Diemen’s Land. Those ‘serious offenders’ who reoffended only once generally committed serious crimes like rape, murder and

⁸⁸⁵ Braithwaite argues that all transported convicts were already recidivists, because the odds of crime being undetected in Britain in the era before modern policing were so favourable to the criminal. In this chapter I am using the term to refer to those who continued to offend in Tasmania. Braithwaite, ‘Crime in a Convict Republic’, 20.

⁸⁸⁶ B. Godfrey, D.J. Cox and S.D. Farrall, *Serious Offenders: A Historical Study Of Habitual Criminals*, (Oxford: Oxford University Press, 2010), 37; Godfrey, Cox and Farrall, *Serious Offenders*, 119.

⁸⁸⁷ Godfrey, Cox and Farrall, *Serious Offenders*, 89-90, 133-4.

⁸⁸⁸ This discussion excludes soldiers, those free to the colony and native born.

manslaughter, and the long sentences incurred (and one hanging), effectively ended their criminal careers. In the final chapter I shall return to this issue and locate these men within a broader context of overall offending for transportees.

What had so shaped the lives of these habitual offenders, and what continued to determine the apparently poor choices that they made? The economic, social and judicial milieu from which they originated was common to all poor working-class people, but not all convicted offenders continue to offend. According to criminologists, psychologists and sociologists, recidivists share a particular suite of social, personal and psychological attributes. It may be possible to arrive at some understanding of why the Port Arthur men continued to offend, while others did not, by using a modern theoretical framework of inquiry to explore their life experiences before, during and after transportation. But as Godfrey cautions:

Humans have complex relationships, impressive imaginations and reasoning abilities, some of which find expression in their actions, making them do some things, and stop doing other things. We will never be in a position to fully understand why human beings do the things that they do, especially when they are at a historical arm's length when different socio-economic and cultural conditions existed.⁸⁸⁹

Cautions regarding the evidence

At the outset, it is important to note that a nineteenth-century criminal record might not be an accurate reflection of a man's criminality. These recorded offences may represent the tip of the iceberg in terms of an individual's criminal history: policing was by no means the professionalised and (relatively more) efficient activity that it is today, nor did it always view 'crime' in the same way. The priority of policing then was the maintenance of public order, and not the detection of crime. Petty theft was of less interest to a constable, and to the community, than vagrancy, drunkenness, street fighting

⁸⁸⁹ B. Godfrey, *Crime In England, 1880-1945: The Rough And The Criminal, The Policed And The Incarcerated*, (New York: Routledge, 2013), 137-8.

and prostitution.⁸⁹⁰ As discussed in the previous chapter, just over one third of this sample appears to have been on the tramp when convicted. Had they committed crimes in other jurisdictions, that record may not have arrived at the court from which they were finally transported. This possibility was further compounded by the fact that identification depended entirely on local knowledge and aliases were common: a man might protest that this was his first offence, and yet have a record as long as his arm.

In addition, as discussed in Chapter 2, it is important that ‘the record of charges brought against both serving and former convicts should be read within the wider context of the operation of the colonial labour market and the social and cultural relations that shaped master and servant relations’.⁸⁹¹ There were significant variations in who was charged, and where and when they were charged. A man’s record depended on, for example, his skills, how necessary his work was at any given time of year, where he was employed and by whom, and extraneous factors like the current cost to his master of food and clothing. Maxwell-Stewart demonstrated that an unskilled man, especially if he were in a chain gang, was far more likely to be punished, and punished more severely, than an assigned servant. Men in penal stations were charged, convicted and brutally punished for even minor infractions, for which an assigned servant might earn only a reprimand at most.⁸⁹²

The various records accumulated in Tasmania also present us with challenges when we attempt to interrogate them closely and in concert. Collating the man’s criminal record, newspaper reports and entries in the *Tasmanian Police Gazettes* to try to arrive at an accurate total of convictions is an inexact science. I only included an offence on the list when the ship of arrival was recorded against the man’s name and his age was more or less consistent with his convict record. The different record sources are certainly not

⁸⁹⁰ D. Philips and R.D. Storch, *Policing Provincial England 1829-56: The Politics Of Reform*, (London: Leicester University Press, 1999), 225; C. Emsley, *The English Police: A Political And Social History*, (Hemel Hempstead: Harvester Wheatsheaf, 1991), 5-6; C. Emsley, *Crime And Society In England 1750-1900*, (Harlow: Person Longman, 3rd edition, 2005), 239-40.

⁸⁹¹ H. Maxwell-Stewart, ‘Convict Labour Extraction and Transportation from Britain and Ireland 1615-1870’, in C.G. DeVito and A. Lichtenstein (eds.), *Global Convict Labour*, (Leiden/Boston: Brill, 2015), 196.

⁸⁹² Maxwell-Stewart, ‘Convict Labour Extraction’, 187-8, 190-192.

consistent: an offence may be mentioned in the *Tasmanian Police Gazette*, but not in the newspaper or on the man's record, or the other way around. James Sanders' attempt to commit sodomy was on his record, but not in the newspapers or the *Tasmanian Police Gazette*.⁸⁹³ James Foley had been convicted on five previous occasions for larceny, whereas the police informed the magistrate of only two when Foley was in court once again for the same offence.⁸⁹⁴ According to the newspaper report of James Geary's trial, the magistrate had his record in front of him and accused him of 'several' offences of cattle stealing. His convict record, however, showed only one previous offence, theft of a horse.⁸⁹⁵

Names might be spelled in various ways in the different sources. Sixteen men have been recorded under alternative spellings, like William Welham/Wilham/Wellham.⁸⁹⁶ These may have been simple clerical errors rather than aliases, but nonetheless they may have caused confusion. In addition, of this sample of 156 men at least 59 or 38 per cent were convicted under more than one name. Peter McKay also went by William Ross, Michael or William Hickey as he accumulated 19 convictions. Magistrates knew ten-times convicted William Lee as William Dixon, John Leatherland and James Sykes. We must assume that these are only the names with which the police managed to associate them: there may well have been more. Another 12 men for whom we have convict records but no mention in the newspapers or the *Tasmanian Police Gazette* may also have committed their crimes under another name. When asked for his criminal history William Baker lied and claimed that this was his first offence: Denis Doherty claimed that he was free when in fact he was still under sentence.⁸⁹⁷ As a result of all of these factors, we must assume that the convictions recorded against their names probably represent the minimum number of crimes for which these men were committed.

⁸⁹³ CON33/1/109, page 103, TAHO.

⁸⁹⁴ *Mercury*, 13 September 1876, 2.

⁸⁹⁵ CON37/1/10, page 187, TAHO: *Mercury*, 8 July 1868, 2.

⁸⁹⁶ Of these 156 men, 26 or almost 17 per cent have multiple spellings of their surnames.

⁸⁹⁷ When charged in England he denied that he had previously been convicted of housebreaking and theft. CON 33/1/57, page 28, TAHO: CON 31/1/12, page 93, TAHO.

Raymond Evans and William Thorpe cautioned that all official documents generated by the convict system ‘reflect an historically specific set of privileged concepts, techniques and practices’. They were generated within a class/power relationship between the collectors of data and the convicts, which ultimately served the state’s ends. Nor can they take into account events and practices that occurred contrary to regulations and that were not recorded. The evidence for inefficiencies, irregularities, differences of interpretation and subterfuge by public officials is ‘ironed out’ by statistical analysis.⁸⁹⁸ As another way of unpicking the life of the convict, they plead for an acknowledgement of ‘the qualitative convict experience’, an infusion of the convict voice, and a naming of those subjects of the system. In the assembly of evidence they insist that ‘the authentic convict voice’ should also be included and valued as a way to flesh out, amplify and sometimes to stand against official records. They argue that ‘[t]he denial of history to the objectified, to the colonized ... is one of the hallmarks of oppressive practice’.⁸⁹⁹

In what follows I wish, as far as the records permit, to name names, as ‘an antidote to the “crime of anonymity”’.⁹⁰⁰ Contrary to Nicholas and Shergold’s contention that ‘Convicts ... have been made inarticulate by history’, like Evans, Thorpe and Peter Linebaugh I found that echoes of convict voices were shouting to us from the records, if we know where and how to look.⁹⁰¹ Despite the caveats expressed by Evans and Thorpe about the quantitative approach, on occasion statistical analysis has been incorporated to tease out the differences and similarities between the Port Arthur convict experience and the general convict population.

⁸⁹⁸ R. Evans and W. Thorpe, ‘Historical reconsiderations IX: Power, punishment and penal labour: Convict workers and Moreton Bay’, *Australian Historical Studies*, Vol.25/98, (1992), 94-96.

⁸⁹⁹ Evans and Thorpe, ‘Historical reconsiderations IX’, 95-6.

⁹⁰⁰ Evans and Thorpe, ‘Historical Reconsiderations IX’, 95; P. Linebaugh, ‘(Marxist) Social History and (Conservative) Legal History: a reply to Professor Langbein’, *New York University Law Review*, Vol. 60/2, (1985), 223.

⁹⁰¹ S. Nicholas and P.R. Shergold, ‘Convicts as Workers’, in S. Nicholas (ed.), *Convict Workers: Reinterpreting Australia’s Past*, (Cambridge: Cambridge University Press, 1988), 45. While these voices are filtered through various forms of official documentation which have their own agenda, I believe that they are not entirely fabricated and so present something like the offender said.

Developing a portrait of the recidivist

As discussed in Chapter 2, the theoretical framework developed by Donald Andrews and James Bonta, based on their work among young offenders, synthesised explanations for recidivism that have generally been agreed upon by sociologists, criminologists, psychologists and historians over the past 50 years. There seems to be a consensus that the standard demographic of the modern repeat offender is young, male, non-white and socioeconomically disadvantaged, a profile that (with the exception of race) well describes this sample of mid-nineteenth century recidivists.⁹⁰² Nicholas and Shergold agree that ‘most early nineteenth century crime was committed by young adults’.⁹⁰³ All but one of the Port Arthur men were working class and thus, given the conditions of the time in which they were transported, sociologically disadvantaged.⁹⁰⁴ Although the men photographed at Port Arthur were all white, they were certainly young when first convicted: by the time that they were transported, 88 men or 74 per cent of this group were still under 25 years of age.⁹⁰⁵ In order to explain this group’s repeated offending, Andrews and Bonta identified eight risk factors for crime, four that they call Moderate and four that they identify as the Big Four.⁹⁰⁶

⁹⁰² D.A. Andrews and J. Bonta, *The Psychology Of Criminal Conduct* (5th edition), (New Jersey: Anderson Publishing, 2010), 10.

⁹⁰³ S. Nicholas and P.R. Shergold, ‘Convicts as Migrants’, in Nicholas (ed.), *Convict Workers*, 47. Morrison describes how the ‘sensuality of crime’, in particular housebreaking, was particularly seductive for young men, offering both thrills and the acquisition of desired material goods. W. Morrison, *Theoretical Criminology: From Modernity To Post-Modernism*, (London: Cavendish, 1995), 358-64.

⁹⁰⁴ Alan Williamson, a land surveyor transported for forgery, is the only ‘white collar’ criminal among them.

⁹⁰⁵ With the caveat that, as I argued in Chapter 2, the Irish were racially distinguished from the Anglo-Saxons and subjected to the same kind of discrimination that African-Americans face today. The mean age of the sample, excluding soldiers, was 23.3 years. No age is given for three men.

⁹⁰⁶ Andrews and Bonta, *The Psychology Of Criminal Conduct*, 58-9. Maruna arrived at the same conclusions as Andrews and Bonta, summarising ‘the risk factors and social obstacles’ facing the emancipist in the 21st century. They sound only too familiar to the historian of the convict experience in nineteenth century Tasmania. They include: ‘impoverished background ... long criminal histories and the stigma that accompanies them: long term use of addictive substances like alcohol and heroin: personality traits that favour adventure and excitement over routine and responsibility: residence in an area notorious for its limited economic opportunities’. S. Maruna, *Making Good: How Ex-Convicts Reform And Rebuild Their Lives*, (Washington: American Psychological Association, 2010), 11.

I shall look at these two sets of Risk Factors in two sections each, one dealing with pre-transportation experience, the second with post-transportation experience. In the discussion on pre-transportation experience, I have excluded soldiers, the native born and those who came free to the colony, since they lacked the background context of those who had been transported. In the discussion on the post-transportation experience, I have used the total sample, since after they entered the system in Tasmania it did not matter where they had come from. I will deal with the four Moderate Risk Factors first.⁹⁰⁷

The Moderate Four Risk Factors are:

1. Family and Marital circumstances: quality of interpersonal relationships within the family unit, family attitudes to antisocial behaviour.

Pre-transportation –

All the transportees had probably come from families that were, as Vic Gatrell observed, ‘chronically deprived, poor and socially powerless...’⁹⁰⁸ Most were born in the first two decades of the nineteenth century, probably into the kinds of conditions recorded by Chadwick in his Sanitary Report of 1842.⁹⁰⁹ From the 1830s he and his inspectors found that the incidence of diseases like cholera and typhus, already ‘the constant accompaniment to life in the courts, closes and wynds’, grew steadily. Epidemics were both more frequent and more intense, with large-scale outbreaks of cholera and typhus in 1826-7, 1831-2, 1837 and 1846.⁹¹⁰ Colds, coughs, ophthalmia, dysentery and rheumatism were endemic, and tuberculosis, the most lethal disease of the nineteenth century, thrived in the weakened bodies of the urban poor.⁹¹¹ Death rates increased dramatically in the 1820s and 1830s. These diseases not only caused great individual suffering and often death, but they disrupted family life with the loss of parents and

⁹⁰⁷ Andrews and Bonta, *The Psychology Of Criminal Conduct*, 10.

⁹⁰⁸ V.A.C. Gatrell, ‘Crime, authority and the policeman state’, in F.M.L. Thompson (ed.), *The Cambridge Social History Of Britain 1750-1850*, Vol. 3, (Cambridge: Cambridge University Press, 1990), 305.

⁹⁰⁹ M. Flinn (ed.), E. Chadwick, *Report On The Sanitary Condition Of The Labouring Population Of Great Britain*, (Edinburgh: University Press, 1965). This was first published in 1842 as E. Chadwick, *Report To Her Majesty's Principal Secretary Of State For The Home Department, From The Poor Law Commissioners, On An Inquiry Into The Sanitary Condition Of The Labouring Population Of Great Britain*.

⁹¹⁰ Chadwick, *Report On The Sanitary Condition*, 8-10.

⁹¹¹ Chadwick, *Report On The Sanitary Condition*, 86, 11-12.

breadwinners, and left a legacy of on-going ill-health. In the town of Tiverton in Dorset, for example, the inhabitants ‘all had a sickly, miserable appearance’. All those that Chadwick talked to ‘were ill or had been so, and the whole community presented a melancholy spectacle of disease and misery’.⁹¹²

Workplaces and homes lacked ventilation and adequate sanitation.⁹¹³ In agricultural districts, boarding houses for agricultural labourers were described as damp, overcrowded, with open cesspools and drains nearby, with as many as eleven people sleeping in one small room.⁹¹⁴ Cottages were generally located on the land that was too poorly drained for crops, surrounded by dung heaps and cesspools. The people slept on wet mud floors, and one inspector reported that in some hovels he had seen ‘the door has been removed from its hinges for children to put their feet on while making buttons’. Their diet consisted of bread and potatoes.⁹¹⁵ Nicholas and Shergold found that the average adult height of Britons born between 1780 and 1840 was ‘markedly shorter’, by about 4 cms, than that even of black American slaves in the same period. They attribute this to ‘intra-uterine malnutrition, poor childhood diet, and the consumption during infancy of injurious substances, notably the opium, laudanum and morphia that were the ingredients of popular patent medicines for children, [that] stunted the physical development of British workers’.⁹¹⁶ Sir Edmund Du Cane, prison administrator between 1863 and 1895, described the men in the colonial convict prisons that he administered as ‘of diseased and impaired constitutions, victims of dirt, intemperance and irregularity’.⁹¹⁷

Of the 123 men photographed at Port Arthur who had been sentenced to transportation by civil as opposed to military courts, 34 per cent were tried in a different county from that of their birth and so had probably experienced severed family ties before they were

⁹¹² Chadwick, *Report On The Sanitary Condition*, 79-80.

⁹¹³ Chadwick, *Report On The Sanitary Condition*, 92, 167.

⁹¹⁴ Chadwick, *Report On The Sanitary Condition*, 82.

⁹¹⁵ Chadwick, *Report On The Sanitary Condition*, 82-4.

⁹¹⁶ Nicholas and Shergold, ‘Convicts as Workers’, 81.

⁹¹⁷ People commonly attributed the desperate condition of the working classes to their own vices, rather than to the systemic oppression and deprivation of the society in which they lived. In their eyes, vice and filth led to poverty, rather than the other way around. E. Du Cane, *The Punishment And Prevention Of Crime*, (London: Macmillan, 1885), 97.

transported. This accords with Nicholas and Shergold's observation that, 'Many of those transported to New South Wales were experienced migrants'.⁹¹⁸ These men chose or were forced to go 'on the tramp', probably in search of work. Despite these fractured and desperate circumstances, in the indents all of them claimed some family. Most had one or both parents listed as living, and usually one or more brothers and sisters.⁹¹⁹ The vast majority of these family members still resided at their native place, unlike their wandering sons and brothers. Only thirteen described themselves as married, and few had children listed, but there may have been unrecorded de facto relationships with children involved.⁹²⁰

Some of the single men may have welcomed the 'adventure' of transportation and the chance for a better, new life: soldiers, already accustomed to leaving their families for long periods, might not have felt the pain of parting so acutely. But many men must have grieved for the loss of family and native place. John Frow described 'the experience of hurt' suffered by transportees, composed of grief and incomprehension of the scale of the experience, 'which returns to haunt its survivors'.⁹²¹ Nicholas and Shergold also observed that 'Uprooting from one's homeland is often a traumatic process. And the pain suffered can be expensive both to the individual and to the host society ... [imposing] "psychic costs" on an individual ...'⁹²²

⁹¹⁸ S. Nicholas and P.R. Shergold, 'Unshackling the Past', in Nicholas (ed.), *Convict Workers*, 8.

⁹¹⁹ For example, John Appleby left behind a mother, a sister and a brother (CON14/1/4, page 101); James Blanchfield left both his parents, a sister and possibly a 'sweetheart' named Sarah Ann (CON 14/1/41, page 355); William Dawson probably never saw his parents, two brothers and three sisters again. (CON14/1/8, page 118), TAHO.

⁹²⁰ Both men and women may also have described themselves as single because they wanted to be rid of the current partner, or because they realised that they would never return and might wish to marry again in the colony. John Merchant had a wife, Martha, and one child (CON31/1/32, page 23); William Walker was married with three children (CON31/1/47, page 159), as was John Gould, whose wife's name was Jemima. (CON14/127, page 51, CON33/1/53, page 251), TAHO.

⁹²¹ J. Frow, 'In the Penal Colony', in R. Nile (ed.), *The Australian Legend And Its Discontents*, (Queensland: University of Queensland Press, 2000), 119.

⁹²² Nicholas and Shergold, 'Convicts as Migrants', in Nicholas (ed.), *Convict Workers*, 53.

The many surviving convict love tokens testify to the profound sorrow and grief experienced by transportees at the prospect of eternal separation.⁹²³ Dedicated to loved ones, in their tiny compass they wring the heart with sentiments such as ‘Weep not for me my Elizabeth dear/With heavy heart I am confined here with grief and sorrow/ I am Oppressed thinking of you’. Some lament the loss of their native land with ‘farewell my country’s exile’ and ‘far from my parents and my home’. One even depicts a simple house with the despairing inscription ‘This was once my cotage’. Many beg those left behind not to forget them: ‘Forget me not/my dear Mother’ is common. The most poignant refer to children: one man inscribed his infant daughter’s name, birthdate, and age. Another begs his mother to take care of his pregnant wife and child. Some bear only eloquent pictures: a man on bended knee takes his leave of a woman, sometimes accompanied by a child: this image also occurs as a tattoo. Many pledge eternal fidelity, beg the recipient not to think or speak ill of them, and long for the day when they can be reunited. One is painfully realistic about the chances of reunion: ‘If you wait till I return you may wait till the day of doom’.⁹²⁴

The realisation of impending separation, the loving sentiments, were too little, too late. According to Godfrey, David Cox and Stephen Farrall’s survey of 297 offenders from Birkenhead and Crewe with offending histories dating from 1855-1940, ‘marriage ... did not support desistance from crime’.⁹²⁵ ‘Minor habitual offenders tended to marry before starting their offending: serious habitual offenders (if they married) tended to get married during their period of offending ...’⁹²⁶ But overall they conclude that ‘67% of habitual offenders never married’ and that ‘habitual offenders were less likely to be married, less

⁹²³ These were coins modified and engraved with messages to loved ones by men en route to the colonies. See H. Maxwell-Stewart and J. Bradley, ‘Convict Tattoos: Tales of Freedom and Coercion’, in M. Field and T. Millet (eds.), *Convict Love Tokens: The Leaden Hearts The Convicts Left Behind*, (Adelaide: Wakefield Press, 1998), 47-52.

⁹²⁴ Field and Millett (eds.), *Convict Love Tokens*, 11, 13-14, 17, 25, 50-1, 78, 80, 94, 89, 101, 111.

⁹²⁵ Godfrey, Cox and Farrall, *Serious Offenders*, 122.

⁹²⁶ One third of Godfrey *at al*’s sample, whose long criminal careers were characterized by ‘a low level of seriousness’ – mainly public order and regulatory offences. Godfrey, Cox and Farrall, *Serious Offenders*, 135: Two thirds of this sample were predominantly involved in property offending. Godfrey, Cox and Farrall, *Serious Offenders*, 135: Godfrey, Cox and Farrall, *Serious Offenders*, 122.

likely to have any semblance of family life ...⁹²⁷ While in Godfrey *et al*'s sample 33 per cent described themselves as married, only 11.3 per cent of the Port Arthur men did so. About two thirds of these were convicted in their native place, indicating that for some men at least marriage seems to have been a disincentive to vagrancy, if not to crime.⁹²⁸ These family ties must have been sorely tested in the 34 per cent of men who were convicted beyond their native place: as Godfrey *et al* also found, habitual offenders were 'more likely to move around and be less residentially stable'.⁹²⁹ So marital and family relationships may have been rendered vulnerable by poverty, ill health disease and death, unemployment and/or underemployment. Some had already been fractured by vagrancy and short prison terms for previous offences. If marriage did not prevent habitual offending, as Godfrey *et al*'s results indicate, habitual offending did not prevent marriage. Marriage may have sometimes prevented vagrancy, but not always. The seasonal and irregular work that these men often did made vagrancy inevitable, as did unemployment. It seems clear that these factors seldom existed in isolation, and that they interacted with one another in unpredictable ways.

Family attitudes to antisocial behaviour seem to have been accommodating. In at least five of these cases other family members were also transported. John Gould's brother was transported, as was William Burton's.⁹³⁰ William Hayes' mother had 'lived by begging' before being transported.⁹³¹ John Moran's mother and brother were transported with him.⁹³² Henry Bramhall, John Gould, Charles Heys, William Price, William Burley and Emmanuel Blore were described as having 'bad connexions', usually meaning family members but perhaps also friends, who were 'known to the police'.⁹³³

⁹²⁷ Godfrey, Cox and Farrall, *Serious Offenders*, 152.

⁹²⁸ Records are occasionally inconsistent as to whether or not a man was married.

⁹²⁹ Godfrey, Cox and Farrall, *Serious Offenders*, 152.

⁹³⁰ CON33/1/53, page 129; CON33/1/19, page 29, TAHO. E. Barnard, *Exiled: The Port Arthur Convict Photographs*, (Canberra: National Library of Australia, 2010), 140.

⁹³¹ Barnard, *Exiled*, 26.

⁹³² Barnard, *Exiled*, 56.

⁹³³ CON33/1/4, page 12; CON33/1/19, page 29; CON31/1/22, page 50; CON31/1/3, page 169; CON33/1/33, page 160; CON33/1/45, page 65, TAHO.

More broadly, however, the social and economic milieu that formed these transported men was one in which petty crimes were regularly committed and broadly tolerated.⁹³⁴ Gatrell argued that ‘nineteenth century criminals ... inherited the assumptions and forms of behaviour of a popular culture that was enormously segregated from the culture of their governors ... which for centuries had been barely disturbed by the state and its values’. This only lasted as long as their communities were opaque: ‘Once the railways and the highways were thrust through the rookeries, once the police began to probe down alleys never before investigated, once shopkeepers and artisans and publicans on the fringe of the old communities began to accept the notion that satisfactory recourse might be had to law in the settlement of offences against them’, then the thief was vulnerable. Ordinary men and women, ‘whose depredations on each other had been built into an immemorial way of life and survival’ swelled the court records.⁹³⁵ And the police and the courts had ‘a relatively easy task of it. Their [i.e. ordinary men and women] opposition was still innocent, had still to learn the rules of the game’.⁹³⁶ Unfortunately for this sample of Port Arthur men, ‘This level of casual criminality was the least defended of all when the police, the courts, and the environmental and moral reformers began in the 1830s and 1840s to address themselves to it.’⁹³⁷

The theft of small items from workplaces – the odd chicken, hammer or piece of lead – was regarded by workers as the normal perks of the job. As Linebaugh pointed out ‘often the law ... was opposed to “custom”’.⁹³⁸ Employers were aware of such ‘usages of the trade’, but were often reluctant to prosecute for fear of losing a good worker.⁹³⁹ But in hard times, or when they were concerned about an apparent rise in general crime, they

⁹³⁴ Godfrey, *Crime In England 1880-1945*, 22.

⁹³⁵ V.A.C. Gatrell, ‘The Decline of Theft and Violence in Victorian and Edwardian England’, in V.A.C. Gatrell, B. Lenman and G. Parker (eds.), *Crime And The Law: The Social History Of Crime In Western Europe Since 1500*, (London: Europa Publications, 1980), 265.

⁹³⁶ Gatrell, ‘The Decline of Theft and Violence in Victorian and Edwardian England’, 264.

⁹³⁷ Gatrell, ‘The Decline of Theft and Violence in Victorian and Edwardian England’, 266.

⁹³⁸ Linebaugh, ‘(Marxist) Social History’, 243.

⁹³⁹ Each occupation had its own word for such perks – ‘cabbage’ to tailors, ‘vails’ to servants, ‘birrs’ to leather workers, ‘chips’ to shipwrights, ‘socking’ to tobacco porters, ‘sweepings’ to sugar lumpers, ‘wastages’ to coopers, ‘thrums’ to weavers’. Linebaugh, ‘(Marxist) Social History’, 228. P. King, *Crime, Justice And Discretion In England 1740-1820*, (Oxford: Oxford University Press, 2000), 208.

might suddenly decide to prosecute, and people who committed such time-honoured ‘pilferage’ in times of hardship might suddenly find themselves arrested.⁹⁴⁰ There were many examples of workers in the Port Arthur sample convicted for stealing goods related to their workplace that, in better days, they might have been allowed to take. Farm labourers William Humphreys and George Glasspoole stole a fowl and a lamb. Plasterer James Harrison may have picked up on his work site the small amount of brass for which he was originally convicted. Might men be so incensed by their prosecution for items that had previously been seen as a perk, that they sought revenge against their employers? Top sawyer John Merchant was first convicted for stealing straw before he was transported for stealing 12 pigs. Labourer George Johnson was originally convicted twice for poaching before he was transported in 1852 for stealing 15 chickens.⁹⁴¹ Arson was a not uncommon response to what men saw as wrongful dismissal or prosecution. Carpenter/joiner James Merchant set fire to a barn which, in the opinion of the court, was ‘malicious’ and done ‘with intent to injure’ its owner Mr Lucas. Merchant had a previous conviction for stealing hay.⁹⁴² Groom George Growsett also set fire to a stack of wheat.⁹⁴³ Police might also bring ‘unnecessary or malicious prosecutions for the reward, or to claim expenses, as supplement to their low salaries’.⁹⁴⁴

As Douglas Hay concluded, among working people there was no social consensus about the legitimacy of the criminal law, but an attitude that was ‘contingent on circumstance’.⁹⁴⁵ King agreed, saying that ‘to the labouring poor the law appeared not as one entity but rather as a series of often contradictory opportunities and oppressions’.⁹⁴⁶ Under these conditions, it is not surprising that the poor might ‘lose any respect for

⁹⁴⁰ J. Ditton, ‘Perks, Pilferage and the Fiddle: the Historical Structure of Invisible Wages’, *Theory And Society*, Vol.4/1, (1977), 52, 55; King, *Crime, Justice And Discretion In England*, 129.

⁹⁴¹ CON33/1/34, page 70; CON31/1/17, page 43; CON33/1/99, page 153; CON31/1/32, page 23; CON33/1/114, page 160, TAHO.

⁹⁴² CON33/1/79, page 106, TAHO.

⁹⁴³ CON33/1/110, page 98, TAHO.

⁹⁴⁴ D. Hay, ‘Prosecution and Power: Malicious Prosecution in the English Courts 1750-1850’, in D. Hay and F. Snyder (eds.), *Policing And Prosecution In Britain 1750-1850*, (Oxford: Clarendon Press, 1989), 390.

⁹⁴⁵ Hay, ‘Prosecution and Power’, 394.

⁹⁴⁶ King, *Crime, Justice And Discretion In England*, 365.

property rights and the law that they might have had'.⁹⁴⁷ This was the attitudinal framework within which these men committed their petty crimes in Britain.

1. Family and Marital circumstances: quality of interpersonal relationships within the family unit, family attitudes to antisocial behaviour.

Post-transportation

Of these 156 men, only 14 per cent applied to marry, and only 11 per cent actually married according to official records.⁹⁴⁸ This figure is substantially less than Maxwell-Stewart found in his 4 per cent sample of convicts arriving between 1840 and 1853: almost 26 per cent of these men married.⁹⁴⁹ I suspect that the fact that my sample is entirely made up of recidivists may account for this apparent anomaly. As Godfrey *et al* point out, 'only about one third (39%) of the serious and minor [persistent] offenders in their sample were married at some point during their lives'.⁹⁵⁰ And this was in England, with a relatively even balance between the sexes. How much less likely was a recidivist to marry in Van Diemen's Land/Tasmania, where a woman could be much more selective and a man might spend long and/or frequent periods incarcerated.⁹⁵¹

Of the 15 men in my sample who married, only three of the brides had not been transported. Using all available public records, however, it is possible to determine that at least 13 other relationships had escaped official attention, either because they were *de facto* or because those involved had simply not applied for permission.⁹⁵² Charles Rosetta

⁹⁴⁷ Gatrell, 'The Decline of Theft and Violence', 314.

⁹⁴⁸ These were the subjects of the Port Arthur photographs who can be identified with certainty. This group includes soldiers, a sailor, the native born and men who came free to the colony. No matter what their background, family formation (or not) in the colony is significant in evaluating their pattern of recidivism.

⁹⁴⁹ H. Maxwell-Stewart, "'And All My Great Hardships Endured"? Irish Convicts in Van Diemen's Land' in N. Whelehan, *Beyond The Island: Transnational Perspectives In Modern Irish History*, Routledge, 2014, 13.

⁹⁵⁰ Godfrey, Cox and Farrall, *Serious Offenders*, 121.

⁹⁵¹ A similar situation obtained in Western Australia, where Godfrey and Cox conclude 'the convicts were not great "catches", especially when the colony was predominantly stocked with men ...' Godfrey and Cox, "'The Last Fleet'", 246.

⁹⁵² These include newspaper reports of trials and conduct records. These involved 11 men but one, Richard Pinches, married twice.

was had up for assaulting his second wife Maria Clark.⁹⁵³ James Harrison had been married in 1853, according to official records, but in 1869 he was sentenced to ten years imprisonment for the manslaughter of a different young woman, Rosa Mumford, with whom he had been living ‘on and off for the past two years’.⁹⁵⁴ George Langley murdered his ‘de facto wife’ Maria.⁹⁵⁵ Luke Marshall sought relief for three of his children.⁹⁵⁶ Richard Pinches/Henry Singleton married not once but twice, bigamously, and was later arrested living with yet another woman.⁹⁵⁷ George Nutt had been living with Susan Lennard ‘as man and wife’ when they were had up for larceny and receiving.⁹⁵⁸ Taking these relationships into account, we may say that of the 156 men in this sample, we know that only 19 per cent either married or formed de facto relationships sufficiently stable for them to be recognised by others.

In at least eight of these cases it seems that family attitudes to the law were again perhaps contingent, certainly not necessarily compliant, since these men and their wives were often prosecuted together or separately. William Burley uttered a forged cheque in company with his wife Sarah and two children aged 17 and 20.⁹⁵⁹ In other cases, wives and even children were guilty of various forms of criminal or disorderly behaviour. George Leathley and his wife Catherine were regularly before the courts for theft, fighting, drunk and disorderly and other public regulation offences, before being charged together with murder during one chaotic drunken night at their house.⁹⁶⁰ His wife was

⁹⁵³ *Launceston Examiner*, 12 February 1857, 3.

⁹⁵⁴ *Mercury*, 25 May 1866, 2; *Cornwall Chronicle*, 9 May 1865, 4.

⁹⁵⁵ *Mercury*, 16 July 1873, 2.

⁹⁵⁶ If this is the correct Luke Marshall, his four children must have been born between 1861 and 1873, during a brief spell of freedom: no wife or mother was mentioned in this application. *Mercury*, 31 October 1879, 2. During a court appearance for theft in 1874, however, a Jane Matilda Marshall is mentioned as his wife. *Launceston Examiner*, 10 January 1874, 3.

⁹⁵⁷ *Mercury*, 31 August 1864, 2.

⁹⁵⁸ *Mercury*, 24 May 1862, 2.

⁹⁵⁹ *Tasmanian Police Gazette*, 20 September, 1861, 83.

⁹⁶⁰ For example, *Mercury*, 17 November 1863, 3; *Mercury*, 13 February 1865, 3; *Mercury*, 25 February 1865, 2; *Mercury*, 31 August 1865, 3. Re the murder, *Mercury*, 13 December 1865, 3. Apparently defying family tradition, little George Leathley won a 10 shilling prize for good conduct at the Orphan School, whence he had been removed with his siblings following a court recommendation based on his mother Catherine’s drunken neglect. *Mercury*, 24 January 1866, 2; *Mercury*, 31 December 1867, 2.

described as ‘a notoriously bad character’⁹⁶¹ and ‘a rough looking woman, of dissolute habits’.⁹⁶² His teenage daughter Sarah continued the family tradition of theft, drunkenness and receiving and added a new wrinkle, prostitution.⁹⁶³

Ephraim Doe’s wife and son were arrested with him, having provided their husband and father with a false alibi in the murder of an elderly shepherd.⁹⁶⁴ Bridget Doran also had a long record of offences for theft before and after her marriage.⁹⁶⁵ George Fisher’s wife Elizabeth racked up an impressive sheet of numerous offences including thefts, fighting and drinking, and tampering with a witness, before she was murdered in 1869.⁹⁶⁶ George Johnson’s wife Ann had a long record of absconding and disobedience before she was married. Afterwards, she added numerous larcenies, obscene language and disorderly conduct.⁹⁶⁷ James Page’s wife Ann had numerous offences against her name for being drunk and disorderly, absconding and insolence before she was convicted of receiving stolen goods with her husband.⁹⁶⁸ Esther Humphries was accused of having attacked a neighbour with an axe in a drunken rage while her husband William punched him.⁹⁶⁹ On another occasion she was charged with receiving stolen goods.⁹⁷⁰

Marriage did not support desistance from crime in the cases of the 17 men who married within the system in Tasmania.⁹⁷¹ All committed at least one recorded offence after marriage, apart from native-born William Kellow, who incurred only one sentence almost 20 years after his marriage for receiving.⁹⁷² Those with only one recorded offence in

⁹⁶¹ *Mercury*, 15 June 1865, 3.

⁹⁶² *Mercury*, 6 December 1865, 2.

⁹⁶³ For example, *Mercury*, 20 February 1874, 2; *Mercury*, 22 April 1878, 2.

⁹⁶⁴ *Mercury*, 19 August 1867, 2.

