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Sound and Fury in Colonial Australia

The Search for the Convict Voice, 1800-1840

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This thesis uses an aural analysis of penal-era Australia to enliven, and unsettle, discussion of convict subjectivity within penal-era historiography. The ‘search for the convict voice’, the quest to discover something of the inner-lives of figures that have transfixed Australians for generations, is expanded as well as complicated by an analysis of the sounds of penal life. By reimagining the soundscapes of penal society as complex conglomerations of sounds and noises, voices, conversations, screams, grunts, groans and silences, this thesis enlarges our conception of what a convict voice is, and where best to search for its most genuine expression.

The convict voices that form this thesis are part of the story of Australia’s penal, legal and social evolution. As such, they are enduring and permanent, and their legacy can be seen in the development of Australia’s colonial institutions, not in opposition, or contradiction, to such developments. The aim of this thesis is to use aural history to show how convict language and noise, despite the restrictions placed on it by the processes of legal argument, corporal punishment or forced garrulity or silence, was a part of the very fabric of the penal system. The convict voices that emerge from this thesis are forged within, and therefore form an indelible part of, the very processes that created a distinctive Australian society.

The Introduction locates my analysis within the existing historiography of penal-era Australia, focusing on how an appreciation for the auditory in colonial life can aid in uncovering the lived convict experience from 1800-1840.

Chapter One is an exploration in, and examination of, convict subjectivity, and how exciting, malleable and uncertain is our search for ‘the convict voice’. This chapter emphasizes that uncovering convict identity should be approached from as widely conceived sources and methodologies as possible, including the auditory and oral. The stentorian or stolid, whispered and timid voices within this chapter also introduce the importance of language and ‘voice’ to contextualise the aural analysis of colonial life that follows.

Chapter Two begins my aural analysis of colonial society by emphasising the importance of the soundscapes of the penal era in any search for ‘the convict voice’. This chapter reminds the reader that colonial Australia was a heard as well as a seen place, and the sounds of penal life powerfully impacted upon colonial inhabitants’ sense of identity and place.

Chapter Three narrows my aural analysis of colonial Australia to an exploration of the specific sounds of the penal system. Comparisons to the noises produced by physical punishment within the slave societies of the American South reveals how the production and control of convict sound could carry ideological significance as well as serve a purely ‘corrective’ function.

Chapter Four deepens my aural analysis of flogging begun in chapter three. It argues for a new awareness of the sounds of the phenomenon of flogging in colonial Australia: as a political and social tool as well as a punishment. I reveal how the sounds of convict pain, produced within a system of deliberate and calibrated corporal violence, were central to the development of punishment policy in the colony, and were understood as such by penal authorities and convicts alike.

Chapter Five shifts from the sounds of violence to the contested sounds of actual convicts voices. I examine how convict conversation and words buttressed penal disciplinary structures. In particular, the phenomenon of convict informing is revealed as an aural construct: a system of discordant voices that created suspicious and divided convict populations. By arguing that convict informing was as much a product of savvy penal authorities as the tendency of convicts to undermine each other, this chapter also seeks to challenge existing historiography that portrays the convicts as habitual fabricators.

Chapter Six traces the development and impact of convict oracy into the colony’s criminal courts. Rather than raised solely in opposition to penal repression, convict legal language—those words spoken by convicts before the colonial Bench—can be appreciated as an indelible part of the development of colonial legal culture and broader institutional life.

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Introduction

With 60,000 leg-ironed males indulging in lurid sex it must have made a heck of a noise. Van Dieman's Land at night must have sounded like the *Anvil Chorus* while the din from New South Wales must surely have been heard from outer space.¹

The above quotation comes from a 2008 essay by John Izzard, reviewing and celebrating the work of Babette Smith for her 'rehabilitation' of Australia's convict forebears in *Australia's Birthstain: the startling legacy of the convict era*.² While probably not qualifying as a link to what Joy Damousi has described as the 'wider historiography of the history of the auditory in cultural life',³ its impact is nevertheless arresting. In congratulating Smith for her excoriation of Father William Ullathorne, Sir William Molesworth and Reverend John West, as the architects of the 'convict stain' that has pervaded colonial history for generations,⁴ Izzard employs an aural analysis, of sorts, to challenge the notion that places such as Norfolk Island were cesspools of unbridled homosexual depravity and lust.

Despite his hyperbole, Izzard alerts us to the rich possibilities of appreciating history through an auditory prism, listening for the complexities and indeed, absurdities, of the

¹ John Izzard, 'Rehabilitating the Convicts', *Quadrant*, 52(6), June 2008, 51-52.

² Babette Smith, *Australia's Birthstain: The Startling Legacy of the Convict Era*, Allen & Unwin, Sydney, 2008.

³ Joy Damousi, *Colonial Voices: A Cultural History of English in Australia, 1840-1940*, Cambridge University Press, Cambridge, 2010, 3.

⁴ Smith, *Australia's Birthstain*, 1-7; Alison Alexander, 'The legacy of the convict system', *Tasmanian Historical Studies*, 6(1), 1998, 48-59.

past. While perhaps an unsubtle foray into the acoustics of colonial Australian life, Izzard's contribution may nevertheless resonate with Damousi's call for a more nuanced understanding of the auditory within historical inquiry:

Historians have long prioritised the written over the spoken and the visual over the auditory. A shift of the historical imagination from seeing to hearing past societies offers a further perspective for examining the complexity of everyday life—especially when we consider how crucial the auditory aspect of life was during those times.⁵

This thesis subscribes to Damousi's call for an imaginative turn to the auditory in historical inquiry, and consequently attempts to provide an aural analysis of penal-era Australia. While not proclaiming a complete aural survey of the period from 1800-1840, some of the potential for aural history to uncover new insights into the nature, operation and complexity of this period is promised. Further, by appreciating how the sounds of the past impacted upon the power structures, social layering and institutional ordering of colonial Australia, a more nuanced understanding of Australian convictism arises. In an approach that accords with what Catie Gilchrist has termed the 'wider historical project of uncovering the convict voice',⁶ this thesis uses the sounds produced by, and within, penal-era Australia to expand our knowledge of the lived conditions of Australia's convicts. Thus, the 'search for the convict voice',⁷ the quest to discover something of the

⁵ Damousi, *Colonial Voices*, 3. For recent work on the auditory in Australian history, see: Diane Collins, 'A roaring decade': Listening to the Australian goldfields', in J. Damousi and D. Deacon (eds), *Talking and Listening in the Age of Modernity: Essays on the History of Sound*, ANU Press, Canberra, 2007, 7-18; Joy Damousi, 'A History of Australian Voice and Speech in *The Australian Legend* and beyond', *Journal of Australian Colonial History*, 10(2), 2008, 155-170; Diane Collins, 'Acoustic journeys: Exploration and the search for an aural history of Australia', *Australian Historical Studies*, 128, 2006, 1-17.

⁶ Catie Gilchrist, 'A life of noisy riot, of filth, indecency and profaneness': The convict voice and the bourgeois imagination', *Journal of the Royal Australian Historical Society*, 92(1), June 2006, 29.

⁷ With thanks to Hamish Maxwell-Stewart for inspiration for the title of this thesis. See Maxwell-Stewart, 'The search for the convict voice', *Tasmanian Historical Studies*, 6(1), 1998, 75-89.

‘inner-lives’ of those figures that have transfixed Australians for generations, is enlivened as well as complicated by an analysis of the sounds of penal life. By reimagining, and representing, the soundscapes of penal society as complex conglomerations of voices, conversations, screams, grunts, groans and silences, this thesis enlarges our conception of what a convict voice sounds like, and where best to search for its most genuine expression.

While it is impossible to actually listen to convicts’ voices, attempts to recreate ‘a convict voice’, or an approximation of the lived convict experience of colonial Australia, can benefit from an analysis of the aural dynamics of colonial society and of penal power. This thesis, in part, rejects the assumption that a convict voice, recorded for example in the colonial criminal court records or local newspaper, ‘speaks’ any more clearly, or is any more revelatory of convicts’ existences, than the muffled groans of a convict desperate to salvage some dignity while being flogged. A search for the convict voice, therefore, becomes a more elaborate, complicated and problematic search for those voices, words, sounds and noises that made up the auditory world of colonial Australia. This world, it is argued, reimagined here as a fiercely contested aural and auditory environment, was as much the creation of those authorities tasked to maintain discipline within both the convict and free community as it was a reflection of a nascent ‘convict society’.⁸ Indeed, questions of the degree of ‘agency’ enjoyed and exercised by convicts

⁸ This is a subtle yet important distinction from James Boyce’s interpretation of colonial Van Dieman’s Land as a *convict society*. Boyce asserts that understanding penal-era Van Dieman’s Land ‘is not best exemplified by the well known penal apparatus – chain gangs, Port Arthur and hard labour – but by the everyday lives of the ordinary people of the colony’. See James Boyce, *Van Dieman’s Land*, Black Inc. Publishing, Melbourne, 2008, 9.

during this period, especially the freedom to ‘raise their voices’ in pertervid protest or untrammelled oracy,⁹ are at the centre of my search for the convict voice.

For John Hirst, the stubbornly enduring image of a man being flogged, however misleading and unrepresentative of the reality of lived convict experience in colonial Australia, remains a potent symbol of our convict system.¹⁰ This thesis has less to say on Hirst’s conclusions, as important and contestable as they are, than with the nature and use of the image itself.¹¹ Noting what Mark Smith has termed historians’ ‘fetish for the visual’,¹² this thesis will bring an aural awareness to colonial Australia: listening for the way that the sounds produced within this often brutal, and brutalising, environment impacted upon its administration, maintenance, ideological underpinnings and image. As such, this thesis challenges historians’ tendencies to treat sound as incidental, or even superfluous, to historical analysis.¹³ It is submitted that an exploration of ‘the convict voice’ requires a deeper consideration of the aural aspects of penal social, cultural and disciplinary relations to give context to this endeavour. As well as expressions of identity, resistance and collaboration, convict voices are also, at base, the sounds produced by convicts as they attempt to negotiate with the forces that confronted them. By imagining the aural universe in which these images of penal brutality were played out, the role of

⁹ Alan Atkinson, *The Europeans in Australia: A History: Volume One*, Oxford University Press, Oxford, 1997, 6.

¹⁰ John Hirst, *Convict Society and its Enemies: A History of Early New South Wales*, Allen and Unwin, Sydney, 1983, 69.

¹¹ For a robust critique of Hirst’s arguments concerning the evolution of colonial Australia, as well as Hirst’s response, see: David Neal, ‘Free society, penal colony, slave society, prison?’, *Australian Historical Studies*, 22(89), October 1987, 497-524.

¹² Mark M. Smith, ‘Echoes in print: Method and causation in aural history’, *The Journal of the Historical Society*, 3(4), Summer/Fall 2002, x.

¹³ Mark M. Smith, ‘Introduction: Onward to audible pasts’, in, Mark M. Smith (ed), *Hearing History: A Reader*, University of Georgia Press, Athens, 2004, x.

sound in structures of penal control and corporal violence are illuminated. In short, by putting some aural flesh on Hirst's, and others, visual bones, convict era Australia becomes a more cacophonous and complex place.

Despite this aim, this thesis is also attuned to Douglas Kahn's warning of the ephemerality of sound as a subject of historical inquiry.¹⁴ Moreover, the very task of writing about sound, constrained as our language is in visualist metaphors, adds to the difficulty of adequately expressing the nature of sound in an historical context.¹⁵ For Kahn, the treatment of sound as an object, in and of itself, is problematic. In other words, and given that sound 'dissipates, modulates, infiltrates other sounds, becomes absorbed by actual objects, and fills a space surrounding them' writing as if sound enjoys a concrete existence is necessarily artificial.¹⁶ In other words, sound as an historical subject is hard to pin down. Rather than be defeated by this, however, this thesis instead embraces the potentialities and shortcomings of aural history—gathering insights by listening for echoes within the archive.

For example, by bringing sound from the sidelines to the centre of historical analysis, its (often) planned, or strategic, production is revealed. Thus, to imagine a flogging, with a

¹⁴ Douglas Kahn quoted in Mark M. Smith, 'Introduction: Onward to audible pasts', xii-xiii.

¹⁵ Mark M. Smith, 'Introduction: Onward to audible pasts', xiii. In the same work see: Jacques Attali, 'Listening', 10-11. For the importance of sound in the inculcation of terror and fear see: Peter Bailey, 'Breaking the sound barrier', 25. For an ambitious analysis of how people in Antebellum America "heard" social, political and economic events in the past see: Mark M. Smith, *Listening to Nineteenth-Century America*, University of North Carolina Press, Chapel Hill, 2001, 6. For an analysis of the ubiquity of visual metaphors in everyday, as well as historical, writing see: Martin Jay, *Downcast Eyes: The Denigration of Vision in Twentieth-Century French Thought*, University of California Press, Berkeley, 1993, 1-20. Bruce Smith provides a critique of historians' ability to adequately capture past sounds in: Bruce R. Smith, 'How sound is sound history? A response to Mark Smith', *The Journal of the Historical Society*, 3(4), Summer/Fall, 2002, 307-315.

¹⁶ Douglas Kahn quoted in Mark M. Smith, 'Introduction: Onward to audible pasts', xiii.

writhing victim desperately attempting to maintain his dignity,¹⁷ or express his defiance, in the silent acceptance of his punishment is to appreciate the importance of sound to this scene.¹⁸ Likewise, the fervent efforts of the flogger to elicit the appropriate noises of convict pain and discomfort elevates the sounds of this punishment from the incidental noises of physical violence to important aural indicators of penal severity. This aural and auditory as much as physical battle, played out countless times in recollections of penal-era Australia,¹⁹ raises a central question, or dilemma, that informs many of the questions and arguments in this thesis. In the ‘contest’ between flogger and flogged, *who is producing, and for what purpose* the noise elicited from the flayed subject? In wielding the ‘cat’ with varying degrees of skill and enthusiasm,²⁰ to what extent should the sounds of corporal violence be attributed to the flogger himself, *as the producer of the noise*, rather than the yelling, screaming or grunting convict? Perhaps more importantly, given

¹⁷ This thesis discusses the ‘voices’ raised by convicts within, and created by, processes of corporal violence. These noises, sounds and voices are overwhelmingly male. This is more a product of the research process than a deliberate focus on masculine convict voices. While women were indeed flogged in the early decades of the penal settlement, their aural traces in the archive are slight. Further, corporal punishment of convict women ceased in the colony in the early 1820s. For discussion on the flogging of convict women during these years see: Mark Finnane, *Punishment in Australian Society*, Oxford University Press, Melbourne, 1997, 20. The importance of convict women in any analysis of ‘the convict voice’ is unquestioned, as my mention of convict women’s raucous oracy, discussed in chapter six of this thesis, attests. However, my thesis is led not by a gendered analysis of the convict voice, but by an analysis of the creation of voices through penal institutions and disciplinary structures. For ways that convict women were punished, see: Kristin McCabe, ‘Discipline and Punishment: Female convicts on the Hunter River, 1830-1840. What can we do with her?’, *Journal of Colonial Australian History*, Vol. 1. No. 1, 1999, 28-61; Joy Damousi, ‘‘What punishment will be sufficient for these rebellious hussies?’ Headshaving and Convict Women in the Female Factories, 1820s-1840s’, in Ian Duffield and James Bradley (eds), *Representing Convicts: New Perspectives on Convict Forced Labour Migration*, Leicester University Press, London, 1997, 204-214.

¹⁸ Raymond Evans and Bill Thorpe, ‘Commanding men: Masculinities and the convict system’, *Journal of Australian Studies*, 56, 1998, 24-25.

¹⁹ John Frost, *The Horrors of Convict Life*, republished Sullivan’s Cove, Hobart, 1973, 10; John Frow, ‘In the penal colony’, *Journal of Australian Studies*, 24(64), 2; Maggie Weidenhofer, *Port Arthur: A Place of Misery*, B. and M. Reid in association with Port Arthur Historic Site Management Authority, Port Arthur, Tasmania, 1990, 22-23; Raymond Evans and Bill Thorpe, ‘Commanding men’, 17-33; Catie Gilchrist, ‘‘This relic of the plain’: Penal flogging, convict morality and the colonial imagination’, *Journal of Australian Colonial History*, 9, 2007, 1-28.

²⁰ Hirst, *Convict Society and its Enemies*, 62.

some authorities extreme reactions to convict stoicism during punishment,²¹ did the sounds of convict pain mean more to floggers, and colonial officials, than is presently appreciated?

In asking these questions, I seek to reveal the strategic production of noise as part of a planned aural environment: convict sounds as the deliberately produced ‘noises’ of a penal system that was designed to physically and emotionally repress its subjects. In effect, these sounds were constructed for disciplinary and ideological purposes; they were not the product of an organic or spontaneous process of convict resistance or solidarity. Convict sound, which includes their voices and words as well as their screams and groans, is not conceived here as an uplifting or positive response to overarching repression. Rather, it is conceptualised as a controlled and mediated disciplinary construct. While it is incorrect, and overly dramatic, to conceive of convict sounds as solely the product of the repressive strategies of their keepers, this thesis, nevertheless, is careful not to portray convicts’ sonic power as too great, or their sonic world as too broad. In short, and to borrow an otherwise eloquent encapsulation of aural power, convicts, in the repressive auditory confines of the penal system, were not ‘the lords of [their] sounds’.²²

²¹ Jack Bushman, “*Jack Bushman*”: *Passages from the Life of a “Lifer”*, Ian Duffield (ed), The International Centre for Convict Studies, <http://iccs.arts.utas.edu.au/narratives/bushman2.html> viewed at 11/02/10, Chapter 3, 3.

²² Shane White and Graham White, *The Sounds of Slavery: Discovering African American History Through Songs, Sermons and Speech*, Beacon Press, Boston, 2005, ix.

With a few notable exceptions, attempts to understand something of the acoustics of colonial Australia have been largely absent within convict historiography.²³ An important exception is Alan Atkinson, particularly in his analysis of the ways that language and voices effected colonial social, cultural and institutional development. In *The Europeans in Australia: A History: Volume One*, Atkinson portrays colonial Australia as a constellation of competing sounds and silences: a theatre where authority was conceived and embedded within the interplay of oral and literate cultures.²⁴ While the Colony itself was ‘mapped out’ in the minds of its Imperial architects, this social and penal experiment was constructed among the discordant voices of its inhabitants.²⁵ For Atkinson, penal Australia is a region ‘thick with competing voices’ and choosing which ones to listen to is crucial to understanding its development.²⁶ While clearly separating, and prioritising, actual convict voices over the ‘sounds emitted from beaten and battered bodies’, Atkinson’s portrayal of colonial Australia as a crowded and contested aural universe acknowledges the auditory dynamics of power and negotiation necessary for the development of colonial society.²⁷

²³ Collins, ‘A ‘roaring decade’, 7-18. Collins has also written on the different meanings that the sounds of the Australian bush has held for those that have traveled through it. See: Collins, ‘Acoustic journeys’, 1-17.

²⁴ Alan Atkinson, *Europeans, Volume One*, 345. In a review of Atkinson’s *The Commonwealth of Speech*, one reviewer imagined Atkinson as ‘a historian with an ear trumpet, straining to hear the voices and conversations of the past’, see: Mark McKenna, ‘Review of *The Commonwealth of Speech* by Alan Atkinson’, *Australian Historical Studies*, 125, 2005, 153.

²⁵ Atkinson, *Europeans, Volume One*, 225.

²⁶ Alan Atkinson, ‘Writing about convicts: Our escape from the one big gaol’, *Tasmanian Historical Studies*, 6(2), 1999, 25.

²⁷ Atkinson has commented on the trend for historians, perhaps inspired by the example of Robert Hughes’ *The Fatal Shore*, to analyze bodies as a means of uncovering lived convict experience. In his words: ‘People are examined for what their surfaces—skin, hair, clothes—say about them’. See: Alan Atkinson, ‘Writing about convicts’, 17-28; Robert Hughes, *The Fatal Shore: A history of the Transportation of Convicts to Australia, 1788-1868*, The Harvill Press, London, 1986. For a reaction to Atkinson’s critique of this trend, and the tendency of work on convict subjectivity to ‘deny the diversity of convict experience’ see: Ian Duffield, ‘Daylight on convict lived experience: The history of a pious negro servant’, *Tasmanian Historical Studies*, 6(2), 1999, 29-62.

For Atkinson, what is found in the voices of historical subjects is paramount to understanding their true natures. Thus, the historians' 'essential task' is to hunt for these voices, as they represent the only real 'medium of the soul' of past actors.²⁸ This thesis subscribes to this view up to a point, the point at which you ask: where did these voices come from and how were they expressed? Implicit in these questions is the acknowledgment of the importance of language to the power structures of society, and the ways it can be used in the maintenance of repression and power.²⁹ Atkinson's separation of the sounds of flogged convicts—the noise created by their screams—from the words that they may have spoken, reduces the importance of these screams for historical analysis by denying, or under-appreciating, their communicative value. I argue that these screams of pain, or grunts of defiance, as the case may be, spoke of the interplay of power and domination between the flogged and flogger, and are laced with ideological and masculinist meaning.³⁰

Listening for the sounds of this violence in the historical record—what Mark Smith likens to 'teasing aurality from ostensibly silent print'³¹—is to appreciate how penal-era soundscapes reflected broader negotiations between convicts and their keepers over control, power and identity in penal Australia. The hiss of the cat as it split the air; the dull thud of cured leather striking exposed flesh; and the muffled, or spectacular, cries of the flayed contributed to an environment that used the sounds of extreme violence,

²⁸ Atkinson, 'Writing about convicts', 25.

²⁹ Amanda Laugesen, 'The politics of language in convict Australia, 1788-1850', *Journal of Australian Colonial History*, 4(1), April 2002, 17-40.

³⁰ Evans and Thorpe, 'Commanding men', 17-33.

³¹ Mark M. Smith, 'Echoes in print', 319; for Bruce Smith's work see: *The Acoustic World of Early Modern England*, University of Chicago Press, Chicago, 1999.

among other methods, to articulate and communicate the severity of penal discipline. Underappreciated amid both contemporary penal-era, and later historiographical, debates over the frequency and relative brutality of convict punishment is how it *sounded*, and the way that noise produced by physical violence informed the relationships between flogger and flogged, helping both ends of the whip to make sense of the aims of the convict system, and their place in it.³²

My conception of ‘the convict voice’ hopes to add to a growing literature animating colonial Australia as an oral and aural, as well as visual and literate, environment. As discussed, Alan Atkinson’s work has revealed how colonial society was saturated in competing voices, arguments and conversations. Amanda Laugesen,³³ Kirsten McKenzie³⁴, Catie Gilchrist,³⁵ and Hamish Maxwell-Stewart,³⁶ among others, have taken these voices and shown how their use and control affected the social, cultural, administrative and sexual structures of colonial and imperial society. This thesis seeks to add to debate over the role of convict noise, sound and voices in broader penal power

³² For analyses of the debates and issues surrounding the severity, or otherwise, of flogging in penal-era Australia see: Stephen Nicholas and Peter R. Shergold, ‘Unshackling the past’, in Stephen Nicholas (ed), *Convict Workers: Reinterpreting Australia’s Past*, Cambridge University Press, Cambridge, 1988, 3-13; for a critique of the *Convict Workers* approach see: Raymond Evans and William Thorpe, ‘Power, punishment and penal labour: *Convict Workers* and Moreton Bay’, *Australian Historical Studies*, 25(98) 1998, 90-111; Evans and Thorpe, ‘Commanding men’, 17-33; Gilchrist, ‘“This relic of the cities of the plain”’, 1-28; Clive Moore, ‘Colonial manhood and masculinities’, *Journal of Australian Studies*, 56, 1998, 35-50; Tamsin O’Connor, ‘A zone of silence: Queensland’s convicts and the historiography of Moreton Bay’, in Duffield and Bradley, *Representing Convicts*, 1997, 124-141.

³³ Laugesen, ‘The politics of language’, 31.

³⁴ Kirsten McKenzie, ‘Performing the peer: Status, empire and impersonation’, *History Australia*, 1(2), 2004, 209; Kirsten McKenzie, *A Swindler’s Progress: Nobles and Convicts in the Age of Liberty*, New South Publishing, University of New South Wales Press, Sydney, 2009, 199-222.

³⁵ Gilchrist, ‘A life of noisy riot’, 29.

³⁶ Maxwell-Stewart, ‘The search for the convict voice’; see also Hamish Maxwell-Stewart and Susan Hood, *Pack of Thieves?: 52 Port Arthur Lives*, Port Arthur Historic Site Management Authority, Port Arthur, Tasmania, 2001.

relations. It will show how pervasive and powerful were the disciplinary structures that controlled, both aurally and physically, colonial society.

Listening to Convicts

This new awareness not only explores the sounds that convicts made, but how and why those sounds were interpreted and created by colonial authority figures. In the experiences of colonial officials, gaolers and guards, often forged within the intense sensory intimacy of the convict transport ship, an almost preternatural aural sensitivity can be discerned. The purpose of writing about this acute aural sensitivity, apart from its under-appreciation within colonial historiography,³⁷ is to reveal how important the sounds of convict and penal life was to those who maintained it. For Alan Atkinson, early colonial Australia was a society built on the ingenuity, expertise and discipline of a predominantly sea-faring class.³⁸ Within this society he includes the convicts, who built much of the physical colony, as well as the mental architects—those such as Governor Arthur Phillip and David Collins—whose ideas and attitudes infused early colonial development.³⁹ Atkinson, Greg Dening and others have all acknowledged that the settlement and development of colonial Australia was a task undertaken and

³⁷ For some exceptions see: Gilchrist, 'A life of noisy riot'; 'The 'Crime' of Precocious Sexuality: Young male convicts and the politics of separation', *Journal of Australian Colonial History*, 8, 2006, 43-66; Alan Atkinson, *The Commonwealth of Speech: An Argument about Australia's Past, Present and Future*, Australian Scholarly Publishing, Melbourne, 2002; *The Europeans in Australia Volume Two: Democracy*, Oxford University Press, Melbourne, 2004, 129-151.

³⁸ Atkinson, *Europeans, Volume One*, 110-117.

³⁹ *Ibid.*, 113.

accomplished, in the main, by sailors.⁴⁰ In a memorable summation, Atkinson hints of the extent of social, cultural and disciplinary infrastructure wrought by the attitudes and actions of sailors:

The network of conversation among the Europeans was shaped a good deal by the seaman's eye and the seaman's tongue; its syntax tasting of salt water.⁴¹

Moreover all convicts, by necessity, experienced seaboard culture as part of their transportation experience. Irrespective of whether it was their first experience at sea, all transported felons, in one way or another, knew what it was like to live on board a sea-bound vessel.⁴² This fact, in addition to infusing the colony with a peculiarly nautical ambiance, made the dangers of both mutiny and escape by sea an ever-present concern. Grace Karskens has demonstrated how, as a 'nautical town', Sydney's waterways and proximity to the sea facilitated many successful, as well as witnessed many unsuccessful, convict escapes.⁴³ Indeed, escape by sea was a recurring fantasy of convicts whose skills made a nautical attempt more realistic than an overland escape to places both real and

⁴⁰ *Ibid.* See also Greg Denning, *Mr Bligh's Bad Language: Passion, Power and Theatre on the Bounty*, Cambridge University Press, Cambridge, 1992, 4; Inga Clendinnen, *Dancing With Strangers*, Text Publishing, Melbourne, 2003, 12; Grace Karskens, *The Colony: A History of Early Sydney*, Allen and Unwin, Sydney, 2009, 164-165; Grace Karskens, 'The dialogue of townscape: The Rocks and Sydney, 1788-1820', *Australian Historical Studies*, 108, 1997, 89; Cassandra Pybus, *Black Founders: The Unknown Story of Australia's First Black Settlers*, University of New South Wales Press, Sydney, 2006, 74.

⁴¹ Atkinson, *Europeans, Volume One*, 113. See also Hamish Maxwell-Stewart's description of sailors' 'nautical eyes' feasting upon the tough pine logs, seemingly perfectly suited for ship-building purposes, found at the mouth of the Huon river in Van Dieman's Land in 1804: Maxwell-Stewart, *Closing Hell's Gates: the death of a convict station*, Allen and Unwin, Sydney, New South Wales, 2008, 4.

⁴² Cindy McCreery and Kirsten McKenzie, 'The Australian colonies in a maritime world', in Alison Bashford and Stuart Macintyre (eds), *The Cambridge History of Australia: Volume 1: Indigenous and Colonial Australia*, Cambridge University Press, New York, 2013, pp. 560-584. For discussion of some of the discipline problems faced by transport Captains dealing with convict cargoes, see: Emma Christopher, 'Ten Thousand Times Worse than the Convicts': rebellious sailors, convict transportation and the struggle for freedom, 1787-1800', *Journal of Australian Colonial History*, 5, 2004, 30-46.

⁴³ Karskens, *The Colony*, 290-292. See also Grace Karskens, 'This spirit of emigration': the nature and meanings of escape in early New South Wales', *Journal of Australian Colonial History*, 7, 2005, 1-34.

imagined.⁴⁴ For these colonial architects, whose habits of authority and discipline were also shaped by their experiences at sea, the control of unruly convict bodies (and body's) was informed by the rigid rules of a ship-bound profession.

As Atkinson notes, the threat of mutiny, and the very thought of mutiny, preoccupied the nautical mind, whether on land or at sea.⁴⁵ Crucial to the maintenance of discipline at sea, and therefore a crucial plank in the disciplinary armoury of sailors and guards on convict transport ships, was a finely tuned aural antenna: an awareness of how the sounds of the ship could act as a barometer of convict dissatisfaction.⁴⁶ The following paragraphs seek to demonstrate, at this early stage in the thesis, how intense such an aural antennae could be, especially when the sounds heard by sailors and gaolers were interpreted as the threatening sounds of collective convict unrest. It is by the interpretation of convict noise that we can begin to appreciate the seriousness with which colonial authorities took the sounds of penal life, and purloined that concern into a strict aural control of their environment. This aural control, in turn, reflects the profound interest in controlling the auditory environment possessed by some colonial authorities, and the subsequent impact this has on any analysis of the 'convict voice' emanating from the penal-era.

Significantly, while authorities were often listening to the everyday sounds of shipboard, barracks or settlement-site life, what they *heard* was the more sinister sound of convict plot, insurrection and revolt.

⁴⁴ Atkinson, *Europeans, Volume One*, 113.

⁴⁵ *Ibid.*

⁴⁶ Gilchrist, 'A life of noisy riot', 36-40.

An indication of the intense aurality of shipboard life is captured in the following incident. It concerns Master John Drake, captain of the male convict transport ship *Chapman*, which arrived in Sydney on July 26th, 1817.⁴⁷ A formal Commission of Inquiry was established after the *Chapman* arrived, owing to what Governor Macquarie's secretary J.T. Campbell described as the 'melancholy circumstances which occurred during the voyage, whereby twelve of the convicts had been killed and twenty-two wounded'.⁴⁸ After being 'well treated' from the time of sailing (14th of March, 1817), to the 17th of April 1817, a suspected convict insurrection aboard the *Chapman* led to a dramatic deterioration in the convicts' treatment. For the remaining three months of their voyage to New South Wales, the *Chapman* convicts were chained, had their rations and allowances halved, and were subjected to brutal physical punishment and neglect.⁴⁹

An important part of the evidence informing the Inquiry was a journal kept by Master Drake himself. While reading it is interesting for the glimpses of sea-faring life it contains, reading the journal with an aural sensibility—reading for the sounds that leap off the page—provides revealing insights into the aural sensibility, bordering on obsession, that Drake displayed in relation to monitoring his convict cargo. In addition to the general brutality of life at sea, captains of convict transports also had to contend with the disciplinary challenges of controlling large groups of felons for extended periods in confined spaces.⁵⁰ As such, their use of every possible means to monitor the mood of

⁴⁷ 'Governor Macquarie to Earl Bathurst', 12th December, 1817, Government House, Sydney, New South Wales, *Historical Records of Australia (HRA)*, Series One, Volume Nine, 708.

⁴⁸ 'Secretary Campbell to Governor Macquarie', 1st August, 1817, Sydney, *HRA*, Series One, Volume Nine, 651.

⁴⁹ *Ibid.*, 652.

⁵⁰ Gilchrist, 'A life of noisy riot', 36.

their charges was utilized. The following journal entry is included in this introduction as an example of the way that the sounds of the ship informed the attitudes of sailors to the disciplinary task facing them on long voyages. In its aural obsessions is an insight into the way that convicts were *intensely listened to*, and how the sounds that convicts made informed the disciplinary structures of their voyage. Thus, one sequential and unedited extract of Master Drake's journal includes the following:

At 8pm two lights in the fore and Main Hatch way, 'having heard some of the Prisoners picking the locks'.

23rd March. Sentry at Fore Hatch way heard Convicts pickings locks; caused Guard and Crew to be under arms; Surgeon, Captain and 3rd Mate with one of the Guard went round the prison *and found* all quiet; at 12, They being heard again as before at 10:30 pm, placed one of the Crew on After Hatchway, who heard some of them say, it was D—d bad job we are found out; see more fully the Captain's journal.

14th April. 3 Men Punished. Punished Nelson for last Night's Conduct; and at request of Crew hand Cuffed Wm. White, Landsman, One of the Crew, for being several times Observed to talk with Convicts.

17 April. Mustered all the Convicts up the after and down the fore; Michael Collins, Convict, informed Mr Baxter, 3rd Mate, that the Convicts meant to take the Ship, Murder all on board, and take Ship to America.

26 April. Punished 3 Prisoners, Vist. Hall, Dooly, and Martin, One for rattling Chains and Alarming Sentry, and the others for Attempting to take off their Irons.

5 May, 7 Punished. Light Breezes and Fine Weather. At 8 am, Punished 2 for being out of bed contrary to orders and rattling their Chains.

3 June, 7 Punished. Punished 7 on Sundry Accounts; Wm. Walsh, Andrew Murtagh, George McMullen (inter alia for laughing)

13 June, 4 Punished. Punished 4, Andrew McMahan for noise and fighting; Mich'l McDonogh for making noise with his Chains in the Night; Pat Riley and Jas. Hayes for fighting. Quere, Are not the squabbles here mentioned Strong

presumptive proof that No Conspiracy (of an Extensive nature at least) existed among the Convicts?

23 June, 3 Punished. Punished 3; Mich'l Peters for uncleanliness, Lawrence Biran for theft, Ed, Ging for making a Noise in the Night. Quere, What kind of noise?⁵¹

Reading this entry, it is not only striking how preoccupied were the sailors about monitoring and controlling the sounds of the ship, but also the diversity of sounds that these sailors were able to distinguish between and decipher, overwhelmingly for their mutinous potential. Further, and borrowing from Martin Jay's example of revealing the hidden visualist metaphors that dominate much modern writing,⁵² there are, at my count, at least twelve *aural* references, expressions or metaphors within twenty lines of Master Drake's excerpt. In reading these outpourings, we can detect the almost palpable suspicion—seemingly fuelled in equal parts by paranoia and intense curiosity—that infused his journal. Of particular relevance, even poignancy, is the question asked about the specific nature of the noise heard on the 23rd of June, the last line of the passage extracted above.

Apparently for Drake, it was not enough to hear and react to the noises of the ship and those who made them, but it was the *nature* of the sound that also interested him.

Arguably, this is not the diary of a captain whose task was to silence the ship; rather his paranoid musings reflect a man whose *control* of sound on board was paramount. In this subtle distinction between the eradication and control of noise is a crucial insight into

⁵¹ Abstract of Captain Drake's Journal of the ship *Chapman* at and from Cork to Sydney Cove, with occasional queries and remarks, 'Correspondence from Macquarie to Bathurst, 12th December 1817', *HRA*, Series One, Volume Nine, 563-570.

⁵² Jay, *Downcast Eyes*, 1-20.

Drake's desire to understand and control, rather than abolish, convict noise. For someone whose sole concern was to eradicate sounds on board the ship, it may be assumed that he would be less concerned, and therefore take less notice, of the actual nature of the sounds being emitted by convicts. In effect, if your task is to eradicate sound, then what type of sound you are eradicating is of little concern. Contrarily, the intense interest displayed by Drake—his preoccupation with the precise nature and meaning of the noises he was hearing—tends to paint a picture of a man concerned to understand and control the noises coming from his ship.

This phenomenon points to an important distinction between the treatment by authorities of convicts' sounds and noises, and one that is under-appreciated in writing about convict/authority relations in penal-era Australia. What Drake's behaviour reveals, is an intense interest in, as well as desire to control, convict auditory culture. Discussed more fully in following chapters, the idea that penal authorities dismissed or ignored convict language or noise, or convict sound more generally, must be challenged. By recognizing, albeit in the rather extreme form of Master Drake above, that those tasked with controlling convicts were intimately interested and informed by the noises convicts made, allows for a renewed appreciation of the contested and mediated terrain of convict auditory culture.

Significantly, the *Chapman* Inquiry also revealed how convicts aboard the transport ship understood the importance of the sailors' strict aural control. Indeed, the subtle aural distinctions made by those listening for trouble could result in extreme physical

punishment for unfortunate victims. Particularly in the menacing ‘jangling’ of a convict’s chains could be heard, by authorities both vigilant and uneasy of their security at sea, the stirrings of mutiny or the attempted overthrow of the ship.⁵³ From the convict James Burn, who gave evidence before the inquiry, we get a glimpse of the sophistication of guards’ monitoring of convict noise:

From the first firing to the second, the Convicts had been quiet. It was then their whole study to be so; it was as much as our Lives were worth to cough. I have seen several Men punished for coughing; that was the crime that went up. I saw them from the Main hatchway where they were seized up; Baxter used to say it was an insinuating cough, a Signal. If the Prisoners made a noise with their Irons or muffled them with a Handkerchief or any thing else to prevent a Noise, they were flogged.⁵⁴

From Burns’ evidence, we see the use of both sound and silence to control potentially unruly felons. Convicts were severely punished for making noise, as well as for attempting to remain silent. Thus, the control of both the noise and quietude of convicts, in this sense by punishing both, reveals the insidious control that authorities attempted to wield over their auditory worlds. This use of both sounds and silences to control convicts, while introduced here, is an aspect of penal-era auditory culture that infuses the chapters that follow.

From James Burn we can begin to appreciate how convict silence, or quietude, was as much a valued as a feared phenomenon for authorities. As Catie Gilchrist notes, authorities viewed the silencing of the convict ship not just as an expression of control,

⁵³ Peter Cunningham, *Two Years in New South Wales 1827*, David Macmillan (ed), Angus and Robertson, Sydney, 1966 (first published in London in 1827), 290; 311.

⁵⁴ Evidence of James Burn, Monday 25th August 1817, ‘Correspondence from Macquarie to Bathurst, 12th December 1817’, *HRA*, Series One, Volume Nine, 582-583.

but also as a necessary stage in the disciplining and civilising project of enlightened punishment practices.⁵⁵ Gilchrist reveals how important the ‘silencing’ of convict voices on board was to overall discipline at sea:

The power of speech to incite piracy on the seas and mutiny in the barracks was a fear which was little assuaged throughout the following years of transportation.⁵⁶ Gilchrist’s linking of the ‘seas’ with the ‘barracks’ is crucial to an understanding of the ways that colonial authorities used the phenomenon of convict sound and noise to inform penal and disciplinary practices. Further, this acute sensitivity to the politics of convict noise also allowed for intervention in other spheres of convicts’ auditory lives.

Convict Subjectivity

This thesis employs an aural analysis of colonial Australia to add to our search for an enhanced, or at least more nuanced, portrayal of convicts’ lived physical and mental worlds. This concern with convict subjectivity, by necessity and design, engages with the long history of attempts to understand, and classify, convict identity and character.⁵⁷ Pinning down the sheer diversity of humanity represented by those arriving in Australia complicates this project. Stephen Garton, in an article tracing the impact of criminological theories on the origins of transported convicts, neatly encapsulates the

⁵⁵ Gilchrist, ‘A life of noisy riot’, 30-40.

⁵⁶ *Ibid.*, 36.

⁵⁷ Amid a large literature, see: Atkinson, *Europeans, Volume One*; 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*, Faber, London, 1966; Babette Smith, *A cargo of Women: Susannah Watson and the Convicts of the ‘Princess Royal’*, Pan Macmillan, Sydney, 1988; Richard White, *Inventing Australia: Images and Identity 1688-1980*, Allen and Unwin, Sydney, 1981, 16-28; Alexander, ‘The legacy of the convict system’, 48-59; Luke Joachim Clarke, ‘‘Lost to All Humanity? Suicide, Religion and Murder Pacts in Convict Van Dieman’s Land’’, B.A. Honours Thesis, School of History and Classics, University of Tasmania, 2002.

problem confronting historians attempting to characterise these felons. Of the ‘radically different interpretations’ of convict characters available, he asks:

Were they rebels, hereditary criminals, members of a criminal class, innocent victims of a harsh and repressive society or casual offenders drawn to crime through want?⁵⁸

The notion of the habitual male criminal, and moral panic over the existence of a pervasive yet shadowy criminal underclass, informed discourses of crime and punishment in early nineteenth century Britain.⁵⁹ For Britain’s political class, post-Napoleonic War economic depression, the return of demobilised combatants from that conflict, and the apocalyptic example of the French Revolution, combined to fuel a visceral fear of ‘the Mob’, and its criminal and revolutionary potential.⁶⁰ Adding to this fervid social climate, crude theories of inherent and hereditary criminality were pandered to, and fuelled by, popular and literary portrayals of the debased, refractory and transgressive working class criminal. Indeed, for authors such as Charles Dickens, who would later titillate Britain’s middle classes with tales of the moral contagion exemplified by the returned ex-convict,

⁵⁸ Stephen Garton, ‘The convict origins debate: Historians and the problem of the ‘criminal class’’, *Australian and New Zealand Journal of Criminology*, 24, 1991, 67.

⁵⁹ Douglas Hay, ‘Property, authority and the criminal law’, in Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thompson and Cal Winslow (eds), *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England*, Allen Lane, London, 1975, 17-63; Alan Atkinson, ‘The free-born Englishman transported: Convict rights as a measure of eighteenth-century empire’, *Past and Present*, 144, August 1994, 106; Catie Gilchrist, ‘Male Convict Sexuality in the Penal Colonies of Australia 1820-1850’, PhD thesis, University of Sydney, 2004, 5.

⁶⁰ Justice James Spigelman, ‘The Macquarie Bicentennial: A Reappraisal of the Bigge Reports’, *History Council of New South Wales*, Sydney, 4th September, 2009, 10-14.

these felons constituted an oeuvre that affirmed the transported felon as a calculating and callous professional criminal.⁶¹

This stereotype of the hardened, hereditary criminal was challenged, and largely debunked, by historian G.A. Wood, in a seminal 1922 article.⁶² By characterising Britain's aristocratic elite as venal and decadent, Wood effectively recast transported convicts as victims of social and political disadvantage rather than the epitome of a degenerate Lombrosian criminal caste.⁶³ Indeed, Wood's belief in environmental factors necessitating, and therefore producing, convict crime, and his faith in the reformatory potential of those supposedly predisposed to criminality, ran counter to emerging eugenic and psychiatric explanations for criminal behaviour. Notions of the hereditary criminal, unredeemable and unreformable, while persuasive in the criminological literature,⁶⁴ failed to overcome the optimistic interpretation of convicts' characters implicit in Wood's work. Convicts' reputations, as victims of repressive social forces and a brutal criminal law code, survived for the next thirty to forty years.

It was a trio of prominent historians, among others, who first challenged Wood's views. For Manning Clark, Lloyd Robson and A.G.L. Shaw, far from being the hapless victims of economic want and political repression, transported convicts were in fact willing,

⁶¹ Richard White, *Inventing Australia*, 22; see also White's reappraisal of his book in Wayne Hudson and Geoffrey Bolton, *Creating Australia: Changing Australian History*, Allen and Unwin, Sydney, 1997, 12-22; Charles Dickens, *Great Expectations* Penguin, Harmondsworth, 1965; *Bleak House*, Collins, London, 1953; For a modern Australian version of this tale see: Peter Carey, *Jack Maggs*, University of Queensland Press, St. Lucia, 1997.

⁶² George Arnold Wood, 'Convicts', *Royal Australian Historical Society Journal and Proceedings*, 8(4), 1922, 177-208.

⁶³ Wood, 'Convicts', 177-208; Garton, 'The convict origins debate', 67.

⁶⁴ Garton, 'The convict origins debate', 68-69; Philip Smith, 'Durkheim and criminology: Reconstructing the legacy', *The Australian and New Zealand Journal of Criminology*, 41(3), 2008, 337-340.

organised and cunning recidivists.⁶⁵ Through a concentrated analysis of the convict indents—those records produced by the transportation process that recorded convicts’ physical characteristics and social and cultural origins—these historians were able to construct a picture of the ‘typical’ transported convict that countered Wood’s representation. Thus, in revealing the convict as an unskilled, urbanised and petty criminal, Clark, Robson and Shaw demolished the empirical basis of Wood’s thesis.⁶⁶ Using a similar methodology, the *Convict Workers* team of economic historians pronounced a ‘new and dramatic reinterpretation of the convict system’ in the late 1980s.⁶⁷ With a steadfast (or according to certain critics, a naïve) faith in the accuracy and comprehensiveness of the convict indents, Stephen Nicholas, Peter Shergold and their colleagues provided new insights into convict health, literacy levels and occupational status.⁶⁸ Despite the empirical richness of their work, however, critics of the *Convict Workers* approach have highlighted the absence of important elements that constituted the whole transportation experience for convicts.⁶⁹ In short, the human detail of penal servitude—the brutal physical, psychological, emotional and spiritual toll endured by some convicts—was sacrificed to a bloodless economic analysis.

⁶⁵ C.M.H. Clark, ‘The origins of the convicts transported to eastern Australia 1787-1852’, *Historical Studies*, 26(27), 1956, 121-135; Lloyd Robson, *The Convict Settlers of Australia*, Melbourne University Press, Victoria, 1965; Shaw, *Convicts and the Colonies*.

⁶⁶ Garton, ‘The convict origins debate’, 69.

⁶⁷ Nicholas and Shergold, ‘Unshackling the past’, 3.

⁶⁸ Nicholas and Shergold explain their methodological approach in ‘Unshackling the past’: ‘As economic historians, trained in economics and quantitative techniques, we ask new and different questions about the early economic and social development of New South Wales. Our methodology is empirical and comparative. Data on 19,711 convicts transported to NSW between 1817 and 1840 form the quantitative basis for our analysis of the convict system’. In writing of the impact of *Convict Workers*’ methodology and findings, Barrie Dyster asserts: ‘It does seem that anyone writing after 1988 has to look at the convict period in a new way’. See Barrie Dyster (ed), *Beyond Convict Workers*, Department of Economic History, UNSW, 1996, 1; for a critique of *Convict Workers* see Evans and Thorpe, ‘Power, punishment and penal labour’, 90-111.

⁶⁹ Evans and Thorpe, ‘Power, punishment and penal labour’, 93-100; Ralph Shlomowitz, ‘Convict workers: A review article’, *Working Papers in Economic History*, 36, January 1990, Flinders University of South Australia, 5.

This work of quantifying the convict experience continues. For Timothy Causer, a more realistic version of life at the Norfolk Island penal settlement can be achieved by painstakingly recording the statistics of every, or nearly every, convict that went through the settlement from 1825 to 1855.⁷⁰ The primary reason given for his collation of the enormous repository of data collected about convicts is that this approach will make the story of Norfolk Island about the convicts, and not the people who wrote about them. For Causer:

This thesis intends to question received interpretations of the second penal settlement at Norfolk Island (1825-1855) which dwell upon the sensational, and thus take a first step towards a more nuanced and contextualised history in which the prisoners are at the centre of the story.⁷¹

While Causer's project sheds much needed light on the conditions facing inmates on Norfolk Island, the means by which the convicts are to be thrust centre-stage in his project is more problematic. An alternative interpretation of the effects of such studies, of course, is to claim that the statistics collected about convicts becomes the central story, and not the people from whom they were collected.⁷² As such, the story then reverts back to an analysis of power relations and the intervention of the state in the lives of prisoners rather than the experiences of the prisoners themselves. In this way, and as Evans and

⁷⁰ Timothy Causer, 'Only a Place fit for Angels and Eagles': The Norfolk Island Penal Settlement, 1825-1855', PhD Thesis, University of London, 2010. For analysis by Causer see: "The worst types of sub-human beings?" The myth and reality of the convicts of the second penal settlement at Norfolk Island, 1825-1855', *Islands of History*, Sydney, 2011, 8-31; 'Norfolk Island's 'suicide lotteries': Myth and reality', Menzies Centre for Australian Studies, King's College, London, 2010, http://www.academia.edu/1109987/Norfolk_Islands_suicide_lotteries_myth_and_reality, viewed at 14/01/2011.

⁷¹ Causer, 'Only a Place Fit For Angels and Eagles', 18.

⁷² Evans and Thorpe, 'Power, punishment and penal labour', 93-96.

Thorpe have powerfully argued, what is left of such an approach is a statist history that tells us much about the mechanisms of state control in such environments but very little of the human story of penal Australia.⁷³ In fact, in some of these studies it is hard to imagine a less-human, and less-personal history of the lives of prisoners transported to Australia.⁷⁴

Inspired by Robert Darnton and Natalie Zemon-Davis, among many others, cultural historians began asking new questions, and teasing new meaning, from the well-trodden records used by Clark, Shaw and others.⁷⁵ As Stuart Macintyre notes, past emphasis on the utility of the convict worker and the normality of the convict experience is now, in turn, challenged by historians ‘fascinated by the otherness of the convicts’.⁷⁶ In this ‘decisive imaginative turn in recent convict historiography’,⁷⁷ convict subjectivity and individual identity has been accorded fresh meaning. Attempts to uncover the convict voice have seen snippets of convict language, whether spoken, written or inscribed—

⁷³ *Ibid.*, 90-111.

⁷⁴ Criticisms of the *Convict Workers* approach, particularly their perceived downplaying of the brutalities of penal Australia has been extensive. See: Evans and Thorpe, ‘Power, punishment and penal labour’, 90-111. In an article on the origins of the Newcastle penal settlement and its first Commandant James Wallis, David Andrew Roberts and Daniel Garland also critique the usefulness of quantitative methodology: ‘Surveying the Newcastle punishment returns between 1810 and 1825, and without going so far as to quantify and tabulate the statistical data (a rather inapt way of recounting the experience of corporal punishment), it can be generally surmised that under each of the five Commandants who administered Newcastle during that period, the number of sentences issued per head of population was proportionally similar...’. See: David Andrew Roberts and Daniel Garland, ‘The forgotten commandant: James Wallis and the Newcastle penal settlement, 1816-1818’, *Australian Historical Studies*, 41(1), 5-24.

⁷⁵ In what he terms ‘cultural history’, Robert Darnton investigates the ‘exceptionally rich’ archives that survived from the French ‘Old Regime’ to reveal the ways in which people in the eighteenth-century made sense of their worlds: ‘When we cannot get a proverb, or a joke, or a ritual, or a poem, we know we are on to something. By picking at the document where it is most opaque, we may be able to unravel an alien system of meaning’. See *The Great Cat Massacre: And Other Episodes in French Cultural History*, Allen Lane, London, 1984, 3-7; see also Natalie Zemon Davis, *The Return of Martin Guerre*, Harvard University Press, Cambridge Massachusetts, 1983, 1-5; Zemon Davis, *Fiction in the Archives: Pardon Tales and their Tellers in Sixteenth-Century France*, Stanford University Press, Stanford California, 1987, 2-6.

⁷⁶ Stuart Macintyre, *A Concise History of Australia*, 2nd ed, Cambridge University Press, Melbourne, 2004, 70.

⁷⁷ Gilchrist, ‘A life of noisy riot’, 29.

even patches of convict skin—used to animate a subjective ‘convict experience’ of penal-era Australia.⁷⁸ This movement towards seeing convicts as self-fashioning individuals will, so the theory goes, fashion a new view of the penal system: one seen from the ideas, feelings and lived experiences of the transported rather than their gaolers or colonial and imperial masters.⁷⁹

An exemplar of this imaginative turn is the discovery of convicts’ ideas, feelings and desires—their inner lives—in the coded messages inscribed on their skin in the form of tattoos. Given that a statistically significant number of transported convicts bore some form of deliberate bodily marking, historians such as David Kent, James Bradley and Hamish Maxwell-Stewart have accorded the subjective convict experience of penal-era Australia new cultural and embodied meanings through analyses of these markings.⁸⁰ Indeed, for Bradley and Maxwell-Stewart, the texts embedded beneath convicts’ skin, or at least the descriptions of them recorded in the Van Dieman’s Land convict indents from 1840-1853, are ‘the closest to the convict voice that it is now possible to attain’.⁸¹ These scholars retain a cautious confidence in these etchings to elucidate their wearers’ mental states. In their words:

To put it bluntly, the real convicts speak to us, not out of the dry dust of the records, or the pages of a published narrative, but in fantastic gibberish:
‘sportsman’s dog and 2 birds on breast, ship, mermaid and woman on right arm

⁷⁸ *Ibid.*, 29-30.

⁷⁹ *Ibid.*

⁸⁰ David Kent, ‘Decorative bodies: The significance of convicts’ tattoos’, *Journal of Australian Studies*, 21(53), 1997, 78-88; James Bradley and Hamish Maxwell-Stewart, ‘Embodied explorations: Investigating convict tattoos and the transportation system’ in Ian Duffield and James Bradley (eds), *Representing Convicts*, 1997, 199; see also Maxwell-Stewart, ‘The search for the convict voice’, 75-89.

⁸¹ Bradley and Maxwell-Stewart, ‘Embodied explorations’, 198.

elephant and castle on elbow joint left arm leopard and other marks on same arm'.⁸²

Despite its exciting contribution to convict era historiography, this thesis does not share the above authors' confidence in the revelatory potential of these bodily markings for uncovering convict identity.⁸³ Rather, it argues a contrary interpretation for these markings, albeit one already acknowledged by Bradley and Maxwell-Stewart. For this thesis, analysis of convict tattoos reveals anew the remorselessness and subtlety of penal surveillance techniques rather than uncovering an uncontaminated, or 'authentic', convict voice. As Bradley and Maxwell-Stewart note themselves, the state intervened heavily in the tattoo recording process, and any reading of them must acknowledge this intervention.⁸⁴ This degree of state intervention in the lives of convicts raises questions about the nature of the search for, and the content of, a genuine convict voice. In particular, to what extent, and in what ways, can we legitimately tease out an authentic convict identity from such a mediated and monitored activity as convict tattooing? More pointedly, is it (always) profitable to try, or even to assume that it is necessary, to separate convicts' experiences of penal life from the disciplinary milieu that held them? Is it not more useful to view convict identity, and any search for the convict voice, as an

⁸² Maxwell-Stewart, 'The search for the convict voice', 84.

⁸³ In subsequent work, Maxwell-Stewart has advised caution in the acceptance of convict stories as true reflections of their penal experiences, as well as the potential for convicts to have multiple lives recorded by multiple narratives, each serving different agendas. See: Hamish Maxwell-Stewart, 'Seven tales for a man with seven sides', in Lucy Frost and Hamish Maxwell-Stewart (eds), *Chain Letters: Narrating Convict Lives*, Melbourne University Press, Melbourne, 2001, 64-76.

⁸⁴ Bradley and Maxwell-Stewart, 'Embodied explorations', 190. Maxwell-Stewart has also described the 'paper penitentiary', held within the Van Dieman's Land convict department records that captured convicts lives, however tenuously, with 'bureaucratic certainty'. For Maxwell-Stewart, (convict) James McKinney was 'hemmed in' by these records, 'not by gaol walls, but by ink lines ruled on thick rag paper': Maxwell-Stewart, *Closing Hell's Gates*, 81.

integral and indivisible part of the processes of penal discipline that underpinned colonial Australian society?

In other words, instead of discovering convict subjectivity in the face of—or, in some cases, in spite of—overarching state intervention, convict identity, and by extension convict voices, arose entwined with, and as a product of, this process. In an attempt to, if not eradicate then diminish the binary view of convict/authority relations as inevitably and necessarily antagonistic,⁸⁵ this thesis envisages convict identity as an inescapable part of the disciplinary, institutional and social development of what was a new, and probably unique, society.⁸⁶ As such, it aims to serve as a corrective to those who, in the interests of revealing ‘genuine’ convict identity—to allow convicts to speak for themselves—prioritise division, and emphasise conflict, in order to reveal the humanity of their chosen subjects.⁸⁷ In short, in this thesis convict’s ‘voices’ are not heard primarily in opposition

⁸⁵ Russel Ward’s work is an example of the ways in which transported convicts were portrayed as implacably opposed to their gaolers and masters: Ward, *The Australian Legend*, Oxford University Press, Melbourne, 1958, 29; Kercher, *Outsiders: Tales from the Supreme Court of NSW, 1824-1836*, Australian Scholarly Publishing, Melbourne, 2006.

⁸⁶ On the ‘unique’ nature of penal-era Australia see: John Hirst, *Freedom on the Fatal Shore: Australia’s First Colony, Being: Convict society and its enemies: A history of early NSW* (1983) and *The strange birth of colonial democracy: New South Wales 1848-1884* (1988), Black Inc. Publishing, Melbourne, 2008, vii-xi; Atkinson, *Europeans, Volume One*, 3-18; Robert Hughes has written: ‘Now this coast was to witness a new colonial experiment, never tried before, not repeated since. An unexplored continent would become a jail. The space around it, the very air and sea, the whole transparent labyrinth of the South Pacific would become a wall 14,000 miles thick’: Hughes, *The Fatal Shore*, 1; Ken Buckley and Ted Wheelwright assert: ‘The origins of capitalism in Australia are unique. In no other country were the elements of the social relations of the system transplanted by force of arms over such a vast distance, in the embryonic form of a military prison, which initially contained no capitalists, no free labourers, and no peasants’: Buckley and Wheelwright, *No Paradise for Workers: Capitalism and the Common People in Australia, 1788-1914*, Oxford University Press, Melbourne, 1988, 1; for a description of how ‘Botany Bay’ represented an ‘experiment in punishment’ see: Mark Finnane, *Punishment in Australian Society*, Oxford University Press, Melbourne, 1997, x.

⁸⁷ Babette Smith rails against the condescension that she believes the transported convicts have been subjected to in official, popular and academic portrayals of penal-era Australia: Babette Smith, *Australia’s Birthstain*, 9-31.

to penal repression, they are un-severable from the mechanisms of penal control and surveillance that ordered convict lives.

Thus, this thesis seeks to demonstrate that convict ‘voices’ are engaged with, and indeed form part of, the fabric of Colonial Australia’s penal institutions: they are not always the desperate cries of outsiders railing against brutality and repression. That is not to say that any search for authentic convict identity is tethered solely to the official record.

Scholarship on the pitfalls of implicitly trusting the veracity of official documentation is legion.⁸⁸ Rather, it is an acknowledgment that identity, voice and lived experience cannot be separated from its context, especially convict identity from the disciplinary environment that gave it meaning. Thus, ‘my convict voices’, discussed later in this introduction, are indeed voices of individual adaptability and compromise, but they are also creations that acknowledge an acceptance of, and an unavoidable creative engagement with, structures and institutions of penal discipline. In short, they are as much a product of the penal environment that created them, as they are spontaneous, organic and heroic representations of convict agency. The irony of course, in this re-imagining of convict voices, is that rather than being the ephemeral words spoken, or the vague bodily etchings brought to us by an official’s biased rendering, the voices that emanate from the disciplinary structures that underpinned colonial society are as resilient and robust as those very structures. Further, in Australia’s institutional development—in some cases well beyond the temporal boundaries of the penal-era itself—the voices of

⁸⁸ James Boyce has criticised Keith Windshuttle’s approach to the collection and interpretation of evidence in his work on Aboriginal/settler relations in Van Dieman’s Land: James Boyce, ‘Fantasy Island’, in Robert Manne (ed), *Whitewash: On Keith Windshuttle’s Fabrication of Aboriginal History*, Black Inc. Publishing, Melbourne, 2003, 17.

convicts are heard as a reflection and creation of the colonial institutions that have evolved and continue to evolve to this day.⁸⁹

Sources

In a quest to unshackle previous historical scholarship from its empirical shallowness and confected, illusory orderliness, Paul Carter bemoans the distortion of convicts' identities in, and by, the writings of the First Fleet chroniclers:

The 'convict' who comes down to us in the pages of his oppressors is a social and political construction: he exists as a reflection of a body of rules, as a personification of transgression, a figure of speech necessary to the ruling class's self-justification and the perpetuation of its power.⁹⁰

For Carter, the idea that convicts are rendered 'knowable' through the distorting mirror of their ruler's pens speaks to the condescension of linear, narrative history. Further, this is a form of history that denies the complexities of past events in the 'one way logic of positivistic chronology'.⁹¹ Moreover, for Carter, generalised explanations that reverse chronological coherence overlooks, or blatantly ignores, the possibility of recovering and writing alternative histories.⁹²

⁸⁹ This evolutionary process was neatly analogised by High Court of Australia Chief Justice Murray Gleeson: 'The Supreme Court is one of Australia's great and enduring institutions of State. Such institutions frequently need development, modernisation and revitalisation. They need to be able to change in order to remain the same. But the institutions which support our communal life are not like free-standing trees in an avenue. They are more like tangled vines. Sometimes they need to be pruned, or even cut back hard, but that is a job for a gardener, not an axeman': Murray Gleeson, 'Address to the 175th Anniversary Dinner of the Supreme Court of New South Wales', 17 May 1999, Supreme Court of New South Wales, http://www.supremecourt.lawlink.nsw.gov.au/agdbasev7wr/supremecourt/documents/pdf/175_06_anniv_sc_nsw_1999.05.17_gleeson.pdf, viewed at 22/02/2010.

⁹⁰ Paul Carter, *The Road to Botany Bay: An Exploration of Landscape and History*, Knopf, New York, 1988, 295; Pybus, *Black Founders*, x.

⁹¹ Carter, *The Road to Botany Bay*, 295.

⁹² *Ibid.*, 294-295.

For this thesis, however, the idea that convicts are the product of the rules, laws and mores that gave order to their lives is less a cause for epistemological angst than a fairly obvious, even banal truism. Where the main thrust of Carter's criticism is in the semantic invention of transported convicts, the notion that these convicts are but a reflection of the laws and restrictions that surrounded them surely compels a search for convict identity in the very documents and sources that elucidate those laws? Instead of seeking to separate convicts from their disciplinary and social environment, as a means of arriving at something like their true characters, my thesis, as explained in the preceding section, recognises how convict subjectivity is intertwined with—in fact, it is dependent upon—the very environment that Carter criticises for concealing genuine convict identity.

As such, this thesis focuses heavily, but not exclusively, on the official published and unpublished documentation produced by the penal system. Hamish Maxwell-Stewart is correct when he states that an uncritical approach to official documents does not add much to our understanding of 'convict society',⁹³ however, a critical and imaginative approach to these sources does help us to reconstruct the worlds that were created in these writings, directives and reports. Particularly in an attempt to retrieve some of the auditory culture of colonial Australia, it is important to recognise that a tangible and concrete world—a world of physical structures, human actions, sounds, noises, conversations and arguments—was the result of these official documents.⁹⁴ At times, it

⁹³ Maxwell-Stewart, 'The search for the convict voice', 84.

⁹⁴ For a more general analysis of auditory culture in colonial Australia and elsewhere see: Collins, 'A 'roaring decade'', 7-18; Joy Damousi and Desley Deacon (eds), *Talking and Listening in the Age of Modernity: Essays on the History of Sound*, ANU EPress, Canberra, 2007; for an insightful review of *Talking and Listening* see Cam Mackellar, 'Review of Desley Deacon and Joy Damousi's *Talking and Listening in the Age of Modernity*', *History Australia*, 6(3), 2009, 87.1-87.2; Damousi, 'A history of Australian voice and speech', 155-159; Collins, 'Acoustic journeys', 1-17.

seems, in the search for the blood and flesh of authentic lived convict experience within these ‘faceless, voiceless official documents’⁹⁵, the worlds that these sources created are too often abstracted from their pen and ink descriptions. In other words, real worlds, real living conditions, and real sounds, noises and voices were created by and reflected in these ‘voiceless’ documents. While acknowledging the omissions, biases and agendas inherent in official documentation, I argue that it is from the environments that these documents created that a search for (any) convict voice should focus. In short, it is from the concrete social and administrative worlds that transportation created that convict strategies for survival, exploitation and resistance sprang.⁹⁶

Despite its focus on the official documentation that the transportation system produced, the convict voices in this thesis emerge from many different sources. Like all historical sources, each has its limitations and biases, yet collectively they represent the complexity of penal-era Australia in evidentiary brushstrokes both broad and narrow. As well as a healthy caution towards all evidence concerning Australian convictism, specific limitations, and debates, concerning the provenance or accuracy of particular sources will be canvassed as they appear in the text. As Gilchrist notes, official colonial documents—parliamentary reports and committee findings, government despatches and official correspondence—are an indispensable resource to glean insights into the social, administrative and ideological underpinnings of colonial society.⁹⁷ Without them, analysis of convicts’ lives—the various ways in which they adjusted to and resisted,

⁹⁵ Gilchrist, ‘A life of noisy riot’, 30.

⁹⁶ Maxwell-Stewart, ‘The search for the convict voice’, 84.

⁹⁷ Gilchrist, ‘Male Convict Sexuality’, 28.

accommodated and collaborated with the disciplinary structures that dominated their lives—rests on unstable foundations.⁹⁸

I have examined official colonial documents alongside the abundant public and private correspondence that penal-era Australia produced. These sources, from serving and emancipated convicts as well as official and unofficial commentators and observers of penal society, elaborate, animate and sometimes challenge official versions of the period. In particular, convict narratives, memoirs and recollections help to locate the tensions and disjuncture between the official versions of penal conditions presented in government reports and Parliamentary committee findings and the realities of life for people living in the colony. These sources require if not a sceptical, then a nuanced and cautious examination. As Gilchrist notes, convict memoirs ‘have been accused of being formulaic, repetitive and distorted’.⁹⁹ Moreover Richard White, among others, has revealed how some ‘convict commentaries’ on the penal system were not, in fact, convict authored.¹⁰⁰ Rather, political prisoners, mercenary editors and well-educated felons pandering to various commercial, social and political ends filled in some of the more lurid details of colonial Australian life.¹⁰¹ Often, memoirs and recollections have been found to be barely concealed copies of others: employing the same narrative strategies and hackneyed

⁹⁸ For an analysis of what ‘collaboration’ may have entailed for an individual convict, see: Hamish Maxwell-Stewart, ‘The rise and fall of John Longworth: Work and punishment in early Port Arthur’, *Tasmanian Historical Studies*, 6(2), 1999, 96-114.

⁹⁹ Gilchrist, ‘Male Convict Sexuality’, 71.

¹⁰⁰ Richard White, *Inventing Australia*, 16-20; See also Anne Conlon, ‘‘Mine is a sad yet true story’’: Convict narratives 1818-1850’, *Journal of the Royal Australian Historical Society*, 55(Part 1), March 1969, 43-73.

¹⁰¹ Richard White, *Inventing Australia*, 18-20.

tropes to reveal the brutal injustices of British penal discipline and the horrors of Botany Bay.¹⁰²

For example, the life of the convict ‘Jack Bushman’, serialised over five consecutive editions of the Moreton Bay Courier in 1859 as *Passages in the Life of a Lifer* (hereafter *Passages*), is both profitable and problematic as a colonial era source.¹⁰³ Bushman, whose experiences at the Moreton Bay penal Settlement in the mid 1830’s, including brutal floggings that are used to reveal the ‘acoustics’ of corporal punishment in chapters three and four of this thesis, has, at last count, two credible alternative identities and at least one very creative amanuensis.¹⁰⁴ Nevertheless, this narrative has proven to be fruitful ground for competing explication and expostulation within penal-era historiography on the likelihood, or otherwise, of uncovering an unmediated convict voice from such sources.¹⁰⁵ Rather than a strict elevation or denunciation of *Passages* as either fact or fiction, a more likely explanation of its provenance is that the actual experiences of a Moreton Bay convict were collected and re-worked—with requisite rhetorical flourishes and moralising tone—by a resourceful newspaper editor for the edification of his predominantly middle-class and god-fearing readership. In other words, lived convict experiences were embellished for the titillation of the reader and, ultimately, the publisher’s commercial benefit.¹⁰⁶ Rather than dismiss this narrative as a

¹⁰² Conlon, ‘Mine is a sad yet true story’, 43.

¹⁰³ Bushman, “*Jack Bushman*”: *Passages from the Life of a “Lifer”*, Chapter 3, 3; For an analysis of “Bushman’s” narrative and the likely identity of “Jack Bushman” see: Ian Duffield, ‘Problematic passages: ‘Jack Bushman’s’ convict narrative’, in Ian Duffield and James Bradley, *Representing Convicts*, 1997, 20-42.

¹⁰⁴ Raymond Evans and William Thorpe, ‘In search of Jack Bushman’ in Lucy Frost and Hamish Maxwell-Stewart (eds): *Chain Letters*, Melbourne University Press, Melbourne, 2001, 32-48.

¹⁰⁵ Duffield, ‘Problematic passages’, 20-42.

¹⁰⁶ *Ibid.*, 33.

hopelessly compromised resource unworthy of serious analysis, however, this thesis, like Ian Duffield's interpretation of *Passages*, celebrates its perversity and contrariness:

Passages is contradictorily invaluable as both a telling instance of the anti-transportation agenda of the colonial middle class and a cry of lived convict experience. The resulting tensions make it vivid. For historians of power relations, such understandings of convict narratives should enhance, rather than diminish, their importance.¹⁰⁷

Thus, instead of rejecting out of hand lurid accounts of Australian convictism, this thesis subscribes to the approach of the *Chain Letters: Narrating Convict Lives* team of historians to questionable source material.¹⁰⁸ For them, written convict testimony, whether in narrative, or letter, or other form, represents a valuable repository of convict words and actions, thoughts and feelings, however flawed and unverifiable.¹⁰⁹ As such, in attempting to narrate the penal experiences of these characters, gleaned from the fragmentary evidence of their lives left behind in various written and symbolic sources, *Chain Letters'* historian's display a careful openness in their interpretation of the documentary record.

