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**THE ROAD TO LOTUS GLEN:
ABORIGINES, THE LAW, JUSTICE AND IMPRISONMENT
IN COLONIAL QUEENSLAND.**

Thesis submitted by Terence Geoffrey Genever, BA(Hons).

March 1996.

for the degree of Doctor of Philosophy
in the Department of History and Politics
James Cook University of North Queensland

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ABSTRACT

This thesis examines aspects of the laws that were applied to Aborigines during Queensland's colonial era. It looks at the effect of imposing an alien judicial system on people who did not understand it but nonetheless recognised its inequity. It argues that the criminal justice system that was applied to black people had specific aims that were quite separate from those directed at Europeans. For Aborigines this law employed the thinking of a bygone draconian age, but did so in an epoch when white offenders were being subjected to a system that was marked by legal benignity. Therefore during this period a dual system was operating. To substantiate its argument, the work looks at the white response to crimes by Aborigines and in doing so it seeks to analyse the effects of an outmoded and imposed legal strategy that was manipulated to further the aims of colonialism at the expense of justice. This, allied to white racial attitudes and European constructions of Aboriginality, provides a starting point from which to consider a situation where black representation in Queensland's prisons grew from nil to over 50% in some gaols. It is a thesis on a failed system which is at least partially responsible for Australian Aborigines currently being counted as the world's most frequently imprisoned people.

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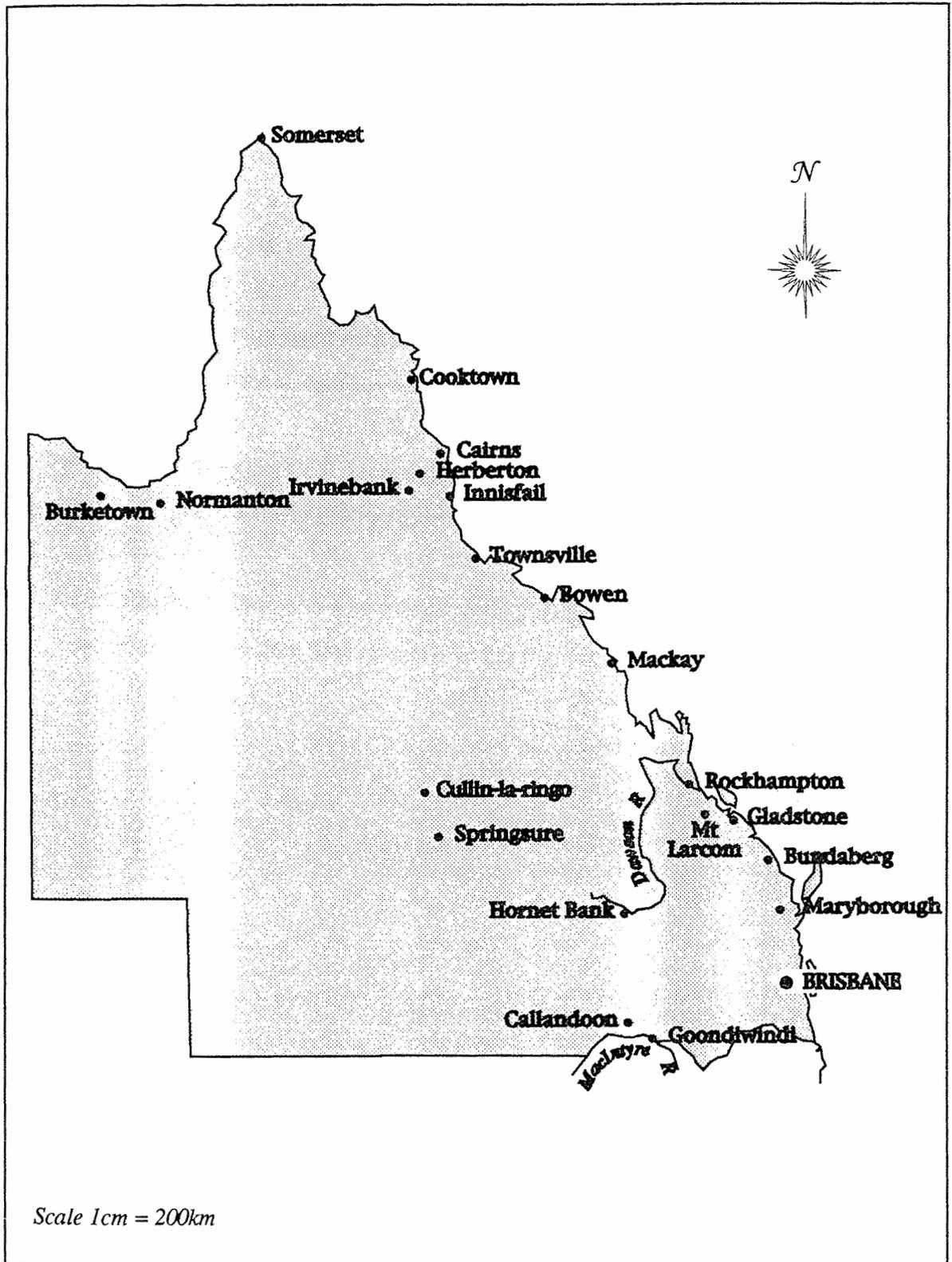
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ABBREVIATIONS

AONSW	Archives Office of New South Wales.
BPP	British Parliamentary Papers.
CO	Colonial Office.
Col. Sec.	Colonial Secretary.
Comdt	Commandant.
HRA	Historical Records of Australia.
HRNSW	Historical Records of NSW.
JRHSQ	Journal of the Royal Historical Society of Queensland.
MF	Micro film.
NA	No Author.
ND	No Date.
RM	Royal Marines.
RN	Royal Navy.
NP or NMP	Native Mounted Police.
NSWLC	New South Wales Legislative Council.
PRO	Public Record Office England and Wales.
QPD	Queensland Parliamentary Debates.
QPP	Queensland Parliamentary Papers.
QSA	Queensland State Archives.
QVP	Queensland Votes and Proceedings.
Lt.or Lieut.	Lieutenant.
2/Lt.	Second Lieutenant.
S.I.	Sub Inspector.

MAP OF QUEENSLAND SHOWING PLACES REFERRED TO IN THE TEXT



DECLARATION AND ACKNOWLEDGMENTS

I declare that this thesis is my own work and has not been submitted in any form for another degree or diploma at any university or other institution of tertiary education. Information derived from the published or unpublished work of others has been acknowledged in the text and a list of references given.

I am extremely grateful to my supervisor Doctor Dawn May for her help, her guidance and for never failing to find the time to read my work no matter how busy she was.

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Geoff Genever

March 1996

PART A: FIRST STEPS ON THE ROAD

Introduction

It seems that countries that have indigenous people as part of their population find reason to gaol them more frequently than those who come from their settler stock. Recognition of this phenomenon caused Amnesty International to conduct a survey that asked such nations what percentage of their indigenous people were in prison. About one third of the countries declined to answer, but from the two thirds that did, it was concluded that Aboriginal Australians were the world's most imprisoned people. In Queensland's case, many of them become inmates of Lotus Glen.

The correctional centre at Lotus Glen near Mareeba on the Atherton Tableland is Queensland's most northern prison. It was established to accommodate prisoners living between Cardwell, which is situated approximately 150 kilometres north of Townsville, and the islands of the Torres Strait. Opened in 1989, it was built to house 224 prisoners of all security classifications.¹ Most of the state's Aboriginal and Torres Strait Islander people live in this region, therefore one would expect the gaol to reflect the region's indigenous presence. Even so it is a shock to visit Lotus Glen. The first impression one gains is that it is a blacks only prison. In fact the population of this institution is about 60% black. Admittedly Lotus Glen is an extreme case, but one of the more noticeable features of all Queensland prisons is the number of black people they contain.

The census of 1991 found that there are about 70,000 Aboriginal and Torres Strait Islander people living in the state of Queensland, but it does not differentiate between the two. The overwhelming majority however, are Aboriginal rather than Torres Strait Islanders and together they represent a little over 2% of Queensland's total inhabitants.² This 2% provides over 16% of the State's prisoners.³

The statistics for women are even more depressing. The latest figures published by the Queensland Corrective Services Commission are for 30 June 1995 and these show that on

¹ The Queensland Corrective Services Commission, Annual Report, 1991/92, p.16.

² Australian Bureau of Statistics, Census of 1991.

³ Information supplied by Mareeba Area Office, Queensland Corrective Services Commission.

that date 104 women were serving sentences in the state. Of these 86 were in Brisbane and 23 of them were black. In Townsville, the only other prison to house women, out of a total of 18, 11 were indigenous women. If all things were equal there should be two or three black women in Queensland's gaols, instead there are 34.⁴ Their plight tends to be overlooked because it stands in the shadow of the massive imprisonment of black men. The fact remains however, that the incarceration of indigenous women is crying out for investigation.

When Lotus Glen Correctional Centre first began to receive prisoners, one of the stated aims was to reduce the number of Aboriginal inmates by 50% within two years. What has happened is that the proportion of black prisoners has increased rather than decreased and it has been found necessary to open two small satellite prisons for Aboriginal people on Cape York Peninsula, with a third planned for Palm Island near Townsville in the very near future. To add to this bleak picture, Aboriginal prisoners in Lotus Glen are now being joined by their children.⁵ Surely this should be an intolerable situation for any society with even a modicum of social conscience.

Recently an investigation commenced to discover why this was happening and why so many Aboriginal people are being gaoled for non serious crimes.⁶ Up until the time of writing, no report has been released and my belief is that a scarcely interested general public will never know that such an inquiry even took place, let alone what it discovered. But if the findings are made public, it may be that historical Aboriginal attitudes to the law and their contemporary view of imprisonment are among the significant factors.

Apart from the number and type of offences Aborigines were charged with, one of the more noticeable things arising from an examination of colonial prison records is that they show

⁴ The Queensland Corrective Services Commission, Annual Report 1995/96.

⁵ Interview Kinley-Genever, June 1993.

⁶ ABC Radio News, 25 October 1995. See also Cairns Post of the same date.

a surprising number of Aboriginal re-offenders⁷ and this has been a continuous feature of black imprisonment. So many Aboriginal lives have been touched in some way by the gaol or something closely resembling it that there is I believe, good evidence to suggest that some of them have come to regard legal restriction as an inevitable part of life's pattern rather than as an aberration to be avoided.

The percentage of Aboriginal prisoners and the number of black recidivists in the state's gaols is influenced by many factors. Included among them is an historical police culture of discrimination in dealings with indigenous people. But black over-representation is I believe, also influenced by the Aboriginal view of imprisonment. The belief that all Aboriginal people have a particularly intense fear of being locked up may have been valid in the past and it may still have currency among older Aborigines, but a significant number of men under 30 years old, particularly those who live in Aboriginal communities, consider going to gaol as something of a rite of passage; for them it apparently provides evidence of manhood.⁸ I have discussed this phenomenon with academic psychologists who work

⁷ For information regarding the frequency of Aboriginal imprisonment during the colonial era, see Appendices "A" and "B".

⁸ Interview Kinley-Genever, March 1996. James Kinley is a psychologist who has worked in prison and parole management for 35 years. He informed me that the nonchalance with which young Aboriginal men approach imprisonment is well recognised and frequently spoken about by social workers, sociologists, lawyers and judges. He stresses that it is a burgeoning phenomenon, one that is particularly applicable to Aboriginal men under 30. This of course has great bearing on the image of the Aborigine in the white mind.

See particularly, H. Sercombe, "The Face of the Criminal is Aboriginal," Journal of Australian Studies, (Special Issue), No. 43, 1995. This recent study found that about 85% of references to young Aboriginal people in the Western Australian Press were about their crimes. My guess is that North Queensland would deliver similar figures.

in this field and they informed me that a positive attitude to the prison by young Aboriginal men is widely recognised.⁹

Recently some Aboriginal men were temporarily released from Lotus Glen to attend a funeral in their community. The hero worship that was being accorded them by the young men of the community and the cavalier attitude of the affluent appearing prisoners themselves, resulted in the elders asking that they be locked in the watch house until they could be returned to the prison.¹⁰ In another instance two Aboriginal prisoners at Lotus Glen were highly indignant when informed of early release. They did not want to leave because they were expecting visitors within two weeks.¹¹ It appears therefore, that the young Aboriginal man's view of the gaol is another thing that demands serious inquiry.

Such an attitude does not spring up overnight, in fact it takes a long time to establish. But Aborigines have had a long time; it has been argued that as a people they have undergone restriction of one kind or another for 200 years. These two phenomena, the historical Aboriginal resistance to laws imposed by Europeans and the institutionalisation of black people during the late 19th century, form the basis for this study.

By the middle of the 19th century in what was to become the Colony of Queensland, Aboriginal people, the majority of whom had probably never seen a white person and certainly had no understanding of their laws, had been placed firmly within the white legal discourse. They had become British subjects who were amenable to English law in their

⁹ Interview, Associate Professor J. Reser-Genever, March 1996.
Interview, Dr. G. Ross-Genever, March 1996.

Reser informs me that David Biles is in the process of producing work on this subject. He also informed me that while young Aboriginal men are sanguine about the gaol, they are far from happy about being incarcerated in watch houses or police cells.

¹⁰ Interview Kinley-Genever, March 1996.

¹¹ Interview Pritchard-Genever, January 1995.

dealings between themselves and in those with the invaders of their land. In this new order their own laws theoretically ceased to have any legal standing whatsoever.¹² These decisions were promulgated in the wake of several "test" cases, but there was no policy of informing black people how their lives had suddenly changed; they would have to learn the hard way.

The revised English laws that came to the Australian colonies were installed to further the aims of British colonisation. They sprang from an existing legal framework that was modified by the colonists' desire for order, to protect themselves and to achieve a state of justice as they saw it. Through their legislature, the white people had a hand in their framing and thus in the administration of the justice that emanated from them. This was not the situation for Aboriginal people. With a simple stroke of a pen, the settlers' laws were imposed on them; they had no say in their formulation or amendment and they often contradicted the diverse and complex rules which had governed Aboriginal lives for perhaps thousands of years. Not only that, but because of a different concept of what constituted an offence, the imposed system was incapable of serving their needs. English law has no sections that dealt with spouse stealing. It had none that covered the complex regulations surrounding incest that are observed by Aboriginal people. Nor could it deal with the serious crime of mentioning the name of the dead or countless other rules demanded by Aboriginal societies. But it could and did punish them for behaviour that was mandated by their own laws. To compound these problems, the inflicted system treated them neither equally or with justice.

This thesis was written to examine from an historical standpoint the way the English law was applied and the level of justice that its application delivered to black people during Queensland's colonial period. The study also seeks to analyse the possible consequences of this. It argues that the imposed criminal justice system developed specific objectives in its dealings with black people and to achieve these aims it looked outside the way it was

¹² To add to the confusion, almost from the earliest days of white settlement some judges have taken traditional Aboriginal laws into consideration and of course in very recent times the "Mabo" decision recognised the validity of indigenous title.

treating white offenders to the strategy that had been employed in the past, an approach that was not only unjust, but in many cases illegal and, if the consequences are considered, illchosen. It resulted in many Aborigines rejecting something which they saw as unsuitable, inequitable and unjust. For laws to be compelling they must be seen as necessary and fair, ideally even by those who break them. Even now many Aboriginal people do not see them in that light and given the history of colonisation it would be surprising if they did. Aborigines did not simply break the law, they defied it as a concept and this defiance was part of their resistance to the European invasion and the imposition of an alien authority that went with it.

Bain Attwood identifies Aboriginal historiography that was written post 1969 as falling into three overlapping categories.¹³ The first of these schools he describes as oppositional and in this genre he places the work of writers like Rowley,¹⁴ and Evans, Cronin and Saunders.¹⁵ These and other authors set out to destroy the myth of peaceful European settlement. They produced a series of books that examined the impact of violence, white racial attitudes and governmental policies on a dispossessed but relatively passive Aboriginal people. The second, or revisionist wave of writers such as Reynolds, Loos, May and Reid used the evidence of contemporary colonists to demonstrate that the Aboriginal response to the white invasion was anything but passive and that in fact it resulted in black people waging a prolonged and bitter war of resistance.¹⁶ Among many other things,

¹³ B. Attwood, The Making of the Aborigines, (Sydney, 1989), pp.135-147.

¹⁴ C. Rowley, Outcasts in White Australia, (Canberra, 1971), The Destruction of Aboriginal Society, (Harmondsworth, 1972); The Remote Aborigines, (Canberra, 1971); and A Matter of Justice, (Canberra, 1978).

¹⁵ R. Evans, K. Cronin and K. Saunders, Race Relations in Colonial Queensland: A History of Exclusion, Exploitation, and Extermination, (Sydney, 1975).

¹⁶ See for example H. Reynolds, The other Side of the Frontier: Aboriginal Resistance to the European Invasion of Australia, (Ringwood, 1986). N. Loos, Invasion and Resistance: Aboriginal-European Relations on the North Queensland Frontier 1861-1897, (Canberra, 1982). D. May, Bush to Station

Reynolds underlines the importance of land issues and the development and expansion of a 19th century racial ideology and forcefully links this baneful colonial heritage to contemporary Australian society.¹⁷ Loos considered the conflict on various material frontiers which included pastoralism, mining and the sea. May has looked at dispossession and conflict but has also considered accommodation aspects of Aboriginal-European relations by placing them in an economic setting. In her work particularly we hear the voices of Aboriginal people.¹⁸ In addition, like Loos she examines the impact of governmental initiatives and missionary effort. The third class Attwood describes as "Aboriginal". Some of this comes as autobiographies or family histories which often reflects the oral style. Very importantly they sometimes provide opportunities to consider indigenous societies removed from the European influence, as well as providing an Aboriginal perspective to events that were previously seen only through white eyes.

My thesis has been influenced by the work of many writers, but particularly that of Henry Reynolds, Noel Loos and Dawn May and to a lesser extent, Charles Rowley. It has also drawn on that of writers like John McCorquodale,¹⁹ Peter Hanks and Bryan Keon-Cohen²⁰ who focus on the interaction of Aborigines and the criminal justice system, a tradition started in the mid 1960s by Elizabeth Eggleston.²¹ Libby Connors' research²² is of particular

(Townsville, 1983).

¹⁷ See particularly H. Reynolds. Frontier, (Sydney, 1987).

¹⁸ See D. May, Aboriginal Labour and the Cattle Industry: Queensland from White Settlement to the Present, (Cambridge, 1994).

¹⁹ J. McCorquodale, Aborigines and the Law: A Digest, (Canberra, 1987).

²⁰ P. Hanks, and B. Keon-Cohen, (Eds), Aborigines and the Law: Essays in Memory of Elizabeth Eggleston, (Sydney, 1984).

²¹ E. Eggleston, Fear favour or Affection, (Canberra, 1976).

²² L. Connors, The Birth of the Prison and the Death of Convictism: The Operation of the Law in Pre-Separation Queensland, Ph.D. Thesis, University of Queensland, 1990.

significance because she has looked at the aims of a criminal justice system directed at Queensland's Aborigines during the colony's pre-separation period. These influences obviously have bearing on the perceived place of my study in the canon of what has been written about Aborigines and justice. The thesis judges the law, government policies and is particularly critical of the way Europeans constructed Aboriginality. This approach unfortunately, gives rise to problems. Severe legal discrimination against black people during the colonial era and beyond was an undeniable reality. Recording it appears to place the work in the oppositional school; it tends to suggest that this thesis deliberately seeks to portray blacks in the role of victims who shared a common experience. This is not my intention. Aborigines were clearly not a homogeneous group and I stress the fact that they were agents in their own right, often to the extreme detriment of Europeans. This is highlighted in the chapters dealing with armed conflict and rape. But more than this, a theme of black resistance to British concepts of justice runs through the entire thesis. Although I cannot speak for blacks, especially those who lived nearly two centuries ago, I have tried to see European initiatives in the way I believe Aboriginal people might have seen them. This is forced on one by the paucity of direct Aboriginal evidence. Therefore the thesis, although not easily be slotted into any particular genre, fits more comfortably into the revisionist mode.

Apart from an examination of the imposition of English law, the study investigates the attitudes, policies and reactions which helped to prepare Aboriginal people for their roles as the inmates of an institution, thus the title: *The Road to Lotus Glen*.

There are clearly problems for a non-legally trained person who decides to write on elements of law. But this thesis is not focussed on the law, it concentrates on matters of justice and it hardly needs pointing out that the two are quite separate.

Although it has not been entirely successful, an attempt has been made to arrange the study

See also L Connors, "the Theatre of Justice: Race Relations and Capital Punishment at Moreton Bay 1841-59, in R. Fisher (Ed), Brisbane The Aboriginal Presence 1824-1860, (Brisbane, 1992), pp.48-57.

thematically in a chronological sequence. It examines the white response to Aboriginal offence between 1788 and 1901 but it is primarily focussed on the period after 1824 which is when the penal settlement at Moreton Bay was established. Criminal trials of white people for crimes committed against Aborigines deliberately receive little attention in this thesis, although it was my original intention to include more of them. I am aware of their immense importance to the topic of justice to black people, but believe they should be the subject of a large and separate study.²³

To provide a background, Chapter 1 considers the development of legal policy towards indigenes by the British Government and its colonial counterparts, which in early New South Wales was more noticeable by its absence than anything else. At the beginning of the 19th century from a legal perspective Aboriginal people did not exist. They were not considered to be amenable to the law of the colonists either in their intercourse with Europeans or between themselves. It was however, a fairly short lived doctrine.

Chapter 2 gives a view of the radically changing nature of the law that came to be established in the colony and the effect this had on Aborigines. It seeks to show that the system that was inflicted on black people was the product of an earlier age and chronologically out of step with that which was being applied to whites. This resulted in a dual approach to criminal justice.

Chapters 3 and 4 look at the judicial difference between Moreton Bay as a penal settlement and the same place as a capitalist enclave. In the latter chapter emphasis is placed on the role of capitalism and its press in giving rise to a specific type of justice for black people.

Chapter 5 continues the examination of the white response to Aboriginal offences, looking at some of the more violent ones. To do this it places them within the context of guerilla war. The subject of armed resistance has in many respects been exhaustively examined by

²³ North Queensland historian Garry Highland has done some very interesting work on this topic. See for example G. Highland, "Aborigines, Europeans and the Criminal Law", in *Aboriginal History*, Vol. 14, 2, 1990.

Henry Reynolds and Noel Loos, however a lot of their work was concentrated on North Queensland. Here, some of its physical, legal and psychological aspects are considered in a southern and central Queensland setting.

Chapter 6 examines the legal and emotional response to crimes committed by Aborigines against European women. This is a most important chapter illustrating not only the archaic, but also the janus-faced nature of the white reaction when it came to dealing with offences by blacks. Much of this chapter is devoted to an investigation of rapes perpetrated by Aboriginal men on white women because this crime was highly significant to the administration of justice to black people. More Aboriginal men were legally executed for it than were for murder. It is therefore fitting that a study of the white response to Aboriginal crime should include an examination of the European reaction to inter-racial rape.

The law and law enforcement are natural bedfellows and Aborigines have had great influence on Australian policing. The following three chapters deal with aspects of this and with policing generally, starting with the historical underpinnings of colonial police development. Considerable space is devoted to this in Chapter 7, because in contrast to some authors I believe that the impact of convictism on police culture, particularly as it affects black people has been profound. The Aboriginal/white police relationship, is considered both before and after Queensland separated from its parent colony and this approach is repeated with the black police. Chapter 9 looks at the pre-separation native police under Frederick Walker, but from a post-revisionist perspective. The unvaried portrayal of the native police officer as a social misfit and the troopers as brutalised victims of a vicious system is in part, an exaggeration. Although it would probably be accurate for most of the force's history, there were periods when such a picture would be a severe distortion, one which I feel should be recognised.

The penultimate chapter examines the impact of separation on matters of justice, the political changes that occurred and their implications for both police and Aborigines. During this period in particular, it seemed that the law and justice were often in bitter conflict with each other.

Finally the subjects of restriction, institutionalisation and political economy are examined within a protective setting. The various black images held in the white mind in the period approaching federation were probably more instrumental than any others in placing Aboriginal people on the road to Lotus Glen.

This then, is an historical work that has sought help from the subjects of the law and race relations in an attempt to encourage further investigation into the shameful state of affairs that sees black people filling the state's gaols.

It examines some aspects of the way the law was administered to the Aboriginal People of Queensland before and after its separation from New South Wales, but I stress, its main concern is not with the law, rather it is with the lack of justice they received and the possible ramifications of this.

Chapter One.

British and Colonial Legal Policy Relating to Indigenous People.

...it was not the policy of a wise government to attempt the perpetuation of the Aboriginal race in New south wales by any protective means...

W. C. Wentworth, cited in the Sydney Morning Herald, 29 June 1849.

The cultural values and beliefs about indigenous peoples that the first British settlers brought to New South Wales¹ were critical to the way they saw Aborigines. They helped produce a black image in the white mind that served the development of a commonly held view that Aborigines need not be treated with the same morality that governed intercourse between Europeans. The often stated legal prevarication that the Aborigine was a British subject and as such entitled to the protection of English Law² came only after many years of white settlement, and even then it was to some colonists an absurdity that existed only in the minds of ivory tower dwellers most of whom were ten thousand miles away. They were supported in this view by inconsistent official policies and a capricious legal system that on one day declared Aboriginal offences to be no crime and on the next, declared the same depredation to be capital.³ At times it countenanced "Anglo Saxon Justice"⁴ and at others vigorously opposed it. Sometimes judges and juries in efforts to appear just, acquitted, or refused to convict on technicalities;⁵ at others they convicted and awarded

¹ Hereafter NSW.

² The law that came to NSW was based on the English system. The other countries that make up the United Kingdom had no legal influence on the colony. One might therefore refer to "British Justice" but the law that was supposed to deliver this myth was English. It is appropriate at this juncture to remind oneself, that the law and justice are not the same thing.

³ For the first 27 years of British settlement Aborigines were not legally answerable for offences committed against Europeans or each other. This should not be read to mean that they were not brought before courts of law during this period; they were, but it was illegal. See P. McGonigle, *The Role of the Law in the Foundation Settlement of NSW Prior to 1828 in Relation to the Aboriginal Inhabitants*, LL.M. Thesis, University of Sydney, 1975, p.156.

⁴ "Anglo Saxon justice" was a euphemism used in the 19th century for revenge based on immediate and generally illegal retribution. It did an injustice to the Anglo-Saxon system, which was complex. Under Anglo-Saxon law the local people were charged with the responsibility of bringing offenders to trial, failure to do so resulted in the locals being tried and fined themselves. Thus, every person became as it were, their own policeman. Summary punishment was also referred to as "Jedborough law".

⁵ This has been an historical feature of the English criminal justice system. In earlier times cases collapsed on the mere misspelling of a name or an incorrect date.

harsh punishments on skin colour in spite of the evidence. Some courts accepted the evidence of Aborigines; others rejected it outright. The policies towards the indigenous people obviously have considerable bearing on the justice they received and it is most important to be aware that there were sometimes three distinctly separate ones that were often pulling in different directions. These were the de facto policies of the invading settlers, which often changed from day to day and place to place; those of the local legislature which were introduced on the basis of need and, such as it was, official British colonial policy which was largely based on wishful thinking. The reality was that in NSW, there was virtually no policy towards the indigenous people.

The British colonies that were established and developed during the seventeenth, eighteenth and nineteenth centuries did so under a variety of circumstances. As a result their legal and administrative arrangements followed no common pattern. Control by the authorities in London was seldom close and in some colonies it was at times, almost non-existent.⁶ From the earliest days of settlement therefore, colonial government can be said to have been conducted by the officials within the colonies themselves rather than by those in London. The Imperial policy with regard to indigenous peoples seems to have been one of ad hoc crisis management rather than previously planned strategy. Yet this does not mean that strenuous attempts were not made by some members of government and the civil service to have "native" peoples treated as fairly as the dictates of colonisation allowed. There were periods when the subject received more attention than others; times when an apparently indifferent government was prodded into activity by those who were sickened by the frequent reports of illtreatment. Also, it must be acknowledged that the orders to governors, administrators and settlers backed up by the threat of punishment under English law were issued in the hope of ensuring fair treatment for indigenes from the hands of white settlers. Nevertheless, the history of British colonisation reveals that the colonists seldom took much notice of either threats or pleas emanating from the United Kingdom, or for that matter the local administration, unless it was forced upon them and this might be said, to a greater or lesser degree, of all British colonies. The acrimonious conflict arising from this

⁶ R. Pugh, The Records of the Colonial and Dominions Offices, (London, 1964), P.23.

drove a wedge between the home government, its colonial counterparts and the settlers that was eventually to lead to the formation of a select committee in the House of Commons. Unfortunately not only was it too late, but like so many parliamentary committees it achieved little. It is of course possible that it was expected to do nothing other than silence, even if only for a while, the more strident voices in Exeter Hall.⁷

One of the major problems in attempting to ameliorate the condition of Aboriginal people was that few people in Britain really knew much about the Australian colonies. This lack of informed parliamentary and public opinion meant that little government pressure was capable of being exerted against either the colonial administration or the settlers. Many of the suggestions emanating from those members of the House of Commons interested enough to make them, or from concerned private individuals, who were also quite thin on the ground, were simply impractical. Added to this was a tendency within the Colonial Office to consider itself and its colonial governors as the only true source of informed thought on the subject of "the natives". Obviously the local governors, who reported to the Colonial Office and not the British Parliament, were influenced by the aspirations of their settlers, sections of which were becoming increasingly powerful as the colonies became less dependent and as a result, less influenced by opinions held in the metropole. In turn it was these governors who provided the information that drove colonial office policies. It is little wonder therefore, that such policies were sometimes at variance with the views that were coming out of the parliament.

In the colonies the Aborigines Protection Society was believed to hold sway over both the Parliament and Downing Street.⁸ Brian Dalton maintains that "such a view receives no

⁷ Exeter Hall was a place in London that became synonymous with humanitarianism. An "Exeter Hall" man or woman was, more often than not, a pejorative characterisation which was frequently used in the colonies in a sneering way to describe those who wished to see indigenous people treated fairly. The implication was that such persons were woolly headed do-gooders who were out of touch with the reality of the colonial situation.

⁸ For an analysis of the colonial and metropolitan attitude to Aboriginal land rights in the first third of the 19th century See H. Reynolds, *Frontier*, (Sydney, 1987). Ch.6.

support whatever from a study of the files".⁹ He adds that the Colonial Office looked upon them as... "ill informed, biased and misguided, often injuring the very interests they advocated..."¹⁰ The main point is that in many ways the Colonial Office reflected the views of the settler societies rather than those of Westminster. In any event the unfortunate fact is that philanthropy came off a poor second best. Before the early 1780s the authority responsible for colonial matters in Britain was the Secretary of State Southern Department. However, for much executive action, advice and routine administration the Secretary was dependent on the Lords of Trade and Plantations, commonly referred to as the Board of Trade. Following the loss of the American colonies in 1782 a major portion of the British colonial empire ceased to exist and this Board of Trade, being no longer required was abolished and with it the office of Secretary of State for the Southern Department. After this date colonial affairs were placed in the hands of the Home Secretary and there they remained until 1801. However, in 1784 the Board of Trade had been revived and two years later, placed on a permanent footing, but it had advisory functions only and its influence and authority on colonial matters rapidly declined and in fact hardly existed by the end of the eighteenth century. In 1794 a Secretary of State for War had been appointed and the responsibility for the colonies was transferred from the Home Secretary to him in 1801. The Secretary of state for war became increasingly involved in colonial affairs, presumably to the detriment of his military responsibilities, but it was not until 1854 that the Colonial and War offices were separated and two new departments, the War Office and the Colonial Office were established. It is useful to appreciate therefore, that colonial affairs had been pushed from pillar to post and that during the important early years of its establishment, NSW had been governed by a body trying to serve two masters. Colonial policy was not, as

might be imagined, the product of thoughtful consensus between several senior cabinet ministers; in fact, it was frequently what only one member of the civil service said on the matter. Accordingly, it is not unreasonable to assume that "native affairs" were given

⁹ B. Dalton, *Control of Native Affairs in New Zealand 1855-70*, D. Phil. Thesis, University of Oxford, 1956, p.73.

¹⁰ Ibid.

a low priority. It is also a fact that general and minor business, into which category it would almost certainly have fallen, were entrusted to the Chief Clerk.¹¹ Therefore with respect to the colony of NSW, official British policy towards the indigenous inhabitants can hardly be said to have existed. It is understandable of course that the aims of colonisation came first, but the British Government was, perhaps not surprisingly, frequently prepared to accept amendment by the local administration when it came to "the natives" even when it flew in the face of their own instructions. The result of this was that policy as a whole, both imperial and local, was sometimes fickle and not infrequently countenanced injustices. These inequities were in the main, acts of omission, but directly commissioned ones were not absent. The claim therefore, that the unjust treatment of indigenous people sprang solely from the actions of the colonists and was contrary to the wishes of Whitehall despite being frequently expressed, does not entirely stand up to investigation. Saxe Bannister's¹² evidence made this point clear in a highly condemnatory way when he told a parliamentary committee that blame

... has been cast on inferior frontier functionaries and the Governors have been excused. In 1826 cold blooded murder was committed under the influence of the

¹¹ Records Information No.86, The Records of The Colonial and Dominion Offices from 1782, PRO. The exact status of the Chief Clerk is uncertain, but it would be a mistake to regard him as a member of minor or middle management. It can be appreciated that men like these had often been in the colonial service for many years and were extremely experienced and knowledgeable. They advised the various secretaries of state and were therefore highly instrumental in formulating policy.

The Chief Clerk should not be confused with the senior clerks that worked in the various divisions which were separated along geographical lines. (Australia and New Zealand constituted the "Australian Division").

For an invaluable insight into the workings of the Colonial Office post 1855, see Dalton, *Control of Native Affairs New Zealand 1855-1870*, pp.56-87.

¹² Saxe Bannister held the office of Attorney-General for NSW. He is described as having possessed fair legal qualifications for his office. He resigned soon after the arrival of Governor Darling on a point of argument about his duties. See, R. Therry, Reminiscences of Thirty Years Residence in New South Wales and Victoria With A Supplementary Chapter on Transportation and the Ticket of Leave System, (London, 1863), p.82.

Governor's illegal orders and he excused himself by referring to the instructions of the Secretary of State. The natural consequence is, that the Governor when accused at home of oppressive conduct is sheltered by the Colonial Office. But the natives are particularly helpless when in conflict with powerful men and ought to be protected especially against the highest oppressors.¹³

Having said that, it is only fair to emphasise that the desire to protect indigenous people and have them accorded justice was a continuous and sincere wish of some senior officials of the British and local administrations. It must also be admitted that there were times when philanthropic and other groups prodded the home government into attempting to curtail settler aggression against indigenes. In response to this, the British Government retained control over "native affairs" for an extended period in Australia, Canada and New Zealand,¹⁴ but what they said on the matter tended to fall on the deaf ears of a colonial societies whose influential sections were largely indifferent to the plight of indigenous people.¹⁵ It can be shown that Aboriginal Australians quite definitely suffered increased dispossession and oppression as political power was transferred from Whitehall to the colonial administrations; it should equally be appreciated that there were times when the British Government directly supported settler aggression by supplying troops to carry out offensive operations against indigenes.¹⁶ The Royal Marines who accompanied the first fleet were not there to guard convicts, this was not their function and they refused to do it.¹⁷

¹³ Evidence of Saxe Bannister, in minutes of evidence taken before The House of Commons Select Committee on Aborigines,(British Settlements), (London, 1836), p.19.

¹⁴ D. Baker, Race Ethnicity and Power: United states, Canada, Australia, New Zealand, South Africa S, Rhodesia, A Comparative Study, (London, 1983), p.44.

¹⁵ H. Jackson, A Century of Dishonour, (New York, 1881), p.78.

¹⁶ The British Army was frequently deployed against Aborigines in NSW. This includes what is now Queensland and Victoria. Many of these operations involved driving blacks off land they had previously owned. It is therefore difficult to see the white occupation of Eastern Australia as any thing other than an invasion.

¹⁷ Phillip to Lord Sydney, Dispatch No. 10, 30 October 1788, CO 201, 1, PRO.

But they, the NSW Corps and the line regiments that followed them were frequently in action against Aborigines.

What the Imperial Government initially said on the subject of how it wished its settlers to treat the indigenes in the colonies it acquired, probably had its genesis during the reign of Charles II. This took the form of a conscience salving directive based on wishful thinking rather than definite, enforceable policy. These instructions emanated from an address to the Council for Foreign Plantations which charged colonial governors with the task of keeping the white settlers and the Indians¹⁸ from each others' throats, but with an important proviso that this royal beneficence applied only to those Indians who were at peace with their white invaders. Under these circumstances they were to be protected from all adversaries, but the Governors were ordered that they "more specially take care that none of our own subjects, nor any of their servants, do any way harm them".¹⁹ This commission went on to place considerable emphasis on the importance of converting them to Christianity, and unlike the instructions for the Australian colonies, it made definite reference to Indian owned land.²⁰ Unfortunately what Charles wished and what the Indians received from the hands of white settlers were two totally different things and this appears to have been the case in many different colonial situations. In fact a study of the papers relating to the various British colonies induces a sense of deja vu for the reader familiar with the history of Australian race relations. For example, in the mid 18th century, Secretary of State Lord Shelburne

¹⁸ In spite of its admitted inaccuracy, the term "Indians" is employed because of common usage when referring to North American Aborigines.

¹⁹ Orders in council dated 17 April 1667, CO 324 2, PRO. This order is written in English but it was not uncommon for dispatches to be written in French at this time. In fact in some of them Charles II referred to himself as the King of France.

²⁰ The British Government recognised the land claims of North American Indians, but ignored those of Australian Aborigines. Their land was declared "Crown Land" and sold to settlers. Two hundred years later we continue to argue the legality or otherwise of the declaration of NSW as a terra nullius, it is an interesting and vital legal question, but from a perspective of justice, it has little bearing on the morality of stealing someone's home and declaring them outlaws for evincing the desire to live on the land expropriated from them.

wrote to one of his administrators in the American colonies informing him that His Majesty

is greatly displeased that so many frauds and violences should have been committed on the Indians under his protection and that settlements should be made so contrary to the intention of His proclamation of 1763 and I have His Majesty's approbation of your conduct and to recommend to you in the strongest terms that you will take every measure that prudence can suggest to appease for the present the just resentment of the Indian tribes. **It appears necessary that some general plan formed upon the principle of justice** [my emphasis] as well as policy for restraining in future those settlements and for preventing effectually the frauds and irregularities of the traders which should be carried firmly and steadily into execution, but as such plans ought to be well digested before the execution of it is attempted. His Majesty relies in the meantime on your known experience of prudence...²¹

It is of course understandable that the home government should prefer to leave local problems, particularly if considered minor, in the hands of those on the ground. But quite apart from being somewhat contradictory in content, the above quotation makes it clear that enforceable, protective policy towards indigenes had not existed in the North American situation any more than it did in the Australian one.

Although Charles' instructions most probably provided the blueprint for those issued to the first governor of NSW the absence of any reference to Aboriginal rights to their land is significant, as is the deficiency of any mention of that most important tool of colonisation, Christianity. George III's instructions to Captain Phillip included the order that

²¹ Lord Shelburne to Sir William Johnson, 13 September 1766, in CO 5, 225, PRO. With regard to the frauds perpetrated on Indians, it is interesting to note that the following month some Indians arrived in England to present their complaint. It appears that their personal deputation was successful because Johnson was ordered to "punish" those responsible. The Indians Shelburne informed him, "should be encouraged to look upon us as their guardians". See letter of 11 October 1766, in Ibid.

You are to endeavour by every possible means to open an intercourse with the natives, and to conciliate their affections, enjoining all our subjects to live in amity and kindness with them. And if any of our subjects shall wantonly destroy them, or give them any unnecessary interruption in the exercise of their several occupations it is our will and pleasure that you do cause such offenders to be brought to punishment according to the degree of the offence. You will endeavour to procure an account of the numbers inhabiting the neighbourhood of the intended settlement, and report your opinion to one of our secretaries of state in what manner our intercourse with these people may be turned to the advantage of this colony²²

It can be reasonably argued then, that this was not a unique instruction to a man who was about to establish a new colony. It was more in the nature of a standard operational order for British colonial chief administrators and identical ones were issued to the next five governors of NSW. These orders left Phillip and his successors free to decide what constituted "unnecessary interruptions in the exercise of their several occupations", also what could be considered an offence and what punishments should be employed. Importantly it offered no advice to someone who was probably untrained in legal matters, on how transgressions by indigenous people should be treated. However, the reference to religion that Charles II had emphasised was omitted and not reintroduced until the appointment of Governor Darling in 1825. His orders contained the words

... it is our will and pleasure that you do, to the utmost of your power, promote Religion and Education among the Native Inhabitants of Our said Colony.²³

²² Instructions in second commission to Captain Arthur Phillip, undated, in CO 202, 2, PRO.

²³ Conversion of indigenes to Christianity was not simply a matter of saving Aboriginal souls, once more it was regarded as vital to the process of colonisation. See Darling's instructions, Historical Records of Australia, (hereafter HRA), Vol.1, xii, p.125. QVP, 1861, p.451. In fact the instructions issued to Governor Bowen by Queen Victoria for the establishment of the separate colony of Queensland in 1859 were virtually a verbatim repetition of those issued to Darling and those governors that

In compliance with his instructions, backed up no doubt by his humanitarian tendencies,²⁴ Phillip considered the problems of inter-racial relations well before his arrival in Australia. The enormity of the task he faced, unsupported by any close military or administrative back up, needs to be appreciated, as does the fact that his knowledge of Aboriginal numbers and temperament was virtually non-existent. But he was a highly experienced naval officer well aware of the problems faced by an invading force.²⁵ It must have crossed his mind that Joseph Banks' estimation of Aboriginal population²⁶ and James Cook's analysis of their character²⁷ could have been well off the mark: he and his two hundred disgruntled marines might have had to face an opposed landing.²⁸ Obviously however, Phillip hoped for a

followed him.

- ²⁴ Captain Arthur Phillip was in many ways a remarkable man with outstanding administrative ability linked to an iron will and determination. The magnitude of his commission and the problems he faced have perhaps not been fully appreciated by many people. The level of his humanitarianism however, presents ambivalences. His concern and sympathy for the Aboriginal people and their problems were frequently expressed and appear to be completely genuine, notwithstanding his attempts at disproportionate retribution following the murder of a convict by Aborigines. See HRA Series 1, Vol. 1. "Introduction".
- ²⁵ Apart from service in the Royal Navy since he was 16 years old, Phillip, whilst on half pay, served in the Portuguese navy in their war with the Spanish. He was recalled to the RN in 1778 on the outbreak of hostilities between Britain and France.
- ²⁶ Evidence of Joseph Banks, Before a Committee of the House of Commons on Transportation, Journals of the House of Commons, Vol. xxxvii, p.311. Banks (who informed the committee that Botany Bay was in the Indian Ocean), voiced the opinion that the probability of opposition from the natives was slight. There were, he believed, only about fifty in the area and these were extremely cowardly. This is in complete contrast to Cook who, speaking of the same people in the same area, admired their bravery.
- ²⁷ W. Warton, (Ed.) Captain Cook's Journal During His First Voyage Round The World In HM Bark "Endeavour" 1768-71, (London, 1893), p.286. Cook wrote that he did not consider them to be a warlike people.
- ²⁸ Phillip to Lords of the Admiralty, undated dispatch, in CO 201 1, PRO. Military matters it appears were not too distant from Phillip's mind; he sent back an intelligence report on the fighting strength of the garrison at Rio De Janiero after calling there.

peaceful invasion, writing that

I think it is a great point gained if I can proceed in this matter without having any dispute with the natives, a few of which I shall endeavour to persuade to settle near us, and who I mean to furnish with every thing that can tend to civilise them, and to give them a high opinion of their new guests, for which purpose it will be necessary to prevent the transports' crew from having any intercourse with the natives if possible. The convicts must have none, for if they have, the arms of the natives will be very formidable in their hands, the women abused, and the natives disgusted.²⁹

The reality was that no governor was able to establish the type of race relationship the British Government said it wanted. It was simply impossible given the tensions that colonisation created, and considering their experience elsewhere, unlikely that they really believed it achievable. Several factors prevented Phillip from realising his aims regarding Aborigines and the break down in the relationship between the races³⁰ began immediately and appears to have been progressive in its intensity. Ironically, at least in one direction, Phillip had by today's standards, an underdeveloped sense of justice; or perhaps an

With reference to the Royal Marines in his fleet the conditions under which they were living on the transports even before they left Motherbank were appalling. They were only marginally better off than the convicts, being quartered well below decks in foul air. Many were sick and one had died. Such wives as accompanied them were living in similar conditions and due to an administrative bungle their children were not provisioned for and were literally starving. They were forced to subsist on a portion of their mothers' meagre ration. Several letters on the subject exist in correspondence from Major Ross RM, to the Admiralty. Further, as naval troops the Marines were entitled to a wine and spirit ration when aboard men of war. They were angered to learn they would not receive this ration whilst serving in NSW. A petition was submitted from every ship carrying Marines in the first fleet.

See dispatches from Major Ross and others, in *Ibid.*

²⁹ Historical Records of NSW, (Hereafter HRNSW) vol.1, pt.11, p.52.

³⁰ The term "race" is considered by many people to be an inappropriate one. In fact it is argued that applying the commonly used criteria for differences between humans, there is no such thing as "race". It is used in this work as a matter of convenience.

overdeveloped sense of revenge. He ordered that six Aborigines were to be put to death for the killing of his servant McIntyre, beginning in Australia the practice of disproportionate retribution that was to last until the early twentieth century.³¹ Within a matter of months he was forced to recognise that his policy of amity with the Aborigines was unworkable observing that the natives

still refuse to come among us... I now doubt that it will be possible to get any of these people to come among us to get their language without using force; they see no advantage that can arise from us that may make amends for the loss of that part of the harbour in which we occasionally employ the boats in fishing...³²

The period immediately following the arrival of the first fleet was vital to the way Aborigines came to be regarded and to the way they were to be treated throughout the colonial period. Even before the first days of white establishment in NSW black people were seen in a specific light. Therefore what the British Government and to a lesser degree, the Colonial Governor said on the subject became increasingly irrelevant. The white invaders, convict and free, responded to what they saw as an inferior subspecies that were in some eyes less than human. This view did not, as is so frequently suggested, spring solely from frontier conflicts, although they undoubtedly compounded the problem. Neither does the description of white behaviour as "racist" explain very much. Racism as an ideology did not emerge until the late nineteenth century and although it serves as a rationalisation for prevailing beliefs, the term does little to explain the more rudimentary reasons for the view of the Aborigine as someone against whom cruelty and injustice became no crime. To understand this it is necessary to consider some underlying psychological factors.

³¹ Summary punishments that more than fitted the crime became ingrained during the nineteenth century, even though many were aware that taking more than an eye for an eye resulted in a vicious spiral of violence. The history of colonisation overflows with examples during this era. Rudyard Kipling, the Poet Laureate, wrote a work that advised those colonised by the British to "Walk wide of the Widow at Windsor". It was sound advice. In Phillip's case one might also consider Frost's analysis. See A. Frost, Philip 1738-1813: His Voyaging. (Sydney 1984), pp.194-6 &261.

³² Phillip to Lord Sydney, dispatch of 30 October 1788, in CO 202 5, PRO.9

Individuals establish an identity based on beliefs involving colour, culture, social relationships and the type of society they consider desirable.³³ These beliefs constitute a basic identity which shapes perceptions and behaviour. In his analysis of white attitudes towards slavery Jordan demonstrates how colour predispositions of white people and of English settlers in particular, contributed to the enslavement of black Africans who initially came to the American colonies as indentured servants.³⁴ Jordan is joined by Baker and Kovel who argue that the colour black

evoked within whites negative or hostile feelings and images, black connoting, among other things, bestiality, evil, sin, irrational sexual impulses and savagery. Because blacks were viewed as animals or subhuman beings their enslavement elicited within whites few moral misgivings.³⁵

Nevertheless the reasons why, for the English in particular, the colour black evoked such images needs further explanation. Unlike other great seafaring nations, the Portuguese and Spanish for example, the English did not really touch the shores of 'black Africa' until the mid 1500s; others, the Portuguese for example had been there nearly a century earlier. Apart from this, the southern Europeans were themselves darker than English people and had been in contact with darker skinned people than themselves for hundreds of years because of their proximity to North Africa. They had in fact been invaded and in part colonised by people darker than themselves. For the English, the Negro's colour was

³³ S. Elkins, "Slavery and Ideology" in A. Lane,(Ed), The Debate over Slavery, (Urbana, 1971), pp.74-5.

³⁴ W. Jordan, White over Black: American Attitudes Towards the Negro, 1550-1812, (Baltimore, 1969), p.52.

³⁵ D Baker, Race Ethnicity and Power, (Boston, 1983), p.160.

something of a shock. As Jordan explains the principle contact between the English and Africans came in West Africa where "...one of the lightest-skinned of the earth's people came face to face with one of the darkest".³⁶ In England perhaps more than in the southern European countries blackness was loaded with intense meaning. The word "black" was itself a pejorative. The Oxford Dictionary gives many definitions; dirty, soiled, foul, baneful, disastrous, sinister, involving death and treachery etc.³⁷ Black was the sign of baseness and evil, it was the colour of savagery, and embedded in this concept was its opposite, white, which stood for all that was good, and which black opposed. Perhaps these negative images of that colour were transposed on to black people, in this case it would account for the emptiness of conscience and lack of compassion that many white people displayed in their dealings with Aborigines; their blackness made them not only base, but unhuman. Speaking of the early period of settlement a cleric informed the NSW Legislative Council that

...such views [that Aborigines were not human and therefore incapable of receiving salvation] prevailed to a great extent among white stock holders. One of them had boasted of killing upwards of a hundred Aborigines in reprisal for their rushing cattle maintaining that there was nothing wrong in it, for it was preposterous to suppose they had souls.³⁸

The denial that Aboriginal people were the owners of souls is not all that surprising really. To admit it, would have been for whites to recognise a commonality with a branch of humanity that they wished to distance themselves from as much as possible. Even so, there is more to it than that. Animals are not human and are not generally considered to possess

³⁶ W. Jordan, The Whiteman's Burden; Historical Origins of Racism in the United States, (New York, 1974), p.5.

³⁷ Oxford Dictionary, (London 1934), p.74.

³⁸ Evidence of Bishop Polding, Select Committee on the Condition of Aborigines, V&P of the NSW Legislative Council, 1845, p.238.

souls, but they are not loathed.³⁹ The Colonial Office's James Stephen threw bright light on the subject when he explained to The Secretary of State for the Colonies that the heart of the problem was "the hatred with which the white man regards the black." "That feeling," he wrote, "results from fear".⁴⁰

Within just a few years of settlement Phillip's policy of inter-racial amity had undergone a complete volte-face with Governor Hunter advising the whites that his strategy was one of

... strictly forbidding the settlers from giving any encouragement to the natives to lurk about their farms. There can be no doubt but that had they never met with the shelter that some have afforded them they would not at this time be so very troublesome and dangerous.⁴¹

This is not intended as a criticism of NSW's second governor. Right from the beginning of his appointment Hunter was engaged in a struggle to control the abuses that had emerged within the colony. In this he received less than the whole hearted support that the British government should have given him. Whitehall had failed to appreciate the speed with which its penal colony in the Pacific was transforming itself into a capitalistic society.⁴²

³⁹ There are countless instances that illustrate the intense dislike that some white people felt for blacks. At the Myall Creek Massacre trial, one of the white jurors who acquitted the murderers in the first trial told how he considered the Aboriginal people to be a race of monkeys and the sooner exterminated the better. Nor are similar attitudes entirely absent from contemporary society.

⁴⁰ Cited in H. Reynolds, Frontier, (Sydney, 1987), p.45.

⁴¹ Order by Governor Hunter, 22 February 1796, HRA, series 1, Vol. ii, pp.688-9.

⁴² HRA, series 1, vol. ii, p.ix.

In fairness it should also be pointed out that at this time Britain was engaged in a life and death struggle with France. Following Napoleon's victory in Egypt the possibility loomed of war over India. The expansion of the Napoleonic empire involved them in the Trafalgar campaign, the Peninsular war and a series of military operations in Europe that culminated in the Battle of Waterloo. Added to this their King was arguably exhibiting signs of insanity. It is understandable therefore, that the problems of NSW should be fairly low on their list of

Nevertheless, this stop-start policy was to continue throughout the entire colonial period. The practice of "keeping out" or "letting in"⁴³ depending on the attitude of the white invader must have been entirely confusing to the blacks during the early years of British colonisation. The next Governor was to order that

...bodies of natives in the above district [Parramatta] are to be driven back from the settlers habitation by firing at them but this order does not extend to the natives in any other district; nor is any native to be molested in any part of the harbour at Sydney or on the road to Parramatta.⁴⁴

Thus there existed a cruelly absurd situation where trespass became a capital offence on one side of an arbitrarily drawn line on the road. The imprudence of expecting an aggressive and in many cases, frightened white community to respect such division is illustrated by the following dispatch in which Governor King stated

One of the settlers fixed below Portland Heads who was much annoyed by the natives in June last delivered me a memorial said to be signed by all the settlers in that district requesting that they might be allowed to shoot the natives frequenting their grounds, who had threatened to fire their wheat when ripe. On further enquiry I found that none of the settlers had authorised this man to put their signatures to the paper and that his fears of what might be, had operated with him more forcibly than any present or future probability of the natives again being inimical to him or

priorities.

⁴³ "Keeping them out" or "letting them in" were the terms used on the frontier to indicate whether or not pastoralists permitted Aborigines to live on and hunt over their leases. Whether squatters had the legal right to deny blacks access to their runs is debatable, but many clearly believed they had. However, legal or not, the practice of keeping them out was widely applied and remained so throughout the remainder of the 19th century. Many believed that "letting in" too early was tantamount to committing suicide. They were let in when they were considered sufficiently "civilised", which was a euphemism for being cowed enough to know their place and do as they were told. The subject is dealt with in more detail later in this work.

⁴⁴ Order by Governor King, 1 May 1801, *Ibid*, p.250.

his neighbours.⁴⁵

This man, who sought official blessing for murder, was sentenced to a months imprisonment but released after a few days because it was considered by Governor King that his property might suffer because of his absence. What is also particularly interesting is that the affair provides a rare insight into the Aboriginal perspective. King was able to interview three of the blacks from the group who allegedly threatened the settlers' crops. In response to the Governor's investigation

... they very ingenuously answered that they did not like to be driven from the few places that were left on the banks of the river where alone they could procure food, that they had gone down the river as the white men took possession of the banks; if they went across the white men's ground the settlers fired on them and were angry...⁴⁶

Commenting on King's dispatches, Lord Hobart's remarks made shortly after the turn of the century, are reminiscent of those made by Shelburne when he spoke of the treatment of Amerindians thirty years earlier. Hobart stated

... I cannot help lamenting that the wise and humane instructions of my predecessors, relative to the necessity of cultivating the good-will of the natives do not appear to have been observed in earlier periods of the establishment of the colony with an attention corresponding to the importance of the object... the natives, alarmed and exasperated by the unjustifiable injuries they have too often experienced will require all the attention which your active vigilance and humanity can bestow upon a subject so important in its self, and so essential to the prosperity of the settlement, and I should hope that you will be able to convince those under your Government that it will be only by observing uniformly a great degree of forbearance and plain, honest dealing with the natives that they can hope to relieve

⁴⁵ King to Hobart, 20 December 1804, in CO 206 1 PRO.

⁴⁶ Ibid.

themselves from their present dangerous embarrassment. It should at the same time be clearly understood that on future occasions, any instance of injustice or wanton cruelty towards the natives will be punished with the utmost severity of the law.⁴⁷

In fact, despite countless instances of dishonest dealing, injustice and wanton cruelty over the next hundred years, the threat that Lord Hobart made, in spite of being repeated ad nauseam, was carried out only twice and it is important to be aware that even then it was not at the instigation of the Imperial authority and in both cases, those punished were convicts, not free men.⁴⁸

Apart from the hollowness of the threat to punish, the callous disregard for the value of Aboriginal lives was becoming highly disturbing. The following report that refers to an incident which occurred only a year after Hobart's caveat, provides a fearful example of wanton cruelty which apparently attracted neither condemnation or punishment. It was reported how

... it was thought necessary to show them the effect of firearms; therefore one native who had sat for some time under a tree... was fired at by three persons at the same time and killed. The sailors stripped him and brought away his ornaments and weapons...⁴⁹

The nonchalance of this report is staggering. However, Lord Hobart's warning, referred to

⁴⁷ Lord Hobart to King 30 January 1802, in Co 201 3, PRO.

⁴⁸ I refer to the execution of a convict named Kirby for stabbing to death an Aborigine named Burrigan in 1820. The second reference is to the Myall Creek affair that will be dealt with later in this work.

In 1827 Lt. N. Lowe of the 40th Regiment, was tried and acquitted for the murder of an Aborigine named Jackey-jackey. He was I believe the only army officer to stand in the dock for the murder of a black. For an analysis of his trial see R. Milliss, Waterloo Creek: the Australia day Massacre of 1838, George Gipps and the British Conquest of New South Wales, (Ringwood, 1992), pp.6-9.

⁴⁹ Crook to Hardcastle, 8 November 1803, HRNSW, v, p.256.

above, was in response to complaints by Governor King over the judgements in a trial conducted in Sydney in which several white men, including a constable, were accused of the totally unjustified murder of two innocent Aborigines. The case is interesting because apart from being a denial of justice that was supported by the British administration, it provides another example of the perceived value of Aboriginal life that was emerging so shortly after first settlement. Further, it illustrates the confusion that existed in the minds of the Europeans over the way blacks should legally be treated.

This trial took place in October 1799 before a court consisting of the Judge Advocate, three officers of the Royal Navy and three from the NSW Corps. The basic facts of the case appear to be that the two Aborigines who were innocent of any crime and in the habit of spending much of their time among the whites, were summarily executed in apparent retaliation for the murder by other Aborigines of a white settler. The defence hinged upon the belief by the accused that they had committed no crime and that they were in fact carrying out the wishes of their superiors. The prisoners posed a question to Lt. McKeller, who was one of the judges, in the following terms:

Pray Sir, when you commanded at the Hawkesbury what orders did you issue against the natives for committing depredations on the settlers?

Lt. McKeller replied

To destroy them when ever they were met with after having been guilty of outrages, except such native children as were domesticated among the settlers.

Q. Was that order ever countermanded since?

A. Not during my time at the Hawkesbury nor since to the best of my knowledge.

McKeller was then questioned by Captain John McArthur

Q. By what authority did you give these orders?

A. By verbal orders which I received from the Governor - I do not recollect receiving any in writing to that effect.

Mckeller went on to add that he passed these orders on to the officer who relieved him. He was then questioned by Lt. Flinders RN.

Q. From your never contradicting the orders to destroy the natives did you consider the orders for destroying them continued in force?

Mckeller replied that he did.⁵⁰

The court found the accused generally guilty of killing two "natives" but

reserve this case under all its peculiar circumstances by special verdict until the sense of His Majesty's Ministers at home is known...The individual sense of the Members of the Court was thus expressed:-

Capt. Waterhouse Finds the prisoners severally guilty of murdering two natives. Capt. Waterhouse further adds that by his opinion he means not to affect the lives of the prisoners because it is the first instance of such an offence being brought before a criminal court and therefore the prisoners were not aware of the consequences of the law as applied to this particular case.

Lieut. Shortland Finds the prisoners guilty of killing two natives in a deliberate manner without any provocation from the deceased natives at the moment.

Lieut. Flinders Finds the prisoners severally guilty of wilfully and inhumanly killing two natives unresisting and in no act of hostility or depredation.

⁵⁰ See CO, 202, 6, PRO. A complete transcript of this trial which forms part of a Dispatch from Governor King to Lord Hobart may be found in this document. See also HRA, series 1, Vol.2 pp.401-422.

Capt. McArthur Finds the prisoners severally guilty of killing two natives.

Lieut. McKeller	ditto
Lieut. Davis	"
The judge Advocate	"

The members of the court were evenly divided in their opinions over a suitable sentence. The three Royal Naval officers advocated corporal punishment; on the other hand the three officers of the NSW Corps wished the sentence to be specially reserved for a British decision. In this they were supported by the Judge Advocate.

In an era when hanging for fairly minor offences was commonplace it was a surprising decision that clearly indicated racial inequality in the eyes of the law. The decision obviously infuriated the Governor who informed his superior that

those men found guilty of murder are now at large and living upon their farms, as much at their ease as ever... every information within my power respecting the light in which the natives of this country were to be held as a people now under the protection of His Majesty's Government was laid before the court. The order given upon that subject both before my time and since was made known to it and is as follows... and if any of our subjects should wantonly destroy them, or give them any interruption in the exercise of their several occupations, it is our will and pleasure that you do cause such offenders to be brought to punishment according to the degree of the offence.

The intention of His Majesty from this part of the Governor's instructions are clear and evident. The above cruel act is the second which I have brought before a court of criminal judicature in order to prevent, as far as in my power, this horrid practice of wantonly destroying the natives...⁵¹

⁵¹ Hunter to the Duke of Portland, 2 January 1800, in CO 202, 6, PRO.

The British Government's response was to order that the Governor remit the punishment of the five accused and once more to repeat

...cruelty towards the natives will be punished with the utmost severity of the law; and His Majesty having at the same time recommended that every means should be used to conciliate the good will of the natives...⁵²

The blame for the break down in relations and the lack of firm enforceable policy therefore, cannot be attributed solely to the colonists or their governments; the Imperial legislature was also culpable. Their lack of resolve must have appeared as tacit support for the policies that were being adopted by the settlers and their emergent legislative bodies. No government, imperial or colonial ever recognised any policy, authority or property as belonging to Aborigines either as individuals or groups. They were deprived of their land and means of subsistence with an utter disregard of their interests. While this was going on governments mouthed platitudes about peaceful coexistence then left blacks and whites to settle matters between themselves. It seems absurd, that with their vast colonial experience gained in other countries, the British could have expected them to shake down into peaceful joint occupation without regulation or interference. Yet no clear directives were ever formulated, although it was perfectly clear that pastoral expansion demanded that Aborigines be displaced. The belief that settlers, their stock and Aborigines could live in harmony was a naivety to which the British Government could not possibly have subscribed.

The absence of policy and the resulting conflict over land is central to the subject of justice afforded to Aborigines throughout the colonial era. The seizure of their land was justified by the interpretation of the law the invaders brought with them which said that for legal purposes NSW was unoccupied, and although it is not the intention of this work to attempt an argument on the legality of this appropriation, by no rules of humanity or common decency can it, or the land acts that were framed in London or the Colony of NSW be considered to have been just.

⁵² Lord Hobart to Acting Governor King, undated Dispatch in CO 202, 6, PRO.

Up until about 1820 the European pressure on Aboriginal land, apart from the strip extending westwards from Sydney to where Bathurst stands was slight. In fact pre 1817 the limits of white expansion stood at Windsor and Camden with Bathurst being an isolated enclave. During this period the local administration concentrated on setting bounds to the colony and restricting settlement rather than expanding it.⁵³ Although exploration was taking place, to all intents and purposes NSW was the crescent shaped area of land around Sydney known as "The Nineteen Counties". This area had been surveyed by Oxley and Mitchell, the successive surveyors General. It encompassed about five million acres⁵⁴ which the Government considered ample for a population of about seventy thousand⁵⁵ however, the hunger for land and the lack of an enforceable policy exploded that myth. Pastoral expansion was forced on a government that gradually gave it grudging acceptance, although it must be allowed that they tried to stop it. Governor Gipps stated that he could not have controlled it even if he had the whole British Army at his disposal. For their part, the British Government did not simply fail to recognise any native right to land, they refused to do so. This was made quite clear by their rejection of Batman's initiative on the grounds that it would set a precedent which would place Crown titles in jeopardy. The only concession they were prepared to make was that blacks had a right to hunt and gather food on runs and that pastoralists had no right to exclude them.⁵⁶ Nonetheless, it was a concession that many squatters and their legislature chose to ignore.

The moral and physical decline attendant upon the dispossession, plus the subsequent Aboriginal depopulation produced a response from a small but often vocal group in NSW and the United Kingdom. The group included politicians, philanthropists and members of the clergy including what was probably Britain's most evangelical segment known as the

⁵³ S. Roberts, The Squatting Age in Australia 1835-1847, (Melbourne, 1970), pp.2-3.

⁵⁴ There are about two and a half acres in a hectare.

⁵⁵ Roberts, The Squatting Age, p.2.

⁵⁶ HRA, Series 1, Vol. xxvi, p.225. As already stated this is a grey area. It may have been the intention of the Imperial Government to grant indigenes access to leases, but it was not included in the later lands acts and in fact the concept was rejected by the local legislature.

"Clapham Sect".⁵⁷ In response to the callous way atrocities were being reported in papers reaching Britain they stressed the need for legislation to protect indigenes. Slavery had been abolished in the British colonies in 1834⁵⁸ and many of those who had campaigned so vigorously against it turned their attention to the problems of colonised people. Among these was a strange sort of whig politician named Thomas Foxwell Buxton, who under the influence of William Wilberforce had worked for ten years on the "holy enterprise" of freeing Negro slaves. Now there were disturbing reports from Southern Africa and Van Diemen's Land. The Tasmanian accounts served to focus concern on the Australian continent generally and in 1834 Buxton began to agitate for the British Government to hold an official inquiry into the condition of the indigenes in all its colonies.⁵⁹ Hearing of this demand J. D. Lang, who was a minister in the Presbyterian Church, contacted Buxton informing him of the fearful plight of the Aborigines of NSW and offering solutions to it. In July of the same year in a most impassioned speech to the House of Commons, Buxton referred to some aspects of British colonisation as "a curse".⁶⁰

Humanitarians like Buxton were not radicals, although they were sometimes involved with them, they were overwhelmingly imperialist in outlook. They supported the expansion of Empire and *laissez faire* doctrines and saw minimal interference as the natural operation of society. Buxton founded The Aborigines Protection Society which had somewhat narrow aims, in that it directed its efforts at immediate native welfare rather than broadly

⁵⁷ R. Mottram, Buxton The Liberator, (London, 1946), p.6.
"Clapham" is the name of a London suburb.

⁵⁸ The slave trade was abolished in the British Empire in 1807 but slavery itself did not end until 1834. Even so, there is no evidence that the abolition of the trade improved the lot of existing slaves. In the face of intense opposition by settlers in slaving colonies such as Jamaica, the anti-slavery campaigners offered a program for its gradual abolition, which contained an immediate plan for amelioration. They recommended that the use of the lash be curtailed for men and banned altogether for women. Families were not to be broken up, they were to be given one day off each week, allowed to purchase their freedom, to give evidence in court and in future all children of slaves were to be born free.

⁵⁹ C. Buxton, Memoirs of Sir Thomas Foxwell Buxton, (London, 1855), p.119.

⁶⁰ Ibid, p.109. Buxton referred particularly to the curse of "brandy and gunpowder".

based policies.⁶¹ They distrusted white settlement based on previous experience, but were realist enough to believe that it could not be curtailed, and they continually stressed the value of "natives" as a source of labour. Nevertheless, they were wise enough not to trust the colonists to treat the indigenous people justly and they vehemently opposed the concept of self governing colonies. The Society therefore, sought to modify colonisation with humanitarian principles rather than prevent it.⁶² Westernisation was the basis of their policy directed at colonised people. There was no thought that "natives" should be allowed to retain their old ways, but their stated belief was that if self interest could not persuade the settlers to treat Aborigines equitably, the Imperial Government should use its coercive powers to make them. What the British Government might have done in these circumstances and whether they would have achieved anything is debatable. Nevertheless, the fact is they made no attempt to do so, which bearing the American War of Independence in mind, is hardly surprising.

Nonetheless, the society undoubtedly influenced the House of Commons Select Committee that was formed in 1836. Some of this committee's recommendations are interesting. They called for an immediate formulation of policy for indigenes and stressed that local legislatures, because of their vested interest could not be trusted. The solution to "native crime" directed against settlers was to make treaties with "chiefs" to hand over offenders against English law, but they were opposed to the formation of native police forces because they believed this created tensions within the tribe. The Committee recognised that many Aboriginal women suffered at the hands of convicts. They therefore argued that transportation should cease and that convicts' wives should be sent out immediately at public expense. Capital and corporal punishment, they argued, should be abolished and replaced with imprisonment.⁶³ It can be seen therefore, that the society's agenda impinged not only on "native affairs", but on the Criminal Justice System as well.

⁶¹ R. Cook, Native Peoples and the Concept of Empire, Ph.D. Thesis, University of Oregon, 1963, p.9.

⁶² Ibid, pp.11-14.

⁶³ Report from the Select Committee on Aborigines, (British Settlements). p.17.

The report from the House of Commons Select Committee can only be described as a horror story. It listed the various colonies one by one, with observations on the fate of their indigenous peoples; a short sample will illustrate the nature of the document.

Of Newfoundland it was asserted that

... there, as in other parts of North America it seems to have been for a length of time accounted a meritorious act to kill an Indian...under our treatment they continued rapidly to diminish... the last of the tribe were killed by two Englishmen in 1823, in the colony of Newfoundland it may therefore be stated that we have exterminated the natives.⁶⁴

From South Africa Graaf Reinert gave evidence that

I myself have heard one of the humane colonists boast of having with his own hands, destroyed near 300 of these unfortunate wretches...⁶⁵

It was maintained that

of the Caribbean...the native inhabitants... we need not speak of them...little more remains than the tradition that they once existed.⁶⁶

The document contains considerable information on the fate of New Zealand Maoris, including the fact that their tattooed heads were offered for sale in Sydney as objects of curiosity.⁶⁷

⁶⁴ Ibid., p.6.

⁶⁵ Ibid.

⁶⁶ Ibid., p.10.

⁶⁷ Ibid. p.15.

They also stated that

It might be presumed that the native inhabitants of any land have an incontrovertible right to their own soil: a plain and sacred right, however, which seems not to have been understood. Europeans have entered their borders uninvited, and, when there, have not only acted as if they were undoubted lords of the soil, but have punished the natives as aggressors if they have evinced a disposition to live in their own country.⁶⁸

This is a most poignant analysis that goes straight to the heart of the problem. But it is vital to appreciate that it is what the Committee said, not what the Government said. It was not, as has been suggested "the official stand".⁶⁹ The Committee and the Government despite occupying the same building are not the same thing. The British Government did not recognise the Australian Aborigines' "incontrovertible right to their own soil", they sold it to whites. This draws into question, if not the sincerity, certainly the understanding of the reality underlying the situation. Two years after the Committee uttered its crie de coeur and made its recommendations, the Secretary of State for the colonies informed his colonial governor that

You cannot over-rate the solicitude of HM Government on the subject of the Aborigines of New Holland. It is impossible to contemplate the condition and prospects of that unfortunate race without the deepest commiseration. I am well aware of the many difficulties which oppose themselves to the effectual protection of these people... still it is impossible that the Government should forget that the original aggression was our own and that we have never yet performed the sacred duty of making any systematic or considerable attempt to impart to the former occupiers of New South Wales the blessings of Christianity, or the knowledge of

⁶⁸ Ibid, p.5.

⁶⁹ J. Woolmington, (Ed), Aborigines in Colonial Society: From Noble Savage to Rural Pest, (Melbourne, 1973), p.4.

the arts and advantages of civilised life...⁷⁰

Apart from the observation that the blessings of Christianity and advantages of civilisation were from the Aboriginal perspective, highly dubious to say the least, the really significant part of that statement is that Aborigines were not seen as the occupiers of part of the land as the indigenous people had been in other colonies. They were the **former** occupiers of the land and this was germane to the shortcomings of British colonial policy towards them.

Prior to 1836 the British philosophy of colonisation in Australia had been heavily influenced by a theory of concentration that was based on the assumption that dispersion of settlement meant the ruin of colonies. With this argument men like Wakefield, Torrens and Rintoul led a strong movement directed at the contemporary British press, while in the House of Commons Buller and Molesworth won over or intimidated secretaries of state.⁷¹ This "Wakefieldian theory" was a thesis based on strict control of settlement which was particularly seductive to the Imperial government if the American experience is considered. It was also a de facto impediment to white settlement on Aboriginal land that the colonists had vigorously rejected virtually from the first days of the white invasion. It was equally one about which a colonial government could not quite make up its mind, impulsively changing it from governor to governor. In fact the Governors of NSW since the 1820s had allowed pastoralists a limited system of land tenure. Grazing rights were bestowed with a proviso which added "until such time as the Government may choose to revoke this indulgence and resume possession to itself"⁷² It was thought that such orders legalised the appropriation of Aboriginal land by squatters but were vague and obviously gave no security of tenure. Governor Bourke recognised this and found it necessary to amend the legislation informing Secretary of State Lord Glenelg, that

Admitting as every reasonable person must, that a degree of concentration is necessary for the advancement of wealth and civilisation, and that it enables

⁷⁰ Lord Russell to Gipps, 21 December 1839, HRA, I, xx, pp.440-441.

⁷¹ Ibid, p.69.

⁷² Ibid, p.74.

government to become at once efficient and economical I cannot but avoid perceiving the peculiarities which in this colony render it impolitic and even impossible to restrain dispersion within the limits that would be expedient elsewhere.⁷³

Bourke's solution came to mean that on payment of ten pounds sterling⁷⁴ a year, a squatter was granted a licence to gaze stock over as much land as he pleased, effectively denying to Aborigines land that had supported them for perhaps thousands of years. By 1840 a line drawn from Tenterfield to the Clarence River marked the boundary of white settlement. In other words, they had reached the Queensland border. In 1841 the Colonial Secretary, Lord Stanley, sent out a new land act that was designed to give stability and uniformity to all Australian land laws and to ensure a fixed statutory appropriation of land revenue.⁷⁵ Hereafter all land was to be auctioned at not less than a pound sterling an acre. Of the proceeds, at least half was to be spent on immigration to populate the colony. Fifteen percent was to go towards Aboriginal relief, a little on roads and the rest to the colonial coffers. It is an irony that some of the money raised by Aboriginal dispossession should be used to provide welfare for the dispossessed. It was an even greater incongruity, at least from the Aboriginal perspective, that the bulk of the revenue should be used to bring out more migrants to appropriate more Aboriginal land thereby placing an ever increasing number of blacks in a situation of mendicancy.

Perhaps the most easily understood statement concerning the situation regarding the acquisition of Aboriginal land by the British comes in a judgement in the Supreme Court of NSW in 1847. In this Chief Justice Stephen rejected a challenge to the Crown's title to, and possession of all land in the colony of NSW. "Since first settlement in 1788" Stephen said, " all the lands in the Colony belonged to the Crown and were in the Crown's

⁷³ Bourke to Glenelg, 10 October 1835, cited in *Ibid*, p.72.

⁷⁴ The monetary sign for a pound is £. This may be confusing to some readers. Therefore the words "pounds sterling" are used throughout this thesis.

⁷⁵ The situation was that the Governor and the Legislative Council of NSW could make some laws, but the British Government retained the final word with respect to land.

possession".⁷⁶ This was part of the feudal system of land tenure which was a foundation of the English law the invaders brought with them.⁷⁷ All land belonged to the Crown, but the tenure system allowed the Monarch to grant land to subjects. What gave these subjects the right to dispossess the previous owners had much of its basis in the teachings of Christianity, allied to capitalism. Quoting Earl Grey the Times informed its readers

...men were to subdue the earth, that is to make it by their labour what it would not have been by itself, and with the labour so bestowed upon it, came the right of property in it. Thus every land that is inhabited at all belongs to somebody; that is, there is either some one person, of family, or tribe or nation who have a greater right to it than anyone else has, it does not, and cannot belong to every body. But so much does the right of property go with labour that civilised nations have never scrupled to take possession of countries inhabited only by tribes of savages - countries that have been hunted over but never subdued or cultivated. It is true that they have often gone further and settled themselves in countries that were cultivated and then it becomes a robbery, but when our fathers went to America and took possession of the mere hunting grounds of Indians, of lands on which man had hitherto bestowed no labour - they only exercised a right which God had inseparably united with industry and knowledge.⁷⁸

This concept was vigorously embraced by the legal theorist John Locke. It underlies the

⁷⁶ Cited in, P. Butt, and R. Eagleson, Mabo: What the High Court Said, (Sydney, 1993), p.18.

