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The temperance shift

The Temperance Shift:

Drunkenness, Responsibility and the
Regulation of Alcohol in NSW, 1788-1856.

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Abstract

This thesis begins with a broad overview of alcohol regulation in early modern England, illustrating the abiding importance of drinking to English society and the equally persistent concern about the consequences of excess for both public morality and public order. The ambiguous status of drinking, essential to the economy and social life but condemned as a symbol of disorder and sin, contributed to the problem of regulating alcohol in early NSW. Rum played a symbolic role in the clash between two visions of the colony: as a moral reformatory for convicts and as a commercial opportunity for the growing class of free and freed entrepreneurs. With the arrival of Macquarie, the greater stability of NSW was mirrored by a growing consensus about the role of alcohol as a necessary evil, reflected in regulation that mirrored the traditional English system. But from the mid-1830s, this consensus was challenged by the emergence of the temperance movement, the rapid growth of the free population and the development of more modern systems of policing that allowed for greater control over the use and abuse of strong drink. As temperance societies radicalised in the 1840s they lost elite support and their influence in NSW correspondingly declined but despite this, temperance grew in influence as an idea. By the time the organised movement re-emerged in the 1850s, a new consensus saw alcohol itself as a fundamentally problematic substance that rendered the drinker incapable of self-control. This temperance shift in the understanding of alcohol was the key to the institutionalisation of a new concept of responsibility which cast drunkenness and other social problems as the responsibility of the liberal state.

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Introduction

Alcohol is an intoxicant, a source of sustenance, a taxable commodity, an industrial product, an accompaniment to recreation and a potential cause of social problems; both widely used, and its use widely debated. As a consequence, from the very beginning of European settlement in NSW, the colonial government constantly regulated its production, sale and consumption; indeed more rules were passed concerning alcohol than almost any other subject and certainly more than governed any other commodity. But my interest in this regulation is not simply to understand changing attitudes to drinking and drunkenness. Drinking was not only associated with leisure but an integral part of many social rituals; drunkenness was not merely a problem for authorities concerned with law and order, it was seen as undermining health, industry and even morality; alcohol production and trade were not just significant industries, crucial to economic development, but taxation on alcoholic liquors was an essential source of state revenue. Even beyond these varied roles – in fact because of them – alcohol had a symbolic function in political debate about the future of the colony and the nature of NSW society. As James Nicholls has observed of the drink question in England:

[b]ecause drinking is such a ubiquitous social activity, the way it is framed in public discourse ... acts as a barometer of the cultural anxieties and political attitudes which are at work in any particular period.¹

So this study reflects and informs the larger story of the transformation of colonial society over the period between the arrival of the first fleet and the establishment of responsible government in 1856.

Although alcohol was ubiquitous within the British society that founded the colony of NSW in 1788 there was a tradition of strict regulation driven by long-standing concerns about problems associated with alcohol. Since the Reformation, religious reformers had attacked drunkenness as a sin while secular authorities were similarly concerned with its threat to industry and public order, but both conceived of such problems as the responsibility of the wicked or criminal drinker.

¹ James Nicholls, *The Politics of Alcohol: a History of the Drink Question in England*, Manchester: Manchester University Press, 2009, 2. Troy Duster has similarly compared alcohol in the social sciences, to the use of dye in microscopy, arguing that it can highlight the broader structures and changes in a society. Cited in: Susanna Barrows and Robin Room, 'Introduction', Barrows and Room, *Drinking: Behaviour and Belief in Modern History*, Berkeley, Ca.: University of California Press, 1991, pp1-25, 1.

Furthermore, the traditional regulatory system involved a fundamental double standard, attacking drunkenness in public while tolerating it in private and actively celebrating the enormous trade in alcohol and the revenues the state derived from it. This hypocrisy was reflected in the particular challenge of regulating alcohol in the early years of NSW. Despite enormous demand in the colony and a global industry eager to supply it, the first four Governors were ordered to institute a unique system of centralised control over the spirit trade to prevent convict drunkenness from undermining their reform. But in practice convict drinking was largely tolerated, so long as it was kept from respectable eyes, both because it was an essential lubricant for the labour which powered the colonial economy, and because the colonial police were incapable of enforcing sobriety. The predictable failure of this centralised system undermined the authority of the government and contributed to the rebellion of 1808.

After this crisis the radical experiment was abandoned and a new regulatory approach, modelled on Britain, was gradually implemented. Alcohol was seen as a necessary evil, freely traded but heavily taxed, public drinking was corralled within licensed premises and drunkenness, though widely condemned, was largely conceived in secular terms as a sign of criminality and punished with exemplary corporal discipline. But the arrival of the temperance movement in the mid-1830s challenged both this system and the view it reflected of alcohol and its associated problems. Despite its origins in traditional religious concern with the sin of drunkenness, by the 1840s temperance became a more radical movement that cast alcohol as a fundamentally problematic substance, preached individual abstinence and lobbied for government enforced prohibition. Though this radical temperance movement lost the support of the colonial elite and declined into insignificance by 1850, the temperance view of alcohol grew in influence in the 1840s and 1850s. Increasingly the drink and not the drinker, was blamed for alcohol problems.

Contributing to this shift, rapid immigration and the end of transportation transformed the population of NSW in the two decades after 1835 and this led to growing concerns about the morals and manners of the free working classes. Under the auspices of a modern and more efficient police force, drunkenness became the leading offence in NSW, used as a form of summary discipline to control public behaviour. Meanwhile the growing influence of new medical interpretations of drunkenness bolstered the temperance view of alcohol. If problem drinkers suffered from a disease then they were not responsible for their behaviour; instead responsibility fell upon alcohol itself and by extension, with the state that licensed its consumption. Although the radical regulation promoted by the temperance movement was largely rejected, alcohol problems were increasingly conceived in radical temperance terms. Drunkards were not sinners or even criminals but rather

victims of the demon drink, irresponsible inebriates who required arrest and treatment for their own and for the greater good. Thus the temperance shift in the understanding of alcohol contributed to a larger transformation in the social imaginary that saw social problems increasingly cast as government concerns and individual liberties subjugated to the needs of a free society.² With the coming of responsible government in 1856, the state had assumed responsibility for alcohol problems.

Theory and Method

Though this thesis is not beholden to any particular theorist, a brief survey of relevant scholarship on alcohol and regulation and a brief discussion of some key aspects of my approach will help to clarify my argument. In keeping with its many roles in society, alcohol is the subject of a variety of theoretical and methodological perspectives but these can be usefully classified into two very different categories, one concerned with drinking and another with the problems associated with it. Building on earlier antiquarian interest in recording and celebrating drinking culture, anthropologists have analysed such practices and the variance both within and between different societies as a means of exploring cultural identity.³ In contrast, the long tradition of attacking alcohol that developed into the temperance movement has spawned an extensive literature concerned with alcohol problems and, since WWII, particularly with alcoholism and the science of addiction.⁴ Despite a wider agenda, historical scholarship on alcohol is also shaped by these categories, largely because they are reflected in the available source material. While some

² Charles Taylor's term "social imaginary" refers to "the ways people imagine their social existence, how they fit together with others ... the expectations that are normally met, and the deeper normative notions and images that underlie these expectations" and is thus largely analogous to the mentalities explored by cultural historians influenced by the Annales school. I use Taylor's term because I am as much interested in the implicit popular understanding of alcohol (and governance) as in publicly expressed ideas. Charles Taylor, *Modern Social Imaginaries*, Durham: Duke University Press, 2007, ch. 2, quotation on 23. For more on mentalités see: Patrick H. Hutton, 'The History of Mentalities: The New Map of Cultural History', *History and Theory*, vol. 20, no. 3 (Oct. 1981), pp237-59; Peter Burke, *Varieties of Cultural History*, Cambridge: Polity Press, 1997, ch. 11.

³ For anthropological views of drinking see: Dwight B. Heath, 'An Anthropological View of Alcohol and Culture in International Perspective', Heath (ed.), *International Handbook on Alcohol and Culture*, London: Greenwood Press, 1995, pp328-61; Dwight B. Heath, *Drinking Occasions: Comparative Perspectives on Alcohol and Culture*, Philadelphia: Taylor & Francis, 2000; Thomas M. Wilson, 'Drinking Cultures: Sites and Practices in the Production and Expression of identity', Wilson (ed.), *Drinking Cultures: Alcohol and Identity*, Oxford: Berg, 2005, pp1-24. For an example of the antiquarian approach see: John Bickerdyke, *The Curiosities of Ale & Beer: an Entertaining History ...*, London: Spring Books, 1965 (first published 1889).

⁴ I discuss the origins of this tradition extensively below. For the medical approach in the post-war era see especially the various publications of the Yale Centre for Alcohol Studies and particularly the *Journal of Studies on Alcohol* (1975-) and its predecessor, the *Quarterly Journal of Studies on Alcohol* (1940-1974). For historicised accounts of alcohol addiction see: Harry G. Levine, 'The Discovery of Addiction. Changing Conceptions of Habitual Drunkenness in America', *Journal of Studies on Alcohol*, vol. 39, no. 1 (1978), pp143-174; David T. Courtwright, 'Addiction and the Science of History', *Addiction*, vol. 107 (2012), 486-92.

historians have sought to explore popular drinking culture in the past, particularly through the study of public houses, the bulk of scholarship has focussed on the changing incidence and construction of alcohol problems facilitated by the archival resources of government and the temperance movement.⁵

In the specific context of nineteenth-century NSW, historical research into alcohol has followed these broad trends but has also tended to focus on the better resourced periods after 1850 and the early crisis of regulation that culminated in the rum rebellion.⁶ The greatest attention is devoted to the temperance movement, particularly during its heyday in the late nineteenth and early twentieth centuries and to the medicalised approach to alcohol problems during a similar period.⁷ Discussion of drinking culture is dominated by antiquarian and popular treatments of Australians' supposed predilection for beer and more scholarly studies of the pubs in which it is served, again biased towards later in the century although some important work on alcohol consumption covers the earlier period.⁸ Most relevant to my own work, Milton Lewis has produced an important study of alcohol regulation in Australia, although largely focussed on the late nineteenth and twentieth century.⁹

⁵ For some recent overviews of historical scholarship on alcohol see: Barrows and Room, 'Introduction'; Jeffrey Verhey, 'Sources for the Social History of Alcohol', Barrows and Room, *Drinking*, pp425-39; Jack S. Blocker Jr., 'Introduction', *Histoire Sociale/Social History*, vol. 27, no. 54 (1994), pp225-239; Joseph F. Kett, 'Temperance and Intemperance as Historical Problems', *Journal of American History*, vol. 67, no. 4 (Mar. 1981), pp878-885. For examples of the history of drinking culture see: Peter Clark, *The English Alehouse: a Social History, 1200-1830*, London: Longman Group Ltd., 1983; Mack P. Holt (ed.), *Alcohol: a Social and Cultural History*, Oxford: Berg, 2006. As Barrows and Room note, such work has tended to focus on popular and public drinking and not the drinking of the elites, again reflecting the influence of the temperance movement: Barrows and Room, 'Introduction', 10. For history focussed on alcohol problems see for example Brian Harrison's classic study of the English temperance movement: Harrison, *Drink and the Victorians: The Temperance Question in England, 1815-72*, London: Faber & Faber, 1971. Of course, temperance and official archives can be read against the grain to draw conclusions about non-problematic drinking.

⁶ The recent work of Ross Fitzgerald and Trevor L. Jordan is the best general study: Fitzgerald and Jordan, *Under the Influence: A History of Alcohol in Australia*, Sydney: Harper Collins, 2009. Robin Room and Keith Powell both give useful overviews that share the typical bias towards later periods: Keith C. Powell, *Drinking and Alcohol in Colonial Australia 1788-1901 For the Easter Colonies*, Canberra: Australian Government Publishing Service, 1988. Robin Room, 'An Intoxicated Society?', John Cavanagh, Frederick Clairmonte & Room (eds.), *The World Alcohol Industry with Special Reference to Australia, New Zealand and the Pacific Islands*, Sydney: University of Sydney Press, 1985, pp148-215. For the problematic historiography of early alcohol problems see below, 61ff.

⁷ For scholarship on temperance in Australia see below, 151. For medical approaches to alcohol see below, 239ff.

⁸ For popular beer history see for example: Cyril Pearl, *Beer, Glorious Beer ...*, Melbourne: Thomas Nelson Ltd., 1969; Bill Wannan, *Folklore of the Australian Pub*, Melbourne: Macmillan, 1972; Keith Dunstan, *The Amber Nectar: a Celebration of Beer and Brewing in Australia*, Ringwood, Vic.: Viking O'Neill, 1987. For scholarly treatment of pubs and pub culture see: J.M. Freeland, *The Australian Pub*, South Melbourne, Vic.: Sun Books, 1977 (first ed. 1966); Diane Kirkby, *Barmaids: a History of Women's Work in Pubs*, Melbourne: Cambridge University Press, 1997; Kirkby, 'Drinking "The Good Life"', Holt (ed.), *Alcohol*, pp203-23; Kirkby, Tanja Luckins and Chris McConville, *The Australian Pub*, Sydney: University of NSW Press, 2010. For consumption see below, Appendix 1, 262ff.

⁹ Milton Lewis, *A Rum State: Alcohol and State Policy in Australia, 1788-1988*, Canberra: Australian Government Publishing Service Press, 1992. Only four pages are devoted to the period before 1850.

My study of alcohol regulation will also focus on alcohol problems though I attempt to situate such problems within a wider context of drinking habits and to avoid the judgemental viewpoint of most commentators. It is a fact that much of the discussion of alcohol in Australia's history has been made by authors with predetermined and largely negative views of the subject. In the era before responsible government it was rare and controversial to defend or celebrate drinking, albeit in a period in which consumption of alcohol was widespread. From the 1830s into the twentieth century, the temperance movement continued and expanded this critical tradition, and as temperance declined after WWI medical attacks on alcohol filled the void, although they were increasingly matched by a strong larrikin tradition, promoted particularly by the beer industry, which mocked temperance and celebrated drinking as a part of a masculine Australian identity.¹⁰ Given the multitude and ubiquity of such ideological approaches to alcohol it is worth clarifying that, to the best of my ability, I come to this study without moral judgement. Alcohol itself is neither good nor evil though it can certainly be a catalyst for, if not a cause of both.

Thus I use the phrase "alcohol problems" to encompass both perception and reality. Indeed, for the purposes of this thesis I am deliberately agnostic as to whether alcohol is in fact responsible for the problems, or for that matter the benefits associated with it. In this regard, I am heavily influenced by the work of Craig MacAndrew and Robert B. Edgerton, who argue that drunken behaviour is largely culturally conditioned and not the invariable effect of the ingestion of alcohol – the corollary to which is that problems associated with alcohol are caused as much by the cultural assumptions of drinkers and their society as by alcohol itself.¹¹ In considering drunkenness, I am thus not concerned with a particular level of intoxication but rather with patterns of behaviour

¹⁰ For temperance attacks, from a wealth of material, see for example: R.B. Hammond, *The Curse of Drink in New South Wales: Reduction for Quantities*, Sydney: NSW Alliance, 1903; James Mankey (ed.), *Why be teetotal? Scientific Evidence ... Regarding Alcoholic Beverages and their Effects upon Individual and National Life*, Melbourne: Spectator Publishing Co., 1940. For medicalised criticism of alcohol see: J.W. Springthorpe, 'Alcohol as a Beverage', *Intercolonial Medical Journal of Australia*, vol. 11, no. 6 (1906); Brian F. Luby, 'Public Health Approaches to Alcohol problems in Australia', *Papers Presented to the 28th International Congress on Alcohol and Alcoholism*, Washington: 1968; Department of Health and Aging, *Preventing Alcohol related Harm in Australia: a Window of Opportunity*, Canberra: Commonwealth of Australia, 2008. For populist defences of drinking see above, note 8; and Keith Dunstan, *Wowers; Being an Account of the Prudery Exhibited by Certain Outstanding Men and Women ...*, Melbourne: Cassell Australia, 1968. For more on this vision of Australian identity see: Richard White, *Inventing Australia, Images and identity 1688-1980*, Sydney: Allen & Unwin, 1981, ch. 10.

¹¹ Craig MacAndrew and Robert B. Edgerton, *Drunken Compartment, A Social Explanation*, London: Thomas Nelson and Sons, 1970. For a more recent statement of this viewpoint see: Marijana Martinic and Fiona Measham, 'Extreme Drinking', Martinic and Measham, *Swimming with Crocodiles: The Culture of Extreme Drinking*, New York: Routledge, 2008, 1-12; for its application to British alcohol history see: Measham, 'A History of Intoxication. Changing Attitudes to Drunkenness and Excess in the United Kingdom', Martinic and Measham, *Swimming with Crocodiles*, 13-36 and for a similar approach to America see: Joseph R. Gusfield, *Contested Meanings: The Construction of Alcohol Problems*, Madison, WI: University of Wisconsin Press, 1996.

associated with consumption and especially the way that this behaviour is constructed and interpreted by the authorities.

I also use the phrase, although for much of the period I study, alcohol problems were exclusively associated with the consumption of spirits and not supposedly healthy drinks like beer or wine. The meaning of alcohol, the kinds of problems associated with it and the nature of their association are all, historically speaking, relative questions. In the twenty-first century there is at least a general scientific consensus on alcohol as a substance (although there is still considerable debate about its effects on the human system) and there are consistent attempts to come to measure its role in causing problems (though such attempts have problems of their own).¹² But in the nineteenth century, all of these questions were widely debated and as a consequence, it makes sense to speak of alcohol problems as a category of thought, a category whose contents were the subject of conflict and disagreement. My thesis is above all a study of the contested and changing meaning of alcohol problems as reflected in regulation.

I draw a distinction between three broad categories of alcohol regulation: taxing or limiting supply, licensing sale or consumption and policing drunkenness.¹³ Taxation was predominantly employed as a source of revenue but was also a means of limiting both supply and demand for alcohol by manipulating prices, while more direct restrictions were achieved by banning or limiting purchase, import or production. Licensing was also a source of state revenue but was more vitally concerned with questions of public order and social policy, not only through restricting the number of outlets but also by setting conditions for consumption. Policing in particular often overlaps these other categories; in my usage I refer not merely to the actions of the force themselves but to the wider array of rules and ideas that constructed drunkenness as a form of deviance.¹⁴ Though policing is thus most directly concerned with alcohol problems, I will consider regulation as a whole because these categories, while useful, gloss over the more holistic view of alcohol that underlay its regulation. It is an axiom of this thesis that in a society obsessed with drunkenness like nineteenth-century NSW, all regulation of alcohol reflects the changing understanding of alcohol problems.

¹² For attempts to calculate the costs of alcohol see for example: National Health and Medical Research Council, *Australian Guidelines to Reduce Health Risks from Drinking Alcohol*, Canberra: Commonwealth of Australia, 2009.

¹³ Compare the four kinds of state interest in alcohol identified by Klaus Mäkelä and Matti Viikari, in an analysis of contemporary alcohol policy: "state fiscal interests, interests of industrial policy, interests of public order, and social policy interests". Mäkelä and Viikari, 'Notes on Alcohol and the State', *Acta Sociologica*, vol. 20, no. 2 (1977), pp155-179, 155.

¹⁴ For more on this broad understanding of policing and its Foucaultian roots see: Mariana Valverde, 'Police, Sovereignty and Law. Foucaultian Reflections', Markus D. Dubber and Mariana Valverde (eds.), *Police and the Liberal State*, Stanford, CA: Stanford Law Books, 2008, pp15-32.

Although the regulations themselves form an essential source for my analysis, I am also concerned with the whole swathe of rules and principles and customs, the moral imperatives, the object lessons; and their respective means of enforcement: the police, the doctors, the teachers and preachers and moralists – the whole range of technologies with which ideas about alcohol were implemented and enforced. This broad approach obviously owes much to the work of Michel Foucault, not only his analyses of carceral and medical forms of power, both of which are relevant to alcohol problems, but also his larger concept of governmentality – the methods by which the modern state, conceived in the largest sense, exercises power over the population and the process by which this emerged as the pre-eminent form of power in modern society.¹⁵ My interest in using alcohol regulation to explore the transformation of NSW can be understood as a study of governmentality both as method and process, especially in my treatment of the changing status of drunkenness.

Having said this, and with due allowance for the complexity of Foucault's thought, I am less interested in regulation as a form of power than as a reflection of the social imaginary.¹⁶ Though the regulation of alcohol in nineteenth-century NSW was largely an exercise of elite authority, both the nature of the elite and authority itself underwent substantial changes. I draw an important distinction throughout this thesis between the elite – the groups with the greatest power and status in society – and the authorities – the officials in charge of legislating and administering regulation – and this distinction reflects a larger truth that regulatory power was not simply concentrated in the hands of a monolithic ruling class. Even at the peak of authoritarian governance in NSW (whenever that may have been), regulation was always a process, subject to influence from a wide range of individuals and groups outside officialdom and frequently resisted by those on whom it was imposed.¹⁷ Thus my study of regulation explores the changing public understanding of alcohol as revealed in the rules themselves, their enforcement and their reception.

¹⁵ Michel Foucault, *Discipline and Punish: the birth of the prison*, translated by Alan Sheridan, New York: Vintage Books, 1979 (first published 1975); Foucault, *The Birth of the Clinic: an Archaeology of Medical Perception*, translated by Alan Sheridan, New York: Vintage Books, 1994 (first published 1973); Foucault, 'Governmentality', Graham Burchell, Colin Gordon and Peter Miller (eds.), *The Foucault Effect. Studies in Governmentality ...*, Chicago: University of Chicago Press, 1991, pp87-104, esp. 102-3. Governmentality is a much debated term, for a recent summary see: Nikolas Rose, Pat O'Malley & Mariana Valverde, 'Governmentality', *Annual Review of Law and Social Science*, vol. 30, (Dec. 2006), pp83-104.

¹⁶ This view of regulation should not imply sympathy with a common critique of Foucault as a kind of reverse-whig, obsessively identifying a grand conspiracy of oppression by unidentified authorities. Foucault himself frequently cautioned against assuming a one directional model of power. For a summary of this debate see: Randall McGowen, 'Power and Humanity, Or Foucault among the Historians', Colin Jones and Roy Porter (eds.), *Reassessing Foucault: Power, Medicine and the Body*, London: Routledge, 1994, pp91-112.

¹⁷ My approach is thus an explicit rejection of the top-down model of Philip Corrigan and Derek Sayer, who explore the growth of the state as a means of legitimating the power of the bourgeois elite. Where they identify changes in the social

In addition, alcohol regulation also reflects changing ideas and practices of government. In its first century, NSW experienced an extraordinary transition from convict colony to responsible democracy that was accompanied by a striking expansion of government, a process shaped by contemporary British reforms that greatly extended the reach of the state.¹⁸ Interpretations of this process are largely shaped by A.V. Dicey's turn of the twentieth-century study of the ideology of law-making which identified three overlapping but distinct stages: early "legislative quiescence", mid-century Benthamite individualism and a late era of collectivist activity. More recent scholarship focusing less on ideology and more on actual government practice, has questioned this chronology pointing to a government expansion from at least the 1830s.¹⁹ I seek to connect this process to changes in the understanding of government and freedom, from a largely negative to a largely positive conception of liberty – from *laissez faire* to progressivism – and find evidence for this in the changing treatment of drunken responsibility.²⁰

Finally, I should make some reference to the spatial and chronological limits of my work. I have focused exclusively on NSW both because of its predominance throughout my period (1788-1856) and because my approach requires a concentrated analysis of a single administrative unit, the colony of NSW. I must concede that this thesis disproportionately deals with Sydney; in my defence I can only note that alcohol regulation shared this bias and that much of the concern about alcohol problems was directed at the capital. The chosen period is a natural consequence of the focus on NSW. The means by which regulation was determined and imposed changed dramatically in the first

imaginary (their "cultural revolution") as evidence of elite authority, imposed through "moral regulation", and embodied in state formation, I reverse the causal model and see the growth of the state as, in part, a reflection of changes in the popular understanding of government. See: Corrigan and Sayer, *The Great Arch: English State Formation as Cultural Revolution*, Oxford: Blackwell, 1985, esp. 2-6.

¹⁸ I discuss this colonial transition throughout my thesis. For the best interpretive overview see John Hirst's studies of the convict system and Australian democracy: Hirst, *Freedom on the Fatal Shore, Australia's First Colony*, Melbourne: Black Inc. 2008 (first eds. 1983, 1988). The most important influence on my understanding is the work of Michael Roe who discusses the conflicts of the middle decades of the nineteenth-century as the defeat of colonial conservatism by the new ideology of "moral enlightenment": Roe, *Quest for Authority in Eastern Australia 1835-1851*, Kingsgrove Vic.: Melbourne University Press, 1965. For a striking, but ultimately unconvincing interpretation of the story along Marxist lines see: Alastair Davidson, *The Invisible State. The Formation of the Australian State 1788-1901*, Cambridge: Cambridge University Press, 1991.

¹⁹ A.V. Dicey, *Lectures on the Relations between Law and Public Opinion in England during the Nineteenth-Century*, London: Macmillan, 1962 (first ed. 1905). For revisionism see: Oliver MacDonagh, 'The nineteenth-century revolution in government: a reappraisal', *Historical Journal*, vol. 1, no. 1 (1958), pp52-67; MacDonagh, *Early Victorian Government, 1830-1870*, London: Weidenfeld and Nicolson, 1977; P. W. J. Bartrip, 'State Intervention in Mid-Nineteenth Century Britain: Fact or Fiction?', *Journal of British Studies*, vol. 23, no. 1 (Autumn 1983), pp63-83; Harold Perkin, 'Individualism versus Collectivism in Nineteenth-Century Britain: A False Antithesis', *Journal of British Studies*, vol. 17, no. 1 (Autumn, 1977), pp105-118.

²⁰ For this distinction within liberalism see: Isiah Berlin, 'Two Concepts of Liberty', *Four Essays on Liberty*, Oxford: Oxford University Press, 1969, pp118-172. The shift should not be overstated. Both impulses were present in liberalism throughout the century but changes in emphasis encouraged and supported the growth of government. See: Perkin, 'Individualism vs Collectivism', 111-16. For drunken responsibility see below, 246ff.

century of the colony but these changes climaxed with the achievement of responsible government and elections on a broad franchise in the late 1850s.

Moreover, despite the passage of significant alcohol legislation towards the end of the century, it is central to my argument that the groundwork for this regulation, the transformation of the place of alcohol within the social imaginary, had already occurred. Indeed, this change in understanding points to the larger significance of my focus on NSW. For all that alcohol regulation and the colonial temperance movement were often derivative of British and American models the coincidence of the diffusion of temperance ideas with the campaign for responsible government was unique to the Australasian colonies. Indeed, in the second half of the century, many of the reforms associated with government expansion and progressive liberalism were pioneered in Australia.²¹ In a sense, what we see in NSW is a distillation of a broader pattern that saw alcohol problems transformed from an individual vice to a social evil and the aim of regulation shift from exemplary punishment to remedial restraint. Thus it is my hope that this thesis may offer at least some insights into the broader development of modern liberal governance as reflected in the regulation of alcohol.

²¹ John Eddy, 'The Technique of Government: Governing mid-Victorian Australia', Roy MacLeod (ed.) *Government and Expertise. Specialists, Administrators and Professionals, 1860-1919*, Cambridge: Cambridge University Press, 1988, 166-81. Note that alcohol regulation was not an area in which the colonies took the lead. For other attempts to emphasize the unique Australian experience in an international context see: Lewis Hartz, *The Founding of New Societies; Studies in the History of the United States, Latin America, South Africa, Canada, and Australia*, New York: Harcourt, Brace & World, 1964; A.W. Martin, 'Australia and the Hartz "Fragment" Thesis', Martin, *The Whig View of Australian History and Other Essays*, Carlton, Vic.: Melbourne University Press, 2007, pp53-73 (first published 1974); 73; John Hirst, 'Keeping Colonial History Colonial: the Hartz Thesis Revisited', *Historical Studies*, vol. 21 (1984), pp85-104; Donald Denoon, 'Isolation of Australian History', *Historical Studies*, vol. 22 (1986), pp252-60; Nicholas Brown, 'Born Modern: Antipodean Variations on a Theme', *Historical Journal*, vol. 48, no. 4 (Dec. 2005), pp1139-1154.

Part I: British and Colonial Origins

Chapter 1) Alcohol Problems in Early Modern England: The Secularisation of Reform

The Origins of English Alcohol Regulation

By 1788 the English, and later British, state had demonstrated a longstanding interest in regulating the production, trade and use of alcohol. In the early modern period, between the English reformation and the settlement of NSW, two distinct though related processes fundamentally changed this regulatory relationship. First, as English society and the economy grew in size and sophistication, there was a corresponding growth in alcohol regulation. Second, religious and moral objections to drunkenness, allied with elite and official fears about declining public order led to increased alarm about alcohol problems and this reformist coalition had a progressively greater influence on the state. However, in something of a paradox, both motivations contributed to an increasingly secular response to drunkenness. Though concerns over public morality emerged out of the religious drive for reform, moralistic opponents of drinking also called for a government solution to alcohol problems.¹ But the English state began to regulate with more limited objectives.

In England before the eighteenth-century, alcohol was typically consumed as domestically brewed ales and ciders, generally a drink of the masses, and imported European wines drunk by the elite. Assizes of bread and ale, the first of which dates to 1266, were the earliest regulatory mechanism. Designed to set victuals at a reasonable price, they probably put publicly sold liquor out of reach of most labourers and made them dependent upon their masters to provide them with alcohol. Peter Clark suggests that these rules were mostly used to raise money for local lords, either by preserving a monopoly on brewing or by periodically fining local alehouses, a practice that may

¹ This paradox fits with Charles Taylor's larger interpretation of secularisation as a process driven in the first instance by the intense piety of protestant reformers. By stressing personal moral discipline and a Godly society reformers empowered the state at the expense of the church and by privileging the individual religious conscience, reformed theology made a space for conscientious doubt. See: Taylor, *A Secular Age*, Cambridge MA.: Belknap Press, 2007.

have evolved into a de facto licensing system.² State controls of alcohol consumption reflected both a traditional fear of vagrancy and idleness and a related concern with the playing of unlawful games as a distraction from more useful pursuits. The first licensing statute dating from 1552 referred to “intolerable hurts and troubles ... through suche abuses and disorders” associated with alehouses, allowed two Justices of the Peace (JPs) to order their closure and required all legitimate venders to gain a licence and pay a bond “againste the usinge of unlauffull Games ... [and for the] maynetyen’nce of good ordre”.³ In practice, despite the new statute, licensing remained an exercise in local patronage. Local officials sometimes imposed fees on the licensee and demanded certificates of good character from the local parish, restricted locations and opening hours, required the provision of lodgings and banned certain categories of poor and distressed from the premises, but many alehouses went unlicensed and the rules, which varied across England, were enforced only sporadically.⁴ Taxation was the other main form of early regulation. Prisaige, one of the traditional rights of the king dating from the late twelfth-century, entitled the crown to a share of all wines entering England and under Edward I this was transformed into the first formal customs duty.⁵ Over time other taxes such as tonnage were applied to imported wines but in practice these became known simply as customs and formed a small but significant component of the royal income, though

² ‘Assise of Bread and Ale’, U.K. Parliament, *Statutes of the Realm* (11 vols.), London: 1810-1828, vol. 1, 199-203; ‘Victuals’ (23 Edw. III, c. 6), *SOR*, vol. 1, 308; Clark, *Alehouse*, 24, 28. Clark distinguishes between three kinds of premises retailing alcohol: inns “usually large, fashionable establishments offering wine, ale and beer, together with quite elaborate food and lodging to well-heeled travellers”; taverns “selling wine to the more prosperous, but without the extensive accommodation”; and alehouses “normally smaller premises serving ale or beer ... and providing rather basic food and accommodation to the lower orders”. While these distinctions are important, I will use ‘alehouse’ to encompass all retail outlets because the different terms are not used systematically in the statutes and because alcohol problems with which I am most concerned were perceived to be connected with the drinking habits of commoners and later the working class, who generally frequented the alehouse.

³ Clark, *Alehouse*, 169; ‘Keepers of Alehouses’, (5 & 6 Edw. VI. c. 25), *SOR*, vol. 4, p157-8. Clark suggests that the Licensing Act of 1552 was designed to codify and nationalise the complex system of local controls that had developed though it generally failed to do so. Earlier initiatives included a City of London statute from 1285 (13 Edw. I. *Stat. Civitatis Lond.*) that ordered Taverns to close after curfew because they were a resort of thieves and vagrants. In 1341 Statute that allowed for the arrest of strangers wandering at night (5 Edw. III c. 14); in 1349, supporting beggars capable of labour was made a crime because it encouraged Idleness and Vice (23 Edw. III c. 7); in 1388 regulations for licensing beggars and punishing the unlicensed were passed (12 Ric, II c. 3, 7-9). None of these earlier acts made specific reference to drinking but the act of 1495 (11 Hen. VII c. 2) against vagabonds and beggars allowed justices to close gaming and drinking houses. *SOR*, vol. 1, 102, 268, 308; vol. 2, 32, 58, 569. A general summary of licensing regulation is: Beatrice and Sidney Webb, *The History of Liquor Licensing: Principally from 1700 to 1830*, London: UK Alliance for the Suppression of the Liquor Traffic, 1903, although their interpretation is coloured by their association with the temperance movement.

⁴ Clark, *Alehouse*, 171, 179-80. Note that one consequence of this localised administration was the stress of moral reformers on enforcing the existing laws which were often waived by corrupt or disinterested Justices.

⁵ For prisaige see: ‘A Statute for Estreats of the Exchequer’, (16 Edw. II), *SOR*, vol. 1, p 192,. A duty is a tax on imports, in contrast to the excise, an inland tax on production or sale. These duties were added to over time and claimed by successive monarchs, by act of Parliament, for the duration of their reign. Sir William Blackstone, *Commentaries on the Laws of England*, 9th Edition, edited by R.I. Burn, London: 1783, vol. 1, 314-7.

subject to the consent of Parliament.⁶ The early modern state thus had two main interests in regulating alcohol: raising revenue and maintaining public order.

Alongside these state interests were more general fears among the elite about the potentially destructive effects of drunken behaviour as a threat to society. In England, the state's regulation of alcohol was linked to this concern, especially in the association of the idle, disorderly, criminal and poor – broadly the deviant – with the public house. To some degree, licensing and even taxation were responses to this, as both functioned in part as a means of restraining consumption and the disorderly and immoral behaviour associated with it. But from the seventeenth-century concern about alcohol was increasingly driven by a call for religious and moral reform.

Puritanism and Moral Reform

Moral criticism of alcohol is not limited either to the modern era or to Western society, but Christianity in particular has drawn upon a rich biblical tradition, to preach against the sin of drunkenness and advocate restraint. Though both the Old and New Testaments contain positive depictions of drinking, the Bible regularly attacks drunkenness, excess and intemperance and this has informed a recurrent call for moral reform within the Church.⁷ Before the Reformation, this concern about alcohol was generally limited to praising temperance as a virtue; and popular drunkenness was tolerated within the boundaries of traditional culture, and even promoted in Church Ales and other carnivalesque religious festivals that included drinking. In contrast, Protestants began to call for a universal standard of sobriety in keeping with their concern for moral reform and the creation of a godly society.⁸

⁶ Blackstone cites Charles I's levying of customs without Parliament's consent as a cause of discontent against his reign. Blackstone, *Commentaries*, vol. 1, 317.

⁷ Joel Bernard, 'From Fasting to Abstinence: The Origins of the American Temperance Movement' in: Susanna Barrows and Robin Room, *Drinking: Behavior and Belief in Modern History*, Berkeley 1991, pp 337-353, 338-342. For examples of biblical condemnation of drunkenness see: Proverbs 20:1, 23:29-35; Isaiah 5:11; Ephesians 5:18. For positive depictions of drinking compare: Ecclesiastes 9:7; Psalm 104:14-15 and of course Jesus' creation of wine at Cana (John 2:1-11) and in the sacrament at the last supper (Matthew 26:27-9). *The Holy Bible, King James Version*, New York: Oxford Edition: 1769; *King James Bible Online*, 2008. [<http://www.kingjamesbibleonline.org/> - accessed 30th May 2012] Note that a significant element within the temperance movement refused to accept that the bible condoned moderate drinking, insisting on an artificial distinction between good unfermented wine consumed and praised by Jesus and bad alcoholic wine referred to when the Bible criticizes drunkenness. See: John L. Merrill, 'The Bible and the American Temperance Movement: Text, Context, and Pretext', *Harvard Theological Review*, vol. 81, no. 2 (Apr. 1988), pp145-170.

⁸ For more on the importance of the reformation as a cultural shift see: Peter Burke, *Popular Culture in Early Modern Europe*, 3rd ed., Surrey, Eng.: Ashgate Publ. Ltd., 2009, chs. 7-8; Mikhail Bakhtin, *Rabelais and his World*, translated by Hélène Iswolsky, Bloomington, Ind.: Indiana University Press, 1984; Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, translated by Talcott Parsons, London: Allen & Unwin, 1976, ch. 1; Nicholls, *Politics of Alcohol*, 6-9; Taylor, *Secular Age*, ch. 2.

In post-reformation England, moral reform and the religious opposition to drunkenness were generally associated with that strand of more pious and radical Protestant thought labelled puritan.⁹ Christopher Hill has connected the puritan drive for reform to the social and economic transformation in late-sixteenth and seventeenth-century England and especially with the rise of an “industrious” urban middle class.¹⁰ Irrespective of their connection to larger social changes, puritans were particularly concerned with traditional sins like drunkenness, idleness and Sabbath-breaking as both economic and moral problems, threatening to good order, hurting the efficient use of resources and offending God.¹⁰ This emphasis on discipline drew upon John Calvin’s attempt to create a godly society in sixteenth-century Geneva, where a small religious elect mobilised the state as well as the church to enforce divine law upon the mass of sinning humanity. In Calvin’s view, secular authority was only granted by God to ensure the government of fallen mankind and thus its first responsibility was to uphold morality.¹¹

As an institution, the Church of England rejected both the call for discipline and the wider implications of Calvinist theology. Calvin’s doctrines of universal predestination and unconditional election were opposed by the more Arminian theology of the Church hierarchy who believed in a degree of free will in determining salvation.¹² The greater capacity for divine mercy in this soteriology allowed for a more tolerant view of worldly behaviour and an acceptance of the traditional patterns of release and restraint symbolised in carnival and lent. But for puritans, tolerating such frivolity and lewdness was to encourage sin and draw God’s judgement down upon the world.¹³ Both within the Church and society at large there was a spectrum of theological opinion and Calvinist and puritan ideas were widely aired and had important political implications which helped shape the opposition that led to the Civil War.

⁹ The term itself is problematic not least because it originated as a derogatory label. Some historians even reject the word entirely referring to such believers in their own language as the godly or in legalistic terms as dissenters. Given the controversy over this term I will use it without capitalisation, to indicate less a specific social group than the proponents of a particular set of theological ideas. See: John Coffey and Paul C. H. Lim, ‘Introduction’ in: Coffey and Lim (eds.): *The Cambridge Companion to Puritanism*, (Cambridge: Cambridge University Press, 2008), pp1-18; Christopher Hill, *Society and Puritanism in Pre-Revolutionary England*, London: Secker & Warburg, 1964, 1, 16, 20; Patrick Collinson, *The Elizabethan Puritan Movement*, London: Cape, 1967, 11-15.

¹⁰ Hill, *Society and Puritanism*, 124-5; 148-9; ch. 4. Hill’s understanding of the puritans is connected to his marxist interpretation of the Civil War as the product of class tension in a modernising society, a view disputed by a range of critics. Without daring to venture into this controversy, I accept his characterisation of puritanism as a forerunner of elements of bourgeois ideology.

¹¹ Brendan Hill, ‘Puritans in the Public Sphere: The Societies for the Reformation of Manners and the Continuity of Calvinism in Early Eighteenth-Century England’, PhD Thesis, Georgetown University, 2004, p51-64.

¹² Nicholas Tyacke, *Anti-Calvinists. The Rise of English Arminianism c.1590-1640*, Oxford: Oxford University Press, 1987, 1-4. The term Arminian is used as a conventional though somewhat anachronistic shorthand since the writings of Josephus Arminius did not reach England until well after this dispute had entered English theology.

¹³ Tyacke, *Anti-Calvinists*, 245-7; Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640*, Cambridge: Cambridge University Press, 1987, 103-5, Hill, *Society and Puritanism*, 189-197.

James I's Declaration of Sports was a key political symbol in this seventeenth-century culture war. The king sought to "rebuke some Puritanes & precise people" who had prevented "lawfull Recreations, and honest exercises upon Sundayes and other Holy dayes, after the afternoon Sermon or Service".¹⁴ He was concerned that such bans would discourage the conversion of Catholics persuaded "that no honest mirth or recreation is lawfull or tollerable in Our Religion", but more importantly:

*this prohibition bareth the common and meaner sort of people from using such exercises as may make their bodies more able for Warre ... And in place thereof sets up filthy tiplings and drunkennesse, and breeds a number of idle and discontented speaches in their Alehouses.*¹⁵

The Declaration thus represented a theological and intellectual challenge to puritanism: the king was on the side of tradition and against reform. Rejecting the new ideal of universal piety with its attack on all popular recreation, the king refused to enforce puritan values on society at large.

This debate intensified when the Declaration of Sports was republished and more strictly enforced by Charles I in 1633. Indeed, conflicts over the Sabbath became more frequent in the decade leading to the Civil War and were part of the growing opposition between the puritans and the High church party centred on the monarch and Archbishop William Laud.¹⁶ Under Cromwell, the puritans tried to impose their morality on the countryside and the major-generals were specifically directed to prevent many of the recreations that Charles I and James I had permitted, though often with little success, and there was a further counter-reaction with the Restoration of Charles II.¹⁷ More importantly, because English puritans were often faced with a state and a church hierarchy broadly opposed to religious discipline they came to rely on pragmatic arguments and Parliamentary action in their campaign for reform. Inspired and supported by the larger movement, puritan MPs introduced a series of new laws in the early seventeenth-century that fundamentally changed the regulation of alcohol.¹⁸ But ironically, these attempts to legislate for a Godly society were largely

¹⁴ James I, *The Kings Maiesties declaration to his subiects, concerning lawfull sports to be vsed*, London: 1618, 1-2.

¹⁵ *Declaration*, 4-5. The connection between 'sports' and military preparation had a precedent in earlier regulations banning 'unlawful games' and controlling the recreation of commoners. An Act of 1388 (12 Ric. II c.6) forbade many popular pastimes as a distraction from training in archery and this was expanded under Edward IV (17 Edw. IV c. 3) to include punishment of the owners of gaming houses. *SOR*, vol. 2, 57, 163, 462-3.

¹⁶ Tyacke, *Anti-Calvinists*, 222; Hill, *Society and Puritanism*, 201.

¹⁷ Christopher Durston, 'Puritan Rule and the Failure of Cultural Revolution 1645-1660' in: Durston and Jacqueline Eales (eds.), *The Culture of English Puritanism, 1560-1700*, London: Macmillan, 1996, pp210-233, 217-221. Durston characterises this moral campaign as an attempted cultural revolution.

¹⁸ Joan R. Kent, 'Attitudes of members of the House of Commons to the Regulation of "Personal Conduct" in Late Elizabethan and Early Stuart England' in: *Bulletin of the Institute of Historical Research*, XLVI (1973), pp41-71; Hill, *Society and Puritanism*, 177-81, 242-253.

supported by James I and the state authorities. Unlike the puritans, James was not concerned with imposing morality but rather with managing alehouses and their unruly culture as a potential threat to an orderly society. He sought new regulation to restore elite governance of drinking and public morals where puritans sought radical reform to create a better, sober world.¹⁹ But both sides of the cultural conflict supported the increased regulation of alcohol.

The Criminalisation of Drunkenness

The turn of the seventeenth-century saw a series of new, puritan-inspired laws that sought to govern drunkenness, idleness, excess in dress, adultery, swearing and breaches of the Sabbath. An Act of 1603 against “the inordinate hauntinge and tiplinge in Innes” noted that public houses were intended for the relief of travellers, not “for entertainment and harbouringe of lewde and idle people ... in lewde and drunken manner” and set penalties for retailers who permitted unlawful drinking.²⁰ But most important was the 1606 Act “for repressing the odious and loathsome synne of Drunnckennes” which had:

*of late growen into common use within this Realme, being the roote and foundacion of many other [enormious] Synnes, as Bloodshed Stabbinge Murder Swearinge Fornication Adulterye and such lyke, to the great dishonour of God and of our Nacion, the overthrowe of many good Artes and Manuell Trades, the disabling of dyvers Workmen and the genrall ympovrishing of many good Subjects abusively wasting the good Creatures of God.*²¹

This criminalisation of drunkenness was driven by both secular and religious motives. Concern with impiety and sinfulness was balanced by a practical interest in problems of crime and labour. When puritan reformers strove to create a godly society on earth by compelling the sinful into a moral and productive life, they allied with the secular authorities who were determined to maintain a

¹⁹ Nicholls, *Politics of Alcohol*, 15-17.

²⁰ Clark, *Alehouse*, 172. ‘Alehouses’, (1 Jac. I c. 9), *SOR*, vol. 4, 1026-7. Additional legislation set penalties for unlicensed houses and prevented the holding of a licence for three years for breaches of the law. ‘Alehouses not licensed’, (4 Jac. 1 c. 4), *SOR*, vol. 4, 1141-2; ‘Alehouse keepers’, (7 Jac. I c. 10), 1167.

²¹ ‘Drunkenness’, (4 Jac. I c. 5), *SOR*, vol. 4, 1142-3. This Act was modified and made permanent in 1624: ‘Drunkenness’, (21 Jac. I c. 7). *SOR*, vol. 4, 1216-7. Describing the Act, the legal commentator Michael Dalton defined drunkenness by reference to the bible: “Now for to know a drunken man the better, the Scripture describeth them to stagger, and reele too and fro - *Job* 12.25 *Esay* 24.20. And so where the same legges which carry a man into the house, cannot bring him out againe, it is a sufficient signe of drunkennesse.” See: Michael Dalton, *The Countrey Justice ...*, 5th ed., London: 1635, 27. Note that earlier editions did not contain this specific delineation of drunkenness suggesting that magistrates developed a working definition after having to put the 1606 Act into practice.

productive and disciplined workforce.²² Though drunkenness was now officially condemned as a sin and punished as a crime, it was more important as a symptom of a larger offense that was both impious and harmful to the state: the absence of a godly calling to labour. It was this coincidence of puritan and state interests in a more diligent and industrious society that would form the basis for the state's regulation of drinking over the next two hundred years.

The process of secularising alcohol problems was accelerated by the failure of the church courts. Since the time of William the Conqueror, a legal distinction was made between spiritual and temporal jurisdiction with church courts charged to try "any cause concerning the government of souls", a traditional list of moral offences that included drunkenness.²³ Though bishops and deacons could promote such cases themselves, in practice they relied upon churchwardens – annually elected lay officials – to offer regular, usually biannual, presentments upon the morals and behaviour of their local parishioners. The courts often travelled on a circuit and drunkards were summoned on threat of excommunication and subject to summary justice unless they cleared their name through evidence or by compurgation - testimony of a witnesses' belief, not knowledge, as to the defendant's innocence. Guilty parties were admonished or punished with various forms of penance but in practice punishments were often commuted to fines at the discretion of the judge.²⁴

By the seventeenth-century, church courts were in decline due to a widely acknowledged failure to deliver justice, the rivalry of the growing body of civil lawyers and most importantly, the opposition of puritans. Puritans wanted a disciplined society but saw ecclesiastical justice as a relic of a papist past, corrupt, incompetent and administering punishments that failed to deter sinners.²⁵ Suited only to local parishes with traditional agrarian values, church courts were ineffective in the modern urban society that emerged after the reformation and their abandonment reflected a wider

²² Joan Kent found that regulations which were clearly linked to popular social disorder were successfully enacted, whereas more universal and explicitly moralistic laws were usually rejected by Parliament. Kent, 'Personal Conduct', 57-60. She also notes more radical complaints: in debating an unsuccessful act against drunkards of 1601 a Mr Glascock described it as "a meer Cob-web to catch poor Flies in" while John Bond, objecting to a statute that compelled attendance at church, argued that "[e]very evil in a state is not to be met with in a law". See: Hayward Townshend, *Historical Collections or an exact account of the proceedings of the last four Parliaments of Q. Elizabeth*, London: 1680, 196-7, 317. Cited in: Kent, 'Personal Conduct', 61.

²³ Blackstone, *Commentaries*, vol. 3, 62; Rev. C. H. Davis (ed.), *English Church Canons of 1604: with Historical Introduction and Notes ...*, London: 1869, p97-8. See also: Anthony Manchester, 'The Reform of the Ecclesiastical Courts' in: *The American Journal of Legal History*, Vol. 10, No. 1 (Jan. 1966), pp51-75, 52-3. Blackstone, saw the establishment of separate jurisdiction as a "fatal encroachment" on English (Saxon) liberty attributing it to the ambition of Rome for temporal power and a pragmatic gesture by William I to win support from the clergy.

²⁴ Ingram, *Church Courts*, 35-69; John Addy, *Sin and Society in the Seventeenth Century*, London: Routledge, 1989, 9-11.

²⁵ Ingram, *Church Courts*, 4-7; Tina Isaacs, 'Moral Crime, Moral Reform, and the State in Early Eighteenth-Century England: A study of Piety and Politics', PhD Thesis, University of Rochester, NY: 1979, 107-8.

change in values.²⁶ Jurisdictional ambiguity only exacerbated these failings. After 1606, secular courts were also empowered to try drunkards but in an era before modern policing they relied on the testimony of injured parties to pursue a case, a rare occurrence with a crime that necessarily lacked a victim.

Ecclesiastical jurisdiction was abolished by the puritan dominated Long Parliament in 1646 and "government of souls" confined to the criminal law. Although the Church Courts were restored in 1661 by Charles II they now concentrated on prosecuting dissenters and recusants, outlawed by the 1662 Act of Uniformity, and their capacity to prosecute moral offences was severely weakened.²⁷ With the Toleration Act of 1689 and the establishment of liberty of conscience this weakness was institutionalised. By establishing a legal status for dissent, the religious hegemony and hence authority of the Church of England was fundamentally undermined. In the eighteenth-century, the Church could no longer claim a mandate over the morals of everyone, only its own adherents, and consequently its courts lost status, widening the space for secular moral reform.²⁸ Their growing irrelevance was illustrated by the annual presentiments of church wardens who increasingly declined to inform on their fellow parishioners, and presented a standard report that "all is well".²⁹ Although in practice this change had only a limited impact on the prosecution of drunkenness which was never a priority of the church system, the decline of church courts symbolised the larger process of secularisation. As Hill aptly summarises, "[h]enceforth sin was distinguished from crime".³⁰ The impact of this crucial shift for the understanding of alcohol problems is clearly illustrated in two distinctive eighteenth-century episodes: the rise and fall of the Societies for the Reformation of Manners (SRMs) and the moral panic over gin drinking.

²⁶ Hill, *Society and Puritanism*, 309-13, 483. For example, excommunication, the Courts' severest sanction, worked well in small self-contained communities but was undermined in larger towns where sinners could simply move to a new parish. More recent study has qualified the extent of the courts' decline but not the larger significance of this process. See: Ingram, *Church Courts*, 6-10, 34-5, 364-72; Isaacs, 'Moral Crime', 108-110.

²⁷ 'Uniformity Act', (13 Car. II, c. 12), *SOR*, vol. 5, 315-6; Ingram, *Church Courts*, 373-4. The restored Church Courts lost the ability to enforce their sentences in the Prerogative Courts, while Parliament's habit of issuing general pardons weakened the threat of excommunication.

²⁸ Tina Isaacs, 'The Anglican hierarchy and the Reformation of Manners' in *Journal of Ecclesiastical History*, vol. 33, no. 3 (July 1982), pp391-411, 392; Lee Davison, Tim Hitchcock, Tim Keirn and Robert B Shoemaker, 'Introduction - The Reactive State: English Governance and Society', Davison et al (eds.), *Stilling the Grumbling Hive. The Response to Social and Economic Problems in England, 1689-1750*, (Stroud Glos.: Allan Sutton, 1992), pp xi-liv, xxxix; Joel Bernard, 'Original Themes of Voluntary Moralism: The Anglo-American Reformation of Manners', Karen Hattunen and Lewis Perry (eds.), *Moral Problems in American Life. New Perspectives on Cultural History*, Ithaca, NY.: Cornell University Press, 1998, pp14-39, 17.

²⁹ Isaacs, 'Moral Crime', 113-4.

³⁰ Hill, *Society and Puritanism*, 343.

The Campaign for the Reformation of Manners

In the aftermath of the Glorious Revolution, with widespread concern about a perceived decline in English morals after the popery and license of the Restoration, a small group of "pious gentlemen" formed a society to promote reform. They used their influence with the new regime to persuade Queen Mary to promote their cause with a letter to the Middlesex Justices calling for especial diligence in upholding moral laws and they supported this with a public campaign of pressure on magistrates and the public to prosecute offenders.³¹ After a brief decline following legal controversies, the movement was resurgent from 1699, now supported by the publishing network of the newly formed Society for the Promotion of Christian Knowledge (SPCK), an Anglican group that focussed on disseminating protestant ideas through circular letters and pamphlets. A growing number of Manners Societies promoted a message of moral reform including opposition to drunkenness and the sports of the public house by distributing this literature, sponsoring reformation sermons and relying on the influence of prominent clergy and noblemen, and they backed this with a private network of informers who reported transgressors to the authorities.³²

The Societies represented themselves as a national movement but they were concentrated in cities and towns and especially in London; at their peak in 1701 there were twenty groups in London alone.³³ In religious terms, though they were allied with other Anglican reform movements they operated outside the official control of the Church and welcomed dissenters as members.³⁴ Politically, the Societies had broad support, both from William III who used the movement as part of a broader propaganda campaign against Jacobites, and from Country politicians concerned about the corruption of the metropolis.³⁵ Discerning the social composition of the Societies has proved

³¹ Edward Fowler, *A vindication of a late undertaking of certain gentlemen in order to the suppressing of debauchery and profaneness*, London, 1692, 8-11; Dudley W. R. Bahlman, *The Moral Revolution of 1688*, New Haven, Conn.: Yale University Press, 1957, 1-9, 15-19.

³² Bahlman, *Moral Revolution*, 20-1, 56-8, 70-6.

³³ Robert B. Shoemaker, 'Reforming the City: The reformation of manners campaign in London, 1690-1738', Davison et al., *Hive*, pp 99-120, 100; Bahlman, *Moral Revolution*, 37-40. Outside of London, Societies seem to have been short-lived affairs.

³⁴ Isaacs, 'Anglican Hierarchy', 393, 396-403. While there was broad church support for moral reform, the Anglican hierarchy was divided over the use of lay institutions. This divide echoed the conflict between puritans and Laudians in the lead-up to the Civil War with High churchmen opposed to the SRMs, insisting on traditional liturgy and hierarchical obedience, and Low churchmen supporting the Societies and willing to concede a greater latitude in faith and discipline. Brendan Hill argues that the SRMs should be understood as the direct descendants of earlier puritan reformers, and indeed as evidence of the continued strength of puritan ideas within the emerging public sphere of the eighteenth-century. Brendan Hill, 'Puritans', 93-7, 103-4. Regardless of the line of descent, the SRMs pursued the same secular approach to moral reform.

³⁵ For William III see: Tony Claydon, *William III and the Godly Revolution*, Cambridge: Cambridge University Press, 1996, p110-21. For Country Politics see: David Hayton, 'Moral Reform and Country Politics in the Late Seventeenth-Century House of Commons', *Past and Present*, vol. 128 (Aug. 1990), pp48-91.

especially difficult, not least because they pursued a deliberate policy of secrecy, probably out of fear of reprisals from an antagonised public. The only extant records are for the Bristol Society of 1699-1702 whose membership were drawn from the secular elite: the fifty-five names included the mayor and four members of the grand jury, and the remainder were prominent citizens, mostly merchants and including several aldermen and constables. Despite this evidence and the absence of other records, some historians have chosen to view the Societies as principally middle class institutions, in part because the project of moral reform is often seen in itself as evidence of the rise of the middle class.³⁶ But in fact, this was a highly diverse movement, lacking any formal infrastructure; separate Societies differed in their social composition and even their goals, focusing on different vices and employing different methods. In 1708, John Chamberlayne described four distinct kinds of SRMs in London. One elite Society made up of "persons of eminency" in the law, Parliament and commerce offered advice and contributed funds to support prosecutions, a second comprised fifty "Tradesmen and others" who were more active in the cause, shutting down more than five hundred disorderly houses, while a third group was made up of interested Constables and a fourth of paid informers.³⁷ But despite this diversity, the movement shared a common interest in policing public morality.

The Societies helped to confirm the shift away from ecclesiastical jurisdiction by relying on the state system to prosecute moral offenders including drunkards. Members were actively encouraged to report such crimes to the local magistrate and not the church, though this was conceived in Calvinist and puritan terms as a responsibility to God. Thus the reforming clergyman, John Disney believed that "Debauchery and Prophaneness" were crimes against the state for which God would hold the nation responsible but enforcement was not only a religious duty but also a practical necessity:

By the neglect of putting the Laws in Execution, the Authority of the Magistrates is rendered Contemptible ... [and] the Public must share both in the Disgrace and Mischief ... [D]ue

³⁶ Margaret Hunt has adopted this view in her *The Middling Sort: Commerce, Gender and the Family in England, 1680-1780*, Berkeley Ca.: University of California Press, 1996, p102. Brendan Hill argues for more diverse Societies, with a propagandising elite supervising broadly middle class followers and sponsoring lower class informers. See: Brendan Hill, 'Puritans', 104-6; Bahlman, *Moral Revolution*, 43-6; Tim Curtis and William Speck, 'The SRMs: a case-study in the theory and practice of moral reform', *Literature and History* 3 (Mar. 1976), pp 45-64, 48.

³⁷ John Chamberlayne, *Magna Britanniae notitia: or, the present state of Great Britain ...*, London: 1708, p277-8. Cited in: Shoemaker, 'Reforming the City', 110-11.

*Execution of these Laws ... puts a stop to the Ruin of many Families ... [and] contributes to the Vigour, Health and generous Spirit of a Nation.*³⁸

There were even demands for reform of the law itself. Edward Stephens who claimed to have founded the first Society, criticised members for their caution and called for petitions to Parliament for new statutes against immorality, claiming it was "the Right and Duty of every Commoner of England" to demand reform.³⁹

It is important to remember that the criminal justice system of the time was practically unable to enforce moral laws. In a society without an official police force, all criminal cases were brought by private citizens and thus for offences like drunkenness, Justices depended on their private servants or unsalaried constables appointed from among the ratepayers to inform against lawbreakers. Both these constables and the Justices themselves were often desultory in their application of laws against vice and if they chose not to enforce the law it rapidly became a dead letter.⁴⁰ The Societies sought to overcome this challenge by encouraging a culture of informing. They published handbooks with abstracts of the relevant laws and blank warrants as well as statistics of allegations and prosecutions and even raised funds to support private informers. Informers were instructed to observe offences, fill in the warrants and carry them to a Justice. Once signed, the warrants were used to compel constables to arrest sinners on threat of the significant fines for failing to enforce the law, while embezzlement of fines was guarded against by strict reporting requirements.⁴¹ The surviving evidence is fragmentary but suggests that drunkenness was rarely prosecuted, despite frequent condemnation in the Societies' literature, perhaps because it was difficult to prove.⁴² The essence of the practical campaign was thus a support mechanism for the inefficient machinery of early modern justice. By paying informers to act as victims and bring

³⁸ John Disney, *An essay upon the execution of the laws against immorality and prophaneness ...*, London, 1708, v, xiv-xvi, 16-7; Brendan Hill, 'Puritans', 125-6; Isaacs, 'Moral Crime', 101-2, 117.

³⁹ Edward Stephens, *A seasonable and necessary admonition to the gentlemen of the First Society, for Reformation of Manners*, London: 1700, p7. Stephens had a particularly radical view of Parliament arguing that MPs were the servants of their electorates and should act on their instruction. See: Geoff Kemp, 'Stephens, Edward (d. 1706)', *Oxford Dictionary of National Biography (ODNB)*, Oxford University Press: 2004 [<http://www.oxforddnb.com/view/article/26380> - accessed 7 Apr. 2012] Though no new laws regarding alcohol problems eventuated in this period the SRMs did play a role in promoting a Statute against swearing which was significant because it helped to define the role of informers. See: 'Suppressing Blasphemy', (9 Gul. III c.35), *SOR*, vol. 7, 409; Bahlman, *Moral Revolution*, 53; Brendan Hill, 'Puritans', 114.

⁴⁰ Isaacs, 'Moral Crime', 138-42; Brendan Hill, 'Puritans', 98-100. For a wider discussion of private prosecution see: J.M. Beattie, *Crime and the Courts in England, 1660-1800*, Princeton, N.J.: Princeton University Press, 1986, ch. 2; and below, 47ff.

⁴¹ Bahlman, *Moral Revolution*, 54-5; Shoemaker, 'Reforming the City', 100; Fowler, *Vindication*, 9.

⁴² Shoemaker, 'Reforming the City', 103-110. The two most commonly prosecuted vices were lewdness, which targeted public prostitution, and Sabbath-breaking which often involved the sale of liquor during church hours, both of which were relatively easy to detect. The SRMs had allegedly prosecuted more than one hundred thousand offenders in London alone, by 1738.

prosecutions, the manners campaign allowed the state system to fill the breach abandoned by the church and discipline the immoral and recalcitrant.

Such tactics were widely resented, both in elite debate and on the streets themselves. Edward Fowler in his history of the Societies rejected claims that the practice of informing was merely a corrupt system of blackmail for profit but recorded "too many instances of late" where informers were violently punished by the mob.⁴³ Regardless, the practice of informing was vigorously defended. In a widely published tract by Josiah Woodward, defending the Societies, he described informing as "absolutely necessary", even claiming it was effectively a branch of charity since fines went to support the poor and the offender was potentially spared damnation.⁴⁴ Indeed, failure to inform was itself a sin. Gilbert Burnett, the Bishop of Salisbury, prayed that:

*we will not so far hate our brother ... as to suffer sin upon him ... lest by such a vicious feebleness we ... entitle our selves to a share in the Judgements that those Sins we connived at may bring down on him and on us.*⁴⁵

The Paradox of Piety by Secular Means

Burnett's prayer illustrates the religious roots of the campaign for reform. Though the Societies employed secular means and defended its project with secular arguments, they were inspired by a Calvinist and puritan sense of religious obligation. As Woodward argued, "[t]he Prosecution of Men for their Vices ... [was] plainly the Duty of the Magistrate, from the Word of GOD" since government was "of Divine Appointment".⁴⁶ History itself was interpreted through this providential lens. The reformation of manners was associated with a kind of Whig history of morals that sought a connection between morality and political ideas with drunkenness a symbol of improper license, linked with tyranny.⁴⁷ Thus Daniel Defoe, referring to the Declaration of Sports, described James I as "the first King of England ... that ever established Wickedness by a Law" and

⁴³ Fowler, *Vindication*, 11, 14. The frequency of such violence is unclear, as is the significance of popular opposition in undermining the SRMs.

⁴⁴ Josiah Woodward, *An Account of the Societies for Reformation of Manners in London and Westminster, and other parts of the Kingdom*, London: 1699, 50.

⁴⁵ Burnett, cited in: Brendan Hill, 'Puritans', 132-3.

⁴⁶ Woodward, *SRMs*, 1, 23-4. He cited Romans XIII.4 in support of this view: "For there is no power but of God ... For he [the magistrate] is the minister of God to thee for good". Isaacs, 'Moral Crimes', 103-5.

⁴⁷ There were various versions of this Whig history; some writers praised the 'ancient constitution' of the Saxons, others the frugality of the Gothic period, others the renaissance balance between King and Parliament, but a common feature of all this writing was the connection of tyranny to luxury and vice. See: Bahlman, *Moral Revolution*, 1-9; J.G.A. Pocock, *The Machiavellian Moment: Florentine Political thought and the Atlantic Republican Tradition*, Princeton: Princeton University Press, 1975, 427-33; Pocock, 'The Varieties of Whiggism from Exclusion to Reform: A History of Ideology and Discourse', Pocock, *Virtue Commerce and History. Essays on Political Thought and History, Chiefly in the Eighteenth Century*, Cambridge: Cambridge University Press, 1985, pp215-310, 230-1.

argued that “debauchery arrived at its meridian” during the tyrannical reign of Charles II when “drunkenness began its reign”.⁴⁸ This discourse was not merely a political weapon. Reformers believed that vice brought God’s judgement upon the nation and the threat of this judgement could be detected in events. Earthquakes in September 1692 and destructive storms of November 1703 were both explicitly linked to national immorality and used as arguments for reform.⁴⁹

But despite this religious imperative the SRMs relied entirely on state law. Citing the decline of “the ancient Discipline of the Church”, Woodward argued:

*that those upon whom the gentle Methods of persuasion have no force, and whom the Ecclesiastical Power does not and will not take any Notice of, should be severely punished, and restrained by the Civil Government ... For publick Immoralities are Offences against the Peace and Happiness of Mankind, against the Government and the Law, as well as against the Christian Religion*⁵⁰

Ironically, the stricter piety demanded by the godly empowered secular Government over the authority of the church.

This paradoxical attitude is demonstrated most clearly in the condemnation of drunkenness. In a pamphlet attacking this vice, Woodward began by describing the sinful ingratitude of the drunkard:

*Man, that has Reason to inform him in the Will of his Creator, and a Conscience to awaken his Care ... for this wise and noble Creature to part with his Reason, his Conscience, his Heaven, his God, for a little Drink more than he needs ... is a most desperate pitch of Sin and Folly.*⁵¹

But he then listed a series of practical reasons why drunkenness should be repressed: it deprives men of their reason, makes them “vile and contemptible” in the sight of others, enflames “bestial lusts and passions”, promotes violence, causes disease and ill-health, induces accidents, facilitates robberies and leads through wastefulness to poverty.⁵² Though he also emphasised the spiritual

⁴⁸ Daniel Defoe, *The Poor Man’s Plea*, London: 1698, 4-5, 12-13. He argued that the enjoyment of drunkenness must have originated among the gentry who were then copied by the common people “who still love to be like their Betters”, going so far as to suggest that it originated in the practice of drinking the king’s health as a sign of loyalty after the restoration. Woodward argued that the broader pattern of English history reflected the favour of God with the conquests by the Romans, Saxons and Normans preceded by a period of corrupt decadence. Woodward, *SRMs*, 67-70.

⁴⁹ Bahlman, *Moral Revolution*, 10-13; Isaacs, ‘Moral Crimes’, 101-3.

⁵⁰ Woodward, *SRMs*, 76.

⁵¹ Woodward, *A Disswasive from the sin of drunkenness ...*, London: 1701, 4.

⁵² Woodward, *Disswasive*, 8-15.

harm caused by drinking, this list of worldly ills formed a template for the temperance movement and its resolutely secular denunciation of alcohol.

Although the Societies remained active well into the eighteenth-century they were a declining force after 1710 and seem to have disappeared by the 1740s.⁵³ In addition to popular resentment, they also attracted religious and political opposition. Ministers who supported the campaign were almost universally Low in theology and Whigs in politics and this led naturally to Tory and High Church opposition, while the establishment in general resented both its democratising and secularising tendencies.⁵⁴ The contrast with the Society for Promoting Christian Knowledge, which grew throughout the century into a global network, is revealing. Where enforcement through prosecutions attracted controversy and created enemies, persuasive tactics like the sponsorship of missionaries, public sermons and lectures, and education for the poor, were widely praised on both sides of politics and the Church.⁵⁵ But though they failed to reform behaviour, Manners Societies established a template for secular moral activism that would have a decisive influence on the regulation of alcohol. Though elite persuasion was the dominant model of eighteenth-century reformers, the policing of drunkenness would return to prominence in the mid nineteenth century.

The Gin Crisis

In contrast to the voluntary policing of the manners campaign, the attack on gin during the second quarter of the eighteenth-century was an official regulatory response to alcohol problems that relied upon limiting the supply of spirits. Seven acts attempting to regulate drinking were passed in the three decades after 1720 in an "unparalleled attempt to place an important product of home industry out of the reach of most of its market".⁵⁶ Though much of this regulation was a marked failure, the wider public debate set the terms of official concern about alcohol problems over the next century and established the regulatory system that was eventually adopted in NSW.

The crisis had its origin in the extraordinary and rapid rise of both local distillation and local consumption of gin after 1688. There is considerable debate about the extent of the problem caused by gin in eighteenth-century London, but there is no question that spirit drinking increased

⁵³ Bahlman, *Moral Revolution*, 67-8, 97.

⁵⁴ Isaacs, 'Anglican Hierarchy', 399-403; Bahlman, *Moral Revolution*, 84-9. For an example of Tory criticism see: Henry Sacheverell, *The character of a Low-church-man...*, London: 1702, 9-11.

⁵⁵ Bahlman, *Moral Revolution*, 77-9, 83, 100-3; Isaacs, 'Moral Crimes', 23-5. The Society for Promoting the Gospel in Foreign Parts, a missionary society founded in 1701 also avoided controversy and remained active throughout the century. The debate between persuasion and more active approaches to reform would recur in the early years of the temperance movement.

⁵⁶ Lee Davison, 'Experiments in the Social Regulation of Industry: Gin Legislation, 1729-1751', Davison et al., *Hive*, pp25-48, 25.

with extraordinary rapidity.⁵⁷ It is no exaggeration to speak of a revolutionary change in drinking habits in the century after 1650 which saw the per capita consumption of spirits increase one hundred-fold.⁵⁸ This change was due partly to the improved technology of distilling but also to regulatory encouragement of the industry and the changing tastes of eighteenth-century society. In a pamphlet to promote the industry, Daniel Defoe, claimed: "[t]here has been for some Years ... a national Gust or Inclination to drinking stronger and higher priced Liquors than formerly", a change in tastes met by "Strong Waters", initially imported but soon produced at home.⁵⁹ The growth of both supply and demand led to an explosion of practically unregulated gin-shops and gin vendors across London, and by the 1720s they were a serious concern of the city authorities. Gin vendors were seen as idle and disorderly and gin itself became associated with a wide range of social problems, including increased crime and rising mortality leading to calls for government action.

However, there is little evidence to support these fears. Discharged soldiers are a much more substantial explanatory factor in the fluctuating levels of criminal prosecutions while deaths ascribed to excessive drinking probably reflect the public panic as much as they do alcohol consumption.⁶⁰ Moreover, gin-sellers were probably more respectable than their critics allowed with many either chandlers, or distillers selling their own product, both businesses that required considerable capital to establish; only the street-trade was dominated by the poor.⁶¹ Concerns were probably exacerbated by the participation of women both as retailers and customers. Women made up a third of unlicensed traders in 1751 and there is considerable anecdotal evidence both that

⁵⁷ Peter Clark examined the "scrappy" evidence on gin sales to conclude that the problem while real was exaggerated and concentrated in the metropolis. Davison disputes this interpretation arguing that the opponents of gin were genuinely concerned about a real problem. Jessica Warner broadly agrees with Clark, seeing the controversy as largely a conflict within the elite. See: Peter Clark, 'The "Mother Gin" Controversy in the Early Eighteenth Century', *Transactions of the Royal Historical Society*, fifth ser., vol. 38 (1988), pp63-84; Davison, 'Experiments', 26-27; Jessica Warner, *Craze: gin and debauchery in an age of reason ...*, New York: Random House, 2002.

⁵⁸ John J. McCusker, 'The business of distilling in the Old World and the New World during the seventeenth and eighteenth centuries: the rise of a new enterprise and its connection with colonial America' in: John McCusker and Kenneth Morgan, *The Early Modern Atlantic Economy*, Cambridge University Press: Cambridge, 2000, pp186-224.

⁵⁹ Daniel Defoe, *A brief case of the distillers ...*, London: 1726, 18-26. This pamphlet is plainly one of Defoe's more cynical efforts, given his previous complaints about drunkenness and criticisms of gin in particular. But at least when writing at the behest of the Distillers Corporation, he was ambivalent about whether drunkenness itself had increased claiming: "I do not say we drink more, or more to Excess, that is a Subject of another Nature, and however true, is not to my present Purpose." (46).

⁶⁰ Clark, 'Mother Gin', 64-6, 71-2. James Beattie has connected fluctuations in property crime in eighteenth-century Surrey with the discharge of soldiers following war. See: Beattie, *Crime and the Courts*, 213-35; Beattie, 'The Pattern of Crime in England 1660-1800', *Past & Present*, no. 62 (Feb., 1974), pp47-95.

⁶¹ Clark, 'Mother Gin', 68-70; Davison, 'Experiments', 26-27. Clark also shows that gin sellers in Bethnal Green were paying "significantly" higher than average rates. Davison disputes this interpretation arguing that poor gin sellers were the least represented in our sources and that the opponents of gin were genuinely concerned. I accept Clark's view that the industry was often more respectable than reformers implied but concede that there was a genuine problem.

women were regular gin drinkers and that female drinking was of particular concern to critics.⁶² This is borne out by the emphasis on hawking in the enforcement of gin regulation and it seems likely that the problem was primarily one of visibility: mobile, unlicensed street-sellers and their customers, particularly women, upset respectable notions of decency with public displays of drunkenness. Thus the campaign against gin should be seen as a moral panic – there were certainly problems associated with drinking, but gin was both symptom and cause and in any case, the crisis was exaggerated by critics who were especially concerned with the disorderly appearance of popular recreation in proto-industrial London.

Regulating Gin

The first official response to the problem was a 1726 survey of the trade by a special committee of the Middlesex justices that found over 6000 retailers operated within the boundaries of greater London while in some parishes as many as one in five houses sold spirits. Though there was no immediate response from Parliament, concerns raised by the Report played a part in the first Gin Act of 1729 which set a twenty pound annual licensing fee and levied a new duty of five shillings per gallon on domestic spirits.⁶³ Unfortunately it was a comprehensive failure: only a fraction of retailers took out the new licences and there were legitimate complaints that the Act only targeted small distillers and law-abiding retailers, ignoring the larger producers and the many street vendors who flouted the law. It was repealed in 1733 and meanwhile the volume of British spirit paying duties continued to increase, almost doubling between 1730 and 1735.⁶⁴

Renewed consumption led to renewed concerns and from the mid-1730s a new and more vociferous campaign against gin began. An organised group of reformers, led in Parliament by Sir Joseph Jekyll and in public by Bishops, Justices, and the missionary and manners societies, promoted a further report by the Middlesex bench, a series of critical pamphlets and a widely signed petition.⁶⁵

⁶² Clark, 'Mother Gin', 70-1. Hogarth's famous print *Gin Lane* embodies this focus in the central figure of a drunken mother neglecting her child while leading pamphleteer, Thomas Wilson clarified this emphasis by stressing that female drinking harmed infants and children and therefore damaged national posterity. Both were implicitly referencing the notorious case of Judith Defour who allegedly left her child to die after selling his bed clothes to buy gin. See: Patrick Dillon, *Gin: the much-lamented death of Madam Geneva*, Boston, Ma.: Justin Charles & Co., 2003, 93-9; William Hogarth, *Beer Street and Gin Lane*, London: 1751, [<http://en.wikipedia.org/wiki/File:Beer-street-and-Gin-lane.jpg>, accessed 8th Apr. 2012]; Thomas Wilson, *Distilled Spirituous Liquors, The Bane of the Nation ...*, 2nd Ed., London: 1736, 37-40.

⁶³ 'Duty on Spirits', (2 Geo II c. 17), Owen Ruffhead, *Statutes at large from Magna Charta, to the end of the last Parliament, 1761*, 8 vols., London: 1768-70, vol. 5, 682.

⁶⁴ Clark, 'Mother Gin', 66-7; Davison, 'Experiments', 27-9. Retailers avoided the act by selling "Parliament brandy", a spirit with the strength of gin but made from wine and not grain and thus escaping the new duties.

⁶⁵ On Jekyll see: Tim Keirn, 'Jekyll, Sir Joseph (bap. 1662, d. 1738)', *ODNB*, [<http://www.oxforddnb.com/view/article/14709>, accessed 8 April 2012]

Despite opposition from distillers and some public scepticism, the petition led to a new Gin Act that built on the increasingly secular understanding of alcohol problems. The 1736 Act claimed that:

*the drinking of Spiritous Liquors ... is become very common, especially among the People of lower and inferior Rank, the constant and excessive Use whereof tends greatly to the Destruction of their Healths, rendering them unfit for useful Labour and Business, debauching their Morals, and inciting them to perpetrate all Manner of Vices; and the ill Consequences of the excessive Use of such Liquors are not confined to the present Generation, but extend to future Ages, and tend to the Devastation and Ruin of this Kingdom.*⁶⁶

In more practical terms, the Act imposed a punitive duty of twenty shillings per gallon, paid by the retailer, along with a prohibitive license fee of fifty pounds, banned sale by hawkers and from unlicensed houses and established severe fines to compel obedience.

Despite controversy, the new Act easily passed Parliament, probably because it avoided any fiscal pain for the state and again targeted small retailers and not the large distillers with their powerful parliamentary lobby.⁶⁷ But it was deeply unpopular with the public. Jacobite conspirators seized on this ill-feeling when they set off an explosion in Westminster Hall, scattering pamphlets alleging that the Gin Act and other recent laws marked a trend towards the “utter subversion of the liberties and properties of the kingdom” and the threat of riot led the government to mobilise troops.⁶⁸ But the Act’s unpopularity was seen most clearly in the widespread opposition to its enforcement. Retailers, almost universally, refused to take out licences, the new taxes raised only five hundred pounds (representing only five hundred duty-paying gallons), and few offenders were ever prosecuted. Magistrates found it difficult to apprehend the smaller mobile street-sellers who were the chief concern and were reluctant to stir up unrest among the poor, leading critics to again allege that the law encouraged illicit sale at the expense of respectable tradesman.⁶⁹

A year later, with less than six hundred convictions under the Act, the government felt obliged to pass an amendment offering rewards for informers which led to an increase of committals

⁶⁶ ‘Duty on Retailers of Spiritous Liquors’, (9 Geo. II c. 23), SAL, vol. 6, 217-21.

⁶⁷ Clark, ‘Mother Gin’, 76-7; Davison, ‘Experiments’, 33-5. Walpole’s decisive support hinged on a guarantee of funding for the civil list.

⁶⁸ Pamphlet cited in: Clark, ‘Mother Gin’, 78-9. George Rudé (‘Mother Gin and the London Riots of 1736’, *Guildhall miscellany*, vol. 1, no. 10 (1959), pp53-62) has despatched the myth that rioting in this period was caused by disgruntled gin addicts deprived of their supply. Nonetheless, the politically opportunistic targeting of the Gin Act must reflect its unpopularity. Public protests complained that the Gin Act was biased, targeting the drinking of the poor while ignoring the rich, and there were also arguments that the license fees were an imposition upon freedom of trade.

⁶⁹ Davison, ‘Experiments’, 35-6.

and punishments, but also created opportunities for corruption and abuse.⁷⁰ De Veil, a Middlesex justice, reported that rewards “set loose a crew of desperate and wicked people who turned informers merely for bread”.⁷¹ His view was shared by the common people who regularly attacked informers, mirroring the reception when the practice was promoted by the manners societies. The government began to fear that the mob was overwhelming the law and responded with amendments designed to make it easier to secure convictions by designating the occupier of any unlicensed house where liquor was sold as a retailer, setting strict penalties for impeding informers and allowing any citizen to arrest street hawkers. Large numbers of offenders were charged, especially for obstructing the law, but once the rioting stopped convictions rapidly declined, suggesting that magistrates were more concerned with public order than alcohol problems.⁷²

Overall, prosecutions under the various Acts were limited and punishments routinely reduced by magistrates anxious to avoid public unrest. By 1742 the excise board had recorded only 1642 convictions which raised only nine thousand pounds in fines, a mere six percent of the possible penalties.⁷³ Popular and administrative opposition thus overwhelmed the Act which became a dead letter and in 1743 it was repealed and replaced with relaxed duties of six pence a gallon on English spirits, now levied at the still, and a licence fee of one pound.⁷⁴ After a temporary decline, production of spirits again increased and the licensed trade expanded accordingly leading to a further public outcry in the early 1750s. Once more the Middlesex bench, now led by Henry Fielding, took a leading role. A subsequent parliamentary campaign led to a new Act in 1751 that focused explicitly on the problem of licensing. Fees and duties were again increased but more importantly national regulations, echoing those of many local counties, restricted licenses to respectable householders and granted magistrates greater authority over public houses.⁷⁵

In the following years other important regulations tightened control over the sale of liquor. An Act for “Preventing Thefts and Robberies” gave Constables authority over theatres and other

⁷⁰ ‘Enforcing 9 Geo. II c. 23’, (10 Geo. II c. 17), *SAL*, vol. 6, 255-264.

⁷¹ de Veil, cited in: Clark, ‘Mother Gin’, 80.

⁷² ‘Enforcing 9 Geo. II c. 23’, (11 Geo. II c. 26) *SAL*, vol. 6, 305-8; Davison, ‘Experiments’, 36-41. For more on public opposition to informers see: Jessica Warner & Frank Ivis, “‘Damn You, You Informing Bitch.’ Vox Populi and the Unmaking of the Gin Act of 1736’, *Journal of Social History*, vol. 33 no. 2 (Winter, 1999), pp299-330.

⁷³ Davison, ‘Experiments’, 36-7. Note that offenders could also be prosecuted directly by magistrates so these figures probably represent about half of the total convictions.

⁷⁴ ‘Duty on Retailers of Spiritous Liquors’, (16 Geo. II c.8), *SAL*, vol. 6, 480-2.

⁷⁵ ‘Duty on Spiritous Liquors’, (24 Geo. II c. 40), *SAL*, vol. 7, 367-75. Licensees had to own property paying rents of £10- a year and pay the poor rates. The new act also banned distillers from retailing, outlawed the sale of alcohol within prisons, made debts for spirits of less than a pound unrecoverable and banned those involved in production or retail from serving as magistrates in licensing cases. For more on the long-term impact of this new licensing system, see below, 47.

“Places of Entertainment for the lower Sort of People”.⁷⁶ A further Licensing Act formally established licensing sessions where magistrates required candidates to produce a certificate of “good fame” from a church warden, made it easier for magistrates to prosecute unlicensed sellers and split fines between the informer and the local poor.⁷⁷ In effect, these new laws formalised and centralised the old parish system of managing drinking places – once more, publicans were required to be respectable characters but this respectability was now enshrined in law and not the patronage of the local magistrate or bishop. These Acts of the 1750s seem to have finally solved the gin crisis, partly because they were more carefully considered, balancing the need to limit retail outlets with the difficulty of enforcement.⁷⁸ But crucially, the 1751 Act for the first time directly connected alcohol problems to the venues where it was sold. By restoring magisterial discretion and thus elite supervision of drinking, and moving drinkers off the streets the problem was (temporarily) solved.

The Pamphlet War: A Secular Debate about Alcohol

The campaign against gin was largely a movement within the social and political elite, particularly among a small group of London magistrates and low churchmen associated with the Society for Promoting Christian Knowledge and the ongoing campaign for moral reform. Three of the leading pamphleteers, Thomas Wilson, Dr Stephen Hales and the excise commissioner, James Vernon were members of the Society, as were other prominent supporters including Jekyll, the chief parliamentary campaigner, Edmund Gibson, the Bishop of London, Sir John Gonson, a member of the Westminster bench and James Oglethorpe, another parliamentary supporter who had chaired an influential committee on gaol reform.⁷⁹ This small but influential alliance of elite reformers had clear ties to the emerging middle classes through their professions, their Whiggish politics, their evangelical religion and their determination to improve society. More importantly, they largely abandoned the traditional religious view of alcohol problems and substituted a rational accounting of the costs of drink for society. James I’s regulation of drunkenness had cast the drinker as a sinner,

⁷⁶ ‘Preventing Thefts and Robberies’, (25 Geo. II c. 36), *SAL*, vol. 7, 438-440. For more on these Acts see: Sir Leon Radzinowicz, *A History of English Criminal Law and its Administration from 1750*, (5 vols.), vol. 3, *Cross-Currents in the Movement for the Reform of Police*, London: Stevens & Sons, 1956, 74-9.

⁷⁷ ‘Licensing Alehouses’, (26 Geo. II c. 31), *SAL*, vol. 7, 519-522.

⁷⁸ Clark, ‘Mother Gin’, 83-4; Davison, ‘Experiments’, 41-2. Also, a resurgent brewing industry was successfully marketing porter, a high quality, mass produced beer that challenged the popularity of spirits, while the new practice of banning distillation in times of poor harvests or famine seriously disrupted the spirit trade.

⁷⁹ Clark, ‘Mother Gin’, 73-6; Davison, ‘Experiments’, 29; Jessica Warner, ‘Faith in Numbers: Quantifying Gin and Sin in Eighteenth-Century England’, *Journal of British Studies*, vol. 50, no. 1 (January 2011), pp76-99, 83-6. As Clark notes magistrates outside of London were generally uninterested in the campaign and even within the capital, beyond the Westminster and Middlesex benches there was very limited support.

while criminalising his behaviour. In contrast, the legislation of the 1730s and 1740s argued that a particular form of alcohol was the cause of problems and targeted its sale.

The uniquely problematic nature of distilled spirits as opposed to more traditional beverages like beer and wine began to emerge at the turn of the century.⁸⁰ In 1725 the College of Physicians petitioned Parliament noting:

*the FATAL EFFECTS of the frequent Use of several Sorts of distilled Spirituous Liquors ... rendering [the people] diseased, not fit for Business, poor, a Burden to themselves and Neighbours, and too often the Cause of weak, feeble and distemper'd Children, ... a Charge to their Country.*⁸¹

In contrast, beer and wine were defended as healthy beverages. In a parliamentary debate of 1743 Lord Chesterfield compared the "old English sort of drunkenness, which proceeded from hospitality and good-fellowship" with the intoxication from gin which "admits of no mirth, no conversation: the company grow mad before they well know what they are about, and the more they drink, the more ripe they grow for any wickedness"⁸² Similarly, Hogarth's *Beer Street*, illustrated the health and prosperity of the traditional beer-drinker in stark contrast to the poverty and crime of *Gin Lane*. Critics of gin conceived of traditional alcohol problems in a new and wider frame. In addition to the standard view that drunkenness was a symptom of a vicious character, drinking to excess was now seen to cause poverty and thus to force its victims to resort to crime.⁸³

Medical arguments against alcohol took on increasing scientific rigour in the context of the gin crisis. The most influential proponent was Stephen Hales, a member of the Royal Society who conducted his own experiments with alcohol. Controversially for the time, he held that all spirits were "equally pernicious and dangerous, that are of an equal strength" and he described in detail how they hurt the human system:

[Spirits] coagulate and thicken the blood, they also contract and narrow the Blood-Vessels [and thus] cause those Obstructions and Stoppages in the Liver ... weaken and wear out the

⁸⁰ For example, Charles Davenant, who hints at this in his discussion of taxation and public revenue where he notes that: "Physicians say, [Brandy] extinguishes natural Heat and Appetite" in the course of drawing a distinction between the taxation of beer and spirits. See: Charles Davenant, *An essay upon Ways and Means of Supplying the War*, 3rd ed., London: 1701, (1st ed. 1695), 134.

⁸¹ Davidson, 'Experiments', 27-8. Physicians petition cited in: Edmund Gibson, *An earnest dissuasive from intemperance in meats and drinks ...*, 8th ed., London: 1750, 37. Note Defoe's apparent response to this in his industry supported pamphlet: Defoe, *Distillers*, 10.

⁸² Cited in: Davidson, 'Experiments', 32-3.

⁸³ Hogarth, *Beer Street*; Fielding, *Enquiry*, 14; Willson, *Spiritous Liquors*, 32-60.

*Substance and Coats of the Stomach ... destroy the Appetite and Digestion ... destroy also many of the very fine Blood Vessels ... as in the Brain; by which means, the Memory and Intellectual Faculties are ruined.*⁸⁴

He also had a sense of the addictive qualities of alcohol, describing spirits as “bewitching” and arguing that “when a Man’s Will and Affections are thus depraved, and he is delighted with this worst of Slavery ... he must be dealt with like a Madman, and be bound down to keep him from destroying himself.”⁸⁵ This view foreshadowed the medical paradigm that would dominate the understanding of alcohol problems after 1850.

More influential, at least in the eighteenth-century, were the wider implications of this medical critique. Hales described the harmful effects of foetal and infant exposure to alcohol through drunken mothers and claimed to identify a decline in christenings and an increase in childhood mortality in London which he attributed entirely to gin.⁸⁶ Thomas Wilson’s attempts to calculate the financial loss to the State from drinking took this argument to its ultimate secular conclusion: the problem of alcohol was less about morality than about health and less about the individual than about the nation as a whole.⁸⁷ In the context of the gin crisis secular arguments against alcohol took on new meaning, drawing together questions of public finance, public health and public order into an overarching state concern with alcohol problems. As Fielding aptly summarised:

*tho’ the Encrease of Thieves, and the Destruction of morality ... the Loss of our Labourers; our Sailors, and our Soldiers, should not be sufficient Reasons, there is one which seems to be unanswerable, and that is, the Loss of our Gin-drinkers: Since, should the drinking this Poison be continued in its present Height during the next twenty Years, there will, by that Time, be very few of the common People left to drink it.*⁸⁸

The debate over gin was thus conducted largely in terms of the public interest. While reformers attacked Gin drinking as a social burden, lobbyists for the distilleries stressed the

⁸⁴ Stephen Hales, *A friendly admonition to the drinkers of brandy and other distilled spirituous liquors...*, 4th ed., London: 1751 (first published 1733), 3-5, 10, 21.

⁸⁵ Hales, *Admonition*, 11-12. For more on the nineteenth-century development of these arguments see below, 239ff.

⁸⁶ Hales, *Admonition*, 19-20, 40-3.

⁸⁷ Wilson, *Spiritous Liquors*, *passim*. For more on the use of political arithmetic as a rhetorical tool in the pamphlet war see: Warner, ‘Quantifying Gin’. Recent scholarship has strongly refuted these arguments; indeed the population of both England and London were rising at this time. See for example: Peter Razzell, ‘The Growth of Population in Eighteenth-Century England: A Critical Reappraisal’, *The Journal of Economic History*, vol. 53, no. 4 (Dec., 1993), pp. 743-771.

⁸⁸ Henry Fielding, *An enquiry into the cause of the late increase of robberies ...*, Dublin: 1751, 17.

economic benefits of the industry both to society at large and to state revenue in particular.⁸⁹ In an especially striking episode, Wilson sent a draft of his influential pamphlet to other reformers asking for comment. Hales warned him of the opposition of the landed interest and asked him to prove that farmers lost more through the reduced grain consumption of drinkers than they gained from the grain demands of the still, while Jekyll advised him "that its Moral Reflections might be kept to the last and not intermixt in the Body of the Treatise".⁹⁰ Though the campaign against alcohol problems was still driven by moral reformers, motivated by their faith, they now argued their case in predominately secular terms, a legacy that would have a profound influence on the regulation of alcohol in nineteenth-century NSW.

⁸⁹ Defoe, *Distillers*, 32-4, 42-4; Anonymous, *An Impartial Inquiry into the Present state of the British Distillery ...*, London: 1736.

⁹⁰ Both comments cited in: Davidson, 'Experiments', 31; Wilson, *Spiritous Liquors*.

Chapter 2) Alcohol, Reform and the Founding of NSW

Rationing Rum

The early colonists argued about alcohol even before they arrived in NSW. In Lord Sydney's original plans for the settlement, there was no provision for alcoholic drinks for the colonists, convict or official, once they made landfall.¹ Reviewing the plan in December of 1786, the future Governor, Arthur Phillip, feared "discontent in the garrison" if they were denied the drinks "to which they have ever been accustomed" and he repeated his fears of "very disagreeable consequences" the following year after Major Robert Ross, the commander of the Marine Corps who were to form the colonial garrison, relayed his troops' strong objection to this enforced sobriety.² Lord Sydney responded, noting that at first an alcohol ration "had not been thought advisable" but because "the service upon which [the marines] may be employed may require such an addition", Phillip should purchase a supply during the voyage although he warned that "no further quantity of wine or spirits will hereafter be allowed for that purpose".³ Phillip was subsequently ordered to purchase wine and spirits for the first three years of the settlement when the fleet stopped at Rio and he duly did so.⁴

According to Alan Atkinson, the original omission of a spirit ration was a deliberate part of Lord Sydney's vision of the colony as a moral reformatory. The key to Sydney's plans was the redemption of convicts through their participation as free men in a new commonwealth, granted land to farm and removed from temptations like alcohol and money, in order to awaken their dormant sense of community and responsibility.⁵ Thus Atkinson suggests that Lord Sydney "tried unsuccessfully to prevent wine or spirits from being added to the common provisions" as part of an effort to "[do] what he could for the moral fabric of the settlement".⁶ But it is by no means clear

¹ 'Lord Sydney to the Lords Commissioners of the Treasury', 18th Aug. 1786, F.M. Bladen (ed.), *Historical Records of NSW (HRNSW)*, (6 vols.), Sydney: 1892-1901, vol. 1, pt. 2, Sydney: 1892, 14-20. This plan makes no reference to alcohol supplies and the subsequent correspondence between Phillip and Lord Sydney shows that this was a deliberate policy decision.

² John Moore, *The First Fleet marines, 1786-1792*, St Lucia, Qld: University of Queensland Press, 1987, 44-5; 'Phillip to Nepean', 2nd Dec. 1786, *HRNSW*, vol. 1, no. 2, 30; 'Phillip to Nepean', 8th May 1787, *HRNSW*, vol. 1, no. 2, 101-2.

³ 'Sydney to Phillip', 5th May 1787, *HRNSW*, vol. 1, no. 2, 94-5. His equivocal language perhaps suggests reluctance.

⁴ 'Phillip to Nepean', 11th May 1787, *HRNSW*, vol. 1, no. 2, 103; 'Phillip to Nepean', 2nd Sep. 1787, *HRNSW*, vol. 1, no. 2, 112; 'Stephens to Ross', 17th May 1787, *HRNSW*, vol. 2, 388.