As Lucy Frost and Hamish Maxwell-Stewart note, each repository of convict words, or snippet of convict life is 'restrained within technologies of penal power and inflected by the colonial politics of the period within which the words were written'.¹¹⁰ In other words, and in similar ways to the official governmental documentation that penal-era

¹⁰⁷ *Ibid.*

¹⁰⁸ Lucy Frost and Hamish Maxwell-Stewart, 'Introduction', in Lucy Frost and Hamish Maxwell-Stewart (eds), *Chain Letters*, Melbourne University Press, Melbourne, 2001, 1.

¹⁰⁹ *Ibid.*, 3.

¹¹⁰ *Ibid.*

Australia produced, these documents reflect the biases and proclivities of their authors as well as the social and political imperatives of the day.¹¹¹ In acknowledging these shortcomings, however, the usefulness, indeed necessity, of these accounts is not lessened. In their exaggerations and omissions, and literary or editorial flights of fancy, reside aspects of lived convict experience that are invaluable in the attempted reconstruction of colonial life.

A search for the convict voice within, and as a part of, colonial Australia's broader auditory culture also allows for—indeed compels—an appreciation for the importance of those authors who wrote of colonial Australia with such sensibilities. In addition to an increased awareness of colonial Australian auralty, writers whose reputations perhaps precluded them from a more secure place as credible observers of colonial life can be resuscitated and celebrated anew. Among others who will reveal themselves in the following chapters, Alexander Harris is perhaps the most compelling example.¹¹² As a source of information concerning life in colonial Australia, and indeed as a subject in his own right, Harris is an enigmatic figure. The value of his contribution to our knowledge

¹¹¹ *Ibid.* For an analysis on the caution that must be displayed when examining the 'official' eye-witness accounts of history see: Clendinnen, *Dancing with Strangers*, 12-66.

¹¹² Alexander Harris: *Settlers and Convicts or, Recollections of Sixteen Years Hard Labour in the Australian Backwoods. By an Emigrant Mechanic*, (first published in London in 1847), Melbourne University Press, Melbourne, 1964. Another work is an autobiographical account of his life, including his experiences of Australia, titled *Religio Christi*. This work was later republished under the title: *The Secrets of Alexander Harris: A frank Autobiography by the author of Settlers and Convicts; with an introduction by his grandson Grant Carr-Harris and a preface by Alec H. Chisholm (President of the Royal Australian Historical Society 1959-61)*, Angus and Robertson, Sydney, 1961. Harris also wrote a novel entitled *The Emigrant Family*, published in London in 1849. A second edition of this work was published in 1852 under the new title of *Martin Beck: or, The Story of an Australian Settler*. For an analysis of Harris' fictional work see: Ian Duffield, 'Martin Beck and Afro-Blacks in Colonial Australia', *Journal of Australian Studies*, 16, May 1985, 3-20.

of early New South Wales is hotly debated.¹¹³ Perhaps the best summation of Harris's divisive and divided work, and the almost schizophrenic quality of many of his observations, is captured in Manning Clark's infamous 'Foreword' to Harris's most important work on colonial Australia, *Settlers and Convicts*:

This work is one of the best descriptions of the way of life and the values of those men who helped to build the colony of New South Wales by the labour of their hands. Yet it appears to contain as much fiction as fact. Also, its author was a very queer man.¹¹⁴

This reference to Harris's 'queerness' reveals a justified scepticism towards a man whose work, personality and indeed life, are marked by insuperable, almost comical, contradictions.¹¹⁵ The dissolute son of a wealthy non-conformist clerical family, Harris, nevertheless, as an 'emigrant mechanic' despatched to New South Wales under less than auspicious circumstances, develops an affinity with the rough-hewn workers, drifters and ex-convicts of colonial Australia.¹¹⁶ Almost certainly an alcoholic, and a man whose correspondence reveals a slippery relationship with notions of fairness and social justice, Harris nevertheless feels entitled to excoriate the colony's land and convict-holding class

¹¹³ Lorraine Neate, 'Alexander Harris – a mystery no more', *Journal of the Royal Australian Historical Society*, 86(2), December 2000, 197-212; Hirst, *Freedom on the Fatal Shore*, 22-24.

¹¹⁴ Manning Clark 'Foreword', in Alexander Harris, *Settlers and Convicts*, v.

¹¹⁵ Manning Clark himself has often been accused of having a slippery relationship with the truth in his own historical writing. Mark McKenna has written on Clark, his place in the academy and questionable research methods in: Mark McKenna, 'Being There', *The Best Australian Essays 2007*, Black Inc., Melbourne, 2007, 202.

¹¹⁶ Harris, *Settlers and Convicts*, 89-90.

for their moral culpability in the maintenance of the ‘slave-like’ assignment system of convict labour.¹¹⁷

For this alone Harris has earned a healthy degree of caution from historians who rightly question the even-handedness of his views.¹¹⁸ While acknowledging that Harris, ‘as an observer of particular episodes, life-styles and work situations’ has no equal among colonial observers, John Hirst robustly challenges his conclusions concerning the nature of convict society.¹¹⁹ For Hirst, Harris’s virulent anti-slavery stance coloured his view of the assignment system practiced in New South Wales. Where Harris saw the coerced labour of assigned convicts through the (simplistic) prism of the writings of American anti-slavery advocates, Hirst argues that the reality of the assignment system in New South Wales made it an inappropriate comparator. To equate the complex relationship of assigned convict and landed master to a crude ‘slave-holder’ characterisation of chattel and owner is, at best, uninformed and at worst, misleading.¹²⁰

This thesis, however, has less to say on Harris’s conclusions regarding the nature of penal-era Australia, than with his descriptions of it. In other words, here I do not play the man; rather, my focus is on his recordings of the sights and, in particular, the sounds of New South Wales, and what they can reveal about living in colonial Australia. As noted

¹¹⁷ The discovery of an unpublished manuscript by Harris, *The Sons of God and the Daughters of Men*, allowed for comparison of its handwriting with that of an 1828 ‘copperplate’ work written by Harris when he was working as a clerk in the Illawarra district of New South Wales. According to graphologist Meryl Bolin, the writings, written decades apart, are from the same person, yet they also reveal ‘deterioration in physical and mental health over the ensuing years’. Bolin concludes that this deterioration can be attributed to alcohol abuse. See Neate, ‘Alexander Harris – a mystery no more’, 209-210.

¹¹⁸ Graeme Davison, ‘Rethinking the Australian Legend’, *Australian Historical Studies*, 43(3), 2012, 432.

¹¹⁹ Hirst, *Freedom on the Fatal Shore*, 22-24.

¹²⁰ *Ibid.*

by Andrew Moran, Harris is at his best as a social commentator when he is describing his own experiences in the colony:

There we find a moralising man usually at ease with the world and his fellow man, working hard, gathering the material benefits of his labour and the social benefits of human interaction, expressing views with a strong sense of social justice. *Settlers and Convicts*, in particular, picks up and portrays the nuances and pre-occupations of colonial life in that period in a unique way.¹²¹

Crucially, Harris brings a welcome aural sensitivity to his recollections. The sounds of colonial life—whether the rough language of a workers hut at mealtime, the sounds of frustrated bullock drivers urging their bovine charges to greater exertion, or the confused cacophony of gunfire as a bushranger is pursued through the bush by authorities—punctuate and enliven his work.¹²² It is in this way that Harris’s recollections are valuable, despite their questionable conclusions. By describing, in rich detail, the acoustics of New South Wales, Harris reveals an aspect of lived colonial experience that is overlooked in most observations of penal society: the way that sound informed relationships of power and authority between convicts, free citizens and authorities, as well as the unique aural dynamics of the Australian bush.¹²³

¹²¹ Andrew Moran, ‘Alexander Harris: The man and his family’, *Journal of Australian Colonial History*, 1(2), August 1999, 44.

¹²² For example, of his experiences with bushrangers, Harris writes: ‘They are all leagued together, and no sooner is a constable or soldier seen on the skirts of the Long Brush, than Crack! Crack! Crack! Goes a gun three times in succession, as quickly as it can be loaded and fired. Then as soon as that is heard the gang in all directions repeat the signal till the woods are ringing and the hills echoing for miles with the clatter of musketry’. See Neate, ‘Alexander Harris – a mystery no more’, 205.

¹²³ Harris, *Settlers and Convicts*, 198-199; for discussion of the ways that sounds specific to different eras and places are recorded and, at times, ignored see: Collins, ‘A ‘roaring decade’’, 7-18; Collins, ‘Acoustic journeys’, 1-17.

Harris's work is used in this thesis in a similar way to how the 'idealistic New England abolitionist' Thomas Wentworth Higginson is used by Shane and Graeme White in their work on the acoustics of slave culture in the Antebellum South, *The Sounds of Slavery*.¹²⁴ For these historians, Higginson's 'unusual sensitivity to sound' made his memoirs, letters and diary recording his experiences as the Commander of a black military unit a unique repository of rich and detailed acoustic insights. Concerning his credibility as a source for uncovering something of the sounds of slavery, the authors recognise Higginson's worth, despite not being able to re-create those sounds themselves. While lamenting their inability to take Frederick Douglass's advice to 'place [themselves] in the deep, pine woods, and there...in silence, thoughtfully analyse the sounds that shall pass through the chambers of [their] soul', these authors believe that, in Thomas Higginson, they have the next best thing:

Unfortunately, of course, we cannot take Douglass's advice. But every now and again, we have come across the writings of someone who has, metaphorically at least, stood in those woods and listened, an observer particularly attuned to the sonic world.¹²⁵

Similar to Thomas Higginson, Alexander Harris, despite the more trenchant aspects of his work, has stood in the cacophony of colonial society and noted what he heard. For this, his recollections are valued in this thesis. Significantly, historians such as Hirst and Clark, who criticise the inferences that Harris draws from what he saw in the colony, do not assert that he did not witness what he saw. In other words, what he said about what he saw, and the conclusions he reached about the state of New South Wales, should not

¹²⁴ White and White, *The Sounds of Slavery*, 32; 115-117.

¹²⁵ *Ibid.*, xix.

detract from the legitimacy of his descriptions of colonial life. It is in the descriptions themselves, rather than the commentary surrounding them, that Harris shines.

As Harris shows, a heightened awareness of colonial era auditory culture, whether you agree with his interpretation of what he heard or not, is important in broadening our understanding of the aural dimensions to the past. In particular, Harris' aural sensitivity shows how, in our search for the convict voice, new avenues of enquiry, and fresh interpretations of existing sources on the social and cultural dynamics of penal-era society, can be made. Specifically, work that engages with the auditory culture of colonial life can be re-examined to add nuance to how convicts, guards, authorities and free citizens experienced colonial life.

Soundscapes and timelines

This thesis uses the project, and concept, of searching for the convict voice in two main ways: first, and primarily, as a means of exploring how convict subjectivity may be given deeper meaning and nuance when appreciated from an aural, as well as visual, perspective. The second way is to encourage a reimagined penal-era Australia, through the notion of the various sounds, noises and 'voices' of convicts, as an aural and oral, as well as visual and literate place. As such, my search for convict voices contemplates a broader interpretation of colonial Australian auditory culture: one that includes the natural and man-made sounds of colonial life as well as the sounds and noises produced within the specific institutions and disciplinary regimes that constituted this place. In this way, I seek to add an auditory dynamic to attempts to reveal anew the conditions and

nature of Australia's European and colonial 'foundation story'.¹²⁶ From the unsettling sounds of the natural environment, to the controlled fury of the flogging post or the muted oracy of the colonial courts, penal-era Australia is conceived as an aural canvas upon which the convict voice was created as well as imposed.

This broad aural canvas encompasses, for this thesis, the years 1800-1840. This period saw significant physical, social and institutional change occur in Australia, as a rough penal settlement transformed itself into a thriving colonial outpost. The lives of convicts also changed during this time, as the *ad hoc* disciplinary arrangements of the colony's formative years evolved into more concrete, methodical and arguably more brutal systems of punishment from the 1820s.¹²⁷ This thesis explores the soundscapes that would have altered along with these changes, as a way of expanding and deepening our search for the convict voice.

Colonial Australia, from 1822 onwards, was altered dramatically by the administrative, legal, penal and social reforms ushered in by John Thomas Bigge, a former Chief Justice of Trinidad, and a man tasked by Lord Bathurst, Secretary of State for War and Colonies from 1812 to 1827, to assess the ongoing viability of the colony as a repository for

¹²⁶ Cassandra Pybus, 'City of the imagination', *Weekend Australian*, July 25-26, 2009, 16.

¹²⁷ Alan Atkinson, 'Four patterns of convict protest', *Labour History*, 37, November 1979, 28-51.

Britain's criminals.¹²⁸ Principally, Bigge was to ascertain whether it was still fulfilling its original purpose of instilling a 'salutary terror', or a general deterrence, among Britain's criminal classes. Despite one character assessment, based on an appraisal of a portrait of the Commissioner that found him 'easy to take offence, a stickler for the rules, punctilious, defensive and biddable',¹²⁹ Bigge assiduously pursued the interests of the Imperial authority that he represented. The 'convict voices' envisaged in this thesis arose principally from the disciplinary, social and aural environments created by this enthusiastic, misunderstood and quite possibly unfairly maligned imperial civil servant.¹³⁰ By enhancing the severity of punishment of serving convicts—both the numbers and frequency of floggings increased as a result of his measures—Bigge provided the penal conditions and punishment regimes that would resound with the screams and cries of beaten and battered convict bodies.¹³¹

In addition to the important physical and administrative changes instigated by the Bigge Reports, this thesis also recognises the importance of the 1837-8 *Select Committee on Transportation*, chaired by Sir William Molesworth, as setting the tone for much contemporary and modern-day angst and debate concerning convict character. The Molesworth Commission, led aggressively by its namesake, 'with a mixture of prurience,

¹²⁸ 'Report of the Commissioner of Inquiry into the State of the Colony of New South Wales, 1822', (The Bigge Reports), *British Parliamentary Papers (BPP) Volume One: Colonies*, Irish University Press, Shannon, 1969, 1-149; see also: John Ritchie (ed), *Punishment and Profit: The Reports of Commissioner John Thomas Bigge on the Colonies of New South Wales and Van Dieman's Land, 1822-1823; their origins, nature and significance*, Heinemann, Melbourne, 1970; Ritchie (ed), *The Evidence to the Bigge Reports: New South Wales under Governor Macquarie, Volume One: The Oral Evidence*, Heinemann, Melbourne, 1971; Ritchie (ed), *The Evidence to the Bigge Reports: New South Wales under Governor Macquarie, Volume Two: The Written Evidence*, Heinemann, Melbourne, 1971.

¹²⁹ Raymond Evans, '19 June 1822: Creating 'an object of real terror': The tabling of the first Bigge Report', in Martin Crotty and David Andrew Roberts, *Turning Points in Australian History*, University of New South Wales Press, Sydney, 2009, 52.

¹³⁰ Spigelman, 'A Reappraisal of the Bigge Reports', 6-7.

¹³¹ Macintyre, *A Concise History of Australia*, 68.

cant and indignation, painstakingly drew from [his] witnesses an image of New South Wales as a place in which drunkenness, prostitution, licentiousness and dissipation thrived, and where sodomy and buggery were not uncommon'.¹³² This thesis, however, is less interested in the accuracy of Molesworth's findings, a topic that is enjoying resurgence within historical writing,¹³³ than with the lasting effect of his report for our search for the convict voice. In essence, attempts to 'resuscitate', or rescue, convicts' reputations have sprung largely from the vigorous denunciations levelled against them by Molesworth, and his self-appointed witnesses. In many respects convicts, through their own self-appointed advocates, have been trying to recover their reputations ever since.

These two inquiries, therefore, and the concrete changes in the lives of convicts that came from them, are crucial to the construction of 'my' convict voices, introduced in the following pages. Essentially, the changes made to the colony from these commissions would have profound impacts upon the physical, immediate lives of convicts but also on their reputations. They would create the physical settings—penal stations, for example, from Bigge—and the attitudes of commentators, observers and officials towards the convicts—for example, the 'depravity' and moral degeneracy tropes arising from Molesworth—that inform our contemporary search for the convict voice. I argue that much of our contemporary concern for uncovering a 'genuine' convict voice stems from

¹³² John Ritchie, 'Towards ending an unclean thing: The Molesworth Committee and the abolition of transportation to New South Wales, 1837-40', *Historical Studies*, 17(67), 1976, 150.

¹³³ Isobelle Barrett Meyering, 'Abolitionism, settler violence and the case against flogging: A reassessment of Sir William Molesworth's contribution to the transportation debate', *History Australia*, 7(1), 2010, 6.1-6.18. Babette Smith, 'Molesworth lives? A reply to some reviewers of *Australia's Birthstain*', *Journal of Australian Colonial History*, 11, 2009, 227-232.

this period, and how the techniques of control and surveillance arising from such reports created much of the noise and sound that constitute my convict voices.

With this focus in mind, my thesis, particularly in chapters two, three and four, departs from the relatively benign view of corporal punishment evoked in new versions of Australia's 'foundation story'.¹³⁴ In exciting attempts to reconstruct early colonial history from the perspective of convicts' particular living conditions, historians such as Grace Karskens¹³⁵ and James Boyce¹³⁶ have used different methodologies, and have approached early Australia from new angles, to reveal a more nuanced analysis of Australia's European origins. For Karskens, the natural environment—'topography, geologies, soils, climate, ecologies'—among other things,¹³⁷ is placed at the centre of colonial development. This provides a more 'holistic' interpretation, using not just our intellects but also our emotional and sensual faculties, to provide both a context, and an explanation, for settlers' and convicts' negotiations with the new land.¹³⁸ Similarly for Boyce, the specific environmental barriers and advantages encountered by Van Dieman's Land settlers is crucial to an enlarged appreciation of the settling experience.¹³⁹

In both of these accounts, however, the *penal* nature of both New South Wales and Van Dieman's Land respectively, is reduced to a germane, yet peripheral, consideration. For

¹³⁴ Pybus, 'City of the imagination', 16.

¹³⁵ Karskens, *The Colony*.

¹³⁶ Boyce, *Van Dieman's Land*.

¹³⁷ Karskens argues that the 'particular environments the settlers encountered are crucial in understanding their experience, and the sort of settlement that emerged; they are not peripheral or incidental, but core historical factors', Karskens, *The Colony*, 4.

¹³⁸ *Ibid.*, 5-6.

¹³⁹ Boyce, *Van Dieman's Land*, 11; for a review of Boyce's work see Richard Flanagan, 'A terrible, beautiful history of hope', *Sydney Morning Herald*, February 16, 2008.

both authors, regimes of penal discipline within the early years of colonial settlement are portrayed as *ad hoc* and piecemeal affairs, brutal in some aspects, absent in others, and almost inconsequential to the ultimate shape that their respective colonies took. In understanding the nature of Van Dieman's Land's 'convict society', Boyce writes:

The penal system, intended to ensure subservience in all convicts, was an important part of the context in which this society evolved, but contrary to the picture presented by Marcus Clarke, and essentially reproduced by Robert Hughes in *The Fatal Shore*, it did not determine its form.¹⁴⁰

For Karskens 'the dynamics and strategies of banishment, forced labour and punishment', are 'germane', but not the dominant narrative in the colony's early years.¹⁴¹ While Karskens' analysis hints at competing, and grander, visions held for the colony by certain British officials, this thesis subscribes to adopt Raymond Evans' explanation for the colony's direction in these foundation years: that is, thirty years of British government apathy and neglect.¹⁴² In what has been described as an Imperial capital 'in the process of painful social and economic adjustment after two decades of almost continual war, amidst the Schumpeterian gales of creative destruction arising from the Agricultural and Industrial Revolutions', the British government had little inclination, and less energy, to properly administer its penal outpost.¹⁴³ Only when its attractions as a place of banishment for increasing numbers of felons resurfaced did the Imperial government feel

¹⁴⁰ Boyce, *Van Dieman's Land*, 9.

¹⁴¹ Karskens, *The Colony*, 9.

¹⁴² Evans, '19 June 1822', 48; For a wider view of the impact of conditions in Britain on the transformation of colonial Australia after 1820, see: David Lambert and Alan Lester (eds), *Colonial Lives Across the British Empire Imperial Careering in the Long Nineteenth Century*, Cambridge University Press, Cambridge, 2006, 3-13; Zoe Laidlaw, *Colonial Connections 1815-45: Patronage, the Information Revolution and Colonial Government*, Manchester University Press, Manchester, 2005, 2-9.

¹⁴³ Spigelman, 'A Reappraisal of the Bigge Reports', 8.

compelled to reassert its penal aims in Australia.¹⁴⁴ In short, Commissioner Bigge was sent to reinforce the principal aim of penal terror, and to ensure that that terror could be transmitted to prospective felons back in Britain, in a colony that had been allowed to drift into a state of political and penal laxity and social abandonment.¹⁴⁵

Thus, this thesis contributes a sense of the auditory brutality of penal life to colonial Australia's 'foundation narrative'.¹⁴⁶ In doing so, it takes this foundation story in a different direction to recent historians. Essentially, it aims to do what Commissioner Bigge envisaged: take terror, punishment, pain and violence from the periphery of colonial Australia and place it squarely back in the centre of analysis. It does not argue that a blood-soaked portrayal of colonial society—perhaps best exemplified in the work of Robert Hughes—is, or should be, the dominant view we have of this period. Rather, it argues that the penal principles of surveillance, confinement and punishment were fundamental components of how colonial society operated, and how it made sense to itself and its inhabitants. In a telling section of her book *The Colony*, Karskens uses parentheses to explain, seemingly in passing, how punishments were in fact severe for convicts unlucky enough to get caught transgressing colonial laws.¹⁴⁷ My thesis continues the story of colonial Australia's evolution minus these obscuring brackets. The physical, psychological and social tyranny of flogging, for example, especially its aural terror,

¹⁴⁴ Evans, '19 June 1822', 49.

¹⁴⁵ Bigge's various roles across the British Empire after his time in New South Wales and Van Dieman's Land are noted by Kirsten McKenzie: 'Three detailed volumes of evidence were published before the House of Commons in 1822 and 1823. And this was only the beginning. Bigge would spend the best part of a decade travelling the British Empire, producing voluminous reports not only on New South Wales but also on Mauritius, Ceylon and the Cape of Good Hope': McKenzie, *A Swindler's Progress: Nobles and Convicts in the Age of Liberty*, University of New South Wales Press, Sydney, 2009, 195.

¹⁴⁶ McKenna, Mark, 'History and Australia: a foundational past?', The Annual History Lecture, History Council of New South Wales, The Mint, Sydney, 8th August 2012.

¹⁴⁷ Karskens, *The Colony*, 11.

informs much of the analysis that underpins my various convict voices. Essentially, the *penal nature of colonial Australia*, its restrictions, contradictions and avenues for convict resistance, not only determined the ultimate form that the colony took, but is also the principal point of reference in our understanding of lived convict experience.

This thesis also recognises Commissioner Bigge and Moleworth's projects, in addition to their concrete reforms and recommendations, as early exercises in Imperial public relations: the creation of an image of penal brutality and social ostracism that would temper British citizens' criminal tendencies. Such representations of colonial Australia would sometimes help, and sometimes stymie, different parties' attempts to reform, buttress or indeed end the transportation and assignment systems. It would also, as this thesis argues, affect the nature and utilisation of convicts' voices in debates over penal policy, and broader imperial and colonial relations. Depictions of convicts' lives, whether in letter, diary or narrative form, or simply invented and disseminated from the vivid imaginations of literate and middle-class amanuenses used, and indeed *created*, the convict 'voices' that were presented to an insatiably curious British public.¹⁴⁸ That some of these were not actual convict voices was hardly important, it was enough that particular audiences believed that they were.¹⁴⁹ In this way, the search for a 'genuine' convict voice must not only be wary of false or misleading authorial meddling, it must actively embrace it.

¹⁴⁸ Gilchrist, 'A life of noisy riot', 29.

¹⁴⁹ This argument mirrors the one used by Hamish Maxwell-Stewart to explain how the perceptions of people impact upon the real existences, however misguided or incorrect, of historical subjects. Explaining the existence of legislation that helped to create the penal system in Australia, Maxwell-Stewart writes: 'The Fact remains, that many respectable late Georgian and Victorian men and women believed in a professional criminal class. The fear of a criminal residuum was responsible for the legislation which shaped an evolving penal system...A professional criminal class existed because respectable nineteenth century opinion believed that it did': Maxwell-Stewart, 'The search for the convict voice', 84.

My Convict Voices

This thesis examines lived convict experience, and the formation and expression of convict identity, within the prism of the auditory culture of penal-era Australia. In particular, I seek to add to debate concerning the search for an ‘authentic’ convict voice during this period and whether uncovering an ‘unproblematic convict voice from below’ is a realistic goal for historians.¹⁵⁰ In the process of doing this, existing notions of what a convict voice is, and where a legitimate convict voice can be found, will be challenged. By revising how convict identity is conceptualised, and allowing for a broader conception of what a convict voice may sound like, new voices have been added by this thesis to the search for greater understanding of convict subjectivity. That convict voices may in fact be the result of the penal practices that shaped their worlds during this period provides a new approach to this question, one that tempers notions of effective convict resistance to their surroundings. That these voices were the product of, rather than in opposition to, penal repression, invites a reconsideration of the role that convict voices played in the evolution of Australia’s disciplinary and legal institutions.

I argue that notions of convict resistance; or power; or agency—expressed in such diverse practices as convicts’ stoical acceptance of physical violence, convict solidarity in refusals to ‘inform’ on fellow inmates or convict defendants seeking redress in colonial courts—has underestimated the reach and creativity of penal disciplinary structures in controlling and shaping this behaviour. Further, I will add other ‘convict voices’ to those already revealed in what is becoming a denser, and exciting, historiography: the voices,

¹⁵⁰ *Ibid.*, 77.

conversations, noises and behaviour that are produced by and within a repressive, and aurally sensitive, penal environment. In effect, and as mentioned earlier, convict voices are part of the very fabric of colonial Australia's administrative and institutional development and not (always) the desperate, aggressive or transgressive quests for individual identity and resistance often portrayed in much penal-era historiography. These voices are my claim for a subtle recasting of convicts: adaptive, not recalcitrant; institutionally savvy, not mindless resisters; 'insiders', not 'outsiders' in penal society.

In the tradition of both *Convict Workers*, who heard convict voices not in words or sounds but in the statistical data regulating convict life, and Hamish Maxwell-Stewart, among others, who locates convict voices in their tattoos, my convict voices come in many guises and 'speak' from a range of different sources. These include: the sounds emitted by convicts as they are being flogged—the screams, cries, groans, grunts and silences of people being flayed; the words spoken and conversations had by convicts with each other and their keepers in both penal (prison yards, work-gangs and barracks) and institutional (courts and commissions) settings. My voices also encompass how convict words and sounds were heard and interpreted by penal authorities and how 'authentic' convict voices, in the form of narratives, recollections and observations, were created and used to excite and terrify the imperial imagination.

Chapter One of this thesis, 'Finding Convict Voices', is an exploration in, and examination of, convict subjectivity, and how exciting, malleable and uncertain is our search for a genuine convict voice from below. By tracing the genesis of an infamous

convict ‘murder-suicide pact’ on Norfolk Island, where sixteen convicts allegedly engaged in a sophisticated ritual to determine the order in which one convict was to kill another, this chapter seeks to unsettle how sure we may be of uncovering the motivations of historical figures. As accounts of convict behaviour are filtered through the vague miasmas of colonial and penal-era myth and legend, the uncertainty of locating authentic convict voices is reasserted. My aim here is twofold: first, and perhaps most importantly, I seek to re-present a well-known Norfolk Island incident in a way that challenges our ability to locate and verify convict action. This adds impetus to my argument that convict subjectivity should be approached from as widely conceived sources and approaches as possible, including the auditory and oral. Second, I aim to reveal how the voices of colonial figures, whether in garrulous repetition of vague facts or breathless rendition of colonial myth, inform important parts of our understanding of convict life. The stentorian or stolid, whispered and timid voices within this analysis introduce the importance of language and ‘voice’ that contextualises the broader aural analysis of colonial life that follows.

Chapter Two, ‘Colonial Acoustics’, begins my aural analysis of colonial society and is designed to emphasise the importance of the soundscapes of penal-era Australia in any search for a credible convict voice. Here, I highlight the acoustics of colonial Australia as an important part of its social and penal identity. This chapter reminds the reader that colonial Australia was a heard as well as a seen environment, and as such the sounds of penal life powerfully impacted upon colonial inhabitant’s sense of identity and place. This chapter also takes the sounds of convict punishment and pain from the flogging yard

or ‘triangle’ to the streets of colonial Australia. I use these sounds to re-cast colonial citizens as aural witnesses to physical violence as the sounds of pain, at times, reverberated across penal society. To hear the ‘horrid sounds of the cat upon naked flesh’¹⁵¹ could produce enormous psychic turmoil for those within aural range. Further, to hear such sounds reminded people that penal life, whether bond, emancipist, free or just passing through, was structured upon concepts of control, surveillance and repression.

Chapter Three, ‘Penal Acoustics’, narrows my aural analysis of colonial Australia to an exploration of the specific sounds of the *penal colony*. Thus, from the broad auditory canvass of colonial life in chapter two, the brutal and contested sounds of penal life, especially the aural brutality of flogging, provide background to an understanding of the nature and genesis of the convict voice. Comparisons to the noises produced by physical punishment within the slave societies of the American South reveals how the production and control of convict sound could carry ideological significance as well as serve a purely ‘corrective’ function. Noises emanating from convicts, whether in pain or shock from corporal punishment or from grunts of defiance, reveal the mediated nature of this penal soundscape. Further, perhaps the most iconic image of the colony—the flogging of a screaming, grunting and groaning convict—is reimagined as the deliberate creation of convict sound/noise by authorities to help maintain order in the colony. Thus, the sounds emitted from battered and beaten bodies are reimagined as important aural markers in the maintenance of order in penal society.¹⁵²

¹⁵¹ J.F. Mortlock, *Experiences of a Convict: Transported for Twenty-One Years*, G.A. Wilkes and A.G. Mitchell (eds), Sydney University Press, Sydney, 1965, 70.

¹⁵² Atkinson, ‘Writing about convicts’, 25.

Chapter Four, ‘The Language of Flayed Skin: Flogging and the Convict Voice’, deepens my aural analysis of flogging begun in chapter three. It argues for a new awareness of the sounds of the phenomenon of flogging in colonial Australia: as a political and social tool as well as a punishment. I reveal how the sounds of convict pain, produced within a system of deliberate and calibrated corporal violence, were central to the development of punishment policy in the colony, and were understood as such by penal authorities, colonial officials and convicts alike. This phenomenon was particularly important in times of political turmoil, as Governors strove to ensure that ‘their’ system of corporal discipline was indeed an effective punishment regime. As well as interpreting these sounds—those pleadings, groans, grunts, oaths and shrieks that made up the language of flayed skin—as the organic outpourings of people in pain, my analysis reveals these voices as barometers of penal severity and aural indicators of ‘effective’ corporal punishment. In this way, convict bodies were used as aural canvases, made to elicit the appropriate sounds of an appropriately harsh penal regime. Thus, the convict voice becomes a tool of penal policy.

In Chapter Five, ‘Stain or stereotype? Informing and the Convict Voice’, my analysis shifts from the sounds of violence to the contested sounds of actual convicts’ voices. I examine how convict conversation and words buttressed penal disciplinary structures. In particular, the phenomenon of convict informing, where information is proffered to gain favour or benefits, is revealed as an aural construct: a system of discordant voices that created suspicious and divided convict populations. This analysis happens within the context of groups of convicts—in gaols, barracks, chain gangs and punishment sites—

forced to inhabit the same confined space. Given penal authorities' general unconcern with the accuracy or veracity of the informer's information, I argue that informing provided the necessary background 'noise' of a system of penal surveillance. Instead of perceiving convicts as addicted to 'dobbing' on each other, the phenomenon of informing is re-imagined as a clever aural system of surveillance created by penal officials. Thus, what is spoken is as much about what is heard as what is said, and 'the search for the convict voice' is enlarged through this dynamic. Catie Gilchrist is indeed right when she asserts that the 'convict voice was not silenced',¹⁵³ however, what is underappreciated in these settings is the role of convicts' voices and silences in the maintenance of the very structures designed to repress convict resistance, power and solidarity. By arguing that convict informing was as much a product of savvy penal authorities as the tendency of convicts to undermine each other, this chapter also seeks to challenge some of the historiography of convictism that portrays the convict population as habitual, even congenital, fabricators.

Chapter Six, 'Colonial Insiders: Convict and the Law', traces the development and impact of convict oracy into the colony's courts. In what is a recurring theme in colonial Australian historiography, it is often asked how a society, founded as a dumping ground for British criminals, transformed itself into a modern, free, law-abiding and relatively peaceful community?¹⁵⁴ Indeed, for Bruce Kercher and Tim Castle, this conundrum

¹⁵³ Gilchrist, 'A life of noisy riot', 29.

¹⁵⁴ Tim Castle and Bruce Kercher assert that: 'How did a society which began as a gaol and dumping ground for British criminals, transform itself into a modern, sophisticated, free society fundamentally based upon the rule of law?'. See 'Tracing civil society and the rule of law in Australia', *Bar Brief: The Monthly Newsletter from the NSW Bar Association*, 121, March, 2005, 1-3.

represents ‘one of the great modern historical contradictions’.¹⁵⁵ Here I will show how this seeming contradiction—itsself a notion that has been robustly challenged—is more a misreading of the role that convicts played, and were compelled to play, in the development of Australia’s legal and administrative institutions than a puzzling historical anomaly.¹⁵⁶ When the criminals that Kercher and Castle imply have entrenched the above contradiction are seen as participants—not passive victims or inconvenient resisters—in the establishment and maintenance of Australia’s civil, legal and social institutions, notions of an enduring contradiction at the heart of our society lose much of their power. Rather than raised solely in opposition to penal repression, convict legal language—those words spoken by convicts before the colonial Bench—formed an indelible part of the development of colonial legal culture, articulating more than simply opposition to the defendant’s lot in life.

While constrained within the disciplinary structures that ensure the stability and institutional coherence that Kercher and Castle celebrate, these convict voices endure beyond historians’ attempts to corral them within a narrow resistance-oriented framework. Similarly, the convict voices that form this thesis are part of the story of Australia’s penal, legal and social evolution. As such, they are enduring and permanent, and their legacy can be seen in the development of Australia’s colonial institutions, not in opposition, or contradiction, to such developments. The aim of this thesis is to use aural

¹⁵⁵ *Ibid.*

¹⁵⁶ For an interpretation that sees the development of institutions in Australia in less antagonistic terms see: Hirst, *Freedom on the Fatal Shore*, 5; see also: Castle and Kercher, ‘Tracing civil society’, 1-3; Tim D. Castle, ‘The practical administration of justice: Adaptation of English law to colonial customs and circumstances, as reflected in Sir James Dowling’s ‘Select Cases’ of the Supreme Court of NSW, 1828-1844’, *Journal of Australian Colonial History*, 5, 2004, 66-72.

historical analysis to show how convict language and noise, despite the restrictions placed on it by the processes of legal argument, corporal punishment or forced garrulity or silence, was a part of the very fabric of the penal system. The convict voices that emerge from this thesis are forged within, and therefore form an indelible part of, the very processes and debates that created a distinctive Australian society. The ‘convict voice’ can thus be found within the very structures of the social, penal and legal institutions that have traditionally been held out as obstacles to uncovering convict identity, and is more enduring for that fact.

Chapter One: Finding Convict Voices

Pity the boy in front of me
He was only 16,
Lifted up my axe then down,
Split his head like a cord of wood.

Not for me the huon pine
Not for me the ankle iron,
A'resting in the rope'll do me fine.

So they sent me down to Bellerive,
Strung me up to my relief,
I was just a petty thief
Of no account, no import.

Send my love to my sister
In the female Factory,
Remind her of the day when we drank wine.

May a slant of winter light
Break upon my stone before the night
I have no sight, I have no sight.

But did they pave the streets of Hobart town?
Lop the old wood forests down
For the press of King and Crown,
For honey? Milk and honey?

My arse.¹

As the above song lyrics suggest, our fascination for brutal acts of convict violence, and the various explanations for those acts, is an enduring legacy of Australia's penal

¹ From Augie March, 'The Slant', *Watch me Disappear*, Sony BMG Australia, 2008.

origins.² The search for something of the ‘inner-worlds’ of those transported to Australia between 1788 and 1868 compels analyses of such acts, happily encouraged by their saturation within both contemporary (penal-era) and modern accounts of our convict origins. The following tale, supposedly enacted on the notorious Norfolk Island penal settlement, exemplifies this fascination. The story of how a group of sixteen convicts conceived of, arranged, and executed a ritual whereby one ‘winner’, having plucked the straw that would ensure his demise, was disemboweled by a fellow convict, has horrified and fascinated readers for generations. Further, such convict action has enlivened writing on Australia’s penal past and entrenched such events as the quintessential convict experience, colouring our perceptions of the nature and conditions of penal-era Australia.

This chapter seeks to analyse the telling of this story as a means of exploring the inherent uncertainties of finding a credible ‘convict voice’ within such acts. In doing so, the rich oracy that surrounds much convict era history becomes apparent, and the methods by which our search for the convict voice is conducted is challenged and, hopefully, unsettled. The panoply of voices that make up my version of the following convict ‘murder-suicide pact’ enliven as much as dampen our search for the convict voice, as the voices of those telling, hearing and listening to this event multiply and deepen. Such voices remind us to listen to and hear history as well as visualise it, and to acknowledge the complex and exciting auralty underpinning much of what we read. As well as an exploration of the vexed topic of uncovering convict subjectivity,

² Auf Der Heide, J (Director) *Van Dieman’s Land* [Motion Picture], Inspiration Studios, Australia, 2009; For a review of *Van Dieman’s Land* see Rachel Olding, ‘The cannibal convict was an everyman at heart’, *Sydney Morning Herald*, September 24, 2009.

this chapter seeks to challenge how best to uncover convict voices, and to invite the reader into the aural analysis of colonial Australia that follows.

Thus, allegedly, on a dusty Norfolk Island road sometime around ‘1832 or 1833’, a group of convicts, tired of life and seeking release from their earthly torment, enacted a scene of ritualized violence the culmination of which left one convict dead and another—his murderer—anticipating a longed-for death on the gallows in Sydney. This ‘contrived’ convict murder began its literary life in the pages of a rambling memoir written by Foster Fyans, a one-time Commandant of the Norfolk Island penal settlement. Spiced with the ‘Irish humour’ and ‘oddities’ of its author, Fyans describes this killing of a convict at the hands of his fellow inmates.³ Without witnessing the event himself Fyans, supposedly through the interrogation of its survivors, was able to provide a detailed account of what took place.⁴

On their way to another day of enforced physical labour sixteen convicts, after restraining their overseer and a reluctant participant enacted a calculated and brutal ‘lottery of death’.⁵ With an almost parade-ground precision, the group’s leader, Fitzgerald, produced sixteen straws, one to be drawn by each prisoner, as the means by which roles would be allocated in the ensuing drama. Both long and short straw holders having been established, these two men then drew against each other with the ‘winner’—by happy circumstance the same Fitzgerald who led the proceedings—to

³ Foster Fyans, *Memoirs: Recorded at Geelong, Victoria, Australia, 1790 - 1870*, Transcribed from his holograph manuscript given by descendants to the State Library, Melbourne, 1962, The Geelong Advertiser Pty Ltd, Geelong, P.L. Brown (ed), 1986, xi.

⁴ Fyans, *Memoirs*, 101-102.

⁵ *Ibid.*

suffer a ‘cruel death on the spot’.⁶ Upon being selected to die, Fitzgerald collected his thoughts, and addressed his comrades:

I am sorry boys that I am leaving you, but I am not the man either to preach or tell a lie; you’ll have fine fun before you, going to Sydney, and a chance of giving them the go-by. Think of me boys; you’ll all get off clane. Only tell old Dowling the judge that it’s my own free deed that Pat Larkins sticks me. I am ready now...Now avick, please yourself and give me as little pain as you can. With that, Pat Larkins, the second place-getter in this event, drove a crudely fashioned hoop-iron knife into Fitzgerald’s abdomen, disembowelling him where he stood.⁷

Foster Fyans’ attitude toward this episode, described under the chapter heading ‘Criminal Variety’ in his memoir, is both candid and curious.⁸ He betrays a sly, soldierly admiration for Fitzgerald’s stoic death, and is refreshingly free of any moral opprobrium for the participants. Rather than passing judgment, Fyans conveys a detached yet genuine puzzlement at such behaviour. Significantly, at no point does he characterize the actions leading to Fitzgerald’s death as suicidal in nature or intent. Indeed, it is later—around one hundred and fifty years later—that this episode is portrayed as a desperate suicidal ploy designed to escape the hellish suffering of convicts banished to the brutal edges of Britain’s ‘experiment’ in penology.⁹ Robert Hughes’s resuscitation of this scene in his evocative, and ‘eccentric’,¹⁰ portrayal of penal-era Australia bristles with a psychological and moral certainty that allows only

⁶ *Ibid.*, 101.

⁷ There is no record of Larkins having been sent from Norfolk Island to Sydney to face trial for this, or any, offence. See Colonial Secretary’s records, Copies of letters sent to the Sheriff, 28/7/1832-4/12/33, 10/12/1833-8/7/36, [4/3898-99], *State Records of New South Wales (SRNSW)*. List appears on Reel 1063; location 4/3898, 78.

⁸ Fyans, *Memoirs*, 101.

⁹ Hughes, *The Fatal Shore*, 1.

¹⁰ Atkinson, ‘Writing about convicts’, 21. Atkinson describes *The Fatal Shore* as ‘a badly compromised piece of work, though it is powerfully, even beautifully written’. He attributes Hughes with a new approach to the study and writing of penal-era history, where the ‘system’ of penal discipline is given a coherence that cannot be accounted for in the historical record.

one explanation for these actions: brutalised convicts, possessing a rudimentary religiosity that understood the anathema of suicide to their faith, enacted a clever ruse to kill themselves while avoiding the stigma of suicide and its risk of exchanging ‘the pains of the Island for a real and eternal hell’.¹¹ In a seductive intellectual sleight-of-hand, Hughes has interpreted the meaning of the ritual from the brutality and reputation of its setting, rather than appreciated it as a discrete and multi-faceted event in its own right. This, in turn, allows him to use it to reveal the ‘gothic horror’ that was Australia’s penal system without addressing any alternative meanings to the ritualist’s actions.¹²

Hughes also warns us that these rituals, by cheating suicide of its stigma, covered its (suicides) traces in the historical record.¹³ He may well be right, and the incidences of convict murder pacts at places such as Norfolk Island may have far exceeded the available evidence for them.¹⁴ The fact that colonial-era records are not detailed or sophisticated enough to apportion motive to different convict actions is an impermeable barrier to a full understanding of the frequency and impact of contrived convict murders. Alternatively, Hughes’s claim that the number of such murders on Norfolk Island is unknown is a convenient prop to increase the importance of these dramatic acts. While it is exciting to consider that Robert Hughes is right when he argues for these acts’ underrepresentation in the convict archive, an equally important

¹¹ Hughes, *The Fatal Shore*, 469. For Richard White such images of ‘exaggerated horror’ were an essential element in the penal system ‘which was based on the belief that the severity of punishment, rather than the likelihood of being caught, was the most effective deterrent to crime’. See Richard White, *Inventing Australia*, 16-17. For the continuing effects of this portrayal of the horrors of Australia’s convict origins see Tom Griffiths, ‘Past silences: Aborigines and convicts in our history making’, in Penny Russell and Richard White (eds), *Pastiche I: Reflections on nineteenth-century Australia*, Allen and Unwin, Sydney, 1994, 7-23; Ronald D. Lambert, ‘Reclaiming the ancestral past: Narrative, rhetoric and the ‘convict stain’’, *Journal of Sociology*, 38(2), 2002, 111-127.

¹² Macintyre, *A Concise History of Australia*, 41.

¹³ Hughes, *The Fatal Shore*, 469.

¹⁴ As strongly argued by Timothy Causer. See ‘Norfolk Island’s ‘suicide lotteries’; ‘‘Only a Place fit for Angels and Eagles’’, 23.

consideration is that the portrayal of these acts represent an unreflective channelling of past human action—unstable, often incoherent and frequently perverse—into untested and mythic interpretations of our penal past.

This chapter uses Fitzgerald's, Pat Larkins' and Foster Fyans' experiences above to reflect upon how best to uncover genuine convict experience from the myriad sources purporting to convey the mental universes of people long dead. Further, in its acknowledgement and hopeful demonstration of the potentialities as well as pitfalls of attempting to uncover such experiences, it is also an unabashed adventure in the 'search for the convict voice'.¹⁵ An examination of the major 'named' participants in Fyans' ritual may shed light on how such evocative stories of the depravity of penal Australia are created, as well as the likelihood of them actually having occurred. As such, this chapter is primarily concerned with how the writing of convicts' lives is accomplished, as well as how the search for an authentic convict voice from below must be approached with equal servings of historical imagination and caution.¹⁶

By necessity and design, this chapter is also an historical 'detective story', with archival research, hopeful hypothesizing and rank speculation combining in an attempt to establish the genesis of one of the more sensational episodes of convict violence committed to paper. The plausibility of my conclusions—as tenuous and contested as they are—are meant both as an attempt to learn something of the ritual itself and to make a point about the difficulty of locating convict identity; or agency; or 'voice' in snippets of convict action. My aim is not to convince or persuade but to provide a way to see anew a tired convict tale, and to question how best the convict

¹⁵ Maxwell-Stewart, 'Search for the convict voice', 75.

¹⁶ Bradley and Maxwell-Stewart, 'Embodied explorations', 198.

voice can be uncovered. To borrow the words and inspiration of Inga Clendinnen, when she wrote of the novelist Norman Mailer's attempts to unravel the mysteries of the death of Lee Harvey Oswald: 'He does not pretend to make a watertight case, or even a highly plausible one—just a disquietingly possible one'.¹⁷

The first step in this analysis is to challenge the notion that contrived convict murders were solely aimed at convicts committing suicide by either being killed in the ritual by-play or being killed by the state later. Despite the questionable veracity of Fyans' account, an analysis of the actual mechanics of the ritual highlight how *non-suicidal* it was in design and intent. The second step attempts to trace each major character in Fyans' account through the historical archive, to arrive at a startling, if contestable conclusion. I have tentatively—perhaps only plausibly—established that Fyans may have heard about a group murder of this type from famous convict chronicler Thomas Brooks.¹⁸ The irony of an iconic episode of convict brutality being the product of an encounter between two notorious penal-era raconteurs is an equally exciting and frustrating example of the uncertainties of historical research. It is also an indication, reflected in the chapters that make up this thesis, that an alternative conception of what a 'convict voice' is, as well as how and where to locate it within the archive, may add to the historiography surrounding this most tenuous of historical phenomena.

Suicide?

If nothing else, the calculated killing of one convict by another, often in concert with co-conspirators, has restored convicts' ability to shock. Forms of violence so

¹⁷ Inga Clendinnen, *Agamemnon's Kiss: Selected Essays*, Text Publishing, Melbourne, 2006, 111.

¹⁸ The life and narrative contribution of Jack Bushman/Thomas Brooks will be extensively examined later in this chapter. See generally: Bushman, "*Jack Bushman*": *Passages from the Life of a "Lifer"*; Duffield, 'Problematic passages', 20-42.

seemingly aberrant remind us of the potential for brutality in this period, a brutality that has been diluted somewhat by historians' discoveries of the fruitfulness, effectiveness and sheer normalcy of the bulk of convicts' lived penal experiences.¹⁹ In addition to this, however, writing about contrived convict killings also reminds us of the caution that needs to be exercised when making judgments about such events, lest the perversity of the action overtake the healthy skepticism that should be employed before believing such convict tales.

Lynette Ross has alluded to the phenomenon of convict murder-suicide pacts—including the pre-determined allotment of roles for convict participants—within a broader discussion of convict suicide at the Port Arthur penal settlement.²⁰ She locates the various 'species' of convict self-killings within the developing historiography concerned with examining, and indeed uncovering, an unmediated and genuine 'convict voice'. Surely, Ross argues, these convict actions are as important as words, or other signifiers of convict identity, in the ongoing search for their inner-worlds:

Suicide has many forms and faces, and men selected from a range of options the means of their end. Yet whether they chose a public performance or sought privacy, whether it was an impulsive act of desperation or an attempt to end life by committing violence against others, all were proclaiming a similar message. Among historians, much has been made of the search for the convict voice. Some seek it in markings on the body and in keepsakes such as love tokens, but it could be said the actions of these men speak louder than words. The question is, what were they trying to say?²¹

¹⁹ Stephen Nicholas, *Convict Workers: Reinterpreting Australia's Past*, Cambridge University Press, Cambridge, 1988; Hirst, *Freedom on the Fatal Shore*; Atkinson, *Europeans, Volume One*; Joy Damousi, *Depraved and Disorderly: Female Convicts, Sexuality and Gender in Colonial Australia*, Cambridge University Press, Cambridge, 1997; Kay Daniels, *Convict Women*, Allen and Unwin, Sydney, 1998; Deborah Oxley, *Convict Maids: The Forced Migration of Women to Australia*, Cambridge University Press, Melbourne, 1996.

²⁰ Lynette Ross, 'The final escape: An analysis of suicide at the penal settlement of Port Arthur', *Journal of Australian Colonial History*, 7, 2005, 181-202.

²¹ Ross, 'The final escape', 200.

This section attempts to answer Ross' question by challenging its premise: that is, the assumption that episodes of contrived convict murder, as sparse as they are in the archive, were indeed suicidal in nature or intent. In particular, by challenging their characterisation as simple suicidal 'escape plots',²² contrived murders can instead be conceived as rare glimpses, however indecipherable, into the moral economies of people existing at the extremes of emotional and physical endurance. While I do not pretend to know or understand why convicts engaged in such acts, an analysis of the actual mechanics of group murders, and especially the incident recalled by Foster Fyans, tends to challenge the assumption that suicide was the prime motivating factor in convict actions.

It is a common theme, within both contemporary and later analyses, that the phenomenon of contrived convict murder and suicide are one and the same—indeed, one is the progenitor of the other. The elision of these two distinctive phenomena robs the analysis of contrived convict murders of nuance, and of the chance to discover other meanings within the mechanics of the ritualised byplay. It is to this supposedly suicidal intent that we now turn. As will be argued further on in this chapter, Foster Fyans' rendition of (his) ritual murder was almost certainly an embellishment on a similar story that he either heard or witnessed himself during his years as a colonial official.²³ Nevertheless, this has not stopped others from using this, and other such

²² Evidence of Lieut.-Col. Henry Gillman, 13th February, 1832, 'Minutes of Evidence taken before the Select Committee on Secondary Punishments', *BPP Volume One: Transportation*, 32. For a non-official view of how these contrived convict murders and 'schemes' were perceived, see: Evidence of Allan Cunningham, 13th February, 1832, 'Minutes of Evidence taken before the Select Committee on Secondary Punishments', *BPP Volume One: Transportation*, 36. See also Evidence of Sir Francis Forbes, 18th April, 1837, 'Minutes of Evidence taken before the Select Committee on Transportation, 1837', *BPP Volume Two: Transportation*, 16.

²³ Causer, 'Norfolk Island's 'suicide lotteries'', 1-2.

episodes, to argue for their own particular versions of the conditions that faced convicts during the penal period.²⁴ Putting aside temporarily the debate over the veracity of such murder-suicide lotteries, it is reasonable to assume that writers and commentators who use such events to bolster their interpretations of penal life in Australia have reflected upon the intent behind these acts. Particularly in the recollections of those acts that have provided ample detail of the actions of individual convicts including, as in Fyans' case, the names of the participants, it seems appropriate that writers and scholars should explore the actions for meanings other than the macabre expression of a deep-seated suicidal tendency.

Lost amid the preoccupation with various acts' of convict 'murder-suicide' is how survival, and indeed the protection of life, was factored into the event. An example from the narrative of J. F. Mortlock can illustrate the dangers of assuming the motive behind such incidents. Mortlock, a transported 'gentleman convict' and brief Norfolk Island inmate, recalls how convicts, despairing of their 'valueless' lives, engaged in deliberate acts of self-killing:

...four would cast lots – who should be murdered – who should do the deed – who should be the two witnesses – for a spell to Sydney.²⁵

While Mortlock's use of the word 'valueless' is meant to convey the degree to which convicts lives had been reduced by their penal experiences, it also forces the reader to think of the nature of the process by which such valueless existences were to be extinguished. If indeed a life without value were to be ended, then it would be logical to assume that the process by which it was to be ended would be reasonably certain?

²⁴ Hughes, *The Fatal Shore*, 468-470. See also: Frank Clune, *The Norfolk Island Story*, Angus and Robertson, Sydney, 1967. For an analysis of Clune's impact upon the writing of Australian history see: Bridget Griffen-Foley, 'Digging up the past: Frank Clune, Australian historian and media personality', *History Australia*, 8(1), 2011, 127-152.

²⁵ Mortlock, *Experiences of a Convict*, 69-70.

While not quite qualifying for what Greg Denning would deem a ‘cliometric moment’,²⁶ a statistical analysis of the episode described by Mortlock—albeit a simple one—is instructive. It is difficult to reconcile a desire to end a ‘valueless’ existence by engaging in a process with only a twenty-five *per cent* likelihood of certain death. Clearly, there is more to this behaviour than a simple suicidal compulsion. In conflating the perceived futility of these prisoners’ lives with their conduct, Mortlock has interpreted a *willingness* to die, or to risk death, with a suicidal desire to be killed. These are two very different scenarios, with correspondingly discordant emotional and intellectual underpinnings.²⁷ What for Mortlock is the macabre expression of inmate despair may be seen as conduct satisfying multiple convict motives, and ensuring survival, however briefly, for three-quarters of its participants. While the actual motives of convicts that engaged in such behaviour will never be definitively known, it is just as plausible, looking at the nature and outcome of the event just described, that these convicts were equally, if not more, desirous of remaining alive as dying. This high survival rate among ‘suicidal’ subjects—their creation and acceptance of multiple chances of survival in the ritual byplay itself—remains unexplained in Mortlock’s appraisal of the ritualist’s actions and motives.

²⁶ In his assessment of Captain William Bligh’s character and performance as a naval commander, Denning asserts a ‘right’ to soften the image of this infamous martinet: ‘I have the right to say that Bligh was milder in displaying physical violence than most British captains who came into the Pacific in the eighteenth century because I have counted all the lashes British sailors received and the occasions of their receiving them’. As a result of this ‘cliometric moment’: ‘From 1765, when John Byron made his dash across the Pacific in the *Dolphin*, until 1793, when George Vancouver tried to ease Spain off the northwest coast of North America, fifteen British naval vessels came into the central Pacific for purposes of discovery and appropriation, or, like the *Bounty* and *Providence*, for purposes of exploitation. Fifteen hundred and fifty six British sailors were aboard those fifteen vessels. Of them, 21.5% were flogged. Cook flogged 20%, 26% and 37%, respectively, on his three voyages. Vancouver flogged 45% of his men. Bligh, on the *Bounty*, flogged 19% and, on the *Providence*, 8%. It was among the least number of men punished on any ship that came into the Pacific’. See Denning, *Mr Bligh’s Bad Language*, 62-63.

²⁷ Ross, ‘The final escape’, 200. Other writing on suicide includes analyses of social aspects such as age patterns, geographical location, marital status, race and sexuality to determine different suicide’s motivations. See Katrina Jaworski, ‘Suicide and gender: Reading suicide through Butler’s notion of performativity’, *Journal of Australian Studies*, 76, 2003, 137.

Of course, the more participants involved in, or coerced into these rituals, the greater likelihood of surviving them.²⁸ Returning to Foster Fyans' account of the ritual murder that opened this chapter, the sheer number of prisoners involved in the alleged act had a significant impact on the likelihood of any particular participant surviving. To re-cap Fitzgerald's demise: sixteen men aided and abetted this ritual, yet only one of them—excluding, for the moment, the uncertain legal path to be taken by the chosen murderer—was guaranteed an expeditious death. Thus, from the original cast, two men progressed to the final deadly ballot, reducing each man's chances of dying at that stage to 12.5 *per cent*. From there, a straight contest between the two finalists—a fifty/fifty chance—reduces the overall likelihood of dying that day for any one of the sixteen ritualists to 6.25 *per cent*. For men supposedly tired of life, and craving death, these are not hopeful odds.

Further, by including the demonstrably reluctant Jewish prisoner, 'Lazarus', in the ritual, each man's chances of dying decreased.²⁹ Notions of solidarity, or some collective convict identity, explaining his inclusion can be quickly dispelled. Upon reaching the ritual ground, Lazarus was manacled to the shocked overseer, with an exhortation that 'Jews are not to be trusted'.³⁰ If any person were to be excluded from the ensuing action, it would be this one: a reluctant outsider, discriminated against and mistrusted, who pleaded with his fellow inmates to be excluded from the action. By including him, however, the other fifteen convicts not only gave this man an opportunity to engage in a process designed to further their own suicidal aims, but

²⁸ Fyans' recollection of the Norfolk Island murder-suicide pact has both elements of voluntary and coerced behaviour: Fyans, *Memoirs*, 101-102; Hughes, *The Fatal Shore*, 468.

²⁹ Fyans, *Memoirs*, 101.

³⁰ *Ibid.*

reduced their chances of being drawn to die. As a 6.25 *per cent* chance of death increases to 6.67 *per cent* with the inclusion of Lazarus, notions of an active search for death—a macabre and irresistible collective convict death wish—becomes harder to believe.

Additionally, for those determined to die, there existed more certain, if less spectacular, ways to do so in such penal settings. In the recollections of Thomas Brooks, or ‘Jack Bushman’, whose colourful colonial career will inform much of the argument in the second half of this chapter, options for convicts to suicide were abundant.³¹ Describing the lot of a fellow prisoner called Macarthy, a man worn down by the brutal treatment he received at Moreton Bay, Brooks reveals a simple suicidal strategy:

They flayed his back till it was one mass of wounds. His spirit was broken. Life was despised. At this period no one knew anything of the back country. To go into the bush was to go to death, and yet Macarthy went, having by some means obtained release from his irons.³²

In other words, to perish at the hands of brutalised and vengeful local ‘blacks’,³³ or to slowly starve in an alien and unforgiving backwoods, seems a surer way to expire than a game of ritualised chance that unfairly stacked the odds of dying *against* its participants.

For other convicts, the option to suicide was presented—indeed cheerfully facilitated—by accommodating penal guards. In his evidence to the 1837 Select Committee enquiring into the state of transportation to the colonies, former Governor

³¹Bushman, “*Jack Bushman*”: *Passages from the Life of a “Lifer”*, Chapter 3; Duffield, ‘Problematic passages’, 20.

³²Bushman, “*Jack Bushman*”: *Passages from the Life of a “Lifer”*, Chapter 3, 1.

³³*Ibid.*

of Van Dieman's Land, Lieut-Colonel George Arthur, described an incident where self-killing was offered to 'two or three men' who professed a strong desire to 'destroy themselves'.³⁴ While acutely aware of the insurrectionary potential of the men's request, yet also sensing their innate abhorrence towards suicide, 'Captain Crowley', the work gang overseer (and a man, we suspect, with a knowing, imperturbable and cynical bent of mind befitting his position), calmly called the men's bluff. Loading them up with the heaviest chains at hand, the prospective suicides were marched out onto a narrow causeway, in front of the entire work gang, ushered toward a sufficiently deep section of water, and invited to jump.³⁵ According to Arthur, when presented with the prospect of 'sinking immediately', the men 'afterwards returned, expressed great contrition, and conducted themselves very well afterwards'.³⁶ What Captain Crowley understood, whether intuitively or through years of experience dealing with restrained and resentful humanity, was the difference between the employment by convicts of the threat of suicide to express profound disillusionment with their lot, and a genuine desire to die. Indeed, their idle threat was brutally exposed by Crowley's deliberately humiliating response. While talk of suicide came readily, if not easily to convicts' lips, acting on thoughts of actual self-destruction seemed rarely to enter their minds.

Acknowledging the high survival rate within these convict murders allows them to be re-examined, or even recast, as articulatory gestures among convicts existing at the extremes of physical and emotional repression. At the least, their characterisation as suicidal escape quests can be challenged. Official interpretations, emphasising an

³⁴ Evidence of Colonel George Arthur, 30th June 1837, 'Minutes of Evidence taken before the Select Committee on Transportation, Appendix and Index', *BPP Volume Two: Transportation*, 310.

³⁵ *Ibid.*

³⁶ *Ibid.*

avoidance of the ‘stigma’ of suicide in these displays, assume a pre-occupation in the ritualists’ minds with broader questions of moral and religious identity and salvation.³⁷ While undoubtedly these issues would have vexed convicts’ consciences and ethical codes, their dominance obscures alternative notions of the ritual’s aims and outcomes.³⁸ The overwhelmingly favourable ‘odds’ of surviving these acts challenges suicide, which Vera Lind describes as a ‘coldly calculated, active strategy’,³⁹ as the primary motive in convicts’ violent behaviour. In fact, these ritually embedded chances of survival, in most cases far outweighing any chance of death, can be interpreted as suicide’s inverse: namely, a desperate desire to affirm lives tenuously balanced on the edge of physical, social and emotional oblivion.

Contrived convict murder and the ‘convict voice’

Once suicide, as a major motivating factor for such behaviour has been, if not discounted then challenged, further exploration of the veracity and genesis of such portrayals of convict murders can be made. Specifically, the process by which these acts became lodged in the contemporary consciousness as exemplars of colonial brutality can be examined against their actual existence within the colonial archive. To assess whether the event that Fyans described actually occurred, in terms similar to how it has been portrayed or, indeed, at all, requires similar ‘detective work’ to that

³⁷ Evidence of Lieut.-Colonel Henry Gillman, 13th February, 1832, *BPP Volume One: Transportation*, 32.

³⁸ Dom. Carter Butler, *The Life and Times of Bishop Ullathorne 1806-1889*, Burns, Oats and Washbourne Ltd, London, 1926, 93; Hamish Maxwell-Stewart, *Closing Hell’s Gates: The Death of a Convict Station*, Allen and Unwin, Sydney, 2008, 219.

³⁹ Vera Lind, ‘The suicidal mind and body: Examples from Northern Germany’, in Jeffrey R. Watt (ed), *From Sin to Insanity: Suicide in Early Modern Europe*, Cornell University Press, Ithaca, 2004, 78.

started by Timothy Causer in his examination of the phenomenon of contrived convict murders as part of his broader examination of the Norfolk Island penal settlement.⁴⁰

For Causer, the drawing of straws, in order to decide the various roles played by convicts in these pacts, is an embellishment written into these acts to enhance their ‘gothic’ appeal.⁴¹ Despite his disappointment in the way that such stories have infected the historiography of Norfolk Island, Causer’s extensive analysis provides a useful starting point in the examination of the origins of these stories of deliberate convict murders. Indeed, the examination of the major ‘players’ that starred in Fyans’ account of the ritual at Norfolk Island opens up, rather than narrows, the field of possibilities available to those who seek to understand the genesis of such events. Further, the following analysis of this ‘iconic’ example of convict protest also reveals a most surprising potential source for this particular version of the convict voice.

Foster Fyans

As the author of the source that recounted the sixteen-man convict murder-suicide pact, Foster Fyans, rightly, is the figure upon which much scrutiny must be directed. This attention is long overdue, as most historians and commentators on the penal system, and Norfolk Island in particular, have taken Fyans’ account of this murder-pact as essentially a truthful rendition of events that occurred during this time.⁴² It is intriguing, but ultimately distracting, to speculate on why such an account has been accepted so readily by previous historians: perhaps the macabre nature of the ritual expressed so conveniently the tropes of brutality and depravity of penal-era Australia

⁴⁰ Causer, ‘Norfolk Island’s ‘suicide lotteries’’; ‘Only a Place fit for Angels and Eagles’.

⁴¹ Causer, ‘Only a Place fit for Angels and Eagles’, 21-33.

⁴² Hughes being the main culprit. See *The Fatal Shore*, 468-469.

that those who stumbled upon it did not want to find out the truth, or otherwise, of its claims? Alternatively, those who accepted the essential veracity of the ritual story were not prepared, or were unable, to do the necessary detective work in order to satisfy for themselves whether this event was in fact historical truth. Another, almost banal, reason for historians' faith in the veracity of this event is that Fyans, as a one-time Commandant of the Norfolk Island penal settlement, a decorated military officer of thirty years experience and a respected citizen who, later in life, held important civic and administrative positions in colonial society, is an eminently believable figure.

Fyans was born in Clontarf, Dublin in 1790. Few details survive of his childhood, however, he did attend school in County Louth, lived for a period of his childhood with an uncle, and, in 1810, 'marched into Portsmouth barracks as a raw ensign of the 67th Regiment'. Half a column in the *Geelong Advertiser*, on the 26th May 1870, which served a dual purpose as an obituary notice for Fyans as well as a brief biography of his later, more local exploits, curtly recalled his military and administrative career:

Joined 67th Regiment, 1810; siege of Cadiz; Cartagena—General Ross; Tarragona—General Murray; retreat from Villafranca—Lord William Bentinck; from England to India, 1817; campaigns and garrison duties, 1819-25; England—transferred to 20th Regiment in India, 1826-27; Mauritius—Sir Lionel Smith; transferred to 4th Regiment, joined it at Botany Bay, 1832; three years at Norfolk Island, then Commandant at Moreton Bay; police magistrate at Geelong, 1837; ran FF cattle on what became Robertson's station; CCL, Portland Bay District, 1840; sheriff and first gold receiver at Geelong; awarded silver vase for his work on the Barwon breakwater.⁴³

⁴³ Fyans, *Memoirs*, x.

As Causer explains, the account of the contrived murder that Fyans wrote of in his memoirs is, even on a cursory glance at the relevant historical records, almost fatally flawed.⁴⁴ That Fyans provided extensive details of the relevant parties to the murder, and stated that they all faced the colonial courts for their crime, while seemingly adding a veneer of credibility to the account, in fact invalidates it archivally. As Causer notes, there is no record of a convict named Fitzgerald dying at Norfolk Island, let alone in such dramatic circumstances.⁴⁵ Further, no one called ‘Pat Larkins’, or even a convict with an ‘approximate’ name, was at Norfolk Island at the time that Fyans specified for the event. As well as information based on an examination of the relevant colonial era archives, Causer also uses evidence concerning the less formal ways that information on such an event would be disseminated to invalidate Fyans’ memoir. Thus, that the ritual was not mentioned at all in the colonial press of the day is crucial, given that the press ‘lapped up sensational tales of Norfolk Island and printed court proceedings at length’.⁴⁶ There was also no mention of such a murder-suicide pact in the diary of Aaron Price, a former Norfolk Island commandant and a man who Causer asserts: ‘always remarked upon the circumstances of murders’.⁴⁷

Causer also contends that Fyans’ account of the episode is chronologically vague, arguing that the approximate time given by Fyans in his recollections—either ‘1832 or 1833’—is an unspecified point in time.⁴⁸ While it could be argued that the

⁴⁴ In a conference paper, Causer presents a strong argument denying that Fyans’ account of the sixteen-man murder ritual took place. Stating that Fyans’s story can be ‘easily deconstructed’, Causer lists a selection of damning evidence against the former Norfolk Island Commandant. See Causer, ‘Norfolk Island’s ‘suicide lotteries’, 2.

⁴⁵ Causer, ‘Only a Place Fit For Angels and Eagles’, 215-216.

⁴⁶ Causer, ‘Norfolk Island’s ‘suicide lotteries’, 2.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

nomination of two years within a lifetime of military and penal service is a reasonably specific timeframe, especially when the events being written about happened decades prior, Fyans' temporally uncertain recollections adds a nebulous quality to the event that further weakens its credibility. In a cogent analysis of the Norfolk Island and broader colonial records that covered the period in question, including an examination of the colonial press at the relevant time, Causer mounts a convincing argument to the effect that the events that Fyans wrote of did not in fact occur.⁴⁹

If we accept that Causer is correct in his assertion that Fyans' account is either: i) a mistake, ii) an embellishment or, iii) a fabrication, the obvious question that presents itself is: 'What was Foster Fyans playing at when he wrote what he did'?

Unfortunately, what would possess Fyans to fabricate such a story is, and will probably remain, unclear. While insinuating that Fyans wrote his memoir in the fog of advanced age and declining faculties, Causer's ultimate conclusion is that this particular course of events—the drawing of straws to decide roles in a murder-suicide pact—was in fact an embellishment by 'middle-class' observers to 'further condemn the character of men who committed such attacks, men already regarded as thoroughly depraved purely by being at Norfolk Island'.⁵⁰ While Causer does not seem to accuse Fyans himself of such a course of action, he does insinuate that he [Fyans] may have been carried along by the tide of gothic horror that swept over the writing of Australia's penal-era during the period when he was writing his memoir. Of Fyans' culpability in the dissemination of such stories, Causer writes: 'There was no reason to give the men pseudonyms, though Fyans wrote his memoirs in his

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

dotage, at a time when tales of such killings were the stuff of legend and his memory may have led him astray'.⁵¹

Apart from this cursory claim, Causer is silent on any other explanation for Fyans' account. Moreover, Causer's analysis has nothing to say on the other time in which Fyans alluded to the contrived murder of convicts using the drawing of straws as a demarcating tool. While, admittedly, a memoir is not the most robust of sources on which to base historical conclusions, it must also be remembered that Fyans did give evidence of the same contrived murder depicted in his recollections to a Victorian Select Committee on Prison Discipline in 1857.⁵² Invited to appear before the Committee, which was conducting an inquiry into the Victorian prison system, Fyans was called to give his opinions on the conditions facing prison administrators and authorities in the penal-era. That he was thought highly enough of to be invited to give evidence perhaps goes some way to preserving some of the honesty, or mental acuity, that Causer seemingly denies him. While unsworn, Fyans, nevertheless, went into some detail on the state of the penal institutions he experienced as both a Commandant and officer, as well as some of the behaviour of convicts enduring places like Norfolk Island and Moreton Bay.

Of his evidence to the Select Committee, the *Geelong Advertiser*, in its summation of the life and experiences of this prominent local figure, asserted that:

Setting aside all the late Police Magistrate's eccentricities and peculiar way of address, he will never be surpassed in the higher and more noble qualifications

⁵¹ Causer, 'Only a Place Fit For Angels and Eagles', 216.

