

Crime Over Time

Crime Over Time:
Temporal Perspectives on Crime
and Punishment in Australia

Edited by

Robyn Lincoln and Shirleene Robinson

**CAMBRIDGE
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P U B L I S H I N G

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This book first published 2010

Cambridge Scholars Publishing

12 Back Chapman Street, Newcastle upon Tyne, NE6 2XX, UK

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

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ISBN (10): 1-4438-2417-8, ISBN (13): 978-1-4438-2417-0

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ACKNOWLEDGEMENTS

We are grateful to Cambridge Scholars Publishing for recognising the value of an interdisciplinary volume such as this one. We are pleased to be part of their growing list of international authors with books on such a wide range of intriguing topics that reflect the globalisation of academic enterprise.

This volume of course would not exist without the academic works of our contributors. We thank each of them sincerely for the enthusiasm with which they responded to our initial approach and then the disciplined way in which they delivered their contributions in such impeccable form.

Robyn wishes to acknowledge the enduring support of her spouse, Paul, and her family—immediate and extended. She dedicates her contribution to her late father, who personally witnessed much change over time in his eighty-five years and possessed a keen sense of justice. Vale Don.

Shirleene wishes to thank Sarah Midgley for her patience and encouragement and her family and friends for continued support. Yorick Smaal, Julie Ustinoff and Emily Wilson were all particularly enthusiastic about this project.

It has been both a pleasure and a privilege to work together on this volume.

INTRODUCTION

Every nation deems certain acts to be criminal and punishes offenders according to the cultural values of the society. The study of crime and punishment reveals much about social order, reactions to deviance and norms.¹ The topics of crime and punishment have particular importance for Australia. It is a society whose European origins derive from the penal policies of late eighteenth century Great Britain. Until 1868, when convict transportation to Western Australia stopped, drawing the convict era to a close, Australian officials were preoccupied with criminality, punishment and the maintenance of absolute law and order. As a distinctive sense of Australian identity developed in the late nineteenth century, law-breaking figures, such as the bushranger Edward “Ned” Kelly, who was hanged at the age of 25, became national icons.² In contemporary Australia, the fascination with criminal activity shows no signs of abating. Television programmes such as *Underbelly*, which focus on notorious criminal figures, attain top ratings, popular crime novels sell extremely well and a number of Australian films continue to explore elements of Australia’s criminal past.

While a preoccupation with crime has been a constant among Australian society, the treatment of crime and the types of punishment meted out have both evolved significantly since the start of European settlement. Despite the important role that crime and punishment have played in Australia’s past, there is a dearth of academically rigorous but accessible texts that have examined crime, criminals and punishment in the nation’s history. The management of crime in Australia has been affected by changing ideas about criminal responsibility, improvements in policing, reforms in prison design and moves away from corporal punishment. The types of acts that are considered to be unlawful have evolved over time.³ Thus, a rigorous historical examination of crime, criminality and punishment serves as an excellent guide to the shifting mores, norms and ideals held within Australia.

In 1991, contributors to the *Australian and New Zealand Journal of Criminology* pointed out that criminology and history would benefit when their approaches were integrated.⁴ Yet, Peter King, who has studied global explorations of the history of crime, asserts that “historians have rarely made explicit links between their work and that of their criminological

contemporaries”.⁵ The discipline of criminology provides a deeper theoretical foundation for understanding the social history of crime and punishment.⁶ Criminology, with its objective social science research methods, delivers a rich means of analysing different histories and perspectives.⁷ Furthermore, as David Garland and Richard Sparks have pointed out, criminology is “part of popular culture, a constitutive (and constituted) element in the collective experience of crime, a repertoire of frames and narratives through which we make sense of that experience”.⁸ This book is informed by calls to amalgamate criminology and history. It responds to the challenge posed by the British criminologist Paul Rock, who lamented that the social science of criminology tends to take a very practical and immediate perspective at the view of ignoring the historical purview.⁹

In an Australian context, most work pertaining to the history of crime has focused either exclusively on convicts and convict settlement or on crime in the colonial era.¹⁰ The text, *A Nation of Rogues: Crime, Law and Punishment in Colonial Australia*, which was published in 1997, provides a sound introduction to crime in colonial Australia.¹¹ Its analysis, however, does not extend beyond the nineteenth century and its approach is not informed by more recent fields of social history or changing understandings of criminal behaviour. There have been some solid attempts to provide overviews of particular aspects of criminal policy in Australia’s past. Mark Finnane’s excellent book, *Punishment in Australian Society*, has focused on shifts in the sanctions that attach to criminal acts throughout Australian history.¹² Sean O’Toole’s 2006 text, *The History of Australian Correction*, provides a thorough exploration of judicial responses to crime but does not consider changes in criminal activity.¹³ More recently, in their 2007 text, *Gangland Australia: Colonial Criminals to the Carlton Crew*, Susanna Lobez and James Morton conducted a study of organised crime from the colonial era to the present.¹⁴

Criminological texts serve to provide information about the causes, nature and extent of contemporary crime in Australian society. Duncan Chappell and Paul Wilson’s 2005 edited collection, *Issues in Australian Crime and Criminal Justice*, provides a comprehensive overview of the criminal activities that impact on Australian society and the way that they are managed by the criminal justice system.¹⁵ This book includes a particularly pertinent chapter by Satyanshu Mukherjee which provides a concise but important overview of the history of Australian criminal correction.¹⁶ On a broader level, the *Cambridge Handbook of Australian Criminology*, edited by Adam Graycar and Peter Grabosky in 2002, presents a range of statistics and issues-based discussion that illustrate the

impact of crime on the Australian community.¹⁷ Other criminology texts have focused more specifically on particular categories of victims, offenders, crimes or policy responses in contemporary Australia.¹⁸

