

*A Good Riddance: The Inception of Criminal Deportation in Colonial Australia*

*Associate Professor Kristyn Harman, University of Tasmania<sup>1</sup>*

**Introduction**

I have an abiding obsession. My obsession is with a particular set of convict indent registers that form part of the Tasmanian Archives in Hobart. These registers are old. They date back to when this island was known as Van Diemen's Land. There are just five of them. And they have tatty brown covers with scrappy handwriting describing them as 'indents' and yet also as 'miscellaneous'. While they are significant enough to have been inscribed into the UNESCO's Memory of the World International Register, the records that I obsess about have largely been overlooked. They were originally compiled by the Comptroller-General of Convicts between 1835 and 1853, terminating when convict transportation to the penal colony formally ended, and were later transferred in 1951 from the Sheriff's Office to the Tasmanian State Archives in Hobart. Today, we know them as CON16, Convicts Locally Convicted or Transported from Other Colonies.

A clue as to why the CON16 registers have not attracted the scholarly attention that I think they deserve lies in their dual title. Yes, they are a set of indents, rich with physical, legal, and social details about the individuals who lives collectively informed the compilation of these five volumes. But these records are 'miscellaneous'. They don't fit neatly into the tired narrative of the men, women, and children from England and Ireland who were transported here in their thousands from the early - and into the middle - decades of the nineteenth century. Perhaps, for me, that is part of the allure. The data captured in CON16 has the power to disrupt what we think we know about convict transportation. It reveals histories that are not consistent with the master narrative – our culturally shared and agreed version of Tasmania's convict history.

My obsession with CON16 dates back twenty years to the start of my doctoral research in 2004. Back then, my curiosity about convicts locally convicted or transported from other colonies was a decade old. A few months after arriving in lutruwita Tasmania in 1994, I stood in front of a headstone in the Maria Island cemetery deciphering an inscription written in Te Reo Māori and wondering what Hohepa Te Umuroa had been doing there in 1847, so far from our shared homeland. It was only later, as I became more familiar with the several layers of the island's colonial past, that I realised he had been one of several Māori deported as criminals from Aotearoa New Zealand after being sentenced to transportation for life for being in open rebellion against Queen and country. Te Umuroa's indent forms part of the third volume of CON16. To be more precise, his name and physical description with details of his offence, trial, and sentencing are spread across pages 312 and 313 of this record.

During the early stages of my doctoral research, I focused on the transportation – or what we might also usefully think of as 'criminal deportation' – of Māori from Aotearoa New Zealand to Van Diemen's Land. But before long I began to wonder whether the same might be happening to Aboriginal people in what had become the Australian colonies? When I posited this as a

---

<sup>1</sup> This research was supported by the Australian Government through the Australian Research Council's *Discovery Projects* funding scheme (project DP230100267). The views expressed herein are those of the authors and are not necessarily those of the Australian Government or Australian Research Council.

possibility, one of my thesis supervisors scribbled in the margin of my work that they seriously doubted that I would find any evidence of that. However, I discovered that more than sixty Aboriginal men from New South Wales (which at the time included what is now Queensland and Victoria) were incorporated into the convict system. So it was these Aboriginal Convicts who became the focus of my doctoral dissertation.

When my first book was published by UNSW Press in 2012, I expanded the scope of Aboriginal Convicts so it became a transnational history. As well as writing about Aboriginal convicts transported within the Australian colonies as a direct consequence of the frontier wars, I also wrote about the Khoisan transported from the Cape colony under similar circumstances, as well as the Māori transported from Aotearoa during the New Zealand Wars.

Fast forward to my second book, *Cleansing the Colony*, published by Otago University Press in 2017, where I drew on all five CON16 registers to track and trace 110 people transported from Aotearoa New Zealand to Van Diemen's Land in the 1840s and early 1850s. This diverse cohort included 51 British soldiers, six Māori warriors, one Sandwich Islander (Hawaiian), and a black man from Spain who was brought up in North America before joining a whaling ship which saw him end up in Auckland, New Zealand. The rest – including one female – were civilians, including some convicts who had fled the Australian penal colonies to seek refuge, anonymity, and a fresh start in New Zealand but instead ended up being transported again.