⁵² See Evidence of Captain Foster Fyans to the Victorian Select Committee on Prison Discipline, *Australian Parliamentary Papers, Victorian Parliamentary Legislative Assembly Votes and Proceedings*, 1856/57, No. 2, Volumes 3 and 4, 78, State Library of New South Wales (SL), RAV FM4, 12.

of sincerity and integrity. The position of rank made not the slightest difference to him in the administration of justice. When his intimate friends have appeared in litigation before him they have benefitted nothing by their friendship.⁵³

Reading between the lines of this description, it seems that it was Fyans' distinctive manner and personality—not his honesty—that challenged those who dealt with him. And of course there was his 'compulsive, breathlessly tumbling verbosity'.⁵⁴

Tellingly, when dealing with Fyans, in his capacity as Police Magistrate and Mayor of the Geelong district, New South Wales Governor Gipps once wrote in a combination of exasperation and wonder: 'It is most extraordinary that nothing can keep Captain Fyans quiet'.⁵⁵

Some of Fyans' natural tendency to hyperbole can be seen in certain aspects of his testimony to the Victorian Select Committee. Asked to comment on the state of the general prison population at the colony's penal settlements, he regurgitated the almost mandatory imprecation of the age: the prisoners held at these sites were the worst class of prisoners he had ever seen and 'beyond anything I ever found in the shape of human beings'.⁵⁶ In another powerful convict-era trope, Fyans also explains how systematic and savage flogging was the only antidote to the behaviour of these inmates. Asked of the importance of corporal punishment in dealing with Norfolk Island prisoners, he answered: 'You cannot do without it [the lash] with these

⁵³ Fyans, *Memoirs*, xi.

⁵⁴ Stuart Sayers, 'Captain Foster Fyans of the Portland Bay district', *The Victorian Historical Magazine*, 40(1 and 2), Feb-May 1969, 46.

⁵⁵ *Ibid.*, 46.

⁵⁶ Evidence of Captain Foster Fyans to the Victorian Select Committee on Prison Discipline, *Australian Parliamentary Papers, Victorian Parliamentary Legislative Assembly Votes and Proceedings, 1856/57*, State Library of New South Wales (SL), RAV FM4, 12.

characters, impossible to do without it'.⁵⁷ Despite this apparent need to dramatise his experiences, Fyans also spoke of his relationships with the prisoners under his command:

I am a great advocate for convicts, and no man ever got on better than I did with them—punish them and they will be quiet, but if you do not punish them they will be always bad. I say do the men every justice; if a man deserves mitigation, recommend him and have him mitigated, do anything to serve him, but you must be strict with them.⁵⁸

Significantly, Fyans does give direct evidence to the Committee concerning the sixteen-straw murder-suicide ritual that was such a prominent part of his memoirs. This was done in Melbourne on the 8th of July 1857. With an impressive grasp of the details of the ritual, Fyans recalled the scene minutely, down to the curious fact that the murdered party, Fitzgerald, did indeed ensure his demise by drawing the 'long straw' against his opponent, as opposed to the more traditional short one.⁵⁹ Of course, having once promulgated a story that was, if not a complete fabrication then the repetition of a second-hand horror story, he may well have felt compelled to repeat his claims for the sake of posterity. Moreover, it is also possible that he used the forum of the Committee's evidence gathering procedure to reiterate his version of the event,

⁵⁷ Evidence of Captain Foster Fyans to the Victorian Select Committee on Prison Discipline, *Australian Parliamentary Papers, Victorian Parliamentary Legislative Assembly Votes and Proceedings, 1856/57*, No. 2, volumes 3 and 4, p.78, State Library of New South Wales (SL), RAV FM4, 75.

⁵⁸ Fyans, *Memoirs*, xiv.

⁵⁹ There is some evidence of straw-drawing on board ships prior to this time. One particular striking example of the lot-drawing process at sea concerned the fate of the crew on the *Dolphin*, a ship that ran aground in 1759, and whose crew were rescued by a Spanish vessel, the *Andalusia*. A.W.B. Simpson takes up the story: 'Being reduced to the last extremity, they all agreed to cast lots for their lives, which accordingly they did; the shortest lot was to die; the next shortest was to be the executioner. The lot fell upon Anthony Galatea a Spanish gentleman, a passenger. They shot him through the head, which they cut off and cast overboard; they then took out the bowels and ate them, and afterwards, ate all the remaining parts of the body, which lasted but a very little while'. See: A.W.B. Simpson, *Cannibalism and the Common Law: The Story of the Tragic Last Voyage of the Mignonette and the Strangely Legal Proceedings to which it Gave Rise*, The University of Chicago Press, Chicago, 1984, 123-124.

and thus accord it a formal legitimacy lacking in the original rendition. Either way, it must be noted that Fyans, with confidence and conviction, re-told the events of ‘1832 or 1833’ as if they actually occurred. That a formally high-ranking and respected colonial figure would lie, or dissemble, so brazenly in such a public and formal setting, does not seem to accord with his reputation as an upstanding, albeit garrulous, figure.

As well as stating outright that the ritual murder occurred on Norfolk Island, Fyans does use its existence in a broader critique of the nature and depravity of the convicts at penal stations. In other words, in order to convey how dissolute the prisoners at these places were, Fyans uses the example of the ritual murder as a means of explaining how almost any form of behaviour was acceptable to these inmates. Rather than interpreting it as a suicidal quest from desperate convicts looking to end their miserable existences however, he assumes that the convicts involved in the alleged episode were simply aiming to gain a ‘spree’, or a few weeks respite in Sydney, as the trial process wove its course through the criminal court.⁶⁰ This use of the contrived murder—as an example of some of the extreme behaviours that convicts engaged in to escape the ‘hell’ of the colony’s penal settlements—tends to accord with the standard use of these alleged acts in the literature of the middle classes at the time.⁶¹

⁶⁰ Evidence of Captain Foster Fyans to the Victorian Select Committee on Prison Discipline, State Library of New South Wales (SL), RAV FM4, 75. For a convict counter to the Fyans’ argument see Hamish Maxwell-Stewart, ‘The search for the invisible man’, in Lucy Frost and Hamish Maxwell-Stewart (eds), *Chain Letters: Narrating Convict Lives*, Melbourne University Press, Melbourne, 2001, 49-63.

⁶¹ For the political, commercial and social background to the writing of convict narratives in the early to mid-1800s see: Conlon, ‘Mine is a sad yet true story’; Causer, ‘Only a Place Fit For Angels and Eagles’, 217.

Given the overwhelming evidence that the murder described by Fyans in his memoir almost certainly never took place, yet not being prepared to libel Foster Fyans as a middle class fabricator of convict history, what other explanations can be posited for its appearance in his memoir? This chapter largely subscribes to Causer's hypothesis that Fyans probably wrote his memoir in a haze of half forgotten memories and shards of stories kept from his decades in the penal service.⁶² That he knew it to be false when he wrote of it and gave evidence to it having happened is impossible to know. However, there is the distinct possibility that Fyans did hear of a macabre contrived convict murder-suicide pact during his time in the penal system and incorporated it into his memoirs later on.⁶³

In order to further interrogate how Foster Fyans may have come to believe that such an event took place,⁶⁴ and to assess how it is that we are still debating its merits long after its alleged occurrence, we need to continue the historical detective work concerning the identities of the major players in this penal-era drama. We therefore move on to the shadowy figure of 'Pat Larkins', the man who, according to Fyans, drove a hoop-iron knife up to his fist into Fitzgerald's abdomen, ensuring a painful, two-day long death for his victim, and consigning himself to death upon the gallows.

Pat Larkins

Of the named participants in Fyans' account of the murder-pact, we know frustratingly little. Despite the apparent certainty of the names, dates and

⁶² Causer, 'Only a Place Fit For Angels and Eagles', 217.

⁶³ Anne Conlon has also written of the way that convict narratives adopted a common theme and narrative structure in order to appeal to as wide a reading public as possible. See Conlon, 'Mine is a sad yet true story', 45-51; Evans and Thorpe, 'In search of Jack Bushman', 32-48. For these authors, the central problem of *Passages* is not so much one of authenticity as of the mystery of authorship (at 40-41).

⁶⁴ Fyans, *Memoirs*, 101-102.

repercussions of the event provided by Fyans, little actual evidence exists that this episode took place, or that its participants made their way through the colonial legal system.⁶⁵ Of two ‘Patrick Larkins’ found in the records kept of convict movements throughout New South Wales and Van Dieman’s Land in the late 1820s and early 1830s, one was secondarily transported from Sydney to Van Dieman’s Land in 1839, the other only arrived in the colony in 1843.⁶⁶ Moreover, after arrival both men travelled south—from Sydney to Van Dieman’s Land—after their arrival in Sydney, not north to where their namesake allegedly committed his crime.⁶⁷

For the sake of completeness, two more ‘Pat Larkins’ were found among the colonial archives, however, they both appear subsidiary, if not irrelevant, to the present inquiry. A man named Pat Larkins appears in the records of ‘Criminal Activity, Maitland’ as having committed a crime sometime in the period between 1834 and 1835.⁶⁸ Other than the fact that this particular individual was found guilty of a crime, we do not know what that crime was, or what punishment he received. Further, we are not told whether this Pat Larkins is indeed a serving or an ex-convict. There is also evidence of another ‘Patrick Larkins’, who arrived in the colony on board the convict ship *Mangles*, being detained on board the hulk *Phoenix* in 1828.⁶⁹ Apart from these

⁶⁵ Despite Fyans’ concise account, a search of the records of the Criminal Jurisdiction of the New South Wales Supreme Court does not mention a murder of this type committed by a ‘Pat Larkins’. See Clerk of the Peace Records, Supreme Court, Criminal Jurisdiction, Supreme Court, Sydney and on circuit - papers and depositions, 1824-36, *SRNSW*, NRS 880, COD 392, [4/9090]; Colonial Secretary’s records, Special Bundles, 1826-1982, *SRNSW*, NRS 906, Supreme Court Sydney and on circuit – Session returns of persons tried and convicted, 1825-1910, Norfolk Island, 1833-34, [X729], Reel 2389; Sydney, 1831-34, [X729], Reel 2389; Sydney, 1833-37, [X731], Reel 2389.

⁶⁶ Deas Thompson correspondence, Colonial Secretary’s records, Copies of letters sent to the Sheriff, 9/7/1836-28/7/1838-29/6/1842, *SRNSW*, Reel 1064; Location 4/3901, 204; Deas Thompson correspondence, Colonial Secretary’s records, Copies of letters sent to the Sheriff, 9/7/1836-28/7/1838-29/6/1842, *SRNSW* Reel 1260; Location 4/4523, 141.

⁶⁷ Deas Thompson correspondence, Colonial Secretary’s records, Copies of letters sent to the Sheriff, 9/7/1836-28/7/1838-29/6/1842, *SRNSW*, Reel 1064; Location 4/3901, 204.

⁶⁸ Criminal Activity Maitland, Quarter Sessions-Maitland Papers, 1834-35, Reel 2407; Location 4/8411, *SRNSW*, 55 (Case Two).

⁶⁹ Fyans, *Memoirs*, 105.

snippets of information, and as the commentary within Fyans memoir itself states, there is no corroborating evidence that places a ‘Patrick Larkins’ at Norfolk Island around the time of the alleged crime.⁷⁰

All is not lost however, in this game of historical detective work. While Timothy Causer is undoubtedly right when he emphasises the importance of consulting the official archive of the Colony before making allegations of misconduct or depravity, it is equally unwise to assume the absolute accuracy of the archive itself as a guide to convict identity and movement.⁷¹ In other words, while delving into the papered ‘penitentiary’ that held convicts,⁷² it is also prudent to assume, every so often and as a result of the almost inevitable mistakes that will be made in the processing and monitoring of thousands of people, that omissions and misspellings were made. As such, to restrict our search for an exact match to the named persons in the account is to potentially miss other approximate names recorded in the archive.⁷³

Thus, there is a record of a ‘Stephen Larkins’ being transported from Sydney to the penal settlement of Norfolk Island on the *Governor Phillip* on the 6th of October 1832.⁷⁴ While Larkins’ name appears third from the bottom on the list of prisoners aboard the vessel, on top of the same list of transportees is ‘James Fitzgerald’. From this patchwork of cross-referenced names, it is possible to state with some certainty that *a* Larkins and *a* Fitzgerald were indeed transported, on the same ship, north to

⁷⁰ *Ibid.*

⁷¹ A point made by Hamish Maxwell-Stewart in his examination of ‘The life and death of James Thomas’. See Hamish Maxwell-Stewart, ‘The life and death of James Thomas’, *Tasmanian Historical Studies*, 10, 2005, 55-64.

⁷² Maxwell-Stewart, *Closing Hell’s Gates*, 81.

⁷³ Causer, ‘Norfolk Island’s ‘suicide lotteries’’, 2.

⁷⁴ See Colonial Secretary’s records, Copies of letters sent to the Sheriff, 28/7/1832-4/12/33, 10/12/1833-8/7/36, [4/3898-99], *SRNSW*, Reel 1063; location 4/3898, 78.

one of the secondary penal sites—Moreton Bay or Norfolk Island—in 1832.⁷⁵ While this is indeed close to scraping the bottom of the evidentiary barrel, this chapter is a study of what is *possible*, if not plausible or even probable.⁷⁶ Despite the uncertainty of not knowing whether Stephen Larkins was in fact the Pat Larkins that starred so prominently in Fyans' account of the murder-pact, the chronology of this man's journey fits in with the events that supposedly transpired at Norfolk Island.⁷⁷

One piece of evidence in particular strengthens the hypothesis that a Pat Larkins, or indeed any other Larkins that may have been at Norfolk Island in the early 1830s, did not in fact play the role ascribed to him in Foster Fyans' account of Fitzgeralds' death. On the 13th of February 1839, according to the correspondence of the Colonial Secretary Edward Deas Thomson, a group of sixty Norfolk Island convicts were transported back to Sydney before being forwarded through to the Hyde Park Barracks and then onto the final destination on the work prison at Cockatoo Island in Sydney Harbour.⁷⁸ Here they would serve out the remainder of their sentences. Again transported in the *Governor Phillip*, the prisoner Stephen Larkins appears as convict number twenty-six of the sixty that were returned to Sydney.

⁷⁵ There is evidence of a 'Fitzgerald' and a 'Larkins' being sent, on the same convict transport ship, *the Governor Phillip*, to Norfolk Island in 1832, however, there is no record of Larkins having been sent from Norfolk Island to Sydney to face trial for this, or any, offence. See Colonial Secretary's records, Copies of letters sent to the Sheriff, 28/7/1832-4/12/33, 10/12/1833-8/7/36, [4/3898-99]. *SRNSW*, Reel 1063; location 4/3898, 78.

⁷⁶ Clendinnen, *Agamemnon's Kiss*, 111.

⁷⁷ Fyans, *Memoirs*, 101.

⁷⁸ For the movements of convict Stephen Larkins see: Colonial Secretary's Papers: Copies of letters Sent to the Sheriff, 9/7/1836-28/7/1838-29/6/1842; *SRNSW*, Reel 1064; Location 4/3901, 88; For 'Stephen Larkins' re-transportation from Norfolk Island to Sydney Gaol; Sydney Gaol to Hyde Park Barracks and Hyde Park Barracks to Cockatoo Island see: Deas Thompson correspondence, Colonial Secretary's Papers: Copies of letters Sent to the Sheriff, 9/7/1836-28/7/1838-29/6/1842; *SRNSW*, Reel 1064; Location 4/3900-01. It is unclear why Larkins and the other convict were returned to Sydney. There was a practice of sending the invalid and incurably sick back to spend the remainder of their days at Cockatoo Island in Sydney Harbour, however we do not know what particular illness, if any, Stephen Larkins was suffering from. For the practice of returning convicts back to Sydney from Norfolk Island see: John Vincent Barry, *Alexander Maconochie of Norfolk Island: A Study of a Pioneer in Penal Reform*, Oxford University Press, Melbourne, 1958, 151.

The six or seven-year gap between when ‘Pat Larkins’ allegedly stabbed Fitzgerald and when ‘Stephen Larkins’ was re-located back to Sydney does not accord with the usual procedure in the administration of murder and other serious crimes committed on Norfolk Island. While the settlement itself was chosen for its isolation and distance from the administrative and legal heart of the colony, the trial and sentencing of serious crimes on the Island were dealt with more expediently than this timeframe would indicate.⁷⁹ Moreover, there is no indication that any of the re-transported men did not experience the same re-location and re-assignment process as any of their colleagues. In other words, these prisoners were transferred back to Sydney, and were not returning to face trial, or any other form of official retribution, for crimes committed at Norfolk Island.

Fitzgerald

Our search for the elusive ‘Fitzgerald’, the man who so stoically (and eloquently) met his death in the dust of Norfolk Island, is complicated by the absence, in Fyans’ account, of a first name for this unfortunate figure. Thus, in a colonial outpost populated by prisoners overwhelmingly of British and Irish origins, the search for a prisoner called ‘Fitzgerald’ produces a disquietingly large array of possible candidates. An examination of the ‘Colonial Convict Movements’ records reveals at least twenty-five convicts with the surname Fitzgerald who were secondarily

⁷⁹ Hirst, *Freedom on the Fatal Shore*, 64; Kercher, *Outsiders*, 109-124; John McLaren, ‘The judicial office bowing no power but the supremacy of the law: Judges and the rule of law in colonial Australia and Canada, 1788-1840’, *Australian Journal of Legal History*, 12, 2003, 177-192; Tim D. Castle, ‘The practical administration of justice’, 47-72.

transported between the years 1819 and 1845.⁸⁰ This means that these men were transported, in addition to their original transportation, at least once more during their period as colonial prisoners. In light of new research that reveals that a substantial proportion of Norfolk Island prisoners were in fact not doubly-convicted transportees, the importance of double transportation as a means of narrowing down potential Norfolk Island Fitzgerald's is reduced.⁸¹ Nevertheless, of the list of Fitzgeralds' that were doubly transported, a smaller list of those who were transported north of Sydney—to Norfolk Island, Port Macquarie or Moreton Bay—can be compiled.

Of the twelve 'Fitzgeralds' sent to penal settlements north of Sydney between 1829 and 1836, two show particular promise, for very different reasons however, in our search for the veracity, or otherwise, of Fyans' tale. The first Fitzgerald we have already met: the convict who shared a ship, the *Governor Phillip*, with Stephen Larkins, to Norfolk Island. As mentioned previously, while evidentially thin, this paper trail does establish, at least chronologically, that there was a Larkins and a Fitzgerald aboard a convict ship *en route* to Norfolk Island around the time that Fyans alleged that the murder-pact took place.

⁸⁰ An examination of the movements of convicts from the State Records Office of New South Wales between 1819 and 1845 reveals at least 25 people with the surname 'Fitzgerald' who were secondarily transported (transported twice) during this period. See Colonial Convict Movements, *SRNSW*, Reel 1031; Location 4/3501, 146; Reel 1062; Location 4/3596, 245, 300, 476; Location 4/3897, 198, 202, 205, 291; Reel 1063; Location 4/3899, 203, 315; Location 4/3898, 78; Location 4/3899, 78, 258, 219; Reel 1064; Location 4/3900, 10; Reel 1065; Location 4/3902, 24; Reel 1260; Location 4/4523, 10, 20, 132, 218, 225, 232, 238, 258.

⁸¹ Timothy Causer has provided statistical data that suggests a large percentage of Norfolk Island prisoners were, in fact, either first-time transportees or prisoners sent to the Island without having been convicted in the Colony. He states: 'The erroneous suggestion that all—or even a majority—of Norfolk Island convicts were doubly-convicted capital respitees can be put to rest, though that this myth has endured and been repeated with such certainty is remarkable. Nearly 55 per cent of the convicts went to Norfolk Island either under their original sentence of transportation or without being subject to a colonial conviction. Only 42 per cent were doubly-convicted and the proportion of those repeatedly convicted in the Australian colonies was miniscule, giving the lie to heightened contemporary rhetoric'. See Causer, 'The worst types of sub-human beings', 30.

The second ‘Fitzgerald’ that stands out from a crowded evidentiary pool is only tangentially connected to the events described by Foster Fyans, but his connection does raise tantalising possibilities in our search for the truth behind this event. Again relying on the maxim of ‘possible if not necessarily plausible’, the presence of this particular Fitzgerald raises both the exhilarating potential, and the extreme caution, that attends any search for an authentic expression of the ‘mental-worlds’ of convicts.⁸² Further, if this connection is a ‘disquietingly possible’⁸³ one, then the search for genuine convict voices in the snippets of words and descriptions of convict action may be found to labour under an almost terminal complexity and uncertainty. For if this connection is found to be possible, then this particular Fitzgerald was the star of Fyans’ Norfolk Island murder pact without actually stepping foot within the infamous penal settlement.

This Fitzgerald—‘Thomas’—was transported to the Moreton Bay penal settlement, again on the transport ship *Governor Phillip*, on the 29th of December 1831.

Curiously, and perhaps crucially, Thomas’s original journey to the colony—his transportation from Britain to New South Wales—was aboard the convict ship *Larkins*, which made three voyages to the Colony, in 1810, 1812 and 1828.⁸⁴ Thomas was on the third voyage that the *Larkins* made.⁸⁵ According to the records of convict movements, from the Colonial Secretary’s records of letters sent to the Sheriff from

⁸² Gilchrist, ‘A life of noisy riot’, 29-31.

⁸³ Clendinnen, *Agamemnon’s Kiss*, 111.

⁸⁴ Historian Charles Bateson, in his work on the ships that transported convicts to the colony, has provided extensive details of all the transport ships that reached New South Wales between 1801 and 1849, Van Dieman’s Land between 1812 and 1853 and Port Phillip between 1803 and 1849. The *Larkins* arrived first in New South Wales on the 22nd of November, 1817, again on the 12th of December, 1829. The ship made one trip to Van Dieman’s Land, arriving on the 19th of October, 1831. See: Charles Bateson, ‘Appendix’, in *The Convict Ships 1787-1868*, Brown, Son and Ferguson Publishers, Glasgow, 1959, 288-323.

⁸⁵ Deas Thompson correspondence, *SRNSW*, Reel 1064; Location 4/3901, 204; Deas Thompson correspondence, *SRNSW* Reel 1260; Location 4/4523, 141.

May 1828 to December 1830, and for different periods of time over the years 1831 and 1832, Thomas Fitzgerald was on a list of names of convicts who were to be transported to Moreton Bay.⁸⁶ He appears to have been on the same transport with a group of convicts who were disembarked at Port Macquarie, where Thomas stayed for a period of approximately three months, before continuing on to Moreton Bay.⁸⁷

Rather than the bare administrative bones of Thomas's various colonial journeys, what is most intriguing about his voyage to Moreton Bay is the presence, on the same ship, of one of the colonial Australia's most important, and controversial, literary and narrative figures. On board the *Governor Phillip* with Thomas Fitzgerald was a convict named Thomas Brooks who, along with a number of other names classified as 'Runaways', was on his way to Moreton Bay.⁸⁸ This serial absconder and secondary-site veteran has subsequently been unearthed as the likely figure behind, and the inspiration for, the infamous convict chronicler known as 'Jack Bushman'.⁸⁹ Before we consider any possible permutations and ramifications of a potential connection between the convicts Thomas Fitzgerald and Thomas Brooks, a brief history of the life of Brooks, and his impact upon our conceptions of convicts' penal station experiences, is warranted.

⁸⁶ Colonial Secretary's records, Copies of letters sent to the Sheriff, 5/7/1828-31/12/1830, 3/1/1831, 27/7/1832, *SRNSW*, Reel 1062; Location 4/3897, 198.

⁸⁷ *Ibid.*, 291.

⁸⁸ In a letter sent from the Colonial Secretary's Office to the Sheriff on the 29th of December, 1831, two lists of convicts' names was presented: one group destined for Moreton Bay, the other for Port Macquarie. See Colonial Secretary's Records, *SRNSW*, Reel 1062; location 4/3897, 198.

⁸⁹ Bushman, "*Jack Bushman*": *Passages from the Life of a "Lifer"*, Chapter 3; For the likely identity of "Jack Bushman" see: Duffield, 'Problematic passages', 20-42.

Thomas Brooks

According to the records of convicts arriving in the colony—the ‘indent’ that were kept as each ship-load of felons came to Australia—Thomas Brooks likely disembarked from the *Grenada* on the 21st of October 1819.⁹⁰ A Yorkshireman, he was a collier by trade, and had received a life sentence at the Lancaster Assizes on the 15th of August 1818. Historians Raymond Evans and William Thorpe suggest that Brooks may have also, over a long working life, have been a handloom weaver and fly-boat driver.⁹¹ Records also show that Brooks received a ticket of leave in 1843, and a conditional pardon in 1852. Colonial records, which have been used to verify some of the details of Brooks’ recollections, have him at the Newcastle settlement hewing coal as well as serving out fresh sentences, mostly for absconding from private service, at both the Port Macquarie and Moreton Bay penal sites.⁹² It seems that Brooks’ fiercely independent spirit coincided disastrously with the increase in penal severity ushered in by the recommendations of Commissioner J. T. Bigge.⁹³ Thus, this convict experienced, over a period of several decades, the very worst that the penal system could throw at him. Fortunately, he also managed to write of, or have written for him, crucial aspects of this experience.

The ‘short, intense convict narrative’ that appeared in the *Moreton Bay Courier* in 1859, titled *Passages from the Life of a ‘Lifer’* (hereafter *Passages*), supposedly written by a convict named ‘Jack Bushman’, has subsequently been found to be

⁹⁰ Ian Duffield, in Note 6 of his chapter ‘Problematic passages’, examines the likely journey Thomas Brooks took to arrive in Australia. See Duffield, ‘Problematic passages’, 34.

⁹¹ *Ibid.*, 21.

⁹² *Ibid.*, 20-41.

⁹³ ‘Report of the Commissioner of Inquiry into the State of the Colony of New South Wales, 1822’, (The Bigge Reports), *BPP Volume One: Colonies*, 1-149; see also: Ritchie, *Punishment and Profit*; Ritchie, *The Evidence to the Bigge Reports: Volume One*; Ritchie, *The Evidence to the Bigge Reports: Volume Two*; For an analysis of the importance of the Bigge reports in the development of Australia’s administrative, legal and social institutions see: Evans, ‘19 June 1822’, 52.

authored, or at least orally transcribed to an intervening author, by Thomas Brooks.⁹⁴ Its value as an historical source—in particular its worth as a credible approximation of the genuine ‘voice’ of a lived convict experience in penal-era Australia—has been vigorously debated since its re-discovery by Evans and Thorpe.⁹⁵ Significantly for this thesis, it also introduces the importance of the sounds of flogging for the control and administration of the colony in chapter three of this thesis. Some historians have claimed that Brooks’, and other convict narratives, ‘amplify accurate, authentic convict voices’, while others such as Ian Duffield approach such works with greater caution.⁹⁶ Indeed, Duffield argues that *Passages* ‘has been subject to heavy intervention by an editor who was a class superior to the original author (or perhaps oral narrator) and who had a quite different agenda from that of an ex-convict’.⁹⁷

For the purposes of the argument here Brooks’ narrative, whether written by him or orally narrated, establishes Brooks, if nothing else, as an enthusiastic, and it must be noted largely credible, teller of stories.⁹⁸ Of course, we do not know how readily Brooks did relate his penal experiences, but that his is among only a handful of narratives that have come directly from a lived convict experience of Australia must say something of his willingness to impart the stories of his life to a public audience.⁹⁹

Irrespective of whether his recollections of the conditions at Moreton Bay and Port

⁹⁴ Bushman, “*Jack Bushman*”: *Passages from the Life of a “Lifer”*, Chapter 3.

⁹⁵ Evans and Thorpe, ‘Power, punishment and penal labour’, 90-111; Duffield, ‘Problematic passages’, 20-41.

⁹⁶ Duffield, ‘Problematic passages’, 22.

⁹⁷ Ian Duffield and James Bradley, ‘Introduction: Representing convicts’, in Ian Duffield and James Bradley (eds), *Representing Convicts: New Perspectives on Convict Forced Migration*, Leicester University Press, London, 1997, 5.

⁹⁸ In their critique of *Convict Workers* methodology, historians Evans and Thorpe use the narratives of ‘Jack Bushman’ and William Ross, among others, to contextualise the brutality of the Moreton Bay penal site. They assert: ‘As far as accuracy goes, it is worth pointing out that much of Ross’s and ‘Jack Bushman’s’ testimony can be corroborated’. See: Evans and Thorpe, ‘Power, punishment and penal labour’, 99; Ian Duffield, on the other hand, delivers a subtle criticism of Evans and Thorpe for taking the words and stories in various convict narratives at face value. See Duffield, ‘Problematic passages’, 33.

⁹⁹ Conlon, ‘Mine is a sad yet true story’, 43.

Macquarie are interpreted as absolute truth, it is safe to assert that Brooks revelled in or was at least happy to convey his experiences of the penal system. As such, any likely connection or interaction between such a renowned story-teller as Thomas Brooks, a convict called Fitzgerald, who arrived in the colony on a ship called the *Larkins*, is a connection worth exploring in the ongoing investigation of the Norfolk Island murder-pact recounted by Foster Fyans.

As for any such connection, there is no actual evidence that these two men were acquainted, or indeed even knew of each other's existence. That they were on the same convict transport north to either Moreton Bay or Norfolk Island does raise the prospect that these men did interact with each other, but it is only speculation. Further, there is also no way of finding out if they could have had the opportunity to speak to each other, or to exchange stories and information, on their voyage. One certainty is that nowhere in Thomas Brooks'/Jack Bushman's narrative is there mention of a fellow prisoner named Fitzgerald. Of course, that does not mean that these two men did not speak, or that were not aware of each other's presence on the *Governor Phillip*.

While admittedly the logic of the above argument veers close to that displayed by Robert Hughes in his treatment of Norfolk Island suicides, this chapter raises the possibility, rather than the assumption, that these two men interacted.¹⁰⁰ As already mentioned, this chapter is an attempt to unravel, and to reveal the danger of uncritically accepting, an episode of violence that has been used as a tenuous portal

¹⁰⁰ Hughes argues that the nature of the 'murder-suicide pacts' on Norfolk Island served to hide the true extent of suicide among prisoners on the island. While possibly true, it has yet to be corroborated or proven correct. Alternatively, this argument of a hidden suicidal phenomenon on Norfolk Island does allow him to argue that suicide was a far greater issue than it may well have been. See Hughes, *The Fatal Shore*, 469.

into the minds of convicts transported to Norfolk Island. That it does not present a watertight case is beside the point; that it does introduce a possible alternative version of an event that has been used to reveal the inner-workings of specific convicts' minds, and as a result, reveals the caution with which such events should be approached when uncovering such voices, is its primary function. Therefore, while it is impossible to say with certainty that Thomas Brooks and Thomas Fitzgerald knew or spoke to each other, it is possible, if ultimately unknowable, that they exchanged words on their way north to serve out their respective punishments.

If this possibility is accepted, a new explanation for the creation of the sixteen-man Norfolk Island murder ritual potentially arises. Thus, we have a potential meeting between a man called 'Fitzgerald', who arrived in New South Wales on a ship called the *Larkins*, and one of the few convicts, 'Thomas Brooks', who experienced the brutalities of the colony's penal stations and was able, through either happenstance, perseverance or luck, to have his memories written down in narrative form. In other words, at this stage in the investigation, we have a man called Fitzgerald, who arrived on a ship called the *Larkins*, who may well have had multiple conversations with another convict who happens to be the source for one of the more famous convict narratives to come out of the Australian penal-era. Of course, the intersection of these particular names with this particular storyteller could be purely coincidental. Equally important however, is the ability to imagine that it was not a coincidence and was rather entirely possible.¹⁰¹

¹⁰¹ See discussion by Hamish Maxwell-Stewart of the necessity, at times, to 'imagine' the lives of those existing within the vast bureaucratic and administrative labyrinth that was penal-era Australia. Maxwell-Stewart, 'The life and death of James Thomas', 55-57.

While unfortunately we cannot know what convicts' conversations sounded like, it is eminently reasonable to deduce that, after perhaps some cursory comments on conviction and each other's experiences in Australia, convicts would speak of their arrival in the colony, including the transports they arrived on and the conditions under which they were transported.¹⁰² From the testimony of numerous sailors and officers on board convict transports like the *Governor Phillip*, especially those who gave evidence of the numerous mutinous plots hatched by convicts, it is safe to assume that convicts were given ample opportunity to interact with each other during their various voyages.¹⁰³ Evidence of interaction between sailors and convicts, especially their tendency to gamble together upon transport ships, was canvassed in the Bigge Commission Reports into the colony in 1822. The social aspects of the voyage concerned Commissioner Bigge, and he worried that sailors would not be impartial in their reports on convicts' behaviour once disembarked in Sydney:

The communication that necessarily takes place between the convicts and the sailors during the passage, and the disposition that is common to both to dissipate their resources for the sake of some temporary enjoyment, to indulge their passion for gambling, or excite it in others, will render the decision of their complaints very difficult to the magistrates at Sydney.¹⁰⁴

¹⁰² For example, chartist agitator John Frost writes of his interactions on board the convict transport that was bringing him to Australia, including discussions between the prisoners of the likely success of a mutiny. See John Frost, *The Horrors of Transportation (two lectures delivered in the Oddfellows Hall, Padiham, August 31st, 1856)*, republished Sullivan's Cove, Hobart, 1973, 23.

¹⁰³ Fyans, *Memoirs*, 89; There are accounts of the interactions between soldiers and convicts, and among convicts themselves, on board transports. See: John Dehle Emberg and Buck Thor Emberg (eds), *The Uncensored Story of Martin Cash (Australian Bushranger) As told to James Lester Burke*, Regal Publishing, Launceston, Tasmania, 1991, 216-217; Colonial visitor Peter Cunningham also recounted the noise made by convicts on board vessels if they were left unsupervised: 'A man, to enforce his authority, must go among them and beard them without timidity; otherwise they will begin forthwith to howl and rattle their chains'. See Peter Cunningham, *Two years in New South Wales*, David Macmillan (ed), Angus and Robertson, Sydney, 1966, 311.

¹⁰⁴ 'Report of the Commissioner of Inquiry into the State of the Colony of New South Wales, 1822', (*The Bigge Reports*), *BPP Volume One: Colonies*, 448.

In this and similar contexts, it is perhaps reasonable to assume that the names of respective vessels, their Captains and crew, as well as interactions with fellow convicts may have all been canvassed.

This is, of course, necessarily speculative. However, and as Hamish Maxwell-Stewart notes in his account of the life and ‘strange death’ of convict James Thomas at Macquarie Harbour in 1832, asking questions of circumstances that may never be able to be answered should not dissuade them from being asked.¹⁰⁵ It is only in the asking of such questions that alternative versions of events suddenly appear, and what at one stage appears as coincidences or tenuous twists of fate assume greater meaning.¹⁰⁶ In a way very different to quantitative historians, or those who seek to present the ‘flesh-and-blood’ of convicts through massive statistical interrogation of the surviving archive, this enquiry imagines the possibility of human interaction and asks what may have come of such meetings. Provided the posited meetings are feasible, the benefits of such leaps of historical imagination often unearth connections and interactions that have been previously hidden. Significantly, and as Maxwell-Stewart himself notes, asking unanswerable questions makes the aim of such inquiries almost ‘impossibly ambitious’.¹⁰⁷ However, now that the detective work has progressed this far, it is now necessary to take it to its final destination and explore any links between Foster Fyans, as the author of the account of the murder-suicide pact, and the noted storyteller Thomas Brooks.

¹⁰⁵ Maxwell-Stewart, ‘The life and death of James Thomas’, 55.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

Foster Fyans and Thomas Brooks

When the possibility of the connection between Brooks and Fitzgerald is acknowledged, it is then necessary, when tracing the origins of Foster Fyans account of this event, to explore any links between Brooks, as a famed convict chronicler, and Fyans as the source of the story of the sixteen-man murder-pact at Norfolk Island. Here, the evidence is clearer, and promising. First, there is clear evidence that both Thomas Brooks and Foster Fyans were at the Moreton Bay penal settlement at the same time: one as a prisoner and the other as the site's Commandant.¹⁰⁸ Further, according to Brooks' narrative, Fyans, as Commandant, treated the returned convict with unusual humanity when he requested that his irons be removed:

I worked on for three years; then a good Commandant came to the district, who was reported to be kind to the men; as from the date of his command flogging was of far less occurrence. I made up my mind to apply to him, which I did, one of the convict officers being present, and what took place I will relate: "Well, my man," said Captain Fines [sic], "what do you want?" "Please sir, I want these irons taken off."

"What character does this man bear?"

"He is a good man for work, but he is always running into the bush."

"Is there anything else against him?"

"No, he is one of the best men to work in the settlement."

"Then, take off his irons instantly," said Captain Fines; "if you were a bird shut up in a cage would you not try to get out?"

God bless Captain Fines. I walked from his presence without the everlasting clanking of the irons, which had not only galled my legs, but planted wormwood in my soul.¹⁰⁹

¹⁰⁸Thomas Brooks was at the Moreton Bay penal settlement while it was under the command of Foster Fyans, freshly arrived from his stint on Norfolk Island, and about to usher in a period of extreme brutality at this place of secondary punishment. See Colin Frederick, *John Knatchbull: From Quarterdeck to Gallows: including the narrative written by himself in Darlinghurst Gaol 23rd January-13th February, 1844*, Angus and Robertson, Sydney, 1963, 16.

¹⁰⁹Bushman, "*Jack Bushman*": *Passages from the Life of a "Lifer"*, Chapter 4, 3.

That Brooks consistently spelled the Captain's name incorrectly does not necessarily invalidate his account of this encounter. Indeed, for two reasons, this misspelling of Fyans name may increase the credibility of Brooks' account. First, and as Ian Duffield explains in relation to Brooks' misspelling of Commandant James Morisset's surname, such a small slip in the spelling of names might in fact be expected after the passage of decades in the re-telling of Brooks' experiences.¹¹⁰ Second, and more simply, the name 'Fines' and Fyans are easily confused, one can be mistakenly heard in place of the other, and the author has given his best, and most phonetically consistent, approximation of what he heard.¹¹¹ Thus, according to Thomas Brooks' account of his experiences at Moreton Bay, not only did he speak directly to Foster Fyans, but he was also treated with a degree of civility that was as welcome as it was surprising. Indeed, Brooks' recollections of Fyans does not accord with other convicts experiences of Fyans authoritarian methods, especially those who experienced his brief reign of brutality as Commandant of Norfolk Island after the infamous uprising there in 1834.¹¹²

Thus, like much of the history written of colonial Australia, we have a frustratingly 'pendular' view of Foster Fyans as a commandant and as a man: was he a humane, sensible and practical administrator or a tyrannical martinet? Further, other than what has been relayed by Thomas Brooks/Jack Bushman in his *Passages*, we do not have evidence of any other conversations occurring between Foster Fyans and Thomas Brooks while they were at Moreton Bay together. We do, however, have some

¹¹⁰ See Duffield commentary in Bushman, "*Jack Bushman*": *Passages from the Life of a "Lifer"*, Chapter 2, 5 and Chapter 4, 4.

¹¹¹ *Ibid.*

¹¹² For an analysis and description of the Norfolk Island uprising of 1834, see Hughes, *The Fatal Shore*, 472-479.

indication of the way that Foster Fyans interacted with those around him, and his liking for lengthy and dramatic conversation with those prepared to listen. While describing a rumour on board the Norfolk Island transport *Governor Phillip* that the food had been poisoned, Fyans inadvertently revealed his liking for the telling of tales. When he was informed of the plot to poison the crew, Fyans, in his own words:

You see I was jawing with the young fellow, spinning a yarn, when up came one of the guard informing the officer that the prisoner next to the door had urged him when on sentry to ask the officer to hear what he would inform me.

For the purpose of the argument in this chapter, what came of the threatened poisoning is of secondary importance.¹¹³ What is striking about the above passage is the image it creates of a younger Fyans, a man who, by all accounts, took himself, his position and his career very seriously, engaging in the kind of hyperbole and blarney more commonly associated with a gathering of jaded old ‘lags’.¹¹⁴ While impossible to prove, it is also instructive to imagine this enthusiastic teller of tales meeting, and perhaps ‘spinning a Yarn’, with one of the most accomplished oral narrators of colonial Australian history, Thomas Brooks.

The search for the convict voice

If it was the case that this so-called murder-suicide pact was a concocted story told either by or to Foster Fyans, who through either a need to dramatise his experiences of penal life, or simply the effects of a hazy memory, recounted it in his memoirs, the search for an unmediated and unproblematic ‘convict voice from below’ has collected

¹¹³ For a discussion on the poisoning incident see Frederick, *John Knatchbull: From Quarterdeck to Gallows*, 9-10.

¹¹⁴ Hughes, *The Fatal Shore*, 171.

another dubious progenitor.¹¹⁵ Despite the likely fabrication of this story however, there is a certain symmetry and appropriateness to the way that it was created and disseminated through the intervening generations. We do not know if Foster Fyans was aware of the ‘flash language’, that secretive and transgressive patois of Britain’s professional criminals.¹¹⁶ If he was—and it is a reasonably safe bet to think that over the course of his career he was exposed to it—then his choice of the word ‘yarn’ to describe his conversations is instructive. For convicts’ propensity to boast of their exploits has a long and established pedigree. James Hardy Vaux, another controversial colonial narrator and dedicated fraudster, compiled a dictionary of this ‘Felon’s cant’, supposedly to aid in the deciphering of courtroom evidence.¹¹⁷ Among his many entries, he explained the term ‘yarn’, and its meaning to convicts, in the following terms:

*YARN: yarning or spinning a yarn, is a favourite amusement among flash-people; signifying to relate their various adventures, exploits, and escapes to each other. This is most common and gratifying, among persons in confinement or exile, to enliven a dull hour, and probably excite a secret hope of one day enjoying a repetition of their former pleasures. A person expert at telling these stories, is said to spin a fine yarn. A man using a great deal of rhetoric, and exerting all his art to talk another person out of any thing he is intent upon, the latter will answer, Aye, Aye, you can spin a good yarn, but it won’t do; meaning, all your eloquence will not have the desired effect.*¹¹⁸

¹¹⁵ Bradley and Maxwell-Stewart, ‘Embodied explorations’, 198.

¹¹⁶ Vaux, James Hardy, *The Memoirs of James Hardy Vaux: Including his Vocabulary of the Flash Language*, (first published in London, 1827), Noel McLachlan (ed), Heinemann, London, 1964; Amanda Laugesen has provided a brief history of the language of convicts, and the politics of that language, in colonial Australia: Amanda Laugesen, *Convict Words: Language in Early Colonial Australia*, Oxford University Press, Melbourne, 2002, v-vii; Laugesen, ‘The politics of language’, 17-40.

¹¹⁷ Vaux, *The Memoirs of James Hardy Vaux*, xvii. This phenomenon is covered more extensively in chapter five of this thesis: ‘Colonial Insiders: Convicts and the Law’.

¹¹⁸ Vaux, *The Memoirs of James Hardy Vaux*, 280.

If indeed Foster Fyans, or Thomas Brooks, or any other long-forgotten convict or officer decided to ‘enliven a dull hour’ with the fantastic case of a macabre and disturbing Norfolk Island murder-suicide pact, then this story can also be included in the vast repository of sources that contribute to the search for the convict voice. If that part of Fyans memoir that deals with the murder pact is indeed an example of a ‘yarn’ that assumed a life of its own and grew to impact upon the writing of convict history for generations, then this is surely a tribute, however unintentionally bestowed, to the enduring nature of the convict voice in colonial history. That it is a ‘voice’ far removed from the actual thoughts, or the inner-worlds of convicts, reaffirms the difficulty of uncovering a sense of the personalities and human qualities of people not forgotten, but long gone.

As previously noted, the search for the origins, and the veracity, of the sixteen-man murder-suicide pact on Norfolk Island in 1832 or 1833, has necessarily delved into the realm of speculation, hypothesis and flights of historical imagination. In searching for the reasons behind the production of such a seemingly perverse and sensational event, whether it actually happened or not, reveals much about the caution that must be taken in the search for that most elusive of colonial Australian phenomena: the ‘convict voice’.¹¹⁹ As hypothesized here, the event that some historians have used as an example of the voice of convicts may well have been the fabricated story told by an accomplished convict chronicler to a receptive colonial official who, perhaps taken in by the ‘gothic drama’ of the convict experience of the 1850s, has recounted it in his memoirs written twenty or thirty years after it allegedly took place. Then again, it may not have happened like this at all. The necessary speculation that this first

¹¹⁹ Maxwell-Stewart, ‘The search for the convict voice’, 75-89.

chapter has engaged in is part of its aim: to highlight the dangers (as well as the potential) that accompany the ambitious search for the convict voice. From the possible, if not plausible, hypothesis put forward here we can see the caution that must be exercised in any attempted resuscitation of a 'genuine' or 'authentic' expression of convicts' mental worlds. To do otherwise is to possibly condemn those historical figures to the very same condescension of history that they are supposedly being saved from.

Chapter Two: Colonial Acoustics

Sound is inescapable. It is as pervasive as the air that constitutes its primary medium.¹

The sense of hearing cannot be closed off at will. There are no earlids. When we go to sleep, our perception of sound is the last door to close and it is also the first to open when we awaken.²

Introduction

Chapter one of this thesis aimed to warn of the potential dangers of relying on the voices used by convicts, or words written about what convicts allegedly said or did, as a guide to searching for the ‘inner-worlds’ of figures long dead. While it is impossible to actually listen to convicts’ voices, attempts to recreate ‘a convict voice’ or an approximation of the lived convict experience of colonial Australia can benefit from an analysis of the aural dynamics colonial society and of penal power. As explained in the introduction, this thesis, in part, rejects the assumption that a convict voice, recorded for example in the colonial court records or local newspaper, speaks any more clearly, or is any more revelatory, of convicts’ penal existences than the muffled groans of a convict desperate to salvage some masculine dignity while being flogged. A search for the ‘convict voice’ therefore, becomes a more elaborate, complex and problematic search for those *voices*, *sounds and noises* that made up the auditory world of colonial Australia: a world that was

¹ Bruce R. Smith, *The Acoustic World of Early Modern England*, 8.

² R. Murray Schafer, ‘Soundscapes and earwitnesses’, in Mark M. Smith (ed), *Hearing History: A Reader*, University of Georgia Press, Athens, 2004, 9.

as much the creation of those authorities tasked to maintain discipline within both the convict and free community as it was a reflection of a nascent ‘convict society’.³

The principal aim of this chapter is to expand the field of inquiry into our search for the convict voice by exploring the auditory culture from whence convicts voices arose. The broad soundscapes of colonial life, including the natural environment as well as the sounds of penal life, all contributed to colonial Australia’s unique auditory culture. Further, this chapter also reminds the reader that penal-era Australia was a heard as well as a seen environment, and as such the sounds of penal life, including the sounds of corporal violence, powerfully impacted upon colonial inhabitant’s sense of identity and place. An awareness of this aural dynamic allows for an appreciation of the contested nature of colonial soundscapes, as both the natural and built colonial environment were employed to further different social, penal and disciplinary aims. This notion of a contested colonial soundscape is a crucial step in my argument for an expanded understanding of the ‘convict voice’ in historical analysis. The contested auralty of penal society allows an awareness of the mediated nature of many of the sounds of colonial Australian life and introduces the idea of the ‘convict voice’ itself as an aural construct. As such, this chapter seeks to reveal a more nuanced and sophisticated auditory environment within colonial Australia, and to start to place the noises, sound and ‘voices’ of convicts within the framework of this contest over the sounds of penal life.

³ As discussed in the Introduction to this thesis, this is a subtle yet important distinction from James Boyce’s interpretation of colonial Van Dieman’s Land as a *convict society*. Boyce asserts that understanding penal-era Van Dieman’s Land ‘is not best exemplified by the well known penal apparatus – chain gangs, Port Arthur and hard labour – but by the everyday lives of the ordinary people of the colony’. See Boyce, *Van Dieman’s Land*, 9.

This chapter places colonial society within the broad reverberations of its aural and oral culture, seeking to locate its sociality, class status and politics within a new auditory prism. As well as the new sounds of the nascent colony, this chapter also takes the sounds of convict punishment and pain from the flogging yard to the streets of colonial Australia. I will use these sounds of physical violence to cast colonial citizens as aural witnesses to physical violence as the sounds of pain, at times, reverberated across penal society. Informing this approach is an awareness that violence did not have to be seen in order to terrorise. Additionally, specific scenes will be used to show how this turmoil was sometimes strategically produced to affect maximum aural terror. In this way, convict voices can be seen as weapons within the aural armoury of penal authorities: deliberately used to perpetrate emotional violence on the general community. To hear such sounds reminded people that penal life was structured upon concepts of control, surveillance and repression. For colonial citizens—isolated, insecure and obsessed with the behavioural minutiae of class status and standing—exposure to the aural and psychological brutality of penal violence unsettled ideas and ideals of status within the colony.

Further, I argue that the removal of the flogging of convicts from public spaces to behind prison walls and gaol yards—largely from the 1820s—has muted its acoustics: resulting in what Diane Collins, in the context of the (forgotten) sounds of the gold-rush period, calls an ‘acoustic amnesia’ among historians.⁴ Particularly after the reforms of the Bigge Commission in the early 1820s, where convicts were removed to isolated penal settlements, historians have, uncritically yet perhaps understandably, assumed that the

⁴ Collins, ‘A ‘roaring decade’’, 15.

sounds of penal life went with them.⁵ This chapter challenges this neat, un-messy and non-auditory portrayal of penal society by revealing how convicts still influenced the soundscapes at the very core of colonial society. Indeed, by re-imagining, through the recollections of both convict and free inhabitants, the sounds of violence washing over diverse colonial inhabitants—some free; some emancipated; some bonded; and some visiting—the aural complexity of such a community is animated. In the sounds of pain, and penal repression, heard inadvertently and innocently by citizens going about their business, was a powerful reminder, if one were needed, of the penal underpinnings of colonial society. When the soundscapes of penal society are imagined in this way, the potential for emotional violence to be suffered by the general community becomes apparent.

Colonial Soundscapes

As many observers and chroniclers have noted, colonial Australia, from its inception to its end; from its indigenous to its imported populations; and from its natural to its built environment, sounded different.⁶ For visitors from Britain, moreover, not only did it sound strange, its acoustics were distracting, at times terrifying, and frequently perverse. This acknowledgement of the natural, physical and aural ‘otherness’ of Australia started early, when all that was known of the land was the settlement of Botany Bay and its

⁵ Hirst, *Freedom on the fatal shore*, 52.

⁶ Macintyre, *A Concise History of Australia*, 1; see also Richard White, *Inventing Australia*, 16-20; Watkin Tench has provided an insightful examination of the various sounds (and sights) that assailed the ears of the early European settlers. See Watkin Tench, *A Narrative of the Expedition to Botany Bay; with an account of New South Wales, its Productions, Inhabitants, and to which is subjoined A List of the Civil and Military Establishments at Port Jackson*, republished Angus and Robertson, Sydney, 1961, 48-49, 72-73, 230-231, 291-292.

immediate surroundings.⁷ For convict and artist Thomas Watling, the antipodean environment was unable to be adequately described in words. Transported in 1791, Watling disembarked onto a landscape, and into a sound-scape, utterly alien to his European sensibilities: ‘The air, the sky, the land, are objects entirely different from all that a Briton has been accustomed to see before’.⁸ Most striking, however, for this astute observer of the settlement’s many natural wonders, was its unceasing din:

The vast numbers of green frogs, reptiles, and large insects, among the grass and on the trees, during the spring, summer, and fall, make an incessant noise and clamour. They cannot fail to surprise the stranger exceedingly, as he will hear their discordant croaking just by, and sometimes all around him, though he is unable to discover whence it proceeds.⁹

Similarly, for later observers of life in penal Australia, acoustic descriptions and aural metaphors were frequently employed to express their colonial experiences. For these new arrivals, the distinctive sounds of the natural environment, as always, figured prominently in their observations. Writing over thirty years after Thomas Watling, surgeon-superintendent Peter Cunningham, who made five trips to New South Wales between 1819 and 1828, employed a familiar aural trope to convey a sense of the strangeness of colonial Australia:

Although all you see are English faces, and you hear no other language but English spoken, yet you soon become aware you are in a country very different

⁷ White, *Inventing Australia*, 16.

⁸ Thomas Watling, *Letter from an Exile at Botany Bay, to his Aunt in Dumfries: Giving a Particular Account of the Settlement of New South Wales, with the Customs and Manners of the Inhabitants*, prepared from the print edition published by Ann Bell, Penrith, 1794, University of Sydney Library, 1999, 12. <http://setis.library.usyd.edu.au/ozlit>, viewed at 18/07/2010.

⁹ *Ibid.*, 9.

from England, by the number of parrots and other birds of strange note and plumage...¹⁰

For Cunningham, the strange sounds of the colony reflected his growing awareness of the profound differences between New South Wales and England, in addition to the psychological effects that living in the penal colony produced on its inhabitants. These observations, delivered in a playfully biting literary style, were expressed in his controversial work *Two Years in New South Wales*.¹¹ While in his 'social relations' he has been described as 'of the most amiable and conciliatory disposition', Cunningham nevertheless expressed the shame and suspicion that attached to those who, returned to England from the penal colony, and whether through carelessness or inattention, happened to mention that they had visited such a notorious settlement.¹²

In addition to its perceived perversity, the acoustics of penal-era Australia would also have changed over time. In particular, as it moved from an agricultural plot and open gaol to a more tightly controlled penal colony, the soundscapes of colonial Australia would have altered quite dramatically.¹³ The sounds that greeted those who disembarked at Botany Bay in 1788 would have been markedly different to those of colonial Sydney in

¹⁰ See Cunningham, *Two Years in New South Wales*, 15, 43-45; C.M.H. Clark, *Select Documents in Australian History 1788-1850*, Angus and Robertson, Sydney, 1950, 422.

¹¹ Cunningham, *Two Years in New South Wales*, 15.

¹² Cunningham expressed in his recollections the shame of being associated with Colonial Australia when in England: 'New South Wales has, in fact, but one drawback of a decidedly unpleasant nature, and even that is more ideal than substantial. It must be admitted that it is the only country in the world which you are ashamed to confess to having visited. I have made several slips of this kind before strangers, and I certainly never yet gained a friend by the disclosure. Everyone, through some excuse or another, endeavours to elude the pleasure of my society'. See Cunningham, *Two Years in New South Wales*, 15, 43-45.

¹³ Grace Karskens provides an insightful discussion of the transformations of Sydney and the Colony during the early colonial period. Karskens asserts at least two transformations occurred 'between 1788 and around the mid 1820s. The first was from the Aboriginal landscape to an organic preindustrial town, which included Aboriginal people; the second, partial and contested, saw the preindustrial town remodelled as a more aesthetic, rectilinear, polite and self-conscious city, a project most energetically promoted by Governor Lachlan Macquarie and his wife Elizabeth'. See Karskens *The Colony*, 2.

the 1850s. Peter Cochrane has written of the topography of 1840s Sydney in the following way:

The compactness of the city was perhaps its most important political feature. Sydney was still a walking city of some 35,000 inhabitants, no corner of it unreachable on foot. It was a little port city not unlike fragments of Liverpool or Bristol, and it replicated familiar patterns of enterprise and political ambition... Since most buildings were no more than two storeys, it was still possible to choose a point at the busy intersection of Hunter and George streets and from that point to look north and see the top masts of shipping moored at the wharves in Sydney Cove.¹⁴

While Cochrane uses the tightness of early Sydney's living space to reveal its politics, such descriptions also carry important aural dynamics. To be able to see most of the city from a strategic point can also raise questions as to how much was heard in such a setting. As Bruce Smith has shown in his work on the acoustics of early modern England, the acoustical and auditory soundscapes of specific communities and broader societies can change significantly over time.¹⁵ While impossible to gauge how far different sounds would have travelled in the topography of colonial Sydney, it is nevertheless instructive to speculate upon the nature and meaning of such colonial soundscapes.¹⁶ For example, would the 'crack' of the cat upon flesh, or perhaps a full-throated scream of pain, have cascaded down from the prison Barracks on Macquarie Street to be heard at the Sydney

¹⁴ Peter Cochrane, *Colonial Ambition: Foundations of Australian Democracy*, Melbourne University Press, Melbourne, 2006, 27.

¹⁵ Bruce R. Smith, *The Acoustic World of Early Modern England*, 46; Smith has also written on the potential shortcomings of "aural" history in: 'How Sound is Sound History?', 307-315.

¹⁶ Grace Karskens, *The Rocks: Life in Early Sydney*, Melbourne University Press, Melbourne, 1997, 7; 'The dialogue of townscape', 88; for a general discussion of early Sydney see: Cochrane, *Colonial Ambition*, xiv. For an analysis of the broader geographical confines of colonial Australia see T. M. Perry, *Australia's First Frontier: The Spread of Settlement in NSW 1788-1828*, Melbourne University Press, Melbourne, 1963, 2.

Hospital, a distance of three hundred yards?¹⁷ These types of questions, while impossible to answer definitively, nevertheless are important in raising awareness of early Australia's auditory culture as well as appreciating how sound would have affected different aspects of colonial life.

Bruce Smith has traced the changes in intensity and amplitude of the sounds that humans are exposed to in their everyday lives.¹⁸ According to Smith, for those born after the invention of electricity and the combustion engine the sound of early modern England, its sheer quiet-ness, is almost impossible to imagine.¹⁹ Moreover, the very loudest sounds that a sixteenth or seventeenth century listener may hear—cannon fire or church bells, for example—would fall within the normal range of sonic events for modern listeners. They would not be remarkable or shocking to modern ears.²⁰ Smith argues that despite the relative quietude of pre-modern societies—most noises did not rise above 60 decibels, or the sound of a barking dog—the *intensity* of specific sounds would be disproportionately apparent given the absence of any background noise.²¹ Thus the sounds of bells or of the occasional bark of a dog would be distinctive in such environments. Applied to early colonial Australia, a pre-industrial and agricultural society for the first fifty years of its existence, the crack of a whip, or the sudden scream of pain from a flogged convict, would most likely have resonated with some force. An awareness of the changeable acoustics of colonial Australia, and in particular the potentially unsettling sounds of penal

¹⁷ Roger Therry, *Reminiscences of Thirty Years Residence in New South Wales and Victoria, 1863*, in Facsimile Edition, Sydney University Press, Sydney, 1974, 42.

¹⁸ Bruce R. Smith, *The Acoustic World of Early Modern England*, 44-48.

¹⁹ *Ibid.*, 49.

²⁰ *Ibid.*, 49-51.

²¹ *Ibid.*

repression as heard by residents, is important to a fuller understanding of the way that convict noise, and voices, may have effected a larger element of colonial society than has previously been recognised.

The importance of sound in understanding the social and cultural dynamics of societies, and the way that acoustics ordered and defined spaces and communities, enjoys an extensive historiography.²² Further still, the way that upheavals in cultural and social practice expressed themselves in auditory form has been an emerging theme in such work. Alain Corbin, for example, has discussed how the peels of church bells have been reconfigured to signify the passing of time, as well as reflecting the importance of aural signals to people to decipher meaning in their worlds. For Corbin, the sounds of bells:

Become for us the sound of another time, were listened to, and evaluated according to a system of affects that is now lost to us. They bear witness to a different way of being inscribed in time and space, and of experiencing time and space.²³

Thus, cultural transformations and the embedding of new, and different, regimes of control and order had important auditory aspects. For Richard L. Hernandez, a pivotal

²² Mark M. Smith, 'Introduction: Onward to audible pasts', xiii. In the same work see: Jacques Attali, 'Listening', 10-11; for an (ambitious) analysis of how people in Antebellum America "heard" social, political and economic events in the past, including 'how their hearing at the everyday level affected their selective hearing and listening to, among other developments, the coming of the Civil War, antebellum class formation, slavery, freedom, modernization, the war itself, and Reconstruction' see: Mark M. Smith, *Listening to Nineteenth-Century America*, University of North Carolina Press, Chapel Hill, 2001, 6. For an analysis of the ubiquity of visual metaphors in everyday, as well as historical, writing see: Martin Jay, *Downcast Eyes: The Denigration of Vision in Twentieth-Century French Thought*, University of California Press, Berkeley, 1993, 1-20; see also: Bruce R. Smith, 'How sound is sound history?', 307-310.

²³ Corbin quoted in Richard L. Hernandez, 'Sacred sound and sacred substance: Church bells and the auditory culture of Russian villages during the Bolshevik *Velikii Perelom*', *The American Historical Review*, 109(5), December 2004, 1478; Alain Corbin, *Village Bells: The Culture of the Senses in the Nineteenth-Century French Countryside (European Perspectives: A Series in Social Thought and Cultural Criticism)*, Columbia University Press, New York, 1998.

moment in the socialisation of the Russian countryside and agricultural system during the Bolshevik revolution was when activists removed the church bells from individual villages.²⁴ In the village of Novoe Pokrovskoe, the broader aims of Bolshevik socialism demanded the removal of the local church bells. For the Bolshevik activists, the bells represented the removal of both a symbol, as well as the sounds, of an alternative and competing worldview. This loss of auditory culture and symbolic meaning cut deeply into the psyches of the village's inhabitants, and unsettled long established patterns of thought and behaviour. As such, the activist's determination to transform society along new lines was fought equally passionately by locals concerned at the loss of their social and spiritual lives.²⁵

As Hernandez notes, in the removal of these aural markers of tradition and stability, the old certainties of village and communal life were sundered.²⁶ Church bells regularly called the dispersed faithful together for worship. Also, if locals could not attend divine services, the bells, nevertheless, reminded them to worship at given times. In ways crucial to the operation of the church in sparsely populated regions, the peelings of the bells effectively extended the walls of the church to allow for absent, yet meaningful, worship.²⁷ In this way, the geographical boundary of the local parish extended to the point where the sounds of its church bells became inaudible.²⁸ This notion of community and geographical belonging or identity being drawn along auditory lines is, of course, not a new phenomenon. It would, for example, be a familiar idea to anyone born within the

²⁴ Hernandez, 'Sacred sound and sacred substance', 1475-1476.

²⁵ *Ibid.*, 1487.

²⁶ *Ibid.*, 1478-1479.

²⁷ See generally Corbin, *Village Bells*; Hernandez, 'Sacred sound and sacred substance', 1475-1484.

²⁸ Hernandez, 'Sacred sound and sacred substance', 1475-1484.

sound of Bow Bells.²⁹ Significantly, in Hernandez's example above, the peals of the bells did not simply represent the end of the parish: they also gave meaning and purpose to those living within their range.

Recent work on the nature of early colonial Australia has shown how the exploitation of the natural environment by convicts and other settlers powerfully re-imagines the place of the natural world in the development of the colony. Grace Karskens has written on the ways that convicts, particularly early in the colony's life, used the spaces around Sydney and its waterways as havens, and escape routes, from the harshness of penal life.³⁰ In her interpretation the land around Sydney, far from being the impenetrable and threatening 'wall' or 'gaol' of colonial folklore, was in fact a means of physical and mental escape for convicts. Moreover, in escaping from the confines of the colony proper, convicts also encountered and engaged with the land in creative and meaningful ways.³¹ In effect, convicts and other escapees made the land work for them as much as the land hindered their attempts at flight or rebellion or other subversive activities. In what she terms 'nefarious geographies', Karskens argues that convicts simultaneously used the land in creating their own spaces and desires in penal Australia: shaping the land while they were in turn shaped by it; living off it and hiding in it, as the first European explorers and exploiters of the Sydney basin.³²

²⁹ For an analysis of how the acoustic reach of Bow Bells has diminished over time see: Olivia Solon, 'Acoustic reach of Bow Bells has shrunk dramatically due to ambient noise', *Wired*, 25 June 2012, <http://www.wired.co.uk/news/archive/2012-06/25/bow-bells-cockney>, viewed at 10/08/2012.

³⁰ Karskens, *The Colony*, 280-285.

³¹ *Ibid.* For a recent, fascinating examination of the use and exploitation of land by Aboriginal Australians during and prior to colonial times see: Gammage, Bill, *The Biggest Estate on Earth: How Aborigines Made Australia*, Allen and Unwin, Sydney, 2011.

³² Karskens, *The Colony*, 280-309.

Karskens writes of the way that the colony's trees were gradually cut down and away, leaving a scarred and desolate landscape of rotting stumps where once flourished magnificent bush.³³ She also notes the different ways that we interpret this phenomenon across historical time: how what today we lament as an environmental travesty was, in colonial times, an indelible sign of the onward march of civilisation, safety and stability.³⁴ This sense of safety was no doubt due, in part, to the destruction of convicts' nefarious geographies: those dense bush havens, secluded caves and impenetrable gullies and ravines that hid those desperate, or spirited, enough to journey beyond the physical and legal boundaries of the colony.

Karskens uses a famous picture of the convict uprising at Castle Hill in 1804 to confirm that the Australian bush, contrary to the accepted wisdom of historians and commentators that viewed it as an impediment to convict freedom, was in fact 'in league with the rebels', providing them with sanctuary in their moment of rebellion.³⁵ In particular, the dense scrub from which the rebels poured forth to face the guns of the New South Wales Corps aided and abetted their insurrectionary enterprise.³⁶ This dark, secretive landscape can also be contrasted with the sparsely-treed land to the left of the picture, under the

³³ Karskens, *The Colony*, 280-285. Aboriginal inhabitants have arguably shaped the natural environment for possibly thousands of years prior to European settlement in Australia. This ecological alteration, including the extensive use of fire to control forest and bush growth, also involved the significant alteration of the original tree line and undergrowth. Arguably, Karsken's ideas on the 'once magnificent bush' (destroyed) by deforestation should be read in light of Gammage's subsequent work. See Gammage, *The Biggest Estate on Earth*, 1-20.

³⁴ Karskens, *The Colony*, 280-285.

³⁵ Karskens, *The Colony*, 281.

³⁶ *Ibid.*

control of the colonial authorities. On the few trees in this barren forest, the bodies of hanged men swing in an unmistakable warning to the rebels.³⁷



'Convict uprising at Castle Hill, 1804' (National Library of Australia, nla.pic-an5577479, watercolour)

The themes in this picture, enlarged upon by Karskens in the context of convicts' relationships with the colonial landscape of early Sydney, also have aural implications. In his study of the sounds of early-modern England, Bruce Smith notes how the natural environment—in his example, forest, meadow and field—present three different 'physical conditions for the production and propagation of sound'.³⁸ Of particular relevance for the picture of early Sydney is Smith's assessment of how sparse bushland would affect the acoustics of the area:

³⁷ *Ibid.*

³⁸ Bruce R. Smith, *The Acoustic World of Early Modern England*, 76-77.

Large tree trunks without much undergrowth would form a relatively resonant space, potentially full of echoes.³⁹

By applying Smith's insights to colonial Australia, in the opening up of the colonial landscape, in the clearing of trees and the settlement of land, the colony would have become *louder*. Moreover, as the penal colony crept further inland, the sounds of penal life would have moved with them, more amplified and more urgent.

While the importance of Karskens' insights into the innovative use convicts made of the colony's natural environment is unquestioned and celebrated in this chapter, this is only part of the story of convict and authorities contests over the natural environment. An aural analysis of the relations between convicts and their keepers reveals how authorities also used the natural environment as an ally in the maintenance of penal control.

Particularly in the use of geographically specific corporal punishment, where convicts would be flogged either at the site of their original transgression, or in some cases at locations chosen by authorities for their terror-inducing effect, the use of colonial space to communicate and entrench penal control was pronounced.⁴⁰

Thus, as the land was cleared and the horizons expanded, the sounds of penal Australia penetrated deeper, and easier, into the interior. As more and more people ventured into the increasingly safer bush—lowly officials whose job it was to supervise convict work-gangs, or farmers and missionaries and explorers who sought wealth, status or solitude in the open spaces—word of mouth, and word of myth, kept outlying and isolated settlements informed of the happenings of their country. Penal authorities understood,

³⁹ *Ibid.*

⁴⁰ Hirst, *Freedom on the Fatal Shore*, 60-61. Also see Harris, *Settlers and Convicts*, 200-201.

and exploited, this desire for communication and connection. By bringing physical violence, and the sights and sounds of penal control within the geographical consciousness of colonial citizens, authorities were able to communicate the essential nature of colonial Australia.

Alexander Harris recounts the unsettling flogging of a convict under the windows of a missionary's house at Wellington Valley, a small community at the edge of the colony.⁴¹ Apparently in an attempt to drive this man from the area, local authorities deliberately targeted his family, comprised predominantly of women, with the sounds of a man in physical pain. Harris purports to have witnessed this event, with its veracity 'just as certain as the daily presence of the sun above us'.⁴² Perhaps in anticipation of the scepticism that such a story would generate, Harris also directs the reader of his work to a Parliamentary Paper that mentions a report having been written of the event.⁴³ The shaken local man, according to Harris, filed a complaint about the incident to the local authorities, the results of which are lost or, perhaps, never recounted.

According to Harris, for the wife and daughters of 'the Reverend Mr Watson' the event, as it unfolded before them, was particularly disturbing. As the lash started to do its work, and as the convict started to voice his pain, the householders' curiosity turned to abject horror. Further, as the 'protracted yells' of the flayed victim bored into the household, horror turned to frenzy, as the traumatised occupants ran from room to room in a

⁴¹ Harris, *Settlers and Convicts*, 200-201.

⁴² *Ibid.*, 200.

⁴³ *Ibid.*, 201.

desperate attempt to avoid the ‘frightful and intolerable offence’.⁴⁴ Thus, the occupants of the house at Wellington Valley were thrown into emotional and psychological turmoil at the sound of the flaying.⁴⁵ Despite a spirited denial by the police alleged to have staged the flogging, Harris, dramatically expresses the incident’s exploitation of the aural sensitivity of the household:

It was the talk of the whole countryside for months afterwards; with the additional particular, that the female part of Mr Watson’s family had been thrown into such a state of anguished excitement at the protracted yells that he knew not what to do to compose them; flying in vain from one room to another to avoid the frightful and intolerable offence.⁴⁶

Significantly, the inclusion of the unfortunate convict as a ‘prop’ in the Wellington Valley flogging shows how the production of sound within the context of corporal punishment could be pivotal to penal terror and control. Indeed, the production of such ‘agonised excitement’ in the ears and minds of free colonial citizens reveals how the terror-inducing effects of witnessing physical violence, when strategically employed by penal punishers, could include many more people than the flogged victim alone. Irrespective of the flogged convict’s performance, (in this case, apparently, he hit the appropriate notes of discomfort) the strategic nature of this episode is clear. Perhaps lost within the novelty of such a macabre act—the audacity of authorities in staging such a performance—is the seriousness of its intent and impact. Much more than a simple ruse

⁴⁴ *Ibid.*, 200-201.