⁷⁷ The proposition that the Crown became the absolute owner of all land in the colony to the exclusion of all other interests demands examination. Not just from the legal aspect but from the moral one as well. If this proposition is correct the moment British subjects set foot on the continent the Aboriginal people lost all right to occupy their home land and were deprived of the economic, spiritual and cultural support that the land provided. Without compensation they became intruders in their own homes, forced to beg not only for their bread but for somewhere to lay their heads. By any standard of human decency such a law would be unjust. This amoral proposition formed the basis of Queensland's argument in the "Mabo" case.

⁷⁸ The Times, 29 December 1846.

acquisition of a title to a res nullius. Such an assertion may have had its foundations in 19th century international law, but it is utterly devoid of either Christian charity or Justice. If this theory has any validity, a peasant had the God given right to plant a crop of potatoes on the King's grouse moors then claim them by right of labour.

After a lengthy period of white settlement on the Australian continent there was strenuous effort to bring Aboriginal people under a policy of protection that British subjection was believed to offer. As already stated the Imperial Government and not the local administration in the colony of NSW (of which Queensland was a part until the 1859 separation) was responsible for "native affairs" This was to last until the grant of self government in 1856 and was to produce a three sided bitter conflict between the British government its colonial counterpart and local capitalism, personified by the squatting interest, with the initiative progressively being gained by the latter. In fact a great gulf came to exist between London, the colonial executive and the settler.⁷⁹ Despite the many sympathetic utterances by certain sections of the British Parliament they were made increasingly aware that the responsibility for the indigenous population of NSW was a thankless and difficult task that was winning them few friends. Therefore unable, or perhaps unwilling to do much about it they were "in the end relieved to hand over their responsibilities to the colonists in the name of local self government".⁸⁰

With this hand-over the black people were now subject to the legal control of those who had a vested interest in denying them justice. Henry Reynolds makes the undeniable point that the imposed system of the colonists was an adulteration of English common law.⁸¹ He states that

... the truly amazing achievement of Australian jurisprudence was to deny that

⁷⁹ Woolmington, Aborigines in Colonial Society, p.53.

⁸⁰ A. Shaw, "British Policy Towards the Australian Aborigines 1830-50", in Australian Historical Studies, No. 99, October 1992, pp.47-55.

⁸¹ H. Reynolds, The Law of the Land, (Ringwood, 1987), p.4.

Aborigines were ever in possession of their own land.⁸²

To understand this and other injustices shown to blacks, it is necessary to examine the development of the English legal system and its application to the Aboriginal people.

⁸² Ibid, p.2.

Chapter Two

The Application of English law to Aboriginal People, 1788-1850.

...murder is not always so among the Aborigines.

Rev. Francis Tuckfield.

From a legal point of view, in the early years of the British settlement of NSW, Aboriginal people were in a state of limbo. During this time the prevalent belief in the Colony was that they were not amenable to judicial proceedings for any offence they might commit upon each other or upon Europeans. This is not to say that they were not tried and punished by magistrates; they were but it was technically illegal.¹ This all changed when a verdict was handed down in the Supreme Court of NSW in 1836. It completely altered the legal position of the black people and established as a matter of British judicial theory, that Aboriginal law which had governed them for perhaps thousands of years, no longer had any standing in Australia and that Aborigines were henceforth answerable in all respects to the laws that were introduced by the colonists.² However, in spite of the imposition of an alien legal system, Aboriginal Australians continued to be governed by their own morality and system of justice. These were not as some settlers considered, simply "native customs".³ They were laws which were extremely complex and generally demanded strict obedience. Therefore at the time that white settlement was spreading into the area of NSW that would eventually become Queensland, Aborigines became initially answerable to two conflicting systems, one of which was in many respects quite meaningless to them. Thus the rule of law, which has been accorded so much historical deference in British society came to have a totally different meaning for black people. It was to them, a series of orders coercively imposed by an authority they did not recognise, which claimed obedience by the threat of force rather than by a morality to which they subscribed. To further compound their dilemma this introduced system was itself undergoing radical change. For white people it was to become infinitely more benevolent under the influence of changing public

¹ McGonigle, *The Rule of Law*, p.162. McGonigle says that the normal practice seems to have been for magistrates to use their power to hold Aboriginal suspects for a certain period for examination to "teach them a lesson", then to release them upon agreement to assist in some way. However few records were kept and the evidence which suggests this approach is inconclusive.

² The importance of "yardstick" cases which create precedents can be appreciated if one considers the *Mabo* decision which recognised the existence of native title.

³ In fact working on advice from missionary L. Threlkeld, Burton J argued that Aborigines had no law, only "lewd practices and irrational superstitions contrary to divine law and consistent only with the grossest darkness. See B. Bridges, "The Extension of English Law to the Aborigines for offences Committed Inter-se, 1829-42", in *JRAHS*, Vol 59, No. 4, p.264.

opinion and legal thought. Blacks however, were not considered suitable recipients for legal beneficence or this emergent penology. Thus a dual system came into operation with Aboriginal crime being controlled by ideas and methods that were outdated and in many cases illegal.⁴

When British settlers established themselves in new colonies they reasonably expected to take their laws with them and become subject to the same legal conditions that had governed them when they were at home. This expectation however, was not always easily gratified. The requirements that allow a legal system to operate were normally absent. Colonies, at least initially, lacked supporting organisations; such things as police, courts, legal officers and prisons did not exist and took time to establish. Apart from this, no two colonies were the same and none of them faithfully reflected the conditions of the metropole which had produced the laws that the settlers wished to see transplanted. Therefore, those that were applied within the new colony often required some modification. It can be appreciated then, that it was not unusual for British colonists to experience atypical legal conditions.⁵

In NSW the judicial processes that the convicts and free settlers understood were displaced by a system that was very military in character. What were in reality courts martial substituted for trials by jury. These courts were often conducted by untrained officials and functioned under letters patent bearing scant resemblance to a system which owed allegiance to English common law. It was a situation that was to last for over twenty years,

⁴ Aborigines were frequently subjected to summary punishment which is of course, retribution delivered in the absence of a trial to established legal guilt. It is therefore not only illegal, but frequently unjust. It is particularly so when it is applied collectively. Injustice can hardly fail to result when a group is punished for the crimes of an individual. Yet this was a practice that the British used extensively when they wished to "teach the natives a lesson" during the 19th and early 20th centuries.

⁵ K. Smith, Appeals to The Privy Council From The American Plantations, (London, 1950), pp.3-5. In the American colonies for example settlers complained that they were being denied the common laws of England.

giving rise to a great deal of dissatisfaction.⁶ Yet the doctrines slowly changed and a modified English system with its common law⁷ foundations gradually replaced the military courts and became the law of the land. It was welcomed by white people who understood it and inflicted on black ones who did not, yet its effect on their legal relationship with Europeans and between themselves was immense. To add to the confusion faced by people, who overnight had become amenable to two often conflicting sets of laws, the concepts underpinning "British justice" were themselves undergoing change. Therefore, not only was an alien legal philosophy being imposed, but the system itself was unstable. In addition to this, the much vaunted British concept of equality before the law was denied to black people and some of the deviations from the English system delivered to Aborigines a level of injustice that may not have been fully appreciated.

Quite apart from the legal and logistical problems faced by the settler society, ethical ones also presented themselves. One of those faced by colonial administrators was how to deal with indigenous people who transgressed the laws that had been imposed. The moral dilemma became particularly acute if the offence was no crime to them, especially if it resulted from an action that was demanded by their own laws. This was a predicament faced by British settlers in Australia. Unfortunately, they knew so little of Aboriginal law that it is likely that countless Aborigines were severely punished for behaviour that was criminal in white eyes, but completely just in black ones. This situation was recognised by some British colonists in NSW and clearly it was no small difficulty for those whose duty

⁶ Prior to 1824 NSW did not have a recognised civil judicial establishment with unlimited jurisdiction in civil and criminal cases.

See Eager to Bigge, 19 October 1819, CO, 201, 116 PRO. One of the reasons why Commissioner Thomas Bigge arrived in the colony was to deflect the very considerable criticism of Lachlan Macquarie's despotic style of governorship. An emancipist named Eager claimed that the colony was governed by a system of arbitrary and illegal legislation which included offences unknown to the common law of England. He complained that free inhabitants were subject to corporal punishment (this was illegal) excessive taxation, illegal police regulations, deprivation of rights, oppression of individuals obnoxious to government, suppression of freedom of discussion and denied a free press.

⁷ Common law refers to the unwritten law which is derived from ancient usage and administered by King's courts,

it was to administer the law justly, but it was an obstacle of enormous proportions for the indigenous people. There was no attempt to accommodate these so called "British subjects" to whom the introduced laws were a mystery and in some cases an anathema. To compound the problem, the imposed system was altered in a way that denied them just treatment. Their evidence was declared legally unacceptable, which discriminated against them in trials, whether they were accused, plaintiff or witness. In fact, it virtually placed them outside the law. This, combined with the illegal practices that were used, gave the invaders' claim of the equality of "British justice" a distinctly hollow ring. Under these circumstances, it is understandable that Aboriginal people should refuse to confer legitimacy on it. Many Europeans read this non-compliance as evidence of at best stupidity, or at worst inherent criminality, failing to recognise that it was frequently a form of resistance to the white presence and their imposed authority.

Significantly, this situation arose in NSW at a time when the English criminal justice system was itself undergoing radical change. After 1815, the treatment of British offenders was becoming more humane. The prison was appearing as an alternative to the hangman's noose and the bloodthirsty practices directed at inflicting pain or humiliation upon the criminal's body, which had been in place for centuries were disappearing. Even transportation which had arisen at least in part as an alternative to the gallows, was under fire and would eventually be replaced. This enlightenment however, was not extended to Aboriginal people. Many of the colonists and their legal representatives did not consider the "untutored savage" sufficiently "civilised". The law for them developed specific aims directed uniquely at Aborigines.⁸ It became in some respects reflective of the English judicial system of the 17th and early 18th centuries, when the law was unequally applied to protect property and did not concern itself overmuch with the rights of the underprivileged.⁹ The death sentence and aspects surrounding it, provide particularly sharp examples which illustrate that the legal treatment of Aborigines was chronologically out

⁸ Even so, it should be appreciated that one of the stated reasons for making Aboriginal people amenable to English law was to protect them.

⁹ In those days poverty was in itself almost a crime and the British poor, physically infirm and intellectually handicapped could expect scant protection from the law. Women might also be added to this list.

of step with the way whites were being treated. The enlightened penology that was undeniably changing the methods of punishing white offenders, was not extended to Aborigines because conventional wisdom considered that the only thing blacks understood was physical force.

As already pointed out, the statutes that came to govern the Australian Colonies were often incorrectly referred to as "British law" or "British justice". In fact they were not British and from the Aboriginal perspective they were clearly not "just" either. The laws that pertained to Australia had their genesis in English common law and legislation. Those of Scotland, although theoretically an equal partner with England in the union and whose laws differ in a number of ways, received no recognition in the Australian colonies. Therefore this imposed legal system was English and it is helpful to consider some aspects associated with it.

The invasion of Australia roughly coincided with a period of English judicial enlightenment. Some authors have failed to recognise the extent of this change in thinking, which is particularly significant when it is juxtaposed with the emergent Australian legal system. Among several other important changes, the beginning of the 19th century saw the demise of the "Bloody Code" which is the name given to the English system of criminal justice that began in 1688 and ended in 1815.¹⁰ It was a strategy which by the end of the Napoleonic wars had brought the number of crimes that attracted the death penalty to about 225. There is a fearful irony attached to this code, in that it replaced by death some punishments that had been considered inhumane. Writing in 1795 a legal analyst explained that

In the course of the present century, several of the old sanguinary modes of punishment have been either very properly abolished by acts of parliament, or allowed, to the honour of humanity, to fall into disuse:- such as burning alive, [used particularly against women] cutting off hands or ears, slitting nostrils, or burning

¹⁰ F. McLynn, Crime and Punishment in Eighteenth-Century England, (London, 1989), p.xi.

in the hands or face; and among lesser punishments, fallen into disuse, may be mentioned the ducking stool... **Many crimes which were formerly considered of an inferior rank have been rendered capital...**¹¹ [my emphasis]

A lot of scholarly argument exists over the aims of the Bloody Code. Some authors consider it to have been an attempt by a ruling class that was fearful for its property, to turn back the clock to the severity of the Tudor and Stuart periods. Others believe that the apparent illogicalities it embraced were part of a well thought out plan to control a burgeoning criminal class.¹² Obviously there were, as there are now, variations in the crime rate from year to year. Yet it appears to be one of human society's constants that the contemporary age is always seen to be more criminal than those that preceded it.¹³ As a result, in the second half of the eighteenth century the code appeared to become even more draconian. Although there were over 200 offences where the death penalty was stipulated, there were about three times that number where it **could** be invoked. Without doubt the code was exceptionally severe; it was also in many people's eyes unjust and irrational. For example, to steal goods from a shop and be seen to do so merited transportation, to steal the same articles without being observed was punishable by death. If the pocket one picked contained eleven and one half pence, it might be the beginning of a trip to Botany Bay, for

¹¹ Cited in L. Evans, and P. Nicholls, (Eds), Convicts and Colonial Society 1788-1853, (Stanmore, 1976), p.103.

The practice of hanging offenders had become ingrained in the English criminal justice system. It partly solved the problem of an escalating prison population and gave the criminal no opportunity to re-offend. But more than this, it was considered painless and humane. Long prison sentences on the other hand, were seen as the ultimate in cruelty.

¹² Several works examine these differing schools of thought, see for example D. Hay, P. Linburg, E Thompson, and C. Winslow, Albion's Fatal Tree: Crime and Society in Eighteenth Century England, (London, 1988).

¹³ This is equally true of the age we now live in. If this belief has any rational foundation, society would eventually reach a state of anarchy; something it shows no sign of doing.

an extra half penny it could mean a much shorter trip to the gallows at Tyburn.¹⁴ These incongruities appear ridiculous and it is further argued that they were counter-productive to the aims of the criminal code, in that the illogicalities produced a backlash in juries that failed to convict, or made strong recommendations for mercy and judges who would not impose the full penalty of the law. Notwithstanding the veracity contained in such analyses it should be pointed out that there are counter arguments and that one of the sins committed by some legal historians is that they have taken this increase in offences made capital, at face value. Many of these crimes that could attract the death penalty were defined by English law in a very narrow way and were instituted to protect specific items. Destroying Westminster Bridge for example, should have been the same class of offence as destroying Tower Bridge, yet each eventuality had a separate capital statute.¹⁵ Sir Robert Peel's attempt to rationalise the law, made use of this fact; he pointed out that there were twenty different statutes governing the destruction of trees.¹⁶ In short, the law was often directed at protecting individual things rather than at the curtailment of a whole class of crime. This should be borne in mind when considering the incongruity and the severity of the code. It is particularly significant when the apparently massive number of capital offences is contemplated.

Nonetheless, strong evidence exists that pointed to a growing disenchantment with a criminal justice system that was based on the death sentence.¹⁷ The ratio of actual executions to capital convictions fell quite dramatically. Between 1790 and 1800 only a

¹⁴ Tyburn was not the only execution site in London. In her research into the beef cattle industry Dawn May discovered that they had been carried out at the site of the Smithfield meat market for about 400 years prior to it becoming a market. Tyburn however was the major London venue for public hangings. It is now marked by a small triangular stone set into the road very close to Marble Arch. Ironically it is still a potential death site. To see it, it is necessary to take one's life in ones hands and brave the terrifying traffic that flows around Hyde Park.

¹⁵ C. Emsley, Crime and Society in England 1750-1900, (Harlow, 1987), p.204.

¹⁶ Ibid.

¹⁷ R. Rosecrance, "The Radical Culture of Australia", in L. Hartz, The Founding of New Societies, p.278. In fact it is claimed that the whole system was characterised by "unremitting severity in theory and a certain leniency in fact".

third of the 745 English death sentences were actually carried out.¹⁸ In addition, judges were empowered to hand down sentences of "death recorded" which virtually guaranteed a reprieve.¹⁹ All the same, it would be quite wrong to believe that the forces of reaction had been completely laid to rest. The Criminal Justice System continued to furnish occasional displays of intense savagery. An instance was demonstrated by the hanging of Mary Jones in the late 1700s for the theft of children's clothing. Her husband had been pressed into the navy, leaving her and her children destitute. Of her execution Sir Samuel Romilly said "I do not believe that a fouler murder was ever committed against the law, than the murder of this woman by the law".

Nevertheless, there was a dramatic decline in hangings, but some legal historians see the decrease in executions in a totally different light. In a most cogent analysis, Douglas Hay presents the use of the pardon as an official option of control. He says that it put

... the principle instrument of judicial terror - the noose - in the hands of those who held power, it was the peculiar genius of the law it allowed the rulers of England a selective instrument of class justice, yet simultaneously to proclaim the law's incorruptible impartiality and absolute determinacy. ...it allowed the class that passed one of the bloodiest codes that Europe had seen to congratulate itself on its humanity and it encouraged loyalty to King and country.²⁰

¹⁸ L. Radzinowicz, A History of Criminal Law and Its Administration From 1750, 5 volumes, (London, 1948-86), Vol 1, p.13.

¹⁹ R. Davies, The Tasmanian Gallows: A Study of Capital Punishment, (Hobart, 1974), p.24.

The power of the Crown to grant absolute or conditional pardons was frequently used, usually to commute death sentences. The reforms of the 1830s and 40s, particularly those of 1837 and 1841 left only 11 capital offences on the statute book; in practice only murder and attempted murder attracted the noose. For other capital convictions, the judge was bound by law to pronounce the sentence of death, but would recommend to the Home Secretary that some other sentence (usually transportation) be imposed. See D. Phillips, Crime and Authority in Victorian England, (London, 1977), p.109.

²⁰ Hay, et al, Albion's Fatal Tree, p.49. When Hay writes of the "rulers of England" he is of course referring to the ruling class rather than the Monarchy.

Hay goes on to say that as accusers, men of wealth could invoke the law or show mercy; "discretion allowed a prosecutor to terrorise a petty thief and then command his gratitude as a man of compassion".²¹ It certainly appears that great care was taken over the bestowal of pardons.

Even so, the influence of enlightened thinking had been gradually making inroads into the savagery that was inherent in this criminal justice system. Increasingly, people of influence were beginning to listen to thinkers like the Italian criminologist Cesare Beccaria who argued that crime resulted from wide social circumstances which frequently included necessity, and had never been reduced by the threat of the death penalty. His solution was for a more rational form of deterrence based on the certainty of being caught, convicted and punished by some means other than the threat of a death sentence that many criminals knew was seldom carried out.²² One perceived disadvantage of Beccaria's proposal was that it demanded a large professional police force, something that was viewed with considerable disfavour in 18th century England.²³ Despite this, the publication of Blackstone's Commentaries gave weight to the sort of ideas that Beccaria was arguing. Also at this time, Jeremy Bentham was calling for the establishment of penitentiaries to replace both the death sentence and transportation. Therefore, some sort of prison based on rehabilitation rather than simply restriction, was seen as providing a means by which these concepts could be effected. This constituted a major attitudinal change, because for centuries prior to this, the punishment for serious crime had been directed at inflicting pain on the criminal's body in one way or another and imprisonment was not regarded as suitable

²¹ Ibid, p.48. Powerful citizens could drop charges against a criminal or wait until he was sentenced and then appeal for clemency which often saved the offender from the gallows.

²² D. Neal, The rule of Law in a Penal Colony: Law and Power in Early New South Wales, (Cambridge, 1991) p.13. However, the disenchantment with the bloody code was not entirely based on humanitarianism. Some people would have been happy to see it remain in place if only criminals had been hanged a little more frequently.

²³ This is particularly applicable to a working class who were powerless and saw police as yet another arm of those who ruled. The ruling class paradoxically, in their turn saw police (and a standing army) as incompatible with a free society. See Blackstone, Commentaries on the Laws of England (Chicago, 1979), p.268.

punishment. Previously, serious crime had demanded hanging, bodily punishment in one of its various forms, or transportation. The gaol had been reserved for less serious offences and sentences were generally of a fairly short duration, usually for a year or less and seldom more than three.

Although England was not to have its first penitentiary until the 1840s, by the end of the 18th century it was becoming apparent to some people that as a deterrent, the death penalty was highly questionable. This is illustrated by an example that was quoted in the press of 1764 in which seven criminals were hanged at Tyburn. A gang of pickpockets (this was a capital offence) systematically worked through the crowd who had turned out to watch the condemned leave Newgate prison. They then robbed those who had it is claimed, "turned out in carnival spirit to watch the public execution".²⁴

On the subject of crowd behaviour at public executions, some authors believe that the claimed blithe atmosphere is a cliché that has been constantly over emphasised. Contrary to much that has been written on the subject, they were frequently opportunities for angry crowds to make political statements about the maladministration of justice. Some resulted in riots that needed troops to quell them. The fact that soldiers were invariably present at public executions is in itself evidence of their potential for public disorder. Henry Fielding argued that the lawlessness they engendered was a threat to property, in that it was one of the causes for the increase in robbery and he advocated removing hangings from public view. In fact a step in that direction was made in 1783 when the procession to Tyburn was discontinued. From this date executions were carried out in the entrance area of Newgate Prison.²⁵ They were eventually to vanish behind closed doors because apart from their potential to trigger public disorder, people began to recognise the brutalising effect they

²⁴ London Chronicle, 5 June 1764, cited in McLynn, Crime and Punishment, p.267.

It is of course not unreasonable to argue that while one can cite cases where execution failed as a deterrent, we can never know how often it persuaded against criminal acts. Nevertheless, apart from questions of legal morality, the instances of its known failure are such that its value as a restraint is highly dubious.

²⁵ M. Ignatieff, A Just Measure of Pain, (New York, 1978), p.88.

had on society. Before this, the cavalcade to the place of execution had been considered an important part of the deterrence strategy. It was meant to allow as many people as possible to contemplate the ultimate wages of crime.²⁶ Its termination marked the beginning of a paradigm shift which saw criminal justice become increasingly based on apprehension and punishment by imprisonment in closed institutions, rather than the noose. It is interesting to note that Captain Arthur Phillip, the Colony's first governor, subscribed to this new enlightenment; he believed that hanging should be reserved for the crimes of murder and sodomy only.²⁷

Therefore the expansion of settlement in NSW took place at a time when Britain was emerging from a period of legal savagery and it is important to recognise that a dramatic change in thinking with regard to punishment was underway.

Given the isolation of NSW, and that it was a penal colony, it would be reasonable to expect that the Australian emergence would be a little slower than its British counterpart and it would be interesting to compare the way justice was administered in the two countries. Unfortunately the statistics for crime and punishment in the Australian colonies are patchy; they are really only available post 1819 and not fully comprehensive until after 1850. This is not to claim that they do not exist, but they are difficult to construct due to administrative vagaries.²⁸ The problem is not applicable in the case of Queensland, because this colony began to keep records immediately on separation from NSW.²⁹ However, it is

²⁶ It was also an important part of the legal process. The public were witnesses that the execution had taken place and that the right person had been hanged.

²⁷ HRA, series 1, Vol. 1, p. 29.

²⁸ This can be an infuriating aspect of research. One may follow a criminal case in the press for weeks only to find it disappears without conclusion and no further mention is made of it. A search of the judicial archives also draws a blank. In such circumstances what has often happened is that a transcript has been put before the Attorney-General who has decided that the case cannot proceed. This was a fairly common occurrence in trials involving Aborigines because their evidence was unacceptable in a court of law.

²⁹ S. Mukherjee, J. Walker, and E. Jacobson, Crime and Punishment in the Colonies: A Statistical Profile, (Kensington, ND), p.viii.

essential to look at the period well before the birth of Queensland, because by 1859 the patterns of legal, and for that matter illegal punishment, were well and truly cast.

The available figures for NSW around the time of initial settlement at Moreton Bay provide an interesting picture of crime and its management. In the period 1814-1824, trials for capital offences outnumbered those for petty larcenies and misdemeanours by three to two, and of the thirty two percent capitally convicted, eleven percent were executed.³⁰ In the four years between 1826 and 1830 the two Australian colonies of NSW and Van Diemen's Land hanged a total of 290 prisoners. Justice Therry who was a judge of the Supreme Court of NSW from 1846 to 1849 throws light on the subject by comparing executions in NSW with those in England and Wales. He maintained that in NSW between 1826 and 1830, 153 felons were hanged, adding

... in these three years out of a population of less than fifty thousand, being an average estimate of one man in every thousand, and something over, actually executed. For the sake of comparison, the similar statistics for England and Wales are added... giving an average annual estimate of one in about two hundred thousand.³¹

Another author examined the figures for three years later, explaining

In 1833 when the population was about sixty thousand there were sixtynine death sentences; in 1834, eightythree; and in 1835 seventyone. If the same proportion held good in the British Isles at the present day it would mean a thousand sentences of death every week. These figures approach the record of the French reign of terror...³²

The Supreme Court depositions relating to Moreton Bay between 1837 and 1858 are also mostly intact in either NSW or Queensland State Archives.

³⁰ *Ibid*, p.1.

³¹ Therry, *Reminiscences*, p.8.

³² J. Williamson, *A Short History of British Expansion*, (London, 1947), p.98.

Therefore executions in Australia reached staggering proportions when compared to the home country. Of course in Australia judges were dealing with a largely convicted and presumably more lawless society.

Although the fact remains that literally hundreds of public executions were carried out here between 1788 and 1855, the overall picture shows that they were declining in Australia as in Britain. However it is wrong to regard the public hanging as simply a manifestation of legal savagery. It was "the visible proof of justice and the law's power".³³ Even so, transportation, which was arguably the Australian colonies' *raison d'etre* could be considered part of a new enlightenment; it was an alternative to capital punishment.³⁴ As such it can be regarded as a move away from the exemplary displays of horror that were directed at the offenders body which had been considered essential to a criminal justice system based on visible deterrence.³⁵ Nevertheless, transportation was also ambiguous, because it was a manifest demonstration of retribution. Prisoners laboured and were sometimes flogged under the public gaze. This was the situation, we are led to believe, at Moreton Bay.³⁶ and of course at the other penal stations in the Australian colonies. As

³³ L. Connors, "The Theatre of Justice: Race Relations and capital Punishment at Moreton Bay 1841-59" in R. Fisher (Ed) Brisbane: The Aboriginal Presence 1824-1860, (Brisbane, 1992), p.48.

³⁴ Between 1808 and 1841 the 200 odd capital offences on the English statute book were reduced to eleven and after 1841 criminals were executed only for murder. For other offences, hanging was replaced by transportation, which in its turn was superseded by penal servitude.

³⁵ In this respect the figures for transportation are of interest. Until 1810 about 500 felons were transported each year. This is the period that Hughes calls "primitive transportation". See R. Hughes, The Fatal Shore, (London, 1988), p.160. For the next half century they averaged around 3,000. This does not only reflect an increase in lawlessness and improved detection, at least a small part of it must be attributable to the demise of the "bloody code" which saw transportation replace hanging.

³⁶ If this was the case at Moreton Bay and prisoners were publicly flogged it was illegal. Governor Brisbane ordered that flogging was not to be carried out in public. See Moreton Bay Letterbook, NSWAO.

However Ross Johnston records that some of the military commandants did not hesitate to exceed the punishment regulations. See, W. Johnston, The Call of the

Connors asserts, the extraction of labour and not institutional confinement was the basis for punishment. Yet the convict settlement with its scenic punishment was a move away from crime management centred on the death penalty and as such can be viewed as part of the growth of humane thinking. Even within the rarefied confines of the penal settlement changes in attitudes towards punishment were taking place. As early as 1798, Governor Hunter informed his superior that "we frequently substitute for corporal punishment a certain time to labour for the public, according to the degree of the crime committed..."³⁸

Transportation itself was basically to end in the 1840s, as already stated, to be replaced by penal servitude. Therefore, it can be seen that in the space of less than half a century the law pertaining to criminal justice twice changed significantly. If one considers the traditional conservatism of the law and the era, these alterations were radical. Unfortunately, this more enlightened thinking did not apply to the colony's Aboriginal inhabitants. It can be shown that these new approaches to penology did not apply to Aborigines. For them, the old ideas remained in place and they were discriminated against by the Criminal Justice System.

In the first 12 years after the colony was established eight white men were tried for the murder of blacks. Of these three were acquitted; the five convicted all received pardons.³⁹ In contrast, McCorquodale states that 24 persons were tried for the murders of whites. Eight were convicted of murder and sentenced to death; six convicted of the lesser charge of manslaughter and ten acquitted. He adds

These results, juxtaposed, indicate a degree of inconsistent application of the law if the victim was black. Firstly there was less likelihood that the offender would be

Land: A history of Queensland to the Present Day, (Milton, 1982), p.21.

³⁷ L. Connors, *The Birth of The Prison and the Death of Convictism: The Operation of the Law in pre Separation Queensland 1839 to 1859*, Ph.D. Thesis, University of Queensland, 1990, p.54.

³⁸ Hunter to the Duke of Portland, 10 June 1798, in CO 201 2, PRO.

³⁹ McGonigal, *The role of the Law*, pp.178-180.

found guilty [if] the offence as charged, was of a capital nature and so required the death penalty. Secondly, a verdict of guilt on the lesser charge was more likely in the case of charges when the victim was black: thirdly, a pardon was more likely to follow trial and conviction for the death of a black than a white.⁴⁰

McCorquodale may well be right, but it is dangerous to use statistics based on small numbers in this way. On the other hand, he might have pointed out that during the colonial age there were many instances where Aborigines who killed whites were not brought to trial because the inadmissibility of Aboriginal evidence made a conviction unlikely. Nevertheless the simple fact that the justice system treated them differently, is indisputable.

By the middle of the 19th century the basic features of colonial law were set and several "yardstick" cases involving black people had, albeit with some misgiving, established in theory the Aboriginal position. As far as the letter of the law was concerned, Aborigines were fully subject to the English criminal code that applied in the Australian colonies.⁴¹ A landmark case which established the right of European courts to try blacks was *Rex v Murrell [or Murrall] and Bummerey* in the Supreme Court of NSW in April 1836. This was a case where two Aborigines were charged with murdering two others. Their defence centred around the argument that European courts lacked the jurisdiction to try Aboriginal people for crimes committed against each other. The principle submission by the defence council was that "natives" were not bound by laws that gave them no security. Settlers, it was argued, were only compelled by English law in NSW because it afforded them protection. It was an argument based on the contract theory of government. This implied that the Sovereign had no inherent right to rule or impose laws on people, but was granted these privileges by them in return for protection. The defence corollary was that since the Monarch gave the accused Aborigines no security, he was unentitled to impose his laws.⁴²

⁴⁰ J. McCorquodale, *Aborigines, A History of Law and Injustice*, Ph.D Thesis, University of New England, Armidale, 1985, p.48

⁴¹ A. Castles, *Australian Legal History*, (Sydney, 1982), p.7.

⁴² J. Hookey, "Settlement and Sovereignty", in P. Hanks, and B. Keon-Cohen, (Eds), *Aborigines and the Law*, (Sydney, 1984), pp.16-17.

The submission failed, with judgement being that Aborigines were answerable to the laws of the colony for offences committed in it "against each other and against the peace of our lord the King"⁴³. This case set a precedent which was to impinge on many subsequent trials. The decision was hardly surprising because the murders took place on the Parramatta Road quite close to a centre of European settlement, therefore it had considerable bearing on the "King's peace". However it is just possible that had the offence occurred in a more remote area it might have attracted a different outcome. In his reasons for judgement, Justice Burton, in a policy decision said

...the greatest possible inconvenience and scandal to this community would be consequent if it were holden by this court that it had no jurisdiction in such cases as the present - to be holden in fact that the crimes of murder and others of almost equal enormity may be committed by those people in our street without restraint so they be committed upon one another; and that our laws be no sanctuary to them.⁴⁴

It appears that this killing was sanctioned by Aboriginal law. Further to this, white colonial opinion was divided on the matter, with one journal maintaining that the trial constituted legal murder⁴⁵ (in fact both were acquitted). Nevertheless Burton J and his fellow judges,⁴⁶ by their policy decision established two important points. One was that Aboriginal law had no legal standing. The other was that their people were answerable to English law and with this went the legal prevarication that they had the same rights and obligations as Europeans.⁴⁷ In reality, the decision denied rights. The non recognition of traditional law

⁴³ Cited in Ibid.

⁴⁴ Cited in Ibid.

⁴⁵ Sydney Gazette. 5 May 1836, cited in Ibid, p.37.

⁴⁶ Justice Burton was assisted in his deliberations by Chief Justice Forbes and Justice Dowling.

⁴⁷ This was by no means the end of the matter. The Coe case in 1979 raised exactly the same challenge to sovereignty as the Murrall and Bummery case had done. That the land was neither terra nullius, conquered nor ceded and because the British had chosen to settle in a land that already had population with its own laws they were amenable to Aboriginal law rather than vice versa.

extended to spiritual ceremonies and rites. In the case of *Rex v Neddy Monkey* his tribal wife was compelled to give evidence against him on the grounds that tribal marriages could not be recognised.⁴⁸ Yet, whether Burton's judgement was based on a desire to protect Aborigines or to establish dominion over them is debatable. The sentence of death he handed down in the Meridio and Neugavil case four years later was dubious and argues that he was prepared to sacrifice what may have been two innocent men for the sake of the deterrence effect their execution might have had on Moreton Bay blacks.⁴⁹ On the other hand it should be pointed out that he was the judge who sentenced seven white men to death for the murder of Aborigines in what is commonly referred to as the "Myall Creek Massacre",⁵⁰ which indicated a respect for both justice and the law.⁵¹ But there was another possibility associated with Burton's decision that might be considered. As already pointed out, British settlers took their laws with them when they established new colonies, but the law was not transferred in its totality, only as much of it was introduced as could reasonably be applied to the circumstances of the new colony. As Butt and Eagleson point

⁴⁸ McCorquodale, *Aborigines: A History of Law and Injustice*, p.52. But bear in mind that Aboriginal evidence was inadmissible.

⁴⁹ In fairness it must be admitted that following a "guilty" verdict a judge was legally obliged to hand down a sentence of death. But he was also in a position to influence the jury, or to make recommendations to the executive for mercy, which appears not have been done in this very dubious case.

The events surrounding this affair are outlined in the following chapter.

⁵⁰ The Myall Creek murders have been too well analysed to require any attempt within this work to further illuminate the affair. However there are aspects associated with it that are of significance to this thesis. The seven made little attempt to deny their guilt but expressed the opinion that they thought it was extremely hard that white men should be put to death for killing blacks, implying that they believed destroying black people was not really a serious crime. Governor Gipps informed Lord Glenelg that "until after the first trial they never I believe thought that their lives were even in jeopardy". The shock wave that this hanging produced was still reverberating on colonial frontiers near the end of the century. But it needs pointing out once more, that the executed were all convicts, which leads one to speculate on what might have eventuated had they been free men.

⁵¹ It is appropriate to again point out that the law and justice are not necessarily the same; for laws to be just they must be equitable to more than one party.

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... this left room for the continued operation of some local laws or customs among the native people, and even the incorporation of some of those laws and customs into the common law.⁵²

Nevertheless, the decision that Aborigines were amenable to English law was challenged by Justice Willis in the *Rex v Bonjon* case of September 1841. Bonjon it seems, had served for several years with the Border Police as a general handyman. One night nine Aborigines came to kill him in retribution for murdering another Aborigine. Bonjon drove them off with a sabre and a pistol, then followed them with a carbine. There was no witness to what happened, but a black man named Yamowing was found dead a few days later with a bullet wound in the back of the head. Bonjon made no attempt to deny the killing, but rather confessed in his own language to the Reverend Francis Tuckfield that he shot Yamowing because he wanted the latter's wife. Tuckfield claimed that the prisoner could not plead guilty or not guilty "as murder is not always so among the Aborigines".⁵³ Reverting to earlier beliefs, Willis J found that Aborigines were not answerable to the Supreme Court for crimes of violence committed against each other.⁵⁴ Refusing to proceed against Bonjon, he was of the opinion that the Aborigines of NSW were a domestic nation, and like the American Indians, internally self governing. The introduction of common law and courts of the English pattern the judge found, were not enough to extinguish Aboriginal customary law. He remanded Bonjon in order that the case could be further considered.

⁵² Butt and Eagleson, *Mabo*, p.29.

We have good examples of this in operation in contemporary society. Some judges take into consideration traditional punishments that have, or will be inflicted on Aboriginal offenders, when they hand down sentences. See ABC television program "Four Corners", 12 September 1994.

⁵³ Cited in M. Cannon, *Who Killed the Koories? The True Terrible Story of Australia's Founding Years*, (Port Melbourne, 1990), p.78.

⁵⁴ The Chief Justice of South Australia shared the same view as Willis. In 1840 (the year before the *Bonjon* case) he had formed the opinion that Aborigines owed no allegiance to a law if they claimed no protection from it. See McCorquodale, *Aborigines: A History of Law and Injustice*, p.50.

This was done, and Chief Justice Dowling informed Governor Gipps that the problem had already been resolved by Burton J in the decision handed down in the Murrell and Bummery case four years earlier. This resulted in Willis' reasoning being disavowed. By this time however, Bonjon had been released,⁵⁵ but the judge's moral and judicial independence were little appreciated in NSW; he was removed from office without the opportunity of defending himself.⁵⁶ It took another two trials before the matter of sovereignty was finally resolved in the Supreme Court of Victoria in 1860. The *Rex v Peter* and the *Rex v Jemmy* cases, decided once and for all that even "non civilised natives" were amenable to the imposed law.⁵⁷ Thereafter colonial trials involving Aborigines did not challenge the question of amenability.⁵⁸

The fact that Aborigines were governed by laws they knew nothing of was regarded as unjust by many people. Giving evidence before the NSW Legislative Council, Lieutenant Sandlier RN, suggested that

A summary of our laws should be translated into the dialects of the Aborigines and frequently promulgated among them - for they are subject to our laws without any voice in framing them, it is but justice that they should be made acquainted with them.⁵⁹

⁵⁵ Ibid.

⁵⁶ Judge Willis' Suspension, pt. 1, in CO 201 376, PRO. There were of course, reasons other than the Bonjon case that resulted in this judge's removal. He was considered a troublesome and argumentative member of the Supreme Court. Against his will, he was appointed resident judge at Port Phillip, but Governor Gipps was soon to complain to the Colonial Office of Willis' "infirmity of temper" and the "extraordinary nature of the harangues which he is in the habit of delivering from the bench". Although his appeal to the Privy Council that he had not been permitted to defend himself was successful, the Colonial Office declined ever again to employ him.

⁵⁷ McCorquodale. *Aborigines; A History of law and Injustice*, pp.50-51.

⁵⁸ Ibid., p.51.

⁵⁹ NSWLC Committee on the Aborigines Question, The Minutes of Evidence, (Sydney, 1838), pp.29-30.

The plea to teach the imposed law to Aborigines was made fairly frequently throughout the first half of the 19th century. Other solutions to the problem were also offered. A British parliamentary committee felt that

To require from the ignorant hordes of savages living in Eastern or Western Australia the observance of our laws would be absurd and to punish their non observance of them by severe penalties would be palpably unjust... it should be one branch of the duty of the protectors to suggest to the local Government, and through it to the local legislature, such short and simple rules as may form a temporary and provisional code for the regulation of the Aborigines, until advancing knowledge and civilisation shall have superseded the necessity for any such special laws.⁶⁰

There were also many members of the legal profession who doubted both the wisdom and the justice of subjecting them to English based legislation.⁶¹ The question is given another proportion however, if one considers La Trobe's comments on the subject. He said

... my own opinion is that unless we assume power to prevent or at least punish murders of the natives among themselves, we shall never teach them to respect European life.⁶²

La Trobe's assertion is important; it underscores one of the reasons why the authorities went to such lengths to bring Aborigines into the criminal justice system when they might have dealt with them summarily or left their inter se offences to be handled by their own judicial processes. Nevertheless, it was a decision that judges have questioned; in fact there are situations where some still do. The doubt of whether or not the black people should be subjected to a legal system that was not only alien to them, but often flew in the

⁶⁰ Report from the Select Committee on Aborigines (British Settlements), p.83.

⁶¹ Castles, Australian Legal History, p.520.

⁶² Cited in Cannon, Who Killed the Koories, p.79.

face of their own traditional laws provided a controversy of long standing.⁶³ Commenting on a murder trial which resulted in the execution of the two Aborigines an eyewitness lamented

[W]hat mockery! The wretched prisoners were not aware of one little (sic) of evidence against them, they were totally ignorant of having committed crimes and knew not why or wherefore they were placed at the criminals dock at the courthouse, and so many eyes fixed upon them.⁶⁴

Another major problem associated with 19th century trials involving Aborigines was undoubtedly the inadmissibility of their evidence in colonial courts. Bennett and Castles make the point that this was not so significant during this period as it is now considered to be, because until late in the 19th century no accused person, irrespective of their race was permitted to give evidence on oath in criminal proceedings.⁶⁵

This thesis disagrees with these authors. The denial of Aboriginal evidence instituted a major injustice and was probably the main reason why so few Europeans were punished for crimes against the black people. It was a disgraceful inequality that was to last for over 100 years. The ramifications of not accepting unsworn evidence extended well beyond the court room in a way that has not been sufficiently recognised. Apart from impeding justice, it signalled to settlers that the laws which governed them did not apply to blacks. This encouraged them to take matters into their own hands and to treat Aboriginal people as they saw fit. Therefore it was a prime mover in establishing the illegal practice of punishment without trial. Further, this unjust practice was given a semblance of legitimacy by the colony's Judge-Advocate who advised the Governor that although

⁶³ The Law Reform Commission,(LRC) Report No. 31, The Recognition of Aboriginal Customary Laws, (Canberra, 1985), pp.11-12. There is a range of pro and con arguments related to this question. In 1985 the LRC recognised the injustice of punishing an Aborigine for an action required by his customary laws. But they also found that because of the secret nature of some of these, ignorance precluded recognition.

⁶⁴ Cited in J. Bennett, and A. Castles, An Australian Legal History, (Sydney, 1982), p.261.

⁶⁵ Ibid, p.532.

The natives are within the pale of His Majesty's protection; but how can a native when brought to trial plead guilty or not guilty to an indictment the meaning and tendency of which they must be totally ignorant of?...the only mode at present, when they deserve it, is to pursue and inflict such punishment as they may merit.⁶⁶

The refusal to accept Aboriginal evidence was based on their ignorance of the Christian God and a lack of belief in the hereafter which were considered essential elements if the truth was to be arrived at. It seems somewhat ironic that that the influence of a religion that preached equality in the eyes its deity should be used to deny that equality to the uninformed. Nonetheless, the fact that their evidence had no legal status also deprived them of the right to testify in situations where they were not accused. Of course a lack of belief in the European's God and a future state were not the only problems, there also existed the obstacle of trying to communicate with a person who had no English, or at best only a rudimentary understanding of it. The dilemma was compounded by the wide variation in Aboriginal languages and a paucity of interpreters. On this subject of Aboriginal evidence, the Aborigines Protection Society in England complained bitterly that "the rejection of the evidence of these natives renders them virtually outlaws in their native land which they have never alienated or forfeited".⁶⁷ Conversely, within the colony, particularly during the early years, there were constant complaints that the rejection of Aboriginal evidence acted as often as not in their favour. Thus there were calls for it to be accepted not only from those who were sympathetic to Aborigines, but also from those who wanted to see them punished. The Moreton Bay Courier, asked the world at large "When will the Blacks be in a position to plead so that they can feel the full penalty of the law?"⁶⁸ In fact the British Government, had in 1843 conferred on the local legislature the right to admit "native" evidence if they so wished. Evidently they were in no hurry to do so; because it was not until 1875 that NSW accepted unsworn Aboriginal testimony, it was even later in Queensland.

⁶⁶ Atkins to King, 8 July 1805, HRNSW, pp.653-4.

⁶⁷ Cited in Ibid.

⁶⁸ Moreton Bay Courier, 30 January 1847.

Much of the unwillingness to accept Aboriginal evidence was based on the widely held belief that no white person should have their life or liberty placed in jeopardy by someone as worthless as a black and it was a premise that evidently cut across all classes of society. NSW supreme court barrister Robert Lowe (later Viscount Sherbrook) was quoted in the Sydney press as saying

See the trembling prisoner in vain endeavouring to gather his future fate from the solid apathy or malignant scowl of those scarce human lineaments. Hear his evidence in a language ... devoid of abstract ideas, ... See him at once become the supreme arbiter of life and death... from savage waywardness or puerile petulance, or from a bribe ... by false witness hurry a fellow creature into the presence of that God whose very name is a stranger to his language ... See all this and say, great is the majesty of British Justice.⁶⁹

Apart from the fact that Lowe had little to worry about because it was not to happen for another 30 years and ignoring the racism and ethnocentrism in his poetic diatribe, the wisdom of his assertion is questionable. A white skin no more guaranteed truth than a black one affirmed its opposite. If it did the crime of perjury would not exist.⁷⁰ Others saw the problem through less emotional and more rational eyes. Benjamin Hurst reasoned that

they may be destroyed by their fellows, and what is worse, shot by wholesale[sic] by Europeans, and yet the arm of the law has no power to punish unless the evidence of a white person can be procured... I would respectfully suggest the propriety of allowing the Aborigines to give evidence in court... I readily admit that their testimony should be received with caution... their not being fully acquainted with the solemn obligation of an oath...but I am of the opinion that when it is

⁶⁹ Sydney Morning Herald, 20 June 1844.

⁷⁰ On the question of unsworn evidence opinion was quite divided. Many people, including members of the legal profession, believed that Aborigines should be permitted to testify and the truthfulness of their assertions should be considered in the same way that white evidence was. It was frequently pointed out that swearing an oath did not guarantee veracity.

corroborated by circumstantial evidence it should be received. Nor do I see... how justice can be done to them unless some provision can be made to meet their case in this respect.

In fact in 1839 the NSW Legislative Council, at the instigation of Burton J, backed up by Sir George Gipps and Lord Normanby, passed a bill to accept unsworn Aboriginal evidence.⁷² Unfortunately this proved unacceptable to the British Attorney-General. It was disallowed by the Crown on the advice that "to allow heathens to give evidence would be contrary to the principles of British jurisprudence".⁷³ This opinion was severely criticised by Saxe Bannister who told a select committee that

No native who has not the practice of making an oath in his own country in a court of justice should be compelled to take an oath in our courts; he should be admitted upon the same terms that regulate him in his own country. In New South Wales up to 1827 our law on this point constantly stopped justice...this stopped the civilisation of these people at the threshold. It would be just and wise to pass a law making their evidence admissible in all cases.⁷⁴

In what may be regarded as a comedy of errors, four years later Gipps was given permission by the British Government to present to the Legislative Council of NSW a bill that would admit the unsworn evidence of blacks. The pastoralist-dominated council which was on the whole hostile to what it saw as imperial interference, rejected the bill out of hand. It was reported that its spokesperson, Sir Thomas Mitchell asserted

⁷¹ Hurst to La Trobe, 22 July 1841, Bonwick Transcripts, ML.

⁷² 3. Vic. No.16. NSWLC V&P, 1849, p.989. There is a discrepancy of ten years here. Information regarding this act was first transmitted from Governor Gipps to Lord Normanby in October 1839, but it was not ordered to be printed until 1849.

⁷³ Ibid, p.993.

⁷⁴ Evidence of Saxe Bannister Select Committee on Aborigines (British Settlements), p.176.

The framers of the Act of Parliament under the sanction of which the present bill was brought in, were unacquainted with the nature of the people about whom they were legislating; but he who was better versed in their habits, would venture to affirm that it would be impossible to depend upon arriving at the truth through the medium of their evidence. The whole study of their lives was how they should best conceal the workings of their minds from the eye of the observer; and to receive the evidence of such witnesses would be to affect most vitally the security of the whole country...⁷⁵

Another attempt was made in 1849 which was again thrown out with the objection that "the vices of our race were with them virtues and our virtues vices... how was it possible that they should be restrained from giving false testimony".⁷⁶

In fact when it suited them, some courts did accept unsworn Aboriginal evidence. Yet the general inadmission of non Christian evidence provided a long standing impediment to justice in colonial courts. In Queensland it was directed even more specifically at Aborigines. In this colony, the Attorney-General in attempting to have the Oaths Act amended tried to have the evidence of every other non-white admitted, asserting "we can exclude Aborigines if the house so wishes".⁷⁷

The white invasion which carried English law into the future colony of Queensland brought Aboriginal people onto two adjoining frontiers. One of these frontiers resulted from the spread of pastoralism, the other from the expansion of transportation. Although both appropriated Aboriginal land, they were very different in their approach to the law and the

⁷⁵ Mitchell to Legislative Council, cited in Sydney Morning Herald, 20 June 1844. Mitchell was far from accurate, there are several instances of Aborigines readily confessing to serious offences. Either because they were unaware that their action had been criminal or because they offered reasons they believed exonerated them. In fact some members of the legal profession believed that Aborigines charged with serious crimes were often truthful enough to be their own worst enemies. See letters pertaining to the case of Darkie, in 00,/188, Col/143, QSA.

⁷⁶ Sydney Morning Herald, 29 June 1849.

⁷⁷ OPD, 1875, p.128.

way justice was administered. Therefore one is justified in arguing that the law was unevenly administered and that a dual system was being applied. The law, and in particular the criminal justice system, that was brought to these twin frontiers was not static. In many ways it had undergone distinct and radical change in the first quarter of the 19th century as more informed opinions influenced concepts of justice and punishment. Yet it was not legal enlightenment that was shown to Aboriginal people; for them, in many ways the clock was turned back to the strategy of an earlier age. However the irony attached to this was that the indigenous people of Moreton Bay appear to have received more justice from the much criticised convict system than they did from the hands of supposedly law-abiding, free settlers.

Chapter Three

The White Response to Aboriginal Crime at Moreton Bay.

... it is our office to carry civilisation and humanity, peace and good government and above all, the knowledge of the true God to the uttermost ends of the earth. He who has made Great Britain what she is, will inquire at our hands how we have employed the influence He has lent us in our dealings with he untutored and defenceless savage...

Report of the Select Committee on Aborigines (British Settlements), 1837, p.3.

There were many similarities between the arrival of the British convicts and their military escort at Moreton Bay and the corresponding invasion that had taken place nine hundred kilometres to the south half a century earlier. In some ways it was as if the clock had been turned back 50 years. In both instances there appears to have been a genuine, albeit naive, belief by the British administration that Aborigines would be treated justly and that good inter-racial relations were achievable. This was in spite of the fact that the northern penal settlement was an overture to white expansion which demanded the appropriation of Aboriginal land as it had done elsewhere. In each case the invasion was an unwelcome intrusion that produced similar patterns of conflict and both events were to prove disastrous to the indigenous people. But there were also differences between the two occurrences. The British at Moreton Bay, who were now more experienced, had no wish to have the blacks live among them as Phillip had done at Port Jackson.¹ Yet when it suited, they represented a potential utility; although they wanted to keep Aborigines at arm's length, when the need arose, they were to be drawn into the invader's criminal justice system in a policing role. This was not new in itself, because by 1824 Aborigines had been employed in this way elsewhere, but it was not something Governor Phillip had envisaged; he had tried to keep Aborigines and convicts separated from each other. For their part, the Aborigines did not initially find the idea of close contact with Europeans attractive either. Nevertheless, in spite of their distaste they were to be increasingly made not only subject to, but a part of the legal system of their invaders. Some of the intruders' values relating to the administration of justice were contradictory, which must have been bewildering to people who were attempting to make sense out of a presence and behaviour that was not of their world.² The initial application of the legal system which was to replace traditional Aboriginal law, was in its turn frequently supplanted by strategies based on expediency when it was seen not to effect the control that colonisation demanded, but even this was erratic. At times the

¹ This was not always the case. On one occasion, in an effort to win over the hearts and minds of the hostile Aborigines to the north of Brisbane, Commandant Cotton wanted some of them to come to the settlement where they would be well treated and return to their own people with a good impression of their colonists. See Cotton to McLeay, 14 Nov 1837, in MF, Col, A 115, JOL.

² It is generally thought that Aborigines believed white people were reincarnated spirits from a world of the dead.

adopted approach turned back the clock to the punishments of an earlier age, while at others it seemed to go to extremes of legal propriety. On occasions the colonists' laws were used to lash out at fairly minor offences with ruthlessness; at others, it permitted Aborigines to literally get away with murder. There were other inconsistencies as well. Although many settlers advocated that Aborigines be punished for their crimes by methods that were illegal, they were often uneasy about weakening an authority that was so important to their culture. Comments by the press and letters to newspaper editors contentiously point on one hand to a profound respect for English law as a just and priceless institution, and on the other to its blind stupidity. This conflicting ideology caused a disquiet that was never entirely resolved.

Although it must be appreciated that the prime aim was to further that of settlement it would be unfair not to recognise that a subordinate objective in imposing English law on Aborigines was to deliver equity, as they saw it, to the "natives". Moreton Bay was a new area of settlement and the current colonial administration was anxious not to repeat some of the mistakes of its predecessors.³ This was made clear by the instructions given to the first military commander. However, it is simply impossible that the infliction of a legal system aimed at robbing them of their land and replacing their traditional laws by a strategy that legalised the theft, can have been regarded as anything other than gross injustice by the Aboriginal people of the region. Some British colonists recognised that blacks not only did not understand this new law, but were unaware of its imposition and that the adopted method of instructing them, which was making them learn by their mistakes, simply compounded the injustice. Arguably, despite what generations of Anglo-Celtic school children have been taught, no colonisers were as blind to the rules and cultural values of those they colonised as were the British.⁴ Although self interest played a major role in this, the analysis is predominantly based on the view they held of

³ It is useful to remind oneself that the administrative interest in Aborigines was minor. The principle aim in establishing the Moreton Bay settlement was to "provide a place of security and subsistence for runaways from Port Macquarie". See Moreton Bay Letterbook, AONSW. It was also undoubtedly influenced by strategic decisions and the future needs of British expansion.

⁴ Report of Select Committee on Aborigines (British Settlements), p.3.

themselves and the prime place they occupied in the 19th century world, particularly in relation to those they saw as inferior and uncivilised.⁵ The law the British brought with them to Moreton Bay, allied to their religion,⁶ were seen as tools whereby the natives could be rendered docile and useful to the settlers and themselves. In contrast to the "customs" which governed Aborigines, they believed that their laws were just, and in imposing them many British settlers honestly believed they were imparting a priceless gift. Some of these colonists understood the plight of the dispossessed black, but they also believed their annexation of land and the penalties they prescribed for offences against person and property were not only righteous under law, but in the long run indisputably advantageous to the "untutored savage".

Therefore, when Lieutenant Miller of the 40th Regiment⁷ accompanied by about fifty⁸ of his fellow country men and women, came ashore at Moreton Bay in August 1824, he did so, among his other responsibilities, as the representative of a legal system that had been fine tuned over a long time to the changing demands of British settler societies. This modified English law was a procedure that embraced ambivalences, but it sprang from something that had been accorded a considerable degree of international respect. In fact,

⁵ A very short time spent researching the 19th century colonial press will convince one that the British and the English in particular, saw themselves as the possessors of unique qualities; even other Europeans were frequently regarded with scarcely concealed contempt. The belief that the British were the most just and humane settlers is a myth that exposes the pervasiveness of self delusion and propaganda. In fact it has been cogently argued that of all possible invaders of Australia, from an Aboriginal perspective, no one could have been more disastrous than the British. See A. Yarwood, and M. Knowling, Racism in Australia, (North Ryde, 1982), p.22.

⁶ The nexus between religion and the law is highly significant. Common law is based on the Ten Commandments.

⁷ The British infantry regiments are numbered in order of seniority. Therefore the 40th Regiment, or 40th of foot as it could be referred to, was the 40th to be raised. These units were later given names that generally indicated the districts that they recruited from. Thus the 40th became The South Lancashire Regiment.

⁸ W. Johnston, Brisbane The First 30 years, (Brisbane, 1993), p.16. Johnston explains that the exact number is unknown because some wives and servants were not counted.

"British Law" has been described as one of humankind's outstanding achievements.⁹ The legal strategy Miller brought with him encapsulated accepted concepts of what was believed to be the correct balance between differing humans. It was, based on previous experience, to be altered to fit a complex relationship. But it must be remembered that Miller was no lawyer and one of the problems he, (and the rest of the pioneer governors) faced was that he was untrained in matters of law and in the absence of legal officials, he and his successors were left to administer it as they thought best. The result of this was often injustice through ignorance. McGonigle makes the very important point that "those responsible for the application of the law were often ignorant of its substantive elements"...

¹⁰

The instructions given to Miller regarding his future licit relationship with Aborigines were contained in two letters. The first from Sir Thomas Brisbane the Governor of NSW, who ordered

You will take an early opportunity of establishing a friendly intercourse with the neighbouring blacks, but you will not permit them to an imprudent familiarity. Whenever they apprehend strayed cattle or runaways small presents are to be issued to them of food, tomahawks, or fish hooks, and you are to punish very severely any illtreatment of them.¹¹

Parts of this were similar to the standard Colonial Office instructions that were issued to all governors. Sir Thomas Brisbane however, chose to direct that offences against these unwilling British subjects were to attract stiffer than normal penalties. The Aborigines were also to be encouraged to act as an auxiliary police force for the invaders by apprehending and returning runaway convicts. By the time of Miller's arrival at Moreton

⁹ C. Rowley, *A Matter of Justice*, (Canberra, 1981), p.32.

¹⁰ McGonigle, *The Role of the Law*, p.359

¹¹ Brisbane to Miller, 27 August 1824, in letter 4/3794, Correspondence, re Moreton Bay, AONSW.
It is interesting to note the slight change in tone between this instruction and those issued by the colonial office.

Bay there was nothing original in this instruction, black people had been employed in this way in other areas of NSW. Speaking of their utility in the Port Hunter district, Commissioner Bigge wrote

[They] have become very active in retaking the fugitive convicts...they accompany the soldiers... they can trace to a great distance, with great accuracy, the impressions of the human foot... when sent in pursuit with out the soldiers; by their skill in throwing their long and pointed wooden darts they wound and disable them, strip them of their clothes and bring them back as prisoners...¹²

This further illustrates the inconsistency of the applied law. When the dichotomy of convenience and legality (or common sense) clashed, decisions were made without sufficient consideration to the consequences. Under different circumstances, Aborigines would be summarily shot or legally executed for spearing white people. Nevertheless, Brisbane's two instructions immediately placed blacks into a special category in the eyes of Moreton Bay's white convicts. Aborigines, who many convicts already hated and feared, were to become an extension to the transportation system as part time policemen. It appears that they were also efficient in this role at Moreton Bay, as well as being inexpensive, because in 1836 Commandant Fyans reported that for the return of each convict bolter he gave to the Aborigines, one small tomahawk or an old blanket, adding

...I find the natives so sharp and assiduous, aided by constables that I have no apprehension of any prisoner escaping.¹³

Understandably, whatever dislike convicts may have already harboured against black people must have been added to by Brisbane's orders. Several authors have commented on the influence of convict values on the wider 19th century Australian society.¹⁴ How much

¹² Cited in H. Reynolds, With the White People: the crucial role of Aborigines in the exploration and development of Australia, (Ringwood, 1990), pp.41-2.

¹³ Commandant Moreton Bay to Col Sec, 6 January 1836, MF A/2,8, JOL.

¹⁴ See for example R. Ward, The Australian Legend, (Melbourne, 1966) p. 71.

this may have contributed to the general contempt for Aborigines that was to emerge and intensify as the district transformed from penal settlement to capitalistic enclave can only be guessed at, but it is interesting to consider the impact of decisions like this on race relations.

The second letter came to Miller via the pen of J. Ovens, who was private secretary to Brisbane, and smacks far less of the official line from Whitehall. This communication is particularly interesting because it provides a construction of the Aborigine in the white mind and insight into the difficulties of administering justice to them, plus a perceived solution. It also underscores a recognition of the problems inherent in appointing military commandants with little or no legal expertise. One might also claim that it further suggests that hope springs eternal; even after the experience in the southern regions the belief apparently still existed that good relations were achievable. Ovens advised Miller that

... in order to insure an amicable understanding with the black natives, good faith must ever be your guide in your public dealings with them. Private injuries towards them must be repressed with care; and if a public or private wrong cannot be avenged by law, it must be repaired by compensation to the sufferers. All uncivilised people have wants which can be cheaply and honourably gratified by us and when treated justly, they acquire many comforts by their union with the more civilised. **This justifies our occupation of their lands.** [my emphasis] It should be your chief object therefore to cause justice to be done on all possible occasions; and when you may happen not to be able to remove all the occasions of differences, this unavoidable evil should be lessened by increased liberality. His Excellency directs that any disturbance, or misunderstanding between the soldiers and prisoners, under your orders, and the Black Natives in the neighbourhood of the settlement, may be reported to him as opportunity offers.¹⁵

¹⁵ Ovens to Miller, 29 August 1824, Original correspondence, Moreton Bay, in bundle 4/1655, AONSW.

The term "black native" was frequently used during this period to differentiate between Aboriginal people and the whites that were born in the colony who were often referred to as "natives of the colony". On this subject there is an interesting

Unlike the instructions from Brisbane, those from Ovens ordered that injuries to Aboriginal people by individuals were to be repressed with care. One might wonder if this was an attempt to write between the lines to warn Miller against taking Governor Brisbane's orders for severe punishment too literally. Added to this possible contradiction, was the irony of an administration that was bending over backwards to treat Aborigines justly while at the same time depriving them of land, which was the very thing that gave their lives meaning. However in spite of the reference to "their lands", the contemporary British wisdom did not see Aborigines as the owners of land in the way that Europeans possessed it. Ownership in white terms meant utilisation that was recognisable to Europeans. To such people Aborigines did not own the land; they were merely on it in the same way that the wildlife and plants were, and like these, the black people could fall into the category of being either a pest that could, to use Sir Thomas Brisbane's words, not be permitted to "an imprudent familiarity". On the other hand they could be a resource that might be utilised to return strayed cattle and apprehend runaway convicts. In other words the Aboriginal presence was an irritation or an asset depending on the whim of the white people. The confusion that this must have caused was one of the reasons why the racial harmony that Governor Brisbane and Secretary Ovens hoped for, was at best tenuous.

Within a matter of days following the white arrival blacks were being driven away from the original settlement at Redcliffe because it was alleged, they were thieves.¹⁶ An axe was stolen, resulting in an Aborigine being shot by soldiers. Blacks retaliated by spearing two convicts.¹⁷ It seems particularly poignant that the taking of an axe, which may not have been a crime in Aboriginal eyes, should result in the death of three human beings, unleashing the violence that had marred race relations elsewhere in the colony. At Moreton Bay this conflict influenced the decision to remove the penal settlement and therefore the site of the future colonial capital. When Brisbane visited the

aside. The son of Lieut. and Mrs Miller, Charles Moreton Miller, was the first white child born at Moreton Bay and is perhaps the first white Queensland.

¹⁶ J. Steel, Brisbane Town in Convict Days 1826-42, (St. Lucia, 1975), pp.14-15.

¹⁷ Petrie, Reminiscences, p.188-9.

place he wrote

No natives are seen in the settlement. This is owing to their being driven off as much as possible, their mischievous tricks of pilfering being not at all agreeable to the people there.¹⁸

Obviously "the people there" and Sir Thomas had forgotten that most of them were in Moreton Bay as a result of pilfering, this was the reason why the majority were transported in the first place. However, as Evans points out, what was going on in this outpost of the English criminal justice system may not have been all that attractive to Aborigines either, causing them to avoid it. He asserts

The Turrbal people tended to keep gingerly away. They had already experienced casualties when Oxley and Lieutenant Butler fired on them in late September 1824. Obviously too there was a mounting sense of horror about the way the Mogwi behaved towards each other... many of the chained ones were miserably treated, poorly fed and beaten publicly and excessively...¹⁹

It should be pointed out however, that Miller was instructed that punishment was never to exceed the stipulated maximum of 50 lashes and that it would

...always take place in the gaol yard, or at some private spot where none are present but the necessary attendants.²⁰

¹⁸ Cited in Johnston, Brisbane, p.55.

¹⁹ Evans, "The mogwi take mi-an-jin".p.15
"Mogwi" meant people returned from the dead.

²⁰ Brisbane to Miller, 4 August 1824, in Moreton Bay Letter Book, AONSW. This maximum sentence was not adhered to by some of the Military Commandants, yet it appears unlikely that they would have deliberately disobeyed orders. It is of course, possible that verbal orders were issued which allowed them to use their discretion in certain circumstances, because as we have seen in the case of Lachlan Macquarie, even governors were not above countenancing illegal punishment. It seems though, that Macquarie did not preach what he practised,

On the subject of Aboriginal attitudes to the European presence, Major Lockyer wrote

...several natives were seen on the side of the river opposite to the settlement ... they had not appeared there in numbers except one or two and that very seldom. [They] could not be persuaded to approach the settlement nearer than two or three hundred yards.²¹

Eventually it seems, local Aborigines were able to swallow their early distaste because Captain Peter Bishop, Lieutenant Miller's successor, said he enjoyed good relations with them. In his dispatch to the Colonial Secretary he wrote

we are on very good terms with the natives. They come to me daily for a little sugar and water, which they term bull, and a few days ago they brought me two bushrangers that had absconded from the settlement. The tomahawks and blankets will be most acceptable presents for them. But I despair of ever making stockmen of them, for they will not approach the cattle.²²

Bishop's glowing report should be accepted, but with a little caution because it must be appreciated that he was writing to his political master telling him that he was observing government policy by establishing good relations and employing the aid of the Aborigines in apprehending runaways. Captain Patrick Logan said more or less the same things. One gains the distinct impression, that much more than civilians, the military commandants

in spite of unlawful sentences his instructions to the Commandant at Port Macquarie were extremely correct. He ordered "...in no case must more than fifty lashes be inflicted on any one man, whatever his crime may be". See HRA, I, x, p.484.

²¹ Cited in, Evans, "The mogwi take mi-an-jin", p.15.

²² Cited in C. Bateson, Patrick Logan, (Sydney, 1966), p.52. Several other people spoke of the Aboriginal fear of cattle. This is interesting in the light of the contribution they were to make to the cattle industry. For an exhaustive analysis of Aboriginal utility in this direction see D. May, Aboriginal Labour and the Cattle Industry: Queensland From White Settlement To The Present, (Melbourne, 1994).

were better disposed towards the black people, but whether this was the result of orders, or personal values, is unfortunately, impossible to say.

Nonetheless, under Logan's commandantship inter-racial relations showed a marked deterioration. There are two possible reasons for this. First, the impact of the white invasion was beginning to bite: land and local resources were being increasingly expropriated as the settlement's convict population grew.²³ Secondly, under Logan's command abscondings escalated dramatically. It is true that the number of prisoners had increased substantially, but proportionally there were more runaways than under Miller or Bishop. It is obviously enticing to relate this to Logan's reputation as a flogger,²⁴ but perhaps absconders were also aware of the encroachment of pastoralism and hoped to be able to lose themselves in a labour starved fledgling industry. Whatever the reason may have been, during the period February 1828 to February 1829, 126 convicts ran away, ten of them twice.²⁵ Governor Darling was convinced that the increased hostility Aborigines were showing towards whites sprang from the crimes that the runaways were perpetrating during their escape bids. Although it was convenient to blame convicts, it is conceivable that the appropriation of

²³ From the original 30 convicts in 1824, the number increased to 195 in March 1827 and by the year's end it stood at nearly 400. This increase obviously has bearing on the attempted escapes.

²⁴ Spicer's Diary is a list of trials and sentences at Moreton Bay. It is named after Peter Spicer, the superintendent of convicts and held at JOL. This record shows that in eight months during 1828 Logan ordered over 11,000 lashes. This included one award of 300, which was six times the maximum Governor Brisbane's initial instructions to Lt. Miller authorised. It is possible however, that the maximum award had been increased. Although it demonstrates the ruthlessness of Logan's approach to punishing convicts, it must be appreciated that he was a soldier and that the lash was the principle instrument of British army discipline during the 18th and 19th centuries. In addition some regiments traditionally flogged more than others and it appears that the 57th or Middlesex Regiment, to which Logan belonged, was one of them.

²⁵ Spicers Diary.
It would be interesting to know how many runaway convicts simply disappeared and were swallowed up by the ever increasing white expansion. With the demise of convictism perhaps the Government chose to ignore them; which is what they were eventually to do with deserters from the British Army.
Bateson, Patrick Logan, p.84. Bateson however, argues that the number who actually made good their escape was negligible.

land and resources was the major bone of racial contention.

Like his predecessor, Logan drew blacks into the legal system as de facto policemen, it is not surprising therefore, that the convicts in general and the bolters in particular, should increasingly view them through jaundiced eyes. That Aborigines recognised the status of whites and differentiated between convicted and free is made evident by botanist Charles Fraser who recorded that while searching for specimens at Breakfast Creek in 1828

... I met with the females of a tribe of aborigines who on seeing me, set up a dreadful yell. Their cries brought the men, who, observing that I was not a runaway convict, offered me no violence.²⁶

Around the time of Fraser's experience, two convicts, one of whom was an overseer, were killed by Aborigines. Evans believes that these two men were absconding when they were murdered. Bateson, on the other hand says that they were guarding a maize field where South Brisbane railway station now stands and imprudently wandered, or were enticed into the bush. Their fate became known when runaway, Francis Reynolds, surrendered himself. He related how he had witnessed the murders and had narrowly escaped with his own life when speared in the shoulder. He took Logan to a spot about fifteen miles²⁷ from the penal station and the bodies were recovered. Reynolds claimed to recognise a black that frequented the settlement, as one of the killers. Logan promptly had this Aborigine arrested and Spicer's diary records the man as being held in solitary confinement for several months before being forwarded to Sydney on the ship "Isabella" for trial, but what eventually

²⁶ Cited in Evans "The mogwi take mi-an-jin", p.16. By this time the penal settlement was four years old and Aborigines would have learned to recognise convicts by their distinctive yellow "slops" clothing. The reaction by the Aboriginal men to the cries of their women probably points to previous outrages committed by convicts.

Fraser was responsible for laying out Brisbane's botanical gardens. They occupy the site that Lt. Miller had cleared as a maize field. See P. Jolley, The shape of Convict Brisbane, (Brisbane, nd), p.10.

²⁷ About 25 Kilometres.

happened to him is unknown.²⁸ Nevertheless, during the period of his confinement, several letters were exchanged between Moreton Bay and Sydney debating the advisability of arraigning him on a murder charge. This indicates the propriety of legal considerations that were applied to Aboriginal crimes. Considering Bigge's statement however, if the two white convicts who were killed were absconding, it is possible that the Aborigines did not intend to kill them, but were attempting to apprehend them for reward. If this was so, their demise would have been a case of white deaths in black custody, something of a role reversal.

The relationship between the races during this time appears to have consisted of periods of fairly peaceful co-existence interspersed with Aboriginal crimes that frequently related to food shortages. In January 1828 Logan wrote to Colonial Secretary MacLeay informing him

... I have likewise to report that the blacks have been exceedingly troublesome since the maize crop begins to ripen. They attack the fields in large parties, on the 24th a tribe of about 50 rushed the field on the south side of the river and threw several spears at the guard sent to protect it. The guard fired in return and one of the natives was unfortunately shot. They have not since made their appearance.²⁹

This dispatch caused Governor Darling to order that cultivation on the south side of the Brisbane river be discontinued. The rationale underlying the decision was to protect a vulnerable food supply, but a secondary aim was so that "acts of aggression on the part of Europeans could also more effectively checked".³⁰ Darling it must be remembered, could effect control because he was dealing with a settlement that was answerable to military law; his instructions would be obeyed even if those within the penal settlement doubted their wisdom. He could not have achieved the same regulation over civilian settlers.

By the 1830s a fairly clear picture of the Aboriginal response to the European invasion of

²⁸ Spicers Diary, JOL.

²⁹ Logan to Macleay, 28 January 1828, Moreton Bay Letter book, AONSW.

³⁰ Macleay to Logan, 30 April 1828, Ibid.

the future Queensland was beginning to emerge. The Moreton Bay penal settlement with its heavily armed redcoat guards was a fait accompli they could do little about, but the attacks that took place all around the settlement point to a wish to contain the invaders and prevent their further encroachment on to Aboriginal land. This seems to have been the reason why Logan lost his life. He was on one of his many exploratory trips into Aboriginal territory which could have given the appearance of a forerunner to white expansion.

If some of the violence perpetrated by the Aborigines in their attempt to contain the European incursion are recognised as acts of resistance, the assassination of Logan has not been credited with the significance it deserves. It was a coup of considerable importance. Although they may not have known it, in one stroke the black people had removed a man who was not simply the commandant of the Moreton Bay penal settlement, he was the commander of the British Army's northern outpost. What is particularly noticeable is that there was no large scale retaliation as there was to be when landed class white civilian settlers were killed. This further illustrates the difference in the administration of justice on the penal and pastoral frontiers. All the same, considering his military experience, the part Logan played in his own demise was quite extraordinary. The day before his death he had been attacked by blacks and had been obliged to fire over their heads, which indicates an absence of malice on his part.³¹ The following afternoon he detached himself from his party to look for a lost horse and probably became lost himself. Almost unbelievably he spent the night in hostile Aboriginal territory sitting on a creek bank, with a fire which drew attention to himself, roasting chestnuts. Not surprisingly, during the night he was attacked and killed.³²

Although it was to confer mixed blessings on them, strenuous effort was made to bring black people into the correct legal processes that were sanctioned by government and

³¹ It seems clear that these Aborigines were attempting to prevent Logan's party from entering their territory.

³² Bateson, Patrick Logan, pp. 168-9. An ungrateful British Government made Mrs Logan pay her own passage back to England.

applied within the penal settlement.³³ Considerable correspondence exists between commandants at Moreton Bay and the Solicitor - General in Sydney asking for legal opinions on whether or not Aboriginal offenders should stand trial for various crimes. This tends to indicate that the military commandants did not resort to summary punishment as civilian settlers did, and that the earlier instructions emanating from London were complied with.³⁴ It is important therefore, that an analysis of the white reaction to what were perceived as crimes by Aborigines during the convict period in Moreton Bay should recognise that the place was atypical. It was an isolated penal station that was very much under government supervision. In many ways it was reminiscent of Port Jackson during the last quarter of the 18th century. Thus the treatment of Aborigines may have differed considerably from that which was meted out elsewhere. Unlike the excesses that often existed on the frontiers of pastoralism, those in the penal settlement were far more rigorously controlled. The convicts were governed by an extremely harsh penal code and the people who regulated them were in their own turn rigidly restrained by the strictures of the law, which in this case was military law that could be used to enforce the directives of government. Even the civilian officials who held positions as doctors, surveyors, or administrators were subject to it. The regulations stated

The Commandant is vested with the control of every department on the settlement, every person whether free or bond being subject to his orders.³⁵

³³ For Correspondence relating to this see the "A" series microfilms, JOL. The letters are scattered throughout this series but tracing them is made easier by reference to the book of letters held in JOL. The offences that I refer to are of a sufficiently serious nature to demand trial in the court at Sydney. Minor offences were dealt with by the Commandant at Moreton Bay.

³⁴ It is of course possible that summary punishments were inflicted on Aborigines and not recorded, but an analysis of the Book of Trials leaves one with a sense of general legal propriety. For example there are several cases where ex prisoners who had been freed refused to work and were charged with vagrancy. As they were free they could not be flogged as convicts could and were therefore given short terms in the house of correction. One can also pick up a quite distinct shift away from flogging towards confinement near the end of Moreton Bay's convict period.

³⁵ Regulations for the Moreton Bay settlement 1829, cited in HRA, I, xv, p.105.

