

Convict Era Broadsides and Ballads and the Working Poor: Part 1

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ABSTRACT: Banjo Patterson, the poet and collector of Australian Bush Songs, famously refrained from publishing much in the way of convicts' ballads. Later folklorists and collectors were more than pleased to collect this kind of material, and added the bushranger ballads as well. So today we have access to some quite remarkable examples to illuminate our understanding of their place in the history of vernacular lyrical poetry and song in Australia, a ballad tradition that stretches from invasion to the present. Today we have many such documents that tell the story of Australia from the point of view of those whose labour built the nation, and strikingly expressed their own views in the process. They stand as working songs, or better still, docu-songs.

KEYWORDS: Broadside ballad; Convict song; Vernacular lyrical poetry; Bushranger balladry

The songs and poems I have gathered for this article place special emphasis on the characteristics that appealed to workers in Britain and Ireland. It was material sold on the streets of the towns that were the former homes of the convicts and their families and friends. The selection illustrates the cultural appeal of the labour movement that attracted support and caught the attention of the wider society. It shows that throughout its existence in Australia the labour movement was concerned with much more than bread and butter issues, important as those were. In the process of constructing itself the movement was gathering friends and allies as part of its hegemonic endeavours to bring about change. Thus the preponderance within the movement in a non-exclusive interest in rights, democracy, industrial organisation, institution building, banners, flags, demonstrations, badges, strikes, meetings, political parties, the peace movement, health and safety, the environment, anti-slavery and forced labour in all its variety. While the movement would have long lasting effects on the colony and its development it was not without its backwardness in attitudes to race and gender and, of course, in the treatment of the original owners of Australia the Aborigines. It was under such circumstance that the Australian labour movement became known around the world for its lack of deference towards authority from the convict decades onwards.

In terms of national mythology, the bushrangers, not the gaolers, are the heroes, and as such much better celebrated in balladry than the authorities whose statues still adorn our cities. Even statues can be subverted by popular opinion so that in the case of the monument raised in Melbourne to commemorate judge Sir Redmond Barry is often referred to as the Ned Kelly statue—Barry being the judge who condemned Kelly to be hanged.

Much has been written by historians drawing on institutional perspectives and discourse about transportation, drawing on official documentation such as court reports and convict records. As Hodge and Mishra argue, however, popular traditions, ‘from below’ and ‘often in oral form’ can also inform our understanding of this history.¹ Among the earliest examples of lyrical material relating to this subject are the transportation or convict ballads. These ballads were widely available, popular vernacular lyrical material produced from settlement to the mid nineteenth century. They reflected and influenced the views of the working-class men and women who constituted the overwhelming majority of the 165,000² convicts transported to Australia. 25,000 of them were women, a male to female ratio of 6.6 to 1. In the white population of Australia convicts and ex-convicts formed a majority for the first 5 decades of the colony and this gender disparity was a prominent feature of those years, one that marked Australia as a very different extension of British society. Most of those who administered the colony or guarded, preached and punished the prisoners could and did return to the land of their birth, their family and friends, while the convicts rarely could or did so.

Broadside ballads were published for and sold on the streets to a largely working-class audience. A recent study finds that twelve hundred such ballads deal with poverty in Britain, and that many of these lay the blame with the class system of society and raise the issues of fairness and equality.³ Another study explores the ‘figure of the working-class intellectual’ and also evaluates ‘a host of familiar writers such as Robert Burns, John Thelwall, Charles Dickens, Charles Kingsley, Ann Yearsley, and even Shakespeare, in terms of their role within a working-class constituency.’⁴

Early Australian ballads like the ‘Cyprus Brig’ and ‘Van Diemen’s Land’ cited below clearly depict the brutality of the convict system in a

1 Bob Hodge and Vijay Mishra ‘Crimes and Punishments’, in Gregory Castle (ed), *Postcolonial Discourse. An Anthology*, (Blackwell, 2001), p. 336.

2 http://www.sl.nsw.gov.au/discover_collections/history_nation/justice/convict/convict.html (accessed 9 February 2013).

3 James Hepburn, *Book of Scattered Leaves: Poetry of Poverty in Broadside Ballads of Nineteenth-Century England: Study and Anthology*, (Lewisburg, Pa., Bucknell University Press, 2000).

4 Aruna Krishnamurthy, *The Working-Class Intellectual in Eighteenth and Nineteenth-Century Britain* (Farnham, Surrey, England, Ashgate, 2009), p. 4.

memorable way that ensured their transmission for generations. Historians may argue about the criminality of convicts, but they largely agree that the great majority of them were working class. It may be argued that class implies relationship, a relationship within a particular society. That relationship is inevitably reflected in social institutions such as the legal system. If only one class is involved in making and administering the law the prospect of its vaunted even-handedness is remote. In their argument against a long-held construct of the transported and exiled as being part of a 'criminal underclass', Ken Buckley and Ted Wheelwright point out that just as the majority of convicts 'were from working class or peasant backgrounds' they also 'came to form part of those same classes in the colonies':⁵

To portray them as a collection of sub-human beings is to adopt the warder mentality of their gaolers ... Recent research suggests that there was a remarkable variety of work skills among the convicts and that they well may have been broadly representative of the British working classes in this respect. Undoubtedly the convicts were the basis for the creation of a proletariat in Australia.

