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The Trial of Warri: Aboriginal Protection and Settler Self Government in Colonial Victoria

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On 25 February 1843, under a prejudicial but hardly atypical headline of 'Black Outrage', the *Port Phillip Gazette* reported that an Aboriginal man from the 'Goulburn tribe' had been committed to stand trial for sheep stealing. The accused was a 'Bangerang' man named Warri, who the previous July had allegedly joined a group of his compatriots in spearing sheep on Edward M. Curr's 'Tongala' pastoral run, which was situated near the confluence of the Murray and Goulburn rivers.¹ According to the *Gazette*, Warri had forcibly disarmed a shepherd to ensure the safety of his companions, and 'after killing about sixty [sheep], carried off the carcasses, the prisoner assisting, and exceedingly active throughout'.² Remanded in custody pending his trial, Warri was entrusted to the care of William Thomas, an Assistant Protector of Aborigines.

This article focuses on the contrasting careers of two white men who were closely involved in Warri's case, and who straddle the rupture in Aboriginal policy caused by the granting of self-government to Victoria. William Thomas (1793-1867) was Warri's key advocate during his trial, a duty associated with his employment in the Port Phillip Protectorate (1838-49). The pastoralist Edward M. Curr (1820-89) was a young man during Warri's trial, but later became a Government official and a member (1875-83) of Victoria's Board for the Protection of Aborigines. Both men left written accounts of Warri's trial and subsequent release: Thomas in his quarterly reports and his personal journal; and Curr in a nostalgic memoir published four decades later. Each asserted his role as Warri's saviour, yet their accounts display divergent understandings of Aboriginal 'protection'.

Ann Curthoys has characterised the history of Indigenous Australia in the era since European contact as 'the product of a three-way relationship: between the Indigenous peoples themselves, the

¹ The prisoner's name is variously spelt Warri, Warre, Warree, Warry or Warrie in contemporary accounts. E. M. Curr, *Recollections of Squatting in Victoria, Then Called the Port Phillip District (from 1841 to 1851)*, Melbourne, 1883, pp. 230ff described Warri's people as 'The Bangerang Tribe'.

² *Port Phillip Gazette*, 25 February 1843, p. 2.

British imperial authorities, and settler interests and societies'.³ In this article, each of these three forces is represented: by Warri, who stood trial for sheep stealing; by Thomas, who had been appointed by the Colonial Office in London to protect Indigenous interests; and by Curr, who sought protection for his property and later represented settler interests in Aboriginal policy. A brief outline of the lives of these three men, and their perspectives on Warri's trial, will enable a broader examination of the shifting relationship between humanitarianism and colonial governance in one site of the British settler empire.

* * *

At the time of his arrest in 1843, Warri was about thirty years old and had a wife and two children.⁴ His Bangerang people had been decimated, first by small pox in about 1831, then by the arrival of Europeans and their sheep. Curr, who arrived in the district with his brothers in July 1841, later observed that during the ten years he was at Tongala 'a large and steady decrease took place in their numbers' from about 200 to 80.⁵ Curr's account of his arrival at Tongala suggests early cooperation with the Bangerang, who built bark canoes to ferry his sheep across the Goulburn River. Early co-operation, however, gave way to conflict, including attacks on Curr's sheep a year after he arrived. The politics of sheep stealing on pastoral stations deserves more scrutiny. Certainly, we should view with scepticism Curr's view that Warri and his co-conspirators were simply hungry, and that they had behaved like naughty children.⁶

³ A. Curthoys, 'Indigenous Subjects', in D. M. Schreuder and S. Ward (eds), *Australia's Empire*, Oxford, 2008, p. 78.

⁴ William Thomas, Journal, 1 May 1843, MS14624, State Library of Victoria. My thanks to Marguerita Stephens for providing transcripts.

⁵ According to Curr, his squatting run encompassed the traditional lands of two Bangerang clans: the 'Towroonban' lived predominantly on the sandhills between the Goulburn and Murray rivers, while the more numerous 'Wongatpan' congregated further north in the region known as 'the Moira'. Curr says these two clans constituted the true 'Bangerang Tribe', but the term also referred to a wider federation linked by language. Curr, *op. cit.*, pp. 230–35. Protectorate officials initially described Warri as 'Warrinellum' or 'Worileum', but such an affiliation is unlikely and was probably the error of the assistant protector for the Goulburn River region, William Le Souëf, who did not speak Warri's language. Robinson, 18 February 1843, in I. D. Clark, *The Journals of George Augustus Robinson, Chief Protector, Port Phillip Aboriginal Protectorate*, Ballarat, 2000, Vol 3, p. 121. Robinson later recorded that Warri was from the 'Tarinban (Towroonbam) section' of the tribe (7 May 1842, p. 169).

⁶ Curr, *op. cit.*, pp. 89-91, 205, 269-71.

Contemporary sources show that Warri's actions reflected significant ill feeling between the Currs and the Bangerang people. When Henry Dana, captain of the Native Police Force, investigated the sheep thefts in late January 1843 (more than six months after Warri's alleged crime), Curr told him that a large group of Aboriginal people were 'daily threatening the lives of his men and attempting to take the sheep'.⁷ George Robinson heard of similar discontent when he visited Tongala the following month. The neighbouring pastoralists had not had any sheep stolen and were 'on good terms with the blacks', but the Currs and their shepherds had a very tense relationship with the Aboriginal people on their run.⁸ The deteriorating relationship between the Curr's and the Bangerang derived at least in part from the actions of two border policemen, who visited Tongala shortly after the sheep thefts. According to Curr's recollections, they arbitrarily captured an Indigenous man near the Curr homestead and shot him dead when he tried to escape. Curr recorded his regret at this outcome, but noted the hope at the time that it would prevent 'further aggressions'. It apparently had the opposite effect, as Bangerang men subsequently took a further 120 lambs.⁹

Captain Dana mounted an expedition on 1 February to apprehend the 'three ringleaders'.¹⁰ Curr assisted by acting as a decoy to lure Warri and his compatriots to within range of Dana's men. A skirmish ensued during which Dana was speared in the leg and Curr also had a narrow escape. Dana instructed Curr and the other officers to fire shots at the Bangerang party, but wrote in his report that the distance was too great to have any effect. Dana's account does not agree, however, with that of Assistant Protector William Le Souëf, who visited the area a fortnight later and found several injured Aborigines hiding in the reeds, one close to death.¹¹ Dana succeeded only in capturing Warri, whom he arrested and took to Melbourne.

