VICE IN A VICIOUS SOCIETY:
CRIME AND THE COMMUNITY IN MID-NINETEENTH
CENTURY NEW SOUTH WALES

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DECLARATION

This thesis is my own work.
ABSTRACT

As a receptacle for British convicts, New South Wales was popularly portrayed as a 'vicious' society. Crime and vice were considered the inevitable concomitants of a transported 'criminal class' and convict 'contamination'. The following study, focusing on the mid-nineteenth century, argues that the impact of convictism on colonial crime and mores was greatly exaggerated. Official criminal statistics, reportage in the press, as well as other contemporary evidence, all present in some ways a distorted view of crime. Crime was not simply grafted on to the colony, but reflected various concerns and interests, the conditions of a relatively affluent frontier community, and perhaps most importantly, an intense concern with respectability. The community's transformation from a penal colony was marked not only by a decreasing proportion of convicts in the population, but a reorientation in standards of public conduct, new fears concerning public order, and an obsessional interest in repudiating the convict stain.
ACKNOWLEDGEMENTS

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PREFACE

The 'mid-nineteenth century' emphasis of this thesis includes broadly the period from 1831 to 1861. The availability and nature of official criminal statistics determined in part these terminal dates. In 1831 returns of convictions before courts of quarter sessions were first recorded. More comprehensive criminal statistics did not become available until 1858, while after 1861 the statistics were affected by the centralization of New South Wales' various police forces. Moreover, the period is bordered by two developments which give it some historical unity in relation to crime. The first is the governorship of Richard Bourke, who assumed office in 1831, and whose administration was rife with controversy concerning the colony's crime rate. The second is the gold rush, which tended to dominate contemporary concern about crime and public order from 1851 to 1861. Since discussion focuses on New South Wales' transition from a penal colony to a free society, the ten years following the cessation of transportation (in its classic form) to the colony in 1840 provides an appropriate middle decade, and is given the greatest attention.

For statistical purposes, 'New South Wales' includes the geographical area of Victoria before it became a separate colony in 1851, and Queensland before separation in 1859. Throughout the period, however, the 'middle district', which comprises New South Wales' present boundaries, is the main focus of study.
'Crime' is less easily circumscribed. As a legal category, it may be defined as those acts or conduct prohibited and punishable by criminal law. In this respect, the study deals with both indictable offences, which were considered more serious crimes and tried before the Supreme Court or courts of quarter sessions, and petty offences tried summarily before the magistracy. But what is labelled and treated as 'crime' is a social process which involves more than simply the violation of a static legal code. With this point in mind, the discussion attempts to examine crime within the wider context of community perceptions and relations.
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### ABBREVIATIONS

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<tr>
<td>ADB</td>
<td>Australian Dictionary of Biography</td>
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<td>Australian National Library</td>
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<td>CO</td>
<td>Colonial Office</td>
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<td>Col Sec</td>
<td>Colonial Secretary</td>
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<td>HRA</td>
<td>Historical Records of Australia</td>
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<td>JRAHS</td>
<td>Journal of the Royal Australian Historical Society</td>
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<td>LC</td>
<td>Legislative Council</td>
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<td>ML</td>
<td>Mitchell Library</td>
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<td>NSW</td>
<td>New South Wales</td>
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<td>PP</td>
<td>Parliamentary Papers</td>
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<td>SANSW</td>
<td>State Archives of New South Wales</td>
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<td>SMH</td>
<td>Sydney Morning Herald</td>
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<td>V&amp;PLA</td>
<td>Votes and Proceedings of the Legislative Assembly</td>
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INTRODUCTION

Between 1788 and 1840 about 80,000 men and women prisoners were transported from the United Kingdom to New South Wales. The social consequences of this migration were most forcefully stated by a British select committee in 1838. The committee concluded that transportation not only failed to reform criminals, but further corrupted them. A still 'more curious and monstrous' result of the system was the 'calling into existence, and continually extending societies, or the germs of nations most thoroughly depraved, as respects both the character and degree of their vicious propensities'.

The committee's chairman, Sir William Molesworth, informed the House of Commons that his investigation proved that transportation produced and perpetuated in the penal colonies 'a state of morality worse than that of any other community in the world'. So much was this the case, that he questioned whether Britain was justified in encouraging immigration to a community where moral principles would be undermined by association with criminals.


Historians concur that the credibility of the Molesworth Committee is seriously undermined by the prejudices and preconceptions of its chairman and principal witnesses. But they have tended to attack the committee's motives rather than to contradict its conclusions. In fact its portrayal of New South Wales represented less a new departure than the climax of British perceptions of the colony. The committee shared with most accounts of New South Wales' moral condition two basic assumptions. First, it assumed the existence of a 'criminal class'. Persons who committed criminal offences were believed to form a class, detached from the working classes, which threatened social order. As fear of revolutionary violence subsided in Britain, concern with the 'criminal' or 'dangerous classes' faded. But the belief that offenders were mainly drawn from a professional criminal subculture prevailed during the first half of the nineteenth century.


conception of a 'criminal class' provided in part the rationale for transportation, since it assumed that offenders were part of a distinct entity which could be exported.

A second pervasive assumption was that criminality was contagious. Contemporaries summed up the demoralizing influence of criminals in the word 'contamination'. According to Sydney's superintendent of police, William Augustus Miles, 'contamination' resulted because 'a convict will talk over his deeds of guilt till crime becomes familiar and romantic'. Others believed the process of contamination was even more insidious. Chief Justice James Dowling, in some fatherly advice to his son, warned that, 'Vice is so fascinating, that she cannot be looked upon without peril to the beholder'. Some held as well that criminal traits were hereditary. Judge Alfred Stephen stated his conviction that 'crime descends, as surely as physical properties and individual temperament'.

Given the assumed existence of a 'criminal class' and its contaminating influence, it was natural to assume that transportation to New South Wales created a vicious society. As one writer asked, 'What else could be expected?':


6 James Dowling to Son, 16 February 1839, Dowling Correspondence, ML, A486-1.

The original stock is the very lowest: the blood-stained hand and ruthless heart from the most barbarian parts of Ireland; the professional depredator from the vilest haunts of London; the lowest slaves of profligacy, inebriation, violence, and lust; Men who have sought and found the very abysses of crime. ... For three-quarters of a century they are left to fester each in his own rankness of soul, or by contact with others to ferment into yet more horrible conditions of pollution and iniquity.  

The dangers inherent in a society which associated bond and free seemed equally apparent. In a statement which is probably more indicative of attitudes toward labour discipline than colonial morality, another observer noted that:

The extent to which the labouring classes of emigrants become contaminated is immense. ... they become as of the same class, rivalling in vice even their instructors. So much is this the case, that I have frequently heard experienced settlers declare that they much preferred the convicts, as being the most easily managed.  

If in a less virulent form, the same assumptions which shaped nineteenth century perceptions of crime are reflected in the works of historians. Studies by C.M.H. Clark, L.L. Robson, and A.G.L. Shaw tend to confirm that most convicts were drawn from a 'criminal class'.

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8 Alexander Harris [An Emigrant Mechanic], Settlers and Convicts; or Recollections of Sixteen Years' Labour in the Australian Backwoods (London 1847; 2nd Australian ed., Melbourne, 1954), p. 231. See also for example Richard Whately, Thoughts on Secondary Punishments, in a Letter to Earl Grey. To which are appended, two articles on Transportation to New South Wales, and on Secondary Punishments; and Some Observations on Colonization (London, 1832), pp. 201-2.

On the basis of the large proportion of convicts with prior convictions before they were sentenced to transportation, as well as 'informed opinion' in Britain, Clark concludes that the convicts were recruited mainly from a distinct body of professional criminals. Robson and Shaw are somewhat more equivocal, noting that the majority of convicts were 'ne'er-do-wells'. Both historians, however, associate the typical convict with city-dwelling professional criminals, and emphasize the high proportion of convicts (estimated at two-thirds of all those transported) with previous convictions. The assumption that most convicts were 'professional' or 'hardened criminals' is also made implicitly by Ken Macnab and Russel Ward, who view the virtue of native-born Australians as partly a reaction against their parents' criminality, and explicitly by M.B. and C.B. Schedvin, who view the socialization of convicts as taking place within a criminal subculture.


The interpretations of Clark, Robson, and Shaw, serve as a corrective to romanticized characterizations of the convicts. 'Obvious victims', in the sense of Tolpuddle Martyrs or Canadian Rebels, comprised only a small percentage of the men and women transported. But the convicts' criminality remains debatable. Based on a statistical study of convicts transported to Van Diemen's Land between 1840 and 1853, James Moore criticizes the portrayal of convicts as principally hardened or habitual criminals. Both on the grounds of the large number of convicts transported without prior convictions, and the high proportion of convicts with good records in the colony, he concludes that many were 'criminals' only in name. This line of argument seems even more relevant in relation to convicts transported to New South Wales.

L.L. Robson's sample of the convict ship indents indicates that fifty-eight per cent of the convicts transported to Van Diemen's Land had previous convictions, a figure similar to Moore's findings, compared to only eighteen per cent of those sent to New South Wales. There are no comprehensive records of the convicts' conduct in New South Wales,

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14 The phrase is used by Lloyd Evans and Paul Nicholls (eds), Convicts and Colonial Society 1788-1853 (Sydney, 1976), p. 113. Of approximately 162,000 prisoners transported to Australia between 1788 and 1868, George Rude identifies only 3,600 convicts as 'political and social protesters', or about one in forty-five of all those transported. George Rudé, Protest and Punishment. The Story of the Social and Political Protesters Transported to Australia 1788-1868 (Oxford, 1978), pp. 8, 10.


16 Part of this disparity may be explained by the fact that there is no information concerning the former offences of a larger proportion of those transported to New South Wales than Van Diemen's Land. Even so, thirty-five per cent of the convicts transported to New South Wales were recorded as having no prior convictions, compared to only seven per cent of those sent to Van Diemen's Land. Robson, Convict Settlers, pp. 209, 212.
but since Van Diemen's Land received the 'worst' offenders, the rate of recidivism was presumably much lower. Robson himself concludes on the basis of offences committed in Van Diemen's Land that the evidence 'does not demonstrate that convicts were vicious criminals incapable of reformation or unable to cease their criminal activity'. He attributes this, however, primarily to conditions in the colony which favoured reformation.

Transportation's potential for reforming convicts cannot be discounted. As A.G.L. Shaw points out, between contemporary criticism of the system's leniency and later criticism of its brutality, the progressive aspects of transportation are frequently overlooked. Aside from placing offenders in a more favourable economic environment, the assignment of convicts to private settlers and the ticket of leave system anticipated modern use of non-custodial treatment and probation. James Moore emphasizes an 'atmosphere of hope' as a further reformatory aspect of the system, while L.L. Robson refers to transportation as an effective form of 'shock treatment'.

Further doubts concerning the criminality of convicts before they were transported, however, are raised by studies of crime in Britain. Susan Magarey points out that changes in the judicial system, criminal law, definitions of offences, and police, make prior convictions a very

17 Ibid., p. 157.
19 Moore, Convicts of Van Diemen's Land, p. 111.
20 Robson, Convict Settlers, p. 187.
dubious indicator of the convicts' character. David Philips's study of crime in England's Black Country from 1835 to 1860 indicates that most persons prosecuted for criminal offences were normally employed, and although they occasionally supplemented their incomes by theft, they were not members of a 'criminal class'. While there was perhaps a distinction between the 'honest' and 'dishonest poor', Philips concludes that only a small proportion of offenders were full-time criminals.

The concept of 'contamination' is still more problematic, both because of its vague connotations in nineteenth century usage, and because it is more subtly translated into historical interpretations. Some historians have accepted uncritically the demoralizing influence of convicts on the honesty and moral standards of the general population. More importantly, convict vices and values such as hard-drinking, hard-swearing, and a hatred for the police are viewed as leaving a lasting imprint on Australian culture. Convict 'contamination' becomes in effect a component in the development of a distinctively Australian ethos.


Such explanations of convicts' long-term influence are particularly resilient, since they are as difficult to disprove as to prove. One can, however, point to contrary evidence and alternative interpretations. Humphrey McQueen argues that convicts largely shared the petit-bourgeois values of free immigrants. In contrast to the supposed importance of convict mores and mateship in the outback, Alan Atkinson suggests that there is little evidence of convict solidarity and that distinctive values were most firmly established in areas of close settlement.

Henry Reynolds asserts that Tasmania, the colony with the highest density of convicts after 1840, ultimately became the most conservative, Anglophile, and un-Australian in outlook. There is also an apparent contradiction in the argument of Ken Macnab and Russel Ward who insist that native-born Australians closely shared the manners and outlook of convicts, yet explain their lack of criminality as largely a reaction against convict viciousness.

The questionable notion of a criminal class and its contaminating influence is indicative of the wider methodological problems involved in relying on contemporary perceptions of crime in relation to New South Wales. Inseparable from the use of literary evidence is the


problem of class bias. Few convicts left records, and those convict narratives which were published, even when genuine, follow a standardized formula. One is left mainly with the impressions of upper and middle class observers who were often repelled by colonial morality simply because they scrutinized the working classes more closely in the colony than in Britain. Upper and middle class moral sensitivities could also result in exaggerated conclusions. John Henderson, for example, found the presence of questionable reading matter in a settler's home ample testimony of the contaminating influence of convicts on children. Many commentators were less explicit about the evidence which shaped their generalizations. To some extent, particularly in travellers' accounts, invective against New South Wales' moral character became a literary convention.

One may suspect that the less savoury aspects of colonial life so often dealt with were calculated largely to appeal to an English audience, rather than to present a balanced view. Literature about the colony and its penal background sometimes approached a subtle form of pornography. Descriptions of convict floggings were one more addition to the already vast number of publications on flagellation in Victorian England. The suspected prevalence of sodomy and

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bestiality was hinted at to the limits propriety would permit. Another favorite theme was the corrupting influence of female convict servants, as in the following passage by J.C. Byrne.

Coming from the very hotbed of vice ... these female convict servants are deeply initiated in all the mysteries of human depravity. ... The young mind is pliable, open to impression, and readily imbibes the effects of the language and conduct of those around. The chamber of female youth, as well as that of the other sex, is always open of necessity to servants, and there, in the very inmost recesses of the home, vice is inculcated, and taught, until desire and ability produce practice.  

Byrne went on to assure his readers that mothers as well as their children were corrupted, as testified by the prevalence of incest between free women settlers and their sons. Not surprisingly, these observations in Byrne's travelogue, failed to merit mention in his Emigrant's Guide published the same year.

At a more profound level, works by British writers were influenced by domestic class jealousies, and reflect resentment against the social and economic mobility of ex-convicts and lower class immigrants. Henry Melville, commenting on New South Wales' moral progress at mid-century, was most disturbed by the manner in which some members of the lower orders became 'elevated above their proper station in life'.

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32 J.C. Byrne, Twelve Years' Wanderings in the British Colonies; From 1835 to 1847 (London, 1848), vol.1, pp. 231-2.
33 Ibid., vol.1, p. 233.
35 Henry Melville, The Present State of Australia, including New South Wales, Western Australia, South Australia, Victoria and New Zealand, with Practical Hints on Emigration; to which are added the Land Regulations, and Description of the Aborigines and their Habits (London, 1851), p. 47.
As F.G. Clarke suggests, a belief that poverty was a necessary condition of working class morality was grounded in fears concerning the social and political advancement of the working classes in Britain. The rapid accumulation of wealth by colonists was viewed as both offensive and threatening to social order. Convictism enabled British publicists to parade economic and social resentment, perhaps subconsciously, under the guise of moral concern. Although less blatant, the same prejudices were evident in attacks on the morality of Australia's free colonies.  

Similar class jealousies affected the works of colonial writers. Labour shortages, high wages, and the relative independence of New South Wales' working classes, meant that upper and middle class colonists had more immediate reasons than British publicists to resent the social and economic mobility of the 'lower orders'. The affluence of workers and their consequent dissipation was a ubiquitous theme, surpassed only by that of the corrupting influence of convictism. Edward M. Curr, a Port Phillip squatter during the 1840s, typically asserted that a decrease in wages was the first step towards transforming the working classes from 'drunkards and idlers' into 'tolerable servants and citizens'.

Colonists' social, political, and religious affiliations further determined the perspective of their publications. The most persistent critics of colonial morality, and often the most prolific writers, were clergymen. As K.S. Inglis points out, their condemnations were perhaps

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to be expected. Not only were denunciations of vice an occupational obligation, but the experience of many ministers was limited to England's rural parishes rather than large towns. Both denominational competition and more altruistic motives led clergymen to emphasize the necessity for religious instruction in New South Wales. Thus for example, William Ullathorne combined his horrific account of the colony with a solicitation for funds in support of the Catholic mission. More generally, the relationship between colonial morality and important issues such as transportation, immigration, and the colony's fitness for self-government meant that observations were often adapted to serve interests other than accuracy.

To point to the prejudices and questionable preconceptions of contemporaries concerning crime in general, and New South Wales' viciousness in particular, is not of course to deny the usefulness of their evidence. It is to suggest rather the need for a critical approach to what they said and wrote, and where possible, methods for checking or taking into account distortions of the evidence. The use of statistics suggests one way of obtaining more objective information about crime. As one prominent social historian notes, statistical measurement is the only means of discerning the 'typical specimen', while failure to use such controls can result in fallacious or implausible generalizations based on a few well-documented examples.

The disparate conclusions about convicts drawn by James Moore and L.L. Robson based on similar statistical findings, however, illustrate that quantitative analysis guarantees no clear cut answers. For reasons which are elaborated in Chapter 4, the interpretation of criminal statistics poses problems which are in some ways more formidable than those associated with evaluating literary evidence. The questionable reliability of criminal statistics leads J.J. Tobias to reject their use entirely in his study of crime in nineteenth century Britain. But as David Philips indicates, simply ignoring the available statistics can create problems in itself. Although imperfect, statistics provide a firmer basis for making quantitative judgements than the often impressionistic and ambiguous testimony of contemporary observers. At the same time, the views of contemporaries concerning crime were often based on statistical information. This is especially the case since an increasing interest in criminal or 'moral statistics' was a feature of the period under study. For these reasons, and because it is often impracticable to draw conclusions without some quantitative basis, statistical evidence is an essential element of the following study.

Criminal statistics provide what K.K. Macnab terms the 'basic facts about crime'. But the 'facts' may be misconstrued unless viewed within the broader context of social relations. The 'interactionist perspective',

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44 Ibid., p. 4.
which first came to the fore in sociological studies of deviance during the 1960s, has appealed to historians as a means of dealing with crime as a social process.45

The interactionist perspective, or more simply 'labelling theory', is generally associated with two central tenets. First, that the official labelling of crime results from the interplay of many variables, and not just the commission of a criminal offence. Criminals or deviants are created in a selective way, so that whether a person who commits a deviant act is labelled a criminal depends on many things extraneous to his or her behaviour. Secondly, being labelled a deviant or a criminal results in a drastic change in a person's public identity and self-image. Social mechanisms conspire to shape persons in the image other people have of them, so that treating people as criminals produces a self-fulfilling prophesy.46

As in the case of criminal statistics, the application of labelling theory involves serious limitations. In at least some sociological circles, the theory has come to be regarded as something of an 'idiot child'.47 Labelling theory suggests that individuals are labelled criminal primarily because of social characteristics, which have little to do with their personality or behaviour. Critics point out that


deviants contribute to their own labelling by disruptive behaviour. As Howard Becker acknowledges, 'It would be foolish to propose that stick-up men stick people up simply because someone has labelled them stick-up men'. Labelling theory ignores psychological characteristics which might contribute to criminal behaviour, as well as other conventional factors associated with crime such as economic conditions. Interactionist studies also tend to focus on marginal and victimless crimes like homosexuality, prostitution, or drug use, rather than tackling 'hard core' offences like theft and violence.

These criticisms are largely aimed at the theory's failure to provide a total explanation of crime. But this, original proponents of the interactionist perspective argue, was never its intention. The perspective serves rather to enlarge the area formerly considered in relation to deviance, and to shift attention from the etiology of crime to the process by which certain behaviours and persons come to be perceived, defined, and treated as criminal.

50 Jock Young, 'Working-class Criminology', in Ian Taylor, Paul Walton, and Jock Young (eds), Critical Criminology (London, 1975), p. 68; Stanley Cohen, 'Criminology and the Sociology of Deviance in Britain: A Recent History and a Current Report', in Rock and McIntosh (eds), Deviance, p. 34.
challenge to interactionist studies is posed by 'radical' criminologists, who stress the failure of labelling theorists to examine the law in relation to the broader social structure and realities of power. The radical critique, however, does not negate the usefulness of an interactionist approach, while the perspective is flexible enough to be used in conjunction with other criminological theory.

As a perspective rather than a rigid theory, an interactionist approach seems well suited to an historical study of crime in New South Wales. It serves to direct attention from the character of individuals, which has so much preoccupied historians in dealing with convicts, to the community in general. By challenging the notion that crime is simply the product of specific factors in individuals or situations, the perspective raises questions about the type of society which generates particular types of crime or criminals. The role of 'moral entrepreneurs', or those who define moral categories and have those definitions enforced as public policy, becomes as important as that of those who are treated as immoral. An emphasis on the perceptions and motives of those who initiate rules and define criminals, rather than criminal offenders, has an obvious advantage considering the one-sided nature of the source material.


53 See Ken Plummer, 'Misunderstanding Labelling Perspectives', in David Downes and Paul Rock (eds), Deviant Interpretations (Oxford, 1979), especially p. 120.
Any approach in studying crime, whether essentially literary, statistical, or theoretical, is deficient in some respects. An eclectic approach is perhaps the most useful, partly as a means of checking different types of evidence against one another, and partly to avoid reducing crime to a one-dimensional phenomenon. The present study attempts to mesh the literary evidence with statistical analysis, while drawing upon interactionist and other criminological material when it appears applicable. As the problems outlined above indicate, conclusions drawn must often be equivocal or highly speculative. This is hardly surprising, since many of the issues raised in relation to crime during the first half of the nineteenth century have remained unresolved. But evaluating the evidence in itself can furnish some insight concerning crime and the community.

The following chapters suggest that assumptions concerning a criminal class and contamination are by and large disabling concepts, which obscure more than they reveal about crime in mid-nineteenth century New South Wales. As such, much of the analysis focuses on the disparity between contemporary perceptions of crime and, as far as can be discerned, the reality of crime. In part, the colony's penal origins acted as a blind in limiting contemporary perceptions of crime. Half a century after transportation ended, some writers still considered that New South Wales laboured under the disadvantage of 'a population in whose veins there is an hereditary taint of criminality'.\(^{54}\) The relation between crime and convictism also

served an ideological role, in the sense that it was an idea which served the political, social, and economic interests of various groups in the community.

While contending that the relation between crime and convicts has been both over-simplified and exaggerated, the following study also suggests other influences at work in shaping perceptions of crime and crimes actually prosecuted in New South Wales. As Leon Radzinowicz points out, crime is made up of such a wide range of behaviour that any attempt to offer a total explanation is doomed to end in broad platitudes. In order to shift attention from the role of a transplanted criminal class and its contaminating influence, however, some alternative points of reference are proposed. These might be categorized under three general headings - environment, respectability, and the press.

Crime was not simply grafted on to the colony as contemporaries often implied, but largely reflected environmental factors including economic and demographic characteristics as well as physical surroundings. Distance, isolation, and pastoral expansion provided opportunities for certain types of offences such as stock theft, bushranging, and forgery, and affected the degree to which such offences were prosecuted. Relations with Aboriginals encouraged a tradition of inter-personal violence. Although there was a high degree of urbanization from early settlement, what might be loosely termed frontier conditions such as a preponderance of males profoundly effected New South Wales' official crime rate. The colony's relative affluence was a further environmental

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55 Radzinowicz, Ideology and Crime, p. 82.
characteristic, which for contemporaries often seemed to make crime all the more inexplicable except in terms of convict depravity. Prosperity could also, however, create a sense of relative deprivation among the less fortunate, provide additional opportunities for offences, and foster materialist values which were conducive to the commission and prosecution of offences against property. Economic conditions played a still more tangible role in relation to the incidence of drunkenness. It could equally be argued that favourable economic conditions inhibited collective violence.

These influences are considered relative to the incidence and range of offences prosecuted in the colony, as distinct from the social processes which largely determined perceptions of crime and criminals. In this latter sense, the concept of respectability serves as a focal point in examining crime. As Michael Roe notes, the word is ubiquitous in contemporary literature, although its precise meaning varies. In part, respectability may be associated with the diffusion of middle class values. As the following discussion suggests, it was largely a code of middle class propriety which displaced the convict code in regulating the boundaries of socially acceptable behaviour once transportation ended. More importantly, respectability may be viewed as a product of social relationships. As Jack Douglas points out, one can be considered moral and respectable only if there are others regarded as immoral and disreputable. To the extent an individual or group wish to create a moral image, they are in a 'competitive struggle'...
to morally upgrade themselves, and morally downgrade others not identified with themselves. The more successful they are in stigmatizing others as immoral, the greater their chances of being regarded as law-abiding and respectable.  

Within the context of a 'competitive struggle' for respectability, the identification of convicts as a 'criminal class' assumes social, economic, and political significance. Socially, convicts provided a counter-image for free immigrants anxious to enhance their status and consolidate their position in the community. Economically, stigmatizing convicts as hardened criminals was one technique for combating the threat posed by cheap convict labour. The same technique could be used for neutralizing political opponents, and was particularly effective in New South Wales given the affinity between respectability and authority. On a community level, relegating convicts to a role of 'criminals' and 'outsiders' represented an attempt to repudiate the colony's penal origins and project a moral image.

In exploring these themes, the press assumes a special importance. As in the case of colonial publications generally, newspapers reflected various social, political, and religious leanings, while evincing predominantly middle class values. Even a 'very beery', sporting weekly like Bell's Life in Sydney drew a sharp distinction


between respectable and non-respectable working men and women. Crime news conformed largely to editorial policy, a desire to attract readers, as well as pre-existing categories determined by the dominant ideology. The subjectivity of newspapers is all the more important since they provide not only the most available source for gauging community perceptions of crime, but were intimately involved in shaping those perceptions.

The press provided a principal forum for publicizing the community's moral boundaries, and placing some individuals or groups outside those boundaries. Indeed it has been suggested that the development of mass circulation newspapers largely displaced harsh public punishments in reinforcing social rules and parading deviants before the community for degradation. At the same time, press reportage shaped public perceptions of the crime problem, in a manner which did not necessarily conform with actual criminal trends. Newspapers were capable of creating public concern, or even a sudden panic, about certain types of crime or criminals. Furthermore, by increasing public sensitivity to particular offences and galvanizing the community and police into action, they might produce an increase in the number of crimes prosecuted.

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61 See Bob Roshier, 'The Selection of Crime News by the Press', in Cohen and Young (eds), Manufacture of News, pp. 28-9; James F. Davis, 'Crime News in Colorado Newspapers', in Cohen and Young (eds), Manufacture of News, pp. 127, 133; Cohen and Young (eds), Manufacture of News, pp. 343-5; Jock Young, 'Mass Media, Drugs, and Deviance', in Rock and McIntosh (eds), Deviance, p. 243; Keith Windshuttle, 'Granny Versus the Hooligans', in Paul R. Wilson and John Braithwaite (eds), Two Faces of Deviance. Crimes of the Powerless and the Powerful (St. Lucia, 1978), pp. 18-24.
As points of reference, environmental factors, the concept of respectability, and the press facilitate consideration of crime in the broader context of the community, rather than simply in terms of a transported criminal subculture and contamination. They may also serve as signposts in a society undergoing rapid change. With colonial births and large scale immigration, the proportion of convicts and ex-convicts in the population diminished from about two-thirds in 1828, to slightly over a third in 1841. By 1851 persons originally transported made up fifteen per cent of the population, before the mass immigration which accompanied the gold rush reduced them to an even smaller minority in the community. It is this dilution of a 'sick' and 'vicious' society with 'virtuous and industrious' immigrants which both contemporaries and historians often view as the central fact in New South Wales' transformation from a convict dumping ground to a free society. At the same time, a legacy of vice is viewed as one of the most conspicuous after-effects of convictism. The following study suggests that New South Wales' transition from a penal colony, at least in relation to colonial crime, was a good deal more complicated.

Three 'crime waves', characterized by 'a rash of publicity, a movement of excitement and alarm, a feeling that something needs to be done', which were not necessarily connected with an actual increase

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62 The impact of a large convict population is most thoroughly explored by Henry Reynolds, who emphasizes the convict toll on Tasmania's crime rate, drunkenness, and fear of disorder, which only gradually dissipated once transportation ceased. Reynolds, "That Hated Stain", especially pp. 20-2, 24. See also Peter Bolger, Hobart Town (Canberra, 1973), pp. 138-9.
in crime, form the subject matter of the first three chapters. Although each crime wave was ostensibly precipitated by the menace of convicts, they were in fact largely symptomatic of the colony's changing economic, political, and social circumstances. The historical 'slices' dealt with in these chapters have by no means been neglected by historians. Nor has the relationship between the alleged criminality of convicts and other issues escaped their notice, especially in regard to the anti-transportation movement. By examining the period in the context of three crime waves, however, the important role perceptions of crime assumed in the community and the factors shaping those perceptions emerges more explicitly. The colony's official crime rate is examined in Chapters 4 and 5, which underline the fallacy of interpreting New South Wales' criminal statistics simply in terms of the changing proportion of convicts in the population. Other supposed evidence of convict contamination such as drunkenness and a contempt for the police are equally open to alternative explanations, as explored in Chapters 7 and 8. Chapters 6 and 9 deal more specifically with the nature of the community's transformation, noting the displacement of the convict code by a new code of respectability, and the displacement of fears about convict rebellion by fears of a democratic society.

63 Erikson, Wayward Puritans, p. 69. Erikson's discussion of crime waves in the Massachusetts Bay Colony during the seventeenth century suggested the structure of the first three chapters. The analysis employed, however, is basically different. Erikson examines the Antinomian controversy, Quaker invasion, and witches of Salem in terms of crime waves which served to unite the community in preserving its identity.
A peculiar feature of the transition was the manner in which attention focussed on certain more or less spectacular evils in this very year 1835. ... An outburst of outrages in every direction threw a flash of interpretation on the real nature of the convict system, just at the moment when the Governor's laxity was the subject of so much complaint.\(^1\)

The 'spectacular evils' of 1835 included foremost an alleged increase in crime. Fears were expressed in the press concerning the danger to life and property, while some residents called for urgent action by the government. Others, however, denied that crime was on the increase. Widespread apprehension of personal violence or loss of property which is usually associated with a crime wave, tended to be overshadowed by a statistical debate in which opposite conclusions were drawn. The following discussion suggests that concern about crime in the mid-1830s was largely symptomatic of a struggle for political, social, and economic power. 'Crime' served as a catchword in attacks on the administration of Governor Bourke and on the aspirations of ex-convicts. At the same time, perceptions of crime served to shore up the shaky authority of the colony's elites.

Judge William Westbrooke Burton's charge to the jury at the close of the Supreme Court sessions in November 1835 occupied a central place in discussion of crime during the mid-1830s. Observations from the bench on the state of the criminal calendar were common in England, but Burton's oration was unprecedented in New South Wales. Referring to both the number of capital convictions before the Supreme Court and the heinous nature of individual offences, Judge Burton drew a harrowing picture. To one looking down on the community, he told the jury, it would appear that its main business was 'the commission of crime and the punishment of it; as if the whole Colony were continually in motion towards, the several Courts of Justice'. The 'grand cause' of this state of affairs, Burton asserted, was a lack of religious principle. To this he added as causes of crime the state of convict road parties, the occupation of waste lands by unauthorized persons, the congregation of convicts in Sydney, the licensing of improper persons as publicans, and the poor superintendence of assigned servants by masters.²

William Burton assumed office as a puisne judge of the New South Wales Supreme Court in January 1833, after occupying the same position at the Cape of Good Hope from 1827.³ His appointment was welcomed by Governor Bourke, who had befriended him while serving as acting governor of the Cape Colony. Once in New South Wales, however, Burton quickly showed signs of disenchantment. He was repulsed by the Supreme Court's 'filth


and looseness of proceedings and want of all order and convenience'.

He was even more unhappy to contemplate that any prospect of promotion would depend on the 'un-Christian like foundation' of his colleagues' death. Burton confided to his brother that if he were not promoted to chief justice of the colony, he would resign his post as soon as he was out of debt. Shortly before delivering his charge to the jury in 1835, Burton had even more reason to feel his ambitions thwarted. Despite his claim for the office of acting chief justice, Governor Bourke recommended James Dowling for the position on the basis of his seniority in New South Wales.

Burton's remarks were perhaps delivered in a fit of pique at having been passed over for the office of acting chief justice, as Bourke's biographer implies. On the other hand, the emphasis on the need for religious instruction was characteristic of his strong sense of Anglican duty. But whatever his motives, Burton's charge to the jury assumed an importance which it seems unlikely he could have predicted.

4 William Burton to Edmund Burton, 29 November 1833, (typescript), Burton Correspondence, ML, MSS. 834, p. 111.

5 Ibid., p. 109.


In a tone of both triumph and alarm, the *Sydney Herald* proclaimed that:

> He has clearly proved that something is wrong and that something must speedily be done to make things right. ... For it is now admitted by a Judge on the Bench, and by reference to the Trials in the Supreme Court, that crime is on the increase, and that nothing but some vigorous measure will enable the Colony to recover the position from which it has fallen.  

The criminal statistics and offences referred to by Burton, the *Herald* contended, demonstrated 'a combination of crime, which for its aggregate amount, and the malignity of its nature, is unexampled in the criminal records of any country'.  

At the same time, the *Australian* expressed satisfaction with Burton's jury charge on the grounds that it showed crime had not increased in proportion to the colony's population, and that it provided hope that 'some silent causes' were resulting in its decrease.

These opposing interpretations are indicative of both political-social divisions in New South Wales during the mid-1830s, and the political-social significance of crime. The *Sydney Herald* reflected conservative opinion and was identified with the 'exclusive' faction of wealthy free immigrants. The *Australian* on the other hand articulated a liberal viewpoint, and supported the 'emancipist' group which was

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8 *Sydney Herald*, 3 December 1835, p. 2. Herald's emphasis.

9 *Sydney Herald*, 30 November 1835, p. 2.

10 *Australian*, 24 November 1835, p. 2.
primarily associated with ex-convicts. The emancipists tended to support Governor Bourke's administration and favour political reform, while exclusives opposed Bourke and the aspirations of ex-convicts. In practice these groups are more difficult to define. The stereotype of each faction is largely a caricature popularized by their opponents.

Debate in the mid-1830s obscured the community of interest between the two groups which became more apparent once transportation ended. As Alan Atkinson notes, leaders of the emancipist party were not necessarily committed to improving the condition of convict servants, and exclusive-emancipist politics were not simply a struggle for the underprivileged. The exclusive-emancipist conflict was primarily a struggle for social, economic, and political power by different segments of the upper and middle classes. To some extent there was also a town and country division, with exclusives drawing support from rural districts and Sydney residents taking the side of emancipists.

Strictly defined, 'emancipists' were convicts who received conditional or absolute pardons, as opposed to 'expiree' convicts who completed their original sentence. In practice the term 'emancipist' was applied to all ex-convicts, and it is in this sense that the word is used elsewhere in the thesis. In this chapter, 'emancipists' is used also to refer to the faction or party known by that name during the 1830s. The emancipist faction was by no means composed entirely of ex-convicts. Alan Atkinson's study indicates that the largest number of subscribers to the Australian Patriotic Association, typically regarded as an emancipist organization, were free immigrants. The Association, however, drew support largely from the ranks of ex-convicts, and was dependant on ex-convict financial support. Alan Thomas Atkinson, 'The Political Life of James Macarthur' (Ph.D. thesis, Australian National University, 1976), especially pp. 153, 156. See also Brian Fletcher, 'Sir John Jamison in New South Wales 1814-1844', JRAHS vol. 65, pt. 1 (June 1979), p. 16.


See Ibid., pp. 155-6.
It remains true, however, that debate focussed largely on the issue of ex-convicts' eligibility for civil liberties and the role of convicts in the community. At the core of opposition to Governor Bourke were accusations that his administration tended 'to elevate the criminal, and to depress in various ways, the man of untainted character'.

The relation between crime and the status of convicts was made explicit by the Sydney Herald in its critique of Burton's jury charge. Judge Burton's contention that crime resulted mainly from a lack of religious instruction was dismissed as for the most part unfounded.

Looking at the materials upon which we have to work, it is our deliberately formed opinion, that a system of rigid coercion must precede every attempt to ameliorate the moral character of the prison population. They must first be reduced to a state of subjection before any beneficial change can be wrought in their minds.

Instead, the Herald attributed the 'alarming increase of crime' allegedly proven by Burton to two innovations which went unmentioned in his charge. The first was an alteration in the summary jurisdiction of magistrates, and the second a recent change in the mode of criminal trials which permitted ex-convicts to serve as jurors.

For Governor Bourke's opponents, the Summary Jurisdiction Act of 1832 was the most conspicuous evidence that he was prepared to sacrifice the security of respectable free immigrants to a lenient convict policy.

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14 Sydney Herald, 18 May 1835, p. 2.
15 Sydney Herald, 30 November 1835, p. 2. Herald's emphasis.
16 Ibid.; Sydney Herald, 3 December 1835, p. 2.
Before 1832 male prisoners summarily convicted of drunkenness, disobedience, neglect of work, or other disorderly conduct could be punished by a month in solitary confinement, a month on the treadmill, or up to one hundred and fifty lashes with a cat-of-nine-tails. Women convicts guilty of the same offences were liable to one month solitary confinement, or up to two years imprisonment with hard labour. Under the 1832 Act the maximum punishments were reduced to fourteen days solitary confinement and two months imprisonment at hard labour, while the time males could be punished on the treadmill was increased to two months. Greater restraints were also placed on flogging, which in the absence of treadmills and prison accommodation was the usual penalty for refractory convicts. A single magistrate could award no more than fifty lashes, although this number could be doubled by two or more JPs sitting in petty sessions for a second offence.

The limitation imposed on flogging was the most controversial aspect of the Act. The cat-of-nine-tails was the standard instrument of punishment. It consisted of a handle about one foot in length, with nine tails of strong whip cord about two feet long attached. Lashes were usually inflicted between the prisoner's shoulders, although occasionally on the breech. The brutality of flogging, particularly as administered by magistrates with assigned servants, was open to obvious objection. Roger Therry, a staunch supporter of Governor Bourke, recorded being present when a convict was sentenced to fifty lashes for failing to take off his hat to a magistrate. The case described probably occurred

18 [Colony of NSW] 11 Geo. 4, No.12, sec.3.
19 [Colony of NSW] 3 Wm. 4, No.3, sec.18, 27.
20 Therry, Reminiscences, p. 43.
after Bourke left the colony, but there is little reason to doubt that JPs sometimes made sadistic use of the lash during his term of office. Ernest Augustus Slade, a Sydney police magistrate and superintendent of the convict barracks at Hyde Park during 1833 and 1834, boasted to the Molesworth Committee that he designed a more painful whip, personally supervised all floggings, and had never seen a case in which the skin was not broken after four lashes. Corporal punishment became increasingly objected to not only on the grounds of its inhumanity, but its failure as a deterrent. Far from stimulating any kind of reform, it was widely believed that victims of the cat were often angered or frightened into committing further crimes.

On the other hand, the lash provided landholders with a cheap instrument of coercion. Not only were scourgers less expensive than prisons, but assigned servants could be returned to work with a minimum of time lost. Even where magistrates were disinclined to inflict floggings, the absence of prison accommodation in many districts meant that their discretionary powers were inoperative. The Sydney Herald also contrasted the relative

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24 Evidence of John Richard Hardy and John Street to the Committee on Police and Gaols, NSW, V&PLC, 1839, vol.2, pp. 271, 287.
leniency of penalties awarded to convicts with those inflicted in the military, where men might receive five hundred or six hundred lashes for minor infractions.  

Although Bourke asserted that most magistrates quietly accepted the new constraints on their authority, the Act stimulated virulent opposition in some quarters. According to the Sydney Herald, it overturned the whole system of convict discipline. Residents of the Hunter River area in particular alleged that the reduction in magistrates' powers caused a corresponding increase of insubordination and crime. A dramatic example of this contention was provided in November 1833 when six assigned servants on the Hunter Valley estate of James Mudie absconded after robbing his house and attempting to kill his partner. Exclusives pointed to the 'revolt' as a side-effect of the Summary Jurisdiction Act, while Bourke's supporters attributed the convicts' actions to ill-treatment.

As historians have noted, the composition of the Hunter Valley's population goes far toward explaining why agitation against the Act

27 See for example Sydney Herald, 30 May 1836, p. 2.
was concentrated there. Because of the convict establishment at Newcastle, settlement in the Valley was officially discouraged until the 1820s. When the area was opened to large-scale settlement it was quickly populated by recently arrived free immigrants. By 1828 the district included about half of the colony's population outside Cumberland County. Not only did free immigrants make up a disproportionate number of the population (excluding convicts under sentence, forty-three per cent of the district's adult males were free immigrants compared to twenty-four per cent in the colony as a whole), but they owned most of the Valley's large land grants. At the same time, a disproportionate number of the colony's assigned servants were located in the district, since they were required to work large estates which combined grazing and farming. The large proportion of free immigrants in the Hunter Valley, the fact that they settled in New South Wales under the repressive regime of Governor Darling, and the heavy dependence on convict labour, provides at least a partial explanation of the region's intense concern about convict discipline and crime.

Sandra Blair, in a study of the revolt on Mudie's estate, suggests that convict insubordination was in fact a growing problem in the Hunter Valley, and was probably aggravated by Bourke's lenient policies. While allowing some latitude for Mudie's character, Blair indicates that master-servant relations on his property, Castle Forbes, were typical of the area. At least one Hunter Valley resident, King, Bourke, pp. 162-3; Blair, 'Revolt at Castle Forbes', pp. 93-6. T.M. Perry, Australia's First Frontier. The Spread of Settlement in New South Wales 1788-1829 (Melbourne, 1963; reprint ed. 1965), Chapter 5, especially pp. 72-5, 78. Blair, 'Revolt at Castle Forbes', pp. 98-100.
however, provides a different view. Edward John Eyre, who moved to the district in 1833, considered the assigned servants were extraordinarily well behaved, while most masters, either through disposition or self-interest, abstained from cruelty or tyranny. While misconduct was dealt with severely, he was surprised that convicts, considering their numbers and the meagre machinery for their control, submitted so quietly.  

The bench records for Patrick's Plains, where James Mudie served as a magistrate until his name was struck from the commission of the peace in 1836, also suggest that Castle Forbes was something less than typical. Of convict cases brought before the bench during 1834 and 1835, over ten per cent involved servants assigned to Mudie or his partner John Larnach (see Table 1). The offences with which his servants were charged were common enough; mostly neglect of work, insolence, absconding or being absent without leave, losing sheep, and suspected pilfering. But the large number of cases indicates that Mudie, his servants, or both, were unrepresentative of the district. Overall there was a marked increase in cases brought before the court between 1834 and 1835, which tends to substantiate charges of increasing crime. The increased number of cases, however, was made up almost entirely of minor breaches of discipline rather than more serious offences. The offences themselves were often extremely trivial.

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<table>
<thead>
<tr>
<th>Offence</th>
<th>Convicts Assigned to James Mudie and John Larnach 1834</th>
<th>1834 %</th>
<th>No.</th>
<th>1835 %</th>
<th>No.</th>
<th>Other Convict Cases 1834</th>
<th>1835 %</th>
<th>No.</th>
<th>1834 Total %</th>
<th>No.</th>
<th>1835 Total %</th>
<th>No.</th>
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<tbody>
<tr>
<td>Absconding and Absent Without Leave</td>
<td>10 14.5</td>
<td>12</td>
<td>16.2</td>
<td>174</td>
<td>34.3</td>
<td>187</td>
<td>29.4</td>
<td>184</td>
<td>31.9</td>
<td>199</td>
<td>28.1</td>
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<td>Insolence, Disobedience, or Abusive Language</td>
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<td>10</td>
<td>13.5</td>
<td>86</td>
<td>17.0</td>
<td>105</td>
<td>16.5</td>
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<td>115</td>
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<td>Losing or Neglect of Livestock</td>
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<td>17</td>
<td>23.0</td>
<td>54</td>
<td>10.7</td>
<td>95</td>
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<td>63</td>
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<td>1.4</td>
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<td>43</td>
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<td>Offence Against the Person</td>
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<td>2</td>
<td>2.7</td>
<td>15</td>
<td>3.0</td>
<td>17</td>
<td>2.7</td>
<td>16</td>
<td>2.7</td>
<td>19</td>
<td>2.7</td>
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<tr>
<td>Offence Against Property</td>
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<td>72</td>
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<td>10.8</td>
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<td>6.35</td>
<td>635</td>
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<td>576</td>
<td>4.5</td>
<td>709</td>
<td>4.7</td>
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Source: Register of Convict Cases Tried Before the Singleton (Patrick's Plains) Bench, January 1834-December 1835, SANSW, 7/3714.
or vaguely defined, such as 'lurking in a suspicious manner', 'allowing a man to come to kitchen at improper hour', 'improper conduct', 'bad language', 'working on overtime against orders', and 'troublesome to mistress'. One assigned servant, Peter Kench, was sentenced to seven days solitary confinement on bread and water for failing to take some medicine procured for him by his master. It is possible that convicts were indeed becoming more insubordinate, or simply that masters were adopting a more rigid attitude toward the conduct of assigned servants.

The Patrick's Plains records also indicate the extent to which the lash was relied upon for coercion. Over seventy per cent of the punishments awarded by the bench during 1834 and 1835 were floggings. Most of the remaining convicts punished were sentenced to short terms of imprisonment, or to an iron gang for six to twelve months. Floggings exceeding fifty lashes required the supervision of a doctor, and initially convicts were forwarded to Newcastle to receive such punishments. To reduce further the time assigned servants were absent from their work, however, the court engaged the services of a physician in 1835 who could superintend floggings on the spot.

Despite charges that Bourke's regime undermined convict discipline, it is questionable whether prisoners were treated with less severity.

34 Singleton (Patrick's Plains) Bench Book, 3 December 1835, SANSW, 5/7685.

35 Calculated from Register of Convict Cases Tried Before the Singleton (Patrick's Plains) Bench, January 1834-December 1835, SANSW, 7/3714.

36 Charles Forbes to Col Sec, 23 April, 10 May 1835, Col Sec, Letters Received, SANSW, 4/2292.1; Col Sec to Police Magistrate, Patrick's Plains, 4 June 1835, Col Sec, Letters Sent, SANSW, 4/3837, p. 276.
during his governorship. Magistrates were urged to supervise floggings more closely, on the grounds that 'to permit their careless or imperfect infliction is but to invite a repetition of crime'. In comparison with the first year of Bourke's administration, there was a decline in the average number of lashes inflicted at each flogging following the Summary Jurisdiction Act. But the number of floggings in the colony, in proportion to the number of male convicts, increased after 1832 (see Table 2). Again this may reflect an increase in convict insubordination, or simply a reaction against Bourke's reforms and the widespread belief that convicts were becoming more intractable.

TABLE 2  Floggings Administered to Convicts in New South Wales, 1830-1837

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Floggings</th>
<th>Average No. of Lashes Inflicted at Each Flogging</th>
<th>No. of Floggings per 100 Male Convicts</th>
</tr>
</thead>
<tbody>
<tr>
<td>1830</td>
<td>2,985</td>
<td>41</td>
<td>16</td>
</tr>
<tr>
<td>1831</td>
<td>3,163</td>
<td>58</td>
<td>14</td>
</tr>
<tr>
<td>1832</td>
<td>3,816</td>
<td>43</td>
<td>16</td>
</tr>
<tr>
<td>1833</td>
<td>5,824</td>
<td>41</td>
<td>25</td>
</tr>
<tr>
<td>1834</td>
<td>6,328</td>
<td>38</td>
<td>25</td>
</tr>
<tr>
<td>1835</td>
<td>7,103</td>
<td>46</td>
<td>25</td>
</tr>
<tr>
<td>1836</td>
<td>6,904</td>
<td>44</td>
<td>23</td>
</tr>
<tr>
<td>1837</td>
<td>5,916</td>
<td>45</td>
<td>18</td>
</tr>
</tbody>
</table>

Source: Return of Floggings, enclosed in Gipps to Glenelg, 8 November 1838, HRA, ser.1, vol.19, p. 644.

In either case, magistrates might contrive to circumvent the new regulations. In order to award more than fifty lashes for an infraction of convict discipline, it was allegedly common practice at some benches


to 'split offences'. A convict charged with disobedience while drunk, for example, might be penalized fifty lashes for drunkenness, and another fifty for disobedience. Thus Edward Hickie, tried before the Patrick's Plains bench in 1835, received seventy-five lashes, partly for being absent all night, and partly for 'impertinence'. His master, Archibald Bell, explained that Hickie said such impertinent things as that 'he worked quite hard enough for the rations I gave him'. If convicts felt smug about the restraints imposed on JPs, it was also easy, as John Blanch discovered, for masters to think up additional charges. Richard Carter told the bench that he discovered Blanch drunk one night, and that when he ordered him to take a flock of sheep out he insolently refused. When Carter threatened to bring him to court, Blanch allegedly replied he didn't care, and that 'they could give him no more than fifty'. Perhaps to counter such bravado, Carter complained at the same time Blanch had gone several times into his kitchen 'to make attempts upon the chastity of a married woman'. Although Carter noted the woman, a servant, complained repeatedly of this, it was apparently not worth a trip to the bench before. The court sentenced Blanch to fifty lashes for drunkenness, and another fifty for 'attempting the chastity of a woman'. The same day, Terence Riley was sentenced to one hundred lashes for losing sheep on two occasions.

40 Singleton (Patrick's Plains) Bench Book, 7 September 1835, SANSW, 5/7685.
41 Singleton (Patrick's Plains) Bench Book, 31 December 1841, SANSW, 5/7686.
42 Ibid.
At the same time, convicts with grievances against their masters remained largely at the mercy of self-interested magistrates. Despite the Sydney Herald's claim that masters were brought almost daily before the bench at the instigation of their convict servants under Bourke's administration, complaints by servants were relatively few. Many would-be complainants were probably deterred by the necessity of requesting a pass from their master in order to appear before the court. Indeed, William Weelbec was sentenced to twenty-five lashes by the Patrick's Plains bench for the impertinent manner in which he demanded a pass, so that he might inquire whether he was compelled to work for another man as ordered by his master. Not uncommonly, convicts initiating complaints against their masters ended up being flogged for making 'trifling and frivolous charges'. Even if the charge were proved, an assigned servant might find himself penalized. In another case before the Patrick's Plains bench, Thomas Graves complained about the quality of the rations issued to him. The bench agreed that part of the meat, which was brought to the court for inspection, was 'very bad indeed', and considered he had just reason to complain. Nevertheless, he was sentenced to twenty-five lashes for insolence to his overseer when insisting that his ration be exchanged.

43 Sydney Herald, 8 August 1835, p. 2.

44 Singleton (Patrick's Plains) Bench Book, 13 July 1835, SANSW, 5/7685.

45 Ibid., 3 September 1835. See also for example Picton Bench Book, 17 October 1831, SANSW, 4/7573; Braidwood Bench Book, 7 October 1840, SANSW, 4/5516.
Aside from the possibility of suffering at the hands of the local JPs, there were two further reasons why assigned servants were probably discouraged from seeking redress through the courts. First, the penalties which masters received were relatively innocuous. In 1835 John Larnach, the partner and son-in-law of James Mudie who was the intended victim of the Castle Forbes revolt, was brought before the Patrick's Plains bench for assaulting an assigned servant with a cane. In his defence, Larnach told the court that the servant's manner was so annoying and indifferent that he was unable to restrain himself. The fact that Larnach was fined one pound was presumably small consolation to a man who in similar circumstance would have faced a flogging at the least, and more probably twelve months in an iron gang.

A second deterrent to complaints by convicts was the knowledge that their masters could subsequently make their life miserable. William Phillips, assigned to William Brooks, told the Patrick's Plains bench that since he brought his master before the magistrates some time ago he was continually abused. Brooks called him names such as 'vagabond' and 'villain'. Although he was formerly a house servant, he was turned out, and no longer allowed into the yard even to receive his rations. He was forbidden to talk to the other men, and they were told not to have any intercourse with him. He was refused a knife to cut his meat with, and thread to mend his pants. Brooks denied the charges, stating that while he may have called him

46 Singleton (Patrick's Plains) Bench Book, 8 October 1835, SANSW, 5/7685.
a name once, he refused Phillips entry to the yard because his wife was afraid of him. He had forgotten about the thread, and ordered the prisoner to be given a knife, which he assumed he received. As a result, Phillips was sentenced to twenty-five lashes for making a frivolous complaint against Brooks. 47

This is not to imply that convicts were treated with unmitigated brutality. Practices varied from bench to bench. Not infrequently, masters intervened to have punishments prescribed by the court reduced, either through compassion for their assigned servants, or so that they would not be deprived of their labour. But the Patrick's Plains records suggest that Bourke's policies far from overturned the authority of JPs and masters in the Hunter Valley.

Bourke's alleged leniency also seems contradicted by his handling of convicts employed on the public roads. The state of road parties was mentioned by Judge Burton as a cause of crime in his jury charge, while the lack of work performed by convict gangs and their threat to public safety was a favourite theme of the Sydney Herald. 48 Nevertheless, the discipline of convict gangs was tightened under Bourke's administration. In 1832 iron gangs were placed under stricter control and an increased guard which, according to Bourke, resulted in fewer escapes and greater labour. 49 The number of convicts absconding from iron gangs declined from over two hundred in 1830 to twenty-six in 1834, even though the number of men in irons more than

47 Ibid., 24 September 1835.
48 See for example Sydney Herald, 21 May, p. 2; 26 November, p. 2; 31 December 1835, p. 2.
49 Bourke to Goderich, 3 November 1832, HRA, ser.1, vol.16, p. 788.
doubled during the period. Bourke believed that convicts working in road gangs without irons were more difficult to manage, and he acted to reduce their numbers. Perhaps, too, he was motivated by public criticism. In any event the number of men employed in road gangs out of irons was reduced by over one-half between December 1835 and December 1836. As A.G.L. Shaw notes, the fact that Bourke twice requested powers to place all convicts in iron gangs who were not in assigned service, indicates the limits of his supposed compassion for convicts.

Governor Bourke's liberality seems more apparent in relation to ex-convicts than prisoners under sentence. In this respect, a new jury law became the focal point of attacks on his administration. As provided under the New South Wales Act of 1823, criminal cases before the Supreme Court were tried by a jury of seven military officers. The Act failed to stipulate how cases in courts of quarter

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51 Bourke to Glenelg, 18 December 1835, HRA, ser.1, vol.18, p. 229.


sessions were to be tried. As a result, civil juries were introduced at quarter sessions by a Supreme Court decision in 1824, but they were later abolished by an Act of 1828.\textsuperscript{55} Despite the recommendation of previous governors and judicial officers, criminal cases were still being tried by a panel of military officers when Bourke arrived in the colony.

The likelihood that the issue of jurors' qualifications would inflame relations between free immigrants and ex-convicts was a principal reason why the introduction of trial by civilian juries was delayed.\textsuperscript{56} Before leaving England, however, Bourke was given permission to introduce civil juries in criminal cases. An Act was narrowly passed by the Legislative Council in 1833, which while retaining military juries, provided that defendants in criminal cases might choose to be tried by a jury of twelve civilians.\textsuperscript{57} The option of military juries was retained until after Bourke's departure, when they were abolished by the Jury Trials Act of 1839.\textsuperscript{58}

Under the Act of 1833, ex-convicts who fulfilled the prescribed property qualifications, and who were not of 'bad repute' or convicted of an offence in the colony, were eligible to serve as jurors. The exclusive faction attacked the so-called 'convict jury law' as intolerable. It was unfair, they contended, to expect 'untainted' persons to sit in the jury box with or be tried by convicted felons.

\textsuperscript{55} 9 Geo. IV, c. 83, sec. 17.


\textsuperscript{57} [Colony of NSW] 4 Wm. IV, No. 12, sec. 2,12.

\textsuperscript{58} [Colony of NSW] 3 Vic., No. 11, sec. 1-2. See also Gipps to Russell, 10 February 1840, \textit{HRA}, ser.1, vol.20, p. 497.
Respectable colonists refused to serve as jurors out of regard for their character. More importantly, it was argued that the sympathies of ex-convict jurors resulted in improper verdicts, and stimulated an increase of crime.  

Governor Bourke countered these allegations by citing the opinions of the Supreme Court judges, attorney-general, and solicitor-general. Judge Burton, while equivocal, tended to find fault with the operation of the jury system, causing Bourke to remark that his view of colonial affairs was 'gloomy, if not morose'. The other judicial officers, however, expressed their satisfaction with the verdicts of civil juries. During the anti-transportation debates of 1850 John Hubert Plunkett, who served as solicitor-general from 1832 until he assumed the office of attorney-general in 1836, asserted that he had not seen half a dozen verdicts of acquittal with which he did not concur before 1840, and considered on the whole that better verdicts were given in the colony than Britain. On the other hand, James Macarthur criticized the views given by the judicial officers as pertaining only to the Supreme Court. There was no attempt to elicit the opinions of magistrates sitting in courts of quarter sessions, where Macarthur claimed much of the improper conduct by juries took place.

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60 Bourke to Glenelg, 10 June 1836, HRA, ser.1, vol.18, p. 437.


62 LC, SMH, 4 October 1850, p. 6.

63 James Macarthur to George Grey, 9 February 1837, CO 201/267, f. 520.
The 1833 Jury Act seemed a direct threat to exclusives, since if ex-convicts were eligible as jurors they would in all probability be considered eligible as future electors. They were further alarmed by the activities of the emancipist or 'liberal' faction, who in May 1835 organized the Australian Patriotic Association to press for reforms including trial by jury in all criminal cases and a representative legislature elected on a wide franchise. Exclusives stated their views in two petitions sent to England in 1836. Central to their arguments was a 'fearful increase of crime' which they alleged Burton's jury charge confirmed. The petitioners claimed that the admission of ex-convicts, as well as persons of 'bad repute and low standing' to juries, encouraged crime because of the facilities offered for acquittal. They also cited the prevalence of crime in the colony as evidence of its lack of fitness for free institutions. In the event that free institutions were granted to the colony, it was hoped that property would not be the only qualification for voting and election. Because of the opportunities for acquiring wealth in New South Wales by dishonest and disreputable practices, the petitioners asserted, property by itself was no proof of good character. Furthermore, they contended that if ex-convicts were admitted to all the rights and privileges of citizenship, transportation would no longer act as a punishment, but an incitement to crime in Britain. 64

64 Petition of Free Inhabitants of New South Wales to the King, and Petition of Free Inhabitants of New South Wales to the House of Commons, enclosed in Bourke to Glenelg, 13 April 1836, HRA, ser.1, vol.18, pp. 392-9. Also printed in Macarthur, New South Wales, Appendix pp. 1-33; Sydney Herald, 7 April 1836, p. 2.
The petitioners' views were amplified in two books published in 1837. James Mudie coined the word 'felonry' to describe New South Wales' convict and ex-convict population in a venomous attack on Governor Bourke and the emancipist party. Mudie returned to England in 1836, incensed at Bourke's initiation of an inquiry into the treatment of convicts on his estate, and the subsequent omission of his name from the commission of the peace despite the fact that no charges of misconduct were proven against him. The chief object of his book was to expose Bourke's government and its 'criminal colusion with convicts'. While admitting that convictism contributed toward New South Wales' prosperity, he argued that it 'occasioned the very depraved and vicious condition of public morals in the colony, and the frightful extent of crime'.

The second and more important work, at least in terms of credibility, was by James Macarthur, who left the colony in 1836 to support the petitioners' demands in London. In England he professed a desire to stick to main principles, and studiously avoid the wranglings of such personalities as James Mudie and Roger Therry. He disclaimed as well any intention of trying to impugn Bourke's government. His book, New South Wales; Its Present State and Future Prospects, was basically an extended essay in support of the exclusive petitions, which included special emphasis on the colony's criminal statistics.

65 Mudie, Felonry, p. 52.
66 Ibid., p. 186.
68 James Macarthur to George Grey, 2 January 1837, Petitions to the King, ML, A284, pp. 17-19. See also King, Bourke, p. 220.
In order to reinforce their demands for civil juries and a representative legislature, the emancipist faction adopted a counter-petition. The petition denied that the condition of convicts in New South Wales served as a temptation to the commission of crime. Furthermore, the exclusion of ex-convicts from civil liberties would destroy the most powerful stimulus to reform and divide colonists into castes. As for the colony's crime rate, the petitioners pointed out that the statistics alluded to by Burton in his jury charge, which were for capital convictions between 1833 and 1835, demonstrated a decrease rather than an increase in crime. Although the number of capital convictions increased from 135 to 148 between 1833 and 1834, the number fell to 116 in 1835. This was in spite of the colony's increasing population. Governor Bourke as well contradicted the alleged prevalence of crime in the colony, pointing out that Burton himself denied ever expressing an opinion in public or private as to whether crime was increasing or decreasing.

Whether the colony's crime rate appeared to be increasing or decreasing depended in fact on the criminal statistics referred to (see Figure 1). There was an erratic decline in capital convictions relative to the colony's population during Bourke's administration. The rate of conviction for all offences tried before the Supreme Court showed a similar trend. But as James Macarthur pointed out

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69 Counter-Petition of Free Inhabitants of New South Wales to the House of Commons, 12 April 1836, enclosed in Bourke to Glenelg, 13 April 1836, HRA, ser.1, vol.18, pp. 399-403. See also Monitor, 13 April 1836, p. 2; Sydney Herald, 14 April 1836, pp. 2-3.

FIGURE 1 Convictions before the Superior Courts per 100,000 Inhabitants in New South Wales, 1831-1835
in his book, correspondence with the Colonial Office, and his evidence to the Molesworth Committee, there were strong grounds for arguing that crime had increased. By including convictions before courts of quarter sessions, Macarthur indicated that the total number of criminal convictions by the superior courts in New South Wales more than doubled between 1831 and 1835.\footnote{Macarthur, New South Wales, especially pp. 34-5, Appendix p. 54; Macarthur to Grey, 9, 10 February 1837, CO 201/267, ff. 511-38; Evidence of James Macarthur to the Select Committee on Transportation, PP, 1837, vol.19, (518), pp. 163-4.} The same statistics were used by the Molesworth Committee to support its conclusions.\footnote{Report from the Select Committee on Transportation, PP, 1837-38, vol.22, (669), p. 25.}

Was crime increasing or decreasing? The complexity of variables affecting criminal statistics makes any interpretation difficult.\footnote{See Chapter 4.} In relation to the early 1830s, the problem is magnified by important changes in the criminal law and judicial system. Both exclusives and emancipists overlooked or chose to ignore factors which would have an obvious impact on the statistics, but which undermined their respective arguments.

Reference by emancipists to the declining number of capital convictions in New South Wales ignored a recent reduction in the number of capital offences. Under an Act of 1833, the colony adopted British legislation abolishing the death penalty for cattle, horse, and sheep stealing, stealing in a dwelling house property worth five pounds or more, and forgery.\footnote{[Colony of NSW] 4 Wm. IV, No. 4.} A decrease in the number of capital convictions from 1833 may have reflected nothing more than
the fact that these crimes were no longer capital offences. James Macarthur was quick to point this out, but the same change in the criminal law probably artificially inflated the colony's total conviction rate which he referred to in asserting crime had increased.

There are two reasons for suspecting that the mitigation of the criminal law in 1833 increased New South Wales' conviction rate, without reflecting a change in the real incidence of crimes committed. First, the knowledge that offenders would no longer be executed probably increased the likelihood of juries convicting persons charged with stock theft, stealing in a dwelling house, and forgery. K.K. Macnab notes that in England and Wales the ratio of convictions to acquittals greatly increased following the abrogation of the death penalty. Secondly, the change in the criminal law probably increased the number of prosecutions initiated for these offences. Although Macnab argues that motives of 'tender-heartedness' had no significant effect on the willingness of persons to initiate prosecutions before the repeal of the death penalty, there was another reason why colonists would be more willing to undertake prosecutions following the 1833 Act. Prosecutors were no longer compelled to travel to Sydney, where all capital offences were tried before the Supreme Court, but might attend courts of quarter sessions located nearer the place of the offence. Since it was continually complained that people were deterred from prosecuting offences because of the time and money involved in travelling great distances to the superior courts, this would presumably increase the number of offences brought to trial.

75 Macarthur, New South Wales, Appendix p. 54.
77 Ibid., pp. 103, 106, 130-1, 149-50, 397-8.
78 See Chapter 4, pp. 132, 134, 136-7.
A more publicized factor affecting the criminal statistics was the change in the colony's jury system. Exclusives contended that the introduction of civil juries, with ex-convict jurors, resulted in an increase of crime since criminals were less likely to be convicted. To the extent that returns are available, they suggest that convictions were significantly less likely to result in cases tried by civil than military juries. It is unclear, however, whether this reflects on the composition of the juries, or the defendants who chose their mode of trial. According to William Charles Wentworth, 'well-known scoundrels' were generally advised to select a military jury, since they would be less acquainted with their character. Although Wentworth implied that military juries were less certain to convict such persons, it is possible that 'well-known scoundrels' were more likely to be convicted no matter what type of trial they chose. There was also some contradiction in exclusives arguing that the improper acquittals of civil juries encouraged crime, while pointing to the colony's conviction rate as proof that crime was increasing.

There was one further change of profound significance which exclusives, and in particular James Macarthur, neglected in arguing that the colony's crime rate was increasing. This was the restriction

79 Of cases tried by military juries before the courts of quarter sessions between 1833 and 1835, and before the Supreme Court between January 1835 and May 1836, 62.0 per cent resulted in convictions, compared to 50.4 per cent of the cases tried by civil juries. Percentages are based on Returns of Criminal Issues Tried by Juries, NSW, V&PLC, 1835, p. 371; 1836, p. 484.

80 Monitor, 16 April 1836, p. 2. James Macarthur similarly criticized military juries for their lack of 'local knowledge'. James Macarthur to George Grey, 9 February 1837, CO 201/267, f. 520.
of magistrates' authority under the Summary Jurisdiction Act of 1832. Although the Act's limitation of flogging has occupied the attention of historians, it also limited the penalties which could be awarded for more serious offences. Before 1832, magistrates were empowered to sentence convicts to transportation for up to three years. 81 Two or more JPs sitting together were also vested with the same powers of summary jurisdiction over convicts exercised by courts of quarter sessions. 82 Under the 1832 Act, the maximum penalty which JPs could award to male convicts was twelve months on the public roads, and six months hard labour in prison for women. As in the case of floggings, these penalties could be doubled for a second offence. More importantly, the jurisdiction of magistrates sitting in petty sessions was restricted to simple larcenies involving property worth less than five pounds. 83 This meant that many cases previously disposed of by magistrates were from 1832 tried by courts of quarter sessions. The upsurge in convictions before courts of quarter sessions during the early 1830s was almost certainly due in large part to the transfer of business from the lower courts. 84

81 [Colony of NSW] 11 Geo. IV, No. 12, sec. 3
82 [Colony of NSW] 11 Geo. IV, No. 13, sec. 2. See also 10 Geo. IV, No. 1, sec. 2.
83 [Colony of NSW] 3 Wm. IV, No. 3, sec. 16, 18.
84 William Bland, New South Wales. Examination of Mr James Macarthur's Work, "New South Wales, Its Present State" (Sydney, 1838), pp. 64-6; Australian, 30 May 1838, p. 2.
Changes in the criminal law, jury system, and magistrates' jurisdiction, make the assertions of the emancipist and exclusive factions, and later the Molesworth Committee, concerning New South Wales' crime rate dubious. Emancipists could justifiably claim that capital convictions and convictions before the Supreme Court declined. But this overlooked a reduction in the number of capital offences, and a consequent reduction in cases handled by the Supreme Court. Exclusives could demonstrate that total convictions before the superior courts increased during the same period. But this reflected in part the greater ease with which prosecutions could be undertaken in cases of forgery, stock theft, and thefts from dwelling houses, as well as the transfer of cases previously tried by JPs to the quarter sessions. The absence of comparable statistics for the periods immediately preceding and following the years between 1831 and 1835 also makes any apparent trend still more difficult to assess. It was perhaps through a recognition of these problems that both sides hedged their interpretations. The Australian asserted that even if crime had increased, this was usually the case in advancing societies, where 'men are stimulated to increasing activity in every way'. At the same time, the Sydney Herald explained that if the number of serious offences committed in the colony had recently decreased, this was due largely to tighter convict discipline implemented under the pressure of free immigrants.