⁵ Alan Atkinson, *The Europeans in Australia: A History*, vol. 1, *Beginning*, Melbourne: Oxford University Press, 1997, 66-72. For more on Atkinson's interpretation and the wider debate about the founding of NSW see below, 52ff.

⁶ Atkinson, *Beginning*, 69. His view was recently adopted by Fitzgerald and Jordan: *Under the Influence*, 12. By comparison, Manning Clark relies on Lord Sydney's own account that he acceded to the marines' request for a rum ration because he was anxious "to remove every possible cause of dissatisfaction". C.M.H. Clark, *A History of Australia*, vol. 1,

that the failure to supply alcohol in the original plans was a consequence of any such idealism. The marines were always intended to receive the full naval ration on the voyage out to NSW, which included half a gallon of rum a day, a reflection of standard military practice: onboard ship marines were provided for by the navy, while on land they were granted an allowance to pay for their food, but had to supply their own liquor.⁷ The difference in NSW was that as a virgin colony there could be no alcohol if the commissariat did not supply it and the impossibility of purchasing drink seems to have led to an assumption that it would be provided "as they have no market to go to".⁸ Indeed it is likely that the initial confusion over victualling the troops emerged because the expedition to Botany Bay was the first time the Marine Corps had served outside of wartime.⁹ Moreover, this supposed prohibitory regime would not have applied to the officers or the civilian officials who accompanied the fleet. Standard naval practice entitled them to bring a personal supply of drink with them on the voyage, besides which, from early 1787 Phillip was authorised to purchase wine at Teneriffe for those "entitled" to a wine ration.¹⁰ All considered it is most likely that the exclusion of alcohol in the original plans was motivated by a combination of military precedent and economy, perhaps complemented by a certain moral censoriousness amongst the planners.

But Atkinson is right to connect alcohol problems in NSW with a belief in moral reform that was integral to the planning of the penal colony. Long before 1788 public drunkenness had become a symbol of disorder and immorality, as it was for the Manners Societies and the gin reformers. Despite, or even because of the prevalence of drinking in eighteenth-century Britain there was a long history of attacking drinking and the eighteenth-century saw a flourishing of new enlightened ideas for reforming society which frequently associated alcohol with the linked problems of poverty, disease, idleness and immorality. But to understand how the spirit of reform shaped the regulation

From the Earliest Times to the Age of Macquarie, Melbourne: Melbourne University Press, 1979, 81. This is closer to my own interpretation.

⁷ 'Sydney to Lords of the Treasury', 18th Aug. 1786, *HRNSW*, vol. 1, no. 2, 14-5; Cyril Field, *Britain's Sea Soldiers: a History of the Royal Marines and Their Predecessors and of Their Services in Action, Ashore and Afloat*, (2 vols.), vol. 1, Liverpool: Lyceum Press, 1924, 134; Moore, *Marines*, 8.. The ration for the voyage is given in: 'Lords of the Admiralty to Sydney', 21st Nov. 1786, *HRNSW*, vol.1, no. 2, 29.

⁸ 'Phillip to Nepean', 8th May 1787, *HRNSW*, vol. 1, no. 2, 101-2; Moore, *Marines*, 28-9, 44-5.. Note that there was also debate during the planning of the fleet about whether the marines would have to pay for their food rations in NSW: 'Lords of the Admiralty to Sydney', 21st Dec. 1786, *HRNSW*, vol. 1, no. 2, 29. It appears from this letter that Sydney did not understand the normal mode of victualling marines. It is also worth noting that the Sailors and Marines who remained on onboard the *Sirius* and the *Supply* in NSW would continue to receive the navy ration, a double standard of which Phillip was aware.

⁹ Moore, *Marines*, 17.

¹⁰ 'Phillip's Instructions', 2th Apr. 1787, *HRNSW*, vol. 1, no. 2, 86. Those "entitled" were presumably the naval officers as this was standard military practice at the time but it is an open question whether this would have included the officers on shore. In the long run officers in NSW were provided with wines. See: 'Phillip to Secretary Stephens', 27th Dec. 1786, *HRNSW*, vol. 1, no. 2, 40-1; 'Stephens to Phillip', 23rd Feb. 1787, *HRNSW*, vol. 1, no. 2, 48-9.

of alcohol in the new colony we first need to appreciate the importance of drinking in eighteenth-century Britain.

Alcohol and British Society in 1788

Alcoholic drinks were ubiquitous in eighteenth-century Britain. Not only were they cheap and readily available, they were frequently the safest beverage in an industrialising society where water supplies were often unsanitary and tea and coffee were still luxuries for many. Levels of consumption are difficult to gauge either in an absolute or relative sense. Official figures begin at the turn of the nineteenth century when there was approximately eight litres available per person each year – though the average drinker must necessarily have consumed more. Almost half of this alcohol was in the form of beer, most of which was weak by modern standards, and formed the staple beverage of the working classes. But the traditional pattern, where the poor drank beer or cider and the rich wines, was changed by the emergence of industrial distillation: beer was still the main means of quenching thirst but spirits were increasingly used as an intoxicant.¹¹

Drinking in Britain at this time was associated with every kind of entertainment and social ceremony, from theatre to funerals. A social lubricant among all classes, alcohol was relied upon as an aid to courtship and general camaraderie and was critical as a symbol of exchange, both in business, where deals were frequently sealed with a drink and in other transactions, like the solemnization of marriage. The public house was more than a mere drinking place it was a centre of community life to rival the church, the main location for public recreation and public meetings, especially for the working classes. Public houses were often the only place where the poor could enjoy basic comforts like light, warmth and decent food but in addition they sponsored local sports and festivals, provided rooms, held funds and kept records for voluntary societies, and supported a host of subsidiary occupations like itinerant traders, auctioneers and prostitutes.¹²

Furthermore, alcohol was actively regarded as healthy and vitalising, frequently prescribed as a medicine and regarded as stimulant necessary accompaniment for any kind of hard work,

¹¹ George B. Wilson, *Alcohol and the nation. A contribution to the study of the liquor problem in the UK from 1800 to 1935*, London: Nicholson & Watson Ltd., 1940, 16; Harrison, *Drink*, 37-9, 88-9; Noel Butlin, 'Yo, Ho, Ho and How Many Bottles of Rum?' in *Australian Economic History Review*, vol. 23, no.1 (March 1983), pp1-27, 14-15. For tea and coffee see: John Burnett, *Liquid Pleasures, A Social History of drinks in Modern Britain*, London: Routledge, 1999, 52-7, 75-80. For a discussion of the problems besetting calculations of alcohol consumption and my approach as well as data on nineteenth-century British drinking see Appendix 1, 262ff.

¹² Harrison, *Drink*, 46-58, 64-5; Clark, *Alehouse*, chs. 10, 13.

especially in the outdoor labour that dominated eighteenth-century society.¹³ In pre-industrial towns, work rhythms tended to be episodic and involve hard work during a short week and hard drinking on the weekend, frequently extending into 'St Monday'. This pattern, along with the ritualised use of alcohol by tradesmen with their systems of fines and footings (hierarchical obligations which often involved inferiors buying drinks) was intimately connected with the nature of eighteenth-century industry with its small scale, organisation into guilds and emphasis on piece-work. As E. P. Thompson has shown, these habits clashed dramatically with the demand for a disciplined work-force in the new industries of the industrial revolution.¹⁴ But it is also important to note that the newly disciplined work habits of industrialising England frequently encouraged drinking – the monotony of the work, the physical demands of factory labour (especially before work-hours were legally regulated) and the rising levels of unemployment all encouraged a resort to the public house.¹⁵

This wider context clarifies the dismay of the First Fleet marines when they discovered the plans for their rationing. In a memorial to Major Ross, the troops informed him that they were "sorely aggrieved" to find that they would have no access to "an indispensable requirement for the preservation of our lives, which change of climate and the extreme fatigue ... may probably endanger".¹⁶ This was not an attitude confined to the ranks. Writing privately to a friend, Lieutenant Ralph Clark complained of "a very great hardship on use[sic] all to have nothing but water to drink for four Years".¹⁷ For the marines at least, alcohol was not only a regular staple whose loss would be deeply felt it was an essential and salutary stimulant, an attitude typical of the eighteenth-century military.¹⁸ The early colonists came from a society in which alcohol was central to daily life.

¹³ Harrison, 38-41; E.P. Thomson, 'Time, Work-Discipline and Industrial Capitalism', *Past & Present*, no. 38 (1967), pp56-97, 59-60.

¹⁴ Thompson, 'Time', 76; Douglas A. Reid, 'The Decline of Saint Monday 1766-1876', *Past & Present*, no. 71 (1976), pp76-101, 79.

¹⁵ Harrison, *Drink*, 41-4.

¹⁶ 'Memorial from the Marines', 7th May 1787, *HRNSW*, 1.2, 100-1.

¹⁷ Ralph Clark, 'Letter to Lieutenant Bedlake', 10th May 1787, *The Journal and Letters of Lt. Ralph Clark 1787-1792*, Paul G. Fidlou and R. J. Ryan (eds.), Sydney: Australian Documents Library, 1981; Moore, *Marines*, 44-5.

¹⁸ Paul E. Kopperman, "The Cheapest Pay": Alcohol Abuse in the Eighteenth-Century British Army in: *The Journal of Military History*, Vol. 60, No. 3 (Jul., 1996), pp. 445-470.

Alcohol, Finance and Commerce

Just as significantly, the eighteenth-century British state relied on the taxation of alcohol for its fiscal security.¹⁹ While imported liquors had long been subject to customs duties and their domestic retail to licensing fees, before the civil war they represented a comparatively small component of the revenues of a small state with limited ambitions. In comparison to the Continental powers, England declined as a military force between 1500 and 1700, and thus had a leaner administration and a smaller tax burden. But between 1660 and 1815 whilst national income tripled, the share appropriated in taxation rose more than fivefold from about three and a half to about eighteen percent and much of this growth came from taxes on drink.²⁰ The introduction of excise and its rapid expansion after the Civil War coincided with the explosive growth of the distilling industry and led to a growing financial dependence on alcohol. As a consequence, spirit production and hence spirit drinking was actively encouraged by the authorities.

Inland taxation or excise was originally introduced to England as a war measure imposed by the Long Parliament and copied by Charles I, but in 1661 the privilege was purchased by Charles II from Parliament as a permanent source of revenue, in exchange for abandoning his claim to certain hereditary rights including feudal tenure.²¹ The civil war excise initially targeted at beers and ciders but was soon expanded to cover many other commodities that were perceived as luxuries, including wine and spirits. While some Whigs attacked the excise as illiberal because it required an extensive system of inspectors with intrusive powers to prevent fraud, economic theorists defended it as the most efficient form of taxation, especially for supporting military campaigns. Charles Davenant described inland taxes as “the most proper Ways and Means to support the Government in a long

¹⁹ John Brewer, *The Sinews of Power: war, money and the English State, 1688-1783*, London: Unwin Hyman, 1989, 7-9, 14-18. Brewer has argued that Britain became a powerful “fiscal-military” state in the eighteenth-century whose efficient bureaucracy led Europe in its capacity to raise revenues and support military action. For the traditional view of Britain as a comparatively weak state in contrast to the strong authoritarian regimes of the continent see: Webb(s), *English Local Government from the Revolution to the Municipal Corporations Act*, (2 vols.), London: 1906-8; Sir Lewis Namier, *The Structure of Politics at the Accession of George III*, London: Macmillan, 1929; J.C.D. Clark, *English Society, 1660-1832: Religion, Ideology, and Politics during the Ancien Regime*, New York: Cambridge University Press, 2000.

²⁰ For military strength see: Brewer, *Sinews*, 7-9, 14-18. For tax see: Patrick K. O'Brien, ‘The Political Economy of British Taxation, 1660-1815’, *Economic History Review*, 2nd ser., vol. 41, no. 1 (Feb., 1988), pp. 1-32, 3-6. His figures are based on a series of assumptions about national income but represent “plausible” estimates. O'Brien also argues that given rates of avoidance and the exemption of the poor, the share from the “effective tax base” was more like 15% in 1700 and 30% in 1815. By comparison, French tax revenues were relatively stable as a proportion of income. See also: Peter Mathias and Patrick O'Brien, ‘Taxation in Britain and France, 1715-1810. A Comparison of the Social and Economic Incidence of Taxes Collected for the Central Governments’, *Journal of European Economic History*, vol. 5(1976), pp601-50, 606.

²¹ Blackstone, *Commentaries*, vol. 1, 319-21; ‘Continuing the Excise’, (12 Car. II c. 5), ‘Continuing the Excise’, (12 Car. II c. 8), ‘Impositions upon liquors’, (12 Car. II c. 23), *SOR*, vol. 5, 206-7, 255ff. Excise was mooted during the revenue crises of the 1620s and 1630s but never passed. Clark, *Alehouse*, 178. For more detail see: William J. Ashworth, *Customs and Excise: Trade, Production and Consumption in England, 1640-1845*, Oxford: OUP, 2003.

War, because they would lye equally upon the whole [of society]" and even encouraged a high duty on spirits as a means to suppress their use and encourage the consumption of milder liquors.²² There were also growing calls to promote the industry as a useful source of demand for surplus grain which would protect against shortages and thus prevent famine.²³

Within a year of assuming the throne in 1694, William III ended the monopoly of the Company of Distillers and passed an Act "for encouraging the distillation of brandy and spirits from Corn" which set advantageous duties "for the greater Consumption of Corne and the advantage of tillage".²⁴ This new regulation gave a great impetus to the industry: within a decade, the volume of spirits paying duty had doubled; there was a five-fold rise by 1720 and almost a nine-fold rise by the 1740s; and by 1730 over a quarter of government revenues came from the drinks trade, the vast majority in excise, and the majority of that on spirits.²⁵ At the same time, excise became an increasingly crucial component of the revenue because it was the only significant tax that was easily increased.²⁶ At least until the Revolutionary and Napoleonic wars, there was consistent political opposition to direct taxation, while raising customs encouraged smuggling, had repercussions for British foreign policy and were the subject of powerful trade lobbies. As a consequence the overall burden of the excise increased as did its significance to the government as their one responsive source of income. In the period 1788-1792, at the very time when NSW was first settled, nearly 40% of British government taxation fell upon alcohol and its ingredients.²⁷

It is also worth emphasising the colonial dimensions of the spirit trade. The territories of what has now become known as the first British Empire, in America and the Caribbean, were heavily dependent on traffic in alcohol. The clockwise circuit of the Atlantic economy led ships from Britain to collect slaves in Africa, carry them to the plantations of the West Indies and return to Europe with sugar, rum and molasses, which fuelled domestic and continental drinking and distillation. Meanwhile, on a smaller scale, the American colonies and the sugar isles carried on a similar

²² Davenant, *Ways and Means*, 116, 133-4. For an example of the Whig critique see Blackstone (vol. 1, 319-21) who describes the tax as "hardly compatible with the temper of a free nation".

²³ Defoe, *Distillers*, 31.

²⁴ Dillon, *Gin*, 8-10; 'Encouraging Distillation', (2 Gul. & Mar. sess. 2, c. 9), *SOR*, vol.6, 236. William knew of the advantage of such legislation from his time in Holland where similar acts were used to encourage local agriculture.

²⁵ Jonathan White, 'The "Slow but Sure Poyson": The Representation of Gin and Its Drinkers, 1736-1751' in: *Journal of British Studies*, vol. 42, no. 1(Jan. 2003), pp35-64, 38; Dillon, *Gin*, 10-11. Clark, *Alehouse*, 185.

²⁶ O'Brien, 'British Tax', 17-18.

²⁷ O'Brien, 'British Tax', table 5, 11. He gives the annual averages for major (greater than one thousand pounds) sources of revenue for this period, a total of almost 16 million pounds, of which over 6 million came from alcohol related taxes. The bulk of this was excise on beer and malt (used in both beer and spirit production).

business.²⁸ As a consequence, spirits played a significant role in these colonial societies. Rum in the eighteenth-century West Indies was a critical form of barter and often used in payment of wages, as it would be in early NSW, while the consumption of alcohol per head of population was apparently enormous.²⁹

Influence and the Reactive State

Despite the social and economic dependence upon alcohol, the second half of the eighteenth-century witnessed growing concerns about drunkenness both inside and outside government. Not only were officials worried about the social costs of alcohol but the state was more responsive to external influence from interest groups – both the lobbyists of the alcohol industries and concerned reformers – and from the increasingly vocal middle classes. As Jürgen Habermas has argued, the rise of the bourgeoisie from the mid-seventeenth-century was accompanied by a rapid growth in the readership and significance of the press which marked a transformation of public life. Accompanying the urban growth of the eighteenth-century, an expanding commercial and professional class, worried about rising levels of poverty and crime, helped shape debates over the proper role of alcohol.³⁰

Recent research has also pointed to the emergence of a new “reactive state” in response to this growing bourgeois constituency of concern. Although the key questions of foreign policy and faith remained the exclusive preserve of the governing elite, domestic policy or “inferior politics” was debated in an expanding public sphere, open to the influence of actors outside the formal political process.³¹ Parliament replaced the Privy Council as the central arena of politics with regular and expanded sessions required to approve the annual grants of revenue to the Crown and to consider the more complex legislation necessary to meet the demands of a changing society. While

²⁸ McCusker, ‘Business of distilling’, 207, 211, 218-9; McCusker and Kenneth Morgan, ‘Introduction’, McCusker and Morgan (eds.) *Atlantic Economy*, 1-12. For more detail on the American trade see: John J McCusker, ‘The Rum Trade and the Balance of Payments of the Thirteen Continental Colonies, 1650-1775’, PhD Thesis, University of Pittsburgh: 1970. On the sugar trade see: Sidney W. Mintz, *Sweetness and power: the place of sugar in modern history*, New York: Viking, 1985.

²⁹ On rum currency see: Margaret Steven, *Merchant Campbell, 1769-1846. A study of Colonial Trade*, Melbourne: Oxford University Press, 1965, 82; McCusker, ‘Rum Trade’, 158; McCusker, ‘Business of distilling’, Table 8.1, 202-3. On American drinking in the eighteenth-century see: W.J. Roraburgh, *The Alcoholic Republic, An American Tradition*, New York: Oxford University Press, 1979. His estimates suggest Americans were consuming approximately 12 litres of alcohol per capita in 1788 though the data is patchy and unreliable (p232). For NSW and English consumption see Appendix 1, 262ff.

³⁰ Jürgen Habermas, *The Structural Transformation of the Public Sphere. An Inquiry into a Category of Bourgeois Society*, translated by Thomas Burger, Cambridge: Polity Press, 1992, 20-67; Davison et al., ‘Reactive State’, xxviii-xxix.

³¹ Davison et al., ‘Reactive State’, xi-xv; Joanna Innes, *Inferior Politics: Social Problems and Social Policies in Eighteenth-Century Britain*, Oxford: Oxford University Press, 2009, 1-8. The phrase “inferior politics” is the title of a pamphlet by Hewling Luson which argued that domestic issues were open to public discussion in contrast to the high affairs of state which were the preserve of the statesman. Innes objects to Davison et al’s term “reactive state” because it implies that the state itself did not initiate policy. I will use it for its larger implication that the state was now more open to influence.

leading party politicians focused on foreign policy and fiscal discipline, inferior politics was often conducted by backbenchers who were acknowledged experts in a given area. Some of these interested MPs had commercial links to industries, like the brewers and distillers, while others had a religiously inspired concern for social improvement, often under the aegis of voluntary societies.³² Local government also grew with magistrates taking on greater responsibilities and the parish becoming a unit of civil administration under the Poor Laws. Government at all levels was more responsive to external pressure and both moral and commercial interests had an increasing influence on the regulation of alcohol.³³

One important method of influencing government was the deployment of rational, scientific and empirical ideas associated with the enlightenment. The eighteenth-century was an era of increased confidence in the possibilities of human achievement and human reform and a corresponding search for secular solutions to social problems. In turn, the larger and more sophisticated state exhibited a growing need for rational management and used enlightened methods of classification, based on empirical evidence, and new kinds of institutions like the prison, the school and the workhouse, to systematise and control problems, including those associated with alcohol.³⁴ From the late-seventeenth-century new methods of numerical analysis or political arithmetic were applied to social problems including the earliest attempts at epidemiology and increasingly organised accounting of state revenues.³⁵ In the eighteenth-century, while there was little progress in the science of statistics, these methods were applied to domestic problems, rather than state finance and many studies of crime, public health and poverty situated alcohol as a key cause of social problems, notably during the gin crisis.³⁶ But rational approaches to alcohol problems were not necessarily dedicated to enforced restraint. Economists like Bernard Mandeville and Adam Smith proposed a free trade solution with Smith claiming that ending restrictive taxes and

³² Innes, *Inferior Politics*, 36-9; Brewer, *Sinews*, 221-49. For the SPCK see: Bahlman, *Moral Revolution*, 70-6. For the alcohol industry as a lobby see: Clark, *Alehouse*, 181-4; Peter Mathias, 'The Brewing Industry, Temperance and Politics', *Historical Journal*, vol. 1, no. 2 (1958), pp97-114; Peter Mathias, 'Agriculture and the Brewing and Distilling Industries in the Eighteenth Century', *Economic History Review*, 2nd ser., vol. 5, no. 2 (1952), pp 249-257.

³³ Davison, 'Reactive State', xxxv-xxxix, Innes, *Inferior Politics*, 9. For more on the eighteenth-century growth of interest-groups see: Graham Wootton, *Pressure Groups in Britain 1720-1970: An Essay in Interpretation with Original Documents*, London: Allen Lane, 1975, 13-54.

³⁴ John Gascoigne, *The Enlightenment and the Origins of European Australia*, Cambridge: Cambridge University Press, 2002, 1-3.

³⁵ Innes, *Inferior Politics*, 110-13, 116-127. The term 'political arithmetic' was coined by William Petty who tried to compare state revenues with the potential wealth of England but other seminal figures included John Graunt who analysed the bills of mortality and tried to predict plague outbreaks and Charles Davenant who followed Petty in attempting to rationalise the tax system.

³⁶ Warner, 'Quantifying Gin'.

licensing would lead to short-term drunkenness but long-term sobriety as the common people learnt the consequences of their excess.³⁷

Liquor Licensing and State Control

These trends are illustrated by the increasing strictness and centralisation of the licensing system. At the beginning of the eighteenth-century licensing remained localised and subject to the whim of parish magistrates but it was nonetheless a relatively efficient bureaucracy. But from the 1750s a new and more centralised system was established in response to public outcry over the gin crisis, with greater surveillance through special licensing sessions, fixed fees and parish certification of the 'fitness' of the license holder who was now required to be a respectable property owner and lodge a bond for good behaviour. Local magistrates retained their leading role in the regime but the state now determined the regulatory framework and licensing law was used as a means to address alcohol problems. State control also increased due to the growing importance of the excise and the consequent professionalism of excise officers, whose frequent inspections of premises ensured greater obedience.³⁸ But by the turn of the nineteenth century this theoretical increase in state control had largely proved a failure. Licensing in urban centres was frequently corrupt, a consequence of the declining status of the urban magistracy, and this led to growing numbers of low taverns, similar to the gin shops of the 1730s, along with new commercial "gin palaces" that targeted the working class drinker with large attractive and well-furnished premises. The rise of such disorderly drinking establishments helped to inspire a series of new systematic solutions to the problem of urban crime and a renewal of the manners campaign by a new breed of evangelical reformers.³⁹

Policing and Public Order in the Late Eighteenth-Century

The criminal justice system of early modern England depended upon private prosecution of offenders and was thus peculiarly ill-suited to punishing ostensibly victimless crimes like

³⁷ Bernard Mandeville, *The fable of the bees: or, private vices publick benefits ...*, London: 1714, 61-2; Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, London: Methuen & Co., 1904, (first ed. 1776), [<http://www.econlib.org/library/Smith/smWN.html>] - accessed 17th Apr. 2012], vol. 4, 3.37.

³⁸ Clark, *Alehouse*, 179-81, 185-6. Brewer, *Sinews*, chs. 3-4. The Webbs claimed that the early eighteenth-century was a period of "extreme laxness" but Clark disputes this conclusion. Sidney and Beatrice Webb, *Liquor Licensing*, 15.

³⁹ Clark, *Alehouse*, 254-262; Sir Leon Radzinowicz, *A History of English criminal Law and its Administration from 1750*, (5 vols.), vol. 2, *The Clash Between Private Initiative and Public Interest in the Enforcement of the Law*, London: Stevens & Sons, 1956, 287-306.

drunkenness or breaches of the licensing acts.⁴⁰ Without an interested party, arraignment depended upon detection by a force of unpaid elected local constables under the command of a hereditary magistracy. The ideology of this traditional English system was paternalistic: officials served out of a sense of duty, and their administration of justice was a form of patronage, based upon local knowledge, with highly discretionary punishments that were either exemplarily severe or condescendingly merciful. By avoiding centralisation, professionalism and certainty in punishment, eighteenth-century justice preserved the liberties of the gentry and clergy who served as Justices of the Peace and gave them an essential stake in the management of their communities.⁴¹ While this amateur system could work in deferential rural parishes it was ill-suited to the increasingly urbanised and democratic society of industrialising England as was shown by the resort to paid informers by Manners Societies and in attempts to enforce the gin acts.

The late eighteenth-century witnessed a flowering of new rational and secular solutions to the linked problems of rising crime, crowded prisons and the flawed system of criminal justice that lay behind them, approaches that largely sought a greater role for the state in securing public order. One such reformer was Henry Fielding who dedicated the last years of his life to an attempt to reduce crime in London, both as an active magistrate during the gin crisis, and as a journalist and author.⁴² In attacking gin drinkers and the purported crime wave of the early 1750s, Fielding evoked a new understanding of the state's responsibility to control drinking and crime. He argued that the constitution of Britain included not only the laws and acts and the system of legal and governmental authority but also "the Customs, Manners, and Habits of the People" which justified his call for stronger police powers.⁴³ For Fielding, the growth of crime in England was a threat to freedom and he thus argued for a form of positive liberty, freedom guaranteed by security and enforcement of the law, as against the negative liberty of freedom from legal constraint. Rejecting

⁴⁰ For a wider discussion of private prosecution and the development of modern police see: J.M. Beattie, *Crime and the Courts in England, 1660-1800*, Princeton, N.J.: Princeton University Press, 1986, ch. 2; Beattie, *Policing and Punishment in London, 1660-1750: Urban Crime and the Limits of Terror*, Oxford: Oxford University Press, 2001; David Phillips, 'Good Men to Associate and Bad Men to Conspire: Associations for the Prosecution of Felons in England, 1760-1860', D. Hay and F. Snyder (eds.), *Policing and Prosecution in Britain 1750-1850*, Oxford: Clarendon Press, 1989, pp113-170.

⁴¹ For more on this traditional system of criminal justice see: Douglas Hay, 'Property, Authority and the Criminal Law', Hay et al., *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, London: Allen Lane, 1975, pp17-64; David Phillips, "'A New Engine of Power and Authority": The Institutionalization of Law-Enforcement in England, 1780-1830', V.A.C. Gatrell, Bruce Lenman, and Geoffrey Parker (eds.), *Crime and the Law: The Social History of Crime in Western Europe since 1500*, London: Europa Publications, 1980, pp155-189, 157-61; Alex Castles, *An Australian Legal History*, Sydney: Law Book Co. Ltd., 1982, 85-6.

⁴² Martin C. Battestin, 'Fielding, Henry (1707-1754)', *ODNB*, [<http://www.oxforddnb.com/view/article/9400> - accessed 18 April 2012]. For examples of his reporting see various editions of the *Covent Garden Journal* (London: 1752), which he edited.

⁴³ Fielding, *Enquiry*, v-vi, viii-xi, 2.

amateur justice, Fielding called for a centralised police to systematically enforce public order, though his proposals were vigorously resisted by Country Whigs who defended the traditional approach arguing that paid law-enforcement was a feature of continental tyranny, anathema to English liberty.⁴⁴

As Chief Magistrate for Middlesex, Fielding became the first paid magistrate in England, and he also established the first centrally paid police force, a carefully selected group of dedicated constables who pursued urban criminals and prosecuted them before Fielding's court. Though Fielding disbanded his "thief-takers", they were re-established on a permanent basis by his successor, his half-brother John Fielding, who assumed the salaried position as Bow Street Magistrate and formed a permanent group of "Bow-Street runners", who formed an important precedent for the modern metropolitan police force that emerged under Robert Peel in the nineteenth century.⁴⁵ But this new approach remained controversial. State funding for the force was long kept secret by the government for fear of public outrage though in a sign of changing attitudes to policing, by 1780 when John died, they were openly acknowledged.⁴⁶

Fielding's ideas adopted by the police theorist, Patrick Colquhoun, writing in the years immediately following the establishment of NSW, who argued that the prevention of crime required "a well-regulated and energetic plan of Police" which was necessary to preserve the "the comfort, the happiness, and the true liberty and security of the People".⁴⁷ He too drew a connection between crime, lower class immorality and alcohol claiming:

perhaps the greatest source of delinquency and crimes is to be ascribed to ill-regulated Public-Houses, conducted by men of loose conduct and depraved morals ... there is scarce any moral evil by which Society is afflicted – the mind debauched – the virtuous parent and

⁴⁴ Fielding used the word "police" in an older sense, not merely a body of men charged with enforcement of the law, but a more general system of social discipline. As eighteenth-century reformers called for paid state officers to enforce such discipline, Whig mythology began to distinguish this broader "Continental" understanding of police responsibilities from a narrower view, commensurate with English liberties. On this distinction see: F. M. Dodsworth, 'The Idea of Police in Eighteenth-Century England: Discipline, Reformation, Superintendence, c. 1780–1800', *Journal of the History of Ideas*, vol. 69, no. 4 (Oct. 2008), pp583-604.

⁴⁵ J.M. Beattie, *The first English detectives: the Bow Street Runners and the policing of London, 1750-1840*, Oxford : Oxford University Press, 2012; Radzinowicz, *Police*, chs. 1-2. These salaries were initially kept secret by the government because paid law-enforcement was seen as a feature of Continental tyranny, anathema to English liberty. In a sign of changing attitudes to policing, by 1780 when John died, they were openly acknowledged. Phillips, 'Engine', 165.

⁴⁶ Phillips, 'Engine', 165. For more on the development of Robert Peel's "new" police in the nineteenth-century see: Phillips, 'Engine'; Beattie, *Detectives*; V.A.C. Gatrell, 'Crime, authority and the policeman-state', F. M. L. Thompson (ed.) *The Cambridge Social History of Britain 1750–1950*, (3 vols.), vol. 3, *Social Agencies and Institutions*, Cambridge: Cambridge University Press, 1990, ch. 5.

⁴⁷ Radzinowicz, *Police*, 265-9, Patrick Colquhoun, *A treatise on the police of the Metropolis ...*, (6th ed.), London, 1800, 1-4, 11-13.

*master distressed, and the ruin of families and individuals affected, which is not generated in Public-houses*⁴⁸

To solve this problem he called for the promotion of alternative recreations, a reduction in the number of licenses and for stricter enforcement of the licensing laws, through increased police powers.⁴⁹ Eighteenth-century police reformers saw alcohol, and especially spirits, as a cause and symptom of social disorder and called for greater systematisation and centralisation of law enforcement.

Penal Reform and Transportation

Connected to new ideas of police were calls for reforms to the discretionary system of punishment. By the mid-eighteenth-century, punishment of crime in England depended upon the threat of execution for a vast array of offences, often commuted to transportation to the American colonies, with fines, corporal discipline and the pillory for misdemeanours like drunkenness.⁵⁰ Prisons were relatively scarce and largely intended for holding debtors and prisoners awaiting trial, but transportation, though it originated as a reprieve from execution, rapidly became the most common form of serious punishment, especially after the Transportation Act of 1718.⁵¹ In a late but influential defence of this approach, William Paley argued that the purpose of punishment was "prevention of crimes" and praised the exemplary force of execution claiming that "few actually suffer death, whilst the dread and danger of it hang over the crimes of many".⁵²

But enlightenment thinkers increasingly called for a more effective and efficient system, focussed on reforming the offender.⁵³ Influenced by the Italian theorist, Cesare Beccaria, English writers attacked the inconsistency of the traditional regime and argued for punishment proportional to the crime. Legal commentators like Sir William Blackstone and William Eden attacked the

⁴⁸ Colquhoun, *Police*, 324-5.

⁴⁹ Colquhoun, *Police*, 326-30. He also proposed new offences including permitting seditious meetings, or games, encouraging the waste of time or money, tolerating fraud or harbouring thieves.

⁵⁰ Beattie, *Crime*, chs. 9-10; 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*, Melbourne: Melbourne University Press, 1981, ch. 1.

⁵¹ This Act set seven year sentences for a wide range of non-capital felonies (mostly various forms of theft) and fourteen years for those spared execution by the king's pardon. Beattie, *Crime*, 503-7.

⁵² William Paley, *The Principles of Moral and Political Philosophy*, (2 vols.), London: 1785, vol. 2, 286, 295-6. Despite this philosophy he called for reform of the system, noting in particular the lack of any effective non-capital punishment (308-13).

⁵³ Randall McGowen, "Making Examples" and the crisis of punishment in mid-eighteenth-century England' in: David Lemmings (ed.), *The British and their Laws in the Eighteenth Century*, Woodbridge, Suffolk: Boydell Press, 2005, pp182-205. For more on the significance of this shift in the understanding of punishment see: Foucault, *Discipline and Punish*, 200-204; Michael Ignatieff, *A Just Measure of Pain: the Penitentiary in the Industrial Revolution, 1750-1850*, London: Macmillan, 1978.

excessive number of capital offences arguing that discretionary mercy was arbitrary and capricious, called for a logically coherent gradation of punishment based on the severity of the offence, and stressed the need for punishments to reform criminals.⁵⁴ This helped inspire a reconsideration of incarceration as a means of punishment. In particular, Jeremy Bentham's Panopticon, proposed as an alternative to transportation, was explicitly designed as a reforming instrument – "a mill for grinding rogues honest and idle men industrious" – that relied on utilitarian principles to enforce improvement. The architecture of his new prison was designed to ensure constant surveillance of prisoners and monitoring of their behaviour so that certainty of both punishment and reward would drive them to industriousness and virtue.⁵⁵

Penal reform was also linked to alcohol. After undertaking a comprehensive review of prison conditions, John Howard argued that their failure to reform the morals of prisoners contributed substantially to crime, describing prisons as "seats and seminaries ... of idleness and every vice."⁵⁶ In particular he pointed to drinking within prisons – the sale of alcohol was a key source of income for gaolers who received no wages from the state – arguing that this corrupt practice led to partiality of treatment and precluded reform, and called for:

*strict regulations in preventing all dissipation and riotous amusement ... [so that] confinement in a prison, though it may cease to be destructive of health and morals, will not fail to be sufficiently irksome and disagreeable, especially to the idle and profligate.*⁵⁷

These ideas received a critical impetus as the existing system of punishment broke down in the second half of the century. Constant attacks on the supposed inefficiency and leniency of transportation led to limited changes with an increase in sentences of imprisonment with hard labour. But what decisively transformed the system was the American Revolution. Without an outlet for transported criminals, the authorities were forced to resort to the already crowded jails and hulks – decommissioned naval vessels, anchored in the Thames – and this growing problem was the catalyst for, if not the major cause of the establishment of NSW.⁵⁸

⁵⁴ Blackstone, *Commentaries*, vol. 4, ch. 28; William Eden, *Principles of English Law*, London: 1772, ch. 2; G.C. Bolton, 'William Eden and the Convicts', *Australian Journal of Politics & History*, vol. 26, no. 1 (Apr. 1980), pp30–44

⁵⁵ 'Bentham to J. P. Brissot', Jeremy Bentham, *The Works of Jeremy Bentham* (11 vols.), John Bowring (ed.), Edinburgh: 1843, vol. 10, 226; Gascoigne, *Enlightenment*, 123-5.

⁵⁶ John Howard, *The State of Prisons in England and Wales ...*, Warrington: 1777, 20-1.

⁵⁷ Howard, *State of Prisons*, 49-50, quotation on 76-7.

⁵⁸ Shaw, *Convicts*, ch. 2; Dan Byrnes, "'Emptying the Hulks": Duncan Campbell and the First Three Fleets to Australia', *Push from the Bush*, no. 24 (April 1987), pp2-23.

The Crisis of Reform and the Colonisation of NSW

In the 1780s, the now overflowing hulks contributed to a growing sense of crisis inspired by defeat in the American war, the pressure of a growing population and anxiety about an increasingly commercial society.⁵⁹ One symptom of this crisis was the revival of calls for a reformation of manners including renewed attacks on public houses and public drunkenness.⁶⁰ Under the leadership of William Wilberforce, a group of nobles and clergy founded the Proclamation Society in 1787. The Society lobbied for and subsequently promoted a royal proclamation against vice which called on magistrates to diligently enforce the laws "which have been made, and are still in force, against the profanation of the Lord's Day, drunkenness, swearing and cursing, and other disorderly practices."⁶¹ The members of the society, largely drawn from the social elite, privately lobbied their peers to set a positive example and publicly campaigned for more prosecutions of moral offenders, new regulations to punish Sabbath-breakers and a stricter vagrants act.⁶²

The connection between alcohol and crime, the new ideal of prisons as reformatories and the renewed manners campaign had important consequences for the penal experiment of NSW. The reasons for founding the colony have been the subject of considerable historical debate and the traditional view of the settlement as simply a dumping ground for criminals is now challenged by arguments for Britain's strategic and commercial interests in New Holland.⁶³ But one consequence of this important debate is a relatively narrow focus by historians seeking to prove or disprove the importance of motives other than convict disposal which has led to the view that transportation was simply expedient. Alan Atkinson is thus a rare exception in linking the colony to the long tradition of

⁵⁹ Innes, *Inferior Politics*, 180-6; Joanna Innes and Arthur Burns, 'Introduction', Burns and Innes (eds.), *Rethinking the Age of Reform: Britain 1780-1850*, Cambridge: Cambridge University Press, 2003, pp1-70, 7-10; M.J.D. Roberts, *Making English Morals. Voluntary Association and Moral Reform in England, 1787-1886*, Cambridge: Cambridge University Press, 2004, 24-33.

⁶⁰ Though the SRM had died out in the 1730s, there had been a similar movement in the 1750s among Methodists who petitioned magistrates to enforce the law. Radzinowicz, *Clash*, 144-6. For more on the evangelical circles in which the manners campaign of the 1780s began see: John Wolffe, 'Clapham Sect (act. 1792-1815)', *ODNB*, [<http://www.oxforddnb.com/view/theme/42140> - accessed 19 April 2012]

⁶¹ Lord Sydney, 'Letter to the High Sheriffs of England' in: William Godschall, *A general plan of parochial and provincial police ...*, London: 1787, 101-3. For more on Wilberforce; John Wolffe, 'Wilberforce, William (1759-1833)', *ODNB*, [<http://www.oxforddnb.com/view/article/29386> - accessed 30 Nov. 2010]. Lord Sydney's involvement in the issuing of this proclamation supports Atkinson's view of his character.

⁶² Radzinowicz, *Police*, 140-207; Roberts, *Morals*, ch.1; Innes, *Inferior Politics*, ch. 5. The Proclamation Society declined in the 1790s and was absorbed into the newer and less elitist Vice Society founded in 1802.

⁶³ The best summary and early arguments are collected in: Ged Martin (ed.), *The Founding of Australia. The Argument about Australia's Origins*, Sydney: Hale & Ironmonger, 1978. Important contributions since 1978 include: Mollie Gillen, 'The Botany Bay Decision, 1786: Convicts, Not Empire', *English Historical Review*, vol. 97, no. 385 (Oct., 1982), pp. 740-766; Alan Frost, 'Botany Bay: An Imperial Venture of the 1780s', *English Historical Review*, vol. 100, no. 395 (Apr., 1985), pp. 309-327 (and Gillen's reply 327-30); Alan Atkinson, 'The First Plans for Governing New South Wales, 1786-7' in: *Australian Historical Studies*, vol.24, no.94 (April 1990), pp22-40.

eighteenth-century reform which saw transportation as not merely convenient for society but a form of philanthropy, offering the destitute, debtors, refugees and criminals an opportunity to redeem themselves in a new and productive life.⁶⁴ Richard Ely has also developed this idea, pointing to the importance of religious and moral concerns in the planning and early operation of the colony.⁶⁵

The earliest extant proposals for a colony in NSW reflect this discourse. In 1783, James Matra, a midshipman on Captain Cook's voyages, suggested that Cook's discovery could be settled by Britain, arguing that there were large numbers of criminals and urban poor whose removal would benefit both the state and themselves. He was clearly aware of the new idea that punishment should reform asking:

Do you wish, either by private prudence, or by civil policy, to reclaim offenders? Show by your treatment of them that you think their reformation extremely practicable, and do not hold before their eyes the hideous and mortifying deformity of their own vices and crimes ... By the plan which I have now proposed a necessity to continue in the place of his destination and to be industrious is imposed on the criminal ... and thus two objects of most desirable and beautiful union will be permanently blended – economy to the publick, and humanity to the individual.⁶⁶

Though his scheme was not adopted it illustrates the way that enlightened ideas shaped the thinking about colonisation.

Phillip was also influenced by such arguments. In a series of observations on the treatment of convicts, written before his departure, he stressed the encouragement of marriage to promote morality and the importance of both rewards and punishments to encourage improved behaviour.⁶⁷ But more importantly, reform was clearly an element of the thinking behind the formal plans that

⁶⁴ Atkinson sees the settlement of NSW as the product of a series of different but often overlapping colonisation schemes, with Lord Sydney's vision of a reforming republic dominant in the planning stages but eventually compromised by Phillip's more comprehensive plans for administering the colony as a prison. Atkinson, *Beginning*, chs. 3-4. See also: Trevor Richard Reese, 'The Origins of Colonial America and NSW: An essay on British imperial policy in the eighteenth-century', *Australian Journal of Politics and History*, vol. 7, no. 2 (Nov. 1961), pp186-197.

⁶⁵ Richard Ely, 'Pains and Penalties: The Religio-Moral Economy of Penal Transportation to NSW and Van Diemens Land', Mark Hutchinson and Edmund Campion (eds.), *Re-visioning Australian colonial Christianity: new essays in the Australian Christian experience 1788-1900*, Sydney: Centre for the Study of Australian Christianity, 1994, pp61-96.

⁶⁶ 'Matra's Proposal', 23rd Aug. 1783, *HRNSW*, vol. 1, pt. 2, 6-8. On Matra himself see: Alan Frost, 'Matra, James Mario (Maria) (1746-1806)', *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, [<http://adb.anu.edu.au/biography/matra-james-mario-maria-13084/text23669> - accessed 20 April 2012].

⁶⁷ 'Phillips' Views', [1787] *HRNSW*, vol. 1, pt. 2, 52-3. In a somewhat less enlightened sidenote he argued that the only punishments that warranted death were murder and sodomy, and proposed taking such heinous offenders to New Zealand to be devoured by cannibals.

emerged in 1787. Phillip's Commission granted him the power to pardon offenders and reprieve sentences, and his Instructions extended this by granting "full power and authority to emancipate and discharge from their servitude any of the convicts ... who shall, from their good conduct and a disposition to industry, be deserving of favour."⁶⁸ These orders were deliberately designed to encourage convicts to change their ways, holding out the prospect of freedom and a productive life for criminals who renounced their former crimes.

There is also some evidence of evangelical influence in the planning of the colony. Phillip's final Instructions ordered him to "enforce a due observance of religion and good order" but an earlier draft elaborated on this in greater detail requiring him to:

*cause the Laws against Blasphemy, Profaneness, adultery, Fornication, Poligamy, Incest, Profanation of the Lord's Day, swearing and Drunkenness to be rigorously executed and ... take due care for the punishment of the aforementioned Vices.*⁶⁹

This list of sins is strikingly reminiscent of the royal proclamation, a connection that is confirmed by Wilberforce's interest in Botany Bay. He helped to recommend the first two ministers appointed to the colony and described the vital importance of religious instruction to make the settlers "temperate and orderly and domestic and contented" especially "in the case of such a society as N. S. Wales".⁷⁰ The first of these ministers, Richard Johnson, brought with him to NSW a popular evangelical tract against the "vice" of drunkenness, which he used to compose sermons to his convict flock.⁷¹

Further evidence for the interest of reformers is found in the public response to the project in the press.⁷² In November of 1786 when plans for the colony were still being formed, 'a real Briton' writing in the *Public Advertiser* praised the idea of sending convicts to the antipodes as beneficial to them and to society. Comparing the state to a giant family, he argued:

⁶⁸ 'Phillip's Commission', 2nd Apr. 1787, *HRNSW*, vol. 1, pt. 2, 63-4; 'Phillip's Instructions', 25th Apr. 1787, *HRNSW*, vol. 1, pt. 2, 90.

⁶⁹ Phillip's Instructions, 90; 'Draft of Phillip's Instructions', 20th April 1787, [<http://www.foundingdocs.gov.au/item.asp?sdlID=68> - accessed 30th Nov. 2010].

⁷⁰ See: 'Middleton to -', [1787], *HRNSW*, vol. 1, pt. 2, 42; 'Wilberforce to Dundas', 7th Aug. 1792, *HRNSW*, vol. 1, no. 2, 633-5.

⁷¹ Atkinson, *Beginnings*, 176. The pamphlet was: Sir James Stonhouse, *Admonitions Against Drunkenness, Swearing and Sabbath-Breaking*, London: 1769. Stonhouse warned the drunkard he would end up in hell, attaching an abstract of the English laws against drunkenness and biblical texts that condemned it. For an example of a sermon potentially influenced by this text see: Richard Johnson, *An Address to the Inhabitants of the Colonies, established in NSW and Norfolk Island*, London: 1794.

⁷² For a more substantial analysis of press coverage of the planning of the Colony see: Ged Martin, 'A London newspaper on the founding of Botany Bay. August 1786-May 1787', Martin (ed.), *Founding*, 169-84. He does not mention the letter discussed below.

to make a sottish son sober, is too rarely practicable – to make a depraved character virtuous, or a rogue honest is as seldom to be accomplished ... To serve such is only to be done by a scheme like the one now proposed ... though many would never reform if retained in their native country ... I cannot but think that the most worthless among them, by being forced on the exercise of industry, will be reformed by its excellence ... [it] gives us every advantage we can propose from their absence, and yet gives them opportunity of redeeming the peace they had lost.⁷³

Unfortunately, making Britain's "sottish sons" sober would prove beyond the capacity of the authorities in NSW.

⁷³ Letter of 'A Real Briton', *Public Advertiser*, London: 1752-93, 20th November, 1786, 1. A Real Briton may be John Cleland who is known to have used the pseudonym 'Briton' in his regular correspondence to the paper. See: Peter Sabor, 'Cleland, John (bap. 1710 – 1789)', *ODNB*, [<http://www.oxforddnb.com/view/article/5595> - accessed 30 Nov. 2010].

Chapter 3) Colonial Precedents: Philanthropy, Commerce and Alcohol Problems in Georgia

As with NSW, the colony of Georgia was established during a period of perceived social crisis in London.¹ In the early decades of the eighteenth-century the rapid growth and consequent overcrowding in the capital inspired a series of proposals for a new American colony, designed to relieve this excess population, form a strategic bulwark against the imperial ambitions of England's Catholic enemies, provide raw materials for the growing metropolitan economy and help the chosen emigrants in establishing a better life. These plans took more concrete form in 1730 when Bray Associates, a charitable trust headed by James Oglethorpe and largely drawn from the same philanthropic elite who were simultaneously promoting the Gin Acts, petitioned parliament for a grant to found a new colony south of the Savannah River, to assist debtors and the deserving poor.²

Oglethorpe's scheme flowed from his work on the Gaol Committee of 1729 and he originally intended the colony as a settlement for freed debtors. His initial proposal called for colonists selected:

*from among the prisoners and others, such as were most distressed, virtuous, and industrious ... putting them in a Christian, moral, and industrious way of life, and instructing them how by labour to gain a comfortable subsistence for themselves and their families.*³

These charitable intentions were complimented by more practical concerns. Prevailing mercantilist economic theory supported colonial expansion as a necessary source of British raw materials and favoured making profitable use of the urban unemployed, while concerns about the Spanish threat to South Carolina encouraged the creation of a defensive buffer.⁴ The royal charter, granted by the

¹ For other comparisons of Georgia and NSW see: Atkinson, *Beginning*, 41-3; Reese, 'Origins', 189-92.

² Betty Wood, 'Oglethorpe, James Edward (1696-1785)', *ODNB*, [<http://www.oxforddnb.com/view/article/20616> - accessed 19 April 2012]; Kenneth Coleman, 'The founding of Georgia', Harvey H. Jackson and Phinizy Spalding, *Forty Years of Diversity: Essays on Colonial Georgia*, Athens, GA: University of Georgia Press, 1984, pp4-20, 10-11. Bray Associates administered the estate of Dr Thomas Bray founder of the SPCK. Oglethorpe, Jekyll, Hales, Vernon were all Georgia Trustees and active proponents of the Gin Acts; the majority of the other Trustees were MPs with a similar ideological bent to Oglethorpe. On Jekyll and Georgia see: Thomas Hart Wilkins, 'Sir Joseph Jekyll and his impact on Oglethorpe's Georgia' in: *Georgia Historical Quarterly*, Vol. 91, Issue 2 (Summer 2007) pp119-34.

³ Oglethorpe, letter to George Berkeley (May 1731) cited in: Paul S. Taylor, *Georgia Plan*, Berkeley Ca.: Institute of Business and Economic Research, University of California, 1971, 13-14.

⁴ Coleman, 'Founding', 4-9; Kenneth Coleman, *Colonial Georgia: A History*, New York: Charles Scribner's Sons, 1976, 13-22. The reasons for founding the colony are disputed in a debate with parallels to the historiography of NSW. Paul Taylor cites the Trustees' statement that the prohibitions of Negroes and rum were the "Fundamentals of the Constitution" to argue

king in 1732, vested power over the colony in a Board of Trustees based in London and provided funds to support the initial colonists – not debtors but unemployed working men. Each man was granted fifty acres of land to support him and his family, a conscious echo of the pre-enclosure countryside, while an official ban on Roman Catholic settlers and an unofficial ban on Lawyers – Oglethorpe insisted that men represent themselves in court – also reflected a desire for a simpler society, free from the disputes of modern England.⁵ Similarly, slavery was outlawed in the colony, not out of any concern for the slaves themselves but to prevent idleness among the settlers and stop the new society developing into an elite-dominated plantation colony like South Carolina.⁶ Georgia was thus conceived as a kind of philanthropic agrarian utopia, with self-sufficient settlers, building a new society and better lives for themselves, away from the temptations of gin-soaked London.

The source of this project lay in the growing concern about urban distress and disorder which also fed the simultaneous panic about Gin. Poverty was a significant problem in early eighteenth-century London, largely due to population growth but elite concern was channelled into a new approach centred on the workhouse and the concept of the 'deserving poor'. Rejecting traditional church charity, which supposedly encouraged idleness, the new philanthropy advocated organised and enforced employment as beneficial to both the poor themselves, who were made self-sufficient and taught useful skills, and to the state, which gained cheap labour and a reduction in crime.⁷ The central distinction between the idle and the deserving poor was one of moral character and was often connected to drunkenness, which functioned as a symbol of laziness – the role of philanthropy was now to instil morality through discipline.⁸ It was this vision of charity, based in a rational and secular belief in the possibility of improving society, which informed the Georgia plan. In a pamphlet promoting the colony published in 1733, Benjamin Martyn, secretary to the Trustees described the project in precisely these terms claiming that:

that philanthropy was the central motive. In contrast, Clarence L. Ver Steeg argues that defence concerns were decisive. See: Taylor, *Plan*, 1-3; Ver Steeg, *Origins of a Southern mosaic: Studies of Early Carolina and Georgia*, Athens, Ga.: University of Georgia Press, 1975, 73-9.

⁵ Phizny Spalding, 'James Edward Oglethorpe's Quest for an American Zion' in: Jackson and Spalding, *Forty Years of Diversity*, pp 60-79, 64-5.

⁶ Coleman, 'Founding', 10-11; *Colonial Georgia*, 17; Spalding, 'Zion', 69-70; Milton L. Ready, 'Philanthropy and the Origins of Georgia' in: Jackson and Spalding (eds.), *Colonial Georgia*, pp 46-59, 51-2. Ready also argues that Oglethorpe opposed slavery as an institution, a view that is more controversial. This was certainly not his main concern.

⁷ Ready, 'Philanthropy', 46-9. The earliest appearance of this idea is probably, Thomas Firmin's *Some Proposals for the Employing of the Poor ...*, London, 1678; the first workhouse was organised by John Cary in Bristol in 1698. For more on changing ideas about poverty see: Donna T. Andrew, *Philanthropy and Police: London Charity in the Eighteenth Century*, London: Princeton University Press, 1989.

⁸ For an example of drunkenness as a symbol see: Daniel Defoe, *Giving alms no charity, And Employing the poor A Grievance to the nation ...*, London: 1704, 27. Note that Defoe opposed the workhouse although he subscribed to the new vision of poverty.

[t]he Poor, who are sent to Georgia ... as they will be settled in such a Frugality, none, who can live [in England], will think of going thither, where, tho' they will have a sufficient and plentiful Maintenance, they will have no room for Luxury, or any of its attendant Vices.⁹

In the initial plans for the settlement, there was no mention of alcohol.¹⁰ But shortly after the colonists' arrival, Oglethorpe, who had settled in the new colony, attributed a spate of deaths to excessive drinking and wrote to his fellow Trustees calling for an official prohibition of rum.¹¹ On his return from a six week visit to Charlestown he found the problem worse than ever with the townspeople in a state of "petulancy", directly connected to their "intemperance" and though he managed to restore his authority in the settlement he was unable to stop the colonists from drinking.¹² When Oglethorpe's letter arrived in London, the Trustees swiftly passed regulations that banned spirits from the Colony, established a licensing system for public houses which were limited to weaker beverages and instituted fines for breaches of the law.¹³ This ban on spirits should be understood as part of the philanthropic ideal behind the colony. Rum threatened the morality, social stability and the good health of the colonists, harmed the local Indian tribes and more generally served as a symbol of an avaricious commercial culture.

Even before the ban was applied there were sceptics in the colony. Peter Houstoun, a large landowner, wrote to a friend that he traded in rum because his competitors did so, because it "brings the most ready money of any" and presciently argued that the ban would never work with spirit so easily obtained from South Carolina.¹⁴ Over the next few years the local authorities made very limited attempts to enforce the law accompanied by persistent allegations that officials were themselves involved in the illegal trade, and by the ready availability of rum. Though Oglethorpe seems to have been more vigilant when he was present in Savannah, during his frequent absences on military duty, the trade went on practically undisturbed. In 1739, the Trustees' local secretary, William Stephens, took a suitably cynical attitude when he complained, "how fatal this excess of

⁹ Benjamin Martyn, *Reasons for establishing the colony of Georgia ...*, London: 1733, 19.

¹⁰ Coleman, 'Founding', 11-13; *Colonial Georgia*, 23-4. On the voyage from England, Oglethorpe, who accompanied the colonists, personally issued a general ration of rum punch to celebrate Christmas and his birthday and even to settle a quarrel, accompanied by the fatherly advice to 'drink and be friends'.

¹¹ Cited in: Julie Anne Sweet, "'That Cursed Evil Rum': The Trustees' prohibition Policy in Colonial Georgia", *Georgia Historical Quarterly*, vol. 94, no. 1(Spring 2010), pp1-29, note 7. [The online version of this article is unpaginated so I have referenced to the nearest footnote.]

¹² Coleman, 'Founding', 14-15; *Colonial Georgia*, 33-5; Sweet, 'Rum', note 7.

¹³ This Order was only approved by the Privy Council in 1735 and in the interim the local Indian chief, Tomochichi, visited London and also requested a ban on spirits, presumably due to the detrimental effect that the rum trade had on Indian society. Sweet, 'Rum', note 9-12. On Indians and the colonial alcohol trade more generally see: Peter C. Mancall, *Deadly Medicine: Indians and alcohol in early America*, Ithaca, NY: Cornell University Press, 1995.

¹⁴ Cited in: Sweet, 'Rum', note 14.

rum-drinking is likely to prove among the common people; and how ineffectual all means have hitherto been found, for suppressing the sale of it by unlicens'd persons in all the bye corners of the town".¹⁵ The attempt to prohibit rum had become a joke.

The Trustees' high-minded idealism clashed with the aspirations of a significant group of colonists who travelled to Georgia not to participate in a utopian experiment but to improve their prospects. Though the first settlers were British poor, subsidised by the Trust, they were soon followed by other groups whose different interests helped to undermine the original plan.¹⁶ In particular, to make up for the lack of charitable donors the Trustees were forced to accept private capital which was raised by providing wealthier emigrants with larger five hundred acre land grants in exchange for subsidising the transportation of the poorer labourers.¹⁷ These self-funded colonists had a very different vision of Georgia. They saw the new colony as a commercial opportunity and a means of self-fulfilment, and their opposition to the original plan grew into a political movement, derisively termed the Malcontents. A series of petitions calling principally for reforms of the land laws and permission to use slaves, culminated in a widely published pamphlet in early 1741.

As part of their broader complaints, the Malcontents attacked the "specious" prohibition of rum. The ban was an unreasonable impediment to the vital trade with the West Indies and was clearly unenforceable. Despite the law "great Quantities" of spirits were imported, wasting the Colony's ready money because smugglers would not accept barter. Moreover, rum was a requirement of colonial life for "the Experience of all the Inhabitants of America will prove the Necessity of qualifying Water with some Spirit".¹⁸ These arguments resonated in London and although the Trustees' published their own pamphlets, repeating Oglethorpe's claims that rum was the cause of ill health in the colony and created disorder amongst the Indians, there was a growing acknowledgement that prohibition was a failure and that commercial imperatives necessitated trade in spirits. In early 1742, instructions were sent to the Georgian authorities to tacitly ignore the laws against rum trading; most Georgians already were.¹⁹

¹⁵ Cited in Sweet, 'Rum', note 33.

¹⁶ Ver Steeg, *Mosaic*, 82-8.

¹⁷ Taylor, *Plan*, 31-4. As Taylor shows, the steady replacement of parliamentary grants and charitable gifts with private capital reflects the declining fortunes of the plan and the eventual triumph of commercial over philanthropic interests.

¹⁸ Patrick Tailfer, Hugh Andersen et al, *A true and historical narrative of the colony of Georgia in America, from the first settlement thereof until this present period...*, Charles-Town, SC [London?]: 1741, 28-9.

¹⁹ Sweet, n. 37-8, 42. The Trustees subsequently tried to have the law repealed but their proposals were rejected by parliament because they were still too strict and it appears that prohibition was never officially overturned. See Sweet, n. 43-4.

The nature of this colonial dispute over alcohol emerges clearly in the Malcontents' sarcastic dedication of their pamphlet to Oglethorpe. In contrast to the "early Trade and Affluence" of other colonies:

*your Excellency's Concern for our perpetual Welfare could never permit you to propose such transitory Advantages for us: You considered Riches ... were disposed to inflate weak Minds with Pride, to pamper the Body with Luxury, and introduce a long Variety of Evils ... And that we might fully receive the spiritual Benefit of those wholesome Austerities, you have wisely denied us the Use of such spirituous Liquors as might in the least divert our Minds from the Contemplation of our happy Circumstances.*²⁰

The philanthropic ideals of the Trustees' and the commercial interests of the Malcontents were in complete opposition, not least over the role of alcohol. In many ways this clash reflects the broader difficulty with alcohol in the eighteenth-century: reconciling its practical importance to society, in trade and for government finances with the anxious concern about its capacity to upset public order. For Oglethorpe and the other Trustees, permitting rum into the colony undermined their ideal society; for the Malcontents it was a commercial necessity. This symbolic conflict over alcohol was to recur in NSW.

²⁰ Tailfer, Andersen et al, *Narrative*, 28-9.

Part II: Struggle for Authority, 1788-1809

Chapter 4) Rum Stories

Controlling Drunkenness: Panopticon versus NSW

Jeremy Bentham was a leading exponent of utilitarian reform and a stern critic of the penal colony in NSW. In a public letter in 1802 he noted that his rival solution to the crime problem of the late eighteenth-century, the famous Panopticon, had been abandoned by the government because of the “improved” state of the colony but argued such supposed improvement – the spread of settlements and the growth of commerce – was actually contrary to the aims of penal justice and particularly to the reformation of the convicts.¹ For Bentham, convict reform depended on supervision and surveillance of prisoners, and the improved conditions in NSW made such supervision impossible, in stark contrast to his ideal prison. This failure of reform was most clearly shown by the inability of the colonial authorities to restrain the spirit trade. Both illicit distillation and smuggling had become more prevalent as the colony ‘improved’ because it was easier to conceal such activities and Bentham argued:

[w]hatever regulations can ever be made for the[sic] preventing the introduction of spirits into the colony—be it by manufacture, be it by importation—there is scarcely a human being in the colony, in or out of power, who has not a personal interest in the inefficacy of them. Among the convicts themselves - non-expirees, as well as expirees ... there is scarcely a man to whom this liquid poison is not dearer than life ... [while] not a master ... can get a servant to work for him on any other terms.²

He concluded that “the exclusion of the means of drunkenness out of the improved colony, presents itself ... as an achievement, now and for everlasting morally impossible.”³

Bentham was certainly not alone in lamenting the impossibility of preventing drunkenness in NSW. Regulating alcohol was one of the central challenges for colonial authorities; every Governor

¹ Jeremy Bentham, ‘Panopticon versus New South Wales ...’, John Bowring (ed.), *The Works of Jeremy Bentham* (11 vols.), Edinburgh: 1843, vol. 4, 289-93.

² Bentham, ‘Panopticon’, 366-7

³ Bentham, ‘Panopticon’, 366.

during the first two decades of British settlement was ordered to control the spirit trade and their consistent failure undermined their respective terms. The uncontrolled importation of spirits caused public drunkenness and encouraged crime, while the traffic itself supported a rival commercial elite who defied the Governors' mandate. Although these challenges were not unique to NSW, or an existential threat to the developing society, the failure to control alcohol became a symbol of the Colony's disordered and immoral state and especially its failure as a penal reformatory. Indeed, this failure has become a staple of the history of early Australia, particularly through the transmission of three entrenched and closely connected myths: a reputation as the most drunken society on earth, the concept of an economy dependent on a "rum currency" and the idea of a "rum rebellion" against Governor Bligh. Each of these myths has some basis in fact but in each case the significance of alcohol is exaggerated or misunderstood because of a lack of appreciation for the wider context of drinking in the period. Exploring the birth and growth of this rum-sodden account of early colonial history will help clarify the real challenge of regulating alcohol in early NSW.

A Drunken Colony

Bentham's attack on the colony was a reflection of the first of these myths. Indeed the source of all of his evidence was the influential account of the first Judge-Advocate, David Collins, who more than any other helped establish the Colony's drunken character.⁴ Collins described excessive drinking as the chief cause of crime and mortality in the colony and cited repeated instances of both the illicit trade in spirits and its harmful consequences, almost all of which were repeated by Bentham.⁵ During the nineteenth century, descriptions of the prodigious drinking of the inhabitants and the problems caused by drunkenness became a traditional element of accounts of the colony, especially those written by foreign and particularly British observers.⁶ Such observations were almost invariably connected with a larger narrative of NSW as a repository for hardened

⁴ Bentham, 'Panopticon', 361-7. For more on Bentham's reliance on Collins and its influence on his views see: R.V. Jackson, 'Theory and Evidence: Bentham, Collins, and the New South Wales Penal Settlement', *Australian Journal of Politics and History*, vol. 39, no. 3 (1993), pp318-29.

⁵ David Collins, *An Account of the English Colony in New South Wales From Its First Settlement, in January 1788, to August 1801*, (2 vols.), Sydney: University of Sydney Library, 1998 (first ed. 1802), vol. 2, 203, [<http://purl.library.usyd.edu.au/setis/id/colacc2> - accessed 30th Nov. 2010]; Bentham, 'Panopticon', 361-5. Collins was almost obsessed with the drinking habits of the early settlement but he was of course particularly exposed to such problems as the judge-advocate and it is worth noting that other witnesses placed less emphasis on colonial drinking. Compare: Watkin Tench, *A Complete Account of the Settlement at Port Jackson, Including an Accurate Description of the Situation of the Colony; of the Natives and of its' Natural Productions*, Sydney: University of Sydney Library, 1998 (first ed. 1793), [<http://purl.library.usyd.edu.au/setis/id/p00044> - accessed 30th Nov. 2010]. Tench makes no mention of colonial drunkenness and generally paints an optimistic picture of convict reform.

⁶ From the numerous examples, see, from either end of the century: John Turnbull, *A Voyage Around the World in the Years 1800, 1801, 1802, 1803 and 1804* (3 vols.), London: 1805, vol. 3, 180-4; Richard Twopenny, *Town Life in Australia*, Ringwood Vic.: Penguin Books, 1973 (facsimile of 1883 ed.), 64-71, 125.

criminals and sinners, incapable of reform.⁷ But in particular, the drunkenness of the earliest Europeans in Australia was legendary.

Two of the earliest historians of the colony, William Wentworth in 1819 and John Dunmore Lang in 1834, offered optimistic assessments of improved colonial morality but both assumed an early period where excessive drinking and criminal disorder went hand in hand.⁸ This view developed into a persistent feature of Australian historiography, repeated over the generations, and it remained a staple of the historical narrative until the 1980s.⁹ Not only does this exaggerate the drinking of the early settlers but that their habits are frequently presented out of context for drunkenness was widespread throughout the eighteenth-century British world. Two economic historians, A.E. Dingle and Noel Butlin, have calculated levels of alcohol consumption demonstrating that they were typical of British society in the period. But despite this statistical evidence, the myth persists. Though few writers now claim that NSW was unique in its drunkenness, the idea that consumption in the colony was excessive by modern standards remains a staple of historiography. In fact, the existing evidence suggests that consumption per head per year in the period before 1810 was less than half the level in twenty first-century Australia and while this is undoubtedly an exaggeration there is little question that on average we drink more now than our convict ancestors or their rum-trading overseers.¹⁰

But arguably more important than this misinterpretation of the quantitative data is the anachronistic criticism of the drunken habits of the colonists. Historians continue to describe instances of drunkenness in early NSW as extraordinary and appalling when in fact they were both typical and inevitable. A now classic example of this trend is the invention of a drunken orgy that supposedly marked the unloading of the female convicts in Port Jackson on the 6th of February 1788. Marian Aveling has shown that the orgy almost certainly never took place, as the only evidence is found in the journal of the censorious Arthur Bowes Smyth who was not on shore at the time, but

⁷ On this larger narrative and its role in defining Australian identity see: White, *Inventing Australia*, ch. 2.

⁸ W.C. Wentworth, *Statistical, Historical and Political Description of the Colony of New South Wales and its Dependent Settlements in Van Dieman's Land*, Lane Cove, N.S.W.: Doubleday Australia, 1978, (facsimile of 1819 ed.), 261; J.D. Lang, *An Historical and Statistical Account of New South Wales*, 2 vols., London: 1834, vol. 2, 228.

⁹ Space will not permit a comprehensive survey but for some examples from different eras see: W. Frederic Morrison, *The Aldine Centennial History of NSW*, (Belden brothers: Sydney 1888), 84-6; Walter S. Campbell, 'The Use and Abuse of Stimulants in the Early Days of Settlement in NSW', *JRAHS*, vol. 18, no. 2 (1932), pp74-99; Clark, C.M.H., *Earliest Times*, 88, 98, 119; Russel Ward, *The Australian Legend*, Melbourne: Oxford University Press, 1974 (first published 1958), 2, 10, 35; Freeland, *Australian Pub*, ch. 1.

¹⁰ A.E. Dingle, "'The Truly Magnificent Thirst': An Historical Survey of Australian Drinking Habits", *Australian Historical Studies*, vol. 19 (1980), pp227-49; Dingle, *Drink and Drinking in Nineteenth Century Australia: a Statistical Commentary*, Clayton, Vic.: Monash University Dept. of Economic History, 1978, Monash papers in economic history, no.6; Noel Butlin, 'Rum'. My own analysis of the patchy evidence bears out their general conclusion. See below, 71.

despite this revisionism, the story continues to be repeated, even in recent historical work.¹¹ In fact, the one part of Smyth's account that stands up to scrutiny is the drunkenness of the sailors aboard the *Lady Penrhyn* where Smyth spent the night. Apparently they requested and were granted an extra ration of grog to celebrate their safe arrival in NSW and soon achieved a general state of drunkenness that "beggars every description, some swearing, others quarrelling, some singing" and all "quite incapable" of performing their duties.¹² Two observations might be made here, both of which reflect the general problems with descriptions of early colonial drunkenness. First, Smyth's account is remarkably reminiscent of the evangelical condemnation of drunkenness we have already encountered, suggesting that it was very much shaped by the existing narrative about the dangers of popular drinking. Second, and more telling, Smyth expresses horror and surprise at what was in fact a commonplace of the eighteenth-century world, for the drunkenness of the navy was proverbial and the granting of an extra ration to reward sailors on making landfall was standard practice.¹³ So rather than a narrative of extraordinary licence we are actually confronted with a typical instance of military discipline, with the supply of alcohol tightly regulated by the naval authorities and the drunkenness of the sailors an accepted reward for their labours. But such moralistic and content free accounts are typical of the history of alcohol in early NSW.

A Rum Currency

The significance of spirits in the early economy is also frequently exaggerated. Contemporary records drew attention to the barter of spirits for other commodities, especially the livestock and crops of the settlers and the use of spirits as wages to induce the convicts to work on private farms. These practices became increasingly problematic because limited supplies, a market dominated by a cartel, and the shortage of other luxuries, led to artificially inflated prices that bankrupted some settlers who needed spirits to pay their convict servants and to escape the drudgery of early colonial life.¹⁴ Due to a lack of hard currency in the early years of the colony,

¹¹ Arthur Bowes Smyth, *A Journal of a Voyage from Portsmouth to New South Wales and China in the Lady Penrhyn ...*, c. 1790, Mitchell Library, Safe 1 / 15, [<http://acms.sl.nsw.gov.au/album/albumView.aspx?acmsID=412747&itemID=823394> - accessed 13th May 2012], Feb. 6; Marian Aveling, 'Gender in Early NSW Society', *Push From the Bush* 24(April 1987), pp30-40. For a more recent version of this revisionism see: Grace Karskens, *The Colony: A History of Early Sydney*, Sydney: Allen & Unwin, 2009, 313-5. For the original statement of the myth see: Manning Clark, *A Short History of Australia*, New York: Mentor Books, 1963, 25. Most influentially stated in: Robert Hughes, *The Fatal Shore*, London: Pan Books, 1988, 89. Recently repeated in: Fitzgerald and Jordan, *Under the Influence*, 11.

¹² Smyth, Feb 6.

¹³ See: Michael Lewis, *A Social History of the Navy, 1793-1815*, London: George Allen & Unwin Ltd., 1960, 398-401; Moore, *Marines*, 8; Field, *Marines*, vol. 1, 134.

¹⁴ See for example: Collins, *Account*, 254, 268; Turnbull, *Voyage*, vol. 3, 180-1. For more on the early spirit trade and official attempts to control it, see below, 72ff.

spirits also became an important component of the system of barter by which many transactions were carried out, perhaps most famously, by the first colonial Minister, Johnson, for the construction of the first colonial church.¹⁵

There was thus, in the early years of the colony a thriving trade in spirits which played an important part in securing convict labour. But the story of this trade grew in the telling and a series of historians transformed spirits into the circulating medium of a mythical economic system. T.A. Coghlin claimed that rum was a “veritable currency,” not to be mistaken as “merely a form of drink traffic” whilst Edward Shann argued that it was the standard means of payment for over twenty years and created an “exchange economy” in which rum was the key to wealth.¹⁶ This view is now discredited, largely thanks to the work of Sydney Butlin who pointed out the impracticality of a consumable currency and argued that although rum formed a part of the wage payments of many workers for up to forty years and was a privileged article of barter it was rarely traded more than a few times before it was drunk.¹⁷ As Butlin argues, the use of rum as wages was a product of the peculiar nature of convict labour. Convicts already received rations and they had little opportunity to spend money on anything other than consumable luxuries like rum, tobacco, tea and sugar. This largely explains the frequent use of rum as payment and in barter: there was a steady demand that ensured a regular value. But, as he notes, value was always calculated in money and flour, not rum, was almost certainly the most frequent item of exchange.¹⁸ Indeed, Johnson’s church is an excellent example of the real role of spirits in the early economy. The total cost of the church was nearly seventy pounds, almost sixty of which Johnson paid in Spanish dollars, but he supplemented these cash payments with rations for his labourers: 50 lbs of meat, 100 lbs flour, 3 lbs tobacco, 5 lbs tea and twenty gallons of rum.¹⁹

¹⁵ ‘Johnson to [Dundas]’, 3rd Sep. 1793, *HRNSW*, vol. 2, 64-6.

¹⁶ T.A. Coghlan, *Labour and Industry in Australia*, (4 vols.), South Melbourne Vic.: Macmillan, 1969 (first ed. 1918), vol. 1, ch. 5; Shann, Edward, *An Economic History of Australia*, Melbourne; Georgia House, 1963 (first ed. 1930), 21-3.

¹⁷ S.J. Butlin, *Foundations of the Australian Monetary System 1788-1851*, Sydney: University of Sydney Library, 2002 (facsimile of the 1968 print ed.), [<http://purl.library.usyd.edu.au/setis/id/sup0003> - accessed 12th May, 2012], ch. 2.

¹⁸ S.J. Butlin, *Monetary System*, 19-23. This is borne out by Jane Elliott’s study of store ledgers which show that tea, sugar, tobacco and fabrics were often larger expenditures than the purchase of alcohol. See: Elliott, ‘Was there a Convict Dandy? Convict Consumer Interests in Sydney, 1788-1815’, *Australian Historical Studies*, vol. 26, no. 104 (Apr. 1995), pp373-92.

¹⁹ ‘Johnson to Dundas’. 66. Butlin suggests that Johnson’s ability to pay in Spanish dollars was “exceptional” for the time but this transaction exemplifies the role spirits played in the economy in the wider period before Macquarie introduced a new currency. S.J. Butlin, *Monetary System*, 21.

Though few historians now refer to rum as a currency there is a continued obsession with its significance to the early colonial economy.²⁰ While alcohol was an important component of early trade we need to bear in mind that this was perfectly typical of the eighteenth-century British world and particularly of new colonies like NSW at the periphery of the empire. Alcohol had a similar if not greater importance to the eighteenth-century West Indies, with spirits serving as a form of barter and used to pay slaves working on sugar plantations, massive consumption and consequent ill-health among the population and a particular problem with the trading activities of military Garrisons.²¹ Moreover, most, if not all contemporary sources on the trade in NSW were themselves interested participants. While spirit-trading was regularly criticised as a threat to the colony these attacks were often highly partisan with critics focussing on the trading activities of their political opponents and ignoring their personal involvement. The overthrow of Governor Bligh is a classic example.

The Rum Rebellion

As the most successful political upheaval in Australian history, the so-called rum rebellion has played an outsized role in the historiography of early NSW and alcohol has in turn achieved an exaggerated importance in the historical debate.²² Two opposed schools of interpretation emerged in the immediate aftermath of the 26th of January 1808, in the writings of the two main protagonists, Bligh and Macarthur. In his April report of events, Bligh claimed that the rebels "discontent" was principally due to their being "checked in the enormous practice of bartering spirits" by his stringent regulations.²³ This consistently held view of his opponents as a clique of self-interested spirit traders informed his and his supporters' interpretation of the Rebellion.²⁴

²⁰ See for example: David Day, *Smugglers and Sailors: the Customs History of Australia 1788-1901*, Canberra: Australian Government Publishing Service, 1992, chs. 1-6, *passim*; Fitzgerald and Jordan, *Under the Influence*, ch. 1.

²¹ See above, Ch. 2. On the problems of soldiers and alcohol in the West Indies see: Kopperman, 'Cheapest Pay'; John Bell, *An inquiry into the causes which produce, and the means of preventing diseases among British officers, soldiers, and others in the West Indies ...*, London: 1791. Bell found that troops in the West Indies commonly traded their rum ration, which was an aged British-made spirit for a larger volume of cheaper local rum, corrupted with wood alcohol but hence more intoxicating (137-8).

²² I will assume that readers are familiar with the basic events. For a clear summary see: Ross Fitzgerald and Mark Hearn, *Bligh, Macarthur and the Rum Rebellion*, Kenshurst (NSW): Kangaroo Press, 1988. Both the illegality of the act and the causal influence of spirits in the rum rebellion are debatable and so I use the term advisedly.

²³ 'Bligh to Castlereagh', 30th Apr. 1808, Frederick Watson, *Historical Records of Australia (HRA)*, (multiple vols.), Sydney: Library Committee of the Commonwealth Parliament 1914-1925, vol. 6, 420ff. Unless specified, future references to the HRA are all to the first series.

²⁴ See for example, Bligh's testimony at the court-martial of Johnston, in: John Ritchie (ed.), *A Charge of Mutiny: The Court Martial of Lieutenant Colonel George Johnston for Deposing Governor William Bligh in the Rebellion of 26 January 1808*, National Library of Australia, Canberra, 1988, 6, 19; the petitions of certain groups of settlers in support of Bligh: 'Settlers' to Castlereagh', 4th Nov. 1808; 'Settlers' to Castlereagh', 17th Feb. 1809; 'Settlers' to Castlereagh', 22nd Feb. 1809, *HRNSW*,

It is no surprise to find that Macarthur and the rebels had a very different view, casting Bligh as a tyrant who had abused his authority and whose overthrow was necessary for the future success of the colony. In a letter to his wife in England immediately following the revolt Macarthur described his actions as “contending for the liberties of this unhappy colony ... [against] The Tyrant” while in his evidence at the Court-Martial of Lieutenant Johnston he described a general feeling of “dread and terror” inspired by Bligh’s authoritarian conduct and alleged that he had manipulated and abused the law to his advantage, particularly by seizing private property.²⁵ Irrespective of the merits of this justification, Macarthur and his supporters had no place for alcohol in their narrative, actively disputing Bligh’s claims that they were defending their monopoly over the profits of the spirit trade.²⁶ Though both views are self-serving, they have formed the outlines of historical debate over the revolt ever since and, by extension have shaped our view of the role of alcohol in the early colony.

Macarthur’s interpretation was dominant in the years immediately after 1808 as a result of the rebels held leading positions in NSW society. Wentworth in his 1819 history developed a general discussion of “[a]rbitrary governments,” into a recital of the evils of Bligh’s rule, and argued that “brutal tyranny” had characterised his entire career, calling his arrest “fortunate for the cause of humanity”.²⁷ But Bligh’s view also had its public partisans. Perhaps the first was Robert Howe, editor of the *Sydney Gazette*, who published a series of editorials from the mid-1820s pointing to the spirit trade as crucial to the animosity of the plutocrats who had overthrown Bligh and continued to undermine the Government of the Colony.²⁸ Lang made a similar case in his 1834 history. While he found fault with Bligh’s authoritarian style, he accepted the Governor’s basic explanation of the revolt arguing that Bligh’s reforms had earned him the opposition of “that comparatively numerous and powerful class of individuals who had grown corpulent on the drunkenness of the colony”.²⁹ Irrespective of any political motive, Lang was partly driven by his concern about contemporary

vol. 6, 803; vol. 7, 33-4, 46-51; Henry Fulton’s letter attacking the rebels: ‘Fulton to [Castlereagh]’, 20th July 1808, *HRNSW*, vol. 6, 696-7.

²⁵ Cited in: Sibella Macarthur Onslow (ed), *Some Early records of the Macarthurs of Camden*, Adelaide: Rigby Ltd, 1973, 153; Ritchie (ed.), *Mutiny*, 186. See also Lieutenant Johnston’s official report: ‘Johnston to Castlereagh’, 11th Apr. 1808, *HRNSW*, vol. 6, 576.

²⁶ See Macarthur’s testimony: Ritchie (ed.), *Mutiny*, 199-200.

²⁷ Wentworth, *Description*, 164-173. Note that Wentworth’s support for Macarthur appears to have weakened between editions of his book. By the third edition he no longer mentioned Bligh or the rebellion while his political position was increasingly opposed to the exclusive party in the colony. See: Wentworth, *A statistical account of the British settlements in Australasia ...*, 2 vols., London: 1824; Mark Hutchinson, ‘W.C. Wentworth and the Sources of Australian Historiography’, *JRAHS*, vol. 77, no. 4 (1992), pp63-85.

²⁸ ‘The Year Eighteen Hundred and Eight’, *Sydney Gazette and New South Wales Advertiser*, Sydney: 1803-42, 24th Nov. 1825, 2; ‘1808!’, *Gazette*, 28th Nov. 1825, 2; ‘Eighteen Hundred and Eight!’, *Gazette*, 1st Dec. 1825, 2.

²⁹ Lang, *Account*, 88-109. Quotation on p94.

alcohol problems. As a leading figure in the early temperance movement, who wrote his history during a voyage to England to secure sober emigrants to improve the moral tone of the colony, he was naturally predisposed towards a view of early colonial history in which rum loomed large.³⁰

Later writers with similar sympathies also tended to adopt this interpretation including the Quaker author and traveller, William Howitt who coined the phrase “rum rebellion” and depicted Bligh’s overthrow as a peak in an ongoing struggle to repress the pernicious influence of spirits upon NSW society.³¹

The second half of the nineteenth century saw new works promoting both interpretations. Charles Mundy’s *Our Antipodes* linked drunkenness and the rum trade to the rebellion, as did Marcus Clarke who depicted the early colony overflowing with rum, thanks to a trade monopolised by the “Rum-Puncheon Corps”.³² In contrast, Rod Flanagan’s 1862 *History of New South Wales* took a more balanced view. He accepted that repressing the spirit trade was an important challenge but argued that Bligh went beyond his authority and that his persecution of Macarthur and lack of respect for the law made his arrest both legal and necessary.³³ What we see in all these writers is the emergence of a dominant account of a pivotal moment in the early history of the colony which emphasised the role of alcohol and the problems of alcohol regulation as integral to the wider story of NSW.

In the twentieth century, despite improvements in the quality of research few writers were capable of avoiding taking sides. Biographers of the key participants have almost invariably sympathised with their subjects. Thus George Mackaness in his *Life of Vice-Admiral William Bligh* (1931) wrote that the “principal occupation [of the NSW Corps] was the sale of rum”, saw NSW society divided between an elite of rum traders and an underclass of drinkers and regarded Bligh’s overthrow as an “organised conspiracy ... to defend the privileges of the rum-trading Corps and its friends”.³⁴ This view was echoed and amplified by H.V. Evatt in his 1938 study *Rum Rebellion*, the book that popularised the term. Attacking what he termed the “copy-book tradition” on the revolt (Macarthur’s interpretation) he argues Bligh was “the victim of a corrupt system” which

³⁰ Baker, D. W. A., 'Lang, John Dunmore (1799–1878)', *ADB*, [<http://adb.anu.edu.au/biography/lang-john-dunmore-2326/text2953> - accessed 14 May 2012]; Lang, 'Declaration on board the Stirling Castle', 13th Oct. 1831, Mitchell Library, ML Doc 1477. For more on this document, the first temperance pledge made in NSW, see below, 156.

³¹ William Howitt, *Land, labour and gold : or, Two years in Victoria with visits to Sydney and Van Diemen's Land*, London: 1855, 293 Cited in Ritchie, *Mutiny*, xvi.

³² Charles Mundy, *Our Antipodes, or, Residence and rambles in the Australasian colonies...*, (3 vols.), London: 1852, vol. 1, 120-1; Marcus Clarke, *Old Tales of a Young Country*, Melbourne: 1871, 37.

³³ Roderick J. Flanagan, *The history of New South Wales ...*, London: 1862, 150-179.

³⁴ George Mackaness, *Life of Vice-Admiral William Bligh R.N., F.R.S.* 2 vols., New York: 1931, vol. 2, 119-20, 139.

monopolised wealth and power especially through control of the spirit trade.³⁵ This new authoritative account was in turn challenged by M.H. Ellis in his 1952 biography of John Macarthur, in which, like Mackaness, his sympathies were very much with his subject. Ellis' work is especially interesting because unlike many of Macarthur's earlier defenders he accepted the importance of the spirit trade in the early colony. Thus he noted that drunkenness was common among all classes of society at the turn of the nineteenth century, that spirits were the only practical means of inducing convicts to work productively and were used for this purpose by everyone, concluding that the trade was entirely necessary, albeit frequently the subject of hypocritical moralising.³⁶ The rivalry between Ellis and Evatt with its political overtones dominated historiography in the twentieth-century.³⁷

More recently, a new revisionist school of interpretation, particularly associated with Alan Atkinson, has put the overthrow of Bligh in a broader context. Atkinson traced the role of rival British patronage networks in supporting the two sides, explored the ideological roots of the revolt in the Whig tradition of English liberty, and claimed a wider popular animosity towards Bligh, particularly inspired by the threat that his arbitrary decisions posed to private property. The rebels employed the lofty rhetoric of tyranny to justify their more worldly opposition to the Governor, but Bligh had alienated a significant section of the colony, especially in Sydney, by seizing private land for his building program and challenging the popular understanding of the rule of law.³⁸ But this still does not explain why Bligh believed his attempts to regulate the spirit trade were so important. Though I broadly agree that the revolt was the consequence of a power struggle between an

³⁵ H.V. Evatt, *Rum Rebellion: A Study of the Overthrow of Governor Bligh by John Macarthur and the New South Wales Corps*, Sydney: Sirius Books, 1965 (first ed. 1931), ch. 1, 220.

³⁶ M.H. Ellis, *John Macarthur*, Penrith: Discovery Press, 1972 (first ed. 1955), 62-4, 285-8. His critique of the anachronism of modern condemnation of the spirit trade is somewhat undercut by his own anachronistic questioning of the ethics of flogging. He asks: "whether it were not more righteous to produce industry in the sinner by making him drunk than by making him bloody" a question which ignores the obvious point that both were perfectly acceptable to many early nineteenth-century minds. See also his: 'Rum Rebellion Reviewed', *Quadrant*, vol. 2, no. 1 (1958), pp13-24.

³⁷ For more on the (somewhat one-sided) rivalry between Ellis and Evatt see: D.A. Calman, 'Mr. Ellis and Dr. Evatt', *Meanjin*, vol. 18, no. 4 (1959), pp435-40; Brian Fletcher, *Australian History in NSW, 1888-1938*, Kensington, NSW: UNSW Press, 1993, 148-50; Andrew Moore, 'The "Historical Expert": M.H.Ellis and the Historiography of the Cold War', *Australian Historical Studies*, no. 114 (2000), pp91-109; George Parsons, 'Dr Evatt and Mr Ellis: an episode in the Australian history wars', *Australian Quarterly*, vol. 74, no. 4 (2002), pp36-7.

³⁸ For patronage see: Alan Atkinson, 'The British Whigs and the Rum Rebellion', *JRAHS*, vol. 66, pt. 2 (Sept. 1980), pp73-90. For ideology see: Alan Atkinson, 'Jeremy Bentham and the Rum Rebellion', *JRAHS*, vol. 64, pt. 1 (June 1978), pp1-13. For a more popular revolt see: Atkinson(ed.), 'William Bligh's Chickens', *Push from the Bush*, no.25 (Oct. 1987), pp72-93; Atkinson, 'The Little Revolution in New South Wales', *The International History Review*, vol. 12, no. 1 (Feb. 1990), pp65-75; Atkinson, *Beginning*, ch.13. Other historians who have adopted Atkinson's general approach include: Fitzgerald and Hearn, *Rum Rebellion*; James Spiegelman, 'Bicentenary of the Coup of 1808', *Legal History*, vol. 12(2008), pp1-18; Grace Karskens and Richard Waterhouse, "'too sacred to be taken away": Property, Liberty, Tyranny and the "Rum Rebellion"', *Journal of Australian Colonial History*, vol. 12 (2010), pp1-22.

authoritarian Governor and the growing free population of the colony, the symbolic importance of alcohol in this ongoing conflict requires further explanation.

The central place of rum in traditional accounts of early NSW is largely based upon exaggeration and anachronistic judgement but the three myths nonetheless reflect a real problem. Although rum was neither as economically or politically important as historians once thought, the constant emphasis on the spirit trade in contemporary accounts of the colony and, most significantly, in the communications between the Governors and their British superiors, suggests that it mattered on another level, over and above such practical concerns. It was not simply the commercial value of spirits, their use in the barter economy or their function as a stimulus to labour that made alcohol an obsession for colonial officials but rather the clash between these traditional roles and the growing concern with drunkenness as both a cause, and a symbol of immorality and crime.

In a colony founded, at least in part, as a reformatory for criminals and still dominated by a convict population, the unrestrained trade and the drunkenness it engendered represented a larger failure of authority. The symbolic affront of public drunkenness to protestant morals and official discipline was amplified in a convict colony and explains both the obsessive concern with regulating alcohol and its failure. As in Georgia, philanthropic idealism among the planners and administrators clashed with the commercial aspirations of an emerging elite. The ideal of reforming the convicts led to consistent demands for the early Governors to strictly control the supply and consumption of alcohol, and these demands were reflected in strenuous attempts to regulate the spirit trade. But unfortunately, the nature of early NSW – diffuse, remote and largely unpoliced – made the suppression of alcohol “morally impossible”. As Bentham knew, the only kind of prison that could keep its convicts sober was one in which they were constantly supervised.

Chapter 5) The Challenge of Regulation

How Many Bottles of Rum?

Perhaps the most extraordinary demand placed upon the early Governors of NSW was that they either prevent or strictly control the supply of alcohol in the colony. In late eighteenth-century Britain all alcoholic drinks were freely imported, except from political enemies like France, provided the considerable taxes were paid. But in NSW importation of spirits was subject to the permission of the Governor and attempts to enforce this control proved an abject failure. In contrast, wine and beer consumption were actively encouraged as healthy alternatives to spirits and were traded freely.¹ Likewise, by 1788 distilling and brewing in Britain were massive and consolidated national industries and small-scale domestic production was common. But in NSW distillation was banned, and brewing and wine-making grew slowly. Thus, supply, demand and regulatory constraints, meant that the vast majority of alcohol consumed in the early colony was imported, and the bulk of that was spirits.

Due to enormous variation in volumes, significant problems with the availability of data and the endemic problems of smuggling and illegal distillation there is little point in trying to calculate annual per capita consumption or distinguish between the regimes of different Governors. But I will offer some broad estimates for the minimum level of available alcohol across three distinct periods. From 1788 to 1799, there were no official attempts to record the volume of imports and the population was small and rapidly changing. But there was on average at least 3.5 litres of pure alcohol available per person per year and almost certainly significantly more. Between 1800 and 1804 Governor King tried to quantify the success of his regulations and these official figures show at least 8 litres per person. From 1805 to 1809, records are again patchy and this period almost certainly saw the highest levels of illicit alcohol. The minimum was 3 litres per person but I would speculate that this underestimates the real level by at least one hundred per cent.²

¹ For more on this view of wine as a civilising drink see: Julie McIntyre, 'A "civilized" drink and a "civilizing" industry: wine growing and cultural imagining', PhD Thesis, Sydney University: 2008.

² For the data see: Collins, *Account, passim*; *HRNSW*, vol. 1, pt. 2, 112, 219; vol. 2, 120, 133, 220, 286, 293-4, 348-9; vol. 3, 158, 729; *HRA*, vol. 1, 202, 222, 249, 333, 366-7, 413-5, 417, 420-1; vol. 2, 35, 143, 442; D.R. Hainsworth, *The Sydney Traders, Simeon Lord and his Contemporaries, 1788-1821*, Sydney: Cassell Australia, 1971, 22; Phillip Lisle, 'Rum beginnings: towards a new perspective of the Grose years', *JRAHS*, vol. 91, no. 1 (2005), pp. 15-28, 18-21; Steven, *Merchant Campbell*, 32, 38-9, 41-2. These figures are of limited value given the gaps in the data but they do at least puncture the traditional myth of NSW as a peculiarly drunken society and provide a baseline for speculating about the real levels of consumption.

The Failure to Control Supply

Access to alcohol in the colony was always supposed to be tightly controlled. The first fleet arrived with spirits and wine from Rio and private supplies of liquor brought out for personal use by some of the officials but rations were restricted to the marines, their officers and other officials, and only occasionally granted as a reward to convicts.³ Despite their poor quality, the Rio spirits were in high demand in the infant settlement as one of the only means of relieving the tedium and depravation of colonial life and they were soon supplemented by private trade from visiting vessels including the opportunistic captains of the second fleet. An illicit barter rapidly emerged between marines and sailors with access to alcohol and convicts who traded stolen aboriginal artefacts, food supplies and even their clothing for liquor – though the sporadic arrival of early vessels led to large fluctuations in supply.⁴ In response, Phillip instituted a permit system ordering the night watch to seize all spirits landed without official permission. He also wrote to his superiors calling for a duty on imported alcohol, both to subsidise enforcement and in recognition of the impossibility of preventing spirits from entering the colony.⁵ Though this request was denied, British officials did tacitly acknowledge this reality by providing a further official supply of spirits on the *Britannia* to maintain the ration that was so essential to local morale. Phillip interpreted this decision as approval to reward convicts, commenting that “it is a bounty which many of those people well deserve – and to the undeserving it will never be given”.⁶ But while he found the new supplies useful he regretted the influence of alcohol on the infant colony: “[t]he permitting of Spirits amongst the civil and military may be necessary but it will certainly be a great evil.”⁷

Phillip’s successors were swift to encounter the “evil” but unable to do without the necessity, or enforce the permit system in the face of constant smuggling. During the two year

By way of comparison, in England and Wales in the first decade of the nineteenth-century, where we have much more reliable figures, there were between 7 and 8 litres per person available for consumption.

³ For convict rewards see for example: Collins, *Account*, vol. 1, 31-2.

⁴ ‘Phillip to Grenville’, 1st Mar. 1791, *HRNSW*, vol. 1, pt. 2, 467; Day, *Smugglers and Sailors*, 3-4. On the poor quality of the Rio spirits see: ‘Ross to Stephens’, 10th July 1788, *HRNSW*, vol. 1, pt. 2, 173. For fluctuations in supplies see: Collins, *Account*, vol. 1, 98, 241.