By using a multi-disciplinary approach, drawing from criminology and history, this text attempts to fill a lacuna in existing literature. It contains a range of theoretically informed case studies that furnish a social history of Australian crime, the way it has evolved and the innovative methods that authorities have used to police and punish those who offend. The authors also outline and analyse the ways that criminology and criminal justice have been constructed and viewed over time. The temporal focus of this text spans more than 220 years of Australia's European history. It draws from a range of recent international studies that have successfully integrated historical and criminological methods to investigate the social history of crime and punishment.¹⁹ Any such collection is bound to be controversial in its selection, for there is such a wide variety of issues and events from which to choose. Thus, this volume does not map a genealogy of the discipline of criminology in Australia but it does traverse the developments in some key topic areas that have garnered significant criminological attention.²⁰

The first three chapters in this book feature in a section entitled "Evolution of Australian Criminal Activity". Since 1788, the types of crimes that Australians have committed have changed manifestly. As Howard Zehr has pointed out, criminal behaviour for many offenders represents a way of protesting against society or prevailing social norms.²¹ As social structures have shifted and evolved, some outlets have appeared which have reduced the need for particular types of criminal activities; while other forms of criminal activity have been constant throughout Australian history. Due to a plethora of material exploring the convict experience, this topic has not been included in this book.²² Instead, the section focuses on topics that have received scant consideration.

One of the forms of criminal activity that has been most closely associated with Australia historically is bushranging. Although most nations have some form of social banditry and many of these bandits have been embraced as heroes, the term "bushranger" is distinctively Australian. By the late nineteenth century, bushrangers—individuals who robbed and stole from coaches, banks or other people and subsisted largely in the bush—had obtained iconic status in Australian folklore. Despite their enduring folk hero status, there have been very few academic examinations of these figures. In Chapter One, Murray Johnson considers the reasons that bushrangers were accorded iconic status at a time when most

Australians were residing in urban centres, far removed from the haunts of bushrangers.

Crimes that impact on Indigenous people also have an important historical dimension. In Chapter Two, Jonathan Richards explores a contested element of Australia's past, demonstrating the way that officials condoned and actively supported the use of violence against Aboriginal people on the Australian frontier. In nineteenth century Queensland, the Native Police force, a special wing of government composed of armed and mounted Indigenous troopers led by European officers, was created solely to crush any resistance by killing Indigenous people. Richards outlines the story of that body of men, including the rare occasions when criminal charges were raised against members of the force.

In Chapter Three, Paul Wilson clearly demonstrates that a type of crime many believe to be a product of the late twentieth century has important historical dimensions. Wilson explains that terrorism impacted on Australian shores in the 1960s, though specific laws relating to terrorism were not introduced until the 1970s. Since September 11 however, a significant number of other laws dealing with terrorism were introduced and a number of organisations banned. Despite many Australian deaths through terrorist actions overseas (Bali 1 and Bali 2) and trials of terrorists within Australia, a corrosive debate exists relating to the overreach of terrorist laws and the targeting of specific groups by security and law enforcement agencies. Certainly, terrorism has become increasingly sophisticated and continues to pose enormous challenges to law enforcement and the criminal justice system.

The second section of the book is entitled "Changing Ideas of Criminality and Offenders" and contains four chapters which explore the social and historical milieu surrounding designations of criminality. Such designations are politically, economically and socially constructed. Crime and its management must be viewed in relationship to the dominant social and political order. Legal processes and the criminal justice system have socially constructed a number of forms of criminality in Australia's past. Individuals from marginalised, minority and non-conforming groups have been more likely to have negative experiences within the criminal justice system. This is still an issue in contemporary Australia. The chapters in this section explore the varying experiences of individuals from groups designated as "criminal" throughout Australian history.

Race has been an important factor that has impacted on who has been considered criminal in Australia's past. In Chapter Four, Shirleene Robinson explores the way that Aboriginal children were affected by racially-driven ideology in the late nineteenth and early twentieth

centuries. Robinson argues that Aboriginal children were viewed as a “criminal” or “problem” population as a result of their race and their position as members of a colonised group. As a consequence, governments across Australia enacted legislation which designated Aboriginal children as “criminal” or “neglected” entirely on the basis of their race and allowed for the removal and “retraining” of Aboriginal children. Their designation as members of a “criminal” group on the basis of race has links to the “stolen generation” policies that were practised across Australia well into the twentieth century.

In Chapter Five, Sean Brawley chronicles and contextualises anti-Asian crime in colonial Australia. The rapid arrival of large numbers of Chinese people during the gold rushes saw many Europeans fear economic competition. Furthermore, racist ideology saw many Europeans express prejudice against Chinese people. Brawley focuses on the ways that these prejudices against Chinese people were expressed in the colonial period, finding that violence and aggression were frequent during this era. The topic explored by Brawley has clear parallels to contemporary anti-Asian sentiment and Brawley uses an innovative framework drawing on contemporary terrorism studies to explore this.

The Australian criminal justice has also regulated gender and sexuality. While homosexual acts are no longer illegal in Australia, male homosexuality was criminalised for much of the nation’s history. In Chapter Six, Yorick Smaal focuses on Queensland, where male homosexual acts were illegal for a little over 130 years. Smaal turns his attention to the regulation of male-to-male sexual activity during World War II, investigating the way that the “crime” of homosexuality was policed, penalised and punished. Smaal fits his analysis into the wider context of state surveillance of public space and the expansion of official powers to control and contain what was perceived to be “dangerous” expressions of sexuality.

