

## Chapter Eight

### The Convict Experience on the Western Road

What was life like for the convict workers of the Western Road? These men, as was shown in Chapter Six, were predominantly sedentary young urban residents. Many, at the time of their sentence to transportation, were first offenders. As indicated in Chapter Seven, beyond labouring experience, the majority possessed few, if any, skills that equipped them for the tasks of road building in the rugged terrain and conditions of colonial New South Wales.

The social relations and conditions of confinement on the Western Road are an important component of the penal experience and are the focus of this chapter. As discussed in Chapter Two management of prisoners working on the roads of New South Wales reflected the changes in penal philosophies that had emerged both in Great Britain and Europe since the 1700s. The days of the public spectacle were on the wane, as penal reformers shifted the focus from the punishment of the body to the reform of the mind through spiritual enlightenment, hard work and the inculcation of industrious habits.<sup>1</sup> The experience of convict life on the Western Road articulates the ‘... many different social influences, historical and cultural, as well as political and ideological’<sup>2</sup> that impacted on the New South Wales system as it evolved in the 1830s. Like all aspects of work on the road, convict living conditions and experiences must be understood in the light of British and colonial administrative policies.

The standard of living of workers on the Western Road was partly the product of

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1 Michel Foucault, *Discipline and Punish The Birth of the Prison*, Penguin Books, London, 1977, pp.7-9.  
2 Mark Finnane, ‘After the Convicts: Towards A History Of Imprisonment In Australia’, *Aust & NZ Journal Of Criminology*, 1991, Vol. 24, p.110.

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official interest in the physical welfare, moral reform and just punishment of the convicts in a way that protected free society from the spectacle and degradation associated with dealing with British and colonial societies' miscreants. Significant other factors which influenced living standards, as outlined previously, were the situation's isolation, the corrupt and influential cabal of overseers and the administrative and managerial conflicts of the penal and road making objectives. The conditions at the No. 2 Stockade Cox's River and other Western Road convict sites present one of those 'peculiar local histories' necessary, in the words of Mark Finnane, 'to understand the forces which are at play in the process and impact of imprisonment.'<sup>3</sup> The system operated under fiscal constraints imposed by the British who were intent on passing the cost of convicts engaged in the construction of public infrastructure onto the colonial treasury. This was strongly resisted locally. During the later 1820s and in the 1830s the free population of New South Wales was chaffing at the constraints on their liberty arising from the penal status of the colony. Ideally, from the administration's point of view, the convicts were to be kept from the sight and minds of free settlers while contributing to the economic development of the colony. But the convicts' rambunctious behaviour sabotaged these ambitions. The implementation of these objectives was also tempered by the ebb and flow of the penal reform debate and cost imperatives imposed from Britain.

In the late 1820s and 1830s living conditions for convicts on the roads evolved and in the process became harsher. At the least onerous extreme, in the later 1820s, wives were occasionally given permission to live with their husbands in the gangs.<sup>4</sup> Then in the early 1830s, ironed gangs were enclosed in stockades. By the mid 1830s 'boxes' were introduced as a more secure means of accommodation. In the later 1830s the use of un-ironed road parties was greatly reduced, if not abolished,<sup>5</sup> and control of works was placed in the hands of the military. Ironed prisoners under full military

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<sup>3</sup> *Ibid.*, p.107.

<sup>4</sup> SRNSW: Col. Sec., Letters to Surveyor of Roads and Bridges, 3 Jan 1831 -31 Mar 1832, 4/3934, pp.62; 83.

<sup>5</sup> The use of unironed road parties was supposedly abolished, but there are references to the No.10 Road Party under James Thorpe as late as 1839; PRO: T 1/4347; SRNSW: Courts of Petty Sessions, Vale of Clwydd Bench Books, 16 Feb - 2 Jun 1839, CGS 3064, 4/5673, p.380. R. 669.

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superintendence were (supposedly) the only convicts employed on the roads. Situations varied across the period and between those experienced by ironed gangs and road parties. As detailed in the context of the convicts at work in Chapter Seven, the isolated system facilitated abuse by corrupt overseers who were able to withhold rations, lay false charges, organise robberies and set men to work for the overseer's fiscal benefit. As the 1830s progressed, this abuse of power was facilitated by the lack of opportunity for convicts, in the road parties particularly, to lay complaints with impunity.

As was the case in Chapter Seven, the experiences of Thomas Cook provide a view of the power relations on the road. A sense of the personal tyranny and hopeless subjugation experienced by these young and, as was found in Chapter Six, relatively inexperienced (prior to transportation) criminals is obtained. This situation existed not because it was officially prescribed but because the isolation of the situation restricted access to outside authority. The sexual intimidation and degradation to which gang members were subjected, the corrupt abuse of power by the overseers and the sub-inspector, and lapses in procedure by the assistant surveyor-magistrates who were under intense pressure to see the road constructed, all contributed to a brutal and degrading situation that ultimately derived from pressures produced by the penal reform and anti-transportation lobby. Yet, spiritual reform, also a key platform of the ideology, was left to the occasional distribution of bibles and to compulsory attendance at prayers led by the stockade superintendent at 10.00 am and 3.00 pm Sunday.<sup>6</sup> It was not high on the agenda. The lack of a dedicated person to attend to convict welfare, who might serve as a credible witness independent of the military and convict administration, further contributed to the social isolation of the place and the dehumanising conditions that developed there.

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<sup>6</sup> SRNSW: Col. Sec., Copies of Letters Sent to Surv. Gen., 16 Feb - 31 Jul 1833, 4/3914, pp.41-42. R.3017; Col. Sec., Special Bundles, Convicts, SZ 79. COD 182.

### Getting There and About

Prior to mid 1831 the transfer of prisoners to gangs was ad hoc and lacked a formalised procedure. In April of that year Governor Darling initiated the establishment a system of warrants, vouchers and inventories of prisoners. The aim was to prevent escapes and safely transfer men to and from gangs. In an innovation, the term of sentence and means of identification was provided to the authority with which each convict was placed. Records were to be kept by the overseers and surveyor as to who was in their charge and locality. It was part of Darling's attempt to systemise the system and, as indicated in Chapter Three, typified the organisational activity then underway.<sup>7</sup>

Despite tightened controls and certain corporal punishment, the more enterprising convicts still attempted to thwart the system. Authorities on the road had to contend with false identities and false claims of freedom. John Murray, for example, was particularly intent on illegitimately obtaining his freedom. In January 1833, he absconded from an escort and was found at Blackheath, in possession of a forged pass purportedly signed by Assistant Surveyor Nicholson stating that he was delivering a letter to the Surveyor General in Sydney. For that offence he was sentenced to an ironed gang until 1 April. While awaiting transfer to undertake this sentence, he was found digging his way out of Bathurst Gaol. On being discovered, lying on the floor covered in mortar, he informed the guard that 'it was his business to escape if possible and their business to stop him'.<sup>8</sup> He was rewarded with a four month extension to his iron gang sentence. By January 1834 he was a member of the Bridge Party and absconded again. This time he was equipped with the certificate of freedom of a gang mate, Boyd Crighton. He had copied Crighton's identifying marks, duplicating scars on his wrists and hands and numerous tattoos on his upper arm. The outcome of that escapade is unknown, but it may have been successful.<sup>9</sup>

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7 SRNSW: Col. Sec., Copies of Letters to Surveyor of Roads and Bridges, 3 Jan 1831 - 31 Mar, 1832, 4/3935, pp.56-57. R.3002

8 SRNSW: Courts of Petty Sessions; CGS 2772, Bathurst, Bench Books, 28 Dec 1832 - 19 March 1833, 2/8324, pp.126 and 186. R.663.

9 SRNSW: Principal Superintendent of Convicts, Convict Indents, 1829, 4/4014, p.229. R.398.

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From April 1832 security was further tightened, with all prisoners forwarded from population centres to the gangs under a military escort handcuffed and attached to a marching chain.<sup>10</sup> The march of men manacled to a chain was an acknowledged source of humiliation and a parading of their debased status which was sorely felt. When Sub-Inspector Clement Dougherty was accused of rape by his assigned servant, the local authorities, in deference to his status as a valued and senior road builder, spared him the ordeal of the chain and arranged for a constable to escort him to Sydney to face the charges.<sup>11</sup>

While the chain prevented escapes, the military escort did not necessarily prevent irregularities in the conduct of the march or ensure the professional behaviour of those overseeing it. Alcohol and drunkenness feature prominently in the court records and the impression that the security provisions and regulations were often more theoretical than practical is given. On long marches there were stops at inns where the soldiers could refresh themselves while the prisoners were left outside or in an outbuilding. On one occasion, 19 year old Michael Driscoll from No. 2 Stockade was murdered by Private John Hagin of the Kings Own 4th Regiment of Foot while under escort to Bathurst. Driscoll was a Cork errand boy who had arrived in the colony in November 1833 with a 14 year sentence for house breaking.<sup>12</sup> At the time of this incident in September 1835, he was the veteran of at least two abscondings, but was described as well behaved by Constable John Hobson who had recently delivered him to the network from Penrith.<sup>13</sup>

There were 14 prisoners on the chain and a dray (with its owner/s) carrying seized spirits was also under charge. The escort consisted of two privates, Hagin and Richard Flinn, both of whom were drunk and had left the stockade in that condition, Sergeant John Hedian, Constable Hobson and Assistant Overseer James Greer.