This control however, stopped where pastoralism's frontier started. Nearly 20 years after the settlement's establishment, visiting missionary Backhouse felt compelled to write

The recollection that we were now on the utmost verge of that part of the British dominions, inhabited by its white subjects, and that these were the very outcasts of civilised society, and that we were surrounded by uncivilised blacks, often passed my mind with a feeling I can hardly describe...³⁶

In fact Backhouse was only half right, because Moreton Bay by the late 1830s, which was the time he and Walker got there, was not an isolated outpost of Empire. What it was in reality was an island of officialdom surrounded by pastoral leases which were theoretically forbidden from approaching within 80 kilometres of it. For anyone other than the staff of the settlement to come within this distance the permission of the Governor of NSW was required. Even if this was granted strict security restricted free movement. None but government ships might anchor except in cases of emergency, and even in such situations a military guard was placed on board.³⁷ In fact though, some squatters were well inside this prohibited area and others were considerably further to the north. So a situation existed where free Europeans were perhaps some 50 kilometres from Brisbane town, yet were administered by the Commissioner for Crown lands in Armidale. In the event of a crime being committed the correct procedure was for a plaintiff, situated perhaps on the northern Darling Downs, to ride the several hundred kilometres to Armidale, contact a commissioner for Crown lands (who might be out on a long patrol), take out a warrant, and bring to trial a suspect who might well be acquitted through lack of evidence. It is not surprising that some isolated Europeans simply took the law into their own hands. Such people were plainly outside the control of the authorities. So it might be that an Aboriginal transgressor on the Brisbane side of an imaginary line was treated by the correct legal processes, while on the other he might be shot out of hand by an irate settler. The northern districts that surrounded the penal settlement had indefinite boundaries that were well beyond the control

³⁶ J. Backhouse, *A Narrative of a Visit to the Australian Colonies*, (London, 1843), p.357.

³⁷ Darling to Murray, 13 August 1829, *HRA*, Vol. xxv, p.105.

of Commissioner MacDonald and his handful of border policemen.³⁸ Therefore civil law, to all intents and purposes did not exist beyond the MacIntyre River. Acknowledgment of this did not rest easily in the mind of Sir George Gipps, resulting in the establishment of the squatting act of 1839. This legislation was a clear recognition of the fact that pastoralism could not be contained. Its very nature and its importance to the economic wellbeing of the colony demanded the theft of Aboriginal territory, but he hoped that the establishment of government authority beyond the limits of location would terminate, or at least curb "the atrocities that have of late been so extensively committed by the aborigines and upon them".³⁹In fact at this time there was an undeclared war between settlers and Aborigines in the pastoral areas of the Northern District.

In contrast to this, the inter-racial relationship in the immediate vicinity of the penal settlement was apparently good, although perhaps only in parts. In March 1840, the Commandant, Lieutenant Gorman, received news that the missionaries at Zions Hill (now Nundah) had fired on a group of Aborigines who it was believed were about to steal potatoes, wounding four of them. In his dispatch to the Colonial Secretary, Gorman expressed regret "as we are on excellent terms with them for forty miles around".⁴⁰ Therefore one may draw the conclusion that the treatment of Aborigines in the immediate vicinity of Brisbane, differed considerably from that which existed all around it. The good relations that Gorman spoke of, if they really existed, were the result of 16 years of close military supervision. It is of course possible that they were a figment of his imagination, or the desire to tell his superiors in Sydney what they wanted to hear. Another thing that should be appreciated is that information from the settlement did not flow freely. What transpired in the early days was subject to censorship and the released information came only from Government sources and even then there appears to have been precious little of it. Therefore our knowledge of what went on there is somewhat sketchy. We do however,

³⁸ The Border Police are dealt with in a later chapter.

³⁹ L. Skinner, "The days of the Squatting Acts Districts of Darling Downs and Moreton Bay", *Queensland Heritage*, No. 3, 1977, p.38.

⁴⁰ Comdt. Moreton Bay, to Col Sec, 30 March 1840, 40/8437 in COL 4/3192, AONSW.

get something of a less attractive insight from Commandant Cotton's grave observation written in September 1837, when he said that

Looking over the records of this settlement, it seems that numerous have been the instances of unprovoked murder and outrage in its vicinity...⁴¹

On this subject Tom Petrie told how he had been informed by convicts that one Aborigine who had been shot while stealing corn at Kangaroo Point, was skinned, stuffed and placed among the corn as a sort of human scarecrow.⁴² It is an unlikely story given the strictures of military law and the control exercised by the Commandant.⁴³ However if it did happen it provides an insight into the construction of the Aborigine in the British mind. Gamekeepers and farmers frequently used dead birds and animals, hung on fences or poles to scare away other predators, therefore to ascribe non-human traits to blacks in this way, diminished the Aborigine's humanity.

To return to Gorman's relationship with the local blacks, one should point out that he was the first commandant to legally and publicly hang them. At Moreton Bay, particularly during its early years, the legal execution of blacks was infrequent.⁴⁴ The earliest was the hanging of Meridio and Neugavil⁴⁵ on the 21 July 1841. This was for the murder of

⁴¹ Cotton to col Sec NSW, 7 September 1837, cited in Evans, "The mogwi take mi-an-jin", p.9.

⁴² Petrie, Reminiscences, p.232.

⁴³ Unlikely though it is, the story may have some foundation in fact. Some Aboriginal people, as part of their funeral rites skinned their dead. It is possible that convicts may have acquired such a skin and used it as a scarecrow.

⁴⁴ In the 20 years before Queensland's separation, six Aborigines were hanged in Brisbane. This compares with three Europeans and one Asian during the same period

⁴⁵ There is dispute over the names. The Moreton Bay book of trials held at the John Oxley Library records them as Merry Dio and Ningavil, some authors record them as Mullan and Ningavil. A third Aborigine named Bunmatter was also accused but died in custody before the trial. See Book of Trials held at Moreton Bay, July 1835- February 1842, MF 114, JOL.

Staypleton and Tuck who were members of a surveying party. There were no circuit courts in Moreton Bay prior to 1850 and no resident judge until 1858, therefore the two Aborigines were tried in Sydney and returned to Brisbane Town for execution. The murder had taken place in the bush, but as an emphasis on the public spectacle Gorman had them hanged at the Brisbane windmill.⁴⁶ In fact they were hanged from one of the windmill's sails, as Evans says "the most prominent land mark of the penal settlement".⁴⁷ This is an interesting case, because there is a distinct possibility that the two Aborigines were innocent. Had Meridio and Neugavil been white it is doubtful that they would have been convicted. The one and only eyewitness was convict James Dunlop who was wounded in the attack. He swore that the accused were not part of the group that assailed the surveying party, as did Peter Finnigan who was another member. His evidence was quite definite, he stated on oath

I can swear to any black men left at the tents on that morning...I now positively swear that I did not see any of these men now before the court.⁴⁸

Although others claimed that they were there, a later account suggested that the convicts who gave evidence against the Aborigines were motivated by the reward that was offered for the apprehension of Staplyton's murderers. Tuck being a mere convict did not generate the same amount of outrage.⁴⁹ The jury after deliberating for half an hour told the judge that if the two Aborigines had not actually committed the murders, they must have been accessories. Burton J somewhat surprisingly, sentenced them to death.⁵⁰ The point is that

⁴⁶ G. Heap, The Old Windmill of Brisbane Town, (Brisbane 1983), p.8.

⁴⁷ Evans, "The Mogwi take Mi-an-jin", p.29.

⁴⁸ Evidence of Peter Finnigan. Inquiry into the murder of G. Staypleton and W. Tuck, Moreton Bay Book of Trials. JOL. What convicted these two Aborigines was the belief that they came to the semi deserted camp later, in company with other blacks and committed the crime.

⁴⁹ This reward took the form of a promise by Lt. Gorman that he would petition the Governor of NSW to remit the sentences of any convict that was instrumental in bringing the murderers to justice. This promise was not fulfilled.

⁵⁰ Sydney Morning Herald, 27 July 1841.

given the conflicting evidence, it is difficult to see that the guilt of the Aborigines was proved beyond reasonable doubt.

There are also aspects of this case that may not have been recognised. Assistant Surveyor Staypleton's character and his relationship with the men who worked for him appears not to have been appreciated. Staypleton was an officer of the Crown who commanded a surveying team comprised of convicts Sutton, Gough, Kelly, Dunlop, Finnegan, Banbury and Tuck. Dunlop, Tuck and Staypleton remained in their camp on 31 May 1841 while the others went to build a bridge over a creek. The camp was attacked and plundered, presumably by blacks, during the absence of the main group. Staypleton and Tuck were killed and Dunlop was knocked unconscious from behind. When the others returned, Kelly said of Dunlop, "I could not get a satisfactory answer from him and I thought he was dying".⁵¹ The five convicts left the apparently dying Dunlop and ran from the scene because, they said, they were afraid the Aborigines would return and kill them also. Dunlop was found wandering in the bush by a search party that was guided by the members of the survey team that had fled.

Staypleton it appears, had an extremely abrasive character and a very well developed sense of his own importance. He could reasonably be described as a martinet. On 4 September 1839 he charged convict George Clark with neglect of duty. In his own defence Clark claimed that he..."had done everything in his power to please Mr. Staypleton and believes no man can do so".⁵² Clark was sentenced to 50 lashes. On 14 October Staypleton again charged Clark with improper conduct, disobedience and bad conduct. Clark denied the charges, but was again sentenced to 50 lashes. On 25 January 1840 Staypleton charged convict Robert Coote with insolence and disobedient behaviour. He maintained that Coote had not erected his [Staypleton's] tent properly, the pegs were not driven in correctly and that the bullocks that pulled the dray were left standing near his tent and not taken to the

⁵¹ Evidence of Patrick Kelly, Moreton Bay Book of trials, MF 114, JOL.

⁵² Ibid., p.139.

feeding ground. Staypleton stated

When I admonished him his manner was very insolent, and when I spoke to him he would reply, 'I always do my duty' In fact lately he has evinced a careless insolent disposition and has frequently interrupted me when I reprimanded him.⁵³

Coote's defence was that he had

done everything in his power to please Mr. Staypleton but he cannot do so and that one Sunday Mr. Staypleton had threatened to bring him to court if he did not sing at his [Staypleton's] tent but to please him he did so and in fact he has had a life of torture ever since he has been with Mr. Staypleton.⁵⁴

Coote was sentenced to 10 days solitary confinement on bread and water.

Staypleton charged Patrick Kelly with making use of improper expressions towards him. The words Staypleton objected to were "I swear by the Holy ghost I did not hear you, damn your soul if I did". This sounds very much like someone speaking normally, but in the Irish vernacular, but Staypleton thought otherwise adding "in fact he threw off all respect and was quite ruffianly and disrespectful towards me". Kelly, in his own defence said

I went immediately on hearing Mr Staypleton, I did my best to be respectful excusing myself and trying to convince him that I came to him as soon as I found he wanted me but he would not listen and ordered me away.⁵⁵

Kelly was awarded 10 days solitary confinement on bread and water. A few days later Peter Finnigan was charged by Staypleton with making improper statements and also received 10 days on bread and water. Coote was again charged and received 28 days imprisonment,

⁵³ Ibid., p.153.

⁵⁴ Ibid.,

⁵⁵ Ibid., p.161.

and on 11 April Staypleton had Convict Abel Sutton sentenced to 28 days hard labour. Sutton said he did his best to give satisfaction to Staypleton but could not succeed in pleasing him.

Granville Staypleton must have had an unenviable reputation among the convicts of Moreton Bay; he clearly made the lives of those assigned to him a misery. Sutton, Kelly and Finnigan who suffered at Staypleton's hands were part of his survey team on the day he was murdered. They and Bunbury formed the group who left the camp to build the bridge. It is not beyond the bounds of possibility that they, and not Aborigines, murdered Staypleton. At least three of these men must have hated him. It is possible that they persuaded or coerced Bunbury to assist them, or at least to say nothing. Tuck may have met the same fate as his master because he refused to support Sutton, Kelly and Finnigan or because he was considered untrustworthy. This leaves Dunlop who could also have been someone that they had initially decided to kill, but whom they were obliged to threaten or cajole into supporting their story when it was discovered that he had survived their assault. The other point is that Dunlop was attacked from behind and was probably severely concussed by the attack, (Kelly remember, thought he was dying). Dunlop's knowledge of the incident may have been considerably influenced by this. The most striking feature of the depositions of convicts Gough, Kelly, Sutton, Finnegan and Banbury is that their evidence is absolutely identical. The complete lack of variation suggests complicity.

On the other hand of course, Staypleton and Tuck might have been killed by Aborigines. However, Connors makes the most important point that despite the dubious aspects of the case, the sentence was consistent with the practices of a century earlier where it was the deterrence effect that mattered rather than the certainty of guilt.⁵⁶ If this is the case, the aim of the execution was to strike terror into the minds of the Moreton Bay Aborigines by taking retribution on anyone with a black skin, rather than the desire to see justice done. Of great importance to the argument presented by this work is the fact that the administration should be prepared to go to the trouble and expense of taking two Aborigines 900 kilometres by sea to stand trial, then send them back to the scene of the crime to provide

⁵⁶ Connors, "Theatre of Justice", p.51.

a spectacle aimed at teaching blacks the awful power of English law. Of course, it also sent important messages to an increasing number of whites at a time when there existed a growing hatred of Aborigines and a belief that blacks could literally get away with murder.⁵⁷

Even so, race relations at the settlement were subject to the influence of changing attitudes as governors in Sydney and commandants at Moreton Bay were replaced as their tours of duty ended. Of substantial importance was the demeanour of the convicts and their military guards. Quite apart from the appropriation of land, an other major cause of conflict, the abduction and abuse of Aboriginal women, was by no means absent within the area controlled by the penal colony. For example, in 1835 convict John Smith was sentenced to a flogging for infecting an Aboriginal girl, described as "a mere child" with a venereal disease.⁵⁸ And in 1841, convicts acting as policemen were brought to trial and punished for detaining black women for sexual purposes. These are only a couple of examples to be sure, but they appear to have been the small tip of a very large undetected, or perhaps normally ignored iceberg. In his own defence one of the accused constables stated that he "did not think it much harm to have a black gin".⁵⁹ Arguably implying that the practice was common. In fact there were rumours regarding Lt. Gorman, the settlement's commandant.⁶⁰ We must also appreciate that the Moreton Bay penal settlement had numerous isolated outstations where the application of the law might depend on the whim of a junior non-commissioned officer.⁶¹ Nevertheless, while the treatment of blacks in the rest of the district

⁵⁷ see Moreton Bay Courier, 14 August 1847. This conviction was illustrated when John Rogers was killed by blacks at the Boyne River. The Moreton Bay Courier informed its readers "of course no inquiry was instigated as the victim was only a white man".

⁵⁸ Moreton Bay Book of trials, JOL.

⁵⁹ This convict constable was Abel Sutton who, it will be remembered, was involved in the Staypleton Affair.

⁶⁰ Evans, "The mogwi take mi-an-jin" p.23.

⁶¹ In those days a totally different concept of rank and command existed in the army. For example corporals often commanded sections of about eight to ten men in isolated situations that were completely removed from control by

was a hotch-potch mixture of what the Governor said on the matter diluted by local pragmatism, within the penal station there existed a direct, uninterrupted line from the Colonial Office in London to the private soldier guarding prisoners of the Crown at Moreton Bay. Therefore, it should be recognised that the legal treatment of the black people within the area controlled by the penal station was influenced by a different set of motives than those which drove the squatters. On the pastoral frontier surrounding Brisbane, and later in the town itself, the Aborigine was seen in terms of "the enemy", and the application of the law was to be modified by white attitudes to deal with them.

commissioned officers. A good demonstration of power being exercised by relatively junior personnel was the command of the Moreton Bay settlement itself. It was entrusted to a lieutenant. Such a situation would be almost unthinkable now, it would require an officer of field rank (at least a major).

Chapter Four

Justice, Aborigines, the Press and Pastoralism: Moreton Bay 1840-1860.

...indeed they may be said to suffer loss of life for offences for which the white man only suffers transportation or hard labour on the roads.

Justice Roger Therry, Judge of the Supreme Court of NSW 1846-1859, on the legal treatment of Aborigines.

Moreton Bay's transformation from penal colony to capitalist enclave brought with it significant changes in the way the law was brought to bear on Aboriginal people. Whatever the 15 years of controlled white settlement had contributed in the way of justice to blacks largely went by the board. Increasingly driven by the dictates of the pastoral industry and fuelled by an aggressively anti-Aboriginal press there was a decline in the level of justice that was afforded to them. A blind eye was turned on illegalities that should have attracted moral outrage, courts of law made dubious decisions and inquiries were instituted into outrages against Aborigines with the express purpose of performing a whitewash to deflect southern criticism. The sense that the Aboriginal people were being separated from the criminal justice system that was applied to Europeans and were being subjected to the strategy of a bygone era had become, if anything more profound.

During the mid to late 1840s the nature of the once exclusive penal settlement was changing radically. In Brisbane town there was something of an air of hesitant progress. The 1846 census showed a population of nearly 1,000 people and there was a strong demand for housing. A daily steamer service to Ipswich began to operate. Stone buildings started to appear and the scrub around the township was in the process of being cleared. Suburban rivalry emerged. South Brisbane, because of its superior wharfing facilities and links with the inland towns, was competing for pre-eminence with the north side of the river. Moreton Bay became a customs port of entry and clearance, with the Government in Sydney setting aside 1000 pounds sterling for the construction of a customs house. Wool exports from the region were estimated to be worth 50,000 pounds sterling, with beef and timber contributing another 10,000. Clearly, pastoralism was in its ascendancy and this industry was crying out for labour and government attention. The days of the transportation frontier were over. Indeed, it seemed in Moreton Bay as if the frontier itself was slowly retreating.¹ Within this period Brisbane had cast off nearly all of its convict characteristics and had become a squatter's town. In fact it was soon to become totally reliant on pastoralism. Further to this, the significance of the industry and the amendments to the squatting act had increased the political power of a group whose best interests were seen to lie in a denial of Aboriginal rights. The new Waste Lands Act that was passed by the

¹ For source of information, see Johnston, Brisbane, pp.101-5.

British Parliament in August 1846, no longer made it necessary for squatters to treat the black people with the same degree of caution that had been necessary under the 1839 legislation enacted by Sir George Gipps.² Then, pastoralists were responsible for the behaviour of their employees and in theory, their licence to depasture could depend on their treatment of Aborigines. After 1846 however, they received 14 year leases and there was less need to concern themselves with the threat of government interference. Because it was not forced on them, most Europeans on the frontier and in the pastoral towns had little time for legal ideology. In their treatment of blacks the concepts of individual culpability, assumptions of innocence and trials aimed at delivering justice were supplanted by revenge based on summary punishment and deterrence. In addition, the overall attitude displayed to Aborigines was one of intense dislike that frequently boiled into hatred. This was encouraged by the creation in the same year, of the Moreton Bay Courier that was quick to take up the cudgel against those it described as "savages" and heap scorn on anyone who would have them treated with humanity and fairness.

The impact of the colonial press on the justice afforded to Aboriginal people should not underestimated. In the north particularly, it spoke with a strident, opinion forming voice in favour of deterrence based on harsh punishment rather than justice determined by guilt or innocence.³ The pre-judgement and assertions of culpability on extremely slim evidence that were so much a part of reporting crimes involving Aborigines in the northern newspapers, almost certainly influenced juries when black people were tried. Crimes were reported as having been committed by "the blacks", implying that the whole race was guilty, even in some cases when an individual perpetrator was known. This provided a rationale for convicting them, and a defence for shooting them when they tried to evade capture or when trials proved troublesome. With local correspondents telling their readers

² The Parliament in the colony was empowered to make laws, which were submitted to London for final approval, but this was really a formality.

³ Prior to 1846 Brisbane was served for news by Thomas Dowse, the local correspondent of the Sydney Morning Herald who produced articles that went under the title of "Brisbane Town News". By his own admission Dowse had set out to hunt down Aborigines. In June of that year the Moreton Bay Progress Association invited Arthur Sydney Lyon to open a fully local newspaper and the aggressively imperialist, Aboriginal hating, Moreton Bay Courier was born.

of "Another foul murder committed by **the blacks**"⁴ [my emphasis] one could hardly expect much sympathy for Aborigines who were executed without the benefit of a trial. Added to this enmity, the non acceptance of Aboriginal evidence except when it suited and the attitude of jurors trying cases where Aborigines were charged with offences against whites, sometimes made the court system nothing more than a charade as far as black people were concerned. Under such circumstances, it is equally unlikely that blacks could have had respect for a criminal justice system that was not only capricious, but which gave the appearance of existing to punish them exclusively.

This then, was the legal climate under which Aboriginal people became increasingly answerable to English law in the Northern District. It was a law that sometimes forgot its role in society and developed subsidiary aims that failed to accord with justice. In one instance for example, the Chief Justice pursuing a misguided approach to Aboriginal protection, sentenced a Moreton Bay Aborigine to six months hard labour in the Brisbane gaol for stealing a knife. The judge rationalised the severity of the sentence by explaining

...it is most desirable for the protection of the natives that their crimes be punished even when ignorant of the law for otherwise the whites would rise up and take the law into their own hands and the native race would become extinct sooner even than was likely...⁵

Yet, in spite of such glaring inequities, articles and letters appearing in the Moreton Bay press of the period make it clear that English law was regarded, at least by some people, with reverence. Its supporters considered it to be an outstanding achievement which set them apart from other nations. This analysis was principally based on its much vaunted

⁴ Sydney Morning Herald, 26 October 1846.

⁵ Ibid, 16 November 1860. It is of course possible that the Chief Justice did not consider six months a severe sentence. If this is the case it reflected the severity of an earlier age.

impartiality and the presumption of innocence.⁶ Yet this is precisely what the British settlers there tried not to convey to blacks. A system based on deterrence is not directed at the offenders; it is aimed at those who are potentially like them.⁷ Therefore a fear of the law's power was what white colonial society tried to instil in the Aboriginal mind and impartiality and a presumption of innocence would have been completely counterproductive to this aim. The Courier stated categorically that even if crimes were committed by an individual the whole "tribe" was culpable because it would have been previously discussed at group level.⁸ Consequently, punishment was aimed at deterring blacks as a whole rather than at punishing the actual offender.⁹

Connors argues that the English criminal law that was applied to Aborigines developed specific aims. These were that blacks were to be impressed with the terror of the law, but equally they were to be shown that it was impartial and would protect them. This may have been a stated aim, but the reality was quite different. The law is not simply what is written on a piece of paper; its actuality exists in the way human beings are treated by it. The fact of the matter is that English law as it pertained to Aborigines was clearly not impartial, neither did it always protect them. In fact, Aborigines who were the victims of white offences were seldom treated justly. Connors' claim is therefore dubious; it is hard to see that impartiality can be claimed for a system which is misapplied across racial lines. The bloody code ended in 1815 and with its demise it fairly quickly became no longer a capital offence for white people to steal stock or other property. Commenting on alterations to the English criminal law, the Brisbane press applauded the fact that "No longer the sheep

⁶ Not everyone saw it in this light, some believed that it had degenerated into a pseudo intellectual contest that did not deliver justice or protect property but merely punished. See Hay et al, Albion's Fatal Tree, pp.26-28

⁷ If deterrence becomes the prime aim of a criminal justice system, it could be argued that it does not matter if the accused is guilty or not as long as he or she appears to be guilty, and more importantly pays the price demanded by public outrage.

⁸ See for example Moreton Bay Courier, 21 November 1846.

⁹ Connors, The Birth of the Prison, p.101.

stealer suffers the death of the murderer".¹⁰ Yet throughout the entire 19th century Aborigines were summarily shot by the police and white settlers for offences involving animals and other possessions. They were executed in retribution for transgressing European laws and customs¹¹ virtually from the first days of settlement in Australia. These killings were illegal and contrary to the officially stated policies that were meant to govern relations between the races. The fact is however, that they became de facto practices that were approved of by many of the white settlers, their legislature and by sections of a press that often encouraged them.¹²

Newspapers changed owners far more frequently than they now do (the Queenslander changed hands twice in one day) and these changes of ownership were often accompanied by alterations in editorial viewpoints. In this respect the Courier was no exception; over the years of the colonial period it is quite easy to recognise attitudinal shifts towards the colony's indigenous people. However, from its initial publication in 1846 and for several years thereafter the Moreton Bay Courier campaigned vigorously against the Aboriginal presence, not just in the environs of Brisbane, but everywhere that white settlement was establishing itself. In fact the Australian told its readers that the people in Moreton Bay and their press were "the bitter enemies of the blacks".¹³ The Courier was also a strong proponent of separation as well as trying to establish itself as the voice of the Northern District. Its utterances rang with a sense of alienation from Sydney and were the verbal manifestation of an emergent siege mentality. Their readers were frequently told that they were being fleeced to provide better conditions for less productive southern interests.

¹⁰ Moreton Bay Courier, 11 September 1847.

¹¹ I refer here to the custom of regarding property as sacred.

¹² It may be unwise to write history from newspapers, nevertheless, the press is an extremely useful source of primary information on contemporary attitudes, in that it generally mirrors those of its intended audience. It is also extremely influential in forming opinions. See D. Cryle, The Press in Colonial Queensland: A Social and Political History, (St. Lucia, 1989), p.2. Denis Cryle points out that "the strategic importance of the press as a vehicle for ideas and a medium for political organisation cannot be over emphasised".

¹³ The Australian, 25 February 1847.

Further to this, the idea that the legal directives of an out of touch government was making life difficult for its pioneering northern citizens was so frequently aired that one is led to wonder how valuable Aboriginal depredations were to the separationists.

To this end, the newspaper frequently used the application of the criminal justice system to blacks as a whipping boy. Many whites firmly believed that the system served them ill. In addition the concept of Aboriginal equality before the law came under constant attack in the Northern District. The Moreton Bay Courier on 2 November 1846 informed their readers

All attempts to apply to a people utterly unacquainted with our institutions, the details of English common law, and acts of parliament will produce more legal injustice.

This journal had very quickly realised on which side its bread was buttered and had become the mouthpiece for the northern squatting interest. Therefore it was exclusively what was considered injustice to them that concerned the editor. Three weeks later the paper was asking for tacit approval for vigilante action asserting

Seriously, solemnly we ask what is to be done? Because the question is surrounded with difficulty. Are we to remain without protection waiting to be cut down like ears before the sickle, bound hand and foot by a one sided law which in our relations with the blacks threatens us instead of protecting us. Either the authorities will have to shut their eyes while we take the law into our own hands or they must offer us that protection which was erstwhile the glory and safeguard of every Englishman.¹⁴

But they went much further. In a lengthy article rural workers were advised under what circumstances they might shoot Aborigines without fear of legal retribution. In fact, one might argue that the editorial was something of an incitement for them to do so. It began

¹⁴ Moreton Bay Courier, 21 November 1846.

by relating Aboriginal rights to the injustices that settlers, who it described as "adventurous men", suffered at the hands of a "cruel and faithless race". It linked this to a government that was not only uncaring for the plight of the white colonist, but whose Attorney-General was seen to be acting as a sort of "Tristan l'Hermit" to the black fellows, of walking about with a noose in his pocket and anxious to slip it over the head of anyone resisting them. It advised bush workers that

... the prevailing characteristics [of Aborigines] are cruelty and cunning; and the best mode of dealing with them is to assume a superiority to them in the latter quality... the course for such a person to follow is perfectly clear if he have the means of defence at hand. Down with the nearest of the vagabonds... **shoot him through the head if you can. Neither the Attorney-General nor the best of the Queen's subjects can lawfully injure a hair of your head.** [my emphasis] ¹⁵

Yet the white attitude to Aboriginal crime also displayed ambiguity. On some occasions settlers wished to see blacks summarily executed for offences that did not warrant a death sentence; at others they wanted black criminals dealt with by the full legal force, while at the same time condemning the concept of considering Aborigines British subjects who were amenable to the jurisdiction that governed white people.

Although it is a fact that there were frequent official assertions that both black and white were British subjects and were equal in the sight of the law, it must be appreciated that while the Aborigine was technically a British subject, he or she was not a citizen, they had few civil rights.¹⁶ As a generalisation, northern newspapers (and people that wrote letters to editors) condemned the philosophy of considering blacks to be British subjects. In one particularly scathing editorial it was stated that

¹⁵ Ibid, 21 October 1848.

¹⁶ A discussion on the rights and obligations of citizenship may be found in J. Barbalet, Citizenship: Rights, Struggle and Class Inequality, (Milton Keynes, 1988), Ch.2.

Talk about treating the blacks as British subjects... would be disastrous and fatal in the extreme to do so and none but those who are totally ignorant of the habits of the wild blacks would ever dream of advocating such a suicidal policy. British subjects indeed! British fiddlesticks.¹⁷

Letters to editors and editorial comments like this make it possible to pick up the drift towards an acceptance of summary punishment as the solution to Aboriginal crimes against whites or their property. Having said that, it is evident from the same sources that the problem of how to deal with Aboriginal transgressions caused considerable soul searching on behalf of the those who wished the matter to be handled legally. The dichotomy that saw the law on one hand as sacred and worthy of great respect, and on the other as blindly stupid when it came to dealing with "untutored savages" seems to have been a constant feature of press editorials. Added to this, the fact that Aboriginal evidence was unacceptable in court gave rise to judicial decisions that were not only illegal but surprisingly out of character. For example after the murder of a small white child two Aborigines, Jacky-Jacky and Peter, were apprehended by police. The prisoners were held in custody in Brisbane, but the evidence against them was that of an Aboriginal woman and therefore, legally inadmissible. Captain Wickham, the Government resident at Moreton Bay, solved the dilemma by allowing the men to escape from custody explaining that "a formal discharge would have the effect of leading the blacks to suppose that similar crimes might be permitted with impunity"¹⁸ Such decisions were not well received by the white community. It appears that in this case at least, neither they nor Wickham need have worried too much because

... a large retaliatory force of Squatters and others supplemented by Mounted Police, plus Lieutenant Johnstone and ten rank and file of the 99th Regiment scoured the Rosewood Scrub and delivered "Vigilante Justice" to the Aborigines. Among them the notorious Jacky Jacky and Peter who were concerned in the

¹⁷ North Australian, 17 November 1847.

¹⁸ L. Skinner, "The Days of the Squatting Acts", Queensland Heritage, Vol.3, No. 7, p.20.

murder of Mr. Moore's child at Limestone have I believe fallen victims to the vengeance of the white man.¹⁹

When it came to dealing with Aborigines, the local press targeted humanitarianism, the Government, the law and the prison system with equal ferocity. In late 1846 the Courier launched an attack on

Our humane Government [who] recently forwarded to this district at the public expense an aboriginal black who had undergone a term of incarceration of three years on Cockatoo Island. With a multitude of European vices grafted on his native ferocity, his presence in this district is already disastrously felt. Led on by him, the Brisbane and Pine River tribes, have become so daring in their depredations that no person now ventures to trust himself unarmed beyond the precincts of the town...²⁰

This editorial, which was probably referring to an Aborigine named Uncle Marney, went on to claim that constitutional law offered no protection to the town's citizens because Aborigines did not understand it and to attempt to use it to control them "is to bring one of our most sacred ordinances into contempt".²¹

It seems strange that there was no suggestion that Aborigines be taught the basic principles of the law that was imposed on them. The argument that Aborigines were incapable of understanding English law was clearly absurd. They understood their own laws, which, although few British settlers would have recognised the fact, were highly complex. Therefore there was no reason for supposing them to be incapable of understanding the basic tenets of English law. It was of course, necessary to deny that blacks were capable of understanding because it provided a rationale for the application of summary punishment. Punishment without trial is very attractive in

¹⁹ "Brisbane Town News" Sydney Morning Herald, 12 October 1843. The Queensland town of Ipswich was originally known as Limestone.

²⁰ Moreton Bay Courier, 21 November 1846.

²¹ Ibid.

the short term, it is inexpensive, gives no chance of acquittal and removes an encumbrance, sometimes permanently. It was made even more essential the press claimed, because

the want of punishment that was understandable to them emboldened them to perpetrate crimes in the more remote areas thereby placing the lives and property of isolated settlers at risk.²²

In fact many of the crimes committed by Aborigines were in response to "punishment that was understandable to them". Summary punishment nurtured a climate of retaliation that was often disproportionate and misdirected. Quite apart from the injustice of punishing innocent black people, we can never know how many uninvolved white settlers lost their lives in retaliatory attacks. It is clear that some Europeans understood that Aboriginal law demanded an eye for an eye, but there was little general recognition of the fact and no attempt at accommodation. Therefore, summary punishment, which in reality compounded the problem, was seen by many as the only solution. It must be admitted however, that the Courier's editor did not embrace it without pointing out to his readers the illegalities that were contained in it. What he did not remind them of, was the undermining of social morality, which is often a consequence of pragmatism and the injustices that sprang from a presumption of guilt rather than one of innocence if one's skin happened to be the wrong colour. The editor claimed to

... know enough of the Aborigines to be aware that...all expeditions of an unusual nature are first debated by the whole adult males of a tribe. Consequently according to our law, to every outrage committed upon the whites they are all accessories - a class of criminals whose punishment is often well nigh equal to that of their principles in crime...²³

This simplistic analysis was not "according to our law". It assumes of course, that there were no demurrers. It also embraced the illegal and unjust principle of collective

²² Ibid.

²³ Ibid.

punishment based on shared guilt. In fairness to the Courier, its editorial went on to maintain that we

... have nothing but moral conviction to guide us in ascertaining the guilt of a whole tribe. And even could this be legally ascertained, on undeniable proof, what would be our remedy? It is the glorious privilege of every British subject that, before he can be tried, he must be capable of understanding the objects and process of legal investigation and the nature of trial by jury, and unless he is capable of comprehending these he is treated as an idiot - as an infant, rather to be protected by the law than visited with its terrors. In such a position stand the blacks - their perceptions limited by their senses, incapable of forming aught like an abstract idea, but few amongst them approach that degree of knowledge and intelligence without which guilt in the eye of the law can exist. And this is British justice!²⁴

One proposed solution to the problem of dealing with offences committed by Aboriginal people was to dispense with the protectorate system,²⁵ which was costing the colony up to 16,000 pounds sterling per annum and existed, it was claimed as "only a salve to stop the humanity mongers in the mother country".²⁶

²⁴ Ibid.

²⁵ This system has a long and complex history. Following a series of ad hoc arrangements, Governor Bourke appointed Crown Lands Commissioners as protectors in 1837. The next year an experiment was carried out in the Port Phillip district by Governor Gipps which won him few friends. He by-passed the NSW legislature working on authority from London, and established with a definite role and a paid staff an organisation to protect Aborigines, mostly from the excesses of pastoralists and added the insult of making the latter pay for it. For a most interesting analysis of the system see Rowley, The Destruction of Aboriginal Society, pp.53-63.

²⁶ Moreton Bay Courier, 16 January 1847.

By 1849 when it underwent parliamentary scrutiny, the the Aboriginal protectorate had cost the colony 61,000 pounds sterling. The idea of giving land to Aborigines was considered by a Legislative Council Committee a complete waste of time. One witness claimed that "the protectorate has only been effectual in convincing the community of its uselessness". Dana, the ex commandant of the Port Phillip Native Police, who gave evidence to the committee attributed the failure of "all quack civilisers of the natives to mistaken ideas of the way to

The money it was suggested, should be spent on a body of mounted police whose officers would be empowered to try minor offences on the spot where they were committed. In this way it was asserted

... the natives would soon become aware that they would be severely punished for their outrages and the result would be that they would gradually and quietly be reclaimed, and they would assist the settlers in their toils... we have seized their country by the right of might, and by the right of might the whites will continue to possess it. When all other remedies and amicable means have failed they ought to be civilised by compulsion...²⁷

Unfortunately, the Courier failed to indicate what punishments would be applied. Fines could hardly be imposed and it was frequently stated that the prison was simply an academy where Aboriginal offenders could perfect their criminal tendencies. The unstated solution could have only been a reversion to punishments directed at the offender's body. This was of course, the way the criminal justice system had operated in the previous century. But quite apart from the difficulties inherent in trying to bring Aborigines within the legal system, the above quotation points to a further annoyance to the British settlers. The expansion of capitalism demanded not only Aboriginal land, it needed cheap labour and here was an immense pool that committed the double affront of failing to recognise the imposed law, then compounded the insult by refusing to work.

Thus, in the final analysis the answer was seen to lie in summary group punishment which would make Aborigines afraid to commit crimes. The journal went on to complain about

...the crimes of a tribe of savages whom no kindness can conciliate are treated as the crimes of a single individual and his equally guilty compeers are suffered to

Port Phillip Native Police, who gave evidence to the committee attributed the failure of "all quack civilisers of the natives to mistaken ideas of the way to civilise savages, forgetting that before a savage can be civilised and converted to Christianity he must first be subdued". See Ibid, 6 October 1849.

²⁷

Ibid.

escape ... **Oh justice, justice, what absurdities are perpetrated in thy name!**
[my emphasis] ²⁸

Therefore, blinded by their own ethnocentrism, the colonists' construction of the Aborigine as someone incapable of understanding simple rules, locked British settlers into an archaic and self defeating system of retribution.

Deterrence by fear was what the bloody code was premised on and it had been shown to work much less than perfectly, which was one of the reasons why it was replaced. Not surprisingly therefore, the strategy of imposing a similar system on Moreton Bay's Aborigines was, by the end of the decade beginning to show clear signs of failure. Aboriginal people who rejected the imposed law emerged and a series of killings were perpetrated which the press reported not as resistance, but as innate savagery on the part of blacks, fuelling the already intense abhorrence that many white people felt for them.

The Aboriginal attack that probably had the greatest impact on race relations in the Moreton Bay region, resulted in the deaths of Andrew Gregor and Mary Shannon in October 1846. This killing was to have severe consequences for Aboriginal people. Reverberations were still being felt years afterwards and it was one of the major incidents that served to sour further the already poor relations that existed between blacks and whites.

The press referred to it as having been committed by blacks generally. The Sydney Morning Herald's resident reporter, true to form, apparently held the whole Aboriginal race culpable, they having added, he said

... another foul massacre to their treacherous acts of cruelty to the isolated portion of our squatting community. Mr Andrew Gregor, a settler on the Pine river, thirty five miles from Brisbane, brother to the Rev. John Gregor, clergyman to this town, and a woman named Shannon, wife of Mr. G's stockman were cruelly murdered by

²⁸

Ibid.

the blacks on Sunday the 18th instant...²⁹

The investigation into this case was conducted by Commissioner for Crown Lands, Dr. Stephen Simpson. Thomas Shannon told him how on the day of the killing, Gregor had sent four Aboriginal workers named, Jemmy, Milbong Jemmy, Dick Ben and Jackey, to cut bark. These four left between eight and nine o'clock in the morning. During their absence around twenty other blacks came to the hut. About an hour after, the four workers returned, but in the meantime Gregor had chased the twenty others away. Thomas Shannon was at a waterhole about 200 metres distant from the hut when he heard his eldest child scream. He went towards the sound but was attacked by an Aborigine who attempted to spear him, and at whom he fired his gun. Shannon then ran off in the direction of Griffin's Station. He concluded his evidence by asserting that after

... the child screamed I heard the blacks shouting to each other; I observed a great number of blacks running towards the hut from the creek I saw them enter the hut and carry blankets and other things out of the hut; I saw this as I was running away.³⁰

The evidence that implicated the four workers was provided by an Aboriginal child named Ralph William Ballow,³¹ resulting in warrants being issued for their arrest. Ballow, who was about ten years old, stated that he was

... a native of Wellington in this colony, but I do not know how old I am... [I] was christened by the Lord Bishop of Australia...I was on the other side of the creek yesterday morning, on horseback and could see the hut, and saw the blacks killing the people. They killed Mr Gregor first; Dick Ben and Jackey killed Mr Gregor by

²⁹ Sydney Morning Herald, 26 October 1846.

It is interesting to note the class difference in the reference to "Mr Andrew Gregor" and "a woman named Shannon" in this report.

³⁰ Cited in Ibid.

³¹ This boy may have been named after the Government medical officer, Dr Ballow.

hitting him on the neck with a waddy, it was near the stockyard. I saw two blackfellows named Moggy Moggy and Milbong Jemmy kill the white woman by striking her on the neck with a waddy... At the time the blacks were killing Mr Gregor and the woman a great number of blacks were going towards the hut from the creek... I heard Jackey, Dick Ben, Milbong Jemmy and Moggy Moggy two days before the murder took place talking. They said they would numcull [kill] Mr Gregor, white woman, white man and the children, 'cause they give us no feed... I told Mr Gregor... another blackfellow who was living with Mr Gregor and who left two days before the murder, told me five days before, the blacks would kill Mr Gregor...³²

This was an occasion when it suited Moreton Bay's white society to accept "native evidence", although considering the legal climate that existed in the 1840s, it is doubtful if the Attorney-General of NSW would have believed it capable of securing a conviction. Nevertheless the dubious and confused testimony of this boy caused enormous injustice to be perpetrated on Aboriginal people of the Moreton Bay region for years to come.

The killing of Gregor and Shannon sparked immediate and indiscriminate retaliation against Brisbane's blacks. Thomas Dowse recorded in his diary that he

went this evening with a number of townfolk after the blacks who murdered Mr. Gregor; returned at 8 am from the bush, no success, blacks not to be seen.³³

We should remind ourselves that this casual entry in a diary is speaking of shooting down people as though they were dangerous animals to whom the law and justice did not apply.

³² Sydney Morning Herald, 26 October 1846. It is unlikely that this child's christening would have made his evidence acceptable in law. Questions would have arisen about his ability to comprehend what he had seen. It was also necessary for a witness to understand the impact of an oath on their life hereafter. It seems curious that Mary Shannon's daughter, who was with her mother when she was killed and was about the same age as Ballow was not called as a witness.

³³ T. Dowse Diary, JOL.

This was made acceptable in some quarters by the colonial construction of the black as less than human. Brisbane's Sub Inspector of customs W.A. Duncan was a little more informative. He saw the killing of Gregor and Shannon as

... the signal for a general rising to hunt down the unfortunate blacks, several whom were deliberately fired upon, and some killed. A peaceable old man who was in the habit of cutting wood for me was fired at by a constable in the public street, his camp was attacked at night by another party of whites, one man was shot dead, another wounded in three places, the camp was burnt, its furniture carried off, and a woman who was with child so terrified that she died in a few days.³⁴

Five years later they were still looking for Aborigines to hang for the killing of Gregor and Shannon. On 15 August 1851 a Wide Bay black named "Jemmy Parsons" alias "Paddy" alias "Mickaloi"³⁵ was forwarded by way of Sydney to be examined at the Brisbane Gaol on suspicion of having been implicated in the affair. Ballow who by now was about 15 years old, and described as "an Aboriginal lad who believed it sinful to tell a lie and that those who did would be punished hereafter"³⁶ told the court that he saw the prisoner Jemmy Parsons strike Mr Gregor repeatedly on the neck with a waddy which killed him. This is interesting, because in his original deposition he claimed that Dick Ben and Jackey killed Gregor. He then said he saw the prisoner kill Mary Shannon³⁷ whose death he had previously attributed to Milbong Jemmy and Moggy Moggy. This witness then went on to accuse Constable who he had earlier mentioned as leaving Gregor's station two days before the killing and he also implicated Dundalli. The hearing degenerated into a fiasco

³⁴ W.A. Duncan Autobiography, cited in Johnston, Brisbane, p.115.

³⁵ It would be wrong to consider these aliases as an indication of criminality. They normally represented the multiplicity of names given to Aborigines by different Europeans.

³⁶ Moreton Bay Courier, 16 August 1851.

³⁷ One of the reasons that this Killing created so much white anger was that Mary Shannon at the time of her death was in an advanced state of pregnancy. See evidence of D. K. Ballow Government Medical Officer, Cited in Sydney Morning Herald, 26 October 1846.

that saw Ballow contradict himself and be sentenced to seven days imprisonment in Brisbane gaol for "prevaricating in his evidence."³⁸ James [Durramboi] Davis who was there to interpret for the accused, but who refused to say a word unless his attendance fees were guaranteed, was given twenty four hours gaol for contempt. Mary Jane Shannon, the daughter of the deceased woman, who was about the same age as Ballow, present during the attack and considered to be a reliable witness, said she did not know the prisoner and could not recognise any of the Aborigines who were involved. Petrie then presented evidence that might have secured the prisoner's freedom there and then because there seemed to be reasonable doubt that he was who the authorities claimed him to be. But another witness called James Smith was produced who declared that he recognised Parsons, maintaining that "he could pick him out in a hundred".³⁹ For his part the Aborigine, whoever he was, said that he was not Parsons and that he came from Wide Bay, which the court refused to believe.⁴⁰ On Smith's evidence the man was convicted and sentenced to death - not for the murder of Mary Shannon, but of one William "Bowler", a sawyer of Pine River⁴¹. His fate though, was to be committed to the custody of the Sheriff pending the Attorney-General's decision. Quite clearly, a horse and cart could have been driven through the prosecution's case and he was set free, causing the Courier's editor to comment that

The deep feelings of smothered rage and indignation that have been felt throughout these districts by outrage after outrage and murder after murder we cannot but view with apprehension and alarm. the consequences of this last act - the final step in a prolonged enquiry during which it is our duty to say that too much has occurred to inspire the harassed residents of the frontier with a suspicion that there lives were

³⁸ Ibid. The report strongly suggests that this Aboriginal youth was not so much lying as confused. He was in tears. It may be that in this state he could not remember to repeat what he had been told to say.

³⁹ Moreton Bay Courier, 10 January 1852.

⁴⁰ The reason they refused to believe that he was from Wide Bay, was because they thought that the local Aborigines would have killed a "foreigner".

⁴¹ This is a misprint on the part of the Courier, the man's name was William Boller.

not held, by the officials in equal estimation with those of their enemies, the aboriginal natives...⁴²

Bearing in mind the comment by The Australian quoted earlier in this chapter, it is significant that the Courier saw Aboriginal people as "their enemies".

There is no doubt that Gregor and Shannon died at the hands of Aborigines, but the confused evidence casts doubt on who did the killing and who was actually present. Several warrants were issued, included among them were those for the apprehension of Millbong Jemmy and Dundalli.

As a young boy Tom Petrie knew Millbong Jemmy and tells us that his name was in fact "Yilbung" which means one eye. Petrie's daughter related how her father had often met Yilbung in the bush near Bowen Hills north of Brisbane. She wrote

To the white boy he seemed kindly enough. He never would own that he had killed anyone but admitted that he had often stolen, saying that he did not see any harm in taking flour when hungry, and that as the white man had taken away his country he thought they should give something for it.⁴³

Towards the end of 1846 the Courier gleefully carried news about Milbong, telling of

A black murderer shot - our pen has been so often employed this week in recording the loss of life among the white population, the death of one of whom at least is to be attributed to the outrages of the blacks, that we have something like satisfaction in informing our readers the hand of retributive justice has reached one of its victims - and that no minor offender against the laws which bind society together. Millbong Jemmy, the principle in no less than five murders within a comparatively

⁴² Moreton Bay courier, 10 January 1852.

⁴³ Campbell, Petrie's Reminiscences, p.169.

short space of time was killed yesterday morning...⁴⁴

The white man's life the Courier claimed to have been lost to Aboriginal outrage was in fact a case of accidental shooting by the deceased's companion. It appears that they were loading wood into a boat near Norman Creek when they were approached by a black who asked for flour, the Courier said that he was armed with a waddy, which was hardly unusual because Aboriginal people carried weapons for hunting, and that he demanded flour rather than asked for it. The day following this incident, Milbong Jemmy was shot. A letter to the editor of the Sydney Chronicle suggested that he died at the hands of bounty hunters who were seeking the reward offered by the Government for his capture.⁴⁵

Milbong Jemmy had also been illegally flogged⁴⁶ in Queen Street by Gilligan, Brisbane's official scourger in 1839.⁴⁷ As already stated, during this era it was illegal to flog anyone other than soldiers, sailors or convicts and even then it required a sentence from a civil or military court to legitimate it.⁴⁸ Cryle explains that Milbong's flogging does not appear in official records "probably because it would not have been sanctioned by superiors in Sydney".⁴⁹ It was an illegal act and therefore he is probably right. But the fact remains, if we are to believe Tom Petrie, that although it was illegal, Milbong Jemmy was actually sentenced to this flogging by a Brisbane court the day before it took place.⁵⁰ Apparently

⁴⁴ Moreton Bay Courier, 7 November 1846.

⁴⁵ Cited in Moreton Bay Courier, 2 January 1847.

⁴⁶ Around this time there was another Aborigine who was also a thorn in the white side, known as Horse Jemmy. Many Aborigines were given the same name by Europeans, which sometimes makes research confusing. It may also have resulted in injustices within the legal system. The standard Aboriginal defence of mistaken identity may in some cases have been valid.

⁴⁷ Petrie, Reminiscences, pp.159, 167-8.

⁴⁸ Flogging was legally introduced in Queensland in 1865. See Offences against the Person Act.

⁴⁹ Petrie, Reminiscences, p.xxi.

⁵⁰ Ibid, p.168.

For virtually the whole of the 19th century Aborigines who had committed no

beating blacks was by no means uncommon. Speaking of the early 1850s R. B. Sheridan said that the treatment handed out by some white people in Brisbane was ... "very bad, I have seen them beaten struck and knocked down".⁵¹

For some time the white residents of Moreton Bay had been clamouring for the appointment of a resident supreme court judge. It was claimed that serious crime was not brought to trial because of the expense of sending prisoners and witnesses to Sydney. But the number of arrests for crime did not appear to warrant a resident justice.⁵² Two magistrates in addition to Capt. J. Wickham had been appointed in November 1848. These were the Government Medical Officer, Dr D. Ballow and a pastoralist named J. McConnel.⁵³ However, this was not sufficient to satisfy the demands of the northern residents who complained that the absence of a higher court was delaying the region's progress. In response the Government proclaimed that a twice yearly circuit court would be held in Brisbane during May and November.⁵⁴ The first assize was held on 13 May 1850 under the direction of Justice Therry who was accompanied by the Attorney-General of NSW and the Crown Solicitor.

One of the cases involved three British soldiers who were tried for firing at and wounding some Aborigines, which they claimed was in self defence. The incident sprang from an unjustified claim by a settler that Aborigines were killing cattle. Brisbane's Chief Constable Fitzpatrick, was ill in bed which resulted in Lieut. Cameron taking out some troops to deal with the affair. In the dark and confusion some soldiers opened fire, apparently without

crime were flogged out of some townships at sundown by the police. This practise was given tacit official sanction by the Queensland Government. See, Tozer to Police, 7 September 1891, A/2, POL, 12, QSA. "Aborigines are, or should be, removed after the sun goes down and no law is necessary to justify this save the law of necessity".

⁵¹ Evidence of R. B. Sheridan to Select Committee on Native Police, 1861, p.23.

⁵² NSWV&P, vol.1,1849. p.365.

⁵³ NSW Government Gazette, 1848, p.1646.

⁵⁴ NSWV&P, Vol.2 1849, p.1707.

orders. One of the soldiers was found guilty of assault and gaoled for three years. In his address to the jury, Attorney-General Plunkett championed Aboriginal civil rights, asserting

... a black man's camp is as much his castle as a white man's house, and if he found it invaded at night by an armed and hostile force, he would be justified in throwing a boomerang.⁵⁵

This says something about the status of "Tommy Atkins"⁵⁶ in colonial society, because it is important to point out that in the several cases of white constables shooting blacks which were to follow this incident, although enquiries were held, no white policeman was ever tried and sentenced.

Because Brisbane's circuit court sat only in May and November, prisoners could spend up to six months awaiting trial. Expense was another problem, cases failed because witnesses did not turn up. There was one person however, who was quite punctual. In the first half of the 19th century, circuit courts were quickly followed by the colony's hangman when sentences demanded his services. It was the policy to hang those convicted in front of the locals at the scene of the crime.⁵⁷ For example, in Port Phillip in 1842 an estimated crowd of 6,000 watched the execution of two Aborigines. Yet as early as the 1840s it was abundantly clear that in Britain the capital statutes were being replaced by those that awarded imprisonment, and although this enlightenment did not have the same impetus in NSW the fact that it was underway and that it was desirable, were being recognised in the colony. In 1847 the Moreton Bay Courier acknowledged this change in legal thought, referring to the demise of

⁵⁵ Moreton Bay Courier, 29 June 1850.

⁵⁶ "Tommy Atkins" is the nickname given to British soldiers in the same way that "Digger" is used for Australian ones.

⁵⁷ R. Beckett, and R. Beckett, Hangman, (Melbourne, 1980), pp.78-81. Alexander Green, NSW's executioner is said to have hanged over 500 men and women during his term of office.

The savage and bloody ordinances which disgraced Britain during the reign of George III which invited and ensured the disgust of every nation in Europe and which plied the hangman's noose until the halter became almost a national emblem...⁵⁸

These days, the editor asserted were over, no more would the British public be subjected to the sight of sixteen year old servant girls swinging on public scaffolds for the crime of having robbed their employers of a few shillings.⁵⁹ The editor was a little premature, because although the public execution was disappearing, it was not until the 1860s that a Royal Commission inquiry into the laws of the United Kingdom finally put an end to it there. By that time practically the only crimes punishable by death were murder and treason.⁶⁰ The Commissioners refrained from considering the abolition of the death penalty altogether, although there was pressure for them to do so,⁶¹ but they did make recommendations that led to the abolition of the public execution in Britain.⁶² Eventually all the countries that fell within the British sphere of influence followed suit. Apart from reasons associated with public disorder, the spectacle was becoming increasingly seen as a revolting display that brutalised those who came to view it. For instance, at the public hanging of a Chinese man in Brisbane in 1852 it was observed that

⁵⁸ Editorial, Moreton Bay Courier, 11 September 1847.

⁵⁹ Ibid. In fact the Editor exaggerated. Hanging for the theft of a few shillings was so rare as to be almost non-existent. Although the crimes that attracted the death penalty varied considerably, the principle ones were murder, forgery, highway robbery (which was defined in a variety of ways) and burglary.
Source:- "Capital Convictions and Executions", London and Middlesex, Home circuit, Western Circuit and Norfolk Circuit. HOM, 441, 6, PRO.

⁶⁰ This was not the case in Scotland, where although they were seldom invoked, several other offences were punishable by death.

⁶¹ In fact a House of Commons Select Committee had recommended its abolition in 1836.

⁶² Queenslander, 24 March 1866.
It should be pointed out that NSW abolished the public execution before the British did.

...the crowd assembled to witness the awful spectacle was not large and we observed only one Chinaman; but disgraceful to say, a large proportion consisted of women and children.⁶³

In earlier times British children had been taken to watch public hangings as a warning of what might happen to them if they strayed from the paths of virtue. Therefore one might draw the conclusion that the disgust shown by the Courier's reporter demonstrated a more progressive approach to the subject. In addition, The Moreton Bay Courier had even campaigned over a long period against the imposition of the death sentence in cases of rape. Commenting on a bill introduced to the Legislative Council of NSW, the editor felt that

...as to the punishment of death for this crime, we have long since expressed our belief that it ought to be abolished. Independently of any other consideration, it is a direct temptation to murder; for a ruffian who has perpetrated one crime will be urged to cover it up by slaying his victim when he knows that he faces the gallows anyway...⁶⁴

But this it appears, was only when the situation applied to white men. In direct contrast to this more enlightened school of thought the ritual execution was considered particularly important as a tool to achieve Aboriginal acceptance of the rule of English law. When it came to hanging blacks the perspective changed and the press of the day was far less concerned about triggering further crime or the brutalising effects of the public exhibition; in fact they welcomed it. On the occasion of two Aborigines being convicted of rape in 1859 the Courier was too shy to state the offence because "it is of so heinous a nature we forbear to mention it"⁶⁵ but they screamed with indignation that

⁶³ Supplement to the Moreton Bay Courier, 6 January 1852.

⁶⁴ Moreton Bay Courier, 22 September 1855.

⁶⁵ Ibid, 1 June 1859.

The sentence of death is a righteous one. Let the transgressors of the law die... let there be no mistaken whine by the sentimental. The arguments of the abolitionists that public executions demoralise the spectators have no weight in this colony... the savage ... who is a terror to the peaceful domestic in the hut should on no account be put forward as a proper recipient for human mercy...⁶⁶

The year of that editorial It should be noted, was 1859. This is important because NSW abolished the public execution in March 1855. From this date hangings were carried out away from public view inside the colony's gaols, and of course this applied to the future Queensland. Therefore what the Moreton Bay Courier was advocating was illegal. This fact however did not appear to concern Brisbane's sheriff who obviously agreed with The Courier, and recorded

Three Aboriginals [were] admitted inside the gaol to witness the execution. There was[sic] thirty to forty Aboriginals looking on from Windmill Hill and in order that they might get a good view I caused the top part of the scaffold to be left open, in place of a black cloth being put around it ... I am also happy to be able to state that some of the Aboriginals understood the whole case, and admit the justice for such an offence - there can be no doubt they will communicate it to the neighbouring tribes, and it is to be hoped that having a knowledge that their lives will be forfeited they will cease to perpetrate a crime which of late has been so frequently perpetrated in the Logan district.⁶⁷

It would be interesting to know who ordered Sheriff Brown to make the hanging public, because it is unlikely that he would have done so on his own initiative and the records show no rebuke for his decision. It appears then, that the abolition of public hanging throughout the colony did not apply to Aborigines. The venue changed but the executions themselves were staged with the same aims that had motivated the "bloody code".

⁶⁶ Ibid.

⁶⁷ Letterbook of the Sheriff, Prisons Dept, 59,101, PRI/G62, QSA.

It can be argued therefore, that while the system of punishment for white people was embracing the ideas of a modern penology, for blacks it was reverting to one based on a spectacle aimed at deterrence and in general terms it appeared that people supported it. The Moreton Bay Courier certainly opposed the "southern" legislation which abolished the public hanging. It lauded the visible execution of blacks stressing the deterrent value and explaining that

... for hostile behaviour towards whites Aborigines when caught were publicly hanged as criminals as a deterrent and as a warning that they had to abide by white laws,⁶⁸

The effects of this legal ambivalence based on race, impinged on the justice accorded to Aborigines throughout the entire colonial era, placing it at variance with the way whites were being treated by the less draconian criminal justice system that was emerging.

As late as 1880, thirty-three years after the abolition of the public display, Aborigines were still subject to public execution, albeit illegally inside gaols.⁶⁹ In that year on 16 October, an Aborigine was executed at the Brisbane gaol. A local historian maintains that the "Kabi" people were taken en masse to watch the hanging as a deterrent.⁷⁰ This is probably an exaggeration, but the press of the day reported that "an unusually large number of blacks attended the hanging".⁷¹

⁶⁸ Moreton Bay Courier, 13 January 1855.

⁶⁹ Although public hangings had moved behind closed doors the descriptions in the press frequently consisted of most graphic accounts which included such details as the prisoner's facial expression and death struggles. See Queenslander, 14 June 1879. After a hanging at Toowoomba the paper castigated the executioner for pulling the felon's head from his body. On the other hand some journals, the Moreton Bay Free Press for example were so revolted by the spectacle they made it a stated policy not to provide details of hangings.

⁷⁰ D. Bull, Short Cut to Gympie Gold; Short stories of Tewanin and the sunshine coast, (Yeerongpilly, 1982), pp.68-70.

⁷¹ Brisbane Courier, 17 August 1880.

In spite of the Courier's constant complaints about Aborigines not being answerable to the law, quite a few warrants were issued for the arrest of blacks who had been accused of serious crimes. In late 1846 "Uncle Marney" who is referred to earlier in this chapter, was captured and brought to Brisbane by two Border Policemen who were on Commissioner for Crown Lands Simpson's staff. Marney was placed in the lockup to await the arrival of a witness from the Darling Downs who would testify against him. The crime with which he was accused was spearing cattle at the Redbank Government Station.⁷² Three days before Marney was taken, Mulrobin, said to be the chief of the South Brisbane tribe, was captured at Ipswich. He was locked up to await evidence that would implicate him in the murder of John Uhr.⁷³ During this period Warrants were also issued for the capture of Aborigines Constable, Canary, Milbong Jemmy, Omulli and Dundalli.

In Dundalli's case he evaded capture for many years becoming a hated and feared resistance leader in the Moreton Bay area. It is impossible to say how many attacks he made on white people or their property because the practise of attributing all depredations involving Aborigines to the current bete noir was very much the order of the day. Dundalli was a Bribie Island man of the Ngunda people who was finally arrested in 1854. Tom Petrie asserts that Dundalli was at this time employed by a brick maker named Massie, and on the day of his arrest was cutting down a tree down for his employer, somewhere close to where Brunswick Street now stands. It appears that the Brisbane police knew where Dundalli was, but were unsure of their ability to capture him.⁷⁴ They sent an Aborigine of the Brisbane people named Wumbunger to cause an altercation during which the police appeared on the scene and Dundalli was taken.⁷⁵ His trial on 20 November 1854 under Therry J, gives insights into the legal system that was applied to Aborigines from the judges perspective. It also provides a view of Dundalli the man, which was something of

⁷² Moreton Bay Courier, 21 November 1846.

⁷³ Ibid.

⁷⁴ "Dundalli" apparently means Wonga Pigeon. A man of this name served in the Native Mounted Police in the early 1850s, but whether it is the same man is not known.

⁷⁵ Petrie, Reminiscences, p.175.

a rarity; normally Aborigines said little at their trials and we know them only as names.

Recalling Dundalli's trial, Judge Therry wrote that it had not fallen to his lot to try many Aborigines but he particularly remembered the case, asserting that Dundalli was a man of

most savage ferocity, his crime of the deepest dye, yet whose intelligence betrayed a sad and pitiful inferiority to the European mind. He was the largest man I ever looked upon. In truth he was a giant; and so formidable was his ferocious strength, that the sheriff was obliged to bring him from his cell in the gaol with his hands tied with ropes and in that state he was placed in the dock...⁷⁶

The defence council, understandably, objected to his client appearing in the dock in this way, because pinioning implied guilt.⁷⁷ Therry J was prepared to order that the accused be released, but the sheriff with his band of six constables who were in attendance could not guarantee restraining Dundalli therefore he remained tied throughout his trial. According to Justice Therry, Dundalli was tried as the ringleader of a group who murdered a family named Gregson. Therry J maintains that the killing of three people was part of a robbery and was made more heinous by the fact that the family had been signally kind to him. Without attempting to diminish the enormity of Dundalli's crime, this repayment of kindness by treachery was so often claimed in attempts to denigrate the Aboriginal character that it loses any impact that it may have had.

The judge's memory may also be faulty, because Dundalli was not tried and convicted for the murder of the Gregson family; he was convicted and sentenced to hang for an attack on a sawyer named William Boller at Pine River in September 1847. At the trial James Smith (whose evidence it will be remembered resulted in the conviction of Jemmy parsons for the same crime) asserted that he and Boller were attacked by a party of Aborigines led

⁷⁶ Therry, Reminiscences, p.287.

⁷⁷ This may be why Aboriginal people were brought into court in Western Australia chained by the neck. Neck chains incidently, were advocated by the Queensland police in place of handcuffs for Aborigines, after the introduction of the 1897 protection act. They were used extensively on Cape York.

by Dundalli and that Boller later died in Brisbane Hospital from the wounds he received.⁷⁸ Dundalli's defence council, a man named Faucett, referred to the "mockery of protection" that was supposed to surround blacks"; a remark that Therry J strongly objected to.⁷⁹ After being convicted and sentenced to death for the murder of William Boller, Dundalli was again placed in the dock and convicted of the murder of Andrew Gregor. The evidence in this case was given By Ralph William Ballow. Faucett, with some justification, complained that Ballow had already been shown to be an unreliable witness.⁸⁰

Whether Dundalli was something of a wag who thumbed his nose at imposed laws he refused to recognise, or if the proceedings were beyond his understanding is difficult to determine at this distance. Whatever it was, his lack of respect did not altogether impress Therry J who found that

... in the course of the trial, it was very distressing to notice the indications of a marked inferiority of mind that his whole conduct evinced. He beckoned, in the middle of the trial, to a settler whom he recognised in court, and said he wanted to speak to him. When the man approached the dock, the prisoner whispered to him in a tone sufficiently loud, however, to be quite audible by me, 'Lend me one sixpence, and I'll give it to that fellow up there (pointing to me upon the bench), and he'll let me off.' At another stage in the trial he told me that if I let him off 'he would row me down to Sydney for nothing'- a distance of 700 miles of the Pacific ocean...⁸¹

The humour, which it may have been, was clearly lost on Therry J who was probably reminding himself that Dundalli was on trial for his life and should therefore, take the event and the institution surrounding it seriously. Connors believes that Dundalli was

⁷⁸ Morton Bay Courier, 25 November 1854.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid, p.288.

contemptuous of the sentence of death that was passed on him,⁸² and well he might have been, because in the four previous years, five Aborigines arraigned on capital charges before the Supreme Court on circuit to Brisbane had cheated the gallows by virtue of having escaped, been discharged for want of witnesses, or had been reprieved by the Governor of NSW. Seven had been forwarded to Sydney for imprisonment or to labour on the roads. The only other Aborigine to be executed between 1841 and 1855 was Davey, who went to the scaffold in August 1854 while Dundalli was in custody awaiting trial. However, had Dundalli been able to read the Moreton Bay press and understand the anger that was being generated by a government that was allowing Aborigines to "get away with murder" he might have been less composed about cheating the hangman. Although Brisbane was on the circuit of the supreme court it was still a close community united in its antagonism to things of southern emanation. It is probable that Dundalli was guilty as charged, but it is certain that the white population of Moreton Bay wanted to see an end to Aborigines "getting away with it". Without implying in any way that an innocent man was hanged, the authorities needed to prove to a disgruntled section of their population that they had the will to punish Aborigines charged with murder. Dundalli's defence was one of mistaken identity, which considering his size and the unlikelihood of him being mistaken for anyone else, was understandably rejected. In his reminiscences, Therry J made some interesting comments in relation to the case. One of them was that

... the resemblance of the persons of this race to one another is so close that it often is difficult to establish the identity of the guilty party.⁸³

He went on to say that it was a painful part of judicial duty to try Aborigines where death is mandated by conviction but, "it would be a grievous injustice not to make black and white man alike amenable to law".⁸⁴ In fact the criminal justice system seldom convicted whites who unlawfully killed blacks, which was a fact that obviously did not escape

⁸² Connors, "Theatre of Justice" p.53.

⁸³ Therry, Reminiscences, p.288.

⁸⁴ Ibid, p.286.

Aborigines.

Dundalli was executed in January 1855 and because the colony of NSW abolished the public execution in March of that year, he was one of the last convicted murderers to be publicly killed. Killed because Dundalli was not hanged, he had to be strangled to death. NSW's public executioner, the inept alcoholic named Alexander Green badly botched Dundalli's execution by making the rope far too long. Dundalli landed on top of his own coffin and bounced up into the air resulting in Green having to tie his legs up behind his back and on to his pinioned arms "like a trussed turkey" until the condemned man died.⁸⁵

The rhetoric of the criminal justice system as applied to Aboriginal offenders was one that implied extreme propriety which would appear to weaken the argument presented by this thesis. In his Reminiscences Justice Therry points out that a defence counsel was always provided, interpreters procured and that these and any witnesses who might testify on their behalf were all provided at the Crown's expense, and that the only crime for which blacks were executed was murder.⁸⁶ This was the fantasy of equality before the law that supported the claim of blind justice; the facts were somewhat different. A defence counsel could not be briefed properly by an Aborigine who did not understand the working of the court system and probably did not speak English. It is a telling point that the role of defence counsels in trials of Aborigines was overwhelmingly restricted to appealing to juries to ignore the colour of the accused, with the occasional addition that in God's eyes all human beings were equal. In very few trials were witnesses called by the defence and while it is true that interpreters were nearly always provided, how much of the accused's language they actually spoke is debatable. Several letters to editors on the subject exist that are quite scathing about interpreters who claim to speak Aboriginal languages.⁸⁷ For about thirty

⁸⁵ Moreton Bay Courier, 6 January 1855. The reporter was appalled by the hangman's ineptitude

See also, Petrie, Reminiscences, p.175.

⁸⁶ Therry, Reminiscences, p.287.

⁸⁷ See for example Moreton Bay Courier, 5 November 1856.

years James Davis was Queensland's interpreter. Without wishing to put too fine a point on it, Davis was a Scottish blacksmith who was transported at 19 years of age and spent another 14 years living as a runaway among Aborigines. Therefore, his ability to understand the nuances of legal language must have been questionable; his ability to translate them even more so. Under these circumstances, trials although properly conducted, were often little more than travesties. The reality of colonial courts trying Aborigines for serious offences was that they were frequently discriminated against.

The construction of Aboriginality in the white mind was of a deviant race that had to be deterred from crime. In the eyes of many settlers the presence of an Aborigine in court was proof of guilt and even if doubt existed, their court appearance served the useful purpose of deterring others of their kind. It was from such people that juries were found and for that matter, judges as well. The quotation at the beginning of this chapter from the reminiscences of Justice Therry that speaks of blacks suffering loss of life for offences that would earn a white man imprisonment, appears to express concern for the administration of justice across racial lines. It may also contradict his assertion that they were only executed for murder. But another dimension is added when he goes on to say

the natives condemned by our tribunals seldom endure the restraint of close confinement. Their lives have been spent in roaming their native forests and when condemned to imprisonment ... in a few months they pine away and die.⁸⁸

How should this be interpreted? One might believe that the judge himself was disposed to order an execution for an Aborigine when under the same circumstances he might have sentenced a white to imprisonment.

In the Moreton Bay district a pattern emerged which saw any black who won white disapproval labelled as being involved in some murder or other. One gains the impression that virtually the entire Aboriginal race took part in the killing of Uhr, Gregor and Shannon. Seldom was a chance missed to make accusations against the blacks. Reporting

⁸⁸ Therry, *Reminiscences*, p.287.

on an inter-tribal fight between two rival groups the press reported that none were killed but several were seriously injured and that included in the conflict were

some of those who were known to be active in the murders of Messes Uhr and Gregor... but they took good care not to approach the township⁸⁹

From the court proceedings reported in the press one gains the impression that Aborigines were generally treated fairly for minor offences in the Brisbane area. However there were exceptions. Imprisonment without trial was not absent either. Johnny Stinkabed had already served a sentence at Cockatoo Island when he was brought before Magistrate W. Brown at the Brisbane Police court in early April 1860. He was charged with drunkenness and having stolen a shirt, a pair of trousers and three handkerchiefs from a clothes line. The Magistrate told him that as he had already occasioned sufficient expense by his journey to Cockatoo he would dispense with the cost of a trial and summarily sent him to gaol for three months.⁹⁰

As the 1850s drew to a close the nature of Aboriginal transgressions appear to have changed. It seemed that there were less serious offences and more petty and street crimes, although crimes by blacks directed at white women appear to have become more prevalent than previously. In 1860 sheriff Brown was asked how long since he had heard of outrages being committed by the black people of Moreton Bay and he replied that he had heard of none for the past five or six months and even these had been no more than minor robberies, which he referred to as "petty larcenies in Fortitude Valley".⁹¹ He also expressed the opinion that the need for the Native Police at Brisbane, Sandgate or the Logan no longer existed.⁹²

⁸⁹ Moreton Bay Courier, 6 November 1847.

⁹⁰ Ibid, 10 April 1860.

⁹¹ Evidence of Sheriff Brown to 1860 police enquiry QVP, 1860 p.544.

⁹² Ibid.

Crimes of violence though, had by no means disappeared altogether. In January 1869 two white men, Buckley and Davis were charged with the manslaughter of Aboriginal Johnny Milford. They were acquitted; their defence was the classical case of not knowing that the gun was loaded. They thought that it was charged with powder only and they wished to frighten away what they believed to be some Aborigines about to attempt a break in. They were apparently mistaken because it seems that Johnny Milford was simply walking past the place. But the mistake was to have a dreadful sequel. Two months later, ten year old Carl Wildermote was, without apparent motive, tomahawked to death at the German Station. The Queenslander's reporter argued that

From all the circumstances there appears to be good reason to suppose that the murder had been perpetrated by the blacks in revenge for the death of Johnny Milford who was killed near the Kedron Brook Hotel some time back...⁹³

The evidence presented to the inquiry into this child's death and the court's findings agree entirely with this reporter's analysis. They point to the fact that although Moreton bay Aborigines had to a degree been pacified, some said nearly to extinction, they still adhered to their own law which demanded lex talionis (an eye for an eye).

It can be argued then, that as the district of Moreton Bay advanced socially and was transformed from penal station to free settlement, then to part of an independent colony, the morality governing the administration of justice to black people had not become more enlightened; it had if anything, declined. Local Aborigines slipped more and more into the role of criminals or fringe dwelling nuisances to be increasingly hauled before the courts for a variety of offences. Apart from the dubious crime of drunkenness, usually accompanied by disorderly conduct, which earned them short sentences of 24 or 48 hours in the police cells, the records show spiralling numbers of blacks being incarcerated in the colony's gaol for more serious crimes.⁹⁴ Although men like Dundalli and Millbong Jemmy who terrorised the Moreton Bay settlers in the 1840s were gone, the conflict, which was

⁹³ Queenslander, 9 March 1869.

⁹⁴ See Queensland Police Gazettes.

often unidentified or unadmitted resistance, remained, simply entering a new phase. It endured because 35 years after the imposition of the colonist's laws, the problems of administering justice to Aboriginal people remained unaddressed and consequently unresolved. The inequities that had been either deliberately placed, or allowed to creep into the legal system had if anything, been added to. Aborigines obviously did not know that they were being subjected to a criminal justice system that belonged to a previous century, but they certainly knew a dual system was in operation and they were not being treated in the same way that whites were. Furthermore the archaic approach to Aboriginal crime management that had been employed at Moreton Bay was, with a few variations, to be repeated in a dozen places along the expanding frontier of white settlement.

Chapter Five

Crime or Armed Resistance? The Northern District 1840-1860.

... as to their being hostile we need not be surprised as they consider us invaders which in fact we are - but we are placed in a predicament ... we must protect our lives in such a manner as to convince the savage that he is powerless to cope with the white man's arms.

Courier, 18 October 1861.

No society has ever been without lawbreakers and there can be no doubt that Aboriginal people had their offenders. Were this not so, many of their complex laws would have been unnecessary. It is equally a fact that they frequently preyed on Europeans. Not to recognise this and to permanently cast the black people in the role of victims is to produce a distorted view of the available evidence. Nonetheless, crime is often extremely difficult to classify and this is all the more so when it is considered historically. Therefore studies involving the British settler's response to Aboriginal offences in the 19th century should recognise that analyses of what were recorded by white colonists as crimes, frequently presented problems of definition. This is particularly the case in infractions within the more settled areas which involved property. On the face of it, the theft of white belongings by blacks represented the manifestation of an Aboriginal desire to enrich themselves at the expense of Europeans. Yet it cannot always be viewed so simply. Some cases of theft undoubtedly were that, but others often contained additional elements which represented a rejection of the white presence and their ever increasing authority. They were acts of resistance in that they were directed at white people or their economy with the express purpose of making life unbearable. It seems surprising from a 20th century perspective, that it was not always apparent to the British settlers that their husbandry was being attacked for this purpose when Aborigines slaughtered or injured animals with no attempt to eat them,¹ destroyed crops or set fire to grass or buildings, or simply wrecked white property. Such action was usually attributed to a delight in cruelty, or wanton savagery. It was even less apparent when scarce resources which appeared to have no value to Aborigines were stolen. It was put down to the common knowledge that blacks were treacherous,

¹ Apart from being a food source themselves, the damage done by European-introduced animals was in some cases devastating for Aborigines. Therefore attacks on stock was often aimed at protecting supplies of food and water, but it should not be forgotten that Aborigines were hunters and that many of the invaders animals were slaughtered because of an Aboriginal love of the chase. Whites who employed blacks often recorded that the appearance of an animal was a signal for a universal "stop work" . See, May, *Aboriginal Labour in the North Queensland Cattle Industry*, p.140.

inveterate thieves.

In relation to Aboriginal behaviour one of the most constantly employed epithets was that of treachery. This accusation generally arose from what white people saw as apparently motiveless attacks following long periods of peaceful co-existence. Quite apart from any other considerations² it is unlikely that Aborigines originally recognised the permanence of the white invasion. Many areas had seen white explorers come and leave. Therefore what the white presence portended may not have been initially obvious to a people who had no concept of invasion and the permanent expropriation of land. It is however, understandable that when it did eventually become clear to them that the invaders were here to stay, they should attempt to do something about it.³ The white reaction to this was often excessive, unjust and in the light of subsequent events, illconsidered. The point is then, that reports of what contemporary white society saw simply as treacherous felonies committed by Aborigines, should have been and still needs to be considered with more care.

This is particularly the case with violent offences which were seemingly senseless acts of savagery involving killing and mutilation. Many of them fell within the realms of armed resistance in that they were aimed at creating terror with the ultimate objective of driving out an invader. Some may have been quite simply deeds of retaliation for specific offences, but many were acts of resistance warfare. Even some crimes of a sexual nature may have fallen within this category, for it has been claimed that rape has been an inevitable accompaniment of war.⁴

² Quite apart from crimes of commission, it was not difficult for white people who were unversed in Aboriginal law to give unwitting offence to blacks, whose law was based on "an eye for an eye". However this was something Europeans were well aware of by the mid 19th century,.