⁹⁶⁵ CON41/1/18, page 120, TAHO.

⁹⁶⁶ CON41/1/15, page 15, TAHO.

⁹⁶⁷ CON41/1/1, page 9, TAHO.

⁹⁶⁸ Ann was transported for that peculiarly Scottish offence of stripping a child, a heartless crime that transgressed one of society’s dearest values, the protection of children. CON40/1/1, page 375, TAHO.

⁹⁶⁹ *Mercury*, 18 September 1861, 2.

⁹⁷⁰ *Mercury*, 3 September 1867, 2.

⁹⁷¹ Godfrey et al found this also to be true in nineteenth century England. Godfrey, Cox and Farrall, *Serious Offenders*, 121-2.

⁹⁷² CON37/1/10, page 514, TAHO.

Tasmania were found guilty of serious offences like rape or manslaughter and so spent much of their remaining active lives in prison. Four committed two recorded offences, five committed three, one committed four and three committed five or more. William Burley and James Page's wives died two years before their offending resumed, but the others apparently had wives living. Of those men, all but one began to reoffend some years after marriage: the earliest was six years, the latest 22. In five cases all their children were born before the resumption of their criminal careers: three had children born during them. It would appear that neither marriage nor fatherhood had supported desistence in this admittedly small sample. Without a steady job, crime might be the only way for a man to support a family, and so marriage and fatherhood might actually become incentives rather than disincentives to crime.

2. School/Work: quality of interpersonal relationships within the workplace: low levels of rewards and satisfactions

Pre-transportation –

As background to the possibility of gaining rewards at school or at work, in 1842 Chadwick and his reporters observed 'a greater incidence of unemployment, destitution and distress than in any other year of the nineteenth century'. The very poorest included workers in declining domestic industries and agricultural labourers.⁹⁷³ Such conditions continued through the period in which these men were transported.

In terms of assessing the level of rewards at school, I have excluded those whose literacy level does not appear on their record (see Appendix 2). This leaves 130 men, of whom 24 could neither read nor write, and 25 could only read or write 'a little', meaning that almost 38 per cent had no useful level of literacy, indicating either unsatisfactory or no experience of school. According to Nicholas, of the convicts transported to New South Wales between 1817 and 1840, 73.7 per cent of the English male convicts and 67 per cent of the Irish could read and write or read only.⁹⁷⁴ The men of my sample seem

⁹⁷³ Flinn in Chadwick, *Report On The Sanitary Condition*, 1, 4.

⁹⁷⁴ Nicholas (ed.), *Convict Workers*, 75, 210 Table A7.

considerably less literate than this, at only 47 per cent for the English and 37 per cent of the Irish.⁹⁷⁵

It seems likely that a skilled man was more likely to find work rewarding. Nicholas and Shergold devised a nine-category skill classification scheme in order to assess whether English convicts were more or less skilled than men who remained in England.⁹⁷⁶ Table 7.1 compares the Port Arthur men with their samples of men transported to New South Wales and men who remained in England. Ninety Port Arthur men of English origin remain after excluding soldiers, the Irish, the few Scots and one Welshman, men who came free to the colony, men whose record does not show their trade or native place, and the native born.⁹⁷⁷ Where a man is listed as having two trades, I have used the more skilled trade, assuming that he only worked as a labourer when he could not get work at his trade. Many men are simply described as ‘labourer’, so I have allocated them to ‘urban’ or ‘rural’ based on their native place. This was admittedly inexact but there seemed no alternative. That means that both of those categories could shift significantly either way, and so neither seems individually reliable except as to add to the total of ‘unskilled’ workers.

⁹⁷⁵ The sample of Scots or Welsh is too small to be useful. Only one soldier, a Scot, has his native place on his record.

⁹⁷⁶ Nicholas (ed.), *Convict Workers*, 71-72, Table 5.5: Appendix Table A18, 223-4.

⁹⁷⁷ The 14 soldiers comprise just over 10 per cent of the sample of 135 whose trades are recorded but, with one exception, their records do not give their native place.

Table 7.1 English convicts and occupations

Nicholas & Shergold's skill classifications	1841 English census	N&S sample, men to NSW	Englishmen to Port Arthur
1. Unskilled urban	8.2	21.6	16.6
2. Unskilled rural	20.3	4.9	16.6
3. Skilled building	7.9	8.1	12.2
4. Skilled urban	32.4	39.2	34.4
5. Skilled rural	6.9	7.0	7.7
6. Dealers	5.2	2.6	1.1
7. Public service	5.7	4.0	1.1
8. Professional	2.9	1.5	1
9. Domestic service	4.6	11.2	5.5
10. Occupations not elsewhere classified	5.9	0	0

Nicholas and Shergold concluded that their sample represented 'a cross-section of the English working class', bringing with them skills 'broadly representative of the skills across the working classes in England'.⁹⁷⁸ Among the New South Wales transportees from England, and those left behind in England, only 26.5 and 28.5 per cent of them respectively were classified as unskilled, whereas 33.2 per cent of those sent to Port Arthur were unskilled. Skilled workers were transported to New South Wales as 65.5 per cent and to Van Diemen's Land/Port Arthur as 59.8 per cent of the total.⁹⁷⁹ Comparison is made more difficult by the small Port Arthur sample, which may account for the narrower range of occupations, especially urban occupations, represented by these men.

This cohort was shaped by the economic conditions prevailing when they were transported between 1831 and 1849. In the early 1830s southern and eastern England were swept by agricultural riots. Agricultural labourers were dealt a fatal blow by the introduction and gradual adoption of reaping and threshing machines, a particular threat

⁹⁷⁸ Nicholas (ed.), *Convict Workers*, 82, 71.

⁹⁷⁹ I have included domestic servants in the skilled category.

to winter employment.⁹⁸⁰ Two Enclosure Acts in 1836 and 1845 removed the customary rights of rural people to graze livestock and to take resources like rabbits from wastelands and woodlands, and to glean fallen grain following the harvest. Many turned to poaching. These were likely to be ‘unemployed men – agricultural labourers, miners, ribbon weavers’, like labourer George Johnson who was convicted four times for poaching before he was transported in 1852 for stealing 15 chickens.⁹⁸¹ In the past, agricultural labourers had received bed and board at the farm where they worked: now, farmers found it cheaper to pay wages than to feed and house their workers. Rural unemployment now meant not only no income, but nowhere to live. This problem was exacerbated when many cottages were demolished because of the Enclosure Acts.⁹⁸² Wages continued to fall, and food prices rose: many died of cold and hunger.⁹⁸³ At the same time, there was an increase in permanent pasture and a decrease in crop growing, further reducing the employment opportunities for agricultural labourers.⁹⁸⁴

The story is repeated in the industrial north, where conditions in the textile trade were appalling. John Moran had been a mill boy since he was a child at Preston Mill, where his parents Henry and Mary and seven siblings also worked. Millwork was particularly injurious to children, stunting and deforming their growth and filling their lungs with fine particles that frequently proved fatal. Mill worker Stephen Binns testified to an 1831 inquiry into child labour that his daughter had died of ‘shortness of breath’ and his son was already ill with the same complaint. The Moran family took to thieving to supplement their low wages. Mary and her sons John, aged fifteen, and William, aged ten, were transported in 1827.⁹⁸⁵

⁹⁸⁰ E. Royle and J. Walvin, *English Radicals And Reformers 1760-1848*, (Brighton: Harvester Press, 1982), 144. Thomas Hardy describes the organisation of labour around the reaping machine at harvest time in *Tess Of The D'Urbervilles*: in his account, while a few men were still employed to drive the horses and as binders, the work of collecting the cut stalks of grain and binding them into sheaves was mainly done by women. T. Hardy, *Tess Of The D'Urbervilles: A Pure Woman*, (first published 1891, London: Macmillan and Co., 1965), 106-7.

⁹⁸¹ P. Gregg, *A Social And Economic History Of Britain*, (London: Harrap, 1950), 31: CON33/1/114, page 160, TAHO: Barnard, *Exiled*, 208.

⁹⁸² Gregg, *A Social And Economic History Of Britain*, 29.

⁹⁸³ Gregg, *A Social And Economic History Of Britain*, 30.

⁹⁸⁴ Gregg, *A Social And Economic History Of Britain*, 112.

⁹⁸⁵ Barnard, *Exiled*, 57.

But things were only going to get worse for families like the Morans. The depression that began in 1836 ushered in ‘years of almost unrelieved economic gloom’.⁹⁸⁶ A severe economic downturn in 1841 ‘brought worse hardship to many areas than had been experienced in 1839 or in any other year of the nineteenth century’. In Manchester alone 50,000 men were out of work. A wave of strikes in industrial areas followed a wage cut in 1842. With food prices high, there were hunger protests. Two hundred men were arrested in Staffordshire’s pottery towns and many were transported.⁹⁸⁷ Henry Boardmore, a potter from Stoke, was transported in 1844 for housebreaking and theft.⁹⁸⁸

Many other tradesmen in the north had already seen their trades destroyed by technological and other changes, like Thomas Molineux, a 23-year-old married spinner from Manchester, who was eventually transported in 1841 for theft after six previous convictions for the same offence.⁹⁸⁹ Between 1830 and 1850 the textile trade was transformed: weaving became steam powered, trade was poor and handloom weavers were hit hard, particularly in the silk industry. A silk weaver like Thomas Jackson from Knutsford may already have been on the parish before being transported in the early 1840s.⁹⁹⁰ In 1847-8 trade collapsed, leading to an industrial depression, high corn prices and low wages.⁹⁹¹ Between 1847 and 1851, almost one third of the British transportees to Port Arthur were transported.⁹⁹² Their occupations ranged from unskilled or semi-skilled labourer and gardener Thomas Fleming, who had already served two sentences for picking pockets and 14 days for vagrancy, to skilled apprentice tailor George Nutt, who had two previous convictions for larceny.⁹⁹³

⁹⁸⁶ Royle and Walvin, *English Radicals And Reformers*, 157.

⁹⁸⁷ Royle and Walvin, *English Radicals And Reformers*, 167-8.

⁹⁸⁸ CON33/1/103, page 42, TAHO.

⁹⁸⁹ Royle and Walvin, *English Radicals And Reformers*, 172. CON33/1/20, page 160, TAHO.

⁹⁹⁰ CON33/1/20, page 160; CON33/1/67, page 29, TAHO. Strangely, although Jackson’s occupation was given as silk weaver, he had only one arm. CON33/1/10, page 115, TAHO: Gregg, *A Social And Economic History Of Britain*, 189.

⁹⁹¹ Gregg, *A Social And Economic History Of Britain*, 221.

⁹⁹² This excludes soldiers, who were transported from all over the Empire under very different economic and social conditions.

⁹⁹³ CON33/1/115, page 64. Nutt was also known as George White, CON33/1/107, page 197, TAHO.

The many men who took to the road in search of something better faced the wrath of the state for their initiative. Under the provisions of the Vagrancy Acts of 1824 and 1838, it became a crime in England and Wales to be homeless.⁹⁹⁴ ‘Rogues, vagabonds and disorderly persons’ were not permitted to sleep on the streets or to beg. Convicted vagrants might serve anything from 24 hours to six weeks in gaol, and on completion of their sentence they would be ‘moved on’, taken by police and dumped outside the parish boundary.⁹⁹⁵ Unusually, 12 year-old Irish orphan Thomas Cahill was transported for vagrancy, having already been arrested several times for minor thefts. He pleaded in his defence, ‘I had no place to live in’.⁹⁹⁶ Vagrants also carried a heavy burden of stigma. Mayhew voiced the common belief that ‘vagrancy is the nursery of crime, and that the habitual tramps are first beggars and then thieves, and finally the convicts of the country’.⁹⁹⁷ Although ‘the poor laws demoralized those who stayed at home ... the vagrancy laws debauched those who joined the migratory labour market’, setting in train a ‘cycle of indiscipline and degeneracy, as critics saw it’.⁹⁹⁸ According to Godfrey, Cox and Farrall, the Vagrancy Acts under which at least one third of our sample might have been arrested as peripatetic workers

had stigmatizing effects which produced itinerant offenders who had little reason not to offend or who did not have stable employment or interpersonal relationships to curtail their offending. As such, these Acts intervened in the lives of some of those we have studied to label them and to reproduce (rather than reduce) the very problem (‘habitual offenders’) they proclaimed to be tackling.⁹⁹⁹

⁹⁹⁴ Vagrancy Act 1824 (Regina. 5 Geo 4, c. 83). Vagrancy Act 1838, (1 & 2 Vict. c. 38). The 1824 act is still in force, although somewhat amended, and has recently been used against people sleeping rough in London. ‘Vagrancy Act 1824’, https://en.wikipedia.org/wiki/Vagrancy_Act_1824, viewed 12 December 2013.

⁹⁹⁵ G. Rudé, *Criminal And Victim: Crime And Society In Early Nineteenth-Century England*, (Oxford : Oxford University Press, 1985), 125.

⁹⁹⁶ CON33/1/65, page 45, TAHO.

⁹⁹⁷ H. Mayhew and J. Binny, *The Criminal Prisons Of London And Scenes Of Prison Life*, (London: Griffin, Bohn and Company, 1862), 43.

⁹⁹⁸ M.J.D. Roberts, ‘Public and private in early nineteenth century London: the Vagrancy Act of 1822 and its enforcement’, *Social History*, Vol. 13/3, (1988), 281.

⁹⁹⁹ Godfrey, Cox and Farrall, *Serious Offenders*, 218.

Underpaid, poorly housed and fed, working in appalling conditions interspersed with periods of unemployment, underemployment and vagrancy: these were not ideal conditions for gaining job satisfaction. But the consequences of conviction for petty offences were catastrophic, since ‘once acquired a criminal record stood in the way of further employment’.¹⁰⁰⁰ How was an unemployable man to live without thieving?

2. School/Work: quality of interpersonal relationships within the workplace: low levels of rewards and satisfaction

Post- transportation –

John Braithwaite agreed with Caroline Chisholm that economic integration was one of the keys to reintegration into society, but the work histories of these men demonstrate frequent failure to achieve this, a factor compounded by their failure to form stable domestic relationships.¹⁰⁰¹ Based on newspaper reports of court proceedings and the *Tasmanian Police Gazette*, the pattern of underemployment, unemployment and vagrancy established in Britain continued for many of the Port Arthur men in colonial Tasmania. Economic conditions over the period 1840-1895, when these men were (occasionally) at liberty and seeking work, fluctuated from the depressions of the 1840s, early 1870s and 1890s, to periods in between of relative prosperity and stability, particularly during the labour shortage associated with the Victorian gold rush of 1852-5. Demand for convict labour peaked in 1853 but by 1857 Tasmania was plunged back into recession again.¹⁰⁰² The influx of significant numbers of free immigrants in the late 1830s also gave employers the option of hiring men unmarked by the convict stain, and the Port Arthur men, commonly regarded as the worst of the worst, must have gone to the end of that queue.¹⁰⁰³

¹⁰⁰⁰ Hay, ‘Prosecution and Power’, 394

¹⁰⁰¹ Braithwaite, ‘Crime in a Convict Republic’, 16.

¹⁰⁰² D. Meredith and D. Oxley, ‘Contracting Convicts: the convict labour market in Van Diemen’s Land 1840-1857’, *Australian Economic History Review*, Vol. 45/1, (2005), 25, 64, 71.

¹⁰⁰³ R.M. Hartwell, *The Economic Development Of Van Diemen’s Land 1820-1850*, (Melbourne: Melbourne University Press, 1954), 66.

In the 1840s, when the Port Arthur men were being released from their original sentence, tens of thousands of emancipists flooded the depressed labour market.¹⁰⁰⁴ A number of men these reported difficulty in gaining employment. As a contemporary writer in New South Wales pointed out in 1841, convicts and ex-convicts were the poorest and least educated class in the colony. The stigma of their criminal history could affect both their self-image and their treatment by others. They were the most vulnerable to economic fluctuations, and had the most limited employment opportunities.¹⁰⁰⁵ This was apparently also the case in Tasmania: even in the depressed 1840s employers still preferred to employ free labourers rather than ex-cons.¹⁰⁰⁶ Throughout the 1840s scare-mongering anti-transportationists further inflamed anti-convict prejudice, ascribing every real and imagined ill in the colony to the ex-convict.

With paid work scarce, the convicts robbed to survive, and burglaries, and the fear of burglary and robbery, became serious social problems.¹⁰⁰⁷ In his defence against the charge of uttering, William Lee said that ‘men who come up from penal servitude were forced to commit crimes, for they could obtain no employment’.¹⁰⁰⁸ Several men were just out of gaol when they offended: during his trial for burglary James Glen ‘particularised a number of unsuccessful applications that he had made for employment’: he had come up from Port Arthur three months previously after serving four years for receiving.¹⁰⁰⁹ James Foley had also just been released from gaol and could not get

¹⁰⁰⁴ D. Huon, ‘By moral means only: the origins of the Launceston Anti-Transportation Leagues 1847-1849’, *Tasmanian Historical Research Association*, Vol. 44/2, (1997), 110.

¹⁰⁰⁵ Things had certainly changed since the halcyon days of the 1820s. Braithwaite argues that in New South Wales in the 1820s emancipists were successfully reintegrated into society. He paints a rosy picture of men setting up small businesses with their wives and receiving ‘substantial’ land grants, becoming wealthy and successful. Wages were high and work plentiful. Not only were they successfully economically reintegrated, but under Macquarie social reintegration was achieved when he invited ex-convicts to sit at the Government House dining table. W. Bland, *Sydney Morning Herald*, 25 February 1841, in M. Sturma, *Vice in a Vicious Society: Crime And Convicts In Mid-Nineteenth Century New South Wales*, (Brisbane: University of Queensland Press, 1983), 77; Braithwaite, ‘Crime in a Convict Republic’, 15-16.

¹⁰⁰⁶ Hartwell, *The Economic Development Of Van Diemen’s Land*, 62, 83.

¹⁰⁰⁷ Huon, ‘By moral means only’, 110.

¹⁰⁰⁸ *Cornwall Chronicle*, 9 June 1858, 5.

¹⁰⁰⁹ CON37/1/5, page 132. TAHO.

work.¹⁰¹⁰ Even when they could get jobs, they were not always fairly treated: both Charles Petts and William Forster took their masters to court for unpaid wages.¹⁰¹¹ By refusing to be cowed by their pariah status and claiming their rights, they both gained the unpaid monies and damaged the reputation of their former employers, which may have been even more gratifying.¹⁰¹²

As they had in Britain, many went on the tramp. A high degree of mobility is apparent among these men. These included William Baker, who committed a range of thefts over 40 years including burglary, receiving, forgery and larceny in Oatlands, Launceston, Ross, Launceston again, Deloraine, Launceston again and finally Hobart. Thomas Cahill was tried for numerous crimes including larceny, wilfully destroying property, absconding and assault over a 20-year period in 21 different locations. Henry Clabby moved between different country areas and Hobart to commit offences over a ten-year period.¹⁰¹³ Only 20 men confined their offending to one location, usually either Hobart or Launceston.

The Tasmanian Vagrancy Act of 1824 was modelled on the English Vagrancy Act of the same year, a law that David Jones has described as ‘one of the most flexible, useful and criminal-making statutes of the century’.¹⁰¹⁴ As the Tasmanian newspapers of the day make clear, these laws allowed police and magistrates complete discretion in pursuit of ‘the criminal, the poor, the weak, the suspected and the simply annoying’.¹⁰¹⁵ On at least 107 occasions men were charged with begging, or being vagrant or idle and disorderly.

¹⁰¹⁰ *Cornwall Chronicle*, 18 September 1872, 2.

¹⁰¹¹ *Mercury*, 14 September 1870, 2; *Mercury*, 22 March 1866, 2

¹⁰¹² Slave women in the Cape Colony brought their masters to court in paternity cases, and found other ways to cause them public scandal, shame and humiliation. K. McKenzie, *Scandal in the Colonies: Sydney and Cape Town, 1820-1850*, (Melbourne: Melbourne University Press, 2005), 134. Damousi also argues that convict women in New South Wales similarly used ‘ridicule, laughter and play as forms of resistance and subversion’. J. Damousi, *Depraved And Disorderly: Female Convicts, Sexuality And Gender In Colonial Australia*, (Cambridge: Cambridge University Press, 1997), 59-62.

¹⁰¹³ CON33/1/65, page 45; CON33/1/65, page 45; Con37/1/10, 560, TAHO.

¹⁰¹⁴ D. Jones, *Crime, Protest, Community And Police In Nineteenth-Century Britain* (London: Routledge, 1982), 206-7; also see J. Kimber, ‘Poor Laws: a Historiography of Vagrancy in Australia’, *History Compass*, Vol. 11/8, (2013), 538.

¹⁰¹⁵ S. Davies, ‘Vagrancy and the Victorians: The Social Construction of the Vagrant in Melbourne, 1880–1907’, Ph.D., Department of History, (University of Melbourne, 1990), 136.

Although these offences become more common as men aged, John Moran was only 38 when he was first arrested for being idle and disorderly, legalse for vagrancy, and many similar charges followed along with numerous charges for theft.¹⁰¹⁶ John White was on the tramp and looking for work when an opportunity for theft presented itself.¹⁰¹⁷ Anti-social behaviour was also drawn into the wide net of the vagrancy laws: Emmanuel Blore was offered a fine of 10 shillings or 14 days' imprisonment for using obscene language in the public street.¹⁰¹⁸ James Geary was sent to gaol for two months for sleeping in a doorway in Collins Street.¹⁰¹⁹

Rather than a disincentive to criminal behaviour, for some men employment seemed to afford opportunities for theft. Henry Clabby had only been employed for two or three days when he stole his master's coat.¹⁰²⁰ Alan Williamson, a habitual forger, forged a cheque on his master's account despite having worked for him for the previous five months.¹⁰²¹ Other thefts took place while the man was employed but the master was not the victim. George Langley was working for a timber merchant on the Hobart wharf when he decided to help himself to some timber he saw floating in the water.¹⁰²² On 18 occasions men showed little commitment to employment by leaving it in order to commit crimes. Denis Doherty left his master's farm to rob the Green Ponds Post Office.¹⁰²³ Three men had been employed on short-term contracts when they stole, perhaps thinking that they were shortly going to be unemployed anyway. William Whittaker robbed a publican who had temporarily employed him.¹⁰²⁴

¹⁰¹⁶ CON33/1/71, page 45, TAHO.

¹⁰¹⁷ *Cornwall Chronicle*, 13 September 1875, 2.

¹⁰¹⁸ *Mercury*, 19 October 1876, 2.

¹⁰¹⁹ *Mercury*, 20 January 1896, 2.

¹⁰²⁰ *Mercury*, 1 December 1871, 2.

¹⁰²¹ *Launceston Examiner*, 27 March 1888, 3.

¹⁰²² *Colonial Times*, 5 September 1855, 2.

¹⁰²³ *Cornwall Chronicle*, 28 July 1857, 3.

¹⁰²⁴ *Courier*, 13 August 1858, 3.

In Tasmania a pattern of unsatisfactory family and work histories continued among the Port Arthur men, which did not support desistance.¹⁰²⁵ Few of them apparently formed solid family relationships, but even those who did continued to offend. Again, while it would seem that stable, long term employment may have been difficult to come by, even those men in employment frequently left it to commit crimes, often of a trifling nature. Another factor in these men's lives made it even more unlikely that they would cease to reoffend. Godfrey adds a caveat to the redemptive power of family and work by arguing that on their own, they were not enough. In addition, a deciding factor was 'the existence of a "respectable society" prepared to tolerate those who could be incorporated . . . For society to progress these large numbers of ex-convicts had to be brought into the fold'.¹⁰²⁶ This criterion finds expression in the third and fourth Minor Risk Factors in Andrews and Bonta's scheme. For ex-convicts to be accepted by 'respectable society', they should desist from anti-social leisure pursuits and substance abuse, and develop respectable habits.

3. Leisure/Recreation: low levels of involvement in anti-criminal leisure pursuits and

4. Substance abuse

I have dealt with these as one issue, since leisure pursuits for this cohort both in Britain and in Tasmania frequently involved the frequenting of pubs and the excessive consumption of alcohol.

Pre-transportation –

Many contemporary commentators lamented the preference of the British and Irish working class for activities that centred on the pub. In the middle class mind, the working classes, criminal or not, were inextricably linked with the vices of drunkenness and the ensuing debauchery. 'Habitual criminals' were men, women and children who were

¹⁰²⁵ According to Godfrey, 'relationship formation and gaining employment could be said to be generally supportive of desistance'. B. Godfrey, 'The "Convict stain" in penal colonies', in J. Rowbotham, M. Muravyeva & D. Nash (eds.), *Shame, Blame And Culpability: Crime And Violence In The Modern State*, (London: Routledge, 2013), 99.

¹⁰²⁶ Godfrey, 'The "Convict stain" in penal colonies', 105.

usually driven by ‘a passion for intoxicating drink’.¹⁰²⁷ As Godfrey said, ‘Criminals were felt to have moral weaknesses which easily seduced them into vices such as gambling, drunkenness and prostitution’ as well as theft.¹⁰²⁸ While the higher orders acknowledged that leisure was considered necessary to keep the working class cheerful in their work, certain kinds of leisure were censured. Storch said that ‘Everywhere one looks in the contemporary literature of description of the working classes at play [one finds] a discourse which reflected a profound sense of fear and disgust ...’¹⁰²⁹ The leisure activities of the working classes were seen as both ‘a general nuisance and a vague threat to civilisation at large’. Pubs in particular were seen as places where working people were most sorely in need of middle-class models of control. Criticism was directed at all places where people gathered in crowds and got excited and, possibly, drunk. Fêtes, fair days, traditional sports or parades, anywhere the working classes gathered in crowds, were believed to propagate vice, especially drunkenness and immorality, and were particularly feared and deplored by the middle classes.¹⁰³⁰ As an alternative, they launched various ‘rational recreation schemes’ in the late 1840s – mechanics institutes, working men’s clubs, libraries, cheap concerts and museums – but all failed to lure workers from the pub, the fair and the racetrack.¹⁰³¹

Attendance at church might have allayed middle-class fears, but sadly the prospect of religious damnation failed to lure the working classes away from their preferred recreations. Most authorities agreed that the working classes, particularly in England, found no consolation in religion. Indeed, the urban poor, from whose ranks many of these men sprang, were said to be ‘actively hostile’ to religion, the churches and their

¹⁰²⁷ B.S. Godfrey and P. Lawrence, *Crime And Justice 1750-1950*, (Cullompton, UK: Willan, 2005), 112-3.

¹⁰²⁸ Godfrey, Cox and Farrall, *Serious Offenders*, 11.

¹⁰²⁹ R.D. Storch, ‘The problems of working class leisure: some roots of middle class moral reform in the industrial North 1825-50’, in A.P. Donajrodski (ed.), *Social Control In Nineteenth Century Britain*, (London: Croom Helm, 1977), 138.

¹⁰³⁰ Storch, ‘The problems of working class leisure’, 143-5; J. Hart, ‘Religion and Social Control in the mid-Nineteenth Century’, in Donajrodski (ed.), *Social Control In Nineteenth Century Britain*, 128-9.

¹⁰³¹ Storch, ‘The problems of working class leisure’, 148-9.

representatives.¹⁰³² Vast numbers of Englishmen, from the cities and the lower classes especially, were ‘quite unconnected with either church or chapel at home’.¹⁰³³ Arthur Winnington-Ingram, Bishop of London and Chairman of the Public Morality Council, observed, ‘the masses of our labouring population ... are never or but seldom seen in our religious congregations’.¹⁰³⁴ A chaplain on an emigrant ship in the 1850s lamented that his flock consisted of ‘very very few who seem to have fixed notions of what religion is’.¹⁰³⁵

Since the Established Church was closely identified with the status quo, its clergy were linked with any injustice, abuse or repression perpetrated by the system. Anglican clergy did nothing to help their cause. They used the pulpit to characterise the poor as idle and corrupt, and preached that their poverty was divinely ordained and thus that it was blasphemy to challenge it.¹⁰³⁶ Catholics were more likely to adhere to their religion, since the Catholic Church was seen as the church of the poor and oppressed, and was itself the victim of discrimination.¹⁰³⁷ Methodism, while it appeared to address the concerns of the working classes, was in fact supported by ‘members of the rising and successful artisan class’, ‘middle class, well-to-do shopkeepers and tradesmen’, rather than the desperately poor and marginalised.¹⁰³⁸

More recently, however, Maxwell-Stewart and Duffield have argued that the proliferation of religious iconography tattooed on convicts’ bodies indicates, at the very least, a familiarity with the basic tenets of religion. Among the Port Arthur men, only eight bore the tattoo of a cross/crucifix, one of which was upside down. Four of those men, and

¹⁰³² A.M. Grocott, *Convicts, Clergymen And Churches: Attitudes Of Convicts And Non-Convicts Towards The Churches And Clergy In New South Wales From 1788 To 1851*, (Sydney: Sydney University Press, 1980), 25.

¹⁰³³ J. Barrett, *That Better Country: The Religious Aspect Of Life In Eastern Australia 1835-1850*, (Melbourne: Melbourne University Press, 1966), 4.

¹⁰³⁴ K.S. Inglis, ‘Churches and working classes in nineteenth century England’, *Historical Studies: Australia And New Zealand*, Vol. 8/29, (1957), 45.

¹⁰³⁵ Barrett, *That Better Country*, 4.

¹⁰³⁶ Grocott, *Convicts, Clergymen And Churches*, 20.

¹⁰³⁷ Inglis, ‘Churches and working classes’, 48.

¹⁰³⁸ Grocott, *Convicts, Clergymen And Churches*, 21; Barrett, *That Better Country*, 66.

another five of their fellows, also bore an anchor, the Christian symbol of hope.¹⁰³⁹ None bore a religious text. The marked men are too few in number to counter the general impression of irreligiosity given by contemporary sources.¹⁰⁴⁰ In Maxwell-Stewart and Duffield's view, the bearers of 'religious' tattoos come from the social stratum 'most affected by antinomian popular religious beliefs'.¹⁰⁴¹ Those who professed antinomianism held that a personal faith in God, rather than obedience to religious law, was enough to secure salvation.¹⁰⁴² While these tattoos indicated knowledge of religious iconography, under an antinomian reading they would co-exist with a rejection of formal church-based observance. As attendance at church was presumably what the respectable classes looked for, antinomianism would surely have been seen as dangerously anti-social.

Nor, according to middle-class lights, did the working classes appear prepared to support their children's education, another badge of respectability. Given that the labour of children as young as four was essential to the economy of poor families in both industrial and agricultural areas this was hardly surprising.¹⁰⁴³ With no form of universal schooling in place in the first half of the nineteenth century, even if poor parents had wanted to send their children to school there may not have been one in their area and, if there were, fees and foregone wages would have been an unwelcome and often unsustainable drain on the family budget.

¹⁰³⁹ H. Maxwell-Stewart and I. Duffield, 'Skin Deep Devotions: Religious Tattoos and Convict Transportation to Australia', in J. Caplan (ed.), *Written On The Body: The Tattoo In European And American History*, (London: Reaktion Books, 2000), 125-7.

¹⁰⁴⁰ Most of the iconography on this group of men was lovelorn – initials, often combined with hearts with darts and the occasional bird.

¹⁰⁴¹ Maxwell-Stewart and Duffield, 'Skin Deep Devotions', 130.

¹⁰⁴² No author, 'Heresies/Antinomianism', *Theopedia*, <http://www.theopedia.com>, viewed 17 March 2014.

¹⁰⁴³ E.P. Thompson, *The Making Of The English Working Class*, (Harmondsworth: Penguin, 1968), 367, 370.

3. *Leisure/Recreation: low levels of involvement in anti-criminal leisure pursuits*

and

4. *Substance abuse*

Post-transportation

Godfrey argued that to achieve reformation ‘what was required was the existence of a “respectable society” prepared to tolerate those who could be incorporated’. Churches and other supportive agencies had to ‘bring them into the fold’.¹⁰⁴⁴ But, as they had been at Home, working-class pastimes were generally frowned upon by the middle and upper classes. They included ‘boxing ... dog- and cock-fighting, card playing and pigeon shooting, all combined with some form of gambling ... and the sometimes excessive consumption of alcohol’, which often led to public swearing or ‘indecent language’.¹⁰⁴⁵ Judging by the newspaper reports, drinking was the major form of recreation for the criminally convicted, and it was frequently the context for the commission of crime. In 1847 there were 53 pubs in Launceston, one for each 188 inhabitants. Dan Huon found that ‘Of the 2,294 offences committed in Launceston in 1847, an average of six a day, 25 per cent, were for drunkenness’, and many of the offenders were ticket-of-leave holders.¹⁰⁴⁶ In Hobart in 1860 there were 195 pubs. In the four blocks of working-class Wapping and Old Wharf alone there were 15 watering holes.¹⁰⁴⁷ When men were either on the tramp, living lonely lives in seedy boarding houses or sleeping rough, pubs were warm places of shelter that provided opportunities for conviviality and perhaps employment. Pubs and their inebriated clientele also provided victims for opportunistic thieves.

In the 143 cases that furnish sufficient detail, 48 offences were committed inside or outside a pub. Peter Mooney was drinking in the *Railway Tavern*, saw that his fellow drinker John Hudson was drunk, snatched his watch and ran off. He received six years for

¹⁰⁴⁴ Godfrey, ‘The “Convict stain” in penal colonies’, 105.

¹⁰⁴⁵ P. MacFie, ‘From prize-fights, poker games, and profanities to ploughing matches and other games: making pastimes respectable in nineteenth century Tasmania’, *Tasmanian Historical Research Association*, Vol. 49/2, (2002), 133, 143.

¹⁰⁴⁶ Huon, ‘By moral means only’, 95-6.

¹⁰⁴⁷ Wapping History Group, *Down Wapping: Hobart’s Vanished Wapping And Old Wharf Districts*, (Hobart: Blubberhead Press, 1988), 111, 113.

his trouble.¹⁰⁴⁸ John Kerswell said he was drunk when he stabbed Constable Morrison outside the *Derwent Hotel*.¹⁰⁴⁹ In several cases thieves repaired to a pub for a restorative drink with the proceeds of crime. Thomas Jackson was arrested in a pub wearing the distinctive plaid jumper he had just stolen. Although he claimed that it was his, the jury was unconvinced and gave him six months.¹⁰⁵⁰ Pubs also acted as clearing houses for stolen property. William Mumford claimed that he had bought a stolen watch in the *Marine Hotel*.¹⁰⁵¹ James Foley, charged with stealing from the landlady of the *Red Lion*, sought to deflect the court's attention by claiming that 'the house of the prosecutrix was a regular receptacle for stolen property'.¹⁰⁵²

In at least 31 more of these cases cases the perpetrators had been drinking, were drunk or claimed to have been drunk at the time.¹⁰⁵³ William and Esther Humphries were both drunk when they attacked John Bailey with an axe.¹⁰⁵⁴ William Hall claimed to have been drunk when he received an order to pay him for work done, and had no idea that it was a forgery.¹⁰⁵⁵ George Leathley was drunk and described as 'addicted to drinking', as was his wife, when he was charged with murder.¹⁰⁵⁶ Cornelius Gleeson, described as 'an idle, vagrant fellow', claimed to have been 'overcome' by a large dose of opium when he was arrested lurking in a yard at night.¹⁰⁵⁷ At his trial for burglary four years later he claimed that 'addiction to strong drink had been the cause of his ruin and present degradation'.¹⁰⁵⁸

¹⁰⁴⁸ *Launceston Examiner*, 1 April 1871, 3.

¹⁰⁴⁹ *Mercury*, 29 January 1864, 2. Sturma cautions that 'many persons tried for offences probably pleaded that they were drunk for want of a better defence', knowing that juries might acquit or recommend mercy on the grounds of intoxication. However the fact that such pleas often stemmed from incidents at or near pubs seems to make their veracity more likely. Sturma, *Vice In A Vicious Society*, 151.

¹⁰⁵⁰ *Mercury*, 28 April 1862, 2.

¹⁰⁵¹ *Mercury*, 4 June 1862, 2.

¹⁰⁵² *Mercury*, 6 September 1865, 2.