When Warri was committed to stand trial on 24 February, the assigned translator spoke, as George Robinson recorded in his journal, 'not a word of Aborigine'.¹² Robinson noted that 'Young Curr'

⁷ Dana to Latrobe, 2 February 1843, VPRS 19, 43/293, Public Records Office Victoria (PROV).

⁸ Robinson, 26-27 March 1843, in Clark, *op. cit.*, Vol 3, pp. 130-32.

⁹ Curr, *op. cit.*, pp. 195-96.

¹⁰ Dana to Latrobe, 2 February 1843, VPRS 19, 43/293, PROV.

¹¹ M. Cannon, *Who Killed the Koories?*, Melbourne, 1990, p. 140.

¹² Robinson, 24 February 1843, in Clark, *op. cit.*, Vol 3. p. 122.

provided assistance with translation, an unsatisfactory arrangement given that Warri was charged with an offence against the property of Curr's father. At the same committal hearing Curr signed a deposition stating that Warri had confessed his guilt a few days before his arrest; Curr recalled that Warri had explained that 'he and the other blacks were very hungry, but that if I [Curr] would not shoot him, he'd never take any more'. The shepherd responsible for the stolen sheep (and the only eyewitness) was William Barker, who also signed a deposition noting that Warri was a regular visitor to Tongala prior to the attacks, but had scarcely been seen since. He explained that on 7 July 1841 Warri and a companion, Johnny, had offered him tobacco and asked to hold his gun, which he refused:

I began to move homeward, and soon saw a number of Blacks make their appearance over the rising ground on my right hand. I kept on homewards, while they kept closing around me jabbering and asking me to drive the sheep into the shrub, which of course I refused, and at last Johnny asked me for my gun, which I not choosing to give up, was taken from me by the Prisoner Warry from behind – another black threatened me with his spear and made me stand aside while the rest speared about sixty sheep which they carried away ...¹³

On 16 March Warri appeared before Justice Willis of the Supreme Court. Redmond Barry (then a lawyer but later a judge) probably represented Warri; he was in court that day and was commonly employed to represent Aboriginal defendants.¹⁴ Warri's case was adjourned because the intended translator, William Le Souëf, had 'excused himself on the plea of having been bitten by a dog'.¹⁵ Willis recorded in his case notes that Warri was 'not at present of suff[icien]t capacity to understand the nature of the proceed[in]gs'.¹⁶ Curr later wrote whimsically that 'the expression of the prisoner's face whilst this point was being discussed was certainly strongly corroborative of the judge's view'.¹⁷ When Le Souëf again failed to appear on 7 April,

¹³ Committal before Frederick Berkley St John [Police Magistrate], 24 February 1843, VPRS 30P, Box 186 NCR 77, PROV.

¹⁴ I thank P. R. Mullaly QC for sharing his research. See also P. Mullaly, *Crime in the Port Phillip District 1835-51*, Ormond (Vic), 2008.

¹⁵ *Port Phillip Gazette*, 18 March 1843, p. 4.

¹⁶ John Walpole Willis, 'Case Books, 1838-1843', n.d., p. 120, Royal Historical Society of Victoria.

¹⁷ Curr, *op. cit.*, p. 204.

Justice Willis dismissed the case on the grounds that it was impossible to instruct the defendant. The judge then placed Warri in the care of William Thomas.¹⁸

* * *

For four years prior to Warri's trial, William Thomas had been an Assistant Protector for the Melbourne and Westernport districts of the Port Phillip Protectorate. The Protectorate was an outcome of the Select Committee on Aborigines, conducted by the British House of Commons in 1835-36. Chaired by Sir Thomas Fowell Buxton, the Committee had in its Report urged the protection and 'civilisation' of Aboriginal peoples in British colonies. It had also stressed that colonial legislatures could not be trusted with Aboriginal policy.¹⁹ Buxton's committee was made possible by a shift in the makeup of the British Parliament following the Reform Act of 1832. It was a period of significant influence for the so-called 'philanthropists', a diverse group of Quakers, Evangelical Christians and others, who successfully passed the Slavery Abolition Act (1833) before turning their attention to the plight of indigenous peoples in the colonies.²⁰ The Report of the Select Committee was a strong indictment of British practices throughout the Empire, drawing on damning accounts from a network of correspondents, many of them missionaries. The report was not anti-colonial; rather, it advocated a more enlightened colonial policy that recognised the right of Indigenous peoples to the protection of British law. Various Imperial measures flowed from the Report, such as nominal rights to land for Indigenous peoples.²¹ Yet, although the Report might be associated with a reformist ideology, it was also out of step with liberal sentiment in its opposition to settler self-government.

¹⁸ *Port Phillip Gazette*, 8 April 1843, p. 3.

¹⁹ *Report of the Parliamentary Select Committee on Aboriginal Tribes (British Settlements) Reprinted with Comments by the 'Aborigines Protection Society'*, London, 1837, p. 117.

²⁰ I use the term 'philanthropist', rather than 'humanitarian', which had quite a separate meaning in the 1830s, and its use in relation to early ideas of Aboriginal protection is anachronistic. C. McLisky, "'Due Observance of Justice, and the Protection of Their Rights': Philanthropy, Humanitarianism and Moral Purpose in the Aborigines Protection Society Circa 1837 and Its Portrayal in Australian Historiography, 1883-2003", *Limina*, Vol. 11, 2005, pp. 57-66.

²¹ E. Elbourne, 'The Sin of the Settler: The 1835-36 Select Committee on Aborigines and Debates over Virtue and Conquest in the Early Nineteenth-Century British White Settler Empire', *Journal of Colonialism and Colonial History*, Vol. 4, No. 3, 2003, np.; D. A. Roberts, "'They Would Speedily Abandon the Country to the New Comers": The Denial of Aboriginal Rights', in M. Crotty and D. A. Roberts (eds), *The Great Mistakes of Australian History*, Sydney, 2006, p. 28.