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10 SRNSW: Col. Sec., Copies of Letters Sent to Surv. Gen., 13 Mar 1832 - 7 Sep 1832, 4/3912, pp. 70-71. R.3016

11 Thomas Cook, *The Exile's Lamentations*, The Library of Australian History, North Sydney, 1978, p.30.

12 SRNSW: Superintendent of Convicts, Indents, 1833 - 1835, 4/4018, p.198; R.906; X635, p.175. R. 907.

13 SRNSW: Supreme Court, Criminal Jurisdiction, Clerk of the Peace Papers and Depositions, T162.

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According to witness statements submitted to the inquest, at around 11.30 am the party had stopped at White's Inn, Solitary Creek (Rydal) supposedly to refresh the horses. The prisoners, who were quiet and orderly, were lined up in front of the inn but were moved to a shed in the yard when it began to rain heavily. While Greer and Hedian were in the inn the privates were left in charge of the prisoners and they were given 'breakfast'.<sup>14</sup>

Greer testified that the shooting was an accident caused by Hagin's drunken state as he staggered around, with his firelock in his hand, counting the prisoners prior to their departure. John Luff/Huff, who was not associated with the stockade and as a free emigrant untainted with any penal associations, also witnessed the shooting. Luff gave a very different account to that of Greer, deposing that Driscoll had been sitting quietly with his head on his chest, when suddenly without provocation Hagin raised his musket to his shoulder, pointed it at Driscoll and said "You see my piece is cocked[,] damn your eyes[,] I'll shoot you" and fired. Immediately prior to the shooting, another witness, James Patterson, an assigned servant of George Rankin, a supply contractor to the gangs, arrived at the inn. Patterson's deposition supports that of Luff. On arrival Patterson was accosted by Hagin who may have recognized him as a convict. Hagin aimed his musket directly at Patterson and demanded '... in the King's name to assist me in taking care of the prisoners or I'll shoot you'. Hagin then cocked the musket and said "do you see that" and "look at that" and fired at Driscoll. Driscoll who was handcuffed to William McGovern fell gently on his side and died within a few minutes. McGovern also concurred with Patterson's account but excused Hagin's behaviour on the basis of intoxication.

The accounts of when the shooting occurred are varied in terms of the language and behaviour of Hagin prior to the shooting, excepting with respect to his drunkenness. The reported timing of events range from the shooting occurring sometime between 2.00 pm and 4.00 or 5.00 pm, giving anywhere between 1½ to 5½ hours after the

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<sup>14</sup> The word may imply a meal or food. It is unlikely that the men were marched from the stockade without first eating.

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arrival of the party for Hagin and Flinn to pilfer spirits from the dray.<sup>15</sup> Hagin's belligerent attitude toward the convicts and his imposition on Patterson, Rankin's assigned servant, hints at the arrogance of the newly empowered military and the treatment that convicts and those in the road gangs experienced at their hands. The variations in the stories of the sworn witnesses may be explained by Cook, who gave quite a different account of this incident. He said that the two free men charged with illegally selling spirits and accompanying the cart proposed stopping at Solitary Creek to entertain the military and the prisoners. Cook claimed that all shared in the drinking in the course of which Hagin shot Driscoll. Hagin was sentenced to 14 years transportation to a penal settlement but, according to Cook, under an Act of Council, he was released before the expiration of his sentence.<sup>16</sup>

In the overall history of the stockade there are numerous accounts of prisoners straying into inns or absconding and being found at a nearby public house. Misadventures and criminal charges were common outcomes. In another incident featuring the military, James Leary died at Cox's River hospital on 1 December 1837 from injuries while in the charge of Privates Peter Mothershead and William Harrison of the 80th Regiment. Leary, with two other prisoners, John Howard and George Iverson, were drawing a handcart from Hassan's Walls to Bowen's Hollow when after about two miles Leary and Iverson asked permission to talk to a man in a dray and disappeared with him behind the vehicle. Twenty minutes later they re-emerged and recommenced the journey but had only gone a short distance when Leary and Iverson showed signs of drunkenness. Leary was so intoxicated he refused to push the cart, lay down on the road and declined to move. In frustration, Mothershead bayoneted him. On arrival at Bowen's Hollow, Leary was put into a box and left untreated. According to Surgeon Reed at Cox's River, Leary died from exhaustion and blood loss from three wounds. Mothershead was found guilty of manslaughter.<sup>17</sup>

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15 SRNSW: Supreme Court, Criminal Jurisdiction, Clerk of the Peace Papers and Depositions, T162.

16 Cook, *op. cit.*, p.33.

17 SRNSW: Supreme Court, Criminal Jurisdiction, Clerk of the Peace, Papers and Depositions, 1824 - 1946, CGS 880, 9/6311, No.30.

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Throughout the construction of the road there was a constant movement of prisoners to take up sentences and between gangs and road parties. Messengers moved between the stockades, work and administrative sites. Wood cutters, water carriers and bullock drivers carting stores all moved relatively unencumbered in the course of fulfilling their duties. There was also the daily trek to work by gangs and of individuals between work sites and the hospital. The transfer of prisoners from gangs to the hospital at No. 2 Stockade was usually supervised by a convict messenger, rather than an armed sentry and there are several accounts of prisoners escaping in such circumstances.<sup>18</sup> At other times passes were issued and prisoners were entrusted to turn up of their own accord. There is no record of those that conformed to the conditions of their pass but there is ample evidence, over the entire period, of convicts taking advantage of such freedom, unable to resist the lure of the public houses that dotted the route. In April 1836, for example, George Squires, a 30 year old bricklayer and former soldier, who had a pass to attend the hospital, returned to the Bridge Party drunk and was sentenced to 50 lashes. A few days later he ran away to join up with Samuel Elvin who had absconded earlier in the year. In September, Squires, Elvin and two others faced the Supreme Court on charges of bushranging and robbery. In another instance, Henry Parnicott of No.9 Road Party and messenger William Katon took the opportunity to rob an overseer's hut at No. 2 Stockade while on leave to attend the hospital there. At other times men failed to show at the hospital entirely, they would drunkenly eventually find their way back to their gangs and ultimately before a magistrate.<sup>19</sup>

Such incidents continued to occur throughout 1836 even though security had again been increased. In April, George Mallen of the Bridge Party was found on the road in a drunken and riotous state. Although this was not an escape bid, but rather a case of

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18 SRNSW: Surv. Gen., Letters from Surveyors, Nicholson, 14 Feb 1832 - 22 Dec 1834, 2/1562, pp.32-33; Col. Sec., Copies of Letters Sent to Surv. Gen., 13 Mar 1832 - 7 Sept 1832, 4/3912, p.123. R.3016; Principal Superintendent of Convicts, Returns of Convict Trials Before Bench of Magistrates, 1832 - 1836, Bathurst to Goulburn, 4/7022.1, pp.3-4; Supreme Court, Criminal Jurisdiction, Clerk of the Peace, Papers and Depositions, 1824 - 1836, CGS 880, T.159; Clerk of the Peace, Quarter Sessions, Depositions and Other Papers, CGS 845, Bathurst, 4/8375, pp.183-196. R.2396.

19 SRNSW: Courts of Petty Sessions, Bathurst Bench Books 1825 - 1936, CGS 2772, 2/8325, pp.129-130; 221. R. 1259; Clerk of the Peace, Quarter Sessions, Depositions and Other Papers, CGS 845, Bathurst, 4/8375, pp.183-196. R.2396.