In Chapter Seven, Emily Wilson focuses on a section of the community that has been particularly vulnerable to mistreatment and abuse. Wilson writes about the 1993 Human Rights and Equal Opportunity Commission report of the National Inquiry into the Human Rights of People with Mental Illness. This report found that violations of the human rights of those in psychiatric care in Australia were commonplace. Although the treatment of the mentally ill as criminals had been discredited for almost a hundred years, in many areas this report indicated that similar attitudes persisted into our recent past. Certainly, her historical analysis speaks to current issues of the over-representation of people with mental illnesses being incarcerated in the nation’s prisons.

The third section of the book canvasses “Variation in Responses to Crime” and it explores the innovative ways that authorities have attempted to police and punish those who offend. Since 1788, the state has responded in a variety of ways, including the use of corporal punishment, deterrence, treatment, preventative programmes and rehabilitative programmes. Throughout this period, communications, technology and the structures and processes put in place to regulate and monitor criminal activity have all changed considerably. Furthermore, theories of crime causation and crime control policy have also evolved. The rapid evolution of responses to criminal activity is a vital component of a study of crime in Australia’s past.

Police have played—and continue to play—a prime role in managing criminal activity in Australian society. In Chapter Eight, Tim Prenzler considers the evolution of Australian policing from a colonial militia through to the contemporary police service that exists today. He explores the tensions that existed between the more aggressive frontier-style based on the Irish Constabulary model and the preventive ideal of the English New Police. He finds that policing has tended to reflect broader social prejudices and has been sexist, racist, violent and corrupt at times. He observes, however, that there have been significant improvements over the past thirty years, with policing transformed by human research management and integrity management strategies, along with a significant divergence into the private sector and specialist areas.

Capital punishment served as the ultimate criminal sanction in Australia until it was abolished. In Chapter Nine, Robyn Lincoln and Shirleene Robinson broach the vexed issue of capital punishment. In 1967, Ronald Ryan was the last Australian to be subjected to capital punishment in this country but this form of punishment remained a legislative option up until the 1980s. This chapter explores the empirical data on executions since colonisation, presents details of some notable cases where offenders were delivered the death sentence, and examines the public opinion data (over the last fifty years) about how Australians view capital punishment as a legal sanction. While it is now more than four decades since that last execution, the spectre of the sentence of death is never far from public and political consciousness, especially when particularly heinous crimes are committed. The chapter includes recent debates about death sentences imposed on Australian citizens while abroad.

In Chapter Ten, Russell Smith explores the challenges posed by cybercrime. Computer-based criminal activity is one of the fastest growing types of crimes in the world today. The risks of criminal misuse of information are significant. Smith investigates the motivations guiding

most cybercrimes and finds that financial gain is a major stimulating factor. He observes that this type of crime has been particularly imaginative and that government authorities, businesses and law enforcers have had to develop corresponding attempts to counter the threats. He concludes his chapter with an evaluation of potential risks for the future and outlines effective responses to cybercrime.

Crime is a central part of society that impacts on everyone either directly or indirectly. Some people are victims of crime during their lifetimes. Others turn to crime and come before the criminal justice system. Many others who do not directly encounter criminal offenders remain fearful about potential criminal threats. The community as a whole also pays a financial cost as a result of criminal activities. A significant number of individuals are also involved in formulating responses to crime and managing criminal offenders. Thus, a study of crime reveals much about protest, power structures, social control, norms and deviance. This historical exploration of the impact of crime and its management elucidates much about Australia's past. This collection also has implications for the prevention, management and recording of crime in contemporary Australia. It provides a long-term perspective that sheds light on what has succeeded and what has failed with regard to criminal justice.²³ Its value therefore lies in the way it increases knowledge about an important but neglected aspect of Australia's past, while also serving an important practical purpose for those involved in law enforcement and the criminal justice system.

The volume is also forward-looking in that it assists in addressing the challenges ahead with the consequences of globalisation or from new developments in genetics and forensic science that will impact on the type or shape of offending behaviour, the way we explain crime and the justice mechanisms available to deal with them. This is where a long-term purview offers a foundation to deal with those future changes. The disciplines of history and criminology—both focusing on offenders, the law and justice matters—can enrich our debates by “building and borrowing from related but separate disciplines”.²⁴

Notes

¹ Robert J. Sampson, “Whither the Sociological Study of Crime?”, *Annual Review of Sociology* 26 (2000), 711-14.

² See particularly, Graham Seal, *Tell 'em I Died Game: The Legend of Ned Kelly* (Flemington, Victoria: Hyland House Publishing, 2002); Graham Seal, *The Outlaw Legend: A Cultural Tradition in Britain, America and Australia* (Cambridge: Cambridge University Press, 1996).

³ Keith Soothill, Moira Peelo and Claire Taylor, *Making Sense of Criminology* (Cambridge: Polity Press, 2002).

⁴ *Australian and New Zealand Journal of Criminology*, Special Issue, “History and Crime”, 24, no. 2 (1991).

⁵ *Ibid*; see also Mark Finnane, “The ABC of Criminology: Anita Muhl, J.V. Barry, Norval Morris and the Making of a Discipline in Australia”, *British Journal of Criminology* 46 (2006), 399-422.

⁶ David Garland and Richard Sparks, “Criminology, Social Theory and the Challenge of Our Times”, *British Journal of Criminology* 40 (2000), 193.