85 Australian, 8 April 1836, p. 2.
86 Sydney Herald, 18 April 1836, p. 2.
Given the deficient and contradictory evidence concerning New South Wales' crime rate, the question of why crime became such a central issue in the mid-1830s seems all the more important. No doubt some settlers genuinely feared for their lives and property, especially when it was thought that Governor Bourke's administration threatened their control over convict labourers. Residents in the Hunter Valley may have felt particularly vulnerable considering the concentration of assigned servants in the area, and because many landholders were relative newcomers with limited experience in managing convicts. The formation of associations for the suppression of stock theft in the mid-1830s, particularly in the Hunter River area, also suggests a measure of real concern about widespread depredations.87

But 'crime' also assumed a significance which was essentially political. This point was clearly stated by Francis Forbes, who served as New South Wales' first chief justice from 1824 to 1836. Although he was a partisan of Bourke, there are strong grounds for accepting his assertion that clamour about a relaxation of convict discipline and increasing crime resulted largely because this was the only cry which colonists supposed would be heard in England.88 By emphasizing the prevalence of crime in the colony, exclusives could hope to discredit Bourke's liberal policies, while indicating the unfitness of ex-convicts to assume a responsible role in government.

87 See Charles Forbes to Col Sec, 12 November 1835, Col Sec, Letters Received, SANSW, 4/2292.1; Sydney Herald, 21 November 1836, p. 2; Roe, Quest for Authority, pp. 38-9; Roberts, Squatting Age, p. 96.

88 Francis Forbes to James Stephen, 13 October 1836, CO 201/257, f. 585. Attorney General, J.H. Plunkett similarly asserted that charges of convict insubordination were 'a mere party-cry'. LC, SMH, 6 July 1838, p. 2.
The criminalty imputed to emancipists and their supporters was counterpoised by the political importance exclusives attached to their own respectability. As Michael Roe points out, the concept of respectability gave the colonial gentry much of their cohesion. The same concept served as a linchpin of authority. Since ex-convicts were included among the wealthiest sections of the community, property alone could not form the basis of exclusive claims for political dominance. There was, one anonymous writer noted, a marked
distinction between questionable respectability which, in this Colony, is claimed from the acquisition of wealth alone, and that respectability which is naturally inferred from the union of wealth and unblemished character.

Exclusives based their legitimacy as the colony's natural rulers primarily on their moral superiority. This was clearly understood by the emancipist faction, whose members sarcastically referred to exclusives as the 'respectables' and the community's 'moral ascendancy'. The Australian noted that the term 'respectability' itself was used as a synonym for what was essentially a political clique.

By some persons this designation is given to those who are rich—by others to those who are well disposed—who are honest and virtuous—or who are their friends and acquaintances; but there is another and a small class which twice a week receives that designation from the Herald—those, namely, who are opposed to the present government.

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89 Roe, Quest for Authority, p. 40.

90 'A Colonist' to Editor, Sydney Herald, 13 June 1836, p. 2. Herald's emphasis.

91 See Francis Forbes to James Stephen, 13 October 1836, CO 201/257, f. 585; Bland, New South Wales, pp. 45-7.

92 Australian, 19 February 1836, p. 2. A similar distinction was later made by the emancipist edited Omnibus, 2 October 1841, p. 2.
To the extent that exclusives wished to assert their authority, it was in their self-interest to downgrade the morality of other sections of the community, and in particular ex-convicts. The concept of a 'criminal class' provided a convenient rationale for exclusive pretensions. Ex-convicts, it was asserted, managed to become wealthy only through dishonest or questionable practices. They acquired money through keeping grog shops and gambling houses, receiving stolen goods, or plundering the government. In rural areas crime was attributed almost entirely to ex-convicts and ticket of leave holders occupying crown lands. These neat conceptions of crime served to confirm the moral failure of emancipists, while reinforcing the respectability of exclusives.

Stigmatizing one's opponents as criminals was an obvious expedient in countering the emancipist faction's claim for a share of political power. Their petition for jury trial and a legislature was attacked as a display of names, which included the signatures of 'the very lowest grades of persons in this vicious society'. The exclusive


95 Sydney Herald, 29 September 1836, p. 2.
petitions, on the other hand, with a fraction of the subscribers, were reputedly supported by those 'Colonists most distinguished for their character'. The same technique was used in an attempt to claim the lion's share of New South Wales' land and labour. In this, however, there was a degree of complicity between wealthy members of the emancipist and exclusive groups which anticipated their co-operation once transportation ended.

Large landholders in both factions had reason to resent the issue of new assignment regulations under Bourke's administration in May 1835. The new regulations, which placed a ceiling on the number of convicts which could be assigned to any one settler and provided a more generous allocation of convicts to settlers with land under cultivation, were criticized as favouring small farmers at the expense of those with more substantial holdings. The assignment of servants to smallholders or 'dungaree' settlers was attacked as contrary to the objects of restraining and reforming the prison population. Significantly, the Herald objected to free immigrants as well as ex-convicts on this ground.

Any man, whether an emancipated Convict or free Emigrant, who drinks, smokes and eats with his Convict servants, will at last also Rob with them. Therefore, from all such persons Convict servants should be immediately withdrawn; for it is impossible to preserve discipline, even the distinction between vice and virtue, master and servant, free man and Convict, where such familiarity exists.

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96 James Macarthur to Lord Glenelg, 15 December 1836, Petitions to the King, ML, A284, p. 5.


98 See for example Sydney Herald, 25 May, p. 2; 28 May 1835, p. 2.

99 Sydney Herald, 3 December 1835, p. 3. Herald's emphasis.
Thomas Potter Macqueen, a Hunter Valley settler and magistrate, similarly argued that convicts should not be assigned to anyone possessing insufficient property to maintain themselves 'wholly above the society of such convict', including all assisted immigrants who had been in the colony less than seven years. 100

At the same time, members of the emancipist faction joined exclusives in a law and order campaign against squatting. The term 'squatter' initially referred to ex-convicts and ticket of leave holders who took unauthorized possession of crown lands, and allegedly lived by plundering their neighbours. 101 It was largely the squatter menace which stimulated the appointment of a select committee on police and gaols in 1835 chaired by Alexander McLeay, the colony's colonial secretary from 1826 to 1837 and a staunch supporter of the exclusive faction. Witnesses before the committee were virtually unanimous in pointing to the danger squatting posed to the lives and property of settlers, and insisting that they be excluded from crown lands. 102 These included John Jamison, a Penrith JP and the first president of the Australian Patriotic Association. He thought ticket of leave holders should be excluded from occupying crown lands under threat of having their tickets revoked. It was also Jamison who proposed the system of licensing enforced by itinerant JPs and mounted police which was eventually adopted in regulating territory beyond the boundaries of location. 103 Similarly the Sydney Gazette, which generally

100 T. Potter Macqueen, Australia. As She Is and As She May Be (London, 1840), pp. 12, 23. Macqueen's emphasis.

101 S.H. Roberts goes to great pains in distinguishing the term 'squatter' as originally applied from its later usage. Squatting Age, pp. 67-84.

102 See for example Evidence of W.H. Dutton, Captain Phillip Parker King, Thomas Icely, Thomas Potter Macqueen, and George Rankin to the Committee on Police and Gaols, NSW, V&PLC, 1835, pp. 335, 338-9, 348, 350

103 Evidence of John Jamison to ibid., pp. 337-8; Roberts, Squatting Age, pp. 72, 97.
supported the emancipist faction before a change of editorship in 1836, emphasized the necessity of protecting the interests of the 'higher orders' against the depredations of squatters. The squatting issue tends to support Alan Atkinson's contention concerning the limited extent to which the emancipist faction was committed to improving the condition of the underprivileged.

While expressing concern over the problem, Governor Bourke pointed out that so-called squatters, as far as their unauthorized occupation of crown lands went, were merely following the steps of more influential colonists who held no better title to the land. The rapidity with which 'squatting' assumed respectable connotations once the practice was put on a legal basis in 1836 was witness to this fact. It seems likely, as S.H. Roberts suggests that wealthier settlers raised the bogey of criminal depradators partly to divert attention from their own large-scale egress beyond the boundaries of location. More importantly perhaps, the alleged criminality of small settlers served as a rationale for their exclusion from crown lands. Large landholders raised the same charges of rampant crime against selectors following new land legislation in the 1860s. The exclusion of 'small men' from crown lands would not only ensure their settlement by wealthier colonists, but augment the supply of labour. As one Bathurst settler complained, the facilities afforded to ticket of leave holders for acquiring land and amassing property

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104 Sydney Gazette, 28 April 1835, p. 2. See also 14 July 1835, p. 2.
106 Roberts, Squatting Age, p. 81.
'by illegal means', meant that they had neither the time nor inclination to work for others.  

The similar interests of wealthy emancipists and exclusives became still more apparent in their stand on the maintenance of convict labour. In their petitions of 1836, exclusives called for an official investigation into the condition of New South Wales and the transportation system. They perhaps had in mind something along the lines of John Thomas Bigge's commission of inquiry, which was critical of Governor Macquarie's emancipist policies. The upshot was instead the appointment of a select committee on transportation in April 1837, the Molesworth Committee, which laid its final report before the House of Commons in August 1838.

In New South Wales the Molesworth Committee evoked a sharp reaction from both exclusives and emancipists. Even before Molesworth issued his final report, news of the evidence taken by the committee in 1837 adequately foreshadowed his conclusions, and was met by a storm of colonial criticism. In May 1838 a petition was signed by over five hundred citizens of 'great respectability' calling for the appointment of a committee of the Legislative Council to counteract 'the evil impression' created in England by the committee. The Legislative

108 'A.B.C.' to Editor, Sydney Herald, 23 March 1835, p. 3.
109 Petition of Free Inhabitants of New South Wales to the King, and Petition of Free Inhabitants of New South Wales to the House of Commons, enclosed in Bourke to Glenelg, 13 April 1836, HRA, ser.1, vol.18, pp. 395, 398-9.
111 Petition from certain Magistrates, Landowners, and other Colonists, NSW, V&PLC, 1838, pp. 229-32; Gipps to Glenelg, 18 July 1838, HRA, ser.1, vol.19, p. 504; Australian, 29 May 1838, pp. 2-3; Monitor, 28 May, p. 2; 30 May 1838, p. 2.
Council agreed that the condition of the colony was misrepresented, but decided against the appointment of a committee on the grounds that its findings would be publicized too late. Instead, the Council passed a series of resolutions defending the efficacy of transportation and the colony's character.\footnote{Resolutions of the Legislative Council, NSW, V\&PLC, 1838, pp. 261-4; LC, Sydney Herald, 20 July 1838, p. 2.}

Opposition to the Molesworth Committee resulted largely from its recommendation that transportation and assignment be abolished. Settlers feared losing their cheap convict work force. Francis Forbes, in a letter to Bourke, predicted that the colony's prosperity would be destroyed, since assigned servants provided the only check to the exorbitant demands of free labourers.\footnote{Francis Forbes to Richard Bourke, 6 August 1838, Bourke Papers, ML, Uncatalogued MSS., Set 403, Item 7.} At the same time, colonists feared the report would discourage immigration to the colony. Molesworth's involvement with the South Australia Company incited charges that he wished to divert immigration away from New South Wales by portraying it as a hotbed of depravity.\footnote{See for example Sydney Gazette, 18 January 1838, p. 2; Australian, 8 January, p. 2; 22 January 1839, p. 2; Sydney Herald, 8 March 1839, p. 2; Francis Forbes to Sir R. Bourke, 23 August 1838, ML, Uncatalogued MSS., Set 403, Item 7; Sir R. Bourke to R. Therry, no date, quoted in Therry, Reminiscences, pp. 497-8.}

Aside from threatening New South Wales' economy, the Molesworth Committee challenged the upper classes' self-image of respectability. The colony's crime rate was seized upon by the committee as evidence of the transportation system's failure. Although the committee confirmed the exclusive stereotype of convicts and ex-convicts, it
took their interpretation of the criminal statistics a step further. According to Molesworth's report, not only was crime increasing in a greater proportion than the population, but this indicated 'too plainly the progressive demoralization both of the bond and of the free inhabitants of that colony'. Not surprisingly, this conclusion offended free immigrants, and especially exclusives, who were prone to emphasize the contaminating influence of convictism, while denying any alteration in their own morals. Indeed they were inclined to view themselves as the only respectable element in a moral wilderness.

The system has been "held together" by the dread and fear of British bayonets and British manufactured hemp- of a bullet or of the gallows; and it "holds together" in these liberal times owing to the same apprehensions, combined with the moral force which the respectable Colonists exercise over the scoundrels by whom they are surrounded ...

The resolutions adopted by the Legislative Council included its opinion that free immigrants 'of character and capital', as well as the rising generation of native-born, constituted a body 'sufficient to impress a character of respectability upon the Colony at large'. The colony's elite was also vigorously defended by Judge William Burton in an article published in 1840. Although his 1835 jury charge was cited almost incessantly by the Molesworth Committee to support its findings, he bitterly resented the committee's conclusion, 'rather by process of reasoning than by proof, that the whole society, which is

116 Sydney Herald, 18 April 1836, p. 2. Herald's emphasis.
117 Resolutions, NSW, V&PLC, 1838, p. 262.
infested by such evils, must be depraved'. According to Burton the 'superior classes', which included government officers, lawyers, large landholders, merchants, and clergy, were 'as a class as respectable a body of gentlemen as perhaps were ever associated together in any colony'. Their social life did not differ from that of England, while colonial ladies were 'precisely what English ladies should be'.

The character of New South Wales' upper classes was defended not only by comparison with Britain, but by contrast with the colony's lower orders. Judge Burton's characterization of polite society differed markedly from his perception of the working classes, who were vulnerable to the contaminating influence of convictism.

Apart from mere dishonesty ... the convict vices manifest themselves continually in the lower order—that of servants of either sex, and labourers especially, in a total absence of good principle—in language profane, disgusting, and unclean, and in suspicions of each other and those around them most odious—the offspring only of minds unpure.

In later years the report and evidence of the Molesworth Committee was variously referred to as an accurate description of New South Wales' past demoralization, or as the epitome of Britain's insipid and unjust perceptions of the colony. In either case, it left a lasting scar on the community's consciousness. One of its apparent effects was to alter radically portrayals of crime in the press. The Herald,


119 Ibid., pp. 433-6.

formerly so active in fueling a crime wave, considered the Molesworth Committee's references to crime and contamination a 'monstrous caricature'. The *Sydney Gazette*, under Tory management from 1836, made a similar volte face. In spite of the colony's large convict population, it found that life is safer and property more secure than in any one of the larger towns in England. Sydney may be traversed at any hour of the night with greater safety to purse and person than many parts of London during the broad light of day.

More often, analogies were drawn between the colony and England's port towns rather than the metropolis. Attorney-General Plunkett, for example, asserted that Sydney's streets were as quiet as those of any English seaport, and that if attacks on drunkards were excepted, robberies were no more numerous. The *Monitor* took the comparison further, noting that the periodic revelry of bush workers sprang largely from the same conditions of isolation which motivated seamen.

Sir William Molesworth and his compeers think little of English sailors residing on shore in brothels, until they have expended their pay in the lowest haunts of vice. Why then make such a to-do, and open their eyes so wide, and why stands their hair erect on their heads, because the same effects are produced in New South Wales from causes analogous, if not similar?

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121 *Sydney Herald*, 30 April 1841, p. 2. The Herald was at this time under new management, but remained the colony's leading conservative newspaper.


123 *Sydney Gazette*, 26 February 1839, p. 2.


125 *Monitor*, 30 May 1838, p. 2.
New South Wales' official crime rate had significantly declined at the time these observations were made. Nevertheless, it is uncertain to what extent the colony experienced a real upsurge in the incidence of criminal activity during the mid-1830s. Those historians who remark upon the statistics at all interpret them vaguely or erroneously. Aside from the factors already mentioned as artificially inflating the colony's crime rate, it is probable that growing public concern, particularly as aroused by the press, stimulated increasing prosecutions. Thus, for example, the formation of associations to combat stock theft could lead to increased convictions for stock theft. Similarly charges of convict insubordination could result in a more rigid attitude toward misdemeanours, and a consequent increase in convict cases brought before the magistracy.

It is perhaps more important to emphasize the way in which perceptions of crime reflected other concerns in the community and served to dramatize other issues. The importance of crime in gaining the ear of the British government, and its emotional value in generating public concern, was appreciated by contemporaries. If not always in a conscious way, the contending views of crime articulated by the exclusive and emancipist factions served their own interests. Exclusives exaggerated the impact of the Summary Jurisdiction Act and jury law on crime as a means of undercutting

126 See Chapter 4.
Governor Bourke’s liberal views on government and the status of ex-convicts. Emancipists countered by arguing that crime decreased under Bourke’s less repressive regime, and that convict insubordination resulted from the oppression of exclusive masters.

Perceptions of who were 'criminals' also served to enhance the social, political, and economic power of the upper classes. Socially, charges of insecurity and a laxity of convict discipline reflected a desire that transported persons be kept in their 'proper place' and demonstrate a 'proper humility'. 128 Not surprisingly, those most insecure about their own moral status were often the most rabid in their denunciation of convict morality. James Mudie apparently tried to defraud the British government and fathered several illegitimate children before emigrating to New South Wales. 129 Ernest Augustus Slade, another principal witness before the Molesworth Committee, was allowed to resign as superintendent of Hyde Park Barracks after he was discovered cohabiting with a convict woman. 130

Economically, the alleged criminality of ex-convicts served as a rationale for denying them access to labour and land. Politically, their alleged criminality provided a basis for excluding them from participation in democratic institutions. As James Macarthur later conceded, the rhetoric of exclusives was

128 See for example Unsigned Letter to Editor, Sydney Herald, 17 September 1835, p. 3; Sydney Herald, 14 March 1836, p. 2; John Bingle to Secretary of State, 3 January 1837, Bingle Papers, ML, A1825.


motivated largely by fear of a 'convict ascendency'. Already by the end of the 1830s portrayals of rampant crime were recanted as fear of political domination by ex-convicts dissipated, and exclusives became convinced of the need for convict labour.

This attempt to relegate convicts to a role of 'outsiders' in the community on the basis of their moral inferiority was recurrent, although who assigned them this status and why changed over time. The unanimity of wealthy emancipists and exclusives on the squatting issue foreshadowed their closing of ranks against the social aspirations of an increasing number of immigrants. Large landholders became the principal defenders of convict morality. But just as convicts provided a counter-image for exclusive pretensions to respectability, the dangers of a criminal class and contamination were later invoked to buttress the authority of the urban middle classes, and to protect the interests of immigrant wage earners.

131 LC, SMH, 28 September 1850, p. 2.
ANATOMY OF A CRIME WAVE, 1844

The year 1844 cannot, however, be rightly understood in its relation to the country we inhabit, unless viewed as part of that eventful cycle which will never be forgotten by the present generation, and which must ever form a dark spot in Australian chronology.¹

When Judge William Burton departed New South Wales for Madras in June 1844, the Sydney Morning Herald included in its eulogy prominent reference to his 'Celebrated Charge' of 1835, which had disclosed an increasing tide of depravity and crime in 'appalling, but factful colours'.² During the same month, the Herald reported that the colony was experiencing another crime wave.

We feel that we are in circumstances of imminent danger to our property, and danger to our very lives. Robberies and murders, increasing both in numbers and in audacity, infest our streets and beset our habitations. Anxiety and alarm have seized upon our families, and in many instances have almost banished sleep from their eyes. ... In short, a complete sense of insecurity has seized upon all classes, and we unanimously feel that something must be done - done effectually, and done forthwith.³

¹ SMH, 31 December 1844, p. 2.
² SMH, 18 June 1844, p. 2.
³ SMH, 8 June 1844, p. 2.
Crime became a dominant theme in the press, public meetings were held, and a select committee of the Legislative Council was appointed to investigate. In contrast to agitation about crime during the mid-1830s, there was little debate over the criminal statistics. The city's official crime rate was on the decline, and it was conceded that crimes had not increased in number but in 'intensity'. The most apparent reason for citizens' 'complete sense of insecurity' was a rash of robberies and burglaries, and more especially two homicides. In January 1844 John Thomas Knatchbull was convicted of murdering Ellen Jamieson in order to rob her, and within five months another attempted robbery resulted in the death of James Noble.

Homicides occurred with enough frequency in Sydney for one to question why two deaths should have induced a crime wave. The sensational Knatchbull murder case has been variously interpreted as a diversion from one of the colony's worst economic depressions, as indicative of the community's advancing respectability, and as the unjust treatment of a criminally insane man. For contemporaries, however, the murder of Ellen Jamieson, as the subsequent murder of James Noble, assumed a largely symbolic importance in relation to a number of long-standing grievances. The

4 Dr Nicholson's Address, LC, SMH, 28 September 1844, p. 2. For Sydney's criminal statistics from 1841 to 1845 see Appendix to the Select Committee on the Insecurity of Life and Property, NSW, V&PLC, 1844, vol.2, p. 386; Appendix referred to in Evidence of William Augustus Miles to the Select Committee on Police, NSW, V&PLC, 1847, vol.2, p. 60.


7 Colin Roderick, John Knatchbull. From Quarterdeck to Gallows (Sydney, 1963), especially pp. 248-52.
following discussion suggests that these grievances, including the continued arrival of expiree convicts in the colony, the confinement of prisoners in Sydney, the expense of maintaining the police, and unemployment, gave the 1844 crime wave much of its impetus. Like the law and order campaign in the mid-1830s, it was also symptomatic of an attempt to relegate convicts to a role as outsiders in a community increasingly composed of free immigrants.

On a Saturday evening, 6 January 1844, John Thomas Knatchbull was observed 'lurking about' the shop of Ellen Jamieson. A neighbour later saw Knatchbull enter the shop about midnight, and after hearing some suspicious noises, sounded an alarm. The house was quickly surrounded, and on the arrival of the police the back door was broken in with an axe. Knatchbull was discovered behind the front door. Mrs Jamieson was lying in a pool of blood, her brain protruding, and pieces of her skull on the floor. The horror of her condition was magnified by the fact that she lingered on for twelve days before dying.

The most sensational aspect of the crime was not its brutality, but Knatchbull's background. He was the second son of eighth baronet Sir Edward Knatchbull. His half brother, the ninth baronet, was in 1844 an MP and member of the Privy Council. Knatchbull was further distinguished for having served as a commander in the Royal Navy for

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five years, before losing his rank for failing to pay a private debt. Following a conviction for pickpocketing, he arrived at Sydney in 1825 under sentence of fourteen years transportation. A year after his arrival in New South Wales he was employed as a police runner, and in 1829 he received a ticket of leave for his good conduct and capture of eight runaway convicts. In 1832 he was convicted of forging a cheque, using the inauspicious signature of Judge James Dowling. For this offence he was transported to Norfolk Island for seven years, and was then sent to Port Macquarie to serve the remainder of his original sentence. In 1842 he again received a ticket of leave.  

Knatchbull's aristocratic origins and connections raised doubts about whether justice would be impartially administered in his case. Despite his protests of innocence, there was little question of his guilt.  Aside from being discovered locked in Jamieson's house, his pants were spattered with blood. When searched by the police money presumably stolen from Mrs Jamieson was found on him, as well as a woman's torn off pocket. The alleged murder weapon, a tomahawk, was identified as the property of Knatchbull's landlord. Under these circumstances, the novel plea of insanity employed in his defence only served to intensify a sense of public outrage.


10 Knatchbull later confessed to the crime while awaiting execution. John Thomas Knatchbull's Confession, 10 February 1844, enclosed in J. Long Innes to Col Sec, 23 February 1844, Col Sec, Letters Received, SANSW, 4/2670.
Robert Lowe, acting as counsel for the defence, argued that if Knatchbull had indeed committed the crime he suffered from an 'insanity of the will' and 'an irresistible and overwhelming influence to the commission of crimes'. It was a defence inspired partly by desperation, and partly by the newly formulated McNaghten Rules in which British judges defined the legal criterion for insanity. Lowe's argument also owed much to the pseudo-science of phrenology, which among other things claimed that a person's character might be determined by his or her cranial development. Lectures on phrenology were delivered at Sydney's School of Arts from the 1830s, and as George Nadel notes, its emphasis on social morality as a product of individual character appealed widely in a colony so conscious of its penal origins. Knatchbull, described as having large features, 'particularly in the upper part of the brow', was an obvious candidate for phrenological analysis.

Using the principles of phrenology, Lowe explained that the mind was divided in such a way that the impairment of one portion might render a person 'perfectly insane', while in other respects they might appear normal. Knatchbull, he contended, laboured 'under some mental infirmity which paralysed his better nature'. This line of argument proved unsuccessful. Judge William Burton, who presided at the trial, instructed the jury that the case 'might be very easily determined upon

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13 George Nadel, Australia's Colonial Culture: Ideas, Men and Institutions in Mid-Nineteenth Century Eastern Australia (Melbourne, 1957), pp. 139, 141.
without resorting to any such abstract reasoning', and they returned a verdict of guilty without leaving the box.\(^{14}\) Lowe's wife, Georgiana, alleged in a private letter that Judge Burton's conduct of the trial was prompted largely by vindictiveness, due to her husband's attacks on an Insolvent Act drawn up by Burton.\(^ {15}\) Lowe later attempted to have the penalty of death set aside on the grounds that Burton neglected to give directions for the disposal of Knatchbull's body when he pronounced sentence, but this objection was overruled.\(^ {16}\)

Many citizens considered that Lowe exceeded his duty in defending Knatchbull. The prospect that he might escape the gallows on a legal technicality added further indignation to what in some respects approached a public crusade. At one point, following the coroner's inquest into Jamieson's death, police feared that the populace might even take the law into their own hands.\(^ {17}\) Despite rumours of a reprieve, Knatchbull was executed on 13 February before a crowd estimated variously at four to ten thousand. According to the Herald, which wedged its report of the event between the cricket scores and the opening of a Wesleyan chapel, the 'solemnity' of the occasion was unbroken.\(^ {18}\)

The cathartic effect of Knatchbull's execution on the community was to prove short lived. On a Sunday evening, 26 May, James Noble was

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\(^ {14}\) SMH, 25 January 1844, p. 2. See also Atlas, 8 March 1845.

\(^ {15}\) Georgiana Lowe to Mrs Sherbrooke, 28 February 1844, (microfilm), Lowe Papers, ANL, G2040, Letter 13.

\(^ {16}\) SMH, 2 February 1844, p. 2; Australian, 3 February 1844, pp. 2-3; Minutes of the Executive Council, 27 January, 10 February 1844, Executive Council, SANSW, 4/1521; Gipps to Stanley, 10 February, 10 March 1844, HRA, ser.1, vol.23, pp. 398-9, 448-53.

\(^ {17}\) SMH, 19 January 1844, p. 3.

\(^ {18}\) SMH, 14 February 1844, p. 3. See also Australian, 15 February 1844, p. 3.
fatally stabbed during an attempted robbery, just a block from where the murder of Ellen Jamieson occurred. The scenes which followed were reminiscent of the Knatchbull case. The inquest into Noble's death was crowded by respectably dressed people, while an estimated eight hundred to one thousand people assembled outside. The appearance of James Martin, the only one of three suspects so far apprehended, elicited groans and hisses, while the jury men received cheers. George Vigors and Thomas Burdett were captured later after committing a robbery on the Liverpool Road, and indicted for Noble's murder. John Rankin, an aging ticket of leave holder, was also indicted as an accessory, for supplying them with a pistol before Noble was killed. Before a packed court room Martin, acting as an 'approver' for the prosecution, testified that it was Vigors who stabbed Noble during a struggle. Vigors, Burdett, and Rankin were sentenced to death. Vigors and Burdett were executed on 13 August.\(^{19}\)

Following the death of Noble there was evidence of a public panic. The *Herald* urged respectable householders to attend a public meeting necessitated 'by the first law of nature - SELF DEFENCE'.\(^{20}\) Residents of at least two city wards had already held meetings asserting that they were in a state of collective terror.\(^{21}\) In fact the *Australian* claimed that at one ward meeting the participants were besieged by pickpockets.\(^{22}\) At a mass assembly in the City Theatre, the citizenry

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\(^{19}\) SMH, 28 May, p. 2; 29 May, pp. 2-3; 12 June, p. 2; 15 July, p. 2; 16 July, p. 2; 17 July, pp. 3-4; 14 August 1844, p. 2; *Australian*, 29 May, p. 307; 1 June, p. 319; 3 June, p. 323; 4 June, p. 328; 13 June 1844, p. 359; *Star*, 1 June, pp. 2-3; 17 August 1844, pp. 1-2.

\(^{20}\) SMH, 8 June 1844, p. 2. *Herald*'s emphasis.

\(^{21}\) SMH, 31 May, p. 3; 1 June 1844, pp. 2-3.

\(^{22}\) *Australian*, 1 June 1844, p. 319.
was chillingly informed that 'The red hand of murder had been raised', and that 'The hour of dark had become the hour of danger; no man was safe'. Meanwhile the Legislative Council appointed a select committee to investigate the insecurity of life and property in Sydney. The committee was chaired by Dr Charles Nicholson, who arrived in Sydney ten years earlier as a physician, but who by 1844 had forsaken private practice to look after his pastoral interests.

The public sense of outrage and alarm created by the two killings can perhaps be attributed largely to the respectability of the murder victims. Judge Burton once observed of crime in New South Wales that 'Happily the grosser injuries, those affecting life and chastity, are for the most part, confined to the equally worthless associates of those guilty of them'. Ellen Jamieson and James Noble were obvious exceptions to this maxim. Jamieson was the widowed mother of two children, who supported herself by keeping a shop. Robert Lowe, perhaps to atone for his role as Knatchbull's attorney, became the orphans' legal guardian. James Noble, described as 'a man of integrity, of quiet, industrious, plodding habits of business', fit into a similar mould. Like Ellen Jamieson, he was a member of John Dunmore Lang's Presbyterian congregation, and was reportedly engaged in Bible reading with his wife and sister-in-law only minutes before being stabbed.

23 SMH, 10 June 1844, p. 4.
25 Burton, 'State of Society', Colonial Magazine vol.2, p. 50. Concerning the importance of a victim's reputation in tempering justice see for example the rape case of Nancy Spelslie presided over by Burton, SMH, 7 March, p. 4; 11 March 1844, p. 2.
26 SMH, 28 May 1844, p. 2.
The murder of 'a helpless and unprotected female', and 'a worthy and respectable man', also created fear. The fact that the victims had no prior association with their killers, and were seemingly killed at random, contributed to a sense of vulnerability.

The recent horrible outrage upon the lamented Mr Noble has shown us, that even while seated around our hearths ... we may be singled out as victims of violence and bloodshed, and in a moment be stabbed to the heart.

Underlying this feeling of insecurity, however, were other concerns. Jamieson's and Noble's deaths provided both a new sense of immediacy and a focal point for a number of grievances which were currently being discussed in the press and Legislative Council.

Agitation about insecurity in Sydney was inspired in part by discontent over the City Council's involvement with police administration. In 1843 the City Council had assumed financial responsibility for Sydney's police, although control of the force remained with the central government. Even before the Knatchbull case the Herald criticized the Council's handling of police affairs, and in particular its intention to further reduce expenses, and hence the number of police. A series of leading articles asserted that the numerical deficiency of the police was resulting in an alarming increase of crime. Other newspapers as well alluded to daily 'outrages' which were attributed to police retrenchment.

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27 The description is John Dunmore Lang's, SMH, 10 June 1844, p. 4.
28 SMH, 8 June 1844, p. 2.
29 See Roe, Quest for Authority, p. 84.
30 SMH, 2 January, p. 2; 6 January 1844, p. 2.
31 SMH, 28 March, p. 2; 16 April, p. 2; 20 May, p. 2; 28 May, p. 2; 1 June, p. 2; 8 June, p. 2; 11 June, p. 2; 12 July 1844, p. 2.
32 See for example Australian, 13 May, p. 251; 28 May, p. 303; 3 June 1844, p. 323; Star, 1 June 1844, pp. 2-3.
The murders of Jamieson and Noble lent dramatic support to this contention.

Criticism of police inadequacy in Sydney was perhaps not without basis. During 1843 the number of ordinary constables in the city was reduced from ninety to seventy in order to bring expenses within the estimate of the City Council.\(^{33}\) In January 1844 the Council announced plans for a further reduction in the police by abolishing the offices of chief constable and assistant chief constable, and reducing the number of police magistrates from three to one.\(^{34}\) The ratio of police to population was estimated by the Herald at one for every 341 Sydney inhabitants in 1844, compared to one for every 263 persons in 1841.\(^{35}\) Yet not everyone agreed that a reduction in the police was ill-considered. The Guardian, an ally of the Council, asserted that public opinion had favoured a reduction rather than augmentation of the police. It considered that at the time the estimates were framed, outrages against the person were rare, while police activities were directed primarily against unregistered dogs, publicans, and suspected drunkards.\(^{36}\)

In fact, conflict with the City Council and the issue of police inadequacy tended to be overshadowed by other concerns. In moving for the appointment of a select committee on insecurity, Dr Nicholson asserted that so long as Hyde Park Barracks and convict gangs in the vicinity of Sydney were improperly superintended, and convicts continued

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33 Returns of the Colony, 'Blue Books', 1842-1843, (xerox copy), ML, CY 4/274-276; Col Sec to Sydney Bench of Magistrates, 10 November 1843, Col Sec, Letters Sent, SANSW, 4/3849, p. 61.

34 SMH, 9 January 1844, p. 3. See also Charles Windeyer and William Augustus Miles to Col Sec, 7 February 1844, Col Sec, Letters Received, SANSW, 2/8022.2.

35 SMH, 28 March 1844, p. 2.

36 Guardian, 22 June 1844, p. 4.
to arrive from Norfolk Island, no corps of police could be expected to maintain order. The committee gave the police relatively little attention in its report, and when the central government resumed control of Sydney's police finances in 1845 the force was augmented by only six men. The 'chief objects' of the committee's recommendations were the exclusion of Norfolk Island expirees from the colony, and the removal of convicts from Sydney.

To the community in general, and the committee on insecurity in particular, the fact that Vigors and Burdett, as well as Knatchbull, underwent punishment at Norfolk Island before committing crimes in Sydney was extremely significant. Knatchbull returned to New South Wales from Norfolk Island in 1839 following the partial completion of his sentence for forgery. Vigors and Burdett, both sentenced to transportation for life, were returned from Norfolk Island as incurably ill.

Nevertheless, the murders of Jamieson and Noble did not initiate concern about convicts returned to New South Wales from Norfolk Island. There had been persistent complaints about the practice from the time that a cessation of transportation appeared imminent. It was argued that the colony continued to suffer the 'stain' of convictism without the benefit of assigned convict labour. This objection was intensified

37 LC, SMH, 7 June 1844, p. 2.
39 LC, SMH, 28 September 1844, p. 3.
40 See for example Gipps to Normanby, 23 November 1839, HRA, ser.1, vol.20, pp. 400-1; Gipps to Russell, 8 October 1840, vol.21, p. 41; Sydney Gazette, 10 October 1839, p. 2.
by experiments in prison discipline conducted by Alexander Maconochie, who assumed command of the island in March 1840. In contrast to the 'separate' system of prison discipline current in Britain, which was essentially a modified form of solitary confinement, Maconochie's ideas were embodied in a 'social' system. Prisoners were to be reformed through a gradual reduction of restraints, which would better prepare them for resisting temptation once free.41

Many colonists considered Maconochie's administration too lenient. The press ridiculed his regime as 'a penal Utopia', which fostered vice rather than reforming criminals.

To recline upon verdant banks, gazing upon the glories of a southern sky, lulled by the gentle murmuring of a brook ... to saunter in careless indolence through the groves, or along the smooth beach of the magnificent Pacific; ... these are the enviable occupations of the pickpockets and cut-throats of Norfolk Island!'42

Governor Gipps reported that the effects of Maconochie's system were universally derided and dreaded in New South Wales,43 while confidentially predicting that he would be dismissed on the grounds of expense.44

In these circumstances, the murders of Jamieson and Noble gave an old issue new life. Although Maconochie was replaced in February 1844, his memory was resurrected in that Vigors and Burdett were returned to Sydney on his repeated request less than four months before Noble's death.

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42 SMH, 31 July 1841, p. 2. See also for example SMH 26 July 1841, p. 2; 16 July, p. 2; 21 October, p. 2; 20 December 1842, p. 2; 19 August 1844, p. 2; Sydney Gazette, 30 April 1842, p. 2.


44 Gipps to LaTrobe, 29 March 1843, (microfilm), Gipps-LaTrobe Correspondence, ANL, Letter H7159.
With reference to 'thrice convicted thieves and men of the vilest
description' from Norfolk Island, as well as runaways from Van Diemen's
Land, the Australian noted that:

Sad indeed is the state of things when, after
having wiped off the disgrace of a penal
Colony, we are reduced to believe that the
Colonists were far safer in that condition
than in their present one, when a man cannot
venture to stir his tea with a silver spoon,
or to walk after dark without fear of
assassination.45

The select committee on insecurity concluded that the majority of
convicts from Norfolk Island were not reformed, but 'rendered more
hardened in vice, and more prone to the commission of every species
of crime'. Their continued arrival threatened life and property, and
was 'demoralising and fatal to the habits and character of the rising
generation'.46

The crime wave was also attributed to the prison population in
the vicinity of Sydney, and in particular prisoners confined in Hyde
Park Barracks.47 Like the Norfolk Island expirees, the Barracks had
been viewed with a jaundiced eye from the abolition of assignment.
They were completed in 1819 under Governor Macquarie's administration
as a receptacle for convicts, and especially those returned from
assigned service. In 1844 the Barracks housed what Governor Gipps
bluntly referred to as 'the refuse of the convict system in New South
Wales'.48 Conspicuously located in the centre of the city, it was

45 Australian, 3 June 1844, p. 323.
46 Report from the Select Committee on the Insecurity of Life and
48 Gipps to Stanley, 28 November 1844, HRA, ser.1, vol.24, p. 84.
a grim reminder of the colony's penal origins. The Barracks were rendered still more offensive in 1844 by a recent increase in inmates, who numbered 828 in May.49

Again the murder of Noble assumed importance, since Vigors and Burdett were confined at Hyde Park Barracks. The morning of the crime they slipped away from a gang on their way to church, shed their prison clothing in a privy, and emerged in ordinary dress. According to reports, it appeared that twenty-five prisoners were absent from the Barracks the night of Noble's stabbing, and over half a dozen convicts were apprehended wearing civilian clothes under their prison uniforms.50 Vigors, no doubt cognizant of public sentiment, allegedly stated before hanging that 'he had never been in a place where so much crime and rascality was carried on', and attributed his downfall to the Barracks.51

The conclusions of the select committee were generally supported by the Legislative Council, which resolved that the return of prisoners from Norfolk Island was an 'intolerable grievance' and the Hyde Park Barracks a 'demoralising influence'.52 Nevertheless, the committee's report appears somewhat dubious in light of the evidence. In contrast to the committee's characterization of Norfolk Island expirees, Sydney's police superintendent testified that of eighty-two expirees not confined in Hyde Park Barracks and known to the police, sixteen were under surveillance, while the others were given a 'good character'.53 Of 920 prisoners discharged to Sydney during Maconochie's

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50 SMH, 28 May 1844, p. 2; Weekly Register, 1 June 1844, p. 613.

51 SMH, 14 August 1844, p. 2.

52 LC, SMH, 2 October 1844, p. 3.

four year administration, only twenty were convicted of subsequent
offences before January 1845. Maconochie pointed out that the
re-conviction rate was twice as high before his administration.
The colonial secretary also confessed his surprise at learning that
of 240 convicts arriving from Norfolk Island between September 1843
and June 1844, those accused of Noble's murder were the only ones
committed for trial.

As for the Hyde Park Barracks, Governor Gipps conceded that its
presence in Sydney was 'a nuisance'. He objected to the removal
of convicts on the grounds that their employment on public works in
rural areas would only increase their opportunities for crime, and
would make the colony responsible for their support. Before the
committee on insecurity was appointed, however, Gipps determined to
remove as many inmates as possible from Hyde Park Barracks, and one
hundred of 'the worst characters' were sent to Cockatoo Island.

There was also some justice in criticism of the investigating committee
by the principal superintendent of convicts. He noted the committee's
attempt to connect the cases of Knatchbull and Vigors, although
Knatchbull had nothing to do with Hyde Park Barracks. He pointed as
well to the committee's 'extraordinary credulity' in accepting any
impressions which cast the Barracks in an unfavourable light. The

54 Barry, Maconochie, p. 149.
55 Captain Maconochie, 'Criminal Statistics and Movement of the Bond
Population of Norfolk Island, to December, 1843', Journal of the
Statistical Society of London vol.8 (1845), pp. 20-1.
56 LC, SMH, 7 June 1844, p. 2.
57 Gipps to Stanley, 28 November 1844, HRA, ser.1, vol.24, p. 84.
58 Message from Governor Gipps to the Legislative Council, 27 November
59 LC, SMH, 2 October 1844, p. 2.
committee reiterated in its report, for example, highly questionable testimony concerning gambling at the Barracks for stakes of twenty-five pounds, and the routine lending out of pistols to inmates. Finally, the city's criminal statistics suggested that convicts were not the only source of crimes. According to the attorney-general, no offences committed during 1844 other than Noble's murder and one robbery were directly traceable to the presence of Hyde Park Barracks.

That the select committee investigating insecurity was less than impartial is perhaps not surprising considering the atmosphere in which it worked. Nor do its conclusions concerning Norfolk Island expirees and Hyde Park Barracks seem surprising since both were objects of long standing grievance. But underlying the conclusions, and the general disquiet about a crime wave in general, were two further grievances. As Governor Gipps suspected, concern about crime was motivated largely by unemployment, and perennial objections to the expense of maintaining police and gaols.

From July 1835, when the cost of maintaining police and gaols was transferred to the colony, their expense served as a constant irritant. Colonists argued that the high cost of police and prisons was almost entirely the outcome of transportation, and as such at

60 Captain McLean to Col Sec, 30 September 1844, Col Sec, Letters Received, SANSW, 4/2674.3. Also enclosed in Gipps to Stanley, 28 November 1844, HRA, ser.1, vol.24, pp. 88-9.

61 LC, SMH, 2 October 1844, p. 3.

least a portion of the expense should be paid by the mother country. More realistically, as select committees on police periodically noted, the expense of law enforcement was also attributable to a preponderance of males, a widely dispersed population, and the presence of Aborigines. This knowledge did little to quiet objections, and with the abolition of transportation the grievance seemed even more insufferable. While colonists remained subject to 'indirect' transportation from Norfolk Island and Van Diemen's Land, they failed to receive the benefits of assigned convict labour. In 1840 the Legislative Council adopted resolutions expressing its opinion that half the cost of police and gaols should be defrayed by Britain, and the following year Governor Gipps reported that their expense was the source of 'nearly every difficulty' encountered in administering the government.

For a number of reasons the issue of support for police and gaols became still more pressing in 1844. Under the Constitution Act of 1842, district councils were to raise half the cost of the police in their respective districts. In light of the colony's economic situation, Governor Gipps agreed to postpone implementation of this portion of the Act. In 1843, however, half the cost of the Sydney police was transferred to the newly incorporated city to

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66 5 & 6 Vic., c. 76, sec. 47.

be paid by local assessments. \(^{68}\) Aside from charges against the City Council for mismanagement of the estimates, some citizens protested that the rates they contributed entitled them to better police protection. \(^{69}\) More importantly, the increased taxation was resented in a period of depression, particularly since the police of other districts continued to be paid out of the general revenue.

The connection between the cost of police and concern about crime became apparent when Sydney residents petitioned the Legislative Council in reference to the 'late outrages' committed in the city. According to the petitioners the arrival of convicts from Norfolk Island necessitated more adequate police and prisons. Since these could not be supported by local taxation, it was 'only just and reasonable' that at least a portion of the charges be borne by the British treasury. It was further suggested that if the British government refused to bear part of the charges, a means be devised for granting expiree convicts arriving in Sydney free passages to England. \(^{70}\)

Bitter feeling concerning support of police and gaols was further aroused in 1844 by plans to remove one of the colony's two military regiments to Van Diemen's Land. The Sydney Morning Herald protested against the proposal on the same grounds that it objected to a reduction in the police. Although New South Wales was no longer subject to direct transportation, it continued to receive 'robbers and murderers'

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\(^{68}\) [Colony of NSW] 6 Vic., No. 3, sec. 70; 6 Vic., No. 5.  
\(^{69}\) SMH, 20 May, p. 2; 31 May 1844, p. 3.  
\(^{70}\) Petition of 682 Inhabitants of Sydney, NSW, V&PLC, 1844, vol.2, p. 79; SMH, 10 June 1844, p. 4; LC, SMH, 29 June 1844, p. 2.
from Van Diemen's Land and Norfolk Island. The Star and Working Man's Guardian urged colonists to petition for the retention of military regiments in the same column which reported Noble's murder, noting that it was better for potential immigrants 'to starve at home than to have their throats cut in New South Wales'. In a similar vein, the Legislative Council concluded that any reduction in the colony's military force would be 'dangerous'. The removal of troops was further evidence that the colony would have to rely on its own resources for law enforcement. But concern was probably prompted more through fear of losing commissariat expenditure than disorder. The withdrawal of soldiers, the Australian pointed out, would mean not only a loss of protectors, but purchasers. It was asserted that the cost of maintaining police and gaols was all the more burdensome in face of rapidly decreasing expenditure from the military chest, which was reduced by over one-third between 1839 and 1843.

In a more indirect way, the issue of police and gaol expense also gained new vigour from squatting regulations promulgated by Governor Gipps in April 1844. The new regulations, which provided

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71 SMH, 25 May 1844, p. 2.
72 Star, 1 June 1844, p. 3.
73 LC, SMH, 2 October 1844, p. 3. See also LC, SMH, 7 June, p. 2; 15 June 1844, p. 2; Report from the Select Committee on the Insecurity of Life and Property, NSW, V&PLC, 1844, vol.2, p. 375.
74 Australian, 3 June 1844, p. 323.
75 Address to the Queen and Parliament prepared by the Select Committee on General Grievances, NSW, V&PLC, 1844, vol.2, p. 750; LC, SMH, 7 December 1844, p. 3.
more stringent conditions on the occupation of crown lands, elicited a sharp reaction, particularly since many squatters were in economic difficulties. Like the issue of police expense, the squatting regulations also symbolized imperial restrictions on the colonial legislature. As part of the backlash against them, the Legislative Council enumerated its grievances over the administration of crown lands. A select committee on land grievances, chaired by Charles Cowper, was appointed in May, only a few weeks before Noble's murder. The committee members which included Charles Nicholson, were all members of the newly formed Pastoral Association, organized to oppose the new land regulations. Among the grievances outlined by the committee was Governor Gipps' alleged violation of 'the compact'. It was vainly contended that in return for supporting police and gaols, the colony received the right to appropriate revenue from crown lands. Within this context, it is significant that at a public meeting on insecurity in Sydney, William Charles Wentworth


protested against not only the injustice of burdening the city with the cost of the police, but also the Legislative Council's lack of control over the territorial revenue.78

In moving for a select committee to investigate insecurity in Sydney, Charles Nicholson made his own priorities clear. The simple landing of convicts from Norfolk Island was not the only grievance, for the colony was compelled 'to go to all the expense of maintaining a police for their control, and a gaol establishment for their incarceration'.79 When later moving for resolutions on the committee's report in September, Nicholson pointed out that most crimes in Sydney were committed by persons originally transported, and concluded that 'there could not be a stronger argument' against the colony being saddled with the cost of police and prisons.80 The committee refrained from making any specific recommendations concerning the issue, but this was probably because action was already taken. At the end of August resolutions were adopted by the Legislative Council recommending that two-thirds of police and gaol expenses, including arrears from 1835, be paid by the home government.81

78 SMH, 10 June 1844, p. 4.
79 LC, SMH, 7 June 1844, p. 2.
80 LC, SMH, 28 September 1844, p. 2.
81 LC, SMH, 31 August 1844, pp. 2-3. The resolutions were referred to the select committee on general grievances, chaired by William Charles Wentworth, for the purpose of preparing an address to the Queen and parliament. The committee laid the address and its report on the Council table in December. LC, SMH, 7 December 1844, pp. 2-3. See also Gipps to Stanley, 27 December 1844, HRA, ser.1, vol.24, p. 118.
Concern about crime in 1844 was also related to unemployment. Underlying condemnations of the convicts' moral influence was at least in part a desire to improve the economic position of free wage earners. During 1843 Sydney labourers held several meetings in protest against the competition of convict labour. In January a proposal by the City Council to employ convicts in repairing the streets resulted in a petition to the governor. Labourers requested that no convict labour be allowed to the city corporation, and that all prisoners be withdrawn from assigned service in the city. 82 Additional petitions were presented in 1843 calling for the removal of all convicts from public works in Sydney on the grounds that large numbers of free persons were unemployed. 83

These efforts were unsuccessful. A select committee of the Legislative Council appointed to consider the labourers' petition objected to the removal of convicts from Sydney. The committee considered that the petitioners deluded themselves as to the amount of relief such a measure would afford, particularly since convicts were employed on public works which would otherwise not be undertaken at all. Furthermore, convicts in government service were clothed and rationed from the military chest, whereas their removal to the interior would necessitate their support by the colony. The committee recommended instead that as many unemployed as possible be siphoned off to country districts. 84

The committee's report did not end the issue. The Mutual Protection Association, formed at a meeting of Sydney's unemployed

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82 SMH, 9 January 1843, p. 2.
83 SMH, 12 June, p. 2; 8 August 1843, p. 2.
84 Report from the Select Committee on the Petition from Distressed Mechanics and Labourers, NSW, V&PLC, 1843, pp. 3-4.
in August 1843, continued to press the government to provide public works. The Association opposed further immigration as well as the arrival of convicts, and considered that convicts should neither be employed on public works nor assigned to service in towns. On 20 May 1844, six days before the murder of James Noble, a public meeting was held at the Sydney School of Arts in order to memorialize the governor again. The meeting resolved that the employment of convict labour in Sydney was injurious to the community and prejudicial to free labour. Convicts should be employed in distant districts where they would not compete with free men. This petition, like its predecessors, was unsuccessful. As a result, the Mutual Protection Association resolved that the first step toward improving working class conditions must be the removal of Governor Gipps.

In at least some quarters, the death of Noble brought new optimism. Following the public meeting on insecurity at the City Theatre the Guardian, mouthpiece of the Mutual Protection Association, reported in jubilant terms that the removal of convicts from Sydney was supported by all parties. It appeared that its object might at last meet with success. It was certainly supported by the select committee on insecurity, which recommended that tickets of leave for the district of Sydney be withheld, and that prisoners in government or assigned service be removed to the interior. In supporting its

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87 Guardian, 1 June 1844, p. 2.

proposal well-worn allusions were made to the role of convicts in perpetuating crime, and their exposure to temptation in the metropolis. The committee also concluded, that regardless of any other reasons, the large number of labourers unemployed in Sydney was alone sufficient reason to adopt their recommendations.  

It seems evident that the crime wave became politicized, and was even in part manufactured, through various interests and grievances. An atmosphere of crisis was created not only by the spectre of crime, but economic depression. As in the mid-1830s it was largely other issues which focussed public attention on crime, while perceptions of criminality were shaped by disparate concerns. A change in newspaper reportage as much as an actual change in offences committed, possibly contributed to widespread fear. The Sydney Morning Herald made crime a daily topic in its columns, while most other newspapers responded to the crime wave with stereotype allusions to convict depravity. Convicts provided both an explanation for feelings of insecurity, and to some extent a scapegoat for economic ills. 

At a meeting of residents in Bourke ward to discuss the crime wave one businessman, R.P. Welsh, was bold enough to suggest that although convicts were responsible for several gross crimes, he believed that on closer inquiry it would be found that a considerable number had been committed by other persons suffering under the privation of the times. For this suggestion he was sternly rebuked. James

McEachern, a leading light of the Mutual Protection Association and the Guardian's first editor, retorted that Welsh 'had grossly insulted the free portion of the community'. While admitting that many immigrants were suffering from poverty, he denied that such suffering led to crime. 'On the contrary', McEachern asserted, 'he was happy to say that they would rather die than be guilty of such outrages.' Under public pressure Welsh retreated. At a subsequent meeting he insisted that he had really been trying to draw attention to the evils the city and colony were subjected to by 'criminals from the adjacent islands being poured upon our shores'.

The select committee on insecurity reached a conclusion which was consistent with McEachern's. The committee acknowledged the role of unemployment and reduced wages as a cause of crime, but only in a qualified way. While economic distress might result in the commission of offences by persons who had previously evinced a 'want of correct principles', the committee concluded that such a causal relation could by no means be applied to the working classes generally. This view fitted in neatly with contemporary conceptions of a 'criminal class', which in New South Wales was easily identifiable as persons originally transported.

In opposing convicts the community was drawn together not only by a collective sense of indignation, but a mutuality of interest. The Mutual Protection Association and Guardian sided

91 SMH, 1 June 1844, p. 2.
92 SMH, 10 June 1844, p. 4.
93 Report from the Select Committee on the Insecurity of Life and Property, NSW, V&PLC, 1844, vol.2, p. 372. See also the Colonial Secretary's Address, LC, SMH, 2 October 1844, p. 2.
with squatters in opposing Gipp's land regulations, largely because of their animosity to the governor. Given the failure of appeals for public works, radicals also viewed the regulations as obstructing a general revival of the economy.\(^{94}\) The decision to support squatters split the Mutual Protection Association and the alliance proved only temporary, but their uneasy coalition in 1844 probably explains in part why Nicholson's committee on insecurity supported the exclusion of all prisoners from Sydney.

By 1844, at least in Sydney, the proportion of convicts in the community had also diminished to the extent that they could be regarded as socially distinct from the working classes, as marginal and outsiders. Between 1841 and 1844 nearly 40,000 free immigrants arrived in New South Wales.\(^{95}\) At the census of 1846 the convict-emancipist group made up one-fifth of the colony's population, and less than one-tenth of Sydney's populace.\(^{96}\) Collective indignation generated by the murders of Jamieson and Noble tended to confirm the moral worth of immigrants, while downgrading the status of convicts. In this respect, as in others, the crime wave of 1844 foreshadowed the anti-transportation movement which gathered momentum at the end of the decade. Although Sydney was relieved of the responsibility for providing partial support for its constabulary after 1844, the expense of supporting police and gaols remained a reason for opposing the reception of convicts in New South Wales. As in 1844, rhetoric concerning the

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95 Madgwick, Immigration, p. 223.

96 Proportions are based on Census of New South Wales, 1846.
threat of crime and moral contamination which convicts posed to the community was underpinned largely by fears that they would threaten workers' standard of living.
CRIME, CONTAMINATION, AND ANTI-TRANSPORTATION

Under the most favourable circumstances we shall always be compelled to deal with our own crime—a task surely of sufficient difficulty to every community. But to draw down upon ourselves—to invite the scum of the British Empire, merely from pecuniary motives, would be to ask from the parent land her curse, instead of her blessing—would be to effect the complete destruction of the trifling claim to respectability, which we now possess—..."  

In 1844 opposition to convicts took place against the backdrop of a crime wave. If less conspicuously, crime continued to serve as an emotive focal point for opposition to convicts as the anti-transportation movement developed in New South Wales. After 1844, increasing emphasis was placed on the colony's improved moral tone. The *Herald* reported on New Year's Day 1847 that:

> The moral state of the colony was never since its foundation, so satisfactory as during the year 1846. The decrease of crime was most conspicuous. ... In short, the dregs of the transportation system had almost disappeared.  

By the end of the decade, however, fears were again being expressed about the continued arrival of convicts and their impact on New South

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1 Bathurst Free Press, 11 January 1851, p. 4.  
2 SMH, 1 January 1847, p. 2.
Wales' crime rate. In the rhetoric of anti-transportationists, crime and convicts became synonymous. The convict ship was a 'cargo of crime' and a 'crime-freighted vessel', while transportation was referred to as an 'importation of crime', 'flood of crime', and 'influx of crime'. As in the mid-1830s and in 1844, perceptions of crime were influenced by social, economic, and political interests. Those perceptions in turn played an instrumental role in stimulating support for the anti-transportation movement, and giving the movement cohesion.

Although direct transportation to New South Wales ended in 1840, efforts to renew transportation, both by colonists eager for convict labour and the British government continued. The Colonial Office became particularly anxious to secure an alternative place to send convicts as deteriorating economic conditions in Van Diemen's Land.

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3 See for example LC, SMH, 2 June, p. 2; SMH, 12 June 1849, p. 2; People's Advocate, 16 June, p. 4; 6 October 1849, p. 2.

increased the number supported by the government. In July 1844 Lord Stanley, secretary of state for the colonies, suggested the possibility of again sending convicts to the mainland. After serving a term in British penitentiaries, prisoners might be sent to Australia with pardons. They would be 'most conveniently distinguished by the term "Exiles"'.\(^5\) Governor Gipps considered that the first exiles might be best sent to Port Phillip, since the cost of labour was higher there than anywhere else in the colony.\(^6\) Between November 1844, when the first shipload arrived, and February 1849, a total of nine ships disembarked 1,727 exiles at Port Phillip.\(^7\)

In the meantime, pressures on New South Wales to receive convicts increased. In 1846 William Gladstone, who replaced Lord Stanley as secretary of state for the colonies in December 1845, proposed a renewal of transportation to the colony on a modified basis. A place for receiving British convicts seemed all the more necessary since in 1846 transportation to Van Diemen's Land was suspended for two years. The following year a British select committee also concluded that transportation could not safely be abandoned, since it had 'Terrors for Offenders' which no other punishment short of death possessed.\(^8\)


\(^{6}\) Gipps to Stanley, 13 December 1844, HRA, ser.1, vol.24, p. 127. See also Gipps to LaTrobe, 7 December 1844,(microfilm), Gipps-LaTrobe Correspondence, ANL, Letter H7266.

\(^{7}\) Return of Exiles to Port Phillip, NSW, V&PLC, 1849, vol.1, p. 902.

\(^{8}\) Second Report from the Select Committee of the House of Lords appointed to inquire into the Execution of the Criminal Law, especially respecting Juvenile Offenders and Transportation, PP, 1847, vol.7, (534), pp. 7-8.
In New South Wales, official response to the proposed renewal of transportation vacillated. At Port Phillip the arrival of exiles from 1844 elicited strong opposition. Nevertheless, a select committee of the Legislative Council reported in favour of resuming transportation in 1846. The committee, chaired by William Charles Wentworth and composed mainly of men anxious to obtain cheap labour, argued that it was preferable to receive convicts under a system in which they could be controlled, than to suffer indirect transportation from the adjacent colonies. Under a number of conditions, the committee considered that transportation would be disarmed of its moral evils and contaminating influences. In September 1847, however, under public pressure and aware of an approaching election, the Council agreed to a motion repudiating the report. The following year the Legislative Council reversed its position again. At the prompting of Early Grey, Gladstone's successor at the Colonial Office, it agreed to accept convicts with tickets of leave or conditional pardons, provided they were accompanied by their families and an equal number of free immigrants.

The Colonial Office acknowledged the Legislative Council's willingness to receive convicts in a despatch dated September 1848, and informed Governor FitzRoy that the Order-in-Council which ended

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11 LC, SMH, 16 September 1847, pp. 2-3; (Supplement), pp. 3-4; Atlas, 18 September 1847, pp. 456-7; Address enclosed in FitzRoy to Grey, 25 September 1847, HRA, ser.1, vol.25, p. 764.

12 Grey to FitzRoy, 3 September 1847, HRA, ser.1, vol.25, pp. 735-8; Address enclosed in FitzRoy to Grey, 10 April 1848, vol.26, p. 368.
New South Wales' status as a receptacle for convicts was to be revoked. The despatch, published in the colony in February 1849, prompted a hostile reaction. Not only were the convicts to be unaccompanied by an equal number of immigrants as promised, but there was no longer an urgent need for labour. Further indignation resulted when it was reported that because of opposition to receiving convicts at Port Phillip, Governor FitzRoy had issued instructions that they should be forwarded to Sydney. The first ship carrying exiles forwarded from Port Phillip, the Hashemy, was greeted at Sydney by a mass demonstration on 11 June 1849.

Crime and New South Wales' vulnerability to any importation of British criminals served as a rallying cry in opposing convicts. At a public meeting held in March 1849 and a subsequent deputation to Governor FitzRoy, anti-transportationists pointed to the probability of convicts forming bands of outlaws which the colony would be powerless to control. The military force had been reduced following the cessation of transportation, while it was argued that augmenting the police in remote districts would entail enormous expense. Furthermore,

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14 See for example SMH, 26 February, p. 2; 27 February, p. 2; 2 March, p. 2; 10 March 1849, pp. 2-3; People's Advocate, 10 March 1849, pp. 2-3; Anon., 'Anti-Transportation Movement in Sydney', Colonial Magazine and East India Review vol.18 (July-December 1849), pp. 179-84.
15 SMH, 9 April, p. 2; 20 April, p. 2; 21 April, p. 2; 25 April 1849, p. 2; People's Advocate, 7 April, p. 7; 14 April, p. 6; 28 April 1849, p. 4.
16 SMH, 12 June, p. 2; 13 June 1849, p. 2; People's Advocate, 16 June 1849, pp. 4-5; Bell's Life, 16 June 1849, p. 1.
17 SMH, 10 March, p. 3; 25 April 1849, p. 2; People's Advocate, 28 April 1849, p. 4.
it was asserted that Earl Grey's scheme requiring convicts to repay the cost of their passage before becoming eligible for conditional pardons was calculated to increase New South Wales' 'scanty ranks of robbery and murder'.

A similar, if often more subtle, campaign against convicts was waged by the press. In a leading article entitled 'Our Criminal Statistics', the Sydney Morning Herald pointed to New South Wales' conviction rate as 'unequivocal proof' of diminishing crime. Even so, comparison with returns for England and Wales was still considered a source of 'shame and humiliation'. The following month, the Herald noted the disproportionate number of convicts and emancipists tried recently before the Sydney Quarter Sessions. It was asserted that one beneficial result of the Molesworth inquiry, so long regarded as a gross slur on the colony, was a complete moral transformation of the community. Unless Earl Grey succeeded in 'contaminating' the colony again with criminals, 'gentlemen of birth and education, accompanied by their accomplished wives and beautiful daughters', might emigrate to New South Wales with confidence that it was no less 'virtuous, tranquil, and secure' than any place in Britain.

Towards the end of 1849 there was a change in the reportage of crime in the Sydney press. Whereas emphasis was previously placed on the colony's declining crime rate, there were reports of an ' alarming increase' in robberies and burglaries. This was attributed

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18 SMH, 2 March 1849, p. 2.
19 SMH, 10 October 1849, p. 2.
20 SMH, 8 November 1849, p. 2.
21 SMH, 29 October 1849, p. 2.
principally to the arrival of ex-convicts from Van Diemen's Land. In January 1850 the Sydney Morning Herald alluded to 'the immigrating hordes of Van Diemen's Land expirees', noting that:

The year 1844 set in with an alarming increase of crime. So has the year 1850. Every day has this journal to report outrages on person or on property, or on both. Not a single night passes without a burglary or an attempt at burglary.

The following month Ann Deas Thomson wrote to her father, former governor Richard Bourke, that scarcely a night passed without hearing of some neighbour being robbed. It was rumoured that 'a regular gang' was operating in the neighbourhood, 'supposed to be expirees from Hobart Town'.

Whether the city was in fact being inundated by Van Diemen's Land expirees is questionable. Of about 5,000 convicts free by servitude or holding conditional pardons recorded leaving Van Diemen's Land between 1847 and 1849, over 3,800 departed for Port Phillip, compared to less than 250 for Sydney. It is possible, of course, that many ex-convicts travelled overland to the east. But the People's Advocate later reported, in order to 'allay unnecessary apprehensions', that very few expiree convicts from Van Diemen's Land arrived in Sydney, and that those who did were under close surveillance by the police.

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22 Bell's Life, 29 December 1849, p. 2; People's Advocate, 29 December 1849, p. 3.
23 SMH, 23 January 1850, p. 2.
26 People's Advocate, 21 September 1850, p. 3. See also SMH, 16 October 1850, p. 2.
As in 1844, it seems likely that the menace of convicts arriving from adjacent colonies was exaggerated. It is also perhaps significant that reports of a 'crime wave' precipitated by Van Diemen's Land expirees appeared when the question of direct transporation was temporarily assumed at an end.

At about the same time as Sydney's populace was assured that Van Diemen's Land expirees posed no real threat to the community, agitation against exiles re-emerged with new vigour. The main reason was the publication of Governor FitzRoy's despatch to the secretary of state concerning protests held in Sydney following the arrival of the Hashemy in June 1849.27 In the despatch, FitzRoy stated that accounts of the protest meetings by the Sydney Morning Herald 'grossly exaggerated' their attendance and the sensation they created. Furthermore, those attending the meetings included a large proportion of 'mere idlers', while 'respectable people', whether opposed to transportation or not, were indignant that the issue was seized upon by a small number of demagogues who attempted to 'ferment disturbance and dissension'.28

Reaction against Governor FitzRoy's despatch, as well as reports that Earl Grey still thought transportation to New South Wales might be resumed, led to a protest meeting at Circular Quay three days after its publication in August 1850. The meeting resolved that FitzRoy's despatch was a gross misrepresentation, and called for his removal from office. A resolution also demanded that the Order-in-Council listing New South Wales as a place where convicts might be

27 The despatch was published in the SMH, 9 August 1850, p. 3. See also SMH, 12 August 1850, p. 2; People's Advocate, 10 August 1850, p. 2.

28 FitzRoy to Grey, 30 June 1849, CO 201/414, ff. 328-33.
The anti-transportation movement gained further momentum at the end of August, when the Legislative Council postponed a motion introduced by John Lamb to petition the Queen for the revocation of the Order-in-Council. The debate was postponed ostensibly to provide time for an expression of public opinion, and resulted in another mass meeting held at Barrack Square on 16 September. Following an epic debate, the Legislative Council agreed on the first of October to request that the Order-in-Council be revoked. Although agitation continued against transportation to Van Diemen's Land and the proposed separation of the northern districts, transportation henceforth lost much of its urgency as a political issue.

Opponents of transportation in 1850 resurrected the same fears about an influx of crime which were expressed in 1849. At Maitland a meeting was informed that the relative absence of bushranging and other 'outrages' in the district was sufficient reasons for opposing any renewal of transportation. Residents of Bathurst heard orations in a similar vein. One speaker asserted that:

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29 SMH, 13 August 1850, pp. 2-3; People's Advocate, 17 August 1850, pp. 4-6, FitzRoy to Grey, 30 September 1850, and enclosed Petition of the Colonists of New South Wales, PP, 1851, vol.45, [1361], pp. 179-81.