³ H. Reynolds, "Racial Violence in North Queensland" in Lectures on North Queensland History, (Townsville, 1975). p.74. Reynolds points out that in some places violence occurred after months or even years of peaceful co-existence.

⁴ S. Brownmiller, Against our Will: Men Women and Rape, (Ringwood, 1991), p.31. The Aboriginal concept of "payback" should also be considered

It is understandable that Europeans should construct Aboriginal responses to the white presence in terms of their own values, but they seldom attempted to see anything from the Aboriginal perspective. This resulted in blacks en masse being labelled murderers and thieves. The early evidence of inter-racial contact however, suggests that they were not. Explorers remarked on the fact that they could leave belongings and find them untouched on their return. The Dawson River Aboriginal people who were later to perpetrate an attack on whites that involved rape, killing and theft which shocked white Australia⁵ had a perfect opportunity to enrich themselves at the invader's expense when Christopher Hodgson and his party left their belongings unattended during their search for Leichhardt. Instead, their honesty caused Hodgson to remark that

... not a single article had been touched, even though we had intentionally scattered some preserved soup, tobacco, and twine for them to pick up.⁶

Hodgson's analysis of their initial response to white people was that

...we had not the remotest foundation for suspecting their intentions were hostile; in fact their whole line of conduct was only that of a people curious to see all that was to be seen, without giving offence.⁷

Half a century earlier Governor Phillip noted in his dispatches that the blacks themselves left their tools and weapons lying around and were astonished and enraged when convicts stole them.⁸ The point is therefore, that there is evidence to suggest that many Blacks became, rather than were, the lawbreakers Europeans accused them of

⁵ I refer to the Hornet Bank station massacre.

⁶ C. Hodgson, Reminiscences of Australia, (London, 1846), p.353.

⁷ Ibid, pp.356-7.

⁸ Phillip to Lord Sydney, 30 October 1788, Dispatch No.10, in CO 202,1, PRO.

being, and their actions were often motivated by the necessity or desire to resist.⁹

In a dispatch written in 1855 Commissioner for Crown Lands William Wiseman explained that throughout the Leichhardt district the Aborigines were in a very "wild and savage state" having committed six murders in the month of January the previous year. He also reported that those who frequented the Mackenzie "are so very hostile [that] they will attack whites when there is little chance of plunder". This group, Wiseman said, had also attacked a native police detachment. In the same letter he went on to inform his chief commissioner that the

greatest number of murders which I know of in these districts I should attribute to the determination of the natives to pillage and murder till they can drive out the white man.¹⁰

There is no doubt that some frontier settlers saw Aboriginal depredations as guerilla warfare. Giving evidence to a parliamentary select committee, pastoralist William Forster said

... when they understand our superior power... they will carry on small depredations and no doubt take lives at times, but their object is not [simply] to take life - it is now war.¹¹

Although they did not employ the word itself, what Wiseman and Forster were talking about was terrorism.

The concept of striking terror into the minds of invaders as a tool to drive them away

⁹ They were also often motivated by the sheer necessity to survive; starvation and crime have never been strangers to each other.

¹⁰ CCL Wiseman to CCCL, 28 August 1855, 35/55, CCL 3/92. QSA. The districts Wiseman was referring to were Moreton Bay, Maranoa, Darling Downs, Burnett and Wide Bay, virtually the whole of the Northern District.

¹¹ NSWV&P, 1856-7, p.1207.

has a long history in the annals of resistance. The more recent activities of the FLN in Algeria, the Mau Mau in Kenya, EOKA in Cyprus and the Communist terrorists in Malaya, which all occurred in the 1950s provide frightening examples of the use of terror to achieve political aims. Obviously the end result of killing is death and in the final appraisal the method of dying, providing it is not too slow and painful, makes little difference to the victim. For those that are left however, the manner of death and the reasons underlying the taking of life are of great importance. There is also a tendency to categorise it as "clean" or otherwise and this has considerable bearing on the emotions engendered. On the subject of passions, offences directed at women and children are particularly affective and therefore they can be important weapons in the terrorist's armoury. Factors other than the crime itself are important as well; the location of the offence is of substantial psychological significance. If it can be carried out in an area considered safe or sacred it produces a greater shock wave.¹² The more gory or emotive the killing may be then, the greater the likelihood of inducing panic into the minds of those the terrorist would rid himself of. But the weapon is also double edged, such tactics can have the reverse effect and give rise to a desire for revenge at any price and on anyone that is even remotely connected with the terrorist. This can be counter productive to the aims of insurgency and it was the response that armed Aboriginal resistance generally precipitated.¹³

¹² In the 1950s E.O.K.A. terrorists (or freedom fighters depending on one's political viewpoint) whose aim was an end to British colonial rule and the union of Cyprus with Greece, made something of an art form of killing their enemies while they prayed in church or lay sick in hospital. They also killed a very obviously pregnant English woman for the political impact it would have. The victim whose car was ambushed, was a Women's Voluntary Service worker. The less prejudiced are prepared to admit that it could have resulted from mistaken identity. However, EOKA also shot and killed, at point blank range, the wife of a British Army Sergeant in Famagusta. Troops of the Royal Ulster Rifles, who were responsible for internal security in the area ran amuck and innocent Cypriots were killed. This caused a political scandal in Britain with increased calls for the island to be granted independence. This was achieved in 1959.

¹³ This "backlash" is not always counter productive as far as the terrorist is concerned because it focuses attention on the situation.

There is of course, no written or verbal evidence to prove that Aborigines rationalised attacks in this way, but they cannot have failed to understand the impact that fear has on people and there were on the northern frontier acts of pure terrorism perpetrated by both sides. There were also assaults on settlers and their property that bore the hallmark of psychological warfare in addition to their physical dimensions. For example in what is now Central Queensland, Aborigines entered a building at night via the chimney and decapitated the occupants.¹⁴ After the Hornet Bank killings they daubed the blood of their victims on the verandah posts, the white women were not only raped and killed but their bodies were "frightfully mangled". William Miles the member of the Legislative Assembly who saw the bodies after the massacre asserted that the women and girls; even the very young, had their arms and legs broken.¹⁵ Neagle the family tutor, was also mutilated in "a shameful manner".¹⁶ This probably means that he was castrated after death. Following the killing of William Conn in North Queensland his legs were cut off.¹⁷ Such acts should not be considered simply as senseless crimes of violence, they may also be seen as political statements designed to induce shock and fear. It should not be imagined that such tactics were restricted to the northern district. Henry Reynolds provides evidence of similar events in Tasmania. He tells of attacks on settlers in 1828 that included the killing of two women and two young children, which "shocked the European community."¹⁸

Violent resistance to the presence of settlers by Aboriginal people who were considered amenable to English and accepted international law created legal dilemmas for the Government. With the proclamation of sovereignty over all land and people in a colony and the consequent definition of such lands as Crown Lands and the inhabitants as

¹⁴ Wiseman to CCCL, 26 April 1858, Wiseman Letterbook, JOL.

¹⁵ Miles to LA. QPD, 1867, pp.338-9

¹⁶ Deposition of William Miles cited in North Australian, 8 December 1857.

¹⁷ Queensland Police Gazette, 28 April 1874.

¹⁸ H. Reynolds, Fate Of A Free People: A Radical Re-Examination of the Tasmanian Wars, (Ringwood, 1995), P.107.

subjects, any resistance by the indigenous people could not be classified as an act of war, but as rebellion or some other criminal activity.¹⁹ This of course, is nothing more than a legal nicety. In his book Frontier, Reynolds argues that many settlers were absolutely aware that a state of war existed between them and the blacks. He also provides reasons why it was not admitted by either the Imperial Government or its colonial counterpart, asserting that

The legal situation was clear from the beginning. Australia was a colony of settlement not of conquest. The common law arrived with the first fleet; the Aborigines became instant subjects of the King, amenable to, and in theory protected by, that law. They could be murdered, outlawed or made subject to martial law but could not be treated as enemies of the state. Lord Glenelg, the Secretary of State for the colonies issued a definitive statement of the situation in 1837 when informing Governor Bourke that the blacks were protected by law and that it was impossible to regard them as aliens 'with whom a war can exist and against whom Her Majesty's troops may exercise belligerent rights'.²⁰

This should not be taken to imply that the British Army never operated against Aborigines; they were frequently in action against them, but as troops in aid of the civil power which is not legally the same as a military operation. However it should also be pointed out that there were occasions when martial law was declared in the Australian colonies, but it was entirely inconsistent with the claim that Aborigines were British subjects.²¹

The settlers' response to what was regarded as crime by Aborigines was frequently

¹⁹ Rowley, The Destruction of Aboriginal Society, p.157.

²⁰ Reynolds, Frontier, p.4.

²¹ See Reynolds, Fate Of A Free people, pp.110-11.

excessive and sometimes extreme. When pastoralist Gregory Blaxland²² was killed at Gin Gin Station in 1850 it was reported that

...a force was organised among all those settlers and their employees and they set out on a mission of revenge...The fugitive blacks were tracked down the Burnett River...it was estimated by the white party that there were about 1,000 congregated here when the attack was made. The avenging whites were determined to end the antagonistic attitude towards their settlement...it is not known how many blacks were killed in this fight, but they must have numbered hundreds.²³

Another version is given by M.C. O'Connell who was at the time a lands commissioner. He stated

A party of squatters on the Burnett were sworn in as special constables, followed the blacks and surprised a camp. We found a camp on the banks of the Burnett River, surprised a camp [sic] and burned all the things in it; owing to the difficulties of the scrub, we did not succeed in getting the parties supposed to be implicated in the murder.²⁴

This account is more likely to be accurate because warrants for the arrest of Neddy, Jacky Jacky, Tommy, Nosey and Boomer, the Aborigines held responsible for the killing of Blaxland were still in effect two years later. They would have been cancelled if the "avenging whites" mentioned in the first report, had shot them.²⁵ However, what

²² Gregory Blaxland was the youngest son of the man of the same name who by crossing the Blue Mountains in 1813 opened up the interior of NSW.

²³ Moreton Bay Courier, 31 August 1850.

²⁴ QVP, 1861, p. 492.

²⁵ Native Police Records held in Queensland State Library, No 48/112, cited in J. Taylor, Race Relations in SE Queensland, BA (Hons) thesis, University of Queensland, 1967, p.29.

O'Connell did not report was who, if any, they did get; he is unlikely to have admitted that doubtful suspects were shot. Nonetheless, the estimate of Aborigines killed in the first report is almost certainly a gross exaggeration. No one stands and waits to be shot and hitting moving targets is very difficult even with modern weapons. In 1850 these settlers would have been armed with single or double barrelled muzzle loading guns which were quite inaccurate over about 50 metres and took a fair time to reload. Nor was the conflict between the rifle and the spear as unequal as one might imagine because

... a blackfellow with some eight to ten spears in his hand and some paddymelon sticks will throw them all while a white man is reloading after firing two balls. I have known a white man to be pierced in the thigh by two spears successively thrown from 70 Yards off.²⁶

The only way that a large number such as the one quoted above could have been killed would have been to surround them in some way. Given the white population at the time, to "yard" 1,000 Aborigines who were determined to break out would have been simply impossible. Even accepting journalistic exaggeration though, the report raises some questions. The massive retaliation for instance; hundreds of blacks killed for the death of one white man could hardly be considered just. If there is any substance to the report, how can the "avenging whites" have known that they were killing those responsible for

²⁶ G. Lang, Melbourne Divided, (Melbourne, 1865), p.74.

Breech loading weapons made their appearance in the 1860s but they were still single shot or double barrelled weapons. The much referred to Snider rifle was not initially a weapon in its own right. It was an invention by a man named Snider that converted a muzzle loading Enfield into a breech loading rifle. In spite of the stories about the "murderous efficiency" of the firearm it was very inaccurate. The Queensland Native Mounted Police were issued with a shortened version which further decreased its accuracy. The British Government had large stocks of Enfield muzzle loaders in store and Jacob Snider provided a cheap conversion to a breech loader. (It was later to manufactured as a complete weapon.) It apparently did him little good - he went bankrupt. Both the long barrelled and the carbine version may be seen in the Queensland Police Museum.

Blaxland's death? If they were sure that they had cornered the perpetrators of the crime, the fact that there was no attempt to bring them to trial points to a campaign of deliberate extermination, or a white held belief that the normal rules of justice and the law did not apply to blacks. Nevertheless, although the affair may have been much embroidered, an event something like this certainly did take place. Apart from O'Connell's report, the Sydney press carried a news item which told how the Government

have lately been put in possession of a letter detailing a dreadful slaughter of blacks in some portion of the Northern District. It is said that between 30 and 40 unfortunate Aborigines, men, women and children were ruthlessly murdered by a party organised for the purpose and that the writer of the letter was an eye witness to the scenes which he describes. A similar account has been forwarded to one of the daily papers, though not for publication, the writer fearing personal violence should it be discovered that he made the facts known. Mr. Parkes intends moving the Government to an enquiry into the truth of these allegations...²⁷

It is fairly certain that Blaxland's death resulted from a planned reprisal. Two brothers named Pegg, who were employed by Blaxland as shepherds, were speared by Gin Gin Aborigines in 1849 and Blaxland is known to have led a punitive party in retaliation. They are declared to have killed many Aborigines and that in the area of the killing, skulls and bones were later ploughed up.²⁸ It was probably this vigilante action that cost Blaxland his own life, because the Aboriginal group is said to have returned to Gin Gin giving an outward appearance of desiring to live in peace. They then waited for a

²⁷ Sydney Morning Herald, 5 May 1850, cited in Moreton Bay Courier, 12 May 1850.

I can find no evidence of any official inquiry relating to this alleged slaughter.

²⁸ H. Blox, "The Early Settlement of the Burnett River District", cited in J. Nolan, Bundaberg, (Brisbane, 1952), p.23.

Stories of "hillsides white with bones" are quite common but they should be considered with caution. In Queensland's wet coastal regions bones often rot to nothing in a relatively short space of time.

suitable opportunity and killed Blaxland by nulla-nulla blows less than 200 metres from his head station.²⁹

There is little doubt that the excessive white response to Aboriginal depredations was morally reprehensible. From a legal aspect however, it may have fallen into a "grey" area. In 1780, The Riot Act³⁰ gave power to a single Justice of the Peace to disperse a riotous or unlawful assembly of 12 or more persons. In such a situation, magistrates could get assistance from a variety of sources. They could appoint special constables, call out the militia, or ask for aid from the Regular Army. This Act was an important tool to achieve civil order. It may have justified in law the summary punitive action taken against Aborigines. If it was possible to have regarded the actions of a group of blacks as a riot, they could have been fired on with legal impunity.³¹ Added to this, the Colony's Attorney-General outlined to police the circumstances under which they as individuals might shoot to kill, telling them

...it is his [the constable's] duty to arrest the person whom he is so authorised or commanded to arrest as soon as he sees him and if he cannot otherwise overtake him he may kill him...when the necessity arises they must perform their duty and the law will protect them.³²

Use of the Army however, was frowned upon by the British Government. The Colonial Secretary of NSW made this point clear to the Government Resident at Moreton Bay when he told Captain Wickham

²⁹ A. Laurie, "Early Gin-Gin and the Blaxland Tragedy", JRHSQ , No. 4, December 1952, p.47.

³⁰ 1 Geo 1, Sec 2, Ch. 5.

³¹ See McGonigle, LL.M Thesis, p.202.

³² Attorney-General to Commissioner of Police, cited in Queensland Police Gazette, 3 Aug 1864. This was a verbatim copy of the instructions given to police by Attorney-General Martin of NSW.

You are not at liberty to call on the military...the small detachment at Moreton Bay is not for the performance of police duties, and the military should never be required to support the police except in cases of actual emergency.³³

The British were later to refuse to allow the new colony of Queensland to use their troops for internal security purposes in spite of pleas, and the fact that the colonial government was prepared to pay for them.³⁴

An important point is that during the first half of the 19th century the phenomena of guerilla warfare and terrorism were unknown to most people. Therefore, such acts were regarded by many white people, who saw war in terms of drawn battle lines, drums beating and colours flying, not as armed resistance to invasion, but simply as crime.³⁵ It may be that the Aboriginal people also had to learn about fighting in this way, because their traditional inter-group fights or "pullen pullens" (which were often largely ceremonial) were themselves fought in battle lines.

It is evident that analyses of Aboriginal depredations committed in the 19th century continue to present problems for white people. Writing in the late 1980s J. Smith explains that attacks by blacks were seen as

³³ Col Sec to Government Resident Moreton Bay, 1842-53, 50/445, 4/3797, AONSW.

³⁴ QVP, 1861, p.451. 19th century Britain was reluctant to commit itself to the cost of frontier wars.

³⁵ Reynolds, Frontier p.8. Apparently the term "guerilla warfare" was first used during the Peninsula campaign which was the series of military operations on the Iberian peninsula during the first decade of the 19th century. In fact the British sent an army to aid Spanish guerillas. See W. Churchill, A History of The English Speaking Peoples, (London, 1857), Vol. 3, p.258.

Equally, many Europeans failed or refused to recognise that Aborigines were at war with them. For example when a shepherd was killed near Rockhampton in 1872 the Police Magistrate said "the evidence shows the man had been murdered by blacks [but] no sufficient motive for the crime could be discovered... Andrews [the victim] was a sober respectable man". See Queenslander, 17 February 1872.

foul murders or impertinence rather than manifestations of resistance. Nevertheless, a minority of these outrages probably did fall into the former category: the most horrendous relating to the murder of the three year old Moore infant near Ipswich by men feared as psychopaths by both black and white.³⁶

We cannot look into the minds of Aborigines who lived a hundred and fifty years ago and Smith may be right. However a counter argument is that, given the psychological impact of attacks on children, the "horrendous outrage" he refers to may have been an act of resistance rather than simply a foul murder. Further, it is by no means uncommon for those engaged in a guerilla war of resistance to be labelled psychopathic killers.

Aborigines in the Northern District had for over 20 years pursued a tactic of attacking travellers and isolated workers along a constantly increasing frontier. In terms of preventing white expansion, this had achieved little. Although the loss of life had been considerable, it had overwhelmingly been on the Aboriginal side. Accurate casualty figures are virtually impossible to arrive at, particularly Aboriginal ones. The most exhaustive work in this direction has been carried out by Reynolds and Loos who estimate that around 1,000 whites died on Queensland's moving frontier.³⁷ Aboriginal deaths there, are conservatively estimated to be ten times that number. The hit and run strategy of guerilla warfare and responses based on summary punishment rely heavily on their psychological impact. Both teach "the short sharp lesson" and do not usually produce heavy casualties, therefore the figures quoted are quite high.³⁸ The important point is that a state of war existed which, despite what the Imperial Government

³⁶ J. Smith, cited in Brisbane Town News From The Sydney Morning Herald 1824-1826, (Brisbane, 1989), p.iii.

³⁷ Reynolds, Frontier, p.29.

³⁸ To put these casualties into some sort of perspective, Australia lost a little under 500 men during the Viet-Nam war.

officially said on the matter, was undeniably recognised in some quarters. Writing of the Burnett and Dawson River Aboriginal clans, the Moreton Bay Courier told its readers that these people "are in a state of actual warfare with the whites".³⁹ Alan McPherson of Mount Abundance would certainly have agreed. He had seven of his employees killed in less than 12 months and was forced to abandon his run.⁴⁰

A similar situation existed near Brisbane, in 1854 it was reported that

...no person dares to improve his land within an hours ride of the capital because his life would be in danger from the attacks of the natives. The first purchaser who attempted to build [in Sandgate] was driven off...severely wounded and narrowly escaped alive. All along the Northern shore of the bay is one dreary waste of bush, entirely abandoned to the blacks.⁴¹

Resistance by Aborigines created not only security problems for settlers, but economic ones as well. Fear caused labour to be scarce and highly priced. In 1843, Commissioner Simpson informed the Colonial Secretary the blacks had given pastoralists "formal notice to quit their land". In addition, he maintained that this proclamation had been delivered in such a systematic manner, that he felt sure it was instigated by some unknown white man.⁴² Simpson did not elaborate on his white renegade theory, but it

³⁹ Moreton Bay Courier, 24 April 1852.

⁴⁰ Petition from Maranoa Settlers, 31 October 1856, NSWV&P, Vol 2, 1856, P.427. See also the Courier, 10 October 1863.

⁴¹ Moreton Bay Courier, 28 October 1854.

⁴² Minute by Governor, 3 November 1843, attached to letter from CCl Moreton Bay to Col Sec, 26 October 1843, in 43/8025, AONSW.
It would be interesting to know what Simpson saw as the motives of this renegade white man. Nevertheless, the claim that absconding convicts and other unscrupulous whites were behind acts of aggression committed by Aborigines was common during the convict years and shortly after. Nor was it rare for the wicked acts of white working men to be deemed responsible for black retaliatory outrages. It was convenient to forget that the source of inter-racial conflict was overwhelmingly the theft of Aboriginal land.

was one that sections of the press frequently subscribed to. The Ipswich correspondent of the Moreton Bay Courier who was reporting an attack on a Wide Bay settler said that there was

... therefore no apparent cause for their murderous attack, which could only proceed from their innate thirst for blood. Mr F is of the opinion that they were urged on to commit these depredations by three white men who are among them...⁴³

Yet when it suited, the same journal also claimed that Aboriginal attacks were exaggerated by white pastoral workers to dissuade others so that wages could be kept artificially high. Reporting a case which involved burning a shepherds hut and subsequent charges under the Master's and Servant's Act, it was alleged that

...these men and others leagued with them, have industriously circulated reports, to the effect that the natives are constantly attacking the stations on the Boyne River and its tributaries, with the malicious intent of terrifying the timid, and deterring others from proceeding to these localities.⁴⁴

Even taking into account the fact that in its early years this was the northern squatter's mouth piece, the Courier was overstretching its credibility when after vociferously and regularly demanding protection by the Government and that some method be found for punishing Aboriginal depredations, its editor went on to add

That there are no grounds for such reports we feel certain; and we take this opportunity of stating that the settlers up there, up to the present time, have not had the slightest fear for the safety either of themselves or their properties. We resided in that neighbourhood for some time ourselves; and can bear testimony to the amicable feelings of the natives in their intercourse with the whites on

⁴³ Moreton Bay Courier, 6 November 1847.

⁴⁴ Ibid, 16 January 1847.

every occasion...⁴⁵

On this subject, Dawn May asserts that fear of blacks was probably the most important factor in preventing workers from seeking employment in some areas.⁴⁶ Therefore, apart from not recognising armed resistance for what it was and classifying it simply as crime, it can be seen that it was not in the colony's interest to admit that a war was being fought, it would have provided a disincentive to expansion.⁴⁷

Such an admission would also have had implications for the status of Aboriginal "depredations". They might have had to be considered as acts of an injured nation defending their land from invaders, rather than offences committed by criminal subjects. The rules of war, had they been applied, would have not only demanded that Aboriginal resistance be considered outside the criminal justice system (as military action is) but it would have been accorded the respect that fighting for one's country earns.⁴⁸ This was denied to Aboriginal people by the imposition of English law which classified as

⁴⁵ Ibid. If there is any truth in these remarks, it is difficult to see why the writer, A. S. Lyon, held such an intense hatred of blacks. It is true he did live in the Boyne district as superintendent of Burrandowan Station in the early 1840s. His personal experience of Aborigines was probably gained from this period. Perhaps he lied about amicable race relations in an attempt to ingratiate himself with his labour starved squatting patrons. Cryle maintains that Lyon, who was an alcoholic, was regarded as something of a useful buffoon by the squatters. See Cryle, The Press in Colonial Queensland. p.21.

⁴⁶ May, From Bush to Station, p.35.

See also May, Aboriginal Labour And the Cattle Industry in Queensland, May demonstrates that not only was labour frightened away, but the whole viability of the cattle industry was threatened and that even at the close of the 19th century Aboriginal resistance caused the abandonment of northern cattle stations.

⁴⁷ The fear that Aboriginal aggression would stifle development and the expansion of the colony was expressed ad nauseam from the 1830s until the black war ended in the 1890s.

⁴⁸ Most nations admire a "worthy foe" and the British were no exception. Dervishes, Zulus, Maoris and many others were rewarded with British respect for this reason in the 19th century.

criminal their desire to fight for what was theirs.

Loss of white life in the colony's northern district triggered an inquiry in the NSW parliament in the year before Queensland's separation from its parent, pointing to a definite increase in Aboriginal activity directed at invading Europeans. The title of the inquiry exhibits an interesting use of language for political ends. It was named The Report of the Select Committee on Murders by Aborigines on the Dawson River. When the British Army, The Native Police, or the vigilante bands of whites shot blacks to death they were said to have "killed" or even "dispersed" them, implying an accepted activity which, although of questionable legality, was considered just, by the dictates of necessity. In contrast, when Aborigines killed whites, they were classified as "murders" invoking all the dishonour that the word implies and at the same time placing them squarely into the criminal rather than the military category.⁴⁹ Of course, the 19th century white response was both predictable and understandable, yet the question of whether attacks by other than regular forces can be seen as crimes or acts of resistance troubles some legal minds even now.⁵⁰

In reality the poorly co-ordinated campaign of armed Aboriginal resistance was doomed to failure.⁵¹ Attacks on isolated, and therefore vulnerable rural workers who were predominantly ex convicts, or working class and often itinerant bush men, seldom

⁴⁹ There was a very notable exception to this in Tasmania. See Reynolds, Fate Of A Free People, p.96.

⁵⁰ We have fairly frequent examples when members of the Irish Republican Army and similar organisations stand up in courts that are convened to try them for criminal acts and state that they are soldiers and do not recognise the legitimacy of the court.

⁵¹ Several reasons have been suggested for this failure. Some authors have drawn comparisons between Red Indian resistance and that of the Aborigines and have drawn attention to the fact that Australian Aborigines did not have horses or firearms as the Indians did and have blamed Aboriginal failure on lack of mobility and weapon technology. But many indigenes lacked these yet provided stiff resistance to invading Europeans, the Maoris or Zulus for example. What probably lessened the impact of Aboriginal resistance was the lack of organisation along a tribal system, which was not a feature of their society.

caused any great or lasting sense of outrage. And it was overwhelmingly this class that bore the brunt of the frontier conflict. Although it was a nuisance to pastoralists, emotionally such people were expendable.⁵² On the other hand striking at a closely knit landed class often triggered vicious retaliation. In 1846 the death of John Uhr had massive repercussions for Aborigines in the Northern District. When one looks at family connections which were bordering on the incestuous, it is not difficult to see why. The Uhrs, Edmund and John, ran Wivenhoe Station and were in partnership with Richard Jones. His daughter married her half brother, W. J. O'Connell Bligh who became Commandant of the Native Mounted Police. Another of Jones' daughters married pastoralist R. R. Mackenzie who was to chair the Committee of Enquiry into the Native Police, and the Condition of Aborigines Generally, and later to become the Premier of Queensland. Edmund Uhr's son, Wentworth D'Arcy Uhr, perhaps motivated by the death of his uncle, joined the Native Police and later is said to have led punitive raids resulting in the shooting of 59 Aborigines near Burketown. This was in retaliation for the death of two Europeans and one Chinese. It may be a gross exaggeration,⁵³ but the wisdom of having such a man as a member of a law enforcement agency whose duty it was to treat Aborigines with something at least resembling justice was certainly questionable.⁵⁴ The same claim might be made for the appointment of William Fraser who was commissioned after his family were slaughtered at Hornet Bank. The recruitment of such men points to a wish to take revenge on Aborigines rather than treat

⁵² M. French, Conflict on the Condamine, p.32.

⁵³ Cited in Port Denison Times, 4 July 1868. The Burketown correspondent of the Courier gleefully informed his readers that

Everybody in the district is delighted with the wholesale slaughter dealt out by the native police, and thank Mr. Uhr for his energy in ridding the districts of **fifty nine** (59) myalls.

⁵⁴ The Native police reported to the Colonial Secretary rather than the Police Commissioner. Apparently this was a bone of contention with Commissioner Seymour. It has been argued that he would have sacked Uhr but for his connections with Mackenzie; he certainly singled him out for criticism. See Evidence of Police Commissioner, Select Committee on Police, QVP, 1869, p.691.

them justly. Desire for revenge and even vindictiveness is understandable when it springs from the breast of involved individuals, it is not when it emanates from government, a body which is supposed to be a product of wisdom.

Because of the pressures created by pastoralism and the spread of settlement, in the late 1840s and 50s in the area to the north and west of Brisbane⁵⁵ the position for Aborigines became desperate. Reid maintains that they were faced with a choice between capitulation or adopting a different form of violent resistance.⁵⁶ One can have no doubt that they chose the latter. A study of the archival records for the period provides definite evidence that Aborigines were beginning to operate in larger groups and to display signs of organised attacks rather than indiscriminate or opportunist strikes. A series of small but obviously planned assaults, albeit with varying levels of success, were carried out in the region.

The situation changed somewhat when Mt Larcom station was attacked and four Europeans and two "civilised" Aborigines were killed.⁵⁷ This event, which was probably the earliest multiple killing of Europeans in what is now Central Queensland, led to intense native police activity, and a public outcry. This was hardly surprising considering that one of the victims was a white woman named Margaret Foran, who it is alleged was repeatedly raped, "even after death". It was the district's most significant

⁵⁵ At this time it was referred to as the "Northern Districts" (of NSW).

⁵⁶ G. Reid, A Nest of Hornets: The Massacre of the Fraser Family at Hornet Bank Station, Central Queensland 1857, and Related Events, (Melbourne, 1982), p.181.

⁵⁷ The exact date of this varies with the sources. Some authors, H. S. Russel for example believe it happened on Christmas Day; CCL Wiseman records it as 27 December 1855. See Wiseman to CCCL, 5 January 1856, in NSW Col Sec special bundle, 4/7192. AONSW. It is probable that both are wrong because Lt. Murray of the Native Police reported it as happening on Boxing day. See Murray to Gov. Resident Port Curtis, 18 January 1856, MF Col A2/36, JOL.

strike by Aborigines at invading whites up to that date.⁵⁸ There was a sequel to this event which resulted in the station owner, a man named William Young, being tried as an accessory to murder. Of this person Rosa Campbell-Praed wrote

Young of Mt Larcome [sic] had many of his shepherds and servants killed. One noted fellow took refuge with Sir Maurice O'Connell. Young followed him up and shot him at Sir Maurice's door. O'Connell was so enraged against Young that he took out a warrant against him and had him tried for his life. He was tried in Brisbane and Pring [later Queensland's Attorney-General] wanted right or wrong to convict him. **He would have convicted him had not our father and Sir Robert Mackenzie made a point of sitting on the bench.**⁵⁹ [My emphasis]

Campbell-Praed's assertion is probably inaccurate, because the reports in the Moreton Bay Courier and the Rockhampton Bulletin do not accord with what she wrote. The Aborigine who was shot was not killed by Young, but rather by another Aborigine who was in Young's employment, who it was claimed recognised the deceased black as one of the perpetrators of the outrage at Mt. Larcom. Nor is there any reason to believe that Ratcliffe Pring was particularly sympathetic towards blacks. Further, given the value placed on black lives, it is inconceivable that Young's own was in any jeopardy even in the unlikely event of his being found guilty. He was not charged with murder, only with aiding and abetting one. Also the trial took place in Gladstone, not Brisbane. However, a major significance of her remarks is the unashamed implication that no matter what the justice of the situation may have been, no white was to be convicted for killing, or being implicated in the murder of a "mere black" even if it meant that those whose duty it was to uphold the law had to involve themselves in dubious actions.⁶⁰ The northern

⁵⁸ Moreton Bay Courier, 28 February 1857. This issue also contains an unconfirmed attack in the Burnett district that took the lives of four Europeans, two men, a woman and a child. I can find no confirmation of this.

⁵⁹ Cited in Reid, Nest of Hornets, p.41.

⁶⁰ Campbell-Praed's statement is notable for other reasons; it underscores Patricia Grimshaw's claim of the importance of 19th century women in recording history.

press played their part by publishing correspondence to editors which outlined the treachery of blacks and the outrage Young had suffered at their hands. One lengthy letter told how

In his absence the blacks surprised the station, insulted the woman, Indian fashion then killed her; also killed all the men with the exception of one of the black boys, robbed the station, and scattered the sheep which they did not take with them...⁶¹

The Moreton Bay Courier prejudged the outcome, demanding that

...men pause before they accord a maudlin sympathy to naked savages...and [in] the belief that no conviction will follow, we desire the district be saved the performance of a solemn farce... we say now to the bench at Gladstone, be careful how the blacks are taught a maudlin sentimentalism which they may consecrate by other deeds of blood on the plea that big fellows, white, pity poor blackfellows, and make no effort to punish them when they take life...⁶²

Reading the above it becomes necessary to remind oneself that it was not an Aborigine in the dock; it was a white man who was standing trial for aiding and abetting the murder of a blackfellow. With regard to the claim of "no effort to punish" the Courier was quite inaccurate, because native police from Gladstone shot dead 11 Aborigines suspected of being involved in the Mt. Larcom attack and three others probably died of gunshot wounds.⁶³

The other thing that seems to have been overlooked was that Young's Mt Larcom station

⁶¹ Letter to editor, Moreton Bay Courier, 9 April 1850. "Indian fashion" refers to the rape of white women which is said to have taken place during the Indian Mutiny.

⁶² Editorial in Ibid.

⁶³ Murray to Govt. Resident Port Curtis, 18 January 1856, MF A2/36, Col. JOL. Murray also retrieved 500 sheep which he returned to Young.

had a history of aggression and brutal treatment directed at Aborigines. Young himself reported to the Inspector General of police that native troopers had fired on blacks there a few weeks before the attack. William Young had informed Lt. John Murray NMP, that this pleased him as it would frighten the local blacks. He had also told Murray that he had kicked and threatened to shoot an Aborigine because he had not responded quickly enough to his [Young's] orders. Murray went on to tell the Inspector General that Young "obtained as much work from them as possible and when he had done with them drove them away".⁶⁴ Young may not have had to pay for his shabby treatment of Aboriginal people but it can be argued that his workers did. On the night of 9 October 1858 his station was again attacked and another three white men died.

There is a distinct possibility that innocent Aboriginal women were shot by native police under the command of the notorious Lt. Frederick Wheeler in retaliation for this attack. Wheeler wrote informing his superior that he was

... not able to shoot any as they had already crossed the river... only took six or seven gins prisoners... but they must all suffer, for the innocent must be held responsible for the guilt of others...⁶⁵

There is no doubt that the earlier attack on Mt Larcom was planned. The same group of Aborigines during the next two weeks struck at the Native Police Camp at Rannes and at the Elliott brothers' station near Gracemere.⁶⁶

During the early part of 1856 after the attack on Mt Larcom, there was, according to William Wiseman, a state of increased panic among the whites of the Leichhardt district. No stations were "letting in" Aborigines, who the Commissioner said had made no progress towards civilisation, being in a completely savage state and hostile to

⁶⁴ Murray to Mayne, 7 November 1856, 118, NMP, Res. 10 QSA.

⁶⁵ Wheeler to Murray, 17 October 1858, MF, Col A2/41, JOL.

⁶⁶ O'Connell to Col Sec, 23 December 1858, MF, A2/39 Col. JOL.

whites.⁶⁷ Wiseman believed that there would be an increase in the already high loss of life. The fears expressed by Europeans in the district led to northern pastoralists in the Legislative Assembly asking for an enquiry into ways of improving the efficiency of the Native Police Force. One of the major points to emerge from the resulting Parliamentary investigation was the belief that the northern blacks had been emboldened by a reduction in native police numbers resulting in eleven white lives being taken. The commonly accepted solution to the problem was expressed by Wide Bay resident Henry Hort Brown when he explained to the committee "fear was the best way of keeping Aborigines in order."⁶⁸

In an earlier incident when two white workers were killed the northern press had informed their readers that the blacks

in this locality have been long known as the most ferocious wretches in the district and it is deeply regretted that there is no means of bringing them to justice.⁶⁹

Now there was no desire and no attempt to bring them to justice. What an alarmed white community wanted was not justice but a substitute for it; a campaign of revenge and violence that would result in either the pacification or extermination of the indigenous people. The slow and often inconclusive processes of law were simply an obstruction to this end. As a later correspondent to an editor put it, "the deadly bullet must do the work of the more legitimate executioners - justice must triumph over law".⁷⁰

Because many settlers considered themselves at war and the normal processes of law

⁶⁷ Wiseman Letterbook, JOL.

⁶⁸ Evidence of H. Brown, Report of the Select Committee to Inquire into the Present State of the Native Police Force Employed in the Colony with a View to Improving its Organization and Management, NSWV&P, 1857, p.27.

⁶⁹ Moreton Bay Courier, 12 July 1846.

⁷⁰ Queensland Guardian, 6 November 1861.

were considered inappropriate for blacks, there were constant calls for action to be effected by vigilantes. The press also frequently advocated that white settlers be mobilised, armed by the Government and if necessary placed under the command of native police officers to operate against Aborigines, adding the usual warning that..."we shall be driven to chose either an exterminating warfare against them or to abandon our outstations."⁷¹ Commissioner Wiseman's approach to the problems created by Aboriginal resistance is noteworthy. He agreed that "strict retaliation on any member of the offending tribe" should be carried out and that the "policy of conciliation was a false one", but he was completely opposed to allowing settlers to take the law into their own hands to punish Aborigines. He affirmed that this should remain a prerogative of government.⁷² The rationale underpinning this belief was that summary justice always attracted reprisals which were frequently directed at uninvolved Europeans.⁷³ It appears therefore, that he subscribed to a commonly held belief that "tribal" blacks did not associate action by the native mounted troopers with whites. It was a view that may have had some currency in the very early days of the formation of the northern force, but by the mid 1850s such a conviction had fallen within the realm of mythology. During an earlier discussion on the subject, an Aborigine named Dalaipi drew Petrie's attention to the number of innocent blacks slain by the Native Police acting under

⁷¹ Moreton Bay Courier, 8 May 1858.

⁷² Wiseman to CCCL, undated, Letter five of 1856, Wiseman Letterbook, JOL. His attitude to Blacks underwent considerable change over the years, he became most sympathetic to their plight, admitting that his earlier anger was influenced by the attack on Mt Larcom station. Wiseman's humanitarianism however, failed to impress Rockhampton's residents when he was their Police Magistrate. He was severely criticised in the press for asserting that blacks "were more sinned against than sinning". See Northern Argus, 30 January 1871 and Queenslander, 4 February 1871.

⁷³ On at least one occasion the Aboriginal reprisal system of justice apparently worked for whites to the detriment of blacks. In 1875 the Port Denison Times carried the story of an Aborigine who came in to a station near Proserpine to report that a white man had been killed by a blackfellow. This Aborigine was carrying the arm of the black that he had killed in retaliation for the murder of this old white settler. See Port Denison Times, 17 April 1875, also Queenslander, 1 May 1875.

European direction.⁷⁴ Considering the interaction between fringe and station dwelling blacks and "tribal" Aborigines at their various spiritual and other gatherings, it is unlikely that the subject of native police and their organisation and affiliation to invading pastoralists were not discussed.

Obviously isolated stations were vulnerable to Aboriginal attack and therefore more likely to be targeted. Particularly so, if they bordered on an area of difficult terrain. Reid argues that Hornet Bank station was selected for this reason. His thesis is supported by the fact that Frederick Walker the Commandant of native police thought so too; he had a Sergeant and four troopers stationed there as a precautionary measure in 1854.⁷⁵ Reid also believes that the assault on Hornet Bank was part of an overall plan to drive whites out, or at least back from the frontier.⁷⁶ The fact that it was carried out by a confederation of Aboriginal groups lends weight to his argument.

Following the assassination of the Fraser family there, probably as many as 300 Aborigines died. The day after the affair, 28 October 1857, native police under 2/Lt. Powell attacked a group of blacks, killing five and wounding several others. The police also retrieved about 100 sheep believed to be from Hornet Bank. Powell followed the band for about ten days but failed to make another contact.⁷⁷ John Ferret thought that the Aboriginal attackers came from his area and that they had frequented the district around the police barracks at Wondai Gumbal. From this assertion one might assume that some of the attackers had been recognised by Ferret, or by someone known to him. We certainly know that some of the backs involved in the killings were identified, yet how accurate this identification was, is open to question. The only white person who could

⁷⁴ Campbell Petrie, Petrie's Reminiscences, p.183.

⁷⁵ Report on his visit to the Dawson, Walker to Col. Sec. 23 September 1854, MF Reel A2,30, JOL.

⁷⁶ G. Reid, "From Hornet Bank to Cullin-La-Ringo" RHSO Journal, Vol. xi, No. 2, 1980-1, pp.61-2.

⁷⁷ Correspondence, Commandant NP to Government Resident Brisbane, 11 Jan 1858, MF Reel A2/39, 58/650, JOL.

have positively identified anyone was Silvester Fraser, but his evidence comes to us secondhand via the statement of Thomas Boulton⁷⁸ and could be unreliable. Fourteen year old Fraser believed he recognised the voice of one of the station blacks named Baulie and appealed to him for help but was immediately knocked unconscious. When he regained consciousness he remained hidden under the bed from where it was said he heard his mother calling the names of several Aborigines asking if they were there. It was further claimed, that from the noise that was being made, Fraser estimated that about 100 Aborigines were taking part in the attack. Considering that he had been knocked unconscious and the noise caused by about 100 people, Fraser's claim to have recognised some voices that he knew is questionable.

Sylvester Fraser was eventually to end up in an institution for the insane.⁷⁹ The evidence suggests that he was schizophrenic, but whether his condition had already begun to manifest itself at the time of the attack is unknown. Nevertheless, in view of the fact that up to 300 Aborigines may have been summarily shot to death, one might ask why were none of them ever apprehended and made to stand trial? If Fraser's evidence is reliable, these were by no means all "myall" Aborigines. Many of them had worked on stations and some had served for several years in the Native Police Force. It is understandable that settlers should, in their fear and anger extract vengeance, but police and magistrates, the supposedly more responsible citizens, were involved in the punitive operations so why there was no attempt to bring anyone to justice? The answer to that question is that the northern settlers saw themselves as being at war, and in any event, "British justice" did not apply to blacks.

William Fraser, the oldest son of the family who was in Ipswich at the time of the attack, returned to the upper Dawson on 12 November. Although it was supposed to be strictly against native police regulations to allow white civilians to take part in operations, Fraser was with 2/Lt. Powell when his detachment attacked Aborigines who were gathering together, probably for protection, on what is now Carrabah station. The

⁷⁸ Evidence of T. Boulton, North Australian, 12 January 1858.

⁷⁹ Northern Miner, 9 August 1898.

Native Police killed three men and three women with the remainder dispersing.⁸⁰ Powell and Fraser were later joined by 2/Lt. Robert Walker's detachment. This combined force contacted Blacks near Wandoan killing seven. The station owner, C. Royd, maintained that those shot were in no way involved in the Hornet Bank affair (presumably because they had not been absent from his run). When J. MacArtney reached Royd's station he met "a number of squatters who had come up to shoot the blacks".⁸¹ On the following day he learned that "young Fraser shot four gins one for his mother and one each for his sisters".⁸² Aborigines are said to have been rounded up on Redbank station and driven into an empty building and guarded overnight. In the morning the whites are stated to have turned the women and children loose, roped the men together then taken them to an isolated place and executed them. William Clarke who was a worker on Redbank was told to retrieve the ropes next morning. Fifty years after the event he reputedly said, "the scene I witnessed I hope never to see again".⁸³ MacDonald asserts that most of these avenging Squatters were magistrates. Inevitably stories like these become exaggerated over the years, but the basic facts are supported by too much evidence to be entirely discounted. One must also appreciate that it was from men like these, with their intense hatred of blacks that the Queensland Government was formed.

It is understandable that following the rape and murder of his mother and sisters at Hornet Bank William Fraser should detest Aborigines and wish to extract revenge, but for the Queensland Government to appoint him as an officer in the Native Police is, to put it mildly, surprising.⁸⁴

⁸⁰ Powell to Murray, 16 December 1857, Special Bundle Col. Sec. 4/719.2, AONSW.

⁸¹ E. Davies, "Some Reminiscences of Early Queensland" in JRHSQ, September 1959, p.29.

⁸² Ibid.

⁸³ Cited in MacDonald, Rockhampton, p.186. We are lucky to have Clarke's statement, it is improbable that a participant observer would have testified.

⁸⁴ Fraser's appointment to the Native Police is probably what gave rise to the belief that he was given carte blanche by the Government to kill Aborigines on sight. At the time of the Hornet Bank affair the Commandant of native police

The attack itself and the white reprisals which came in its wake instituted a state of intense alarm for both races. Aboriginal people were seeking security by attaching themselves to the homesteads of the less belligerent settlers. This in turn was alarming whites who were frightened by the increased Aboriginal numbers. Commissioner Wiseman informed his superior that the punitive activity of the squatters and Native Police was causing blacks to flee their country. They were coming inwards from the frontier to the more settled areas to achieve a degree of safety.⁸⁵ Although claims by whites that the Government was not affording them the protection they believed necessary was a constant complaint, it was an understandable one in the months following the Hornet Bank massacre. Rumours were circulating that a similar attack was being planned. One settler informed the Colonial Secretary that another Indian Mutiny was in the offing and pastoralist George Seracold claimed that if the Government did not act immediately the squatters would take the matter into their own hands once the shearing was over. He pointed out that in one year 20 whites out of a total of 180 had lost their lives to Aboriginal activity.⁸⁶ It was quite wrong for Seracold to contribute to the spread of alarm, he was a Justice of the Peace,⁸⁷ but it leaves little doubt that a war of resistance was being fought.

One must appreciate the position of white people. For them the frontier could be a terrifying place where, because they were a small, isolated and vulnerable population, an attack on one affected them all. Living with constant fear induces a state of mind that becomes a little more debilitating as each new day arrives bringing with it the question

sight. At the time of the Hornet Bank affair the Commandant of native police had authority to appoint four temporary officers should the need arise. There is no record that William Fraser was appointed under this authority. His official appointment was gazetted almost ten years later. See Reid, Nest of Hornets, p.72.

⁸⁵ Wiseman to CCCL, 8 December 1857, Col. Sec special bundle, 4/719. 2, AONSW.

⁸⁶ Sydney Morning Herald, 30 November 1857.

⁸⁷ As a further indication of how interwoven the white community was, Seracold's station Cockatoo Ck. was jointly owned by him and R. R. Mackenzie, whose name frequently crops up throughout this work.

"is it my turn next"? Campbell-Praed captured some of the intense apprehension that was part of living on the frontier when she related

...Father often described how each evening when coming in from the run he used in cold fear mount the hill overlooking the humpy, and draw a free breath again when he saw it lying quiet and unharmed.⁸⁸

In the Maranoa district alone in just under two years there were eight recorded European lives lost to Aboriginal attack.⁸⁹ Four deaths a year may not seem many but in sparsely populated regions this may have represented a high percentage of the total. It is also a fact that many frontier deaths went officially unrecorded although it was often common knowledge that they had occurred. Added to this were the ever present rumours which spread false information that did little to abate the fears of frightened and isolated communities. It is understandable therefore, that Europeans who considered themselves at risk should hate Aborigines and be prepared to countenance acts to remove the source of their fears that would be repugnant under normal circumstances. Although some of them no doubt were, the majority of frontier settlers were not vicious people and it would be erroneous to give the impression that they were. Any imaginative person might question their own attitudes and behaviour were they placed in the same circumstances. One shudders to think of the anxiety that isolated shepherds and the like experienced.⁹⁰ And of course, the Aboriginal perspective must be considered; to imagine the terror they must have undergone at the sight of mounted, heavily armed white men or native troopers requires little mental effort.

During the months that followed the Hornet Bank incident the number of Aboriginal

⁸⁸ R. Campbell-Praed, *My Australian Girlhood*, (London, 1904), pp.75-6.

⁸⁹ Government Resident Moreton Bay, to Col. Sec. NSW MF, Z1495, QSA.

⁹⁰ Employers were not always sympathetic it appears. When a shepherd near Bowen would not risk his life and attempt to drive off a large body of blacks, but rather hid whilst they plundered his hut his employer had him charged under The Master and Servant Act with neglect. See Port Denison Times, 5 October 1867.

depredations, the way they were carried out, and the general evidence of white insecurity lends support to the belief that a guerilla campaign was being fought. Wiseman wrote that an increasing number of pastoralists were convinced that their runs faced imminent attack. Their fears were not unfounded, because in January 1858 he reported, that a group of two to three hundred blacks attempted to ambush him and his party en route between Rannes and Archer's Gracemere Station. Wiseman was of the opinion that this coalition of Aboriginal groups included some Upper Dawson blacks who had taken part in the Hornet Bank raid. The same body was held responsible for a wide series of attacks on isolated shepherds huts and an assault on Banana Station where they were repulsed by three heavily armed white men. They were also believed to have carried out a raid on Gregory's Station near Taroom.⁹¹ Around this time Frederick Walker was, somewhat ironically if one considers the name, speared at Conciliation Creek.⁹²

There was a distinct connection between Aboriginal resistance and Queensland's push for separation. As a result of blacks stepping up their opposition to the white presence there had been an understandable decline in liberal influence within some government circles and in the public debate on justice to Aboriginal people generally. This led to a conflict drawn broadly on division between the town and the bush with the latter having more political clout. If the term "big Man's frontier"⁹³ might be applied to any part of regional Queensland, it could be employed in relation to the Wide Bay, Darling Downs Maranoa and Burnett regions. Wide Bay was the first district to be occupied following the departure of Gipps and the introduction of indulgent conditions provided by the Waste Lands Act. This rush to occupy Aboriginal territory produced a type of squatter who believed that racial war was probably inevitable and certainly justified. Men like William Forster and Gordon Sandeman expelled Aborigines from the lands they occupied as a matter of course. In response to criticism of this action Sandeman stated

⁹¹ See appendix to Report of the Select Committee on Murders by Aborigines on the Dawson River, in V&P of the LA of NSW 1858, p.55.

⁹² Wiseman to CCCL, nd letter 100/59, Wiseman Letterbook, JOL.

⁹³ This term refers to wealthy pastoralists.

All practical and experienced men with a very few exceptions agree... the most humane and most judicious plan is not to permit them on newly formed stations.⁹⁴

In addition such men increasingly questioned the wisdom of considering Aborigines subjects who were amenable to the law that was applicable to the white population. Although it was by no means restricted to the northern districts, or the bush, the argument presented continuously by these people and of the press that supported them, was that the "southern" government was selective in the administration of justice; it protected Aborigines at the expense of whites. Against all the evidence, they succeeded in presenting the frontier pastoralist as the long suffering victim of Aboriginal crime. In their lack of foresight they embraced an outmoded system of denial and summary punishment that guaranteed racial conflict.

Paradoxically however, the hardening of attitude towards blacks was greatly influenced by an attempt to treat them with justice. Years before, in the late 1830s following the Myall Creek murder trial⁹⁵ a public campaign commenced and spread along the expanding frontier. It used as its basis the execution of the seven white men for those murders. These hangings had been previously employed to discredit Governor Gipps who squatters had seen as a symbol of British tyranny. Although the trial had been conducted 20 years previously, it was continually referred to in one way or another during the 1840s and 50s in attempts to strengthen anti-centralist feelings. Allied to all this were the increased assaults on white life and property which fuelled the development of an intense hatred of anything Aboriginal and contempt for the concept of humane and just treatment no matter who expressed it.⁹⁶ This deterioration had been gathering momentum for some time but became more marked in the mid to late 1850s

⁹⁴ Cited in G. Lang, The Aborigines of Australia in their Original Condition and in Their Relations with the White Men, (Melbourne, 1965), p.91.

⁹⁵ This is referred to in chapter 2 of this work.

⁹⁶ The three most important events affecting justice to Aboriginal people were probably the Myall Creek affair, the Hornet Bank massacre and the killing of 19 Europeans at Cullin-la-Ringo.

following the events which culminated in the attack on Hornet Bank Station. The newly established Ipswich newspaper the North Australian, under that scourge of the blacks, A. S. Lyon⁹⁷ was scornful of "trifling operations" and urged that the "absurd formalities" of the law be dispensed with and that squatters armed by government and led by native police officers, should mount large scale punitive operations.⁹⁸ Much of the wrath and indignation the attack generated was directed at what was perceived as governmental neglect and failure to instil fear into the "lower races".

It is particularly poignant that some influential northern pastoralists and sections of their press saw both the Imperial Government and that of NSW, to be as much an enemy as the blacks.⁹⁹ Therefore the calls for separation from that "iniquitous part of the continent",¹⁰⁰ allied to comments about the "native police farce" and demands that the blacks be taught a lesson, drowned the voices of the moderates, which by now included the Moreton Bay Courier, who appealed for restraint.¹⁰¹ This then, was the state of contemporary thought on the way the "natives" should be treated when the Northern District separated from NSW to come increasingly under the influence of governmental policies formulated to serve the needs of pastoralism, It also underscores the influence of the period, the district, and Aboriginal resistance, to the future application of justice to the black people in Queensland.

From the 1840s, throughout the 1850s and early 1860s, Aboriginal people waged a guerilla campaign against the white invasion of Central Queensland. In less than a year

⁹⁷ During his working life Lyon edited four newspapers in colonial Queensland. Alcoholic Buffoon though he may have been, the damage he did to the cause of justice to Aboriginal people is immeasurable.

⁹⁸ North Australian, 17 November 1857.

⁹⁹ It is particularly so in the light of recent right wing activity in the United States of America.

¹⁰⁰ Moreton Bay Courier, 7 August 1852.

¹⁰¹ By this time the Courier was being edited by Charles Lilley.

18 Europeans had been killed on two stations alone.¹⁰² The massive retaliation by whites¹⁰³ for the massacre of the Fraser family and their workers did not pacify the region. The attack on Cullin-La-Ringo four years later testified to that. This was to be the most successful operation carried out by Aborigines in their war with whites in the history of Australia. Some historians believe that the attack at Cullin-La-Ringo were spontaneous, unplanned murders, using as evidence to support this theory the fact that Aboriginal women and children were present when the attack was made.¹⁰⁴ The belief that the presence of women and children always indicated pacific, or at least non violent intent by Aborigines was, although widely believed by whites, a myth. There is evidence that women were present when the Strau family were killed near Cooktown, when the Conn couple were attacked near Cardwell and Aboriginal women were quite definitely part of the plan of attack when blacks attempted to take Woollogorang station. It may be that women and children were deliberately included at Cullin-La-Ringo to lull the whites into a false sense of security. Nevertheless, it is impossible that the 19 white lives could have been taken without a carefully planned and well executed operation.

The attack took place on the morning of 17 October 1861 when a number of blacks entered the whites camp, they were apparently intrigued by the activity but showed no hostility and soon left. By lunch time according to a shepherd named Moore, about 50 or 60 had casually sauntered back into the camp and positioned themselves. Immediately after lunch, when the settlers were resting they attacked. The Aborigines struck so quickly that most of the Europeans died without a fight. Horatio Wills managed to fire two shots from a revolver and mount his horse but was immediately speared to death¹⁰⁵. Further proof that the operation was planned is provided by the fact

¹⁰² Sydney Morning Herald, 30 November 1857.

¹⁰³ For reasons of exaggeration and in some cases concealment it is impossible to arrive at anywhere near an accurate figure for Aborigines killed in retaliation for these events.

¹⁰⁴ For example see MacDonald, Rockhampton, p.190.

¹⁰⁵ Another report indicates that Wills fired only one shot and was tomahawked in the entrance to his tent. See William Thompson Memorandum Book, cited in MacDonald, Rockhampton, p.190.

that a simultaneous attack was made on three white men who were erecting a holding yard about two kilometres away from the main camp.¹⁰⁶ Reid supplies evidence to support a belief that some Aborigines took part in both the Hornet Bank and Cullin-La-Ringo massacres.¹⁰⁷ If this is the case, the disproportionate and often indiscriminate attacks on Aboriginal people following the Hornet Bank affair that were designed to "teach the natives a lesson" achieved little. Aborigines were not intimidated into submission and the application of this so called Anglo-Saxon Justice pointed in two directions. One was that European settlers in Central Queensland were not dealing with criminal activity, but with a war of resistance. It also signalled a bankruptcy of frontier policy on the part of their government who not only turned a blind eye to punishment based on taking revenge, but abetted it.

It might appear that the question of whether Aboriginal outrages were crimes or acts of resistance is purely academic; after all the dead are no less dead whether at the hands of a freedom fighter or cut throat criminal. However, if the moral implications are considered there is a great difference. Clearly Aborigines were at war with invading settlers, which was something the British Government and its colonial counterpart deliberately refused to recognise even though many white settlers did. Although it is generally accepted that killing in a campaign of resistance becomes a non-criminal act of liberation warfare, it nevertheless provided a justification for retaliation. What it did not justify was the indiscriminate and completely disproportionate slaughter of uninvolved and probably innocent Aboriginal people. These acts of retaliation may not have been illegal under law,¹⁰⁸ but morally, they were acts of savagery.

It is estimated that between 150 and 300 Aborigines died as a result of the massacre of the 11 white people at Hornet Bank. In his dispatch to the British Government,

¹⁰⁶ Gregson family Memoirs, MS 1382, Mitchell Library.

¹⁰⁷ Reid, Nest of Hornets, p.135.

¹⁰⁸ As already explained, the Riot Act and the failure of "suspects" to surrender may have legitimated these acts.

Governor Bowen informed them that an estimated 75 Aborigines had been killed in retaliation for the 19 white deaths at Cullin-La-Ringo.¹⁰⁹ One is led to wonder why the outrage perpetrated on the Fraser family triggered the more violent response. This question can be partially answered by the fact that Hornet Bank was the colony's first major demonstration of Aboriginal resistance to white expansion, one which generated fear of a black uprising. The attack on Hornet Bank came when the shock of the Indian mutiny was very fresh in the white mind and some drew parallels between the two.¹¹⁰ There was however, a major difference between the two Australian incidents. Unlike the attack at Cullin-La-Ringo, the Hornet Bank massacre saw women mutilated and raped and assaults on women produced what Henry Reynolds termed "an uncontrollable thirst for revenge".¹¹¹

¹⁰⁹ Bowen to Newcastle, 14 December 1861, 74, Gov/23, QSA.

¹¹⁰ In the aftermath of the Hornet bank affair there were several references to the Indian mutiny. See for example, Moreton Bay Courier, 17 January 1861.

¹¹¹ Reynolds, Frontier, p.46.

Chapter Six

The Reaction to Aboriginal Crimes against European Women.

... for the Aborigines, I believe, hanging is the only thing that brings home to them the terror of the law.

Bramston to Legislative Assembly, during discussion on the crime of rape, OPD, 1865, p.394.

Perhaps more than any other offence, the rape of European women by Aboriginal men provided a particularly vivid example of a society with dual concepts of justice. Aboriginal crimes against white women, especially if they involved sexual assault were highly emotive and generated public outrage, irrational responses and in Queensland's case, emotional political debate. The debate was particularly significant because it occurred during the first few months of the colony's establishment, at a time when changing public attitudes presented the opportunity to follow British trends and radically liberalise the existing penalty for the crime. In fact, discussion on the subject in the Queensland Parliament and in particular the attitude of some politicians towards Aborigines not only stifled progressive alteration for a further 40 years, but underscored the old fashioned, but time honoured belief that physical punishment was the only option of any value in dealing with blacks. In yet another instance, Aborigines were to be controlled by an ideology that belonged to the past.

Sexual assaults by black men are important for other reasons. They afford insights into the way 19th century white men constructed their own sexuality as well as that of Aborigines and this had direct bearing on their reaction to the crime. In addition, research into this offence suggests that some commonly held convictions associated with 19th century rapes may not be valid. The rape of European women by Aboriginal men¹ has attracted the attention of several authors and there exists a fairly comprehensive body of writing on the subject. Statements made by politicians and others, allied to rape related statistics, have led to certain conclusions about the offence. Among them are the beliefs that in 19th century Queensland, although the rape of white women by Aboriginal men was rare² it was considered a more serious crime than

¹ There is no doubt whatsoever that the reverse of this offence, the rape of Aboriginal women by white men was legion and by many white men considered to be little more than a prank. It is however, outside the scope of this particular study.

² C. Harris, "The Terror of The Law as Applied to Black Rapists in Colonial Queensland", *Hecate*, Vol.3, No.2, 1982.

See Also Reynolds, *Frontier*, p.81. Reynolds does not claim they were rare, but says that they were an unusual accompaniment to Aboriginal attack.

murder; that white racism resulted in courts making questionable decisions across racial lines; and that they invariably sentenced to death any Aboriginal men convicted of the crime.³ It has also been claimed that unlike trials involving European men, the moral character of the white woman was not questioned when the rapist was black.⁴

In contradiction to these views, this work argues that sexual assaults on white women by Aboriginal men during the colonial era were far from uncommon and that people did not believe that it was a worse crime than murder. Also that the moral character of white women was frequently brought into question and although there were undoubtedly occasions when courts, police and Crown prosecutors demonstrated racial bias, there were sentences handed down to Aboriginal men that were surprisingly lenient. Therefore, inconsistency can also be added to the list of features impinging on colonial Queensland's inter-racial rape trials.

The law regarding sexual offences in the Australian colonies prior to 1865 awarded the death penalty for rape, unlawful carnal knowledge of a girl under ten,⁵ bestiality and sodomy. But it was only normally applied in cases of rape, the other three offences had been punished by different means for a fairly long time. In fact these crimes, including rape, had ceased to be capital offences in the United Kingdom in 1841.⁶

The first rapes that were reported in the Northern District took place before Queensland was established. These include accounts of attacks on white women by Aboriginal men

For information on the frequency of this offence, see Appendix "C".

³ I. Lincoln, *The Punishment of Crime in Queensland*, BA (Hons), Thesis, University of Queensland, 1966, p.20.

⁴ Harris, "The Terror of The Law", p.14.

See also, P. Grimshaw, M. Lake, A. McGrath and M. Quartley, *Building a Nation: A Dramatic New History That Challenges The Conventional View of Australia's Past as a Creation of White Men of British Descent*, (Ringwood, 1994), p.148.

⁵ The legal age of consent in this era was 12 and it remained so until 1891.

⁶ See Debate on Offences Against The Person Bill, QPD 1865, p.498.

on the MacIntyre River in 1847, at Mt Larcom in 1854, Brisbane in 1855 and of course at Hornet Bank Station in 1857. However, the word "reported" is highly significant because it is certain that the number of notified sexual assaults and the trials that resulted from these reports, represent only a portion of the number that were actually perpetrated. Sexual assault on white women clearly occurred far more frequently than the judicial records suggest.⁷ Yet it is impossible to know how many white women were attacked in this way for the simple reason that we know of only the reported cases. It is common knowledge that women do not report rapes now⁸ and they were probably less likely to do so then.

Reporting sexual assault has always been fraught with problems for women. To seek justice frequently places them in the invidious position of being accused of contributing to their own victimisation: of "asking for it", of changing their mind at the last minute or later when the threat of an unwanted pregnancy looms, or of seeking revenge for something. Rape is also very difficult to prove and should the rapist be acquitted the woman is doubly damned as a person who is not only sexually tainted, but designing as well.⁹ In fact a letter to a colonial newspaper suggested that in cases where there was an

⁷ For an indication of the frequency of this crime, see Appendix A.

⁸ The US Federal Bureau of Investigation believes that only one in five rapes are reported. Brownmiller suggests that the true figure is closer to one in twenty. See Brownmiller, Against Our Will, p.148.

Having carried out a survey of women who did not report the crime, Paul Wilson believes that the fear of social labelling is overwhelmingly the major deterrent. The loneliness of the situation is illustrated by one woman who declared

If I had the same decisions to make again I know I would not report it because reporting it brings in my family and friends whereas I have only had to cope with it myself.

See P. Wilson, "Victims of Rape", in D. Chappell and P. Wilson, (Eds), The Australian Criminal Justice System, (Chatswood, 1977), p.446.

⁹ It must be born in mind however, that a "not guilty" verdict may not necessarily reflect what the court really thinks. The presumption of innocence, uncorroborated evidence and reasonable doubt sometimes demand verdicts

acquittal in a rape trial, the woman should automatically be charged with both perjury and attempted murder.¹⁰ To these disincentives, for the 19th century woman was added the additional burden of racism. In a racially dichotomised society the idea that a white woman had been in sexual contact with someone as "unworthy" as a black was certainly not something that most women would want known. In three separate rape trials, involving black men, white women told courts that they did not initially report attacks as rapes because they were ashamed.¹¹ Therefore, it can be argued that the trials themselves probably represent only the visible portion of a largely hidden phenomenon.

The first trial of Aboriginal men to take place in the northern district occurred when Dick and Chamery were accused of raping Mary Ann Treatroff, the wife of a shepherd, at Dugandine near the Logan River on 11 January 1859. It appears that they went to Treatroff's hut, asked for food and committed the offence. Although the two men worked on adjacent stations they were not known to the woman, but were arrested on her description of them. Doubt may be cast on the accuracy of this description because Treatroff spoke English poorly enough to require an interpreter during the trial. Dick and Chamery also required an interpreter, who was as usual, James (Durramboi) Davies.¹² The men pleaded not guilty and the defence centred around a case of mistaken

that both judges and juries are uneasy about.

¹⁰ Courier, 13 June 1887, cited in R. Barber, "Rape as a Capital Offence in Nineteenth Century Queensland", Australian Journal of Politics and History, No. 21, 1975, pp.31-41.

¹¹ Regina v Georgie, 1861; Regina v Jemmy, 1862; and Regina v George, 1888. See various Circuit Court Trials, for Ipswich and Roma, held in CCT files, QSA.

¹² Pictures of Davies show a small dour looking Scot. He is an interesting character. A convict runaway from the Moreton Bay settlement he lived with various Aboriginal groups for 14 years. Pardoned, he became Queensland's unofficial interpreter. He demanded payment for his services and was at times in conflict with the courts over this. As already pointed out, on at least one occasion he was gaoled for contempt over his demands. Davies represents a tragedy for historians. When he was prepared to relate his experiences with Aborigines, few wanted to listen, later he would say nothing. In spite of demanding his pound of flesh, he was something of a philanthropist. He donated 750 pounds sterling to the Royal Brisbane Hospital in 1899 and a

identity, with the defence council, J.W. Blakeney, finding it necessary to ask the jury to cast on one side any prejudices they might harbour against the race of the accused. What secured the conviction was a statement that Chamery made to Lt. Williams of the Native Police in which he said "what a stupid head mine to ravish white Mary".¹³ This was taken as a confession, but given that Chamery spoke poor English, what he might have been trying to say was "Do you think I am stupid enough to ravish a white woman?" The evidence showed that Treatroff, Dick and Chamery sat and spoke for some time prior to the offence being committed. In view of the lack of mutual language one wonders if misunderstanding might not have played some part. Without wishing to cast a slur on Treatroff's character, it does not seem unreasonable to believe that, given the reluctance of juries to return guilty verdicts, under the same circumstances white men might not have been convicted because of "reasonable doubt". Considering that Blakeney was the defence council and the man who attempted six months later to have rape removed from the list of capital offences, one wonders what influence the case of *Regina v Dick and Chamery* had on both the attempted amendment and its rejection. Perhaps Blakeney was motivated by the belief that two innocent men had been hanged. Equally, it might be that the opposition to his proposed amendment and the belief that hanging was the only solution as far as Aborigines were concerned, resulted from this particular case. Even so, the press response and the illegal public execution provide a vivid example of the different way justice was seen to apply to blacks during a period of legal enlightenment for whites.¹⁴

It is a fact that when these two men were hanged the winds of change had been blowing for a while. The public execution had been discontinued four years earlier and some people, including sections of the press were campaigning to end capital punishment altogether. They wanted to see it replaced by life imprisonment. The Moreton Bay courier for example, pleaded

further 1100 pounds in 1911. See Benefactors Board in Royal Brisbane Hospital.

¹³ Moreton Bay Courier, 1 June 1859.

¹⁴ Details relating to this execution are provided in Chapter 4.

...let Queensland be the first colony to lay aside this relic of barbarous days and adopt a practice more worthy of the age...¹⁵

The plea was a little optimistic. The Argus on the other hand was more pragmatic, arguing that

hanging by the neck...has so long been a much respected institution among the British race, that it will require considerable effort of independent thinking even among the most humane people to face any proposed immovation[sic] of a less barbarous punishment.¹⁶

As it transpired, the Argus was entirely accurate.

Nevertheless, the Editor of the Moreton Bay Courier had also argued along abolitionist lines five years earlier when he had told his readers that

...in the outset we are met by the glaring fact that the law inflicts equal punishment upon the ravisher who is clearly convicted of committing this act of brutal violence on an innocent girl, and upon him who is found guilty on the testimony of a woman of doubtful or bad reputation. This is clearly an inconsistency, and a barbarous mistake... as to the punishment of death for this crime, we have long since expressed our belief that it ought to be abolished...¹⁷

This editorial maintained that the retention of capital punishment for the crime of rape served to encourage the rapist to murder his victim as he could only be hanged once, and the silencing of probably the only witness might prevent detection. This may well

¹⁵ Moreton Bay Courier, 8 December 1860.

However, a counter-argument used by the retentionists was that life imprisonment was too cruel.

¹⁶ The Argus, 8 February 1859.

¹⁷ Moreton Bay Courier, 22 September 1855.

point to one of the reasons why there were more executions for rape than murder in colonial Queensland.¹⁸ There was often no witness to a murder, whereas there was always at least one to a rape. Therefore it may have been easier to secure a conviction for the latter crime, which would obviously impinge on the relative execution figures.

The call by the northern press to abolish the death penalty for rape which is cited above, sharply contrasts the same journal's, and perhaps society's, attitude if the rapist was black. When Aborigines Dick and Chamery were convicted and sentenced to death for the offence, the editor of the Moreton Bay Courier praised both the verdict and the sentence, further maintaining that the execution of blacks should be made public. Nor were they concerned in differentiating between the sexual experience of the victims. The "peaceful domestic in the hut" was one of those "subjects of the Queen [who must] be sacred from molestation by savages"¹⁹.

In August 1860, a few months after the execution of Dick and Chamery, the Government of the newly established colony of Queensland debated the possibility of creating a precedent by becoming the first Australian colony to follow the British example and remove rape from the list of capital statutes.²⁰

The abolitionist argument presented in Queensland's parliament was based on the fact that although Britain had made the crime non-capital, there had been no increase in the frequency of the offence. Further to this argued Blakeney,²¹ there existed

¹⁸ The fact that there were more hangings for rape than for murder in colonial Queensland is another factor which has led some authors to believe that rape was considered the more serious crime of the two.

¹⁹ Moreton Bay Courier, 1 June 1859. See also p.105 this thesis.

²⁰ The Death Punishment for Rape Abolition Bill was introduced by Blakeney who was, as already stated, also a Barrister and later judge of the District Court. At the same time he sought to have criminal assaults on children under ten made non-capital. See QVP, 1860, p.167.

²¹ Blakeney was the member for Brisbane.

...an abundance of evidence on record to show that many an innocent man had been convicted and executed on the evidence of one designing woman.²²

It is an unlikely claim and there are no records to substantiate it. Nonetheless, seven other members of parliament spoke on the subject and all opposed his amendment. They did so on the grounds of the scarcity of whites within the colony, particularly on the frontier,²³ the isolation of white women and the threat posed to them by the large number of blacks who according to the Honourable St. George Richard Gore, MLC, "could not be deterred [from raping white women] by any other punishment than that of death".²⁴ He was supported in this belief by Jordan who added

If capital punishment was to be enforced in any case, it ought to be enforced in the case of rape, which was even worse than murder.²⁵

Queensland's Attorney-General, Ratcliffe Pring, apparently also held this view. He told the Parliament that

A child so treated would be better off dead and that so long as capital punishment was retained he would enforce it in cases of that kind.²⁶

²² Cited in the Courier, 1 September 1860.

²³ There is no reliable breakdown of population by sex for 1860, but it was claimed that in the colony's rural districts in 1871 the white population was 64% male and 48% female. The discrepancy probably represents a writing error.
Source: Queensland Census, 1871.

²⁴ Cited in Courier, 1 September 1860.

²⁵ Ibid

The fact that more men were hanged for rape between 1860 and 1901 than were executed for murder, has led some people to believe that Queenslanders in general shared Jordan's opinion.

²⁶ Cited in Courier, 1 September 1860.

This belief, we are led to believe, frequently existed in the white colonial mind, particularly if the rapist was black. However, because of the emotive nature of this crime the rhetoric surrounding it should be weighed carefully before it is accepted as representative of contemporary thought on the matter. Even so, the magnitude of the offence in the white woman's mind certainly seems to have been influenced by the race of their assailant. They are recorded as having felt intense shame, both for themselves and for their male relatives if the attacker was black, but whether women shared Jordan's view and considered rape worse than death is highly questionable. Few comments on the subject by 19th century women exist and it was after all they, not the Queensland politicians who espoused the view, who were in danger of being raped or murdered. Therefore the belief by some authors that rape was considered a worse crime than murder, which is a belief based on the numbers actually hanged for each offence and related to comments like those above, may be quite wrong.²⁷ It certainly seems reasonable to believe that few women would have subscribed to it despite music hall jokes about a "fate worse than death". One should also consider the significance of the continuous opposition to rape's capital status. In particular the Courier's writer when he said

...the instinctive feeling that the crowning offence against society is murder, and that, serious as sexual offences are, they must yet, in point of criminality take a secondary place...the reluctance exhibited by juries to convict in so called capital offences against women...all go to show that the public sentiment is opposed to the infliction of the supreme penalty... for such a crime.²⁸

It is true that this was written in 1889, but there had been opposition to rape's capital rank since the middle of the century.²⁹

Nonetheless, the debate in parliament and the reasons why the crime retained its

²⁷ C. Harris, "The Terror of the Law", p.22

²⁸ Courier, 7 June 1889.

²⁹ See for example Moreton Bay Courier, 22 September 1855.

hanging status raise the question of whether or not rape would have remained a capital offence in Queensland in the absence of a perceived threat to European women from Aborigines. The fact that only one white man was ever hanged for this crime in Queensland should also be considered when examining this question.

Given the stated belief that only hanging would deter blacks from raping white women and considering the number of Aborigines actually executed for the offence, one might come to the conclusion that the courts were deliberately selective in awarding punishment across racial lines. Such a belief, although it may be valid, is impossible to prove. Nevertheless, the number of Aborigines hanged does appear to give weight to this hypothesis. Between 1859 and 1900 (which is when rape became non capital), a total of 16 men were hanged for the offence in Queensland. Of these, as already stated, only one was a European. Three were Pacific Islanders and 12 were Aborigines.³⁰ It could have been 14, because one was shot while attempting to escape from gaol and another died in police custody. However the number of Aborigines actually hanged does not in itself indicate discrimination against them by the courts. One needs to consider the total numbers of each race actually arraigned on the capital charge. Obviously courts could not award a death sentence for a non-capital offence and therefore what the offender was actually charged with, is vital to this question. Perhaps police prosecutors were more likely to charge blacks with rape and whites with attempted rape because it was easier to get a conviction on the more serious charge when the defendant was black. It is certainly a fact that Aborigines, unlike whites, rarely called witnesses and seldom said much in their own defence, leaving the courts little option but to convict. If this is the case, it was the law enforcement body and crown prosecutors more than the courts that were discriminatory. This produces several other issues. Was the white woman's evidence more readily believed if the offender was Aboriginal? Were black men easier to convict than whites because of inadequate defence? Would courts have awarded the death sentence to more white rapists had they been given the chance to do so? It also

³⁰ This includes Aborigines Dick and Chamery who were hanged just before Queensland separated. They are included because of their importance to the subjects of rape and race relations, and I believe, to the initial debate on the crime that was held in the newly formed Queensland Parliament.

raises the important question of the frequency with which black men committed the crime compared to white men. This in turn leads to the vital suggestion, in terms of justice, that at least some black rapists were unaware that it was a capital offence. Indeed, some may not even have known it was a crime.

Harris cogently argues that since white women were considered as belonging to white men, inter-racial rape was the ultimate violation of property rights. Hanging people for crimes against property was of course, consistent with previous British judicial practice, but there is little doubt that affection and concern for the safety of women also played a major role in the white response. However, if women were regarded as belongings, the 1860 and 1865 debates demonstrated the attitudes that existed concerning property values. The rape of a virgin was viewed far more seriously than the same offence committed on a sexually experienced woman. During debate on the subject, R. J. Smith argued that although he was in favour of the retention of rape as a capital offence he believed that something more than the evidence of married woman should be necessary before a "guilty" verdict could be returned.³¹

The parliamentary debates were important for another reason; they also clearly established the Aborigine as a perceived sexual threat to white women.