¹⁰⁵³ Witnesses could not agree as to whether James Connolly was drunk when he murdered Constable Thompson. *Mercury*, 20 February 1883, 2.

¹⁰⁵⁴ *Mercury*, 18 September 1861, 2.

¹⁰⁵⁵ *Mercury*, 12 March 1868, 2.

¹⁰⁵⁶ *Mercury*, 6 December 1865, 2.

¹⁰⁵⁷ *Mercury*, 4 November 1869, 2; *Mercury*, 4 December 1873, 2.

¹⁰⁵⁸ *Mercury*, 4 December 1873, 2.

In addition to crimes committed when drunk, there were 39 charges of being drunk and disorderly, or drunk and incapable. Sometimes these were combined with other behaviour that would not have endeared these men to respectable folk. Nine offences of ‘indecent behaviour’, mostly urination and fornication in public, brought the perpetrators to the attention of the police in their role as guardians of moral order. John Appleby and his wife Elizabeth were had up for fighting in the street with two other women.¹⁰⁵⁹

Emmanuel Blore was heard ‘using obscene language in the public street’ and spent 14 days in prison.¹⁰⁶⁰ James Geary and Alice Stokes got a hefty fine or 14 days in gaol for ‘misconducting themselves in the Domain on Sunday afternoon’.¹⁰⁶¹ Many such incidents probably went gone unreported as gentlefolk simply averted their eyes or the police were busy elsewhere.

While the Inebriates Acts of 1873 and 1885 provided for the admission of drunkards to retreats, these institutions were private and so were only accessible to the middle classes. Some government subsidies were available for those who could not afford fees, but it seems unlikely that many ex-convicts were actually admitted to such places. No other support was provided for them so that, as in England, most ended up serving short sentences in lunatic asylums, pauper and invalid depots, and prisons.¹⁰⁶² Under the Inebriates Hospital Act 1892 magistrates could send those who needed to dry out to a government hospital, but inmates still had to pay fees. No provision was made in the Act for those unable to pay.

Bruce Hindmarsh points out that, in addition to the social and often criminal nuisance caused by drinking, places where convicts drank together became ‘gathering places for the expression of dissent’, providing further motivation for their suppression by anxious

¹⁰⁵⁹ *Mercury*, 23 November 1868, 2.

¹⁰⁶⁰ *Mercury*, 9 October 1876, 2.

¹⁰⁶¹ *Mercury*, 20 January 1896, 2.

¹⁰⁶² J.S. Blocker, D.M. Fahey and I.R. Tyrell (eds.), *Alcohol And Temperance In Modern History: An International Encyclopedia* (2003), 2014 Copyright Credo Reference, http://search.credoreference.com.ezproxy.utas.edu.au/content/entry/abcalc/inebriate_institutions_australia/0?searchId=9a78cc27-ad7a-11e3-878e-0aea1e24c1ac&result=2, viewed 4 April 2014. Godfrey, *Crime in England*, 217.

respectable folk.¹⁰⁶³ The Temperance Movement in Tasmania had limited success, generating much heat but little light.¹⁰⁶⁴ A great deal of energy was expended by worthy citizens but high levels of drunkenness, and drunken crime, continued. Influential citizens like Quakers George Washington Walker and James Backhouse began to form organisations advocating total abstinence in the 1830s: they included the first Tasmanian branch of the Independent Order of Rechabites, founded in 1835 in Launceston, and later the Van Diemen's Land Total Abstinence Society in Hobart in 1846.¹⁰⁶⁵ Many rural towns had branches of societies like the Rechabites and Good Templars. Membership was made up of 'the more well-to-do and educated segments of colonial society', including Anglican clergy of the evangelical, 'low' church, politicians and businessmen.¹⁰⁶⁶ The Catholic Church, led by teetotaler Bishop Willson, established its own total abstinence society. Although this may have reached a wider constituency among the Irish convicts and ex-convicts in its flock, the Irish love for strong drink (even among priests) was proverbial.¹⁰⁶⁷ By the 1850s 'alcohol was regarded as the source of the degeneration of society'.¹⁰⁶⁸ Those who were likely to consume it to excess, with anti-social and criminal consequences, were surely regarded as responsible. In New South Wales Sturma concluded that 'One can probably assume that the drunkard was far less likely to come in contact with the temperance enthusiast than with the police', and the same seems likely for Tasmania.¹⁰⁶⁹

¹⁰⁶³ B. Hindmarsh, 'Beer and fighting: some aspects of male convict leisure in rural Van Diemen's Land', *Journal Of Australian Studies*, Vol.23/63, (1999), 153.

¹⁰⁶⁴ Barrett, *That Better Country*, 183.

¹⁰⁶⁵ Independent Order of Rechabites. Tasmania District No. 79, *Independent Order Of Rechabites, Tasmania District, No. 79. Centenary Celebrations 1835-1935, Launceston 24th August, 1935: To The Memory Of The "Pioneers" Who "Blazed The Track" And Laid The Foundation Of The Stately Edifice Of Rechabiteism This "Souvenir" Is Affectionately Dedicated*, (Launceston: The Order, 1935); P. Bolger, 'Peter Facey', *Australian Dictionary Of Biography*, Vol. 4, (Melbourne: Melbourne University Press, 1972). <http://adb.anu.edu.au/biography/facey-peter-357>, viewed 17 March 2014.

¹⁰⁶⁶ R.Kilner, 'Temperance and the liquor question in Tasmania in the 1850s', *Tasmanian Historical Research Association*, Vol. 20/2, (1973), 85.

¹⁰⁶⁷ Kilner, 'Temperance and the liquor question', 87.

¹⁰⁶⁸ Kilner, 'Temperance and the liquor question', 85.

¹⁰⁶⁹ Reverend WB Boyce, superintendent of the Wesleyan Church from 1846, in Sturma, *Vice In A Vicious Society*, 155

Racetracks, the regatta ground, a theatre, a skittle alley and gambling are the only other recreational venues mentioned in court. Samuel Paul was charged with gambling in public on a Sunday.¹⁰⁷⁰ Peter Killeen had only been up from Port Arthur for a few weeks when he was arrested while picking pockets at the Muddy Plains racetrack.¹⁰⁷¹

A convict or emancipist might attempt to gain entrée to respectable society by embracing church-going but, if they had been disinclined to attend church at home, their experience of religion in Tasmania would surely have finally alienated them. As Allan Grocott said, ‘much religious ignorance and carelessness in the colonies had taken root in England and was simply transplanted’.¹⁰⁷² Even among the free working class, the widespread indifference to religion shown at Home continued.¹⁰⁷³ Rather than churchgoing there was ‘a great deal of lying about on Sundays and very little church attendance’.¹⁰⁷⁴ Those who ministered to prisoners sighed that they did not want clergy, but were forced to have them because it was part of the government’s agenda.¹⁰⁷⁵ Anglican church services and prayers did not seem designed to win souls to Christ. Their convict flock considered them part of the machinery of punishment, since they generally served as an opportunity for chaplains to berate them for their wickedness and to stress the necessity of submitting to secular as well as to religious authority.¹⁰⁷⁶ Indeed, ‘the anti-religious attitudes of the felonry on Norfolk Island were so intense that they became, to a certain extent, institutionalized’. Anyone who was religious or attentive at church was branded ‘a parson’s man’ and ostracized.¹⁰⁷⁷

Catholic convicts tended to more observant, and even looked to their clergy for intellectual and political leadership.¹⁰⁷⁸ But even the Benedictine prelate Dr William

¹⁰⁷⁰ *Mercury*, 27 March 1868, 2.

¹⁰⁷¹ *Mercury*, 13 March 1875, 2.

¹⁰⁷² Grocott, *Convicts, Clergymen And Churches*, 4.

¹⁰⁷³ Barrett, *That Better Country*, 82.

¹⁰⁷⁴ Barrett, *That Better Country*, 169.

¹⁰⁷⁵ Barrett, *That Better Country*, 82.

¹⁰⁷⁶ Maxwell-Stewart and Duffield, ‘Skin Deep Devotions’, 124.

¹⁰⁷⁷ Many of the Port Arthur men had spent time on Norfolk Island. Grocott, *Convicts, Clergymen And Churches*, 149.

¹⁰⁷⁸ Barrett, *That Better Country*, 151, 268; Grocott, *Convicts, Clergymen And Churches*, 269-70.

Ullathorne glumly informed the 1837-8 Select Committee on Transportation that ‘the doctrine of the Trinity and the first principles of Christianity’ were unknown to the majority of prisoners, and that the situation at penal stations was even worse.¹⁰⁷⁹

Although Catholics were more likely to attend church and practice their religion, Protestants generally dismissed them as ‘crude and ignorant, narrow and belligerent’.¹⁰⁸⁰ Some even saw their faith as revolutionary, a threat to the existing order, ‘fundamentally alien and a disruptive force’.¹⁰⁸¹

Nor did ex-convicts apparently display any enthusiasm for the various ‘rational recreation schemes’ transplanted from England in the late 1840s – mechanics institutes, working men’s clubs, libraries, cheap concerts and museums – which had all failed to lure English workers from alcohol-fuelled vice and degradation.¹⁰⁸² While these organisations began to be established in Van Diemen’s Land from the 1850s, like the Temperance Movement they generally attracted the rising working class rather than the poor and marginalised.¹⁰⁸³ Petrow found that the Mechanics Institutes were patronised ‘not only by the leaders of public opinion’ but by mechanics, artisans and the middle classes’, who aimed to educate ‘the working class, to make them respectable and more efficient workers and to wean them from destructive leisure activities’.¹⁰⁸⁴ By the late 1860s, perhaps to try to broaden their appeal, the improving lectures on esoteric subjects like astronomy had been replaced by debating, concerts, reading, singing and games like chess and skittles.¹⁰⁸⁵ But to no avail, for as Petrow concluded, ‘Working-class men found middle-class

¹⁰⁷⁹ The Very Reverend William Ullathorne, minutes of evidence, 8 February 1838, Select Committee on the System of Transportation, *British Parliamentary Papers*, 1837-38 (669), Vol. XXII, 20, 27.

¹⁰⁸⁰ Grocott, *Convicts, Clergymen And Churches*, 268.

¹⁰⁸¹ Grocott, *Convicts, Clergymen And Churches*, 268; L. Robson, ‘Damnosa hereditas? Tasmania’s British Inheritance in the Later Nineteenth Century’, in M. Roe (ed.), *The Flow Of Culture: Tasmanian Studies*, (Canberra: Australian Academy for the Humanities, 1987), 92.

¹⁰⁸² Storch, ‘The problems of working class leisure’, 148-9; S. Petrow, ‘Leisure for the toilers: the Hobart Working Men’s Club 1864-1887’, *Tasmanian Historical Research Association*, Vol. 49/2, (2002), 76.

¹⁰⁸³ P. Bolger, *Hobart Town*, (Canberra: Australian National University Press, 1973), 154.

¹⁰⁸⁴ S. Petrow, *Going To The Mechanics: A History Of The Launceston Mechanics Institute 1842-1914*, (Launceston: Historical Survey of Northern Tasmania, 1998), 3, 9.

¹⁰⁸⁵ Petrow, *Going To The Mechanics*, 54; Petrow, ‘Leisure for the toilers’, 80-81.

patronage and condescension stifling, and most clubs seem to have existed for a short period'.¹⁰⁸⁶

Libraries began to appear even in small rural towns from at least 1864, but the Launceston library may not have been unique in that the books were said not to appeal to popular taste, the opening hours were too restrictive for working people, and the staff were often ignorant about the collection.¹⁰⁸⁷ It closed in 1881 after only 25 years.

Working Men's Clubs also failed to appeal to the criminally convicted: catering for tradesmen and professionals, what they laughingly described as recreation consisted of classes in literacy and other lectures 'while cultivating moral and respectable habits'.¹⁰⁸⁸

The Oddfellows and other Friendly Societies might have been more likely to appeal, since in the early days they met in pubs, but this would hardly have contributed to the respectability project needed to integrate these men into their communities.¹⁰⁸⁹ The sporting clubs of the 1880s onwards displayed 'less class bias' but by this time these men were too old for such active pursuits.¹⁰⁹⁰

Conclusion

Andrews and Bonta's framework seems to provide a roadmap for poor John Finelly. An illiterate 24 year-old farm labourer, John was one of the Irish who were transported for what seems to have been a first offence. He was about 40 miles from home when he stole a cow and earned himself seven years in Van Diemen's Land. After a relatively uneventful early experience in the colony, between 1854 and 1874 he was convicted of theft and embezzlement, absconding, disobedience, housebreaking and stealing. As far as we know, he never formed a long-term domestic partnership. After having his photograph taken, he was released from Port Arthur in 1874, and there is no further record of his existence. Like most of the Port Arthur convicts, he failed to achieve the happy marriage and secure job that Caroline Chisholm believed kept criminals on the straight and

¹⁰⁸⁶ Petrow, 'Leisure for the toilers', 73.

¹⁰⁸⁷ Libraries are listed at Westbury, Deloraine, Longford, and New Norfolk in the second volume of Walch's Almanac, published in 1864: Petrow, *Going To The Mechanics*, 122-3.

¹⁰⁸⁸ Petrow, *Going To The Mechanics*, 127-8.

¹⁰⁸⁹ Bolger, *Hobart Town*, 153.

¹⁰⁹⁰ Bolger, *Hobart Town*, 183.

narrow.¹⁰⁹¹ For those who did, it was often a very fragile and easily disrupted arrangement, further complicated by frequent vagrancy and incarceration.¹⁰⁹² Their leisure preferences created a gulf between them and respectable people, making them ‘despised in all the circles around them’.¹⁰⁹³ As Robson wrote, ‘there is no doubt that the colonial respectability regarded the convict inheritance as a taint and with abhorrence ...’¹⁰⁹⁴

In the next chapter I will look at Andrews and Bonta’s four major Risk Factors for reoffending.

¹⁰⁹¹ Braithwaite, *Crime In A Convict Republic*, 30.

¹⁰⁹² Godfrey, ‘The “Convict stain” in penal colonies’, 103.

¹⁰⁹³ Bolger, *Hobart Town*, 148.

¹⁰⁹⁴ Robson, ‘*Damnosa hereditas?*’ 93-4.

CHAPTER 8: ‘He bore a very bad character’: chained to the criminal life¹⁰⁹⁵

The Recorder John Whitefoord Esq, sentencing John Doran to six years at Port Arthur for a series of thefts in 1871



John Doran
Taken at Port Arthur 1874
Photographer: probably Commandant A.H. Boyd
National Library of Australia

As Rowbotham pointed out, ‘stereotypical indications of character were not negotiable in the court room’, and were critical in the outcome of a trial.¹⁰⁹⁶ The questions that were often asked went to the respectability of the individual’s connections, appearance and

¹⁰⁹⁵ *Launceston Examiner*, 3 January 1871, 3. The title of Recorder was created in 1857 to dispatch court hearings more efficiently and Whitefoord, reputed to have been the only bearer of the title in Tasmania, was empowered to preside at some criminal hearings and hold courts whenever necessary. He later became chairman of Quarter Sessions. Whitefoord’s summation of John Doran’s character might well have applied to his own. He was a highly controversial official, whose alleged dishonesty and corruption were continually paraded before its readers in the newspaper the *True Colonist*.

¹⁰⁹⁶ J. Rowbotham, ‘Turning away from criminal intent: reflecting on Victorian and Edwardian strategies promoting desistance amongst petty offenders’, *Theoretical Criminology*, Vol. 13/1, (2009), 112.

conduct, and hence to how deserving he was of leniency. Character witnesses played an important role in establishing grounds for mitigation – or condemnation.¹⁰⁹⁷ But John Doran could have benefitted from no such witnesses. In his life he had been exposed to all of those minor risk factors that might have led to his embracing crime as a viable career. He was a single 15-year old tailor, who had been convicted about ten miles from home. He could read and write, and the larceny for which he was transported was his fourth offence.

The ‘new’ labour history of the 1980s exhorted us to try to understand men like John Doran, not through the usual prism of their various forms of incarceration and punishment, but through foregrounding ‘their cultural and social background and social relations, as well as their institutional membership and social and economic behaviour’.¹⁰⁹⁸ This approach positions them as actors in their own lives rather than acted upon by the lives of others. I have tried to contextualise the lives of Doran and his fellows in this way to reveal the ‘more complete picture of the forgotten causes, the failed efforts, the obsolete skills and the private strengths of the largely unknown men and women whose history is essential to an understanding of the world in which we live’.¹⁰⁹⁹ This picture transcends categories like the ‘serious offenders’, ‘habitual offenders’ or ‘minor offenders’ of Godfrey *et al.* Instead, we may see that they are men whose lives included episodes of offending behaviour, and that this behaviour had meaning for them. We may also see what lay in between these episodes.

In this chapter I move on to Andrews and Bontas’ Big Four Risk Factors to add further cultural, social and economic context to our understanding of John Doran’s struggles. These are somewhat more difficult to assess than the Minor Risk Factors investigated in the last chapter. Number 2, ‘*Antisocial personality pattern [incl. biological factors/heredity]*’, requires psychological and social information that is simply not

¹⁰⁹⁷ Rowbotham, ‘Turning away from criminal intent’, 112.

¹⁰⁹⁸ G.S. Kealey, ‘Labour and Working Class History in Canada: Prospects in the 1980s’, *Labour/Le Travailleur*, Vol. 7, (1981), 69.

¹⁰⁹⁹ ‘Workers are no longer seen as isolated figures engaged in trade unions, strikes and radical politics: instead they are studied in a totality that includes their cultural backgrounds etc’. Kealey, ‘Labour and Working Class History in Canada’, 68.

available. Accordingly, in what follows I will use a looser structure, addressing only factors 1, 3 and 4.

1. History of Anti-social behaviour: being arrested at a young age, large number of prior offences.

Pre-transportation –

The mean age at transportation of those men who were photographed at Port Arthur¹¹⁰⁰ was 24.9 years, although this includes one 48 year-old who was an outlier by 11 years. Without this man, the mean was 23.3 years.¹¹⁰¹ Both are considerably younger than Maxwell and Kippen's mean of 27.4, based on a four per cent sample of the total convict population, meaning that my sample was generally convicted for transportation at a younger age than theirs.¹¹⁰² Relying on a mean, however, conceals the actual age profile of the various individuals who made up this group. Sixteen per cent were 16 or under, including 11-year-old Irish orphan Thomas Cahill and 14 year-old George Langley, first arrested when he was only 13; 40 per cent were aged 17 to 21, and another 22 per cent were aged 22 to 24.¹¹⁰³ Fifty two per cent were under 21 and 74 per cent were younger than 25 at transportation. Just over 20 per cent were transported for a first offence, 36 per cent for a second offence, almost 26 per cent for a third offence and almost 18 per cent for four or more offences.¹¹⁰⁴ Some juvenile offenders had a record of multiple previous convictions despite their youth. Thus 14-year-old John Doran had three previous and 19-year-old James Sanders stood out with ten previous. All of those sixteen boys aged 16 or

¹¹⁰⁰ I was not able to determine the age at which soldiers and men free to the colony were first convicted.¹¹⁰⁰ The criminal histories of seven other men were given on their record as 'not known'.

¹¹⁰¹ This is a sample of 113 men, excluding soldiers, the native born, those who came free to the colony and two men whose ages were not recorded. Age at transportation has been calculated by subtracting one year from the age given on the man's record when he arrived, to account for time spent awaiting trial and embarkation, and then on the voyage.

¹¹⁰² H. Maxwell-Stewart and R. Kippen, "What is a man that is a bolter to do? I would steal the Governor's axe rather than starve": old lags and recidivism in the Tasmanian penal colony', in J. Campbell and V. Miller (eds.), *Transnational Penal Cultures*, (UK: Routledge, 2014), 7, Table 5, 17.

¹¹⁰³ E. Barnard, *Exiled: The Port Arthur Convict Photographs*, (Canberra: National Library of Australia, 2010), 108.

¹¹⁰⁴ These often involved violence or the theft of an animal like a pig, a cow or a horse.

under had committed at least one offence except for 15-year old John Moran. It seems reasonable to conclude that this group had been ‘known to the police’ from a young age.

I calculated the level of persistence of these transportees by dividing their age at transportation by the number of convictions already on their record. I then compared their level of early persistence with a sample of 870 men whom Hamish Maxwell-Stewart has traced to a post-1865 Police Gazette record, i.e. men who were also recidivists.¹¹⁰⁵ The record of conviction before transportation for these 870 men is only slightly better than that for the Port Arthur men, 0.07 offences per year of opportunity as opposed to the Port Arthur men’s 0.08. By just looking at the number of offences prior to transportation, and ignoring the age component, the Port Arthur men had a worse record than those for whom we can find no record of offending post-emancipation, a mean of 1.7 as compared to the apparently non-recidivist at 1.3. Their record is the same as those 870 men who also reoffended post-emancipation, both groups having a mean of 1.7 convictions prior to transportation. We may conclude, therefore, that those with high numbers of early prior offences were likely to become recidivist.

While it would appear that many of those transported came to Tasmania with a history of anti-social behaviour and prior conviction, what of the native-born? Nine of the ten native-born offenders were first arrested at a young age.¹¹⁰⁶ James Calhoun and Henry Clabby were the youngest at 14, Calhoun for an unnamed offence that had already seen him incarcerated in the Hobart Reformatory and Clabby, for misconduct as an Orphan School apprentice. Samuel Paul was convicted at 15 for gambling in an open space, Francis Gregson at 16 for housebreaking, William Kellow for stealing lambs and James Geary for the theft of a gold ring at 17, Leonard Hand at 18 for an unnatural crime,

¹¹⁰⁵ H. Maxwell-Stewart, pers. comm., 17 May 2015.

¹¹⁰⁶ John or Cornelius Mayne, another native-born man, was photographed at Port Arthur in late 1873, but since he was wrongfully imprisoned on false testimony and released shortly afterwards I have not included him in what follows. *Cornwall Chronicle*, 9 November 1873, 2. Samuel Evans was an adult. *Mercury*, 8 July 1869, 3.

Thomas Wood or Key at younger than 19 for an unknown crime, and John Gregson at 19 for furious driving.¹¹⁰⁷

1. History of Anti-social behaviour: being arrested at a young age, large number of prior offences.

Post-transportation –

After their first sentence in Van Diemen's Land had been served, most of the Port Arthur men continued to add to their history of anti-social behaviour. In what follows, I have excluded those two native born who were only convicted of one crime, Samuel Evans¹¹⁰⁸ for sheep stealing and Leonard Hand for an unnatural offence. Of the remaining 154 men, all were convicted of at least one offence after gaining their freedom in Tasmania.

Among the worst offenders were the 12-year-old Irish orphan Thomas Cahill, who served time for 23 offences, and Denis Doherty, who rarely enjoyed a moment's liberty until he was sentenced to life for robbery under arms in 1857. Several men were deprived of what might have been a long criminal career either by dying or by committing such a heinous offence early on that they spent the rest of their active life in gaol. Bewley Tuck got life for attempting an unnatural offence in 1862. James Morgan, John Murphy and Leonard Hand all died either under sentence or shortly after gaining their freedom. Job Smith was controversially hanged for rape, his second offence in the colony. Only Alfred Maldon, a New Yorker by birth, seems to have departed Tasmania.¹¹⁰⁹ He left in 1874 after serving a three-year sentence for his only crime, shooting a policeman in an excess of drunken

¹¹⁰⁷ CON37/1/10, page 560: CON37/1/10, image 453: CON37/1/10, page 446: CON37/1/10, image 461: CON37/1/10, image 514: CON31/1/4, page 176: CON37/1/10, page 312: CON37/1/10, page 498, TAHO. Calhoun may also have served four days for being idle and disorderly when he was only eleven. *Tasmanian Police Gazette*, 3 November 1865, 178: *Tasmanian Police Gazette*, 22 November 1869, 192: *Tasmanian Police Gazette*, 14 May 1869, 80: *Mercury*, 27 March 1868, 2: *Cornwall Chronicle*, 2 April 1870, 10: *Courier*, 17 January 1846, 2: *Mercury*, 30 July 1862, 3: *Cornwall Chronicle*, 28 April 1866, 3: *Launceston Examiner*, 3 November 1840, 2: *Launceston Examiner*, 19 November 1870, 4.

¹¹⁰⁸ Although Samuel was only convicted once, the magistrate commented that sheep stealing was a practice 'which he had been systematically engaged in for a considerable time'. *Mercury*, 8 July 1869, 3: CON37/1/10, page 442, Tasmanian Archive and Heritage Office (TAHO).

¹¹⁰⁹ CON37/1/10, page 312: CON33/1/65, page 45: CON37/1/8, page 29: CON37/1/10, page 88: CON31/1/12, page 94: CON35/1/1, page 188: CON37/1/9, page 562: CON33/1/86, page 143: CON33/1/104, page 181: CON37/1/10, page 312: CON37/1/10, page 100: CON37/1/10, page 487, TAHO.

high spirits. Some men appear to be irredeemable recidivists but, like John Doran, many of their multitude of offences were only against public order – drunk and disorderly, idle and disorderly/vagrancy, begging – or against minor and no doubt irksome government regulations like absconding from the Invalid Depot or breach of the Master and Servant Act.¹¹¹⁰

No matter how trivial, in terms of accumulating a long history of anti-social behaviour, 61 per cent of these 154 men fitted the bill as serious offenders according to the legal definition of their day, being convicted of three or more offences. It is difficult to know exactly how many committed crimes involving significant violence or large sums of money, since details on records are sometimes scanty, but it would appear that 27.5 per cent would satisfy modern ideas about serious offending.¹¹¹¹ Given the problems with the completeness of records outlined in the previous chapter, these convictions represent an estimate only of their offending behaviour and its seriousness; it may well be higher.

3. Antisocial cognition: feeling anger, resentment or defiance; identification with criminals, negative attitudes towards the law and justice systems, a belief that crime will yield rewards, rationalizations justifying crime.

Pre-transportation –

There are almost no statements by the transported men themselves about how they felt about their situation, the law and justice systems, the profitability of crime etc., but their behaviour in gaol before transportation and on the ship during the voyage does furnish some clues. In this discussion, men who were native-born or free to the colony have been

¹¹¹⁰ CON33/1/42, page 48. Doran committed 31 offences, mostly trivial offences against public order or petty larceny.

¹¹¹¹ Unless the record reads ‘Burglary/housebreaking *and assault*’ I have assumed that these crimes did not involve violence. ‘Forgery’ and ‘uttering’ rarely mention the sums involved, but since many involve cheques presented to pubs I assume they were for small amounts. Assault is also difficult to unpack, since assaulting an official while under sentence, or a fellow prisoner, may have been under provocation and relatively minor, but a conviction may have been used as a deterrent. Unless the sentence was for a number of years I have not included it. Another seven per cent (12 men) committed some form of ‘unnatural offence’, ‘buggery’ or ‘attempt sodomy’ that I have not included because no violence was mentioned and these may have been consenting homosexual acts between adults. Two per cent (three men) attempted bestiality, which would not be regarded as serious today.

excluded, but soldiers have been included since their records occasionally shed light on their attitudes. This leaves a sample of 137 men.

Naturally gaol, hulk and surgeon's reports reflect the value judgements of the gaol and hulk authorities and of the ship's surgeon.¹¹¹² It is difficult to know just what their assessments of conduct refer to, embedded as they are in the daily exigencies of managing a large and presumably resentful convict population that was in unwilling transit. They are, however, worth interrogating as the only record that we have. The sections that record their behaviour on the hulk and the voyage were not consistently filled in; many have only the surgeon's report. Some men presumably did not go to the hulks, because that line is often not filled in. Some general comments seem to relate to behaviour, which I have taken to mean overall compliance with the order and discipline required. Since the person making these value judgements was responsible for the good order of the institution or vessel, it seems fair to assume that they were measuring the degree to which the subject either gave no trouble or proved difficult.

They seem to be a surprisingly well-behaved lot in general. If these reports are aggregated, there are 160 entries. Of those, the most frequent are very good or good (52 per cent), orderly/well conducted (14 per cent), indifferent (7.5 per cent) and very bad/bad (almost 19 per cent). The conduct of only a very few men was consistently recorded as bad across more than one report; James Page was 'very bad in every way'/'very bad, notorious thief'/bad'; John Appleby stole rations on board ship; Richard Pinches had no gaol report but he had been 'threatening and insubordinate' on the hulk, and 'very bad' on the voyage.¹¹¹³ Many men appear to have behaved inconsistently, 'bad' in gaol and 'good' in the hulk and on the voyage, or some variant of that.

¹¹¹² Gaol reports largely measure the extent to which the man was known – 'convicted before', 'notorious thief' – but when they do make a judgement like 'good', often alongside their known criminal history, I have included it here since it appears to indicate behaviour. Hulk reports measured behaviour in the hulk, as presumably did surgeon's reports on the voyage out.

¹¹¹³ Since this report is from his time on the hulk, it seems to imply that he stole from his shipmates: if so it would have been an extremely antisocial act, as would James Appleby's theft of rations. CON33/1/2, page 185; CON33/1/24, page 4, TAHO.

Comments on their behaviour may measure how useful they were to authorities rather than any objective standard of ‘goodness’, but it may also reflect their responses to different personnel and regimes of incarceration; in any case, their behaviour seems to have been highly contingent. Emmanuel Blore’s gaol report described ‘a notorious thief, connexions bad, sullen disposition’ but ‘orderly’, although on the hulk he was flogged for assaulting a boy. John White’s gaol report was not very encouraging; he endured six periods of solitary confinement, and was assessed as ‘an indolent prisoner, habits and disposition very bad; does not improve by mild treatment’. But on the voyage he was ‘very good up until he struck the sergeant of the guard, has expressed his contrition and behaved very well ever since’. These reports seem to indicate that the surgeon found White to be generally well behaved until he felt himself provoked, when his behaviour would become antisocial. Michael Gilmore had a good gaol report but on the voyage the surgeon found that he was a ‘quarrelsome, disorderly, fighting character’.¹¹¹⁴

Others were more specific and generally uncomplimentary; Patrick Grant was very dirty, James Harper was slovenly, Job Smith was, not surprisingly, ‘discontented’, John Gould was ‘idle’, Stephen O’Brien was merely ‘tolerable’, Peter Mooney was ‘artful and obstinate’, and James Brocklehurst was only ‘middling’, none of which sound more than slightly antisocial. George Langley and Luke Marshall bore characters that were ‘artful and indifferent’.¹¹¹⁵ Negative comments like these might be interpreted as describing behaviour that expressed subtle resistance, embodying a negative attitude towards the law and justice systems.

All but one of the soldiers had been transported either for desertion or for striking a senior officer. Without knowing the context for these offences and the cause of their provocation, it is difficult to know what prompted this behaviour. Were these soldiers reacting against a reasonable request from someone in authority, or against abuse by a

¹¹¹⁴ CON33/1/102, page 185: CON33/1/45, page 15: CON37/1/6, page 83: CON33/1/15, page 61, TAHO.

¹¹¹⁵ CON33/1/60, page 68: CON33/1/63, page 112: CON33/1/63, page 199: CON33/1/53, page 129: CON33/1/3, page 12: CON33/1/46, page 118: CON33/1/67, page 29: CON33/1/38, page 91: CON33/1/38, page 105: TAHO.

senior officer, like Thomas Francis who struck a corporal on the head with a spade after the corporal had stabbed him with a bayonet?¹¹¹⁶ Did they desert because their situation had become too frightening and dangerous, because they were homesick or because they were reluctant soldiers? Hilton found that some soldiers saw no way to leave the army other than by being court martialled, and so committed offences like striking their officers.¹¹¹⁷ James Blanchfield had deserted once, and then had struck his superior officer; his gaol report was ‘good’. John Donovan had been a soldier for seven years until he deserted in Canada, for which he was transported. While his gaol report was ‘bad’, his hulk and surgeon’s reports were ‘good’. Daniel Murphy had been found drunk ten times, and was then transported for ‘insubordinate conduct’ in striking his senior officer; he had been a soldier for eleven years. William Ryan deserted twice and was branded ‘D’ for deserter each time, and Alexander Wood and James Martin were each branded once. Denis Doherty deserted twice and went bushranging in New South Wales before being transported to Tasmania.¹¹¹⁸ None seems to be a multiple offender, and those whose length of service was noted had all been soldiers for a long time. Perhaps they simply couldn’t stand army life any more.

On the transportation records it is usually not possible to hear a man account for his motivation in committing the offence. A rare exception was twelve-year old orphan Irish boy Thomas Cahill, who offered a rationalization justifying crime. He said that he was transported for vagrancy, because ‘I had no place to live in’.¹¹¹⁹ We must assume that Thomas spoke for many of those displaced by Enclosure Acts, famine and economic depression, and made redundant by industrialisation.

¹¹¹⁶ CON33/1/71, page 105: TAHO.

¹¹¹⁷ P.J. Hilton, “*Branded D on the left side*”: *a study of former soldiers and marines transported to Van Diemen's Land: 1804-1854*, Ph.D. thesis, (School of Classics and History, University of Tasmania, 2010), 180, 219, 234.

¹¹¹⁸ CON33/1/103, page 57: CON33/1/5, page 89: CON37/1/4, page 144: CON33/1/109, page 278: CON33/1/56, page 254: CON33/1/45, page 147 & 245: CON31/1/12, page 94: TAHO. No gaol, hulk or surgeon’s reports were entered on Doherty’s record.

¹¹¹⁹ CON33/1/65, page 45: TAHO.

3. *Antisocial cognition: feeling anger, resentment or defiance; identification with criminals, negative attitudes towards the law and justice systems, a belief that crime will yield rewards, rationalizations justifying crime.*

Post-transportation –

Once these men fell into the clutches of the Convict Department's record keeping and the colonial law and justice system, there is more evidence that allows us to establish antisocial cognition. Recalling from Chapter 2 that deviancy theorists 'took seriously the "vocabularies of motive" used by the deviant as an expression of belief that might be related, in a meaningful fashion, to his involvement in deviance', we must pay attention to what these men said as evidence of their world view, rather than simply angry reactions to their predicament.¹¹²⁰ In newspaper reports of the trials of at least 20 men, they expressed anger, resentment and defiance, which sometimes sounded merely petulant but at other times went powerfully on the offensive. By using the accused man's own words when they are available, we are presented with what Conway called 'that magical opportunity of entering another life', in which we may discover that 'the Them are a lot like Us', and not the bogeymen of popular imagination.¹¹²¹ When Joseph Walmsley received six months hard labour 'for being idle and disorderly and frequenting public places for the purpose of committing a felony', he was dragged from the court 'doing a mingled attempt at roaring and pleading for liberty'.¹¹²² The judge told Peter Killeen that he was sorry to see him before the court on assault and robbery charges, and Killeen responded, 'I am sorry myself sir'. He continued to fight his corner, accounting for his crime by assuring the judge that he was starving. Clearly unsympathetic, the judge declared that work was not in short supply, and it was his own fault if he were starving. Eighty-one year old Killeen came back with 'My hand was bad and I could not work'.¹¹²³

¹¹²⁰ T.P. Walton and J. Young, 'Critical Criminology in Britain: review and prospects', in I. Taylor, P. Walton and J. Young (eds.), *Critical Criminology*, (London: Routledge & Kegan Paul, 1975), 6-7.

¹¹²¹ J.K. Conway, *When Memory Speaks*, (New York: Knopf, 1998), 18, in S. Maruna, *Making Good: How Ex-Convicts Reform And Rebuild Their Lives*, (Washington: American Psychological Association, 2001), 14; Maruna, *Making Good*, 14.

¹¹²² *Launceston Examiner*, 7 April 1859, 4.

¹¹²³ *Cornwall Chronicle*, 10 March 1876, 2.