We have witnessed a considerable shift in popular perception of convicts in Australia over the last half century. Popular interest and research in genealogy and family history, as well as the institutional concerns of museums and the economic concerns of tourism, have all played a part in the modern perception of convict life. The 'convict stain' that served to hide, and dampen interest in, so much convict history for so long has largely been replaced by a more dispassionate understanding of convict life. The early notion of 'criminal underclass' referred to above by Buckley and Wheelwright, no longer holds sway. Historian William Lines sums up the new perception in this way⁶

The British government, fearful of riot and revolution, found a palliative in transportation, which aimed, not at punishing individual crimes, but at banishing an enemy class from British society. Those convicted and sent to Australia did not belong to a British criminal class. As a cross-section of the English and Irish working class, they possessed the skills needed to build Australia, and were suited to the tasks of performing the hard physical labour required to conquer a new country.

Historian Alison Alexander attributes the change in popular perception in part to the publication in 1958 of Russel Ward's *The Australian Legend*.

5 Ken Buckley and Ted Wheelwright, *No Paradise for Workers, Capitalism and the Common People in Australia 1788–1914* (Melbourne, Oxford University Press, 1988), p. 55.

6 William J. Lines, *Taming the Great South Land: A History of the Conquest of Nature in Australia* (Allen & Unwin, Sydney, 1992), p. 56.

Alexander describes Ward's claim that 'convicts' values were the basis of the Australian national character' as a 'bombshell' at the time. She writes, 'Even today many prefer not to remember that for nearly the first half-century of its existence White Australia was, primarily, an extensive gaol.'⁷ However, A.G.L. Shaw, writing only eight years after the publication of *The Australian Legend* remained strongly of the view that convicts were rightly considered by historians as criminals despite the popular myth, 'firmly embedded in national ethos', that

convicts were more sinned against than sinning, victims of a harsh criminal law, driven by want to some petty crimes in times of economic depression or social stress, caused by the enclosing of the commons or the 'industrial revolution'.

Shaw describes this view as a 'myth now firmly embedded in the national ethos' and one expressed in an early pre-transportation rhyme which he cites⁸

The law locks up the man or woman
Who steals the goose from off the common,
But leaves the greater villain loose
Who steals the common from the goose.

but though the myth is now firmly embedded in the national ethos, where it will doubtless remain for generations, historians have come to doubt it more and more.

Today we have evidence from more recent research that what Shaw regarded as a popular myth actually presented a more accurate picture of convicts than the view commonly espoused by historians. Archaeological evidence from the Rocks area in Sydney, an area where convicts and ex-convicts lived from the very early days of settlement, offers us a picture of a thriving working-class community in an area many have regarded as a slum. Urban archaeologist and historian Grace Karskens writes,⁹

Archaeology forces us to look more closely at the idea of strictly class-based residential patterns gleaned from the scribblings of nineteenth century outsider observers. That so-called 'slum-dwellers' should so clearly aspire to, and often achieve, their preferred form of gentility, made available by consumer culture, industrialisation, and by their interest in

⁷ Alison Alexander, *Tasmania's Convicts: How Felons Built a Free Society* (Allen & Unwin, Crows Nest, NSW, 2010), p. 231.

⁸ A.G.L. Shaw, *Convicts and the Colonies: A Study of Penal Transportation from Great Britain and Ire-land to Australia and Other Parts of the British Empire* (London, Faber & Faber, 1966), pp. 146-147.

⁹ Grace Karskens, 'Engaging Artefacts: Urban Archaeology, Museums And The Origins Of Sydney', *Humanities Research*, vol. ix, no. 1 (2002), p. 48.

collecting, is the sort of ‘shock’ insight archaeology delivers. It challenges long-held ideas about the culture and stance of working people, about the Rocks as a ‘slum’, about the very notion of ‘slums’ itself.

Karskens’ evidence illuminates the agency and self-reliance of convicts in the first three decades of the colony. The vast southern continent claimed by the British empire was itself considered to be the prison. Convicts were not in prisons since the gaols and penal stations they were to build did yet exist. Many convicts built their own houses in ‘The Rocks’ (their own name for the area), away from the precincts of the ruling elite, creating an industrious community where much productive activity took place in the cottages and gardens. They were eager to equip their homes with the latest commodities from a rapidly industrialising Britain, just the kinds of cutlery, plates, buttons, decorations along with the tea and coffee to which workers in a similar position in Britain were also growing accustomed. Industrial society was dependent on such consumption. Karskens shows the streets and houses grew organically as needs required and were planned not with a grid of streets, but in ways that reflected the existing topography of the area.¹⁰ This part of Sydney was a place that convicts claimed as their own.

What should also be said about the situation is that we cannot simply conclude that convicts ‘were better off here’. What is missing is an account of the convict understanding of the unfairness of the penal machinery that sent them to the other side of the world in the first place. Similarly, absent is an account of the trauma of being wrenched from family, friends, community and land of birth. Karskens is describing conditions in Sydney in the first three decades of settlement, however, with the construction of the penal stations and places of secondary transport, conditions for convicts were radically altered.

What we learn from lyrical material associated with the convicts allows us to enter the world of the convicts using methods not dissimilar to those of the archaeologist, piecing together what we can from a variety of fragments from the vernacular narratives. Among the fragments available can also be included newspaper reports of the time dating from 1803 onwards. Official reports, too, often reveal important insights into convict life and convict thinking.

Convict desperation in the penal settlements of New South Wales and Van Diemen’s Land, their misery and dejection at the injustices they believed they were suffering certainly resulted in extraordinary counter-hegemonic acts. A number of convict incidences of self-harm were noted

¹⁰ Grace Karskens, ‘Engaging Artifacts’, *Humanities Research*, vol. ix, no. 1 (2002), p. 48.

with alarm in the Molesworth Report. Sir Francis Forbes, the chief justice of Australia produced evidence to the Transportation Committee:¹¹

The experience furnished by these penal settlements has proved that transportation is capable of being carried to an extent of suffering such as to render death desirable, and to induce many prisoners to seek it under its most appalling aspects.