Despite having written two books, I still wasn't finished with CON16. Captured within these volumes are hundreds of records reveal the long-forgotten existence of men, women, and children who had arrived free in the Australian colonies carrying their few belongings, and entertaining dreams of the possibilities of a new life only to end up being tried, sentenced, and transported from within the colonies themselves. Some were born free here. None had prior criminal records before ending up as convicts in Van Diemen's Land. These are the people who became the subjects of my current research project with Dr Vicky Nagy – *The Inception of Criminal Deportation in Colonial Australia* – that has been generously funded by an Australian Research Council Discovery Grant. We are also very interested in the socio-economic and legal contexts that led to these people becoming entangled in the convict system.

By now, I think I've given you a pretty good indication of the depth and breadth of my obsession with CON16. The remainder of this lecture is in three parts. I'll briefly examine the inception of criminal deportation, with a particular focus on early modern England. I'll then discuss some of the key findings from Vicky's and my research into the inception of criminal deportation in colonial Australia. I'll conclude by briefly tracing the long trajectory of criminal deportation through to present-day Australia.

### **The Inception of Criminal Deportation**

Part Nine of the Reverend John West's monumental *The History of Tasmania* comprises 186 pages devoted to convict transportation. In the first section, West explored the origin of exile as a punishment in a western context which, for West, is of course very much a *Christian* context. And to find its origins, he looked back to the Biblical origins of humankind. West draws our attention to exile as being, and I am quoting him directly here, 'the penalty denounced by the Almighty against the first homicide.' He was of course referring to the Book of Genesis, Chapter

4, Verse 14, in which God banished Cain, the eldest son of Adam and Eve, for having killed his younger brother, Abel.

Fratricide is a far cry from the story of Cain Jones, transported from England to Van Diemen's Land in 1844 for "Stealing some fowls". Incidentally, this Cain's earlier misdemeanours included vagrancy, and it is from the 1598 Vagabonds Act that West ultimately dates the legal incorporation of the Roman idea of exile into English parliamentary law.

In doing so, and through relying on the scholarship of the time, West oversimplified things considerably. Just as the convict system against which West fought had a history of change and development, so too did the vagrancy laws into which he read convict origins. As Nick Brodie has pointed out, earlier Tudor laws had provided for compulsory putting people to work, the physical removal of persons from one jurisdiction to another, and even banishment from the Realm. Lots of variations on the themes of punishment and forced movement played out over a long history, ultimately feeding into the convict transportation system as West knew it. The 1531 Act concerning Egyptians, for instance, dealt with Roma people and fortune-tellers who "by Palmestre coulde telle menne and womens fortunes, and so many tymes by craftte and subtyltie have deceyved the people of theyr money". (22 Hen. VIII cap. 10). Such people were forbidden to enter England, would forfeit their possessions to the Crown if they did so, and would be imprisoned if they did not depart the country within 15 days.

England was far from being the first or only early modern imperial power to utilise exile and convict labour to expand her territories. Thanks to a five-year research project in the twenty-teens led by Professor Clare Anderson from the University of Leicester, very generously funded by the European Research Council, we now enjoy far deeper insights into convict transportation and forced labour as a global phenomenon.

Temporally, Clare's global research team's scope extended from Portugal's use of convicts in North Africa as early as 1415 through to the dissolution in the USSR of Stalin's gulags in the 1960s. Scholars focused on all the global powers that utilised convict transportation to foster expansion and colonisation, including Europe, Russia, Latin America, China, and Japan. This resulted in an astonishingly broad geographical mandate, embracing the Caribbean, West Africa, Gibraltar, Russia, Portugal, Latin America, Japan, Australia, and the Indian Ocean.

My point is that although my focus is on the Australian colonies (contextualised within the former British Empire), we do need to acknowledge that convict transportation has been a *global* phenomenon across the past half a millennium with influences on economies, societies, and people's identities.

Labour was a useful and, indeed, unifying lens through which Clare's team could view the coerced migration over time of hundreds of thousands of people on a global scale. In our Australian context, there was a marked shift by the end of the 1980s away from thinking of the nation's convict ancestors as being part of an inherently criminal class to reimagining them as a labour force essential to consolidating the Australian colonies and, ultimately, to building a nation. This was largely thanks to a book edited by Stephen Nicholas and published by Cambridge University Press in 1988, *Convict Workers: Reinterpreting Australia's Past*. It seems no accident that this book hit the shelves in the year of Australia's bicentenary. Since then, the

dominant national story that we tell ourselves and each other about the nation's convict past has been one that features these men, women, and children as migrant labourers who may even have been better off for having been forcibly removed from their families, friends, and homelands.

