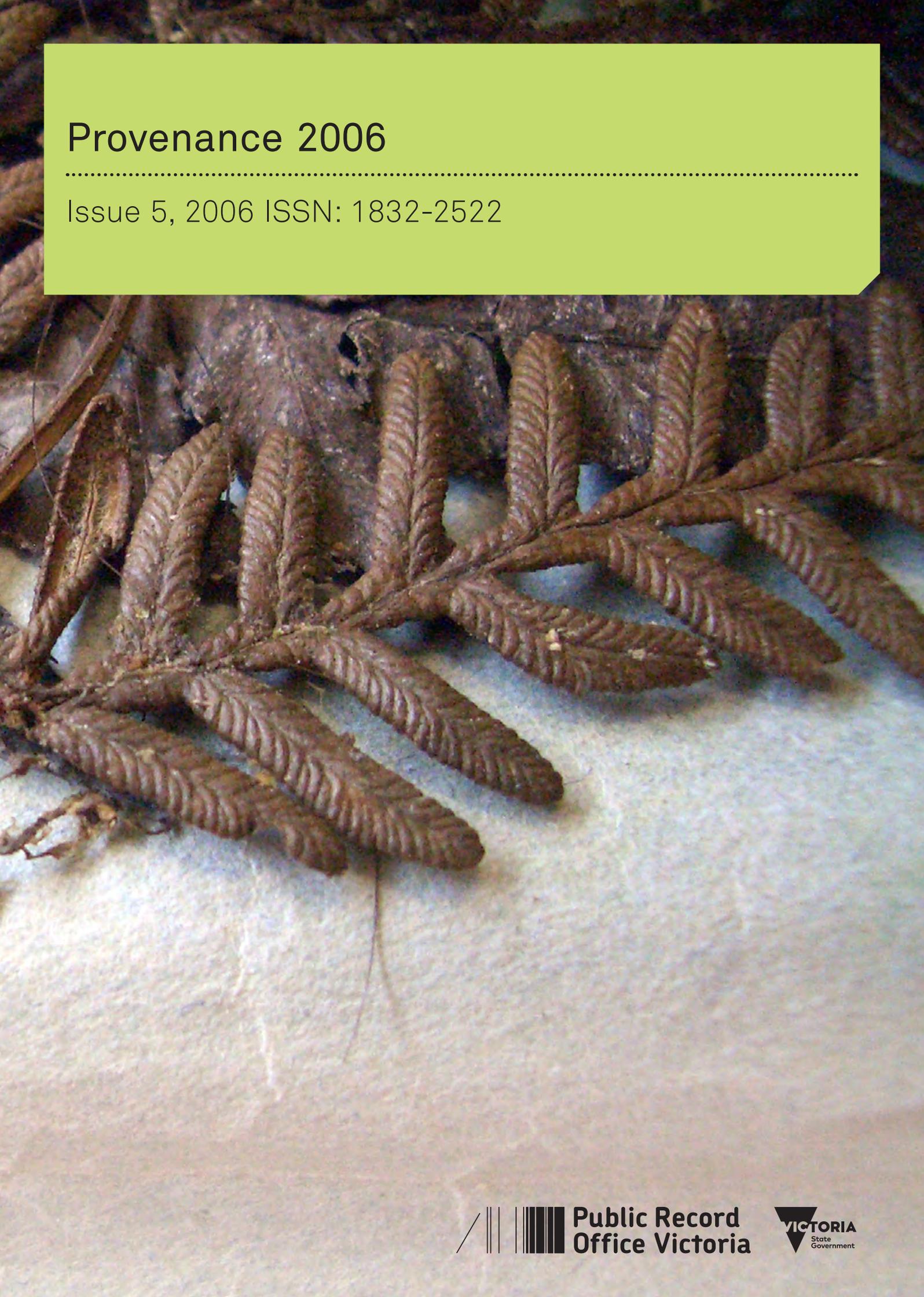


Provenance 2006

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About Provenance

The journal of Public Record Office Victoria

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Editorial

Provenance 2006

Welcome to issue 5 of *Provenance*! This issue sees the online journal continuing to evolve and expand. In addition to peer-reviewed articles, we have now included a Forum section, providing a place for a broader spectrum of contributions. The aim of this new section is to attract different writing approaches and research perspectives to the journal, while continuing the focus of research on PROV's collection. The current issue contains two peer-reviewed articles and four Forum articles.

Crime, and what counts as 'criminal', is the common theme in four of the articles in this issue. Each of these articles is based on research into records concerning crime, and in particular make good use of the criminal trial briefs that the crown solicitor's office compiled for the prosecution of serious offences.

The first article, by Barry Patton, concerns the shooting in 1843 of an Aboriginal man named Jim Crow by police on the western frontier lands of the Port Phillip settlement (which later became the Colony of Victoria). Patton's examination of the circumstances of the shooting and events leading up to it, and the subsequent trial of the police concerned, presents us with a criminal justice system that was fundamentally skewed, if not in the letter of the law then in its application.

Keir Reeves has set out to write about the Chinese on the Victorian goldfields in a way that is free of the usual clichés and generalisations found in historical accounts of this group of immigrants. He does this by focusing on an individual, James Acoy, court interpreter, businessman, miner and settler who was imprisoned for corruption in 1869. In telling Acoy's life story, Reeves is able to show the complex ways in which the goldfields Chinese straddled two very different cultural and ethical worlds. As with Jim Crow, the case of James Acoy reveals that what was treated as a crime was not purely a legal matter; rather, it often depended upon social arrangements organised by those who held and sought power.

Two articles in the Forum section were researched as part of a La Trobe University honours course, which brought history students into the archive to learn how to conduct primary research into government records. The focus for the group of students that came to PROV in 2005 was the 1920s, and their research centred on criminal trial briefs. Two of the most outstanding pieces that came out of this research experience are presented here. Zoe Carthew conjures up a truly tragic story with her imaginative re-telling of the death of Bertha Coughlan. A young lady from provincial Victoria, Bertha died during treatment at a private abortion clinic run by Nurse Hannah Mitchell in her Richmond house in 1922. Jessica Stagnitti presents us with an equally powerful story, involving the murder of Kathleen Price in her Carlton home by her partner Charles Johnson, quite possibly while he experienced a drug-induced psychotic episode.

The last two articles describe the process of researching books. Judith Buckrich tells us about her approach to researching the illustrious history of Prahran Technical School, using both PROV and other primary source collections, and shares some of the remarkable stories that she found. John Leckey likewise takes us through some of the steps of his research into the life of Victorian cricketer great, Bill Ponsford.

I would like to thank the members of the *Provenance* editorial board for their efforts on this issue. The ongoing evolution of journal these past two years is owed largely to their steadfast support.

Sebastian Gurciullo
Editor

Refereed articles



Goldfields Settler or Frontier Rogue?

The Trial of James Acoy and the Chinese on the Mount Alexander Diggings

Keir Reeves

‘Goldfields Settler or Frontier Rogue?: The Trial of James Acoy and the Chinese on the Mount Alexander Diggings’,
Provenance: The Journal of Public Record Office Victoria, issue no. 5, 2006.

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This article has been peer reviewed.

Keir Reeves is an Australian Research Council Postdoctoral Fellow at the Cultural Heritage Unit in the History Department at the University of Melbourne. His doctoral dissertation was on the Chinese on the Mount Alexander diggings. He has recently been awarded an Australian Research Council Postdoctoral Fellowship to undertake research into the history and cultural landscapes of central Victoria and to consider the international significance of the region in terms of its heritage values. His research interests include mining history, regional history, Chinese-Australian history, Asian history and heritage, heritage studies and cultural landscape analysis. He has lectured in goldfields history and Chinese-Australian heritage for the past three years.

Abstract

Too often in Chinese-Australian history there is a preponderance of generic commentary on the Chinese as a group of people and a commensurate absence of individual life stories. This article, drawing on trial records held at Public Record Office Victoria, aims to redress this impersonal approach by providing a biographical sketch of James Acoy, the Castlemaine court interpreter, businessman, miner and settler who was imprisoned for corruption in 1869. It argues that Acoy’s imprisonment had its antecedence in events surrounding the collection of a poll tax levied on the Victorian Chinese community a decade earlier. It also aims to provide a broader interpretation of goldfields Castlemaine society during the late 1850s and the 1860s and to suggest that it was a more culturally complex and ethnically diverse community than has previously been assumed.

During my recent doctoral research on the Mount Alexander Chinese I was struck by the lack of individual life stories in Chinese-Australian history. Notwithstanding Mei Quong Tart,[1] the renowned Sydney businessman and his Melbourne counterparts Lowe Kong Meng and Louey Amoy, there is a notable absence of Chinese figures in historiographical narratives of the mid-nineteenth century in Victoria – and indeed Australia. This is especially the case on the Victorian goldfields, despite census

records revealing that in 1859 ten percent of the colonial population came from Southern China.[2] Furthermore, mining wardens’ reports indicate that in some mining districts, including the Mount Alexander diggings in and around present-day Castlemaine, one in four adult males was Chinese. Understandably it came as a pleasant surprise to learn at the Castlemaine Historical Society that an extensive trial record of a key Castlemaine pioneer, James Acoy, was still in existence.[3]

This article evaluates the cultural relations of Castlemaine society in the 1850s and 1860s using an analysis of James Acoy’s conflict with the Chinese community over the introduction of the Chinese residence tax in 1859 and his later trial for corruption that dominated diggings society in 1869. It argues that Acoy was not necessarily a corrupt man, but more a victim of circumstance caught between Chinese and European cultures.

James Acoy stood at the centre of the cultural exchange on the Mount Alexander diggings – an exchange balanced between conflict and cooperation. He was a key personality in nineteenth-century Castlemaine goldfields society.[4] Representing on the one hand the Chinese miners, previously relegated to the periphery of goldfields’ experience, and on the other the European administration, he is a liminal figure.[5]



John Bartholomew, Early sketch map of the Mount Alexander diggings, A & C Black, Edinburgh, 1853. Courtesy of Keir Reeves.

Acoy, also known as Ah Coy, had departed from the Portuguese port of Macau and was 22 years old when he arrived in Sydney in 1852 on a barque named either *Eagle* or *Grey Eagle*.^[6] There is some conjecture over this date as both Cronin and Rolls have suggested that Acoy was one of the earliest Chinese arrivals to the Victorian goldfields. If their assertion is correct then he originally came out to work as a contract or coolie labourer at the age of 11 or 12.^[7] Although this explanation is unlikely, given his documented arrival in Australia during the gold-rush era, it would explain his mastery of the English language when the gold rushes began. However, his prison record suggests that he had been a seaman who had travelled on the *Grey Eagle* from California to Sydney in 1852,^[8] and this may offer a different explanation for his excellent command of English.^[9]

If the date of his arrival in Sydney is accepted as 1852 (the date given on both his naturalisation record and his criminal records) then the following year James Acoy caught a steamer to the colony of Victoria where he promptly made his way to the Mount Alexander diggings.^[10] He probably had a brief experience of

alluvial mining, then became a butcher at Fryers Creek and was soon engaged by the Chinese diggers at Forest Creek to act as an interpreter and perhaps also as a headman (see below).^[11] Later his role was formalised, at least in the eyes of the colonial administration, when he was employed by the Victorian Government as an official interpreter. He also proved to be a successful businessman, accumulating considerable wealth and property over the course of his life.

The term headman is two-fold in its meaning and requires explanation in order to explain the social status and privilege that Acoy enjoyed in Castlemaine society. In one sense it represented a figure of social and political authority within the Chinese community.^[12] In a more official government sense it was a rank, subordinate to that of interpreter in the Victorian colonial administrative apparatus (see image below). This second understanding of the term was applied specifically on the Victorian goldfields. Being a headman or interpreter in the government as well as headman in the Chinese community seems to have been quite common amongst the Chinese on the Mount Alexander diggings. Often the terms were used interchangeably and as a result the nebulous meaning of headman makes situating these men culturally in Castlemaine society difficult. One possible explanation for the confusion is that the European authorities attempted to place an arbitrary administrative model and corresponding lexicon onto a group within the community which adhered to a different set of power relations and cultural practices. The nexus between the cultural role of the headman amongst the Chinese and the administrative role that was carried out by officers of the Crown was often problematic for the Chinese government employees. This was apparent in court proceedings and during the implementation of the entry poll tax and the residence tax: Chinese government employees were expected to play a key role in collecting the taxes and administering the system. This source of tension was central to the situation Acoy confronted in Castlemaine.

The problem is particularly evident in Acoy's contribution to the Reverend William Young's *Report on the condition of the Chinese population in Victoria* (1868), in which he commented on Chinese society in the Castlemaine district. Acoy directed his concern at the detrimental effects of opium, not at the Chinese community. His solution to the problem of importing the drug into the district was that 'when ships arrive with the drug' the authorities should intervene so as 'not to permit it to be landed'.

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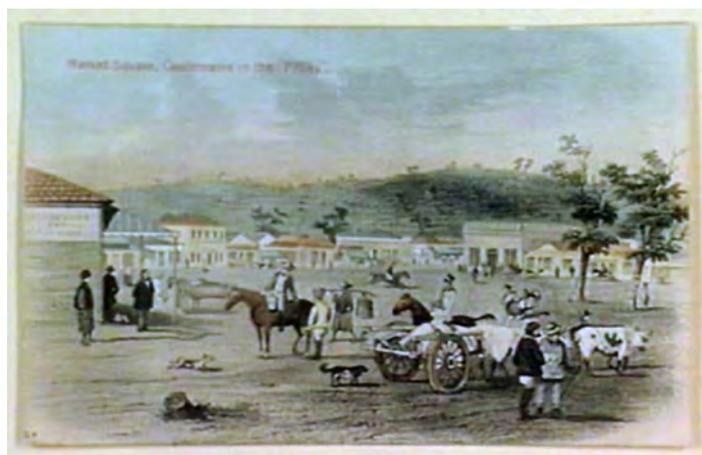
This put the onus of responsibility firmly on the government. Likewise in his call for the establishment of schools for the teaching of the English language – claiming ‘it is probable that some of the Chinese would attend’ – his expectation of government assistance is apparent.[13] Such comments do not mark Acoy as a collaborator with the European administration; rather he served as a conduit between Chinese and Europeans on the goldfields.

Although Acoy is just one individual, the events of his life contradict the sojourning *mentalité* so arbitrarily applied to Chinese immigrants. Between 1853 and 1856 he lived as part of the semi-permanent mining community on the rich alluvial Fryers Creek diggings. As early as 1855 he married Caroline Fischer, a 17-year-old spinster of German descent.[14] Four years later he took out citizenship, publicly expressing his wish to settle in the district.[15] This was only seven years after his arrival in Sydney, and at his naturalisation ceremony he expressed his commitment to his adopted country, commenting that he wished ‘to settle in Victoria for life’ and was ‘wishful of becoming a landowner’.[16] James and his wife then moved into Castlemaine, initially to a makeshift tent dwelling. In 1862 they built a house on an allotment (later 5 Bowden Street), with a distinctive regency verandah, that became widely known around the district as the family home.[17] The Bowden Street house on Camp Hill was where James and Caroline reared ten children. [18] This heritage-classified house above the town still stands and former neighbours can remember the youngest two daughters, both of whom lived to be over 100 years old.[19]

In 1859 a new version of the Chinese residence tax was introduced into Victoria, and, as a servant of the Crown, Acoy was bound to collect this pernicious, racially based tax from the Castlemaine Chinese community. It was this act that would ultimately lead to his public disgrace and eventual imprisonment almost a decade later. It remains unclear whether Acoy simply had the unenviable responsibility of collecting the residence tax or whether he actually supported its imposition. It should be noted that the tax was first imposed upon the Chinese in Victoria in 1859 to fund the Chinese protectorate system. It was levied at £4 in addition to the £10 entry tax and was vigorously enforced by the colonial authorities. Caught between an allegiance to his employer or to his countrymen, Acoy was maligned on the one hand by Europeans for his alleged duplicity and on the other by Chinese for alleged fraudulent behaviour and conspiring with the colonial authorities. As early as

1859 he sought to explain his difficult position, arguing that vilification by his countrymen occurred because of the ‘mistaken idea on their part that the obnoxious tax [was] something of his doing’.[20] Without supporting documentation it is impossible to apportion responsibility conclusively. In addition, the payment of money to figures of authority in the Chinese community as part of a mutual self-help organisation was not unusual and Acoy may have been following convention in collecting money from the Castlemaine Chinese.[21] However, given his association with government authorities, suggestions of his implicit support for the resident tax are not readily dismissed, despite his protestations otherwise.

Clearly there is a great deal of ambiguity surrounding Acoy’s involvement in the collection of resident taxes during the second half of the 1850s. His role as a government employee explicitly associated him with its collection and acted as the catalyst that led to his public disgrace and eventual imprisonment for embezzlement and deception of his countrymen. In this respect the extraordinary sequence of events surrounding the protests about the tax (including the attack on his person, his extraordinary avowal of innocence and a major political protest against the tax that culminated in a march on the Government Camp) were connected with his trial for fraud a decade later.



Market Square, Castlemaine in the ‘Fifties’ [picture], c. 1905 – c. 1910, postcard: printed, col. La Trobe Picture Collection, State Library of Victoria.

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The Trial: A Glimpse inside the Castlemaine Chinese Community

It would be convenient to consign Acoy to historical oblivion as a man who collaborated with the European authorities over the Chinese poll tax and who subsequently embezzled his fellow countrymen over a ten-year period. Such an interpretation of events assumes that he was a willing participant in collecting the residence tax on behalf of his European employers. However this analysis not only misrepresents Acoy and his role in Castlemaine society but also oversimplifies the nature of Chinese community organisation on the goldfields.[22]

Further examination of the events surrounding the trial reveals much about Castlemaine society. Acoy's difficulties began in earnest on 24 November 1868 when Frederick Charles Standish, the Chief Commissioner of Police, wrote to the Minister for Justice forwarding a report in which 'the Chinese Interpreter "Ah Coy" is accused of serious irregularities, in receiving weekly allowances from the keepers of the Chinese gambling houses'.[23] Unbeknownst to Acoy, his friend and colleague Captain Bull,[24] and the Castlemaine press, a local private investigation had been in train since August as a result of the allegations outlined in Standish's correspondence with the minister. This was conducted by William Winch, the Castlemaine police superintendent, and a little-known figure named Hodges.[25] Its terms of reference were to investigate alleged fraudulent behaviour by Acoy. Encouraged by Hodges, the superintendent commented to Standish that 'I have no doubt that Ah Coy has been receiving, under the pretence above referred to, considerable sums of money. I understand that he alleges that one half of this kind of "black mail" goes to the government, hence the readiness of the Chinese to pay'.[26]

Winch and Hodge's initial enquiries were conducted at three stores where lotteries had been established. Winch commented that two were at 'Campbell's Creek, kept satisfactorily by Cheong Lung and Taing Tat, each of these pay Ah Coy 30/ per week and in proof of this the books of the concern were produced in which regular entries of these weekly payments are made'.[27] He also mentioned that 'the other is in Castlemaine where the payment to Ah Coy is £2 per week'. The extent and serious nature of the allegations were compounded in Winch's concluding statement to Standish that:

there is no doubt in my mind that this system of subsidy from the Chinese population by the Gaol Interpreter is carried on to an enormous extent included I assume the amount at one time of £40 per week, and I have reason to believe that it is now quite half of that.

A subsequent letter from Standish to the Chief Magistrate simply formalised the allegations against Acoy and set in train a series of events that led to his incarceration the following year.

News of the investigation became public on 18 December 1868 when the *Mount Alexander Mail* reported that a warrant had been issued for Acoy's arrest. The next day Acoy, offended by the 'decidedly non-positive paragraph on the subject', called into the offices of the newspaper to clarify that he was not resigning as the government interpreter.[28] What the journalist from the *Mount Alexander Mail* did not know about, and what Acoy had decided to contest, were the multiple accusations of fraud and embezzlement by his fellow countrymen.

On 2 December, Captain Bull had informed his friend of the serious allegations that had been made against him. Bull wrote:

You have been informed against for levying dues upon the Chinese inhabitants here and elsewhere to a considerable amount under false pretences, namely that you would protect their gambling transactions from the Police by so receiving.[29]

The letter contained the additional damning information that 'Three Chinese establishments have given information in this matter'.

If taken at face value, the allegations and the subsequent press reports did not bode well for Acoy. Yet the gambling houses mentioned by Bull were the same three establishments Hodges had taken Winch to during the preliminary investigations. Furthermore, in his vehement denial of the charges Acoy argued that Hodges, a bi-lingual European, coveted his position as the Chinese interpreter. Acoy also argued that he 'could have shewn that not only *persuasion* but *threats* and *intimidation* were used to get the witnesses to come forward and make the statements they did'.[30] He also suggested that Hodges had been complicit in framing the charges against him. This sequence of events is quite plausible given that Hodges was subsequently charged with financial impropriety regarding the various Castlemaine Chinese lotteries.[31] Hodges may have offered the Chinese gambling house proprietors better terms in regard to the lotteries. Vanquishing Acoy from this official government post would have been central to establishing a new arrangement.



Castlemaine Chinese leading the procession welcoming HRH the Prince of Wales in Castlemaine in 1868. Reception of HRH Duke of Edinburgh at Castlemaine [picture], in *Illustrated Australian News*, 4 February 1868, print: wood engraving. La Trobe Picture Collection, State Library of Victoria.

Bull's extensive details of the charges and the tone of his letter to Acoy must be understood in terms of the long association the two men shared. Bull obviously felt a debt of loyalty to his old friend and his letter was intended to assist Acoy with preparations for his defence. He wrote that it was 'advisable to inform you of these facts in order that you may be prepared with your evidence and witnesses'.^[32] Two days later, on 4 December, Acoy visited Captain Bull at the Camp and was investigated by Mr Winch with the Reverend William Young, the chief Chinese interpreter, in attendance. Young's presence would have highlighted the serious nature of the charges. Compounding this humiliation for Acoy was the fact that he had only recently provided Young with information on the Castlemaine Chinese for Young's *Report on the condition of the Chinese Population in Victoria*. Bull and Acoy's relationship was a matter of concern to the Castlemaine community; it was noted in the local press and came to the attention of the Chief Commissioner of Police in Melbourne.^[33] The office of the Police Commissioner wrote to Winch suggesting that Bull had failed to consult with him and had acted prejudicially in Acoy's favour. The *Mount Alexander Mail* was also aware of the situation, commenting that Bull 'committed a mistake of not acting according to instructions, which were not to communicate with Mr Acoy without first advising Mr Winch and Mr Young'.^[34] For this indiscretion Bull would later receive a severe reprimand from the Minister for Justice – and was lucky to escape with his reputation relatively intact, given that his friend and associate was imprisoned

for four years with hard labour. Acoy served out this sentence and subsequently returned to Castlemaine where he resumed his business and mining activities until his death in 1879.