⁵ ‘Phillip to Nepean’, 18th Nov. 1791; ‘Dundas to Phillip’, 15th May 1792, *HRNSW*, vol. 1, pt. 2, 556-7, 623; Collins, *Account*, vol. 1, 175.

⁶ ‘Phillip to Dundas’, 2nd Oct. 1792, *HRNSW*, vol. 1 pt. 2, 648. Phillip based this interpretation on the official comment that the 2319 Gallons supplied on the *Britannia* was “an allowance of half a gallon for each person per annum”. This must mean that the new supply was intended only for special occasions as the standard military ration of half a pint per day would have exhausted this volume in less than a month. This ambiguity probably explains the divergence between the volume mentioned in this despatch and the invoice for 9278G sent out earlier that year. See: ‘Dundas to Phillip’, 10th Jan. 1792, *HRA*, vol. 1, 333. In my calculations of available alcohol I have assumed that these were separate shipments on the same vessel.

⁷ ‘Phillip to Dundas’, 11th Oct. 1792, *HRNSW*, vol. 1, pt. 2, 665.

interlude between Phillip's departure and the arrival of Governor Hunter, Lieutenant-Governor Grose was warned that "[g]reat attention seems necessary to prevent spirits from being secretly sold and conveyed to the convicts" and ordered to "strictly enforce such orders and directions as appear most likely to prevent ... secret and clandestine sale".⁸ Grose interpreted these orders liberally, allowing shipments of spirits, outside of those sent from England, in order to replenish the official supply required for rationing. He was also involved in private trade. He and his fellow officers of the newly arrived NSW Corps soon began to purchase the cargo of trading vessels and convict transports that arrived in Port Jackson and sell it at a profit, even commissioning the *Brittania* to travel to the Cape and return with supplies.⁹ Though much of this trade was beneficial for the colony, producing the beginnings of a capitalist economy and saving the colonists from starvation when official supplies failed to arrive, the traders soon seized upon spirits as a profitable commodity with a reliable market and this helped undermine official restrictions on alcohol.¹⁰ By the time Hunter arrived in the colony in September 1795 a de facto system had developed whereby any spirits not required for rationing troops were purchased privately and either sold or bartered, often at an enormous profit for the fortunate few who had access to hard currency with which to buy them.

Hunter received instructions prior to his departure for NSW that "great evils have arisen from the unrestrained importation of spirituous liquors" and orders to strictly impose the permit system.¹¹ He arrived full of good intentions but soon found "from the frequent state of inebriation in which great numbers of the lower orders ... [have] been seen ... that a greater quantity of spirituous liquors has been landed ... than permission had been obtained for". Apparently aware of military involvement in the trade he specifically ordered the NSW Corps to assist him in "putting an end to a species of traffic from which the destruction of health and the ruin of all industry may be expected".¹² However, his regulations failed, not least because he undermined them himself by regularly authorising substantial cargoes of spirits into the colony. In any case, smuggling was rife

⁸ 'Dundas to Grose', 30th June 1793, *HRA*, vol. 1, 442.

⁹ The so-called "rum corps" never entirely monopolised trade and were only predominant until the turn of the century. On the other hand, the officers did play a crucial role in the emergence of capitalism. See: Hainsworth, *Sydney Traders*, chs. 1-3; George Parsons, 'The commercialisation of honour: Early Australian capitalism 1788-1809', George Aplin (ed.), *A Difficult Infant: Sydney Before Macquarie*, Kensington, NSW: New South Wales University Press, 1988, pp102-119.

¹⁰ Lisle, 'Rum Beginnings', 24-5; Hainsworth, *Sydney Traders*, 22-31. Lisle argues that the spirit trade under Grose was enormous, claiming over 45000 gallons of spirits were imported in a nine month period in 1794-5. I disagree, both with this calculation and the implication that this was a typical level of spirit importation – it was almost certainly the peak period in the first decade of the colony. However, I generally agree with his view that trade under Grose was practically unregulated. Further support for this interpretation is found in the comments of Johnson and Marsden on the Grose era, although, as is so often the case in this period, their allegations of official connivance in the spirit trade were hardly impartial. See: 'Johnson to Hunter', 5th July 1798; 'Marsden to Hunter', 11th Aug. 1798, *HRNSW*, vol. 3, 433-4, 439-442.

¹¹ 'Hunter's Instructions', 23rd June 1794, *HRNSW*, vol. 2, 230-1.

¹² 'General Order', 22nd Mar. 1796, *HRNSW*, vol. 3, 36; 'General Order', 18th June 1796, *HRA*, vol. 1, 693.

and the cargo generally made it to the market regardless of official consent. Not six months after his initial orders, Hunter lamented that “considerable quantities” of spirits were causing public drunkenness and again proposed a colonial duty as a means to “defray some part of the expense of the civil establishment of the colony”.¹³ As with Phillip this probably reflects his growing awareness that without a reliable police and customs to enforce his regulations, he was all but powerless to control the trade.

In a detailed report in November 1796, Hunter argued that the illicit traffic was central to both colonial immorality and the opposition of the military elite to his leadership:

Had this article, so pernicious in its effects as it has been us'd, been sparingly employ'd and imported in moderation, it would have done much good; but being an article much sought after by the lower orders of the people ... it has been eagerly imported ... and sold again to the settlers at an immense profit ... very considerable sums have been realis'd in a very short time by this ruinous trade – ruinous to many who might have liv'd now very independently on their farms; to the destruction of all order; to the almost total extinction of every spark of religion; to the encouragement of gambling; the occasion of frequent robberys; and, concern'd am I to add, to several very recent and shocking murders; and, in short, to the abolishment of all discipline and every attention of the concerns of Government.¹⁴

This clash between official regulations and the commercial interests of the local elite is obviously reminiscent of Georgia but restraint was especially necessary in NSW. Like Phillip before him, Hunter acknowledged the need for alcohol noting that “much labour is often obtained by a small gratification in the article of spirits” and claimed to favour free trade in theory, but in practice the spirit trade had already ruined many settlers and undermined morality.¹⁵ The demand for convict reform meant that the colonists could not be trusted with alcohol.

In addition to his struggles with smugglers, Hunter also faced a challenge regulating local production of alcohol. Recent scholarship suggests that James Squire, the first commercial brewer, began operation in the early 1790s, and was soon joined by John Boston; by 1800, both had reached

¹³ ‘Hunter to Portland’, 20th Aug. 1796, *HRA*, vol. 1, 593-4. Note that he had allowed almost 8000 gallons into the colony in this period.

¹⁴ Hunter to Portland, 12th November 1796, *HRA*, vol. 1, 668-9. On the problems of the trade see also: Hunter to Portland, 20th June 1797, *HRNSW*, vol. 3, 224-5.

¹⁵ ‘Hunter to Portland’, 20th Aug. 1796; ‘Hunter to King’, 14th Nov. 1796, *HRA*, vol. 1, 593-4, 703. For a further statement of this view and the contrast between the public spirit in the colony under Phillip and the selfish private interests under Hunter see: ‘Hunter to Portland’, 15th Nov. 1799, *HRNSW*, vol. 3, 745. Hunter’s view is borne out by Collins who reports in detail on the official inquiry into the debts of the early farming settlers of the Hawkesbury. See: Collins, *Account*, vol. 1, 482-3.

a scale requiring dedicated premises and substantial quantities of grain.¹⁶ Local wine-making also began in the 1790s, with vines planted on both private land and on the Government farms, although early vintages were largely undrinkable due to a lack of necessary expertise.¹⁷ More problematic, given concerns about spirits, was the emergence of distilling in NSW. Given the huge demand for spirits it was not surprising that stills found their way to the colony or that crops found their way to the stills. In December 1793, Collins reported that a Parramatta settler named Webb was making a spirit from his wheat and selling or trading it for a handsome profit.¹⁸ In 1796, Hunter banned distillation and had a number of stills destroyed, arguing that “[s]o iniquitous and dangerous a practice [was] ... destructive to the welfare and prosperity of the colony”, citing both drunkenness and the waste of scarce grain. He noted that the practice was carried on in secrecy by considerable numbers of settlers; indeed his Order implies that he only became aware of the problem when an official request was made for permission.¹⁹

Hunter’s struggle to control the “ruinous trade” in spirits only grew over time. While he prevented any commercial cargo from landing in 1797 he was forced to concede that the spirits he turned away were usually smuggled ashore.²⁰ His failure to exercise control irritated his superiors in Britain who had little sympathy with his claim that the permit system could not be enforced when the majority of officials were profiting from the black market.²¹ He incurred further displeasure when he approved an agreement by the officers and “some of the leading inhabitants” to combat inflated prices by purchasing goods as a cartel.²² Though probably well-intentioned, Hunter’s approval of this arrangement only exacerbated the opportunity for local magnates to exploit their superior access to imported goods, the very problem that was bankrupting the poorer settlers. Bolstered by an anonymous report on military involvement in the spirit trade, the Secretary of State

¹⁶ David Hughes, ‘Australia’s first brewer’, *JRAHS*, vol. 82, pt. 2 (1996), pp153-167.

¹⁷ McIntyre, ‘Wine’, 66-72.

¹⁸ Collins, *Account*, vol. 1, 327.

¹⁹ ‘General Order’, 23rd Jan. 1796; ‘Hunter to Portland’, 3rd Mar. 1796; ‘Portland to Hunter’, 2nd Mar 1797, *HRNSW*, vol. 3, 10, 31, 196; Collins, *Account*, vol. 1, 449. As with his efforts to prevent smuggling, his initial optimism that he could contain the problem was misplaced and shortly before his departure he was forced to re-issue orders against the practice after more stills were detected. See: ‘Hunter to Portland’, 15th Nov. 1799, *HRA*, vol. 2, 398-9; ‘Proceedings of the Judge Advocate’s Bench’, 9th, 19th and 23rd Mar., 11th Apr. 1799, NSW State Archives, NRS3397. Note that convicts caught distilling were sentenced to a year’s transportation whereas the free settler Owen MacNanamy was dismissed with a reprimand and even had his still returned after it had been disabled.

²⁰ ‘Hunter to Portland’, 6th July 1797, *HRA*, vol. 1, 35.

²¹ ‘Portland to Hunter’, 6th Feb. 1798, *HRA*, vol. 2, 127; ‘Portland to Hunter’, 18th Sep. 1798, *HRNSW*, vol. 3, 490.

²² ‘Agreement between Officers and Others’, 18th June 1798; ‘General Order’, 25th June 1798, *HRNSW*, vol. 3, 405-6, 408.

condemned Hunter's efforts and began planning his replacement, long before he finally departed the colony in September 1800.²³

The final two years of Hunter's term of office did witness some important regulatory reforms but the spirit trade continued unabated. Responding to Hunter's regular reports of cargoes of spirits arriving from India, the Colonial Office requested that the East India Company (EIC) prevent the trade, a request to which they agreed.²⁴ Hunter also extended the permit system to local movement of spirits and appointed a larger force of officers under the authority of magistrate and notorious drunkard, Richard Atkins.²⁵ But when they tried to prosecute smugglers from the *Walker* who were caught red-handed carrying spirits ashore, the case failed after the evidence of the arresting officer, a convict transported for perjury, was discredited and the legality of his official authority, disputed by the court.²⁶ This incident aptly illustrates Hunter's impotence in the face of the commercial imperatives driving the spirit trade. Even when he was able to detect illegal spirits he had no reliable body – only convict constables – to enforce his regulations.

Hunter also introduced the first official tax on alcohol, an innovation that would play a critical role in NSW.²⁷ He was well aware that taxation was technically illegal without authority from Parliament or a colonial legislature, but he and his successors relied on a legal fiction that the tax was a landing fee which colonial Governors could legally impose.²⁸ More surprisingly, the Colonial Office, having ordered Phillip not to charge duties, now connived in the illegality approving the appropriation of these taxes into two funds, the Gaol Fund for infrastructure and the Orphan Fund

²³ For British reaction to the Officer's agreement see: 'Portland to Hunter', 5th Nov. 1799, *HRNSW*, vol. 3, 734. On the anonymous letter see: 'Portland to Hunter', 26th Feb. 1799; 'Brownrigg to Patterson', 6th Mar. 1799; 'Hunter to Portland', 15th Nov. 1799, *HRNSW*, vol. 3, 636-8, 639-40, 741-8. On Rev Thomas Palmer as the possible author see: Ellis, *Macarthur*, 136-8, 148-9. On early plans to replace Hunter see: 'A letter from Sydney', 14th Sep. 1798, *HRNSW*, vol. 3, 485-7. This letter, probably written by Samuel Marsden, implies that King was already known as Hunter's replacement two years before the change of Governor.

²⁴ 'Portland to Dundas', 19th Oct. 1799; 'E. India Co. to Dundas', 28th Oct. 1799, *HRNSW*, vol. 3, 725-6, 728-9. This did not immediately deter Indian traders: Steven, *Campbell*, 82-3.

²⁵ 'General Order', 3rd Dec. 1799, *HRA*, vol. 2, 594. On Atkins see: J. M. Bennett, 'Atkins, Richard (1745-1820)', *ADB*, [<http://adb.anu.edu.au/biography/atkins-richard-1723/text23945> - accessed 29 May 2012].

²⁶ 'Hunter to Portland', 2nd Jan. 1800, *HRA*, vol. 2, 423-4. The shipping firm was fined £1000.

²⁷ 'Hunter to Portland', 2nd Feb. 1800, *HRA*, vol. 1, 451; Collins, *Account*, vol.2, 285-6. The actual Order is missing but under King, the permit cost 6d. regardless of volume. See: 'General Order', 7th Oct 1801, *HRA*, vol. 3, 464-5. Hunter's duty was actually anticipated by King as Lieutenant-Governor of Norfolk Island, when he used a one-off tariff to pay the schoolmaster. See: Day, *Smugglers*, 6-7.

²⁸ La Nauze, 'Tariffs pt 1', 2-4; G.J. Abbott, 'Government Works and Services' in: Abbott and N.B. Nairn (eds.), *Economic growth of Australia 1788-1821*, Melbourne: Melbourne University Press, 1969, pp306-24. Note that duties were resented by the settlers in NSW receiving a mention in one of the anonymous 'Pipes' against Governor King in which he is made to say: "Tythes, taxes and quit-rents unto me belong/And duties on spirits I claim as my own". See: 'King to Hobart', 9th May 1803, *HRNSW*, vol. 5, 126. Bentham was the most influential critic of these illegal taxes arguing that all Governors orders as applied to free citizens were probably illegal. See: Bentham, 'A Plea for the Constitution ...', Bowring (ed.), *Works*, vol. 4, pp386-441. For Bentham's influence on Macarthur's campaign against illegal government authority see: Atkinson, 'Bentham'. For the recurrence of this legal question under Macquarie see below, 101ff.

which operated a poor house for abandoned children. In 1807, Viscount Castlereagh, the Secretary of State, even went so far as to approve of future spirit duties as “one of the most material Sources of Revenue” for the colony.²⁹ But before 1810, taxes and license fees on alcohol never contributed significantly to colonial finances.

Despite these significant innovations, Hunter clearly failed to fulfil his orders or impose his authority on the spirit trade. He justified landing the cargo of the *El Plumier*, a captured Spanish prize, in late 1799 with the claim that the spirits were needed for rationing, but this hardly seems plausible when in the six months from November 1799 to May 1800 over thirty-six thousand gallons were landed in NSW – more than seven gallons for every person in the colony.³⁰ Describing his decision to countenance another spirit-laden vessel, the *Thynne*, which had been chartered from Bengal by the officers’ cartel, Hunter aptly summarised the challenge of regulating the spirit trade:

*To oppose [spirits] being landed, my Lord, will be vain on my part, for the want of proper officers to execute such Orders ... if not permitted, [the spirits] will be landed and become a monopoly in the hands of some of the traders ... I see it therefore necessary, in order to prevent those heavy impositions on the lowest classes and inferior officers, to permit their purchasing at a moderate rate whilst they can. I am sufficiently experienc’d here to know that whilst the article is sought after in this harbour, or indeed any other on this coast, it is impossible to counteract the designs of those who wish to have it.*³¹

Hunter’s orders were unenforceable, but his failure to control the spirit trade undermined his administration and would continue to challenge the authority of his successors.

Shortly after his arrival Governor King reported on the scale of alcohol problems, blaming the lax regime of his predecessor, and embarked on an ambitious program of reform.³² He supplemented the permit system with an attempt to undercut the extortionate private market by selling spirits at a fixed margin through the Government Store. Quotas established different volumes available to government officials, Officers, license holders and other free settlers while

²⁹ ‘Castlereagh to Bligh’, 31st Dec. 1807, *HRA*, vol. 6, 201-2; J. A. La Nauze, ‘Australian tariffs and imperial control’ (pt. 1 of 2), *Economic Record*, vol. 24.1 (1948), pp1-17, 6-7.

³⁰ ‘Hunter to Portland’, 3rd Jan. 1800, *HRNSW*, vol. 4, 7-8; ‘Spirits and Wines Imported ...’, *HRA*, vol. 2, 550.

³¹ ‘Hunter to Portland’, 15th Jan. 1800, *HRA*, vol. 2, 436-9. See also the petitions: ‘Hunter to Portland’, 1st Feb. 1800, *HRA*, vol. 2, 442-3. These popular complaints bear out some of Hunter’s excuses for permitting the landing of spirits.

³² ‘King to Portland’, 14th Nov. 1801, *HRA*, vol. 3, 329.

private sale was restricted with a maximum price of twenty shillings per gallon.³³ He also bolstered the enforcement of these regulations through a new Naval Office and encouraged diligence by ordering all smuggled spirits to be granted as a reward to the seizing officer. Hunter's landing fees were expanded into a volumetric system of duties, set at one shilling per gallon for spirits, sixpence for wine and thruppence for beer landed in the colony and subsequently imposed an additional ad valorem duty of five percent on all goods shipped from India.³⁴ He also sought to cut-off supply at the source by requesting a strict limit of five hundred gallons of spirits on convict transports and issuing a warning to the US consul that all spirits brought to the colony from America would be turned away. Most importantly of all, while he permitted supplies to maintain the ration and meet settler demand, he enforced his orders by regularly refusing to allow cargoes to be landed, claiming to have turned away over fifty thousand gallons of spirits and wine in his first year alone.³⁵ In an optimistic despatch to his superiors in October 1802 he claimed that his refined system had reduced smuggling to a trickle with only two instances during the first two years of his regime, both of which were detected.³⁶

However, his repeated re-issuing of orders against smuggling tells a different story and his limited success was soon compromised by complicity in the trade.³⁷ Like Hunter, King found that forbidding all spirits only hurt the poorest settlers – those without access to the black market or the capacity to stockpile – while the need to secure supplies necessitated allowing some spirits into the colony. Robert Campbell, whose Bengali trading house played an important role in early commerce, regularly risked fines and censure by seeking to import larger quantities of spirits than their contracts allowed. King noted that Campbell had “acted with a becoming propriety, and is deserving of every other encouragement, *except in forcing spirits on the colony* [sic]” and suggested a compromise allowing merchants to bring four to five thousand gallons per vessel that they could sell

³³ ‘General Order’, 1st Oct. 1800; ‘King to Under-Secretary King’, 28th Sep. 1800, *HRNSW*, vol. 4, 220-1, 201. For examples of Government distribution see: ‘General Order’, 20th Dec. 1800, *HRNSW*, vol. 4, 273; ‘General Orders’, 5th Mar 1803, *Gazette*, 1; ‘General Orders’, *Gazette*, 15th Jan. 1804, 1.

³⁴ ‘General Order’, 28th Nov. 1800, *HRNSW*, vol. 4, 260. For the new duties see: ‘Port Regulations’, 10th Sep. 1800, *HRNSW*, vol. 4, 146; ‘General Order’, 14th June 1802, *HRA*, vol. 3, 490.

³⁵ For attempts to prevent shipments see: ‘King to Portland’, 10th Mar. 1801, *HRA*, vol. 3, 7-8, 56, 89, 102; ‘King to British Consul in N. America’, 1st Mar. 1802, *HRA*, vol. 3, 413. The Transport Office responded that convict vessels had been banned from bringing spirits to trade in NSW since 1798 but instituted a bond for the good conduct of Masters of vessels. See: ‘Transport Office to Hobart’, 4th Feb. 1802, *HRNSW*, vol. 4, 693. For spirits turned away see: ‘King to Portland’, 21st Aug. 1801, *HRNSW*, vol. 4, 463; ‘King to Hobart’, 30th Oct. 1802, *HRA*, vol. 3, 593-4.

³⁶ ‘King to Hobart’, 30th Oct. 1802, *HRNSW*, vol. 4, 877-8. King seems blissfully unaware that successful smuggling was unlikely to come to his attention.

³⁷ For repeated orders in the first two years of his tenure alone see: ‘King to Portland’, 18th Sep. 1800, *HRA*, vol. 2, 542-5, 546-8; ‘General Order’, 10th Oct. 1800, *HRNSW*, vol.4, 228; ‘General Order’, 11th May 1801, *HRA*, vol. 3, 252; ‘General Order’, 1st Jan. 1802; ‘General Order’, 1st Oct. 1802; ‘General Order’, 11th Oct 1802, *HRNSW*, vol. 4, 673, 843, 321.

at fixed prices through his quota system. However, further breaches of contract by Indian ships saw King lose patience and he complained to the Indian authorities and requested the Colonial Office discipline Campbell.³⁸

These problems grew as King's will to pursue the spirit trade slackened and his system was criticised. There were regular complaints from traders who missed out on permits and while their objections were self-interested, it was a natural consequence of King's policy that those who could secure access to spirits in a situation of high demand and controlled supply, stood to profit from their good fortune. Allegations of favouritism, special exceptions and other irregularities, are too frequent to be without foundation. In fact, by centralising the distribution of spirits through the government store, King created a new form of official patronage which inevitably caused resentment, encouraged fraud and helped extend the artificial price of spirits into a period in which a normal market was emerging in NSW.³⁹

Local production of alcohol also expanded as King sought to encourage less intoxicating drinks for the colony and a commercial industry emerged. Two French prisoners-of-war with experience as vigneron were sent out on three year terms to assist colonial growers and spread advice on wine growing to promote the nascent wine-industry. However, there were only 2 acres of wine-producing grapes in NSW in 1800 and wine production did not take off in this period.⁴⁰ A similar policy was adopted for beer, with greater success. On King's request, supplies were shipped from England to support a Government brewery at Parramatta that might "lessen the consumption of spirituous liquors" and this was supplemented by home brewers and the growing number of commercial operations including Squire, now established at Kissing Point and Daniel Cooper's Australian Brewery on George St. The Parramatta brewery opened in 1804 under Thomas Rushton and was soon capable of producing six thousand gallons a month although a shortage of hops and probably lack of demand for the local product meant that this level was rarely reached and the enterprise folded. Despite this failure, from this early 1800s a considerable quantity of locally

³⁸ Steven, *Campbell*, ch. 4; 'King to Hobart', 9th May 1803, *HRA*, vol. 4, 75, 88, 128-34; 'King to Hobart', 14th Aug. 1804, *HRA*, vol. 5, 15-16, 49-60; 'King to Hobart', 20th Dec. 1804, *HRNSW*, vol. 5, 523-4. On calls for punishment see: 'King to Camden', 30th Apr. 1805; 'King to Governor General in India', 31st May 1805, *HRA*, vol. 5, 428-3, 533.

³⁹ Hainsworth, *Traders*, 51-4. For examples of complaints see: 'Captain Colnett to Nepean', 14th Sep. 1803, *HRNSW*, vol. 5, 213-4; George Caley, *A Short account, relative to the proceedings in New South Wales ...*, Papers of Sir Joseph Banks, Mitchell Library, Section 5, Series 18.045; 'Blaxland to Chapman', 15th Oct. 1807, *HRNSW*, vol. 6, 303-4. For fraud see: 'General Order', 1st Feb. 1805; 'King to Camden', 15th Mar. 1806, *HRNSW*, vol. 5, 549-50, 671-2; 'General Order', 21st Jan. 1806, *HRNSW*, vol. 6, 12.

⁴⁰ McIntyre, 'Wine', 71-2; 'Portland to [King]', 27th Apr. 1800, *HRA*, vol. 2, 493-8; 'King to Portland', 10th Mar. 1801; 'Hobart to King', 30th Jan. 1802, *HRA*, vol. 3, 6, 368; 'King to Hobart', 9th May 1803; 'King to Hobart', 7th Aug. 1803; 'King to Hobart', 17th Sep. 1803; 'King to Hobart', 1st Mar. 1804, *HRA*, vol. 4, 232, 310, 392, 460.

brewed beer was available in the colony, though the quality remained low until the advent of refrigeration in the 1870s.⁴¹

Distillation remained illegal, both because it encouraged drunkenness and wasted grain, but despite this, it too appears to have increased under King. Though a series of illegal stills were detected and destroyed in 1805, by the end of that year he reported that "if report is true there are many others at work".⁴² This was a predictable result both because distilling excess crops into spirit was standard practice in eighteenth-century farming and because the punishments for those detected were insufficient to deter – free men merely had to pay a bond not to offend again for twelve months.⁴³ By the end of his term of office, with illegal distillation rife, King was forced to resort to increasing the punishment, declaring that those detected would be fined four hundred pounds and imprisoned for six months.⁴⁴ Reviewing this policy, Bentham acidly observed: "the publication of each subsequent order is a pretty sufficient evidence of the inefficacy of all preceding ones."⁴⁵ This might serve as the epitaph for alcohol regulation in early NSW.

The case of Joseph Holt, an Irish rebel transported to NSW in 1798 and soon established as a small farmer and entrepreneur, illustrates not only the habits of distillers but also popular attitudes to the regulation of alcohol and the impossible struggle of the authorities.⁴⁶ Holt's peach trees produced enough excess fruit to make five hundred gallons of cider with a value of seventy-five pounds or fifty gallons of spirit worth one hundred and twenty-five and accordingly he borrowed a still, set it up in secluded bushland near town, and set to work. He sold his moonshine to local publicans and enticed by his profits, purchased sugar to continue working after his crop was finished. He was caught because a companion betrayed him to the watch, not through any diligent police-work and accepting his punishment before the court – he was forced to pay four hundred pounds as

⁴¹ For official promotion of the industry see: 'Hobart to King', 29th Aug. 1802, *HRA*, vol. 3, 560-2; 'Hobart to King', 24th Feb. 1803; 'King to Hobart', 9th May 1803; 'King to Hobart', 7th Aug. 1803; 'King to Hobart', 17th Sep. 1803; 'King to Sullivan', 15th Mar. 1804; 'King to Hobart', 1st Mar. 1804; 'King to Sullivan', 1st Apr. 1804, *HRA*, vol. 4, 18, 246, 311, 392, 602, 607; 'King to Hobart', 14th Aug. 1804; 'General Order', 25th Sep. 1804; 'King to Hobart', 20th Dec. 1804; 'King to Camden', 15th Mar. 1806, *HRA*, vol. 5, 10-11, 272, 170, 176, 668. For an overview of early brewers and brewing see: Keith M. Deutscher, *The Breweries of Australia: A History*, Sydney: Lothian, 1999; T.G. Parsons, 'The limits of technology or, why didn't Australians drink colonial beer in 1838?', *Push from the Bush*, no. 4 (Sep. 1979), pp22-9.

⁴² 'Fitzmaurice to King and reply', 20th Feb. 1804; 'General Order', 31st Aug. 1805; 'King to Cooke', 24th Oct. 1805; 'King to Cooke', 31st Dec. 1805, *HRNSW*, vol. 5, 128-9, 688 571, 633-4.

⁴³ Joseph Holt, *A Rum Story*, Peter O'Shaughnessy (ed.), Kenshurst, NSW: Kangaroo Press, 1988, 103-4.

⁴⁴ 'Proclamation', 14th June 1806, *HRNSW*, vol. 6, 93. For the ongoing problem see: 'King to Camden', 15th Mar. 1806; 'King to Castlereagh', 27th July 1806, *HRNSW*, vol. 6, 41, 115.

⁴⁵ Bentham, 'Panopticon vs NSW', 366.

⁴⁶ For more on Holt see: G C Bolton, 'Holt, Joseph (1756–1826)', *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, [<http://adb.anu.edu.au/biography/holt-joseph-2194/text2831> - accessed 10 July 2012].

surety against reoffending – he told the magistrate that there was ‘no treason in a man making the best hand he can of his own property’ before promising that as soon as his twelve month bond expired he intended to work his still again.⁴⁷ Though Holt was not a typical settler, this attitude embodies the difficulty facing the early Governors in repressing spirits. Fundamentally, most colonists felt perfectly entitled to profit from the trade in alcohol.

But it was Bligh whose regime best captures the ill conceived and futile effort to control the supply of alcohol in early NSW. He received the now standard instructions to restrain the spirit trade and prevent distillation and took these orders to heart stressing in particular his determination to prohibit the barter in spirits for grain.⁴⁸ Following a tour of the colony focused on the Hawkesbury district, he described this “barter system” as the underlying cause of indebtedness and poverty amongst the free or freed settlers, a means of evading price limits on the sale of spirits and the chief inducement to illicit distillation, and he predicted an inevitable clash between his regulations and “those few who have so materially enriched themselves by [the trade]”.⁴⁹ These measures, though they earned the praise of the colonial office, helped to create the divisions that would lead to revolt. Complaints about the difficulty of accessing spirits under Bligh’s regime were common but so were expressions of support for the Governor.⁵⁰ In essence, like King whose regulatory system he largely adopted, Bligh used access to alcohol as a tool of patronage, denying it to the wealthy traders associated with the NSW Corps while providing more ready access to his supporters in the burgeoning bureaucracy and among the poorer settlers.

One clear example of this is Bligh’s handling of the *City of Edinburgh* which arrived with the largest cargo of spirits ever brought to the colony, not a month before the Rebellion. Bligh, apparently with great reluctance, permitted the landing of the spirits because the vessel’s “leaky” state of repair made it dangerous for her to leave Port Jackson; but he sent the whole cargo to the Government Store to be distributed at his discretion.⁵¹ This procedure typified Bligh’s approach to

⁴⁷ Holt, *Rum*, 102-4. See also the official account: ‘Captain Abbot to King’, 2nd June 1806, *HRNSW*, vol. 6, 84-6.

⁴⁸ ‘Bligh’s Commission’, n.d., *HRA*, vol. 6, 11, 16-17. Note that Bligh was specifically ordered to encourage free trade except in spirits.

⁴⁹ Bligh to Windham, 7th Feb. 1807, *HRA*, vol. 6, 124-5. See also his orders: ‘General Order’, 14th Feb. 1807, *HRNSW*, vol. 6, 253.

⁵⁰ For C.O. praise see: ‘Castlereagh to Bligh’, 31st Dec. 1807, *HRA*, vol. 6, 201-2. For complaints about Bligh’s spirit regime see: ‘Harris to King’, 25th Oct. 1807, *HRNSW*, vol. 6, 696-7; ‘Blaxland to Liverpool’ 27th Nov. 1809, *HRNSW*, vol. 7, 236. For support see: ‘Arndell to Bligh’, 6th Mar. 1808, *HRNSW*, vol. 6, 532-3; ‘Settler’s to Castlereagh’, 31st Aug. 1808, *HRNSW*, vol. 6, 803; ‘Fulton to [Castlereagh]’, 20th July 1808, *HRNSW*, vol. 6, 696-7.

⁵¹ Bligh to Castlereagh’, 30th Apr. 1808, *HRA*, vol. 6, 424. A quantitative assessment of the effectiveness of Bligh’s policies is impossible given his brief term of office; low imports in 1806 and 1807 may just as likely reflect the healthy state of colonial supplies. But the *City of Edinburgh* puts the lie to Macarthur’s claim (at Johnston’s court-martial) that so little spirit came to the colony under Bligh that the Governor’s ban on barter was never an issue. See: Ritchie (ed.), *Mutiny*, 199-200.

the trade. Rather than imposing abstinence, he was the most successful of the early Governors in enforcing the official policy of centralised control over alcohol and the wealth it represented – and by extension, such success contributed to the animosity felt by those who no longer had access to this important source of colonial profit. The rebellion was the climax of a power struggle with deeper ideological and political roots, but Bligh's regulation of alcohol also contributed on a symbolic level. One key moment in the crisis that led to his arrest was a court case over attempts to prevent Macarthur from importing a still into the colony. Though the issue at stake in this case was really official power and not distillation it is telling that a significant catalyst for the rebels revolved around the Governor's authority over alcohol.⁵²

That alcohol regulation was a political concern, even if it was not the cause of the rebellion, is shown by the surge in imports under the rebel regime. In June, Bligh claimed that over twelve thousand gallons of spirits and nearly fifty thousand gallons of wine had been imported since his removal "to the manifest injury of the colony" and while this is probably an exaggeration, even excluding the *City of Edinburgh*, more spirits arrived legally in NSW in 1808 than in the previous three years combined.⁵³ Just as importantly, the rebels regained access to official supplies. According to the deposed Commissary, John Palmer, the spirits in the Government Store (recently bolstered by twenty-two thousand gallons from the *City of Edinburgh*) were released to the officers and their allies and sold at an enormous profit, a charge that is supported by a series of complaints from Hawkesbury settlers that the officers had resumed their monopoly on spirits.⁵⁴ Though the military administration made some effort to restrain the trade, alcohol problems only grew during the interregnum. Commenting after the *Rose*, a Campbell & Co vessel, had landed spirits without a

⁵² For the case see: 'Bligh to Windham', 31st Oct. 1807, *HRNSW*, vol. 6, 364-5; 'Macarthur v. Robert Campbell Jnr.', 24th Oct. 1807, *HRA*, vol. 6, 174-8; Ellis, *Macarthur*, 295-9; Evatt, *Rum Rebellion*, ch. 20. Intriguingly, Macarthur first raised the issue of illegal government in NSW in a discussion with King over his desire to distil peaches. See: 'King Papers', 2nd Jan. 1806, *HRNSW*, vol. 6, 1. Day concludes that the rum rebellion "might more appropriately be called the 'peach putsch' [sic]". If he means that local distillation was as much of a problem as smuggling for King and Bligh then I agree; if he is arguing that Macarthur was chiefly motivated to overthrow Bligh by the denial of his right to distil then I must differ. Day, *Smugglers*, 61.

⁵³ 'Bligh to Castlereagh', 30th June 1808, *HRNSW*, vol. 6, 670-1. Note also the strange case of the *Jenny*, an American vessel ordered from Sydney by Johnston with five thousand gallons of spirits after allegations of smuggling. She was later seized in Broken Bay, unloading this cargo and Captain Dorr brought for trial in Sydney but subsequently acquitted and released. Bligh claimed a conspiracy by the rebels to seize the cargo but the truth is now obscure. Cf: 'Johnson to Castlereagh', 11th Apr. 1808, *HRNSW*, vol. 6, 585; 'Campbell's Report on Spirit Traffic', 31st Mar. 1808, *HRA*, vol. 6, 552-555.

⁵⁴ 'Palmer to Bligh', 31st Aug. 1808, *HRNSW*, vol. 6, 724. Palmer could be seen as a partisan witness – he certainly lost power under the rebels – but it is hard to see why he would lie in a private letter to his patron, Bligh. For settlers petitions see: 'Settlers' to Castlereagh', 4th Nov. 1808, *HRNSW*, vol. 6, 803; 'Settlers' to Castlereagh', 17th Feb. 1809; 'Settlers' to Castlereagh', 22nd Feb. 1809, *HRNSW*, vol. 7, 33-4, 46-51.

permit Lieutenant-Governor Paterson summed up the disastrous attempt to control the importation of alcohol into NSW:

*the excessive restraints which have been imposed upon the importation of spiritous liquors have very powerfully contributed to heighten the desire of the colonists to possess them, and have absolutely increased the evils which they were intended to diminish.*⁵⁵

The British Government made a belated recognition of this flawed approach in 1812, when an Inquiry into transportation examined the state of the colony. A key question for the committee was the role of alcohol and particularly the problems posed by the spirit trade. Their report found that “[t]he greatest difficulties to which the Government has been subject, have arisen in its attempts to regulate the supply of spirituous liquors” and their recommendations included permitting licensed distilleries, and allowing a free trade under a high duty which would end the harmful monopoly, remove the incentive for barter at inflated prices and discourage smuggling and illicit distillation.⁵⁶ Effectively they acknowledged what had been apparent to Bentham all along: alcohol could not be kept out of the colony and the convicts could not be prevented from gaining access to it. But by then, the uncontrollable spirit trade had undermined the authority of three of the Governors of NSW.

Limited Licensing

In contrast to the consistent attempts to strictly control the supply of alcohol, licensing in the early colony was relatively lax. Under Phillip there was no provision for public consumption but shortly before he left he issued the first licenses, on a temporary basis, for the sale of porter brought out on the *Royal Admiral* – though these primitive alehouses soon proved a magnet for convicts and a cover for the sale of spirits.⁵⁷ Following this failed experiment, no further licenses were issued for several years though much alcohol was privately traded and consumed as the constant complaints of the authorities amply demonstrate. In particular, convicts and poorer settlers who had no access to official supplies sought liquor eagerly, demanding spirits as payment for their labour and trading

⁵⁵ ‘Foveaux to [Chapman]’, 10th Sep. 1808, *HRNSW*, vol. 6, 752-4. On the problem in this period see also: ‘Foveaux to Castlereagh’, 6th Sep. 1808, *HRNSW*, vol. 6, 740-2; ‘Paterson to Castlereagh’, 23rd Mar, 1809, *HRA*, vol. 7, 30-1; ‘T. Brown to Castlereagh’, 13th Oct, 1809, *HRNSW*, vol. 7, 216-7.

⁵⁶ U.K. Parliament, *Report from the Select Committee on Transportation*, London: 1812, 5, 14. That such free trade was currently impossible due to the new Governor’s hospital contract is another story. See below, 92.

⁵⁷ Collins, *Account*, vol. 1, 240-1.

their (or others') possessions to get it.⁵⁸ In March 1796, Hunter condemned those who "self-licensed, have presumed to open public houses" to sell smuggled spirits and ordered their premises destroyed but shortly thereafter he clearly changed his view. He issued ten licenses for the year, under the supervision of the magistrates bench, to "persons of good character" in order "more effectually to suppress the dangerous practice of retailing spirits in this indiscriminate way". This policy did not have the desired effect because by June he was complaining that rather than encouraging responsible drinking they had led to an upsurge of drunkenness and crime but licensing remained a permanent feature of the regulatory system from then on.⁵⁹

Maintaining control over the licensing process and the houses themselves proved difficult. Records of the number of licenses are not always available but in 1798 when Hunter had requested that the magistrates only issue eight for Sydney, four for Parramatta and three for the Hawkesbury, the bench awarded thirty-one.⁶⁰ Such independence was a feature of the English system but out of character in the authoritarian colony and the sharp reduction to eighteen licenses the following year probably reflects the re-assertion of central control.⁶¹ A more substantial problem was Hunter's inability to police the houses, or for that matter, the many vendors who continued to operate unlicensed. There were regular reports of Sabbath-selling and unlicensed sale, leading the Judge-Advocate to issue an open warrant allowing constables to forcibly enter suspected houses.⁶²

Under King, this system was maintained and further centralised. In 1800 he spelled out the conditions of the license, modelled on those in England: regular measures, "no gambling, drunkenness, or other disorders", no credit greater than a pound and opening hours from noon to the curfew (9 pm) and closed on Sundays. These were backed up by orders for the magistrates to

⁵⁸ Karskens, *Colony*, 125-8; Collins, *Account*, vol. 1, 254, 259-60, 277, 299-300, 338-9; Richard Johnson, 'Johnson to Stonnard', 11th Aug. 1794, George Mackaness (ed.), *Some Letters of Rev. Richard Johnson B.A. First Chaplain of New South Wales*, (2 pts.), Dubbo: Review Publications, 1978, pt. 2, 7.

⁵⁹ 'General Order', 22nd Mar. 1796; 'General Order', 18th Jun. 1796; 'General Order', 11th July 1796, *HRNSW*, vol. 3, 36, 54, 58-9; 'Hunter to Portland', 20th Aug. 1796, *HRNSW*, vol. 1, 78. The actual Order is missing but for the terms of the licenses see: Collins, *Account*, vol. 1, 471. The initial fee was £5 with a £20 bond and two £10 sureties from respectable persons though these fees were lowered in 1799 and 1800 as the completion of the gaol reduced the need for revenue.

⁶⁰ 'Judge Advocate's Bench', 19th Sep. 1798; 'General Order', 6th Aug. 1798, *HRNSW*, vol. 3, 447. This amounted to a rate of almost seven licenses for every thousand inhabitants, only briefly exceeded during the military administration of Johnston, Paterson and Foveaux. Subsequently, license to population ratios stabilised at approximately half this level. See Appendix 3, 272ff.

⁶¹ John McLaughlin argues that the Governor always determined license numbers until Commissioner Bigge's Report led to reforms in the system – clearly this was not true in 1798, though the subsequent reduction in numbers demonstrates the Governor's authority. See: McLaughlin, 'The Magistracy in New South Wales, 1788-1850', ML Thesis, University of Sydney, 1973, 59, 185-6; 'Judge Advocate's Bench', 14th, 19th Sep. 1799. For more on the question of magisterial authority over licensing see below, 116ff.

⁶² Collins, vol. 2, 122-3; 'Judge-Advocate's Bench', 5th Sep. 1798. For prosecution of unlicensed houses see: 'Judge Advocate's Bench', 28th Dec 1799, 4th Jan 1800.

search both licensed and unlicensed premises, seize liquor and impose fines, half of which went to reward the informer.⁶³ As with the spirit trade he repeatedly re-issued his orders and increased penalties, which can only mean that they were regularly disobeyed.⁶⁴ The other key feature of King's system was its connection to the centralised distribution of spirits. The official quotas for publicans seriously limited the amount any house could sell; indeed in most cases, license-holders received less spirits than Officers or officials and it is hard to believe that a profitable business could operate exclusively on this basis. Though there is little evidence, it seems inevitable that publicans were supplementing their supply on the flourishing black market.⁶⁵

Bligh maintained King's approach including the existing number of licenses – thirty-two – although his attack on barter must have hurt the profitability of many houses, whose clientele were unlikely to be able to pay in hard currency.⁶⁶ But a much more substantial change took place under the rebel administration with the number of licenses more than tripled to one hundred and twelve. Unfortunately there is no evidence for why this decision was taken but a logical interpretation is that the rebels' support for a free trade in spirits encouraged them to abandon any attempt to restrict the number of outlets and instead to offer licenses to all who could pay.⁶⁷ These questions of open or limited licensing and magisterial or centralised control would become more prominent under the next Governor. But in the early period licensing was largely an afterthought to the struggles to control the spirit trade especially because the system was so difficult to enforce.

Policing NSW: English Foundations and Colonial Development

Despite the Colony's reputation and the reformist rhetoric about drunkenness, excessive consumption of alcohol was frequent and practically unrestrained even among convicts, unless it was an accompaniment to a more serious crime. In part this failure to police alcohol problems reflects the inadequacy of the traditional mechanisms of criminal justice for the resources and conditions in NSW. But more importantly it was a consequence of the peculiar nature of early

⁶³ 'General Order', 27th Oct. 1800, *HRNSW*, vol. 4, 249-50. Though King appears to have called for only 8 licenses, the accounts of the Orphan Fund imply that twenty were issued. See: 'General Order', 19th Oct. 1800, *HRNSW*, vol. 4, 248; 'Proceedings of the Committee of the Orphan Institution', 9th May 1803, *HRA*, vol. 4, 94.

⁶⁴ See for example: 'General Order', 28th Dec. 1800; 'General Order', 9th Apr. 1801; 'General Order', 24th Dec. 1801; 'General Order', 28th Dec. 1801, *HRNSW*, vol. 4, 276-7, 340, 598, 640. For prosecutions for license breaches see: 'General Order', 24th May 1802, *HRNSW*, vol. 4, 768; 'Judge Advocate's Bench', 22nd May 1802; 8th, 10th Jan. 1804; 30th Sep. 1805.

⁶⁵ For distributions, see for example: 'General Order', 30th June 1804, *HRNSW*, vol. 5, 391-2. For publican's selling peach brandy illegally see: 'General Order', 19th Apr. 1806, *HRNSW*, vol. 6, 69.

⁶⁶ 'Bligh to Windham', 7th Feb. 1807; 'General Order', 14th Feb. 1807, *HRNSW*, vol. 6, 250-1, 253.

⁶⁷ 'Foveaux to Castlereagh', 6th Sep. 1808, *HRNSW*, vol. 6, 740. Foveaux's language in this despatch provides some support for this view as he stresses the "considerable tax" brought in by the license fees. Free traders, following Adam Smith, argued for open licensing as a means to reap revenue and saturate the market, which would eventually reduce demand.

colonial society and its convict underclass whose drinking was simultaneously an affront to the prospect of reform, and essential to the emerging economy.

Though the original plans for NSW may have envisaged a stricter military discipline, by the time the first fleet sailed the basic principles of English law and by extension, its regulation of alcohol, were formally established for the new colony.⁶⁸ The NSW Act of 1787 established a "Court of Criminal Jurisdiction ... with authority to proceed in a more summary way than is used within this realm ... for the trial and punishment of all such outrages and misbehaviours as, if committed within this realm, would be deemed [an offence]".⁶⁹ This first court was to be presided over by Collins, the deputy Judge-Advocate and a jury of six military officers, an expedient that reflected both the military origins of the plan and the absence of free citizens to form an English jury. More importantly for the policing of drunkenness, it allowed for the summary disposal of minor crimes and offences against public order by Justices of the Peace. Extended summary jurisdiction was seen as necessary for the management of convicts but the legal status of free settlers was more ambiguous and was not formally resolved for half a century.

The earliest settlement, divided between a criminal working class and an official elite, was almost a caricature of the society assumed under eighteenth-century English law. But the traditional model of social order depended upon a sense of duty and voluntary service, assumed deference and empowered discretion, and the experimental society of NSW had none of these norms. Convicts lacked any ingrained respect for their masters or the law, while those appointed to discipline them were at best reluctant and at worst actively working for themselves rather than the social good. Rural English magistrates derived their authority from their hereditary status and wealth, but the early magistracy of NSW were more like the famously corrupt 'trading justices' of London – they lacked any established link with those they ruled and were rarely capable of winning respect, instead using the office to enrich themselves and their cronies. Indeed, the pool of potential magistrates was strictly limited and as a consequence, many of the earliest justices were largely ignorant of the law and lacked the disinterested status of the Gentry ideal, often serving in other roles that seriously conflicted with their judgement, not least as masters of convicts.⁷⁰

⁶⁸ For more on the important shift from military to civil government in plans for NSW see Atkinson, 'First Plans'; Hilary Golder, *High and Responsible Office: A History of the NSW Magistracy*, Sydney: Sydney University Press, 1991, 2.

⁶⁹ 'NSW Act' (27 Geo. III c. 2), *HRA*, ser. IV, vol. 1, 4-5. See also the Charter of Justice which formally outlined the procedure of the criminal justice system: *HRA*, ser. IV, vol. 1, 10-12.

⁷⁰ Golder, *Magistracy*, 2-9; McLaughlin, 'Magistracy', ch. 2.

Only three magistrates were named in the original plans, Phillip, Collins and Ross and besides them, the only legal officer appointed was Henry Brewer the provost-marshal, who was also made a sheriff and peace-officer. However, under his commission, Phillip was empowered to appoint "justices of the peace, coroners, constables and other necessary officers" and this not only allowed for essential expansion of the justice system but also centralised authority in the Governor, a fact only emphasised by the power to pardon or reprieve convicted offenders.⁷¹ Thus the colony was founded with a bastardised version of the traditional English police system: English law summarily applied by officers appointed by the executive, often incompetent and lacking the traditional ties of patronage. As Golder notes, "authority grounded in deference could not be awarded; it had in some sense to be granted by the community."⁷² In NSW such authority was temporary at best and achieved only at the fast end of a lash.

Moreover, the magistrates lacked any organisation to enforce their rulings, arrest criminals and preserve order. Given the primitive state of law enforcement in late-eighteenth-century England, and the constant desire for economy in the transportation scheme, it is hardly surprising that no police officers were sent out with the first fleet. But unlike England there were no rate-payers and no parish community to provide voluntary service. Phillip assumed that the Officers of the marine corps would assist, requesting that they "would occasionally encourage such [convicts] as they observed diligent and point out for punishment such as they saw idle or straggling in the woods."⁷³ However, the officers declined this public service and thus Phillip struggled to keep the convicts under control. Though the marines did form a guard for the camp and maintained a basic curfew they refused to police convict behaviour and the result was a predictable breakdown of order and increased drunkenness. Collins noted that robberies were common and that sailors "although repeatedly forbidden, and frequently punished, still persisted in bringing spirits on shore by night, and drunkenness was often the consequence".⁷⁴ By the middle of the year, Collins was complaining that "[e]xemplary punishments seemed ... to be growing daily more necessary" and noted that some convicts were "so inured to the habits of vice, and so callous to remonstrance, that they were only restrained until a favourable opportunity presented itself."⁷⁵

⁷¹ 'Phillip's Commission', *HRNSW*, vol. 1, pt. 2, 63.

⁷² Golder, *Magistracy*, 4.

⁷³ 'Phillip to Sydney', *HRNSW*, vol. 1, pt. 2, 16th May 1788, 138-9. For a general overview of early policing in NSW see: Bruce Swanton, *The Police of Sydney, 1788-1862*, Canberra: Australian Institute of Criminology, 1984.

⁷⁴ Collins, *Account*, vol. 1, 9.

⁷⁵ Collins, *Account*, vol. 1, 32-3.

Phillip tried to solve this problem with the traditional expedient of offering rewards to informers and by ordering the military patrol to fire on curfew breakers who refused to surrender. But by winter 1789, with the starving colony on half rations, the problem of theft threatened survival and had to be dealt with. Twelve convict watchmen were appointed to patrol from the curfew hour until sunrise “for the discovery of any felony, trespass, or misdemeanour, and for the apprehending and securing for examination any person or persons that may appear to them concerned therein”.⁷⁶ This watch, under the direction of the magistrates, was apparently effective in reducing thefts but paid little attention to public order offences like drunkenness.⁷⁷

Under Grose, this system was radically altered with the civil officials disenfranchised and the military administering justice. Collins reported that the magistrates were deprived of their authority over the convicts with an order that “all inquiries by the civil magistrate were in future to be dispensed with” and suggests that the intention was to increase the power of the military officers who already dominated the colony.⁷⁸ A lack of records makes it impossible to determine precisely how crimes were policed and justice administered under the military but it is likely that even summary proceedings were dispensed with, with disputes settled and punishments determined by executive order. Complaints from the civil officials suggest that morality declined, with increased drunkenness and crime and that the constables were ignored employed to enforce the will of the officers and not to preserve the peace.⁷⁹

On his arrival, Hunter immediately restored the civil system making the justices of the peace once more the key figures in the administration of the colony. He was heavily critical of the military regime, complaining that their inattention to discipline and tolerance for the spirit trade had led to “confusion, disorder, and licentiousness, and a total inattention to—nay, I might almost say, a direct disobedience of—Public Orders”.⁸⁰ But he was soon struggling to find “a sufficient number of the

⁷⁶ ‘Phillip to Sydney’ 1st Feb. 1790, *HRA* vol. 1, 292-3. The new watch led to further conflict with the marines who complained that subjecting them to convict authority was “an insult to the corps”. A compromise was reached whereby marines could only be arrested if caught committing a crime and had to be immediately handed over to the military guard.

⁷⁷ David, J. Neal, *The rule of law in a penal colony: law and power in early New South Wales*, Melbourne: Cambridge University Press, 1991, 143-6; Collins, *Account*, vol. 1, 85.

⁷⁸ Collins, *Account*, vol. 1, 252-4; McLaughlin, *Magistracy*, 41-8. As McLaughlin points out, there are no magistrates’ bench records between 1792 and 1795, suggesting that the benches were entirely closed under military rule.

⁷⁹ See: ‘Johnson to Hunter’, 5th July 1798; ‘Arndell to Hunter’, 25th July 1798; ‘Marsden to Hunter’, 11th Aug. 1798, *HRNSW*, vol. 3, 432-442; Richard Atkins, ‘Journal of a voyage to Botany Bay and South America, 1791-1810’, Mitchell Library, MLMSS 737, 27th Oct., 3rd Dec. 1793, 5th Apr. 1794, 12th Feb. 1795; cited in: Atkinson, *Beginnings*, 259, note 78. All of these witnesses had fallen out with the military though that need not invalidate their evidence. The diffusion of the settlement in this era was no doubt a contributing factor to lawlessness, with convicts, some still under sentence, settling at the Hawkesbury, in part to escape official supervision. See: Karskens, *Colony*, 118-21.

⁸⁰ Collins, *Account*, vol. 1, 430; ‘Hunter to Portland’, 12th Nov. 1796; ‘Hunter to King’, 1st June 1797; ‘Hunter to Portland’, 25th July 1798, *HRNSW*, vol. 3, 166-74, 212, 423, 427.

best characters" to serve as constables, and was forced to institute rewards to induce men to serve, offering them a ration of spirits, normally forbidden to convicts, and early release from their terms of transportation.⁸¹ This limited reform was obviously not sufficient to deal with the lawless state of the colony and in November of 1796, Hunter divided the town into districts each of which elected watchmen from "the most decent and respectable" who in early Sydney were presumably mostly emancipists, to supervise the convict constables. For the first time in the colony, his new regulations made explicit mention of drunkenness with the watch commanded to be "particularly careful to secure ... all gamesters and drunkards, and to enforce ... a due reverence for the Sabbath".⁸² His system rapidly expanded with more magistrates appointed and the police force reaching a peak of 36 constables in 1797, and he was soon claiming credit for a safer and more law-abiding colony.⁸³

But it does not appear that there was a meaningful improvement in either convict behaviour or enforcement of the rules. Before the constable elections in 1798, he called for caution when selecting from the candidates because recent escapes from the gaol had been facilitated by the police themselves. By 1799 he was forced to admit that many criminals were escaping the attention of his "strict police" and in July he issued an order calling on the military and private citizens to assist in law enforcement as the watch were failing to prevent crime, due either to careless negligence or active connivance with criminals. This call led to the formation of Loyal Associations at Sydney and Parramatta but while they served to suppress the threat of Irish revolt, including supporting the military in the Castle Hill Rebellion of 1804, they do not appear to have played a meaningful role in law enforcement.⁸⁴

Governor King continued to expand the magistracy and its responsibilities. He issued orders insisting that all convict punishment be "proportionate to the offence" and imposed by a magistrate and gave them new powers to authorize searches under the licensing act.⁸⁵ But the lack of respectable officers to enforce his regulations continued to undermine the system and King was

⁸¹ Swanton, *Police*, 5-6; 'Hunter to Portland', 30th Apr. 1796; 'Hunter to King', 20th Aug. 1796, *HRNSW*, vol. 3, 45-6, 74.

⁸² 'General Order', 9th Nov. 1796; 'General Order', 30th Nov. 1796, *HRNSW*, vol. 3, 165-6, 182-3; Collins, *Account*, vol. 2, 8. Note that Hunter cited the need to reward his watchmen as a reason for his continued importation of spirits. See: 'Hunter to Portland', 3rd Jan 1800, *HRNSW*, vol. 4, 7.

⁸³ For the expansion of the magistracy see the summary in McLaughlin, *Magistracy*, chs.4-5. Police numbers in Swanton, *Police*, 68. This was equivalent to 8 police per thousand population, probably the highest rates in NSW history, though they were neither professional or full-time.

⁸⁴ 'Hunter to Portland', 10th June 1797, *HRNSW*, vol. 3, 216. For ongoing problems see: 'General Order', 5th Dec. 1798, *HRNSW*, vol. 3, 513; Collins, vol. 2, 139, 217-9; 'Hunter to Portland', 1st May 1799; 'General order' 2nd July 1799, *HRNSW*, vol. 3, 666, 685. For Loyal Associations see: 'General Order', 7th Sep. 1800; 'General Order', 28th Dec. 1800; 'General Order', 27th July 1801, *HRNSW*, vol. 4, 132-3, 276-7, 444.

⁸⁵ 'General Order', 6th Oct. 1800, *HRNSW*, vol. 4, 222. On the expansion of the magistracy see: 'King to Hunter', 6th July 1800; 'State of the Settlements', 31st Dec. 1801, *HRNSW*, vol. 4, 171, 652. For Licensing and Constables see: 'General Order', 27th Oct. 1800, *HRNSW*, vol. 4, 249-50. For more on convicts rights see: Hirst, *Freedom*, 98-120.

forced to appoint two military officers as inspectors into the police and to forbid the convict constables from releasing prisoners without a magistrates order.⁸⁶ In a case that summed up the problem with a convict police force, two constables were dismissed from the watch in 1803 for smuggling spirits, the very activity they had been charged to prevent and this was probably not an isolated event.⁸⁷ In 1806 as his term came to an end, King effectively re-issued Hunter's police regulations because he found they were so poorly observed by the inhabitants.⁸⁸ These were not conditions conducive to preventing public drunkenness.

Convicts and Public Drunkenness

As I have shown drunkenness was illegal under the laws of England and specifically the Act of James I. But though it was not made explicit, this law also enshrined an essential distinction between public and private drunkenness which would have a crucial impact on the treatment of the offence in NSW. Blackstone in his *Commentaries on the Laws of England*, first published in the 1760s, but still updated and in use in NSW a century later, brought out this distinction with his typical clarity:

*the vice of drunkenness, if committed privately and alone, is beyond the knowledge and of course beyond the reach of human tribunals; but if committed publicly, in the face of the world, its evil example makes it liable to temporal censure.*⁸⁹

Thus drunkenness was largely a crime of the poor whose drinking might attract the attention of the authorities – the rich with well-stocked cellars and spacious dining-rooms, got drunk in the privacy of their homes, and never came under the attention of the police. Moreover, though drunkenness reflects a real physiological state, as a public offence it is almost entirely subjective and its deployment by the authorities was and is a method of disciplining the deviant. But the traditional eighteenth-century justice system with its voluntary constables and magistrates largely failed to deal with drunkenness, even as public concern about the problem mounted. A similar pattern would play out in early NSW.

The contemporary association of drinking and crime suffused official policy. In an early example, Phillip deliberately delayed the departure of the First Fleet's store ship, the *Fishburn*, until

⁸⁶ 'General Order', 21st Jan. 1801; 'General Order', 1st June 1801; 'General Order', 14th May 1802, *HRNSW*, vol. 4, 293, 380, 754.

⁸⁷ *Gazette*, 4th Dec. 1803, 2.

⁸⁸ 'General Order', 13th May 1806, *HRNSW*, vol. 6, 73.

⁸⁹ Blackstone, *Commentaries*, vol. 4, 41-2.

he could construct a secure storehouse to unload the Colony's spirits, because he believed they would tempt the colonists to theft. He was not mistaken. The majority of crime during his term of office was either attempts to steal spirits or violence committed under their influence.⁹⁰ As smuggled spirits became widely available in 1793, Collins illustrated the official view arguing that it was:

*indispensable to the preservation of peace and good order in the settlement, to prevent, if possible, the existence of so great an evil as drunkenness; which, if suffered, would have been the parent of every irregularity.*⁹¹

Almost without fail, criminal cases made reference to the drunkenness of the victim, the defendant or both. For example, in April 1799, two cases of murder came before the Criminal Court, both involving drunken quarrels. In the first, a soldier was exonerated for the death of a sailor after he proved that the fatal wound occurred in a fight "occasioned by the intemperance of [his victim] and he was accordingly found to have committed a justifiable homicide". In the second, Simon Taylor was found guilty of murder and executed after he killed his wife during a mutual drinking bout. Commenting on the cases, Collins noted that:

*To this pernicious practice of drinking to excess, more of the crimes which disgraced the colony were to be ascribed than to any other cause; and more lives were lost through this than through any other circumstance.*⁹²

Public drunkenness was thus a symptom of the Colony's larger challenge in controlling the criminal instincts of its population and crime was inextricably linked to alcohol in the perception of the authorities and frequently in fact.

However, despite this emphasis the offence itself was rarely prosecuted by the courts. Of over two thousand cases recorded in the extant Judge-Advocates Bench Books for the period 1788-1809, only thirty-five were for charges of drunkenness.⁹³ This is not a comprehensive record of court

⁹⁰ 'Phillip to Nepean', 9th July 1788, *HRA*, vol. 1, 57. For crime see: Collins, *Account*, vol. 1, 25, 59-60.

⁹¹ Collins, *Account*, vol. 1, 260.

⁹² Collins, *Account*, vol. 2, 203, 209.

⁹³ 'Judge Advocate's Bench'. This estimate was made using the online index (<http://srwww.records.nsw.gov.au/indexes/searchform.aspx?id=11> – accessed 9th Apr. 2012) of the bench books but consulting the books themselves confirms my impression that the bulk of cases before the magistrates were for more serious offences, especially theft and absconding. Of the 2948 names/cases in the index between 1788 and 31st Dec. 1809, I allowed for 750 on lists of license holders and constables to come up with an estimate of 2198 defendants before the court, only 35 of who were charged with drunkenness. Even if we include cases of riot and disorder where drunkenness was not explicitly charged (58 in total) we are still left with a surprisingly low number of recorded cases of arrest. This is

activity and convict drunkenness was doubtless subject to unofficial punishments, but this figure is nonetheless striking, particularly in contrast with the very high rates of arrest that prevailed in NSW from the 1840s onwards. The disparity between rhetoric and action no doubt reflects the primitive state of policing in early NSW because the force was numerically inadequate and temperamentally unsuited to imposing the law. But more importantly, the peculiar legal status of the convict underclass discouraged enforcement. There were many more serious offences with which a troublesome convict could be charged and while drunkenness was regularly condemned it seems that it was not, in and of itself regarded as warranting arrest.

This certainly does not imply that public drunkenness was actually rare in early NSW – the frequency of complaints and the volumes of alcohol imported make this impossible. No doubt, many other cases before the bench were associated with excess drinking, but drunkenness was often ignored when a more serious charge could be brought forward and in almost every instance where an offender was charged it was combined with other offences. When Samuel Barsby and William Bond were overheard by the constable drinking in their hut in 1789 they were tried and flogged. But the severity of their sentences – 300 lashes for Barsby who provided the rum and 150 for Bond – likely reflects their “very insolent” conduct before the magistrate and their refusal to inform on their supplier; indeed it is quite possible that the case was only pursued for this reason.⁹⁴

Similarly, three of the four cases involving drunkenness that came before the court in March of 1803 involved a larger offence: Mary Goodhall was charged with drunkenness and riotous conduct, Mary Carroll with drunkenness and abusive language and Eleanor Bates with being drunk and disorderly.⁹⁵ Tellingly, Goodhall and Bates who were first offenders were discharged with a warning while Mary Carroll was sent to Castle Hill for three months not only “for being drunk and abusive” but “for various breaches of peace and old offences”. The one case of simple drunkenness also fits this pattern. Elizabeth Wilson who was “charged with being in a state of Intoxication which induced the Chief Constable to Confine her for the Preservation of the Public Peace” had a substantial criminal record and was known to the officer who arrested her.⁹⁶ The preponderance of

also borne out in evidence from the Macquarie era on which, see below, 129ff. For a rare example of a prosecution see: Collins, *Account*, vol. 1, 242.

⁹⁴ ‘Judge Advocate’s Bench’, 20th Jan. 1789. Bond at first claimed and subsequently denied that the spirits was payment for work he had performed while a witness at the trial claimed to have seen Barsby buy spirits from soldiers. Both are plausible sources.

⁹⁵ ‘Judge Advocate’s Bench’, 8th Mar. 1803, 19th Mar, 1803, 22nd Mar. 1803.

⁹⁶ ‘Judge Advocate’s Bench’, 22nd Mar. 1803. She too was sent to Castle Hill, unsurprisingly as she had been before the court on four previous occasions, once for theft, once for resisting arrest and twice for “riotous and disorderly conduct”, no doubt alcohol-related.

women among those charged is also suggestive. Gendered standards of behaviour meant that disorderly convict women were often viewed as more threatening than their male counterparts; and they were often treated differently in consequence.⁹⁷ For example, Catherine Evans, charged with abuse and ill treatment of her master while in a state of “beastly intoxication” was sentenced to sweep the gaol for a month wearing an iron collar, a punishment specifically designed to “check the enormities committed by abandoned women whilst in a state of Drunkenness”.⁹⁸

Perhaps the key to explaining the relative lack of prosecutions for drunkenness in the colony is the ambiguous attitude to alcohol. Drinking in the eighteenth-century British world was simultaneously the focus of intense concern from religious and utilitarian reformers and an essential practice that underlay the economy and complemented social life. But exacerbating this conflicted view was the peculiar nature of NSW society. Under the hybrid legal system, convicts were subject to summary jurisdiction of a magistrate who held enormous discretion in determining punishment, and as a result, arresting public drunkards served little purpose because those who could potentially be charged were already under the power of the law. Drunkenness in and of itself was not regarded as an offence so much as a sin; it was the loss of labour, the public disorder, and the crime with which it was so commonly associated, which were the real concerns of the authorities and for convicts these were already serious offences. It was not until the growing numbers of emancipists and free emigrants came to dominate the colony that public drunkenness emerged as a leading disciplinary offence.

Thus the intense concern about drunkenness in early NSW was not reflected in rigorous policing. As in Britain, drinking was all but universal and drunkenness unremarkable but this posed unique problems in the context of the penal colony. The idea, if not the reality of convict drunkenness was an affront to the reforming ideology that underlay the establishment of NSW and because officials were both unable and unwilling to systematically police the behaviour of drinkers they were forced to try and control supply. This flawed attempt to limit access to spirits only exacerbated alcohol problems. Importation and production were subject to severe but ineffectual regulation through the permit system, fixed prices and bans on distillation. But in practice, permits

⁹⁷ See Hunter's views as an example: 'General Order', 7th Nov. 1798; 'General Order', 2nd July 1799, *HRNSW*, vol. 3, 508-9, 686; Collins, *Account*, vol. 2, 213-4. For more on the treatment of female convicts see: Joy Damousi, *Depraved and Disorderly: Female Convicts, Sexuality and Gender in Colonial Australia*, Cambridge: CUP, 1997; Anne Summers, *Damned Whores and God's Police: The Colonization of Women in Australia*, Ringwood, Vic.: Penguin, 1982, 291-316; Michael Sturma, 'Eye of the beholder. The stereotype of women convicts, 1788-1852', *Labour History*, vol. 74 (May 1978), pp3-10. My case survey shows a slightly disproportionate number of female offenders in relation to the gender imbalance in the population but not enough to be statistically significant.

⁹⁸ 'Judge Advocate's Bench', 5th, 12th Jan. 1799; cited in: Golder, *Magistracy*, 22-3.

were so regularly granted that their refusal became a partisan tool in a factional contest, while widespread smuggling and illicit stills made a mockery of the Government. Worse still, the system artificially inflated the price of the Colony's main luxury and enriched those with the least respect for authority. Despite never coming closer to NSW than his London study, Jeremy Bentham understood the colony better than the officials who set its policy. Centralised control of alcohol was impossible; a workable regulatory approach would await the arrival of a new Governor.

Part III: The Macquarie Consensus, 1810-1835

Chapter 6) Free Trade and its Consequences

The regulation of alcohol in early NSW was uniquely problematic and contested a new and more effective approach began with the arrival of a new Governor, Lachlan Macquarie, in 1810. The emerging regulatory system relied upon market forces to limit supply with free importation under high duties supporting the colonial revenue and funding expanded control and surveillance of drinkers through strict licensing and a more efficient police. This reformed system, though radical in NSW, was largely derived from eighteenth-century British practice. The British state already relied on taxing alcohol and had responded to growing concerns about drunkenness with increasingly stringent licensing laws and a movement to reform the police. During the period 1810-1835, under a succession of Governors, NSW developed a broad public consensus around alcohol and its role in society that brought the colony in line with British practice. There was a general acceptance of both the importance of alcohol as a commodity and the need to address problems associated with its public consumption. While drunkenness remained a symbol of the disordered nature of the convict colony, alcohol's role as a social lubricant, economic mainstay and vital source of revenue was rarely questioned. As Phillip had observed in the 1790s, alcohol was a necessary evil.

Macquarie's Hospital 'Monopoly' and the Introduction of Free Trade

In 1809, with the Colony's alcohol problems unresolved, Macquarie's Official Instructions repeated the traditional formula: enforce the existing laws to prevent drunkenness and limit the supply of spirits. But a separate communication from the Colonial Office acknowledged past failures and proposed a new solution:

Various measures have been taken from time to time to check the Importation and regulate the Sale of Spirits, but they have all unfortunately failed, and have led to the Introduction of private Stills, and to a clandestine retail by officers and Settlers of the most vexatious and

*ruinous Nature. It has therefore been conceived that as the Use of Spirits cannot be suppressed, that the free Importation should be allowed under a high Duty.*¹

This approach reflected the growing influence of laissez faire on British Government policy in the early nineteenth century. Adam Smith had called for free trade in beer as a means to clean up the corrupt brewing industry and licensing system and encourage healthier drinking habits and with the 1830 Beer Act this proposal would be enacted in England.² While Macquarie was at heart a centraliser and an autocrat, he had fully imbibed this newly fashionable doctrine, and though he was selective in its application to NSW he believed in a free market as an ideal, if not always a practical solution in a penal colony. Despite concentrating power in his hands he sought to open up colonial trade and his term of office was marked by the emergence of a mixed economy with government spending balanced by a significant private sector that replaced the commissariat as the major source of imported goods.³

Shortly after his arrival in the colony, Macquarie expressed his support for the new approach to the spirit trade. He proposed "free Importation of good Spirits under a high duty" arguing, after Adam Smith, that "instead of promoting Drunkenness and Idleness [free trade] would tend rather to lessen both, for it has generally been observed that the Avidity of the lower orders of the people is in the inverse Ratio for the Quantity of Spirits Imported". Notably, he also called for an end to centralised price fixing in order to "leave the Importation Trade entirely free" claiming that this would help to develop a self-sufficient economy.⁴ But by the time British approval of these reforms reached NSW, Macquarie had radically altered his plans. Rather than opening the spirit trade to all-comers he concentrated it in the hands of a new government-licensed monopoly.

¹ 'Macquarie's Instructions', 9th May 1809; 'Castlereagh to Macquarie', 14th May 1809, *HRNSW*, vol. 7, 135-6, 145. Castlereagh also called for renewed efforts to prevent barter.

² For the development of laissez faire ideas see: Arthur J. Taylor, *Laissez-faire and State Intervention in Nineteenth-Century Britain*, London: Macmillan, 1972; Philip Harling and Peter Mandler, 'From "Fiscal-Military" State to Laissez-Faire State, 1760-1850', *Journal of British Studies*, vol. 32, no. 1 (Jan., 1993), pp. 44-70. For Smith, see: *Wealth of Nations*, IV.3.37, V.2.195; for the Beer Act see: Harrison, *Drink*, ch 3; Nicholls, *Alcohol*, ch. 7.

³ For the character of Macquarie's Governorship see: Marion Phillips, *A Colonial Autocracy, New South Wales Under Governor Macquarie, 1810-1821*, Sydney: Sydney University Press, 1971 (first ed. 1909); M.H. Ellis, *Lachlan Macquarie*, Sydney: Angus & Robertson, 1978 (first ed. 1947); John Ritchie, *Lachlan Macquarie: A Biography*, Melbourne: Melbourne University Press, 1986, chs. 6-8; Atkinson, *Beginnings*, ch. 15; Karskens, *Colony*, ch. 7. For the transformation of the economy under Macquarie see: N. Butlin, *Colonial Economy*, ch. 12. But compare Parsons, who suggests that this capitalism had its root in the eighteenth-century commercial opportunism of the NSW Corps: Parsons, 'Commercialisation'.

⁴ 'Macquarie to Castlereagh', 30th Apr. 1810, *HRA*, vol. 7, 250. The new Secretary of State, the Earl of Liverpool, approved Macquarie's plans, securing EIC agreement and calling for a minimum duty of 4 s. per gallon on a trial basis. See: 'Liverpool to Macquarie', 26th July 1810; 'Liverpool to Macquarie', 10th Mar. 1812; 'Liverpool to Macquarie', 5th May 1812, *HRA*, vol. 7, 361-2, 456-8, 482.

The immediate explanation for this change in policy was public necessity. Unable to afford a much needed new public hospital, Macquarie called for private tenders and accepted an offer from Alexander Riley, Garnham Blaxcell and subsequently D'Arcy Wentworth to undertake the construction in exchange for an exclusive contract for the importation of spirits. Originally for three years and forty-five thousand gallons, but subsequently extended to four years and sixty thousand, the scheme was a success in that the colony acquired a new hospital at no cost to the revenue – indeed the government profited by some five thousand pounds in duties paid by the contractors.⁵ But understandably, the British authorities were less than impressed with Macquarie's sudden abandonment of free trade. When the Colonial office received notice in May 1812 they immediately criticised the plan, noting that London merchants had already begun shipping spirits to the colony and these cargoes could only be landed at significant cost to the contractors.⁶

Macquarie's response would appear to indicate that this was precisely his plan. He claimed that the contract was "so advantageous to Government" that he had assumed it would receive approval and stressed that the contractors would be obliged to purchase any spirits exported under a misapprehension "at a fair price to be fixed by the Governor".⁷ The Colonial Office continued to express their disapproval and was especially critical of the extension of the contract. When it finally ended at the close of 1814, Macquarie immediately issued orders opening all colonial ports "for the Free Importation of Spirits in Common with all other Articles of Merchandize" from Britain and her allies, fixed the duty at seven shillings per gallon and established a bonding warehouse for merchants to lodge spirits prior to paying duty.⁸ Five years after his arrival, Macquarie had established a free trade in alcohol.

Though the hospital scheme temporarily obstructed official policy, it was only ever a short-term expedient and never a monopoly; indeed it is possible that more rum was imported into NSW outside of the contract than within it. When large quantities of spirits arrived in Sydney in 1812 and

⁵ The best summary and guide to the records is: M.H. Ellis, 'Governor Macquarie and the "Rum" Hospital', *JRAHS*, vol. 32, no. 5 (1946), pp273-93. For Macquarie's call for tenders see: 'Government Advertisement', *Gazette*, 19th May 1810, 1. For the contract itself and its subsequent amendments see: 'Hospital Contract', 18th Oct. 1811, *HRA*, vol. 7, 401-5; 'Wentworth Family Correspondence - Papers Relating to the Sydney Hospital', Mitchell Library, A761. For his official explanation see: 'Macquarie to Liverpool', 18th Oct. 1811, *HRA*, vol. 7, 384-5. The government did provide convicts, oxen and food supplies to the contractors but the value of these goods was easily outweighed by the taxes they paid.

⁶ 'Liverpool to Macquarie', 19th May 1812, *HRA*, vol. 7, 486-8. Notably the independent Report of the Select Committee on Transportation was much less critical, only noting that the contract would delay legalising distillation. See: '1812 Transportation Committee'; 'Bathurst to Macquarie', 23rd Nov. 1812, *HRA*, vol. 7, 670.

⁷ 'Macquarie to Liverpool', 17th Nov. 1812, *HRA*, vol. 7, 595-6.

⁸ For ongoing criticism see: 'Bathurst to Macquarie', 3rd Feb. 1814; 'Bathurst to Macquarie', 4th Dec. 1815, *HRA*, vol. 8, 128-9, 132-3, 641. For free trade see: 'Macquarie to Bathurst', 24th Mar. 1815; 'Bathurst to Macquarie', 18th Apr. 1816; 'Macquarie to Bathurst', 4th Apr. 1817, *HRA*, vol. 8, 463-4; vol. 9, 109, 352; 'Government Public Notice',

1813 Macquarie permitted their landing to placate merchants who might otherwise have been discouraged from future trade and then compensated the contractors with extensions of the contract.⁹ But this concession was probably intended to ensure that the contractors remained solvent and the hospital was finished. They were not required under the contract which included exemptions for “what Government may deem it necessary to Import for their own use”, “any quantity of spirits which may be brought into the country by promiscuous ships” and any shipments already on the water for which the government had granted a permit.¹⁰

In fact, the supposed “monopoly” is yet another of the myths surrounding alcohol in early NSW.¹¹ While Blaxcell, Riley and Wentworth made concerted efforts to improve their terms, complaining of hardship and injustice, we should not interpret the deal from the perspective of the interested parties. The contract is best understood as a limited extension of the permit system to meet a particular need with the contractors granted permission for a larger quantity of spirits than was typical and some limited exclusivity to protect their investment. In all probability the deal was good for all concerned: the contractors made a profit, the colony gained a hospital and the volume of spirits in NSW remained relatively stable.¹² In 1800-4, the last period with reasonably complete records, 3.9 gallons of spirits were imported for each inhabitant; in the years of the hospital contract (1811-14) this fell to 3.5 gallons; while in the remaining years of Macquarie’s term (1810, 1815-20) it was again 3.9 gallons.¹³ Though these figures undoubtedly conceal inaccuracies and cannot account for widespread smuggling they do demonstrate that neither the hospital contract nor the policy of

‘Government and General Orders’, *Gazette*, 31st Dec. 1814, 1.

¹⁰ ‘Hospital Contract’, 404-5. Ellis calculates other traders imported twice as much as the contractors but this is probably exaggerated: Ellis, “‘Rum’ Hospital”, 289. In the five years 1811-15, 226,855 gallons of spirits were recorded as imported into the colony - I have included 1815, the year after the contract expired, because these were measurements of spirits released from bond and frequently imports remained in the government store for a considerable period. Even if we assume that half of this spirit was imported before or after the period of the contract this ‘monopoly’ would not have troubled the ACCC.

¹¹ This view of the contract probably emerged first among Macquarie’s critics but has become a mainstay of early colonial history. For an early version see: Henry Grey Bennet, *Letter to Lord Sidmouth...on the Transportation Laws, the State of the Hulks, and of the Colonies in New South Wales*, London: 1819, 77-9. For an influential statement of this interpretation see: Phillips, *Autocracy*, 90-4. For recent repetition see: Day, *Customs*, 90.

¹² The contractors themselves claimed to have made a loss while their accountant, John Laurie, estimated they made ten thousand pounds each. Ellis sympathises with the contractors and dismisses Laurie’s testimony, but his own calculations indicate that the venture was profitable. He estimates the total costs for the builders at twenty shillings a gallon while conceding that they sold their spirits at twenty seven shillings minimum which would have given them each seven thousand pounds. This was undoubtedly much lower than the typical rate of return for the spirit speculators of early NSW but hardly a reason for Blaxcell’s subsequent bankruptcy or Wentworth’s penalty. See: ‘Hospital Papers’, 114-9; ‘J. Laurie Evidence’, Bigge Appendix, Bonwick Transcripts, Mitchell Library.

¹³ For more on the figures see Appendix 1, 262ff.

free trade substantially increased importation of spirits, and both systems provided important benefits to the state.

Free trade in alcohol would operate unchallenged for over two decades after 1815. The abandonment of the permit system was supplemented by attempts to severely limit the provision of rations including alcohol through the government stores. Macquarie limited such supplies to convicts and the military but complaints of hardship forced him to continue rationing the colonial clergy and to offer settlers, both free and emancipist, government support for their first six months on the land.¹⁴ More importantly, he also ended the long established practice of centrally purchasing spirits and selling them to privileged individuals at a fixed price.¹⁵ These changes were probably just as significant as free trade in destroying the artificial spirit economy that had existed since the establishment of the colony. Demand for spirits remained high, buoyed up by the disposable income of convicts, but all wholesale purchasers whether licensed retailers, small settlers or gentlemen now bought their supplies on the open market, removing the opportunities for inflated profits.¹⁶

New problems emerged among the bureaucracy that the system required. Successive Governors struggled to prevent corruption within the Commissariat although a formal ban on trading by commissariat officials and standardise account-keeping helped resolve this.¹⁷ There were similar problems with the Naval Office, charged with administering the growing duties imposed upon trade. In 1827, Captain John Piper, Naval Officer since 1814, was found to be deficient in his account-keeping, lax in monitoring traders and most likely defrauding the revenue in an effort to conceal his borrowing from the funds he administered. The Governor at the time, Ralph Darling, responded to this demonstrated mismanagement, by creating the first formal Customs Office with officials paid by salary rather than commission, and an expanded staff which he argued would more than pay for itself through expanded revenue.¹⁸

¹⁴ 'Macquarie to Bathurst', 24th Mar. 1815; 'Macquarie to Bathurst', 31st Mar. 1817; 'Macquarie to Bathurst', 16th May 1817, *HRA*, vol. 8, 463-4; vol. 9, 236-7, 406-7.

¹⁵ J.T. Bigge, *Report of the Commissioner of inquiry on the Judicial Establishments of NSW and VDL*, Adelaide: Australian Facsimile Editions, 1966 (facsimile of 1823 ed.), 66. As Bigge noted the practice had developed into a de facto form of payment because the Government price was substantially lower than the market.

¹⁶ On convicts' continued thirst for spirits, see for example: D.D. Mann, *The Present Picture of NSW...*, London: 1811, 44, 69-71. But as Elliott notes, convicts spent more money on other goods including clothes sugar and tea: Elliott, 'Convict Dandy'.

¹⁷ 'Macquarie to Lords Commissioners of the Treasury', 12th June 1819; 'Bathurst to Darling', 30th Dec. 1825; 'Bathurst to Darling', 5th Jan. 1826; 'Darling to Bathurst', 27th Dec. 1826; 'Hay to Darling', 16th June 1830, *HRA*, vol. 10, 153-171; vol. 12, 130-1, 141, 660; vol. 15, 556-9.

¹⁸ On Piper and the Naval Office see: Day, *Customs*, 100-1, 105-7, 116, 126-7, ch. 11; J.T. Bigge, *Report of the Commission of Inquiry, on Agriculture and Trade in NSW and VDL*, Adelaide: Australian Facsimile Editions, 1966 (facsimile of 1823 ed.), 83-9. On Customs see: 'Darling to Hay', 2nd Feb. 1826; 'Customs to Treasury', 27th July 1826; 'Darling to Bathurst', 21st Oct.

The Customs Office was also a response to the growth of smuggling. Free trade reduced the incentive for illegal importation of spirits although it was certainly carried out on a small scale. When Billy Blue, a harbour watchman, was found with two casks of smuggled rum in 1818, the *Gazette* expressed surprise, noting that the crime was unnecessary now that spirits were freely available.¹⁹ But it seems that smuggling increased towards the end of Macquarie's term in line with rising duties. In the early 1820s, D'Arcy Wentworth, the Police Superintendent, reported that smuggling was "very common" as "great facilities have always existed for the clandestine importation from ships in the harbour, from the great extent of its shores and the numerous bays and inlets". He also noted that the lack of reward for the capture of smuggled spirits discouraged police interest in the crime.²⁰ This was exacerbated by Piper's mismanagement of the Naval Office. He allowed vessels to unload their cargoes unsupervised provided the manifest did not mention taxable goods, a trust almost certainly betrayed. In his defence, Piper had no access to the bond stores, where dutiable spirits were held pending payment, which were managed by the Commissariat, a division of power that created more opportunities for dishonesty.²¹ Attempts to prevent smuggling also suffered from the familiar problem of legal authority. In December 1824, an attempt to enforce the Port Orders and seize a boat used to land spirits was overturned by the Supreme Court. On consulting Britain, the Governor, Thomas Brisbane, was told that his Orders were illegal and NSW officials had no power to detain the property of British traders, a loophole only filled with the expansion of Customs powers in the 1830s.²²

An incident from 1824 shows how substantially the regulation of supply was transformed in this era. Brisbane sought to exclude spirits from the new penal settlement of Port Stephens by forcing visiting vessels to pay a bond of twenty shillings a gallon, forfeit if they were detected trading alcohol. Justifying this rule, he cited both the necessity for discipline among the convicts who worked in the lumber industry and the potential harm to the local Aboriginal tribes "from the moral

1826; 'Darling to Bathurst', 9th Apr. 1827; 'Darling to Bathurst', 11th Apr. 1827; 'Murray to Darling', 28th June 1830, *HRA*, vol. 12, 150-1, 452-4, 653-5; vol. 13, 245-6, 248-50; vol. 15, 568-9. Revenues did increase significantly in 1828, the year after the change of system although it is hard to draw a meaningful connection – one likely explanation is that large volumes of spirits were imported that year in advance of the increase in duty in October.

¹⁹ *Gazette*, 17th Oct. 1818, 2; 24th Oct 1818, 2. Despite this, the case seems to have inspired Macquarie to update the Port Orders and their strict regulation for the landing of spirits. See: 'Government Order', *Gazette*, 24th Oct. 1818, 1; 'Port Regulations', 1st Oct. 1810; 'Port Regulations', 22nd Mar. 1819, *HRA*, vol. 7, 657-8; vol. 10, 74-5. The penalty for landing wine or spirits without a permit was reduced but constables were permitted to seize illegal liquor and the vessel bringing it to shore.

²⁰ Bigge, *Judicial*, 72-3. For more on the prevalence of smuggling see: *Australian*, Sydney: 1824-48, 16th Dec. 1824, 3.

²¹ Day, *Customs*, 166-8.

²² 'Brisbane to Bathurst', 30th Jan. 1825; 'Bathurst to Brisbane', 22nd July 1825, *HRA*, vol. 11, 481-2, 689-90; 'Supreme Court', *Australian*, 6th Jan. 1825, 2. For new legislation expanding Customs powers see: 'Order in Council', 18th June 1832, *HRA*, vol. 16, 669-70. For the development of the customs service see: Day, *Customs*, ch. 13.

and physical degeneracy, consequent upon drunkenness", comparing their "manly" forms when untouched by civilisation with the "debilitated" natives of Sydney. He also pointed to the clause in his instructions, unchanged from those issued to previous Governors, that "no Spirits shall be landed ... without your Consent". But despite these arguments, the Colonial Office ruled that the bond was an illegal tax and ordered it withdrawn.²³ With free trade established, the focus of regulation had shifted decisively and the trade in spirits was now recognised as a resource for the growing state.

The Wages of Sin: Alcohol and Colonial Revenue

Even before he opened up the trade, Macquarie had begun to raise tariffs and this soon provided his administration with a substantial source of local revenue, entirely under his control. The origins of this technically illegal tax lie in the early years of the colony but it was only with free trade that the revenue reached significant levels. One of Macquarie's first acts as Governor was to double the duty on spirits and over his tenure in office they rose from one and a half to ten shillings per gallon.²⁴ This money was directed into a new Police Fund which, in the eighteenth-century sense of "police", was used to pay for building programs, infrastructure and welfare as well as an expanded constabulary. Over the eleven years Macquarie was in charge of NSW, customs duties, predominantly on spirits, averaged almost sixty percent of local revenue, and while this was less than five percent of total expenditure on the Colony it was not subject to any meaningful oversight by the colonial office.²⁵

This growth of domestic funding enabled him to commence an unprecedented construction program and to expand the reach of government institutions. The swathe of public buildings centred on Macquarie Street, turnpike roads to Parramatta and the Hawkesbury, churches, schools and orphanages all mark the physical evidence of Macquarie's governorship but it is rarely appreciated that much of his reputation as a builder depended upon secure and independent local

²³ 'Bathurst to Brisbane', 13th Apr. 1824; 'Brisbane to Bathurst', 6th Nov. 1824; 'Bathurst to Brisbane', 5th June 1825, *HRA*, vol. 11, 247-9, 413-4, 625. For his Instructions see: 'Instructions to Brisbane', n.d., *HRA*, vol. 10, 598. For further criticism of Brisbane for a lack of impartiality in granting exemptions to merchants who complained that the duties had changed while their cargoes were on the water. See: 'Bathurst to Brisbane', 5th June 1825, *HRA*, vol. 11, 625-35. Tellingly, Darling's Instructions no longer mentioned spirits: 'Instructions to Darling', n.d., *HRA*, vol. 12, 107-125.

²⁴ Duty was doubled to 3s. in March 1810, raised to 5s. in December 1812, to 7s. at the end of 1814 (the end of the hospital monopoly) and to 10s. in March 1818. See La Nauze, 'Tariffs pt 1', 16-17. Note that the hospital contractors only ever paid the 3s. rate.

²⁵ See Appendix 2, 267ff, for more detail and discussion of these figures. Disaggregated figures for spirit duties are not available for the 1810s but they made up the majority of all customs revenue. The bulk of expenditure on the colony was British, not colonial.

finances based upon the taxation of alcohol.²⁶ Over half of the expanding Police Fund was used to support construction and supplemented by convict labour, this formed the financial basis of his building program. Where earlier Governors had reserved convicts for projects directly connected to the penal aspects of the colony, relying on private contractors for other works, Macquarie eroded this distinction, using all the resources at his disposal on his visionary schemes to improve NSW and spread the settlement.²⁷ Much of this construction relied on the revenues of the spirit trade.

The rum hospital is both the most obvious and the least typical example of this dependence. Recalling the scheme in a public defence of his management, Macquarie explicitly linked the contract to his wider building program claiming that on his arrival “there were no funds with which any new work could be undertaken, and the few public buildings were all in a state of decay”.²⁸ Despite the fact that the construction was conducted at a net profit for the state, stern criticism from London forced Macquarie to abandon such public-private partnerships. But it is also likely that he had realised that the profits from the unregulated spirit trade were large enough to support an ambitious building program without recourse to contracts of this kind. The justification for this revenue – if one were required in the context of a similar dependence in Britain – was an explicit link to the cost of alcohol problems for society. For example, Macquarie described the Hospital ‘monopoly’ as “laying a Duty, however enormous, on the consumption of the article which, beyond every other cause, operated to render a Hospital necessary.”²⁹ In a parallel to Britain at the turn of the eighteenth-century, expanding alcohol revenues provided the financial foundation for an expanded state, justified in part by the need to solve alcohol problems.

The importance of such revenue only grew under Macquarie’s successors, as they were well aware.³⁰ As Figure 1 (below, p103) shows, taxation of alcohol continued to form a critical component of the Governors’ power, particularly since local revenue remained the only source of funding directly under their personal control. The illegal duties were finally authorised by the UK Parliament in 1819 and introducing the bill, Lord Goulburn explained the reformist philosophy behind it:

²⁶ Noel Butlin, *Forming a Colonial Economy*, Cambridge: Cambridge University Press, 1994, 79-81. For Macquarie’s building program see: Ritchie, *Macquarie*, chs. 6-7; Ellis, *Macquarie*, 194-5, 203-6, 416-9; Karskens, *Colony*, ch. 7.

²⁷ G.J. Abbott, ‘Government Works and Services’ in: Abbott and N.B. Nairn, *Economic Growth of Australia 1788-1821*, Carlton, Vic.: Melbourne University Press, 1978, 317-8. See also: Hainsworth, *Traders*, ch. 13, esp. 209-10.

²⁸ Lachlan Macquarie, *A Letter to the Rt. Hon. Viscount Sidmouth in Refutation of Statements made by the Hon. Henry Grey Bennett M.P. ...*, London: 1821, 13.

²⁹ Macquarie, *Letter to Sidmouth*, 14.

³⁰ For an example of awareness of the importance of alcohol duties see: ‘Bathurst to Darling’, 14th July 1825, *HRA*, vol. 12, 19.

from the very first establishment of the colony, it had been considered of great importance to subject [spirits] to a heavy impost; just as in this country the necessity was evident of preventing the introduction of spirits into our goals³¹

Goulburn was clearly unfamiliar with the early history of NSW but his assumption reflects the official consensus that the colony was in the process of adopting. The growing links between alcohol and public expenditure brought the colony into line with British practice.

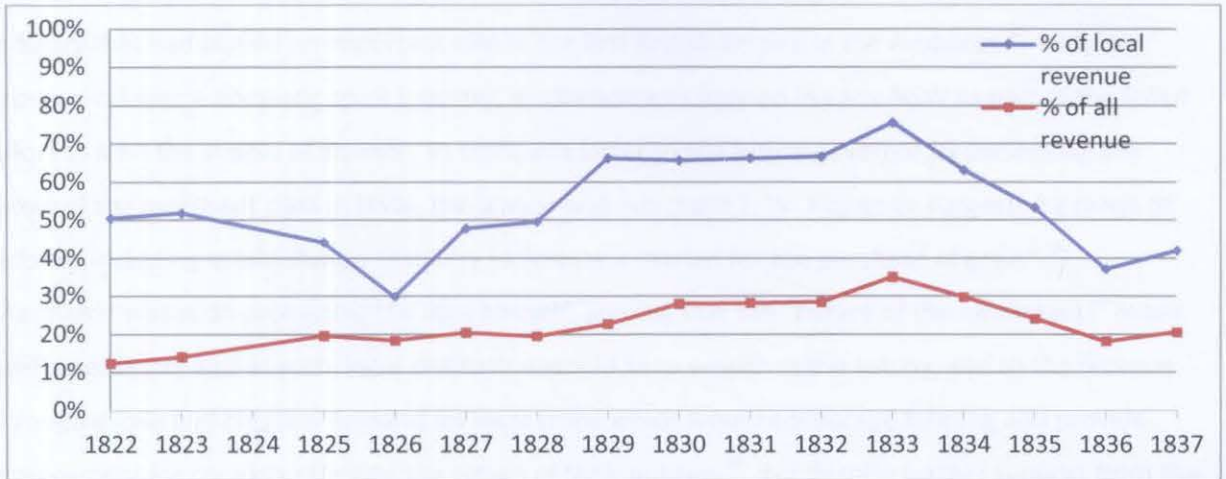


Figure 1 - Percentage of NSW Government Revenue from Alcohol, 1822-37. (For sources and more detail on this data see Appendix 2)

This dependence remained largely uncontroversial until the 1830s when public critics began to question the propriety of running a society on the profits of the drink trade.³² In a series of editorials in 1832, the *Gazette* claimed that “more than two-thirds of the whole Revenue of New South Wales is derived from the consumption of distilled and fermented liquors” criticising both the regressive nature of such taxation and the fact that the system made it “the direct interest of the Government to foster the growth of habits of dissipation”.³³ This criticism of the Government’s role in promoting alcohol would become a mainstay of the temperance movement later in the decade.

³¹ U.K. Parliament, *Parliamentary debates: House of Commons: official report*, 23rd Mar. 1819, vol. 39, c.1136. Cited in: Abbott, ‘Government Works’, n. 11, 323. For the controversy that inspired this legislation see: Field to Macquarie’, 23rd Feb. 1818; ‘Macquarie to Bathurst’, 15th May 1818, *HRA*, vol. 9, 772-5; N. Butlin, *Colonial Economy*, 77-81; H.M Boot, ‘Government and the Colonial Economies’, *Australian Economic History Review*, vol. 38, no. 1(March 1998), pp74-101, 80; La Nauze, ‘Australian tariffs’, 7-12; Castles, *Legal History*, 384-9, 392.