For the Aborigines Protection Society (founded in 1837), self-government was an enigmatic problem; as Cooke has argued, its support for Aboriginal interests often put it at odds with 'a liberal and enlightened policy on home rule for the colonies'.²² Nevertheless, in the late 1830s philanthropic influence was at its peak and humanitarianism had become what Porter has described as 'a vital component of Britain's national and Imperial identity'.²³ This peak of philanthropic hegemony coincided with a rapid expansion of the pastoral industry of south-eastern Australia, accompanied by large-scale acquisition of Aboriginal land, particularly in the region surrounding the young town of Melbourne.²⁴ In this context, the Colonial Office devised the Port Phillip Protectorate and imposed it upon settlers in 1838. Comprising a Chief Protector and four Assistants, it was one of the most significant policy outcomes of Buxton's select committee.²⁵

William Thomas is an important figure in the history of the Port Phillip Protectorate because, of the five men appointed in 1838, he lasted the longest in his job. He survived the protectorate's closure in 1849, taking on a position as Guardian of Aborigines, and continued to influence Aboriginal policy until the early 1860s, by which time Victoria had achieved responsible government. Rae-Ellis argues that Thomas was the exception among the protectors in not putting his own interests first.²⁶ Fels agrees, describing him as 'the standout assistant protector, in terms of intimacy with his people', while Sayers adds that Thomas 'had a warm sympathy, and sincere regard, for his charges'.²⁷ In contrast, Reed suggests that the view of Thomas as a 'friend' of the Aborigines was a product of Thomas' own writings about himself, noting that he 'maintained his position at the centre of his reports and

22 R. M. Cooke, 'British Evangelicals and the Issue of Colonial Self-Government', *Pacific Historical Review*, Vol. 34, No. 2, 1965, p. 128.

23 A. Porter, 'Trusteeship, Anti-slavery and Humanitarianism', in A. Porter (ed.), *The Oxford History of the British Empire. Volume 3: The Nineteenth Century*, Oxford, p. 198.

24 T. Barta, "'They Appear Actually to Vanish from the Face of the Earth": Aborigines and the European Project in Australia Felix', *Journal of Genocide Research*, Vol. 10, No. 4, 2008, pp. 524–26.

25 A. Lester and F. Dussart, 'Trajectories of Protection: Protectorates of Aborigines in Early 19th Century Australia and Aotearoa New Zealand', *New Zealand Geographer* Vol. 64, No. 3, 2008, p. 210.

26 V. Rae-Ellis, *Black Robinson: Protector of Aborigines*, Carlton (Vic), 1996, p. 192.

27 M. H. Fels, *I Succeeded Once: The Aboriginal Protectorate on the Mornington Peninsula, 1839-1840*, Canberra, 2011, p. 15; T. F. Bride, *Letters from Victorian Pioneers: a Series of Papers on the Early Occupation of the Colony, the Aborigines, Etc*, South Yarra (Vic), 1983, p. 397.

correspondence, situating himself as the all-knowing and caring (underpaid) Assistant Protector'.²⁸ Certainly, Thomas' writings reveal as much about his personal motives and Evangelical identity as they do about his actual relationships with Indigenous people. Moreover, Reed's critique is useful as it disrupts the simplistic binary of 'good' and 'bad', suggesting that Thomas' interactions with Aboriginal people still served to consolidate white power in the colonial context.

Born of Welsh parents in 1793 in Westminster, Thomas completed his education by spending a year in continental Europe.²⁹ He subsequently opened a school for young gentlemen in London and many of his students had successful careers in the civil service. Of Methodist faith, he made contacts within the Evangelical and philanthropic networks led by Buxton. Late in 1837 the Secretary of State for War and the Colonies, Lord Glenelg, asked the former lieutenant-governor of Van Diemen's Land, Sir George Arthur, to recommend four Assistant Protectors, who were to join Chief Protector George Augustus Robinson in the Port Phillip District of New South Wales (NSW).³⁰ Arthur had been a key architect of the protectorate system, lobbying for such an approach during the Select Committee and in letters to the Colonial Office.³¹ Thomas was encouraged to apply by the writer Amelia Murray, who was an advocate of juvenile reformatories and a maid of honour to Queen Victoria; she was Thomas' link to the philanthropic network behind the protectorate idea. He later recalled that Murray had simply asked him 'if I should not like to go abroad and protect the poor blacks'.³² Arthur recommended Thomas be appointed, but noted he did not possess the 'force of character' of other applicants.³³ He was thinking particularly of Thomas' future colleague Charles Sievwright, an army officer and assertive Protector whose career in the Port Phillip District was to

28 L. Reed, 'Rethinking William Thomas, "Friend" of the Aborigines', *Aboriginal History*, Vol. 28, 2004, p. 92.

29 D. J. Mulvaney, 'Thomas, William (1793–1867)', in *Australian Dictionary of Biography*, Vol. 2, Carlton (Vic), 1967, pp. 518–19; I. M. Crawford, 'William Thomas and the Port Phillip Protectorate, 1838–1849', M.A. Thesis, University of Melbourne, 1966.

30 Arthur to Glenelg, 9 November 1837, quoted in Crawford, *op. cit.*, p. 22.

31 Barta, 'Aborigines and the European Project in Australia Felix', p. 523.

32 Crawford, *op. cit.*, p. 24; K. D. Reynolds, 'Murray, Amelia Matilda (1795–1884)', in *Oxford Dictionary of National Biography* Oxford, 2004, <www.oxforddnb.com/view/article/19589> (25 February 2013).

33 Arthur to Glenelg, 15 December 1837, quoted in Crawford, *op. cit.*, p. 25.

prove short and controversial.³⁴ In addition to Thomas and Sievwright, the Colonial Office appointed two more Methodists, Edward Stone Parker and James Dredge. Thomas travelled first to Sydney and was present (with Parker and Dredge) at a planning meeting for the Australian Aborigines Protection Society on 29 September 1838.³⁵ The first public meeting of the society in October attracted a large crowd, but the Myall Creek Massacre trials the following month must certainly have undermined the confidence of the newly arrived Protectors. Strong settler opposition to the trial of twelve white men (and the execution of seven) for the massacre of up to thirty Aborigines revealed clearly the difficult task faced by Thomas and his colleagues in representing Aboriginal interests. Meanwhile, Thomas and his colleagues wrote anxiously to Governor Gipps on 26 October requesting fuller details of their duties and noting 'our success will be mainly dependent upon the adequacy of the support receive from His Excellency's Government, and the efficiency of the means placed at our disposal'.³⁶ In January 1839 they proceeded to Melbourne and a cool reception from the local settlers there.