In this report Forbes also reveals:

That he had known many cases in which it appeared that convicts at Norfolk Island had committed crimes which subjected them to execution, for the purpose of being sent up to Sydney ... and that he believed they deliberately preferred death, because there was no chance of escape, and they stated that they were weary of life, and would rather go to Sydney and be hanged.

A hundred and thirty years later Historian Hamish Maxwell-Stewart writes about an astonishing convict 'escape' in Van Diemen's Land. On 17 October 1827 nine convicts sent to Macquarie Harbour penal settlement as a secondary punishment, carried out their plan to escape from further flogging by forcing the penal system to hang them. They believed they would go to Heaven if they confessed to murder, and they carefully planned the drowning of a ruthless constable within the sight of witnesses who they had bound and gagged.¹²

By drowning Constable George Rex, by immersing him below the cold waters of Macquarie Harbour, by ensuring that there were others there to see what had passed, the nine men had arranged their own deaths. The state had obliged by supplying them with Bible, candles and clergymen from no fewer than three denominations. The ultimate sanction that [Governor George] Arthur possessed had been corrupted and used for altogether unintended purposes ... It was as though the nine men had cut out a brig from under the noses of the convict department and one and all, prisoners, public, clergy and colonial officials, had been forced to watch them sail away.

Convict and contemporary verse also reveals that the transported often took desperate steps to escape the penal settlements that had been specially chosen and designed to make their escape impossible. They certainly strongly believed that they had been 'more sinned against than sinning'.

11 David Charles Douglas, *English Historical Documents* (London: Eyre & Spottiswoode, 1956), p. 523.

12 Hamish Maxwell-Stewart, *Closing Hell's Gates: The Death of a Convict Station* (Crows Nest, N.S.W., Allen & Unwin, 2008), p. 219.

That this particular attitude was abroad long before the deliberations of modern historians can be found in the Tasmanian ballad about the *Cyprus Brig*, a song that tells the story of the convict seizure of and escape via this vessel in 1829. Folklorist Edgar Waters writes¹³

We have a solitary recording of a song about the 'convict times' in Tasmania: 'The Seizure of the Cyprus Brig'. There is a poem, known from a manuscript, of this title, said to have been written by the Irish convict known as Frank the Poet. The song was recorded from an old whaler named Davies in the 1960s. It makes use of bits of the text from the manuscript poem, adds an introductory verse from a broad side ballad called 'Van Diemen's Land' and sets it to one of the tunes used for that song.

This ballad has been attributed to the Irish convict Francis MacNamara, whose lyrical compositions occupy a particular place as examples of Australia's earliest working-class song and poetry.

In August 1929 the recently refurbished *Cyprus Brig* was conveying thirty-one prisoners to Macquarie Harbour. On 9 August 1829 the ship was forced by storms to seek refuge in Recherche Bay for a week. During its anchorage in the bay the convicts on board seized the ship and after putting the captain, soldiers, crew and a number of hesitant convicts ashore, they set sail for Japan, ultimately reaching China. The Tasmanian newspaper *Colonial Times* attempted to put a positive spin on the escape.¹⁴

We are somewhat apprehensive that this affair will be a great temptation to other prisoners to make similar attempts, while this Penal Settlement is continued. It is, however, much better for the Colony that these desperate characters have got off, even with the loss sustained, than that they should have escaped into the bush, and have become bushrangers, for in all probability they would have then committed numerous depredations before they would be taken. There is also some consolation, that they committed no murders, nor ill-treated the women on this occasion.

The same article estimated the loss of the ship and its cargo to be '£3,350', canvassed the need to close the reviled Macquarie Harbour penal settlement and named the escaped prisoners:

If any thing can induce the Settlement of Macquarie Harbour to be abandoned, we trust this loss will ... The following is a list of the prisoners, who captured the Cyprus:—Michael Herring, Robert McGuire,

13 Gwenda Davey and Graham Seal, *The Oxford Companion to Australian Folklore* (Melbourne, Oxford University Press, 1993), p. 162.

14 *Colonial Times*, 4 September 1829.

William Templeman, Matthew Pennell, William Watts, James Davis, Samuel Thacker, John Beveridge, Alexander Stevenson, Leslie Ferguson, John Lynch, James Jones, William Swallow (commonly called Walker), Charles Towers, James Cham, Thomas Bryant, John Denner, William Brown. In our next number, we propose to give some account of their crimes.

We also know that the story of this dramatic escape spread to London in the form of a play and was ‘propagated by oral tradition’ through Van Diemen’s Land as a ballad performed and sung by convicts. The popularity of this celebratory rebel song among convicts, is noted by John West the Tasmanian newspaper proprietor and historian who was also one of the founders of the Anti Transportation League in his two volume *History of Tasmania*, written almost twenty years after the closure of Macquarie Harbour penal settlement:¹⁵

The capture of the Cyprus in Recherche Bay, on the voyage to Macquarie Harbour, was a stirring episode in the history of transportation. It excited vast interest in Great Britain, and was dramatised at a London theatre. The prisoners, who wage war with society, regarded the event with exultation; and long after, a song, composed by a sympathising poet, was propagated by oral tradition, and sung in chorus around the fires in the interior. This version of the story made the capture a triumph of the oppressed over the oppressors.

West’s language is interesting, the ‘prisoners who wage war on society’ seems ideologically loaded, while the documenting of the currency of the ballad ‘propagated by oral tradition, and sung in chorus around the fires in the interior’ and the almost respectful ‘triumph of the oppressed over the oppressors’ suggest a more dispassionate understanding. West’s leadership of the anti-transportation movement with its emphasis on the ‘monstrous’ behaviour of convicts at the time may offer an explanation for his ambivalence towards them. The inverse phrase ‘rulers who wage war on workers’ might be an appropriate riposte from below.