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absence without leave, he was sentenced to 50 lashes. In May, Thomas Coffee from the Bridge Party stayed out over night while on a message to Mt Victoria, having become drunk en route. He was rewarded with four days in the cells on bread and water.<sup>20</sup>

In the same year, James Connor, the 30 year old messenger at Bowen's Hollow was to escort 15 year old Thomas Mead to the lock up at the Vale of Clwydd. They both arrived drunk after having visited Rawsthorn's Public House. Connor freely confessed and accepted responsibility to a gross neglect of duty. He was sentenced to 50 lashes, lost his privileged position as a messenger and was returned to his gang. In June 1837 Alexander Harrison, a miner by trade and an assistant overseer, turned up at the Bowen's Hollow Lumber Yard drunk and disorderly. Harrison, drawing on his skilled status, told overseer James Greer, who had ordered him to go to his hut, that he would go when he thought proper and abused Greer. He, too, was subsequently sentenced to 50 lashes.<sup>21</sup>

Publicans could be charged with harbouring prisoners and were not allowed to sell alcohol to them but this was widely flaunted even though constables were on the look out and the convict customers were likely to give evidence against them. Richard Briggs, a prisoner attached to Hassan's Walls Stockade, for example, testified that he had visited Keenan's Public House where he ordered and was served half a pint of rum and departed drunk. Keenan was charged under the Licensing Act and was fined.<sup>22</sup> In mid 1838, Constable Swords and prisoner Daniel Daniels were drinking at Keenan's when Daniels was ordered home by Private Soon of the military. Swords interfered, saying the prisoner was in his company and that Swords had authority over that of the soldier. Soon brought charges and Keenan was again fined. Daniels was charged with disorderly conduct and refusing to answer the

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20 SRNSW: Courts of Petty Sessions, Bathurst Bench Books 1825 - 1936, CGS 2772, 2/8325, pp.202; 335. R. 1259.

21 SRNSW: Courts of Petty Sessions, Vale of Clwydd Bench Book, Feb 16 1836 - 2 Jun 1839, CGS 3064, 4/5673, pp.118-119; 160. R.669.

22 SRNSW: Courts of Petty Sessions, Vale of Clwydd Bench Book, Committals, CGS 3064, 21 June 1836 - 7 Dec 1837, 4/5673, p.43. R.669.

questions of a constable. He was sentenced to 50 lashes and returned to a gang. Swords was fined for neglect of duty in his treatment of Daniels.<sup>23</sup>

The presence of convicts moving about the area, some on official errands and others apparently absent without leave, seems pervasive. The evidence calls into question the application of the regulations and the rhetoric associated with security that dominates official correspondence throughout the entire 1830s, whether management was in the hands of the assistant surveyors or the military. The lapses indicate that road construction was dependent on a convict workforce that by necessity moved between work and support sites on the road. It also suggests that conditions were such that even the most trusted convicts had lapses when it came to the temptations of roadside inns; indeed such places must have seemed to be havens of normality and domesticity.

### **Convict Domestic Life**

Life for convicts in the stockades was governed by routines, with the most dominant routine being that of the work day referred to in Chapter Seven. In the evenings men gathered around fires in the stockade square or at road party sites. Govett refers to their singing around the fire, the chorus making 'a most tremendous uproar'.<sup>24</sup> In the early 1830s, before boxes were introduced, throughout the night men in road parties would visit the fire to warm themselves.<sup>25</sup> Some prisoners used their spare time reading or writing. Others told long stories to an appreciative audience. There was also the domesticity implied in their rearrangement of the interior of their huts, referred to previously, which so annoyed the authorities. Also incidentally mentioned, as part of correspondence concerning the condition of the stockade is their occasionally riotous behaviour referred to in earlier chapters. Materials around the stockades were employed in creative ways, for example, pieces of metal were

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23 SRNSW: Courts of Petty Sessions, Vale of Clwydd Deposition Book, 4/5674, pp.27-28. R.669; Courts of Petty Sessions, Vale of Clwydd Bench Book, Feb 16 1836 - 2 Jun 1839, CGS 3064, 4/5673, p.243. R.669.

24 William Romaine Govett, *Sketches of New South Wales: Written and Illustrated for the Saturday Magazine 1836-37*, Melbourne: Gaston Renard, 1977, p.49.

25 Cook, *op. cit.*, p.18.

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made into saws while some prisoners manufactured spirit flasks from bullock horns that were polished and decorated with scrimshaw, which they sold, traded or gifted. At the road party sites dinners were prepared either individually or in groups.<sup>26</sup>

On Saturday afternoons from 2.00 pm the prisoners had time for domestic tasks, such as washing and mending their clothes and tidying their huts.<sup>27</sup> Saturday afternoon, however, was also a time for flogging so that domestic tasks were undertaken with the background noises of the triangle, providing a constant reminder to the convicts of their situation and creating a deep source of resentment, fear and reprisals.

Reprisals and vendettas between convicts over domestic arrangements were a hazard. In one outburst, Henry Honey was stabbed by fellow prisoner, John Dillon, at No.3 Stockade Hassan's Walls. Dillon was taking belated revenge against Honey as the principal witness against him when he was convicted of making a disturbance in the box when Dillon had tried to take Honey's blankets. It was a serious attack and Dillon was committed to stand trial for attempted murder.<sup>28</sup>

Stealing a blanket was by no means a trivial act. Blankets were much coveted by convicts, they were often in short supply or threadbare and in winter they were a barely adequate covering and never snug. In mid winter 1832, by which time it was very cold in the mountains, the winter issue of blankets had not been received because the existing supply had been inadequately accounted for. Sixty-four unserviceable blankets due to be returned to Parramatta had been retained until replacements ordered in February had been delivered. Assistant Surveyor Nicholson had lent these '... among the Prisoners, to some two, and others three, to reduce the number as much as possible of Men exposed in this inclement season at night without covering'. The norm was that each man was to have a single blanket but at

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26 Cook, *op. cit.*, p.21

27 SRNSW: Col. Sec., Copies of Letters Sent to Surv. Gen., 16 Feb - 31 Jul 1833, 4/3914, pp.41-42. R.3017; Col. Sec., Special Bundles, Convicts, SZ 79. COD 182

28 SRNSW: Courts of Petty Sessions, Vale of Clwydd Deposition Book, 7 Dec 1837 - 17 Nov 1842, CGS 3065, 4/5674, p.115.R 669.

the time there were 74 men without a serviceable blanket and 30 without any covering at all.<sup>29</sup>

Under the regulations of September 1832, each prisoner was to have one blanket but from 15 May to 15 August they were to have two, a very short period for a winter allocation in the cold of the mountains. Clothing for the year was to consist of two Parramatta frocks, two Parramatta trousers, three striped shirts, three pairs of shoes and one straw hat and cap.<sup>30</sup>

The following year a similar blanket saga played out in mid winter when there was a shortfall of almost 100 blankets going back to October 1832. According to Nicholson, men were exposed to severe hardship. Some unironed men were without covering entirely while men in irons had two.<sup>31</sup> Despite the good intentions, the management and provisioning of convicts was complicated by entrenched bureaucratic inadequacies within the colonial administration throughout the entire period under study. For example, when requisitions for shoes for the bullock drivers and messengers associated with road parties (who were entitled to three pairs a year) were not submitted on the correct forms, the shoes were not issued. When this particular matter was raised in April 1830 Governor Darling did not approve of an extra issue as the regular half yearly issue was about to occur. He had concluded that the convicts would probably sell them.<sup>32</sup>

This official correspondence supports the bleak picture painted by Cook of the situation of the mountains road gangs. The bookish Cook had been marched from temperate Sydney and the warmth of weather proof Hyde Park Barracks to the dilapidated slab and bark huts at Honeysuckle Flat in June 1833. With gaps between

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29 SRNSW: Surv. Gen., Letters Received from Surveyors, Nicholson, 14 Feb 1832 - 22 Dec 1834, 2/1562, pp. 143-144. R. 3080.

<sup>30</sup> SRNSW: Col. Sec., Special Bundles, Convicts, SZ79. COD 182.

<sup>31</sup> SRNSW: Surv. Gen., Letters Received from Surveyors, Nicholson, 14 Feb 1832 - 22 Dec 1834, 2/1562, pp.256; 258.

<sup>32</sup> SRNSW: Col. Sec., Copies of Letters Sent to Surv. Gen., 1 Jan 1830 - 21 May 1830, 4/3907, pp.442-443. R.3015.

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the slabs, the huts offered scant protection from the winds that whipped down from the surrounding ridges. It was an isolated place, off the line of road and hidden from the curious by the topography.<sup>33</sup>

... the wretched and haggard countenances of the men, the Severity of the cold, the want of a second or even one good blanket to save the half frozen man from perishing ... With a sheet of Bark for my Bed, the half of a thread bare Blanket for my covering, and Log for my Pillow, the action of the frost was so severe on my limbs that it was with difficulty I could find the use of them, and then only by frequenting the fire at intervals during each night.<sup>34</sup>

The issuing of blankets was only one aspect of the provisioning of convicts. Overall, the supply and issue of their basic necessities were fraught with problems of inadequacy and abuse. The situation needs to be viewed in the light of penal policies and regulations discussed in earlier chapters. While the justice of the convicts' punishments was not doubted, it was nevertheless expected to be undertaken with an adequate nutritional allowance and basic clothing and accommodation provisions. It was important to Governors and their superiors at the Colonial and Home Offices in Britain that the gang system was free of corruption. Part of this concern was to do with preventing fraud on the treasury and partly with concern for the prisoners' welfare. In an example of this concern, toward the end of 1830, Assistant Surveyor Lambie's policy of issuing sugar and soap allocations in arrears to gangs on the Great South Road was investigated because of its potential for 'irregularities'. How were the men in the gangs to use supplies if they were discharged?<sup>35</sup> As a result of the enquiry, instructions were issued to district magistrates to inspect iron gangs and road parties and the provisions issued to them. Overseers were to attend whenever the local magistrate thought it necessary to examine the men and provisions under the overseer's charge and the assistant surveyors were to be:

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<sup>33</sup> Cook *op. cit.*, p.18.