John Nestor was something of a bush lawyer. Charged with stealing and pawning a coat, he scoffed at the patent foolishness of the charge, saying that ‘if he had stolen the cloak it was not likely that he would have pawned it in his own name’.¹¹²⁴ When James Foley received eight years for larceny, twice the prescribed sentence, he ‘made an exclamation which is not repeatable’.¹¹²⁵ William Hall was defiant; charged with forgery and uttering, when ordered to speak up in court he shot back ‘I speak loud enough for any one to hear me, I am sure’. He also aggressively questioned the prosecutor at length, attempting to discredit his testimony.¹¹²⁶ George Growsett accused the judge of rigging his trial; when he was cautioned that he had forfeited the laws of the colony by the crime with which he was charged Growsett snapped back, ‘So much the better’. When His Honour held out the hope that the Executive might not sentence him to death, Growsett was singularly ungrateful, proclaiming ‘I would rather be hanged’.¹¹²⁷

John Glenn and James Geary knew when the odds were stacked against them but still had to have their two bob’s worth. On being charged with horse stealing, Geary shrugged ‘All right, you’ll send me to Port Arthur this time’ and Glenn, who throughout his lengthy trial on a charge of burglary maintained his innocence, declared ‘Well, if I have done anything wrong let the law take its course’, which it did and sent him to gaol for ten years.¹¹²⁸ Thomas Jackson complained ‘It is very hard’ to get six months hard labour for stealing a jumper.¹¹²⁹ John White and Alan Williamson continued to protest their innocence of burglary and forging and uttering respectively, but were unable to persuade the court. Both were found guilty.¹¹³⁰

Denis Doherty, whose long criminal career was apparently accumulated in a perpetual rage against authority, was convicted of robbing a post office. The reporter described him as;

¹¹²⁴ *Mercury*, 18 July 1861, 2.

¹¹²⁵ *Cornwall Chronicle*, 9 September 1865, 3.

¹¹²⁶ *Mercury*, 12 March 1868, 2.

¹¹²⁷ *Mercury*, 11 June 1860, 3.

¹¹²⁸ *Mercury*, 19 January 1865, 2; *Mercury*, 7 June 1877, 3.

¹¹²⁹ *Mercury*, 8 August 1862, 3.

¹¹³⁰ *Mercury*, 23 February 1872, 3; 14 December 1881, 3.

a bush lawyer – accustomed to such trials – and ascribes all his misfortunes to his unjust deprivation of liberty. He has no fear of death, provided a short time intervenes between the sentence and the execution. His manner in the dock displayed his fearlessness and thoughtlessness as to the result of his trial.¹¹³¹

Twenty-five years later, Doherty gave voice to the yearnings of all those who had been repeatedly punished and incarcerated, when he met the visiting writer Anthony Trollope in Port Arthur's Separate Prison in 1872. Doherty accounted for his life of endless punishment in heart-rending terms: 'I have tried to escape, always to escape, as a bird does out of a cage. Is that unnatural, is that a great crime?' Trollope described Doherty as a man who 'had been always escaping, always rebelling, always fighting against authority – and always being flogged'.¹¹³² Although Doherty claimed to be 'broken at last', he went on to strike fear into the hearts of staff at the Hobart Gaol for many more years.

Silence was also an option for the defiant prisoner. John Murphy and his co-accused Charles Baldwin both refused to address the jury in their own defence on a charge of committing an unnatural offence.¹¹³³ When Henry Roberts, up for stealing brandy, was given the opportunity to betray his accomplices, he declared that 'he was a brick, and he would rather sink into the bowels of the earth than turn round on his mates'.¹¹³⁴ Luke Clarkson and Luke Marshall also refused to say who had given them stolen meat.¹¹³⁵

Anger, resentment and defiance were also expressed in action, both while under sentence and upon emancipation. Alan Atkinson¹¹³⁶ described four patterns of protest – physical or verbal attacks, appeals to authority in the belief that a convicted man had rights, the

¹¹³¹ *Mercury*, 28 July 1857, 3.

¹¹³² A. Trollope, *Australia And New Zealand* (London: Chapman & Hall, 1876, first published in 1873), Vol. 2, 148-49.

¹¹³³ *Mercury*, 6 July 1870, 2.

¹¹³⁴ *Mercury*, 26 October July 1866, 2.

¹¹³⁵ *Launceston Examiner*, 10 January 1874, 3.

¹¹³⁶ A. Atkinson, 'Four Patterns of Convict Protest', *Labour History*, Vol. 37, (1979), 30.

withdrawal of labour and compensatory retribution,¹¹³⁷ Shane Breen adopted them and borrowed another, oppositional behaviour, from Gillian Cowlshaw.¹¹³⁸ For Cowlshaw's Aboriginal subjects, 'public drinking and petty crime confer status on the protagonists and confirm an oppositional identity'.¹¹³⁹ While heavy drinking, for example, may be seen as recreation, depression or weakness, it may also be seen as defying the expectations of others.¹¹⁴⁰ As I have demonstrated in Chapter 7, heavy drinking and petty crime were cornerstones of the convict subculture.

Many convict records demonstrate physical and verbal attacks upon figures of authority, and the withdrawal of labour. For disobedience, Thomas Francis got solitary confinement on bread and water in heavy irons for three weeks; Richard Hicks spent a month doing hard labour in chains for obscene language; William Forster endured 50 lashes for refusing to work. When assignee John Brown used violent and threatening language to his master, he was rewarded with 12 months in a chain gang.¹¹⁴¹ James Geary, being conveyed to the police station on a charge of horse stealing, said that 'he would do for the sergeant if it took 20 years' and threatened to split the constable's skull with his spade.¹¹⁴² Every man sent to Port Arthur and to Norfolk Island incurred many harsh punishments for such trivial, and apparently pointless, offences. Despite the fact that the consequences were shockingly severe, nonetheless these minor infractions against pettifogging regulations were committed repeatedly. These offences only make sense if we see them as protest, as a way for a man to show that he was not beaten by the system.

But such brutality inevitably took its toll on a man's psychological, as well as his physical, wellbeing and identity. Maxwell-Stewart discovered that those who had been punished more often, and more severely, while under sentence went on to become

¹¹³⁷ 'This was where the convicts turned to a supplementary code of punishment, of their own devising, to punish their masters for some specific act of injustice'. Atkinson, 'Four Patterns of Convict Protest', 30.

¹¹³⁸ S. Breen, 'Farm labour, petty law and "Idle Vagabonds": emancipated convicts in Tasmania's Northern Districts 1853-1900', *Australian Studies*, Vol. 16/1, (2001), 94-5.

¹¹³⁹ G. Cowlshaw, 'The Materials for Identity Construction' in J. Beckett (ed.), *Past And Present: The Construction Of Aboriginality*, (Canberra: Aboriginal Studies Press, 1994), 97-99.

¹¹⁴⁰ Breen, 'Farm labour, petty law and "Idle Vagabonds"', 95.

¹¹⁴¹ CON33/1/71, page 109; CON31/1/4, page 176, TAHO.

¹¹⁴² *Mercury*, 28 November 1882, 2.

recidivists.¹¹⁴³ This holds true for these Port Arthur men, as Table 8.1 below demonstrates, comparing punishment rates per man between the Port Arthur men and a sample of men who had no record of post-emancipation offending, and men whose offences were listed in the *Police Gazette* post-1865.¹¹⁴⁴ The Port Arthur men were punished more savagely, and more often, than either of the other group

Table 8.1: Relationship between recidivism and punishment¹¹⁴⁵

Punishment (mean for group)	No record of post- sentence offending	In Police Gazette post-1865	Port Arthur convicts
Days road party	121	448	427
Days chain gang	65	107	431
Days solitary cells	10	17	53
Strokes of lash	4	5	46
Days treadmill	2	2	7

Sources: Conduct Registers for Male Convicts Arriving in the Assignment Period, Con 31/ vols. 1– 48; Supplementary Conduct Registers, Con 32/1/ vols. 1– 5; Conduct Registers for Male Convicts Arriving in the Probation Period, Con 33//1/vols. 1–115; CON37/1/vols. 1-10, TAHO: *Tasmanian Police Gazette*, 14 June 1861-2 November 1900.

¹¹⁴³ H. Maxwell-Stewart, “‘And All My Great Hardships Endured’? Irish Convicts in Van Diemen’s Land’ in N. Whelehan, *Beyond The Island: Transnational Perspectives In Modern Irish History* (Routledge, 2015), 83. Maxwell-Stewart and Kippen, “‘What is a man that is a bolter to do?’”, 165.

¹¹⁴⁴ The first two columns are drawn from Maxwell-Stewart and Kippen’s sample of 1,124 men. Maxwell-Stewart and Kippen, “‘What is a man that is a bolter to do?’”, 181.

¹¹⁴⁵ Based on figures from my sample of 163 men compared with Maxwell-Stewart and Kippen’s sample of 1,124 men, “‘What is a man that is a bolter to do?’”, Table 10.8, 175, 181. Maxwell and Kippen found that ‘At least 100, or 9 per cent, of the 1,124 convicts in our sample were reconvicted in the period 1861-1900’. This total is reduced to 467 by the 182 men who died, the 67 who escaped and the approximately 380 men who they estimate left the colony. One hundred of those 467 were recidivists.

Denis Doherty received more than 1700 lashes for 67 acts of violence, defiance and rebellion during his 18 months on Norfolk Island, including an extra four years on his sentence for mutiny on the ship taking him to the island.¹¹⁴⁶ John Barnes' career was one long howl of defiance; he endured floggings, long and frequent periods in the dreaded Separate Prison, and hard labour in and out of chains, as he repeatedly refused to work and absconded. He indecently exposed himself, was insolent to the Reverend Mr Gibbs and smashed overseer Mr Hoare's windows.¹¹⁴⁷ James Martin, court martialled and transported for drunkenness, assembled a charge sheet that makes one's eyes water; in about 35 years he served almost 32 years of imprisonment, with more than 12 years hard labour in chains, six years hard labour without chains, 195 lashes and 397 days in solitary.¹¹⁴⁸ But Henry Holloway cannot be the only prisoner who reported after being flogged; 'When I got out of prison I became worse than ever, and in less than four months I was put upon my trial for felony ...'¹¹⁴⁹

Even after men had earned their freedom they continued to court further punishments through petty acts of defiance that seemed designed to express contempt for authority.¹¹⁵⁰ When James Harper was in gaol in Hobart for one of his many petty crimes, he demanded a second breakfast; when the warder James Jones refused, Harper threw his slop bucket at him. Throughout his trial, Harper 'was gibing and laughing, seemingly enjoying the fun and the alarm he had evidently caused to the warder'. The magistrate noted that he had been up several times for such offences, and rewarded him with a 12-month extension on his sentence, which he hoped would curb 'his violent tendencies'.¹¹⁵¹ Harper continued to cock a snook at authority, deliberately exposing himself in Despard Street in a manner that a witness opined 'was committed for the purpose of

¹¹⁴⁶ CON33/1/71, page 105: CON39/1/2, page 205: CON33/1/54, page 98: CON 31/1/12, page 93, TAHO.

¹¹⁴⁷ Atkinson describes insolence as a form of protest. Atkinson, 'Four Patterns of Convict Protest', 32.

¹¹⁴⁸ CON33/1/79, page 14: CON33/1/45, page 243, TAHO.

¹¹⁴⁹ H. Holloway, *A Voice From The Convict Cell*, (Manchester: J. Heywood, 1877), 10, in P. Priestley, *Victorian Prison Lives: English Prison Biographies 1830-1914*, (London: Methuen, 1985), 217.

¹¹⁵⁰ Breen, 'Farm labour, petty law and "Idle Vagabonds"', 96.

¹¹⁵¹ Mercury, 15 August 1873, 3.

annoyance'.¹¹⁵² When police came to arrest James Connelly and John Kerswell for murder, both men challenged onlookers and dared anyone to take them.¹¹⁵³

For many emancipists, freedom meant a new source of anger at the system that had brought them half way around the world, only to abandon them. Port Arthur Superintendent James Boyd informed the Rev. Whitworth Russell in 1845 that 6,000 ticket-of-leave men and 2,000 pass holders were at that time unemployed.¹¹⁵⁴ Although the colonial labour market began to recover during the 1850s, William Gates described how probationary pass holders '[wandered] up and down farming districts and day after day were turned away as no employment could be secured'.¹¹⁵⁵ In an 1860 'Select Committee Report on the system under which convicts are discharged from Port Arthur with tickets of leave', the committee reported that these men had great difficulty in gaining employment, which 'creates in their minds a sense of hardship' and becomes 'a temptation ... and a justification for entering upon a fresh career of crime', or what Andrews and Bonta call rationalization justifying crime.¹¹⁵⁶ Police Superintendent Hamilton confirmed that only skilled mechanics could readily get work.

Nine pages later, the basis of the genuine hardship of many of these men becomes clear, when magistrate William Tarleton gave evidence that men who were sent by police to the country because they are 'of bad character' were not given any rations or lodging, which they would have received if they remained in the Prisoners Barracks in Hobart.¹¹⁵⁷ John Glenn described how difficult it was for old lags to gain employment; he said that since he had been 'liberated' from Port Arthur three months earlier he had managed to earn only £15.2.0, 'but he was not desirous of remaining idle'. He particularised a number of

¹¹⁵² *Mercury*, 9 March 1876, 2.

¹¹⁵³ CON33/1/108, page 54; CON33/1/103, page 167, TAHO. *Mercury*, 20 January 1883, 3: 29 January 1864, 2.

¹¹⁵⁴ Boyd to Russell 26 April 1845, *British Parliamentary Papers: Crime And Punishment, Transportation* 7, 401-410, in Hilton, "'Branded D on the left side'", 277.

¹¹⁵⁵ W. Gates, *Recollections Of Life In Van Diemen's Land*, (Sydney: D S Ford, 1961: originally published 1850), Part 2, 12.

¹¹⁵⁶ 'Select Committee Report on the system under which convicts are discharged from Port Arthur with tickets of leave', *House Of Assembly Journals*, 1860, Vol.V, Paper 98, 5.

¹¹⁵⁷ 'Select Committee Report on the system under which convicts are discharged from Port Arthur', 13-15.

unsuccessful applications that he had made for employment and said it was his desire to prove a useful colonist'.¹¹⁵⁸ During his trial William Lee 'asserted that men coming up from penal servitude [at Port Arthur], were forced to commit crimes, for they could obtain no employment'.¹¹⁵⁹ James Foley pleaded guilty to theft but offered up the following explanation in hopes of a mitigation of sentence.

I wish to bring before your notice the cause which led me to commit that crime ... I was discharged that morning after undergoing the sentence of six months. I went to the wharf to see if I could obtain employment. I did not succeed; I had no friends in Launceston. Also I had no money to procure food or a night's lodgings. I was utterly destitute.¹¹⁶⁰

He begged for a lighter sentence so that he could go to the country for the harvest and earn some money with which to leave the colony, but his plea fell on deaf ears, the magistrate rebuking him with 'even utter destitution furnishes no justification for stealing other people's property'; he went down for another six months hard labour, which the magistrate complacently acknowledged would cause him to miss the harvest. The magistrate did not, however, acknowledge that this would probably prolong his unemployment and destitution, and lead him into further crime.

John Finelly broke into a store and stole pork and other things. In court he said that he had always worked hard for his living, but in this case he was driven to it by hunger.¹¹⁶¹ Stephen Kelly also pleaded hardship on a charge of burglary; 'in extenuation, Kelly pleaded that at the time he committed the offence he was in a most deplorable state, having been compelled to part with all his "kit"'.¹¹⁶² In a long address to the Chief Justice following his acquittal on a charge of murder, Denis Doherty claimed that 'he had

¹¹⁵⁸ He had served seven years of a ten-year sentence for robbery. *Mercury*, 12 July 1877, 2.

¹¹⁵⁹ *Cornwall Chronicle*, 9 June 1858, 5.

¹¹⁶⁰ *Cornwall Chronicle*, 13 September 1875, 2.

¹¹⁶¹ *Cornwall Chronicle*, 18 September 1872, 3.

¹¹⁶² *Launceston Examiner*, 2 April 1870, 3.

never had a chance of behaving himself since he came to the colony, and that every one was against him'.¹¹⁶³

Others, however, labouring under an unresolved grievance against another individual, took matters into their own hands. Atkinson identified such informal sanctions as 'compensatory retribution', a form of protest.¹¹⁶⁴ Such actions were commonplace in working class communities in Britain. In her work on the population of a tenement in London in the early-mid nineteenth century, Jennifer Davis described how, when the poorest classes had suffered an injury, they first employed informal sanctions, usually common assault, to resolve neighbourhood disputes. Only when this had failed did they turn to the law.¹¹⁶⁵ She notes that 'their notion of justice did not necessarily coincide with what the law prescribed, reflecting the standards of the propertied classes'.¹¹⁶⁶

John Appleby justified his burglary of a pub by saying that the publican 'had not behaved right to him, and he would do it [sell the stolen plate]'.¹¹⁶⁷ James Harrison beat and kicked his de facto wife Rosa Mumford because she had mistreated their child and he also suspected that she was having an affair with the local publican.¹¹⁶⁸ Francis Gregson was arrested for throwing stones at the landlord who had evicted his family.¹¹⁶⁹ William and Esther Humphries punched, kicked and attacked a neighbour with an axe, presumably seeking to settle some personal quarrel.¹¹⁷⁰ John Barnes (he was described only as a labourer but he came from a rural area) and George Glasspoole (an agricultural labourer by trade) both mistreated animals and, although there is no detail given on either

¹¹⁶³ *Colonial Times*, 1 August 1857, 2.

¹¹⁶⁴ Atkinson, 'Four Patterns of Convict Protest', 30.

¹¹⁶⁵ J.S. Davis, 'Law Breaking and Law Enforcement: the creation of a criminal class in mid-Victorian London', Ph.D. thesis, Boston College, USA, 1984, 290, 294, 303-4.

¹¹⁶⁶ Davis, 'Law Breaking and Law Enforcement', 314.

¹¹⁶⁷ *Mercury*, 2 March 1871, 2.

¹¹⁶⁸ Rosa died three weeks later from internal injuries, so it seems that he did not mean to kill her. *Cornwall Chronicle*, 9 May 1866, 4.

¹¹⁶⁹ *Launceston Examiner*, 1 July 1871, 5.

¹¹⁷⁰ *Mercury*, 18 September 1861, 2.

of those charges, the animals were perhaps the property of their masters.¹¹⁷¹ What these men may have seen as a reasonable explanation for a warranted action, officialdom may have seen as a rationalization justifying crime

In a number of reports the accused expressed their negative attitudes towards the law and justice systems, in ways that indicate that they understood very well how the police and courts operated and were convinced that they had not been treated fairly according to the law. As Henry Singleton was removed from the court upon being sentenced to 14 years imprisonment for burglary, he addressed His Honour the Chief Justice Sir Francis Smith, ‘There’s one thing I’ll be able to say: I’ll be able to see you afterwards, at any rate’.¹¹⁷² Although the meaning is a little opaque – did he mean in Hell? – the comment seems to impugn the judge’s integrity and to threaten some retribution.

When William Marsden protested his innocence of the charge of assault on his lover Isabella Andrews, he ‘complained that he had not been allowed to produce his witnesses at the Torquay Police Court’.¹¹⁷³ William Lee and Henry Bramhall made similar complaints.¹¹⁷⁴ Cornelius Gleeson claimed that his co-accused, Michael Dwyer, would have exculpated him from the charge of burglary had he been allowed to question him. But since the Police Magistrate would not allow it, he was placed in ‘a critical position’.¹¹⁷⁵ Robert McKay went bushranging because ‘I could not get my application for a Ticket of Leave signed so I absconded’.¹¹⁷⁶ Luke Marshall and Luke Clarkson claimed that the witness against them in a case of killing a calf and stealing the meat ‘had been bribed by the Superintendent of Police’.¹¹⁷⁷ James Geary, arrested while trying to sell a horse he had stolen, also claimed improper behaviour by the police, saying that ‘the

¹¹⁷¹ Barnes was discharged from a country area. *Tasmanian Police Gazette*, 14 September 1883, 148: CON37/1/10, page 276.

¹¹⁷² *Mercury*, 9 September 1883, 3.

¹¹⁷³ *Mercury*, 5 June 1869, 3.

¹¹⁷⁴ *Cornwall Chronicle*, 9 June 1858, 5: *Launceston Examiner*, 22 November 1867, 5.

¹¹⁷⁵ *Mercury*, 4 December 1873, 2.

¹¹⁷⁶ CON31/1/52, page 178, TAHO.

¹¹⁷⁷ *Launceston Examiner*, 10 January 1874, 3.

police would not let a man live an “honest” life’.¹¹⁷⁸ This may have been his response to the draconian and invasive provisions of the 1865 Police Act, under which police could arrest anyone on mere suspicion that they had broken the law or might be about to break it.¹¹⁷⁹

James Glenn claimed that, on the charge of burglary, the prosecution had not furnished ‘sufficient proof in law; if there were a previous conviction it should be proved in a legal way’. He also complained that he had not had a fair trial either by ‘His Honor [sic] nor the Attorney General’.¹¹⁸⁰ In his cross-examination of a witness he demonstrated scant regard for the police, asking ‘Don't you think it quite possible that a Police constable himself might have committed the deed?’ He continued to press the witness who seemed doubtful that the police would do such a thing; ‘You have heard of such things being done? ... Have you ever read of such a thing?’ The witness replied that he had neither heard nor read of such a thing. Glenn continued to press him, ‘Have you never known a police constable to charge a person with an offence when the constable was guilty himself?’ When the witness continued to profess ignorance of such misbehaviour, Glenn sorrowfully informed him, ‘I am sorry to say I have’. The Police Magistrate finally brought this line of questioning to a close, and Glenn explained that ‘he meant by stating that the constable might have done the damage; that it was as possible for the constable to have done it as any other man’. In his final remarks, however,

... the prisoner Glenn complained that the local papers had taken a mean advantage of him, as, according to law, he stood before the jury as an innocent man, notwithstanding that the newspapers had browbeaten him. The prisoner then, in defence, read a lengthy document which was suggestive of the production of a ‘bush lawyer’ and caused considerable

¹¹⁷⁸ Quotation marks at ‘honest’ in original. *Mercury*, 28 November 1882, 2.

¹¹⁷⁹ Such acts, containing provisions similar to the English Vagrancy Acts, had been in operation since at least 1838. See An Act to Regulate the Police in Certain Towns and Ports within the island of Van Diemen’s Land and to Make More Effectual Provision For The Preservation Of The Peace And Good Order Throughout The Said Island And Its Dependencies Generally, 1838, (2 Vic, No 22), para LXI: Police Act 1865, (29 Vic, No. 10), para 14: Police Act Amendment Act 1879 (42 Vic, No. 25) para.4.

¹¹⁸⁰ *Mercury*, 5 July 1871, 2.

amusement to most of those in Court. The purport of the document was to impute the veracity of policemen generally, in support of which contention he cited two cases where policemen who were supposed to be in pursuit of offenders were convicted of having committed the crimes themselves. The document also cast ridicule upon the evidence that had been given, characterised the testimony of Constable Delaney in particular as a false fabrication, and asserted the innocence of the prisoner.

Unsurprisingly, despite his heroic efforts the Police Magistrate found him guilty.¹¹⁸¹ George Growsett also had no faith in the justice system.

... the prisoner in a most insolent manner said he knew very well that the question was only a matter of form; he had not been tried at all, and did not consider that he had had a fair trial. The witnesses had sworn what they liked, and he had not been defended by counsel; in fact, he had been sold like a bullock in Smithfield Market; he knew very well that His Honor [sic] had his sentence ready written before him, and that the whole thing was a matter of form.

When the judge declared that he thought that Growsett had had a most fair and impartial trial, the prisoner shot back 'Well, then, I don't'. When His Honour went on to refer to Growsett's original 14 year sentence for arson, Growsett protested indignantly that he had already been punished for that.¹¹⁸²

The only witness to Charles Ward's burglary of a house was a neighbour's little girl, whom police testified had confidently pointed out Ward to them. But Ward demonstrated his awareness that proper procedure had not been followed, complaining that the child had been shown him while he was by himself and not with others, so that she might have no trouble identifying him as the guilty party. He also asserted that the first words the

¹¹⁸¹ *Mercury*, 12 July 1877, 2.

¹¹⁸² *Mercury*, 11 June 1860, 3.

child spoke at the police office were that he was ‘not the man’. Detective Morley, being recalled, said ‘the child had not expressed any doubt whatever’, which certainly did not address Ward’s first objection and rather leaves the impression that there may have been some merit in it.¹¹⁸³

While the urge to romanticise every incident of law-breaking as heroic resistance must be avoided, it seems clear that convicts found many ways to express their resistance to what they saw as an unjust regime. There is surely some truth in Hilton’s argument that ‘their extensive conduct records are not so much documentary evidence of their criminality, but evidence of the criminalisation of their resistance by the Tasmanian penal ideology’.¹¹⁸⁴

4. Antisocial associates; association with criminal others, relative isolation from anti-criminal others.

Pre-transportation

Although the definition of anti-social behaviour almost 200 years ago encapsulated many actions that today we would treat as far less serious or even innocent, we know that at least 15 men met the criterion of association with criminal others.¹¹⁸⁵ This was an age when, as Rowbotham observes, ‘good (or bad) character was taken seriously as evidence in courts, and comprehension of this extended to the wider family, friendship or employment circles and the place of the offender within these circles’.¹¹⁸⁶ As I discussed in Chapter 7, John Gould and William Hayes had a brother and a mother respectively who were also transported. Peter Killeen had ‘siblings in Hobart’, presumably also transported. Henry Bramhall, John Gould, Charles Heys, William Price and William

¹¹⁸³ *Mercury*, 8 July 1868, 2.

¹¹⁸⁴ P. Hilton, ‘Separately treated: an assessment of the effectiveness of Port Arthur's Separate Prison, in the crushing of convict resistance, 1849-1877’, B.A. Hons. thesis, (School of Classics and History, University of Tasmania, 1999), 72.

¹¹⁸⁵ V.A.C. Gatrell, ‘The Decline of Theft and Violence in Victorian and Edwardian England’, in V.A.C. Gatrell, B. Lenman and G. Parker (eds.), *Crime And The Law: The Social History Of Crime In Western Europe Since 1500*, (London: Europa Publications, 1980), 264-6; Godfrey, *Crime In England 1880-1940*, 22; Linebaugh, ‘(Marxist) Social History’, 228, 243; P. King, *Crime, Justice And Discretion In England 1740-1820*, (Oxford: Oxford University Press, 2000), 129.

¹¹⁸⁶ J. Rowbotham, ‘Turning away from criminal intent: reflecting on Victorian and Edwardian strategies promoting desistance among repeat offenders’, *Theoretical Criminology*, Vol. 13/1, (2009), 112.

Burley not only had bad characters, they had ‘bad connexions’, i.e. probably criminal family members or perhaps associates.¹¹⁸⁷ Seven men also had a note on their record that they had committed their crimes with one or more others. I found convict records for six of those criminal associates who were also transported. John Wright, convicted for burglary with John Barnes, had one known previous conviction for which he had served five years on the hulks.¹¹⁸⁸ Thomas Finn, convicted for burglary with Emmanuel Blore, was described on his record as ‘a notorious pottery thief’ and had three known previous convictions.¹¹⁸⁹ Philip Burton was convicted with William Holden and Henry Toogood for burglary with violence; Holden had one known previous and Toogood had two known previous convictions.¹¹⁹⁰ Richard Hicks had a prior conviction for highway robbery in company with ‘several others’ before he was transported for another highway robbery.¹¹⁹¹ Robert MacKay had gone bushranging in New South Wales with ‘a man named Rudge who is now at Port Arthur’.¹¹⁹² James Merchant fired granaries with William Youngs, who already had two known convictions; ex-soldier Peter Perry stole money from a ‘bazaarman’ in India with a fellow ex-soldier, John Hinds, who had two known previous convictions for desertion and many for ‘habitual drunkenness’.¹¹⁹³

Given that definitions of crime were flexible and contextual among the working class, and that distress and want were givens in their lives, few of the men in this sample would have been able to claim that they had not associated with criminal others, although they probably would not have identified them as such. In addition, more than one third of the men in this sample were vagrant, and therefore by definition criminal outcasts, as were those with whom they associated on the road, and in gaols and workhouses.

¹¹⁸⁷ CON33/1/53, page 129: Barnard, *Exiled*, 26: CON31/1/25, page 209: CON33/1/4, page 12: CON33/1/19, page 29: CON31/1/22, page 50: CON31/1/3, page 169: CON33/1/33, page 160.

¹¹⁸⁸ CON33/1/4, page 12: CON33/1/19, page 29: CON31/1/22, page 50: CON31/1/3, page 169: CON33/1/33, page 160: CON33/1/79, page 199, TAHO.

¹¹⁸⁹ CON33/1/45, page 65, TAHO. He was presumably a member of a North Staffordshire gang known as the Pottery Gang, notoriously active in the late 1820s: a number of its members, both men and women, were subsequently transported. J. Briggs, C. Harrison, A. McInnes & D. Vincent, *Crime And Punishment In England: An Introductory History*, (New York: St. Martin's Press, 1996), 166.

¹¹⁹⁰ They committed the crime with Wi. CON33/1/79, page 170, TAHO.

¹¹⁹¹ CON39/1/2, page 205, TAHO.

¹¹⁹² I was unable to find this man's record.

¹¹⁹³ CON33/1/79, page 202: CON33/1/52, page 94, TAHO.

4. *Antisocial associates; association with criminal others, relative isolation from anti-criminal others*

Post-transportation

Farrall agreed with Andrews and Bonta that continued association with other old lags was a powerful disincentive to desistance. Unless the offender feels shame and guilt for what he has done, which he is unlikely to do in the presence of other repeat offenders, his self-identity is unlikely to change and he is unlikely to break old patterns of offending behaviour.¹¹⁹⁴ Most of the men in this sample reoffended between the 1850s and the 1870s, and 41 per cent of them demonstrate their possession of antisocial associates on at least 84 occasions, involving 97 other men and women with criminal records.¹¹⁹⁵ On 25 further occasions they committed offences with single men or women whose record I have not been able to find.¹¹⁹⁶ The 'Return of the persons convicted in the Supreme Court during 1850 to 1859, distinguishing those who appear always to have been free', finds that of the 907 men convicted in that decade only 89 or not quite ten per cent did not have a previous conviction.¹¹⁹⁷ So it would therefore seem reasonable to assume that 90 per cent of those 25 men and women whose records I cannot find were previous offenders; if

¹¹⁹⁴ S. Farrall, 'On the Existential Aspects of Desistance from Crime', *Symbolic Interaction*, 28: 367-86. doi:10.1525/is.2005.29.3.367, viewed 23 February 2015.

¹¹⁹⁵ In what follows I have not included escapes in company from gaols, since these could only be committed with criminal associates and so do not indicate a choice to associate with such people. Nor have I included occasions when a number of people have been charged at one hearing with public order offences, since it is not clear whether they were lumped together for the court's convenience or in each other's company when the offence occurred. When two men from my sample collaborate in an offence I have counted that as one offence. When a Port Arthur man acts with another who only has this offence to his name I have not included that offence or that man. Obviously some of those whose record I have not been able to find may also have committed only one offence, but until that can be demonstrated I have included them here. Some men appear more than once, committing offences with different people each time.

¹¹⁹⁶ Records before the probation period are scanty, aliases might have been used, and occasionally there were so many men with a common name like Kelly or Jones that my nerve failed me! The criminal status of women is particularly hard to identify, since they often used their married name and so, since not all marriages were officially recorded, they effectively disappear from this discussion. But we do know that at least 14 of these men married or cohabited with women who also had been transported and/or reoffended in the colony with their husbands. Despite the difficulty of finding records for women, I feel that sufficient men have been traced to demonstrate that old lags frequently married, consorted with and committed crimes with other old lags.

¹¹⁹⁷ 'Return of the persons convicted in the Supreme Court during 1850 to 1859, distinguishing those who appear always to have been free', *House Of Assembly Journals*, 1860, Vol. V, Paper 107.

so, we can add another 22 people to the list of antisocial associates. Similarly, another 20 men and women whose records I could not find committed offences in association with those who were known old lags. Taking away ten per cent or two of them, we are left with an additional 18 people who were probably criminal associates, an additional 40 to add to the original 97. In total, our 67 men probably had at least 137 criminal associates.

Occasionally the association is simply a domestic or social arrangement which, given that women of their class were almost certain to have been transported, left them little option but to associate with known criminals. When Emmanuel Blore was charged with burglary in 1861 he was living with Jessie Thompson, ‘a young female, who was lately sentenced to a month to the factory’.¹¹⁹⁸ Often these associations were familial; the Gregson brothers frequently committed crimes together and had done so since they were young teenagers.¹¹⁹⁹ Eleven men applied for permission to marry women who had been transported. Crime was a family affair for William Humphries; his wife Esther and daughter Elizabeth joined him in assault and receiving.¹²⁰⁰ George Leathley’s wife Catherine (per *Earl Grey*) was frequently imprisoned for being drunk and disorderly, disturbing the peace and threatening behaviour.¹²⁰¹ Their daughters Sarah, Catherine and Elizabeth were also had up for prostitution, theft and receiving.¹²⁰² The family continued to waste the courts’ time until the late 1890s. Alfred Doran and his wife Bridget were twice convicted together.¹²⁰³

Richard Pinches/Henry Singleton was arrested while he was living in a cave with Elizabeth Wilder, ‘who has been convicted by the Oatlands bench’.¹²⁰⁴ Ten years later

¹¹⁹⁸ *Mercury*, 2 February 1861, 2.

¹¹⁹⁹ *Cornwall Chronicle*, 6 September 1871, 2; 12 August 1875, 4. *Launceston Examiner*, 24 October 1871, 3.

¹²⁰⁰ *Mercury*, 18 September 1861, 2; 3 September 1867, 2.

¹²⁰¹ See for example *Mercury*, 17 November 1863, 3; 25 February 1865, 2; 15 May 1865, 2; 6 December 1865, 2. On this final occasion she was described as ‘addicted to drinking . . . a rough looking woman, of dissolute habits, has but lately completed a sentence’ and ‘an old offender’.

Mercury, 28 May 1866, 2.

¹²⁰² See for example *Mercury*, 31 August 1865, 3; 20 February 1874, 2; 23 May 1874, 2.

¹²⁰³ *Mercury*, 8 October 1861, 2; *Mercury*, 30 July 1863, 3.

¹²⁰⁴ *Mercury*, 5 June 1873, 2.

they committed another burglary together.¹²⁰⁵ George Langley was a witness in the murder of John Dunn's wife; he and his wife had been drinking with the couple all day before the fatal assault.¹²⁰⁶ Edward Ray died when his condemned hovel in Dunn Street, Hobart, burnt down in 1882. He was 'often in trouble' but was known as 'the Good Samaritan', because 'any homeless waif who, on leaving the watch house, found him- or her-self without board or lodging, being safe for a time at any rate to find a welcome at "Old Ned's"'.¹²⁰⁷ During their trial for burglary, one of the defendants, John Glenn, said of his fellow defendant that he 'knew Appleby when he was at Mr Walker's some years ago'.¹²⁰⁸ Some associations may have been unique or occasional, like the indecent act that Charles Rosetta and James Connolly were convicted of committing together.¹²⁰⁹

A convict named William Thompson per *Westmoreland* left an oral record of his experience, transcribed by noted photographer John Watt Beattie in 1900. In it he described the many opportunities that existed in a convict's life to fraternise with his fellows. Before transportation many men spent time in hulks, and Thompson refers to a man he met while on the run as 'an old shipmate', whom he knew from a hulk rather than a transport.¹²¹⁰ He described being marched in groups to and from stations; sleeping in group huts rather than cells; waiting at the Prisoners' Barracks to be sent somewhere or released to freedom. While awaiting release, men were often allowed out of the Barracks together on a Saturday. Men under sentence worked in gangs under loose supervision; those who arrived before the introduction of the probation system worked for private masters on farms in groups with minimal supervision.¹²¹¹ Thompson was briefly sent to make shoes at one of the Brown's River official's houses; there he 'got on very well with

¹²⁰⁵ *Mercury*, 5 November 1883, 3.

¹²⁰⁶ *Colonial Times*, 24 July 1849, 3. Six years later, George Langley killed his wife in a rage at her drinking. *Mercury*, 16 July 1873, 2.

¹²⁰⁷ *Mercury*, 5 March 1885, 2.

¹²⁰⁸ *Mercury*, 5 July 1870, 3.

¹²⁰⁹ *Launceston Examiner*, 1 April 1869, 3.