Cyprus Brig, like many ballads of this period, begins with the phrase ‘come all you’, indeed such songs have become collectively known to folklorists as ‘Come all Ye’ ballads. In this case the audience is urged to see themselves as ‘sons of freedom’ and to join in the chorus. The narrative begins to unfold as ‘a song of heroes and glorious liberty’, heroes who are condemned to transportation to ‘Van Diemen’s shore’ and wrenched perhaps forever from ‘country friends and parents’. These prisoners definitely see themselves as ‘more sinned against than sinning’.

15 John West, *History of Tasmania: Volume 2*, (Launceston, Henry Dowling, 1852), p. 215.

Come all you sons of freedom, a chorus join with me,
I'll sing a song of heroes, and glorious liberty.
Some lads condemn'd from England sail'd to Van Diemen's shore.
Their country, friends and parents, perhaps never to see more.

The next verse contains the phrase 'trifling offences', offences perhaps 'of looks, anything betraying the insurgent spirit' as Governor Arthur enlightens the Molesworth committee in London a decade after the song's heroes had made their famous escape.

When landed in this Colony to different masters went,
For trifling offences, to Hobart Town Gaol were sent,
A second sentence being incurr'd we were order'd for to be
Sent to Macquarie Harbour, that place of tyranny.

Maxwell-Stewart writes that this ballad was 'considered so subversive that it was said to have been suppressed.' Whatever the case we know it didn't appear in any of the newspapers or any other printed form at the time, and survived underground for the next 130 years in Tasmanian oral tradition. Maxwell-Stewart describes the extreme geographic nature of Macquarie Harbour; 'that place of tyranny' as the song has it.¹⁶

At the farthest corner of an island, at the very end of the world, lies a windswept shore that was once home to one of history's most isolated outcasts. Cut off by mountain ranges it served as a place of exile within a land of exile, a prison within a prison. Some of those who were sent there talked as though they had slipped below the crust of the earth to dwell in some terrible netherworld. They called this place 'Pluto's Land'.

Following is a selection of the lines of the ballad that historian Geoffrey Ingleton attributes to 'Frank the Poet':¹⁷

Confined within a dismal hole, we soon contrived a plan,
To capture now the 'Cyprus', or perish every man.
But thirteen turned fainthearted and begged to go ashore,
So eighteen boys rushed daring, and took the brig and store.
We first addressed the soldiers, 'For liberty we crave,
Give up your arms this instant, or the sea will be your grave;
By tyranny we've been oppressed, by your colonial laws,
But we'll bid adieu to slavery, or die in freedom's cause.'

Here in verse is the equivalent of the cry 'Liberty or Death', common to Irish and British convicts alike in their refusal to reconcile themselves to oppression. There is also evidence of a negotiated surrender of the armed

¹⁶ Hamish Maxwell-Stewart, *Closing Hell's Gates: The Death of a Convict Station* (, Crows Nest, N.S.W., Allen & Unwin, 2008), p. 1.

¹⁷ Geoffrey Ingleton, *True Patriots All*, p. 129.

crew and soldiers charged with the journey to the remote convict station Macquarie Harbour on the north-west coast of Van Diemen's Land, a remote and unforgiving place renamed by convict's as 'Hell's Gates' or 'Pluto'. That same verse then continues:

The morn broke bright the wind was fair, we headed for the sea,
With one cheer more for those onshore, and glorious liberty.
For navigating smartly Bill Swallow was the man,
Who laid a course out neatly, to take us to Japan.

Then sound your golden trumpets, play on your tuneful notes,
The Cyprus Brig is sailing, how proudly now she floats.
May fortune help the noble lads, and keep them ever free,
From Gags, and Cats and Chains and traps and cruel tyranny.

It's hard not to imagine the pleasure fellow prisoners would have gained when this ballad was recited or sung. Each of the verses closely fit the course of events as later described by West:¹⁸

It related their flight from torture to the woods, and drew but a dreary picture of the life of an outlaw. It passed through the details of conviction and embarkation, and then described the dashing seamanship of the pirates.

In 1961, armed with a tape recorder, the Tasmanian historian Lloyd Robson collected a version of the song 'Cyprus Brig' in Hobart. It remains the only field recording of the song and was sung by retired sea captain Jack Davies, who, when asked by Robson what the song was about replied:¹⁹

Well what they used to do, the farmers in those days apply, to get two or three or whatever they wanted onto their farm, and then when they had a bit of a cheque to come, they'd rig up some crime against them and send them into Hobart. Give them a letter to bring in—to walk in perhaps ... the old boss was far away when they got to the gaol it was a letter to get a flogging.

The singer's understanding of the historical background to the song and the way the assignment system would be manipulated to cheat convicts out of wages owed for their work, illustrates again the popular perception of the one-sided power relationship and unfairness built into the convict and assignment system. This understanding is part of a meta-narrative, as background information, not part of the song itself but understood by the singers and their audiences as important for a fuller comprehension of it.

¹⁸ John West, *History of Tasmania* (Launceston, Henry Dowling, 1852), p. 215.

¹⁹ Transcribed by the author from a National Library of Australia sound recording.

One of the reasons folklorists query performers about their songs is to gather such contextual information. In this example Robson's enquiry and the response it elicited remains preserved on the tape. Often such material has been lost for reasons of economy or because the expensive tapes were wiped and reused after a transcript of the song and notation of the tune has been made.