<sup>34</sup> *Ibid.*

<sup>35</sup> SRNSW: Col. Sec., Copies of Letters Sent to Surv. Gen., 20 May 1830 - 7 Oct 1830, 4/3908, p.473. R.3015.

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... held strictly responsible for any irregularity in the messing of the parties or otherwise, as it is expected that by constantly visiting (without which they cannot effectually perform their duty) they will be able at once to check any imposition or irregularity. It is also considered necessary that the Assistant Surveyor should make a point of occasionally seeing the parties at their Meals, and that they should state in their periodical Reports their having done so, noticing at the same time any circumstances which may require attention.<sup>36</sup>

When inferior quality provisions provided by the contractor to No.35 and No.40 Road Gangs on the Western Road were reported, Surveyor General Mitchell was instructed by Governor Darling to:

... immediately call on Mr Assistant Surveyor Nicholson to report when he visited these Gangs... and also what Rule is observed in visiting the parties, whether they make a point of inspecting the provisions, as the Reports which are received of the quality are generally unfavourable.<sup>37</sup>

Governor Darling also acted in November 1830 to prevent overseers serving as agents for the contractors due to:

Great Complaints having been made as to the bad quality of the provisions furnished to the Road Parties, and it appearing that the Overseers of the Gangs act as agents to the Contractor.

... you [the Surveyor General] will immediately communicate with the several Assistant Surveyors employed on the Roads, and order them to visit their Parties, and inform the Overseers that they are on no account to act as Agents, it being on the contrary their duty to act as a Check on the Contractor.<sup>38</sup>

When prisoners at Mt Victoria complained of the proportion of bran in the flour

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<sup>36</sup> Ibid. pp. 516-517.

<sup>37</sup> SRNSW: Col. Sec., Copies of Letters Sent to Surv. Gen., 8 Oct 1830 - 20 Apr 1831, 4/3909, p.41 R.3015.

<sup>38</sup> Ibid. p.143.

ration it was decided henceforth to provide sieves to the assistant surveyors to better assess the quality of provisions supplied by the contractors.<sup>39</sup>

Governor Bourke was under instructions to keep the rations simple, avoiding alterations that might complicate the commissariat accounts to enhance control and scrutiny and enable their transmission to the United Kingdom as soon as possible.<sup>40</sup> Under Act 3 William IV No.3 rations were to consist of 8¾ lbs of bread or 7 lbs of flour, 3½ lbs of maize meal, 7 lbs of beef, 3½ oz of salt and 7 oz of sugar per week. The ration of meat and bread was supplemented with soup every second day and breakfast consisted of hominy or boiled maize meal.<sup>41</sup> Such a diet provided about 2100 calories per day. According to figures supplied by Stephen Nicholas in *Convict Workers* this was almost half that supplied to American slaves; two-thirds of that supplied to soldiery in the British Army between 1813-1857; roughly equivalent to that received by civilians in Nazi Germany and about 200 calories more than that received by Eastern POWs in Nazi Germany.<sup>42</sup> The ration of convicts sentenced to solitary confinement was 1½ lbs of bread or 1¼ lbs of flour.<sup>43</sup> For iron gang workers who were engaged in heavy labour encumbered with irons the ration was barely adequate. It readily became inadequate if quality or quantity was compromised. To protect against compromise, the new regulations stipulated that two delegates from each gang were to ensure the quality of the rations, one to inspect the meat at the contractors and the other to watch the cooks at the huts. The superintendent was to inspect the rations on delivery from the contractor and was required to report any irregularities. He was to check the rations equipped with scales, weights and measures and a sieve. Once rations were in the hands of the cooks the superintendent

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39 SRNSW: Col. Sec., Copies of Letters Sent to Surv. Gen., 13 Mar 1832 - 7 Sept 1832, 4/3912, p. 192. R.3016.

40 Viscount Goderich to Governor Bourke, 3 July 1832, *HRA*, Vol. XVI, Ser. 1, Library Committee of the Commonwealth Parliament, Sydney, 1923, pp.671-672.

41 Cook., *op. cit.*, pp.27-28; Govett, *op. cit.*, p.49; SRNSW: Col. Sec., Special Bundles, Convicts, SZ 79. COD 182.

42 Stephen Nicholas (ed), *Convict Workers Reinterpreting Australia's Past*, Cambridge University Press, Sydney, 1989, pp. 184-187.

43 SRNSW: Col. Sec., Copies of Letters Sent to Surv. Gen., 13 Mar 1832 -7 Sep 1832, 4/3912, p.78. R.3016.

was to 'use every exertion' to prevent theft or fraud.<sup>44</sup>

Govett described the mess arrangements in the early 1830s:

At noon, the prisoners are marched in to dinner, for which they are allowed an hour. They often grumble at their mess, and refuse to touch it. In these cases, the commissariat officer, whom they call their 'head cook', is sent for, who decides whether the ration and meat be sufficiently good or not. If his decision be in favour of the ration, the prisoners will commence eating, and laugh at the trouble they have occasioned, for they frequently object, merely to annoy the overseers and others over them.<sup>45</sup>

These events suggest that the policies stipulated by the authorities in Sydney were intended to be implemented and that to a certain extent they were. Govett's account also suggests that, with the overseers' support, convict rights could be asserted. Hirst has used the issue of convicts' preference for wheat bread as evidence of the convicts capacity to control their conditions.<sup>46</sup> On the Western Road however, that control was in the hands of the overseers, not the rank and file of the gangs.

In mid 1835 command of the stockade was given over entirely to the military which ushered in a much harsher regime. The Officer in Command, Captain Faunce, did away with the 'Interior Comforts', and conditions deteriorated.<sup>47</sup>

### **Prisoner Health**

The new regulations issued under Act, 3 William IV No.3 in 1832 stipulated not only diet and clothing but also accommodation standards for ironed gangs. The superintendent was to ensure levels of cleanliness in the huts, barracks and field hospitals which were to be inspected daily. In an inadvertent comment on existing

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44 SRNSW: Col. Sec., Special Bundles, Convicts, SZ 79. COD 182; Col. Sec., Copies of Letters Sent to Surv. Gen., 6 Sep 1832 - 15 Feb 1833, 4/3913, p.113. R.3017

45 Govett, *op. cit.*, p.49.

46 John Hirst, *Convict Society and its enemies*, Sydney, George Allen & Unwin, 1983. pp.48-50; 58; 61.

47 Cook, *op. cit.*, pp.31-32.



conditions the new regulations stipulated that housing was to be weatherproof.

When No. 2 Stockade was first occupied by ironed gangs, medical attention was in the hands of a convict attendant. Although there were a hospital and dispensary on site, more serious cases were sent to Bathurst. However by November 1832, the attendant had been committed on a charge of highway robbery and Nicholson requested the appointment of a regular surgeon.<sup>48</sup> In April 1833 the Colonial Secretary wrote to the Surveyor General expressing the Governor's concern about the spread of disease at the No. 2 Stockade because of the poor condition of the huts and his opinion that the assistant surveyor in charge of the line could not be relied on to 'render it a safe abode for the prisoners'. As a consequence the Inspector of Hospitals and Deputy Surveyor General Perry were sent to the area to inspect and rectify the situation. The outcomes of the inspection, detailed in Chapter Five, included the construction of a new hospital.<sup>49</sup> The matter was so sensitive that Perry corresponded privately with the Governor, by-passing the Surveyor General and the Colonial Secretary. A doctor was stationed to attend to all personnel. Mitchell's suggestion that:

... the price of labour now lost by the pretended sickness and consequent absence of men in the Road Parties would pay the Salary of a respectable Surgeon qualified to act also as a Magistrate by whose appointment the present abuses would be prevented.<sup>50</sup>

was to be given consideration. Even in the summer months illness abounded. In December 1833, there were 62 sick prisoners at Cox's River and the Superintendent continued to blame the poor state of the accommodation at the stockade. He claimed that many huts were roofless. Further Nicholson had recently ordered a mass

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48 SRNSW: Surv. Gen., Letters Received from Surveyors, Nicholson, 14 Feb 1832 - 22 Dec 1834, 2/1562, p.189. R.3080.

49 SRNSW: Col. Sec., Copies of Letters Sent to Surv. Gen., 16 Feb - 31 Jul 1833, 4/3914, pp.162-163. R.3017.

50 Ibid., p. 234.

flogging.<sup>51</sup> That complaint brought a recommendation from Governor Bourke for Nicholson's dismissal because of his 'inattention and remissness'.<sup>52</sup> Mitchell defended Nicholson:

... no representations had been made to him by the Superintendent - as was his duty - and secondly that the part unroofed consisted only of about 1/24 th part of the whole and not a greater portion as stated by the Principal Superintendent of Convicts.