Clearly Acoy was not without powerful friends, and three magistrates signed a memorial to the Chief Justice in support of him.^[35] But his enemies were also formidable. Thomas Dennis Strafford Heron, one of the eight magistrates who comprised the full bench at Acoy's trial, argued that the trial should proceed immediately as he suspected that Acoy would abscond if the trial was adjourned.^[36] Heron's harsh attitude towards Acoy was founded on erroneous presumptions about the interpreter's personal circumstances. After all, Acoy, a Castlemaine pioneer, had extensive business interests, a professional occupation, a large family, and had built his own home in Castlemaine, all of which indicated that he was neither inclined nor in a position to flee the district. Recently Heather Holst has demonstrated how in other legal cases Heron was vehemently intolerant of the Chinese,^[37] who he argued were '... obscene and exceedingly filthy in their habits disgusting in their general actions and remarkable for dishonesty causing them to be morally unfit to associate with the European'.^[38] However, in this instance there was sufficient support for Acoy and he was granted bail and remained in Castlemaine to face trial early in the New Year.^[39]

The Castlemaine Goon Lee Lottery

Acoy's trial began with a consideration of the Goon Lee lottery in Castlemaine. Acoy's denial of involvement in the gambling was contradicted by the evidence of storekeeper Lee Ming Soon, which suggested that Acoy was intimately involved. In a damning testimonial Soon explicitly stated that 'Ni-see-oh is the Treasurer & pays [Acoy] the money'.

[40] But the most explosive revelation was his assertion in broken English that Acoy was 'a shareholder in lotteries 4 years in Castlemaine and 2 years and a little more in Morepoke and Pennyweight. The Chinese Camp has been erected 3 years or more – in this camp there are 2 lottery houses one newly opened – [Acoy] had a share in one called Win-lee – given up some time ago'. He stated further that Acoy's share of the Goon Lee lottery included all the furniture and pottery and entitled him to £1 per week. In addition Acoy was paid £2 per week li money and Ni See Oh also rented the premises from him for £1 1s weekly.

Ah Hen, also associated with Castlemaine gambling, then corroborated Lee Ming Soon's evidence by explaining the ledger of gambling transactions that included li payments to Acoy. For the court interpreter there were two separate entries: one was for his share money (his commercial interest in the business) and the other was for 'present money or li-money'. He kept this record at the instigation of Ni See Oh, whom he referred to as a book-keeper and, more revealingly, headman. Ah Hen then emphasised that he was not involved in the lottery but kept other records at the store where he was paid by a storekeeper named Ah Chee.

Choo Chaa, another with an interest in the lottery, revealed the ambiguity surrounding Acoy's entitlements and overall role in the organisation. Choo Chaa explained to the magistrates that 'the li-money is given because it is the custom, if the money were not given they would be arrested, it is the custom in China and the same here'. [41] He also commented that irrespective of 'whether they lose or gain £2 li money is always paid'. The li money was paid to Acoy for his own use. Choo Chaa continued:

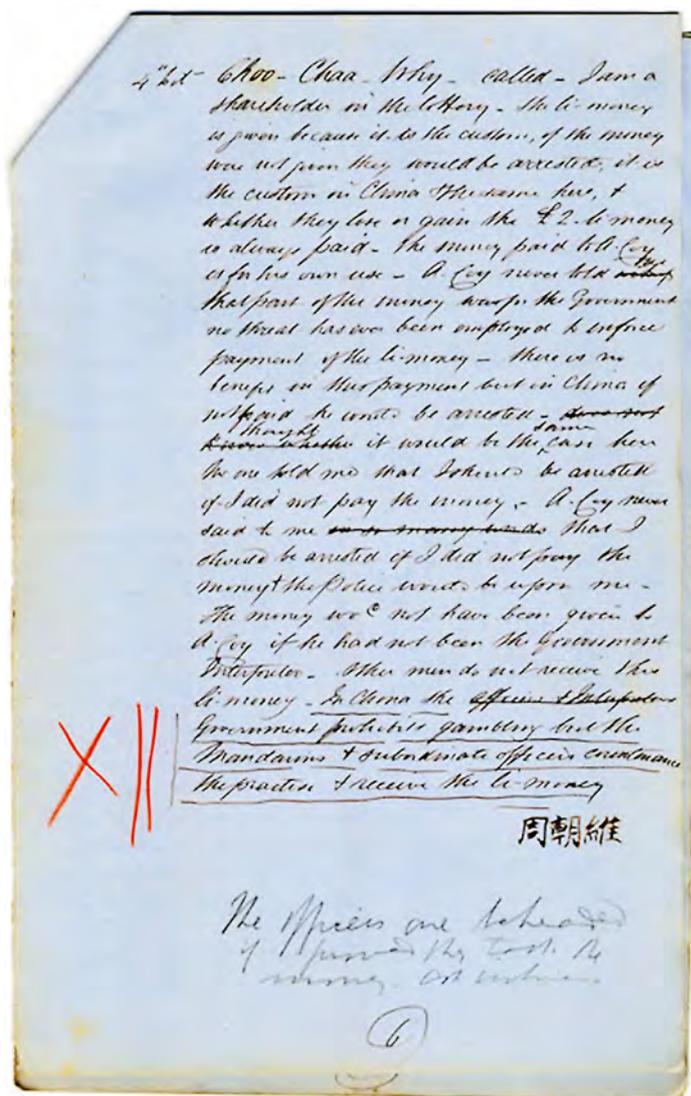
A. Coy never told me that part of the money was for the Government no threat has ever been employed to enforce payment of the li-money – there is no benefit in this payment but in China if not paid [I] would be arrested [...]
A. Coy never said to me that I should be arrested if I did not pay the money and the Police would be upon me.

This explanation is important as it demonstrates that the Chinese tolerated the collection of li money.[42] It also shows how this practice was maintained on the Victorian goldfields. Perhaps most revealingly it describes how li money was so entrenched that Acoy did not have to use threats to obtain it; rather, his role was accepted as part of a necessary, if undesirable, social convention. This fact was apparent in Choo Chaa's subsequent comment that:

The money would not have been given to A. Coy if he had not been the Government Interpreter. Other men do not receive this li-money. In China the Government prohibits gambling but the Mandarins and subordinate officers countenance the practise and receive the li-money.

The erroneous historical expediency of portraying Acoy either as victim or as a kind of heroic Victorian alabaster figure highlights the need to move beyond stereotypes based on overarching historiographical debates and to examine and reappraise the cultural history of the era more closely. The historical figure of Acoy, and the events surrounding his life, are symptomatic of a complex, often inconsistent, set of social relations that prevailed during the second half of the nineteenth century. This was typified by mutual and often ambiguous cultural exchange. The reason Acoy is important in considering this situation is twofold. Firstly, because of his unique

social position on the diggings, he serves as a cipher for understanding the permeability of cultural interaction in Castlemaine during this period. Secondly, because of the extensive records of his trial and property ownership, he is the most historically accessible of the Castlemaine Chinese.



Minutes of evidence given by Choo Chaa Why to the police investigation. PROV, VPRS 30/P, Unit 355, Case number 2 of 15 March 1869.

One way of understanding the social complexity of Castlemaine society from the early 1850s until the early twentieth century is to unpack different historical layers of cultural exchange. This approach is particularly appropriate for the key period of the gold rush era and nowhere are these layers more apparent than in the investigation, trial and subsequent imprisonment of James Acoy in March 1869. This episode is open to a number of contested historical interpretations, each of which reflects different tiers of cultural meaning.

What transpires is not the story of a corrupt man, nor of a paragon of virtue. Instead, a far more ambiguous narrative emerges in which Acoy is at once regarded as a victim of European justice, despite the fact that his European colleagues at the Camp and the legal profession were trying to exonerate him, and as a target for disaffected Chinese who betrayed him at his trial. One interpretation of the trial depositions is that Acoy's downfall was caused not so much because he was embezzling money from the Chinese community but rather because he had lost political control over them. This also meant that he had lost his authority over the li money from the gambling dens, something that he had previously been entitled to, given his position as headman. If this was the case, then his trial was a forum for a political struggle within the Chinese community, with Acoy trying, ultimately unsuccessfully, to resist being usurped from his position of power and profit. This in itself proves, as Yong has observed, that the Chinese community was not a single structure but instead comprised multiple segments.[43]

The most tantalising aspect of Acoy's story is that, in moving between different worlds, he was able – up until his trial, at least – to manipulate circumstances to his own advantage. Thus it is possible that he was a loyal servant of the Chinese community while also receiving gambling money. He may also have been the conduit between Europeans and Chinese, not only in the legal system as an interpreter but also in the gambling houses throughout the diggings. Given his multiple roles, it is unremarkable that Acoy was able to position himself socially to capitalise on commercial opportunities.

It is important to remember that Acoy's aggressive desire to acquire wealth and establish himself in a new community was almost universal on the diggings.[44] What was unusual was that he actually realised many of these aspirations. This can be attributed in part to the dynamic nature of camps on the goldfields before they became settled communities with more static modes of social life and interaction.[45] Acoy's achievements and notoriety in Castlemaine are symptomatic of boomtown life. Freed from posthumous historiographical distortion, his behaviour can be seen, not as anomalous, but rather as typical of the *Zeitgeist* of his age.[46] In such a socially fluid and changing society his morally ambiguous behaviour would have been more readily understandable.[47] Given the permeability of cultural exchange between Chinese and Europeans on the Mount Alexander diggings there is even a sense of inevitability about Acoy's ascension to a prominent social position in the community.

Despite his protestations of innocence, it is probable that Acoy took li money from the Chinese gambling houses in and around Castlemaine. There is a tendency in Chinese social hierarchy to confer authority on the materially successful and the learned. Traditional understanding of social hierarchies, formulated during the Ming Dynasty, emphasised the importance of classic scholars and wealthy landowners. Of less significance were artisans and merchants and the peasantry – the social classes to which the majority of Victorian Chinese gold-seekers belonged. Situating Acoy within this hierarchy is difficult. On one level he was not a classically trained scholar, nor did he come from a privileged background. Yet within Castlemaine society – almost the opposite of the rigidly hierarchical Chinese – his prominence is understandable. After all, he was fluently bi-lingual and he was almost certainly the richest Chinese man in Castlemaine.[48] Therefore, in the absence of more traditional figures of authority it is likely that Chinese social relations sanctioned his entitlement to the li money, even if European justice did not.

It is possible that Acoy's adversaries within the Chinese community looked to the colonial legal system because they knew that, if successful, his public disgrace would be complete. In this reading of events his trial becomes an instrument orchestrated by his opponents in order to secure his removal as the official government interpreter. After all, his removal from this position was central to replacing him as one of the key beneficiaries of the gambling activities.

Explicit in this interpretation is the argument that Acoy was framed by his adversaries. Given that nearly all of Acoy's foes belonged to the See Yup Society, of which he was not a member, it is likely that See Yup was the key group opposed to him. It could be further speculated that his main adversary was Louey Ah Mouy, the leader of the See Yup community in Victoria.[49] Ah Mouy had been an indirect opponent of Acoy during the anti-resident tax conflict some ten years earlier. Furthermore, Lee Heng Jacjung, the one-time Vaughan interpreter with strong allegiances to Ah Mouy, was one of the major beneficiaries from Acoy's downfall. Ultimately he became an official interpreter in Castlemaine following Acoy's imprisonment.

Another explanation for the seemingly acquiescent silence on the part of the colonial administrators is that gambling was a vice that was tacitly accepted. It was perceived as a tolerable, albeit illegitimate, form of entertainment. This situation assists in explaining why the Europeans involved in Acoy's case – Bull, Heron, Winch and Hodges among them – did not divide automatically along ethnic lines.

It is also revealing that following the trial there was no further investigation into Chinese gambling on the Mount Alexander diggings. This suggests that Acoy's trial was primarily politically motivated. It served as an expedient strategy for securing his public disgrace rather than constituting an extensive campaign on the part of the colonial administration to police illegal gambling on the diggings. This theory is supported by the actions of Hodges, who had designs on Acoy's position as the court interpreter and wanted the potentially lucrative role of liaison between the government authorities and the Chinese community. The reticence of the authorities to conduct further enquiries may have been, in part, because many of those involved in the protection of Chinese gambling houses were Europeans, some of whom were supposed to be enforcing the law.[50] This lack of action by the authorities occurred despite the imprisonment of Acoy and Hodges, and Captain Bull's severe reprimand. In this instance the keenly felt protests of innocence evident in the Acoy family memory are more than just nostalgic musings.[51]

What a close reading of Acoy's trial records reveals is that, despite benefiting from the lottery on the diggings, Acoy was tried not because of his acceptance of the li money but because he had been framed by another group within the Chinese community that wanted to replace him. In such a situation even the naked ambition of Hodges, Acoy's *bête noire*, must be reconsidered. Perhaps Hodges was a pawn in a bigger conspiracy and his vexatious claims against Acoy (central to the interpreter's imprisonment) were designed to serve not only Hodges's personal ends but also those of Acoy's opponents in the Chinese community.

The Goon Lee lottery represented a personal disaster for Acoy and culminated in his imprisonment at Ararat. But his trial and public life provide an opportunity for us to develop a better understanding of the Chinese community on the Castlemaine goldfields in terms of identities, motives and power structures.[52] What is evident from this present article is that the Castlemaine Chinese engaged with the broader community to a greater degree, and in a culturally more complex way, than has been previously acknowledged. By re-centring individuals such as James Acoy,[53] it is possible to move beyond generic representations in social histories of colonial Victoria.

Endnotes

[1] R Travers, *Australian mandarin: the life and times of Quong Tart*, Rosenberg, Dural, NSW, 2004, esp. pp. 9-11.

[2] For an indication of the prominence of the Chinese in the community see L Kong Meng, Cheok Hong Cheong and Louis Ah Mouy, *The Chinese question in Australia, 1878-79*, FF Baillière, Melbourne, 1879. A more recent discussion of migrant networks in the Chinese diaspora is provided in A McKeown, *Chinese migrant networks and cultural change: Peru, Chicago, Hawaii, 1900-1936*, University of Chicago Press, 2001.

[3] The author would like to thank the Castlemaine Historical Society staff for assisting with archival material for my research on the Mount Alexander Chinese community during the gold-rush era. Acoy's trial record is held at Public Record Office Victoria, VPRS 30/P/0, Unit 355, Melbourne Criminal Sitting, Case number 2 of 15 March 1869.

[4] K Cronin, *Colonial casualties: Chinese in early Victoria*, Melbourne University Press, 1982, p. 86.

[5] The notion of the 'liminar', an individual who passes 'from one cultural state or social status to another in the course of his ... life cycle' is discussed in V Turner, *On the edge of the bush: anthropology as experience*, University of Arizona Press, Tucson, 1985, pp. 158-61.

[6] James Acoy, Naturalisation Record, 1859, held by the Castlemaine Historical Society Inc. I am grateful to Mrs Beryl Payne, a descendant of James Acoy, for this information, received in correspondence dated 14 October 2002.

[7] Cronin, *Colonial casualties*, p. 14; EC Rolls, *Sojourners: the epic story of China's centuries-old relationship with Australia*, University of Queensland Press, St Lucia, Qld, 1992, p. 145. For a brief account of the cruel system of indentured slavery of coolie labour see F Wood, *No dogs & not many Chinese: treaty port life in China 1843-1943*, John Murray, London, 2000.

[8] Unfortunately no image of Acoy exists, although his prison record compiled in 1869 includes a physical description of an olive-skinned man with hazel eyes. His distinguishing features suggest a more colourful, apparently nautical, past. He had lost one front lower tooth, had an anchor tattoo on his left arm, and on his right arm the words 'J. A. COY' were etched. He also had a long scar on his left leg that would have served as a reminder of an earlier conflict or accident. PROV, VPRS 515/P/0, Unit 12, Prisoners' Register 1868-1870, No. 8491.

[9] *ibid.* Castlemaine researchers Ian and Aileen Hockley make a very interesting set of observations regarding Acoy's Chinese-Portuguese ancestry as well the uncertainty of his activity when not acting as the court interpreter. This file note is in the records of the Castlemaine Historical Society.

[10] Correspondence from Beryl Payne to author, and recorded in Acoy's entry in the Prisoners' Register.

[11] *Mount Alexander Mail*, 29 March 1879, unattributed obituary notice.

- [12] I Lim, *Secret societies in Singapore: featuring the William Stirling Collection*, Singapore History Museum, 1999; L Pan (ed.), *The encyclopedia of the Chinese overseas*, Archipelago Press/Landmark Books, Singapore, 1998. For a more detailed account of the Victorian experience see Cai Shaoqing, 'Analysing Chinese secret societies in Australia', paper presented at the Chinese Heritage of Australian Federation conference, Melbourne, 2000. This research was subsequently expanded upon in Cai Shaoqing, 'From mutual aid to public interest: Chinese secret societies in Australia', *Otherland*, special edition: *After the rush: regulation, participation, and Chinese communities in Australia 1860-1940*, vol. 9, 2004, pp. 133-51.
- [13] The Reverend William Young was a Eurasian of Scottish and Malaysian ancestry who was active in the Church Missionary Society. See K Cole, *The Anglican mission to the Chinese in Bendigo and Central Victoria 1854-1918*, Keith Cole Publications, Bendigo, 1994, pp. 11-12. Young's report is reproduced in facsimile in IF Maclaren, *The Chinese in Victoria: official reports & documents*, Red Rooster Press, Ascot Vale, Vic., 1985. Acoy's report is on pp. 38-9.
- [14] Marriage Certificate of James Acoy and Caroline Fischer, held by the Castlemaine Historical Society.
- [15] Acoy, Naturalisation Record.
- [16] *ibid.*
- [17] Perrott Lyon Mathieson Pty Ltd, *City of Castlemaine architectural and historical study*, Melbourne, 1979.
- [18] From correspondence with Beryl Payne.
- [19] Heritage Victoria, '5 Bowden Street Castlemaine', in *Victorian Heritage Register*, Department of Sustainability & Environment, Victorian Government, Melbourne, 2005, accessed 18 September 2006 at: <http://www.heritage.vic.gov.au/>, accessed 24 September 2006.
- [20] *Mount Alexander Mail*, 25 May 1859.
- [21] MKC Leong, 'The role of the See Yup Society in Melbourne and Victoria', unpublished paper presented at the Chinese Heritage of Australian Federation Conference, Melbourne, 2000, p. 2; Shaoqing, 'Analysing Chinese secret societies in Australia', pp. 3-5.
- [22] Cronin, *Colonial casualties*, p. 90; Rolls, *Sojourners*, p. 145.
- [23] Standish to the Minister of Justice, 24 November 1868, in PROV, VPRS 30/P, Unit 355, Melbourne Criminal Sitting, Case number 2 of 15 March 1869.
- [24] John Edward Bull was the police magistrate and resident gold warden of the Government Camp.
- [25] See the entry on Charles Hodges on the Chinese Heritage of Australian Federation website, accessed 18 September 2006.
- [26] Winch to Standish, 23 November 1868, in PROV, VPRS 30/P, Unit 355, Melbourne Criminal Sitting, Case number 2 of 15 March 1869.
- [27] *ibid.*
- [28] *Mount Alexander Mail*, 19 December 1868.
- [29] Statement of James Acoy, 8 December 1868, in VPRS 30/P/0, Unit 355, Melbourne Criminal Sitting, Case number 2 of 15 March 1869.
- [30] *ibid.*
- [31] *ibid.*
- [32] *ibid.*
- [33] Winch to Chief Commissioner of Police, 5 December 1868, in PROV, VPRS 937/P, Unit 105, Bundle 2, Item LB358. This file includes a newspaper clipping from the *Mount Alexander Mail* (undated) attached to a memorandum that was also sent to the Chief Commissioner.
- [34] *Mount Alexander Mail*, undated clipping cited above.
- [35] Dunne to Smythe, telegram, 29 December 1868, in PROV, VPRS 266/P, Unit 180, File 68/8397.
- [36] Dunne to Smythe, telegram, 30 December 1868, in PROV, VPRS 266/P, Unit 180, File 68/8418.
- [37] Heather Holst, 'Equal before the law? The Chinese in the nineteenth century Castlemaine police courts,' *Journal of Australian Colonial History*, vol. 6, 2004, pp. 126-7.
- [38] TDS Heron, Letter Book and Diary, 1855-1872, Castlemaine Historical Society Inc., VCMHS 2002/177.
- [39] Information from discussion with Mr Bob Murphy, 4 May 2003. Transcript notes in possession of the author.
- [40] Lee Ming Soon's evidence is found on p. 2 of the Investigation attached to James Acoy's Statement in PROV, VPRS 30/P, Unit 355, Melbourne Criminal Sitting, Case number 2 of 15 March 1869.
- [41] Investigation, p. 6. For a further discussion on the Qing government's administration of li-money see Tsai Jung-fang, *Hong Kong in Chinese history: community and social unrest in the British colony, 1842-1913*, Columbia University Press, New York, 1993, *passim*.
- [42] For a broader contextual discussion see J Lydon, 'Many inventions': *the Chinese in the Rocks, Sydney 1890-1930*, Department of History, Monash University, Clayton, 1999.
- [43] CF Yong, *The new gold mountain: the Chinese in Australia 1901-1921*, Raphael Arts, Adelaide, 1977, pp. 189-95.

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[44] G Serle, *The rush to be rich: a history of the colony of Victoria, 1883-1889*, Melbourne University Press, 1971, pp. 22-3, 47-8, 85-6; G Serle, 'The gold generation', *Victorian historical magazine*, vol. 41, 1970, pp. 266, 270-1.

[45] See W Bate, *Victorian gold rushes*, McPhee Gribble/Penguin, Fitzroy, Vic., 1988, pp. 59-65.

[46] R Annear, *Nothing but gold: the diggers of 1852*, Text Publishing, Melbourne, 1999, p. 313. Annear alludes to this in the title but suggests that community endured long after the formative year of 1852.

[47] A Mayne, *Hill End: an historic Australian goldfields landscape*, Melbourne University Press, 2003, p. 69.

[48] Last Will and Testament of James Acoy, 1879, in PROV, VPRS 28/P, Unit 218, Item 18/907 and PROV, VPRS 28/P2, Unit 9, Item 18/907. From his will it is clear that Acoy was a very wealthy man.

[49] See Cronin, *Colonial casualties*, p. 20; Leong, 'The role of the See Yup Society in Melbourne and Victoria', pp. 1-4.

[50] Lydon, 'Many inventions', pp. 110-12, 121-2.

[51] Correspondence with Beryl Payne.

[52] Kevin Rains makes a similar observation about this methodological approach in regard to Cooktown in far north Queensland: 'this re-centring of the individual simply implies acknowledging the plurality of society and revealing the potential for multiple realities within particular historical and socio-economic contexts'. K Rains, 'Intersections: the historical archaeology of the overseas Chinese social landscape of Cooktown, 1873-1935', paper presented at the Chinese Studies Association of Australia conference, Bendigo, 2005, p. 21.

[53] For a discussion of the re-centring of the individual, and the grounding of symbolic meanings in 'practical, situational contexts of action', see I Hodder, 'Converging traditions: the search for symbolic meanings in archaeology and geography', in *Landscape and culture: geographical and archaeological perspectives*, ed. JM Wagstaff, Basil Blackwell, Oxford, 1987, p. 144.