³² There was a continued public debate about taxation in the 1820s from a liberal perspective, linked to calls for representative government and trial by jury, but this debate did not touch on alcohol. See: *Monitor*, Sydney: 1826-42, 27th Jan. 1827, 7-8; 27th Oct. 1828, 3-4; 16th Mar. 1827, 4; ‘Darling to Bathurst’, 31st Jan. 1827; ‘Darling to Hay’, 23rd Mar. 1827, *HRA*, vol. 13, 50, 181-5

³³ *Gazette*, 20th Sep. 1832, 3; 4th Oct. 1832, 2. The editor based his calculations on local revenue alone.

But in this earlier period, such revenues were widely accepted, reflecting the broad consensus on the necessity of alcohol.

Distillation and the Interested State

This consensus also informed the campaign for licensed distillation which was promoted as a means to encourage colonial farmers. The idea that distilleries promoted agriculture by providing a market for grain was mainstay of eighteenth-century economic thought, and distillation was an industry that had played an important role in the first British Empire in the Americas.³⁴ Despite growing calls for a domestic spirit industry, distillation was banned in early NSW as part of the failed effort to limit the supply of alcohol. In 1809, in a letter to the future governor, representing the views of the merchant class in NSW, the lawyer and merchant T. W. Plummer suggested a range of reforms including establishing a Distillery to “create a market for the purchase of grain”.³⁵ Macquarie was soon promoting the idea himself, arguing that the “nature of the inhabitants” made spirits necessary and as such, local distillation would keep wealth in the colony, add to the revenue through excise and create a demand for local crops which would encourage farming and provide employment for convicts relieving the crown of their upkeep.³⁶ But despite further support from the 1812 Inquiry into Transportation and continued support from the Governor, the hospital contract followed by a series of poor harvests led to doubts about the viability of the scheme and the Colonial Office withheld consent.³⁷

Macquarie’s enthusiasm was not isolated; it reflected a widespread view amongst the Colony’s capitalist class. In 1819, as Commissioner John Thomas Bigge was preparing to leave for NSW to conduct his inquiry into the colony he was met by a petition of grievances to the Prince Regent, signed by over a thousand “respectable inhabitants” that called for a range of key reforms including jury trial, removal of trade restrictions and the creation of a domestic spirit industry.³⁸ William Wentworth’s 1819 history of the colony also supported the campaign. He called for strict

³⁴ Mathias, ‘Agriculture’.

³⁵ ‘Plummer to Macquarie’, 4th May 1809, *HRA*, vol. 7, 200-4. Plummer served as John Macarthur’s agent in London. Atkinson plausibly suggests that the letter, though in Plummer’s hand, was composed by Macarthur in the aftermath of the Rebellion. Atkinson, ‘Bentham’, 6-7. In any case, it certainly embodies the concerns of the colonists and not merely a British merchant. See also: Ritchie, *Macquarie*, 111-2.

³⁶ ‘Macquarie to Liverpool’, 17th Nov. 1812, *HRA* vol. 7, 592-4.

³⁷ *1812 Committee*, 5, 14; ‘Bathurst to Macquarie’, 23rd Nov. 1812; ‘Macquarie to Bathurst’, 28th June 1813; ‘Bathurst to Macquarie’, 3rd Feb. 1814; ‘Macquarie to Bathurst’, 28th Apr. 1814; ‘Macquarie to Bathurst’, 7th Oct. 1814; ‘Macquarie to Bathurst’, 22nd Mar. 1817; ‘Bathurst to Macquarie’, 30th Jan. 1819, *HRA* vol. 7, 670-2, 772-3; vol. 8, 127-9, 146-7, 308-10; vol. 9, 210-4; vol. 10, 10-11.

³⁸ ‘Petition of the Inhabitants ...’, 22nd Mar. 1819, *HRA* vol. 10, 58-61.

import duties "as would amount to a prohibition" to encourage a colonial distillery that would supply the demand for spirits and create a market for grain outside the government monopoly.³⁹ His "most powerful" argument for distillation was "its beneficial influence on the morality of the rising generation", for citing the examples of France, Spain and Italy, he argued that "[their] sobriety can only be the consequence of a steady equable supply, which induces moderate enjoyment, without holding out any temptation to excessive indulgence".⁴⁰ Distillation was promoted on free trade lines as a rational improvement of the colony that would bolster the economy and counter alcohol problems.

While this elite campaign continued, private distillation remained both widespread and illegal and was subject to serious penalties which Macquarie increased in late 1810.⁴¹ William Skinner, a free settler, became the first convicted under the new rules and received a twenty pound fine and five years hard labour, a sentence praised by the *Gazette* given the continued risk of famine in the colony and the need to preserve a grain surplus.⁴² From a broad survey of the limited records of cases against distillers it appears that very few were ever detected outside of Sydney and that most cases involved very small scale production. There was thus a stark divide between the reality and the rhetoric around distillation. Elite supporters promoted a large modern industry as a stimulus to agriculture while ignoring or condemning the opportunists drawn from the working classes who actually distilled.

Ironically, Macquarie had been recalled by the time the Colonial Office finally approved colonial distillation, but the new industry was conducted along the lines he had suggested. His plan, approved by Bigge, called for large-scale distillation under license, supported by preferential duties but restricted to working locally-grown grain.⁴³ The first legal distillery was opened by James

³⁹ Wentworth, *Description of the Colony*, 253-4.

⁴⁰ Wentworth, *Description of the Colony*, 260-3. This argument was borrowed from Smith: *Wealth of Nations*, IV.3.37.

For another example of similarly optimistic rhetoric from the same period see the letter of E.S. Hall to Macquarie in 1821: 'Colonial Distillation', *Monitor*, 8th Sep. 1826, 6; 'Mr Hall's Letter ... Continued ...', *Monitor*, 13th Oct. 1826, 6. Hall claimed drunkenness arose from lack of access to alcohol which led to spree drinking and therefore recommended the de-regulation of both distilling and public houses so that anyone could produce or sell spirits. This was a more extreme version of Adam Smith's argument for free trade in alcohol, which would shortly lead to the English Beer Act.

⁴¹ For Macquarie's orders against distillation see: 'General Orders', *Gazette*, 22nd Dec. 1810, 1; 'Proclamation', *Gazette*, 26th Jan 1811, 1.

⁴² 'Sydney', *Gazette*, 5th Jan. 1811, 3. Compare the case of Michael Burne who was exonerated despite being found with the body of a still, after he claimed it was used in his brewery: *Gazette*, 12th Jan. 1811, 2; 'Judge Advocate's Bench', 12th Jan., 26th Jan. 1810, Burne even tried to claim his spirits back but could not produce a permit for landing them and so they were confiscated. Notably, the editor scoffed at the popular claim that stills like Burne's were worked with the surplus peach crop, thus posing no risk to the Colony's grain supply, pointing out that summer's peaches were still green. See also: Karskens, *Colony*, 298.

⁴³ 'Regulations to be Observed in the Use of Distilleries ...', *Gazette*, 10th Feb. 1821, 1; J.T. Bigge, *Report of the Commissioner of inquiry into the State of the Colony of N.S.W.*, Adelaide: Australian Facsimile Editions, 1966 (facsimile of

Underwood in 1824 and shortly after one of his initial partners Robert Cooper broke away on his own. But the high hopes for the scheme were not forthcoming. By 1825, Governor Brisbane was obliged to permit the use of sugar in the distilleries and to alter the system of duties.⁴⁴ In a subsequent despatch he claimed that colonial distillation was "the worst step that was ever adopted" arguing it would hurt the revenue by undercutting imported spirits and encourage drunkenness.⁴⁵ But in fact, the legal industry had little impact on the colonial economy and less on colonial morals. Before 1840, the volume of colonial spirits was never more than one fifth and rarely more than one tenth of that imported, and though there was some impact on the revenue from the preferential duties this was more than compensated by the expanding population.⁴⁶ The limited scale of the industry and the operators' preference for working cheap sugar over expensive grain meant that there was little impact on agriculture and the main consequence was simply to enrich Underwood and especially Cooper at the expense of merchants who imported West Indian rum.⁴⁷

Despite this relative insignificance, from the mid-1820s the growing public debate centred on distillation, aptly illustrates the changing imperatives behind the regulation of alcohol. In a speech to the Agricultural and Horticultural Society in 1829, Sir John Jamison praised the "splendid distilleries" exhorting the "community at large" to support farmers by purchasing their spirits. Commenting on the speech, the *Monitor* noted that Underwood's twenty thousand pound still had sat idle for the last two years because he had judged it unprofitable to work during a period of high grain prices, and argued that a "despotic government" had made the industry unprofitable, calling for the removal of local duties and the freedom to work whatever raw materials they chose.⁴⁸ Later that year, a pamphlet published by James Atkinson addressed more practical concerns. He pointed out that the distilleries in Sydney were next to useless for rural farmers who could not easily or cheaply get their grain to the still and therefore proposed that all farmers with more than a hundred

1822 ed.), 155; Bigge, *Agriculture*, 58-9. See also the useful summary of this legislation in: D. I. McDonald, 'The Worst Step That Was Ever Adopted', *JRAHS*, vol. 56, pt. 3 (Sept. 1970), pp206-24. Licensed stills had to be larger than 44 Gallons and there was a special clause allowing the Governor to order grain supplies preserved in times of famine.

⁴⁴ Sugar distillation was permitted on the proviso that the distiller export a similar quantity of grain such that it contributed to the market: 'The Double Distilled ...', *Australian*, 28th Oct. 1824, 3. For the new duties see: 'Brisbane to Bathurst', 4th Feb. 1825, *HRA*, vol. 11, 487-93. Sugar distillation was permitted on the proviso that the operator export a similar quantity of grain to maintain agricultural demand. For the use of sugar see also: 'The Double Distilled ...', *Australian*, 28th Oct. 1824, 3.

⁴⁵ 'Brisbane to Horton', 24th Mar. 1825, *HRA*, vol. 11, 555-6.

⁴⁶ See Appendix 1, 262ff.

⁴⁷ On the preference for sugar over grain see: Edgars Dunsdorfs, *The Australian Wheat-growing Industry 1788-1948*, Melbourne: Melbourne University Press, 1956, 38-9.

⁴⁸ *Monitor*, 19th Apr. 1828, 4. This was a popular argument during the drought years around 1830. See: *Australian*, 7th Aug. 1829, 2; *Sydney Herald*, Sydney: 1832-, 22nd August 1831, 2.

acres in cultivation should be licensed to distil their own produce.⁴⁹ But moralists attacked this plan with the *Gazette* describing it as a means of promoting drunkenness and “demoralise the labouring population”.⁵⁰

In 1833 the controversy reached the newly established Legislative Council. Dominated by wealthy landowners with a vested interest in promoting agriculture, they sought to remove the duty on colonial spirits and the restrictive license. But Governor Bourke took a different view. Though the legislation received British approval, Bourke withheld his assent fearing that opening the industry would lead to a rapid expansion of this illegal practice, discouraging imported spirits and harming the revenue.⁵¹ By the 1830s, centralised regulation of alcohol was essential to protect the state’s financial power.

Bourke’s letter also clarifies the reality of colonial distillation. He noted that only one licensed distillery (Cooper’s) was operating in NSW but this was supplemented by small private stills operated by farmers who used their surplus crops to produce spirits on which “no duty has been paid or demanded ... [and] the government has not thought it worth while to interfere”.⁵² Despite the focus on the Sydney operations in public debate it was notorious that most farmers kept stills that were notionally illegal and worked them whenever the price of grain fell to unprofitable levels. Although private distillation was repeatedly outlawed by the Orders of the early Governors, no laws were passed on the subject until 1838 and there was thus a degree of legal confusion exploited by farmers. In 1833 the *Monitor* noted that stills were easily found for sale in Sydney and that “secret distillation ... has already struck out vigorous roots” in the rural districts where “the profits of the first-erected stills soon tempted others to set them up”.⁵³ This reflected a double standard whereby “rich [farmers] sell ‘on the sly’ with impunity, while poor people cannot” and so rejecting free trade the paper argued that increased duties and an increased price were necessary “to keep the people tolerably sober”:

if people will destroy their morals and health with ardent spirits, let the virtuous portion of the community reap the benefit by an increased Revenue. If on the other hand, the Revenue

⁴⁹ James Atkinson, *On the expediency and necessity of encouraging distilling and brewing from grain in NSW*, Sydney: 1829. For the immediate critical reaction to this proposal see: ‘Mr Atkinson’s Pamphlet’, *Gazette*, 30th May 1829, 2; ‘Brewing and Distilling’, *Gazette*, 4th June 1829, 2.

⁵⁰ ‘Distillation’, *Gazette*, 1st May 1830, 2; ‘Colonial Distillation’, *Gazette*, 17th Feb. 1831, 3.

⁵¹ ‘Bourke to Goderich’, 1st May 1833; ‘Spring Rice to Bourke’, 25th July 1834, *HRA*, vol. 17, 95-9, 486-8.

⁵² ‘Bourke to Goderich’, 1st May 1833, *HRA*, vol. 17, 95-9.

⁵³ ‘Stills, Drunkenness & Murder in NSW’ *Monitor*, 27th Feb, 1833, 2. For regulation touching on this practice see: ‘Publicans Licensing Acts Consolidation’ (11 Geo. IV no. 11), 12th May 1830, *Public General Statutes of NSW*, Sydney: 1861, 225-40.

*should decrease ... the proportionately increased sobriety of the people, would be a source or fund, whence judicious taxes would be drawn, which would repair such breach*⁵⁴

This argument anticipated the temperance movement. The state's financial interest in alcohol made government increasingly responsible for alcohol problems.

Increased Consumption

Consumption of alcohol increased under this open system, especially as the trade became linked to revenue. Brewing continued to receive favourable treatment by government as the only imported form of alcohol that was not subject to a special duty. Bigge reported on the progress of the industry, noting that "consumption of the beer brewed at Sydney, from maize and sugar by several individuals is already considerable" but repeated the view of several of his informants that the warm climate and poor ingredients would prevent the emergence of an industry on the British scale.⁵⁵ Unfortunately, records of beer importation and colonial brewing are scanty before the late nineteenth century but the few we have suggest that *by volume* it was the most popular alcoholic drink in NSW by the 1820s. James Squire, in evidence to Bigge, reported that his brewery produced about one hundred thousand gallons a year in 1821 and though he was almost certainly the largest local producer there were at least ten other active breweries in the colony at the time. By 1828, Darling was claiming that "[b]rewing has made considerable progress during the last Year, and promises to lessen the Consumption of Ardent Spirits" and in an article in 1831 the *Monitor* claimed seven hundred and fifty thousand gallons were produced in the colony every year. However, the local product was roundly criticised by the author who noted that despite its popularity in thirsty Sydney this "hopped sweet-wort", largely made with sugar, was "as different from English ale or porter, as any person who is a judge of malt liquor can possibly imagine".⁵⁶ In any case, independent of this colonial production, by the 1830s the colony imported on average three and a half gallons of beer per person, so it is clear that considerable quantities were consumed in NSW.

Wine-making was also encouraged in NSW and arguably with better prospects of success. While the attempts at government production continued the local industry was increasingly driven

⁵⁴ 'Stills', *Monitor*, 2.

⁵⁵ Bigge, *Agriculture*, 34; Parson's, 'Colonial Beer', 24-5; 'G. Blaxland Evidence', Bigge Evidence, Bonwick Transcripts, Mitchell Library, Box 5, 2108-13. For Squire's hops see: 'Macquarie to Bathurst', 22nd Mar. 1819; 'Goulburn to Macquarie', 24th Mar. 1820, *HRA*, vol. 10, 82-3, 296.

⁵⁶ 'Squire Evidence', John Ritchie, *The Evidence to the Bigge Reports* (2 vols.), Melbourne: Heinemann, 1971, vol. 1, 116-8; 'Darling to Huskisson', 10th Apr. 1828, *HRA*, vol. 14, 129, 132; 'Colonial Beer', *Monitor*, 17th Sep. 1831, 2. The editor also complained that the use of sugar meant that the industry was of little benefit to colonial agriculture.

by private investment, especially among large wool growers, seeking to diversify their farming and these pioneers were rewarded with land grants and other concessions. More than a reflection of elite taste, this support reflected the view that wine-drinking was civilised in stark contrast to the legendary rum drinking of the Colony's convict founders. By the mid-1830s, vines were a common feature of the cultivated countryside with some regions like the Hunter developing a concentration of growers.⁵⁷ But colonial production remained only a fraction of imports which continued to serve a substantial minority of the population with over three gallons per person imported each year during the 1830s.

Despite the development of these industries, there is no doubt that spirits were still the most popular alcoholic drink. With free trade and growing local production, the 1830s saw levels of available alcohol reach a historic peak with well over ten litres per person (Figure 2, below, p110). Though this was no new consensus that the supply of alcohol was best regulated by tariff policy and not by restrictions on trade or production. Public debate largely focussed on specific levels of duty and the way they encouraged local agriculture and industry, or promoted public disorder. Overall, the system pioneered by Macquarie and developed by his successors ensured a stable supply and price for alcohol in the colony and guaranteed the state a constant stream of revenue. It was not until the arrival of the temperance movement that this was seriously challenged.

⁵⁷ 'Horton to Brisbane', 23rd Jan 1824; 'Bathurst to Brisbane', 26th Feb. 1825, 'Memorial of James Busby', 29th Jan. 1831; 'Hay to Bourke', 24th Jan. 1832, *HRA*, vol. 11, 202-3, 527-8; vol. 16, 40-6, 508-9; James Busby, *A Treatise on the Culture of the Vine and the Art of Making Wine ...*, Sydney: David Ell Press, 1979 (facsimile of the 1825 ed.); Busby, *A Manual of Plain Directions for Planting and Cultivating a Vineyard and for Making Wine in New South Wales*, Sydney: 1830; McIntyre, 'Wine', ch. 3.

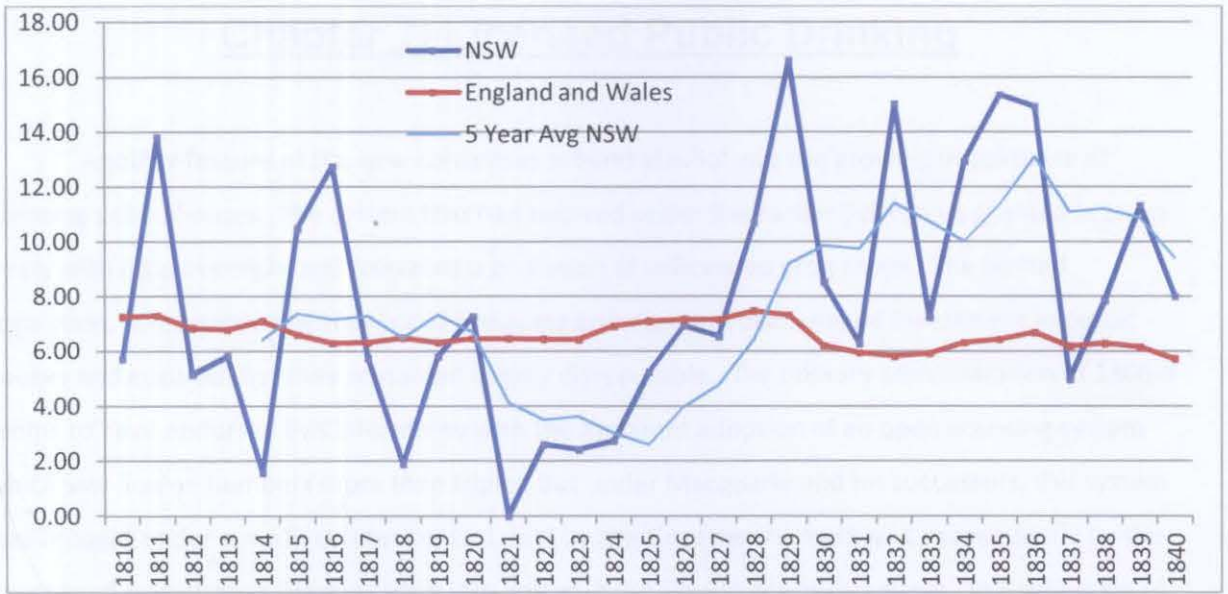


Figure 2 - Litres of Available Alcohol per Person, NSW and England and Wales, 1810-1840. (For sources and more detail on this data see Appendix 1)⁵⁸

⁵⁸ Note that this does not include domestic beer or wine and lacks imports of these beverages for most years before 1828. This would likely increase the available alcohol by between 1 and 2 L/person, perhaps more. The dip in the 1820s is largely a product of defective data and not real reductions in available alcohol which probably remained stable at around 6 L/person.

Chapter 7) Licensed Public Drinking

Another feature of the new consensus around alcohol was the growing importance of licensing public houses. The system that had evolved under the earlier Governors granted licenses freely with little oversight and tolerated a profusion of unlicensed grog shops. The limited regulation, compounded by the lack of adequate enforcement discouraged investment in public houses and ensured that they remained largely disreputable. The military administration of 1808-9 seems to have endorsed this informality with the apparent adoption of an open licensing system which saw license numbers more than triple. But under Macquarie and his successors, this system was brought under a much stricter control, first by the Governor himself, and subsequently by the benches of magistrates, bringing NSW into line with the English licensing system. In a reflection of larger changes in colonial society, by the late 1820s, a public debate about licensing, influenced by vested interests, led to an open but regulated system and growing numbers of Public Houses.

Macquarie's Licensing System

Within weeks of his arrival, Macquarie began to institute reforms. He reduced the number of spirit licenses in the colony from 101 to 31, created a new class of beer-only license, and re-issued now traditional orders against unlicensed houses, smuggling and private distillation, offering rewards for informers.¹ He tied this reform to his new police force by directing all fees from licenses and spirit duties to the new Police Fund while ordering constables to suppress unlicensed and disorderly houses, and to enforce nine o'clock closing. Justifying his severity he declared that there was:

*a very great and unnecessary number of licensed houses ... [that] cannot fail of being productive of the most baneful and mischievous effects on the morals and industry of the lower parts of the community, and must inevitably lead to a profligacy of manners, dissipation and idleness.*²

¹ 'General Order', 16th Feb. 1810; 'General Order' 31st Mar. 1810; 'General Order', 22nd Dec. 1810, *HRNSW*, 7, 289-90, 323, 473-4. These orders were consolidated and standardized in 1811, see: 'Proclamation', *Gazette*, 30th Mar. 1811, 1. For a general summary of Macquarie's licensing see: Phillips, *Autocracy*, 95-108.

² 'Government and General Orders', 29th Dec. 1810, *Gazette*, 1-3. See also an earlier order before the Police reforms: 'Macquarie General Order', 26th May 1810, *HRNSW*, vol. 7, 382; 'Macquarie General Order', 16th Feb. 1810, *HRNSW*, vol. 7, 289-90.

Like his predecessors, Macquarie soon found that it was easier to rail against public houses in theory than regulate them in practice. Despite his official severity, unlicensed sale continued both in Sydney and particularly in rural districts where the challenge of enforcement was greater.³ The standards expected of licensed houses were probably quite subjective, depending greatly on the diligence of the local magistrate and constables. Licenses were occasionally withdrawn and bonds forfeited, typically in cases involving either a more substantial crime or a so-called "irregular and disorderly" house, a euphemism that probably concealed both loud and riotous celebration by the customers and prostitution.⁴ Thus in 1814, Elizabeth Watson lost her license after a murder took place in her house, the bench finding that Michael Casey who worked the house on Watson's behalf, was "highly culpable" and "did not by any means exercise the authority which it was his duty to have done". However, the limited number of prosecutions suggests that the system remained relatively lax.⁵

For a clear illustration, consider Joseph Salter, a storekeeper and sometime publican who received his pardon in the first year of Macquarie's term. A month later he was awarded one of the first beer licenses, and opened a house "under the sign of York Races" on York Street, but in March 1811 he was charged with selling spirits on the testimony of a private informer, and was fined twenty pounds.⁶ Despite this, indeed on the very day he was before the court, he was awarded a full license to sell spirits and by 1815, his business expanding, he was advertising wholesale rum and brandy at thirty shillings a gallon from his new house near the hospital wharf.⁷ Gaps in the records preclude certainty, but it appears that Salter sold spirits irrespective of the class of his license, or if he held one at all, and in NSW tradition he seems to have profited handsomely from this cavalier attitude to the rules.

From 1816 onwards Macquarie revised these regulations. He first announced plans to reduce the number of licenses as there were far more "than can possibly be required for the beneficial Accommodation of the Public ... [leading to] many scenes of Intoxication ... subversive of

³ Evidence for licensing in the country districts is very limited but the absence of any records of rural licenses, outside of country towns suggests that they were rarely taken out – unsurprising given that the system could not have been enforced. Freeland claims that in 1818 Macquarie acknowledged this by exempting wayside inns from holding license but I can find no evidence of this and he does not cite a source. See: Freeland, *Australian Pub*, 95.

⁴ See for example, Richard Farrington of Parramatta: *Gazette*, 17th June 1815, 1.

⁵ For Watson see: *Gazette*, 9th July 1814, 1.

⁶ 'Judge Advocate's Bench', 7th July 1810, 16th Mar. 1811; 'General Orders', *Gazette*, 21st July 1810, 1. For his pardon see: 'Public Notice', *Gazette*, 16th June 1810, 1. For his advertisement see: *Gazette*, 23rd Feb. 1811, 1.

⁷ 'Government and General Orders', *Gazette*, 16th Mar. 1811, 1; 'Government Public Notice', *Gazette*, 1st Apr. 1815, 1; 'To be sold', *Gazette*, 4th Nov. 1815, 1; 'Judge Advocate's Bench', 1st Mar. 1817.

the regular and orderly Police".⁸ He specified the number of licenses for each district and required applicants to provide a signed certificate of character from the resident magistrate and chaplain, increased the fine for unlicensed sale to thirty pounds all of which now went to the informer and increased the statutory definition of retail sale from less than two, to less than five gallons.⁹ These measures had some effect, leading to increased prosecutions for illicit sale which were previously very rare.¹⁰ In 1817, the entrepreneur, Mary Reiby was one of six punished and fined accordingly – though like Salter, she had previously held a license.¹¹ But despite the larger fees and fines, retailing liquor remained a rough trade under Macquarie, in large part because the system was poorly policed and thus there were few incentives to run a respectable house or even to take out a license. Even after the reforms, magistrates could only fine offenders, some of whom were convicted more than once in a year for unlicensed sale.¹² Parramatta, under the more vigorous magistracy of Samuel Marsden formed a partial exception to this rule as the constables hired informers to visit suspected unlicensed houses and provide testimony to support convictions but this in turn led to "a great deal of perjury" and forced the bench to abandon many cases.¹³

The increased regulation of the retail trade also made the system more susceptible to influence from the alcohol industry itself. In 1810, the reduction in licenses soon led to complaints from Sydney's four newly licensed brewers about the diminished market for their product. As Macquarie's cuts were only designed to limit consumption of spirits and not less-intoxicating drinks, he responded by introducing a class of beer-only license which he argued would provide a "great accommodation to labouring people, and to the lower class of the inhabitants in general", granting fifty that year.¹⁴ These beer-shops proved problematic because the cheaper license fee encouraged the dishonest to use them as a cover to secretly vend spirits and in 1816, Macquarie reverted to a single class of license. However, further pressure from the brewers forced him to reverse his

⁸ 'Government and General Orders', *Gazette*, 19th Aug. 1815, 1.

⁹ 'Government and General Orders', 27th Jan. 1816, *Gazette*, 1; 'Proclamation', 22nd Feb. 1817, *Gazette*, 1.

¹⁰ Bigge, *Judicial*, 70-1. Bigge attributed the increased prosecutions primarily to the diligence of the new Judge Advocate Wylde, noting that they declined again when he retired from the bench.

¹¹ 'Judge Advocate's Bench', 12th, 19th Apr., 20th May, 11th June, 12th July, 23rd Aug. 1817. For her and her husband's licenses see: 'Government and General Orders', 17th Feb. 1810, 1; 'Judge Advocate's Bench', 9th Feb. 1811; 'A List of Person's Holding Licenses', *Gazette*, 7th Aug. 1813, 2. She was subsequently charged with another alcohol related offence in 1818 when she removed spirits from the bonding house without a permit: *Gazette*, 15th Aug. 1818, 2.

¹² Bigge, *Judicial*, 72.

¹³ Bigge, *Judicial*, 71. There were 22 charges of unlicensed sale in Parramatta from 1815 to 1820. See: 'Number of Crimes Alphabetically arranged, committed at ...', Bigge Appendix, Public Record Office, Colonial Office Series 201/121, Australian Joint Copying Project, pp688-701.

¹⁴ 'Macquarie General Order', 21st July 1810, *HRNSW*, 7, 397; '[No Title]', 23rd June 1810, *Gazette*, 2. King had briefly experimented with beer licenses a decade earlier. See: 'King General Order', 25th Sept. 1804, *HRA*, vol. 5, 272.

decision once again and he restored the beer-only license four months later.¹⁵ Thus, while spirit licenses were sharply reduced, the total number of licensed houses relative to the population remained stable and only declined slowly over Macquarie's term of office. (Figure 3, below, 118).

Magistrates and Public Houses

During Bigge's investigation of the colony, both the difficulties of enforcement and the influence of vested interests were raised as criticisms of Macquarie's licensing system and his administration in general. D'Arcy Wentworth noted that while there were large numbers of public houses, illicit sale was common and difficult to prevent so that "the revenue might as well be benefitted by granting as many licenses as come properly recommended".¹⁶ This somewhat cynical attitude, borne out by figures like Salter, likely reflects Macquarie's own views. Numbers of licenses fluctuated because while the Governor wanted to reduce public drinking he was well aware that severity would simply lead to flouting of the law. Bigge broadly supported this view, noting that in Parramatta the worst houses held licenses but were so profitable that the owners could ignore prosecutions, while the Rocks was notorious for flaunting of the curfew and for brothels, which he conceded "could not be prevented".¹⁷

As Police Magistrate and Superintendant, Wentworth was a critical voice in the licensing process in Sydney. Applicants had to first petition him for a certificate before they could gain a license and more importantly he was the leading figure in restraining illicit sale and enforcing regulations. But this influence was subject to heavy criticism, particularly in the light of his extensive interest in the spirit trade as one of the hospital contractors and it was alleged that he refused to prosecute dealers and promoted the traffic during the contract.¹⁸ The wealthy landowner, John Harris, described Wentworth as "constantly [trading] ... largely in spirits since he resided in Sidney, especially at the time he was contractor of the general hospital" and argued that drunkenness increased during the hospital contract because of "the increased opportunities of obtaining spirit"

¹⁵ 'Government and General Orders', *Gazette*, 27th Jan. 1816, 1; 'Government and General Orders', *Gazette*, 25th May 1816, 1; Phillips, *Autocracy*, 98. Freeland wrongly claims that Macquarie instituted the tradition of all pubs serving both beer and spirits: Freeland, *Pub*, 28.

¹⁶ 'Evidence of D'Arcy Wentworth', John Ritchie, *The Evidence to the Bigge Reports* (2 vols.), vol. 1: The Oral Evidence, Heinemann: Melbourne, 1971, 50.

¹⁷ Bigge, *Judicial*, 72. Though he did allege that permitting public dances in unlicensed houses encouraged both drunkenness and prostitution.

¹⁸ 'Evidence of Robert Murray', Bigge Evidence, Box 2, 613-4; 'Evidence of James Larra', Bigge Evidence, Box 1, 364-6. However, this anecdotal evidence needs to be weighed against the overall consumption figures I discussed above. Note that in any case, Wentworth's trading was not confined to the period of the monopoly. He bought and sold spirits (as did almost all of the wealthy in Sydney) as part of his trading interests throughout his time in NSW. See: John Ritchie, *The Wentworths: Father and Son*, Carlton, Vic.: Melbourne University Press, 1997, 68, 85, 92, 134, 158.

from the larger number of public houses. He even claimed to have “frequently remonstrated” with the Superintendent about such drunken behaviour to which Wentworth allegedly replied that it was good for trade and good for the Police Fund.¹⁹

Bigge also heard evidence about the challenge of enforcing the system. Wentworth’s assistant, Robert Murray, claimed that he had all but abandoned pursuing convictions for sly grog selling because “the magistrates generally and particularly the Judge Advocate [John Wylde] throwing every possible difficulty in the way of the informer and taking advantage of every slight variation in the evidence”.²⁰ Wylde himself noted the failure of most prosecutions but denied applying technical objections to the cases, arguing that most failed for lack of credible evidence.²¹ However, he also claimed that there were “many occasions” when Wentworth “differed from all the magistrates present as to the sufficiency of the Proof”. On this basis, though Bigge generally approved of Wentworth’s conduct as Police Superintendent, he noted in private correspondence that enforcement of licensing “was not administered with strictness” because “the interest that Mr Wentworth openly took in the Sale of Spirits ... had considerable influence in encouraging the unlicensed Vendor of Spirits to [sell] with impunity.”²²

Samuel Marsden made a more general objection, noting that while license numbers had “considerably reduced” overall problems were systemic because “the private interest of the magistrates who are dealers in rum by wholesale, is so clearly interwoven with the interest of Licensed Retailers of Spirits as well as the unlicensed.”²³ The irony of this critique is that it probably applies as much to Marsden himself as to other interested magistrates like Wentworth. In a subsequent defence of his administration, Macquarie sought to undermine Marsden’s testimony by claiming that his objections were motivated by the threat of competition to his own spirit dealing.²⁴ Though Marsden vigorously denied this charge, his carefully worded statement tacitly acknowledged his involvement in the liquor trade under earlier Governors, and with reference to the Macquarie

¹⁹ ‘Evidence of John Harris’, Bigge Evidence, Box 1, 271-2. Wentworth subsequently denied making this comment, and noted that spirits were more expensive during the period of the ‘monopoly’. See: Ritchie, *Wentworths*, 190-1. Harris’ reliability is also undermined by the fact that license numbers only rose in comparison with the extraordinary year of 1810 and declined in proportion to the population.

²⁰ ‘Robert Murray Evidence’, Bigge Evidence, Box 2, 615-9.

²¹ ‘John Wylde Evidence’, Bigge Evidence, Box 7, 3038-40.

²² Cited in: Ritchie, *Evidence*, vol. 2, 183.

²³ ‘Marsden to Bigge’, 10th Mar 1821, Bigge Appendix, Bonwick Transcripts, Mitchell Library, Box 27, 6352-4.

²⁴ Macquarie, *Letter to Lord Sidmouth*, 14. The context of this defence was Bennet’s *Letter to Lord Sidmouth...*, which relied upon private correspondence with Marsden (as well as the now traditional criticisms of David Collins and Jeremy Bentham) to attack the colony in general and Macquarie’s administration in particular.

era, relied upon the claim that he could not have kept a pub without public knowledge.²⁵ This is probably true (though there are other, later cases of alleged dummy owners which came before the licensing magistrates) but deliberately avoids the point: Macquarie did not say that Marsden ran a public house but that he traded in spirits. It is quite possible, even likely, that Marsden both reviled the licensed houses of Parramatta as visible evidence of public drunkenness and simultaneously speculated on cargoes of spirits as a merchant. Indeed, this is precisely the kind of creative hypocrisy that underlay alcohol regulation in early NSW.²⁶

Regardless of Marsden's involvement in the trade, magistrates were rarely disinterested arbiters. Bigge reported several witnesses who claimed that magistrates involved in the trade were inclined to leniency and though he found no concrete evidence he concluded:

*in a community, wherein it was of the utmost importance that the exercise of magisterial authority should be placed above the suspicion of being actuated by personal motives, it was certainly unfortunate, ... that any of the magistrates should have had ... an interest in the extended use of a commodity, which they knew to be the cause of mischief to the colony, in proportion as it was the cause of profit to themselves.*²⁷

Many magistrates and most of the social elite in NSW were still involved in the liquor trade as merchants, dealers or even as farmers, rewarding their convict servants, and this fact must have undermined their commitment to restrain the retail sale of spirits.

Overall, this regulation broadly echoed English licensing law with one notable exception: Macquarie retained absolute authority over the system. Magistrates took bonds and issued fines but decisions on granting and removing licenses were reserved for the Governor who used his oversight to control the number of retail outlets. He transmitted a list of approved applicants to the magistrates for their authorisation and had a final say on removal of licenses from disreputable

²⁵ Samuel Marsden, *An Answer to Certain Calumnies in the late Governor Macquarie's pamphlet and the Third Edition of Mr. Wentworth's Account of Australasia*, London: 1825, 45-7. Marsden also responded to (W.C.) Wentworth's restatement of Macquarie's claim. See: William Wentworth, *Statistical Account of NSW* (2nd ed., 1824), vol. 1, 376-7.

²⁶ Marsden later denied trading under Macquarie by reference to the Governor's Order of 1816, against commercial activity by Government officials and officers, arguing that given his feud with Macquarie he could not have breached this order and escaped punishment. This leaves open the possibility that he had traded prior to that date which would have breached earlier orders. Marsden, *Answer to Certain Calumnies*, 55-6; 'Government and General Orders', *Gazette*, 17th August 1816, 1. For earlier orders see for example: 'King to Portland', 18th September 1800, *HRA* vol. 2, 542-5. For more on Marsden and the liquor trade see: Michael Saclier, 'Sam Marsden's Colony: Notes on a Manuscript in the Mitchell Library, Sydney', *JRAHS* vol. 52, pt. 2 (June 1966), pp94-114, 109-113.

²⁷ Bigge, *Judicial*, 71.

houses.²⁸ This centralised power was the subject of a complaint to the colonial office by the deputy judge-advocate, Ellis Bent, who cited English tradition and claimed that in NSW “the influence and patronage ... is now wholly engrossed by the Governor to the injury of the public ... and greatly to the diminution of the influence of the magistrates” who were “merely acting as clerks to the Governor”.²⁹ Even after 1816 when applicants required certificates of character, Macquarie was known to approve some who failed to meet this qualification. Murray told Bigge that the system was “very defective” citing cases of well-known brothels that Macquarie had licensed despite the local officials’ refusal of a certificate and even Wentworth agreed that magistrates had no meaningful discretion.³⁰ The complaints of the clergy were equally severe: Marsden argued that it was often impossible to find candidates for licenses who met Macquarie’s criteria as “sober, honest and Industrious”, while his Chaplain, William Cowper, refused to sign certificates for any applicant who failed to attend church.³¹

Bigge, reviewed this complaint in detail and played an important role in initiating reforms which brought NSW into line with localised English licensing practice. Though he defended Macquarie’s decision to waive character certificates he attacked the increase in license numbers:

*The difficulty of preventing unlicensed persons from retailing spirits and the benefit that was derived to the revenue, ... [led Macquarie] to give his consent to a greater number of licensed houses than the convenience of the public required, and he was led to disregard the evil consequences to which he had formerly felt and declared that it must lead.*³²

This was unfair on Macquarie. Not only did Bigge ignore the distinction between beer and spirit licenses, he failed to account for the far greater growth in population.³³ Figure 3 (below, p118) provides a more accurate representation of license numbers per capita which shows a general decline throughout the Macquarie era. Moreover, shifts were not arbitrary or corrupt, but rather reflected Macquarie’s evolving policy which sought to balance alcohol problems, revenue from

²⁸ ‘Bent to Bathurst’, 1st July 1815, *HRA*, ser. 4, vol. 1, 131; Bigge, *Judicial*, 72; McLaughlin, ‘Magistracy’, 145-6, 184-6. Phillips mistakenly argues that Macquarie’s authority was an innovation of his term. Phillips, *Autocracy*, 98-9. Macquarie appeared aware of the English law in an 1813 Proclamation that granted a single magistrate summary power to remove a license from a house which held an unlawful meeting. See: ‘Proclamation’, *Gazette*, 27th Nov. 1813, 1.

²⁹ ‘Bent to Bathurst’, 1st July 1815, *HRA*, ser. 4, vol. 1, 131; Phillips, *Autocracy*, 99-100.

³⁰ ‘Evidence of Murray’ BT Box 2, 613-4; ‘Evidence of D’Arcy Wentworth’, Ritchie, *Evidence to Bigge*, vol. 1, 46-7; Bigge, I, 65-6.

³¹ ‘Evidence of Samuel Marsden’, Ritchie, *Evidence to Bigge*, vol. 2, 118.

³² Bigge, *Judicial*, 66-70.

³³ Bigge, *Judicial*, 66.

license fees and spirit duties, and the difficulty in preventing unlicensed sale. In his defence, he noted that he had initially reduced license numbers on his arrival in NSW but:

*notwithstanding every severity of punishment the law could enforce ... I found that the people persisted in a contraband traffic: it therefore appeared to me best ... to extend the number and thus obtain for the legal vendors ... an equality as to profits with the illegal.*³⁴

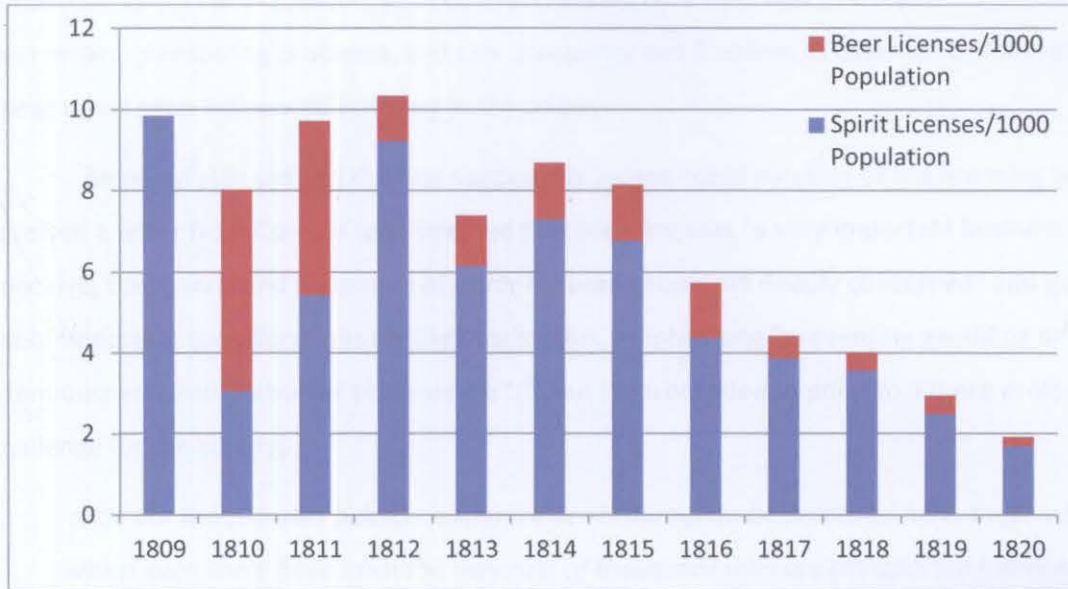


Figure 3 - Licenses/1000 Population, NSW, 1809-1820. (For sources and more detail on this data see Appendix 3)

But Bigge demanded an end to this centralised approach and the establishment of licensing by local benches of magistrates. In 1820, Macquarie granted the magistrates their full authority, only insisting that the total number of licenses not exceed the number for the previous year. Led by Wylde, the Sydney bench strictly reduced numbers, particularly refusing to license houses which combined the liquor trade with other retail, forbidden under English licensing law. As a result, many existing publicans were deprived of their license for an offence not previously recognised in NSW, and several complained to the Governor, who immediately overturned the bench's decision.³⁵ But this controversy is a pertinent illustration of the differences between the two approaches to licensing: where Wylde relied upon statutory powers and insisted on a strict enforcement of the law, Macquarie used his personal authority to grant licenses as a form of patronage. The abandoning of

³⁴ Macquarie, *Letter to Sidmouth*, 14.

³⁵ Phillips, *Autocracy*, 104-6; Bigge, *Judicial*, 69-70. Bigge noted the dubious credentials of three of the four individuals whose licenses were restored, claiming Bernard Williams' House near the docks was suspected of involvement in spirit smuggling, that Thomas Carpenter was an emancipist of known bad character and was merely a dummy for a previous owner now deprived of a license, and that Thomas Stilwell's House, located directly opposite the convict lumber yard, encouraged convict drinking.

this centralised system brought licensing into line with English practice and increased the responsibility of magistrates for managing alcohol problems.

More significant than the question of executive power was the wider ideological debate about licensing problems. Reformers had long argued that strict controls were necessary to restrain drunken behaviour and called for restrictive licensing, high taxes and stern policing, especially in the context of NSW's convict majority. In contrast, laissez faire held that free-trade in alcohol was the best means of resolving problems, and saw prosperity and freedom as essential to colonial progress. These views soon influenced licensing in the colony.

Before Wylde chaired the first supposedly independent meeting of the licensing bench, he received a letter from Cowper who stressed that licensing was "a very important business in which, I conceive, the morals and happiness of thirty thousand souls are deeply concerned" and gave a long list of important considerations for the magistrates, emphasising "preventing gambling or licentiousness, intoxication or profaneness".³⁶ But he proceeded to point to a more profound challenge for the colony:

shall our Magistrates publicly authorize or encourage to be practiced here, those very evils which even there have been the very ruin of thousands who are transported hither expressly to be reformed?

For colonial reformers, traditional concerns about alcohol problems were magnified, precisely because the colony was intended as a reformatory for convicts.

But laissez faire also had colonial advocates. A letter to the *Gazette* around the licensing session of 1823, argued that the increasing number of spirit licenses was pleasing evidence of the decline of the "ancient monopoly" over spirits and would actually reduce drunkenness. Comparing the United States to England he claimed that:

the people of that country are much more sober than the English; and yet, on account of their cheapness, more spirits are drank there, in proportion to population, than in England. Every prosperous mechanic, in America consumes in His family a pint of spirits per day [while t]he most drunken settler in New South Wales does not drink half as much ... [Thus] in all countries where wine and spirits are the cheapest, the people are the most sober; and the people of New

³⁶ 'Cowper to Wylde', 16th Feb. 1820, Bigge Appendix, Box 21, 3944-6.

South Wales will never be reformed of their inebriety, until they also can afford to drink a pint per family per day.

Leaving aside the merits of this argument, it is an extreme form of an emerging attitude that tended to both downplay alcohol problems and favour free trade as their logical solution. This was allied with an instinctive radical rejection of the condescension of the elite as the writer concluded:

there is no more harm in settlers drinking their grog, every day of their lives, at dinner and supper, than in the Colonist drinking his wine; and, of the two ... the settler deserves his grog, every day, much more than the Colonist his claret.³⁷

This conflict between the doctrine of free trade and the concern over morality shaped public debate around licensing in NSW over the next two decades.

Legislation and Lobbying

From 1823 with the passing of the NSW Act control over licensing moved further into the public domain. Rather than issuing orders, Governors were now granted legislative powers subject to deliberation in a new Executive Council, nominated by the crown. Though the Council had no formal powers, the new system made it easier to influence law-making because there were more ears to influence and a broader debate.³⁸ This more open process is illustrated by some of the earliest legislation. The Licensing Act of 1825 largely codified the system that had emerged from the Bigge Inquiry. The magistrate's benches were given responsibility for "strict examination" of the character of licensees who were to be of "good fame and reputation and fit and proper to keep a Public House". Certificates of character were now required from three "respectable householders" as well as the nearest magistrate and minister and two magistrates could now summarily punish houses that permitted "disorderly conduct" with a fine of six dollars (c. 30 shillings) for the first offence, doubled for the second and a suspension of the license for the third.³⁹ The Runaway Convicts Act, passed at the same time, extended this regulation, noting that convicts "frequently resort to drinking or gambling houses to the great injury of their masters and detriment to public order" and allowed two magistrates, on the basis of a single informer, to summarily fine houses permitting convicts to drink without the leave of their master or overseer, whether they did this

³⁷ 'Letter of An Old Emigrant Settler', *Gazette*, 6th Mar. 1823, 2.

³⁸ On the wider significance of the NSW Act see: Castles, *Legal History*, ch. 7; and below, 131ff.

³⁹ 'Licensed Publicans Act' (6 Geo. IV no.4), 8th Feb. 1825, *Statutes of NSW*, 5-7. After a third offence licensees could be prosecuted for their bond. For the short-lived dollar currency see: S.J. Butlin, *Monetary System*, ch. 6.

knowingly or not. Thus publicans were now put in the invidious position of trying to determine the legal status of their patrons.⁴⁰

The Licensing Act was swiftly revised after the two clergymen for Sydney, Cowper and Richard Hill, both refused to sign a single certificate of character. In a letter to the Council they maintained that the required certificates should not be issued to persons who "live in a state of adultery or concubinage, or in any other known immoral habit, nor those who do allow music or dancing, or keep a billiard table". They also called for a ban on the sale of alcohol alongside other goods, claiming that it:

*affords to servants and the lower classes, a pretext for visiting such public houses to purchase articles of clothing, food &c., but in reality to drink or procure liquor, and thus to misspend their time, and their money, also to neglect their duty, and, not unfrequently, to profane the Lord's Day*⁴¹

As such, they adopted most of the elements of the long-standing reformist critique of alcohol: drinking was not merely a sin, it encouraged idleness among the working class and disturbed public order. The rejection of such severity by the Legislature, who removed the requirement for clergy approval, reflected the growing acceptance of drinking as a necessary evil.⁴²

But in what would become the norm, the new laws were also criticised as too strict by the newly publicans complaining about unreasonable impediments to their business and their allies among the proponents of *laissez faire*. Illustrating the emerging public sphere in the colony, the two public newspapers predictably took sides on this issue with the *Gazette*, edited by the newly converted Methodist, Robert Howe, backing the government's legislation and supporting strict regulation, while the recently founded and liberal-minded *Australian* supported the rights of publicans to conduct their business undisturbed.⁴³ At a meeting at Hill's Tavern in February 1826, a large group of publicans formed the first commercial lobby in Australian history, agreeing on a petition to the Governor outlining their concerns and subscribing to a fund for "furthering the

⁴⁰ 'Runaway Convicts Harboursing' (5 Geo. IV no. 3), 19th Jan. 1825, *Statutes of NSW*, 3; Hirst, *Freedom on the Fatal Shore*, 119-20.

⁴¹ 'Letter of Cowper and Hill', 15th Feb. 1825, Legislative Council, *Votes and Proceedings of the Legislative Council of New South Wales*, Sydney: 1832-1855, 1825, 7.

⁴² 'Amend Licensed Publicans Act' (6 Geo. IV no. 6), 15th Feb. 1825, *Statutes of NSW*, 9-10.

⁴³ See: *Gazette* 10th Feb. 1825, 2; *Australian*, 24th Feb. 1825, 2-3. Other than the commercial orientation of the proprietors, the *Australian* was also inclined to support liberal licensing because newspapers were another area traditionally subject to intrusive government regulation and the paper consistently argued for a free press. See: Robin Walker, *The Newspaper Press in New South Wales, 1803-1920*, Sydney: Sydney University Press, 1976, ch. 2. On the links between regulatory philosophy and the press see: Walker, *Press*, 2; Tony Tanner, 'Licence and Licencing: To the Presse or to the Spunge', *Journal of the History of Ideas*, vol. 38, no. 1 (1977), pp3-18.

prosecution of persons selling spirits without license" and "all persons guilty of improper conduct ... towards victuallers".⁴⁴ Speakers complained of entrapment by avaricious constables, the impossible obligation to refuse convicts, objected to the nine o'clock curfew as an unreasonably early hour for many respectable people and even disputed the taking of a bond, claiming that this amounted to a claim "that a publican ... had a natural disposition to break the peace".⁴⁵ In essence they asserted their profession as a legitimate and respectable trade and sought concessions that would make it more secure and more profitable.

A deputation from the new Licensed Victuallers Association was heard at the bar of the Council during the debate over the new act and the law was substantially revised to reflect their concerns.⁴⁶ Certificates of character were now granted by the Chief Constable and no longer required clerical endorsement and serving convicts was no longer an offense except after eight o'clock or on Sundays. Most importantly, the basis upon which bonds were forfeit and licenses lost was specifically spelt out: "a publican shall not permit any playing at cards, dice or any other game ... nor suffer any person to become drunk ... or to remain there tippling or drinking after the hour of nine at night or on Sunday ... nor suffer any disorder ... nor refuse to admit any Magistrate or Constable" while any coroners finding of a death due to intoxication would void the license of the house.⁴⁷ At least in theory, respectable publicans were now protected from police harassment.

This lobbying reflects a growing democratic consciousness in NSW but the success of such protest was still heavily dependent on the Governor's patronage. It was entirely Brisbane's decision to accede to the publicans' plea as he demonstrated by turning down a subsequent appeal over the strict enforcement of closing hours.⁴⁸ The *Gazette*, despite its declared support for the original "wise Act ... to repress drunkenness", accepted the need for these changes and praised the process by which "this most respectable and useful Body [the Licensed Victuallers]" had sought reform:

The Act ... has been repealed ... in answer to the prayer of the Memorialists ... and thus was forcibly demonstrated, the promptitude of the Executive in listening to, and in remedying, the

⁴⁴ *Gazette*, 4th Feb. 1826, 3.

⁴⁵ *Australian*, 2nd Feb. 1826, 3. For an earlier example of these complaints see: 'Letter of Scrutator', *Gazette*, 5th May 1825, 4.

⁴⁶ 20th Feb. 1826, *VPLC*, 1826, 31.

⁴⁷ 'Licensed Publicans Act' (7 Geo. IV no.2), 20th Feb. 1826, *Statutes of NSW*, 35-40. I have not found any evidence that this latter clause was ever acted upon but it is significant that there were some attempts at this time to make publicans responsible for the behaviour of those on their premises. In other changes to the law, masters were now excepted from the ban on unlicensed trade if they were supplying their own servants and the beer license was once again abandoned.

⁴⁸ *Australian*, 5th Apr. 1826, 2-3; 8th Apr. 1826, 2.

*grievances complained of, a line of conduct that we know will always be regarded where the same constitutional and respectful means are resorted to.*⁴⁹

The Expansion of Licensing

Over the next decade, interest groups had a growing influence on licensing and there was a wider public debate about alcohol problems and their regulation. Following the licensing session of 1826, the number of houses in Sydney was almost halved by the magistrates, and ticket-of-leave holders were explicitly barred from owning public houses.⁵⁰ The *Australian*, acting as a de facto mouthpiece of the Licensed Victuallers, argued that reducing licenses simply created a "fictitious value" in the remainder while unfairly punishing those who had previously made a living as publicans and claimed that the magistrates appeared to have licensed not the most orderly houses but those the most commercially successful which hardly justified their zeal.⁵¹ Extending this free market attack on the system, the paper noted that the new laws were significantly stricter than those of England and alleged that only "the disorderly of the lower orders" required restraint.⁵²

When a new Act was passed the following year that ignored all of the Licensed Victuallers' suggestions the *Australian* mounted its most sustained criticism of colonial licensing. Despite supposed magisterial responsibility, licensing was still subject to executive control and failed to limit drinking:

The Authorities wished the number of licenses, to be reduced; and accordingly it almost seemed to be thought, that the greater the reduction was, the more "the Authorities", would be pleased! The Authorities wished licenses to be withheld from women; and they were universally withheld! The Authorities willed that ticket-of-leave men should be turned out of public-houses; and turned out accordingly they were! ... The licensing laws were harsh enough of themselves ... but they were rendered doubly harsh by the manner of putting them in force.

⁴⁹ *Gazette*, 4th Feb. 1826, 3; *Gazette*, 25th Feb. 1826, 2.

⁵⁰ This decision on ticket-of-leave holders was part of a broader tightening of the ticket system, with holders also prevented from having convict servants assigned to them. The Governor's Order claimed that ticket holders allowed to hold licenses "generally (it may be said almost invariably) [fall] into a Course of Vice and Dissipation". See: *Gazette*, 15th Mar. 1826, 1; 'Darling to Bathurst' 1st May 1826, *HRA*, vol. 12, 248-50; Hirst, *Freedom*, 95-6.

⁵¹ *Australian*, 9th Mar. 1826, 3; *Australian*, 5th Apr. 1826, 2. Unfortunately I have been unable to locate license numbers for 1826 but a rough calculation, based on licensing revenues of £3058, 18s. 4d. and a £25 license fee gives us an approximation of 120 licenses across the colony compared with 137 and 38 beer licenses the year before. For revenues see: *Gazette* 6th Feb 1828, 2. For earlier support for publicans in the paper see: *Australian*, 2nd March 1826, 3.

⁵² *Australian*, 30th Mar. 1826, 2; 8th Apr. 1826, 3; 30th Dec. 1826, 2.

*Witness ... the numbers of illicit ... dealers in liquor - dealers who sell far more by all accounts than the licensed victuallers. Then the laws severe as they were, have proved inefficient.*⁵³

This last criticism, was particularly telling because it appears that illegal premises were still just as common as licensed. Unfair competition from sly grog sellers was certainly a concern of the Licensed Victuallers who raised private funds to encourage constables “who shall prosecute to conviction unlicensed venders of grog”, topping up their share of the fine with a fifty shilling reward.⁵⁴ The free emigrant and later author, Alexander Harris, described a visit to such a sly grog shop, the Sheer Hulk on Gloucester St, owned by a ticket-of-leave holder and formally operating as a lodging house. The Hulk flouted the law through the payment of “sweeteners” to the local constables, afforded by the substantial profit of the trade which Harris estimated at thirty shillings a night. Describing his visit to this brazen operation he noted:

*The noise ... might fairly have led to the belief that there was nothing there to be concealed from the police, particularly as one old constable in his blue coat and red collar stood baton under arm at the corner of Frazer's Lane listening to it in all the appearance of serene reflectiveness.*⁵⁵

He claimed that in the 1820s almost every house in the Rocks operated in this way, acting as a drinking den, fence and flophouse for the criminal underclass of convicts, prostitutes and sailors who populated the growing Port of Sydney.⁵⁶ Though we will never know just how widespread the practice was, it is clear that official regulation of drinking was substantially undermined by the ongoing illegal trade, especially when licensing conditions were tightened.

By 1830 this view had become a consensus in the colonial press with even the *Gazette* conceding that “more drunkenness, independent of other vices, takes place in those places where spirits are illegally sold”.⁵⁷ Calls for a more liberal system were finally satisfied with the new and far

⁵³ *Australian*, 10th Feb. 1827, 2-3. See also the similar views in the *Monitor*: 10th Mar. 1828, 1028; 15th Mar 1828, 1036-7. For the legislation see: ‘Licensed Publicans Act’ (8 Geo. IV no. 1), 26th Feb. 1827, *Statutes of NSW*, 49-50. Its only purpose was to clamp down on the common practice of paying servants in liquor. With regard to the ban on women, see: Alan Atkinson, ‘Women Publicans in 1838’, *Push from the Bush* 8 (1980), pp88-106. Atkinson notes that female licensees made up about a quarter of the total under Macquarie but by 1830 were barely 5%. While I can find no explicit Order against female licenses, the *Australian’s* comment suggests that there was an implicit prejudice by the late 1820s.

⁵⁴ *Monitor*, 27th Mar. 1827, 2; 1st June 1827, 8; *Gazette*, 1st Dec. 1829, 2. They were forced to abandon the practice when they found that rewards simply encouraged perjury.

⁵⁵ Alexander Harris, *Settlers and Convicts or, Recollections of Sixteen Years' Labour in the Australian Backwoods*, London: 1847, 90. For Harris himself and the question of authorship see: John Metcalfe, ‘Harris, Alexander (1805–1874)’, [<http://adb.anu.edu.au/biography/harris-alexander-2160/text2763> - accessed 12 May 2012].

⁵⁶ Harris, *Settlers*, 105-6.

⁵⁷ For examples of ongoing criticism see: *Australian*, 17th Feb. 1829, 2; 24th Feb. 1829, 2; ‘Letter of a rejected old publican’, *Monitor*, 2nd Mar. 1829, 2; *Australian*, 13th Mar. 1829, 2; *Gazette*, 6th Mar. 1830, 2.

more comprehensive Licensing Act of 1830 which finally overrode the Governor's privilege of setting license numbers.⁵⁸ The Act consolidated previous legislation and established annual licensing sessions in every district, requiring at least three Justices of the Peace and barring magistrates with any personal interest in the liquor trade from serving on the licensing bench. Those granted licenses now had stricter conditions: larger sureties for good behaviour, a visible sign and a lamp kept burning all night, minimum bedrooms and stabling for travellers, and stricter penalties for unlicensed sale, including, for the first time, punishments for customers who frequented unlicensed houses.⁵⁹

At least initially widely praised in the press, the 1830 Act marked the beginning of a steady increase in both the total and per capita numbers of public houses in NSW as magistrates exercised their new freedom to license all eligible applicants. Though new acts were passed in 1833 and 1835 they were mainly technical revisions altering some ambiguous language that had created legal loopholes.⁶⁰ A key reason for the support for this laissez faire approach was that it seems to have finally reduced the incidence of sly grog sale, at least where the police were sufficient to enforce the laws. In evidence to the 1839 Select Committee on Police, the Police Magistrate Charles Windeyer noted that the steadily increasing numbers of licensed houses in the early 1830s led to "as regular a diminution of the illicit retailers".⁶¹ While the Licensed Victuallers continued to appeal to the Legislative Council for lower fines and smaller bonds, and to complain about the conduct of informers, licensing in the 1830s seems to have been less controversial and the trade expanded and became more respectable.⁶² License numbers rose to a peak of over six public houses per thousand population (see Figure 4, below, p 126) although this was still far below the level in England, where there were more than ten per thousand. By 1835, the colony had broadly reached a consensus with

⁵⁸ 7th Apr.-4th May 1830, *VPLC, 1830*, pp77-82. Once again the Licensed Victuallers petitioned the Council although I have been unable to locate their views. However, the Council seems to have been more concerned with a fraudulent signature attached to the Victuallers' petition than they were with its contents, ordering Frederick Gibson, the secretary, to attend the Council and apologise. For an impression of their likely complaints see the *Australian's* editorial: 7th Apr. 1830, 2.

⁵⁹ 'Publicans Licensing Acts Consolidation' (11 Geo. IV no. 11), 12th May 1830, *Statutes of NSW*, 225-40. Freeland sees this Act as crucial to the architectural history of the pub, arguing that the new requirement of two bedrooms and a sitting room, "killed the tavern" and led to raised standards in the appearance and outfitting of houses. See: Freeland, *Pub*, 54-5.

⁶⁰ 'Licensed Publicans Act' (3 Wm. IV no. 8), 13th June 1833, *Statutes of NSW*, 359-75; 'Licensed Publicans Act' (6 Wm. IV no. 18), 9th Oct. 1835, *Statutes of NSW*, 637-41. See also the legal criticism of the 1830 Act published in the *Gazette*: 'Letter of Publicus', 20th September 1832, 2; 27th Sept. 1832, 2; 4th Oct 1832, 2-3.

⁶¹ NSW Legislative Council, 'Report of the Committee on Police and Gaols with the Minutes of Evidence and Appendices'. *VPLC (1839)*, Evidence 174-5. The copy of the *VPLC* of 1839 I consulted (Fisher Library, Microfilm 328.944_18) does not have overall page numbers so references are to the pages of the report itself and to the minutes of evidence - which are numbered separately - and not the Votes and Proceedings.

⁶² For continued complaints see for example: *Australian*, 9th July 1833, 2, 2s; *Gazette*, 15th May 1834, 2

a widely available license governed by strict conditions. But the success of this system was almost entirely dependent on the efforts of the police and they left a great deal to be desired.

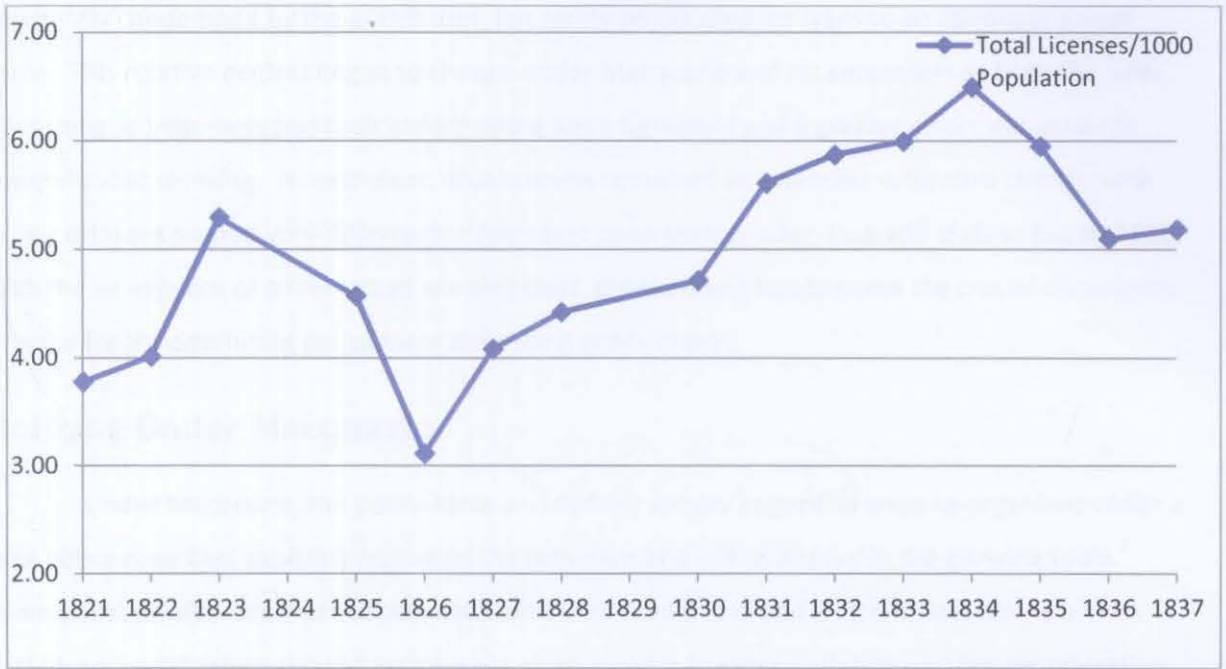


Figure 4 - Licenses/1000 Population, NSW, 1821-1837. (For sources and more detail on this data see Appendix 3)

Chapter 8) Alcohol Problems and the New Police

In keeping with the ambiguous status of alcohol in early NSW, convict drunkenness was constantly condemned by the authorities, but rarely prosecuted for want of an adequate police force. This relative neglect began to change under Macquarie and his successors as both the rules governing drunkenness and their enforcement were tightened and a greater effort was made to control public drinking. Nonetheless, drunkenness remained an intensely subjective charge, with public drinkers treated very differently dependent upon their gender, race and status. But by 1835, with the emergence of a free urban working class, drunkenness had become the crucial disciplinary offence for a modernising police force defending public order.

Policing Under Macquarie

Under Macquarie, the police force and Sydney society in general were re-organised under a new police code that explicitly regulated the provision and use of alcohol in the growing town.¹ Sydney was divided into five districts each with their own patrol and watch house, a nine o'clock curfew was established and the police were given powers to enter both licensed houses operating after hours and those suspected of illicit sale. In addition, they were to apprehend "all Persons who [they] shall see drunken, idle, or disorderly in the Streets, at any Time, and all persons who have no apparent Means of obtaining a livelihood". Echoing traditional English vagrancy law, the code defined three classes of deviant: idle and disorderly persons, rogues and vagabonds, and, incorrigible rogues, the latter two designations reserved for repeat offenders who were subject to stricter punishment and explicitly forbidden from keeping Public houses. As such, public drunkenness was defined as an offense of the poor, explicitly connected to idleness and crucial to the whole conception of the police code. Macquarie specifically informed his superiors that the new code was inspired by "the most disgraceful scenes of Rioting, Drunkenness and Excesses of every kind" which had formerly disgraced the streets of Sydney.²

The new police code modernised the policing of Sydney, if not the rest of NSW, moving away from the traditional system of rural England with its voluntary magistrates and constables. The force was more than doubled to 43 constables and 5 district constables, paid in rations for the men and their families with the prospect of additional income from receiving a proportion of any fines,

¹ 'Government and General Orders', *Gazette*, 5th Jan. 1811, 1-2.

² 'Macquarie to Liverpool' 18th Oct. 1811, *HRA*, vol. 7, 408-411.

including those for the unlicensed sale of spirits and for illicit distillation – though not for drunkenness itself.³ The new Police Fund supplied salaries for the officers under the new Superintendent, D'Arcy Wentworth, who was also made the first stipendiary or paid magistrate which led *de facto* to the creation of a new Police Magistrate's Bench, with responsibility for the majority of cases, especially those concerning public order.⁴ These reforms thus exacerbated the contrasting approaches to policing in Sydney and rural NSW which echoed the British divide between the emerging professional urban constabulary and the traditional eighteenth-century parish system.⁵ Rural magistrates were invariably large landowners, their position a mark of status and respectability and they were responsible for appointing their own constables for their district and administering the law, largely outside of central control.

Candidates eligible for the magistracy both in Sydney and the country were very limited; Wentworth's dubious background and alleged corruption was by no means an isolated example. Bigge criticised many of those on Macquarie's benches but also noted that the need for more and better magistrates was frustrated by the difficulty in finding suitable candidates.⁶ Even ignoring the politicised objection to emancipists, the quality of free settlers was sadly lacking. Ideally, amateur magistrates were landed gentry whose wealth and status made them disinterested upholders of the law. But the landed class in NSW were largely "young men on the make", who had come to NSW in pursuit of profit, were usually beholden to the Governor for both their land and their position and sought the magistracy in large part for its financial rewards – four convict servants, rationed on the store and the near certainty of profitable land grants which were awarded to colonial officials.⁷ This difficulty in finding trustworthy men only exacerbated the inconsistency inherent in a system of summary justice. In practice, the severity with which drunkenness was treated by the law depended enormously on the discretion of the individual and rarely disinterested magistrates.

There is some evidence that Macquarie's reforms reduced alcohol problems in Sydney. In February 1811, with the code newly in force, fear of the police appears to have motivated greater

³ Swanton, *Police*, 21-3; Neal, *Rule of Law*, 146-8; Paula J. Byrne, *Criminal Law and Colonial Subject, NSW, 1810-1830*, Cambridge: Cambridge University Press, 1993, 158. Legally, constables could only receive a share of the fine when it was specified in local regulations or British laws, though there is some evidence to suggest that, in line with the general informality of magistrates' proceedings, they were sometimes rewarded in spite of the rules. Macquarie codified this system in 1818, giving magistrates the power to issue rewards from fines imposed under the authority of Government Orders. See: 'Proclamation'. 21st Nov. 1818, *HRA*, ser. 4, vol. 1, 323-4. For drunk fines see below.

⁴ McLaughlin, 'Magistracy', 136, 140-5. Macquarie also appointed emancipists to the honorary magistracy, leading to a controversy that would undermine his administration. On which see: McLaughlin, 135ff; Ellis, *Macquarie*, 222-41, 473-4; Golder, *Magistracy*, 14-19.

⁵ Neal, *Rule of Law*, 131-40.

⁶ Bigge, *State of the Colony*, 80-98; *Judicial*, 84.

⁷ Golder, *Magistracy*, 12-3.

caution amongst liquor traders. In a case of illegal distilling, Ann Chapman gave evidence that the defendant Mary Turley had offered her cheap spirits to sell in her public house but Chapman refused and warned Turley “to be very careful for the Governor had given very particular orders”.⁸ This implies that there was a genuine fear of the police as an efficient force, at least for some kinds of offence. This reflected Macquarie’s overall policy for the colony: he offered greater opportunities for reform through his generous treatment of emancipists and greater potential for punishment through stricter policing.⁹

But drunkenness remained a surprisingly rare charge. In compiling his report, Bigge requested complete copies of the records of the magistrates’ benches for the five years ending in 1820. Unsurprisingly, given the infant state of colonial administration, he only received records from a few and only those for Parramatta were complete. Nonetheless, in the overall average of the various benches drunkenness amounted to less than four per cent of all offences punished by magistrates – that is for all but the most serious crimes which went before a higher court.¹⁰ Even at the new Police Magistrate’s bench in Sydney, specifically designed to deal with convict and public order charges, offenders were rarely brought before the court for drunkenness, although their crimes were often committed in an intoxicated state.¹¹

One important reason why public drunkenness was not aggressively pursued by the police was the lack of incentive for constables. The unsalaried force depended on rewards to supplement their ration and while Macquarie sought to grant them a share of any fines, there was little profit in arresting drunkards. Convict drinkers were not punished with fines but with the lash and for free drunkards, under the English law still governing the offence in the colony, fines were paid to “the Churchwardens of that Parish where the Offence shall be comytted” – an office that did not exist in nineteenth-century NSW – so until the late 1830s there was no official policy of rewarding the policing of drunkenness.¹² As a result, there was no financial incentive to prosecute public and enforcement of the law depended upon diligent magistrates. But even in the most vigilant district,

⁸ ‘Judge Advocate’s Bench’, 2nd Feb. 1811, cited in: Byrne, *Criminal*, 210-11.

⁹ On the emancipist policy see for example: ‘Macquarie to Bathurst’, 31st Mar. 1817; ‘Macquarie to York’, 25th July 1817, *HRA*, vol. 9, 238, 442-4; Bigge, *State of the Colony*, 80-155 *passim*; Ritchie, *Macquarie*, 132-4; Ellis, *Macquarie*, ch. 17.

¹⁰ ‘Number of crimes’, Bigge Appendix. Including disorder and misconduct, offences that sometimes but not always included drunkenness would take this to 10.1%.

¹¹ ‘Proceedings, Police Magistrate’s Bench, Sydney, 1815-16’, NSW State Archives, NRS3402. These records were not included in Bigge’s analysis but conform with the pattern. In the index to the records, compiled by the clerk of the court, there were 236 individuals only 9 of whom were charged with drunkenness (2.7%). Even if we add those charged with disorder (21 or 6.3%) and misconduct (22 or 6.6%), this still amounts to only 15.5% of total cases.

¹² ‘Acte for Repressing Drunckennes’ (1606), *Statutes of the Realm*, vol. 4, 1142; Byrne, *Criminal*, 158. See below, 190, 210. There are some suggestions that police were increasingly awarded these fines by the magistrates and given that there were no churchwardens in NSW this would have been a sensible interpretation of the law but there was no official policy.

Parramatta under Marsden and Hannibal Macarthur, drunkenness only once, in 1819, exceeded ten per cent of offences. While there are significant problems with this data it shows that drunkenness under Macquarie was not the police obsession it would later become.

Like his predecessors, Macquarie found his authority undermined by opponents who stressed the myth of the drunken colony and claimed that he had failed to manage alcohol problems. Chief among these was Marsden whose opposition to the Governor emerged from a clash of strong personalities and a series of disputes over Macquarie's emancipist policy and his pre-emptory manner in dealing with those, like Marsden, he regarded as subordinates.¹³ In a letter to Macquarie, in 1815 he complained of increased crime in his district of Parramatta, noting as a leading cause that the convicts were "addicted to inebriety" and that Macquarie's licensing system only encouraged this problem.¹⁴ Inspired by Marsden, British penal theorist Henry Bennet published an attack on the colony under Macquarie in which he echoed Bentham's earlier criticisms, arguing that the convicts in NSW retained "their low and sordid vices, the habits of idleness, and the love of spirituous liquors" and more importantly that these vices went unrestrained. Indeed, he claimed that policing was "uncertain, incomplete, and occasional" and hence "no preservative against hatred of work, gaming, drunkenness, licentious manners, and irregular intercourse".¹⁵ Macquarie's subsequent response to these charges is revealing because he stressed the successful reformation of many convicts without denying that the police were unable to ensure public order.¹⁶ This failure was likewise reflected in Bigge's Report.

Witnesses before the commissioner repeatedly cited drunkenness as the leading cause of crime in NSW. Marsden repeated his earlier concerns about the moral habits of the colony, and argued that convicts should not be allowed in Sydney where they were tempted by "new Scenes of Vice, such as drunkenness, gaming and debaucheries".¹⁷ D'Arcy Wentworth largely agreed, calling for compulsory uniforms and restrictions on movement as the only means to prevent convicts getting drunk.¹⁸ Concern was not limited to convicts. John Oxley, the Surveyor-General, reported that the emancipist settlers on the Hawkesbury were just as bad, describing them as "far from

¹³ A good non-partisan summary of the feud is found in: A. T. Yarwood, 'Marsden, Samuel (1765–1838)', *ADB*, [<http://adb.anu.edu.au/biography/marsden-samuel-2433/text3237> - accessed 12 May 2012].

¹⁴ Marsden, 'Letter to Macquarie', 19th July 1815, Bennet, *Letter to Viscount Sidmouth*, 133.

¹⁵ Bennet, *Letter to Sidmouth*, 67, 81-2.

¹⁶ Macquarie, *Letter to Sidmouth*, 58, 72-3.

¹⁷ 'Evidence of Samuel Marsden' in Ritchie, *Evidence to Bigge*, vol. 2, 92, 118.

¹⁸ 'Evidence of D'Arcy Wentworth' in Ritchie, *Evidence to Bigge*, vol. 1, 44-5.

industrious; addicted to drunkenness and prefer[ing] a licentious and unsettled life to the attention requisite for the proper cultivation of their lands".¹⁹ .

Bigge also used the data he compiled on summary punishment to criticise the policing of the colony and argue for stricter enforcement of the laws against public drunkenness. Supported by the higher rate of conviction for drunkenness in Parramatta, Bigge cited with approval the local magistrates' practice of "giv[ing] every encouragement to their police officers to apprehend and detain both convicts and free men who were in a state of intoxication, and who were disturbing the public peace". He also noted with approval the construction of a special gaol in Windsor to house lawbreakers including drunkards apprehended overnight. Citing the many deaths from drunkenness and the public disorder on market days he called for "every restraint on the immoderate use of spirits, that can be effected either through the means of positive regulation or exemplary punishment".²⁰ Over the next two decades, improved policing would allow for a more efficient and systematic response to alcohol problems but this would lead to challenges of its own.

Legislative Reform

With the passing of the NSW Act in 1823 the system of summary discipline in the colony was formalised. Courts of General and Quarter Sessions were established to try summarily "all Complaints made against [convicts] for Drunkenness ... or other turbulent or disorderly Conduct", and punish offenders with flogging, transportation or hard labour.²¹ The Summary Punishment Act of 1825 statutorily limited this to "moderate punishment": up to ten days on a treadmill, fifty lashes, a week of solitary confinement or three months hard labour.²² Meanwhile, the first licensing act established the principal of penalising publicans who permitted 'disorderly conduct' on their premises and called for a bond against permitting "any person to become drunk".²³ Fines under the Act were used to reward informers, encouraging stricter policing of licensed houses, a significant increase in the charging of publicans and repeated complaints about police corruption.²⁴

¹⁹ 'Evidence of John Oxley' in Ritchie, *Evidence to Bigge*, vol. 1, 74.

²⁰ Bigge, *Judicial*, 73-4.

²¹ 'Proclamation', *Gazette*, 22nd July 1824, 1. A Colonial Act also established fines for publicans serving convicts without their masters' permission. See: 'Harbouring of Runaway Convicts Act' (5 Geo IV, No. 3), *Statutes of NSW*, 19th Jan. 1825, 3.

²² 'Male Convicts Punishment Act' (6 Geo. IV, no. 5), *Statutes of NSW*, 8th Feb. 1825, 8-9. Punishments were not fixed for female convicts until 1830: 'Offenders Punishment and Transportation Act', (11 Geo. IV, no. 12), *Statutes of NSW*, 12th May 1830, 241-6.

²³ 'Licensed Publicans' Act' (6 Geo. IV, no. 4), *Statutes of NSW*, 8th Feb. 1825, 5-7. After 1830 they were divided between the informer and the crown. See: 'Licensed Publicans' Act' (7 Geo. IV, no. 2, *Statutes of NSW*, 20th Feb. 1826, 37.

²⁴ 'Fines and Penalties Recovery Act', (6 Geo. IV, no. 20), *Statutes of NSW*, 1st Nov. 1825, 22-3; 'Publicans' Licensing Acts Consolidation' (11 Geo. IV, no. 11), *Statutes of NSW*, (12th May 1830), 235.

However, there was no local legislation on public drunkenness among the growing numbers of free men and women in NSW and the status of any fines – the essential incentive to police action – was ambiguous. On Bigge's recommendation, Brisbane was specifically reminded to restrict the use of spirits, and advised to issue larger fines which would better reward constables "in the suppression and punishment of drunkenness" but no new regulation was forthcoming.²⁵ Despite this, drunkenness was becoming a more significant offence for the colonial police. Growing numbers of free urban workers who were not subject to the summary discipline reserved for convicts seem to have led to an increase in arrests.²⁶

One other likely explanation is the continuing modernisation of the Sydney police. Captain F.N. Rossi was appointed Police Superintendent for the colony in 1825 though, in practice, he was confined by his workload to Sydney. Rossi oversaw a re-organisation of the police districts, new shifts, new uniforms and badges and the professionalisation of the force, with increased wages for all ranks that finally saw ordinary constables paid a salary. Requesting this remuneration, Rossi pointed to the challenge of policing Sydney, not just a convict town but also a thriving port, and described how convicts were attracted to the city to commit crimes. Noting that many of these convicts would soon become emancipists he argued that "nothing short of the strict operations of a Vagrant Act, aided by a strong and active Police" could deal with the criminal propensities of the Sydney population once they received their pardons and were no longer subject to summary justice.²⁷ He also stressed the impossibility of controlling crime without a properly paid force of adequate size and standardised wages and rewards to encourage diligence while increasing police numbers. However, despite these reforms, the quality of personnel and the high turnover rate remained a significant problem: between May 1825 and October 1826, there were fifty-seven police dismissed for misconduct (mostly drunkenness) and twenty-five resignations.²⁸

²⁵ 'Bathurst to Brisbane', 31st July 1823, 'Brisbane to Bathurst', 14th May 1825, *HRA*, Vol. 11, 96-7, 581-2, 588. Brisbane claimed to have done "as much as possible" to achieve this and mentioned stimulating police activity by allowing Magistrates to give rewards on credit from the Colonial Treasury, including in his despatch a copy of the form to be used for this purpose.

²⁶ 'Return of Convicts Before Magistrates, Sydney Police Office, Jul. – Dec. 1824', Colonial Secretary's Correspondence, Special Bundles 1794-1825, NSW State Archives, 4/6671 pt. Note that despite the title, this return includes free persons, convicts and ticket holders charged before the bench. 42 out of 477 (9.2%) convicts were charged with drunkenness or a related offence, compared to 22 out of 124 (17.7%) free. Although the sample size is too small to be conclusive this fits with the pattern of increasing concern.

²⁷ 'Report on Police', 7th Oct. 1826, *HRA*, vol. 12, 678-88; Hazel King, 'Some Aspects of Police Administration in NSW, 1825-1851', *JRAHS*, vol. 42, pt. 5 (1956), pp205-30, 216-8; Swanton, *Police*, 25-7.

²⁸ In 1820 there were 142 police (or 5.26 per 1000 population) in the colony as a whole and 59 (or 5.07) in Sydney; by 1829 there were 292 (or 7.12) and 77 (or 7.14). See: Sturma, *Vice*, 74; King, 'Police', 215; *Gazette*, 20th May 1820, 1; 23rd June 1821, 2s; 23rd Oct. 1825, 2; *VPLC* (1833), 166-7. For dismissals see: King, 'Police', 218.

Magistrate numbers also increased substantially in the 1820s, largely drawn from the larger ranks of the independent gentry.²⁹ Despite growing well above the rate of the population, the system was unable to cope with the rapid expansion of settlement and rural magistrates were both overworked and poorly supervised leading to inconsistency and bias. Efforts by the Governors, to solve this problem led to increased scrutiny and the expansion of stipendiary positions which helped achieve a greater degree of professionalism and more central control over policing without significantly increasing costs. New Police Magistrates were appointed to Parramatta and Windsor in 1825 and by 1837 there were three in Sydney, two in Port Phillip and eighteen in the rest of NSW.³⁰

The punishment of drunkenness was also tightened and specific penalties laid out under local acts in 1830 and 1832 that hardened the existing distinction between convict and free.³¹ Convict drunkenness now had to be judged by two magistrates, who could have women imprisoned or sentenced to the female factory, and men flogged, or worked on the treadmill; meanwhile, free colonists were still only fined 5 shillings or put in the stocks. The limitation of magisterial discretion over convicts proved controversial with amateur magistrates complaining that their independence was unreasonably curtailed by an authoritarian central government. This fitted into a discourse in which the pastoral elite challenged the authority of the Governors employing a version of the Country Whig arguments of eighteenth-century British gentry. In particular, magistrates in the Hunter led by James Mudie, who was infamous for ordering savage floggings of convicts, circulated a petition against the reforms and published it in England.³² Justifying his actions in response to such critics, Governor Bourke gave a powerful summary of the enormous powers possessed by magistrates in NSW:

Although the condition of the Convict is that of a Slave, it has not been thought desirable to give to the Master a power of personally inflicting punishment; a most extensive summary jurisdiction is however given to Magistrates [including over drunkenness] ... which would

²⁹ There were 21 magistrates in November 1822 and 83 in January 1827. See: Golder, *Magistracy*, 28-30.

³⁰ 'Brisbane to Bathurst', 28th Jan. 1825; 'Darling to Bathurst', 20th Nov. 1826, *HRA*, vol. 11, 477; vol. 12, 697-9; Golder, *Magistracy*, 34-5, 38-42; McLaughlin, 'Magistracy', ch. 10. As Darling noted, the honorary magistrates were rewarded with convicts and rations that cost the government real money – he estimated £2200 a year in 1826.

³¹ 'Offenders' Punishment and Transportation Act' (11 Geo. IV, No. 12), *Statutes of NSW*, 12th May 1830, 241-3; 'Offenders' Punishment and Justices' Summary Jurisdiction Act' (3 Gul. IV, No. 3), *Statutes of NSW*, 24th Aug. 1832, 324-30.

³² The climax of Mudie's campaign against Governor Bourke and the liberal view of convict punishment was his book length attack on the colony. See: James Mudie, *The Felony of NSW...*, Walter Stone (ed.), Melbourne: Lansdowne Press, 1964 (first ed. 1837). For more on the exclusive objections to Darling and Bourke's reforms see: Golder, *Magistracy*, 47-50; Neal, *Rule of Law*, 120-3, 126-31; Hirst, *Freedom*, 158-175; Michael Sturma, *Vice in a Vicious Society: Crime and Convicts in Mid-Nineteenth-Century New South Wales*, St. Lucia, Qld.: University of Queensland Press, 1983, ch. 1.

certainly be out of place in any but a Slave Code ... [Convicts] are often subjected to flogging and imprisonment for offences which in [English labourers] would be punished by reproof ... ³³

This extraordinary discretion over convicts had often led to lenient treatment of drunkenness but the new professional police were increasingly committed to a systematic application of the law. Thus by the end of the 1830s, NSW effectively had two distinct systems of policing. Sydney and other towns had a modern and efficient force, dedicated to preserving public order, while the rural districts had a system run along military lines, mostly concerned with armed insurrection by bushrangers and aborigines, in which alcohol problems were an afterthought.³⁴

The new Sydney Police Act of 1833, deliberately modelled on Peel's new police in London, consolidated this divide and set a precedent for centralised regulation of public order in NSW.³⁵ The Act established a wide range of offences against good order – from Sabbath-breaking to dumping rubbish – called for magistrates to suppress all breaches of the peace and public nuisances and made them responsible for selecting and controlling the Police Constables. Constables were to arrest “any person ... drunk in the streets or public places [of Sydney] ... and to apprehend all loose idle drunken and disorderly persons ... between sunset and the hour of eight in the forenoon”.³⁶ This distinction seems to have anticipated the first colonial Vagrants' Act of 1835 which designated thrice convicted or 'habitual' drunkards as 'idle and disorderly', a judicial category which made the offender subject to far more serious sentences – up to 3 months hard labour – citizen arrest and random police searches. The Vagrants Act was explicitly designed to deal with the growing problem of emancipists, predicted by Rossi. It created a criminal class, subject to stricter punishment and greater surveillance than ordinary citizens, ordering all transported persons who were convicted of a serious offence in NSW to register with the nearest magistrate and made them subject to stricter penalties for disturbing the peace. This was thus a system in which repeated public drunkenness by free citizens was, at least in theory, subject to the heavy scrutiny and severe punishment of the convict legal code.³⁷

³³ 'Bourke to Stanley', 15th Jan. 1834, *HRA*, vol. 17, 322-5.

³⁴ Golder, *Magistracy*, 45-6.

³⁵ 'Bourke to Stanley', 2nd Oct. 1833, *HRA*, vol. 17, 233-5. For Peel's Act see: 'Metropolitan Police Act', 1829 (10 Geo. 4 c. 44), National Archives, U.K. Legislation, [<http://www.legislation.gov.uk/ukpga/Geo4/10/44/contents> – accessed 12th May 2012]; Phillips, 'Authority'.

³⁶ 'Sydney Police Act' (4 Gul. IV, no. 7), *Statutes of NSW*, 6th Aug. 1833, 423.

³⁷ 'Vagrants Act' (6 Gul. IV, no. 6), *Statutes of NSW*, 25th Aug. 1835, 631-2. Also included under the Act were all persons with “no visible means of support or insufficient lawful means”, all whites associating with natives, all prostitutes found in public, all who “shall behave in a riotous or indecent manner”, all persons found within houses of ill repute and all beggars.

Arresting Public Drunkards

The new police had many faults but they were a much more efficient means of punishing free drunkards. In Sydney in the early 1830s over forty percent of all free persons brought before a magistrate were charged with drunkenness, in contrast to less than seven percent of convicts.³⁸ Clearly, there was a significant change in the policing of drinkers during the 1820s and 1830s, especially focussed on the free population, but a lack of data makes it difficult to pinpoint exactly when and why it occurred. Paula Byrne identifies an increased surveillance of the streets during the 1820s, with larger numbers of arrests for a swathe of public order offences and suggests that magistrates encouraged this practice by rewarding arresting officers.³⁹ Changing arrest rates also reflected the growth of the non-convict population and the consequent transformation of NSW society. While convicts remained over a third of the population until the 1840s, the increasing number of free emigrants, freed convicts and ticket of leave holders helped create a new urban working class who required a new form of policing.⁴⁰

Where convict populations were relatively easily controlled by amateur magistrates, with summary proceedings for almost any infraction of authority, free workers were, at least in theory, entitled to English liberties and could not be arrested simply for insolence or refusal to work. The passing of colonial masters and servants legislation in 1828 was a reflection of this changed dynamic as were the Sydney Police Act and the Vagrants Act discussed above.⁴¹ But this transformation also

In practice, it appears that few offenders were charged with habitual drunkenness, at least in the 1830s, in part because the cases were expensive and therefore unprofitable for constables. See: 'Information for Drunkards', *Australian*, 6th Feb. 1839, 2.

³⁸ Free: 'Registers of cases involving free persons, Police Magistrate's Bench, 1830-1', NSW State Archives, NRS3403. In 1830, 705 of 1979 (35.6%) were charged and in 1831, 670 of 1410 (47.5%). The decline in the number of cases and increasing proportion of drunkenness shows the weakness of this data approach to the records because it probably reflects a larger number of cases being recorded at a different bench for which the records are now lost. Notwithstanding this warning, the disparity between the early colony and the 1830s onward is so significant that it must be meaningful. Convict: 'Police Report of Prisoners Tried, Hyde Park Barracks, Jan.-Jul. 1832', Colonial Secretary's Correspondence, Special Bundles 1826-1832, NSW State Archives, NRS 906, x825. There were 825 convicts charged in this period and only 55 (6.66%) for drunkenness. Note that the book is missing the first two weeks of July. Compare also the convict cases before the Patrick's Plains bench in 1834-5 where less than five percent were for drunkenness. See: Sturma, *Vice*, 17.

³⁹ Byrne, *Criminal*, Table 20, 161. She records 7 drunkenness or related offences in a sample from 1820-1 out of a total of 21 free arrests, and 106 in 1828 out of a total of 147. I have not consulted the original records for these figures but the sample size, especially for the early period is too small to be accorded any great significance. Nonetheless, they support the trend I identify.

⁴⁰ For population statistics see: Wray Vamplew (ed.), *Australians: Historical Statistics*, Sydney: Fairfax, Syme & Weldon, 1987, 104. For class formation see: R.W. Connell and T.H. Irving, *Class Structure in Australian History: Documents, Narrative and Argument*, Melbourne: Longman Cheshire, 1980, 54-61. I am using class in a less rigorous manner, simply referring to the changed legal status of urban workers, not their relation to the means of production or their collective consciousness. For a vision of this development closer to my own see: Michael Roe, *Quest for Authority in Eastern Australia 1835-1851*, Kingsgrove Vic.: Melbourne University Press, 1965.

⁴¹ 'Servants and Labourers Act' (9 Geo. IV no. 9), *Statutes of NSW* (17th July 1828), 138-40. For more on the significance of this Act and the attempt to control colonial labour see: Michael Quinlan, 'Australia 1788-1902, A Workingman's Paradise?',

increased the value of drunkenness as a disciplinary offence. For a free population, arrest for drunkenness was the easiest means by which the police could deal with the unruly and disreputable and bring them before a magistrate. Drunkenness was a discretionary charge, easily attributed to deviant or disorderly individuals, regardless of their actual level of intoxication – and conversely, easily excused among the respectable – and for this reason rising arrests cannot be attributed solely to increased consumption of alcohol. As Byrne argues, in the late 1820s, “two strands of policing practice – the surveillance of the convict and of the vagrant – had begun to converge”.⁴² Where policing under Macquarie was explicitly a system of convict management, the period between 1820 and 1840 witnessed a transition towards a more modern notion of policing public order and by extension public morals and this new system placed a much greater emphasis on controlling public drinking.

There is also some evidence that convict drunkenness was regarded with increasing severity. Returns of convict punishments show a significant increase in both the proportion of floggings and of total lashes administered to convicts for the offence of drunkenness in the 1830s (Figure 5).