⁴⁵ *Ibid.*, 200.

⁴⁶ *Ibid.*, 200-201.

to ‘annoy’ a recalcitrant, or unpopular, local missionary, this flogging represented a calculated and brutal aural assault on an unprepared colonial family.⁴⁷

To mobilise corporal violence in this way, to bring its terrifying sights and sounds to isolated areas, or specific sites, reveals authorities keen understanding of the distress caused to citizens exposed to such displays.⁴⁸ As the official correspondence of the colony demonstrate, the usefulness of terrorising potential felons by bringing the likely results of their misdeeds to their direct attention, was a calculated and strategic move:

By bringing justice nearer to the spot where crime has been committed, a knowledge of the law and of its vindication is the more readily impressed on the minds of those amongst whom it has taken place, a greater facility of proof is afforded, and the prosecutors and witnesses, not being withdrawn from their homes and occupations, are the more ready to come forward to prosecute and give evidence.⁴⁹

Further, by noting that it was the ‘talk of the whole countryside for months afterwards’ Harris, whether consciously or not, reveals the impact this event had on the free as well as bond colonial population.⁵⁰ Not only did the story of the flogging travel around the countryside as an unsubtle reminder of the nature of the colony, the acoustics of violence were re-imagined and relived with each retelling. Further, and if Foster Fyans’ example, in chapter one of this thesis, of the way that stories tended to be retold in colonial society is any guide, the auditory brutality of the incident probably intensified with each new version. The hysteria produced in Mr Watson’s house reminded those directly affected,

⁴⁷ Hirst, *Freedom on the Fatal Shore*, 60.

⁴⁸ Harris, *Settlers and Convicts*, 200.

⁴⁹ ‘Correspondence relative to the Finances of New South Wales’, *BPP Volume Six: Colonies*, 85.

⁵⁰ Harris, *Settlers and Convicts*, 200-201.

either as specific targets or as unfortunate aural or visual eyewitnesses, that penal authority was exercised with an often-brutal discrimination. The impact of this event upon the wider community, including the power of myth, gossip and rumour in its evocation, graphically illustrates the use of the sensory brutality of corporal punishment to cast the pall of convictism across vast geographical space. In a single, strategic flogging, the 'voice' of a flayed convict carried a message of penal control to the outer reaches of the community.

Conveying the sounds of corporal violence, and broadcasting them across a wide geographical space, also made creative, and brutal, use of the natural environment. As the sounds of corporal violence reverberated among the convicts and free settlers of communities like Wellington Valley, the essential purpose and identity of the colony was made plain. In convicts' screams of pain, escaping on the air to torment colonial inhabitants, the true character of penal-era Australia was communicated. The notion of mobile terror, and the use of the reverberative dynamic of sound, reorients the way that we should perhaps examine space, and its colonisation and use, in penal-era Australia. As the sounds of pain and violence were carried on the same air as that enjoyed by free colonial citizens the notion of a separable and discrete penal dynamic to colonial Australia starts to fray.

Aural Witnesses

As Alexander Harris demonstrated in his description of the convict flogging at Wellington Valley, corporal violence did not have to be seen in order to terrorise: its

range extended beyond those within its sight. At times, like smoke traces, the sounds of convicts screaming in pain escaped from the enclosures; or gaol-yards; or court house flogging grounds that were supposed to protect the public from their brutal and brutalising effects. In the acoustics of penal-era Australia, the transfer of penal punishment from public to private spaces did not always privatise the sounds of this violence. The voices of convicts—those screams and cries wrenched from battered bodies—sometimes still spoke to those unfortunate colonial inhabitants unlucky enough to venture within aural range. Overwhelmingly, those voices conveyed a simple yet powerful message: colonial Australia, however much its diverse population wished otherwise, was a penal colony run on the penal principles of pain, punishment and repression.

Less well acknowledged is the incidental, and at times accidental, exposure of free colonial citizens to the sights and sounds of such violence. This section argues that to imagine that free colonial inhabitants were not exposed to the violent side of penal society is to assume a degree of separation between free and bond that, in practice, was never a reality. By emphasising the aural dynamics of colonial Australian society, the intimacy of colonial space, and the shared aural experiences of colonial citizens, becomes apparent. In short, it seems as though most observers, and some historians, have separated the lives of the various inhabitants of colonial society too thoroughly: overlooking the shared experiences of all penal categories—convict, free, emancipated and visitor—forced to inhabit the same physical and sensory space.⁵¹ A tendency to prioritise the visual in the written descriptions of colonial life, discussed in the

⁵¹ Karskens, *The Rocks*, 10-11; see also Karskens, 'The dialogue of townscape', 96-97.

introduction to this thesis, tends to, if not ignore then downplay, the sounds that would have been made and shared by citizens as a necessary consequence of living within the intimate confines of colonial society.

Because share this space they did. As Grace Karskens, among others, has shown, the intimate living conditions of places like the notorious Rocks district in early Sydney were not enjoyed solely by the lower orders of the colony.⁵² Indeed, all manner of citizens shared the Rocks without any sense of inferiority or stigma for much of the penal-era.⁵³ Many reputable and reformed figures mingled with their less respectable neighbours in this precinct. Karskens' example of William Kelly, who despite being an emancipated convict, nonetheless carved out a respectable existence within the Rocks area, bears this out. For Karskens, it is figures like Kelly, who comfortably and confidently called the Rocks home that gives lie to the assertion that this area was somehow hived off from the rest of respectable Sydney. Thus, these figures can help realign, and possibly rehabilitate, the image of the Rocks in popular and academic writing:

Here the contradiction between the Rocks' reputation and the solid evidence for comfortable, steady family life may be partly resolved. It is clear that both types of life existed side by side, often intermingling. It was difficult for elite and educated observers to see this: their unfamiliarity and disgust prevented it.⁵⁴

⁵² Karskens, *The Rocks*, 37-45; in an archaeological analysis of the Rocks area, Karskens, and a team of archaeologists, analyse the material remnants of early Rocks inhabitants for clues as to how they lived, and who they were. For Karskens: 'By putting together archaeology, family history and oral testimony, the standard histories created about the Rocks by outsiders can be inverted. We can turn them over, to see what the Rocks was like *from the inside*' [her emphasis]. See Grace Karskens, *Inside the Rocks: The Archaeology of a Neighbourhood*, Hale and Iremonger, Alexandria, New South Wales, 1999, 22.

⁵³ Karskens, *The Rocks*, 37.

⁵⁴ *Ibid.*, 42.

Further, this sense of community was felt in specifically aural terms. The acoustics of the community did not just bind the inhabitants in a shared sensory place: they also served to exclude outsiders. Karskens reveals how Rocks' inhabitants understood the physical and temporal aspects of their community in ways beyond the grasp of outside observers:

They used their own relational system of names and landmarks to find their way about and exchange information. They heard the sounds of the town in common too: the rolling drumbeats at daybreak and day's end, calling and releasing those working for the government, and the out-of-tune bells of St Phillip's, clanging unheeded on the Sabbath...⁵⁵

By revealing the social inclusiveness of the Rocks, Karskens argues for a renewed appreciation of this much maligned area: to see it as a crucible of early Australian cultures of community, togetherness and domestic pride that is often overlooked in work that focuses solely upon its criminal underbelly.⁵⁶ Importantly, this renewed appreciation of the geographical intimacy of colonial citizens also invites us to imagine their sensory closeness. In particular, it allows us to imagine, and to examine, how the sights, sounds, smells and other aspects of the colony affected its diverse inhabitants: whether free, bond, emancipated or elsewhere on the sliding scale of penal status that so perplexed and divided early Australia.⁵⁷ As Karskens demonstrates, colonial citizens, contrary to what some of the historians who study them may think, did not inhabit a 'zone of silence' in

⁵⁵ *Ibid.*, 52.

⁵⁶ *Ibid.*, 42; see also: Karskens, 'The dialogue of townscape', 88-112.

⁵⁷ On status in colonial Australia generally, amid a voluminous literature, see: Kirsten McKenzie, *Scandal in the Colonies: Sydney and Cape Town, 1820-1850*, Melbourne University Press, Melbourne, 2004; James Mudie, *The Felony of New South Wales*, (originally Whaley and Co., London, 1837), facsimile edition, Walter Stone (ed), Lansdowne Press, Melbourne, 1964; Penny Russell, *Savage or Civilised?: Manners in Colonial Australia*, University of New South Wales Press, Sydney, 2010; Penny Russell (ed), *This Errant Lady: Jane Franklin's Overland Journey to Port Phillip and Sydney, 1839*, National Library of Australia, Canberra, 2002; Kercher, *Outsiders*, 93-107; Babette Smith, *Australia's Birthstain*; 'Legend and Reality: The Genius of Russel Ward', The 2009 Russel Ward Annual Lecture, University of New England, 8th September 2009, *Journal of Australian Colonial History*, 12, 2010, 171-190.

their everyday lives.⁵⁸ To appreciate that these residents endured, albeit at a lesser intensity, the unsettling sounds of convict pain and discomfort, helps to re-imagine, perversely or even counter-intuitively perhaps, colonial society as a more unified place: with all inhabitants bound, however tenuously, in a shared aural universe.

This physical and sensory intimacy is borne out in the recollections of colonial life by both convict and free observers. Peter Cunningham, the garrulous surgeon-superintendent we met earlier in this chapter, writes of the sensory shock that confronted first time visitors to colonial Australia.⁵⁹ The deep sense of unease that Cunningham attempts to convey of the sights and sounds of penal Australia only deepens when he is confronted by the colony's felons, in this instance, in a chain-gang 'marching backwards and forwards from their work in single military file'.⁶⁰ All that is needed to understand the essential purpose of the colony, according to Cunningham, could be learned in the desultory and slightly threatening clinking of their chains. Further, for Cunningham, the peculiar acoustics of the convicts, equally compelling and repugnant to the colonial observer, reminded those within earshot as well as eye-line that they are in a threatening place. As the gaol-gang, 'straddling sulkily by in their jingling leg-chains', hove into view, the sights and sounds of their progress 'tell a tale too plain to be misunderstood'.⁶¹

Together with the fantastic sounds of the natural environment came the equally

⁵⁸ Tamsin O'Connor uses this evocative phrase to describe and critique the 'muffling' effect of much of the historiography concerning the conditions in colonial-era Queensland. See O'Connor, 'A zone of silence', 124.

⁵⁹ The controversy surrounding Cunningham's journal, in particular the shame and opprobrium cast upon those in Britain who had visited the penal colony is covered in footnote 12 above. See generally: Cunningham, *Two Years in New South Wales*.

⁶⁰ Cunningham, *Two Years in New South Wales*, 15, 43-45. See also Cunningham excerpts in C.M.H Clark, *Select Documents in Australian History*, 422.

⁶¹ Cunningham, *Two Years in New South Wales*, in C.M.H Clark, *Select Documents in Australian History*, 423.

persistent, and equally unsettling, sounds of convicts and their repression. In particular, the sounds of the paraphernalia of penal life—the clinking chains of the convict chain-gangs, and the harsh voices of convicts and their keepers—engrossed, and unsettled, this observer of colonial society.⁶²

In addition to those immediately involved in the processes of flogging, innocent witnesses and those unfortunate enough to have been exposed to convict flogging attest to its visceral and confronting nature. In this way, the convict voices that emanated from flogging were communicated, often in dramatic ways, to those who came within their range. We have noted Peter Cunningham's attempts to convey a sense of the shock that creeps over the visitor upon first seeing and hearing a convict chain-gang: the almost palpable sense of unease in the presence of shackled humanity that resounded in the harsh and abrasive rattling of their chains. Apparent in Cunningham's commentary on penal life is the feeling of shock and foreboding that assails the visual and aural witnesses to such scenes. There is an implicit, yet pervasive, warning within his commentaries: visitors must prepare themselves psychologically as much as physically for the realities of living in a penal colony. In this contrary place, it is not simply the visual that is aberrant, but a complete sensory assault awaits the unprepared visitor. Along with an image of the struggling convicts, Cunningham presents an equally compelling view of the affronted *witness* to penal life: silent, pensive and all at sea in a place 'very different from England'.⁶³

⁶² *Ibid.*

⁶³ *Ibid.*, 422-423.

The unease that Cunningham is trying to express is also apparent in the writings of other colonial citizens. New arrivals, both convict and free, noted the aural, and psychological, adjustment that was required in order to withstand the sounds and scenes of penal society. Henry Melville, a long-term resident of Van Dieman's Land, and one time owner of the *Colonial Times* newspaper, warned the prospective visitor to Hobart, and any other Van Dieman's Land town, of the sensory assault occasioned by new arrivals facing convict chain-gangs for the first time:

On the arrival of a stranger he at first shudders at the sight of so many men working in irons, and a feeling of horror creeps over him, nor does he overcome the sensation, until his ear becomes habituated to the music of the chains, as they are wrung by the convicts at their work.⁶⁴

Despite the drama and flair of his language, we must approach Melville's recollections of the conditions within the penal colony with some caution. The fact that one of his more notorious publications was entitled *Two letters Written in Van Dieman's Land Shewing the Oppression and Tyranny of the Government*, reveals much of his anti-colonial government stance. Indeed, while preparing to write a brief history of the Australian colony from 1825 to 1835, the Van Dieman's Land government, objecting to the tenor

⁶⁴ Henry Melville, *The Present State of Australasia, including New South Wales, Western Australia, South Australia, Victoria and New Zealand, with Practical Hints on Emigration; also Remarks on Prison Discipline, with Suggestions for Obviating the Difficulties Attending the Transportation of Convicts; to which are added The Land Regulations, and Description of the Aborigines and their Habits*, G. Willis, Great Piazza, Covent Garden, London, 1851, 181. For an analysis of Melville's role over twenty years in Van Dieman's Land see: Mackaness, George, 'Introduction, notes and commentary', in Henry Melville, *The History of Van Dieman's Land from the year 1824-1835, inclusive, During the Administration of Lieutenant-Governor George Arthur*, Horwitz Publications Inc. Pty. Ltd. and The Grahame Book Company Pty. Ltd., Sydney, 1965, 9-11.

and tone of his newspapers, refused to supply him with the statistical information required to complete the project.⁶⁵

While Melville's principal aim in writing of colonial society was to attack the degrading nature of convict punishment, he also reveals the process that is required for visitors to steel themselves for the penal station experience. In effect, a dual process is at work here: on one level the new arrival to Van Dieman's Land learns to master the physical and emotional turmoil that witnessing penal punishment presents; on the other, a learned indifference to the sights and sounds of convict punishment is employed as a way to survive—psychologically as much as any other way—penal life. In other words, if the initial shock of witnessing the sights and sounds of penal repression could be mastered, then a gradual conventionalisation of these aberrant scenes could be achieved. Crucially, it is not until the visitor has made the aural adjustment necessary to render the clinking of chains a common everyday sound that they can feel comfortable in this environment.⁶⁶ In this way, the sound-scapes of penal Australia, by necessity and by choice, seeped into the psyches of colonial inhabitants.

⁶⁵ The Australian Dictionary of Biography (ADB) provides more information of Melville's interactions with Van Dieman's Land Governor Arthur. Melville's article, 'A comment on the action of the Supreme Court in the case of R. Bryan' on a cattle-stealing charge, which appeared in the *Colonial Times*, November 1835, led to his imprisonment for contempt of court, but he was soon released. While in gaol he wrote 'A few words on prison discipline' and completed his history of the colony, which was a critical and descriptive account of Lieutenant-Governor Sir George Arthur's administration. These were printed in Hobart by Melville, smuggled in a ship and published in London under the title *History of the Island of Van Diemen's Land from the Year 1824 to 1835*. He became involved in insolvency proceedings in 1838 and sold the *Tasmanian* to Maurice Smith, and the *Trumpeter* to John Macdougall. The *Colonial Times* also passed to Macdougall in 1839.

⁶⁶ This phenomenon, including discussion of the 'aural identity of geographical places', is discussed in Bruce R. Smith, *The Acoustic World of Early Modern England*, 44-48.

Similarly, ‘unfree visitors’ to Australia also had to confront the harsh acoustics of penal life. We first met J.F. Mortlock in chapter one of this thesis, as his recollections concerning the process by which convicts would draw straws in order to decide who would kill, and who would die, in allegedly contrived rituals of convict murder, helped to question their likely characterisation as suicidal ploys. For witnesses like Mortlock, whose *Experiences of a Convict* relates the difficulties of an ‘educated convict’ adjusting to his new, and much diminished, status in this new environment, the aural dynamic to the punishment of convicts proved the most troublesome:

During our first few months, many of my shipmates were flogged daily, in the barrack yard, under my windows, on complaints often made with a wicked purpose by their overseers; although I could shut my eyes, the horrid sound of the “cats” upon naked flesh (like the crack of a cart-whip) tortured my ears.⁶⁷

In this way, the shared auditory experiences of residents and visitors united rather than divided the colonial community. Indeed ‘aurality’, described by Mark Smith as ‘clumsy, blunt, and lacking in subtlety and perspective’,⁶⁸ as a common trait among diverse colonial citizens, tended to coalesce and conventionalise the experiences of inhabitants, whether bond or free, as witnesses to penal violence.

There is little doubt future New South Wales Supreme Court Justice Roger Therry, if the thought had occurred to him, would have appreciated a set of ‘earlids’⁶⁹ when, at 11 am

⁶⁷ Mortlock, *Experiences of a Convict*, 70.

⁶⁸ Mark M. Smith, ‘Echoes in print’, 332; see also ‘Making sense of social history’, *Journal of Social History*, 37(1), Fall 2003, 165-166; for an interpretation, and critique, of Smith’s aural history see Bruce R. Smith, ‘How sound is sound history?’, 307-309.

⁶⁹ See the R. Murray Schafer quotation (footnote 2) that begins this chapter, ‘Soundscapes and earwitnesses’, 9.

on a Sydney day in 1829, he was walking past the Hyde Park Prison Barracks.⁷⁰ This was one of Therry's first forays into colonial Sydney society, having arrived only days before from England to assume the office of Commissioner of the Court of Requests for the colony.⁷¹ Already burdened by the sights of convicts skulking around the streets of Sydney, with their 'chains clanking at their heels' and their 'downcast countenances', Therry was to receive a further aural shock. Despite a 'very high brick wall' separating him from the prison yard close to the Hyde Park Barrack; and comforted by the fact that floggings were no longer a part of the public life of the Colony, Therry nevertheless, experienced a 'thrill of horror' as a flayed convict, 'his voice piercing the air with terrific screams', was transferred from the prison yard to the nearby Sydney Hospital.⁷² Thus, Commissioner Therry, who was initially seduced by the genteel and ordered nature of the settlement, was introduced to the brutal acoustics of penal Australia. If it had not previously occurred to him, he was powerfully reminded of it now: Sydney was a penal as much as a nautical town, with the cacophony of coerced and confined humanity—what Alan Atkinson has termed, in another context, the 'aural hieroglyphics' of place—the unavoidable companion to potentially all its inhabitants.⁷³

⁷⁰ Therry, *Reminiscences*, 42. In a blunt assessment of the worth of Therry's *Reminiscences*, J. M. Bennett, in the course of writing the Introduction to Therry's work: 'There is one caution to offer. For reasons to be mentioned later, the *Reminiscences* are not to be read as if they were a diary of current observations. They profess to be no more than recollections expressing, where appropriate, the author's convictions in matters of controversy'. See Bennett, 'Introduction', in Therry, *Reminiscences*, 11. Therry's contribution to the legal profession has been acknowledged by Justice Jeremy Finn, who asserts that: 'Mention must also be made of the legal biography. Pride of place here without question goes to Roger Therry's memoir of his time in New South Wales, which is both readable and informative'. See Jeremy Finn, 'A Formidable Subject: Some thoughts on the writing of Australian Legal History', *Australian Journal of Legal History*, 7(1), 2003, 4, viewed at 6/10/2010 <http://www.austlii.edu.au/au/journals/AJLH/2003/7.html>.

⁷¹ Therry, *Reminiscences*, 15-17.

⁷² *Ibid.*, 42.

⁷³ Atkinson, *Europeans, Volume Two*, 212.

For this passionate political and penal reformer, the terror he felt that morning encapsulated the brutal and brutalising effects of what, for him, was the wanton and profligate nature of corporal violence in the Colony.⁷⁴ No doubt, this view was informed, and possibly embellished, by his political views. For Therry, the excessive physical violence of penal society made a mockery of the colony's aspirations for civility and respectability, and negated broader humanitarian notions of the reformatory potential of convicted felons.⁷⁵ In his opinion, the excessive use of the lash only 'hardened' convict victims, making them reckless and less likely, in the long term, to alter their behaviour and become, if not respectable, then reformed citizens. Moreover, the excessive use of the lash represented an alarming breakdown in the administration of colonial justice, as irresponsible and unprincipled penal officials and Magistrates exercised an unfettered and tyrannical regime of physical violence upon convicts.⁷⁶ As a lawyer, and later as a Judge of the Supreme Court, Therry would dedicate most of his time in Australia to rectifying this situation. This would win him admiration from the Government of the day, who he frequently represented in the colonial courts, and loathing from the predominantly landed members of society, whose power and reach Therry actively sought to curtail.⁷⁷

Despite his colourful and controversial public life, it is not Therry's legal position, politics or religion that is the focus of this section. Rather, it is the visceral and human response—the 'thrill of horror'—that he experienced as he heard the screams of a flogged convict that concerns us. In his dramatic description of that Sydney morning Therry,

⁷⁴ Therry, *Reminiscences*, 42.

⁷⁵ *Ibid.*, 43.

⁷⁶ *Ibid.*, 43-50.

⁷⁷ *Ibid.*, 18-21; Sandra Blair, 'The felony and the free?: Divisions in colonial society in the penal-era', *Labour History*, 45, November 1983, 10-11.

whether consciously or not, incorporated an aural dimension to the infliction of physical violence that reminds us that colonial Sydney, and indeed the complex network of early Australia's penal system, was as much a heard as a seen society.⁷⁸ Moreover, what colonial inhabitants heard as they went about their business, and what penal authorities wanted them to hear, would have tremendous implications for the way that colonial Australia, and its diverse population, made sense of themselves and their position in the world. In the voices of convicts—the screams of pain and grunts of defiance of corporally punished humanity—the brutal reality of penal life was communicated to its inhabitants.

As Roger Therry's experience demonstrates, the sounds of penal violence, easily escaping their walled enclosures and reverberating across the immediate vicinity, could include all colonial residents, irrespective of position or class, in the processes of penal violence. Beyond the shock of encountering this jolt to the senses, and whether he liked it or not, Therry was transformed from an interested, yet removed, colonial citizen into an active witness—visual, aural and visceral—to corporal punishment. This example of the way that sound travels across space and place complicates our understanding of the aural dynamics of colonial Australia. Particularly after the Bigge reforms of the early 1820s, where the punishment of recidivist convicts was removed to 'secondary punishment sites' far removed from established colonial settlements, the exposure of free colonial residents

⁷⁸ For work on the aural history of colonial Australia see: Collins, 'A 'roaring decade', 7-18; Collins, 'Acoustic journeys', 1-17; For aural histories of the United States of America, particularly its antebellum period see: Mark M. Smith, 'Introduction: Onward to audible pasts', xiii; For a discussion of how people in Antebellum America 'heard' social, political and economic events in the past see: Mark M. Smith, *Listening to Nineteenth-Century America*, 6. Smith, with contributions from Peter H. Wood, John K. Thornton and Edward A. Pearson has also re-imagined a slave rebellion of 1739 using, among other methods, an aural analysis by Richard Cullen Rath on the same revolt. See Mark M. Smith (ed), *Stono: Documenting and Interpreting a Southern Slave Revolt*, University of South Carolina Press, Columbia, South Carolina, 2005, xiv-xv. For an overview of the methods, problems and progress of aural history generally see: Mark M. Smith, 'Echoes in print', 317-336.

to the corporal punishment of convicts has been either ignored as irrelevant, or downplayed as insignificant.⁷⁹

For example, John Hirst writes that: ‘by the 1820s flogging was not a public spectacle and it was almost as easy for people in NSW to avoid the sights and sounds of floggings as it is for us to avoid seeing a jail’.⁸⁰ It is safe to assume that Roger Therry, given the experience he endured above, would strenuously disagree with this statement. Moreover for Hirst, the imagination is misled if, particularly after the banning of public flogging by the 1820s, we ‘imagine a whole people hardened by brutality and going about their business unconcernably with the hiss of the lash and the cries of pain sounding in their ears’.⁸¹ In other words, in the absence of ‘public’ violence, depictions of colonial society as an aural and physical pandemonium are misplaced. Hirst, understandably yet narrowly and without an aural sensibility, argues that in the absence of *public displays* of penal violence, there was, in effect, nothing there to see or hear.

As hinted at in the preceding sentence, it is difficult to agree completely with Hirst’s assertions. Unless willing to argue that all flogging had been removed from the public sphere of colonial life, including beyond hearing range, the sights and sounds of corporal punishment may still have impacted upon colonial inhabitants. In effect, even though they could not see the actual infliction of corporal violence, colonial citizens, as demonstrated by Roger Therry’s experiences above, were still vulnerable to the sounds, or ‘voices’, of convicts enduring punishment. While much of the corporal punishment of

⁷⁹ Hirst, *Freedom on the Fatal Shore*, 52.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

penal-era Australia has indeed been exaggerated to the point of cliché,⁸² the demarcation of colonial society into discrete aural zones of heard and unheard sounds lacks nuance.

Again, it is Alexander Harris who can perhaps provide something of the nuance that previous, non-auditory, discussions about corporal violence have lacked. In a powerfully resonant scene in *Settlers and Convicts* Harris describes how a convict was flogged at a courthouse at Emu Plains, then a government agricultural station close to the Nepean River.⁸³ Acting on what turned out to be false information, Harris arrived at Emu Plains hoping to secure work in the construction of a new administrative cottage. Rather than secure employment however, Harris instead received a harsh lesson in penal discipline. In his words it [Emu Plains]: ‘afforded me an opportunity of becoming acquainted, by personal observation and inquiry, with the real character of our British penal institutions in New South Wales’.⁸⁴

A group of convicts, newly convicted and sentenced, were ushered from the courthouse and led to a nearby flogging post. Most had been sentenced to receive twenty-five lashes, and the looks of ‘mingled astonishment, indignation, and dogged sullenness that they exchanged as they came out of the courthouse door’ indicated, for Harris, the fairness with which they believed they had been treated. As they filed past Harris into the flogging ground, the gate securing the area was left open by a supervising constable.

Harris’s finely tuned aural antenna helped to capture the ensuing drama:

⁸² Timothy Causer discusses this phenomenon within the context of the hyperbole and sensationalism that surrounded the Norfolk Island secondary punishment site: Causer, ‘Only a Place fit for Angels and Eagles’, 21-38; Richard White, *Inventing Australia*, 16-20; Finnane, *Punishment in Australian Society*, 108-109.

⁸³ Harris, *Settlers and Convicts*, 68-69.

⁸⁴ *Ibid.*

I heard the flogger say, “Well, who’s the first”? After an instant or two I heard the answer; it seemed to be the voice of a Scotch lad: “Here, I’m the first, you...; but...my eyes if I don’t have satisfaction one way or another, if I get hanged for it.” I heard, awhile after, the dull, heavy fall of the cat on the flesh, and the constable’s count- ONE, TWO, THREE, FOUR, mingling with the flogger’s hiss each time, as he sent the blows home, dallying between each to spin out the punishment to the utmost.⁸⁵

Thus, in a few short sentences, Harris lays bare the varied and visceral aural brutality of corporal violence for every witness to it: the convict being punished, the convict onlooker waiting for his turn on the triangle, and casual observer alike. Moreover, as the silence between the blows lengthens, the pitch and tone of corporal punishment is revealed. In a powerful aural metaphor, the seeming languidness of the counting—the almost lazy mechanics of setting the pace of the punishment and keeping track of the blows—underscores the brutal result as the lash finishes its arc.⁸⁶ Not only has he recorded the sounds of corporal violence, he has also conveyed the heavy silences and pauses of flogging, allowing the reader to endure the pregnant pause as the lash is slowly raised, and imagine the torturous anticipation of those waiting their turn on the triangle. Less painfully, of course, but nonetheless significant, is the anxiety experienced by Harris as spectator to this incident, and the vicarious discomfort experienced by his readers. As

⁸⁵ Harris, *Settlers and Convicts*, 69.

⁸⁶ The different ‘rhythms’ of corporal violence has been noted elsewhere. Hamish Maxwell-Stewart describes the process of flogging at Settlement Island, during the operation of the Macquarie Harbour penal settlement in these terms: ‘At Settlement Island the triangles were anchored on the shingle of the beach just above the high water mark. They were positioned at right angles to a planked gangway. The surgeon and settlement commandant paced the length of this wooden deck, turning when they had reached its extremity so that throughout the duration of the punishment they could alternately observe the prisoner’s back and face. Each stroke was timed to coincide with the turn that brought the gaze of the two gentlemen to bear once more on the bound frame of the convict. One hundred strokes delivered in this manner could take in excess of an hour’. See Maxwell-Stewart, *Closing Hell’s Gates*, 79.

Greg Denning asserts, it is in listening for the silences, as well as the noise, that our historical imaginations are pricked.⁸⁷

Of particular interest, if impossible to ascertain with certainty, is whether the constable at Emu Plains, who left the yard gate ajar as Alexander Harris walked by, did so inadvertently, or with a broader aim in mind? Harris is ambiguous on this point. In stating that ‘the constable who went in last left the gate partly open’ allows for multiple possibilities. It may well have been the inadvertent action of a distracted or incompetent penal official. Indeed, for John Hirst, the yard gate incident does no more than confirm the privacy of corporal violence during this post-Bigge period. For Hirst, Alexander Harris’s horror at the brutality of penal discipline is only activated and enabled through the carelessness of the supervising official.⁸⁸ Alternatively, of course, it may also have been the deliberate action of an official who, in perhaps noticing the presence of an interested visitor, decided to introduce him to the realities of penal discipline.

Such speculation, while beyond the capacity of anyone to definitively prove, is not idle historical posturing. Rather, it focuses attention on the possibility of authorities strategically planning corporal and other punishments. Thus, a nondescript yard gate may open a small window on the role that the sounds of physical violence played in

⁸⁷ In an essay entitled ‘Writing, Re-writing the Beach: An Essay’, Greg Denning explains what he, and others writing in ‘the Humanities’, are trying to do when they encounter gaps and omissions, or ‘silences’, in the historical record: ‘In the humanities, we are forever trying to imagine what the silences mean—those silences that come from the skewing processes of preservation in archives and memory, those silences of the powerless—whether they are powerless for reasons of class, gender or race; those silences of the inexpressible—grief and happiness, love and hatred, catastrophe and exultation; those silences of everyday ordinariness; those silences that in the end belong to the inaccessible person or individual’. See Peter Craven (ed), *The Best Australian Essays 1999*, Bookman Press, Melbourne, 1999, 440. See also: Denning, *Readings/Writings*, Melbourne University Press, Melbourne, 1998, 111.

⁸⁸ Hirst, *Convict Society*, 60.

controlling colonial society. If indeed this act were a deliberate one, then it would be reasonable to assume that the guard meant for Harris to see the flogging, as well as hear it. As it was, the yard gate amplified for Harris the already disturbing sounds that were emanating from the sight: both revolting and enticing to the curious spectator. An alternative version of this event, therefore, sees the open gate as a strategic act: as colonial authorities broadening the aural and visual impact of the flogging to remind a colonial citizen of (his) place in the penal hierarchy. In enforcing ideologies of social discipline and control, the strategic use of the sights and sounds of corporal violence may have allowed authorities to better order the general community.

Moreover, this shared sonic experience allows the flogging of convicts, notionally characterised as an intimate and private penal process, to be re-imagined as a shared aural experience. In the maelstrom of pain and punishment recorded by Harris at the Emu Plains court house, no one is spared the ordeal of enduring the violence. On one level or another, every participant in the event—whether convict victim or spectator; official flogger or supervisor, or indeed, innocent aural witness—feels the effects of the punishment. With a few exceptions, this aural dimension to the community's interactions with penal violence is under-appreciated among colonial observers and later historians of colonial Australia.⁸⁹ It challenges our views on the extent to which colonial citizens, of all stripes, were affected by the sounds of penal violence, however 'private' it was considered. This aural dynamic re-imagines colonial citizens' exposure to what has, at

⁸⁹ Some exceptions include Atkinson, 'Writing about convicts', 24-25; 'Settlement from below', *The Push from the Bush: A Bulletin of Social History*, 3, May 1979, 64-69; Gilchrist, 'A life of noisy riot', 29-30; Harris, *Settlers and Convicts*.

least after the early 1820s in the penal colony, been considered a private penal function.⁹⁰ Thus, the social divisions within the colony, so carefully and jealously guarded by all European inhabitants in Australia,⁹¹ are unsettled by the common humanity of people reacting to the penal violence surrounding them.⁹²

Of course, for colonial citizens to adjust to, or ‘conventionalise’, the sight of convicts in their midst is only part of the story. While Robert Hughes hints at the ability to glaze over these pitiful figures—to see them as debased and different—the sounds they made, and the effect of those sounds on colonial witnesses, were more difficult to ignore or filter out. In other words, the ‘tortured ears’ of J.F. Mortlock, his deeply felt visceral response to the sounds of corporal violence, was a reaction not easily reconciled to notions of an orderly, or rigidly structured, penal hierarchy.⁹³ Similarly, the ‘thrill of horror’ experienced by Roger Therry as he walked the colony’s streets,⁹⁴ should also be understood as a natural consequence of the aural assault practiced upon free colonial citizens who, if they dared to think otherwise, were robustly reminded of the principles and practices underpinning their surroundings. The sounds of corporal violence, and the resultant language of flayed convict skin that was its natural accompaniment, joined them as subjects within an overarching system of aural discipline. The emotional violence

⁹⁰ Hirst, *Convict Society*, 60.

⁹¹ Former Chief Justice of the Supreme Court of New South Wales, James Spigelman, has provided his interpretation of the nature of colonial Australian societies social stratification: ‘The social system of Australia in this era was based on castes. Different social groupings were segregated by differences of function and culture—almost as distinct as the castes of the Indian subcontinent. The castes included convicts, emancipists, free settlers, civil officials, the military, the native born and Aborigines together with the human flotsam of a seaport in the Rocks’. See Spigelman, ‘A Reappraisal of the Bigge Reports’, 19.

⁹² It was not just the upper classes who maintained strict social demarcations in colonial Australia. Europeans of all stripes, from the Governor to the lowliest felon, assumed an attitude of superiority to the Indigenous populations that they encountered. See Clendinnen, *Dancing with Strangers*, 83-93.

⁹³ Mortlock, *Experiences of a Convict*, 70.

⁹⁴ Therry, *Reminiscences*, 42.

visited upon these inhabitants, as aural witnesses to the sounds of physical violence, reveals a commonality of experiences between diverse colonial citizens, rather than a strict or defined demarcation.

From the above, it may be argued that the reactions of people to these sounds of violence are irredeemably and inherently human ones.⁹⁵ As Robert Hughes acknowledges, those who wished to ignore the sights and sounds of penal life swirling around them learned to conventionalise the sight of convicts and their conditions. This, of course, may have been an effective antidote for those for whom the sights and sounds of corporal violence was an inevitable consequence of life in a penal colony. However, the tightening of the ‘gut’, and the involuntary flinch, as a scream of pain rends the air within earshot is a physiological phenomenon that binds humanity in a natural abhorrence to the sounds of physical or emotional distress. In this sense, by conventionalising the sights and sounds of penal life, free colonial citizens were acknowledging their own position within a penal society, not removing themselves from it.

The exploitation, or at least inadvertent ‘reminder’, of the general populations’ emotional susceptibility to the sounds of violence further complicates the designation of identity and status within penal society. In essence, when faced with the reality of corporal violence, the reactions of the convict J. F. Mortlock and by Justice Roger Therry are the same human responses to an unpleasant aural and auditory assault. There is no strict social

⁹⁵ For a more rigorous and scientific explanation of the mechanics of hearing as well the various ways that humans can experience sound that is both illuminating and intelligible see: Graeme Clark, *Restoring the Senses: Boyer Lectures 2007*, ABC Books, Sydney, 2007, 11-22. Professor Clark explains the neuroscience of hearing, and the role that bionics can play when that process is disturbed or undeveloped.

barrier that can overcome the visceral reaction of human beings forced to witness, whether by design, circumstance or bad luck, the flaying of a fellow human being. Of course, not all citizens were unlucky enough to be exposed to penal violence in their everyday lives. For every Roger Therry, J. F. Mortlock, Alexander Harris, Henry Melville and Peter Cunningham, among others, many more free citizens would have lived in Australia without ever being exposed to such brutality. John Hirst has forcefully made this point. Crucially however, and especially important for the argument in this chapter, is the reaction of those citizens who did witness such violence.

Conclusion

After examining, in chapter one of this thesis, the evidentiary and historiographical difficulties surrounding the search for a credible ‘convict voice from below’,⁹⁶ this chapter has been a first step in introducing and applying an aural analysis of convict life to aid in our search. Appreciating the wider auditory culture of penal-era Australia expands the potential field from which convicts voices arose, as well as providing nuance to considerations of what a convict voice is. This process of uncovering the auditory complexity of colonial life, as a vehicle through which to add to our understanding of convict subjectivity, will continue in following chapters. In this chapter, an introduction to the sounds of colonial Australia, and how they were interpreted, created and used by diverse inhabitants, has reminded us that this place was heard as well as seen. How it was heard, and why, will preoccupy the rest of this thesis. Further, here I have sought to challenge existing historiography that emphasises the inconspicuousness of flogging in

⁹⁶ Maxwell-Stewart, ‘The search for the convict voice’, 77.

colonial society,⁹⁷ and argue that it ignores the public nature of the sounds of extreme, if nominally hidden or ‘private’, violence. To hear these sounds was to be reminded that colonial life, whether bond or free, was structured upon the distinctly penal concepts of control, repression and surveillance.

Similarly, while the natural environment has rightly become an intriguing and fruitful subject for historical analysis of the power structures in colonial Australia, an aural appraisal of its manipulation and mediation is also instructive. Revealing how the altered landscape was also an altered soundscape, an appreciation of the auditory and acoustical dynamics of the natural environment affirms its utility as a potential weapon in the aural armoury of colonial authorities. In other words, just as important as how it effected the development of convict and colonial life is how it was, in its turn, marshalled by authorities in the maintenance of penal control. This phenomenon must be acknowledged in any search for a ‘convict voice’ that concerns the auditory dynamics of colonial Australia.

In the floggings of convicts across the colony, from isolated courthouse to lone property to small settlement, the creeping control of aural terror stalked the colonial countryside. Often forgotten or overlooked in an age distracted by a ‘fetish for the visual’ in historical analysis is how the landscape was also a sound-scape.⁹⁸ In turn scandalising locals and controlling convicts, the sounds of violence and pain robbed those unlucky enough to be in its path of their sense of freedom or individuality, and reminded them of their actual

⁹⁷ Hirst, *Convict Society*, 61.

⁹⁸ Bruce R. Smith, *The Acoustic World of Early Modern England*, 44-48. See generally Corbin, *Village Bells*.

colonial status: not bond, but not free; not whipped, but not free of the psychic hurt of scourging; not repressed, but entrapped nonetheless in the vice-like control of the sights and sounds of penal life.

Thus, the very colonial air, as a conveyer of the sounds of violence to scattered communities, and the medium upon which the myths of colonial repression spread through the more isolated settlements, was appropriated to serve authorities' ends. What was once the air of freedom and potential escape was, once again, the 'imprisoning air' of penal repression.⁹⁹ The sounds of penal life—the screams of pain of flayed flogging victims, the grunts and groans of coerced labour, and the barked orders of penal supervisors—rent this supposedly freer colonial air. More than that, it was the very air itself that carried these sounds, more resonant across the increasingly treeless land than ever before, into the ears and lives, even sometimes the homes, of colonial inhabitants.¹⁰⁰

⁹⁹ Alan Atkinson asserts that it may have been Governor Arthur 'who first made Australians familiar with the notion that an entire colonial territory might be a gaol, a place in which the very air was imprisoning'. See 'Writing about convicts', 18.

¹⁰⁰ Bruce R. Smith, *The Acoustic World of Early Modern England*, 44-48; Harris, *Settlers and Convicts*, 200-201.

Chapter Three: Penal Acoustics

In fact slavery, the total subjection of men and women, was never entrenched. There was evidence of it and there was talk about it, but in New South Wales, as we see later, slavery was a subject easily exhausted.¹

To tell free people of slavery is to raise a feeling of compassion for the portion of humanity bereft of liberty, and to call up emotions and enlist such in the path of duty, to aid emancipation. For our slavery there was no balm.²

Introduction

For the readers of Brisbane's *Moreton Bay Courier* (*Courier*) newspaper, the short, intense narrative of the life of former convict 'Jack Bushman' was a buffeting experience. Mentioned in the introduction to this thesis, and published over five consecutive editions in 1859, *Passages in the Life of a Lifer* (*Passages*) graphically recounted the brutality of the Moreton Bay penal settlement, a place of secondary punishment for convicts from 1824-1842, and the progenitor of post penal-era Brisbane.³ While almost certainly an invented moniker, 'Bushman', likely through the literary intervention of the *Courier's* editor, recalled enough of the degrading conditions at Moreton Bay to both terrify and thrill its predominantly middle class readership. While Ian Duffield has acknowledged the 'prudent' decision to publish such a life pseudonymously, so as not to offend lingering convict era sensitivities, *Passages* also signaled, through subtle tropes, soaring metaphors and a strident moralism, that a distasteful period in the colony's history had been consigned to a

¹ Atkinson, *Europeans, Volume One*, 98.

² Bushman, "*Jack Bushman*": *Passages from the Life of a "Lifer"*, Chapter 5, 1.

³ *Ibid.*, Chapter 3, 3; For an analysis of "Bushman's" narrative and the likely identity of "Jack Bushman" see: Duffield, 'Problematic passages', 20-42.

distant past.⁴ In short, from the moral and social pandemonium of Moreton Bay's convict past a glorious colonial future has been salvaged, in no small part due to the 'sterilizing' effect of an influx of free British immigrants (and *Courier* subscribers) to Moreton Bay around 1850.⁵

One particularly resonant *Passages* scene recalls a 'noble' tree, long dead and its stump burned, as a witness to, and victim of, years of corporal violence. On its trunk convicts, stripped to the waist and tressed in 'spread-eagle' fashion, were brutally whipped. An unintended consequence of this practice was the destruction of the tree's bark as the cords of the 'cat' overshot their primary target to nick, thousands of times, the tree's surface. The resulting damage—the mottled bark pockmarked with countless indentations—caused the tree's untimely death.⁶ In what has been described as a 'powerful metaphor for liberty killed by cruel tyranny', this tree's literal death-by-a-thousand-cuts exposes, for the *Courier's* editor at least, the fine line that separates a just and proportionate system of penal discipline from the sadistic tendencies of an unfettered and unprincipled regime of physical violence.⁷ For the shadowy author of *Passages* that line was crossed at Moreton Bay, and the *Courier's* readers were invited to imagine life in the settlement through the unfortunate fate of this flogged tree, prior to their own purifying influence:

It did not die a natural death. Its life was whipped out of it. In the light of the morning, before the dewdrops had been gathered from the blades of grass by the guardian of the day, would screams be heard of men enduring mortal

⁴ Duffield, 'Problematic passages', 20.

⁵ *Ibid.*, 20. For an analysis of John Dunmore Lang and his championing of the 'strength' and 'vigour' of the White community in the Northern settlement see: Jessie Mitchell, 'The Gomorrah of the Southern Seas': Population, separation and race in early colonial Queensland', *History Australia*, 6(3), 2009, 6.

⁶ Bushman, "*Jack Bushman*": *Passages from the Life of a "Lifer"*, Chapter 5, 2.

⁷ Duffield, 'Problematic passages', 26; for an analysis of 'Bushman's' narrative 'as a historical source, a narrative and a history' see Evans and Thorpe, 'In search of Jack Bushman', 32-48.

agony, while at other times the formulas would be gravely observed, and the flogging be given in the presence of a multitude of guilty and suffering ones, so that they might learn how tremendous that power was which held their liberty. They flogged that tree to death.⁸

In addition to its metaphoric power, the above passage also invites us to contemplate the acoustics of corporal violence. Indeed, by having the dewy peace of the morning so profoundly shattered by the screams of flogged men, *Passages*' author uses the discordant sounds of Moreton Bay to underscore the aural, as well as physical, aberrance of such regimes.

In chapter two of this thesis, *Colonial Acoustics*, the broader soundscapes of colonial era Australia were introduced as an important backdrop for the search for the convict voice. One aim of chapter two was to explore the notion of a confected, or at least manipulable, auditory culture within this period, including the use by authorities of the natural environment as a prop in the construction of disciplinary and disciplining penal sounds. As such, a deeper appreciation for the contested soundscapes of penal life can emerge, providing nuance to the auditory context from which many 'convict voices' emerged. While admittedly a broad sweep across the auditory canvass of colonial Australia, chapter two sought, in essence, to re-introduce the penal system as a heard and aural environment, as much as a seen and ocular one.⁹ Thus, to contemplate penal-era Australia as a place of discordant and contested sounds allows—arguably compels—a broader conception of the convict voice than is currently contemplated: a mix of words, language, sounds and noises that was battled over by various colonial figures.

⁸ Bushman, "*Jack Bushman*": *Passages from the Life of a "Lifer"*, Chapter 5, 2.

⁹ Damousi, *Colonial Voices*, 3. For recent work on the auditory in Australian history, see: Collins, 'A 'roaring decade'', 7-18; Damousi, 'A history of Australian voice and speech', 155-170; Collins, 'Acoustic journeys', 1-17; Gilchrist, 'A life of noisy riot', 29-45.

This chapter, introduced by the striking sounds and silences of the flogging process in Jack Bushman's narrative, explores the narrower acoustics of physical punishment. In particular, through the processes of corporal violence—the infliction of punishment and pain by the whip or 'lash'—*the sounds of penal life* are contemplated for their contested and mediated nature. In aural analyses similar to that employed in chapter two, this chapter turns its attention to the nature and meaning of the noises produced by convicts enduring physical punishment. Further, the effects of the manipulation and creation of convict noise during corporal punishment will be applied to our broader 'search for the convict voice',¹⁰ as the sounds produced by the flogging process can be seen to satisfy the social, political and disciplinary aims of penal authorities. Thus, a decrescendo from the soundscapes of colonial life, in chapter two, to the sounds of the flogging process in this chapter, is contemplated.

Despite this narrower auditory focus, the possible implications for our understanding of the convict voice through the processes of corporal violence are potentially far greater than the parochialism of the sounds discussed in 'Colonial Acoustics'. Here, a comparative analysis with other systems of unfree labour, especially those controlled through whipping, is employed. Prominent within this comparison is the institution of slavery in the American South, where the control of slaves' auditory culture is used to decipher some of the possible aims and attitudes of floggers within penal-era Australia. While insights from other systems, including slave societies, provide valuable contexts for the actions of penal authorities, and are indeed used in this way, there is no attempt, however, to equate colonial Australia with the institution of

¹⁰ Gilchrist, 'A life of noisy riot', 29-32.

slavery. Rather, this chapter subscribes to Alan Atkinson's introductory assertion: conditions of slavery are a valuable, yet necessarily limited, vehicle through which to discuss, contrast and compare colonial era society.¹¹ In this way, slavery, while never contemplated as an institution that belonged in colonial Australia, is nevertheless useful as both a mode of corporal violence, and an auditory culture, to contextualise and to contemplate the conditions faced by Australia's convicts.¹²

By adopting a broad view of the links between convictism and other systems of coercion, this chapter argues that the sounds of physical violence were a shared aural phenomenon across a wide variety of coercive disciplinary regimes. This acknowledgement, in turn, invites a comparison of the role that sound played in other theatres of emotional and physical repression. Simply because slavery was not a system that was advocated for or implemented in penal Australia does not mean that aspects of its operation were not attempted or relevant to the ways in which penal authorities sought to control their bonded charges. Indeed, the fact that penal-era Australia has overwhelmingly, and rightly, avoided the 'slave system' tag, makes any similarities between the two systems more rather than less important. In other words, analyses of the ways that slaves were punished, controlled and repressed, and the application and comparison of those methods to an Australian penal context, may

¹¹ Atkinson, *Europeans, Volume One*, 98.

¹² This is also backed up by the words of foundation Governor Captain Arthur Phillip. Noting the shape that the legal and administrative structure of New South Wales would take, Phillip asserted: 'The laws of this country [England] will, of course, be introduced in New South Wales, and there is one that I would wish to take place from the moment His Majesty's forces take possession of the country—that there can be no slavery in a free land and consequently no slaves'. See Thomas Keneally, *Australians: Origins to Eureka, Volume One*, Allen and Unwin, Sydney, New South Wales, 2009, 56. Hamish Maxwell-Stewart has also discussed how Van Dieman's Land Governor George Arthur compared the conditions of penal-era Australia to that of slavery: Maxwell-Stewart, *Closing Hell's Gates*, 155.

expose ideological and practical similarities across systems not ordinarily compared to one another.¹³

As such, an aural analysis of the flogging of convicts reveals that, for some floggers, the expected screams and cries of the flogged reflects a tendency and expectation, very similar to that displayed by slave masters, to completely dominate and repress convicts. It is this ideological aspect within the flogging regimes of colonial era Australia that deserves renewed analysis, and is key to a renewed appreciation of the nature of ‘the convict voice’ produced by such systems. In effect, convicts were expected to make noise as they were being flogged and these noises were an important part of colonial punishment regimes. In showing how physical violence was used to elicit the sounds of convicts’ physical and emotional repression, the inherently mediated nature of the sounds coming from convicts can be appreciated. It is this mediation and manipulation of convict sound through flogging—that is shared by both convict and slave punishment regimes alike—that reveals similarities in the auditory cultures of both societies. Further, and perhaps most importantly, it also provides important insights into how authorities sought to use convict sound to entrench notions of control and repression within bonded communities. This, in turn, allows for renewed appreciation for the complexity of ‘the convict voice’ and its meaning within penal-era Australia.

¹³ With some exceptions. See for example: Bushman, “*Jack Bushman*”: *Passages from the Life of a “Lifer”*, Chapter 3, 4; Neal, ‘Free society, penal colony, slave society, prison?’, 497-524; John Hirst, ‘Or none of the above: A reply (to David Neal ‘Free society, penal colony, slave society, prison’), *Australian Historical Studies*, 22(89), October 1987, 519-524; W. Nichol, ‘Ideology and the convict system in New South Wales 1788-1820’, *Australian Historical Studies*, 22(86), April 1986, 1-20; Duffield, ‘Daylight on convict lived experience’, 29-37; Buckley and Wheelwright, *No Paradise for Workers*, 44-45.

Thus, instead of the slavish attachment to the strict dichotomy between the convict and Southern slave ‘systems’, this chapter borrows from aspects of both environments, and draws links between them, to expand the notion and nature of what a ‘convict voice’ is, and hence where best to search for it. By doing so, the use of convict sound and noise, often produced through and by processes of physical violence, is revealed as a mediated and meaningful aural phenomenon. In other words, convict noise is much more than simply the uncontrolled outpourings of people in pain. For convicts, penal authorities and floggers, the creation and subsequent use and meaning of convict noise went beyond a simple organic expression of pain or discomfort or shame, but rather had far deeper ideological meaning for those involved.

As discussed in the introduction to this thesis, the image of a flogged convict, replicated almost to the point of cliché within writing on penal-era Australia, must also be appreciated as an auditory phenomenon.¹⁴ While the screams, grunts or moans of flogged humanity have been extensively written about, the notion that these sounds meant something beyond the organic outpourings of convicts in pain is under-explored. In other words, to express the fact that noise was made during the punishment process, without more, empties much of the meaning, and therefore historical value, that episodes of corporal violence potentially possess. Moreover, when such an appreciation is reached, crucial and different questions arise. For example, in the aural battle over the control of convict suffering, where the lash is used as both an instrument of pain and an auditory control, the issue of who is *creating the noise within this process, and for what reason*, emerges. Further, in the

¹⁴ For writing on the enduring images of penal-era punishments see Finnane, *Punishment in Australian Society*, 1-28.

reactions of floggers and flogged within these brutal episodes, how important is the production of sound to the flogger? Such enquiries reflect an age-old, but under-explored aspect to convict historiography: for all of the analysis of convict action, motivation and experience, where is the equal curiosity about the inner worlds of those on the other end of the whip? This is neatly encapsulated in a comment made by Peter Ustinov who, in answering a journalist's question about Australian history said: 'I wouldn't be worried about a society descended from convicts, but about a society descended from the guards'.¹⁵ Asking these types of questions when pondering the flogging of convicts helps to reveal the aural dynamic of convict/flogger relations, and the mediated nature of the sounds, or, as I will argue here, the 'voices' that emanate from such settings.

Therefore, what this chapter does is contemplate the phenomenon of 'the convict voice' through a prism of the sounds produced by regimes of corporal violence. In effect, the creation of convict voices through flogging will be given a much broader ideological and comparative dynamic. The search for the convict voice is therefore, and again, complicated and deepened by awareness that the aural contest within the processes of physical violence was not a uniquely Australian penal-era phenomenon. A new understanding of the ideological importance of flogging, how it was not simply the detached corporal process it has often been likened to, invites the reader to see the similarities that exist between different systems of physical and emotional coercion that have been ignored, or undervalued, as profitable avenues of enquiry.

¹⁵ Peter Ustinov quoted in Peter MacFie, 'Dobbers and cobbles: Informers and mateship among convicts, officials and settlers on the Grass Tree Hill Road, Tasmania, 1830-1850', *Tasmanian Historical Research Association: Papers and Proceedings*, 35(3), September 1988, 112.

The sounds of convictism¹⁶

This section starts with a comparison between two ‘scenes’ of corporal violence, written around the same time, by chroniclers celebrated within their respective cultures.¹⁷ While centered upon similar themes, these scenes are separated, however, by the chasms of geography, culture, ideology and race. Nevertheless, they do share one aspect in common: the control of one human being by another using a whip, and all the physical, psychological, emotional and, most importantly for this chapter, auditory turmoil that is produced.

The first scene involves the infamous ‘Jack Bushman’, the convict chronicler whose narrative excerpt opened this chapter, and the source of both excitement and scepticism in the pursuit of ‘the convict voice’ in chapter one of this thesis. Thus, after absconding from Moreton Bay, Bushman was apprehended by a party of soldiers searching for another runaway convict. In what he relates as the ‘last sad scene of the runaway stories’, Bushman recalls the brutality of his punishment: ‘I was sentenced to receive 300 lashes—100 each morning on three successive mornings’.¹⁸ As perhaps only Bushman could, the first hundred was taken ‘very comfortably considering what was to come afterwards’. On the second day, as the flogging started to bite, Bushman, determined not to ‘shriek’, endured his one hundred lashes in silence despite them ‘making me like a madman’.¹⁹ On the third and final morning of his punishment, with the old wounds of the previous mornings ‘gaping ghastly’, Bushman, with a swollen

¹⁶ With gratitude to Shane and Graeme White’s work on the sounds of Antebellum Southern slavery. These historians have shown the potential for aural analysis to reinvigorate historical inquiry. See: Shane White and Graeme White, *The Sounds of Slavery*.

¹⁷ Douglass, Frederick, *Narrative of the Life of Frederick Douglass, An American Slave, Written by Himself (1845)*, Academic Affairs Library, The University of Nth Carolina, 1999, <http://www.docsouth.unc.edu/neh/douglass/douglass.html>, viewed at 1/08/09; Bushman, “*Jack Bushman*”: *Passages from the Life of a “Lifer”*.

¹⁸ Bushman, “*Jack Bushman*”: *Passages*, Chapter 4, 2.

¹⁹ *Ibid.*

tongue that was only saved from being ‘bitten in twain’ by the fact that ‘I gnawed a leaden button’ during the flogging, retained consciousness long enough to hear that he was to be cast off from the punishment after eighty five lashes had been inflicted.²⁰ As for the remaining fifteen, despite Bushman asking for them to be given immediately, he was instead taken to the hospital where his wounds, but apparently not his spirit, slowly recovered.²¹

Significantly, as he writhes in intense, yet silent, agony under the blows of the lash, his flogger, spitting his disappointment, is heard to yell: ‘you b- you will not holloa [holler]’.²² The inability to produce the requisite sounds of pain in Bushman caused the flogger’s anger, not the brutality, or indeed the ‘effectiveness’ of the punishment itself. More than the actual pain that this convict may have been experiencing, it was his silence—his refusal to emit the expected sounds of supplication expected of the flogging ground—that upset his flogger. The price that Bushman paid for this resistance is dramatically revealed in his description of the pain that multiple floggings caused:

Oh Lord! My back has been cut and chopped, until it was scarcely ever well. The fire used to flash from my eyes while I was taking the floggings, and it seemed as if the very hell of agony had fastened on me. A boiling sensation of pain, as if I was being scorched with a red hot iron was the sensation towards the close, and sometimes I thought I must have shouted for mercy.²³

By remaining silent, however, Jack Bushman did not accord with, or subscribe to, a regime of penal repression manifested in aural, as well as physical, subjection.

²⁰ *Ibid.*

²¹ *Ibid.*, Chapter 4, 2-3.

²² *Ibid.*, Chapter 4, 2.

²³ *Ibid.*, Chapter 3, 2.

In the second scene, I ask you to consider the fate of ‘Hester’, a beloved aunt of former slave, author and renowned anti-slavery advocate Frederick Douglass.²⁴ Douglass, who according to Orlando Patterson is ‘undoubtedly the most articulate former slave who ever lived’,²⁵ recounts the terror he felt in witnessing his relation being savagely beaten for associating with a slave from a neighbouring property. Hester, who according to Douglass was a ‘woman of noble form, and of graceful proportions’, disobeyed orders forbidding her from seeing ‘Lloyd’s Ned’, a male slave who, Douglass hints, may have been conducting a physical relationship with his aunt. For Douglass’ master, ‘Captain Anthony’, a man who seemed to ‘take great pleasure in whipping a slave’, Hester’s continuing disobedience, and perhaps his own frustrated intentions regarding this particular slave, resulted in sustained and brutal corporal punishment.²⁶

Often Hester would be stripped to the waist, her hands bound together, and hoisted into the air ready for the onslaught of lashes.²⁷ In this exposed position she would regularly be flogged for hours on end. Indeed, Douglass recounts being regularly jolted awake on early mornings by the sounds of his aunt being whipped.²⁸

Interspersed with Hester’s screams of pain were her flogger’s angry accusations of disobedience and disloyalty. For Douglass, the ‘heart-rending shrieks’ and ‘horrid

²⁴ Douglass, *Narrative of the Life of Frederick Douglass*. For a discussion on the meaning and impact of Douglas’s narrative see Orlando Patterson, *Slavery and Social Death: A Comparative Study*, Harvard University Press, Cambridge Massachusetts, 1982, 12-13. For work on the ‘contested’ nature of slave narratives and their ability to reveal the inner worlds of slaves see: Walter Johnson, ‘On agency’, *Journal of Social History*, 37(1), Fall 2003, 113-124; Faust, Drew Gilpin (ed), *The Ideology of Slavery: Proslavery Thought in the Antebellum South, 1830-1860*, Louisiana State University Press, Baton Rouge, 1981, 20. Also note the ‘narrative industry’ that surrounds slaves as well. Links can be drawn between the slave narrative industry in the American South and convicts in penal-era Australia. See Conlon ‘Mine is a sad yet true story’, 43-73.

²⁵ Patterson, *Slavery and Social Death*, 13.

²⁶ Douglass, *Narrative of the Life of Frederick Douglass*, 6.

²⁷ *Ibid.*, 7.

²⁸ *Ibid.*

oaths' surrounding this event, and others like it, served as aural markers to express his abhorrence at the violence and perverse paternalistic moral and sexual codes of plantation slavery.²⁹

A striking feature of the various scenes of Hester's floggings is its aural brutality. Driven by exasperation at Hester's continued disobedience and, as mentioned above, perhaps his own frustrated desires, Captain Anthony, would 'whip her [Hester] to make her scream, and whip her to make her hush'.³⁰ In this way, the production of the sounds of both emotional as well as physical subjection reinforced the complete domination of master over slave. Moreover, and as Douglass explains, Hester's loud verbal responses—her screams of pain—to such floggings was not an incidental aspect of the punishment. This auditory dimension is indeed confirmed by Douglass, who observes that 'the louder she screamed, the harder he [Captain Anthony] whipped'.³¹ In other words, Anthony's desire to control Hester's response to the whipping—in this case by increasing the severity of his attack—reveals how the control, and denial, of Hester's emotional response informed, at least in part, the nature and intensity of his violence. While in the context of Southern slavery, the assumed sub-humanity, or at least inferiority, of slaves was no secret,³² controlling their emotional responses to physical violence further embedded their subordinated position.

²⁹ *Ibid.*, 6; see also Mark M. Smith, *How Race is Made: Slavery, Segregation and the Senses*, The University of North Carolina Press, Chapel Hill, 2006, 34.

³⁰ Douglass, *Narrative of the Life of Frederick Douglass*, 6.

³¹ *Ibid.*

³² Leon F. Litwack, *North of Slavery: The Negro in the Free States*, University of Chicago Press, Chicago, 1961, 15; Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made*, Random House, New York, 490-491; John Blassingame, *The Slave Community: Plantation Life in the Antebellum South*, Oxford University Press, New York, 1972, 200.

As both Jack Bushman and Aunt Hester's experiences reveal, corporal punishment could involve much more than the dispassionate infliction of pain for a wayward convict or slave. The aural dynamic to both scenes, in particular, strikingly reveals how the control of the sounds produced by the whipping process drove much of the *floggers* satisfaction, or otherwise, with the punishment. While the use of the whip was a phenomenon shared by many societies dependent upon the coerced labour of unwilling and unpaid humanity, the rich descriptions produced by both slave and convict systems of the phenomenon of flogging invites a comparative aural analysis. While there are some distinctive similarities between the methods employed by overseers within both systems to control their reluctant charges, this comparison does not seek to be an exhaustive analysis of the similarities between the systems of American slavery and Australian convictism. Rather, it uses a phenomenon that both systems shared—namely the physical punishment of people using whips—to shed new light on the ideological underpinnings of penal Australia, and how its participants made sense of themselves and their roles in a 'unique' penal and social setting.³³

Returning to the scene where Jack Bushman refuses to 'shriek' during punishment, the intense upset this caused his flogger is difficult to fathom. This is especially so when you consider, as was done in chapter two of this thesis, John Hirst's interpretation, of the phenomenon of penal-era flogging as a 'dispassionate' affair conducted by 'lowly officials'.³⁴ If this was indeed the case, how can the reaction of Bushman's flogger, supposedly an ex, or current, convict paid to inflict corporal punishment upon his fellow convicts, be interpreted as anything other than passionate

³³ Hughes, *The Fatal Shore*, 1. For a critique of Hughes see: Atkinson, 'Writing about convicts', 20-24. For a broader analysis on how Australian history has been written see: Atkinson, '2005 Eldershaw Memorial Lecture: Tasmania and the Multiplicity of Nations', *Tasmanian Historical Research Association: Papers and Proceedings*, 52(4), December 2005, 189-200.

³⁴ Hirst, *Freedom on the Fatal Shore*, 53.

and personal? When seen in comparison to the emotionality of Captain Anthony's assault on Aunt Hester, and its similarity to that displayed by Jack Bushman's flogger, a less 'dispassionate' process is difficult to imagine. Moreover, it appears that this personal dynamic to the punishment process was tethered to notions of resistance to the effectiveness of the punishment, reflected predominantly in the victim's refusal to make the noises of pain and supplication obviously expected by the wielder of the 'cat'.

Not only does this aural dynamic to corporal punishment allow us to reflect more deeply upon the ideological and human dimensions to flogging, a phenomenon that enjoys an extensive historiography,³⁵ it also makes us think about the multiple purposes of flogging itself. While, of course, the infliction of lashes, and the associated pain involved for the victim by doing so is an obvious corrective technique to punish recalcitrant or criminal behavior, whether justified or not. However, the production of sound within this process, and the disappointment felt by the flogger when it was absent, is less well understood. It is the language of this process—the actual sounds created by flogging and their potential meanings—that informs much of the interplay of penal flogging.

³⁵ Gilchrist, 'This relic of the plain', 1-28; Evans and Thorpe, 'Commanding men', 17-33; Frow, 'In the penal colony', 1-13; Moore, 'Colonial manhood and masculinities', 43-48; Erin Ihde, 'Monitoring the situation: The 'convict journal', convict protest and convicts' rights', *Journal of the Royal Australian Historical Society*, 85(1), June 1999, 29; *A Manifesto for New South Wales: Edward Smith Hall and the Sydney Monitor 1826-1840*, Australian Scholarly Publishing, Melbourne, 2004, 143-175. For work on the role of the body and physical violence more generally see: Randall McGowan, 'The body and punishment in eighteenth-century England', *Journal of Modern History*, 59, December 1987, 651-679; Jody Enders, *The Medieval Theatre of Cruelty: Rhetoric, Memory, Violence*, Cornell University Press, Ithaca, 1999, 160-229. For an appreciation of the concept of flogging in the different institutional setting of a private boys school see: Joseph A. Mercurio, *Canning: Educational Ritual*, Holt, Rinehart and Winston, Sydney, 1975.

Such desire for control of convicts' reactions, and noise, within the flogging process can also be seen in the context of slave whipping in the American South. Thus, a comparative analysis with the auditory culture of Southern slavery can provide ideological nuance to these battles. While perhaps more *ad hoc* than the punishments inflicted upon most convicts, the following examples of corporal violence affirms the need for floggers to draw a reaction from their victim. Often, the requirement of a verbal or oral response to the infliction of pain—the screams and cries of flogged victims—was not enough to satisfy some floggers. In an environment where, according to escaped slave Peter Randolph, there were 'no rules for whipping', the nature of slaves' physical and emotional subjection was, at times, a savagely personal process for their punishers.³⁶ No doubt, for some of these masters, the infliction of violence upon their slaves was a reaction, however perverse, to the disloyalty displayed by their charges. For James Curry, who witnessed the beating of a fellow slave for the alleged theft of wheat, the accuracy of the allegations themselves was a secondary consideration to his master's desire to control his victim's response:

My master whipped at this time by [sic] for the most cruelly. He would require the poor slave to confess the truth, and then to deny it, and then back again, and so on, beating him from truth to lie, and from lie to truth, over and over again.³⁷

For William J. Anderson, a survivor of plantation life and passionate opponent of slavery, the whipping of slaves was as much about the ability of floggers to change

³⁶ Randolph, Peter, *Sketches of Slave Life: Or, Illustrations of the "Peculiar Institution"*, Boston 1855, Documenting the American South, The University of Nth Carolina, 2004, <http://docsouth.unc.edu/neh/randol55/menu.html>, viewed at 08/08/09, 21.

³⁷ Curry, James, *Narrative of James Curry, A Fugitive Slave*. *The Liberator*, 10 January 1840, Documenting the American South, The University of Nth Carolina, 2004, <http://docsouth.unc.edu/neh/curry/menu.html>, viewed at 08/08/09, paragraph 15 (no pagination).

the responses of victims to physical pain, as it was to punish them for misbehaviour.³⁸ Recounting his time on a farm not far from Vicksburg, Mississippi, Anderson recalls a particularly brutal whipping where an overseer, ‘Mr Hudmon’, punished a ‘kindly old slave’ for an undisclosed offence. According to Anderson, after delivering a ‘hundred or more lashes; until the blood flowed down to the ground’, the overseer asked his victim if he was angry at his treatment. In extreme pain, and therefore slow to answer, the slave was given another series of beatings for his recalcitrance.³⁹ Such was the sustained brutality of this whipping, the victim, by this time delirious with frustration and pain, began to laugh. While Anderson advises his readers to ‘imagine what kind of laugh it was’, the interaction between punisher and punished in this scene reveals how the complete control of the victim’s physical and emotional response to punishment drove the overseer’s actions as much as the desire to punish a wayward slave.⁴⁰

Whether the overseer in William Anderson’s recollection intended to whip his victim from rage to exasperation is uncertain. More certain, however, is the desire of floggers to demonstrate a complete domination of their victims—physically, psychologically and emotionally—by the infliction of lashes. In the myriad tales of wanton brutality that the Southern slave system has produced, some apocryphal, to be sure, but others more certain, a common thread in the infliction of pain is the way that

³⁸ Anderson, William J., *Life and Narrative of William J. Anderson, Twenty-four Years a Slave; Sold Eight Times! In Jail Sixty Times!! Whipped Three Hundred Times!!! or The Dark Deeds of American Slavery Revealed. Containing Scriptural Views of the Origin of the Black and of the White Man. Also, a Simple and Easy Plan to Abolish Slavery in the United States. Together with an Account of the Services of Coloured Men in the Revolutionary War--Day and Date, and Interesting Facts*, Chicago: Daily Tribune Book and Job Printing Office, 1857, Documenting the American South, The University of North Carolina, 2004, <http://docsouth.unc.edu/neh/andersonw/menu.html>, viewed at 11/08/09, 26.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

domination of master over slave was expressed as much emotionally as physically, as much mentally as of flesh and blood.

By revealing this aural dynamic to flogging, shared across different cultures and diverse locations, not merely is the ‘contest’ over flogger and flogged given more prominence, but the inherent human intimacy of the flogging process is revealed. This contest over the process of flogging within penal-era Australia will be discussed in the second half of this chapter. Further, that the phenomenon of controlling the sounds of corporal violence was seemingly shared by societies as distant and diverse as colonial Australia and the Antebellum South can only deepen understanding of the nature of Australian convictism. In other words, by myopically focusing on the ‘unique’ nature of Britain’s ‘experiment in penology’,⁴¹ rich comparative offerings that may add nuance to analyses of our own past are potentially overlooked. Indeed, in the ongoing discussion about the correct, or most appropriate, way to characterize penal-era Australia, a topic seemingly undergoing renewed interest,⁴² a comparative aural analysis can add nuance and sophistication, and indeed humanity, to such issues.