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Unequal Justice

Colonial Law and the Shooting of Jim Crow

Barry Patton

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Abstract

Despite the extent of frontier violence in the Port Phillip District (as Victoria was called before it became a separate colony in 1851), deaths of Aboriginal people only proceeded to full murder trials on two occasions. The first, involving three Western District settlers accused of shooting dead three women and a child in February 1842 in what became known as the Muston's Creek massacre, is somewhat better known. The second, lesser-known trial concerned three policemen charged with murdering an Aboriginal man called Jim Crow, who they had been ordered to arrest, in the Wimmera area in October 1843. Although the shooting of Jim Crow has been mentioned by other authors, there has been no detailed discussion of the events.

This essay examines the case throughout, from the issuing of arrest warrants and policing practices to prosecution and presentation of evidence. It considers how the processes of Anglo-Australian colonial law skewed a supposedly impartial legal system to favour Europeans over Aboriginal inhabitants, despite their nominal equality as British subjects. It argues that in the frontier conflict over land, the application of colonial law supported settlers' interests and posed significant obstacles for Aboriginal complaints to be heard, particularly in evidence. In so doing, the law denied Aboriginal subjects substantive legal protection, exacerbating frontier violence.

The stand-off lasted for three-quarters of an hour. The suspect stood poised with a single spear ready to throw, and held spares in his other hand. Surrounding him on four sides were three mounted policemen and a settler, guns aimed at their quarry...

Border Police troopers James Daplin, William Sparrow and Frederick Bushe had been sent to arrest Jim Crow for allegedly threatening to kill a squatter and had tracked him to the open Wimmera plain in which they now stood. Jim Crow, regarded as an Aboriginal renegade by squatters on Western Victoria's Wimmera frontier in 1844, had made it clear he would defend himself. The settler in the party, Daniel Cameron, parleyed to persuade him to lay down his spears, to no avail. From time to time, the weapon shipped in Jim Crow's spear-thrower quivered as if he were about to discharge it. Cameron had once seen him hurl a spear 150 yards with accuracy and judged he could kill a man at ninety yards; the troopers were barely fifty yards away. They were not inclined to test his skill: when Sergeant Daplin twice ordered his men to charge, twice they refused.

Daplin would wait no longer. His party had less than three hours of daylight left in the October afternoon, and they were twenty-five miles by horse from the security of the nearest station, the nearest outpost of civilisation. Unable to effect a capture without endangering the life of man or horse, he ordered his men to fire. A single shot from Trooper Sparrow's carbine hit Jim Crow in the left breast. The ball passed through his body and out near his shoulder blade. Silently, without a cry, he dropped gently to his knees, then onto his arms, and slowly onto his side. He still held his spears in his hand. Soon after, he died. His body was left where it fell.[2]

The impasse on the Wimmera plain on Saturday 19 October 1844 was not simply one between black and white men but also between two forms of law, two views of justice. Just as policemen Daplin, Sparrow and Bushe acted according to their people's laws, so Jim Crow, if the accusations against him are to be believed, had acted according to the laws of his people[3] – by asserting ownership of land and threatening punishment for those who unjustly occupied it. Colonial land law allowed Aboriginal people to be expelled from their lands, prompting them to complain of 'uncalled for, unreasonable and oppressive treatment'.[4] Frontier conflict between European settlers and Indigenous inhabitants was generally a matter of disputed land use.

The shooting of Jim Crow, however, was a one-sided affair: not only at the level of manpower and firepower used or as an account rendered by his pursuers, but also in the surrounding legal process and the eventual trial of the three troopers for murder. The Jim Crow case affords an opportunity to explore some of these unequal workings of Anglo-Australian law in the frontier conflict of the 1840s in the Port Phillip District. I will examine aspects of colonial law in the order in which they enter the case – from the role of magistrates in issuing arrest warrants, through the policing of the frontier, to the operation of the criminal courts.

Prelude: Accusations, Magistrates and Warrants

In the week before the stand-off, station overseer Daniel Cameron had fired off a volley of accusations against Jim Crow. A shepherd had been attacked by a group of Aboriginal men but not killed; a station worker's life had been verbally threatened; sheep had been stolen from the runs; the Aboriginal group were planning 'to murder all the settlers in this quarter and carry off all the stock belonging to them'.[5] Jim Crow, according to Cameron, was at the centre of it all. He was alleged to have given the command to spear the shepherd. He was accused of threatening to kill the station worker. He was said to have driven off the sheep.

Sergeant-Major Peter Bennett of the Native Police led a party of four troopers to investigate some of the claims circulating at stations on the Wimmera River, just north of the Grampians ranges. His Aboriginal troopers, known for their tracking skills, followed the tracks of the missing sheep and discovered they had merely joined another flock. He also found another report 'in a great measure to be false'.[6] A shepherd and hutkeeper reportedly speared at Ashens station, one of two stations where Cameron worked for squatters Dugald McPherson and William Taylor, had been untouched when 'four blacks had thrown some spears ... and tried to get some sheep away but did not succeed'.[7]

Cameron was unhappy with the Native Police officer's handling of the Jim Crow case: he felt that Bennett, whom he would later describe as a 'rank coward', had allowed the suspect to escape on another matter.[8] While Bennett was still investigating the accusations, Cameron urged Horatio Ellerman, the overseer whose life was allegedly threatened at the neighbouring Brighton station of Henry Darlot, to apply formally to an alternative legal authority for Jim Crow's capture. Ellerman rode about fifty miles east to the Pyrenees district to an honorary magistrate, James Allan Cameron (apparently no relation to his neighbour), who had control over a detachment of Border Police.[9] There, three days before the stand-off, he presented letters from Daniel Cameron outlining the accusations made to Bennett against Jim Crow. Ellerman also swore before the magistrate:

I Horatio Ellerman do hereby Certify that I Consider myself in danger from an aboriginal native of the name of Jim Crow who has threatened to take away my life on the first opportunity.[10]

JA Cameron then issued an arrest warrant and ordered the Border Police party under Sergeant Daplin to capture Jim Crow. His alleged offence: using threatening language.

PROV, VPRS 30/P0, unit 188, NCR 174, sworn statement of Horatio Ellerman.

Magistrates' responsibilities in mid-1840s Port Phillip extended beyond judicial duties to include the detection and prevention of crime through their control over police. They have been described as 'a combination of thief-catcher and judge'.^[11] The separation of magisterial and police powers would not begin until well into the 1850s. As a magistrate near the frontier in 1844 and with a detachment of police at his disposal, JA Cameron was a key local representative of colonial law. His decisions could, in effect, determine who and what were policed and how.^[12]

However, in matters of frontier conflict, JA Cameron's decisions were unlikely to be impartial. The Scottish former cavalry officer was himself a squatter, with a run named Decameron. His district's occasional court of petty sessions was held at the station of another settler, WH Pettitt, where during the previous twelve months Aboriginal attackers had speared a shepherd and taken sheep. Cameron had issued a warrant for Jim Crow's arrest over that spearing, too.^[13] Like many colonial magistrates, Cameron was burdened with the conflict of interest brought about by his connection to settlers in their ongoing disputes with Aboriginal people over land. The appointment of magistrates in 1840s Port Phillip replicated that of the English magistracy of the seventeenth and eighteenth centuries, with justices chosen from their district's landholding class. This also replicated the failings of the English system: a local justice, responsible for both detection and punishment of crime, would almost inevitably hold prejudices that favoured the interests of the recognised landholders (settlers) over those of Aboriginal inhabitants.^[14]

The ease with which Daniel Cameron's and Horatio Ellerman's word could initiate magisterial action and police pursuit of Jim Crow, and so enforcement of pastoralists' interests in the frontier conflict, highlights the inherent partiality of colonial law. In contrast, the Indigenous population, although theoretically equal before the law as Her Majesty's subjects, had no such ease of access to squatter-magistrates and police. By and large, they would have been ignorant of colonial law's processes for seeking the arrest of a suspected wrongdoer, and would almost certainly have been reliant on assistance from a friendly European. They would also have had to overcome suspicions of a legal system that treated them more often as accused than accusers. For these reasons, they generally took complaints to Port Phillip's Protectors of Aborigines, who held magisterial powers. Even then, however, any attempt to obtain a warrant faced the further impediment of the unacceptability of the complainant's oath: the same reasoning that prevented Aboriginal people from giving sworn witness testimony in court –

that they did not believe in a supreme being^[15] – also prohibited the sworn oath required for a warrant, as Horatio Ellerman had made. In this, the legal equality of Aboriginal subjects was considerably limited by practical realities, such as suspicion and lack of awareness, and by the cultural specificity of the law itself, such as its requirement for religious oaths.

The arrest warrant for Jim Crow was itself said to be irregular. In the court case the following year, Crown Prosecutor James Croke would insist that the warrant was issued by a magistrate 'who was not authorised so to act, not having sufficient grounds upon which to do so', and that as a consequence 'in law it was no warrant'.^[16] Croke's argument, in part, concerned whether a summons should have been issued instead of an arrest warrant. However, as trial judge Richard Therry noted, what was the magistrate to do: issue a summons against 'a savage of the woods unable to read?'.^[17] The judge's observation – that Aboriginal suspects had to be arrested rather than summonsed to ensure their attendance in court – reveals a further limit to equal application of colonial law: Aboriginal people had a different language, culture and unfixed abode. Further, issuing a warrant empowered troopers with the potential to resort to lethal – and legal – force not available when serving a summons. Croke noted in the trial that the troopers could legally fire only with 'a valid authority' (a warrant) or in self-defence. Therry also remarked that 'the law was, that a party being authorised to arrest, and the party resisted, the arrestor was authorised in opposing force to force'.^[18] A white settler served with a summons for allegedly using threatening language would not be shot for noncompliance; an Aboriginal suspect such as Jim Crow, accused of the same minor offence and 'resisting a warrant the consequences of which [he] did not understand',^[19] could be. Issuing arrest warrants for Aboriginal people was common practice.

Pursuit: Police and Policing

Two police forces pursued Jim Crow. The Border Police and Native Police – two of the five main police forces in Port Phillip District in the mid-1840s – operated on the frontier of settlement. Both were armed and mounted corps, their mobility making them well suited to policing rural areas. The Native Police (1837-8, 1838-9, 1842-53) were Aboriginal troopers under European officers. The Border Police (1839-46) were, until 1845, 'government men' – well-conducted convicts and former convicts, many of them former soldiers transported for military offences – which has raised doubts about their capability and honesty.

Unpaid and working only for rations, this relatively cheap force suggests something of the attitude of colonial authorities to frontier policing. They were controlled by the Commissioners of Crown Lands, who also had such bureaucratic duties as collecting licence fees, assessing land and stock for tax purposes, and settling boundary disputes. The two forces frequently operated under the orders of local magistrates. An important function of both was to minimise frontier violence, yet both on occasion ended up in bloody conflict with Aboriginal groups and individuals.[20]



William Strutt, Aboriginal troopers, Melbourne police, with English corporal, pencil and watercolour, 1850, in Victoria the Golden: scenes, sketches and jottings from nature, 1850-1862. Reproduced with the permission of the Parliamentary Library, Parliament of Victoria

In the hunt for Jim Crow, however, the two used dissimilar policing methods. At this time Sergeant Bennett of the Native Police had been specifically ordered to take a nonviolent approach in Aboriginal cases. He reported after Jim Crow's death:

The party under my charge had not discharged a single shot, as having received my instructions not to use any coercive [sic] measures with the natives excepting in extreme danger.[21]

He had followed these instructions when he had tracked down the suspect about a week earlier. Jim Crow was wanted on an earlier warrant for allegedly stealing sugar; Bennett had found his people's camp but he was not there. When Bennett returned later and Jim Crow fled, the policeman chose not to risk confrontation with a chase.[22] This nonviolent and discretionary policing, under instructions from superiors remote from the frontier, contrasts markedly with Daplin's strict pursuit of an arrest, and willingness to use violence with fatal results, under orders from a local magistrate. However, Bennett's failure to arrest infuriated settlers

such as Daniel Cameron, leading to the approach to the magistrate and ultimately to the fatal Border Police pursuit.[23]

With few men and wide territory to police, troopers were frequently 'one move behind the play' in frontier conflict. [24] The Border Police's Western Port detachment, which also covered the Wimmera, comprised barely a dozen men at the end of 1844 to patrol many thousands of square kilometres.[25] In searching for Jim Crow, Daplin and his men were almost a day behind a European party in pursuit of the suspect's group. They overtook the settlers at a campsite that they shared with Bennett's Native Police. Daplin's patrol was joined by Daniel Cameron to provide local knowledge and identify Jim Crow should they find him.[26] This joint hunt with settlers suggests police partiality and conflict of interest, similar to that of the magistrates, brought about by their relations with settlers.[27] It also suggests an alliance for mutual benefit, if not shared aims. For the troopers, civilians augmented their manpower and intelligence on likely Aboriginal numbers, locations and movements. It also put them in effective command of what might otherwise have been a punitive expedition by squatters, and so helped to fulfil their aim of minimising frontier conflict. For the settlers, troopers increased numbers, firepower and the chances of reducing, by arrest or death, Aboriginal opposition to white settlement. Police command also gave their party the legitimacy of a state agency: any collision would have a degree of official sanction.

From an Aboriginal perspective, however, the police were not a welcome body defending their interests. The appearance of troopers working alongside settlers would have affirmed the view that police were not impartial and that troopers and civilians were merely different aspects of the same European invasion and threat. Jim Crow voiced such an opinion of settlers and police as united opponents when they caught up with him on the Wimmera plain, twenty-fives miles north of McPherson's and Taylor's Longernong station, telling the troopers to go or he 'would kill them all and all the white settlers'. [28]

An incident on the day of the stand-off would have reinforced that belief. As they searched for Jim Crow, Daplin's party had encountered a camp in thick scrub. It was almost certainly Jim Crow's people. The pursuers separated and approached from different directions, in a military-style pincer movement. As they moved in, 'the spears flew in all directions' and Daplin and Sparrow returned fire, killing an Aboriginal man named Charlie.[29]

The troopers' intentions may have been hostile, precautionary or entirely peaceful, although it was well known on the frontier that to approach an Aboriginal camp in such a fashion would incite violence.

Now it cannot be denied that even, if a peaceable Tribe is surprised that Blacks seize their spears ... Major Mitchell and every other writer have cautioned parties against hastily making a native Encampment ... a body of Mounted Men Galloping into an Encampment, however peaceable they may have been before, is enough of itself to excite them ...[30]

Those camped in the scrub certainly interpreted the troopers' actions as a threat. The fatal outcome no doubt confirmed their interpretation and their view of police hostility and partiality.

The hunt for Jim Crow illustrates some of the impossibilities of equitable frontier policing using available models. The Native Police's nonviolent approach at this time to Aboriginal relations, comparable with the civil policing philosophy of London's constabulary, angered settlers and led indirectly to the hunt by Daplin's troopers. The Border Police's militaristic approach was supported by the settlers but caused Aboriginal fatalities. Like the paramilitary Irish Constabulary on which both forces were modelled, the Border Police enforced a law to the benefit of recognised landed interests. Indeed, the corps was an arm of the Commissioners of Crown Lands, whose name acknowledged land ownership residing in a single sovereignty and implied denial of Indigenous law and land ownership.[31] Nonviolent and militaristic policing alienated either European or Aboriginal inhabitants along the Wimmera frontier, and neither method prevented violence or protected Indigenous subjects.



This map shows Brighton run and Ashens run, two of the stations mentioned in the article. PROV, VPRS 6760/P0, Unit 1, Item 5, Robert Brough Smythe.

Prosecution: Indictments, Courts and Juries

In an attempt to stop frontier violence, Governor George Gipps in Sydney, under instructions from London, had ordered that inquiries be held into all cases of Aboriginal deaths from collisions with Europeans. The Commissioners of Crown Lands and their Border Police had long-standing instructions to take witness depositions for such inquiries and for any prosecution that might follow.[32] In the Jim Crow case, with police involved in the death, the task of collecting depositions fell to magistrate JA Cameron, who had issued the arrest warrant. These he forwarded to the head of government in Port Phillip, Superintendent Charles La Trobe, reaching Melbourne about a fortnight after the shooting. The Chief Protector of Aborigines, George Augustus Robinson, learned of events before La Trobe could inform him. Details were later forwarded to the Crown Prosecutor.[33]

The success of this system of official scrutiny and legal intervention as a means for protecting Aboriginal lives depended on the success of prosecution and sentencing as a deterrent to future frontier violence. However, the system was not without its faults. The Border Police repeatedly failed to take depositions following collisions, and were later upbraided for their laxity.[34] In the Jim Crow case, the act of a magistrate both ordering an arrest and interviewing those involved in the subsequent deaths demonstrates a conflict between the unseparated frontier powers of police and judiciary. JA Cameron, in his letter to La Trobe accompanying the statements, even went so far as to opine that the police were 'obliged in self-defence to shoot two of the Natives'. Significantly, Aboriginal witnesses could not supply statements under oath, so their version of events was excluded from the depositions and the legal process. Instead, representation of Aboriginal legal interests was dependent on sympathetic European intermediaries such as the Protectors of Aborigines. Indeed, the existence and function of the Protectors acknowledged implicitly that the theoretical equality of Aboriginal subjects was not matched by the realities of practice.

After eight months, word of the shooting became public in Melbourne. Press reaction revealed staunch support for settlers on the frontier, hostility to the Aboriginal inhabitants and an assumption of innocence or justification on the part of the police. The Indigenous people of the Wimmera were regarded as 'excessively troublesome customers' and when police were sent in 'encounters naturally followed'.[35] The Protectors received particular criticism for representing Aboriginal interests.

It is certainly very singular how indefatigable the Protectors generally are in cases against the natives, and how negligent and fair and easy they show themselves when a Koort Kirrup or any other sable murderer happens to be arraigned before a British tribunal.[36]

The 'sable murderer' Koort Kirrup, who denied the allegation that he had killed two Western District settlers, was presumed guilty before he was tried.[37] Policemen who shot dead two Aboriginal men were afforded a greater presumption of innocence.

The policemen appeared before the Supreme Court in Melbourne on Wednesday 20 August 1845 – Sparrow, who fired the fatal shot, on a charge of murdering Jim Crow, Daplin and Bushe for 'counselling, aiding, assisting and abetting' in the alleged murder. The main issues considered were the legality of police actions when executing an invalid warrant and whether the threat posed by Jim Crow justified shooting him in self-defence.

In determining this the court relied overwhelmingly on the testimony of Daniel Cameron, whose initial claims of Jim Crow's depredations had been cast into doubt, who had been central to instigating the police pursuit and who had participated in the hunt and fatal stand-off. He was far from an impartial witness. The only other witness called was magistrate JA Cameron, who gave evidence about his issuing of the warrant. The law forbade sworn evidence from Aboriginal witnesses such as Jacky Jacky, one of those in the camp where 'the spears flew in all directions' and where the man named Charlie was killed. After the camp skirmish, Daniel Cameron had induced Jacky Jacky to help the police party find Jim Crow and, according to Cameron's evidence, 'the guide' was present during the fatal stand-off.[38] Yet Jacky Jacky, a witness to both shootings, gave neither deposition nor courtroom testimony. He might have confirmed or contested Cameron's account and elaborated on his euphemistic three-word courtroom description of the fatal scrub skirmish – 'the camp dispersed'.[39]

Other courtroom discussion considered the place of the Indigenous population as theoretically equal subjects under Anglo-Australian law. In his opening address to the jury, prosecutor James Croke said 'the aboriginals were as much entitled to protection as any other portion of her Majesty's subjects, and that the homicide of an aboriginal must be prosecuted the same as the homicide of any other person'. However, Judge Therry noted:

In the application of the British law to the aborigines, there was a great difficulty ... in consequence of the discrepancies in the habits and manners of the savage man compared with those in civilized life. Although they were entitled to the same law as ourselves they were not

to be encouraged by any false notions, or by any undue regard or facility, any more than ourselves, and if one of the jury had been placed in the position of the black, and under the circumstances if the policemen were justified in shooting him, they were equally justified in shooting the black.

Therry's argument of a situation analogous with a white suspect sought by police assumes an equal understanding of the workings of colonial law and of the legal processes following surrender. However, the standing counsel for the Aborigines, Redmond Barry, argued that the troopers had not told Jim Crow what they required of him. Nonetheless, the judge's opinion to the jury was that 'as much notice had been given to a person of that kind as could be given', and that if the police had not given actual notification 'there was at least an implied notification, and that was sufficient'.



John Botterill, Portrait of Sir Redmond Barry, K.C.M.G. [picture], c. 1853 – c. 1880, painting: oil on canvas. La Trobe Picture Collection, State Library of Victoria.

Therry's argument also indicated that Aboriginal subjects of the Crown were entitled to the protection of British law and had to comply with British law. This suggested that Jim Crow and other Aboriginal people understood and accepted the implicit social contract between state and subject which afforded protection in exchange for submission to the law.

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Jim Crow's actions, however, suggest the contrary: he did not regard himself as part of the encroaching white society that he resisted, threatening to kill 'all the white settlers', and he did not feel himself bound by its laws or legal agents. Ultimately, he did not get its protection either. He was in effect a subject in name only, by foreign dictate, conferred without his consent through the Crown's claim of sovereignty over the lands of his people and others.

The individual beliefs and opinions of the jury members were randomised by alphabetical selection, but collectively they were white men who satisfied the property qualification for jury duty. Of the twelve jurors named in press reports of the trial, two were farmers but most were small businessmen and/or skilled tradesmen, with occupations ranging from publican and grocer to builder, upholsterer and glazier.[40] Most lived in Melbourne, but the ten-year-old town was not far removed in time from frontier settlement. As a group, they were likely to represent a similar social class to the Wimmera settlers, with perhaps similar perspectives. Also, press coverage of the impending case had promoted assumptions of police innocence and Aboriginal depredation and violence,[41] which may have reflected or informed public opinion about frontier conflict. Overall, the jurors might well have been expected to sympathise with policemen who acted in defence of settlers' interests.

Their verdict was swift. Without retiring, they acquitted the three defendants of murdering Jim Crow.[42] The prosecution then dropped charges relating to the killing of Charlie. The court never explored the dispersal of the camp where Charlie died.