Thomas' decision to uproot his large family reveals a commitment to the civilising mission that was at the heart of Buxton's Select Committee Report. He later claimed to have left behind a lucrative teaching career, a 'reputable home' and connections 'among the higher circles'.³⁷ Cotter suggests that 'it is not possible to understand Thomas without appreciating his strong religious beliefs'.³⁸ Similarly, Mitchell has noted that while the protectorate was 'a more secular and administrative undertaking' it shared many common elements with missions, notably 'the Evangelical commitments of protectors Dredge, Thomas and Parker'.³⁹ It appears that Thomas misinterpreted the Port Phillip Protectorate as primarily a missionary endeavour. In September 1839 he lamented in his journal: 'Oh that God had cast my lot as a

³⁴ L. Arkley, *The Hated Protector: The Story of Charles Wightman Sievwright, Protector of Aborigines, 1839-42*, Mentone (Vic), 2000.

³⁵ Australian Aborigines' Protection Society, *The Australian Aborigines' Protection Society: Instituted 1838*, Sydney, 1838.

³⁶ M. Cannon (ed.), *Historical Records of Victoria: Foundation Series*, Vol. 2B, Melbourne, 1983, p. 385.

³⁷ Crawford, *op. cit.*, p. 23.

³⁸ R. Cotter (ed.), *A Cloud of Hapless Foreboding: Assistant Protector William Thomas and the Port Phillip Aborigines, 1839-1840*, Sorrento (Vic), 2005, p. 5.

³⁹ J. Mitchell, *In Good Faith?: Governing Indigenous Australia Through God, Charity and Empire, 1825-1855*, Canberra, 2011, p. 31.

missionary instead of a Protector'.⁴⁰ His vision of a mission-style agricultural settlement contrasted with the expectations of Chief Protector Robinson, who ordered Thomas to remain in Melbourne and provide medical and legal assistance to Aborigines.⁴¹ Thomas was eventually allowed to move into the field, but his attempts to gather Aborigines at stations at Arthur's Seat then Nerre Nerre Warren were unsuccessful. From the point of view of most settlers, the key failure of Thomas and his colleagues was their inability to convince Aboriginal people to settle in one location.

During the early years of the Protectorate Thomas had campaigned against what he believed were almost random arrests and convictions for sheep theft.⁴² His quest for a more just legal process continued in 1843 when Robinson ordered him to Melbourne 'in consequence of a black being lodged in gaol'. For three weeks Thomas visited Warri daily, 'endeavouring to teach [him]' and 'prepare him for his trial', a task made difficult by language barriers.⁴³ Thomas insisted that Warri be allowed to understand the charges against him. On 16 March 1843, the day of the first trial hearing, Robinson recorded that Thomas had made 'a long speech' on the matter.⁴⁴

On 8 April Justice Willis released Warri into Thomas' care. Thomas doubted he could persuade Warri to remain with him, so Justice Willis granted him an indemnity should Warri abscond. As it was, Thomas recorded his surprise that Warri accompanied him to Nerre Nerre Warren. In a report to Robinson, he was insistent that Warri was happy to reside at the protectorate station:

I remained [at the station] with Warriee, who stops perfectly satisfied; he occasionally wishes for his wife and children, saying, 'if he had them he would no more go back to his own country,' which induced me ... to write to Mr. Assistant Protector Le Souef to forward

⁴⁰ Cannon, *op. cit.*, p. 541. See also J. Heartfield, *The Aborigines' Protection Society: Humanitarian Imperialism in Australia, New Zealand, Fiji, Canada, South Africa, and the Congo, 1837-1909*, New York, 2011, p. 109.

⁴¹ Crawford, *op. cit.*, pp. 63-65.

⁴² Mitchell, *In Good Faith?*, p. 52.

⁴³ Thomas to Robinson, 'Journal of Proceedings from 1st December 1842 to 1st March 1843', in 'Annual Report on Aborigines for 1843', Colonial Office: Original Correspondence, New South Wales (CO) 201/344.

⁴⁴ Robinson, 16 March 1843, in Clark, *op. cit.*, Vol. 3, p. 126.

them. Warriee works regular with myself and the men, without murmuring or showing any reluctance ...⁴⁵

Although Thomas maintained that Warri would have remained with him if his family had been fetched, his private journal records what appears to be an attempt to rescue Warri. On 29 April he wrote that a group of Aborigines had arrived at Nerre Nerre Warren to persuade him to take Warri to the Merri Creek encampment, near Melbourne. There, Thomas noted, 'there are lots of Pangarang & Goulbourn Blacks [sic] waiting to give me Spears for getting Warriee out of Jail'.⁴⁶ Thomas implies that the aim of these assembled clans was to congratulate him, but a report by a police officer two days earlier put it differently: 'that the Goulbourn Blacks intentions are to try and steal away the Black which Mr Assistant Protector Thomas has in his charge at Nerre Nerre Warren'.⁴⁷

On 7 May Robinson ordered Thomas to abandon the Nerre Nerre Warren station and move permanently to the Merri Creek. Robinson judged the station a failure (Warri was the only Aborigine present when he visited) and instructed Thomas to focus on the Aboriginal people in and around Melbourne. Thomas took Warri with him to the Merri Creek camp, but as Warri feared the 'Western Port Blacks' who resided there, Thomas left him instead at his son's farm at nearby Moonee Ponds. He blamed Warri's growing agitation on his own frequent absences on official duties, rather than attributing it to a desire on Warri's part to return to his people. When Warri eventually departed on 17 May, Thomas stressed that Warri was appreciative of the kindness he had received and added: 'I firmly believe that had Warriee had his wife and children, and I remained on the station, he would never have left Nerre Nerre Warren'. Thomas added that he had explained to Warri the nature of the law and 'the consequences of robbing', and had 'endeavoured to make some impression on his mind touching the Great Father of all the families of the earth'.⁴⁸

Although his time with Thomas was relatively brief, Warri left quite an impression on the Assistant Protector. Thomas wrote

⁴⁵ Thomas to Robinson, 'Journal of Proceedings from 1st March to 1st June 1843', in Annual Report on Aborigines for 1843, CO 201/344.