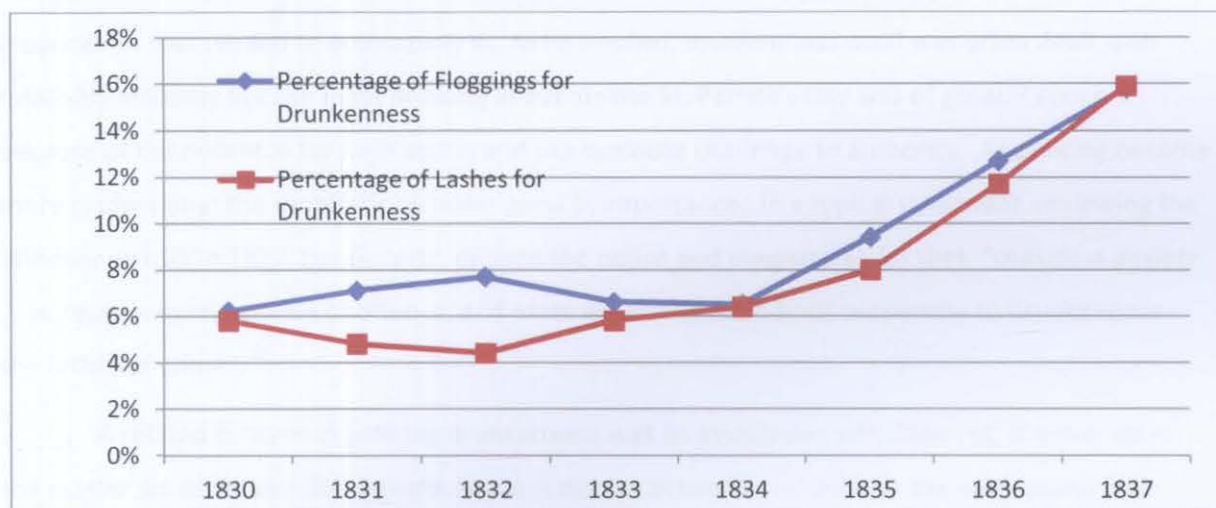


Figure 5 - Percentage of Convict Punishments for Drunkenness, 1830-7. (Data from: 'Return of floggings', 8th Nov. 1838, *HRA*, vol. 19, 654)

Douglas Hay and Paul Craven (eds.), *Masters, Servants and Magistrates in Britain and the Empire, 1562-1955*, Chapel Hill, N.C.: University of North Carolina Press, 2004, pp219-250.

⁴² Byrne, 162-3. Byrne also suggests that policing of vagrant women pre-dated policing of vagrant men. Free women on the streets at night were perceived as a problem much earlier than free men.

This suggests that growing police attention to drunkenness was not simply a matter of controlling a freed population. The need to discipline a more independent workforce coincided with a renewed concern about public morals, especially with the rise of temperance. But throughout the period 1810-1835, the driving force behind the prosecution of drunkenness, convict and free, was its perception as a threat to society, a cause of crime, disorder and idleness.

Sentencing Dennis Mcarthy to three months solitary confinement and seven years at Newcastle for assaulting a constable, Ellis Bent noted that the offence took place on St. Patrick's Day and lamented:

the acts of excess and violence into which the lower orders of persons rush upon that and other particular holidays ... However leniently many of those who had fallen under these excesses may have heretofore been dealt with, yet there had long since appeared a strong necessity for restraining, by the force of example ... against the dangerous folly of assembling on particular days of festival, or at any other periods, for the purposes of in- temperate drinking⁴³

Bent was not only troubled by criminal excess, but also a fear of popular celebration and the ritual intoxication that tended to accompany it. As he implied, drunkenness itself was often dealt with relatively leniently but the mass drinking at events like St. Patrick's Day was of greater concern because of the potential for mob action and the symbolic challenge to authority. As policing became more professional this emphasis on order grew in importance. In a typical statement, reviewing the Windsor district in 1827, the *Gazette*, praised the police and magistrates for their "ceaseless anxiety ... to repress every species of offence, and more especially the odious propensity to drunkenness - the father of crime".⁴⁴

A related concern in policing drunkenness was its association with idleness, in many ways the master sin of convict life, threatening as it did the economic survival (in the early years) and prosperity of the colony. This is seen in the case of Thomas Biggers, an emancipist charged with breaching the peace and "using vile and daring expressions in the open street", who pleaded in defence his "extreme intoxication" and asked for mercy on account of his family. The sitting magistrate, the fellow emancipist Simeon Lord, discharged him with a reprimand and a good behaviour bond, but noted that:

⁴³ 'Court of Criminal Jurisdiction', *Gazette*, 25th June 1814, 2.

⁴⁴ *Gazette*, 12th Jan. 1827, 1.

*the depravity of his manners was the more lamentable, as the present comfort and future welfare of his children much depended on his personal assiduity, and the moral example it was his duty to set before them - whereas to both these requisites habitual drunkenness was an undoubted bar.*⁴⁵

The police concern in this case was with the disturbance of the peace and especially Biggers' ability to work, not with drunkenness as such; indeed it was never charged as an offence despite forming an element of his plea. Here drunkenness was largely a personal moral failing, chastised by the bench for its consequences.

A further example of this use of drunkenness as an excuse will help clarify the popular understanding of alcohol. William Ward was charged with stealing a pistol but claimed "insensibility arising from miserable inebriety", a plea that was undermined by the fact that he had craftily managed to scratch the owners name from the weapon in the hour before he was apprehended.⁴⁶ Despite the failure of this defence and the clear legal precedent that established drunkenness as exacerbating, rather than mitigating an offence, it appears that in the social imaginary, drunkenness could function as an excuse or at least an explanation of deviant behaviour.⁴⁷ When three burglars were publicly executed in 1820 they gave speeches before the crowd gathered at the gallows in which they "exhort[ed] their fellow prisoners, who witnessed the unhappy spectacle, to shun those vile practices which prevailed among them, gambling, drunkenness, theft, and the total neglect of religion".⁴⁸ Even at a popular level, drunkenness was intuitively understood as a cause of crime and sin but this popular understanding was applied very unevenly by the police.

One area in which the subjectivity of the offence was especially apparent was in the different treatment of men and women who were found drunk. Reflecting larger differences in the understanding of the sexes, male drunkenness was generally connected to crime and especially violence but female drunkenness was more typically framed in terms of vice and virtue and seen as a symptom of moral degradation. As Joy Damousi has argued, female adoption of what were regarded as male characteristics like excessive drinking or sexual license, threatened emerging

⁴⁵ 'Sydney', *Gazette*, 10th Apr. 1813, 2. Lord was one of Macquarie's emancipist appointments to the magistracy, who lost his position after complaints from the free Judiciary. His background may have inclined him to a more sympathetic view of Biggers' offence but his sympathy seems vindicated as Biggers went on to own land and prosper in the colony. See: 'Government and General Orders', *Gazette*, 22nd June 1816, 1, where a Thomas Biggers is listed as one of those allowed to purchase cattle from the Government herds.

⁴⁶ 'Criminal court', *Gazette*, 11th Aug, 1821, 3.

⁴⁷ For more on the question of drunken responsibility for crime see below, 246ff.

⁴⁸ *Gazette*, 15th July 1820, 2.

respectable values.⁴⁹ NSW society defined women as servants and prospective wives and in either case, drunkenness challenged their proper role. For servants, the failure of obedience and deference defied the assumed status of their masters, while the sinfulness of drinking threatened the purity that wives were supposed to embody. There is some evidence that public order offences like drunkenness were pursued with greater vigour against women, especially given their smaller numbers in the colony but there is no question that offenders were treated very differently by the authorities.⁵⁰

While female convicts were usually spared corporal punishment they were instead subjected to imprisonment, sometimes combined with humiliation and the withdrawal of privileges and drunken women were typically confined to the stocks or, if recidivists, or convicts, sent to the Female Factory.⁵¹ A case from November 1823 against a group of two men and three women who were engaged in a drunken party in the Rocks, illustrates the double standard. Hearing “a terrible alarm” the chief Constable, Mr. Dunn, forced entrance to the house where he found all five “intoxicated” and one of the women so drunk she could not be moved until morning.⁵² The men, both visiting sailors, were returned to their ship and the discipline of their captain, but the women who were free but “known to all the Police, as well as to the Town of Sydney, as the most abandoned of their species” received three months hard labour in the Factory at Parramatta. A notable feature of such cases is the different language used to describe male and female drunkenness; where drunken men were “abusive” and “threatening”, women were “insolent” and “disobedient”. Female offenders were much more frequently described in moral terms such as Mary Reardon, a free offender whose conduct was described not merely as drunken but also “depraved and corrupted”.⁵³

Reporting on drunken women took two distinct forms. Describing their sentences, the *Herald* deployed a humorous approach: they were sent to “try the air in Parramatta”, to “the school for sobriety”, or “Mrs. Gordon’s temperance school”.⁵⁴ But in its editorials, the paper took a very different tone, lamenting their failure to reform and fearing for future generations. Describing the failure of the Factory the *Herald* noted:

⁴⁹ Damousi, *Depraved*, 38-9.

⁵⁰ Byrne, *Criminal*, 39-40, 161-2. Her sample is not large enough to draw a definitive conclusion.

⁵¹ Golder, *Magistracy*, 22-3. See for example, Sarah McGrady: ‘Police Magistrate’s Bench, 1815-16’, 358.

⁵² *Gazette*, 27th Nov. 1823, 2.

⁵³ ‘Return of Convicts, 1824’, 10th Sep. 1824.

⁵⁴ See the collected examples from the 1830s in: Judith Dunn (ed.), *Colonial ladies: Lovely, Lively and Lamentably Loose. Crime Reports from the Sydney Herald relating to the Female Factory, Parramatta, 1831-1835*, Riverwood, NSW: Lingare Pty. Ltd., 2008, 37-50.

The excellence of the treatment, the snugness of the retreat, and the absence of labor, are inducements to indiscriminate prostitution and insubordination. They are a bounty on immorality; labour, there is none, associates and shipmates are numerous; food, clothing, lodging, and medical treatment are provided, and although on entrance the locks of the "fair penitents" are sometimes shorn, yet these may luxuriantly grow again, after retirement and good treatment, and their absence will not detract from their charms.⁵⁵

The system of punishment only cemented the alienation of convict women from society and failed to mould them into the compliant wives the colony required.

An editorial in the *Monitor* in 1826 expanded on this idea of lenience and set out the underlying presumptions about the inherent deviance of female drunkards. Attacking recent calls for distributing women as servants immediately from the transports, the paper argued they were:

too full of gaiety and presumption on their arrival in this fine climate, steadily to set to work as servants do in England ... Accustomed all their lives to idleness and intemperance, the flow of health and spirits, the excitations produced by novelty and by being set free from the bondage of ship-board, will soon tempt them to insubordination and licentiousness.

Marriage was no solution for many of the women were too degraded to make useful wives, the editor asking:

Is it not better for society that we should be troubled with an unmarried drunken childless prostitute, than with the same person bringing up children and training up her daughters to be prostitutes before they can even have any inclination to unchastity?⁵⁶

This aptly illustrates the fundamental distinction between male and female drunkenness in NSW. Whereas male drinkers were disorderly and idle, and threatened the established order and its dependence on dutiful labour, female drunkards represented an existential threat to the future of the colony.

In contrast, though Aboriginal drinking was similarly demonised, Aboriginal drinkers were generally treated with patronising lenience. Macquarie's Port Regulations of 1810, were an early example of discriminatory regulation, ordering that "no spirits, wine, beer or other intoxicating

⁵⁵ 'Female Convicts or Penal Discipline in 1835', *Herald*, 5th Oct. 1835, 2.

⁵⁶ *Monitor*, 9th June 1826, 27-8.

liquor is to be sold or given from on board any vessel to a native".⁵⁷ In practice, this order had almost no effect and Aborigines were regularly found drunk in the towns of the colony. Indeed, visitors to NSW made the drunkenness of the natives into a trope of similar power to the drunkenness of the convicts.⁵⁸ But when before the courts, native offenders were regarded as childlike and irresponsible and they were rarely punished severely. For example, Simon, a native "well known to the Inhabitants of Windsor", was charged with drunkenness and disorder in 1826 after he violently resisted his removal from a public house, but despite smashing the window and threatening bystanders he was only placed in the stocks – a convict committing such an aggravated offence would certainly have been flogged.⁵⁹ In another such case, Terrebelong was charged with the same offence but released without punishment after his tribal Chief came to the court to plead for him.⁶⁰

But the largest distinctions were between the convict and free population of NSW. Licensing acts and other regulations in this period sought to tighten official control over convict behaviour and restricted convict access to alcohol, though not always with great success. One classic example was Maquarie's decision to order the unassigned convicts in Sydney into barracks from which he explicitly barred liquor.⁶¹ However, convicts were frequently found outside the barracks after curfew and their lack of a uniform made distinguishing barracks inmates, assignees, ticket-of-leave men and the growing numbers of free immigrants almost impossible. Despite the challenge of identifying convicts, the laws in this period explicitly established different punishments. In a clear illustration of differential treatment an overseer and two convicts who managed a ferry in Hobart were all convicted of drunkenness but, while the free supervisor was merely fined, the two convicts drinking with him were given 25 lashes apiece.⁶²

Convict drunkenness was also subject to substantial discretion. The potential informality of magistrates is shown in the records of evidence gathered for the Grand Jury investigation of Henry Grattan Douglass. Douglass was appointed a magistrate at Parramatta upon his arrival in the colony in 1821 but soon became embroiled in a feud with his colleagues on the Parramatta bench, who

⁵⁷ 'Port regulations', 1st Oct. 1810, cited in: Jean Woolmington (ed.), *Aborigines in Colonial Society, 1788-1850: A Sourcebook*, Armidale: UNE Press, 1988, 6.

⁵⁸ See for example, the account of Dr Roger Oldfield in 1828, cited in: R.H.W. Reece, *Aborigines and Colonists: Aboriginal and Colonial Society in NSW in the 1830s and 1840s*, Sydney: Sydney University Press, 1974, 6-11. For a (probably) local perspective on the problem see the anonymous poem and caricature: [Author unknown], 'Real Life in Sydney', c. 1838, Mitchell Library, B1106.

⁵⁹ *Monitor*, 9th June, 1826, 2.

⁶⁰ *Australian*, 21st July 1825, 3.

⁶¹ 'Government and General Order' *Gazette*, 8th May 1819, 1.

⁶² *Gazette*, 17th April 1823, 2.

accused him of drunkenness and improper treatment of prisoners.⁶³ Among the evidence gathered by the Grand Jury was a case in Liverpool in 1824, in which illegal punishments were used to induce a confession from convicts. Anthony Radley and James Gogam, assigned to a Mr Brackfield, were found in their hut “very drunk and riotous, breaking every thing before them”. After refusing to reveal the source of the liquor they were confined over a weekend, with the order that, “if they will not then inform the Court where they got the spirits, they are to receive 100 lashes”. On the Monday, Radley broke down and claimed his source was a third convict, Benson, but with each blaming the others, all three were eventually sentenced to one hundred lashes, and Gogam and Benson were sent to the gaol gang.⁶⁴ This case and the kind of irregular practice it reveals were unlikely to have been outliers; indeed the attempt to prevent such capricious justice drove officials to regulate petty sessions. Alexander Harris tells a similar story, describing an incident in which a drunken convict who had his clothes stolen and was thus afraid to go home to his master was found guilty of drunkenness, stealing clothing, and absconding, and flogged for each offence.⁶⁵ This reveals a legal culture where convicts were assumed to be guilty, drunkenness was a sign of moral corruption and the law was an instrument for managing this deviant population.

Due to the ever greater numbers and proportion of free settlers in the colony, and the tightening of colonial legislation, this distinction began to break down during the 1830s, only to be replaced by the more traditional distinction between rich and poor that was implicit in English law and its exclusive focus on public drunkenness. A humorous anecdote published in the *Gazette* reflects this traditional bias: two London printers were arrested for drunkenness and brought before the bench. Asked their profession, the first replied that he was reared to the bar (meaning the press) while the second said that he was a man of letters. This “put his Worship into a great rage” and he threw out the cases, abusing the police “for not being able to tell the difference between blackguards and gentlemen”.⁶⁶ Though apocryphal, this tale reflects the importance of class to the law of drunkenness. If recognised as printers the men would have been fined or sent to the stocks; as gentlemen they were released with apologies. One example of this lenient treatment was

⁶³ The dispute with Douglass led to a split on the Parramatta bench with the other magistrates refusing to sit with him. For more details see: Noad, K. B., 'Douglass, Henry Grattan (1790–1865)', *ADB*, <http://adb.anu.edu.au/biography/douglass-henry-grattan-1987/text2417>, accessed 22 November 2011; Byrne, *Magistracy*, 170-1. For claims of drunkenness and his exoneration see: 'Brisbane to Bathurst', 11th Aug. 1825, *HRA*, vol. 11, 782-807.

⁶⁴ U.K. Parliament, House of Commons, *Papers Relating to the Conduct of Magistrates in NSW, in directing the Infliction of Punishments upon Prisoners in that Colony*, London: 1826, 6, 276-7.

⁶⁵ Harris, *Settlers*, 20-1. I cannot locate this case which may be a composite fiction. Regardless, it certainly represents a real phenomenon. See for example: 'Circular Letter', 10th Apr. 1826, *HRA*, vol. 12, 329-30.

⁶⁶ *Gazette*, 6th Jan. 1825, 2.

William Wentworth, a notorious alcoholic who was never officially charged with drunkenness, though he was rumoured to have been picked up by the police on numerous occasions.⁶⁷

We can see this bias very clearly in accounts of the celebrations of the various classes in the colony. Describing St Patricks Day in 1832, the *Australian* commented:

*[w]e have rarely beheld the number of Bacchanals exceeded. Nearly all about the Rocks, three-fourths of the population appeared, as if by common consent, to be determinedly agreed in one thing, and in no other — namely, to get drunk. Never had the rum bottle more determined votaries. The stocks and drunken [sic] police fund found plenty of contributors next morning.*⁶⁸

In stark contrast was the paper's description of the "excellent dinner" for over fifty gentlemen "in convivial commemoration of St. Andrew", held that same year. In addition to the wines accompanying dinner, over twenty toasts were drunk, after which the gentlemen, "having enjoyed their jolly stoup to a goodly hour, ganged hame all unco fou [sic] and happy".⁶⁹

More significantly, this bias manifested in the actions of the police. In a concerted attack on class distinctions, the *Monitor* reported a series of incidents in which the police violently assaulted free drunkards who supposedly resisted arrest. In one example, Mr. Whalen, a shoemaker, was found in the street making a drunken row after his wife deserted him. When the constables tried to arrest him he offered to return peaceably to his home. Likely motivated by the prospect of a reward, the constables refused and dragged Whalen by his arm towards the watch-house, administering a savage beating when he tried to escape. Taken before the bench:

*his wounds were considered ... as damning proofs of his guilt! ... [S]o the poor shoemaker was ordered to the stocks, and the three constables who had so mistreated him, received praise for the zealous discharge of their duty.*⁷⁰

A similar case a few weeks later, saw George Tuesman, a huxter and pig jobber found drunk and asleep outside his house. Again the police sought to drag him to the watch-house and again, in resisting arrest he was beaten to within an inch of his life.⁷¹

⁶⁷ Ritchie cites three occasions on which he was "placed under military restraint for being drunk and disorderly". See: Ritchie, *Wentworths*, 206. For an example of Wentworth's reputation see also: *Gazette*, 6th June 1833, 3. He was also known to have supplied convicts with alcohol for which he was never charged. See: Richard Waterhouse, *Private Pleasures, Public Leisure, A History of Australian Popular Culture Since 1788*, Sydney: Longman, 1995, 19.

⁶⁸ *Australian*, 30th Mar. 1832, 3.

⁶⁹ 'Scotia's Patron Saint', *Australian*, 14th Dec. 1832, 4.

⁷⁰ "'Lofty Spirits" and Constable Spirits, or Sydney Bench Justice', *Monitor*, 3rd Oct. 1829, 4.

Contrasting with these stories, the *Monitor* offered a contemporary account that demonstrated how “people of respectability, have rather better luck with our Sydney Bench”. A Mr. M and Mr. G (their names were obscured, presumably for fear of a libel suit), were returning from a dinner with Alexander Baxter, the new Attorney General, when they were stopped by the police. Hall’s description of their state is worth quoting in full – they were:

(to use the constables' expression) "bestly drunk", [or rather] these Gentlemen were merely "pleasant company" or as it may be termed "agreeably elevated" or to use another description of claret excitation as compared with excitation by vulgar rum or ale, the Gentlemen might be just "mellow"; however, to waive nice distinctions; the constables swore point blank to the Gentlemen being "the worse of liquor"...

But the next morning they were easily and speedily acquitted and the constables themselves charged with wrongful arrest and suspended for three months, the magistrate noting that “constables had no right to take up drunken persons who were peaceable”.⁷² Clearly this right was not equally applied in NSW.

Indeed, in the light of these cases and the obvious prejudice they indicate, the Sydney Police Act and the Vagrants Act can be read as an attempt to effectively re-establish a convict class among the free. Under these statutes, once a poor man fell afoul of the law, traditional liberties were rapidly removed, the police could arrest an offender simply for failing to give a good account of themselves, and magistrates’ summary jurisdiction was restored. Just as importantly, the Police Act established the principal of discretionary bail. Constables could release drunkards or other offenders under a bond that they appear before a magistrate for their offence, a rule that supported the institutionalised bias towards “respectable” offenders. Those with money paid sureties for their release but never returned to face trial and this practice gradually evolved into a formal system under which arrested drunkards who paid the value of the maximum fine were immediately released and never pursued when they failed to attend court.⁷³

The *Monitor’s* account also highlights the corruption and unreliability of the police themselves. Throughout this period, the force remained predominantly convicts and ex-convicts who relied on rewards for income and were notorious for corruption and entrapment.⁷⁴ Bigge was

⁷¹ ‘More Sydney Bench Justice’, *Australian*, 31st Jan. 1829, 2.

⁷² *Monitor*, 3rd Oct. 1829, 4.

⁷³ Sturma, *Vice*, 155-8. For more on this system of fines and its evolution see below, 223ff.

⁷⁴ Hirst, *Freedom*, 135.

heavily critical of Macquarie's police arguing that the "inconsiderable allowances" discouraged "men of good character" and noting that "constables have been frequently dismissed, either for drunkenness or inattention to their duty".⁷⁵ Such complaints were a staple of the period and continued into the 1830s. In an example from 1829, District Constable Hamilton was charged, not only with being too drunk to perform his duty, but with arresting an innocent woman and infant "while in that state".⁷⁶ Rossi, rather than dismissing his officer, simply fined him a pound and moved him to a different district. Commenting on the case, the *Australian* noted that it was a strange decision but perhaps justified by the "peculiar circumstances" of the colony and the desperate need to retain good officers, given the grave difficulties in finding men to serve. With this as the standard of policing it is no surprise that drunkenness remained widespread in NSW.

But despite their corruption and incompetence the NSW police had considerable authority over drunkenness. In a case that illustrates this power George Leland was charged with attempted murder of a convict who resisted arrest. George Greenhill had spent the evening drinking with friends and was returning to his master's house after the curfew when he was accosted by Leland and ordered to come to the watch-house. He refused upon which, Leland raised his pistol and fired twice, wounding Greenhill. Summing up the case, Justice Forbes noted that the police of NSW were accorded greater powers than their English counterparts "owing to the mixed nature of the population". Convicts were liable to summary jurisdiction for misconduct including drunkenness, whereas in England "unless a man, in his moments of inebriation betrayed symptoms of riotous behaviour", he could not be lawfully arrested.⁷⁷ Though an extreme case, Leland's actions reflected a view that those subject to the police in NSW were a dangerous criminal underclass, "a felony" in James Mudie's famous phrase. Summing up his view of the "two castes" in NSW, Mudie noted that the inequality between the convict and free was "just and legal" and derided the idea that emancipists should be entitled to the same rights and freedoms as "respectable" free settlers.⁷⁸ The expansion of drunkenness as an offence was in part a reflection of the need to retain control over the felony.

⁷⁵ Bigge, *State of the Colony*, 106. There were regular announcements of constables dismissed for drunkenness under Macquarie, for example, William Brown and Joseph Kearns in 1820: 'Government and General Orders', *Gazette*, 21th Oct, 1820, 1.

⁷⁶ 'Police Incident', *Australian*, 27th Feb. 1829, 3. The woman was immediately liberated by the Police Sergeant.

⁷⁷ 'Supreme Court', *Australian*, 22 Aug. 1828, 2, Division of Law, Macquarie University, *Decisions of the Superior Courts of New South Wales, 1788-1899*,

[http://www.law.mq.edu.au/research/colonial_case_law/nsw/cases/case_index/1828/r_v_lelland/ - accessed 12th May 2012]. Leland was found guilty but spared execution under a sentence of 'Death Recorded'.

⁷⁸ Mudie, *Felony*, 6-7.

Drunkenness and Crime in 1835

Fundamentally, policing in NSW remained mired in an eighteenth-century model that could not cope with the demands of the developing society. Despite attempts at reform, the police were still a disreputable body, whose largely convict origins deprived them of respect, whose low salary discouraged respectable applicants and whose poor reputation was largely deserved. Moreover, in NSW, even more than England, there was a need for modern urban policing to preserve public order because the penal origins of the colony added a symbolic charge to commonplace problems like drunkenness.

The Report of the 1835 Select Committee on Police illustrates most clearly the growing clash between traditional and modern approaches noting that the “want of uniformity in the constitution of the Police Force” was a major problem.⁷⁹ The Committee spoke to magistrates from across the Colony who were asked to report about the problem of crime in their respective districts. Rural JPs frequently repeated the traditional concern about drunkenness and its association with crime, particularly complaining about drinking during the weekly muster of convicts, which brought large numbers of servants into town and in reach of the pubs.⁸⁰ There were also calls for greater severity towards drunkards with longer sentences and larger numbers of lashes, a reflection of anger at official attempts to limit discretion. But this conservative view of policing also, by necessity, meant a system in which drunkenness would go largely unpunished. Sir John Jamison, Chief Magistrate at Penrith, illustrates this dilemma with his calls for a “salutary first punishment” of ten days imprisonment for “general crimes of trivial insubordination, drunkenness or neglect of duty”.⁸¹ Harsh penalties were necessary precisely because the traditional system made no pretence at a total surveillance of the criminal underclass – indeed it explicitly rejected such a policy as anathema to English liberty. Instead, it relied on exemplary punishment to discourage misbehaviour and excess. In fact, the whole ideology of traditional policing was based around the force of example, both the positive example of the gentleman who led society and the negative example of the severe punishments inflicted on offenders. Whether either could prove effective in the NSW of the 1830s is an open question.

⁷⁹ ‘Final Report of the Committee on Police and Gaols’, *VPLC* (1835), pp418-37, 424.

⁸⁰ NSW Legislative Council, ‘Minutes of Evidence taken Before the Committee on Police’, *VPLC* (1835), pp323-69, 331-2, 348. Robert Scott of St Patrick’s Plains even noted that Courts were often held in Public Houses, for want of a Courthouse, “in consequence of which scenes of drunkenness and disorder often occur”.

⁸¹ ‘Evidence 1835 Police Committee’, 336-7.

In any case, the view of Jamison and his amateur colleagues differed greatly from their professional urban counterparts. The former saw the solution to the growth of crime as a restoration of magisterial discretion, in keeping with their traditional eighteenth-century ideal of justice dispensed by gentlemen. The latter embodied in Colonel Wilson, the First Police Magistrate for Sydney, called for an expanded modern and professional police force that would pay much closer attention to the offence of drunkenness. Wilson described the duties of this new police focusing on maintaining public order among the:

great numbers of incorrigible bad characters, who, on obtaining their freedom, will not apply themselves to any honest mode of obtaining a living, but endeavour to support themselves in idleness and debauchery, by plunder – but who cannot be driven from their town haunts by the same process that vagabonds are disposed of at home .⁸²

Policing this sprawling town of twenty thousand, with its uniquely criminal population and the ease of escape provided by surrounding bushland, required a modern force along the lines of Peel's Metropolitan Police. In particular, the police needed to manage and control public drinking, both as a visible symbol of disorder and as an encouragement to crime both by the drinker himself and by other criminals targeting easy marks. The new legislation of the 1830s adopted this approach and by 1840 public drunkenness had become the default offense used by the police in their management of public order.

Later that same year, William Burton, the new Supreme Court Justice, delivered a Charge to the Jury at the close of the criminal sessions, which illustrated changing views of policing and justice in the Colony. He noted the high number of capital offences, often associated with drunkenness, and claiming NSW was in the grip of a crime wave he called for both moral and regulatory reform. He pointed to a series of systemic problems including the "overwhelming defect of religious principle in this community" and poor regulation of convicts, noting in particular the laxness of licensing which led to public houses that were little more than dens of thieves. Summing up his argument he claimed that the state of colonial morality was retarding development towards a free society and asked:

[what] must be the effect upon [free] institutions, of men passing from one class to another without moral improvement? ... it must be the total corruption of them all. [...] Free

⁸² 'Evidence 1835 Police Committee', 358-9; 'Report 1835 Police Committee', 427-9.

*institutions could only be appreciated and enjoyed by the virtuous; coercion was for the depraved; and a vicious people have never continued to be free.*⁸³

Burton's call for moral reform combined the traditional stress on the example of moral leaders with despair over the possibility of reform through exemplary punishment. He wanted both a better moral leadership and a stricter surveillance of the criminal class, anticipating temperance by linking the regulation of alcohol problems, to the achievement of a free society.

Dr. Lang, one of the pioneer's of the colonial temperance movement, praised Burton for raising the subject of crime but claimed the problem was unsurprising given the convict origins of the working classes and the Colony's dependence on alcohol:

*[While] the Government are virtually, ... doing every thing that is requisite to demoralize the country by introducing vast numbers of convicts every year, and by permitting the importation of ardent spirits to complete their demoralization, it is almost hopeless to ply the powerful engine of religious instruction for its moral renovation.*⁸⁴

Citing the recent Report he argued that policing in NSW was a failure but while advocating reform he claimed that improvement would prove impossible while alcohol remained so readily available. This was an argument that would only grow in influence.

By the mid-1830s, drunkenness was fully established as not only a crime against God but a crime against the state, and it was a crime increasingly strictly policed.⁸⁵ It was also a crime that was increasingly recognised as an official responsibility, with extensive revenues from alcohol obligating the government to deal with alcohol problems.⁸⁶ Just as importantly, public attitudes to alcohol and drunkenness were also beginning to change. In a letter to Darling, the new Anglican Bishop, William Broughton, described the "degraded state of morals" in Sydney and argued that only religion could improve public behaviour:

⁸³ 'Charge of Judge Burton to the Jury on closing the Supreme Court', *Monitor*, 21st Nov. 1835, 2. Note in particular the case of Cowan, cleared of a drunken murder after he intimidated the main witness to the crime as they travelled down to Sydney, chained together. For the importance of the charge see: Sturma, *Vice*, ch. 1; Walker, *Newspaper*, 21. For reactions see: 'Bourke to Glenelg', 18th Dec. 1835, *HRA*, vol. 18, 228-32; "'Vox Populi—Vox Dei'", *Australian*, 24th Nov. 1835, 2; *Gazette*, 28th Nov. 1835, 3; 'Judge Burton's Charge', *Monitor*, 25th Nov. 1835, 2; *Herald*, 30th Nov. 1835, 2; *Herald*, 3rd Dec. 1835, 2.

⁸⁴ 'State of the Colony', *Colonist: or weekly journal of politics, commerce, agriculture, literature, science and religion for the Colony of New South Wales*, Sydney: 1835-40, 10th Dec. 1835, 1.

⁸⁵ For debate around the status of drunkenness see: *Gazette*, 31st Aug. 1830, 2; 'On Drunkenness', *Gazette*, 2nd Sep. 1830, 3.

⁸⁶ 'The Sydney Police', *Colonist*, 14th May 1835, 150-1.

*Penal restraints can never keep pace with the offences to which they should apply, unless an improvement can be effected in the people themselves; and for that improvement, we must look to an increased sense of religion among them as the only effectual agent.*⁸⁷

Broughton was right but the agent was not religion itself, but a secular off-shoot of religious principles: the temperance movement.

⁸⁷ 'Broughton to Darling', 19th June 1830, *HRA*, vol. 15, 726. Supporting his argument, he noted that three times as many charges for drunkenness were made on Mondays, ignoring the fact that this represented two days worth of offences.

Part IV: Temperance

Chapter 9) The Temperance Movement

The temperance movement and its campaign against alcohol problems was perhaps the largest social cause of the nineteenth-century English-speaking world. Despite enormous variety within the movement and across the century, an extraordinary number of men and women were united by one central idea: that alcohol was the leading cause of social problems. The word temperance, as one of Plato's four cardinal virtues, had a long association with moderation and from the sixteenth-century onwards began to acquire a specific connection with food and especially drink.¹ Religious criticism of drinking was common, especially after the reformation, and the organised temperance movement evolved from earlier efforts to improve morals and manners, but developed into a radical and distinctive model of social reform. Where groups like the Societies for the Reformation of Manners sought to reform morals in general and preached moderation from alcohol, the temperance movement was specifically focussed on drunkenness and advocated abstinence as the only cure. Rather than depending on the patronage and example of the social elite, temperance became a mass movement that actively sought to involve the working class in their own improvement. Although members of societies were almost all Christian, they sought political, cultural and scientific cures for what they recognized as a secular, not a spiritual problem.

The basic pattern of development of temperance ideology saw Protestant notions of sin and redemption combine with the increasingly secular concern with alcohol problems to form a new ideal of personal abstinence as a path to self-improvement. The first temperance societies were a specialised offshoot of earlier reform movements. Drawing support from a philanthropic elite and focused on the behaviour of their social inferiors, they offered a critique of spirits, not alcohol, as unhealthy and impoverishing, and drunkenness as immoral and a gateway to crime. But this conservative temperance ethic was seized upon and altered by the emerging respectable middle and working classes for whom temperance functioned as a symbol of their moral superiority and rising status. These second generation temperance societies were generally opposed to all forms of

¹ 'temperance, n.', 'Intemperance, n.', *Oxford English Dictionary*, online version, [<http://www.oed.com.ezproxy2.library.usyd.edu.au/view/Entry/198885> - accessed 15 May 2012]. For the changing use of the term see: Bernard, 'Fasting', 337-41.

alcohol, more politically active, more radical in their ideas about society and less conformist in their Christianity. As they grew in strength the older temperance movement declined and practically disappeared.

This view of temperance in NSW draws upon some of the more prominent interpretations of the movement in Britain and America. Brian Harrison, in his classic history of alcohol in nineteenth-century England, argued that the movement was intimately connected to the new social mobility that emerged following the industrial revolution.² He claimed that the strength of temperance in this period depended upon the rise of a new working class who adopted respectable habits, including abstinence from alcohol, as a means of both achieving and asserting their rising status and distinguishing themselves from the disreputable. I have adopted this connection between temperance and respectability but because temperance support in NSW cannot be neatly aligned with a particular social strata I prefer to understand it in terms of cultural identity, not social class.³

Similarly, the sociologist, Joseph Gusfield, has described the temperance movement in America as a "symbolic crusade" in which abstinence was not only a personal choice or a moral stance but a means of distinguishing subcultures.⁴ He argued that political acts like the attempt to restrict access to alcohol, but also the promotion of abstinence as a moral good, can and should be understood as symbolic attempts to gain and assert status. For Gusfield, the temperance movement was less concerned with instrumental and more with symbolic action; its campaigns were often more effective in asserting the status of "devout native American Protestants" as opposed to actually reducing drunkenness.⁵ He subsequently qualified his "status politics" interpretation arguing for a more complex "cultural politics" in which attempts to control alcohol are directed at a

² Harrison, *Drink*, 24-26.

³ This approach obviously owes more to Weber than Marx and reflects a trend away from class analysis in nineteenth-century historiography. For a useful summary of this shift in a British context see: James Thompson, 'After the Fall: Class and Political Language in Britain, 1780-1900', *The Historical Journal*, vol. 39, no. 3, (Sep. 1996), pp785-806. For more on the concept of respectability see: Joseph Gusfield, 'Benevolent Repression: Popular Culture, Social Structure, and the Control of Drinking', Susan Barrows and Robin Room (eds.), *Drinking: Behavior and Belief in Modern History*, Berkeley and Los Angeles: University of California Press, 1991, 399-424; Peter Bailey, "'Will the Real Bill Banks Please Stand up?' Towards a Role Analysis of Mid-Victorian Working-Class Respectability', *Journal of Social History*, vol. 12, no. 3, (Spring, 1979), pp336-353; Brian Harrison, 'Traditions of Respectability in British Labour History', Harrison (ed.), *Peaceable Kingdom: Stability and Change in Modern Britain*, Oxford: Clarendon Press, 1982, pp157-216. For an Australian context see: Waterhouse, *Leisure*, ch. 4.

⁴ Joseph Gusfield, *Symbolic Crusade: Status Politics and the American Temperance Movement*, (2nd ed.), Urbana: University of Illinois Press, 1986 (first ed. 1963), 3-4.

⁵ Gusfield, *Symbolic Crusade*, 11-15, 166-7. Ian Tyrrell has responded to Gusfield's approach, cautioning against overstating the symbolic importance of temperance; he argues that temperance support was dominated by "improvers" who combined a desire for social and material success with a fervent belief in the possibility of moral improvement in society at large including a genuine belief in the reforming power of temperance. See: Ian Tyrrell, *Sobering Up: From Temperance to Prohibition in Antebellum America*, Westport, Conn.: Greenwood Press, 1979, 7-12, ch. 5.

wider cultural hegemony.⁶ I will adapt Gusfield's concept of a symbolic contest over alcohol to explain the significance of temperance in mid nineteenth-century NSW, arguing that support was used as a symbol of respectability, in a society still haunted by the convict stain.⁷

Temperance thus reflects larger changes in NSW society over the course of the century, particularly the growing voice of the working class and the increased public influence of women. A detailed analysis of the movement in Sydney will illustrate the general pattern of development and reveal its connection with some of these wider social changes. I will focus especially on the earliest period – from the mid-1830s when the first societies emerged to their rapid and striking decline in the second half of the 1840s – which has rarely received much scholarly attention.⁸ The key exception to this neglect is Michael Roe who has characterised temperance as the symbolic centre of his concept of “moral enlightenment”, the rival ideology that he argues triumphed over colonial conservatism in the mid nineteenth century. Not so much a movement as an entire culture, moral enlightenment combined a series of new ideas, in particular the evangelical belief in earthly salvation with its stress on education, morality and self-improvement. Temperance, with its concern for personal and social reform, its emphasis on the work ethic and its opposition to traditional conservative Anglicanism, embodied this new ideology. While I broadly agree with the significance Roe accords to temperance, the early movement in NSW should more properly be

⁶ Gusfield, *Symbolic Crusade*, 207-209; Gusfield, 'Benevolent', 417-9. As he notes, his initial view was in large part a reaction to earlier interpretations of temperance which had seen the movement either through a narrow class perspective or, in the shadow of repeal of Prohibition, as an exceptional and excessive American moralism (*Symbolic Crusade*, 189-90).

⁷ For more on the impact of the convict stain on the desire for respectability see: Babette Smith, *Australia's Birthstain: the Startling Legacy of the Convict Era*, Crows Nest, NSW: Allen & Unwin, 2008, chs. 10-11. I do not agree with Smith's suggestion that the deliberate suppression of convict heritage was surprising or with her pitting of a repressed bourgeois modernity against a romanticised convict era. Moral enlightenment was not imposed by a puritanical elite but actively embraced by ex-convicts who themselves rejected their criminal past. Nonetheless, her work is an important contribution to our understanding of colonial respectability.

⁸ Most work on Australian temperance that covers the mid-nineteenth century offers only a general summary. J.W. Meaden gives a brief and limited history of the movement, written by a partisan: Meaden (ed.), *Temperance in Australia: the Memorial Volume of the International Temperance Convention ...*, Melbourne: Temperance Book Depot, 1889. Gar Dillon provides another insider history (he was a longstanding President of the N.S.W. Temperance Alliance) and is poorly written and ideological: Dillon, *A Delusion of the Australian Culture: A Brief History of the Clash with Alcohol in New South Wales 1788-1983*, Sydney: N.S.W. Temperance Alliance, 1985. Quentin Beresford focuses on the various political campaigns of the early twentieth century but provides a brief background: Beresford, 'Drinkers and the Anti-Drink Movement in Sydney, 1870-1930', PhD Thesis, Australian National University, 1984. In his analysis of drunkenness in the 1840s, Michael Sturma argues that the temperance movement “frequently seemed less concerned with the reform of drunkards than with confirming the morality of its members”, a view that is largely confirmed by my research: Sturma, *Vice*, ch. 7, quote on p155.

understood as conservative; it was only with the rebirth of organised temperance in the 1850s that it truly embodied Roe's radical new faith in secular progress.⁹

The Pattern of Temperance

The emergence of temperance societies was connected to the profound social and economic transformation taking place at the turn of the nineteenth century. The shift in drinking habits during the eighteenth-century was a necessary precursor, but the social changes that accompanied the industrial revolution were also significant, especially the growing need for a sober and disciplined industrial workforce, the emergence of a larger middle class and the promotion of respectability as the leading middle class virtue. Evangelical religion helped to mobilise moralistic arguments against drunkenness while earlier campaigns for missionaries, against slavery and for the reformation of manners helped provide a model for organised social reform. Scientific medicine contributed a secular critique of alcohol that supported other enlightened arguments against drinking, while the use of statistics to demonstrate the problem aligned with the rational bent of the nineteenth-century mind. But probably of greatest significance was simple timeliness. Distilled spirits had increased both the level and crucially the visibility of drunkenness in society throughout the eighteenth century and by the early nineteenth there was a growing concern that was ripe for harvest in the temperance cause.¹⁰

The first dedicated society opposed to drunkenness in the English-speaking world was the Massachusetts Society for the Suppression of Intemperance founded in 1813. This was never a large organisation by later American standards, peaking at about four thousand members, and like earlier manners campaigns the main focus was on law enforcement embodied in an effort to close the large numbers of unlicensed dram shops – wholesalers who illegally sold spirits by the glass to the poor. This focus on the drinking of the working classes was also reflected in the Society's attempts to end part-payment of workers with a spirit ration, and in the society's literature which attacked excessive public spirit drinking while remaining notably silent about private wine consumption amongst the upper class. These features have led Ian Tyrell to characterise the movement as elitist, conservative and "pessimistic" in its outlook. He notes that the membership mostly comprised the elites of eighteenth-century America, Congregationalist clergy and Federalist politicians and it used a

⁹ Roe, *Quest, passim*, esp. ch. 8. I employ the term "conservative" below, in his sense, to describe the character of the early elitist temperance movement. This usage does not imply that I entirely accept Roe's characterisation of exclusive politics as conservative.

¹⁰ Harrison, *Drink*, 89-97; Tyrell, *Sobering*, 59-60.

traditional patronage model to achieve its aims, relying upon local prestige and influence with the authorities rather than propaganda.¹¹ It should therefore be seen as a transitional organisation between eighteenth and nineteenth century approaches to drunkenness.

In contrast to this conservative ideology, the new temperance ethic which swept down the East coast of America in the 1820s was optimistic, growing out of revivalism and affirming the evangelical churches' belief in salvation. The American Temperance Society founded in 1826 was the first to rely upon the pledge of abstinence as a means of motivating members and the first society to insist upon total abstinence from spirits. Unlike the exclusive Massachusetts Society, the new movement used the fundraising network and printing presses of earlier tract and missionary groups to persuade as many people as possible, from both sexes and all classes, to join the cause and they were extraordinarily successful: by 1833 there were six thousand branches with over a million members. The new Society was broad-based, popular and optimistic of human potential, as much opposed to elite as to popular drinking; it was in particular a society for the respectable.¹²

The temperance movement arrived in the UK after a decade in which liberal parliamentarians in England had consistently pushed for a free-trade solution to the drink problem, culminating in the Beer Act of 1830.¹³ British temperance had the same concern with drunkenness but a very different approach. Inspired by the American example, societies organised themselves around the pledge to abstain from spirits, emerging first in Ireland and Scotland in 1829 and rapidly spreading south, culminating in the formation of the British and Foreign Temperance Society in July 1831. As with America, this early temperance movement was largely conservative and elitist: most of its funds came from large donations by rich donors, its high officers were all prominent members of society and it had an aversion to radical measures evinced in its timid support for legislative changes.¹⁴

¹¹ Tyrell, *Sobering*, 32-4, 41-7, 54; Gusfield, *Symbolic*, 37-41. For the connection between this first temperance society and the SRM see: Bernard, 'Voluntary'; Bernard, 'Fasting'.

¹² Tyrell, *Sobering*, 54-5, 65-8, 87. The connection between class and temperance in America is much more complicated than I have implied. Tyrell sees temperance generally as a part of an ideological movement by the rising middle classes of the North and East to distinguish themselves as sober, hard-working and respectable in contrast to the labouring classes. But the point here is that in contrast to the Massachusetts Society, the new movement was open to all who renounced drink. The Washingtonian societies of the 1840s were, in contrast, a genuinely working class movement formed by recovered drunkards and seriously concerned with the problem of escaping addiction. But they were gradually swallowed up by the larger organisations as temperance in America became prohibitionist in the 1850s and 1860s. Tyrell, *Sobering*, 159-210.

¹³ For the Beer Act see: Harrison, *Drink*, ch 3; Nicholls, *Alcohol*, ch. 7.

¹⁴ Harrison, *Drink*, 99-112; Nicholls, *Alcohol*, 97-9; Roberts, *Morals*, 116-7.

Also similar to America, this early movement was rapidly overtaken by a second-wave of temperance which advocated total abstinence from alcohol (or teetotalism), radical legislative reform and drew its strength from the respectable middle and working classes. A critical turning-point was the 1834 Select Committee on Drunkenness, chaired by a leading advocate of temperance, James Buckingham. The Report of this Committee considered a wealth of largely partisan evidence on this "National evil" asserting that "the right to exercise legislative interference ... cannot be questioned" and called for stricter licensing linked to population density, reduced opening hours and the promotion of alternative recreations like public parks and libraries, all directed towards the "ultimate" solution: a total prohibition on spirits. Though still conceived within the anti-spirits frame, the radical solutions proposed by this committee would inspire the temperance movement in Britain and NSW for much of the remainder of the century.¹⁵ Harrison situates this shift within the wider radical politics of the 1830s arguing that respectable temperance supporters were deliberately:

*gaining allies for the radical attack on privilege, deference, corruption and violence – grooming working men to add their numbers to the energy and righteous indignation of the radical middle class.*¹⁶

By 1840, teetotalers were the dominant temperance force and in 1848 the last anti-spirit society folded.¹⁷

Thus the earliest temperance societies on both sides of the Atlantic were somewhat conservative, often associated with the established churches, restricted their focus to spirit consumption and solicited membership from the social elite. But they were soon overtaken by a second wave of total abstinence societies that had strong connections to evangelical Protestantism, attacked all kinds of drinking and were both more radical and more popular. The first Societies depended on the "benevolent paternalism" of the upper classes. They insisted on the "voluntary principle", rejecting any efforts to compel sobriety and relying on "moral suasion" – lectures and pamphlets that admonished drunkards to change their ways. But the new teetotal movement not only rejected the hypocritical tolerance of wine drinking but also the methods of earlier reformers.

¹⁵ UK Parliament, *Report from the Select Committee on Drunkenness ...*, London: 1834, vi-vii. For more on this committee and its significance see: Brian Harrison, 'Two Roads to Social Reform: Francis Place and the "Drunken Committee" of 1834', *Historical Journal*, vol. 11, no. 2 (1968), pp272-300. He argues that the resort to compulsion was a feature of the more evangelical approach to social reform, in contrast to the rational secular stress on self-improvement, embodied in reformers like Francis Place, Bentham and later J.S. Mill.

¹⁶ Harrison, *Drink*, 133.

¹⁷ For the abstinence movement see: Harrison, *Drink*, 142-6; Nicholls, *Alcohol*, 97-104; Roberts, *Morals*, 150-2, 165-8.

They attracted a mass membership by “dramatising social mobility” at their meetings and fostering a sense of community through marches, tea parties and concerts, and increasingly they lobbied the government for legislative enforcement of temperance.¹⁸ We can thus distinguish a basic pattern of development in the methods of the movement and its understanding of reform from conservative to radical and elitist to populist.¹⁹

The Movement in NSW

The development of the early temperance movement in Sydney reflected this general pattern. News of the British and American movements reached NSW in 1830 while in 1832 the Quaker missionaries James Backhouse and George Walker founded a temperance society in Hobart that helped inspire Sydney activists.²⁰ Even before this, Dr. Lang had taken pledges of abstinence in Sydney harbor from the free emigrant mechanics he brought to the colony aboard the *Stirling Castle*. Lang’s project in promoting free emigration was intended to encourage a “moral revolution” in Sydney by offering sober competition for the “drunken ticket-of-leave men” who formed the Colony’s labor force.²¹ A similar desire to improve the laboring classes seems to have driven the first advocates of the NSW Temperance Society (NSWTS). A preliminary meeting was held in October 1833, chaired by William Pascoe Crook, a Congregationalist missionary and pastor, and by December, the society had one hundred and fifty pledged members, was meeting regularly in the house of the cabinet maker, Edward Hunt, and had secured the Chief Justice, Francis Forbes, to act as President.²²

The first public meeting of the society took place in May with Forbes and he praised the cause to a “numerous and highly respectable” crowd as “a great moral engine” to redeem the colony

¹⁸ Harrison, *Drink*, chs. 5-6, quotations on 107, 115. He observes a wider correlation in other nineteenth-century social movements between “extremist standpoint and lower social grade.” (142-4) The debate over methods was actually much more convoluted with divisions within the teetotallers over long and short pledges – largely the question of whether a teetotaller could tolerate drinking in others or was compelled to publicly object to it.

¹⁹ I have used the terms populist and elitist here to avoid the difficulties of explaining this division in class terms. Whilst social class was of crucial importance, the split also involved religious affiliation, cultural sensibility and political ideology.

²⁰ Roe, *Quest*, 165. For early reference to temperance societies see: *Gazette*, 2nd Jan. 1830, 2; ‘Temperance Societies’, *Gazette*, 20th Apr. 1830, 4. For calls for a Sydney society see: *Gazette*, 31st Aug. 1830, 2; ‘Drunkenness’, 3; *Gazette*, 5th June 1832, 2; ‘Letter of “Pero”’, *Gazette*, 10th Nov. 1832, 3; ‘Letter of A.B.’, *Gazette*, 6th July 1833, 2.

²¹ J.D. Lang, ‘Declaration made by Lang and others on board Stirling Castle ...’, 13th Oct. 1831, Mitchell Library, MLDOC 1477; J.D. Lang, *Immigration and the Scotch Mechanics of 1831 ...*, Sydney: 1876; Lang, *Historical*, 240. The disappearance of this putative society from the records perhaps reflects the fact that Sydney was not yet ready for a public working-class temperance movement. Tellingly none of those who signed the pledge were subscribers of the Temperance Society or are mentioned in accounts of meetings.

²² *Gazette*, 26th Oct. 1833, 2; ‘Temperance Society’, *Gazette*, 5th Dec. 1833, 2; *Gazette*, 7th December 1833, 2.

from drunkenness, "the parent and nurse of crime in New South Wales".²³ The inaugural committee was dominated by legal and religious figures and their preliminary report setting out the rules of the society showed a largely elitist approach to the problem of drunkenness. Explicitly modelled on the British and Foreign Society, they required members to pledge to "relinquish the use of ardent spirit" and avoid "excess" of other alcoholic beverages. Members met quarterly to discuss the problems of intemperance in the colony, and in order to spread their message they organised public lectures, printed pamphlets and later a newspaper, and funded the missionary work of John Saunders, their secretary, who travelled the rural parts of the colony preaching the evils of alcohol.²⁴ Their propaganda made many of the familiar arguments against drunkenness but noticeably targeted moderate drinkers, claiming spirit drinking was common "[b]ecause it is countenanced and supported by YOU[sic] ... the respectable moderate spirit drinker".²⁵

The Society expanded steadily and by the first anniversary meeting there were four hundred members.²⁶ In July 1837 the first edition of the monthly *Australian Temperance Magazine* was published, providing a prominent mouthpiece, and by the following year it ran to four thousand copies, nominally the highest circulation of any contemporary journal.²⁷ This success received a crucial boost at the fourth annual meeting in June 1838, chaired by the new Governor, George Gipps. He signed the pledge before delivering a speech in which he stressed the importance of the cause, arguing that "a great portion of the crimes, the vices and consequently, the punishments ... in this colony may be traced to the excessive use of ardent spirits". This was the first public meeting of any kind chaired by a Governor and the next few years marked the high point for the temperance movement. Up to a thousand people attended the annual meeting in 1839 while, the following year, the popularity of the cause induced the Society to shift from publishing a monthly magazine to a weekly newspaper which had 1100 subscriptions by its second edition.²⁸ At the packed annual

²³ 'Temperance Society', *Herald*, 8th May 1834, 3; 'Temperance Society', *Gazette*, 17th May 1834, 2; 'Temperance Society', *Monitor*, 17th May 1834, 2. Note the accompanying leading article in the *Monitor*, in which Hall attacked the government for its dependence on alcohol revenue.

²⁴ *Australian Temperance Magazine*, Sydney: 1837-1840, July 1837, 1-3; NSWTS, *Report of the Provisional Committee of the Temperance Society of New South Wales*, Sydney: 1834, 5-6, 10; John Saunders, 'Letterbook, 1834-56', Mitchell Library, B1106, 20th Mar. 1835. For the British Society's pledge see Harrison, *Drink*, 107-8.

²⁵ *Australian*, 9th Dec. 1833, 2. For another example see: 'One glass will do you no harm', *Monitor*, 1st Apr. 1834, 3; *Gazette*, 3rd Apr. 1834, 2; NSW Temperance Society, *Half an Hour's Reading from the Temperance Society of NSW*, Sydney: 1834.

²⁶ NSWTS, *First Annual Report of the Temperance Society of New South Wales*, Sydney: 1835, 13.

²⁷ 'List of Subscribers', *Temp. Mag.*, Oct. 1838, 62-4. For analysis of these figures, see below, 163-4.

²⁸ *Temp. Mag.*, July 1838, 1-7; 'Temperance Society', *Monitor*, 12th Apr. 1839, 2; 'Temperance Society', *Herald*, 12th Apr. 1839, 2; *Temperance Advocate and Commercial and Agricultural Intelligencer*, Sydney: 1840-1, 21st Oct. 1840, 1.

meeting in 1841 hundreds were turned away from the hall of Sydney College in what the somewhat partisan *Temperance Advocate* described as the greatest public meeting ever seen in the colony.²⁹

The first teetotal society, the Australian Total Abstinence Society (ATAS), was founded in September 1838. It grew rapidly, with over five hundred members by the first anniversary, drawn from a broader cross-section of Sydney society, including mechanics and servants. The teetotal pledge, copied from England, demanded complete abstinence from all intoxicating beverages and this message was actively promoted to the working class. Regular tea parties, processions and festivals helped to make the society popular as did the frequent meetings which were relatively informal with speakers drawn from the floor and reformed drunkards encouraged to relate their conversion to the cause. The teetotallers also organised a workers' benefit society, a form of mutual insurance with members paying an annual subscription in exchange for sick benefits and funeral costs, but restricting its membership to those who had signed the pledge.³⁰ This approach had rapid and dramatic success. There were overflowing meetings held each week in the School of Arts and almost two thousand signed the pledge in 1841-2.³¹

The early 1840s were the high point of early Sydney temperance. At the annual meeting of the Abstinence Society in September 1842 over a thousand attended the Victoria Theatre, the largest public room in town, whilst the Boxing Day meeting of the St Patrick's Society, a new teetotal group linked to the Catholic Church, drew seven hundred.³² But signs of the divisions that would lead to decline were already present. Reflecting the British and American pattern, as the abstinence societies grew, support for the Temperance Society declined and this move towards populist temperance was symbolised by the collapse of the *Temperance Advocate*, and the rise in its place of a new paper, the *Teetotaller*.³³ However, in NSW, teetotal triumph was to prove short lived. Personal animosity and power struggles between rival leaders, disagreement over tactics, and latent cultural and ideological differences led to the fracturing of the movement. By the end of 1843 there

²⁹ 'The Public Meeting', *Temp. Adv.*, 21st Apr. 1841, 2.

³⁰ See for example the account of the third public meeting: 'Teetotalism', *Herald*, 24th May 1839, 2; and the first anniversary tea party: 'Tee-Total Society', *Herald*, 6th Sep. 1839, 2.

³¹ 'The Annual Report ...', *Teetotaller and General Newspaper*, Sydney: 1842-3, 26th Oct. 1842, 2. This took the total to just short of four thousand signatures although these figures would include many who signed and then fell back into drinking and some who signed again thereafter.

³² 'The Teetotal Festival', *Teetotaller*, 7th Sep. 1842, 2; 'St Patrick's Total Abstinence Society', 19th Oct. 1842, 2. The St Patrick's Society was formed in May 1841. For promotion of Catholic temperance and the development of a local Catholic society see: *Australasian Chronicle*, Sydney: 1839-1848, 'Total Abstinence Society', 15th Aug. 1840, 2-3; 'The Wolf and the Lamb', 24th Nov. 1840, 2; 'St Patrick's Temperance and Total Abstinence Society', 6th May 1841, 2-3.

³³ For the change of papers see: *Temp. Adv.*, 29th Dec. 1841; *Teetotaller*, 8th Jan. 1842. The *Advocate* had debts of over £400 when it closed and these were reluctantly met by subscriptions among the elite and by a generous gift from the Governor.

were four separate teetotal societies and the last vestiges of the Temperance Society competing for support and divided in approach.³⁴

There is no doubt that these divisions contributed to decline but equally significant were the loss of elite support for the movement and closely related financial problems. At the annual meeting of the Temperance Society in 1842, Gipps pointed to shameful debts and argued that it was incumbent upon members to subscribe to their relief. But two years later, ongoing donations from the Governor and the few remaining passionate supporters had failed to clear the Society's name. In a symbolic act, for the first time since his arrival in NSW, Gipps did not attend the annual meeting, instead holding a ball at Government House, and the Society seems to have folded within the following year.³⁵ The Abstinence Society also suffered from financial difficulties at this time. Its newspaper suffered "four quarters of loss" in its first year of operation, experienced continually declining subscriptions and folded for good in September 1843.³⁶ The depression of the early 1840s seriously reduced the capacity of the upper classes to assist charitable causes and this problem was exacerbated by the loss of the Governor's patronage especially after Gipps' departure from the colony in 1846. The depression also reduced the incidence of intemperance, particularly amongst the poor. Available alcohol declined dramatically in the mid-1840s and though there are complex reasons for this, declining disposable income was crucial.³⁷

Loss of funds affected the entire temperance movement and without a figurehead and divided between different factions, societies struggled to survive. While a core group of passionate

³⁴ In 1844, the *Maitland Mercury*, quoting the short-lived and no longer extant, *NSW Total Abstinence and Temperance Advocate*, gave membership figures for the entire temperance movement as follows: "St Patrick's Society, 4027; Australian Society, 900; Sydney Society, 521; Youths' Society, 200; total, 5648". 'New Newspaper', *Maitland Mercury and Hunter River General Advertiser*, Maitland, NSW: 1843-93, 25th May 1844, 4. This survey ignored the Rechabites, a newly founded benefit society, and the NSWTS.

³⁵ 'Temperance Meeting', *Herald*, 28th Apr. 1842, 2; 'Temperance Society', *Herald*, 29th June, 1844, 2; 'Annual Temperance Meeting', *Australian*, 29th June 1844, 2. Two months later the debt of seventy-five pounds had been reduced to forty by a few donations, mostly what seems to have been a cancellation of a printing debt by Mr Fairfax of the *Herald*.

'Subscriptions', *Herald*, 2nd Aug. 1844, 3. There are no more recorded meetings of the Society. See also: Allen, 'Journal', 28th June 1844. He claimed that the donations were "miserably small" and argued that the funds were mismanaged.

³⁶ 'To Our Subscribers', *Teetotaller*, 21st Dec. 1842, 1; 'Notice', 27th Sep. 1843, 1. See also the complaint of William Currey that "so few of the higher classes in this colony [are] helping forward their noble undertaking". 'Quarterly Meeting of the ATAS', *Teetotaller*, 26th Mar. 1842, 3.

³⁷ On the importance of upper class support for charities see: Elizabeth Windschuttle, "Women, Class and Temperance: Moral Reform in Eastern Australia 1832-1857," in *Push From the Bush* 3 (May 1979), pp5-23, 9-10. For declining consumption see: Evidence of Richard Sadleir, NSW Legislative Council, 'Progress Report from the Select Committee on Intemperance ...', *VPLC* (1854), vol. 2, pp517-641, 621; Dingle, 'Thirst', 229; Surma, *Vice*, 144-7. Dingle points to the correlation between alcohol consumption and economic conditions as the best factor for predicting alcohol consumption, citing the 1840s as an example. It is worth noting that contemporaries tended to attribute the decline to the activity of the temperance society or more cynically to increased smuggling due to high duties, leading to more unrecorded drinking. See for example 'Duties on Spirits', *Herald*, 23rd Sep. 1845, 2. For more on consumption of alcohol in the 1840s see below, 198-9. For more on the depression see: Barrie Dyster, 'The 1840s Depression Revisited', *Australian Historical Studies*, vol. 25, no. 101 (Oct. 1993), pp589-607.

advocates continued to promote the cause, they never managed to secure stable funding or significant popular support and it appears that all of Sydney's temperance societies, with the lone exception of the St Patrick's Society which was funded by the Catholic Church, ceased to operate in the decade after 1845. Regular reports of annual meetings come to an end in the mid 1840s and in 1853 a *Herald* editorial contrasted the thriving temperance movement in Melbourne with its absence in Sydney.³⁸ Thus the pattern of Sydney temperance diverges from that of England and America, and for that matter, from other parts of the Australian colonies in the 1840s and 1850s.³⁹

Growing public concern about alcohol problems contributed to the gradual revival of the movement in the 1850s. The end of the depression and the gold rushes led to growing prosperity, rising consumption of alcohol and a moral panic about the newly enriched working classes that was fertile ground for temperance anxieties. But equally important was the 1851 passage of the so-called Maine Law, an early version of prohibition in America. This legislation inspired the formation of the UK Alliance for the Suppression of the Trade in Alcohol which in turn encouraged temperance advocates in NSW.⁴⁰ In a series of letters to the *Herald*, the Anglican minister, William Lumsdaine, noted the terrible damage caused by drunkenness and called for efforts to "resuscitate the cause" of temperance in NSW and the formation of a Maine Law League in Melbourne soon inspired local imitators under the leadership of a retired naval officer, Lieutenant Richard Sadlier.⁴¹

The new society prepared a petition to the legislature with over seven thousand signatures, calling for a complete ban on the legal sale of alcohol. Presenting the petition, Sadlier demonstrated some sympathy with the voluntary principle, stressing that prohibition required popular support and calling for a campaign of public education followed by a referendum. But he also justified the resort to legislation arguing that the earlier movement had failed because "any good we may do is counteracted; for one convert we may reclaim, twenty new drunkards are created by public

³⁸ The annual meetings were (unsuccessfully) tracked in the *Herald*, *Australian* and *Chronicle* for the period 1840-1855. For the editorial see: 'Growth of Intemperance', *Herald*, 22nd Apr. 1853, 2. Note the Catholic press response, pointing out that the St Patrick's Society was still thriving: *Freemans' Journal* 31st Apr. 1853, 8. For its unlikely survival, see below, 172. Contemporaries also argued that the mercenary attitudes promoted by the gold rush encouraged drunkenness and hurt the temperance movement though it is difficult to substantiate this view. See for example: *Freeman's Journal*, Sydney: 1850-1932, 11th Mar. 1852, 8-9.

³⁹ For England see: Harrison, *Drink*, chs. 6 and 9; for the United States see: Tyrrell, *Sobering*, chs. 8-9; for Melbourne see: 'Growth of Intemperance', *Herald*, 22nd Apr. 1853, 2; for Hobart see: Roe, *Quest*, 167. Some local temperance groups did survive in other parts of NSW but the movement lost its central leadership and significance as a lobby.

⁴⁰ On the Maine law see: Tyrell, *Sobering*, ch. 10. On British adoption of this cause see: Harrison, *Drink*, 182; Nicholls, *Alcohol*, 113-4. For renewed concerns about drinking associated with the gold rush see below, 230ff.

⁴¹ For Lumsdaine and the Victorian example see: 'Intemperance', *Herald*, 31st Oct. 1853, 3; 'Victoria', 28th Dec. 1853, 3; 'A Temperance League', 29th Dec. 1853, 2; 'A Temperance League', 5th Jan. 1854, 3. For the new society in NSW see: 'Temperance', *Herald*, 16th Feb. 1854, 5; 'Total Abstinence', 2nd Mar. 1854, 5; 'Total Abstinence', 16th Mar. 1854, 5; 'Teetotal Meeting', *Empire*, Sydney: 1850-1875, 2nd Mar. 1854, 2; 'Sydney Total Abstinence Society', 17th Mar. 1854, 2s.

houses".⁴² These tactics were widely criticised with the *Herald* calling for "reason and persuasion, backed by example" while a letter writer claimed NSW was not ready for prohibition and suggested a school-based program to teach temperance to the next generation.⁴³ But though the proposal was never acted on the mid to late 1850s saw a broader revival of the temperance movement throughout NSW.

The first Bands of Hope, societies dedicated to indoctrinating children in the temperance cause, were formed in 1855 and soon spread across the colony. This movement, again inspired by British precedents, sought to "combine instruction with entertainment", securing pledges to abstain from drinking, publishing a magazine for children and teaching moral lessons to young teetotallers, and it would play a critical role in the spread of temperance support in the final quarter of the century.⁴⁴ Another significant development was the emergence of dedicated women's societies. Despite substantial female support for temperance in the 1830s and 1840s, the Ladies Total Abstinence Society, was not founded until 1856 and, even then, they relied on men to chair the meetings and frequently invited male guest speakers. But this group was not merely a separate space for female advocates. The Society actively promoted the cause by touring Sydney's slums, seeking female converts – both drunkards and victims of male abuse – and their emergence marked a shift towards female dominance of the temperance movement in the twentieth-century.⁴⁵ The period also saw the formation of the first of a series of temperance alliances that sought to unite the heavily divided movement. The first of these, an "unsectarian and non-Political" organisation, did not take a formal position on prohibition, though many of its members supported the 1854 petition, but it did play an important role in the development of a political temperance lobby, creating a forum for internal temperance debate and organising the construction of Sydney's first dedicated temperance hall.⁴⁶

⁴² Sadler Evidence, '1854 Intemperance Committee', 619-22. For the Petition see: 'Total Abstinence Society', *Herald*, 14th July 1854, 5; 'Intemperance', 1st Sep 1854, 5. Intriguingly the petition called for an exemption for "medical and artistic purposes".

⁴³ For *Herald* criticism see: 'The Temperance Cause', *Herald*, 7th Jan. 1854, 4; 'The Anti-Liquor Law', 4th Mar. 1854, 4. For the School proposal see: 'Temperance', *Herald*, 9th Jan. 1854, 3.

⁴⁴ For the beginning of the movement see: 'Band of Hope', *Herald*, 15th June 1855, 5; 'Pitt-Street band of Hope', *Australian Band of Hope Review, and Children's Friend*, Sydney: 1856-1861, 5th Jan 1856, 11. For British precedent see: Harrison, *Drink*, 178-80.

⁴⁵ 'Ladies' Total Abstinence Society', *Band of Hope*, 5th July 1856, 15-16; 'Ladies' Total Abstinence Society', 30th Aug. 1856, 15-16; 'Ladies' Total Abstinence Society', 27th Sep. 1856, 16; 'Women's Crusade Against Intemperance', *Herald*, 13th Dec. 1859, 11.

⁴⁶ For the Alliance see: NSW Alliance for the Suppression on Intemperance and for the Social Moral and Intellectual Elevation of the People, 'NSW Alliance: Prospectus', John Joseph Therry papers, 1788, 1807-1888, Mitchell Library, MLMSS 1810/117, pp189-90; 'Temperance Movement', *Herald*, 24th Feb. 1857, 8; 'Suppression of Intemperance – Public meeting',

Over the remainder of the nineteenth century, the organised movement steadily grew in strength and influence. New fraternal societies aimed at working men and women like the Sons and Daughters of Temperance, the Good Templars and the Rechabites gained large memberships, providing benefit clubs for workers and social activities for their families. Meanwhile, the Women's Christian Temperance Union (WCTU) pushed women to the forefront of temperance and played a critical role in securing a political voice for women in Australian society.⁴⁷ A series of tours by American and British advocates, backed up by Intercolonial and International Conferences helped to unite the movement as did the increasingly politicised temperance alliance which lobbied the government for a so-called Permissive Law, a means of introducing prohibition by local popular vote.⁴⁸ This campaign was finally successful with Henry Parkes' 1882 Licensing Act which introduced a limited form of Local Option – each electorate voted to veto any new licenses – a significant measure that further politicised the drink question by mobilising temperance forces during elections and led to a stricter form of Local Option in 1905. The movement climaxed in the twentieth-century with its campaigns around two referenda: success for six o'clock closing in 1916 and failure for full prohibition in 1928. From then, organised temperance declined into its recent insignificance, though its impact on the social understanding of alcohol remains profound.⁴⁹

27th Feb. 1857, 5. For the hall see: 'Temperance Hall', *Empire*, 1st May 1857, 4; 'The Temperance Hall', 15th July 1858, 2; 'Opening of the Temperance Hall', *Herald*, 20th Apr. 1859, 4.

⁴⁷ For the Sons and Daughters see: Sons and Daughters of Temperance, National Division of Australasia, *Rules and regulations to be Observed by the National, Grand, & Subordinate Divisions of the Sons and Daughters of Temperance*, Sydney: 1890; *New South Wales Son of Temperance*, Sydney: 1899-1917, 1st Aug. 1899, 1. For the Templars see: Rev. Frank Firth, *Good Templarism: An Exposition of the Order*, Sydney: n.d. [c.1870]; G.D. Clark, *The Good Templar Movement; its History and Work: a World view of the Liquor Problem*, Sydney: Grand Lodge of New South Wales of The International Order of Good Templars, 1928. For the Rechabites see: George W. Cole (ed.), *Jubilee Celebrations: Proceedings of the first Intercolonial Convention ...*, Melbourne: 1886. For the WCTU see: Anthea Hyslop, 'Temperance, Christianity and Feminism: The Woman's Christian Temperance Union of Victoria, 1887-97', *Historical Studies*, vol. 17 (1976), pp27-49; Ian Tyrrell, 'International Aspects of the Woman's Temperance Movement in Australia: The Influence of the American WCTU, 1882-1914', *Journal of Religious History*, vol. 12 (1983), pp284-304; Jocelyn Pixley, 'Wowsers & Pro-woman Politics: Temperance against Australian Patriarchy', *ANZ Journal of Sociology*, vol. 27, no. 3 (Nov. 1991), pp293-314; Alison Alexander, 'A Turning Point in Women's History? The Foundation of the Women's Christian Temperance Union in Australia', *Tasmanian Historical Studies*, vol. 7, no. 2 (2001), pp16-27.

⁴⁸ For touring speakers, see for example: 'Mr Booth, The American Temperance Advocate', *Herald*, 10th Apr. 1884, 4; 'WCTU. Reception of Mrs Harrison Lee', 17th June 1892, 3; 'WCTU. Speech of Mrs Harrison Lee', *Herald*, 18th June 1892, 11. For the Conventions see: H.G. Rudd and H.T.C. Cox, *International Temperance Conference, Melbourne 1880: Papers, Debates and General Proceedings*, Melbourne: 1880; Meaden, *Temperance*. For the Alliance see: F.B. Boyce, *Fourscore years and seven ...*, Sydney: Angus & Robertson, 1934. Note that this lobbying campaign began with the less successful Political Association formed in 1864. See: Beresford, 'Drinkers', ch. 3.

⁴⁹ For the politics of Local Option see: 'Licensing (no. 2) Act' (45 Vic. no. 14), *Statutes of NSW*, 19th Dec. 1881, pp41-75; 'Liquor Act' (no. 40, 1905), 9th Dec. 1905, pp207-37; Beresford, 'Drinkers', chs. 5, 7; A.W. Martin, 'Henry Parkes and the Political Manipulation of Sectarianism', *Journal of Religious History*, vol. 9, no. 1 (June 1976), pp85-92; J.D. Bollen, *Protestantism and Social Reform in New South Wales 1890-1910*, Carlton, Vic.: Melbourne University Press, 1972; Richard Broome, *Treasure in Earthen Vessels: Protestant Christianity in New South Wales Society, 1900-1914*, St. Lucia, Qld.: University of Queensland Press, 1980. For six o'clock and prohibition see: Beresford, 'Drinkers', chs. 8-9; Walter Phillips,

Temperance Ideology: Conservatives and Radicals

The early NSW temperance movement was in many ways a failure. Despite initial promise and enthusiasm, public support declined sharply in the decade after 1843 and the organised movement was only beginning to recover its former status by the mid 1850s. Even the brief period of early success was insignificant by comparison with the scale and achievements of the mass-movement at the turn of the twentieth-century. Nonetheless, the early societies are significant for what they reveal about changing attitudes to alcohol and the transformation of NSW society in the decades preceding responsible government. Though temperance began as a largely conservative reaction against the public drinking of the colonial underclass it developed into a radical movement that empowered the disenfranchised and challenged the liberal consensus on the limits of government. An explanation of the decline of the early societies can help to clarify the larger significance of the movement and its impact on the social understanding of alcohol.

Reverend Beazley, a Congregationalist clergyman originally based in VDL and active in the more successful movement there, claimed that the temperance movement "had almost ceased" when he arrived in NSW in 1847. He attributed this to Gipps' departure from the colony for not only did the Governor provide support himself:

*but men of intelligence and standing sustained the movement by their presence and advocacy ... the very men who had influence with the community. Their place in subsequent efforts has been supplied by comparatively humble persons of little influence.*⁵⁰

His view that the influence of the respectable upper classes was crucial to the success of early temperance is confirmed in a wealth of anecdotal evidence which shows that the societies of the 1830s and 1840s were largely reliant upon the vacillating support of the fashionable upper classes, support which depended upon an elitist approach to reform.

The men who formed the Provisional Committee as well as the initial subscribers to the Temperance Society were all from the upper levels of NSW society; no convicts or emancipists can be identified among their number and those whose livelihood can be discerned were largely clergy, and missionaries, merchants, and professionals, especially lawyers and government officials.⁵¹

"Six O'Clock Swill": The Introduction of Early Closing of Hotel Bars in Australia', *Historical Studies*, vol. 19 (1980), pp250-66; Fitzgerald and Jordan, *Under the Influence*, ch. 4.

⁵⁰ Evidence of Reverend Beazley, '1854 Intemperance Committee', 628.

⁵¹ 39 men are named as either officials or subscribers of whom 12 cannot be identified, 9 were clergy or missionaries, 6 were merchants or tradesmen (a watchmaker, a cabinet-maker and a chemist), 5 worked in the law including the Chief

Unfortunately there are no surviving membership records for the Society but the subscription lists for its publications provide an important insight into its social composition. At its circulation peak in 1840 the *Temperance Magazine* was printing 1324 copies for only 162 Sydney subscribers.⁵² Not only does the ordering of multiple copies reflect their relative wealth, but almost half of the subscribers held some form of title, either as gentlemen, clergymen or military officers.⁵³

The Society was proud of the status of its members. The *Provisional Report* emphasized the patronage of their honorary President, Chief Justice Forbes, and vice-Presidents Sir William Parry, Commissioner of the Australian Agricultural Company, Richard Jones, leading merchant, landowner and Member of the Legislative Council, William Lithgow, the Auditor-General, and two of the three Police Magistrates for the colony, Charles Windeyer and E.A. Slade. Elite influence was in fact the basis of the Society's approach to the alcohol problems. In a meeting in January 1835, Mr Johnson, a George Street watchmaker, moved that they should solicit the attendance of:

*the Members of Council, the Judges, the principal officers of Government, the Magistrates, the Ministers of religion and other gentlemen ... [for] the influence of the temperance principles must gain strength in proportion to the countenance given to them by the most distinguished and respectable members of the community.*⁵⁴

Similarly, the *Provisional Report* argued that the Society was to spread its message about the dangers of intemperance through "correspondence ... with Ministers, Medical Gentlemen and other influential persons throughout the Colony", by printing material "addressed to different classes of persons" and by aiming "to encourage especially, the formation of Associations on similar principles amongst the labouring classes".⁵⁵ It is telling that they envisaged working class temperance as separate and distinct. Like the Societies for the Reformation of Manners and the Proclamation Society, they sought moral reform through patronage of the poor, not solidarity; moral reform without social reform.

Justice and 2 police magistrates, 4 were landowners and there were 2 surgeons and a schoolmaster. Though these men were not all from the very highest rank of society they were eminently respectable. See: NSWTS, *Provisional Report*, 3, 11.

⁵² 'List of Subscribers', *Temp. Mag.*, Jan. 1840, 110-112. The total print run was 4000 but I have excluded the non-Sydney subscribers and the 500 copies bought by the Government for issue to road gangs. The minimum order was for five copies.

⁵³ There were 61 gentlemen, 10 clergy (including both bishops), 3 military officers, the Governor, the Colonial Secretary and the Attorney General.

⁵⁴ 'Temperance Society', *Herald*, 8th Jan. 1835, 2; For the elite patrons see: NSWTS, *Provisional Report*, 3.

⁵⁵ NSWTS, *Provisional Report*, 6.

The pledge of the society, limited to spirits was also intrinsically elitist. Spirits were almost exclusively the drink of the working man and this bias was the basis for extensive criticism. Within weeks of its foundation "a Correspondent" to the *Herald* undertook a satirical attack asking:

[a]re not the vices of immorality and gormandizing – particularly among the higher and middle ranks of society – much more destructive to public happiness, than the immoderate use of ardent spirits, bad as this is, amongst the lower orders of men?

In a similar, if less irreverent vein, the editor of the *Australian* praised the goal of the Society but feared that the members "are only those persons to whom [spirits] are by nature distasteful."⁵⁶

The perception of the Society as biased against the working classes is illustrated in a controversy that followed the introduction of stricter licensing provisions in 1838. A letter to the *Monitor* noted that the pledge was somewhat "unjust to the labourer", a theme that the paper echoed. Describing the approach as "a barbarous and tyrannical attack upon the comforts of the poor" the paper argued that some form of alcoholic drink was a necessary stimulant for workers and defended spirits on the basis of cost.⁵⁷ The impassioned response of Saunders, editor of the *Temperance Magazine*, showed his sensitivity to this charge of bias. He denied that temperance was an elite movement claiming "the cause has been chiefly upheld by the middle and humble ranks", but claimed that:

*poor drinkers have created the distinction [between upper and working class drinking] by their own acts, and cling to the noxious fluid as the poor man's drink, although it is the drink which has made them poor.*⁵⁸

Thus, even in defending the Society from accusations of bias, its chief advocate could not avoid stressing that drunkenness was a more serious problem amongst the working classes.

In stark contrast, the teetotal societies of the early 1840s were popular, drawing wide support precisely from "humble persons of little influence". Though membership of these short-lived bodies is even harder to determine, it is noticeable that subscriptions to abstinence societies were consistently for much smaller sums, the majority less than 6 shillings where most benefactors

⁵⁶ 'Letter of "A Correspondent"', *Herald*, 12th May 1834, 2; *Australian*, 9th May 1834, 2. For more early criticism of the movement see: *Australian*, 6th July 1832, 2; 6th Jan. 1834, 4; 21st Feb. 1834, 3. For the pledge see: *Provisional Report*, 5. On the elitism of the British and Foreign Temperance Society see Harrison, *Drink*, 107-115.

⁵⁷ 'Public Houses', *Monitor*, 27th July 1838, 2; 'Public Houses', *Monitor*, 30th July 1838, 2. For the Act, see below, 186ff.

⁵⁸ *Temp. Mag.*, Sep. 1838, 33-4.

to the temperance society gave several pounds.⁵⁹ Also noticeable is the dominance of dissent within the movement, with meetings often held in nonconformist chapels, dissenting clergy prominent among the membership and, in contrast to the Temperance Society, very little support from the established church.⁶⁰ More importantly, they were not just popular but populist – they actively sought a broad membership and immersed their supporters in a social world to rival that surrounding the public house with regular meetings and events that catered to the whole family. This approach is captured in the processions and festivals which dotted the temperance calendar during which members publicly celebrated their abstinence, reinforced their sense of virtue, advertised their growing numbers and attracted new converts with music, food and conviviality.⁶¹ But they were also increasingly radical in their approach. Inclusivity was predicated on a new understanding that restraining the influence of the “demon drink” required a universal commitment to sobriety, backed by legislative enactment.

But in the 1840s, both the style and the approach of teetotal societies was rejected by conservatives who consistently objected to “politics” and refused to support the populist movement. Gipps repeatedly defended his government’s policies on alcohol, arguing in 1838 that the success of temperance “depends less upon the exertions of the legislature than it does on the exertions of individuals.”⁶² This was the official position of the Society despite the fact that its keenest supporters were convinced that legislative changes were necessary. Reflecting this divide, in September 1837, a respectable publican, “candid objector”, claimed that while he approved of temperance and had joined the Society, he believed it should only be pursued “through the medium of personal example and moral suasion” whereas “the most prominent members of the society propose ... legislative enactments ... [and] appear to insist on a radical reform in the commercial world.”⁶³ For example, in an editorial in the *Temperance Magazine* Saunders argued for restrictions on the sale, import and production of spirits but claimed:

⁵⁹ See for example: ‘Subscriptions and Donations ...’, *Teetotaller*, 2nd Nov. 1842, 3; ‘Temperance Meeting’, *Herald*, 28th Apr. 1842, 2.

⁶⁰ The established church was increasingly hostile towards radical temperance, arguing that the movement challenged the authority of the church. See for example the debate between ‘Guardian’ and ‘Reviewer’: *Teetotaller*, 29th Jan; 5th Feb.; 12th Feb.; 19th Feb.; 26th Feb. 1842.

⁶¹ See for example: ‘Report of the Sydney Total Abstinence Society’, *Temp. Adv.*, 22nd Sep. 1841, 5; ‘St Patrick’s Total Abstinence Society’, *Chronicle*, 15th Oct. 1842, 2; ‘Teetotal Festival’, *Chronicle*, 28th Dec. 1841, 2.

⁶² *Temp. Mag.*, July 1838, 6.

⁶³ ‘Letter of “A Candid Objector”’, *Temp. Mag.*, Sep. 1837, 39. The fact that a respectable publican joined the Temperance Society in the first place tells us something of the character of the early movement.

*connected as we are with the Temperance Society, we do not call for legislative enactment; but we have no hesitation in saying, that such an enactment, and a very wide and very strong one, would be beneficial.*⁶⁴

This distinction between a “call for legislative enactment” and a strongly expressed opinion in its favour seems very fine indeed. What it suggests is a conflict between Saunders’ own views and the official position of the Society, between the radical and the conservative supporters of temperance.

Once the Abstinence Society was established this conflict between moderates and radicals became more overt. At the annual meeting in 1841 Gipps referred to the “controversy” but called for cooperation praising the strict principle of the teetotallers who deserved “the places of honour amongst us” though he also argued that their “extreme” approach could not achieve reform. Drinking in moderation was harmless, aided social intercourse, brought “good cheer” and thus had an important social role, and he cited as an example that on hearing of the recent birth of the Queen’s daughter he had immediately drunk a toast to her health.⁶⁵ This remark drew the ire of the teetotallers and, at a meeting shortly after, Gipps was all but accused of encouraging drunkenness, by promoting this “worst of fallacies ... that the comfort of the social table depends on the bottle”. This placed Saunders in an awkward position and while he condemned this attack on “the chief friend of Temperance in this Colony” he also argued against the prevalence of alcohol in high society and claimed that Gipps’ himself would rejoice at the day when “his duty and affection to his sovereign will not be suspected by mentioning her name without raising the pledging cup”.⁶⁶ Hostility towards conservative temperance was common at abstinence meetings. In 1839, John McKaeg, a Presbyterian preacher, argued that “the old Temperance Society is not sufficient to reclaim drunkards ... [because] it forbids one kind of intoxicating liquor but allows others” and claimed the lack of converts to the cause showed that the original society was a failure. This disdain for rival approaches was mutual: as the Temperance Society went into a terminal decline, its conservative supporters largely refused to transfer allegiance to the more radical organisation.⁶⁷

The *Herald*, under the editorship of Kemp and Fairfax, was a strong supporter of the Temperance Society, but regularly criticised the teetotallers for what it perceived as overly ostentatious and “political” demonstrations. In December 1841 the editor described a march by

⁶⁴ *Temp. Mag.*, Aug. 1838, 20.

⁶⁵ ‘The Public Meeting’, *Temp. Adv.*, 21st Apr. 1841, 3-4. For the importance of toasting in English culture and the temperance revolt against this custom see: Harrison, *Drink*, 55-6, 351.

⁶⁶ ‘Total Abstinence Society’, *Temp. Adv.*, 9th June 1841, 2; ‘Healths and Toasts’, *Temp. Adv.*, 16th June 1841, 1-2.

⁶⁷ For McKaeg see: ‘Teetotalism’, *Herald*, 24th May 1839, 2. See also the series of debates between the two sides: ‘Temperance vs Teetotalism’, *Temp. Adv.*, 11th Aug. 1841, 8-11; ‘Discussion at the School of Arts’, 18th Aug. 1841, 5-9.

Teetotallers in Wollongong as “scarcely compatible with the peace of society” and noting that the Sydney Society was soon to follow suit, he argued that “many who esteem and admire [the principle] will turn from it in disgust when thus painted and gilded for the sake of effect”.⁶⁸ In essence, the movement was divided between a largely conservative elite and a wider and more enthusiastic public.

This conflict over temperance is best illustrated in the person of Saunders, the long time secretary of the Temperance Society, editor of its journals, and subsequently an active teetotaller. Roe described Saunders’ “conversion” as a symbol of “the near-absolute victory for teetotalism” but this is misleading for he was a member and supporter of the Temperance Society until it ceased to exist. Rather, Saunders illustrates the irreconcilable differences between the radical aspirations of passionate temperance advocates and the much more conservative approach demanded by the elite who funded the movement. In a letter to his sister, he described his invitation to a function at Government House and noted that although he was not invited to supper afterwards, he would not have gone in any case because such evenings were devoted to drinking and dancing.⁶⁹ For radicals, such frivolity was a dangerous temptation and a bad example but as secretary Saunders was well aware that the Society relied upon those who thought differently.⁷⁰

As in his discussion of toasting, Saunders often found himself walking a tightrope over the widening chasm between two very different views of temperance and he criticised the faults of both sides. In an editorial in the *Advocate* he pointed to the crime of “civicide” by the “aristocracy” noting that “there are men of large possessions in this Colony who only think of their own brief existence and the best means of enjoying themselves” and who, more pertinently, refused to support the temperance cause. But he also feared the excess of the teetotallers criticising the “personality and tirade” which characterised their meetings and rejected their more aggressive acts.⁷¹ Thus Saunders symbolises the struggle to reconcile the populist and elitist approaches to temperance, a challenge that would contribute to the failure of the early movement.

⁶⁸ ‘The Teetotal Gala’, *Herald*, 13th Dec. 1841, 2. The issue in Wollongong related to the use of banners and insignia associated with, or similar to those associated with, the rebel Catholic cause in Ireland. For more on this incident and its sectarian overtones see: Allen, ‘Sectarianism’, 386-7.

⁶⁹ Roe, *Quest*, 166; Saunders, Letter to Harriett, ‘Letterbook’, 9th June 1835.

⁷⁰ For his private views see: Letter to Harriett, 1st Aug. 1835. Compare his public writings: *Temp. Mag.*, 11th May 1840, 161-3; ‘The Gentry’, *Temp. Mag.*, May 1840, 161-3.

⁷¹ ‘Civicide’, *Temp. Adv.*, 17th Mar. 1841, 1-2. For criticism of teetotallers see: *Temp. Adv.*, 16th June 1841, 1-2; ‘Progress’, *Temp. Adv.*, 11th Aug. 1841, 1.

Elite Support and the Failure of Early Temperance

Though elitist in its outlook, conservative temperance was by no means universally supported by Sydney's elite. Even before the establishment of the movement in NSW, a writer to the *Australian* alleged that overseas experience showed that temperance societies lowered the social tone by reducing friendliness and good feeling and this attitude underlay an upper class disdain for personal temperance, if not the movement in general.⁷² High society continued to be lubricated by alcohol and even when this was not excessive, drinking was an intrinsic part of social rituals, symbolized in Gipps' refusal to banish wine from his table despite his dedication to temperance.⁷³ But the Temperance Society was ideologically and financially dependent upon this hypocritical elite.

After the Governor had chaired the annual meeting in 1838, the *Gazette* claimed that the greatest opposition to temperance came from "the influence of fashion" which had prevented many moderate drinkers from giving their support. Gipps' leadership was crucial because it made the movement fashionable and similar claims were made about Queen Victoria's patronage of the British parent society, a fact which "must increase public approval" for temperance.⁷⁴ Gipps seemed aware of this, noting in 1841 "the marked increase in the attendance of persons of weight and influence" since he first chaired the annual meeting. He also pointed to the ephemeral nature of such supporters hoping that "if they be not all members of our Society, are at best, all, I trust and believe, friends and advocates of the cause"⁷⁵

But this was wishful thinking. In his speech the following year Gipps commented on "the respectable appearance [of the room] ... which might lead a stranger to suppose this society is well supported" but noted that in fact their debts had doubled. At the same meeting, Chief Justice Alfred Stephens quoted an unnamed "friend" who refused to subscribe claiming that: "Temperance Societies do no good. Your Temperance people are a set of fashionables who go yearly to a large hall to hear the Governor make a speech".⁷⁶ Though Stephens' proceeded to demolish such arguments, in the light of the Society's rapid decline his anecdote seems remarkably close to the truth. There must have been many such friends of the cause in the audience that night whose

⁷² *Australian*, 20th Feb. 1834, 2. See also the response of 'Veritas', *Herald*, 7th Feb. 1834, 2.

⁷³ For elite drinking see: 'St George's Dinner', *Herald*, 25th Apr. 1836, 2-3. On Gipps and wine see: *Temp. Mag.*, May 1840, 167-8; 'The Public Meeting', *Temp. Adv.*, 21st Apr. 1841, 4.

⁷⁴ 'The Meeting', *Gazette*, 12th June 1838, 2; *Temp. Mag.*, July 1838, 1; August 1838, 20.

⁷⁵ 'The Public Meeting', *Temp. Adv.*, 21st Apr. 1841, 4.

⁷⁶ 'The Seventh Annual Report', *Teetotaller*, 7th May 1842, Supplement, 2. See also the comment of Elizabeth Saunders that many of the gentry were not keeping their pledges: Saunders, Elizabeth to Jane, *Letterbook*, 8th June 1835.

friendship was limited to attendance at the annual meeting. The social elite on whom the Society was financially dependent were mostly not devoted to temperance.

The paucity of elite support is illustrated by the limited contribution of women to the Temperance Society. Female involvement was actively sought with male speakers casting women as the key agents in redeeming drunkards. At the first general meeting of the Temperance Society Forbes noted that “the ladies had the power of doing much good, by endeavouring to rescue by their council those who were falling victim to the dreadful vice of intemperance” and subsequent events advertised the provision of seats especially “for the ladies”.⁷⁷ There were even calls for a dedicated society of “influential ladies” who would promote the cause “by seeking for members amongst all classes of society”.⁷⁸ That this society never eventuated suggests that the advertised seats were not always full.

Gipps was perhaps the foremost advocate of women’s special powers of reform. At the annual meeting of 1840 he claimed that the influence of women was more effective than “law, religion, despair, or ruin”. He exhorted his female listeners to use the weapons at their disposal, “looks of love and smiles of pity ... [and the] plaintive eloquence of a tearful eye” to persuade drunkards to abstain while the Attorney-General, John Plunkett called on “every lady in that assembly” to force even moderate drinkers to sign the pledge “on penalty of exclusion from their presence”.⁷⁹ But this feminine privilege was double-sided. The following year, Gipps attacked the “large attendance” of ladies in the audience, but asked whether their support was genuine or merely fashionable. Claiming that the cause would already have succeeded if they had truly committed to it, he prayed that they were not conniving in male drunkenness or worse, given to intemperance themselves:

but this could hardly be, for e’er it can arrive, the creature is unsexed, the soft and endearing name of woman shall no longer be applied to her ... There is nothing in the whole catalogue of crime, so thoroughly revolting as drunkenness in a woman.

⁷⁷ ‘Temperance Society’, *Herald*, 20th Nov. 1834, 2. For mention of seats see: ‘NSWTS’, *Colonist*, 1st Jan. 1835, 7; ‘Temperance Society’, *Herald*, 8th Jan. 1835, 2.

⁷⁸ ‘Temperance Society’, *Herald*, 24th Apr. 1839, 2. There is no evidence that such a group was formed in NSW until the 1850s.

⁷⁹ ‘Temperance Meeting’, *Colonist*, 25th Apr. 1840, 2,4.

In a classic demonstration of Anne Summer's thesis, Gipps insisted that women who did not strive to reform society were betrayers of their angelic sex, and those who fell into drunkenness were beneath contempt, the very devils of society.⁸⁰

What is also notable is that Gipps perceived elite female participation as largely superficial. This is borne out by an analysis of subscription lists for the Temperance Society, which even in its heyday show a very limited female involvement, especially in comparison with the leading role elite women often took in colonial charities. When Gipps and his wife attended meetings they were well attended, but in general the Society lacked dedicated female involvement.⁸¹ In stark contrast, teetotallers gained much more enthusiastic support from women, albeit of lower status. Female members not only attended more regular meetings but played an active role in the societies painting banners, sewing decorations, preparing food and leading musical activities that formed an integral part of the more comprehensive program of populist temperance. The limited evidence of membership suggests that women may have made up as much as a third of teetotallers, largely because the societies offered a more holistic experience for their members. As with membership in general, teetotal societies were more popular with women because they offered entertainment and community, not merely condescension towards the poor.⁸²

The decline of early temperance was in large part due to the depression of the early 1840s. But it was also a consequence of the divisions that emerged within the movement between conservatives and radicals with very different views of how alcohol problems should be solved. The loss of elite support also had an impact upon the teetotal societies, even though their membership was mostly drawn from lower down the social scale, as we can see from the fact that the peak years for the Abstinence Society were also those when the Temperance Society was active. Without elite participation, teetotal societies struggled to procure the attention of the newspapers a fact that no

⁸⁰ 'Temperance Society', *Herald*, 19th Apr. 1841, 1. For more on Gipps' views of women and temperance see Windschuttle, 'Women', 8-9. For the dual vision of women in colonial Australia see: Summers, *Damned*, chs. 8-9.