This shift in the national narrative to reinterpreting convicts as labourers has had the unintended consequence of causing us to *lose sight* of the way in which convicts were thought of as being irredeemably criminal to the very core of their being. We also risk *losing sight* of the enthusiasm with which Britain, then later her colonies, exiled such people to make the problems they were seen to be causing go away. The irony is that when England first made use of some of her American colonies as locations to which criminals could be deported, society's dim view of them was literally inscribed on their bodies.

As John West has explained, it was enacted that 'dangerous rogues, and such as will not be reformed of their roguish course of life, may lawfully by the justices in their quarter sessions be banished out of the realm, and all the dominions thereof, and to such parts beyond the seas as shall for that purpose be assigned by the privy council'. To ensure that even casual observers could identify these men and women, 'a brand', wrote West, 'was affixed upon the shoulder, of the breadth of an English shilling, with a great Roman 'R' upon the iron', marking the individual for the remainder of their natural life. It was these 'Rogues and other dangerous persons' who, after being proven idle or otherwise hazardous to English society, were sent to be forced to labour in the plantations of Virginia.

Echoes of this brutal practice reverberated throughout Van Diemen's Land, too, where, as Phillip Hilton explained in his doctoral thesis, former soldiers and marines were over-represented in the convict population. These men had already experienced 'a coercive disciplinary regime comparable with the convict system', the marks from which were written on their bodies as hundreds had already been flogged. Many were deserters and, as such, had been branded with a capital letter 'D' on their left hand sides, a mark of shame and identification that they would carry with them to their graves.

These symbols signify to us that it wasn't just any randomly selected potential labourer who was being transported to Van Diemen's Land. Rather, convicts were often those who were seen to be deviant. This point is further supported by Hilton's observation that former soldiers tended to be unskilled labourers. Their lack of value to the colonial economy contributed, Hilton argued, to these men being punished at higher rates than the general male convict population at penal stations, in chain gangs, and on the gallows.

The impetus to rid one's locality of people who had broken the law extended well beyond England's shores to become a practice embedded into Australia's colonies too. This attitude was summed up succinctly by the *Adelaide Observer* in 1851 when it used the headline 'A Good Riddance' to report how a boatload of locally convicted men had just departed South Australia for Van Diemen's Land. That brings us now to the second part of this paper where my focus shifts to the inception of criminal deportation in colonial Australia.

## **The Inception of Criminal Deportation in Colonial Australia**

I was intrigued to find that there were men, women, and children who either arrived free or who were born free in the Australian colonies, sometimes to convict parents, who ended up as convicts. Vicky and I are examining this phenomenon using the CON16 Indents from Tasmania as they are a remarkably detailed and complete record set. But as well as being transported to, or even within, Van Diemen's Land, some free people from across the Australian colonies also ended up as convicts in Australia's other penal colonies, including New South Wales. And some ended up in Van Diemen's Land without being recorded in CON16.

Despite these caveats, working with CON16 has given us significant insights into the lives and experiences of the formerly free people who ended up as convicts. We are taking a life course approach, meaning that our focus is on the recorded lives of individuals from the cradle to the grave. We are also interested in what the collective experiences of these individuals, at least as recorded by colonial scribes, can reveal about Australian colonial societies in the mid-nineteenth century.

To give you an indication of the scale of our research findings, I'll shortly share some contextual data with you. But as I find it dehumanising to reduce people's lives to data points, I'll follow that up with several case studies to illustrate some key points about the lives of people whose records form part of our data set.

Our research team identified 627 people from the entries in CON16 who fit the criteria for our study. The vast majority were men. 88%, to be precise. Around 11% were women. You may have noticed that these figures add up to 99%, not 100. That's because two individuals had ambiguous names and it has not yet been possible to determine how they might best be classified.