Jim Crow's death was one of only two cases in Port Phillip in the 1840s in which whites faced a complete murder trial over Aboriginal deaths. The Muston's Creek massacre produced the other trial – and that through the inducement of a hefty reward of £100, or for convicts a pardon and passage to England, for Queen's evidence from 'any parties who were not principals in the first degree, or did not actually fire the shots causing death'. [43] The difficulty of securing admissible evidence, when so often the only non-Aboriginal witnesses to killings were the alleged offenders and their colleagues, had previously led to abandoned prosecutions and lesser charges, if charges could be laid at all. In 1837 the murder trial of convict shepherd John Whitehead, accused of shooting an Indigenous man tied to a tree on a station near Geelong, collapsed as it opened because the witnesses (and possible accomplices) had fled to Van Diemen's Land.[44] In 1839 murder charges against shepherds John Davis and Abraham Braybrook were dropped for insufficient evidence that they had shot two

Aboriginal men near Mount Mitchell, although they were prosecuted for 'the misdemeanour of burning the bodies before any legal investigation took place'.[45] In 1841 squatter George Bolden was acquitted of shooting with intent to kill an Indigenous man on his Western District property; the murder charge on which he had been committed, based on information from an Aboriginal witness, was dropped before trial.[46]

No Europeans in Port Phillip were found guilty of murdering Aboriginal people in this period. According to Robinson, Chief Protector of Aborigines, not until 1847 was a settler convicted for violence against an Indigenous person, receiving a bare two-month jail sentence for the shooting. In the same period, five Aboriginal men were hanged and four transported, two of them for life, for attacks on Europeans.[47]

The acquittal of Daplin, Sparrow and Bushe in what he called a farce of a trial[48] prompted Robinson to report (not for the first time, and not for the last) on the human cost of forbidding Aboriginal testimony and of the 'unequal justice' that Aboriginal people had complained of. Settlers knew that the law's rejection of Aboriginal evidence allowed them, quite literally, to get away with murder. He wrote that 'there is reason to fear numbers of natives have been shot and others poisoned by the wicked disposed of the whites from the known fact of the natives being incapacitated to give evidence'.[49] Months earlier a squatter in the Wimmera had told him that settlers there opposed legalising Aboriginal testimony 'because so many are implicated in killing Natives'.[50] Legislation to accept Aboriginal evidence, Robinson now wrote, was 'not only requisite as a measure of justice but essentially necessary for the preservation of a race'.[51] In the year Jim Crow died, however, the squatter-dominated New South Wales legislature had rejected just such a bill, fearful of a repeat of the hangings of whites convicted over the 1838 Myall Creek massacre.[52] Similar bills also failed to win London's or Sydney's approval in 1839 and 1849.[53]

Conclusion

The Jim Crow case demonstrates a pervasive inequity in colonial law in 1840s Port Phillip. For European settlers, the rule of law worked in their favour. They could seek protection of life and property through the magistracy and/or frontier police forces. If one did not satisfactorily meet their needs, another might. The agencies of the law helped to reinforce their occupation of land and legitimise their claim to it. The military style of frontier policing was not directed against them. Prosecutions of settlers for offences against Aboriginal inhabitants were few indeed, and convictions rarer still.

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The rule of law, however, gave little protection and few practical rights to the Indigenous population. Nonviolent, discretionary policing could be nullified by settlers' superior legal access to squatter-magistrates and police. Aboriginal people might be subject to force under warrant, whereas others might be served with a summons. As complainants, they were reliant for practical reasons on European intermediaries. As witnesses, their evidence for culturally determined legal reasons was unacceptable. Instead, accounts from Europeans dominated the legal process, with judgement delivered by those likely to sympathise with settlers and feel adversely towards them. That two types of policing were employed in the hunt for Jim Crow illustrates that frontier police were not singularly or always hostile to Aboriginal people. That those who shot Jim Crow were prosecuted reminds us that the operation of colonial law was not uniformly and monolithically contrary to the protection of Aboriginal people and their interests. However, at each procedural stage, simple prejudice or systemic partiality operated. At each stage, Aboriginal subjects were denied in practice the full legal equality that they held in theory.

The ramifications of colonial criminal law for Indigenous people were felt most intensely outside the courtroom and in such places as the Wimmera plains. Acceptance of Aboriginal evidence was not simply a matter of legal process but of protection of human life. The imperial claim that Aboriginal people were subjects was expressed less by a prosecutor's avowal of equal protection than by the demand in police practice that they submit to rules they did not understand or consent to.

Endnotes

[1] Jim Crow's shooting has been discussed in J O'Sullivan, *Mounted police of Victoria and Tasmania*, Adelaide, Rigby, 1980, pp. 32-3; ID Clark, *Aboriginal languages and clans: an historical atlas of Western and Central Victoria, 1800-1900*, Department of Geography and Environmental Science, Monash University, 1990, pp. 241, 244; ID Clark, *Scars in the landscape: a register of massacre sites in Western Victoria, 1803-1859*, Aboriginal Studies Press, Canberra, 1995), p. 163; and, with a brief summary of the trial, in M Cannon, *Who killed the Koories?*, William Heinemann Australia, Port Melbourne, 1990, pp. 148-50.

[2] Description of event taken from James Daplin, statement No. 3, 24 October 1844, PROV, VPRS 30/P, Unit 188, NCR 174; *Port Phillip Patriot*, 21 August 1845; and *Port Phillip Herald*, 21 August 1845. The shooting occurred in the region of present-day Warracknabeal, Western Victoria, although the precise location is unknown. I use the more common spellings of Jim Crow, Daplin and Bushe rather than the variants Jem Crow, Duplin and Bush.

[3] Jim Crow was most probably from one of the eastern Jardwadjali clans, judging from the location of the alleged offences. However, he was also accused of depredations in the Pyrenees region in Djadja wurrung country, and his shooting may have been in neighbouring Wergaia country. As there may therefore be some small doubt as to which country and which group he belonged to, I have referred to him nonspecifically as Aboriginal. Clark, however, identifies Jim Crow as coming from a Jardwadjali clan and dying in Jardwadjali country: see ID Clark, *Aboriginal languages and clans*, pp. 241, 244 and *Scars in the landscape*, p. 163.

[4] George Augustus Robinson, Chief Protector of Aborigines, 1845 Annual Report, PROV, VPRS 4399, Unit 1 (microfilm copy VPRS 4467, reel 3).

[5] Daniel Cameron, statements No. 1 and 2, PROV, VPRS 30/P, Unit 188, NCR 174.

[6] Peter Roberts Bennett, statement, PROV, VPRS 30/P, Unit 188, NCR 174.

[7] *ibid.*

[8] D Cameron, statement No. 1; ID Clark (ed), *The journals of George Augustus Robinson, Chief Protector, Port Phillip Aboriginal Protectorate*, vol. 4, 1 January 1844 – 24 October 1845, 2nd edn, Heritage Matters, Melbourne, 2000, p. 245 (4 April 1845).

[9] J Allan Cameron to CJ La Trobe, 24 October 1844, PROV, VPRS 30/P, Unit 188, NCR 174; Bennett, statement, *op. cit.*

[10] J Horatio Ellerman, sworn statement, 16 October 1844, PROV, VPRS 30/P, Unit 188, NCR 174.

[11] D Palmer, 'Magistrates, police and power in Port Phillip', in *A nation of rogues? Crime, law and punishment in colonial Australia*, ed. D Philips & S Davies, Melbourne University Press, 1994, p. 94.

[12] *ibid.*, pp. 78, 94.

[13] Robinson, *Journals*, vol. 4, p. 243 (31 March 1845); JJ Mouritz, *The Port Phillip almanac and directory for 1847*, Melbourne, W Clarke, 1847, pp. 33, 68, 125; Separation Association, *The Port Phillip Separation merchants' and settlers' almanac, diary and directory for Melbourne and the District of Port Phillip [for] 1846*, W Clarke, Melbourne, 1845, pp. 113, 126; Edward Parker, Assistant Protector of Aborigines, letter, 1 December 1843, PROV, VPRS 11, Unit 5, File 210 (microfilm copy VPRS 4467, reel 1); J Allan Cameron, letter, 24 October 1844.

[14] M Finnane, *Police and government: histories of policing in Australia*, Melbourne University Press, 1994, pp. 25-6; D Hay, 'Property, authority and the criminal law', in *Albion's fatal tree: crime and society in eighteenth-century England*, ed. D Hay et al., Allen Lane, London, 1975, pp. 34-5, 38-9.

[15] B Kercher, *An unruly child: a history of law in Australia*, Allen & Unwin, St Leonards, New South Wales, 1995, pp. 15-17.

[16] *Port Phillip Patriot*, 21 August 1845.

- [17] *ibid.*
- [18] *ibid.*
- [19] GA Robinson, Chief Protector of Aborigines, 1844 Annual Report, PROV, VPRS 19/P, Unit 68, File 45/249.
- [20] O'Sullivan, *Mounted police of Victoria and Tasmania*, pp. 22-6, 36-7; R Haldane, *The people's force: a history of the Victoria Police*, Melbourne University Press, 1986, pp. 5, 12, 16-17; Palmer, 'Magistrates, police and power in Port Phillip', pp. 88-90; M H Fels, *Good men and true: the Aboriginal Police of the Port Phillip District 1837-1853*, Melbourne University Press, 1988, pp. 3, 111-14, 155; M Sturma, 'Policing the criminal frontier in mid-nineteenth century Australia, Britain and America', in *Policing in Australia: historical perspectives*, ed. M Finnane, University of New South Wales Press, Sydney, 1987, pp. 23-6.
- [21] Bennett, statement, *op. cit.*
- [22] *ibid.*
- [23] D Cameron, statement No. 1, *op. cit.*
- [24] Fels, *Good men and true*, p. 156.
- [25] CJ La Trobe to FA Powlett, 26 March 1845, PROV, VPRS 6909, Unit 1, File 45/355.
- [26] Daplin, statement No. 3, *op. cit.*
- [27] Finnane, *Police and government*, p. 26.
- [28] *Port Phillip Patriot*, 21 August 1845.
- [29] Daplin, statement No. 3, *op. cit.*
- [30] William Thomas, Assistant Protector of Aborigines, 1 December 1843, journal of proceedings, PROV, VPRS 4410, Unit 3, File 78 (microfilm copy VPRS 4467, reel 2).
- [31] Finnane, *Police and government*, pp. 11-13; J McQuilton, 'Police in rural Victoria: a regional example', in *Policing in Australia*, pp. 36-7; Palmer, 'Magistrates, police and power in Port Phillip', p. 75.
- [32] *New South Wales Government Gazette*, 22 May 1839, p. 606; Colonial Secretary, circular, 7 November 1846, PROV, VPRS 6909/P/1, Unit 1, unnumbered item.
- [33] J Allan Cameron, letter, 24 October 1844; Robinson, *Journals*, vol. 4, pp. 222-3 (4 and 5 November 1844).
- [34] Colonial Secretary, circular, 7 November 1846.
- [35] 'Alleged murder of Aborigines', *Port Phillip Herald*, 5 June 1845.
- [36] *ibid.*
- [37] After many court appearances over almost fifteen months, Koort Kirrup was discharged without trial in March 1846 on the grounds that he was unable to comprehend the court process. See *Port Phillip Herald*, 17 March 1846.
- [38] Cameron, undated statement, PROV, VPRS 30/P, Unit 188, NCR 174; *Port Phillip Herald*, 21 August 1845; *Port Phillip Patriot*, 21 August 1845.
- [39] *Port Phillip Patriot*, 21 August 1845. Further quotations from the court proceedings are also taken from this source. For a discussion of the violence surrounding 'dispersing a camp' see PROV, online exhibition *Tracking the Native Police*, Image 19 http://www.prov.vic.gov.au/nativepolice/westerndist_methods.html, accessed 24 September 2006.
- [40] Mouritz, *Port Phillip almanac and directory for 1847*, pp. 132-8; Separation Association, *The Port Phillip Separation merchants' and settlers' almanac, diary and Melbourne directory for 1845*, W Clarke, Melbourne, 1844, pp. 75-6.
- [41] 'Alleged murder of Aborigines', *Port Phillip Herald*, 5 June 1845.
- [42] *Port Phillip Patriot*, 21 August 1845; *Port Phillip Herald*, 21 August 1845.
- [43] CJ La Trobe to Colonial Secretary, 3 September 1842, PROV, VPRS 32, Unit 1, File 42/1189. The Muston's Creek massacre and subsequent trial have been dealt with in some detail in I MacFarlane, *1842: the public executions at Melbourne*, Victorian Government Printing Office, Melbourne, 1984, pp. 43-6 and in S Davies, 'Aborigines, murder and the criminal law in early Port Phillip, 1841-1851', *Historical studies*, vol. 22, April 1987, pp. 313-35, esp. 320-5. The Muston's Creek trial brief can be found at PROV, VPRS 30/P, Unit 186, NCR 81.
- [44] William Lonsdale to Attorney-General, 25 November 1836 and 29 January 1837, PROV, VPRS 1, Unit 1 (microfilm copy VPRS 2140, reel 1). Witness depositions from Frederick Taylor, James Flitt and Edward Freeston appear in the Melbourne Court criminal record book on 25 October, 3 November and 19 December 1836: PROV, VPRS 2136, reel 1.
- [45] Lonsdale to Attorney-General, 2 July 1839, PROV, VPRS 1, Unit 1 (microfilm copy VPRS 2140, reel 1).
- [46] *Port Phillip Gazette*, 4 December 1841.
- [47] Robinson, 1847 Annual Report, in *The Papers of George Augustus Robinson, Chief Protector, Port Phillip Aboriginal Protectorate*, vol. 4, ed. ID Clark, Heritage Matters, Ballarat, 2001, p. 128. Robinson gave the gallows tally as 'three aboriginal natives of "Victoria"', which did not include the hangings of Tasmanians Bob and Jack in 1842. Cf. Supreme Court Criminal Record Book, 20 December 1841, 19 July 1842 and 25 February 1845, PROV, VPRS 78, Unit 1 (microfilm copy VPRS 5136).
- [48] Robinson, *Journals*, vol. 4, p. 297 (20 August 1845).
- [49] 1845 Annual Report, *op. cit.*
- [50] Robinson, *Journals*, vol. 4, p. 248 (5 April 1845).
- [51] 1845 Annual Report.

[52] In November 1838, eleven men were tried for murder over the killing of twenty-eight Aboriginal people at Myall Creek, New South Wales. All were acquitted, but seven were then controversially tried again and convicted on indictments not brought in the first trial. Their hanging caused an uproar among the settlers. For an interesting contemporary account, see George Gipps, December 1838, British Parliamentary Papers 1839, cited in H Reynolds, *Dispossession: black Australians and white invaders*, Allen & Unwin, Sydney, 1989, pp. 190–1.

[53] Kercher, *An unruly child*, pp. 16–17; AC Castles, *An Australian legal history*, The Law Book Company, Sydney, 1982, p. 534.

Forum articles



Researching a Cricket Book

Dr John Anthony Leckey

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Abstract

This article presents the process of researching a book-length biography on Victorian cricketer great Bill Ponsford using primary sources. In particular, the article discusses some of the useful research pathways that are available using PROV records and other collections in preparing such a biography.

The market for cricket books is large and growing in cricket-playing countries. Many new titles are written and sold each year but there is also a continuing demand for second-hand books, of which *Cricket Crisis* (Cassell, London, 1946) by JH Fingleton is an example. Several specialist antiquarian bookshops service the market, which includes a substantial collectors' component. Publishers like cricket books because of the established sales pattern, especially if the marketing of the book can be associated with an event like a test tour.

Having written a number of commissioned business biographies, I was encouraged (nagged) by a cricket fan to research and write a biography of a famous test cricketer of the 1920s and 1930s, Bill Ponsford, who was my friend's neighbour for many years. Eventually I approached the Ponsford family, who retain quite good records, although no correspondence, and the Melbourne Cricket Club, where Ponsford worked for thirty-seven years. The result was that both parties were supportive and a former publisher was pleased to undertake the production.

Most cricket books are about matches, scores, runs and balls. Already a respected book had been written about Ponsford's playing career (Marc Fiddian, *Ponsford*

and Woodfull: a premier partnership, Five Mile Press, 1988). My proposal was to take the statistical details as read and write a book about Ponsford as an individual, constructed along the lines of my other biographies. This would involve research into the forebears of the family and their occupations, their migration to Australia and settlement in their new country. It would mean searching for details of their marriages, births and deaths and their housing and schooling. It would also mean researching details of Ponsford's employers, which were in turn The State Savings Bank of Victoria, The Herald and Weekly Times and the Melbourne Cricket Club.

Little was known of the Ponsford forebears except that Bill's father, William Ponsford, worked in the postal service in Melbourne and that his grandfather, also William, married in Bendigo, having migrated from Devon in England in 1862. As usual in family research, the first port of call was Public Record Office Victoria in North Melbourne. Using the birth, death and marriage indexes on the PROV reading room computers I tracked down the relevant dates for each generation of Ponsford forebears. This enabled me to locate the actual certificates of birth, death and marriage online at the Registry of Births, Deaths and Marriages website (which can be accessed through <http://online.justice.vic.gov.au/servlet/bdm-home>) and to print out my own copies at home. As a result I gained very valuable information on parentage, causes of death, places of origin, spouses, and names and ages of children. From the shipping records at PROV I found the vessel on which the first Ponsford arrived in Australia, the size of the ship, its captain, the length of the voyage and the names and occupations of Ponsford's fellow passengers, most of whom were optimistic miners on their way to the goldfields in central Victoria.

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Further details of the Ponsford individuals were gained from the City of Melbourne Citizen Lists and/or Citizen Rolls (VPRS 4029) and Rate Books (VPRS 5708), which revealed information on residential dimensions, rates paid and names of neighbours. Wills and probate records found in VPRS 7591 and VPRS 28 respectively provided data on real property and personal assets and names of executors. The well-selected collection of reference books and history classics in the PROV North Melbourne reading room was also helpful. In my case, Henry Gyles Turner's *The history of the colony of Victoria* (Longman's, London, 1904) and Geoffrey Serle's *The rush to be rich: a history of the colony of Victoria, 1883-1889* (Melbourne University Press, 1971) provided useful background material about the goldrush period.

Adding to the PROV information were the important *Sands and McDougall* postal directories, located at the Baillieu Library and elsewhere. That careful detective work has to be followed is illustrated by the Ponsford study. Several William Ponsfords appeared in the directories between 1874 and 1900, including a most promising entry for the years 1886 to 1894 – a postmaster at Heidelberg Road, Alphington. Cognisant that Bill's father worked in the postal service and aware that sons tended to follow in their fathers' trades, it seemed likely that I had located the residence of Bill's grandfather, or at least his great-uncle. Other Ponsfords appeared in the directory as butcher, grocer and van man (carrier). From the rate books and death and probate records at PROV, however, it turned out that the postmaster hailed from Essex rather than Devon and that his descendants were unrelated to our Ponsfords. It also transpired that the van proprietor was Bill's grandfather, who had invested in a carrying business running between the goldfields at Bendigo and Carlton North. Previously, he had spent over twenty years working underground in the quartz gold mines. His family had arrived in Melbourne in 1888, the peak year of the land boom and had purchased one of the thousands of boom-period terrace houses erected for workers' families. The draft horse was stabled at the rear of the property. The van proprietor secured his son William (Bill's father) a steady job at fourteen by having him employed as a telegraph delivery boy at the Carlton post office at a wage of £2 per month. This is the equivalent of \$199 in 2004 values (the latest available).

Tracing William's postal career was more straightforward than I expected when Australia Post's historian advised that the positions and salaries of all postal employees (and other public servants) were published every year in the Commonwealth Government Gazette. Worthwhile details of the workings of the

early postal service were found in the reports of a royal commission of 1908-10, published in the Commonwealth Parliamentary papers. From telegraph boy, William progressed steadily through the service to letter carrier (postman), porter, letter sorter and supervisor of letter carriers.

Researching the employment records of the next generation should have been more straightforward. But Bill Ponsford's career provides a good example of the frustrations an historian can encounter. Having passed his banker's exams at the age of fifteen, young Bill joined the State Savings Bank of Victoria as an office boy in 1916. He enjoyed his ten years with the bank and the bank was very proud of their record-breaking clerk, presenting him with a gold watch and chain when he established a new world-record batting score of 429 in 1922-23. Bill left the bank in 1927 when, turning down a lucrative offer from an English cricket club, he was 'saved' for Australian cricket by a journalistic position on the *Herald*. Seeking his employment records, I found that when the bank (then named the State Bank of Victoria) collapsed in the 1980s and was absorbed into the Commonwealth Bank in 1991, the old records were supposed ultimately to have been passed over to PROV. Some old employment records *are* in PROV custody, but unfortunately, the Ponsford details are not among them.

Bill became a valuable journalist for the *Herald* and the public throughout Australia read his columns with pleasure, especially as at the same time he was continuing to make big scores in first-class cricket. During important matches Bill would telephone his special comments back to the paper during breaks for lunch and tea. Quite often he was headline news himself and his achievements were reported on the front page, no doubt helping to boost newspaper sales. A prime example occurred in the 1928 test at Brisbane, when the fearsome English fast bowler, Harold Larwood, broke Ponsford's little finger with a particularly fast delivery. King George V was ailing seriously at the time but Ponsford's little finger brought the banner headlines, above news of the king's condition. Next day, an X-ray photograph of the finger appeared on the top of the front page!

When I approached the *Herald* and *Weekly Times* about its 1920s employment records, I found that the company had discarded them. However, through assiduous reading through years of old *Heralds* on microfilm at the State Library of Victoria, I was able to reconstruct the history of Bill's five years of employment (1926-31) because the newspaper gave plenty of publicity to their young star recruit.



Statue of Bill Ponsford located outside the new Ponsford Stand at the Melbourne Cricket Ground. Photograph courtesy of John Leckey.

Despite this, Bill did not really enjoy being a journalist. When his contract expired in 1932, he resisted the personal entreaties of the head of the *Herald*, Keith Murdoch (later Sir Keith), and joined the Melbourne Cricket Club in the office under Secretary Hugh Trumble. His main duties included administering the vast club membership, arranging cricket practice and matches for the members, and managing the casual workers who manned the turnstiles and gates on test and football match days at the Melbourne Cricket Ground. He retired from the job in 1969. In recognition of his service to the MCC and cricket, the Ponsford stand was named in his honour. The MCC's employment records are apparently quite sound, but again there is a catch. During the demolition of the old members' stand and its replacement in time for the Commonwealth Games in 2006, the archives were boxed up and packed away in a warehouse and will not be available for many months.

The Best Time of their Lives

Researching the History of Prahran Technical School

Dr Judith Buckrich

'The Best Time of their Lives: Researching the History of Prahran Technical School', *Provenance: The Journal of Public Record Office Victoria*, issue no. 5, 2006. ISSN 1832-2522. Copyright © Judith Buckrich.

Dr Judith Buckrich was born in Budapest, Hungary and emigrated to Australia with her parents in 1958. She completed her PhD thesis on the life of the science-fiction writer George Turner at the University of Melbourne and is now an Honorary Research Fellow in that University's Cultural Heritage Unit. Judith has written commissioned histories on the Royal Victorian Institute for the Blind, Port Melbourne, St Kilda Road, Collins Street, and the Montefiore Homes, and is currently researching the history of Prahran Technical School for the Prahran Mechanics' Institute, to be published as *Design for living: a history of Prahran Tech* in 2007. In 2005 she curated an exhibition 'History: Community: Identity: Showcasing Melbourne's Diversity' for the Royal Historical Society of Victoria.

Abstract

The history of Prahran Technical School is a remarkable story. Created by the Prahran Mechanics' Institute, the 'Tech' opened in High Street in 1915. With both junior and senior sections, a boys' school and later a girls' school, it survived for fifty years with barely sufficient funding. Art had always featured as a major stream of study, however, and in the 1960s it became Melbourne's most innovative art school. In this paper the author shares her experiences of gathering her material and shaping her research.