⁷ Peter King, “Locating Histories of Crime: A Bibliographic Study”, *British Journal of Criminology* 39, no. 1 (Special Issue 1999), 161.

⁸ David Garland and Richard Sparks, “Criminology, Social Theory and the Challenge of Our Times”, 189-204.

⁹ See Paul Rock, ed., *History of British Criminology* (Oxford: Clarendon Press, 1988).

¹⁰ For work on convicts, see particularly, Deborah Oxley, *Convict Maids: The Forced Migration of Women to Australia* (Melbourne: Cambridge University Press, 1996); Raymond Evans and William Thorpe, “Power, Punishment and Penal Labour: Convict Workers and Moreton Bay”, *Australian Historical Studies*, no. 98 (1992), 90-111; Stephen Nicholas, ed., *Convict Workers: Re-interpreting Australia's Past* (Melbourne: Cambridge University Press, 1988); J.B. Hirst, *Convict Society and its Enemies: A History of Early New South Wales* (Sydney: Allen and Unwin, 1983); for the colonial period, see particularly Peter Grabosky, *Sydney in Ferment* (Canberra: ANU Press, 1977); Edgar Penzig, *Rogues, Vagabonds and Bloody Thieves: An Illustrated History of Colonial Crime 1850-1900* (Katoomba, New South Wales: Tranter Enterprises, 1992); Michael Sturma, *Vice in a Vicious Society: Crime and Convicts in Mid-Nineteenth Century New South Wales* (Brisbane: University of Queensland Press, 1983); P.J. Byrne, *Criminal Law and Colonial Subject: New South Wales, 1810-1830* (Melbourne: Cambridge University Press, 1993).

¹¹ David Philips and Susanne Davies, eds., *A Nation of Rogues: Crime, Law and Punishment in Colonial Australia* (Melbourne: Melbourne University Press, 1994).

¹² Mark Finnane, *Punishment in Australian Society* (Melbourne: Oxford University Press, 1997).

¹³ Sean O'Toole, *The History of Australian Correction* (Sydney: University of New South Wales Press, 2006).

¹⁴ Susanna Lobez and James Morton, *Gangland Australia: Colonial Criminals to the Carlton Crew* (Melbourne: Melbourne University Press, 2007).

¹⁵ Duncan Chappell and Paul Wilson, eds., *Issues in Australian Crime and Criminal Justice* (Sydney: LexisNexus Butterworths, 2005).

¹⁶ Satyanshu Mukherjee, “‘Crime Wave’: Australia in Context” in Chappell and Wilson, eds., *Issues in Australian Crime and Criminal Justice*, 3-35.

¹⁷ Adam Graycar and Peter Grabosky, eds., *The Cambridge Handbook of Australian Criminology* (Melbourne: Cambridge University Press, 2002).

¹⁸ See for example, Harry Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (Sydney: Hawkins Press, 2008); Chris Cunneen, ed., *Aboriginal Perspectives on Criminal Justice* (Sydney: Australian Institute of Criminology, 1992); Kelly Richards, *Juveniles’ Contact with the Criminal Justice System in Australia* (Canberra: Australian Institute of Criminology, 2009).

¹⁹ See for example, C. Emsley, “Albion’s Felonious Attractions: Reflections Upon the History of Crime In England”, in C. Emsley and L. Knafna, eds., *Crime History and Histories of Crime: Studies in the Historiography of Crime and Criminal Justice in Modern History* (Westport, Connecticut: Greenwood, 1996), 67-86; C. Emsley, “The History of Crime and Crime Control Institutions c1770-c1945”, in Mike Maguire, Rod Morgan and Robert Reiner, eds., *The Oxford Handbook of Criminology* (Oxford: Clarendon Press, 1994); V. Gattrell, B. Lenham and G. Parker, eds., *Crime and the Law: The Social History of Crime in Western Europe Since 1500* (London: Europa, 1980).

²⁰ David Garland, “Of Crimes and Criminals: The Development of Criminology in Britain”, in Mike Maguire, Rod Morgan and Robert Reiner, eds., *The Oxford Handbook of Criminology* (Oxford: Oxford University Press, 2002);

²¹ Howard Zehr, *Crime and the Development of Modern Society* (Totowa, New Jersey: Rowman and Littlefield, 1976), 9.

²² See for example, J.B. Hirst, *Convict Society and its Enemies* (Sydney: George Allen and Unwin, 1983); Robert Hughes, *The Fatal Shore* (London: Collins Harvill, 1987); Nicholas, *Convict Workers*.

²³ T.C. Pratt, “Rational Choice Theory, Crime Control Policy and Criminological Relevance”, *Criminology and Public Policy* 7, no. 1 (2008), 43.

²⁴ Soothill et al, *Making Sense of Criminology*.

PART I:

**EVOLUTION OF AUSTRALIAN
CRIMINAL ACTIVITY**

CHAPTER ONE

AUSTRALIAN BUSHRANGERS: LAW, RETRIBUTION AND THE PUBLIC IMAGINATION

MURRAY JOHNSON

As a social group, the bushrangers inspired fear and loathing from the earliest days of European settlement until the early decades of the twentieth century. Then a paradox occurred. Well before they physically disappeared from the landscape, forces were at work which raised them in the national mythology and folkloric tradition so that a few of those guilty of even the most horrendous crimes were not just exonerated; they were portrayed as persecuted victims of a harsh authoritarian system.¹ As criminals who undertook their nefarious activities in the rural districts, their elevation was also partly due to the environment in which they lived. Like so many other rural dwellers such as swagmen, bullock-drivers, shepherds and overlanders who George Farwell collectively termed “vanishing Australians”,² the bushrangers were denizens of the bush—a landscape alien to the majority of the population. Perhaps more importantly, as lords of their domain they stood well outside the law which constrained their more passive and less adventurous contemporaries. And with one possible exception, they were all men.