In her paper Harris maintains that

It had been reported, **quite without supporting evidence**, [my emphasis] in 1861 that in the Logan River district, employers would no longer employ married shepherds because the wives were constantly being ravished by blacks.³²

³¹ Hon. J. Smith to LA, *QPD*, 1865, p.399. This highly insulting suggestion was an implication that women are liars when it comes to rape. The legacy of this calumny is that up until very recently in cases of rape the judge was obliged to warn the jury against accepting the uncorroborated evidence of the complainant. In all other criminal cases the evidence of witnesses is taken at face value. See B. Sullivan, "Women and the Current Queensland State Government", in *Hecate*, Vol. 19, No. 1, 1993, p.12.

³² Harris, "The Terror of The law", p.25.

She is not entirely accurate: the execution of two Aborigines for the rape of a shepherd's wife in this district is fairly conclusive supporting evidence. In fact there was no shortage of supporting evidence. The 1861 parliamentary committee on native police were told of rapes by Aboriginal men on white women in the Logan District that were "hushed up". This included an attack on a young woman who asked as a special favour that the crime not be reported "because she is a very respectable girl and she was anxious that it should be made known".³³ The witness who told how he could not send a married shepherd to any other than the head station "as the woman would be ravished by the blacks" went on to add that no Aborigines had ever been prosecuted for these offences even though the rapists were in some cases identified, presumably because the women involved did not want it to become common knowledge.³⁴ A police officer maintained that the crime was increasing as Aborigines became "more civilised".³⁵ What he meant by this apparent contradiction, was that the crime was on the increase as white settlement spread and Aborigines came into increasing contact with white women. J. Hardie told the committee of a rape committed by an Aborigine named Charlie who went to an outstation hut with a message that a woman living there was required at the head station. When she came out she was knocked to the ground and raped.³⁶ Brisbane's sheriff also commented on the frequency of the crime on the Logan. Therefore Harris' claim that "the prevalent image of Aborigines as rapists of white females was quite unwarranted"³⁷ does not stand up to investigation.

The conditions demanded for a conviction on a rape charge prior to 1865, were that the offence be reported as rape and that evidence of both penetration and emission of semen be provided, although if penetration was proved to the court's satisfaction, ejaculation

³³ Evidence of J. Hardie to Select committee on Native Police, p.99.

³⁴ Evidence of A. Compigne in Ibid, p.36.

³⁵ Evidence of F. Wheeler in Ibid, p.32.

³⁶ Evidence of J. Hardie in Ibid, p.99.

³⁷ Ibid.

was normally assumed. In the absence of any of these, the charge should become one of attempted rape for which the penalty was two years imprisonment with hard labour. Therefore the line between life and death was a very narrow one. If one considers the legal requirements for a conviction on the capital charge, it is surprising that in 1862, an Aboriginal man named Kipper Billy was sentenced to death, not for rape, but for aiding and abetting one.³⁸

One might also question the case of *Regina v Georgie*. The attack that Aboriginal Georgie made on Bridget Ryan in 1861 was particularly brutal. The violence of his assault put her in bed for three weeks. She was examined by Dr. Challinor on the night of the attack, but attention was paid only to her other injuries and the court believed itself to be dealing with a case of attempted murder. There was no examination for rape for the simple reason that she did not tell anyone that she had been raped. She only admitted it when she stood in the witness box under oath. Ryan told the court that she had failed to complain of rape because she "was ashamed of her husband".³⁹[She was ashamed to tell her husband]. The legal anomalies should have ensured that Georgie was charged with attempted rape rather than the capital offence. The fact that she made no complaint of rape should have precluded a charge on that count. Further, although she gave verbal details of vaginal and oral penetration,⁴⁰ because no supportive evidence was presented, in law Ryan was not raped. Chambers J was legally obliged to have drawn attention to these facts, yet he left the matter to the jury who returned a guilty verdict on the major charge in less than three minutes.

Georgie was executed on 1 February 1862. The brutality of his attack on Bridget Ryan is not in doubt. Nor in reality was the fact that she was raped, but his legal guilt is and it once more raises the question of whether a white man would have been hanged under similar circumstances.

³⁸ *Regina v Kipper Billy*, 5 June 1862, CCT/2/1 QSA.

³⁹ *Regina v Georgie (an Aborigine)*, 22 November 1861, 2727, COL, A/21, QSA.

⁴⁰ *Ibid.*

On the other hand, when Wilhelmina Kachel was sexually assaulted in her home by Jemmy on the 25 January 1865, she initially reported it as an attempted rape. Only after three days did she inform her husband that she had been raped. She asserted that

At first I did not state the full extent of the prisoner's offence. Three days after I told my husband... I was ashamed to tell any person before then.⁴¹

In fact she said that she felt unclean and she did not tell her mother either, claiming that it was an attempted rather than an actual rape.⁴² Kachell also told William Adams who lived nearby that "a black man had ill used her in the house".⁴³ Adams went on to add

...she was all blood in the face. I asked if he had done anything else to her but there was no reply...⁴⁴

The case of Regina v Jemmy is engaging, not only because it was another case where neither attacker nor victim spoke much English and required interpreters, but it illustrates a trial where, unlike the Ryan case, which it resembles in several details, an observance of the letter of the law kept an Aborigine from the gallows. Kachel informed the court that "he enter [sic] my private parts with his penis to some extent before I could get away".⁴⁵ She went on to tell how the struggle had lasted 15 minutes and that Jemmy had threatened to kill her adding

I threw him off twice and he entered my person twice... it was in consequence of my struggling that the prisoner did not complete the connection.⁴⁶

⁴¹ Cited in Regina v Jemmy, Circuit Court Records, CCT, 2/1 QSA.

⁴² Lutwyche to Governor, 5 May 1865, 1070, Col A /66, QSA.

⁴³ Evidence of W. Adams in CCT, 2/1, QSA.

⁴⁴ Cited in Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid, p.4.

There is little doubt that Kachel was also raped and medical evidence was produced which stated that the condition of her "external organs of generation" was consistent with having been penetrated violently, but several legal anomalies kept Jemmy from the gallows. Among them was her failure to report the attack as a rape and her words that "the prisoner did not complete the connection". Justice Lutwyche pointed out to the jury that it was reasonable to accept that she should fail to tell her husband that she had been raped, but he was disturbed by the fact that she had failed to tell her mother as well. He went on to add that if they had any doubts they could bring in a verdict on the lesser charge; in other words he was directing the jury. They failed to take his advice and handed down a guilty verdict on the capital charge. Accordingly, Jemmy was sentenced to death. There was no doubt that Lutwyche J considered the verdict and sentence to be a just one, he said as much in his letter to the Governor. He also pointed out that Jemmy had only just been released from Toowoomba Gaol after serving two years hard labour for a similar offence. There was however an interesting twist to this case that may have also influenced the Executive to commute Jemmy's sentence. The foreman of the jury was an alien and as such was unentitled to serve on a jury. Therefore the defence counsel could have submitted a writ of errors and demanded a re-trial.

Jemmy received a sentence of two years hard labour in the Brisbane gaol. It would be a distortion therefore, to claim that Aborigines were invariably treated unjustly in cases of a sexual nature, although it appears they frequently were.

The remarks about accepting the evidence of married women that were expressed in the house and in the press, added to the very small number of white men condemned for the crime of rape, seems to indicate a reluctance on the part of juries to convict, but only if the accused was white. As suggested earlier, investigation leads to a belief that in cases involving white men, crown prosecutors and police tended to press for lesser charges where they believed that juries might acquit on the capital charge. If this is the case, the belief may be extended to embrace the idea that they did not do so in cases involving blacks because they believed that juries were less likely to give a black man the benefit of doubt. In his study of crime and punishment in Queensland, Ian Lincoln provides information regarding a case in Ipswich that was "clearly rape" reduced to indecent

assault which attracted a sentence of two years hard labour.⁴⁷ In another example in what appears to have been a definite case of rape in November 1860, another white man named James Cannan, had his charge reduced to attempted rape and received a sentence of five years hard labour in the Brisbane Gaol.⁴⁸ It is therefore possible to draw parallels between the demise in the 18th century of the bloody code where juries were sometimes loath to convict on capital charges, and the frequent reduction of the capital charge of rape, to one of attempted rape during the second half of 19th century.

The image of the Aboriginal man as a raper of white women was intensified in the mid 1860s. In 1864 during debate on the futility of attempting to educate black people, the Hon. H. Fitz implied that all Aborigines were potential rapists, particularly those who had been exposed to white "civilising" influences.⁴⁹

The following year the parliament debated the Offences Against the Persons Bill. Under the legislation emanating from this, death ceased to be the punishment for several offences which included attempted murder, sodomy bestiality and the carnal knowledge of a girl under 10. However, the death sentence was once more retained in cases of rape. Speaking for the Government, J. Bramston explained that

Capital punishment will be kept for rape because the women in this Colony are in a more defenceless position than at home, from our limited population and scattered habitation... consequently, they are very liable to violence in the absence of their natural protectors; and they are also liable to assaults by the Aborigines. For the Aborigines I believe, hanging is the only thing that brings home to them the terror of the law.⁵⁰

⁴⁷ Lincoln, *The Punishment of Crime in Queensland*, p.20.

⁴⁸ Moreton Bay Courier, 15 December 1860.

⁴⁹ QPD, 1864, p.32.

⁵⁰ QPD, 1865, p.394.

Bramston's statement is important to this thesis for more than one reason. It points not only to the perceived threat that black men represented to white women, it also provides insights into a white male construction of the Aborigine as someone who was sexually uncontrollable. It argues that he believed nothing but the threat of a violent and degrading death could combat their sexual urges. But more than this, it has bearing on the way white men may have seen their own sexuality.

Throughout the 19th century (and beyond) the white male view of black men's sexuality was complex and potentially explosive. The belief that all black people were particularly carnal was of course not new, it had existed since the age of exploration. However as settlement spread in Queensland another dimension was added to it which saw Aboriginal men as lusting specifically after white women. There may have been some objective basis for the accusation, because sexual intercourse forced on European women might have been for the black man, at least in part, an act of retribution against the white race and not simply one of sexual gratification.⁵¹ But no matter how firmly based in fact this may have been, the image of the sexually aggressive black man was even more solidly set in a deep footing of irrationality. It can be suggested that white men projected their own desires onto Aboriginal men. The practice of European men using Aboriginal women as sexual partners was widespread but not socially acceptable

⁵¹ There are several references to this. See for instance C. Lack and H. Stafford The Rifle and The Spear, (Brisbane, 1965), p.96.

Unfortunately we have no record of how Aboriginal rapists saw the crime. The nearest we come to it was the assertion by George in 1871 who said "Black Ginn(sic) no give me anything". See Executive Council Review of Prisoners under sentence of death, 1871-1879, EXE/2, QSA.

There is however a statement by a black American rapist who said "Rape was an insurrectory act. It delighted me that I was trampling on the white man's law, upon his system of values and I was defiling his women...I was getting revenge". See E. Cleaver, Soul on Ice, (New York, 1992), p.26.

It might also have been an attractive proposition simply on the grounds of variety, in exactly the same way that intercourse with black women appeals to many white men.

either to society or self and hence not really admissible.⁵² Sexual desires and the accompanying guilt about "letting one self go to the dogs", or even worse "diluting the purity of the race", could in some measure be eased by imputing one's culpability and anxiety to others. They could be rationalised by the specious argument that it is not we, but others, that are guilty. It is not we that lust, but they.⁵³ It was common wisdom that blacks were sexually insatiable, therefore nagging fears about sexual adequacy may also have existed and perhaps even worse, that their own women shared their desire to experiment across colour boundaries. Given the scope of human sexuality, it is impossible that some did not. But considering the image of the virtuous white woman that was held in the 19th century, the idea would have been unbearable. The only possible remedy to such a threat was to eliminate the source of the anxiety.

It is unwise to state categorically that courts were selective in awarding the death sentence across racial lines, but dubious decisions were certainly not absent. The town of Bowen's first trial by jury which took place on 19 March 1866 provides an excellent example. In this case a white medical practitioner, Dr. Thomas O'Grady, was indicted on three separate counts of assault on a girl under twelve years of age (she was in fact eight); one for indecent assault with intent to rape, which the judge referred to as a capital offence;⁵⁴ another for indecent assault, and a third, for common assault. The basic facts of the case were that the doctor, who was under the influence of alcohol,

⁵² "Comboism" was the name given to this type of union. It was acceptable among working men in frontier situations but decidedly unacceptable in urban or middle class society. A 19th century policeman explained that for a white man of any reasonable social standing "being arrested in the black's camp reserve at night meant his utter ruin". See Sullivan, Cameos of Crime, p.50.

⁵³ W. Jordan, The White Man's Burden: Historical Origins of Racism In the United States, (New York, 1974), pp.81-2.

⁵⁴ This is difficult to understand because in the pervious year the Offences Against the Person Act, had gone through parliament. As already stated, this legislation made carnal knowledge of a girl under 10 no longer a capital offence. It did however, give a judge the right to order up to three floggings in addition to any other sentence he might impose. The flogging amendment got through on the second attempt by the narrow margin of five votes to four. The politician responsible for presenting it to the parliament was R. Gore, the man who accused all Aborigines of being potential rapists.

dragged the child off the street, took her to a bedroom and committed the offences.

Following ten objections to selected jurors, the defendant was satisfied with the jury's composition and the trial commenced. The Crown Prosecutor opened his case by informing the jury how painful it was to have to press charges against someone he had known under more favourable circumstances. Having briefly stated the case for the crown, he astonishingly informed them that "he did not at present see clearly how to establish the first count."⁵⁵ In fact, he made it quite clear that he did not expect a conviction on the major charge, but wanted one on the minor indictments, and with a little help from the Judge, that is what he got. At the close of evidence, before verdicts were even announced, His Honour, Innes J preempted the outcome by telling the jury how pleased he was "that this respected member of a learned profession" had not had the capital charge against him proved". The jury retired and in ten minutes found O'Grady not guilty on the major charge, but guilty of the lesser one. The judge then delivered a homily on the evils of drink, but hoped that the lenient sentence would prove to be beneficial to the prisoner by weaning him from alcohol. He sentenced O'Grady to six months gaol with hard labour.

The gravity of this offence was unquestionable; carnal knowledge of a girl under ten had only just ceased to be a capital crime. This child was medically examined within hours of the offence. Her vagina was found to be swollen and painful. There were traces of blood on her underclothes and the neighbour who rescued her from the doctor's house saw him holding her on the bed with one hand, while the other was under her clothing.⁵⁶ Given these circumstances the leniency of the court seems surprising until one considers the class aspects of the case.

In general this reluctance to convict was seldom extended to blacks and given Queensland's record in sexual assault trials involving Aborigines, O'Grady might have been lucky to cheat the hangman had he been black. Under that circumstance he might

⁵⁵ Port Denison Times, 21 March 1866.

⁵⁶ Ibid.

have been charged with rape. As already admitted, it is unwise to draw comparisons between individual cases because of the inevitable differences that exist, but bias within the legal system and by juries was at times clearly evident.

It is interesting to compare O'Grady's trial with that of an Aboriginal youth charged with an attempted assault on a white woman at Normanton in 1894. On this occasion the crown case was slight and Justice Cooper examined the defendant himself because the young Aborigine was unrepresented. Recognising that his case was too hollow the Crown Prosecutor decided to drop the charge and Cooper J directed the jury to return a verdict of "Not Guilty". This they declined to do, demanding more evidence. The judge pointed out to them that the Crown had dropped the charge for the very reason that there was no more evidence. The jury, who clearly wished to convict, refused to accept the judge's directive and retired. When no verdict was forthcoming by four thirty pm, an exasperated judge had them locked up for the night.⁵⁷

Yet some Aboriginal men suspected of rape were not visited by legal terror, instead they were illegally killed by summary execution. Following the rape and murder of Fanny Briggs near Rockhampton in 1861, Lt. E. Morriset, the Commandant of the Native Police Force and a justice of the peace, called for Aboriginal workers to be expelled from all stations in the district. He is reputed to have told Commissioner Wiseman to dismiss his own black servants "so that they may be shot by police when away from my place".⁵⁸ Such a statement coming as it did from a senior policeman and magistrate, raises serious questions about the Commandant's level of mental responsibility. The irony attached to his remarks is that the crime was almost certainly committed by his own native policemen. The Maryborough Chronicle's reporter was quick to inform his readers that

... the late atrocity has embittered the at no time friendly feelings of the white

⁵⁷ Article by Justice Douglas, "Northern Supreme Court" Brisbane Courier, 12 September 1931.

⁵⁸ Wiseman to Archer December 1861, cited in Archer Papers ML. See also Commandant NP to Col Sec, 12 November 1860, 2107, 48/682, Col, QSA.

population towards the blacks of the district...⁵⁹

Some days after the inquest, an Aboriginal woman who had allegedly been ill-treated by native police troopers, gave a statement implicating four of them in the Brigg's case. Sergeant Toby, Troopers Gulliver, Johnny Reid and Alma were arrested. Reid was released because of lack of evidence. Toby was taken into the bush by native police who returned without him. Alma was shot while attempting to escape by a white constable under highly dubious circumstances. He was taken down to the river to get water when he allegedly jumped in and tried to swim away. MacDonald asserts that it seems odd that he should throw himself into the water wearing leg irons in front of a constable with a carbine in his hands.⁶⁰ Alma's death was officially recorded as "drowning while trying to escape".⁶¹

It was reported in the Moreton Bay Courier that whilst in custody Gulliver had made statements which cast guilt on Toby and Alma and it was stated that some of Brigg's clothing was "found in the possession of their gins".⁶² Gulliver also said that the murdered woman's bridle was hidden in a tree. When he was taken to retrieve it he managed to escape. The Courier reported that it was "impossible to take him without the use of the leaden messenger which is said to have ended his career".⁶³

The implication that Gulliver could not be apprehended and was shot while attempting to escape is a nonsense. It is virtually certain that the man was summarily executed. The evidence given to the 1861 Select committee on The Native Police Force, by Henry Babbitt clearly indicates that when Gulliver was handed over to Lieut. Powell he was

⁵⁹ Ibid.

⁶⁰ Macdonald, Rockhampton, p.181.
Macdonald may be misinformed, it seems that Alma was wearing not leg irons, but handcuffs See Queenslander 5 March 1870.

⁶¹ Northern Argus, Cited in Queenslander, 5 March 1870.

⁶² Moreton Bay Courier, 15 December 1860.

⁶³ Ibid.

intoxicated to the point of being unable to stand, let alone run away. He had apparently already confessed to being involved in the murder of Briggs and there was no reason why he should not have been made to stand trial for murder. Instead he was officially "shot while trying to escape". Babbitt did not actually see Gulliver executed, but the evidence that he was, is overwhelming. When Babbitt re-met the police party he asked one of the troopers what had happened to their prisoner and he was told "he no keep away any more".⁶⁴ Upon being questioned by committee member J. Watts, Babbitt answered that

...as there appeared to be something singular about the affair I asked one of the white men what had been done with Gulliver, and he said it was one of those things which ought not to be talked about.⁶⁵

In attempts to justify the illegal execution of Gulliver, Fitzsimmonds, the member for Rockhampton, asked Babbitt if he was aware that Gulliver had confessed to the Briggs murder. He then went on to inquire "Did you hear that he was the principle in the Fraser murders on the Dawson?"⁶⁶ If there was any substance in that rumour at all, it is unbelievable that instead of being made to stand trial for murder, Gulliver was appointed a non-commissioned officer in the police force.

The effect the crime of rape had on colonial race relations was further demonstrated in 1869 when an Aborigine named Jacob was arraigned on two charges of rape at Maryborough assizes⁶⁷. Both attacks were said to have been made on shepherds' wives when their husbands were absent. Jacob was captured with the aid of black trackers and delivered to the police at Gayndah. The Queenslander's correspondent wrote that

⁶⁴ Evidence of H. Babbitt, Select Committee on Native Police, p.33.

⁶⁵ Ibid.

⁶⁶ Ibid, p.35.

⁶⁷ Queenslander, 20 March 1869.

His arrival here caused considerable excitement. I thought seriously that he ran a fair chance of being lynched by some of the crowd who rushed down to the river bank to see him cross over to this side, where the lock up is...while the search was being made the town was crowded with blackfellows who evidently came in from the bush through fear.⁶⁸

Jacob was sentenced to death on the 14 April 1869 at the Maryborough assizes. In an unrelated incident also near Maryborough, another Aborigine was chased and shot dead by a station owner after the attempted rape and stabbing of another shepherd's wife.⁶⁹

The fact that only one white man was hanged for rape, while during the same period 12 Aboriginal men were executed for the crime makes it tempting to conclude that juries were more willing to convict Aborigines and that judges had few qualms about handing down a sentence of death. However, it might be simplistic to view the statistics in those terms. An investigation of the Queensland Criminal Reports between 1860 and 1901 shows a higher incidence of reported sexual attacks being perpetrated or attempted by Aboriginal men than by white ones. Whether the claims were always justified or not is another matter,⁷⁰ but the number of reported assaults and charges laid against Aboriginal men between 1860 and 1901 was considerable. The other noticeable feature is the number of black men who re-offended. One is left with the uneasy feeling that the investigation, charges and court proceedings may have been entirely meaningless to them.

In 1870 Aborigine Jacky Whitton stood trial for rape at the Toowoomba circuit Court before Justice Lutwyche. Whitton made no attempt to deny that he had attempted to

⁶⁸ Ibid, 27 February 1869.

⁶⁹ Port Denison Times, 5 April 1865. The white woman died in this attack.

⁷⁰ Walker to Col. Sec, 31 December 1853, NMP, B/5, QSA. It appears that the mere presence of an Aboriginal man was tantamount to sexual attack in some white women's eyes. Frederick Walker gave details of one of his troopers who unceremoniously walked into a settler's hut. The white woman occupant fled in terror; it seemed the trooper only wanted to light his pipe from her fire.

have sexual intercourse with Henrietta Reis, but denied that he had achieved it. Addressing the jury the defence counsel maintained that

the prisoner did not deny that he had made an attempt to commit rape but denied that the crime had been actually perpetrated. The former offence was punishable by imprisonment only, the latter by death. No medical evidence had been adduced in this case as there might have been and always should be when a man's life was at stake. Aboriginals of this country were not aware that rape was a capital crime and from the confession of the prisoner it was evident that he was not aware of it and that he was anxious to have it known that he had not assaulted the girl and had not hurt her believing as he did that assault was the most heinous crime...[he] called on the jury ...to bear in mind that the life of the prisoner at the bar was of as much value in the eyes of the Creator and of the law as the highest person in the land.⁷⁰

It took the jury only a few minutes to reject the attempted rape charge and to convict on the capital one. The prisoner's statement in reply to the usual question of whether he had anything to say was

I did not knock the girl down in the gully. She played with me and laughed with me she ran away, I ran after her we both fall down.⁷¹

⁷⁰ Cited in the Queenslander, 5 February 1870. Examination of Whitton's evidence leads one to the conclusion that he certainly attempted to have sexual intercourse with the girl, but his remarks about Henrietta playing and laughing with him give rise to the possibility of a misunderstanding. Whitton it was claimed spoke good English but apparently Henrietta did not, because a German interpreter was employed. However one of the problems raised by this particular trial was that Henrietta's age was unknown. She was about 14 therefore, she may have been capable of consenting and one gains the impression that Whitton believed she was. The other question her evidence raises, is did she fully understand what constituted sexual intercourse?

⁷¹ Ibid. The girl was a foster child and as nobody knew how old she actually was, a charge of "carnal knowledge" might have been very difficult to prove.

Apparently the most damning evidence was the fact that the back of the girl's clothes were dirty, but there had been no attempt to physically examine her by anyone, including her foster mother.

Given the reluctance of Queensland's courts, not only to convict, but to even try white men for rape, it seems unlikely that a white offender would have received a death sentence and even less likely that he would have been actually executed.

Their "play" was to have a horrifying ending with the law, justice and even common humanity failing this man. Following his sentence of death, Jacky Whitton stood on the gallows in Toowoomba gaol on the first Monday in March 1870, but his punishment was not yet over. In a botched hanging, somewhat reminiscent of Dundalli's ordeal fifteen years earlier his feet came to rest to a slight extent on the cross beams under the scaffold, and there he struggled to support himself with the tips of his toes for about 20 minutes, during which time he was repeatedly examined by two medical practitioners until he ultimately strangled to death. As if that was not enough, religion failed him as well. Despite the fact that

..."the black boy exhibited the greatest attention to the religious instruction offered by the Rev. Dr. Nelson and the Rev. R. Cryke"⁷³

Whitton was buried in pagan ground.

It appears that sections of the colonial press were far less concerned about being seen to be prejudging cases of sexual assault involving blacks than they were when the accused was white. The presumption of innocence was certainly not colour blind when a

... Wide Bay blackfellow named "Dr Dawson" was yesterday committed for trial for **having committed** [my emphasis] an aggravated assault on an elderly married woman... this scoundrel had just been released from gaol after

⁷³ Darling Downs Gazette, 9 March 1970.

undergoing a term of imprisonment for committing a similar assault at Mackay.⁷⁴

It must be appreciated that this Aborigine faced a death sentence if convicted. In point of fact, in spite of journalistic efforts to have him hanged, Dr Dawson was acquitted.⁷⁵

This case is atypical in that the judge not only directed the jury to acquit the Aboriginal defendant, but made some surprising assertions about the character of the white woman he was accused of assaulting. This contradicts authors who maintain that in cases where black men were accused of rape the integrity of the white woman was never called into question.

It appears that a married woman named Bridget Slater was returning home alone, at night, from the Rockhampton races. She alleged that Dr Dawson came up behind her, knocked her to the ground and raped her. Slater reported the crime and Dawson was arrested on the description she gave to the police. Slater recognised Dawson in a highly doubtful identification parade (only two totally different looking black men were paraded) by some scratches on his face. Dawson denied the charge and attributed the scratches to a fight with another Aborigine. Slater was examined some time after the incident by Dr Salmond who expressed the rather non-committal opinion that "it was quite possible that the offence might have been committed"⁷⁶

She obviously antagonised Chief Justice Sir James Cockle by refusing to answer questions about how much alcohol she had consumed that day. She demanded to know what right the defence council had to ask such questions when she had been "so ill-

⁷⁴ Ibid, 7 January 1871.

It is unclear why this man was named "Doctor Dawson" he may have been considered by the white community as some sort of a "witch Doctor". It is more likely that the name was awarded in a derisive way.

⁷⁵ Ibid, 1 April 1871.

⁷⁶ Rockhampton Bulletin, 7 January 1877.

treated, worse than murder by a blackfellow".⁷⁷ It was also established that Slater had previously been tried for stealing clothes. In his summing up Cockle CJ stressed to the jury the importance of knowing something of the woman's character and habits.

This was a case where a directed jury refused to convict on the uncorroborated evidence of a married woman whose character had been questioned by the judge and the defence. Cockle CJ had spoken of life being sworn away by badly disposed women. One wonders how much Slater's demeanor in the witness box prompted this, especially when one considers that Dr Dawson already had a related conviction.⁷⁸ The question of the judge's attitude becomes particularly significant, because at the same criminal sitting with the same judge, another Aborigine was tried for the same offence with totally different proceedings and outcome.

In this trial an Aboriginal man named George was indicted for the rape on 18 December 1870, of a married woman called Ellen Manning. George was said to have dragged Manning to the roadside, threatened to kill her with a knife if she made a noise, then raped her. She made a complaint and was examined by Dr Salmond who found her "much bruised and complaining of pain".⁷⁹ There were no witnesses to the offence, it therefore became, as in Slater's case, a question of an uncorroborated, married white woman's word against that of an Aboriginal man.

This is not an apology for the defendant. It is virtually certain that George did rape Ellen Manning, but considering what had been said in the Legislative Assembly just a few years previously and also the judge's duty to warn juries against accepting uncorroborated evidence from women in rape cases, the verdict from a legal standpoint

⁷⁷ Ibid, 28 March 1871. She constantly referred to the prisoner as a "black brute" from whom she feared she might have caught some disease.

⁷⁸ Five months after his acquittal on this charge, Dr Dawson was arraigned on two somewhat similar ones that also involved theft. For these offences he received one years hard labour to be followed by three years penal servitude. See Rockhampton Bulletin, 12 September 1871.

⁷⁹ Dept of Justice, register of Criminal Depositions, 1865-1885, JUS/S2, QSA.

raises questions, particularly as only the previous day the Chief Justice had stressed the importance of considering the woman's reputation. In George's case there was no reference to Manning's character (and in fairness why should there have been?). It took the jury only 20 minutes to convict. In passing sentence the judge told the prisoner that "he must have known that the penalty by **all law** [my emphasis] for the offence of which he had just been found guilty was death".⁸⁰ The judge's claim is debatable. Was forced sexual intercourse punishable by death under Aboriginal law and more specifically, under the law of the particular people that George came from? It is unlikely that Cockle CJ knew this. The other question is did George know it was a capital crime under the white man's laws? Who would have told him for he spoke very little English.⁸¹ One might wonder how many Aboriginal men knew that this was a capital crime when they committed it. If they did it argues that the death penalty was of little value as a deterrent anyway. Whatever else the trials of Dr Dawson and George may speak of, they clearly represent judicial inconsistency.

Some also demonstrated unwarranted leniency in addition to providing examples of "blaming the victim". Such a trial was that of Donald, who in 1892 was convicted of attempting to rape Eva Scott. In passing sentence Justice Real said

... we have an untutored savage who knows nothing about God...has never been taught self restraint his feelings were too strong... he gave way to them ... there was this woman wandering about in the bush alone putting temptation in his way... this should be a warning to other women. The sentence of this court is that he will be imprisoned for six months, and as I notice he has been in gaol for over two months waiting trial, that is to be counted as part of his sentence. Therefore he will serve four months.⁸²

⁸⁰ Rockhampton Bulletin, 28 March 1871.

⁸¹ Ibid, James (Durramboi) Davies also translated at this trial.

⁸² Cited in O'Sullivan Cameos of Crime, p.71.

The following year Donald reoffended and was hanged.⁸³

There were also other trials where Aborigines were convicted, and death sentences were awarded but not carried out. In one case it could be argued that the white woman's reputation influenced the executive to grant a reprieve.

Gillie Gillie Jack was charged with having raped Anne Wilkinson near Coomera in July 1876. What makes the reprieve remarkable is that the woman's husband was murdered in the incident. The evidence in this case was that two Aboriginal men who were apparently known to the Wilkinsons, came to their home and asked to sleep the night.⁸⁴ When the husband went to the door he was attacked with a tomahawk and killed. The two Aborigines entered the home and raped Anne Wilkinson. They then took her to their camp and did not release her until about ten o'clock the next morning. The evidence suggests that on the day of the offence Wilkinson and her husband had been drinking rum with the two Aborigines. The defence centred around the usual argument that this was a case of mistaken identity and also that Anne Wilkinson's testimony was unreliable. The prisoner said that she was often drunk in the black's camp. Added to this, her morals were called into question by a white man named George Hopkins who was a witness for the defence and who said that Wilkinson "bore a loose character".⁸⁵ Another European witness told that the prisoner was a quiet inoffensive person who was a better workman than many white men and earned from five to ten shillings a week. It took the jury an hour to find Gillie Gillie Jack guilty but in passing sentence of death, Lutwyche J said that his character might weigh with the executive in determining his ultimate fate.⁸⁶ It is hard to say whether it was Gillie Gillie Jack's character or Anne

⁸³ R. Barber, "Rape as a Capital offence in Nineteenth Century Queensland" in Australian Journal of Politics and History, No. 21, 1975, p.36.

⁸⁴ The second Aborigine was Peter, who died in police custody before coming to trial

⁸⁵ Queenslander, 9 September 1876.

⁸⁶ Ibid. See also Record of Death sentences in PRI/18 QSA. In this document Gillie-Gillie Jack is recorded as being condemned to death for murder not rape. This is incorrect, all other documents show him as having been convicted

Wilkinson's that tipped the scales, but he was reprieved. Reading the trial report in the press one gains the distinct impression that Anne Wilkinson and to a lesser extent her husband, were on trial nearly as much as Gillie-Gillie Jack.

Queensland's most infamous black rapist was a man named Johnny Campbell who was sentenced to 14 years imprisonment on 3 April 1880 by Blake J for the crimes of assault and robbery. What Justice Blake did not know was that a young girl was in the process of being persuaded by police to lay charges of rape against Campbell. Eventually 14 year old Jane Macalister complained that Campbell had raped her on 10 February 1880.

Johnny Campbell, or to give him his correct name, Kagariu, is another of the small body of Aboriginal criminals that we know something about, even though much of the recorded information is little more than myth. "Black Campbell" as he was called by some authors, is something of a romantic figure. An early history of Maryborough describes him as

A most intelligent individual, and conversant with many languages, speaking French, German, Italian and Gaelic. He received an education in Europe where he was taken by Mr. Campbell, a squatter.⁸⁷

Another person signing himself "Walaryan" whose life Campbell once saved and who knew him well, asserts that the man never learned to read or write and there is no evidence that he ever set foot outside Queensland.

By no means without justification, Campbell is credited with having developed a penchant for white women. Bull maintains that he acquired this taste after visiting white

and sentenced for rape. His death sentence was commuted to 15 years penal servitude on 7 September 1876.

Police Gazette, No. 23 11 November 1882. Gillie-Gillie Jack was released on 15 September 1882 having served 6 years in Brisbane gaol.

⁸⁷ G. Loyau, A history of Maryborough and Wide Bay and Burnett districts from the Year 1850 To 1895, (Brisbane, 1897), p.82.

prostitutes when he was in Europe. In keeping with the attitudes of white people about Aboriginal sexuality allied to racism, it would have to have been prostitutes; liaisons with "decent" white women would have been unthinkable.

The latest picture of him, produced in 1994 by Ann McGrath is of "a proud man with a reputation as a courageous horseman" who "spoke excellent English".⁸⁸ Campbell did have a reputation as a good rough rider, but the other accolades are arguable. Even allowing for cultural differences, "proud" seems an odd way to describe someone who attempted to sexually assault a five year old child; someone who beat and attempted to murder his own wife and abducted a another Aboriginal girl; and one who attempted rapes on several white women before being finally convicted of the offence. In addition, the latter part of this claim is not substantiated by his trial statement which was delivered in broken English. His reputation as an habitual rapist gave rise to the claim that his "fiendish crimes haunted the dreams of women"⁸⁹ In reality, Campbell may have provided a larger nightmare for men because "it had several times been said that he wanted shooting and often predicted that he would one day be hanged."⁹⁰ There is strong evidence however, that he attempted several sexual assaults. Campbell is alleged to have tried to rape Mrs McKewan on 25 July 1879 and 12 year old Matilda Bowden near Tiaro the following day.⁹¹ Paradoxically though, a white herdsman named Edgar Forman not only saw Campbell as posing no threat to his 17 year old wife, but praised him as "a man of his word" adding "a better or more honest fellow could not be found."⁹²

Campbell's modus operandi was to wait until huts or homesteads were deserted, or

⁸⁸ P. Grimshaw, M. Lake, A. McGrath, and M. Quartly, Creating A Nation: A dramatic new history that challenges the conventional view of Australia's past as a creation of white men of British descent, (Ringwood, 1994), p.149.

⁸⁹ C. Lack and H. Stafford, The Rifle and the Spear, (Brisbane, 1965), p.96.

⁹⁰ "Walareyan", Career of Campbell, p.1.

⁹¹ Police Gazette, 28 February, 1880.

⁹² Cited in "Walareyan", Career of Campbell, p.4.

occupied only by women, then to rob them. He also robbed lone travellers and deserted camps. In this, Prentis asserts he was often aided by his people, the Kabi of the Wide Bay region.⁹³ They also harboured him which led to them being harassed by police, and may be one of the reasons why so many of them were later taken to Brisbane to witness his execution.

A month after he began his 14 year sentence Campbell was re-committed for trial on a charge of having raped Jane Macalister. Dr. A. MacIntosh carried out a medical examination of Jane on 12 May which was three months after the alleged offence took place. This of course would have proved nothing other than the existence or otherwise of Jane's hymen. It is significant that the matter of rape was not mentioned by Jane herself and that the police had to persuade her to lay charges. It is quite probable that the girl, who was getting close to marriagable age, did not wish the incident to be made known and that her silence on the matter reflected only a reticence to have it aired in public.

The case of Regina V Johnny Campbell opened at the criminal sittings of the Supreme Court at Ipswich, on 26 July 1880. It should be remembered that Campbell had just started a 14 year prison sentence, but it seems that this was not sufficient for the colony. The man was seen as dangerous and Queensland wanted to be rid of him. To give further substance to the impression of menace this seven stone man who was five feet three inches tall appeared in court in a new sort of restraining device which was made in the form of a large belt which pinned his arms to his sides and he was held by police throughout the trial.⁹⁴

The case for the prosecution hinged entirely on the evidence of Mrs Stewart and Jane Macalister who maintained that at gun point Campbell had demanded sexual intercourse with Jane and had chased her until she submitted.

⁹³ Prentis, "The Life and Death Of Johnny Campbell", p.144.

⁹⁴ Brisbane Courier, 27 July 1880.

Campbell was defended by Frederick Swanwick who was a well known opponent of the death penalty. His cross examination of Stewart and Macalister was fairly vigorous, but no witnesses were called. In reality the defence was nothing more than an admission of guilt, accompanied by a plea that this Aborigine had done to a white girl only what so many white men had done to black women. This virtually ensured that Campbell would hang. It may also be the source of a sometimes stated belief that Campbell's rapes were "paybacks" against white men. Swanwick asserted that

...numerous were the cases of white men ravishing black women, and the blackfellow naturally imitated his white fellowman to whom he looked for an example in morality and civilisation...⁹⁵

He then asked the jury to become colour blind, and not to be influenced by the race of the accused. Neither plea carried much weight with either the judge or the jury. It took them only 15 minutes to decide that Campbell was guilty. Following the tradition of allowing the prisoner to speak before sentencing, the judge invited Campbell to say something on his own behalf. This is the first time we hear the voice of the man and it is noteworthy that he spoke in much less than perfect English and that he attempted to accuse Jane of selling herself. Campbell said

There's some story there; I did not do such thing; that woman tell a lot of lie on me; I'm not supposed to be guilty he [Campbell was referring to Stewart] say of stories about me putting revolver to his head; I was standing by creek...he call me down himself [referring to Jane] before that he ask me how much money I'm not supposed to be guilty.⁹⁶

The judge refused to confer any credibility on Campbell's claim, but Prentis believes that the man's statement seemed sincere.⁹⁷ He goes on to assert that Campbell may have

⁹⁵ Cited in Prentis, "Life and Death of Johnny Campbell", p.61.

⁹⁶ Cited in *ibid*.

⁹⁷ Prentis, "Life and Death of Johnny Campbell", p.67.

viewed the two women's attempts to placate him as acquiescence. This of course is pure supposition; nor does it alter the fact of rape in law, although it may have done so in Campbell's eyes. It is significant that Justice Lilley told the prisoner that "he could hold out no hope of mercy for him"⁹⁸ even though the sentence had to be reviewed by the Governor.

Campbell the black bushranger and rapist was hanged at Brisbane gaol on 16 August 1880. Three hundred Kabi Aboriginal people are said to have been taken to Brisbane to witness the hanging as a signal lesson to the black race. Like so much of what was written about Campbell, this is probably an exaggeration, but the press did report that an unusually large number of Aboriginal people were assembled to witness the execution.⁹⁹ This is one of the features that make this case important to the argument presented by this work. It was a judicial "throwback" to an earlier era; a re-emergence of the public spectacle aimed at deterrence by terror. There are also other features which underline this claim. Reminiscent of bygone days when the corpses of executed criminals were given to surgeons for dissection, the Queensland Government gave Campbell's body to international science. His brain was examined and photographed and his preserved remains were shipped to Berlin to be examined by that city's anthropological society.¹⁰⁰

It is interesting to consider the impact of inter-racial rape on the white colonial mind. In earlier times in the American colonies this fear, allied to those of miscegenation and its effect on racial purity, gave rise to the introduction of laws which permitted castration of black slaves as a legal punishment for rape or the attempted rape of a white woman. It was rationalised by the American settlers as necessary to restrain a lecherous and barbarous race.¹⁰¹ It is not difficult to recognise an analogy between the legislation enacted by the American colonists in the 17th century, and the laws that were

⁹⁸ Queenslander, 31 July 1880.

⁹⁹ The Telegraph, 17 August 1880. See also Brisbane Courier, 17 August 1880.

¹⁰⁰ Prentis, "Life and Death of Johnny Campbell", p.72.

¹⁰¹ These laws caused outrage in Britain, where it was considered that the barbarity was on the other side. See Jordan, Whiteman's Burden, pp.81-2.

promulgated by backward looking politicians in the Colony of Queensland. Two hundred years later, execution for the offence of rape was retained for over 40 years because of the presence of black people who it was believed, could only be controlled by "the terror of the law" in the shape of a noose.

It can be seen then, that colonial courts and the rest of the legal process displayed elements of racial discrimination, but it would be a distortion to claim that it was invariable. The frequency of rapes and attempted rapes by Aboriginal men make the claim that it was a rare occurrence untenable. So too, is the belief that the moral character of the white woman victim was never questioned. But whether this was done overtly or not seems to have depended on the impression they created in the witness box. This means that like their modern sisters they were also on trial.

PART B: POLICING THE ROAD TO LOTUS GLEN

Chapter Seven

White Police: Historical Perspectives.

If any characteristic has distinguished the police in Australia from their original models in England and Ireland, it has been their continually changing role in the government of Aborigines.

M. Finane, Police and Government: Histories of Policing in Australia, (Melbourne, 1994), p.111.

It is impossible to examine the history of the white reaction to Aboriginal crime, or the justice that was afforded them without reference to the police. Their involvement in both the prosecution, and paradoxically, the protection of the indigenous people are major themes in Queensland's history of race relations.¹ Nevertheless, while it would be palpably inaccurate to claim that Aboriginal people were invariably unjustly treated by police, overwhelmingly the association has been far from happy. Historical records make it obvious that many white policemen disliked Aborigines intensely. As the century progressed this antipathy became increasingly swayed by racism, but its roots were probably set in fear and conflict. It has been argued that the police were prejudiced against Aborigines from the beginning and that this stemmed from attitudes carried over from the period when frontier conditions produced direct conflict between the two races.² This is understandable, after all it is difficult not to be prejudiced against people who are seen as dangerous enemies. However to better understand this relationship, it is useful to look at the police historically and it is helpful to consider their development and behaviour in the Australian context. The police culture of despising blacks was central to the level of severity shown to Aboriginal people and to the steadily increasing number of them that were to be imprisoned in the colony's gaols.

The police image of the black people as dangerous and "less than human", encouraged a level of harshness that was to be a continuous problem for Aborigines. The treatment they received at the hands of convict constables who displayed a particularly marked antipathy for blacks may have sown the seeds for the brutality that many white policemen showed towards Aboriginal people throughout the entire colonial era. In their turn, Aborigines affected many aspects of colonial policing, including that which was performed by the British Army,³ and at least one white force was raised specifically to

¹ One should be aware of the role that some police played in the protection of Aborigines, not only post 1897, in the wake of The Aborigines Protection and Restriction of the Sale of Opium Act, but during the colonial era generally.

² E. Eggleston, Fear Favour and Affection, (Canberra, 1976), pp.18-19.

³ In 1847 Earl Grey informed the Government of NSW that the military force had been performing duties more analogous to those of a police force than part of Her Majesty's regular army and that henceforth they would no longer undertake such

deal with difficulties associated with the Aboriginal presence.

Because of its dramatic impact, historical analyses of the interaction between police and Aborigines has tended to concentrate on the role of the Native Police when they were pursuing a policy of dispersal in frontier situations, while the other associations between white constabulary in its various forms and black people, during the early years of colonisation has been somewhat ignored. In fact, one might claim that the historical association between Aborigines and white police in Queensland, when it is seen at all, tends to be viewed in terms of the relationship that occurred at the end of the 19th century in the wake of the 1897 Protection Act. The fact remains however, that virtually from the initial days of the European invasion Aborigines and white policemen were in some sort of a connection that was largely based on conflict. The constant calls for police protection against blacks throughout the 19th century attests to the accuracy of this claim. It is important to recognise this because the character of the Queensland police and for that matter the other Australian forces, has traditionally been attributed to the effects of convictism, the influence of the Royal Irish Constabulary and the demands of governments suffering from inadequate bureaucracies. Without denying the impact of these, their influence should not obscure the fact that Aborigines impinged upon the police as much as the other three phenomena did.⁴

It is also important to dispel the commonly held belief that the Queensland police or for that matter the other Australian forces, are faithful replications of the British model.⁵ However, it is true to say that there are many similarities and the instructions to police contained in Sir Robert Peel's Metropolitan Police Act of 1829, influence the Australian forces to this day.

The 1820s saw dramatic alterations to the notions of policing in Britain and

responsibilities. See Moreton Bay Courier, 29 May 1847.

⁴ One should remember that Aborigines policed convicts at Moreton Bay and elsewhere.

⁵ K. Milte, Police in Australia, (Sydney, 1977), p.8.

consequently, in those regions of the world that fell under its influence. However, the concept of a standing police force was not something that the British embraced willingly. In fact the absence of such a body has been cited as one of the underlying reasons for the severity of the 18th century penal code.⁶ It was believed that severe laws which served as a deterrent better provided for the protection of property than an organisation expressly raised to capture criminals after the event. This of course, ignores the point that the presence of a police force may also act as a deterrent.

Since Saxon times, with a few variations, British policing had been based on the local constable system. These were men considered to be of good character who were appointed to serve their communities for a limited period. It was often an unpopular task and frequently those elected farmed the job out to anyone who might take on the responsibility for payment. It was clearly a most imperfect system but it appeared to suit the anti-professionalism that was part of the English character.⁷ Allied to this was the abhorrence they apparently felt for anything which approximated that imperfectly understood phenomenon that continental Europe occasionally provided examples of called the Police State.⁸

⁶ McClynn, Crime and Punishment in 18th Century England, p.xvi. It has been argued that the explosion of capital offences in 18th century England is attributable to the lack of a police force. But perhaps historians who subscribe to this point of view have mistaken a symptom for a cause. The dislike of police was one of several attitudes that formed part of the English political culture, attached to this was the dislike of a standing army, which was connected to the upper class cult of the amateur: professionalism was a little suspect in England.

⁷ This seems to have been a particularly English characteristic.

The terms "English" and "British" are not, as many Australians make them, interchangeable. "British" embraces the United Kingdom as a whole with its diversity of countries, language, laws and culture.

⁸ From an Aboriginal perspective, it would be no exaggeration to claim that 19th century Queensland was a police state.

For an interesting analysis of police state societies see K. Popper, The Open Society and Its Enemies, Vol. 1, (London, 1950).

Many nation states have at various times in their histories produced what might be termed police state societies. The concept of the state raising and maintaining bodies to enforce the will of the politically powerful probably first emerged in ancient Greece. In his Republic, Plato explained that the foundation of justice lay in the specialisation of functions within society. He termed policemen "guardians" but added that they should be more properly be described as "auxiliaries". Their function was to assist the policy makers in the execution of their decisions. These guardians were a constituent arm of the ruling class whose duty was to control the lower orders of society to prevent them becoming a threat. There was no provision or desire to limit the ruling class, their own self regulation was considered sufficient.⁹ Plato's theory of control coincided with another emergent and important concept, that of "politia". This was the term that referred to "all matters affecting the survival of the inhabitants of the city",¹⁰ which included public health and morality. The existence of a body to enforce the will of those who wielded power became even more manifest in the state of Rome, where the imperium passed from the people to the Emperor as an assignment of sovereignty. The Emperor was thus empowered by two elements, his authority to regulate conduct and possession of the means to compel obedience by coercion. The Greek and Roman models provide a background from which to consider the increased scope for control in the more modern police state, of which Spain, Russia and Nazi Germany and to a lesser extent Queensland, provide examples. In these societies the role of the police was not restricted to crime prevention and law enforcement. They became an arm of government with extensive social and political duties so that, in Milte's terms "... the dominant political authority could be perpetuated".¹¹ Post revolutionary France provided perhaps the most striking example, one which horrified the British. The Earl of Dudley in 1811 illustrated this abhorrence and contempt for the lives of others, when he maintained

⁹ A. Taylor, Plato: The Man and His Works, (London, 1955), p.264.

¹⁰ Ibid, p.266.

¹¹ Milte, Police in Australia, p.8.

See also reports of the Commissioners of Police in QVP, 1864 - 1939. At one stage the Queensland force had 70 non police duties to perform.

They have an admirable police in Paris, but they pay for it dear enough. I had rather half-a-dozen people's throats should be cut in the Ratcliffe highway every three or four years than be subject to the domiciliary visits, spies and all the rest of Fouche's contrivances.¹²

This is an important statement, because it illustrates that antipathy towards police cut across all classes in England.

Yet the need to stem the rising crime rate and protect property demanded alteration to the inefficient policing methods that had been employed for so long. Therefore in 1818 a parliamentary commission considered police reform. They found that amendment was certainly desirable, but took the important step of rejecting the prevention of crime and the apprehension of criminals as the prime object of policing. They recommended that the overriding aim of the constabulary should be the preservation of the peace and stressed, with considerable emphasis, that the public was to enjoy maximum freedom from interference. This committee argued

It is difficult to reconcile an effective system of police with that perfect freedom of action and exemption from interference which are the greatest blessing of society in this country. Your committee think that the forfeiture or curtailment of such advantages would be too great a sacrifice for improvements in police, or facilities in detection of crime, however desirable in themselves if abstractly considered.¹³

This is a somewhat surprising assertion from a class of people who have been so often portrayed as being inordinately preoccupied with the protection of property. Nevertheless, a professional police force was provided for metropolitan London in 1829, but it was a force imbued, at least on the face of it, with the concept of minimal

¹² D. Neal, The Rule of Law in a Penal Colony: Law and Power in Early New South Wales, (Oakleigh, 1991), p.141.

¹³ Cited in L. Radzinowicz, A History of English Criminal Law, Vol. 3, (London, 1956), p.247.

interference with liberty. Peel was adamant that they should give the appearance of being the public's servants, not their masters. With this in mind, unlike their Australian counterparts they were able to avoid many non police duties which would have affected their popularity.

The "New Police" that Peel created were unarmed and on the face of it, had little more authority than the ordinary citizen. Importantly he instructed his constables that they

... will be civil and attentive to persons of every rank and class, insolence will not be passed over...[they] **must be cautious not to interfere idly and unnecessarily.**¹⁴ [my emphasis]

Laudable as all this may appear, it would be naive to believe that the creation of such a tolerant and benign police force arose simply from the desire to confer equal civil rights on London's class divided population.¹⁵ The 18th and early 19th centuries were times of great political upheaval in the United Kingdom.¹⁶ The French revolution and the volatility of their own working people¹⁷ had shaken the British ruling class to its

¹⁴ Cited in C. Reith, A New Study of Political History, (London, 1956), p.125.

¹⁵ The Metropolitan Police Act was initially only applicable to London; the rest of England and Wales was policed by systems that had existed, with a few variations, since before the Norman conquest. Scotland had its own legal system and Ireland, because of its political climate, was policed entirely differently. See J. Skolnick, "Changing Conceptions of the Police" in Encyclopaedia Britannica, (Chicago, 1972), pp.41-44.

¹⁶ G. Rude, Protest and Punishment; The Story of Political Protesters Transported to Australia, 1788-168, (Oxford, 1978), p.13. Rude makes the obvious, but nonetheless important point that it is difficult to differentiate between someone convicted as a result of political protest and the common law offender.

Engles attributed the thirty-seven fold increase in crime that Britain experienced, to need in some form. See F. Engles, The Condition of the Working Class in England, (London, 1952), pp.130-2.

¹⁷ The belief that the English working class were docile and compliant is a complete myth. They were perhaps the most volatile people in Europe. See E. Thompson The Making of The English Working Class, (Ringwood, 1968), Ch.2.

foundations. Peel's aim therefore, was to create a force that was acceptable to this caste who were fearful for the safety of their property, while at the same not stirring up violent discontent among the lower orders; he had no wish to hear the sound of tumbrels in Hyde Park. This is a somewhat cynical analysis because there is no doubt that Peel was a man of vision, but he was well aware that a permanent constabulary was unlikely to find favour with the general London populace, and equally certain that without public support their task would be much more difficult. With this in mind he issued a series of thoughtful orders aimed at public relations. These included

(i) 29 September 1829: Police constables are particularly cautioned not to pay attention to any ignorant or silly expressions of ridicule that may be made use of towards them personally, all of which they must feel to be beneath their notice.

(ii) 3 June 1830: No constable is justified in depriving anyone of his liberty for words only; and language however violent towards the police constable himself is not to be noticed. The constables are particularly cautioned not to answer angrily or enter into altercation with any person while on duty. A constable who allows himself to be irritated by any language shows he has not a command of his temper which is absolutely necessary in an officer invested with such extensive powers.¹⁸

(iii) 26 October 1830: The people should be treated with good humour and

¹⁸ In fact, as already stated their powers did not appear to be extensive. Historically, British police have always given an impression that their activities were curtailed were by public opinion. However, since the advent of international terrorism police powers have been extended. Even so, it is appropriate in a comparison between British and Queensland police to point out that in the Australian state, to use insulting language to police was, and still is, an offence for which one may be arrested. For example in 1867 for telling a Queensland policeman to "go to blazes", John Manning was fined five shillings, in default, 12 hours gaol. See Port Denison Times, 19 January 1867.

There is no such offence as "insulting the police" in England.

civility and no severity used except in cases of utmost necessity.¹⁹

Therefore, the Metropolitan Police Act may be regarded as thoughtful legislation which produced a policing force with an appearance of compromise which was aimed at undermining the strong prejudice many Londoners held for police generally and the concept of a professional constabulary particularly.²⁰ It was an act that initially applied only to London, but it gradually spread to the rest of England and Wales on a voluntary basis, which became obligatory by 1856. Yet the "New Police", as they were called, did not meet with universal approval, some citizens were unhappy with the idea of a permanent, paid force and others wanted one that would operate aggressively against criminals. To this end, the possibility of establishing a body like the para-military Royal Irish Constabulary was examined by an 1839 Royal Commission. However it was rejected because of its repressive nature.²¹

Understandably, civil libertarian influences on policing were much less pronounced in New South Wales. There, it was well recognised that the type of force that was developing in the colony would find small favour with people who valued British liberal traditions. In fact, a select committee on police argued somewhat apologetically that

... if it be objected that it is inconsistent with the notions entertained in an English community of the perfect liberty of subjects, it may be answered that it is only such a sacrifice of theory as is required to obtain in practice a more perfect security of life and property without which liberty itself can have no

¹⁹ Cited in C. Reith, A New Study of Police History, (London, 1956), p.135.

²⁰ The reality may have been somewhat different because police powers under the Vagrant Act of 1824 and the Metropolitan Police Act of 1829 were arguably draconian. Even so, police for some time were subjected to abuse and humiliation. See Radzinowicz, History of Law, vol.1, Ch.5.

²¹ Milte, Police in Australia, p.23.

substantial reality...²²

Quite obviously, policing a largely convicted society presented specific difficulties. Such a population was presumably more lawless and therefore required more surveillance.²³ This was one of the reasons for the inordinately high ratio of police to population in the colony.²⁴ To compound the problem, there was also the threat to security that Aborigines and runaway convicts represented. There is little doubt that these pressures and the acute shortage of men who were considered suitable for the office of constable influenced the decision to appoint convicts.²⁵ Yet it could be argued that there was a risk in selecting a law enforcement body from such men and although some historians disagree,²⁶ this thesis argues that the influence of convictism on policing has been profound.

As might perhaps be expected, the arrangement worked poorly with lawlessness

²² Select Committee on Police and Gaols, NSW V&P of the Legislative Council, 1839, Vol.2. p.24.

²³ This assertion is debatable. It is extremely difficult to arrive at accurate figures for crime in early NSW, therefore, reliable comparisons between the two countries do not exist. However the belief that convicted people required more intense policing did. See Therry, Reminiscences, p.84.

²⁴ During the colonial era policing provided an important source of employment for men who might have otherwise been destitute, but they were often paid less than that offered to labourers and by many people regarded with contempt.

²⁵ The same shortage also raised difficulties for the penal strategy. In NSW the initial response was to provide constables for the various settlements, and warders for the convict establishments from the ranks of the best behaved prisoners. In the case of the convict overseers this was simply following a very long tradition. Like his charges the warder is also locked up and for this and other reasons free men are loath to do it. To overcome this difficulty, and perhaps to save money, in British influenced gaols prisoners were employed in the role of turnkey (later to be named warder) and it was not until 1865 that the practice was abolished.

²⁶ Some historians believe the influence of convictism on policing has been over emphasised. See Finane, Police and Government, p.24.

escalating.²⁷ But it did have certain advantages for the young colony. It was a cheap method of obtaining a police force and the magistrates bench could exercise tight control over convict constables under the Summary Punishments Act. Governor Hunter however, disbanded this form of policing and copied the method that had been employed in England prior to Peel's act; he policed Sydney Town by appointing respectable free residents as constables. These men were unpaid but received a weekly ration of rum.²⁸

The arrangement changed with the appointment of Governor Macquarie. In 1810 he established a strategy that relied heavily on house searches and street surveillance. This was intended to impact on the economic and social lives of the colony's inhabitants, convicted and free. It was an ineffective system that illustrates an attempt to create a method of policing that was not only unknown in Britain, but would have been considered repugnant because it had many of the trappings of the police state.²⁹ It seems therefore, that the untrammelled atmosphere of the colony invited experiment in policing methods.

In 1819, following complaints of maladministration, Commissioner Thomas Bigge was sent out to investigate the affairs of the colony. Among his list of priorities were the policing arrangements.³⁰ One of his recommendations was that all police be placed under the command of a specific officer. Thus Capt. F. Rossi became the first superintendent of police on a salary of 500 pounds sterling a year.³¹ Acting on another

²⁷ H. King, "Some Aspects of Police Administration in NSW 1825-51, in Royal Australian Historical Society Journal and Proceedings, Vol.xlii, p.25.

²⁸ Ibid, p.216.

²⁹ P. Byrne, Criminal Law and Colonial Subject: New South Wales 1810-1830, (Melbourne, 1993), p.155.

³⁰ Bathurst to Sidmouth. 23 April 1817, Letter 138 in CO 324, PRO.

³¹ In fact King argues that he was never really more than the head of the Sydney police because his duties on the magistrates bench kept him there. See H. King, "Some Aspects of Police Administration in New South Wales 1825-1851", JRAHS, Vol.42, No. 5, 1956, p.216.

of Bigge's suggestions a body known as the "Horse Patrol" was formed.³² This was probably the first of the colony's police forces created for a specific purpose; its task was to deal with bushrangers³³ and depredations by Aborigines within the confines of the settled districts. It was apparently an effective body that found favour with the magistracy. There was a distinct similarity between this unit and the Irish Constabulary³⁴ in that both were para-military and existed to impose unpopular control

³² J. O'Sullivan, Mounted Police of NSW, (Melbourne, 1972), p.74. This unit is sometimes referred to as the "Horse Guards" but more properly it was named "The Mounted Police of NSW". Both these titles are confusing because Horse Guards is the name given to the British War Office, (because it was located at Horse Guard's Parade in Whitehall) and there were two corps of mounted police in NSW. The Horse Patrol is used to avoid confusion.

³³ "Bushranger" was the name given to runaway convicts, although there were many bushrangers who came from the ranks of the free. Bushranging has had no small influence on Queensland's draconian vagrancy laws. It was assumed that being abroad in the bush with no visible means of support was tantamount to an admission of intent to commit robbery. This ignores the fact that many people could and did live off the land. In fact, early in the colonial era some innocent people living in this way described themselves as bushrangers. See Byrne, Criminal Law and Colonial Subject, p.130. It was only later that the name acquired its "highwayman" connotation.

³⁴ Dublin Castle Records, CO, 904, PRO. and Irish Office Records, CO, 906, PRO. The Irish constabulary were created in 1836 and policed the whole country with the exception of Dublin. They became "Royal" in 1867. Initially they were concerned solely with keeping the peace, a duty which could entail the suppression of armed rebellion, sectarian riots or agrarian disturbances. In 1867, they took over a wide range of extraneous, non police duties. For this, and other reasons, they demonstrate a remarkable similarity with the Queensland force which was developing at the same time.

King, "Some Aspects of Police Administration", p.210. King believes that this was not a conscious imitation, but something that sprang from the fundamental necessity of imposing a jurisdiction that was rejected by a large section of the people. In Queensland's case I do not agree with her analysis because the colony's first Governor wrote

...I felt... it was my duty ...to induce my ministers to put the police on an improved footing. I suggested the formation of a European force on the model of the Irish constabulary...See Governor to Sec. of State for the Colonies, 12 November 1866, Gov/24, QSA.

Colonial Secretary R. G. Herbert also expressed the opinion that the Queensland force should be in the hands of "someone who was familiar with the... Irish constabulary". See also, Report of the Prevention and Repression of Crimes, QV&P, 1872, p.1487.

over sizeable portions of the population. In fact the Horse Patrol was a military corps. It began as a small body consisting of two officers, two sergeants and twenty private soldiers. The original concept had been to recruit from those men who had taken their discharge while serving in the colony, but it was soon found necessary to establish the practice of seconding men from the resident infantry regiment.³⁵ They were volunteers, however unlike the men, the officers stayed only for a short tour of duty so that their military careers would not be jeopardised.³⁶

As settlement spread, conflict between Aborigines and colonists escalated making further modification to policing necessary. Beyond the limits of location the invading settler dispensed his own form of justice, to which the Aborigine retaliated, producing a continuous spiral of violence. An effort to curb this gave rise to another para-military police force known as the Border Police.³⁷

This was a particularly fascinating body. It was initially formed from six soldiers who had been transported to NSW from the Cape Colony for military offences. It was considered that their army training and exposure to discipline would make them more suitable as policemen than civilian convicts. It is also another example of the flawed thinking which ignores the risks in trying to turn a law breaker into a law enforcer.³⁸ It is true that these particular transportees were convicted by the harsh system of discipline that was employed by the British Army. But an army convict is a convict no less. Military prisoners sentenced to transportation were convicted of crimes which would often have attracted the death penalty earlier. The first part of their sentence was to be dishonourably discharged from the service. This was never imposed lightly; on the contrary the army made every effort to retain men using instead the many punishment

³⁵ Because they recruited from infantrymen it was sometimes difficult to find good horsemen. The Queensland Police had similar problems.

³⁶ O'Sullivan, Mounted Police of NSW, p.50.

³⁷ The Border Police should not be confused with the Border Patrol. The latter was a Queensland customs enforcement agency.

³⁸ This blighted thinking was later to be employed in recruiting for the Queensland Native Mounted police, who also recruited from the colony's gaols.

options that military law allowed. Discharge with ignominy meant then, as it does now, that the soldier so discharged was considered, generally because of repeated offences, to be worthless. Either that, or the crime he had committed was viewed so seriously that his continued service constituted a threat to the discipline which the army saw as essential to its function. This can hardly be seen as a suitable recommendation for a policeman. In fact O'Sullivan believes that the border police were mostly drunkards and the scum of the army.³⁹ This description however, is not altogether accurate. The number of military convicts arriving in the colony was never sufficient to bring the force up to its desired strength and the authorities were obliged to recruit from men to whom such a characterisation would be an unjustified insult. The reference to them as "scum" probably reflects the attitude held by squatters, who sometimes called them "Border Crawlers" and disliked them for reasons which will become obvious. The convicted ex soldiers who founded the corps were unpaid, but promised that good service would earn them indulgences. They were so thin on the ground as to be almost meaningless; like the Queensland Police who followed them, they were burdened by extraneous duties which often prevented them from policing. Nonetheless, the Border Police represented an attempt to protect Aboriginal people from the excesses of white settlers. Although it is convincingly argued that these police were not exclusively Gipps' idea; they sprang from his Crown lands bill, which was presented to an extraordinary session of the NSW Legislative Council in February 1839.⁴⁰

The concept of a policing force to operate outside the settled districts had been advocated by several people including Lt. Sandlier RN. Like Gipps, Sandlier was motivated by the desire to curtail inter-racial conflict. He also wanted to send people out to teach the basic tenets of English law to Aborigines.

³⁹ O'Sullivan, Mounted Police in NSW, p.43.

⁴⁰ Crown Lands Act, (2 Vic 27). This was the hated "Squatting Act" that was so often referred to. (It was also called the "Border Police Act"). It is quite possible that the Myall Creek massacre and the subsequent execution of seven white men for the murder of Aborigines had substantial bearing on this legislation. However it should be mentioned that the same title was also given to an earlier act of 1836. This was Wm iv 4.

Governor Gipps reasoned that as the Border Police were to protect squatters as much as Aborigines, the former should pay for half the maintenance of the force. This was to be collected in the form of a poll tax on animals, which was one half penny per sheep, one penny for each head of cattle and three pence for every horse. The revenue collected was to be used to defray the cost of the border police and the salaries of the Commissioners for Crown Lands.⁴¹ It is understandable therefore, that these tax-collecting policemen were unpopular with the squatting fraternity. Pastoralists also complained that they were inclined to establish commonality with convicts, which is hardly surprising as they were mostly convicts themselves.

The legislation that established this police force contained no specific references to Aborigines and did not spell out their civil rights under law. The legal belief was that the existing laws were adequate; what was needed was the means of enforcing them. Even so, whatever the shortcomings of the Border Police or those that controlled them may have been, the conceptual basis of the legislation represented a serious attempt by Gipps to curb the burgeoning violence that was taking place between Aborigines and Europeans - a violence about which his masters in Downing Street were becoming increasingly uneasy. We cannot be sure how much of the Governor's protective stance towards blacks stemmed from his own humanitarianism or what part obedience to orders played,⁴² but whatever may have motivated him, he was determined, even in the face of an increasingly opposing legislative body, to see the Act observed and the Border Police were to be the means of achieving this. Prior to their establishment he had no means of enforcing the law beyond the limits of the nineteen counties, but his conversation with a "wealthy grazier" which was reported in The Australian, leaves little doubt about the strength of his resolve.

Grazier: I have called upon your Excellency for the purpose of representing the dreadful state of the southern districts in consequence of the repeated

⁴¹ Skinner, "The Days of the Squatting Acts", p.5.

⁴² This may well be an unwarranted slur on Gipps' character because his humanitarian credentials had been well established in the West Indies. See H. Beard to Sir George Murray, 15 January 1829, CO, 111/106 PRO.

aggressions of the aborigines.

Gipps: What do you require? The aborigines are subject to the laws of the country, which I apprehend are sufficient to protect everyone, both black and white.

Grazier: It is impossible to apprehend the natives; and when they are apprehended they cannot be tried for their offences insomuch as no person can interpret their language. An armed force is the only remedy that can effectually protect our interests.

Gipps: It is a question of great difficulty. It cannot be expected that everyone who goes in search of pasture for his flocks and herds can be protected by an armed force. The Government can not act sir, in the way you require.

Grazier: Although I for one shall regret the result, still, for our own protection and for the protection of the lives our servants and flocks and herds, we must take the law into own hands.

Gipps: You may do as you like, but if you or your servants commit any murders on the Aborigines, and you or they are convicted of them, as sure as my name is George Gipps, so sure shall you, or they hang.⁴³

How protective of Aborigines the Border Police actually were is questionable. They had been employed in the Port Phillip region prior to their use in the Northern District. Fels states that in the south of the colony information about them is sketchy, but they had an evil reputation among Aborigines.⁴⁴ They made their appearance in the Moreton Bay

⁴³ Cited in G. Reece, Aborigines and Colonists, p.144.

⁴⁴ M. Fels, Good Men and True, p.152. See also Reece, Aborigines and Colonists, p.186. The Border Police and the Commissioners were at times quite ruthless with Aborigines. In a reprisal near Grafton in 1841 following a theft - subsequently traced

region on the staff of CCL Dr. Stephen Simpson, when a corporal and three troopers were posted to him on 1 March 1843. Interestingly, two of them were "Hottentots" who had been private soldiers in the Cape Mounted Rifles. One had been transported for a second desertion, the other for mutiny and the murder of an officer.⁴⁵ Simpson also applied for three extra police to combat the illegal felling of cedar on the banks of the Brisbane and Logan Rivers. What is particularly significant about this request is that he suggested that Aborigines be chosen as constables and that they be mounted. He may have been motivated by their tracking skills, or by pecuniary considerations. Gipps approved both requests, but warned Simpson to ensure that the Aborigines were not illtreated by the white constables or made to act as servants to them.⁴⁶

During 1844, because of increased inter-racial conflict, commissioners for crown lands were permitted to fill vacancies in border police ranks by appointing free men at a rate of pay not exceeding one shilling a day, plus clothing and rations.⁴⁷ This recruitment of non convicts raised questions relating to the code that was to govern their activities. In answer to queries on the subject raised by Commissioner Rolleston he was informed that

The free men will be subject to the same discipline and control as constables in the ordinary police, but all regulations established for the Border Police and not inconsistent with their condition as free men are still to be observed.⁴⁸

This established an unusual situation where two men doing the same job and perhaps working together, operated under differing legal systems. The shortage of suitable men caused Simpson to be given permission to recruit potential constables from the infantry

to a white man - they indiscriminately shot black men, women and children.

⁴⁵ The Names and Descriptions of all Male and Female Convicts Who Arrived in The Colony of NSW, 1840-42. Cited in Skinner "Days of the Squatting Acts", p.25.

⁴⁶ Ibid.

⁴⁷ Col Sec to CCL Darling Downs, letter 44/7950, MF, A2-14, JOL.

⁴⁸ Cited in Skinner, "Days of the Squatting Acts", p.28.

regiment serving in Sydney, but service as policemen cannot have been all that attractive to the soldiery, because he was obliged to take two men who were undergoing short sentences for offences committed in NSW.⁴⁹

1844 saw the formation of a select committee to investigate grievances relating to crown lands which foreshadowed the end of a border police force that were stretched to the limit. In the mid 1840s there were occasional references to them in the northern press that were mainly couched in derogatory terms.⁵⁰ In part they were the victims of the ongoing conflict between Gipps and a hostile Legislative Council. Towards the end of June 1846 the Commissioners for Crown Lands were told to discharge the free men in the force (those in receipt of government pay), but they were given the power to retain up to half of these paid border policemen where there had recently been, or was liable to be, conflict between Aborigines and settlers.⁵¹

By the middle of the century the impact that the Aboriginal presence had already achieved on colonial policing was quite obvious and this was to increase. The Border Police were completely disbanded to be replaced by what was the forerunner of the modern Queensland force. These were the small groups of police attached to the magistrates benches in the locations gazetted to hold courts of petty sessions. Such a place of course was Brisbane Town.

Quite obviously, colonial policing requirements were vastly different from those needed to police Britain. Nevertheless, the forms of constabulary that were developing to police the future Queensland would probably not have been tolerated in the United Kingdom. Here the police displayed a level of interference and severity that would have been considered insufferable. No one was to suffer from this harshness more than the increasing number of Aboriginal people that were coming to live on the fringes of white society.

⁴⁹ Simpson to Col Sec, 44/8104, JOL MF A2-14.

⁵⁰ See for example the Moreton Bay Courier, 7 November 1846.

⁵¹ Col Sec to Commissioners of Crown Lands, 20 June 1846, HRA 1, xxv, pp.121-2.

Chapter Eight

Aboriginal/Police relations in Pre-Separation Queensland.

Oh the old days are gone with the blacks, you can't give them a bloody good razzle-dazzle like you used to be able to.

Comments from a policeman, cited in Report of the Committee of Inquiry into the Enforcement of Criminal Law in Queensland 1977, pp. 78-79.

During Morton Bay's convict period and immediately afterwards there appears to have been little overt conflict between Aborigines and those who policed the settlement. The military commandants followed the time honoured practice of appointing convict constables to control the prisoners and the immediate area surrounding Brisbane Town and as far as the records show, they appear to have acted with restraint in their dealings with the black people. This was a period when the Aborigines in the vicinity came increasingly in contact with Europeans. In some cases it was a matter of choice, in others, circumstances forced it upon them. Nevertheless, in 1837 Commandant Cotton was able to claim that

The tribes which occupy the lands immediately adjacent to Brisbane town, after an acquaintance of several years, come amongst us in confidence. A good understanding prevails between them and us both within and without the limits of the settlement; amongst these are the tribes which live near Amity Point, and on the banks of the "Brisbane" beyond the settlement. These tribes were formerly extremely hostile...¹

Over the years that followed the "confidence" that Cotton wrote of, allied to frontier confrontation, saw an increased establishment of Aboriginal camps on the fringes of white settlement and with them a subsequent souring of relations which frequently brought the blacks into conflict with white society in general, but particularly with the emergent police force.

With the arrival of Capt. J. Wickham RN as police magistrate, a chief constable and four non convict constables were recruited. Thus by 1843 Brisbane could boast a police presence of five free men.² This number was frequently augmented by convict or ticket of leave constables and, when the occasion demanded it, white vigilantes. The camps' proximity to white habitation produced a level of inter-racial contact that many

¹ Cotton to Col Sec 14 February 1837, cited in Evans, "Mogwi Take Mi-an-jin", p.22.

² Wickham to Col Sec, Police establishment at Moreton Bay, 1843, letter 4/2618, Moreton Bay Letterbook, AONSW.

Europeans were ambivalent about, resulting in white police being frequently called upon to curb some aspects of Aboriginal behaviour which they often did with brutality. Although this sort of police behaviour was to be repeated throughout Queensland, it began in Moreton Bay and gave rise to a legacy of distrust and hatred between Aborigines and police that has long outlived the colonial period.³

Apart from a series of violent crimes, what the white residents of Moreton Bay disliked initially were those of a petty nature emanating from the presence of non local Aboriginal groups who came for corroborees or other gatherings.⁴ The prospect of such a assembly caused a newspaper correspondent to write

...it would be advisable for the authorities to put a stop... to these meetings, and as we have a military guard down here, the sight of a few bayonets, and an explanation through an interpreter of the unlawfulness of their meetings, would cause them to have fear of the whiteman's anger... The Brisbane tribe are pretty honest...but the strange tribes are a complete pest - when they are known to be in the vicinity nothing is too hot or too heavy for them to carry away if in the eating line.⁵

There seems to have been little recognition of the link between hunger and crime, or the fact that these "myall" Aborigines might have considered growing crops theirs for the taking. As well as this, these group meetings were part of Aboriginal culture and as such the morality of declaring them unlawful was questionable. Nevertheless, they contributed to the deterioration in race relations which saw even the local clans progressively regarded as a nuisance to be controlled. Within just a few years the "good understanding" that Cotton referred to, had been supplanted by attitudes that supported

³ Interview, Genever - J. Taylor and four other young Aboriginal men in Cairns, June 1993. Taylor stated "the police are our enemies, they have always been the enemy of Murri people".

⁴ These were often inter group battles. They appear to have been largely ceremonial, but Aborigines were injured and sometimes deaths were recorded.

⁵ Sydney Morning Herald, 22 March 1845.

police brutality. This police behaviour set the tone for what was to be repeated over and over again as European settlement spread and Aboriginal people and white police came into ever increasing contact. Quite apart from felonies and misdemeanours, certain aspects relating to Aboriginal visibility gave offence.⁶ Crimes against "decency" in the form of Aboriginal nudity and what was euphemistically termed "insulting women" often formed the substance of regular complaints in the press and the police were exhorted to do their duty and put down misconduct of this nature, and if they were to

... act energetically, the natives would soon provide themselves with garments when they found it was not allowable to walk about with out them.⁷

By the late 1840s punitive settler attacks and native police operations against Aborigines on the surrounding pastoral frontier were a contributing factor to the growth in fringe camp populations. People who might be described as "tribal" blacks were coming into the vicinity of white settlements as refugees who were fleeing from frontier violence. Many of these "myall" Aborigines must have been unaware that nudity and other aspects of their behaviour were considered to be offences against decency. These transgressions sometimes resulted in conflict with the town police. The white citizens made frequent complaints to newspapers, and no doubt to police, about black misdeeds,⁸ claiming that Aboriginal indecency corrupted youth and prevented white women from leaving their homes. They demanded that the police "teach them a lesson they won't forget".⁹ Because the punishments normally awarded to whites for such offences were

⁶ "Visibility" does not simply refer to being black. Living in conditions lacking privacy meant that certain aspects of Aboriginal behaviour which might shock European sensibilities were often on public display.