⁴⁶ William Thomas, Journal, 29 April 1843, MS 14624, State Library of Victoria.

⁴⁷ Bennett to La Trobe, 27 April 1843, VPRS 19, Box 44, 43/735, PROV.

⁴⁸ Thomas to Robinson, 'Journal of Proceedings, 1st December 1842 to 1st March 1843, 1st March to 1st June 1843' in 'Annual Report on the State of the Aborigines for 1843', CO 201/344.

extensively about Warri in his reports to Robinson and mentioned him often in his personal journal.⁴⁹ In 1846, when Thomas was entrusted with a discharged Aboriginal prisoner named Koort Kurrup, he recalled his earlier experiences with Warri. Koort Kurrup departed Thomas' care unannounced after three months, prompting Thomas to write in his journal: 'I felt vexed that he had not told me he was going as poor Warrie did'.⁵⁰ Two sketches of Warri, most likely drawn by Thomas, have also survived.⁵¹

In his report to Robinson, Thomas seemed anxious to assert the importance of Warri's brief time at the Nerre Nerre Warren station to his spiritual improvement. This is not surprising given the wider context; Thomas wished to emphasise the success of the Protectorate at a time when its very existence was under threat. His encounter with Warri coincided with a significant reduction in expenditure on the Protectorate, placing him in a precarious position. La Trobe viewed Thomas' salary as 'an almost useless expenditure of the public money' while Robinson was inclined to blame Thomas for the failure of the station at Nerre Nerre Warren.⁵² Many years later Thomas observed: 'The Government would not suffer anything to be given to the blacks, unless they would stop at the station'.⁵³

The closure of the Nerre Nerre Warren station signalled the end of the Protectorate experiment. The breaking up of the station coincided not only with Warri's sojourn, but also with the beginnings of self-government in NSW; the first elections for the reconstituted Legislative Council were held only a month after Thomas was ordered to leave Nerre Nerre Warren. Reform of the Council that year saw two thirds of its members elected on a property-based franchise, giving a strong voice to pastoral interests in the colony. That La Trobe and his superior, Governor George Gipps, had scaled back the Protectorate just before these elections hardly seems coincidental; they likely anticipated

⁴⁹ A crucial missing section of Thomas' journal from 1843 has recently been rediscovered and donated to the State Library of Victoria, MS 14624. Most of his journal is held by the State Library of New South Wales.

⁵⁰ Journal of William Thomas, 12 March and 9 June 1846, William Thomas Papers, ML MSS 214/3, State Library of New South Wales.

⁵¹ Warrie. William Thomas[?], Sketch, R. Brough Smyth papers, MS 8781 Box 1176/7(a), State Library of Victoria.

⁵² Crawford, *op. cit.*, p. 177.

⁵³ Victoria, *Report of the Select Committee of the Legislative Council on the Aborigines, together with the proceedings of the committee, minutes of evidence, and appendices*, Melbourne, 1859, p. 2.

the mood of the new Council, which soon demanded self-government.⁵⁴ Settler antipathy towards expenditure on the Protectorate was considerable and the financial collapse of 1842 magnified these concerns.⁵⁵ Moreover, with a looming battle over security of tenure for pastoral leases, Aboriginal protection sunk to a low order of priority.

In his diminished role Thomas provided legal and medical support to Aborigines in Melbourne. His demeanour also changed: as Crawford has observed, 'he became tactful in his approach to his superiors, more judicious in his statements, and much more conservative'.⁵⁶ Later in 1843, when he learnt from Aboriginal informants that Captain Dana's Native Police had murdered Aborigines in the Western District and that Dana had encouraged settlers there to 'retaliate for frays', Thomas did not pass on the information, being apparently keen to avoid further quarrels with his superiors in the pursuit of justice.⁵⁷ As Thomas became more measured and conservative, he gained the trust of the colonial administration. The NSW government disbanded the Protectorate in 1849, accepting the recommendations of a Select Committee of the Legislative Council, but superintendent La Trobe retained Thomas' services. A key responsibility for Thomas in his new role was to endeavour to keep Aborigines out of Melbourne.⁵⁸ He became pessimistic about the prospects of Aborigines near the town and began to advocate the forcible removal of Aboriginal children.⁵⁹

Soon afterwards, the Port Phillip District separated from NSW and La Trobe appointed Thomas the Guardian of Aborigines for the newly created Colony of Victoria. In 1855 Britain granted the colony responsible government, along with the colonies of NSW, South Australia and Tasmania. While Britain retained certain powers, especially in the spheres of foreign policy and defence, it effectively handed over control of Aboriginal policy to the new legislatures. During Victoria's first fully elected parliament, a Select Committee on

⁵⁴ J. Evans *et al.*, *Equal Subjects, Unequal Rights: Indigenous Peoples in British Settler Colonies, 1830-1910*, Manchester, 2003, p. 66.

⁵⁵ J. Mitchell, "'The Galling Yoke of Slavery': Race and Separation in Colonial Port Phillip', *Journal of Australian Studies*, Vol. 33, No. 2, 2009, p. 129.

⁵⁶ Crawford, *op. cit.*, p. 179.

⁵⁷ *Ibid.*, p. 180.

⁵⁸ P. Edmonds, *Urbanizing Frontiers: Indigenous Peoples and Settlers in 19th-century Pacific Rim Cities*, Vancouver, 2010, p. 153.

⁵⁹ Mitchell, *In Good Faith?*, p. 193.