How many bushrangers operated outside the closely settled districts may never be known, but their numbers were certainly considerable. They also fall into roughly four historical periods. Beginning with Australia’s first bushranger, John “Black” Caesar in 1790-96, virtually all his lawless successors right up until the late 1840s were escaped convicts who overwhelmingly engaged in crimes against the person and property for sheer survival. Not so the second major phase of bushranging, which was ushered in by the discovery of gold in 1851. Here the emphasis lay heavily

on the acquisition of wealth with minimal effort, but the irony was that none of the career bushrangers lived, or remained at large long enough to enjoy their ill-gotten gains. There was an added dimension as well. So many bushrangers were active between the early 1850s and late 1860s, that it can almost be seen as having been a rite of passage for rural youths, the majority of whom probably returned to more mundane occupations once the excitement of a single escapade had passed.³

Although there was some overlap, including a heavy dependence on kinship links, a third phase coincided with the *Selection Acts* and closer settlement from the late 1860s. It was then that Australia's most famous (or infamous) bushranger, Edward Kelly, rose to the fore. The Kelly gang claimed to have taken their stand through victimisation by the authorities, a denial of criminality that has been reinforced by popular writers to the present day.⁴ Less spectacular bushrangers in this same period, however, lived on the fringe of society and eked out a bare existence through parasitism on the settled community and innocent wayfarers.

Finally, there was a fourth and very distinct phase, which occurred in the 1920s with the emergence of the so-called "boy bushrangers"—youths who had become infatuated with the exciting tales of derring-do from the bushranging past. Their appearance also severed the Irish influence that had been indelibly entwined with Australia's bushranging history.⁵ Yet, while the Irish and their descendants clearly predominated, many other nationalities were also to be found among the ranks of these rural criminals. John "Black" Caesar, for example, was either a West Indian or a native of Mauritius,⁶ and apart from the Australian-born (including Aboriginal Australians), there were also Canadian, English, Scottish, French and even a Chinese bushranger—the tragic Sam Poo who was hanged at Bathurst, New South Wales, in December 1865 for the murder of a police trooper.⁷ Sam Poo was raised from obscurity a century after his death through his fictionalisation in David Martin's novel, *The Hero of Too*.⁸

The Operation of Selectivity

The appearance of Sam Poo in Australian literature serves as a reminder that despite the large number of bushrangers who operated in the outlying districts across some 140 years, it is only a select few who are remembered today. Seized on by novelists and other popular writers, their ranks have included Alexander Pearce, the Clarke brothers and Daniel Morgan, all of whom made good copy through their excessive use of violence. Others, such as Matthew Brady, Ben Hall, Frank Gardiner and Frederick Ward or

“Thunderbolt”, provided daring escapades with some elements of chivalry in the British highwayman tradition (which, it needs to be said, was often quite different in reality). To extend the analogy as far back as the legendary Robin Hood, however, would be a serious mistake. Although the Australian bushrangers preferred to rob the rich, they did so only because the wealthy had more to give. When circumstances demanded otherwise, few had any scruples about robbing the poor. Nor did they necessarily stop at theft.

Michael Howe was one of the early convict “bolters” of Van Diemen’s Land, or Tasmania as it later became known. Convicted of highway robbery in Yorkshire, Howe was transported to the island colony in 1812, where he quickly abandoned penal servitude for a free life in the bush. After joining Tasmania’s first organised gang of bushrangers, Howe assumed control in October 1814 after the nominal leader, John Whitehead, was killed in a clash with soldiers of the 46th Regiment.⁹ Although generally operating outside Hobart in the south, Howe’s band extended its sphere of operations to embrace all the settled districts as far north as Port Dalrymple (Launceston). While their ranks were steadily reduced through violent confrontations with military pursuit parties, the fear they continued to evoke among the European settlers is evident from the curious agreement reached between Howe and Lieutenant-Governor William Sorell in 1817. In exchange for a pardon, Howe was prepared to supply the authorities with information that would lead to the capture of his confederates.¹⁰

Howe accordingly surrendered to an intermediary, Captain Nairne of the 46th Regiment, and was conveyed to Hobart where he provided details about the hideouts of his gang. It is clear, however, that it was punitive action by the military, rather than Howe’s treachery, which gradually weakened the power of the bushrangers. Howe was also caught in a bind because Sorell’s promise of a pardon required confirmation from Governor Macquarie in Sydney. Owing to a lengthy delay and concomitant rumours abounding in Hobart that Howe had been involved in at least four murders, the former leader suddenly abandoned all pretext of reforming and returned to the bush.¹¹ Not surprisingly, he was forced to operate independently, eking out a solitary existence on the edge of the settled districts. Howe had a well-camouflaged hideout in the Upper Shannon River district that was not discovered until five years after his death. From there, he made occasional raids on isolated farmsteads for provisions, arms and ammunition.¹²