⁷ Moreton Bay Courier, 11 September 1847.

⁸ These were crimes that would to-day be termed Street Offences and then as now Aborigines were arrested and punished for them. They included drunkenness, urinating in public, unconcealed sexual behaviour and oddly enough, the use of obscene language. The morality of "punishing" blacks for such transgressions in the 1840s was of course, highly dubious.

⁹ See for example, Moreton Bay Courier, 16 September 1847.

not considered appropriate for blacks, the constables were frequently exhorted to dish out on the spot corporal punishment. Conventional wisdom saw little wrong in beating "niggers", it was after all the "only thing they could understand".¹⁰ It is hardly surprising that the police response frequently included cruelty. Dispersals did not necessarily involve physical violence, but the potential for a savage beating or worse always existed if the blacks responded in what the constabulary considered an inappropriate way.

It was not infrequently suggested that the dilemma of the Aboriginal presence in the townships could be solved by denying them access altogether, but few white people would have advocated depriving themselves of a pool of labour for the dirty or unwanted jobs that existed. The problem of controlling Aboriginal behaviour in the settled areas was therefore laid at the door of the white police; a body of men who frequently had neither the will, nor the understanding to handle it with anything other than an iron fist.

An early example occurred in February 1847 when an attempt was made to apprehend an Aboriginal suspect named Jacky-Jacky against whom warrants had been issued for the murders of Uhr, Gregor and Shannon. Working on information supplied by another Aboriginal man named Jacky, that the wanted man was part of the assembly gathered at York's Hollow (which is near where the Royal Brisbane Hospital now stands) constables Connor and Murphy in company with the informant and a convict named Grattan, set out to capture him. The report of what actually happened is confused, but the evidence points to a fiasco that led to the ordering of an inquiry by the colonial Attorney-General.

See also letter signed "Amicus", *Ibid*, 26 September 1857.

¹⁰ Sheridan to Select Committee on the Native Police Force, *QVP*, 1861, p.23. Sheridan told the parliamentary committee that he had often seen them beaten and knocked about by whites.

Sheridan who was a customs officer and water police magistrate also told the committee that Aborigines had a great terror of the white police. See *Ibid*, p.25.

It seems that the police party approached the camp in darkness and waited until the occupants, an estimated three to four hundred Aborigines, were asleep. The informant was sent to ascertain the exact whereabouts of the suspect and provided with a noose which he was to place over the man's head to secure him. He had nearly succeeded in doing this when Jacky-Jacky jumped up and ran. Constable Connor told the inquiry that he ordered the man to stand, but when he understandably failed to do so Constable Murphy attempted to shoot him but his weapon misfired. Convict Grattan also attempted to shoot him, but with the same result. At this stage Jacky (the informant) drew a pistol and shot at a dog. Connor, who had by this time managed to get his piece to fire, shot at Jacky-Jacky who by now was about fifty metres away. In his deposition Connor said that he did not know whether he had hit the wanted man, but he concluded his evidence by asserting that the inhabitants of the camp ran off

...as soon as the shots were fired. I did not hear any of them cry out as though they were hurt... after the shots were fired we left the camp and returned to Brisbane... we returned to the camp at about 11 o'clock next day but we could see no traces which led us to suppose that any of them had been wounded. We saw no marks of blood.¹¹

Constable Murphy, perhaps not surprisingly, corroborated Connor's statement in every detail. But the evidence given to the inquiry, and the conversation Constable Connor had with James MacAlister, a boatman from the Customs Department, varied considerably. MacAlister stated on oath that he

... went to Connor's house and he told me he was near to nailing two blacks last night. Murphy said he would have brought in Jacky-Jacky had it not been for the black named Bumbarogan missing to put the rope on his head... Jacky-Jacky then wheeled about when Connor put his piece to his shoulder and fired. He told me that he heard the black screech and fall... I also heard one of the constables say that Bobby was shot at the same time... I saw a great many of the war

¹¹ Cited in Moreton Bay Courier, 16 January 1847.

instruments of the blacks in the constable's house. Connor told me he had burned a great many more. A few days after, the Duke of York a native, came to my house. He told me that all grang-grang [waddies] were burned and he said that Mary belonging to him was bong [sick].¹²

Thus to the terror of police raids was frequently added the cruel loss of all belongings some of which not only required intense labour to make, but were vital to Aboriginal subsistence.

This hamfisted outrage was brought to light by W.A. Duncan who was a sub Inspector of customs in Brisbane. He informed Wickham who declined to take any action, because he apparently approved of this operation by his police. Duncan however, was persistent and eventually got the authorities in Sydney to order Wickham to convene an inquiry. Ross Johnston says that some young Aboriginal men were bribed to give evidence which exonerated the police with the result that the findings were inconclusive.¹³ Yet quite apart from the terror caused to several hundred people, it is possible that Kitty, the "Duke of York's" daughter, her unborn child, Bobby and Jacky-Jacky died as a result of this police attack.

The Courier clearly believed that the affair was a storm in a teacup and castigated a Sydney newspaper reporter who had complained about the outrage, stating that the

... Cock and Bull story about the blacks breaking their heads and shins against the trees and stumps when running away from the camp [is] unworthy of refutation... the blacks like the feline species can see as well at night as in the day, as he probably would find to his cost should it ever be his fate to fall into their clutches during their nocturnal rambles.¹⁴

¹² Cited in Ibid.

¹³ Johnston, Brisbane, p.115.

¹⁴ Moreton Bay Courier, 6 February 1847.

During the late 1840s and early 1850s a series of attacks on fringe camps were mounted in the Brisbane region.¹⁵ In 1854, again at York's hollow, a party of white men led by constables shot Aborigines. Two years later Police Magistrate Wickham called out the local police to break up fighting between two Brisbane groups.¹⁶ Hereafter it became a fairly common response to offences committed by Aborigines, for white vigilantes, who were frequently accompanied or led by police, to attack the inhabitants of Brisbane's camps.

In October 1860 the Courier carried a large news item labelled "Wanton Outrage" which called for severe disciplinary action to be taken against police, because

...a sergeant and five foot policemen went armed to the blacks camp beyond Breakfast Creek, and having fired off their carbines to frighten the women and children and a sick old man who was at the point of death, set fire to the bark gunyas, destroyed all the blankets that were distributed by the Government on the Queen's birthday, and pitched waddies, tomahawks, dillies, tobacco and loaves into the river. A more dastardly act was never perpetrated even at Maryborough where the life of a blackboy is valued at no more than a bottle of rum or a quarter of a pound of tobacco...¹⁷

Although the Courier's enraged reporter was most probably primarily motivated by concern for Aborigines, there were other considerations; he went on to say

...but having seen the evil that was done, and knowing the danger to unoffending settlers that will surely result from this cold blooded and cowardly attack, we

¹⁵ See for example, Moreton Bay Courier, 3 June 1848, 15 June 1852 and 14 July 1855. There are several others.

¹⁶ Moreton Bay Courier, 19 June 1847.
See also Johnston, Brisbane p.115. Wickham had little time for Aborigines, he referred to them as brutes and gave tacit approval for punitive forays by his constabulary.

¹⁷ Moreton Bay Courier, 9 October 1860.

can only insist that the author of the wrong be instantly removed from office...¹⁸

In his defence at the magisterial inquiry that resulted from this affair, Brisbane's chief constable, Thomas Quirk, maintained that he had ordered the punitive raid because of repeated complaints about indecent Aboriginal behaviour. The complaints he asserted, "emanated principally from an extensive individual" whom Quirk declined to name.¹⁹

It seems particularly cruel that after having had their land taken from them Aborigines should receive such harsh treatment from the hands of police when they tried to re-establish themselves on the fringes of the their previous homes. The injustice of the situation clearly escaped Constable Dunning who said "there was no harshness or cruelty shown to them... we only dispersed them and destroyed their gunyahs".²⁰

During this period several wanted Aborigines were shot by police when they tried to avoid capture. These included Millbong Jemmy and Jackey in 1846 and Horse Jemmy in 1847. Aborigines also died in police custody. One of the earliest that we know of was Bunmatter who was accused with two others of the murder of Staplyton and Tuck in 1841.²¹ Then, as now, police had an obligation to ensure the safety of persons that were arrested. This was obviously ignored during the apprehension of Omilly in 1848.

Omilly was yet another black who was suspected of being implicated in the murder of Gregor and Shannon which is referred to in chapter four. In fact the Courier maintained that

¹⁸ Ibid.

¹⁹ D. Cryle, The press in Colonial Queensland: A social and political History, 1845-1875, (St. Lucia, 1989), p.62. In fact a certain amount of suspicion for ordering this raid fell on Colonial Secretary Herbert who obtained ownership of the land after Aborigines had been cleared from it.

²⁰ For an analysis of this outrage see R. Evans, "Wanton Outrage: Police and Aborigines at Breakfast Creek 1860", in Fisher, Brisbane: The Aboriginal Presence, pp.80-89.

²¹ The public execution of his two companions is referred to in chapter 3.

... there is proof, the most positive that can be obtained that he was the actual murderer of Mrs Shannon, and also that he was actively concerned in the aggression on the sawyers at pine River...²²

It appears that this man was seen in one of Brisbane's fringe camps and the information was given by an Aboriginal woman to a white man called Lucette. He informed Wickham and in the company of some constables went to the Aboriginal encampment. Omilly, who was lying down was pointed out to them by another Aborigine. Lucette seized Omilly, put a noose around his neck and under his arm and pulled it tight. At the same time Constable Ramsay snapped a pair of handcuffs around his ankles. The prisoner was then dragged into Brisbane where he was found to be dead. Lucette supposed that during the struggle the rope must have slipped from under Omilly's arm and

...he must have strangled while making violent efforts to escape. Witness did not know that he was dead until he arrived in Brisbane. No more violence was used than what was necessary to apprehend the deceased.²³

To place a noose around someone's neck is to court tragedy. It was not necessary for the rope to have slipped from under Omilly's arm to have resulted in his death, a rope placed under the arm and around the neck would almost certainly cause strangulation if pulled tight enough. One wonders why this fact was not questioned during the inquiry into Omilly's death. Also, one can not strangle oneself by struggling. Consciousness is lost before death and struggling ceases, for strangulation to take place the rope has to be pulled by someone else after the victim has become unconscious. One may hang oneself, but self strangulation is impossible. Omilly died because he was dragged by the neck while comatosed.

Some interesting evidence was given by an Aboriginal witness named Bobby Winter

²² Moreton Bay Courier, 3 June 1847.

²³ Ibid.

who was called to prove that the dead man was in fact who the police claimed him to be. This witness could have been saying anything because he spoke no English and what he said was translated by Lucette (a Frenchman) who clearly had a personal interest in the outcome of the inquiry. He claimed he

knows the black man now lying dead; he is named Omilly. At the time of the murder of the late Mr Gregor and Mary Shannon [he] was passing on his way to the camp and saw Omilly strike Mary Shannon on the back of the head with a tomahawk.²⁴

This is remarkable because during the inquiry held into the Gregor and Shannon killings reported in the Sydney Morning Herald two years earlier there was no mention of Omilly.

There were other irregularities relating to the Coroner's report. He told the jury that in the absence of any other medical practitioner, he made the initial examination of the body and went on to find that it

bore the appearance of a person who had met his death by suffocation. There were no shot marks on it, nor any marks of blows.²⁵

This of course is unbelievable. Omilly was dragged along the ground for a considerable distance,²⁶ there would have been immense bruising, particularly on the hips and head that would have been quite indistinguishable from the bruising caused by blows. The Coroner could have found that these marks were consistent with being dragged, which might have laid the police open to a charge of brutality, but to claim that there were no

²⁴ Ibid.

²⁵ Ibid.

²⁶ This report does not say where Omilly was apprehended, but it does talk about his being dragged up the hill to Brisbane. This probably argues that he was taken at York's Hollow, which was about a kilometre from the town.

marks of blows on the body, smacks of a blatant attempt to whitewash the episode. The jury immediately, without retiring, returned a verdict that "the deceased had met his death while resisting the lawful apprehension of his person on a charge of murder".²⁷ To place a noose around the neck of a sleeping man in the middle of the night and not expect him to resist violently is completely unreasonable. It must also call the lawfulness of the arrest into question.

It would be unjust to present the police as being solely responsible for the brutality that was being shown towards fringe dwelling black people. Much of their activity in this direction arose from the attitudes and demands of the broader white society. It would also be unfair not to recognise that some police sought to have Aborigines treated justly. Constable Beardmore had a ticket of leave convict named Timothy Duffy arrested and brought to trial for shooting at an Aboriginal woman at Kangaroo Point in 1848. The case failed because white witnesses claimed that Duffy had neither powder or shot in his possession,²⁸ and the evidence of the black witnesses were inadmissible.

Nevertheless harassment by white police was a continuous feature of European expansion. It took place at most centres of settlement. At Maryborough for example

... white police accompanied by some white volunteers proceeded to the blacks camp...and drove every man woman and child out of it, then set it on fire destroying all the clothing, bark, tomahawks and weapons of the blacks and burning wilfully the blankets which at no inconsiderable expense are served out to the blacks yearly by the Government. The party... then followed and shot a boy of 12 years of age dead - a lad well known in the town as a harmless, helpless lunatic...²⁹

²⁷ Moreton Bay Courier, 3 June 1847.

²⁸ Ibid, 6 May 1848.

²⁹ Cited in J. Walker, *Aboriginal-European Relations in the Maryborough District 1850-1900*, BA Hons Thesis, University of Queensland, 1966, p.34.

If police were accused of brutality towards black people, they were also condemned for leniency. The Northern Argus advised that the town's police should

enlarge their vision and protect the town from the black devilry instead of wasting their time on white picadilloos [sic]. Remove the greater evil first. We have enough of our own without any savage addition. It is said that we have corrupted the black race, perhaps, but that is no reason why we should permit them to reproduce the evil we have taught them... our safety is in their removal and the further they are sent the better.³⁰

A more extreme proposal for dealing with the "Aboriginal problem" was suggested by a Brisbane Presbyterian minister who went by the unfortunate name of Charles Ogg. His "final solution" was for the British to send troops which would be augmented by local police and "every man capable of bearing arms" who would sweep the country clean of the blacks and their "deeds of darkness".³¹

There were countless reports of raids by white police on aboriginal fringe camps throughout the 19th century. Even as late as 1907 Bishop Frodsham, in an article on the subject referred to "the cruel, brutal and unjust treatment of Aborigines by police".³²

By European definitions, there may have been some criminals, or at least suspected criminals among the hundreds of black people who fled in terror from the white police on Brisbane's outskirts in the 1840s and 50s. The overwhelming majority however, were simply "British subjects" trying to live in the only way they understood, as close as possible to the land they had owned before it was taken from them. The treatment they frequently received from the Colony's emergent police force³³ made it impossible that

³⁰ Cited in Port Denison Times, 9 December 1865.

³¹ Moreton Bay Courier, 6 September 1860.

³² Brisbane Courier, 13 July 1907.

³³ For information on the strength and cost of Queensland's early police force, See Appendix "D".

Aboriginal people could have regarded the white law enforcement body, or the apparent laws they supported, with anything other than hatred. But their problems were to be compounded in the mid 1850s when native mounted police commanded by Lt. Frederick Wheeler commenced dispersal operations in the immediate vicinity of Brisbane town.

Chapter Nine

Morum Billak's ¹ Policemen: The Native Police in Pre-Separation Queensland.

... I cannot but look with contempt on any person who can for any length of time feel vindictively towards... the Aborigines of this continent...

Lt. Frederick Walker, Commandant, Native Mounted Police.

¹ This is apparently the name the black troopers gave Frederick Walker. It may mean "bullfrog" and possibly refers to Walker's long legs.

The Native Mounted Police, and in particular the northern version, have been overwhelmingly portrayed as para-military murder squads. Hence the popular image of the native police trooper is of a black killer who was delighted to commit inhuman outrages on his own people. For their part, the white officers are characterised as not only turning a blind eye to this inhumanity, but if anything contributing to it. Undeniably, atrocity and brutality frequently committed upon innocent people, are major parts of the native police story. But they are by no means all of it, there are other aspects to this frontier force.² The belief that the Native Police always acted to the detriment of blacks does not hold true. There is good evidence to show that there were periods when both their policies and activities were aimed at protecting and improving the lot of blacks.³ In the overall history of the force these occasions may have been much in the minority, but for the sake of accuracy their existence should be recognised. It should also be appreciated that the force which was raised and trained for the northern district before the colony of Queensland was established, was in many ways quite different from that which developed later. For this reason the native police that existed during these two distinct periods deserve to be considered separately. One might also point out that the murderous dispersals that are referred to in chapter five of this thesis took place after Frederick Walker's dismissal and were soundly condemned by him.

The Native Police provided one of the most interesting and contentious features of Queensland's history of internal security and Aboriginal crime management. This branch of the colony's police force has intrigued many authors and considerable writing has been devoted to it. Even so, the fact remains that little is really known about the force. For

² It is worth remembering that some native policemen served the colony for anything up to 15 years and that not a few of them lost their lives doing so. The Queensland Native Police performed various police duties. They operated on horseback, on foot and from boats. See memoirs of Sub Inspector R. Johnstone, Queenslander, 5 march 1904. They captured suspected criminals, black and white, they escorted prisoners, gold, and carried mail. See Wiseman Letterbook JOL. They also carried out military style duties. In Brisbane they were present at the public execution of Dundalli because of the fear of an Aboriginal riot. See Moreton Bay Courier 5 January 1855.

³ It must also be admitted that these policies were at best paternalistic and at worst murderously harsh.

various reasons, we are unsure of their training and operational methods and not much has been recorded about the character of the troopers⁴ and their routine employment.⁵ In the work of most writers the men and more particularly their officers appear as exaggerated, menacing figures. In the interests of accuracy it is timely to remind oneself that Charles Rowley's contention that a commission in the force was "a perfect niche for a sadist"⁶ should not be taken to read that everyone who held such a position was one, even though some may well have been. Neither should it be forgotten that some native police officers not only served the colony honourably, but were sympathetic to the Aboriginal condition and attempted to treat them lawfully, for which they were at times censured.⁷ Service in this corps was extremely hard and dangerous for all ranks and it took its toll on them in many ways.⁸

⁴ L. Skinner, Police of the Pastoral Frontier, (St. Lucia, 1975), pp.386-395. This work is a notable exception to this claim. In it Skinner provides information relating to individual troopers.

⁵ QVP, 1867, pp.1210-16. Contrary to what some authors appear to believe, the native troopers did not spend all their waking hours in attacking Aborigines. In fact "collisions" formed a very small part of their overall duties. The papers relating to the dismissal of Sub Inspector Blakeney make it abundantly clear that they spent most of their time otherwise employed, mostly patrolling, in much the same way as a policeman on his beat does.

⁶ C. Rowley, The Destruction of Aboriginal Society, (Canberra, 1970), p.169.

⁷ The force is overwhelmingly seen in terms of the excesses perpetrated by men like Lt. Wheeler and to a lesser extent Sub Inspector Carroll, who were both charged with murder. Efforts by officers like Lt. Walker, Sub Inspectors O'Connor and Isley to treat Aborigines lawfully and with humanity has been largely overlooked. In O'Connor's case he was told by the local press to stop playing the missionary and "civilise" them with rifle fire. See Cooktown Courier 25 January 1879. Isley was one of several NP officers who refused to disperse blacks who were doing no harm. S.I. Blakeney was also opposed to dispersing Aborigines; he believed it made them retaliate and he informed a police magistrate that settlers brought trouble on themselves by unnecessary interference with blacks. See Blakeney to PM Cardwell, 16 January 1865, 65/325, COL/A64, QSA.

⁸ Alcohol was an great problem for the force. It affected the health and efficiency of many troopers and their Officers. The following quotation gives an insight into one of the reasons why it was over-used.

The Native Police represented the cutting edge to white expansion in much of Queensland and there is no doubt that they killed Aborigines in large numbers. Even so, it should be realised that the major destroyers of Aboriginal people were the pastoralists and their employees rather than the black police.⁹ Also, the representation of the troopers as uncontrollable killers and their officers as social misfits motivated solely by innate brutality is in many cases a distortion of the available evidence. A lot of their activity was probably illegal, much of it was certainly inhuman and thoroughly deserves unqualified condemnation, but some of it was not and this should be recognised. A great deal that has been written and accepted as an accurate portrayal of the force contains exaggerations that a little more investigation might have rejected.¹⁰

Sub Inspector L. Poindestre to Fitzgerald, 25 September 1893, Commissioner's letter 04500, in Poindestre personal file, Police Museum Archives. Poindestre wrote

... to remind you of the number of years spent outside civilization debarred from the most ordinary enjoyments of life in the most dreary and inaccessible portions of the country.

⁹ Reynolds, Frontier, p.42.

It is impossible to know how many Aborigines the Native Police killed in the 60 odd years they operated in Queensland but there is no doubt that many of the claims are grossly exaggerated. Apart from numerous other considerations, even if the intent existed, the small arms that were available to the force were incapable of delivering the slaughter that some authors have suggested.

¹⁰ See N. Loos, Invasion and Resistance: Aboriginal-European Relations on the North Queensland Frontier 1861-1897, (Canberra, 1982), p.26. Contrary to what has been suggested by Loos and other authors, dispersal did not invariably mean shooting. The Native Police did capture prisoners (including whites and Chinese) and bring them to trial. (The Laura detachment went after Ned Kelly.) Officers did not have the power of life and death over their troopers; at least two were tried for murder, and deserters were not automatically shot. Police Commissioner Seymour stated this categorically. (See Seymour to Col. Sec. 31 July 1874, cited in "Alleged outrages committed on the Aborigines by the NMP", QVP, 1875. pp.623-4. Sub Inspector O'Connor brought in deserters who were released and discharged. See Queenslander, 7 October 1876).

This is not to claim that such events never took place; they certainly did, but the implication that they were part of NP policy or standard procedure is a distortion. They were aberrations and illegal. An officer who pursued a policy of summarily executing his men in any armed force would place his own life in jeopardy. In addition the claim that the men were uncontrollable by their officers when their

There is a certain amount of argument about the birth of this para-military force and the concept that produced it. It appears that it was not, as many people believe, simply to control crimes by Aborigines. The proposal by Capt. Lonsdale of the 4th Regiment¹¹ which relates to the original force that was raised in Port Phillip, shows that there were other motives. He believed that if a body of Aborigines could be recruited and placed under European superintendence it would be possible to combine the desirable objects of making them useful to white society and of gradually weaning them from their native habits and slowly habituating them to "civilised" customs. Lonsdale was wise enough to be convinced that it would be impossible to accomplish these objects by any abrupt means or sudden changes. The most effective method he thought would be to form them into a police corps, because in that situation they would not be tied to any definite labour or irksome routine. They would, he hoped

... whilst enjoying a change of scene and occupation, and the occasional recreation of hunting, be, under proper management imperceptively to themselves acquiring the change which is desired.¹²

Lonsdale's proposal may be the first tangible deliberation on the formation of an Australian native policing force.

Although to the contemporary reader it is disturbing in its unconcealed willingness to engage in social engineering, it is particularly interesting if it is considered alongside the

"blood lust" was roused is made dubious by the assertions of at least three NP officers who said that they were always in control and another who maintained that he knew of no cases where troopers had fired when ordered to stop. With reference to this and peaceful dispersals, see evidence of the Colony's Surveyor-General in Report of the Select Committee on the Native Police and the Condition of the Aborigines Generally, p.72. Gregory believed that it was the settlers that needed controlling.

¹¹ Lonsdale was also police magistrate and superintendent for the Port Phillip district.

¹² Capt. W. Lonsdale, to Col Sec, Regulations Proposed for the Establishment of an Aboriginal Police Corps, 25 October 1837, Letter 37/11413, 4/1135,1, AONSW.

approach to "civilising" employed by missionaries and others who saw the path paved with prayer and hard work. Nonetheless, the concept of native police forces was not universally popular. In fact the House of Commons Select Committee on Aborigines was categorically opposed to it.¹³ Despite Lonsdale's suggestion, the idea of raising the native police is generally credited to the British penal reformer Capt. Alexander Maconochie who was at the time, secretary to the Governor of Van Diemen's Land. The inter-racial violence on that island appalled Maconochie who was anxious to prevent a repetition on the mainland. He believed that white people had a moral obligation to raise the esteem of Aborigines in their own eyes and also in those of Europeans. Religion, he believed, had an important role to play, but he was at variance with main stream missionary thought in that he saw protective segregation as counter-productive. Maconochie believed that if blacks could be employed in public service under the supervision and influence of the right type of white men "the whole imitative faculties of the race could be devoted to good".¹⁴ Considering the use the force was ultimately put to in Queensland one might, in the light of hindsight, question his wisdom, particularly if the House of Commons Select Committee's recommendations are considered. Nevertheless, Maconochie believed that the function of native police could be easily reconciled with the semi-nomadic lifestyle of Aboriginal people and that it would lay the foundations of "civilised" life in the wider black community.¹⁵

In a finely analytical engagement with the subject, Marie Fels hypothesises that Lonsdale's request for mounted police and Maconochie's recommendation that Port Phillip Aborigines be trained as policemen "arrived on the desk of the Governor of New South Wales at about

¹³ Select Committee on Aborigines (British settlements), p.14.

¹⁴ N. Plomley, Weep in Silence: A History of the Flinders Island Aboriginal Settlement, (Hobart, 1987), p.1003.

¹⁵ Reece, Aborigines and Colonists, p.67. Reece postulates that Maconochie may have been influenced by the German ethnologist Gustave Klemm who believed that "passive" races could learn from "active" ones by copying in a state of discipline. See also R. Lowe, The History of Ethnological Theory, (London, 1937), pp.11-16.

the same time"¹⁶ allowing as it were, two birds to be killed with one stone. It is also possible that the original proposal came from Christiaan de Villiers, who was subsequently appointed to command the corps. He wrote to Governor Gipps pointing out that the force was his brainchild and was not contradicted. On the other hand the Port Phillip Gazette of 13 July 1839, credited Governor Bourke with the suggestion.¹⁸

No matter to whom it may be attributed, the fact remains that it was by no means an original idea. Like the Romans before them, the British had a long established tradition of raising police forces and military units in their colonies to keep the peace of empire.¹⁹ They even established para-military police forces in some parts of the British Isles. Apart from the Royal Irish Constabulary, that famous Scottish regiment The Black Watch, first saw the light of day as a policing force to control dissident highlanders.²⁰ In one way however, the Native Mounted Police in the Australian situation were different; unlike the "native" forces in the other British colonies, the black police were not imperially funded.²¹

¹⁶ Fels, Good Men and True, p.11.

¹⁷ With due respect to Maconochie, the idea of a military life as a cradle for civilisation is debatable. Such a life is more likely to brutalise. However, one must consider that in the 19th century military life was seen as character building.

¹⁸ Fels, Good Men and True, p.11.

¹⁹ At various times in their colonising career the British raised police forces and military units in certain parts of Africa, Burma, Malaya, Aden, Palestine and Cyprus to name a few. The practice reached its apex in India where they established a complete army in addition to several para-military police forces.

²⁰ The "Black Watch" is a translation from the Gaelic and refers to the dark coloured tartan that these police wore. They became part of the British army as the 42nd Regiment and were accorded the title of "The Royal Highland Regiment, but they still also use the name "Black Watch".

²¹ The northern force was extraordinarily expensive. The estimate for their maintenance in 1858 was 16,246 pounds sterling. For comparison, the combined government departments, including the Government Resident, clerks of courts of petty sessions, various governmental officers and all white police in the Northern District was 12,651 pounds sterling. See Moreton Bay Courier, 14 November 1857.

The rationale underlying the formation of the Port Phillip force was not that of dealing with Aboriginal depredations. Lonsdale's problem was runaway convicts from Van Diemen's land with whom his meagre group of soldiers, plus three constables were unable to cope. The solution was provided by a small body of Aboriginal troopers who were to be trained and commanded by Christiaan Ludolph Johannes de Villiers.

De Villiers came to NSW from the Cape Colony where it was claimed, he had been trained in a Hottentot regiment. The Native Police that he raised lasted less than three months and there is no evidence that they did any policing whatsoever.²² It seems that de Villiers, like quite a few of the native police officers who followed him, was highly protective of his men and probably in turn well liked by them. It also appears that he was inclined to overreact to criticism, he resigned after a verbal altercation with some missionaries who accused him of heavy drinking and using "vile language". It was an accusation that de Villiers considered beneath his dignity to contradict.²³

Because of the potential value of the project (and perhaps because de Villiers, having had second thoughts, wrote a letter of explanation to the Governor), the corps was quickly reformed and its commander reinstated. The second attempt was only marginally more successful than its predecessor. After a few weeks it was again disbanded. This was once more caused by de Villiers' resignation.

The disintegration of the 1837 and 1838 native police forces stands testimony to the necessity for stable leadership. This was to be achieved in 1842 by the appointment of Henry Edmund Pultney Dana. Dana was a very soldierly figure in dress and bearing, but how much military training he had is difficult to establish.²⁴ Yet if his military expertise is

²² Fels, Good Men and True, p.20.

²³ Ibid, p.22.

²⁴ It was believed locally that Dana had graduated from The Royal Military Academy Sandhurst but Fels discovered that they have no record of him. See Fels Good Men and True, p.265. Nevertheless, it is possible that Dana trained at the Royal Military College Woolwich which was the British Army's officer training establishment before Sandhurst. However my examination of the Army lists held

questionable, the affection and understanding he displayed towards his black troopers is not. He was not only prepared to allow them frequent leave of absence to fulfil their spiritual and other obligations, but he was not beyond "fiddling" the accounts in order to provide for their families.²⁵

The activity of the southern corps is outside the scope of this work.²⁶ It is sufficient to say that as the need for them diminished in the 1840s they began to fade away. Dana himself died of pneumonia in 1852, yet the success of his force was recognised by the transfer of the idea to the future colony of Queensland. In fact, the possibility of a force resembling the southern native police was mooted by the committee that rang the death knell for the Border Police. Yet even though they had the successful Port Phillip force as an example, they were not exactly enthusiastic about the prospect of an independent northern one. However it was thought there might be merit in attaching some black troopers to the white police there.²⁷

The northern version of the Native Mounted Police, viewed objectively and for the total period of its operational life²⁸ represents an attempt to establish colonial concepts of law and order outside the settled areas and to pacify a dangerous, ever expanding frontier. In addition it eventually provided an example of a move back to a philosophy that was in the

at the Public Record Office in London, produced no evidence that he had ever been commissioned into the British Army.

²⁵ Fels, Good men and True, p.44.

²⁶ It should be pointed out however, that they did not have a benign history. They carried out several punitive raids against Aborigines in the Port Phillip District. See B. Nancy, "The Level of Violence: Europeans and Aborigines in Port Phillip 1835-1850", in Historical Studies, Vol.19, October 1981, p.552.

²⁷ Evidence of Deas Thomson, Select Committee on Crown Land Grievances, NSWV&P, 1844, p.130.

²⁸ They probably finally ceased to operate as troopers on Cape York Peninsula just before the first world war, when they were incorporated into the regular Queensland police force as trackers. See report of the Police Commissioner for 1913, in QVP, 1914.

process of becoming outmoded. In short, it was yet another instance of Aboriginal people being subjected to the criminal justice procedure of a previous age.

The concept that came to underlie native police operations in Queensland was that of the punitive expedition which had for a long time been the British response to either outrage or insurgency by "natives" in its colonies. Although the practice of punishment without trial still had a fair amount of life left in it, from the mid 1800s people increasingly questioned not only the justice, but also the wisdom of delivering summary punishment.²⁹ However in relation to this, it is admitted that what the northern corps eventually became was probably not what Governor FitzRoy had in mind when he officially raised the subject of a white-officered native force for the region in 1848.³⁰

Prior to the arrival of the Native Police on the northern frontier, as elsewhere Aboriginal resistance and crime had been officially combated by the British Army,³¹ Border Police or the various versions of white constabulary. It was continually argued that none of these options proved satisfactory in the frontier situation that developed in Queensland.³² The result was that settlers and their employees tended to take matters into their own hands when faced with what they saw as Aboriginal depredations. This generally meant that they took punitive action against black people either because they were suspected of being offenders or they believed that it would act as a deterrent. The settlers then pursued a policy

²⁹ See for example, The Courier 31 July 1861, and OPD, 1867, p.334.

³⁰ FitzRoy to Grey, 12 August 1848, Dispatch 180, HRA, 1, xxvi, p.559. Obviously FitzRoy had the Port Phillip force as a model, but one might also consider the enthusiasm exhibited by CCL Simpson for the idea of Aboriginal police. Particularly his comments about how impressed the "wild blacks" were at the sight of his native constable. It is possible that this also influenced FitzRoy's decision.

³¹ In this is included the Mounted Police of NSW.

³² Various reasons were given for this which included the heavily wooded nature of the terrain. On the subject of troops, as previously pointed out the British Government were none too keen to have their army used for internal security. They refused Queensland's request for troops to be used in this way. In any event they were to be removed during the 1870s under pressure from the "Manchester movement" led by Cobden and Bright in the House of Commons.

of "keeping out" those blacks who had survived. The lack of justice and perhaps wisdom in such a denial is self-evident, but contrary to what has been suggested, although the use of arms except in cases of self defence was illegal, the denial itself was apparently not. In February 1848, Earl Grey via the authority of Governor FitzRoy, had tried to impose an understanding that the granting of pastoral leases was not intended to deny Aboriginal people the right to hunt and gather on the land that they had previously used.³³ The NSW Executive Council rejected this on advice from the colonial Attorney-General, advising that the condition Grey proposed could not be attached to leases by the colonial government, it could only be authorised by Her Majesty in council.³⁴

Even so, it was a situation that some settlers were not happy about. Apart from its inhumanity, which was without doubt recognised in some quarters, the memory of the Myall creek affair remained relatively undimmed.³⁵ Added to this, sub section 11 of the Waste Lands Occupation Act provided that in the event of the lessee's conviction by a justice of the district for any offence against the law, the case might be inquired into within three months of the conviction by two or more separate justices. Depending on the nature of the offence, these justices could order the lease to be forfeited without compensation for the value of improvements.³⁶ Therefore the circumstances which had given rise to the establishment of the Border Police also provided, at least partially, a reason for the formation of the northern native police.

By the late 1840s there had been calls for a northern force for some time and from a variety

³³ Grey to FitzRoy, dispatch No 24, 11 February 1848, HRA 1, xxvi, pp.223-28.

³⁴ FitzRoy to Grey, dispatch 221, 11 October 1848, Ibid, p.623-36. This raises the question of why the British Government, who were responsible for "native affairs" until 1855, did not enforce this.

³⁵ Manning Clark argues that the execution of white men for the murder of Aborigines hardened attitudes against blacks rather than encouraged just treatment. See C. M. H. Clark A Short History of Australia, (Melbourne, 1969), p.87.

³⁶ I can find no instance where this happened as a result of illtreatment of Aborigines, but the potential apparently existed which caused intense anger in pastoralist circles. See Moreton Bay Courier, 17 April 1847.

of sources. In July 1848 the Courier ran a report lauding the Government's decision to raise such a body, explaining

When we recommended a few weeks ago, the establishment of a native police force for the purpose of keeping good rule and order in the lawless regions of the bush, we little thought that the Government had determined to adopt the scheme... a small body has long existed in the Port Phillip district...we believe their behaviour has been on all occasions extremely good. The same results may be expected elsewhere, for the partly civilised aboriginal readily adopts military habits...³⁷

Dana had strongly recommended his younger brother William for the commandantship of the northern corps, but even before his letter reached Sydney, the decision to appoint Frederick Walker had been made. What is noticeable is that the new leader had much in common with his predecessor.

The NSW Government Gazette of 17 August 1848 published the appointment of Frederick Walker as the Commandant of native police for the next four years, he was probably 28 years old.³⁸ Walker was born in Devon and had arrived in the colony in 1844. He had worked as superintendent for W. C. Wentworth and had also been the clerk of petty sessions at Tumut. Described as a large man with a commanding presence, he got on well with Aborigines.³⁹ It is most important to be aware that it was his views on racial harmony, not any military expertise that won him the commandantship of the Native Police.⁴⁰ Walker

³⁷ Moreton Bay Courier, 1 July 1848.

³⁸ The date of Walker's birth is not known but he was probably born in 1820.

³⁹ It was frequently argued that Walker was an "expert" on the Aboriginal character. See for example, OPD, 1864, p.260.

⁴⁰ Wentworth almost certainly had a hand in Walker's appointment. Yet one would assume that the command of such a force would be given to an ex army man, the colony had no shortage of such people. There is no evidence that Walker had any military experience whatsoever. This not only makes his appointment unusual, but the level of discipline and military efficiency his troopers achieved quite remarkable. It also gives an insight into what motivated the Government of NSW to raise this frontier force.

believed that if squatters broke the law in their dealings with blacks, the Aborigines had the right to reciprocate and he proposed that protection be denied to pastoralists who took the law into their own hands.⁴¹

Walker was a much criticised man both during his life and after. His accounting was to say the least slipshod, he wrote abrasive letters about powerful people, he may have been guilty of embezzlement⁴² and his alcoholism was undeniable.⁴³ So too was the fact that he was responsible for killing Aborigines who attacked his police or refused to surrender when warrants had been issued for their apprehension. But what has not been sufficiently recognised is that he also tried to protect both races and prevent a war of extermination. He gave strict instructions that should a "collision" occur his white officers and sergeants were to use every endeavour to "prevent the unnecessary effusion of blood and sacrifice of life".⁴⁴ He gave similar instructions to his troopers telling them

...what the Governor want from you is to make charcoles quiet, he does not want them killed and he won't let white fellows do so...⁴⁵

They were not to fire on Aborigines unless ordered to by their officers except in cases where their lives were threatened.⁴⁶ Above all he tried to keep the Aborigines and pastoralists from each other's throats by attempting to get the latter to see things from the black perspective. This is something which seems to have been overlooked by many

⁴¹ D. Pike, (Ed), Australian Dictionary of Biography, Vol. 6, pp.338-9.

⁴² Minutes of Executive council in 1855 show that Sir William Denison wanted to prosecute Walker. As long as two years after Walker's dismissal native police accounts were still in a mess.

⁴³ For an indication of Walker's penchant for strong drinks see Appendix E, which is an hotel bill for two days and probably comes from The Royal Hotel Maryborough.

⁴⁴ Commandants instructions to Sergeants, 17 March 1852 cited in Skinner, Police of the Pastoral Frontier, p.74.

⁴⁵ Walker's Address to Native Police, 4 August 1851, NMP B/4 QSA.

⁴⁶ Ibid.

authors as does the fact that he had more reason than most to hate blacks, having been speared by them.⁴⁷ The sad reality was that frontier racial attitudes were so ingrained that the best that could be hoped for was no more than a degree of crisis management.

Walker and his 14 black troopers arrived in the northern district on 10 May 1849, but what the region's pastoralists expected from the Commandant and his native police and what the Government of NSW ordered were apparently two different things. On 31 December 1849 Walker submitted a report to the Colonial Secretary detailing the northern force's activities from its inauguration to that date. He reported on the ease of obtaining recruits stating

...I could have had ten times the number. The pick of eight tribes. In the present force there are men from four tribes each speaking a different language...⁴⁸

He went on to explain that Aboriginal lives had been lost and some of his troopers had been wounded on 14 June when "I was attempting to apprehend six blacks charged on oath with a most atrocious murder".⁴⁹ Walker then gave details of a very large collision between his troopers and about 150 Aborigines in which the latter "suffered so severely that they returned to their own country, a distance of about 80 miles".⁵⁰ On receipt of this information, in spite of the fact that it won the approval of some members of the Government and the local settlers, the Colonial Secretary found it necessary to write to Walker and remind him that he was not appointed to pursue aggressive acts against blacks, but to keep the peace.

⁴⁷ Walker was, somewhat ironically, speared at Conciliation Creek in Central Queensland. See Wiseman Letterbook, JOL.

⁴⁸ Cited in Moreton Bay Courier, 29 June 1850. The idea of having men who spoke different languages has been presented as a security measure to discourage mutiny. This was not necessarily the case. Where a multiplicity of languages exists in a situation that demands verbal contact a lingua franca arises. This would have encouraged the troopers to learn English which given the diversity of Aboriginal languages was essential. All "native" units in the British Empire learned some English.

⁴⁹ Ibid.

⁵⁰ Ibid. 80 miles is about 120 kilometres.

This admonishment stemmed from the first native police operations on the MacIntyre River which had the appearance of an attempt by Walker to make the presence of his police felt. The Commandant defended himself pointing out that he was attempting to apprehend Aborigines that had been accused of murder and against whom warrants had been issued. He was unable to separate them and was obliged to engage the whole group. He went on to add that as a result of this action there were now three times as many blacks who were willing to declare themselves friendly.

Reading Walker's dispatches and studying his operational methods, one is left with the impression that he wished to demonstrate to Aborigines what his force was capable of in the hope of averting the necessity for continuous punitive action. There is no doubt that to achieve this he resorted to collective punishment and this was recognised by the Government. His behaviour had been considered belligerent and his superiors told him so. Although it is possible that the Colonial Secretary was attempting to deflect future criticism that might arise from the incident, such an admonishment is hardly indicative of an administration intent on the destruction of its indigenous population. What it did point to, was one that was unsure of exactly how it wished its native police to operate. This was to become increasingly apparent when Walker asked for specific guidance. Following a collision between Lt. Marshall's detachment and some Aborigines on the Condamine, Walker raised the question of his force's legal position when police action resulted in Aboriginal deaths. He explained to his political master that the settlers had seen many of their number killed by blacks, and had experienced considerable property losses. Now they were expected to pay for the support of his police and were extremely dissatisfied when he was obliged to tell them that he was not legally empowered to act in some circumstances, or in the way they demanded. But he made a point of telling his superior that the action he had taken on the MacIntyre, combined with the introduction of a better type of white worker on stations that had been previously staffed by men of the "most desperate character", and most importantly the "letting in" of Aborigines to search for their food under the "kindly protection of the native police", had rendered the area pacific. Apart from wishing to reassure the Colonial Secretary, what the Commandant also wanted was clarification of his legal position. He wanted to know would he or his officers place themselves outside the law if they killed blacks in the execution of their duty? Clearly they

were empowered to shoot in their own defence if attacked, but what of the cases where they fired on blacks who refused to surrender and for whom a warrant of arrest had been issued?⁵¹ The response he received was entirely unsatisfactory. The Colonial Secretary with the Governor's approval, informed him that in such cases the officer in command of the police should hold an inquiry and forward his findings to the Attorney-General. The Colonial Secretary had in fact referred the matter to Attorney-General Plunket who subscribed to the instruction, then neatly sidestepped the issue by declining to offer any further opinion in case he ever had to consider the matter as a public prosecutor.⁵² Therefore the Native Police were in the invidious position of having to placate pastoralists who were meeting the costs of the force and who wanted them to perform acts that might place the officers in court on murder charges.

For the most part, the frontier settlers, and squatters in particular, were at first pleased to hand over the "Aboriginal problem" to these native police and be relieved of the dangerous burden of having to take the law into their own hands. Yet their satisfaction was short lived when it was discovered that the Native Police that came to the northern district were not dealing with Aborigines in the way the frontiersmen considered appropriate. Therefore, although the force was initially well received it was not too long before the Commandant found himself at loggerheads with sections of this fraternity. There were several reasons for this, among them the fact that a small body of para-military policemen could not exhibit a presence with the frequency that scattered pastoralists would have liked. But the main complaint appears to have been a disaffection resulting from Walker's refusal to respond to Aboriginal depredations in the way the squatters and their workers expected him to. The difficulty of his situation was well explained in a letter to the editor of the Courier which maintained

...the squatters here look upon the Native Police as a body of men sent to these districts for their special use, to be at their call at any time, and that the duty of the

⁵¹ Walker to Col Sec, indistinct date 1850, NMP, B/J1 QSA.

⁵² Attorney-General to Col Sec, 9 November 1850, referred to by Government Resident Moreton Bay, 22 October 1858, G. Res. QSA.

officers consists in seeing their views carried out... When the police first arrived here they were warmly received and actively co-operated with, and appear to have used their utmost endeavour to forward the wishes of the squatters as far as they legally could...as far as I can gather Mr Walker took the advice of the Attorney-General and acted up to it. This did not please the settlers... finding I presume that it was useless attempting to give satisfaction to all...Walker appears to have pursued an independent line of conduct...this gives still less satisfaction and several declined either receiving or rationing the police at their stations...their movements were criticised and few endeavoured to co-operate with them...⁵³

In fact Walker's analysis of his duties caused him to remark to the Attorney-General, "...the object I presume is to make the blacks feel the strength of the law not the strength of individuals".⁵⁴

Following a series of letters to the editor of the Courier which condemned the Native Police in general and Walker in particular for failing to act more aggressively towards the blacks, Walker wrote to the Colonial Secretary explaining his position. This letter was released to the press and appeared in July 1852, three months after it had been written.

The general feeling among the settlers, Walker asserted, was that the Government would not allow them to shoot blacks but had sent the Native Police to do it for them. In fact the opinion had been expressed that it was the duty of government to display a certain amount of vindictiveness towards the blacks as an exercise of control. The Commandant was convinced that the conflict between Aborigines and settlers was exacerbated and prolonged because of the widely applied practice of "keeping them out". This was done he maintained, with indifference to the consequences. Even so, Walker was sympathetic to the settler's dilemma, he believed that when they were outside the protection of the law they were justified in taking up arms and attempting by main force to curb Aboriginal depredations. What he objected to was the "abominable cruelty" that was perpetrated and the motives of

⁵³ Moreton Bay Courier, 7 August 1852.

⁵⁴ Cited in Evans et al, Race Relations in Colonial Queensland, p.129.

revenge and feelings of vindictiveness which many settlers continued to harbour. He wrote with fairness and compassion, saying

...I can make allowance for the irritation and perhaps feelings of revenge, which may actuate a man at the time he sees his fellow creature cruelly murdered, or his property wantonly destroyed. I cannot but look with feelings of contempt on any person who can for any length of time feel vindictively towards such miserable and ignorant wretches as the aborigines of this continent...should any officer of the Native Police evince any vindictive feelings in his dealings with them he would be unworthy of the confidence of the Government.⁵⁵

Walker was adamant in his opposition to the system that was being applied in the Burnett, Maranoa, and Wide Bay districts where

... settlers carry on the system of preventing the blacks from obtaining their lawful means of livelihood, and persist in not showing them all old grudges and vindictiveness are thrown on one side by the whites, which the blacks will believe when they are allowed at the stations...⁵⁶

Until this time he maintained, depredations would continue; the police might check them, but they would be unable to end them. In support of his argument he explained what had happened when his experimental force had first arrived on the MacIntyre. Then blacks were outlawed in their own country; they were hunted from the river and creek frontages and were deprived of the means of lawfully obtaining food. Driven to desperation, they carried on a constant war of retaliation with the whites and lived solely on cattle. The Native Police, on their arrival found that they had become so accustomed to this lifestyle that it was necessary to use force to end it. This done Walker persuaded the settlers to lay aside

⁵⁵ Walker to Col Sec, 1 March 1852, cited in Moreton Bay Courier, 17 July 1852. This is the man some authors have referred to as "a lout". See for example, F. Robinson & B. York, The Black Resistance, (Maryborough, 1977), p.116.

⁵⁶ Ibid.

their weapons and let the blacks in. The Aborigines were admitted everywhere and a run that would have fetched a hundred pounds sterling in May was disposed of the following January for five times that amount. His letter produced intense anger. Here was a policeman who was sympathetic to the pastoralists' enemies and the squatters hated him for it.

The picture Walker drew contains contradictions and is a little too rosy, but it does give an insight into the aspirations of a policeman and an administrator with a sense of justice who attempted to see the problems from more than one side.

In spite of some of his subsequent behaviour, Walker, like Dana, was a charismatic figure. He was physically the equal of his troopers, being apparently one of the few white officers who could keep up with them on foot in the scrub. It was also admitted that the most efficient officers were recruited by Walker himself rather than those appointed by the Government. Although he was undoubtedly paternalistic, he established an admirable state of discipline which none of his successors were able to achieve, while at the same time being revered by his troopers,⁵⁷ even though he was not beyond having them flogged. Giving evidence to a select committee three years after Walker's sacking, William Archer told how Walker would never do this himself. He would assemble the troopers and tell them

...this fellow has been doing so and so - isn't he a great rascal - hadn't we better flog him. The man would then be tied up and flogged by a native corporal or trooper...⁵⁸

⁵⁷ Evidence of Capt. M. O'Connell, Select Committee on the Native Police, QVP, 1861, pp.89-90. See also Moreton Bay Courier 27 November 1852. Commenting on the discipline of the Aboriginal troopers, this journal said

It is argued that it is impossible to reclaim these savages of the wild but the discipline Mr Walker has brought his party to gives direct contradiction to this assertion. For no European even were they soldiers could have acted more correctly than they did in delivering up their prisoner to the authorities of this town...

⁵⁸ Archer to Select Committee, NSWV&P, 1858, p.871.
Without wishing to give the appearance of condoning corporal punishment, it must be appreciated that flogging was very much part of the 19th century military

Archer maintained that Walker had a certain tact in dealing with blacks and there were never any desertions.⁵⁹ He went on to add

It was considered ... that but for the native police force there would have been a war in which the settlers would have soon exterminated the aborigines.⁶⁰

There is equally, ample evidence that the Commandant returned his men's affection. In fact there seems little doubt that he was sympathetic to the plight of Aborigines generally. Although naive, his vision, if we are to believe his own words,⁶¹ was for a peaceable state where blacks would be "let in" to the pastoral leases to search for their traditional food and even supplied with gifts of tobacco and blankets. He had never, he said, "found the settler niggardly with such items when the district was pacific".⁶²

Letting the Aborigines back in to their own land was something that Frederick Walker obviously felt extremely strongly about. In fact he wanted to keep them in their own country as a measure of control. He believed that they were less likely to commit crimes there. The practice of keeping them out that had been adopted by so many settlers, was he believed, the principle cause of outrages.⁶³ Very importantly and indicative of the man's

⁵⁹ Walker to Col Sec 7 November 1850 MF A2/37 Col, JOL. On the subject of deserters Walker informed the Col. Sec. that no force on earth could keep Aborigines "in the Queen's service" against their will. Nor did he believe anyone should make the attempt.

⁶⁰ Ibid, p.873.

⁶¹ It might be argued that what Walker said should be taken with a grain of salt because of his alcoholism. But his words were matched by actions to protect Aborigines both before and after his dismissal. Therefore there is no reason to doubt his sincerity.

⁶² Walker to Col. Sec. 9 November 1850, NMP, B/J1, QSA.

⁶³ Walker to Col. Sec. 1 March 1852, Reel A2/64, 689, Col, JOL. On this point many squatters completely disagreed with Walker. They believed that "letting in" too early was tantamount to committing suicide.

humanity, he felt that pastoralists had a moral responsibility to feed the dispossessed Aborigines in times of hardship.

Reporting on the efficacy of "letting in" the Courier's correspondent said

Mr Commandant Walkers's plan of allowing aborigines in has been completely successful on one station, where the proprietors ... have for some time past had 16,000 sheep herded and watched entirely by blacks. They are allowed the same rations as white men. During some months they have been employed in this manner they have never missed a single sheep...⁶⁴

If one considers Walker's views, and the fact that the Government of NSW appointed him because of them, it becomes unreasonable to believe that the northern native mounted police were raised, as has been so often implied, for the express purpose of exterminating Aborigines. Therefore the assertion by Gordon Reid that "The native police under Walker...had a free licence to oppress black resistance" ⁶⁵ is quite wrong. Although the situation degenerated in many ways with the establishment of the colony of Queensland, during Walker's era they were not allowed to shoot blacks with impunity, nor it appears, did he or his officers wish to. In fact, the evidence strongly suggests that the slaughter of Aborigines was the last thing that was wanted.

Neither should it be automatically assumed that the often referred to "dispersals" always meant shooting Aborigines. In most situations "dispersal" meant just that and nothing more.⁶⁶ Writing of such an incident, Walker recalled that

⁶⁴ Moreton Bay Courier, 23 October 1852.

⁶⁵ Reid, A Nest of Hornets, p.185.

⁶⁶ It was police policy to disperse Aborigines that were gathering in large groups. Some NP officers were opposed to this, believing it caused more problems than it solved. Dispersals were carried out by both black and white police and reports show that the majority of them were non-violent. Dispersals were often an accompaniment to blanket or ration distribution. Because Lt Wheeler told a parliamentary committee that dispersals meant "shooting at them" it should not be assumed that every NP officer saw dispersals in that light. As already stated

...he knew who the murderers were but there was no legal evidence. He had kept up a constant system of patrols ...and so pursued the Aborigines as to cause them to disperse... **not a shot had been fired.** [my emphasis]⁶⁷

In another instance, obeying Walker's instructions, one of his sergeants followed a group of Aborigines among whom were the killers of a white settler named McLaren and his two shepherds. The sergeant was unable to apprehend them and because the guilty were mixed up with innocent blacks this policeman declined to fire on them but ordered his Aboriginal corporals to disperse them without shooting.⁶⁸ It was this sort of behaviour that incensed the white settlers.

That the Native Police under Frederick Walker worked within the law is further substantiated by an event in 1850 when he held an inquiry in conjunction with a justice of the peace named Frederick Gardiner into the frequently referred to attack by Aborigines on shepherd Theophilus Jones. Walker succeeded in apprehending four of those accused of being involved in this grisly affair.⁶⁹ Exercising his right as a magistrate, he tried them. Two were released because of insufficient evidence, one escaped and he took the fourth with him, although he questioned the wisdom of "putting the colony to the expense of prosecuting him, but he is too mischievous to be left behind".⁷⁰ This lends a lie to the claim that the native police never took prisoners. In fact there are numerous cases of trials which resulted from Aborigines being captured by the force.

violent action was more frequently referred to as a "collision".

⁶⁷ Walker to Col. Sec. 14 June 1853, MF A2/26 Col, JOL.

⁶⁸ Walker to Col. Sec. 23 September 1854, MF A2/30, Col JOL. This sergeant was also named Walker.

⁶⁹ Jones was menaced by an Aboriginal group at whom he fired a gun. Whereupon it is alleged, he was seized, gagged, blindfolded and tied down. The Aborigines then opened a vein in his neck and sucked his blood to such an extent that he was rendered senseless. They also unsuccessfully attempted to bore his testicles with a pointed stick. One wonders why they did not kill him.

⁷⁰ Walker to Col Sec 15 June 1850, MF A2/52, Col, JOL.

The rule that Europeans who were not members of the Native Police force not be allowed to accompany detachments during operations has been analysed as a sinister order to prevent information regarding native police activity from becoming available to the general public. In fact local white men were often used as guides.⁷¹ The rule however was instituted by Walker and seems to have existed more for the purpose of preventing Europeans from interfering with native policemen than preventing leakages of information. After such an incident Lt. Fulford wrote to Sgt. Dempster reminding him that

...the police must not on any account whatever be permitted to go after Blacks without an officer with them **not even in the case of murder**, because they may be induced by either **foolish** or **designing** persons to fire on Blacks who are perfectly innocent of the offences laid to their charge.⁷²

Walker's sympathy for Aborigines was to cause him to become unpopular in other than squatting circles. Following the May 1853 murder trial of an Aborigine named Mickie,⁷³ he wrote to the Colonial Secretary what can only be seen as a politically unworldly letter, criticising the judiciary. Mickie had been convicted and had received a sentence of "death recorded". As already stated this virtually guaranteed a reprieve. The sentencing judge, Therry J, was asked by the Colonial Secretary to recommend a suitable punishment. Therry himself admitted that Mickie had taken no active part in the murder, but had become involved in aiding and abetting the crime by being one of a number of blacks who had carried away flour and sugar. For this offence Therry suggested a punishment of seven years hard labour on the roads.⁷⁴ Hearing of this, an incensed Frederick Walker wrote to Secretary Thompson saying

⁷¹ Dempster to Fulford, 20 June 1852, in NMP, B/4, QSA.

⁷² Fulford to Dempster, 13 May 1852, in NMP, B/J2, QSA.

⁷³ Mickie was yet one more black to be accused of being implicated in the murder of Gregor and Shannon on the Pine River in 1846. He was also incidently, one who had been apprehended by native police.

⁷⁴ Civil and Military cases tried at Moreton Bay NSWV&P, 1855, p.820.

...a black of the name of Mickie apprehended by the native police was convicted of the murder of Mrs Shannon and Mr Gregor (I presume as an accessory after the fact). Now it is certain that he did rob the hut after the murder but you must understand that he was a mere boy at the time and the murderer made every boy, man, woman and child carry away the property. I can give the Attorney General half a dozen more under the same warrant... there ought to be an amnesty for everyone included in that warrant excepting Dundalli who was an actual murderer. I hold several other absurd warrants such as two for blacks, names unknown, and no description.⁷⁵

Not surprisingly, Justice Therry was unimpressed. Walker might now be the commandant of native police, but that did not give a former clerk of petty sessions the right to tell supreme court judges how to sentence. His forthright letters and poor accounting had already been the cause of some disquiet in fairly elevated circles. Added to this, his taste for alcohol was providing the wherewithal his detractors sought to have him removed from his command. Walker became a target for considerable criticism on several counts, but prominent among these was his sympathy for Aborigines at a time when attitudes towards black people were hardening almost everywhere. Justice Therry wrote

...though Mr Walker's sympathy may be very commendable, it appears to me that the fate of Mr Gregor and his servant is not without some claim to sympathy too, and that it should not be exclusively bestowed on those who break the law.⁷⁶

It seems that the judge missed the point of Walker's complaint. Sympathy for Gregor and Shannon was not in question. Walker was complaining of what he saw as a harsh sentence imposed for a crime committed by an Aboriginal child.

⁷⁵ Walker to Col Sec, 8 August 1853, MF, A2/28, COL, JOL.

⁷⁶ Therry to Col Sec, 13 December 1853, MF, A2/23, Col, JOL. Therry J's comments about sympathy for the victims could be construed as a desire to extract revenge.

In April 1852 a formal complaint was made to the Colonial Secretary that Walker had been seen intoxicated on several occasions. However it was not until two years later that matters really came to a head. By this time Walker's alcoholism had contributed to a partial disintegration of his once well disciplined force.⁷⁷ His friend Augustus Morris, who was a member of the Legislative Council wrote telling him that numerous charges had been made relating to the force's inefficiency and, in relation to Walker's drinking problem added "that terrible failing ...[which] I fear will be the ruin of you".⁷⁸ There was no doubt that powerful people were seeking Walker's dismissal for political reasons. This was recognised by a subscriber to the Courier who wrote

...there is evidently a vindictive feeling... to be gratified and it seems quite clear for Mr Walker to do right would be utterly impossible and even annoying...⁷⁹

Whatever the facts of Walker's character may have been it is important to understand that the Commandant of native police became unwillingly embroiled in the pastoralists' campaign to achieve freedom from what they saw as an interfering Sydney government. Implicit in this was a denial of justice to Aborigines in the form of a basic disregard for their rights to hunt and gather food on pastoral leases. Walker went so far as to assert that good will by the settlers in this direction, would do more for peace than any police force could.⁸⁰ Therefore in attempting to champion the Aboriginal right to exist, Walker became cast in the same mould as the "Exeter Hall mob", Governor Gipps, the Border Police, poll tax on animals and all the other annoyances that the squatters saw as preventing them from enriching themselves. There was no room for a commandant of what pastoralists believed should be a punitive force, who wished to see blacks treated with justice at their expense. He had to go.

⁷⁷ Evidence of G. Sandeman, Select Committee on Native Police NSWV&P, 1856-7, p.1207.

⁷⁸ Morris to Walker, 6 September 1854, NMP, B/J1, QSA.

⁷⁹ Moreton Bay Courier, 11 December 1852.

⁸⁰ Walker to Col. Sec, 6 July 1851, MF A2/23, Col. JOL.

It was claimed that his police were rendered useless by restrictive orders issued from Sydney and willingly complied with by Walker. Thus a campaign was mounted against him with the aim of achieving his dismissal and having the Native Police removed from the central government's direction and placed under the local magistracy.

The attack on Walker's commandantship was spearheaded by William Henry Walsh,⁸¹ Gordon Sandeman and William Forster⁸². Led by these men, supported by a growing anti-centralist movement, aided and abetted by whatever newspaper Arthur Lyon happened to be editing at the time,⁸³ Walker was accused of "folly and indeed wickedness"⁸⁴ and demands were made for an immediate enquiry into native police operations. Forster accused Walker's troopers of immorality with "native women" who were he stated, "spies for the myalls". He also accused them of robbing shepherds' huts. Forster further maintained that the officers delegated their duties to sergeants and that the commandant himself was intoxicated on several occasions.

Forster's complaints against the control of the native police contained contradictions. He complained on one hand that they failed to stay long enough in one place to make their presence felt, and on the other of spending too much time at certain favoured stations. Having made attacks on Walker's lack of sobriety it seems odd that he should inform the 1856 select committee, "I have been accused of having strong feelings against Mr Walker myself, but to my knowledge I never saw the man in my life".⁸⁵ It is even more surprising that after having been a prime mover in Walker's dismissal and accusing the commandant of failing to control Aboriginal crime he should state to a parliamentary committee

⁸¹ Walsh is worthy of a lot more investigation than he has received. He is a most controversial character; at times he seems to have hated Aborigines and at others vigorously championed their cause. His hatred of Walker appears to have been profound.

⁸² Forster was to become the Colonial Secretary of NSW.

⁸³ In the early 1850s it was the Moreton Bay Free Press.

⁸⁴ Sydney Morning Herald, 21 August 1852.

⁸⁵ Forster to Select Committee, NSWV&P, 1856-7, p.1211.

Enterprising men induced by the large profit or the appearance of profit... will always go beyond any protection the Government can give them; and in that case murders will be committed by the natives, and upon the natives **in spite of any force you can organise**[my emphasis].⁸⁶

Virtually from the outset there had been a struggle by pastoralists to have the force become their tool to control what they saw as Aboriginal crime. To this end it was believed that close supervision by an out of touch executive in Sydney was undesirable. Many settlers wanted the Native Police like the white police, to be directed by the local magistracy who, being themselves settlers, would be more inclined to deal with blacks pragmatically.

The fact that Walker demanded that his officers work only on sworn statements supported by warrants and refused to even attempt to apprehend Aborigines on hearsay, caused intense anger among sections of the squatting brotherhood. Richard Jones, a member of the Legislative Council of NSW cited a letter from one of his constituents which attacked the management of the force because it was

... trammelled with such restrictive orders from the executive as to render its services useless for the purposes intended, and the sooner we are rid of them and left to manage the savages our selves the better.⁸⁷

A board of enquiry formed in the middle of December to hear charges laid against the Commandant of native police. Dennis Cryle believes that despite their eventual success, the squatters' campaign against Walker remained unconvincing and that although his drunkenness was repeatedly referred to, no further documentary evidence against him was produced.⁸⁸ This is arguable, because the board of enquiry itself produce a document asserting that Walker arrived an hour late

⁸⁶ Forster to Select Committee, NSWV&P, 1858, p.864.

⁸⁷ Jones to Col Sec, 2 September 1851, MF A2/21, COL, JOL.

⁸⁸ Cryle, The Press in Colonial Queensland, p.20.

...in a state of intoxication bordering on stupidity so as not to be able to recognise his first Lieutenant Mr Marshall, who was sitting at his side. Seeing the disgraceful condition of the Commandant, the board requested him to retire, this however he declined to do...⁸⁹

Walker unsuccessfully attempted to save himself by submitting a medical certificate which stated that he was suffering from a medical condition which gave an outward appearance of drunkenness.⁹⁰

In January 1855 he was dismissed from his position as commandant. His departure left the Native Police Force in a state of turmoil with some troopers threatening to desert. In his examination by the 1858 select committee Capt O'Connell gave evidence of this. He also provides a view of the troopers as loyal human beings, not just to Walker, but to the colony they served. Speaking to these men, who were from the Gladstone detachment, O'Connell found "they stated very reasonably their causes for dissatisfaction".⁹¹ They had been recruited by Walker for a limited period and promised that at the end of their service they would be taken back to their own country. Now five years later they were determined to go home. O'Connell could not get them to change their minds until he told them the Crimean war had broken out and their departure would leave the country defenceless. He went on to say

...they took the idea immediately and declared that under the circumstances they would remain and they even followed me into Gladstone, to express more strongly their determination to do so. I mention this as I think it a strong proof that these aboriginals are capable of generous impulses...⁹²

⁸⁹ Findings of the Board, cited in Moreton Bay Courier, 5 January 1856.

⁹⁰ Walker to Col Sec, 1 January 1855, MF A2/30, Col, JOL.

⁹¹ Evidence of Capt M. O'Connell to 1858 Enquiry, cited in 1861 Enquiry, pp.89-90. At this time O'Connell was Commissioner for Crown Lands in this region.

⁹² Ibid. As reward for their loyalty these men were promised by Governor FitzRoy that they would be provided with horses to return home. This pledge was broken

Following Walker's dismissal, Lieut. Richard Purvis Marshall was appointed acting commandant. He had served in the force for four years and by all accounts, including Walker's, was a zealous and efficient officer. In early 1855 it was proposed that the strength of the Native police be reduced by about half. Marshall regarded this as folly, pointing out that with a force of only 70 men he would be obliged to wage a continuous punitive war on blacks after depredations had been committed, whereas, with a larger body their presence and patrolling activity would deter blacks from attempting attacks. In this way, he reasoned, the lives of not only whites would be saved, but blacks as well. This had been Walker's policy. Marshall's objections were dismissed and the post of commandant was abolished, with control of the native police being given to the Inspector-General of Police in Sydney.

This was the last thing the northern pastoralists really wanted, what they were after was for the force to be in the hands of the local magistracy, or failing this, in those of an "obedient" commandant. Marshall was offered an appointment, but only as the officer-in-charge of an area and at a reduced salary. This, he declined to accept and at the same time tendered his resignation, although he did offer to serve as a native police officer and justice of the peace until a replacement could be found. He was informed that his services were no longer required. His period of leadership had lasted for exactly one year.

On 16 April 1856 he was relieved by Lt E. V. Morisset, the son of the former commandant of the Port Macquarie penal settlement. The control of the Native Police was about to pass into the hands of those with more "hawklike" dispositions.⁹³

Referring to the men who replaced Frederick Walker, David Denholm questions whether

and they were unjustly discharged to make their way home on foot, a situation that was fraught with danger in hostile Aboriginal country. O'Connell was convinced that these ex troopers were responsible for many of the Aboriginal crimes committed on the white settlers during this period.

⁹³ This may have caused dissatisfaction to some officers. One of whom stated "I resigned because I was not inclined to become a butcher of women and children". See Lt. F. Nichol, NMP, to Col Sec, 12 March 1858, MF, A2/42, Col, JOL.

the northern pastoralists really got what they wanted.⁹⁴ Under Morisset's leadership the Courier considered the native police a farce⁹⁵ and laid its shortcomings directly at his feet.⁹⁶ In this the journal was joined by Alfred Brown who was a member of the Legislative Council and a Wide Bay squatter. He told the 1858 Select committee that the efficiency of the force had deteriorated since Walker was removed, adding

...I think the principle reason ... is that they have inefficient officers. Some of the officers are not at all ... adapted to the command of the force.

Asked if this included the Commandant, he replied "Yes". Three years later he was questioned as to whether he saw any reason to revise his opinion, to which he replied "None whatsoever".⁹⁷ Judging from the praise that Walker's leadership received during the 1856, 1858 and 1861 enquiries into the Native Police, it seems that more than a few might have been having second thoughts.

Walker's dismissal was certainly warranted, but the accusation that under his direction the force practiced indiscriminate slaughter⁹⁸ is not. Even after his sacking his attempts to achieve racial justice by curbing the excesses of native police and the settlers seem to have been sincere. On 3 April 1861 he wrote to Queensland's Colonial Secretary complaining of a squatter instigated attack by native police on friendly Aborigines at Planet Creek,

⁹⁴ Denholm, *Some Aspects of Squatting*, p.359. In fact he goes farther and questions Morisset's sanity. Whether Morisset was in fact suffering from diminished intellectual responsibility is virtually impossible to determine.

⁹⁵ Moreton Bay Courier, 11 August 1858.

⁹⁶ Ibid, 31 March 1858.

⁹⁷ Evidence of A. H. Brown, 1861 Enquiry, p.114.

⁹⁸ H. Holthouse, Up Rode the Squatter: The Savage Beginnings of Queensland's West, (Adelaide, 1970), p.129.

See also Loos, Invasion and Resistance, p.20. Referring to an incident during the search for Burke and Wills, in which Walker showed reluctance to cause any unnecessary slaughter of Aborigines, Loos observes, "This comes as a surprising comment from the ex-commandant of the Native Police force..." In fact given Walker's attitude towards blacks it is not at all surprising.

pleading "...I... earnestly call on the Government to take measures for the protection of these blacks in future ..."99 In the same year he wrote condemning a massacre of Aborigines who had "been proved to the satisfaction of five magistrates of being innocent of any participation in crime". In this incident one was spared. The reason, Walker postulated, was "possibly because the supply of cartridges was running short".100

It seems that Frederick Walker was a man torn between the duties demanded by his leadership of a punitive force which the Native Police undeniably were, and his own desire to see black people treated with humanity and at least a semblance of justice at a time when there was a distinct hardening of attitude towards them by frontier society and sections of government. It is tempting to suggest that this tension caused Walker's alcoholism, but his heavy drinking obviously existed well before his appointment to command the force. However his duties and his subsequent dismissal may have contributed significantly towards his increased use of the drug.

It has been convincingly argued that under Walker the Native Police attained a standard of discipline and efficiency it was never to reach again.¹⁰¹ In fact it was claimed that the only time the Native Police force was efficient was under his command. Although it must be admitted that Walker's excessive drinking, allied to poor accounting, contributed to a decline in the efficiency of the force which alienated many people, including some of his officers, others remembered him with respect. Walker's stated aim for his force was to prevent inter-racial violence and there is no reason to doubt his sincerity. It should also be recognised that the accusations of inhuman behaviour levelled at the Native Police were not evident during his leadership. Under his command they were seen by many people as being protective of Aborigines. W. A. Duncan, who was highly sympathetic to the Aboriginal condition and had been prepared to fight the northern "establishment" to achieve justice for

⁹⁹ Cited in QVP, 1861, p.571.

¹⁰⁰ Walker to Col Sec, 10 July 1861, NMP/1, QSA.

¹⁰¹ The Select Committee to inquire into and report upon the murders which have recently taken place on the Dawson river, commented on "the troopers who did such good service ...under the their late Commandant Mr. Walker..."

them, wrote in 1852 during Walker's commandantship, "the Native Police is an excellent institution..."¹⁰²

The criticism Walker faced was not that he destroyed blacks; but rather that he did not when he might have done. He should not be tarred with the same brush as men like Bligh, Wheeler and Carrol. It seems particularly cruel in the light of his efforts to protect Aborigines that some revisionist historians have chosen to do so.

Frederick Walker died on 19 November 1866 at Floraville while he was marking the telegraph line to the Gulf of Carpentaria; he was probably 46 years old. While he may have died of alcoholism, the official cause of death was attributed to diarrhoea. Walker is remembered as the leader of the expedition to attempt to find the missing Burke and Wills. He never denied shooting Aborigines when he considered the situation demanded it. Even so, he might also be remembered as a friend to them at a time when they had few. His replacement by commanders of native police who were less humane and less concerned about justice to Aboriginal people contributed to a deterioration in frontier relations and increased loss of life which was overwhelmingly black; it also changed the character of the Native Mounted Police.

¹⁰² Duncan to Sec. Board of National Education, cited in "Inquiry into Native Police and Condition of Aborigines Generally" *QVP*, 1861, pp.304-5.

Chapter Ten

The "Black Friday Question"¹: The Native Police Post Walker and the 1861 Enquiry.

...I believe that cruelty and injustice have been committed under the guise of law...

The Hon. M. C. O'Connell to "Enquiry into the Native Police Force and the Condition of Aborigines Generally", QV&P, 1861, p.83.

¹ Walsh to LA, QPD, 1867-8, p.957. Walsh claimed that discussions "tut tutting" native police activity took place every year and always on Fridays, that's why nothing was ever done. Walsh went on to add that they were "black Friday Questions" and were too important to be treated in this way.

The mid 1850s was a period in which a native police force, much reduced in size and efficiency, was held largely responsible for a state of affairs that some frontier settlers had, in no small part brought on themselves. In their efforts to obtain a compliant force and in their vendetta against Walker and the "southern government", the northern pastoralists paid scant attention to the damage that was done to race relations, or the effects their actions would have on the security of an already dangerous frontier. The Native Police had become distinctly less disciplined and in some instances contributed to crime, rather than to its solution. Criticism of them increased markedly and they were the subject of two NSW parliamentary enquiries in the years immediately before the new colony was founded, one of which lamented the fact that the force no longer enjoyed the good reputation that it had previously acquired. This was attributed to the recruitment of local blacks rather than those from the southern districts, and the absence of Walker's leadership.² While there were demands that the native police be disbanded or modified in some way throughout the remainder of the century,³ criticism of them was at its peak during the late 1850s and early 1860s. This antagonism was matched by a decline in tolerant attitudes towards Aborigines in general, which was by no means restricted to the frontier.⁴ Encouraged by this and the recommendations of parliamentary bodies to become more aggressive in the way they carried out their duties, the Native Mounted Police was transformed into the more punitive para-military body for which Queensland was to be so severely criticised. To understand

² "Report of the Select Committee on Murders by Aborigines on the Dawson River" NSWV&P, 1858, p.1. Walker recruited from The Murray, Darling and Edward River districts. He considered it folly to enlist men who would have to operate in their own localities.

³ Even as late as 1896 Archibald Meston in his Report on the Aborigines of Queensland, called on the Government to disband the force.

⁴ This period is referred to in chapter four. It saw intense black resistance in the Dawson and Port Curtis regions of central Queensland culminating in the loss of 19 white lives at Cullin-La-Ringo in 1861. The shock wave from this and the attack on Hornet Bank station four years earlier lost Aborigines the support of many philanthropically minded white people. This was compounded by a marked increase in Aboriginal depredations in the settled areas. These were mostly viewed by whites as nothing other than criminal activities.

these developments and the effect they were to have on this branch of Queensland's police, it is helpful to be aware of the political pressures that had been created and it is most important to recognise not simply the agenda, but the long-term effects of the 1861 Report From the Select Committee On The Native Police Force and the Condition of Aborigines Generally.⁵ The findings of this committee did nothing to curb the excesses perpetrated by the force; rather their lack of condemnation gave tacit approval to police murders and encouraged a denial of justice to Aboriginal people.

In the years immediately surrounding Queensland's separation, the discourse on crimes committed by Aborigines and the European response to them, was an important part of the intense political conflict between the powerful pastoral lobby and various pressure groups that were mostly urban in origin. Well before separation these town movements had recognised the squatters as the future power brokers in a new northern colony and their treatment of Aboriginal people was used as a weapon with which to attack them. The confrontation within the white society was frequently fuelled by argument over the way the Native Police were behaving and the morality of denying civil and legal rights to the dispossessed indigenous people. To compound the conflict, it occurred during a time of escalating Aboriginal resistance to the white presence. This resulted in increased loss of life and property, and helped to polarise attitudes. A perceived change in Aboriginal behaviour gave cause for alarm, with a parliamentary committee stating

...public attention has been lately drawn to some very remarkable circumstances... the blacks... about the Dawson not only travel and fight by night... [they] combine their fighting men for the purpose of aggression...⁶

⁵ Hereafter referred to as the 1861 Enquiry.

⁶ Donaldson to O'Connell, "Select Committee on the murders by Aborigines on the Dawson River", p.1.

In one way the claim was surprising⁷ but its recognition by whites was important. The belief that Aboriginal crime was a product of tribal planning was used to countenance indiscriminate retaliation. It also helped to stifle the voices of those Europeans who believed that Aborigines were British subjects who should be answerable to the law in the same way that white people were.