The colony from which the largest number of free people, 276 in total, were transported to Van Diemen's Land was New South Wales. This was closely followed by Van Diemen's Land itself as from within its own shores the Vandemonian law courts ensured that 247 formerly free people were incorporated into the convict system, usually being sent well away from the scenes of their crimes. It may interest you to learn that 82 of these people were tried at either the Quarter Sessions or before the Supreme Court in Launceston. So criminal deportation was at work even within the penal colony itself. South Australia bade 'good riddance' to 45 people transported to Van Diemen's Land, Victoria to 29, and even Western Australia sent 19 people here. I found that quite surprising as the Swan River Colony became Western Australia only three years before the CON16 Indents began to be kept.

Those of you who are familiar with Tasmania's convict records will appreciate that there can be numerous ways of describing the same type of crime. We got around this by grouping like crimes together. We've ended up with 28 categories. This demonstrates how there was a wide spectrum of criminal offending that resulted in the formerly free ending up in the convict system here. It is perhaps unsurprising to find that the most frequent offence was larceny (or theft), accounting for more than 36% of total offences. Some of the other types of offence ranged from arson and bigamy through to sheep stealing and unnatural offences.

Almost 10% of the people in our data set were under 20 years old. The youngest was Joseph Levy who was only ten years old. Levy was the key witness at a case heard before the Berrima Circuit Court in September 1841. A man named John McGlynn had been charged with stabbing a mare that belonged to Edward Chalker. McGlynn was let off after the boy, Levy, admitted in court that Chalker had promised to give him a cow and calf for his support. But Levy told the court that he knew nothing about any stabbing. This ten year old was then charged with ‘wilful and corrupt perjury’ and transported to Van Diemen’s Land for seven years where he served part of his sentence at Point Puer.

Levy left behind his parents and six siblings, a Catholic family who lived at Blacktown, near Sydney. While under sentence, Levy was found guilty of misconduct, disorderly conduct, and being absent without leave and was punished with cumulative totals of 83 ‘stripes on the breech’ and 61 days in solitary confinement. After becoming eligible for his Certificate of Freedom in May 1848, Levy was repatriated to New South Wales on the *May Queen* in November of that same year.

At the other end of the spectrum was 75-year-old Michael Caffray, a carpenter who came out as a free migrant on the *Lynx* from Dublin to Hobart. He was tried in Hobart in 1836 for receiving 40 lbs of mutton, sentenced to transportation for fourteen years, then sent to join the Grass Tree Hill road gang. Caffray became eligible for a certificate of freedom in 1850, before dying from paralysis four years later at Impression Bay on the Tasman Peninsula.

While Caffray was never transported prior to being sentenced in Hobart, he had accrued a record of minor infractions in Van Diemen’s Land. For example, he had been fined £10 in August 1830 for harbouring a convict named Robert Anderson. We’ve noticed this pattern in relation to others in our data set too. This was also often the case for those transported from England and elsewhere. Their prior offending lent credence to the belief that they were incorrigible rogues or otherwise ne’er-do-wells whose local communities would benefit from their banishment.

As you’ll have noticed, in discussing our statistical data I haven’t been able to resist the temptation to start sharing aspects of what we know about some of the people whose lives were directly impacted by this practice of inter- and intra-colonial transportation – or what we now understand to have been criminal deportation – within the Australian colonies. There are two more people whose lived experiences I would like to share with you to provide further insights into some of our research findings. The first of these is Thomas Carroll, the man whose entry is the first one in the first of the five CON16 indents.

Carroll was born around 1803 in Gellingham, England, to a Protestant family. He learned to read and write prior to immigrating to Van Diemen’s Land aged 29, arriving at Launceston on the *Surrey* on the fifth of November 1831. The following month, he placed an advertisement in the *Launceston Advertiser* to inform the public that he had opened a livery stables at the Cornwall Hotel at which he was happy to receive horses. Carroll already had some horses available for hire with or without gigs and was also happy to break in colts or fillies. It is unclear when, why, and how he relocated from Launceston to Hobart sometime between his arrival in

late 1831 and his offence in February 1835. What is clear is that Carroll continued working with horses.

On Tuesday 10 February 1835 the Police Court in Hobart found that Thomas Carroll, who had been working as a groom, had a case to answer in relation to the alleged theft of a saddle. He was tried at the Hobart Quarter Sessions on Thursday 26 February 1835 where he was sentenced to seven years transportation for having stolen a saddle valued at £3 from the stables of his employer, Mr J H Johnson of Liverpool Street, Hobart. One of the interesting things to note here is that Carroll's offence was demonstrably linked to his employment type. The same can be said for many of the others in our data set.