With regard to the number of sick I trust I may be permitted to request His Excellency's attention to the circumstances under which the prisoners are received into the hospital as sick, and the circumstances stated by Mr Nicholson - that he lately ordered nearly the whole of them to be flogged for gambling and disorderly conduct.

I beg also to observe that the attention of the Asst. Surveyor is required to other business besides accommodation & discipline of convicts - but that nevertheless this object had engaged so much of his attention since the removal of the Stockade to Cox's River, that the business of enquiring, for which Mr Nicholson is eminently qualified has been retarded and interrupted beyond all my calculation as to the completion of the Road to Bathurst.<sup>53</sup>

Conflict between the superintendent of the stockade responsible for convict welfare and the surveying department also reflected concerns (or lack of) for convict health. In May 1833, the gangs were detained at the stockade by the superintendent who thought it was going to rain. Nicholson, who was having great difficulty progressing the road works, with some chagrin, complained that he and the road parties were at work and queried the superintendent's authority to withhold the men. On another occasion, a bullock team allocated to road works was pressed into service at the stockade, over the objections of the surveyor, to convey sick prisoners to Bathurst

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51 SRNSW: Surv. Gen., Copies of Letters Sent to Col. Sec., 25 Nov 1833 - 21 Feb 1835, 4/5400, p.38. R.2839.

52 SRNSW: Col. Sec., Copies of Letters Sent to Surv. Gen., 1 Aug 1833 - 11 Apr 1834, 4/3915, p.366. R.3017.

53 SRNSW: Surv. Gen., Copies of Letters Sent to Col. Sec., 25 Nov 1833 to 21 Feb 1835, 4/5400, p.38. R.2839.

Hospital.<sup>54</sup>

The condition of the stockade and the cold winters all played a part in adding to the miseries of the gangs and parties. The floggings, the frequent shortfalls in blankets and clothing, the hard work, the cold, wet and a deficient diet which, even at its best, was barely adequate, due to corrupt overseers and poor supply by contractors, clearly contributed to debility and illness. The nocturnal activities of the prisoners, including the creation of private compartments using the stockade roof, as discussed in Chapter Five, undoubtedly had a part to play. In addition, the conflict between the authorities responsible for various aspects of the enterprise, discussed in earlier chapters, contributed to poor health outcomes.

From mid 1833 convict medical attendants of variable skill and experience assisted the surgeons who were usually linked with the military. They treated prisoners, military and members of the public who required assistance. William Mitchell, a Yorkshire groom, who had arrived in the colony in 1828, who at 43 was one of the more mature prisoners at Cox's River served as a dispenser there in 1833.<sup>55</sup>

Another attendant was Henry Kirkwood who arrived at Cox's River in July 1835 to serve as a hospital assistant and assistant to Dr Parry and also to Dr Alexander of the 28<sup>th</sup> Regiment. He worked from both Hassan's Walls and Cox's River. Thirty-three year old Kirkwood had arrived in the colony in January 1835 and was described as a mariner and surgeon. He had been brought up and educated in the navy and with no criminal connections he was considered to be quite respectable. His crime had been to steal and pledge a bible belonging to his landlady.<sup>56</sup> As well as attending those at the stockades Kirkwood also assisted people in the neighbourhood and performed

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54 SRNSW: Surv. Gen., Letters Received from Surveyors, Nicholson, 14 Feb 1832 - 22 Dec 1834, 2/1562, pp.251-252. R. 3080; Col. Sec., Copies of Letters Sent to Surv. Gen., 1 Aug 1833 - 11 Apr 1834, 4/3915, p.69. R.3017.

55 SRNSW: Supreme Court, Criminal Jurisdiction, Clerk of the Peace, Papers and Depositions, 1824-1836, CGS 880, T157.

56 SRNSW: Principal Superintendent of Convicts, Convict Indents, X637, p.8. R.907; 4/4019, p.175. R.906; PRO: HO 17/55 Pt.2 It31.

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emergency and minor surgery. In May 1837, he was charged with manslaughter and disgraceful conduct after he horrifically bungled a birth in which the baby's head was torn from the body. He had told the settler family that he was a doctor with 16 years experience in the "London Lying- in Hospital" but in reality he was the son of a doctor who had sat in on lectures at St Bartholomew's Hospital but was not qualified. Although he had attended the confinement of a soldier's wife and the Solitary Creek publican's wife, he had little experience. Nevertheless, on trial in the Supreme Court, he was found not guilty.<sup>57</sup>

Perhaps, more appropriately qualified was chemist and druggist John Arthur, under a life sentence for arson, who served as doctor's mate at Cox's River in 1837. He too travelled in the area giving assistance to injured locals and diligently made the best of a privileged position at the stockade, giving evidence against fellow convicts who were absent without leave or encountered illegally drinking in the neighbourhood.<sup>58</sup>

Alexander McDonnell had quite a different attitude. McDonnell's qualifications are unknown but he had a ticket-of-leave and had been sent by the Inspector General of Hospitals to serve as a dispenser. He was constantly drunk and unfit for the situation. Ultimately, he was charged with "habitual drunkenness, disorderly conduct and neglect of duty in his hired service". He was sentenced to 14 days solitary confinement and a recommendation was made that his ticket-of-leave be revoked. The ultimate outcome is unknown.<sup>59</sup>

The following list is a rare surviving example of convicts that the medical officer at Cox's River considered unfit for continued work in the gangs. It indicates that whatever its inadequacies, there was a system in place to attend to the welfare of the infirm.

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57 SRNSW: Supreme Court, Criminal Jurisdiction, Clerk of the Peace, Papers and Depositions, 1824-1946, CGS 880, 9/6311, No. 26.

58 SRNSW: Courts of Petty Sessions, Vale of Clwydd Bench Book, Feb 16 1836 - 2 Jun 1839, CGS 3064, 4/5673, p.153. R.669; Courts of Petty Sessions, Vale of Clwydd Bench Book, Feb 16 1836 - 2 Jun 1839, CGS 3064, 4/5673, Committals, p.98. R.669.

59 SRNSW: Courts of Petty Sessions, Vale of Clwydd Bench Book, Feb 16 1836 - 2 Jun 1839, CGS 3064, 4/5673, pp.251-252. R.669.

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60 SRNSW: Surv. Gen., Letters Received from Surveyors, Nicholson, 14 Feb 1832 - 22 Dec 1834, 2/1562, p.379. R.3080.  
61 SRNSW: Col. Sec., Copies of Letters Sent to Surv. Gen., 13 Mar 1832 - 7 Sept 1832, 4/3912, pp.124; 568 R.3016; Surv. Gen., Copies of Letters Sent to Col. Sec., 7 Jun 1831-17 Nov 1832, 4/5398, pp.319-320. R.2839.  
62 SRNSW: Courts of Petty Sessions, Vale of Clwydd Bench Book, Feb 16 1836 - 2 Jun 1839, CGS 3064, 4/5673, p.150. R.669.

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It is not clear exactly how long Thomas Cook spent with the No.10 Road Party on the Honeysuckle Range, referred to in Chapter Seven, but correlating his account with events recorded elsewhere, it could not have been more than three or four weeks before sleepless, cold nights and heavy labour brought him to seek assistance from the medical officer at the No. 2 Stockade. As a consequence Cook was transferred to Mt Victoria where he joined the No.9 Road Party under Overseer John Skeen. Cook found the conditions at Mt Victoria less severe than at Honeysuckle Flat because the party was less isolated and occasionally would be given tobacco or treats by passing travellers. In all other respects he found the gang similar to that at Honeysuckle Flat. Referring to the sexual abuse that pervaded both locations Cook wrote that:

... an appeal to their better feelings was the certain result of insult and derision which they would copiously inflict upon their less depraved fellow prisoners; and if he nevertheless persisted in publicly deprecating their horrid propensities, he would be struck, kicked and otherwise abused.<sup>63</sup>

The overseers set the tone for the standard of behaviour, and:

Woe unto that man who had the courage to pass a remark at all disrespectful of the despicable objects of their horrible ambition! He would be selected as a lamb for the Slaughter!!<sup>64</sup>

False charges would be laid which would result in a flogging. It was the custom for two or three men to sleep together, but Cook objected to the homosexual relations around him, complaining that:

So far advanced were these wretched men in depravity, that they appeared to have entirely lost the feelings of men, and to have imbibed those that would render them execrable to all mankind.<sup>65</sup>

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<sup>63</sup> Cook, *op. cit.*, pp.19-20.

<sup>64</sup> *Ibid.*, p.20.

<sup>65</sup> *Ibid.*, p.19.