30 People's Advocate, 31 August, p. 2; 21 September 1850, pp. 4-5; SMH, 18 September 1850, pp. 2-3, 6; FitzRoy to Grey, 9 October 1850, PP, 1851, vol.45, [1361], pp. 198-9.

31 LC, SMH, 28 September, p. 2; 30 September, p. 2; 1 October, p. 2; 2 October, p. 2; 3 October, pp. 3-7; 4 October, pp. 3-7; 7 October 1850, pp. 3-6.

32 SMH, 16 September 1850, p. 3.
I remember some ten years ago, when you could never take up a paper but accounts of bushranging, robbery, and murder, stared you in the face; and under the assignment system as now proposed, similar scenes will occur again. Runaway prisoners, combining with unemployed operatives, will infest the roads and haunt the bush lands...

The 1837-38 report of the Molesworth Committee was cited as 'proof' of the vice and crime generated by conviction in the past, and the inevitable result if transportation was renewed.

Particular emphasis was placed on the vulnerability of women and children to sexual assault. John Dunmore Lang electrified the crowd at Barrack Square with an example of the transportation system he purported to be personally acquainted with. In 1834 he had induced a family consisting of a married couple and their three daughters to settle in New South Wales. The husband was frequently absent from their farm, and during one of his absences their house was attacked by some men from a gaol gang who threw his wife in the fire. Although she recovered from the burns she received, due to an 'organic disease' the shock of the incident resulted in her death a short time later. The father continued to reside at the farm with his daughters. During another of the father's absences, according to Lang, an old convict 'perpetrated an outrage upon each of them in succession, fit only for one of the demons from hell to perpetrate, and for which our language has no name'.

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33 SMH, 20 September 1850, p. 3.
34 See for example SMH, 18 September 1850, p. 2.
35 People's Advocate, 21 September 1850, p. 7. Lang recounted the same incident in the Legislative Council. LC, SMH, 3 October 1850, p. 4.
Such appeals for the protection of wives and daughters were especially effective in the colony, since the numerical deficiency of women and their frequent isolation in the bush was thought to make them more vulnerable to attack. While adopting other mitigations of the criminal law, New South Wales retained the death penalty for rape even though it was abolished in Britain in 1841. The fact that one of the exiles was accused of committing rape assumed special importance in the Legislative Council's debate. Henry Dangar, a pro-transportationist with massive land holdings, asserted that exiles in the colony had been charged only with 'minor offences'. When enumerating the offences committed by exiles, however, he began by noting that one was accused of rape. Although Dangar later explained that he meant to say exiles 'generally' were only accused of minor offences, the damage was done. Speaker after speaker attacked his implication that rape was a minor crime. Dangar's insensitivity was cited as evidence of convicts' contaminating influence, while greater violence to women and children was predicted if transportation were renewed.

At the same time, speakers in the Legislative Council cited the colony's criminal statistics as a measure of convictism's impact. John Nichols pointed to New South Wales' relatively high conviction rate during the mid-1830s, while Edwin Suttor asserted that nine-tenths of the colony's crime was committed by persons originally transported.

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36 The death penalty for rape in New South Wales was not repealed until 1955. Crime Act, 1900, No. 40, sec. 63; Crime Amendment Act, 1955, No. 16, sec. 5.

37 LC, SMH, 4 October 1850, p. 3.

38 Ibid., pp. 4-5, 7; LC, SMH, 7 October 1850, p. 6.

39 LC, SMH, 1 October, p. 2; 4 October 1850, p. 4.
Although the attorney-general, John Hubert Plunkett, considered the proportion was somewhat less, his observations were no less damming. He estimated that while the 'transported classes' made up only about twenty per cent of the population, they were responsible for at least sixty per cent of the crime. Plunkett cited return after return of cases tried before various superior courts noting the small proportion of cases involving the 'free classes'. Not only did convicts and ex-convicts commit a disproportionate number of offences, but 'nearly all the heinous offences'. While conceding that thousands were previously transported for petty and political offences, opponents of transportation noted that changes in the English criminal law meant that only the 'worst class' would be sent if transportation were renewed. Aside from creating the danger of murder, rapine, and theft, the presence of convicts would necessarily lead to contamination.

If they were to introduce them, a large number of vicious men, or men who indulged in vicious habits, the inevitable consequence must be that the free population, whether native or transported, must become demoralized.

Throughout the period, the criminal tendencies of exiles received special attention from the press. It was reported that at one session of the criminal court at Port Phillip, exiles made up one-third of the prisoners tried. At Moreton Bay it was alleged that while residents scarcely considered locking their doors before, the arrival of exiles

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40 LC, SMH, 4 October 1850, pp. 6-7.
41 Mr Suttor's and Attorney-General's Address, ibid., pp. 4, 7.
42 Mr Bowman's Address, ibid., p. 5.
43 People's Advocate, 24 March 1849, p. 4.
necessitated their being constantly on the alert for 'the numerous
sneaks now prowling about after night-fall'.\textsuperscript{44} In the vicinity
of Goulburn, exiles were believed responsible for a rash of forgeries.\textsuperscript{45}
Offences committed by exiles were scrupulously reported by Sydney
newspapers, including such minor infractions as disobedience of
orders and drunkenness.\textsuperscript{46}

While exiles were credited with committing numerous offences,
fears concerning their criminal propensities seem greatly exaggerated.
Between June 1849, when the Hashemy arrived, and June 1850, a
total of 1,618 exiles disembarked at New South Wales' middle district
and Moreton Bay. During that year forty forfeited their tickets of
leave. In three-fourths of the cases this was simply for minor
breaches of discipline. But ten of the exiles were alleged to have
committed what Governor FitzRoy termed 'offences of a grave character',
including one rape, five cases of larceny, and four cases of assault
or felony.\textsuperscript{47} A year and a half later, the exiles were credited with
an additional 309 offences. Again, most of these were minor breaches
of discipline. The most common offences were absence from musters,
absconding, breach of the Masters and Servants Act, drunkenness or
disorderly conduct. The large numbers absenting themselves, absconding,
or breaking agreements must be viewed in the context of opportunities
for alternative employment created by the discovery of gold. Exiles

\textsuperscript{44} SMH, 8 March 1850, p. 2.
\textsuperscript{45} Goulburn Herald, 15 February, p. 4; 8 March 1851, p. 6; Empire,
10 May 1851, p. 424.
\textsuperscript{46} See for example People's Advocate, 8 December 1849, p. 4; SMH,
13 November 1849, p. 3.
\textsuperscript{47} FitzRoy to Grey, 5 July 1850, and enclosed return, PP, 1851, vol.
45, [1361], pp. 177-8.
were also punished for an additional fourteen 'serious' offences, generally some form of theft. As in the case of convicts and ex-convicts generally, these figures must be considered in light of community attitudes toward them, and especially discrimination by the police and courts.

The Legislative Council's decision against any renewal of transportation in October 1850 was lauded as a moral victory. According to the Sydney Morning Herald, despite temptations 'between the expedient and the right, between material gain and moral loss', colonists opted for 'the purity of their country'. Although in the rhetoric of its opponents, transportation was conceived as 'a great moral question', the issue was interwoven with more material concerns. Delegates to the Australasian League assembled at Melbourne in February 1851, urged colonists to consider not only the prospect of 'robbery, violence, and murder, and every abomination that disgraces human nature', but 'even the merely economic relations of the question'.

As in 1844, resistance to transportation continued to be tied to the grievance of police and gaol expenditure. Again as in 1844, this grievance seemed particularly important amid reports that more troops were to be removed from the colony. England was accused

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48 Return of Offences Committed by Exiles, NSW, V&PLC, 1851, vol.2, pp. 431-2. It is unclear whether these 'serious' offences referred to arrests, committals, or convictions.

49 See Chapter 4, pp. 148-9.

50 SMH, 4 October 1850, p. 2.

51 SMH, 13 February 1851, p. 2.

52 See Shaw, Convicts and the Colonies, p. 265; Alice Hazel King, 'Police Organization and Administration in the Middle District of New South Wales, 1825-1851', (M.A. thesis, University of Sydney, 1956), pp. 159-60.
of deluging New South Wales with 'thieves and cut-throats' on the one hand, while refusing to provide protection on the other. Any renewal of convictism, it was asserted, would necessitate an augmentation of police and prisons, and a consequent increase in taxation. Taxes used to finance the control of convicts, it was contended, would in turn reduce the wages of free immigrants.

More importantly, as historians have emphasized, fear of contamination expressed by the working classes was related to their fear of economic competition. With reference to the anti-transportation movement Sydney's former superintendent of police, William Augustus Miles, sarcastically remarked it was 'quite refreshing to learn how much virtue and morality there is blossoming in Sydney', adding that mechanics were afraid 'that the influx of labour might produce a deflux of wages'. The Sydney Morning Herald attacked Grey's proposal to send exiles in 1849 largely on the grounds that the colony's 'untainted labourers' would be faced not only with a labour market overstocked with immigrants, but 'the hateful competition of ticket-of-leave holders'. The arrival of the Hashemy at Sydney was accompanied by two immigrant ships the same day. A week later, protesters were informed that there were over twelve hundred immigrants on ships in the harbour waiting to disembark.

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53 SMH, 31 August 1850, p. 2.
54 See for example Petition of 1,210 Inhabitants of the Maitland and Hunter River District, enclosed in FitzRoy to Gladstone, 6 November 1846, HRA, ser.1, vol.25, p. 252; SMH, 27 February, p. 2; 10 March 1849, p. 3; 11 January 1851, p. 2.
55 People's Advocate, 14 September 1850, p. 3.
57 W.A. Miles to Joseph Townsend, 4 October 1850, Joseph Phipps Townsend Papers, ML, MSS. 1461/3
58 SMH, 27 February 1849, p. 2. Herald's emphasis.
59 People's Advocate, 23 June 1849, p. 4.
Anxiety concerning the competition of convict labour was no doubt accentuated by the apparent ease with which exiles found employment. Following the arrival of the Adelaide with 259 exiles in January 1850, the principal superintendent of convicts reported that the demand for convicts had increased in spite of the supply of free labour. Under these circumstances, additional free immigrants as well as convicts posed a threat to labour's bargaining position. When news arrived that parliament had voted funds in order that convicts might be accompanied by an equal number of free immigrants, the Herald retorted that there were thousands in England never convicted of crime who were nevertheless unsuited as useful labour.

We do not want the filth of England's streets, nor the off scouring of England's workhouses. And we very seriously doubt the practicality of inducing the required number of industrious men and of virtuous women to emigrate to any country known to be the abode and the continued recipient of convicted felons.

The same derogatory stereotyping, whether in reference to convicts, Chinese, or assisted immigrants, was a recurrent motif throughout the nineteenth century whenever a group appeared to threaten workers' wages and standards of living.

60 Report of the Principal Superintendent of Convicts, 14 January 1850, enclosed in FitzRoy to Grey, 17 January 1850, PP, 1850, vol.45, [1285], p. 347. Exiles arriving on other ships were similarly reported to have easily found employment. See Gipps to Stanley, 9 April 1845, 11 February 1846, HRA, ser.1, vol.24, pp. 316, 760; FitzRoy to Grey, 23 December 1849, PP, 1850, vol.45, [1285], pp. 344-5; FitzRoy to Grey, 5 July 1850, PP, 1851, vol.45, [1361], p. 177.

61 SMH, 4 January 1850, p. 2.

This does not mean, of course, that talk about crime was mere cant. Charles Cowper, the acknowledged leader of the anti-transportation forces, evinced a strong interest in law enforcement which seemingly went beyond his involvement with the anti-transportation movement. In 1847 he served as chairman of a select committee on police, and two years later headed an investigation of Darlinghurst Gaol. He also suggested that annual returns of crime tried before courts of petty sessions be compiled, thirty years before the practice was permanently instituted. Cowper may only have been after political ammunition, but his concern with crime apparently continued after the transportation question was settled. In 1852 he served on a select committee investigating a police regulation act, a committee on destitute children in 1854, and during the same year chaired a select committee on intemperance.

Nevertheless, perceptions of transportation as primarily a moral issue played an important role which went beyond the alleged criminality of convicts. First, the supposed threat convicts posed to the community's morality added legitimacy, and perhaps more importantly, drama to the anti-transportation movement. Despite agitation by the press, the movement was inhibited by public apathy. When an anti-transportation meeting was held at Sydney in early March 1849 to protest against Earl Grey's sending of exiles, the Herald confessed it was not as well attended as expected. The 'Great Protest Meeting' against the Hashem in June 1849 was something less

63 See Chapter 6, p. 234.
65 SMH, 10 March 1849, p. 2.
than a spontaneous show of indignation. Preparations for the demonstration at Circular Quay began almost two months before the Hashemy arrived.66

Even so, it is questionable how well the protest was attended. The Herald estimated the crowd at from four to five thousand, while the People's Advocate reported there was not less than seven to eight thousand persons present.67 On the other hand, the superintendent of police, Joseph Long Innes, asserted that the demonstration was never attended by more than seven hundred people.68 Part of the discrepancy can be attributed to the difficulty of making an accurate estimate, and the fact that Innes's figure referred to the crowd at any one time, while newspaper estimates included all persons who attended during the day. Nevertheless, the difference is so great that one or both of the reports were seemingly fabricated.

Innes is not a particularly reliable source, since he was dismissed from office a short time later for prevaricating before a select committee on Darlinghurst Gaol.69 One may suspect, however, that the virulence with which his evidence was attacked by the committee owed something to its chairman, leading anti-transportationist Charles Cowper. Was Innes perhaps being punished for his unsympathetic view of the anti-transportation movement? Aside from Innes's report,

66 See People's Advocate, 21 April, p. 6; 28 April, pp. 2-3; 5 May, pp. 2-3; 12 May 1849, p. 2; Martin, Henry Parkes, (typescript), Chapter 3, pp. 25-6; Irving, 'Liberal Politics', p. 330.
67 SMH, 13 June 1849, p. 2; People's Advocate, 16 June 1849, p. 4.
68 Confidential Minute enclosed in FitzRoy to Grey, 30 June 1849, CO 201/414, f. 362.
69 See Chapter 8, p. 309.
Governor FitzRoy's assertion that Archibald Michie, a prominent speaker at anti-transportation meetings, was employed writing leading articles for the Herald, casts further doubts on the newspaper's credibility. 70

In general crowd estimates varied wildly. When a mass meeting was held at Barrack Square in September 1850, Governor FitzRoy stated that he heard reports of from three to five thousand people being present. 71 The Herald estimated that six thousand people attended, while the meeting's chairman, Charles Cowper, put the figure at eight thousand. 72 The People's Advocate reported that at one time during the meeting ten thousand people were present. 73

While it can be assumed that most colonists opposed a renewal of transportation, it is likely that anti-transportationists greatly exaggerated the degree of community participation. At Bathurst, for example, initial attempts to form a branch of the Anti-Transportation Association failed, even though it was believed to express the views of 'the people'. 74 In part, 'crime' served as an emotional lever and catchword in attempting to generate further support and enthusiasm.

As one newspaper noted, fear of crime and 'pollution' was effective in stimulating those who were otherwise indifferent to the transportation issue.

70 Fitzroy to Grey, 30 June 1849, CO 201/414, ff. 332-3.
72 SMH, 18 September 1850, p. 2.
73 People's Advocate, 21 September 1850, p. 4.
74 Bathurst Free Press, 11 January 1851, p. 4.
these are the persons who cannot understand an opposition to transportation in any other way than as implying a personal dread of the prisoners. A man of this sort will be up in arms if you tell him that there is any fear of his pocket being picked; but he will look on with the most stoical indifference while measures are being adopted for the political ruin of his country.  

The discovery of this reaction perhaps explains the change in tactics adopted by the People's Advocate. The Advocate began publication in December 1848 and endorsed the objectives of the recently formed Constitutional Association. Its radical platform included an extension of the franchise, responsible government, and land reform, as well as opposition to transportation. Initially the Advocate scorned talk 'about contamination and pollution' as 'the very weakest kind of argument' against transportation. A short time later it was referring to convictism as the 'ugly foulness rooted in our blood' which made the colony a 'dunghill'. Workers were urged to support the anti-transportation movement on the grounds that:

Not only will their wages be reduced by competition with prisoners, but their wives, and their children, will be far more exposed to the violence and contamination which must necessarily ensue, than will the wives and children of their employers.

Emphasis on transportation as primarily a moral issue also served to conceal deep divisions within the anti-transportation movement itself.

75 Moreton Bay Courier, quoted in People's Advocate, 14 July 1849, p. 7.
77 People's Advocate, 10 March 1849, p. 1.
78 People's Advocate, 8 September 1849, p. 1.
79 People's Advocate, 19 October 1850, p. 8.
Although anti-transportationists contended that all sects, parties, classes, interests and groups were 'fused into one compact body', the movement represented an uneasy coalition. While some squatters were active in the movement, squatters in general provided a common foe for workers and the urban middle classes. In turn, workers and the middle classes were divided on such issues as immigration. Middle class proponents of anti-transportation tended to argue that convicts would discourage suitable immigrants from coming to the colony. Workers, however, often seemed as adamant against immigration as transportation. Even before it was learned that exiles were to be sent to New South Wales, fears were expressed concerning the impact large numbers of immigrants were having on the labour market.

Sydney operatives denigrated 'such ignorant vendors of misrepresentation' as John Dunmore Lang, and considered proposals to inform British workers of the distress many colonial labourers were suffering in order to discourage immigration.

There was also tension within the movement between moderates and radicals. The leading role initially taken by members of the Constitutional Association, formed in November 1848 to press the interests of the working classes, created unease. A.W. Martin suggests that it was members of the Association who chiefly engineered the

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80 SMH, 4 April 1849, p. 2.
82 See for example SMH, 9 January, p. 2; 18 October 1850, p. 2; 3 May 1851, p. 2.
83 See for example People's Advocate, 17 February, pp. 5-6; 24 February 1849, p. 6.
84 People's Advocate, 18 August 1849, p. 4.
Hashemy protest. When radicals organized a protest meeting in August 1850 which called for Governor FitzRoy's dismissal, even those who professed support for the anti-transportation cause deprectaed the intemperate language used. Possibly because of fears stimulated by the demonstration, moderates like Charles Cowper and John Lamb seized the initiative in directing future anti-transportation activities. When a New South Wales Association for preventing a revival of transportation was formed the following month, only ten per cent of its managing committee were drawn from among shopkeepers and tradesmen who formed the backbone of the radical movement, while most of the remaining members were merchants, manufacturers, and professionals. The Freeman's Journal asserted that the 'most peaceable and best disposed' citizens took an active part in the anti-transportation movement with a view to countering the revolutionary projects and dissension fostered by demagogues. The cloak of morality and perceptions of convicts as a threat to public safety helped minimize conflict and give the movement at least a superficial consensus.

Even more dramatically than in 1844, the anti-transportation movement relegated convicts to the role of outsiders. Their changed

85 Martin, Henry Parkes, (typescript), Chapter 3, p. 25.
87 Irving, 'Liberal Politics', p. 334.
88 Freeman's Journal, 9 October 1851, p. 8. Fears of collective violence generated by the anti-transportation movement are discussed in Chapter 9.
status was reflected officially in a new Vagrancy Act passed by
the Legislative Council at the end of the year in 1849, largely
on the grounds that expiree convicts from Van Diemen's Land were
primarily responsible for robberies in and around Sydney. 89
Throughout the period under study, the Vagrancy Act served as a
catchall law for combating what were perceived as criminal problems.
The Act was suggested as a means of excluding disorderly Aboriginals
from the towns, 90 and later for clearing 'disreputable characters'
from the gold fields. 91 The Herald had urged the necessity of a
Vagrancy Act in 1835 for the control of ex-convicts, 92 while during
the 1844 crime wave police used the existing Act to deal summarily
with suspected thieves. 93 Under the new Act freed convicts from
Van Diemen's Land were required to register their residence with
the local magistracy, a requirement already imposed on doubly-convicted
convicts arriving from Norfolk Island. Ex-convicts who failed to
comply with the Act were liable to imprisonment at hard labour for
up to two years. All such persons could also be summoned by the
magistrates to give an account of themselves, and if unable to
demonstrate any lawful means of support they were also liable to
two years imprisonment. 94

The Act was later disallowed by the British government on the
grounds that it interfered with the Crown's prerogative of

89 Mr Nichols's Address, LC, SMH, 3 October 1849, p. 3.
90 R.H.W. Reece, Aborigines and Colonists. Aborigines and Colonial
Society in New South Wales in the 1830s and 1840s (Sydney, 1974),
pp. 9-10.
91 Evidence of Charles Henry Green to the Select Committee on the
92 Sydney Herald, 15 June, p. 2; 18 June 1835, p. 2.
93 Australian, 22 June 1844, p. 391.
94 [Colony of NSW] 13 Vic., No. 46, sec. 2-3; FitzRoy to Grey, 16
While some colonists conceded that the penalties prescribed were too severe, they resented British intervention. George Nichols, who initially proposed the Act, claimed that since its disallowance crime in Sydney had increased five-fold. During the Act's operation, however, only one conviction was made under the objectionable clauses. This was compared to 140 convictions in the space of two years in Victoria, where more stringent legislation excluding Van Diemen's Land expirees was subsequently passed. At least in New South Wales, the Act was mainly of symbolic importance. It provided the illusion that something was being done to stem the threat of 'immigrating hordes' from Van Diemen's Land, while marking ex-convicts as undesirable settlers.

Convicts' role as outsiders was also reflected geographically. As a proportion of the total population, convicts and emancipists were most heavily concentrated in unsettled districts. In 1841, when convicts and ex-convicts comprised thirty-six per cent of the total population, they made up about twenty-seven per cent of the persons in the county of Cumberland, the colony's most densely settled county. At the same time, they made up over half of the population beyond the boundaries of location. By 1851, when convicts and emancipists represented sixteen per cent of New South Wales' population, they composed only nine per cent of Cumberland's populace.

95 Grey to FitzRoy, 4 July 1850, PP, 1850, vol. 45, [1285], pp. 359-60.
96 See Bell's Life, 9 November 1850, p. 2; Maitland Mercury, 8 January 1851, p. 2; Freeman's Journal, 23 January 1851, p. 8; Goulburn Herald, 25 January 1851, p. 4.
97 LC, Empire, 17 April 1851, p. 326.
98 Convictions Under Vagrant Act, NSW, V&PLC, 1851, vol. 2, p. 463; LC, SMH, 18 October 1851, p. 3. See also Press, 8 January 1851, p. 12.
compared to about thirty per cent beyond the boundaries. Their numbers sharply declined in all areas except the squatting districts, where there was a slight increase. 100

In 1844 agitation against convicts centred largely on excluding them from Sydney. Advocates of this policy could call on the traditional argument which emphasized the temptations of the city on the one hand, and the regenerating influence of the bush on the other. The same argument served the interests of both workers, who wished to eliminate competition, and employers eager for labour in the remote districts. By 1849 the presence of convicts in the interior was objected to as well. Although exiles were to be limited to distant areas, it was asserted that it was precisely in these areas, beyond the pale of police and church, 'where crime may be perpetrated with the boldest chances of impunity'. 101 As a result, the interior would become an object of even greater terror to free immigrants.

For the most part, the law-abiding and productive role which most emancipists assumed in the community was ignored by anti-transportationists. The People's Advocate on one occasion apologized for any offense it had given ex-convicts, and made a rare appeal for their support. Emancipists, it was argued, were well acquainted with the horrors of transportation, and would suffer as other workers from an importation of cheap labour. Those with conditional pardons were even more vulnerable than immigrants to economic competition, since they were not free to leave the colony. 102

100 Percentages are based on Census of New South Wales, 1841 and 1851.
101 SMH, 27 April 1849, p. 2. See also for example SMH, 13 August 1950, p. 2; People's Advocate, 17 March, p. 6; 12 May 1849, p. 4; LC, SMH, 7 October 1850, p. 6.
102 People's Advocate, 28 April 1849, p. 5.
attempt to minimize criticism of ex-convicts by emphasizing the brutality of the penal system, and asserting that exiles were worse than those persons transported before 1840.  

The anti-transportation movement was primarily, however, a movement of free immigrants, anxious to secure their own place in the community. The movement reflected the social and economic aspirations of immigrants, as well as the emergence of a new community consciousness. In turn, that community consciousness was defined largely by placing convictism beyond its boundaries. To the cheers of anti-transportationists, Archdeacon McEncroe noted that:

it is against all reasoning- against all principles of human nature, to imagine that a branded class could come out here to operate harmoniously with those who looked upon them as a branded class.

Perceptions of convicts as a 'branded' or 'criminal' class, as outsiders, enabled free immigrants to deal cohesively with a social, political, and economic threat. Those same perceptions served to elevate the status of even the lowliest free immigrant, who became by association with anti-transportationists a member of the respectable classes.

The identification of convicts as outsiders also served to repudiate New South Wales' penal origins. Even allowing for anti-transportationists' bombastic language, there was genuine concern about the 'taint' and 'stain' of convictism which was apparent when the colony was referred to in English journals and the House of Commons.

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103 See for example Ibid.; People's Advocate, 10 March 1849, p. 1.
104 SMH, 3 May 1851, p. 2.
105 See for example SMH, 9 January 1850, p. 2.; LC, SMH, 4 October 1850, p. 3.
Charles Cowper argued that anti-transportation 'was the only course which they could take to save that which individuals, or at least respectable individuals, prized most dearly - their reputation'.

According to the Herald, if the anti-transportation movement proved anything

it proved that in this community there exists a general hatred of convict influence and convict association! ... And is it conceivable that in a society where this feeling is so widely diffused and so deeply seated, the emancipists, as such, can exert a dominant influence? The thought is preposterous.

Exhibiting contempt for convicts served to legitimate the community's new identity. It was largely with a view to Australia's image that the Eastern colonies later opposed transportation to Western Australia.

As in the mid-1830s, contending views of convicts' criminality was indicative of a contest for power. During the 1840s the colony's middle classes grew both in numbers and self-confidence. Their alliance with the working classes in opposing transportation was part of a broader movement against the pastoral interest. The gold rushes which began in 1851 both intensified this movement, and modified the role of convicts. As far as the Colonial Office was concerned, the presence of gold ended the feasibility of transportation, since

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106 Address to the Australasian League, SMH, 3 May 1851, p. 2.
107 SMH, 18 October 1850, p. 2. Herald's emphasis.
108 See Berger, Invitation to Sociology, p. 159.
exiling convicts to the proximity of gold fields would create an undesirable impression on 'the minds of the criminal class'.

At the same time, gold further established the ascendancy of free immigrants. Although there was continued concern about the arrival of expiree convicts from Van Diemen's Land, they no longer seemed such an immediate threat. But moral indignation, charges of criminality, and exclusive legislation were easily transferred to other groups, such as the Chinese, which seemed to pose a threat.

The Empire proclaimed in 1851 that it would be more in the colony's moral interest to receive two thousand convicts than five hundred 'yellow slaves' accompanied by 'all incestuous and murderous crimes'.

The concepts of a 'criminal class' and 'contamination' were malleable enough to continue serving various interests in the community.


112 Empire, 24 November 1851, p. 394.
allowing the facts to speak for themselves often masks an ignorance of the meaning of those facts and how they are officially compiled; and speaking for the facts is often a means of selective perception and interpretation to support and further personal or group interests. ... The source of information that sustains most beliefs about crime and criminals is the official statistics ... 1

Contemporaries generally made two quantitative judgements about New South Wales' crime rate. First, it was assumed that as a result of penal transportation the colony's crime rate was extremely high; some believed the highest in the world. Secondly, it was contended that crime in the colony was almost wholly attributable to persons originally transported. Statistical evidence marshalled to support these contentions, however, was usually scanty or non-existent. A Colonial Magazine correspondent, for example, asserted that Australia's criminal statistics demonstrated the country's 'low state of morals', 'the most fearful debauchery and violence', and 'the most corrupt form of civilisation that has yet been recorded', without actually citing any statistics. 2 When criminal statistics were cited by publicists

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1 Box, Deviance, pp. 58-9.

2 Anon., 'Transportation and Convict Colonies', Colonial Magazine and East India Review vol.18, (July-December 1849), p. 34.
and newspapers, they generally referred to only brief spans of time and were listed without reference to the colony's changing population. In fact despite intense concern about crime, New South Wales' official statistics provide only a crude index of criminal trends. Returns of committals to trial, available for England and Wales from the beginning of the nineteenth century, were not introduced in New South Wales until 1858. Statistics of police arrests were not systematically compiled until 1874. The only statistics comprehending the years before 1858 are convictions before the Supreme Court, circuit courts, and courts of quarter sessions.

Although until at least mid-century there was little doubt that New South Wales' crime rate was almost entirely dependent on the proportion of convicts and ex-convicts in the population, the following discussion suggests that the available statistics must be considered in a wider context. Criminal statistics in general are a questionable measure of actual criminal activity. Beyond this it is necessary to consider the official crime rate in relation to the colony's apparatus for social control. The composition of New South Wales' population must be viewed not only in terms of persons originally transported, but broader demographic changes. International trends in crime rates for the period further suggest that the colony's criminal statistics reflect social changes which cut across national boundaries.

Figures 2 and 3 represent convictions for what in contemporary terms was 'serious crime', that is convictions before the superior courts, in New South Wales from 1831 to 1861. Convictions for offences are expressed as a rate to every 100,000 inhabitants in order to compensate for the colony's changing population. To give some indication of changing patterns of conviction for different types of crime, offences are grouped into categories introduced by Britain's criminal registrar in 1833, and which have remained basically unchanged to the present. Offences against the person includes violent crimes ranging from murder to common assaults. Some non-violent crimes are also included, notably bigamy and sodomy, but they made up only a fraction of the offences in this group. Offences against property with violence includes robbery and crimes where victims were put in fear, as well as crimes committed where the offender was denied legal access such as housebreaking and burglary. Most offences against property without violence were simply denominated 'larcenies', although this group also includes such offences as stock theft, embezzlement, and fraud. Forgery and counterfeiting comprise a separate category, as does malicious offences against property, which almost always took the form of arson or killing and maiming livestock.


5 Although different modes of classification are used, the statistical trends generally conform with Peter Grabosky's analysis of 'acquisitive' and 'violent' crime for the period. A notable exception is for the years 1831-1835, for which Grabosky's figures indicate a decrease rather than an increase. This is because Grabosky includes only convictions before the Supreme Court, whereas the following figures include convictions before courts of quarter sessions. As noted in Chapter 1 both convictions before the Supreme Court and courts of quarter sessions are a dubious measure of actual criminal trends. See Peter N. Grabosky, 'Patterns of Criminality in New South Wales, 1788-1973', Australian and New Zealand Journal of Criminology vol.7, no.4 (December 1974), pp. 220-1; Grabosky, Sydney in Ferment, pp. 33-4, 58; Ted Robert Gurr, Peter N. Grabosky, and Richard C. Hula, The Politics of Crime and Conflict. A Comparative History of Four Cities (London, 1977), p. 439.
FIGURE 2  Total Convictions, Convictions for All Offences Against Property, and Convictions for All Offences Against the Person, Per 100,000 Inhabitants Before the Superior Courts of New South Wales, 1831-1861
FIGURE 3 Convictions for Offences Against Property Without Violence, Offences Against Property With Violence, Offences Against the Currency, and Malicious Offences Against Property, Per 100,000 Inhabitants Before the Superior Courts of New South Wales, 1831-1861
The figures illustrate a sharp increase in the colony's conviction rate from 1831 to 1835, as already discussed in some detail in Chapter 1. Due to an absence of returns for courts of quarter sessions from 1836 to 1838, there are no complete statistics for these years. From 1839 the conviction rate sharply declined until 1847, and then fell sharply again in the years after 1854. Convictions for offences against property exhibit the same trend, which is not surprising since they made up the vast majority of all convictions. Offences against the person reached a peak in 1833, sharply declined between 1839 and 1843, and then remained fairly stable until 1854 when the conviction rate again declined. Convictions for offences against property with violence peaked in 1834, exhibited a marked decline during the early 1840s, and thereafter decreased irregularly to the end of the period. The rate of conviction for offences against the currency and malicious offences against property remained relatively stable, although the total number of offences involved is too small to discern any meaningful trends.

Overall New South Wales' conviction rate seems to justify emphasis on the relation between crime and convictism, especially since the official crime rate plummeted once transportation ended. But the statistics are by no means an accurate measure of real crime levels.  

The most formidable problem associated with criminal statistics is the impossibility of determining what relation officially recorded crime bears to actual criminal activity. Many crimes are never recorded, and this 'dark figure' of crime makes conclusions about changing patterns of criminal statistics questionable. The statistics for New South Wales are a particularly crude index of crimes committed, since until 1858 only convictions were recorded. As a general rule criminologists argue that the further the record is removed from the commission of an offence, the less accurately it reflects the real incidence of criminal activity. For this reason, records of crimes known to the police or committals for trial would be a more accurate index of crime than simply convictions.  

While many nineteenth century observers recognized that criminal statistics did not represent all crimes committed, they circumvented the problem by assuming that undetected crimes remained a constant proportion of those recorded. Modern criminologists as well, have often assumed that criminal statistics represent a fairly constant proportion of the real incidence of crime. Nevertheless, there are important reasons why the proportion of unrecorded criminal activity might fluctuate over time.

Whether crimes are officially recorded or not depends largely on the tendency of people to report offences. Modern victimization studies indicate that a vast number of criminal offences, in some

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7 At least in terms of general trends, however, convictions are probably comparable to committals for trial. K.K. Macnab indicates that in England and Wales during the first half of the nineteenth century committals and convictions show almost identical fluctuations. Macnab, 'Crime in England and Wales', p. 61. Statistics of committals for trial in New South Wales from 1858 also conform with the pattern of conviction.
cases over one-half of those committed, are never reported. It is theoretically possible for the statistics to indicate a crime wave when in fact nothing changed but reporting habits. On an individual level, the likelihood of an offence being reported might vary with the victim's social group, his or her attitude toward the crime committed and the police, or the victim's relation to the offender. More generally, the seriousness with which an offence is regarded might vary with time and place. Susan Magarey, for example, suggests that property-owners might be more eager to prosecute and convict offenders for crimes against property in periods of economic depression. On the other hand, Leon Radzinowicz indicates that increasing crime during an economic depression might result in people becoming more accustomed to crime, and consequently more tolerant, apathetic, and reluctant to report offences.

More important perhaps than reporting habits in influencing criminal statistics, is a community's machinery for law enforcement. Obviously the number of crimes detected would fluctuate with the number, efficiency, and disposition of the police. The statistics are also affected by changes in the judicial system, criminal law, and legal procedure. From one point of view, criminal statistics can be regarded as less a measure of criminal activity, than a reflection of the capacity and practices of a community's social

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9 Sellin and Wolfgang, Delinquency, pp. 31-2; Box, Deviance, pp. 60-2.


control apparatus. For this reason, New South Wales' criminal statistics must be considered in light of the colony's judicial and police system.

In relation to New South Wales, the extension of the judicial system would seem a particularly important factor influencing the rate of criminal convictions. The remoteness of superior courts was persistently complained of, largely on the grounds that many crimes went unpunished. One magistrate of Portland Bay went so far as to assert that people were reluctant to prosecute anything less than murder, for fear that their presence might be required in Melbourne to enforce a conviction. Although prosecutors and witnesses were reimbursed for some travel costs, the expenses provided were often considered inadequate compensation for the time, loss of employment, and inconvenience involved. The establishment of additional courts could cause an increase in recorded crime since, as the colony's chief justice noted, the greater convenience afforded might lead to a greater willingness to prosecute offences.

With the New South Wales Act of 1823 the Court of Criminal Judicature, which formerly heard all criminal cases including those originating in Van Diemen's Land, was abolished. Criminal offences

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14 See for example Australian, 12 September 1844, p. 2; Bell's Life, 1 July 1846, p. 3; Attorney-General's Address to Berrima Circuit Court, Atlas, 8 March 1845, p. 177; G.P.F. Gregory, Registrar of the Supreme Court, to Col Sec, 10 October 1846, NSW, V&PLC, 1846, vol.2, p. 189.

15 Alfred Stephen to Col Sec, 13 March 1852, Chief Justice's Letterbook, Supreme Court, SANSW, 4/6654. Also printed in NSW, V&PLC, 1852, vol.1, p. 438.

16 Concerning the organization of New South Wales' judicial system see J.M. Bennett, A History of the Supreme Court of New South Wales (Sydney, 1974); Alex C. Castles, An Introduction to Australian Legal History (Sydney, 1971); John Kennedy McLaughlin, 'The Magistracy in New South Wales, 1788-1850', (M.M. thesis. University of Sydney, 1973).
in New South Wales were subsequently tried by a Supreme Court and courts of quarter sessions. The Supreme Court, which opened at Sydney in May 1824, initially consisted of a chief justice. By 1827 two additional judges were appointed to the court. From that date the composition of the Supreme Court in Sydney remained the same until 1865, when a fourth judge was added to the bench.

Courts of quarter sessions, so called because justices in England were originally required to hold sessions four times a year, were also established in 1824. In New South Wales the first such courts were directed to be held at Sydney, Parramatta, Windsor, and Liverpool. The courts were comprised of magistrates, and presided over by an annually elected chairman. The chairman, elected from among the justices of the peace, was generally a barrister, and once elected became a salaried officer of the government. Courts of quarter sessions were authorized to try all criminal offences not punishable by death, and to try prisoners under sentence of transportation summarily without a jury.

The need for additional judges and courts, both to relieve the burden placed on judicial officers and to keep pace with settlement, was urged throughout the period under study. Yet the construction of the judicial system was only gradually expanded. In 1837 Richard Bourke proposed the creation of an additional judgeship in order that courts might be held at Port Phillip, but it was only after the Legislative Council was empowered to make provisions for the administration of justice in 1839 that steps for an appointment were taken.17 The Council's first act relating to justice provided for

17 Normanby to Gipps, 29 August 1839, HRA, ser.1, vol.20, p. 299; 2 & 3 Vic., c. 70, sec. 2.
the appointment of a resident judge at Port Phillip.\textsuperscript{18} The Act also
authorized the appointment of other judges which would extend the
presence of the Supreme Court, but the only other addition made before
1861 was the appointment of a resident judge for Moreton Bay in
January 1856.

The administration of justice was further impeded by the slow
development of circuit courts. As early as 1826 Chief Justice Forbes
pressed for the establishment of circuit courts, and their necessity
was repeatedly urged by Governor Bourke.\textsuperscript{19} In 1839 Governor Gipps
reported that the absence of circuit courts amounted 'almost to a
denial of Justice'.\textsuperscript{20} He considered both the cost of bringing
prisoners and witnesses to Sydney for trial, and the consequent delay
of justice 'highly injurious'.\textsuperscript{21} It was also suspected that many
crimes went unpunished because of the reluctance of parties and their
witnesses to undertake the time and expense of travelling to Sydney
in order to prosecute offences.\textsuperscript{22}

The creation of circuit courts, also known as courts of assize,
was finally authorized in 1840.\textsuperscript{23} The courts were held before a judge
of the Supreme Court, and empowered to try capital offences. Governor
Gipps proclaimed three circuit districts to be visited twice a year,
and in 1841 the first sittings opened at Bathurst, Berrima, and
Maitland.\textsuperscript{24} In 1847 Goulburn displaced Berrima as the site for a

\textsuperscript{18}[Colony of NSW] 4 Vic., No. 22, sec. 4.
\textsuperscript{19}Bennett, Supreme Court, pp. 75-6.
\textsuperscript{20}Gipps to Normanby, 3 October 1839, HRA, ser.1, vol.20, p. 360.
\textsuperscript{21}Gipps to Normanby, 4 September 1839, \textit{ibid.}, pp. 306-7.
\textsuperscript{22}Resolutions of the Legislative Council, 25 September 1839, enclosed
\textsuperscript{23}[Colony of NSW] 4 Vic., No. 22, sec. 16.
\textsuperscript{24}James Dowling to Governor Gipps, 23 November 1840, Copies of Semi-
Official Letters and Opinions of Chief Justice Dowling, Supreme Court,
SANSW, 2/3474; Report on the General State of the Colony, enclosed
in Gipps to Russell, 14 September 1841, HRA, ser.1, vol.21, p. 508.
circuit court, on the basis that four-fifths of the cases tried at Berrima arose in the area of Goulburn, and because of the paucity of jurors at Berrima. Despite the need for additional circuit courts underlined by a royal commission on law in 1849, the only court subsequently established was for the Moreton Bay district, which was held for the first time in 1850.

The slow expansion of circuit courts was paralleled by that of quarter sessions. In 1831 courts of quarter sessions were held at Sydney, Parramatta, Windsor, Campbell Town, and Maitland. By 1839 courts were also established in the districts of Berrima, Bathurst, and Port Phillip. Courts held at Windsor and Campbell Town were discontinued from 1844, and after 1847 Goulburn displaced Berrima as the site for quarter sessions as well as circuit courts. Additional courts were not created until the District Courts Act of 1858. Under the Act the colony was divided into five districts, and a total of forty locations were designated sites where courts might be held. District court judges were empowered to preside over courts of quarter sessions, and given jurisdiction over all criminal offences not punishable by death. By special commission they could also be authorized with the same powers as a Supreme Court judge for dealing with cases in remote areas.

25 Alfred Stephen to Col Sec, 1 October 1846, Alfred Stephen's Letterbook, ML, MSS. A673, pp. 238-9; Alfred Stephen to Col Sec, 21 January 1847, Chief Justice's Letterbook, Supreme Court, SANSW, 4/6653.


To some extent frequent protests concerning the necessity for establishing more superior courts resulted from regional rivalry. In the northern districts residents of Armidale, Tamworth, and Scone all petitioned against the inconvenience of travelling to Maitland for trials, while urging the fitness of their respective towns as the site of a court of assize. Similarly, residents of Windsor protested the loss of their court of quarter sessions not only on the grounds that crimes went unchecked, but also on the town's declining prosperity. On the other hand, the vast distance of many settlers from courts was probably a serious obstruction to justice. Residents of Albury for example, were required to travel over 230 miles to Goulburn in order to attend a circuit court, while settlers at Tamworth were 170 miles from courts of assize and quarter sessions held at Maitland. Circuit courts were later established at Albury and Tamworth, but not until after 1868.

The evidence suggests that because of the distance of many settlers from superior courts, crimes were frequently not

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30 Atlas, 5 June 1847, p. 270.


32 Memorial of 126 Residents of Tamworth, NSW, V&PLA, 1856-7, vol.1, p. 1089.

33 Bennett, Supreme Court, p. 78.
prosecuted. For the same reason, it may be suspected that poorer members of the community were less likely to undertake prosecutions than their wealthier neighbours. Beyond this the impact of the judicial system on the colony's official crime rate is uncertain. It might be argued that New South Wales' declining rate of convictions from 1839 reflects in part the failure of the courts to keep pace with a growing and increasingly dispersed population. On the other hand, expansion of the judicial system, most notably with the creation of circuit courts in 1841 and district courts in 1858, failed to result in any upsurge in convictions. This might suggest that in spite of greater opportunities for prosecuting offences, the colony's crime rate continued to fall.

The rate of criminal convictions would ostensibly be affected not only by the number of courts, but changes in legal procedure and criminal law. As already discussed in Chapter 1, a reduction in the number of capital offences and a curtailment of magistrates' jurisdiction in the 1830s almost certainly had a significant impact on the official crime rate. A further change of immense importance was the extension of summary jurisdiction in the 1850s to include criminal offences previously tried by the superior courts. Under the Juvenile Offenders Act of 1850 cases of simple larceny involving persons not over fourteen years of age could be tried by courts of petty sessions consisting of two or more magistrates. In 1852 summary

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34 See for example Report of the Committee on Police and Gaols, NSW, V&PLC, 1839, vol.2, p. 199; Mr Donaldson's Address, LC, SMH, 13 July 1849, p. 3; SMH, 29 November 1849, p. 2; Judge Therry's Address to the Brisbane Circuit Court, SMH, 21 May 1850, p. 2; Petition of 208 Inhabitants of Wagga Wagga, NSW, V&PLA, 1857, vol.1, pp. 63-4.

jurisdiction was extended to cases of larceny involving persons up to sixteen years of age, and in larcenies of less than five shillings to persons of all ages. The jurisdiction of magistrates was again widened in 1855, to include all cases where money or property stolen did not exceed forty shillings in value. There are no returns for cases tried summarily, so it is impossible to determine how many cases were diverted to courts of petty sessions. One can assume with some confidence, however, that these changes resulted in a substantial decrease in offences against property tried before the superior courts.

Changes in police numbers are more easily quantified. Nevertheless, an assessment of their influence on the statistics is complicated by the fragmented structure of New South Wales' police forces. A unified force for the colony was not permanently established until 1862, and before that date various forces were created and abolished. The backbone of New South Wales' police was the metropolitan force in Sydney and the rural constabulary. Until 1810 Sydney's police operated under military control. In that year Governor Macquarie divided the town into districts, and placed the constabulary under a civilian superintendent of police. Under Governor Bourke

36 [Colony of NSW] 16 Vic., No. 6, sec. 1-2.
37 [Colony of NSW] 19 Vic., No. 24, sec. 11.
the administration of Sydney's police was divided between two officers, one of whom managed the constabulary, including appointments and dismissals, while the other was charged with conducting business at the police office. The titles of police officials were periodically altered, but this arrangement remained basically the same throughout the period.

From 1835 the colony's rural constabulary was divided into police districts. By 1847 there were forty-two police districts in New South Wales, including ten districts at Port Phillip. In that year, with the establishment of courts of petty sessions beyond the boundaries of location, the number of districts was increased to seventy-seven. The constabulary of each district were entirely independent of one another. They were supervised either by a paid police magistrate appointed by the governor, or as was more often the case, unpaid justices of the peace.

In addition to the rural constabulary and metropolitan police of Sydney, four other police forces were established in New South Wales before 1851. In 1825 a Mounted Police, consisting of men recruited from military regiments serving in the colony, was established by Governor Thomas Brisbane. The force was formed primarily to apprehend runaway convicts, and track down persons committing robberies and other serious offences. Divisions were stationed at various posts, and

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40 Evidence of Charles Windeyer to the Select Committee on Police, NSW, V&PLC, 1847, vol.2, p. 44.
41 King, 'Problems of Police Administration', p. 58.
small parties patrolled the main roads. The force was discontinued in December 1850, with the refusal of the Legislative Council to vote funds for their support.

In Sydney a Water Police operated along side the regular constabulary from 1830, and at Melbourne from 1841. The force was formed primarily to prevent the escape of convicts, but later dealt principally with cases involving sailors. From 1840 the Water Police at Sydney were directed by a separate superintendent, who also performed magisterial duties at the Water Police Court. This office was abolished in 1843 on the grounds that it conflicted with the ordinary police. Executive duties of the Water Police were transferred to Sydney's superintendent of police, and judicial functions to the Police Office. In 1847 a separate Water Police Court and superintendent was re-established as a result of agitation by shipping interests in Sydney, but this arrangement was short-lived. Following the Police Act of 1850 the judicial and executive duties formerly performed by the superintendent of the Water Police were separated. Sydney's superintendent of police again took charge of the force, while magisterial business was conducted by a Water Police magistrate.

After an unsuccessful attempt to establish a corps in 1837, a Native Police at Port Phillip was revived in 1842. The force, consisting of mounted Aborigines and European officers, was formed

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44 [Colony of NSW] 4 Vic., No. 17, sec. 1.
45 Report from the Select Committee on the Water Police Act Amendment Bill, NSW, V&PLC, 1843, p. 1; [Colony of NSW] 7 Vic., No. 21, sec. 5.
46 See Petition of 63 Merchants, Shipowners, and Masters of Vessels for a Separate Water Police Court, NSW, V&PLC, 1845, p. 479; Memorial of Merchants, Shipowners, and Masters of Vessels, 30 March 1846, Col Sec, Letters Received, 1846, SANSW, 2/80828.2; FitzRoy to Grey, 9 January 1847, HRA, ser.1, vol.25, p. 317.
47 King, 'Problems of Police Administration', p. 57.
mainly for controlling Aborigines. In 1848 a corps of Native Police was also established in the colony's middle district. Victoria's Native Police was disbanded early in 1853, while a corps continued to operate chiefly in New South Wales' northern districts. 48

In 1839 a Border Police was established on the proposal of Governor Gipps, largely in response to the murder of Aborigines at Myall Creek. Their main function was to bring some order to settler-Aboriginal relations beyond the boundaries of location. 49 Mounted men were attached to commissioners of crown lands, who also acted as justices of the peace. The police were generally men chosen from among well conducted prisoners, and received no pay. The force was disbanded in 1847 following the establishment of courts of petty sessions with attachments of police beyond the settled districts. 50

Following the discovery of gold in 1851 two mounted forces were established in the form of a Gold Escort and Road Patrol. A Western Road Patrol operated between Sydney and Bathurst under orders of the inspector-general of police, while a smaller patrol operated in the south under the control of provincial inspectors. 51 Mounted troopers


49 [Colony of NSW] 2 Vic., No. 27; Gipps to Glenelg, 20 February, 6 April 1839, HRA, ser.1, vol.20, pp. 6, 90.


51 Evidence of Captain Edward Battye to the Select Committee on the Police Regulation Bill, NSW, V&PLC, 1852, vol.1, p. 933.
were also attached to gold commissioners. In May 1851 a chief commissioner of crown lands for the gold districts was appointed, and gold commissioners for a western and southern district were established. The commissioners were responsible for collecting licence fees, supervising the escort of gold, settling disputed claims, and acting as police magistrates. For the control of every one thousand gold diggers an establishment consisting of an assistant commissioner, a sub-commissioner, five mounted and five dismounted troopers was authorized by the government.

To the extent that returns are available, Table 3 gives a numerical breakdown of New South Wales' police. For the purpose of evaluating the impact of changing police numbers on the colony's criminal statistics, figures for the Water Police and Native Police can be excluded since they rarely apprehended offenders for indictable offences. The lack of returns for the Border Police also precludes including statistics for police beyond the boundaries of location. The only comprehensive returns are for police within the settled districts, that is the metropolitan police, rural constabulary (including Port Phillip), and Mounted Police, from 1831 to 1850.

Figure 4 represents changes in police numbers within the settled districts expressed as a rate per 1,000 inhabitants. As the figure illustrates, a decline in police numbers from 1837 coincides with declining criminal convictions in New South Wales. As a result, it may be postulated that the colony's official crime rate reflected in part reductions in the police. Again, however,


John R. Hardy to Col Sec, 20 June 1852, NSW, V&PLC, 1852, vol.2, p. 503.
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FIGURE 4 Police Within the Settled Districts per 1,000 Inhabitants of New South Wales, 1831-1850.
the evidence is ambiguous. Despite reductions in the police before 1835, the colony's conviction rate continued to rise. This might suggest that at least for the period between 1831 and 1835, the impact of changing police numbers on the figures is not significant. Furthermore, changes in police numbers do not necessarily reflect changes in police efficiency, and give no indication of police practices at any one time.

The complexity of variables affecting criminal statistics obviously limits their reliability as a measure of real criminal activity. The factors already discussed affected the statistics in some way, although it is difficult to delineate the influence of individual factors since they were always in interaction. All that can be stated with certainty is that New South Wales' official crime rate declined more or less steadily from 1839. Beyond this any interpretation of the statistics must be tentative. With this mind, however, it may be hypothesized that the slow expansion of the judicial system, reductions in the police, and an expansion of the magistracy's jurisdiction, together were at least partially responsible for the colony's falling crime rate.

New South Wales' official crime rate was affected not only by changes in the apparatus for social control, but the composition of the population. In this respect the declining proportion of persons transported is the most obvious change, and as already noted, the one which most contemporaries emphasized in interpreting the colony's criminal statistics. To the extent that returns are available, they indicate that a greatly disproportionate number of persons tried and convicted of criminal offences were drawn from the convict group. Judge William Burton calculated that of criminal cases tried before
him between 1833 and 1838, 701 out of 853, that is 82.2 per cent, involved convicts or emancipists.\textsuperscript{54} Returns for the early 1840s indicate that convicts under sentence and persons free by servitude together made up about seventy per cent of those tried before the superior courts.\textsuperscript{55} Table 4, based on extant records of persons tried during 1841 and 1851, illustrates a similar trend.

These figures are incomplete, since many court records are not available, and in numerous cases the civil condition of persons tried was not recorded.\textsuperscript{56} They do suggest that the colony's convict element, and in particular emancipists, made up a disproportionate number of persons tried for criminal offences. The table indicates that in 1841 convicts and ex-convicts made up over seventy per cent of persons tried, while they composed only thirty-five per cent of the population. By 1851 this discrepancy was considerably reduced, but ex-convicts still accounted for fifty per cent of persons tried, compared to only fourteen per cent of the population. In fact, the proportion of emancipists tried for offences may be understated. It was believed that many of those persons who committed crimes and were recorded as coming to the colony free, really came free from Van Diemen's Land where they were originally transported.\textsuperscript{57}

\textsuperscript{54} Burton, 'State of Society', 

\textsuperscript{55} Percentage is based on Papers presented in Evidence of William Augustus Miles to the Select Committee on the Insecurity of Life and Property, NSW, V&PLC, 1844, vol.2, p. 380; Appendix referred to in Evidence of J. Phelps Robinson to the Select Committee on General Grievances, NSW, V&PLC, 1844, vol.2, p. 748; Returns cited by the Attorney-General, LC, SMH, 4 October 1850, p. 7.

\textsuperscript{56} Whether an offender's civil condition was recorded depended largely on the committing magistrates and clerks of the bench, and it was complained that they were extremely negligent in this respect, particularly as time went on. See SMH, 23 August 1849, p. 3; Attorney-General's Address, LC, SMH, 4 October 1850, p. 7.

\textsuperscript{57} Burton, 'State of Society', 
TABLE 4  Civil Condition of Persons Tried Before the Superior Courts of New South Wales, 1841 and 1851

<table>
<thead>
<tr>
<th>Civil Condition</th>
<th>1841</th>
<th></th>
<th></th>
<th>1851</th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. Tried</td>
<td>% of Tried</td>
<td>% of Pop.</td>
<td>No. Tried</td>
<td>% of Tried</td>
<td>% of Pop.</td>
</tr>
<tr>
<td>Bond</td>
<td>163</td>
<td>20.8</td>
<td>15.9</td>
<td>2</td>
<td>0.5</td>
<td>0.4</td>
</tr>
<tr>
<td>Ticket of Leave</td>
<td>20</td>
<td>2.6</td>
<td>4.7</td>
<td>7</td>
<td>1.9</td>
<td>1.1</td>
</tr>
<tr>
<td>Free of Servitude</td>
<td>356</td>
<td>45.5</td>
<td>14.8</td>
<td>101</td>
<td>48.7</td>
<td>14.2</td>
</tr>
<tr>
<td>Came Free</td>
<td>184</td>
<td>23.5</td>
<td>40.4</td>
<td>158</td>
<td>42.5</td>
<td>40.9</td>
</tr>
<tr>
<td>Born in Colony</td>
<td>46</td>
<td>5.9</td>
<td>22.5</td>
<td>21</td>
<td>5.6</td>
<td>43.5</td>
</tr>
<tr>
<td>Aborigine</td>
<td>13</td>
<td>1.7</td>
<td></td>
<td>3</td>
<td>0.8</td>
<td></td>
</tr>
<tr>
<td>No Information</td>
<td>143</td>
<td></td>
<td></td>
<td>457</td>
<td></td>
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</table>

Notes: These figures represent part of a more comprehensive analysis of persons tried during 1841 and 1851. For methods and sources employed see Chapter 5 and Appendix. Percentages of persons tried exclude no information cases, so that they can be compared to population returns.
There are a number of reasons why convicts and ex-convicts might be expected to make up a large proportion of persons tried and convicted of criminal offences, aside from simply their criminal propensities. The vast majority of persons committed for offences were adult males, and relative to other social groups a disproportionate number of the colony's adult males were originally transported. If it is assumed that all male convicts and ex-convicts were over fourteen years of age, they represented fifty-eight per cent of all males in the colony over fourteen in 1841. As late as 1851 male emancipists made up thirty-two per cent of all males in the colony over fourteen years of age. Considered in this light, the number of offences involving convicts seems less dramatic.

The colony's machinery for social control was also directed largely toward the coercion of convicts. They were subject to more stringent regulation, kept under closer surveillance by the police, and treated differently by the courts. One may suspect that the discretion of prosecutors, constables, and judges operated more favourably toward free immigrants and native-born persons that those with a criminal record. Convicts and ex-convicts were apparently more likely to be convicted than free immigrants and those born in the colony tried for offences. This is a further reason why the convict population had a disproportionate effect on New South Wales' conviction rate.

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58 Percentages are based on Census of New South Wales, 1841 and 1851.
60 Based on an analysis of persons tried during 1841, 73.6 per cent of the convicts tried were convicted and 71.9 per cent of those free by servitude, compared to 60.9 per cent of the free immigrants tried and 63.0 per cent of those born in the colony. In 1851, 76.8 per cent of the ex-convicts tried were convicted, while 66.5 per cent of those who came free and 71.4 per cent of the native-born were convicted. For methods and sources employed in the analysis see Chapter 5.
As William Bland pointed out in criticism of James Macarthur's book, the fact that convicts and ex-convicts generally constituted the poorest, least educated, and lowest class in the colony, meant that they were the same as those most prone to commit offences in any community. They were probably more vulnerable to economic fluctuations, since persons of convict background often faced the most limited employment opportunities. In interactionist terms, the stigma of transportation could affect both convicts' self-image and their treatment by other members of the community. To some extent they perhaps assumed or were coerced into a role which was expected of them.

The changing proportion of convicts and ex-convicts in the population was only one part of a broader change in New South Wales' social composition. Since the majority of persons tried for criminal offences were adult males, changes in the colony's sex ratio and age distribution would be expected to have a marked impact on the colony's crime rate. Between 1831 and 1846 the proportion of males decreased from seventy-four per cent of the total population to about sixty per cent. Although the proportion of males fluctuated during the gold rush years, there was still a continued decline. Peter Grabosky suggests that the masculinity of the population was the single most important variable affecting New South Wales' crime rate during the nineteenth century.

61 Bland, New South Wales, pp. 81-2.
63 See Appendix 1.
64 Grabosky makes this generalization on the basis of multiple regression analysis, which as he warns makes his findings no more than suggestive and of 'questionable validity'. Grabosky, 'Patterns of Criminality', pp. 215, 224-5; Grabosky, Sydney in Ferment, pp. 165-7.
The colony's official crime rate was similarly distorted by changes in age distribution. Juveniles apparently made up only a small proportion of offenders. Only about one per cent of the persons taken into custody by the Sydney police during 1857 were under fifteen years of age. Consequently a low ratio of children in the population inflated the colony's crime rate, especially during the convict era. Between 1841 and 1851 the proportion of the population aged twenty-one to forty-four dropped from 55.7 per cent to 38.6 per cent. After transportation ended as well, immigrants included a preponderance of young adults. The resulting kinked population meant that there continued to be a disproportionate number in those age groups most likely to be tried for criminal offences.

Differences in New South Wales' law enforcement machinery and demographic patterns not only affected the crime rate over time, but make direct comparisons with other communities virtually meaningless. Nevertheless, such comparisons were made, often by implication, if not with statistical evidence. While acknowledging that such comparisons were 'imperfect tests of the relative moral condition of different countries', James Macarthur cited figures from a Swedish publication indicating that the ratio of offenders to inhabitants was 1:22 in New South Wales, compared to 1:740 in England, and 1:3500 in America. Macarthur noted privately that he obtained

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66 Percentages are based on Census of New South Wales, 1841 and 1851.
the statistics from a newspaper extract, and that he both hoped and believed they were in error. In fact, since there was no indication of the types of offences included in the different ratios, and because no national crime figures were available for America during the period, the comparison was preposterous.

While hardly approaching the statistics cited by Macarthur, the rate of conviction before the superior courts in New South Wales was much higher than in England and Wales, especially during the 1830s and early 1840s. This disparity, however, can by no means be regarded as simply an effect of penal transportation, nor as a measure of real criminal activity. While the criminal law of the two communities was much the same, there were important differences in legal procedure and law enforcement. For example, if a prosecutor or witness failed to appear at a trial in Britain the case was dismissed, while in New South Wales it was only postponed. In New South Wales, the attorney-general performed the function of grand juries, which may have resulted in a much higher rate of committals to trial. More importantly, the attorney-general acted as a public prosecutor in criminal cases, while in Britain the burden of prosecution was placed entirely on private individuals until 1879. By British standards New South Wales was densely policed, and one may suspect that the constabulary was more effective in detecting and apprehending

69 James Macarthur to George Grey, 10 February 1837, CO 201/267, f. 511.
70 See Appendix 5.
72 See Ibid., pp. 96, 103-4; Currey, 'Legal History of New South Wales', pp. 215-17, 418.
73 See Chapter 8, pp. 347-8.
suspects in a small community than Britain's urban centres. In general, a high crime rate is the expected concomitant of a community which was highly organized for coercing criminals and controlling crime.

As already indicated, New South Wales' crime rate was grossly distorted by a preponderance of males and young adults. A narrowing gap between British and colonial conviction rates from the 1840s no doubt owed much to the development of a more normalized sex ratio and age distribution. At the same time, New South Wales' smaller population meant that a relatively small change in the number of convictions could create large fluctuations in the crime rate. A similar trend is exhibited by Australia's other colonies. Aside from other mitigating factors, a lack of returns for convictions before courts of quarter sessions in South Australia and Victoria makes comparison with New South Wales impossible. It is worth noting, however, that the conviction rate before the supreme court alone in these 'free' colonies was for much of the period higher than in Britain as well.

A detailed comparison between the crime rates of different communities would necessarily multiply the problems of assessing the influence of reporting habits, police practices, judicial changes, and the composition of the population. Nevertheless, some studies of nineteenth century criminal statistics for other communities show enough uniformity in long term trends to suggest that New South Wales' crime rate should not be considered as an isolated phenomenon.

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75 See Paul Ward and Greg Woods, Law and Order in Australia (Sydney, 1972), pp. 76-77.
76 See Appendix 5.
An analysis of the criminal statistics for London, Stockholm, and New South Wales directed by Ted Robert Gurr reveals a similar trend in all three societies. In each community crime rates for murder and assault, and theft, showed a sharp decline from the mid-nineteenth century, followed by a more gradual decline which continued into the twentieth century.\textsuperscript{77} As Gurr notes, this pattern is paralleled by some studies of crime rates on a national level. V.A.C. Gatrell's and T.B. Hadden's work on nineteenth century criminal statistics in England and Wales indicates a long term increase in serious crime until mid-century, and subsequently a decline throughout the rest of the century.\textsuperscript{78} In France major crimes against property plummeted from the early 1840s, although this trend was not followed by crimes against the person.\textsuperscript{79} Sweden's theft rate decreased greatly between 1852 and the end of the 1880s.\textsuperscript{80}

Precisely why the official crime rate of different communities exhibit so similar a trend during the nineteenth century is uncertain. Ted Robert Gurr suggests that the only simple explanation is that the statistical evidence reflects a real change in social behaviour.\textsuperscript{81} In reference to England and Wales, Gatrell and Hadden also conclude that


\textsuperscript{78} Gatrell and Hadden, 'Criminal Statistics', pp. 372-7.

\textsuperscript{79} Tilly, Rebellious Century, pp. 78-9.


\textsuperscript{81} Gurr, Rogues, Rebels and Reformers, p. 43; Gurr, Grabosky, and Hula, Politics of Crime, pp. 627, 632.
the statistics indicate a real change in criminal activity. They suggest two reasons for declining crime from the mid-nineteenth century. First, there was increasing police and administrative efficiency in maintaining law and order. Second, the growing prosperity of the population during the second half of the century led to declining crime. 82

Gurr and his colleagues reject the idea that a change in crime control was responsible for declining crime from mid-century. 83 As Peter Grabosky indicates, New South Wales' crime rate showed a marked decrease before there was any marked improvement in police efficiency. 84 Aside from a short lived attempt to implement a centralized system of police in the early 1850s, there was no major police reform before 1862. 85 Whereas increasing police efficiency may have served to inhibit crime in the long term, however, it seems likely that a massive contraction of the police and penal system during the 1840s was partly responsible for New South Wales' falling crime rate. A change in the judicial system also had an important impact on the statistics for at least New South Wales and Britain which is overlooked by Gurr. This was an extension of summary jurisdiction during the 1850s, which meant that a large proportion of cases previously tried before the superior courts were diverted to the magistracy. 86

84 Grabosky, 'Patterns of Criminality', p. 219.
85 See Chapter 8.
Improving economic conditions is perhaps the most viable explanation of a long term decline in crime rates during the second half of the nineteenth century, as opposed to a sharp downturn at mid-century. Although convictions for offences against property in New South Wales fell despite a severe economic depression during the early 1840s, prosperity may have had a more profound influence on the conviction rate from the gold rush years. Finally, it may be suggested that falling crime rates from mid-century were indicative of declining official and public concern about crime. Improved economic conditions might result in a more relaxed attitude toward the sanctity of property, and especially petty larcenies. By the 1850s fears of revolutionary violence in Europe also subsided, and this was probably translated into a general lessening of concern about crime and the 'criminal class'. In the case of New South Wales, a decreasing crime rate after 1839 may be regarded as symptomatic of a diminishing preoccupation with crime, elicited particularly by the abolition of transportation.

In many ways the various hypotheses presented above are inter-related, and it is this interrelationship which perhaps comes closest to providing some insight into the meaning of New South Wales' criminal statistics. It may be suggested that the abolition of penal transportation to New South Wales had a profound effect on the colony's official crime rate, at least during the 1840s, but in a more indirect way than contemporaries indicated. The high proportion of convicts and ex-convicts tried for offences did not simply reflect their

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87 See Gurr, Rogues, Rebels, and Reformers, pp. 17, 20-1; Roger Lane, 'Urbanization and Criminal Violence in the 19th Century: Massachusetts as a Test Case', in Graham and Gurr (eds), Violence in America, p. 480.

criminal tendencies, but their social and economic position in the
community. Immigration and colonial births did not simply result
in the dilution of a vicious society, but dramatically altered those
demographic characteristics which the crime rate reflected. The
ending of transportation resulted as well in diminishing public and
official concern about crime, which affected policies of social
control and the number of prosecutions undertaken. Reductions in
police numbers for example, while inspired largely by motives of
economy, also reflected declining concern about crime. Public concern
and the colony's crime rate reinforced one another, since as the
crime rate fell efforts to curb crime were relaxed, which in turn
might lead to a further diminution in the crime rate. At the same
time, the colony's falling conviction rate was perhaps reinforced
by trends which cut across national boundaries. For this reason,
and because New South Wales' crime rate continued to fall throughout
the nineteenth century, the influence of convictism on the crime rate
was probably confined to a fairly narrow space in time.
we should ever suspect a theory of prison administration which contemplates no other end than to get rid of the transgressor, while we neglect the causes of crime ... The only way of making the punishment of crime more effective, is really to raise the condition of the mass of the people, that they may have less to envy and more to lose.\footnote{SMH, 20 June 1861, p. 4. Herald's emphasis.}

The official criminal statistics provide only a rough outline of offences prosecuted in New South Wales. No information is given concerning those people charged with crimes, their alleged victims, or indeed the precise form which offences took. In order to gain a more detailed impression of offences prosecuted in the colony, it is necessary to resort to extant court records and newspaper reports. The judgement books, returns of trials, and calendars of the superior courts provide information concerning the civil condition of offenders presented in the last chapter. They also record the place of trial, trial result, and court's sentence for each offence. For any information beyond this it is necessary to rely on the press.