In Davies' recorded version of the 'Cyprus Brig', the first two verses are:²⁰

Poor Tom Brown from Nottingham Jack Williams and poor Joe
They were three gallant poacher boys their country all does know
And by the laws of our Game Act that you may understand
Were fourteen years transported boys all to Van Diemen's Land

When we landed in this colony to different masters sent
For little trifling offences boys to Hobart Town gaol were sent
Now the second sentence we received and ordered for to be
Sent to Macquarie Harbour that place of tyranny

Here the beginning of a stanza from the older ballad 'Van Diemen's Land' has been recast through oral transmission to suit the locally situated convict story of the seizure of a ship for the purposes of escape. The mention of the 'Game Act' in this orally transmitted song does not appear either in 'Van Diemen's Land' or in the poem 'Seizure of the 'Cyprus Brig' in Recherche Bay' attributed to MacNamara and composed in the 1840s.

Portelli has argued the recording of songs and their preservation in a recorded form is of great importance to research, and that transcription is very much a second-rate rendering of the richness of the performance. In the case of Davies we can see that the recording provides a wealth of information that would otherwise be unavailable.

The daring *Cyprus Brig* escape was emulated again in Tasmania just as Macquarie Harbour was being closed down. In fact, the closure was held up for a time so that the *Frederick* brig being built there could be completed. Maxwell-Stewart tells the story: 'When the vessel was eventually launched hardly anybody remained save a military detachment and a small band of convict mechanics and seamen.' The convict James Porter, famous for his singing in the penal settlement choir, now sang his heart out to distract the guard.²¹

The song that Porter sang to the unsuspecting soldiers was a lament to the impoverished conditions that had accompanied the end of the Napoleonic Wars:

²⁰ <http://www.frankthepoet.com/2011/01/cyprus-brig.html>, (accessed 4 October 2011).

²¹ Maxwell Stewart, *Closing Hell's Gates*, pp. 264-265.

The money is withdrawn and out trade is diminishing,
 For mechanics are wandering without shoes or hose;
 Come stir up the wars and our trade will be flourishing,
 This grand conversation was under the rose.

While he was still in full voice the signal was hammered out on the deck for the convicts to rise up and seize the vessel. Porter and nine others sailed her away to the coast of South America in a repeat of the *Cyprus* affair.

The novel use of ballad singing to ‘distract the guard’ is evidence of the boredom of the guard and their attraction to a musical break. The choice of this particular ballad to entertain soldiers is not surprising, while the urge ‘to stir up the wars’ in order to help impoverished mechanics back to work shows an interesting insight into popular thinking about the political economy of the time. Maxwell-Stewart explains the ironic relevance of the flower in the song:²²

The phrase ‘under the rose’ meant something said or plotted in secret, the rose being sacred to Harpocrates, the Greek god of silence. For this reason the rooms of taverns were sometimes decorated with roses to indicate that what was said in their confines should not be made public.

...
 The plan to take the *Frederick* remained, like so much that had been plotted at Macquarie Harbour ‘under the rose’.

Among the prisoners transported to Australia were Scottish rebels, trade unionists, Luddites, poachers, Irish rebels, and Chartists. In varying ways it might be said they did not believe that the laws and judicial processes that sentenced them to transportation were fair. Perhaps they had in their minds reasonable and fair laws that did not yet exist. Popular culture, stories and religious traditions were replete with tales where right prevails over might and where the poor are blessed as they ‘shall inherit the Earth.’ These are the assumed or imagined rights and social norms that became embedded as components of their preferred and chosen narrative as opposed to the narrative devised and broadcast by rulers in accordance with their reverence of exclusive class position and property ownership—ultimately a reflection of their own self-interest.

The enclosure of land, the Combination Acts, the Masters and Servants Acts, the Unlawful Oaths Act, the Game laws, the Machine Breaking laws, the laws of sedition and conspiracy, the Poor Laws, the Felony Treason laws and the laws legitimating the conquest of Ireland constituted a broad variety of contestable law in the questioning minds of the nascent working class in what Thompson describes as a ‘process of self-discovery and self-definition’. Many of these laws are specifically named in the broadside

22 Maxwell Stewart, *Closing Hell's Gates*, p. 265.

ballads and songs collected in later years as in the ‘Cyprus Brig’ above and additional examples examined here. Taken together they provide evidence of a continuing working-class narrative of assumed rights, rights specifically threatened by hostile laws, framed in a political climate where there was a growing popular concern about lack of democratic representation. The famous slogan of the American Revolution ‘No Taxation Without Representation’ could equally be formulated as ‘No Legislation Without Representation’ in a period where the demand for universal suffrage was gaining unprecedented popular support. The 5 percent of the population of Britain who could vote or stand for parliament, saw themselves as the guardians of freedom ... free that is from those they looked upon as the ‘swinish multitude.’ The laws they framed were, as the poet Byron famously declared in his maiden speech in the House of Lords in 1812, were designed to frame and hang the recalcitrant working poor:²³

Is there not blood enough upon your penal code! That more must be poured forth to ascend to heaven and testify against you? ... Can you commit a whole country to their own prisons? Will you erect a gibbet in every field, and hang up men like scarescrows?

Assumed rights, as Margaret Somers argues, were important to people’s lives, contributing to the culture of a community where the ‘narrative theme was that working people had inviolable rights to a particular political and legal relationship ... [T]his conception of rights defined independence and autonomy’.²⁴

This ideological perspective stands in contrast to British imperial aspiration, which can also be considered an ideological point of view as the historian Alan Atkinson has argued. Discussing how the empire’s system of transportation ‘received a new lease of life with the establishment of settlement in New South Wales’ he writes that²⁵

this was partly because the moral dimensions of empire were now made to overlap with those of criminal punishment, each being shaped from Whitehall. Among the new visions of empire can be found one whose rigid order slightly resembles that of a great panopticon.