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However, not all the overseers were corrupt. Cook recalls George Morley, principal overseer of ironed gangs, dissuading Skeen from pursuing such a charge against Cook. Morley had found him manacled at Cox's River awaiting a magistrate. Cook finally learnt to remain a 'silent observer' while maintaining his resistance to unwanted sexual advances. Morley then arranged for Cook to be appointed for a six week stint as his relief clerk. The other overseer who was not a part of the corrupt power network was Ephraim Whiting who was a veteran of one of Mitchell's expeditions into the interior. In 1834, when overseer of the Bridge Party, Whiting was charged and later convicted of assault, despite the belief of the authorities that he had been "set up" under a false charge.<sup>66</sup>

### Crime and Punishment

As noted in Chapter Seven, the No.9 Road Party was notorious for its poor behaviour. When in early September 1833 Cook arrived back at the Mt Victoria camp site after the above episode, he was arrested for slaughtering cattle belonging to local settlers. A crime he could not have been party to due to his absence, he nevertheless was marched back to Cox's River with three co-accused. They spent 14 days manacled to a chain, with no blankets, in a draughty slab building waiting for the surveyor-magistrate, John Nicholson, to hear the charges. One of his companions lost two toes from frostbite. In frustration, Cook presumably using his legal experience, obtained their release without trial by writing to Nicholson and indicating his intention to appeal to the Governor on the basis of the conditions under which they were held and the delay in receiving a hearing.<sup>67</sup>

On their return to Mt Victoria they found that the huts had been completely destroyed in a fire and they were again without blankets, although the road party had been moved to accommodation formerly occupied by the military. Cook and his companions arrived back at about 10.00 pm to find their colleagues in the gang

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<sup>66</sup> SRNSW: Surv. Gen., Copies of Letters Sent to Col. Sec., 7 Jun 1831- 17 Nov 1832 , 4/5398, pp.319-320. R.2839; Surv. Gen., Letters Received from Surveyors, 2/1526, pp.482-483. R. 3080; Surv. Gen., Register of Letters Received from Roads Branch, 1833-1836, 1846-1850, 2/1417. R.2804.  
<sup>67</sup> Cook, *op. cit.*, pp.21-22.

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busily frying beef. The new comers were assured that the two bullocks had been given to the gang by their owner after they had fallen from the top of Mt Victoria. Their fall, in fact, had been facilitated by gang members who were quarrying at the top and rolled a large rock amongst them. By way of mitigation of the party's behaviour, the hunger of the men was partly due to the overseers commandeering their rations to entertain visitors.<sup>68</sup>

The overseers shared the plunder of the party and had organised a select group to be specifically employed in robbing drays by night and day. Cook refers to the Mt Victoria area becoming so notorious for robberies that the matter was raised in the press with the result that police visits were frequent. About this time, early October 1833, the 'Select party' had slaughtered another two bullocks near the camp and four 'less guilty' gang mates had gone to the spot to help themselves to some meat. According to Cook, the men were followed by the overseers and charged with the slaughter. They were subsequently convicted and sentenced to transportation to Norfolk Island for life. In corroboration of Cook's account, court records indicate that Robert Hastings, Joseph Wright, William Carr and William Rogers were charged with this offence on 5 October 1833. There was an initial inquiry at Cox's River and the matter was referred to the Bathurst Quarter Sessions where on the evidence of Assistant Overseer Armfield and Overseer Skeen they were convicted and sentenced to a penal colony for the remainder of their natural lives. Cook attributed the 'framing' of these four to the need of the overseers to divert attention from themselves and to produce culprits who could be blamed for the spate of robberies they had orchestrated.<sup>69</sup>

Meanwhile, Keen resigned as overseer and was to be soon replaced by John Hamilton, with assistant overseers Nathaniel Davis and George Armfield. Hamilton had been an assistant overseer of an ironed gang at Cox's River since at least

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<sup>68</sup> Cook *op cit.*, p.22.

<sup>69</sup> SRNSW: Principal Superintendent of Convicts, Returns of Convict Trials Before Bench of Magistrates, 1832-1836, Bathurst to Goulburn, 4/7022.1, p.1; Clerk of the Peace, Quarter Sessions, Depositions and Other papers, CGS 845, Bathurst, 4/8371, pp.51-57. R.2395; Cook, *op. cit.*, p.23.



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December 1832, and had arrived in the colony in 1819 on a life sentence. Davis was a clerk who had arrived in 1828 and was a veteran of the Great North Road construction project where he was a senior assistant overseer of an ironed gang in 1830. He had worked with a number of the road parties on the Western Road including No.9 under Skeen. Both were older men in their late 30s and were veterans of survival and promotion in the system. Armfield supported Skeen in making false charges against members of their gang, in order to protect those responsible for crimes undertaken if not on the orders of the overseers then with their complicity.<sup>70</sup>

On Skeene's resignation, Surveyor General Mitchell, who had a very low opinion of him, wrote to the Colonial Secretary:

The conduct of the Road party No.9 stationed near Mt Victoria and, until lately under Overseer Skeene has been much complained of; drays have been robbed, and cattle slaughtered in the neighbourhood of this gang ... there is every reason to believe that prisoners in that gang have been concerned in these depredations.

[The behaviour] ...of the gang is mainly attributable to this overseer who holds a ticket of leave, but which I consider it would be justice to deprive him of, although he has left the department, considering all circumstances connected with the conduct of the gang lately under his charge, for he has built a house on the road side, and, so situated, it can scarcely be doubted that he will encourage drinking and disorder amongst the men employed in that neighbourhood.<sup>71</sup>

Mitchell planned to use the No.9 Road Party to test the new wooden boxes as a means of accommodation and containment for road parties rather than the slab huts then in use. The Quaker missionary Backhouse described the boxes as being so cramped when fully occupied that not all men could either stand upright or sit down at the same time with their bodies fully stretched. Only 18 inches breadth per person

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<sup>70</sup> Cook, *op. cit.*, p.21.

<sup>71</sup> SRNSW: Col. Sec., Papers Regarding Bathurst and Southern Roads, 1827-1849, SZ 854, p.110-112. COD 207.

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was allocated and 28 men could be locked in one of these from sunset to sunrise. Backhouse also supports Cook's view of the overseers, saying that the convicts were likely to be flogged for trifling offences and were subject to capricious conduct by the overseers. In Backhouse's opinion, death was preferable.<sup>72</sup>

Cook stayed with the No.9 Road Party until they were dispersed among settlers to assist with the harvest. When recalled from the harvest he was selected by the principal clerk at the police office located at No. 2 Stockade to work as a clerical assistant associated with the court. But after seven weeks he applied to be transferred back to the Mt Victoria gang as he feared trouble arising from the incompetence of a fellow clerk. On presenting his certificate of conduct and transfer to Assistant Surveyor Nicholson, he accepted an offer of a clerical position in his office at Mt Clarence. This situation he held for three months when he was charged with issuing false warrants for witnesses from the No.9 Road Party to attend the Supreme Court in Sydney. He vigorously denied the charge and, although he was never tried, he nevertheless lost his position and was sent as a book keeper to the Bridge Party at Diamond Swamp.<sup>73</sup>

Diamond Swamp was less comfortable than the assistant surveyor's headquarters but Cook was still in a comparatively privileged position and had his own hut. He lost the situation when he beat a fellow prisoner from Mt Victoria who, presumably making reference to the sexual activity at Mt Victoria to which Cook had objected, had applied '...Epithets to me altogether unmerited by my principles and demeanour'.<sup>74</sup> While an officer could command severe penalties for abuse, Cook was subsequently sentenced to 12 months in an iron gang.

According to Hughes, the language of Cook when referring to the homosexual acts and his reaction to it was typical of Englishmen of the time.<sup>75</sup> When Cook was

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<sup>72</sup> Cited by A.G.L. Shaw in the introduction to Cook, *op. cit.*, p.vi.

<sup>73</sup> Cook, *op. cit.*, p.27.

<sup>74</sup> *Ibid.*

<sup>75</sup> Robert Hughes, *The Fatal Shore*, Collins Harvill, London 1987, p.269.

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removed to No. 2 Stockade around September 1834 there were about 500 convicts located there under the superintendence of W. Foster and conditions were superior to those of the road parties.<sup>76</sup>

The charging of James Maltman with 'Disobedience of Orders and disgusting Language' by Captain Kane in May 1838 and other charges later in the year illustrates the sensitivity and seriousness with which verbal abuse was taken. Kane testified that Maltman had made 'use of the most beastly language using the terms bugger, and imprecations also of the most frightful import such as bloody heavens' and had concluded the barrage by singing a bawdy song. Maltman received 50 lashes, a sentence that could have been administered for simple insolence or refusing to work. The reference to the language was unnecessary for the outcome, leading to the

conclusion that the terminology was found to be particularly offensive.<sup>77</sup> In June Maltman was again drunk, had been absent from the stockade and was gagged to stop his tirade of abuse after Kane had ordered him to be placed on a chain. He had been delivered to the stockade by the landlord of a local public house where he had been behaving outrageously. For this he was awarded 50 lashes on the back and 25 on the breech. In September he was again drunk and abusive, making an uproar late into the night after he was confined. He received another 50 lashes. Nor was Maltman an exception, Thomas Smith, a scourger at Hassan's Walls, under punishment for drunkenness, also abused Captain Kane and faced charges of insolence and the use of threatening and disgusting language. He suffered the humiliation of a sentence of 25 lashes on the breech and 25 on the back.<sup>78</sup>

Cook referred to the No. 2 Stockade as 'that Den of Infamy' citing the 'horrid crimes' of homosexual acts between the convicts and the overseers which gave some

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<sup>76</sup> Cook., *op. cit.*, pp.27-28.