Newspapers generally reported, in varying detail, all offences tried before specific criminal sessions. They did not, however, report all criminal sessions. The proceedings of the Central Criminal Court (that
is the criminal jurisdiction of the Supreme Court) or Sydney Quarter Sessions, for example, were more likely to be reported than those held in country towns. In general, newspapers also gave cases tried before the Supreme Court and circuit courts much fuller coverage than the quarter sessions. Reports of the quarter sessions sometimes included little more than a list of offenders and their crimes. For this reason, the information supplied is biased towards the more serious offences dealt with by judges of the Supreme Court either in Sydney or on circuit. Added to this is an inevitable journalistic bias in the selection of detail given about individual offences.

In order to provide a systematic analysis of prosecuted offences, available information was compiled on all cases tried before the superior courts during 1841 and 1851. The years 1841 and 1851 were chosen both because they border the most important decade in New South Wales' transition from a penal colony, and in order to make comparisons with information supplied by census returns.² It is arguable, too, that because of the nature of the source material, concentrating on two years provides a more viable framework for analysis than a sample for the entire period. These 'soundings', to borrow James Waldersee's term,³ also permit a familiarity with individual cases and offenders which might be obscured in a more wide-ranging survey. Although the

² Census returns before 1841 and after 1851 lack essential information concerning the civil condition of inhabitants. Returns taken during the 1830s fail to distinguish emancipists from those born in the colony, or ticket of leave holders from convicts under sentence. The 1851 census was the last return to include reference to residents' civil condition. See T.A. Coghlan, General Report on the Eleventh Census of New South Wales (Sydney, 1894), pp. 74, 76.

analysis is in the nature of a pilot study, in many respects offences tried during 1841 and 1851 may be considered characteristic of offences prosecuted during the entire period.

Data was compiled on a total of 1,754 cases, comprising 925 tried during 1841 and 829 during 1851. Information for 1851 is more comprehensive both as a proportion of the total number of offences tried and cases represented in the analysis, primarily because of the greater availability of country newspapers. The analysis includes only those cases actually brought to trial. A large number of persons (probably over ten per cent of all those committed for offences) were discharged.

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Information for the analysis is based on Return of Prisoners Tried and Convicted in the Supreme Court, 1841, Supreme Court, SANSW, X43; Calendar of Prisoners Tried in Sydney Courts, 1841, Clerk of the Peace, SANSW, X852; Session Returns of Prisoners Tried and Convicted in the Supreme Court at Port Phillip, 1841, Supreme Court, SANSW, X46A; Prisoners Tried at the Circuit Courts Held at Maitland, Berrima, and Bathurst, April 1841, Supreme Court, SANSW, X901; Return of Prisoners Tried and Convicted at the Circuit Court Held at Maitland, 1841, Supreme Court, SANSW, X894A; Return of Prisoners Tried and Convicted at the Circuit Court Held at Berrima, 1841, Supreme Court, SANSW, X848; Bathurst Circuit Court Judgement Book, 1841, Supreme Court, SANSW, 2915; Return of Criminal Cases Tried at Sydney Quarter Sessions, 1841, Clerk of the Peace, SANSW, 2916; Register of Criminal Cases Tried at Berrima Quarter Sessions, 1841, Clerk of the Peace, SANSW, 3015; Register of Criminal Cases Tried at Campbell Town Quarter Sessions, 1841, Clerk of the Peace, SANSW, 3012; Register of Criminal Cases Tried at Parramatta Quarter Sessions, 1841, Clerk of the Peace, SANSW, 2997; Register of Criminal Cases Tried at Windsor Quarter Sessions, 1841, Clerk of the Peace, SANSW, 3008; Calendar of Persons Tried on Criminal Charges in Sydney Courts, 1851, Clerk of the Peace, SANSW, 4/6449; Brisbane Circuit Court Judgement Book, 1851, Supreme Court, SANSW, 4/5747; Return of Prisoners Tried and Convicted at the Brisbane Circuit Court, 1851, Supreme Court, SANSW, X885; Register of Criminal Cases Tried at Parramatta Quarter Sessions, 1851, Clerk of the Peace, SANSW, 2999; Bathurst Quarter Sessions Judgement Book, 1851, ML, A1455; Criminal sessions and committals to trial by various benches reported in the SMH, January-December 1841, January-December 1851; Port Phillip Patriot, January-December 1841; Empire, January-December 1851; Bathurst Free Press, January-December 1851; Goulburn Herald, January-December 1851; Maitland Mercury, January-December 1851. Unless otherwise noted, the statistics cited in this chapter are based on the analysis of these sources. A further discussion of the methods employed is included in Appendix 6.
160.

without trial or had their cases postponed during the year. This could result from a variety of causes including a defect in the depositions taken, the attorney-general declining to proceed with a case, the prisoner's escape, but most often because of the absence of a principal witness or prosecutor. In some cases as well, charges of additional offences against a defendant might be dropped if they were convicted of a more serious crime.

At the same time, cases brought to trial give an inflated picture of the number of offenders and offences prosecuted. Some persons were tried for more than one offence during the year. More importantly, two or more persons were frequently tried for their involvement in the same offence. During 1841, almost one-third of the persons brought to trial were tried with 'accomplices', as were nearly one-quarter of those tried during 1851. This has an important bearing on the colony's conviction rate, since it reflected the number of persons prosecuted and not simply the number of crimes. Those charged with offences against property with violence were the most likely to be tried with accomplices, while convicts and Aboriginals were the social groups most prone to be charged in cases involving two or more offenders.

Information concerning the occupations of persons tried is far too fragmentary to draw any firm conclusions (see Table 5). Several features are suggested, however, which at least deserve comment. The largest proportion of offenders could be described as either hired and domestic servants or unskilled workers. The increased

5 See Below, p. 164.

6 Of persons tried for offences against property with violence during 1841, 60.8 per cent were charged with one or more other persons, as were 40.3 per cent of those tried in 1851. Convicts and Aboriginals made up an insignificant proportion of those tried during 1851, but in 1841 55.9 per cent of the convicts were tried with accomplices, and 92.3 per cent of the Aboriginals.

7 Occupational information is available for 16.2 per cent of those persons tried in 1841, and 22.6 per cent of those tried in 1851.
TABLE 5  Occupation of Persons Tried Before the Superior Courts of New South Wales, 1841 and 1851

<table>
<thead>
<tr>
<th>Occupation</th>
<th>1841</th>
<th></th>
<th>1851</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Assigned Convict Servants</td>
<td>31</td>
<td>20.7</td>
<td>53</td>
<td>28.3</td>
</tr>
<tr>
<td>Servants (Hired and Domestic)</td>
<td>18</td>
<td>12.0</td>
<td>53</td>
<td>28.3</td>
</tr>
<tr>
<td>Labourers</td>
<td>11</td>
<td>7.3</td>
<td>18</td>
<td>9.6</td>
</tr>
<tr>
<td>Rural Workers</td>
<td>5</td>
<td>3.3</td>
<td>21</td>
<td>11.2</td>
</tr>
<tr>
<td>Sawyers</td>
<td>3</td>
<td>2.0</td>
<td>3</td>
<td>1.6</td>
</tr>
<tr>
<td>Carriers</td>
<td></td>
<td></td>
<td>8</td>
<td>4.3</td>
</tr>
<tr>
<td>Seamen</td>
<td>19</td>
<td>12.7</td>
<td>17</td>
<td>9.1</td>
</tr>
<tr>
<td>Policemen</td>
<td>15</td>
<td>10.0</td>
<td>2</td>
<td>1.1</td>
</tr>
<tr>
<td>Soldiers</td>
<td>20</td>
<td>13.3</td>
<td>2</td>
<td>1.1</td>
</tr>
<tr>
<td>Skilled Tradesmen</td>
<td>9</td>
<td>6.0</td>
<td>12</td>
<td>6.4</td>
</tr>
<tr>
<td>Apprentices</td>
<td>1</td>
<td>0.7</td>
<td>2</td>
<td>1.1</td>
</tr>
<tr>
<td>Food Retailers (Butcher, Grocer, etc.)</td>
<td>2</td>
<td>1.3</td>
<td>8</td>
<td>4.3</td>
</tr>
<tr>
<td>Publicans and Innkeepers</td>
<td></td>
<td></td>
<td>5</td>
<td>2.7</td>
</tr>
<tr>
<td>Shopkeepers, Dealers and Brokers</td>
<td></td>
<td></td>
<td>6</td>
<td>3.2</td>
</tr>
<tr>
<td>Civil Servants (Bailiff, Postal Clerk)</td>
<td>3</td>
<td>2.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>White Collar Workers (Clerk, etc.)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Farmers and Settlers</td>
<td>5</td>
<td>3.3</td>
<td>7</td>
<td>3.7</td>
</tr>
<tr>
<td>Professionals (Newspaper Proprietor, etc.)</td>
<td>1</td>
<td>0.6</td>
<td>7</td>
<td>3.7</td>
</tr>
<tr>
<td>Other Miscellaneous Occupations</td>
<td>7</td>
<td>4.7</td>
<td>13</td>
<td>7.0</td>
</tr>
</tbody>
</table>

| Total                                           | 150  |      | 187  |      |
proportion of free servants tried in 1851 compared with that in 1841, obviously reflects the abolition of convict assignment. Relative to census returns rural workers appear to be the most underrepresented occupational group, but this is probably because they were often denominated 'servants' in court reports. Offenders included as well a fair number of skilled workers or tradesmen, and more surprisingly, not a few professional and middle class people in 1851. This may reflect in part the expansion of the middle class which took place during the 1840s. Most of the cases involving middle class people were related to their particular occupation, and were often atypical of the majority of offences tried. Shopkeepers and dealers were commonly charged with receiving stolen goods. All of the four newspaper proprietors tried in 1851 were charged with libel. The only minister prosecuted was accused of performing an illegal marriage.

Three occupational groups stand out as especially prominent. During 1841 large numbers of both soldiers and police were brought before the courts. The disproportionate number of soldiers owes much to the court records, which unlike other occupational groups specified military offenders. Nevertheless, the frequent involvement of soldiers in criminal offences elicited comment from both judges and the press. Compared to all persons tried during 1841, soldiers

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8 About one-quarter of the work force in 1841, and one-third in 1851, could be classified as rural workers. Census of New South Wales, 1841 and 1851. In general, the census classification used in grouping occupations is too vague to draw any but the most crude comparisons.

9 Despite the amorphous system of occupational classification used in census returns, there was a large apparent growth in the middle classes. In 1841 about five per cent of the working population were grouped as landed proprietor, merchants, brokers, professionals, storekeepers, and dealers. By contrast, nearly twenty per cent of the work force in 1851 were classified as engaged in commerce, trade, agriculture, or professionals and other educated people. Census of New South Wales, 1841 and 1851.

10 See for example SMH, 14 October 1844, p. 2; Bell's Life, 19 September 1846, p. 1.
made up 2.2 per cent of the offenders, while comprising about one per cent of the population.\textsuperscript{11} The largest number were charged with larceny, but two men were charged with sexual assaults, and five with robbery.

Police were not specially recorded in judicial returns, but it is probable that newspapers put special emphasis on cases involving constables. The small number of police offences reported in 1851 may reflect an improvement in police personnel, or a more tolerant posture by the press. More often than not, policemen were charged with offences related to their performance of duty. Five of the constables tried in 1841 were accused of negligence in allowing prisoners to escape, and one with perjury. That three constables were tried for manslaughter, one for murder, and one for assault, is perhaps some comment on the brutal methods allegedly employed by the police.\textsuperscript{12} The remaining four cases involving constables prosecuted during 1841 were for theft.

The third occupational group which appears particularly prominent is seamen, who made up a large number of those tried during both 1841 and 1851. As in the case of the police, offences were often work-related. Seven sailors tried in 1841 were charged with mutiny and insubordination, while all but one of the remainder were prosecuted for larceny. Of seamen tried in 1851, two were charged with conspiracy, nine with larceny, two with forgery, two with robbery, and one each for murder and assault. The colony's criminal statistics were thus significantly affected by Sydney's role as a port, and were further inflated by offences committed at sea or on board ship by immigrants and others.

\textsuperscript{11} The percentage of soldiers in the population is based on Coghlan's estimate, Report on the Eleventh Census, p. 82. The proportion of soldiers tried was inflated since all military personnel were adult males.

\textsuperscript{12} See Chapter 8.
Newspaper reports in general give little indication of offenders' general character. Persons described by such phrases as a 'bad character', 'notorious thief', or 'an old offender', numbered only three in 1841 and nine in 1851. This was compared with eighteen and twenty-six persons tried during 1841 and 1851 respectively given a 'good', 'excellent', or 'very high character'. The character of some persons tried can be surmised on the basis that twenty-four offenders were prosecuted for more than one offence (usually of the same nature) during 1841, as were forty persons in 1851. Some were no doubt established recidivists. Margaret Kenny, an ex-convict, was convicted of larceny four times between 1837 and 1840. In February 1841 she was sentenced to six months in the female factory for stealing sugar, and later the same year was transported to Van Diemen's Land for stealing a piece of pork. The data hardly permits a confident assertion, as David Philips indicates in relation to England's Black Country, that most offenders were regularly employed. It is worth noting, however, that few persons could be described from their occupations as members of a criminal subculture. Two persons tried were described as keepers of a disorderly house (which was not necessarily a brothel), and two other offenders were prize-fighters, both charged with manslaughter as a result of boxing matches.

Three additional groups stand out because they were underrepresented among those prosecuted for criminal offences - women, native-born, and Aboriginals. Women made up only one-fifth of those tried in both 1841 and 1851. The only official statistics available indicate that 16.0

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13 SMH, 18 February, p. 2; 16 November 1841, p. 2.; Register of Criminal Cases Tried at the Sydney Quarter Sessions, 1841, Clerk of the Peace, SANSW, 2916.

per cent of the persons committed to trial between 1841 and 1845 were female. In part this reflected their relative numbers in a predominantly male population. As in other communities, however, women also made up a small proportion of offenders relative to their proportion of the total population.

The analysis suggests as well a number of other characteristics which distinguished women prosecuted for offences from their male counterparts. Not only were women less likely to be prosecuted than men, but they were considerably less likely to be convicted. This further underscores the role of the colony's sex ratio in inflating the official crime rate. The defendants tried for some offences were exclusively women — notably those charged with infanticide and as 'common scolds' (a blatantly sexist offence category which permitted women believed a nuisance to be tried before the superior courts). Proportionately, women were most underrepresented among those tried for offences against property with violence, and offences against the currency. As in the case of men, larceny was the most common offence

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15 Percentage is based on Return of Criminal Statistics, NSW, V&PLC, 1847, vol.1, p. 632.


17 In 1841, 56.8 per cent of the women tried were convicted compared with 66.8 per cent of the men tried. In 1851, 60.6 per cent of the women tried were convicted, compared with 73.7 per cent of the men.

18 Women made up only 4.7 per cent of those charged with offences against property with violence during 1841, and 5.2 per cent in 1851. In 1841, women comprised only 3.0 per cent of those tried for offences against the currency, although the proportion increased to 10.7 per cent in 1851.
women were accused of. Although women represented one-fifth of all
those tried, they made up almost one-third of those prosecuted for
larceny. There were also some discrepancies in the types of property
men and women were accused of stealing. The greatest disparity was
in cases of stock theft. About one-fifth of the men tried for property
offences were charged with stealing livestock, compared with less than
three per cent of the women tried. Women, on the other hand, were
more likely to be tried for the theft of clothing, linen, and fabric
than men.19 Finally, women were more often tried for committing
offences against other women than men committing offences against
women.20

Despite fear of convict contamination, especially in relation to
the rising generation, most observers praised the morality of those
persons born in the colony. Ken Macnab and Russel Ward, based on
statistics of persons tried before Judge William Burton between 1833
and 1838, point to the relative absence of criminality among the native-
born.21 Of 853 persons tried by Burton on criminal charges, only 3.5

19 Only 1.1 per cent of the women tried in 1841, and 2.6 per cent of
those tried in 1851 were accused of stealing livestock. This was
compared with 21.6 per cent of the men tried in 1841, and 17.2 per
cent of those tried in 1851. During 1841 26.4 per cent of the
women tried for property offences were charged with stealing
clothing, and 11.0 per cent with stealing linen and fabric. During
the same year 11.3 per cent of the men tried were charged with
stealing clothing, and 4.8 per cent with stealing linen and fabric.
In 1851, 30.2 per cent of the women tried for property offences were
accused of stealing clothing, and 9.5 per cent with the theft of
linen and fabric. The comparable proportion of men was 16.9 per cent
and 5.6 per cent respectively.

20 Of the known victims of male offenders in 1841, 11.7 per cent were
women, compared with 17.2 per cent of the offences in which women
were tried. In 1851, 11.5 per cent of the male offenders' known
victims were female, while the proportion relative to female offenders
increased to 34.4 per cent.

21 Macnab and Ward, 'Native-Born Australians', p. 300.
per cent were native-born, all of whom were males.²² To the extent that
information is available, persons born in the colony made up only about six
per cent of those tried during 1841, while making up over one-fifth of the
colony's population. They comprised the same proportion of those
tried in 1851, even though they represented over forty per cent of
the population.²³ In part, however, the small proportion of native-
born tried is a demographic illusion. Although census returns fail
to break down the age structure of the population by civil condition,
it can safely be assumed that a much larger proportion of those
born in the colony were juveniles than either immigrants or convicts.²⁴
The statistics in effect compare the criminality of five years olds
with that of twenty-five year olds. The figures are also distorted
because of differential sex ratios. Whereas the number of males and
females was more or less equal among the native-born, males (and
consequently those most likely to be tried) were overrepresented among
immigrants and convicts.²⁵

Macnab and Ward explain the virtue of the native-born not only in
terms of Australia's environment, but as a psychological reaction against
the vicious home environment created by convict parents.²⁶ On the
other hand, it is probable that their parents were instead neither
as vicious nor unconcerned about their children's welfare as is commonly
supposed. Edward Smith Hall and Joseph Long Innes stated their belief

²³ See Table 4, p. 147.
²⁴ See Jackson, Australian Economic Development, p. 32.
²⁵ In 1841, 50.3 per cent of those persons born in the colony were
male, compared with 58.1 per cent of free immigrants, and 85.4
per cent of convicts and ex-convicts. Males made up 51.4 per cent
of native-born and free immigrants in 1851, and 85.2 per cent of
convicts and ex-convicts. Percentages are based on Census of
New South Wales, 1841 and 1851.
²⁶ Macnab and Ward, 'Native-Born Australians', pp. 303-5.
that ex-convict parents were generally more anxious about the education of their children than free immigrants. Caroline Chisholm similarly remarked upon emancipists' 'nervous anxiety, regarding the moral and religious welfare of their children'. Aside from demographic distortions, there is some evidence which suggests that migrants in general are more likely to be tried for offences than those born in a community, and which perhaps reflects their status as outsiders.

Both as offenders and victims Aboriginals were for the most part placed beyond the pale of the law. Between May 1824 and February 1836, only twenty-one Aboriginals were tried before the Supreme Court. To the extent that cases can be documented, thirteen Aboriginals were tried during 1841, and only three in 1851. Even these meagre figures are overstated, since all of those prosecuted in 1841 were charged in connection with only three separate offences. Six of the offenders were tried for the robbery of flour and mutton from a station, for which all but one were sentenced to transportation for ten years. One of those prosecuted eloquently explained that 'the sheep eat the grass belonging to his kangaroo, and white fellow took kangaroo, and what not for give him sheep'. Five Aboriginals,

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28 Caroline Chisholm, Emigration and Transportation Relatively Considered; In a Letter, Dedicated, by Permission, to Earl Grey (London, 1847), p. 18.
29 See Thomas and Stewart, Imprisonment in Western Australia, p. 54; Grabosky, Sydney in Ferment, p. 86.
30 Reece, Aborigines and Colonists, p. 225.
31 Port Phillip Patriot, 7 January 1841, p. 2.
including three women, were charged with the murder of two whalers at Western Port, and two more were tried for another murder. Four of the seven offenders were convicted and sentenced to death. The small number of Aboriginals tried seems all the more striking since it was a period of increasing conflict, particularly in the Portland Bay area and Liverpool Plains. The remoteness of police and magistrates, as well as the difficulty of tracing offences to individuals and obtaining convictions, encouraged settlers to deal directly with Aboriginals.

The general exclusion of Aboriginals from the judicial process was equally reflected in the small number of whites prosecuted for committing offences against them. As historians have noted, the conviction and execution of seven stockmen for their role in the massacre of Aboriginals at Myall Creek in 1838 stands out as a spectacular exception arising from unique circumstances. Before 1838 only three persons were convicted of murdering Aboriginals, none of whom were executed. The prosecution of such cases was severely limited by the disability of Aboriginals as witnesses. Following the Myall Creek massacre Governor Gipps pressed for legislation to admit the evidence of Aboriginals in criminal cases, and although an Act was passed by the Legislative Council, it was disallowed by British

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32 Port Phillip Patriot, 23 December 1841, p. 6; Return of Prisoners Tried and Convicted before the Supreme Court at Port Phillip, 1841-1845, Col Sec, SANSW, X46A; Calendars of Persons Tried on Criminal Charges in Sydney Courts, 1838-1843, Clerk of the Peace, SANSW, X852.

33 See Reece, Aborigines and Colonists, pp. 23, 185, 196-7.


35 Reece, Aborigines and Colonists, p. 105.
law officers. The home government later reversed its position, but subsequent attempts to admit Aboriginals as competent witnesses were defeated in the colony until 1876.\(^{36}\) During 1841 there were eight prosecutions for offences against Aboriginals, including one murder, two for manslaughter, and six cases of shooting with intent. This was compared with 43 reported homicides committed by whites in New South Wales' northern districts between 1838 and 1841, and the reported killing of 113 Aboriginals in the Port Phillip district between 1836 and 1844.\(^{37}\) In 1851 there are no documented cases in which Aboriginals figured as victims.

Occupational information is somewhat more forthcoming about victims than offenders, but it is still too scanty to support more than some tentative generalizations (see Table 6). The most apparent feature is the predominance of shopkeepers and other retailers as prosecutors. When it is considered that many skilled tradesmen had shops as well, the number seems all the more impressive. Most of those cases prosecuted were recorded as 'larceny', and it seems likely that a large proportion of these involved shoplifting.\(^{38}\) Publicans are another prominent occupational group among victims. This was perhaps because public houses had on hand two commodities always in great demand - money and liquor. The role of pubs as a social centre, especially in country districts, made them an obvious place to pass bad money and forged orders, while publicans sometimes became involved in brawls with their customers. In relation to offences against the person, policemen were the most common occupational group to be reported as victims. The high


\(^{37}\) SMH, 20 February 1844, p. 2; Reece, Aborigines and Colonists, pp. 220-3.

\(^{38}\) See Below, pp. 206-7.
### TABLE 6  Occupation of Victims in Offences Tried Before the Superior Courts of New South Wales, 1841 and 1851

<table>
<thead>
<tr>
<th>Occupation of Victim</th>
<th>1841</th>
<th>1851</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Convicts Under Sentence</td>
<td>5</td>
<td>3.1</td>
</tr>
<tr>
<td>Servants (Hired and Domestic)</td>
<td>2</td>
<td>1.2</td>
</tr>
<tr>
<td>Labourers</td>
<td>8</td>
<td>5.0</td>
</tr>
<tr>
<td>Rural Workers</td>
<td>2</td>
<td>1.2</td>
</tr>
<tr>
<td>Gold Diggers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seamen (Including Shipmasters and Whalers)</td>
<td>9</td>
<td>5.6</td>
</tr>
<tr>
<td>Policemen</td>
<td>23</td>
<td>14.3</td>
</tr>
<tr>
<td>Soldiers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Skilled Tradesmen</td>
<td>13</td>
<td>8.1</td>
</tr>
<tr>
<td>Food Retailers</td>
<td>3</td>
<td>1.9</td>
</tr>
<tr>
<td>Publicans and Innkeepers</td>
<td>24</td>
<td>14.9</td>
</tr>
<tr>
<td>Shopkeepers, Dealers, Merchants</td>
<td>38</td>
<td>23.6</td>
</tr>
<tr>
<td>Civil Servants</td>
<td>5</td>
<td>3.1</td>
</tr>
<tr>
<td>Farmers and Settlers</td>
<td>15</td>
<td>9.3</td>
</tr>
<tr>
<td>Manufacturers (Mill Owner, Ship Builder, etc.)</td>
<td>2</td>
<td>1.2</td>
</tr>
<tr>
<td>Professionals</td>
<td>6</td>
<td>3.7</td>
</tr>
<tr>
<td>Other Miscellaneous Occupations</td>
<td>6</td>
<td>3.7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>161</td>
<td></td>
</tr>
</tbody>
</table>
proportion of assault cases involving constables in 1841 in particular, is probably some indication of their unpopularity. Bailiffs were another favoured object of assaults, usually as a result of executing court orders.\(^{39}\)

David Philips's study of England's Black Country indicates that large numbers of prosecutions were initiated by working men, leading him to conclude that there was a general faith in the judicial system and a basic acceptance of the law's legitimacy.\(^{40}\) The available information for New South Wales indicates a clear class distinction between those typically prosecuted for offences and those prosecuting. Despite the large number of convicts still under sentence in 1841, only five documented cases involved prisoners as victims. This no doubt reflected in large part their non-status as property holders - all of the cases tried were for offences against the person. There were nevertheless a substantial number of prosecutions by working men. That many cases in 1851 were initiated by rural workers, who were comparatively isolated from police and courts, seems to suggest that there was by no means a wholesale rejection of legal channels of redress. The cost both in money and loss of time was probably the major impediment to prosecutions by working men and women, rather than anti-authoritarianism or disbelief in the sanctity of the law. As will be discussed in Chapter 6, working men and women seemed more than prepared to resort to litigation before the more pervasive and less costly police courts.

\(^{39}\) Of twenty-three cases involving police as victims in 1841, all but six were for assault or a more serious offence against the person, while in 1851 nine of the fourteen police cases involved violence. All of the seven cases involving bailiffs as victims in 1841 and 1851 were for assault.

One further feature emerges of considerable significance, and this is the frequency with which offenders and their victims were acquainted prior to the commission of an alleged offence (see Table 7). Newspaper reports were rarely explicit about whether the person tried and the victim were strangers or 'semi-strangers' (that is cases in which the offender and victim met immediately before an offence such as by having a drink together in a public house). In the majority of cases there is no information concerning the offenders' relation to the victim, if any existed. Even so, it is apparent that in large numbers of cases tried the offender and victim were acquainted with one another before the crime took place. Of the offences tried during 1841, one-seventh can be documented in which the offender and victim were previously acquainted, and with the fuller newspaper reports available in 1851 the proportion rises to almost one-third. This is undoubtedly an understatement, since even if it is assumed that the vast majority of offences for which there is no information involved strangers, the no information category is grossly inflated by the skeletal reports given of many offences. A more accurate idea of offender-victim relationships is probably given if offences are limited to those in which the press at least mentioned the victim. If this is done, the available evidence indicates that one-quarter of those tried in 1841 were somehow acquainted with the victim prior to the offence, and in 1851 the proportion is forty per cent.\(^{41}\) This still probably understates the proportion of offences in which offenders and victims were previously acquainted, since newspapers frequently gave no more than the victim's name.

\(^{41}\) In 1841 the sex of the victim is known for 463 offences, of which the offender and victim were acquainted prior to the commission of 113 offences. Of offences tried during 1851 the sex of the victim is known in 597 cases, and of these the victim was acquainted with the offender previous to the crime in 239 offences.
### TABLE 7  Offender's Relation to Victim in Offences Tried Before the Superior Courts of New South Wales, 1841 and 1851

<table>
<thead>
<tr>
<th>Offender's Relation to Victim</th>
<th>1841</th>
<th></th>
<th>1851</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee, or Former Employee</td>
<td>38</td>
<td>4.3</td>
<td>64</td>
<td>7.9</td>
</tr>
<tr>
<td>Employer</td>
<td>0</td>
<td>0.0</td>
<td>2</td>
<td>0.2</td>
</tr>
<tr>
<td>Workmate</td>
<td>9</td>
<td>1.0</td>
<td>12</td>
<td>1.5</td>
</tr>
<tr>
<td>Neighbour</td>
<td>2</td>
<td>0.2</td>
<td>33</td>
<td>4.1</td>
</tr>
<tr>
<td>Lodger</td>
<td>6</td>
<td>0.7</td>
<td>22</td>
<td>2.7</td>
</tr>
<tr>
<td>Parent</td>
<td>6</td>
<td>0.7</td>
<td>4</td>
<td>0.5</td>
</tr>
<tr>
<td>Spouse</td>
<td>4</td>
<td>0.5</td>
<td>4</td>
<td>0.5</td>
</tr>
<tr>
<td>Other Relative</td>
<td>1</td>
<td>0.1</td>
<td>3</td>
<td>0.4</td>
</tr>
<tr>
<td>Acquaintance</td>
<td>55</td>
<td>6.2</td>
<td>98</td>
<td>12.1</td>
</tr>
<tr>
<td>Stranger, or Semi-Stranger</td>
<td>9</td>
<td>1.0</td>
<td>2</td>
<td>0.2</td>
</tr>
<tr>
<td>No Information</td>
<td>752</td>
<td>85.3</td>
<td>555</td>
<td>68.6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>882</td>
<td></td>
<td>809</td>
<td></td>
</tr>
</tbody>
</table>

Note: These figures exclude victimless crimes such as escaping custody or keeping a disorderly house.

In the largest number of these cases the offender and victim could simply be described as 'acquaintances'. A large proportion of offences, however, involved the prosecution of employees or former employees by employers. In 1851 there were also a substantial number of cases in which the victim and offender were neighbours, or in which the offender lodged with the prosecutor. In most of these cases the alleged offence involved some form of theft. A smaller number of prosecutions involved spouses or other relatives, and usually stemmed from some form of violence. The large proportion of offences in which offenders and victims were acquainted in some way prior to the crime may in part reflect on the efficiency of the police. For obvious reasons, offenders were much more likely to be taken into custody if the victim knew who they were. It is also revealing about the nature of offences prosecuted, which were overwhelmingly offences against property. It seems likely that many...
offences were committed as a matter of opportunity rather than as a calculated enterprise. The labourer who pilfered property from his employer, or the person who secreted some possession of their neighbour or other acquaintance were among those typically tried. At least in these cases, it is difficult to discern the omnipresent criminal class which loomed in the popular imagination.

The threat of personal violence probably instilled more fear in the community than any other form of offence. The Molesworth Committee claimed that rapes, murders, and attempted murders were as common in the colony as petty larcenies in England. The statistics hardly justify this claim, although offences against the person did make up a larger proportion of prosecuted crimes than in Britain. In England and Wales between 1834 and 1856 about one-tenth of all committals were for offences against the person. During roughly the same period, this offence category comprised eighteen per cent of all convictions in New South Wales. Convictions for both homicide and assault declined erratically between 1831 and 1861 (see Figure 5). It is worth noting, however, that violent crimes made up a higher proportion of all convictions during the gold rush decade than during the convict period.

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43 Gatrell and Hadden, 'Criminal Statistics', p. 369.

44 Percentage is based on Returns of the Colony, 'Blue Books', 1831-1857, (xerox copy), ML, CY 4/262-290; NSW, Registrar General's Office, Statistical Register of New South Wales, 1858-1861. The percentage refers to convictions for offences against the person from 1831 to 1861, with the exception of the years 1836-1838, and 1842 when returns are unavailable. Part of the disparity between convictions in New South Wales and committals in Britain may be due to a higher conviction rate for offences against the person than other types of offences.

45 As a proportion of total convictions, offences against the person hovered around seventeen per cent during the 1830s and 1840s, and then increased to about twenty per cent in the 1850s.
FIGURE 5  Convictions for Assault, Murder, and Manslaughter per 100,000 Inhabitants in New South Wales, 1831-1861
A high proportion of violent offences can be explained largely in terms of the conditions of a frontier community. Although violent crime has been conventionally associated with urbanization and industrialization, this relationship has been increasingly challenged. In the United States, for example, it is the less industrialized and urbanized South which has the nation's highest violent crime rate. Recent research has placed emphasis instead on violence as a regional and cultural pattern. In New South Wales conflict with Aboriginals encouraged a habit of both physical force and bearing weapons. This was possibly reinforced by the use of state violence in the form of floggings and executions to administer the penal system. Moreover, the masculinity of the population had an important bearing on the colony's violent crime rate, both because it was males who figured predominantly in such cases, and because a large adult male population increased the potential for interpersonal violence. Finally, the frequency with which offences against the person were prosecuted may have reflected in part the community's propensity for litigation. The vast majority of offences against the person tried were for common assault, and some observers believed that the populace had a particular propensity for bringing such cases before the courts.

46 Sheldon Hackney, 'Southern Violence', in Graham and Gurr (eds), Violence in America, p. 516.


48 See Chapter 6.
To the extent that information is available, firearms and knives were the most common weapons used in offences against the person in 1841, with knives and 'blunt instruments' gaining the ascendancy in 1851 (see Table 8). These figures give a distorted impression, however, since they are biased towards more serious crimes which received fuller reportage in the press. Consequently the vast majority of offences in the no information category, which makes up about half of the total, were common assaults. It is probably safe to assume that the most common weapons used were fists, boots, and sometimes teeth. Cornelius O'Brien, for example, was charged with biting off about half an inch of his neighbour's nose during a drunken row.

<table>
<thead>
<tr>
<th>Weapons Used</th>
<th>1841 No.</th>
<th>1841 %</th>
<th>1851 No.</th>
<th>1851 %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hands, Feet, and Teeth</td>
<td>11</td>
<td>7.3</td>
<td>5</td>
<td>5.1</td>
</tr>
<tr>
<td>Firearm</td>
<td>24</td>
<td>15.9</td>
<td>7</td>
<td>7.1</td>
</tr>
<tr>
<td>Knife</td>
<td>24</td>
<td>15.9</td>
<td>15</td>
<td>15.3</td>
</tr>
<tr>
<td>Axe</td>
<td>3</td>
<td>2.0</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>Rock or Brick</td>
<td>3</td>
<td>2.0</td>
<td>5</td>
<td>5.1</td>
</tr>
<tr>
<td>Other Blunt Instrument</td>
<td>4</td>
<td>2.6</td>
<td>12</td>
<td>12.2</td>
</tr>
<tr>
<td>Poison</td>
<td>1</td>
<td>0.7</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>Drowning</td>
<td>1</td>
<td>0.7</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>Burning</td>
<td>1</td>
<td>0.7</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>Whip</td>
<td>1</td>
<td>0.7</td>
<td>2</td>
<td>2.0</td>
</tr>
<tr>
<td>Other</td>
<td>3</td>
<td>2.0</td>
<td>4</td>
<td>4.1</td>
</tr>
<tr>
<td>No Information</td>
<td>75</td>
<td>49.7</td>
<td>48</td>
<td>49.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>151</strong></td>
<td><strong>98</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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49 **SMH, 3 February 1841, p. 2.**
The proportion of offences involving firearms is somewhat overstated, because in cases of 'shooting with intent' the weapon was known by definition. Nevertheless, the large number of cases in which guns featured in 1841 is marked. Beyond the boundaries of location in particular, firearms were often carried as a matter of course for protection against Aboriginals and robbers. Although commissioners of crown lands were instructed to discourage the practice, it is doubtful whether their efforts had any appreciable effect. By 1851 fewer acts of violence involved firearms, but concern was expressed about the habit of carrying guns during the gold rush. The government responded by passing a Fire-Arms Act in 1852, under which persons convicted of brandishing guns or other weapons with intent to cause injury or alarm could be imprisoned for up to two years. Persons carrying loaded guns in Sydney or other prescribed towns were also liable to summary conviction and fines of twenty pounds. Knives were a less obvious offensive weapon, and were probably carried as a matter of convenience rather than protection. A long-bladed knife was considered an essential tool on the diggings used in 'crevicing' for gold. As in the case


51 See for example FitzRoy to Pakington, 5 February 1853, PP, 1852-53, vol.64, [16843], p. 496.

52 [Colony of NSW] 16 Vic., No. 27, sec. 1-2.

of firearms, foreign gold seekers were accused of encouraging an 'un-English resort to the knife'.\textsuperscript{54} Even before the gold rush, however, knives were commonly used in offences, and it is significant that when gold was first discovered colonists arriving at the diggings were heavily armed with guns.\textsuperscript{55}

Michael Cannon contrasts nineteenth century violence, when he contends most homicides were committed by strangers for the sake of gain, to modern violence in which most victims are already known to the murderer.\textsuperscript{56} This is almost certainly a false distinction. A lack of available information prohibits the conclusion that assault cases generally involved persons already acquainted, although the proportion of offenders and victims previously acquainted is greater than for other non-violent offences. The evidence is far more persuasive in relation to the homicides which Cannon refers to, largely because they were reported in more detail in the press (see Table 9). Of twenty-two persons tried for murder in 1841, thirteen (about sixty per cent) can be documented as previously acquainted with their victims, as can three out of seven persons tried in 1851. In cases of manslaughter the proportion is much higher, with all but four of twenty-two persons tried during 1841 and 1851 clearly acquainted with the victim prior to the offence. In addition, both persons tried for infanticide in 1841 were the alleged mother of the victim. As already noted in relation to offences in general, these figures are presumably an understatement because of the minimal information available about many cases. Of those tried for murder in 1841, for example, seven were Aboriginals and it is unclear whether they were acquainted with their victims, while in two other cases nothing whatsoever is known about the victims.

\textsuperscript{54} Chief Justice Alfred Stephen's Address to the Central Criminal Court, People's Advocate, 8 October 1853, p. 5.

\textsuperscript{55} See SMH, 20 June 1851, p. 3.

TABLE 9  Offender's Relation to Victim in Cases of Assault, Murder, and Manslaughter Tried Before the Superior Courts of New South Wales, 1841 and 1851

| Offender's Relation to Victim | Assault 1841 | | Assault 1851 | | Murder 1841 | | Murder 1851 | | Manslaughter 1841 | | Manslaughter 1851 |
|------------------------------|--------------|-----|--------------|-----|------------|-----|------------|-----|------------|-----|
|                              | No. | %   | No. | %   | No. | %   | No. | %   | No. | %   |
| Employee, or Former Employee | 1   | 1.3 | 1   | 1.4 | 0   | 0.0 | 0   | 0.0 | 0   | 0.0 |
| Employer                     | 0   | 0.0 | 0   | 0.0 | 3   | 13.6| 0   | 0.0 | 0   | 0.0 |
| Workmate                     | 1   | 1.3 | 1   | 1.4 | 3   | 13.6| 0   | 0.0 | 2   | 18.2|
| Neighbour                    | 1   | 1.3 | 1   | 1.4 | 1   | 4.5 | 1   | 14.3| 0   | 0.0 |
| Lodger                       | 1   | 1.3 | 1   | 1.4 | 4   | 18.2| 0   | 0.0 | 0   | 0.0 |
| Spouse                       | 0   | 0.0 | 2   | 2.7 | 1   | 4.5 | 0   | 0.0 | 2   | 18.2|
| Parent                       | 0   | 0.0 | 0   | 0.0 | 2   | 18.2| 0   | 0.0 | 2   | 18.2|
| Other Relative               | 1   | 1.3 | 1   | 1.4 | 0   | 0.0 | 0   | 0.0 | 0   | 0.0 |
| Acquaintance                 | 13  | 16.9| 18  | 24.7| 4   | 18.2| 2   | 28.6| 5   | 45.5|
| Stranger or Semi-Stranger    | 2   | 2.6 | 1   | 1.4 | 0   | 0.0 | 0   | 0.0 | 0   | 0.0 |
| No Information               | 56  | 72.7| 43  | 58.9| 9   | 40.9| 4   | 57.1| 2   | 18.2|
| Total                        | 77  | 73  | 43  | 58.9| 22  | 7   | 11  | 11  | 11  | 11  |
The fact that almost one-third of those tried for murder in 1841 were Aboriginals suggests the extent to which white-Aboriginal conflict inflated the colony's violent crime rate. Even though the total number of Aboriginals prosecuted was small, they significantly affected the officially recorded incidence of violence since they were usually charged in groups, and because the total number of homicides prosecuted was relatively small. This is one further way in which offences against the person were affected by frontier conditions. As for Europeans tried, the largest proportion of homicides can be traced to brawls, feuds, and domestic arguments. Michael Cotter, who was tried for killing John Carroll after he discovered him lying with his wife in 'a criminal position' behind a public house, is a fairly typical example. While the frontier established a tradition of violence, the motives for its use were often much the same as in the twentieth century.

In terms of sentences passed, cases of assault were dealt with relatively lightly. About one-quarter of those convicted of assault in 1841 and 1851 were merely fined, while the largest proportion of offenders were sentenced to imprisonment for one year or less. Harsher punishments were more frequently meted out in 1851 than 1841, which may reflect either a hardening attitude toward violence, or a change in the type of offences brought before the courts. Most persons convicted of manslaughter were awarded prison terms ranging from less than a month to two years, although two persons convicted of this

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57 Goulburn Herald, 9 August 1851, p. 3; Empire, 11 August 1851, p. 35.

58 Of persons convicted of assault in 1841, 23.1 per cent were fined, and 65.4 per cent received prison terms of one year or less. In 1851, 24.2 per cent of those convicted were fined, and 54.5 per cent were sentenced to imprisonment for one year or less.
offence in 1841 were sentenced to transportation. Persons convicted of 'shooting with intent' or 'stabbing and cutting' were usually dealt with more severely, while all persons convicted of murder in 1841 and 1851 were sentenced to death. By the 1840s murder was the only offence in New South Wales for which persons commonly suffered the extreme penalty of the law. Of eighty-one persons executed between 1841 and 1851, sixty-five were convicted of murder, seven of wounding with intent to kill, five of rape, and four for piracy. 59

Sexual assaults made up a relatively small proportion of offences against the person tried, but those offences which actually reach the courts are notoriously a small proportion of those committed. Women might be deterred from reporting offences through fear of the stigma which might be attached to them by the community, or even fear of their spouse. Diana Elms, a shepherd's wife allegedly raped by an Aboriginal, told the Bathurst Circuit Court that she did not inform her husband of the offence until the following day for fear that he would beat her. 60 Other women probably did not wish to suffer the embarrassment of a trial, which might ruthlessly inquire into their own character. Cases could also be easily dismissed for lack of evidence, especially if the defendant was relatively respectable. 61

Most prosecutions for sexual assaults involved juvenile girls, a feature which was apparently paralleled in Britain. 62 This may well have been because young girls were less likely to feel the stigma which could be attached to adults, and because legal action was initiated


60 Bathurst Free Press, 22 February 1851, p. 3.

61 See for example Bell's Life, 17 May 1851, p. 3.

by their parents. To the extent that information is available, free immigrants were the most common defendants in such cases. Of three persons committed to trial for sexual assaults on children by the Dungog bench between 1848 and 1853, two were schoolmasters. James Alexander Duff, a free immigrant, was committed to trial for the rape of a six year old girl. The other schoolmaster, James Macbeth Gibb, was charged with a number of indecent assaults on female pupils which included putting his hands up their petticoats, thrusting his fingers into their vaginas, and attempting to force their hands down his pants. The fact that the alleged offences took place over a substantial period of time, and that some parents, although aware of Gibb's behaviour, only came forward after others took the initiative, is some indication of the hesitancy with which such prosecutions were undertaken.

Cases involving homosexuality and bestiality were even less likely to be brought before the courts than other sexual offences. Aside from the reticence of the 'victim', witnesses might be reluctant to report such transgressions. The details of 'unnatural' crimes were suppressed in the newspapers, but it is possible to gain some information from magistrates' bench books. At Parramatta, for example, Robert Goodin, born in the colony, was charged with attempting to commit an unnatural offence with a sow. The local police magistrate

63 To the extent that the civil condition of defendants is known, persons tried for sexual assaults in 1841 included four free immigrants, two convicts, two ex-convicts, two native-born, and one ticket of leave holder. In 1851, the defendants included six free immigrants, one ex-convict, and one Aboriginal.

64 Dungog Bench Book, 16 June 1849, SANSW, 4/5537.

65 Ibid., 18 August 1853.
termed the case the most 'painfully disgusting' he had ever heard, but Goodin was apparently let off with a fine for indecent exposure. In another case Robert Skinner, a farm overseer, testified that when going out to the milking herd on one morning he saw a man standing on a stool having intercourse with a mare belonging to Colonel Snodgrass of the Mounted Police. Through the stool used, the offence was traced to William Kelly, a free immigrant and married man.

Although legally, sexual offences were regarded with as much abhorrence as murder, only a small proportion of those convicted were sentenced to death, and a smaller proportion still actually executed. Not infrequently persons charged with rape were convicted of a lesser offence - either assault with intent or common assault. Most offenders were sentenced to imprisonment or work in a road gang for periods less than three years. Unnatural offences as well were punished more leniently in practice than permitted by law. Of four persons convicted of sodomy or bestiality during 1841 and 1851, all were sentenced to prison terms of two to three years.

Aside from crimes of violence, two further offences were especially associated with lawlessness in New South Wales - bushranging and stock theft. Bushranging in particular created apprehension because it combined loss of property with the use or threat of force, and because of its social connotations. In Australian tradition robbers, convict


68 Dungog Bench Book, 2, 5 August 1843, SANSW, 4/5536.

69 Of nine persons convicted of sexual assaults (excluding 'unnatural' crimes) in 1841, two were sentenced to death, as were two out of eight persons convicted in 1851.
bolters, and bushrangers have often become synonymous, but it is important to draw a distinction between the three. Initially, the term 'bushranger' was applied generally to prisoners illegally at large. By the 1830s, it was also applied in a more specific sense to persons living in the bush who engaged in systematic robberies. Obviously not all absconding convicts turned to robbery for sustenance, although this was frequently the implication of contemporaries. As John Richard Hardy pointed out while police magistrate for Yass, absconding did not necessarily lead to outrages, nor did large numbers of convicts illegally at large necessarily produce a state of insecurity. Indeed, Hardy believed runaways were often better conducted than other servants, while they were encouraged to abscond by the indiscriminate hiring practices of settlers. Charles Darwin, writing in 1836, was more explicit, if less flattering, in drawing a distinction. He contrasted 'crawlers', who were runaway servants supporting themselves by labour or petty larceny, to 'bush-rangers', who were desperate villains subsisting by highway robbery and plunder. Bushrangers (as opposed to runaways) created apprehension not so much from their numbers, as their ability to commit offences within a wide radius and to evade capture.


R.B. Walker in examining the incidence of bushranging looks to convictions for armed robbery as 'the distinctive bushranging crime'. But this is to confuse bushranging as a distinct phenomenon with a more generic crime. Robbery subsumed all offences which involved the taking of property by force, or the threat of violence, while the official statistics often fail to specify whether the offence was committed with or without arms. Even armed robbery did not necessarily imply the use of guns. Two convicts in 1844, for example, perpetrated a highway robbery armed with sticks. Whereas bushranging is typically associated with the interior, robberies frequently took place in an urban setting. Among those convicted of 'highway robbery' in 1846, for example, were three soldiers who knocked down and robbed a man in one of Parramatta's main streets. Bushranging in its classic sense is probably best confined to robberies committed on the roads or at country residences and stores by men armed with guns, usually on horseback, and often travelling in gangs.

Using this as a working definition, only seven of fifty-two cases of robbery tried in 1841 could be described from the available information as bushranging style offences, as could eight of thirty-eight tried in 1851. Not all bushrangers were charged with robbery. Some convicts who no doubt engaged in robberies were tried for being illegally at large with firearms in their possession, and one of the most notorious gangs of bushrangers operating in 1841 was tried for murder.

74 SMH, 3 April 1844, p. 2.
75 Bell's Life, 11 April, p. 2; 18 April 1846, p. 2.
76 SMH, 25 February, pp. 2-3; 14 March 1841, p. 2; Calendars of Persons Tried on Criminal Charges in Sydney Courts, 1838-1843, Clerk of the Peace, SANSW, X852.
Robbery by itself, which was as likely to involve the waylaying of someone leaving a public house as an armed 'stick up' of a country traveller, is thus far from an accurate measure of the incidence of bushranging.

Historically, the importance of bushranging lies not so much in the alleged prevalence of the offence, as in its social implications. Bushranging, it has been contended, was viewed differently from other crimes, while bushrangers themselves served as heroic symbols of resistance against police, squatters, and constituted authority.

The bushranger of Australian legend assumes in E.J. Hobsbawn's terms the role of a 'social bandit', whose victims are typically the enemies of the poor and who receive at least tacit support from the community.

This suggests yet another distinction which should be drawn - that is between those who merely committed bushranging type offences and those who could be perceived as social rebels and received some measure of popular support. There was an obvious difference, for example, between William Westwood ('Jacky Jacky'), an assigned convict who committed a series of robberies beginning with an attack on his master's home and who was later executed for his role in an attempted insurrection at

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77 See for example Port Phillip Patriot, 2 December 1841, p. 3; Maitland Mercury, 11 January, p. 4; 5 March 1851, p. 4; Bathurst Free Press, 22 February 1851, p. 2; Empire, 27 February 1851, p. 3.


Norfolk Island, and Richard Seldon, a stockman accused of robbing Eliza Smith at gun point when she was returning home after selling a load of potatoes.

Humphrey McQueen attacks the bushranging legend, casting bushrangers in the mould of glorified louts, whose alleged chivalry was limited to robbing women without raping them. Their enshrinement in folksongs is viewed as a flimsy measure of their popularity since they were usually written long after the event and present a romanticized picture. As Russel Ward notes, however, most folksongs had their origin in oral rather than written tradition. Nor is it surprising that the brutality and misdeeds of bushrangers was suppressed in the popular imagination since they were often viewed as champions of a social cause. The role of the bushranger as a defender of the oppressed was sometimes quite explicit, as when the overseer of one Hunter Valley station was flogged by robbers before the assigned convicts present. To the extent that bushrangers expected some measure of support, there were practical reasons for them to modify their conduct in conformity with popular expectations. It was in their interest to abstain from violence,


81 Bathurst Free Press, 22 February 1851, p. 2.

82 McQueen, New Britannia, p. 137.


84 'E.E.' to Editor, Sydney Gazette, 9 October 1841, p. 3.
since its use usually intensified efforts for their capture. Edward Davis ('The Jewboy'), the leader of a gang tried for murder in 1841, reportedly stated 'he had always opposed the shedding of blood, for he knew if they did so, they would not reign a week'. Victims themselves often construed bushrangers' actions in a favourable light simply because their own fears were unrealized. William Haygarth, for example, professed some sympathy for 'Buchan Charley' largely because he constrained his companion, 'a ruffianly-looking Irishman of the lowest grade', from doing him any physical harm.

However, if some bushrangers successfully assumed the role of social bandits, the degree of support they received is easily exaggerated. Certainly contemporaries believed bushrangers were frequently aided by a network of sympathizers. On the grounds that sawyers were among their principal supporters, the Sydney Gazette urged that timber cutters should be required to find two respectable sureties for their character and conduct. One settler in the Hunter Valley recommended depriving prisoners of all indulgences, including tickets of leave, until bushrangers in the area were captured. Nevertheless, there are grounds for arguing that the support allegedly given bushrangers was to a large extent an excuse for police inefficiency, and a reflection of fears of a pervasive criminal class.

Even among assigned convicts sympathy for bushrangers was by no means universal. The allegiance of convicts might be bought and paid for with rum, tea, sugar, and other scarce commodities, rather

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85 SMH, 25 February 1841, p. 2. See also Marjoribanks, Travels, p. 167.
87 Sydney Gazette, 28 January 1841, p. 2.
88 'E.E.' to Editor, Sydney Gazette, 9 October 1841, p. 3.
The prospect of receiving a ticket of leave or conditional pardon was often adequate incentive for convicts to assist in the capture of bushrangers. Since bushrangers frequently lacked discretion in who they injured or killed in their attacks, assigned servants were sometimes forced to defend their lives if not their master's property. A settler in 1835 described how, when bushrangers attacked three of his drays and fired on the convicts escorting them, they met heroic resistance. One of the convicts, Henry Brian, after receiving a wound in the arm, threw down his gun which had misfired, and attempted to wrestle with his assailants. That the servants were armed at all is some comment on the degree to which they were trusted.

As Humphrey McQueen points out, antipathy toward the police did not necessarily mean sympathy for thieves. On the contrary, animosity toward the police arose in part from their failure to control bushranging. Another historian suggests that if persons were often unhelpful in apprehending bushrangers, this stemmed as much from apathy as hostility to the law. In fact the frequent ineptitude of the police served to magnify the power of bushrangers, and make those who failed to co-operate with them appear much more vulnerable to retaliation. Bush workers in

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89 See Sydney Gazette, 22 December 1838, p. 2.
90 See for example Col Sec to Andrew Gipson, 17 February 1840, Col Sec, Letters Sent, SANSW, 4/3844, pp. 468-9; SMH, 30 January, p. 3; 20 June 1844, p. 3.
91 See for example Col Sec to Police Magistrate, Yass, 29 September 1838, Col Sec, Letters Sent, SANSW, 4/3842, p. 302; Sydney Gazette, 28 January 1840, p. 2.
92 Unsigned Letter to Editor, Sydney Herald, 1 October 1835, pp. 2-3.
93 McQueen, New Britannia, p. 139.
94 See Chappell and Wilson, Police and Public, p. 31.
particular, from their isolated situation, might feel at the mercy of bushrangers and more or less compelled to provide assistance. The extent to which bushrangers might rely on coercion for support rather than sympathy has a particular relevance for the 1840s and 1850s, since there is evidence that they suffered a marked decline in social prestige during this period. Russel Ward insists that there was continuity in bushranging both before and after the gold rush. Nevertheless, there was a definite interlude between the robberies of convict bolters in the 1830s and bushranging's 'golden age' in the 1860s. This was primarily because bushrangers of the 1840s and 1850s failed to be perceived as part of a social struggle.

Bushranging in the 1830s emerged as the most coherent form of resistance to an oppressive penal system, and assumed an obvious significance for convicts who felt victimized. Bold Jack Donahoe, who arrived in New South Wales in 1825 and was killed in 1830, was the archetypal convict rebel.

His name it was Jack Donahoe of courage and renown - He'd scorn to live in slavery or humble to the Crown.

The convict bushranger was typically viewed as driven to the bush by ill-treatment, and to crime by desperation. Through his actions

See Harris, Settlers and Convicts, p. 35.
other convicts might vicariously experience the taste of freedom and rebellion.

With the abolition of assignment and the consequent decline of convicts in private service during the early 1840s, bushrangers largely lost their raison d'être as social bandits. Charles Cozens asserted in 1848 that bushranging was almost unknown in New South Wales because the number of prisoners had so greatly declined, and because conditional freedom was so easily obtained. Another observer noted at mid-century that while bushrangers once possessed a certain dignity, they were no longer romantic figures. Instead they committed petty and cowardly robberies on the poor and defenceless. When bushrangers were extolled in the 1840s and 1850s, it was still Donahoe who was spoken of rather than contemporaneous robbers.

The resurgence of bushrangers as social bandits in the 1860s represented a new and different phase. Whereas bushranging was wedded to the penal system in the 1830s, in the 1860s conflict centred around land and the land regulations. Some observers continued to trace support for bushrangers to the colony's convict origins. Chief Justice Alfred Stephen, at the trial of the Clarke brothers in 1867, attributed sympathy for bushrangers to 'the old leaven of convictism not yet worked out'. As was often the case, convictism served to mask more fundamental social issues. The end of the bushranging era in the 1880s resulted not from the old convict leaven being worked out, but probably as Pat O'Malley indicates, from a redistribution of land

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100 Cozens, Guardsman, p. 155.
101 Mundy, Our Antipodes, p. 72.
102 See for example Ibid., p. 70; Cozens, Guardsman, pp. 149-54; Fox, Diary, 28 March 1852, ML, MSS. 1045/3, pp. 145-7.
103 See O'Malley, 'Social Bandity', SAANZ paper, p. 10.
104 Quoted in Inglis, Australian Colonists, p. 267; Clark, History of Australia, vol.4, p. 209.
and the growth of rural trade unionism which displaced bushrangers in reflecting class interests.  

Convictions for all robberies showed a marked decline from the 1840s, although for reasons already indicated, it is questionable whether bushranging style offences followed a similar trend. Money was the most common item taken in robberies, and in 1841 a substantial number of robberies involved the theft of food, usually from drays in the interior. Of persons tried for robberies in general, convicts comprised the largest proportion of offenders in 1841, and all but one of those tried for bushranging style robberies were bond. Figures for 1851 are more suspect because of the large number of cases for which there is no information concerning the offender's civil condition. To the extent that information is available, free immigrants, ex-convicts, and native-born were the most common social groups tried in that order. Those tried for bushranging style robberies included one ex-convict, one immigrant, and two native-born. Relative to other crimes, native-born offenders are overrepresented among those tried for robbery, perhaps foreshadowing the native-born bushrangers who became a characteristic of the 1860s.


106 There is no information concerning property stolen in 60.8 per cent of the robberies tried in 1841, while money was taken in 17.6 per cent of the cases, food in 13.7 per cent, watches in 3.9 per cent, and other items in 3.9 per cent of the offences tried. In 1851 there is no information about property stolen in 40.0 per cent of the cases, while money was taken in 48.6 per cent, watches in 8.6 per cent, and other items in 2.9 per cent of the cases.

107 Of those tried for robbery in 1841, 50.0 per cent were convicts, 13.5 per cent ex-convicts, 11.5 per cent Aboriginals, 9.6 per cent immigrants 1.9 per cent ticket of leave holders, and there is no information concerning 13.5 per cent of those tried. In 1851 there is no information concerning 42.1 per cent of the persons tried for robbery, while 26.3 per cent came free, 18.4 per cent were ex-convicts, and 13.2 per cent native-born.
The seriousness with which robberies were regarded was reflected in the penalties awarded to those convicted of the offence. Under the Bushranging Act as originally passed in 1834, persons sentenced to death for robbery or plundering a house with violence were to be executed within twenty-four hours of their conviction. This section of the Act was repealed in 1838, and the last executions for robbery took place the following year. The majority of persons convicted in 1841 were sentenced to transportation, usually for ten years. The remaining offenders were generally sentenced to two or three years in a road gang. In 1851 the standard punishment for persons convicted of robbery was four or more years hard labour on the roads or public works. About one-quarter of those convicted in 1851, however, received relatively light prison terms of two years or less. Bushrangers tended to receive much harsher punishments than other robbers. All of those persons convicted of bushranging style offences in 1841 were sentenced to transportation, while in 1851 all were sentenced to hard labour for seven to fifteen years.

In terms of the penalties awarded, stock theft was placed on a par with robbery. Until 1833 cattle, horse, and sheep stealing were capital offences, and after that date punishments remained harsh. Of fifteen persons convicted of stock theft before the Supreme Court in 1838, all but one were sentenced to transportation for life.

108 [Colony of NSW] 5 Wm. IV, No. 9, sec. 6.
110 Of persons convicted in 1841, 77.0 per cent were sentenced to transportation, while 20.5 per cent were sentenced to two to three years in a road gang. In 1851, 68.0 per cent of those convicted were sentenced to work on the roads, the largest number for periods over eight years. Another 24.0 per cent of the offenders received prison terms of two years or less.
111 Compiled from Return of Prisoners Tried and Convicted in the Supreme Court, 1838-1841, Supreme Court, SANSW, X43.
In 1841, seventy-five per cent of the offenders convicted of horse and cattle stealing were sentenced to transportation. Prosecutions for sheep stealing were much less numerous, and apparently regarded as less serious. Only one of three persons convicted of sheep stealing in 1841 was transported. By 1851 punishments were more lenient, although still severe relative to other property offences. The largest proportion of those convicted of stock theft were sentenced to hard labour on the roads or public works for four to five years.\footnote{112}

Chief Justice James Dowling insisted that such 'dread examples' of punishment were necessary, since stock theft posed an obvious threat to a pastoral country.\footnote{113} The offence seemed all the more dangerous because it was assumed that it was systematically perpetrated by professional thieves. According to Judge Roger Therry, cattle stealing made up the staple business of New South Wales' criminal sessions, and 'was reduced to a sort of science by the criminal class in the Colony'.\footnote{114} Similarly, magistrate Charles Lockhart asserted that animals were stolen not in scores, but in hundreds by 'well organized bands'.\footnote{115} At least in relation to those offences actually prosecuted, however, stock theft appears to have been neither systematic nor the work of professionals.

\footnote{112}{Of persons convicted of stock theft in 1851, 63.6 per cent were sentenced to four to five years hard labour on the roads or public works, while most of the remaining offenders were awarded prison terms of three years or less.}

\footnote{113}{SMH, 19 March 1842, p. 2.}

\footnote{114}{Therry, Reminiscences, p. 213.}

\footnote{115}{Charles George Norman Lockhart, 'Sketch of a Proposed System of Police for the Colony of New South Wales', 1851, Police, SANSW, 2/674.15, pp. 12-13.}
Most persons tried for stock theft were accused of stealing only one or two animals (see Table 10). Of nineteen prosecutions for cattle stealing in 1841 in which the number of animals allegedly stolen is known, only two cases involved the theft of five or more cattle, and in 1851 only two out of twenty-seven documented cases involved the stealing of five or more animals. The largest number of cattle stolen by any one offender prosecuted in 1841 and 1851 was nine head. In cases of horse stealing, almost inevitably only one animal was allegedly stolen. The large number of prosecutions for the theft of single animals seems all the more striking in light of the apparent difficulties in bringing rural offenders before the courts.

TABLE 10  Number of Animals Allegedly Stolen by Persons Tried for Stock Theft Before the Superior Courts of New South Wales, 1841 and 1851

<table>
<thead>
<tr>
<th>No. of Animals</th>
<th>1841</th>
<th>1851</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Cattle Stealing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>One</td>
<td>9</td>
<td>30.0</td>
</tr>
<tr>
<td>Two</td>
<td>8</td>
<td>26.6</td>
</tr>
<tr>
<td>Three</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>Five or More</td>
<td>2</td>
<td>6.7</td>
</tr>
<tr>
<td>No Information</td>
<td>11</td>
<td>36.7</td>
</tr>
<tr>
<td>Total</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>Horse Stealing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>One</td>
<td>21</td>
<td>80.8</td>
</tr>
<tr>
<td>Two</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>No Information</td>
<td>5</td>
<td>19.2</td>
</tr>
<tr>
<td>Total</td>
<td>26</td>
<td></td>
</tr>
<tr>
<td>Sheep Stealing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>One</td>
<td>3</td>
<td>60.0</td>
</tr>
<tr>
<td>No Information</td>
<td>2</td>
<td>40.0</td>
</tr>
<tr>
<td>Total</td>
<td>5</td>
<td></td>
</tr>
</tbody>
</table>
This does not, of course, prove that stock theft was not engaged in systematically or on a large scale. Prosecutors were only compelled to substantiate the theft of one animal to secure a conviction. Some persons also figured in more than one case. George Brown, for example, was acquitted on a charge of stealing a horse from William Oakenfell at Maitland's circuit court, but convicted of stealing a horse from Timothy McCarthy. In another case George Oakes and Daniel McGane were convicted of stealing twenty-five head of cattle belonging to Sydney merchant Charles Campbell. But it is significant that Chief Justice Dowling considered that this case exceeded in enormity any case of cattle stealing tried before him during the past fifteen years. Police magistrate John Richard Hardy asserted as well that although there was a great deal of cattle stealing, it was practiced in a small rather than wholesale manner.

There is virtually no information concerning the relation of offenders and victims for stock theft cases tried in 1841, although at least five persons tried the following year were current or former employees of the prosecutor. Among those tried in 1851 were six persons who were employees of the victim, two neighbours, and seven persons otherwise acquainted with the prosecutor prior to

116 SMH, 6 March 1851, p. 2; Maitland Mercury, 5 March 1851, p. 4.
117 SMH, 26 March 1842, p. 2.
119 SMH, 2 February, p. 3; 10 September, p. 3.; 13 September, p. 2; 11 October 1842, p. 2.
the alleged offence. Known defendants in stock theft cases ranged from John Burns, described as 'an old man of about seventy' charged with stealing a cow near Hartley, to Robert Myers, a young boy tried at Berrima for slaughtering a heifer, to James McMahon, given testimonials of the 'highest respectability', and who was accused of stealing cattle by a servant after he refused his wages. While far from conclusive, the available evidence casts doubt upon contemporary notions that stock theft was principally the work of organized criminal bands. It is probable that most animal thefts were committed by amateurs on a minor scale, either to supplement their diet or income.

While on the one hand contemporaries believed that stock theft was primarily perpetrated by a criminal class, it was at the same time alleged that free immigrants, and more particularly native-born persons, were more prone to the offence than other crimes. For this there is some support. Of thirty persons born in the colony tried before Judge William Burton between 1833 and 1838, thirteen

120 Those tried in 1841 included two employees and one acquaintance, while there is no information concerning the offender's relation to the victim in the other fifty-eight cases tried. The remaining forty-seven cases tried during 1851 included one in which the defendant was a semi-stranger to the victim, and forty-six cases for which there is no information.

121 SMH, 1 April 1842, p. 2.
122 Atlas, 15 March 1845, p. 189.
123 SMH, 9 September, p. 4.; 11 September 1844, p. 4.
were charged with stock theft.\textsuperscript{125} If no information cases are excluded, free immigrants comprised about one-third of those tried in 1841, while one-tenth of the offenders were native-born. Figures for 1851 are far more dubious since there is no information concerning seventy per cent of those tried for stock theft. If these cases are excluded, free immigrants made up about half of those tried, and native-born twelve per cent.\textsuperscript{126}

As in the case of other property offences, convictions for stock theft increased during the early 1830s, although at a much more rapid rate than other crimes (see Figure 6). This was no doubt due largely to the repeal of the death penalty for cattle, horse, and sheep stealing in 1833, which facilitated prosecutions and probably meant that juries were more likely to convict offenders.\textsuperscript{127} Convictions for stock theft declined during the 1840s, but exhibited an increase during the gold rush years. Two other features also stand out. The first is the small number of convictions for sheep stealing. The second is an increase in convictions for horse stealing relative to cattle stealing from the mid-1840s.

The slaughter of sheep for food, often with the owner's tacit approval, was believed to be a widely practiced outback custom.\textsuperscript{128}


\textsuperscript{126}If no information cases are included, which comprised 24.6 per cent of those tried in 1841, free immigrants represented 24.6 per cent of those tried for stock theft, ex-convicts 19.7 per cent, convicts 16.4 per cent, native-born 8.2 per cent, and ticket of leave holders 6.6 per cent. The comparable figures for 1851 are 72.1 per cent no information, 13.1 per cent came free, 9.8 per cent ex-convicts, 3.3 per cent native-born, and 1.6 per cent bond.

\textsuperscript{127}See Chapter 1, pp. 50-1.

\textsuperscript{128}Harris, \textit{Settlers and Convicts}, pp. 185-6.
FIGURE 6  Convictions for Stock Theft Per 100,000 Inhabitants in New South Wales, 1831-1861
Russel Ward goes so far as to suggest that 'every honest bushman, more or less, was a thief upon occasion'. This might explain in part why stock owners were reluctant to prosecute offenders for sheep stealing. Whether in fact all bushmen indulged in the practice, however, is questionable. At least occasionally, fellow shepherds acted as principal witnesses against workmates accused of killing sheep. The small number of convictions for sheep stealing may well have resulted more from the fact that they were less valuable than other animals and much more difficult to identify as stolen.

Reasons for an increasing number of convictions for horse stealing relative to other stock is equally difficult to discern. There is some evidence that the statistics reflect a real increase in horse theft. In the Bathurst district, for example, the crime allegedly became so prevalent by 1848 that one newspaper urged the formation of a vigilante association for its suppression. An increasing incidence of horse theft may have stemmed in part simply from a larger number of horses which could be stolen. The number of horses in the colony tripled between 1842 and 1856, increasing at a faster rate than either cattle or sheep. At the same time there was a great demand for horses. William Fox, writing from the Major's Creek diggings in 1852, reported that any person who could scrape together the requisite cash immediately purchased a steed.