The research for this history began in the most ordinary way – by looking at the minute books, correspondence files and administrative records of Prahran Technical School and its parent body, the Prahran Mechanics' Institute (PMI). Most of the archives of the various institutions that began as Prahran Technical School are now held at Deakin University (which inherited some parts of Prahran Tech, but by no means all) and at Public Record Office Victoria.[1] The PMI holds its own minute books, the transcripts of a series of oral histories undertaken after a 1996 school reunion, and a bundle of website printouts about famous and infamous personalities who have been associated with the school over the years – among them Kevin Sheedy,[2] Joan Carden[3] and Sir William Dargie.[4]

PROV files include many handbooks and official photographs, which are invaluable for revealing how the school (later college) presented itself to the world. PROV also holds newspaper cuttings, festival programmes, honour rolls and staff handbooks that give an insight

into celebrations not recorded in the minute books now at Deakin. Correspondence files at PROV are also of great interest.

I found a few lists of graduates in the minute books and contacted scores of ex-students and teachers through a process of one contact leading to another. I also made use of the internet, where many former students who have become well known could be traced. Almost everyone wanted to talk about their time at Prahran Tech because it was the best time of their lives.

I approached my research in my usual way – by going through the available archives, making photocopies and taking notes in a seemingly random fashion, all the while trying to form a picture in my mind of Prahran Tech and to develop a feel for it. This is always an uncomfortable stage of the research journey for me because I'm not sure what I'm looking for and often feel as though I will never understand, let alone be able to write about, my commissioned subject. But I am also aware that I always feel like this at this stage, so I go on regardless. It all seems very messy and awkward. The best antidote for this feeling of unease is to read about the time and place into which my subject fits and try to understand the big picture. I always find this very reassuring because it reminds me of what I do know but had forgotten that I know and because the setting is an integral part of the story of any organisation – no matter how small. This part of the process was made easier because the project I had completed previously, a history of the Royal Victorian Institute for the Blind in the same area of Melbourne,[5] owed its existence to the same person – the Reverend William Moss.[6]

.....

Apart from time spent at PROV, in people's homes and studios, and in restaurants and pubs interviewing them, I have been (most happily) located at the Prahran Mechanics' Institute Victorian and Local History Library for the duration of my research and writing. The staff and one committee member of the PMI have acted as a constant sounding-board and source of information. So although Prahran Tech no longer exists, its founding parent has proved invaluable to my work. As well, it's important to note that the PMI is located at 140 High Street, Prahran. Not only was this the address of the Tech (the PMI was always housed within the Tech's boundaries), but Swinburne University of Technology, Prahran Tech's successor, has maintained the buildings and, to a degree, the youth culture around the site. So each day spent in the Institute's bright, window-lit space has been, in a sense, a day spent at the Tech, or perhaps more accurately, in its shadow. There are fewer students walking around and the atmosphere is no longer charged with the breathlessness of 1960s and 1970s youth culture (and its optimism), but it is still an area of intense activity and great diversity.



Photograph of Prahran Technical Girls School building, Hornby Street, Windsor, c. 1955. PROV, VPRS 9626/P1, Unit 3.

High Street near Chapel Street in Prahran is as socially broad as ever. There is a real mix of rich and poor, fashionable and dowdy, conventional and outright weird. Many students and older people throng the area, as do the disenfranchised young and the sophisticated shoppers looking eagerly at Chapel Street boutiques (though this latter group gathers momentum further north toward Toorak Road). Every day some shops close forever and new ones open, but the area has many fine and notable old buildings and 140 High Street is one of these – though admittedly more notable than fine.

.....

It is perhaps worth describing how I begin to have a feeling about a place and how this feeling changes as the research and writing proceed. As each piece of information is ingested, and as each description consolidates the picture, my subject comes more to life. In a way it is like the technique of a recent film about the Winter Palace in St Petersburg:[7] there were no clear episodes; rather, the camera moved in one long shot from room to room down corridors that were quite similar, yet not the same, through scenes of people who enacted significant moments in Russian history. All was animate and each scene built on the last. As the camera moved, the audience could remember or forget according to its own interest and intellectual and emotional focus.

This is a normal, and at the same time very exciting, process that has occurred with each project that I have worked on, but it was made much more 'real' this time by the presence in the story of so many people whom I have actually met and talked to. Prahran Tech was well known as an art school; many of the people I have interviewed are artists. They had either taught at Prahran or studied there – or, in a surprisingly large number of cases, had done both. The majority of them were at the school during the late 1960s and 1970s – a time of social, cultural and political upheaval. For almost all, this was the period in which they experienced life at its most intense. With each interview my understanding of what made Prahran 'fabulous' became more clear. The minute books and letters and brochures and prospectuses of the time describe a place in transition.

The change from the school's previous difficult and threadbare 50 years of existence was utterly remarkable. The archives covering the period 1915 to 1965 had revealed an institution that moved agonisingly slowly; it was always underfunded, badly housed and often grim. The school had opened when the Great War was just into its second year.

But my research had to go back much further – to the beginning of the Prahran Mechanics' Institute in 1854, in fact. The middle of the nineteenth century saw a flurry of activity as the idea of adult education for artisans became popular. Prahran was the sixth mechanics' institute to be established in Victoria, preceded only by Melbourne (1839), Portland (1844), Geelong (1846), Warrnambool (1853) and Port Melbourne (1853).

I also looked at the beginning of Prahran as a suburb to try and understand how it fitted into the development of Melbourne as a whole. What follows is a little of what I discovered.

The first Crown Land sales in Prahran were in 1840 but the area developed slowly until 1852 when disappointed miners began returning to Melbourne from the Central Victorian goldfields. It was, from the beginning, 'a district of sharp contrasts in its geography, its economy, its districts, streets and people'.^[8] The name Prahran had been given to the district by George Langhorne, a missionary working with Aborigines south of the Yarra River during the 1840s. The word is apparently a combination of two words used by local Aboriginal groups meaning 'land partly surrounded by water'. By 1850, it defined a small hamlet along Chapel Street, High Street and Malvern/Commercial Roads. The Mechanics' Institute was established before Prahran was gazetted as a municipality in 1855. By 1856, when the first Town Council elections were held, the district had a population of about 8000 and the new municipality was bounded by the river, Punt Road, Dandenong Road and Boundary (Kooyong) Road. It covered an area of four square miles and included two other small settlements called Windsor and South Yarra. There was high land along the riverfront and the district's eastern half, but the good stretches were separated by deep gullies, creeks, bogs and even quicksand, with a huge swamp at the river end of Chapel Street. The Yarra, where it flowed into Port Phillip, was then surrounded by swampy land and tended to flood. During the next sixty years much work was done dredging and draining the river and its surrounds until finally the Yarra's course was re-channelled in the 1880s. But even after that, swampy low-lying ground often flooded and made life uncomfortable for those living in such areas. Collingwood and Prahran residents had higher rates of summer diseases such as cholera than their neighbours in hilly Kew and Toorak, and not just because of their lower standard of living.

Prahran during the 1840s and 1850s was like a country town. The roads were rough, with side streets leading down to swamps and creeks, and there were farms and market gardens – and hotels placed at strategic corners. Wealthy families who had settled along the riverbank had gardens, poultry, farm animals, orchards, beehives and comfortable large houses with stables and outbuildings on their estates. They often needed labourers and in South Yarra, Windsor and Prahran narrow streets with small lots had one- and two-roomed cottages built to house workers. In 1856 most of Prahran's residents lived in modest dwellings like these. They were employed in the occupations that were most useful at that time in the growing city – brick-making, timber-getting, sawmilling, carting and farming, but they were also butchers, storekeepers, hoteliers and skilled artisans as well as bakers, saddlers, blacksmiths, brewers and ironworkers.



Photograph of students in the Prahran Technical Girls School library, Hornby Street, Windsor, c. 1961. PROV, VPRS 9626/P1, Unit 3.

The next step on my journey was to explain the origins of the school.

I set out to find whatever I could about the Institute's founder, the Reverend William Moss. This was not really difficult. Moss was much written about in newspapers of the time, and the annual reports of the Institute for the Blind, which he also helped found, also provided a source of information. Moss had been brought out to Melbourne from England by the Independent Congregational Church. In his *History of Prahran*, published in 1924, John Butler Cooper said about Moss and his Chapel, after which Melbourne's famous Chapel Street is named, that it

was but the husk of a visible acknowledgment of a house of prayer, dedicated to the service of God. It was the pastor, the Rev. William Moss, whose magnetic personality, charged with an abounding love of humanity, that lifted his chapel into prominence, and made it the outstanding landmark and the notable spring of good works, in early Prahran. And what manner of man was he, this pioneer of the spiritual life of the young settlement? A word-picture of him survives as he appeared in the first days of his ministry in Prahran; a curious figure indeed, somewhat out of keeping with the primitive surroundings. He is described "as a straight, well-proportioned fellow, wearing a frock coat, a black belltopper hat, with a white necktie, fair in complexion, with the large, deep, thoughtful blue eyes, gentle in manner, and soft in speech"^[9]

I knew from previous research that Moss was instrumental in founding many charitable organisations, but his first significant undertaking was the establishment of the Prahran Mechanics' Institute in 1854.^[10]

The Institute's first meetings were held in the Independent Schoolroom attached to the Independent Chapel, but in May 1854 a room in Chapel Street was acquired. The first Prahran Mechanics' Institute was built at what is now 259 Chapel Street and opened in December 1856. Some of the early topics discussed there were:

- Has the introduction of gunpowder into the art of war been more beneficial than injurious to mankind?
- The Crusaders
- Has the miser or the spendthrift been the most injurious to society?
- Comic characters of Shakespeare
- Has the pen of the novelist been a benefit or injury to the mind?
- Is America or Australia the most advantageous to immigrants?[11]

From here the story of the Institute took shape. I was able to rely on the minute books, but there was also a great deal in the local newspapers about milestone events and about the courses on offer, which were advertised regularly.

I learned that the PMI was less popular during the early 1860s because the new Prahran Town Hall offered talks and withdrew the books it had lent to the Institute in order to establish a Free Lending Library. But the PMI continued to offer soirées, dances and band performances, established a Chess Club, and offered free French and shorthand classes (for men, not women, working in law offices, as journalists etc.). In 1866 it introduced penny readings by prominent men.

During the 1860s, ideas about technical training came to the attention of the colonial government and a Technological Commission was appointed in 1868. The Commission was instructed to promote technological and industrial instruction and to establish schools of design to educate workingmen by means of drawing lessons.[12]

A School of Art and Design was established in Prahran in 1870 and classes were held at the Mechanics' Institute in Chapel Street. The Institute provided this kind of education to the public without cost to the government for more than thirty years. It also offered classes to prepare candidates for the Matriculation examination (required for university entrance, entrance to the public service and to pharmacy courses). These classes were very successful and students who enrolled in them often received honours and first and second places in their relevant entrance exams.

In 1909 the School of Art and Design was recognised as a Technical Art School with no maintenance (funding) from the Victorian Education Department, and negotiations were underway for the building of a Technical School in High Street, Prahran. The PMI offered to build a school on land it had bought and to lease it to the Education Department for nominal rent. In July 1910 the Department promised to place £50 in the Estimates (the Victorian Government's budget) towards school expenses.

In 1913 the Technical School appointed a future Inspector of Technical Schools, Mr WR Dean as its Principal. The school paid £14,000 for the building and the government promised a £1,000 maintenance grant and a £1,500 equipment grant when the building was available. The foundation stone of the new school was laid on 24 February 1915 and the school was opened on October 8 of the same year by the Director of Public Instruction, the Honorable Donald McKinnon.

The subjects offered in 1916 were Architectural Drawing, Arts and Crafts, Black and White Illustration, Building Construction, Cabinet Making, Certificates of Drawing for Primary and Secondary Teachers, Dressmaking, Embroidery, Engineering Drawing, Fashion Plate Drawing, Furniture Designing, House Painting and Decorating, Lithographic Drawing, Millinery, Modelling, Needlework, Show Card and Ticket Writing, Sign Writing and Wood Carving.[13]

All of these subjects were offered to adults of both sexes, but part of the school was a Junior Technical School for boys. By 1919 a Girls' Junior Tech was also established, with Miss FA Swan as its first teacher in charge. In the 1920s, both girls and boys from the nearby Deaf School in St Kilda Road attended Prahran Tech to learn dressmaking and carpentry respectively.



Scrapbook entry on tour to north-east Victoria by the Junior Girls' section of Prahran Technical School, 1962. PROV, VPRS 9626/P1, Unit 2, 'Our School Story' scrapbook.

Despite constant endeavours to move the Girls' School away from the Boys' and to purchase land for it, the Girls' School at Hornby Street, Windsor, was not built until 1955.

From the late 1920s until the 1950s the school struggled with lack of funding, overcrowding, bad conditions for both staff and students, and all of the hardships faced by institutions reliant on government funding for providing services to the poorer parts of society. A long dark period through the Great Depression of the 1930s until after World War 2 prevented much development in Victoria.

After 1945, however, there was a great resurgence in all strata of Australian society. After almost 30 years of waiting, extended even further by the shortage of building materials after the war, the foundation stone for the Girls' School building in Hornby Street was laid on 6 August 1951 and the new school was completed in February 1955. The girls were finally able to move into their own building, an entirely modern structure. It was a real shot in the arm for the girls' section of the school. The headmistress, Miss KA McKemmish, according to many ex-students, was an intelligent and self-assured woman. The official opening coincided with centenary celebrations for the city of Prahran and the Age carried the following report on April 27:

A three-storied white building, with green sliding doors opening to an inner courtyard, the school is painted inside in pastel colors – different colors in each classroom. These open on to long passages with an unusual color scheme of two shades of blue.

At the moment about 400 girls are pupils there, but this number will be increased even further when all the classrooms are in use. Pupils' ages range from 12 to 15 or 16 years, and their curriculum covers, as well as ordinary academic subjects, some aspects of domestic economy.

The Director of Education (Mr A H Ramsay) who also spoke at the ceremony, told the girls their work in a school of this nature was of vital importance to the community. It was just as important for girls to be skilled in their work as boys, who went to a technical school to learn a skilled trade....[14]

Despite their new building, however, the girls were still at a disadvantage. Subjects that had the same names had a different content for boys and girls, and this tended to discriminate against female students. Among a group of papers held by Public Record Office Victoria, I found a letter from Miss JL Williams of Sunshine Technical School to Miss McKemmish, written in November 1961. It expressed some of the frustration felt by educators of young women at the time. Miss Williams wrote that a group of girls at Sunshine Tech had sat a science exam that was based on the syllabus for boys and had nonetheless obtained excellent marks:

you will no doubt comment mentally perhaps on the emphasis on boys syllabuses, but some of the girls are interested in Applied Science, etc.[15]

There must have been a constant struggle to bring girls' education into line with boys' and to make subjects more accessible to girls.

Another important find at this time was a copy of the only issue of a school magazine, *Alinta*, published at the Girls' School. It gives a vivid picture of an academically and socially confident community with lots of room for creativity and a strong sense of purpose.[16] The word 'alinta', according to the editors of the magazine, Margaret Fairthorne and Anne Worthington, meant 'flame' in an Aboriginal language. Motifs from the 1956 Melbourne Olympics influenced the design of the cover. The literary and visual content veered between 'Girls Own' and very 'moderne' in style.

In 1961 Prahran Tech employed a new Principal, Alan Edwin Warren. (At this time the school as a whole had a Principal while the girls' and boys' sections had a headmistress and headmaster respectively.) Warren took over from EH Duncan, who had been Principal of the school since 1948, on 1 March 1961.[17] Warren had previously been employed by the Royal Melbourne Institute of Technology (RMIT) in the School of Art, where he was responsible for the graphic design course 'which he approached with a distinct formal bent. Art History and theory were not taught, but he did require students to read Roger Fry's *Vision and Design* (1926), a text which emphasised the compositional aspects of art making'.[18] Warren was a committed modernist, an early member of the Contemporary Art Society set up in Melbourne in 1938 to resist the establishment of an Australian Academy of Art which would exclude the modern movement.[19] He was art critic for the *Sun News Pictorial* for twenty years from 1951.[20] His report on the Senior Art School in April 1961 showed his intentions in the area of art education:

The least concern of an art school – to my mind – is to produce artists (by that, I mean oil painters.) Creative designers, craftsmen and draughtsmen, Yes. Artists in a vacuum, No.[21]

By the May Council meeting of 1961, Warren had asserted that:

Classes in art and design were commenced here in 1870. They continued until 1909 when the Education Department decided to recognise the School as a Technical Art School.

Ninety-one years later it is still referred to as a Technical School. I believe that a City like Prahran should have a College – not just a Technical School. Our aim should be to raise the status of this teaching institution.

To achieve this our educational standards must meet the requirements of Diploma work as laid down by the Education Department.[22]



Prahran Technical School fete poster inserted between scrapbook entries for 1962. PROV, VPRS 9626/P1, Unit 2, 'Our School Story' scrapbook.

His views during the 1960s were in happy parallel with the Coldstream Report from Britain which proposed 'an integrated approach where intending artists and designers should be instructed in a range of basic technical skills'. Under this model, some academic disciplines should be incorporated into the curriculum with the result that students would be 'awarded a tertiary level "Diploma of Art & Design" upon successfully completing their studies'.^[23]

Warren pushed on with great haste and energy towards changing the Art School in preparation for its metamorphosis into a technical college. Although he concentrated his efforts in the Art School, he was aware that other parts of the school had to be built up if it were ever to become a proper technical college.

By 1967 his plans for separating the secondary and tertiary parts of the school were forging ahead. The Art Division, as it was called, moved into the first new building of its kind in 1968.

In Warren's introduction to the 1968 handbook, 'New Era', he wrote:

The transfer of the Art Division to the new Diploma building not only removes present limitations, but allows for a more progressive approach to professional design training. With its new building, the first such building erected in Victoria since 1919, the Prahran Technical School becomes a special place. [...] Today no design school worthy of the name would limit the art and design student to 'making coloured marks on a flat surface' or similar narrowly conceived activity.

Electronics, engineering, science, photography, visual and verbal communications mean more to a designer than drawing in a free manner from a nude model.^[24]

Suddenly Prahran could boast of its 'admirable situation for a tertiary educational Institute. Students are drawn from a wide area south of the Yarra, as far as Frankston, and transport and parking facilities are good. Without the disadvantages of a city location, the School has many advantages in being close to the city, and close to Melbourne and Monash Universities; it is conveniently placed to receive, as part-time students, the employees of many city and suburban industrial concerns.'^[25]

However, Warren's ideas were already being challenged. He had employed Lenton Parr as head of Art and Design in 1966. Parr was a well-known and well-liked sculptor in Melbourne's small and close-knit artistic community. He was a graduate of RMIT where he had finished with a Fellowship of Sculpture in 1951 and had worked as an assistant to Henry Moore in Britain between 1955 and 1957. He also spent weekends in Eduardo Paolozzi's cottage in Essex. Unlike many of his contemporaries who, having left Australia, remained overseas where sculpture was well supported, Parr returned to Australia to advance the cause of sculpture through his own work and through teaching. Before heading up Prahran's Art and Design School, he had been Head of Sculpture at RMIT.^[26]

Parr's and Warren's philosophies on art education were quite different, with Parr supporting the idea of art for art's sake and Warren interested in training artists for employment. Warren probably felt his territory was being encroached on, as Parr was held in higher esteem by art staff and students.^[27] In an atmosphere of growing tension, a notice appeared in the *Age* on Saturday 12 October 1968 advertising Parr's position. An assertion was made by someone in the school administration (it is never made clear who this was) that Parr had been employed as Acting Head only. Judging by Parr's later achievements at the Victorian College of the Arts he was a force to be reckoned with.

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In an obituary written for the online newsletter of the Producers' and Directors' Guild of Victoria, Parr was described as having a 'gentle exterior and a kind social manner'; however, 'in meetings and in planning the continuity of his extraordinary dream – the Victorian College of the Arts – he was tough – really tough, and could be uncompromising if he felt his ideas were being threatened.' [28]

Parr was reinstated, but left to take up the post at the National Gallery School. The episode had damaged support for Warren. When the secondary school and college were finally divided in 1967, the Victoria Institute of Colleges demanded that the Principal's position be upgraded and advertised. After years of work to establish the college, Warren found himself having to compete with PhD holders for the job. He initially applied but withdrew at the end of 1971 when Head of Business Myer Mirsky took over as Acting Principal until Dr David Armstrong was appointed to the position in late 1972. Under Armstrong's leadership Prahran became one of Australia's leading Colleges of Advanced Education with many innovative programmes. It was the first such organisation to offer modern languages, creative writing, Jewish studies and many other subjects as well as the first college with a Planned Parenthood clinic and childcare facilities on campus.

My formal story of Prahran Tech finishes here. After 1972 the school was divided into tertiary and secondary sections and within those structures many changes occurred until Prahran Tech disappeared altogether in the early 1990s. But a lengthy afterword in my history will cover the period from 1971 to 1991.

Endnotes

- [1] My thanks go to the staff of these institutions for their invaluable help and advice.
- [2] Kevin Sheedy was recruited from Prahran Football Club and played 251 games for Richmond between 1967 and 1979. He has coached the Essendon club since 1981 and is described as a 'legend' by his fans.
- [3] Joan Carden is one of Australia's most distinguished operatic sopranos.
- [4] Sir William Dargie (1912-2003), artist. Winner of the Archibald Prize for portraiture a record eight times.
- [5] J Buckrich, *Lighthouse on the boulevard: a history of the Victorian Institute for the Blind*, Australian Scholarly Publishing, Melbourne, 2004.
- [6] See discussion on Moss below.
- [7] Aleksandr Sokurov's 2002 film *Russian Ark* (Wellspring Media) was famously filmed in a single take.
- [8] B Malone, 'Introduction', in S Wilde, *The history of Prahran. Volume 2, 1925-1990*, Melbourne University Press, 1993, p. vii.
- [9] JB Cooper, *The History of Prahran 1836-1924*, Modern Printing Company, Melbourne, 1924, p. 43.
- [10] See the PMI website at www.pmi.net.au/01.htm, accessed 24 September 2006.
- [11] JH Furneaux, *Short history of the Prahran Mechanics' Institute: as disclosed by minute books*, the Institute, 1930, pp. 2 & 3.
- [12] LJ Blake (ed.), *Vision and realisation: a centenary history of state education in Victoria*, 3 vols, Education Department of Victoria, Melbourne, 1973, vol. 1, p. 608.
- [13] Prospectus, Prahran Art School and Junior Technical School, 1916, held by the Prahran Mechanics' Institute.
- [14] 'School opened in centenary year', *Age*, 27 April 1955.
- [15] Exam Papers and Course Notes 1948-62. Letter from JL Williams of Sunshine Technical School to Miss McKemmish of Prahran Girls' Technical School dated 20 November 1961. VPRS 9626, Unit 12, Examination papers and course notes, School council correspondence / School administration files.
- [16] *Alinta*, Prahran Tech Girls' School Magazine, 1959. VPRS 9626, Unit 5.
- [17] Letter from Education Department to the President, Prahran Technical School Council, 26 January 1961.
- [18] C Heathcote, 'About Alan Warren' at www.artangel.com.au/alanwarren, accessed 24 September 2006.
- [19] *ibid.*

[20] Letter from Warren to Cr Spencer Harper re permission to engage in private work, 15 March 1961. Deakin University archive, Prahran Technical School 97/017, Council Appointments and Letters 1958-1963.