¹²¹⁰ J. Clark (ed.), *The Career Of William Thompson, Convict*, (Hobart: Port Arthur Historic Site Management Authority, 2009), 63.

¹²¹¹ See W. Archer's journal of life on the mixed farm *Brickendon* in the late 1830s, Archer family collection, unpublished.

the prisoner women servants'.¹²¹² After a drunken spree, he slept at the house of a fellow convict shoemaker; they had met when assigned to the same master.¹²¹³ Thompson also described how men at the Coal Mines, sleeping in huts of 16 bunks, had plenty of opportunities to make mischief together; they contrived ingenious ways of getting out of their hut and into the store room, and spent many hours after lights-out telling stories. They also enjoyed quiet times together after supper, sitting around the fire with a pipe until bedtime.¹²¹⁴

Once free, with their limited opportunities for paid work, such men would have congregated in areas like Wapping in Hobart. Situated on low-lying ground along the Hobart Rivulet behind Old Wharf, the alleyways off Hunter Street were lined with 'poorer quality, low-cost rental housing', squalid, decayed and overcrowded.¹²¹⁵ As the century progressed, many houses became uninhabitable and were demolished, further reducing the availability of cheap housing and crowding residents ever more tightly together. Whether they wished to or not, poverty forced emancipists to associate with one another.

Rather surprisingly, not a single man in this sample whose record has been located seems to have committed a criminal offence with anyone with whom he had been transported. The connections described above must have been made after arrival in Van Diemen's Land, where repeated stints in incarceration together, in gaol or gangs, must have formed a bond of familiarity and shared experience. Since Norfolk Island and Port Arthur were secondary punishment stations for all those convicted of serious offences during the period under scrutiny, and they were held at the Prisoners' Barracks in Hobart before being shipped there, it seems reasonable to assume that most of these men would have met at one or more of those places at some time or other. At least 27 men committed more than one offence in criminal company with other former Port Arthur men in our

¹²¹² Clark (ed.), *William Thompson*, 101.

¹²¹³ Clark (ed.), *William Thompson*, 112.

¹²¹⁴ Clark (ed.), *William Thompson*, 93.

¹²¹⁵ Wapping History Group, *Down Wapping: Hobart's Vanished Wapping And Old Wharf Districts*, (Hobart: Blubber Head Press, 1988), 55.

sample; on three separate occasions Henry Bramhall teamed up with an ex-Port Arthur man – Andrew Kelly per *Elphinstone* (3) in a theft, then with William Harding in theft and receiving and finally with Thomas Ditnon per *Waterlily* in housebreaking.¹²¹⁶

Andrew Kelly also committed a crime with William Forster.¹²¹⁷ John Appleby offended first with John Glenn and then with John Merchant, both of whom he knew from Port Arthur.¹²¹⁸ Although most offences were committed solo and many were committed with only one other, a few men committed an offence in company with more than one Port Arthur alumnus; Alexander Wood went burglarising with Richard Fishwick per *John Brewer*, George Forster per *William Jardine* and John Gardiner per *Theresa*.¹²¹⁹

Social and criminal connections were especially likely to merge into one another when drink was involved. Pubs and sly grog shops were both the convict's salvation and his downfall. Hobart and Launceston were plentifully supplied with places to drink, some of which were run by ex-convicts.¹²²⁰ William Thompson 'imbibed rather too freely' during a drinking spree with mates at one of the many pubs near the Prisoners' Barracks.¹²²¹ But there also a man might plan a crime, or commit one. Many a glorious binge ended at Port Arthur or in Hobart Gaol. Thomas Molyneux and James Smith met Samuel Noble per *Tortoise* at the *Steam Packet Hotel* in Launceston. While he was at the bar buying them a drink, Noble noticed that they were talking together as if they knew each other. After quite a few drinks they parted, but Smith and Molyneux waylaid Noble as he was

¹²¹⁶ The newspaper report describes him as such but I have been unable to locate his convict record. *Mercury* 22 August 1862, 5. Men not identified by their ship are excluded from my sample: *Colonial Times*, 24 July 1849, 3: Bramhall testified that Harding 'whom he knew at Port Arthur', had inveigled him into the robbery. I have not found Harding's record. *Mercury*, 22 August 1862, 8; *Mercury*, 21 October 1867, 2.

¹²¹⁷ *Courier*, 12 December 1849, 3.

¹²¹⁸ *Launceston Examiner*, 4 March 1871, 5; *Launceston Examiner*, 18 November 1862, 3.

¹²¹⁹ *Mercury* 1 June 1865, 2.

¹²²⁰ Wapping History Group, *Down Wapping*, 113: A. Alexander, 'Reality and Reputation: Convicts and Tasmania in the nineteenth century', *Tasmanian Historical Research Association*, Vol. 54/1, (2007), 55.

¹²²¹ Clark (ed.), *William Thompson*, 103, 83, 85, 110.

staggering up the street and robbed him of his wages.¹²²² Each received five years at Port Arthur for their pains.

Jane Kay per *Tory* was drinking with Robert West; she asked him for money, and he forged a cheque for her.¹²²³ Thomas Cahill and William Smith [per *Gilmore*] had been drinking with William Jones at the *Prince Albert Hotel* in New Town. Cahill, Smith, Jones and Jones' family all stayed at the pub that night, and Cahill and Smith robbed Jones some time during the night.¹²²⁴ After regular imbibing during periods of liberty, a man might get thirsty when he was inside; William Dawson was caught slipping a bottle of rum through a hole in the fence at Hobart Gaol to a mate named Green.¹²²⁵ Interestingly, less than two years later a Sarah Green was living in Dawson's house and was a witness for the defence when he was charged with stealing hams.¹²²⁶

Sometimes drink provided a general context for crimes. George Langley beat his wife so severely that she later died, after he had fetched her from the pub; they had lived together for 18 years and, although she was an inveterate drunkard, he had treated her well until that night.¹²²⁷ George Leathley and Elijah Round were both drinking at the *Cornish Mount* in Hobart and went back to Leathley's house to continue the binge, where Leathley eventually beat Round to death.¹²²⁸ James Harrison and his wife Rosa Mumford lived two doors from a pub, and both were drunk when they had a screaming row in the street outside, after which James fatally assaulted Rosa.¹²²⁹ Esther and William Humphreys were both drunk when they assaulted their neighbour.¹²³⁰

Despite these connections with disastrous over-imbibing, the pub also provided an important opportunity for a man to be among his own, where he might escape, however

¹²²² *Cornwall Chronicle*, 2 October 1869, 6.

¹²²³ *Mercury*, 10 September 1870, 3.

¹²²⁴ *Mercury*, 6 April 1878, 3.

¹²²⁵ *Mercury*, 4 November 1867, 3.

¹²²⁶ *Mercury*, 15 September 1869, 2.

¹²²⁷ *Mercury*, 16 July 1873, 2.

¹²²⁸ *Mercury*, 13 December 1865, 3.

¹²²⁹ *Cornwall Chronicle*, 9 May 1866, 4.

¹²³⁰ *Mercury*, 18 September 1861, 2.

briefly, from the condemnation and rejection of society at large and meet those who had shared his experience. Maxwell-Stewart and Tom Dunning found a culture of solidarity among members of a probation gang in Deloraine in 1845, as did Marcus Rediker among eighteenth century seaman, a solidarity that both bound men together and separated them from the mainstream.¹²³¹ Whether shaped by the prison, the hulk, the transport, the chain gang, the penal institution or assignment in a rural area, the convict's life was lived in *relative isolation from anti-criminal others*. I shall return to this idea in the next chapter in the discussion on the convict sub-culture.

Conclusion

In this and the preceding chapter I have attempted to bring these men to life as individuals, and also to understand their shared experiences and the impact that they may have had on their lives post-transportation. I have tried to rescue them, one by one, from the amorphous mass into which they are often merged, represented as a collective social, economic and political problem for Tasmania to solve and, ultimately, to transcend. They were not only numbers to be manipulated by the administrators of the convict system. Nor were they only fodder for statistics to be manipulated by historians to demonstrate important points about labour and punishment, revealing and useful though these are. In their day they were figures of dread, to be flourished to represent all that was unholy and chaotic in the lives of respectable folk. But even then they were more than that. Each man was a son, father, brother, once loved somewhere by someone who was never seen again, and who was struggling to live as best he could in a hostile and uncaring world.

In the next chapter I wish to take up the points raised by Chisholm, Godfrey *et al*, and Braithwaite, and examine the significance of social and economic exclusion and isolation in recidivism. I shall argue that the emancipist's social, domestic and economic exclusion, and his own awareness of that exclusion, were further reinforced by discriminatory administrative measures and by the prevailing belief systems of the larger

¹²³¹ H. Maxwell-Stewart and T. Dunning, 'Mutiny at Deloraine: ganging and convict resistance in 1840s Van Diemen's Land', *Labour History*, Vol. 82, 2002, 41.

¹²³¹ M. Rediker, *Between The Devil And The Deep Blue Sea: Merchant Seamen, Pirates, And The Anglo-American Maritime Worlds*, (Cambridge: Cambridge University Press, 1987), 110-11.

society. I shall also return to the questions of identity and sub-culture raised by Rediker and Maxwell-Stewart, particularly the tension between narrative identity, the story that we tell ourselves about ourselves, and socially constructed identity, the identity that is created for us by the society at large.¹²³² Their recidivism is beginning to emerge as a result of the interaction between their life experiences both in Britain and in the colony.

And what of John Doran, whose story began this chapter? He fulfilled all Andrews and Bonta's testable criteria for the risk factors for recidivism. Once free in Van Diemen's Land, he committed twenty-six further offences in different locations across the colony, many against public order but some involving theft and violence. All but one was committed alone, and that exception was committed in the company of another former Port Arthur man. He was a frequenter of pubs, where he was prone to bouts of heavy drinking during which he would often offend. He did not marry nor did he apparently form an informal relationship. After 1876 he rotated in and out of gaol and the Invalid Depot, that last refuge for the poor and friendless, where he was also often convicted for breaking their regulations. His death was apparently not recorded, his only permanent trace on history the official record of his transgressions, and his photograph.

¹²³² D. Ezzy, 'Theorizing Narrative Identity: Symbolic Interactionism and Hermeneutics', *The Sociological Quarterly*, Vol. 39/2, (1998), 239.

CHAPTER 9: ‘They belonged to that class...that might be called incorrigible...’: Tasmanian society and the Port Arthur man¹²³³



William Hayes and Richard Cobbett
 Taken at Port Arthur 1874
 Photographer: probably Commandant A.H. Boyd
 National Library of Australia (L) and Queen Victoria Museum
 & Art Gallery

William Hayes and Richard Cobbett had had little luck in their lives, but even that ran out when they stood before Sir Francis Smith in 1869. Smith had been appointed to the Supreme Court bench in 1860. He was a controversial judge. While his judgements were regarded by his peers as well reasoned and his sentences moderate, he was ‘intemperate in court, often engaging in vehement exchanges with counsel or witnesses’.¹²³⁴ Hayes and Cobbett certainly felt the sharp edge of his tongue. They had arrived in 1823 and 1832 respectively. Both had records of minor offending in locations scattered all over the state: they could be described as

¹²³³ *Mercury*, 4 March 1869, 2.

¹²³⁴ J.M. Bennett and F.C. Green, ‘Smith, Sir Francis Villeneuve (1819–1909)’, *Australian Dictionary Of Biography*, (Melbourne: Melbourne University Press, 1976), <http://adb.anu.edu.au/biography/smith-sir-francis-villeneuve-4603>, viewed 2 July 2015.

‘vagabonds’, ‘lawless, shiftless and immoral’.¹²³⁵ After enduring many short periods of freedom and longer periods of harsh punishment, in March 1869 they teamed up to break into the houses of Joseph Williams and Samuel Page, where they stole clothing and food. Luckless as always, they were arrested, found guilty on two charges each of housebreaking and stealing, and sent to Port Arthur for 14 years hard labour.¹²³⁶ But why, in a new colony, with a fresh start and opportunities that seemed relatively unlimited compared to Britain and Ireland at that time, did Cobbett, Hayes and many like them end up spending much of their lives on the wrong end of the lash and behind bars? Now I wish to turn the camera back onto the system that wielded it, and the society that that system was designed to serve. What responsibility must it bear for the wasted lives of men like Hayes and Cobbett?

Braithwaite, Godfrey and Cox offered apparently straightforward prescriptions for desistance. The first two were individual attainments – a family and a job.¹²³⁷ Both add important structural preconditions. For Braithwaite, fair treatment by a system that desired reform was essential and in the early years of the colonies ‘assignment [was] the principal vehicle of reintegration’.¹²³⁸ Godfrey and Cox agreed that reintegration was an important precondition for desistance, underpinned by ‘the existence of a ‘respectable society’ prepared to tolerate those who could be incorporated ... For society to progress these large numbers of ex-convicts had to be brought into the fold’.¹²³⁹ This assignment system operated between 1820 and 1839: under this system, a large proportion of the convict population in Tasmania worked for private masters. When agriculture and pastoralism were expanding and enormously profitable and free immigration was limited, their labour was highly valued.¹²⁴⁰ In order to get the best out of their workers, employers

¹²³⁵ S. Breen, ‘Farm labour, petty law and “Idle Vagabonds”: emancipated convicts in Tasmania’s Northern Districts 1853-1900’, *Australian Studies*, Vol. 16/1, (2001), 81.

¹²³⁶ Mercury, 3-4 March 1869, 3.

¹²³⁷ B. Godfrey, ‘The “Convict stain” in penal colonies’, in J. Rowbotham, M. Muravyeva & D. Nash (eds.), *Shame, Blame And Culpability: Crime And Violence In The Modern State*, (London: Routledge, 2013), 105; J. Braithwaite, ‘Crime in a Convict Republic’, *The Modern Law Review*, Vol. 64, No.1, (2001), 16, 30.

¹²³⁸ Braithwaite, ‘Crime in a Convict Republic’, 26.

¹²³⁹ Godfrey, ‘The “Convict stain” in penal colonies’, 105.

¹²⁴⁰ R.M. Hartwell, *The Economic Development Of Van Diemen’s Land 1820-1850*, (Melbourne: Melbourne University Press, 1954), 70-1.

found that positive incentives like increased and improved rations, and the promise of a ticket-of-leave or permission to marry, worked better than harsh punishment. Under this system, Braithwaite found that ‘surprisingly high levels of procedural justice and reintegration drove down crime rates’, assisted by punishment that was not stigmatising.

¹²⁴¹ The passage of these former assignees into normal life was further assisted by the fact that when they left assignment, they would be wearing ordinary clothes, and sporting haircuts, whiskers and beards that made them indistinguishable from the free working class. If they were good workers, they might be kept on where they had been assigned, or have formed contacts in the area that saw them likely to be employed.

In contrast, men in road gangs or penal stations suffered under a regime of coercion, intense surveillance and harsh punishment. These men were also far more likely to incur extensions of their sentences, often for trivial offences against multifarious regulations.¹²⁴² Serious offences would send them to punishment stations like Port Arthur (1830-78), Norfolk Island (1788-1814 and 1825-53) or Macquarie Harbour (1822-33). William Green, who absconded from Port Arthur in 1844, told the court that he had been horrifically flogged and then cast into a dark cell for nine months. He begged not to be sent back there, swearing that he would rather die.¹²⁴³ Such men went on to become

¹²⁴¹ Braithwaite, ‘Crime in a Convict Republic’, 11. He argued that punishment might be either stigmatising or reintegrative. If it is to be reintegrative, it addresses the act rather than the offender, thus preserving the identity of the offender as essentially good. It is accompanied by efforts ‘to reintegrate the offender back into the community of law-abiding or respectable citizens through words or gestures of forgiveness or ceremonies to decertify the offender as deviant’. When it is stigmatising, it omits such ceremonies of reconciliation and frames the offender, rather than his action, as deviant: this effectively cuts him off from the broader society. J. Braithwaite, ‘Crime, Shame and Reintegration’ in P. Cordella and L. Segel, *Readings In Contemporary Criminological Theory*, (Boston: Northeastern University Press, 1996), 35-6.

¹²⁴² H. Maxwell-Stewart, “‘Like poor galley slaves’: slavery and convict transportation”, in M.S.F. Dias (ed.), *Legacies Of Slavery: Comparative Perspectives*, (Newcastle: Cambridge Scholars Publishing, 2007), 53; H. Maxwell-Stewart, ‘Convict Labour Extraction and Transportation from Britain and Ireland, 1615-1870’, in C. G. De Vito and A. Lichtenstein (eds.), *Global Convict Labour*, (Leiden and Boston: Brill, 2015), 185, 189.

¹²⁴³ The judge refused to believe his story and read out ‘a frightful list of recorded crimes against the prisoner’, sentencing him to transportation. As he was lead away, Green told the court, ‘Why, he’s as great a rogue as I am’. *True Colonist*, 22 March 1844, 4.

Braithwaite's 'brutalised minority [who] responded to injustice with escalated defiance'.¹²⁴⁴

The treatment meted out to transportees to Van Diemen's Land after 1839, when most of the subjects of the Port Arthur images arrived, was very different from that which transportees experienced under assignment. In the probation period, men remained under government control for the first part of their sentence, and increasingly that control was ruthlessly and brutally exercised in road gangs. After they had served this probationary period, they were to be available for hire by private individuals for a nominal wage. Unfortunately, with an agricultural depression and a glut of labour men became stuck in probation stations and hiring depots.¹²⁴⁵ From there, it was likely that they would reoffend and end up at a secondary punishment station like Port Arthur (1830-78) or Norfolk Island (1825-53). Under such a system there were few opportunities for reward and reintegration, and many for severe punishment and stigmatisation.

I wish now to combine Andrews and Bonta's framework with aspects of the struggle towards desistance gleaned from the work of Braithwaite, Godfrey and Cox, and to draw out particular emphases from the other psychological and sociological theorists discussed in Chapter 2. These are shaming, labelling and stigmatisation, in particular the role of the convict system, police and the courts: the acquisition of social capital: the development and nature of convict culture: narrative theory and the preconditions for identity transformation.¹²⁴⁶

¹²⁴⁴ Braithwaite, 'Crime in a Convict Republic', 25.

¹²⁴⁵ Maxwell-Stewart, 'Convict Labour Extraction', 194.

¹²⁴⁶ My use of Andrews and Bonta's framework enables an assessment of the degree to which convicts might acquire social capital. Also useful are R. Paternoster and L. Iovanni, 'The Labeling [sic] Perspective and Delinquency: an Elaboration of the Theory and an Assessment of the Evidence', in Cordella and Segel, *Readings In Contemporary Criminological Theory*, 172; J.H. Laub, 'Crime in the Making: Pathways and Turning Points through Life', in Cordella and Segel, *Readings In Contemporary Criminological Theory*, 252; S. Farrall and A. Calverley, *Understanding Desistance From Crime: Theoretical Directions In Resettlement And Rehabilitation*, (Maidenhead: Open University Press, 2006), 181-2. D. Bracken, L. Deane and L. Morrissette, 'Desistance and social marginalization: the case of Canadian Aboriginal offenders', *Theoretical Criminology*, Vol. 13/1, (2009), 73-4; B. Vila, 'A General paradigm of Criminality', in Cordella and Segel, *Readings In Contemporary Criminological Theory*, 277. G.K. Cowlshaw, 'The materials for identity construction', in J. Beckett, (ed.), *Past And Present: The Construction*

‘The brutalised minority’: shaming, labelling and stigmatisation¹²⁴⁷

Did mid- to late-nineteenth century Tasmanian convict society resemble Braithwaite’s early nineteenth-century Australian colonies in being brutal yet forgiving?¹²⁴⁸ Alison Alexander argued that for ‘the great majority’ in Van Diemen’s Land it did, and that ‘few were alienated’: she identified a small number of convicts who managed to make successful lives for themselves and ‘bury their past’.¹²⁴⁹ But many other men like Hayes and Cobbett found that, far from being forgiven, they were at the mercy of Raymond Paternoster and LeeAnn Iovanni’s ‘hostile social audience that makes negative assessments of character, which may lead to the subject being excluded from normal activities and opportunities’.¹²⁵⁰

Tasmanian society could make its hostile feelings felt in a number of ways. Many authors have written about the pervasive and long-lasting public perceptions of the danger represented by the ex-convict, and the longevity of such views.¹²⁵¹ In what follows I shall attempt to sum up the general thrust of their arguments. The Molesworth Committee’s report of 1838 led to the abolition of transportation in New South Wales. Kirsten McKenzie summarised its description of the colony as a ‘veritable inferno of gender inversion, corrupted childhood, venereal disease ... “unnatural crimes” between men’ and

Of Aboriginality, (Canberra: Aboriginal Studies Press, 1988), 94-8: Bracken, Deane and Morrissette, ‘Desistance and social marginalization’, 73-4. Laub, ‘Crime in the Making’, 246, 248: Farrall and Calverley, *Understanding Desistance From Crime*, 7, 188, 191: Ricoeur, *Time and Narrative*, Vol. 1, trans. by K. McLaughlin and D. Pellaeur, (Chicago: Chicago University Press, 1984), in D. Ezzy, ‘Theorizing Narrative Identity: Symbolic Interaction and Hermeneutics’, *The Sociological Quarterly*, Vol. 39/ 2, (1998), 244, 247-8: M. Somers, ‘The Narrative Constitution of Identity’, *Theory And Society*, Vol. 23/5, (1994), 606.

¹²⁴⁷ Braithwaite, ‘Crime in a Convict Republic’, 19, 25.

¹²⁴⁸ Braithwaite, ‘Crime in a Convict Republic’, 11-50.

¹²⁴⁹ A. Alexander, ‘Reply to Babette Smith’, in D.A. Roberts, Discussion Forum, “‘Beyond the Stain’”, Rethinking the Nature and Impact of the Anti-Transportation Movement’, *Journal Of Australian Colonial History*, Vol.14, (2012), 220. A. Alexander, ‘Reality and Reputation: Convicts and Tasmania in the nineteenth century’, *Tasmanian Historical Research Association*, Vol. 54/1, (2007), 58.

¹²⁵⁰ Paternoster and Iovanni, ‘The Labeling [sic] Perspective and Delinquency’, 174-5.

¹²⁵¹ Alexander, ‘Reality and Reputation’: an extensive reading list of contemporary sources describing the depraved and irredeemable character of the convict can be found at 52, fn11.

‘domestic immorality’.¹²⁵² The Vandiemonian anti-transportationists picked up that baton and ran with it throughout the late 1840s, disseminating the same anti-emancipist rhetoric through many published pamphlets and the popular press. It stressed the innate depravity of the convict class, focussing in particular on their purported fondness for ‘unnatural crime’ or homosexual practices: this was the most extreme manifestation of the ‘other’, of those who were beasts rather than men.¹²⁵³

The Reverend John West drafted a letter in 1847 to the representative of the London Agency Association of New South Wales, John Alexander Jackson. He described the convicts in probation gangs as ‘a separated caste’, unreceptive to religious instruction and ‘real reform’. They were ‘stained with appalling vices in fearful proportions’. The gangs were ‘scenes of indolence, evasion and brutality’. Among these unnameable evils was the most appalling vice of all, homosexuality. The ‘consequences, moral and material’ for the colonists did not bear thinking about. According to Huon, it was the respectable colonists’ deep-seated horror of this immoral and godless behaviour that won the day for the anti-transportationists, demonstrating how powerful was their fear and loathing of the convict.¹²⁵⁴

Somewhat paradoxically given their homosexual proclivities, convicts also represented the primary source of danger to wives, daughters and sisters. The northern press led the charge. An editorial in the *Launceston Examiner* in 1848 cursed those who planned to transfer men from Norfolk Island to Van Diemen’s Land for ‘bringing into the midst of our children beings who have ceased to be men, and are become worse than brutes’.¹²⁵⁵ Six years later the paper declared that the vices of those men being transferred to Port Arthur ‘were too revolting for publication’.¹²⁵⁶ The anti-transportationists also deplored the corrupting influence of the convict system on the institutions through which its

¹²⁵² K. McKenzie, *Scandal In The Colonies: Sydney And Cape Town 1820-1850*, (Melbourne: Melbourne University Publishing, 2004), 124-5, 147.

¹²⁵³ McKenzie, *Scandal In The Colonies*, 149.

¹²⁵⁴ D. Huon, ‘By moral means only: the origins of the Launceston Anti-Transportation Leagues 1847-1849’, *Tasmanian Historical Research Association*, Vol. 44/2, (1997), 101, 103-4.

¹²⁵⁵ *Launceston Examiner*, 1 November 1848, 3.

¹²⁵⁶ *Launceston Examiner*, 20 October 1852, 3-4.

subjects had passed.¹²⁵⁷ Petrow summed up the effect of the anti-transportation campaign in Tasmania as having ‘entrenched a fear of convicts for decades to come’.¹²⁵⁸ Irish convicts experienced a double burden of prejudice and discrimination, reviled for both their identity and their crime.¹²⁵⁹

With the abolition of transportation on 10 August 1853 convicts stopped arriving but, despite the arrival at last of that happy day, Henry Reynolds said that ‘memories of the convict system survived the formal end of transportation to exert an important influence on many facets of island life, including its politics and legislation, its manners and social relations’.¹²⁶⁰ For example, the Master and Servant Act 1856 resembled a blend of similar acts in other colonies with Van Diemonian Convict Department regulations: Tasmanian masters had far more extensive and more repressive powers over their largely emancipist workforce than those on the mainland.¹²⁶¹ Fear of violence and disorder lived on long after 1853, fuelled by the arrival in Tasmania of those convicts previously incarcerated on Norfolk Island and the continued existence of Port Arthur. Free settlers were worried that, with the decentralisation of the police force and authority passing to municipal councils, they might not be able ‘to control the emancipist working class’. The withdrawal of British troops in 1870 raised the spectre of a convict uprising. The combined effect of all of these factors led to a proletariat that was ‘the most dispirited ...in the Australian colonies’, and to a persistent fear in the minds of free colonists at the potential for ‘insurrection, insubordination and violence’ represented by the emancipist.¹²⁶²

¹²⁵⁷ B. Smith, *Australia’s Birthstain: The Startling Legacy Of The Convict Era*, (Sydney: Allen and Unwin, 2008), 231-3.

¹²⁵⁸ S. Petrow, “‘Convict-phobia’: Combating Vandemonian Convicts in 1850s and 1860s Victoria”, in Discussion Forum, “‘Beyond the Stain’”, Rethinking the Nature and Impact of the Anti-Transportation Movement’, *Journal Of Australian Colonial History*, Vol. 14, (2012), 262.

¹²⁵⁹ D. Meredith and D. Oxley, ‘Contracting Convicts: the convict labour market in Van Diemen’s Land 1840-57’, *Australian Economic History Review*, Vol. 45/1, (2005), 61.

¹²⁶⁰ H. Reynolds, ‘That hated stain: the aftermath of transportation in Tasmania’, *Historical Studies*, Vol. 14/53, (1969), 23.

¹²⁶¹ 19 Vic., No. 28.

¹²⁶² Reynolds, ‘That hated stain’, 24, 25, 26, 27, 31: Breen, ‘Farm Labour, Petty Law and “Idle Vagabonds”’, 93.

Rowbotham argued that ‘Opinionated commentary was influential in shaping community opinion’, and Tasmania was well supplied with commentators prepared to heap public shame and stigma onto the transportee.¹²⁶³ Their fear and prejudice found expression through those institutions with which his life was most intimately entwined – the parliament, the police, the courts and the popular press. In the early 1850s Chief Police Magistrate Francis Burgess often fulminated in his correspondence against the men recently returned from Norfolk Island, to whom he attributed much of the crime in the colony.¹²⁶⁴ I have already referred to the anti-convict prejudice of Inspector Forster, Chief of Police between 1857 and 1875, the avowed enemy of all ‘habitual criminals...the crime-committing class in our community’, who ‘prefer detention and prison labour to honest work’.¹²⁶⁵ He urged his police force to ‘stringently enforce’ the Vagrancy Acts, which they primarily wielded against the homeless and the indigent, most of whom were emancipists.¹²⁶⁶

The 1860 Select Committee inquiry into convicts discharged from Port Arthur found that ‘Of the whole number arriving from Port Arthur, not a few are men of desperate character and addicted to vices of a revolting nature’. The prevalence of crime among them was due to ‘the class to which they belong’: employers were discouraged from taking them on because of ‘their general inferiority as labourers’. The report refers to ‘the growing dread of the frightful practices to which it is well known many of them are addicted’. As a result, they were responsible for ‘the whole of the crime of the colony with all its dangers and moral evils together with the enormous cost of restraining and punishing that crime’. As long as Port Arthur remained, it ‘afforded the colony but a sad and distant prospect of

¹²⁶³ J. Rowbotham, ‘The Shifting nature of shame: revisiting issues of blame, shame and culpability in the English criminal justice system’, in Rowbotham, Muravyeva and Nash (eds.), *Shame, Blame And Culpability*, 74.

¹²⁶⁴ P.J. Hilton, ‘“Branded D on the left side”’: a study of former soldiers and marines transported to Van Diemen's Land: 1804-1854’, Ph.D. thesis, (School of Classics and History, University of Tasmania, 2010), 180, 219, 315.

¹²⁶⁵ Report by Inspector of Municipal Police, *House Of Assembly Journals*, 1868, Vol. XIV, Paper 25, 3.

¹²⁶⁶ The police, through the Vagrancy Acts, persecuted anyone who had no home to go to and no work to do, through constant surveillance (in theory if not in under-resourced practice) and threat of arrest on suspicion of the mere prospect of wrongdoing. Report by Inspector of Territorial Police, *House Of Assembly Journals*, 1873, Volume XXV, Paper No. 20, 3.

escaping from the frightful evils resulting from this continuous circulating of criminals through the community'.¹²⁶⁷

In order to contain this contagion, colonial legislation and municipal by-laws of the 1850s relating to public order dictated that “the worst men” were required to live in the city where they were ‘submitted to an unremitting supervision, frequently visited at home by day and night and otherwise vigilantly watched’.¹²⁶⁸ Breen noted that between 1846 and 1897 in northern Tasmania this ‘unremitting supervision’ persisted as long as emancipists survived’, a situation that prevailed throughout the entire colony.¹²⁶⁹ After the horrific rape and murder of a two-and-a-half-year-old girl, for which a convict was charged but not ultimately convicted, Hobart aldermen sent a memorial to the Governor Henry Fox Young accusing men from Port Arthur of being ‘utterly unfit for society, so inherently and irreclaimably bad’. According to these good burghers, such men had committed ‘fearful acts of Turpitude, Vileness and Criminality’: they had ‘not the slightest control over their ... evil propensities but ... exercise them ... on Infants and on all within their range regardless of Law, Decency and Religion’.¹²⁷⁰ Since the colony was no longer dependent on the labour of these men, many of whom were by now old, ill or disabled, the leaders of society could give free rein to their stigmatising judgements.¹²⁷¹ Popular newspapers, a widely available vehicle for both group-based and individual opinions, reinforced this point. It is also one of the only lenses through which we can see the convict’s reaction to his situation.

¹²⁶⁷ ‘Select Committee Report on the system under which convicts are discharged from Port Arthur with Tickets-of-leave’, *House Of Assembly Journals*, 1860, Vol. V, Paper 98, 5-6.

¹²⁶⁸ ‘Select Committee Report on the system under which convicts are discharged from Port Arthur’, 5.

¹²⁶⁹ This supervision, if it were carried out by the under-resourced police force, would have meant that local police became only too familiar with the emancipists living in their jurisdiction, which may account for the fact that they did not find the use of photographs necessary. S. Breen, *Contested Places: Tasmania’s Northern Districts From Ancient Times To 1900*, (Hobart, Centre for Tasmanian Historical Studies, 2001), 122-123.

¹²⁷⁰ S. Petrow, ‘Indulgences of the Crown: Hobart and the Port Arthur Ticket-of-Leavers in 1861’, *Tasmanian Historical Research Association*, Vol. 39/1, (1992), 50-1.

¹²⁷¹ Braithwaite’s main analysis rests on Heimer and Straffen’s research, which uses labelling theory to demonstrate that ‘reintegration and procedural fairness are found to arise in conditions where the powerful are dependent on the deviant’. Braithwaite, ‘Crime in a Convict Republic’, 11.

Scandal and gossip: popular newspapers and the formation of popular opinion

Unfortunately for these former Port Arthur men, they were emancipated in the middle of the nineteenth century, which McKenzie argues was a time of rapid social change in those British colonies founded on unfree labour when ‘the division between the respectable and disreputable was becoming increasingly stark’, a division elaborated and enforced by ‘practices of exclusion’.¹²⁷² Battles over status, nurtured by scandal and gossip, informed every aspect of public and private life of such colonies, and the popular press plunged eagerly into the fray.¹²⁷³ Tasmanian newspapers played a crucial role in feeding the fears and prejudices of a social audience that was already sensitive to slurs on its own fragile reputation for respectability and hostile to convicts, thus reinforcing barriers to desistance.¹²⁷⁴ They also contributed to the convict’s own assessment of his identity as an essentially deviant person, thus embedding him ever more deeply into convict subculture and its oppositional behaviours.¹²⁷⁵ As Sir Francis Smith judged Hayes and Cobbett, so the judiciary from country magistrates up to the Chief Justice frequently made highly prejudicial remarks from the bench about the convicts who appeared before them. Court reporters reproduced what I assume was at least the gist of these remarks in the newspapers, to alert the community to what Rowbotham called ‘the degree of blame and shame they needed to affix to the defendant’.¹²⁷⁶ David Nash found that this stigmatising shaming became ‘a trope central to entertainment and for constructing the uncivilised other’.¹²⁷⁷

¹²⁷² McKenzie, *Scandal In The Colonies*, 5.

¹²⁷³ McKenzie, *Scandal In The Colonies*, 6. According to Rowbotham and Stevenson, the Victorians regarded the newspapers as ‘crucial in promoting and mediating mass consent to the operation of the legal system and the accompanying sociocultural processes of identifying and punishing transgressors’. J. Rowbotham and K. Stevenson, ‘Introduction’, *Criminal Conversations: Victorian Crimes, Social Panic And Moral Outrage*, (Ohio: Ohio State University, 2005), xxiii.

¹²⁷⁴ Paternoster and Iovanni, ‘The Labeling [sic] Perspective and Delinquency’, 174-5.

¹²⁷⁵ Among similarly marginalised Aboriginal people, ‘The awareness of the disapproval of the whites is accompanied by defiant refusal to comply with their judgements or even to pay lip service to their standards’. G.K. Cowlshaw, ‘The materials for identity construction’, 95.

¹²⁷⁶ Rowbotham, ‘The Shifting nature of shame’, 74.

¹²⁷⁷ D. Nash, ‘Towards an agenda for the wider study of shame: theorising from nineteenth century British evidence’, in Rowbotham, Muravyeva and D. Nash (eds.), *Shame, Blame And Culpability*, 47, 51.

The power of the press to arouse community fear and revulsion was amply demonstrated in its reporting of the 1883 murder of a constable at Campbelltown by James Connolly, an old man who seemed to be at least temporarily insane. It was reported in papers both north and south in grisly detail, making rich fodder for alarmist rumour-mongering as ‘Groups of men and women assembled at the street corners, and made the terrible tidings the one topic of conversation’.¹²⁷⁸ Three hundred people later assembled to see Connolly brought by train to Launceston to stand trial.¹²⁷⁹ Although Justice Dobson decided that the death of the constable at Connolly’s hand was in fact caused by a combination of Connolly’s mental illness and the constable’s striking him on the head, ‘*in revenge for which he struck the constable down with an axe*’, the reporter editorialised in white heat, italicising the Judge’s finding for effect: ‘We have italicised these words, as they appear to express an opinion that the Premier entertains the idea that killing a man in revenge is not murder according to law. The police records show that Connolly is now undergoing his seventh sentence: the terms for the previous six range up to about 12 years’.¹²⁸⁰ The jury agreed and found old Connolly guilty of murder. In another case, the horrified public was informed that the bolter James Geary had threatened to split a constable’s skull with his spade.¹²⁸¹

In looking closely at these newspaper accounts we see a focus on certain offences, particularly crimes involving sex and/or violence, and the punishment meted out to those found guilty reveals the age’s consensus on what constituted acceptable social behaviour – and what did not. Stuart Hall, Chas Critcher, Tony Jefferson, John Clark and Brian Roberts referred to this as the ‘*dramatised symbolic reassertion*’ [their italics] of those values.¹²⁸² As they argued, what is presented as ‘news’ and the way in which it is

¹²⁷⁸ *Mercury*, 20 February 1883, 3.