Aborigines (1858-59) recommended a new protectorate system. Although it gestured towards philanthropic concerns, it was more palatable to settler interests than its predecessor. Thomas was a key witness to the Select Committee. Although doubtful about the potential for success of the proposed system of Aboriginal reserves and depots, he did convince the Committee to recommend the creation of reserves in the territory of each Aboriginal group, rather than one reserve for the entire colony.⁶⁰ In this he supported Aboriginal requests made to him as early as 1843, when Woiwurrung leader Billibellary told him 'if Yarra black fellows had a country on the Yarra that they would stop on it and cultivate the ground'.⁶¹ From 1859 Thomas helped Billibellary's son Simon Wonga broker a deal for land on the Acheron River for the Taungurong people; he was enraged a year later when local settlers successfully lobbied for the removal of the reserve to a new location.⁶² He also helped Wonga in his quest for land for the Woiwurrung, who by 1863 had settled at the Coranderrk reserve; but by then Thomas' health was failing and he died in 1867. Although Thomas' approach to Aboriginal protection certainly became more amenable to settler opinion, his commitment to reserves on tribal lands stands in contrast to the views later expressed by Edward M. Curr, to whom we now turn.

* * *

Edward M. Curr was born in 1820 in Hobart to English Catholic parents.⁶³ His father, also Edward Curr, was head of the Van Diemen's Land Company, employees of which were involved in the Cape Grim Massacre of 1828. As MacFarlane has shown, Curr Snr avoided investigating these Aboriginal deaths, despite being the local magistrate.⁶⁴ The Curr family moved to the Port Phillip District in 1841, where Curr Snr pursued a political career. He was narrowly defeated in the first elections for the NSW Legislative Council in June 1843,⁶⁵ but later served two terms on the Council and was prominent

⁶⁰ Victoria, *Report of the Select Committee of the Legislative Council on the Aborigines*, p. 3.

⁶¹ Mitchell, *In Good Faith?*, p. 91; Fels, *I Succeeded Once*, p. 26.

⁶² B. Attwood, *Rights for Aborigines*, Sydney, 2003, pp. 7–9.

⁶³ For further biographical details see S. Furphy, "'Our Civilisation Has Rolled over Thee': Edward M Curr and the Yorta Yorta Native Title Case", *History Australia*, Vol. 7, No. 3, 2010, pp. 54.1–54.16; S. Furphy, *Edward M. Curr and the Tide of History*, Canberra, 2013.

⁶⁴ I. McFarlane, 'Cape Grim', in R. Manne (ed.), *Whitewash: On Keith Windschuttle's Fabrication of Aboriginal History*, Melbourne, 2003, pp. 277–98.

⁶⁵ *Port Phillip Herald*, 20 June 1843, p. 2.

in the Port Phillip District's campaign to achieve separation. Mitchell has shown that in this campaign strong criticism of the Aboriginal Protectorate was often linked to dissatisfaction at the rule of remote officials in Sydney.⁶⁶ Moreover, in the campaign for self-government in NSW itself, Aboriginal people were systematically excluded from political discourse and 'images of supposed Indigenous primitivism or savagery were used as rhetorical tools' to discredit earlier modes of governance such as the protectorate.⁶⁷ Edward M. Curr's connection, through his father, to these campaigns for settler autonomy is pertinent, providing a useful frame for analysing his subsequent record in Aboriginal policy.

Curr received a Jesuit education in England before leading his family's charge to Port Phillip in 1841. He and several younger brothers managed their father's vast squatting empire for a decade, setting up their head station at 'Tongala' on the Goulburn River. The Currens expanded their pastoral holdings considerably between 1842 and 1844, the period corresponding with Warri's arrest and trial. At the peak of their activities, the Currens occupied three hundred square miles of prime pastoral land. In the 1850s Edward M. Curr invested his paternal inheritance in various pastoral and trading ventures in New Zealand, Queensland and NSW, but was ruined by a drought on the Lachlan River in 1861. He moved to Melbourne to rebuild his career as a government official, rising to the highly paid position of Chief Inspector of Stock, thus remaining closely connected to the pastoral interests of the colony.

In 1875 Curr joined the Board for the Protection of Aborigines during a controversial period. Although historians of the Australian colonies are familiar with Curr's memoir and his ethnological writings, discussed below, they have less often realised his significance in the history of Aboriginal policy. Diane Barwick was the first to give Curr's role on the Protection Board serious consideration. He was appointed during a board shakeup, along with conservative parliamentarian Frederick Race Godfrey and the Zoological Gardens director Albert Le Souëf (a son of the former Assistant Protector). As Barwick has observed, '(t)hree old pastoralists who knew nothing of Kulin history or social organisation — but prided themselves on their knowledge of

⁶⁶ Mitchell, "'The Galling Yoke of Slavery'", p. 129.

⁶⁷ J. Mitchell, "'Are We in Danger of a Hostile Visit from the Aborigines?' Dispossession and the Rise of Self-Government in New South Wales', *Australian Historical Studies*, Vol. 40, No. 3, 2009, pp. 294, 306.

"the blacks" — began to dictate Board policy'.⁶⁸ Curr was the key advocate of a plan to close the Coranderrk reserve and move its politically active Aboriginal residents to a remote location on the Murray River. Unlike many contemporaries, Curr was sceptical of assimilationist ideology, advocating instead strict control of all Aborigines for several generations. He informed a Royal Commission on Aborigines in 1877 that 'the black should, when necessary, be coerced just as we coerce children and lunatics who cannot take care of themselves'.⁶⁹ At a parliamentary inquiry into Coranderrk in 1881, he elaborated:

Anyone who knows the blacks knows their will is nothing, that they might have a serious objection now which they would not remember three months afterwards. I would suggest that they should be moved for their own benefit ... I should remove the blacks from Coranderrk whether they liked it or not.⁷⁰

Curr also asserted his credentials as an Aboriginal administrator: 'They are an easy people to manage. I managed four times as many as there are at Coranderrk when I was nineteen years old'.⁷¹

In the 1880s Edward M. Curr published two major works: *Recollections of Squatting in Victoria* (1883), a nostalgic memoir of his decade as a squatter in the 1840s, and a four-volume ethnological work, *The Australian Race* (1886-7) which focussed largely on language and was printed by the Victorian Government. Curr's account of Warri's arrest and trial can be found in his memoir and is consistent with the views on Aboriginal discipline that he expounded while serving on the Protection Board. Curr's ethnological writings have attracted differing opinions from historians. While Geoffrey Blainey describes Curr as 'one of the sharpest observers of tribal life', legal scholar Ben Golder argues that he provided 'as perfect an example of

⁶⁸ D. Barwick, *Rebellion at Coranderrk*, Canberra, 1998, p. 111.