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130 See for example *SMH*, 10 September 1842, p. 3; 27 September 1849, p. 2.
The great staple for talk apart from gold is horses. There they come out in a manner to me perfectly astounding - appellations, to me many of them quite new, are bestowed in sweet confusion - I hear a running fire of mares, foals, fillies, hacks, cobs, screws, bays, blacks, roans, piebalds, skewbalds, silver manes and tails, shakes in the near forelegs, brands in the off shoulders ... 

Horses derived importance in the community not only as a valuable economic commodity, but as a symbol of social status.

Relative to other forms of property allegedly stolen in 1841 and 1851, livestock featured in about ten per cent of the offences against property prosecuted (see Table 11). The most common items stolen, however, were money and clothing. Money was obviously an attractive item for theft, since it could be easily used and was difficult to trace. Clothing was another commodity easily put to use or disposed of, although the large proportion of offences involving wearing apparel is also indicative of the limited range of consumer goods available. A substantial number of cases involved the theft of food and drink, more especially in 1841. This probably reflected both the larger number of convicts under sentence in 1841 wishing to supplement their rations and recreation, and the more depressed state of the economy. A fair number of cases, particularly in 1851, involved the taking of several miscellaneous items during the course of an offence. Other items commonly stolen included watches, fabric, linen, household goods, tools, and building materials.


134 This was also the case in larcenies tried before the Supreme Court of Western Australia between 1830 and 1855. Compare with Judith Fall, 'Crime and Criminal Records in Western Australia 1830-1855', Studies in Western Australian History no.3 (November 1978), p. 22.
TABLE 11  Property Stolen in Offences Against Property Tried Before the Superior Courts of New South Wales, 1841 and 1851

<table>
<thead>
<tr>
<th>Property Stolen</th>
<th>1841 No.</th>
<th>1841 %</th>
<th>1851 No.</th>
<th>1851 %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Money</td>
<td>79</td>
<td>11.8</td>
<td>102</td>
<td>16.2</td>
</tr>
<tr>
<td>Clothing</td>
<td>57</td>
<td>8.5</td>
<td>102</td>
<td>16.2</td>
</tr>
<tr>
<td>Watch</td>
<td>19</td>
<td>2.8</td>
<td>15</td>
<td>2.4</td>
</tr>
<tr>
<td>Jewellery</td>
<td>6</td>
<td>0.9</td>
<td>3</td>
<td>0.5</td>
</tr>
<tr>
<td>Other Personal Item</td>
<td>4</td>
<td>0.6</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>Food</td>
<td>38</td>
<td>5.7</td>
<td>14</td>
<td>2.2</td>
</tr>
<tr>
<td>Drink</td>
<td>23</td>
<td>3.4</td>
<td>8</td>
<td>1.3</td>
</tr>
<tr>
<td>Cattle</td>
<td>30</td>
<td>4.5</td>
<td>28</td>
<td>4.4</td>
</tr>
<tr>
<td>Horses</td>
<td>28</td>
<td>4.2</td>
<td>35</td>
<td>5.6</td>
</tr>
<tr>
<td>Sheep</td>
<td>6</td>
<td>0.9</td>
<td>1</td>
<td>0.2</td>
</tr>
<tr>
<td>Small Animal</td>
<td>5</td>
<td>0.7</td>
<td>11</td>
<td>1.7</td>
</tr>
<tr>
<td>Farm Produce</td>
<td>3</td>
<td>0.4</td>
<td>9</td>
<td>1.4</td>
</tr>
<tr>
<td>Saddlery</td>
<td>6</td>
<td>0.9</td>
<td>10</td>
<td>1.6</td>
</tr>
<tr>
<td>Tools</td>
<td>4</td>
<td>0.6</td>
<td>17</td>
<td>2.7</td>
</tr>
<tr>
<td>Building Material</td>
<td>7</td>
<td>1.0</td>
<td>11</td>
<td>1.7</td>
</tr>
<tr>
<td>Rope or Wire</td>
<td>2</td>
<td>0.3</td>
<td>2</td>
<td>0.3</td>
</tr>
<tr>
<td>Bags</td>
<td>2</td>
<td>0.3</td>
<td>2</td>
<td>0.3</td>
</tr>
<tr>
<td>Fabric</td>
<td>16</td>
<td>2.4</td>
<td>19</td>
<td>3.0</td>
</tr>
<tr>
<td>Linen</td>
<td>8</td>
<td>1.2</td>
<td>12</td>
<td>1.9</td>
</tr>
<tr>
<td>Silver or Plate</td>
<td>2</td>
<td>0.3</td>
<td>1</td>
<td>0.2</td>
</tr>
<tr>
<td>Gold</td>
<td>1</td>
<td>0.2</td>
<td>1</td>
<td>0.2</td>
</tr>
<tr>
<td>Cooking Utensils</td>
<td>8</td>
<td>1.2</td>
<td>4</td>
<td>0.6</td>
</tr>
<tr>
<td>Glassware</td>
<td>6</td>
<td>0.9</td>
<td>10</td>
<td>1.4</td>
</tr>
<tr>
<td>Furniture</td>
<td>0</td>
<td>0.0</td>
<td>5</td>
<td>0.8</td>
</tr>
<tr>
<td>Ship's Equipment</td>
<td>3</td>
<td>0.4</td>
<td>5</td>
<td>0.8</td>
</tr>
<tr>
<td>Books</td>
<td>3</td>
<td>0.4</td>
<td>4</td>
<td>0.6</td>
</tr>
<tr>
<td>Stationary or Letters</td>
<td>3</td>
<td>0.4</td>
<td>2</td>
<td>0.3</td>
</tr>
<tr>
<td>Miscellaneous Items</td>
<td>9</td>
<td>1.3</td>
<td>33</td>
<td>5.2</td>
</tr>
<tr>
<td>Other</td>
<td>4</td>
<td>0.6</td>
<td>17</td>
<td>2.7</td>
</tr>
<tr>
<td>No Information</td>
<td>285</td>
<td>42.7</td>
<td>157</td>
<td>24.9</td>
</tr>
<tr>
<td>Total</td>
<td>667</td>
<td></td>
<td>640</td>
<td></td>
</tr>
</tbody>
</table>

Notes: These figures include all offences against property with or without violence, and exclude offences against the currency, malicious offences against property, and miscellaneous offences where no loss of property was involved. The proportion of cases involving livestock are overstated relative to other forms of property, since the property stolen was known by definition in cases of cattle, horse, and sheep stealing.

As in Britain, simple larceny was statistically the colony's most important offence. There was no distinction between petty and grand larceny, and items allegedly stolen were often of quite small value.
Property stolen by persons prosecuted for theft in 1842 included a pair of stays, a quart of ale valued at one shilling, a tumbler, a glass of brandy, and a brush. Four persons tried during 1841 and 1851 were accused of stealing ordinary bags. Some other cases can only be described as bizarre. John Kenny for instance, a convict, was tried before the Sydney Quarter Sessions in 1841 for stealing two volumes of Ivanhoe. He was acquitted on this charge, but was convicted of 'stealing a note in the receiving watch-house, which he afterwards concealed by swallowing it'. For this offence he was sentenced to be worked in irons for three years.  

To the extent that information is known about offenders' relation to their victims, the largest proportion of larceny cases involved employees or former employees charged with stealing from their employers. One observer in the 1850s believed young servant girls in particular were tempted to theft by 'those unbecoming unservantlike innovations in dress and tawdry ornaments so much indulged in at present'. Thefts by employees in general can probably be more aptly attributed to the particular opportunities they had for pilfering, and the fact that they were likely suspects if property was missed by their master. In some cases employees may have considered the pilfering of property as a justifiable perquisite. It was also believed that those thefts actually prosecuted made up only a small proportion of those committed by servants, since

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135 SMH, 19 February, p. 2; 23 February, p. 2; 24 February 1841, p. 2; Register of Criminal Cases Tried at the Sydney Quarter Sessions, 1841, Clerk of the Peace, SANSW, 2916.

136 Of 400 persons tried for larceny in 1841, 4.8 per cent were employees of the victim, as were 10.6 per cent of the 416 persons tried in 1851. For reasons already outlined, these figures are an understatement because of the large proportion of cases for which there is no information concerning the offender's relation to victim, comprising 92.8 per cent of the total in 1841 and 72.6 per cent of the total in 1851.

137 'J.F.C.' to Editor, SMH, 5 March 1853, p. 3.
employers were frequently too apathetic to initiate court proceedings and simply dismissed the offending employee instead.\textsuperscript{138} The attitudes of various employees and employers toward property further underscores the vulnerability of the official statistics as a measure of crime.

Aside from offences involving servants, there were other work-related prosecutions for larceny as well. David Wilson for example, a bookbinder, was tried for stealing some printed sheets entrusted to him for binding. The theft was only detected when the sheets were discovered at a butter stall in the market where Wilson had sold them as waste paper.\textsuperscript{139} Similarly, Thomas Bodenhain was accused of stealing a watch left with him for repair.\textsuperscript{140} Tradesmen might also occasionally be victimized by their competitors. James Turner, a Bathurst shoemaker, was charged with snatching a couple of boots from the counter while visiting the shop of another boot and shoemaker.\textsuperscript{141}

Shoplifting was another prevalent form of larceny. The display of goods outside shops and in doorways in particular was criticized by law enforcement officials as offering especial temptations to theft.\textsuperscript{142} During 1857 alone 390 persons were taken into custody by the Sydney police for shoplifting or stealing show goods, representing

\begin{align*}
\textsuperscript{138} & \text{Crown Prosecutor's Address to the Sydney Quarter Sessions, Empire, 10 February 1851, p. 3.} \\
\textsuperscript{139} & \text{SMH, 29 December 1849, p. 3.} \\
\textsuperscript{140} & \text{SMH, 19 November 1841, p. 2; Register of Criminal Cases Tried at the Sydney Quarter Sessions, 1841, Clerk of the Peace, SANSW, 2916.} \\
\textsuperscript{141} & \text{SMH, 8 October 1849, p. 3.} \\
\textsuperscript{142} & \text{See for example Judge Dowling's Address to the Supreme Court, Sydney Herald, 18 May 1835, p. 3; Police Magistrate James Dowling's Address to the Police Office, Empire, 19 June 1851, p. 559.}
\end{align*}
over one-quarter of all persons arrested on charges other than drunkenness or petty misdemeanours. Over half of these cases were summarily dealt with by the magistracy, but before an expansion of the magistracy's jurisdiction in the mid-1850s, all such cases were tried before the superior courts. In 1841 female convicts and ex-convicts were believed to be the principal culprits in such cases, concealing shop items in their cloaks, shawls, or with their babies.

The offence was hardly restricted to the lower classes, however, as when one 'decent-looking young girl' apprehended in 1854 was discovered to have seventy-five pounds in the savings bank and other property worth one hundred and fifty pounds.

The most common penalty awarded to persons convicted of larceny during both 1841 and 1851 was a prison term of six months or less (see Table 12). As in the case of other offences, however, there was a marked reduction in sentences passed during the decade. About one-third of those convicted of larceny in 1841 received sentences of six months or less, compared to almost sixty per cent of those convicted in 1851. Of those convicted in 1841, twelve per cent were sentenced to transportation (usually for seven years), while no persons were transported for larceny in 1851. The largest proportion of other offenders convicted in 1841 and 1851 were sentenced to work on the roads or public works for terms ranging from six months to eight years. In general convicts and ex-convicts convicted of larceny were more harshly punished than those persons without a criminal record, although in 1841 a larger proportion of free immigrants and native-born persons suffered the
<table>
<thead>
<tr>
<th>Sentence</th>
<th>Free by Servitude Year</th>
<th>Ticket of Leave Year</th>
<th>Offenders' Civil Condition</th>
<th>Native-Born Information</th>
<th>No Information</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1841</td>
<td>1851</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fine</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1841</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1851</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prison, 1 mo. or less</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1841</td>
<td>7</td>
<td>4.4</td>
<td></td>
<td>8</td>
<td>14.8</td>
<td>21</td>
</tr>
<tr>
<td>1851</td>
<td>2</td>
<td>1.9</td>
<td></td>
<td>4</td>
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extreme penalty of transportation. This was possibly because their crimes were more serious, or because the courts wished to make examples of them.

As the single most common offence, larceny cases had a substantial impact on the overall conviction rate. Convictions for larceny made up about forty per cent of the total convictions before the superior courts between 1831 and 1861. One might also expect that the incidence of larceny convictions would be strongly influenced by economic conditions. As in the case of all offences against property, however, there is no consistent correlation with economic trends. While there was a sharp increase in convictions during the depressed year of 1843, there were similar peaks during the more prosperous years of 1846 and 1851 (see Figure 7). A marked decline in convictions during the mid-1850s probably reflected most of all changes in summary jurisdiction.

This contrasts the apparent trend in Britain, which leads K.K. Macnab to suggest that fluctuations in crime provide a clear index of economic pressure on the working classes. Analysis of England and Wales, criminal statistics for the first half of the nineteenth century indicates that property offences did increase in times of economic adversity, and diminished in periods of prosperity.

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146 Percentage is based on Returns of the Colony, 'Blue Books', 1831-1857, (xerox copy), ML, CY 4/270-4/290; NSW, Registrar General's Office, Statistical Register of New South Wales, 1858-1861. Information is incomplete for the years 1836-1838, 1842, and 1853.


148 Ibid., especially pp. 311-12, 394; Gatrell and Hadden, 'Criminal Statistics', especially p. 368.
FIGURE 7 Convictions for Larceny per 100,000 Inhabitants in New South Wales, 1831-1851.
Regional studies in England for the same period illustrate the same trend. This does not necessarily imply that property offences were the direct result of want. David Philips, in his study of England's Black Country, suggests that thefts resulting from the pressure of immediate want were few. But while thefts were probably not simply a means of fighting starvation, poverty and unemployment were the conditions under which property offences increased.

Of perhaps greater significance in relation to New South Wales, is the fact that the correlation between adverse economic conditions and crime in Britain was limited to the first half of the nineteenth century. Gatrell and Hadden note that as the century progressed, the incidence of property offences ceased to be positively associated with economic depression. They suggest that there was a transition from poverty based crime to prosperity based crime, so that in the twentieth century property offences tended to diminish in periods of depression and increase in periods of affluence. A study of London's criminal statistics also indicates that from the 1870s property offences, as well as offences against the person, tended to increase in periods of high wages and low unemployment. This general trend in modern western communities is explained largely in terms of relative deprivation, increased opportunities for crime, and materialist values associated with the affluent society.

While there are obvious problems in comparing modern industrialized society with a pastoral and pre-industrial community, the correlation between affluence and property offences suggests some insight concerning crime in New South Wales. Contemporaries were prone to view crime in a land of plenty as confirmation that the colony was corrupted by convictism and victimized by a parasitic criminal class. The Molesworth Committee reported in 1838 that:

In old communities, where there is a comparative want of employment, and profits are low, the amount of crime is not a perfectly sure test of the moral state of society, as the general uneasiness of the population gives birth to innumerable offences against property; but in these new communities, where there is a pressing demand for labour, and great facilities for acquiring wealth, crimes so numerous and so atrocious as those, perpetrated in New South Wales and Van Diemen's Land, truly indicates the depth of their moral depravity. ¹⁵⁴

But prosperity itself could influence the incidence of property offences in a positive as well as a negative way. The 'acquisitive competitiveness' of immigrants fostered a culture conducive to acquisitive crime. A high degree of social and economic mobility also served to contrast the position of those who failed to improve their material condition, and could create a sense of deprivation and envy among the more depressed segments of the community.

The theme of colonial materialism, so frequently harped on by contemporaries, in part betrayed alarm at New South Wales' social

¹⁵⁴ Report from the Select Committee on Transportation, PP, 1837-38, vol.22, (669), p. 27. See also for example Address from Anti-Transportation Delegates assembled at Melbourne, SMH, 13 February 1851, p. 2; Judge Dickinson's Address to the Supreme Court, Empire, 5 December 1851, p. 435.

¹⁵⁵ McQueen, New Britannia, pp. 124-5.

and economic mobility. Most colonists, however, immigrated with expectations of improving their material circumstances, and as such the community was largely preoccupied with personal gain. After overcoming a period of initial deprivation in New South Wales, a recently arrived Henry Parkes pronounced his aspirations clearly.

I am now anxious about getting money, not being at all content to come here for no purpose. ... Nothing like getting money; nothing can be done without it. I know the value of money now! Money! money! money! is my watchword for the future!  

The colony's convict population, if less than imbued with the petit-bourgeois values Humphrey McQueen attributes to them, demonstrated a similar interest in accumulating property. Port Phillip squatter Edward M. Curr noted that the 'work and burst' philosophy of old hands was substantially modified by their investment in livestock, dogs, guns, and other possessions. Material advancement was one way of easing the social stigma of convictism. While hardly legitimizing crime, New South Wales' materialist outlook and acquisitive values could encourage the commission of property offences. The high premium placed on property also explains in part the extent to which prosecutions for theft were undertaken.

Thefts motivated by immediate need were apparently few in New South Wales, but not unknown. John Marshall, an ex-convict tried at Melbourne for stealing a cheese in 1841, contended that he stole the food out of sheer starvation after he was discharged from his job without payment of his wages. The court was convinced enough by this defence

to let him off with the time he had already spent in custody awaiting trial. More often, property offences were probably related to the relative deprivation felt by those who failed to share in the colony's prosperity, rather than total destitution.

Characterizations of New South Wales' affluent working classes overlooked the fact that for many years convicts under sentence formed a large and propertyless segment of the population. Employment opportunities for ex-convicts were also more circumscribed than most observers suggested. Stories of fortunes made by ex-convicts were widely circulated as criticism of the transportation system's leniency. Those achieving some measure of wealth were relatively few, while the richest and best known of the emancipist merchants, Samuel Terry, died the same year the Molesworth Committee issued its report. By the 1830s opportunities for ex-convicts were contracted considerably by the greater availability of free labour and immigrants with capital. Although exiles were snapped up by squatters to work in the interior, they could face grave difficulties in finding work in their proper trades. James Johnston, a hatter by occupation exiled to Port Phillip, asserted that there was little opportunity for those of his kind to work except as shepherds, because prejudice against them was so 'exceedingly violent'. He considered he was able to find employment dressing hats only because no other tradesmen were available. Employers reportedly had a general objection to hiring ex-convict servants, and those with a convict taint were the first to lose their jobs in periods of economic

159 Port Phillip Patriot, 16 September 1841, p. 2; Session Returns of Prisoners Tried and Convicted at the Port Phillip Supreme Court, 1841-1845, Col Sec, SANSW, X46A.

160 See Priestly, 'Molesworth Committee', p. 178.

161 Quoted in Evans and Nicholls, Convicts and Colonial Society, p. 205.
distress. Considered in this context, the proportion of offences involving those free by servitude seems far from surprising.

While materialism and relative deprivation suggest conditions which are conducive to crime, thefts might result largely as a matter of opportunity. Chief Justice Francis Forbes believed that the frequency of burglaries and robberies was due partly to the insecurity of houses, and 'a great looseness with respect to the keeping of property in New South Wales'. The Herald reported that thefts were facilitated by the practice of workmen leaving their tools in unfinished buildings where they could be easily pilfered. As already noted, the open display of goods for sale was considered another invitation to stealing. The colony's relative prosperity possibly led to a greater casualness in protecting property. It was further believed that thieving was encouraged by the ease with which property could be disposed of with numerous brokers and dealers.

As important in contributing toward opportunities for crime was the pattern of settlement and pastoral expansion. This was most apparent in relation to stock theft. The theft and concealment of animals was greatly facilitated by the size and isolation of stations, absentee owners, large numbers of unbranded livestock, the broken and relatively inaccessible terrain of some districts, and a general

162 Evidence of Charles Windeyer and Joseph Long Innes to the Select Committee on the Insecurity of Life and Property, NSW, VePLC, 1844, vol.2, pp. 403, 419; Colonial Secretary's Address, LC, SMH, 2 October 1844, p. 2; Evidence of Stuart Alexander Donaldson to the Select Committee on Transportation, PP, 1861, vol.13, (286), p. 73.


164 SMH, 5 December 1842, p. 2.

165 See for example SMH, 18 June 1849, p. 2; Bell's Life, 3 November 1849, p. 2; People's Advocate, 12 October 1850, p. 7.
absence of enclosures. horses might be stolen not only when turned out to forage, but when left tied outside a store or public house. The ease with which horses could be sold with little inquiry about their origin was believed to be a further inducement to theft.

A dispersed population and poor communications provided particular opportunities for the commission of other types of offences as well. Travellers coming from the country with recently paid wages or finances for a stay in the metropolis were easy targets for robbers. The conveyance of large quantities of stores in the interior led to dray robberies, particularly towards the end of the year when goods were laid in for the shearing season. As in the case of stock theft, the topography of certain regions was also thought particularly attractive for the operations of bushrangers.

A shortage of coin and bank notes in country districts, and a consequent reliance on orders, greatly widened the scope for forgery. Governor Gipps was inclined to attribute the prevalent use of orders to New South Wales' convict character, which made it unsafe to carry

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167 See for example SMH, 26 August, p. 2; 27 August 1851, p. 2.

168 Sydney Herald, 22 February 1838, p. 2.

169 See for example SMH, 18 October 1844, p. 2; Mundy, Our Antipodes, p. 71.


171 See for example Sydney Gazette, 22 December 1838, p. 2; SMH, 31 August 1841, p. 3.
or keep cash. As S.J. Butlin points out, however, a similar system failed to develop in Tasmania, and it was distance which principally led to the widespread use of orders. The ease with which such orders could be drawn or altered was believed a major incentive to forgeries, while their transmission (often without specifying the payee) encouraged robbery of the mails.

Overall, the impression which emerges of prosecuted offences in New South Wales conforms to David Philips's conclusion in relation to England's Black Country - that most crime was 'prosaic and undramatic'. Most offences appear casual and fairly petty affairs, springing from opportunity rather than a criminal conspiracy. Cases prosecuted in New South Wales were better typified by shoplifting than bushranging. Often the evidence is too fragmentary to draw definite conclusions. But there are strong grounds for challenging some conventional stereotypes and assumptions about crime and criminals, such as the relation between offenders and victims in cases of violence, the degree to which livestock was stolen by organized rustlers, and the pervasive presence of a criminal underworld and professional gangs which featured so largely in popular perceptions of crime.

There are also grounds for at least modifying the standard view of the transportation system. The supposed advantage of transportation

173 Judge Stephen's Address to the Maitland Circuit Court, SMH, 11 September 1841, p. 2; Empire, 4 February 1851, p. 3; Vaile, 'Crime in Bathurst', pp. 194-5.
was that it not only rid Britain of its criminal population, but placed offenders in a setting where there were greater opportunities for gaining an honest livelihood. As both contemporaries and historians have emphasized, it seems undisputable that New South Wales' economic climate and the chance to make a fresh start encouraged many convicts to abstain from the commission of subsequent crimes. But this does not mean that those convicts who failed to 'reform' were necessarily hardened or professional criminals. In some respects conditions in New South Wales were no less conducive to crime than in Britain. The proximity of the frontier, and a predominantly male population, promoted violence, most apparent in relations with Aboriginals. The frontier also provided special opportunities for property offences. More importantly, the acquisitive aspirations of those immigrating to New South Wales fostered a culture which stimulated both the commission and prosecution of acquisitive crimes. Finally, portrayals of offenders as habitual and professional criminals fail to appreciate the extent to which offences were work-related, or otherwise involved persons who previously had some contact with one another. Convicts and ex-convicts were the most vulnerable to the pressures of a new and relatively affluent community because they were generally the most economically deprived, because they experienced the stigmatizing effect of the penal system, and because they were often expected to behave as criminals.
1 Supreme Court and St James Church, 1842

2 New Court House at Darlinghurst, c. 1845
3 Chief Justice James Dowling, 1840

4 Judge William Westbrooke Burton, no date

5 Chief Justice Alfred Stephen, no date
6 Sydney Police Office (with domed roof and weather-vane), 1842

7 Interior of the Sydney Police Court, 1854
10 Caricature of the Sydney Police Arresting a Boy for Setting Off Fire Works, 1847

11 Gold Commissioner Settling a Dispute at Tambaroora, c. 1851
12 Sly-Grog Tent at Hanging Rock, 1854

13 Sunday Scene at the Oakenville Diggings, 1854
THE MAGISTRACY AND PETTY OFFENCES

Magistrates, who are accustomed to sit at Petty Sessions, are men of all others, who see and who know most of the characters and dispositions of the lower orders of society; the amount of capital crime may be known in the Superior Courts, but the real amount of moral depravity can be better ascertained in the inferior Courts of Justice.¹

The vast majority of offences were not adjudicated before the superior courts, but were heard by magistrates sitting alone, or by courts of petty sessions consisting of two or more magistrates. The available statistical evidence indicates that only about five per cent of those persons taken into custody by the police were committed for trial, while the remainder were either discharged or dealt with summarily.² The fact that such a large proportion of judicial business was left in the hands of men who often appeared to lack ability and impartiality, led to widespread criticism. At least among those who articulated their grievances, however, the magistracy's bias and incompetence was considered less of a problem than their neglect of duty. The focal point of complaints against magistrates was the obstruction they posed to court proceedings through their failure to attend the bench regularly.

¹ Sydney Gazette, 31 October 1840, p. 2. Gazette's emphasis.
Concern about the magistracy's non-attendance at local courts was in turn indicative of colonists' penchant for undertaking prosecutions. Before transportation and assignment ceased, the bulk of magisterial business involved minor infractions of penal discipline. Despite frequent impediments to bringing convicts before the courts, assigned servants were commonly tried for relatively innocuous offences. After transportation ended, the triviality of much magisterial business is again a striking feature. In large part, petty offences tried before the lower courts are less indicative of the community's 'moral depravity' than of its machinery for social control and its litigiousness. In this context, the penal code by the 1840s was giving way to a code of respectability, which embodied not only new standards of behaviour, but a new competitiveness for social prestige.

Magistrates, also known as justices of the peace or JPs, were initially appointed and removed by the governor. With the introduction of responsible government, magistrates continued to be nominally appointed by the governor, but they were selected by the ministry. Within their respective districts, magistrates exercised summary jurisdiction over minor offences, and carried out various administrative duties including supervision of the police, licensing public houses, and preparing jury lists. In addition to unpaid JPs, magisterial functions were performed by stipendiary, or as they were more commonly known, police magistrates. Their duties were essentially the same as that of other magistrates, but they served as paid officials of the government. In general, police magistrates were appointed only in populous districts where there was a great deal of judicial business, or where the unpaid magistracy appeared inadequate.
In unsettled districts, beyond the boundaries of location, magisterial powers were vested in commissioners of crown lands. As itinerant JPs, they were required to visit stations within their districts at least twice a year. They were also charged with preventing the unauthorized occupation of crown lands, settling boundary disputes, and collecting license fees and stock assessments. Commissioners on the gold fields, first appointed in 1851, served in an analogous capacity. Aside from exercising summary jurisdiction, they supervised gold escorts, settled disputed claims, and collected licence fees from diggers.

The administration of justice by the magistracy was a matter of continual complaint throughout the period under study. Much of the criticism directed at JPs can be attributed to dissatisfied prosecutors and defendants, who vented their anger in anonymous letters to the press. But there is also evidence of a general dissatisfaction with the magistracy which went beyond motives of revenge. Since magistrates required no legal training, their competence to perform judicial duties was frequently attacked. It was largely for this reason that Governor Bourke acted to restrict their powers, and that J.H. Plunkett produced An Australian Magistrate in 1835 for their legal guidance. These innovations, however, apparently had a limited effect on magisterial decision making. The Atlas, probably reflecting the opinion of lawyer Robert Lowe, asserted that 'in ninety-nine cases out of every one hundred,

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Justices of the Peace know absolutely nothing of the laws which they are called upon to administer'. If in more moderate language, the same sentiment was often echoed by other colonial observers.

The absence of any legal requirements followed the example of Britain, where the only qualification for admission to the bench was based on property. In fact, the magistracy in Britain was at times subjected to no less harsh criticism than in New South Wales.

Nevertheless, as John McLaughlin points out, there are social and geographical reasons why the system was less satisfactory in the colony. The colonial magistracy largely lacked the habit of authority, personal bonds, and tradition of deference which characterized relationships in much of the English countryside. New South Wales' limited population ostensibly meant that JPs could not be selected with as great a discretion. Because of the colony's dispersed

population, JPs in the interior were also exempt from some of the checks on magisterial abuses which existed in England. In many districts there was no local press to report legal irregularities. Nor were lawyers scattered enough to influence the judicial proceedings of remote benches. Furthermore, distance and impediments to communication made it difficult to appeal against the decisions of rural magistrates.\(^{13}\)

The relative autonomy of many magistrates, made their impartiality all the more questionable. Although JPs were prohibited from acting in cases involving their own servants, most were employers of labour. In relation to cases involving convicts, there were obvious reasons why magistrates would be expected to show greater sympathy towards their fellow landholders. As one justice of the peace observed:

> It is the feeling of doing as you would be done by - of punishing another man's servant in the way in which you would wish him to punish yours; that is with the severity with which every man regards an offence against himself.\(^{14}\)

This same feeling could affect the magistracy's dealings with other workers so that, according to Attorney-General Plunkett, it could not be expected that free servants would be any more satisfied at being brought before the bench than convicts.\(^{15}\) Whether intended or not, contemporaries often noted, magistrates were prejudiced towards their

\(^{13}\) Atlas, 22 March 1845, p. 194; People's Advocate, 30 June 1849, p. 1; Bathurst Free Press, 22 March 1851, p. 4; Bell's Life, 16 September 1854, p. 2; Evidence of Alfred Stephen to the Select Committee on the State of the Magistracy, NSW, V&PLA, 1858, vol.2, p. 121; Harris, Settlers and Convicts, p. 228.


\(^{15}\) LC, SMH, 25 October 1843, p. 2.
own class and interested parties in dispensing justice.  

Criticism of the magistracy's objectivity was most vocal in relation to their administration of the Masters and Servants Act. As initially passed in 1828, servants summarily convicted under the Act of offences such as neglect of work or absenting themselves before fulfilling a contract, could be imprisoned for up to six months. In addition they could be compelled to forfeit all wages due. Servants who destroyed or lost any property entrusted to them were required to pay double the value of the property or in default spend up to six months in prison. These provisions applied only to servants employed on farms and estates, and engagements for time, but a new Act in 1840 was expanded to encompass servants under engagements generally. At the same time, the maximum penalties servants were liable to were reduced from six to three months imprisonment. Although the Act was further amended in 1845 and 1847, the penal clauses remained substantially the same until 1857. The administration of the Act appeared prejudicial not only because most

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16 See for example Australian, 1 October 1840, p. 2; 'One Who Was Once Better Off' to Editor, People's Advocate, 25 May 1850, p. 6; Stewart Marjoribanks Mowle, 'Journal in Retrospect', 18 April 1848, (typescript), ANL, MS. 1042, p. 28; Evidence of Robert Owen, Alfred Stephen, and Edward Deas Thomson to the Select Committee on the State of the Magistracy, NSW, V&PLA, 1858, vol.2, pp. 115, 122, 171; Evidence of T. Garrett to the Select Committee in Reference to the Unpaid Magistracy, NSW, V&PLA, 1861, vol.1, p. 917.

17 [Colony of NSW] 9 Geo. 4, No. 9, sec. 1, 3.

18 [Colony of NSW] 4 Vic., No. 23, sec. 2, 4, 7. See also Gipps to Russell, 1 January 1841, HRA, ser.1, vol.21, p. 152.

JPs were drawn from the ranks of employers, but because servants had little recourse against their decisions. The high costs of an appeal, the time and expense of travelling to a superior court, and the frequent necessity of obtaining a lawyer's services, virtually prohibited the less affluent from seeking another hearing.20

As a select committee in 1858 underlined, the magistracy's impartiality was questioned on more general grounds as well. Leaving aside cases involving labour relations, their connections in often small communities meant that their judgements might easily be swayed by associates, family, or business. The supervisory capacity they exercised over the police, and hence their role in apprehending suspects, was calculated to give them more than a passing interest in prosecutions. Since they heard one party's story before issuing a summons or warrant, they might become prejudiced against the defendant. They were also susceptible to political influences, especially since their duties included revision of the electoral rolls. Within two years after the introduction of responsible government the commission of the peace was increased by fifty per cent, and it was alleged that many appointments were based on political considerations.21

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In general, however, censure of the magistracy focussed less on their incompetence and prejudices, than their inaccessibility and neglect of duties. As in the case of the superior courts, colonists frequently protested that the distance between benches placed them virtually beyond the pale of the law. Although new courts were periodically created, the pattern of settlement and slow transport precluded easy access to JPs in many areas. Courts of petty sessions were not established beyond the boundaries of location until 1847. Before that date settlers were compelled to travel to the nearest bench within the settled districts, or await the irregular visits of commissioners of crown lands. Even after the introduction of petty sessions, settlers were still often required to travel immense distances. For instance, residents of the Darling Downs and Gwydir district protested in 1857 that the average distance to the nearest court of summary jurisdiction was 130 miles.22

Still more galling was the fact that after travelling great distances, persons often had their cases postponed because the local JPs failed to appear at court. Attorney-General Plunkett stated his belief that:

parties have come a distance of thirty or forty miles, not only once, but twice or three times, to get their cases decided, and found no Bench. They lose their time, they lose their money, and probably the loss is so great that they do not ask a decision at all.23

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In some districts an insufficient number of magistrates served to prevent cases being heard. Residents of Murrurundi, for example, urged the necessity of appointing a police magistrate because there was only one magistrate in the district, and he was in ill-health. As a result, they were compelled to travel fifty miles to Scone in order to obtain justice. The commission of the peace was not significantly expanded until the advent of responsible government, when under Charles Cowper's ministry tradition was broken by including professionals and tradesmen as well as large landholders. Nevertheless, in 1861 it was asserted that while magistrates in the cities had increased, their numbers in country areas had actually declined through resignations and departures.

More often, judicial efficiency was hindered not so much by a scarcity of magistrates, as an apparent abdication of responsibility on the part of those appointed. Complaints that local JPs ignored their judicial duties were legion. Magistrate's bench books and newspaper reports suggest that in most districts only one or two justices of the peace regularly attended court. At Muswellbrook during 1841, for example, Francis Allman Jr and David Cox Scott were the only JPs who heard cases with any regularity. Although seven

24 Petition of the Inhabitants of Murrurundi, enclosed in Scone Police Office to Col Sec, 4 May 1847, Col Sec, Letters Received, SANSW, 4/2779.1.
25 Powell, Patrician Democrat, p. 133.
other magistrates appeared at least once during the year, all but two sat on the bench five days or less.\textsuperscript{28} Similarly, in the Illawarra district it was reported that between March 1848 and June 1849 only two of the district's then JPs attended the bench with the exception of general licensing day.\textsuperscript{29}

The non-attendance of magistrates meant that courts were often held at infrequent and irregular intervals. Even when court was convened, cases requiring the presence of two JPs, such as those under the Masters and Servants Act, were frequently postponed through the want of a second magistrate.\textsuperscript{30} For instance Robert Horne, first brought before the Warialda bench in October 1851 for absconding from his hired service, was not actually tried until December due to the absence of a second JP.\textsuperscript{31} At Parramatta between March 1849 and March 1850, only one magistrate attended the bench on 94 days, out of a total of 187 days on which cases were heard.\textsuperscript{32} As Table 13 suggests, based on bench books in which the JPs attending were recorded, the presence of a second magistrate in less populous districts was often more uncommon.

\textsuperscript{28} Compiled from Muswellbrook (Merton) Bench Books, January-December 1841, SANSW, 4/5601-5602. Of those benches cited in Table 13, Kiama was the only district where more than one or two magistrates attended sessions over fifteen days during the year. At all of the benches except Kiama and Warialda, one-half or more of the magistrates appearing during the years indicated, served on the bench five days or less. This excludes JPs who did not appear during the year at all.

\textsuperscript{29} People's Advocate, 30 June 1849, p. 3; 26 January 1850, p. 6.

\textsuperscript{30} See for example SMH, 5 March 1842, p. 3.; Bathurst Free Press, 26 April, p. 4; 10 May 1851, p. 6; Col Sec to Police Magistrate, Wollombi, 22 July 1841, Col Sec, Letters Sent, SANSW, 4/3847; J. Buchanan to Chief Commissioner of Crown Lands, 2 February, 1 March, 29 May 1857. Copies of Letters Sent to Officers and Private Individuals from Assistant Gold Commissioner, New England, Gold Commissioners, SANSW, 4/5475.

\textsuperscript{31} Warialda Bench Book, 2 October, 6 November, 4 December 1851, SANSW, 4/5679.

\textsuperscript{32} Compiled from Parramatta Bench Book, 20 March 1849-30 March 1850, SANSW, 4/5613.
### TABLE 13 Magisterial Attendance at Various Country Benches During 1831, 1841, 1851, and 1861

<table>
<thead>
<tr>
<th>Number of Magistrates Present</th>
<th>One JP</th>
<th>Two JPs</th>
<th>Three or More JPs</th>
<th>No Information</th>
<th>Total Days Court was Convened</th>
</tr>
</thead>
<tbody>
<tr>
<td>Picton 1831</td>
<td>64</td>
<td>6</td>
<td>1</td>
<td>71</td>
<td></td>
</tr>
<tr>
<td>Port Macquarie 1831</td>
<td>86</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td>104</td>
</tr>
<tr>
<td>Muswellbrook 1841</td>
<td>66</td>
<td>26</td>
<td>5</td>
<td>3</td>
<td>100</td>
</tr>
<tr>
<td>Picton 1841</td>
<td>8</td>
<td>22</td>
<td>3</td>
<td></td>
<td>33</td>
</tr>
<tr>
<td>Yass 1841</td>
<td>45</td>
<td>8</td>
<td>2</td>
<td></td>
<td>55</td>
</tr>
<tr>
<td>Armidale 1851</td>
<td>49</td>
<td>5</td>
<td>1</td>
<td></td>
<td>56</td>
</tr>
<tr>
<td>Mudgee 1851</td>
<td>36</td>
<td>8</td>
<td>1</td>
<td></td>
<td>44</td>
</tr>
<tr>
<td>Warralda 1851</td>
<td>11</td>
<td>6</td>
<td>2</td>
<td>1</td>
<td>20</td>
</tr>
<tr>
<td>Balranald 1861</td>
<td>20</td>
<td>5</td>
<td>3</td>
<td></td>
<td>28</td>
</tr>
<tr>
<td>Kiama 1861</td>
<td>7</td>
<td>7</td>
<td>33</td>
<td></td>
<td>44</td>
</tr>
<tr>
<td>Tenterfield 1861</td>
<td>18</td>
<td>8</td>
<td></td>
<td></td>
<td>26</td>
</tr>
</tbody>
</table>

One reason cited for the magistracy's lethargy, and one which further distinguished them from their English counterparts, was the absence of a leisured squirearchy with a tradition of public service. A select committee of the Legislative Council concluded in 1839 that:

There is a marked distinction between a newly found Society, thinly scattered over a wild and unimproved Country and all necessarily engaged in the active pursuits of life, and the mother-country possessing in great numbers men of wealth, and leisure, and ready to devote their time and talents to Public objects. In this Colony, as in all new Countries, there are no men of leisure.

The same distinction was drawn by Judge Roger Therry twenty years later. He believed the greatest impediment to the administration of justice by the magistracy was the absence of a county gentry 'having nothing to do, as in England'.

To some extent magisterial neglect can also be attributed to the distance many justices of the peace resided from the courts. At Bathurst, for example, it was reported that all but one of the district's magistrates lived too far away from the settlement to make the journey conveniently. In at least one respect Bathurst was more fortunate than many other districts, since it had a resident police magistrate. Petitions for the appointment of stipendiary magistrates on the grounds that unpaid JPs lived too far from the bench to perform their duties

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35 Evidence of Justice Therry to the Select Committee on the State of the Magistracy, NSW, V&PLA, 1858, vol.2, p. 110. See also for example Mr Meston's Address, LC, SMH, 13 February 1861, p. 4.
36 Evidence of John Street to the Committee on Police and Gaols, NSW, V&PLC, 1839, vol.2, pp. 284-5; SMH, 25 June, p. 3; 5 July 1850, p. 2.
effectively were fairly common. But even in Sydney the inactivity of men appointed to the commission of the peace was a matter of incessant comment. During the year ending September 1852, forty of the district's sixty-eight magistrates never appeared at the Police Office. Although the press persistently expressed views to the contrary, many justices of the peace apparently regarded their appointment primarily as a titular honour.

As the preceding discussion suggests, the most common means urged for improving the day-to-day administration of justice was the appointment of salaried police magistrates. During 1860 alone a dozen locations forwarded petitions or applications to the colonial secretary requesting the appointment of a stipendiary magistrate.


38 See for example Sydney Herald, 3 December 1835, p. 3; Australian, 14 December 1835, p. 2; 28 March 1840, p. 2; SMH, 21 January 1842, p. 2; 19 February 1849, p. 2; 14 January, p. 2; 29 April 1850, p. 2; 11 November 1851, p. 2; People's Advocate, 28 September 1850, p. 7; Empire, 5 June 1851, p. 510; Evidence of Captain David Frederick Charles Scott to the Select Committee on the Management of the Central Police Office, NSW, V&PLA, 1862, vol.2, p. 409.


40 See for example Australian, 28 March 1840, p. 2; SMH, 21 January 1842, p. 2; 29 April 1850, p. 2; Evidence of Justice Therry to the Select Committee on the State of the Magistracy, NSW, V&PLA, 1858, vol.2, pp. 106-7; Report from the Select Committee in Reference to the Unpaid Magistracy, NSW, V&PLA, 1861, vol.1, p. 897.

41 Report from the Select Committee in Reference to the Unpaid Magistracy, NSW, V&PLA, 1861, vol.1, p. 898.
New South Wales' first police magistrate was appointed at Parramatta in 1825 by Governor Brisbane, and by 1840 there were twenty-six stipendiary magistrates in the colony. Following the introduction of a partially elected Legislative Council, however, their numbers were radically reduced. Between January 1842 and December 1843 seventeen police magistrates were removed from office, and by 1846 only seven of the colony's forty-one benches had stipendiary magistrates. The Council refused to vote funds for the support of most police magistrates both as a measure of economy and opposition to Governor Gipps. It seems likely as well that country gentlemen resented their superintendence and impingement on their authority. Nevertheless, under public pressure their numbers were gradually increased during the 1850s, and the displacement of unpaid JPs by stipendiary magistrates continued into the twentieth century.

Although contemporaries frequently noted that there was greater confidence in the impartiality of police magistrates, at least some observers believed that the bonds they developed with neighbouring

42 Currey, 'Legal History of New South Wales', p. 262; King, 'Problems of Police Administration', p. 58.
43 Gipps to Stanley, 9 July 1844, HRA, ser.1, vol.23, p. 672; Gipps to Gladstone, 11 June 1846, vol.24, p. 89.
settlers and JPs left the administration of justice unchanged.  
The criteria used for selecting police magistrates could also be
rather dubious. Percy Simpson was appointed police magistrate for
Patrick's Plains in 1839 mainly because he had become a burden on
the surveyor-general's department. Governor Gipps on assuming
office found him nominally in charge of a depot at Parramatta which
was maintained solely for his employment. Having no alternative way
of employing Simpson, Gipps made him a police magistrate. The
appointment of police magistrates, however, did alleviate the most
pressing problem associated with the magistracy by ensuring that
someone regularly attended the bench. This was especially the case
from 1850, when police magistrates were empowered to act alone in
cases formerly requiring the presence of two or more justices of the
peace.

Magisterial attendance and the accessibility of the courts in
various districts no doubt exercised a profound influence on the number
and type of cases brought before the bench. The magistracy's composition
might affect the character of prosecutions, particularly since judicial
business was often left in the hands of one or two men. Thus at Penrith,
for example, the administration of justice was allegedly dominated by
the 'religious fanaticism' and 'straight-laced notions of morality'
entertained by the town's leading magistrate. Much more than in
relation to 'serious' crime, changes in police numbers and practices

48 Harris, Settlers and Convicts, p. 228; Evidence of T. Garrett to the
Select Committee in Reference to the Unpaid Magistracy, NSW, V&PLA,
1861, vol.1, p. 915.

49 Gipps to Stanley, 9 April 1844, Governor's Despatches, ML, A1233,
pp. 1635-55.

50 [Colony of NSW] 14 Vic., No. 43, sec. 29.

51 'Vox Legis' to Editor, Bell's Life, 20 June 1846, p. 1. See also for
example Bathurst Free Press, 22 March 1851, p. 4.
would expect to alter significantly the pattern of cases summarily tried. For all of these reasons, the offences brought before the lower courts reflected in large part the colony's machinery for social control.

Since returns of offences tried summarily in New South Wales were not systematically compiled until 1879, difficulties are posed in determining precisely what types of cases were brought before the magistracy. In relation to the period under study, the only comprehensive statistics available are for the early 1840s and irregular periods at mid-century. In both cases the returns were compiled at the request of Charles Cowper, possibly with a view to using them in the anti-transportation campaign. Their value, however, is minimized by the amorphous system of classification used. It is clear that drunkenness was the most common offence brought before the courts, making up about half of all cases during the period. The next largest group of offences were recorded under the heading 'other offences unspecified'. The proportion of cases in this category increased to nearly thirty per cent of all offences for the period between January 1850 and September 1851. After drunkenness, the largest number of specified cases were grouped in the varied category 'disobedience of orders, abusive language, and disorderly conduct'. The vague system of categorization used, as well as the limited period for which statistics were recorded, makes it difficult to gain more than some general impressions.


Rough Draft of a Paper on Criminal Statistics adapted to New South Wales, 31 July 1849, Col Sec, Letters Received, SANSW, 4/2868; LC, People's Advocate, 19 May 1849, p. 3; LC, SMH, 18 October 1851, p. 2.

There are more complete returns for cases of drunkenness than other offences. See Chapter 7.
Table 14 lists those offence categories (out of the total of sixty-two categories recorded) which comprised one per cent or more of the total cases dealt with summarily during the periods for which statistics are available. The most marked trend was a decline in cases of drunkenness during the early 1840s, which is discussed in Chapter 7. There was also a decline in offences aggregated as 'disobedience, abusive language and disorderly conduct', which presumably reflected a decline in convict cases, as did a decrease in persons illegally at large. As a proportion of all offences, cases under the Masters and Servants Act, threatening language, common assault and 'unspecified' offences showed the clearest increase following the cessation of transportation.

More detailed information concerning offences tried before the magistracy is provided by newspapers and magistrate's bench books, although neither source is entirely satisfactory. The press reported in detail only a small portion of the cases brought before the police courts. The emphasis was often on cases which offered a moral message for the lower classes. Alternatively, a tone of trivialization was frequently adopted. Testimony was recorded replete with Jewish, Irish, and Chinese accents. The antics of drunkards received special attention, and were often reported in a mock-heroic style epitomized

Since returns for 1841-1845 do not include cases dealt with at Hyde Park Barracks the number of convict cases is understated. An increase in this offence category in the 1850-1851 period might be attributable to the arrival of exiles, an increase in disorderly conduct cases, or the inclusion of obscene language cases which showed a marked increase in the 1850s.
<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No. %</td>
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<tr>
<td>Drunkenness</td>
<td>15,691</td>
<td>61.3</td>
<td>9,630</td>
<td>59.7</td>
<td>6,187</td>
<td>52.8</td>
<td>4,293 46.8</td>
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<td>Other Offences</td>
<td>2,441</td>
<td>9.5</td>
<td>1,520</td>
<td>9.4</td>
<td>1,212</td>
<td>10.4</td>
<td>1,042 11.4</td>
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<tr>
<td>Unspecified</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1,261 14.0</td>
</tr>
<tr>
<td>Disobedience, Abusive Language, and Disorderly Conduct</td>
<td>2,262</td>
<td>8.8</td>
<td>1,283</td>
<td>8.0</td>
<td>1,129</td>
<td>9.6</td>
<td>721 7.9</td>
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<td>Illegally at Large</td>
<td>1,469</td>
<td>5.7</td>
<td>528</td>
<td>3.3</td>
<td>332</td>
<td>2.8</td>
<td>237 2.6</td>
</tr>
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<td>Masters and Servants Acts</td>
<td>533</td>
<td>2.1</td>
<td>627</td>
<td>3.9</td>
<td>696</td>
<td>5.9</td>
<td>788 8.6</td>
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<td>Common Assaults</td>
<td>955</td>
<td>3.7</td>
<td>693</td>
<td>4.3</td>
<td>730</td>
<td>6.2</td>
<td>672 7.3</td>
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<td>Neglect of Work</td>
<td>490</td>
<td>1.9</td>
<td>414</td>
<td>2.6</td>
<td>226</td>
<td>1.9</td>
<td>95 1.0</td>
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<td>Rogues and Vagabonds</td>
<td>365</td>
<td>1.4</td>
<td>478</td>
<td>3.0</td>
<td>233</td>
<td>2.0</td>
<td>376 4.1</td>
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<td>Riot and Breach of the Peace</td>
<td>269</td>
<td>1.1</td>
<td>160</td>
<td>1.0</td>
<td>273</td>
<td>2.3</td>
<td>417 4.5</td>
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<td>Thefts and Larcenies</td>
<td>262</td>
<td>1.0</td>
<td>146</td>
<td>0.9</td>
<td>132</td>
<td>1.1</td>
<td>101 1.1</td>
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<td>Threatening Language</td>
<td>105</td>
<td>0.4</td>
<td>95</td>
<td>0.6</td>
<td>107</td>
<td>0.9</td>
<td>86 0.9</td>
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<tr>
<td>Wilful Damage to Property</td>
<td>32</td>
<td>0.1</td>
<td>51</td>
<td>0.3</td>
<td>46</td>
<td>0.4</td>
<td>49 0.5</td>
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<td>Total Offences</td>
<td>25,582</td>
<td></td>
<td>16,118</td>
<td></td>
<td>11,720</td>
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<td></td>
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<td>16,920</td>
</tr>
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</table>

by *Bell's Life in Sydney*. William a'Beckett, a leading temperance proponent later to become Victoria's first chief justice, complained of such facetious reportage, noting that the press would do better to analyze the moral decline of persons brought before the bench 'instead of winding up with a jest or something worse'. In one sense the press was interested in providing mass entertainment, but since gossip and ridicule were an effective deterrent to misbehaviour in a small community, it was also a potent instrument of social control.

Magistrate's bench books provide a more comprehensive view of offences summarily dealt with, but there are serious gaps in the surviving records. There are no bench books available for Sydney and many other populous districts for the period under study. Extant bench books usually cover only short periods of time, and vary widely in the amount of detail recorded about cases. It is possible that many cases went unrecorded, either through neglect or because they might prove embarrassing to the local JPs. Generally, the bench books include only a summary of the prosecutions brought before the bench and the court's judgement. Nevertheless, the bench books provide some broad impressions, as well as some rare glimpses of the community and the law in practice.

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56 For a selection of court reports from *Bell's Life* and the Empire see Charles Adam Corbyn, *Sydney Revels of Bacchus, Cupid, and Momus; Being Choice and Humorous Selections from Scenes at the Sydney Police Office, and Other Public Places, During the Last Three Years* (Sydney, 1854).

57 *Australian Temperance Magazine*, 1 July 1838, p. 11.

58 See Berger, *Invitation to Sociology*, p. 72.
A survey of the bench records makes it clear that offences involving assigned servants dominated the judicial business of the magistrates' courts during the 1830s. The defendants in about ninety per cent of the cases brought before the benches at Port Macquarie and Stonequarry during 1831, for example, were convicts under sentence. Similarly, of 378 cases brought before the Patrick's Plains bench between July and December 1835, all but fifty involved convicts in assigned service or government employment. Although this proportion later declined, extant bench books complete for the year 1841 indicate that convicts still made up the largest proportion of offenders, both in total numbers and relative to their proportion of the population. Of cases brought before the Muswellbrook bench, about forty per cent involved convicts under sentence, while they made up twenty-two per cent of the district's population. Over sixty per cent of the defendants in cases brought before the magistracy at Patrick's Plains, Picton (as Stonequarry was known from 1841), and Yass during 1841 were convicts in assigned service or road gangs, although they comprised less than twenty per cent of the population in all of these districts. As noted


60 Percentages are based on Muswellbrook Bench Book, January-December 1841, SANSW, 4/5602; Singleton (Patrick's Plains) Bench Books, January-December 1841, SANSW, 4/5662, 7686; Picton Bench Book, January-December 1841, SANSW, 4/5627; Yass Bench Book, January-December 1841, SANSW, 4/5703; Census of New South Wales, 1841. These percentages exclude cases in which the defendant's civil condition was unknown in order to compare them with population figures. Since for some benches the number of no information cases was substantial, the figures must be regarded as tentative.
in relation to offences tried before the superior courts, this owed much to differences in the sex and age composition of those originally transported and other colonists. More importantly, the large number of convict cases was indicative of the stringent and pervasive standards of discipline which they were subjected to. In 1841, over 19,000 convicts were still in assigned service, while following the abolition of assignment in that year the proportion of convict cases quickly diminished.61

While convict cases brought before the magistracy were overwhelmingly minor breaches of discipline, there were local variations in the types of misconduct most frequently prosecuted. Convicts charged with neglect of work made up one-quarter of all cases brought before the Port Macquarie bench in 1831, for example, but only ten per cent of the cases at Stonequarry, where persons tried for absconding or being absent without leave predominated. At Queanbeyan, thirty-one per cent of the convict cases dealt with during 1841 were for disobedience. During the same year one-tenth of all cases brought before the Yass bench were for losing or neglecting sheep, while such cases made up five per cent or less of those tried at Patrick's Plains, Muswellbrook, and Picton.62 There were also wide variations in the number of cases heard in various districts relative to the population. In the Patrick's Plains district for instance, there

61 Return of Convict Statistics, NSW, V&PLC, 1846, vol.2, p. 267. By the end of the year the number of convicts in assigned service was reduced to about 13,000. See Appendix 2.

were 160.5 cases per 1,000 inhabitants during 1841, compared to only 79.6 per 1,000 at Yass. These regional differences in offences prosecuted presumably reflected not only differences in population, but conditions of labour, settlers' attitudes, and the composition of the magistracy.

From the 1840s the most common offence category brought before the magistracy was drunkenness and/or disorderly conduct. This included a broad spectrum of activity. Persons charged with drunkenness ranged from John Mahan who was described as 'not beastly drunk but could not walk steady', to George Graw who was so intoxicated that he had to be taken to the watchhouse in a wheelbarrow. In a more serious offence Richard Bates, a Queanbeyan ticket of leave holder, was charged with drunkenness and disorderly conduct after he arrived at the hut of John Carney one night with a bottle of rum and terrorized his family. Carney testified that Bates came about midnight asking where Tom the settler lived, and then declared he would travel no farther. He forced his way into the hut, and threw himself on a bed where Carney's wife and children were sleeping. He later threatened to beat Carney with a stick and burn the house down before he fell asleep, obliging the family to spend the night outside. Disorderly conduct cases also included offences which were unrelated to alcohol abuse, and which were often vaguely defined. Margaret Critis was

63 Population figures refer to the police districts of Patrick's Plains and Yass, and are based on the Census of New South Wales, 1841.
64 Queanbeyan Deposition Book, 3 March 1841, SANSW, 4/5650.
65 Braidwood Bench Book, 22 July 1840, SANSW, 4/5516.
66 Queanbeyan Deposition Book, 22 December 1841, SANSW, 4/5650.
sentenced to fourteen days solitary confinement for 'disorderly conduct' after a constable discovered her in a room at Daffern's Inn wearing only a shift and with three men in various states of undress. Jane McTavish was charged with 'disorderly conduct in going about the country habited in male apparel'.

The number of petty offences prosecuted showed a marked decline during the early 1840s. The Australian boldly announced in 1842 that the declining number of minor offences was a striking proof that the general tone of moral and social feeling is rapidly improving, and that we may now justly claim to be considered not only a shrewd and intelligent community, but a well conducted community.

In reality, the decrease in petty offences largely reflected a decline in the number of convicts under sentence, and consequently a decline in cases resulting from infractions of convict discipline. The assignment of convicts to private settlers was ended in July 1841. Although convicts already assigned remained in private service until they became eligible for a ticket of leave or gained their freedom, all convicts were to be removed from service within the period prescribed by their original sentence. This measure prevented the possibility of masters forestalling their servants'

67 Ibid., 27 February 1841.
68 Yass Bench Book, 22 February, 4 March 1852, SANSW, 4/5704.
69 See Table 14, p. 236.
70 Australian, 16 November 1842, p. 2.
freedom by charging them with subsequent offences. At the same time, a massive reduction in police numbers following the cessation of transportation would be expected to cause a marked decline in the detection of petty offences.

While the number of cases summarily tried fell sharply during the 1840s, the abolition of transportation by no means created a vacuum in judicial business before the lower courts. Newspaper reports and magistrate's records suggest instead two features which were to become increasingly apparent by mid-century. First, as attention was diverted from the regulation of convicts, there is evidence of a growing concern with the community's moral standards in general. The Herald lamented in 1841 that it was 'really disgraceful' to see the number of young tradesmen who went parrot shooting on Sunday instead of attending church services, while others 'accompanied by numbers of dissolute females, betake themselves to boating, and sail up and down the harbour, singing lewd and obscene songs'. The same year toll fees were doubled for Sunday travelling, and this measure was followed by the appointment of a select committee to investigate the observance of the Sabbath.

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72 See Chapter 4, pp. 142-4.

73 SMH, 5 May 1841, p. 2.

74 LC, SMH, 17 June, p. 2; 24 June 1841, p. 2; Report from the Committee on the Shooting on Sunday Prevention Bill, NSW, V&PLC, 1841, pp. 269-72.
Although the committee's attempt to implement a general Sunday Observance Act was unsuccessful, a new Act prohibited shooting on Sunday for pleasure or profit. Sabbatarian legislation was symptomatic of a more diffuse effort to impose stricter standards of personal behaviour. Bell's Life went so far as to assert in 1846 that while proportionately there was less 'real crime' than in the United Kingdom, offences overlooked in Britain were in the colony 'tortured into crime'. Following the discovery of gold drunkenness, sly-grog selling, gambling, prize fighting, desecration of the Sabbath, and other evidence of 'immorality', rather than more serious offences, were the focal point of widespread anxiety.

A second feature which emerges is the community's litigiousness. Judge Burton's image of the population continually moving to and from the courts, if less than apt in relation to the higher tribunals, often seems relevant to the petty sessions. Despite regional variations in the types of convict misconduct most frequently brought before the bench, in all districts prosecutions often arose out of petty altercations or fits of pique. Thus John Hazel received seven days solitary confinement for allegedly making 'a noise like breaking wind' when his overseer chastised him about the speed of his ploughing. In another case, John Morris was sentenced to twelve months in an iron gang for rashly threatening his master after he criticized the dimensions of a haystack he was making. The colony's free inhabitants showed a similar

75 [Colony of NSW] 5 Vic., No. 6, Gipps to Russell, 16 October 1841, HRA, ser. 1, vol. 21, p. 555.
76 Bell's Life, 31 October 1846, p. 1.
77 See Chapter 9.
78 Singleton (Patrick's Plains) Bench Book, 4 March 1841, SANSW, 4/5562.
disposition to prosecute one another when their sensitivities were offended or when minor disputes arose. The alacrity with which apparently petty offences were prosecuted seems all the more striking in light of the incessant complaints made about the difficulties of initiating cases and the magistracy's conduction of business. In this context, it is significant that colonists appeared vexed more by magistrates' non-attendance than their incompetence.

Prosecutions for obscenity in New South Wales provide a case in point of both the enforcement of more stringent standards of personal behaviour, and the community's litigiousness. During 1843 and 1844 the first legal proceedings were instituted against obscene publications with the suppression of three Sydney tattle sheets, the Satirist, Omnibus, and Paddy Kelly's Budget. There were also occasional complaints made against the display for sale of indecent engravings and prints. In general, however, efforts to suppress obscenity were directed less against printed matter than against offensive public conduct. One of the more striking features of offences summarily tried during the early 1840s was the large number of cases for indecent exposure. Still more striking was an upsurge in obscene language cases at mid-century.

During 1841 there were 252 apprehensions by the police for 'exposure of person' in Sydney alone. Although there was a decline in such

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80 Roe, Quest for Authority, pp. 191-2; Molony, Architect of Freedom, pp. 45-6.
81 See for example SMH, 5 June 1844, p. 2; Atlas, 14 December 1844, p. 35.
82 Appendix to Report from the Select Committee on the Insecurity of Life and Property, NSW, V&PLC, 1844, vol.2, p. 387. This return excludes convict cases tried at the Hyde Park Barracks.
cases during the early 1840s, as in most petty offences, they remained common throughout the mid-nineteenth century. The large number of arrests for indecent exposure can be attributed in part to police practices. Since constables received a portion of the fines for convictions before 1850, it was in their direct interest to make as many apprehensions as possible. For the same reason doubts were sometimes raised as to whether the offence was actually committed.

The incidence of arrests also owed much to the broad definition of indecent exposure, which ranged from 'having connection' in a public place to bathing in Sydney Harbour within view of the government Domain.

Persons guilty of indecent exposure were usually liable to a fine, although harsher punishments were sometimes awarded depending on the nature of the offence. Andrew Gannon, a labourer, was sentenced to twelve months imprisonment at hard labour for allegedly following Anne Barker through the tap room of a public house with his pants down, while making lewd suggestions. At Maitland, a tailor named Michael Lester testified that he watched a man urinate on the verandah of the Mercury newspaper office, and then walk out into the street exposing himself, saying 'where is the bloody woman that will take 6 inches of this'. The offender, Owen Crusacle, was sentenced to three months hard labour in Maitland Gaol. These incidents serve to underline the crudity of some colonists, but they were by no means typical of the offences prosecuted.

83 See Chapter 8.
84 See for example Bell's Life, 25 January 1845, p. 2.
85 [Colony of NSW] 4 Wm. IV, No. 7, sec. 22; 2 Vic., No. 2, sec. 22.
86 Camden Bench Book, 2 May 1854, SANSW, 4/5528.
More often than not arrests for indecent exposure involved persons charged with 'making water in the street'. Some defendants were apparently too intoxicated to realize or care that they were committing an offence. Edward McCormick for example, was found lying drunk in one of Mudgee's streets with his trousers down. The arresting constable testified that 'he seemed to be easing himself, and then fell into it'. McCormick pleaded in his defence that he did not remember any part of the circumstances. Other defendants 'pleaded necessity', and complained of the lack of public toilets. Although public houses were required by law to provide facilities, their failure in this respect was believed largely responsible for offences against decency. As was often the case, this particular form of colonial 'immorality' was related to more fundamental social conditions. In England as well the streets were commonly used for bladder relief, for apparently the same reason.

At least in some quarters, the prevalence of obscene language was a matter of greater concern. The Sydney Gazette reported in 1839 that:

It is a matter of doubt which is the greatest evil in Sydney, the vice of drunkenness or the custom of vile swearing in the streets. Great as is the former evil it is in some respects less objectionable than the horrid oaths and obscene

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88 Mudgee Bench Book, 26 May 1854, SANSW, 4/5591.
89 See for example Empire, 6 March 1851, p. 3.
91 See Marcus, Other Victorians, p. 98.
language which is current in our streets among the lower orders, and so disgusting to all respectable persons, but more particularly so to those newly-arrived in the colony. 92

Similarly, C. Rudston Read later remarked that the habit of swearing and use of 'coarse low-life language' was the 'greatest vice' practiced at the gold diggings. 93 While most observers regarded drunkenness as a more serious social problem, the use of obscene language was commonly pointed to as one of the most palpable signs of widespread moral depravity in New South Wales. 94

Magistrates' bench books suggest that public concern about obscene language reached a peak in the years immediately following the discovery of gold. At Parramatta there were fifty-five prosecutions for obscene language during 1852, ninety-five the following year and over two hundred in 1854. Cases involving obscene language made up over ten per cent of all cases brought before the Parramatta bench during these years. 95 This phenomenon was not apparent in all districts, but it was far from uncommon. Prosecutions for obscene

92 Sydney Gazette, 29 August 1839, p. 2. See also for example Australian, 1 January 1839, p. 3; SMH, 21 July 1842, p. 2; 6 February 1850, p. 3; People's Advocate, 31 August 1850, p. 3.


94 See for example Backhouse, Narrative, p. cxxv; Haygarth, Recollections, p. 26; William Westgarth, Australia Felix; or, A Historical and Descriptive Account of the Settlement of Port Phillip, New South Wales: Including Full Particulars on the Manners and Condition of the Aboriginal Natives, with Observations on Emigration, on the System of Transportation, and on Colonial Policy (Edinburgh, 1848), p. 282; Fowler, Southern Lights, pp. 24-5; David Blair to Editor, Bathurst Free Press, 17 December 1851, p. 4; Evidence of James Hugh Palmer to the Select Committee on the Condition of the Working Classes of the Metropolis, NSW, V&PLC, 1859-60, vol.4, pp. 1347-8.

95 Compiled from Parramatta Bench Books, 1852-1854, SANSW, 4/5613-5615. See Table 15, p. 252.
language at Mudgee, for example, began to escalate at the end of 1853, increasing in number from five in 1851 to thirty-two in 1854.96 In the 'chaste village' of Camden, where there were only three obscene language cases between 1847 and 1851, the number increased to sixteen in 1852, twenty-five in 1853, and then declined to nineteen in 1854. Almost one-fifth of the cases heard before the Camden bench in 1853 involved charges of obscene language.97

While there are no extant bench books for many of the colony's larger population centres, the prevalence of obscene language cases is suggested by other evidence. At Bathurst, for example, it was not uncommon for obscene language cases to make up over one-third of the police office business reported by the local newspaper in the mid-1850s.98 A similar trend is suggested by returns of police apprehensions in Sydney for 1857 and 1859 (the only years available which distinguish obscene language as a separate offence category). During 1857 Sydney's police took 519 persons into custody for obscene language, and 581 persons during 1859. In both years apprehensions for obscene language made up over seven per cent of all arrests, and in 1859 obscene language was Sydney's most common offence after drunkenness.99

96 Compiled from Mudgee Bench Book, 1851-1854, SANSW, 4/5591.
97 Compiled from Camden Bench Books, 1847-1854, SANSW, 4/5527-5528.
98 See for example Bathurst Free Press, 26 April, p. 2; 24 May, p. 2; 31 May, p. 2; 11 June, p. 2; 14 June, p. 2; 25 June, p. 2; 16 July 1856, p. 2.
The proliferation of obscene language cases at mid-century owed much to a new Vagrancy Act passed in 1849. Following the Act's passage, magistrates in many districts expressed their intention of acting more vigorously to suppress obscene language. At the same time, police were encouraged to charge suspected drunkards with obscene language, since they could be subjected to more severe penalties under the Act. For instance, Mary Innis was arrested for a breach of the Vagrancy Act at Parramatta by a constable who overheard her say 'I don't care a Bugger', while she stood drunk at a street corner. Not infrequently, the obscene language in question was addressed to policemen by suspects after they were apprehended. Thus Mary Salsbury was charged with using obscene language to Mudgee's chief constable, who deposed that he found her lying drunk in front of a public house, and that when he lifted her up she told him 'to kiss her arse'.