Earlier in this period sections of the rural magistracy became openly defiant to central government. Soon after Denison became governor in 1855, Earl Grey reminded him of his duties towards Aborigines and expressed his disapproval of the practice of firing on them to prevent their escape. It was obviously unjust to kill black people with no knowledge of the laws of arrest, for running away from the police; they may not have been guilty of any crime, but simply running in fear. Denison consequently issued orders to officers of the Native Police and commissioners for crown lands, that in future blacks were only to be shot in self defence.⁸ Certain magistrates refused to accept this directive and the government was obliged to back down and send out a face saving statement that "the circular was not intended to refer to cases of felony, but to a practice supposed to prevail in any trifling matter".⁹ This was to have most serious consequences, because it gave police what they saw as carte blanche to shoot Aboriginal suspects.

The following year, 1856, a NSW parliamentary select committee formed to investigate the Native Police. This body signalled a clear victory for the "hawks" over the humanitarians. The central control of the Native Police was soundly condemned and it was returned to the hands of a local commandant. As previously stated, these were those of Lt. E. V. Morisset.

⁷ In fact, at least part of the claim is dubious because there are many earlier instances of Aborigines attacking at night. They did so at various times in the Port Curtis region and it is probable that Patrick Logan was killed at night

⁸ This was the question that Frederick Walker had attempted to have cleared up which is referred to in the previous chapter.

⁹ Gov Res, to MB Res, 55/9457/A6, QSA.

Apart from anything else, this order recognises that Aborigines were being shot for "trifling matters".

He was highly recommended by the northern squatting power bloc which included men like Gordon Sandeman, James Leith-Hay, Patrick Leslie, and Charles Haly. Morisset, they claimed, was "in every way a gentleman" who would combine fairness with firmness in his dealings with Aborigines.¹⁰ With regard to his "fairness", it should be remembered that he was the man who wanted to shoot commissioner Wiseman's innocent black workers without trial following the rape and murder of Fanny Briggs. Despite his appointment, this commandant was not to be permitted to act independently. Rather, he was bound by the decisions of the local bench. Very importantly, communications between the individual native police officers and their superior, including monthly reports, were to

... be transmitted through the bench of magistrates nearest to the locality where the commander happens to be at the time...such reports may be accompanied by any minutes that may seem to the bench to be desirable to make...and in the event of any complaint being made against the conduct of the commandant, such complaint shall be referred to a bench of magistrates near to where the cause of the complaint in question shall have occurred.¹¹

This of course, gave the squatting interest virtual control of the force. But it did more; by placing supervision in local magisterial hands it meant that there was no uniformity of action and operational procedures. Therefore the native police approach to their duties and subsequently, how Aborigines were treated, depended to a great extent on the whim of the local bench and those who influenced them.¹² This incongruity was compounded by the lack of officer training that the force had always suffered from. Because no formal training was undertaken, there was considerable difference in the way the individual officers carried out their duties. Some accompanied their more experienced peers during a probationary period. Others, Lt. Frederick Wheeler for example, had never been on patrol with another

¹⁰ Various letters to Government Resident, November 1856, in Res, QSA.

¹¹ Report of the Select Committee on Native Police, NSWV&P, 1856, pp.1159-65.

¹² It is appropriate to point out that the Commissioner of Police had limited control over the Native Police, they reported to the Colonial Secretary. This was a long lasting annoyance to Commissioner Seymour.

officer.¹³ With such a lack of uniformity it was inevitable that there should be a wide variety in the way they behaved towards Aborigines. The other notable change to arise from this committee was that the strength of the Native Police increased from around 70 to 120.

In the wake of the Hornet Bank affair a second NSW parliamentary committee formed which underscored a desire for revenge at the expense of justice and the uncompromising role the force was being encouraged to adopt. The attack on this station the previous year and the letters to editors hinting at another "Indian Mutiny" induced in sections of the white population a belief that blacks in the northern district no longer held the power of the Europeans in awe as they once had.¹⁴ The 1858 Committee's feelings were that it was "...better to take effective measures at once, to convince the blacks that any country the white people once take up they will hold..."¹⁵

This was nothing more than a thinly veiled call for reprisals. There was to be no consideration given to the cause, or lack of justice surrounding the conflict, nor any instruction that black offenders were to be brought to trial, or even that the culprits were to be positively identified. Aborigines were simply to be "punished" as a deterrent. The Select Committee which examined the Aboriginal resistance on the Dawson River informed the house

... your Committee desires to state that... while they repudiate in the strongest terms any attempt to wage a war of extermination against the aborigines they are satisfied

¹³ See evidence of Lt F. Wheeler to 1861 Enquiry, p.17.

It has been suggested that a lot of the criticism of Frederick Walker by modern writers arose from confusion caused by the similarity between his name and that of Frederick Wheeler.

¹⁴ These references to the Indian Mutiny are interesting. They meant different things to different people. Some considered the analogy in terms of a black uprising. Others related it to the Native Police who, because they were heavily armed "savages", were compared to the mutinous Sepoys in the Indian Army.

¹⁵ Buckley to O'Connell, cited in 1861 Enquiry, p.93.

that there is no alternative but to carry matters with a strong hand and punish with severity all future outrages on life and property.¹⁶

They may not have been advocating an all out war, but they were going as close to it as they dared. Denied a presumption of innocence, the employment of a jury to establish guilt and a judge to sentence, it meant that the Aborigine had no legal status within the criminal justice system at all. Further, it is important to be aware that these draconian measures aimed at simply "punishing" Aborigines, were in complete contrast to the legal enlightenment that was emerging for the colony's white offenders. For them, moves towards more liberal penal management were being made because it was increasingly recognised that harsh punishment did not reduce crime. In acknowledgment of the futility of the "iron fist" approach, allied to efforts to shed the taint of a convict past, parliamentary committees in Queensland gave a distinctly less vindictive tone to the colony's criminal justice system. Remission for good behaviour was introduced, prisoners were paid and pointless labour such as the treadmill and crank were discontinued. It was also recognised that discharging prisoners without money forced them to re-offend, so it was recommended that they be given a small amount of money before being sent out into the world.¹⁷ Lincoln refers to it as Queensland's "penological age of reform."¹⁸ He might have added "for whites only", because this progressive thinking was not applied to the black people. Instead, a campaign against what were classified as Aboriginal depredations commenced with a spate of letters, petitions and calls for police action, resulting in the Native Police under Lt. Frederick Wheeler being stationed at Sandgate and punitive attacks beginning on blacks in the Bald Hills and Pine River areas. Wheeler's detachment patrolled extensively around Brisbane and as far south as the Tweed River.¹⁹ This belligerent

¹⁶ NSWV&P, 1858, pp.870-1.

Apparently some northern pastoralists openly advocated a war of extermination. See North Australian, 10 May 1861.

¹⁷ See "Report of Select Committee on Prison Discipline", QV&P 1868, p.1097.

¹⁸ See Lincoln, Punishment of Crime in Queensland, p.143.

¹⁹ Murray to Col. Sec. 6 December 1862, 62/2994, Col/A35 QSA. It may have been that Wheeler had discipline problems or was too strict because 8 troopers,

approach to Aboriginal crime management was to last for the next ten years. In fact it did not end on the northern and western frontiers until the 1890s

In the early 1860s however, summary execution of Aborigines became no longer restricted to remote regions of the colony. A series of atrocities were committed by native police in, or close to centres of white habitation. On 1 February 1860, Lt. John O'Connell Bligh led an attack on a small group of blacks in the centre of Maryborough.²⁰ Four Aborigines died in this operation including one shot personally by Bligh. This police officer justified his actions by stating that he suspected one of the Aboriginal men of having been involved in an attack on a white woman.²¹ Apart from the fact that suspicion ought not to have warranted a death sentence, Bligh was not given the legal right to kill this man simply because he was attempting to evade capture. The Attorney-General had ruled that suspects could be shot only if the arresting officer was convinced that they might otherwise escape. In fact his instruction stated that if "there was reasonable ground for supposing that the arrest can be accomplished, the officer ought not... to take life".²² There was little chance of this man escaping; he was swimming in the Mary River and being chased by police in a rowing boat. Bligh himself admitted that he had grabbed at the man's hair. No one could evade capture under those circumstances for very long, therefore shooting him was a totally unjustifiable act. Given the presence of native police, the town's white constabulary and the numerous civilian males who were onlookers, it could not have proved all that difficult to take this man alive and make him stand trial. The town's water police magistrate who watched the incident said there was "no doubt the man in the water could have been taken;

virtually the complete detachment, deserted.

²⁰ This attack was in response to a spate of thefts by blacks in the area.

²¹ Moreton Bay Courier, 2 April 1861.
When questioned on this subject by the Select committee. Bligh admitted that no rapes had actually been perpetrated, but he believed several attempts had been made. See 1861 Enquiry, p.153. (In fact the man Bligh shot was a suspect who was wanted on warrant for theft).

²² This ruling was reiterated by Queensland's Attorney-General. See Police Gazettes Numbers 5,6&7, 1864.

there could have been no difficulty in reaching him".²³ This incident had the appearance of a police murder designed to intimidate Aborigines. But more than this, it demonstrated the different standards of justice that were applied to black people; it is extremely doubtful that Bligh would have shot a white man under similar circumstances. It also pointed to a decline in police and public morality, because Bligh admitted that previously he had not liked shooting blacks in the townships.²⁴

In disgust The Empire congratulated him on shooting an unarmed and defenceless man in the back.²⁵ Equally incensed was Maryborough's newly appointed harbourmaster, customs officer and water police magistrate, R. B. Sheridan, who urged an inquiry. In this however, Sheridan was not supported by the town's other magistrates. In fact a public meeting held three days after the incident praised Bligh and recommended increased vigilante action to protect property. This unlawful killing obviously met with considerable approval in Maryborough because Bligh was presented with a sword to honour his "valorous conduct". The Queensland Government too, was clearly unperturbed by its police officers carrying out summary executions in the middle of one of the colony's towns, for not too long after this incident they promoted him to command the Native Police Force.

Later in the year, Fanny Briggs was murdered on the outskirts of Rockhampton, almost certainly by native troopers. The following month they shot innocent Aboriginal workers on Manumbar station. In the week before Christmas 1860, first in the Dungandan Scrub, then later in a paddock near Fassifern, Lt. Frederick Wheeler displayed some of the savagery he was later to face a murder charge for, when Aborigines whom witnesses claimed were not guilty of any crime, were shot and their bodies burned.²⁶ The force was

²³ Evidence of R. B. Sheridan to 1861 Enquiry, p.25.

²⁴ Ibid. It has been suggested that during this period, certain NP officers were demonstrating an aggressive approach in order to curry favour with Queensland's pastoralist-stacked assembly and be considered as Morisset's successor.

²⁵ Empire, 3 March 1860.

²⁶ Evidence of Ipswich Coroner to 1861 Enquiry, pp.2-3. Evidence was presented that an Aboriginal woman was also shot dead and a child, who was in the arms of one of the shot men, slightly wounded. In addition two other Aboriginal men

seen by the more liberally minded sections of society as thoroughly rotten and there were loud and frequent demands for its disbandment, or at least radical alteration by the infusion of white troopers who, it was hoped, would prove better disciplined.

The Native Mounted Police had been the subject of intense controversy since well before Queensland separated from NSW. Reservations were frequently voiced about its legality and efficiency and it is into these two categories that the majority of its detractors fell. In the period following separation however, native police brutality and atrocity were perhaps the major concerns and it is notable that the criticism was increasingly coming from the more settled areas.²⁷

The need to investigate the efficiency of the new Colony's police was established in the Legislative Assembly on 20 June 1860. On that date a select committee consisting of six members was appointed. Among the departments examined was the Native Police Force and it is interesting to compare the Queensland Government's findings with those of its NSW counterpart handed down only 18 months earlier. The Queensland body found that

Although it would appear from the evidence taken by your committee... [that] the Force is a great expense to the country, an expense which at present cannot be curtailed without destroying its efficiency, they believe it is now in a most efficient state, under better management and in better working order than it has been for some years previous...²⁸

Considering that criticism of the corps was coming from almost every direction, the Committee's findings were an obvious absurdity that flew in the face of the evidence. Even so, it is difficult to decide exactly what triggered the 1861 Enquiry. There had been so many complaints about the force that it was becoming increasingly difficult for the newly

suffered gunshot wounds, which in one case caused the loss of a hand.

²⁷ Without doubt a more liberal press was a contributing factor to this.

²⁸ QVP, 1860, p.536.

established Queensland Government to ignore the escalating volume of disquiet.

On 16 March 1861, the following notice appeared in the press:

To the Officer in command of the party of native police who shot and wounded some blacks on the station of Manumbar on Sunday the 10th inst.

Sir, If in future you should take a fancy to bring your troopers upon the Station of Manumbar on a sporting excursion we shall feel obliged if you will either bag or bury the game which you shot as it is far from pleasant to have the decomposing remains of four or five blackfellows lying unburied within a mile or two of our headstation. If you will do neither please be kind enough to remove the corpses from the waterholes near the headstation which we sometimes use for culinary purposes. As most of the blacks you left dead on our run were feeble old men, some of them apparently not less than eighty years of age, will you please to inform us whether these hoary old sinners are the parties chiefly engaged in spearing bullocks and "cramming monkies" [sheep stealing] etc. or whether you just shoot them because the younger ones are too nimble for you. Besides four or five you left dead on our run, you have wounded two of our station blacks who have been in our employment during lambing washing and shearing and all other busy times for the last eight or nine years, and we have never known either of them to have been charged with a crime of any kind. One of them came to the station with a bullet wound through one of his thighs, another through one of his arms, and another through one of his hands; the other had a bullet wound through one of his arms. These blacks being in our employment, very naturally look to us for protection from such outrages, and we are of the opinion that when you shoot and wound blacks in such an indiscriminate manner, you exceed your commission, and we publish this so that those who employ and pay you may have some knowledge of the way in which you perform your services.²⁹

²⁹

Moreton Bay Courier, 16 March 1861.

This letter caused intense reaction inside and outside parliament. It was referred to at length in the lead up to, and during the 1861 committee's tenure and it is quite likely that it was this publication that forced the Queensland Government to at least be seen to be going through the motions of an inquiry.

Vice-Regal pressure was also applied. According to the Courier, when he opened parliament on 30 April 1861 Governor Bowen recommended to members that they consider the condition of Aboriginal people within the colony and that a parliamentary committee investigate them and the native police force with a view to improving its discipline and efficiency.³⁰ It is probable that the decision to do so had already been taken, but the enquiry officially arose from a call by Robert Ramsay Mackenzie, the Colonial Treasurer, following an amended notice in the Legislative Assembly the next day. A request for a select committee was made by J. Ferret on 9 May 1861. However, this was apparently not in response to the Manumbar incident, but rather to deflect criticism over the shooting of Aborigines by Lt. Wheeler on Hardie's Fassifern station.³¹

The prospect of losing, or at least having its black police severely modified, was alarming to Queensland's pastoralist dominated assembly. To forestall this distinct possibility, a parliamentary select committee was quickly established. This body provided perhaps the most blatant whitewash that the colony was to see in its history of race relations. What is particularly notable on the credit side however, is that an often squabbling northern press were united in their opposition to a government enquiry that was clearly aimed at "pulling the wool" over public eyes. On the debit side, it represented a victory for the pastoral interest at the expense of justice.

The 1861 Enquiry into the Native Police was a sham and many people were aware that it

³⁰ It is difficult to say what Bowen's attitude towards the Native Police was, but he was probably ambivalent about them.

³¹ QVP, 1861 p.64. Ferret was a squatter of long standing and a member of the 1861 Select Committee. He had a history of "punishing" blacks and believed that the application of the law as far as Aborigines were concerned was "all nonsense". See also, Courier, 13 August 1861.

would be, even before the committee began its investigation.³² As something of an afterthought, the scope of the body was widened to look at the "Condition of Aborigines Generally" (perhaps as a mark of respect to Governor Bowen whom the Queensland Parliament was ardently courting). This part of the enquiry was not really used by the committee to investigate the circumstances of the colony's indigenous people, rather it was principally used to defame them and to underscore the necessity of a punitive force for their control.

The composition of the parliamentary body attracted intense criticism even before it started taking evidence. Part of this condemnation arose from blustering attacks the Select Committee members made on anyone who questioned the integrity of the panel's intent. The chairman called the press attacks on the Native Police "cowardly and un-English",³³ but the fact is that at this time there were more attacks on the committee itself, than on the force. The largest single cause of public suspicion was that this body was more than just dominated by pastoralists, it was almost exclusively made up of them. The entire committee with one exception, consisted of squatters. The exception was Charles Blakeny, the member for Brisbane, and even he found little cause to dissent from the views of his pastoral colleagues, causing the North Australian to ask

How... can justice be expected for the poor aborigines or punishment for their murderers when there are men on that committee who state that it was questionable "whether it would not be found necessary to pursue a policy of extermination in dealing with the blacks in new and uncivilised districts"..."³⁴

They were to become even more suspicious when they discovered just how many graziers

³² Although the 1861 Enquiry could be considered intentionally fraudulent, it provides unequalled insights into the Native Police, the contemporary Aboriginal condition and the white attitude towards them.

³³ This is somewhat odd coming from a Scotsman.

³⁴ North Australian, 10 May 1861.

were invited to say what the committee wanted to hear.

To heap further odium on this panel, that "demon of discord"³⁵ William Henry Walsh who had done so much to have Frederick Walker removed from office, declined the Committee's request to give evidence, writing

...anxious as I am for the results that their labours will produce, I am yet most unwilling to travel 200 miles to appear before the committee whose constitution called forth so much suspicion in, and increasing disappointment outside of, the assembly...³⁶

Adding its weight to the fray in a scathing editorial The Courier³⁷ told its readers

... in order to prove the perfect impartiality of the committee, the members of the committee and the house generally abuse in good round terms those who express an opinion adverse to the present composition of the committee and threaten all sorts of awful punishments which luckily they have not the power to inflict ... no good can possibly be attained by Messrs Watts, Gore and Mackenzie publishing with their own tongues on every conceivable occasion, that they are honest upright impartial politicians. The parrot-like reiteration of this fact upon the part of the immaculate member for Drayton and Toowoomba is becoming a periodical bore...³⁸

³⁵ Cryle, Press in Colonial Queensland, p.21.

³⁶ Cited in QVP, 1861, p.389.

³⁷ In mid May 1861 under the editorship of Theophilus Pugh, the Moreton Bay Courier changed its name to The Courier and was published daily. By this time this publication had ceased to be the squatter's mouthpiece. No doubt partly because the region's population was increasing and it needed more than the support of pastoralists to increase sales, but mostly because its second editor had been Charles Lilley, who was later to become Chief Justice of the Supreme Court. A little later it underwent a further name change to become The Brisbane Courier.

³⁸ The Courier, 17 June 1861.

An editorial in the same journal on 25 July 1861, which was just after the Committee handed down its findings, ironically informed readers that

... a more piquant farce was never enacted. It is excruciatingly funny to witness the apparent solicitude of the chairman for the souls of the aborigines and see how cleverly each member of the committee extracted as much as he wanted from the doubtful witnesses and no more...

It was not a "piquant farce", nor was it "excruciatingly funny", it was a tragedy of injustice and blatant witness manipulation that was not even intelligently handled. This committee gave the new colony an opportunity to modify and restructure the force it would use for the pacification of its expanding frontier for the next 30 years. It presented a chance to behave with honour and to recognise what the denial of justice was doing to a defenceless people and to do something about their appalling predicament. It gave them an opening to protect their unwilling black subjects from the excesses of men who should have been made to stand trial, if not for murder, certainly for manslaughter. It did none of these things.

This was supposed to be an investigation into, not only the behaviour and efficiency of the Native Police, but the wretched plight of Aboriginal people as well, and yet someone like Frederick Walker, who probably knew more about the black police and the condition of frontier Aborigines than most, was ignored.³⁹ At this time the Native Police troopers represented about half of Queensland's total police force.⁴⁰ Many of them spoke very good English, their views would have been invaluable to any serious fact finding body and evidence under oath would not have been necessary. No black was invited to speak and those whites that attempted to do so in support of them were ridiculed. It is equally notable that the four native police officers who were called to give evidence, were men who placed little importance on just behaviour and had a history of murderous severity when it came

³⁹ Three years later the Queensland Legislative Assembly was told that "as an expert and in the management of the blacks, no man was his [Walkers] superior in the colony". See *OPD*, 1864, p.260.

⁴⁰ Appendix "F" shows the distribution of native police in the 1860s.

to dealing with blacks.

Dr. Challinor⁴¹ was utterly convinced that Lt. Wheeler's shooting of several innocent Aborigines at Dungandan and on Hardie's station on 21 and 24 December 1860, amounted to murder.⁴² Second Lieutenant Carr's detachment had shot blacks following the Hornet Bank attack because he believed them, on slender evidence, to have taken part in the affair. A few days later, by his own admission they shot to death an additional 15 on Coxon's station because someone, who Carr could not remember, recognised belongings that **might** have come from the Fraser household.⁴³ It is also worth mentioning that Frederick Walker had previously tried to lay charges against Carr for the murder of an Aboriginal trooper named Tahiti. The other officers called to give evidence were Bligh, whose attitude to blacks has already been discussed, and Commandant Morisset. The notable features of the latter's evidence, were his approval of the summary execution of Gulliver by Lt. Powell⁴⁴ and the shooting by his (Morisset's) brother, of what were almost certainly innocent Aborigines on Manumbar Station. Asked if he believed that the killing of at least eight and the fact of

⁴¹ Challinor expressed a wish to serve as a committee member, but he was not selected. This was almost certainly because his liberal views would have proved an impediment to the aims of the Committee .

⁴² 1861 Enquiry, p.3.

⁴³ Ibid, p.135. As additional justification for the shooting in an unbelievable statement 2/Lt. Carr told the enquiry the principal fighting man of these Dawson River people could be heard exhorting the Aborigines to continue the fight because the native police were running short of cartridges "...with my own ears I heard him say that in good English" he added. The claim that this "myall" Aboriginal man should be speaking to "tribal" blacks in English is quite amazing. It is equally surprising that Blakeney, who was a lawyer and who was interrogating Carr did not question the fact and neither did any other member of the committee. If there is any truth in Carr's statement it would mean that these Aborigines were "station blacks" or ex NP troopers.

Carr's evidence is of great importance for any study of native police activity in the wake of the Hornet Bank affair. It should be noted however that the Walker Carr referred to, was not Frederick Walker. Following Frederick Walker's dismissal, another NP officer by the name of Walker was appointed. This was Lt. Robert Walker.

⁴⁴ Gulliver is referred to in chapter 6.

leaving their bodies scattered about the run was justified, he replied "Yes I think so..."⁴⁵ It can be seen therefore, that those native police officers selected to give evidence had little time for Aborigines and were not overly concerned about acting legally or justly.

It was quite obvious what the Courier meant when it referred to "doubtful witnesses", but if the integrity of some may have been questionable, few were devoid of an opinion, even though some gave evidence that was contradictory. For example, Jacob Lowe maintained on one hand that there was no cruelty shown to the blacks⁴⁶ and a few minutes later admitted that "we went out...and killed a good number".⁴⁷ One gains the impression that in many cases, evidence was gleaned from witnesses who were "instructed", or who were known supporters of the status quo. A feeling also arises that the findings had been decided well before the evidence was taken, because in some instances the words appearing in the committee's final report were used verbatim during their questioning of witnesses.⁴⁸

The Courier clearly believed that in large part the 1861 Enquiry was little more than a series of orchestrated interviews and they pretended amusement when the Committee had the temerity to be affronted by their cynicism. To rub salt into the wounds they had already caused, their reporter wrote

...the debate on the native police bids fair to be a lengthy one and the result will probably be as unsatisfactory as anyone who doubted the impartiality of the Committee expected.⁴⁹

Much of the press attack was directed at Mackenzie, the committee's chairman who was

⁴⁵ Evidence of E.N.V. Morisset, 1861 Enquiry, p.144.

⁴⁶ Ibid, p.7.

⁴⁷ Ibid, p.9.

⁴⁸ It is impossible to prove this but it seems as if the findings had been previously decided on. The committee's job therefore, was not to fact find, but to lead witnesses into saying the required words to give their findings substance.

⁴⁹ Courier, 25 July 1861.

also, as previously pointed out, the Colony's Treasurer. He was later to become Queensland's Premier, then to inherit a baronetcy and go home to Scotland to enjoy it. Throughout the investigation his approach was to gloss over the inadequacy and brutality of the Native Police and where necessary to manipulate witnesses to present a picture of Aborigines as utterly worthless. There is evidence that Mackenzie's distaste for them went back a long way. Apart from probably being influenced by his pastoral interests near the Dawson River where Aborigines had conducted an intense campaign of resistance, he was a signatory to a threatening petition that was presented to Governor Gipps and the Legislative Council of NSW in 1838. This petition lauded pastoralists as the "pioneers of civilisation" and said of the blacks

...these untutored savages not comprehending or appreciating the motives that actuate us attribute forbearance on our part solely to impotence or fear... if adequate protection is not afforded by the Government the settlers will undoubtedly take measures to protect themselves as it is not to be supposed they will remain quietly looking on while their property is destroyed and their servants murdered and your memorialists need hardly observe that such a mode of proceeding, **will be attended with consequences of a most painful nature...**⁵⁰ [my emphasis]

The Queensland Governor, Sir George Bowen, apparently thought Mackenzie to be a man of substance, describing him as a "pastoralist of high honour and integrity" who had methodical habits of business.⁵¹ In his memoirs, Oscar De Satge said much the same thing, according him the title of a "pure merino". Therefore one may accept that Mackenzie's attitude towards Aborigines was fairly representative of the northern squatters.⁵² His

⁵⁰ Australian, 22 June 1838. It is interesting that three weeks after this petition was presented news of the Myall Creek murders broke.

⁵¹ D. Pike, (Ed), Australian Dictionary of Biography, Vol. 5 p.171.

⁵² Cited in W. Cowin, European /Aboriginal Relations in Early Queensland, BA (Hons) thesis, University of Queensland, 1966, p.58.

Despite the foregoing comments, it would be grossly unfair not to point out that

biographer however, is a little less generous about the man's qualities, considering him to have been a man of extravagant habits, whose financial accounting was slipshod and one of whom his creditors were suspicious. In 1844 he had been a bankrupt with debts of 27,000 pounds sterling hanging over his head. "Mackenzie was" he adds, "physically large but intellectually limited".⁵³ Lewis Bernays⁵⁴ would clearly have agreed with this analysis, claiming that "his best friend could not accuse him of mental brilliance". He also bestowed on him the indictment of being humourless.⁵⁵ The point of all this is that someone of Mackenzie's persuasion would have been unlikely to have had any sympathy for the Aboriginal perspective, or to have wished to curb the Native Police in any way.

One of the commissions of the 1861 Enquiry it might be remembered, was to investigate "the Condition of Aborigines Generally". Therefore it was disturbing that the Chairman should find it necessary to ask Dr Challinor why he was making so much fuss about the Aborigines shot at Fassifern.⁵⁶ It was a potentially dangerous line of questioning to adopt, one which a slightly more astute politician might have avoided. Apart from Challinor's well known humanitarian outlook, because of his influential position as a member of parliament and the added facts of him also being a magistrate and a coroner, the committee faced the very real prospect of a scandal which might have placed Lt. Wheeler in the dock on a murder charge; Hardie, who was one of their own kind, with him as an accessory; and Mrs Hardie on an indictment of perjury.⁵⁷ There is no doubt that Challinor wished to pursue the

there were some pastoralists who treated Aborigines with consideration and justice; men like Archer, Dutton and Christison for example, but they appear to have been in the minority.

⁵³ Pike, Dictionary of Biography, p.171.

⁵⁴ Bernays was the clerk of the Legislative Assembly.

⁵⁵ Cited in Reid, Nest of Hornets, p.226. See also Moreton Bay Courier, 9 October 1860. Apparently Mackenzie's intellectual shortcomings were a source of embarrassment to his parliamentary colleagues

⁵⁶ See evidence of Dr. Challinor, 1861 Enquiry, p.4.

⁵⁷ Challinor to Queensland Attorney-General, 29 January 1861, cited in 1861 Enquiry, p.6. Challinor believed that Hardie and his wife, the owners of Fassifern station, both lied over the incident.

matter and although he was probably blocked by an unsympathetic attorney-general,⁵⁸ he did have the support, albeit somewhat guarded, of the Courier which told its readers that

...the evidence taken before Dr Challinor at the magisterial inquiry during the month of January on the massacre of the blacks at Fassifern shows a somewhat strong case against Lt. Wheeler as the perpetrator and against Mr. Hardie, one of the proprietors of the station, as an accomplice after the fact.⁵⁹

The line of questioning adopted by Mackenzie, and Challinor's responses make it clear that there was intense antagonism between the two.⁶⁰ Challinor refused to answer any questions relating to his duties as coroner on the grounds that the panel was unqualified to ask them. For their part, the Committee attempted to belittle him, first by suggesting that he was an interfering "do gooder", then by portraying him as someone who was out of touch with the reality of Aboriginal behaviour. The fact was that as a magistrate, Challinor had tried and sentenced blacks and was very much in touch with the relationship between them and the criminal justice system. He made it quite clear that he sought no special treatment for them, simply that they should be answerable to the law in the way that whites were.

This was one of the major points that the Committee was keen to reject. Another was the force's attenuation by the inclusion of white troopers. So with help from selected witnesses they set out to prove that the Native Police was the only force capable of catching Aborigines who broke the law, and that summary punishment was the sole viable option. It was generally accepted that white troopers would be better disciplined, but apart from cost, it was monotonously argued that they would be unable to follow blacks through the

See also Ibid, p.12. Challinor stated. "There was nothing in the evidence given before me which led me to believe that any provocation had been given".

⁵⁸ Following the 1861 Enquiry Challinor asked to see Wheeler's report. The Attorney-General refused on the grounds that it might incriminate Wheeler. See QPD, 1867, p.334.

⁵⁹ Moreton Bay Courier, 12 March 1861.

⁶⁰ Challinor was probably contemptuous of Mackenzie. He pleaded with the Attorney-General to have the enquiry conducted by a professional man.

scrub or live off the land. In addition to this, most of the squatter witnesses did not think there was any advantage in employing ex army men either as troopers or officers.⁶¹ However none of these witnesses had been military men themselves, so their appreciation of the advantages of army training and discipline would have been slight. Samuel Sneyd, Brisbane's chief constable, was an ex soldier of the 4th Regiment and had also been a sergeant in the old mounted police of NSW. Both he and Capt. M. C. O'Connell, who was president of the Legislative Council and a highly respected army officer believed that the advantages of trained, disciplined white troopers subject to military law and accompanied by black trackers would outweigh any disadvantages that there might be in paying for Europeans. They pointed to the old mounted police who had successfully operated against Aborigines with less bloodshed and complaints of atrocity than the native police were currently attracting.⁶² The Committee understandably rejected this suggestion, they did not want to increase costs and most importantly, they did not want any modification of the black police. Therefore, not surprisingly, they found that..." any changes by substituting white troopers, would destroy the efficiency of the corps".⁶³ They had a point, because the problem lay more with the officers than with the troopers. The major fault in the Native Police lay in its leadership. Walker had established that, properly officered, the black troopers could be as highly disciplined as any whites. However, a problem the Native Police force had throughout its entire existence was one of officers who did not know their jobs. Much of this resulted from the absence of officer training and this in turn was related to the particularly English cult of anti-professionalism. Military prowess was seen to come naturally to "gentlemen" and it is from this class the black police tried to recruit its officers.

⁶¹ Cost was a factor here. Native troopers were paid between five and eight pence a day; white troopers would demand about three shillings and sixpence per day and the cost of rationing them would have been considerably higher.

⁶² The Horse Patrol did commit atrocities against Aborigines. See, front quote to Ch 1 of Milliss Waterloo Creek. It is true however, that soldiers are generally strictly controlled by their officers and influenced by a code of conduct which demands that prisoners and wounded are treated with humanity. It is a form of self preservation; one might someday find oneself in the same predicament.

⁶³ 1861 Enquiry, p.2.

From the line of questioning employed it is obvious that another of the Committee's aims was to show that the illtreatment, including murder, of Aborigines by Europeans was not only exaggerated, which it may at times have been, but that it also attracted greater outrage than when blacks killed whites, which it certainly did not.⁶⁴ In his interview with Brisbane's Chief Constable, Mackenzie used the Myall Creek massacre to hammer home this point. He maintained that the seven white men were "judicially murdered; for I can call it nothing else..." because they were goaded by the unpunished attacks on their comrades.⁶⁵ He chose to ignore the reality that the 28 Aborigines they killed were found to have given not even a "shadow of provocation"⁶⁶ and were in fact, on very good terms with some of their murderers.⁶⁷ he also ignored or forgot the fact that the murder for which the seven white men were eventually convicted, was of a child.⁶⁸

To give weight to the claim of hyperbole, J. Wilson was asked "are not reports of disturbances with the blacks exaggerated"? He replied

Yes I know they are; there are a number of persons up the country who go about from house to house - who in fact live by sponging upon the settlers - who tell and invent the most dreadful stories about the blacks and the native police to amuse their hearers, their sole object being to be asked to sit down and have their dinners...⁶⁹

⁶⁴ Attacks by Aborigines on Europeans, particularly on the landed class gave rise to intense outrage and calls for revenge that were often irrational. In the reverse situation there was generally someone to rationalise the act as being merited in some way, even if only for its deterrent value.

⁶⁵ 1861 Enquiry, p.48.

⁶⁶ Australian, 1 December 1838.

⁶⁷ See Milliss, Waterloo Creek, pp.279-282.

⁶⁸ Although the seven men were convicted for the murder of only one child, several children were in fact murdered.

⁶⁹ Evidence of J. Wilson, Ibid, pp.71-72. Although it is clear that Wilson was a supporter of the Native Police, his evidence should not be discounted for that reason. In defence of his assertion it would be impossible to claim that there has

In relation to this question of overstating native police brutality, O'Connell's response is particularly interesting. Although of the "old school" that recognised the efficacy of summary punishment he was distinctly disapproving of the way the force was behaving. One gains from his evidence a certain sense of compassion for the plight of the indigenous people and that he saw them as something other than "revolting savages". Having been a Commissioner for Crown Lands, he had a lot of experience with the Native Police and with Aborigines generally. O'Connell had been a key witness before the 1858 Select Committee that considered the Dawson River murders and had submitted a proposal which included costing, for a corps of white mounted police to serve in the future Queensland.⁷⁰ In examining O'Connell's evidence to both the 1858 and 1861 enquiries one is struck by the similarity in attitude towards blacks between himself and Frederick Walker. One also gets the impression that the 1861 Select Committee sat up and took notice when O'Connell spoke. This however, did not prevent the Chairman from attempting to manipulate the man's evidence. Mackenzie asked

You are aware that at different periods, great outcries have been made against the Native Police and the squatters generally, and that many stories have been circulated to their discredit - don't you think that the reports have been in many cases exaggerated?

ever been a dearth of sensational writing on the subject. For example, see C. Eden, My Wife and I in Queensland: An Eight Year Experience in the Above Colony With Some Account of Polynesian Labour, (London, 1872), p.113, who wrote

...once their blood is up... the officer loses his control of them ...so inherent is their thirst for blood that I know of **several** [my emphasis] authenticated instances of a trooper coming up to his officer rolling almost out of his saddle with laughter and leading him up to a body, say, "Marmy that fellow brother belong to me". However it is as well to draw a veil over the dark side of the picture.

This unlikely tale is really no more than racial slander. With regard to controlling troopers, both Lt. Nicholls and S. I. Johnstone wrote that they had never known of them failing to cease firing when ordered to do so.

⁷⁰ This proposal may be seen in Appendix "G".

To this O'Connell replied

I fancy they may have been in some cases, because I believe that the horror of all right thinking people is very greatly excited by the knowledge **that cruelty and injustice have been committed under the guise of law**, [my emphasis] and there is also an instinctive feeling against taking human life.⁷¹

Mackenzie then sought to have O'Connell admit that the native police were the only solution to Aboriginal crime, asking if there was any point in white men attempting to capture blacks. In reply O'Connell told him

If you want to destroy the blacks by wholesale slaughter, you could not find people more suited for the purpose than the Native Police.⁷²

The Committee had more success with men like Captain John Coley who gave evidence that he did not "know of a single Brisbane black being killed by whites".⁷³ Although Coley admitted that the "Brisbane Tribe" had completely died out, they were by the inhabitants of Brisbane he claimed, "most kindly used",⁷⁴ and he could recall no act of cruelty.⁷⁵ Sheridan on the other hand thought their treatment by Brisbane's white population was appalling and he reminded the committee that Europeans had been punished in the police

⁷¹ Ibid.

⁷² Evidence of the Hon. M. C. O'Connell Ibid, p.83.

⁷³ Evidence of Capt J. Coley in Ibid, p.20. There was no shortage of people who believed that the injustice shown to Aborigines was a myth constructed by "blind humanitarianism". G. Milne, the member for Warrego told the LA that he "did not believe there were ever any blacks shot down in the scrubs". See QPD, 1867-8, p.954.

⁷⁴ Ibid, p.19.

⁷⁵ Perhaps Coley's memory was faulty, because during debate on the 1861 Enquiry a member of the house named O'Sullivan believed that Capt. Griffin had boasted to Coley that he had poisoned about 70 blacks in the Pine River district. See Courier, 27 July 1861.

court for illtreating blacks.⁷⁶ When Mackenzie tried to have him say that the murder of blacks by whites attracted greater attention than the opposite, Sheridan replied "In my experience it has been quite the reverse: I have never known till lately **any** notice taken of the murders of blacks".⁷⁷

Many of the witnesses voiced the opinion that stock killing by Aborigines was nothing more than wanton crime. Wheeler stated that there was no need for them to interfere with cattle because "I believe there is a greater number of kangaroos than there was formerly".⁷⁸ This was an odd statement considering he was not there "formerly" but the claim that cattle killing was not related to hunger was frequently made.⁷⁹ While it is true that there was a variety of motives for killing stock, which included resistance to the white presence,⁸⁰ Challinor thought that cattle killing was often forced on them by starvation. In this belief he was supported by Sheridan who had some sage observations to make about urban Aboriginal crime in general. He pointed out that blacks were drawn to the townships by the promise of blanket distribution but due to maladministration they were sometimes obliged to wait for up to two months in locations where there was a scarcity of food. "And" he added, "they must subsist, and therefore they commit petty larcenies".⁸¹

⁷⁶ Evidence of R.B. Sheridan, *Ibid*, p.22.

⁷⁷ *Ibid*, p.23.

⁷⁸ *Ibid*, p.31.

⁷⁹ See for example "Brisbane Town News" in *Sydney Morning Herald*, 26 January 1846. "They [the blacks] are killing calves out of wantonness, there is plenty of game in the bush".

⁸⁰ Evidence of J. Zillman, *Ibid*, p.78. Retaliation was obviously one of them. Zillman, who was present when some Aborigines were questioned about why they killed cattle, said the blacks replied "Why... did you drive us from our camp?"

⁸¹ *Ibid*, p.24. This is a very important point. On the subject of Aboriginal crime and for that matter resistance, although it has been seen by some as a causative factor, other historians have failed to recognise the very strong link between hunger and Aboriginal depredations. Because of the pressures created by white expansion and the policy of "keeping them out" in some situations blacks were literally starving to death.

The select committee sat for nearly three months and took evidence from 31 witnesses. They claimed to have investigated the condition of the Native Police Force, the charges of unnecessary cruelty by some of its officers and the prospect of improving the Aboriginal condition. One of their findings was that because of a native police presence, the destruction of property and loss of life, black and white, had diminished. This was nonsense. In the time prior to this enquiry stock losses were enormous and killings of both Aborigines and Europeans had increased dramatically. The intense Aboriginal resistance in the Port Curtis and Dawson regions and in particular the attack on Hornet Bank with the retaliatory responses made it almost certainly the most bloody period in the northern district's history. The massacre of 19 white people at Cullin-La-Ringo was only a few months away and although it was still out of sight, it completes the picture of a totally unresolved and dangerous frontier. In the settled areas, the Queensland press reported an ever increasing number of crimes involving blacks. They were mostly minor larcenies, but also during this period, there was a very definite growth in the number of reported assaults by Aborigines on white women. It was this escalation in the overall Aboriginal crime rate that had been responsible for the increased native police activity in the first place.

Ignoring these facts and that native police had been involved in them as perpetrators, Mackenzie exhorted the Assembly to adopt the select committee's report by asserting that the principal consideration the Committee had to consider was how Aborigines who broke the law should be dealt with. This in point of fact was not what the select Committee had been commissioned to examine. That had been cleared up years before. They were British subjects and amenable to the laws operating within the colony. Rather the Committee's job was to examine the efficiency of the Native Police Force and the condition of the colony's Aboriginal people. Nevertheless, the most appropriate response to Aboriginal crime was indeed what the panel focussed on. In fact, Mackenzie dealt with the subject of Aboriginal lawbreakers by asserting as an opening gambit that "there was only one law they could understand". In this he was supported by the overwhelming weight of squatter evidence and it was clearly the view held by the Committee as a whole. One of the members, John Ferrett, said publicly that punishing them in the way that other British subjects were

punished was "all nonsense".⁸² Even the two missionaries who gave evidence subscribed to this point of view. Mackenzie asked Missionary Rode "Have you not found it necessary to keep the natives in fear...?" To which Rode replied "Yes that has always been my experience".⁸³ Later when Missionary Zillman was interrogated by Watts who asked, "then you are of the opinion that it is necessary to have some force in existence which is feared by the natives...?" Zillman replied "Such a force is necessary, I know it from experience".⁸⁴

Imprisonment, the legal alternative to summary punishment for non-capital offences, was admitted to be entirely inappropriate by the majority of those pastoralists questioned. This response was achieved by the employment of a manipulative questioning technique. Witnesses were asked "Do you think their being mixed up with the worst white characters has a tendency to make them better or worse?"⁸⁵ It was of course, a question to which there could be only one answer. All the same, an alternative was provided by A. C Gregory, the colony's surveyor-general, who gave evidence that a prison exclusively for blacks operated in Western Australia. No doubt hoping for a negative response, he was asked by Mackenzie what long term effect prison discipline had on released black prisoners, Gregory said

A very desirable one... if you meet a native who has been a prisoner and make inquiries as to his trustworthiness, he will tell that you can trust him, as he has been a prisoner.⁸⁶

If this is true it constitutes an early example of the acceptance of institutionalisation by Aboriginal people.

⁸² See Courier, 13 August 1861.

⁸³ Evidence of A. Rode 1861 Enquiry, p.60.

⁸⁴ Evidence of J. Zillman Ibid, p.78. These attitudes may have contributed to the much emphasised lack of missionary success with Aboriginal people.

⁸⁵ See, for example, evidence of C. Haly, Ibid, p.81.

⁸⁶ Ibid, p.45.

O'Connell also believed that Queensland should have a separate gaol for Aborigines as an alternative to shooting them. When he voiced this opinion another attempt was made to have him admit the folly of imprisoning blacks. As in the questioning of almost every other witness, using virtually identical words, he was asked

Do you not think that their being placed in gaols with the worst white characters is the means of making them worse than they would have been if they had never been placed there?

Unlike the majority of pastoralists who responded affirmatively, O'Connell replied "I think it would be an advantage to have a separate place of confinement for blacks".⁸⁷ It was patently obvious however, that the Committee found gunpowder and shot more expedient, because no further consideration was given to the suggestion.

The overwhelming majority of witnesses clearly believed there was little point in gaoling Aborigines. However it must be appreciated that many of these men were of an age that considered imprisonment *per se* to be "newfangled", and therefore suspect. The "bloody code" did not end until 1815 and old beliefs die hard; we are only looking at forty years after the event. It is true that the 1860s saw a liberalisation of the penal code as far as white offenders were concerned, but conventional wisdom knew that the only way to treat "niggers" was to deliver a short sharp lesson aimed at the body in some way. Thus the 1861 Enquiry provided nothing more than a reinforcement of outmoded thinking that belonged to an earlier age.

Having voiced the opinion that force was the only law applicable to black people, Mackenzie's lengthy address to the house consisted of a monologue of justification for native police operations interspersed with attacks on those who criticised them. To this was added an invective on the morality of the Aboriginal people as a whole. He criticised their propensity for "unnatural practices" and cannibalism, their innate savagery and failure to

⁸⁷Ibid, p.87.

embrace anything other "than the vices of the white man".⁸⁸ These hackneyed criticisms are important. This was one of Queensland's first legislative enquiries and it was used to deny justice to black people by presenting them to the parliament and the white population, as being unworthy of it. Aborigines were not only worthless, but were addicted to crimes that were unmentionable. It was claimed that the evidence

... taken by your Committee shews beyond doubt that all attempts to Christianize or educate the aborigines of Australia have hitherto proved abortive...both sexes invariably return to their savage habits. Credible witnesses shew they are addicted to cannibalism; they have no idea of a future state; and are sunk in the lowest depths of barbarism...⁸⁹

The crime of eating human flesh was especially abhorrent to 19th century Europeans. The lesser known regions of the world were believed to be peopled by "savages" who committed this sin among sins. Such people were unentitled to be considered human and their cannibalism was used to deny them amenability to the law. It was also used to justify acts of atrocity against them.⁹⁰ The Committee in general, but Mackenzie in particular⁹¹ put words into witnesses mouths to prove that Aboriginal people were steeped in cannibalism. During examination, Colin Frazer stated categorically that although he had heard that blacks were cannibals, he had no personal knowledge of the practice. Yet at the end of his evidence Mackenzie stated "Then in fact you have no doubt that the practice of cannibalism prevails?" The Chairman also attempted to compound the horror by implying that they

⁸⁸ OPD, 24 July 1861.

⁸⁹ 1861 Enquiry, p.4.

⁹⁰ The question of whether Aboriginal people ate human flesh is still debated. It is generally accepted that they did as part of religious practice. (Christianity has its parallel in the ceremony of the Eucharist.) In times of extreme stress they may have eaten human flesh to survive, in the same way that many white people have done. There appears to be no evidence that they did it as part of their normal dietary habit. The question of Aboriginal cannibalism therefore, seems to be more a case of what Europeans were prepared to swallow, rather than what blacks ate.

⁹¹ An enormous amount of the questioning was done by Mackenzie himself. This fact, combined with his intellectual shortcomings gave the press a "field day".

preferred to eat children.⁹² James Davies, by virtue of having lived among Aborigines for 14 years, was a useful witness to prove Aboriginal addiction to cannibalism. Mackenzie asked him "Have you noticed that any of these blacks are cannibals?" Davies replied, "the whole of them are".⁹³ This was probably true in a sense, but Sheridan put the practice into a different perspective by explaining that "it is part of their religious service to eat a portion of their relatives".⁹⁴

The subject of cannibalism was pursued at great length by this committee and the question was not simply academic. It was blatantly used to undermine the concept of treating Aborigines legally. There was a precedent for this; it had previously been employed in this way in the 1840s. Then, the Courier, giving evidence of the practice among blacks, had argued that a people who ate human flesh could not be considered amenable to British law. The paper asked

...Who will presume to say, after this, that the blacks should be treated as British subjects when even their own kindred are liable to be sacrificed in order to satisfy the cravings of their brutal appetites.⁹⁵

The tactics that were used to prove the widespread Aboriginal addiction to human flesh were also employed to show them to be guilty of "unnatural crimes". The point was

⁹² 1861 Inquiry, p.2.

See also, Savage to Police Commissioner, 20 May 1892, Col/142, QSA. Inspector Savage, who worked among Aborigines for many years and showed a marked interest in their culture informed his superior "...at no time do they kill for the mere purpose of indulging in a feast of human flesh..."

⁹³ Evidence of James Davies, Ibid, p.55. As frequently stated Davies was the Northern District's principle interpreter, and had been for a number of years. This committee got his name wrong; it appears in the list of witnesses as "John" Davies, in spite of the fact that he corrected Mackenzie over the fact.. In addition, R. B. Sheridan's initials are shown as "H".B.

⁹⁴ Evidence of R. Sheridan, Ibid, p.29.

⁹⁵ Moreton Bay Courier, 14 November 1846.

continually laboured by most witnesses being asked if they were aware that Aborigines committed them at their initiation ceremonies. In Davies' case he was adamant that "...there is nothing criminal in their ceremonies and I have seen hundreds of them".⁹⁶ It is possible, but not likely, that Davies did not know exactly what the committee was referring to when they spoke of such offences.⁹⁷ It is important to be aware that Mackenzie's apparent preoccupation with "unnatural crimes" was also not without motive. Like cannibalism it supplied rationale for summary execution. In this period, sodomy legally attracted the death penalty.

In an effort to be seen as distancing themselves from native police killings, this committee

... although aware of the difficulties of making blacks amenable to British law could not ...countenance the indiscriminate slaughter which appears on more than one occasion to have taken place".⁹⁸

They could not countenance it, but were not prepared to do anything about it. The evidence that Gulliver was shot in cold blood by Lt. Powell's detachment was overwhelming, yet there was no recommendation for an enquiry or his dismissal. In Bligh's case they found that this "zealous officer" had "been justified in his attack on the natives in the town of Maryborough".

Lieutenant Wheeler on the other hand,

... appears to have acted with indiscretion on his late visit to the Logan and Fassifern. Your Committee recommend that he should be reprimanded, and removed to another district: were it not that in other respects he is a most valuable

⁹⁶ Evidence of J. Davies, 1861 Enquiry, p.57.

⁹⁷ It is more than likely that Davies had been exposed to sodomy during his convict period.

⁹⁸ Ibid, p.3.

and zealous officer they would feel it their duty to recommend his dismissal.⁹⁹

"Indiscretion" is an unusual euphemism for murder.

Nauseated by the enormity of Wheeler's behaviour and his cavalier response to the investigation of it, not to mention the Committee's mild condemnation, the Courier denounced both adding,

... and this is the force that the committee wish to perpetuate while professing a hypocritical anxiety for the evangelisation of the poor wretches whose gradual extirpation they are actually aiming at.¹⁰⁰

In view of the press comment and the Select Committee's particular findings in relation to murders committed by Bligh and Wheeler, it is appropriate to look a little more closely at this zealous but indiscreet duo.

Frederick Walker referred to the native police under Bligh's leadership as "an infernal system which has already cast a deep stain upon the honour of this colony".¹⁰¹ After being exonerated by the parliamentary body, Bligh it seems rode on to Dutton's station near Rockhampton and drove off his black workers who were "peacefully washing sheep". Dutton's black shepherds were also driven off, leaving the animals to wander unattended. It is not known how many Aborigines were shot in this operation, but Bligh's troopers rode their horses over an Aboriginal woman "injuring her dreadfully".¹⁰² This dispersal may have been politically motivated because apart from being a supporter of Walker and his conciliatory policies, Dutton was known as an Aboriginal sympathiser and opponent of the Native Police. In fact the pastoralists in the Rockhampton region considered him a traitor

⁹⁹ Ibid.

¹⁰⁰ Courier, 25 July 1861.

¹⁰¹ Walker to Attorney-General, 10 July 1861, 61/1909, COL/A18, QSA.

¹⁰² Sydney Morning Herald, 3 February 1862.

to his class. More than this, the policy of "letting in" laid him open to accusations of harbouring murderers.¹⁰³

Frederick Wheeler, this "most valuable and zealous officer", is a much more interesting case. There is something disturbing about him. The 1861 Enquiry could have seen him placed in the dock to face unlawful killing charges, yet his answers in response to questions leaves an impression of total lack of affect. Either that, or he was convinced that the Queensland Government would shield him from prosecution. Questioned about his operational methods which involved "surrounding blacks camps and shooting innocent gins", he flatly replied "there is no other way".¹⁰⁴ Astonishingly, Wheeler, whose job was to police Aborigines and who had been in the force for four years, admitted "I know so little of the blacks. They run before me - I never see them".¹⁰⁵ Even so, he was convinced that the correct response to Aboriginal crime was to shoot a few, as a deterrent to others. Asked if there was no other way of dealing with Aboriginal crime this police officer replied " No. I don't think they can understand anything else except shooting them".¹⁰⁶ He also admitted flogging black women whose only offence was to follow his troopers. "The gins" he claimed "will follow the men and I have at times nothing to do but flog them off".¹⁰⁷ Wheeler appears to have despised black women and he probably shot some in the Port Curtis region. His report of 17 October 1858 which stated that "they must all suffer, for the innocent must be held responsible for the guilty" has a certain Old Testament chill about it with perhaps a suggestion of a psychosis and in it he was writing about Aboriginal women.¹⁰⁸ Ironically his own wife nearly lost her life to Aboriginal attack; an event that he may have caused. In December 1860 immediately following the death of the black woman his troopers shot at Dungandan, Mrs Wheeler was staying not far away with the wife of

¹⁰³ See letter by William Clark, Port Denison Times, 27 February 1867.

¹⁰⁴ Response of Lt. F Wheeler, 1861 Enquiry, p.17.

¹⁰⁵ Ibid, p.32.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid, p.29

¹⁰⁸ This incident is referred to in Chapter 5.

Leonard Lester when blacks attacked the place at about three o'clock in the morning. Their assault was aborted when Mrs Lester fired a revolver.¹⁰⁹ It is possible that this attempted attack was in retaliation for the death of the black woman, or the shooting of blacks on nearby Fassifern Station.

There certainly appears to have been a sadistic streak in Wheeler's character. The flogging and subsequent death of an Aborigine named Jemmy by Wheeler at the Belyando police camp in 1876 which resulted in murder charges being laid against him is well documented. The principal witness was a white police constable named Thomas Baker.¹¹⁰ In his evidence he said

... they let him drop to the ground before Mr Wheeler arrived; Mr Wheeler then kicked the blackboy Jemmy while on the ground two or three times... after Jemmy was brought up to the barracks Mr Wheeler told one of the troopers to flog him...the trooper flogged him with a horsewhip giving him eight to ten cuts...another trooper was then told to flog him by Mr Wheeler and Jemmy received about twelve more blows when the whip broke: Mr Wheeler then flogged Jemmy with a leather girth with the buckle cut off...Mr Wheeler struck Jemmy about six or twelve times. Mr Wheeler then called the native trooper Toby who gave Jemmy about twelve strokes; after this Mr Wheeler gave him a few more blows; after this prisoner [Wheeler] told another trooper to flog the boy Jemmy the trooper flogged him with I believe the girth; the trooper gave deceased about twelve or more strokes; I then said to prisoner "that will do Sir, the boy has had enough".¹¹¹

Apart from the kicking administered by Wheeler, it seems that Jemmy received about 60 lashes which, considering the regulations governing the administration of corporal

¹⁰⁹ Evidence of L. Lester, 1861 Enquiry, p.108.

¹¹⁰ The presence of a European witness saw Wheeler indicted on a charge of murder; this time this "zealous and efficient officer" was on his own.

¹¹¹ Cited in Queenslander, 29 April 1876.

punishment in the era, must be considered excessive.¹¹² Jemmy died four days later and Dr Harricks, who carried out the post mortem described a number of wounds he found on the body and attributed death to a severe attack of peritonitis accelerated by a nervous attack caused by the wounds. Frank Hamilton, a station hand, estimated Jemmy's age to be between 25 and 28. This does not accord with Loos or Hillier¹¹³ who describe Jemmy as a ten year old boy.

Wheeler was committed to stand trial for murder at Rockhampton on 2 October 1876 but released on bail. He failed to appear and his recognisances amounting to 800 pounds sterling were estreated. In an assertion based heavily on supposition Hillier says

¹¹² There are instances of soldiers in the British Army receiving 1,000 lashes. However NP troopers were not subject to military law and therefore whipping, although widely applied was illegal and in any event, Jemmy was not a trooper.

Many people who advocate a return to corporal punishment have little idea just how brutal it really was. One might mistakenly believe there is little comparison between a prolonged flogging orchestrated by someone who was probably a sadist and a judicial whipping administered under medical supervision which the Crimes Against the Persons Act of 1865 demanded. This Act reintroduced corporal punishment for certain offences, usually crimes of extreme violence or carnal knowledge of young girls. Bailey, a member of Queensland's Legislative Assembly witnessed a legal flogging in 1885. He was not opposed to flogging per se but felt that in this instance the punishment was excessive and his comments illustrate how brutal it could be. He wrote

When ordinary imprisonment fails to effect the punishment of the criminal - when a criminal cares nothing for imprisonment or the restriction of his liberty - it is necessary to administer a sharp punishment; but as soon as a man receives from ten to fifteen lashes it is perfect cruelty to go beyond that - you are then cutting up an inanimate object...bad as a man may be - we have no right to punish him by a kind of cruelty which is perfectly useless.

Premier Griffith was shocked to learn that punishment was continued after a prisoner had lost consciousness. See OPD, 1885, pp.674-5.

¹¹³ Loos Invasion and Resistance, p.26. See also A. Hillier, "The Native Police under Scrutiny" in RHSQJ, Vol. xv, No. 6 February 1994, p.282. The confusion may have occurred because of the use of the term "black boy". "Boy" was used to describe Aborigines old enough to be grandfathers.

To Wheeler, a wealthy man, this was minuscule. He was guilty and he would hang for this crime. He promptly fled to California.¹¹⁴

Given the record of whites charged with killing Aborigines in colonial Queensland it might be argued that such an outcome was extremely unlikely. It is also difficult to see that a charge of murder would have stood up in court anyway, although one of manslaughter might have.¹¹⁵

¹¹⁴ Hillier, "Native Police under Scrutiny", p.283.

¹¹⁵ Frederick Wheeler was not the only native police officer to be accused of murdering Aborigines. Also in 1876, S.I. Carrol was charged with the murder of Trooper Echo. The case collapsed due to insufficient white evidence. See Queenslander, 7 October 1876. See also Police Gazette, No.6, 1876. It appears that Echo tried to poison Carrol. This case is confusing because two troopers named Echo were involved. Echo 1 was probably shot and his body burned by Carrol. Echo 2 was flogged senseless by him.

See also Evidence of Board of Enquiry, 29 August 1881, in letter 81/296, COL/A84, QSA. S.I. Douglas was accused of shooting Trooper Corney. This case also failed because there was no white evidence, but it might not have succeeded anyway because police produced evidence that ex trooper Alick, the man making the accusation, was a confirmed liar.

Nor it seems was Frederick Wheeler the only "Wheeler" to be accused of brutality to blacks. What is less well known is that another Wheeler who was also a native police officer had already been accused of the same sort of thing. On 21 Dec 1870 the Northern Argus carried a letter written by someone who called himself "The Suffering Bushman" accusing Sub Inspector Edward Wheeler of flogging a black, then of putting a carbine to his head and threatening to shoot him. The Queenslander ran the story which drew comment from several readers. In response the Colonial Secretary released correspondence emanating from the Chief Inspector of Police at Roma which refuted the charges stating that

from... many inquiries made by me... I am quite confident that there is not one word of truth in the story...the black boy alluded to is a very civilised, intelligent fellow, and I examined him myself and asked him if Mr Wheeler had flogged him. He said "no". He, (Mr W) had caught him taking some rations, and had struck him but not hurt him. ... I do not consider Mr Wheeler to have exceeded his duty in any way, but on the contrary deserves much credit for the energetic manner he performs a very difficult task. See Queenslander, 18 February 1871.

Although illuminated by hindsight, it can be convincingly argued that the 1861 Enquiry would have done well to recommend this man's sacking.

The "Black Friday question", that of a legal and humane response to Aboriginal crime smouldered fitfully, and it seems, interminably. Five years after the enquiry, during debate on native police, Thomas Stephens the member for South Brisbane moved that in the opinion of the Assembly the working of the force be condemned as unsatisfactory. He argued that the employment of a number of armed troopers whose evidence was inadmissible in a court of justice and who were in the presence of only one white man, did not give sufficient check upon the activities of the police and as a result lead to actions that were unnecessary and illegal, at the same time reducing its efficiency as a protective force.¹¹⁶ The house divided on this issue and the resolution was lost by 8 votes to 12. One of the members for Ipswich expressed surprise that the Government rejected the motion asking how any Christian country could employ a body of savages to shoot their fellow creatures, permitting no argument as to the justice of the situation. In an effort to transform the troopers into trackers the other member for Ipswich, Dr Challinor, moved that the Aboriginal police not be armed. Another member pointed out that there was already a law in place that expressly stated that "firearms should not be placed in the hands of Savages".¹¹⁷ Ramsay, who was opposed to the concept of imprisonment for Aborigines, argued that it was better that blacks be intimidated and deterred from committing offences, than be punished after the event. It is astounding that men like him, and there was no shortage of them, could not appreciate the injustice of applying a death sentence in the form of a rifle bullet, to minor crime. For such people the "bloody code" was obviously still relevant, at least for blacks.

In a very cleverly presented argument, Charles Lilley, the member for Fortitude Valley said he believed that the necessity for the Native Police was generally recognised and if its establishment could be "justified by law or justice it would be more decent to bring in a

¹¹⁶ Stephens to LA, QPD, 1867-8, p.948.

¹¹⁷ Walsh to LA, Ibid, p.949.

specific statute".¹¹⁸ But he was aware that it was an avenging force and therefore outside the law and he claimed, "the honourable members knew very well that the Imperial Government would never sanction an act for that purpose". He went on to assert that having taken possession of the country and having imposed British Law upon a savage people, this obligation made them British subjects.¹¹⁹ They were punished for rape, murder and other crimes that were unknown to their laws. If they robbed they were punished with death not by legal tribunal, or according to any recognised forms of punishment, but by shooting. In this case the British were, as a people guilty of murder, unless by the introduction of a law they declared that robbery by Aborigines was a capital offence. If they declared that the blacks were enemies, and the settlers were in an enemy country which gave them the right to deal with the blacks according to the rules of war. But they had not done this and if the blacks were recognised as British subjects they could only be punished according to British law. Thus the activities of the Native Police were illegal and there was not a line in the statute book that made their activities licit; they were an unlawful force and there was nothing in the common law of England or the law of nations to justify the conduct of the white population towards the Aboriginal inhabitants of the country.¹²⁰

Attorney-General Pring refuted Lilly's argument that because their country had been taken from them they were automatically British subjects who were amenable to English law. "Every day," he asserted

the solemn farce was enacted of a black fellow being tried through an interpreter who either knew or pretended to know the blackfellow language, and the unfortunate prisoner, if he was convicted, was hanged by the common hangman...¹²¹

¹¹⁸ Ibid, p.951.

¹¹⁹ Here Lilly is using "savage" in the sense of uncivilised and ungoverned.

¹²⁰ OPD, 1867-8, p.951. This was a very persuasive legal argument, but it, like the many similar statements that had preceded it since separation had no impact on the reality of the situation. The Native Police and their operational methods were a fait accompli and they would remain so as long as the Government of the Colony of Queensland saw fit.

¹²¹ Ibid.

This is the very point; they were not hanged by the "common hangman". Trials and hangings were a rarity, they were far more likely to be summarily executed.

Deliberately or otherwise, missing Lilly's point, Pring went on to say that the only Aborigines he considered to be British subjects were those who by association with Europeans had come to learn "the difference between right and wrong".¹²² The logical extension to this argument is that those blacks who were being shot down for relatively minor offences against property were not aware of the difference between right and wrong and were therefore legally in the same position as children and entitled to the law's protection.

Considering his intense dislike of the force, in a somewhat unusual admission of culpability, Walsh confessed he had been highly instrumental in its inauguration in NSW, having heard so much of its value in Victoria. In fact when they arrived at Callandoon it was to his station that they came. They stayed for some time on his property and he accompanied them to others. Unlike other witnesses who had nothing but praise for them during this period, he found that they were "incapable of doing any thing properly, and were incapable of being controlled by their officers". In a play on words Walsh referred to the Native Police as the "black police farce" and further asserted that he had done all in his power to get rid of it. There had been no reform in the force he added, because a succession of governments had winked at the crimes they had committed. He had brought the matter of their outrageous behaviour to the attention to the Governor to which His Excellency replied "You know I can do nothing; my ministers will not look at it". In the past Walsh had tried to lay charges against native police officers who had "with their own hands shot Aboriginal women". He, and he maintained other members of the house, knew an officer who had ridden up to an Aboriginal woman and shot her because she would not disclose the whereabouts of her husband.¹²³

Perhaps in an attempt to lessen the impact of the force's excesses the belief was expressed

¹²² *Ibid*, pp.952-3.

¹²³ *Ibid*, p.956.

that the black police were only a temporary measure, in fact the Colonial Secretary told the house that "in three years you won't see one of them".¹²⁴ Exactly what he meant by this is unclear; whether he was implying that Aborigines would by this time be pacified, exterminated, or have died out is hard to determine, but it was certainly a premature speculation, because native troopers were still operating on Cape York Peninsula 45 years after his statement.

The Government's unspoken approval of unlawful killing by men like Wheeler probably encouraged others to copy him. In June 1867, on the Morinish diggings near Rockhampton, a detachment of native police under a very inexperienced acting Sub Inspector named Myrtil Aubin shot to death two Aboriginal men and a girl of about eight in addition to severely wounding two other Aborigines. Their crime, to use Aubin's words, had been that of "greatly annoying people, committing daily petty robberies, preventing people from sleeping at night,...and corroboreeing all night".¹²⁵ This killing caused great indignation among the white inhabitants there, but Aubin could not really understand what all the fuss was about. If a fault had been committed, he maintained "it was only out of excess of zeal".¹²⁶ Unlike Wheeler's "indiscretion" which had taken the lives of innocent blacks at Fassifern, Aubin's zeal did result in his dismissal from the force. However he believed he had been unfairly treated. He was under the impression that he had done nothing but his duty. Gone were the "fruits of twenty eight months of active and zealous service" and he was left with a "seriously injured character",¹²⁷ which was no doubt a severe handicap for someone who was a Knight Companion of the Order of Isabelle la Catholica.¹²⁸ It was however, considerably more than the dead Aborigines were left with.

¹²⁴ Ibid, p.954. They were still in existence in 1913.

¹²⁵ Aubin to Commissioner of Police, 24 June 1867, cited in QVP, 1867, p.985.

¹²⁶ Aubin's petition to Governor Bowen, 16 August 1867, cited in Ibid, p.990.

¹²⁷ Ibid.

¹²⁸ Aubin informed Governor Sir George Bowen of his title when he appealed for reinstatement.

Statements from white miners were available and the evidence of James Cunningham's conversation with Aubin would probably have supported a charge of unlawful killing, if not murder, but the Queensland Government chose not to pursue the matter. It was a case of 1861 all over again.

By its failure to condemn native police excesses in the early years of the colony's existence, the 1861 Enquiry directly influenced these killings and the many more that were to take place during the invasion and settlement of North Queensland.¹²⁹ The importance of the Select Committee's findings therefore, may not have been fully appreciated. The Queensland Native Mounted Police were to act aggressively against frontier blacks for the next 40 years, but it was the last time they were to be investigated as an operational force. Thus this committee countenanced a code of conduct that was to live on long after the enquiry itself had been forgotten. The tragedy was that many responsible whites offered proof that Aboriginal people were not hopelessly criminal and shooting them was not the only solution to their crimes. But the Committee would not listen because they did not want to and in this way the attitudes of Mackenzie and those like him, left a legacy that was continuously instrumental in denying justice to Aboriginal people. There was little attempt at subtlety in the way the findings were arrived at and although the committee's agenda was perfectly obvious, many balanced, humane people were hoodwinked into accepting that the Native Police and summary punishment were the only answer to the "Aboriginal problem". Others simply gave up in the face of what they saw as overpowering vested interest.

From the mid to late 1860s civil and legal rights for Aborigines no longer attracted the passionate debate they had done earlier. Although this was to change by the end of the decade, during this period it was more frequently argued that blacks were dying out anyway and the obvious population decline supported this hypothesis. It is true that some individuals and newspapers took up the banner from time-to-time,¹³⁰ but none of these attempts presented the threat to the force's existence that the efforts of those who instigated

¹²⁹ Native police operation in the north of the colony have been exhaustively dealt with by the outstanding research of Loos and Reynolds.

¹³⁰ The debate in the Assembly in 1867 for instance.

the 1861 Enquiry had done. The pastoralists had won and the Native Police with their obsolescent methods of illegal summary justice were to be retained in the unsettled areas for as long as the squatting interest considered them necessary.

But the fact remains that they were a frontier force and by the 1870s the frontier was receding, leaving behind it a rapidly growing settled area containing an ever growing number of dispossessed Aborigines living on the fringes of white society. Even though they were considered a dying race, Aboriginal numbers in and around the centres of white habitation were considerable. In the more settled areas of southern and central Queensland the black was no longer primarily seen as a "murderous savage", but often as either a criminal medicant or part of a pitiful remnant. Both views demanded that something be done about "the Aboriginal problem". In spite of an apparent rejection of the closed gaol as an answer to Aboriginal crime, it, or something very like it, became increasingly seen as a solution. For the black people this change of thinking marked the beginning of a long journey into institutionalisation.

PART C: THE ROAD TO LOTUS GLEN

Chapter Eleven

Transportation, Gaols, Reserves, Missions and other forms of Imprisonment.

... where the presence of any particular Aborigine has proved a source of **possible** [my emphasis] danger to the white population etc. his removal to and detention in another district has been, upon my recommendation, sanctioned by the minister.

Report of the Northern Protector of Aborigines QV&P, 1901.

The modern prison was born in the early 19th century and is regarded by most people as the centre point of an humane criminal justice system. Its role is to curtail freedom rather than to inflict bodily punishment and this serves society in several ways. It is a penalty for the convicted, a solution for a public that wishes to rid itself, even if only temporarily, of a perceived threat and under certain circumstances it has the potential to change some offenders and make them acceptable to the society they have offended. As an institution the gaol also has several disadvantages. Unlike the gallows upon which the previous system was based, it provides an opportunity to re-offend. It is extremely expensive to run and has historically been seen by some people as self defeating; for them it is an academy where inmates can fine tune their criminal tendencies. In addition gaols and places like them have the ability to institutionalise, and in this way they contribute to their own reproduction. Some people who have undergone long or frequent periods of imprisonment learn to accept the gaol as an occupational hazard and it holds few fears for them. There are also those who actually come to prefer the certainty of three meals a day and the routine orderliness of an institution to the changing fortunes and responsibilities that are a part of being free. Freedom has many faces which include the freedom to go hungry, be exploited, shelterless and illtreated. But if liberty has more than one face, so too does confinement and it hardly needs pointing out that there is more to restraint than stone walls and iron bars. The curtailment of freedom can be achieved in other ways than simply locking people up. Keeping them from where they would rather be, or from what they would rather be doing may be almost as restricting as a gaol. Ever since the British arrival Aboriginal history has been one in which freedom has been curtailed in some way. It is a story of restriction, imprisonment, transportation and slavery¹ that spans two centuries. For black

¹ The capture and detention of Aborigines, particularly women and children was widespread and had been since the very early days of white settlement. Euphemistically termed "kidnapping", it was considered a minor crime by many Europeans. It was far from minor, it instituted a form of servitude in which black human beings were bought, sold, flogged and worked without payment. See Report of the Chief Protector of Aborigines for 1902 in OPP, 1903, in which he referred to "the obnoxious practice of the police providing children". See also, undated letter from a Miss Jackson of Atherton to Minister of Agriculture, 12/389, pol/J15, QSA. Jackson wrote

Queenslanders, the road to Lotus Glen began on the shores of Moreton Bay in 1824.

When Lt Miller and his 50 or so fellow Britons came ashore there, the majority of them were prisoners. In contrast, not a single Aborigine living in what was to become the colony of Queensland was suffering any sort of restricted liberty. British settlement at once changed that imbalance. Aborigines were immediately denied entry to areas which had previously been available to them and within a few years black people were behind bars or being restricted to places they had no wish to be in. They were also transported from their own country and made to work. These last two forms of punishment and control were only fully employed in the dying years of the 19th century, but some Europeans had been calling for their implementation since the 1850s and their voices were to become particularly strident in the 1860s and 1870s. Not only that, but what they were demanding was a move away from the prison in its modern form to the penology of earlier times. It is notable that virtually every answer to the "Aboriginal problem" was produced by white people looking back to the solutions of an earlier age.

Apart from attempts to stifle complaints from Queensland's humanitarians and to briefly examine a few side issues, the 1861 Enquiry into the Native Police and the Condition of Aborigines Generally became an investigation into the appropriate response to Aboriginal offences. In essence, the Committee stated that although summary punishment appeared to be the only viable option they could not condone the excesses of some native police officers. Ostensibly, this offered a modicum of hope for change. However, even the very modest reform that might have resulted from this enquiry failed to eventuate. In fact the situation deteriorated, with dispersals increasing dramatically in the aftermath of the Cullin-La-Ringo massacre. This took place in October 1861 which was only a matter of weeks after the enquiry's findings were handed down. The attack on the Wills family and

...we have had our boy for 26 years he has never known what it is to live with blacks. He was quite a little fellow when given to us by Inspector Wheelan.

Another 19th century Queensland policeman wrote of a ten year old Aboriginal child being "swapped" for a Kelpie dog. See O'Sullivan Cameos of Crime, pp.78-9. It is hard to see this sort of thing as anything other than slavery.

their workers in central Queensland that left 19 white people dead, appeared to justify the Committee's findings and put paid to any hopes of reforming the Native Police system or moderating the white response to Aboriginal crime for the best part of ten years.

But nothing lasts forever and towards the end of the 1860s attitudes were changing. Although the summary response to Aboriginal crime was still tolerated in the frontier areas of the north and north west, and would be for another quarter of a century, its acceptability in the more settled districts was starting to wear a little thin. For a variety of reasons, a growing number of Europeans were looking for alternative ways of dealing with the perceived crimes and other problems associated with Aborigines. Even on the northern frontier a growing body of people were becoming sickened by the bloodshed and atrocity that had taken place.² Also, by the end of the decade in much of Queensland, Aborigines were no longer on the "other side of the frontier"³. The rapid advance of European colonisation had placed an ever increasing number on the white side of it, and in these areas people were demanding that the strategies for dealing with them be amended. There were several reasons for this, among them was the fact that Queensland's treatment of its black people was attracting unwanted attention from the United Kingdom, which resulted in some embarrassing questions being asked. In the late 1860s the powerful London-based Aborigines Protection Society was questioning what was going on in the colony.⁴ The Secretary asked for information on the state of the blacks and what Queensland was doing about them. Their request was ignored, but the possibility of an international scandal existed. The Port Denison Times asked

We know the storm that was raised in England following the Jamaican riots when 400 were killed. What would be said if they knew that more than that number fall

² As a result, in parts of the Kennedy district for example, some stations were beginning to let Aborigines in even though it was considered risky. In fact by 1869, it was claimed they were "let in" to most pastoral runs between Bowen and Townsville. See letter to editor, Port Denison times, 15 May 1869.

³ The Other Side of the Frontier is the title of a major work by Henry Reynolds.

⁴ Secretary Aborigines Protection Society to Colonial Secretary, 1 August 1867, 2680, Col/A91, QSA.

each year by the hands of the settlers and an illegally constituted native police?⁵

There was not much doubt that "they", or at least some of them, did know; a letter to the editor of the Queenslander asked "what must the people of England think of Queensland with the foul stain that is upon her?"⁶ Later, another one by a man named Heydon to the Sydney Morning Herald about the activities of the black troopers accompanying the Queensland Government's expedition to the north of the colony, found its way to England and caused outrage there,⁷ with some questions being raised by the Secretary of State for the Colonies.⁸ Heydon's letter resulted in discomfort for the Queensland government and required denials from Police Commissioner Seymour to some damning accusations about the Native Police and its operational methods. As Raymond Evans suggests, "there were some indications that a storm was brewing".⁹

The treatment and condition of Aborigines was clearly an embarrassment and would become increasingly so, and their plight was reflecting on the young colony in a most unwelcome way. Some people, were questioning not just what kind of government Queensland had, but what type of society the colony was producing and if some were asking questions, others were beginning to provide answers. This is illustrated by a paper that was later tabled in the House of Commons. It was a balanced report that appeared to understate the case, but carried nevertheless, something of a sting in its tail. It stated the relations

... between white and native populations in Queensland have not been such as to

⁵ Port Denison Times, 1 May 1869.

⁶ Queenslander, 10 August 1872.

⁷ Heydon's letter contained exaggerations and inaccuracies, but he made a very sage comment about the damage that was done to future race relations in a new area and the price that would eventually have to be paid by both races.

⁸ See QV&P, 1875, p.621.