23 Robert Charles Dallas, and Alexander R.C. Dallas, *Recollections of the Life of Lord Byron, from the Year 1808 to the End of 1814; Exhibiting His Early Character and Opinions, Detailing the Progress of His Literary Career, and Including Various Unpublished Passages of His Works. Taken from Authentic Documents, in the Possession of the Author*, (London: C. Knight, 1824), p. 215.

24 Margaret R. Somers, ‘Narrativity, Narrative Identity, and Social Action: Rethinking English Working-Class Formation’, *Social Science History*, Vol. 16, No. 4 (1992), p. 612.

25 Alan Atkinson, ‘The Free-Born Englishman Transported: Convict Rights as a Measure of Eighteenth-Century Empire’, *Past & Present*, No. 144 (1994), p. 113.

Atkinson concludes that the requirements of empire encouraged the formulation of laws that²⁶

undermined the power of neighborhoods and national communities to make up their own minds about rights and duties, whether in general or in particular cases. This might lead to explosions of resentment, such as the American Revolution. But otherwise the new rigidity greatly strengthened the imperial state.

As the rulers of the imperial state strengthened their position at home and abroad, so did the moral concepts of those whose rights were adversely affected by this rigidity come to play an important role in their resistance. Thompson points to persistent popular attitudes towards crime in the traditions affecting the early English working class ‘amounting at times to an unwritten code, quite distinct from the laws of the land.’²⁷ Folklorists and folksong collectors of the early twentieth century thought much the same about the songs and especially the tunes they sought, that their informants were carriers of a culture quite distinct from that of schooled musicians.

The anti-worker laws of the British empire were shipped to Australia along with convicts settlers, soldiers, wardens and lawyers. Some new laws framed along the same lines were designed to deal with rebellion in the new colony. The most famous perhaps was the creation by Governor Darling of the new offence of Bushranging. Historian Paula Byrne teases out the operation and politics of this law, and how it entangled ordinary people.²⁸

For the magistrates, this behaviour was winnowed down until it no longer rested on bushranging, but on the act of being suspicious. And this suspicion did not centre on the bushranger but on his connections. The whole sweep of the countryside inhabited by the freed population was thought to be bristling with the exchange of stolen goods, the feeding of these bushrangers and the wanton rejection of authority.

The law established rewards for information and allowed for unrestricted day and night searches of the dwellings of settlers and freed convicts alike, again these were laws framed outside of any democratic representation.

This was intensive policing of a group which through ticket-of-leave or emancipation existed outside servitude. As we shall see, magistrates and constables had difficulty in regarding these people as other than convict, so it is not surprising that suspicion fell on them.

²⁶ Atkinson, ‘The Free-Born Englishman Transported’, p. 115.

²⁷ E.P. Thompson, *The Making of The English Working Class*, (London, Penguin Books, 1968), p. 64.

²⁸ Paula J. Byrne, *The Criminal Law and Colonial Subject* (Cambridge University Press, 1993). p. 148.

The existence of numerous Australian bushranger ballads exposes the gap between the lawmakers and popular opinion, making the famous bushrangers much more sung about and lauded than any of the ruling elite of the time. Again, bushranger balladry often hides in the relative safety of oral tradition long before it finds its way into print.

The British transportation laws were based on the notion that by breaking the law the offenders had attacked the person of the monarch, who in return could have had them executed for such treason but chose instead to send them into exile as a show of leniency. The victims of the laws were, as we have seen, overwhelmingly working class. Michel Foucault discusses this kind of situation in which prisoners find themselves accused of symbolic crimes against sovereignty, crimes that are deemed an affront to sovereignty itself as an institution as such a crime: 'requires that the king take revenge for an affront to his very person. The right to punish, therefore, is an aspect of the sovereign's right to make war on his enemies'.²⁹

In discussing convict poetry and song it is necessary to understand how they may be interpreted as cultural constructs that embody the individuals and communities they come from. Italian historian Portelli, analysing a song written by Sante Carboni a worker in the industrial town of Terni in Italy in the 1950s, has theorised the relationship between songs, their creators and those who continue to sing them as follows:³⁰

When a song is born, it reflects the moment of its birth, but also much of the history of its creators. It then continues to live and react to history. The geological layers of forms inside Carboni's ballad teach us about history because the song is not merely a description of a historical event, but a summary of the identity of those who were involved in and reacted to it. The song is a synthesis of the event's meaning for those who lived on to sing the tale.

Following Portelli we can also discern in the case of the convict ballad 'Cyprus Brig' 'geological layers and forms' of the song and discover too a 'summary of the identity of those who were involved in and reacted to it'. The song presents us with 'a synthesis of the event's meaning' to those who sang it in the 1840s and can, in its assertion of rights in the face of tyranny, serve in a similar way for those who choose to sing it a century and a half later.

A list of the most widely known ballads dealing with Australian convict transportation and life might include 'Van Diemen's Land', 'The Convict Maid', 'The Wild Colonial Boy', 'Bold Jack Donohue', 'The Black Velvet

29 Michel Foucault, *Discipline and Punish: The Birth of the Prison*, (New York, Pantheon Books, 1977), p. 48.

30 Alessandro Portelli, *The Death of Luigi Trastulli, and other stories: form and meaning in oral history*, (Albani, 1991), p. 192.