In October 1817 one of the few remaining members of his former gang, George Watts, decided to capture Howe in the hope of receiving

lenient treatment for his own crimes. Having arranged a secluded meeting, Watts managed to overpower Howe with the assistance of William Drewe—an assigned convict he had taken into his confidence. Success proved to be brief indeed. Howe managed to snap his bonds on the trek to Hobart, mortally wound Watts with a concealed knife and shoot Drewe dead with Watts' musket.¹³ Howe narrowly escaped a second attempt at capture by a freed convict named James McGill in September 1818, on this occasion being forced to abandon all his possessions.¹⁴ A third attempt the following month finally proved successful. On this occasion the ambush was organised by Warburton, a kangaroo-shooter who was keen to collect the £100 offered as reward for Howe's capture—dead or alive. Assisted by Thomas Worrall, a convict stock-keeper, and Private William Pugh of the 48th Regiment, Howe was lured to Warburton's remote hut on the pretence of being supplied with ammunition. Once there he was confronted by Worrall and Pugh. An exchange of musket fire from both sides failed to take effect and Howe was pursued, caught and battered to death. His severed head was taken to Hobart, where all three collaborators were duly rewarded.¹⁵

At this point Howe might have been forgotten as just one of the many violent offenders who roamed the Tasmanian wilderness in the early decades of the nineteenth century: literary aspiration determined otherwise. Shortly after Howe's death an obscure writer—Thomas E. Wells—presented pioneer Hobart printer and publisher Andrew Bent with a manuscript entitled *Michael Howe, the Last and Worst of the Bush Rangers*. Never one to miss a good opportunity, Bent published the work in December 1818, and despite a hefty retail price of five shillings per copy the first edition sold out by June the following year. A cheaper reprint of what is considered to have been the first general work of literature published in Australia quickly followed.¹⁶ This work established a genre that has continued with varying degrees of success to the present day; for apart from the moralising tone of the author, Howe's factual adventures in the Tasmanian wilderness provided a racy escapism from the drudgery of everyday life.

So, too, did those of yet another escaped convict, though in the case of Alexander Pearce there was an added dimension of almost indescribable horror. While his bushranging career was brief, Pearce has figured prominently in a plethora of fiction and non-fiction works for the simple reason that his anthropophagic tendencies have the power to both fascinate and repel, particularly in the hands of gifted narrators such as Marcus Clarke. In 1870 the Melbourne journalist published his highly-acclaimed novel, *For the Term of His Natural Life*, in which Pearce (fictionalised as

Gabbett) served as a powerful tool to reinforce Clarke's outrage against the inhumanity of the convict system.¹⁷

Pearce was convicted of stealing shoes in Ireland and transported to Van Diemen's Land in October 1819. Two years after arriving in Hobart, he was sent to the grim Macquarie Harbour penal settlement on Tasmania's wild west coast after forging a banknote and absconding from service. Later the same year Pearce escaped with seven companions, and although two turned back, the remaining five struggled on through the desolate wind-swept mountain barrier in a bid to reach the settled districts.¹⁸ As their hunger increased, they began to prey on the weakest member of the group until only Pearce remained. Having reached the pastoral lands of the Western Tiers he was fortunate to fall in with two bushrangers, Churton and Davis, but this new life ended abruptly a few weeks later when all three were captured.¹⁹

The Reverend Robert Knopwood was among those who interrogated Pearce, the latter openly admitting that it was only through consuming the flesh of his companions that he had survived the rigours of the journey from Macquarie Harbour. His confession was not believed, partly through the possibility that Pearce was lying to protect the other escapees who were still at large.²⁰ They were never seen again, and Pearce was simply returned to Macquarie Harbour. In November 1823 he made a second attempt to reach the settled districts, this time with only one companion—the unfortunate Thomas Cox. Rather than tackle the almost impenetrable forests, the pair attempted to reach freedom by following the coast northwards. It did not save Cox; when Pearce was captured by a party of sailors a few weeks later, the flesh of his fellow absconder was found among his meagre possessions. There could be no doubting Pearce's confession on this occasion; he was taken to Hobart, tried and hanged.²¹ His cannibalistic repasts, however, continue to haunt the works of historians, popular writers and, more recently, film-makers.²²

Unlike Pearce or the wild and solitary Michael Howe, Martin Cash not only survived the brutality of convictism and the rigours of bushranging to achieve a measure of respectability, he lived long enough to have his own "autobiography" published and accepted by the reading public. A farm labourer from County Wexford in Ireland, Cash was convicted of housebreaking in 1827 and transported to New South Wales for a term of seven years. Initially assigned to George Bowman in the Hunter Valley, he eventually received a ticket-of-leave and established himself as a budding pastoralist. In 1837 Cash fled to Van Diemen's Land after awkward questions were raised over the ownership of livestock in his possession. Two years later he was convicted of larceny in the island colony and

sentenced to another seven-year-term of imprisonment. Cash escaped from custody three times in as many years and another four years were added to his original sentence. Sent to Port Arthur he escaped yet again, this time with two former bushrangers from New South Wales, Lawrence Kavanagh and George Jones.²³

Avoiding unnecessary violence the trio plundered isolated properties and inns, with Cash acquiring a reputation as a “gentleman bushranger”. His luck ran out in 1843 when he ventured into Hobart and was recognised and captured after a fierce struggle that resulted in the death of a police constable. Narrowly escaping the gallows through a legal technicality, Cash was sentenced to ten years’ penal servitude on Norfolk Island, where he was joined by his former confederate, Lawrence Kavanagh.²⁴ Jones was later captured and hanged—a fate that also claimed Kavanagh after a convict revolt on Norfolk Island in July 1846. Cash wisely avoided confrontation with the authorities and was rewarded with a ticket-of-leave in 1854.²⁵

After returning to Hobart, Cash was first employed at the Botanic Gardens before venturing to New Zealand in 1856 when he received a conditional pardon. He returned to Tasmania in 1860 and purchased a property at Glenorchy, where he farmed quietly until his death in 1877 at the age of sixty-nine.²⁶ It was at Glenorchy that Cash became acquainted with the ex-convict and aspiring author, James Lester Burke, who induced the illiterate former bushranger to dictate his life story. This “autobiography” was published in 1870 and has seldom been out of print since, notwithstanding that it provides a rather embellished account of the principal events.²⁷ Importantly, with Burke’s editorial hand clearly at work, the “autobiography” served to reinforce Cash’s reputation as a “gentleman bushranger” and thus contributed to the sanitisation of the bushranging fraternity.