Carroll had several further brushes with the law while under sentence in Van Diemen's Land. However, after 5½ years under sentence he was granted his ticket of leave, and on in February 1844 he became eligible for a Certificate of Freedom. Post-sentence, Carroll has proven impossible to trace as there were several men with the same name at the same time in the colony.

As I've already flagged, only 11% of the convicts in our data set are female. We are grateful to the Female Convict Research Centre for their generosity in sharing their extensive database with us. I acknowledge Colette McAlpine who co-ordinates the FCRC's international network of volunteers, and Helen Ménard, Eileen Ball, and Doreen Derbyshire whose extensive research informs my next and final case study.

I became intrigued by key events in Emma Cotterill's life and by her changes in fortune after learning about her from Colette. Emma grew up in Holborn, London, as part of a large and respectable family. Her grandfather, Edmund Cotterill, was a magistrate for the county of Middlesex. Cotterill, in his 87<sup>th</sup> year, was thought to have suicided after two balls from a blunderbuss were fired into his body in the family's kitchen, and a gardener's knife was found sticking out of his throat. His widow reported no obvious changes in his behaviour that might have indicated any suicidal intent, leading me to wonder whether this may have been an undetected murder. Either way, the sudden and violent end to the life of the family's patriarch in August 1827 was no doubt a shock to his family. Five years after the death of her grandfather, in 1833, Emma emigrated to New South Wales on the *Rubicon* by which time she had turned 32.

Emma was a woman of independent means. When her father, a spectacle-maker also named Edmund, died in 1811, his will had provided for her to inherit £500 when she turned 21. That's the equivalent of close to sixty thousand Australian dollars today. This inheritance also points to the family's relatively wealthy background, as do the amounts left to Emma's mother and siblings. Emma was the seventh of seventeen children, although only eleven survived for sufficiently long to be included in their father's will. Seven of her sisters likewise inherited £500 on reaching maturity, three brothers were to receive £300 under the same condition, and Edmund Jr.'s widow, Sarah, was granted an annuity of £1,500.

Emma had been in Sydney for four years when she appeared before the Court of Quarter Sessions charged with stealing a bundle of wearing apparel. There seems to have been no mention of Emma's trial in any of the Sydney newspapers, and I have been left wondering

whether this silence could have been in deference to her relatively wealthy family background. On being found guilty, Emma was sentenced seven years' transportation and was sent to Van Diemen's Land on the *Marion Watson* in 1838. She obtained a ticket of leave in January 1842, only to have it revoked briefly after being charged with misconduct for which she was sentenced to 14 days' hard labour.

Sometime after her sentence expired in 1844, Emma formed a relationship with a man named George Fuller who is thought to have been a convict transported from Bedfordshire for stealing fowls and oats. As I have flagged earlier, many people transported from England had already accrued offences, and Fuller was no exception having previously served 3 months' imprisonment for poaching. Like Emma, his sentence to transportation was for seven years. Fuller became eligible to receive his Certificate of Freedom in 1852.

Records indicate that Emma had one more brush with the law. In May 1859 she was fined five shillings for disturbing the peace on a Saturday night in Liverpool Street in downtown Hobart. I was interested to see that she was described as 'respectably attired' – perhaps code for indicating that she was not a prostitute – and had apparently been shouting in the street when her tipsy husband had gone into a butcher's shop but was taking his time coming back out.

Four years later, Emma died suddenly at home in Princes Street, Hobart. There were a couple of aspects of the inquest that piqued my curiosity. Her 14 year old foster daughter described Emma's habit of drinking opium, while *The Advertiser* claimed she was 'better known as old Emma the fortune teller'.

As Alana Piper has pointed out, fortune telling could provide a source of income for women and was sometimes a woman's only means of support. It was often portrayed as a working-class pastime. It seems somewhat incongruous that this 'respectably attired' elderly woman was actively engaged in a pastime that had been an offence under English law since the early 1500s. But as the inquest into her death determined, it was neither the opium nor her illegal pastime that killed Emma. Instead, it was death 'by the visitation of God in a natural way to wit of emphysema of the lungs'.