As in the case of indecent exposure, the large number of apprehensions for obscene language can be attributed in part to the use of police discretion, or rather the lack of it. Under the Vagrancy Act persons convicted of using profane or obscene language 'to the annoyance of

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100 See for example People's Advocate, 5 January, p. 5; 9 February 1850, p. 5; SMH, 23 March, p. 3; 17 August, p. 2; 9 September, p. 2; 23 September 1850 (Supplement), p. 4; Maitland Mercury, 31 December 1851, p. 2. Although opposition to obscene language was most vocal immediately following the Act, the bench books suggest that the movement for its suppression spread gradually, affecting different districts at different times.

101 [Colony of NSW] 13 Vic., No. 46; People's Advocate, 9 February 1850, p. 5.

102 Parramatta Bench Book, 1 June 1852, SANSW, 4/5614.

103 Mudgee Bench Book, 13 September 1850, SANSW, 4/5591.
the inhabitants or passengers in any public street or place' were liable to a fine not exceeding five pounds, or in default, imprisonment for up to three months. The letter of the law was often enforced with what seems undue rigour. Prosecutions sometimes resulted from policemen overhearing domestic endearments. Mary Ann Fleming was charged with calling her husband a 'bloody bugger' in a public house, while Joseph Parfitt was accused of calling his wife a 'bloody leech or wretch' (the arresting constable wasn't sure which) in a public street.

Cases also arose of persons charged with using objectionable language in private homes, although the legality of such prosecutions was questioned. William and Margaret Bourke, for example, were fined twenty shillings each or a week in gaol for calling each other 'a bloody old bitch' and 'a bloody old bugger' as a constable passed their house.

Although less numerous, 'obscene' language cases included blasphemies as well. For instance, Thomas Dowan, an ex-convict, was sentenced to four days in Parramatta Gaol for using the expression 'Holy Jesus', and Elizabeth Sicwood was fined three pounds for swearing 'By the Bloody Holy Ghost' at Braidwood. In many cases the offensive language prosecuted was used in an idiomatic sense, rather than with any obscene or blasphemous intent. It seems that persons were commonly convicted for using words which were a normal part of their speech and an acceptable

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104 [Colony of NSW] 13 Vic., No. 46, sec. 7.
105 Parramatta Bench Book, 8 August 1853, SANSW, 4/5614.
106 Mudgee Bench Book, 8 December 1853, SANSW, 4/5591.
107 See Bell's Life, 7 September 1850, p. 2; SMH, 4 September 1850, p. 3; 'Lex.' to Editor, SMH, 12 March 1861, p. 3.
110 Braidwood Bench Book, 7 February 1856, SANSW, 4/5517.
mode of expression among certain groups.\textsuperscript{111}

Not only the police and magistracy, but private citizens were active in regulating this particular aspect of social behaviour. At Parramatta about one-half of the cases involving obscene language prosecuted between 1852 and 1854 were initiated by civilians.\textsuperscript{112}

At other benches the proportion could be much higher. Of thirty-seven prosecutions for obscene language undertaken at Maitland between July 1853 and March 1854, for example, only five were initiated by the police.\textsuperscript{113} Similarly, at Braidwood less than one out of every seven cases prosecuted between 1853 and 1856 were the result of police action.\textsuperscript{114} Table 15 gives a breakdown of obscene language cases brought before the Parramatta bench, where the number was particularly large and the records are more detailed than for most districts. As the table indicates, an increasing number of prosecutions were initiated by private citizens during the period for which records are available, and both men and women figured prominently as prosecutors and defendants.

Prosecutions for obscene language were generally precipitated by minor disputes. Business transactions figured occasionally in cases. John Coulter, a free immigrant, was charged by Andrew Payton, a publican, with calling him a 'bloody liar' in an altercation over Coulter's bar bill.\textsuperscript{115} In another case William Wright, a carpenter, accused an

\footnotesize{\begin{enumerate}
\item See Edward Sagarin, The Anatomy of Dirty Words (New York, 1962), pp. 33, 37; Paul R. Wilson, 'What is Deviant Language?', in Wilson and Braithwaite (eds), Two Faces of Deviance, p. 47.
\item Compiled from Parramatta Bench Book, January 1852-December 1854, SANSW, 4/5614-5615.
\item Compiled from Maitland Bench Book, July 1853-March 1854, SANSW, 4/5541.
\item Compiled from Braidwood Bench Book, January 1853-December 1856, SANSW, 4/5517.
\item Parramatta Bench Book, 4 January 1853, SANSW, 4/5614.
\end{enumerate}}
ex-convict named Michael Dagherty of using indecent language to himself and his wife when they approached him in the street concerning the length of time he was taking to repair an umbrella. Wright deposed that when asked when he intended to return the umbrella, Dagherty told him to bugger himself, slapped his bottom a dozen times, and told him to kiss it. When Wright's wife interjected that this was some language to use after keeping the umbrella so long, he retorted that 'she might go and fuck herself'.

TABLE 15 Obscene Language Cases Brought Before the Parramatta Bench, 1850-1854

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Notes: Records for cases tried during 1851 are incomplete. The large number of cases tried from 1853 in which the prosecutor is unknown is due primarily to the practice adopted of omitting their name when the defendant pleaded guilty. Frequently persons were brought before the bench for more than one offence. During 1854, for example, twenty-two defendants were tried in two cases, and six persons in three or more cases.

More commonly, the prosecutor and defendant were neighbours. For instance, Mary Delaney informed magistrates at Parramatta that when she went out on her verandah her neighbour, Sarah Ward, said to her in a loud voice that 'I was a whore from my cradle and that I had my belly up to my chin with a bastard'. Her testimony was confirmed by another neighbour, a watchmaker named William Dodd-Turner, who deposed that Ward also called him a 'humpy back wretch'.

In another case involving two women who lived next door to one another and who both kept small shops, Sarah Crump was summoned to the Maitland bench by Mary Glen for calling her 'a bloody whore and a bloody bitch' from her back gate. In some cases the offensive language was not even directly addressed to the prosecutor. Henry Sheriff Potter, a Braidwood innkeeper, charged a neighbour, Eleanor Holder, with repeatedly saying to her husband during a quarrel outside his house, 'why don't you go into that Bloody Melbourne Whore Mrs Potter'.

The number of men and women involved in cases of obscene language, both as prosecutors and defendants, was fairly evenly divided. The civil condition and occupation of parties were only irregularly recorded, but the social status of both prosecutors and defendants apparently cut across class lines. The large number of cases involving neighbours suggests that the social standing of the prosecutor and defendant was often comparable. At the same time, those involved in prosecutions ranged from members of the working class to justices of

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117 Parramatta Bench Book, 17 April 1852, SANSW, 4/5614.
118 Maitland Bench Book, 7 March 1854, SANSW, 4/5541.
119 Braidwood Bench Book, 12 October 1854, SANSW, 4/5517. Holder was prosecuted twice the following year for similar offences by the Potters; 5 April, 10 May 1855.
the peace. For example Catherine Hobbs, wife of a shoemaker, charged Ann McCarthey, an ex-convict, with using obscene language. At the other extreme, Jonathan Brown, who conducted Sydney's Waterloo Hotel, was charged by magistrate Major Lockyer with using profane language toward him during a dispute which arose over some ducks.

The avidity with which colonists prosecuted obscene language cases was indicative of a more general litigiousness which extended to other types of offences. The Australian observed that:

It really is surprising the spirit of litigation which prevails amongst the lower classes of Sydney. The same faces appear time after time to make their complaint of grievous and fancied injuries, which if passed by with a little forbearance, would soon be put a stop to; ... Nor have people when excited by those feelings any regard for that saving wisdom, by which alone they can improve their condition, but they eagerly throw away their money to the lawyers to manage their cases for them, and to the already tedious and heavy business of the Court is added the grandiloquent speeches and sparkling witticism of attorneys, who strive to make a case, appear of the most aggravated description, which a soft answer or a little forbearance might have altogether averted.

The 'trumpery' nature of threatening language cases, assaults, and similar breaches of the peace in particular was frequently commented upon by the Sydney press. On the grounds that frivolous cases arising from domestic squabbles and neighbourly quarrels were so numerous, the Herald went so far as to suggest that complainants failing to substantiate their charges should be subjected to punitive costs.

120 Parramatta Bench Book, 12 April 1852, SANSW, 4/5613.
121 Bell's Life, 14 February 1852, p. 3.
122 Australian, 26 September 1842, p. 2.
123 See for example Ibid.; Bell's Life, 29 November 1845, p. 1; 3 January 1846, p. 1; SMH, 12 January, p. 2; 22 August 1849, p. 2; 29 January 1850, p. 2; Empire, 28 August 1851, p. 95.
124 SMH, 15 October 1853, p. 4.
In country districts prosecutions for threatening language were fewer than those for obscenity, but almost all were initiated by private citizens rather than the police. At Maitland between July 1853 and March 1854, only one out of eighteen threatening language cases brought before the bench was instigated by a policeman. Similarly at Parramatta between 1852 and 1854, of twenty-seven cases in which the plaintiff was recorded, police prosecuted only two offences. As with obscene language cases, prosecutions for threatening language showed a marked increase from the early 1850s. As a percentage of all cases summarily tried, the proportion of threatening language cases increased from less than one per cent of all offences in 1841, to almost four per cent for the period between January 1850 and September 1851. Again as with obscene language cases, prosecutions for threatening language often appeared to be the outcome of minor disputes which assumed a seriousness out of proportion to the actual offence. Following a dispute over cutting timber for example, Margaret Faye was bound over to keep the peace toward George Colebrook, a boat builder, who charged her with threatening to 'dash his brains out' and throwing stones at him. In another case precipitated by a straying horse, Elizabeth Howe had Mary Belcher bound over to keep the peace for allegedly saying 'she would wring Howe's neck off'.

125 Compiled from Maitland Bench Book, July 1853-March 1854, SANSW, 4/5541.
126 Compiled from Parramatta Bench Books, January 1852-December 1854, SANSW, 4/5613-5615.
129 Sydney Gazette, 2 April 1840, p. 2.
Even in cases of assault, the resort to criminal prosecutions sometimes seems surprising. In a case accorded special seriousness by the Herald, John Corrigan, about ten years of age, was charged by Mrs Riley, described as 'a respectable looking female', with assault. Corrigan and Riley lived near one another, and on the morning of the alleged assault the boy entered the Riley's verandah while they were at breakfast. Mr Riley told the boy to go away and then bodily removed him from the house. Corrigan then threw some stones at the door, and later at Mr Riley when he left for work. Mrs Riley went outside to prevent her children from being pelted too. She deposed, 'the little rascal then went up to her, kicked her, and said he would kick her guts out'. Corrigan admitted kicking her clothes, but denied touching her person, which is not improbable considering female costume of the period. In another case Mr Strettles charged Mrs West with assault when her only offence consisted of spitting at him, and saying 'take that'.

The upsurge in prosecutions for obscene language and similar offences may be explained partly in terms of a demand for greater order. In dealing with nineteenth century crime in Massachusetts, Roger Lane offers this explanation to account for a statistical increase in drunkenness and similar misdemeanours which accompanied a decline in serious crime. According to Lane, a fall in 'real crime' permitted condoned standards of conduct to rise. As definitions of order changed, the machinery of social control was

130 SMH, 6 November 1851, p. 3.
131 SMH, 4 June 1851, p. 2.
extended to deal with offences previously overlooked. Urbanization also meant that behaviour which was acceptable in a more independent community required greater regulation. As a result, there was a 'progressive heightening of standards of propriety', and an 'increasing reliance on official law enforcement'.\textsuperscript{132}

This interpretation seems to adapt itself neatly to the case of New South Wales. From 1839 the colony's serious crime rate, that is offences tried before the superior courts, sharply declined. Although the number of police relative to the population declined during the same period, the cessation of transportation meant that their activities could be diverted from regulating the behaviour of convicts to that of the community in general. The colony's falling crime rate, the diminishing proportion of convicts in the population, and closer settlement, all interacted to create a greater sensitivity to offensive public conduct.

Within this context, growing concern with obscenity was symptomatic of changing definitions of acceptable behaviour. Concern with larrikinism during the period might be viewed in much the same light. Sydney's first larrikins, that is street gangs which specialized in harassing respectable citizens, were known collectively in the 1840s as the 'Cabbage Tree Mob'.\textsuperscript{133} They were so-called because the


\textsuperscript{133} See Sean Glynn, \textit{Urbanization and Australian History, 1788-1900} (Melbourne, 1970), p. 44.
distinctive larrikin trademark, or uniform, was a hat made from the leaves of the cabbage tree. Their activities ranged from street brawls, to baiting respectable passers-by, to fouling the seats in Hyde Park after dark.\textsuperscript{134} The appearance of larrikinism in the 1840s probably reflected not only a reaction against new standards of respectability, but the fact that the offensive behaviour associated with larrikinism was formerly regarded as less intolerable. Although N.D. McLachlan traces larrikinism at the end of the century partly to a convict tradition of anti-authoritarianism,\textsuperscript{135} this particular form of delinquency in the late 1840s possibly owed more to the sensitivities of colonists who anxiously scrutinized the rising generation for signs of convict contamination.

On the other hand, a 'heightening of standards of propriety' may only partly explain a phenomenon which is related to more complex social relations. Lane's interpretation refers to the widening ambit of police activities. But in New South Wales the number of obscene language and similar cases initiated by private citizens as opposed to the constabulary is particularly striking, and suggests that perhaps there was more involved than simply a greater demand for order. That individuals were willing to prosecute minor offences with such alacrity may only signify how deeply they assimilated new standards of behaviour. But this does not explain why such a large number of cases which might be regarded as no more than backyard squabbles should come before the magistrates.

\textsuperscript{134} James Sheen Dowling, 'James Sheen Dowling's Recollections of "Old Sydney", "Parramatta" and "The Hawkesbury" Including Windsor and Richmond', 1889, (typescript), ML, MSS. Ad 69-3, pp. 6-7; Mundy, Our Antipodes, p. 17; Alfred Stephen to Superintendent of Police, 2 May 1849, (xerox copy), Hyde Park Committee, ML, Document 2427.

The offending language used in some obscene language cases suggests that tensions between social and national groups at least occasionally underlaid apparently minor disputes. For example, John Yeats prosecuted Mrs Dick for using obscene language following a neighbourly quarrel. Yeats deposed that when he complained to Mrs Dick about her daughter taking a piece of wood out of his closet, she replied that her daughter was a decent child and not a bastard like his children. When Yeats's wife then ordered her away from their door, Mrs Dick called her 'a blineyed convicted bitch and said she was not sent out here by the expense of the Government and while she and her daughter were in bed my wife and Bastards were whoring about the Town'.

In an analogous case, Norah Cahill charged Judith Hyder with calling her a 'bloody Irish Immigrant Bugger' from her verandah. At Maitland the Campbell and Foran families figured in a series of obscene language and minor assault cases. Significantly, the first recorded altercation took place at the Catholic burial ground when John Foran reportedly called William Campbell 'a north of Ireland paleface bugger'.

Colonial prejudices obviously provide only a partial explanation of prosecutions. It is probable that the colony's convict origins exercised a more profound influence. In part, the penal system provided an infrastructure for widespread litigation. Despite complaints concerning the inaccessibility of courts and JPs, the

exigency of regulating convict labour resulted in a more developed legal system. The Reverend John Dunmore Lang, who was inclined to attribute the colony's pervasive spirit of litigation to the encouragement of the legal profession, also thought that emancipists were particularly likely to patronize lawyers in view of their past experience. More generally, the practice of taking assigned servants to court for the most minor infractions may have instilled a habit of resorting to the courts for settling personal and work related disputes.

At the same time, colonial litigiousness may have reflected the absence of a tradition for handling matters of inter-personal conflict. Large influxes of newcomers, especially after the discovery of gold, meant that many persons were relatively unacquainted with both their neighbours and local sanctions for settling differences. The fact that magistrates were willing to take cognizance of often highly personal cases provided further encouragement to litigation. At Parramatta, for instance, William Hopkins brought Joseph Thorpe before the bench after he discovered him in bed with his wife. Hopkins explained that when he asked Thorpe what he was doing, he knocked him down and made his escape. Thorpe was consequently fined twenty shillings for being 'illegally on his premises'. In another Parramatta case, Sarah Smith was sentenced to three months imprisonment after her husband complained that she was constantly drunk and threw things at him.

139 Lang, Historical Account, vol.2, pp. 230-1.
141 Ibid., 15 January 1853.
Perhaps most importantly, colonial litigiousness was indicative of concern with respectability. In part, this was related to more rigid standards of behaviour and a heightened sensitivity to disorder in the sense that Roger Lane denotes. But respectability also emerges as a product of social relationships. It is in relation to a 'competitive struggle' for social status that the prevalence of obscene language cases and similar offences seems most significant.\textsuperscript{142} The courts provided a means of settling quarrels and 'getting even'. They also afforded an official and public means of asserting one's own moral worth and status. By morally downgrading others before the magistracy, persons might increase their own chances of being regarded as respectable.

Another characteristic attributed to New South Wales' society, an inordinate passion for scandal and gossip, might be viewed in a similar light. This feature, like the colony's litigiousness, no doubt owed much to the community's small size and a lack of intellectual amusements.\textsuperscript{143} But gossip was also an obvious means, if an unconscious one, for asserting one's own morality, while undermining that of others. Sydney's scandal sheets, for which there was an apparent market, were probably rendered objectionable as much from their assault on upstanding citizens as their vulgarity. The \textit{Satirist}'s aspersions ranged from characterizing James Macarthur as 'the concentrated essence of "humbug"', to innuendo concerning the sobriety of temperance leaders.\textsuperscript{144} The suppression of Paddy Kelly's \textit{Budget} was called for on the grounds that its insinuations 'against

\textsuperscript{142} See Douglas, 'Deviance and Respectability', p. 6; Introduction, pp. 20-1.


\textsuperscript{144} \textit{Satirist}, 11 February, p. 1; 11 March 1843, p. 3.
the character of women whose reputations stand high' caused a
great deal of mischief. There was also the omnipresent concern
about the colony's image. The Herald insisted that such papers were
sent back to England to prove New South Wales' depravity.

The quest for respectability was heightened to some extent by
New South Wales' convict background. Governor Gipps noted that
the fear of being suspected of convict taint, acted 'in a wholesome
manner as a restraint'. The same fear could inspire attempts
to assert visibly one's moral superiority, and helps explain why
some observers believed that social rivalry and apeing of Britain's
middle classes reached almost absurd proportions. Even more
important in contributing to the scramble for respectability was
the similar background of most immigrants, and the degree of
social fluidity within the colony. The relatively even distribution
of financial resources among immigrants, along with opportunities
for social advancement, fostered competition for social status.
That prosecutions for obscene language frequently involved neighbours
is perhaps not surprising, since competition was presumably most
intense between persons of comparable social position. That prosecutors
ranged from magistrates to labourers may be some indication of the
pervasiveness of concern with respectability. The upsurge in obscene
language cases following the discovery of gold in particular, suggests

145 SMH, 27 February 1844, p. 2.
146 SMH, 19 April 1843, p. 2.
147 Report on the General State of the Colony, enclosed in Gipps to
148 See for example Louisa Ann Meredith, Notes and Sketches of New
South Wales during A Residence in that Colony from 1839 to 1844
(London, 1844), pp. 52-3; Marjoribanks, Travels, pp. 22-3.
a rush for respectability coincident with the new prosperity of many immigrants.

With reference to Sydney's Police Office, the Herald observed in 1853 that:

Perhaps there are few things that would strike the new comer in this colony, more forcibly than the number of the cases daily tried, the nature of them, and the interest manifested in them by a large concourse of idle people, who, in these busy times, ought to have something better to do. 149

The Herald's implication was not the degree to which immorality prevailed in the colony, but the community's propensity for legal proceedings. As other newspapers, it expressed both bewilderment and bemusement at the readiness with which those from humbler walks of life squandered their time and money on court proceedings. In contrast to the supposed prevalence of anti-authoritarianism, the working classes appeared far from inhibited in resorting to the police and courts, at least when it served their self-interest. Thus in spite of magisterial bias, clauses under the Masters and Servants Act for the recovery of wages were widely used by labourers. 150 Legislation ostensibly intended to improve morality could also be manipulated to serve other purposes, just as prosecutions for obscene language were frequently used to carry out private vendettas.

At the same time, the community's litigiousness reflected deep-seated social rivalry, and a preoccupation with social status. The frequent trivialization by the press of petty prosecutions brought before the magistracy overlooked the same litigious tendency of the upper classes who glutted the civil courts with law suits from early settlement. 151

149 SMH, 15 October, 1853, p. 4.
150 See Crowley, 'Working Class Conditions', pp. 296, 300.
and who could afford to stage their wranglings in a more dramatic manner before the superior courts. Even more emphatically than cases of obscene language, threatening language, and minor assaults, numerous prosecutions before the Supreme Court for libel and analogous offences indicated an intense concern with publically demonstrating one's prestige and moral worth. The courts served as a principal forum for delineating and reinforcing the boundaries of respectability and social status which so much preoccupied the community.
The question of drunkenness, so far as the mere discussion of it is concerned, is sufficiently easy. The thing is to be regarded in two aspects - as a vice, and also as a crime. If a man gets drunk quietly in his own home, he is simply vicious; if he appears drunk in the public streets, he is criminal too.\(^1\)

As New South Wales' most common crime and 'prevailing vice',\(^2\) drunkenness evoked more intense and persistent concern than any other offence brought before the magistracy. Some commentators blamed the availability of alcohol for undermining the efficacy of transportation as a punishment,\(^3\) while the Molesworth Committee reported that drunkenness in Sydney 'had attained its highest pitch'.\(^4\) Few accounts of the colony written during the first half of the nineteenth century fail to comment on the prevalence of intemperance. 'Drink, drink, drink,' one writer concluded, was New South Wales' 'universal motto'.\(^5\) Yet another temporary resident, drawing on the motif of Australia as a land


\(^3\) Backhouse, Narrative, p. lxxviii; Lang, Transportation and Colonization, Chapter 5; SMH, 17 July 1841, p. 2.


\(^5\) Byrne, Wanderings, vol.1, p.136.
of contrarities, asserted that, 'In fact, not to drink is considered a crime'.

While contemporaries perhaps exaggerated the extent of intemperance in New South Wales, there is little doubt that it posed a genuine social problem. A high incidence of drunkenness probably resulted from relatively favourable economic conditions and a frontier environment, rather than a vicious population. Perceptions of intemperance as the colony's greatest social evil did not, however, rest simply on its alleged prevalence or on moral principle. Opponents of drunkenness were more inclined to emphasize its social costs in terms of the colony's economic progress, public health, and serious crime. In these respects, drunkenness appeared to threaten the community. At the same time, the temperance cause played a largely symbolic role in reinforcing the respectability of its adherents. Although attempts to curb intemperance were varied, the most consistent approach to drunkenness was to treat it as a crime. This reflected in turn the apparent failure of alternative approaches, the failure of large segments of the population to accept temperance ideals, and popular perceptions of drunkards.

In delineating the causes of intemperance, contemporaries frequently noted the relatively prosperous condition of the working classes. In 1839 Edward Lockyer, a Parramatta magistrate, was typical in attributing drunkenness to 'the abundance of money, and the ease with which it is obtained'. Conversely, drunkenness was considered to be on the decline.

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6 Fowler, Southern Lights, p. 52.

7 Evidence of Edward Lockyer to the Committee on Police and Gaols, NSW, V&PLC, 1839, vol.2, p. 281. See also for example Evidence of John Dunmore Lang to the Select Committee on Transportation, PP, 1837, vol.19, (518), p. 265; Meredith, Notes, p. 58.
during the early 1840s, according to some observers, because of economic distress.\textsuperscript{8} The correlation between intemperance and economic conditions was even more emphatically pronounced following the discovery of gold in New South Wales. Fears that drunkenness was rapidly increasing in part stimulated the appointment of a select committee on intemperance in 1854. Witness after witness testifying before the committee stated their opinion that drunkenness was primarily due to the large quantities of money in the hands of diggers, the increased rate of wages, and the improved condition of workers.\textsuperscript{9}

The facility with which many contemporaries connected drunkenness with high wages is to some extent suspect. An assumption that workers squandered their money on drink was related in some minds to notions of the moral inferiority of the lower orders. The supposed intemperance of the working classes was also a convenient whipping boy for frustrations concerning the difficulty of obtaining cheap and docile labour.\textsuperscript{10} Nevertheless, the correlation between decreasing drunkenness in times of economic depression, and increasing drunkenness in periods of prosperity, gains support from other evidence.


To the extent that statistics for arrests are available, they lend some support to the correlation between drunkenness and economic conditions (see Table 16). During the depression of the early 1840s apprehensions for drunkenness, both in the district of Sydney and in the colony as a whole declined sharply. In 1841 there were 110 arrests for drunkenness per 1,000 inhabitants in New South Wales, while by 1845 the ratio dropped to 33 per 1,000. During the same period arrests for drunkenness also made up a diminishing proportion of all apprehensions by the police. Whereas fifty-two per cent of the persons apprehended in 1841 were arrested for drunkenness, the proportion declined to thirty-nine per cent in 1845.

**TABLE 16** Arrests for Drunkenness in the District of Sydney and New South Wales

<table>
<thead>
<tr>
<th>Year</th>
<th>Sydney Arrests</th>
<th>% of all Arrests</th>
<th>New South Wales Arrests</th>
<th>% of all Arrests</th>
<th>Arrests per 1,000 pop.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1841</td>
<td>7,710</td>
<td>60.4</td>
<td>16,501</td>
<td>51.5</td>
<td>110.3</td>
</tr>
<tr>
<td>1842</td>
<td>4,240</td>
<td>49.1</td>
<td>10,381</td>
<td>47.5</td>
<td>64.9</td>
</tr>
<tr>
<td>1843</td>
<td>3,289</td>
<td>45.7</td>
<td>6,865</td>
<td>39.4</td>
<td>41.5</td>
</tr>
<tr>
<td>1844</td>
<td>2,443</td>
<td>38.7</td>
<td>5,179</td>
<td>35.2</td>
<td>29.9</td>
</tr>
<tr>
<td>1845</td>
<td>2,786</td>
<td>40.1</td>
<td>6,007</td>
<td>38.7</td>
<td>33.1</td>
</tr>
<tr>
<td>1851</td>
<td>3,993</td>
<td></td>
<td>6,684</td>
<td>33.9</td>
<td></td>
</tr>
<tr>
<td>1852</td>
<td>4,842</td>
<td></td>
<td>8,036</td>
<td>38.6</td>
<td></td>
</tr>
<tr>
<td>1853</td>
<td>6,018</td>
<td></td>
<td>10,307</td>
<td>44.6</td>
<td></td>
</tr>
<tr>
<td>1857</td>
<td>4,012</td>
<td>55.7</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1859</td>
<td>4,386</td>
<td>56.8</td>
<td>9,419</td>
<td>28.0</td>
<td></td>
</tr>
<tr>
<td>1860</td>
<td>5,742</td>
<td></td>
<td>10,166</td>
<td>28.2</td>
<td></td>
</tr>
<tr>
<td>1861</td>
<td>2,903</td>
<td></td>
<td>6,195</td>
<td>17.3</td>
<td></td>
</tr>
</tbody>
</table>

Arrests for drunkenness both numerically and proportionately reached their lowest level in 1844, when wages fell to their lowest rate during the period.\(^{11}\) Apprehensions for drunkenness also showed a marked increase following the discovery of gold in New South Wales, although the upsurge in arrests was less striking than the decline which took place during the early 1840s. In 1851 arrests numbered 34 per 1,000 inhabitants, compared to 45 per 1,000 in 1853. A decline in arrests at the end of the decade also coincided with the colony's waning economic fortunes.

As with criminal statistics generally, statistics for drunk arrests are liable to a number of objections. Rates of arrest were affected by changes in the composition of New South Wales' population already outlined in Chapter 4. Even more than in the case of 'serious' crime, the number of arrests for drunkenness may reflect public concern and a community's machinery for social control, more than the actual incidence of the offence. Declining apprehensions between 1841 and 1845 were almost certainly affected by two changes in the police. The first was a substantial reduction in the constabulary between 1841 and 1845.\(^{12}\) A second change was the appointment of a new superintendent for Sydney's police in 1841. Whereas constables previously interfered with suspected drunkards indiscriminately, the new superintendent, William Augustus Miles, instructed constables not to take persons into

\(^{11}\) For fluctuations in wage levels see Crowley, 'Working Class Conditions', p. 243.

\(^{12}\) See Chapter 4, pp. 143-4. A decline in arrests for drunkenness in 1861 similarly coincided with a large reduction in the constabulary. Conversely, expansions of the police in Britain had a marked effect in increasing arrests for drunkenness and other minor offences. See Macnab, 'Crime in England and Wales', pp. 226, 244; Philips, Crime in Victorian England, p. 86.
custody unless they were unable to take care of themselves or were creating a nuisance. As Miles noted in 1844, a declining number of arrests did not prove there was less drunkenness, although he did consider that there was 'decidedly less'.

Following the gold discoveries, arrest statistics are perhaps an even more inadequate measure of the actual incidence of drunkenness. The relatively small number of arrests after 1850 compared to the early 1840s can be attributed largely to a further change in the police. Constables no longer received a portion of the fines for drunkenness, so there was less incentive to make arrests. On the gold fields a lack of prison accommodation and the distance of public houses from police offices also meant that most drunkards went unapprehended. In some cases where persons were found drunk in and around public houses, the publican was simply compelled to provide beds for them.

In addition to police practices, the number of apprehensions for drunkenness depended largely on the visibility of the offence. Changes in public drinking habits might radically affect the pattern of arrests. Sydney's police magistrate, James Sheen Dowling, thought that on the basis of men charged with ill-using their wives, many men never brought before the bench for drunkenness might be 'perfect sots at home'.

14 See Chapter 8, pp. 318-23.
It was suspected that drinking in private houses increased during the 1850s, which offers another possible explanation for the relatively small number of arrests compared to the early 1840s.

At the same time, there is no means of determining the actual number of persons arrested for drunkenness, since one person might be apprehended a number of times. What evidence is available suggests that the statistics are greatly swollen by multiple arrests of the same people. For example, of 1,061 persons committed at Darlinghurst Gaol for drunkenness during the first six months of 1854, twenty-nine per cent were committed more than once, and sixteen per cent were committed three times or more.\textsuperscript{17} James Dowling estimated that there were about fifty people apprehended on charges of drunkenness as often as once a month in Sydney, and some who were dealt with sixteen or seventeen times a year.\textsuperscript{18} Similarly, at Bathurst between 1850 and 1856, twenty people accounted for a total of 131 arrests for drunkenness. The sum of their criminal records, a couple of which extend back to 1848 and forward to the early 1870s, includes 441 offences, almost all of which were for drunkenness or related offences.\textsuperscript{19}

Statistics for alcohol consumption are perhaps a more adequate measure of drinking habits, and they reflect even more dramatically the colony's economic fortunes (see Figure 8). The amount of spirits on which duties were collected in New South Wales, both in terms of total

\textsuperscript{17} Percentages are based on Annexure referred to in Evidence of Alfred Stephen to \textit{ibid.}, p. 608.

\textsuperscript{18} Evidence of James Sheen Dowling to \textit{ibid.}, p. 537.

\textsuperscript{19} Compiled from Bathurst Register of Convictions, 1848-1877, SANSW, 7/91.
FIGURE 8  Per Capita Consumption of Spirits in New South Wales and the United Kingdom, 1838-1855
gallons and gallons per head of population, sharply declined in the early 1840s. As in the case of arrests for drunkenness, per capita consumption of alcohol appears to have reached the lowest level in 1844. Rising spirit consumption to 1847, a decline at the end of the decade, and then a large upsurge during the gold rushes, also coincides with fluctuations in wage levels. In 1855, as wage levels began to fall, consumption sharply declined. Furthermore, comparison between spirit consumption in New South Wales and the United Kingdom gives some credence to the colony's reputation for intemperance.

Again, however, these figures are open to criticism. Increasing consumption of alcohol does not necessarily indicate increasing drunkenness. Nor do mere consumption figures give any indication of what segments of the population are consuming spirits. There is no way of determining whether a reduction in alcohol consumption indicates a decrease in consumption by all drinkers, or only a portion.

Since the figures include only spirits on which duties were collected, they take no account of spirits smuggled into the colony or illicitly distilled. Especially in the early 1840s, changes in the duties imposed on spirits may have radically affected the consumption figures. In 1840 and 1841 duties on spirits were increased, a measure which according to Governor Gipps was calculated as much to check consumption as raise revenue. According to the Sydney Morning Herald, however, high duties encouraged illicit distillation, which aided neither temperance nor the revenue. It was further suspected that large scale smuggling


21 Governor Gipps's Address to New South Wales Temperance Society, SMH, 19 April 1841, p. 1; [Colony of NSW] 4 Vic., No.11, sec.1; 4 Vic., No.16, sec.1; 5 Vic., No.16, sec.2.

22 SMH, 28 November 1844, p. 2. See also 'Mercator' to Editor, SMH, 23 February 1861, p. 5.
was carried on, even by 'respectable' merchants. Governor Gipps as well attributed declining revenues collected on spirits during the early 1840s largely to an increase in smuggling and illicit distillation, although he also considered drunkenness to be declining. Towards the end of 1845 duties on spirits were substantially reduced, which might account for a reduction in smuggling and illicit distillation, and a consequent increase in spirits on which duties were paid.

There is also the possibility that spirits were not consumed at the time duties were collected. Particularly in periods of depression, declining imports might reflect more a change in commercial activities than a change in the demand for alcohol.

Comparison between consumption figures for New South Wales and the United Kingdom raises further problems. Rates of consumption would obviously be affected by differences in population composition, and in particular the disproportionate number of adult males in New South Wales. When consumption rates are expressed as a ratio to males, the disparity between spirit consumption in New South Wales and the United Kingdom is considerably reduced (see Figure 9). During the depression years of 1844 and 1845 per capita consumption in the colony even dipped below that of Britain. The gap would probably be narrowed even more if there was sufficient information to compare statistics for marriage and age distribution.

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23 See for example SMH, 23 June 1842, p. 2; Australian, 24 August 1842, p. 2.


25 [Colony of NSW] 9 Vic., No. 20, sec. 1. See also SMH, 15 November 1849, p. 2; 7 June 1851, p. 2.
FIGURE 9  Per capita Consumption of Spirits by Males in New South Wales and the United Kingdom, 1838-1855
The high level of spirit consumption in New South Wales might also be attributed in part to the relative scarcity of beer.  

James Macarthur considered New South Wales one of the most drunken communities in the world, but he also noted that the amount of spirit drinking was due largely to a want of beer, cider, wine, and 'other refreshing liquors'.  

There are no returns for beer consumption in New South Wales, but in the United Kingdom consumption of beer was high, reaching a peak during the period under study of 30.6 gallons per head in 1854.

Considered as a ratio of proof alcohol to volume, it was much more expensive to import beer than spirits. Imported beer retailed at about twice the price of the colonial product, while beer brewed in the colony was for many years limited both in quantity and quality. One observer in the 1850s claimed that colonial ale was not only inferior to imports, but 'decidedly unwholesome', producing such unpleasant side-effects as dysentery. The distance of many localities from breweries also meant that beer was more difficult and expensive to transport than spirits. In 1839 Yass's police magistrate, for example, attributed the absence of applications for

27 Macarthur, New South Wales, p. 62.
28 Wilson, Alcohol and the Nation, p. 332.
31 Lancelott, Australia, vol.2, p. 84.
wine or beer licenses in the district to its distance from Sydney. More and better beer only gradually became available with improved transport, technological advances in brewing, the establishment of breweries in country towns, and the development of large urban markets. In later years consumption of spirits decreased dramatically as beer consumption increased, a trend which was paralleled in the United States.

Despite these objections, the close correspondence between economic conditions and statistics for arrests and alcohol consumption, supported by literary evidence, suggests a definite pattern. Based on arrest statistics from 1870 to 1970, Peter Grabosky indicates that the relationship between economic conditions and apprehensions for drunkenness in New South Wales persists to the present. The correlation between increasing drunkenness in periods of prosperity and declining intemperance in times of depression is further supported by studies of other communities. Assuming that drunkenness was directly related to economic conditions, the prevalence of intemperance in New South Wales was perhaps most of all a reflection of the relative prosperity of workers.

The Sydney Morning Herald concluded in 1851 that thousands had 'too much money', and because they did not know how to use it, they spent it on drink. This was no doubt an over-simplification, but it perhaps contained an element of truth. As Brian Harrison notes, drunkenness may

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38 SMH, 22 March 1851, p. 2.
result not only 'from squalor, overwork, and underpay, but sometimes also from the possession of funds without an accompanying tradition which assures their constructive application'.

The relation between drinking habits and prosperity was reinforced by the conditions of a frontier community. The preponderance of males in Australia, particularly those without families placing demands on their wages, contributed to intemperance. Edward Willis, a magistrate at Geelong, considered that because of the scarcity of marriageable women in the district, 'the labourers have little inducement to settle or save money; but so soon as they receive their wages, in nine cases out of ten, they gather in public houses, and there spend their earnings'. Another observer suggested that a lack of savings banks in the interior, and hence a means of safely keeping money, encouraged many persons to dissipate their wages on drink. The lack of opportunity for labourers to acquire land was cited as a further reason why so much money was spent on alcohol. More generally, there was only a limited range of alternative consumer goods within reach of working class incomes to compete with alcoholic beverages, and few alternative places of amusement which could compete with the public house in occupying the leisure time of workers.

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44 See for example Evidence of James Sheen Dowling to the Select Committee on Intemperance, NSW, V&PLC, 1854, vol.2, p. 537; Bell's Life, 29 July 1854, p. 2.
In part, drunkenness might be viewed as a response to the rigours of colonial life. Alcohol was in one sense an obvious and available means of escapism. A desire for escape, A.E. Dingle suggests, may provide a further explanation of an early preference for spirits over beer. Among bush workers in particular, the isolation and monotony of their employment, as well as a lack of dependants, encouraged a tradition of 'work and burst'. In urban centres as well, the pub provided not only a focal point of social life, but often a refuge from crude housing. The Herald, during the same month in which it asserted labourers had too much money, noted that because of a housing shortage five or six persons were frequently forced to share a small room intended for one person. Apart from overcrowding, many working class dwellings were considered so unfit for habitation as to be 'past remedy without a general fire'. On the gold fields, public houses offered a similar resort for diggers who largely camped in tents.

At least one observer believed it was in the interest of squatters to encourage excessive drinking in order to ensure a cheap labour supply. The faster labourers wasted their money, the sooner they would return to work, and the longer they would remain servants. More generally,

45 Dingle, ""Truly Magnificent Thirst"", p. 16.
46 Ward, Australian Legend, p. 100.
47 SMH, 8 March 1851, p. 2.
however, the apparent correlation between drunkenness and wage levels added grist to arguments that drunkenness undermined labour discipline.

Employers were urged to support the temperance cause on the grounds that sober servants were more efficient and conscientious. Governor Gipps, patron to the New South Wales Temperance Society, explained that:

The want of labour is the cry throughout the land ... but not withstanding this great demand for labour, how much of it is lost through drunkenness? If a man gets drunk one day in a week he does not lose one day's work only, for, in addition to the operation of getting drunk, there is the operation of getting sober, and, if in addition to the actual loss of labour in this way, they took into further consideration the loss of persons to look after drunkards - the constables, the gaolers, and the scourgers - he thought he was justified in saying that at least one-third, probably one-half, of the productive energy of the Colony is destroyed by drunkenness.  

The appointment of a select committee of the Legislative Council to investigate intemperance in 1854, A.W. Martin suggests, was inspired largely by frustrations concerning the shortage and arrogance of labour.

Aside from its impact on the labour market, drunkenness appeared to threaten the colony's economic progress in other ways. The huge expenditure on foreign spirits, it was asserted, 'swallowed down' the colony's wealth and sapped its commercial interests.

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51 See for example Australian, 27 April 1841, p. 2; SMH, 28 April, p. 2; 29 June 1842, p. 3.

52 SMH, 19 April 1841, p. 1.

53 Martin, 'Drink and Deviance', especially pp. 358, 360.

54 Australian Temperance Magazine, 1 September 1837, p. 40. See also for example SMH, 3 July 1841, p. 2; Teetotaller, 10 May 1843, p. 1; Empire, 10 March 1854, p. 2.
with drunkards. It was feared that respectable immigrants might be discouraged by colonial intemperance, while those who arrived might be rendered useless. Because of the allowance of spirit rations on board ship and the monotony of the voyage, it was believed many immigrants became drunkards at sea. Those who arrived safely might be 'contaminated' by the colony's dissipated population. In view of the colony's large investment in immigrants, Judge Alfred Stephen informed the New South Wales Temperance Society that it was important that they should be kept sober not only to form a virtuous population, but because 'the consequences produced by the spirit trade had too frequently been the premature death of numbers of these immigrants, while others were punished for crime'.

As Judge Stephen's remark suggests, economic arguments against intemperance were further related to its impact on public health and the colony's crime rate. Contrary to popular notions that drink, at least in moderate quantities, was essential for health and stamina, opponents of drink emphasized its harmful physical effects. The

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55 See for example Teetotaller, 11 January 1842, p. 1; Mr Boniface's Address to Parramatta Total Abstinence Society, SMH, 9 April 1849, p. 3; Evidence of Reverend W.M. Cowper to the Select Committee on the Condition of the Working Classes of the Metropolis, NSW, V&PLA, 1859-60, vol.4, p. 1384.

56 Backhouse, Narrative, p. 514; Melville, Australia, pp. 100-1; Australian Temperance Magazine, 1 July 1838, p. 11; SMH, 28 April 1842, p. 2; Nadel, Colonial Culture, p. 51.

57 Evidence of Ernest Augustus Slade to the Select Committee on Transportation, PP, 1837, (518), pp. 63-4. See also for example Evidence of Archdeacon McEncroe to the Select Committee on Intemperance, NSW, V&PLC, 1854, vol.2, p. 565.

58 SMH, 17 July 1841, p. 2.

temperance press argued that alcohol was unnecessary for strenuous labour, afforded no protection against the weather, and in fact made the body more susceptible to injury. Under a column entitled 'Medical Testimony', the Australian Temperance Magazine provided a steady flow of extracts from medical journals, physicians' reports, and other testimonials illustrating the injurious properties of alcohol. To further underscore the point, a Sydney Total Abstinence Benefit Society, formed in 1841, claimed its members were healthier than any comparable group of men who were not teetotallers. Disease and insanity were among the consequences widely attributed to overindulgence in spirits, while more oblique references were made to sexual impotence.

Still more dramatic evidence concerning the deadly effects of alcohol was found in coroners' inquests, which provided the subject matter for another column in the Australian Temperance Magazine. According to the Temperance Advocate, which superseded the Magazine in 1840, the statistics of inquests furnished 'undeniable proofs' that eight-tenths of the deaths were caused by drunkenness. The statistics were a far cry from the Advocate's claim, but not unimpressive.

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60 See for example Teetotaller, 29 January 1842, p. 1; Australian Temperance Magazine, 1 September, p. 36; 1 November 1837, pp. 68-9.


63 Temperance Advocate, 11 November 1840, pp. 2-3.
Of coroners' inquests held in the district of Sydney during 1840, fifteen per cent of the deaths examined were attributed to intemperance, as were eleven per cent the following year. During 1853 alone coroners' inquests and magisterial inquiries determined that 205 persons in New South Wales died from drink. It was further claimed that these figures understated the proportion of deaths attributable to intemperance, since they did not include unknown deaths in distant parts of the colony, and because the juries at inquests sometimes leaned 'towards the morality and good points of deceased persons'. Nevertheless, the figures owed much to the imprecision with which causes of death were determined. Men who fell from their drays in a drunken stupor could be legitimately claimed as victims of drunkenness, but deaths 'occasioned by drink' also included a substantial proportion of suicides, and persons who died from diseases supposedly aggravated by intemperate habits.

Such drastic effects were attributed not only to excessive consumption of alcohol, but the types of alcohol consumed. Female convicts were believed to have a penchant for drinking their mistresses' cologne, and one may suspect that more injurious substances were sometimes resorted to when liquor was unavailable. It was further believed that drinkers were sometimes drugged or 'hocussed' by would-be robbers.

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64 SMH, 17 August 1842, p. 3.
66 Temperance Advocate, 9 December 1840, pp. 1-2.
67 Meredith, Notes, p. 77; Byrne, Wanderings, vol.1, p. 144.
68 See for example Harris, Settlers and Convicts, p. 50; Evidence of Francis Campbell to the Select Committee on Intemperance, NSW, V&PLC, 1854, vol.2, p. 552.
According to one Melbourne physician, thieves had only to blow tobacco oil from a pipe into the glass of their victim in order to render them insensible, and not infrequently permanently disabled.69 There was an even greater danger of being poisoned by a publican. It was allegedly common practice for publicans to doctor their stock in order to give it pungency after watering it down, or to stimulate the thirst of their customers.70 The suspected agents used to accomplish this ranged from tobacco juice to sulphuric acid.71 Judging from the number of lunatics he met on the gold fields, Charles Henry Green, gold commissioner for New South Wales' western district, concluded that only adulterated spirits could produce 'such frequent and fearful prostration of the powers of the mind'.72 There was, however, virtually no check on the practice. The law against adulterating spirits and beer was inoperative since there was no official either in Sydney or on the gold fields capable of analysing the stock of publicans.73

69 Port Phillip Gazette, quoted in Atlas, 25 March 1848, p. 158.

70 See for example Evidence of John McLerie and Archdeacon McEncroe to the Select Committee on Intemperance, NSW, V&PLC, 1854, vol.2, pp. 556, 565; Empire, 29 September 1851, p. 203.


If drink seemed to take a frightful toll on the colony's health, greater emphasis was placed on its relation to crime. Although contemporaries demonstrated a striking lack of consistency in delineating the sources of criminality, intemperance was widely acclaimed the 'parent of crime'. Public houses were generally thought to be the resort of criminals, while publicans and sly-grog sellers were frequently suspected of acting as receivers for stolen goods. More importantly, it was assumed that most offenders were either intoxicated when they perpetrated crimes, or that they committed offences in order to satisfy their appetite for liquor. Highway robberies, it was claimed, were usually perpetrated either to procure the means of purchasing rum, or to steal alcohol being conveyed to the interior on drays. Burglaries were inspired by spirits, while forgeries were committed by 'habitual drunkards of the more educated class'. Drunkenness was believed to be the exciting cause of murders, while stimulating prostitution and sexual assaults. A continuous stream of exemplary cases linking drunkenness to crime was provided by temperance newspapers. The connection between intemperance and more serious offences also provided the staple topic of addresses by judges from the bench.


75 See for example Backhouse, Narrative, pp. 156-7; Australian, 8 October 1840, p. 2; SMH, 19 April, p. 1; 17 July 1841, p. 2; Evidence of Alfred Stephen to the Select Committee on Destitute Children, NSW, V&PLC, 1854, vol.2, p. 200.

76 See for example Australian Temperance Magazine, 1 October 1837, p. 60; 1 December 1837, pp. 90-3; 1 May 1838, pp. 170-1; Temperance Advocate, 18 November 1840, pp. 2-3; 6 January 1841, p. 9; Teetotaller, 15 January 1842, p. 1; 3 May 1843, pp. 2-3.

77 See for example SMH, 17 April, p. 2; 22 October 1841, p. 2; 1 April 1842, p. 2; 21 May 1850, p. 2; 14 March 1853, p. 2.
The prominent role judicial officers played in the temperance movement served to reinforce the relationship between alcohol and crime. Before departing the colony in 1836, Chief Justice Francis Forbes chaired the first public meetings of the New South Wales Temperance Society. Other leading proponents of temperance included Supreme Court judges James Dowling, William Burton, Alfred Stephen, William a'Beckett, and Roger Therry, as well as Attorney-General John Plunkett and Sydney police magistrate Charles Windeyer. Involvement with the temperance cause may explain their preoccupation with drink as a source of crime, or it may be that their judicial experience impressed upon them the need for reform. In either case, law enforcement officials vied with each other in estimating the proportion of offences which could be attributed to drink. Chief Justice Alfred Stephen believed that three-fourths of the crimes committed sprang from drunkenness, while Attorney-General Plunkett considered the proportion to be four-fifths. John McLerie, as Sydney's superintendent of police, estimated that intemperance was the source of five-sixths of all crimes.

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78 Australian Temperance Magazine, 1 July 1837, p. 3. See also Roe, Quest for Authority, p. 168.


80 Temperance Advocate, 24 March 1841, p. 2. See also SMH, 28 April 1842, p. 2.

The tendency of contemporaries to attribute almost every form of crime to drink suggests that their generalizations should be regarded with scepticism. Their beliefs were frequently reinforced by prisoners who blamed alcohol for their downfall, but such professions are also suspect. Many persons tried for offences probably pleaded they were drunk for lack of a better defence, or in order to protect their self-image. Others may have believed that they would be dealt with more leniently, either by telling judges what they wanted to hear, or because they would not be considered responsible for their actions. Although legally drunkenness was not considered an excuse for crime, in instances where a defendant's intent was in question, such as cases of intent to murder or do grievous bodily harm, intoxication was taken into account as to whether persons were capable of forming any specific intent. Juries might also recommend prisoners to mercy or acquit them on the grounds that they were intoxicated when they committed an offence. Chief Justice Stephen thought it difficult to induce juries to convict persons when the offence was committed under the influence of alcohol.

While contemporaries probably over-emphasized intemperance as the 'parent of crime', their observations cannot simply be dismissed.

82 See Box, Deviance, pp. 230-1.
83 See J. Gordon Legge, A Selection of Supreme Court Cases in New South Wales, from 1825 to 1862 (Sydney, 1896), vol.1, pp. 797-9.
84 See for example Sydney Gazette, 27 February 1840, p.2; SMH, 8 October 1844, p. 2.
85 Evidence of Alfred Stephen to the Select Committee on Destitute Children, NSW, V&PLC, 1854, vol.2, p. 201.
Modern research continues to suggest a strong connection, if not necessarily a causal relationship, between drunkenness and more serious offences. This is particularly the case in relation to violent crime. The possible correlation between alcohol and crime suggests another way in which economic conditions may have affected New South Wales' crime rate, and in particular the incidence of violence. Gatrell and Hadden's analysis of Britain's criminal statistics for the nineteenth century indicates that arrests for drunkenness and assaults fluctuated in direct proportion to one another. They suggest that high wages and high employment led to a greater consumption of alcohol, which in turn contributed to a higher rate of violent crime.

New South Wales' conviction rate for murder and manslaughter exhibits no apparent pattern other than an irregular and long term decline. Convictions for serious assaults, that is assault cases tried before the superior courts, exhibit a trend similar to that for alcohol consumption during the mid-1840s and early 1850s, but the absence of a similar pattern for other periods makes any correlation extremely tenuous. Apprehensions for all assaults during the early 1840s, the only years for which comprehensive


87 Gatrell and Hadden, 'Criminal Statistics', p. 371.

88 See Figure 5, p. 175.
statistics are available, do show a trend similar to that noted by Gatrell and Hadden. Between 1841 and 1845 arrests for assault sharply declined, and as in the case of drunkenness, reached the lowest level in 1844 (see Table 17). The correlation between declining arrests for drunkenness and assaults, however, is rather dubious since arrests for most offences declined during the period. Furthermore, at least in relation to Sydney, this pattern must be qualified. While there was a sharp decline in arrests for assault between 1841 and 1843, the decline was due entirely to decreasing assaults on policemen. Apprehensions for common assault actually increased during the period. The implication of the statistics is that declining arrests for drunkenness simply meant that fewer assaults were provoked on the police.

**TABLE 17** Arrests for Assault in New South Wales and the District of Sydney, 1841-1845

<table>
<thead>
<tr>
<th>Year</th>
<th>Assault</th>
<th>Arrests per 100,000 Pop.</th>
<th>Sydney Arrests for Assault</th>
<th>Common Assault</th>
<th>on Police</th>
</tr>
</thead>
<tbody>
<tr>
<td>1841</td>
<td>1,688</td>
<td>1127.8</td>
<td>276</td>
<td>708</td>
<td></td>
</tr>
<tr>
<td>1842</td>
<td>1,302</td>
<td>814.3</td>
<td>362</td>
<td>289</td>
<td></td>
</tr>
<tr>
<td>1843</td>
<td>1,407</td>
<td>849.9</td>
<td>412</td>
<td>264</td>
<td></td>
</tr>
<tr>
<td>1844</td>
<td>1,301</td>
<td>750.3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1845</td>
<td>1,591</td>
<td>876.3</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The frequency with which assaults were precipitated by seemingly trivial disputes, is perhaps the most suggestive evidence of some correlation between drunkenness and the incidence of violence. In one case for example, James Barlow, a labourer at Parramatta, and his wife Catherine, were accused of attacking George Ringnose with a pen knife, tongs, a bar of iron, and a tomahawk. Both Ringnose and the Barlows were drunk, and the attack was apparently motivated by the victim's refusal to toss for half a pint of rum. In another case, a Goulburn woman was accused of shooting her husband during an argument over a bottle of brandy. Offences in which drink was actually the central issue in arguments were comparatively few, but court reports furnish abundant examples of cases in which alcohol apparently served to break down inhibitions to violence.

Drunkenness almost certainly affected the incidence of crime in another way. As Chief Justice Stephen noted, the drunkenness of victims frequently presented opportunities for crime which would not have otherwise existed. One man in Sydney for example, described as 'a respectably dressed tailor', was so drunk when walking along Sussex Street that he lay down, only to discover after coming to his senses that his watch was stolen. In a similar case, Charles Baker

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89 SMH, 16 January 1844, p. 2.
90 SMH, 15 January 1850 (Supplement), p. 3.
92 SMH, 28 February 1844, p. 2.
was observed walking around drunk before falling against a wall with enough force to knock him unconscious. A passer-by was later seen rifling his pockets, although Baker's impression was that he had been attacked before being robbed. According to the colony's attorney-general, the most frequent victims of robberies were drunken sailors or others 'reeling along the street', and intoxicated settlers coming from the country with their pockets full of money. On the gold fields in particular, idlers who hung about public houses robbing drunken diggers were considered a major menace.

As the preceding discussion suggests, the campaign to curb drunkenness in New South Wales consisted largely of publicizing the 'baneful' effects of drink. More direct, if rather fitful, approaches to suppressing intemperance were used as well. In 1839 a select committee of the Legislative Council, chaired by Anglican Bishop William Grant Broughton, recommended the prohibition of distillation in the colony. The committee considered that distillers did not make a substantial contribution to colonial agriculture, while from 'a moral point of view' such a measure was desirable as a first step towards the repression of drunkenness. This measure was never adopted, although

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93 SMH, 15 April 1851, p. 2.
94 LC, Sydney Herald, 6 July 1838, p. 2.
95 See for example Bathurst Free Press, 17 December 1851, p. 2; C. McAkings to J.H. Durbin, 30 June 1852, Copies of Letters to Officials and Private Individuals from Assistant Gold Commissioner, Nundle, Gold Commissioners, SANSW, 9/2696, p. 81; Evidence of Charles Henry Green to the Select Committee on the Gold Fields Management Bill, NSW, V&PLC, 1853, vol.2, p. 444.
as already noted, duties on spirits were increased in 1840 and 1841. Further legislation was passed to encourage the production of wine, largely with the hope that it might displace spirits as the colony's favoured beverage. For the same reason, colonial breweries received official encouragement from the early 1800s.

Official limitations on the number of public houses licensed was another means periodically urged for inhibiting intemperance. It was believed that a large number of pubs not only increased the temptation to drink, but that intense competition led to nefarious practices such as selling at unlawful hours and adulterating spirits.

The Sydney Morning Herald went so far as to claim that liberal licensing tended to drive the 'more respectable' publicans out of business.

Nevertheless, there were few constraints on the licensing of pubs. It was thought that strict limitations on licensing encouraged sly-grog selling, and from 1830 licenses were granted more or less on

97 [Colony of NSW] 7 Vic., No. 7; Gipps to Stanley, 1 January 1844, HRA, ser.1, vol.23, p. 284. See also Lang, Historical Account, vol.1, p. 420; Macqueen, Australia, p. 41; Australian Temperance Magazine, 1 April 1838, pp. 152-3; SMH, 22 December 1849, p. 2.


99 See for example Empire, 24 February, p. 2; 7 March 1854, p. 2; Evidence of John McLerie to the Select Committee on Intemperance, NSW, V&PLC, 1854, vol.2, p. 556.

100 SMH, 24 April 1849, p. 1. See also Bathurst Free Press, 6 December 1856, p. 2.
the 'free trade' system. Some observers considered that even provisions requiring applicants to furnish character references were of doubtful consequences. Chief Justice Alfred Stephen called the system 'a farce', asserting that the ease with which certificates of character were obtained could 'almost be termed a national vice'. Persons refused a license, or who suspected their application would be refused, could take a petition to any two magistrates, who in turn might recommend them to the governor for a publican's license.

While some colonists emphasized the necessity of limiting the number of public houses, others pointed to the need for counter-attractions to the pub. Although disassociating itself from total abstinence societies 'or any other foolery of the kind', Bell's Life admitted that drunkenness was 'the crying evil of the day'. This it believed was due largely to a lack of facilities for popular recreation, and recommended the establishment of mechanics' institutes. Similarly, the People's Advocate stressed the need for 'amusement and recreation of an innocent, intellectual, and healthful nature', such as reading rooms, libraries, and other social and intellectual societies.


103 Evidence of James Sheen Dowling to ibid., p. 540.

104 Bell's Life, 29 July 1854, p. 2.
This, it asserted, would do far more to suppress intemperance than 'all the penal legislation that can be devised', while the establishment of a debating society would do more to guarantee a town's morality than twenty constables. Yet another suggestion for attacking the drink problem was the improvement of housing, so that working men and women might take pride in their homes. George Nadel notes that many contemporaries viewed intemperance as a major reason for fostering the alternative of colonial culture.

The temperance movement itself provided an important counter-attraction to public houses, as well as a concerted campaign against drunkenness. The New South Wales Temperance Society held its first public meeting in 1834, and Sydney's first Catholic temperance society was founded the following year. In 1838 a Total Abstinence Society was established. It is difficult to assess the movement in terms of its following. Statistics of membership in the societies are few, and even when available are of questionable value. Membership in temperance societies fluctuated wildly, while many abstainers might not be affiliated with the movement. Since membership was often on a family basis, it is impossible to determine how many potential drinkers were involved.

105 People's Advocate, 21 July 1850, p. 7.
106 SMH, 22 March 1851, p. 2.
107 Nadel, Colonial Culture, p. 176.
108 See Roe, Quest for Authority, especially pp. 165-74, 187-90.
It is equally impossible to determine what impact temperance societies had on colonial drinking habits. Although some observers attributed declining drunkenness during the early 1840s partly to the influence of the temperance movement, their views may have been over-optimistic. The fortunes of the temperance movement, like that of publicans, apparently followed economic trends. By 1841 the New South Wales Temperance Society was heavily in debt, and the following year the society's newspaper was discontinued due to its increasing insolvency and general lack of support.  

This newspaper was followed by the Teetotaller, organ of the Total Abstinence Society, but it also proved a financial liability and managed to survive until September 1843 only through the gratuitous services of its editor. The temperance movement seemingly began to lose momentum at the same time that drunkenness appeared to decline.

The movement's fiscal difficulties were not the only problems which limited its effectiveness. Although temperance enthusiasts claimed that they embraced all sections of the community without political or religious distinctions, the movement was torn by divisions. Some societies were accused of aggravating community antagonisms. At Illawarra the use of Irish colours and insignias by the Teetotal Society was objected to as giving offence to Protestants and endangering the public peace. Temperance activities were often viewed with scepticism and jealousy by members of the clergy.

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110 SMH, 19 April 1841, p. 1; 28 April 1842, p. 2.
111 Teetotaller, 27 September 1843, p. 1.
112 See for example SMH, 16 April 1841, p. 2.
113 SMH, 25 November, p. 2; 9 December 1841, p. 2.
114 See Roe, Quest for Authority, pp. 180-3; Harrison, Drink and the Victorians, p. 179.
Church of England minister Alfred H. Stephen told the select committee on intemperance in 1854 that he objected to temperance and teetotal societies on the grounds that if religious bodies failed to promote temperance, other societies were of little use. Despite frequent protests to the contrary, there was also tension between constituents of the movement. Although a staunch supporter of the temperance cause, the Sydney Morning Herald ruthlessly attacked on occasion total abstainers. Teetotallers themselves were divided in April 1843, when members of the Australian Total Abstinence Society seceded to form a separate society.

The temperance movement frequently seemed less concerned with the reform of drunkards than confirming the morality of its members. As in Britain and America, drinking habits served as an important indicator of social status, and it was largely through the concept of respectability that the movement made its appeal. Leading light of the New South Wales Temperance Society, Reverend John Saunders, denied that it was in any sense a 'drunkards Society'. Although drunkards might be reclaimed 'if opportunity offered', its main purpose was to

116 See for example SMH, 6 July, p. 2; 8 July, p. 2; 20 July 1841, p. 2.
117 See Teetotaller, 6 September, p. 2; 27 September 1843, p. 3.
There was in fact generally a sharp distinction between those brought before the police court on charges of drunkenness, and the membership of temperance societies. Their meetings were almost inevitably described in terms of 'a dense mass of respectably dressed people', 'well-dressed tradesmen', the 'respectability' and 'moral worth' of the colony, with special attention to the large proportion of ladies present. Reverend W.B. Boyce, superintendent of the Wesleyan Church in New South Wales from 1846, thought that the majority of members in temperance societies were 'persons not likely to be intemperate under any circumstances'. The emphasis was primarily on setting an example, rather than actual participation in reclaiming victims of drink. 'Are not the labouring classes of every country', Reverend D.J. Dryer rhetorically asked a Bathurst temperance meeting, 'most powerfully influenced by the example of their superiors?'

One can probably assume that the drunkard was far less likely to come in contact with the temperance enthusiast than with the police. The constabulary formed the real front line against drunkenness, while the most consistent approach to intemperance was punitive. Convicts under sentence who were convicted of drunkenness could receive up to fifty lashes for a first offence, and ticket of leave holders could have their ticket revoked. Of tickets cancelled during

119 Australian Temperance Magazine, 1 July 1837, p. 10. Total abstainers or teetotallers, as distinct from temperance advocates, placed greater emphasis on reclaiming drunkards.


121 SMH, 12 April 1842, p. 4.
1838, 21.1 per cent were withdrawn for drunkenness and related offences. \textsuperscript{122} For free persons the standard penalty was a fine of from five shillings to one pound, or in default of payment, a short term of solitary confinement, work on the treadmill, or exhibition in the stocks. \textsuperscript{123} In 1849 the maximum fine for drunkards was increased to two pounds, while the alternative sentence of solitary confinement was increased from twenty-four to forty-eight hours. \textsuperscript{124} In the case of recidivists, the penalties could be multiplied by the number of their previous convictions. Thus for example, Catherine Doyle, described by the \textit{Herald} as 'a venerable drunkard', was sentenced to 184 hours in the cells, and another 'old Bacchanalian sinner' with sixteen previous convictions received 204 hours on the treadmill. \textsuperscript{125} Still more stringent penalties could be awarded under the Vagrancy Act, which permitted magistrates to imprison 'habitual drunkards' for up to three months. \textsuperscript{126}

The failure of such penalties to reform drunkards was frequently admitted. Some contemporaries believed that incarceration only made offenders more hardened towards their indiscretions. \textsuperscript{127} In its opening number, the \textit{Temperance Advocate} noted that compulsion and punishment seldom seemed successful, 'whilst persuasion, evidence, and especially example, operate with a force and efficacy calculated alike to reclaim and reform'. \textsuperscript{128} Attitudes toward the punishment of drunkards, however,

\textsuperscript{122} Compiled from New South Wales Government Gazette, 1838, vols. 1-2.
\textsuperscript{124} [Colony of NSW] 13 Vic., No. 29, sec. 62.
\textsuperscript{125} SMH, 2 November 1844, p. 2; 11 November 1842, p. 2.
\textsuperscript{126} [Colony of NSW] 6 Wm. 4, No. 6, sec. 2.
\textsuperscript{127} See for example \textit{Bell's Life}, 31 October 1846, p. 1.
\textsuperscript{128} \textit{Temperance Advocate}, 7 October 1841, p. 1. Advocate's emphasis.
even among temperance supporters, were equivocal. When questioned whether provisions for alternative recreations might not attract persons from the public house, Chief Justice Stephen, the most vocal temperance advocate on the New South Wales bench, believed such alternatives would prove useless. He suggested instead that persons convicted of drunkenness twice within six months should serve a long prison sentence at hard labour, while women convicted of a third offence within that time should have their heads shaved. The Teetotaller asserted that although penalties inflicted for drunkenness were more severe than anywhere else in the world, no amount of punishment would induce reform. But it recommended the still more penal measure of total prohibition.

At least during the 1830s, the necessity of treating drunkenness primarily as a crime was linked with the colony's convict origins. When two women were accused of causing the death of their children through habits of intemperance in 1839, the Sydney Gazette editorialized

Evidence of Alfred Stephen to the Select Committee on Intemperance, NSW, V&PLC, 1854, vol.2, p. 606. Stephen apparently changed his ideas in later years, asserting that the proper place for treating drunkards was not prison, but a sanitarium or 'hospital for inebriates'. He retained a belief, however, that the law could make men moral, and recommended more punitive legislation for dealing with illicit distillation, publicans, and sly-grog sellers. Alfred Stephen, Address on Intemperance and the Licensing System, Delivered in the Masonic Hall, on the 11th December, 1869 (Sydney, 1870), pp. 12, 20.

Teetotaller, 18 June 1842, p. 1.
that:

In other countries there exists a moral influence arising from the force of public opinion, which operates powerfully in restraining the spread of this devouring crime; but here the tone of society is hopelessly low, and nothing but the dread of punishment the law awards to the offender operates to prevent its regular indulgence.  

Long after transportation ended, however, a coercive approach to drunkenness was related to notions that a significant portion of the community was hostile to, or at least refused to accept, the ideals of temperance and abstinence. This was probably even more the case as the temperance movement lost momentum. Both the belief that drunkenness was mainly a moral failure, and an absence of alternative medical and welfare facilities, ensured that drunkards became primarily a police problem. The idea that drunkards should be punished also owed much to perceptions of who the victims of drunkenness were. James Sheen Dowling, as Sydney's police magistrate, characterized chronic alcohol offenders as

The lowest of the low - women of the town, barrowmen, and men with no fixed abodes or habitations, who get their livings casually; many of them weak and debilitated, and who get drunk with one or a couple of glasses of spirits.

A similar view of drunkards was given by Bell's Life in its descriptions of the Police Office.

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131 Sydney Gazette, 18 May 1839, p. 2.
132 See Gusfield, Symbolic Crusade, p. 70.
The morning of Monday presented a more formidable array of the devotees of the bottle than ordinary. Some thirty lugubriously looking bipedal specimens of both sexes, 'ranked all in a row' ... Bleared and besotted brutes, some with noses all awry, and dim occulars, set in rainbow tinted frames; some shirtless, shoeless; some struggling to ape the garb of respectability, but all bearing the foul stamp of degradation ...

One observer later recommended that such cases should be disposed of at the Police Office before nine o'clock in the morning, so that citizens might be spared the sight of them being escorted from the watch-house to face sentencing.

Perceptions of drunkards as drawn from the lowest segments of the community were in fact reinforced by discriminatory police practices. As Dowling informed the select committee on intemperance in 1854, persons who could pay the forty shilling fine for drunkenness were released from custody when sober, while others were charged publicly before the police court. This effectively excluded from the public's gaze those 'whose social position was above the common' and those who would be 'disgraced if called before the bench'. Before this practice was adopted, the arrest of otherwise 'respectable' citizens on charges of drunkenness was a major issue in generating hostility toward the police.