<sup>77</sup> SRNSW: Courts of Petty Sessions, Vale of Clwydd Bench Book, Feb 16 1836 - 2 Jun 1839, CGS 3064, 4/5673, pp.266-267. R.669.

<sup>78</sup> SRNSW: Courts of Petty Sessions, Vale of Clwydd Bench Book, Feb 16 1836 - 2 Jun 1839, CGS 3064, 4/5673, pp.257; 294; 333. R.669.

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convicts the opportunity of escaping punishment. Cook accused the sub-inspector, who was based at Bowen's Hollow, but was next in the hierarchy to the assistant surveyor responsible for road construction, of corruption. According to Cook the overseers were chosen by the sub-inspector and he had the power to dismiss them. In Cook's opinion, they were:

... the most overbearing and depraved Villains it were possible to find ... The only regard they had to classification, was evidently that which to all natural Beings, bespoke their own abominations or, in other words, the most execrable portion of their men found no difficulty in ingratiating themselves into favour, by the coarseness of their language, and the open demonstrations of pleasure with which they gave effect to their horrible propensities, in their Overseers hearing. In fact this was the only sure way (unless a man possessed of money to bribe them) of escaping, at the Triangles, the lacerations and torture which their perjuries rendered notorious among the less depraved among them.<sup>79</sup>

As Hughes points out, many of the sexual acts were not lovemaking but rapes, 'sadistic humiliation' to assert power over less experienced and younger men.<sup>80</sup> It was an unofficial system that saw convicts promoted to positions of power on the basis of the recommendations of the overseers who held them in their power. Certainly on the Western Road, Cook and both overseers, Morley and Whiting, who were not party to this combine, all lost their positions of responsibility in circumstances that suggest they were the victims of false evidence and "set ups". Armfield, one of Skeen's men, was recommended to replace Morley. Cook claimed that, despite his confinement in England and in Sydney, 'with men who had been Guilty of every offence under the Laws of their country', he was unaware of practices such as occurred on the Western Road. He could not understand 'how such monsters could have been nominated to act as Overseers'.<sup>81</sup> He blamed the overseers, backed by the sub-inspector for the premature deaths of numerous prisoners due to

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79 Cook, *op. cit.*, p.28.

80 Hughes, *op. cit.*, p.269.

81 Cook, *op. cit.*, pp.28-29.

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starvation, flogging and ‘insupportable Labour’.<sup>82</sup> The sub-inspector to whom Cook was referring was Clement Dougherty on whom prisoners extracted revenge by pursuing a false accusation of rape. He was convicted, sentenced to death and reprieved but, to the delight of the men on the roads, received a life sentence to Norfolk Island.<sup>83</sup>

Just as the overseers were involved in robberies, the military rank and file were similarly vulnerable to the opportunities the situation afforded. Anyone travelling on the Western Road was fair game, since, when passing the stockade, they were in full view of the prisoners who could peer through the gaps in the fence. Security was such that, despite the sentries, travellers were assaulted and robbed.<sup>84</sup> In 1838 George Mills, Samuel Pike, George Malpus and Alan Isaac, who were soldiers of the 80<sup>th</sup> Regiment at Bowen’s Hollow, were detected in colluding to undertake or oversee highway robberies using coerced prisoners from the ironed gang stationed there. On the occasion of their detection the prisoners George King and John Jones were awoken in the boxes at round 2.00 am and ordered to rob travellers camped at Magpie Hollow. King testified that the soldiers ‘ovalled’ one of his irons and removed his foot from it and pushed the other up his leg. They insisted he follow them, on threat of a flogging or a prick with a bayonet, and gave him a musket. When he became frightened as they neared the place, they threatened to shoot him as an escapee. King swore that he had been asked on a number of occasions to commit robberies and that he was afraid for his life. When he had previously complained he had received 100 lashes and an additional 36 lbs of irons. As well as travellers, prisoners suspected of having money were set upon by fellow prisoners on instruction by the military, with the prisoners silently bearing the penalties if caught. The investigation of the Magpie Hollow incident was particularly difficult as ‘all the military were more or less implicated, and the convicts were afraid to give evidence...’ and two prisoners were turned out by the soldiers to prevent them giving

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<sup>82</sup> *Ibid.*, p.29.

<sup>83</sup> *Ibid.*, pp.30-31.

<sup>84</sup> SRNSW: Supreme Court, Criminal Jurisdiction, Clerk of the Peace Papers and Depositions, T162.

evidence. Those soldiers not directly involved in or supervising the robbery were paid a proportion of the take to keep quiet.<sup>85</sup>

There are numerous other accounts of robberies being undertaken by convicts from the stockade, usually by those in privileged positions. In April 1835, for example, William Akhurst was badly bashed and robbed on the road after the stockade by Peter Doyle and Martin Byrne of the No. 2 Stockade. Byrne was employed out of irons by the military surgeon at the hospital and Doyle was in a similarly privileged position. Both were charged with 'highway robbery with violence', found guilty and sentenced to death. Their sentences may have been commuted as Byrne died at Norfolk Island in 1841. The fate of Doyle is unknown except that toward the end of the year he was charged with the murder, so he may have been executed. James Presnall and Joseph Saint, both wardsmen at Bowen's Hollow, were charged with highway robbery in July 1836.<sup>86</sup>

Travellers were attacked with bare hands, sticks or whatever was available and everything moveable was stripped from them with little mercy shown. In August 1835, charges of burglary with violence and rape were laid against eleven members of the No.10 Road Party then stationed at Honeysuckle Flat. James Thorp was the overseer in charge of the party and testified that William Harvey and Lewis Wingfield had left the party at dinner time and returned drunk and riotous about 6 o'clock. Several of the prisoners had been drinking at William and Lydia Barnes' inn, situated about a mile away, during the day and went back at night to rob it. The evidence indicates a brutal and violent attack in the presence of children.<sup>87</sup> Clearly the gangs were not closely supervised or, as Cook claimed, the overseer was in collusion with the gang members.

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85 SRNSW: Supreme Court, Criminal Jurisdiction, Clerk of the Peace, Papers and Depositions, 1824-1946, CGS 880, 9/6316, No.80; Courts Of Petty Sessions, Vale of Clwydd Deposition Book, 7 Dec 1837 - 17 November 1842, 4/5674, pp.64-78.R.669

86 SRNSW: Supreme Court, Criminal Jurisdiction, Clerk of the Peace, Papers and Depositions, 1824-1836, CGS 880, T 162; 169; T170.

87 SRNSW: Supreme Court, Criminal Jurisdiction, Clerk of the Peace, Papers and Depositions, 1824-1836, CGS 880, T162; SR NSW: Supreme Court, Criminal Jurisdiction, Informations and Other Papers 1824-1947, CGS 13477, T30, No.18;T42 No 20.

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In August 1835 James Smith, a sergeant with the 4<sup>th</sup> Regiment, was accompanying Edward Hall in the search for a plant of sovereigns near Cox's River. When crossing the river on a log Hall knocked him down and held him under the water until Smith was rescued by his dog. Hall was tried for murder, but the outcome is not known.<sup>88</sup>

It was not only crimes against property and adults that were committed. Children at the stockade, usually the dependents of the military, were also vulnerable. In 1833, 11 year old Elizabeth Streeton, daughter of William Streeton of the 17<sup>th</sup> Regiment, was raped by Private David Thompson of the same regiment. Thompson lured her along the creek by telling her that a hen and chickens belonging to Captain Deedes were lost and that there would be a reward if she found them. Thompson was sentenced to 12 months in Newcastle Gaol. In 1836 Jane McCarter, the six year old daughter of John McCarter of the 4<sup>th</sup> Regiment, was raped by convict John Madden. On conviction Madden was transported for two years to a penal settlement.<sup>89</sup>

In an extraordinary episode in the history of the No. 2 Stockade the free stockade clerk Richard Vowell, four convicts and four military men went on the run together in mid 1835. According to Cook, Vowell had been bribed by two ironed men to alter the record of their sentences from 12 to nine months and to organise a pass for their transfer to headquarters. But the men were seen by the clerk of the court as they departed the stockade and their early release was discovered.<sup>90</sup> After the forgery was revealed Vowell absented himself from the stockade and in his absence was charged with the forgery and on 15 May a reward of £20 or a conditional pardon was posted for his capture. Shortly after Vowell returned to the stockade and was again placed in charge of the books. But on this information being received by the Governor on May 23, Vowell was ordered to be discharged and Foster, the superintendent, was recalled to Sydney.<sup>91</sup>

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88 SRNSW: Clerk of the Peace, Quarter Sessions, Depositions and Other Papers, CGS 845, Bathurst, 4/8380, pp.315-319; 4/8379, pp.51-54. R.2397.