Colonial character traits

The preceding section sought to establish the usefulness of a comparative aural analysis between Australian convictism and Southern American slavery to further our understanding of colonial Australian society. The sounds of whipped convicts and slaves were compared, as a means of demonstrating how ideological and cultural similarities can exist between societies which share very little in common except for

⁴¹ Hughes, *The Fatal Shore*, 1.

⁴² Karskens, *The Colony*, 2-5 ; Boyce, *Van Dieman’s Land*, 1-11; Atkinson, ‘Tasmania and the Multiplicity of Nations’, 195.

the control of sections of their populations through whipping. Thus, the process of flogging, especially its aural brutality, can be seen as more than the dispassionate application of ‘corrective’ corporal punishment. This section extends this comparative approach by examining how flogging has impacted upon the way that penal society has been understood, or classified, over time. My aim here is to show how flogging has been used in analyses that purport to reveal the true character of the penal system. Further, that it was the contested aural quality of the flogging process that informed some of this analysis elevates the ‘voices’ of flayed convicts above the simple, and un-meaningful, sounds of pain to important aural markers of penal-era ideology.

Before exploring the benefits of such comparisons, however, an important caveat is required. As David Neal, John Hirst and many others have stressed, systems of slavery and bondage, or the exploitation of ‘unfree’ lives and labour, have taken seemingly innumerable forms, guises and permutations over time.⁴³ To compare, or associate, convict era Australia with an amorphous concept such as ‘slavery’ is to invite theoretical, practical and historiographical confusion.⁴⁴ The choice of the ‘peculiar institution’⁴⁵ of Southern slavery to assess the auditory implications for the search for the convict voice in colonial Australia, as asserted above, is more directed, and more modest, in this chapter. Along with the use of the whip to control bonded

⁴³ For an Australian oriented view of the nature of the penal Colony see: Neal, ‘Free society’, 497; Hirst, *Convict Society and its Enemies*, 21; *Sense and Nonsense in Australian History*, Black Inc. Agenda, Melbourne, 2005, 111. For a more comparative and trans-national interpretation of Australia’s forced convict migrations see: Stephen Nicholas, ‘The convict labour market’, in *Convict Workers: Reinterpreting Australia’s Past*, Stephen Nicholas (ed), Cambridge University Press, Cambridge, 1988, 111; Atkinson, ‘Writing about convicts’, 17. For analyses of the ways that American writers and historians characterise the slave systems in their own country see: Johnson, ‘On agency’, 113; Patterson, *Slavery and Social Death*, 38. For a South African perspective on slave conditions and psychology see: John Edwin Mason, *Social Death and Resurrection: Slavery and Emancipation in South Africa*, University of Virginia Press, Charlottesville, 2003, 3.

⁴⁴ Atkinson, *Europeans, Volume One*, 80.

⁴⁵ Blassingame, *The Slave Community*; Patterson, *Slavery and Social Death*; Genovese, *Roll, Jordon, Roll*.

humanity, Australian convictism during the period covered by this thesis (1800-1840) and Southern slavery share a corresponding temporal framework. While Southern slavery, of course, has existed in one form or another for centuries, my choices of slave incidents in this chapter are restricted to the above period, lending such comparisons added relevance.⁴⁶ Further, the direct comparison of Southern slavery with Australia's penal system has been utilized before.

As such, this section builds upon earlier attempts to harness a comparative analysis with slavery to understand more of our own ideological underpinnings, and the effects of corporal violence in the formation and structure of penal-era Australia. Where my analysis differs from some others—as already discussed and hopefully clarified—is in its muted ambitions. To reiterate: I am not equating convict Australia with slavery in the American South but, rather, taking one aspect of both societies and comparing them for the purposes of deeper understanding of our own convict past. This is an inherently different, and less ambitious, process than finding concrete linkages or synergies between both systems. That some of the linkages and similarities between these systems reveal fresh insight into the constitution of penal Australia does not extend the analogy and comparison between both societies beyond what is plausible.

Having established the parameters of my comparative analysis, it is nevertheless important to note that the phenomenon of flogging, among many other strategies, has been used in attempts to classify colonial Australia. Indeed, how to properly classify penal-era Australia has employed a number of different frameworks in which to characterise the colony and make sense of its aims, structures and meaning. In the

⁴⁶ Despite the institution of American Southern slavery lasting much longer than penal-era Australia, both 'systems' operated during the timeframe of colonial Australia, and the timeframe nominated for study in this thesis, 1800-1840. See Neal, 'Free society, penal colony, slave society, prison', 500-501.

academic literature, views on what type of society was established by settlement, and indeed what shape that society took, have been driven by differing opinions on the role and nature of the colony's inhabitants.⁴⁷ Among the panoply of theories, interpretations and opinions, penal-era Australia has been characterised, among other things, as an antipodean gulag,⁴⁸ a slave-based society,⁴⁹ a brutal penal outpost,⁵⁰ and as a haven for Australia's first 'convict immigrants'.⁵¹ Despite the marked difference in some of these views one common factor, expressed with varying levels of confidence, seems to predominate: Australian penal society was a unique experiment in social, penal and administrative control that blended the above systems, in multiple ways, in the one polymorphous whole.

In 1979, in the pages of *Historical Studies*, John Hirst and David Neal engaged in a vigorous discussion about what kind of society penal Australia was; how closely it resembled other systems of labour, coerced and otherwise; and to what extent, and at what time, did its citizens, convicts included, enjoy the social and political freedoms that distinguished other communities.⁵² Reacting to Hirst's influential interpretation of colonial New South Wales, *Convict Society and its Enemies*, Neal attacked the imprecision of the terms 'free', 'freedom', 'slave society' and 'convict society', among others, that Hirst employed to argue that penal-era New South Wales had the makings of a free community ingrained within its structures almost from its

⁴⁷ Neal, 'Free society, penal colony, slave society, prison'; *The Rule of Law in a Penal Colony: Law and Power in Early New South Wales*, Cambridge University Press, Cambridge, 1991, 27-83; Hirst, *Freedom on the Fatal Shore*, 5-21; Manning Clark, *A Short History of Australia: Fourth Revised Edition*, Penguin Books, Melbourne, 1995, 18-35; McKenna, 'History and Australia'; Cochrane, *Colonial Ambition*, 1-35.

⁴⁸ Hughes, *A Fatal Shore*, 581.

⁴⁹ Neal, 'Free society, penal colony, slave society, prison', 497-513.

⁵⁰ Neal, 'Free society, penal colony, slave society, prison', 497-518.

⁵¹ Nicholas and Shergold, 'Unshackling the past', 8.

⁵² *Ibid*, 497-524.

inception.⁵³ Irrespective of the merits of both sides in this debate,⁵⁴ the use of alternative systems as comparators, to reveal either the uniqueness or conformity of colonial Australia, was an accepted analytical approach.

One particularly effective strategy that Neal employed against Hirst's thesis was to compare the conditions faced by convicts with those faced by others—slaves, servants and serfs—to argue that colonial Australia was in fact what it was always designed to be: a penal colony. As he noted: 'In order to conclude, for example, that New South Wales was not a slave society one needs to understand the defining characteristics of both slave societies and New South Wales'.⁵⁵ To this end, Neal mobilised different theories and practices of slavery, and other systems of unfree and coerced labour, to challenge some of the claims for social and political 'freedom' advocated by Hirst. Thus, an important comparative mode of analysis underpinned a debate that, crucially, could not define the concept of 'freedom' with sufficient precision to reach consensus. Particularly effective was Neal's analysis of the various ideologies of freedom within diverse societies: what 'freedom' may have actually meant to people trapped in various coercive systems. Significantly, Neal asserted that a sense of agency, however constrained by the appalling conditions faced by some workers, was a more cherished ideal than the degradation of chattel slavery experienced by subjects whose material existences—their food, shelter and communal lives—may have surpassed those of free workers.⁵⁶

⁵³ *Ibid.*, 497-513.

⁵⁴ Seemingly distracted by a fierce bout of chronological one-upmanship, these authors seemed to sacrifice debate on the ideological underpinnings of penal Australia to concerns, however oblique, over the precise moment that the Colony became 'free': Neal, 'Free society, penal colony, slave society, prison', 497-524.

⁵⁵ *Ibid.*, 499.

⁵⁶ *Ibid.*, 506-507.

In highlighting the importance of what Neal describes as the ‘ideology of formal freedom’ to structure and give meaning to social practice reminds us of the power of ideology in shaping different communities. Just as the ideology of freedom bound the understanding of British workers who endured conditions similar to those of convicts or slaves, ideologies of slavery may also exist in the practices of societies that regard themselves as free or penal-based. This disjuncture between the actuality and ideology of everyday life can be applied more specifically to penal-era Australia, particularly the nature of its punishment of convicts.

In addition to Neal and Hirst, a comparative approach to both the ideological premises, and the lived realities, of different systems owes much to the pioneering work of the *Convict Workers* team of economic historians.⁵⁷ Amid an otherwise negative analysis of the conclusions and methodology *Convict Workers* used to decipher the nature, conditions and lived experience of convicts within penal-era Australia, Raymond Evans and William Thorpe, nevertheless, conceded the value of *Convict Workers*’ broad comparative approach. In particular, Evans and Thorpe recognized the value and freshness of comparative analysis between similar systems of coerced labour to broaden the scope of historical enquiry.⁵⁸ Thus, an important by-product of *Convict Workers*’ methodology is the authors’ assertion that Australian convictism is but a species of a ‘global system of forced migration’.⁵⁹ In other words,

⁵⁷ Nicholas, *Convict Workers*. For an overwhelmingly positive discussion of the utility and uniqueness of *Convict Workers* see Dyster, *Beyond Convict Workers*, 1-2.

⁵⁸ Evans and Thorpe, ‘Power, punishment and penal labour’, 92.

⁵⁹ Nicholas, *Convict Workers*, 7. For other work that explores the transnational and inter-colonial links between the various colonies within the British Empire see: Laidlaw, *Colonial Connections*; Boyce, *Van Dieman’s Land*; Atkinson, ‘Writing about Convicts’, 17-28; Hughes, *The Fatal Shore*, 368-424; Russell Smandych, ‘Mapping Imperial legal connections: Towards a comparative historical sociology of colonial law’ *Adelaide Law Review*, 31, 2010, 187; Lambert and Lester (eds), *Colonial Lives Across the British Empire*; Kirsten McKenzie, ‘Of convicts and capitalists: Honour and colonial commerce in 1830s Cape Town and Sydney’, *Australian Historical Studies*, 118, 2002, 199-222; Atkinson, ‘The free-born Englishman transported, 108-112; McKenzie, ‘Performing the peer’, 227.

the transportation and repression of felons was not a peculiarly Australian phenomenon.⁶⁰ Further, by including the Australian penal experience within broader geographical and labour migration trends, some of the parochialism surrounding the transportation of felons to Australia may be tempered.⁶¹

Despite recognizing the utility of such comparative analyses, the *Convict Workers* quantitative, and aggressively revisionist, approach to writing about colonial Australia was less well received.⁶² Indeed, for Evans and Thorpe, the methodological shortcomings of *Convict Workers*—the massive statistical interrogation and assessment of convicts' lives using official colonial data—rendered their conclusions dangerously shallow:

The authors never examine such matters as the manner in which official data was originally collected on convicts; the class/power relationship between the collectors and the sources of information being collected; and the relationship between the statistics themselves and the real human beings and social situations that such data is meant to represent. Somewhat naively, the authors accept official calculations on floggings, dietary scales, clothing allowances, literacy, and occupations as unproblematical facts.⁶³

In essence, and as discussed in the introduction to this thesis, the absence of any evidence of, or feeling for, the humanity of convicts' lived colonial and penal existences is at the heart of Evans and Thorpe's critique. Further, and reinforcing the utility of an awareness of the auditory resonances of colonial experience, to assert that the dry, lifeless tabulations of numbers on a page, without more, reveals something of

⁶⁰ Nicholas, *Convict Workers*. 7-13.

⁶¹ *Ibid.*

⁶² At one point Stephen Nicholas asks: 'How did Australian historians get it [analyses of penal-era Australia] so wrong?', *Convict Workers*, 199.

⁶³ Evans and Thorpe, 'Power, punishment and penal labour', 93.

the lived experiences of convicts is a limited and limiting approach to historical research.⁶⁴

Comparing aural violence

Indeed, a reminder to look and listen to other systems of physically coerced ‘unfree’ labour can reveal important differences in the ways that each society has interpreted or characterised their violent pasts.⁶⁵ Perhaps part of our (historical) reluctance to notice or draw links between the physical punishment of convicts and that of slaves is the markedly different ways that corporal violence has been interpreted and used by observers and commentators of each system.⁶⁶ In ways similar to how the wielder of the whip in penal-era historiography has been downplayed in favour of a convict-centred approach, analyses of corporal violence have been skewed in favour of a victim-oriented focus. A more balanced approach to the infliction of violence, both in terms of hearing as well as seeing it within the archive, and analyzing it from both ends of the whip, can potentially reveal more about the ideological, political and cultural underpinnings of communities than is presently appreciated.

Indeed, for the Southern slave ‘eye witness’ to the brutality of plantation life, the screams, groans and grunts of pain of flayed humanity stand to condemn the inhumanity of their punishers. Rather than interpret the sounds of physical discomfort from the prism of the punished, slave narrators and other observers judge the moral,

⁶⁴ Roberts and Garland, ‘The forgotten commandant’, 5-24.

⁶⁵ Nicholas, *Convict Workers*; Clare Anderson, ‘The genealogy of the modern subject: Indian convicts in Mauritius, 1814-1853’, in Ian Duffield and James Bradley (eds) *Representing Convicts: New Perspectives on Forced Labour Migration*, Leicester University Press, Leicester, 1997, 164-182.

⁶⁶ A symptom, perhaps, of the fact that slavery, as a system that used corporal violence, was never intended to be instituted in the colony. Alan Atkinson asserts that although ‘slavery’ was commonly spoken of in the early years of the Colony, it was never a serious proposition for the creators of the settlement, *Europeans Vol 1*, 80-82; Thomas Keneally, *Australians: origins to Eureka, Volume One*, Allen and Unwin, Sydney, 2009, 56.

ideological and social underpinnings of slavery from the actions of those wielding the whip.⁶⁷ Recollections of slave society are replete with tales of detached, brutal treatment meted out by masters seemingly oblivious to the discomfort of their victims. For James Curry, a former fugitive slave writing of his experiences in *The Liberator* on January 10th 1840, the inhumanity of slavery was encapsulated in the reactions of a master as he flayed a disobedient slave:

His flesh, at length, would draw and quiver all over his body, like newly killed beef, and finally it appeared as though it was dead. The poor creature was all the time shrieking, and begging, and pleading for mercy; but it had no more effect upon them than would the squealing of a hog they had been killing.⁶⁸

For Curry, the cruelty of the flogging was as much an aural phenomenon as a physical one. Indeed, the range and diversity of the victim's aural responses—the shrieking, begging and pleading—affirms the cold brutality of the flogger rather than the weakness, or emasculation, of the flogged. Further still, the 'them' that Curry emphasises in the above description are the floggers and masters of plantation slavery, transformed from the singular plantation master to the plural masters who made up the inhuman slave system. This neat trope emphasises not just the general attitude of some slave owners but also the extent of the attitude of floggers and masters within this society.

⁶⁷ Douglass, *Narrative of the Life of Frederick Douglass*, 6. For analyses of the ways that American writers and historians characterise the Southern slavery see: Johnson, 'On agency', 113; Patterson, *Slavery and Social Death*, 38; Charles H. Nichols, Jr., 'Slave narratives and the plantation legend', *Phylon*, 10, 1949, 207; Lawrence W. Levine, *Black Culture and Black Consciousness*, Oxford University Press, New York, 1977, 128; Blassingame, *The Slave Community*, 200; Charles H. Nichols, Jr., *Many Thousands Gone: The Ex-Slaves Account of Their Bondage and Freedom*, Leiden E. J. Brill, New York, 1963, 68. For a South African perspective on slave conditions and psychology see Mason, *Social Death and Resurrection*, 3.

⁶⁸ Curry, *Narrative of James Curry, A Fugitive Slave*, paragraph 15.

Similarly, William J. Anderson recounts a flogging he received from his master after attempting to escape from his Mississippi farm. Of the (in)-humanity of his master, expressed in his behaviour at the flogging site, Anderson notes: 'I begged, mourned, and cried, and prayed; but all my lamentations were only sport for him; he was a stranger to mercy'.⁶⁹ That masters within the slave system of the South were capable of this kind of treatment is a reasonably uncontroversial notion.⁷⁰ Of more interest, however, are the use of the acoustics of physical violence by narrators and other observers to express the inhumanity and moral and spiritual baseness of slave society and its participants.⁷¹ In effect, the sounds of physical pain, and the contest between flogger and flogged, was an aural marker to denote the brutality and baseness of slave systems and, by extension, the floggers who ensured they worked effectively.

In contrast, recollections of the corporal violence of penal Australia tend to interpret the sounds of the infliction of physical punishment in a way that is more convict, or victim, focused. Thus, the flogging of convicts is interpreted through, and focused largely upon, the reaction of the victim: are (his) screams or silences the epitome or the antithesis of an idealised masculine mode of behaviour?⁷² In other words, the sounds of convicts on the triangle tell us more about the *convicts* than they do about the floggers and the systems that they represent. As such, the iconic episodes of

⁶⁹ Anderson, *Life and Narrative of William J. Anderson, Twenty-four Years a Slave*, 17.

⁷⁰ Harry P. Owens, (ed), *Perspectives and Irony in American Slavery*, University Press of Mississippi, Jackson Mississippi, 1976, ix-xi. In the same work see Carl N. Degler, 'The irony of American Negro slavery', in Harry P. Owens, (ed), *Perspectives and Irony in American Slavery*, University Press of Mississippi, Jackson Mississippi, 1976, 19-25; Philip D. Morgan, *Slave Counterpoint: Black Culture in the 18th Century Chesapeake and Lowcountry*, University of North Carolina Press, Chapel Hill, 1998, 266-273.

⁷¹ For example, see the discussion of Thomas Higginson in: White and White, *The Sounds of Slavery*, 32, 115-117. Higginson's aural sensitivity and its enlivening of historical analysis is also discussed in the Introduction to this thesis.

⁷² Hughes, *The Fatal Shore*, 461-467; Gilchrist, 'This relic of the plain', 1-28; Evans and Thorpe, 'Power, punishment and penal labour', 103-105; 'Commanding men', 17-33; 'The last days of Moreton Bay: Power, sexuality and the misrule of law', *Journal of Australian Studies*, 53, June 1997, 59-77.

convict flogging that have saturated portrayals of colonial Australia for decades are interpreted through the prism of convict pain and subjection, rather than as a symbol or symptom of the system or society which produced such incidents.

An example of this phenomenon is seen in the way that some historians have written about the nature of flogging. Catie Gilchrist, among many others, has noted that the position of the flogged male convict—often fastened with some form of restraint and partially or wholly undressed—is one of almost complete vulnerability.⁷³ Thus, the emasculation of the male recipient of physical violence becomes the focal point of the scene. Similar sentiments can be read in Robert Hughes’s evocative descriptions:

Nothing in the ordinary man’s experience compared to the rituals of the cat: to be stripped and tied to the triangle, like an owlskin nailed to a barn door; to hear, through battering pain, the quartermaster-sergeant slowly calling out the strokes; this was to be drowned in powerlessness.⁷⁴

These descriptions, while conveying the fraught position that some convicts found themselves in while upon the triangle, neatly convey the emasculating effects of physical violence upon human beings unused to such treatment. However, the reaffirmation of convict humiliation does not progress understanding of the ways that these episodes impacted upon the flogger, the community more broadly, or what they may have meant beyond the punishment of the victim.⁷⁵ In short, we are so distracted by the plight (and sight) of the victim, often described in evocative and dramatic style by the writer, that we do not think beyond this fairly narrow framework.

⁷³ Gilchrist, ‘This relic of the plain’, 7-8; for the impact that flogging had on the development of convict masculinities in colonial Australia see: Evans and Bill Thorpe, ‘Commanding men’, 23-24.

⁷⁴ Hughes, *The Fatal Shore*, 429.

⁷⁵ Gilchrist, ‘This relic of the plain’, 1-28; Barrett Meyering, ‘Abolitionism, settler violence and the case against flogging’, 6.1-6.18.

This approach has had a number of negative consequences for the study of penal-era Australia, none more so than for analyses of convict subjectivity. First, by neglecting the potential meanings of the aural contest between flogger and flogged within the process of corporal punishment, larger themes of control and discipline—particularly the disciplinary aims of those doing the flogging—have been under-explored in the imagined and ‘visual’ gore of the flogging ground. Second, by making the meaning of flogging about how convicts withstood corporal punishment, a preoccupation with individual convict responses to pain has emptied convict individuality and subjectivity of its broader ideological resonance. In other words, by attempting to discern the meaning of individual convict responses to corporal violence, that is all we find: an individual responding to physical violence. While of course this makes it easy to create a veneer of convict ‘agency’ or ‘resistance’ within the somewhat hackneyed tropes of ‘brave-convict-resistance-in-the-face-of-corporal-brutality’, it tells us very little of the aims of floggers or the broader ideological or political meanings of penal punishment regimes.

As such, and while arguably better than a list of numbers of floggings on a page to reveal something of lived convict experience, a focus upon the suffering of an individual convict, minus the humanising context of the convict/flogger relationship, does not add much to our search for the convict voice. Indeed, and rather ironically, a too-narrow focus upon individual convict experiences actually hinders our search for convict subjectivity, by ignoring or underplaying the broader context, including the auditory culture of lived convict experience. That the acoustics of violence can be used to reveal something of the attitudes of authorities, whether wielding the lash, watching it being wielded or directing its use from afar, is an under-explored aspect of

penal-era historiography. Most importantly, an aural analysis of the infliction of physical violence reveals the *auditory contest* within these episodes as both ends of the whip strove to create and maintain their own dominance within a fiercely contested aural battleground. The ‘winner’ of these battles, either the flogged, yet stoical victim, or the triumphant wielder of the lash and producer of the sounds of convict repression and pain, would not merely win the emotional battle between the different ends of the lash, but also creative rights over the production of ‘the convict voice’.

Contested auralities

One such battle was described in two lectures, later to be published as ‘The Horrors of Transportation’, at the ‘Oddfellows Hall’ in Padiham, near Manchester, on the 31st of August 1856.⁷⁶ After a rapturous welcome, the guest speaker got down to the business of ‘showing the people of England what sort of rulers they have so far as the penal colonies are concerned’.⁷⁷ For John Frost, returned exile and, at one time, the ‘prime mover of Chartism’ in England, the brutality he witnessed at Van Dieman’s Land reflected the political and moral deficiencies of the successive British governments that had established and sustained such penal systems.⁷⁸ Having been found guilty of High Treason and Sedition for his role in politically motivated violence, and having had his death-sentence commuted to that of transportation, Frost was no friend of

⁷⁶ Frost, *The Horrors of Transportation*.

⁷⁷ *Ibid.*, 11.

⁷⁸ For commentary on Chartism, the Chartist movement in Britain and John Frost’s role see: Frank Rosenblatt, *The Chartist Movement: In its Social and Economic Aspects*, Routledge, London, 2006; John Charlton, *The Chartists: First National Workers Movement*, Pluto Press, Chicago IL, 1997; Dorothy Thompson, *The Chartists: Popular Politics in the Industrial Revolution*, Pantheon Books, New York, 1984; David Goodway, *London Chartism 1838-1848*, Cambridge University Press, Cambridge, 2002, 82.

Britain's politicians.⁷⁹ Indeed, his transportation to Australia, and subsequent return to England after a period in the United States of America, allowed him to continue afresh his forty year long assault on the venal and unrepresentative British parliamentary system.⁸⁰

Whereas before his attacks had focused on the denial of representation for working class men in England's House of Commons, Frost's experiences as a transported felon opened another front in his battle against British government tyranny. In lurid and dramatic detail, Frost, inspired by the earlier efforts of prominent anti-transportation advocates, recounted the brutal conditions faced by convicts trapped in a penal code 'not equalled in severity in any part of the civilised world'.⁸¹ As well as the capriciousness of punishment meted out in the penal colonies—sometimes floggings, apparently, were ordered for convicts having their hands in their pockets—Frost also revealed its physical brutality.⁸² This was epitomized in his recollection of a 'typical Port Arthur flogging'.⁸³ While reminding the audience that, indeed, what he was about to describe was practiced on 'human beings', some of whom may well have been related to or friendly with those present, Frost recounted the manner in which some of his fellow inmates were treated:

The flogger at this time was one of the most powerful men on the settlement, and one who, like his master, felt a gratification in inflicting and witnessing human misery. There were many prisoners who would bear any punishment rather than complain; I am certain that they would have died at the triangle rather than utter a groan. It was a contest between the parties: the flogger using every means in

⁷⁹ Frost, *The Horrors of Transportation*, 5-6.

⁸⁰ *Ibid.*, 5.

⁸¹ *Ibid.*, 27-28.

⁸² *Ibid.*, 27.

⁸³ *Ibid.*, 29.

his power to break the spirit of those who suffered, and the sufferers determined to sustain the punishment unflinchingly; the authorities looking on.⁸⁴

Such episodes of stoical endurance by convicts, under brutal physical punishment, saturate recollections of penal-era Australia, as well as its historiography.⁸⁵ Moreover, these images, which in many respects still dominate the iconography of Australian convictism today, portray—indeed celebrate—convict resilience and silence under the lash as emblematic of masculine resistance to excessive penal violence.⁸⁶ Less well acknowledged within these scenes, however, is the desire for control over the sounds made by victims of flogging. Thus, along with the actual infliction of pain, distinctive soundscapes of pain and repression were also expected of, and by, floggers. This dual somatic and physical imperative was most apparent when those anticipated sounds of pain did not accompany their physical signs.

As demonstrated in the quotation above, for John Frost, the flogging of convicts involved an overt, and mutually recognised, aural battle between flogger and flogged. The ‘spirit’ of the flogged victim was expressed not just in the way that they handled their punishment physically, but also in the amount of noise they made while being punished. Indeed, the auditory response of the flogged convict went a long way towards conveying how physically severe the punishment was. To cry out, or even to utter a groan of discomfort, was to acknowledge the severity of the punishment being inflicted, and to relinquish any sense of control that those flogged may have felt

⁸⁴ *Ibid.*, 30.

⁸⁵ John Broxup, ‘Life of John Broxup’, in Hugh Anderson, *Farewell to Judges and Juries: The Broadside Ballad and Convict Transportation to Australia, 1788-1868*, Red Rooster Press, Victoria, 2000, 37; Hughes, *The Fatal Shore*, 463-466.

⁸⁶ For popular portrayals of the penal-era see Bryce Courtenay, *The Potato Factory*, Penguin Books, Victoria, 1995; *Tommo and Hawk*, Penguin Books, Victoria, 1997; *Solomon’s Song*, Penguin Books, Victoria, 1999. Peter Carey, *Jack Maggs*; Jonathan Auf Der Heide, *Van Dieman’s Land*.

during their ordeal.⁸⁷ Thus, in his description, Frost reveals a humanising dimension to convict stoicism and silence: how control of noise, under the extremes of corporal brutality, reaffirmed not only convicts' ability to physically resist penal violence, but also to retain an emotional control over themselves, and the situation into which they were thrust.

In such ways was the convict voice expressed. Jack Bushman, whom we met biting down upon a 'leaden button' during punishment earlier in this chapter—presumably to prevent himself from crying out in pain—reveals the importance of maintaining such stoical silences.⁸⁸ Perhaps this repeatedly flogged convict did not trust himself to silently endure the pain, and in a bout of masculine vanity, used a crude 'gag' to ensure his reputation as a 'stone man' was maintained.⁸⁹ Alternatively Bushman, whether intuitively or not, may have understood the emotional control avidly sought after by authorities in the production of his cries. As a consequence, his determined silence moderated some of the control wielded over him. We cannot know with certainty what compelled this behaviour, yet the aural battle—itself a battle, in microcosm, for broader control of convict emotionality—between Bushman and his flogger is overt and meaningful. As this recklessly brave; or eccentric; or unstable convict demonstrates, the aural battle played out on the flogging triangle was an important part of convicts' sense of masculine identity in the face of brutal physical repression.⁹⁰

⁸⁷ Frost, *The Horrors of Transportation*, 30.

⁸⁸ Bushman, *Jack Bushman: Passages*, Chapter 4, 2.

⁸⁹ *Ibid.*

⁹⁰ The brutal physical and emotional experience that corporal punishment reflected is encapsulated neatly by Evans and Thorpe: 'In reducing the subject to a condition of helplessness and impotence, by such assaults upon both psyche and musculature, a sense of humiliation and emasculation was violently imposed, while the authority figure, directing the punishment, grew concomitantly in power, like a Leviathan', Evans and Thorpe, 'Commanding men', 25.

Similarly for James Boyd, who spent several years as an Assistant Surgeon in the colony, the year he spent at the Port Arthur penal station educated him in the subtleties of the auditory battles that raged between the floggers and flogged.⁹¹ While still acclimatising to the brutality of the punishments inflicted at Port Arthur, Boyd nevertheless noticed the concerted effort that most convicts made to remain silent during physical punishment. Contrasted with the ‘sandstones’ who fell apart emotionally at the merest hint of the lash,⁹² the convicts at Port Arthur, often those whose penal careers had seen the worst that the system could throw at them, denied the flogger any satisfaction in hearing them scream in pain:

There have been upwards of 30 cases of corporal punishment at this station during the last six months, and upon two recent occasions only have I heard the prisoners utter the slightest cry of agony during the infliction. They pride themselves in being termed “bricks”, that is, because they do not flinch at the lash. This punishment is frequently inflicted in the most indecent manner.⁹³

As Boyd recognises, the infliction of corporal violence was a contest over sound as well as the delivery of physical pain. In addition to informing the internal dynamics of penal institutions,⁹⁴ the imposition or maintenance of sound and silence held important ideological meaning, for both flogger and flogged, in the violent, and intimate, world of the flogging ground.

For some, mocking laughter or vicious oaths greeted the flogger before, after and sometimes during his performance.⁹⁵ For R. W. Owen, Assistant Surgeon at George

⁹¹ James Boyd, Senior Assistant Superintendent, to J.S. Hampton, Esq., *BPP Volume Seven: Transportation*, 78.

⁹² Hughes, *The Fatal Shore*, 429.

⁹³ James Boyd, Senior Assistant Superintendent, to J.S. Hampton, Esq., *BPP Volume Seven: Transportation*, 78.

⁹⁴ Gilchrist, ‘A life of noisy riot’, 30-35.

⁹⁵ Broxup, ‘Life of John Broxup’, 37.

Town in Van Dieman's Land, and frequent spectator at corporal punishments during his service in the Colony, the severity of flogging could be ascertained by the reactions of convicts as their punishment ended. Giving evidence before Commissioner John Thomas Bigge on the 8th of July 1820, Owen revealed that 'frequently' the men punished at George Town walked away from the triangle laughing.⁹⁶ If this was a show of bravado by men smarting from the sting of the lash yet reluctant to show onlookers their true discomfort, then it worked: Owen was convinced that the flogging of convicts at George Town was too mild. Pointedly, this surgeon, presumably knowledgeable about the limits of the human body and its ability to withstand physical punishment, chose to use convicts' reactions to the violence inflicted to assess its severity. In this way, authorities' and observers' reliance upon the punished convict to reveal the appropriateness of specific punishment regimes emerges, an aural and auditory phenomenon discussed more fully in chapter four of this thesis, 'The Language of Flayed Skin: Flogging and the Convict Voice'.

Further, disdain among convicts for making noises during the infliction of pain extended to watching others being punished. While often convicts were compelled to watch their fellow inmates being flogged, to warn them of the consequences of misbehaviour, this strategy was frequently countered by the actions of captive spectators. Derisive or mocking laughter could be expected for convicts who succumbed to the pain of flogging and screamed or cried out.⁹⁷ Perhaps adding to this

⁹⁶ Examination of R.W. Owen before the Commission of Inquiry into the State of the Colony of New South Wales, 8th July 1820, *HRA*, Series Three, Volume Three, 408.

⁹⁷ V.A.C. Gatrell, *The Hanging Tree: Execution and the English People 1770-1868*, Oxford University Press, Oxford, 1994, 89; Hay, 'Property, authority and the criminal law', 17. For an analysis of public executions in colonial New South Wales, in particular their contemporary meanings for colonial citizens who read of them in the press see: Tim Castle, 'Constructing death: Newspaper reports of executions in colonial New South Wales, 1826-1837', *Journal of Australian Colonial History*, 9, 2007, 52-53; David Cooper, *The Lesson of the Scaffold: The public Execution Controversy in Victorian England*, Ohio University Press, Athens, 1974, 106.

desire for quiet control during punishment was the common practice of authorities to flog convicts in front of other inmates. Alexander Harris' experience of the auditory terror of witnessing such violence at the Wellington Valley courthouse, discussed in chapter two of this thesis, is an example of this practice.⁹⁸ Compelling convicts to watch corporal punishment was a popular strategy among penal officials and reformers who imagined a didactic, as well as punitive, benefit, to this process.⁹⁹ It was not simply the spectacle of the flogging that was supposed to scare the convicts into good behaviour, but also the pitiful wails of pain emanating from the flayed victim that would deter future criminality. That it often did not work—in some cases, it was spectacularly unsuccessful—does not alter the underpinning rationale for its use.¹⁰⁰

Naturally, in the absence of screams of pain or groans of anguish, the effectiveness or success of the infliction of pain was more uncertain. For floggers—those men, often ex-convicts themselves, at the 'coalface' of penal violence—the sounds produced by their work, particularly the cries and groans of convict pain, reaffirmed, however

⁹⁸ Harris, *Settlers and Convicts*.

⁹⁹ Evidence of surgeon John Barnes, Esq., 12th February, 1838, 'Minutes of Evidence taken before the Select Committee on Transportation', *BPP Volume Three: Transportation*, 43. Hamish Maxwell-Stewart has described floggings at the Macquarie Harbour penal settlement as staged events: 'they were designed as theatre to be watched by an audience that was literally captive... They were events that tied the participants to one another—that created bonds of subservience and revenge, order and disorder as strong as the cord that held each flogged prisoner to the triangle's wooden frame'. See Hamish Maxwell-Stewart, *Closing Hell's Gates: the death of a convict station*, Allen and Unwin, Sydney, New South Wales, 2008, 109-110. For a broader discussion of the purpose of 'public torture', the gallows and gallows speeches as didactic displays see Michel Foucault, *Discipline and Punish: The birth of the prison*, Penguin Books, London, 1991, 32-69.

¹⁰⁰ John Barnes has provided a description of one hanging where the lessons to be learned by the assembled convict spectators was perhaps not appreciated: 'and so buoyant were the feelings of the men who were about to be executed, and so little did they seem to care about it, that they absolutely kicked their shoes off among the crowd as they were about to be executed, in order, as the term expressed by them was, that they might die game', Evidence of surgeon John Barnes, Esq., 12th February, 1838, *BPP Volume Three: Transportation*, 43.

imprecisely, the ‘success’ of each flogging.¹⁰¹ Further, and as discussed above, control of convict sound through incidents of inflicted corporal violence could also represent the complete subjection—emotional and psychological, as well as physical—of each prisoner.¹⁰² This desire to create the appropriate sounds of suppression was fiercely felt, especially when uncooperative subjects withheld them.

That penal authorities, at times, failed to produce these (reassuring) sounds of repression, does not make their attempts to do so any less fervent, or their motives in controlling convict noise any less revelatory. In fact, flogger’s frustration at the silence that greeted their efforts reveals how important the sounds of pain were to them. In attempting to produce; or stifle; or control convicts’ reactions to physical violence, authorities betrayed a belief in the pliability of victims’ intuitive, or human, responses to pain. To resist the temptation to scream out during corporal punishment, and to be regarded as a ‘stone man’, or a ‘brick’, for the ability to silently withstand physical pain thus became an important aural signifier of the system’s inability to defeat the spirit of those it sought to repress.

Such robust aural contests naturally affected those wielding the lash. Indeed, certain floggers exhibited an intense interest in the results of their labour: in the proficiency and artistry of their use of the ‘cat’. Contrary to notions of the disinterested penal functionary, these floggers seemed to revel in their control of the flogging process,

¹⁰¹ The phenomenon of producing convict sounds of pain, particularly for political and penal policy aims, is discussed more fully in chapter four of this thesis: ‘The Language of Flayed Skin: Flogging and the Convict Voice’.

¹⁰² Hirst, *Freedom on the Fatal Shore*, 53; Hughes, *The Fatal Shore*, 467; Harris, *Settlers and Convicts*, xiii.

and the notoriety that accompanied such performances.¹⁰³ One such figure was a man nicknamed ‘Old Bumble’, a bow-legged flogger who ‘rejoiced when he heard the appeals of his victims, and gloried in his calling’.¹⁰⁴ Upon being presented with five or six victims trussed and awaiting punishment, ‘Bumble’ would methodically work through his quota, meticulously washing his ‘cat’ in a tin of water in between floggings. Irrespective of the colourful stories told of this infamous character, that Old Bumble took a proprietary pride in his work is difficult to refute.¹⁰⁵ Similarly, such was the reputation of Bumble’s successor ‘Gilligan’ as principal flogger at Moreton Bay, when it came time to flog this convict (Gilligan) for his own misdeeds, only a single volunteer came forward, out of all those who had suffered at this man’s hands, to deliver the blows.¹⁰⁶

Of course, the irony of using innate human responses—the screams of pain of physically abused subjects—to deny, or reduce peoples’ humanity should not be lost. As Orlando Patterson¹⁰⁷, in the context of slavery, and Inga Clendinnen, in the context of Nazi atrocities, have shown,¹⁰⁸ the manipulation of victim’s (all too human) emotionality in attempts to systematically deny their humanity serves only to reinforce such human responses. In other words, the implicit recognition of humanity is most apparent when those very characteristics that make us human are

¹⁰³ Hirst, for example, asserts that floggings were ‘low class affairs’ and carried out dispassionately and with a minimum of emotion, *Freedom on the Fatal Shore*, 53.

¹⁰⁴ J. J. Knight, *In the Early Days*, 1895, 37-45, 47-48 in J. G. Steele, *Brisbane Town in Convict Days, 1824-1842*, University of Queensland Press, St. Lucia, Queensland, 1975, 178.

¹⁰⁵ One such ‘story’, of questionable, and unverifiable, veracity, recalls ‘Old Bumble’ quenching his thirst with sips from the same tin in which he washes his ‘cat’ in between floggings. The blood-soaked water, consumed despite its more murky appearance with each flogging, may well elevate ‘Bumble’ from a notorious flogging figure to a penal-era legend. See: Alex C. Castles, *An Australian Legal History*, The Law Book Company, Sydney, 1982, 221.

¹⁰⁶ Castles, *Legal History*, 221.

¹⁰⁷ Patterson, *Slavery and Social Death*, 7.

¹⁰⁸ Inga Clendinnen, *Reading the Holocaust*, Cambridge University Press, Cambridge, 1999, 43.

threatened.¹⁰⁹ More significantly, perhaps, is floggers' and penal authority's *belief* in the ability to control convicts' verbal, or sonic, responses to physical pain. Like plantation masters, this attitude betrays a belief in the pliability of convicts' emotionality and sentience. In this belief, or mindset, however misguided or fanciful, a tendency on the part of penal authorities to de-humanise their bonded charges is revealed.

Conclusion

Returning to the metaphor of 'tyrannised liberty' that opened this chapter, for the *Moreton Bay Courier's* author it is the treatment and fate of the stoic, silent tree—not, in this instance, the hundreds of screaming convicts flogged upon its trunk—that reveals the degrading and arbitrary nature of Moreton Bay's wanton violence. While content to use the aural brutality of this scene to make their point about colonial violence, the editor of the *Courier* glossed over the nature of the battle itself, and how convicts, in their desperate attempts to remain quiet during their punishment, were communicating their defiance of a system that sought to injure them emotionally as well as physically. For 'Jack Bushman', on the other hand, the tree's death signifies the loss of human dignity, hope and nobility amid the brutality of the Moreton Bay penal settlement.¹¹⁰

The dual nature of this aural attack, where both the silent tree and screaming convict are portrayed as both sides of the battle for survival within penal life, is starkly revealed by this scene. It is also a phenomenon that this chapter has tried to examine

¹⁰⁹ Clendinnen, *Reading the Holocaust*, 43-44. For another examination of misaligned and dueling 'humanities' see "'Fierce and unnatural cruelty": Cortes and the conquest of Mexico', *Representations*, 33, Winter 1991, 65-100.

¹¹⁰ Duffield, 'Problematic passages', 32-33; Evans and Thorpe, 'In search of Jack Bushman', 32-48.

and convey: the deeper meanings within the sounds and silences of colonial Australia that reflect and uncover the mediated nature of much of penal Australian auditory culture. It is somewhat apt that both the silent and noisy sides to corporal violence are portrayed as the product of the flogging process, and that both subsequently share a similar fate in a society ‘callous to all refined feelings’.¹¹¹ This chapter has sought to add these aural battles to the ‘search for a genuine convict voice from below’¹¹² by demonstrating how important the sounds and silences of flogging were to those whose identities were dependent upon their performance on and before the triangle.

This chapter, while a narrower aural analysis from the broad ‘Colonial Acoustics’ in chapter two, has also invited speculation upon the usefulness of a comparative analysis with other systems of coerced and whipped humanity to add nuance and depth to our search for the convict voice. Thus, the physical and aural violence of slavery in the American South has been examined, to reveal similarities and distinctions with penal-era Australia’s regimes of corporal violence. Battles for control of the whipping post or flogging triangle affirm the pivotal role that sound played in the maintenance of these coercive systems. Further, it is also in these battles that the aural brutality of penal-era punishment is revealed. It is here, as much as anywhere else, where the ‘voices’ of convicts, in the sense that they were able to communicate a sense of identity and resistance, were loudest and most persistent, yet also most mediated. Thus, ‘the convict voice’ can be imagined both as a product of, and as a reaction to, the brutal physical and aural processes of corporal violence. As much as convicts were able to assert a sense of identity in their resistance to such

¹¹¹ Henry Melville, ‘Present state of Australasia’, in Lloyd Evans and Paul Nicholls, *Convicts and Colonial Society 1788-1853*, Cassell Australia, Sydney, 1978, 184.

¹¹² Maxwell-Stewart, ‘The search for the convict voice’, 77. For another discussion of the various ways of uncovering the ‘inner world of the convict’ see Kent, ‘Decorative bodies’, 78.

treatment, it is equally apparent that the sounds that convicts made during their ordeals were the product of the forces of corporal violence imposed upon them.

From chapter one of this thesis, it is hopefully apparent that the reliability of the actual words purportedly spoken by convicts, as a means of uncovering their lived experiences of penal life, is at best questionable and, at worst, absent. While speculating upon the possible words spoken, and conversations had, by convicts can make for exciting historical hypothesizing, the sounds produced by convicts while being flogged seem to be just as credible evidence of the inner-worlds of convicts as those that ‘spoke’ in narratives, pamphlets and journals. In this sense, the desire of a convict, trussed, physically helpless and at the mercy of state violence, to control his emotions while receiving punishment, is a fundamental insight into the inner-world of that person. His voice, in this case encased within the desperate sounds of muffled pain, is both clear and poignant: an expression of pride, or resistance, within the de-humanising processes of corporal violence. As such, these sounds and silences seem to be as much convict voices as anything else we can find. Understanding how these voices arose, and the fierce aural battles conducted in producing them, is vital to a more sophisticated awareness of what the convict voice is, and where best to find it.

Chapter Four:

The Language of Flayed Skin: Flogging and the Convict Voice

8. Alfred Shanton, *Lady Harewood*, neglect of work, 25 lashes. A hardened youngster about 17 years of age; he was determined (if possible) to bear his punishment like a man; he was however well flogged, and I have no doubt he will avoid a similar punishment; back a good deal lacerated, but he did not seem to suffer much bodily pain.¹

Introduction

The excerpt above, taken from a report of the flogging of convict Alfred Shanton sometime between the 1st and 30th of September 1833, is crucial evidence for the arguments made in this chapter. It was created by superintendent of police, S. North, who, along with other police magistrates and superintendents in New South Wales, was ordered by Colonial Secretary Alexander McLeay, on behalf of Governor Richard Burke, to report upon the state of corporal punishment in his district. The Gubernatorial directive read, in part, as follows:

I am directed by his Excellency the Governor to request that you will have the goodness to superintend, personally, the corporal punishments which shall be inflicted in your district during the ensuing month of September, and report in the column of remarks in the return above alluded to the amount of bodily suffering in every case which the infliction shall appear to have produced, whether evinced by the effusion of blood, or by laceration, or other symptoms of bodily injury.²

¹ Return of Corporal Punishments inflicted by Sentence of Magistrates at Windsor from the 1st to the 30th September 1833, in the presence of S. North, J.P. Superintendent of Police, Appendix No. 2, 'Correspondence respecting Secondary Punishment', *BPP Volume Two: Transportation*, 96.

² Circular, No. 33-38, Colonial Secretary's Office, Sydney, 29th August, 1833, 'Correspondence respecting Secondary Punishment', *BPP Volume Two: Transportation*, 86.

The purpose of these punishment reports, which in many respects may be considered an early colonial ‘law-and-order’ political stoush between Governor Burke and influential landowning opponents within the colony, will be discussed later in this chapter. For immediate purposes, however, it is North’s description of Alfred’s punishment, and the assumptions and considerations that underlay his conclusion concerning its effectiveness, that is in issue. Simply reading Superintendent North’s report, in which he followed the instructions contained in the directive to the letter, is confusing, for it does not satisfactorily explain how he came to the conclusions he did about Alfred’s punishment. Despite, or perhaps because of, this rather sparse report, the question of how North came to conclude that Alfred was ‘well flogged’, with many ‘lacerations’, (and will avoid being flogged again), yet did not seem to suffer much ‘bodily pain’, compels further speculation and investigation rather than less.

Indeed, without an appreciation for the auditory dynamic within this scene—without *listening* for its unstated, yet obvious aural resonance—this punishment report does not make much sense. While the visualist dynamic is apparent, as the ‘well lacerated’ back congers up familiar images of trussed convicts enduring brutal corporal punishment, a purely visual interpretation of the scene conveyed in this report is incomplete. Further, being satisfied with a visual interpretation also renders Superintendent North’s report, and perceptions of the event, both shallow and nonsensical. It is clear that, if North perceived Alfred as well flogged, yet without suffering much bodily pain, something else, not noted in North’s report, must have compelled this reaction. It is apparent, or so this

chapter will argue, that the sounds (and silences) North heard were as important, and possibly more so, than what he saw.

A more detailed, and possibly more accurate, interpretation of Superintendent North's conclusions concerning Alfred is that he formed his assessment of Alfred's relatively robust health upon the determined silence exhibited by the victim as he endured his punishment. In other words, despite significant physical injuries, Alfred's silence under corporal punishment—his refusal to scream; or inability to respond; or simple desire to maintain his masculine dignity in the face of humiliating violation—rendered his experience, to North at least, almost painless.³ Indeed, without an appreciation of the way that Superintendent North must have been listening for Alfred's reaction to this punishment—his *reliance* on aural markers to assess how well Alfred bore his punishment—the above report is compromised. For this authority figure, and keen aural observer, Alfred's stoicism belied, and trumped, the clear signs of pain and suffering etched upon his back.

The credibility of superintendent North's conclusions in the above report may or may not be persuasive. We simply do not know how attentive he was on the day Alfred was flogged, or indeed how high was his threshold concerning the appropriate brutality required of penal punishment. What is important, however, is the way that Alfred affected North's opinion: how the noise, or lack thereof, that came from the flogged convict aided, or may indeed have complicated, his opinion as to the 'effectiveness' or 'severity' of the punishment. In other words, the sounds produced by this particular

³ Evans and Thorpe, 'Commanding men', 23.

convict, produced within the contested auditory world of the flogging ground, played an active role in determining how well, or effectively, his punishment was perceived. As will be shown later in this chapter, such appraisals of the effectiveness of the colony's punishment regimes were produced in similar ways by many penal officials, making the auditory as well as visual interpretation of corporal violence crucial to the interpretation and direction of penal punishment policy in New South Wales.

This chapter explores this aspect of the production of convict noise through flogging, and how the 'voices' of convicts, listened for intently by observers and floggers alike, informed issues of broader policy within the colony. By exploring the effects of flogging from those tasked to administer it—from the other end of the whip—a renewed appreciation for the broader implications of corporal violence become possible. This approach to analyses of corporal punishment, introduced in chapter three of this thesis, allows for a more sophisticated and nuanced interpretation of flogging, one not clouded by its overwhelming, yet ultimately limiting, brutality. In other words, by turning our attention away from the flogged victim himself to how he was assessed, interpreted and judged by those in control of his punishment, adds depth to our inquiries into convict subjectivity. In turn, appreciating the broader implications of flogging challenges, and expands, the notion of what the convict voice is, where it may be found. That the sounds made by convicts informed penal punishment policy, and that they were used to refine colonial punishment practice, may reorient our search for the convict voice into the very structures of discipline and control that convict voices have traditionally been portrayed as railing against.

In chapters two and three of this thesis, a re-introduction to the penal colony of Australia was attempted. This re-introduction came with a renewed awareness of the auditory culture of colonial Australia, an awareness that would help to reveal the fiercely contested nature of the colony's various soundscapes. Further, the heavily manipulated, or mediated, nature of the colony's auditory culture unsettles what it means to hear and perceive the noise of convicts—whether in spoken words and language, grunts and groans of pain, or stoical silences—and to reassess, or at least ponder, the broader auditory implications of the sounds of lived convict experience and colonial life. As such, colonial Australia as a heard culture can enliven, as much as unsettle, the notion of a search for the convict voice, as the very sounds of convicts are incorporated into this much broader auditory context. Thus, 'the convict voice', understood predominantly as an expression of individuality and identity within the repressive strictures of penal Australia, may be re-conceptualised as a part of the very disciplinary structures of colonial Australia.

Particular attention was paid, in both chapter two, on the broader aural 'terror' of witnessing the sounds of corporal violence, and chapter three, on the ideological implications of the creation of, and contestation over, the soundscapes of penal society, to the practice and meaning of flogging. It was asserted that a new way to conceive of this phenomenon, namely as an aural construct designed by authorities to further the disciplinary aims of penal society, would allow for a renewed appreciation of what indeed a convict voice was, and how such convict voices could be marshalled to further

the disciplinary aims of the colony. This chapter attempts to contextualise those broader arguments by revealing how the sounds produced by corporal punishment, the actual noises and silences heard by floggers, authorities and onlookers, were perceived as important aspects of penal punishment and policy. In this sense, the ‘convict voices’ elicited from those flogged are, in fact, the necessary aural referents that gave coherence and meaning to much penal discipline.

This chapter, on the creation of a convict voice in the sounds of pain emanating from convicts’ ‘beaten and battered’ bodies,⁴ is the first of three attempts to contextualise those broader arguments made in chapters two and three. In other words, while the auditory conditions within which ‘the search for the convict voice’ is to be conducted was the focus of chapters two and three, the focus in the next three chapters is to reveal examples of convict voices that arose from such aural conditions. Thus, the following chapters extend the notion, argued previously, of the inherently mediated nature of much colonial auditory culture. Further, this chapter and the two following will seek to recast what convict voices were, and to locate them much more at the forefront, and within the fabric, of colonial social, cultural and disciplinary life. While existing work on ‘the convict voice’ as an expression of individuality and resistance to penal repression is lauded, this chapter, nevertheless, seeks to extend our understanding of how the convict voice may be conceptualised. Thus, over the course of this, and the following two chapters, an unsettling of some of the ‘iconic’ images and interpretations of convict resistance and identity that have dominated writing and thinking on Australian convictism, will be attempted.

⁴ Atkinson, ‘Writing about convicts’, 25.

Writing About Flogging

In order to unsettle some of the ‘myths’ or misconceptions of the nature and meaning of flogging within colonial Australia, it is important to discuss what some of those misconceptions are. Hopefully this thesis, particularly in chapters two and three, has encouraged a deeper appreciation of the nature of corporal violence, both as a coercive tool and as an aural construct. However, an appreciation of the auditory and ideological underpinnings of flogging is incomplete without an awareness of the ways that flogging has been interpreted, presented and misrepresented previously. This section will canvass some of these misconceptions, not in order to critique or revise previous work, but to explore how an awareness of the aural dynamic to the practice of flogging may add to our understanding of this most prominent penal-era phenomenon.

Further, an appreciation of how flogging has been interpreted by past writers and commentators is necessary to contextualise the arguments made in the second half of this chapter: that rather than a banal aspect of penal life, flogging can be seen as a much broader barometer of penal severity. Thus, notions of colonial Australian flogging as a dispassionate, and strictly legally constrained, activity are challenged here, as evidence of manipulation and corruption of the practice of flogging by various colonial administrators and officials is revealed. Further, to assume that flogging was somehow an anodyne, procedural necessity employed purely to inflict pain upon recalcitrant convicts robs it of its human dynamic, and underplays its importance to those responsible for its infliction. While the broader auditory dynamic of flogging has been discussed in chapters two and

three of this thesis, its reimagining as a specific and important expression of ‘the convict voice’ is the aim here.

As demonstrated in chapter two, ‘Penal acoustics’, the punishment of flogging has long preoccupied historians and commentators who have attempted to characterise Australia’s convict system.⁵ Invariably, notions of the brutality and degradation of colonial life—for both convicts and free citizens—emphasise the excessive nature of the system’s use of physical violence on prisoners. Despite his florid prose, and acknowledging the poetic licence practiced by most anti-transportation advocates,⁶ Father William Ullathorne, the Vicar-General of New South Wales and Van Dieman’s Land from 1833-1835,⁷ described, in dramatic but not unusual style, the ubiquity of flogging in the Colony and its implications for the moral health of its inhabitants:

Where a master in England finds fault, the master in Australia threatens the lash; where the master here grows angry, the master there swears, and invokes the lash; where here he talks of turning away, there he procures the infliction of the lash; for idleness, the lash; for carelessness, the lash; for insolence, the lash; for drunkenness, the lash; for disobedience, the lash; wherever there is reason, and wherever there is not reason, the lash. Ever on the master’s tongue, and ever in the prisoner’s ear, just as he himself urges his drowsy bullocks, sounds the lash, the lash!-the lash!⁸

⁵ Neal, ‘Free society, penal colony, slave society, prison’, 507; *The Rule of Law in a Penal Colony*, 50-61.

⁶ See Evidence of Sir Francis Forbes, 28th April 1837, ‘Minutes of Evidence taken before the Select Committee on Transportation’, *BPP Volume Two: Transportation*, 70-89.

⁷ For a discussion of Father William Ullathorne see Babette Smith, *Australia’s Birthstain*, 198; T. L. Suttor, *Ullathorne, William Bernard (1806–1889)*, Australian Dictionary of Biography, 2006-2014, <http://adb.anu.edu.au/biography/ullathorne-william-bernard-2750>, viewed at 20/02/2011.

⁸ Dom. Carter Butler, *The Life and Times of Bishop Ullathorne*, 104.

Ullathorne's description of the brutality of penal-era Australia must, of course, be viewed in the context of his strong anti-transportation stance.⁹ Notwithstanding this bias, however, his description also provides a dramatic snapshot of a society saturated with physical violence. That the 'sounds' of the lash constantly assailed the 'prisoner's ear' reveal that, for Ullathorne at least, the flogging of convicts was an aural, as well as visual and visceral, experience. By emphasising the harsh acoustics of flogging, Ullathorne reminds his readers that corporal punishment was a broad sensory assault that went beyond the process of simple physical punishment: it was a process that resonated beyond the flogging ground.

In academic debate, the practice of flogging and the nature of penal-era flogging regimes have been used to differentiate colonial Australia from other systems that extracted labour from bonded workforces.¹⁰ As shown by David Neal, however, and as discussed in chapter three of this thesis, the practice of flogging in the colony can be compared to other systems of unfree labour, where the whip enforced control of the population. Indeed, Neal has argued that on the criteria of severity, capriciousness and legal control, penal-era Australia's flogging practices were, in fact, harsher than most slave states.¹¹ In a direct comparison between Australian convictism and slavery in the American South, Neal, despite the absence of any legal prohibition on slave holders whipping their charges

⁹ Babette Smith, *Australia's Birthstain*, 198, 214-215.

¹⁰ Neal, 'Free society, penal colony, slave society, prison', 507.

¹¹ *Ibid.*, 504.

asserts: ‘the balance on flogging favours slaves rather than convicts’.¹² In this, and other analyses, flogging has epitomised penal Australia’s brutality toward, and broader repression of, its convicts.¹³

Alternatively, other work has challenged both the level and scope of brutality within penal-era Australia’s flogging regimes. For Tamsin O’Connor, writing of the historiography of the Moreton Bay settlement, a revisionist historical trend that ‘muffles the lash and refutes tales of brutality’ has downgraded the infliction of pain as a primary factor in the Australian convict experience.¹⁴ Further, the cliometricians of *Convict Workers* have ‘unshackled the past’ by subjecting the convict era to an economic statistical analysis.¹⁵ By assessing the data on 19,711 convicts transported to New South Wales between 1817 and 1840, the authors offer a raft of conclusions concerning the everyday lives of convicts that does not merely challenge existing views of Australian penal society, but professes to overturn it. On issues of health and welfare, diet, work history and punishment rates, among others, *Convict Workers* presents a picture of colonial life in Australia at odds with most historiography that has gone before it. While

¹² *Ibid.* It is quite possible that some slaves, trapped within the system of plantation slavery and brutally whipped by their owners would disagree with Neal’s statement. See for example Charles Ball, *Slavery in the United States: A Narrative of the Life and Adventures of Charles Ball, a Black Man, Who Lived Forty Years in Maryland, South Carolina and Georgia, as a Slave Under Various Masters, and was One Year in the Navy with Commodore Barney, During the Late War*, Published by John S. Taylor, 1837, New York, Documenting the American South, The University of Nth Carolina, <http://docsouth.unc.edu/neh/ballslavery/menu.html>, viewed at 1/08/09, 111.

¹³ See M. Hazzard, *Punishment Short of Death: A History of the Penal Settlement at Norfolk Island*, Melbourne University Press, Melbourne, 1984. Early examples of how flogging was used to affirm, however accurately, the brutality of penal-era Australia can be found in: John Dehle Emburg and Buck Thor Emberg (eds), *The Uncensored Story of Martin Cash (Australian Bushranger) As told to James Lester Burke*, Regal Publishing, Launceston, Tasmania, 1991. Within literary work see: Marcus Clarke, *For the Term of his Natural Life*, Collins, London, 1953 (first published 1874).

¹⁴ Tamsin O’Connor, ‘A zone of silence’, 135; ‘Buckley’s chance: Freedom and hope at the penal settlements of Newcastle and Moreton Bay’, *Tasmanian Historical Studies*, 6(2), 1999, 117. For commentary on O’Connor’s work see: Catie Gilchrist, ‘This relic of the plain’, 2-3.

¹⁵ Nicholas and Shergold, ‘Unshackling the past’, 3.

both the methodology and conclusions reached by the *Convict Workers* team have been discussed and challenged in previous chapters of this thesis, it is undeniable that they have made an important contribution to how flogging has been perceived by modern scholars of colonial Australia.¹⁶ If nothing else, *Convict Workers* has invigorated debate over the frequency and nature of flogging within the penal-era.

On the preponderance of flogging in the Colony, Stephen Nicholas and Peter Shergold have, quite correctly, concluded that the actual amount of lashes that convicts received has perhaps been exaggerated in previous accounts of penal-era Australia.¹⁷ Thus, through an analysis and reliance on data and statistics alone, Nicholas can assert that:

The official statistics on corporal punishment disprove the popular picture of convictism as a society where workers were demoralised physically and psychologically by the whip.¹⁸

As already stated, despite its uniqueness, *Convict Workers*' methodology and, by necessity, its conclusions are treated with caution in this thesis. They are conceived as, at best, a valuable perspective on the lives of transported convicts and, at worst, a beacon of warning to historians who may be tempted to put blind (and deaf) faith in official statistics.¹⁹ Confusing the probability of receiving corporal punishment with its total terror-inducing effect, Nicholas and Shergold can attest to the 'judicious' use of the lash in colonial Australia.²⁰ As discussed more broadly in chapters two and three of this thesis, this interpretation excludes, or under-appreciates, the psychological terror of a *potential*

¹⁶ Dyster, *Beyond Convict Workers*, preface. For more recent work that has taken on aspects of *Convict Workers* methodologies see: Causer, 'Only a Place fit for Angels and Eagles', 231.

¹⁷ Nicholas and Shergold, *Convict Workers*, 11.

¹⁸ *Ibid.*

¹⁹ For an extensive critique of the methodology, underlying imperial evidence and conclusions of *Convict Workers* see: Evans and Thorpe, 'Power, punishment and penal labour', 93-100.

²⁰ Nicholas and Shergold, *Convict Workers*, 11.

flogging, and the psychic torment of witnessing, visually and aurally, a person being flayed. In other words, the human dimension to receiving, witnessing and being forced to think about the infliction of brutal physical pain, is absent in their assessment. Southern American slavery historian Robert Olwell provides an antidote for this myopia. Olwell encourages readers to listen to the ‘crack of the whip’ between the lines of seemingly benign correspondence.²¹ This questioning of—indeed, healthy scepticism toward—official documents is a powerful reminder to interrogate historical sources and the periods that produced them for their silences as well as their sounds.²²

In theory, the punishment of flogging in penal-era Australia was indeed a punctilious and dispassionate process. Unlike plantation slavery, the application of physical violence in colonial Australia, particularly in the years after Commissioner Bigge’s reforms, reflected a desire for penal practices that would make convict suffering, in Alan Atkinson’s words: ‘deliberate, methodical and rooted in theory’.²³ That theory envisioned flogging as a relatively benign form of chastisement that, without incapacitating the convict beyond the point at which his productive labour was lost, nonetheless delivered a sharp and painful corrective to a wide range of unacceptable behaviour. In this ‘calibrated process of administering pain’, a ritualised and often quite formal process of punishment was delivered.²⁴ For Raymond Evans and Bill Thorpe, the form and duration of convict

²¹ Robert Olwell, *Masters, Slaves and Subjects: The Culture of Power in the South Carolina Low Country, 1740-1790*, Cornell University Press, Ithaca, 1998, 189.

²² As exemplified, for example, in the work of Greg Denning. See: *Islands and Beaches: Discourse on a Silent Land Marquesas 1774-1880*, Melbourne University Press, Melbourne, 1980; ‘Writing, Re-writing the Beach: An Essay’, in Peter Craven, *The Best Australian Essays 1999*, Bookman Press, Melbourne, 1999, 440-441; *Performances*, Melbourne University Press, Melbourne, 1996, 97-98; *The Bounty: An Ethnographic History*, History Department University of Melbourne, Parkville Victoria, 1988, 16-23.

²³ Atkinson, *Europeans, Volume One*, 345.

²⁴ Evans and Thorpe, ‘Commanding men’, 24.

punishment: ‘the tied victim, the scourger in absolute control, the rhythmic application of the blows’, served to both emasculate the convict and reinforce the power of state-sanctioned violence.²⁵ Moreover, in this careful calibration and supervision of convict pain the penal system was able to differentiate itself from the perceived wantonness of plantation and other slave-based violence.²⁶

In this fidelity to the latest penological theories, and the strict adherence to flogging protocol, it is indeed easy to imagine corporal punishments as detached and disinterested affairs. For John Hirst, these floggings were an unedifying, yet necessary, function of penal administration:

Floggings were very much low-class affairs. The military officers and soldiers who are usually depicted as being present when floggings are recreated on film or at places like Old Sydney Town had nothing to do with them. The flogger himself was a convict, retained for this duty only and paid a ration and a small wage.²⁷

Tellingly, Hirst also acknowledges that such floggings, particularly those in the more isolated parts of the Colony, were more *ad hoc* and nebulous episodes contaminated by corruption between flogger and flogged and lax supervision.²⁸ In other words, a pronounced human element informed these processes, whether in the delivery of the lashes themselves or in the negotiations over the degree of severity with which they would be delivered. Such conceptions of flogging—as a dispassionate and methodical process of administering pain—must grapple with evidence of floggers, and penal

²⁵ *Ibid.*

²⁶ Blair, ‘The felony and the free?’, 9; Hirst, ‘The Australian experience’, 242. For an analysis of the political debates concerning convict punishment and the introduction of Governor Burke’s *Summary Jurisdiction Act (1832)*, especially for settlers living in more isolated parts of the Colony see: Norma Townsend, ‘The clamour of...inconsistent persons: Attitudes to transportation within New South Wales in the 1830’s’, *The Australian Journal of Politics and History*, 25(3), 1979, 345-356.

²⁷ Hirst, *Freedom on the Fatal Shore*, 53.

²⁸ *Ibid.*

officials, viscerally engaging with the punishment of convicts. A focus on the bureaucratic apparatus of violence tends to downplay the intimate, and sensory, human reality of administering physical pain.

An important feature of the administration, and the justification of the administration, of the Colony's punishment regimes was its legal prohibition upon convict masters to arbitrarily punish their charges.²⁹ Indeed, the prevention of masters applying physical coercion to convicts assigned to them was a critical plank in arguments proffered by advocates of the transportation system to distinguish it from slavery.³⁰ Under questioning from the Chairman of the 1837 Select Committee on Transportation (the *Molesworth Commission*), Colonel George Arthur, former Governor of Van Dieman's Land, was invited by the Commission to equate the treatment of corporally punished assigned convicts in Australia with those of slave-based punishment regimes. While acknowledging that, in many respects, the lot of an assigned and imprisoned Australian convict is very similar to that of a slave, Arthur reiterated the restrictions imposed upon masters abusing their convicts to reject any further comparisons:

4279. So that the convict, according to that account, is exposed to the caprice of all the family to whose service he may happen to be assigned?—Yes

4280. And subject to the most summary laws?—Yes

²⁹ Petition of certain Landowners and other Free Inhabitants of the districts of *Newcastle and Port Stephens*, praying an amendment of the *Summary Punishment Act*, Colonial Secretaries Office, Sydney, 'Correspondence on the subject of Secondary Punishment', *BPP Volume Six: Transportation*, 16. John Hirst asserts that 'during their confinement extra punishment could be inflicted on convicts only by order of the court; masters were prohibited from inflicting corporal punishment themselves. A master who had a complaint against a convict labourer had to take him to the same court that heard the complaints of convicts against masters'. See John Hirst, 'The Australian experience: The convict colony', in Norval Morris and David J. Rothman (eds), *The Oxford History of the Prison: The Practice of Punishment in Western Society*, Oxford University Press, New York, 1998, 241-242.

³⁰ Evidence of James Busby, Esq., 27th July, 1831, 'Minutes of Evidence taken before the Select Committee on Secondary Punishments', *BPP Volume One: Transportation*, 76.

4281. Then the condition of the convict in no respect differs from that of a slave?—No, except that his master cannot apply corporal punishment with his own hand, or by his own orders.³¹

This argument—that there existed a legal and administrative ‘buffer-zone’ between masters and their convicts concerning the infliction of corporal punishment—was an effective counterpoint to the claims of excessive abuse in the master/convict relationship that Molesworth was asserting.³² Moreover, by highlighting the legal boundaries that governed corporal punishment in the Colony, the practice of flogging could be cast as a bureaucratic and administrative process rather than a potentially arbitrary practice. In the institutionalisation of flogging, so the theory went, a detached and controlled flogging regime prevented masters from taking matters into their own hands and replicating the excesses of plantation violence.

Like all theories, however, its practical implementation, particularly in a Colony as isolated and dispersed as penal-era Australia, was a messier affair.³³ For some colonial figures—who were both convict masters and holders of legal office in their districts—the intervention of a court in the administration of convict discipline was mere caricature of

³¹ Evidence of Colonel George Arthur to Sir William Molesworth, 27th June, 1837, ‘Minutes of Evidence taken before the Select Committee on Transportation’, *BPP Volume Six: Transportation*, 286.

³² Ritchie, ‘Towards ending an unclean thing’, 144-164. Babette Smith argues that, along with a fervent desire to end what Molesworth deemed a variation of plantation slavery, his Chairmanship of the Transportation Committee was also a step towards Molesworth’s long term ambition of becoming Secretary of State for the Colonies. See: Babette Smith, *Australia’s Birthstain*, 200-203. For a reinterpretation of the role that Sir William Molesworth played in the debates surrounding the end of transportation in New South Wales, in particular assessments of his character and aims beyond a narrow “national history” focus see: Isobelle Barrett Meyering, ‘Abolitionism, settler violence and the case against flogging’, 6.1-6.18.

³³ There has been a decisive turning away, within recent convict historiography, from the view that penal-era Australia was, in any meaningful way, the product of a systematic or overarching philosophy of government or penal control. See: Atkinson, ‘Writing about convicts’, 18. See also Atkinson’s comments in ‘2005 Eldershaw Memorial Lecture’, 189-200.

legal due process. Instead of the procedural rights and structures guaranteeing impartiality and professionalism within the legal process, the isolation of many colonial settlements ensured the opposite: a self-governing, self-referential and self-perpetuating system of convict punishment. Particularly where a minority of prominent settlers, connected through patronage, economic and social ties, controlled both the productive land and were it's appointed legal representatives, convicts' ability to receive impartial justice was jeopardised.³⁴ For these land holders and masters this was a cherished façade: a legal construct that ensured a system of strict convict discipline for their bonded workforces while cloaking any excess brutality in a veneer of reasoned legality and administrative procedure.³⁵

Perhaps no one exploited this lacuna in the administration of penal punishment regimes in Australia more than John Coghill.³⁶ Initially the master of the convict transport *Mangles*, Coghill settled in the Colony of New South Wales in 1826, and proceeded to involve himself in its political, economic and social life. For Christine Wright, Coghill's various official and personal roles made his exposure to, and experiences with, convicts unsurpassed in colonial history:

The sum of his experiences with convicts may well be unique. He also sat as a Magistrate on the Campbelltown, Cawdor, Bringelly and Braidwood benches. His

³⁴ Christine Wright, 'Rogues and Fools': John Coghill and the convict system in New South Wales', *Journal of Australian Colonial History*, 3(2), October 2001, 57-58.