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134 Bell's Life, 27 January 1849, p. 3.
138 See Chapter 8.
'As with other aspects of New South Wales' moral character, it is questionable whether the colony deserved its reputation for drunkenness. At least some persons, if the exception, believed that drunkenness was no more visible than in English towns. Observers were often more impressed by the number of public houses in the colony than the number of drunkards. In this respect, however, New South Wales does not compare unfavourably with other communities. In 1821 there was one public house for every 349 inhabitants in New South Wales, while in the newly incorporated American city of Boston in 1823 there was a liquor licence for every 65 persons, excluding a large number of illegal sellers. In 1841 the ratio of pubs to population in Sydney was 1: 255, compared to 1: 117 in Glasgow, and 1: 108 in the English country town of Banbury. This is not to suggest that New South Wales was particularly temperate, but simply that the number of public houses in a community, like statistics of arrests and alcohol consumption, is a dubious index of its drinking habits. In Britain, after the Beer Act of 1830, the figures were bloated by a huge number of beer houses, while in New South Wales many pubs depended on the seasonal business of bush workers.

139 Charles Windeyer's Address to Temperance Society, Australian Temperance Magazine, 1 July 1838, p. 12; Mundy, Our Antipodes, p. 18.
140 See for example Meredith, Notes, p. 54; Byrne, Wanderings, vol.1, p. 136; Fowler, Southern Lights, pp. 51-2.
141 Freeland, Australian Pub, p. 204; Lane, 'Urbanization and Violence', p. 475.
142 The ratio for Sydney is based on SMH, 1 May 1841, pp. 2-3; Census of New South Wales, 1841. The figure for Glasgow is from Marjoribanks, Travels, p. 152. The ratio for Banbury is given by Harrison and Trinder, 'Drink in Banbury', p. 2.
It is likely that relatively high wages and frontier conditions in New South Wales did make drunkenness a more glaring social problem than in Britain. At the same time, concern about intemperance in the colony was heightened by fears concerning the availability and social mobility of labour, which became most apparent following the discovery of gold. More than any other crime or vice, drunkenness appeared to threaten colonists' two great obsessions - moral and material progress.

Contemporaries were by no means oblivious to the deeper implications of colonial drinking patterns in terms of New South Wales' social environment. A select committee on Sydney's working classes appointed in 1859 reported that many witnesses considered intemperance to be largely an effect rather than a cause of misery and discomfort, and recommended improvements in public education, sanitation, housing, recreational facilities, and more active sympathy from the upper classes. The committee could not refrain, however, from stating its belief that drunkenness was a prime source of the distress complained of, and recommending a more stringent licensing system. In general, it was expedient to attribute drunkenness to personal failure or the depravity of the 'lower orders'. While there was an increasing awareness that treating drunkenness primarily as a crime failed to make men moral, a punitive approach continued to reflect the paucity of alternatives for ameliorating both individual drinking habits and fundamental social conditions.

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143 See Chapter 9.

POLICE AND THE COMMUNITY

No Public Department in the Colonial Service has been so well-abused as the Police, whether of Sydney or the Country districts, and certainly no department so richly deserves it.¹

The police are only one mechanism for maintaining order within a network of social control, which ranges from religious organizations to recreational facilities.² As the most obvious law enforcement agency, however, as well as the most immediate link between the legal system and community, the police deserve special attention. In dealing with police-public relations in nineteenth century Australia, historians typically emphasize the existence of popular disrespect for the constabulary, and point to anti-authoritarianism inherited from a large convict and Irish population.³ Certainly there is strong evidence of contempt for policemen in mid-nineteenth century New South Wales.

¹ Heads of the People, 24 April 1847, p. 13.
But it is questionable to what extent antipathy to the police is traceable to inherent attitudes. Similar antagonisms were endemic to other communities during the period. Much of the antagonism toward the police can be attributed to the type of men who acted as constables, and in this respect low rates of pay rather than ingrained prejudice was the main impediment to recruiting suitable men. More importantly, well before the gold rushes police-public relations were undermined by constables' interaction with the community, and especially their enforcement of laws against relatively petty offences.

Evidence concerning the background of constables is slight, but it is possible to make some tentative generalizations. The Sydney force was composed largely of men drawn from those groups which are traditionally regarded as most antithetical to the police - Irish and ex-convicts. In 1839, 74.8 per cent of the Sydney police were from Ireland, and in 1846 the proportion was 69.7 per cent, with most of the remaining constables coming from England. Until at least the 1840s, police were also recruited largely from the colony's convict population. In 1839, 52.9 per cent of the police employed in the district of Sydney were ex-convicts and ticket of leave holders. This proportion, however, was quickly reduced in subsequent years. By 1844 ex-convicts made up 22.5 per cent of the Sydney constabulary, while only one ticket of leave holder was employed on the force. By 1850 it appears that only 13.8 per cent of Sydney's policemen were ex-convicts.  

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4 Percentages are based on Papers referred to in Evidence of Henry Croasdaile Wilson to the Committee on Police and Gaols, NSW, V&PLC, 1839, vol.2, p. 377; Return enclosed in W.A. Miles to Col Sec, 7 January 1846, Col Sec, Letters Received, SANSW, 2/8028.2; Colonial Secretary's Address, LC, SMH, 7 June 1844, p. 3; 'One of the Inferior Grade' to Editor, People's Advocate, 14 September 1850, p. 2. Since there was a high rate of turnover in the police, the returns represent only a sample for the years indicated.
From the mid-1840s the character of the police was perhaps more profoundly influenced by a large number of ex-soldiers than ex-convicts. Men appointed to Sydney's constabulary represented a wide range of former occupations, but by far the largest proportion were from the military. According to a return for 1839, 19.8 per cent of the force consisted of ex-soldiers, and in 1846 37.1 per cent. Of men appointed to the police during 1854, 31.2 per cent were former military men. The fact that the police force was staffed largely by Irish, ex-convicts, and ex-soldiers does not, of course, prove that these groups were particularly sympathetic to the police. It suggests rather that constables were recruited mainly from the most depressed groups in the community.

While information concerning the background of men serving as police in Sydney is fragmentary, there is a good deal of evidence which suggests that their general character was poor. Joseph Long Innes, as acting superintendent, told a committee of the Legislative Council in 1839 that men of good character were unwilling to join the force. As a result, it included many persons 'wanting both in mental and physical ability, and presenting an appearance at once ludicrous and disreputable'. The committee agreed, and concluded that generally the only men induced to join the police were the idle, aged, and sick. Although criticism of constables was somewhat less trenchant in later years, their quality in 1850 was still considered 'radically bad'.

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5 Percentages are based on Papers referred to in Evidence of Henry Croasdaile Wilson to the Committee on Police and Gaols, NSW, V&PLC, 1839, vol.2, p. 377; Return enclosed in W.A. Miles to Col Sec, 7 January 1846, Col Sec, Letters Received, SANSW, 2/8028.2; Returns of the Sydney Constabulary for 1854, Police, SANSW, 7/93.


7 Report of the Committee on Police and Gaols, ibid., p. 185.

The rate of turnover in police personnel was high, both because of dismissals and resignations. Between 1844 and June 1847 eighty-three men resigned from the Sydney force, and within the same period another eighty-two men were dismissed. During 1854 seventy men resigned from the Sydney police, two absconded, and another seventy-two were dismissed, when the entire force consisted of 179 men.

To some extent the large number of dismissals and resignations may be misleading. Based on a return of the Sydney constabulary for January 1846, it appears that a substantial number of police did serve at least several years. Although twenty-four per cent of the constables had served less than a year, fifty-five per cent had served one to five years, and twenty-one per cent six or more years.

It may be reasonable to assume that while the worst constables were dismissed, often the best men resigned. Since it was considered that many persons joined the police only as a temporary source of income while looking for another job, one may suspect that the better men were the first to find alternative employment.

According to Henry Croasdaile Wilson, who superintended Sydney's force from 1833 to 1839, a constable's weaknesses were easily exploited.

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9 Appendix referred to in Evidence of William Augustus Miles to the Select Committee on Police, NSW, V&PLC, 1847, vol.2, p. 64.

10 Compiled from Returns of the Sydney Constabulary for 1854, Police, SANSW, 7/93.

11 Percentages are based on Return enclosed in W.A. Miles to Col Sec, 7 January 1846, Col Sec, Letters Received, SANSW, 2/8028.2.
As soon as they are sworn, every temptation is open to them for the gratification of their tastes free of expense - liquor, women, and bribes are employed to corrupt them, and many are corrupted.  

Liquor in particular took a heavy toll. Of the seventy-two men dismissed from Sydney's constabulary during 1854, fifty-four were discharged for drunkenness and related offences.  

In fact, this figure probably understates the extent of the problem, since many constables were dismissed only after repeated offences, or when drunkenness was compounded by another breach of discipline. Police were also charged with more serious offences. Cases in which policemen allegedly robbed prisoners in their custody, at least until the early 1840s, were not uncommon. In 1839 three constables, two charged with stealing and one with perjury, were not only allowed to continue acting on the Sydney force, but appeared at their trials in uniform. The governor subsequently determined that constables charged with criminal offences were to be suspended until tried.  

The public image of the police was often unaided by their leaders. Henry Wilson, who noted the inducements to corruption policemen were liable to, was dismissed himself following a rash of complaints and formal inquiries into his character. Among other charges, it was proved

12 Report from H.C. Wilson, 1 May 1835, Appendix to the Minutes of Evidence taken before the Committee on Police and Gaols, NSW, V&PLC, 1835, p. 362.  
13 Compiled from Returns of the Sydney Constabulary for 1854, Police, SANSW, 7/93.  
14 See for example Sydney Gazette, 7 July, p. 2; 9 October 1838, p. 2; SMH, 2 September 1841, p. 2; 22 March 1842, p. 2; Harris, Settlers and Convicts, pp. 56-7.  
15 Col Sec to Sydney's First Police Magistrate, 14 August 1839, Col Sec, Letters Sent, SANSW, 4/3844.
to the satisfaction of Governor Gipps and the Executive Council that Wilson employed constables in his private service, frequently in livery. He also appeared guilty of appropriating bread from the Police Office for feeding his dogs and poultry, although Wilson insisted the bread, an estimated fourteen pounds a day, was delivered to his home without his knowledge. 16 William Augustus Miles, who superintended Sydney's police from September 1841, was forced from office in 1848 following repeated charges of corruption and accusations of being drunk on duty. 17 His successor, Joseph Long Innes, was dismissed the following year after disclosures by a select committee on Darlinghurst Gaol. As visiting magistrate to the prison in 1849, Innes told the committee that he believed there was not a better conducted establishment in the world, that the prison staff competed with one another in attention to their duties, and that for himself the gaol was 'a sort of hobby' in which he took 'a great deal of pride'. 18 In contrast, the committee concluded that the management and discipline of the prison was 'wholly unfit', and reported the existence of a 'system of debauchery, drunkenness and irregularity of every kind'. 19 In the light of the evidence, the committee's indignation seems exaggerated. Nevertheless, it was demonstrated that Innes employed prisoners and turnkeys from Darlinghurst in his private service, and his prevarication alone to the committee was sufficient grounds for his dismissal from all government posts. The

16 Col Sec to H.C. Wilson, 27 February 1839, Col Sec, Letters Sent, SANSW, 4/3843; Gipps to Normanby, 5 December 1839, HRA, ser.1, vol.20, pp. 415-19.
new superintendent, Edward Denny Day, was distinguished as a rural police magistrate for leading the capture of the Myall Creek murderers and the 'Jewboy' bushranging gang. He was dismissed in less than a year for being intoxicated while on duty.

It is more difficult to generalize concerning the quality of constables in rural areas. Police in Campbell Town were considered satisfactory, and praised by the local magistracy for their 'general good conduct' and long service. All of the force's seven members in 1847 had served at least four years. The Campbell Town police, however, may well have been exceptional. Charles Lockhart, a Cooma magistrate, characterized rural constables generally as 'quite unfit'. He believed many, 'Very many!', were confirmed drunkards, while many others were infirm, old, and destitute men appointed out of pseudo charity.

As in the case of the Sydney force, there was a high rate of dismissal. During 1837, 95 men were dismissed from the rural constabulary, out of a total strength of 263, and another 64 police were dismissed during the first ten months of the following year.

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21 SMH, 4 September 1850, p. 3.
22 Australian, 11 January 1840, p. 3; Campbell Town Police Office to Col Sec, 14 May 1847, Col Sec, Letters Received, 4/2777.
24 Return of Police Dismissals, Letters, Petitions and Statistical Returns Received by Judge Burton, 1834-1843, Supreme Court, SANSW, 4765.
While in Sydney constables were summarily dismissed by the superintendent, the matter rested with the magistracy in country areas. As a result, there was a good deal of latitude between districts, which may help account for the longevity of Campbell Town's constables. Policemen found drunk on duty were often only fined like other drunkards. At Mudgee, for example, constable Terrence O'Donnell was dismissed from the force only after he was brought before the bench for drunkenness four times in the space of a year. On the other hand, William Moore was expelled from Patrick's Plains force simply for using abusive language to a publican's wife. The readiness or reluctance of JPs to dismiss police probably depended to some extent on how easily they could be replaced.

In country districts police with convict backgrounds may have made up a larger and more lasting proportion of the constabulary than in Sydney, particularly since ex-convicts constituted a larger proportion of the rural population. During the 1830s prisoners holding tickets of leave were frequently recruited as constables not only because of the difficulty in obtaining 'proper persons', but because they were considered 'more under control than free men'. The stereotype rural


policeman, embodied in Alexander Harris's fictional character Harry Grimsby, was an ex-convict, too indolent and too fond of a debauched life to work at any other occupation.\(^2^8\)

Whether the police generally conformed to this stereotype, of course, is questionable. But this was frequently their image as projected in the press. Police at Bathurst, for example, were portrayed as spending their time 'lounging about public-houses, and in doing worse'. Their 'immoral lives and habits' were denounced as 'really disgraceful'.\(^2^9\) Goulburn's constabulary was similarly portrayed as consisting of 'idlers' and 'loiterers', who acted as 'a source of annoyance to the respectable portion of the inhabitants'.\(^3^0\) Constables were often described with the same sarcasm generally reserved for drunkards and other supposed reprobates. *Bell's Life*, in reference to Newcastle's lock-up keeper, found it

most disgusting to see a man holding so mean a situation as he now holds, although he but a short time back filled the important office of Boots in one of the Newcastle inns, and was pew opener and grave digger to the parish church, yet he now struts forth with princely grandeur, snuffing the breeze of the morning with a gold chain about his neck ... again he is seen attired in the same glittering and ornamental manner mounted on his high-spirited steed, enjoying the luxury of an Havanah, sometimes setting at defiance all laws for the suppression of furious driving. Again he is seen with his young and enchanting wife, noted for her meekness, charity, and piety, taking an evenings drive in

\(^{28}\) Harris, *Emigrant Family*, vol.1, p. 103. See also Lang, *Historical Account*, vol.2, p. 218.

\(^{29}\) *Australian*, 11 January 1840, p. 3. See also Vaile, 'Law and Order in Bathurst', M.A. thesis, p. 128.

\(^{30}\) *SMH*, 8 May 1850, p. 2. See also 19 March 1850, p. 2.
a neatly-finished jaunting-car, cutting and dashing in a more than ducal style; 'tis most refreshing to catch the beautiful scent emanating from the vehicle as it passes, which often acts as a restorative to many a way-worn traveller upon the road-side, who often takes the fellow to be the most important personage in the town, and therefore touches his hat with the most profound respect.  

Chief constables, who commanded ordinary constables under the supervision of the magistracy, were a special object of contempt. More often than not, they were characterized as petty tyrants, whose only claim to office was their superior ignorance.

In considering the failure of the police to attract 'the most desirable class of persons', a select committee on police in 1850 pointed out that the reputation of the constabulary was damaged by being composed for many years largely of ex-convicts. It also recognized a more immediate reason in the low rates of pay, or as the committee phrased it, the availability of alternative employment at high rates of wages. A decade earlier the Sydney Gazette asked its readers:

In this country, where labour is at such a premium as it is - what man who has a spark of industry in his composition would accept the post of a police constable, for the amount of wages given?

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31 Bell's Life, 3 January 1846, p. 1.

32 See for example 'A Reformer' to Editor, Atlas, 21 June 1845, p. 356; Edward C. Laman to Editor, Empire, 13 August 1851, p. 43.


34 Sydney Gazette, 28 January 1841, p. 2.
The answer, according to the Gazette, was men 'too lazy to work', 'the off scourge of society', and 'as great a set of ruffians as the colony can boast of'. Throughout the period, colonial officials and the press pointed to low pay as the main impediment to recruiting 'respectable and efficient men' to act as police. For the most part, however, their observations were ignored by the Legislative Council. Both for the sake of economy, and as a protest against the home government's transfer of the expense to the colonial revenue, they were determined to keep police costs to a minimum.

In 1839 ordinary constables in Sydney received two shillings tenpence a day, while the average wage of ordinary labourers was at least four shillings a day. The daily pay of police in both Sydney and rural areas was increased to three shillings in 1841, so that during the depth of the depression their salaries were comparable to that of other workers. During 1845 wages for constables in Sydney were reduced to two shillings ninepence, and that of rural constables to two shillings sixpence. Despite improving economic conditions and the protests of policemen, it was not until May 1851, following the

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36 See for example Memorandum by H.C. Wilson, NSW, V&PLC, 1836, vol.2, p. 627; Report of the Committee on Police and Gaols, NSW, V&PLC, 1839, vol.2, p. 185; J.L. Innes to Col Sec, 4 January 1840, Col Sec, Letters Received, SANSW, 4/2508.5; FitzRoy to Grey, 30 April 1847, HRA, ser.1, vol.25, p. 533; Sydney Gazette, 14 July 1835, p. 2; 12 April 1838, p. 2; 23 April 1842, p. 2; Australian, 15 July 1841, p. 2; SMH, 4 September 1850, p. 2; Bathurst Free Press, 12 November 1851, p. 2.
37 See Chapter 2, pp. 84-6.
39 See for example Petition of the Goulburn Constabulary, 5 June 1847, Col Sec, Letters Received, SANSW, 4/2776; Petition of the Campbell Town Constabulary, enclosed in Campbell Town Police Office to Col Sec, 14 May 1847, Col Sec, Letters Received, SANSW, 4/2777.
discovery of gold, that the pay of constables increased. At Bathurst the pay of police was increased to four shillings sixpence a day, a step considered absolutely necessary since police would have starved on their former wages. In other districts pay was increased by only one shilling. It was estimated in 1852 that labourers in country districts earned about twenty-five pounds more a year than policemen. The following table of pay scales for constables compared to the average wages of mechanics in Sydney gives some indication of the extent to which police pay lagged behind changes in wage levels (see Table 18).

The low wages offered to police were made even less attractive by the irregular intervals at which they were paid in some districts. Nor did constables receive any additional compensation for frequently travelling great distances to serve subpoenas and escort prisoners. The only 'fringe benefit' was a small clothing allowance. Even the police uniform, however, was believed to deter recruits. Modelled on those worn by the London constabulary, the coats and hats provided were considered too heavy for New South Wales' climate.

40 SMH, 23 May 1851, p. 3.
41 Mr Fitzgerald's Address, LC, Empire, 11 September 1852, p. 2.
42 See for example SMH, 9 March 1841, p. 2; Bathurst Free Press, 26 July 1851, p. 4; 'An Interested Party' to Editor, SMH, 12 March 1861, p. 3; 'Another Trooper' to Editor, SMH, 5 June 1861, p. 5.
44 SMH, 9 October 1849, p. 2; Lockhart, 'Proposed System of Police', Police, SANSW, 2/674.15, p. 19.
### TABLE 18  Daily Pay of Ordinary Constables in Sydney and Country Districts, and Average Daily Wages of Mechanics in Sydney, 1838-1856

<table>
<thead>
<tr>
<th>Year</th>
<th>Constables in Sydney</th>
<th>Constables in Country District</th>
<th>Mechanics in Sydney</th>
</tr>
</thead>
<tbody>
<tr>
<td>1838</td>
<td>2s. 10d.</td>
<td>2s. 9d.</td>
<td></td>
</tr>
<tr>
<td>1839</td>
<td>2s. 10d.</td>
<td>2s. 9d.</td>
<td></td>
</tr>
<tr>
<td>1840</td>
<td>2s. 10d.</td>
<td>2s. 9d.</td>
<td></td>
</tr>
<tr>
<td>1841</td>
<td>3s.</td>
<td>3s.</td>
<td>7s.</td>
</tr>
<tr>
<td>1842</td>
<td>3s.</td>
<td>3s.</td>
<td>6s.-7s.</td>
</tr>
<tr>
<td>1843</td>
<td>3s.</td>
<td>3s.</td>
<td>5s.</td>
</tr>
<tr>
<td>1844</td>
<td>3s.</td>
<td>3s.</td>
<td></td>
</tr>
<tr>
<td>1845</td>
<td>2s. 9d.</td>
<td>2s. 6d.</td>
<td>2s. 6d.-4s.</td>
</tr>
<tr>
<td>1846</td>
<td>2s. 9d.</td>
<td>2s. 6d.</td>
<td>4s. 8d.-5s. 2d.</td>
</tr>
<tr>
<td>1847</td>
<td>2s. 9d.</td>
<td>2s. 6d.</td>
<td>5s. 6d.</td>
</tr>
<tr>
<td>1848</td>
<td>2s. 9d.</td>
<td>2s. 6d.</td>
<td>5s. 3d.</td>
</tr>
<tr>
<td>1849</td>
<td>2s. 9d.</td>
<td>2s. 3d.</td>
<td>4s. 6d.-4s. 9d.</td>
</tr>
<tr>
<td>1850</td>
<td>2s. 9d.</td>
<td>2s. 3d.</td>
<td>4s. 6d.</td>
</tr>
<tr>
<td>1851</td>
<td>3s. 9d.</td>
<td>3s. 3d.</td>
<td>6s.-8s. 3d.</td>
</tr>
<tr>
<td>1852</td>
<td>6s.</td>
<td>3s. 9d.</td>
<td>9s.</td>
</tr>
<tr>
<td>1853</td>
<td>10s.</td>
<td></td>
<td>12s. 6d.-16s.</td>
</tr>
<tr>
<td>1854</td>
<td>10s.</td>
<td></td>
<td>14s.-30s.</td>
</tr>
<tr>
<td>1855</td>
<td>10s.</td>
<td></td>
<td>14s.-18s.</td>
</tr>
<tr>
<td>1856</td>
<td>10s.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


Part of the rationale for the low wages offered to police was that they should depend partly on rewards, which would offer an incentive to perform their duty. But the system of rewards was strenuously...
objected to as further undermining community respect for the police. According to William Augustus Miles, the policeman was reduced to an informer for his own profit, while made vulnerable to bribery and perjury. It was complained that the police refused to act unless there was some prospect of remuneration. Even the Sydney Morning Herald, which confessed a reluctance to criticize the police, believed there was reason to suppose that the police did not exert themselves to capture bushrangers unless a reward was offered. At the same time, the offer of rewards could inspire interference with or the arrest of innocent people.

This was especially the case under the Bushranging Act, first enacted in 1834 and renewed until it was allowed to expire in December 1853. Under the Act any person suspected of being a runaway convict could be apprehended by the police, and either detained until they proved their freedom, or forwarded to Sydney to be identified. The apprehension of some of the colony's leading personages as suspected runaways, including chief justices Francis Forbes and James Dowling, is a common anecdote in contemporary accounts. The Act posed a more serious threat to travelling labourers,

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47 SMH, 5 February, p. 2; 19 February 1844, p. 2. For a defence of the police see 'Fair Play' to Editor, SMH, 17 February, p. 2; 28 February 1844, p. 3.

48 [Colony of NSW] 5 Wm. IV, No. 9; 6 Wm. IV, No. 17; 1 Vic., No. 2; 3 Vic., No. 29; 5 Vic., No. 23; 8 Vic., No. 5; 9 Vic., No. 31; 11 Vic., No. 45.

particularly as New South Wales' free population increased.  

Arrests under the Act seemed all the more galling since they were frequently made by police who were themselves ticket of leave holders or ex-convicts. Although it was sometimes believed that apprehensions were made out of pure spite, constables were probably motivated by the offer of government rewards, either in the form of money or a remittance of sentence.

Even more obnoxious was the system in which informing constables received a portion of the fines for certain offences. It was suggested that the police devoted their time dealing with minor offences which involved fines, while neglecting more serious crimes. More importantly perhaps, the system inspired the apprehension of normally law-abiding people for petty offences. Since it was in the direct economic interest of police to obtain convictions their evidence was rendered suspect, while they were open to charges of entrapment. Bell's Life was probably correct in asserting that the police 'incurred more unpopularity and aversion, through the abuse of their opportunities of acquiring money by such fines, than by any other medium'.

50 See for example Col Sec to Parramatta Police Magistrate, 12 September 1838, Col Sec, Letters Sent, SANSW, 4/3842, p. 265; Gipps to Russell, 1 January 1841, HRA, ser.1, vol.21, p. 149; Petition of Sydney Operatives, enclosed in FitzRoy to Grey, 1 February 1847, vol.25, p. 350; SMH, 8 February 1842, p. 2; 'Billy Barlow in Australia', quoted in Clark (ed.), Sources of Australian History, pp. 271-2.

51 Byrne, Wanderings, vol.1, p. 166; Harris, Settlers and Convicts, p. 83.


53 Bell's Life, 8 August 1846, p. 2. See also 12 September 1846, p. 1.
Under the system policemen were characterized as 'eternally prying and spying and sneaking at the corners of the streets', while citizens were subjected to offensive inquiries and interference with their personal lives and liberty. Police were accused of actively encouraging illicit stills in order to gain a reward for their seizure. Publicans, it was claimed, were constantly harrassed by constables, who either tricked them into committing offences, or extorted bribes from them to go unmolested. Many charges of assault made by constables were considered to be 'of the most frivolous description'. Apprehensions for drunkenness, which accounted for the largest proportion of arrests by the police, were particularly objectionable. The *Australian* reported in 1841 that:

> Respectable persons are dragged into the watch-house, falsely accused of drunkenness, and are fined in a reckless manner, at the instance of any constable whose interest it is to give the usual evidence.  

Since fines for drunkenness were divided equally between the Crown and the informing constable, police had obvious reason to distort their evidence. Under an Act of 1842, fines for drunkenness not exceeding five shillings were paid to a benevolent asylum or other charitable

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54 *Australian*, 15 July 1841, p. 2.  
55 *Guardian*, 8 June 1844, p. 3; *SMH*, 28 November 1844, p. 2.  
56 *Australian*, 9 May 1840, p. 2; 22 April 1841, p. 2; *Bell's Life*, 9 September 1848, p. 2; 5 August 1854, p. 2; 2 August 1856, p. 2.  
57 *SMH*, 5 January 1841, p. 2.  
58 *Australian*, 6 July 1841, p. 2. See also for example D. Gill to Editor, *Australian*, 10 July 1841, p. 2; Marjoribanks, *Travels*, p. 55.
institution in the district where the case was heard. But in cases where the fine was greater than five shillings, constables continued to receive up to one-half the amount.\(^{59}\) Governor Gipps believed that constables were unlikely to go to the trouble of filling out informations for drunkenness without the benefit of fines. On the other hand, he recognized that the system encouraged constables to interfere where they had no business. A drunkard might be going home quietly, while an attempt to take him into police custody could precipitate an assault. As a result, they were punished not only for drunkenness, but a relatively serious offence which otherwise would not have occurred.\(^{60}\)

Under the superintendence of W.A. Miles, who assumed office late in 1841, there was reportedly some improvement in the conduct of constables.\(^{61}\) Miles asserted that the police were no longer allowed to 'interfere ruthlessly with drunken men for the sake of the fines'.\(^{62}\) Only persons unable to take care of themselves or who became a public nuisance were to be apprehended. Drunkards conducting themselves quietly were simply to be escorted to their homes.\(^{63}\) More generally, police were warned against using abusive language to citizens, idle meddling, and using their staves of office as bludgeons.\(^{64}\) Constables were further required to wear a white band on their wrists while on duty, which it was hoped would restrict their 'wholesale system of interfering'.\(^{65}\)

\(^{59}\) [Colony of NSW] 6 Vic., No. 13, sec. 2. See also Circular enclosed in Auditor General to Col Sec, 25 August 1846, Col Sec, Letters Received, SANSW, 4/2777.
\(^{60}\) LC, SMH, 19 August 1842, p. 2.
\(^{61}\) See SMH, 9 December 1841, p. 2; Australian, 16 November 1842, p. 2; Weekly Register, 22 June 1844, p. 626; Marjoribanks, Travels, p. 57.
\(^{63}\) SMH, 6 September 1841, p. 2; Teetotaller, 4 June 1842, p. 1.
\(^{64}\) Sydney Gazette, 21 October, 1841, p. 3.
\(^{65}\) Australian, 31 August 1841, p. 3.
While these innovations, along with a decline in police numbers and arrests for drunkenness during the early 1840s, tended to improve police-public relations, the constabulary was still considered far from satisfactory. At a public meeting convened to discuss insecurity during the 1844 'crime wave', the prejudice of police for hunting fines rather than criminals was generally denounced. According to one citizen, Joshua Holt, it was useless to consider augmenting the police when 'all they cared about was, smelling a poor devil's breath after rum at night, in the neighbourhood of public houses, to find out if he had been drinking rum after hours'. The benefit of increasing the police was similarly questioned in 1849 when large bodies of constables were observed parading the main streets 'watching a few half drunken men, or noisy native boys, or publicans'.

Since the system of fine sharing operated throughout the colony, it served to inflame police-public relations in districts beyond Sydney as well. At Penrith, where it was asserted, serious offences abounded, the constabulary reportedly spent their time:

parading the verandahs, or lounging in the tap-rooms of public houses, alert to seize some unfortunate inebriate, or to detail some special plan of complaint against the landlords, in order to enrich their pockets by fine - to pocket the spoil, and provide for their occasional debaucheries, or support a career of fornication amidst a race of hired harlots.

Similar complaints frequently emanated from other districts. Constables in Parramatta, for example, were accused of picking up sober persons on charges of drunkenness in order to share in the fines. Under the

66 SMH, 10 June 1844, p. 4.
67 Bell's Life, 29 December 1849, p. 2.
68 Australian, 29 January 1842, p. 3.
town's 'police-oocracy', it was alleged that 'a stagger over the stones is drunkenness'.

The main point at issue was not prosecutions for drunkenness in general, but the lack of discretion in police arrests. *Bell's Life* thought the vague ideas of the police concerning drunkenness would be laughable

were it not that the liberty of the subject is improperly interfered with, and respectable individuals are dragged into a court amongst the scum of the community, at the caprice of some over-officious moralist.  

While constables were criticized as over-zealous in prosecuting some members of the community, they were exhorted to use greater vigour in dealing with 'hardened' offenders.

It was consistently urged, both by police officials and the press, that the pay of the police should be increased, while abolishing the system of rewards and fines altogether. Under Acts passed in 1849 and 1850 police no longer received a portion of the fines for drunkenness, while fines for other offences went to a 'police reward fund' rather than the informing constable. Nevertheless, provisions which excluded

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70 *Bell's Life*, 1 August 1846, p. 3.
71 *Bell's Life*, 23 March 1850, p. 2.
72 See for example *Sydney Gazette*, 21 June 1842, p. 3; SMH, 14 March 1850, p. 2.
74 [Colony of NSW] 13 Vic., No. 29, sec. 86; 13 Vic., No. 32, sec. 2; 14 Vic., No. 38, sec. 26.
police from receiving a portion of penalties were to some extent circumvented. The Gold Police, who were not under the jurisdiction of the Police Act, still received a share of fines for informations against sly-grog selling. Even ordinary police might have a friend file information in order to collect rewards. In Bathurst one man reportedly filed all such informations for the police.  

The brutality sometimes employed in apprehending persons charged with drunkenness was a further cause of animosity toward the police. In 1842 Judge William Burton considered this aspect of police conduct to be a major reason why they were widely regarded 'as the enemy, instead of a protector'. Although he believed the police had recently improved in this respect, the manner in which drunkards were taken into custody continued to create at least occasional outrage. A Sydney physician, Frederick Mackellar, complained in 1851 that people leaving church services in Druitt Street witnessed a brutal assault by police on a suspected drunkard. After handcuffing the man, they dragged him along the newly macadamized street to the watch-house so that his shirt and pants (the only clothes he had on) were nearly torn off. Two days later, Mackellar called public attention to another violent attack by constables on a drunkard outside his own home. Other instances of police brutality were periodically

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76 See for example Sydney Gazette, 3 March, p. 2; 10 March, p. 2; 20 June 1840, p. 3; Australian, 23 January 1841, p. 2.

77 SMH, 15 January 1842, p. 2.

78 Frederick Mackellar to Editor, Empire, 23 December 1851, p. 495. See also Empire, 24 December 1851, p. 498; Bell's Life, 27 December 1851, p. 2.

79 'F.M.' to Editor, Empire, 25 December 1851, p. 503.
reported, especially when they offended the sensitivities of respectable citizens.  

While criticism of the constabulary in the press primarily reflected the views of the middle classes and 'respectable' workers, there were also more popular manifestations of contempt for the police. Chief Justice Alfred Stephen observed that attempts to take drunkards into custody were sure to provoke public antipathy, if not verbal or physical assault on the apprehending constables. Certain harassment of policemen making arrests was a frequent occurrence, with crowds typically inciting the suspect to turn on his captors. As already noted, decreasing arrests for drunkenness in Sydney during the early 1840s were paralleled by a sharp decline in arrests for assault on policemen.

Larger disturbances were sometimes triggered for apparently the same reason. James Sheen Dowling, who acted as Sydney's police magistrate from 1851 to 1857, considered that there were only two incidents during his term of office which approached riot proportions. The first occurred on the evening of the Anniversary Day regatta in January 1851. Following the regatta, a 'somewhat inebriated' crowd gathered in an unfinished house at Circular Quay licensed to sell liquor for the day. The attention of the police was attracted by a temporary scaffolding to an upper room in the building which appeared

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80 See for example SMH, 1 May 1849, p. 2; Bell's Life, 9 September 1854, p. 2.


82 See for example Sydney Gazette, 28 February 1839, p. 2; SMH, 27 February, p. 3; 26 July 1850, p. 2; Empire, 13 August 1851, p. 43.

unsafe. Trouble began when the superintendent of police, John McLerie, ordered the house to be cleared and the scaffolding taken down. The crowd, estimated at about three hundred, began hooting at the police. When constables seized a particularly active member of the crowd, they began throwing stones. Although McLerie was hit by a rock, there were no serious injuries, and the building was quickly cleared when he read the proclamation against rioting. 84

The second disturbance alluded to by Dowling occurred later the same year. The disorder was apparently precipitated by the arrest of some drunk man-of-war sailors who decided to dress up in women's clothing and attend church services. At about eight o'clock Sunday evening a crowd led by sailors assembled at the Cumberland Street watch-house where one of the seamen, donning a bonnet and dress, was lodged by the police. They threatened to pull down the watch-house and knock out the brains of the attending constable if the sailor wasn't released. The constable complied, and the crowd proceeded to a watch-house on Druit Street where another seaman was being held. After making an unsuccessful rush on the gates, the crowd dispersed, but they returned about an hour later. By this time the police had reinforced their numbers, and they were able to drive the crowd away by making a charge on them. An attempt to break into the female watch-house on Clarence Street was also thwarted by the arrival of the mounted patrol. 85

84 *Ibid.; Empire, 28 January, p. 2; 28 February 1851, p. 3; SMH, 28 February 1851, p. 2.*

85 *SMH, 26 August, pp. 2-3; 27 August 1851, p. 2; Bell's Life, 30 August 1851, pp. 2-3; Empire, 25 August, p. 83; 26 August 1851, p. 87.*
Similar disturbances, while by no means common, were not unknown. In October 1841, for example, crowds led by men from the HMS Favourite attacked police watch-houses two nights in succession following the rumoured arrest of some sailors. An attempt by a constable to interfere with disorderly sailors in 1845 resulted in another attack on a station house, in which seven constables were severely injured. Prisoners were liberated from a watch-house in 1848 by a crowd following the arrest of some boys charged with setting off fireworks in the streets. As Edward Banfield suggests, attacks on the police do not necessarily reflect a hatred for them. They might become an object of violence simply because they are at hand and will put up a good fight. On the other hand, assaults on police and police watch-houses probably represented something more than an amusing diversion for some Sydney residents. While collective violence against the police was perhaps in part an extension of recreational activities, it also demonstrated a resistance to police interference with traditional patterns of leisure.

In general, the character and performance of the colony's more specialized police forces were regarded no more favourably than the regular constabulary. There were frequent complaints against the Water Police, particularly in relation to their 'overbearing conduct' towards ship's officers. Ordinary seamen had even more reason to

86 Sydney Herald, 7 October, p. 3; 8 October, p. 2; 11 October 1841, p. 2; Sydney Gazette, 7 October, p. 3; 9 October 1841, p. 2; Australian, 7 October, p. 2; 9 October 1841, p. 2.
87 SMH, 3 November 1845, p. 2; W.A. Miles to Col Sec, 24 November 1845, Col Sec, Letters Received, SANSW, 2/8926.4; Col Sec to Commissioner of Police, 28 November 1845, Col Sec, Letters Sent, SANSW, 4/3850.
88 Bell's Life, 27 May 1848, p. 3.
90 Sydney Gazette, 2 April 1842, p. 3.
resent the force. Under the Water Police Act of 1840, seamen on shore after nine o'clock without a pass were liable to a fine, or in default of payment up to three days imprisonment. The same Act provided that seamen guilty of insubordination or refusing to work could be imprisoned at hard labour for up to three months.91 The *Australian* expressed fears that the oppressive nature of the Act, as well as police interference with sailors on shore leave, might even result in ships refitting at other ports.92 Although the harshest provisions of the Act were repealed in 1843,93 it is doubtful whether relations between seamen and police significantly improved. As in the case of the land police, a large proportion of arrests by the Water Police were for drunkenness. Between October 1840 and September 1843, 31.7 per cent of the cases tried at the Water Police Office in Sydney involved charges of drunkenness. Over half of the cases tried, 53.3 per cent, involved charges of desertion, being absent from ship, insubordination, and refusing to work on board ship. Only 3.4 per cent of the cases were for the recovery of unpaid seamen's wages.94

The composition of the Border Police was particularly open to objection, since the force was composed largely of convicts under sentence. As initially formed, the force was staffed mainly by

91 [Colony of NSW] 4 Vic., No. 17, sec. 19, 23.
92 *Australian*, 9 October 1841, p. 2.
93 [Colony of NSW] 7 Vic., No. 21, sec. 3, 10.
94 Percentages are based on Appendix referred to in Evidence to the Select Committee on the Water Police Act Amendment Bill, NSW, V&PLC, 1843, p. 17.
By the mid-1840s, convicts and ticket of leave holders continued to make up about half the Border Police. Such a force, critics asserted, was inappropriate in light of the colony's increasing free population. What was probably more objectionable, however, was the mode of its support. Under the Border Police Act of 1839, the force was financed by an assessment on livestock beyond the boundaries of location. Instead of providing protection, squatters claimed that the police devoted their energies almost entirely to collecting taxes for their own maintenance.

Further resentment was fostered by the autocratic powers vested in commissioners of crown lands, which according to S.H. Roberts, made their unpopularity predestined. Certainly much depended on the personality of the commissioners. At least one squatter, Edward Curr, thought that the commissioner in his district gave 'a fair amount of satisfaction', as a result of public confidence in his impartiality. But as Roberts notes, the variety of problems dealt

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95 King, 'Problems of Police Administration', p. 62.
96 Constitution of the Border Police for February 1845 and January 1846, Col Sec, Letters Received, Special Bundle, SANSW, 4/1141.1.
98 See Sydney Gazette, 6 June 1840, p. 2; LC, SMH, 20 August 1842, p. 2; 3 October 1844, p. 3; Henderson, Excursions, vol.2, pp. 278-83. One trooper in the Border Police noted as well that their principal duty was serving assessment notices to squatters. Cozens, Guardsman, p. 161.
99 Roberts, Squatting Age, p. 348.
100 Curr, Recollections of Squatting, p. 119.
with, the lack of legal precedents, and the difficulty of appealing against their decisions, tended to make the commissioners appear arbitrary and despotic.\(^{101}\)

The Native Police proved more popular than the Border Police, probably because their activities were mainly limited to suppressing Aborigines. It was also the colony's least expensive force. Aboriginal troopers were initially unpaid, and in 1850 received only three pence a day plus rations.\(^{102}\) Nevertheless, the force was not without its problems. Squatters resented the recruitment of Aboriginal labourers to act as police, while workers believed that they tended to lower wages.\(^{103}\) Following a long period of complaints by residents, magistrates, and finally officers of the corps, a board of inquiry was appointed in September 1854 to investigate the general management of the Native Police.\(^{104}\) Suspicions that its commandant, Frederick Walker, was of intemperate habits seemed confirmed when he appeared before the board 'in a state of intoxication, bordering on stupidity'.\(^{105}\) The accounts of the force were found in a similar state of confusion, with large arrears due in back pay. As a result, Walker was relieved of command in January 1855.\(^{106}\) After Walker's dismissal the force was reduced, and criticized for its relative inefficiency, improper

\(^{101}\) Roberts, Squatting Age, pp. 348-55.

\(^{102}\) Bridges, 'Native Police', pp. 124-5; SMH, 10 January 1850, p. 2.

\(^{103}\) Skinner, Native Police, pp. 84-5, 121.

\(^{104}\) Col Sec to Government Resident, Moreton Bay, 23 September 1854, NSW, VePLC, 1855, vol.1, p. 870; Report from the Select Committee on the Native Police Force, NSW, VePLA, 1856-7, vol.1, p. 1162.

\(^{105}\) Board of Inquiry to Col Sec, 20 December 1854, NSW, VePLC, 1855, vol.1, p. 871.

\(^{106}\) Col Sec to Frederick Walker, 19 January 1855, ibid., pp. 874-5.
distribution, and general deterioration in discipline.  

The most important auxiliary police force, both in terms of its numbers and duties, was the Mounted Police. Troopers for the Mounted Police were selected from the regiments by their commanding officers, who were hardly inclined to send their best men. The commandant of the force, Major Jeffrey Nicholson, characterized his men generally as 'only a tolerable average'.

Turnovers in the Mounted Police were less frequent than in the regular constabulary. Of men serving on the force in March 1848, only three had served less than a year, thirty-five served from one to five years, and sixty-eight over five years. But this probably reflects in part the fact that mounted policemen could not simply resign. One may also suspect that they were less readily dismissed, as the career of Edward Warrington tends to suggest.

Edward Warrington enlisted in the 80th regiment in May 1835, and joined the Mounted Police 1 October 1838. In May 1840 he was charged with being drunk and using indecent language to a trooper in the barrack room. Despite orders by his commanding officer, Warrington refused to undergo punishment, stating he would rather be tried by a court martial. Consequently he was tried by a court

107 Skinner, Native Police, pp. 164, 226, 252. See also E.V. Morisset to Government Resident, Moreton Bay, 8 August 1858, enclosed in Government Resident to Col Sec, 19 August 1858, NSW, V&PLA, 1858, vol.2, p. 417.


109 Nominal Roll of Men belonging to the Mounted Police Corps, 31 March 1848, Police, SANSW, 2/671.
martial, and sentenced to fourteen days solitary confinement. The punishment was remitted in consideration of his previous good character. In December of the same year he was charged with 'irregular conduct' at Bathurst, with the result that his grog ration was suspended for one month.

The following year Warrington was dismounted in penalty for being absent from watch duty at Carter's Barracks, and given fourteen days 'saddle bag drill' for being drunk at Dungog. In 1843 he lost twenty-one days' pay and was removed to Melbourne for being drunk at his station in Port Phillip. The next year he lost a month's pay for being drunk, riotous, and losing his arms and horse at Portland. Even before this punishment was carried out, he was imprisoned by the local magistrates for another offence. During 1846 Warrington was punished for six additional offences including drunkenness, absence from duty, and disobedience. For these transgressions he was dismounted once, reported to the governor twice, and spent a total of forty-six days in prison.

In May 1846 the governor directed that Warrington be returned to his regiment as unfit for the police, but he was either returned to the force or never left. In February 1847 Warrington received twenty-four hours in the cells and seven days saddle bag drill for being absent from duty and returning drunk. Less than a month and a half later he received twenty-four hours in the cells for inattention in the ranks at drill and disrespect in the orderly room. By this time perhaps, his superiors were beginning to doubt the efficacy of punishment. Between July 1847 and October 1849 when his record ends, Warrington was charged with six additional offences, all involving drunkenness. For the first three offences he was simply admonished,
and for the last three confined to barracks and denied a pass for one month. Despite his conduct record, Warrington later appeared in the Gold Police, from which he was dismissed in 1852. 110

Warrington was not an average trooper. In fact he held the dubious distinction of being punished for more offences, twenty in all, than any other member of the force. On the other hand, the breaches of discipline committed by Warrington and the punishments he received were fairly typical. His career also suggests the extent to which misconduct could be tolerated without leading to a trooper's dismissal.

As with Sydney's constabulary, the most common form of misconduct by mounted police leading to disciplinary action was drunkenness (see Table 19). About one-half of the troopers punished were charged with drunkenness, and this understates the extent of the offence since men charged with being absent from duty were frequently absent because they were intoxicated. One Hunter Valley settler complained that intemperance was encouraged by the fact that troopers might receive a month's spirit rations in the space of a few days. 111 Nevertheless, the colonial secretary was probably justified in claiming that mounted policemen were in general better behaved than the regular constabulary. 112

110 Record of offences by members of the Mounted Police, 1839-1850, Police, SANSW, 2/671; Jeffrey Nicholson to Col Sec, 9 November 1844, 8 May 1846, Mounted Police, Letters Sent, SANSW, 4/5720; Col Sec to Commandant of Mounted Police, 12 May 1846, Col Sec, Letters Sent, SANSW, 4/3863; General Order No. 108, 19 June 1846, Orders to Mounted Police Troops, Police, SANSW, 4/5718; Harold Mclean to J.R. Hardy, 1 May 1852, Department of the Chief Commissioner of Crown Lands for the Gold Districts, Letters Received from Gold Commissioners, Gold Commissioners, SANSW, 5/3770.


112 LC, SMH, 30 August 1849, p. 2.
As trooper Warrington's record indicates, the incidence of misconduct was inflated by offences committed by the same men. Only 86 different troopers were disciplined for a total of 386 offences between 1839 and 1850, and 9 troopers were punished for more than ten breaches of discipline each.\(^{113}\)

### TABLE 19 Misconduct by Mounted Policemen in New South Wales Leading Disciplinary Action, 1839-1850

<table>
<thead>
<tr>
<th>Type of Misconduct</th>
<th>No. of Offences</th>
<th>% of All Offences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drunkenness</td>
<td>186</td>
<td>48.2</td>
</tr>
<tr>
<td>Absence from Duty</td>
<td>102</td>
<td>26.4</td>
</tr>
<tr>
<td>Neglect of Duty</td>
<td>20</td>
<td>5.2</td>
</tr>
<tr>
<td>Disobedience and Insolence</td>
<td>39</td>
<td>10.1</td>
</tr>
<tr>
<td>Ill-using Horse</td>
<td>10</td>
<td>2.6</td>
</tr>
<tr>
<td>Improper Dress</td>
<td>4</td>
<td>1.0</td>
</tr>
<tr>
<td>Getting Married Without Leave</td>
<td>3</td>
<td>0.8</td>
</tr>
<tr>
<td>Other Irregular Conduct</td>
<td>22</td>
<td>5.7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>386</strong></td>
<td></td>
</tr>
</tbody>
</table>

Source: Record of Offences by Members of the Mounted Police, 1839-1850, Police, SANSW, 2/671.

Note: These figures exclude offences tried before the magistracy and superior courts.

According to Major Nicholson, misconduct by troopers was most common at Port Phillip. Police in the district were widely dispersed, and lacked the supervision of an officer. In 1844 he reported that it was rare the

\(^{113}\) Compiled from Record of Offences by Members of the Mounted Police, 1839-1850, Police, SANSW, 2/671.
post arrived from Melbourne without some complaints against troopers in the district. By 1846 reports of irregularities and crimes by the police were so frequent that Nicholson considered they were losing the character not only of mounted police, but of soldiers. In that year the appointment of a commanding officer for the district was finally authorized in an attempt to restore discipline.

Criticism of the Mounted Police was directed mainly at the force's paramilitary organization, its alleged brutality in dealing with suspected criminals, and its contempt for civil authorities. As with the regular constabulary, it was complained in some districts that Mounted Police refused to pursue bushrangers until they were 'worth catching'. To some extent the protective function of the Mounted Police was also perverted by local magistrates. Contrary to official intentions, troopers were frequently employed in the duties of ordinary constables serving subpoenas and escorting prisoners. Until an order of 1848 prohibited the practice, troopers at some stations were sent on long journeys to apprehend absconding servants, leaving districts unprotected.

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114 Jeffrey Nicholson to Col Sec, 9 November 1844, 18 March, 8 May 1846, Mounted Police, Letters Sent, SANSW, 4/5720.

115 Col Sec to Commandant of Mounted Police, 28 September, 5 October 1846, Col Sec, Letters Sent, SANSW, 4/3863.

116 See for example Report from the Select Committee on Police, NSW, V&PLC, 1847, vol.2, p. 27; Evidence of Charles Windeyer to the Committee, p. 47-8; Haydon, Trooper Police, p. 70.


119 Troop Order No. 36, 2 December 1848, Orders to Mounted Police Troops, Police, SANSW, 4/5718.
The efficiency of the Mounted Police was further undermined by lack of co-operation from the regular constabulary. Commandant Jeffrey Nicholson complained that the force encountered great difficulty in obtaining early intelligence of robberies and other crimes. Rural constables often withheld information until their own efforts failed, in hopes of gaining any credit or reward for the capture of offenders. By the time the Mounted Police heard of a crime, it was often too late to apprehend any suspects.  

The lack of communication and co-operation between rural constables and the Mounted Police was symptomatic of relations between all of the colony's forces. Along with the poor quality of constables recruited, the fragmented organization of the police was long considered a major obstacle to efficiency. Sydney police magistrate Charles Windeyer asserted in 1839 that persons who committed offences in the city and then moved to the remote interior were as safe as if they had left the colony. In 1841 the colony was divided into thirty-one police districts, which numbered fifty-nine by 1851, and seventy in 1856. The police of neighbouring districts not only failed to co-operate, but exhibited an 'unseemly jealousy'.  

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124 Report from the Select Committee on Police, NSW, V&PLC, 1850, vol.2, p. 402. See also for example Mr Cowper's Address, LC, SMH, 28 November 1861, p. 3.
As in many other communities, the impetus for police reform in New South Wales came largely from fears of public disorder. A riot on New Year's Day 1850 was the principal catalyst which changed desultory criticism of the police into vigorous agitation for their reform. Following the riot, public meetings were held which protested against the inefficiency of the police, and pressed for measures to ensure the security of citizens' lives and property. A similar campaign was waged by the press. In a series of leading articles, the Sydney Morning Herald underlined the inadequacies of the constabulary, while alluding to the dangers posed by the 'mob'.

Protests in Sydney were reinforced by a flurry of agitation in country areas. To some extent residents in country districts probably took their cue from the metropolis in pressing for greater police protection. Concern was mainly motivated, however, by plans to abolish the Mounted Police. Between 1849 and 1850 the force was reduced from 131 men to only 35, before it was disbanded completely at the end of the year. Despite disciplinary problems, the Mounted

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126 Bell's Life, 5 January 1850, p. 3; SMH, 5 January, p. 4; 17 January 1850, p. 2. The riot is discussed further in Chapter 9.

127 SMH, 23 January, p. 2; 25 January, p. 2; 31 January, p. 2; 29 May, p. 2; 19 June 1850, p. 2.

128 See for example SMH, 18 January, p. 2; 19 March, p. 2; 3 May, p. 3; 29 May, p. 2; 25 July 1850, p. 2.

Police were generally regarded as the colony's most efficient force. Their disbandment was regretted by many persons who considered the force was foolishly sacrificed for economy. Anne Deas Thomson wrote to her father that it seemed 'perfect nonsense doing away with such a very efficient body of men', and that some would no doubt feel their loss 'when the winter nights come on and bushranging begins again'.

There was nothing novel in the report of the select committee of the Legislative Council appointed to investigate the police in the wake of popular agitation. For the most part, it simply echoed the conclusions drawn by previous select committees on police in 1835, 1839, and 1847. Unlike previous committees, however, its recommendations were acted upon. The select committee, as well as a board of inquiry appointed to investigate the New Year's riot, recommended a generous augmentation of the Sydney constabulary. Following their reports twenty-four ordinary constables were added to the city force, the first increase since the 'crime wave' of 1844 when six additional constables were appointed. A Horse Patrol was also formed, consisting of sixteen men, primarily to facilitate crowd control. The most important innovation which followed the inquiries was the introduction of a centralized form of control over the colony's various police forces.

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130 Anne Deas Thomson to Richard Bourke, 1 January 1850, Bourke Papers, ML, Uncatalogued MSS, Set 403, Item 7. See also Sir Alfred Stephen's Diary, 22 September 1849, Stephen Papers, ML, MSS. 777/2, pt. 6; Mundy, Our Antipodes, p. 74; FitzRoy to Grey, 5 December 1850, CO, 201/433, f. 4.

the Colonial Police Act of 1850 the governor was authorized to appoint an inspector-general of police for New South Wales, and up to six provincial inspectors. 132

In general, these reforms failed to silence criticism of the police, and their impact was to prove transitory. The appointment of inspectors at high salaries, while ignoring the pay of ordinary constables, was denounced as flagrant jobbery. 133 Although the Sydney constabulary was increased, its ranks were quickly depleted following the gold rush which began in mid-1851. The system of general superintendence over the police remained in effect for only two years, and even during that time was operative in only a few districts. 134

Inadequate administrative machinery, the poor choice of provincial inspectors, and lack of co-operation from magistrates, were considered the major reasons for the system's failure. 135 Because of their extensive districts, it was thought that not enough officers were appointed to effectively supervise the police. 136 At the same time, some of the officers appointed were considered less than satisfactory.


133 See for example People's Advocate, 31 August 1850, p. 3; SMH, 4 September 1850, p. 2, 7 July 1851, p. 3; Empire, 21 March 1851, p. 4; Goulburn Herald, 7 June 1851, p. 5; Bell's Life, 8 November 1851, p. 2.


136 LC, Empire, 8 December 1852, p. 2; Lockhart, 'Proposed System of Police', Police, SANSW, 2/674.15, p. 13.
William Spain, who arrived in New South Wales only a short time before to practise as an attorney, became the colony's first inspector-general of police in January 1851. His appointment was initially criticized on the grounds that better qualified colonists were passed over for 'a comparative stranger'. Lack of public and government confidence led Spain to resign later the same year.

The provincial inspectors appointed included Edward Denny Day, despite his recent dismissal as superintendent of Sydney's force for drunkenness. The inspector of Bathurst, Captain Wentworth, was described as a sexagenarian who knew absolutely nothing about the district. The efficiency of the police was further hindered by the country magistracy, who were inclined to view the system as an infringement on their authority.

In 1852 a select committee amended the Police Regulation Bill limiting control of the inspector-general to the Sydney police and Road Patrols. Although the inspector-general's office remained a channel of communication for the colony's various forces, control of the constabulary in each district was returned to local JPs.

137 Bell's Life, 15 March 1851, p. 2.
138 LC, SMH, 15 December 1851, p. 2; William Spain to FitzRoy, enclosed in FitzRoy to Grey, 3 January 1852, CO, 201/450, ff. 20-1.
139 Empire, 24 January 1851, p. 2.
140 Bathurst Free Press, 1 February 1851, p. 4.
141 See LC, Empire, 2 September, p. 2; 8 December 1852, p. 2.
A centralized system of police in New South Wales was not permanently re-established until 1862. While changes in 1850 were inspired largely by the New Year's Day riot, reorganization of the police a decade later was largely in response to riots against the Chinese, as well as a new outbreak of bushranging.

In addition to placing the police under centralized control, the Police Regulation Act of 1850 established more stringent guidelines for the appointment of constables. Police were to be able bodied, under forty years of age, literate, and with 'a good character for honesty, fidelity and activity'. But significant improvement in the quality of constables was probably precluded by the discovery of gold in 1851. As before 1850, the major obstacle to obtaining desirable men to act as police was insufficient pay. Charles Henry Green, gold commissioner for the western district, pointed out that as long as police pay was 'not equal to what a labouring man can earn within two or three hundred yards of them, they will not be satisfied'. William Colburn Mayne, who was appointed inspector-general of police following Spain's resignation, considered that the high rate of resignations from the police was less the result of men being lured to the gold fields, than the pressure of increasing rents and prices.

143 [Colony of NSW] 25 Vic., No. 16.
144 See O'Brien, Australian Police, p. 23; Grabosky, Sydney in Ferment, p. 76.
145 [Colony of NSW] 14 Vic., No. 38, sec. 7. The same requirements were stipulated by the Police Regulation Act of 1852, 16 Vic., No. 33, sec. 7.
147 W.C. Mayne to Col Sec, 8 July 1852, Col Sec, Letters Received, SANSW, 4/3118.
By September 1852 there were thirty-five vacancies in the Sydney force, with little prospect of recruiting replacements. The constabulary which numbered 168 at full strength, was reduced to only 133 men, 29 of whom had given notice of resignation. At the same time, there were sixteen vacancies in the rural constabulary, and another dozen resignations from the Gold Police. Due to a loss of trained men, it was reported that many new constables were unacquainted with the most rudimentary police procedure. Another apparent effect of the gold rush was an increase in the proportion of single men acting as constables. Whereas over three-quarters of Sydney's policemen were married in 1846, the proportion among those recruited in 1854 was slightly over one-third.

One means repeatedly urged for improving the quality and efficiency of the police was to recruit constables in the United Kingdom. Under the pressure of large scale resignations, steps for recruiting men acting as constables in Britain, as well as 'other eligible persons', to serve in the colonial force were finally taken with the Police Recruiting Act of 1853. Under the Act recruits were to be given free

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149 Press, 18 June 1851, p. 284.

150 Proportions are based on Return enclosed in W.A. Miles to Col Sec, 7 January 1846, Col Sec, Letters Received, SANSW, 2/8028.2; Returns of the Sydney Constabulary for 1854, SANSW, 7/93.

passage to the colony with their families. They were engaged to serve in the police for a minimum of three years, and persons deserting or guilty of misconduct were liable to imprisonment with hard labour for up to six months, as well as forfeiture of all wages due. 152

Although it was hoped to engage 150 men from the Dublin and London constabularies to serve in Sydney, difficulties were encountered in getting recruits. Commissioners of the Dublin Metropolitan Police objected to sending volunteers to New South Wales, where they would receive increased pay, on the grounds that it would undermine the morale of an already understaffed Irish constabulary. 153 At the same time, volunteers from the London force were far less numerous than expected. 154 During 1855 two detachments of men from England arrived to serve on Sydney's police force. The ship Bangalore landed forty-six men on 13 January, and a further seventy-two men arrived 26 July via the Exodus. A little over one-third of the men had served as police in England. The remainder were mostly labourers, although a wide range of former occupations were also represented. 155

According to police magistrate James Dowling, police from England improved the tone of the force and 'commanded respect for it'. 156 Compared to other men appointed constables in Sydney during

152 [Colony of NSW] 17 Vic., No. 30, sec. 1, 5, 7.
153 J. Browne to Under Secretary, 17 July 1854, enclosed in Henry FitzRoy to Herman Merivale, 29 July 1854, CO 201/478, ff. 155-6.
155 Compiled from Register of appointments, promotions, dismissals, retirements, 1855-1861, Police, SANSW, 7/6362.
1855, the imported recruits did appear to represent an improvement. Of ninety men appointed in the colony, thirty-one were dismissed within a year of their appointment, and another twenty-four resigned. A total of 118 men arrived from England to act as police during the same period. Only one was dismissed during his first year of service, although eleven more men were dismissed within two years of their appointment. They were prohibited from resigning before three years service, but seventeen men absconded during their first year on the force. Within three years of their appointment another thirteen men resigned. 157

The low dismissal rate of English recruits may reflect a reluctance to dismiss men who represented an investment. At the same time, the lower rate of resignations was perhaps indicative of the fact that a larger proportion were committed to police work as a career. But even if it is assumed they raised the tone of the constabulary, their acceptance by the community is questionable. Critics of the plan noted that colonial recruits were more amenable to local opinion, and more likely to possess public confidence than imported policemen. As a result, a better force, if decently paid, could be raised in the colony than Britain. 158 In the long term, a tightened labour market following the gold rushes, and more attractive service conditions, were the most important changes in improving the quality of constables. 159

157 Compiled from Register of appointments, promotions, dismissals, and retirements, 1855-1861, Police, SANSW, 7/6362.
158 Bell's Life, 8 June 1850, p. 2; People's Advocate, 22 June 1850, p. 9.
159 Chappell and Wilson, Police and Public, p. 29.
Whether the police in New South Wales were significantly worse than that of other communities is also questionable. Ted Robert Gurr notes that pre-modern constabularies in general were staffed by men drawn from the lowest ranks of societies, primarily because elites wished to maintain order with a minimum of expense. Corruption, brutality, and drunkenness were fairly common characteristics of police forces during the period.\(^{160}\) Between September 1830 and December 1832, 2,803 men were dismissed from the London police, when the total force amounted to 3,300. Four out of every five men dismissed were discharged for drunkenness.\(^{161}\) When a new constabulary was formed at Cheshire, England, in 1850, over half of the 214 police appointed were dismissed within three years, mostly for drunkenness.\(^{162}\) In England's Black Country a high rate of dismissal and resignation from the police was a feature throughout the 1840s and 1850s.\(^{163}\)

The favourable reputation of the British police rests mainly on the community's quick acceptance of the London constabulary following its organization under the Metropolitan Police Act of 1829. Even

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160 Gurr, *Rogues, Rebels, and Reformers*, pp. 120-1.

161 King, 'Aspects of Police Administration', p. 210. See also Macnab, 'Crime in England and Wales', pp. 194-7. Although King notes that the quality of constables in London rapidly improved, Macnab indicates that improvement was much more gradual.


this force, however, probably generated greater and more persistent antipathy than is commonly supposed. London newspapers remained hostile to the police until well into the second half of the nineteenth century.\textsuperscript{164} While the metropolitan police perhaps won the good will of 'respectable persons', Wilbur Miller asserts that the most they achieved in relation to the working classes before the 1860s was acquiescence.\textsuperscript{165} The conventional view that resistance to the police in Britain quickly dissipated is further challenged by Robert Storch, who indicates that chronic conflict resulted from police intervention in the daily lives and recreational activities of the working classes. Whereas resistance first took the form of riots, he suggests that continuing antagonism was reflected in the high incidence of assault on constables.\textsuperscript{166}

Given the poor quality of constables and public animosity toward them in Britain during the first half of the nineteenth century, hostile attitudes toward the police may have been part of the cultural baggage of immigrants in general, and not just convicts and Irish as historians have indicated. In fact, emphasis on the character of New South Wales' population, rather than the character of the police, may be misplaced. The composition of New South Wales' constabulary and their interaction with the community provide an ample explanation of their unpopularity, without reference to a distinctively Australian ethos.

\textsuperscript{165} Wilbur R. Miller, 'Police Authority in London and New York City 1830-1870', \textit{Journal of Social History} vol.8 (Winter 1975), pp. 92-3.
Aside from the debatable influence of convict and Irish anti-authoritarianism, disrespect for the police in New South Wales was perhaps accentuated by two factors. First, the colony's police were more obviously recruited from marginal groups than in other communities. The constabulary included a disproportionate number of Irish, and even more objectionable, large numbers of ex-convicts and ex-soldiers. If the colony's bond population regarded convict police as traitors, as Russel Ward suggests, free immigrants viewed them with no less hostility. In a society sensitive of its convict origins, the employment of ex-convicts as constables was a slap in the face. Soldiers were often viewed little more favourably than convicts, while their presence in the police was a further reminder of the colony's penal background.

A second, and more important, factor in generating animosity toward the police was the seemingly disproportionate attention directed against relatively trivial offences in New South Wales. According to the Heads of the People, the police had so little legitimate business to look after that they turned their attention to other pursuits, and in particular offences through which they might secure a portion of the fines. The contradiction between the rules enforced by the police and their own conduct was a major impediment to establishing a respected constabulary. Another newspaper noted in 1846 that:

> It is ridiculous in the last degree to elevate a police force into conservators of morals. If they were organized for such an end, the candidates must necessarily undergo some sort of preparatory instruction and investigation, and be made at least competent to understand in


168 Heads of the People, 24 April 1847, p. 13.
some measure the moral code which they are
entrusted to carry out, and also be in their
own private lives proper examples for imitation;
whereas taken as a body, they are about as
ignorant a class of individuals as can possibly
be found within the limits of the colony ...169

Increasing arrests for petty offences, especially drunkenness and
disorderly conduct, were a feature of other communities during the
period.\textsuperscript{170} But in New South Wales the role of police as 'conservators
of morals' was magnified by their comparatively large numbers. Both
because of the colony's convict background, and the slow process of
professionalizing the police in Britain, New South Wales was relatively
densely policed. In 1846, based on available returns, the average
ratio of country police to inhabitants in England was 1: 2700. At
about the same time, 1848, the ratio of police to population was
less than 1: 1000 in sixty-five per cent of England's boroughs.\textsuperscript{171}
By comparison the ratio of police to population in New South Wales'
settled districts in 1846, excluding Sydney, was 1: 344.\textsuperscript{172} This
was despite large reductions in the constabulary following the
cessation of transportation, and exclusive of the colony's specialized
forces. Much of the disparity can be attributed to New South Wales'
dispersed population, but it was frequently complained that constables

\textsuperscript{169} Bell's Life, 20 June 1846, p. 1.

\textsuperscript{170} See Lane, 'Urbanization and Violence', pp. 473-4; Philips, 'Crime
and Authority', pp. 119-20; Philips, Crime in Victorian England, p. 86.

\textsuperscript{171} Macnab, 'Crime in England and Wales', pp. 23, 283. These figures
actually overstate the ratio of police to population in England,
since they refer only to counties with police forces organized under
the County Police Act of 1839, and boroughs with police established
under the Municipal Corporations Act of 1835.

\textsuperscript{172} Ratio is based on Returns of the Colony, 'Blue Book', 1846, CO
206/88; Census of New South Wales, 1846.
remained clustered in the towns. Sydney was also heavily policed by British standards. In 1841 the ratio of police to population was 1:263 in Sydney, compared to 1:495 in London. A decade later Sydney was still more densely policed with a ratio of 1:391 to London's 1:461. The disparity was much more marked in comparison to Britain's other large cities. The relatively large number of police in the colony made them more visible, increased the scope for their activities, and hence increased the potential for conflict with citizens.

Whether nineteenth century experience had any lasting influence on Australian attitudes toward the police seems doubtful. Even in the years immediately following the cessation of transportation, the tone of police-community relations was principally determined through interaction rather than inherent attitudes. New South Wales' penal origins probably accentuated antipathy toward the police, but in a more indirect way than some writers have implied. Especially during the early 1840s, colonists reacted against the relatively large number of police accustomed to regulating closely the personal conduct of convicts. It also seems likely that animosity toward the

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173 See for example SMH, 10 November 1841, p. 2.

174 Ratios for London are from Macnab, 'Crime in England and Wales', p. 259. The 1841 ratio for Sydney is from SMH, 28 March 1844, p. 2. The 1851 ratio is based on Returns of the Colony, 'Blue Book', 1851, CO 206/93; Census of New South Wales, 1851.