Band' and 'Botany Bay'. These are among the thirty-six songs cited by Ward to illuminate aspects of Australian workers' outlook and ethos.³¹ These ballads each exist in a number of versions and also remained long enough in oral tradition in Australia to have been collected and recorded by folklorists in the 1960s. As well-known as they are, they comprise only a fraction of convict balladry, a relatively neglected corpus of historical material. Hugh Anderson's 'Farewell To Judges & Juries' goes a long way to address this neglect. As the most comprehensive collection of Australian convict ballads, it offers one hundred and forty examples dating from 1788 to 1868. In the preface Anderson remarks:³²

The convict system and transportation from England, Ireland, Scotland and Wales has been a central concern of most Australian historians for a long time, a few in Britain and more in Ireland, but none of them has given any detailed attention to the broadsides and songs printed from the 1790s to the 1860s.

My investigation of the online archives of Australian newspapers has revealed four of the verses of the ballad 'Van Diemen's Land' that were published in *Launceston, Van Diemen's Land* in 1839. This discovery shows that the flimsy popular song sheets aimed at the poor in the streets of London could find their way to far flung colonies, no doubt to the interest and pleasure of the convicts and their families. In this case the ballad appears in a *Launceston Advertiser* review of the English 'Fraser's Magazine' edition of April 1839.³³

They chain us two by two, and whip and lash along,
They cut off our provisions if we do the least thing wrong,
They march us in the burning sun, until our feet are sore,
So hard's our lot now we are got upon Van Diemen's shore.

We labour hard from morn to night, until our bones do ache.
Then every one, they must obey, their mouldy beds must make;
We often wish, when we lay down, we ne'er may rise no more.
To meet our savage governors upon Van Diemen's shore.

Every night when I lay down, I wash my straw with tears,
While wind upon that horrid shore do whistle in our ears
Those dreadful beasts upon that land around our cots do roar;
Most dismal is our doom upon Van Diemen's shore.

Come all young men and maidens, do bad company forsake,
If tongue can tell our overthrow, it would make your heart to ache;
You girls, I pray, be ruled by me, your wicked ways give o'er,
For fear, like us, you spend your days upon Van Diemen's shore.

31 Russel Ward, *The Australian Legend*, (Melbourne, Oxford University Press, 1978), p. 333.

32 Hugh Anderson, *Farewell to Judges & Juries: The Broadside Ballad & Convict Transportation to Australia 1788-1868*, (Melbourne, Red Rooster Press 2000), p. ix.

33 *Launceston Advertiser*, 21 November 1839.

The ballad was published as a broadside to sell on the streets of Britain and Ireland over many years and the earliest version appears to date back to 1826 when 'The Night Poaching Act came into full force'.³⁴ The version above shares three of its verses with the broadside versions but the last verse, the warning verse, differs in a striking way in being explicitly addressed to both 'young men and maidens'. A popular broadside published over a number of years and in different places was 'The Convict Maid'. The version below was published and set in London,³⁵ while an otherwise identical ballad was set in Scotland and begins 'Ye Glasgow maids attend to me.'³⁶

Ye London maids attend to me,
While I relate my misery;
Thro' London Streets I oft times stray'd,
But now I am a convict maid.

In innocence I once did live,
In all the joys that peace can give;
But sin my youthful heart betray'd,
And now I am a convict maid.

To wed my lover, I did try
To take my master's property,
So all my guilt was soon display'd,
And I became a convict maid.

Then I was soon to prison sent,
To wait, in fear, my punishment,
When at the bar, I stood dismay'd;
Since doom'd to be a convict maid.

The verses, while all repentant, contain a vivid litany of fate that living conditions in the overcrowded and impoverished cities of the metropolitan centre of the empire forced upon its young workers. Transportation provided the same empire with a source of forced and unpaid labour for its most remote colony. Read, or, better still, listened to, with attention the repentance apparent in the song becomes a matter of secondary importance.

At length the judge did me address,
Which fill'd with pain, my aching breast,
To Botany Bay you will be convey'd,
For seven years a convict maid.

34 Anderson, *Farewell to Judges and Juries*, p. 566.

35 Anderson, p. 144.

36 <http://bodley24.bodley.ox.ac.uk/cgi-bin/acwwweng/regsrch.pl>, (accessed 23 November 2013).

For seven years! oh, how I sighed;
 While my poor mother loudly cried;
 My lover wept, and thus he said,
 May God be with my convict maid.

To you that hear my mournful tale,
 I cannot half my grief reveal;
 No sorrow yet has been portray'd,
 Like that of the poor convict maid.

Far from friends and home, so dear.
 My punishment is most severe;
 My woe is great, and I'm afraid
 That I shall die a convict maid.

I toil each day in grief and pain,
 In sleepless thought the night remain;
 My constant toils are unrepald,
 And wretched is the convict maid.

The final lines are a cry for freedom from punishing unpaid toil and a dream that 'some honest trade' might prove to be an escape from the nightmare destroying the life of the young convict.

Oh, could I but once more be free,
 I'd ne'er again a captive be,
 But I would seek some honest trade,
 And never become a convict maid.

It is interesting too that a copy of this ballad is preserved in the Mitchell Library in Sydney and that the tune to which these words are set is a variant of 'The Croppy Boy' one of the songs of the 1788 Irish Rebellion. The tradition of ballad writing is evident in the kinds of verse published in colonial newspapers. One striking example tackles the consequences of the forced appropriation of the Aboriginal hunting grounds in Van Diemen's Land. Its forthcoming publication was announced in the *Colonial Times*:³⁷ 'To Correspondents. Limited as is our space, we have seldom opportunity to oblige our poetical friends. But 'The Native's Lament' commands insertion and will appear in our next.