⁶⁹ Parliament of Victoria, 'Report of the Commissioners appointed to inquire into the Present Condition of the Aborigines of this Colony, and to advise as to the best means of caring for, and dealing with them, in the future; together with Minutes of Evidence', *Papers Presented to Parliament by Command*, Vol 3, Melbourne, 1877-1878, p. 78.

⁷⁰ Parliament of Victoria, 'Report of the Board appointed to enquire into, and report upon, the present condition and management of the Coranderrk Aboriginal Station, together with the minutes of evidence', *Papers Presented to Parliament by Command*, Vol. 3, Melbourne, 1882-83, p. 120.

⁷¹ *Ibid.* Curr gave evidence to the Inquiry on 8 December 1881.

crude racist stereotyping as it is possible to find among early colonial accounts of Indigenous people'.⁷² Critiques proliferated in the wake of the Yorta Yorta native title case (1998), when Curr's writings on the claimants' ancestors were highly influential in the failed claim.⁷³ Although recent scholarship has been critical of Curr's ethnological pursuits, many have found his work useful. Reynolds, for example, argues that Curr 'wrote the classical account of frontier conflict'.⁷⁴ Certainly, Curr's frank account of interracial violence is highly valuable. Nevertheless, the common assertion that Curr was unusually sympathetic to Aboriginal people is misleading.⁷⁵ Such assertions are apparently based on a cursory reading of Curr's nostalgic memoir and overlook his record in Aboriginal administration; they create the false impression that Curr represented a philanthropic viewpoint, broadly similar to that of William Thomas and his colleagues. In fact, Curr was dismissive of the protectors and consistently advocated strict discipline and coercive control over Aboriginal people.

Curr devoted an entire chapter of *Recollections* to the saga of Warri's capture, trial and release. The tone is light-hearted and comical, tending to mask the reality of Indigenous resistance to his family's pastoral enterprise. When compared to contemporary sources, there is much in Curr's account that might be questioned.⁷⁶ His intention was to entertain, not to provide an accurate and impartial account of events as they occurred four decades previously. Curr characterised Warri's actions as childish naughtiness, yet even in his own text there is a clue that there was more at stake. In a memorable passage Curr relates an encounter with a Bangerang fishing party in December 1842, when he and an Aboriginal guide were scouting the 'Moira' country on the Murray River. He describes the furious protests of an ageing tribal elder, who implored him to leave:

⁷² G. Blainey, *Triumph of the Nomads: A History of Ancient Australia*, South Melbourne, 1975, p. 97; B. Golder, 'Law, History, Colonialism: An Orientalist Reading of Australian Native Title Law', *Deakin Law Review*, Vol. 9, No. 1, 2004, p. 51.

⁷³ For analysis, see Furphy, *op. cit.*, 54.1-54.16.

⁷⁴ H. Reynolds, *The Other Side of the Frontier: Aboriginal Resistance to the European Invasion of Australia*, Ringwood (Vic), 1982, p. 50.

⁷⁵ For example J. M. Powell, 'Curr, Edward (1798-1850)', in *Oxford Dictionary of National Biography*, H. C. G. Matthew and B. Harrison (eds), Oxford 2004, <www.oxforddnb.com/view/article/52436> (25 February 2013).

⁷⁶ Curr, *op. cit.*, pp. 190-206. See for example M. H. Fels, *Good Men and True: The Aboriginal Police of the Port Phillip District 1837-1853*, Carlton (Vic), 1988, pp. 159-61.

His fishing spear quivered in his hand, and, after an abortive attempt at a war-like caper, he howled, abused, and spat at me, in senile fury, asking, as Tommy afterwards explained, why I came to the Moira? What I wanted? That I was a demon from the grave! That the water, the fish, and the ducks belonged to his tribe. That he spat at me and hated me. That I was Pekka (a ghost), but that man or devil he would spear me!⁷⁷

Crucially, Curr's guide identified the old man as 'pather belonging to Warri'. He did not connect the father's fury and the son's sheep stealing, although we might well wish to do so.

Curr was absent from Tongala at the time of the attacks on his father's flocks, but received an account of the events from his brother Richard. Having noted with understatement that the Bangerang had been 'somewhat troublesome' in the latter half of 1842, Curr gave a humorous account of the sheep stealing in which Warri features as a 'gentle savage' who through trickery disarms the shepherd. His account suggests a considerably more benign altercation than is contained in the contemporary deposition of the shepherd, William Barker (quoted above). After describing Captain Dana's expedition to apprehend the 'ringleaders', Curr recalled a conversation he had with Warri shortly after his capture, noting that he had allowed Warri to believe he would be executed in public for his crimes: 'My object in frightening the poor fellow was, of course, to impress on him thoroughly, and eventually through him on his tribe, the disagreeable consequences of sheep-stealing'.⁷⁸

As noted, Curr was present when Warri was committed to stand trial on 24 February. He also attended the first trial hearing on 16 March, but then returned to Tongala, frustrated by the legal stalemate caused by the lack of an interpreter. In Curr's *Recollections*, the squatter surprisingly emerges as Warri's saviour:

Being in Melbourne again, however, some three months later, I visited the prisoner in his cell, and found him in bad spirits and ill-health. He was delighted to see me. Indeed, though he had assisted to devour my father's sheep, and I had got him imprisoned in return, a sort of friendly feeling had always existed between us, as for

⁷⁷ Curr, *op. cit.*, pp. 176–7.

⁷⁸ *Ibid.*, pp. 167, 194, 203.

my part I never could view either him or his countrymen, on such occasions, as worse than naughty children, who should have been well flogged and locked up for a month. So, as I pitied the poor fellow, thought he had been punished enough, and was of the opinion that his return to Tongala would add to the security of property there, I bestirred myself to get him released.⁷⁹

Curr implies that Warri had languished in prison for three months, neglected and forgotten, but his recollections are at odds with contemporary records. Not only had Thomas visited Warri daily in gaol, but Justice Willis had released the prisoner into Thomas' care only three weeks after the first trial hearing.⁸⁰ Curr instead took the credit for Warri's release himself.