³⁵ Neal, *The Rule of Law in a Penal Colony*, 117-124; Bruce Kercher, *An Unruly Child: A History of Law in New South Wales*, Allen and Unwin, St. Leonards, Australia, 1995, 25-26; Alan Atkinson, 'Four patterns of convict protest', *Labour History*, 37, 1979, 43.

³⁶ For a brief biography of John Coghill see *Mr John Coghill*, Parliament of New South Wales, Former Members, <http://www.parliament.nsw.gov.au/prod/PARLMENT/members.nsf/fe1657bcbd0b25c9ca256df300077f63/7a86f14455f58a39ca256eed00835ef6?OpenDocument>, viewed at 20/02/2011.

extensive correspondence affords an opportunity to examine one man's dealings with the convict system from 1826 until the late 1840s.³⁷

In Coghill's dealings, as both a deponent and a Magistrate, with the various benches servicing the districts containing his properties,³⁸ the discipline of assigned convicts in his and others employ became almost farcically nebulous. As legal authority was concentrated in the hands of settlers who were also Magistrates, the power to punish each other's convicts was, in essence if not officially, entrenched. Given the imprecision of the charges that could result in sanction or flogging for convicts—offences such as 'disobedience' or 'insolence' for example—an almost unfettered, and certainly unprincipled, system of discipline was constructed.³⁹

Wright has highlighted one instance where Coghill, due to his ambiguous role as both employer and Magistrate, witnessed the flogging of his own assigned servant.⁴⁰ Similarly, numerous cases exist where Magistrates, sitting either together or individually, passed judgement on convicts assigned to their colleagues on the Bench.⁴¹ While the Magistrates who brought proceedings against convicts would not participate in their sentencing, scenarios that allowed Magistrates to deal with each other's convicts, often on the same day and frequently concurrently or successively, has obvious, and negative, implications

³⁷ Wright, 'Rogues and Fools', 38.

³⁸ Wright has examined the various *Bench Books* covering the districts upon which John Coghill held land. These include the Cawdor Bench Books (1826-1828) Reel 666 *SRNSW*; Sutton Forest Bench Books (1833-1836) Reel 664 *SRNSW*; and Register of convicts tried before Campbelltown Bench 1832-1837, Mitchell Library. See: Wright, 'Rogues and Fools', 44.

³⁹ Wright, 'Rogues and Fools', 46. Colonial Judge Roger Therry also had much to say on the arbitrariness of the justice system. See: Therry, *Reminiscences*, 46-49. See also Neal, *The Rule of Law in a Penal Colony*, 115-140.

⁴⁰ Wright, 'Rogues and Fools', 46.

⁴¹ *Ibid.*

for the administration of justice in those areas.⁴² While logic would suggest, in the interests of maintaining a reliable and healthy workforce if nothing else, that masters would not wish to over-flog their servants, the opportunities for the exercise of excessive and capricious force upon convicts inhere within these institutional arrangements.⁴³ The careful façade of a controlled flogging regime in colonial Australia is easily pierced by these examples of nepotism and venality. The charging, depositioning, hearing and sentencing of convicts by a coterie of land owning Magistrates raises significant doubts about the even-handedness and disinterestedness of the administration and application of flogging in this period.

Further piercing the notion of the colony's punishment regimes as dispassionate deliverers of measured corporal justice is evidence that certain flogging regimes often reflected the particular attitudes and predilections of their administrators. Sadistic tendencies or capriciousness in punishment, particularly in the more isolated settlements, unsettles to a degree the idea that penal violence was a uniform, bureaucratic and impersonal process. By all accounts, and despite his orders to maintain a settlement that ensured extreme hardship for convicts, Patrick Logan's time as Commandant at the Moreton Bay penal site was particularly harsh. In the recordings of Logan's sentences

⁴² *Ibid.*, 45-48.

⁴³ John Hirst succinctly makes this point in the context of infusing some perspective into the debate over the level of brutality in penal-era Australia: 'It is sometimes implied that masters took a particular pleasure in having a labour force which could be sent to be flogged. Having good servants would have pleased them much more. The aim of masters was in fact to find and keep those convicts who would work well and give least trouble—that is, those who wouldn't need to be punished so much—and to get rid of the rest'. See: Hirst, *Freedom on the Fatal Shore*, 54. Hirst's conclusions, as sound as they are, do not, it is submitted, alter the potential for corruption in the allocation of punishments and the general administration of justice within the Magistracy at this time. See for example Neal, *The Rule of Law in a Penal Colony*, 115-140. For an analysis of the role of the courts as a cultural as well as strictly legal and punitive process see: Paula J. Byrne, *Criminal Law and Colonial Subject*, Cambridge University Press, Cambridge, 1993.

and punishments, noted in a journal by a military officer at Moreton Bay, ‘Captain Spicer’, is evidence of a regime of severe and unconscionable violence bordering on the despotic.⁴⁴ Charles Bateson neatly encapsulates what Spicer’s journal of 1828 reveals of Logan’s reign:

An examination of the journal shows that between 11th February and 16th October Logan pronounced seventy-two sentences of 25 lashes each, ninety-seven of 50 lashes, seventeen of 100, three of 150, ten of 200 and one of 300. Thus in eight months he imposed sentences of corporal punishment totalling 11,100 lashes—a staggering figure.⁴⁵

Further, evidence of Logan concealing the severity of his regime from Sydney officials adds to its arbitrariness. Of course, the veracity of such accounts must be appraised with caution. It is almost certain that both contemporary historians and *post-hoc* commentators have embellished Logan’s ‘reign of terror’ at Moreton Bay.⁴⁶ Lurid tales of ‘unspeakable’ brutality and desperate attempts by convicts to escape Moreton Bay’s tyranny abound in the written record of this place.⁴⁷ The truth, or otherwise, of these accounts will always be contested. However, less contested is the notion that the Moreton Bay settlement, and its level of brutality, was a reflection of—indeed an extension of—the will of its

⁴⁴ Charles Bateson, *Patrick Logan: Tyrant of Brisbane Town*, Ure Smith, Sydney, 1966, 106.

⁴⁵ *Ibid.*

⁴⁶ Stories of Logan’s tyranny at Moreton Bay have achieved iconic status in the history of colonial Australia. See: Macintyre, *A Concise History of Australia*, 69; Shaw, *Convicts and the Colonies*, 204. Despite his criticisms of Logan’s more extreme punishments, Charles Bateson, nevertheless, forgives him his rigid approach to physical discipline: ‘Logan’s attitude, when viewed through modern eyes, is indefensible, but it is understandable. He was the product of the army in which he had spent almost his entire life, an army in which the officers belonged to a social caste and the rank and file were drawn largely from the riff-raff of the nation, an army in which discipline was still maintained primarily by the excessive use of the lash’. See: Bateson, *Patrick Logan*, 108. For an analysis of the ‘convict narrative industry’ that flourished between 1819 and 1850 concerning the experiences of convicted felons in Australia see: Conlon, ‘Mine is a sad yet true story’, 43-73.

⁴⁷ Evidence of Allan Cunningham, 13th February, 1832, *BPP Volume One: Transportation*, 36; Bushman, ‘Jack Bushman’: *Passages from the Life of a “Lifer”*, Chapter 3, 2; Tamsin O’Connor, ‘Buckley’s chance’, 115-128; Evans and Thorpe, ‘Power, punishment and penal labour’, 103-108.

Commandant. Logan's absolute control of this site was enshrined in its 1829 Regulations: 'The Commandant is vested with the control of every department on the settlement, every person, whether free or bond, being subject to his orders'.⁴⁸ Far from ensuring a bureaucratic exactitude in the administration and application of physical violence, however, this regulation was a blueprint for its opposite: an invitation to despotism.

In addition to its simple function as a physical punishment for recalcitrant convicts, flogging was also used as a coercive tool for authorities in a broader penal context. Convicts were regularly flogged in order to provide information on potential threats or to confess to nefarious deeds.⁴⁹ One well-known example of this behaviour concerned allegations made by the Reverend Samuel Marsden against colonial landholder Dr H. G. Douglass for the apparent flogging of a convict to elicit information concerning an alleged crime. Leading to an inquiry into the practice of illegal flogging in the colony, numerous incidents of similar abuse of physical violence by masters was revealed. For

⁴⁸ Bateson, *Patrick Logan*, 58; Robert Hughes has also written on the potential dangers of authority figures who, in the context of isolated penal settlements, enjoy almost unfettered power. In the figure of Lieutenant-Colonel James Thomas Morriset, Commandant of the Norfolk Island penal station from 1829 to 1834, Hughes constructs the quintessential penal martinet: a man whose sadistic tendencies were given free reign: 'People often suppose that penal systems recruit sadists. But cruelty is an appetite that grows with feeding, and few people receive an epiphany of their own sadism in the abstract; they must see their victims first'. See: Hughes, *The Fatal Shore*, 460; for a brief biography of Morriset, including his time at Norfolk Island, see Vivienne Parsons, *Morriset, James Thomas (1780-1852)*, Australian Dictionary of Biography, 2006-2014, <http://adb.anu.edu.au/biography/morriset-james-thomas-2482>, viewed at 21/02/2011. For a critique of Hughes' characterisation of Morriset see: Atkinson, 'Writing about convicts', 23;

⁴⁹ 'Letter from Sir Thomas Brisbane, Chief Justice Forbes and Archdeacon Scott to Earl Bathurst', concerning their investigation of the allegations, Sydney, New South Wales, 11th August, 1825, *HRA*, Series One, Volume Eleven, 782. See also, within the correspondence concerning these allegations, records of the Parramatta Bench, 1821-1825, detailing Magistrates who threaten, and sentence, defendants with floggings in order to acquire confessions: 'Extract from the Records of Fines, Penalties and Summonses of the Parramatta Bench', Saturday 15th December, 1821, Brisbane and others to Bathurst, *HRA*, Series One, Volume Eleven, 798-799. See also 'Extract from the Records of the Parramatta Bench', Monday 31st March, 1823, Brisbane and others to Bathurst, *HRA*, Series One, Volume Eleven, 801. For a defence of his actions, and an admission that this type of practice is widespread in the Colony see: 'Dr Douglass to Sir Thomas Brisbane, Chief Justice Forbes and Archdeacon Scott', 16th August, 1825, Brisbane and others to Bathurst, Sydney, New South Wales, *HRA*, Series One, Volume Eleven, 802; 'Extracts from Returns', 28th December, 1821, Brisbane and others to Bathurst, *HRA*, Series One, Volume Eleven, 802-807.

Marsden, an approach by ‘Walton, the Flogger’ on the street opposite the Sydney Gaol in 1825, revealed the sordid details:

Walton, the Flogger, accosted me in the following manner: That he had been compelled to flog a man, named Henry Baynes, in a most cruel manner *on suspicion of a Robbery* that he had been ordered to punish him with twenty-five lashes every morning, until he would tell where the Property he was charged with stealing was concealed; that no Surgeon attended and the man’s back was so lacerated that he was afraid he would die under the punishment if continued: that he inflicted upon Baynes 25 lashes for five mornings successively beginning on Monday, he was ordered by Dr Douglass to punish him again, which he did, the man still persisting in his Innocence that he knew nothing of the property. *I satisfied myself with respect to the correctness of Walton’s Statement, that he punished Henry Baynes six times in eight days.*⁵⁰

Other examples of the abuse of the flogging process litter the official record of the colony.⁵¹ Extracts from the punishment returns produced by the various Magistrate Benches within the colony reveal the extent to which the flogging of accused convicts, upon mere suspicion of criminality, was employed. Among the crimes that convicts were flogged for *not confessing to* were stealing a quantity of clothing apparel, a pair of ‘blue cloth Trowsers’ stolen from the Government garden House, and stealing a pair of shoes from another convicts hut.⁵² For Richard Skinner and Timothy Feaney, who were alleged to have stolen ‘two Snuffers and a Sugar Tongs’ from a ‘Mr Nash’, the punishment was simple: Magistrates Douglass and Macleod sentenced them to receive ‘25 lashes every morning, until the property is found by either of them’. Unsurprisingly perhaps the

⁵⁰ ‘The Reverend S. Marsden to Sir Thomas Brisbane, Chief Justice Forbes, and Archdeacon Scott’, Parsonage, 28th July, 1825, Brisbane and others to Bathurst, *HRA*, Series One, Volume Eleven, 800.

⁵¹ ‘Extracts from Returns’, *HRA*, Series One, Volume Eleven, 802-807.

⁵² *Ibid.*, 802-804.

property was found, with Skinner escaping further punishment and Feaney being sent, after more lashes, to the Port Macquarie penal settlement for three years.⁵³

For James Hardy Vaux, an educated, or ‘special’,⁵⁴ convict, and author of a dictionary of ‘felons cant’,⁵⁵ a reluctance to admit knowledge of a fraudulent transaction was also met with a novel solution. After numerous ‘private examinations’, in which ‘great promises were held out to extract information from me’, the principal officers seeking to implicate Vaux in a series of forgeries, threatened to flog a confession out of him. According to Vaux, it was Governor King himself who initiated proceedings:

The Governor finding me firm in my resolution to give him no satisfaction, ordered Dr Harris, who was present, to take me to the jail-yard, send for the public executioner, and there to give me five-and-twenties, (this was his phrase), till I confessed the whole truth.⁵⁶

Despite his confidence in being able to endure such a punishment Vaux reluctantly, yet with what we may suspect is a sense of guilty relief at avoiding a series of floggings, acknowledged the error of his ways and submitted his fate to the Governor’s pleasure.⁵⁷

⁵³ *Ibid.*, 803.

⁵⁴ Vaux, *The Memoirs of James Hardy Vaux*, xviii. On educated convicts, or ‘specials’ see: David Andrew Roberts, ‘The Valley of Swells: ‘Special’ or ‘Educated’ Convicts on the Wellington Valley Settlement, 1827-1830’, *History Australia*, 3(1), 2006, 11.3-11.4; ‘‘A sort of Inland Norfolk Island?’ Isolation, coercion and resistance on the Wellington Valley Convict Station, 1823-26’, *Journal of Australian Colonial History*, 2(1), April 2000, 50-54. For one of the earliest, and most famous, examples of these liminal convict figures see: Suzanne Rickard (ed), *George Barrington’s Voyage to Botany Bay: Retelling a Convict’s Travel Narrative of the 1790s*, Leicester University Press, London, 2001, 3-13.

⁵⁵ Vaux provided a detailed, and annotated, version of the words commonly used by English, but especially London based, criminals. It is thought that the ‘dictionary of felon’s cant’ was written by Vaux to assist in the understanding of a colonial Judge in proceedings that contained numerous confusing words and concepts. See: Vaux, *The Memoirs of James Hardy Vaux*, xvi-xvii. Chapter Six of this thesis, ‘Colonial Insiders: Convicts and the Law’, will also discuss Vaux’s dictionary, in particular its use as a tool to decipher evidence of convict ‘cant’ in the context of evidence gathering in court. For another view of Vaux’s *Memoirs*, and the authorial interference to them occasioned by Justice Barron Field, see: Evans and Thorpe, ‘In search of Jack Bushman’, 47.

⁵⁶ *Ibid.*, 103.

⁵⁷ *Ibid.*

From the above, it is apparent that the process of flogging was often more complicated than the simple infliction of uniform numbers of lashes to roughly equate with the degree of transgression committed by an individual convict. Indeed, the flogging of convicts, particularly within the context of more isolated colonial settlements appeared more arbitrary and, as argued in chapter three of this thesis, more redolent of slave holding societies than is perhaps acknowledged. Thus, when the banality of flogging has been discounted, alternative interpretations of its nature, effectiveness and meaning become possible. In particular, the interpretation of flogging as something beyond the simple infliction of punishment, in effect as something that has personal, social and disciplinary relevance for those involved emerges.

As has been noted in the preceding chapters of this thesis, the sounds of flogging carried important messages for those involved in it, whether as flogged, flogger, administrator or innocent aural witness. Further, the importance of controlling the sounds of flogging, as a means of entrenching ideologies of control and discipline, can be seen in the fierce contests for auditory control of the flogging ground. In other words, a sense that the sounds of flogging mattered to people may be discerned. It is this phenomenon that informs the remainder of this chapter, as an examination of the sounds of convicts, created through the flogging process, is used to inform our search for the convict voice. Rather than focus on the convict victim, however, the rest of this chapter explores how observers and inflictors of convict pain used the sounds made in this process to inform penal discipline and punishment policy; using the ‘voices’ of convicts to ensure the coherence, stability and brutality of penal society. When convicts’ voices are appreciated

in this way, the very notion of what a convict voice is, and where best to look for them in our quest for a greater understanding of convict subjectivity, is both unsettled and expanded.

The Politics of Pain

There is little doubt that colonial authorities, administrators and, seemingly obvious but often overlooked, convicts, had opinions as to the degree of pain that flogging should produce. Indeed, debates over the effectiveness of colonial punishment preoccupied colonial and imperial officials.⁵⁸ Among other considerations, the accepted numbers of lashes, frequency of flogging and quality of the flogging equipment were issues of concern to those whose responsibility it was to implement a system of punishment that would deter British citizens, as well as potential colonial recidivists, from committing crimes.⁵⁹

⁵⁸ 'Report of the Commissioner of Inquiry into the State of the Colony of New South Wales, 1822', (The Bigge Reports), *BPP Volume One: Colonies*, 35; Neal, *The Rule of Law in a Penal Colony*, 27-59; Bruce Kercher, 'Perish or prosper: The law and convict transportation in the British Empire, 1700-1850', *Law and History Review* (online), 21(3), Fall 2003, paragraph 33-41; *An Unruly Child*, 22-29; Sandra Blair, 'The revolt at Castle Forbes: A catalyst to emancipist emigrant confrontation', *Journal of the Royal Australian Historical Society*, 64(2), September 1978, 89-95; Ihde, 'Monitoring the situation', 29.

⁵⁹ One the aims of the Bigge Commission was to assess the effectiveness of the penal colony in terms of deterrence and fear. See: Ritchie, *Punishment and Profit*, 61-65; Spigelman, 'A Reappraisal of the Bigge Reports', 4-5.

One method employed by colonial authorities of assessing the severity of flogging was to compare it to corporal punishment regimes practiced within the British armed services.⁶⁰ For Commissioner Bigge, reporting upon the severity of the colony's punishment regimes in 1822, the fact that floggings were inflicted by 'instruments of punishment' less brutal than those used by the army and navy, was countered somewhat by the fact that punishments were inflicted with 'more severity than at the period when the government works were less extensively conducted, and the convicts less numerous'.⁶¹ Significantly, Bigge also recognised the importance of the convicts themselves to any measurement or indication of corporal punishment, as they would invariably affect the severity of any lashes meted out:

The effect of these different kinds of punishments is stated by the chief engineer to vary with the feelings and bodily habits and strengths of the convicts; and the punishment of the chain gang is rightly described by him to be the least efficient, and most prejudicial.⁶²

Almost twenty years later, Van Dieman's Land Governor John Franklin expressed sentiments similar to those conveyed by Commissioner Bigge regarding the uncertainty of measuring corporal punishment. Franklin recognised that, given the unpredictability of how human beings will respond to physical violence, the inherent uncertainty of

⁶⁰ The Bigge Reports, *BPP Volume One: Colonies*, 35. For a series of punishments witnessed by Police Magistrates William Howe and John Coghill, a doctor (Dr Kenny) intervened to assert that a particular convict had been punished too lightly. Doctor Kenny, who had served with the army in India and had witnessed professional army punishment, thought that the same number of lashes he witnessed with Howe and Coghill, would have, in the army, 'infallibly produced blood'. See: Return of Corporal Punishments inflicted by the Bench of Magistrates, at Campbelltown, 1st-30th September, 1833, inclusively, in the presence of the Police Magistrate, William Howe, Esq., J.P., and John Coghill, Esq., J.P., Appendix No. 2, 'Correspondence Respecting Secondary Punishment', *BPP*, Volume Two, *Transportation*, Irish University Press Reprint Series, Shannon, 1969, 95.

⁶¹ The Bigge Reports, *BPP Volume One: Colonies*, 35.

⁶² *Ibid.*

measuring the effectiveness of such punishments is unavoidable. Writing to Lord Glenelg in 1839, Franklin, a Governor with extensive nautical and naval experience,⁶³ expressed the important role that the recipient of the punishment plays in any assessment of severity:

On the other hand, in so far as inequality of punishment is necessarily an element in assignment, I believe it to be so likewise in the same, or in very nearly the same degree, in every description of punishment, to which the numerous offenders of Great Britain could be subjected... Let the mode of punishment be what it will, it never can be equal in its operation upon each one subjected to it, so long as there remains a diversity almost infinite in human nature itself... [later]... The capacity, mental and corporeal, to endure pain, privation, and shame, is perhaps not the same in any two individuals, any more than the disposition to inflict them is the same.⁶⁴

What both Commissioner Bigge and Governor Franklin realise is that the effective measurement of pain, however arrived at, is dictated by the *recipient* of the punishment as well as the inflictor. This is of course complicated by the deliberate manipulation by convicts, and floggers, of the flogging process itself. As demonstrated in earlier chapters, the auditory world of the flogging ground was fiercely contested, with both convicts and floggers eager to control the soundscapes of physical violence. For medical officer John Tattersall, interviewed by Commissioner Bigge on the 22nd of September, 1822, the

⁶³ For biographical work on Governor John Franklin see: Fitzpatrick, Kathleen, *Franklin, Sir John (1786–1847)*, Australian Dictionary of Biography, 2006–2014, <http://adb.anu.edu.au/biography/franklin-sir-john-2066>, viewed at 21/02/2011; *Sir John Franklin in Tasmania, 1837–1843*, Melbourne University Press, Melbourne, 1949; James Calder, *Recollections of Sir John and Lady Jane Franklin in Tasmania*, republished Sullivans Cove, Adelaide, 1984. For a biographical sketch of Lady Jane Franklin see: Russell, *This Errant Lady*. For reference to the Franklins in recent literature see: Richard Flanagan, *Wanting*, Random House Australia, Sydney, 2008.

⁶⁴ Copy of a dispatch from Lieutenant-Governor Sir John Franklin to Lord Glenelg, Government House, Van Dieman's Land, 15th February, 1839, 'Correspondence relative to Secondary Punishment', *BPP Volume Six: Transportation*, 73.

effectiveness of colonial corporal punishment was reduced, among other things, by the presence of convict spectators:

Do you think that these punishments make much impression?

I do not think that it does. The bystander's laugh at those who do not bear the punishment well...⁶⁵

Thus, the practice of penal violence was complicated by the physical and aural manipulation of the flogging process. By not subscribing to the protocols of punishment—by not receiving their lashes in a fashion that was decipherable to those attempting to measure such things—convicts made the accurate measurement of corporal punishment almost impossible.

What these problems of quantification and individual judgement reveal is that, for colonial authorities at least, the measurement of pain, as a guide to the effective punishment of convicts relied, in part, on the production of commensurate soundscapes of pain. In short, the infliction of pain is rendered less effective without the aural manifestations of that pain, in particular the sounds of physical discomfort. Thus, the 'reassuring' sounds that convicts made when screaming in pain on the triangle allowed colonial officials to re-affirm the severity of the colony's punishment regimes, in their areas of responsibility at least. For each instance where an official or observer could relay the 'mortal agony' of a convict enduring physical punishment, the effectiveness of the system chosen to discipline convicts was reaffirmed. Thus, in addition to the sounds of flogging carrying ideological implications, as discussed in chapter three of this thesis, the

⁶⁵ Evidence of medical officer John Tattersall to the Commission of Inquiry into Secondary Punishment, John Ritchie (ed), *The Evidence to the Bigge Reports: New South Wales under Governor Macquarie, Volume One: The Oral Evidence*, Heinemann, Melbourne, 1971, 140-141.

noises made, or not made, by convicts bearing corporal punishment can also be seen to have political and administrative relevance.

The issue of the most appropriate measure of pain and punishment that should be inflicted upon convicts, and how best to measure it, assumed enormous political importance within New South Wales during Governor Bourke's period in office. As suggested in the opening paragraphs of this chapter, the 'vexed question' of convict discipline, particularly within the more isolated parts of the colony, became a lightning rod for opposing political and social factions within New South Wales.⁶⁶ Apart from how the sounds of convict flogging impacted upon them, the broader machinations of this dispute, written about extensively elsewhere, will not be canvassed in depth in this chapter.⁶⁷ In brief, however, after Governor Bourke passed the *Summary Punishment Act* (1832), which curtailed much of the power of the colonial magistracy to punish convicts, those directly affected by such curtailment initiated a vociferous political campaign to both restore their power, and to admonish Bourke for his dangerously lenient approach (according to them) to convict discipline.⁶⁸ The ensuing dispute, loosely based upon the division in colonial New South Wales between 'emancipated', or freed convicts, and their supporters and 'exclusives', or those who had arrived free to the colony, had social,

⁶⁶ Blair, 'The revolt at Castle Forbes', 89.

⁶⁷ For the political and social ramifications of this debate see: Blair, 'The revolt at Castle Forbes', 89-105; 'The felony and the free?', 9-10; 'Patronage and prejudice: Educated convicts in the New South Wales Press, 1838', *Push from the Bush*, 8, 1980, 75; B.T. Dowd and Averil Fink, 'James Mudie, Harlequin of the Hunter (Part II)', *Journal of the Royal Australian Historical Society*, 55(1), March 1969, 107; McKenzie, 'Performing the peer', 227. For the Supreme Court of New South Wales case relating to the 'Castle Forbes Revolt' see: *Mudie v Howe [1836] NSW SupC 41*, http://www.law.mq.edu.au/research/colonial_case_law/nsw/cases/case_index/1836/mudie_v_howe/

⁶⁸ Blair, 'The revolt at Castle Forbes', 89-107; Alex C. Castles, *An Australian Legal History*, The Law Book Company, Sydney, 1982, 166.

political, legal, and press dynamics. Sandra Blair, writing of an incident of convict punishment within the Hunter region that both encapsulated and inflamed this dispute, provides a flavour of the political and social tensions involved:

The Castle Forbes incident provided the Emancipists with a point on which to concentrate their attacks on the privileged landowners. It was not the fate of the six convicts which was being fought over, but the future of the entire colony: was it to lie with the ‘bull-frog farmers of the Hunter or with the Felony of New South Wales?’⁶⁹

It was within this socially and politically fraught environment that Governor Bourke decided, ostensibly to discern the effectiveness of his new *Act* yet more likely to quell his political opponents, to have the various colonial Police Superintendents witness, and report back on, the nature and severity of the systems’ corporal punishment regime. Thus, on the 18th of May 1833, these officials received their instructions, in the form of the circular from Colonial Secretary McLeay, which was introduced at the start of this chapter. Given the circumstances in which these instructions were sent, it is perhaps unsurprising that Governor Bourke found the regime of punishment instituted by the *Summary Punishment Act*, gleaned from reading the returned reports, to be both proportionate and appropriate. In Bourke’s words: ‘the conclusion to be drawn from a consideration of these documents is necessarily this: that both the measurement of punishment authorised by the law, and the instrument for inflicting it, are sufficient for the purpose intended’.⁷⁰ While Bourke’s conclusions are hardly surprising, they are not

⁶⁹ Blair, ‘The revolt at Castle Forbes’, 102.

⁷⁰ Correspondence of Alexander McLeay, Circular No. 33-48, Colonial Secretary’s Office, Sydney, 16th October 1833, ‘Correspondence respecting Secondary Punishment’, *BPP Volume Two: Transportation*, 102.

the focus of this section. Rather, the way that those tasked to assess the colony's punishment regimes, and the means by which they did so, are our primary concern.

These punishment records, some written with an austere economy of style (and substance), others the verbose outpourings of men convinced of their ability to quantify the infliction of pain in pen and ink, are an important avenue into what Catie Gilchrist has termed, in a different context, the 'official mind' of the Colony.⁷¹ Something of the richness of these sources has been shown in the seemingly simple, yet sensorily intriguing correspondence of Superintendent North concerning the punishment of Alfred Shanton. While North's assessment of Alfred's punishment was chosen for its aural revelations, it is by no means an isolated, or even the most interesting, example of the considerations that police magistrates and others took into account to fulfil the brief presented by Governor Bourke. Indeed, between the lines of these diverse recordings is evidence of supervisors' and observers sophisticated aural worlds: how what they heard informed their opinions on the effectiveness of corporal punishment as much, and possibly more, than what they saw.

The very imprecision of the task expected of superintendents'—the inability to know, let alone articulate, a convict's level of pain from a given punishment—is these document's great weakness as political testimony, yet great strength as historical sources. The sheer vagueness of the terms of reference renders them largely incapable of producing a

⁷¹ In her PhD Thesis, Gilchrist argues that an examination of the official documents of penal-era Australia, despite their limitations provides invaluable insights into the attitudes and aims of officialdom. For Gilchrist, 'looking at the 'official mind' reveals the social and ideological underpinnings of colonial policy'. See Gilchrist, 'Male Convict Sexuality', 28.

consistent response from the respondents. Terms such as ‘severity’, ‘effectiveness’ and even ‘bodily pain’ do not promote consistent conclusions concerning the report’s aims. Indeed, these terms, rather than promote a consistency of analysis, actually guarantee that each respondent would be forced to engage in subjective speculation, however conscientiously and seriously it was provided. In short, while lacking the precision to usefully inform an analysis of the effectiveness of the colony’s system of corporal punishment, these reports are, nonetheless, a rich repository of the opinions, attitudes and biases of those officials who implemented those systems. Further, they are an invaluable insight into the relationship that penal officials and floggers had with convicts, as well as the importance of convict reactions to flogging to inform observers’ opinions as to the nature and effectiveness of corporal punishment.

The reports reveal the aural dynamic to assessments of corporal severity, a phenomenon that has perhaps been under-appreciated in both contemporary and modern portrayals of penal-era violence. Indeed, the auditory dynamic to these reports is striking. As well as minutely visually observed by penal authorities, these flogged convicts were also intently *listened to*. For example, of the descriptions of corporal punishment provided by Augustus Slade at the Hyde Park barracks over the course of September 1833, 64 of the 81 recorded floggings—close to 80 *per cent*—were described using some form of aural referent.⁷² An analysis that *listens* for their significance as well as examines their quantitative utility enlivens and extends these reports as historical sources. Not merely in the way that convicts reacted to their punishment, these reports reveal how witnesses

⁷² Return of Corporal Punishments Inflicted by Sentence of the Hyde Park Barrack Bench, from 4th to 30th September 1833, in the presence of E.A. Slade, J.P., Superintendent, Hyde Park Barracks, Appendix No. 2, ‘Correspondence respecting Secondary Punishment’, *BPP Volume Two: Transportation*, 89-93.

used senses beyond the visual to assess the phenomenon of corporal punishment.⁷³ As such, as snapshots of the opinions of penal authorities forced to confront the severity of punishment, they are reinvigorated as historical artifacts. This rejuvenation mirrors what Robert Darnton asserts as a vital dynamic to effective historical research: the idea that ‘one can always put new questions to old material’.⁷⁴

The sensory assault occasioned by witnessing corporal punishment, discussed in chapter two of this thesis, is apparent within these sources. For George Kenyon Holden, the police magistrate responsible for law and order in the Campbelltown area of New South Wales in the early-to-mid 1830s, the ability to witness corporal punishment was a process of careful mental and sensory conditioning.⁷⁵ Furthermore, such a process, for Holden at least, required the passing of a certain amount of time in which to become accustomed to the brutality of what he was asked to witness. While stressing the underlying law-abidingness of his particular patch of the colony, Holden nevertheless revealed the altered state of emotional preparedness required to endure such a task:

To judge by my own feelings, in witnessing the execution of the present punishment, I should be disposed to say, that when the scourge is new, it is usually quite sufficient. But, in so saying, I do not profess to have yet acquired the power of witnessing the infliction of pain with such unmoved nerves, as may be, perhaps, justly considered to be as necessary in a magistrate dealing with this subject as in a surgeon when inflicting pain for the beneficial purpose of his art.⁷⁶

⁷³ The use of other senses to assess different societies—their fissures, tensions and divisions—can be seen in Mark M. Smith, *Stono*, 49.

⁷⁴ Darnton, *The Great Cat Massacre*, 4.

⁷⁵ Correspondence of George Kenyon Holden, Police Magistrate, Police Office, Campbelltown, 1st October, 1833, Appendix No. 2, ‘Correspondence respecting Secondary Punishment’, *BPP Volume Two: Transportation*, 94.

⁷⁶ *Ibid.*

In other words, Holden's reactions to the spectacle of flogging—his inability to sufficiently control his emotions while witnessing corporal violence—diminishes the worth of his opinions concerning the severity of its application. This refreshingly candid official hints at the effort required—the professional emotional distance that was necessary—to witness a brutal physical assault. It required nothing less than a conscious sensory and emotional transformation in the witness. Luckily for this squeamish Police Magistrate, in the Campbelltown area 'there exists none of that tendency to disorder and insubordination which has been complained of in other parts of the colony'.⁷⁷ To his 'great astonishment' and, we suspect, vast relief, Holden finds not a single episode of calumny worthy of the 'cat' in the district under his control.⁷⁸ Instead, the relative calm of Campbelltown consigned the bulk of the work of witnessing physical violence to other, more robust Magistrates in other, more unruly, jurisdictions.

To take Robert Darnton's advice and ask new questions of these punishment reports reveals how intently some observers listened to convicts being flogged. When listened for, the nature of authorities responses to convicts' corporal punishment betrayed an often sophisticated and diverse aural sensibility. Indeed, the importance of the sounds and silences of convicts to inform some observers' interpretations of what they were witnessing is overwhelmingly apparent. One example is E.S. Slade's recording of the floggings of convicts Daniel Culane and Frederick Landigan. Culane, who received 50 lashes for having a pair of stolen boots in his possession, was the fifth convict recorded

⁷⁷ Extract of a Letter from George Kenyon Holden, Esq., Police Magistrate, dated Police Office, Campbelltown, 28th September 1833, Appendix No. 2, 'Correspondence respecting Secondary Punishment', *BPP Volume Two: Transportation*, 94.

⁷⁸ *Ibid.*

punished during September 1833, within the second ‘batch’ of reports produced by Slade.⁷⁹ Culane’s reaction to his flogging was expressed in the following way: ‘The skin was lacerated at the 4th lash; he cried out at every lash; blood appeared at the 35th lash; he suffered much pain’.⁸⁰ The obvious cacophony of this scene can be contrasted with the experience of the next man punished, Frederick Landigan, who also received 50 lashes for possessing stolen property. Slade again uses the acoustics of the spectacle to assess the likely effectiveness of the punishment:

This man says he was never flogged before; there were no remaining marks of former punishment; the skin was lacerated at the 25th lash, yet he did not utter any cries, but his countenance evinced the endurance of great pain.⁸¹

Both the presence and absence of sound within Slade’s reports, assiduously recorded when heard, confirms the rich and sophisticated aural dynamic of his approach. Indeed, the aural dynamic within these recordings is enhanced, rather than reduced, in those rare floggings without an aural component. The absence of sound, at times recorded by Slade in almost admiring tones, affirms the importance of convict noise to inform those watching of the severity of the punishment being inflicted. To take another example from

⁷⁹ Return of Corporal Punishments Inflicted by Sentence of the Hyde Park Barrack Bench, from 4th to 30th September, 1833, in the presence of E.A. Slade, J.P., Superintendent, Hyde Park Barracks, Appendix No. 2, *BPP Volume Two: Transportation*, 92. E.S. Slade, Superintendent and magistrate at the Sydney Barracks, was singled out by Governor Bourke as an ‘active and intelligent officer’ for his suggestions concerning the punishment of convicts. See: Letter from Colonial Secretary Alexander McLeay, Colonial Secretary’s Office, Sydney, 16th October, 1833, ‘Circular’ No. 33-48, ‘Correspondence on the subject of Secondary Punishment’, *BPP Volume Six: Transportation*, 34. This praise did not save Slade’s career as Sydney Superintendent, after the discovery of his mistress and illegitimate daughter clashed unfavourably with the moral strictures of colonial society at the time. See: McKenzie, *Scandal in the Colonies*, 106.

⁸⁰ Return of Corporal Punishments Inflicted by Sentence of the Hyde Park Barrack Bench, from 4th to 30th September, 1833, in the presence of E.A. Slade, J.P., Superintendent, Hyde Park Barracks, Appendix No. 2, *BPP Volume Two: Transportation*, 92.

⁸¹ *Ibid.*

Slade: this time, the punishment of convict William Graham, who received 25 lashes for being absent without leave:

Skin lacerated at the 13th lash; at the 15th the convict appeared to suffer great pain; but during the whole of the punishment he did not utter a word, nor groaned; but when cast loose from the table, the expression of his countenance indicated much suffering. The convict says that he never was flogged in this colony before. I did not discover any marks of punishment on his back.⁸²

That Slade was listening hard enough, and indeed was close enough to the flogging to notice, to distinguish between a ‘word’ not uttered, nor a ‘groan’, reveals the importance of the auditory in assessing such punishments. In this way, the convicts’ sounds upon the triangle, whether exuberant and pronounced or muted in defiance, affected the way that Slade interpreted the effect of corporal punishment within his district. Thus, the convict voice informed, to a degree at least, the content of the reports that this official would send to Governor Bourke.

The sheer exuberance of Slade’s descriptions—their aural as well as visual power—can be contrasted with those of Thomas Evernden, the Superintendent of Police at Bathurst, in inland New South Wales. For the context that an aural analysis can offer, a comparison between Slade and Evernden’s reports is striking. While we do not know how much of what he heard impacted upon his opinions—he may have well listened intently to what transpired upon the triangle—it is nevertheless apparent that Evernden’s reports provide a much less nuanced account of the effects of flogging. For the full effect of his reports, we need to see the way that Evernden deals with a succession of flogged convicts. From the

⁸² Return of Corporal Punishments Inflicted by Sentence of the Hyde Park Barrack Bench, from 4th to 30th September, 1833, in the presence of E.A. Slade, J.P., Superintendent, Hyde Park Barracks, Appendix No. 2, *BPP Volume Two: Transportation*, 89.

reports that he submitted for September 1833, convicts ‘5’ through to ‘10’ are described by Evernden in the following way, with their names, ship of arrival, punishment received and response laid out:

5. John Thacker, Surry, neglect of duty, 50 lashes. Bruised, lacerated and blood drawn.
6. Christopher Lennings, Captain Cook, disobedience of orders, 25 lashes. Ditto, ditto.
7. George Westwood, Malabar, drunkenness and riotous conduct, 25 lashes. Ditto, ditto.
8. John Higgins, Lord Melville, drunkenness and absent without a pass, 50 lashes. Ditto, ditto, freely.
9. Samuel Jolly, Katherine Stewart Forbes, drunkenness and fighting, 25 lashes. Ditto, ditto, slightly.
10. John Callaghan, Asia, absconding, 50 lashes. Ditto, ditto.⁸³

And it goes on. The absence of an aural dimension to Evernden’s analysis is marked, perhaps not reducing the honesty or even enthusiasm of his task, but severely curtailing any usefulness that may have been gleaned from his reports for those interested in them. Further, as reports that are designed to enlighten colonial officials as to the nature and effectiveness of corporal punishment, they are severely limited. Whether he is right or wrong, realistic or pessimistic, Thomas Evernden’s assessments of the effectiveness of corporal punishment stand in stark contrast to those of Augustus Slade. The descriptions provided by Slade add nuance and humanity to the process of punishment. As if to confirm his disinterest, and in a final rhetorical flourish, Evernden inserts an ‘*N. B.*’ at the

⁸³ Return of Corporal Punishments Inflicted by Order of the Court of Petty Sessions at Bathurst, 1st to the 30th September, 1833, inclusively, in the presence of Thomas Evernden, J.P., Superintendent, of Police, Appendix No. 2, ‘Correspondence respecting Secondary Punishment’, *BPP Volume Two: Transportation*, 98.

bottom of his report that states that: ‘The above punishments were all properly inflicted’.⁸⁴

Of course, the rending or pitiable sounds made by convicts often did not prevent them from receiving the full measure of punishment allocated. For Police Magistrates William Howe and John Coghill, who witnessed the flogging of convicts at Campbelltown from the 1st to the 30th of September 1833,⁸⁵ the unsettling sounds of convict discomfort caused them to question the severity of the punishment. Reporting upon the flogging of Thomas Price, Coghill reported:

8. Thomas Price, Isabella, disobedience, idleness and insolence, 36 lashes. A new scourge. Symptoms recorded No. 1; no blood, but the scourge appeared to act severely; the prisoner made pitiable exclamations.⁸⁶

Significantly, the noise that Thomas Price was making, compelling Coghill to report that the prisoner ‘appeared painfully struck by the punishment’, almost had his punishment stopped at twenty-five lashes. It was only the intervention of Mr Howe and Dr Kenny, who had witnessed more severe floggings in the British army, that countered the perception that the victim had been sufficiently punished.⁸⁷ While not officially recorded, it appears that, despite Thomas’ earnest exclamations, he received the full measure of his punishment.

⁸⁴ *Ibid.*

⁸⁵ Return of Corporal Punishments Inflicted by the Bench of Magistrates, at Campbelltown, 1st to the 30th September, 1833, inclusively, in the presence of the Police Magistrate, William Howe, Esq., J.P., and John Coghill, Esq., J.P., Appendix No. 2, ‘Correspondence respecting Secondary Punishment’, *BPP Volume Two: Transportation*, 95.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

Direct links between the sounds and silences of convicts as they were being flogged, and the pain that they may have been feeling, was often stated in the reports. Indeed, these reported ‘convict voices’, heard in the utterances made during flogging, represented an important referent by which those asked to report on the ‘pain’ experienced by convicts was measured. As well as exhibiting laudable epidermal knowledge, Augustus Slade was also attuned to the way that certain flogged subjects dealt with the pain of scourging:

James Clayton, *Pheonix*, absent without leave and neglecting his duty, 50 lashes. The skin was lacerated at the fifth lash, and there was a slight effusion of blood: *the prisoner subdued his sense of pain by biting his lips*. The skin of this man was thick to an uncommon degree, and both his body and his mind have been hardened by former punishments, and he is also known to be what is termed “flash”, or “game”; nevertheless, I am of opinion, that if all his former (or perhaps only his first) punishments had been as vigorously administered as this last, his indomitable spirit would have been subdued.⁸⁸

For Slade, the fact of Clayton’s relative silence under the lash did not prevent him from concluding that the pain he felt was genuine. Indeed, it is the fact that Slade could interpret both the sounds and silences of convicts as barometers of corporal severity that affirms the importance of convict noise to this particular punishment exercise. For this penal official, the effectiveness or otherwise of colonial corporal punishment was assessed aurally as much as visually, whether what was heard confirmed or discounted his assessment of the severity of flogging. In other words, the noises of convicts were complicit in debate over the form and nature of colonial punishment policy, a phenomenon that both expands and contracts our search for the convict voice.

⁸⁸ Return of Corporal Punishments Inflicted by Sentence of the Hyde Park Barrack Bench, from 4th to 30th September, 1833, in the presence of E.A. Slade, J.P., Superintendent, Hyde Park Barracks, Appendix No. 2, *BPP Volume Two: Transportation*, 89.

Conclusion

This chapter has explored how the sounds of convict pain were used for political and policy purposes—particularly in debates over the effectiveness, or otherwise, of colonial punishment regimes. As such, the sounds that convicts made as they were being flogged—their voices—were carefully recorded and became an important barometer of the severity of corporal punishment in the colony. I have argued that these voices form part of the development of penal punishment policy in the early-to-mid 1830s in colonial Australia. Rather than denying convicts an identity through this process however, the use of their voices in such a manner includes them in the evolution of the colony’s penal and political institutions. Therefore, any search for a genuine convict voice that reflects their lives and experiences in penal Australia should acknowledge this institutional aspect to ‘convict voice’ history. By recognising the role and importance of convict voices in the development of colonial punishment policy their place in penal history, it is argued, is reimagined, and elevated: they are entwined within the institutional fabric of Australia rather than desperadoes railing at it from the margins.

This examination of the nature of those convict voices created within the processes of corporal violence, reveal how convict sounds were used to help make sense of penal punishment policy. In this way, the sounds, or voices, of convicts enduring corporal violence can be seen as much more than the organic and unmediated outpourings of human beings in pain: they are also tools used by both ends of the whip to articulate and entrench systems of control and resistance in penal-era Australia. By using the ‘Returns of Corporal Punishment records, 1833’ to show how important convict reactions to

physical punishment were in assessments of penal ‘severity’, ‘deterrence’ and ‘effectiveness’, I have argued that these sounds, re-imagined as the voices of convict pain, were important in the development of punishment policy within the Colony.

This chapter also concludes a trilogy of chapters that have analysed, in different ways and in varying degrees of intensity, the phenomenon of flogging and corporal violence within penal-era Australia. Thus concludes an analysis that has reimagined flogging as an aural and auditory construct, as much as a detached process delivering measured and proportionate physical punishment. An aural analysis of the flogging of convicts also challenges traditional perceptions and interpretations of the flogging process, a phenomenon that has achieved iconic status within contemporary colonial and modern portrayals of colonial Australia. By listening for the auditory resonances of the flogging ground, notions of flogging that portray it as a purely punitive and bureaucratic process can be robustly challenged.⁸⁹ Further, resort to a cliometric or quantitative methodology, it is submitted, tends to downplay the human, including the aural, dimension to the infliction of physical pain. This re-conceptualisation of one of the colony’s most recognisable phenomena sets the tone for the remaining two chapters in this thesis: the aural significance of the words and conversations uttered by convict informants and those spoken in the colonial courts.

⁸⁹ Hirst, *Freedom on the Fatal Shore*, 52-53.

Chapter Five:

Stain or Stereotype? Informing and the Convict Voice

You mentioned just now you had received information respecting this intended insurrection of the convicts; from whom did you receive that information?

From the convicts betraying each other. As soon as ever they had attempted the mutiny, and the attempt had proved abortive, I got plenty of information then.

Was it the instigators themselves who came to you, to show their penitence?

No, not at all; fellows who came to betray, merely to make friends, and to get anything they could by it. All convicts are remarkable for that; if they could be true to each other, they would do wonders, but they cannot do it.

Are they remarkable for their readiness to betray each other?

Yes, they do so perpetually; it is a universal remark; I never knew a person employed about them who did not find it the case. They are the most treacherous beings on the face of the earth.¹

Introduction

On October 27th 1819, Major George Druitt, Chief Engineer of the rapidly expanding colonial settlement of New South Wales, gave evidence before John Thomas Bigge, the Commissioner of Inquiry charged with reporting on the ‘laws, regulations and usages of the settlements in the territory of NSW and its dependencies’.² Among other matters, Major Druitt was questioned about the safety of colonial citizens from large accumulations of convicts caused by the recent construction of the Hyde Park convict barrack.³ Druitt’s answer, despite a tendency to ‘gild the pill with blague, legerdemain and chicanery’, was refreshingly candid.⁴ Disarmingly, he

¹ Evidence of Major Thomas Wright to the Select Committee on Transportation, 1838 (The Molesworth Report), 2nd April, 1838, ‘Minutes of Evidence taken before the Select Committee on Transportation’, *BPP Volume Three: Transportation*, 135.

² Ritchie (ed), *The Evidence to the Bigge Reports: Volume One: The Oral Evidence*, 61.

³ As Chief Engineer for the Colony, Druitt was questioned as to the quality, progress and maintenance of colonial buildings. See: Ritchie (ed), *The Evidence to the Bigge Reports: Volume One: The Oral Evidence*, 14.

⁴ *Ibid.*

explained that, well before any unrest could eventuate, convicts' compulsion to 'split upon each other'—to inform—would furnish him all the information necessary to quell any potential trouble.⁵ For this colonial official, the surveillance and control of convicts rested, in part, on the words and whispers of those he was charged to police. In addition to a healthy disrespect for convict solidarity, Druitt's evidence reveals how most colonial officials, officers and guards explained the practice of convict informing: the cowardly, yet compulsive, acts of morally debased felons who, without any real concern for the welfare of their fellow-inmates, betrayed them to the authorities with astonishing ease. That Major Druitt's words conform largely to those of Major Thomas Wright, whose testimony to the Molesworth Inquiry into the Transportation system in New South Wales in 1838 opens this chapter, confirms that the attitudes of officials to the issue of convict informing, and to convicts' sense of loyalty more generally, remained consistent, and overwhelmingly condemnatory, over a long period of time.

Convict informing—the feeding of incriminating information to authorities, often at the expense of other convicts—has been a source of both fascination and anxiety for those attempting to understand the complex and ambivalent relationship Australians, and others, have with their

⁵ Druitt's evidence included the following: '*Do you consider there is any danger to the inhabitants and town of Sydney from the accumulation of so many bad characters and from any sudden irruption at night by forcing the constables and watchmen at the gate?* I do not consider there is any danger; as experience has shown me that I should have the certain means of knowing it beforehand and of preventing it. They invariably give information to me as they term it "*split upon each other*". I also consider them generally speaking to be of a cowardly disposition and easily put down although there are certainly some desperate characters amongst them'. The final report paraphrased this evidence in the following way: 'Major Druitt does not conceive that any danger to the colony has arisen, or is likely to arise, from the confinement of so many criminals in the same place. Conspiracies to cut out vessels from the harbour, or to effect escape, are frequently made there; but the accumulation of numbers seems rather to have afforded means of timely detection, than of the perpetration of outrage; and the chief engineer, and the superintendent, have always depended upon the treachery of accomplices for information respecting it, and have not been deceived in that expectation. The security, indeed, arising from the treachery of the convicts towards each other, is common to all establishments in which they are collected together'. See: Ritchie (ed), *The Evidence to the Bigge Reports: Volume One: The Oral Evidence*, 14. The term 'split' is also explained in James Hardy Vaux's 'Vocabulary of the Flash Language'. See: Vaux, *The Memoirs of James Hardy Vaux*, 268.

convict heritage.⁶ For those concerned with the dishonour—the ‘stain’—that accrued from having felonious forbears, the phenomenon of informing reinforces notions of the moral depravity and cowardice that has tainted convict history for generations.⁷ Indeed, for Peter MacFie, writing in 1988, some contemporary Tasmanians’ attitudes towards authorities, institutions and unfamiliar ‘others’ can be understood, in part, from an ingrained suspicion stretching back to the distant penal past.⁸ According to MacFie, a ‘contemporary xenophobia’ [sic] among residents of older, convict-settled towns within rural Tasmania, specifically in the Richmond district, is the product of this particular penal heritage.⁹ Apparently, a culture of fear and suspicion left over from the convict period has bred a mistrust of outsiders in these settlements. Conversely, a demonstrable distaste, or ‘hatred’, for the convict informer reinforces the ideal of robust clannishness—the ethos of mateship and solidarity—that is the preferred national character trait.¹⁰ Despite these nebulous and ill-defined genealogical, psychological and historical linkages, the spectre of informing, and its implications for how some Australians see themselves and make sense of their history is still powerfully present. As Grace Karskens notes, when writing of the convicts who sabotaged their fellow’s escape plans: ‘these were the original Australian doblers, loathed then and ever since’.¹¹

⁶ Alan Atkinson has written, in the context of debates concerning the way that colonial Australia has been presented in both popular and academic history writing, that: ‘Our thinking has always been shaped at least partly by an understanding that convicts are at the heart of how Australians know themselves. Convict history is vital for the moral dimension to national identity’. See: Atkinson, ‘Writing about convicts’, 17. See also: Karskens, *The Colony*, 292. Babette Smith rails against the condescension that she believes the transported convicts have been subjected to in official, popular and academic portrayals of penal-era Australia. See: Babette Smith, *Australia’s Birthstain*, 9-31. See also Laugesen, ‘The politics of language’, 31; *Convict Words*, vii-xxii; Macintyre, *A Concise History of Australia*, 70-71.

⁷ And this fascination with the so-called convict stain continues. See: Babette Smith, *Australia’s Birthstain*, 1-7.

⁸ MacFie, ‘Dobbers and cobbbers’, 122-123.

⁹ *Ibid.*, 123.

¹⁰ Richard White, *Inventing Australia*, 22-28.

¹¹ Karskens, *The Colony*, 292.

This chapter uses the phenomenon of convict informing—principally at those secondary sites of punishment and repression that isolated and concentrated convicts in large groups—to challenge what we perceive to be a particularly odious manifestation of the ‘convict voice’ in Australia colonial history. By analysing the aural dynamic within convict/authority relations within these punishment sites, an appreciation for the manipulated nature of much convict informing becomes apparent. In effect, when imagined as the noises produced by penal discipline, rather than the words spoken by convicts, the words and whispers of convict informants become collaborators in the maintenance of penal control. Evidence of the systematic production and abuse of convict information by authorities confirms how the phenomenon of convict informing was as much a product of an aurally sensitive penal system of espionage as the natural tendency of convicts to lie and dissemble. By imagining the phenomenon of convict informing through authority’s desire to control the soundscapes of penal sites, the mediated words spoken by convicts, interpreted and often *created* by penal authorities as the necessary sounds of convict disunion, were often convenient props in the maintenance of penal discipline.

Thus, this chapter attempts to rescue convicts from the condescension of historians who assume that convict informing was simply the cowardly actions of purely self-interested individuals.¹² Here, the focus is on the way that a brutal and systematic process of surveillance and control compelled convicts to inform upon their fellow inmates. The convict voices heard in the whispered, yelled, implied and inferred denunciations of others were, in fact, a product of the disciplinary environment in which some convicts found themselves.

¹² *Ibid.*

Of course, espionage and informing played a crucial role in the maintenance of convict discipline.¹³ Historian Alan Atkinson has neatly captured the nature of informing on the penal settlement of Norfolk Island in a striking gustatory metaphor:

A body of people can be made to work smartly enough on a diet of lies. Seasoned correctly, lies can meet a range of needs, though they always taste local. Indeed, however high-minded the hearers, the truth itself may be hard to take raw.¹⁴

Using the recollections of former prisoner Laurence Frayne, Atkinson reveals how convict discipline was maintained by a ‘system of espionage’, whereby receptive authorities would ‘feast upon’ the rumours, innuendo and gossip that occurred within such small communities to justify their cruel behaviour.¹⁵ Further, the encouragement of informing kept convicts isolated and suspicious: ideal conditions for the creation of a divided and manipulable convict population that were too preoccupied with betraying each other to contemplate any form of collective protest or spontaneous uprising. As John Hirst notes, evidence of convicts betraying and stealing from each other was a ‘reassuring depravity’ for those responsible for their supervision.¹⁶

Crucially, into this potent disciplinary broth, Atkinson (and Frayne) have assumed an equal culinary contribution from both keepers and kept. In other words, the convicts’ stories constituted the necessary ingredients for overseers and guards to concoct their surveillance regimes. The authorities on Norfolk Island are portrayed as clever opportunists who have exploited the natural tendencies of convicts to talk, rather than as the architects of the entire

¹³ Atkinson, *Europeans, Volume Two*, 197.

¹⁴ *Ibid.*

¹⁵ *Ibid.* Robert Hughes has also written of the experiences of Laurence Frayne on Norfolk Island. He quotes from Frayne’s recollections, whereby the ‘Indulgences’ received by convicts who informed on their fellow inmates ‘was only got by such traffic in human blood’. See: Hughes, quoting Frayne, in: *The Fatal Shore*, 463.

¹⁶ Hirst, *Freedom on the Fatal Shore*, 127.

charade. In effect, and to torture Atkinson's metaphor further, instead of convicts, and their voices, being seen as the ingredients in this disciplinary concoction, they have instead been mistaken for its co-creators.

This chapter does not assume that such an equality of contribution existed within these coercive disciplinary regimes. Further, while attuned to Alan Atkinson's contention that 'voices are the only real medium of the soul',¹⁷ it also does not assume that the words spoken by people are necessarily reflective of their true feelings or choices; or are not rather the creation of other powerful disciplinary forces. The phenomenon of convict informing, particularly at places of extreme physical and emotional repression such as Norfolk Island, is a case in point. While historians acknowledge that regimes of coercive physical punishment did operate, in part, on the basis of keeping convicts divided and suspicious of each other, they, nevertheless, are content to criticise, apportion blame and to question the moral fibre of convicts who chose to give the system what it, in many instances, demanded. In other words, they are treating the words spoken by convicts as acts of personal choice rather than the products of effective penal discipline. In so doing, the words spoken by convicts are divorced from the disciplinary context in which they are uttered, and the convict speakers are unfairly maligned as duplicitous and cowardly collaborators. By robbing the process of informing of its systemic and coercive character, the convicts caught up in its embrace become agents of free choice, and hence disreputable figures, rather than participants in coercive penal practices.¹⁸

¹⁷ Atkinson, 'Writing about convicts', 25.

¹⁸ Toni Johnson-Woods, 'Virtual reality', in Ian Duffield and James Bradley, *Representing Convicts: New Perspectives on Forced Labour Migration*, Leicester University Press, London, 1997, 54.

There has been a decisive turning away, within recent convict historiography, from the view that penal-era Australia was, in any meaningful way, the product of a systematic or overarching philosophy of government or penal control. Indeed, for Alan Atkinson, historical writing that has promoted the idea of colonial Australia as a monolithic edifice with ‘deep ideological consistency, rational, pervasive, self-driven, absolute in its ambitions’, has spawned interpretations of our past that assume a degree of organisational coherence that is simply not supported by the archival evidence.¹⁹ This ‘longing after system’, therefore, rather than reflecting actual colonial experience, satisfies a need among those who write on penal-era Australia for a sense of some overarching purpose within the transportation enterprise.²⁰ Rather than continue on within this narrow interpretive framework, Atkinson argues that we should analyse these claims of system more robustly, and to challenge the assumption of order and coherence that ‘hangs like a ghost within historical narrative, eager to show itself in flights of metaphor’.²¹ In short, the full complexity of convict transportation needs to be articulated, with its administrative and penal shortcomings and illogicalities revealed, and the sheer diversity of convicts’ colonial experiences given fresh geographical and social emphasis.

This work has started. In exciting attempts to reconstruct early colonial history from the perspective of convicts’ particular living conditions, historians such as Grace Karskens and James Boyce have used different methodologies, and have approached early Australia from new

¹⁹ Atkinson, ‘Writing about convicts’, 17-18.

²⁰ *Ibid.*

²¹ *Ibid.*, 18. See also Atkinson’s comments in the 2005 Eldershaw Memorial Lecture, where he speaks on the work of Anne Coote, whose PhD thesis concerned the development of multiple senses of nationhood within the different Australian colonies: ‘It is her contention that scholars have been too much dazzled by the wonderful symmetry involved in the idea of ‘a nation for a continent and a continent for a nation’. During the nineteenth century, she says, there evolved within New South Wales alone, despite its contracting boundaries, a strong sense of nationhood; of a people conversing among themselves and governed from a single capital, namely Sydney’. See: Atkinson, ‘2005 Eldershaw Memorial Lecture’, 195.

angles, to reveal a more nuanced analysis of Australia's European origins.²² As discussed in the introduction to this thesis, for Karskens, the natural environment—'topography, geologies, soils, climate, ecologies'—among other things, is placed at the centre of colonial development.²³ This provides a more 'holistic' interpretation, using not just our intellects but also our emotional and sensual faculties, to provide both a context, and an explanation, for settlers' and convicts' negotiations with the new land.²⁴ Similarly for Boyce, the specific environmental barriers and advantages encountered by Van Dieman's Land settlers is crucial to an enlarged appreciation of the settling experience.²⁵ In both of these accounts, however, the penal nature of both New South Wales and Van Dieman's Land respectively, is reduced to a germane, yet peripheral, consideration. For both authors, regimes of penal discipline within the early years of colonial settlement are portrayed as *ad hoc* and piecemeal affairs, brutal in some aspects, absent in others, and almost inconsequential to the ultimate shape that their respective colonies took.

This chapter recognises the importance of work that seeks to illuminate the diversity of lived convict experience in colonial Australia. It also celebrates the way that geographical, social and cultural considerations are being given more emphasis in the project of uncovering genuine convict lives as they were lived within the diversity of Australia's penal-era environments. However, it is also cautious in disregarding the practical and intellectual utility of thinking about the convict period in terms of 'system'. Especially in the context of convict informing, the idea of a system of coercive discipline can (still) help to contextualise the pressures that convicts

²² Karskens, *The Colony*; Boyce, *Van Dieman's Land*.

²³ Karskens argues that the: 'particular environments the settlers encountered are crucial in understanding their experience, and the sort of settlement that emerged; they are not peripheral or incidental, but core historical factors', Karskens, *The Colony*, 4.

²⁴ *Ibid.*, 5-6.

²⁵ Boyce, *Van Dieman's Land*, 11. For a review of Boyce's work see: Richard Flanagan, 'A terrible, beautiful history of hope', *Sydney Morning Herald*, February 16, 2008.

faced in their everyday negotiations with authorities. Further, without the idea of a systematic disciplinary regime the focus of enquiry falls more heavily upon the individuals within the system rather than on the system itself. In what in many ways seems to be a counter-intuitive result, a focus on the individual experiences of convicts tends to mask the broader disciplinary forces working upon such figures, which renders them less, not more, visible as personalities from the past. As such, and in both positive and negative ways, analysis becomes more about the personalities, emotions, motives and aims of nebulous colonial characters rather than their existences within a broader disciplinary milieu.²⁶

Further, to discredit the idea that penal Australia can be understood, at least partly, in terms of a ‘system’, serves to undermine the benefits that accrue from such intellectual approaches.²⁷ While Robert Hughes’ vision of the convict transportation experience as a giant, brutal and unbending ‘Gulag’ has received deserved criticism, the idea of systematic punishment, nevertheless, can still be useful in attempting to understand convicts’ complex negotiations with those aspects of

²⁶ Smith, *Australia’s Birthstain*, 1-7

²⁷ The notion of disciplinary regimes viewed in terms of overarching or complete ‘systems’ has been a useful metaphor to explain repressive regimes. See generally: Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850*, The Macmillan Press, London, 1978; Hay, Property, authority and the criminal law’, 17-63; Michel Foucault, *Discipline and Punish: The Birth of the Prison*, Allen Lane, London, 1977. For work relating to penal-era Australia see: Byrne, *Criminal Law and Colonial Subject*, (particularly the introduction); ‘Freedom in a bonded society: The administrative mind and the ‘lower classes’ in colonial New South Wales’, *Journal of Australian Studies*, 53, 1997, 51-58; J.M., Bennett, ‘The day of retribution: Commissioner Bigge’s inquiries in colonial New South Wales’, *The American Journal of Legal History*, 15, 1971, 85-100.

the system that used coercion, fear and suspicion to further various disciplinary aims.²⁸ Indeed, when a phenomenon such as convict informing is approached in this way, the words spoken by informers are not just the cowardly outpourings of weak individuals but also the product of an insidious and effective penal disciplinary regime. Thus, these convict voices were not only exploited but *created* by penal authorities in the maintenance of repressive disciplinary regimes. To despise the people who succumbed to this particular form of coercion seems unfairly harsh, unduly condemnatory, and an unfortunate form of historical condescension.²⁹

Hearing Convicts

As part of a reconceptualisation of convict informing, this chapter attempts to affirm, in the broader auditory and oral context of colonial Australia, what Bruce Smith asserts: that while the act of listening is a psychological and social art, the act of hearing is a physiological phenomenon.³⁰ In essence, we can control, to a large degree, what we listen to, but not what we

²⁸ Hughes has been widely criticised for his analogy of the transportation system with the system of terror and suspicion written about, most prominently, by Alexander Solzhenitsyn in his novels on the Stalin era's machinery of terror. See: Atkinson, 'Writing about convicts', 20-23. On literary attempts to create the lived conditions, as well as the feeling, of being trapped within systems of coercion and suspicion see: Alexander Solzhenitsyn, *The First Circle*, English translation published by William Collins and Sons, Ltd, and The Harvill Press, London, 1968. Writing of the effects of such systems of surveillance on issues of privacy and identity, Solzhenitsyn recounts the process by which inmates in some institutions received letters from their families and acquaintances: 'After he had read it to satisfy himself that it contained no sinful or seditious matter, the Security Officer would make a short speech and give the prisoner his letter with the envelope conspicuously open, thus ensuring that any lingering sense of privacy was destroyed. A letter that had gone through so many hands, and been so closely scanned for incriminating material before being disfigured by the black smudge of the censor's stamp, lost what little personal meaning it ever had and took on the aspect of an official document', 559; *The Gulag Archipelago, 1918-1956*, Collins/Harvill Press and Fontana, London, 1974.

²⁹ Ever mindful of E.P. Thompson's exhortation to beware 'the enormous condescension of posterity'. See: E.P. Thompson, *The Making of the English Working Class*, Random House, London, 1966. For a discussion of Thompson's impact upon the writing of history see: Robert W. Gordon, 'E.P. Thompson's legacies', *Yale Law School, Faculty Scholarship Series*, Paper 1353, 1994, http://digitalcommons.law.yale.edu/fss_papers/1353, viewed at 02/02/2013.

³⁰ Bruce R. Smith, *The Acoustic World of Early Modern England*, 6-7.

hear.³¹ The notion of listening as a social art is particularly important to any search for a ‘genuine convict voice from below’,³² as it highlights the importance of examining not simply the words, sounds and noises that escaped from convicts but also the crucial question of who was listening to, assessing and recording those sounds. Before a closer examination of convict informing within secondary penal punishment sites is attempted, therefore, the importance of language to the power structures of society, and the ways in which language can resonate differently, depending on the hearer, should be discussed.

As such, this section seeks to demonstrate that along with being both physiological and social in nature, the art of listening, particularly to convicts’ voices, was also an unavoidably ideological, disciplinary and political act. What colonial observers listened to and, more crucially perhaps, how they choose to interpret what they heard, had important implications for how colonial Australian society, and the convicts that made up a significant proportion of its population, were perceived. This chapter, therefore, examines how convicts were ‘heard’ by those who were responsible for their control and discipline. In effect, it is about the phenomenon of hearing and listening to convict noise, whether clinking chains, raised voices or idle chatter, and interpreting what those noises may have meant to those who heard them. By analysing the sounds of convicts from this perspective, this thesis adds another layer to our understanding of ‘the convict voice’: the voices that arose from the ears and imaginations of colonial authorities and observers of convict auditory culture. This, and the following, chapter, examine how the words and conversations used by convicts were heard, interpreted and often exploited by colonial officials.

³¹ Mark M. Smith, ‘Making sense of social history’, 174-175; ‘Onward to audible pasts’, xiii. See also: Jacques Attali, ‘Listening’, 10-11. For the importance of sound in the inculcation of terror see: Peter Bailey, ‘Breaking the sound barrier’, 25; R. Murray Schafer ‘Soundscapes and earwitnesses’, 3.

³² Maxwell-Stewart, ‘The search for the convict voice’, 77.

Included within this analysis, therefore—and of crucial importance to the way that convict language and words were interpreted by authorities—was how the language *sounded*. As Bruce Smith notes, language can be both meaningful and meaningless, depending on the agenda of the person hearing it.³³ Indeed, as important as what someone is saying is the ability of the receiver to interpret the words and sounds in the way that the speaker intends.

An appreciation of colonial auditory culture as both a mediated, and fiercely contested, terrain compels a reappraisal of the nature of convict language, and its potential use by authorities to further specific disciplinary aims. Further, when language is appreciated both as a means of verbal communication as well as a system of sounds and noises, a sharper focus upon the way that convict language was perceived by those who sought to control convicts' lives is warranted. This chapter on convict informing, and the following one on legal voices, extends the notion of authorities manipulation of convict noise into the very words and conversations of convicts, and attempts to re-examine how this language may have been interpreted by those with a vested interest in controlling convict lives. While the nature and use of convict language has been extensively covered within the historiography on colonial Australia, the *sound* of that language has been rather less covered.³⁴ Here, I attempt to reveal something of the language of convicts heard through the ears of penal authorities, an angle that may add nuance, and auditory depth, to our search for the convict voice.

³³ Bruce R. Smith, 'How sound is sound history', 311-312.

³⁴ On convict language see: Laugesen, 'The politics of language'; *Convict Words*; Lucy Frost and Hamish Maxwell-Stewart (eds), *Chain Letters: Narrating Convict Lives*, Melbourne University Press, Melbourne, 2001; Atkinson, *The Commonwealth of Speech*; McKenzie, 'Performing the peer', 218-223.

The importance of language in understanding societies, and their particular strata and social fissures, is captured neatly by Amanda Laugesen:

Language is a fundamental marker of identity and is often a site of contest. The use of language, from words to grammar to pronunciation, is often where class, racial and status struggles take place. Language is also a fundamental human function and shapes our perceptions and experience. Thus language is not a neutral means of communicating information but rather reflects and shapes a community's desires and struggles over the fundamental nature of its society and culture.³⁵

As Laugesen notes, in the context of penal-era Australia, language was a crucial signifier of class and status. Further, and particularly in the context of writing about the political, social and cultural impact of contests over language within colonial society, she asserts that colonial authorities and observers practiced a 'careful avoidance' of convict language, predominantly to distinguish themselves from convicts and to reinforce existing social hierarchies.³⁶ Specifically, she notes a dis-inclination among publishers and colonial commentators to write or indulge in this 'vile language'.³⁷ While Laugesen is correct to note the discordance between convict and middling language within the colony, it is also important to realize how engaged colonial authorities and middle class, literate observers were with convict language, especially recording and describing it in their own words.

Crucially, Laugesen's interpretation seems to under-appreciate the fact that, while language can be literally avoided, in the sense of not spoken directly, it may still carry important social and ideological meaning for people. In other words, we do not have to use language we perceive as anathema ourselves in order to condemn people that do. In a simple example, profanity does not

³⁵ Laugesen, 'The politics of language', 18.

³⁶ *Ibid.*, 31.

³⁷ *Ibid.*, 28.

have to be specifically engaged in in order to use it as a marker of exclusion, or oppression, in a given society or social context. In fact, rather than knowing little of the use of the language in question, reformers and officials, while admittedly reluctant to use such language themselves, actively engaged with it by attempting to decipher its broader impacts upon convicts and colonial society.³⁸

By emphasising the distance between middle-class observers and convict oral and auditory culture, however, Laugesen presents a picture, however un-intentioned, of convict language as a separate and unmediated aural phenomenon. In effect, in Laugesen's interpretation the language of convicts and the language of the rest of colonial society are largely separated, and each, while obviously decipherable to the other, exists within their own linguistic and oral worlds. In this way, she can assert that language set convicts apart, and represented an impenetrable linguistic boundary to their integration into mainstream colonial society.³⁹ The implications of this interpretation of the nature of colonial oral culture is that convict language existed 'untouched' by the meddling interventions of middling types whose roles, self-appointed or otherwise, was to comment on, and often demean, such language. This argument presents convict language as an almost unmediated phenomenon: giving it almost too much agency and power, while simultaneously excusing the sustained attacks upon such language by literate colonial observers.