⁸¹ 'Temperance Society', *Herald*, 19th Apr. 1841, 1; Windschuttle, 'Women', 9-12. She suggests three reasons for the lack of support, the general indifference of Anglicans towards temperance – most of the leading female philanthropists were Anglican – the fact that temperance outreach necessarily involved interaction with working class men and the increasingly radical associations of the movement. For more on women and charity in nineteenth-century NSW see her: 'Feeding the Poor and Sapping their Strength: the Public Role of Ruling-Class Women in Eastern Australia, 1788-1850', Windschuttle (ed.), *Women, Class and History: Feminist Perspectives on Australia, 1788-1978*, Melbourne: Fontana, 1980, pp 53-80.

⁸² For active participation see: 'Illawarra Total Abstinence Society', *Chronicle*, 14 Sep. 1841, 2; 'Teetotal Festival', *Chronicle*, 28th Dec. 1841, 2; 'St Patrick's Total Abstinence Society', *Chronicle*, 15th Oct. 1842, 2; 'Ladies Corner', *Temp. Adv.* 7th Oct. 1840, 5. For membership see: 'Windsor', *Temp. Adv.*, 28th Apr. 1841, 11. Windschuttle, 'Women', 12-13. For the importance of family see: 'Family Temperance Societies', *Teetotaller*, 23rd July 1843, 1.

doubt reflected editorial prejudice but also the waning interest of the reading public who were the natural constituency of populist temperance.⁸³

The failure of the radical societies was also a consequence of rising sectarian tensions. Despite the passion of the movement's leaders, the popularity of temperance societies was largely a reflection of identity politics and not an abiding concern with alcohol problems. For the members of populist societies, temperance was often less about personal reform, or outreach to the unfortunate, than it was a statement of respectability. As the St Patrick's Society became the dominant organisation in the mid-1840s, temperance was increasingly perceived as an Irish and Catholic movement and at a time of sectarian hostilities, Protestant support shrank.⁸⁴ It was only with the rising concern about drunkenness in the 1850s that temperance societies recovered their respectability and the movement revived.

But temperance in mid nineteenth-century NSW was not only a social movement. It was also an influential set of ideas about alcohol and these ideas had a life beyond the organised societies. Ironically, even as the movement declined, the radical temperance view that alcohol was inherently dangerous became widely accepted, with far-reaching consequences for alcohol regulation and wider implications for democratic governance.

⁸³ Even the *Star and Working Man's Guardian*, a radical paper, gave scant coverage to temperance all but ignoring the large teetotal festival in 1845. See: *Star and Working Man's Guardian*, Parramatta: 1844-5, 28th June 1845, 2.

⁸⁴ For more detail on this argument see my article: Matthew Allen, 'Sectarianism, Respectability and Cultural Identity: The St Patrick's Total Abstinence Society and Irish Catholic Temperance in mid-Nineteenth Century Sydney', *Journal of Religious History*, vol. 35, no. 3, (Sep. 2011), pp374-392.

Chapter 10) George Allen and the Temperance Shift.

Temperance as an Idea

Over the course of the nineteenth century ideas about alcohol underwent a striking transformation among experts and lawmakers, and within the popular imagination. From an eighteenth-century world in which drinking was ubiquitous and unconsidered and drunkenness common and generally tolerated, the twentieth-century began with abstinence from alcohol widely regarded as an ideal, habitual drunkenness viewed as a form of insanity and a vast body of new regulations that increasingly restricted access to alcohol and the manner in which it was consumed. The temperance movement was both a symptom of and a catalyst for these changes.

This shift in ideas had significant consequences for the regulation of alcohol. Before temperance, access to alcohol was treated as a right, albeit a right increasingly hedged by the responsibility not to disturb public order. Though government was concerned with alcohol problems, licensing sale only under strict conditions and taxing alcohol heavily, these measures presumed that drinking was a natural activity and that only excessive public drinkers required restraint. Even eighteenth-century reformers accepted that moderate consumption was legitimate and concentrated their energies on the perceived association between drunkenness and idleness, poverty and disorder. As a result, problematic drunkenness was seen as a choice made by the drinker; a sinful and potentially criminal choice for which the drinker was held responsible by God and under the law.

But the campaigns of the temperance movement helped transform the place of alcohol in the social imaginary. Rather than blaming drinkers for alcohol problems, temperance pitied them and blamed the drink itself and more importantly the government that profited from it and this new paradigm contributed to the growth of regulation. Temperance demanded centralised restrictions on the supply of alcohol and popular control of licensing that aimed at eventual prohibition, promoted increased surveillance of public drinking and systematised discipline for the disorderly by a modernising police force, and supported the medicalisation of habitual drunkenness as an uncontrollable addiction. The temperance shift made alcohol problems a responsibility of the state.

Temperance changed ideas about alcohol despite its failure as a movement. Despite the institutional failure of the early societies in NSW, the radical temperance critique of alcohol became firmly established in the public sphere and helped to frame debate for the rest of the century.

Ironically, the success of the idea may partly explain the failure of the movement: the fact that temperance had such wide acceptance meant that membership of a society was more reflective of cultural identity and a desire for respectability than any particular concern about drunkenness.

The significance of temperance and its evolution as a movement are embodied in the temperance career of George Allen.¹ Allen was a transitional figure with connections to both the initial conservative movement and the later populist societies. While he personally embraced the more radical ethic of total abstinence and advocated a universal reformation of manners, he also objected to the political program of the abstinence movement insisting that personal influence and elite philanthropy were the proper means of reforming society. In addition, as a magistrate and politician, he was intimately involved in the state's campaign against alcohol problems, both in formulating regulation and putting it into practice. Though he was by no means a typical advocate of temperance, his personal convictions and public career illustrate the shifts within the movement and in broader ideas about alcohol and responsibility.

George Allen and Public Life

Allen was born in England in 1800 but after his father's death in 1806 his mother remarried and her new husband was soon after arrested for fraud and transported to NSW.² His mother followed her husband to Sydney and upon their arrival in 1816, George was articled to Frederick Garling, a practising solicitor. He was admitted to practice in 1822 and the firm that he founded is the oldest in Australia, still operating today. He was also married in that year to Jane Bowden, the daughter of Thomas, a school master and the pioneer of Methodism in NSW. This alliance no doubt reflected his growing involvement in the Church for he had joined the Methodist Society the year before and from this date his faith, until then a casual matter, became increasingly important.³ As well as his legal practice he was also a businessman, a founding director of the Gaslight Company and the Bank of New South Wales among other ventures. He received a land grant from Macquarie in 1819 and through a combination of hard work, thrift and prudent investment he was soon a rich man. In 1831 he had three houses in Sydney, 30 acres at Botany Bay and in that year he purchased

¹ For the record, note that George Allen and I are not related.

² For general biographical details of Allen see: Norman Cowper, 'Allen, George (1800–1877)', *ADB*, [<http://adb.anu.edu.au/biography/allen-george-1696/text1831> - accessed 22 May 2012]; George W.D. Allen (ed.), *Early Georgian: Extracts from the Journal of George Allen, 1800-1877*, Sydney: Angus & Robertson, 1958; George Allen, 'Journals'.

³ For more detail on early Methodism in NSW see: R.B. Walker, 'The Growth and Typology of the Wesleyan Methodist Church in New South Wales 1812-1901', *Journal of Religious History*, vol. 6, no. 4 (1971), pp331-47; Don Wright and Eric G. Clancy, *The Methodists. A History of Methodism in NSW*, St Leonards, NSW: Allen & Unwin, 1993.

another, larger estate in what had been the old St Phillip's Glebe on which he built Toxteth Park, his home until his death in 1877. Allen thus found himself in the awkward half-way house of colonial society, respectable and prosperous but tainted by his father-in-law with a connection to the convict system which denied him acceptance in the highest social circles.⁴

Allen entered politics at the earliest opportunity, standing for the first Australian elections, to the Municipal Council in 1842 and in 1844 he became Sydney's third Mayor. Following the success of his mayoral term he was appointed by Gipps to the Legislative Council where he remained an unelected member through the many changes to that institution, until his retirement from public life in 1873. But in addition to his legal and political career, Allen was also an active philanthropist and congregant. He was a founder and trustee of the Sydney Free Grammar School, later Sydney College, president of the Australian Total Abstinence Society, secretary of the Benevolent Society and the Bible and Tract Society and donated to most charitable causes. He was active in the Methodist church, attending a weekly bible class and working without pay as a lawyer for, and member of, the District Methodist Society. He also preached, twice on Sundays and once on a weeknight, to his servants and neighbours, at first in the front room of the family home and subsequently in the 200 seat chapel that he built at Toxteth in 1843. In 1844 his busy schedule saw him rise at five to write, work at his legal practice in the mornings, serve on the District or Municipal Council every afternoon and attend a different charity each evening, except Thursday when he held religious service.⁵ This was a man with an extraordinary sense of public responsibility.

Abstinence, Temperance and Teetotallers

Allen's interest in temperance pre-dated the establishment of the movement in NSW and was almost certainly connected to his religious conversion. Indeed, the early Methodist church drew part of its strength from its condemnation of drunkenness and forgiveness of reformed and occasionally relapsing alcoholics. Allen's father-in-law was removed from his position as a school teacher after falling back into chronic intemperance in March 1825 while Robert Howe, a close friend of Allen and the Methodist editor of the *Sydney Gazette* during the 1820s was similarly prone to indulge while using his paper to condemn the vice. Even while he remained a drinker, he recorded his anxiety over the habits of others, noting his grief when he found his brother "in a state

⁴ For more on the prejudice against convict association in colonial society see: Penny Russell, *Savage or Civilised? Manners in Colonial Australia*, Sydney: University of New South Wales Press, 2010, ch. 4; Hirst, *Freedom*, 181-2; Smith, *Birthstain*, chs. 7-8.

⁵ Allen, 'Journals', 28th Feb. 1844.

in which he ought not to have been".⁶ It is quite possible that Allen's own abstinence was partly inspired by these warning examples.

In early October of 1833 he privately pledged to abstain from all alcoholic drinks, and maintained this stance for the remainder of his life.⁷ Though he was never a heavy drinker he was convinced that he had benefitted from his abstinence:

*I am stronger now I drink nothing but tea and coffee ... I have far better spirits ... it [alcohol] is an unnecessary indulgence ... it does you no good, it is a needless expense, it will not help you in preparing for a dying hour ... while you drink at all you are in temptations path ... forsake this dreadful habit.*⁸

Allen's temperance was thus directed both inward and outward – he wanted to set an example for others and he had a sincere fear of offending God. This complex demonstrative piety emerges clearly in two associated acts of self-denial. Eighteen months after abandoning alcohol he also quit smoking, a challenge that he found more difficult, but in which he eventually succeeded. Describing his motives he observed that while smoking was not itself a sin, as a "waste of time and a useless expense" it could be regarded as sinful. There were similar scruples behind his obsession with early rising for he regularly berated himself for time "wasted ... in unprofitable sleep".⁹ In a classic illustration of Weber's protestant ethic, Allen's religious calling drove him to labour, to thrift and to an exacting morality that included a complete avoidance of alcohol.¹⁰ Indeed, he feared the punishment of an active providence. Commenting on the depression of 1843 he noted that "the grossest indecency seems to be carried on in our city – Is it not a wonder that God whose eye sees all things does not swallow up the place".¹¹ His obsession with sin aligned him with the long tradition of moral reformers and like them he also had practical and secular concerns.

Allen shared the traditional objection to public drinking which was especially prevalent amongst members of Sydney's legal and charitable elite and drove the foundation of the Temperance Society. Even before his commitment to abstinence, he repeatedly condemned the

⁶ Allen, 'Journals', 4th Sep. 1827. Allen regularly lamented his brother's drunkenness, even suggesting it contributed to his early death in 1844. See: 'Journals', 13th Dec. 1835; 23rd June, 1844. For Bowden see: V.W.E. Goodin, 'Bowden, Thomas (1778–1834)', *ADB*, [<http://adb.anu.edu.au/biography/bowden-thomas-1809/text2061> - accessed 22 June 2012]. For Howe see: 'Journals', 22nd July 1834; 1st May 1841.

⁷ Allen, 'Journals', 2nd Apr. 1834. He records five months without a drink.

⁸ Allen, 'Journals', 29th Sep. 1835.

⁹ For smoking: Allen, 'Journals', 27th May 1835. For early rising: 29th May 1834; 14th-15th Mar. 1837; 22nd Sep. 1847. Quotation from 1847.

¹⁰ Weber, *Protestant Ethic*, ch. 5. See also his comments on Methodism, 139-143.

¹¹ Allen, 'Journals', 4th May 1843.

drunken celebration of festivals and holidays, commenting in early 1831 on the “Christmas drunkenness” and lamenting that “the festival should be so abused [that] instead of the time being spent in meditating upon divine things it is too often spent in sin and folly”.¹² After his pledge his attacks became more frequent and his proposed cure more radical. In May of 1834 Allen assisted a Mrs Moriarty who had been threatened and assaulted by her drunken husband and feared for her life. Recounting the event in his journal he made a more general condemnation of the “dreadful vice” of drunkenness, “the chief incentive to crime – It causes the husband to lay violent hands on the partner of his life – the father to beggar his family – the mother to neglect her offspring. In short it turns man into worse than a brute”. But Allen also made a more radical argument:

*“I cannot help thinking it is a great pity that temperance societies do not go further than prohibit the use of spirituous liquors – why not beer and wine except in cases where required for health[?] ... But say the temperance societies – spirits is the drink of the poor and it is those persons we wish to reclaim – I fear this is only half doing the business. Let us cure the rich, the polite etc [sic] as well as the poor and vulgar – perchance their example may have a good effect upon their thoughtless brethren”.*¹³

Though he supported the exemplary approach of conservative temperance he shared the Saunders’ scepticism about the commitment of the gentry and displayed a degree of ambivalence towards the Temperance Society.

Allen was deeply concerned with the connections between drunkenness and crime, echoing Justice Burton’s condemnation of drunkenness and perjury as “the prevailing vices in the colony”. During the criminal sessions of 1836 he attributed the spate of murders to intemperance and concluded that “we cannot do too much to hold up Temperance Societies”.¹⁴ Thus it is surprising to find that he only occasionally attended meetings, particularly given his diligent labours in other charitable causes.¹⁵ He frequently expressed scepticism about the effectiveness of the Society, noting on one occasion that “it is to be feared too little energy has been exerted by its members”.¹⁶ In all likelihood, this equivocation was partly motivated by social and religious distinctions – though a prominent lawyer, in the strictly stratified society of 1830s Sydney, Allen’s nonconformity and his

¹² Allen, ‘Journals’, 4th Jan. 1831. See also 29th Dec. 1833. He also regularly attacked Irish drunkenness on St Patrick’s day: 18th Mar. 1835; 17th Mar. 1837.

¹³ Allen, ‘Journals’, 11th May 1834.

¹⁴ Allen, ‘Journals’, 14th May 1834; 6th May, 1836.

¹⁵ He first attended a temperance meeting in Parramatta on the 10th Sep. 1835. For donations see: *Temp. Mag.*, July 1837, 15; Oct. 1838, 62; Jan 1840, 110. From 1839 he was on the committee.

¹⁶ Allen, ‘Journals’, 6th May, 1836.

association with convicts through his step-father, excluded him from the social elite. But he was genuinely uncomfortable with the hypocrisy of an upper class who regularly drank to excess but condemned the drinking habits of the poor. His vision of reform was more universal. After he became President of the Total Abstinence Society in early 1841 he clarified this position:

*with respect to the temperance cause I am decidedly in favour of the Total Abstinence society as being in my opinion the fairest society – In that the rich and the poor fare alike.*¹⁷

But despite his objections to the hypocrisy of the Temperance Society, Allen was no radical. At the annual committee meeting of the Abstinence Society in late 1842, Allen's candidacy for President was rejected, ostensibly because opponents claimed that he had never signed a pledge, despite the fact that he was the best known and longest standing teetotaler in the colony. This rejection was driven by a radical working-class faction within the Society, based around John Neale, a butcher, elected member of Sydney Council and the head of the Abstinence Benefit Society. They overwhelmed the meeting, electing officers who supported political temperance and lobbying of the government to coerce abstinence through stricter regulations. The real objection to Allen's leadership was both political and social with one speaker commenting that "the society was the working man's society, they did not want gentlemen among them."¹⁸ Allen probably shared the view of an anonymous correspondent to the *Teetotaler* who complained that "all our respectability is gone" and described the "uproar and revolutionary anarchy" of a subsequent meeting under the new leadership.¹⁹

In the following months he was repeatedly approached to resume the Presidency but declined, objecting to the decision to "interfere with politics" and "coerce the people" as well as pointing to financial irregularities. His leadership was eventually solicited by a breakaway group and he agreed to become President of the new Sydney Total Abstinence Society.²⁰ Leaving aside the complex rivalries behind this split among the teetotalers, Allen's objection to politics reflected his

¹⁷ Allen, 'Journals', 9th Apr. 1841; 17th Apr. 1841.

¹⁸ 'ATAS', *Teetotaler*, 31st Aug. 1842, 3. On Neale see: Terry Irving, *The Southern Tree of Liberty: The Democratic Movement in New South Wales Before 1856*, Sydney: The Federation Press, 2006, 87. Irving's study of popular democracy has suggestive implications for my understanding of this split in the temperance movement. There is considerable overlap between the populist teetotalers and early chartists and radicals in NSW.

¹⁹ 'Letter of "An Observer of the Times"', *Teetotaler*, 15th Mar. 1843, 2;

²⁰ 'ATAS', *Teetotaler*, 12th Apr. 1843, 1; 'ATAS', 19th Apr. 1843, 1; Allen, 'Journals', 31st Mar. 1843; 14th Apr. 1843, 18th Apr. 1843, 20th Apr. 1843. He claimed that he accepted because "I found I should do harm if I refused". A similar split seems to have affected the Hobart temperance movement at this time with the founding members especially those "of the moral and religious class" leaving the original Hobart Town Total Abstinence Society and founding a rival VDL Society where "unfit persons as far as possible [were] excluded from office". See: Tasmanian Total Abstinence Agency Association Papers, 1846-1847, Mitchell Library, A585, 181-3

sympathy for the traditional and elitist model of reform. Though he rejected the hypocrisy of the anti-spirit societies he was equally alarmed by the radical claims to equality of some working-class teetotallers. He wanted a total reform of society's morals but without a radical upheaval of the traditional social order – ironically, an order in which he was only begrudgingly accepted.

Unfortunately Allen's vision of reform was not shared by either his fellow philanthropists or the working classes to whom they tended. From the beginning of his association with the abstinence societies, he noted their lack of "fashionable" support. In particular he observed that "many good men stand aloof under the false [impression] that the principles of the Society are opposed ... to Religion" a criticism made by high church Anglicans who resented any reform independent of the church.²¹ In 1844 he noted that the movement was in decline with meetings "neither so respectably nor so numerously attended".²² Even when meetings were popular, he noted the lack of respectable support claiming that many respectable and temperate people refused to contribute or participate in the movement. In 1847 he attributed the failure of the Abstinence Society to the fact that "so valuable an institution is so little countenanced by the upper classes of society".²³ But paradoxically he was also critical of the very features that attracted public support to the temperance movement.

Allen's distaste for the style of populist temperance is illustrated by his refusal to attend a tea party put on by the St Patrick's Society in 1843. No doubt this was in part driven by his sectarian inclinations for he was highly suspicious of Catholic motives and his journals show a strong sympathy for the many gross slanders against "popery" that formed an undercurrent to Protestant culture in the mid nineteenth century.²⁴ But he claimed that he would not attend because he disliked "public exhibitions" and disapproved of the music and festivities associated with such events.²⁵ In contrast, during his mayoral term he organised what was then the largest temperance event in NSW, the Mayor's Tea Festival, which featured precisely this kind of musical attraction. Unfortunately his journal does not record his thoughts on this occasion but perhaps tellingly he left long before the

²¹ Allen, 'Journals', 9th Apr. 1841; 12th Oct. 1843. For more on Anglican attempts to preserve their primacy see: Michael Hogan, *The Sectarian Strand: Religion in Australian History*, Ringwood, Vic.: Penguin, 1987, ch. 2, 74-80; Roe, *Quest*, 13-23; John Barrett, *That Better Country; the Religious Aspect of Life in Eastern Australia, 1835-1850*, Melbourne: Melbourne University Press, 1966, chs. 3-4; Hilary M. Carey, *Believing in Australia: a Cultural History of Religions*, St Leonards, NSW: Allen & Unwin, 1996, ch. 1.

²² Allen, 'Journals', 28th Mar. 1844; 20th June 1844; 3rd Aug. 1847.

²³ Allen, 'Journals', 3rd Aug. 1847.

²⁴ See for example: Allen, 'Journals', 5th June 1836, 30th Jan. 1837, 18th Aug. 1843. For more on sectarianism in this era see Hogan, *Sectarian*, 61-9; Allen, 'Sectarianism', 383-5.

²⁵ Allen, 'Journals', 14th Oct. 1843; 17th Oct. 1843.

evening ended.²⁶ Allen joined and supported the abstinence movement as a gentleman patron, not an ordinary member and his sympathy was thus with the elitist approach to temperance, despite his commitment to personal sobriety. Thus, Allen was left behind by the temperance shift, eventually rejecting both the populist approach to attracting members and the radical approach to reform.²⁷

Conservatism and the Social Elite

Allen demonstrated his scrupulous and egalitarian morality in other aspects of his public life. In his journal he repeatedly attacked traditional upper class socialising, which he regarded as a cause of immorality. When invited to attend elite social occasions, as he increasingly was, he refused to allow his family to attend claiming many lives were "ruined by balls and assemblies". Similarly, when his career obliged him to dine with other gentlemen he went with a distinctive reluctance and was ridiculed for his abstinence as "the gentlemen seem astonished that any one can deprive themselves of the precious fluid".²⁸ His attitude towards the elite is perhaps best illustrated by his nomination as a member of the Australian Club. This Sydney institution, modelled on the clubs of London, was one of the key marks of status in the colony – all men of consequence were members and membership was a much sought after honour. Allen records his hesitation in his diary:

I must confess I do not see any advantage in this matter. It is true that the club is composed of gentlemen and none but gentlemen are admitted but really I do not like expending money for a matter which is not a charity and from which any advantage is derivable. I did not like however to refuse to pay the fee and have therefore, much against my inclination complied.²⁹

Here Allen's complicated attitude to status is perfectly condensed. Though his faith demanded that he avoid the extravagant indulgence of a club membership he nonetheless complied with his social obligations. This was not simple hypocrisy but a genuine expression of a peculiarly conflicted view of elite society for it appears that he never attended the club. While rejecting the trappings of status,

²⁶ 'The Mayor's Party', *Herald*, 23rd June 1845.

²⁷ When the movement revived in the 1850s, Allen was again involved, presiding at meetings and subscribing to the construction of the temperance hall though he expressed doubts about their prospects of success and never involved himself in the campaign for legislative reform. See: Allen, 'Journals', 27th Nov. 1856; 21st Jan. 1857; 2nd May 1857; 21st Apr. 1859.

²⁸ For Balls see: Allen, 'Journals', 18th Apr. 1836; 17th Oct. 1846. For dinners see: 1st June 1847; 18th Mar. 1834; 29th May 1841; 2nd July 1847.

²⁹ Allen, 'Journals', 20th June 1850. For more on the club and its status see: J.R. Angel, *The Australia Club 1838-1988: The First 150 Years*, Sydney: John Ferguson, 1988, ch. 5. For a somewhat similar anecdote about colonial manners see Penny Russell's account of Neil Black and his reluctant attendance at a drunken dinner party at the Wool Pack Inn in Geelong: Russell, *Manners*, ch. 3.

Allen retained a respect for traditional authority and this would lead him into conflict with his fellow abstainers.

In effect Allen combined sincere piety and reformist concern about alcohol problems with conservative resistance to change. There is an intriguing parallel here with William Wentworth, whose convict associations, like Allen, excluded him from the highest society. Though he was a constant campaigner for responsible government, Wentworth rejected the popular push for democracy, notoriously calling for a hereditary upper house in NSW which saw him ridiculed by the radicals whose cause he once championed.³⁰ While one could hardly conceive a starker contrast in personalities, Allen was likewise a conservative reformer whose ideals were overtaken by the pace of change in nineteenth-century Sydney. Describing the first NSW elections in 1843 he was horrified "to see such quarrels and animosities" and claimed that only "fear of human laws and not the fear of God ... has prevented much murder". He consistently opposed lowering the franchise, citing the election of improper characters, including publicans to Sydney Council as evidence that "votes are too easily obtained". Similarly, he celebrated his appointment to the Legislative Council noting:

*none but gentlemen have been nominated by the Crown ... [though there are] many highly respectable persons among the elected. As to the majority among that body are very many who ought not to have been placed in such a situation ... There are persons living in concubinage and adultery – there are drunkards and persons who have passed through the insolvent court and have defrauded their creditors.*³¹

When pushed by friends to again campaign for mayor in 1852 he displayed a peculiarly honourable view of democratic institutions arguing that "the people ought to choose the person they deem best qualified and that no person should solicit votes".³² For very different reasons, Allen also rejected both the manners of the colonial gentry and the excesses of popular democracy that drove Wentworth from Australia.

Allen's conservatism is also apparent in his attitude to preaching. Like most Methodists he favoured lay preaching, building a chapel on his estate where he gave sermons every Sunday. But

³⁰ D'Arcy Wentworth, while not a convict was sent out to NSW in disgrace after narrowly escaping conviction in a series of trials for highway robbery, while William's wife Sarah was the daughter of a convict. For more on his social exclusion see: Russell, *Manners*, 128-9; Ritchie, *Wentworths*; Peter Cochrane, *Colonial Ambition: Foundations of Australian Democracy*, Melbourne: Melbourne University Press, 2006, 4-5, 22-3. For his upper house scheme see: Cochrane, *Ambition*, 365-7; Ged Martin, *Bunyip Aristocracy: the NSW Constitution Debate of 1853 and Hereditary Institutions in the British Colonies*, Sydney: Croom Helm, 1986.

³¹ Allen, 'Journals', 17th June 1843; 8th May 1844; 2nd Aug. 1850. Of course this criticism of the elected members could well have applied to Wentworth.

³² Allen, 'Journals', 12th Jan. 1852.

after attending a sermon by a Mr Butler he noted that “not every pious man ... is a fit person to preach” and regretted that it was “a sad pity to see men put themselves forward when they are really quite incompetent”. For similar reasons he opposed allowing emancipated convicts to hold lay offices within the church and regretted that men “whose characters are not free from suspicion” were prominent within the Methodist Society.³³ He also shared typical conservative attitudes to servants, complaining of their insolence and disobedience and regularly firing his employees for drunken misbehaviour.³⁴ But this did not preclude aspirations for reform so long as they were grounded in the traditional hierarchy and in personal virtue. His coachman who was a prisoner for eight years before gaining his ticket-of-leave was once “irreligious ... criminal and frequently very impertinent” but like “a brand plucked from the burning”, the exposure to regular preaching at Toxteth transformed his character until he became “moral and respectful and what is far better ... really devoted to the service of God”.³⁵ Allen strove for reform through individual improvement and dedication to God but he rejected the radical democracy of the modern world and was sceptical of the reforming state.

As a public figure, Allen regularly attacked his fellow magistrates and councillors for tolerating public immorality. Describing a debate in the Legislative Council over a revision of the licensing bill he criticised their general “latitude” contrasting this with his sense of a public “duty” to limit licenses. In his account of a conversation with the Attorney-General, and fellow temperance supporter, John Plunkett, he clarified his position arguing that “we ought to restrict the number of these places to the necessity of refreshment of the inhabitants and not allow such indiscriminate trade in such deadly poison”.³⁶ He upheld this principle on the licensing bench, where he opposed the laissez faire approach of granting licenses to all eligible applicants, arguing that numbers should reflect the needs of the city and “thereby dissuade the temptation to tipple”. He was especially concerned with the character of officials, especially magistrates asking “how can they punish offenders if they themselves be guilty”.³⁷ In 1854 he characterised the licensing session as a battle for colonial morality. Not only was he confronted by the “utter uselessness and ... worse” of some magistrates who “would not care who obtained a license” but most of the bench entirely neglected

³³ Allen, ‘Journals’, 12th Jan. 1840; 11th Jan. 1837.

³⁴ Allen, ‘Journals’, 27th Apr. 1841; 24th Mar. 1835. In an early example of his conservative propensities he bought and burned a copy of Thomas Paine’s *Rights of Man* that he found in the possession of his convict overseer. Allen, ‘Journals’, 14th May 1832.

³⁵ Allen, ‘Journals’, 6th Apr. 1843.

³⁶ Allen, ‘Journals’, 3rd June 1847; 12th Nov. 1853.

³⁷ Allen, ‘Journals’, 24th Apr. 1850; 6th May 1850. He alluded to some magistrates living in a state of adultery. See also his attack on the mayoral candidacy of Joshua Josephson: Allen, ‘Journals’, 10th Nov. 1847.

the responsibility to attend placing a greater burden on the diligent.³⁸ Like earlier religious reformers, Allen conceived of the magistracy as a moral office, that should be the responsibility of a moral and social elite who would set a personal example of propriety and enforce such standards upon the recalcitrant.

In addition to his strict approach to licensing, he favoured high duties on alcohol to increase prices and reduce demand.³⁹ His commitment to such regulatory restraint would seem to clash with his opposition to political temperance but in fact both reflected his conservative instincts. Like Saunders, he opposed the political campaigns of radical temperance, even when he approved of their goal, because he saw such public advocacy as a challenge to proper authority. Describing a meeting of the Benevolent Society in 1847 he expressed his surprise at the absence of quarrelling and argument noting that with democracy “frequently the most improper persons are brought forward to fill the offices which should be given to men of education and respectability”.⁴⁰ This was precisely the view which saw him gradually withdraw from all but a ceremonial role within the temperance movement. He objected to the increasingly populist tone of the societies and he was sceptical of radical proposals to restrict drinking through prohibition and of the new concept of inebriety with its implied abdication of personal responsibility.

While sitting on the Select Committee on Intemperance in 1854 he noted the wide range of proposals to deal with alcohol problems and argued that while prohibition would be “the most effectual way” to solve the problem, neither the population nor the parliament were ready for such a radical change. He was also in two minds about the new medical approach to drunkenness:

*some say treat the habitual drunkard as a lunatic and take from him the management of his property – others say punish him, punish him with hard labor. I am really at a loss what to say, no doubt both these plans are good but will they stop this increasing evil, I fear not.*⁴¹

Though he was convinced that drunkenness was a sin and remained personally committed to temperance, he never actively supported the campaign for prohibition. When, in 1857, the newly formed Temperance Alliance called for public subscriptions to construct a temperance hall he concluded the speeches by describing his views:

³⁸ Allen, ‘Journals’, 5th-15th Sep. 1854. See also the newspaper report on the session which records a license refused for Michael Garahoo on the grounds that he had been living in a state of adultery: ‘Quarterly Licensing Session’, *Empire*, 6th Sep. 1854, 3

³⁹ Allen, ‘Journals’, 3rd July, 1850; 5th July 1850. He wanted duties as high as possible while not encouraging smuggling.

⁴⁰ Allen, ‘Journals’, 14th Apr. 1847.

⁴¹ Allen, ‘Journals’, 12th July 1854; 14th July 1854. For more on this important committee see below 232ff.

*He was a practical teetotaller, and had been for a period of a quarter of a century ... although he did not drink himself he did not think he was justified in saying to others that they should refrain also.*⁴²

George Allen's career illustrates the way that the temperance movement and the wider understanding of alcohol problems shifted dramatically in the two decades after 1835. Originally a temperance pioneer, and too extreme for the original Temperance Society, Allen found himself alienated by the radical and populist approach of the later movement. He could not support the legislative enforcement of sobriety or embrace the social tone of the populist societies. But perhaps most importantly, he also doubted the wider implications of the legislative approach. Deeply committed to a strict personal piety he could not find sympathy with a movement that increasingly regarded drunkards as victims of a demon drink. In fact, Allen's failure to keep pace with the development of temperance embodies the transformation of reform. By treating problem drinkers as irresponsible, the new idea of temperance laid the groundwork for absolving them of guilt, a stark irony given its origins in the condemnation of sin. But despite Allen's disillusionment, and the failure of the early societies, temperance ideas came to shape the discourse around alcohol.

⁴² 'New Temperance Hall', *Herald*, 2nd May 1857, 4, 7.

Part V: Regulation After Temperance, 1835-1856

Chapter 11) Balancing Interests

By the mid-1830s in NSW there was a broad consensus on alcohol as an essential but problematic substance and this consensus was embodied in regulation. In theory, if not always in practice, alcohol was freely imported and production was encouraged for its economic benefits but retail sale and consumption were tightly controlled through licenses and, where possible, public drunkenness was strictly policed. However, the arrival of the temperance movement in the 1830s began a decisive shift in this understanding of alcohol and how it should be regulated. Increasingly, alcohol problems were seen as a failure of society and government action as necessary to enforce a general public reform.

The administration of Governor Gipps, beginning in 1838 marked a symbolic change in official attitudes to alcohol after which the regulatory consensus of the Macquarie era began to break down. The temperance view of alcohol grew in influence at the same time as the reach of government was steadily expanding, with greater resources, including a more efficient police force, facilitating a new approach. Moreover, the gradual democratisation of colonial politics and the declining authority of Britain in the decades before 1856 made government both more responsible and more responsive. Both the temperance movement and commercial lobbies had a growing influence on the regulatory process, as did an increasingly enfranchised and better informed general public.¹

Gipps himself was committed to reform, indicating his intentions in his agenda-setting speech to the legislative council in February that year and from the Chair of the Temperance Society in June.² However, he qualified his support of temperance ideas by expressing the view that the solution to this problem was not legislation but individual example and personal reform, thus putting himself firmly on the conservative side of the schism that was developing within the temperance movement. Like his predecessors, he viewed alcohol as a necessary evil and its regulation as a pragmatic balancing act and while he oversaw important regulatory changes he would not support

¹ For more on this process, see below, 258-9.

² 'Opening of the Council', *Gazette*, 31st May 1838, 2; 'The Meeting', 12th June 1838, 2.

the radical temperance program. But over the course of the next decade, temperance views were slowly absorbed into the discourse around alcohol.

The 1838 Licensing Act: Regulating Respectability

The Licensed Publicans Act of 1838 made important changes to the regulatory system and set a precedent for the next twenty years of licensing.³ Explaining the Act to the Legislative Council, Plunkett, the Attorney-General, noted that it not only consolidated the old laws but reflected the concern of the new Governor who “had taken great pains to enquire into the subject”. More importantly, in its final form the law showed the impact of lobbying by both the temperance movement and the publicans themselves. Indeed Plunkett described the bill as representing the “public interest versus the interest of publicans” and argued that their organised opposition “was one of the strongest arguments in its favour”. Despite his partisan leanings, the Licensed Victuallers petitioned the Legislature and hired Roger Therry as a Counsel to speak on their behalf at the bar of the house, and the final law reflected a balance between moral and vested interests.⁴

Temperance arguments led to the re-introduction of the problematic beer license, despite complaints from publicans fearing competition. As Plunkett noted, “it would be a great point gained, if the great body of the inhabitants of this Colony could be weaned from spirit drinking, and encouraged to drink wine or beer”.⁵ Though these lesser licenses had a reduced fee, they were subject to the control of the licensing bench and its annual sessions. In contrast to the laissez faire British Beer Act, this was a regulatory attempt to encourage the public towards weaker beverages without removing police and magistrate control over the retail sale of alcohol. In the face of strenuous objections from the Licensed Victuallers, a series of new restrictions were established on licensed houses. To address the challenges of policing, new rules forbade pubs from having entrances off the main thorough-fair, preventing the unseen escape of after-hours drinkers. New requirement to provide stabling and lodging for travellers also reflected the temperance view of the trade with Plunkett claiming that “Publicans were not allowed license for their own benefits ... but [in] the interest of the community, for the convenience of travellers and guests”.⁶

³ ‘Licensed Publicans Act’ (2 Vic. no. 18), 26th Sept. 1838, *Statutes of NSW*, 844-75.

⁴ ‘Legislative Council’, *Herald*, 14th Sept. 1838, 2; ‘The Licensing Act’, *Gazette*, 15th Sept. 1838, 2; Legislative Council’, *Monitor*, 12th Sept. 1838, 2; *Australian*, 11th Sept. 1838, 2. For the petitions see: *VPLC* (1838), 119-20.

⁵ ‘Legislative Council’, *Herald*, 14th Sept. 1838, 2. Two other new classes of license were introduced, confectioner’s licenses for the sale of ginger beers and packet licenses for vessels in Colonial waters. For Publican complaints see: *Australian*, 11th Sept. 1838, 2.

⁶ ‘The Licensing Act’, *Gazette*, 15th Sept. 1838, 2.

But the Licensed Victuallers were more successful in their lobbying over limits to trading hours, including a proposed ban on all Sunday trading and a closing hour of ten o'clock. Embodying the patronising attitude of the early temperance movement, Plunkett argued that late at night, public houses "were frequented by company composed of mechanics and labourers, who ought to be in bed before that hour".⁷ But the clause was amended to create a brief two hour trade window on Sundays that allowed workers to purchase ale to drink with their dinner, and a new class of night license, costing ten pounds and available only at the magistrates' discretion.⁸

The debate over a proposed ban on sports was especially revealing of the fears that underlay conservative temperance. In draft, the Act forbade "dice, cards, bowls, billiards, quoits ... or any other unlawful game or sport" and Plunkett noted that the intention was:

*to prevent the carrying on of these games which we know lead to the commission of all kinds of vice and mischief; as skittle playing or any other kind of gaming at a public house, only congregates together a lot of idle vagabonds.*⁹

This proposal led to vigorous complaints with the Licensed Victuallers Association arguing that it would encourage private gaming houses with reduced police supervision and convert such sport "from an innocent recreation, into a demoralizing vice". But protest soon diverged along class lines. While a petition from a group of Maitland publicans claimed that skittles in particular was "the means of dispelling ennui for a mechanic after his return from labour, and at the same time proved useful and healthy", the Sydney based Association had a different focus.¹⁰ In his speech to the house, Roger Therry complained that the proposal was "not founded on the law of England but was a piece of pure puritanical legislation" but he confined his lobbying to billiards, "an innocent game, and one of science" – a game played by gentlemen and not labourers.¹¹ Tellingly, this argument even won the support of Plunkett who pointed to the "great difference" between the two games, for billiards was an "exercise or amusement" that could not be played while drunk, while skittles was simply a lure used by publicans to encourage drinking and vice. As a result, a further class of special license was created, again at a charge of ten pounds, that permitted the holder to keep a billiard table but no other sports or games were allowed in association with drinking.

⁷ 'The Licensing Act', *Gazette*, 15th Sept. 1838, 2.

⁸ For the operation of this system see: 'Licensed Publicans', *Gazette* 17th Jan. 1839, 2; 'Licenses Under the New Act', 19th Jan. 1839, 2. In Sydney in 1839, late night venues were restricted to the theatre district and the wharfs, and Southern entrance to the town, for the convenience of late-night travellers.

⁹ 'Legislative Council', *Herald*, 14th Sept. 1838, 2.

¹⁰ *Australian*, 11th Sept. 1838, 2; 'Legislative Council', *Monitor*, 12th Sept. 1838, 2.

¹¹ 'The Licensing Act', *Gazette*, 15th Sept. 1838, 2. This choice illustrates the respectable nature of the Licensed Victuallers Association, reflecting the divide between grand hotels and low taverns.

Therry's complaint reflected a wider animosity towards the temperance inspired efforts to enforce morality. In an editorial the *Monitor* attacked the Act as a symptom of the disease of "cant" among the colonial elite. Condemning wholesale the attempt to improve morals through regulation the author reserved special scorn for the ban on games and defended billiards in particular:

*Billiard players, in a general way, have some pretensions to be considered respectable, and are just as competent to lay out their money and dispose of their leisure as the very best of those who now assume the right of dictating in the business. But it would be too much, perhaps, to expect from those who can show themselves so utterly regardless of the rights of property, any remarkable delicacy as to interfering with the amusements of the people.*¹²

Thus the *Monitor* demonstrated sympathy for both the laissez faire approach to public houses as a business best managed by the market, and an old fashioned tolerance for popular recreation. But the article ignored the obvious bias inherent in the billiard license, a bias that drew upon the growing divide between rough and respectable popular culture, exemplified in the temperance movement.¹³

Brief experiment is sufficient to show that, contra-Plunkett, both billiards and skittles can be played under the influence of alcohol and no doubt both were in Sydney in 1838. But where the former game required a significant investment by the publican – a new table could cost over two hundred pounds – skittles only required a smooth patch of ground and some wooden pegs.¹⁴ The style with which the two games were played reflected this economic distinction. Billiards, brought to the colony by army officers, played indoors and often supervised by uniformed attendants, contrasted starkly with the crowds who gathered around skittle games to drink and make merry. Exemplifying elite fears, 'A Spectator' in 1835 noted the "quarrelling noise, compounded of many angry tones, and unheard-of imprecations" which came from a skittle alley, located at the rear of a row of public houses and which was "daily taken up by a set of drunken suspicious characters" and claimed that alleys were invariably dens of thieves and prostitutes.¹⁵

Despite the ban, skittle playing remained a problem as publicans continued to keep grounds on the sly – indeed the "problem" was largely an invention of the regulations. In 1843, 'Scrutator'

¹² 'A Canticle', *Monitor*, 19th Sept. 1838, 2.

¹³ For more on the clash between Respectable and Rough Popular Culture see: Waterhouse, *Leisure*, 98-101; For connections between public houses and sports see: Clark, *Alehouse*, 154-5, 233, 319; and in an Australian context: Waterhouse, *Leisure*, 39-40; Richard Cashman, *Paradise of Sport: the Rise of Organised Sport in Australia*, Melbourne: Oxford University Press, 1995, 22-4.

¹⁴ Price given in: 'A Canticle', *Monitor*, 19th Sept. 1838, 2. See also: Freeland, 63.

¹⁵ 'Skittle Grounds', *Herald*, 15th June 1835, 2

claimed that the law against skittles was a dead letter only demonstrating the “apathy” of the police, for he knew of twenty-eight skittle grounds in Sydney:

*kept by no other, but such low publicans who can rent a piece of ground, convenient to their pot-house, in the name of some low black-guard ... [and] each attended by about twenty of the most depraved characters, in all between five and six hundred drunkards, thieves, gamblers, and idlers, meet there to concert on schemes.*¹⁶

The following year, the *Herald* echoed this point, observing the iron law of moral inflation by claiming there were almost fifty skittle alleys in the city, most associated with pubs and all “the resort of the disorderly, the trap for dupes, an exchange for utterers, a rendezvous for thieves [and] a new and efficient nursery for drunkards.”¹⁷ The persistence of the sport in spite of such concern is perhaps explained by one of the only cases ever prosecuted. In 1849, a Windsor publican, Joseph Hudson, was found to keep a skittle ground next door to his house, serving drinks to patrons through a sliding paling.¹⁸ The practice was probably common and reflected a drinking subculture that explicitly rejected the temperance call for respectability.

In a long attack upon the licensing system in 1846, the editor of *Bell's Life* which depended more than most newspapers on the patronage and advertising of publicans, commented on the hypocritical ban on games:

*billiards, being somewhat expensive, and out of reach of the humbler classes, are permitted upon the payment of £10 ... while the more humble portion of Her Majesty's loyalists are debarred from their favourite athletic games of quoits, skittles, bowling, &c. &c, and the sedentary are forbid the pleasure of a game of whist, cribbage, backgammon, chess, &c because they meet at a public-house.*¹⁹

¹⁶ ‘Letter of Scrutator’, *Herald*, 27th Oct. 1843, 3; ‘Letter of Scrutator’, 15th Nov. 1843, 3. See also: Evidence of W.A. Miles, NSW Legislative Council, ‘Report of the Select Committee on the Insecurity of Life and Property’, VPLC (1844), pp369-448, 383.

¹⁷ ‘Licensing Sessions’, *Herald*, 2nd Apr. 1844, 2. Interestingly, the editor did not spare billiards, claiming “[billiard tables] are to one class what skittle alleys are to another. Many a youth may be traced from the billiard room to Woollloomooloo Gaol”.

¹⁸ *Herald*, 25th Sept. 1849, 3.

¹⁹ ‘Publican’s Licenses’, *Bell's Life in Sydney and Sporting Reviewer*, 3rd Oct. 1846, 2. *Bell's Life* was modelled on its London namesake and represented the sporting interest in the colony, vigorously defending publicans and carrying notices of meetings of the Licensed Victuallers as well as adverts for hotels. Governor Fitzroy described the paper in 1848 as representing “the sporting part of the community” and claimed that it was “generally to be found in the public houses”. See: Walker, *Newspaper*, 28-35; *Bell's Life*, 13th June 1846, 2; 20th June 1846, 1; 25th Mar. 1848, 2; 9th Sep. 1848, 2-3; ‘Fitzroy to Grey’, 10th Jan. 1848, *HRA*, vol. 26, 168-9.

Even if they did not voice their objection publicly, this must have been a common reaction to the new law. The ban on games in public houses illustrates the legislative enforcement of respectable morality on popular culture, as was increasingly demanded by the temperance movement.

This temperance influence was also reflected in the provisions of the Act dealing with drunkenness. In order to “quiet all doubts” about the applicability of the English statute to NSW, the law specifically applied it, allowing any “constable or peace officer ... to apprehend any person whom he shall find drunk in any highway street road or public place”. Public drunks were subject to summary justice and punished with fines of up to a pound, multiplied for repeat offenders, while failure to pay could lead to solitary confinement or the treadmill.²⁰ Just as importantly, this was the first colonial law that explicitly rewarded the police, ordering half of all fines to the informer. Indeed, the need to provide an incentive was probably the driving force behind the re-statement of the law.²¹

A civil case at Parramatta, in October 1838, after the Act was passed but before it took effect, illustrates the need for clarification. A Mr Thorne, who was arrested for drunkenness sued Hunt, the chief constable at Parramatta, on the basis that no colonial law authorised his arrest.²² Thorne’s expert knowledge was likely due to his close connection to the police force as his recently deceased brother-in-law was the previous chief constable. Samuel Horne, one of the arresting officers, claimed that Thorne “did not appear to be very drunk” but admitted he had seen him drinking, that it affected his behaviour, and, intriguingly, that he and Thorne regularly drank together. Under cross examination he claimed “a man was not drunk as long as he can walk and talk”, echoing the traditional view under English law.²³ But rival testimony showed that Thorne was unable to keep his seat when brought to the watch-house and had collapsed to the floor when attempting to address the Police Magistrate. Despite this strong evidence of intoxication, Justice Burton advised the jury that the arrest was technically illegal though he “thought it was evident that Thorne could not have been sober” and advised the jury to bear this in mind in awarding damages.²⁴ Expanding on the law of drunkenness, he noted:

²⁰ ‘Licensing Act’, 1838, 862-3.

²¹ ‘Licensing Act’, 1838, 866. Plunkett referred to “some allusion to church-wardens in the distribution of penalties” as the reason why the clauses were necessary: ‘Legislative Council’, *Herald*, 14th Sept. 1838, 2.

²² ‘Law. Supreme Court’, *Australian*, 18th Oct. 1838, 2. The 1833 Police Act authorised arrest for public drunkenness but only in Sydney, not Parramatta.

²³ For this traditional view, see above, note 21, 2222.

²⁴ ‘Law Intelligence’, *Herald*, 19th Oct. 1838, 2. Thorne was duly given a verdict for one farthing, not the five hundred pounds he had originally sought. This is the only example I can find of drunkards exploiting this legal loophole – which suggests that the 1830s saw a large number of arrests which were technically illegal.

*It would not do for any man to be arrested on the mere supposition of an officer, even if a law did exist; many prudent men might by chance get drunk once, and it would be intolerable that he should be dragged through the street at the caprice of a constable.*²⁵

This allusion to the subjectivity of the offence illustrates the emerging challenge of policing drunkenness in a free population, who could not be heedlessly subjected to summary justice.

The Act also restored the ban on publicans serving convicts without their master's permission, though the penalty was reduced if the offence was committed "unknowingly and unwillingly". More importantly, the offence was expanded to the general population to combat the general practice of paying servants in spirits, "the cause of frequent crimes".²⁶ There were also two new categories of person who were forbidden alcohol entirely. The Act created the first outright ban on Aboriginal drinking (indeed it was one of the first pieces of legislation to explicitly target Aborigines), noting that "intoxicating liquors" were "productive of serious evil" among the natives.²⁷ The second new class denied access to alcohol by the law were so-called "habitual" or "notorious" or "inveterate" drunkards, first delineated under the Vagrants Act of 1835. Directly inspired by a Massachusetts law, the new Act allowed two Justices to forbid the sale of alcohol for up to a year to any person who through drinking "so misspend waste or lessen his or her estate" as to injure themselves or their family, explicitly marking such drunkards as irresponsible.²⁸

In an editorial prior to the passing of the law, the *Herald* praised the Legislative Council for taking drunkards "under their guardianship, considering, as is the case, that a confirmed inveterate drunkard is a sort of lunatic, who must be taken care of".²⁹ In contrast, the *Australian* objected to the new power as "entirely unjustifiable" and while praising the intent called for "juster and more rational means" of imposing such a penalty, suggesting an inquiry "by fit and proper persons, or repeated convictions on the police records, of the party having been found in a state of intoxication".³⁰ What is striking about this debate is that even the critical *Australian* did not question the proposition that anyone proven to be a habitual drunkard should be subject to state control.

²⁵ 'Law. Supreme Court', *Australian*, 18th Oct. 1838, 2.

²⁶ 'Licensing Act', 1838, 857-8. Exemptions were made for doctors and for farmers during sheep washing, when a spirit ration was seen as necessary to combat exposure.

²⁷ 'Licensing Act', 1838, 858. Despite a five pound fine, it appears that this ban was little honoured as complaints about drunken Aborigines continued throughout the 1840s, especially in Sydney.

²⁸ 'Licensing Act', 1838, 863. The reference to property was borrowed from the law of lunacy. See: Blackstone, *Commentaries*, vol. 1, 303-7. But note that he specifically distinguished between true lunacy and "voluntarily contracted madness" like drunkenness (vol. 4, 25-6). For more on this distinction see below, 247-8.

²⁹ 'Drunkards', *Herald*, 7th Sept. 1838, 2.

³⁰ *Australian*, 18th Sept. 1838, 2

The paper's proposals closely resemble the kinds of systematic classification of inebriates that finally eventuated at the turn of the twentieth-century, and the basic principle behind them was clearly accepted sixty years earlier.³¹ However, it does not appear that this clause was ever strictly enforced. The only instance I can find of a banning order being issued in the 1840s was against a James Smith at Portland Bay. Smith wrote to the local paper in 1843 complaining that he was unable to buy liquor even after his twelve month ban had expired, leading the *Herald* to comment sardonically that they had "never heard of a more oppressive case" than a free subject not allowed to get drunk.³² In 1788 it was regarded as oppressive that free Britons could not get a drink; hence the protests of the marines on the first fleet. By the 1840s the *Herald* regarded this argument as preposterous.

Thus the 1838 Licensing Act demonstrates the growing influence of temperance ideas in NSW. Though alcohol problems were a persistent feature of NSW society, since Macquarie, regulation had been guided by a broad elite consensus that alcohol was a necessary evil. In the 1840s and 1850s, while the most radical temperance regulation was rejected, a new approach developed. Alcohol was viewed as unnecessary and dangerous to society, its production and sale were consolidated into heavily regulated industries and drunkenness was systematically punished as a means to restrain working class disorder.

Lobbying and Alcohol Taxation

There was little change in the regulation of the supply of alcohol in the decades after 1835 despite an ongoing temperance campaign for prohibition. Throughout the period, government dependence on alcohol taxation continued to increase, amounting to one third of total revenue by 1860 despite predictable criticism. The first annual report of the Temperance Society, referred to "the appalling fact that the revenue of this colony is chiefly derived from the importation and sale of Rum ... [which] almost legalizes and renders patriotic every drunken debauch".³³ This argument first emerged during the eighteenth-century gin crisis, but temperance advocates not only claimed that such dependence was corrupting but also that it was a false economy. Using increasingly ingenious,

³¹ For inebriety and the Inebriates Act see below, 240, 261.

³² 'Keeping a Man Sober', *Herald*, 22nd Mar. 1843, 2. In 1854, John McLerie, the Superintendent of Police claimed he knew of only two attempts to apply such an order during his seven years with the Sydney police, both of which were based on the application of a relative and both of which had proved a failure due to the size of the town. See: '1854 Intemperance Committee', 558.

³³ NSWTS, *First Report*, 14-16. For revenues see Appendix 2, 267ff.

if often tendentious calculations, advocates sought to demonstrate that the revenue from alcohol was more than expended on alcohol problems.

Early versions of this argument relied on British and American analysis but John Saunders began to perform local calculations from the mid-1830s and they became a staple of public discussion of the drink question. In a series of lectures in 1835, Saunders purported to show that the cost of drunkenness to NSW was more than double the revenue from alcohol taxes although his method was simply to triple expenditure on foreign spirits to account for lost time and lost property through drink.³⁴ By the 1880s this accounting was much more sophisticated with annual "drink bills" issued by the Temperance Alliance as part of their political campaign for local option but in the era of early temperance, the chief form of regulation and thus the leading concern of temperance was the level of duties on alcohol.³⁵ In this period, there was an ongoing struggle to balance the competing interests of temperance, distillers and importers of spirits, while the revenue was constantly threatened by tax evasion.

Since the late 1820s, the government had sought to encourage the manufacture of spirits from grain over sugar, and both over imports, through concessional duties, in order to encourage local agriculture and local industry. However, there was no legislation regulating distilleries which were still governed by Brisbane's original Orders from the early 1820s. Moreover the differential duties failed to adequately stimulate the industry which produced less than three percent of the volume of imported spirits in the decade before 1838.³⁶ Shortly after his arrival in the colony, Gipps reflected on the failure of this system, claiming that "our revenue is rapidly falling off from the effects of illicit distillation". He believed that private operators were secretly distilling from sugar and either passing it off as grain spirit or mixing it with legal imports, thus evading the duty and securing a substantial profit. The current rules were "almost a dead letter" because they encouraged fraud without appointing officials or prescribing penalties to prevent it. He proposed

³⁴ He estimated £75,600 each for money expended, time wasted and property lost and added £60,000 for the police establishment against £115,000 in revenue, leaving NSW at a loss of over £170,000. See: 'The Rev. Mr Saunders' Third and Concluding Lecture on Temperance', *Colonist*, 27th Aug. 1835, 2; 'The Rev. Mr Saunders' Third and Concluding Lecture on Temperance [Concluded]', 3rd Sep. 1835, 3. For more on the approach in a British context see: A.E. Dingle, *The Rise and Fall of Temperance Economics*, Clayton, Vic.: Monash University Dept. of Economic History, 1977, Monash papers in economic history, no.3.

³⁵ For drink bills see for example: "The Drink Bill of NSW", *Herald*, 29th Sep. 1884, 4.

³⁶ For volumes of spirits see Appendix 1, 262ff.

new legislation that would standardise duties regardless of the raw material, increase rates, regulate the time and mode of distillation and appoint an inspectorate to enforce the rules.³⁷

The Colony's two commercial distillers, Robert Cooper and William Abercrombie, followed a similar course to the publicans in 1838, petitioning the council to hear their views. Cooper, who ran the largest distillery, maintained that the bill would ruin him in its present form and convinced the Council to institute a lower rate of duty to encourage the legal trade.³⁸ In contrast, members of the temperance movement objected to legalised distillation in principle but in keeping with the voluntary principle, made no attempt to directly influence the Council. But inspired by VDL where Governor Arthur had banned distillation in 1837, temperance arguments became more radical. In one strident piece, Saunders described the state as "the chief delinquent" responsible for drunkenness in NSW and accused the Council of licensing a crime.³⁹

Despite ignoring this criticism, Gipps soon discovered that his new system was seriously flawed. With the benefit of improved surveillance, he found that the bulk of illicit distillation was not from remote private stills, but from larger operations based in Sydney, and particularly from the licensed distillers who had the apparatus and ample opportunity to avoid paying their taxes. Meanwhile, encouraged by the low duties, the volume of spirit legally manufactured in the colony tripled and almost all of it was made from imported sugar, thus providing no meaningful benefit to the local economy and hurting the revenue by reducing taxes on imported spirits.⁴⁰ Since illicit activity in the capital could be easily controlled by his Inspectorate, Gipps proposed a new bill in 1839 that would raise the local duties and thus restore the lost revenue. But this time the temperance movement was more aggressive in its lobbying. Saunders asserted that "a ban [on distillation] could easily pass our legislature and would be backed by the popular voice" and prepared a petition on the subject that he presented to the Council. Apparently this did not amount to a "call for legislative enactment".⁴¹

³⁷ 'Gipps to Glenelg', 1st Oct. 1838, *HRA*, vol. 19, 600; 'Legislative Council', *Herald*, 26th Sep. 1838, 2. For the proposed Act see: 'Government Gazette', *Monitor*, 1st Oct. 1838, supplement, 2.

³⁸ The rates in the final bill were 3s/gallon for wheat and 4s 6d for sugar. For the distillers in Council see: *VPLC (1838)*, 138, 141-2, 144-5, 147-8. For the new Act see: 'Colonial Spirits Distillation', (2 Vic. No. 24), 12th Oct. 1838, *Statutes of NSW*, 882-91; 'Gipps to Glenelg', 23rd Jan. 1839, *HRA*, vol. 19, 769-71.

³⁹ 'Distillation', *Temp. Mag.*, Nov. 1838, 65-8; 'The Chief Delinquent', Mar. 1839, 129-31. The VDL ban was less a temperance scheme than an attempt to boost revenue. As Gipps complained to the Colonial Office, its effect was to encourage Southern agriculture while undermining NSW' revenue on imported spirits. See: 'Gipps to Russel', 10th Feb. 1840, *HRA*, vol. 20, 500-2.

⁴⁰ 'The Revenue From Distillation', *Colonist*, 4th May 1839, 2; 'Legislative Council', *Gazette*, 4th July 1839, 2.

⁴¹ 'The Crisis', *Temp. Mag.*, July 1839, 1-3. For Saunders' purported refusal to lobby for legislation, see above, 167.

Debating Prohibition

Saunders' petition objected to distillation for wasting resources and stimulating crime, and disputed the supposed benefits it provided for the colony. Over seven hundred signed in Sydney and perhaps a thousand across the colony as a whole, indicative of the strength of temperance sentiment and the growth of democratic consciousness.⁴² The effect on the Council was electric. Where debate on the original bill was marked by pragmatic discussions of the appropriate level of duty, the petition was eagerly supported by a majority of members, forcing Gipps to send his proposal to a Select Committee. In response, the two distillers again appeared before the Council to plead for the vast investments and demand compensation, which they estimated at one hundred and fifty thousand pounds, if their right to distil was removed.⁴³ The Committee accepted the financial arguments of the temperance movement, rejected the idea that distillation helped colonial agriculture and accordingly recommended that the industry be shut down, suggesting five thousand pounds as adequate recompense. But this plan was never put to Council. Exerting his executive authority, and no doubt driven by financial pressures applied by the Colonial Office, Gipps adopted a more conservative plan, increasing duties while prohibiting the use of sugar.⁴⁴

The following year, Gipps raised duties on all spirits, imported and colonial, "in order to meet the increased expenditure of the colony".⁴⁵ In response, the Abstinence Society made a radical proposal, calling for the "prohibition of the importation, as well as of the colonial manufacture of intoxicating liquors". Speaking at the meeting to adopt the petition, M.T. Adam, an American missionary who had come to Sydney to minister to the notoriously debauched seamen of the thriving port, made a largely pragmatic case for prohibition. He claimed that a ban on spirits would be supported by public opinion and beneficial to commerce as well as "the moral and intellectual interests of the community". More interestingly, he addressed the objection of conservatives, committed to the voluntary principle:

⁴² 'Petition to Council against Colonial Distillation', *Monitor*, 15th July 1839, 2; August 1839, 26-9. *VPLC* (1839), 48-9. For more on the significance of petitioning in democratic politics at this time see: Paul A. Pickering, "'And Your Petitioners &c.'": Chartist Petitioning in Popular Politics 1838-48', *English Historical Review*, vol. 116, no. 466. (Apr. 2001), pp368-88.

⁴³ *VPLC* (1839), 39-41, 46-8.

⁴⁴ *VPLC* (1839), 48-9; 'Report from the Committee on Colonial Distillation', *VPLC* (1839), 491-519; 'Legislative Council', *Colonist*, 31st Aug. 1839, 3; 'Gipps to Russel', 10th Feb. 1840, *HRA*, vol. 20, 500-2. For the problem of compensation see: 'The Colonial Distillers', *Monitor*, 23rd Aug. 1839, 2; 'The Distillation Question', *Colonist*, 17th Aug. 1839, 2; 'The Distillation Question Concluded', 21st Aug. 1839, 2; 'The Distillation Question', 7th Sep. 1839, 2. For the act itself see: 'Colonial Spirits Distillation', (3 Vic. no. 9), 18th Sep. 1839, *Statutes of NSW*, 948-59.

⁴⁵ 'Customs Duties Act' (4 Vic. No. 11), 15th Sep. 1840, *Statutes of NSW*, 1052-4; 'Colonial Spirits Act', (4 Vic. no. 16), 29th Sep. 1840, 1070-1.

[He] took a survey of the natural and absolute rights of individuals, and of the mode in which they could be claimed, and showed that in a social state these merged into that of the general good, for the promotion of which, government was established. ... [Since] drunkenness was an evil which infringed on the public weal; and as it did so, it was competent for the Government to exert its energies to suppress it ... If strict justice was done, he who gave the power, as well as he who sold the spirits, ought to be punished, as well as he who got drunk on it.

In essence, he was adopting a more positive concept of liberty, justifying intervention with the individual in the name of the common good.⁴⁶

But this view was certainly not shared by the opinion makers of NSW. In a scathing editorial, the *Herald* attacked the plan as "crazy fanaticism", impractical in a colony already unable to prevent smuggling, but saved the greatest scorn for Adam's lack of liberal principal. Citing Milton's verses on the fall of man, the *Herald* argued that:

in this distinction between freedom to do, and responsibility for doing wrong, lies the very essence of civil liberty ... in telling me that if I get drunk, I shall be fined or placed in the stocks, the law does but put a wholesome restraint upon my sensual indulgence; but if it tells me that lest I should get drunk, I must taste neither brandy, nor wine, nor malt liquor, it deprives me of the attributes of a rational being, and sinks me to the level of an infant or a lunatic.

The editor concluded with a scathing and amusing attack on Adam:

*If these be the Yankee "notions" of public liberty which he has come hither to propagate, the sooner he measures his steps back to the "sovereign people," the better for our free though monarchical community.*⁴⁷

Defending his speech and the petition in a letter to the *Herald*, Adam noted that its arguments were all adopted from Britain, and the Report of the 1834 Drunkenness Committee, and pointed out that he was a British citizen. But though the controversy saw the *Herald* pressured to make an apology – it politely declined to do so – the colonial press, with the exception of the *Temperance Advocate* were unanimous in supporting this liberal argument.⁴⁸ In 1841, there was no

⁴⁶ For the petition see: 'Total Abstinence Society', *Temp. Adv.*, 7th July 1841, 1-2; 'Peace', 14th July 1841, 1-2; 18th Aug. 1841; For Adam's speech see: 'Total Abstinence Society', *Herald*, 3rd July 1841, 2. For positive and negative concepts of liberty see below 256ff.

⁴⁷ 'Teetotal Quixotism I', *Herald*, 6th July 1841, 2; 'Teetotal Quixotism II', 8th July 1841, 2.

⁴⁸ For Adam's defence see: 'Total Abstinence Society', *Herald*, 7th July 1841, 2. For controversy over an apology see: 'The *Herald's* attack on the Rev. T.M. Adam [sic]', *Gazette*, 8th July 1841, 2; 'The *Herald* vs T.M. Adam [sic]', 13th July 1841, 2. For

constituency for state mandated prohibition, nor would there be in NSW for several decades, but the press were as one even in rejecting public petitioning of the legislature in favour of legal reform.

This consensus is a clear illustration of the distinction between the temperance movement and the idea of temperance. All colonial newspapers supported temperance as a principle, indeed they were often edited by members of the various societies, but they typically criticised the movement as it became more populist and radical, and especially as its proponents began to advocate forms of prohibition.⁴⁹ This no doubt reflected a general attitude among the middle and upper classes of Sydney, who largely agreed with the conservative campaign to improve the poor and were prepared to join the movement while it remained elitist but refused to countenance the utopian aspirations of more radical reformers. A similar pattern continued for the remainder of the century with the press generally critical of the extremes of the temperance movement but supportive of the ideal of a temperate society. To generalise, public opinion, at least as represented by the press, lagged considerably behind the methods of the temperance movement while broadly supporting its aims.

Meanwhile, Gipps continued to struggle in his attempts to manage alcohol supply through duties alone. Rumours were rife that the two distillers frequently breached the law against the use of sugar and in June 1841 a large quantity of allegedly illegal spirit was seized from Abercrombie's premises.⁵⁰ Gipps responded with a further reversal of his policy. Describing the need for a new act, he noted several recent cases of smuggling and the flagrant behaviour of the distillers and called for either outright prohibition or equalised duties to discourage fraud. Once again, fearful of compensation claims, the Council rejected the radical option.⁵¹

Of course, high duties created large incentives for unlicensed distillation and it appears that there was a resurgence of small private stills in the early 1840s. Smuggling was also common and while the Customs Officers under Major Gibbes frequently detected contraband, it was widely

wider press opposition see: 'Original Correspondence', *Australian*, 10th July 1841, 2; 'Teetotalism', *Gazette*, 10th July 1841, 2.

⁴⁹ For example, Rev. Lang, editor of the *Colonist*, E.S. Hall, of the *Monitor* and later the *Australian*, and Ralph Mansfield of the *Gazette* and later the *Herald* were supporters of the NSW Temperance Society.

⁵⁰ For rumours of sugar distilling see: 'Land', *Gazette*, 4th May 1841, 2. For the case against Abercrombie: 'Seizure of Illicitly Distilled', *Chronicle*, 15th June 1841, 2; 'Police Report', *Gazette*, 9th Sep. 1841, 2; 'The Glenmore Distillery', *Australian*, 9th Sep. 1841, 2. He denied the charge and counter-sued the inspectors for trespass but the case was eventually settled on a bizarre technicality, without any testing of the spirits, when it was proven that Abercrombie's license had expired six months earlier and he agreed to pay a thousand pound bond for future good behaviour.

⁵¹ 'Legislative Council', *Herald*, 22nd Sep. 1841, 2; 'Gipps to Stanley', 9th Mar. 1842, *HRA*, vol. 21, 725-6. See also, Abercrombie's failed attempt to sue another member of the Council and supporter of the Temperance Society, Richard Jones, for making similar allegations, which led to the assertion of parliamentary privilege: 'Privileges of Council', *Chronicle*, 18th Dec. 1841, 2. For the act itself see: 'Colonial Distillation Act' (5 Vic. no. 16), 17th Dec. 1841, 1172-4.

believed that the revenue was regularly defrauded; indeed allegations were aired that the Officers themselves connived in such activity.⁵² In 1843, Gipps was compelled to increase the number of distillery inspectors, and bolster the Customs, but unable to restore the revenue which was also suffering from the depression, he returned to the Council and, after again toying with prohibition, proposed a new scale of duties which halved rates across the board. Defending this umpteenth plan he pleaded that it was "almost forced upon me by the proofs recently afforded of the extent to which Smuggling and illicit Distillation have been carried" though he also noted his reluctance to reduce the high rates that he believed had helped reduce drunkenness.⁵³

Predictably, his new policy earned the ire of the radical temperance movement. In addition to their usual petition, Adam wrote a public letter to the British Government in which he depicted a colony wracked by alcohol problems and argued that the money wasted on spirits was the leading cause of the ongoing depression.⁵⁴ But the combination of low duties and reduced demand in a weakened economy finally led to stable management. Though the pattern of persistent lobbying from both alcohol suppliers and the temperance movement continued, Gipps had finally found a level of duty that achieved a reasonable balance between protecting the revenue, encouraging industry and assuaging temperance concerns. The management of distilleries and the Customs department became increasingly professional and duties remained at their new low levels until the early 1850s when renewed fears of drunkenness associated with the gold rush led to a further experiment with high taxes as a means to limit alcohol.⁵⁵

Consumption after 1835

There is some evidence for the effectiveness of these policies in the levels of available alcohol which declined substantially from their 1830s peak to record lows during the depression before returning to a more typical level in the late 1840s and then surging during the gold rushes (see below, Figure 6, p199). Though it is next to impossible to separate out the influence of policy from the more substantial effect of economic conditions, it seems likely that demand had stabilised

⁵² For smuggling see: 'Government Gazette', *Chronicle*, 18th Aug. 1841, 4; 'Smuggling', *Herald*, 25th June 1842; Day, *Customs*, 202-4. For illegal distillation see: 'Gipps to Stanley', 1st July 1843, *HRA*, vol. 23, 1-2; 'Reward for Discovery of Illicit Distillation', *Chronicle*, 14th Dec. 1842, 2; 'Breach of the Distillery Law', *Herald*, 22nd July 1843, 2; 'Illicit Distillation', *Chronicle*, 25th July 1843, 2. For reduced revenue see: 'Gipps to Stanley', 1st July 1843, *HRA*, vol. 23, 1-2.

⁵³ 'Customs Duties Act' (7 Vic. no. 24) 22nd Dec. 1843, *Statutes of NSW*, 1439-40. 'Suppression of Colonial Distillation', *Herald*, 19th Oct. 1843, 2; 'Gipps to Stanley', 1st Jan. 1844, *HRA*, vol. 23, 296-8. This Act was reserved by Gipps after the Council amended it to include a protective duty on corn, but it appears to have been subsequently passed by the crown as its provisions for spirits were continued in future legislation. See: "Customs Act' (9 Vic. no. 15), 8th Nov. 1845, 1519-1548.

⁵⁴ 'Stanley to Gipps', 14th June 1844, *HRA*, vol. 23, 641; 'Gipps to Stanley', 12th Nov. 1844, 71-3; *VPLC* (1844), vol. 2, 107-9.

⁵⁵ 'Spirit Duties Act' (18 Vic. no. 24), 10th Nov. 1854, *Statutes of NSW*;

at a lower level around 1850. After the gold-induced spike, consumption declined, settling at a level approaching four litres per person per year after 1870.⁵⁶ The other feature of this period, which would become more pronounced towards the end of the century, was the move from distilled to fermented liquors. Overall consumption of wine declined from the 1830s although the local industry grew probably began to supply a significant fraction of the market from the 1850s onwards.⁵⁷ But in stark contrast, beer consumption expanded significantly and even though we lack figures for local production, imports alone made up more than ten percent of available alcohol in the 1850s. This trend would continue through the remainder of the century such that by the 1890s, with comprehensive data, more than half of all alcohol in the colony came in the form of beer.⁵⁸

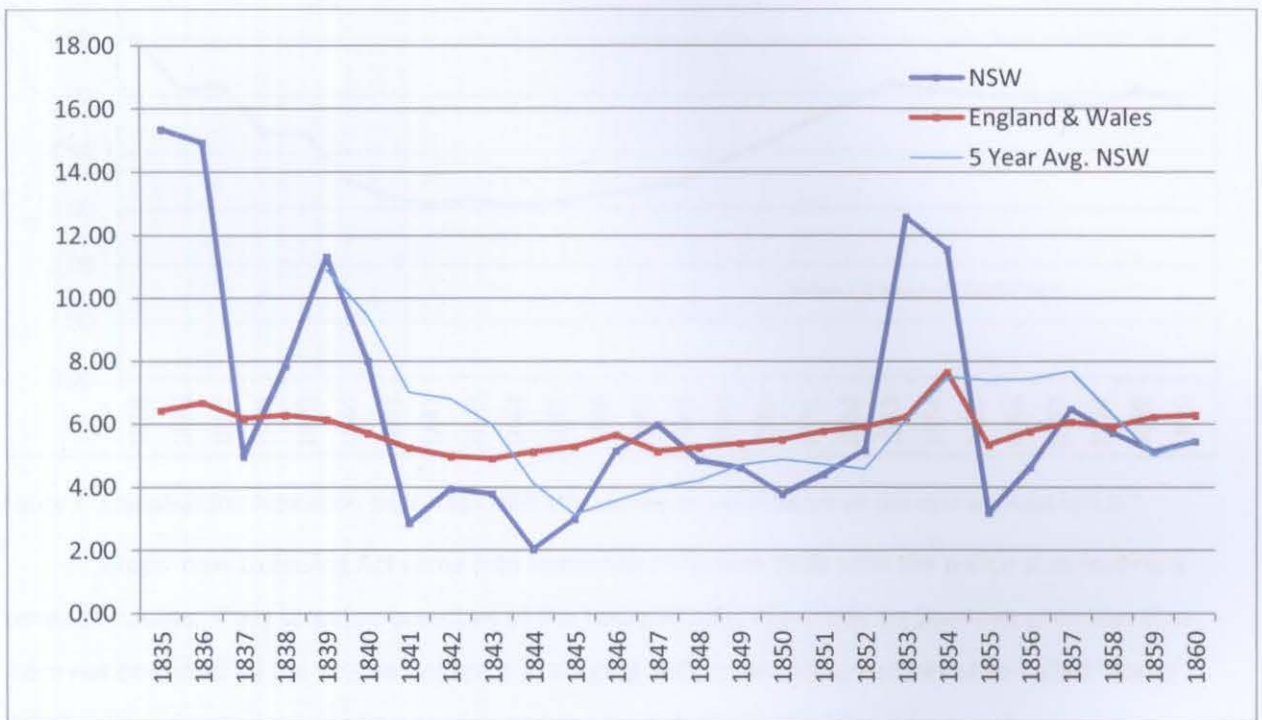


Figure 6 - Litres of Alcohol Available per Person, NSW and England and Wales, 1835-1860. (For sources and more detail on this data see Appendix 1)

Policing the Public Houses

After the influential Act of 1838, licensing regulation also remained relatively stable in the early temperance era. License numbers declined significantly, in proportion to population, after 1835. From a peak of six houses per thousand persons numbers fell to barely three per thousand in

⁵⁶ For the figures see below, Appendix 1, 262ff. As more data is available for later years, the 1830s peak is probably even more pronounced than it appears. By comparison, British consumption experienced a similar but less pronounced pattern.

⁵⁷ McIntyre, 'Wine', chs. 5-6. Wine consumption only revived with European immigration in the twentieth-century.

⁵⁸ Notwithstanding my suggestions of a successful early industry, the key factor in increased consumption was doubtless refrigeration. See: Parsons, 'Beer'.

the mid 1840s before rising again during the gold rush and stabilising at around five per thousand (Figure 7). This decrease was not driven by the Governors because licensing was now the exclusive concern of magistrates and, though the depression doubtless helped shrink the industry, temperance sympathies on the bench, aggressive lobbying by the temperance movement and increasingly professional policing also played a critical role. But by the mid-1850s, despite temperance criticism, publicans were an increasingly respectable trade whose growing wealth, supported by the strict regulations that reduced competition, enabled them to effectively lobby to protect their interests.

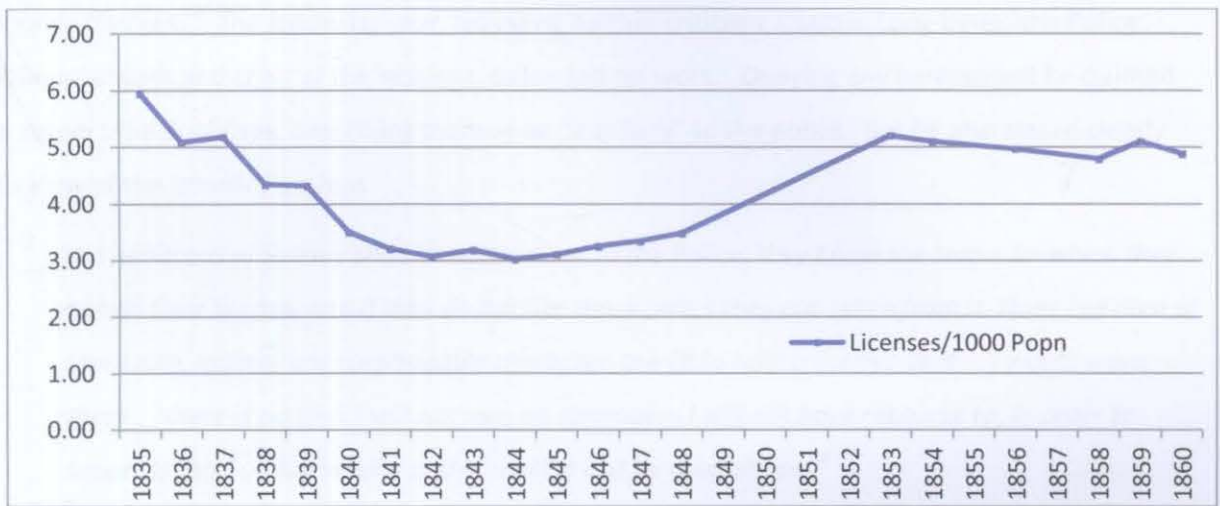


Figure 7 - Licenses/1000 Population, NSW, 1835-1860. (For sources and more detail on this data see Appendix 3)⁵⁹

Gipps' new Licensing Act came into immediate effect in 1839 with the police prosecuting a series of houses. They targeted breaches of the hours of sale, especially on Sundays, premises that were not operated by the license holder, and sly grog sellers, including a series of so-called "Fancy Balls", where guests paid an entrance fee and then purchased liquor inside from unlicensed vendors.⁶⁰ The efficiency of the new regulations was widely praised in evidence to the 1839 Select Committee on Police. There was a consensus among the officials called as witnesses that sly grog shops were a much more serious problem than well supervised licensed houses and several magistrates reported that the Act had reduced illicit sale.⁶¹ The Sydney licensing sessions ruthlessly

⁵⁹ Note that this data is only indicative – but the trend matches the changing rhetoric about licensing in this period. There was a further sharp decline with the introduction of local option in the 1880s

⁶⁰ See for example: 'The Licensing Act', *Gazette*, 8th Jan. 1839, 2; 'Fancy Balls', 10th Jan. 1839, 2; 'Fancy Balls', *Herald*, 9th Jan. 1839, 2; 'Immense Profits on Sly Grog Selling', *Australian*, 12th Jan. 1839, 2; 'Police Office, Friday', 21st Nov. 1840, 2; 'Publicans', 26th Nov. 1840, 2; 'Police Court', *Chronicle*, 28th Feb. 1840.

⁶¹ '1839 Police Committee', Evidence 12, 38, 189-90. Note that Edmund Lockyer, who served on the bench in Yass and Goulburn maintained that the Act was only effective in Sydney because of inadequate policing in country districts: Evidence 53-4.

weeded out disreputable applicants which dramatically reduced numbers. In 1839, with the Act only newly in place, two hundred and thirty-four licenses were issued and only ten percent of applicants rejected, but in 1840, total numbers were reduced to one hundred and fifty-four and almost forty percent were denied a license.⁶²

Commenting in 1840, the *Australian* noted that the publicans were increasingly respectable but questioned whether a drunkard was really discouraged by "the additional few yards he may have to walk to obtain the needful". The paper also attacked the closed licensing sessions from which the press and applicants were excluded and complained of the entrapment of publicans on phoney charges.⁶³ The following year, following further criticism, Captain Long Innes, the Police Superintendant and chair of the sessions, defended his work. Denying any harassment he claimed to respect the publicans, describing them as an "auxiliary" to the police. But he also stated clearly his view of the licensing system:

*the publicans of Sydney shall be subservient to the Police; they know the terms on which they obtain their license, and if they do not like those terms they can retire from it. None but men of reputable, indeed, unexceptionable character, are fit to hold a license, and ... I would warn them ... there is no trick I will not use; no stratagem I will not have recourse to, in order to suppress this Sunday service and in rooting out sly grog-shops.*⁶⁴

In theory, such a system would have pleased the Licensed Victuallers, who were an affiliation of respectable and wealthy operators, because it made licenses harder to secure and hence more valuable. Some publicans were even supporters of temperance, at least in its early and conservative form. At a meeting in 1840, a group of publicans signed the petition calling for a ban on distillation and made an agreement to coordinate and raise prices on rum, ostensibly to discourage drunkenness among the working classes.⁶⁵ Following Innes' speech, the Licensed Victualler's pledged to "abide strictly by the letter of the Act [and] give their best assistance towards suppressing sly grog sellers".⁶⁶ But this surprising alliance was undermined by the actions of the

⁶² 'Petty Sessions', *Australian*, 7th May 1839, 2; 9th May 1840, 2; 'Licenses', 15th May 1841, 2.

⁶³ *Australian*, 9th May 1840, 2. For further repetition of this complaint against the closed sessions see: 'Annual License Meeting No. 1', *Australian*, 20th Mar. 1841, 2; 'Annual License Meeting No. 2', 23rd Mar. 1841, 2; 'Public Licenses', *Gazette*, 1st May 1841, 2.

⁶⁴ 'Licenses', *Australian*, 15th May 1841, 2.

⁶⁵ 'Movement among the Publicans', *Herald*, 23rd Sep. 1840, 2; 'Public Meeting of the Licensed Victuallers', 25th Sep. 1840, 2.

⁶⁶ 'The Licensing System', *Australian*, 20th May 1841, 2. Though the Licensed Victualler's regularly met when Licensing legislation was before the Council, it appears that the organisation often folded between these bursts of lobbying. From the 1850s there was a more regularly constituted and permanent society.

police. In 1841, Innes was forced to concede that “[t]he constables were more intent on pocketing fines than attending to their legitimate duties” and insist that constables should never enter a public house unless called by the proprietor or in the company of a senior officer.⁶⁷

In fact this kind of dubious practice by the Sydney police was notorious. Publicans were fined for serving convicts, even when their dress and manner were indistinguishable from free persons, for serving constables on duty and for serving after hours or on Sundays, even if they were entrapped into doing so by disguised police officers. Such behaviour was in part a consequence of the rewards upon which most police depended to make a decent living, and on the poor quality of the candidates who joined the force.⁶⁸ But it also reflected the difficulty of enforcing the Licensing Act. At the 1847 Select Committee on Police, the acting Chief Constable, John Wearin, commented on the challenge. Though Sunday drinking was widespread, it could not be stopped because magistrates refused to accept cases where constables employed disguise and without this, prosecutions were impossible:

*if a policeman goes to the door of a public house in uniform he is not admitted till everything is cleared away, and if he found a room full of people with nothing to drink before them he could do nothing in the matter.*⁶⁹

Wearin linked this problem to the numbers of public houses which were once more on the increase, claiming publicans told him they were forced to sell on Sundays to remain competitive in a crowded market place⁷⁰ The increasing numbers and falling standards were in part a consequence of the persistence of laissez faire views among the amateur magistrates. Innes described the operation of the bench, noting that although two magistrates inspected every house prior to the sessions and the applicants needed five testimonials to their good character, beyond these tests the Sydney bench operated:

entirely upon the free trade system ... any man having a good character, and a house with the necessary accommodation required by law, is entitled to a license ... and the consequence has been a great increase in the number of public houses.

⁶⁷ ‘Informers’, *Monitor*, 12th July 1841, 2.

⁶⁸ ‘Hardship to Publicans’, *Monitor*, 16th Sep. 1840, 2; ‘Informing’, 28th Sep. 1840, 2; *Australian*, 31st July 1841, 2; ‘The Spy System’, *Chronicle*, 26th Mar. 1845, 2; ‘The Spy System’, 29th Mar. 1845, 3. For the difficulty of identifying convicts see: Hirst, *Freedom*, 119-20. For more on problems with the police force in the 1840s see below, 212ff.

⁶⁹ Evidence of John Wearin, NSW Legislative Council, ‘Report from the Select Committee on Police’, *VPLC (1847)*, vol. 2 pp13-268, 103-4. He cited a case where a man had been found drunk within a pub on a Sunday, but was discharged after he claimed to have been sleeping. See also: Evidence of W.A. Miles, ‘1847 Police Committee’, 59, 61.

⁷⁰ Evidence of John Wearin, ‘1847 Police Committee’, 104, 108.

As an example of this liberality he cited a house located on the Parramatta Road which was refused a license by the Parramatta bench, but granted one in Sydney despite his strong opposition.⁷¹ His evidence suggests that despite a ban on interested parties serving on the bench, licensing was often a nepotistic business in which magistrates vouched for their clients and ignored blemishes against their good name.

Temperance and Licensed Victuallers

But there is also clear evidence of the influence of temperance concerns on the bench. In May of 1839 George Reynolds was indicted for the manslaughter of Thomas Cannon after killing him in a drunken brawl on the day after St Patrick's Day.⁷² Objecting to the seating of any publicans on the jury, Plunkett stated that:

*I do not consider the trade of a publican in this Colony to be a legitimate trade. When I see the dreadful consequences which result daily from indulgence in the beastly vice of drunkenness, I must consider such a trade pernicious to the public interests.*⁷³

In an editorial on the speech, the *Colonist* praised the sentiments but regretted that the Attorney-General's enthusiasm for the "great cause of Temperance" had "borne him somewhat beyond the limits of propriety and just policy". The editor agreed that publicans were culpable for administering "the crime-exciting draught" and claimed that they should be held liable for crimes committed by their drunken customers. But while supporting a reduction in the number of licenses, he argued that Plunkett had gone too far because "the TRADE [sic] itself, if properly regulated, is a perfectly legitimate ... extremely useful and necessary one".⁷⁴ The *Australian* went further claiming Plunkett had "grossly abused his privilege" and argued that the present system treated publicans "as mendicants, [rather] than as persons preferring a legitimate application".⁷⁵ This illustrates the growing divide, in the press, the Council and the public in general, between supporters of temperance and the owners, suppliers and customers of public houses.

This divide is especially apparent in the ongoing debate over licensing that was a constant feature of NSW politics. In 1839, the Licensed Victualler's secured some minor revisions to the Act after they complained about a series of hardships, particularly the new clause requiring them to

⁷¹ Evidence of J.L. Innes, '1847 Police Committee', 50-1. See also Evidence of W.A. Miles, '1847 Police Committee', 95.

⁷² 'Supreme Court', *Monitor*, 17th May 1839, 2.

⁷³ 'Drunkenness', *Herald*, 17th May 1839, 2.

⁷⁴ The attorney-General and the Publicans', *Colonist*, 22nd May 1839, 2.

⁷⁵ 'The Attorney-General and the Licensed Victuallers', *Australian*, 23rd May 1839, 2; 1st June 1839, 1. The *Australian* appears to have had a close affiliation with the Licensed Victuallers, carrying the fullest reports of their meetings.

keep a lamp lit during the night.⁷⁶ In contrast, efforts by the temperance movement to prohibit retail sale of alcohol were markedly less successful. In the lead-up to the prohibitory petition of 1841, the Abstinence Society also petitioned the licensing benches, calling for them to exercise their privilege and issue no licenses, a tactic they repeated frequently without reward.⁷⁷ From the mid-1840s as complaints about the Act mounted on all sides, the Council began to consider new legislation and this led to more vigorous lobbying. At a meeting in June 1844 the Licensed Victuallers prepared a petition of their grievances including calls for open licensing sessions, no rewards for informers and extended opening hours, raised funds to meet the costs of their campaign and solicited William Wentworth to promote their cause in the house.⁷⁸ In early August, Wentworth duly presented a revised Act reflecting their concerns but the Council was immediately deluged with counter-petitions for a stricter system. The largest of these, presented by Dr. Lang called for a hundred pound license fee, a limit of one public house for every five hundred inhabitants, stricter checks on applicants and an automatic loss of license for breaches of the Act.⁷⁹ The much debated bill went before a select committee and, with the press of other matters before the house, never re-emerged.

This pattern was repeated every year, with consistent lobbying from both sides and substantial dispute within the Council itself, until finally in 1849 a new licensing act made it to a vote before the Council.⁸⁰ This Act, brought to the floor by Plunkett, was a temperance influenced bill that called for stricter regulation but after much debate and revision by members sympathetic to the publicans, many of the more restrictive clauses were altered and the final Act was a reasonable compromise between the two sides. It brought an end to the ill-fated beer license, despised by both lobbies, tightened the regulation around licensing sessions but opened their proceedings to the public and increased penalties for breaches of the Act but ended the practice of rewarding informers.⁸¹ This balancing of interests remained the pattern of licensing regulation over the next three decades, despite the growing power of the temperance movement. In fact, the two sides had

⁷⁶ For the petition see: 10th Sept. 1839, *VPLC* (1839), 123-4. For the new Act see 'Licensed Publicans Act', (3 Vic. no. 13), 25th Sep. 1839, *Statutes of NSW*, 974-5. They also requested ten o'clock closing and asked for an end to the system of rewarding constables with fines but both suggestions were ignored.

⁷⁷ 'Victuallers' Licenses', *Herald*, 16th Apr. 1841, 2.

⁷⁸ 'Meeting of the Licensed Victuallers of Sydney', *Australian*, 24th June 1844, 3; 'Sydney Licensed Victuallers', *Herald*, 25th June 1844, 2; 'Publicans Meeting', *Australian*, 9th July 1844, 2. It is unclear whether the funds were required to pay Wentworth for his advocacy – it is certainly not inconceivable.

⁷⁹ 'Legislative Council', *Herald*, 24th Aug. 1844, 2; 'Progress of Temperance. the Petition to the Legislature', *Chronicle*, 28th Aug. 1844, 2. This reduction would have more than halved the number of licenses.

⁸⁰ For details of the interminable discussion of licensing in the 1840s, see the various *VPLC* and the Reports of Parliamentary Debates in the *Herald*.

⁸¹ 'Licensed Publicans Act', (13 Vic. no. 29), 2nd Oct. 1849, *Statutes of NSW*, 1917-1945.

a substantial degree of shared interest; for very different reasons, both sought to limit numbers and enforce respectability on houses. Ironically, the temperance campaign against the sale of alcohol helped consolidate the trade and created a powerful lobby that successfully defended its interests.⁸² But the persistence of the campaign in the decade after 1845 also demonstrates the growing influence of temperance ideas. At a time when the only remaining temperance society in Sydney was a Catholic institution, more concerned with community building than legislation, temperance had a powerful influence over alcohol policy.

⁸² For more on the success of the licensed victuallers, see: Beresford, 'Drinkers', chs. 3-4.

Chapter 12) Policing a Free Population

The offence of drunkenness in NSW was gradually standardised under the 1838 Licensing Act. Temperance ideas contributed to the widespread view that public drinking was not merely an individual sin or crime but a symptom of a larger social crisis caused by alcohol and led to demands for rigorous and consistent punishment for offenders. But the actual nature of drunk policing in the decades before responsible government was just as much a consequence of changes to the police force itself. Shifts in police incentives and instructions contributed to a unique obsession with arresting drunkards in the years around 1840, and even after this faded, drunkenness remained the leading disciplinary offence for the remainder of the nineteenth century. Despite the official desire for a modern, professional and efficient force administering systematic justice, ongoing problems with corrupt and incompetent constables and headstrong magistrates contributed to the subjective nature of the charge. The policing of drunkenness in the 1840s thus reflected elite concern with particular forms of deviance and especially with managing the newly enfranchised working classes.

Incentives to Arrest

The limited data for the period before 1840 suggests that arrest for drunkenness was relatively infrequent in the early years of the colony but increased in the 1820s and 1830s under modernised urban policing. But from 1839 onwards, for the years which we have data, drunkenness typically made up greater than forty percent of all charges tried in a magistrates court. It was by any measure the dominant police offence of the second half of the nineteenth century, and indeed retained this status until it was decriminalised in 1979.¹ While drunkenness was also the most common cause of arrest in Britain it was far less predominant. With the exception of the 1860s, arrests as a percentage of police activity in England (including Wales) and London were about half the corresponding levels in NSW and Sydney (Figure 8, below, p207). Colonial authorities paid particular attention to drunkenness.

¹ The legal status of drunkenness was finally changed by the Intoxicated Persons Act (1979, no. 67) which established the present system under which drunks may only be arrested for their own protection or for disturbing the peace. For more on the twentieth-century status of drunkenness see: Andrew Cornish, 'Public Drunkenness in NSW: From Criminality to Welfare', *ANZ Journal of Criminology*, vol. 18 (June 1985), pp73-84. For twentieth-century statistics see: S.K. Mukherjee, Anita Scandia et al. (eds.), *Source Book of Australian Criminal and Social Statistics, 1804-1988*, Canberra: Australian Institute of Criminology, 1989, 281-3.