Emma's husband, George Fuller, survived her by 30 years before dying aged 86 from malnutrition at Glenorchy in what is now Hobart's northern suburbs. Despite having been sentenced to transportation for seven years, Emma and George may as well have been given life sentences as both eventually died in the penal colony to which they had been deported.

We can see from the foregoing, then, that the formerly free people who were convicted in, and criminally deported from within, the Australian colonies had often accrued short records of minor infractions prior to being sentenced to transportation. This strongly suggests that they were seen as being inherently criminal, and therefore people their local communities would be better off without. Their treatment was consistent with practices of punishment and exile dating back in the English tradition to Tudor England and utilised across many parts of the globe.

That brings me, then, to the third and concluding part of my lecture where my focus shifts to the long trajectory of criminal deportation into present-day Australia.



## **The Long Trajectory of Criminal Deportation into Present-Day Australia**

In recent years the Australian Research Council has funded two Discovery projects that complement Vicky's and my research. These projects were led by Professor Marinella Marmo from Flinders University. The first considered how Britain and Australia have managed migrants and border control from 1901 through to 1981. The second delved into how – in Australia – migration control has become entangled with the justice system. The latter phenomenon is what Marinella's and my research teams refer to as 'criminal deportation'. I'm drawing on Marinella's team's research findings in this section of my lecture to highlight continuities of policy and practice across many generations.

Marinella's work on Australia concentrated on the period immediately after Federation, so from 1902 through to 1972. She and her team collected from the archives 866 historical cases of criminal deportation across this 70 year period. One of their key findings was that Australian deportations in the twentieth century mostly targeted male migrants. 91 per cent of those criminally deported were men. This closely aligns with our own analysis of criminal deportation within the Australian colonies in the mid-nineteenth century where men accounted for 88 per cent of those transported.

Another point of interest and correlation was how the twentieth century data set was organised into ten categories. Only 11 per cent of those deported were expelled expressly due to criminal conduct. You may wonder why I have suggested a correlation between Marinella's and our data sets when the people in our data set were all deported because of criminal conduct. The explanation lies in society's perceptions of itself and of those being deported.

Like Britain, mainstream Australia has embraced what Marinella described as 'an illusion of shared values and a common socio-cultural background'. This background has been constructed as 'white' and 'patriarchal'. She has explained how both Britain and Australia have engaged in 'violent, restrictive and/or invasive border performativity' to support their respective nation-state projects. Central, then, to the immigration system has been a selection process through which people have been labelled as 'desirable' or 'undesirable'.

Within this broader societal context, we can see how the other categories of twentieth-century deportees, which included physical illness, mental illness, and political affiliation, positioned those who were deported in the 'undesirable' category just as clearly as if they had all been found guilty of criminal conduct like their nineteenth-century counterparts.

More recently, the Australian federal government has utilised Section 501 of the Migration Act, which it amended in December 2014, to cancel the visas of people who have served prison sentences of twelve months or more on the grounds of 'bad character'. To date, this has resulted in more than 3,000 people being deported from Australia, with around 60% being returned to Aotearoa New Zealand. This has had nothing to do with their labour being required elsewhere, but everything to do with society's perceptions of inherent criminality. Many 501 deportees have struggled to adapt to life in Aotearoa New Zealand and are being blamed for a rise in violent crime.

Aotearoa New Zealand, like Australia, also grapples with a long-standing issue whereby Indigenous peoples are grossly over-represented in the nation's prisons. Writing in this context, Associate Professor Katey Thom and Stella Black from the Auckland University of Technology recently called for a shift to a 'trauma-informed' justice system. They have argued that, and I quote, 'a trauma-informed approach acknowledges what has happened to someone rather than identify what is wrong with them'. Rather than labelling someone as inherently 'bad', families and communities work to support those who have engaged in offending behaviour so that they may have opportunities to heal and take part in restorative justice.

Similar initiatives have been utilised in Australia this century, including circle sentencing and victim-offender mediation. Such practices here date back to 2001 in relation to juvenile justice, and have more recently been extended to adult contexts.

Only time will tell whether trauma-informed approaches might become commonplace across Australasia, and, if so, whether we might finally see an end to criminal deportation, a long-established practice in Australia dating back to the early colonial period.

Thank you.