Unlike the convict-bushrangers of Tasmania who are largely remembered in prose compositions, their counterparts in New South Wales often feature in folkloric ballads. Victimisation, oppression and anti-authoritarianism are key elements in the lyrics; so, too, is the concept of “dying game”, which rose to even greater heights during the second phase of bushranging in the 1850s and 1860s. A good example is offered by Jack Donohue, a convict bolter who provided the inspiration for *The Wild Colonial Boy*.²⁸ After absconding from assigned service Donohue formed a bushranging gang that plagued the settled districts of New South Wales in the 1820s. His career came to a violent end in September 1830 when Donohue and his men were ambushed by civilian vigilantes who were fortuitously reinforced by police troopers. During the gun battle Donohue

taunted his opponents with abuse until he was shot dead—the only way they could capture the wild colonial boy.²⁹

William Westwood (“Jackey Jackey”) was less prone to violence but it was his ability to escape from lawful custody that was partly responsible for securing his place in bushranging balladry. In 1839 Westwood absconded from assigned service near Goulburn and joined with another convict bolter named Paddy Curran. The partnership coincided with a minor epidemic of bushranging, with the result that Westwood and Curran were often credited with robberies in which they played no part. Stories thus spread of their uncanny ability to be at two places at the same time until the partnership was dissolved after Curran sexually assaulted the wife of one of their victims.³⁰ Curran was later captured and executed, while Westwood managed to escape from his captors on a number of occasions, until August 1841 when he was recognised at the Black Horse Inn, near Berrima on the south coast of New South Wales, and knocked unconscious with a shingling hammer.³¹

Sentenced to life imprisonment, Westwood was first incarcerated at Darlinghurst Gaol in Sydney. After a foiled escape attempt he was transferred to Cockatoo Island where he led a number of fellow prisoners in yet another unsuccessful bid for freedom. Westwood escaped only after being transported to Port Arthur in Van Diemen’s Land. Following a brief return to bushranging, he was recaptured and was fortunate to be sent to Glenorchy Probation Station on account of his youth. Not that it altered his determination to be free. Another escape and recapture resulted in ten years’ penal servitude on Norfolk Island, and it was there that Westwood’s luck ran out. In July 1846 he was named as one of the ringleaders of the convict revolt which claimed a number of lives—a few at Westwood’s own hands.³²

With Lawrence Kavanagh and eleven others he was sentenced to death, a penalty from which there was to be no reprieve. While awaiting the gallows, however, Westwood still managed to make his own modest mark on Australian literature. He was encouraged to dictate his life story by the Reverend Thomas Rogers who attended the condemned man in his final days. Rogers abandoned the ministry a few years later to take up journalism, and it was in this capacity that he later published Westwood’s story under the pseudonym “Peutetre” in the Melbourne *Australasian* during February 1879.³³ Unlike the autobiography of Martin Cash, that of Westwood is a catalogue of robberies, captures and escapes leading up to his transportation to Norfolk Island. It is the matter-of-fact reflection of a man about to die,³⁴ and although it may have been intended to serve as a warning to similarly misguided youths, by the time it appeared in print the

Australian colonies were already experiencing their second major phase of bushranging. This was a more complex development that had been ushered in by the discovery of gold in 1851.

The most spectacular robbery during the gold rush era occurred in June 1862 when Francis Christie (usually referred to as Frank Gardiner) formed a gang of bushrangers and held up the gold escort at Eugowra Rocks near Forbes in central New South Wales. They netted a staggering £14,000 in gold and cash.³⁵ Gardiner and two of his associates, Ben Hall and Johnny Gilbert, have featured in an abundance of printed works, an outpouring which commenced soon after Hall and Gilbert were gunned down by police bullets in 1865. Gardiner was also to meet a violent death, but his was far removed from the Lachlan River district of New South Wales and decades after the heady days of the gold rush era.

Gardiner's criminal career began in Victoria where he was arrested for horse-stealing in 1850 before managing to escape from custody and flee across the border into New South Wales. Four years later he was arrested in that colony on the same charge and sentenced to seven years' imprisonment at Cockatoo Island in Sydney. Released in 1856 on a ticket-of-leave with the stipulation that he remain within the police district of Carcoar, Gardiner promptly absconded to the Lambing Flat goldfield where he established a butcher shop retailing meat from stolen cattle.³⁶ While business appears to have been profitable, it did not stop Gardiner masterminding the gold escort robbery and disappearing with his share of the proceeds.