The weekly newspaper, as promised, published this poem, composed it seems from the point of view of the local Aborigines, and although the author is not named undoubtedly written by a settler known to the editor rather than an indigenous native:

Oh! where are the wilds I once sported among,
 When as free as my clime through its forests I sprung;
 When no track but the few which our fires had made,

37 *Colonial Times*, 28 April 1826.

Had tarnished the carpet that nature had laid;
When the lone waters dashed down the darksome ravine,
O'erhung by the shade of the Huon's dark green;
When the broad morning sun o'er our mountains could roam,
And see not a slave in our bright Island home.

The sense of outrage at the empire's settlement, despoliation and plunder of country is evident from the introductory verses. This ballad presents a potent dialogic comment on the triumphant official views at the time.

When our trees were unscath'd, nor our echoes awoke,
To the hum of the stranger, or woodman's wild stroke;
When our rocks proudly rose 'gainst the dash of the main,
And saw not a bark on the wide azure plain;
When the moon through the heaven's roll'd onward, and smil'd,
As she lighted the home of the free and the wild.

Oh! my country, the stranger has found thy fair clime,
And he comes with the sons of misfortune and crime;
He brings the rude refuse of countries laid waste,
To tread thy fair wilds, and thy waters to taste;
He usurps the best lands of thy native domains,
And thy children must fly, or submit to his chains.

The benefits of the civilisation provided to Van Diemen's Land that brought forced labour with it, 'the sons of misfortune and crime' is not evident to those who had live in the country for tens of thousand of years. The description of convicts as 'the rude refuse of countries laid waste' evokes the common belief in a 'criminal class', while acknowledging the despoliation of the metropolitan centre and its uncontrolled industrialisation.

He builds his dark home, and he tricks it about,
With trinkets and trifles within and without;
When the bright sun of nature sinks into the main;
He lights little suns to make daylight again;
And he calls a crowd round him, to see him preside,
And our tyrant himself is the slave of his pride!

The dialectic relationship of tyrant and slave so often explored in convict and bushranger verse, and in Irish verse too, is compared to the freedom of the original inhabitants and their love of country.

Oh! dearer to us, is our rude hollow-tree,
Where heart joins to heart with a pulse warm and free;
Or our dew-covered sod, with no canopy o'er it,
But the star-spangl'd sky,—we can lay and adore it!
Or if worn with fatigue, when the bright sun forsakes us,
We lay down and sleep, till he rises and wakes us!

Our wants are but few, and our feelings are warm,
 We fear not the sun, and we fear not the storm;
 We are fierce to our foes, to our loves we are fond,
 Let us live and be free—life has nothing beyond.

Oh! I would not exchange the wild nature I bear,
 For life with the tame sons of culture and care,
 Nor give one free moment as proudly I stand,
 For all that their arts and their toils can command.
 Away to the mountains, and leave them the plains,
 To pursue their dull toils, and to forge their dark chains.
 April 22, 1826.

The ballad offers a rare contemporaneous commentary that goes against the Van Diemen's Land clearances known as the Black Wars that took place under the rule of Governor Arthur. Alexander writes:³⁸ 'While European settlements were small, Aborigines co-existed reasonably happily with the newcomers.' This changed when more settlers took over the best hunting grounds in the midlands:

When the Aborigines retaliated the Europeans attacked them ... and trouble escalated. By the late 1820s it was all-out war, with many Europeans determined to exterminate the Aborigines ... when the remaining Aborigines were removed to Flinders Island in the early 1930s there were only a few hundred left of the 5000—or perhaps more—of 30 years earlier.

The atmosphere regarding the original inhabitants in Van Diemen's Land can be deduced from the hysteria of the *Colonial Times* editorial of 1826:³⁹

We deeply deplore the situation of the Settlers. With no remunerating price for their produce, they have just immersed from the perils of the bushrangers, which affected their property, and they are now exposed to the attack of these natives, who aim at their lives. We make no pompous display of Philanthropy — we say unequivocally, SELF DEFENCE IS THE FIRST LAW OF NATURE. THE GOVERNMENT MUST REMOVE THE NATIVES — IF NOT, THEY WILL BE HUNTED DOWN LIKE WILD BEASTS, AND DESTROYED!

As we can see convicts, bushrangers and original inhabitants somehow get lumped together in the imperial mindset. A bushranger ballad that Australian folk song collectors found in a variety of oral forms is the ballad 'Jack Donohoe' the Irish convict who escaped to the bush and was killed by the police in 1830. The *Sydney Gazette* carries this report:⁴⁰

38 Alison Alexander, *Tasmania's Convicts*, p. 263.

39 *Colonial Times*, 1 December 1926.

40 *Sydney Gazette*, 4 September 1830.

DEATH OF DONOHOE.

This daring marauder has at length been met by that untimely fate which he so long contrived to avoid. On Wednesday evening, at dusk, as a party of the Mounted Police were riding through the bush at Reiby, near Campbell Town, they came up with three bushrangers, one of whom was Donahoe; on being called upon to stand, they threw away their hats and shoes, and ran off, when the Police fired, and killed Donahoe on the spot, one ball entering his neck and another his forehead. Favoured by the dusk, the others made their escape, and in defiance of the dreadful fate of their comrade, that very night broke into a hut and carried off what they wanted. The body of Donahoe was removed to Liverpool, and will be brought to Sydney this morning. Thus is the Colony rid of one of the most dangerous spirits that ever infested it, and happy would it be were those of alike disposition to take warning by his awful fate.

In perfect counterpoint to the newspaper story Donohoe is quickly raised to the status of national hero in a profusion of ballads and stories praising his bravery and his refusal to 'work one day for the government' that is, choosing 'liberty of death!'

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