³⁸ One of the most famous examples of the way language was used as a marker of status, for both Indigenous Australians and convicts was by Watkin Tench. See: Tench, *A Narrative of the Expedition to Botany Bay*, 49, 297. See also Michael Sturma, *Vice in a Vicious Society: Crime and Convicts in mid-Nineteenth Century New South Wales*, University of Queensland Press, St. Lucia, 1983, 1-8. For the interpretation of convict women's language as a reflection of their character (in the ears of authority) see: Deborah Oxley, 'Representing convict women', in Ian Duffield and James Bradley (eds), *Representing Convicts: New Perspectives on Forced Labour Migration*, Leicester University Press, London, 1997, 88-105. For a critique of Oxley's view of working class women see: David Kent and Norma Townsend, 'Deborah Oxley's "Female Convicts": An accurate view of working class women?', *Labour History*, 65, November 1993, 179-199. For Oxley's counter see: 'Exercising agency', *Labour History*, 65, November 1993, 192-199. See also Atkinson, *Europeans, Volume One*, 3-18; Harris, *Settlers and Convicts*, 197, 205.

³⁹ Laugesen, 'The politics of language', 22.

Thus, Laugesen seems to have confused the refusal of literate middle class observers and colonial authorities to *use* ‘vile language’ for a total disengagement from it, an analysis that excludes such authorities from using ‘profane’ language to construct social hierarchies. In fact, quite the opposite is the case upon examination of official and private correspondence between literate colonial observers. The colonial archive is replete with examples of an almost obsessive middle-class interest in convict language—especially the lewdness and profanity of convict women’s speech—as a way of either despairing of the quality of the convicts in question or affirming existing stereotypes of the degenerate convict woman and her unruly tongue.⁴⁰ An alternative argument sees profanity, whilst not actually *spoken* by colonial authorities, nevertheless being used by authorities and colonial era commentators to isolate and stigmatize the convict population. Contrary to Laugesen’s view, the ‘linguistic imperialism’⁴¹ exercised by colonial authorities involved engaging with, often to a degree bordering on obsession, rather than avoiding, convict language.

Contrary to arguments stressing the physical and linguistic distance between colonial authorities and ‘the vulgar world of the convicts’, primary accounts of the penal system indicate a healthy

⁴⁰ Cunningham, *Two Years in New South Wales 1827*, 315-316; Mudie, *The Felonry of New South Wales*, 122. For E.S. Hall, the absence of essential qualities was not merely a sign of convict women’s irredeemable natures, but also a threat to the moral health of the colony: ‘Thirty years observation on this head convinced me that no bar to the reformation of the convict was so great as convict women assigned on the same farm and in the same villages; and I believe that very few, if any, murders were ever committed in New South Wales without a convict woman being at the bottom of it. The female mind possesses less stamina for reformation than that of men; they are more the creatures of feeling, pleasure and appetite than the men. This is true wherever they may go; but to send them to the same colony as you send the men, seems to be madness’, See: Copy of a Letter from Mr. E.S. Hall to Earl Grey, Sydney, 1st August, 1849, ‘Letter to Earl Grey, relative to Transportation to New South Wales’, *BPP Volume Eight: Transportation*, 4.

⁴¹ Laugesen, ‘The politics of language’, 20.

preoccupation by middle-class observers with convict, and ‘lower class’, language.⁴² Travel writer Alexander Marjoribanks is a prime example.⁴³ Encountering the rough-hewn language of a bullocky during his travels in the colony, Marjoribanks went to the trouble of attempting to calculate, to the nearest thousand, the amount of times he [the bullock driver] used this ‘favourite oath’ in general conversation:

I once had the curiosity to count the number of times that a bullock driver used this word in the course of a quarter of an hour, and found that he did so twenty-five times. I gave him eight hours in the day to sleep, and six to be silent, this leaving ten hours for conversation. I supposed that he had commenced at twenty and continued till seventy years of age, and found that in the course of that time he must have pronounced this disgusting word no less than 18, 200, 000 times.⁴⁴

Further, colonial observers believed that language, and in particular the use of profanity by those transported to Australia, was an indicator of the future moral health of the colony. The Reverend Robert Cartwright, who administered religious instruction at Hawkesbury and Windsor, invoked the language of convicts to distinguish between colonial generations.⁴⁵ For Cartwright, language would dictate the likelihood of success for locally born citizens, compared to their parents. Describing convicts as ‘addicted to swearing’, Cartwright, nevertheless, held great hope for the offspring of these idle and disorderly colonists, provided they did not inherit their parents’

⁴² *Ibid.*, 31.

⁴³ Alexander Marjoribanks, *Travels in New South Wales*, Smith Elder and Co., London, 1847 <http://babel.hathitrust.org/cgi/pt?id=nyp.33433082447222;view=1up;seq=6>, viewed at 01/02/2010. See also Samantha Selinger-Morris, ‘A fine line in profanity’, *The Sydney Morning Herald*, March 5, 2011, <http://www.smh.com.au/federal-politics/society-and-culture/a-fine-line-in-profanity-20110304-1bhr7.html>, viewed at 05/03/2011.

⁴⁴ Marjoribanks, *Travels in New South Wales*, 57. For a contemporary analysis of the term ‘bloody’ in Australian culture see: Anna Wierzbicka, ‘Australian cultural scripts—bloody revisited’, *Journal of Pragmatics*, 34, 2002, 1167–1209. In her abstract, Wierzbicka states: “This paper focusses on “the great Australian adjective” bloody and it shows that far from being meaningless, the humble bloody is packed with meaning; and that by unpacking this meaning we can throw a good deal of light on traditional Australian attitudes and values.”

⁴⁵ Ritchie (ed), *The Evidence to the Bigge Reports: Volume One: The Oral Evidence*, 157.

‘vices’.⁴⁶ Further, attempts to control lower class and ‘criminal’ language, as a means of instilling respectable behavioural standards, had a long colonial pedigree.⁴⁷ Deborah Oxley reveals how, prior to transportation, prison reformers in England attempted to replace the ‘loud ribaldry and oaths’ from convicted women with a regime of ‘silence or edifying talk’.⁴⁸

Authorities and literate observer’s engagement with convict language is also apparent within the brutal and degrading environs of the Colony’s penal settlements.⁴⁹ Designed to isolate and punish colonial recidivists, and to epitomise the terror of penal transportation, these ‘abodes of wretchedness and despair’⁵⁰ produced unique and creative cultures of resistance and survival, often oral and auditory in nature, among their unwilling inhabitants.⁵¹ Thus, the use and abuse of language at these sites reflected the brutality of the colony’s secondary punishments regimes. For Roger Therry, colonial judge and witness to the depravities of these disciplinary regimes, the pernicious effect of secondary punishment was evidenced in convicts’ argot:

So perverse was their language that, in their dialect, evil was literally called good – and good, evil; the well disposed man was branded wicked, whilst the leader in monstrous vice was styled virtuous.⁵²

⁴⁶ *Ibid.*

⁴⁷ For example, Deborah Oxley discusses the efforts of prison reformer Mrs Elizabeth Fry and her associates from the Society for the Reformation of Female Prisoners through the control of language. See: Oxley, ‘Representing convict women’, 96-97.

⁴⁸ *Ibid.*, 97.

⁴⁹ Evans and Thorpe, ‘Power, punishment and penal labour’, 100; John Ritchie, ‘Towards ending an unclean thing’, 162; Castle, ‘Constructing death’, 60; John Hirst, ‘The Australian experience’, 254.

⁵⁰ William Ashton, ‘A Lecture on the Evils of Emigration and Transportation’, in Geoffrey Chapman Ingleton (ed), *True Patriots All or News From Early Australia as told in a collection of Broad-sides*, Angus and Robertson, Sydney, 1952, 195.

⁵¹ Evans and Thorpe, ‘Power, punishment and penal labour’, 100; Alan Frost, ‘A place of exile: Norfolk Island’, in Graeme Davison (ed), *Journeys into History: Australia’s foremost History Writers reflect on the Landscape of our Past*, Weldon Russell Publishing, Sydney, New South Wales, 1990, 79; Therry, *Reminiscences*, 19; Hirst, *Freedom on the Fatal Shore*, 28; O’Conner, ‘A zone of silence’, 135; Maxwell-Stewart, ‘The rise and fall of John Longworth’, 96-114; Bateson, *Patrick Logan*, 109.

⁵² Therry, *Reminiscences*, 19.

For Therry, this language is the incomprehensible, and unsettling, prattle of degraded humanity. As revealed in chapter two of this thesis, Therry, a staunch critic of the penal system and its brutality toward convicts, has interpreted evidence of such oracy to argue for the inherently negative and brutalizing effects of penal Australia's disciplinary regimes. While Therry's motives for revealing such conditions are inextricably linked to his politics, the crucial point is that Therry did 'hear' the convict language within these settlements in this way. For Therry, while he may have interpreted the use of such language as a sign of the repugnance of the secondary punishment system itself, the important point, for the arguments in this chapter at least, is that he, like most of his middling contemporaries, heard and used such convict voices and language within the prism of his own particular worldview and political agenda.

Alternatively, Laugesen, within the context of a modern interpretation of the nature and use of convict language within penal settlements, has shown how the deliberate inversion of familiar idiomatic conventions by Norfolk Island convicts could engender a sense of control or agency within a brutalizing environment.⁵³ In other words, an invented argot, or private language, provided a sense of control in a capricious setting. Thus, in ways very similar to that of Roger Therry over 150 years ago, the voices of convicts have been appropriated to make a broader point about the particular system of penal discipline practiced in the colony. That Therry interpreted the nature and content of such convict language in more ephemeral, aural terms, compared to Laugesen's focus on the content and meaning of the words used, affirms the importance of the aural dynamic in attempting to understand convict and penal society.

⁵³ Laugesen, 'The politics of language', 29.

Crucially, both Therry, as contemporary (penal-era) observer of colonial life, and Laugesen, as historical and linguistic interpreter writing generations after the words were spoken and written down, reach profoundly different views as to the potential meaning that such convict words potentially convey. Therry's interpretation is at once both horrified and despairing, the interpretation of an observer convinced of the hopelessness of the convict lot within such settlements and convinced of their profoundly negative effect.⁵⁴ Alternatively, Laugesen interprets such words—and the very inversionary dynamic that so shocked Therry—as an essentially positive example of resistance and resilience of people on the edge of physical and emotional oblivion.⁵⁵ In effect, the exact words used by convicts could be, and were, interpreted by observers to explain their own versions of the punishment regimes within colonial Australia, and the attitudes of people unfortunate enough to be enmeshed within them.

These different interpretations further a major argument of this chapter, and thesis generally: that convict language, whether used in ways that condemned them; or lauded their resistance; or demonstrated their linguistic ingenuity, was, and is still, a phenomenon whose interpretation is an inherently mediated process. In other words, how we choose to view the nature and effect of convict words and language arise, in large measure, from our view of the relative freedom or effectiveness of convict lives. This acknowledgement, if not particularly revolutionary, at least tends to remove the interpretation of convict language away from a 'resistance/supplication' pendulum to a more nuanced understanding of how convict language was, or could be, manipulated within certain penal contexts. That both Roger Therry and Amanda Laugesen can have very different interpretations of what they heard or read of convict words neatly makes this

⁵⁴ Therry, *Reminiscences*, 18-19.

⁵⁵ Laugesen, 'The politics of language', 29-30.

point: that convict language, or *any* language heard by someone else for that matter, is necessarily funnelled through a process of judgment and appraisal in the ears and mind of the hearer or reader. It is to this phenomenon, within the context of the auditory culture of the colony's penal stations, that we now turn.

'Systems' of espionage

Penal-era Australia, and in particular those settlements, such as Norfolk Island, Moreton Bay and Macquarie Harbour, that concentrated convicts in brutalising conditions, hummed with the sounds of innuendo and plot.⁵⁶ For Surgeon-Superintendent Peter Cunningham, the culture of informing on Norfolk Island was so pervasive and sophisticated that the notion that crimes were being committed on the island without the knowledge of penal officials was simply inconceivable. Speaking of crimes such as 'contrived convict murders', discussed extensively in chapter one of this thesis, Cunningham confidently parlayed enquiries into whether a dark underbelly of brutal depravity existed within penal settlements, under the noses of guards or overseers.⁵⁷ Rather than argue that such acts did or did not happen, Cunningham relied on the prevalence of informing on the island to confidently assert that such crimes did not take place. In other words, such was the sophistication and saturation of informing that, if he did not hear of such murders occurring, then they did not happen. Interviewed by the 1832 Select Committee inquiring into the nature of secondary punishment in the Colony, Cunningham revealed something of the claustrophobia of Norfolk Island, in both its geography and systems of discipline and surveillance:

⁵⁶ Hughes, *The Fatal Shore*, 463; Frost, 'A Place of exile', 79; Doug Munro, 'From Macquarie Harbour to Port Arthur: The founding of a penal settlement', *Tasmanian Historical Research Association: Papers and Proceedings*, 36(3), September 1989, 116.

⁵⁷ Evidence of Allan Cunningham, 13th February, 1832, *BPP Volume One: Transportation*, 36.

183. If such practices had been prevalent, would you not have heard of it from the Commandant? Yes, from everyone; and the individuals would have been brought forward.

186. It depended upon the assertion of those convicts? Yes. I was there from May till September, and I firmly believe that no crime of that character was committed. It must have been spoken of; for as the convicts had not confidence in one another, they would have told immediately.

188. If the report originated merely in the convicts themselves, how is it possible that a report originating with them should get to the Commandant's ears? I do not recollect how it got to his ears, but everything is heard in such a small place as Norfolk Island.⁵⁸

The idea that convicts were somehow predisposed to inform—that they, in addition to the many incentives presented by authorities to betray their fellow inmates, were naturally inclined to be duplicitous—is not a new phenomenon. Nor is it one that has completely disappeared from the historiography of penal-era Australia.⁵⁹ Indeed, a central tenet of officials' beliefs in the moral pliability of convicts was their concomitant belief in their propensity to inform on their fellow inmates. In other words, an inability to keep counsel or show even a modicum of solidarity was a sign and a symptom of a broader moral malaise or deficiency within these felons. Even if convicts wanted to control their tongues, their innate and irredeemable moral degeneracy prevented them from doing so.

This can be seen in the attitudes of authorities at the time. For Major George Druitt, whose evidence to the Bigge Commission into the state of the Colony in 1822 is touched upon in the introduction to this chapter, convicts were not just duplicitous, but compulsively so. In addition

⁵⁸ *Ibid.*

⁵⁹ MacFie, 'Dobbers and cobbers', 112-127.

to wanting to inform for material gain, he also hints at another reason for their treachery. When asked to discuss the degree of corruption and collusion that exists between convict workers and their overseers, Druitt introduces the notion that convicts were, in fact, predisposed to inform on their comrades:

Do you not think it very possible and does it often happen that an overseer may allow a convict under his charge to escape from his gang and work out for himself receiving his ration as a reward for this connivance at the end of the week? I do think it very possible and I have sometimes found that an overseer has connived at the absence of his men, the only means I have of detecting it is from the declarations of other convicts of the same gang who are always found ready to make any unfavourable report against their overseers; and so strong is this disposition amongst the convicts that I think that the abuse does not exist to any great extent.⁶⁰

What is striking about the above passage is the way that corruption within the work practices of the colony's overseers and other authorities has been used to denigrate the characters of those convicts caught up in the system of preferential working conditions and favouritism. In other words, the sly way that Druitt answered Bigge's question neatly side-stepped the role that colonial and penal authorities played in the creation of an environment where informing was an accepted, and indeed desired, practice.

A crucial element missing from Druitt's account of convicts' 'propensity' to inform is the pressure that the penal system put on such characters. It is impossible to know whether Druitt believed his own words, and that his testimony before the Bigge Commission was a deliberate separating of the actions of convict informers and the physical and psychological pressures that were brought to bear upon prisoners. What is more certain, however, is that convict overseers, as well as those they were in charge of, received significant incentives to inform upon their

⁶⁰ Ritchie (ed), *The Evidence to the Bigge Reports: Volume One: The Oral Evidence*, 28.

charges.⁶¹ Particularly in the harsh conditions of isolated penal settlements, inducements to inform were extremely effective. In a letter to his wife, former Newcastle prisoner John Slater writes of the conditions facing both convicts and their keepers, and what the provision of information could mean for those prepared to supply it:

A constable obtains half a ration more than the common man; so does an overseer and all petty officers, therefore in the midst of poverty, such an indulgence and an exemption from the labour of the place, makes them vigilant and dutiful, even sometimes to more than strict propriety, for they are very often found in malicious lies and enmity against their fellow prisoners with the view of favour.⁶²

That such systems of informing and surveillance existed during this time was a well-known, indeed celebrated, fact within the various colonies. For former Van Dieman's Land Governor George Arthur, the maintenance of effective discipline within his sphere of influence included the overt favouring of those convicts who were prepared to inform upon their fellow inmates. Examined before the Molesworth Commission on 30th June 1837, Arthur reveals not simply that informing was an organic, or *ad hoc* part of surveillance within Van Dieman's Land, but that it was factored into the formal system of punishment and reward that underpinned the colony's social structure. When asked about the potential for corruption between convict overseers and those whom they were tasked to control, Arthur confidently asserted that the inducements presented to those prepared to inform outweighed any feelings of solidarity or concern between inmate and overseer:

⁶¹ Atkinson, *Europeans Volume Two*, 197-198; John Vincent Barry, *Alexander Maconochie of Norfolk Island: A study of a pioneer in penal reform*, Oxford University Press, Melbourne, Victoria, 1958, 124-125.

⁶² John Slater, 'An account of the manners and employment of the convicts, in a letter from John Slater, Sydney, new South Wales, April 27 1819', in Geoffrey Chapman Ingleton (ed), *True Patriots All or News From Early Australia as told in a Collection of Broadsides*, Angus and Robertson, Sydney, 1952, 82.

4457. Then you must trust entirely, in this system of punishment, to the vigilance of these constables taken from the class of convicts?

Yes; and I think, in a great many instances, the system may be considered a good one, inasmuch as they have all very strong inducements to give information. It is recorded in the white books of the colony, and when a prisoner has been a constable and applies for indulgence, all those matters are brought forward in his favour; and the anxiety with which they look forward to any remission of their sentence, either that which is conveyed by a ticket-of-leave, or much more by emancipation, is a sufficient inducement, generally speaking, to lead these men to do their duty in a very watchful and careful manner.⁶³

Evidence of sophisticated systems of payment and preferential treatment for those convicts and overseers willing to inform on their colleagues exists, not just in the correspondence between particular individuals within the colony, but in documents that explain and justify how the expenses of the colony were distributed. In a collection of documents titled ‘Correspondence relative to the finances of New South Wales’, one set of records contains an ‘estimate of the probable expenses of the Department of Public Works and Buildings, forming a charge on the Treasury of New South Wales, for the year 1840’.⁶⁴ Essentially, this is a document that outlines, in minute detail, the financial health of the colony, as well as an account of where and how the public wealth that the colony created, and was received by the British Treasury, was spent. Amid the reams of columns and figures that account for the cost of running the Colony’s ‘Department of Public Works’, ‘Judicial Establishment’, ‘Police and Gaols’ and ‘Church Establishments’, is a report on the efficiency, both in terms of finances and the control of convicts, of the Colony’s ‘Police Force’.⁶⁵

⁶³ Evidence of Colonel George Arthur, 30th June, 1837, *BPP Volume Two: Transportation*, 303.

⁶⁴ Estimate of the Probable Expenses of the Department of Public Works and Buildings, Forming a Charge on the Treasury of New South Wales, for the year 1840, ‘Correspondence relative to the Finances of New South Wales’, *BPP Volume Six: Colonies*, 24-29.

⁶⁵ *Ibid.*

In the discussion of how to improve the efficiency of the police within New South Wales, the report details how convict informing, and the financial rewards that are given in exchange for information, is part of the formal disciplinary structures of some parts of the colony:

It appears from the evidence that a practice prevails throughout the several benches of the colony, of causing all informations to be drawn in the name of the chief constable of the district, without reference to the quarter from which the information may have been actually obtained. In conformity to the provisions generally of the Acts under which fines are imposed, one-half goes to the informer, and, consequently, under this system, it is paid to the chief constable, whose emoluments are thus in many instances rendered greater than those of the police magistrate under whom he acts...⁶⁶

This evidence, formally documented in an official assessment of the Colony's finances, reveals an overt system of payment for information from convicts whose anonymity is maintained through a process of subsuming their rewards within the general system of apportioning fines within the colony. In other words, a system existed, for which the Treasuries of both New South Wales and Britain were aware, of monetary payment for information provided in order to help keep the peace in the colony and improve the efficiency of the colonial police force.

Some convicts, of course, steadfastly refused to engage in a practice that they deemed a contemptible betrayal of solidarity or inmate principle. However, the evidence suggests that a significant amount—albeit reluctant to admit it—capitulated to the demands and inducements of

⁶⁶ Appendix, Scourgers, 'Correspondence relative to the Finances of New South Wales', *BPP Volume Six: Colonies*, 81. Paula J. Byrne has also shown how a system of informing and espionage was not limited to the control of convicts: 'The existence of informers was encouraged by the reward system. It came into operation after the arrest of the bushrangers, and rewards were given to receivers or informers who gave information of the whereabouts of bushrangers when they were seen at a neighbour's or a fellow-servant's house. All of this information was denied by the receivers; some cases were acquitted and bear all the signs of false accusation'. See: Byrne, *Criminal Law and Colonial Subject*, 146.

such systems.⁶⁷ For Owen Suffolk, who boldly asserted, when pressed to inform, that ‘there were depths of baseness to which I could never descend’, the favours and rewards earned through ‘sneaking’ and spying proved too great a temptation.⁶⁸ Consigned to Norfolk Island in the early 1830s, this adept and valuable informant ‘diligently scrutinised the whole convict body’, and, according to Toni Johnson-Woods, ‘likely exaggerated his diligence to impress the authorities’.⁶⁹ Such behaviour was a common source of anxiety and bitterness for those convicts who provided testimony of their experiences in penal Australia.⁷⁰

Perhaps not unexpectedly, such sophisticated systems of espionage and reward bore fruit. Evidence abounds within the colonial archive of convicts bemoaning the level of informing and duplicity that infected sites where such behaviour was encouraged. For notorious convict and bushranger Martin Cash, the duplicity of his fellow inmates precluded him from sharing his plans for escape. As Cash also hints, often the consequences of convicts sharing such secrets, if and when they did, were serious, with the unfortunate victim of a well-placed word wearing its effects upon (his) back:

I now began seriously to arrange my plans, as during the whole time I was on Port Arthur I continued to make observations, letting nothing slip that I thought might in any way facilitate my escape. As yet, I had seen no person to whom I could entrust my secret, it being an everyday occurrence for one man to turn round upon another and to inform the authorities of his intention to abscond, which entailed nearly the same amount of punishment as if he actually committed the offence. This, of course, caused distrust and suspicion to exist among my unfortunate class.⁷¹

⁶⁷ Ward, *The Australian Legend*, 29.

⁶⁸ Johnson-Woods, ‘Virtual reality’, 43, 56-57

⁶⁹ *Ibid.*, 56.

⁷⁰ Conlon, ‘Mine is a sad yet true story’, 50-51.

⁷¹ Cash, *The Uncensored Story of Martin Cash*, 102.

For Cash, it was the danger of his fellow inmates relaying credible information, that is, information that was received from an external source and believed to be true that compelled him to use caution. For others, however, the information did not even have to be true for it to form the basis of an exchange between convict and overseer.

Indeed, evidence of concocted information supplied by convicts exists in recollections of penal society.⁷² Infamous Norfolk Island prisoner Thomas Cook relates how this system of espionage operated. In terms similar to Martin Cash, Cook reveals the importance of caution when holding dangerous information or plans for escape, yet he also introduces a new dynamic to the way that the system of informing worked at these places. Of particular interest is his assertion that convicts—inmate and overseer—concocted stories of nefarious deeds in order to ‘keep up’ with the thirst for information of penal authorities. In other words, the system of informing that existed on Norfolk Island was instigated and encouraged by officials, whose desire for information taxed convicts’ ability to either provide or concoct it. This dynamic provides an important balancing view of the so-called ‘propensity’ or disposition of convicts to inform upon their colleagues:

This was the place in which I was doomed to pass the remainder of my days, and black despair for a time took possession of my Soul. Soon after my arrival on the island, I found circumspection indispensable to escape, if possible, the Machinations of the unprincipled characters employed by the Underlings in Office to trepan their fellow prisoners into some indiscreet act. Numerous were these despicable treacherous characters, who with the hope of preferment, or for a much less inducement, a stinking bit of tobacco, would retail to the Underlings every trifling occurrence of the day—such was

⁷² Atkinson, *Europeans, Volume Two*, 197-199; Conlon, ‘Mine is a sad yet true story’, 43-73; Bushman, “Jack Bushman”: *Passages from the Life of a “Lifer”*, Chapter 3, 2; Hughes, *The Fatal Shore*, 463.

the rage for informations, that to keep pace with their employers wishes, themselves were compelled to hatch plots and form conspiracies, into which the unwary were ensnared.⁷³

Further, Cook recalled the extent to which convicts would go to provide informational fodder for receptive authorities, including deliberate self-mutilation. In what he describes as ‘machinations so diabolical’, Cook recounts how an aggrieved convict, Morgan, concocted, and subsequently ‘uncovered’, a mutinous plot to overthrow the guard at Norfolk Island.⁷⁴ Thus, two men, Morgan and Beattie, gave information to the guard at Norfolk Island that a mutiny among the convicts was imminent. Morgan, who admitted to ‘forcibly’ taking the list from a convict named Farrell, produced a list of 120 names, purporting to be those of the mutineers. To ensure that the credibility of his story was maintained, Morgan displayed bodily wounds, purportedly inflicted by Farrell during their scuffle. As a result of this damning evidence, two of the alleged mutineers, Farrell and Breehan, were chained and imprisoned.

Doubting the veracity of Morgan’s story, and displaying the natural suspicion of someone who had witnessed the desperate measures taken by some convicts to inveigh themselves to their guards, Cook investigated the incident described by Morgan. Citing the testimony of another prisoner implicated in the mutiny, along with other ‘forcible evidence’, Cook provided an alternative account of what transpired: Morgan, seeking favour with the Norfolk Island authorities, forged the list of alleged mutineers and stabbed himself to ensure that he was believed.⁷⁵ Cook’s revelations did not save the victims of Morgan’s deceit however, as both the

⁷³ Thomas Cook, ‘An Exile’s Lamentations’, in Hugh Anderson, *Farewell to Judges and Juries: The Broadside Ballad and Convict Transportation to Australia, 1788-1868*, Red Rooster Press, Victoria, 2000, 482.

⁷⁴ *Ibid.*, 482-483.

⁷⁵ *Ibid.*

‘calumniating Wretches’ received three hundred lashes.⁷⁶ For Cook, Morgan’s actions exemplified the brutality and futility of Norfolk Island, where convicts, devoid of both hope and comfort, sought gain by implicating their fellow inmates in various plots and mutinies.

We have seen in previous chapters of this thesis how flogging was used to encourage convicts, allegedly guilty of various crimes and misdemeanours, to ‘confess’ to their (unproven) crimes. Essentially, convicts would be flogged repeatedly until what they had allegedly stolen was returned, or what they had allegedly done was acknowledged. This use of corporal punishment, of course, was both illegal and barbaric, and was highlighted in chapter four of this thesis to unsettle the notion that colonial flogging was a dispassionate, measured and (always) legally monitored phenomenon. In a similar way, systems of convict informing, and the creation and dissemination of information for disciplinary purposes, were also supported by the infliction of corporal punishment. For former colonial surgeon John Barnes, interviewed by the Molesworth Commission in Australia on 12th February 1838, the use and abuse by authorities of convict information was both a necessary, and completely arbitrary and shambolic, aspect of penal discipline.⁷⁷

Giving evidence of the nature of convict supervision at the Macquarie Harbour penal station in Van Dieman’s Land, Barnes recalled how the system operated. Commenting upon the fact that

⁷⁶ *Ibid.*

⁷⁷ Evidence of surgeon John Barnes, Esq., 12th February, 1838, *BPP Volume Three: Transportation*, 44-45. Corruption within the relationships between authorities and convicts was also widely commented upon by the 1822 Bigge inquiry: ‘It is the opinion of Major Bell, the acting engineer at Hobart Town, and of Lieutenant Vandermeulen, acting engineer of George Town, that a convict overseer dares not inform against any of his men for misconduct, and that such a proof of his integrity, or an exertion of his authority, would be visited by the enmity of the whole of his gang; to a certain degree that is true; but, on the other hand, it must be observed that many of the convicts, both at Hobart Town and in New South Wales, have been punished on the information of the overseers alone; many also for insolence toward them, and a few for resistance’. See: ‘Report of the Commissioner of Inquiry into the State of the Colony of New South Wales, 1822’, (*The Bigge Reports*), *BPP Volume One: Colonies*, 59.

many overseers and constables were convicts themselves, Barnes emphasised the importance of the commanding officer at Macquarie Harbour maintaining a strict vigilance over convicts, lest their tendency to concoct information result in undeserving convict punishments. Indeed, if such authorities ‘listened to every tale that those men chose to relate to him’, many convicts would be unjustly flogged.⁷⁸ Recalling one particular convict informant, ‘Anderson’, who Barnes asserted ‘seemed to delight in seeing his fellow-convicts punished’, the amount of flogging caused by this one individual attained almost epidemic proportions. ‘Scarcely a day passed over’, Barnes noted, ‘without four or five, and in some cases 16 or 17 individuals, being flogged upon the report of that man’.⁷⁹ While justly unsettled by the effects of this convict’s actions, Barnes, nevertheless, provided an excuse, of sorts, for Anderson’s behaviour:

388: Then were the convicts completely at the mercy of those convict constables? Completely; if any act of insubordination took place, and it was not reported to the officer, the constable certainly would be flogged; it was the most tyrannical discipline that can be imagined which was maintained at Macquarie Harbour.⁸⁰

While content to blame the preponderance of violence at Macquarie Harbour on the loose tongue of the convict ‘Anderson’, it is important to note that it was not Anderson who was doing the flogging in the above scene. Rather, it was the officials responsible for order and discipline at the site who acted upon the information provided to them with corporal punishment. Barnes also acknowledges that authorities at Macquarie Harbour faced a choice in these situations: to either believe everything that came their way and punish accordingly, or to exercise discretion and balance in the interpretation of convict information. The added fear of convict overseers themselves being flogged for *not reporting* such information, irrespective of its veracity, creates

⁷⁸ Evidence of surgeon John Barnes, Esq., 12th February, 1838, *BPP Volume Three: Transportation*, 45.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

a disciplinary structure that guaranteed the infliction of punishment for any perceived form of convict duplicity. The breadth and sophistication of such a system necessarily challenges notions of the irredeemably duplicitous and cowardly convict as the primary agent in such systems of espionage.

Convict words and the artificiality of informing

To assert that convicts were the primary drivers of systems of informing within the colony assumes, among other things, that colonial officials trusted the stories, and the words, that convicts uttered in supposed furtherance of their aims. This is especially so if we are to believe that the authorities that received and acted on such stories were simply the passive recipients of convict information, and simply reacted to the information received rather than playing an active part in its creation and dissemination. Contrary to such assumptions, evidence reveals that colonial authorities did not take the information of convicts particularly seriously. For Major George Druitt, who, admittedly, did not think highly of convicts' physical or moral courage, the information received regarding his own safety was frequently ignored. Giving testimony before the Bigge Commission, Druitt reveals his attitude toward information provided to him that directly concerned his safety in the colony:

*Have you ever been attacked by the convicts in Government employ and have you ever had reason to apprehend their resentment? I have never been attacked by them, but my House has been broken open and my property stolen. I have frequently received intelligence of their intention to destroy me, but I never credited it.*⁸¹

In other words, while Druitt received information, some or most of which was presumably supplied by convicts, he chose not to believe much of it. While it is probably safe to assume that

⁸¹ Ritchie (ed), *The Evidence to the Bigge Reports: Volume One: The Oral Evidence*, 38.

Druitt did not wish to reveal any sense of fear before the Committee, nonetheless, the casual discarding of such information shows the seriousness with which it was taken.

Adding to this dismissal of convict words and threats was the commonly held perception among the convicts' keepers and other colonial officials that their words could not be trusted. As Catie Gilchrist notes:

The stereotype of the cunning criminal and his 'artful dodges', his incapacity to speak the truth and at times, his willingness to turn 'kings evidence' meant that dishonesty and deception, perjury and treachery informed most contemporary judgements.⁸²

That convict words were held in such low esteem tends to undermine the notion that penal officials were content to take those words on face value and to structure systems of punishment around the testimony of such demonstrably unreliable witnesses.

Admittedly, convicts own oral cultures, and flexible attitudes to truth telling, added immeasurably to the stereotypes that Gilchrist highlights. Indeed, the very language used by convicts, especially the argot, or 'flash language', that distinguished them, added to the perception within the middling classes that convicts were inherently untrustworthy.⁸³ James Hardy Vaux, an 'educated convict' who spent time in New South Wales after committing fraud in England, explained the intricacies of convict criminal-class language in his dictionary of the felon's cant.⁸⁴ Significantly, for those convicts familiar with the flash tongue, the very word 'speak' signified the carrying out of nefarious deeds. As Vaux notes, to 'speak' was to commit a robbery, whereas to 'speak to' a person:

⁸² Gilchrist, 'A life of noisy riot', 38.

⁸³ Vaux, *The Memoirs of James Hardy Vaux*, xv-xviii.

⁸⁴ *Ibid.*, 225-280.

Is to rob them, and to *spoke to* any article, is to steal it; as, I *spoke to the cove for his montra*; I robbed the gentleman of his watch. I *spoke to that crib for all the wedge*; I robbed that house of all the plate. I *spoke to* a chest of *slop*; I stole a chest of tea. A thief will say to his *pall* who has been attempting any robbery, “Well, did you *spoke*? Or, have you *spoke*?” Meaning, did you get any thing?⁸⁵

With this history of verbal trickery, it is perhaps unsurprising that penal authorities approached convict words with some caution. Indeed, and as the discussion of convict oracy at Norfolk Island earlier in this chapter affirmed, the language that convicts used could be a double-edged sword: for all of its inventiveness and subversiveness, it did engender an understandable suspicion amongst colonial authorities. This dual phenomenon will be more fully explored in chapter six of this thesis, *Colonial Insiders: Convicts and the Law*. For one-time police superintendent of the Hyde Park barracks in Sydney, Augustus Earl Slade, whose rich descriptions of the flogging of convicts in chapter four of this thesis helped Governor Bourke maintain his political credibility, convicts were simply not to be trusted. While an enigmatic colonial character in his own right,⁸⁶ Slade, nevertheless, put forward his views on the relative honesty of convicts before the 1837 Molesworth Enquiry into the transportation system:

1094. Is perjury common with convicts?

They are not to be believed. I would rather take the word of free men of irreproachable character than the oath of all the convicts in New South Wales.

1098. In the majority of cases is convict evidence received?

⁸⁵ *Ibid.*, 267. Conversely, Vaux also notes what it meant in the vocabulary of felons to be ‘*Spoke to*’: Alluding to any person or place that has been already robbed, they say, that place, or person, has been *spoke to* before. A *family man* on discovering that he has been robbed, will exclaim, I have been *spoke to*; and perhaps will add, *for* such a thing, naming what he has lost. *Spoke to upon the screw, crack, sneak, hoist, buz*, etc, means robbed *upon* either of those particular *suits* or *games*. Upon any great misfortune befalling a man, as being apprehended on a very serious charge, receiving a wound supposed to be mortal etc, his friends will say, Poor fellow, I believe he’s *spoke to*, meaning it is all over with him’. See: Vaux, *The Memoirs of James Hardy Vaux*, 268.

⁸⁶ McKenzie, *Scandal in the Colonies*, 106.

Yes; but I always received convict evidence with the greatest caution.⁸⁷

For Slade, this testimony was not simply the result of an unreflective bias against convict words. Further into his evidence before the Molesworth Committee, he recalled an incident where a convict witness had perjured himself before the New South Wales Supreme Court, in aid of a young horse thief. Slade hints that this was not an isolated event, an opinion perhaps encouraged by the blatantly ‘leading question’ asked by Commission chairman William Molesworth himself:

1102. [Chairman] Is there a traffic in false swearing?

I have always understood so; and I found my opinion upon the following circumstances: I committed a ticket-of-leave man for giving false evidence before the Supreme court, in which a colonial lad had been acquitted of horse-stealing; the evidence he had before given at the police office was so strong that the lad must have been convicted, but he contradicted his words before the judge, upon which the attorney-general threw up the case.⁸⁸

Despite a pervasive belief, and abundant evidence, that convicts’ words and voices were not to be trusted, penal and colonial officials nevertheless employed them in the maintenance of penal authority. In other words, while colonial authorities or penal guards did not trust what convicts said, their words, nevertheless, when used against fellow inmates, were frequently employed. Thus, reinforcing the artificiality of the trading of information between convicts and their guards within penal surveillance structures was authority’s arbitrary, and strategic, use of convict testimony. While Catie Gilchrist, among others, has noted the basic distrust of convict voices by colonial officials, evidence of the use of convict testimony to repress and survey penal

⁸⁷ Evidence of Mr E.A. Slade to the *Molesworth Commission*, 25th April, 1837, ‘Minutes of Evidence taken before the Select Committee on Transportation’, *BPP Volume Two: Transportation*, 69.

⁸⁸ *Ibid.*, 70.

populations is nonetheless present in recollections of colonial Australia.⁸⁹ Clearly, to use and exploit information that is perceived to be tainted by convict ‘dishonesty and deception, perjury and treachery’,⁹⁰ is to fail the same test of honesty and transparency that condemned convicts in the eyes of their keepers. In other words, to use the very information that is supposedly prejudiced by the nefarious nature of its conveyers, for the purposes of convict surveillance and repression, reaffirms the strategic nature of penal authorities’ use of such information. In effect, a suspension of the normal suspicion of convict voices was engaged in when it suited authority’s particular disciplinary circumstances.

For some officials, this lesson in hypocrisy had to be spelt out. In discussions of his possible return, around 1837, to Norfolk Island to administer to his Roman Catholic flock, the Reverend Thomas Atkins was advised by Governor Bourke, in mildly condescending tones, on the appropriate handling of convict complaints:

His Excellency trusts that, should you return, you will perceive the impropriety of adopting, without previous investigation and corroboration, the complaints of prisoners on the Settlement against those placed over them.⁹¹

In effect, Bourke emphasises that complaints made by convicts should not be taken on face value; rather, a healthy scepticism toward all convict testimony should be the prevailing approach when interacting with the Norfolk Island inmates. Juxtaposed against this otherwise sage advice is evidence of colonial officials accepting, and using, uncorroborated convict

⁸⁹ For the verbal artistry of convicts in colonial courtrooms see: William Westbrooke Burton, *The State of Religion and Education in NSW*, J. Cross, London, 1840, 257. See also Mortlock, *Experiences of a Convict*, 70; Gilchrist, ‘A life of noisy riot’, 38.

⁹⁰ Gilchrist, ‘A life of noisy riot’, 38.

⁹¹ ‘Colonial Secretary Thomson to Rev. Thomas Atkins’, Colonial Secretary’s Office, Sydney, 26th April, 1837, *HRA*, Series One, Volume Eighteen, 771.

testimony in the furtherance of penal repression.⁹² For some officials, it seems, the voices of convicts, however compromised by its speaker's perfidious nature, was useful noise too tempting to resist in the maintenance of penal repression.

Seemingly, for some penal authorities at least, the accuracy of the intelligence received was often less important than its abundance. This preference for bulk over veracity was reflected in some of the methods employed to obtain it. While the flogging of convicts in order to confess to crimes has been discussed in chapter four of this thesis, convicts were also regularly flogged in order to provide information on potential threats.⁹³ John Hirst, in the context of a potential Irish rebellion early in the colony's life, reveals the lengths authorities would go to elicit information:

One young man, aged 20, was given 100 lashes on his back, 100 on his buttocks, and 100 on the calves of his legs. He took this without crying out and insisted that he didn't know where the pikes were hidden.⁹⁴

For those distracted by statistics—the listing of numbers of lashes on a page—and perhaps inured to the brutality of this period,⁹⁵ some understanding of the potential harshness of three hundred lashes may be required. According to Henry Cowper, a medical officer at the Sydney Hospital questioned by Commissioner Bigge, the infliction of lashes, with an instrument made of

⁹²Johnson-Woods, 'Virtual reality', 54.

⁹³'Letter from Sir Thomas Brisbane, Chief Justice Forbes and Archdeacon Scott to Earl Bathurst' concerning their investigation of the allegations, 11th August, *HRA*, Series One, Volume Eleven, 798; 'Extract from the Records of the Parramatta Bench', Monday 31st March, 1823, Brisbane and others to Bathurst, *HRA*, Series One, Volume Eleven, 801. For a defence of his actions, and an admission that this type of practice is widespread in the Colony see: 'Dr Douglass to Sir Thomas Brisbane, Chief Justice Forbes and Archdeacon Scott', 16th August, 1825, Sydney, New South Wales, Brisbane and others to Bathurst, *HRA*, Series One, Volume Eleven, 802.

⁹⁴Hirst, *Convict Society*, 135. This flogging episode is thought to be part of attempts by penal authorities to prevent an uprising by predominantly Irish convicts. It did not prevent 'the most serious uprising by convicts in Australia, at Castle Hill near Sydney' in 1804. See: Buckley and Wheelwright, *No Paradise for Workers*, 52.

⁹⁵Nicholas, *Convict Workers*, 3-13; Caser, 'Only a Place fit for Angels and Eagles', 47.

twine, whipped at the ends, brings blood in four lashes.⁹⁶ If anything would persuade a convict to ‘reveal’ the details of a likely or potential threat, it would be this.

As shown in chapter four of this thesis, such intelligence gathering techniques blurs the distinction between flogging as a purely physical, somatic punishment and its role as a mechanism of penal control. However, it also served to create distrust and suspicion among convicts who were perhaps fearful of being unable to hold out under punishment and confess to nefarious deeds, or more likely, inform authorities of another’s.⁹⁷ In other words, the creation of convict ‘voices’ under the pain of the lash, served to instil an insecurity within the convict community that their fellow inmates, perhaps under the strong persuasion of flogging, may implicate each other, whether justifiably or not, in illegal behaviour. Both authorities and convicts distrusted the convict voices emanating from such practices. Whereas for authorities the deceitful words and information was an important tool to repress convict solidarity, the mistrust of convicts’ words by fellow inmates compounded this phenomenon. In this way, the confected nature of convict language served the disciplinary aims of penal authorities in two ways: first, by allowing them to use such language to justify repression and, second, to ensure a lack of trust, and therefore any chance of collective resistance, among convicts.

Adding to the artificiality of informing—its contrived and strategic nature—was the theatrical flair that convicts, and some authorities, brought to its performance. At its heart, convicts’ trading of information, whether truthful or not, for actual or perceived gain, is an

⁹⁶ Ritchie, *Punishment and Profit*, 198.

⁹⁷ Hirst, *Convict Society*, 126-127.

acknowledgment and exploitation of the rules and rituals of unequal power relationships.⁹⁸ In other words, a suitable deference to penal authority allowed convicts, in some circumstances, to ameliorate their penal conditions. Informing was a natural process for those seeking to ingratiate themselves within strictly defined hierarchies of power. For those existing at the extremes of physical repression, submission to authority involved, among other things, respecting the system's voracious appetite for information and the performance of allotted roles within hierarchies of penal power.⁹⁹

As such, systems of penal espionage often exhibited, and indeed fostered, a dramaturgical inventiveness within convict informers.¹⁰⁰ Elaborate ruses to ensure convicts would benefit from the favours bestowed by receptive officials affirm the artificiality of much convict informing. J.F. Mortlock, transported to Australia for his various fraudulent activities,¹⁰¹ writes of the methods convicts' employed, and the severe consequences for their unlucky victims, in attaining Government reward through deception:

Many innocent persons have been doomed to death, or years of bondage, through the agency of unprincipled villains pretending to discover upon premises property by themselves secreted.¹⁰²

In other words, in the above scenario, convicts engineered a performance whereby goods were stolen then 'discovered' by the same person, in an attempt to implicate a fellow inmate and gain reward from grateful penal officials and overseers. Likewise, Jack Bushman's lament, after 'discovering' that he had been implicated in the theft of gardening implements at Moreton Bay, reflects the same phenomenon. For Bushman, his distain for the culprit (never discovered) was

⁹⁸ Neal, *The Rule of Law in a Penal Colony*, 136-137; Evans and Thorpe, 'Commanding men', 24.

⁹⁹ Atkinson, *Europeans, Volume Two*, 197-198.

¹⁰⁰ *Ibid.*, 197.

¹⁰¹ Mortlock, *Experiences of a Convict*, xiv.

¹⁰² *Ibid.*, 78.

partially offset by his admiration for the ‘devilish plausibility’ of the informer’s plot against him and sly skill of his accuser.¹⁰³

By encouraging and rewarding such displays, it is likely that penal officials were exploiting certain methods employed by the professional criminal classes that constituted some of the Australian convict population. Indeed, the rough-hewn theatrics above have a long pedigree in the behaviours of Georgian England’s professional criminals. As James Hardy Vaux again explains, the word ‘Plant’ describes various types of behaviour designed to implicate others in the commission of crimes. What is striking about the following description is not simply the sophistication of the behaviour engaged in by these criminals, but the sheer creativity, and impenetrability, of the language used to describe it. Thus, to *Plant* is:

To hide, or conceal any person or thing, is termed *planting* him, or it; and anything hid is called, *the plant*, when alluded to in conversation; such article is said to be *in plant*; the place of concealment is sometimes called *the plant*, as, I know of a fine *plant*; that is, a secure hiding-place. To *spring a plant*, is to find anything that has been concealed by another. To *rise the plant*, is to take up and remove any thing that has been hid, whether by yourself or another. A person’s money, or valuables, secreted about his house, or person, is called his *plant*. To *plant upon* a man, is to set somebody to watch his motions; also to place anything purposely in his way, that he may steal it and be immediately detected.¹⁰⁴

The phenomenon of planting stolen property, and then ‘discovering’ it later to the detriment of another for reward, is perhaps a perversion of this accepted mode of behaviour among criminals that developed within the unique culture of transported and isolated convicts. The added complexity of reward for those who provided information to authorities allows us to see the

¹⁰³ Bushman, “*Jack Bushman*”: *Passages from the Life of a “Lifer”*, Chapter 3, 2. For an analysis of “Bushman’s” narrative and the likely identity of “Jack Bushman” see: Duffield, ‘Problematic passages’, 20-42; Evans and Thorpe, ‘In search of Jack Bushman’, 32-48.

¹⁰⁴ Vaux, *The Memoirs of James Hardy Vaux*, 258.

temptation that would have confronted convicts, particularly in the brutal, tense and tightly packed penal stations.

Thus, a combination of manipulation, reward and criminal class culture reveals the sheer artifice that was the system of convict informing within the penal system. In particular, it is the elaborate convict pantomimes of denunciation and accusation where informing is trivialised, and revealed as an elaborate exercise, both aural and physical, in penal surveillance and control. In a system based on vigilance and suspicion the feigned outrage of convicts' 'discovering' stolen goods, or the whispered betrayals of fellow inmates, provide the reassuring scenes, and sounds, to penal authorities, of a divided, or at least, a dis-unified, convict population.¹⁰⁵ Crucial to liberating convicts from the perception that they were morally questionable 'dobbers'¹⁰⁶ is to acknowledge the importance that authorities placed, and the skill with which they manipulated convict 'noise', to enforce discipline. In other words, some of the sounds convicts made, including the words they spoke, and the lies they told, in order to curry favour with authorities, were words and sounds that were created by the peculiar disciplinary structures implemented by skilful and experienced penal guards.

Mirroring the use of convict informing to provide the necessary (and reassuring) sounds of convict division, *silences* or *quietude* also signalled, to authorities at least, any number of threatening scenarios that required forceful repression. In ways similar to that described on the convict transports, convict silences, depending on the ways that authorities chose to interpret them, could represent a threatening, sinister or mutinous lull that required immediate quelling.

¹⁰⁵ Harris, *Settlers and Convicts*, 71.

¹⁰⁶ MacFie, 'Dobbers and cobbles', 112; Karskens, *The Colony*, 292.

Captain Drake's auditory and aural obsessions discussed in the introduction to this thesis, confirms this. In this way, an insidious aural 'bind' was created and exploited, as authorities, in order to control the penal population, used both convict sound and silence to justify repressive measures. Penal authorities, particularly those stationed at isolated penal stations were acutely aware of the threat, and of the opportunity for repression, of convict quietude.¹⁰⁷ In the artificial world of convict informing—a world of whispers and accusations created and exploited by those very authorities—a *lack of convict sound* could signal genuine convict plotting or the breeding of dark, calamitous conspiracies.¹⁰⁸

For Major Thomas Wright, Commandant of Norfolk Island 'around 1827 or 1828', and already the victim of one (unsuccessful) murder plot, a troublesome dearth of information concerning another attempt at insurrection precipitated swift, pre-emptive action.¹⁰⁹ The alleged conspirators, who Wright admits 'none of whom were people I had ever had occasion to punish at all', were arrested and tried for their mutinous inclinations.¹¹⁰ In effect, it was on the strength of a paucity of information—a feeling of unease at the foreboding silence of the convict body—that their fates were sealed. For this aurally sensitive colonial official, a lack of sound, in the form of a want of convict information, was as suspicious, and damning, as a fulsome admission of guilt.

¹⁰⁷ Clark, *A Short History of Australia*, 50-53.

¹⁰⁸ Gilchrist, 'A life of noisy riot', 36.

¹⁰⁹ Evidence of Major Thomas Wright to the Select Committee on Transportation, 1838 (The Molesworth Report), 2nd April 1838, *BPP Volume Three: Transportation*, 135.

¹¹⁰ *Ibid.*, 132.

George Arthur, Governor of Van Diemen's Land from 1824 to 1836,¹¹¹ well understood the importance of the control of sound to the maintenance of penal discipline. In giving evidence before the Molesworth Commission in 1837, Arthur revealed how the imposition of 'total silence' upon convicts was inimical to effective penal discipline. While forbidding all kinds of communication between convicts, Arthur did not see the benefit in eradicating all sound from the penal environment.¹¹² For this successful colonial and penal administrator, the *control* of convict noise, rather than its wholesale eradication, was preferred. While being a military rather than naval man, Arthur, nevertheless grasped the importance of controlling the auditory environment as a means of instilling broader penal control.¹¹³ In his recognition of the importance of controlling rather than eradicating convict noise, we see echoes of Master Drake aboard the *Chapman* fervently seeking to understand convict noise in order to master it. What both Drake and Arthur most likely understood, if not intuitively then through years of colonial, penal and nautical experience, was that the control of convicts, and their noise, was best accomplished if those convict noises were in fact created by the disciplinary environments in which they were enmeshed.

Conclusion

While often characterised as a symbol of convict duplicity and cowardice, informing also provided penal authorities with a system of aural surveillance of inmates.¹¹⁴ In the constant 'chatter', or noise, coming from convict ranks, authorities could gauge the mood: resigned, fractious, or insurrectionary, of groups of prisoners. Indeed, to imagine informing, foremost, as a

¹¹¹ Ian Brand, *Penal Peninsula: Port Arthur and its Outstations, 1827-1898*, Jason Publications, Tasmania, 1978, 12.

¹¹² Evidence of Colonel George Arthur, 30th June, 1837, *BPP Volume Two: Transportation*, 305.

¹¹³ For Arthur's military career see: A.G.L Shaw, *Arthur, Sir George (1784-1854)*, Australian Dictionary of Biography, 2006-2014, <http://adb.anu.edu.au/biography/arthur-sir-george-1721>, viewed at 14/02/2013.

¹¹⁴ Johnson-Woods, 'Virtual reality', 55-57.

system of sounds created by the whispers, grumbles or shouts of desperate felons, is to appreciate the aural significance of this practice to vigilant guards and administrators.

Further, to appreciate this control of convict noise is to realise how little aural control, or power, convicts wielded. In the production of the sounds of convict division and suspicion, or the interpretation of convict silence as threatening, mutinous or scheming, penal authorities dominated the auditory worlds of these prisoners. Moreover, the promotion and encouragement of convict informing used convicts' own voices—their words, language and sounds—to entrench convict disunion. In short, convict speech, far from forging a space for the expression of identity or resistance, acted to create, and police, the boundaries of its speaker's own repression.¹¹⁵ In the cacophony of convict voices—whispers, cries, screams and sullen silences—effective penal repression was conceived and nurtured: the necessary and reassuring sounds of convict division within an artificial aural world.

To imagine 'the convict voice'—expressed in this chapter by the phenomenon of convicts informing upon each other to authorities—as a deliberate aural construct invigorates, and yet further complicates, the search for this most slippery of colonial phenomena.¹¹⁶ It also saves convicts from some of the moral opprobrium, and condescension, that has reigned down upon them across the generations. As the 'hated informer' of popular, and some academic, history is re-imagined as an important cog in a sophisticated and insidious system of espionage, the distaste with which these convict collaborators are viewed can be tempered.¹¹⁷

¹¹⁵ Atkinson, *Europeans Volume One*, 97; 'The free-born Englishman transported', 88; Ihde, 'Monitoring the situation', 21.

¹¹⁶ Maxwell-Stewart, 'The search for the convict voice', 77.

¹¹⁷ Karskens, *The Colony*, 292.

Given penal authorities' general unconcern with the accuracy or veracity of the informer's information, it is argued that informing provided the necessary background 'noise' of a system of penal surveillance. Moreover, an aural 'bind' is revealed as convicts' silences are also used to suppress potential upheaval. In other words, penal authorities could interpret an insufficient supply of 'information', or noise, coming from convicts as a threatening lull that required surveillance and repression. In the cacophony of convict informing, the murmured accusations and denunciations of self-interested felons created an environment of suspicion and division within convict populations. By interpreting (rare) cases of collective convict silence as potential upheavals requiring swift and brutal repression, colonial authorities were able to use both convict noise, and quietude, as aural weapons in their quest for complete convict subjection. These insidious, if inventive, aural constructs placed convicts in the unusual position of policing their own disciplinary boundaries.

As one of the iconic features of our understanding of the penal system, and the felons who endured it, convict informing represents an important, and controversial, place in Australian's perceptions of their convict forbears and, by extension, their own characters.¹¹⁸ This chapter has argued that convict informing, far from a means of channelling the character traits of our convict forbears, for good and ill, was primarily a clever and sophisticated penal strategy that prevented convict collusion and allowed for the effective running of penal punishment sites. Catie Gilchrist is right when she asserts that the 'convict voice was not silenced'¹¹⁹ despite authorities fervent attempts to do so, however, what is underappreciated in these settings is the role of convicts'

¹¹⁸ MacFie, 'Dobbers and cobbers', 112-127.

¹¹⁹ Gilchrist, 'A life of noisy riot', 41.

voices and silences in the maintenance of the very structures designed to fracture convict resistance, power and solidarity.

Chapter Six:

Colonial Insiders: Convicts Voices and the Law

The right to speak and the need to watch one's 'manner of speaking': these were the two sides of liberty for the convicts, the two seeds from which public order was to grow in the Antipodes.¹

During the first month that I was there, there was no end to the artifices which they had recourse to avoid labour and impose on me...and that I should make the strictest justice my rule, even to the quibbles of the law in their favour, because all on which a convict lives are the quibbles of the law in his favour...²

Introduction

For American citizen, British prisoner and lawyer Linus Miller, colonial Australian law—its processes, procedures and meaning—held an uneasy place within his world and worldview. In the rather unique position of being both legally trained and a convicted felon, Miller understood well both sides of the dock, and how the law could be, at best, a bulwark against state-sanctioned tyranny and, at worst, the means by which naïve litigants are seduced into unprincipled and corrupt legal regimes.³ Thus, for Miller, the legal system represented both the best of British freedom and rights and the worst form of colonial institutional tyranny. Further, the language of the law, both in the articulation of

¹ Atkinson, *Europeans, Volume One*, 97.

² Evidence of Major Thomas Wright to the Select Committee on Transportation, 1838 (The Molesworth Report), 2nd April 1838, *BPP Volume Three: Transportation*, 132.

³ Cassandra Pybus, 'The d – Yankee Quill-driver', in Lucy Frost and Hamish Maxwell-Stewart (eds), *Chain Letters: Narrating Convict Lives*, Melbourne University Press, Melbourne, 2001, 15-17.

legal argument and in the impassioned pleas of mitigation and leniency was, simultaneously, a crucial avenue of resistance and a poisoned verbal chalice. For Miller, and as will be shown below, the choice faced by those forced to endure the formal processes of colonial Australian justice was a heavy one. This choice was between eschewing the formal protection of the law and maintaining a shred of institutional and individual identity, or submitting oneself to the vagaries of colonial justice and risk the potential injustices of a corrupted system peopled by unprincipled and incompetent tyrants. Given his attitude towards colonial criminal law processes, is it any wonder that Miller, when faced with such a choice—in his written narrative at least—chose to keep his mouth shut.

As one of the ninety-one political prisoners known collectively as the ‘Patriot Exiles’, Miller was charged, convicted and transported to Van Dieman’s Land for his role in various insurrectionary raids into the then British colony of Upper Canada.⁴ After enduring the penal system in Australia for five years, including the experiences of hulk-life, Miller wrote of his experiences of Van Dieman’s Land in his narrative *Notes of an Exile to Van Dieman’s Land*.⁵ Despite the detailed analysis that Miller provides of his courtroom experiences both in Britain and Australia, some caution must be exercised when reading his retrospective. As Cassandra Pybus notes, in his writing, Miller was often tempted to the grandiloquent and dramatic in the descriptions of his adventures.

Writing of Miller’s account of the actual patriot incursion, Pybus warns that:

⁴ For an analysis of the actions of the ‘patriots’ and the way that their experiences in penal-era Australia have been portrayed see: Brian M. Petrie, ‘The French-Canadian patriote convict experience, 1840-1848’, *The Journal of the Royal Australian Historical Society*, 81(2), December 1995, 167-183.

⁵ Pybus, ‘The d – Yankee Quill-driver’, 15.

He wrote the whole business of the invasion of Canada at the Short Hills, and his subsequent capture, as a series of heroic adventures, casting himself as swash-buckling hero who faced down the venal Jacob Beemer, a fellow patriot invader who had tried to hang a clutch of captured British soldiers.⁶

Unsurprisingly, Miller also wrote of his legal adventures in a similar, dramatic fashion. Despite some discrepancies between his version of events and those described by other captured patriots, Miller, nevertheless, provided detailed descriptions of the legal arguments and verbal intricacies of the various charges and defences he mounted during his ordeal.⁷ Crucially, when he was formally indicted for his role in the incursion, Miller pointedly refused to plead, stating to the Judge: ‘I understand your wishes and my own interest too well’.⁸ In other words, by refusing to engage in the verbal requirements of the criminal law, Miller removed himself—linguistically, if not physically—from the processes of what he perceived as a perversion of British justice.

The trial records, however, tell a different story. Miller did indeed plead on his indictment: not guilty by reason of insanity.⁹ Moreover, in the evidence provided by other witnesses, Miller’s role in the stand made against Beemer was also questioned. Thus,

⁶ Pybus, ‘The d – Yankee Quill-driver’, 15. Pybus and Hamish Maxwell-Stewart have also discussed the veracity of the ‘Patriot narratives’ elsewhere. In their words: ‘For the most part the Patriot narratives have a high degree of verisimilitude and historical veracity. That said, the Patriots should not be considered as entirely reliable narrators of their experience, especially in their published accounts. In the growing literature on the convict narratives a recurrent theme is the problematic nature of the convict voice, and the Patriot narratives are a case in point’. See: Cassandra Pybus and Hamish Maxwell-Stewart, *American Citizens, British Slaves: Yankee Political Prisoners in an Australian Penal Colony, 1839-1850*, Melbourne University Press, Melbourne, 2002, xiv.

⁷ Pybus, ‘The d – Yankee Quill-driver’, 29-30.

⁸ *Ibid.*, 29.

⁹ *Ibid.*

Linus Miller makes for an unreliable, if interesting, witness to the events surrounding the invasion and its conclusion in the criminal courts. Pybus again:

Rhetoric aside, he had no faith in his capacity to win the legal argument in a court of law, as opposed to the pages of a book, any more than he did when he chose to plead insanity in 1838.¹⁰

Despite his discredited reputation Miller, nevertheless, demonstrates the importance of language in the definition of legal status and identity. It is the use of words—or in Miller’s embellished case, their non-use—that defines a person’s relationship with the law and its processes. Moreover, Miller’s actions in court demonstrate that even practitioners skilled in arcane legal language did not always trust it to guarantee impartiality or justice.¹¹ In fact, by refusing to engage in legal discourse, Miller attempts to signal his mistrust of the British criminal justice system. Even if the course of his trial did not happen as he wrote it, Miller shows an awareness of the potential bind of institutional rights: how words and jargon can entrap litigants under the guise of affording them avenues of defence. To speak as part of a system that is anathema to the ideals and procedures of impartial justice effectively enjoins you in that same process. In his writings, if not his actions, Miller refused to make the acceptable sounds of institutional identity.

In this chapter, which extends and deepens my analysis on the mediated nature of convict voices, the auditory culture of the colonial courts is analysed as a way of enlivening the convict voice. In this way, the notion of institutional sound is added to the sounds of

¹⁰ *Ibid.*, 30.

¹¹ *Ibid.*, 15.

punishment policy in chapter four, and penal surveillance in chapter five, in a re-imagined colonial Australian soundscape. Further, and along with those mediated sounds that inform our search for the convict voice already covered, the way that the institution of the colonial courts expected, and sought to create, the appropriate sounds of deference and respect to the institution of formal justice is explored. In essence, this chapter examines how colonial courts inculcated a process of aural as well as physical and procedural discipline upon those involved in its practices and processes. In what Alessandro Portelli, in a different context, has termed ‘the politics of judicial orality’,¹² the channelling of convict oracy into the strictures of institutional language allowed colonial courts to exercise an aural control of convicts that is well understood, yet still under-appreciated within Australian penal-era historiography.¹³

This chapter, therefore, extends the idea of ‘self-disciplining’ convict voices from the corporal and disciplinary to the institutional: from the sounds of physical pain and corporal violence, to convict informing within the barrack and punishment site, into colonial courtrooms. It recognises that the use of convict voices was by no means restricted to instances of strict convict confinement or physical punishment. Indeed, perhaps nowhere was the restriction, and construction, of the convict voice more overt than in the colonial courts. By acknowledging how the auditory culture of Georgian England naturally fuelled an appreciation among the illiterate for the ‘pomp’ and theatricality of the criminal law, the practice of colonial law, particularly concerning

¹² Alessandro Portelli, ‘Oral testimony, the law and the making of history: The ‘April 7’ murder trial’, *The History Workshop Journal*, 20(1), 1985, 8-9.

¹³ For discussion of oracy within colonial courts, see: Atkinson, *Europeans, Volume One*, 97; Barron Field, *Hints to Witnesses in Courts of Justice*, published in ‘Practical advocacy: Witness preparation’, *Australian Bar Review*, 22, 2010, 160-169.

convicts, remained an inherently aural and oral phenomenon. Further, in the battles over judicial oracy, the effect of convict voices, particularly the impact of the ‘flash language’ of the criminal classes in the collection and deciphering of evidence, has been more enduring than is presently acknowledged. For those convicts raised in the intense orality of illiterate Britain, the verbal leeway offered by the processes of the criminal law ensured engagement with, rather than avoidance of, the law in colonial Australia.

Thus, a further aim of this chapter is to show how convict language, despite the restrictions placed on it by the processes of legal argument, was a part of the very fabric of the colonial legal system. In fact, the restrictions placed on convict speech in court, by necessity, placed such speech within the structures of colonial legality. In other words, this language was part of the development of legal culture in colonial Australia. Further, this chapter looks at the way that convict voices were used by authorities as a means of controlling convict behaviour and identity yet, at the same time, the legal process accorded convicts a (welcome) institutional identity. Hence, a dual tension existed within the notion and ideal of ‘free speech’: convicts could engage in the processes of the colonial law, yet their verbal dexterity and power was constrained by doing so. The colonial courtroom is an obvious place to explore this phenomenon, as convicts’ language—flexible, organic and spontaneous—was channelled by the strictures of legal form and procedure into institutionally coherent language. Transplanted and articulated within a penal context, the verbal rights enjoyed by colonial litigants, including convicts, simultaneously channelled their language into acceptable institutional forms. Thus,

tempering the ‘aggressive power of speech’ involved confining it within strict linguistic boundaries.¹⁴

As Linus Miller demonstrated above, the ability of those before the courts to either engage with or ignore legal formality was often a choice. As will be argued below, that convicts often used the courts as a means of expressing specific grievances or articulating perceived injustices, enmeshed convicts within these formal legal processes. Rather than resisting the colony’s institutional constraints, therefore, convicts who used the law to voice opposition to penal brutality *joined* those very institutional mechanisms. In effect, by using the colonial courts to voice their grievances, rather than, for example, taking matters into their own hands in violent uprisings or collective protest, convicts displayed more fidelity to, rather than distrust of, the formal processes of colonial justice. It is this choice faced by convicts that underpins the ‘voices’ that emanate from this chapter, and unsettles previous perceptions of convicts’ interactions with the colonial courts. When convicts’ desire to enter and, in some cases, re-enter the formal courts system, sometimes in defiance of the system’s desire to ‘banish’ them beyond its reach, a new appreciation of convicts’ interactions and attitudes towards colonial law can emerge.

Conditioning creative speech

That the law was understood by the illiterate in eighteenth-century Britain, and therefore by those transported to Australia during this period, in overwhelmingly verbal and oral terms is neatly highlighted by an incident recorded by Alan Atkinson early in the

¹⁴ Atkinson, *Europeans, Volume One*, 266.

colony's life.¹⁵ In attempting to provide a semblance of order within the colony's population, Governor Arthur Phillip posted written notices upon prominent trees as a way of informing the populace of the behaviour expected of them in various areas of colonial life. While helped by those same notices being read out by overseers, the frequent flaunting of the posted rules suggested a serious breakdown in either colonial law-and-order or in communication between rulers and ruled. As noted by Atkinson, the ability to control a population unused to noticing, let alone following, written orders was as much a problem of cultural and mental dissonance as it was an issue of convict discipline.¹⁶ To innocently reply that they had 'never heard of it'¹⁷ in response to accusations of law breaking spoke to the divide between the literate enforcer of colonial law, and the illiterate subject of such laws.

In other words, for those used to the ephemerality and cacophony of the spoken word, the posting of public notices was largely meaningless: only the verbal transmission of such laws was effective. Further, due to such ephemerality, the notion that a written missive was effective as a law for an extended period of time—indeed for as long as the law remained current—was outside the understanding of people raised to receive instruction verbally.¹⁸ Thus, the 'shelf-life' of most instructions given to illiterate members of the colony was brief: in some cases as long as it took to explain them. Most importantly, however, for the purposes of this chapter at least, is what this brief experience of colonial law and order reveals about convicts' relationships with the law. In the world of the

¹⁵ *Ibid.*, 88.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

transported felon, understanding, and therefore an appreciation for, the practice and processes of the criminal law was overwhelmingly conveyed in oral and aural terms. Both inside court and out, the language and artifice of the law was almost an exclusively oral phenomenon.

The auditory dynamic to the legal process was appreciated well beyond the confines of the courthouse itself. Indeed, the oral restrictions imposed by British judicial practice started well before a defendant set foot in court. The pomp and theatricality of court procedure; its oratorical appeal to an overwhelmingly illiterate public, fostered an awareness of, and perhaps even respect for, legal speech.¹⁹ The formulaic nature of public oratory became synonymous with institutional authority. Alan Atkinson has shown how the ‘poor’, luxuriating in the theatricality of the courtroom, entertained each other in the re-creation of its drama.²⁰ Moreover, these performances could also double as practice runs for potential, or imminent, judicial appearances. James Mudie, controversial colonial figure, and author of a vicious diatribe against Governor Bourke alluded to in chapter four of this thesis, recounts how a ‘young gentlemen’ convict could faithfully imitate, to the enjoyment of his colleagues, the verbal dexterity of London’s leading legal figures.²¹ Despite its entertainment value, this oral mimicry reflects the way that legal discourse saturated the lives of British citizens and felons alike. An institutional intelligibility was inculcated in these events, conditioning people to the acceptable verbal practices and sounds of authority. Further, and in a sign of the law’s deep penetration into the lives of

¹⁹ *Ibid.*, 220.

²⁰ *Ibid.*

²¹ Mudie, *The Felonry of New South Wales*, 115; Blair, ‘The felonry and the free?’, 1; Dowd and Fink, ‘James Mudie, Harlequin of the Hunter (Part II)’, 106-107; McKenzie, ‘Performing the Peer’, 225; Sturma, *Vice in a Vicious Society*, 15-16.

its subjects, convicts often entertained themselves on board the transport ships bringing them to New South Wales by the recreation of the very courtroom experiences that culminated in their banishment.²²

Stories of mock-trials and the impassioned pleas, and dramaturgical flair, of felons well versed in the art of legal discourse, litter the documentary record of colonial Australia.²³ In this way, the sounds of British and colonial legalism—the appropriate, and expected ‘noises’ of legal participation—resounded in the theatrics and byplay of convict life. Atkinson has argued that a ‘vestigial authority’ remained within the sounds of authoritarian male English voices, and the illiterate poor luxuriated in the replication and performance of them.²⁴ Further, the performance of mock criminal trials, performed with ‘a strange parcel of replication and antithesis’, repeated the verbal and legal processes that consigned their performers to prison, transportation or the gallows.²⁵ For Charles Lucas, a notorious ‘captain among thieves’ in London, the faux trial of one of his victims neatly linked the theatre of the law to the reality of organised criminal life in Georgian England. In what may pass as both a homage to the entertainment value of the criminal law process, and a subtle commentary on its closeness to criminal culture, Lucas drags an unfortunate ‘defendant’ before him, and forces him to pay the inevitable fee for the services of ‘counsel’ in his impending trial.²⁶ It seems that London’s criminal underbelly well understood not just the theatrics of the criminal law but also the means by which legal favour may have been swayed in the real world.