It took police two years to trace Gardiner to Queensland, where he was found to be operating a shanty outside Rockhampton under an assumed name. Arrested and extradited to New South Wales, he was sentenced to 32 years in prison. Yet despite the gravity of the crime, Gardiner found considerable support among the general public, a number of whom were prepared to use their influence to secure his release.³⁷ Part of this sympathy clearly arose from the spectacular success of the gold escort robbery and, perhaps, from the fact that almost half the proceeds had been recovered on an abandoned packhorse.³⁸ Part of it was also due to Gardiner having led an exemplary life in Queensland for two years. Agitation for his release grew steadily until 1874, when a compromise was finally reached: in exchange for freedom Gardiner was forced to accept exile. Placed on board a vessel bound for Hong Kong, the former bushranger eventually made his way to San Francisco where, three decades after leaving Australian shores, Gardiner either died in a brawl or was accidentally shot dead.³⁹

Unlike the mastermind behind the gold escort robbery, other members

of his gang remained behind in the Lachlan River district. Two of them, John Gilbert and Ben Hall, subsequently loomed large among the bushranging fraternity until their own lives ended violently. Often referred to as “Ben Hall’s Gang” following Gardiner’s escape to Queensland, it was probably Gilbert who was the nominal leader of a loose-knit group which conducted a spate of robberies and the occasional murder. While it is correct that Ben Hall did not personally take life he was frequently with those who did, including the Canadian-born Gilbert, who had few qualms about using unnecessary violence. It was for this reason, and the fact that Hall was physically more prepossessing and was to meet his death through treachery, which ensured that it was he, not Gilbert, who fared better in posterity.⁴⁰ Many works have also wrongly sought to present Hall as the innocent victim of police persecution but, like virtually all others in this period, he took to bushranging from choice.⁴¹

So, too, did Frederick Ward, who preferred to be known as “Thunderbolt”. Born in 1836 near Windsor in New South Wales, Ward became an accomplished horse-breaker, with his appreciation of quality horseflesh resulting in two terms of imprisonment for stealing the animals. It was then that he took up bushranging, and much of Ward’s success rested on the stolen racehorses that could easily outdistance the mounts of his pursuers.⁴² Between 1865 and 1870 he is credited with having committed 70 major robberies and stealing 80 horses across a wide swathe of northern New South Wales, though his usual sphere of operations was concentrated on the New England Ranges.⁴³ On numerous occasions Ward was also assisted by his part-Aboriginal wife, Mary Ann, who has the dubious distinction of being Australia’s only recognised female bushranger. Mary Ann possibly died from tuberculosis in late 1867, and apart from his emotional loss, Ward was deprived of his wife’s skilled bushcraft.⁴⁴ Despite this major setback, his criminal career continued for another three years until he was pursued and shot dead by Constable Alexander Walker near Uralla. This was one of the few occasions that Ward had been mounted on an inferior horse.⁴⁵

Throughout his criminal career, Ward managed to avoid taking life and using unnecessary violence. His devotion to Mary Ann and his superb horsemanship helped to enhance his reputation, though perhaps more than anything else, it is the aura of mystery surrounding “Thunderbolt” that has ensured his place in Australian folklore. No trace of the proceeds from his numerous robberies has yet been discovered,⁴⁶ and there were claims at the time of his death (which have been repeated many times since), that the man shot by Constable Walker was actually “Thunderbolt’s” half-brother, Blake Ward, and not the bushranger.⁴⁷ That doubt has come down to the

present day.

In different ways, Ward, Gardiner and Hall were ideal subjects to romanticise for distant urban dwellers whose dreary and monotonous lives were enlivened by tales of derring-do in the wilder regions of the interior. In a rugged land lacking military figures in the heroic British mould, the bushrangers, with their anti-authoritarianism, their superb horsemanship and bushcraft, and their generally brief but spectacular careers, helped to fill a void in the public imagination which was only surpassed by the epic journeys of the nineteenth century explorers.⁴⁸ For those far removed from their depredations, however, it was still necessary to downplay the extent of the actual violence or, in extreme cases, to highlight exceptional violence as a means of engaging the reading public.

During the gold rush era it was Daniel Morgan who fulfilled the latter role. As Margaret Carnegie has argued, however, Morgan's portrayal as a psychopathic killer may have been linked to his own death and subsequent mutilation in 1865.⁴⁹ The son of convict parents, Morgan was probably born in Sydney in 1833 and spent much of his formative years in the Campbelltown district of New South Wales. But it was in Victoria that he first came to the attention of police. In 1854 he was arrested and sentenced to twelve years' imprisonment for bailing up and robbing an itinerant hawker near Castlemaine. After serving the initial part of his sentence in prison hulks, Morgan was transferred to Pentridge Gaol and released from custody in 1860 on the proviso that he remain in the Ovens Valley-Yackandandah district and report regularly to police.⁵⁰

Like Gardiner in New South Wales, Morgan promptly absconded—in his case to a hideout in the King River area—from where he periodically sallied out to commit robberies and engage in horse-stealing. This came to an abrupt end in August 1860 when Morgan was pursued and slightly wounded by two local pastoralists, Evan Evans and Edmund Bond, before escaping over the border into New South Wales.⁵¹ Thereafter the Riverina district became Morgan's regular haunt, though it is known that he occasionally returned to Victoria to waylay travellers and rob isolated properties. Contrary to the usual image of Morgan as an unsociable loner, he was often assisted in his bushranging activities by country youths, both European and Indigenous, about whom little is known.⁵²

For all that, Morgan was clearly violent and not averse to taking life if his victims offered resistance. He was responsible for the cold-blooded murder of two police sergeants in separate incidents,⁵³ and it was revenge which eventually brought about his downfall. In April 1865 Morgan again crossed into Victoria, on this occasion intending to deal with Evans and Bond who had wounded him nearly five years earlier. Finding neither