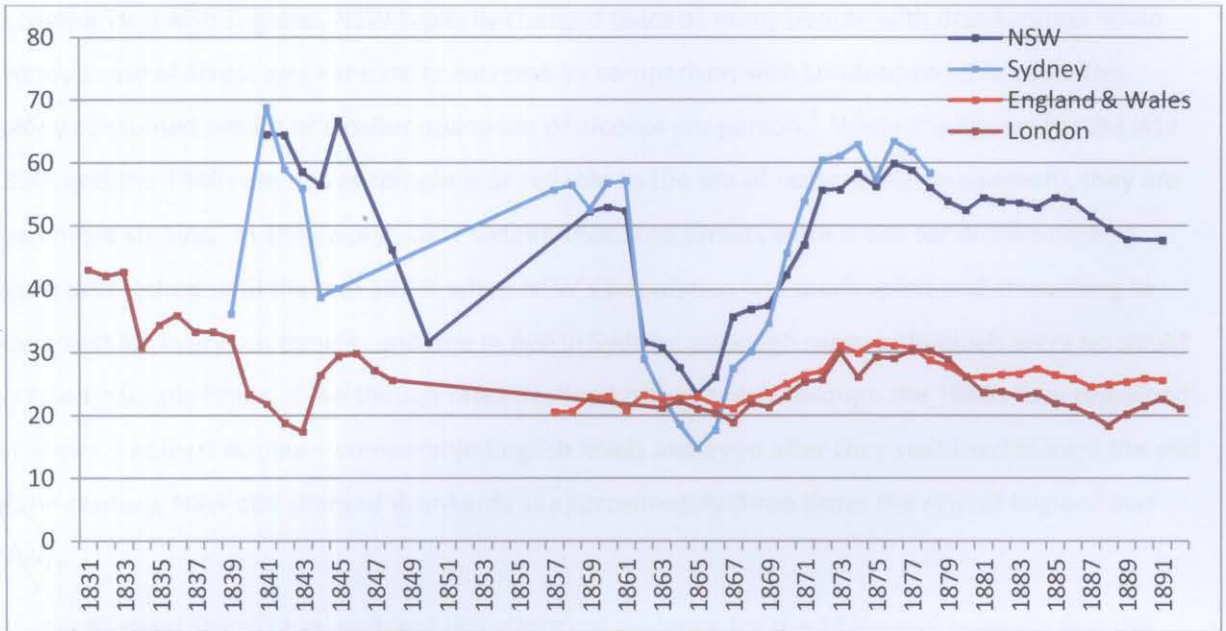


Figure 8 – Drunkenness as a Percentage of all Committals before a Magistrate, 1831-1891. (For sources and more details on this data see Appendix 4)²

This is borne out by a comparison of arrests per head of population in various jurisdictions (Figure 9).

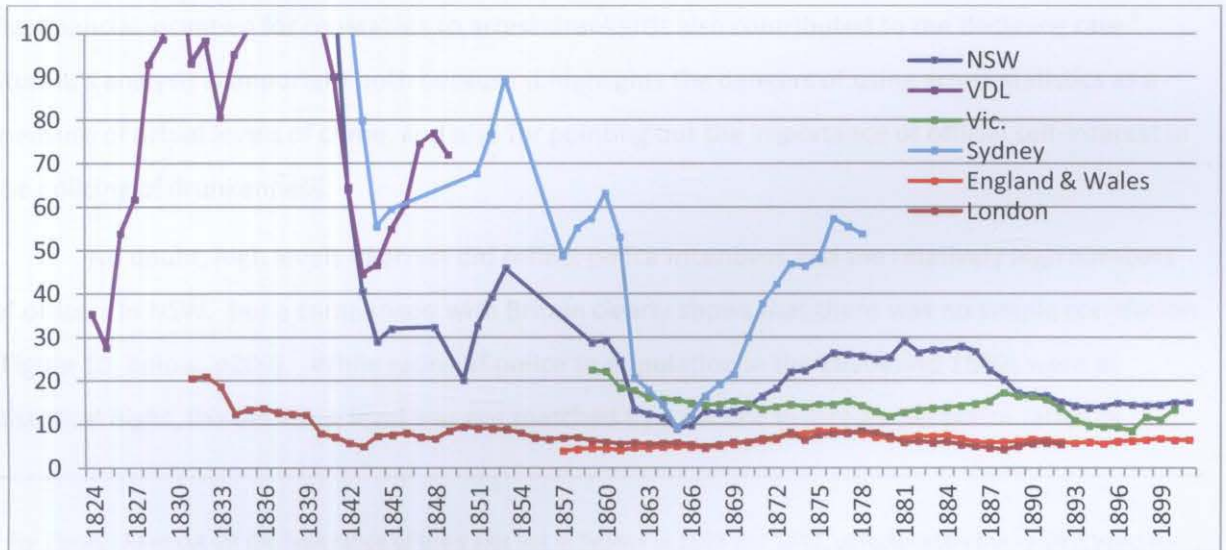


Figure 9 – Committals for Drunkenness/1000 Population, 1824-1901. (For sources and more details on this data see Appendix 4)³

² Committals serve as a proxy for arrests, though they probably slightly understate arrest rates. For a discussion of interpreting nineteenth-century crime data see: V.A.C Gatrell and T.B. Hadden, 'Criminal Statistics and their Interpretation', E.A. Wrigley (ed.), *Nineteenth-century Society. Essays in the use of Quantitative Methods for the Study of Social Data*, Cambridge: Cambridge University Press, 1972, pp336-396; K.K. Macnab, 'Aspects of the History of Crime in England and Wales Between 1805 and 1860', D. Phil. Thesis, University of Sussex, 1965. The decline in the 1860s, while outside my period, can be explained by a legislative error which made arrest of drunkards problematic - see my as yet unpublished article: 'David Buchanan and the Crime of Drunkenness in Nineteenth-Century NSW'. Contact me for a copy of this essay.

In comparison with England, NSW typically charged twice as many people with drunkenness while Sydney's rate of arrest was even more extreme by comparison with London; and this while the colony consumed similar or smaller quantities of alcohol per person.⁴ While the figures for the late 1830s and the 1840s are not as complete or reliable as the era of responsible government, they are even more striking. In 1841 alone, over sixteen thousand arrests were made for drunkenness, a figure unmatched until the late 1870s when NSW's population had quadrupled and amounting to one arrest for every ten people, and one in five in Sydney, although many individuals were no doubt arrested multiple times. Even though rates declined precipitously through the 1840s they remained far above – at least double – comparable English levels and even after they stabilised toward the end of the century, NSW still charged drunkards at approximately three times the rate of England and Wales.⁵

Michael Sturma has analysed this statistical evidence for the 1840s and suggests that the chief explanation for the rapid decline in rates of arrest was the depression, which shrank discretionary spending on alcohol. However, he also points to significant changes to policing in the period. Reductions of police numbers in the early 1840s (also related to the depression and the consequent austerity), altered police instructions and changes to the system of fines which reduced the financial incentive for constables to arrest drunkards also contributed to the declining rate.⁶ Sturma's analysis is important both because it highlights the dangers of using arrest statistics as a measure of actual levels of crime, and also for pointing out the importance of official self-interest in the policing of drunkenness.

No doubt, high levels of arrest did reflect police incentives and the relatively high numbers of officers in NSW. But a comparison with Britain clearly shows that there was no simple correlation (Figure 10, below, p209). While ratios of police to population in the 1830s and 1840s were at historical highs, the declining level was not matched by a decline in arrests. As police ratios in

³ For clarity I have cut off the high range of the y axis but in Sydney in 1839 and 1841, unfortunately the earliest years for which I could find jurisdiction-wide data, there were approximately 200 arrests per 1000 population, a staggering and unprecedented level. Note that the data for individual benches suggests that Sydney had begun to approach these arrest rates in the early 1830s, see above, 135. This graph also conceals gaps in the data for the late 1840s and early 1850s in Sydney and NSW.

⁴ Both in the late 1830s/early 1840s and around the gold rushes, NSW alcohol consumption was briefly higher than Britain's, but after this it declined in relation to the mother country. See Appendix 1, 262ff.

⁵ I could not locate national figures from England prior to 1859 but London arrest rates provide a rough proxy – in all likelihood they were slightly higher than national rates – and suggest a general decline from a lower peak up to 1850, followed by consistently low levels thereafter. See: U.K. Parliament, *Judicial Statistics of England and Wales, 1857-1880*; Wilson, *Alcohol and the Nation*, 430-3.

⁶ Sturma, *Vice*, 142-3; Michael Sturma, 'Police and Drunkards in Sydney, 1841-1851', *Australian Journal of Politics & History*, 27(1981), pp48-56. Sturma claims that "police no longer received a portion of the fines for drunkenness" by 1850. This was not strictly true although the opportunity to supplement income through arresting drunkards had certainly declined.

England and NSW converged toward the end of the century, the Colonial force still dedicated far more of its resources to the offence of drunkenness. This point is brought out even more clearly by a comparison of the respective capitals. After 1860, Sydney had fewer police per capita and by the end of the century London had almost twice as many officers to every citizen but they each performed half as many arrests (Figure 11).

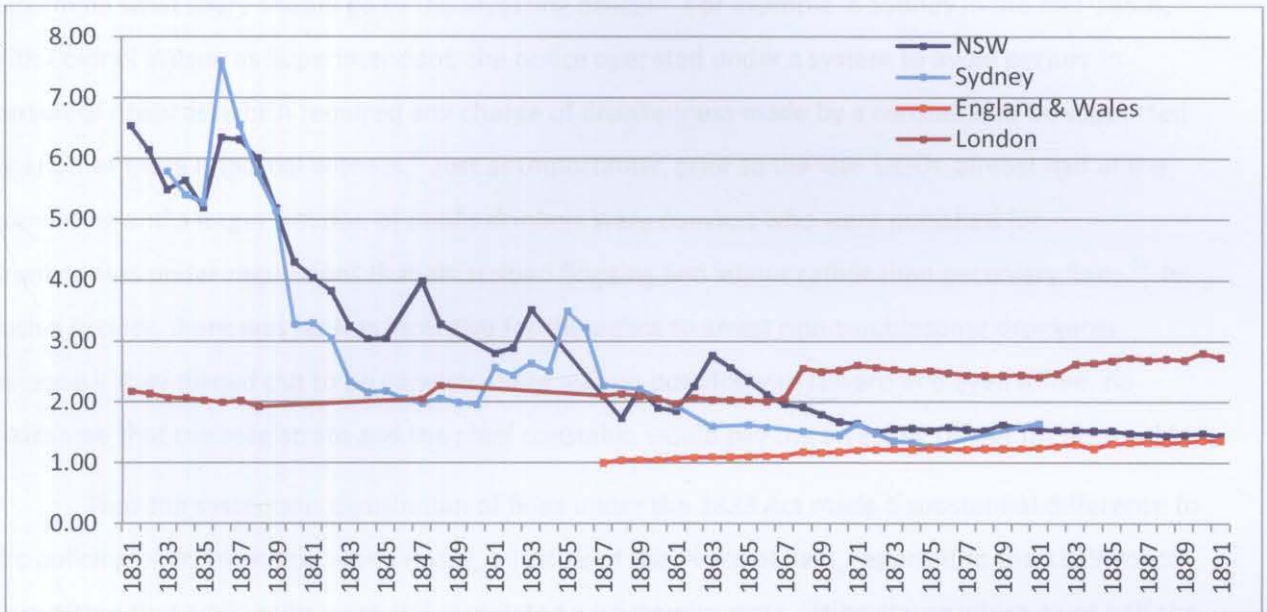


Figure 10 – Police/1000 Population, 1831-1891. (For sources and more details on this data see Appendix 4)

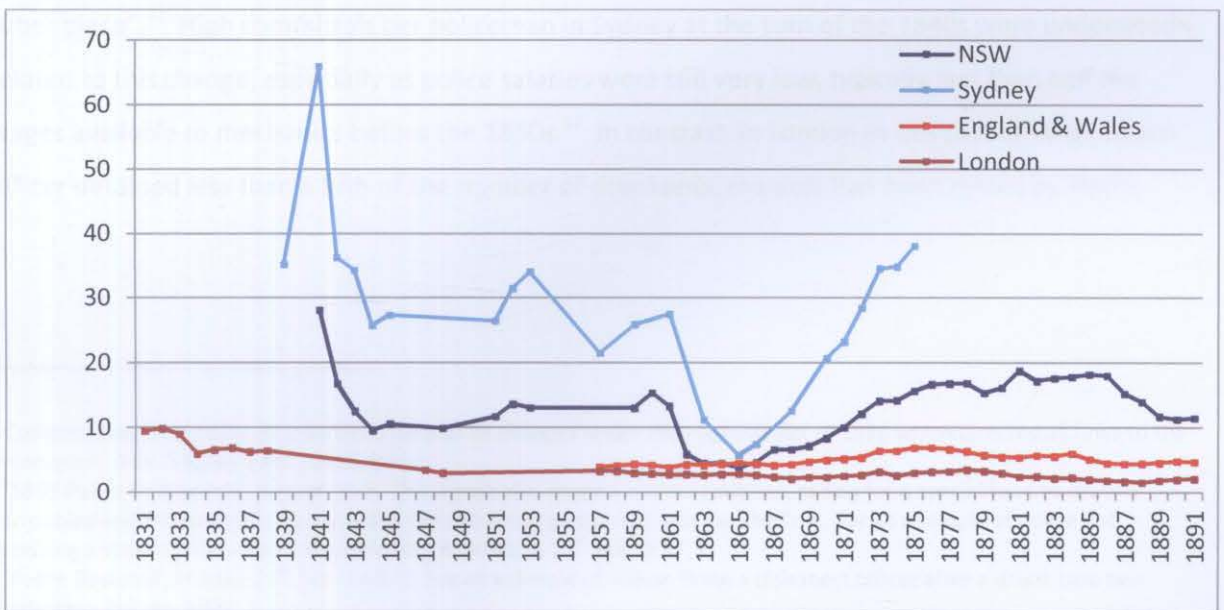


Figure 11 – Committals for Drunkenness/Policeman, 1831-1891. (For sources and more details on this data see Appendix 4)

On average, from 1840 to 1900, police in NSW arrested three times as many drunkards as in England, while in Sydney they arrested five times as many as in London.

Part of the explanation for this disproportionate police concern was, as Sturma has noted, new inducements for police activity. In particular, the peak levels of arrest around 1840 almost certainly reflected the new provisions for rewarding constables in the 1838 Licensing Act.⁷ Before this date, the ambiguous state of the law meant that any reward to the police was subject to magisterial discretion and in any case was traditionally paid to the chief constable who would then determine what share should go to the arresting officer.⁸ For example in Sydney in the mid-1830s, with Colonel Wilson as Superintendent, the police operated under a system to avoid perjury in pursuit of rewards, which required any charge of drunkenness made by a constable to be supported by another more impartial witness.⁹ Just as importantly, prior to the late 1830s, almost half of the population and a larger fraction of public drinkers were convicts who were punished for drunkenness under regulations that prescribed flogging and labour rather than pecuniary fines.¹⁰ In such a society, there was far less incentive for the police to arrest non-troublesome drunkards because if they turned out to be convicts there was no possibility of reward and even if free, no guarantee that the magistrate and the chief constable would pay the arresting officer for his trouble.

Thus the systematic distribution of fines under the 1838 Act made a substantial difference to the policing of drunkenness. John Hardy, a Justice of the Peace at Yass, reported to the 1839 Police Committee that while pubs were still associated with drunkenness, “[t]he clause which gives half the fines of drunkards to constables has made Yass, in outward appearance at least, a very generally sober place”.¹¹ High committals per policeman in Sydney at the turn of the 1840s were undoubtedly related to this change, especially as police salaries were still very low, typically less than half the wages available to mechanics before the 1850s.¹² In contrast, in London in this period, where each officer detained less than a fifth of the number of drunkards, rewards had been ended by Peel’s

⁷ Complicating the picture, drunkards could also be charged under the Vagrants Act of 1835 which directed all fines to the prosecutor. See: ‘Vagrants Act’, 1835, 636.

⁸ ‘1839 Police Committee’, Report 56-7. The report also noted a related problem, calling for a special fund to reward constables and informants in cases where the convicted party could not pay the fine. For an example of police not receiving a share of fines see: ‘Drunkenness’, *Australian*, 25th July 1837, 2.

⁹ ‘Police Business’, *Herald*, 21st Oct 1840, 2. For an example of Wilson firing a dishonest officer after a drunk case see: *Australian*, 3rd Jan. 1837, 2.

¹⁰ For population changes, see below, Figure 12, 213.

¹¹ ‘1839 Police Committee’, Evidence 39. It is worth noting that his colleague on the Yass bench, Edmund Lockyer, disagreed, arguing that the constables were all “the worst description of free men, being idle and drunken persons” and that drunkenness and dissipation had increased, due to “the abundance of money and the ease with which it is obtained”. Evidence 51, 53-4.

¹² Sturma, ‘Drunkenness’, 49. It was only when the gold rush created both a greater need for police and further competition for unskilled labour through wage inflation that police pay began to improve.

police reforms and constables were actively encouraged not to detain drinkers unless they were causing disorder or unable to take care of themselves.¹³

Incentives help to explain not just the peak in arrests in 1841 but also their subsequent and rapid decline. Rates in Sydney halved between 1841 and 1842, almost entirely as a result of a public backlash against the increasingly corrupt behaviour of the police. In June of 1841, a sailor, "Poor Jack", wrote to the *Gazette* complaining of the "system of fraud and imposture which is daily practised at the Police Office, under the specious pretext of suppressing drunkenness". He and his friend had visited a public house and were returning to their lodgings when he was stopped by a constable who demanded his ship's pass and despite observing it, detained him overnight. In the morning, Captain Innes interrogated him, and when he refused to concede that he was drunk, sent him back to his cell. As "Jack" had to rejoin his ship, he eventually admitted the offence and was duly fined and released. Complaining of his treatment as an "infringement of the liberty of the subject", he argued that the law breached English principles by providing witnesses with "a premium to perjury". The editor commented that he had confirmed the veracity of the letter and noted that "the evil complained of is of daily occurrence", especially among seamen who had no friends to testify in their defence.¹⁴

This was but the first of a spate of published complaints about police practices over the following months. In particular, outrage was expressed at the indiscriminate targeting of gentlemen by the police. 'An Observer', commenting on the outrageous arrest of a ship's captain when "perfectly sober", noted with horror that he was forced to spend the night in a cell "with the vagabonds and proscribed outcasts of society", although tellingly the Police Magistrate, "judging him from his appearance to be a respectable person" released him the next morning on payment of his fine, without forcing him to attend court.¹⁵

¹³ For English police and drunkards see: Philips, 'New Engine of Power and Authority', 179; 'New Police Instruction', *Times*, London: 1788-, 25th Sep. 1829, 3; Leone Levi, 'On the Limits of Legislative Interference with the Sale of Fermented Liquors', *Journal of the Statistical Society of London*, vol. 35, no. 1 (Mar. 1872), pp25-56, 51. See also the letter of 'WM', complaining about the police profiteering from false charges of drunkenness, who noted that this could not happen under English law: *Gazette*, 13th Apr. 1841, 2.

¹⁴ 'Letter of Poor Jack', *Gazette*, 15th June 1841, 3. See also the editorial on this case: *Gazette*, 22nd July 1841, 2. For another examples see the similar case of Dr Gill who was arrested for drunkenness because he had slipped over in the muddy street while attending to a patient: *Australian*, 10th July 1841, 2; *Gazette*, 10th July 1841, 2; Sturma, 'Drunkards', 49-50.

¹⁵ 'The Sydney Police. No. 1' *Monitor*, 9th July 1841, 2. The letter writer commented on the fact that respectable people would pay the fine regardless of their guilt to avoid a court appearance. For more complaints see: *Australian*, 6th July 1841, 2; 'The Discerning Police Constables', *Monitor*, 28th July 1841, 3.

There is also evidence of more popular resistance to the upsurge in arrests. At the annual meeting of the temperance society in 1839, the Police Magistrate, John Ryan Brennan, noted the difficulties officers faced when arresting drunkards:

*instead of receiving [public] co-operation and support, they are invariably hooted at, and too frequently assaulted in the effort to confine the unfortunate and degraded wretch, which, if looked at in its proper light, is rendering a benefit to the drunkard both as to his safety, and to good order of society.*¹⁶

Further evidence comes from Richard Windeyer, who recalled the earlier period before a Select Committee in 1844. He noted that the substantial decrease in arrests for drunkenness was accompanied by a similar decline in cases of assaulting a police officer, suggesting both the connection between these two highly subjective offences and the resentment of corrupt police tactics at the turn of the decade.¹⁷ Opinion soon hardened against rewards. Following up on his earlier letter, 'An Observer' called for an Assistant Chief Constable to tour the watch houses each night and release those he deemed "confined on a trumpery-charge", and the abolition of rewards with a corresponding increase to police salaries that might help attract "persons of decent habits and respectable demeanour, and indeed, men of some intelligence".¹⁸

The Police System and its Problems

This reflected the problem of perception that had plagued the NSW police since their origins as a convict force in the eighteenth-century. Though policing practices changed substantially in the 1830s and 1840s, the poor reputation of the force persisted, as did the challenge of recruiting trustworthy officers. Following Rossi's reforms, the police in Sydney were, at least in theory, an increasingly professional body. Numbers of officers and paid magistrates rose but while this helped to standardise the application of the law, practices still differed greatly between Sydney and the more remote rural districts.¹⁹ In Sydney, under the Act of 1833, and from 1838 in other substantial towns, the respective forces were modelled on Robert Peel's new Metropolitan Police in London. In contrast, rural policing was largely conducted by mounted patrols organised more along military

¹⁶ 'Temperance Society', *Australian*, 13th Apr. 1839, 3. This was not a temporary problem. See Alfred Stephen's comments on the same phenomenon in 1854: '1854 Intemperance Committee', 606.

¹⁷ 'Committee on Insecurity', 1844, 404; Sturma 'Drunkards', 52.

¹⁸ 'The Sydney Police No. 2', *Monitor*, 12th July 1841, 2.

¹⁹ Golder, *Magistrates*, 41-2, 45-6.

lines, modelled on the Irish constabulary and far less concerned with public order.²⁰ These different systems reflected a philosophical divide between amateur eighteenth and professional nineteenth century understandings of police that had contributed to elite complaints about the Governors in the 1820s and 1830s.²¹

What had changed by the 1840s was the population subject to the police. In the Report of the 1839 Police Committee, two of the three leading causes of crime were the same as 1835: the convict origins of much of the population and the dispersion of the settlement. But the Report also pointed to the disproportion of the sexes which deprived men of the “consolations of home and Society” and created “temptations to drinking and other sources of dissipation” as a major colonial problem.²² This in part reflected the rapid demographic transformation of the colony. Where the proportion of convicts was relatively stable at forty percent of the population from 1820 to 1835, over the following decade, increased immigration and the end of transportation saw this plummet to ten percent in 1845 and less than one percent by 1850 (Figure 12). NSW rapidly became a free society in which social problems were no longer conceived as solely due to the criminal propensities of a disenfranchised underclass. Rather than a convict force controlling fellow convicts, the police were increasingly concerned with maintaining public order and defending respectability.

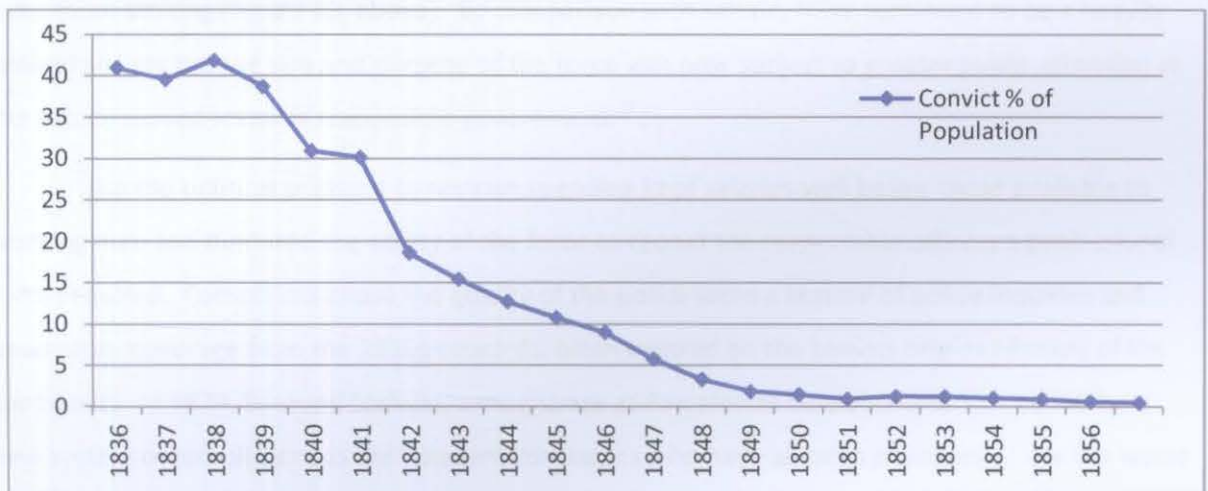


Figure 12 - Convicts as a Percentage of Population, NSW, 1835-1856. (For data see : Sturma, *Vice*, 189)²³

²⁰ For the contrast between Peel’s London police and the Royal Irish Constabulary and the relevance of these models to NSW see: King, ‘Police’, 207-13; Mark Finnane, *Police and Government. Histories of Policing in Australia*, Melbourne: Oxford University Press, 1994, 11-29. For the extension of Sydney’s system see: ‘Police Act’, (2 Vic. no. 2), *Statutes of NSW* (10th Aug. 1838), 762-782. This act basically copied the provision of the 1833 law but applied them to “Parramatta Windsor Maitland Bathurst and other Towns”.

²¹ This divide was still a problem in 1839, with the Police Committee hearing reports of rural magistrates illegally multiplying offences to increase the scope of permitted punishment. See: ‘1839 Police Committee’, Report 72-5.

²² ‘1839 Police Committee’, Report 2.

²³ For more on this transformation see Hirst, *Freedom*, 176-203; Sturma, *Vice*, 1-8.

One other factor hastening the changing priorities of the police was the growing challenge of funding the force. Though Macquarie had established the first Police Fund with colonial revenue, as the force expanded, expenses were largely borne by Britain, based on the view that they were a necessary consequence of the convict system. But from July 1835, Britain refused to continue to cover the growing costs of policing the colony. Claiming that “great and rapidly increasing prosperity” was due to the free labour from convicts, the British Treasury argued that it was therefore incumbent on NSW to cover their expenses. While this did not prevent the Governor and Council from increasing the force in the 1830s, costs became an increasingly significant factor in the administration of the police.²⁴ The 1839 Police Committee reflected these constraints. Despite noting the challenge of recruitment given the low salaries of the force, the Report argued that increases were unaffordable.²⁵ This financial challenge became more pressing in the early 1840s with shrinking revenues and an increasingly independent Legislative Council questioning the Governor’s budgets.²⁶ As a result of this concern for costs, allowing for annual fluctuations and the inaccuracy of some of the figures, police numbers in NSW remained almost stable over the decade after 1835 as the population of the colony nearly doubled, while in Sydney the relative decline was even more striking (Figure 10, above). By comparison with Britain, NSW continued to be a heavily policed society but the size and purpose of the force was now subject to greater public attention as the colony moved towards responsible government.²⁷

But the political pressure to restrain spending kept salaries well below those available to working men and hindered the ability of the force to recruit the respectable officers a professional force required. Complaints about the quality of the police were a feature of police inquiries and newspaper coverage from the 1830s onwards, often centred on the convict origins of many of the constables. In 1839, Edmund Lockyer, a magistrate at Parramatta Goulburn and Yass called for a new system of recruitment as the “present constables who have all been prisoners ... are the worst description of free men, being idle and drunken persons”.²⁸ Though the police were still dominated by current and former convicts their numbers declined substantially in the 1840s in line with the

²⁴ Swanton, *Police*, 24-35; King, ‘Police’, 214, 218-9; ‘Enclosure to Spring Rice to Bourke’, 15th Nov. 1834, *HRA*, vol. 17, 579-80.

²⁵ ‘1839 Police Committee’, Report 55.

²⁶ For challenging the budget estimates see: Cochrane, *Colonial*, ch. 1.

²⁷ Neal, *Rule of Law*, 163-5. The 1847 Police Committee noted that the cost of an officer in England ranged between five and eleven pence per head of population while in NSW it was between two and eleven shillings: ‘1847 Police Committee’, 20-1, 23.

²⁸ ‘1839 Police Committee’, 1839, Evidence 51.

Colony's changing demographics. In 1839, fifty-three per cent of Sydney police were either ex-convicts or ticket-of-leave holders but in 1844 this had fallen to twenty-three per cent and to fourteen per cent by 1850.²⁹ Despite this, the reputation of the force remained poor as low wages exacerbated the difficulties of recruitment. Describing the Sydney Constabulary in 1847, the Police Commissioner W.A. Miles noted his difficulty in keeping good officers on the current wages.³⁰ In a thirty month period he was forced to replace almost the entire strength of the force in retirements with a similar number of men dismissed, mostly for drunkenness. In a vicious cycle, the poor reputation combined with the low rates of pay discouraged more respectable applicants.³¹

This was the context in which complaints about the police and their excessive targeting of drunkards reached a peak in 1841. The *Australian* summarised the problems:

*No really respectable man can ... exist upon the very small wages ... The consequence is, firstly, that the greatest portion of this force consists of men who are not respectable persons, and secondly, that these constables are driven to eke out their weekly earnings by lying in wait for informations, and substantiating paltry charges.*³²

The public pressure led Captain Innes to change the instructions to constables forbidding them to interfere with peaceable and orderly drinkers, regardless of their degree of intoxication.³³ In the latter half of 1841, a series of constables were charged with perjury and dismissed from the service after arresting alleged drunkards, illustrating the change in the police culture, especially under the influence of the newly appointed Superintendent Miles.³⁴ These changes made a substantial difference with the *Gazette*, in its usual report on the police courts noted "an absence of charges that we have never before seen paralleled in the colony".³⁵

In his evidence to the 1844 Select Committee on the Insecurity of Life and Property, Miles explained current police practice:

²⁹ Sturma, 'Drunkards', 48.

³⁰ '1847 Police Committee', 57-8.

³¹ 'Police Report', 1847, 58, 64; Sturma, 'Drunkards', 49. He notes that despite this high turnover more than a fifth of the force served for five years or longer, suggesting that there was a core of reliable officers. For the ongoing nature of this problem see: NSW Legislative Council, 'Report from the Select Committee on Police', *VPLC* (1850), vol. 2, pp395-409, 401.

³² *Australian*, 15th July 1841, 2.

³³ *Gazette*, 29th July, 1841, 2.

³⁴ See for example: 'Letter of A Subscriber', *Monitor*, 21st July 1841, 2; 'The Police', *Herald*, 6th Sept. 1841, 2.

³⁵ 'Police Business', *Gazette*, 13th Aug. 1842, 3. New legislation also gave magistrates discretion over whether informers received fines. See: 'Fines For Drunkenness Charitable Application Act', (6 Vic. no. 13), *Statutes of NSW* (30th Aug. 1842), 1315. For more evidence of the changed culture see the testimony of Parramatta magistrate Gilbert Elliott: '1847 Police Committee', 75. But compare his fellow Parramatta magistrate George Oakes who claimed the police still extorted fines: '1847 Police Committee', 115.

*I do not allow the police to interfere ruthlessly with drunken men for the sake of the fines; if they are unable to take care of themselves, or if they are a nuisance to the public the police interfere. Thus the decrease in the number of drunkards does not prove that there is less drunkenness, although the impression on my mind is that there is decidedly less.*³⁶

While some commentators continued to call for more fundamental reform of wages and rewards, this new system seems to have reduced the problem with fewer complaints and a reduced rate of arrests, especially in Sydney. However, even after the distorting incentives to arrest drunkards were removed, both Sydney and NSW continued to have much higher rates than London and England, a fact that demands further explanation. Despite the demographic transformation of NSW, colonial society remained haunted by the legacy of the convict system and this contributed towards unusual levels of public concern about drunkenness in NSW.³⁷

In 1847, while the cost of the force remained a significant political issue, there were growing complaints that numbers were insufficient and a growing awareness of how dependent arrest levels were on police practices. Innes reported that "there is one great duty of police that is not now attended at all ... the maintenance of due order and regularity in the streets in the day time".³⁸ Though he did not believe that drunkenness had increased, he recognised that public order was threatened by the persistent under-investment in the force. This reflected broader public anxiety about the failure to strictly police public drunkenness. In 1848, the *Chronicle* noted the corner of Pitt and Goulburn streets as an especially bad part of the city, claiming that "both men and women may be seen lying about nearly all day long of a Sunday in the most disgusting state of intoxication" and complaining that "[w]e never observe the police interfere with them".³⁹ As alcohol consumption rose in the 1850s, liberal objections to excessive police power were increasingly trumped by temperance concerns about public drunkenness. But even in the 1840s, the policing of drunkenness reflected traditional elite fears of crime and disorder, now magnified by the growing power of the free working class.

³⁶ Evidence of W.A. Miles, '1844 Insecurity Committee', 380, 382.. As he also noted, the decline in arrests for drunkenness between 1841 and 1844 was strongly correlated with the decline in cases involving fines (386). He also proposed that constables share of fines be paid into a superannuation fund for retired officers.

³⁷ For the persistence of concern about the convict legacy see: Smith, *Stain*, chs. 10-11; Russell, *Manners*, 109-115; Hirst, *Freedom*, 201-3.

³⁸ '1847 Police Committee', 50.

³⁹ 'Drunkenness', *Chronicle*, 9th Mar. 1848, 3.

The Crime of Drunkenness

From 1838, there were at least three different laws governing drunkenness. Convicts were subject to flogging or labour under the provisions of the Offenders' Punishment Act of 1830, while repeat offenders, so-called 'habitual drunkards', could be sentenced to prison under the Vagrants Act. But, in practice, drunkenness was increasingly dealt with under the Licensing Act of 1838: free drinkers were arrested by the police, brought before magistrates and fined. Charges of habitual drunkenness were rare, perhaps because they typically deprived the arresting officer of a fine and the provisions of the Licensing Act that allowed magistrates to issue banning orders were rarely exercised. The declining numbers of convicts remaining in the colony also reduced the need for a special system; by 1840, Captain Innes reported that three quarters of all drunkards before the court were free men.⁴⁰ Changing demographics also made it easier for convicts to pass as free and gain access to alcohol a practice apparently widespread at Hyde Park Barracks in the 1840s, while fewer convicts were subjected to corporal punishment because the stricter convict law was almost never enforced on those with tickets-of-leave.⁴¹

In a typical convict court session in 1839, Charles Atterill, an assignee, was given thirty-six lashes for being drunk and missing work, while Thomas Ingham, sentenced for the same offence the week before received fifty as an "incurable offender" and was remanded to face a charge of stealing. Henry Ray, assigned to the sitting Police Magistrate, John Ryan Brennan, was charged with "repeated drunkenness and neglect of duty". Brennan briefly excused himself from the bench in favour of Captain Innes, and deposed that he had "tried every means to make the prisoner abstain from drinking, and had ... even allowed him a glass of spirits every night after he had done his work". Despite this kindness, Ray had stolen a horse from the stables and ridden it bareback around the town on Sunday. Forgiven on the pleas of Mrs Brennan, the very next day Ray had again neglected his duty to hit the bottle; he too was given fifty lashes. But in contrast to these cases, Thomas Murd, a ticket-of-leave holder found lying drunk in the middle of George Street for the second time in six months was sentenced to ten days imprisonment and kept his ticket. Though this was a significant sentence, it was not prescribed for convicts, reflecting the growing tendency to treat ticket-holders as free men. Commenting on this supposed lenience, the *Monitor* claimed the verdict was "subversive of all rational discipline ... [i]f Tickets are to be continued to drunkards, then

⁴⁰ *Herald*, 28th Sept. 1840, 3. As the paper noted, this figure included seamen and freed convicts so it was not an indication of an immoral populace. The editor claimed only a third of offences were committed by the free population "properly so called". But in terms of relevant legislation, Innes' analysis is accurate.

⁴¹ '1844 Insecurity Committee', 373-4, 381.

drunkenness is no offence in a convict".⁴² But in fact, the verdict reflected the changing social structure of NSW. Where once there was a clear distinction between convict and free, increasingly the divide was between different social classes and especially between the respectable and their social inferiors.

Murd's sentence also reflected the greater punishments for repeat offenders. In a more extreme example, Alexander Johnstone was charged for the twenty-seventh time with drunkenness, in December 1841, and sentenced, as a convict, to three months on the treadmill.⁴³ Free offenders could also receive increased fines and punishments under the Licensing Act. In March 1839, with the act in effect for less than three months, one female drunkard was sentenced to six days' imprisonment in lieu of her fine meaning that this was the sixth time she was charged.⁴⁴ Increasingly, gradations of punishment were more a reflection of recidivism than legal status.

In a typical session from the 1840s, twenty-two offenders were charged with drunkenness at the Sydney Police Court. While the records do not break down their status we can deduce it from the sentences: eight free men were fined five shillings or faced two hours in the stocks while three others, presumably repeat offenders, received larger fines; five convicts were sentenced to twelve hours on the treadmill, and five others to longer stints. The only woman charged, must have been a very regular offender because she received the extreme sentence of eight days in prison.⁴⁵ This remained the typical pattern for the regular police sessions in Sydney from the 1840s onwards, with each session commencing with the so-called "drunkards' list": a procession of wretches, dried-out after a night in the cells were taken one by one to receive their lecture and fine from the duty magistrate, a practice that was soon adopted throughout the colony.⁴⁶

Interestingly, women seem to be overrepresented among repeat offenders, regularly featured in the reporting of drunkenness and often among those who received the heaviest sentences.⁴⁷ In 1854, a detailed accounting of those committed to Darlinghurst gaol for drunkenness, a sentence reserved for offenders who failed to pay their fine, showed that only ten

⁴² 'Police Court', *Monitor*, 23rd Aug. 1839, 2. This was a regular complaint in the paper; see for example: 'Drunken Convicts', *Monitor*, 19th Apr. 1837, 2.

⁴³ 'A Candidate for the Bacchanalian Premiership', *Herald*, 1st Dec. 1841, 3.

⁴⁴ *Gazette*, 19th Mar. 1839, 2.

⁴⁵ 'Drunkards', *Herald*, 4th Dec. 1840, 2.

⁴⁶ The drunkards' list became a staple of humorous popular journalism, with the classic examples of the genre published in *Bell's Life in Sydney*. See the collection in: Cyril Pearl (ed.), *Sydney Revels (The Eighteen-Fifties) Of Bacchus, Cupid and Momus ...*, Sydney: Ure Smith, 1970.

⁴⁷ Unfortunately there are no Colony wide statistics for arrests distinguished by sex until the 1860s but for the last four decades of the century, on average, less than one fifth of all arrests for drunkenness were women. See: NSW Legislative Assembly, *Statistical Register of NSW*, Sydney: 1858-1900.

percent of men but over a quarter of women were gaoled three times or more over a six month period.⁴⁸ This suggests that a substantial proportion, if not the majority of female arrests, were members of a relatively small sub-culture of women whose life on the streets brought them into frequent contact with the police. Reports of the Police Courts show repeated reference to "incorrigible" women sentenced for drunkenness, idleness, disorder and prostitution and often given more severe sentences as a result of their repeated arrest.⁴⁹ Equally, it reflects the continued obsession with female immorality as a threat to the future of the colony, a problem that was increasingly conceived in scientific terms as a question of heredity and racial health.

This view of female drinking is clearly illustrated in two similar cases in May of 1839 that both drew on the archetype of the wanton drunken mother. Ellen Henry was charged with the manslaughter of her young daughter through drunken neglect. As prosecutor, Plunkett claimed that she was a habitual drunkard who "had given herself up to inebriation, which deadened her maternal feelings, and led to the neglect which caused the death of her child"⁵⁰. Testimony from a female friend showed that though "when sober she was a good mother", during her frequent bouts of drunkenness she ignored her child. The surgeon who conducted the examination of the corpse found "want of nutriment" as the cause of death and testified that "[a]rdent spirits taken by the mother would have an injurious effect upon the child at the breast". Henry was subsequently found guilty of manslaughter with a recommendation of leniency, and sentenced to two years in gaol.⁵¹ The next day, Catherine Ward was charged with misdemeanour neglect of her young daughter, Eliza. While she and her husband were out drinking their room had caught on fire and Eliza had to be rescued by a passing baker. The doctor treating the infant testified that Ward refused to care for her daughter's wounds leading to her subsequent death while several witnesses "spoke of the drunken, dissolute habits of the mother, and of her neglect of the child". Despite this, she was found not

⁴⁸ 'Intemperance Committee', 608. There were 691 men and 370 women sentenced to Darlinghurst for drunkenness in that period but the bulk of repeat offenders were female.

⁴⁹ See for example: Margaret Doughety: 'News of the Day', *Monitor*, 1st Dec. 1840, 2; Mary Ann Maguire: 'Police Court', *Monitor*, 6th Apr 1840, 3; two "incorrigible hags": 'Police Office', *Australian*, 30th Sep., 1845, 3; "McCann, a perfect incorrigible": 'News from the Interior', *Herald*, 14th May 1845, 3. See also Dowling and McLerie's evidence to the 1854 Intemperance Committee. McLerie claimed the ratio of drunk arrests was seven men to five women while Dowling, presumably in error, reversed the proportions, alleging more women were arrested than men. Even if the former were correct it suggests a striking decline in female arrest rates after 1855 but it seems more likely they were referring to the number of habitual offenders, as reflected in the statistics of Darlinghurst gaol. If so, this would tentatively support my view that women, in relation to the Colony's sex ratio, were less likely to be arrested for drunkenness but more likely to be charged as habitual offenders. '1854 Intemperance Committee', 538, 556.

⁵⁰ 'Supreme Court', *Monitor*, 17th May 1839, 2. Notably, Plunkett used his opening speech to wonder how anyone involved in the administration of justice could not be a supporter of the temperance movement.

⁵¹ 'Supreme Court', *Sydney Gazette*, 21st May 1839.

guilty and released with a warning from the bench about the “depravity and wickedness of her conduct”.⁵²

The *Gazette*, noting that these cases were the first of the kind in NSW, hoped that they would “have a salutary effect in checking the prevalence of drunkenness among females of the lower orders”.⁵³ They reflected the particular problem of drunkenness, especially female drunkenness in NSW:

in other countries there exists a moral influence arising from the force of public opinion, which operates powerfully in restraining the spread of this devouring crime; but here the tone of society is hopelessly low, and nothing but the dread of the punishment the law awards to the offender operates to prevent its regular indulgence.

Drunken women were not only an affront to society but a threat to the moral order, especially when they proved incapable of looking after their children. By failing to fulfil their role as moral exemplars, they undermined the reform of the convict-tainted underclass and threatened to spread their degradation to the next generation.⁵⁴ Henry’s drinking was specifically seen to make her unwomanly and she was regarded as incapable of proper motherhood when under the influence. Equally, these cases clearly show a familiar double standard. Only the mother’s neglect of her child was considered by the law – the absent, drunken father never came before the court.

Women also typically bore the brunt of the very real harms associated with excessive drinking. In 1839, a convict, Mary Dunlop, sought police protection from her husband, a “low drunken blackguard” who made a living selling pies. She had married him solely to escape Government service and had since “led a miserable life ... being frequently driven into the street, at night, by her drunken mate”. The court found her husband was already awaiting trial for drunkenness and disorderly conduct but the only protection they could offer her was a return to the female factory.⁵⁵ On the same day, James Duff, a free man “of good family and acquirements” but frequently before the courts since he arrived in NSW, was charged with an assault that left his wife – unfortunately, though perhaps revealingly unnamed in our sources – in a critical condition. John McGrath, their landlord, gave evidence that “his conduct to her was outrageous; he was constantly intoxicated and ill-treating her”. On the morning of the assault he heard cries of “murder” and burst

⁵² ‘Law Intelligence’, *Herald*, 17th May 1839, 2.

⁵³ ‘Drunken Mothers’, *Gazette*, 18th May 1839, 2.

⁵⁴ For more on this view of women see: Summers, *Damned Whores*, 291-316.

⁵⁵ ‘Assignment Regulations’, *Australian*, 23rd Apr. 1839, 2.

in to find her lying unconscious on the bed while Duff continued to kick her. Her injuries prevented her testimony and the case was deferred but Duff's lawyers produced a surgeon's certificate that cast "considerable doubt whether the man has been of sane mind for some time", the direct result of "habitual drunkenness".⁵⁶ As the case appears never to have made it to court, it seems likely that despite her ill-treatment, his wife refused to prosecute him. The persistence of such drunken violence against women contributed to their strong support of the temperance movement, and would eventually lead to the association of temperance with feminism.

Aboriginal drunkenness also remained a significant problem for the colony, despite the Licensing Act and its ban on supplying natives with liquor.⁵⁷ In a case from 1839, five native men were arrested for drunkenness and discharged with a warning by the magistrate, Richard Windeyer. A few days earlier, in another incident that went undisturbed by the police, a dozen Aborigines, men and women set up a camp outside Hyde Park Barrack's and were "beastly drunk ... exposing themselves to the passengers, dancing their native dances, and disturbing the whole neighbourhood". Commenting on these events, the *Australian* saved its condemnation for the "disgraceful" but unknown parties who had supplied the liquor expressing outrage that:

*white people, publicans especially, will not be content with getting drunk themselves, without further brutalizing the unfortunate blacks, already sufficiently degraded in the scale of humanity, and whose powers of resisting temptation are less powerful than their white brethren.*⁵⁸

Despite repeated complaints about the practice and calls for the enforcement of the Licensing Act, it seems that publicans and others continued to sell liquor to the natives with impunity.⁵⁹

However, what is more striking in this account is the implicit assumption that Aborigines could not be trusted with alcohol. In a report to the Colonial Office on the native problem, Gipps noted that allowing Aborigines into contact with Europeans "will frequently expose them to temptations which they may not be strong enough to withstand, the men to the use of ardent

⁵⁶ 'Police News', *Monitor*, 22nd Apr. 1839, 4; 'Violent Assault', *Gazette*, 23rd Apr. 1839, 2; *Australian*, 25th Apr. 1839, 2.

⁵⁷ For the problem of preventing aboriginal drinking see: U.K. Parliament, Report of the Select Committee on Aborigines in British Settlements, London: 1836, 78; cited in: Woolmington (ed.), *Aborigines*, 10.

⁵⁸ *Australian*, 15th Jan. 1839, 2. Cited in: Reece, *Aborigines and Colonists*, 10.

⁵⁹ See for example: 'Local Aborigines', *Chronicle*, 4th Feb. 1840, 2; 'Domestic Intelligence', *Herald*, 7th Sep. 1840, 5; 'The Aborigines', *Herald*, 19th July 1841, 2; 'Sydney News', *Maitland Mercury*, 28th Apr. 1847, 4. I can find no record of a publican charged with supplying liquor to natives.

spirits, the women to be seduced from their husbands or natural protectors".⁶⁰ But more than this, such a patronising view of Aboriginal drinking implied that they were not responsible for their behaviour when drunk. In a case before the Supreme Court in 1838, Long Jack, an aboriginal native, was charged with the murder of his wife during a drunken spree and as part of his unsuccessful defence, Mr a'Beckett asked Justice Burton "whether the prisoner could be looked upon the same as a drunken white man, as he could hardly be supposed to know the effect of liquor".⁶¹ While Burton reserved the question for the jury, the very suggestion is telling. Clearly Aboriginal drunkenness was regarded differently and this was reflected in the regular discharge of Aborigines arrested for their intoxicated behaviour. In many ways the treatment of native drinkers foreshadowed the broader, temperance-induced transformation of drunken responsibility.

Temperance, Drunkenness and Respectability

Concern about drunkenness continued to focus on its alleged role as a cause of other, more serious, crime and this association was only encouraged by the temperance movement. In a typical comment, the editor of the *Chronicle* claimed that "there is hardly an offence or misdemeanour but may be traced, directly or indirectly to [drunkenness]". Exploring this connection he noted both the "immediate stimulus of drink", and the "vicious and immoral habits which drunkenness produces, which, stifling remorse, and lulling reason to sleep, set loose all the animal passions, and ... lead men into every depth of crime".⁶² Rather than simply pointing to the status of drunkenness as a sin or its association with other bad habits, this interpretation relied on an understanding of alcohol as a dangerous substance that deprived the drinker of control. Temperance increasingly promoted a medical-influenced understanding of drunkenness which placed greater emphasis on the intoxicating effects of alcohol than its status as a symbol of vice. The harmful influence of alcohol and its relationship with violence was made abundantly clear within the court system where there were a steady stream of cases in which alcohol played a critical role. This frequency both inspired and confirmed the temperance sympathies of many of the legal officials in NSW.

In November 1841, Philip Riley tried to have his wife, who was assigned to him, returned to Hyde Park Barracks after a drunken quarrel. After denying his request, the unnamed magistrate,

⁶⁰ 'Gipps to Russel', *HRA*, vol. 21, 315. See also: R.H.W. Reece, 'Feasts and blankets', *Archaeology and Physical Anthropology in Oceania*, vol. 2, no. 3 (Oct. 1967) pp190-206, 200ff.

⁶¹ 'Supreme Court', *Herald* 7th May 1838, 2, Cited in: Macquarie University, *Decisions of the Superior Courts*, [http://www.law.mq.edu.au/research/colonial_case_law/nsw/cases/case_index/1838/r_v_long_jack/ - accessed 18th May 2012].

⁶² 'Drunkenness vs Morality', *Chronicle*, 19th Feb. 1845, 2.

advised Riley "to become a member of the Teetotal Society".⁶³ Such advice seems to have become a regular feature of the repeated proceedings against drunkards. Three months later William Green appeared for the third time before the court and was fined twenty shillings. The magistrate, Colonel Shadforth, "suggested to him the propriety of his joining the Teetotallers, as he would thereby avoid giving the court any trouble in future, and also save his money", and he publicly agreed to join the society.⁶⁴ In a similar case before Justice Willis in 1840, Daniel Cutler who while drunk had accidentally fired a pistol at Mary Lynch had his weapon held by the court for three months with the promise it would be returned if he proved he had kept his teetotal pledge during that period.⁶⁵ Such discretionary justice remained a feature of rural benches even as the urban magistrates became more systematic in their approach. On the Molong bench, the local magistrate, a Mr Chippendale employed a "peculiar system of drilling their drunkards into sobriety".⁶⁶ Under the 1849 Licensing Act, those who could not pay their fines were to be sent to the "house of correction" for up to forty-eight hours, and because there was no such institution in Molong – though there were cells in the local watch-house – Chippendale ordered local drunks to march some sixty miles to Bathurst, under police escort and in irons to prevent escape. While this absurd and extreme measure was clearly contrary to the intention of the Act it reveals the extent to which justice in NSW, outside of major towns, remained a subjective affair.

In general, this kind of discretion declined during the 1840s. But the operation of the law still deliberately favoured the rich and respectable, particularly in the practice of taking bail for misdemeanours. Constables were permitted to release offenders charged with misdemeanours on bail "with or without sureties" and their discretion in this regard was undoubtedly biased towards the rich and powerful.⁶⁷ By the 1850s this practice was applied systematically to drunkenness, at least in Sydney, where payment of the usual fine procured immediate release. In theory, the bailed party was to return for trial before a magistrate but in practice such bails were invariably seized in lieu of appearance so that those who could afford to pay the fine never had to face court.⁶⁸ This

⁶³ 'Intemperate Love', *Herald*, 10th Nov. 1841, 2. Riley was told that if he returned his wife to the factory he would have to pay 10s. a week in support.

⁶⁴ 'A Promise the Teetotallers Should Look After', *Herald*, 22nd Feb. 1842, 2.

⁶⁵ 'Supreme Court', *Herald*, 1st Nov. 1840, 2, Macquarie, *Decisions*, [http://www.law.mq.edu.au/research/colonial_case_law/nsw/cases/case_index/1840/r_v_cutler/ - accessed 12 May 2012]

⁶⁶ 'Country Courts', *Bathurst Free Press*, 29th June 1850, 4-5.

⁶⁷ '1833 Sydney Police Act', 423-4.

⁶⁸ '1854 Intemperance Committee', 557; *Teetotaller*, 29th Mar. 1843, 1; Sturma, *Vice*, 157; A. W. Martin, "Drink and Deviance in Sydney: Investigating Intemperance, 1854-5", *Historical Studies Australia*, vol. 17, no. 68 (April 1977), pp342-60, 348. In 1854, Inspector McLerie, who had served on the force for seven years claimed that such bail "has always been the practice", while the *Teetotaller* was complaining about drunkards not facing a magistrate in 1843.

was a system that favoured the wealthy both because they were able to afford the fine, and because they had more to lose from a public court appearance.

Regardless of when this system became formalised, there is no question that well connected gentlemen were far less likely to be arrested by the police and not only because they tended to drink in private. Respectable citizens were in a much stronger position to challenge the police case, more likely to bring legal representation and to pursue any instance of wrongful arrest with a charge against the officer. The inherent bias within the system is clearly revealed in a case from 1847 against two clerks from the Commissariat Department, James Charles Rudston Wood and Alfred Salway. Constable Magee testified that he found them drunk in town at two in the morning, knocking on doors, and “kicking up a row” and that when he repeatedly requested them to return home “they refused doing so, saying they were ‘gentlemen’”; only after they broke a window was he forced to arrest them. The next morning the magistrate released them “in consideration of their having been in the lock-up for a few hours”. The editor of the *Chronicle* was outraged by this decision, arguing (with considerable evidence) that “[i]f two poor men were placed in their position, guilty of the like misconduct ... instead of meeting with such consideration, they would be either compelled to find security for their good behaviour, or sent to gaol”.⁶⁹

In contrast, poor and inconsequential offenders were frequently mistreated by the police and largely at the mercy of their discretion – the lesson the police appeared to have absorbed from the controversy of the early 1840s was that they could not abuse the liberties of the powerful. In an illustrative case from Maitland in 1848, four constables were found guilty of gross misbehaviour after they arrested Eliza Rawlings for drunkenness and abusive language. As Rawlings denied she was drunk and refused to go with the officers they picked her up, one to each limb and carried her forcibly down the main street, in the process exposing her to passers-by and though the constables were each fined a month’s wages they were not dismissed from the force.⁷⁰ Another case later that year revealed a similar attitude to lower class offenders. Solomon Waters was arrested by the Sydney police as a convict out past the curfew. At the Police Office he proved that he was a free man but was subsequently charged with drunkenness and only released after he paid a fine. In a letter to the paper, his employer, James Robinson, complained that the charges were false, and

⁶⁹ ‘A Couple of Swells’, *Chronicle*, 7th Feb. 1846, 2.

⁷⁰ ‘Charge Against Constables’, *Maitland Mercury*, 5th Apr. 1848, 2; ‘Charge Against Constables’, *Maitland Mercury*, 8th Apr. 1848, 2.

“made with a view of extorting the fine from him”, defending him as a “a sober, industrious, and particularly steady man.”⁷¹

The charge of drunkenness was also used as a tool of discipline. In Bathurst in 1849, James Sutherland, one of the few convicts remaining in NSW but a ticket of leave holder, was charged with drunk and disorderly conduct. The constables’ evidence was that they had received a complaint that Sutherland was “drunk and riotous” in a private house, and that once he was forced from the premises onto the public road they arrested him, though when cross-examined they conceded that he was only “groggy”. In his defence, Sutherland produced a string of witnesses who testified to his sobriety on the night in question and argued that his “groggy” state was due to a severe beating he had received from the officers. But the bench refused to hear medical testimony with regard to his injuries, dismissed his witnesses and sentenced him to a week’s imprisonment with a warning that only his previous good conduct had allowed him to keep his ticket. Meanwhile, in the same session of the court, another ticket holder charged with the same offence who pleaded guilty was discharged with a warning.⁷² Especially before amateur magistrates, appropriate deference was the best defence.

For the few offenders of higher status who came before the court the situation was very different. In 1850, a Mr Weedon, “an old and highly respected colonist” was summoned on a charge of drunkenness after he fell from his gig and a Constable Chambers attributed his unsteadiness to alcohol and not concussion. Describing the case, *Bell’s Life* observed the difficulty the police had in “defining intoxication satisfactorily to the authorities” and claimed that the “evidence” presented by the police against an accused drunkard was often nothing more than the smell of liquor or the impertinence of his answers to their questions. The issue was a serious one because:

*the liberty of the subject is improperly interfered with, and respectable individuals are dragged into a public court amongst the scum of the community, at the caprice of some over-officious moralist who bears the badge and livery of authority.*⁷³

But such dubious evidence was often quite sufficient if the accused failed to pass the test of respectability. In a case from the following year, Thomas Burke was arrested by Constables Egan and Lodge for drunkenness and assaulting a police officer, and then dragged in manacles through several city blocks to the Town Hall police station, tearing his clothing and creating a public scene.

⁷¹ ‘Police Abuses’, *Bell’s Life*, 8th Apr. 1848, 3.

⁷² ‘Application of Magisterial Authority’, *Bathurst Free Press*, Bathurst: 1849-1851, 20th Oct. 1849, 6.

⁷³ ‘Police Protection’. *Bell’s Life*, 23rd Mar. 1850, 2; Sturma, ‘Police’, 52.

Two members of the crowd who objected to the Constables' conduct were also charged with assaulting the arresting officers, as were two further witnesses who attended court and volunteered to give evidence in Mooney's defence but were immediately placed under arrest by the Police Magistrate, James Dowling. Despite the testimony of these and numerous other witnesses, Dowling found all the parties guilty of their offences and observed in fining them that "[i]f the constables misbehave themselves, the people have no right to interfere with them in the streets, but should come to the proper place and make a complaint".⁷⁴ In a letter to the *Empire*, independent of the court proceedings, a further witness, Dr Frederic Mackellar also attacked the police case, claiming that the officers conduct was "inhuman".⁷⁵ The conduct of Dowling and the police was severely criticised in the press, but what is striking was the stress they placed on the evidence of Mackellar.⁷⁶ Of the witnesses whose occupations were given in court, one worked in the Fire Brigade, one was a shoemaker and a third, a publican. Though all were described as "decent" or "respectable" and none were drunk, their testimony had less weight than that of a doctor who did not attend the court and observed the scene from his window. Clearly status was a very significant factor in determining both the conduct of the police and the courts, and the respect accorded by society at large. More importantly, drunkenness was an offence that delineated the boundaries of respectability: those who were respectable could not be drunk, while those who were drunk could not be respectable.

To celebrate the election of new members, Sydney Municipal Council held a dinner on the twelfth of December 1844 at Petty's Hotel. In the early hours of the next morning, William Moir was regaling the remaining company with a Scottish air, when Thomas Ryan, heavily intoxicated and apparently regarding the song as a sectarian insult, hurled his tumbler of whiskey at his fellow councillor, slicing open his head. Following the unprovoked attack, Ryan collapsed insensible in his chair before being taken to the Police Office, but Moir declined to pursue the case against a fellow gentleman and he was never charged. However, despite writing a letter of apology and offering to pay medical bills, the two parties could not reach an agreement and Moir eventually pursued a civil remedy in the Supreme Court. In evidence, it appeared that Ryan rarely drank, could not hold his liquor and that he was probably unconscious of his actions at the time but the jury found for Moir and awarded him fifty pounds damages and costs.⁷⁷

⁷⁴ 'Assaulting the Police', *Empire*, 23rd Dec. 1851, 3; Sturma, 'Police', 52.

⁷⁵ 'Original Correspondence', *Empire*, 23rd Dec. 1851, 3; 'The Police Again', *Empire*, 25th Dec. 1851, 3.

⁷⁶ 'The Magistracy and the Police', *Empire*, 24th Dec. 1851, 2; 'The Magistracy, the Police and the Citizens', *Bell's Life*, 27th Dec. 1851, 5.

⁷⁷ 'The Late Fracas', *Chronicle*, 21st Dec. 1844, 2; 'Law Intelligence', *Herald*, 15th Feb. 1845, 2.

This incident clearly reflects the way that class politics continued to underlie the understanding of drunkenness. Like other elite dinners this was undoubtedly a drunken occasion. Despite protests by some witnesses that the party, Ryan excepted, were sober, the evidence of the hotel's owner showed that in addition to the seven cases of wine which had accompanied the dinner, those who remained had consumed nine bottles of brandy. Though Ryan was not guilty of public drunkenness, all witnesses agreed that he was drunk, and though he subsequently claimed to have no memory of the event, his assault was certainly a police matter. But despite his arrest, which was ordered by Alderman Wiltshire and took place in the presence of the Police Magistrate and Commissioner, Miles, he was never charged.⁷⁸ Ryan sought to resolve the matter by offering his "unfeigned regret" and to "make ... any other concession and reparation within my power, which you may require at my hands", while the *Chronicle* called for an extra-judicial resolution in such an affair between gentlemen: for Mr Ryan to make "whatever apology or atonement" two gentlemen, one appointed by each party, should recommend and for Moir to accept it.⁷⁹ The court proceedings that concluded the affair were thus a consequence of the breakdown of the informal system which gentlemen used to resolve their disputes. Summing up the case, the new Chief Justice, Alfred Stephen, who was to become the leading temperance advocate in NSW, joined Plunkett in regretting that the case had ever come to trial and described the affair as "in some degree disgraceful to all parties concerned".⁸⁰ Even with a temperance view of alcohol problems, drunkenness was not a universal state. For a gentleman like Ryan it was a disgrace, but not an offence.

The new Licensing Act of 1849 largely confirmed the existing status of drunkenness.⁸¹ During debate on the bill in the Legislative Council, Wentworth proposed changing the offense to "drunk and disorderly" arguing that "intoxication was not an offence for which such a punishment should be imposed". While Plunkett opposed this amendment arguing that "[n]o man ... had a right to be dead drunk in the streets like a beast, even though he might not make a noise", Wentworth's version was carried.⁸² Simple drunkenness was now liable to arrest but punishments were only applicable to those who were also disorderly, bringing colonial law in line with that of England.⁸³

⁷⁸ 'Law Intelligence', *Herald*, 15th Feb. 1845, 2.

⁷⁹ 'The Late Fracas', *Chronicle*, 21st Dec. 1844, 2. The editor also recommended Ryan should take the teetotal pledge although there is no evidence that he did so. During the court proceedings there were further attempts to broker an honourable settlement, by Ryan's Counsel and the Judge. See: 'Law Intelligence', *Herald*, 15th Feb. 1845, 2. For more on the use of extra-legal codes of honour for resolving disputes see: Russell, *Savage or Civilised*, 132-4.

⁸⁰ 'Law Intelligence', *Herald*, 15th Feb. 1845, 2. For more on Stephen and temperance, see below, chs. 13-14 *passim*.³¹

⁸¹ '1849 Licensed Publicans Act', 1932.

⁸² 'Publican's Bill', *Herald*, 16th Aug. 1849, 2.

⁸³ William Hattam Wilkinson, *Plunkett's Australian Magistrate*, Sydney: 1860, 89-91. As Wilkinson notes there was still some ambiguity about the punishment of what we might term 'orderly' drunkards. The English law on the subject

Though there were some limited complaints the fact that this amendment passed with so little public outcry demonstrates how the law was only catching up with existing practice.⁸⁴ The new Act also finally resolved the problem of police incentives, ordering all fines for drunkenness to be paid entirely to the Benevolent Asylum or equivalent local charity. In combination with the new Police Reward Fund, established shortly afterwards, this finally removed the pecuniary incentive that had promoted the arrest of drunkards.⁸⁵ But, in practice, little changed for police had been employing discretion in their arrests and only targeting the disorderly and disreputable for much of the 1840s. Sydney benches continued to deal with large numbers of poor drunkards who were systematically fined or imprisoned for their offence.⁸⁶

By 1850, the legal status of drunkenness matched the existing practice of the police: drunkenness itself was not a crime, at least for the respectable. It had to be aggravated with disorder to warrant police attention, and such disorder was intensely subjective. The offence of drunkenness was used by the police as the chief means of controlling the unruly public populating the growing towns of NSW. Even critics of the police system were increasingly aware of the need for a strong effective and reliable police force in a free society. Noting another example of false swearing by constables in 1853, the *Empire* pointed to the vital role the police played in NSW:

*To check crime and disorder, especially in a community like this, in which drunkenness is so prevalent, it is not easy to understand at what point to begin, unless it be with a disciplined police force ... the system will be bad, and go from bad to worse, unless the Legislature or public opinion coerce those at the head of the department to enforce a vigilant and strict discipline.*⁸⁷

Where earlier critics were concerned with the threat of the police force to English liberties, especially those of gentlemen, the *Empire*, liberal spokesman for an increasingly democratic society,

probably did not apply in NSW, so his conclusion was that they could be legally arrested but not fined. For more on this see: Allen, 'Buchanan'.

⁸⁴ For a complaint about the bill see: 'News for drunkards', *Herald*, 19th Dec. 1849, 5.

⁸⁵ 'Licensed Publicans Act', 1849, 1938; 'Police Reward Fund Act', (13 Vic. no. 32), 9th Oct. 1849, *Statutes of NSW*, 1947-8. This act directed all fines formerly issued to informers to a fund for the support of the police force, used primarily to provide pensions.

⁸⁶ For the unchanged nature of drunkards' sessions see for example: 'Before the Police Magistrate and Captain Darley JP', *Empire*, 17th Nov. 1852, 3; 'Police Register', *Bell's Life*, 14th Aug. 1852, 2. This is borne out by the rising numbers of arrests in the early 1850s; clearly, police activity was not constrained by the change in legislation. A new Vagrants Act and Police Act in the early 1850s also complemented existing practices while expanding magisterial discretion, extending provisions for arrest without a warrant. See: 'Vagrancy Act', (15 Vic. no. 4), 1st Dec. 1851, *Statutes of NSW*, 2428-33; 'Metropolitan Police Act' (17 Vic no. 31), 24th Oct. 1853, *Statutes of NSW*, 2752-7, 2755. This latter act also introduced the first age limits for alcohol, banning sale to those under 16.

⁸⁷ 'More of the Police System', *Empire*, 27 Oct. 1853, 2.

was more concerned with maintaining public order. Increasingly, freedom would be construed as a positive liberty from the offensive, dangerous and criminal behaviour of the soon to be enfranchised masses.

Chapter 13) Gold and Moral Panic

In the early 1850s, there was a growing feeling, inspired in part by the resurgent temperance movement, that drunkenness was out of control. In part, this was no doubt due to a real increase in alcohol consumption and drunkenness linked to the gold rushes. Arrests per head of population rose, and this mirrored a significant rise in alcohol consumption from less than four litres per person during the peak of the depression to over six through the 1850s.¹ The explanation for this increased drinking and resulting drunkenness, at least in the eyes of contemporaries, was the gold rushes and the consequent growth of population, wealth and wages in the colony. After gold discoveries were publicised in 1851, the population of NSW doubled in fifteen years, exports tripled and imports grew five-fold in a decade, only exceeded by the even swifter transformation of Victoria where the largest finds were made.² These raw statistics cannot convey the full scale of the disturbance to the colony, with significant numbers of men moving in search of wealth, unprecedented opportunities for profit and significant inflation of prices for land and goods. Just as important, by offering at least the prospect of independence from wage labour, the gold rushes led to a significant rise in wages that enriched labourers, vastly increased the electoral franchise and gave the emerging working classes a greater sense of status.³ Not surprisingly, these rapid changes to NSW society provoked public concern and as was characteristic of NSW society, much of this concern manifested around alcohol problems.

In a typical discussion of the perceived problem, the *Illustrated Sydney News* described the paradox of “a nation increasing in every element of national prosperity, while in virtue and in morals it is deteriorating”, citing as the chief cause the “unprecedented opportunities which have been afforded for [drunkenness]”.⁴ Support for this view is found in evidence that increasingly expensive spirits were replacing the cheap rum that had been the staple drink of the colony since 1788 and in the undoubted increase in the volume of alcohol available.⁵ But it is much more questionable

¹ For arrests, see above, Figure 9, 207; for consumption, see above, Figure 6, 199.

² Rodney Maddock and Ian McLean, ‘Supply-Side Shocks: The Case of Australian Gold’, *Journal of Economic History*, vol. 44, no. 4 (Dec., 1984), pp. 1047-1067, 1048, Australian Bureau of Statistics (ABS), 2008, *Australian Historical Population Statistics*, cat. no. 3105.0.65.001, [<http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/3105.0.65.001> - accessed 17th July 2012].

³ Hirst, *Freedom*, 289-94; Cochrane, *Colonial Ambition*, 285-7.

⁴ ‘Vice in Sydney’, *Illustrated Sydney News*, Sydney: 1853-1894, 29th Oct. 1853, 1-2. For other attempts to connect increased drunkenness with gold see: ‘Drunkenness’, *Herald*, 17th Dec. 1853, 6; ‘The Social Condition of NSW’, *Bell’s Life*, 2nd Sep. 1854, 2.

⁵ ‘1854 Intemperance Committee’, 531-2. This is also borne out in recent economic analysis that shows Australian alcohol consumption is best correlated with prosperity. See: Dingle, *Statistical Commentary*, 37-8.

whether such drinking really manifested in public disorder and lawlessness. Implicit within the discourse around the gold rushes were class-based fears of popular disturbance, similar to those that underlay the obsession with drunkenness as a sign of anarchy in the early years of the colony, and the use of drunkenness as a disciplinary offence in the 1830s and 1840s. Both the Colony's traditional landed elite, increasingly bolstered by newly wealthy squatters, and the rising respectable middle classes, based in the trades and professions of Sydney, feared growing working class power and assertiveness and public drunkenness functioned as a symbol of the working classes insolent and disorderly state. In a classic statement of such fears, the *Empire* described the "haughty and discourteous bearing of workmen" since the gold discoveries and claimed that:

*Moderate pay satisfies nobody now, and even immoderate pay is received with all the surliness of boorish incivility. Employment has ceased to be cared for ... Meanwhile, an immense proportion of the augmented gains is ... productive of waste and improvidence, if not of incorrigible intemperance and vice.*⁶

What is certain is that public drinking and drunkenness became more visible and concern more marked in the early 1850s.

Alcohol problems were not only caused by increased wealth. There was also a growing perception that the police were overly tolerant of disorderly behaviour, a view reflected in the anecdote that accompanied the editorial in the *Illustrated Sydney News*. The author described what he claimed was a typical and representative scene: four "drunken young women of abandoned character" who rode a cab full speed down George Street at three in the afternoon, drinking and disturbing the peace, but were untroubled by the police.⁷

The paper pointed to the two traditional cures for intemperance, one internal through the promotion of a "moral, intellectual, and religious culture" and one external through "legislation" – broadly speaking the approaches of the conservative and radical temperance movements. Discussing the latter, the editor considered and dismissed many of the now traditional expedients: increasing the duty on alcohol "would be felt chiefly by respectable persons of limited means, who use in moderation those things the abuse of which only is injurious"; decreasing the number of licenses would merely "crowd the same number of persons into a less number of houses" while granting a monopoly to those who retained their licence. Instead the editor recommended stricter

⁶ 'The Condition of Operatives, English and Colonial', *Empire*, 4th Mar. 1854, 2. For more on this editorial and Parkes' and the *Empire*'s attack on drunkenness as a symbol of gold-inspired disorder see: Martin, 'Drink and Deviance', 358-60.

⁷ 'An Illustration of Vice in Sydney', *Illustrated Sydney News*, 29th Oct. 1853, 3.

policing. He argued that “the penalties for drunkenness in Sydney are utterly ineffectual” pointing to the vast numbers of regular offenders, who were merely “a very flourishing police-bank”, and proposed a new solution:

to render the crime of intoxication in the streets highly penal. For the present fine we would substitute fine and imprisonment - imprisonment for three or four months - while the magistrate should have the discretionary power of inflicting hard labour in addition. ... [The public] would be relieved for a fixed time from a certain number of intolerable nuisances [while the criminal] would not only be preserved for the same period from vice; but the compulsory and temporary suspension of his evil habits might, combined with moral influences, lead to their voluntary and permanent renunciation.⁸

This reflects a complete abandonment of the ideal of moral suasion, preached by the early temperance movement and a new emphasis on exemplary discipline, like that inconsistently applied to convict drunkenness in the early years of the colony. Indeed, there were growing calls for radical solutions to the perceived crisis of order with proponents arguing that a free society required the repression of drunkards and other offenders. The early 1850s also witnessed renewed demands for prohibition of alcohol from the newly revived temperance movement and this radicalism culminated in a public inquiry which met in a climate of frenzied concern about working-class drinking.

Investigating Intemperance

In his speech moving for the formation of the 1854 Select Committee on Intemperance, the chairman and future Premier, Charles Cowper, noted that there was no need to prove either that drunkenness was an evil or that it was increasing for both were universally acknowledged.⁹ During its term, the Committee received a series of petitions calling for legal reform, and mostly focused on prohibition including one signed by over a thousand “landed Proprietors, Householders and Residents” of Sydney. The witnesses reflected these assumptions, “selected from those classes in the community who, it may be fairly presumed, take the deepest interest in the subject” – that is to say, those who already regarded public consumption of alcohol as a problem.¹⁰ There were seven clergymen, three magistrates, three police officers, the Chief Justice, Alfred Stephen, four medical men, a manufacturer, a cooper, a naval officer, the US consul, the President of Sydney University and three publicans, included as an afterthought when the Committee’s meetings extended into

⁸ ‘Vice in Sydney’, *Illustrated Sydney News*, 29th Oct. 1853, 1-2.

⁹ ‘Legislative Council’, *Herald*, 22nd June 1854, 4; Martin, ‘Drink and Deviance’, 345.

¹⁰ ‘1854 Intemperance Committee’, 521, 525-9.

1855.¹¹ But as a result of this bias, their evidence reveals especially clearly the changing nature of concerns about alcohol in the wake of the gold rushes.

The Police Magistrate, James Dowling, spoke for the witnesses as a whole when he attributed increasing intemperance to gold which “has increased the rate of wages so much” while the Superintendent of the Metropolitan Police, John McLerie saw the cause as “possession by the lower classes of larger means of obtaining liquor”. Both men also connected increased drunkenness to colonial crime and poverty with McLerie arguing that five sixths of cases before the courts and a similar proportion of supplicants to the Benevolent Asylum were the victims of intemperance.¹² This view was shared by the Reverend Alfred Stephen who claimed to know many formerly sober mechanics ruined by drink from his work as a parochial clergyman visiting the working class in Redfern, Chippendale and Surry Hills. He thought the gold discoveries had led to a broader transformation, claiming that there was a newfound “luxurious style of living amongst all classes of society”.¹³ In contrast, William Binnington Boyce, the Methodist Superintendent for the Colony, argued that drunkenness was confined to the “very lowest classes” and that there was “a large class of mechanics who are very sober and very steady” although he did accept that drink was responsible for the vast majority of misery and crime.¹⁴

One focus of recommendations was reform to limit the availability of alcohol. There was a general consensus that there were too many improper persons licensed to sell. For example, Dowling noted that men “of the worst character” were frequently granted licenses and called for a new commission to manage the system, higher license fees and stricter fines and penalties to improve the standard.¹⁵ There were repeated calls to reduce the number of licenses, with John McEncroe, the head of the St. Patrick’s Abstinence Society, suggesting that they should be limited to one per five hundred inhabitants, and those few witnesses who called for a free trade solution were in a distinct minority.¹⁶ McEncroe also pointed to a new concern with the practice of “hocusing” – adulteration of liquor with other intoxicants – claiming he had paid a chemist who had proved that

¹¹ ‘1854 Intemperance Committee’, *passim*; NSW Legislative Council, ‘Final report from the select Committee on Intemperance’, *VPLC* (1855), vol. 1, pp671-85; Martin, ‘Drink and Deviance’, 345-6.

¹² ‘1854 Intemperance Committee’, 537, 556, 560.

¹³ ‘1854 Intemperance Committee’, 574-5.

¹⁴ ‘1854 Intemperance Committee’, 582.

¹⁵ ‘1854 Intemperance Committee’, 540-4. See also the letter of Dr. Ross (530-1).

¹⁶ ‘1854 Intemperance Committee’, 564. See also the evidence of the Anglican Minister, Alfred Stephen (575-7) and Father Therry (579). In 1854 the actual proportion was closer to one license per two hundred inhabitants.

several pubs in the centre of Sydney sold liquor that was highly poisonous.¹⁷ But there was a fundamental divide between two groups of witnesses: religious and professional. Ministers typically depicted public houses as dangerous sources of temptation, pointing to the music, dancing and sports which accompanied drinking as lures to the unwary. Boyce argued drinking should be limited to private premises as this would remove the “temptation to drunken habits engendered in nice well-lighted rooms; it would destroy the sociability of drunkenness”.¹⁸ In contrast, police witnesses and publicans themselves drew a distinction between respectable and disreputable houses arguing that stricter licensing would promote the former at the expense of the latter and largely solve the problem. Summing up this view, McLerie argued that “as long as liquor is sold, houses must be licensed for its sale” but called for improved standards, and he was supported by the three publicans called to the Committee.¹⁹

Similarly religious ideas underlay the opposition to the Government’s reliance on taxing alcohol as a source of revenue. R.W. Vanderkiste, a former representative of the London City Mission, questioned how “any Government carried on on Christian principles could make terms with such a vice and sin” while Boyce, claimed that this dependence led to public apathy about alcohol problems.²⁰ But surprisingly, even among these religious witnesses, there was only tentative support for a Maine law. Boyce, despite his concern about drunkenness, did not believe that “modern habits of thought” would tolerate “legislative interference, affecting our manners or social vices”, while Dowling argued that prohibition was desirable but “impossible amongst a British population”. Even Sadlier, President of the Society for the Suppression of Intemperance which was formed to introduce the law to NSW, conceded that the colony was not yet ready arguing that such a radical change should be carried by popular vote.²¹

The greatest expertise of the Committee was concentrated in the sphere of law and such witnesses offered important insights into the policing of drunkenness. Dowling cited figures for the increase of the offence but noted that at least before the Sydney Bench, a core group of about fifty habitual offenders – “the lowest of the low – women of the town, barrowmen, and men with no fixed abodes or habitations” – made up a significant proportion of charges, appearing about once a

¹⁷ ‘1854 Intemperance Committee’, 565. Though note that the publicans questioned on this subject thought such claims were highly exaggerated.

¹⁸ ‘1854 Intemperance Committee’, 582-3. See also the evidence of Rev Beazley (629).

¹⁹ ‘1854 Intemperance Committee’, 556-62; ‘1855 Intemperance Committee’, 675-85.

²⁰ ‘1854 Intemperance Committee’, 570, 583.

²¹ ‘1854 Intemperance Committee’, 583, 540, 619-20.

month, with the worst individual arrested seventeen times in a single year.²² McLerie agreed but added that a significant proportion of drunkards were migratory workers, especially miners and sailors. He particularly despaired over another group of regular offenders “among the mechanics who are receiving the highest rate of wages”. Citing a recent case where a woman had complained of regular assaults by her drunken husband, a plasterer earning 31 shillings a day, he noted that this man could not be treated as a vagrant or a lunatic since he had “sufficient sense to earn money to administer to his habits of drinking.”²³

Both officials were well aware that the arrest statistics were not an accurate reflection of the real level of drunkenness, as men escaped arrest provided they could “walk home quietly” while many others drank at home. In the face of Henry Parkes’ critical questioning they also defended the practice of releasing offenders on bond. Dowling noted that there were about ten such cases per week (less than ten percent of the average case load) while McLerie stressed that it was a requirement under the Police Act. But they also supported a stricter system of punishment, both calling for enforced imprisonment, while McLerie suggested a graded system where those who were arrested three times or more were sent to a special “drunkards gang”, forced to sweep the streets and exposed to public ridicule.²⁴ Inspector Henry Garvin agreed noting that many drunkards, especially visiting miners and sailors, “think nothing” of their sentences and called for a restoration of the treadmill.²⁵ But the rural-urban divide still shaped policing. Sydney Hudson-Darby, a New England magistrate, and the only representative of the rural benches attributed increased intemperance not to wealth but to “the freedom with which men get drunk without the chance of having a charge laid against them” because in many cases they were sixty miles from the nearest police man or magistrates’ bench.²⁶

A slightly different perspective came from the other Police Inspector called as a witness. James Singleton who had served on the force for seven years, displayed a more meaningful insight into the difficulty of enforcing the provisions of the Licensing Act and a refreshingly cynical attitude to drunkenness as a fundamentally insoluble problem, which was exaggerated by the elite. He agreed that intemperance had increased but “not very seriously” explaining the increased spirit consumption in the colony with reference to the growing population and rising prosperity and,

²² ‘1854 Intemperance Committee’, 537-9. In 1853, these habitual drunkards would have represented about 10% of all drunk arrests.

²³ ‘1854 Intemperance Committee’, 555-61.

²⁴ ‘1854 Intemperance Committee’, 537-9, 555-61.

²⁵ ‘1854 Intemperance Committee’, 618.

²⁶ ‘1854 Intemperance Committee’, 572.

agreeing with Cowper's question, pointed out that working men could drink a great deal without being habitually drunk. In fact, he thought that most arrests were of a hard core of regular drunkards, perhaps three or four hundred, slightly less than half female, who were constantly before the bench. From this, he drew the unpopular conclusion that the current system of fines was perfectly adequate and he further noted, in a telling comment that was unfortunately all but ignored by his interviewers, that the vast majority of crime was caused by professional thieves who were far too cautious to commit their offences while intoxicated.²⁷

But Singleton was outnumbered by the numerous elite witnesses, convinced of an alcohol-induced crisis among their social inferiors. Boyce, though less hyperbolic than some, argued that while "among the middle and higher classes drunkenness is considered disgraceful ... among the lower classes, I fear it is not looked upon in its proper light" and echoed police calls for increased punishment and gaol sentences. The current system was flawed because "[n]o moral guilt appears to attach to any offence when a man can get off by merely paying a fine".²⁸ Sadlier was particularly concerned about the ease with which the law was evaded, claiming that since the loss of financial incentives for arrest, constables "have become indifferent". He called for better pay and for a reversion to the older law which authorised arrest regardless of whether the peace was disturbed because drunkards were "liable to commit the most dreadful offences".²⁹ Nathaniel Pigeon, a Wesleyan missionary who preached his message among the urban working classes of inner-city Sydney, echoed complaints about the inefficiency of the current system. Citing examples known to him through his work, he claimed that rising wages meant that drunkards did not fear punishment and recommended uniforms and hard labour in a special workhouse for habitual offenders arguing that "drunkards do not like to work when the habit is fully formed".³⁰ In essence he was calling for the creation of a new convict class comprised of drunkards, who would be placed under special surveillance and worked for the benefit of the state.

But perhaps the broadest and most considered view of the problem came from the Chief Justice, Sir Alfred Stephen who stressed the cost of intemperance "occasioned by the wilfulness or negligence of drunken people":

²⁷ '1854 Intemperance Committee', 615-7. In fairness to the many witnesses who saw drunkenness as the leading cause of crime, Singleton was obviously talking about acquisitive offences, while temperance arguments were based on the undoubted association between drunkenness and violence – but were often framed as a general claim that alcohol caused crime.

²⁸ '1854 Intemperance Committee', 583-5. However he rejected McLerie's proposal to create a road gang, claiming that public humiliation would only exacerbate criminal tendencies.

²⁹ '1854 Intemperance Committee', 624.

³⁰ '1854 Intemperance Committee', 633-4. For more on Pigeon's moralising see: Pearl, *Sydney Revels*, 10-13.

*from the entire desolation of home, and the annihilation of comforts and attractions; from deaths and disease the direct effects of drunkenness; from the idleness and waste of labour, the prostration of character and destruction of the moral sense, which habits of tipping inevitably induce; from the desertion or ill-usage of wives and children, by drunkards, and the utter neglect of children's education, not to mention, what is saddest of all, the actual instilling of vice into them.*³¹

His views reflected the respectable bias of the witnesses. Though well aware of the subjectivity of the offence he dismissed any difficulty in legally defining drunkenness describing it as "the negation of sobriety; or simply this, that every man not sober is necessarily drunk". Tellingly, he then qualified his answer noting that "if a man has taken a bottle of wine, and it does not affect his senses, or his gait, or voice; that man is clearly in no degree drunk". This apparent contradiction is actually quite revealing of Stephen's prejudices for, in the traditional manner, he clearly regarded drunkenness as an offence of public order largely perpetrated by the spirit-drinking classes. Indeed, he thought that problematic drunkenness "especially that degree of intoxication which leads to violent crimes" was exclusively confined to spirit drinkers and though he supported a Maine law he thought that only spirits should be prohibited.³²

He associated the growing criminal problem with a wider British culture, in which intoxication was a subject of levity and drinking was regarded as healthy and normal. Radical legislative reform would be impossible until:

*the day when the class of mechanics at least, if not every labouring man, shall be aware that drinking spirits is pernicious; and that every degree of intoxication (to say nothing of its sinfulness) is dangerous to the individual, and as well as a crime against the state.*³³

However, he also called for a wider social reform advocating ostracism of drunkards in high society and disqualification of drunken magistrates.³⁴ Thus, in the manner of conservative temperance, he saw the moral example of the elite as crucial to solving alcohol problems.

³¹ '1854 Intemperance Committee', 600. Martin implies that Stephen's contribution to the Committee was hasty and pre-judged (Martin, 'Drink and deviance', 346-7.) I would argue that despite his inconsistency on some points, Stephen's evidence displays the most sophisticated understanding of the legal and social implications of different responses to the drink problem.

³² 'Intemperance Committee', 601-5. He noted that arrest rates reflected police instructions showing an awareness of the subjectivity of drunkenness.

³³ 'Intemperance Committee', 606.

³⁴ 'Intemperance Committee', 603. This call for elite example was echoed by the Dean J.T. Lynch of Maitland in a letter to the Committee in which he argued that "so long as places of honor and trust may be held by drunkards, so long will we have to complain of the evils." (530)

Like others with experience of the system, Stephen favoured sterner sentences including hard labour, and head shaving for women, after the first offence.³⁵ But he also allied himself with a new radical approach. He argued that most drunkards “labour rather under a disease than under any disposition to commit crime” and approved of the regulations that allowed for guardianship over the property of habitual drunkards. Indeed, in punishing drunkards, his motive was as much amelioration as it was punishment:

*In those people who are sent to gaol so often, drinking evidently is a disease ... I would deal with it as a crime; because it is not a visitation of Providence, but one self inflicted. The object is, however, in truth, their own protection. And the greater length of imprisonment, with enforced abstinence from drink, might finally induce sobriety, in some degree by the fear of a repetition.*³⁶

Inspired by temperance, this medical interpretation of drunkenness was increasingly accepted by government marking a significant shift in the public understanding of alcohol.

³⁵ ‘Intemperance Committee’, 606. 608. Note that no drunkard ever had to go to gaol, provided they paid their fine, so that the gaol returns are likely to be only a record of poor drinkers – who perhaps concluded that a day in prison was worth saving a pound.

³⁶ ‘Intemperance Committee’, 606.

Chapter 14) Medicine, Responsibility and Freedom

The Medical View of Drunkenness

The idea that uncontrollable drunkenness should be treated as a disease was not a new one. During the eighteenth-century gin crisis, Stephen Hales' attack on drinking as harmful to health and his association of drunkenness with madness was a pioneering statement of this secular argument.¹ Doctors began to study in detail the harmful effects of drinking and the argument that alcohol caused ill-health became increasingly familiar.² One especially influential proponent was Dr. Benjamin Rush, a signatory to the Declaration of Independence, whose pamphlet examining the influence of spirits on health, though mostly concerned with physical harms, also noted the effect on the mind. Rush argued that spirits "impair the memory, debilitate the understanding, and pervert the moral faculties" and more importantly that while the use of spirits began as a free choice, "[f]rom habit it takes place from necessity".³ The illustration that accompanied this publication, Rush's "Moral and Physical Thermometer" correlated the strength and frequency of use of various drinks with both the moral vices and physical ills that accompanied their consumption and played a crucial role in diffusing knowledge of the medical arguments against alcohol. Indeed this kind of diagram was still in use among temperance advocates well into the nineteenth century.⁴

Thomas Trotter was more explicit in dealing not just with the effects of alcohol but also its addictive qualities. Writing in 1804, he called drunkenness "a disease; produced by a remote cause, and giving birth to actions and movements in the living body, that disorder the functions of health."⁵ During the nineteenth century, although alcohol continued to be widely prescribed and self-administered as a medicine, there were increasingly sophisticated medical arguments against its consumption.⁶ The pioneering work in this field was largely done in Continental Europe but by 1850 the English-speaking medical world was familiar with what would, in the twentieth-century, become widely accepted ideas: the physical basis of alcoholism as a disease, its connection with

¹ For Hales, see above, 36; White, 'Gin', 46-7.

² See for example: Bell, *Diseases*.

³ Benjamin Rush, *An Inquiry Into the Effects of Ardent Spirits Upon the Human Body and Mind ...*, Eighth Ed., Boston: 1823, 11.

⁴ Bernard, 'Fasting to Abstinence', 345-6. See for example 'The Drunkards Tree' in: NSWTS, *Half an Hour's Reading*.

⁵ Thomas Trotter, *An Essay, Medical, Philosophical and Chemical, on Drunkenness and Its Effects on the Human Body ...*, London: 1804, 8.

⁶ For more on the continued use of alcohol as a medicine see: Harrison, *Drink*, 91, Tyrell, *Sobering Up*, 89-90.

psychological and environmental causes, the hereditary nature of chronic drunkenness and its treatment through abstinence and psychiatry. Just as importantly, first in America and subsequently in Britain, what were increasingly known as inebriates were beginning to be treated through the psychiatric system of lunatic asylums.⁷

In the decisive statement on the development of these ideas, Harry Levine has called this a new paradigm of addiction, and while I would quibble with his chronology, he is right to argue that the medicalisation of alcohol problems marked a decisive shift.⁸ His interpretation fits within the classic narrative of the construction of social problems in which an early moralistic and religious understanding is overtaken by the criminalisation and subsequent medicalisation of deviance in the modern world and the historiography of alcohol problems has frequently been fitted to this template.⁹

However, in NSW at least, before the arrival of temperance, the new paradigm remained the preserve of a small fraction of the educated elite. Though accidents and violent crimes were attributed to alcohol, drinking was not in itself widely understood as a cause of ill-health. David Collins, the first deputy judge advocate, repeatedly lamented the effect of alcohol on the "health" of the colony but only in a metaphorical sense.¹⁰ He did appreciate that individuals could harm themselves through drinking but only through gross excess as in the case of two settlers whose drinking contest ended in the death of one and severe injury to the other.¹¹ Indeed in cases of alcoholic poisoning it was often believed that the chief cause was not the alcohol itself but rather its poor quality or the various adulterants added to it by unscrupulous victuallers. Hunter cited this

⁷ Marianna Valverde, *Diseases of the Will: Alcohol and the Dilemmas of Freedom*, Cambridge: Cambridge University Press, 1998, ch. 2; William F. Bynum, 'Chronic Alcoholism in the First Half of the 19th Century', *Bulletin of the History of Medicine*, vol. 42 (1968), pp160-85. For this movement in an Australian context see: Milton James Lewis, 'Alcoholism in Australia, the 1880s to the 1980s: from Medical Science to Political Science', *Australian Drug & Alcohol Review*, vol. 7, no. 4 (1988), pp391-401; Milton James Lewis, 'The Early Alcoholism Treatment Movement in Australia, 1859-1939', *Drug and Alcohol Review*, vol. 2 (1992), pp75-84; Lewis, *Rum State*, 97-103; Fitzgerald, *Under the Influence*, 208-9.

⁸ Levine, 'Discovery of Addiction'. Though I have not attempted anything like a comprehensive survey of anti-alcohol literature in the eighteenth-century it seems clear that the idea of addiction, if not the term itself dates at least to the gin crisis.

⁹ See for example: Peter Conrad & Joseph W Schneider, *Deviance and Medicalization: From Badness to Sickness*, St Louis: C.V. Mosby Co., 1980, Ch. 2. Valverde convincingly argues that the medicalisation of alcohol had failed by the early twentieth-century, to be replaced by a new paradigm based on the approach of Alcoholics Anonymous but this lies beyond the scope of this thesis. Valverde, *Diseases of the Will*, esp. chs. 3, 5.

¹⁰ Collins, *Account*, vol. 1, 449, 471. This use of the disease metaphor to describe the effect of alcohol was common at the turn of the nineteenth-century. See for example: Mann, *Present Picture*, 7-8; 'King to Portland', 10th Mar. 1801, *HRA* vol. 3, 7-8.

¹¹ Collins, vol. 1, 167.

concern when banning distillation on the basis that the "quality of [the spirit] is of so poisonous a nature as must in a very short time ruin the good health of the settlement".¹²

In contrast, alcohol was often viewed as a curative agent. One of the first orders issued by Phillip was to grant a ration of rum to the "sickly" wives of the soldiers in the colony reflecting the general belief that spirit stimulated the body helping to fight illness and endure harsh conditions.¹³ In a complaint addressed to England in 1809 a petition of free settlers noted the high price and poor quality of spirits and complained that "There is no Nutritious Liquor produced in the Colony, Either as a Restorative to the Sick or Laborious".¹⁴ Alcohol was a widely used medicine and doctors were associated not only with prescribing but even producing spirits. In evidence given at the Court-Martial of Johnston, the Surgeon and Bligh supporter, Martin Mason, complained of the seizure of his still and liquors by Macarthur and his supporters, claiming he distilled "publicly and openly as a professional man... for the purpose of making tinctures and other medical preparations" and that "every medical man in the colony had a still, for the most part of larger dimensions than mine".¹⁵ This view of alcohol is symbolised by Macquarie's new hospital: health services subsidised by the sale of spirits.

Even into the temperance era, alcohol continued to be used for treatment with the 1838 Licensing Act making a special exemption for masters of convicts providing liquor "medicinally".¹⁶ Though alcohol was increasingly cited as a cause of death in coroners' inquests, there was little attempt to connect these cases with wider social problems and fears about the physical effects of drinking tended to focus on gross excess as in the apocryphal story of chronic drinkers spontaneously combusting.¹⁷ Concern over alcohol problems in the first fifty years of the colony was focused on crime, public order and idleness – arguments that attacked the abuse and not the regular use of alcohol. Alcohol was regularly referred to as "maddening" and there was certainly an appreciation of its role in causing crime, but these were invariably understood as the temporary

¹² 'Hunter General Order', 23rd Jan. 1796, *HRNSW*, vol. 3, 10; 'Hunter to Portland', 3rd Mar. 1796, *HRA*, vol. 1, 555.

¹³ 'Phillip to Nepean', 5th July 1788, *HRNSW* vol. 1, pt. 2, 142. For an international perspective alcohol as medicine see: S.E. Williams, 'Use of Beverage Alcohol as Medicine 1790-1860', *Journal of Alcohol Studies*, vol. 41 (1980), pp543-66.

¹⁴ 'Memorial of Settlers to Castlereagh', *HRA*, vol. 7, 149.

¹⁵ 'Mason Evidence', Ritchie, *A Charge of Mutiny*, 129-33; 'Mason to Foveaux', Ritchie, *A Charge of Mutiny*, Appendix xxxiv, 462-3.

¹⁶ '1838 Licensing Act', 857.