¹²⁷⁹ *Mercury*, 21 February 1883, 3.

¹²⁸⁰ Acting on the jury’s finding and ‘from no choice or option of his own’, Dobson reluctantly sentenced Connolly to hang: the sentence was commuted to life imprisonment. *Mercury*, 6 April 1883, 3. Although Connolly had one previous offence for assault and robbery, his other convictions were for larceny and a homosexual act with another adult. *Launceston Examiner*, 5 September 1883, 2.

¹²⁸¹ *Mercury*, 9 May 1870, 2.

¹²⁸² S. Hall, C. Critcher, T. Jefferson, J. Clarke and B. Roberts, *Policing The Crisis: Mugging, The State, And Law And Order*, (London: Macmillan Press, 1982), 66.

presented, does not depict some objective reality, but is socially constructed.¹²⁸³

Although each newspaper may have had a different reading audience, they framed their reportage within a ‘consensus of values’ based on a broad spectrum of ‘reasonable men’.¹²⁸⁴ The media may also set the agenda for public discourse: when a range of media publicised a particular issue in consistent terms, in this case the threat represented by convicts, it conferred upon that threat a generalized sense of urgent significance.¹²⁸⁵ In using specific language and pre-determined frames of reference, the media alerted the reader to what to think and how to feel.

Rowbotham *et al* discussed the particular codes of presentation and representation that were used to report offences in nineteenth century newspapers. They fuelled a generalised ‘moral panic’, a sense of the fragility of social cohesion and stability.¹²⁸⁶ Thus the perpetrator of a specific, localised offence became a generalised threat. He becomes a member of Taylor’s ‘alien group, beyond the bounds of respectable society, that not only contains threatening and dysfunctional individuals but which brings into question both fundamental social institutions [and] the wider codes of behaviour that bind society together’.¹²⁸⁷ The identity of the members of this group is formed by a process called ‘Othering’, in which ‘people differentiate In-Group from Out-Group and the Self from the Other, in such a way as to reinforce and protect the Self’.¹²⁸⁸

Goffman argued that, ‘the character of any individual is inferred from who that person is seen spending time with, the assumption being that “he is what others are”...Part and parcel of “who” one is, is “where” one is’.¹²⁸⁹ Many newspaper reports described ex-convicts meeting each other at seedy pubs, indulging in anti-social behaviours like

¹²⁸³ Hall *et al*, *Policing The Crisis*, 59-60.

¹²⁸⁴ Hall *et al*, *Policing The Crisis*, 61.

¹²⁸⁵ Hall *et al*, *Policing The Crisis*, 62.

¹²⁸⁶ Rowbotham and Stevenson, *Criminal Conversations*, xxviii-xix.

¹²⁸⁷ D. Taylor, ‘Beyond the Bounds of Respectable Society: The Dangerous Classes in Victorian and Edwardian England’, in Rowbotham and Stevenson, *Criminal Conversations*, 3.

¹²⁸⁸ F. Dervin, ‘Cultural identity, representation and othering’, in J. Jackson (ed.), *The Routledge Handbook Of Language And Intercultural Communication*, (Oxford: Routledge, 2012), 187.

¹²⁸⁹ S. Farrall, ‘On the Existential Aspects of Desistance from Crime’, *Symbolic Interaction*, Vol. 28/3, (2005): doi:10.1525/is.2005.29.3.367, viewed 23 February 2015.

gambling, fighting and excessive drinking together and then going on to commit a crime.¹²⁹⁰ This communal flouting of the codes of behaviour of respectable society allowed the world to form an unfavourable judgement of emancipists as a class. Sir Francis Smith both reflected and confirmed that judgement by describing William Hayes and Richard Cobbett as ‘two old and hardened offenders [who] belonged to that class, if there were such a class, that might be called incorrigible’.¹²⁹¹ Reportage frequently gave the impression that this class of incorrigibles committed all the crime in the colony. While largely true statistically, most of the ‘crime’ they committed was trivial and either victimless, (like drinking or urinating in the street) or against members of their own class (fighting or petty theft), so they were hardly a generalised threat.¹²⁹²

Its effect, however, was to promulgate the idea of the bogeymen who represented a perpetual threat to mainstream society and so could never be accepted into it.¹²⁹³ Irwin argues that ‘the myth of the bogeyman has its most profound influence in societies passing through uncertain times’.¹²⁹⁴ Uncertainty was undoubtedly a feature of nineteenth century life in Van Diemen’s Land/Tasmania, as the colony transitioned from an imperial convict prison to a self-governing free society, weathering severe economic crises on the way. As Michael Roe argued, this free society was composed of immigrants who were seeking to better themselves, and who were unprepared to tolerate those did not subscribe to their values.¹²⁹⁵

¹²⁹⁰ With rich hypocrisy, by the 1840s the colonial government was so dependent on the revenue from liquor imports that it tolerated, and even encouraged, heavy drinking. J. Boyce, *Van Diemen’s Land*, (Melbourne: Black Inc., 2008), 220.

¹²⁹¹ *Mercury*, 4 March 1869, 2.

¹²⁹² The ‘Return of the persons convicted in the Supreme Court during 1850 to 1859, distinguishing those who appear always to have been free’ found that, of the 907 men convicted in that decade, only 89 or not quite ten per cent did not have a previous conviction. *House of Assembly Journals*, 1860, Vol. V, Paper 107. In contrast, in Western Australia men holding either a conditional pardon or a ticket-of-leave committed 63.5 per cent of offences in 1854. B. Godfrey and D.J. Cox, “‘The Last Fleet’: Crime, Reformation and Punishment in Western Australia after 1868”, *The Australian And New Zealand Journal Of Criminology*, Vol. 41/2, (2008), 244.

¹²⁹³ Maruna, *Making Good*, 5.

¹²⁹⁴ J. Irwin, ‘The Return of the Bogeyman’, Keynote lecture at the meeting of the American Society of Criminology, 1985, in Maruna, *Making Good*, 5.

¹²⁹⁵ M. Roe, *Quest For Authority In Eastern Australia 1835-51*, (Melbourne: Melbourne University Press, 1965), 1-6, 184-206.

There is ample evidence that justice was not ‘procedurally fair’ and did not function as Braithwaite, Godfrey and Cox’s instrument of reintegration. On a number of occasions judges gave out sentences that, in contravention of accepted legal practice, were calibrated not by what the prisoner *did* on this occasion, but by what the judge/magistrate thinks that he *is* and will always be, and by society’s need to quarantine him from the law-abiding majority.¹²⁹⁶ Magistrate William Tarleton agreed that ‘a large proportion of crime is committed by prisoners of that class [i.e. emancipists]’ and added that, after he had seen their police character, ‘if I find the character a bad one, I consider it my duty to send the prisoner back to Port Arthur’. This was apparently his practice no matter how trivial the charge against the unfortunate offender. He continued: ‘I find them utterly unfit to be at large in society. They have proved themselves to be incorrigible’.¹²⁹⁷ In sentencing an old man, James Harper, for throwing a bucket at a warder in the Hobart Gaol, the magistrate summed up: ‘It was evident that the prisoner was a dangerous character, and he would, perhaps, end by committing murder if he was not checked’ To contain ‘his violent tendencies’ the magistrate sentenced him to twelve months at Port Arthur.¹²⁹⁸ When James Foley and Robert Seward came up before Sir Francis Smith for larceny, His Honour declared that, as their records showed that ‘they had been convicted many times, under these circumstances he was determined to place them out of the reach of committing further larcenies’, and gave them twice the prescribed sentence, eight years.¹²⁹⁹ After this gross injustice, Foley’s offending accelerated. Having had five criminal offences and two offences against regulations in the previous 12 years, in the next seven years he accumulated seven criminal offences and seven offences against regulations.¹³⁰⁰

¹²⁹⁶ In contrast, magistrates in the same period in Western Australia focused ‘on the crime that had been committed rather than the offender who had committed it and his criminal career’. In comparison with Tasmania, penalties were lenient and rarely custodial, reflecting the colony’s on-going labour needs. In Tasmania, terms of imprisonment were used to manage a glut of labour for much of this period. Godfrey and Cox, “‘The Last Fleet’”, 243.

¹²⁹⁷ ‘Select Committee Report on the system under which convicts are discharged from Port Arthur’, 13-14.

¹²⁹⁸ *Mercury*, 15 August 1873, 2.

¹²⁹⁹ *Cornwall Chronicle*, 9 September 1865, 3.

¹³⁰⁰ CON33/1/109, page 103; CON37/1/10, page 248, Tasmanian Archive and Heritage Office (TAHO).

Peter Killeen received seven years for assault and robbery, the judge describing him as a man ‘who had always followed a career of crime’: in fact, in his 34 years in the colony, he had only four convictions recorded against him, two of which were for vagrancy.¹³⁰¹ ‘From his antecedents’, fumed Chief Justice Sir Francis Smith, ‘it was evident that [John Murphy] belonged to that class of persons who would never do any work, that class which was a curse to all society in which they were allowed to mix’.¹³⁰² Murphy had only one previous conviction in Tasmania, for larceny, so such a judgement seems irrationally harsh until we realise that in this instance he was charged with committing an unnatural act, behaviour which inspired general and extreme panic and revulsion.

Sir Francis Smith also informed readers of the *Launceston Examiner* that Thomas Jackson ‘had been a garrotter in England’.¹³⁰³ This was a reference to the ‘garrotting panics’ of the 1850s and 1862, in which a spate of particularly violent street robberies had ‘sent ripples of fear throughout the country’.¹³⁰⁴ Jackson’s reputation was thus publicly and permanently destroyed and he was given a sentence commensurate with his villainy, twelve years at Port Arthur: in fact, he was transported in 1841 for stealing.¹³⁰⁵

Various code words were used to inform the reader that a man had a record. He might be described as a ‘bad character’ or a ‘very bad character’ or ‘an old offender’.¹³⁰⁶ Other code words stressed a man’s reputation as a habitual offender, as in ‘a notorious thief’, ‘a noted gaol bird’ ‘a notorious vagabond’, a ‘notorious offender’.¹³⁰⁷ Often this negative

¹³⁰¹ *Mercury*, 11 March 1876, 3.

¹³⁰² *Mercury*, 6 July March 1870, 2.

¹³⁰³ *Launceston Examiner*, 21 April 1863, 2.

¹³⁰⁴ C. Emsley, *Crime And Society In England 1750-1900*, (Harlow: Person Longman, 3rd edition, 2005), 35-6.

¹³⁰⁵ CON33/1/10, page 115, TAHO.

¹³⁰⁶ James Thomas, *Mercury*, 14 December 1870, 2: Michael Gilmore, *Launceston Examiner*, 28 August 1869, 2S: John Moran, *Launceston Examiner*, 16 May 1881, 3. John Barnes’ character was ‘very far from good’, *Mercury*, 28 January 1864, 2: Michael Gilmore, *Mercury* 28 October 1869, 2 and 18 May 1886, 2: Emmanuel Blore, *Mercury*, 18 May 1876, 2: Luke Marshall, *Mercury*, 13 January 1874, 2:

¹³⁰⁷ Edward Ray, *Launceston Examiner*, 2 September 1869, 2: Stephen Kelly, *Launceston Examiner*, 5 March 1870, 3: James Geary, *Mercury*, 28 November 1882, 2: George Nutt, *Mercury*, 27 August, 1875, 2. To underscore the threat that he represented, Nutt was also described as ‘a very notorious vagabond and absconder’. *Cornwall Chronicle*, 6 March 1879, 2.

summary of the man's character was amplified by references to his past record, frequently itemised at sentencing to give the impression that the man was a hardened criminal, an on-going danger to the public.¹³⁰⁸ Even the use of the label 'offender' and 'thief', as Shadd Maruna observed, not only describes what a man has done but also connotes what he is likely to do in the future, denying the possibility of desistance.¹³⁰⁹ A lurid account of a man's criminal past was also occasionally enhanced by a description of his alleged appearance, invariably brutish and menacing. George Nutt was 'a desperate character ... a stout, thickset, desperate looking man, who would be an ugly customer to deal with in a personal encounter', while Thomas Jackson's right arm 'terminated in an iron hook' — details calculated to sway the opinion of the reader.¹³¹⁰

Reportage often gave the impression that the colony was in immediate danger, not just from the odd 'old offender' but also from groups of these men of whom he was merely a representative. Henry Singleton, 'a desperate and determined character', had committed many robberies in company with 'his mates'.¹³¹¹ Joseph Walmsley was 'a cunning thief and vagabond ... one of the worst characters in the colony' and, in case readers were insufficiently alarmed, another reporter informed them that Walmsley was a 'full blown criminal ... one of the most notoriously bad characters in the colony'.¹³¹² The native born were not exempt from such generalising castigation: our old friend Sir Francis Smith lamented that sixteen year old James Calhoun, already with four minor convictions under his belt and clearly embarked on a life of crime, was a deplorable example of 'so many of the young natives of the colony' with whom he had to deal.¹³¹³

¹³⁰⁸ In the case of John Moran, 'no less than five convictions for robbery were proved against him, he being a ticket-of-leave man when he was convicted in 1862. *Launceston Examiner*, 16 May 1881, 3. James Thomas 'bore a very bad character, and had but recently been released from a long sentence at Port Arthur for stealing two watches and burglariously entering premises'. *Mercury*, 14 December 1870, 2. Edward Ray 'only came out of gaol on Monday last, after doing a sentence of eighteen months'. *Launceston Examiner*, 2 September 1869, 2.

¹³⁰⁹ Maruna, *Making Good*, 5.

¹³¹⁰ *Mercury*, 4 March 1870, 2: Jackson had been a soldier and had presumably lost his arm in the service of King and Country. *Launceston Examiner*, 21 April 1863, 2.

¹³¹¹ *Launceston Examiner* 31 May 1873, 5.

¹³¹² *Launceston Examiner*, 7 April 1859, 4; *Mercury*, 27 August 1872, 2.

¹³¹³ *Mercury*, 25 November 1869, 2.

Adding to the general sense of anxiety among respectable folk, such men also seemed to be constantly escaping from supposedly secure institutions, often with other men like themselves, to terrorise law-abiding citizens. Patrick Grant ‘one of the Port Arthur monsters ... has been illegally at large for the past eighteen months in opposition to the wish of the people and their Parliament’, during which time he was accused of sexually assaulting an eight-year-old boy.¹³¹⁴ When John Donovan and twenty of his mates failed to find redress through the prescribed official channels for the cut in their rations, they escaped from the probation party at Deloraine and attacked and plundered Thomas Limeburner’s house near Westbury. Seventeen of them were condemned to death. The Attorney General Thomas Horne’s customary ‘kindness and benevolence’ seemed to have deserted him on this occasion, perhaps overpowered by community expectations.¹³¹⁵ He certainly earned extravagant praise from the reporter for ‘the acute, equitable, and able manner in which he adjudicated in this extraordinary and complicated case.’¹³¹⁶ John Doran and Hugh McCallum had escaped from the Penal Establishment at Launceston before they broke into a house and stole numerous items. Constable Lennox took his life in his hands during their recapture, since ‘it was a dark night, and he had three men to contend against, one of whom was armed with a plough-share’.¹³¹⁷

In the case of Denis Doherty, the reporter fulminated, ‘The history of the prisoner is that of a hundred other men who are at present at large in this island. His career has been one of unrelenting warfare against his fellow men’. He went on to present the reader with Doherty’s entire record, which certainly made alarming reading, estimated the cost of his trial at £500, informed the reader that Doherty did not fear death provided that it came swiftly after the trial, and opined that Doherty was a monster. In case the reader was not yet horrified enough, he concluded ‘So long as such characters as Doherty are permitted by the government to be let loose upon the community, so long will crime stalk abroad, in a great measure, unpunished, and the inhabitants be exposed to assaults of this kind

¹³¹⁴ *Cornwall Chronicle*, 28 August 1861, 4.

¹³¹⁵ Horne’s work as a judge was considered ‘competent and painstaking’. M. Nicholls, ‘Thomas Horne 1800-1870’, *Australian Dictionary Of Biography*, Vol. 4, (1972), <http://adb.anu.edu.au/biography/horne-thomas-3798>, viewed 23 June 2015.

¹³¹⁶ *Cornwall Chronicle*, 10 January 1846, 24.

¹³¹⁷ *Cornwall Chronicle*, 23 July 1864, 5.

without hope of redress'.¹³¹⁸ The emancipist's ingenuity and cunning rendered him especially dangerous: Henry Singleton was found 'trying to pick the lock of his cell with a piece of wire taken from the rim of a tin plate on which he had his dinner', while George Brown, well known as 'a daring burglar ... was a very cunning character, never being seen in the day time, but confining his operations to the hours of darkness'.¹³¹⁹

Many crimes were dramatised with alarmist headlines, usually shouted in capitals, 'to underscore the gravity of the crime and provide a cue to the reader'.¹³²⁰ The account of Emmanuel Piper's alleged assault on a little girl was headlined 'ATROCIOUS CONDUCT'.¹³²¹ Charles Rosetta assaulted his wife in a case of 'DISGRACEFUL ASSAULT'.¹³²² When Henry Singleton was arrested the headline screamed 'CAPTURE OF A COUPLE OF DESPERADOES!'.¹³²³ A drunken Alfred Maldon apparently accidentally shot a constable in the heat of a street brawl, but the act was described as a 'DIABOLICAL AND COWARDLY OUTRAGE: CONSTABLE SHOT IN THE EXECUTION OF HIS DUTY!'.¹³²⁴ 'A MOST DARING ATTEMPT' to escape from Launceston Gaol by John Barnes and a group of his mates who were destined for Port Arthur was narrowly averted, the reporter no doubt sending a delicious shiver down his reader's spine as he concluded that 'it is impossible to imagine what the result would have been had these twelve or thirteen determined ruffians got their liberty ...'.¹³²⁵ Hall *et al* described this kind of editorialising as 'campaigning', when the writer directs the populace in what they are supposed to think, and seeks to persuade them that the strongest possible measures should be taken to counter these threats.¹³²⁶

Sexual crimes produced the most lurid reports, since the Molesworth Committee had raised the ghastly spectre of the sexual and moral depravity of abuses perpetrated against

¹³¹⁸ *Mercury*, 28 July 1857, 3.

¹³¹⁹ *Launceston Examiner*, 31 May 1873, 3; *Launceston Examiner*, 20 July 1869, 3.

¹³²⁰ Rowbotham and Stevenson, *Criminal Conversations*, xxvi.

¹³²¹ *Cornwall Chronicle*, 27 September 1865, 5.

¹³²² *Launceston Examiner*, 12 February 1857, 3.

¹³²³ *Mercury*, 29 May 1873, 2.

¹³²⁴ Maldon claimed that the shooting was an accident. *Mercury*, 28 April 1862, 2.

¹³²⁵ *Launceston Examiner*, 18 February 1864, 5.

¹³²⁶ Hall *et al*, *Policing The Crisis*, 63.

children by convicts.¹³²⁷ Ephraim Booth sexually abused a little girl who had been left with an older sister while her parents went to work in the bush. The judge sounded a stern warning for every parent in the colony: ‘And more so is it dreadful when one looks around at the position of female children in this colony, living in the bush, and the parents obliged to work are continually taken away from them, and they are left quite unprotected’.¹³²⁸ Under the standards of the day, many sexual offences could not be described in the newspapers. The concealment of details allowed vivid imaginations to conjure up all kinds of unspeakable horrors. Escapee Patrick Grant ‘has been committed for trial for an unmentionable atrocity ... [a] monstrous libel upon human nature’, the details of which were ‘far too disgusting to reflect upon, much less to publish’.¹³²⁹ The reporter wondered, and encouraged his revolted reader to wonder:

During that period [while the prisoner was at large] what an extensive crop of the seeds of depravity may not such a fiend have scattered abroad, and left to ripen amongst those he came in contact with? The comparatively innocent may have been contaminated while the evil disposed would be made infinitely worse by association with such a wretch’.¹³³⁰

When Bewley Tuck and John Sullivan stood before the Chief Justice Sir Valentine Fleming accused of an unnatural crime, the most extreme ‘index of moral outrage’ identified by the Molesworth Committee, His Honour described the case as ‘of a nature so revolting and so outraging every feeling of humanity as to preclude comment. The details were too disgusting and loathsome’, and the prisoners ‘were a disgrace to humanity, and had reduced themselves below the level of the brute beast of the field’.¹³³¹ Tuck and Sullivan represented ‘a society beyond the limits of civilisation’.¹³³²

¹³²⁷ McKenzie, *Scandal In The Colonies*, 125, 148.

¹³²⁸ *Launceston Examiner*, 18 February 1868, 3.

¹³²⁹ *Cornwall Chronicle*, 28 August 1861, 4.

¹³³⁰ *Cornwall Chronicle*, 28 August 1861, 4.

¹³³¹ Hall *et al*, *Policing The Crisis*, 63; McKenzie, *Scandal In The Colonies*, 148; *Launceston Examiner*, 8 May 1862, 3.

¹³³² McKenzie, *Scandal In The Colonies*, 148.

But at the same time as it aroused a sense of threat, the reportage also frequently adopted a comic tone, employing elephantine satire to depict the offender as laughingly inept.¹³³³ Was he a real bogeyman or simply a clownish bungler? Joseph Walmsley and an unnamed mate had not been sent to prison, they had ‘found their way to the stone jug’.¹³³⁴ After his sentencing Walmsley, previously described as ‘one of the worst characters in the colony’ was dragged away ‘doing a mingled attempt at roaring and pleading for liberty’.¹³³⁵ Alan Williamson was arrested when Sergeant Green ‘introduced himself to Mr Williamson a short time prior to his intended emigration to the southern end of the island, and interfered with a possible programme of a trip to Fern Tree Bower or to the summit of Mount Wellington by lodging him in the Launceston Gaol’.¹³³⁶ Edward Ray, accused of stealing apples to sell, was sarcastically praised for his ingenuity, since ‘It would appear that Ray, when he found his stock wanted replenishing, resorted to the nearest orchard after dark and assisted himself. This, as the magistrate remarked, was a very profitable way of doing a trade’.¹³³⁷

‘Marked man’ Thomas Moran’s splendid array of tattoos were described as ‘compassionating the extreme stupidity of the constabulary’ by providing a ready means of identification. Images of drinking paraphernalia indicated that ‘he is of a convivial disposition’ and female figures ‘suggest that he was not altogether indifferent to the softer sex’.¹³³⁸ William Adams’ theft of a coat was ‘a smart trick ... but which unfortunately for him did not terminate quite as happily as he desired’.¹³³⁹ ‘Freebooter’ Henry Singleton had accumulated in his cave home in Oatlands, shared with Elizabeth Wilder, a considerable quantity of books. The reporter scoffed: ‘From the foregoing list, it is evident that Singleton is a man of literary tastes, and judging from the presence of his female associate he was determined not to be deprived of the enjoyment of social life’.¹³⁴⁰

¹³³³ Taylor, ‘Beyond the Bounds of Respectable Society’, 7.

¹³³⁴ *Mercury*, 27 August 1872, 2.

¹³³⁵ *Launceston Examiner*, 7 April 1859, 4.

¹³³⁶ *Launceston Examiner*, 21 March 1888, 2.

¹³³⁷ *Launceston Examiner*, 3 April 1882, 3.

¹³³⁸ *Colonial Times*, 26 March 1853, 2.

¹³³⁹ *Launceston Examiner*, 24 October 1882, 2.

¹³⁴⁰ *Mercury*, 5 June 1873, 2.

According to Justice Sir William Dobson, James Geary's theft of a horse was 'a most stupid specimen of stealing on your part'.¹³⁴¹ Serial absconder Michael Gilmore left Port Arthur in a pair of grey trousers that he had ingeniously adapted from his jacket, so that when captured 'he presented to early risers an appearance below the knees just like a bishop ... he will receive the reward of his single-handed industry by being allotted a place in the "Model"'.¹³⁴²

These men carried the burden of exclusion and stigmatisation even after they had served their sentences, through constant harassment by the police, who chivvied them from pillar to post: their difficulty in finding work: their social isolation: and the many short sentences that they served for trivial public order offences like drunkenness. As they grew older and infirm, wandering idly around public places looking and smelling repulsive, the delicate sensibilities of polite society had them shunted off to periodic spells in the Invalid Depots or other charitable institutions. Braithwaite characterised these institutions as supportive of the emancipist, designed to 'requalify its convicts as good citizens', and saw the regime of constant police surveillance and home visitation in the same light.¹³⁴³ The fact, however, that emancipists apparently spent as little time as they could in such institutions, frequently discharging themselves when the weather grew warmer or when seasonal work like fruit-picking was available, seems to prove that they were rather seen as instruments of oppression. By directing their efforts towards frequent arrests for minor or even manufactured offences and intrusive surveillance, the police had done nothing to earn their gratitude or respect. Itinerancy may also have been an attempt to avoid home visitation.

A community apart: the development of the convict sub-culture

For shaming to be an avenue for desistance, Braithwaite argued that it must be 'bounded by ceremonies to reintegrate the offender back into a community of respectable citizens'. It is counterproductive, even 'crime-producing', when it leads to stigmatisation that

¹³⁴¹ *Mercury*, 4 December 1874, 2.

¹³⁴² 'The Model' was Port Arthur's Separate Prison. *Mercury*, 13 October 1874, 3.

¹³⁴³ Braithwaite, 'Crime in a Convict Republic', 36-7.

pushes offenders into the clutches of criminal mates and subcultures.¹³⁴⁴ But membership of the convict sub-culture was a welcome antidote to the rejection of the broader society, providing the ‘supportive deviant audience that makes the actor’s acceptance of a deviance role less isolating, while opening up deviant routines and opportunities’.¹³⁴⁵ The process of gang formation characterised by oppositional culture, identified by Cowlshaw, Bracken *et al* among marginalised Aboriginal Australians and Canadian First Peoples, has also been noted by historians. Rediker described the same kind of bond among eighteenth century seamen, formed in analogous situations of close association, harsh working conditions and capricious authority. In their case,

relationships initiated by the concentration of labor [sic] on the ship were soon transformed by seamen into a new basis for the organization of community ... as a “community apart”, separated from family and church, seafarers forged new social relations. The dangers of their work and their collective need for safety increased and intensified their solidarity ... theirs was a collectivism of necessity.¹³⁴⁶

Rediker went on to argue that not only did such experience create a new cultural context, it acted to strip away the old one, ‘for the imperatives of work and survival left little room for incompatible cultural forms ... attachments to previous ways of life were in crucial ways weakened’. Integration into this new culture ‘helped to create cultural distance between maritime workers and the rest of plebeian culture’.¹³⁴⁷

Whether shaped by the prison, the hulk, the transport, the chain gang, the penal institution or assignment in a rural area, the convict’s life was lived in relative isolation from the wider society, and in close association with criminal others, upon whom he came to depend for friendship and support. Maxwell-Stewart and Dunning found this culture of

¹³⁴⁴ Braithwaite, *Crime, Shame And Reintegration*, 4.

¹³⁴⁵ Paternoster and Iovanni, ‘The Labeling [sic] Perspective and Delinquency’, 174-5.

¹³⁴⁶ M. Rediker, *Between The Devil And The Deep Blue Sea: Merchant Seamen, Pirates, And The Anglo-American Maritime Worlds*, (Cambridge: Cambridge University Press, 1987), 110-11.

¹³⁴⁷ Rediker, *Between The Devil And The Deep Blue Sea*, 202-3.

solidarity among members of a probation gang in Deloraine in 1845¹³⁴⁸, as did Peter MacFie among the men of the Grass Tree Hill road gang.¹³⁴⁹ MacFie suggested that, as the result of their experiences, emancipists were fiercely loyal and clannish, a culture most often identifiable as an opposition to authority.¹³⁵⁰ Braithwaite characterised this culture as ‘a values system that is the inverse of those of the wider society’, including ‘contempt for property and authority, immediate impulse gratification instead of impulse control, apathy instead of ambition, toughness instead of control of aggression’.¹³⁵¹ Its expression is catalogued in the records of each man’s offences where, despite the threat of immediate and harsh punishment, we see insolence, threatening and abusive language, disobedience and blackmarketeering to open organised revolt and violence.¹³⁵²

Like Rediker’s seamen, this sense of separation from, and hostility towards, the wider milieu was reinforced by the corruption, mismanagement, brutal work and harsh disciplinary practices to which ganged men were subjected.¹³⁵³ Reports of floggings revealed the convict sub-culture at work. When William Thompson was flogged in Oatlands in the 1840s, he was exhorted by the men watching to ‘meet it’, to bear his flogging defiantly without crying out.¹³⁵⁴ Superintendent Boyd described such group and individual defiance in action in the face of terrible punishment at the Prisoner’s Barracks in 1847:

It is a practice among convicts of bad character to arrange their dress so as to display a spirit of defiance: for example, their caps...are frequently

¹³⁴⁸ H. Maxwell-Stewart and T. Dunning, ‘Mutiny at Deloraine: Ganging and Convict Resistance in 1840s Van Diemen’s Land’, *Labour History*, Vol. 82, (2002), 41.

¹³⁴⁹ P. MacFie, ‘Dobbers and Cobbers: informers and mateship among convicts, officials and settlers on the Grass Tree Hill Road, Tasmania 1830-1850 [online]. *Tasmanian Historical Research*, Vol. 35/3, (1988), 112-127.

¹³⁵⁰ MacFie, ‘Dobbers and Cobbers’, 123.

¹³⁵¹ Braithwaite, *Crime, Shame And Reintegration*, 22.

¹³⁵² MacFie, ‘Dobbers and Cobbers’, 117-8.

¹³⁵³ Maxwell-Stewart and Dunning, ‘Mutiny at Deloraine’, 41.

¹³⁵⁴ He was so angry at the manner in which he had been flogged that he cursed the flagellator and refused to go to hospital, swearing at the Superintendent, ‘Bugger you and the hospital, I don’t want no hospital!’ for which he found himself returned to the cells. J. Clark (ed.), *The Career Of William Thompson, Convict*, (Hobart: Port Arthur Historic Site Management Authority, 2009), 60.

reversed by them when about to be punished ... Such men are known among their fellows as “flash characters” or, more significantly, as “pebbles”, indicating thereby the callousness of their dispositions.¹³⁵⁵

In all these cases, a sense of shame and contrition, an acknowledgement of the values of the broader society and a consciousness of having violated them, was notably absent.

Whenever the opportunity presented itself, both while they were under sentence and as free men, convict and former convict recreations were those which caused the greatest offence to middle-class values: they included fighting, gambling, dog- and cock-fighting, accompanied by lavish drunkenness and swearing.¹³⁵⁶ As the nineteenth century progressed, and Tasmania was slowly gentrified, ever more determined but ultimately futile efforts were made to stamp out such brutish recreations.¹³⁵⁷ From the late 1830s on it became illegal to play music, sing and dance, play skittles, bowls, ninepins or any game of chance, or to be present while any of these activities were going on in pubs.¹³⁵⁸ The very high number of offences against public order committed by these men – public indecency, drunkenness, fighting, obscene language and behaviour – all proclaimed a defiant inversion of society’s values.

During the trial of the Norfolk island mutineers, the New South Wales Crown Solicitor Justice William Burton found that ‘there has been a system of evil among the prisoners of this island: you have called good, evil and evil, good. Those whom you have called good men, are the worst and most depraved men in the world’.¹³⁵⁹ Just as Cowlshaw’s informants boasted of their offending, so too did Justice Burton’s mutineers.¹³⁶⁰ He found that the chief recreation of these men ‘was the relation of crimes in which they had been engaged, or to which they were privy’. Witness John Jackson told him proudly that

¹³⁵⁵ A.H. Boyd 1847 in GO33/58, 125, TAHO.

¹³⁵⁶ P. MacFie, ‘From prize-fights, poker games, and profanities to ploughing matches and other games: making pastimes respectable in nineteenth century Tasmania’, *Tasmanian Historical Research Association*, Vol. 49/2, (2002), 133.

¹³⁵⁷ MacFie, ‘From prize-fights, poker games, and profanities’, 142, 146.

¹³⁵⁸ Boyce, *Van Diemen’s Land*, 219.

¹³⁵⁹ *Sydney Gazette And New South Wales Advertiser*, 27 September 1834, 2S.

¹³⁶⁰ Cowlshaw, ‘The materials for identity construction’, 94.

in England, ‘he had carried on a system of “Locusing”, i.e. giving travellers laudanum in brandy and water’ and then robbing them when they fell asleep.¹³⁶¹

Convicts in court laughed at, abused and argued with the bench, the police and respectable witnesses and victims, and alleged corruption in the way in which they had been detected, arrested, charged and arraigned. Upon sentence they continued to proclaim their innocence and sometimes cursed the magistrate or judge. This kind of ‘rebellious display of disreputable behaviour’, expressed a ‘defiant refusal to comply with [society’s] judgements or even to pay lip service to their standards’, and ‘an aggressive assertion of low status’, which undoubtedly provided an ‘immediate trigger’ for social disapproval and hostility and served to confirm and reactivate it.¹³⁶² As Bracken *et al* observed, oppositional culture is highly resistant to change, since it is founded in truth. Gangs of young men in Aboriginal Canadian communities do not simply perceive themselves as dispossessed and marginalised, they are in fact dispossessed and marginalised.¹³⁶³ Surely Tasmania’s convicts possessed a similar awareness of their situation.

Like money in the bank: the acquisition of social capital

Bracken *et al* defined social capital as ‘a store of resources in common norms and mutual trust developed across social networks...utilized by individuals to access opportunity and to accomplish social tasks’, and to build networks of trust with those outside the group.¹³⁶⁴ Although it was ‘a critical element in an individual’s desistance’, helping him to overcome the structural constraints that may operate as barriers to this process, they and Vila noted that it ‘is not readily available to marginalised groups’.¹³⁶⁵ These groups, those without social capital, are disproportionately represented in the criminal justice

¹³⁶¹ *Sydney Gazette And New South Wales Advertiser*, 27 September 1834, 1S.

¹³⁶² Cowlshaw, ‘The materials for identity construction’, 94-8.

¹³⁶³ Bracken, Deane and Morrissette, ‘Desistance and social marginalization’, 73-4.

¹³⁶⁴ Bracken, Deane and Morrissette, ‘Desistance and social marginalization’, 75.

¹³⁶⁵ This study seems particularly relevant since convicts, after the effective elimination of Tasmania’s Aboriginal people, occupied the position of most marginalised group in the colony. Bracken, Deane and Morrissette, ‘Desistance and social marginalization’, 62, 64; Vila, ‘A General Paradigm of Criminality’, 277.

system, are more likely to be denied bail, to spend more time in pre-trial detention, to be charged with multiple offences and more than twice as likely to be incarcerated.¹³⁶⁶

The available data illustrates how little social capital these men managed to accumulate throughout their lives. To summarise the results of the analysis from earlier chapters, they came from a social milieu where crime was a norm, and some had followed other family members to the New World at the monarch's pleasure. One third of them had been living away from their native place, and almost all of them also began spending time in prison from a young age, weakening the bonds between themselves and their families, and disrupting employment. Their record of accomplishing social tasks was also poor. Their schooling appears to have been more limited than the men whom Nicholas and Shergold described, equipping them with both an immediate sense of failure and insufficient skills for later success.¹³⁶⁷ They were less skilled, so more likely to be itinerant and frequently unemployed. They were much less likely to marry than either Nicholas and Shergold's or Maxwell-Stewart's samples, and almost all of the relationships that they did manage to establish seemed unstable and did not halt the men's pattern of offending.¹³⁶⁸

By the time they were transported, they already had a higher number of convictions than those men who did not go on to reoffend. As I have demonstrated earlier in this chapter, their networks of trust were built within their own group and rarely intersected with those in society whose stock of social capital was high, unless they offended against them or appeared in front of them in court. The 24 Irish among them were even further disadvantaged economically and socially by the prevailing prejudice against them, their

¹³⁶⁶ Bracken, Deane and Morrissette, 'Desistance and social marginalization', 65.