[21] Minutes of School Council Meeting, 20 April 1961. The motion was adopted. Deakin University archive, Prahran Technical School 97/017, Council Minutes and Agenda Papers 1959-1961.

[22] Minutes of School Council Meeting, 18 May 1961, in *ibid.*

[23] 'About Alan Warren'.

[24] 1968 Handbook, Prahran Technical School. VPRS 9626/P/1, Unit 5.

[25] *ibid.*

[26] Parr left Prahran to become Principal of the National Gallery School (1969-74) and continued as Founding Director of the Victorian College of the Arts when it replaced the Gallery School (1974-84). See Georgia Rouette, 'Lenton Parr 1924-2003' at www.christineabrahamsgallery.com.au, accessed 24 September 2006, and L Parr, *Lenton Parr: vital presences*, introd. G. Edwards, The Beagle Press, Roseville, NSW, 1999.

[27] Author interviews with Bill Kelly, 1 August 2006 and Fred Cress, 4 August 2006.

[28] P Oyston, 'Lenton Parr wise man and artist' at www.pdgv.com.au/news/2003-08-26_07.html, accessed 24 September 2006.

Criminals, Prostitutes, Vagrants and Drunkards

1920s Carlton

Jessica Ellen Stagnitti

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'Criminals, Prostitutes, Vagrants and Drunkards: 1920s Carlton', *Provenance: The Journal of Public Record Office Victoria*, issue no. 5, 2006. ISSN 1832-2522. Copyright © Jessica Stagnitti.

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Abstract

In the 1920s the Melbourne suburb of Carlton was a squalid slum, a home to, amongst others, criminals, prostitutes, vagrants and drunkards. This essay locates three individuals whose lives were trapped within these depressing conditions. A mystery slowly unfolds in a boarding-house in Lygon Street... An alleged prostitute, Kathleen Price, is murdered by her partner, Charles Johnson, a cocaine addict... Kathleen's daughter, Doris Price, and other boarding-house residents look on helplessly... In preparing this piece, the author has used the original records creatively to develop empathy with the characters and to highlight the drama of these extraordinary events.

List of Characters

- Charles Johnson, the murderer in question
- Kathleen Price, Charles's victim
- Doris Price, Kathleen's daughter
- Senior Constable Murray, who apprehended Charles
- Senior Constable Crawford, who apprehended Charles
- Clara Aumont, boarding-house keeper
- Stanley Stanton, boarding-house tenant who occupied the room opposite Kathleen's
- Henry Gaw, fought alongside Charles in World War 1
- John Andrew, long-term friend of Charles; also fought alongside Charles in World War 1
- Mr Justice Mann, Judge
- Maisie M'Cool, companion of Kathleen
- Tessie Connelly, companion of Kathleen

'In night attire and with her bare feet bleeding from the cuts caused by the rough roads, Doris Price, aged nine years, ran into the Carlton police station, Drummond Street, shortly after 2 o'clock yesterday morning and cried, "A man has mother by the hair and is cutting her neck with a table knife." The little girl brought the first news of a horrible tragedy.'

(Argus, 3 December 1923)

* * *

On 3 December 1923, Charles Johnson awoke with a start. Sounds of boisterous drunk men and cackling women pervaded. He scanned the unfamiliar room. Where was he? How did he get here?

He lay on a thin mattress in a bare room. He had no memory of the events leading up to this point. He looked down at his hands: blood-stained. He looked around, bewildered. His heart raced with anxiety at the possibilities.

A stern-looking policeman entered the cell of the City Watch House and informed Charles of his actions the night before. Charles expressed horror as each word assaulted his ears. His howls echoed through the outside corridors.[1]

* * *

Henry Gaw and Charles Johnson were fellow combatants in World War 1. Henry had witnessed Charles's volatile nature. He testified at the Supreme Court in 1924:

When I said he was erratic I mean on one occasion when I was with him in a canteen in Sutton Veney in England he had this stuff. I did not know what it was at the time. He had one drink with me and finished up punching three of us. We got hold of him and held him down on the floor of the canteen. He calmed down in about half an hour's time and I asked him what he done that for. He said he did not remember. I meant what did he punch us for – his own mates. He said 'I don't remember.' [2]



Photograph of prisoner number 37059 Charles S. Johnson taken in March 1924. PROV, VPRS 515/P/0, Central Register of Male Prisoners, Unit 73, Folio 342, Charles Sydney Johnson, registration no. 37059 [detail].

* * *

Who was Charles Johnson? Below are the findings of Senior Constable Murray written in 1924.

I have to report that Charles Sydney Johnson was born in Brunswick 29 years ago. His father who was a full-blooded American Negro, died 20 years ago, and his mother who was a white woman, died 16 years ago. Very little is known of Johnson's early life up till he was 16 years of age, when he was fined 40/- or 14 days imprisonment at Brunswick for playing two-up, but from that date right up to his arrest on this charge of murder he was unfavorably known by the police.

At Brunswick on the 2/9/14 he was fined 10/- for obscene language, and at the same court on 24/3/15, was fined £5 or 2 months imprisonment for unlawful assault. On the 5/4/15 he was arrested in company with a man named George Watson on a charge of murder, the victim being a man named James Gregory, who was killed by being struck on the head with a bottle, on that occasion, Johnson gave the name of Charles Wilson. Both accused appeared before the City Court and Watson was discharged, but Johnson was committed for trial and on his presentment at the criminal court was found not guilty. From that time up to the date of his enlistment in the A.I.F., he was employed at the Hoffman Brick works, Brunswick. He enlisted on the 8/7/15 and returned to Australia on 6/10/19. His military record is in the possession of the Crown Solicitor. Since his return he has been following the occupation of a Hawker, but as far as I can ascertain, he lived principally on the earnings of the deceased woman, Kathleen Elizabeth Price, who was a prostitute, and with whom he was living. He is a man of drunken habits, and when in drink, very violent and quarrelsome. He was also the companion of convicted thieves and prostitutes and frequented the slum area of the city.[3]

Senior Constable Murray had read Charles's military record. It revealed numerous hospital stays for the treatment of venereal disease. While away at war, Charles also suffered from mumps, septic knees and

influenza. In 1916 he was wounded in action in France and transferred to England for the treatment of his wounded left leg.[4]

Many offences are listed on Charles's military record: for using insulting and insubordinate language, for being drunk, for numerous absences without leave, for escaping custody, and for assaulting another soldier. Charles served time for these offences in military prison in France and England.

* * *

At the top of the stairs, Senior Constables Murray and Crawford saw that the walls were sprayed with blood.[5] The door of the bedroom was open. A double bed stood sideways between two windows. Before it, on the floor, lying face downwards in a pool of blood, was the fully dressed body of a woman.[6] The woman was Kathleen Price. Her light-blue knitted silk jumper, navy-blue skirt, white shoes, stockings and hat were soaked with blood. [7] Murray and Crawford found that Kathleen's head was nearly severed from her body.[8] Cuts, scratches and bruises were found all over her. Her left thumb had been almost severed at its joint. Her face was cut, scratched and bruised. Her lower lip was swollen, her eyelids were blackened.[9] A curved table knife was found lying near her right hand. There was evidence of a fierce struggle. In the corner of the room a blood-stained bread knife was found. The heel of Kathleen's left shoe had been torn off, and her false teeth were found in a far corner of the room.[10]

Kathleen Price, aged 30, was a married woman who had been separated from her husband for five years.[11] She and Charles Johnson had been living together as man and wife in a boarding-house at 230 Lygon Street. They shared the front bedroom on the second floor of the boarding-house. Kathleen's nine-year-old daughter, Doris, occupied a separate room, two or three steps away from her mother's.[12]

Today Lygon Street, Carlton is a colourful array of Italian restaurants, a trendy environment occupied by the middle class. But not so long ago Carlton was very much a working-class suburb, home to, amongst others, prostitutes, vagrants, criminals and drunkards. Various writers in Peter Yule's *Carlton: a history* describe how Carlton's renaissance through the late 1950s to the late 1970s transformed this 'squalid slum' into the vibrant and fashionable suburb we know today.[13] Carlton in the late nineteenth century was a 'breeding ground of crime!'. [14] Its inhabitants were frequently depicted by the police and government as social outcasts, unwashed and dirty. The poor were stigmatised 'with stereotypes that linked poverty with depravity'. [15]

Anderson, Coney and Nelson in *Carlton: a history* draw on the work of Marie Sturt in *Among the Terraces* to explain how:

[t]he economic depression of the 1890s reinforced Carlton's reputation as a place rife with crime. Slum growth accelerated with the onset of the Depression and was particularly apparent in Carlton's south, where many larger houses were converted into boarding-houses after their previous owners had vacated.[16]

Many people lived in cheap, often dilapidated boarding-houses in the 1920s. In *The outcasts of Melbourne*, Shurlee Swain describes the endemic poverty of places like these.[17] Already in 1854 the *Argus* had noted that boarding-houses were 'overcrowded and filthy to a degree'; that they were 'scenes of extortion, drunkenness, riot and robbery, if not murder' and, in many cases, places where 'drugs were kept'.[18] Poverty and misery motivated much criminal behaviour, and in turn local criminal acts only worsened the depressed conditions. Not much had changed by the 1920s. Carlton still housed some of the poorest people in Victoria.[19]

Charles, Kathleen and Doris lived in this environment. Clara Aumont, their boarding-house keeper, had commented incidentally to Constables Murray and Crawford that these three had been the 'happiest family she had ever seen'.[20] Doris called Charles 'father'. Clara did not discover until the day of Kathleen's murder that Charles and Kathleen were not married.[21] For the four weeks that they had been living in the boarding-house,[22] no one had heard the slightest murmur of an argument between them.[23]



F Oswald Barnett, Behind the scenes [flyer showing a hand pulling back an illustrated curtain to reveal the slums behind the public face of the City of Melbourne], c. 1935, photoprint. La Trobe Picture Collection, State Library of Victoria.

What happened? About 9.00 pm on Saturday night, 1 December 1923, Doris crawled into her mother's double bed. She was not asleep, but looking through her school books.[24] Her mother was not home. Kathleen was working as a waitress at a café in the city, and did not finish until late at night.[25] Charles Johnson would usually meet her and bring her home. On this occasion Kathleen returned home with Charles at about 1.45 am.[26] Kathleen quietly entered the bedroom, kissed Doris and told her to go to her own room. 'Johnson then was drunk. He was in a bad temper and in every bad temper I went to my own room', Doris later told the Coroner.[27] Doris left her mother's room. She entered the little passage connecting their two rooms, and three steps later was in her own bedroom. She was just drifting off to sleep when she was startled by her mother's shrill screams.[28] She jumped out of bed and ran to her mother's room.

Charles had her mother by the hair, about to draw a table knife across her throat. Doris pleaded, 'Daddy, don't!' [29] Charles then pulled the knife back, hit Doris across the face, and drew the knife across Kathleen's throat. Causing only a superficial wound, he growled 'This knife is not sharp enough!' [30] He threw it under the sofa, which stood parallel to the double bed, against the wall.[31]

Doris watched in horror as Charles pushed her mother viciously to the ground. He then went to the drawer and retrieved a sharp table knife. He whispered mockingly to Kathleen, 'I will get the bitch', referring to Doris. Doris sprinted downstairs screaming. She was met on the way by Clara Aumont, who was running up the stairs to Kathleen's defence. Doris anxiously followed Clara back to her mother's room. Her mother was slumped on a wooden-framed chair.[32]

Kathleen regained some strength and rolled under the bed. Charles pulled her out by the leg. He twisted it, nearly breaking it. Doris and Clara looked on helplessly. Clara, in a voice trembling with fright, instructed Doris to get Stanley Stanton, the man who occupied the room opposite her mother's.

Stanley came running. Doris followed. Stanley implored Charles to stop. Charles ignored him. He picked Kathleen up off the ground and threw her onto the side of the bed. She got up and tried to get away from him. Charles said mockingly, 'You will get away will you?' He kicked her in the face and then on the head. She lay bleeding on the ground. He knelt, and while holding her down, sliced her throat from ear to ear. He then rolled her over onto her face.

Stanley, Clara and Doris ran downstairs, fleeing to the front downstairs bedroom occupied by an invalid. They stood nervously as they heard footsteps. Charles entered the room. The invalid man said, 'You are cruel to do that to the woman.' Charles threw a punch at him. With urgency in her voice, Clara gasped, 'Quick, Doris, go and get the police, quick!' Doris ran out into Elgin Street. In a nightdress she stood in the dark street in utter terror and cried. A man heard her crying and came out of a shop. The man took her to the police.

Clara stayed in the front downstairs bedroom with the invalid man after Doris had run for the police. While still in the room, Charles showed Clara his hands, all covered with blood. Splashes of blood were all over his face and clothes. 'He was like a lunatic and was singing out and was mad. He was not sober, he was drunk, he did not seem to know what he was doing', Clara later told the Coroner.[33] Clara accusingly asked Charles, 'What have you done?' [34]

Charles replied, 'She is as dead as Julius Caesar. I loved that woman; I will go to the gallows for her.' Witnesses later reported: 'he was throwing his hands in the air ... his eyes were staring out of his head ... he looked as if he was a madman.' [35]

Senior Constables Murray and Crawford were in the Carlton Police Station when Doris arrived.[36] Both were tall men, Murray with light grey eyes, red hair and a pale complexion, Crawford with light blue eyes, fair hair and a fair complexion. Doris's dishevelled appearance raised alarm.[37] The two men ran to the house, Murray carrying little Doris, who was nearly hysterical.[38] The door of the house was open. Charles was standing on the doorstep. His light grey suit was soaked with blood. [39] Blood dripped from his hands.[40] Clara was seated in the hall, crying bitterly.[41]

Constable Murray composed himself, and enquired, 'What is the matter here Johnson?'

Unwilling to cooperate, Charles replied, 'Nothing.'

Constable Murray said, 'We will go upstairs and see.'

Charles replied, 'Yes come upstairs and see.'

They made their way up the narrow staircase to the front bedroom. The sight of Kathleen shocked the constables. Murray asked Charles, 'Did you do this?' He replied, 'There she is, she is dead alright, I will say nothing.'

Murray pulled out his handcuffs and prepared to place them on Charles. He had been quite calm up until then, but now began to struggle violently. Murray fastened the handcuffs on his left hand, but Charles struck out

with his right. Constable Crawford was knocked down the narrow staircase. After some effort, the constables finally managed to restrain their charge. He was then taken to the City Watch House.



Photograph of Charles' and Kathleen's bedroom at 230 Lygon Street. PROV, VA 667 Office of the Victorian Government Solicitor, VPRS 30/P, Unit 2029, Melbourne Supreme Court, case number 5 of 15 February 1924.

On 16 February 1924 the Age reported:

In the opening case for the defense Mr. Brennan said there was no doubt that [the] accused caused the woman's death, but there was a mystery overhanging it. Although not man and wife, the two people were living together apparently in the most complete harmony and love. Evidence would be called to show that the accused was a cocaine victim. Cocaine was the most powerful and attractive of all drugs, and a victim could not free himself of its influence. Johnson had persistently taken that drug. A man under its influence was without memory, will or the power of forming an intention. He was not merely a lunatic, but was worse in that he had no understanding of what he was doing.

Charles had acquired the habit of sniffing cocaine while serving in the army during the war. John Andrew, who had known Charles all of his life, had spent six months with him overseas and was with him in the camp at Sutton Veney, in Wiltshire. John remarked at Charles's trial that most soldiers at war took cocaine 'to make them a bit game to go into the trenches'. [42]

John testified that after he had been sniffing cocaine, Charles 'used to go mad and wanted to fight everybody'. In London at the time of the war, Charles had even hit John with an entrenching tool on one occasion, after he had been sniffing cocaine. 'He had no reason whatsoever for striking me. He was my best friend. He said it was the dope and he could not help it, he did not know what he was doing. He was otherwise absolutely friendly with the men in the camp, when he was quiet.'

Charles's trial lasted only one day. He pleaded not guilty to the charge that on 2 December 1923 he murdered Kathleen Price. There was no controversy over the fact that Charles had caused the death of Kathleen; what was controversial was whether or not Charles was capable of forming the intention to kill her. For the jury to find Charles not guilty, Mr Justice Mann explained that they would have to find Charles insane. If they came to the conclusion that Charles was not insane, but that his mind was so affected by drugs or alcohol that he was incapable of forming the intention to kill Kathleen, or inflict grievous bodily harm, they should bring on a verdict of manslaughter. However, if they were to conclude that Charles had committed the fatal act with the intention of killing Kathleen, or of inflicting grievous bodily harm, their verdict should be murder.[43]

On 15 February 1924 Charles was found guilty of murder with a strong recommendation for mercy. When Mr Justice Mann asked Charles if there was any reason why the sentence of death should not be brought upon him, he said 'No'. Charles was sentenced to death; to be hanged by the neck until dead.

The *Age* newspaper reported that he showed no emotion when his sentence was pronounced.[44]

This sentence was later commuted to imprisonment for the term of his natural life without the benefit of any regulations relating to remission of sentence.[45] Charles served 11 years at Pentridge and four years at Geelong Gaol, where he died on 1 July 1939.[46]

And what of Kathleen? The records always seem to tell us so much more about perpetrators, and little about the victims. Who was Kathleen and what might her life have been like? Neither court proceedings, nor the articles in the *Age* and *Argus* newspapers ever made mention of Senior Constable Murray's belief that Kathleen Price was a prostitute. These newspapers reported only that she was a waitress in a café in the city. Even Murray, in his report dated 2 December 1923, stated that Kathleen was believed to be a waitress.[47] His findings, including his statement that Kathleen was a prostitute, were compiled after the sentencing of Charles Johnson in 1924. Perhaps by then Murray had stumbled across new information implicating Kathleen as a prostitute.

Writers in *Carlton: a history* draw on Chris McConville's work in *Outcast Melbourne* to claim that 'in the late-nineteenth and early-twentieth century many brothels operated in Carlton, particularly in Lygon and Bouverie Streets', and were operated by both men and women. [48] McConville has described how prostitution in the 1920s took place in city hotels, slum houses, suburban mansions and the dilapidated terraces of inner suburbs. These locales sustained two distinct lifestyles:

Secure, but with little freedom, the 'dressed' girls worked in exclusive brothels. The Madame kept their earnings, dressed [her] girls in expensive outfits and demanded that they bring back only 'respectable' clients. At the other extreme, old or diseased prostitutes, 'filthy creatures having barely sufficient clothing to cover their nakedness', hung about city lanes or camped on vacant blocks 'where they ... adjourn for immoral purposes when they happen to wheedle a drunken man into their meshes'.[49]

Successful prostitution relied on police reaction. Police rarely questioned the 'dressed' girls or their wealthy patrons, but hounded poorer women wherever they went. McConville writes: 'On the move constantly between slum and cheap boarding-house, it was upon these unfortunate few that the full weight of moral sanction was pressed.'[50] Being identified through arrest made the situation of these women even more precarious. They were then forced to follow a path leading towards legitimate work or respectable marriage.



Photograph of the 'crime scene', Charles' and Kathleen's bedroom at 230 Lygon Street. PROV, VA 667 Office of the Victorian Government Solicitor, VPRS 30/P, Unit 2029, Melbourne Supreme Court, case number 5 of 15 February 1924.

Perhaps Kathleen became caught in this web. The *Argus* reported on 4 December 1923 that:

Plain-clothes Constables Murphy and Snowden visited a house in Little Lonsdale Street, where they recovered the handbag of the dead woman. It is stated that Mrs. Price visited the house on Saturday, and obtained supplies of cocaine in the form of 'snow'. She is believed to have returned home under the influence of the drug. Two women were arrested yesterday by the constables in the house in Little Lonsdale Street on charges of vagrancy.

The two women, Maisie M'Cool, 27, and Tessie Connelly, alias Julien Beckman, 27, were alleged companions of Kathleen Price.[51]

McConville describes how, under the law, individuals with insufficient means of support could be arrested for vagrancy – for being ‘idle and disorderly’.[52] ‘Many of those apprehended [for vagrancy] were prostitutes, thieves, drunkards and gamblers – collectively regarded as social outcasts’. Also arrested on the charge of vagrancy were members of the working class, the poorest of whom were often unable to afford housing. Many women apprehended for vagrancy were ‘considered undeserving of charity’. As McConville describes it:

According to the hierarchy of benevolence, single mothers, alcoholics and women who did not adhere to the rigid rules of respectability were not worthy of assistance. It was thus easy for such women to become destitute.

The story of Charles, Kathleen and Doris reveals a desperate world, now forgotten. The events that changed their lives forever are true, uncovered from 83-year-old files held at Public Record Office Victoria, the Victoria Police Museum and in newspaper articles of the day. Next time you walk down fashionable Lygon Street, visit number 230, now a bustling restaurant, and remember that not so long ago the street in which you stand was once part of a slum, shaping the blighted lives of people like Charles and Kathleen and little Doris.

Endnotes

[1] Narrative reconstructed from report in the *Age*, 16 February 1924.

[2] PROV, VA 2825 Attorney-General’s Department, VPRS 264/P/1, Unit 30, Item Charles S. Johnson, Transcript of trial, Supreme Court Melbourne, 15 February 1924, testimony of Henry Gaw.

[3] *ibid.*, testimony of Senior Constable Murray.

[4] PROV, VA 667 Office of the Victorian Government Solicitor, VPRS 30/P/0, Unit 2029, Melbourne Supreme Court, case number 5 of 15 February 1924, Coroner’s Inquest, Charles Johnson’s military record.

[5] *Argus*, 3 December 1923.

[6] *Age*, 3 December 1923.

[7] VPRS 30/P/0, Unit 2029, Melbourne Supreme Court, case number 5 of 15 February 1924, Coroner’s Inquest, testimony of Senior Constable Murray and Transcript of trial, testimony of John Brett.

[8] *Argus*, 3 December 1923.

[9] VPRS 30/P/0, Unit 2029, Melbourne Supreme Court, case number 5 of 15 February 1924, Transcript of trial, testimony of John Brett.

[10] *Argus*, 3 December 1923.

[11] VPRS 30/P/0, Unit 2029, Melbourne Supreme Court, case number 5 of 15 February 1924, Coroner’s Inquest, testimony of John Sylvester Price.

[12] VPRS 264/P/1, Unit 30, Item Charles S. Johnson, Transcript of trial, testimony of Doris Price.

[13] A Mayne & K Zygmuntowicz, ‘Postwar Carlton’, in P Yule (ed.), *Carlton: a history*, Melbourne University Press, 2004, p. 37.

[14] F Anderson, C Coney & E Nelson, ‘Crime’, in *ibid.*, p. 431.

[15] *loc. cit.*

[16] Sturt, cited in *ibid.*, p. 431.

[17] S Swain, ‘The poor people of Melbourne’, in G Davison, D Dunstan & C McConville (eds), *The outcasts of Melbourne: essays in social history*, Allen & Unwin, Sydney, 1985, p. 103.