¹⁷ 'Combustion of the Human Body by Habitual Drunkenness', *Gazette*, 28th Aug. 1830, 4. For an example of a early inquest see: *Gazette*, 13th Apr. 1816, 2. A brief survey suggests that drunkenness was increasingly common as a cause of death from the 1830s.

effects of an intoxicant.¹⁸ The idea of an addiction to alcohol though it had eighteenth-century origins had no meaningful impact in NSW until the 1830s.

Local discussion of the then newly defined disorder of delirium tremens began as temperance was beginning to spread from Europe and America and it was not until the emergence of a colonial movement that there was any systematic consideration of this concept.¹⁹ In the first clear reference to the new paradigm, a correspondent of the *Colonist*, described recent writings on the alcohol problem from Britain and the US which called for habitual drunkenness to be “proclaimed a form of madness” and for dedicated hospitals to be established for its treatment, while the editor suggested that the Temperance Society address a “modest proposal” to the Legislative Council for the establishment of such a system in NSW.²⁰ By the late 1830s, with temperance ascendant, harmful effects of alcohol on health were widely debated in the colony, and the regularity of alcohol-related deaths was a common subject of temperance advocates who included violent murders by intoxicated drinkers in their tallying of the costs of the liquor problem.²¹ This discourse even made its way into official practice through the influence of temperance doctors. In an important murder trial in 1838, John Crowley was found not guilty of the murder of his wife, who died shortly after he beat her for getting drunk. Crowley was exonerated largely on the testimony of Dr. Clarke who testified that Johanna’s external injuries were not the cause of her death but rather that “the appearance of the brain presented that of a person dying from habitual drunkenness”.²²

The public diffusion of these ideas is shown by a series of events organised by the temperance movement in 1841. In one of a series of debates between temperance and total abstinence principles at the School of Arts, Matthew Bourne who would subsequently graduate in

¹⁸ See for example: *Gazette*, 29th Sep. 1805, 1.

¹⁹ ‘Letter of Temperance’, *Herald*, 6th Dec. 1832, 3. In considering the earliest colonial appearance of this discourse I have ignored extracts from British papers that were quoted without comment.

²⁰ ‘Intoxication. A Hint for the Worthy editor of the NSW Temperance Magazine’, *Colonist*, 27th July 1836, 246. It is unfortunately unclear whether the paper’s apparent allusion to Jonathan Swift’s more famous “modest proposal” was accidental or intended to ridicule the hospitalisation of drunkenness. However, at this time, the Temperance Society was probably not ready to embrace the idea with Saunders publishing an editorial a few months later in which he explicitly argued that intoxication must be “willed” by the drinker who was therefore responsible for his fault (*Temp. Mag.*, Sep. 1837, 33). He acknowledged the *Colonist*’s suggestion without comment in the following issue (Oct. 1837, 55).

²¹ See for example, the speeches of Plunkett and Dr Nicholson at the Temperance Society. *Temperance Magazine*, July 1838, 10, 15.

²² ‘Supreme Court’, *Gazette*, 10th Nov. 1838, 2;

http://www.law.mq.edu.au/research/colonial_case_law/nsw/cases/case_index/1838/r_v_crowley/

The case was also notable because two of the crown’s witnesses were themselves sentenced for attending court while drunk.

Medicine at Edinburgh, summarised the most recent medical arguments against alcohol, claiming it injured the constitution and caused serious diseases including insanity.²³ In a public lecture a fortnight later, a recently arrived British doctor, George Fullerton, argued that alcohol was a “narcotic poison” that tended to “induce disease into the human constitution.” Its “irritating or ... stimulating power” was both the source of its attraction and of the many health problems it caused and as a result alcohol should be avoided except as a medicine, and then used sparingly.²⁴ But proposals for the systematic application of the disease model did not emerge in NSW until the 1850s.

Part of the reason for the slow adoption of inebriate treatment lies in the history of medical institutions in the colony. The health of the settlement was always an important concern but in early NSW, care was only provided for convicts and public officials. Care was provided free of charge until 1839 and the system was supplemented by voluntary agencies such as the Benevolent Asylum, established in 1821, which took in the destitute, elderly and long-term incapacitated and by a growing cadre of private practitioners who those who could afford to pay.²⁵

Within this system, mental health was something of an afterthought. The European settlement of Australia took place at a time when British (and for that matter International) attitudes to insanity were changing dramatically. In the mid-eighteenth-century, the insane were only perceived as a problem to the extent that they were responsible for disorder and in such cases were dealt with in the same manner and by the same institutions as other burdens upon society like the physically disabled, petty criminals and the poor.²⁶ But by 1850, increased concern both for the problem of insanity and the treatment of the insane had led to a regulatory regime that separated them from other deviants, set standards for care and inspected both public and private institutions to ensure compliance. At first lunatics were confined in Parramatta gaol but from 1811 a separate asylum at Castle Hill was established and in 1838 a purpose built facility at Tarban Creek, near Gladesville improved conditions while the new superintendent, Jonathan Digby, provided better regulated and comparatively more humane care. Prior to this move, lunatics were treated like criminals, often chained and forced to work with little effort to diagnose and no attempt to cure

²³ ‘School of Arts’, *Herald*, 5th Aug. 1841, 2.

²⁴ “Lecture I: On the Physical properties of Alcohol”, *Temp. Advocate*, 18th Aug. 1841, 3-9.

²⁵ Sidney Sax, *A Strife of Interests: Politics and Policies in Australian Health Services*, Sydney: George Allen & Unwin, 1984, 3-14.

²⁶ Milton Lewis, *Managing Madness: Psychiatry and Society in Australia 1788-1980*, Canberra: Australian Government Publishing Service, 1988, 2-4; Foucault, *Madness*.

their disorders but Digby, influenced by the moral treatment approach he had observed in England, tried to minimize restraint and effect cures of his patients through the encouragement of self-control.²⁷ Nonetheless, it was not until the late 1840s following a Select Committee Inquiry, that regulations required medical supervision of the insane and thus before 1850 there was no medically administered establishment in NSW that could consider the systematic treatment of habitual drunkards.²⁸

With the resurgence of the temperance movement the disease concept began to resonate in NSW. A speech by Alfred Stephen at the 1854 meeting of the *Benevolent Asylum* seems to have marked a decisive turning point in public discussion. Stephen claimed that “a drunkard ought only to be considered in the light of a lunatic” and noted that this was how habitual drunkards were treated in America. Reporting the speech, the *Herald* attributed the growth of intemperance to “magisterial leniency” and called for stricter laws, impartially administered but added that when proved by a competent tribunal, habitual drunkards should be treated as lunatics.²⁹

Not surprisingly, the medical profession took the lead in promoting Stephen’s suggestion. In a series of letters to the *Herald*, George Walker, the Acting Superintendent at Tarban Creek, outlined current colonial practice and called for reform. He claimed that insanity was rapidly increasing in NSW, that “two-thirds of the patients admitted into this institution are lunatics from intemperance”, and that, if unchecked, the evil “will in the present rapidly augmenting ratio—entail the most fearful results upon the colony—by ensuring the procreation of a race of incurable idiots”.³⁰ Expanding on this judgement, he cited figures to show the increasing numbers of inmates at the asylum due to drinking and argued that intemperance “in its extreme forms” was a disease, or form of insanity, a permanent intoxication. Following from this, echoing Stephen, he argued that:

²⁷ Lewis, *Madness*, 5-10.

²⁸ ‘Council Paper. Lunatic Asylum. Tarban Creek’, *Herald*, 24th Oct. 1846, 2s; ‘Review. State of the Lunatic Asylum, Tarban Creek’, *Herald*, 20th May 1847, 3; ‘Council Paper. Lunatic Asylum. Tarban Creek’, *Herald*, 30th Sep. 1846, 2. The Inquiry was concerned with the appalling conditions in which patients were kept and not the causes of insanity. Notably, it made no mention of drunkenness among patients although one of the many complaints was that the staff of the establishment were frequently intoxicated.

²⁹ ‘Habitual Drunkards’, *Herald* 13th Mar. 1854, 4. For further support for this view of drunkenness as a disease, see: ‘Intemperance No. 1’, *Herald*, 31st Oct. 1853, 3; ‘Intemperance No. 2’, *Herald*, 2nd Dec. 1853, 3; ‘Intemperance No. 3’, *Herald*, 27th Dec. 1853, 3; ‘Letter of ‘Y’’, *Herald*, 17th Mar. 1854, 3; ‘Letter of ‘Y’’, *Herald*, 11th Apr. 1854, 5.

³⁰ ‘Letter of George Walker’, *Herald*, 5th Aug. 1854, 5.

"the best means of arresting the tide of intemperance would be to institute a hospital for public drunkards, and treat them as lunatics".³¹

Other witnesses to the 1854 Committee shared Stephens' call for a medical approach.³² John Yates Rutter, the Medical Officer to the Sydney police claimed to frequently treat drunkards arrested "in a state of insanity from *delirium tremens*" in addition to larger numbers "suffering from chronic disease, whose health has been shattered by intemperance". He thought most drunken offenders, even those who did not require medical treatment, were "more or less diseased" and complained that the current system had no adequate means to deal with such people.³³ But the most comprehensive proposals came from Walker's supervisor and Chief Superintendant of Tarban Creek, Dr Francis Campbell. He described in detail the current medical understanding of chronic drunkenness as a "species of insanity":

*Alcoholismus chronicus ... technically ... is that exciting desire for drink which cannot be subdued, it is a madness for drink; against which, argument and reason are of no avail. In fact, when the habit of drunkenness is confirmed, it becomes a positive disease in the individuals indulging in it, and what is still worse it tends to shorten the span of life, and is apt to be communicated to the offspring.*³⁴

While not all drunkenness was diseased, a drinker "who cannot be kept from drink by any moral means, who is continually drunk, or drunk as often as he can get anything to drink" was for Campbell a certifiable lunatic who should be kept in an asylum. He subsequently elaborated on this proposal calling for a receiving house for lunatics where cases of temporary *delirium tremens* could be separated out from those driven permanently insane by drink who could then be confined appropriately.³⁵

Only one witness seemed to have considered the wider implications of the new medical approach. The John Woolley, Professor of Classics and President of the newly founded University, and a liberal scholar in the Oxford tradition, agreed with police witnesses that punishment had to demonstrate the severity of the offence but stressed the need for the system to be "reformatory

³¹ George Walker, 'Intemperance as a Cause of Insanity', *Herald*, 18th Oct. 1854, 3. He claimed 136 of 336 admitted patients were exclusively due to drunkenness and that most other lunatics were also affected by drink. For more on the subsequent development of these ideas in NSW see: Garton, 'Habitual Drunkenness'.

³² Most witnesses approved the new approach, some admittedly, only after receiving leading questions, while Boyce in particular was a valuable source of information on the management of inebriates in Europe and America.

³³ '1854 Intemperance Committee', 594-5.

³⁴ '1854 Intemperance Committee', 552.

³⁵ NSW Legislative Council, 'Report of the Select Committee on Lunacy', *VPLC* (1855), vol. 3, 67.

and remedial". In his view, drunkards should not be confined with other felons for fear of further contaminating their moral sensibility and he also pointed to the need for alternative forms of leisure and for compulsory education for the working classes, "to raise the tone of the people's minds and give them some other means of mental and social improvement and of recreation".³⁶ He was similarly cautious on the subject of drunken insanity. He agreed with the existing provisions for the protection of property but was sceptical about treating a condition that was "voluntary at the commencement". And, like many other witnesses he also objected to the idea of a Maine law:

*Unless you determine that the drinking itself in moderation is wrong, it is difficult to see on what principle you have a right to interfere with the sale. It seems to me against the principle of good government to diminish unnecessarily personal responsibility, or to interfere with personal liberty, except where its exercise is positively injurious to the community.*³⁷

As Woolley alone perceived, implicit in the medical understanding of drunkenness was a radical shift in responsibility for alcohol problems.

Drunken Responsibility

There was a longstanding tradition in philosophy that associated freedom and responsibility with the free exercise of the will and within this tradition alcohol and its intoxicating effects played a crucial exemplary role. For example, Aristotle noted that although a drunken man might be ignorant of his offence, because he was responsible for his ignorance it was no excuse and cited the doubling of penalties under Greek law for crimes committed while intoxicated.³⁸ But by the early modern period the understanding of freedom and the consequent view of intoxicated responsibility had divided. For many republican thinkers, freedom depended on the absence of both external and internal restraints. Fears and appetites could enslave a man as surely as direct physical coercion and while the main import of this doctrine was to challenge the authority of arbitrary governments, it also implied that because a drunken man no longer had the power to control his actions he was a slave to alcohol and therefore neither free nor properly responsible.³⁹ This view was radically challenged by Thomas Hobbes' materialist philosophy. Hobbes argued that freedom was only prevented by external restraints and thus that human will was not necessarily the product of reason

³⁶ '1854 Intemperance Committee', 586-8.

³⁷ '1854 Intemperance Committee', 587-8.

³⁸ Aristotle, *The Nichomachean Ethics of Aristotle*, trans. F.H. Peters, London: Kegan Paul, Trench, Truebner & Co., 1893, book 3, ch. 1.

³⁹ See for example: Baruch Spinoza, 'Ethics', *The Chief Works of Benedict de Spinoza (2 vols.)*, trans. R.H.M. Elwes, London: George Bell and Sons, 1901 (first published 1677), vol. 2, pt. III, proposition II.

but rather of the forces of appetite and aversion. Hence the desires of a drunken man were as freely willed as those when he was sober. When drunk, he might lack the power to act upon his sober desires but he did not lack the freedom to do so.⁴⁰ The implication of this view was that a drunkard was responsible for his actions and the law should hold him so – he was a criminal, and intoxication was a freely entered state. Thus by the nineteenth century, two very different concepts of intoxicated responsibility were a feature of the philosophical discourse around liberty and freedom.⁴¹

In Britain and subsequently NSW these concepts informed two very different official views of drunkenness. The growing body of medical thought saw uncontrolled drinking as a form of madness, but the criminal law held drunkards personally responsible for their crimes. By the eighteenth-century the law was officially clear that drunkenness could not mitigate responsibility although in practice intoxication was often offered and sometimes accepted as an informal defence – ironically, often leading to a sentence of transportation for what would otherwise have been a capital offence.⁴² Blackstone clarified this legal view describing lunacy as “a deficiency in will, which excuses from the guilt of crimes” though noting that those who had lucid intervals “shall answer for what he does in those intervals as if he had no deficiency”. Lunatics “as they are not answerable for their actions ... should not be permitted the liberty of acting unless under proper control” and were therefore subject to imprisonment under the vagrants acts.⁴³ Distinguishing between born “idiots” and “lunatics” who had lost the use of their former reason, he clarified the civil procedure for having this status certified and appointing managers to any property.⁴⁴ More importantly, he drew the key distinction between involuntary lunacy and “artificial, voluntarily contracted madness, by drunkenness or intoxication, which, depriving men of their reason, puts them in a temporary

⁴⁰ Thomas Hobbes, *Elements of philosophy the first section, concerning body...*, London: 1656, ch. 25.12, 302-5; Corey Robin, ‘The First Counter-Revolutionary’, *The Nation*, 19th Oct. 2009, <http://www.thenation.com/article/first-counter-revolutionary> - accessed 29th Mar. 2012; Quentin Skinner, *Hobbes and Republican Liberty*, Cambridge: Cambridge University Press, 2008, ix-xvi.

⁴¹ For more on the divisions within republican and liberal thought see: Skinner, *Hobbes*, 27-33; Pocock, ‘Varieties of Whiggism’.

⁴² See: Dana Rabin, ‘Drunkenness and Responsibility for Crime in the Eighteenth Century’, *Journal of British Studies*, vol. 44, no. 3 (July 2005), pp457-77. In a sample-based survey of cases in the Old Bailey between 1680 and 1750, Rabin found 2.5% mention drunkenness and 65% of these saw a reduced sentence.

⁴³ Blackstone, *Commentaries*, vol. 4, 24-5.

⁴⁴ Blackstone, *Commentaries*, vol. 1, 303-7.

phrenzy" and only aggravated any offence rather than excusing it.⁴⁵ This strict legal interpretation would increasingly clash with the medical view of drunkenness during the nineteenth century.⁴⁶

In the early colony alcohol problems were almost invariably viewed as the responsibility of the drinker, drunkenness was not accepted as mitigation and was frequently a reason for more severe sentencing.⁴⁷ But despite this, defendants continued to refer to their intoxication in explaining their criminal conduct, a reflection of the divergence between the official view of drunkenness and the popular understanding. While drunkards were explicitly held responsible under the law, in the social imaginary there was a greater sympathy for intoxicated behaviour. This view did not excuse drunkards but did appreciate the way that alcohol could temporarily madden the drinker and contribute to a spiral of decline that led to criminality, as is shown by the frequent presence of drunkenness as a step in the narrative of moral decay that featured in most published convict memoirs.⁴⁸ The legal interpretation of drunken responsibility evolved under the influence of these popular ideas, especially with the impact of temperance.

Under the hybrid and fluid legal system of the early colony drunkenness was a sign of guilt. In a case before Judge Collins in April of 1799 a soldier was charged with murdering a passing sailor on Sydney's wharves. His acquittal was based upon his evidence that the victim in a fit of drunkenness had insulted and provoked him; it was therefore ruled a "justifiable homicide ... the effect of intoxication".⁴⁹ A few days later, Collins again presided over the case of Simon Taylor, an otherwise respectable settler who was executed for murdering his female companion when they were both under the influence. In each case, drunkenness was not a mitigating but an exacerbating factor and the responsibility for the crime was cast upon the individual who drank to excess.⁵⁰

The new Supreme Court, founded by the NSW Act of 1823, took a similar view to Collins, now grounded in English precedent. In 1825, Edmund Bates was tried for the murder of his wife after a drinking binge and though denying the charge told the arresting constable: "If I killed her I did

⁴⁵ Blackstone, *Commentaries*, vol. 4, 25-6.

⁴⁶ For more on this clash in a British context see: Valverde, *Diseases of the Will*, 45-50, 59-60, ch. 3; Martin J. Wiener, 'Judges v. Jurors: Courtroom Tensions in Murder Trials and the Law of Criminal Responsibility in Nineteenth-Century England', *Law and History Review*, vol. 17, no. 3 (Autumn, 1999), pp467-506; Nicola Lacey, 'In Search of the Responsible Subject: History, Philosophy and Social Sciences in Criminal Law', *Modern Law Review*, vol. 64, no. 3 (May, 2001), pp350-71.

⁴⁷ See for example: 'Sitting Magistrate - S. Lord Esq.', *Gazette*, 10th Apr. 1813, 2; *Gazette*, 11th Aug. 1821, 2. For a similar debate in NSW around the trial of John Knatchbull see: Jan Wilson, 'An Irresistible Impulse of Mind: Crime and the Legal Defense of Moral Insanity in Nineteenth Century Australia', *Australian Journal of Law and Society*, vol. 11 (1995), pp137-68.

⁴⁸ See the summary of this literary form in: Anne Conlon, "'Mine is a Sad yet True Story': Convict Narratives 1818-1850", *JRAHS*, vol. 55, no. 1 (March 1969), pp43-82.

⁴⁹ Collins, vol. 2, 203

⁵⁰ Collins, vol. 2, 203.

it when I was drunk." The evidence in the case suggested that Bates had repeatedly beaten her after a quarrel and the main basis of the defence offered by William Wentworth was Bates' intoxication. Summing up the case, Chief Justice Francis Forbes noted that the evidence showed that the defendant was reasonably sober by the time the police arrived but more importantly stressed the principle that "drunkenness, unless it can be proved that it was involuntary, and had produced an aberration of the mind, is not by English law admitted as an excuse or justification of a criminal act". Bates was found guilty and sentenced to hang and Forbes, perhaps anticipating that Bates' drunkenness might be seen as an excuse, wrote to the Governor that he could find no circumstances to recommend mercy.⁵¹ In a case from 1842, Alfred Stephens made perhaps the clearest explanation of the doctrine in advising the jury and then sentencing Thomas Williams who had picked up a gun during a drinking spree and accidentally killed his wife, Ann. He advised the jury that "they were bound to hold that crimes and offences committed under the influence of intemperance, were as bad, if not worse, in the eye of the law [for] ... if parties will indulge in drunkenness they must abide by and take the consequences."⁵²

But though the doctrine of drunken responsibility was clear enough it was not always or universally accepted. In 1835, John Hagan was one of a party of soldiers escorting prisoners near Bathurst, who got drunk during their guard duty. Hagan asked one of the convicts, Michael Driscoll, for a pipe of tobacco and when told he did not have one he cocked his musket, stating "d--n your eyes, I'll shoot you", when the gun discharged. Driscoll died instantly and Hagan, overcome by remorse, fell to the ground praying for forgiveness. Despite this, Hagan was found guilty of murder and Judge Dowling sentenced him to hang commenting as usual that his intoxication was no excuse.⁵³ However, the case was respited after evidence emerged that Hagan's musket may have fired accidentally and Hagan was reprieved pending a further inquiry to the Privy Council.⁵⁴ This led to considerable controversy in the press and presumably in legal circles with some reports commenting on Hagan's drunkenness and contrition as exonerating circumstances that should have reduced his offence to manslaughter.⁵⁵ In an extended comment, the *Monitor* noted that though there was no

⁵¹ 'Criminal Court', *Australian*, 14th Apr. 1825, 2; 'Supreme criminal court', *Gazette*, 14th Apr. 1825, 3. For this and subsequent discussion of Supreme Court cases I am indebted to the online archive: Macquarie University, *Decisions of the Superior Courts of NSW*.

⁵² 'Supreme Court', *Herald*, 13th Jan. 1842, 2; *Teetotaler*, 15th Jan. 1842, 3. For other examples of drunkenness not diminishing guilt see: 'Law Intelligence', *Herald*, 6th Nov. 1837, 6; 'Law Intelligence', *Herald*, 6 Nov. 1840, 2; 'Law intelligence', *Herald*, 10th Jan. 1842, 2.

⁵³ 'Law Intelligence', *Australian*, 17th Nov. 1835, 2.

⁵⁴ *Herald*, 16th Nov. 1835, 3; 'Domestic Intelligence', *Herald*, 30th Nov. 1835, 3. Unfortunately the case disappears from the records at this point and it is unclear if Hagan was ever punished.

⁵⁵ *Australian*, 17th Nov. 1835, 2; 'The Australian's Law', *Monitor*, 18th Nov. 1835, 2; *Gazette* 19th Nov. 1835, 2.

provocation from Driscoll "malice is excited in some men when intoxicated by the slightest and most unreasonable causes" and claimed that "a drunken man, might [fire] without thought" asking: "Shall a man who strikes or injures or even kills another, either thoughtlessly or unintentionally, suffer the same punishment as a deliberate murderer?"⁵⁶

The one area in which responsibility was held to be diminished by drunkenness was with regard to offences where intent was material to the charge. John Ryan was charged with a drunken sexual assault on Margaret Kelly at Bathurst in 1853 and after Justice Dickinson advised the jury to ignore the defendant's intoxication and he was found guilty. But the Supreme Court, citing British precedent, found that drunkenness was relevant to Ryan's ability to form a specific intent and therefore quashed the conviction. Stephen commented that while "drunkenness was no excuse for crime" in statutory cases where "intention is essential to the charge" drunkenness may form a test: "was the person so drunk as to have no power to form any specific intent". But noting that "[a] man voluntarily makes himself a drunkard", he explicitly limited this doctrine arguing:

*There seems no limit to general insecurity, and none to impunity for drunkenness, if the rule be once broadly laid down, that intoxication is to be, in all cases and without restriction, a test of the intent charged.*⁵⁷

A different construction of drunken responsibility came from the other side of sexual assault with the question of consent. In a case from 1833, Phillip Cunningham was charged with raping Eliza Besford, but the charge was dropped after Besford attended court so drunk as to make her evidence inadmissible. Reindicted for the police charge of aggravated assault, Cunningham's defence was based on calling witnesses to show Besford was a "depraved, worthless person, and was in a state of intoxication on the night in question". Summing up, Dowling told the jury that their decision should be a simple matter of evidence and if they believed the crown case then Cunningham's defence "could not avail him in law" and the jury accordingly found him guilty. Dowling sentenced him to two years hard labour with the road gang, commenting on the "enormity and inhumanity of his offence, in taking advantage of [her] imbecile and helpless state". The clear implication of Dowling's

⁵⁶ 'Inconsistent Verdicts', *Monitor*, 21st Nov. 1835, 2. Hall compared the case to another drunken homicide a day later where David Campbell was found guilty of manslaughter, after shooting Nicholas Conden over an argument about their bullock dray. Hall, with some reason, claimed that in contrast to Hagan, this was a "deliberate, wanton, uncalled for, malicious murder" and used the apparent inconsistency to attack the military jury in the latter case. See also: 'Supreme Criminal Court', *Gazette*, 17th Nov. 1835, 3.

⁵⁷ J. Gordon Legge (ed.), *A Selection of Supreme Court Cases in NSW from 1825 to 1862*, Sydney: 1896, 797-9. For the original suspended trial see: *Herald*, 27th Aug. 1853, 3; 'Law Intelligence', *Empire*, 29th Oct. 1853, 4.

judgement was that Besford could not have consented given her intoxication and thus aspersions on her character were irrelevant.⁵⁸

Drunken lunacy was a more complex legal question.⁵⁹ Even before the 1838 Licensing Act acknowledged the connection between habitual drunkenness and insanity there were some early cases where drunkenness was raised, perhaps most notably that involving Esther Johnstone, the widow of the rum rebel. Before the Lunacy Commission to decide on her financial responsibility, her barrister Sydney Stephen argued:

*that the eccentric habits of this lady, even admitting them to have been heightened by the occasional practice of drinking too freely, presented no grounds for pronouncing her insane, and depriving her of the property she had by her industry acquired. If all persons in the habit of drinking and committing extravagances in consequence, were to be supposed mad, he, the learned gentleman, believed it would be difficult to find Jurymen enough to decide upon their cases.*⁶⁰

Another incident of a contested will provided a further test of the connection between drunkenness and insanity. Alexander Ikin had left a cottage to his son-in-law, a publican named Bullivant, but this was challenged by Ikin's natural son who contended that his father was not competent when the will was made and was in fact a habitual drunkard, whose problems were exacerbated by Bullivant's establishment. The key witness for Ikin junior was Dr Nicholson who contended that Alexander's mind "was so obscured by drink, and by his dissolute habits, that it was difficult to make him understand me". Though the jury found for Bullivant they did so based on testimony that the will had been written and signed while Ikin was sober.⁶¹ Thus by the 1840s, the medical understanding of habitual drunkenness had earned a place within the legal system of the colony. This was consolidated by the Dangerous Lunatic Act of 1843, the first Colonial Legislation to require Medical

⁵⁸ 'Supreme Court', *Gazette*, 9th Feb. 1833, 2. The history of British rape law is much more complicated than I have suggested here and space will not permit a full discussion. For an introduction see: Antony E. Simpson, 'The "Blackmail Myth" and the Prosecution of Rape and Its Attempt in 18th Century London: The Creation of a Legal Tradition', *Journal of Criminal Law and Criminology*, vol. 77, no. 1 (Spring, 1986), pp. 101-150. The notion of consent as I have used it here is largely an anachronism but serves to clarify the point at issue: could Besford be responsible for what happened to her if she was intoxicated? The distinction between the aborted charge of rape and the proven charge of aggravated assault was that the former was a private action, pursued by the victim who was incapable of presenting her case, while the latter was a public action, pursued by the police.

⁵⁹ In this regard see the case of Long Jack above, 222.

⁶⁰ 'Enquiry De Lunatico', *Australian*, 20th Mar. 1829, 3; 'Important to the Colony', *Gazette*, 19th Mar. 1829, 2. Esther was found to be insane and her son was given charge of her estate. Ironically, John Macarthur, the other leading figure in the rebellion, also went mad in 1833. Bligh died in 1817, as sane as he ever was.

⁶¹ 'Supreme Court', *Gazette*, 10th July 1838, 2-3. See also: 'Supreme Court - Civil side', *Gazette*, 26th June 1838, 2. For another case where the will of the testator was questioned on account of his drunkenness, see: 'Supreme Court', *Australian*, 17th Sep. 1839, 2.

Authority in diagnosing a Criminal Lunatic, which also regulated the process of juries' finding a defendant not guilty by reason of insanity.⁶²

A comparison of two cases of violent assault from the 1830s, both committed by habitual drunkards, illustrates this shift. In 1832, Thomas Blake, who was executed for attempted murder based his defence largely on a claim of insanity, supported by evidence of peculiar obsessive behaviour widely regarded as madness, and the lack of apparent motive for his action. This was rejected by the jury in large part based upon the evidence of the arresting constable that his strange behaviour "was occasioned by intoxication, not by mental derangement".⁶³ In contrast, in 1838 Henry Hammond was found not guilty by reason of insanity of assaulting Jane Boyle, a four year old child. Hammond had been fired for drunkenness from his job as usher at a school and on the morning in question witnesses thought his behaviour strange and inexplicable. Suddenly and without reason he seized Boyle, a student at the school with whom he had always been friendly, and sliced her throat with a razor. Judge Dowling advised the jury that if they thought "either from the effects of drink, or grief of mind at losing his situation, the prisoner was at the time insane" they should find him not guilty.⁶⁴ Thus by the 1840s it appears that insanity from drink, as distinct from ordinary drunkenness, could diminish criminal responsibility.

The dangerous implications of this distinction were made apparent in the trial of Kenneth Mackenzie, a gentleman and Clerk to the Gayndah Bench who was charged with manslaughter in 1853. Mackenzie suffered from *delirium tremens* and while in a hallucinatory state, fearing attack by bushrangers he grabbed a loaded gun from the wall and pointed it at one of his friends, Francis Webber. A third friend tried to seize the weapon away but it discharged and Webber was killed. One key fact in the case was the question of whether Mackenzie intended to fire, but also at issue was his deranged state of mind. Dr Sewell who had been treating Mackenzie for his condition drew a distinction between insanity, *delirium tremens* and intoxication though he noted that all three states could lead to "a total deprivation of reason" and "unquestionably" believed that Mackenzie was out of his mind.

Summing up, Justice Stephen deplored the fact that a gentleman, born to such advantages, had yielded to habitual drunkenness and called for a law "empowering magistrates to commit to

⁶² 'Dangerous Lunatics Act', (7 Vic. no. 14), *Statutes of NSW*, 12th Dec. 1843, pp1394-7; Stephen Garton, 'Policing the dangerous lunatic: lunacy incarceration in NSW, 1843-1914', Mark Finnane (ed.), *Policing in Australia, Historical Perspectives*, Kensington, NSW: UNSW Press, 1987, pp74-87.

⁶³ 'Supreme Court', *Gazette*, 9th Feb. 1832, 3.

⁶⁴ 'Supreme Criminal Court', *Gazette*, 8th Feb. 1838, 2; 'Law Intelligence'; see also the case of James Moyes: 'Brisbane Circuit Court', *Moreton Bay Courier*, Brisbane: 1846-61, 24th Nov. 1855, 2.

safe custody all who were in danger, through habitual intemperance, of committing deeds like these". But he then commended the jury to the relevant question:

*was the death of Francis Gerald Webber caused by the act of the prisoner? And if so, was the prisoner or was he not insane at the time? Mere delirium tremens or drunkenness would not be sufficient to screen him; but if they found him insane, it would be the duty of the Court to send him to [an asylum].*⁶⁵

Mackenzie was in fact found not guilty on the basis that the gun had fired accidentally but Stephen referred to this case again in his testimony to the Intemperance Committee asking: "what security has the public, against the acts of such a man ... I believe that he probably would commit some similar act again, in a similar state of disordered mind. Yet there is no law to touch such a case."⁶⁶ Increasingly, the medical view of drunkenness was forcing NSW society to consider new provisions to deal with the problems caused by alcohol.

A murder, committed immediately after the Intemperance Committee published its Report, clarifies the problems with the new approach.⁶⁷ In December 1854, William Ryan, his wife Catherine and their eleven year old son, John were shopping in town and visited Mr Hordern's shop on George Street, to buy John a hat. Heading home along Hay Street, towards South Head Road, they disagreed on the route, Ryan wanting to go via Terry Hughes' shop while his wife wanted to take their usual route across the Green. Just before they reached Campbell Street and without any warning, Ryan tripped his wife up, stabbed her with a large knife he had concealed in his shirt and ran away. He went to the house of his brother-in-law, the Police Sergeant Thomas Newton, where he confessed his crime and was promptly arrested. Meanwhile, Catherine was taken in to the Cheshire Cheese, a nearby hotel, where despite the attention of Dr Smithwick her wounds overcame her. Even on her deathbed, she could offer no explanation for her husband's sudden violence, telling Police Superintendent McLerie they "were on good terms before this", a view supported by John who claimed that this was the first time he had seen his parents quarrel.

The evidence presented at the inquest into her death and his trial in 1855 showed that Ryan "appeared to be both perfectly collected and sober" when arrested and gave no reason for his actions. But it was also revealed that in September 1854 he was arrested for public drunkenness, suffering from delirium tremens and "being in an unsafe state to be allowed at large" and in lieu of

⁶⁵ 'Domestic Intelligence', *Moreton Bay Courier*, 26th Nov. 1853, 2.

⁶⁶ '1854 Intemperance Committee', 603.

⁶⁷ 'Council Papers. Intemperance', *Herald*, 24th Nov. 1854, 2.

sureties was sentenced to a week in Darlinghurst gaol. A few weeks later, in early October, he was again committed, this time by Newton himself, for being "of unsound mind" and again in lieu of sureties was sent to gaol, this time for two months. At trial, Newton told the court he arrested Ryan "for drunkenness and because I was in bodily fear of him ... [as] a man who, when he did drink, would not be friendly to his nearest relatives" though this violent temperament was not borne out by other witnesses. Leading up to this second arrest, Ryan had repeatedly come to his sister's house and told her and Newton that he could not live with his wife any longer, complaining that she had "rubbed some stuff on his breast" – apparently some form of delusion. It also emerged that Ryan's brother was himself confined in Tarban Creek as a lunatic and while there had killed a fellow inmate.⁶⁸

Medical evidence at the trial varied. Peter Smithwick, the surgeon who had treated Catherine before her injuries overcame her, but who had never served in an Asylum, testified that "[a] man may be perfectly sane upon some subjects and perfectly insane upon others. It is impossible to decide at what particular point a person thus situated became incapable of controlling his acts." He conceded that Ryan's delusions might explain his actions but stated that he thought Ryan was "perfectly sensible of what he had done and his responsibility". Rutter, the Police Surgeon, had treated Ryan in gaol and in September "found him labouring under delusions caused by delirium tremens, from excessive drinking" though on his second arrest in October he was apparently unaffected. Rutter also noted from his experience at the asylum that Ryan's professions of sanity were typical of lunatics and no evidence as to his real mental state.

Ryan's defence, understandably, rested entirely on the question of his state of mind and his Counsel, Mr Darvall argued that his actions, "committed suddenly and in silence, without a shadow of provocation, bore in itself the unmistakable stamp of insanity." Justice Stephen's summation clarified the current state of the law:

Any man temporarily deprived of reason by intoxication would be still responsible for his acts while in that state, for this was a voluntary act, and if drunkenness, itself a crime against society, was admitted as an excuse, any of the greater crimes might be committed with

⁶⁸ Arrested in September see: "Central Police Court", *Herald*, 12th Sep. 1854, 4; arrested in October: 'Central Police Court'; *Herald*, 9th Oct. 1854, 5; committal for murder: 'Central Police Court', *Herald*, 13th Dec 1854, 5; inquest: 'Murder – Coroner's Inquest', *Herald*, 13th Dec 1854, 5; trial: 'Law. Central Criminal Court', *Herald*, 10th Feb. 1855, 4.

*impunity. But where settled insanity was the result even of habitual intoxication, this insanity would form an excuse in the same manner as if it had proceeded from any other cause.*⁶⁹

Ryan was found guilty and sentenced to hang.

However, like all capital sentences, the case was sent for the further consideration of the Executive Council and became the subject of considerable public debate. One controversy was that Stephen had kept important evidence from the jury as inadmissible hearsay, including the suggestion that Catherine Ryan had attributed her husband's recent conduct to madness, brought on by the death of their youngest child. But more generally, the case served as a conduit for debate about crime, medicine and law, revolving in part around the problem of alcohol. 'Mercy', writing in the *Herald*, cited English legal authorities to suggest that the plea of insanity depended on a diagnosed "disease" and not "the delusion occasioned by drunkenness or the transports of passion", but argued that there was "a strong presumption" that Ryan suffered from such a disorder, calling for him to be spared.⁷⁰ After the Governor upheld the sentence and Ryan was hung, the *Empire* which had consistently opposed capital punishment noted the law holding that "an insane person is irresponsible, and must not be punished as a criminal" and argued that the evidence should have been sufficient to provide doubts to his sanity that should have prevented a capital sentence.⁷¹

In contrast, George Mackie, a Presbyterian clergyman, defended the verdict in a series of letters. Attacking the call for mercy he noted that it had been proved that Ryan was "a periodical, if not an habitual, drunkard" and asked "[w]ill any one say that a man is not responsible for his drinking propensities? ... It may be said, a drunkard is a madman ; but who made him so?" He rejected the call for medical leniency in Calvinist terms arguing that:

*[man's]nature is a fallen nature; it is corrupt, depraved, and for this corruption and depravity man himself alone is responsible. And this being so, it is not the Lunatic Asylum men need to keep them from doing evil, it is the grace of God.*⁷²

Mackie was clearly a temperance advocate as he devoted the final paragraph of his letter to a typical attack on alcohol, but his stress on divine judgement was a return to the religious basis that underlay

⁶⁹ 'Law. Central Criminal Court', *Herald*, 10th Feb. 1855, 4.

⁷⁰ *Herald*, 17th Feb. 1855, 4.

⁷¹ 'Death Punishments', *Empire*, 2nd Mar. 1855, 4. See also the letter of 'Anglo-Saxon' who pointed to the absurdity of an exemplary punishment performed in private: "Capital Punishment and Private Executions", *Empire*, 7th Mar. 1855, 6; and, the letter of 'Gamma', who sought to show that the bible did not countenance the death sentence: 'Capital Punishments', *Empire*, 13th Mar. 1855, 6.

⁷² 'Capital Punishment', *Empire*, 14th Mar. 1855, 5; 'Capital Punishment', *Empire*, 29th Mar. 1855, 5; 'Capital Punishment', *Empire*, 12th Apr. 1855, 5.

the post-reformation assault on drunkenness. But by the 1850s, the idea of drunkenness as a sin was increasingly subordinated to secular concerns about the impact of the habit on society and men were increasingly turning to the asylum as the solution to the problems of alcohol.

Drunkenness and Liberty

Growing queries about the responsibility of drunkards and calls for the prohibition of alcohol were both reflections of a larger shift in the popular understanding of government. The philosophical basis for the temperance movement was the view that the government was responsible for alcohol problems, given their patronage of the liquor trade and its revenues. But by the 1850s these views took an increasingly radical form with calls for direct Government intervention, both with the problem drinker and the problem drink. This radical argument for state intervention was explicitly framed in terms of freedom. In a letter to the *Herald*, George Brooks, claimed that “[e]verybody knows, or ought to know, that British liberty does not allow a man to destroy himself, nor to contaminate morals”, citing the Vagrants Act as evidence of the right of the state to interfere with those who were harmful to society.⁷³ Similarly, an anonymous correspondent calling for the Maine Law noted that Britain’s much-boasted liberties depended on legal restraints and argued that utilitarian considerations demanded a ban on alcohol.⁷⁴

On the other hand, traditional liberals took a very different view of these proposals. While the 1854 Intemperance Committee was meeting, William Redman, a leading barrister, wrote to the *Herald* protesting against the growing trend to disregard traditional liberties of the subject. Citing recent cases where he had successfully defended clients arrested on flimsy grounds he warned that “abuses [by the police] were too often corrected only when the hardship came home to the great”.⁷⁵ But his larger criticism was of the growing tolerance for police oppression by the governing classes:

*when we see even a spirit merchant [the magistrate, Daniel Egan] hoping to see the day when a man drunk in his own house could be forcibly dragged out ... every man with a spark of liberty glowing in his heart must feel how great a tyrant this man would be if he could. With such a man the Englishman's home is no longer sacred; his house no longer his castle.*⁷⁶

⁷³ ‘Letter of George Brooks’, *Herald*, 29th Dec. 1853, 2.

⁷⁴ ‘Drunkenness’, *Herald*, 15th Apr. 1854, 3.

⁷⁵ ‘The Violation of Our Homes’, *Herald*, 19th Sep. 1854, 3; ‘Central Police Court’, *Herald*, 29th Aug. 1854, 4; ‘Police brutality’, *Empire*, 29th Aug. 1854, 5.

⁷⁶ ‘The Violation of Our Homes’, *Herald*, 19th Sep. 1854, 3. For another liberal defence against the temperance approach see the English extracts quoted in: ‘The Legislative Suppression of the Sale of Intoxicating Drinks’, *Herald*, 15th Apr. 1854, 4; Edwath Miall, ‘The Morality of the Stick’, *Herald*, 18th Apr. 1854, 8.

While Redman's idealised view of the noble traditions of British law was largely a Whig myth, his outrage contributed to the debate over the proper role of the police in the newly free society of NSW, a debate which once again crystallised around drunkenness. Fears about the criminal propensities of the populace, exacerbated by the moral panic surrounding the gold rushes, saw the colonial elite increasingly promote a positive vision of liberty that regarded deviants as pathologically incapable of responsibility and sacrificed their rights for the greater good of society.

This shift in the understanding of liberty was not confined to the colonies. In the most important work of nineteenth-century liberalism, published in 1859, John Stuart Mill expressed strong views on the punishment of drunkenness:

No person ought to be punished simply for being drunk but [when] ... there is a definite damage, or a definite risk of damage, either to an individual or to the public the case is taken out of the province of liberty, and placed in that of morality or law.⁷⁷

Drunkenness in fact formed the classic example of his general dictum of individual liberty, often known as the harm principle: that any individual has the right to act as he or she desires, so long as these actions do not harm others. In using drunkenness in this way, he not only tapped into a philosophical tradition that had consistently employed the metaphor of intoxication to explore human freedom, but he deliberately chose an area of contemporary society in which his philosophy would be put to the test.

Mill went on to address the temperance question more directly. He quoted the Secretary of the UK Alliance, by then Britain's largest temperance organisation, who had publicly defended prohibition claiming "a right to legislate whenever my social rights are invaded by the social act of another." Mill responded to this view with one of his most forceful and explicitly political passages:

[This is a] theory of 'social rights,' the like of which probably never before found its way into distinct language: being nothing short of this—that it is the absolute social right of every individual, that every other individual shall act in every respect exactly as he ought; that whosoever fails thereof in the smallest particular, violates my social right, and entitles me to demand from the legislature the removal of the grievance. So monstrous a principle is far more

⁷⁷ John Stuart Mill, 'On Liberty' in Mill, *On Liberty and Other Essays*, Oxford: Oxford University Press, 1998 (first published 1859), 90-1.

*dangerous than any single interference with liberty; there is no violation of liberty which it would not justify; it acknowledges no right to any freedom whatever ...*⁷⁸

This argument marked a pivotal point in the development of nineteenth-century liberalism for despite Mill's pervasive influence the trend was increasingly towards the philosophy embodied by the temperance movement. In the broadest possible terms there was a shift from a largely negative to a largely positive view of liberty over the course of the century. While classical liberals had espoused the doctrine of laissez faire and called for as little state intervention as possible in both markets and society, the second half of the nineteenth century saw the gradual triumph of a new liberal doctrine that both justified and reflected the significant expansion of government in the Victorian era. Stated most eloquently by T.H. Green, this new liberalism called for state intervention in the name of the common good:

*justified on the ground that it is the business of the state, not indirectly to promote moral goodness ... but to maintain the conditions without which a free exercise of human faculties is impossible.*⁷⁹

It was this view that would draw the British Liberal Party into its strategic and ill-fated alliance with the temperance movement and lead to the introduction of a form of prohibition through the policy of local option over licenses. But more importantly, the underlying idea was an important driving force in the expansion of government responsibilities in the second half of the nineteenth century, an expansion in NSW that was associated with the emergence of responsible government.⁸⁰

The 1840s had witnessed the first flowering of colonial democracy with the first local elections to the Sydney Council in 1842, the first colony-wide elections in 1843 and a growing campaign for representative and independent government of the colony and this would culminate

⁷⁸ Mill, 'On Liberty', 99-100. Notably, Mill went on to argue that those convicted of drunken violence "should be placed under a special legal restriction, personal to himself; that if he were afterwards found drunk, he should be liable to a penalty, and that if when in that state he committed another offence, the punishment to which he would be liable for that other offence should be increased in severity". (108)

⁷⁹ Cited in: Nicholls, *Politics of Alcohol*, 120. For more on Green and liberalism see: Richard Bellamy, 'T.H. Green and the morality of Victorian liberalism', Bellamy (ed.), *Victorian Liberalism. Nineteenth-century political thought and practice*, London and New York: Routledge, 1990, pp 131-51; Peter P. Nicholson, 'T.H. Green and state action: Liquor Legislation', *History of Political Thought*, vol. 6, no. 3(Winter 1985), pp517-550. For more on the expansion of government see above, 15.

⁸⁰ For more on late nineteenth-century British temperance and the alliance with the Liberal party see: Nicholls, *Politics of Alcohol*, chs. 9-10; A.E. Dingle, *The campaign for prohibition in Victorian England : the United Kingdom Alliance, 1872-1895*, London: Croom Helm, 1980; John Greenaway, *Drink and British Politics Since 1830: a Study in Policy Making*, Basingstoke: Palgrave Macmillan, 2003, ch. 3. For more on the development of this interventionist strand in colonial liberalism later in the century see: Stuart Macintyre, *A Colonial Liberalism: The Lost World of Three Victorian Visionaries*, Melbourne: Oxford University Press, 1991; Michael Roe, *Nine Australian Progressives. Vitalism in Bourgeois Social Thought 1890-1960*, St Lucia, Qld.: Queensland University Press, 1984.

with the granting of fully responsible government on a broad franchise in 1856.⁸¹ Accompanying these practical achievements was a less visible but equally significant growth in what might be termed a democratic consciousness in NSW. This is seen in the flourishing of the colonial press, the growing interest in elections and politics and the emergence of explicitly political societies like the Australian Patriotic Association but also less overtly political clubs and organisations that harnessed a new public energy into social action.⁸² Indeed, the radical turn of the temperance movement in the 1840s must also be understood in relation to the emergence of a popular political voice. The coincidence of this rapid expansion of both democratic institutions and democratic ideals with the increased immigration and moral panic associated with the gold rushes, contributed to the rejection of working-class radicalism by colonial liberals and to their rapid adoption of the interventionist model of government.⁸³ In NSW in the 1850s, the expanding responsibilities of the colonial state, associated with responsible government, were explicitly conceived as a defence against the unruly behaviour of the gold-enriched masses and this helps explain the swift adoption of the radical temperance view of drunkenness. From the mid-1850s, respectable opinion was clear that drinkers could not be trusted and state intervention was required to discipline and treat the problems caused by alcohol.

We can see the way that the problem of drunkenness served as a testing ground for these new liberal ideas in NSW in a *Herald* editorial from this period. Concerned especially about the treatment of women by drunken husbands and the "lenient" punishments meted out to such criminals the editor drew a wider lesson:

⁸¹ The sesquicentenary of responsible government in NSW in 2006 has seen a recent revival of interest in the emergence of colonial democracy with the re-issuing of Hirst's study first published in 1988 and a new account by Cochrane. See: Hirst, *Freedom*; Cochrane, *Colonial Ambition*. For earlier interpretations of these developments see: Roe, *Quest*, ch. 4; T.H. Irving, 'The Idea of Responsible Government in NSW before 1856', *Historical Studies*, vol. 11, no. 62 (April 1964), pp192-205; Irving, 'The Development of Liberal Politics in NSW, 1843-1855', PhD Thesis, University of Sydney: 1967. There is also revived interest in chartism, radicalism and popular movements for democracy in a colonial context for which see: Irving, *Southern Tree*; Paul Pickering, "'The Oak of English Liberty': Popular Constitutionalism in NSW, 1848-1856", *Journal of Australian Colonial History*, vol. 3, no. 1 (April 2001), pp1-27. Irving and Pickering have recently debated the distinctiveness of Australian radicalism and while I accept Irving's defence of the specificity of his study, for my purposes I am more interested in its reflection of a larger transformation within the British world. See: Pickering, 'Was the "Southern Tree of liberty" an Oak?', *Labour History*, no. 92 (May 2007), pp139-42; Irving, "'A Song for the Future": a Response to Paul Pickering', *Labour History*, no. 92 (May 2007), pp143-7.

⁸² For this broader politics in NSW see: Irving, *Southern Tree*, ch. 4, 134-142; Alan Atkinson, *The Europeans in Australia: A History*, vol. 2, *Democracy*, Melbourne: Oxford University Press, 2004, 222-5, 243-9.

⁸³ In describing this as a coincidence I am deliberately avoiding the complex relationship between these simultaneous changes and the class dynamics that underlay them, as beyond the reach of this thesis. The best interpretation of social class in colonial politics in this period remains: C.N. Connolly, 'The Middling-Class Victory in NSW, 1853-62: a Critique of the Bourgeois-Pastoralist Dichotomy', *Australian Historical Studies*, vol. 19, no. 76 (Apr. 1981), pp369-87.

*When all classes of society, except those manifestly and directly interested in the continuation of the abuse, agree that the time has come to put it down, its days are numbered. Private advantage must give way to the public good, and individual interests must be sacrificed to the health of the community.*⁸⁴

Increasingly, in NSW, conceptions of the public good were made in reference to a democratic majority and not the individual and temperance had played an important role in diffusing this view. Discussing the Maine law the *Herald* noted that the “public mind is thoroughly aroused” and though the editor argued against prohibition on practical grounds he noted that:

We have not the shadow of a doubt that there resides in the Supreme Government of the land an absolute right to prohibit spirituous liquors. The only question is as to the expediency of such prohibition.

Similarly, when considering drunkenness, the editor pointed to the costs in crime, in health, to families and to the economy and argued for greater severity calling for the abolition of fines and the imposition of hard labour:

The infliction of a fine of twenty shillings or twenty pounds is a farce; but the forcible seizure of dissolute persons, and compelling them to hard labour, not only as a punishment but as a compensation to society, is quite within the province and within the power of the law ... People will cry out that this would be a hardship on many respectable persons who may be betrayed on occasions of legitimate festivity into passing the bounds of strict sobriety. But if we are to admit any namby-pamby excuse, we may as well give up the attempt to grapple with the evil ... [!]n every case where drunkenness leads to public detriment, and in every case where exposure is incurred, let the law deal out inexorable justice upon gentle or simple, rich and poor, and soon the plague will be abated.

“Society” the paper concluded, “has therefore an evident right, at whatever sacrifice of individual liberty, to vindicate its interests and to put down the pest with a high hand”.⁸⁵

By the mid-1850s, temperance had largely won the battle of public opinion on the question of alcohol. Objections to state control were now largely based on practical concerns and not on liberal principles while the rights of the individual drinker were all but disregarded in favour of the greater right of respectable society. Despite the fact that there was little change to the regulatory

⁸⁴ ‘Crimes of Violence’, *Herald*, 20th Feb. 1854, 4.

⁸⁵ ‘Crimes of violence’, *Herald*, 20th Feb. 1854, 4.

system, the official view of alcohol problems had permanently shifted. In the coming era of responsible government, the state would steadily expand its attempts to control and restrict both the liquor trade and public drinking. But the limited progress made on this front should be attributed as much to the growing influence of the increasingly well organised alcohol lobby as to any ideological resistance. Resurgent temperance grew through the 1860s and 1870s, becoming a mass movement and achieving significant legislative successes in the final decades of the nineteenth century.⁸⁶ The second half of the nineteenth century also saw a rapid expansion of government into other areas of society with health, education and labour all more vigorously and consistently regulated. By conditioning not only its supporters but the larger population to the idea that the drink problem required a state solution, temperance helped contribute to the widespread acceptance of this dramatic transformation. The temperance shift changed the idea of alcohol and alcohol problems in the social imaginary but this reflected larger changes in colonial society and the public understanding of government.

⁸⁶ For subsequent restrictions on supply and licensing see: Beresford, 'Drinkers', Lewis, *Rum*, chs. 2-3. For the Inebriates Act of 1901 see: Lewis, *Rum*, ch. 5; Lewis, 'Alcoholism'; Garton, 'Habitual Drunkenness'.

Appendices

Appendix 1) Available Alcohol

Calculating the volume of alcohol available for consumption in nineteenth-century NSW is fraught with difficulties. I have deliberately avoided the dubious assumption that the volume of alcohol available is a measure of actual consumption – especially in the earliest years, alcohol was often stockpiled. For this reason, it is also best to judge available alcohol as a rolling average. I have also chosen to give an overall figure for litres of pure alcohol, rather than individual volumes of different drinks. While this involves some potentially problematic judgements it avoids the misconception of many nineteenth-century reformers who believed that only particular kinds of drinks were problematic. To the extent that alcohol problems are a direct result of consumption, only the quantity of the intoxicant is relevant. In order to give this overall result I have assumed that all spirits contained 40% alcohol, all wines 10% and all beers 4% and converted gallons to litres. This should understate the actual strength of these drinks – spirits, for example, were often imported at the strongest concentration possible to save space and avoid taxes - but allowing for enormous variation, gives a useful working estimate. The degree of estimation involved is a salutary reminder of the speculative nature of the exercise. Fundamentally, we will never know how much alcohol was consumed in nineteenth-century NSW but my calculations are at least indicative of trends. In general, I think that the figures for the early part of the century are too low and that estimates only become reliable after the 1840s when the volumes start to be impervious to any reasonable level of illicit activity.

The original work on this problem in the late 1970s by A.E. Dingle (and N.J. Butlin for the earliest years) forms the foundation of my calculations but I have supplemented this data by double-checking, occasionally correcting and supplementing references from the original records.⁹⁶⁵ In some instances where data is lacking I have estimated based on available figures on colonial revenue, using as a guide the closest year where we know the proportion of such revenue based on taxing specific kinds of alcohol. I have re-calculated these figures using the updated population

⁹⁶⁵ Butlin, 'How Many Bottles of Rum?'; Dingle, 'Australian Drinking Habits'; Dingle, *Statistical Commentary*; *HRNSW*, *passim*; *HRA*, *passim*; NSW Colonial Secretary, *Returns of the Colony of NSW*, Sydney: 1822-1857; *Statistical Register*, 1858-1900.

statistics put out by the Australian Bureau of Statistics.⁹⁶⁶ By way of comparison I used George Wilson's figures for consumption in England and Wales in the same period.⁹⁶⁷ The data is summarised in Figure 13 and given in full in Table 1. Where necessary I have converted contemporary measurements to gallons and litres according to the following ratios: 4.5 gallons = 1 Litre; 1 legar = 1 tun = 2 pipes = 4 hogsheads = 8 barrels = 210 gallons; 1 puncheon = 70 gallons. I have not included figures for the years before 1800 as it is impossible to compile accurate annual data; for my estimates see above, 71.

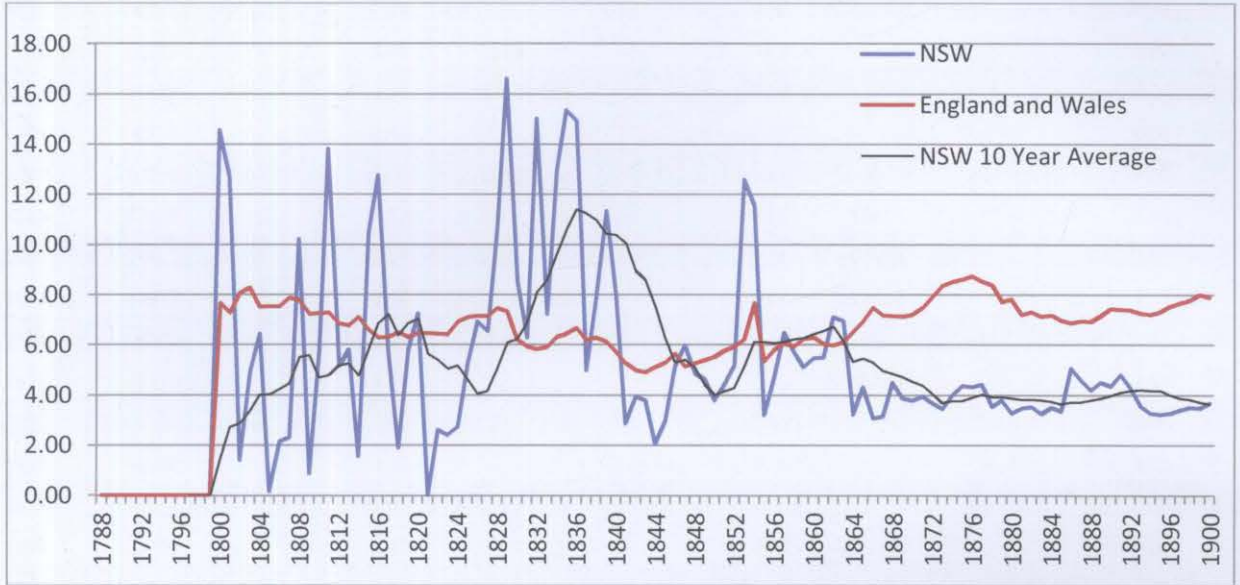


Figure 13 - Available Alcohol, NSW and England and Wales, 1788-1900

Table 1 - Available Alcohol in NSW, 1788-1900

Year	Imported Spirit (g)	Colonial Spirit (g)	Total Spirit (g) / Population	Imported Wine (g)	Colonial Wine (g)	Total Wine (g) / Population	Imported Beer (g)	Colonial Beer (g)	Total Beer (g) / Population	Alcohol (L) / Population
1788			0.00			0.00			0.00	0.00
1789			0.00			0.00			0.00	0.00
1790			0.00			0.00			0.00	0.00
1791			0.00			0.00			0.00	0.00
1792			0.00			0.00			0.00	0.00
1793			0.00			0.00			0.00	0.00
1794			0.00			0.00			0.00	0.00
1795			0.00			0.00			0.00	0.00
1796			0.00			0.00			0.00	0.00
1797			0.00			0.00			0.00	0.00
1798			0.00			0.00			0.00	0.00

⁹⁶⁶ ABS, *Population Statistics*.

⁹⁶⁷ Wilson, *Alcohol and the Nation*, 331-3.

Year	Imported Spirit (g)	Colonial Spirit (g)	Total Spirit (g) / Population	Imported Wine (g)	Colonial Wine (g)	Total Wine (g) / Population	Imported Beer (g)	Colonial Beer (g)	Total Beer (g) / Population	Alcohol (L) / Population
1799			0.00			0.00			0.00	0.00
1800	36590		7.01	22224		4.26			0.00	14.54
1801	39851		6.70	8896		1.50			0.00	12.74
1802	5115		0.73	1418		0.20			0.00	1.40
1803	18643		2.64	2915		0.41			0.00	4.94
1804	21941		3.12	11245		1.60		4247	0.60	6.44
1805	608		0.09			0.00			0.00	0.16
1806	8577		1.20			0.00			0.00	2.16
1807	9923		1.25	838		0.11			0.00	2.29
1808	39484		4.34	48710		0.00			0.00	10.21
1809	4928		0.48			0.00			0.00	0.86
1810	30355		3.01	6658		0.66			0.00	5.71
1811	77355		7.52			0.00	15015		1.46	13.80
1812	29807		2.73			0.00	14558		1.33	5.15
1813	36917		3.04			0.00	22680		1.87	5.80
1814	10058		0.83			0.00	5400		0.44	1.57
1815	72718		5.54			0.00	35343		2.69	10.46
1816	109921		7.08			0.00			0.00	12.75
1817	56898		3.19			0.00			0.00	5.74
1818	23604		1.05			0.00			0.00	1.89
1819	83804		3.22			0.00			0.00	5.79
1820	113047		4.03			0.00			0.00	7.26
1821			0.00			0.00			0.00	0.00
1822	39068		1.32	15077		0.51			0.00	2.60
1823	40997		1.34			0.00			0.00	2.41
1824	47974	6285	1.52			0.00			0.00	2.73
1825	103096	8120	2.90			0.00			0.00	5.23
1826	132191	17453	3.85			0.00			0.00	6.93
1827	123495	19710	3.63			0.00			0.00	6.53
1828	162167	6798	4.22	197360		4.93	194750		4.86	10.68
1829	294198	2310	7.25	227987		5.57	238418		5.83	16.60
1830	205505	5683	4.74			0.00			0.00	8.53
1831	130976	9080	2.92	78751		1.64	76067		1.58	6.28
1832	373589	8256	7.13	161410		3.02	244000		4.56	15.02
1833	204083	9800	3.44	65975		1.06	192237		3.10	7.23
1834	382741	11565	5.97	239045		3.62	207823		3.15	12.94
1835	501282	8450	7.15	283234		3.97	273128		3.83	15.34
1836	541360	5334	6.93	320934		4.07	274618		3.48	14.92
1837	151858	8577	1.86	217620		2.52	237233		2.74	4.97
1838	264576	18090	2.88	399757		4.07	449514		4.58	7.84
1839	423313	60579	4.27	657679		5.80	651528		5.74	11.32

Year	Imported Spirit (g)	Colonial Spirit (g)	Total Spirit (g) / Population	Imported Wine (g)	Colonial Wine (g)	Total Wine (g) / Population	Imported Beer (g)	Colonial Beer (g)	Total Beer (g) / Population	Alcohol (L) / Population
1840	263262	53499	2.49	605116		4.75	983770		7.72	8.00
1841	209098	21354	1.59			0.00			0.00	2.85
1842	225860	18723	1.51	294503		1.81	374315		2.31	3.94
1843	198914	38982	1.41	275720	34630	1.83	401704		2.38	3.79
1844	110047	32660	0.80	52843	51584	0.59	332713		1.86	2.04
1845	165558	50136	1.15	159925	56429	1.15	423015		2.25	2.99
1846	309723	78046	1.97	210283	53720	1.34	1084722		5.51	5.14
1847	490181	80525	2.78	184703	55437	1.17	497639		2.43	5.97
1848	394898	52753	2.03	299061	98463	1.80	467983		2.12	4.84
1849	484168	21866	2.05	275710	97109	1.51	354500		1.43	4.62
1850	444355	12672	1.71	177112	113043	1.09	307847		1.15	3.78
1851	305478	41760	1.76	242080	86484	1.67	532381		2.70	4.40
1852	455345		2.22	198939	94325	1.43	605150		2.96	5.18
1853	1235804		5.51	651200	59078	3.17	1533989		6.84	12.57
1854	1370757		5.67	64900	58633	0.51	1496393		6.19	11.55
1855	317404		1.19	179695	117040	1.12	789468		2.97	3.18
1856	516695		1.79	284247	97192	1.32	1277146		4.43	4.62
1857	821765		2.68	300098	109588	1.34	1779650		5.81	6.47
1858	823363		2.45	311383	59620	1.10	1514913		4.51	5.72
1859	713530		2.18	276233	97422	1.14	1238350		3.78	5.12
1860	648577	172879	2.36	280212	100500	1.09	1401552		4.02	5.46
1861	736479	163039	2.52	278020	85965	1.02	989992		2.77	5.49
1862	1047563	115334	3.18	485622	117637	1.65	1309977		3.58	7.10
1863	1039758	142995	3.14	220796	139009	0.95	1823145		4.83	6.95
1864	406019	106076	1.31	163589	164376	0.84	1023643		2.62	3.21
1865	742704	13347	1.85	184543	169562	0.87	1371989		3.36	4.33
1866	439893	6378	1.04	290384	245359	1.25	1482989		3.46	3.06
1867	503214	20903	1.18	196718	289140	1.09	1274005		2.87	3.13
1868	799187	77431	1.90	139506	414475	1.20	1370591		2.96	4.48
1869	711264	20176	1.52	122812	462008	1.22	1489580		3.10	3.84
1870	738876	48055	1.58	145524	344522	0.98	1344186		2.70	3.77
1871	815966	29678	1.64	116599	415087	1.03	1479740		2.86	3.92
1872	785211	36059	1.54	167577	452447	1.16	1064372		1.99	3.65
1873	634942	54629	1.25	254109	580902	1.51	1603295		2.90	3.45
1874	824708	85346	1.59	150221	686117	1.46	1537519		2.68	3.99
1875	912645	151913	1.79	125887	834542	1.62	1301666		2.19	4.35
1876	875066	218308	1.78	169197	802678	1.58	1323773		2.16	4.31
1877	1063671	150737	1.89	244934	709913	1.49	1215504		1.89	4.41
1878	872456	124156	1.49	213784	687273	1.34	931382		1.39	3.53
1879	1008877	128285	1.60	157133	737762	1.26	1243117		1.75	3.77
1880	944331	110063	1.42	110229	608635	0.97	1091431		1.47	3.26

Year	Imported Spirit (g)	Colonial Spirit (g)	Total Spirit (g) / Population	Imported Wine (g)	Colonial Wine (g)	Total Wine (g) / Population	Imported Beer (g)	Colonial Beer (g)	Total Beer (g) / Population	Alcohol (L) / Population
1881	1162854	74377	1.59	153721	517210	0.86	909513		1.17	3.47
1882	1158680	118066	1.58	173218	545210	0.89	1309706		1.62	3.53
1883	1051388	152766	1.41	186326	593766	0.91	1445316		1.69	3.25
1884	1282352	160403	1.60	150483	444044	0.66	1572555		1.75	3.50
1885	1176169	193343	1.45	184897	559363	0.79	1925876		2.04	3.33
1886	1058451	202420	1.28	133452	602660	0.75	2155224	11000000	13.38	5.05
1887	959881	197016	1.14	152868	668988	0.81	2085238	10000000	11.91	4.56
1888	893244	145620	0.99	134756	808414	0.90	2253216	9300200	11.06	4.19
1889	1059952	200708	1.17	118647	692387	0.76	2593378	9515200	11.27	4.48
1890	1020799	235049	1.13	97272	848885	0.85	2241813	9619600	10.65	4.33
1891	1231462	298626	1.33	131595	919221	0.91	2207330	10594020	11.10	4.80
1892	957466	304720	1.07	106906	936897	0.88	2142044	10807200	10.94	4.29
1893	873262	134670	0.84	61138	753579	0.68	1917448	9753200	9.67	3.55
1894	923608	0	0.75	48623	738039	0.64	1652964	9508400	9.06	3.27
1895	860399	0	0.69	43740	892822	0.75	1624478	9821840	9.12	3.21
1896	918622	0	0.72	50335	801390	0.67	1665599	10177360	9.31	3.28
1897	941847	0	0.73	54003	875304	0.72	1842241	10806400	9.76	3.39
1898	1013084	0	0.77	53626	849118	0.69	1583349	11674880	10.06	3.50
1899	1000472	0	0.75	51903	749292	0.60	1610587	12218560	10.33	3.47
1900	1053672	0	0.77	47447	902360	0.70	1497500	13410800	10.96	3.68

Appendix 2) Revenue from Alcohol

The amount of state revenue based upon taxing the various alcohol industries is also difficult to calculate precisely. The British government provided the funding for the new colony but they did so in a variety of ways with separate bureaucracies funding the transportation of convicts, the salaries of military and civilian officials and the rationing and supply of those within the colony. More importantly, the records of these financial transactions are often incomplete and in any case unreliable, they probably conceal double counting and they rarely balance between NSW and London, particularly because the colonists came to use commissariat funds for paying supplementary allowances and compensating individuals for un-budgeted public services. As Noel Butlin has described, "[t]he accounts served essentially after and over some period, to settle the outstanding personal liability of the accountant for the conduct of his period of office."¹ Though the first local sources of revenue were based on the earliest spirit duties and license fees but before 1822 the data is too sporadic and unreliable to make for meaningful annual figures – in addition to missing data, the enormous variation reflects the fluctuating levels of imports in this period.

From 1823, funding for NSW in this period was divided between three funds, the Commissariat which continued to pay for Convict and military expenses, the expanding Colonial fund which collected local revenues and, after 1833, the Crown and Land fund which controlled revenues from the sale and lease of crown lands. This latter funding was disputed; constitutionally it belonged to Britain but the increasingly independent Legislative Council repeatedly argued that it should be considered Colonial Revenue, a dispute that was resolved in NSW's favour in 1855. To make matters more complex, there were frequent large transfers between the funds and large sums from the Commissariat were accounted as spent on NSW but actually used outside the colony, particularly in the foundation of New Zealand. I have therefore used Noel Butlin's estimates of total expenditure on NSW up to 1850, which differ markedly from total expenditure recorded in the blue books.² After 1850 I have used the figures given by Alan Barnard which summarise the Statistical Registers.³ Note

¹ N. Butlin, *Colonial Economy*, 66.

² N. Butlin, *Colonial Economy*, Appendix 4.

³ Alan Barnard, *Australian Government Finances: A Statistical Overview, 1850–1982*, Canberra: Australian National University, 1985, Australian National University Working Papers in Economic History, No. 59; Barnard, *Some Government Financial Data 1850 to 1982*, Canberra: Australian National University, 1986, Australian National University Source Papers in Economic History No. 13.

that Butlin and Barnard's figures for 1850 do not agree, so I have calculated for both estimates. Data on alcohol revenue is drawn from a variety of official sources and is given in Table 2.⁴

Table 2 - Revenue from Alcohol in NSW, 1788-1900

Year	Imported Spirits (£)	Imported Wine (£)	Imported Beer (£)	Col. Spirit (£)	Col. Wine (£)	Col. Beer (£)	License Fees (£)	Alcohol Revenue (1000 £)	Local Revenue (1000 £)	Total Revenue (1000 £)	Alcohol/Local Revenue (%)	Alcohol/Total Revenue (%)
1788										18.80		
1789										58.10		
1790										44.80		
1791										129.00		
1792										104.60		
1793										70.00		
1794										79.40		
1795										75.30		
1796										83.90		
1797										120.40		
1798										111.50		
1799										80.30		
1800										111.00		
1801										125.50		
1802	887							0.89	0.90	150.30	98.56	0.59
1803	652							0.65	5.20	102.20	12.54	0.64
1804	381							0.38	0.50	47.00	76.20	0.81
1805	1570							1.57	3.10	121.70	50.65	1.29
1806								0.00	1.90	109.20		
1807	353	92						0.45	1.20	123.10	37.08	0.36
1808										131.50		
1809										124.60		
1810	1463	141						1.60	3.30	182.00	48.61	0.88
1811									10.90	225.60		
1812	512	1260						1.77	13.50	199.00	13.13	0.89
1813	6263	162						6.43	14.60	233.30	44.01	2.75
1814	1953	127						2.08	13.30	238.40	15.64	0.87
1815	14842	272						15.11	18.00	199.50	83.97	7.58
1816									17.80	234.10		
1817									24.70	257.30		
1818									31.00	356.10		
1819									40.80	368.60		
1820									43.00	416.30		

⁴ HRNSW, *passim*; HRA, *passim*; Returns of the Colony of NSW; Statistical Register of NSW.

Year	Imported Spirits (£)	Imported Wine (£)	Imported Beer (£)	Col. Spirit (£)	Col. Wine (£)	Col. Beer (£)	License Fees (£)	Alcohol Revenue (1000 £)	Local Revenue (1000 £)	Total Revenue (1000 £)	Alcohol/Local Revenue (%)	Alcohol/Total Revenue (%)
1821									44.50	469.90		
1822	29881	573					3152	33.61	66.70	274.50	50.38	12.24
1823	22018	464					5138	27.62	53.40	198.00	51.72	13.95
1824	23987						3600	27.59				
1825	38661			1081			3133	42.88	97.30	220.00	44.06	19.49
1826	41765			1891			3063	46.72	156.90	255.50	29.78	18.29
1827	39343			2212			4025	45.58	95.60	224.30	47.68	20.32
1828	51902			770			4425	57.10	115.50	294.20	49.43	19.41
1829	61304			289			3725	65.32	98.80	288.70	66.11	22.62
1830	66789			710			5100	72.60	110.80	260.00	65.52	27.92
1831	73500			1195			6550	81.25	122.90	288.40	66.11	28.17
1832	81585			1032			7785	90.40	135.90	318.30	66.52	28.40
1833	94309			1225			9124	104.66	138.70	299.10	75.46	34.99
1834	106289			1665			9877	117.83	187.00	396.90	63.01	29.69
1835	115894			1267			10023	127.18	239.20	530.10	53.17	23.99
1836	126258			800			9505	136.56	369.00	755.20	37.01	18.08
1837	130039			1287			10834	142.16	339.50	694.60	41.87	20.47
1838	109645			2698			10275	122.62	492.90	877.70	24.88	13.97
1839	103514			13078			14740	131.33	255.10	760.90	51.48	17.26
1840	119456			13050			13558	146.06	341.80	941.40	42.73	15.52
1841	119829			9284			13924	143.04	377.00	725.70	37.94	19.71
1842	107925			5155			15275	128.36	412.80	713.90	31.09	17.98
1843	80298			17542			18136	115.98	294.30	497.70	39.41	23.30
1844	71458			14697			18258	104.41	266.70	531.20	39.15	19.66
1845	64355			17929			19890	102.17	280.80	460.80	36.39	22.17
1846	53791			13658			21479	88.93	264.50	435.30	33.62	20.43
1847	58715			14091			22725	95.53	276.00	488.40	34.61	19.56
1848	63852			9232			25440	98.52	294.80	468.10	33.42	21.05
1849	73184			4357			28017	105.56	323.70	621.00	32.61	17.00
1850 Butlin	84514			2850			28790	116.15	370.40	685.80	31.36	16.94
1850 Barnard	84514			2850			28790	116.15		571.00		20.34
1851	99804			7210			29084	136.10		518.00		26.27
1852	138729	4934	1860	18211			32732	196.47		529.00		37.14
1853	193239	32297	8916	28755			36651	299.86		809.00		37.07
1854	236254	35958	9548	35550			38381	355.69		958.00		37.13
1855	232574	19664	5680	46021			39770	343.71		973.00		35.32
1856	314544	24238	7763	51075			45328	442.95		1183.00		37.44
1857	294568	27529	10042	63478			56028	451.65		1368.00		33.01
1859	322810	33865	6728	54627			63387	481.42		1309.00		36.78
1860	301598	27677	7803	44129			61831	443.04		1422.00		31.16

Year	Import. Spirits (£)	Import. Wine (£)	Import. Beer (£)	Col. Spirit (£)	Col. Wine (£)	Col. Beer (£)	License Fees (£)	Alcohol Revenue (1000 £)	Local Revenue (1000 £)	Total Revenue (1000 £)	Alcohol/Local Revenue (%)	Alcohol/Total Revenue (%)
1861	319037	28187	6156	38514			65070	456.96		1558.00		29.33
1863	333987	36614	10673	35651			68011	484.94		1662.00		29.18
1864	319399	23774	8965	10085			68426	430.65		1899.00		22.68
1865	326650	27394	11306	22677			69903	457.93		2038.00		22.47
1866	325789	25514	25428	22054			70574	469.36		2012.00		23.33
1867	336740	26994	22569	23083			70045	479.43		2107.00		22.75
1868	320425	27487	24170	29970			71009	473.06		2203.00		21.47
1869	322423	23500	27234	18577			70811	462.55		2103.00		21.99
1870	319913	21629	23248	12624			70960	448.37		2239.00		20.03
1871	314894	29273	34457	9929			72237	460.79		2812.00		16.39
1872	368680	31403	38177	8829			75857	522.95		3331.00		15.70
1873	400437	35971	45658	11634			79440	573.14		3514.00		16.31
1874	415483	36357	42918	10801			81497	587.06		4126.00		14.23
1875	442850	36918	37755	8573			84551	610.65		5038.00		12.12
1876	485241	38403	37351	9860			89225	660.08		5752.00		11.48
1877	506403	39352	35666	8169			96326	685.92		4992.00		13.74
1878	544596	40881	33864	4007			104171	727.52		4482.00		16.23
1879	521273	34885	37747	3845			106089	703.84		4912.00		14.33
1880	599848	41257	31566	7353			106168	786.19		4714.00		16.68
1881	661861	47062	34579	3705			108992	856.20		7419.00		11.54
1882	692832	51656	41574	5637			109460	901.16		6470.00		13.93
1883	716790	51158	46971	12193			109907	937.02		7118.00		13.16
1884	743697	53097	53209	10625			109899	970.53		7587.00		12.79
1885	722873	54530	61202	8545			111637	958.79		7594.00		12.63
1886	699107	48949	69208	5814			114085	937.16		8583.00		10.92
1887	758805	45237	69189	10653		62196	115274	1061.35		8886.00		11.94
1888	805719	51125	77418	11978		116255	118143	1180.64		9063.00		13.03
1889	800711	47942	79935	16494		118939	119036	1183.06		9495.00		12.46
1890	823418	46141	71597	23174		120245	121142	1205.72		10036.00		12.01
1891	869751	49377	80890	23729		131851	120879	1276.48		10501.00		12.16
1892	812560	38660	71748	21132		135090	120469	1199.66		9707.00		12.36
1893	684352	27500	48439	18165		121915	116041	1016.41		9508.00		10.69
1894	656884	23802	54572	14694		118855	110626	979.43		4944.00		19.81
1895	641389	23309	51546	8606		122773	109961	957.58		9254.00		10.35
1896	659354	24310	55026	5609		127217	107294	978.81		9287.00		10.54
1897	647213	22786	56760	5025		135080	108028	974.89		9482.00		10.28
1898	690868	22626	50416	2865		145936	107255	1019.97		9754.00		10.46
1899	701451	22909	53341	4972		152732	105630	1041.04		9973.00		10.44
1900	769021	27428	53470	7045		167635	108039	1132.64		10612.00		10.67

Appendix 3) Licenses

Calculating the number of licensed houses in NSW suffers from different limitations. Though there are gaps in the data for the earliest years of the licensing system, the evidence for the early period is almost certainly more reliable than for the middle decades of the century. For the years up to 1830, data is drawn from a range of sources but particularly from lists of licenses published in the *Gazette*.¹ From 1830 to 1858 data is drawn from the butts of publicans licenses held in the NSW State Archives based on the indexes available online with duplicate references to a single public house excluded. Though in the 1830s these figures seem plausible, by the 1850s they seem to systematically understate the total number of licenses – I speculate, because many more remote areas were not returning certificates of license to Sydney.² From 1859 onwards data is drawn from the *Statistical Register*.³ I compare these figures with license numbers for England and Wales, taken once per decade.⁴ The data is summarised in Figure 14 and given in full in Table 3.

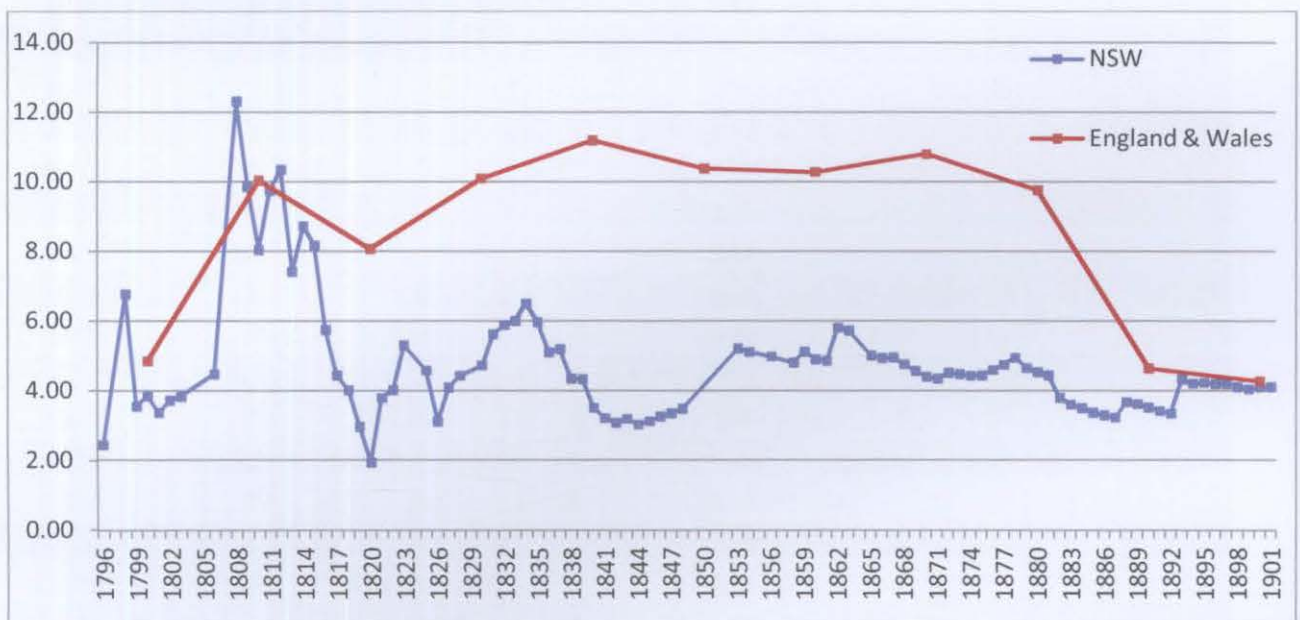


Figure 14 - Licenses/1000 Population, NSW and England and Wales, 1796-1901

¹ Data is drawn from: *HRA; HRNSW; 'Judge Advocate's Bench'; Returns of the Colony of NSW; Gazette*.

² 'Butts of Publicans' Licenses', 1830-1849, NSW State Archives, NRS 14401; 'Certificates of Publicans' Licenses', 1853-1861, NSW State Archives, NRS 14403.

³ *Statistical Register of NSW*.

⁴ Wilson, *Alcohol and the Nation*, 394-7.

Table 3 - Licenses, NSW and England and Wales, 1788-1901

Year	NSW General Licenses	NSW Beer Licenses	NSW Other Licenses	Licenses (all) /1000 Popn.	England & Wales Licenses (all)	England & Wales Licenses/1000 Popn.
1788						
1789						
1790						
1791						
1792						
1793						
1794						
1795						
1796	10			2.44		
1797						
1798	31			6.76		
1799	18			3.54		
1800	20			3.83	43018	4.84
1801	20			3.36		
1802	26			3.71		
1803	27			3.82		
1804						
1805						
1806	32			4.47		
1807	32					
1808	112			12.30		
1809	101			9.84		
1810	31	50		8.02	101114	10.02
1811	56	44	4	9.72		
1812	101	12	4	10.33		
1813	75	15	3	7.40		
1814	89	17	4	8.70		
1815	89	18	5	8.16		
1816	68	21	4	5.74		
1817	69	10	4	4.43		
1818	80	10	4	4.01		
1819	65	12	3	2.95		
1820	48	6	5	1.93	96593	8.06
1821	79	33	7	3.78		
1822	105	14	8	4.01		
1823	138	24	10	5.29		
1824						
1825	137	38	1	4.57		
1826	121		2	3.11		

Year	NSW General Licenses	NSW Beer Licenses	NSW Other Licenses	Licenses (all) /1000 Popn.	England & Wales Licenses (all)	England & Wales Licenses/1000 Popn.
1827	161			4.08		
1828	177			4.42		
1829						
1830	210			4.71	140219	10.09
1831	269			5.60		
1832	314			5.87		
1833	372			5.99		
1834	429			6.49		
1835	424			5.95		
1836	402			5.09		
1837	448			5.18		
1838	426			4.34		
1839	490			4.32		
1840	446			3.50	177993	11.18
1841	466			3.21		
1842	499			3.07		
1843	539			3.19		
1844	540			3.03		
1845	585			3.11		
1846	640			3.25		
1847	685			3.34		
1848	768			3.48		
1849						
1850					186038	10.38
1851						
1852						
1853	1167			5.20		
1854	1233			5.10		
1855	851					
1856	1432			4.97		
1857	538					
1858	1610			4.79		
1859	1671			5.10		
1860	1702			4.88	206028	10.27
1861	1733			4.85		
1862	2122			5.80		
1863	2104		49	5.71		
1864						
1865	2041			5.00		
1866	2109			4.93		
1867	2195			4.94		

Year	NSW General Licenses	NSW Beer Licenses	NSW Other Licenses	Licenses (all) /1000 Popn.	England & Wales Licenses (all)	England & Wales Licenses/1000 Popn.
1868	2196			4.75		
1869	2192			4.56		
1870	2187			4.39	244885	10.79
1871	2242			4.34		
1872	2403			4.50		
1873	2471			4.47		
1874	2537			4.42		
1875	2630			4.43		
1876	2813			4.59		
1877	3043			4.73		
1878	3312			4.94		
1879	3288			4.64		
1880	3347			4.52	253109	9.74
1881	3436			4.42		
1882	3063			3.78		
1883	3074			3.59		
1884	3144			3.50		
1885	3179			3.37		
1886	3231			3.29		
1887	3270			3.22		
1888	3368		888	3.66		
1889	3405		891	3.61		
1890	3428		905	3.51	134296	4.63
1891	3441		924	3.41		
1892	3441		924	3.34		
1893	3370		3210	4.31		
1894	3290		2298	4.19		
1895	3238		2458	4.22		
1896	3176		3278	4.18		
1897	3170		3404	4.19		
1898	3153		3347	4.09		
1899	3141		3344	4.04		
1900	3163		3475	4.10	138856	4.27
1901	3151		3562	4.10		

Appendix 4) Arrests for Drunkenness

The difficulties in compiling and using data on arrests for drunkenness in nineteenth-century NSW is discussed in some detail above. I will confine myself here to a reminder that arrest rates are not a measure of drunkenness so much as a measure of police attention and to the warning that while I am confident in the general trend of increased police concern, I suspect that the earliest figures seriously understate the total rate of arrest, due to gaps in the data. Data is drawn from various magistrates' bench books, from evidence to a series of official inquiries into alcohol and from the *Statistical Register*.¹ I have given the NSW-wide data, only available from 1841, below in Table 4 and summarised the comparative rates of arrest in Figure 15.

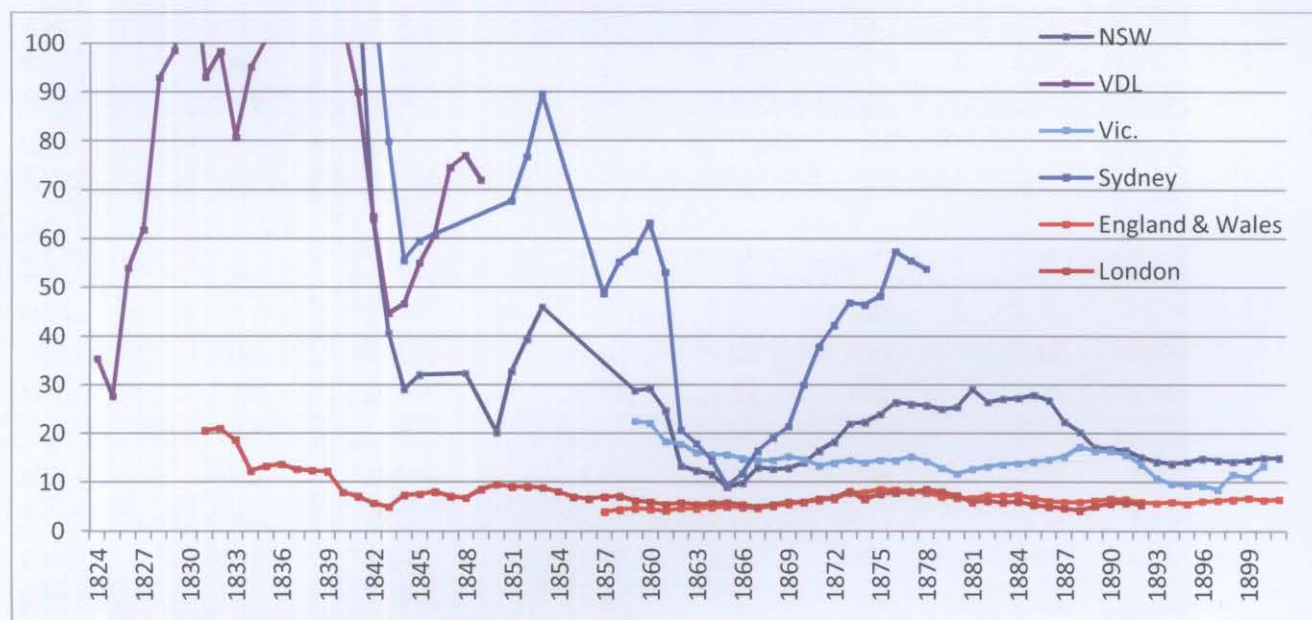


Figure 15 - Committals for Drunkenness/1000 Population, Various Jurisdictions, 1824-1901

¹ Drunkenness given in: *VPLC of NSW*, 1847, vol. 1, 632-4; vol.2, 60; 1849, vol. 1, 1010-11; 1852, vol. 1, 1022; 1854, vol. 2, 514-5; NSW Legislative Assembly, *Votes and Proceedings of the Legislative Assembly of NSW*, Sydney: 1856-1900, 1857, vol. 2, 597; 1859, vol. 4, 1369-70, 1434-5; *Statistical Register*. Police numbers in: *Gazette*; Sturma, *Vice*, 73-4; *Distribution of the NSW Police Force 1863-1881 ...*, Canberra: Popinjay Publications, 1988; Fletcher, *Police*, 239; U.K. Parliament, *Judicial Statistics of England and Wales, 1857-1880*. British figures from: Joseph Fletcher, 'Statistical Account of the Police of the Metropolis', *Journal of the Statistical Society of London*, vol. 13, no. 3 (Aug. 1850), pp221-267, 258; 'Miscellaneous Statistics', *J. of Stat. Soc.*, vol. 15, no. 3 (Sep. 1852), 263; Levi, 'Limits of Legislative Interference'; Wilson, *Alcohol and the Nation*; U.K. Parliament, *Judicial Statistics of England and Wales, 1857-1880*. Victorian figures from: Victoria Penal Dept., *Criminal Statistics ...*, Melbourne: 1858-67; Victoria Registrar-General's Office, *Statistics of the Colony of Victoria*, Melbourne: 1852-73; Victoria Registrar-General's Office, *Statistical Register, 1874-1900*. VDL in: VDL Colonial Secretary's Office, *Statistical Returns of VDL from 1824 to 1839*, Hobart: 1839; VDL Colonial Secretary's Office, *Statistics of VDL*, Hobart: 1839-49.

Table 4 - Charges of Drunkenness in NSW, 1841-1901

Year	Charged with Drunkenness	All Charges Before a Magistrate	Drunkenness/ All Charges (%)	Charges/ 1000 Popn.	Police Officers	Police/1000 Popn.	Charges/Police
1841	16504	25582	64.51	113.58	587	4.04	28.12
1842	10381	16118	64.41	63.96	621	3.83	16.72
1843	6865	11720	58.58	40.59	549	3.25	12.50
1844	5179	9174	56.45	29.02	542	3.04	9.56
1845	6007	9015	66.63	31.97	571	3.04	10.52
1846					570	2.90	
1847					714	3.48	
1848	7138	15437	46.24	32.33	723	3.27	9.87
1849					739	2.99	
1850	5380	17036	31.58	20.16	636	2.38	
1851	6454			32.72	552	2.80	11.69
1852	8043			39.30	591	2.89	13.61
1853	10301			45.92	788	3.51	13.07
1854							
1855							
1856							
1857							
1858					581	1.73	
1859	9419	18018	52.28	28.76	724	2.21	13.01
1860	10166	19193	52.97	29.17	663	1.90	15.33
1861	8817	16837	52.37	24.67	663	1.86	13.30
1862	4875	15410	31.64	13.32	828	2.26	5.89
1863	4643	15106	30.74	12.31	1041	2.76	4.46
1864	4507	16321	27.61	11.55	1000	2.56	4.51
1865	3665	15687	23.36	8.97	959	2.35	3.82
1866	4174	16004	26.08	9.75	909	2.12	4.59
1867	5760	16181	35.60	12.97	871	1.96	6.61
1868	5860	15929	36.79	12.67	887	1.92	6.61
1869	6167	16514	37.34	12.83	863	1.79	7.15
1870	6953	16447	42.28	13.96	833	1.67	8.35
1871	8472	18025	47.00	16.40	849	1.64	9.98
1872	9727	17458	55.72	18.21	803	1.50	12.11
1873	12144	21784	55.75	21.97	861	1.56	14.10
1874	12778	21924	58.28	22.26	901	1.57	14.18
1875	14206	25265	56.23	23.94	910	1.53	15.61
1876	16171	26993	59.91	26.37	971	1.58	16.65
1877	16696	28363	58.87	25.97	995	1.55	16.78
1878	17224	30718	56.07	25.67	1024	1.53	16.82

Year	Charged with Drunkenness	All Charges Before a Magistrate	Drunkenness/ All Charges (%)	Charges/ 1000 Popn.	Police Officers	Police/1000 Popn.	Charge s/Police
1879	17715	32860	53.91	25.00	1154	1.63	15.35
1880	18774	35774	52.48	25.33	1166	1.57	16.10
1881	22560	41402	54.49	29.03	1202	1.55	18.77
1882	21393	39758	53.81	26.43	1246	1.54	17.17
1883	23178	43177	53.68	27.10	1317	1.54	17.60
1884	24438	46199	52.90	27.18	1372	1.53	17.81
1885	26291	48261	54.48	27.85	1444	1.53	18.21
1886	26310	48854	53.85	26.75	1463	1.49	17.98
1887	22706	44094	51.49	22.38	1492	1.47	15.22
1888	21129	42579	49.62	20.23	1514	1.45	13.96
1889	18355	38345	47.87	17.09	1568	1.46	11.71
1890	18654			16.76	1652	1.48	11.29
1891	19092	40012	47.72	16.56	1666	1.44	11.46
1892	17872	40445	44.19	15.11	1757	1.49	10.17
1893	17091	38562	44.32	14.17	1777	1.47	9.62
1894	16933	36044	46.98	13.75	1820	1.48	9.30
1895	17717	36939	47.96	14.11	1854	1.48	9.56
1896	18883	36642	51.53	14.84	1875	1.47	10.07
1897	18673	35413	52.73	14.41	1898	1.46	9.84
1898	18724	35864	52.21	14.21	1957	1.49	9.57
1899	19300	35837	53.85	14.41	2003	1.50	9.64
1900	20418	37462	54.50	15.01	2107	1.55	9.69
1901	20580	38092	54.03	14.96	2165	1.57	9.51

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