¹³⁶⁷ Only 38 per cent had a useful level of literacy, as compared to Nicholas and Shergold's figures of 73.7 per cent of the English male convicts and 67 per cent of the Irish transported to New South Wales between 1817 and 1840. Nicholas (ed.), *Convict Workers*, 75, 210 Table A7.

¹³⁶⁸ Only 33.2 per cent of these men described themselves as unskilled workers in comparison with Nicholas and Shergold's 28.5 per cent. Only around 11 per cent of these men married both before and after transportation, in stark contrast to Godfrey *et al*'s 39 per cent¹³⁶⁸ of their sample of habitual criminals in England, and Maxwell-Stewart's almost 26 per cent of his 4 per cent sample of convicts arriving between 1840 and 1853. Another eight per cent formed de facto relationships in the colony. H. Maxwell-Stewart, "'And All My Great Hardships Endured'?" Irish Convicts in Van Diemen's Land' in N. Whelehan, *Beyond The Island: Transnational Perspectives In Modern Irish History*, (London: Routledge, 2014), 13.

low skill levels and the fact that many of them probably spoke only Gaelic.¹³⁶⁹ As a result, they may well have formed a subset within the broader convict sub-culture. Their form of this culture may also have been informed by anti-English prejudice, making them even more truculent and difficult to manage.

The men in this sample were certainly ‘disproportionally represented in the criminal justice system’. While they were said to have been responsible for most of the offences that ended up in court, the police may have found it expeditious to target the vulnerable and friendless ex-convict.¹³⁷⁰ Even if they had not actually committed any crime, the zealous application by police of both the British and Tasmanian Vagrancy Acts was likely to see them sent to gaol for mere suspicion of criminal intent or a trivial offence against public order.¹³⁷¹ While Braithwaite argued that Van Diemen’s Land /Tasmania ‘did not experience high rates of crime overall’, Reynolds showed that, in 1848-9, 93 per cent of the serious crime in Van Diemen’s Land was committed by convicts/emancipists.¹³⁷² In 1866-7 they accounted for 70 per cent, and 44 per cent by 1875.¹³⁷³ On average, the Port Arthur men were convicted of 5.5 offences after they were emancipated for the first time. The 23 Norfolk Island men in this group were convicted of an average of 8.7 offences. Not only did they account for a large proportion of crime in the colony, Table 9.1 demonstrates that, as a group, their rate of offending had gradually increased since their arrival in Van Diemen’s Land, as had the seriousness of their crimes. Many more of their convictions involved violence and offences of a sexual nature than had been the case in Britain and Ireland. Respectable society was not necessarily wrong to fear them.

¹³⁶⁹ Meredith and Oxley, ‘Contracting Convicts’, 61.

¹³⁷⁰ Convicts discharged from Port Arthur were responsible for ‘the whole of the crime of the colony with all its dangers and moral evils together with the enormous cost of restraining and punishing that crime’. ‘Select Committee Report on the system under which convicts are discharged from Port Arthur’, 5-6.

¹³⁷¹ These laws were far more repressive than the English Vagrancy Acts. Boyce, *Van Diemen’s Land*, 218.

¹³⁷² Braithwaite, ‘Crime in a Convict Republic’, 17-18.

¹³⁷³ Reynolds, ‘That hated stain’, 19-31.

Table 9.1 Record of offences of Port Arthur men

Class I: Offences against the Person		Totals	Totals	Totals
		Pre-transp.	Arrival-1865	Post 1865
1. Murder				6
2. Attempted murder				
3. Manslaughter	1	1	3	
4. Rape				7
5. Other offences against females	4	3	7	
6. Abduction				
7. Unnatural offences			5	11
10. Bigamy				
11. Assault, aggravated			5	4
12. Assault, common	12	19	26	
13. Other offences against the person	2	2		
Class II: Offences against Property		Totals	Totals	Totals
14. Burglary	11	16	27	
15. Housebreaking & stealing	19	18	39	
16. Robbery and stealing from the person	34	19	133	
17. Horse-stealing	4	5	3	
18. Cattle-stealing	2	2	4	
19. Sheep-stealing	3	3	8	
20. Embezzlement and stealing by servants	6	3	3	
21. Larceny, other	144	47	210	
22. Unlawfully using horses or cattle				2
23. Unlawfully branding				
24. Receiving	3	8	17	
25. Fraud and false pretenses		6	5	
26. Arson	2			
27. Malicious damage	1	1		
28. Other offences against property	1	1	2	
Class III: Forgery and Offences against the Currency		Totals	Totals	Totals
29. Forgery and uttering forged instruments	2	13	21	
30. Offences in relation to the currency	2	0	0	
Class IV: Offences against Good Order		Totals	Totals	Totals
31. Drunkenness	22	15	10	
32. Drunkenness and disorderly conduct		4	12	

33. Drunkenness, habitual			
34. Obscene, threatening, or abusive language		4	8
35. Vagrancy/idle & disorderly	9	12	81
36. Begging			6
37. Indecent, riotous, or offensive conduct		1	12
38. Other offences against good order	2	3	9

Class V: Offences not Included in Preceding Classes	Totals	Totals	Totals
39. Offences against masters and servants laws	1	1	2
40. Offences against education laws			1
41. Other offences, which included offences against convict discipline; includes absconding, offences against Invalid Dept regs.	1	37	71
42. Desertion	13		
43. Pig-stealing	3	1	1
44. Highway robbery	1	2	
45. Bushranging	2	1	
46. Robbing a dray	2		
47. Fighting	5		1
48. Poaching	3		
49. Administering cantharides to a female	1		
50. Furiously riding	1		
51. Cruelty to animals			4
52. Trespass with intent			13

Hunted to honesty and respectability: narrative theory and identity transformation

In Braithwaite's Australian colonies of the 1830s, convicts behaved well because they had confidence that the law would treat them fairly.¹³⁷⁴ As Ezzy found, 'the past plays a central role in imagining and shaping the present and the future'.¹³⁷⁵ According to

¹³⁷⁴ He gives two examples that may also be read as working against such a comfortable assertion. One man retorted to his master's inquiry as to why he hadn't done his work, 'Do it yourself and be buggered: punish me and be damned'. A young woman sentenced to 30 days upon the complaint of her master turned and spat in his face, and then had some sport with the magistrate, begging him to make it 31 because she was 'very fond of an odd number'. Braithwaite interprets these two acts of defiance, that he calls 'excess assurance', as springing from total confidence in their procedural rights. Could they not also be read as fatalistic defiance? J.B. Hirst, *Convict Society And Its Enemies: A History Of Early New South Wales*, (Sydney: George Allen and Unwin, 1983), n.78, 70-71. Braithwaite, 'Crime in a Convict Republic', 22.

¹³⁷⁵ Ezzy, 'Theorizing Narrative Identity', 250.

Braithwaite's argument, a man whose past experience is of fair treatment will expect it in future and so be more inclined to obey the law. Such a man is able to imagine himself as law-abiding. A man who has only experienced what he perceives to be injustice is unable to reshape his identity to one of compliance with the law. Braithwaite's conclusions are based, however, on a sample of men who had enjoyed the benefits of assignment, which Braithwaite identified as an important precondition for desistance.¹³⁷⁶ Since the vast majority of the men in the Port Arthur photographs arrived too late for assignment, but instead spent their sentences in road gangs and various forms of incarceration under the probation system, they were only too well aware that the system was not 'procedurally fair': they had extensive experience of punishment that was capricious, illegal and disproportionately harsh.¹³⁷⁷

Many had been to Macquarie Harbour and Norfolk Island, where the commandants often ran the stations according to their whims rather than to official regulations, and their records testify to the disproportionate, grossly brutal and often illegal punishments to which their charges had frequently been subjected.¹³⁷⁸ Men living under such regimes lived in constant fear of transgressing against the multifarious trivial rules for which they would be flogged or ironed. When Justice William Burton spoke to the 55 men on Norfolk Island whom he was to try, and to witnesses both for and against the charge of mutiny, he heard testimony to this effect. A mutineer, William Riley, testified that he was 'a short sentence man', a relatively minor offender, but that 'he had been punished severely enough if he had committed murder, he had been flogged for smiling with 100

¹³⁷⁶ Braithwaite, 'Crime in a Convict Republic', 26.

¹³⁷⁷ In the management of ganged labour, see Maxwell-Stewart and Dunning, 'Mutiny at Deloraine', 37,40,42, 44: also C. Pybus and H. Maxwell-Stewart, *American Citizens, British Slaves: Yankee Political Prisoners In An Australian Penal Colony*, (Melbourne: Melbourne University Press, 2002), 120, 124, 126 *et al.* On penal stations, for Macquarie Harbour see H. Maxwell-Stewart, *Closing Hell's Gates: The Death Of A Convict Station*, (Sydney: Allen and Unwin, 2002), 84, 86, 90 *et al.* For Norfolk Island, J. Clay, *Maconochie's Experiment*, (London: John Murray, 2001), 116, 129, 261. The records of all of the men who were sent there bear witness to such extremes of punishment.

¹³⁷⁸ Maxwell-Stewart described it as 'a settlement calculated to produce pain'. Maxwell-Stewart, *Closing Hell's Gates*, 84. For example, at Macquarie Harbour: losing a shirt – 100 lashes: having pilfered potatoes – 75 lashes: stealing tea and plums – 100 lashes. Maxwell-Stewart, *Closing Hell's Gates*, 33, 78-9.

lashes ...¹³⁷⁹ One of the convicts who gave evidence against the mutineers, John Jackson, complained ‘I am in irons: I was not sentenced to work in irons, but I have never been out of irons since I came’.¹³⁸⁰ Several others told Justice Burton that ‘the crimes that had brought them there, were not of a kind that should condemn them to such a state’.¹³⁸¹

While Port Arthur’s regime may not have been as capricious, it offered the unique terror of prolonged periods in the dreaded Separate Prison for infringement of a myriad of pettifogging regulations. William Baker spent six months there for disobedience in refusing to work, and ‘misconduct’ earned John Barnes seven days solitary and three months in the Separate Prison.¹³⁸² Through the court reports in the newspapers, emancipists articulated their understanding that the system that produced such outcomes was unreasonably harsh and not always impartial. They knew that they were being punished immoderately for trivial crimes, felt that their condition in society had given them no choice but to commit crime, and that they were being hounded by authorities that they believed to be corrupt.¹³⁸³ Their identities therefore must have more closely resembled the products of the American slave system, which Braithwaite describes as characterised by a sense of ‘procedural injustice, exclusion and stigmatisation’.¹³⁸⁴

With such low stocks of social capital, and the additional barriers of a labour glut and shortage of women, these men would have found it a huge challenge to achieve any sort of marriage and a job, let alone what Laub calls ‘positive turning points’. He stresses that it is the quality of these bonds that determines a pro-social outcome. A spouse must be non-offending, the relationship must be close and supportive: employment must be

¹³⁷⁹ *Sydney Gazette And New South Wales Advertiser*, 27 September 1834, 1S.

¹³⁸⁰ *Sydney Gazette And New South Wales Advertiser*, 13 September 1834, 1S.

¹³⁸¹ *Sydney Gazette And New South Wales Advertiser*, 27 September 1834, 1S.

¹³⁸² CON33/1/57, page 28; CON33/1/79, page 14, TAHO.

¹³⁸³ See for example George Growsett (*Mercury*, 11 June 1860, 3); John Glen (*Mercury*, 12 July 1877, 2); William Lee (*Cornwall Chronicle*, 9 June 1858, 5); John Finelly (*Cornwall Chronicle*, 18 September 1872, 3); Denis Doherty (*Launceston Examiner*, 2 April 1870, 3).

¹³⁸⁴ Braithwaite, ‘Crime in a Convict Republic’, 20. The gang identity of Cowlshaw’s Aboriginal subjects also lay in contempt for the law as unjust and partisan, and their awareness of their status as marginal. Cowlshaw, ‘The materials for identity construction’, 94.

characterised by ‘job stability, commitment to work and mutual ties binding workers and employers’.¹³⁸⁵ Farrall showed that those who achieve desistance ‘have gone through lengthy periods of rebuilding, remodelling or remaking their own social identities...most always propped up by partners and parents and offspring’.¹³⁸⁶ We know that the vast majority of the very few domestic relationships that have been identified among the Port Arthur men involved women who had also been transported, most of whom continued to offend or be involved in their partner’s offending, and who also exhibited anti-social behaviours like drinking and fighting. Some of them were savagely beaten or murdered by their partners. Other men changed partners, some more than once. Few seem to have had offspring and many of those children followed them into offending.¹³⁸⁷ Support for identity remodelling and desistance for these men seems unlikely to have come from such a turbulent domestic sphere.

Laub also identified negative turning points, particularly ‘prolonged incarceration, heavy drinking and job instability’.¹³⁸⁸ For these men, incarceration was frequent, and often prolonged, leading to some of them spending almost their entire lives in prison. Judging by the frequency with which these men were sacked or left employment (often after robbing their master), or found employment difficult if not impossible to obtain, the kind of rewarding, secure employment that promoted desistance was not their experience.¹³⁸⁹ Farrall and Calverley believed that, for the would-be desister, ‘the most dangerous places are public houses’, but they were the heartland of convict sub-culture.¹³⁹⁰

¹³⁸⁵ Laub, ‘Crime in the Making’ 246, 248.

¹³⁸⁶ We recall that Laub identifies the non-offending, supportive spouse as a key figure in the emancipist’s struggle towards desistance. Laub, ‘Crime in the Making’, 246, 248. Farrall, ‘On the Existential Aspects of Desistance from Crime’, doi:10.1525/is.2005.29.3.367, viewed 23 February 2015. No such supports were available to most emancipists, and any connections that they did have were also likely to be members of the convict culture.

¹³⁸⁷ See for example Charles Rosetta (*Launceston Examiner*, 12 February 1857, 3): George Langley (*Mercury*, 16 July 1873, 2): George and Catherine Leathley (*Mercury*, 13 December 1865, 3, *passim*): Esther and William Humphries (*Mercury*, 18 September 1861, 2: 3 September 1867, 2): Richard Pinches/Henry Singleton, (*Mercury*, 2 August 1862, 2: 29 May 1873, 2).

¹³⁸⁸ Laub, ‘Crime in the Making’, 246, 248.

¹³⁸⁹ See for example Denis Doherty (*Cornwall Chronicle*, 28 July 1857, 3): Henry Clabby (*Mercury*, 1 December 1871, 2): James Glen (*Mercury*, 12 July 1877, 2): Alan Williamson (*Launceston Examiner*, 27 March 1888, 3).

¹³⁹⁰ Farrall and Calverley, *Understanding Desistance From Crime*, 191.

The power of the pub in supporting convict identity and sub-culture was recognised in Britain by 1872, when the Reverend Hugh Smyth declared to the Leeds Congress of the National Association for the Promotion of Social Science that the recent reform of the Licensing Act was entirely responsible for the reduction of crime in Luton by more than half. This Act punished publicans with the loss of their license should they admit any ‘thieves or imputed thieves’: Smyth crowed that criminals now had no choice but to stay at home or to work. When convicted men begged not to be ‘hunted about’ in this manner Smyth proudly declared that, ‘We are hunting [them] to honesty and respectability’.¹³⁹¹

Even if that had been possible, Smyth may have underestimated the strength of opposition to his plan. Hindmarsh argued that going to the pub and drinking to excess were more than simply custom or lack of alternative opportunities, but were powerful personal and cultural statements. He pointed out that this pattern of behaviour ‘constituted refusal to accept official control over that time convicts had claimed as their own...shared recreational activity promoted a sense of convict identity, of rights and sufferings held in common’.¹³⁹² Hindmarsh also valued places where convicts drank together as ‘gathering places for the expression of dissent’, and this surely was a component in the strong working-class community resistance to the temperance movement in Tasmania at this time.¹³⁹³

Other internal, psychological factors also have a role to play. Some believe that the desire to give up crime is the single most important precondition, but the chief obstacle is the status of the individual recidivist, not only in his own eyes but in the eyes of his associates and, most importantly and relevantly for this study, the criminal justice system. ‘If police refuse to accept that an individual has given up offending, that individual may feel he has

¹³⁹¹ The Reverend Hugh Smyth, *The Extraordinary Decrease Of Crime In Luton And The Action Which Has Produced It*, (London: Leeds Congress of the National Association for the Promotion of Social Science, 1872), 11.

¹³⁹² B. Hindmarsh, ‘Beer and fighting: some aspects of male convict leisure in rural Van Diemen’s Land’, *Journal Of Australian Studies*, Vol. 23/63, (1999), 156.

¹³⁹³ Hindmarsh, ‘Beer and fighting’, 156. The Wapping History Group, *Down Wapping: Hobart’s Vanished Wapping And Old Hobart Districts*, (Hobart: Blubber Head Press, 1988), 124-28.

little to lose from continuing to offend', argued Farrall and Calverley.¹³⁹⁴ In the case of the Tasmanian offender, not only the police but the courts refused to admit the possibility of change and, as we have seen, he derived whatever support he had from the solidarity and loyalty of his criminal associates.¹³⁹⁵ In the absence of any alternative network of support and faced with exclusively negative and destructive assessments of his identity, which he internalized based on his past experience and in the absence of any counterbalancing positive assessments, Ezzy held that the offender would be unable to envision a future without crime and thus be unable to find the strength or the motivation for giving it up.¹³⁹⁶

The importance of hope: strategies for desistance in nineteenth century Tasmania

While not as overtly theorised as the modern studies of recidivism, similar understandings were put to practical work in the nineteenth century, apparently with considerable success. In Victorian England, voluntary agencies associated with the criminal justice system, such as the London Police Court Mission (LCPM), and some sympathetic police and magistrates, offered help based on the concepts of reintegrative shaming and identity transformation. Their ideas, time and money were devoted to helping the individual 'escape from crime'.¹³⁹⁷ They identified a number of the social and cultural factors that promoted reoffending that are also supported by late twentieth-century research, including addiction to strong drink, and seasonal and unskilled work. They encouraged an individual to embrace desistance through the development of a sense of shame: enlisting the support of their community (presumably the respectable portion of it) and of broader society: gaining regular employment: and residence in a law-abiding neighbourhood. But for them, the 'moral driver towards desistance' was hope: a man had to hope that he could change and hope that society would accept him back into the fold.¹³⁹⁸

¹³⁹⁴ Farrall and Calverley, *Understanding Desistance From Crime*, 181.

¹³⁹⁵ Clark (ed.), *William Thompson*, 60: Boyd 1847 in GO33/58, 125, TAHO: MacFie, 'Dobbers and Cobbers', 123.

¹³⁹⁶ D. Ezzy, 'Theorizing Narrative Identity: Symbolic Interaction and Hermeneutics', *The Sociological Quarterly*, Vol. 39, No. 2, 239-52; 241, 246.

¹³⁹⁷ Ezzy, 'Theorizing Narrative Identity', 241, 246: J. Rowbotham, 'Turning away from criminal intent: reflecting on Victorian and Edwardian strategies promoting desistance amongst petty offenders', *Theoretical Criminology*, Vol. 13/1, (2009), 108.

¹³⁹⁸ Rowbotham, 'Turning away from criminal intent', 105, 117.

The LCPM employed an individualised and a structural strategy for identity transformation called ‘personalism ... a morally-inspired approach which was also deeply practically oriented in its focus on the individual’, combined with an emphasis on ‘the community context in which sustained desistance needed to be initiated if it was to be successful’. The development of ‘self-respect [was] seen as crucial in enabling individuals to make permanent desistance choices’.¹³⁹⁹ The LCPM was particularly concerned to persuade the offender and his wife to give up drink, which they believed led to despair and re-offending. They tried to increase home comforts in preparation for the return home, and emphasised marriage as a key factor in promoting ‘a hopeful personal context’. The broader society provided a supportive social context: the middle and upper classes contributed many active philanthropists, and the poor communities from which these offenders came were tightknit and accepting.¹⁴⁰⁰ The society’s annual reports claimed significant success: in 1900, for example, 70 per cent did not reoffend, a result significantly better than that produced by the justice system today.¹⁴⁰¹ Such willing, generous philanthropists and tightknit, accepting working class communities, however, were not generally to be found in Tasmania.

The administrators of the convict system were aware that a transformation of identity, both group and individual, was critical in the process of developing desistance, and they engaged in various attempts at such a transformation. No consideration was given to the structural factors in play, however, and all efforts were directed at the individual, who was seen as the sole author of his failure. The earliest and most obvious strategy was to try to terrorise men into desistance through the threat and delivery of physical pain. This strategy employed physical punishment in repeated and ever-increasing doses. As shown in Table 8.3, on average the convicts photographed at Port Arthur had endured more, and more savage, punishments than those who did not reoffend. Even when compared to those with a record of post-1865 offending, the Port Arthur convicts were more savagely punished.

¹³⁹⁹ Rowbotham, ‘Turning away from criminal intent’, 122-23.

¹⁴⁰⁰ Rowbotham, ‘Turning away from criminal intent’, 119-21.

¹⁴⁰¹ Rowbotham, ‘Turning away from criminal intent’, 122.

Hope, the LCPM's precondition for desistance, was not to be found on Norfolk Island. When Justice Burton talked to a number of the conspirators and the witnesses against them, several men told him what had driven them to such fatal action. Under the brutal regime on the island one said 'Let a man's heart be what it will, when he comes here, his Man's heart is taken from him, and there is given to him the heart of a Beast'.¹⁴⁰² Mutineer Robert Douglas spoke of 'the state of hopelessness and wretchedness of the prisoners'. John Groves was denied speedy death as his means of escape: when he was informed that his death sentence had been commuted to life on Norfolk Island, he wept, saying that 'he deeply regretted [the commutation] as death was far preferable to an existence on that island ...'¹⁴⁰³ When Father William Ullathorne visited Norfolk Island to comfort the Catholic mutineers due for execution, he had to inform the prisoners as to who was reprieved and who was to die: he was shocked to record 'that each man who heard his reprieve wept bitterly, and that each man who heard of his condemnation to death went down on his knees with dry eyes, and thanked God'.¹⁴⁰⁴

It seems that nothing had changed nine years later, when young bushranger and Port Arthur alumnus William Westwood was hanged on Norfolk Island for his role in yet another mutiny. When he was 17 he was transported in 1837 for 14 years for stealing wheat.¹⁴⁰⁵ He had endured nine years of incarceration, long periods in solitary and many floggings for offences that had rapidly escalated in seriousness: he began with absconding and ended with bushranging under arms. Just before his execution for his part in this desperate and doomed mutiny, he penned a deeply moving letter to the Port Arthur chaplain whose kindness had made a deep impression on him. He wrote:

I became a slave and was sent far away from my dear native country ...
for a trifling offence. Since then I have been treated more like a beast

¹⁴⁰² W.W. Burton, *The State Of Religion And Education In New South Wales*, (London: J. Cross, 1840), 258.

¹⁴⁰³ *Sydney Gazette And New South Wales Advertiser*, 27 September 1834, 1S.

¹⁴⁰⁴ *Bendigo Advertiser*, 3 June 1893, 5.

¹⁴⁰⁵ CON35/1/1, page 605, TAHO.

than a man, until nature could bear no more. I was, like many others, driven to despair by the oppressive and tyrannical conduct of those whose duty it was to prevent us from being treated in this way ... the British Government ... continues to carry on a system that has and still continues to ruin the prospects of the souls and bodies of thousands of British subjects ... The spirit of the British law is reformation. Now, years of sad experience should have told them, that instead of reforming the wretched man, under the present system, led by example on the one hand, and driven by despair and tyranny on the other, goes on from bad to worse, till at length he is ruined body and soul ... those that I deprived of life [the overseers] ... inflicted on many a lingering death – for years they have tortured men’s minds as well as bodies, and after years of bodily torture sent them to a premature grave.

For Westwood, his grave would be ‘a haven’, a merciful release from the ‘living death’ of Norfolk Island.¹⁴⁰⁶

Strategies other than physical punishment were arguably more sophisticated psychological attempts at identity transformation. As Maxwell-Stewart and Dunning argued, the convict system aimed to deliberately form and consolidate group identity through the use of ganged labour: this solidarity was created through the practice of stripping each man of his identity, creating not ‘individual bodies, but bodies of men’.¹⁴⁰⁷ While this suited administrative and security purposes in open-air settings like a road gang, it was ultimately counter-productive, for those bodies of men were further alienated and consolidated by harsh treatment. The Separate Prison at Port Arthur worked on identity in a much more ambitious fashion. Its purpose was nothing less than the re-engineering of individual identity from deviant to compliant but, rather than physical pain, it used psychological pain. Each man’s name was replaced by a number, and he was entirely isolated from his fellows. These men were not consolidated but atomised, to

¹⁴⁰⁶ ‘Jackey Jackey’, *Bell’s Life In Sydney And Sporting Reviewer*, 28 November 1846, 1.

¹⁴⁰⁷ Maxwell-Stewart and Dunning, ‘Mutiny at Deloraine’, 41.

make them vulnerable to the influences that were brought to bear on them, of which religion was one of the most important. Chaplains visited each man daily, to encourage him to reflect upon his sins. Prison sermons commonly dwelt on the wickedness of the convicts and threatened them with a certain road to hellfire and damnation if they did not go straight.

The administrators of this system persisted in these strategies for decades, despite the obvious fact that mentally and physically destructive suffering did not apparently render convicts malleable and repentant. Although chaplains boasted that ‘There is nothing easier ... than to move the feelings of prisoners in separation, and to gain control almost over their very wills’, a commission into penal discipline in 1875 found otherwise.¹⁴⁰⁸ It heard from the Port Arthur Station Master George Whittington, who had worked at Port Arthur for nearly 20 years that, ‘I don’t believe in much reform of prisoners, there is little reform in them’, despite the fact that time in the Separate Prison was ‘the most disliked’ form of punishment. Other witnesses also took a dim view of the reformatory effects of incarceration in the Separate Prison. The Anglican Chaplain the Reverend Dr Rowland Hayward concurred, stating that ‘I have seen very few instances of real reformation’. The Medical Officer Dr John Coverdale said that he despaired of reforming the older prisoners, although he held out some hope for the younger men. Hayward and the Civil Commandant and Medical Officer Dr Coverdale agreed that the Separate Prison exerted ‘a decidedly injurious’ effect on the men’s minds. Despite these powerful disincentives to further offending, men chose to continue to offend, Whittington admitting that ‘As a general rule the men don’t like to come back to Port Arthur, but still many have done so’, often after committing crimes with fellow Port Arthur alumni.¹⁴⁰⁹ This surely indicates that both their individual and group identity remained intact and robustly deviant.

¹⁴⁰⁸ C.B. Gibson, *Life Among Convicts*, 2 vols, (London: Hurst and Blackett, 1863), 98, in P. Priestley, *Victorian Prison Lives: English Prison Biography 1830-1914*, (London: Methuen, 1985), 101.

¹⁴⁰⁹ Report of the Commission into Penal Discipline, *House Of Assembly Journals*, 1875, Vol. XX, Paper 49, 6-7.

Bad men or a bad system?

Had the authorities been interested, they might have heard the answer to that question from the convicts' own mouths. After an extension of his sentence that he believed was wholly undeserved, William Thompson declared that 'it was only part of a system which tended rather to discourage than encourage prisoners towards improvement during their imprisonment, and did an incalculable amount of damage among the prison population'.¹⁴¹⁰ Robert Bell, a Norfolk Island mutineer, gave eloquent testimony on this topic. He did not deny that he was guilty of the crime for which he had been transported, but

he spoke with great earnestness upon the hopeless condition of the prisoners on the island, that no reasonable hope was held out that good conduct should ever restore them to civilized society ... it was little wonder that crime should exist and that men so situated would use every means to escape from such a state of misery and wretchedness. He said surely the object of punishment was reformation of the person punished: and without hope of profiting in this life by good conduct, such reformation was not likely to take place, it was more likely that the punished person would sink deeper in crime: and if a man does not reform within a reasonable time, there was no hope that he would ever reform.¹⁴¹¹

A few prominent colonial officials did blame systemic, rather than personal, failure when they addressed the causes of reoffending. They wrote about the causes of crime and recidivism in ways that prefigured the results of modern research. Alexander Maconochie, the remarkable Commandant of Norfolk Island between 1840-43, introduced an enlightened regime based on acceptance, kindness and the engendering of hope. Through his incentive system, men who worked hard and behaved well earned rewards, including a reduction in their sentences. He abolished demeaning and degrading routines and

¹⁴¹⁰ Clark (ed.), *William Thompson*, 136.

¹⁴¹¹ *Sydney Gazette And New South Wales Advertiser*, 27 September 1834, 1S.

frequent and immoderately brutal punishments: flogging and ironed labour became the last resort rather than the first. Maconochie believed that kind and humane treatment ‘inspired confidence’ so that men who had abandoned all hope of leading a better life would see that he had faith in them and so would redouble their efforts at reform. He also stressed the value of education and allowed men occasionally to enjoy freedom of association without restraints. In all his work, he sought to build up what theorists today would call their stock of social capital. Sadly he was removed in 1844 and the former abuses reinstated. The success of his approach may be judged by the fact that, of the 920 men who passed through his hands, only two per cent reoffended in the 12 months after his removal.¹⁴¹²

Such ideas were not unknown at Port Arthur. Before Superintendent James Boyd, former Head Warder at Pentonville and a great fan of the Separate System, had committed Port Arthur to its implementation in the late 1840s, shipwright John Watson had apparently managed to turn around the lives of many of the ‘desperate and dangerous’ men and boys under his charge. While at the Port Arthur Dockyard he said ‘I treated the men like human beings, not like caged beasts’, and he claimed that some of them turned out very well.¹⁴¹³ His successor, David Hoy, adopted a similar approach with similar results. While he was commanding the brig *Frederick* in Macquarie Harbour, it was seized by mutineers, who acknowledged Hoy’s kindness to them by not beating or killing him, but put him ashore with a decent coat and shoes, bandages and two bottles of wine. Of his work at Port Arthur between 1836 and 1848, William Moriarty, Superintendent of Government Vessels and Port Officer in Hobart, praised Hoy for ‘making fair tradesmen out of the boys and men’. Hoy claimed to have played an important role in their reformation, asserting that ‘many of them are now respectable and useful members of Society’. They included Walter Paisley, once an angry, defiant and much punished Point Puer boy, now a successful shipwright.¹⁴¹⁴ The success enjoyed by the

¹⁴¹² Clay, *Maconochie’s Experiment*, 248-9.

¹⁴¹³ ‘The Dockyard Guide’, Port Arthur, http://portarthur.org.au/wp-content/uploads/2015/03/Dockyard_Visitor_Guide1.pdf, viewed 24 July 2015.

¹⁴¹⁴ H. Maxwell-Stewart and S. Hood, *Pack Of Thieves? 52 Port Arthur Lives*, (Port Arthur: Port Arthur Historic Site Management Authority, 2001), 10.

reintegrative strategies implemented by Hoy, Watson, Maconochie and the London Police Court Mission demonstrate Godfrey and Cox's and Braithwaite's point – they work, as stigmatisation does not.

It seems to me that 'bad person vs. bad system' is a false dichotomy. The nineteenth-century vision of convicts, popularised in the work of writers like Mayhew and Dickens, was of a class of professional criminals spawned in the vice-ridden thieves' dens of England's cities, but twenty-first century historians have developed a very different and more nuanced understanding. Extensive quantitative research by Nicholas *et al* demonstrated that the Port Arthur convicts appeared to be merely a subset of the ordinary British working class rather than a special class of professional criminals. If this is true, then we must conclude that some outside factors went to work on these ordinary labourers and mechanics to cause them to be such permanent fixtures in the courts and gaols, and such a source of terror to respectable folk.

What distinguished the 21 per cent of them who became recidivists from the 79 per cent who did not?¹⁴¹⁵ I have argued that specific psychological, economic, sociological and political factors created their deviant identity. Their failure to accumulate much social capital in Britain set them inexorably on the road to recidivism. They were more likely to be unmarried than Godfrey's sample. In comparison to Maxwell-Stewart and Kippen's sample, they had begun their criminal careers when they were considerably younger than the general population. This interrupted schooling and employment led to literacy rates below those found by Nicholas and Shergold in their study of transportation to New South Wales. They were relatively less skilled, meaning that they would likely have found employment difficult to come by and been driven into a peripatetic life, breaking social bonds with those who might have supported and cared for them and making them vulnerable to prosecution and stigmatisation.

¹⁴¹⁵ Maxwell-Stewart and Kippen, "What is a man that is a bolter to do?", 1.

Maxwell-Stewart, Matt Cracknell and Kris Inwood hypothesised that some young men were more likely to end up in court because they were so disadvantaged through poverty as children that they were particularly short. Recent research also indicates that police, prosecutors and magistrates ‘were more likely to ascribe negative character traits to short offenders’, and thus be more likely to convict. In looking at the heights of 1,188 men who had arrived as a convict aged 21-70 and went on to accumulate multiple convictions, Maxwell-Stewart *et al* found that their mean height was 65.05 inches. In contrast, those born in the colony averaged 66.76 inches, while those who arrived free averaged 66.39 inches.¹⁴¹⁶ I was able to find height data for 94 Port Arthur men who arrived aged between 21 and 70. Their mean height was only 63.95, making them even shorter than Maxwell-Stewart and Kippen’s sample. Although this is only a small sample, it suggests that lack of height among this group of men further contributed to stigmatisation and lack of self-esteem, both contributors to deviance.

Once they had arrived in Van Diemen’s Land, these young men were disproportionately employed on hard manual labour projects since they had been provided with few chances to acquire effective skills. As a result they were more vulnerable to prosecution and punishment both by masters and by gang supervisors. The savagery and immoderate nature of this punishment, especially if they were sent to a penal station, brutalised and alienated them. The procedural injustice around who was punished and how they were punished was obvious to them, and would have encouraged an attitude of non-compliance with the law. Once freed, they would have found employment difficult to obtain, and would have again taken to the road. There, poverty, hunger, desperation and alienation made petty thieving an attractive option.

Once they had developed a reputation as an offender, they were subjected to intensive and stigmatising surveillance by police, picked up for mere suspicion and sentenced

¹⁴¹⁶ H. Maxwell-Stewart, M. Cracknell and K. Inwood, ‘Height, Crime and Colonial History’, *Law, Crime And History*, Vol. 5/1, (2015), 38, 40.

to long periods in gaol for minor matters like larceny and public order offences. Employment and any family relationships that they had managed to establish would have been disrupted, possibly destroyed. Eventually they found themselves at Port Arthur, probably more than once, as a result of which they joined that cohort of the famously incorrigible, those bogeymen who struck fear into the hearts of all respectable folk. Each court appearance brought with it a new bout of stigmatising shaming, a reprise of their association with the dreaded Port Arthur and reinforcement of the message that there was no place for them in this New World. This drove them further into the arms of criminal confederates, and deeper into membership of a criminal sub-culture, the very nature of which was shaped by furious defiance of the law and its administrators. It is not surprising that the subjects of these photographs remained outcast until the end of their days.

By then, they had certainly become most people's definition of 'bad men' but, as their personal histories, convict records and their own accounts attest, they had been worked upon from their earliest days by a bad system. As Sir Samuel Romilly pleaded with a recalcitrant House of Commons in 1813, 'cruel punishments have an inevitable tendency to produce cruelty in the people'.¹⁴¹⁷ Robert Bell's testimony in the shadow of the scaffold, and William Westwood's heart-rending account of the 'ruination of [his body and soul]' at the hands of his Norfolk Island tormentors, testify to the tragic futility and catastrophic results of 'hunting men to honesty and respectability'.¹⁴¹⁸

¹⁴¹⁷ Submission by Sir S. Romilly, B. Montague, *The Debate In The House Of Commons, April 5, 1813, Upon Sir Samuel Romilly's Bill On The Sentence For High Treason*, (London: Longman, Hurst, Rees, Orme and Brown, 1813), 41.

¹⁴¹⁸ 'Jackey Jackey', 1. The Reverend Hugh Smyth, *The Extraordinary Decrease Of Crime In Luton*, 11.