[18] Cited in G Davison, ‘Introduction’, in *ibid.*, p. 8.

[19] Anderson, Coney & Nelson, ‘Crime’, p. 432.

[20] *Argus*, 3 December 1923.

[21] *loc. cit.*

[22] VPRS 264/P/1, Unit 30, Item Charles S. Johnson, Transcript of trial, testimony of Clara Aumont.

[23] *Argus*, 3 December 1923.

[24] VPRS 264/P/1, Unit 30, Item Charles S. Johnson, Transcript of trial, testimony of Doris Price.

[25] *loc. cit.*

[26] VPRS 30/P/0, Unit 2029, Melbourne Supreme Court, case number 5 of 15 February 1924, testimony of Senior Constable Murray.

[27] *ibid.*, testimony of Doris Price.

[28] VPRS 264/P/1, Unit 30, Item Charles S. Johnson, Transcript of trial, testimony of Doris Price.

[29] *loc. cit.*

[30] VPRS 30/P/0, Unit 2029, Melbourne Supreme Court, case number 5 of 15 February 1924, testimony of Doris Price.

[31] Photo of crime scene in *ibid.*

[32] *ibid.*, testimony of Doris Price. The next section of the narrative is also drawn from this testimony.

[33] *ibid.*, testimony of Clara Aumont.

[34] VPRS 264/P/1, Unit 30, Item Charles S. Johnson, testimony of Clara Aumont.

[35] *loc. cit.*

[36] *Argus*, 3 December 1923.

[37] Victoria Police Museum, Record of Conduct and Service, John Martin Murray and Frederick William Crawford.

[38] *Argus*, 3 December 1923.

[39] loc. cit.

[40] *Age*, 3 December 1923.

[41] *Argus*, 3 December 1923. The next section of the narrative is also drawn from this source.

[42] VPRS 264/P/1, Unit 30, Item Charles S. Johnson. testimony of John Andrew. The following two quotations are also taken from this source.

[43] VPRS 264/P/1, Unit 30, Item Charles S. Johnson.

[44] *Age*, 16 February 1924.

[45] VPRS 264/P/1, Unit 30, Item Charles S. Johnson.

[46] PROV, VA 1464 Penal and Gaols Branch, Chief Secretary's Department, VPRS 515/P/0, Central Register of Male Prisoners, Unit 73, Folio 342, Chas Sydney Johnson, registration no. 37059.

[47] VPRS 30/P/0, Unit 2029, Melbourne Supreme Court, case number 5 of 15 February 1924, testimony of Senior Constable Murray.

[48] C McConville, *Outcast Melbourne: social deviance in the city, 1880-1914*, Melbourne, 1974, cited in Anderson, Coney & Nelson, 'Crime', p. 436.

[49] C McConville (citing a Mrs Nicholson), 'From "criminal class" to "underworld"', in Davison, Dunstan & McConville, *The outcasts of Melbourne*, p. 79.

[50] *ibid.*, p. 80.

[51] *Age*, 4 December 1923.

[52] McConville, cited in Anderson, Coney & Nelson, 'Crime', p. 435. Further quotations are from this source.

'She Had Not a Baby Face'

The death of Bertha Coughlan

Zoe Gray Carthew

“‘She Had Not a Baby Face’: The death of Bertha Coughlan”, *Provenance: The Journal of Public Record Office Victoria*, issue no. 5, 2006. ISSN 1832-2522. Copyright © Zoe Carthew.

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Abstract

In November 1922, Bertha Coughlan came to Melbourne from her remote and lonely farm in provincial Victoria. She had no mother, and her father and one remaining brother were not attentive. She had recently broken off her engagement and suffered the removal of all her teeth. Ostensibly, she came to the city to treat her chronic earache. But once there, she took the opportunity to remedy another, more scandalous, health issue. She separated from her negligent father and her disinterested family, and disappeared into obscurity.

For years, Nurse Hannah Mitchell had run a lucrative private abortion clinic from her large townhouse in Richmond. In 1922, she was sharing the house with her daughter, her sister, her nephew and her many patients. When her third ex-husband, Frank Bonfiglio, suddenly returned in November to renew his affections, Nurse Mitchell’s reputation and practice were thrown into jeopardy.

A dramatic procession of bloody and violent circumstances brought the very different worlds of Bertha Coughlan and Nurse Mitchell together – and to a tragic end.

List of Characters

- Hannah Mitchell, Nurse
 - Frank Bonfiglio, the third ex-husband of Nurse Mitchell
 - Bertha Coughlan, a young woman from Hinnomunjie in East Gippsland
 - Margaret Milward, Nurse Mitchell’s sister
 - Queenie Mitchell, Nurse’s daughter
 - Florence Spicer, friend of Margaret Milward
 - Ilma Clarice Walters, the nurse next door
 - John Coughlan, Bertha’s father
 - Rebecca Male, Bertha’s aunt
 - Thomas Cook, Coughlan family friend (suggested father of Bertha’s ‘trouble’)
 - Richard Thomas, Cook’s friend who knew ‘a respectable woman’
 - Lilian Mueller, the ‘respectable woman’
 - Sydney McGuffie, Detective
 - Frederick Piggott, Senior Detective
 - Edmund Ethell, Detective
 - Crawford H. Mollison, doctor at Melbourne City Morgue
 - Robert H. Cole, Coroner
 - Horace Solly, husband of one of Nurse Mitchell’s patients
 - Arthur Trood, Bertha’s dental surgeon
 - Harold Sharkey-Boyd, witness to a suspicious act
-

1 February 1923

At 11.10 pm Harold Sharkey-Boyd was crossing the Anderson Street Bridge in Richmond when he heard a man emerge from a parked car. He looked back to see the man struggle with a large, lumpy sack, which he unburdened over the side of the bridge. He heard a dull splash. Feigning apathy, if he had been caught looking, or ignorance, if he hadn't, Sharkey-Boyd restored his attention to the street ahead. On the walk home, he stopped in at the police station.

At 9 o'clock the next morning, Detective Sydney McGuffie and Constable A Taylor from the Russell Street police department 'commenced dragging operations' close to the bridge. From a small boat off the bank they cast a broad net beneath the water. Their dredges of the stretch under Anderson Bridge at first seemed a waste of time: a motorcycle and some bicycle parts. McGuffie congratulated himself on the find: there was yesterday's case of the missing bike solved.

Sharkey-Boyd had been thrilled to witness a suspicious act. In his statement to the police he dwelt gleefully on the brightness of the moonlight, the loom of the parked car, and the unshapely bulk of the mysterious sack. Senior Detective Frederick Piggott had been on duty with McGuffie the night before; they smirked at Sharkey-Boyd when he insisted he had witnessed a body-dump.

But as far-fetched as this was, it gave McGuffie and Taylor an excuse to keep dredging. At 2 pm, they ensnared a decaying black bran sack spewing weight-stones and tied with insulated wire. It had been in the water a lot longer than one night. This was not the bag that Sharkey-Boyd had seen being thrown over the bridge last night. McGuffie and Taylor gagged at the severe 'stench'. They took it ashore. McGuffie cut it open. They found the sack contained another, a corn sack. Stuffed with muddied black fern leaves, the corn sack held the decomposing remains of a woman's body. 'The legs were bent up', and between them was another bag. McGuffie looked closer, and read 'Victorian Portland Cement Company, Cave Hill, Lilydale' on the smaller bag. He hacked it open to find the woman's skull, and a faded and slimy length of dark brown hair.

At the Melbourne City Morgue, Dr Crawford Mollison began a post-mortem, leaving McGuffie to identify the fern leaves and wash the hair. The hair was infested with pupa casings; evidence which, taken with the fern leaves, indicated that the depths of the Yarra had not been the dead woman's only resting place. Dr Mollison discerned that the bones were those of a young woman with a distinguishing feature: she had no teeth.



Police evidence: dead leaves found with a long dark human hair in the bag with Bertha's body in the Yarra River. PROV, VPRS 30/P, Unit 2001, Melbourne Supreme Court, Case number 151 of 15 March 1923. Photograph by Akiko Kawasaki.

18 November 1922

Frank Bonfiglio 'was staying with some Italian friends at the Palamara's shop in Victoria Street', Richmond. By an unhappy accident, Nurse Hannah Mitchell[2] had been passing by on her way to the Caulfield Cup at the very moment Bonfiglio was wandering out for the day. She stopped the taxi and skipped over, urging him to join her in an afternoon of revelry. She appealed to their mutual love of a flutter, to their shared personal history: he had the dubious honour of being Nurse's third ex-husband. She won him over.

In the course of the afternoon they won £600. They didn't talk about her little cottage industry: fixing women's troubles. And they didn't talk about the last time she had seen him, just before he got six months inside for (false) charges of cruelty against her. They certainly didn't mention the dashing Mr Ridgway, her solicitor and ex-lover, who had been directly responsible for Bonfiglio's time behind bars.[3] They didn't even talk about little Margaret 'Queenie' Mitchell, his one-time step-daughter, who hated him and had never shrunk from saying so.

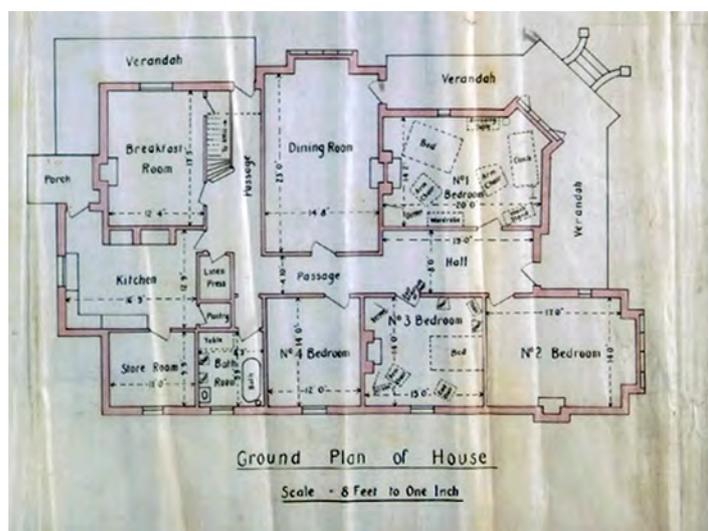
They had a splendid afternoon. When the taxi stopped at 4 Burnley Street in Richmond, Nurse Mitchell invited Bonfiglio inside to 'sing a song': Bonfiglio was a gifted tenor. He demurred, but said he would meet her later. At 9.30 pm he turned up on her doorstep, carefully shaven, wearing his best jacket. Nurse's sister, Mrs Margaret Milward, let him in. Nurse Mitchell made a fleeting appearance, and told him to read the paper; she had 'things' to finish up. Bonfiglio made himself comfortable in the sitting room.

The house was full of people being quiet. Mrs Milward and her friend, Mrs Florence Spicer, were murmuring over coffee in the kitchen. Queenie Mitchell and Mrs Milward's son Albert were upstairs amusing Albert's little brother. The bedrooms downstairs contained various moaning or snoring girls, three and four to a bed, shamed and docile. Nurse Mitchell likely had another girl in the bedroom (strategically) nearest the bathroom at that moment. Bonfiglio shared the sitting room with a sickly looking man who introduced himself as Horace Solly. His wife was in a bedroom upstairs, awaiting a procedure; they had five little ones already, he told Bonfiglio, and himself 'in a delicate state of health' – well, Nurse Mitchell was their only hope!

But Bonfiglio was losing interest and patience. Twenty minutes later Nurse Mitchell came back transformed: brusque, cool, severe. She said, 'I have a girl taken bad. Take your coat off and help carry her to the bathroom. Maggie will help you.'

In the third bedroom was a girl lying in a mess of blood. Her nightgown was soaked from the middle down and the sheets all around her were soggy and depressed. Bonfiglio coaxed her arms up loosely around his neck, and took her about the shoulders. Her lolling head was supported by his stomach. He staggered backwards, Nurse carrying her ankles, down the hall to the bathroom. She was not a small girl; in a swoon she was a dead weight. They laid her half on the table, with her head on a small cushion and her legs dangling over the side. Blood dripped on the lino.

'Hold her,' Nurse Mitchell barked. 'Hold her head or she'll fall down and kill herself. She's very bad.'



Police evidence: floor plan of Nurse Mitchell's house, 4 Burnley St, Richmond. PROV, VPRS 30/P, Unit 2001, Melbourne Supreme Court, Case number 151 of 15 March 1923.

Nurse Mitchell got two chairs and placed them side-by-side backwards at the end of the table. With Bonfiglio still holding the girl's head, 'Nurse Mitchell propped each foot on the backs of the chairs'. Mrs Milward hovered. Nurse went away and came back with her tools of the trade: a bowl of soapy water, a long, flat, silver instrument and a large syringe.[4] She put the bowl of water on the seat of one chair, and sat on the other, and bent to work: scraping, syringing, soaping.

Bonfiglio and Mrs Milward stood in the bathroom for forty-five minutes. While scraping, Nurse Mitchell said to Bertha, 'Did I hurt you?' 'No,' the girl panted. 'You are a good girl,' Nurse said firmly. She turned to Mrs Milward. 'Call your son to get some brandy with a spoon.' [5]

Mrs Milward fed the brandy to the girl in small sips. Nurse Mitchell had ceased scraping and syringing. Now she put her hand up, inside the birth passage: 'Cough, darling, and help me,' she ordered. 'The girl coughed three or four times.' 'You are a good girl,' she repeated. 'Cough again.' She removed her hand and rinsed it in the dish of soapy water, now lukewarm. The girl's head sank back on the cushion. She was breathing fast and shallow, her long neck as exposed and prone as her legs.

Nurse Mitchell could hear the quiet glug of blood filling the girl's womb.[6] She said to Bonfiglio, 'I can't do anything more for her; I have done my best; it is a serious case and it may be fatal. I am very tired. I cannot do any more; I think she is gone.' She sluiced the coloured remains of the soapy water on the girl and said, 'Carry her out of the bathroom again and into the bedroom.'

Mrs Milward, Bonfiglio and Nurse Mitchell made to lift Bertha from the table, but she began to haemorrhage. Soon she fainted. They waited for the flow to ease and carried her, still dripping, back to the bedroom. Nurse Mitchell said she was off to bed, and told Mrs Milward to keep up the sips of brandy. Bonfiglio followed her out of the room, intent on sleep himself, but Nurse Mitchell told him to 'Go keep Maggie [Milward] company'. Bonfiglio objected.

Bonfiglio: Why didn't you call a doctor?

Nurse: A doctor cannot do more than I did to her.

Bonfiglio: Why didn't you have one before?

Nurse: Don't worry; let me rest ... I'm going to make a cup of coffee.

Nurse Mitchell walked off, leaving Bonfiglio and his conscience in the doorway of the bedroom.

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Inside the room, Mrs Milward was leaning over the girl. She was rolling feverishly from one side of the bed to the other. Mrs Milward put a hand on her shoulder to calm her, and fed her another spoonful of brandy. 'It is a shame to see the girl dying like this,' she said.

Bonfiglio was still thinking about Nurse Mitchell. He said aloud to himself, 'I am going to bed,' and became aware that Mrs Milward had spoken. 'Why don't you go to bed?' he asked. 'I can't leave the girl like this,' she said. Bonfiglio sighed; he could not leave in good conscience.

The girl looked into Mrs Milward's face and croaked, 'I'm so cold. Could you rub my hands, please?' Mrs Milward put the spoon aside and took her hands. The girl squeezed back weakly. She whispered, so that Mrs Milward could hardly hear over the gentle friction of their clasped hands and the bedclothes, 'You are kind; you are so good to me.' Mrs Milward tried to soothe her.

Mrs Milward: Never mind, dear ... You will have a nice breakfast in the morning.

Girl: I won't be alive in the morning. I'm dying.

Mrs Milward: No, you are not. Where is your boy?

Girl: I don't know.

Mrs Milward: Don't you know where he is?

Girl: Yes, I do, but I don't want to say anything.

Mrs Milward: What religion are you, dear?

Girl: Church of England.

Mrs Milward: What is your name?

Girl: *[fading fast]* Cog ...

Bonfiglio: She is gone.

Mrs Milward was still rubbing the girl's hands, gently, gently. They were no warmer than when she began. 'She is not; she can't be gone,' she said. Bonfiglio leaned close. 'She is,' he confirmed. He straightened up, and put a hand on Mrs Milward's forearm, encouraging her to let go. The bedroom was cool and smelled of blood.

Mrs Milward went to the kitchen to brew a new pot of coffee. It was late. Mrs Spicer was in the kitchen. Everyone else was in bed. In an upstairs bedroom[7] Bonfiglio stood over Nurse Mitchell and shook her awake. She said, 'I am tired, let me rest.' Bonfiglio persisted this time: 'Come and see her; you might do something for her.' Nurse Mitchell yawned. 'I suppose she is dead?' Bonfiglio replied, 'Just come and see her.'

In the bedroom, Mrs Milward gave Nurse Mitchell a coffee. Mrs Spicer had followed her from the kitchen. She peered at the girl from the doorway and said into

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the room, 'You know what she said to me earlier? She said, "I wish I were a little bird and a cat come along and swallow me up." Huh. Fancy a poor girl dying and none of her relations to know where she has gone.' [8]

'It would be no good informing the relations,' said Nurse. 'It would be putting me away.'

Mrs Milward asked, 'Is she really gone?' Nurse deposited her coffee and drew the bloody sheet over the girl's face. 'Yes. Go to bed,' she ordered them.

28 February 1923

The Coroner, Robert Cole, inquired into the identity of the woman in the bags and the nature of her death. The inquest took four days. Among those who testified to her identity were her dentist and her father. They addressed their statements to the Coroner's legal representative, Scott Murphy.

In November 1920, dentist Arthur Trood had removed every last tooth in Bertha Coughlan's head. She was a plain girl; porcelains could only improve her thin, long face. His bumbling account of the operation betrayed his profound personal disinterest in his patient's identity and his professional interest in her cash payment. When Cole asked him to describe her face, he said he was 'concerned more with her mouth and the work I was doing than with her features ... I have seen hundreds of patients since then, probably thousands.'

John Coughlan was called to give evidence. He had reported his daughter missing in November.[9] After two and a half months, it was not a shock to know she was dead. He now gave her description to Cole as best he could. He couldn't remember her birthday, but she was probably 27 or 28, he said, and he tried hard to remember how she looked. She was 'inclined to be slight – very slight. Her hair was dark brown or black; I think you would call her eyes hazel; I would not swear; they were dark eyes ... She had rather high cheekbones and was rather big in the features: she had strong features – long and strong.' Here Mr Coughlan paused, searching for the right words for his daughter's plainness, at once sturdy and sickly. He summed her up as best he could: 'She had not a baby face.' He began to tell the Coroner that Bertha had come to Melbourne to seek treatment for her chronic earache, but finished up telling the court about her chronic heartache.



Bertha's friend Thomas Cook wrote to her from The Victoria Coffee Palace in Collins Street. Image courtesy of The Collector's Marvellous Melbourne.

1 November 1922

Bertha's mother had been dead for almost a year. Her brother, James, had died years ago, just after the war. She wore his medal on her blouse as a brooch. Now there was only her father, her younger brother, Leslie, and herself at the little farm in Hinnomunjie, a gold-dredging community on the Mitta Mitta near Omeo. Bertha had broken off her engagement to Arthur Lemmon in July, and hadn't seen him since. She was bored and lonely in remote Hinnomunjie. Lately her ear had been giving her trouble again and Dr McCardy in Omeo was no help. She was glad of the excuse to go to Melbourne.

Bertha and her father came by train from Bairnsdale, arriving in the morning of 6 November. She had an appointment with Dr Ewing, an ear specialist, who prescribed an expensive relief. Feeling crabby from the train ride and alienated by the city, Mr Coughlan objected to the price at three different pharmacies across town. It was late afternoon by the time Bertha had her medicine; she could have cried. They adjourned to the *Bull and Mouth Hotel* in Bourke Street.[10]

Tuesday was Cup Day. Bertha left her father in the bar at the *Bull and Mouth*, and caught the train to Dandenong to visit her Aunt Rebecca and cousins. They invited her to extend her stay; they were sympathetic about her impossible father. She accepted tentatively. On Wednesday she returned to the city for another appointment with Dr Ewing. Her ear medicine of mercury and almond oil was proving effective, and its nasty smell provided Bertha with a fine excuse for her ritual morning vomit.[11] Her father hadn't noticed, of course, but her Aunt had expressed concern.

Mr Coughlan saw her off at Flinders Street Station on Friday night. He complained that 'she had about as much luggage as an ordinary man can carry'. That was the last he saw of her: her little black dress buttoned modestly up at the neck, a slate-coloured cloche pulled low over her anxious expression, and her brother's medal pinned to her breast. Mr Coughlan went back to Warragul,[12] satisfied that his daughter was in someone else's care for the summer.

Bertha stayed with Aunt Rebecca for six days. As Aunt's curiosity and concern increased, so did Bertha's reservation and misery. On 13 November she packed some of her luggage and told Aunt Rebecca that she 'was going to Camberwell to a Mrs Forbes and some people in Elwood'. The day after she left, a telegram arrived. It read: 'Staying at *Victoria Coffee Palace* till tomorrow; come down today if possible, *Elsie*.' Aunt Rebecca didn't recall her niece mentioning this friend, but she kept it anyway, for when Bertha came back.

19 November 1923

It was Sunday. People drifted in and out of the house. Nurse Mitchell let her daughter, Queenie, check on the girls[13] while she visited Nurse Laura Gidley's private hospital next door at 2 Burnley Street and spoke with Nurse Ilma Walters. A few days ago she had given Nurse Walters another girl who had taken bad; at least that one looked like she might improve. Nurse Walters was comfortingly matter-of-fact about patient mortality.

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Nurse Mitchell told her that Bertha had died because the placenta had been expelled before the foetus, and the foetus had got stuck high in the womb: *placenta praevia*.^[14] Nurse Walters frowned when she said she hadn't called a doctor. Nurse Mitchell suffered her righteousness for as long as it took to make sure her cast-off patient wasn't dead by her own hand – two murders at the same time would look like she was losing her touch. She returned home and went to her room, coming out only to drink coffee and make telephone calls.

She caught Mrs Spicer alone in the kitchen, mid-afternoon; things needed to be done.

Mrs Milward: Never mind, dear ... You will have a nice breakfast in the morning.

Nurse: Has Peg told you the news?

Mrs Spicer: No ...?

Nurse: I have had trouble. The girl is dead.

Mrs Spicer: Why don't you ring the police?

Nurse: It is too late now, the girl is stiff. I want you to go on an errand for me.

Mrs Spicer: Where do you want me to go?

Nurse: South Yarra. [*she gives an address*] You must tell a certain gentlemanto smudge his lights and meet me at Victoria Street Bridge. Ask him would he bring a carand take a body away – would he do that, and offer £300 or £400. The money does not make any difference; can you do that?

But Mrs Spicer's mission was unsuccessful.

Nurse: How did you get on?

Mrs Spicer: He would do anything legitimate but he would not do anything crook. He said he had had a bad time with the police.

Nurse: I don't know what to do; what would you do?