89 SRNSW: Clerk of the Peace, Quarter Sessions, Depositions and Other Papers, CGS 845, Bathurst, 4/8371, pp.21-23; 4/8379, pp.55-68; R.2397.

90 Cook, *op. cit.*, pp.34-35.

91 SRNSW: Col. Sec., Copies of Letters Sent, 2 Apr 1835-21 Jan 1836, 4/3681, pp.99-100. R.1049.

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On 25 May, presumably after this instruction reached the stockade, four convicts including James Monds, clerk to the medical officer, John McCann, John Fisher and William Bryant and four privates of the 4<sup>th</sup> Kings Own Regiment - Marsden, Shann, Shaw and Powell - went absent without leave. Vowell too, disappeared. They were pursued by the military through the night but escaped without trace. Handbills were struck and their descriptions were circulated, the circumstances of the composition of the group being considered to be quite extraordinary. It was feared that as some of the escapees had seafaring experience that the party was headed to Twofold Bay from where they planned to take a whale boat and thus escape the colony. The reality was both more and less fantastic.<sup>92</sup>

Vowell and his fellow absconders took up bushranging and robbery. By August they had been captured and were on trial in the Supreme Court. They had travelled down to the Murrumbidgee, rather than to the coast and conducted a series of robberies. The outcome of the trial was that one was executed, five were transported to Norfolk Island for life and one was sentenced to 14 years on Norfolk Island.<sup>93</sup> The bribery and robbery charges against Vowell were dismissed by the Supreme Court but he was convicted of the theft of Foster's watch. He was originally sentenced to death, but this was commuted to life at Norfolk Island and later reduced to 7 years.<sup>94</sup>

Richard Longfield Vowell had arrived in New South Wales in early 1833 and in March was recommended to the position of clerk and constable at No. 2 Stockade. Vowell came with recommendations that testified that he was the son of Major Richard Vowell of the 66<sup>th</sup> Regiment. He had served in c.1818-1830 in the British Legion, was a former Captain of Marines in the Chili State Service and a former major of brigade for the South American Liberator, Simón Bolívar.<sup>95</sup> But Vowell's history is much more interesting. He was a gentleman, Oxford educated and an

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92 SRNSW: Col. Sec., Letters Received, Military and Naval, 1835, File No. 35/4094 at 4/2287.2.

93 Cook, *op. cit.*, pp.34-35.

94 Cook, *op. cit.*, pp.34-35; Dr. Maria Victor, pers. comm. January 2005.

95 SRNSW: Col. Sec., Letters Received from the Principal Superintendent of Convicts, 1833, Letter No. 33/2310 at 4/2184.



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historian and fiction writer as well as a soldier. He was in the thick of the action and wrote three books based on his experiences. The first was published in 1831 in London. These works, both fiction and non fiction, are highly regarded by Latin American historians and were reissued in the twentieth century by the Academia Nacional de la Historia in Caracas in the 1970s. It is not known what became of Vowell after the trial except that he died in Victoria in 1870 at the age of 76. His life, however, is the subject of a biography by Canadian scholar Dr Maria Victor, who is currently attempting to solve the mysterious later life of this revered hero of the South American liberation from the Spanish. Vowell wrote under a pseudonym and Dr Victor believes that he was highly likely to have recorded his experiences, perhaps in some fictionalised form. The prospect of finding such a work is an exciting one which has the potential to add another dimension to the Cox's River story. Dr. Victor is convinced, from her long study of Vowell, that his actions were likely to have been provoked by the injustices and brutality he witnessed while employed at No. 2 Stockade.<sup>96</sup>

### Civil Rights

As was shown earlier, Thomas Cook was able to use his legal experience to get him and his co-accused released from the lock-up at No. 2 Stockade in 1833. However, few convicts on the road had the capacity to assert their rights in that manner. Other demonstrations of appeals to higher authorities are rare and the outcome dubious. It was a risky business, a complaint could result in a charge of making a false accusation and the penalty on conviction was usually 50 lashes and the enmity of the overseer. Convicts could resist by refusing to work, feigning sickness or sabotage by losing tools.

A character reference could also ameliorate the outcome in the courts. When Joseph Anderson was charged with absconding, his sentence of 50 lashes was remitted because of a reference provided by Lieutenant Ronald McDonald. Shortly after,

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<sup>96</sup> Dr Maria Victor, pers. comm. January 2005.

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however, Anderson, then described as “scourger to the gang at Hassan’s Walls”, absconded a second time and was sentenced to 12 months in irons.<sup>97</sup> However, as was shown in the case of Ephraim Whiting, authorities were powerless to defend Whiting against the co-ordinated calumnies of his accusers, a situation which demonstrates the power of the counter system in operation on the road.

In an example of a relatively successful complaint by convicts (probably because it was brought to the attention of the authorities in Sydney) in mid 1832, the military commandant at Mt Victoria was asked to investigate complaints by prisoners in the Bathurst Bridge Party of the ‘tyrannical conduct’ of the overseer, Charles Hewitt and his deputy Phillip McIntyre. It was found that on several occasions the prisoners had been treated with ‘great severity’ and the Colonial Secretary requested that the two be informed that they ‘should be more discrete in the management of the prisoners under their charge, who appear in some instances to have had just ground of complaint against them’.<sup>98</sup> Analysis of the court records for the Western Road gangs indicates that the proceedings in the early 1830s were often more than a mere formality and that there was an attempt to administer justice. But the right to question witnesses was used rarely by defendants. Cook’s account indicates that in practice the system was flawed. Perjury abounded, aided and abetted by the isolation and power of the overseers referred to earlier.

Part of the motivation for Act, 3 William IV No.3 was Governor Bourke’s concern that convicts were not always treated impartially before the courts. The Act reduced magistrates’ powers to inflict punishments. Punishment for misbehaviour was only to occur after a hearing before a justice of the peace. Yet there are at least two separate accounts which refer to the assistant surveyors failing to follow procedure. There is Assistant Surveyor Govett’s account of the flogging of a gang member for instigating a song and that of Cook referring to the surveyor not even bothering to dismount to

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97 SRNSW: Courts of Petty Sessions, Vale of Clwydd Bench Book, Feb 16 1836 - 2 Jun 1839, CGS 3064, 4/5673, pp.115-117; 128-129. R.669.

98 SRNSW: Col. Sec., Copies of Letters Sent to Surv. Gen.,13 Mar 1832 - 7 Sept 1832, 4/3912, p.231. R.3016.

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investigate the charges laid by an overseer and summarily ordering mass floggings, referred to previously.

Despite severe penalties and virtually no hope of escaping detection, crimes of violence at the stockade and against gang members were a feature of life. The court records conjure the image of a brutal existence where chance as much as compliance influenced survival.

### Conclusion

The *Convict Workers* study contends that convict accommodation was 'healthy and spacious' compared to urban housing for the poor in Britain; that convicts had a high standard of medical care and were generally healthy. Moreover, convict transportation was part of an international system of forced labour migration 'rather than something unique to the Australian experience'.<sup>99</sup> As shown above, the Western Road convict experience was not the happy existence, indeed blessing, suggested in *Convict Workers*. An alternate corrupt system was in operation that was run covertly by the majority of the overseers which made life a misery, far beyond the intention of the penal authorities. As Governor Bourke reported for the convicts in irons who were kept in stockades, their lot was '... felt by themselves as one of great privation and unhappiness'.<sup>100</sup>

Concern regarding the physical condition of the stockade itself, outlined in Chapter Five and elsewhere in this thesis, is another example of the ambitions of the system. It serves to demonstrate the hopes that underpinned the policies that were formulated by those in authority, such as the Governor. But, as this chapter has revealed, the ideals of the policy makers were somewhat removed from the practicalities of both convict welfare and road making. The realities of the experience of many, if not all convicts in the gangs, in the stockades and on the road were all too often brutal,

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<sup>99</sup> Nicholas and Shergold, *op. cit.*, pp.7-12.

<sup>100</sup> Extracts from a Despatch from Major General Bourke addressed to Mr Secretary Stanley, dated Government House, Sydney, 15 January 1834, *Secondary Punishment (Australia) British Parliamentary Papers, (Crime and Punishment: Transportation) 1834*, Shannon, Irish University Press, Vol. 6, pp.376-7.

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degrading and dehumanising.