²² Smith, *Birthstain*, 109.

²³ Johnson-Woods, ‘Virtual reality’, 54; Atkinson, *Europeans, Volume One*, 221.

²⁴ Atkinson, *Europeans, Volume One*, 220.

²⁵ *Ibid.*, 221.

²⁶ *Ibid.*, 221-2.

Indeed, in the ‘flash language’ of Britain’s professional criminals, the ability to induce a jury, through the power of persuasion and oratory, was enshrined in their lexicon. James Hardy Vaux, the ‘educated convict’ whom we have met in earlier chapters of this thesis, explained this skill in his dictionary of the felon’s cant.²⁷ While Vaux’s dictionary, and its use by a Judge in interpreting courtroom evidence, will be discussed later in this chapter, for present purposes, its explanation of various ‘cant’ terms reveals the dextrous oracy of Britain’s criminal classes. Extending his analysis of the cant term *Gammon*, meaning to deceive or trick a target through flattery or pretence, Vaux explained its application to the judicial system:

GAMMON THE TWELVE: a man who has been tried by a criminal court, and by a plausible defence, has induced the jury to acquit him, or to banish the capital part of the charge, and so save his life, is said, by his associates to have *gammoned the twelve in prime twig*, alluding to the number of jurymen.²⁸

In this example, the association between legal appearances and verbal dexterity and deception is explicitly made. In other words, the criminal classes of Britain around this time naturally associated the legal system with verbal trickery: a system to be circumvented and orally adapted to, as much as avoided.

Further, the familiarity of convicts and criminals to the requirements of legal speech is seen in their descriptions of the ordeals of the criminal trial. In the criminal lexicon, to ‘talk’ was to *patter*, and thus to skilfully engage in the intricacies of the flash language

²⁷ Vaux, *The Memoirs of James Hardy Vaux*. Amanda Laugesen has provided a brief history of the language of convicts, and the politics of that language, in colonial Australia. See: Laugesen, *Convict Words*, v-vii; ‘The politics of language’, 17-40.

²⁸ Vaux, *The Memoirs of James Hardy Vaux*, 243.

was to *patter good flash*. Significantly, the way that criminals described the verbal requirements of the courtroom also involved this term. Thus, to have *Patter'd* is to have undergone a trial; and someone who had survived this ordeal was said to have *stood the patter*.²⁹ In these terms, the judicial process was as much a linguistic and verbal ordeal as it was an examination of evidence and argument, claim and counter-claim. Further, such verbal trickery was not restricted to those directly involved in the suit. As Vaux's cant dictionary makes clear, there were people prepared, and indeed paid, to give false evidence before a judge in order to secure an acquittal. Thus, to *Mount* was: 'to swear, or give evidence falsely for the sake of a gratuity'.³⁰ Some, labelled *Mounters* by Vaux, perjured themselves for a living. To live by *mounting* then, was to receive payment to 'swear whatever is proposed to him'.³¹

Indeed, in the language of some criminal sub-cultures, the word 'speak' signified the carrying out of nefarious deeds. As demonstrated in the previous chapter, concerning the artificiality and inventiveness of convict language, the link between deception and language was explicit. Significantly, the associations that convicts, especially those cognisant of the verbal flexibility and range of the 'felons tongue', made with the ability to speak was with robbery and other nefarious activities. In this way, those felons transported to Australia were well aware of the oral and auditory nature of much of the criminal law's procedures and processes. As much as they regretted being the victims of such processes, it is arguable that their knowledge of the criminal law was second only to those whose job was to implement it. Transplanted and adapted to the Australian penal

²⁹ *Ibid.*, 257.

³⁰ *Ibid.*, 253.

³¹ *Ibid.*

colonies, the oracy of the processes of English criminal law, quite understandably, played a significant role in penal criminal practice.³²

In addition to, or indeed due to, it being an inherently oral process, the colonial law sought to strictly control the voices of convicts. In particular, adding to the control of convict speech was the enactment of many offences involving, whether directly or incidentally, verbal transgression. As Jo Lennan has argued, the development of offensive language laws in the first half of the nineteenth century was essentially penal in nature and designed to control the convict population:

During the first period [1788-1835], the rhetoric of the law against insulting or offensive language was wholly consistent with the law's effects. The laws were expressly designed to suppress and control the convict population, and this was precisely how they were used.³³

From 1823 onwards, however, the law concerning offensive convict language expanded to include abusing free settlers for whom convicts laboured. In effect, punishment for offensive convict language was put into civilian and settler hands, as well as the military's. Unsurprisingly perhaps, colonial officials noted the increased brutality and pettiness of punishments meted out to convicts stemming from this change in legal

³² While the essence of British justice remained, certain changes were made to accommodate a new and unique population. For other work on the relevance of legal history see: Ian Holloway and Andrew Buck, 'Why legal history matters', *Australian Journal of Legal History*, 7, 2003, 1-4; Neal, *The Rule of Law in a Penal Colony*, xii-xiii; 'Free society, penal colony, slave society, prison?', 497-524; Kercher, *An Unruly Child*, ix; Bruce Kercher and Brent Salter (eds), *The Kercher Reports: Decisions of the New South Wales Superior Courts, 1788-1827*, The Francis Forbes Society for Australian Legal History, The New South Wales Bar Association, Sydney, 2009, x; Mark Leeming, 'Hawkesworth's Voyages: The first 'Australian' copyright litigation', *Australian Journal of Legal History*, 9(2), 2005, 160.

³³ Jo Lennan, 'The development of offensive language laws in Nineteenth-Century New South Wales', *Current Issues in Criminal Justice*, 18(3), 2007, 449. For a history of legislative and judicial attempts to regulate and control public speech, both in the Britain and New South Wales see: Lennan, 'Laws against insult: History and legitimacy in *Coleman v Power*', *Legal History*, 10, 2006, 244-250.

policy.³⁴ Michael Sturma has documented numerous examples of the excessive punishments earned by convicts for seemingly minor verbal infractions.³⁵ In one instance, for example, assigned convict John Hazel was given seven days in solitary confinement for making ‘a noise like breaking wind’ when his overseer criticised his plowing.³⁶

Further, and particularly in the more isolated areas of the colony, the administration of colonial justice often operated on the enforcement of unstable, or opaque, ‘illegal’ acts.³⁷ Instances of ‘insubordination’ or ‘insolence’ encompassed a range of physical and verbal conduct that often defied classification. Roger Therry, prominent legal counsel and later New South Wales Supreme Court Judge, noted the arbitrariness of these laws in a scathing attack on the colonial magistracy.³⁸ While Therry’s fraught relationship with the New South Wales magistracy must compel caution in any appraisal of his views concerning colonial law and order, an examination of some of the offences committed tends to buttress his claims of an almost arbitrary regime of convict punishment. A charge of insubordination, he notes, ‘might mean anything’.³⁹ Included in his list of potentially insubordinate acts was ‘a hasty word’, which was considered a ‘grave offence’ and ‘punishable by the lash’.⁴⁰

³⁴ G.D. Woods, *A History of Criminal Law in New South Wales: The Colonial Period 1788-1900*, The Federation Press, Sydney, 2002, 73.

³⁵ Sturma, *Vice in a Vicious Society*, 126-128.

³⁶ *Ibid.*; Lennan, ‘The development of offensive language laws’, 450.

³⁷ Therry, *Reminiscences*, 46.

³⁸ For an analysis of the role and power of the colonial magistracy see: Neal, *The Rule of Law in a Penal Colony*, 115-140.

³⁹ Therry, *Reminiscences*, 46-47.

⁴⁰ *Ibid.*, 47-48.

The nature of these offences, of course, reminded convicts of the need to control their speech. In this way, the ascription of legal opprobrium to convict oracy served a disciplinary function: controlling convicts' 'talk' by unsettling the boundaries of its permissible use. In other words, not simply would language be strictly controlled within the confines of the colonial courtroom, but the misuse, or careless use, of language itself could be reason for the court appearance in the first place.

Courting Convicts

Given how thoroughly the use of language permeated convicts', and the working and poor classes', interactions with British legal culture, it is not surprising to learn of the importance placed upon speech when those same people entered the courtroom. To speak in court, either in protest at perceived grievances, or to defend infringed rights, was central to British ideals of impartial and inclusive justice.⁴¹ Courtroom verbalism operated within what Alan Atkinson has called a 'continuing theatrical style', ensuring litigants the appearance, if not the actuality, of even-handed treatment.⁴² Characterised in the popular imagination within notions of 'free speech', British subjects, including convicts, held this verbal freedom to be a defining element of national identity.⁴³ Less explored, however, and a phenomenon that underpins many of the arguments in this chapter, is the way that court room practice and procedure restricted convict oracy, emptying it of nuance and confining it within strict oral conventions. It is undeniable, as

⁴¹ McLaren, 'The judicial office bowing no power but the supremacy of the law', 1; Castle, 'The practical administration of justice', 51; Alex Low, 'Sir Alfred Stephen and the reform of the courts system in Van Dieman's Land', *Australian Journal of Legal History*, 9(1), 2005, 19-20.

⁴² Alan Atkinson, *Camden*, Oxford University Press, Melbourne, 1988, 22.

⁴³ Ihde, 'Monitoring the situation', 22.

Amanda Laugesen notes, that through the courts, ‘convicts were given a voice’.⁴⁴

However, looking beyond the rhetorical appeal of this institutional right, the nature and purpose of that legal voice requires fresh analysis. To be ‘given’ a voice can be as restrictive as it is enabling. This depends first, on who is bestowing the gift and second, on the sacrifices made in its acquisition. Convicts did indeed enjoy a legal voice, however, it was entangled in the verbal rules and restrictions of institutional discourse.

Further, the requirement to express grievances in a foreign physical and verbal environment allowed courts to mould, or channel, convict speech into acceptable forms. That this was accomplished under the guise of according convicts their legal ‘rights’ reveals the insidious nature of this verbal stripping. Such tempering of the ‘aggressive power of speech’ invites a re-conceptualisation of the nature of legal freedoms and rights in unstable and semi-literate environments.⁴⁵ Alan Atkinson, in the context of discussing different forms of convict protest in colonial Australia, reveals, perhaps unwittingly, how this process operated.⁴⁶ In one prominent 1833 legal case, the Ogilvie family of Merton, near Muswellbrook, took their convict workers to court after they (the convict workers) refused to begin work until their correct ration of wheat had been provided.⁴⁷ Having run out of wheat, Frederick Ogilvie had tried to substitute it with rye. Upon presentation of their grievances in court, each convict, following standard legal procedure, proffered his

⁴⁴ Laugesen, ‘The politics of language’, 32.

⁴⁵ Atkinson, *Europeans, Volume One*, 266.

⁴⁶ Atkinson, ‘Four patterns of convict protest’, 28-51.

⁴⁷ *Ibid.*, 39.

own defence, articulating a variety of reasons for his alleged intransigence.⁴⁸ Atkinson has described the arguments proffered by the convict defendants:

When the case came to court each man had his own defence: the rye had weevils in it, and stank; the mill would not grind rye; it was impossible to cook, or impossible to eat when cooked; they were short of meat anyway. Only one, named Furth, was willing to declare the principle on which they had clearly combined: ‘he did not take the rye’, he said, ‘because it was not in the regulations’.⁴⁹

Atkinson, rightly, characterises this case as an example of a convict collective attempting to bargain and fight for the ‘restoration of their established rights’.⁵⁰ From the point of view of a group of people standing up for a principle, this is correct. However, within the context of the operation of the legal system, and how convicts could present a unified and coherent argument for the restoration of their rights, it must be viewed as a failure. While united in their desire to enforce the regulations concerning the apportionment of rations in the colony, the convicts involved in the case were separated into individual legal subjects and, subsequently, isolated bargaining agents. It is hard to believe, however, that their case was not weakened by the fractured nature of their testimony. While it cannot be asserted that this alone caused their argument to fail, it must be noted that the convicts in this case did indeed lose. Subsequently, all were flogged with the leader of the group receiving 75 lashes.⁵¹ While these men may have shared a legally enforceable grievance, only one of them was prepared to express it in blunt, unequivocal terms. The rest relied

⁴⁸ *Ibid.*, 39.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ Trial of twelve men and that of William Clegg and John Thomas, 31st July, 1832, at Muswellbrook, Colonial Secretary’s Records, ‘Benches other than Sydney’, Muswellbrook (Merton)—Bench books, 2nd Jan 1832-12th Jan 1836; 12th Feb 1838-13th Feb 1843, *SRNSW*, [4/5599].

on a variety of arguments, propositions and words to paint their recalcitrant master in the worst possible light.

While this episode is presented within other examples of collective protest, the individualised defences demanded of these men fractured any lingering collective momentum.⁵² As such, convict solidarity, or at least a sense of common purpose, was sacrificed to the demands of institutional verbal rules. In effect, the individual voice of each defendant reaffirmed (his) solitariness rather than fidelity to a common cause. Thus, what Alan Atkinson argued was a gesture of legal empowerment, and the affirmation of collective convict agency, can also be interpreted as a fatal restriction of their verbal universe. Indeed, the operation of such restrictive verbal rules is recognised by Atkinson himself when he, in an elegant statement that introduces this chapter, describes the two ‘sides of liberty’ for convicts in the establishment of colonial order. For Atkinson, in their rights, and responsibilities, in the creation of an ordered colonial public life, convicts had ‘the right to speak and the need to watch one’s manner of speaking’.⁵³ In other words, the freedom to articulate grievances in the public domain was indeed a convict right, provided it accorded with the rules of a strict, and decorous, public institutional discourse.

This sentiment is also borne out in colonial court practice. For John Hitchcock, one of the convict mutineers who revolted at ‘Castle Forbes’ in the Hunter Valley, his chance to articulate the brutality of his treatment at the hands of his master James Mudie in the New

⁵² Atkinson, ‘Four patterns of convict protest’, 39.

⁵³ Atkinson, *Europeans, Volume One*, 97.

South Wales Supreme Court proved unsatisfying.⁵⁴ The passion with which the defendant Hitchcock verbally castigated Mudie, a passion probably justified given Mudie's treatment of convicts in his charge, was quickly 'stopped by the court'.⁵⁵ While allowed a degree of leeway in the public defence of his crimes, Hitchcock, nevertheless, still had to abide by the verbal conventions of the courtroom. In this, apparently, he failed.

Eschewing the usual solemnity of the judicial process, this defendant, described by Roger Therry as the most intelligent of the group of convicts on trial, provided a glimpse of the power of untrammelled oratory. Perhaps more revealing is Hitchcock's request to the court, presumably as evidence of his master's brutality, for permission to display his lacerated back.⁵⁶ Thus, stripped of his verbal and rhetorical power, Hitchcock's desperate appeal to judicial compassion and clemency can also be seen as an implicit acknowledgement of the oral restraints of court procedure. In other words, 'seeing-is-believing' became a final resort for a convict frustrated in his oratorical aims.

Such restrictions on convict oracy can also be seen in accounts of convicts who, perhaps distracted in their quests for notoriety, embellished their courtroom performances beyond anything sensibly allowed by vigilant judges. The autobiography of notorious convict fraudster Owen Suffolk, *Days of Crime and Years of Suffering*,⁵⁷ provides further insight into the verbal restrictions placed on litigants. For historian Toni Johnson Woods, Suffolk's work is a study in the perils of using autobiography as historical sources, as

⁵⁴ Therry, *Reminiscences*, 168-169.

⁵⁵ *Ibid.*, 166-167. For an analysis of the worth of Roger Therry as a primary source see footnote 71 of chapter two of this thesis. See also Bennett, 'Introduction', in Therry, *Reminiscences*, 11.

⁵⁶ Therry, *Reminiscences*, 168-169.

⁵⁷ For discussion of Owen Suffolk's *Days of Crime and Years of Suffering*, see: Johnson-Woods, 'Virtual reality', 45 (also footnote page 59). For the original version see: Owen Suffolk, *Days of Crime and Years of Suffering. An Autobiography. (Reprinted from "The Australasian" of 1867 by special permission.)*, Trove, National Library of Australia, <http://trove.nla.gov.au/ndp/del/article/62373706>, viewed at 08/08/2013.

‘auto-biographers write in order to proclaim their own ascendancy’.⁵⁸ For Woods, this was particularly apparent in Suffolk’s descriptions of his appearances in various imperial and colonial courtrooms:

He often represents his courtroom speeches as gaining the admiration of those in court. In one instance he recreates at length what he claims to have spoken to London’s Central criminal Court. This, he proudly states, was reprinted at length in *The Times*. In reality, *The Times* reports that he remained doggedly silent throughout his court appearance. These invented courtroom speeches allow Suffolk to embroider at length his beliefs. Far from being authentic reports, they are constructed self-representations.⁵⁹

In other words, such was the power exercised by those in control of convict and litigant courtroom speech, the idea of an untrammelled and celebrated verbal performance was unthinkable within British and colonial courts. The very strictness of courtroom language is the reason why Owen Suffolk almost certainly fabricated his courtroom rantings, and why he is treated with caution as an historical source.

Of course, just because the law exercised strict control of courtroom oracy, convicts did not stop attempting to use their own verbal dexterity and cunning to exploit the courtroom process for their own aims. Particularly on the brutal edges of the colony’s penal punishment regimes—at the penal stations designed to isolate convicts—the fabrication of evidence of nefarious activities was a common ploy for convicts to re-engage with the colonial courts. Such was the desire to leave such sites, whether as the star witness in a concocted convict plot, or as the genuine star of a contrived convict murder, convicts provided ample evidence of their involvement in conspiracies and plots

⁵⁸ Johnson-Woods, ‘Virtual reality’, 54-56.

⁵⁹ *Ibid.*, 54.

worthy of a trip to the Supreme Court of New South Wales.⁶⁰ For John Russell, Superintendent of convicts at Port Arthur, the abundance of such ‘gratuitous’ convict evidence to assorted nefarious deeds led him to employ a plot of his own.⁶¹

Giving evidence before the Molesworth Commission in 1838, Russell spoke of his strategy for curbing unprincipled convict evidence. So prevalent was the exploitation of false evidence at Port Arthur that this penal official took a dramatic, and clever, step to apprehend those who were prepared to perjure themselves. Russell recalled how convicts would not inform upon each other if the consequences of the offence committed would not result in a journey beyond the confines of the penal site.⁶² However, if evidence of a crime or plot was worthy of being delivered in court in Hobart, which involved a period of travel to and from the settlement at Port Arthur, then convicts’ willingness to expose their fellow inmates increased. Russell recounted a particularly effective method that he employed to flush out such duplicity:

464. But when the crime was of such a nature as to require the criminal to be sent to the Supreme Court at Hobart Town, then had you any difficulty in obtaining evidence?

No; there was plenty of gratuitous evidence, evidence of men who knew nothing at all of the facts, frequently offered in the hope of getting away from the settlement. On one occasion I recollect playing a trick on them in that way, by spreading a report in the settlement that I was about to commit a man for trial for some offence to the Supreme Court, and I obtained all the necessary evidence by

⁶⁰ Evidence of Mr John Russell to the Molesworth Commission, 19th February, 1838, ‘Minutes of Evidence taken before the Select Committee on Transportation’, *BPP Volume Three: Transportation*, 52.

⁶¹ *Ibid.*

⁶² *Ibid.*, 52-53.

that means, and some of it was more than was necessary; however, I punished the case myself summarily afterwards.⁶³

Similar episodes of gratuitous convict evidence to illusory or confected misdeeds affected those who sought to control the Norfolk Island penal settlement. The opportunity to ‘escape’ brutal penal discipline, if only for a few weeks, or in the case of Norfolk Island, the months it would take to sail the thousand miles down the coast to attend the Supreme Court in Sydney, give evidence, and sail back, made the creation of court appearances very attractive.⁶⁴ While often suspected of being ruses to escape penal discipline, penal authorities, nevertheless, marvelled at the ability of convicts to maintain their ‘involvement’ in various incidents. Writing of the difficulty of administering justice on Norfolk Island, Colonial Governor Sir Richard Bourke reveals how convicts fabricated roles in murder rituals in order to guarantee judicial appearances:

There being hardly any possibility of detecting the imposture until the trial, and sometimes not even then, as many who have invented or exaggerated statements, in order to procure their being summoned, will persist in them on the trial with the greatest effrontery.⁶⁵

Of course, given the evidence in chapter five of this thesis of the construction of much convict informing within penal punishment sites, such evidence of convict duplicity must be assessed cautiously. However, given the brutality of some penal sites, the chance to star in a manufactured courtroom drama must have sorely tempted convicts.

⁶³ *Ibid.*, 52,

⁶⁴ Kercher, *Outsiders*, 110-111.

⁶⁵ Copy of despatch from Sir Richard Bourke to the Right Hon. E.G. Stanley, Government House, Sydney, 30th November, 1833, ‘Appendix No. 7, Administration of Justice at Norfolk Island, Appendix to the Report from the Select Committee on Transportation’, *BPP Volume Two: Transportation*, 199.

One such episode is hinted at in a story told by the infamous fraudster, and twice transported felon, Thomas Cook.⁶⁶ In his *An Exiles Lamentations*, Cook, describing the brutal reign of Commandant Morriset at Norfolk Island in the mid 1830s, recounts a conspiracy by convicts to murder ‘Sullivan’, a particularly sadistic overseer.⁶⁷ Seizing the first opportunity, a man named ‘Reynolds’ repeatedly struck Sullivan with a hoe, horribly mutilating and killing him. At this point in his narrative, Cook introduces a ‘misguided wretch’ named ‘Connor’, who injected himself into proceedings by seizing the head of the slain victim. According to Cook, through this intervention Connor, excluded from the original conspiracy, implicates himself in the crime ‘with the sole purpose of being hanged’.⁶⁸ Putting Cook’s interpretation of Connor’s motives aside, in addition to displaying an admirable understanding of the intricacies of criminal evidentiary procedure, this convict also reveals a desire to engage in the formalities and processes of the colonial legal system. In effect, Connor has parasitically exploited a premeditated murder in order to first: leave the Island, however briefly, and second: to ensure his presence in a colonial courtroom.

While Connor’s motives for engaging in such an incident cannot be definitively known, his actions, if indeed they were committed as Cook described, reflect a strong desire to engage with the colonial criminal courts. As discussed in chapter one of this thesis, in their haste to condemn convict murderers as aberrant escape merchants or suicidal desperados,⁶⁹ colonial officials and later historians may have overlooked alternative

⁶⁶ Thomas Cook in Anderson, *Farewell to Judges and Juries*, 480-484.

⁶⁷ *Ibid.*, 483.

⁶⁸ *Ibid.*

⁶⁹ Evidence of Sir Francis Forbes, 18th April, 1837, *BPP Volume Two: Transportation*, 16.

motivations for convicts who participated in such episodes. One unfortunate consequence of this myopia is their undercutting of the importance of the legal process for these felons.⁷⁰ An alternative interpretation may assert that convicts did not simply view court as an institutional encumbrance on their inexorable path to the gallows: it could also be also a forum to articulate specific or more general grievances.⁷¹ To assume that the subjects of a harsh penal system would avoid rather than value and exploit the courtroom's potential as a forum for the articulation of grievances, underestimates convicts' verbal dexterity and legal knowledge.⁷² Indeed, an appreciation for the institutional savvy of certain convicts animates and complicates their actions: contrived convict violence and other acts leading to court appearances may be re-conceived as a means of engaging with the formal processes of the colony's criminal law system.

Some of this convict legal savvy can be seen in the courtroom appearance of John Gough, and his testimony in relation to the conditions faced by convicts at Norfolk Island. For Gough, a 'West Indian Mulatto, woolly headed, and apparently about forty years of age, but muscular and actively limbed-of the middle height',⁷³ the conditions faced at Norfolk Island compelled convicts to commit murders in order to be sent to Sydney to be hanged. Along with two others, Watson and Muir, Gough was indicted for the wilful murder of Lance-Corporal Robert Wilson at the 'rebellion' at Norfolk Island on September 25th,

⁷⁰ One of the primary culprits being Hughes, See: Hughes, *The Fatal Shore*. For a critique of *The Fatal Shore*'s obsession with the gothic horror of the penal-era see: Atkinson, 'Writing about convicts', 17-28.

⁷¹ Byrne, *Criminal Law and Colonial Subject*, 1-15; Neal, *The Rule of Law in a Penal Colony*, 61-83.

⁷² Byrne, *Criminal Law and Colonial Subject*, 265-276.

⁷³ *R v Gough, Watson and Muir [1827] NSWSupC 57*

http://www.law.mq.edu.au/research/colonial_case_law/nsw/cases/case_index/1827/r_v_gough_watson_and_muir/; this case was also reported in the *Sydney Gazette*, 24 September, 1827 and the *Monitor*, 24 September, 1827.

1827.⁷⁴ While attempting to describe these conditions, Gough alluded to his own descent into despair at his predicament, and employed the murderous machinations of his fellow prisoners to reinforce Norfolk Island's brutality. The record of the case reveals:

The prisoner proceeded to describe with great minuteness, the petty tyranny, as he conceived it, of the Overseers, who, he said, by their villainy *greatly increased their miseries*. "So hopeless and wretched (said the unhappy culprit) is our conditions at the Island, that Plans have been projected, to commit murder, IN ORDER TO GET UP TO SYDNEY TO BE HANGED. As for myself, though a stout-hearted man, I have often wept with despair."⁷⁵

That Gough explained the lot that he and his fellow inmates endured on Norfolk Island with 'great minuteness' reveals how important it was for this man to communicate his sense of injustice. It may be presumed if he was merely there to be hanged, the passion with which he delivered his testimony may have been muted. As it was, Gough's legal appearance ensured that the conditions faced by Norfolk Island convicts would be broadcast across the Colony and beyond.⁷⁶

Convicts' desire for legal redress may also be seen to extend beyond a simple faith in judicial procedure. A. G. L. Shaw has written of the difficulty of adequately 'supervising' the colony's penal stations, and their subsequent descent into 'nothing but bitterness, vice, hardship, pain, toil and possibly death'.⁷⁷ Perhaps unwittingly, or by design,

⁷⁴ *Ibid.* For an overview of the history of Norfolk Island during the penal-era see: Causer, 'Only a place fit for angels and eagles', 50-55.

⁷⁵ *R v Gough, Watson and Muir [1827] NSWSupC 57*. See also Ian Duffield, 'The life and death of 'Black' John Goff: Aspects of the black convict contribution to resistance patterns during the transportation era in eastern Australia', *Australian Journal of Politics and History*, 33(1), 1987, 30-44.

⁷⁶ Work on discovering the professional, political and social linkages across the British Empire is revealing how information moved between different colonies. See: Smandych, 'Mapping Imperial legal connections', 187. For other work on 'transnational' links see: Laidlaw, *Colonial Connections*, 38; Lambert and Lester (eds), *Colonial Lives Across the British Empire*.

⁷⁷ Shaw, *Convicts and the Colonies*, 205-206.

testimony from the perpetrators of deliberate convict murders, in publicising the depravities of these places, helped to monitor conditions at the edges of colonial punishment regimes. In effect, the brutally policed became policemen themselves. While Alexander Harris bemoans a lack of transparency at these ‘awful and iniquitous establishments’, he nevertheless uses the existence of calculated convict murders—their perversity and desperation—to expose practices anathema to civilised society.⁷⁸ When one convict, described as possessing a ‘singular ability and uncommon calmness’, expressed the hopelessness of his lot, and wished for death, his actions spoke of a deep disillusionment with the neglectful state of penal supervision.⁷⁹

For these convicts, it is apparent that ‘banishment’ to isolated penal settlements did not equate to physical, or moral, abandonment: their sentiments upon legal examination reveal a mental universe structured upon notions, however distorted, of civility and reformation. Aside from the irony of convicts being forced to monitor their own discipline—in effect to police the boundaries of their own confinement—contrived convict murders and other crimes, and the legal attention that attended them, hints at the use of these acts as desperate attempts by isolated convicts for the protection of the criminal law. That such an interpretation of convict motives is possible reaffirms the caution called for in chapter one of this thesis when attempting to uncover a ‘genuine convict voice from below’.⁸⁰

⁷⁸ Harris, *Settlers and Convicts*, 229. For the importance, or otherwise, of Alexander Harris as a chronicler of life in New South Wales see: Neate, ‘Alexander Harris – a mystery no more’, 197-212; John Hirst criticizes Harris for the narrow interpretation of colonial society that he expressed in his work. See: Hirst, *Freedom on the Fatal Shore*, 22-24.

⁷⁹ Burton, *The State of Religion and Education in New South Wales*, 258.

⁸⁰ Maxwell-Stewart, ‘The search for the convict voice’, 77.

Further to the articulation of grievances, convicts at isolated punishment sites also exploited the logistical difficulties of conducting trials to ‘escape’, however briefly, their penal lives.⁸¹ For secondary site prisoners, the legal process—especially the trip to Sydney from Norfolk Island and Moreton Bay, or from Port Arthur and Macquarie Harbour to Hobart to attend court—provided a respite from the unrelenting oppression of penal life.⁸² As shown by the behaviour of ‘Connor’, who in Thomas Cook’s account of the death of a penal guard included himself in the murder of an overseer, convicts could inveigle themselves into the processes of justice as a means of ‘taking a slant’, or escaping their carceral environments for a time.⁸³

That convicts engaged in such behaviour purely for the purpose of gaining a brief reprieve from their penal lives is unknown. Perhaps convict ‘witnesses’ to contrived murders and other crimes believed that by relaying the brutalities of the colony’s penal stations, irrespective of whether such incidents actually took place, they were publicising the system’s inhumanities. As Greg Denning demonstrates in his work on the execution of the *Bounty* mutineers,⁸⁴ fidelity to the protocols and rituals of justice creates and embeds the official ‘truth’ of those events and circumstances.⁸⁵ In a similar vein, convict witnesses, by exposing the true nature of penal discipline through the ritual of the judicial

⁸¹ Henry Stuart Russell, *The Genesis of Queensland*, Turner and Henderson, Sydney, 1888, 65.

⁸² *Ibid.*

⁸³ Thomas Cook in Anderson, *Farewell to Judges and Juries*, 483.

⁸⁴ Denning, *Mr Bligh’s Bad Language*, 39.

⁸⁵ Denning asserts that to ensure a coherent and comprehensible ‘final reading’ of the history of the *Bounty* mutiny, all uncertainty and ambiguity surrounding the event must be decisively and formally settled: ‘but to make the rituals work there needed to be solemn deferences to all the signs. Nothing should be accidental. Nor should the mutineers disturb the right order of things...Ellison, Millward and Burkitt must be proper sacrificial victims. Their hanging made the court’s history true’. See: Denning, *Mr Bligh’s Bad Language*, 40.

process, may have attempted to confirm the credibility, or ‘truth’, of their stories. This, of course, may be according convicts a wholly undeserved moral or ethical sensibility: they may simply have exploited a procedural loophole, and their own verbal dexterity, to enjoy a rest in a different set of cells. Nevertheless, contrived courtroom appearances was one of the only ways that convicts sentenced to secondary punishment could express concerns over the conditions of their incarceration.

Additionally, the quest for a ‘slant’, or a chance to be sent to Sydney or Hobart for trial and the possibility of escaping from either the transporting vessel or the hulk, became an important legal argument for convicts up against murder and other battery charges in the colonial courts. In essence, it was argued that convict defendants, in the maiming of their fellows, did not intend to kill but rather to injure them seriously enough to be tried in Sydney, or Hobart, as the case may be. In one such case, that of *R v McDonnell and Miller [1832]*, two convicts, John McDonnell and Francis Miller, drew straws to decide who would deliver the incapacitating blow to a third convict, Thomas Smith, who had been randomly nominated as the battery victim.⁸⁶ According to the *Sydney Gazette*, the circumstances of this case ‘differed in nothing from those of the greater number of Norfolk Island cases which come before the court’.⁸⁷

In this case the drawing of straws to decide who would physically commit the crime was a commonplace and rational strategy. It was essentially a convenient method by which

⁸⁶ *R v McDonnell and Miller [1832] NSWSupC 2*
http://www.law.mq.edu.au/research/colonial_case_law/nsw/cases/case_index/1832/r_v_mcdonnel_and_mil/ler/

⁸⁷ *Sydney Gazette*, 4 February, 1832.

roles would be assigned in violent assaults. Reading the defence arguments of then barrister and later Judge Roger Therry, it seems that the process of drawing straws was emphasised to affirm the dispassionate nature of the offence.⁸⁸ In other words, the defendants were so disinterested in the assault or murder of this man that they had to engage in an artificial and random process of selection in order to commit the offence.⁸⁹ If such accounts are to be believed (which, after reading chapter one of this thesis, must be carefully examined), the strategic assault of fellow prisoners in these instances were not necessarily compelled by a desire for death, but rather as a means of physical escape from isolated penal sites.⁹⁰ That the criminal courts were the natural and most effective way in which to escape penal brutality made their procedures and protocols well known to desperate convicts. Further, in addition to those directly involved in ‘plots’ to leave penal sites, other convicts, aware of the requirements of the evidentiary processes of the criminal courts, could also exploit such avenues to escape penal repression.

In *R v Maloney and Reid*, a defendant to murder openly admitted to driving a pickaxe into the back of his colleague’s head, having already drawn straws with the victim and ‘won’ the right to die on the scaffold.⁹¹ What made this case different from other cases of contrived convict murder, however, was the testimony of two ‘witnesses’ who openly admitted to not actually seeing the event in question. Rather, these two convicts were called to impress upon the judge the hardship of iron-gang life, and how such acts of

⁸⁸ *R v McDonnell and Miller [1832] NSWSupC 2.*

⁸⁹ *Ibid.*

⁹⁰ Timothy Causer has asserted that: ‘There seems to have been a rather curious protest element here, as McDonnell insisted that their intention was to gain the opportunity to publicise the ‘tyranny’ of Morisset rather than seriously hurt Smith. The drawing of lots appears to have been to choose a ‘spokesman’ rather than to select a man to die’. See: Causer, ‘Only a Place fit for Angels and Eagles’, 216.

⁹¹ *R v Maloney and Reid [1838] NSWSupC 51*

http://www.law.mq.edu.au/research/colonial_case_law/nsw/cases/case_index/1838/r_v_maloney_and_reid/

brutality could be understood, if not excused, in the world of the transported and doubly condemned convict.⁹² In this way, such witnesses provided a moral commentary on the conditions of penal settlements, quite apart from any exculpatory evidence to excuse the defendants' actions. Thus, in this particular circumstance a combination of legal protest and opportunistic travel seemed to motivate these convicts, further complicating any attempt to locate a distinctive motivation, or pattern, for the perpetration of deliberate convict violence.

These alternative arguments concerning the motivations for contrived convict killings may help to illuminate the relationship, and interactions, between concerted convict violence and the institutions of penal justice. By using ritual murders and other crimes to manufacture court appearances, isolated and desperate inmates can be seen to have exploited the opportunities provided by the legal process—the verbal leeway allowed defendants—to rail against the conditions of their incarceration.⁹³ This exploitation of courtroom procedure reveals an oral and dramaturgical inventiveness within convict cultures long recognised as existing outside the courtroom yet less appreciated within.⁹⁴ Further, such awareness may perhaps unsettle the perception of convicts as unthinking

⁹² *Ibid.*

⁹³ See, for example, Russell, *The Genesis of Queensland*, 62-65; 'Report from the Select Committee on Transportation', 1838, *BPP Volume Three: Transportation*, xv; Evidence of John Stephen, Esq., 7th February, 1832, 'Minutes of Evidence taken before the Select Committee on Secondary Punishments', *BPP Volume One: Transportation*, 30; Stefan Petrow, 'Drawing lots: Murder at the Port Arthur penal settlement in 1835', *Tasmanian Historical Research Association: Papers and Proceedings*, 45(3), September 1998, 186.

⁹⁴ Within a crowded literature on the raucousness of convict culture, especially convict women's, see: Damousi, *Depraved and Disorderly*; Daniels, *Convict Women*; Michael Sturma, 'Eye of the beholder: The stereotype of women convicts, 1788-1852', *Labour History*, 34, May 1978, 3-10; Alecia Simmonds, 'Rebellious bodies and subversive sniggers? Embodying women's humour and laughter in colonial Australia', *History Australia*, 6(2), 2009, 39.1-39.16; Oxley, *Convict Maids*, 8-15.

victims of penal and legal repression and reimagine them as more institutionally savvy subjects.⁹⁵

Thus, convicts did not just use the sanctions of the state to ensure their demise, but also to articulate their grievances. If not an unequivocal sign of convict faith in, or loyalty to, the processes of the colonial criminal system, it does show how convicts viewed these institutions as more than simply the most effective means of ensuring a religiously sanctioned and public death.⁹⁶ By placing contrived convict murders within a broader process where convicts' grievances were played out in the institutions of penal justice, their meanings are both enlarged and unsettled. From the murder sites themselves, through the criminal courts, and, for a (un) lucky few, the gallows,⁹⁷ convict grievances were to be expressed, often in inventive and nuanced ways.

Institutional Sounds

From the above section, it is apparent that convicts, especially those in isolated penal settlements, used various means by which to re-engage with the processes and procedures of the colonial criminal law. Whether to die on the gallows, take a 'slant' from an oppressive penal regime or seek to publicly articulate their grievances, it is dangerous, if not simply incorrect, to assume that convicts did not appreciate the role that the law could play in their lives. Further, given the verbal dexterity displayed by convicts within the courtroom environment, it is equally misguided to believe that convicts did not

⁹⁵ As discussed by Byrne in: *Criminal Law and Colonial Subject*, 1-15.

⁹⁶ An argument made strongly by Robert Hughes, and discussed in the chapter one of this thesis. See: Hughes, *The Fatal Shore*, 467-470.

⁹⁷ Tamsin O'Connor, 'Raising Lazarus', in Lucy Frost and Hamish Maxwell-Stewart (eds), *Chain Letters: Narrating Convict Lives*, Melbourne University Press, Melbourne, 2001, 148.

understand, and attempt to exploit, the oracy of the court process during their various appearances.

By doing so, the convict voice, celebrated and feared in equal measure for its sophistication and flexibility in other contexts,⁹⁸ was articulated and therefore corralled within the strict verbal confines of legal procedure. Rather than empty its verbal power, however, the use of convict language within the courts—counter-intuitively perhaps—adds to its character and endurance. By forcing the law to engage with the oral inventiveness of convict argot, the language of the law itself was altered, and the voices of convicts became enmeshed within the very structures and practice of colonial legal practice. While of course it is likely that the affect of convict language upon courtroom process is not nearly as prominent as the inverse effect, nevertheless, the mutual effect of both language systems and oral traditions upon the other should be appreciated. Much more than the ephemeral traces of words shouted in ‘resistance’; or uttered in ‘defiance’; or incorrectly documented by literate officials, the convict voices intertwined within the fabric of colonial law endure along with the institutions from which they emanate.

Perhaps nowhere was this linguistic and oral ‘cross-pollination’ more apparent than in the use of convict James Hardy Vaux’s ‘dictionary of the felons cant’ to aid in the gathering and deciphering of convict evidence within colonial courts.⁹⁹ Vaux, whose dictionary was introduced earlier in this chapter and been used elsewhere in this thesis, was an educated,

⁹⁸ Laugesen, *Convict Words*; ‘Lags’ and ‘Lashes’: the vocabulary of convict Australia, 1788-1850’, *National Library of Australia News*, July 2002, 3-6; ‘Botany Bay argot’, *Ozwords*, November 2002, 1-3; Vaux, *The Memoirs of James Hardy Vaux*.

⁹⁹ Vaux, *The Memoirs of James Hardy Vaux*.

or ‘special’,¹⁰⁰ convict, and author of a detailed compendium of the language and oral idiosyncrasies of Britain’s criminal classes.¹⁰¹ Further, this controversial colonial narrator and dedicated fraudster allegedly compiled his dictionary to aid in the deciphering of courtroom evidence.¹⁰² Despite its obscure background, *A Vocabulary of the Flash Language* was supposedly provided to a colonial magistrate to aid in his interpretation of the criminal classes’ evidence.¹⁰³ Indeed, the colonial judge Barron Field is rumoured to have intervened substantially in the production and editing of the work.¹⁰⁴

Vaux’s interpretation of the flash language of Georgian England’s criminal classes, and by extension a portion of Australia’s convicts, reveals the astonishing creativity and sophistication of some of this argot. At times indecipherable to the uninitiated ear, words used by professional criminals could be impenetrably complex for those whose task it was to decipher such language. For example, in one dictionary entry, Vaux attempts to explain the use of the word *fake* among the *flash mob*:

FAKE: a word so variously used, that I can only illustrate it by a few examples. To *fake* any person or place, may signify to rob them; to *fake* a person, may also imply to shoot, wound or cut; to *fake* a man *out and out*, is to kill him; a man who inflicts wounds upon, or otherwise disfigures, himself, for any sinister purpose, is said to have *faked himself*; if a man’s shoe happens to pinch, or gall his foot, from its being overtight, he will complain that his shoe *fakes* his foot sadly; it also

¹⁰⁰ *Ibid.*, xviii. On educated convicts, or ‘specials’ see: Roberts, ‘The Valley of Swells’, 11.3-11.4; ‘A Sort of Inland Norfolk Island?’, 50-54. For one of the earliest examples of these liminal convict figures see: Rickard (ed), *George Barrington’s Voyage to Botany Bay*, 3-13.

¹⁰¹ Vaux provided a detailed version of the words commonly used by English (especially London based) criminals. It is thought that the ‘dictionary of felon’s cant’ was written by Vaux to assist in the understanding of a colonial Judge in court proceedings: see: Vaux, *The Memoirs of James Hardy Vaux*, xvi-xvii.

¹⁰² Vaux, *The Memoirs of James Hardy Vaux*, xvii.

¹⁰³ *Ibid.*

¹⁰⁴ Johnson-Woods, ‘Virtual reality’, 44. For a brief biographical sketch of Justice Field see: Kercher and Salter (eds), *The Kercher Reports*, xxiii-xxiv.

describes the doing of any act, or the fabricating any thing, as, to *fake* your *slangs*, is to cut your irons in order to escape from custody; to *fake* your *pin*, is to create a sore leg, or to cut it, as if accidentally, with an axe, etc, in hopes to obtain a discharge from the army or navy, to get into the doctor's list, etc; to *fake* a *screeve*, is to write a letter, or other paper; to *fake a screw*, is to shape out a skeleton or false key, for the purpose of *screwing* a particular place; to *fake a cly*, is to pick a pocket; etc, etc, etc.¹⁰⁵

From the above entry, it is apparent that understanding not just the words used but also the context in which they were used is crucial to deciphering the nature of individual convict crimes. Particularly when the incorrect interpretation of a particular word can mean the difference between robbing, cutting or killing a person, the vital clarifying role that Vaux's dictionary would have played becomes apparent. Noel McLachlan asserts that this cant, retrieved and documented by Vaux, was not a dialect.¹⁰⁶ Rather, it was 'a private language used by thieves to foil eavesdroppers'.¹⁰⁷ Indeed, such was the systematic and sophisticated nature of this dialogue, McLachlan accords Vaux bilingual status in his mastery of it.¹⁰⁸ Despite debate over the purpose and use of such a text, knowledge of convict cant became an important plank in the running of colonial court cases. By using the dictionary to interpret 'flash' language, the court was able to channel this product of human linguistic and verbal creativity into familiar institutional jargon. Hence, to 'bounce',¹⁰⁹ or fraudulently deceive an aggrieved party was transformed into the familiar legal language of fraud and deceit.¹¹⁰ By translating it's meaning, therefore,

¹⁰⁵ Vaux, *The Memoirs of James Hardy Vaux*, 239.

¹⁰⁶ *Ibid.*, xviii.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ Harris, 'Settlers and Convicts', 192.

¹¹⁰ Mortlock, *Experiences of a Convict*, 190.

the colonial courts transformed this nuanced and creative oracy into shards of institutionally decipherable sound.

In addition to convicts' 'flash' language, Vaux also notes that the police had their own form of flash, or cant. Contrary to assumptions of police ignorance of the felons' cant, Vaux claims that police had a sophisticated awareness of such language. Further, they developed their own lexicon to describe their work. Hence, to *Weigh Forty* was a police term that meant to resist, or 'hold off', arresting a suspect until he had accrued a sufficiently serious number of offences to be worthy of a substantial reward. In Vaux's terms:

WEIGH FORTY: term used by the police, who are as well versed in *flash* as the thieves themselves. It is often customary with the *traps*, to wink at depredations of a petty nature, and for which no reward would attach, and to let a thief *reign* unmolested til he commits a capital crime. They then *grab* him, and, on conviction, share (in many cases) a reward of 40 pounds, or upwards; therefore these gentry will say, Let him alone at present, we don't *want* him till he *weighs his weight*, meaning, of course, forty pounds.¹¹¹

The use of Vaux's dictionary, as an aid in clarifying cant talk in court, whether by defendant's or police, aided the courts in controlling the oral and aural, as well as physical, power of convicts. As both Alan Atkinson and Amanda Laugesen note, controlling and manipulating colonial speech was essential to the maintenance of social, penal and legal authority.¹¹² By using the dictionary to interpret 'flash' language, the court was able to channel this product of human linguistic and verbal creativity into familiar institutional jargon.

¹¹¹ Vaux, *The Memoirs of James Hardy Vaux*, 279.

¹¹² Laugesen, 'The politics of language', 20.

This phenomenon—the co-mingling and mutual accommodation, however asymmetrically at times—of diverse oral and auditory cultures, has potentially wide-ranging application in other contexts where structures of power and control are contested. In a peculiarly similar way, the ‘translation’ of Indigenous languages into speech conformable with courtroom procedure was also a feature of colonial court practice. As Hilary Carey notes, the renowned linguist and interpreter Lancelot Threlkeld, in addition to compiling extensive dictionaries and ‘lists’ of Aboriginal words, also helped to interpret those words for the purposes of legal procedure. Anne Keary, in an article that attempts to ‘reconstruct a cross-cultural conversation about sacred matters’ between Lancelot Thelkeld and his Indigenous companion ‘Biraban’, provides a neat encapsulation of the life and motivations of this devoted missionary and linguist:

When Threlkeld arrived in Australia in late 1824, he was an already experienced missionary. The son of an English brush-maker and a former circus performer, Threlkeld had joined the mainly non-conformist LMS [London Missionary Society] in 1813 following a life-altering conversion.¹¹³

The work that Thelkeld conducted among the Indigenous inhabitants is not the focus of this thesis, and is covered extensively elsewhere.¹¹⁴ For us, however, among the more striking features of Threlkeld’s 1834 *Australian Grammar*, a comprehensive

¹¹³ Anne Keary, ‘Christianity, colonialism, and cross-cultural translation: Lancelot Threlkeld, Biraban, and the Awabakal’, *Aboriginal History*, 33, 2009, 120.

¹¹⁴ See, for example: Anna Johnston, *The Paper War: Morality, Print Culture and Power in Colonial New South Wales*, UWA Publishing, Western Australia, 2011. For discussion of Threlkeld in the context of his ‘linguistic mission’ in colonial Australia see: David Andrew Roberts, ‘“language to save the innocent”: Reverend L. Threlkeld’s linguistic mission’, *Journal of the Royal Australian Historical Society*, 94 (Part 2), 2008, 107-125; Hilary M. Carey, ‘Death, god and linguistics: Conversations with missionaries on the Australian frontier, 1824-1845’, *Australian Historical Studies*, 40(2), 2009, 161-177; Keary, ‘Christianity, colonialism, and cross-cultural translation’, 117-155.

compendium of the languages of the Indigenous inhabitants of the Hunter River and Lake Macquarie areas of New South Wales, is the elaborate translation of the English word ‘death’ in six sentences in place of an appropriate Aboriginal equivalent. According to Carey, Threlkeld translated and transposed the word death into the following sentences:

‘Alas! Alas! I am left to die;’ ‘Let him die;’ ‘Kill him. Who shall?;’ ‘I will permit you to die;’ ‘I will cause you to die, as by poison;’ and finally, *Tetti bungngunnun banung* [Die force will I-thee], meaning ‘I will compel you to die, or, murder you’.¹¹⁵

Carey insists, from the evidence of the way that such Indigenous language was translated, that Threlkeld’s *Australian Grammar* was used by the colonial government to interpret the language of Indigenous Australians for colonial courts as well as to interrogate Aboriginals brought before the court. As Carey notes, the lists of words, phrases and ‘illustrative sentences’ compiled by Threlkeld in his personal papers read like the transcripts of court proceedings:

In his tidy hand, he wrote the phrases and sentences for interrogations which read like the dialogue from court cases and interrogations he had personally attended: ‘I think you’re a wild fellow; I hear you’re a thief; Who told you?; Blackfellow told me; You’re a brave fellow; This is a miserable place; I’ll fight you tomorrow; I’ll spear you this evening; Sit down, I’ll not hurt you; I have heard blackfellow going to kill you; Don’t you deceive me; I’ll put you in the watchhouse; If you break it, I’ll kill you; Who gave you the tomahawk?; You hurt me—take care.’¹¹⁶

Despite Thelkeld’s ability to confine, or discipline, Aboriginal languages into the institutional speech required of courtroom procedure, the complexity of such language

¹¹⁵ Carey, ‘Death, god and linguistics’, 167.

¹¹⁶ *Ibid.*, 168.

was still acknowledged. Indeed, for James Günther, the complexity of the various Indigenous languages was a striking feature of his reading of Threlkeld's journals. In addition to a healthy disrespect for Threlkeld's ability as both a grammarian and writer of English, Günther recognised the depth and sophistication of the Indigenous languages he was translating:

From the little I have seen and heard of the language during the short time of my residence here I conclude that it is by no means very poor. Considering their simple way of living scarcely a grade above the irrational creation one would naturally expect that their ideas must be very few and compromised in small compass of words but this is far from being the case.¹¹⁷

This brief account of the potentiality of cross-cultural awareness to be enhanced by an acknowledgment of the sophistication and nuance of both convict and Indigenous languages and dialects raises interesting possibilities for further investigation. Particularly when the experiences of both convicts and Indigenous Australians has been nominated as one of the enduring 'silences' within Australia's past, yet to be adequately examined by historians,¹¹⁸ the *institutional inroads* made by each groups linguistic inventiveness is of significant interest. Indeed, it is intriguing to ponder whether the 'translation' of convict language into intelligible institutional language had a similar effect upon those who engaged with it as that of Indigenous languages. While the possibility of 'cross-cultural

¹¹⁷ *Ibid.*, 171-172.

¹¹⁸ Tom Griffiths, in discussing the phenomenon the commemoration within the (uneasy) distinction between 'private experience and public knowledge', asserts that: 'suggestive silences confront the historian of early Australia'. For Griffiths, 'two particular aspects of the Australian past, because of their sensitivity, reveal how uneasy is that distinction. One is white violence against Aborigines, the other is the convict beginnings of European settlement. Both experiences have lived strongly, sometimes hauntingly, in the Australian memory. Both have also been subjects of public reticence and embarrassment'. See: Griffiths, 'Past silences', 7-8. For discussion of the relationships between Indigenous Australians and convicts, including 'exploring the various kinds of co-operation which seemed to have developed between them' see: Jan Kociumbas, 'Mary Ann', Joseph Fleming and 'Gentleman Dick': Aboriginal-convict relationships in colonial history', *Journal of Australian Colonial History*, 3(1), April 2001, 28-54.

conversation' between European and Indigenous Australian's is complicated by chasms of cultural and social dissonance, an appreciation for the language of convicts is more likely. Indeed, in the formation of colonial legal institutions, the impact of convict language, in allowing the colonial courts to function effectively by collecting and understanding convict evidence, may well have been more profound than is presently appreciated. In the enduring edifices of colonial and contemporary law, in the practices and procedures of the criminal law, reside the voices of those convicts straining to be heard, enshrined not in resistance, but in conformity with the institutions of colonial discipline.

Conclusion

This chapter completes a trilogy of chapters that have explored new ways of appreciating and understanding, and unsettling and energising, the exciting historical project of uncovering 'the convict voice'.¹¹⁹ Manifestations of these voices, displayed here in the oral inventiveness of colonial courts, completes a process by which iconic penal-era phenomena, namely flogging, informing and legal speech, are reimagined as expressions and representations of convict voices within the penal-era archive. Convicts' interactions with British and colonial Australian legal cultures have shown how their speech both altered, and was altered by, the processes of legal appearance, procedure and argument. Thus, in the very process of sacrificing some of their verbal freedom, convicts also reaffirmed their status as legal subjects. The arguments used in this chapter, in particular that convicts understood, and indeed used the oral flexibility of the colonial courts to

¹¹⁹ Gilchrist, 'A life of noisy riot', 29-30.

further various aims, serves as a mild corrective to those historians and commentators who have written of convicts as (always) victims of the legal process; as ‘outsiders’¹²⁰ always in opposition to, and railing against, the inequities of the criminal law.

This chapter concedes that convicts necessarily lost something unique to their language and culture when they entered the colonial courts, for the language that they used was channelled into the familiar verbalism of colonial legalese. However, in exchange for this verbal restriction, the concerns, issues and identities of convicts became, once more, institutional and legal concerns. Thus, the compromises entailed in convicts’ interactions with the courts simultaneously ensured an institutional identity in the colonial court system. For the price of verbal freedom, convicts attained a much more valued commodity: the freedom of British legal speech. In effect, convicts’ voices, while tempered, nonetheless became enmeshed in the verbal traditions of the colonial and British legal system. In this way, the convict voice was there at the very birth of Australian legal identity. The convict voice, therefore, when perceived as part of the institutional and social fabric of society, attains a degree of permanence and stability that is lacking in the ephemeral voices of those railing against colonial or penal injustice.

This chapter has also sought, by using examples of convicts manufacturing court appearances, to unsettle previous assumptions that convicts avoided colonial justice whenever possible. Convicts’ exploitation of the processes of the colonial criminal courts will hopefully provide fresh insight into convict subjectivity during this period. That

¹²⁰ Kercher, *Outsiders*, 109-124.

convicts may have acted in ways that invited, or indeed compelled, the presence of legal process and procedure into their worlds animates, as well as complicates, our understanding of their attitudes towards penal law and order. An awareness of, and even loyalty to, the ideals of British justice and ‘rights’ recasts convicts as socially and institutionally savvy subjects. Further, traces of convict fidelity to the processes of colonial law and discipline may add nuance to a stubbornly enduring, if largely settled, conundrum at the heart of Australia’s ‘national story’¹²¹: namely, how a society of ‘thieves and ruffians’ created, or were complicit in, the creation of such a law-abiding community.¹²² Thus, while constrained within the legal structures that ensured stability and institutional coherence within colonial Australia, the convict voices that punctuate this chapter endure beyond historians’ attempts to corral them within a narrow resistance-oriented framework. The convict voices found above are part of the story of Australia’s penal, legal and social evolution. As such, they are enduring and permanent, and their legacy can be seen in the development of Australia’s colonial institutions, not in opposition, or contradiction, to such developments.

¹²¹ Babette Smith, *Australia’s Birthstain*, 10.

¹²² Sue Rosen, “*Men at Work*”: *Penal Ideology and Nation Building on the Great Western Road*, Heritage Assessment and History, Sydney, 2006, 19.

Conclusion

This thesis has examined the auditory culture of penal-era Australia to challenge, invigorate and, ideally, unsettle discussion and debate concerning convict subjectivity and what constitutes a ‘genuine convict voice from below’ during this period. In a project inspired by what Mark Smith describes as ‘teasing aurality from ostensibly silent print’,¹ the various archives, accounts, narratives and recollections of colonial Australia, from approximately 1800-1840, have been mined for their sonic resonance: lifting the cacophony of convictism from the printed descriptions of penal life. To bring a semblance of order to these retrieved sounds, as well as reveal the nuances of Australia’s auditory culture during this period, this thesis has been structured from a broad interpretation, in chapters two and three, of the aural context in which convict voices arose, to a narrower examination, in chapters four, five and six, of individual ‘convict voices’ that were produced within this auditory environment.

Chapter one of this thesis provided a context in which to discuss and challenge our ability to uncover an authentic convict voice from documented convict action. An unabashed exploration of the potentialities and pitfalls of uncovering convict subjectivity, this chapter sought to marry a healthy scepticism toward the ‘wider historiographical project of uncovering the convict voice’² with clues as to where the search should flow. The garrulous and guarded voices of the creators of convict ‘murder suicides pacts’ warned us to raise our aural antennas to the past and listen for the auditory and oral dynamics of the past.

¹ Mark M. Smith, ‘Echoes in print’, 319.

² Gilchrist, ‘A life of noisy riot’, 29.

Chapters two and three began this process, and were concerned with broadening the auditory canvass upon which such searches for the convict voice should be conducted. A search for the convict voice, when conceived as an aural and oral, as much as visual and literate project, compels an analysis of colonial life that encompasses all the sounds and noises that made up this society, not simply the voices captured by officials, observers or commentators. Thus, the natural environment had been mined for its aural resonances, expanding our understanding of the ways in which colonial society understood itself as well as the ways in which the environment was used to instil penal discipline. Further, the auditory culture of Australia's penal system was also explored, and links made to the other systems of repression that used whipping to control bonded humanity. The 'unique' experiment that was penal-era Australia was revealed as a place resounding with the contested sounds of physical violence, as both flogger and flogged sought validation and identity on the flogging ground. These fiercely contested soundscapes of colonial life reminds us to listen for the disciplinary, ideological and social underpinnings of much colonial activity, and to include these sounds within any search for an unmediated convict voice from below.

The choice of flogging, informing and legal speech, in chapters four, five and six respectively in this thesis, is my attempt to reposition these iconic penal-era phenomena as specific 'convict voices' produced within penal-era Australia's auditory culture. While representing some of the most well known images and representations of convicts' lives, flogging, informing and legal speech are re-imagined in this thesis as mediated aural constructs that simultaneously reveal the robust and lasting nature of the convict voice while tethering convict lives to the

disciplinary structures that held them. In this way, the sounds of penal repression are conceived as both contested and strategic: their creation, use and exploitation by colonial authorities, and convicts, shaping the boundaries of the Colony's disciplinary regimes. Hence, the convict voice, rather than existing outside the disciplinary structures that controlled convicts' lives, is a part of the very process of the colony's legal, administrative and social development. Conceived this way, the convict voice is a stronger and more lasting phenomenon than has previously been envisioned.

This thesis decrescendoed as it progressed: from the broad auditory culture of colonial Australia to those individual and idiosyncratic aural constructs mentioned above.

Despite this effect, the relevance of the softer and narrower sounds of convict voices in chapters four, five and six are not diminished as their reverberations lessen. Like all compelling musical composition, the unique sounds of individual instruments are an integral part of the overall work. This is an apt metaphor for my interpretation of how the search for a genuine convict voice may be approached within penal-era historiography. The 'convict voices' that emanate from the colonial era archive should not be interpreted as individualised, discrete and severable artifacts but as part of a broader aural composition, what Alan Atkinson has described, in another context, as the 'aural hieroglyphics' of place.³

Convict Subjectivity

In addition to a demonstration of aural history's ability to invigorate historical inquiry, this thesis has employed such analyses as a means of commenting upon the broader project of examining convict subjectivity within penal-era Australia. Chapter

³ Atkinson, *Europeans, Volume Two*, 212.

one of this thesis sought, by example rather than assertion, to reveal some of the dangers involved in taking stories of convict identity at face value. By revealing the complex interplay of colonial myth, bluster, recollection and supposition, it was argued that uncovering something of the ‘inner-worlds’ of convicts requires both scepticism and creativity. The various voices employed within the rendition of this iconic convict incident also introduced aural and oral history as a vital, and not just interesting, avenue of inquiry for this project. As such, in addition to a celebration of aural history, this thesis serves as a subtle warning to those who seek understanding of convict identity in overused sources and uncritical reflection.

Over the past two decades, an explosion in interest in the identity and character of convicts has occurred in Australia. Fuelled by increasing interest in family history and genealogy, and the ‘democratisation’ of historical inquiry through advanced and easier retrieval technologies, the lives of convicts have, arguably, never garnered as much popular interest as they now enjoy.⁴ Further, interest in the lives of convicts has been piqued by contemporary historians’ and novelists’ portrayals of the ‘real’ or ‘genuine’ conditions faced by those transported to Australia—our original ‘founding fathers’.⁵ While this endeavour is to be encouraged, it must also be acknowledged that it is beset with historical and methodological dangers. Chief among these is the tendency to create the impression of ‘closeness’, whether genealogical, spiritual or emotional, between our convict forebears and our selves. The establishment of a

⁴ Graeme Davison, ‘Speed relating: Family history in a digital age’, *History Australia*, 6(2), 2009, 43.1-43.10. See also Stuart Macintyre and Anna Clark for analysis of the politicization of history and using the past to inform how the populace should be thinking about their place in the present and future. See: Stuart Macintyre and Anna Clark, *The History Wars*, Melbourne University Press, Carlton, 2004, 1-13. See also Alison Alexander, ‘Convict Legacy’, *The Companion to Tasmanian History*, Centre for Tasmanian Historical Studies, 2006, http://www.utas.edu.au/library/companion_to_tasmanian_history/C/Convict%20legacy.htm, viewed at 08/08/2013; Stephen Gapps, ‘Exhibition reviews: Connecting with convicts’, *History Australia*, 8(1), 2010, 247-249.

⁵ Ward, *The Australian Legend*, 15.

human connection to these characters, and the assumption that such closeness is historically profitable or indeed possible, is problematic. At best, it potentially misleads as to the potential reach of historical inquiry and, at worst, it exploits our desire to imagine and construct some sort of concrete connection, beyond the ephemeral and imaginative, with our convict heritage. Further, this desire is also linked to the desire to include ourselves, along with our colonial progenitors, in the great story of Australian foundation and the development of distinctly ‘Australian’ characteristics and behaviours, passed down to us by the actions, motivations and attitudes of Australia’s convict cohort.

In seductive historical and narrational sleights-of-hand, which are emotional rather than intellectual in their articulation and rationale, historians such as Babette Smith have attempted to create a link between ‘us’ as modern Australian citizens and (for some at least) our convict forebears.⁶ This is based largely on the emotional pull of imagined exploits and positive convict character traits rather than a critical examination of the historians’ (or anybody’s) ability to draw parallels between people separated by multiple generations and markedly different living conditions.⁷ This approach to characterising convicts is misguided in two principal ways: first, it creates a false

⁶ Smith has written of the ‘proximity’, and ‘close generational link’ between figures such as the convict Thomas Harrison, transported to Western Australia in 1863, who ‘did not die until 1931’, and what she describes as ‘modern Australia’. See: Smith, *Birthstain*, 5.

⁷ Among other things, Smith has drawn a direct link between a specific convict experience and the first ‘diggers’ at ANZAC cove in Gallipoli. The use of such linkages ties, or attempts to link, the character traits of convicts to those heroic exploits (both physical and mental) during WW1. Further, and in perhaps a more cynical and sinister tactic to bring the convict experience closer to contemporary understanding, Smith has likened, in an *Australian* book review, the Cascade convict ‘Female Factory’ in Hobart (circa 1828) to the conditions at Auschwitz under Nazi German control. See: Babette Smith, ‘Terror and triumph in convict lives’, *The Australian*, 3 March, 2012, <http://www.theaustralian.com.au/arts/books/terror-and-triumph-in-convict-lives/story-e6fgr8nf-1226285411334>, viewed at 3 March, 2012. Thomas Keneally has also attempted to link the conditions of penal-era Australia with that of Nazi Germany. Writing of the dynamics of convict flogging, Keneally opined: ‘Occasionally, convict solidarity surfaced in the face of the lash, and a convict scourger would refuse to do his work, but the system had attended to this possibility by its appointment of overseers and constables, the equivalent of *Kapos* in German concentration camps. See: Keneally, *Australians*, 308.

impression that the ‘inner lives’ of convicts, their thoughts, attitudes, motivations and impulses are readily retrievable and knowable. The second way is that, in order to create an impression of the laudable convict as an exemplar of robust Australian character, a system of discipline and opposition must be *created* for those very character traits to rail against. For Smith, the history of Australian convictism is one of middle class (English) bigotry and religious repression that has robbed later generations of the full picture of how our forbears lived in colonial times.⁸ Thus, to remedy this, convict characters must be fleshed out to reveal ‘confrontations with the law, ingenious escapes and capacity for endurance’⁹: phenomena that are seemingly missing, or have been ignored, in existing portrayals of convict life.

Smith’s underlying message is that convicts, especially in their interactions with colonial authorities, were (and are still, metaphorically) railing against injustice, repression and bigotry. Thus, to ‘resuscitate’ the convict, and to reclaim a genuine convict voice, authors such as Smith construct a counter-narrative of the downtrodden, beaten outsider whose tenacity and ingenuity in the face of barbarism must be revealed, and indeed celebrated, today.¹⁰ In what is perhaps the supreme irony of this process, historians who laud convicts’ resilience and bravery in the face of tyranny are compelled to accentuate those very elements of penal life that, in their opinion, created the myth of the dreaded ‘convict stain’ in the first place. In other words, to invalidate the stain that has blighted our appreciation of convicts, a stain that has so slandered and traduced the characters of our forebears, these authors have

⁸ Babette Smith, *Australia’s Birthstain*, 1-7, 9; ‘About Australia’s Birthstain’, Babette Smith: Author, Historian, Journalist & Mediator’, 2009, http://www.babettesmith.com/index.php?option=com_content&view=article&id=2&Itemid=6, viewed at 05/02/2010.

⁹ Babette Smith, *Australia’s Birthstain*, 2.

¹⁰ Babette Smith, *Birthstain*; Karskens, *The Colony*. 292.

resuscitated the same stain-inducing conditions in order to rescue these convicts from posterity's condescension.¹¹ In effect, a modern, deeper and more virulent rendition of the phenomenon of the 'convict stain' has been articulated as a means to rescue convicts from its perceived untruths and injustices.

Further, by bringing convicts 'closer' emotionally to the modern reader, as if a modern readership can empathise with their forebears, is actually rendering these historical actors less (historically) visible. By 'knowing' convicts from our own modern perspective, are we simply reaffirming our own preconceptions of what they (the convicts) must have been like? Essentially, by this process are we not learning to know ourselves better, and what we want our forebears to represent in our present, rather than understanding the lived experiences, however vague and incapable of actual illumination, of people long dead? Such an emotional engagement with past actors is a fraught process: we engage our own emotions and attitudes in the process of attempted empathy with these others which, in turn, opens our own analysis to those very emotions: flights of outrage and anger at perceived injustice, and outpourings of joy, fancy and wonder at the more uplifting experiences of convicts.

Often historians criticise novelists, or 'celebrity historians', for simply and fraudulently 'making people up' to suit the demands of a fast paced and interesting historical narrative.¹² Thus, as the criticism goes, these authors substitute any form of academic research, and any definable methodology, with glib character portraits and

¹¹ With simultaneous apologies and thanks to E.P. Thompson, E.P., *The Making of the English Working Class*.

¹² Babette Smith, 'Authenticity lost at sea', *The Sydney Morning Herald*, November 28-29, 2009, 32. Cassandra Pybus, has responded to the publication of one historical work by attacking the author's 'scanty notes', writing that 'to pass off such creative speculation about a past event as a work of history is a fraud upon the reader'. See: Catharine Munro, 'Alone in stormy waters', *Sun Herald*, November 29, 2009.

pop-psychological analyses to accord to their own notions of how these people must have behaved and ‘felt’.¹³ While some of this criticism is indeed warranted historians, in providing new insights into the ‘inner-worlds’ of convicts, have also stretched the bounds of plausible imagination to provide us with convicts’ lives unshackled from the opinions offered by their Governors and gaolers. Assumptions and assertions that convicts’ inner-worlds can indeed be revealed betray a psychological and historical certainty that ignores, or at least underestimates, the ambiguities, and otherness, of the past. In other words, the concept of, and respect for, the ‘pastness’ of the past, in Shane and Graham White’s words,¹⁴ is sacrificed to a desire to render knowable an arguably unknowable quarry.

In this way, Robert Darnton’s seminal idea that it is the unfathomable in history that gives it its most intriguing dynamic is dismembered by historians flexing their psychological muscles to paint a picture of people that, given their temporal, cultural and emotional distance, are overwhelmingly *unknowable* to historians, novelists, commentators or anyone else. For Darnton, the historical richness of, for example, the wonderfully perverse antics of the Parisian cats killers, is its very indecipherability: the simple truth that only an approximation of what these artisans were thinking, in the social and cultural context in which they acted, is possible for the conscientious historian.¹⁵ We learn of the potential meanings of the artisan’s actions from their social and economic milieu, from the broad patterns of life swirling around them and their work. Darnton does not abstract the rules of the shop floor from the actions of the workers, *rather it is the very rules of the workplace that give the artisans actions their richness and meaning*. This thesis has attempted a similar approach to

¹³ *Ibid.*

¹⁴ White and White, *The Sounds of Slavery*, xix.

¹⁵ Darnton, *The Great Cat Massacre*, 78.

uncovering versions of ‘the convict voice’: to gain an approximate understanding of the actions and attitudes of people through the very laws and rules that structured their lives.

In addition to highlighting some of the methodological pitfalls and potentialities involved in locating an authentic convict experience of colonial Australia, this thesis challenges the notion, most recently expressed by John Hirst, that ‘Australia has now emerged from the long era of repression about its origins’.¹⁶ While it may indeed be true that modern Australia is no longer consumed by shame about the relatively unique foundations of their country,¹⁷ the subject of convict identity and subjectivity remains one of the most prominent aspects of our historical inquiry.¹⁸ Indeed, to understand something of the experiences of Australia’s first European residents is to engage in what Hirst has also deemed ‘the most challenging question in Australian history: ‘what effect did the convicts have on our national character?’¹⁹ This thesis challenges whether this question is answerable in any meaningful way, but it does not believe that the question should not be pondered. The issue is how to glean meaningful insights into convicts’ lives without sacrificing historical practice or convicts’ credibility in the process. In essence, the convict voice, however nebulous and frustratingly beyond our comprehension, is still a valid, indeed vital, historical phenomenon worthy of sustained and principled inquiry and analysis.

¹⁶ John Hirst, ‘An oddity from the start: Convicts and national character’, *The Monthly*, July 2008, 42.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

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