Mrs Spicer: [*not tempted to comfort her*] I don't know. I'm going home.

By the time Bonfiglio returned in the evening, Nurse Mitchell had a new plan. She, Queenie, Mrs Milward and Bonfiglio all ate supper around the kitchen table. At 9.30 a taxi arrived;^[15] Bonfiglio answered the door. 'What have you got him for?' he asked Nurse. She replied enigmatically, 'Come for a drive in the fresh air.'

She directed the taxi to her son-in-law, Mr Torbey's place in Faraday Street, and told Bonfiglio to wait in the cab; she would be back soon. Half an hour later she pulled up beside the cab in Mr Torbey's Studebaker. Bonfiglio

dismissed the taxi and took the wheel of the Studebaker. 'I can drive any car,' he boasted. They drove home. Nurse had been evasive all evening and now she was smug.

Nurse: Do you know what I got the car for?

Bonfiglio: No.

Nurse: To take the girl away.

Bonfiglio: Where are you going to take her?

Nurse: Healesville.

Bonfiglio: In this car? It won't pull up the Spur!

Nurse: No. We are going to that place where we have been shooting.^[16]

Bonfiglio: Why didn't you tell me before?

Nurse: If you won't help me, the people who have done this thing before will do it again; they have got a car.^[17] [*begins to cry*] It's your place to help me! You don't want to see me hanged! [*calms down*] ... Anyway, if anything comes to the worst I will confess it and say I am the only one to blame.

She had given him a lot to think about. He had known about her profession when they were married, but he had always chosen to remain ignorant of the particulars. To hear that this girl's death was, while not a common event, nevertheless one of a number... And he couldn't doubt that her promise to own all responsibility might mean exactly the opposite: he had served time in gaol for her convenience in their divorce. What, exactly, did she think 'his place' was?

14 November 1922

The 'Elsie' of the telegram was in fact Thomas Cook, who lived with his wife on a small farm near the Coughlans' in Hinnomunjie. He had been in Albury for a race meeting (he had horses there) when he received a letter from Bertha in Dandenong. The letter asked him to come to Melbourne and, when there, to send her a telegram from 'Elsie'.^[18] She said she was in trouble. Would he help? Cook knew what Bertha's 'trouble' was.^[19]

Cook had a friend in Melbourne, Richard Thomas, an engine driver on the provincial trains. When Thomas was in Albury, Cook asked him for the name of 'a respectable woman' – specifically, a nurse. He also asked for some money. Thomas said he didn't know any nurses, why would he? But he did know a respectable lady called Mrs Lilian Mueller. Cook said, 'Will you give me a letter of introduction?' Thomas fixed him up with a note, and the address of the *Recreation Hotel* in Spencer Street where Mrs Mueller worked. Cook left for Melbourne.

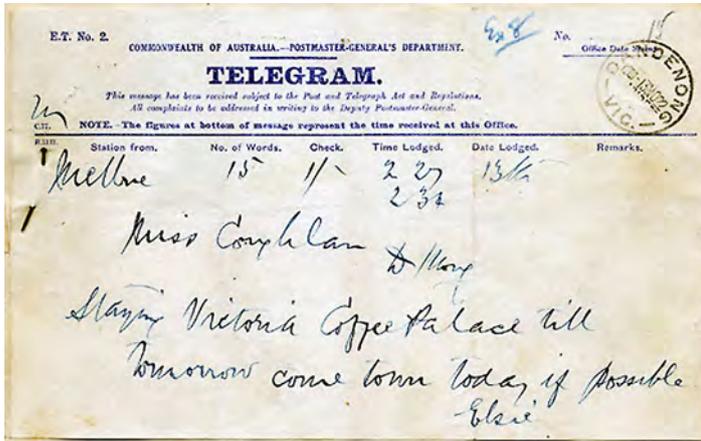


Exhibit no. 8 – copy of telegram sent to deceased. Thomas Cook’s cryptic telegram arrived too late for Bertha, and was received with puzzlement by her Aunt Rebecca. PROV, VPRS 30/P, Unit 2001, Melbourne Supreme Court, Case number 151 of 15 March 1923.

His telegram might have been too late, but at midday on 14 November he chanced to walk past the *Bull and Mouth* at the same time as Bertha was leaving. He thought she looked thicker around the middle, but it was probably just her dress, or his suspicion. Her thin, long face looked pallid and anguished. He took her back inside, into the bar. He said, ‘What is your trouble? Why did you write to me? Where’s Mr Lemmon [Bertha’s ex-fiancé]?’ [20]

She said that Lemmon had sold out of his business outside Omeo, and she had not heard from him lately. ‘It does not concern you,’ she said sourly. He gave up trying to elicit her story, and cut to the chase. ‘I found a “respectable woman” for you,’ he said. ‘She will help you to find a nurse.’

‘Don’t do anything silly,’ he warned, to which she replied curtly, ‘It’s not what you think it is.’ Cook was doubtful, but the girl was alone and in trouble. He took pity on her. ‘If it’s for a good cause, then I can give you £10, but that is all. I don’t have any more.’ He told Bertha the address of the *Recreation Hotel*, then left for his lodgings at the *Coffee Palace*. Later that afternoon, he was strolling past the General Post Office in Bourke Street when he caught sight of Bertha, this time in the company of a stout, middle-aged woman of respectable, unfashionable dress. He nodded at Bertha and she acknowledged him; he kept walking.

Cook left for Albury the next day. He telephoned Mrs Mueller a couple of days later, to satisfy his conscience. Mrs Mueller assured him that ‘the girl is all right’. He was content not to know details; his duty was done. When he went home to Hinnomunjie in early December, he called on John Coughlan: ‘Have you heard from Bertha recently?’ Coughlan said he hadn’t. On 28

February 1923, Cook recalled to the Coroner: ‘She told me it was for a good cause, and I thought she was going to a hospital to be delivered.’

20 November 1922

Bonfiglio and Nurse Mitchell left the Studebaker around the side of the house and came into the kitchen. Mrs Spicer, Mrs Milward and Queenie were still up; it was past midnight. Nurse Mitchell helped herself to coffee and joined them at the table. She looked sternly at Mrs Milward and said, ‘Remember, you are my sister, and as a sister I expect you to stick to me in the trouble. Keep your mouth closed. Remember, don’t say *anything* about this to *anyone*. If you do, you will go to gaol.’ Bonfiglio had taken a seat at the end of the table, smiling grimly as she said this. ‘People that talk can always be silenced,’ Nurse Mitchell said.

Then she took a breath and continued in a gentler tone: ‘Peg, I want you to come for a motor ride.’ [21]

Mrs Milward: Why do you want *me* to go?

Nurse: I want to go see Mrs Torbey. She’s sick.

Mrs Milward: I don’t want to go in the car with you! [to Mrs Spicer:] She wants me to go out with her to take the body! What would you do?

Mrs Spicer: I am not in a position to judge. You are her sister and I suppose she expects you to help her.

Nurse: Don’t be silly, Peg. You are coming.

Mrs Milward: [crying] I don’t want to go!

Nurse: You can do all the weeping when you come home; you will have more time then. We must go soon.

Mrs Milward: [mutinously] If I have to go, Queenie has to go.

Queenie: All right, Peg, I will go with you and Nurse and Mr Bonfiglio.

Nurse: Make yourself warm. [leaves the room]

The sheets around the corpse were stiff and conspicuous with old blood. Everything was awkward; the sheets wouldn’t wrap neatly.[22] Nurse Mitchell directed Bonfiglio to wrap it in fresh ones, and to fasten the shroud loosely with safety pins. They carried it to the car and placed it half on the floor between the front and back seats. ‘The head had to be bent’ to accommodate Nurse Mitchell and Mrs Milward in the back seat. Bonfiglio and Queenie were in the front. Bonfiglio drove up Whitehorse Road until they passed Melba’s cottage. [23] They took a right turn after the post office, and then another left, down a narrowing, desolate road.

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It was around 4 am; not as dark as before. They reached Coldstream and pulled through a gate bearing the sign 'Yarra Bank'.

They were on a broad plateau above a wide, semi-cleared gully. Nurse Mitchell and Bonfiglio struggled to remove the slip-rails which would block their descent, while Queenie and Mrs Milward brought out the corpse. Queenie stayed at the car on lookout while the others lumbered down into the gully. At the bottom, they laid the body on the leafy ground and unwrapped the shroud. Nurse Mitchell grabbed handfuls of forest debris to cover it – large, dead, brown fern fronds and grey masses of gum leaves. Then she dragged a large plank of wood and laid it over the area to keep the weather away. She dusted off her hands and said, 'She will be eaten by some animal in a few days, and it will not be known who she is if they find her.' They climbed back to the car in silence. The horizon was beginning to glow; it was almost five.

They drove back to 4 Burnley Street. Mrs Spicer was in the kitchen having breakfast with Mr Solly. Nurse Mitchell went into the newly empty bedroom to remove all traces of the girl. 'What have you done with the clothes?' she asked Queenie. 'I burnt them under the copper.' 'Good girl.'

Nurse and Queenie collected two small poison-bottles that Bertha had brought with her.[24] Before incinerating the girl's effects, Queenie had removed a brooch made from a war medal, and a ring set with a small diamond. Now she showed these to her mother.

There was someone at the door. Nurse went and there found Mrs Mueller expecting to see 'the young girl from the country'. Nurse Mitchell smiled at her.

'She's gone home,' she lied. 'She left yesterday. Didn't she go to your place?' Mrs Mueller was mystified. Nurse Mitchell said, 'Well, she left here to go there.' Mrs Mueller could only respond, 'But she could not go to my place because there is nobody at my place that knows her, only me! I don't even really know the girl. Her people are anxious about her; she hasn't written to them.' [25] Nurse Mitchell continued friendly and ignorant: 'She has probably gone to stay with friends. Of course, there are many girls here and they are encouraged to come and go as they please. I've been at the races lately.' [26] This was not an explanation, but Mrs Mueller was not, after all, responsible for the girl. She allowed Nurse Mitchell to distract her with talk of the races.

13 January 1923

Frank Bonfiglio was cooperating with the police, from the extreme discomfort of a hospital bed in St Vincent's. Senior Detective Fred Piggott and Detective Ed Ethell were standing over his bed with notebooks and earnest expressions.

Det. Piggott: Hulloo, Bonfiglio! What has happened to you this time?

Bonfiglio: I have been shot.

Det. Piggott: Who shot you?

Bonfiglio: Nurse Mitchell.

Before Bonfiglio left for Western Australia, he and Nurse Mitchell had come to an understanding. They were going to start afresh. He was going to start a business. They were going to move interstate and forget about 4 Burnley Street and the dead girl. On the Saturday after they buried her, Nurse Mitchell had begged him to marry her 'this afternoon!' He promised he would, but only after he had re-established himself in Perth. She sulked, but let him go. He left his young son at her house while he was to be away – a gesture of his commitment. Their understanding included Nurse Mitchell's promise of £40 up front and more to follow. From Perth, he sent her a telegram requesting £30. She wrote back, astonished and suspicious: why did he need £30 a mere fortnight after her generous gift? She had reason to be cautious; as long as she and Bonfiglio remained unmarried and at large he might be tempted to divulge the affair to police. The two of them had not shared the most peaceful of personal histories, she recalled. Soon after she had sent her reply her fears were realised. Bonfiglio now requested £500 in exchange for his silence about Bertha's death. Nurse Mitchell took a risk; she did not send him any more money. Besides, there were many other parties apart from Bonfiglio to consider – stories to straighten, useful people to thank – and her racing fortunes could only fund so much silence.[27]

Without Nurse Mitchell's extra contributions, Bonfiglio was unable to set up his business as a marble mason. Disheartened, he returned to Melbourne on 12 January, and called at 4 Burnley Street. He was unprepared for the nest of tensions he encountered. 'Nurse opened the door, and was speechless to see him.' He went upstairs to her bedroom and took off his coat. She came up behind him and finally said, 'I got a shock to see you.' She kissed him, less to renew her affections than to remind him of his loyalty. Then she said with bitterness, 'It was nice letters you sent me; you can do what you like, you can tell a policeman if you want to. The body has been shifted and burnt under the copper.' She was lying; she hadn't burnt the girl.[28]

On his way out, Bonfiglio met Queenie. They had never liked one another. She hissed a warning, 'If you do any harm to my mother I will shoot you, and I will shoot your son.'

When Bonfiglio came back that evening, Queenie answered the door. She directed him upstairs, hinting that her mother was emotional and 'might *do something* to herself'. He climbed the stairs with trepidation. Nurse Mitchell was in her bed, and invited him to join her. He complied.

At 9.30 the next morning, Bonfiglio awoke; he shaved and dressed to go out. When he went downstairs, he noticed Nurse's car out front.

Bonfiglio: What is the car for?

Nurse: We are going for a drive.

Bonfiglio: Where? I cannot go out. I have an appointment; where are you going?

Nurse: We are going for a drive in the country.

Bonfiglio: No, I have to meet a friend of mine at one o'clock.

Nurse Mitchell became suspicious of his 'appointment'. She grabbed at his coat and pulled it off him. She rushed into an empty bedroom and thrust it in the closet. He was thumping behind her, irritated at her larks.

'Where's the coat?' he snapped, at which she laughed affectedly and said, 'I have a bad memory. As soon as I remember where I put it, I will give it to you!' Then she became grave and dangerous. She stared at him. 'I do not want you to have anything on me your whole life.' Then she began to shoot...

Det. Piggott: Are you in pain?

Bonfiglio: Yes.

Det. Piggott: Have you suffered much?

Bonfiglio: A good deal.

Bonfiglio had every reason to feel vindictive. He told the detectives the truth: Nurse Mitchell had killed the girl, and hidden the body at Coldstream. 'She missed me first,' he said. 'I rushed at her, and held her by the wrist.' She fired another two shots. The fourth hit his arm. He fell heavily on the floor in front of the wardrobe, gasping, wounded. She shot him three more times. He was helpless at close range. He could only writhe and crawl on the carpet. One bullet hit his back. One hit high on his front, and another buried itself in the flesh beneath his waistcoat. Nurse said, 'Frank, I am sorry but I have got to do it,' and fired her last shot. Then she left, locking the door behind her.

Bonfiglio concentrated on breathing. He was probably dying. He slithered to the window and hauled himself up, leaving smears on the floor and the window ledge.[29] He walked wretchedly to Nurse Gidley's next door. She patched him up, before calling an ambulance.

7 March 1923

Detectives Piggott and Ethell were subpoenaed to appear in the Coroner's court. Bonfiglio's shooting investigation had, thanks to his damning statement in St Vincent's Hospital, brought about Bertha's inquest. But though Bonfiglio had spoken specifically and at length about the mound of dead fronds which had formed Bertha's first grave, this was not the detail which cracked the case.

Piggott's statement to Robert Cole was laconic. In the last phase of the inquest, he told the Coroner and the court of witnesses, suspects and others:

I was told that the body had been removed twice. I was told that when it would be found, it would be found in a bag, and that the head would be in one portion of the bag and the body in the other, and that it was under water, and in that bag I would find ferns. I could not tell you from whom I found out this. I never tell you where my information comes from. I will go so far as to tell you that it is not one of the witnesses in this court, and it is someone who is not connected to the case in any way. I did not know that a body was under the Anderson Street Bridge. I suggest that the finding of the body ... was a complete fluke.

Postscript

After the inquest, Nurse Mitchell, Bonfiglio and Mrs Milward were all arrested and released on bail while the police investigated Nurse Mitchell's vast network of extortion and bribery. In April 1923 'Nurse' Hannah Elizabeth Mitchell was tried for the 'willful murder' of Bertha Coughlan. She told Crown Prosecutor HCG Macindoe that in her professional opinion, Bertha had

asked me if she could stay for about a week as she did not want to go to her friends on account of her sickness as she was so ill and very often vomiting. From the signs and what she told me, I came to the conclusion that she was suffering a little bit from kidney trouble, and I advised her to see a doctor.

Nurse Mitchell was never prosecuted.

Endnotes

[1] *Note on historical veracity:* All of the dialogue, except where footnoted, is taken, verbatim, from witness testimonies at the Coroner's inquest. Most of the descriptive details have been gleaned from the testimonies as well; exact descriptions are given in quotation marks. Some empathetic details have been fabricated, and these are acknowledged in the notes. Testimonies from the following witnesses were presented at the inquest between 28 February and 7 March 1923: Arthur Trood, John Coughlan, Leslie Coughlan, Rebecca Male, Samuel Ewing, Richard Thomas, Thomas Cook, Lilian Mueller, Frank Bonfiglio, Horace Solly, Margaret Milward, Florence Spicer, Ilma Clarice Walters, Sydney McGuffie, Frederick Piggott, Edmund Ethell. In addition, the testimonies of Frank Bonfiglio and Hannah Mitchell under cross-examination by Crown Prosecutor, HCG Macindoe, at the trial in April 1923 were relied upon in preparing this account. All case material is contained in PROV, VPRS 30/P, Unit 2001, Melbourne Supreme Court, Case number 151 of 15 March 1923. This includes the police report, Coroner's inquest, Trial transcript: His Majesty vs. Hannah Elizabeth Mitchell, Prosecutor's notes, Police evidence including dried fern-leaves, transcripts of telegrams and letters, transcripts of witness statements, and map of the accused's house.

[2] Nurse Hannah Elizabeth Mitchell was called simply 'Nurse' by her daughter and sister, and by her ex-husband Bonfiglio. She was a nurse by vocation, and her home was her workplace. Her daughter Queenie worked under her supervision as her apprentice in the house. Bonfiglio refers to her as 'Nurse' and 'Nurse Mitchell' in the Coroner's inquest and in the trial transcripts.

[3] The love triangle: Bonfiglio said later that Nurse and Ridgway had colluded to get him out of the picture. He maintained they had trumped up the charges of cruelty against him.

[4] The first (and usually the only) procedure upon unwanted pregnancies was performed with a catheter. This long, sharp instrument was inserted into the vagina and 'poked' into the womb to disturb the foetus, which would detach and be expelled from the womb within a matter of days. Nurse Mitchell's house was 'reputable', insofar as she allowed the patient to remain under her supervision until the miscarriage occurred. Other 'backyard' abortionists sent the patient home to deal with it herself. If the miscarriage was not clean – that is, if there appeared to be excessive bleeding (as was the case with Bertha) or if the foetus and other womb materials had not been successfully expelled – a second procedure was performed. This was called curetting, and involved simultaneously scraping and rinsing the opening of the womb and the birth canal of any remaining matter. The instruments used were a long silver syringe (the curette) and a speculum, to hold the area open and unobstructed. This was a last resort, usually preceded and followed by heavy bleeding. If detached matter remained in the womb or birth canal, the danger was that it might become septic and spread infection which would be fatal to the patient.

[5] This conversation has been fabricated from the inquest accounts of Bonfiglio and Margaret Milward. Nurse Mitchell *did* ask this of Milward.

[6] Later Nurse Mitchell told her neighbour Nurse Ilma Walters that while she was 'working on' Bertha she could 'hear her filling up' with blood. Nurse Walter's statement was quoted in the Coroner's inquest.

[7] It is unclear from the testimonies and the floor plan sketch whether Nurse's bedroom was on the upper or ground level. Here, Bonfiglio indicates that it was upstairs, but later, when he was shot, he said he climbed out the window (quite a feat from the upper level). There may have been some kind of landing.

[8] Mrs Spicer recalls Bertha's cat-and-bird speech in her testimony, but it is not known whether she mentioned this to the other people in the house.

[9] This detail may be inferred from the evidence, but is not recorded.

[10] John Coughlan said that they stayed at the *Bull and Mouth* in *Elizabeth* Street, not Bourke, but he was not familiar with Melbourne.

[11] While this detail is not recorded, the testimonies reveal that Bertha worried about her morning sickness becoming conspicuous to her Aunt, and Dr Ewing's prescriptions of mercury and almond oil were nasty and, quite possibly, poisonous.

[12] The rural city of Warragul was a township in the 1920s, south-east of Dandenong on the train line back to Gippsland.

[13] I have added this detail: Queenie was Nurse Mitchell's trainee, she called her mother 'Nurse' and she attended to patients.

[14] It is not clear whether *placenta praevia* killed Bertha or not. It appears from the inquest and trial that Mrs Milward and Queenie saw the expelled foetus among the bed sheets, and Nurse was known to have said, 'Thank god, I have got the foetus. I have saved the girl.' It is likely Nurse Mitchell told Nurse Walters that the foetus was *not* expelled, so as to have a blameless explanation for Bertha's death; Nurse Walters was called upon during the inquest and trial as an expert witness, to give a detailed medical opinion.

[15] Bonfiglio says 9.30 pm at the inquest and 10.30 pm at the trial.

[16] Nurse Mitchell refers to an activity the couple once enjoyed.

[17] Nurse Mitchell refers to the other times she has had to dispose of a corpse, and the help she bribed.

[18] Thomas Cook was later arrested for sending a telegram under a pseudonym.

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[19] This is alluded to in the inquest testimony of Emily Elizabeth Tucker, who ran a boarding house to which Bertha applied for accommodation the day before she was admitted to Nurse Mitchell's: 'She [Nurse] told me that a young fellow in the country was responsible for the trouble. She said that the girl had carried on with a married man.'

[20] This conversation has been reconstructed from Cook's account of his meeting with Bertha.

[21] This was never a whole scene; Nurse and the others were buzzing around the house, in and out of rooms, speaking with one another separately, and not always in the others' company.

[22] Bonfiglio's and Milward's testimonies referred to the body being wrapped in a blanket *and* a sheet, it is not clear which. It is also not clear who wrapped the body.

[23] Coombe Cottage, the residence of Dame Nellie Melba, Melbourne's celebrated opera singer. It is mentioned several times throughout the inquest and trial, as a local landmark.

[24] Bertha's nasty ear medicine, used by Dr Ewing and the Coroner to identify her at the inquest.

[25] The latter part of the speech is a creative addition: I have reconstructed Mrs Mueller's speech to Nurse from her account at the inquest.

[26] It is unclear exactly what Nurse said to Mrs Mueller to distract her from Bertha's welfare. Bonfiglio testified that after Nurse lied to Mueller they stood chatting about the horse races for a considerable time.

[27] The various testimonies from marginal characters indicate that Nurse Mitchell embarked upon an orgy of extortion and favour-granting, using her regular, large race winnings. In December she had three men remove the body from Coldstream. They took it to a well and reported back. Mrs Milward recalled that the men wanted to move it again, and that Nurse Mitchell approved.

[28] Nurse Mitchell told Bonfiglio that she had removed the body from the gully in Coldstream and burnt it. Bonfiglio indicated in his inquest account that he did not believe this (possibly because she had never burnt any other dead patients). He thought it reasonable to believe she had moved it. When he gave evidence to the detectives, he said he suspected that the fern leaves at Coldstream would prove the truth of the matter. It is unclear why Nurse's hired help relocated Bertha's corpse from Coldstream back to Richmond for the hapless Sharkey-Boyd to detect; perhaps they thought that another body in Richmond's Yarra had better chance of decaying unnoticed than it would in the secluded environs of Coldstream.

[29] This detail is my own invention.

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