175 See Gatrell and Hadden, 'Criminal Statistics', p. 353.

police was much stronger in the towns (where the proportion of free immigrants was largest), than in country districts, since it was in the towns that the police were most obtrusive.

More than any other single factor, apprehensions for petty offences created popular indignation, both because constables acted out of pecuniary self-interest, and because normally law-abiding persons resented being stigmatized by police arrest. Police interference was resented all the more in the light of the constabulary's low standards of recruitment and its apparent inefficiency in dealing with more serious crimes. The absence of a 'moral consensus' on the part of the community, or more specifically, disagreement concerning the role of the police with regard to public morality, was a further impediment to an acceptance of the police. The constabulary's handling of 'victimless' crime, as well as charges of police corruption and inefficiency, were the main bones of contention, and in this sense conflict between policemen and colonists in the mid-nineteenth century foreshadowed rather than predetermined later antipathy towards Australia's police.

PUBLIC ORDER AND ORDER ON THE GOLD FIELDS

The position of a labouring man in the colonies is already so much superior to that which he occupies in the mother country, that transportation has ceased to inspire dread ... Let there be added to these inducements the prospect of picking up gold without diving into other people's pockets under the prying gaze of a policeman, and the temptation to crime will be perfectly irresistible; ... The discovery of gold-mines will arrest transportation to Australia far more certainly than the eloquence of Sir William Molesworth, or the efforts of the Colonial League, - and gold which has been the corrupter of so many communities, will for once perform the duty of purifier.¹

The discovery of gold in New South Wales signalled a new era in colonial crime, inasmuch as it served to shift attention from the criminality of convicts to regulating a community in rapid flux. Both contemporaries and historians have regarded order on the gold fields as a benchmark in the community's transition from a penal colony. A high standard of public order, however, owed much to conditions already long apparent in New South Wales. At the same time, there was a good deal of ambiguity in evidence relating to the conduct of diggers. The

gold rush was perceived with a type of double vision, which was symptomatic of conflicting attitudes toward the social implications of gold. On the one hand, colonists pointed to the relative absence of serious crime and disturbances on the gold fields as testimony of their new respectability and freedom from the convict stain. On the other hand, there was a preoccupation with diggers' vices which reflected fears of social change, and which were accentuated by occasional collective violence. Despite lipservice concerning the peaceable disposition of the diggers, it is arguable that many colonists viewed disorder as more of a threat during the gold rush than under the transportation system.

The gold rush touched off in May 1851 by publicity of Edward Hargrave's find at Ophir in the Bathurst district, initially created widespread fears of anarchy. The press prophesised that social chaos and rampant crime might prevail. Thomas Icely, a magistrate, MLC, and large landowner, informed the Executive Council at the end of May that he had already removed plate and other valuables from his home near Carcoar, and would soon remove himself in anticipation of pillaging by those travelling to the diggings. Some settlers with an eye to both social stability and their economic interests, pressed the government to proclaim martial law and prohibit gold mining. As late as February 1852, Charles Nicholson wrote from Sydney that law and order were little more respected than in California, and

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2 See for example SMH, 19 May 1851, p. 2; Bell's Life, 14 June 1851, p. 1.
3 Minute of the Statements made by Thomas Icely before the Executive Council, 23 May 1851, enclosed in FitzRoy to Grey, 11 June 1851, PP, 1852, vol.34, [1430], p. 23.
that he anticipated social breakdown unless an adequate military force was provided.\(^5\)

Predictions of rampant crime by the press were soon replaced by self-congratulatory descriptions of the gold fields. A month after gold digging began at Ophir, the *Sydney Morning Herald*'s correspondent reported that there had been only one case of assault, and that not more than two drunkards had been seen.\(^6\) Gold commissioners typically reported that the diggers 'behaved remarkably well', and commented on the general good order and absence of crime at the diggings.\(^7\) After attending the Bathurst Assizes in March 1852, Attorney-General Plunkett noted that only a few criminal cases could be related to the discovery of gold, and that he could not remember when the district had been in a more orderly state.\(^8\) The same month *Bell's Life* pointed out that most of the colony's initial fears remained unrealized.


\(^6\) *SMH*, 21 June 1851, p. 3. See also for example *Empire*, 27 May 1851, p. 480.


\(^8\) J.H. Plunkett to Col Sec, 16 March 1852, enclosed in FitzRoy to Grey, 26 March 1852, *PP*, 1852-53, vol.64, [1607], p. 68.
When the Gold Fields were discovered in this Colony it was solemnly prophecied by certain wise men that it would be the means of completely convulsing society, rocking the foundations of morality and order, and leaving life and property at the mercy of a set of lawless vagabonds, who would be lure hither by the glittering bait ... Nearly twelve months have rolled over our heads since ... the colonists are still alive, and remain in undisputed possession of their property. Thousands of strangers have reached these shores, but so strong was the arm of the law, so vigorous the measures adopted by the Government, and so determined were the people themselves, that the immigrants were compelled to restrain all dishonest intentions (if they had any) and gain the golden treasure by the sweat of their brow.9

There was, however, another side of the gold fields, which became increasingly evident in reports as fears of total anarchy subsided. Under the leader 'The Evil of Gold', the Empire lamented that while order and obedience to the law was for the most part maintained, diggers indulged in 'reckless and deplorable debaucheries'.10 Despite initial praise of the diggers' sobriety, drunkenness and its attendant evils was soon a staple topic of newspaper correspondents.11 Sly-grog sellers were denounced as injurious not only to miners, but licensed publicans, while the police resorted to elaborate schemes and disguises for their entrapment.12 Gambling was another 'hell-bred' vice which seemed to quickly gain momentum on the gold fields, and which it was feared would generate other forms of crime.13 Prize fights combined betting and brutality, with pugilistic encounters sometimes lasting

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9 Bell's Life, 6 March 1852, p. 2.
10 Empire, 24 August 1852, p. 1334.
11 See for example Bathurst Free Press, 29 July 1851, pp. 4-5; Empire, 23 July 1851, p. 674; Bell's Life, 2 August 1851, p. 2; 24 July 1852, p. 2.
12 See for example J.R. Hardy to E. Deas Thomson, 14 July 1851, Deas-Thomson Papers, ML, MS. A1531-3, vol.3, pp. 258-9; Bathurst Free Press, 30 July, p. 2; 18 October, p. 4; 25 October 1851, p. 6; Empire, 18 September 1851, p. 167; 'A Resident Gold Digger' to Editor, SMH, 5 March 1853, p. 3.
13 See for example Empire, 25 June 1851, p. 578 Bathurst Free Press, 9 July 1851, p. 2.
for hours or being fought within a few hundred yards of a Sunday sermon. 14 The Bathurst Free Press, while professing not to belong to a strict class of sabbatarianism, made the desecration of the Sabbath on the Turon a constant theme in its columns. 15 It was these vices, according to the Goulburn Herald, which had a 'peculiar strength and attraction at the mines', and which 'ought to be punished with the utmost severity'. 16

Conflicting reports concerning order on the gold fields resulted largely from the different types of disorder being commented upon. There were in fact two faces of order on the gold fields. One in which the colony was relatively free of serious crime, and which contrasted the lawlessness of California and Victoria. The other saw the community being undermined by the new wealth and concomitant vices of workers, shortages of labour, and democratic aspirations.

Inseparable from the relative prosperity of many workers were upper and middle class fears that their social and economic position would be undercut. For British publicists, gold dramatized the already popular topic of moral dangers generated by an affluent lower class and a criminally tainted population. 17 In the colonial press, the corrupting influence of wealth on the 'lower orders' became a

14 See for example Empire, 23 July 1851, p. 674; Bathurst Free Press, 29 July 1851, pp. 4-5; 20 August 1851, p. 2.

15 Bathurst Free Press, 15 October 1851, p. 2. See also for example 20 August, p. 2; 4 October 1851, p. 4.

16 Goulburn Herald, 1 November 1851, p. 4.

17 Clarke, Land of Contrarities, pp. 151-3.
ubiquitous theme. *Bell's Life*, which formerly ridiculed predictions of chaos and crime, later detected 'a destructive undercurrent' in the gold rushes. 18

It is absurd to expect that the population of a country will annually visit scenes of vice and crime, and not carry away much of the immorality and licentiousness they have been brought in contact with. Hence it is, that while Australia has become more wealthy, she has become more immoral ... 19

The sudden acquisition of money beyond the labouring classes' needs, it was frequently contended, would prove in reality a curse. 20 Successful diggers were tempted to dissipation, and squandered their earnings in conspicuous and 'vicious expenditure'. 21 Unsuccessful miners as well would be 'contaminated by the proximity of vicious example', and rather than return to their former occupations they would become bandits or paupers. 22 Underlying such pessimistic projections was concern not only about the cost and availability of labour (shared by newspaper proprietors), 23 but an alleged social revolution. J.R. Godley, following a visit to New South Wales in 1853, asserted that gold brought not only a drastic increase in wages

18 *Bell's Life*, 22 October 1853, p. 2.
19 *Bell's Life*, 2 September 1854, p. 2.
20 See for example *Goulburn Herald*, 1 November 1851, p. 4; *SMH*, 3 December, p. 4; 10 December 1853, p. 6.
21 *Freeman's Journal*, 16 October 1851, p. 9.
22 *Goulburn Herald*, 1 November 1851, p. 4.
23 See Martin, Henry Parkes, (typescript), Chapter 4, pp. 30, 34-6.
but that, in fact, speaking generally, the masters and servants have changed places; the former are dependent on the latter, must humour them, bear with them, get them to do as much as they will, and be thankful as for a favour. ... they are jostled at every turn, often outbid and outshone by those who had been their inferiors, perhaps their servants.  

Perceptions of a community corrupted by new found wealth were counterbalanced by an insistence that order on the gold fields confirmed the colony's new found respectability. Colonists bitterly resented insinuations by American newspapers that New South Welshmen were largely responsible for crimes, especially arson, committed in California. The colonial press retaliated with abundant reports of lynch law and vigilante movements in California, which served both to confirm New South Wales' superior order, and underline the dangers inherent in Yankee republicanism. The discovery of gold was heralded as an excellent opportunity for demonstrating to California and the world, that much of the odium which has been lavished upon the country is undeserved; and that with all the disadvantage of a penal origin, the inhabitants of New South Wales imported to their new homes that instinctive respect for authority of the law, and regard for social order, which distinguish the brethren of their fatherland.  


25 See for example SMH, 15 February 1851, p. 4; Empire, 5 June 1851, p. 511; Maitland Mercury, 23 July 1851, p. 2; Press, 30 July 1851, p. 357.

26 See for example Freeman's Journal, 9 October 1851, p. 8; Bathurst Free Press, 15 October 1851, p. 2. The Empire, while denying that California's evils derived from democratic institutions, deprecated American vigilante action as both inhumane and un-British. Empire, 22 October 1851, p. 282.

27 Bathurst Free Press, 7 June 1851, p. 2; Bell's Life, 14 June 1851, p. 1.
Similarly, it was asserted that the colony's low crime rate would go far toward proving in Europe that New South Wales 'was not morally the worst country in the world'.

In contrasting New South Wales to California, colonists were prone to emphasize Anglo superiority. Edward Hargraves, the acclaimed discoverer of gold, privately expressed his opinion that the worst convicts from Van Diemen's Land were better than New Yorkers on the American diggings, who had little scruple about killing and scarcely a semblance of religion. Nevertheless, differences between New South Wales and California went much deeper than the character of the digging population. Unlike California, the machinery for government and social control was already firmly established in the colony before gold was discovered. The proximity of settled communities to the diggings provided relatively easy access to police and courts. Established wool and agricultural pursuits in New South Wales also served as a safety valve for frustrated gold seekers by affording alternative employment. In California the presence of hostile Indians stimulated a habit of using armed force, while in New South Wales Aboriginal resistance was already crushed in the gold mining regions.

This is not to discount the importance of the mining population in establishing order on the gold fields. Gold commissioners frequently characterized the diggers as 'respectable', even a 'superior' class

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28 Empire, 18 September 1852 (Supplement), p. 1.

29 Arthur E. Selwyn to Rose Rusden, 25 February 1852, Selwyn Correspondence, ANL, MS. 3542, pp. 102-3.

of men anxious to obey laws and preserve the peace.\(^{31}\) Significantly, however, not only residents of Australia, but foreigners were included in this assessment. Despite accounts of California, Americans were described as well behaved, and admired for their steady working habits.\(^{32}\) At least one resident of the western gold fields believed that foreign diggers in general were better behaved than residents of the colony. This was possibly because they took the business of accumulating money more seriously, and as the same observer remarked, 'did not waste their substance'.\(^{33}\)

The relative order of New South Wales' gold fields was contrasted not only to California but Victoria, where gold was first discovered in August 1851. Although the Victorian fields first appeared orderly, there were soon reports of widespread lawlessness.

What a contrast! The evils which we feared have fallen heavily upon her. Gold she possesses a plenty, but with it the curse of overriding ruffianism and total insecurity.\(^{34}\)


\(^{34}\) Bell's Life, 6 March 1852, p. 2. See also for example Illustrated Sydney News, 5 November 1853, p. 36.
Outbreaks of crime in New South Wales were frequently attributed to the periodic incursions of Victorians, who allegedly lacked the New South Welshman's respect for the law. Portrayals of Victoria no doubt owed much to colonial rivalry intensified by recent separation, and resentment against an 'assumed superiority on the part of the Melbourne people'. Added to this, the Sydney press tended to exaggerate crime on the Victorian gold fields in order to discourage migration.

Both contemporaries and historians have typically attributed lawlessness on the Victorian gold fields to the presence of large numbers of Van Diemen's Land expirees. There were, however, other factors which distinguished New South Wales from her sister colony. Most obviously, gold digging was on a much larger and more frenetic scale in Victoria. During the 1850s New South Wales' gold output

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36 SMH, 24 January 1853 (Supplement), p. 2.

37 Serle, Golden Age, p. 36.

was only about seven per cent of Victoria's. 39 Whereas Victoria's population increased by almost seven-fold between 1851 and 1861, New South Wales' was less than doubled. 40 The colony's newly formed government was weaker and less experienced than that of New South Wales. Victoria's machinery for social control was also more seriously disrupted by the gold rushes. Resignations from the police were more numerous than in New South Wales, and an adequate force was only established through the arrival of military pensioners from Van Diemen's Land, the recruitment of men from London's constabulary in 1853, and a cadet scheme for training officers implemented between 1852 and 1856. 41

The fact that diggers were drawn largely from among permanent residents in New South Wales was perhaps most important in contributing to a settled population, which contrasted the rush to a wilderness in California and Victoria's huge influx of immigrants. Following the initial rush to new discoveries, women and children quickly made up an increasing proportion of the population on the gold fields as miners sent for their families. The life style of diggers became more sedentary as substantial dwellings were constructed, gardens planted, and gold mining was pursued as a more or less permanent business. 42

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40 Markus, Fear and Hatred, p. 14.

Even when more attractive discoveries of gold were made, diggers sometimes appeared reluctant to move because they had 'made themselves so comfortable in their huts and gardens'. The London Times' correspondent, particularly struck by the growth of domestic virtues, noted that:

Homesteads are eagerly sought after by the men who have laboured for a few months in the rivers and creeks; domestic considerations prevail over the speculative ambition, and unlike the gambling, roving, Californian, the Australian gold-digger has no sooner filled his pockets than he sets to work to settle his wife comfortable in a cottage with a neat garden ... Despite the ruinous effects of fifty years felony, domestic relations and domestic virtues are rapidly growing up among us, and the dreadful remembrances attached to a populus virorum are fast fading away.

While allusions to cottages and gardens were rather extravagant, New South Wales' digging population was relatively stable, especially since many of the colony's more adventurous spirits migrated to California or Victoria. In one sense a stable mining population was potentially more volatile. Geoffrey Blainey indicates that this was the case at Ballarat, where the length of time required to mine a claim made gold regulations more oppressive and allowed diggers' indignation to be sustained longer. In general, however, a settled population was easier to control. Lack of anonymity could make diggers more self-conscious.

44 Times (London), quoted in Sidney, Colonies of Australia, p. 417.
45 Blainey, The Rush, pp. 50-1.
about their actions, and reduce the chance of offenders escaping
detection. Outbreaks of lawlessness later in the decade were
commonly associated with a more nomadic and impatient existence
on the gold fields.  

Coincident with contemporary emphasis on the character of the
digging population in explaining New South Wales' quiescence was
an insistence that colonists were imbued with a 'British love of
order'. This explanation can probably be regarded with some
scepticism, particularly since historians have increasingly questioned
Britain's reputation for order and peaceful evolution. While the
development of non-violent forms of protest in Britain probably
contributed to a tradition of public order in New South Wales, there
were also distinctively colonial conditions which inhibited collective
violence. Most obviously, Australia was isolated from pressures
which generated widespread disaffection in Europe. At the same
time, a dearth of groups organized for political power struggles, or
other contending groups such as labour organizations, reduced the
possibility of large scale confrontations.

In dealing with the relative absence of civil strife in Sydney,
Peter Grabosky mentions four additional factors which contributed
to public order. During the first half century of settlement,

46 See for example J. Buchanan to Under Secretary for Lands and
Public Works, 1 July 1857, Copies of Letters Sent to Officials
and Private Individuals from Assistant Gold Commissioner, New
England, Gold Commissioners, SANSW, 4/5475; SMH, 11 February
p. 4; 12 June, p. 5; 19 June 1861, p. 4.

47 See Tilly, Rebellious Century, p. 280; Quinault and Stevenson
(eds), Popular Protest, p. 15.
Grabosky suggests, the 'coercive capacities' of authorities and favourable economic conditions were primarily responsible for checking collective violence. Following the convict era, a lack of public disorder can be explained largely by the willingness of existing institutions and authorities to accommodate citizens' demands, and the racial homogenity of the population. With some elaboration, these conditions provide at least a partial explanation of order in New South Wales both before and after the gold rush.

The 'coercive capacities' of authorities helps explain C.M.H. Clark's observation that convict folk literature tended to warn offenders rather than urge them to rebellion. It is a platitude that New South Wales experienced only one large scale convict rising (at Castle Hill in 1804), while the colony's more rebellious prisoners were limited to the hit and run tactics of bushranging. The colony's penal origins fostered a tradition of repression, and meant that large numbers of police and military troops were available for suppressing disturbances. Despite large reductions in the constabulary and troops following the cessation of transportation, the colony remained densely policed by British standards. In their study of rebellion in nineteenth century Europe, the Tillys conclude that 'repression works' in deterring collective violence, and this seems supported by the experience of New South Wales.

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48 Grabosky, Sydney in Ferment, p. 170.
50 See Chapter 8, pp. 347-8.
On the gold fields, the role of the police in maintaining order was somewhat ambiguous. The problem was not only providing enough police, but not too many. As one gold commissioner indicated, the police had to be sufficient to afford protection, 'but not in such numbers as to offend the prejudices of any'.\(^{52}\) Particularly where the Gold Police exceeded their authority, they might become regarded as more a nuisance than a protector. Russel Ward suggests that a hatred for the police was perhaps 'the most prominent feature of the diggers' ethos'.\(^{53}\)

On the other hand, oppression by the Gold Police is easily exaggerated. Some of the more obnoxious gold regulations were either easily circumvented or not enforced. One of the most objectionable regulations required that licenses be issued only to persons producing a certificate of discharge from their last employment, or who could prove to the satisfaction of the commissioners that they were not improperly absent from hired service. But this regulation was considered a dead letter. Miners were rarely required to give an account of themselves, while forged discharges could be obtained at any public house for the price of a drink.\(^{54}\) Similarly, regulations requiring non-British subjects to pay a double license fee were easily evaded. Americans were difficult to distinguish, and could claim to be Englishmen. Chinamen could insist they came

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from the British possession of Hong Kong. All 'dark men' and Dutchmen reportedly claimed to come from the Cape of Good Hope, and Frenchmen could maintain they were from Canada. While Germans generally paid the fee, some claimed to belong to Heligoland. Contemporaneous descriptions of the Gold Police as corrupt, overbearing, and inefficient, generally refer to Victoria. There is at least some evidence which suggests the police in New South Wales conducted themselves better. William Johnson, a commissioner for the western district, characterized the Gold Police as 'a steady and efficient body', and considered that communication and co-operation between police on the various gold fields was an improvement over most parts of the colony. According to Johnson, the orderly state of the diggings owed as much to police supervision 'as to any abstract love of order' among the miners. In general, the all important gold commissioners were believed popular with the diggers. Administration of the gold regulations was considered more lenient than in Victoria. When a mass disturbance seemed imminent on the Turon in February 1853, the tact of the gold commissioners was largely credited with averting an armed confrontation. By regulating disputed claims, the commissioners also contained what was potentially


58 See for example Empire, 21 November 1851, p. 388; SMH, 2 February 1853, p. 2; People's Advocate, 21 June 1856, pp. 6-7.


60 SMH, 11 February, p. 2; 12 February (Supplement), p. 1; 19 February 1853, p. 2.
a major source of violence.61

The importance of the police in maintaining order was most apparent in their absence. Despite denunciations of Californian 'lynch law', diggers in New South Wales were not above resorting to vigilante action where police protection appeared inadequate. Before the arrival of police at the Ophir gold field, a man caught robbing his mate was run down by diggers and severely kicked.62 Residents at Maitland Point on the Turon formed a vigilance association in 1851, which while acting in conjunction with the police, apparently lacked discrimination in serving out punishments.63 Diggers at Stoney Creek, where in 1856 there was only one commissioner and two police for the regulation of two to three thousand inhabitants, also formed a vigilance committee, and on one occasion reportedly came close to hanging a thief.64 It was later reported that two men were narrowly saved from lynching on the Kiandra gold fields in 1860.65 That such incidents were not more frequent undoubtedly owed much to a police presence, which helps account for the stark contrast to America where there were no less than 119 documented vigilante killings between 1850 and 1859.66

61 See Commissioner Hardy to Col Sec, 5 June 1851, enclosed in FitzRoy to Grey, 15 August 1851, PP, 1852, vol.34, [1430], p. 54; SMH, 19 September 1853, p. 4.


63 Empire, 16 December 1851, p. 471.

64 Bathurst Free Press, 8 October, p. 2; 11 October, p. 2; 15 October 1856, p. 2; William Johnson to Col Sec, 11 October 1856, NSW, V&PLA, 1856-7, vol.2, pp. 516-17.

65 Assistant-Commissioner Lynch to Commissioner Cloete, 23 March 1860, NSW, V&PLA, 1861, vol.2, p. 381.

If the colony's 'coercive capacities' usually appeared adequate to check collective violence, compliance to authority was also dictated by self-interest. Far from simply an 'abstract love of order', commercial prosperity and relatively high wages gave many members of the community a stake in upholding the law. The Herald stated the relationship succinctly, noting that:

No man quarrels with the law when he is well off.
To him it is not a terror but a friend.67

George Rudé has noted the general absence of subsequent radical activity among prisoners transported to Australia for their involvement in riots, and attributes this to the temporary and local nature of riot leaders.68 On the other hand, Humphrey McQueen argues that the growth of a radical tradition among convicts was undermined by the colony's social mobility. While most convicts did not rise themselves, there was a working class acceptance of 'the acquisitive ethic of capitalism because it worked for them'.69 The Bathurst Free Press explained New South Wales' transition from a penal colony in similar terms, noting that the 'acquisition of property begot a conservative spirit', and fostered a community committed to peace and order.70

Significantly, Sydney's first radical movement developed in the depth of the 1840s depression, and then quickly lost momentum as economic conditions improved. Writing at mid-century, Godfrey Mundy

67 SMH, 21 June 1853, p. 2.
69 McQueen, 'Convicts and Rebels', pp. 28, 30.
70 Bathurst Free Press, 14 June 1856, p. 2.
found New South Wales' population 'usually drowsy, well-fed and politically apathetic', noting that their collective comfort made it difficult to inspire discontent and disquiet. The poor voter turnout at elections in the 1850s was another indicator of political apathy. The Herald, commenting on the lack of sensation caused by the success of campaigns to end transportation and for self-government, asserted that colonists were under a 'Monetary Despotism' in which anything unconnected with financial interests was considered superfluous. While such denunciations of colonial materialism were undoubtedly overstated, prosperity might serve to minimize political radicalism and economic grievances which could ultimately lead to violent confrontations.

On the gold fields as well, at least during the opening years of the rush, the general success of miners fostered a peaceful population. Although some observers considered a large proportion of the digging population squandered all of their earnings on drink, many miners were apparently more cautious. It was estimated, for example, that two-thirds of the miners at the Rocky River gold fields sent their money to the savings bank. According to Roger Therry, deposits in the government bank increased dramatically, and at a time when it was difficult to recruit police, 'every depositor in the Savings Bank might be looked upon as a special constable whose interests were all on the side of the struggle to maintain order'.

71 Mundy, Our Antipodes, pp. 467, 470.
72 See Martin, Henry Parkes, (typescript), Chapter 3, pp. 36, 46-7; Chapter 5, p. 29. See also S.G. Foster, Colonial Improver. Edward Deas Thomson 1800-1879 (Melbourne, 1978), p. 120.
73 SMH, 27 May 1853, p. 2.
75 Therry, Reminiscences, pp. 372-3.
A third condition which contributed to public order was the willingness of existing institutions and authorities to accommodate citizens' demands. A.G.L. Shaw asserts that easy successes meant that it was not necessary for colonists to go beyond threats.\textsuperscript{76} There was no group in the colony with hereditary privileges to protect, while conservatism was generally restricted to a defence of economic interests.\textsuperscript{77} Colonial conservatism also tended to be fluid and flexible, rather than doctrinaire and committed to a rigid ideology.\textsuperscript{78} By the 1850s, T.H. Irving suggests, both 'enlightened' conservatives and radicals were becoming more liberal.\textsuperscript{79}

The final condition which Peter Grabosky mentions as contributing to social quiescence is the community's homogenity. Race relations in fact proved the most prolific source of collective violence in the nineteenth century, although it can be legitimately claimed that the ethnic homogenity of New South Wales' white population minimized strife between Europeans. The similar background of most immigrants precluded the potential for civil conflict which existed between the British and French in Canada, and the British and Dutch in South Africa.

\textsuperscript{78} Dyster, 'Colonial Conservatism', pp. 341, 350-1.
\textsuperscript{79} Irving, 'Liberal Politics', p. 6.
Although the large proportion of Irish in the population created the possibility of large scale communal violence, hostilities for the most part were kept in check. A lack of official repression in matters of religion and education reduced racial antagonisms, while an Irish presence in Australia from the beginning of settlement meant they were not faced with the status of newcomers, as in America. Authorities also demonstrated an intolerance of communal violence. Following outbreaks of disorder between orange and ribbon factions at Port Phillip in 1846, an Act was passed which prohibited parades and festivities calculated to provoke a breach of the peace.

While Europeans demonstrated a capacity for peaceful co-existence with one another, this did not extend beyond a colour bar. Traditional emphasis on the absence of public violence in Australia's past excludes the frontier killings of Aboriginals. There are a number of reasons for this. Because the killings of Aboriginals were largely carried out in a surreptitious manner beyond official observation they are often difficult to document. The massacre of twenty-eight Aboriginals at Myall Creek in 1838 by a gang of stockmen was apparently only one of a series in the area. Contemporaries in general, and to some extent

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83 Rowley, Destruction of Aboriginal Society, pp. 35-7; Reece, Aborigines and Colonists, pp. 42-6.
historians, have tended to legitimize the killing of Aboriginals as a form of warfare. Alternatively, Aboriginals could be viewed as criminals who jeopardized the lives of settlers and their property, and hence deserved retaliation. The quasi-military operations of the Native Police reflected the contemporary view of Aboriginals as either a foreign enemy or law-breakers. One historian suggests that a reasonable estimate of Aboriginals killed in frontier conflict throughout Australia is ten to twelve thousand.\footnote{Reynolds, 'Violence', p. 475.} Obviously, the killing of Aboriginals by either organized bands of settlers or police represented the ugliest and most common form of collective violence in New South Wales during the nineteenth century.

As the preceding discussion suggests, those factors noted by Peter Grabosky seem important in relation to public order. By assigning different conditions an importance either before or after the convict era, however, a false distinction is drawn. At least during the gold rush, disorder or the threat of disorder can be related in part to all four conditions. More precisely, economic adversity, governmental inflexibility, an absence of adequate police and troops, and racial conflict appear to be preconditions of collective violence.

Racial antagonism underlaid the most serious disturbances on the gold fields, in consequence of a large influx of Chinese miners. By 1854 about 2,500 Chinese had entered New South Wales.\footnote{D.N. Jeans, An Historical Geography of New South Wales to 1901 (Sydney, 1972), p. 162.} Their number increased rapidly following restrictions on Chinese immigration adopted by Victoria in 1855 and South Australia in 1857. By the end
of the decade Chinese outnumbered European gold miners in New South Wales by three to two, reaching a peak of 15,000 in 1861. Although there were previous attacks on the Chinese, racial violence culminated at the Lambing Flat gold field near the present town of Young. In a series of riots between November 1860 and July 1861 Europeans assaulted Chinese diggers and destroyed their encampments. Unlike Aborigines, however, the Chinese were not considered entirely beyond the pale of the law and civilization. They were entitled to testify in courts of law, and authorities demonstrated much greater resolve in protecting them. This may explain in part why attacks on the Chinese stopped short of murder.

Disturbances usually took place when constituted authority was at its weakest. The first attack on Chinese in New South Wales, at the Rocky River gold field in September 1856, occurred only after fruitless requests for more men by the resident gold commissioner. At the time of the 'collision', four policemen were responsible for the control of about 3,000 persons. Although the population was serviced by sixteen public houses, it was not until the following year that there was a lock-up for detaining offenders, or a court house to try them in.

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88 See Markus, Fear and Hatred, pp. 6, 15, 42.
89 J. Buchanan to E.C. Merewether, August 1856; J. Buchanan to Chief Commissioner of Crown Lands, 30 August, 1 October, 1 December 1856, 2 February, 1 March 1857, Copies of Letters Sent to Officers and Private Individuals from Assistant Gold Commissioner, New England, Gold Commissioners, SANSW, 4/5475.
The more infamous anti-Chinese riots at Lambing Flat occurred as well when the machinery for social control appeared relatively ineffectual. It was not until nine months after the discovery of gold at Lambing Flat in March 1860 that the area was proclaimed a gold field and a commissioner appointed. The new commissioner, David Dickson, was formerly a sub-commissioner at Kiandra, where he was allegedly renowned for his arrogance in dealing with miners. The police camp was initially located twelve miles from the diggings, and the construction of police quarters and a lock-up was only sanctioned in February 1861. Although the arrival of a strong force of police and troops on the gold field in March 1861 temporarily quelled disturbances, they were withdrawn in May amid racial tension and against the advice of resident officials. The small number of police left proved powerless to prevent a subsequent conflict between Chinese and Europeans at Native Dog Creek, a field which was neglected by the authorities even though violence was anticipated there. The riots culminated with an attack on the police camp itself in July 1861, while order was quickly restored when a strong force was again deployed to the field.

90 Selth, 'Burrangong Riots', pp. 49-50; 'A Bendigo Digger' to Editor, SMH, 23 February 1861, p. 5.

91 Selth, 'Burrangong Riots', p. 50; Markus, Fear and Hatred, p. 30; M. FitzPatrick to P.L. Cloete, 27 February 1861, Department of Lands and Public Works, Letters Received, SANSW, 5/3626.

92 H. McLean, Memo, 15 May 1861, enclosed in Col Sec to Under Secretary for Lands, 17 May 1861, Department of Lands and Public Works, Letters Received, SANSW, 5/3626; Carrington, 'Lambing Flat', p. 233; Selth, 'Burrangong Riots', p. 57.

93 Assistant Gold Commissioner Keightly to Commissioner of the Western Gold Fields, 10 May 1861, enclosed in Col Sec to Under Secretary for Lands, 17 May 1861; Commissioner McLean to Under Secretary for Lands, 26 May 1861, Department of Lands and Public Works, Letters Received, SANSW, 5/3626; SMH, 1 June 1861, pp. 5-6.
While favourable economic conditions fostered social quiescence, disorders were generally associated with declining yields of gold and disruptions of work. The select committee appointed in the wake of a threatened rising at the Turon in February 1853 attributed discontent to the indiscriminate imposition of the license fees and the instigation of publicans and storekeepers. Yet as one witness noted, agitation was perhaps largely stimulated by decreasing gold returns. Obviously the unpopularity of the license fee bore some relation to diggers' earnings. Commissioner William Johnson, noting the flooded state of the Turon at the end of 1852, reported that 'formerly the fee was readily and cheerfully paid - whereas now it has to be literally squeezed out of the miners'. Disruption of work due to excessive water at the fields reduced the amount of gold mined and created an idle and restless population.

The Lambing Flat riots provide another case in point of the importance of economic conditions in mediating civil strife. As a 'poor man's field' requiring little capital to be worked, Lambing Flat attracted many disappointed diggers from other fields hoping to recoup their past losses. It was believed that many had expectations of making more


95 Evidence of William Hardy to the Committee, p. 465.

96 William Johnson to Chief Commissioner for the Gold Districts, 8 September 1852, Copies of Letters Sent to Officials and Private Individuals from Assistant Gold Commissioner, Sofala, Gold Commissioners, SANSW, 4/6264, pp. 4-5.

than just wages, which were for the most part unrealized. Whereas flooding disrupted work on the Turon in 1853, Lambing Flat was plagued by water shortages. The Yass Courier's correspondent reported in April 1861 that:

Most unfortunately for the peace and quiet of Burrangong, we have been for a long time without rain, and for that reason mining has become so slack that people have had time enough to turn their thoughts again to the consideration of their grievances.

Racial prejudice and the role of Chinese as economic competitors combined to make them obvious scapegoats for the frustrated expectations of European miners.

The gold fields on the Turon and Lambing Flat again provide examples of situations aggravated by the government's intransigence. Miners were persistently reminded that if government regulations were found oppressive they might use constitutional means for their modification. But the government demonstrated a reluctance to respond to petitions. A motion for a select committee to investigate the gold regulations was made following a petition by about 2,000 diggers at Sofala towards the end of 1851. The motion was withdrawn, however, following objections by the colonial secretary, Deas Thomson.

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98 SMH, 19 June 1861, p. 4.
100 See for example Bathurst Free Press, 7 June 1851, p. 2; SMH, 11 June 1851, p. 3; Bell's Life, 14 June 1851, p. 1; Report from Select Committee on the Gold Fields Management Bill, NSW, V&PLC, 1853, vol.2, p. 434.
101 Bathurst Free Press, 15 November, p. 3; 22 November 1851, p. 4.
Impressed by the lack of ill-feeling towards the authorities during a recent visit to the diggings, he considered an inquiry unnecessary.\textsuperscript{102}

Thomson's observations were criticized on the grounds that his brief visit to the gold fields hardly qualified him to assess the situation. The \textit{Empire}'s 'special reporter' angrily commented that:

\begin{quote}

he knows as much about gold-digging and gold-diggers as an inhabitant of Saturn would know about the social composition of the Earth, after having spent a month upon it, visiting the princes and great men of the world.\textsuperscript{103}
\end{quote}

Nevertheless, it was only after it appeared miners might violently resist the enforcement of new gold regulations in 1853 that a select committee recommended a reduction in the license fee from thirty to ten shillings a month.\textsuperscript{104} It was not until 1857 that New South Wales belatedly followed Victoria's example in replacing the license fee with a duty on exported gold.

At Lambing Flat the government was considered unbending because of its failure to restrict Chinese immigration as miners demanded. This was particularly the case after a visit to the gold fields by Premier Charles Cowper raised expectations of government action which were not fulfilled.\textsuperscript{105} As on the Turon, however, the threat of violence eventually

\begin{thebibliography}
\item 103 \textit{Empire}, 12 December 1851, p. 459. See also for example \textit{Bathurst Free Press}, 10 December, p. 2; 20 December 1851, p. 4.
\item 105 Selth, 'Burragong Riots', p. 56.
\end{thebibliography}
prompted the adoption of legislation conceding the diggers' demands. Again following the example of Victoria, an Act was passed in 1861 which limited the entry of Chinese into the colony, and prevented them from becoming naturalized.\textsuperscript{106}

Ultimately, levels of collective violence depended on colonists' frustrations (whether attributed to the economy, government, Aboriginals, or Chinese) on the one hand, and the ability of authorities either to contain or placate those frustrations on the other. The most important distinction between disorder before and after mid-century pertains not to the conditions which inhibited collective violence, but the form disorder took. In this respect, the cut-off point was not the end of the convict era but the beginning of the gold rush. At the same time, one may question the contention of Ted Robert Gurr, Peter Grabosky, and Richard Hula that by mid-century public order was no longer a dominant issue, due to the end of transportation, an influx of free immigrants, and rising prosperity.\textsuperscript{107}

An apparent feature of public violence in the decade following the cessation of transportation was the often 'issueless' nature of riots.\textsuperscript{108} As already noted, antagonism toward the constabulary frequently motivated attacks on policemen and police watch-houses.\textsuperscript{109} But these disorders

\textsuperscript{106} [Colony of NSW] 25 Vic., No. 3, sec. 3-5, 9.


\textsuperscript{109} See Chapter 8, pp. 324-6.
represented a spontaneous response to police interference, rather than part of a concerted campaign with definite objectives. Other disorders sometimes appeared primarily recreational.

One of Sydney's worst disturbances, the New Year's Day riot of 1850, began with a brawl between some off-duty soldiers and merchant seamen. A crowd estimated at three to four hundred gradually assembled, consisting largely of boys, which smashed windows along Pitt, George, and Elizabeth Streets, tore down fences at one street corner, and set fire to a watch-box at the racecourse. In Pitt Street one of the alleged ringleaders encouraged stone throwing by waving his hat over his head, cocking one leg, and shouting 'Hurrah! Go it, boys!'. There was no pillaging, although a publican on George Street testified that some of the rioters came to his door demanding a bottle of rum. He eventually gave them the liquor, and one of the crowd waved a stick over his head, crying 'no stones here lads', before they moved on to the next door.\(^\text{110}\)

One of the most disturbing features of the riot was the youth of many participants, who included the sons of 'respectable citizens'. Of sixteen persons apprehended by the police, seven were reported to be under fifteen years of age.\(^\text{111}\) Still more galling was the absence of any apparent cause for the riot other than 'the pure love of mischief'.\(^\text{112}\)

The Herald asserted that:

> In Europe and America, when the masses break out into violence, the passions have been inflamed by some real or imaginary wrong. ... But the riot which on New Year's morning spread terror and dismay amongst so many of the peaceful families of Sydney, was altogether without provocation or pretext of any kind. ... Sydney is threatened with riots of a perfectly novel genus. We have

\(^{110}\) SMH, 4 January, p. 2; 5 January, pp. 2, 5; 7 January, p. 2; 10 January, p. 2; 4 March 1850, p. 2; Bell's Life, 5 January, p. 2; 9 March 1850, p. 1.

\(^{111}\) Bell's Life, 5 January 1850, p. 2; SMH, 4 January 1850, p. 2.

\(^{112}\) SMH, 23 January 1850, p. 2.
nothing to fear from mobs goaded to madness by starvation, nor from mobs fired with political disaffection. But the experience of the last few years shows that we have very much to fear from mobs of giddy boys, who love rioting for rioting sake, and with whom midnight violence is an amusing pastime.  

Despite the contention that Sydney was faced 'with riots of a perfectly novel genus', the New Year's Day disturbance fit a familiar pattern. Such 'rampages', consisting largely of young males, were endemic to most large cities.

Collective violence at Lambing Flat represented a new departure inasmuch as it arose out of specific grievances, and was directed towards definite social, economic, and political objectives all subsumed under the exclusion of the Chinese. The disturbances were part of a concerted campaign, which from January 1861 was given organization by a Miners' Protection League. The diggers' objectives were also proselytized by delegates from Lambing Flat who participated in anti-Chinese demonstrations in Sydney. Similarly, the threat of disorder on the Turon in 1853 arose from collective action by diggers in protest against new mining regulations. Miners passed resolutions, adopted petitions, and selected a deputation to test the new regulations, along with more militant activity.

At the same time, disorders at Lambing Flat shared characteristics with earlier 'issueless' riots in Sydney. The fact that four anti-Chinese riots took place on a Sunday suggests some correlation with

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113 SMH, 12 January 1850, p. 2.
114 See Banfield, Unheavenly City, pp. 187-9.
miners' leisure activity. Chinese camps were not only destroyed but looted. Following an attack on Chinese at Back Creek and Blackguard Gully in June 1861, one gold commissioner reported that 'the object of the Rioters seemed to be more for the sake of the plunder to be obtained than from repugnance to the Chinese'. The procession of banners and flags added a festive air to 'roll ups', while at least four riots were accompanied by band music. In this respect, the Lambing Flat riots combined aspects of disorders which were largely spontaneous, communal, or recreational, with the use of force to achieve articulated objectives.

There was some attempt to credit the disturbances at Lambing Flat to the influence of the 'criminal class'. The Sydney Morning Herald insisted that persons responsible for attacks on the Chinese were not to be confused with the digging population.

They are the vendors of illicit drink - the receivers of stolen goods - the plotters of sticking-up and gold robberies - and generally the main strength and stay of all schemes for the demoralization of the people. A popular grievance therefore is to them a centre of operation, and assuming the character of reformers they disguise their latent purpose and give something like eclat to their career of crime.

115 Walker, 'Lambing Flat', p. 197.

116 J. Lynch to Secretary for Lands, 3 July 1861, Department of Lands and Public Works, Letters Received, SANSW, 5/3627.

117 J. Lynch to Secretary for Lands, 3 July 1861, and J.H. Griffin to Under Secretary for Lands, 16 July 1861, Department of Lands and Public Works, Letters Received, SANSW, 5/3627; Selth, 'Burrangong Riots', pp. 49, 52; Carrington, 'Lambing Flat', p. 229; Clark, History of Australia, vol.4, p. 131; Markus, Fear and Hatred, p. 30-1.

118 SMH, 26 February 1861, p. 4. See also for example 19 March, p. 8; 20 July, p. 3; 22 July 1861, p. 4.
This view received some support from men on the spot. Assistant-Commissioner J.H. Griffin, noting the harvest of plunder reaped by 'roll ups', asserted that there were more 'scoundrels' at Lambing Flat than he had witnessed anywhere else in the colony since he joined the Gold Police in 1852. Historians as well have tacitly accepted a causal relationship between rioting and a concentration of criminals on the gold field.

Whether criminals played an instrumental part in the Lambing Flat riots seems doubtful. It is difficult to rationalize their alleged role with the fact that an attack on Chinese in December 1860 was immediately preceded by the burning of sly-grog shanties and other supposed criminal haunts on the gold field. Captain Henry Zouch, who commanded the Southern Road Patrol, contended that shanty keepers instigated the attack on the Chinese to discredit those who destroyed their property. This seems a rather lame explanation at best, and typically imputes a degree of organization to law-breakers which probably did not exist. As D.L. Carrington points out, it also seems unlikely that riots involving several thousand people did not include a substantial proportion of genuine diggers. Nor is there any reason to assume that looting which accompanied the riots was the work of 'criminals' rather than diggers taking an opportunity to obtain goods

119 J.H. Griffin to Under Secretary for Lands, 16 July 1861, Department of Lands and Public Works, Letters Received, SANSW, 5/3627.
120 See for example Selth, 'Burrangong Riots', pp. 58-9; Markus, Fear and Hatred, p. 30.
121 Report of Henry Zouch, 2 January 1861, quoted in SMH, 14 January 1861, p. 4.
122 Carrington, 'Lambing Flat', p. 239.
with little chance of being prosecuted. Attributing disorders to the 'criminal class' was a standard response to riots. It was believed that thieves and pickpockets encouraged the New Year's Day riot of 1850 as a cover for their nefarious activities, while the Herald stated as a matter of fact that fifteen per cent of those in the Eureka Stockade were 'known thieves'. The association of disturbances with criminals served both to satisfy the need for an explanation of collective violence, while denying the legitimacy of popular grievances.

Underlying the portrayal of Lambing Flat rioters as criminals as well, was fear that the tactics used against the Chinese might be employed to achieve other objectives. The Herald's apparent sympathy for the Chinese barely obscured its less humanitarian concerns. Following a clash between Europeans and Chinese at Native Dog Creek it reported that:

> these riots and disorders are a pretext, and that they are expressive of a state of things which may endanger the safety of the British as well as the Chinese population. These men will not confine their grievances to one department. ... they contemplated no end of political and social reforms. Entering upon this path they may soon find that many other classes of the population are in the way and they will probably extend the range of their depredations beyond the limits of the goldfields.

Although Gurr, Grabosky, and Hula suggest fear of disorder was largely abated by mid-century, there is reason to believe it had instead

123 SMH, 12 January 1850, p. 2; 8 March 1861, p. 5. The traditional view that riotous crowds were composed largely of criminals and other social misfits is challenged by Rude, Crowd in History, pp. 198-204; Hobsbawn, Primitive Rebels, pp. 112-14.

124 SMH, 6 July 1861, p. 4. See also 17 July 1861, p. 4.
increased. During the 1840s fear of convict insurrection quickly
gave way to that of the anonymous city 'mob'. When troops were
diverted from New South Wales to New Zealand in 1847, William Wentworth
responded that:

It was in the crowded cities that internal violence
was most easily excited, and most to be expected.
Who could have answered for the safety of the banks
during the last election, except the military had
been at hand to hold the mob in check, if they had
had the will to attack them? 125

The anti-transportation movement in particular created apprehension
of mob violence. Governor FitzRoy reacted to the Hashemy protest in
June 1849 by placing a double guard around Government House with
fixed bayonets, quartering reinforcements in the kitchen and stable,
and it was rumoured, training the cannon at Fort Macquarie on
Circular Quay. 126 Following an anti-transportation meeting in August
1850, a deputation including William Wentworth and William Macarthur
presented an address to the governor stating their belief that 'an
anti-British and democratic spirit' was springing up which was both
'violent and dangerous'. 127 Fear of a 'democratic spirit' was not
simply indicative of the conservatism of Wentworth, Macarthur, and
others. Against the backdrop of revolutions in Europe during 1848
and Chartism, 'democracy' was often equated with republicanism and
rebellion. 128

125 LC, Atlas, 29 May 1847, p. 265. See also FitzRoy to Grey, 30 April
126 People's Advocate, 16 June 1849, pp. 5-6; SMH, 19 June 1849, p. 3.
127 Address of 1603 Inhabitants of Sydney and the Colony of New South
Wales, enclosed in FitzRoy to Grey, 30 September 1850, PP, vol.45,
[1361], pp. 182-3; SMH, 11 September 1850, p. 2.
128 W.J.V. Windeyer, 'Responsible Government - Highlights, Sidelights and
In retrospect, fears of collective violence seem unjustified. Opponents of transportation denounced allusions to the 'mob' as both unwarranted and insulting. For the most part, the movement was firmly under the control of moderates. When a New South Wales Association for Preventing the Revival of Transportation was formed, its twenty-eight man managing committee included five members of the Legislative Council, while the remainder were mostly drawn from Sydney's business and professional circles. Following the discovery of gold the Empire, edited by radical Henry Parkes, pointed to the orderly behaviour on the diggings as 'an extraordinary contradiction of certain oft-repeated slanders against the working classes'.

It remains true, however, that public order was a dominant issue, and one which seemed all the more pressing with the gold rush. To some extent, fears of disorder were exacerbated by the very conditions which Gurr, Grabosky, and Hula note as minimizing them. With the cessation of transportation, apprehensions of rebellious prisoners were displaced by fear of an urban mob inflamed by democratic ideas. The withdrawal of troops and reductions of police which accompanied the dismantling of the penal system made elites feel that much more vulnerable. A dramatic increase in free immigrants brought a population more conscious and assertive of their rights. They could be neither as blatantly repressed as convicts, nor ignored as moral inferiors. Rising prosperity, at least to the extent that it improved the

129 Powell, Patrician Democrat, p. 46.
130 Empire, 20 June 1851, p. 562.
bargaining position of labour, created further fears of social revolution. It was precisely because public order was a dominant issue that police reforms were implemented in 1851 and 1862.

With implicit reference to New South Wales' penal origins, Hazel King suggests that order on the gold fields indicated that a community had evolved in which the majority voluntarily upheld the law.  

Contemporaries were often prone to view the gold rush in much the same light. A high standard of public order, however, was hardly an innovation, while there was a good deal of continuity in the conditions which contributed toward social quiescence both before and after the discovery of gold. The view of the gold fields as orderly must also be qualified considering the Lambing Flat riots. Both before and after the gold rush, collective violence was largely reserved for those perceived as outside the community - Aborigina\ls and Chinese.

Contemporary emphasis on the orderly state of the diggings largely reflected a concern with establishing New South Wales' new identity. The Californian gold fields in particular provided a counter-image for colonial claims to respectability, and even a superior moral character. During the first year of the gold rush, the Bathurst Free Press urged the importance of maintaining order on the grounds that:

> It will be for us to show the civilized world that with all the widely-trumpeted disadvantages of our penal origin, we hold in abhorrence the savage and blood-stained administration of lynch law which has latterly disgraced the free and enlightened citizens of California ... Let each do its duty, and we may in the very exuberance of a virtuous hope cry aloud, Australia for ever!'  

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131 King, 'Problems of Police Administration', p. 67.
132 Bathurst Free Press, 15 October 1851, p. 2.
Violence at Lambing Flat was later rationalized on the basis that if gold fields were discovered in the heart of England, and invaded by hords of Chinese, much greater disorders would have occurred than in New South Wales.133

The role of gold as a 'purifier' of the colony's image, was counterbalanced by fears of its other consequences. Anxiety about the contaminating influence of gold on working class morals was symptomatic of more deep-seated apprehensions about the price and availability of labour, the position of the 'lower orders' relative to the upper and middle classes, and democratic reforms. The portrayal of rioters as part of a 'criminal class' reflected alarm about the use of collective violence as one means of obtaining popular demands. This seemed all the more threatening since New South Wales' penal origins could no longer be used as a rationale for repression. The gold rush was an appropriate finale to the post-transportation era to the extent that it heightened both colonial aspirations and uncertainties apparent when transportation ended in 1840.

133 Empire, 20 June 1861, p. 4.
CONCLUSION

In dealing with Australian crime in historical perspective, Paul Ward and Greg Woods suggest in the light of current outcries about crime that things were a good deal worse in the nineteenth century. Peter Grabosky, based on quantitative analysis, makes at least implicitly the same judgement. That nineteenth century Australian society was often characterized by grossness and brutality as Ward and Woods emphasize cannot be disputed. A community which flocked to public executions, where many persons urinated in the streets, and which closed its eyes to the murder of Aboriginals is obviously repulsive from a modern point of view.

On the other hand, Whiggish interpretations of crime, which view vice and callousness being overcome by the march of civilization and material progress, should be resisted. One might imagine that nineteenth century Australians would be no less repulsed by current televising of accident and murder victims, the open display of pornography, or the slaughter which takes place on the highways. Such historical relativism works both ways. Quantitative comparisons between the nineteenth and twentieth century are equally open to criticism. Changes in agencies of social control, criminal law (especially summary jurisdiction), and the attitudes


2 Grabosky, 'Patterns of Criminality', p. 216.
of victims, make criminal statistics a dubious measure of crime even over relatively short periods of time. Ward, Woods, and Grabosky usefully underline the fact that rising crime rates and anxiety about crime is by no means a new phenomenon. Beyond this, however, comparisons can be misleading since crime was woven into the fabric of the community, and cannot be objectively dealt with out of context.

This same line of reasoning is relevant to contemporary perceptions of New South Wales' viciousness. The inevitable association of crime with convictism, overlooked other aspects of the community which influenced the incidence of crime and the types of offences committed. In relation to Britain, New South Wales was a 'peculiar' society not only because of its penal origins, but in terms of its environment, economy, and free population. The frontier encouraged a tradition of violence, and provided special opportunities for the commission of other offences such as stock theft. Relatively favourable economic conditions could provide further opportunities for offences, and intensify feelings of relative deprivation among the more depressed segments of the population. Acquisitive values were reinforced by the material aspirations of immigrants, while a preponderance of young adults and males seriously distorted the colony's crime rate. As Governor Bourke noted in response to the Molesworth Committee's report, 'drunkenness, and a brutal coarseness of speech and manner' was not confined to New South Wales, but symptomatic of all newly formed settlements. Contemporaries were also prone to confuse convict vices with what were in fact working class mores.

3 Memorandum for Lord John Russel, quoted in King, Bourke, p. 224.
Historians often seem to over-emphasize or misconstrue the social consequences of transportation. Interpretations which point to the assimilation of convict values, such as hard-drinking and a contempt for the police, underplay important, if more mundane, influences at work. The relative prosperity of the working classes and conditions associated with recent settlement such as a preponderance of males and a lack of alternative consumer goods, provide a more cogent explanation of colonial drinking habits than convictism. For the same reasons, drunkenness was probably a greater social problem in the 1850s than when transportation ended. Similarly, hostility toward the police did not simply spring from convict-Irish anti-authoritarianism, as testified by the low status of the constabulary in other nineteenth century communities. Immigrants, who resented the enforcement of moral sanctions when they were applied to themselves, had their own reasons for disliking the police. This does not disprove the contention that convicts fostered anti-authoritarian attitudes, but it at least casts doubt on the extent to which convict attitudes influenced other segments of the population. A relative absence of civil strife and the litigiousness of the population also tends to indicate a general acceptance of authority. Hostility toward agents of social control apparently did not extend to the law itself.

This is not to argue that the impact of transportation on the community was negligible. But often the most important side-effects of convictism were more subtle or indirect than historians have appreciated. The apparatus for social control inherited from the penal system probably had as profound an influence on colonial crime as convicts. Despite the
obstruction to law enforcement posed by distance and isolation, New South Wales was over-policed by contemporary standards. Police could in one sense create crime, especially when they had the incentive of sharing in fines and rewards. It may be assumed as well, that in comparison with other frontier communities, the magistracy and superior courts exercised a more pervasive influence. A reliance on formal agencies of law enforcement fostered by the convict system, was reinforced by conditions of recent settlement. There was a relative absence of less blatant social control mechanisms such as 'God's police', churches and schools. A lack of traditional channels for imposing authority and mediating relations encouraged colonists to resort to the courts.

A high crime rate is to be expected in a community which placed such heavy reliance on the law and its agents. The same reliance affected other aspects of community relations. Citizens brought personal and minor disputes before the courts for adjudication. Large numbers of police created resentment when their activities evolved from the regulation of convicts to monitoring the morality of more 'respectable' residents. A strong police and military presence minimized the likelihood of collective violence. The infrastructure established to control convicts in remote districts probably inhibited as well the growth of a vigilante tradition.

Dominant values, at least as defined by the upper and middle classes, were more profoundly shaped by a reaction against convictism than the dissemination of a convict ethos. The community, which so often viewed itself as Britain's neglected offspring, demonstrated an obsessional concern with repudiating its origins and raising its status in the Empire.
The gold rush in particular was embraced as a 'moral passage' which assured the colony's new image. Stuart A. Donaldson, New South Wales' first prime minister, told a British select committee on transportation in 1861 that a stranger coming to the colony would notice nothing unusual about society, and that the amalgamation of the second generation was 'nearly perfect'. Another observer, applauding the mechanisms of social Darwinism, claimed that the last convicts died of drink shortly after gold was discovered. Nevertheless, colonists remained sensitive to the stigma of convictism. When sentencing the bushranger Gardiner in 1864, the colony's chief justice noted the degradation which he had brought on New South Wales, which was already regarded in England and elsewhere as 'nothing but a den of thieves'. Colonial sensitivities were no doubt heightened by the insistence of British visitors that there was still an 'ingrained taint', although they were usually vague about what this consisted of. The most lasting consequence of transportation was the convict stain itself, which fostered feelings of social inferiority throughout the nineteenth century.

The convict stain in fact played a functional role in the community's consciousness. Historians are prone to overemphasize the influence of the convict era as an attractive explanation of Australian culture. For contemporaries, convictism served as a rationale for thwarted expectations in building a better society. By the 1850s attention was

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5 Curr, Recollections of Squatting, p. 437.
6 Quoted in Preshaw, Banking Under Difficulties, p. 98.
shifting from problems associated with transportation to those of a rapidly expanding society. A select committee on the working classes in 1859–60 indicated more fundamental social problems posed by urbanization, poor housing, sanitation, juvenile delinquency, land policies, and unemployment. It was still tempting, however, to fall back on the penal system in explaining social problems rather than seeking more basic causes. When addressing itself to the dilemma of destitute children in a new and enterprising country, the Herald asserted in 1861 that:

Although moral traces of convictism are wonderfully obliterated, there has never been a rooting out of all its traditional haunts, and all its old associations.... Death has been the great social purifier. Property and plenty have done their share in the reformation; disperson has distributed and concealed much of the evil. But there is a residuum, and this we have to dissolve and scatter by moral means.

Convictism obscured the existence of poverty and inequality, and served to absolve the community of social responsibility.

Historians have concerned themselves much less with the after-effects of transportation than the criminality of those transported. Whereas convicts were formerly romanticized as political prisoners and victims of oppression, more recent scholarship has cast them in the mould of more or less hardened and professional criminals. Both of these categories can be equally misleading. While quantitative studies of the convict records fail to discern the social implications of offences committed, they make it clear that those who can be documented as political

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9 SMH, 30 April 1861, p. 4.

prisoners represented only a small minority. But to assume that those transported were drawn principally from a distinct criminal subculture is probably just as erroneous. At least one must consider the motives and prejudices of those who defined 'crime' and officially stigmatized certain people as 'criminals'.11

In New South Wales there was a clear distinction between those who defined the community's moral standards, and those typically designated as breaching those standards. As occasionally became apparent, deviance was by no means the preserve of the lower classes, although those with some measure of power were much less likely to suffer the full consequences of the law. When Wellington's police magistrate, J.A. Robertson, was charged with an 'indecent assault' on the wife of one of his employees, he was only fined five pounds.12 This contrasted the fate of a trooper in the Gold Police named Heywood, who was dismissed from service and sentenced to twelve months imprisonment after being found illegally on the premises of his superior early one morning with a servant girl.13 At least in terms of the publicity they received, both of these cases were atypical, but they aptly exemplify the inequities of the judicial process.

Criminality was largely a conferred status which depended only in part on the commission of a criminal offence. As such, the criminality of convicts must be considered in light of their social and economic position in the colony, their closer supervision by the police and magistracy, the greater likelihood of their prosecution and conviction,

as well as the motives and interests of those who labelled them criminals. Similar motives and interests must be taken into account in relation to the stigmatizing of other social groups, whether Irish, Chinese, or rebellious gold diggers.

As a social product, perceptions of crime reflected in large part contemporary fears. The notions of a 'criminal class' and 'contamination' were wedded in the 1830s to fears of emancipist domination. By the 1840s, as the initiative in defining moral issues was transferred from large landholders to the urban middle classes, these notions were associated with the economic, social, and political threat posed by a resumption of penal transportation. With the gold rushes, crime was increasingly identified with the menace of an independent working class and democratic reform. Following a visit to fellow refugee William Wentworth, Roger Therry wrote from England in 1863 that:

He tells me that universal suffrage has quite ruined the Colony, and that society is so much altered and so little for the better, that I would scarcely recognize it as the same place I left five years ago. Bushranging is worse than in the worst days of convictism. 14

While probably unconscious, the juxtaposition of democracy and crime was hardly coincidental.

Counterpoised against crime and vice was the concept of respectability. Whereas perceptions of crime were shaded by fear, respectability was closely identified with colonial aspirations. In its crudest form, respectability was a synonym for upper-middle class pretensions to moral superiority and power. At a more subtle level, respectability entailed

a 'competitive struggle' for status by persons anxious to confirm their place in a new and rapidly changing social environment. For New South Wales as a community, respectability meant overcoming the stigma of convictism.

Not only were the concepts of criminality and respectability counterpoised against one another, but they were to some extent mutually dependent. For some people to assume a role as 'respectable' members of the community, it was necessary to identify other persons as disreputable. The attempt to impose 'respectable' standards of behaviour, whether through the overt coercion of the penal system or more subtle means such as the press, tended to dramatize crime and make it more visible. In a classic statement foreshadowing interactionist studies, Frank Tannenbaum observed that:

The process of making the criminal is a process of tagging, defining, identifying, segregating, describing, emphasizing, making conscious and self-conscious ... The harder they work to reform evil, the greater the evil grows under their hands. The persistent suggestion with whatever good intentions, works mischief, because it leads to bring out the bad behaviour it would suppress.15

Tannenbaum's explanation of deviance is no doubt over-simplified and exaggerated. But it may be suggested that New South Wales' reputation as a 'vicious' society depended at least in part on the very fervour with which vice was suppressed in the colony.

15 Frank Tannenbaum, quoted in Gove (ed.), Labelling, p. 3.
APPENDIX 1 Male and Female Population of New South Wales, 1831-1861

<table>
<thead>
<tr>
<th>Year</th>
<th>Male No.</th>
<th>Male %</th>
<th>Female No.</th>
<th>Female %</th>
<th>Total</th>
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<tr>
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<td>73.4</td>
<td>16,150</td>
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<td>60,794</td>
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<td>66,212</td>
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<td>19,759</td>
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<td>72.0</td>
<td>21,557</td>
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</tr>
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<td>99,920</td>
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<td>107,194</td>
<td>42.7</td>
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</tr>
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<td>119,056</td>
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<td>126,796</td>
<td>43.9</td>
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</tr>
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<td>133,814</td>
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</tr>
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</tr>
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</tr>
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Note: Male and female population figures for 1830-1832, 1834-1835, and 1837 are interpolated.
### APPENDIX 2  Convict Population of New South Wales, 1831-1861

<table>
<thead>
<tr>
<th>Year</th>
<th>Assigned Service</th>
<th>Establishments, Govt. Service, or Under Punishment</th>
<th>Ticket of Leave Holders</th>
<th>Total</th>
<th>% of Total Pop.</th>
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<tbody>
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<td></td>
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<tr>
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<td>1833</td>
<td>24,543</td>
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<td></td>
<td></td>
<td>40.4</td>
</tr>
<tr>
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</tr>
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<td>714</td>
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<tr>
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<td>778</td>
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Note: Figures for some years differ between sources, presumably because they refer to different periods of the year. The figures above are generally from the 'Blue Books' and refer to December of each year.
APPENDIX 3  Total Convictions and Convictions per 100,000 Inhabitants for All Indictable Offences, Offences Against Property, and Offences Against the Person, Before the Superior Courts in New South Wales from 1831 to 1861

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<thead>
<tr>
<th>Year</th>
<th>All Offences</th>
<th>Against Property</th>
<th>Against the Person</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Per 100,000</td>
<td>Total</td>
</tr>
<tr>
<td>1831</td>
<td>361</td>
<td>705.7</td>
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</tr>
<tr>
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<td>425</td>
<td>794.0</td>
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<td>559</td>
</tr>
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<td>771</td>
<td>1076.9</td>
<td>622</td>
</tr>
<tr>
<td>1836</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1837</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>1838</td>
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<td></td>
<td></td>
</tr>
<tr>
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Note: Figures 1, 2, 3, 5, 6, 7, and Appendix 4 are based on the same sources.
APPENDIX 4  Total Convictions and Convictions per 100,000 Inhabitants for Offences Against Property Without Violence, Offences Against Property with Violence, Forgery and Offences Against the Currency, and Malicious Offences Against Property, Before the Superior Courts in New South Wales 1831 to 1861

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<th>Malicious Offences</th>
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### APPENDIX 5
Total Convictions and Convictions per 100,000 Inhabitants
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England and Wales, Supreme Court and Courts of Quarter
Sessions of Tasmania, Supreme Court of Victoria, and Supreme
Court of South Australia, 1831-1861

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Note: Statistics for Victoria and South Australia refer only to convictions before the Supreme Court.
APPENDIX 6 Analysis of Offences Tried Before the Superior Courts of New South Wales, 1841 and 1851

In order to gain a more detailed knowledge of offences prosecuted in New South Wales than is provided by the official statistics, available information was compiled on all persons tried before the superior courts during 1841 and 1851. This mode of analysis was suggested by David Philips's study of crime in England's Black Country between 1835 and 1860, although there are substantial variations in the type of data employed and analyzed. Most notably, the variables included in the present study are not limited to categories prescribed by the official records, and greater emphasis is placed on cross-tabulations between variables.¹ The sources used are extant court records and newspaper reports. In about one-half of the cases tried during 1841 and 1851 data was obtained from both newspapers and court records. Information for the remaining cases was available from either newspapers or court calendars, returns, and judgement books. Press reportage is more complete for 1851, with information available for 77.7 per cent of all cases tried, thus giving a more comprehensive view of offences for this year in terms of property stolen, offender-victim relation, and so on. On the other hand, information concerning offenders' civil condition recorded in court returns is more complete for 1841.

Where the information available was scanty or extremely diversified, as in the case of occupational data, data was compiled by hand. The bulk of the analysis was done with the aid of a computer. For each person tried, the available information was recorded under fourteen categories, which included:

1. Year of Trial
2. Offence Category (e.g. Offence Against the Person)
3. Specific Offence (e.g. Murder)
4. Offender's Civil Condition
5. Offender's Sex
6. Accomplices (i.e. if tried with one or more other persons)
7. Trial Result

¹ Philips's study has been recently criticized for its shortcomings in these respects. Adrian Merritt, 'Methodological and Theoretical Implications of the Study of the Law and Crime', *Labour History* no.37 (November 1979), p. 111.
These categories included a total of 175 variables.

Using this information, a computer program was written to perform various 'tests' on the data. Some of these were simply to provide totals of the variables under each category, such as various forms of property stolen during 1841 and 1851. The bulk of the 'output' involved cross correlations between different categories such as Offender's Civil Condition - Offender's Sex, or Specific Offence - Civil Condition - Sentence. Through this process it was hoped to discover relationships which might otherwise be indiscernible, and which in any case were too numerous to compute by hand.

The comprehensiveness of the analysis can be checked in part against official statistics of convictions. Total convictions in the analysis represent 82.8 per cent of the total convictions officially recorded for New South Wales in 1841. The deficiency is due almost entirely to an absence of returns for cases tried at the Bathurst and Maitland Quarter Sessions. The analysis represents somewhat less than this proportion of all persons tried during 1841, since some court records did not include persons who were acquitted. For 1851, convictions in the analysis include all convictions officially recorded, and may also be assumed to represent more or less all persons tried since neither newspaper reports nor court records available excluded persons who were acquitted.²

² Through a statistical irregularity, returns of convictions in the 'blue books' for 1841 are actually for the period from 1 October 1840 to 30 September 1841. Total convictions for the calendar year are available from another source, and the above percentage is based on this figure. See Statistics of New South Wales, from 1839 to 1848, NSW, V&PLC, 1849, vol.1, p. 771. Convictions in the analysis for 1851 represent slightly more than 100 per cent of the official convictions, presumably because newspaper reports at the beginning of January 1851 included a small number of cases tried during the 1850 calendar year.
The proportion of persons tried in the analysis for specific offences can also be compared to the official statistics of convictions. In general, the percentage of persons tried for various offences closely conforms with the percentage convicted, although there are some variations. The proportion of persons tried for larceny in 1841 is overrepresented in the analysis (making up 43.3 per cent of those tried in the analysis and 36.4 per cent of official convictions). This may be due in part to a larger proportion of offenders being acquitted than for other offences, and because the official statistics do not conform strictly to the calendar year. The only other substantial difference is in cases of assault and sexual assault. This is almost certainly because the official returns grouped sexual assaults other than rape under the heading 'assaults with various intents'.
### APPENDIX 7 Per Capita Consumption of Spirits in New South Wales and the United Kingdom, 1838-1855

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BIBLIOGRAPHY

OFFICIAL PAPERS - MANUSCRIPT

Correspondence

Police Records

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