I visited Warri once more in his cell, and ... informed him that he was to be set free; and at my suggestion, to prevent the Melbourne Blacks from killing him that he would the next day after dark be driven in a spring-cart well outside the limits of the town, and there be set at liberty. Poor Warri stared at me with all his eyes, and was some time before he could believe that I was in earnest, and that his difficulties were to come to so pleasing an end; and it was only after I had shown him a blanket, tomahawk, and a small supply of food, which I had brought for him, that he allowed himself to believe that what I said was the fact.⁸¹

Curr's account contradicts Thomas' record of Warri's release, the duration of his residence at Nerre Nerre Warren and the timing of his eventual return home. Perhaps Curr did suggest that Warri's trial be abandoned, but by omitting the role of Thomas he creates a false impression. In *Recollections*, the only oblique reference to Thomas is a mocking statement regarding 'a few well-intentioned visionaries' whose list of complaints about the poor legal rights accorded Aborigines was, in his view, 'as tedious to answer as it is trifling in itself'.⁸² Curr's dismissive indifference to the legal rights of Aborigines was evident not only in his 1883 memoir, but also (as we have seen) in

⁷⁹ *Ibid.*, pp. 204–5.

⁸⁰ Curr's confusion might derive from the length of time that elapsed between Warri's arrest on 1 February 1842 (recorded by Captain Dana) until his return to Tongala after leaving Thomas on 17 May. In fact, Warri spent three weeks in prison.

⁸¹ Curr, *op. cit.*, p. 205.

⁸² *Ibid.*, pp. 120–21.

the coercive 'protection' policy he pursued in the 1870s and early 1880s. His belief in a patriarchal form of authority, backed by the threat of military action, is clearly evident in the closing passage of his chapter on Warri:

Ever after he and I were the best of friends, as he ascribed his release entirely to me; whilst the sage Bangerang, who firmly believed that unnumbered police troopers and officials in shell-jackets would be sent to the Moira to punish any undue indulgence in mutton on their part, became henceforth quite reclaimed characters.⁸³

In a gentle but condescending way, Curr revealed his fundamental belief that the British occupation of Aboriginal lands was just, that concern for Aboriginal legal rights was naïve, and that the childish Aborigine responded well to the authority of a superior race.

* * *

Both William Thomas and Edward M. Curr wrote self-serving accounts of Warri's trial, each displaying paternalism in his own way. Warri emerges as a shallow caricature in both their accounts: either a compliant man amenable to Thomas' benevolent attention and religious instruction, or a jolly but gullible man easily disciplined by the confident and educated Curr. Yet the accounts of Thomas and Curr diverge markedly in ways that illustrate the significance of settler self-government to the history of Indigenous Australia. The transfer of control over Aboriginal policy from London to settler-dominated colonial legislatures had profound and lasting effects. This is well illustrated by the clear differences between notions of Aboriginal protection in 1840s Port Phillip and 1870s Victoria, as evident in the writings of Thomas and Curr. We should not assume, however, that changes in Aboriginal policy resulted simply from a shift in power from London to Melbourne. Evolution in policy also reflected a decline of philanthropic influence in the British Empire more generally.⁸⁴ Indeed, the process of granting self-government required the British government to disavow philanthropic assertions that settler legislatures could not be trusted with Indigenous peoples.⁸⁵ In this way, self-government represented a major challenge for the members

⁸³ *Ibid.*, pp. 205–6.

⁸⁴ Elbourne, *op. cit.*, p. 8.

⁸⁵ Porter, *op. cit.*, p. 213.

of the Aborigines Protection Society in London. As Laidlaw has observed, 'their calls for positive imperial intervention fell on increasingly deaf ears'.⁸⁶ In 1850, when the British parliament considered a bill to extend greater autonomy to the Australian colonies, the APS urged that Aboriginal rights be entrenched in the new constitutions; the response was the hollow assertion that Aborigines would have the same rights (to the franchise for example) as other British subjects.⁸⁷ Porter has pointed to the irony that electoral reform in 1832 gave British philanthropists greater control at Westminster, but that the same democratic principles, when extended to the colonies, undermined their humanitarian aims.⁸⁸

By the time Curr joined the Board for the Protection of Aborigines in 1875, Victoria had been transformed demographically and economically, while several broader developments had reshaped Imperial attitudes to Indigenous peoples. In the 1850s and 1860s Indigenous resistance in India, New Zealand and Jamaica met with strong military responses from the British authorities.⁸⁹ Moreover, the 1859 publication of Charles Darwin's *On the Origin of Species* sparked new debates about racial difference, which undermined Evangelical claims to human unity. Kenny has shown that Darwinian thought reshaped monogenism, providing a non-scriptural basis and allowing for 'an irrevocable inequality of races'.⁹⁰ These tandem developments ensured that the influence of philanthropic voices waned in both London and the colonies; military action to secure British economic interests was increasingly justified by a new form of 'scientific' racism. Nevertheless, self-government was a crucial factor behind the emergence of a more coercive 'protection' policy in Victoria. The decision from London to step back from its governance of the settler colonies had far-reaching consequences for Aboriginal people; the contrasting careers of William Thomas and Edward Curr, and their respective accounts of the trial of Warri, demonstrate this.

86 Z. Laidlaw, 'Heathens, Slaves and Aborigines: Thomas Hodgkin's Critique of Missions and Anti-slavery', *History Workshop Journal*, Vol. 64, No. 1, 2007, p. 136.

87 Evans *et. al.*, *op. cit.*, pp. 66–68.

88 Porter, *op. cit.*, p. 212.

89 A. Lester, *Imperial Networks: Creating Identities in Nineteenth-Century South Africa and Britain*, London, 2001, pp. 161–63.

90 R. Kenny, 'From the Curse of Ham to the Curse of Nature: The Influence of Natural Selection on the Debate on Human Unity Before the Publication of The Descent of Man', *British Journal for the History of Science*, Vol. 40, No. 3, 2007, p. 368.