CONCLUSION

More than 140 years ago Commandant Adolarius Humphrey Boyd sat about 200 men down, one by one, in his little garden studio in a gaol at the end of the known world. There he recorded a portrait that none of them realised would live forever. While it seems that we will never be certain, it is most likely that these photographs of the last men at Port Arthur were taken as they were being prepared to be shipped off yet again, from the encircling wilderness of southern Tasmania to walled imprisonment in the heart of Hobart Town. These photographs seemed not to have been destined for wide circulation, as was the practice in Britain, Europe and the other Australian colonies, but were adhered to the record that was created for each man once he arrived at Hobart Gaol. Only those men capable of work, and so capable of escape, were immortalised like this. The invalids, lunatics and paupers were warehoused in institutions built for that purpose, and as a result we will never see their faces.

After a lifetime of poverty, deprivation, incarceration and brutal punishment, it is no surprise that the men photographed at Port Arthur had continued to offend once their sentence to transportation had expired. They appear passive, resigned to their fate. They knew that the odds were stacked against them. Upon arrival each of them had been escorted into the presence of a number of clerks and officials, who stripped and interrogated him, and minutely inspected his body: a detailed physical description was then entered into a large ledger in front of them. He was also forced to admit to his record of offences and the offence that had brought him to stand before these representatives of total authority. The process was designed to be intimidating and ‘an utterly humiliating invasion of privacy’.¹⁴¹⁹ As if their sense being tangled in the inescapable clutches of the system was not already sufficiently acute, they knew that as former Port Arthur men they were in the frame for every crime committed in the colony. The police were not highly efficient, but they did not always need to be. Either the local constable in their stamping ground knew them, or they stuck out as new arrivals and immediately aroused suspicion.

¹⁴¹⁹ C. Pybus, and H. Maxwell-Stewart, *American Citizens, British Slaves: Yankee Political Prisoners In An Australian Penal Colony*, (Melbourne: Melbourne University Press, 2002), 68.

Those upon whom they preyed were not inclined to tolerate their petty thefts, and were willing participants in their detection and arrest. And hanging over them was always the Vagrancy Act, under which the mere whiff of suspicion would have them arrested in an instant.

It is too easy to see them as crime statistics, as the passive victims of a cruel fate. But we now know these men better than we did. We know that they had suffered greatly but that not all had been broken. We know that many of them belonged to a sub-culture of men like themselves, who looked after each other and supported each other as best they could, who drank together, robbed together and did time together. They knew that the rest of the world was implacably hostile to them. That world, the tiny world of free Tasmania striving for respectability, had resolutely closed its doors against those upon whose labour their comfort was based, but whose continued existence threatened their pretensions.

The photographs of the Port Arthur convicts played their part in this endeavour. Nothing could be more apt than Scherer's reminder that 'photographs were used to give meaning to political, economic and social understandings, preconceptions and stereotypes' and also served to mould and codify those stereotypes. She described how, in the colonial context, photography was used to 'categorize, define, dominate and sometimes invent, an 'other', and the representation became a form of cultural and legal power'.¹⁴²⁰ Foucault described the objects of discipline as being subjected to 'the fact of being constantly seen, of being always able to be seen, that maintains the disciplined individual in his subjugation'.¹⁴²¹ Although he was talking about the panopticon, he might have been talking about photography. Sontag agreed: she saw that photography 'turns people into objects that can be symbolically possessed'.¹⁴²²

¹⁴²⁰ J.C. Scherer, 'The Photographic Document: Photographs as Primary Data in Anthropological Inquiry', in E. Edwards (ed.), *Anthropology And Photography 1860-1920*, (New Haven and London: Yale University Press, 1992), 33-4.

¹⁴²¹ M. Foucault, *Discipline And Punish: The Birth Of The Prison*, (Middlesex: Penguin, 1975, trans. 1977), 87.

¹⁴²² S. Sontag, *On Photography*, (New York: Penguin, 1977), 14.

Somehow, even those who knew nothing about photography knew this to be true. They understood its power to identify, define and control. Indigenous peoples, when first confronted by a camera, often refused to be photographed. Although the indigenous people of British Guiana, whom Everard Im Thurm tried to photograph in the late nineteenth century, had not read Foucault or Sontag, they believed that to have their photograph taken ‘submitted them spiritually to the power of anyone possessing their picture’.¹⁴²³ It seems that criminals in Britain had also immediately understood and feared it. They distorted their features in front of the camera, avoided gaols where they knew their photograph would be taken, and displayed an almost superstitious reverence for the power of a photograph to throw a noose around them.

Although the men in the Port Arthur photographs had all been transported before the adoption of photography as a tool of criminal surveillance and control, they were familiar with the portrait image as a medium of popular consumption and sensationalism. They had undoubtedly seen the sensationalist penny broadsheets that bore the portraits of notorious criminals, and those transported in the 1840s had possibly also seen the photographic images of convicted persons that began to be circulated by canny commercial photographers. The potential of photography to take a central place in the sphere of mass communication, to make convicted persons notorious, must have been obvious to these men.

Sontag said that ‘Photographs furnish evidence.’¹⁴²⁴ But what evidence do these images furnish today? In their time and place, their subjects were objects of fear and disgust, their images evidence of individual failure and a vicious nature. Today, their meaning has changed: they now provoke our curiosity and pity. Transformed from the repressive sphere to the honorific, now they are evidence of the cruelty and injustice of transportation and its failure to help men like George Brown, Charles Hayes, John Maldon and their fellow Port Arthur convicts to a better life in the new world to which they had been transported. But as they sat before the Commandant to have their

¹⁴²³ D. Tayler, “‘Very Loveable Human Beings’: the Photography of Everard Im Thurm’, 187-92, in E. Edwards (ed.), *Anthropology And Photography 1860-1920*, 189.

¹⁴²⁴ Sontag, *On Photography*, 5.

photographs taken, they could not have known any of that. What they did know was that this scrap of paper would go out into the world as the visible manifestation and proof of their identity as the eternal creatures of Port Arthur in particular and the convict system in general.

In 1882 photographer H. Baden Pritchard wrote after a visit to Pentonville:

Every prisoner is aware that a picture has been taken of him, and he never knows how much this may be the means of bringing him to justice if he relapses once more into evil ways. He is apt to over-estimate rather than under-estimate the power of photography ... ¹⁴²⁵

The anonymous writer who had opposed the introduction of criminal photography had been right to object that, in declaring a man's identity for all time as criminal, he would never be able to live a better life.¹⁴²⁶ Each portrait would not only fix its subject for all time in the public gaze, but would also play a role in shaping his own interior narrative as a social outcast. While the convict system had possessed and abused his mind and his body, the photograph had stolen his soul.

¹⁴²⁵ B. and P. Heathcote, 'The Custodial Photograph', in K. Collins (ed), *Shadow and Substance: Essays On The History Of Photography In Honour Of Heinz K. Hensich*, (Michigan: The Amorphous Institute Press, 1990), 117.

¹⁴²⁶ Anon., 'Photographing Criminals', *The Photographic News*, Vol. 10, (1866), 525.

Appendix 1: Images of men photographed at Port Arthur

Surname on first record	First Name	Other name on cdv	Reconvicted as/also known as	Ship	Where held
Appleby	John			Candahar	NLA P1029/51
Aylward	Phillip			Blenheim 2	QVMAG 1985:P:129
Baker	William			Maria Somes	NLA P1029/51 QVMAG 1985:P:156
Barnes	John			Mayda	QVMAG 1985:P:122
Blanchfield	James			Cornwall	QVMAG 1985:P:117
Blore	Emmanuel		Bloor	Lord Petre	TMAG Q15596
Boardmore	Henry		Brown, Broadmore	Cornwall	QVMAG 1985:P:134
Booth	Ephraim			Lord Auckland	NLA P1029/52 TMAG Q15589
Brady	James			Haversham	TMAG Q15604
Bramall	Henry	Walter Johnson	James Taylor, Walter Johnstone, Bramhall/ Brammall	Asiatic	NLA P1029/26
Brocklehurst	James	Jones	James Jones	Theresa	NLA P1029/27a&b QVMAG 1985:P:81
Brown	George			Maria Somes	NLA P1029/3 PAHS 2004.0002
Brown	John			Lord Lyndoch 1	QVMAG 1985:P:121
Burley	William			Elphinstone	QVMAG 1985:P:74
Burton	Phillip			David Malcolm	TMAG Q15595
Burton	William	Adams	Adams	Lord Auckland	NLA P1029/1;
Cahill	Thomas		John Wilson	Elizabeth & Henry	NLA P1029/56
Calhoun	James			native	NLA P1029/4

Surname on first record	First Name	Other name on cdv	Reconvicted as/also known as	Ship	Where held
Cavanagh Charlton	Henry George			free to colony Blundell	NLA vn3660505 TMAG Q15571
Clabby Clemo	Henry William		Cooper	native Equestrian 3	TMAG Q15600 QVMAG 1985:P:87
Cobbett	Richard		Corbett	York 2	QVMAG 1985:P:93
Connolly	James		Conley	Pestongee Bomanjee 4	QVMAG 1985:P:86 PAHS 998.0690
Conlon	James		Conlan	Hydrabad 3	NLA P1029/5
Cosgrave	Richard	Cocker	Casker/Cosker	London 2	QVMAG 1985:P:124
Curtis	William		John Curtis	Anson 4	QVMAG 1985:P:100
Dawson Doe	William Ephraim		Bowler	Barossa Layton 3	TMAG Q15584 QVMAG 1985:P:66
Doherty	Dennis	Dogherty		Aurora	NLA P1029/7
Donovan	John			Lord Lyndoch	QVMAG 1985:P:112
Doran	John		Charles Knight	Asiatic	NLA P1029/8
Dorman	Archibald	Alfred Doran	Albert Dorman	Blenheim 4	TMAG Q15580 TAHO 30/3257 QVMAG 1985:P:151
Dowling Downes	John Charles			free to colony Rodney 2	TMAG Q15586 NLA P1029/6 QVMAG 1985:P:92 QVMAG 1985:P:161
Dunne	John	Dunn	James Dempsey	Hyderabad 3	TMAG Q15585
Dunn	William			free to colony	QVMAG 1985:P:135 QVMAG 1985:P:137
Ediker	George			Oriental Queen	NLA P1029/67a&b
Evans	Samuel			native	NLAP1029/57

Surname on first record	First Name	Other name on cdv	Reconvicted as/also known as	Ship	Where held
Finelly	John	Finlay	Brown; again as Finlay	Pestongee Bomanjee 3	NLA P1029/58 QVMAG 1985:P:99
Fisher	George		Joseph Fisher	Stratheden	NLA P1029/10 TMAG Q15616
Fitzpatrick	John			Lord Lyndoch 2	TMAG Q15613 NLA P1029/11
Fleming	Thomas		James McGrath; again as James Fleming	St Vincent	QVMAG 1985:P:67 QVMAG 1985:P:169
Foley	James			Lord Dalhousie	QVMAG 1985:P:105
Forster	William			Equestrian 1	NLA P1029/12 QVMAG 1985:P:94 NLA P1029/13 PAHS 3134 [attached to record]
Francis	Thomas			Lady Franklin 4	NLA P1029/14
Funt	John			Hyderabad 3	NLA P1029/15 QVMAG 1985:P:104 QVMAG 1985:P:147
Garfitt	Charles		Garforth	Mount Stewart Elphinstone	QVMAG 1985:P:111
Geary	James		Robert Smith	native	NLA P1029/16
Gilmore	Michael			Prince Regent	NLA P1029/17a&b NLA P1029/18
Glasspoole	George	Glassford or White	White	Marquis of Hastings	TMAG Q15626 PAHS 996.0020.
Gleeson	Cornelius			Lady Montague	TMAG Q15602.1 TMAG Q15602.2
Glen	James		Glenn	Clyde	TMAG Q15574

Surname on first record	First Name	Other name on cdv	Reconvicted as/also known as	Ship	Where held
Gould	John			Marion	QVMAG 1985:P:140 QVMAG 1985:P:88
Grant	Patrick			Emily 2	QVMAG 1985:P:127
Gregson Gregson	Francis John			native native	NLA P1029/19 TMAG Q15577 NLA P1029/20a&b
Griffin Growsett	Thomas George			Rodney 2 Lady Montague	P1029/21 TMAG Q15611 NLA P1029/22 TAHO 30/3258
Hall	William			Maria Somes	NLA P1029/25 QVMAG 1985:P:151
Hand Hansbury	Leonard Martin		Hainsbury	native Rodney 1	NLA P1029/64 QVMAG 1985:P:119 QVMAG 1985:P:141
Harper Harrison	James James			Sir Robert Peel Rodney 1	NLA P1029/23 TMAG Q15603 QVMAG 1985:P:143
Harrison	William			native	TMAG Q15579 NLA P1029/24 PAHS 996.0022
Hayes	William			Asia 1	NLA vn4506214 NLA vn4516219
Hester Heys	Cornelius Charles	Hayes	Ward	Equestrian Moffat 2	TMAG Q15581 NLA 4506217 NLA P1029/46
Hicks Humphreys	Richard William	Humphrie s		Waterlilly Navarino	TMAG Q15607 QVMAG 1985:P:65
Jackson	Thomas			Layton 4	QVMAG 1985:P:114
Jeffries Johnson Johnstone	Henry George Henry	Henry Williams, George Page		Native Oriental Queen Governor Phillip	NLA vn4594564 NLA P1029/59 NLA P1029/48
Jones	John			William Jardine 2	NLA P1029/28

Surname on first record	First Name	Other name on cdv	Reconvicted as/also known as	Ship	Where held
Kellow	William			native	TMAG Q15601
Kelly	Stephen			Louisa	TMAG Q15606
Kennedy	Michael	Dwyer	Dwyer	William Jardine 2	QVMAG 1985:P:82.
Kerswell	John			Cornwall	QVMAG 1985:P:75
Killeen	Peter			Marian Watson	NLA P1029/29 QVMAG 1985:P:174 QVMAG 1985:P:108
Langley	George			John Renwick4	NLA uncatalogued
Langton	John			Maria Somes 2	Private colln.
Leathley	George			Blundel	TMAG Q15588 NLA P1029/68
Lee	William			Gazelle	NLA an- 23792854-v
McAnally	James	McNally		Nile	QVMAG 1985:P:95 QVMAG 1985:P:168
McCallum	Hugh	McCullum		Ratcliffe 2	TMAG Q15609
McDonald	Duncan			Eden 1	NLA P1029/31
McKay	Peter	McKay or Ross	William Ross	Nile	QVMAG 1985:P:96
McKay	Robert			Sir John Byng	NLA P1029/71
Maldon	Alfred			Tamar	TMAG Q15619 PAHS 996.0024
Marsden	William			Palmyra	QVMAG 1985:P:103
Marshall	Luke			John Renwick	NLA P1029/32
Martin	James			Lord Petre	TAHO 30/2023 TMAG Q15614
Mayne	John	Cornelius		native	TMAG Q15599 B Rieusset
Killeen	Peter			Marian Watson	NLA P1029/29 QVMAG 1985:P:174 QVMAG 1985:P:108
Langley	George			John Renwick4	NLA uncatalogued
Langton	John			Maria Somes 2	Private colln.
Leathley	George			Blundel	TMAG Q15588 NLA P1029/68
Lee	William			Gazelle	NLA V23792854-

Surname on first record	First Name	Other name on cdv	Reconvicted as/also known as	Ship	Where held
McAnally	James	McNally		Nile	QVMAG 1985:P:95 QVMAG 1985:P:168
McCallum	Hugh	McCullum		Ratcliffe 2	TMAG Q15609
McDonald	Duncan			Eden 1	NLA P1029/31
McKay	Peter	McKay or Ross	William Ross	Nile	QVMAG 1985:P:96
McKay Maldon	Robert Alfred			Sir John Byng Tamar	NLA P1029/71 TMAG Q15619 PAHS 996.0024
Marsden	William			Palmyra	QVMAG 1985:P:103
Marshall	Luke			John Renwick	NLA P1029/32
Martin	James			Lord Petre	TAHO 30/2023 TMAG Q15614
Mayne	John	Cornelius		native	TMAG Q15599 B Rieusset
Meagher	William		Meaghers	Sir John Byng	PAHS 2004.0005 NLA an23784154-v TMAG Q15587
Merchant	James			Mayda <i>cdv says Maria Somes</i>	
Merchant	John			Neptune 1	NLA P1029/33 QVMAG 1985:P:173 QVMAG 1985:P:72
Molineux	Thomas		Molyneaux	Isabella 2	NLA P1029/34a&b
Mooney	Peter			Henrietta	PAHS 2004.0003
Moran	John			Lady Franklin	TMAG Q15582 NLA P1029/35 PAHS 996.0019
Moran	Thomas	Kelly	Kelly	London 2	QVMAG 1985:P:128 NLA P1029/30
Surname on first record	First Name	Other name on cdv	Reconvicted as/also known as	Ship	Where held
Morgan	James			Hyderabad	QVMAG 1985:P:126
Morrison	John F		Morris	Pestongee Bomangee	NLA P1029/36

Surname on first record	First Name	Other name on cdv	Reconvicted as/also known as	Ship	Where held
Mumford	William		Willis	Augusta Jessie	PAHS 2004.0004 NLA P1029/37 QVMAG 1985:P:164
Meagher	William		Meaghers	Sir John Byng	PAHS 2004.0005 NLA an23784154-v TMAG Q15587
Merchant	James			Mayda <i>cdv says Maria Somes</i>	
Merchant	John			Neptune 1	NLA P1029/33 QVMAG 1985:P:173 QVMAG 1985:P:72
Molineux	Thomas		Molyneaux	Isabella 2	NLA P1029/34a&b
Mooney	Peter			Henrietta	PAHS 2004.0003
Moran	John			Lady Franklin	TMAG Q15582 NLA P1029/35 PAHS 996.0019
Moran	Thomas	Kelly	Kelly	London 2	QVMAG 1985:P:128 NLA P1029/30
Morgan	James			Hyderabad	QVMAG 1985:P:126
Morrison	John F		Morris	Pestongee Bomangee	NLA P1029/36
Mumford	William		Willis	Augusta Jessie	PAHS 2004.0004 NLA P1029/37 QVMAG 1985:P:164
Murphy	Daniel			Gazelle	QVMAG 1985:P:148 TMAG Q15605
Murphy	John			Blenheim 4	QVMAG 1985:P:79 NLA P1029/38a & b
Murphy	Michael			Fairlie	QVMAG 1985:P:120
Neale	George	Neill		Asia	QVMAG 1985:P:107

Surname on first record	First Name	Other name on cdv	Reconvicted as/also known as	Ship	Where held
Nestor	John			Hyderabad 1	TMAG Q15610 QVMAG 1985:P:171
Nutt	George	White	White	Fairlie	QVMAG 1985:P:70
O'Brien	John			Lord Auckland 2	QVMAG 1985:P:80
O'Brien	Stephen			Egyptian 2	QVMAG 1985:P:123
Owens	Thomas		Michael Foxley	Gilmore 1	TAHO 30/4113 TMAG Q15575 PAHS 996.0025
Pace	Thomas	Page		Cornwall	QVMAG 1985:P:118
Page	Henry			Phoenix 2	NLA P1029/39 QVMAG 1985:P:172
Page	James			Asia 5	QVMAG 1985:P:110
Paul Perry	Samuel Peter			native Duke of Richmond	NLA vn4727969 QVMAG 1985:P:136
Petts	Charles			Westmoreland	QVMAG 1985:P:76
Phillips	Richard			Atlas	TAHO 30/3259 TMAG Q15618
Pinches	Richard	Henry Singleton alias Richard Pinches	Henry Singleton	Ldy Kennaway 3 <i>cdv says per Lord William Bentinck</i>	QVMAG 1985:P:77 NLA P1029/42
Piper	Emanuel			Dunorlan; free to colony	QVMAG 1985:P:106
Price	William			Triton	TMAG Q15590 NLA P1029/40
Ray	Edward			Palmyra	QVMAG 1985:P:101
Riley Roberts	Thomas Henry	Reilly		Isabella Watson Rodney 2	NLA P1029/41 QVMAG 1985:P:84
Robinson	George			Barossa 1	QVMAG 1985:P:130
Robinson	William			Surrey 4	QVMAG 1985:P:78 QVMAG 1985:P:159

Surname on first record	First Name	Other name on cdv	Reconvicted as/also known as	Ship	Where held
Rogers	James			Lady Montague	TMAG Q15597 PAHS 2002.0010 PAHS 996.0016
Rosetta	Charles			Woodman	QVMAG 1985:P:125 NLA an- 23784263-v
Ryan Ryan Sanders	Thomas William James	Saunders		Oriental Queen Lord Dalhousie John Renwick	TMAG Q15593 TMAG Q15576 QVMAG 1985:P:83
Sanders	Thomas	Saunders		Sir Robert Peel	QVMAG 1985:P:91
Sawyer	William	Sayer		Chapman	TMAG Q15615 PAHS 996.0018
Sewell Smith	William Henry			Siam Rodney 2	TMAG Q15573 TMAG Q15594 TAHO 30/3260 QVMAG 1985:P:155
Smith	Job	Campbell alias Boodle	William Campbell	Sir Robert Peel	TMAG Q15572 NLA P1029/53 TMAG Q15578
Smith	Thomas			John Calvin	TMAG Q15583 TAHO 30/3256
Steventon	Charles		Littleton	David Malcolm	QVMAG 1985:P:116
Thomas Todd	James James			William Jardine Nile	NLA P1029/61 QVMAG 1985:P:98
Toomey Tuck	John Bewley			Ratcliffe (2) Lotus	NLA P1029/44 QVMAG 1985:P:68
Walker	William			Asia 4	QVMAG 1985:P:109;
Walmsley	Joseph			Isabella 2	NLA P1029/45 TMAG Q15598 PAHS 996.0017
Ward West	Charles Robert			Moffatt 2 Gilmore	NLA P1029/46 TMAG Q15591 NLA P1029/69a&b
White	John			Eliza	TMAG Q15612 NLA P1029/47 PAHS 996.0021
Whittaker	William	Baker		St Vincent	TAHO 30/3199

Surname on first record	First Name	Other name on cdv	Reconvicted as/also known as	Ship	Where held
Willham	William		Wilham/ Wellham	Barossa 2	QVMAG 1985:P:85 NLA P1029/70
Williams	John			Tasmania	QVMAG 1985:P:132 Private Colln.
Williamson Willis	Alan George		poss. Wilson, no Willis on this ship. CP on arrival, no further info.	Neptune 2	PAHS 996.0023 TMAG Q15617
Wilson Wood	George Alexander	Woods	White	Lord Lyndoch 3 London	NLA P1029/50 QVMAG 1985:P:97 QVMAG 1985:P:160
Wood	Thomas	or Key		native	TMAG Q15608.1 TMAG Q15608.2
Woodley	John	William Woodley		Moffatt 3	QVMAG 1985:P:133 NLA P1029/54
Wynn	James	Wynne		Barossa 2	TMAG Q15592 NLA P1029/55
Yeomans	William			Bussorah Merchant	QVMAG 1985:P:69 NLA P1029/62

NLA National Library of Australia
PAHSMA Port Arthur Historic Site Management Authority
QVMAG Queen Victoria Museum and Art Gallery
TAHO Tasmanian Archive and Heritage Office
TMAG Tasmanian Museum and Art Gallery

Appendix 2: Master list of men transported to Port Arthur

OCC. = occupation

LIT. = literacy: R = read/W = write/Y = both

M/S = married/single

L/V = local/ vagrant

NAME		OCC.	AGE/ M/S	LIT.	L./ V	CONVICTIONS (starting with transportation offence)
Appleby	John	housepainter/ glazier	22/?	A little	L	burglary/2 previous
Baker	William	farm labourer	23/S	R a little	V	housebreaking & theft/ 1 previous that he denies
Barnes	John	labourer	17/S	A little	V	burglary/1 previous
Blanchfield	James	SOLDIER	29/S	R & W		
Blore	Emmanuel	shoe maker	20/S	R	V	burglary/assault x 2/theft
Boardmore	Henry	potter	32/S	N	V	housebreaking + theft/ 1 previous
Booth	Ephraim	labourer	30/S	N	V	larceny/theft/vagrancy/ fighting
Brady	James	SOLDIER		?		
Bramall	Henry	labourer	16/S	R & W	L	larceny/2 previous
Brockle- hurst	James	silk weaver	22/S	N	V	larceny/1 previous
Brown	John	labourer	?/S	?	V	picking pockets/ not known
Burley	William	groom/ brickmaker	22/S	?	L	stealing/2 previous
Burton	Phillip	labourer	20/S	N	L	burglary + theft/ 1 previous theft
Burton	William	bootmaker	22/S	R & W	L	larceny from the person/ 1 previous
Cahill	Thomas	labourer	12/S	N	V	vagrancy/several previous for theft
Charlton	George	well sinker/ miner	36/S	R	L	burglary + theft (first conviction)
Clemo	William	clockmaker	34/S	R & W	V	burglary + theft/1 previous
Cobbett	Richard	labourer	16/S	?	L	larceny from the person/theft
Conlon	James	labourer	22/S	R a little	L	theft/theft x 2
Connolly	James	labourer/ imperf. baker	22/S	N	V	burglary/theft
Cosgrave	Richard	farm labourer/ mat maker	23/S	A little	L	stole a pig
Curtis	William	house painter	22/S	R & W	V	larceny/1 previous
Dawson	William	groom/ coachman	24/S	R & W	L	stealing/1 previous

NAME		OCC.	AGE/ M/S	LIT.	L./V	CONVICTIONS (starting with transportation offence)
Doe	Ephraim	farm labourer	27/S	?	?V	stealing x3/assault
Doherty	Dennis	SOLDIER	27/S	R		
Donovan	John	SOLDIER	21/S	R & W		
Doran	John	tailor	15/S	R & W	L	larceny/theft x 2/ breaking a window
Dorman	Archibald/ Alfred	labourer	24/S	A little	L	larceny/1 previous
Downes	Charles	farm labourer	31/S	R & W	L	stealing/2 previous
Dunne	John	labourer	22/S	A little	L	theft/no previous known
Ediker	George	kitchen gardener	22/S	A little	L	larceny/3 previous
Finelly	John	farm labourer	24/S	N	V	stealing a cow
Fisher	George	labourer	19/S	R & W	V	burglary/1 previous
Fitzpatrick	John	labourer	21/S	R & W	L	stealing/2 previous
Fleming	Thomas	labourer/ gardener	20/S	A little	V	picking pockets/ x 3/vagrancy
Foley	James	sweep	26/S	N	L	larceny from the person/ 5 previous
Forster	William	farm labourer	17/S	R & W	V	burglary + theft/1 previous: unemployed
Francis	Thomas	labourer	27/S	R & W	L	theft - first offence
Funt	John	labourer	27/S	N	L	stealing/1 previous
Garfitt	Charles	labourer	23/S	R & W	V	Housebreaking/stealing/ theft/breaking a window
Gilmore	Michael	labourer/ carpenter & joiner	20/S	R & W	L	stealing/2 previous
Glasspoole	George	farm labourer	24/S	?	L	stealing a lamb/unknown
Gleeson	Cornelius	seaman	22/S	R & W	L	stealing x 3/vagrancy
Glen	James	SOLDIER	?	?		
Gould	John	shoemaker	30/M	R	L	receiving/ leaving his wife/'idle'
Grant	Patrick	weaver	26/S	N	L	larceny/1 or 2 previous
Griffin	Thomas	farm labourer	23/S	R a little	L	housebreaking + theft/drunkenness/theft
Growsett	George	groom	19/S	R & W	V	arson/refusing to work x 2
Hall	William	engineer/ collier	23/S	R & W	V	stealing
Hansbury	Martin	apprentice tailor	15/S	A little	L	stealing/1 previous

NAME		OCC.	AGE/ M/S	LIT.	L/V	CONVICTIONS (starting with transportation offence)
Harper	James	stonecutter	24/S	N	V	stealing/1 or 2 previous
Harrison	James	plasterer	21/S	A little	L	stealing/1 previous
Hayes	William	splitter	25/?	?	V	stealing shoes/4 previous
Hester	Cornelius	labourer	35/S	R a little	V	robbery with violence
Heys	Charles	labourer	18/S	?	V	stealing/1 previous/ 7 times imprisoned (?)
Hicks	Richard	farm labourer	23/S	?	L	theft
Humphreys	William	gent. servant	17/S	R & W	L	theft/fighting
Jackson	Thomas	silk weaver	27/S	R & W	V	stealing/possibly 2 previous
Johnson	George	labourer	28/S	R & W	L	stealing/stealing/ poaching x 2
Johnson	Henry	labourer/ ploughman	32/S	N	V	horsestealing/stealing plate
Jones	John	labourer	32/S	R & W	L	stealing from the person/house robbery/embezzlement
Kelly	Stephen	labourer	14/sS	?	L	street robbery/ robbery with violence
Kennedy	Michael	tailor	24/S	N	L	assault/unknown
Kerswell	John	plasterer	28/S	R a little	V	stealing from the person
Killeen	Peter	bricklayer	29/S	Y	V	picking pockets
Langley	George	tailor	17/S	Y	L	larceny/embezzlement
Langton	John	labourer/ brushmaker	19/S	Y	L	stealing/stealing/ factory robbery/running from my mother
Leathley	George	blacksmith	25/S	Y	V	horse stealing x 2
Lee	William	SOLDIER	28/S	?		
McAnally	James	labourer	36/S	Y	V	housebreaking, 1st conviction
McCallum	Hugh	house painter	20/S	?	L	theft/2 previous
McDonald	Duncan	gent.servant/ groom/ gardener	26/?	?	?V	attempted rape & assault
McKay	Peter	SOLDIER	31/S	Y		
McKay	Robert	no info	c20/M	?	?L	theft
Marsden	William	striker	25/S	R	V	Housebreaking/stealing/th eftx2/manslaughter
Marshall	Luke	collier	19/S	N	V	theft/leaving my master/theft/vagrancy
Martin	James	SOLDIER	23/S	Y		
Meaghers	William	SOLDIER	?/M	?		
Merchant	James	carpenter/ joiner	22/S	Y	V	arson with intent to cause harm/theft

NAME		OCC.	AGE/ M/S	LIT.	L/V	CONVICTIONS (starting with transportation offence)
Merchant	John	top sawyer	22/M	?	V	theft/theft/fighting
Molineaux	Thomas	spinner	23/M	Y	L	theft/4 or 5 previous/ disorderly conduct
Mooney	Peter	labourer	16/S	N	L	picking pockets/3 previous/gambling
Moran	John	factory worker	15/S	Y	V	robbery
Moran	Thomas	farm labourer	35/M	a little	L	robbery + sheep stealing
Morgan	James	tinker	22/S	N	V	burglary/theft
Morrison	John	gent. servant/ labourer	20/S	Y	V	obtaining money on false pretences
Mumford	William	house servant/ kitchen gardener	20/S	?	V	horse stealing/not known
Murphy	Daniel	SOLDIER	27/S	a little		
Murphy	John	labourer	22/S	N	L	stealing/1 previous
Murphy	Michael	bricklayer	24/S	a little	L	larceny
Neale	George	sweep	19/S	N	L	housebreaking/theft
Nestor	John	SOLDIER	27/S	?		
Nutt	George	apprentice tailor	19/S	a little	L	larceny/2 previous
O'Brien	John	farm labourer	23/S	N	V	larceny
O'Brien	Stephen	labourer	20/S	Y	L	rape
Owens	Thomas	labourer	25/S	?	L	theft/1 previous, poss. attempted rape
Pace	Thomas	miner/ lime burner	35/S	r a little	V	sheep stealing/1 previous
Page	Henry	labourer	24/S	?	?	
Page	James	ploughman	24/S	R	V	stealing/2 previous
Perry	Peter	SOLDIER	34/S	N		
Petts	Charles	horsebreaker	23/S	N	V	housebreaking/poaching
Phillips	Richard	labourer	19/S	?	V	stealing/4 previous unknown
Pinches	Richard	plumber/ glazier	32/S	Y	V	theft/housebreaking/theft
Price	William	rough carpenter	21/S	a little	V	theft/theft
Ray	Edward	labourer	26/S	N	V	stealing clothes x 3
Riley	Thomas	labourer	19/S	Y	V	theft, 2 previous
Roberts	Henry	ostler	28/S	Y	L	receiving/theft
Robinson	George	gent. servant	24/S	Y	L	theft/theft/administering cantharides to female

NAME		OCC.	AGE/ M/S	LIT.	L/V	CONVICTIONS (starting with transportation offence)
Robinson	William	factory boy	21/S	R	V	theft/theft/picking pockets/theft
Rogers	James	lamp maker	27/S	Y	L	theft
Rosetta	Charles	labourer	16/S	?	V	stealing from the person/probably previous
Ryan	Thomas	striker	26/S	r a little	L	stealing from the person/ 1 previous similar
Ryan	William	SOLDIER	35/S	a little		
Sanders	James	collier	20/S	R	V	breaking down door of police station/robbery/ drunkenness x 2/rows x 2/5 previous unknown
Sanders	Thomas	watch finisher	19/S	Y	V	theft
Sawyer	William	shoemaker	?/M	?	L	theft/1 previous
Price	William	rough carpenter	21/S	a little	V	theft/theft
Ray	Edward	labourer	26/S	N	V	stealing clothes x 3
Riley	Thomas	labourer	19/S	Y	V	theft, 2 previous
Roberts	Henry	ostler	28/S	Y	L	receiving/theft
Robinson	George	gent. servant	24/S	Y	L	theft/theft/administering cantharides to female
Robinson	William	factory boy	21/S	R	V	theft/theft/picking pockets/theft
Rogers	James	lamp maker	27/S	Y	L	theft
Rosetta	Charles	labourer	16/S	?	V	stealing from the person/probably previous
Ryan	Thomas	striker	26/S	r a little	L	stealing from the person/ 1 previous similar
Ryan	William	SOLDIER	35/S	a little		
Sanders	James	collier	20/S	R	V	breaking down door of police station/robbery/ drunkenness x 2/rows x 2/5 previous unknown
Sanders	Thomas	watch finisher	19/S	Y	V	theft
Sawyer	William	shoemaker	?/M	?	L	theft/1 previous
Sewell	William	carpenter & joiner	22/?M	?	V	larceny/'known to the police'
Smith	Henry	labourer	21/S	Y	L	picking pockets/1 previous/attempted felony x 4
Smith	Job	labourer	22/S	r a little	L	housebreaking/horse stealing

NAME		OCC.	AGE/ M/S	LIT.	L/V	CONVICTIONS (starting with transportation offence)
Smith	Thomas	poulterer	28/M	Y	V	armed robbery but he says uttering forged note/theft
Steventon	Charles	brushmaker	37/S	R	V	stealing a rabbit/ housebreaking/1 previous
Thomas	James	labourer	48/M	r a little	L	theft/theft
Todd	James	groom	23/S	Y	L	housebreaking + theft/theft
Toomey	John	baker/ confectioner	18/S	?	L	housebreaking + theft/theft
Tuck	Bewley	labourer/ shoemaker	18/S	Y	L	theft/theft
Walker	William	house painter/ glazier	29/M	?	L	housebreaking/not known
Walmsley	Joseph	labourer	14/S	R	V	theft/2 previous
West	Robert	labourer	24/S	?	?	stealing clothes/embezzlement/ vagrancy
White	John	apprentice bricklayer	19/S	N	V	larceny/theft, assault x2
Whittaker	William	farm labourer	28/S	Y	V	larceny/1 previous
Wilham	William	tailor	14/S	Y	L	theft/1 previous
Williamson	Alan	gardener/ land surveyor	20/S	Y	V	forgery & uttering/ furiously riding
Wilson	George	farm labourer	20/?	N	V	theft leg of pork/theft
Wood	Alexander	SOLDIER	30/S	?		
Woodley	John/William	ploughman	29/S	R	L	theft/2 previous
Wynn	James	farm labourer	26/M	r a little	V	theft/theft/assault + attempted rape
Yeomans	William	shoemaker/ farm labourer	20/S	?	V	theft/receiving

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