⁹ R. Evans, "Queensland's First Aboriginal Reserve", Queensland Heritage, Vol.2 No.4, May 1971, p.27.

promote sympathy or kindly feelings on either side, nor have they been favourable to the development of that generous or dispassionate spirit in which the government of native races should be undertaken. It is possible that there may be and probably is exaggeration, and even gross exaggeration in the stories told of the brutality and cruelty shown towards the natives in Queensland, but it is impossible to converse with any average Queensland colonist, to read their newspapers, or the speeches of their legislators without perceiving that even among the most enlightened and humane of their number, the native is regarded as simply an encumbrance on the soil, as being destitute of rights...To entrust such control [of Aboriginal people] is to entrust it to an oligarchy in which those governed have no representation whatsoever...¹⁰

It can be seen then, that as the last quarter of the century approached, the response to Aboriginal transgressions was no longer dominated solely by frontier solutions. A study of the available evidence provided by government papers, colonial press articles and letters to editors makes it quite clear that a growing number of white people were beginning to consider the dilemma associated with what was seen as a delinquent "native" population that was encroaching on white society. Therefore, regulating Aboriginal behaviour and the methods of doing so, became of importance.¹¹ At least for some people, because it must be stressed that what blacks did or what was done to them, was of interest to only a very small section of the white community. There is no doubt that there was a body of white people who were concerned about the Aboriginal condition for the Aborigines' sake, but there were more who saw it simply in terms of their own discomfort. The majority however, were simply disinterested.

The rapid spread of European colonisation in the late 1860s and 70s obviously increased the scope for Aborigines to commit crimes and other offences against white society. By

¹⁰ "Report of the Royal Commission to Inquire into the workings of the Western Pacific", Orders in Council, BPP, 1884, Vol. 4, p.793.

¹¹ Apart from crimes there were many complaints about Aboriginal behaviour offending "decent people" and corrupting youth. See for example Port Denison Times, 26 July 1869.

then, in many areas the "Aboriginal problem" had also altered somewhat, in that more of their offences were becoming social rather than criminal. The problem for a growing number of whites was not so much major crime, the courts and gaols took care of them, but petty ones and other breaches of the law that to-day would constitute street offences. In fact the Queenslander's editor who referred to the black people as "provisional humanity" said they attracted little attention in the more settled areas and in the country towns their behaviour provoked disgust more than outrage. He went on to make the surprising claim that

Were they more actively troublesome in the police sense of the term - there would perhaps be a better chance of their survival as a subject and servile race.¹²

What he meant by this is unclear; perhaps he believed blacks stood a better chance of survival in gaol. Anyway he, like a lot of other people, compared their petty crimes to those of the gipsies and "other vagabonds" in England and in some ways that was how they were being treated. Within areas where the overt conflict was over or drawing to a close, images of the black people were changing. Aborigines ceased to be seen as murderous savages and other stereotypes of them gained ground. These including those of the lazy, drunken, semi-criminal beggar and Queensland's white community responded to them in much the same way that English society had done to the "masterless men"¹³ of earlier centuries. The place

¹² Queenslander, 20 March 1880.

¹³ The term "masterless men" relates to the English vagrancy laws. These were intended to deal with social problems presented by people who were landless, of no fixed abode and with not too many prospects (not unlike Queensland's Aborigines in the 19th century). Employed by no one they were considered a threat to the social order. Legislation was introduced which said that any person lacking independent means must have a master or be given the status of a vagabond. This was a criminal status. Offenders were arrested not because of their behaviour or actions, but because of their status in society. They were punished physically by stocking, whipping or burning in the face, normally the ear, and sent to the bridewells (houses of correction), where they were forced to work. More than one person suggested that if they would not work they should be hanged, painfully illustrating the importance of the work ethic in the Anglo psyche. Seventeenth century English society was particularly harsh on idle youth. The recommendations for dealing with them are highly reminiscent of those

for such people was believed to be in some sort of a closed establishment where if they might not learn the error of their ways, they would at least present no threat to the dominant order. They were dying out anyway. So the solution to the unwanted, albeit temporary presence of the Aborigines and the crimes and social problems associated with them was by more and more white people, seen to lie in some sort of an institution. One that provided restriction and kept them away from Europeans, and if at the same time they could be made to labour for their keep, so much the better.

For years it had been claimed that Europeans in gaols "taught depravity to blacks" and therefore all Aboriginal prisoners should be held in solitary confinement.¹⁴ It is surprising however, that few white Queenslanders seemed to favour the concept of a separate prison system along the West Australian lines, even though this has been praised and recommended by Queensland's Surveyor-General in 1861. Or perhaps they did, but realised that it would have been impractical in terms of numbers and cost. A major problem lay in the fact that many white people did not simply want the removal of Aboriginal criminals, they wanted to be rid of a sizeable proportion of the black population; those blacks who were a nuisance, who were unable to support themselves or were of no use to whites. One way of controlling them it was argued, was to classify some of their every-day actions as criminal. In this respect the use of the Vagrancy Act was constantly advocated. Paradoxically, while pressure was being brought to bear for this morally despicable law to be evoked as a means of dealing with certain aspects of Aboriginal behaviour, debate was still going on as to whether or not Aborigines were British subjects and if in fact English law and a criminal justice system based on the gaol was a suitable method of dealing with them.

The belief that the prison was unsuitable for blacks was still being widely expressed on both sides of the humanitarian-pragmatist discourse. For the more fundamental members of European society it was seen as not being sufficiently punitive. To others, the prison exposed blacks to the influence of the worst types of whites which served only to

aimed at "civilising" Aboriginal children.

¹⁴ Moreton Bay Free Press, 4 November 1857.

compound the innate criminality some Europeans believed them to possess. As someone signing himself "A Real Australian" put it, "...the courts are a waste of time...the only way to effectively quieten them is through fear and ball cartridges administered pretty freely..."¹⁵ For some humanitarians on the other hand, to incarcerate Aborigines was viewed as an extremely cruel act. It was frequently argued that if locked up, like wild birds and beasts they would pine to a much greater degree than white people.¹⁶ For Aborigines, it was frequently argued that the modern prison aimed at both punishment and rehabilitation was unsuitable because they did not understand it; for them, other, older forms of crime management were considered more appropriate. At least that was the rhetoric, because an growing number of Aborigines were in fact being sentenced to terms in the colony's gaols.¹⁷ Quite apart from this, imprisonment of Aborigines took several forms which do not show up in prison records. Imprisonment without trial was extremely common. Police simply locked up black suspects for what they considered a suitable period then released them. Also, a point to be remembered is that Aborigines were never simply summonsed, they were always arrested, and remands for identification, or to await trial could take months. For instance, in the case of some black troopers who were charged with murder in North Queensland, they spent one year in gaol before they came to trial.¹⁸ Therefore, in the case of Aborigines the prison statistics can be quite misleading.

One should not forget that a legal prison sentence required that the full procedure of the law be observed. It demanded an apprehension, trial, conviction and a sentence which was of course, a very costly and time consuming process. Also many of the "offences" that white

¹⁵ Letter to editor, Queenslander 19 June 1875.

¹⁶ This meant that some of the more liberal whites were giving, albeit unwillingly, support to the concept of summary punishment. In addition, the argument that they would pine like animals served to dehumanise Aboriginal people. Considering the amount of restriction blacks have undergone since 1788 it was and still is, a questionable belief.

¹⁷ This trend became particularly marked in the 1880s but it can be seen to have started in the 70s. The increase in Aboriginal imprisonment during these decades can be seen in Appendix "B".

¹⁸ G. Genever, *The Massacre at Irvinebank*, (Work in process of publication).

people wanted Aborigines removed for, would not have stood up in a court of law, or would have attracted only very short sentences. One of the attractions of introducing some official form of removal such as were frequently being recommended, was that they could be inflicted without the benefit of a trial and could be used not instead of, but as well as prisons.

By the time of the period under discussion, the prison sentence had become absolutely central to white society's response to crime. The other methods of punishing offenders were in rapid decline. The supreme penalty was reserved for a diminishing number of offences. In fact Queensland did not even have an official executioner until 1862 and if one considers the number of prisoners hanged before 1850 and those executed after, the difference is quite extraordinary. Transportation was also virtually extinct and had been replaced by penal servitude.¹⁹ It is true that this period saw the reintroduction of whipping for some sexual and violent crimes, but other methods of corporal punishment had disappeared completely. Unarguably, the criminal justice system had become much more benign. In Britain a penitentiary had been built which provided a detached, inhuman form of confinement, which nonetheless was partly aimed at reform rather than simply punishment.²⁰ In Queensland, the first public building to be erected had been the gaol on Petrie Terrace in 1860 and another one was soon to be established on the island of St Helena in Moreton Bay. Thereafter as the frontier rolled back prisons sprang up throughout the colony. By the end of the 1870s almost every sizeable centre of white habitation had a prison of some sort. They were mostly police gaols and they were all eventually to close because of expense or population shifts. But apart from Brisbane, permanent prisons had

¹⁹ Apparently a request by the British Government to reinstitute transportation was countered by one to dump Queensland's criminals in the United Kingdom. See Hibbert, The Roots of Evil, p.ix.

²⁰ Pentonville opened in London in 1847. The original plan was that prisoners sent there should spend 18 months of their sentence faceless and in solitude to contemplate the error of their ways. When they were paraded with other prisoners they wore masks which took away their identity. At the end of 18 months they were to be sent to public works prisons such as Dartmoor, or transported to NSW to complete the remainder of their sentence. See Ignatieff, A Just Measure of Pain, p.217.

been built at Rockhampton, Toowoomba, Roma and Townsville, all with the stated aim, at least in part, of rehabilitation. So it might be argued that the modern prison had come of age. However for the black people incarceration was being considered in its more archaic forms. Not only that, but the reforms to criminal justice brought about by the introduction of parole and probation in the last quarter of the 19th century, were aimed at keeping white people out of prisons. In contrast, all the schemes to control blacks hinged on locking them up in some way.

There were many suggested variations for dealing with black offenders. For those considered minor, if the Vagrancy Act²¹ could not be employed to remove unwanted black people, an alternative proposition was to arrest them for offences that had previously been largely ignored, indecent exposure for example. In this way it was asserted, Maryborough alone could fill the Brisbane gaol.²² This of course was no solution and absurd; by to-day's standards the colony's gaols were miniscule. What white Queenslanders were looking for was some sort of a permanent, cheap, final solution. It would take nearly another 30 years before they found it, but the search began much earlier.

A frequent proposal was to remove blacks to some form of restrictive establishment other than a gaol that would be at least partly self supporting, such as a permanent institution where

... a more lasting remedy would be the empowering [of] the managers to punish them for misdemeanours with hard labour, and in cases of its non-performance by reduction of rations...²³

²¹ This act was and in fact still is, used extensively by police to remove unwanted people. It requires no offence other than that of being without visible means of support. It is a denial of the presumption of innocence and a mystery that any fair-minded society can possibly see it as just.

²² Maryborough Chronicle, 9 June 1864.

²³ McNab to Douglas, 16 October 1877, cited in K. McArthur, Pumicestone Passage, (Caloundra, 1978), pp.60-1.

This suggested banishment with forced labour had much in common with the convict system reintroduced by the British in the late 18th century and dismantled half a century later.

Although convicts were sent to Western Australia until 1868, transportation had been basically rejected as a suitable punishment for British criminals in the 1840s, but it had been under fire long before that. In fact some people had been campaigning against it even before it started in the Australian colonies. Yet the idea of the invading society ridding itself of the "nuisance" that Aborigines represented by transporting them to remote places, or better still, offshore islands that would serve as confining settlements became increasingly attractive in the last half of the 19th century. After all the principle had been applied to whites a century earlier and a variation of the system had been successfully used on North American indigenes even before that. So while the prison was being developed for the European offender, something else was being considered for the black one. Their punishment and re-socialisation it was argued, should develop along separate paths. But they were not new paths, they were those that white offenders had trodden in bygone days.

As early as 1852 it had been suggested that those Aborigines who would not work for white people should be rounded up and have their offspring taken from them. Separated from the influence of their culture, these children could be taught something that would make them useful to white society. The adults, it was suggested, should be then transported to Norfolk or Flinders Islands and made to work by force.²³ There were countless variations to this theme. As white settlement spread north, it was suggested that the colonists there should ask their politicians to reconstitute the Tasmanian experience, in that they

... might have advocated getting up a petition to parliament to adopt the successful Tasmanian system - of surrounding their camps, driving in all **prisoners** [my emphasis], putting them on an island and making all the elders work, and the youngsters learn something useful...²⁴

²³ Moreton Bay Courier, 6 November 1852.

²⁴ Letter to editor Port Denison Times, 10 January 1866.

It was further suggested that the Native Police might be the tool to achieve this by increasing their numbers temporarily. One settler demanded to know "why cannot the force be increased for a few months and these marauders captured and confined in safety on some island ..." ²⁶ An earlier select committee on native police had suggested that as a valuable auxiliary to their work, missionary stations should be established. The sites of these should be carefully selected and approved by the Government, who should also be responsible for their funding. ²⁷ The 1861 enquiry into native police had recommended the establishment of a religious cotton plantation where blacks would undergo forced labour and learn Christianity on the side, or vice versa. During his appointment as Colonial Secretary in 1864, Herbert had suggested that the Government be authorised to grant land to anyone prepared to "do something about" Aborigines by establishing missions or industrial schools. ²⁸ It is notable that a succession of governments and committees seemed to be prepared to give land to people who wished to save Aboriginal souls, smooth the deathbed pillow, or as a means of keeping them "off the streets" so to speak, but blacks were not to be given land to hunt and gather on. They were to become dependent.

What is equally remarkable is that for so many Europeans, being Aboriginal was synonymous with being a prisoner, and in fact that was virtually the only role for many of them in their association with the imposed legal system. They could not even be witnesses.

²⁶ Letter to Editor, *Ibid*, 10 Aug 1867.

²⁷ Select Committee on Native Police, *NSWV&P*, 1857, p.22.

²⁸ Herbert to LA, *OPD*, 1864, p.315.

One wonders how much of an incentive this might have been to the establishment of these institutions. The Church of England Missionary Society was obviously not above a little speculation in real estate. Twenty-six missionaries in New Zealand purchased 185,000 acres from the Maoris in 1832. What they paid is unknown but their conduct apparently disgraced the missionary cause and caused Bishop Selwyn to order that they either stop the practice, or leave the church. See *Brisbane Telegraph*, 2 November 1874.

The church has a history of real estate acquisition. The legal history of England records many instances of parliamentary attempts to curb this propensity and an equal number of clerical attempts to evade the law in this respect.

Although some could be native policemen, they were overwhelmingly on the receiving end of the law, a law they did not fully understand, had no say in framing and which prosecuted but did not protect them.²⁹ Under such circumstances, how could they be expected to honour something that gave every appearance of existing only to take away their freedom? For them the law was nothing more than a gaoler. It was their enemy, something to be feared and hated. That is the way many Aboriginal people continue to see it and one of the reasons for their apparent contempt for it. It would take time and there would be occasional regressions, but all these suggestions aimed at protecting or controlling blacks were moving Aborigines closer to their colonial destiny; that of being the dying race inmates of an institution.

But if they were considered to be a moribund nuisance, it was believed that they should at least be made to pay for the funeral expenses. Running through the majority of these schemes was an ever present wish to extract labour. Although many whites saw Aborigines as criminal, or urban pests, others viewed them in terms of their economic potential. For example a settler writing from the Lower Herbert in 1878 maintained that without blacks he could not have cultivated his land. This man, like many others thought that their roaming habit was the most significant barrier to their regular employment. He argued that if Aborigines were brought from settled areas about 500 miles distant and placed in concentration camps they would be too frightened to "go walkabout" in hostile country. Native police, he suggested, should be used to supervise them and prevent petty crime, and local Aboriginal women could be encouraged to "inter-marry" with them. In this way a pool of labour could be established that would "supplant our present Polynesian Labour".³⁰

Many Europeans expressed belief in the work ethic as a panacea for the ills of Aboriginality. One editorial forcefully referred to labour as the "great keystone" to civilising them. He said

²⁹ Apart from their evidence being unacceptable, they could not appeal or use any of the mechanism of civil law.

³⁰ Letter to Editor, Queenslander, 10 August 1878.

...work - labour - which must be the first golden step in the ladder in commencing any attempt which is meant to be successful in ...improving our aboriginal population.³¹

This editor was adamant that shutting Aboriginal offenders away in "walled barracks, closed towns, gaols or reformatories" all of which were frequently advocated, "was cruel", but he was equally convinced that they had to be both disciplined and kept away from whites. Therefore remote locations, or better still non-productive or unwanted land separated by stretches of water, provided particularly attractive solutions. The innumerable suggestions to the Queensland Government, linked to statements by parliamentarians, newspaper articles and letters to editors make it clear that many white people saw a return to transportation, or something very like it, as a way of getting rid of those Aborigines who were unwanted. For the less vicious it provided a viable alternative to summary execution. The answer therefore, was not to shoot them but to transport them to some place "with sufficient white supervision to teach them "habits of civilisation ...and they might become of some use to the colony".³² A succession of governments had been ambivalent about the value and cost, of attempting to "protect" Aborigines who were believed to be dying out. All the same, support for some system of removal and restriction was gradually gathering ground, and it had been for a long time. Some of the earlier suggestions that were aimed at it are particularly interesting.

One of these was written by J.C. White who submitted a comprehensive plan to deal with the problem. He claiming that the reason for missionary failure to "civilise" blacks in the Moreton Bay region had been because of the "baneful examples of the convicts and their descendants" and the difficulty of "retaining the natives in a state of constraint".³³ White believed that Aboriginal crime often resulted from a certain amount of confusion which existed in the Aboriginal mind because they had been allowed to exercise traditional law

³¹ Ibid, 11 November 1876.

³² Ibid, 1 July 1876.

³³ White to Col Sec, 31 March 1864, 989, Col/A52, QSA.

upon each other, but became amenable to white laws as soon as a European became involved.³⁴ He called for the establishment of a protectorate with the Chief Protector being situated in Brisbane and a Sub Protector in each district. Under his plan, blankets and clothing were to be issued to Aboriginal people every year. These were to be of a distinctive style for identification purposes. They were also to be given a weekly ration of two pounds of flour. Aboriginal evidence was to be accepted in law and considered at face value as was the case with Europeans. Two "promising youths" from each language group were to be attached to every minister of religion to learn English so that they would eventually be available as court interpreters. Blacks were to be made to labour and placed under work agreements. The Native Police he maintained, should be entirely removed from the settled areas and only be employed on the extremes of the frontier.³⁵ In this way White reasoned, blacks would settle down and become dependant on European handouts both for food and clothing. The threat of withdrawing these items, he argued, could be used to control their crimes. In short they were to be institutionalised. In contrast to others who saw the removal of Aboriginal children from the influence of their parents as essential to any plan to "civilise" the race, White believed that the children should not be removed under any circumstances. He considered the antagonism caused by this practice to be completely counter productive to any attempts to improve them. He quoted an Aboriginal father who told him that if whites attempted to steal his children, he would steal some white children and teach them "something useful". The Colonial Secretary found White's suggestions "interesting", but like others it was ignored. Also in 1864, a politician named W. Wood, suggested to the Queensland Legislative Assembly that tracts of country possessing but little value to the white man could be chosen as a venue for concentrating blacks.³⁶ This

³⁴ He was right because it was not at all unusual for police to ignore even very serious crimes committed by Aborigines upon each other. See for example, Hansen to Isley, 17 August 1886, 86/4147, Col A/320, QSA.
This relates to an inter se murder.

See also Criminal Trials Normanton, 95/1735, CCT/14/15, QSA.

³⁵ Not a few people thought that the Native Police were a prime reason why Aborigines could not be made to settle down. It was believed that dispersals kept blacks on the move. See for example Port Denison Times, 18 April 1874.

³⁶ Woods to LA, OPD, 1864, p.31.

honourable member in company with many others apparently missed the point that land which was of little use to whites was similarly valueless to blacks.³⁷ However, the Queensland Government had apparently already decided to adopt the course of action advocated by Wood. J. Bramston informed him that

... the Government have determined to reserve the Island [Fraser Island] for the use of the blacks...all others will be warned off".³⁸

The size and location of Fraser Island, situated close to Moreton Bay, Wide Bay and Rockhampton which were the major southern and central areas of white population, made it attractive as Queensland's Botany Bay.³⁹ It was a place to which undesirable blacks, those who were considered criminal or of no use to whites could be sent. Fraser's Island as it was then called, was judged worthless as agricultural land, therefore it fitted the bill recommended by people like Wood. It was offshore, which made it attractive as a destination for transportees, but its adaptation for this purpose also attracted criticism. The Brisbane Courier thought it was dangerous to banish the blacks to that island "...because it would provide a launching ground for attacks on whites".⁴⁰ This was a view shared by The Reverend Charles Ogg; his final solution as already stated was to shoot them all. The Maryborough Chronicle's reporter did not approve of transportation either. He was one of the minority in favour of gaoling black people and wrote

...we can get rid of the Maryborough blacks by evoking the vagrants act because there were few who sooner or later would not be lodged in Brisbane gaol.⁴¹

³⁷ Missions and reserves were often established on marginal land, this was one of the contributing factors to the failure of the system.

³⁸ OPD, 1864, p.32.

³⁹ Of course there never was a penal colony at Botany Bay, it was situated about 20 kilometres away at Port Jackson.

⁴⁰ Brisbane Courier, 11 August 1860.

⁴¹ Ibid, 7 January 1865.

The Fraser Island plan was attractive in that it not only removed unwanted people, but would incur little expense because the Aborigines so confined should

...be placed under strict surveillance and strong guard, and compelled, if necessary by the infliction of corporal punishment to cultivate the ground.⁴²

Therefore not only was transportation to be re-introduced, but a return to the lash was recommended as a punishment for minor offences. It would be hard for anyone to miss the similarity between these proposals, and what had taken place at Port Jackson nearly a hundred years earlier.

The concept of transportation was obviously attractive to many people, among them Inspector Marlow of the Native Mounted Police. He linked it directly to Aboriginal pastoral crime and came up with a novel variation. Marlow believed that black men speared the squatter's cattle for a variety of reasons. Apart from the excitement of hunting he argued, they could afford the time to do this because their women went about their normal work of gathering and fishing. Therefore if the men failed to kill a beast, they had the women's efforts to exist on. He believed that if all the women and children were captured and deported to offshore islands the men would have to stop hunting cattle and revert to their former ways of subsisting because cattle hunting was too risky. The removal of the women was also to be used as a means of pacifying the men. As a reward for good behaviour, they could be taken to rejoin the women. In this way they would all be removed. He too argued that there were not that many of them and their numbers were decreasing rapidly. Marlow submitted the idea to Police commissioner Seymour who passed it on to the Colonial Secretary with the observation that although it might present difficulties, it was the most humane suggestion to date.⁴³

Individual ideas about the size of the colony's Aboriginal population may have been well wide of the mark. In 1872 Commissioner of Police Seymour, reported to parliament that

⁴² Maryborough Chronicle, 18 April 1876.

⁴³ Marlow to Commissioner of Police, 9 December 1867, 56, Col/A100, QSA.

from information provided by his officers, he estimated Aboriginal numbers to be about 50,000. Archibald Meston, a principal architect of the 1897 protection Act, believed that prior to the white invasion Queensland had been home to about 200,000.⁴⁴ This was of course highly speculative, but there was no doubt that their numbers had declined dramatically in the 30 years of white settlement. From this much reduced black population the Commissioner of Police maintained that the overall incidence of Aboriginal crime was on the increase.⁴⁵ Even so, Seymour's reports for the next 10 years give an impression that although he considered the Native Police necessary to curb Aboriginal crime on the frontier he was not entirely happy about their behaviour and he wished to see them replaced by white police.⁴⁶ Whether this was because of humanitarian tendencies or because they were to a large degree outside his control as well as being enormously expensive, is hard to determine, but he did want to see the back of them, first in the more settled coastal areas and eventually altogether. Whatever the reasoning, from his reports he appears to have been, if not exactly sympathetic to the plight of the black people, at least aware of their right to exist. Seymour eventually became convinced that the dispersal policy employed by Europeans was not only cruel but self defeating. For years it had been policy to disperse any large group of blacks who were congregating close to white habitation because it was believed that numbers emboldened them to commit depredations. In fact dispersals frequently forced blacks onto marginal land that was incapable of supporting them. So it became matter of crime for survival. Either that or they had to resort to begging and prostituting their women for a living. Seymour also believed that dispersals inculcated a strong desire for revenge. In one of his reports to the Parliament he recognised the pressures that rapid white settlement was exerting on blacks and although he saw it from a policeman's perspective, that is, in terms of Aboriginal crime, he also pleaded for them to be fed, saying the condition of the blacks on the coast

... has become a matter of some concern. Settlement has advanced on the tribes so

⁴⁴ "A Meston, "Report on the Aborigines of Queensland", QVP, 1896, p.726.

⁴⁵ See Report of the Commissioner of Police for 1872, QV&P, 1873.

⁴⁶ See report of Commissioner of Police, for 1875 in QVP, 1876, p.904.

rapidly... they have been deprived of their only means of existence. The consequence has been the committal of depredations... in driving them back from one occupied locality, they [are] merely driven to another. As settlement is increasing in the far northern districts daily it will be necessary to consider what means will have to be adopted to protect the aborigines from starvation...⁴⁶

In some respects, the search for alternative ways of dealing with Aboriginal crime was not unlike the demise of the bloody code. Apart from pressure emanating from various humanitarian groups, there seems to have been a groundswell of opinion that had no affiliation with "Exeter Hall" in any way, belonging simply to people who had seen enough bloodshed and brutality, but who nevertheless wanted blacks out of sight.⁴⁷

Although the Government was dragging its feet and it was to be a long time before they developed any lasting policy for their black subjects, by 1870 they seemed to be moving towards it. In that year G. F. Bridgman suggested that a block of land south of the Pioneer River near Mackay be set aside and gazetted as a reserve for Aborigines. One might wonder why the Queensland Government acted on this suggestion when they had so often ignored similar requests. Nonetheless, the proposal was put to the local magistrates bench who were divided on the issue. The deciding vote in wary favour of the experiment was given by one of the local planters, a man named Davidson who happened to be an amateur ethnologist. It also received somewhat guarded general support from the local white residents, possibly because it gave an opportunity to test a reserve system,⁴⁸ but it also got Aborigines out of the town and concentrated them in one area where an eye could be kept on them. It is more likely though, as Evans suggests, that it reflected the interests of the local sugar planters who were concerned about the restrictions being imposed on the

⁴⁶ Report of the Commissioner of Police for 1884, QVP, 1885, p.543.

⁴⁷ This attitude is well illustrated in the long running correspondence on the subject in the Queenslander. As a starting point, see particularly "The Way We Civilise." Queenslander, 1 May 1880.

⁴⁸ Evans, "Queensland's First Aboriginal Reserve", p.28.
It also brought them within the ambit of the master and servant laws.

importation of Pacific Island labour.⁵⁰ So under Bridgman's leadership a petition was presented to government to set aside money to settle Aborigines on the reserve and to appoint trustees who were to control Aboriginal movement and institute work contracts, he maintained that it was

...the duty of the people of Queensland ...to take some little trouble and spend a small fraction of the land revenue in teaching them to adapt themselves to...making an honest living by work.⁵¹

In response, the Government appointed a commission to inquire into the Mackay proposal. This reserve was established, so perhaps it is a little too cynical, but the Reverend Duncan McNab who was a Roman Catholic missionary was later to claim that it was instituted "...for the purpose of shelving the question and serving as a blind to the Home Government".⁵² Had this been the case it was a successful ploy, because for once something that Queensland was doing for its indigenous population found favour with the Colonial Office.⁵³

In October 1873 The Aborigines Commission which had been established by the Governor in Council, published a circular that called for information from the public to assist in their stated bid to ameliorate the condition of the colony's black people. What they wanted was as much information as possible

... relative to the names, estimated number, condition, habits, laws customs and means of livelihood in the various districts of the colony, together with any information of a like nature, such as the number of aborigines in and around the several towns, stations, plantations and settlements; the extent to which they are

⁵⁰ Ibid.

⁵¹ Cited in Ibid, p.29.

⁵² McNab to Secretary of State for the Colonies, 24 October 1879, 81,2895, Col A/316, QSA.

⁵³ Secretary of State to Governor Cairns, 5 September 1876, Gov/11, QSA.

employed by Europeans; the nature of the employment; and whether the service rendered is satisfactory to the employers or otherwise...⁵⁴

Copies of this circular were sent to all major centres in the colony to be forwarded to anyone considered responsible enough to provide useful information. The document also contained a number of questions for the recipients to answer. Despite claims to the contrary, the main thrust of this was not so much an attempt to ameliorate the condition of the black people, as to investigate their utility as a labour force, the biggest impediment to which as frequently stated, was their propensity to roam.

One respondent, a justice of the peace, suggested a solution to this which sounded not unlike that of J. C. White written ten years earlier. He said that corroborees must be stopped because "men that worked steadily at fencing from week to week receiving rations, clothes and money, and women that settled down to the cotton fields have been no use whatever since these gatherings commenced".⁵⁵ He went on to recommend that Aboriginal people be made to declare their native place and that they be restricted to a specific distance from it "not so confined as to make them unhappy, but at the same time not so wide as to foster [a] savage life". They should be made to wear identification tags in the form of a small brass plate showing a number. Those not wearing them "should be treated as rebels, but not too rigorously until they understood the regulation".⁵⁶ Unlike white's plan, children were to be taken from their parents and placed in "blacks stations" where they would receive two years education, then be apprenticed out. A commissioner was to be appointed in each large area who would hire out the native youths and the Native Police would be under his control.

Apparently, the Commission received a very large number of proposals from all over the colony. A few of them, like the one referred to above found their way into the colonial

⁵⁴ W. Drew, The Aborigines Commission Circular, (Brisbane, 1873).

⁵⁵ Port Denison Times, 18 April 1874.

⁵⁶ This Justice of the Peace was probably advocating on the spot corporal punishment.

press. Apart from their impracticalities, a most notable feature was that none of them contained any Aboriginal input. Therefore it was again significant that at no time was any black perspective considered; everybody but the Aborigine it appears, knew what was best for them. Of course the opinions of blacks were not considered valid, but one wonders how significant this was in the failure of the many schemes to improve their lot.

The following year, 1874, this Commission handed down findings that gave a distinct impression that the imprisonment of black people was something of a rarity. An enquiry into the condition of Aborigines found that

Hitherto the Aborigines have been almost exempt from both the protection and penalties of our laws, and, except in cases of personal violence towards Europeans, the records of our courts of law show but a very small proportion of Aboriginal offenders. It is well known, however, that petty aggressions and misdemeanours on the part of the Aborigines are of frequent occurrence, but that, in consequence of the difficulty of obtaining legal Proof, and the unsuitable character of the penalties provided by law, most persons prefer to submit to losses or inconvenience, or to take the administration of punishment into their own hands.⁵⁷

This statement is only partly correct. Even without those who underwent imprisonment without trial, or served short sentences in police cells, by 1874 the number of Aborigines sentenced by the colonial courts was becoming substantial, especially so if their percentage of the population is considered. In fact, with regard to Aborigines being sentenced to the colony's major prisons, 1874 shows about a 75% increase over the previous year.⁵⁸ Interestingly, Bridgman corresponded with one of the Commissioners about a prison sentence imposed on one of his reserve blacks who was arrested for sleeping in a stable behind one of Mackay's hotels. This Aborigine violently resisted arrest and as a consequence was sentenced to six months hard labour. His resistance, according to

⁵⁷ Report of Commissioners on the "Aborigines of Queensland" *QVP*, Vol 11, 1874, pp.3-4.

⁵⁸ See Appendix "B".

Bridgman, was motivated by the fear that he was about to be handed over to the Native Police and shot. The offence was recorded in the Police Gazette as being illegally on premises.⁵⁹ It would be quite wrong therefore, to accept the Committee's idea that blacks were not imprisoned; they were and always had been. Writing of Rockhampton in 1871, police magistrate Wiseman told that city's mayor, who wanted blacks barred from the town, that

the recent outrages committed by aborigines from Brisbane and Maryborough ... were very soon arrested by the police and are now in gaol, awaiting trial or convicted.⁶⁰

So in spite of the Commission's findings, not only were Aborigines frequently gaoled, the numbers were growing.

Queensland's prison admission records are complete. These may be seen in the PRI files held in Queensland State Archives. Most Aboriginal prisoners have their race recorded alongside their name. There is however, a problem which is related to the white construction of Aboriginality. Some offenders considered to be of "mixed blood" were recorded as "half castes", others were not, probably depending on their features and degree of "colour". The names and descriptions provide clues, often there is only a Christian name without a surname, but it is by no means accurate and it points to the fact that there were often considerably more Aboriginal people in the colony's gaols than the records indicate. This fact, the existing records, and colonial press reports, goes to show that from a decreasing Aboriginal population, the numbers of them in the colony's major prisons, police gaols and watch houses were increasing quite markedly.

It must be freely admitted that Aboriginal society was not devoid of criminals, and that some of their crimes were horrendous. But it is also a fact that deprivation goes hand in

⁵⁹ Police Gazette, Vol. xiii, No. 3, 1876, See also Evans, "Queensland's First Aboriginal Reserve" p.32.

⁶⁰ Cited in Rockhampton Bulletin, 21 January 1871.

hand with crime and that the high visibility of black people was almost certainly a factor in their arrest and imprisonment. It is equally impossible to deny that police and courts, particularly local benches, discriminated against Aboriginal people. In spite of claims to the contrary the number of Aborigines in the colonial gaols was disproportionate to their population and the fact that white people more and more viewed them as a delinquent race cannot have failed to have bearing on this. Even so, this commission and increasing portions of European society were looking for additional ways to handle the Aboriginal presence, particularly those elements of it that were considered lawless, mendicant or offensive. But no matter what category the black people fell into, every suggested method of ameliorating their condition, or controlling them incorporated some elements of restriction and this included the missionary effort.⁶¹

Initially the modest success achieved by Bridgman gave rise to a flurry of interest and appeared to offer hope that a reserve system might furnish a resolution to the problem of controlling and "reclaiming" blacks. The Queenslander was fairly lavish in its praise reporting on "the good work initiated at Mackay" and expressing the hope that it might be duplicated in various centres throughout the colony.⁶²

The motivation that fuelled the attempts to establish reserves in the 1870s allows an absorbing exercise in analysis. One of the first impressions one gains is that there was no general consensus; the concept meant different things to different people. Some were

⁶¹ One of the most telling examples comes from the early 20th century and is from the diary of R. Wilson. It refers to Aurukun on Cape York Peninsula.

... and again Agnes received two beatings and Hilda one...one girl received 25 lashes and the other more because she was beaten twice. They were beaten for tampering with tobacco, a charge that was not proved...three more beatings for tampering with a mouth organ, eight more beatings that evening because some peanuts were missing from the garden... the question arises in my mind as to what this place is, whether a reformatory or a mission station. It savours more of the former.

Cited in May, *Aboriginal Labour in the North Queensland Cattle Industry*, pp. 97-8.

⁶² Queenslander, 16 December 1876.

uneasy about "the enemy on their doorstep". Others, McNab for instance, wanted Aborigines to be protected controlled and "civilised" but he disliked the intermediate approach that reserves embraced. Bishop Hale wanted the police to be permanently in their midst to take care of criminals that came into the reserve from outside. A somewhat surprising proponent of the concept had been A. H. Palmer. For years Palmer's outspoken criticisms of both Aborigines and those who would see them treated justly, allied to his unswerving allegiance to laissez-faire policies had seen him labelled as a hater of blacks. He had made a joke about the rape of black women by white men, maintaining that such a thing was impossible as all Aboriginal women were totally immoral. In parliament he rejected the idea of native police atrocity as "only tall talk",⁶³ and openly advocated the rule of force stating it was

... only possible to rule a savage race, and the Australian Aboriginal in particular by brute force and by showing him you are his master... by using a firm hand, and the only way to ensure that firm hand was to show that the whites were superior animals who could beat them down.⁶⁴

In fact Palmer was the quintessential example of the Queenslander who was complained about in the British Parliamentary report which is referred to above. It appears out of character that he should support the concept of Aboriginal protection. There are two possible reasons. One of them as McNab explained, was to attempt to deflect criticism. The other may have been provided by Bridgman's statement that

...we are here now in a large Agricultural district and under favourable circumstances, testing the capacity of the aborigines for regular and useful employment.⁶⁵

⁶³ OPD, 1868, p.955.

⁶⁴ Ibid, 1880, pp.1137-8.

⁶⁵ Bridgman to Minister for Lands, cited in Evans, "Queensland's first Aboriginal reserve", p.29.

That "agricultural district" was highly significant to Palmer's chances of re-election. He was also well aware that what the Government gave it could easily take away, which was exactly what it did in the case of the Mackay experiment. There is no evidence to support a belief that a softening of attitude had taken place in Palmer's breast, because in 1874, at the height of hope for the reserve system, he maintained that "... the fear of death is necessary to keep treacherous blacks in submission". By the end of the 1870s when Aboriginal reserves had become a dead letter his advice was to forget any fancy ideas about civilising them simply give them a good blanket.⁶⁶ One suspects that this had really been his attitude all along.

In 1876 a board of enquiry was formed to investigate the Mackay reserve. It was lavish in its praise for Bridgman, although it misspelt his name, but reading between the lines it becomes noticeable that the board was a little dubious about the concept of reserves. The result for the money the Government had spent, which was 600 pounds sterling was "satisfactory" but in less experienced hands than Bridgman's "we should consider the success of the undertaking more than doubtful".⁶⁷ In fact this comment might be seen as a death knell because although there were to be temporary triumphs and the possibility of a chain of reserves covering the whole colony was investigated, and indeed started, the following year the Mackay experiment was coming in for extreme criticism. Charles Rawson, a member of the 1876 board that had been so complimentary to Bridgman's efforts informed the Colonial Secretary "... Bridgman has lost all control over the Blacks...they are a very dangerous nuisance to everybody."⁶⁸

By 1879 the Aboriginal Commission had virtually ceased to exist and with its demise the efforts to establish institutions to control blacks and provide a labour force died too and this

⁶⁶ G. Hoskin, *Aboriginal Reserves in Queensland*, BA Hons Thesis, University of Queensland, 1967.

⁶⁷ Cited in *QV&P*, 1876, p.157.

⁶⁸ Rawson to Col. Sec. 16 July 1877, 5744, Col A/249, QSA.

was to be more or less the situation for the next 15 years.⁶⁹ Duncan McNab was probably not all that far off the mark in his assessment of public interest when he said

Nineteen-twentieths of the population care nothing about them ... the other twentieth regard them as a nuisance to be got rid of.⁷⁰

McNab's role in the reserve experiment is intriguing. He did not, like so many others, believe that Aboriginal people were bound for the biological scrapheap. He believed it to be impossible that his God could have planned such a thing. McNab supported the concept of protection and his ideas in this direction embraced some highly draconian measures. But he was opposed to reserves because he believed that any future place that Aboriginal people might have in the scheme of things demanded that they live and work in the same way that Europeans did. Placing them on closed reserves was a waste of time because

... the work and expense of their settlement and civilisation in distinct families has to be begun or recommenced after perhaps years of residence on a reserve. Reserves are temporary expedients, whereas the object desired is the permanent settlement of the blacks upon the land. This can be attained only by their being domiciled like the whites; and not being merely preserved like cattle on a run.⁷¹

Making them members of main stream society was an extremely radical departure from what most white people considered desirable, the overwhelming majority wanted to institute a form of apartheid.

McNab's heart may have been in the right place, but his letters to the Government were very didactic and could hardly have won him any friends in high places. Verbally rapping

⁶⁹ For an analysis of the reserve system of the 1870s and its subsequent failure, see particularly R. Evans, "Queensland's First Aboriginal Reserve", Part 2, "The Failure of Reform", in Queensland Heritage, Vol. 2 No. 5, pp.3-15.

⁷⁰ Cited in Ibid, p.9.

⁷¹ D. McNab to Col Sec, 9 May 1876, cited in QV&P, 1876, p.161.

the Colonial Secretary over the knuckles he wrote

It seems to me an error in political economy almost incredible that a Government which countenances the importation of temporary laborers (sic) from the South Sea Islands should be indifferent to the extinction of the Aboriginal population.⁷²

The man was highly paternalistic; he was also an assimilationist about three quarters of a century ahead of its time. But unlike most people who really only wanted to see them out of sight and consequently out of mind, he had a plan. He argued that the law as it stood was of little value in either protecting or prosecuting Aborigines and that it left them without government. Therefore it should be changed. McNab proposed a series of amendments which were to be temporary until they could gradually become amenable to the laws to which white people were subject. There was nothing new in that idea, it had been suggested by several people in the first half of the century. But he wanted blacks to be granted individual blocks of land and that was extremely radical.⁷³

Unlike those who saw all Aboriginal crime in terms of transportation or powder and shot he argued that the most suitable punishment for aborigines guilty of minor offences

... appears to be their being condemned to forced labour on public works, such as railway making. They might be kept in stockades apart from white prisoners and preventing from escaping into the scrub while at work not only by armed sentinels but also by being chained singly or together, as is the practice with some criminals on the Continent of Europe.⁷⁴

⁷² Ibid.

⁷³ Ibid., McNab applied to the Lands Department for three homestead blocks of about 600 acres each for three Aborigines.

⁷⁴ McNab's legal plan was comprehensive covering everything from polygamy and polyandry to vagrancy and the laws of contract. See various letters from McNab to the Minister for Lands and others cited in Ibid., pp.162-172.

The idea was not well received. McNab had written a letter to Douglas, the Minister for Lands, complaining bitterly about an Aborigine who was flogged by a trooper in Gympie. In response, referring to McNab's chain gang suggestion the Brisbane Courier argued that he was opposed to flogging but would see them worked in chains. What the Courier overlooked was that McNab's chain gang would at least consist of legally convicted blacks. The man flogged in Gympie was the victim of illegal summary punishment.

By 1879 the idea of setting up a reserve system along the lines of the Mackay type was abandoned although several had been established. Durunder reserve died from lack of funds, the one at Bribie Island from lack of interest and several more that were planned failed to get off the ground at all. The Government's ideas on the subject changed and throughout most of the 1880s to the mid 1890s they left the problems of Aboriginal protection to the churches. They saw the plight of their black people in moral rather than in physical or political terms.

In 1885 the Griffith government set aside 500 pounds sterling for Aboriginal relief and a further 1,000 for reserves, but by the following year that money was still largely unused.⁷⁵ The Government eventually set about declaring reserves in the far north of the colony and these were handed over to missionaries.⁷⁶ They were established north and south of Cooktown, at Cape Bedford and on the Bloomfield River. A little later they granted 30 square miles and a monthly subsidy of ten pounds to form one at Mari Yamba near Mackay. John Douglas chose the site of a 100 square mile reserve near the mouth of the Batavia River, and Mapoon as it was called was handed over to Moravian missionaries Ward and Hey in 1891. The following year Yarrabah reserve went to the Reverend J. B. Gribble of the Church of England.

⁷⁵ OPD, 1886, p.1132.

⁷⁶ Many of these were northern Europeans from the Moravian and Lutheran churches. They had a history of success in difficult situations, preached a simple doctrine and demonstrated a willingness to get on with other Protestant churches.

The impact of Christian missions in the late 19th century probably did more to institutionalise Aborigines than anything else. They sought to convert blacks to Christianity, but to do this they believed that they had to be altered in almost every way. No matter what brand of Christianity they preached, all of them tried to lock Aborigines up. All believed that unless the concept of a fixed abode could be inculcated in the Aboriginal mind no progress could be made in "civilising" them. It was also absolutely necessary for missionaries to extract labour from Aborigines. Apart from the fact that the mission stations' financial resources were always meagre, they all had a profound belief in the moral value of work. Missionary Flierl of Cape Bedford asserted, "Our basic principle in teaching... the native to work is he who does not work shall not eat". Noel Loos explained how missionary Hoerlein of Bloomfield even had blacks perform unproductive agricultural labour because he believed field work to be a vital part of conversion to Christianity.⁷⁷ Blacks therefore, were encouraged to become reliant, but not mendicant; they had to pay to become dependent.

Furthermore, the Aborigines had to be made to impose these restrictions on themselves, because prior to 1897 no European had the legal right to restrict Aboriginal movement or make them work. The solution was to bribe them. Missionaries bribed blacks with the promise of a life after death, but such an abstract idea needed a fair amount of time to inculcate, so to retain their presence and hopefully their interest, they were bribed with food and tobacco and the craving for these things ensured that blacks would stay, listen and work. Medicine and medical knowledge were also used in the same way.

One of the great beliefs that missionaries held, particularly those from continental Europe it seems, was that Aboriginality was suffused with Satanism: they saw the Devil's hand in everything Aborigines did, their minor crimes were not criminal acts or induced by need, but were the work of the "evil one".⁷⁸ Reading the missionary response to this it is necessary to remind oneself that we are talking of the late 19th century and not the middle

⁷⁷ N. Loos, *Aboriginal-European Relations in North Queensland, 1861-1897*, Ph.D Thesis, James Cook University of North Queensland, 1976, p.557.

⁷⁸ For an analysis of this attitude see *Ibid*, pp.544-547.

ages. Yet it is highly unlikely that they would have seen exactly the same crimes committed by whites in this way and so it is another example of Aboriginal offences being considered from an archaic point of view.

Missionaries like almost everybody else, believed Aborigines to be dying out; their souls were of value but not much else was. In fact not a few missionaries demonstrated a profound dislike for their flock. Hey described them as "moral lepers", Pfalzer as "the lowest of the low and in relation to the Aboriginal character Missionary Poland wrote

... he lives like an animal giving thought to nothing but the satisfaction of his physical needs. He is little better than a beast.⁷⁹

Flierl considered that they should have been prepared for Christianity by "... the iron clad power of the police..."⁸⁰

As a generalisation, adult Aborigines were considered beyond redemption. Therefore missionary effort was directed primarily at children. Prior to 1897 Aborigines had to be persuaded to leave their children and the children had to be induced to stay. This was done by displays of kindness and bribes of food and clothing; something that was particularly effective in times of hardship. From then on these children were subjected to a highly organised routine by day, followed by incarceration in dormitories by night.⁸¹ At Mapoon a children's day governed by bells, prayers, drill and bugles, gives one the impression of a sort of religious light infantry and it would be difficult to disagree with Loos' analysis that

The role of the dormitory system in creating a new generation of institutionalised Aborigines cannot be overemphasised. Its effect on the subsequent generations

⁷⁹ Cited in Ibid, p.548.

⁸⁰ J. Flierl, Foundations of a New Lutheran Mission in North Queensland, p.15. A copy of this work to which there are no publishing details, is held in JOL.

⁸¹ For a detailed description of the routine, see particularly Loos, Aboriginal-European Relations, pp.564-5.

deserves serious psychological and sociological investigation.⁸²

Aborigines resisted missionary effort, clinging tenaciously to aspects of their culture when it would have been easier to bow to the dominant order. Therefore it is obviously quite wrong to consider them to have been complete victims. But the close control that went with the mission and reserve system, cannot have failed to impact on future generations of blacks who saw at least part of their life as inmates. Missionaries assisted in herding Aborigines into concentration centres, they separated families, and particularly children from families, resulting in a wedge being driven between young and old. Their aim was to change what they believed was offensive and to make Aborigines acceptable to white society by Christian resocialisation. The prison and the mission shared some common goals.

Having said that, it would be unjust not to acknowledge the Church's role in Aboriginal protection; they took it on under conditions of great adversity at times when nobody else wanted to. They provided havens where a shattered black people could regroup and they were a major factor in Aboriginal survival, but there was a price to pay. Whatever else missions taught, they taught dependence and to live in them Aborigines were forced to redefine themselves, for which they continue to pay a high price. As Rowley points out it was inevitable that Aboriginal people should come to regard these institutions as their homes.⁸³ For some however, the pressure to shed their cultural identity and to embrace Christianity may have created unbearable tensions. Few people would be cynical enough to argue that these institutions were established without good intentions, but as Samuel Johnson said, "hell is paved with good intentions".

During the decade of the mid 1880s to the mid 1890s the Queensland Government became involved in a series of defacto initiatives that would lead to The Aborigines Protection and Restriction of the Sale of Opium Act of 1897, but not before some of its members had come in for intense criticism. One of the Act's prime architects wrote to the Colonial

⁸² Ibid, p.569.

⁸³ C. Rowley, Outcasts in White Australia, (Sydney, 1988), p.148.

Secretary pointing out that

...the question of the aboriginals is not to be indefinitely postponed. If you decide to do nothing it will come before the colony in a shape that will not be pleasant for Queenslanders to contemplate...even if the whole question has to be laid bare from 1842 to 1895 in all its naked hideousness... It seems to me you are not quite clear concerning the public opinion of Queensland on this subject...In Heaven's name who can you please by not acting decisively? In whom can you excite hostility by decisive action?...⁸⁴

Action was taken, and its contribution to the institutionalisation of Aboriginal people was profound. The Act of 1897 ushered in perhaps the most comprehensive and repressive laws ever passed on an indigenous people by invading Europeans. Control, which the reserve and mission systems had been trying to achieve with their hands tied, received legal sanction. The incarceration and transportation suggested by white people in the 60s and 70s became a reality. A reserve was re-created on Fraser Island⁸⁵ which it was claimed, the Northern Protector of Aborigines regarded as "a sort of penal settlement".⁸⁶ He was correct in doing so, because the Act of 1897 with its various amendments introduced legislation which saw enormous numbers of Aboriginal people transported for a variety of criminal and social reasons.⁸⁷ Such people were later to be transported for what were referred to as

⁸⁴ Meston to Col. Sec. 11 September 1895, 95/15056, Col/A 320, QSA.

⁸⁵ A mission had been briefly established there in the 1870s by the Reverend Fuller. In the face of failure he left to try again near Caboolture.

⁸⁶ Meston to Home Secretary, 11 May 1897, 97/127, Col/A 029, QSA. By this time the title of the Colonial Secretary had been changed to Home Secretary.

⁸⁷ Aboriginals Protection and Restriction of the sale of Opium Act, (61 Vic No. 17). This legislation and its amendments enacted between 1897 and 1939 saw enormous numbers of Aborigines placed under restriction in various missions and government reserves. One of its more notable achievement was the establishment of Palm Island as a semi-penal colony to which countless black people were transported, often in the complete absence of any offence.

"special reasons".⁸⁸ This transportation was eventually to be applied to all Aborigines who had undergone a prison sentence in the colony's gaols. However unlike some of the British felons who had been transported to NSW earlier in the century and who had been sentenced for seven or fourteen years, blacks were to be sent "for the remainder of their natural lives".⁸⁹

The colonial era ended in 1901, but not for blacks. For them federation ushered in a more intense period of restriction as the laws were altered to become ever more restrictive. The 1897 Act with its various amendments touched virtually every aspect of Aboriginal life. It decided the liberty they might have depending on how Aboriginal they were considered to be. It controlled their movement, work, wages, property, correspondence, sexuality and marriage. It governed their ownership of animals and even their funeral arrangements. Black people were literally regulated from the cradle to the grave. This Act became a blueprint for the Northern territory and Western Australia to follow and Queensland congratulated itself on the legislation and the level of protection that emanated from it. Others have seen it in a different light.

Anthropologist William Stanner condemned it, saying that there was

... no more terrible part of our 19th century story than the herding together of broken tribes, under authority and yoked by new regulations, into settlements and institutions...⁹⁰

It can be seen then, that the construction of the Aborigine as someone who was unworthy of equality in the sight of the law and for whom separate concepts of justice were necessary has driven what appears to be a longlasting wedge between black people and the legal system. The knowledge that a two-sided scheme of justice operated and that they always

⁸⁸ See QVP, 1902, p.1176.

⁸⁹ See Telegraph, 2 September 1897.

⁹⁰ W. Stanner, After the Dreaming; the 1968 Boyer Lectures, (Sydney, 1969), pp.44-45.

seemed to be on the wrong side, created for them a climate of distrust and disrespect for the law. Linked to this in the late 19th and early 20th centuries were continuously strengthening beliefs that these troublesome, but dying indigenous people needed to be in some sort of restrictive establishments for their own benefit. Such beliefs were absurd and lamentable in so many ways, among them the fact that white society appeared to have overlooked the dangerous illogicality in placing Aborigines in an authoritarian closed world. It meant that there was virtually no chance for them to understand the society they were supposed to aspire to become members of and little chance of them developing any respect for the institution that had placed them there.

Accordingly my conviction is that lack of respect for an inequitable legal system and imposed institutionalisation that had its genesis in restriction, are two of the reasons why Aborigines may be the world's most imprisoned people. These two factors form an important part of the historical foundations of the road to Lotus Glen.

CONCLUSION

"You hang blackfellow Brisbane Gaol: why no hang whitefellow when he kill blackfellow?"

Unknown Aboriginal man to journalist, cited in Moreton Bay Courier, 10 September 1859.

This thesis has examined the way British settlers sought to control the indigenous people they found when they arrived here. It has looked at the way they attempted to repress what were perceived as crimes and to regulate what was considered inappropriate behaviour. It was a long process of trial and error that took a century, starting with an absence of legal jurisdiction and ending in a state of almost total restriction. It began with Governor Phillip's idea of an amicable, just, close relationship between the races, and ended with a bitter division in which Europeans sought to distance themselves from the black people as much as possible by unjustly confining them in closed institutions. It was a process that had many intermediate sub plots and one that Aborigines opposed every step of the way. Parts of it were illegal, but even those that were licit were often unwise, unjust and frequently morally bankrupt.

Only the totally ignorant or the incurably prejudiced could fail to admit that in the past, Aboriginal people have been unjustly treated. The white institutions of the law, politics, religion and even the much vaunted but mythical British sense of "fair play" have failed the black people miserably. The construction of the Aborigine in the white mind was a major role player in this. It was later to be amended by white racialism, but from the outset the European image of the Aborigine as someone who need not be treated justly or with the same rules of decency that governed intercourse between whites appears to have existed.

From the initial days of white settlement Aboriginal people were seen as judicially separate. In fact legally they did not exist and with that went a denial of rights. The legal fiction that initially said that they were never in possession of their land, and later that they were British subjects and amenable to both the law's prosecution and protection took a quarter of a century to establish and by this time it was too late to have any effect on settler behaviour. Over 25 years of conflict compounded by European fears and cultural beliefs and an absence of policies saw injustice become ingrained. Trials involving the murder of black people by white colonists which were punished by a judicial "slap on the wrist" can only have appeared to settlers as tacit approval.

Cases in which Aborigines were defendants on the other hand, were a legal farce. The simple fact was that they could not justly be considered amenable to a law and its legal processes they did not understand. Accepted judicial principles stated that unless a defendant fully understood the true character of a crime the trial was illegal, it became a mistrial¹ and this classification could be applied to so many cases involving blacks during the colonial era. It was probably a major reason why summary group punishment became acceptable. In addition to this, lack of understanding meant that blacks could not appeal against any legal decisions nor use the law as a plaintiff.

The "test cases" which denied the validity of traditional laws and established Aboriginal amenability to English common law were not simply attempts to treat black offenders equitably. Although that may have had some bearing on the decisions, they were also made because even a recognition of aspects of Aboriginal law might have given rise to serious complications for the declaration of New South Wales as a terra nullius. In addition it would have denied colonists the dominion they wished to exert over indigenous behaviour. In this respect La Trobe's comments about making them respect European life which are cited in chapter two are highly significant. The other important reason for considering them amenable to English law, was that it was too hard to do anything else and they were not considered important enough to warrant legal effort. The reality of this was that the introduced law was modified in its application to black people and justice for them frequently existed in name only.

The radical alterations to the criminal justice system for whites that took place after 1815 demonstrate particularly poignant examples of the de facto presence of a dual system. The strategy was not exactly put in place, rather it was allowed to creep in. Nowhere is this more apparent than in the alterations to the statutes that surrounded the death penalty. For white people, in the space of half a century the offences that attracted capital punishment dropped from around 300 to about three. This at a time when blacks were being summarily executed

¹ See comments by Noel J cited in Herberton Advertiser, 4 November 1887.

for minor offences against property. In addition the inadmissibility of their evidence in a court of law ensured that they were discriminated against and conferred veracity on the adage that no white would hang for the murder of a black in Queensland.

Moreton Bay's transformation from penal station to capitalistic enclave gives an opportunity to consider the effects that pragmatism had on justice and the activities of an emergent police force. Undeniably this could work to Aboriginal advantage, but more often it operated against them. Serious crimes committed against Aborigines by Europeans had blind eyes turned to them, or were treated as petty. Police very often ignored violent crimes, including murder, when only Aborigines were involved. However when Europeans became victims and if a black suspect could be caught they were not only brought to trial to provide examples to other blacks, but Aboriginal evidence was improperly accepted and used to secure a conviction. Aborigines were illegally whipped or simply locked up until the police saw fit to release them. Throughout the entire colonial age police with the help of local benches frequently had Aborigines remanded as a punishment when there was insufficient evidence to make a charge stick.² In this way blacks were imprisoned without trial. Not only was there no redress, but such police behaviour generally won the approval of colonial society.

In trials involving Aboriginal attacks on white women black men faced not only a prosecutor, but often a biased, antagonistic jury as well (to say nothing of the public gallery). This hostility was frequently recognised by judges. It manifested itself in juries refusing to accept recommendations from the bench or failing to add pleas for mercy when they would normally have done so. In a rape case in North Queensland the judge not only drew attention to this, but remarked on the particularly strong prejudices against blacks held by northerners.³

Applied to Aboriginal people in the 19th century, the claim that ignorance of the law provided

² See for example, Cooktown Courier, 24 April 1888.

³ See Sheppard to Governor, 19 December 1877, 1/1878, EXE/2, QSA.

no excuse, was no more than a cruel nonsense. It is certain that some Aboriginal men were hanged for offences that were to them no crime. Others were sanctioned or even mandated by their customary laws.

The truly disturbing aspect of all this is not that inequity existed, but that that it was eventually to become obligatory. The law that had been brought from the United Kingdom in an attempt to deliver justice to all the inhabitants of this land underwent constant change until it dispensed injustice to some of them. Inequality was not simply a fact of life, after 1897 and the introduction of The Aborigines Protection and Restriction of the Sale of Opium Act, it became against the law to treat black people equally.⁴ The expectation that Aborigines would accept this ever increasing inequity unquestioningly and without resistance says a lot about the blinkered view that white ethnocentrism encouraged. The belief that Aboriginal people would eventually learn to respect a system that has historically treated them with such inequality is totally unreasonable and the failure to recognise the long term effects of enforced institutionalisation is depressingly naive.

⁴ To accept Aboriginal evidence was illegitimate, for Aborigines to work in a dairy was against the law. To allow an Aborigine to carry mail was against the law. It was also illegal for a white man to have sexual intercourse with an Aboriginal woman. There were countless instances where equal treatment was contrary to the law.

Appendix A

Offences committed by Aborigines tried by Supreme Court during 12 months prior to 13 June 1860. Intended to show the type of offences Aborigines were charged with.

Abbreviation HL = Hard Labour

Date	Name	Offence	Verdict	Punishment
23 Jan. 1859	Dick	Common assault	Not Guilty	
22 Nov. 1859	Jimmy Fisherman	House breaking	Guilty of Larceny	6 months HL
22 NOV. 1895	Billy	Assault with intent to rape	Guilty	2 years HL
17 Feb. 1860	Billy Louden	Larceny from the Person	Guilty	5 years HL
15 May. 1860	Dick Basket	House breaking	Guilty	3 years HL

During this period 31 Europeans and 3 Chinese were tried by the Supreme Court.

Appendix B

Aborigines Tried and Sentenced to Queensland's Major Prisons.

This table does not include Aborigines found "Not Guilty", those jailed for short terms in police cells, or those Aborigines Classified as "half castes".

The information is derived from the names of prisoners who were released each month from the colony's major gaols which were St Helena in Moreton Bay, Brisbane, Rockhampton, Toowoomba (where women prisoners were normally gaoled) Roma and Townsville. Those prisoners who were due for release after December 1887 are not shown although they may have been in gaol on that date. The source of the information is the Queensland Police Gazettes, which were and in fact still are published monthly. The aim of this appendix is to show the type of offences Aborigines were charged with, and the sentences the crimes attracted.

In general, the sentences were similar to those awarded to whites. Discrimination, when it occurred, normally did so prior to the cases arriving in court. Unlike white offenders, Aborigines were never simply charged, they were always arrested and locked up. This is a most important point because it meant Aborigines spent longer in gaol than whites did for the same offence. It could mean that they spent 6 months longer because the circuit courts were convened only twice a year. The major courts were correct and generally inclined to treat Aborigines with fairness, if not leniency, sometimes taking into account traditional laws and ignorance of European ones. Police were aware of this and normally tried to have blacks tried by the local magistrates who were more pragmatic. Therefore the majority of Aboriginal offenders would have been tried before local benches and would have served short sentences in police cells and watch houses.

Abbreviations, HL = Hard labour

I = Imprisonment

PS = Penal Servitude

Year	Name	Offence	Court	Sentence
1865	Jemmy	Assault	Brisbane	2 years HL
	Charles Morris	Larceny	Brisbane	3 months I
	Peter	Being of Unsound Mind	Bowen	6 months I
1867	Soap	Larceny	Brisbane	6 months HL
	Johnny Milford	Larceny	Brisbane	4 months HL
	Dodo	Larceny	Roma	12 months HL
	Possum	Destroying property	Brisbane	10 days I
1868	James Hunter	Receiving stolen property	Rockhampton	8 months HL
1868	Charles	Larceny	Springsure	6 months HL
	Tommy Adams	Larceny	Brisbane	6 months HL
1871	Quambo	Larceny	Brisbane	3 months HL
	Brandy	Being illegally on premises	Brisbane	3 months HL

Year	Name	Offence	Court	Sentence
	Johnny Clayson	Assault with intent to commit rape	Rockhampton	2 years HL
1872	Jemmy	Larceny	Rockhampton	6 moths HL
	Yorky	Robbery under arms	Brisbane	7 years PS
	Nullah	Robbery under arms	Rockhampton	6 years HL
	King Dickey	Assault	Toowoomba	1 years HL
1873	Johnny Jefferies	Indecent assault	Brisbane	6 months HL
	Jemmy Hunter	Illegally on premises	Ravenswood	3 months HL
	Jemmy Cleary	Larceny	Maryborough	6 months HL
	Tommy	Larceny	Brisbane	6 months HL
1874	Dickie	Larceny	Townsville	6 months HL
	John Kelly	Larceny from the person	Gympie	2 years HL
	Sambo	Common assault	Ipswich	1 years HL
	Donald McKenzie	Attempt to commit a felony	Maryborough	6 months HL
	George	Larceny	Maryborough	6 months HL
	Tommy	Receiving stolen property	Maryborough	6 months HL
	Quail	Larceny	Maryborough	2 years HL
	Johnny Brisbane	Manslaughter	Brisbane	3 years PS
1875	Sandy	Disobedience on board ship	Rockhampton	4 weeks HL
	Toby	Larceny	Gladstone	2 years I
	Henry Wallace	Larceny	Brisbane	4 months I
	Tommy	Larceny	Gladstone	6 months I
	Charley McRarey	Indecent exposure	Toowoomba	3 months HL
1876	Billy	Larceny	Dalby	1 months HL
	Saturday	Larceny	Tambo	3 months HL
	Jasper	Larceny	Condamine	6 months HL
	Billy	Larceny	Townsville	5 months HL
1877	Jack	Illegally on premises	Brisbane	6 months HL
	George	Larceny	Maryborough	3 months HL

Year	Name	Offence	Court	Sentence
	Lolly	Obscene language	Gympie	3 months HL
	Boney	Larceny	Caldwell	2 months HL
	Jackey	Assault	Roma	2 months HL
1878	Nero	Illegally using a horse	Caldwell	2 months HL
	Willey	Larceny	Rockhampton	1 months HL
	Jim	Wilful damage	Brisbane	1 months I *
* This sentence was recorded as "1 months confinement"				
	Billy	Assault & robbery	Gladstone	6 months HL
	Willie	Larceny	Roma	3 months HL
	George	Larceny	Maryborough	3 months HL
	Patty	Larceny	Maryborough	3 months HL
	Tommy	Larceny	Rockhampton	6 months HL
	Douglas	Larceny	Rockhampton	6 months HL
	Neddy	Larceny	Gympie	6 months HL
1879	Davey	Larceny	Roma	6 months HL
	Boney	Larceny	Maryborough	3 months HL
	Jemmy	Having money he could not account for	Rockhampton	3 months HL
	Bismark	Being illegally on premises	Roma	2 months HL
	Piggy	Assault	Ipswich	3 months HL
	Jock	Vagrancy	Roma	3 months HL
	Robin Hood	Larceny	Nanango	2 months HL
	Spencer	Exposing his person	Rockhampton	2 months HL
	Douglas	Illegal possession of goods	Townsville	2 months HL
	Ellen Murray	Obscene language	Rockhampton	2 months HL
	Charley	Larceny	Toowoomba	2 months HL
1880	Buckley	Assault	Rockhampton	1 month HL
	Nellie	Manslaughter	Maryborough	8 months HL
	Jimmy	Assault	Roma	1 months HL

Year	Name	Offence	Court	Sentence
	Walker	Larceny	Goondiwindi	3 months HL
1881	Tommy	Illegally using a horse	Isisford	3 months HL
	Paddy	Assault	Surat	1 month HL
	Daughes	Larceny	Townsville	6 months HL
	Henry Atkins	Illegally on premises	Townsville	1 month I
	Charles Perry	Threatening language	Roma	1 month I
	Peter	Larceny	Charters Towers	3 months HL
	Paddy	Vagrancy	Roma	1 month HL
	Tommy	Larceny	Mackay	2 months HL
	Harry	Obscene language	Roma	2 months HL
	Tommy	Larceny	Charters Towers	6 months HL
	Johnny	Assault	Maryborough	2 months I
1882	Pepper	Larceny	Morven	11 months HL
	Billy Quart Pot	Assault	Ipswich	3 months HL
	Jemmy	Assault	Townsville	2 months I
	Paddy	Assault	Surat	1 months HL
	Johnny	Larceny	Maryborough	1 months HL
	Jango	Assault	Rockhampton	6 months HL
	Dick	Indecent assault	Roma	3 months HL
	Jemmy	Assault	Townsville	6 months I
	Gillie-Gillie Jack	Rape	Brisbane	Death commuted to 15 years I
	Dick	Threatening language	Dalby	3 months I
1883	James Jones	Threatening language	Brisbane	14 days I
	Mick	Assault	Chinchilla	1 months I
	Broken Nose Billy	Larceny	St George	3 months HL
	Jemmy Campbell	Assaulting police	Roma	1 month HL
	Jemmy Campbell	Illegally on premises and assault	Roma	4 months HL

Year	Name	Offence	Court	Sentence
	Billy Neil	Obscene language	Toowoomba	3 months HL
	Jemmy	Assault and larceny	Rockhampton	2 months HL
	Ned	Aggravated assault	Rockhampton	6 months HL
	Paddy	Threatening language	Rockhampton	3 months I
	Jemmy	Failing to keep the peace	Ravenswood	6 months I
	Mengally	Larceny	Cooktown	6 months I
	Tommy	Larceny	Taroom	6 months I
1884	George	Larceny	Townsville	1 month HL
	Paddy	Assault	Gatton	1 month I
	Cabbie Towboy	Larceny	Taroom	3 months HL
	Timothy	Assault	Charleville	3 months HL
	Broken Nose Billy	Having stolen goods	St George	3 months HL
	Long Jackey	Unlawfully wounding	Roma	9 months HL
	Bob Murray	Assault	Brisbane	6 weeks HL
	Bobby Abbo	Larceny	Charters Towers	6 weeks I
	Willie	Assault	Charters Towers	1 month I
	Patrick James	Obscene language	Brisbane	1 month I
	Willie Parleen	Larceny	Clermont	2 months HL
1885	Willie Parleen	Larceny	Clermont	2 months HL
	Willie Parleen	Larceny	Clermont	6 months HL
	Bobby	Larceny	Mitchell	6 months HI
	Fred	Being in possession of money he could not account for	Toowoomba	3 months HL
1886	Jacob	Illegally using a horse	Roma	2 months HL
	Sammy	Larceny	Gympie	3 months HL
	Alberto	Unlawful wounding	Brisbane	2 years HL
	Seman	Unlawful wounding	Townsville	1 years HL
	Jackey	Assault on an Aboriginal woman	Roma	4 months I

Year	Name	Offence	Court	Sentence
	Jack Halpin	Assault	Thornboro	6 months I
	Nugget	Receiving	Townsville	3 months I
1887	Brandy	Assault	Rockhampton	3 months HL
	William Doolan	Larceny	Chinchilla	6 months HL
	Robert	Assault	Brisbane	10months HL
	Toby	Illegally on premises	Mitchell	1 months HL
	Colin	Indecent Assault	Blackall	6 months HL
	Jimmy	Obscene language	Charters Towers	3 months HL
	Jack	Drunk and disorderly	Townsville	7 days I
	Joe	Assault with intent to murder	Burketown	15 years PS
	Harry	Attempting to carnally know a girl under 10	Cooktown	15 years PS
	Jim Chisholm	Murder	Townsville	10 years PS
	Billy	Murder	Winton	2 years HL
	Jimmy	Murder	Winton	2 years HL
	Tommy Spence	Assault	Cardwell	6 months HL
	Pilot	Manslaughter	Roma	5 Years PS

Appendix C

Reported Sexual Assaults by Aboriginal men on European Women

Date	Name	Offence	Action taken or sentence	Reference
1855	Dick	Rape	Warrant issues	<u>MBC</u> , 4/8/1855
1859	Chamery	Rape	Sentenced to death	CCT, 2/1 QSA
	Dick	Rape	Sentenced to death	CCT, 2/1 QSA
	Billy	Attempted Rape	2 years hard labour	CCT, 2/1 QSA
1860	Gulliver Alma Toby	Rape (unconfirmed) and murder	Summarily executed	<u>1861 NP Enquiry</u>
This relates to the possible rape and murder of Fanny Briggs by native police troopers near Rockhampton				
1861	Georgie	Rape	Sentenced to death	CCT, 2/1, QSA
1862	Billy Horton	Rape	Sentenced to death	CCT, 2/1, QSA
1862	*Kipper Billy	Rape	Sentenced to death	CCT, 2/1, QSA
* This was for aiding and abetting a rape. Sentence was not carried out, it may have been illegal				
1862	Jemmy	Attempted rape	2 years hard labour	CCT, 2/1, QSA
1865	*Jemmy	Rape	Not guilty	CCT, 2/1, QSA
*Jemmy was tried a month later on another rape charge and sentenced to death				
1865	Jacky	Attempted rape	No details found	PRI/18 QSA
1868	?	Attempted rape	Unknown assailant	<u>Police Gazette (PG)</u> , 7/10/1868
1868	Billy alias Dandine	Attempted rape	Not apprehended	<u>Police Gazette (PG)</u> , 7/10/1868
1869	Henry	Attempted rape	Charges, no details	<u>PG</u> , 6/1/1869 ex NP trooper
1870	Jacky Whitton	Rape	Sentenced to death	<u>Queenslander</u> 5/2/1870
1870	George	Rape	Sentenced to death	<u>Rockhampton Bulletin</u> 28/3/1871
1871	Dr Dawson	Rape	Not guilty	<u>Rockhampton Bulletin</u> 7/1/1871

1871	Dr Dawson	Attempted rape	3 years PS	<u>Rockhampton Bulletin</u> 12/9/1871
1871	Campbell	Attempted rape	Warrant issued	<u>PG, 7/7/1871</u>
1872	Sandy	Attempted rape	Warrant issued	<u>PG, 3/4/1872</u>
1872	Johnny Clayson	Attempted rape	2 years hard labour	<u>PG, 7/10/1873</u>
1875	Andrew	Indecent assault	2 years hard labour	<u>PG, 5/12/1877</u>
1876	Peter	Rape	Died in custody	<u>PG, 3/1/1877</u>
1876	*Gillie-Gillie Jack	Rape	Sentenced to death	<u>Queenslander</u> 9/9/1876
* Gillie-Gillie Jack was reprieved by the Executive				
1877	*Jacky-Jacky	Rape	Sentenced to death	ColA/251, QSA
1877	*Paddy	Rape	Sentenced to death	ColA/251, QSA
* These two men were tried and sentenced conjointly. They were also reprieved.				
1879	*Campbell	Attempted rape	Warrant issued	<u>PG, 6/8/1879</u>
*This was for an attempt on a 12 year old girl. Two days later Campbell is alleged to have attempted to rape a woman named McKewan				
1880	Campbell	Rape	Sentenced to death	<u>Brisbane Courier</u> 27/7/1880
1880	Chapman	Attempted rape	3 years hard labour	80,838, Col A/308, QSA
1882	George	Rape	Sentenced to death	CCT N/40 QSA
1885	Unknown	Rape of a child	No details	<u>Queenslander</u>
1891	*Donald	Attempted rape	6 months imprisonment	CT, 5/O, QSA
*The following year Donald was convicted of rape and hanged				
1892	Donald	Rape	Sentenced to death	PRI/19, QSA

This list is by no means complete. There are several assaults on white women that may have been of a sexual nature but were classified as "common assault", these have been ignored. So too have those claims of sexual attack that the police recorded as "dubious". There are also several instances where the white woman involved refused to press, or withdraw charges. The list is intended to serve only as an indication of the crime's frequency.

Appendix D

Strength and Cost of Queensland Police during initial years of the Colony's foundation

Year	Ordinary Police	Native Police	Total Cost in Pounds Sterling	Population White	Area Occupied in Sq. Miles
1860	91	122	22,827	29,074	195,500
1863	150	137	34,680	61,467	379,100
1864	176	163	40,680	75,000	400,000

Cost of police includes cost of escorting prisoners.

Total Area of Queensland = 678,600 Sq. Miles

Source: OVP, 1864, p. 455.

Appendix E

Part of Frederick Walker's Bill, Royal Hotel Maryborough, May 1852.

		£	s	p
	Brought Forward	75	6	8
May 18	Two luncheons		3	0
	½ pint sherry		1	6
	Soda and sherry		6	6
	Washing		1	6
	Dinner		3	6
	Oranges		1	0
	½ pint sherry		1	6
	Brandy			6
	Cigars		1	0
	Cash	2	6	0
	Tea		1	6
	Brandy		1	9
	Two beds		4	0
May 19	Two breakfasts		4	0
	Sherry and sherry		2	6
	Brandy and soda		1	6
	Cash	1	0	0
	Troopers		12	0
	Tobacco and pipes		3	0
	Soda and sherry		9	0
	Brandy			9
	Cash		8	0
	Dinner		2	6
	½ pint sherry		1	6
	Bed		2	0
	Breakfast		2	0
	Soda and sherry		1	0
	Troopers		12	0
	Carried over	83	1	8

Appendix F

Strength and Location of NP as at 31 December 1864.

Abbreviation C = Cadet

Location	Officers		Sergeants	Troopers	Totals
	Lt	2/Lt	European		
1st Division					
Rockhampton	1	1	1	6	9
L. Dawson		1	1	5	7
U. Dawson		1	1	6	8
Mackenzie		1	1	6	8
Broadsound		1	1	5	7
2nd Division					
Comet & Ngoa	2	2	1	15	20
North Creek		1	1	6	8
Belyando		1	1	8	10
3rd Division					
Bungie Creek	1	1C	1	10	13
Maranoa River		1	1	8	10
Warrego River		1	1	8	10
4th Division					
Sandgate		1	1	7	9
5th Division					
Bowen		1	2	7	11
Bowen River		1C	1	5	7
Bungie Creek	1	1C	1	10	13

Source OVP, 1864 p.453.

Appendix G

O'Connell's proposal for the establishment of a mounted police force for the frontier districts of NSW.

Regimental Staff	Est. cost p.a. in pounds sterling £/s/d
1 Commandant	365/0/0
1 Adjutant/riding master	365/0/0
1 Paymaster	365/0/0
1 Surgeon	365/0/0
1 Sergeant-Major	150/0/0
1 Saddle Sergeant	120/0/0
2 Farriers	127/15/0
4 rough riders	255/10/0
Two troops of 60 troopers plus officers, non-commissioned etc.	
2 Officers (Troop commanders)	900/0/0
4 Subalterns	1200/0/0
2 Troop Sgt-Majors	240/0/0
2 Pay Sergeants	240/0/0
40 European Troopers (at three shillings and six pence per day)	2555/0/0
15 European supernumeraries	1058/0/0
80 Aboriginal Troopers (at one shilling and six pence per day)	2190/0/0
20 of these Aboriginal troopers were to be sergeants and were to be paid an extra shilling per day	365/0/0
A band consisting Bandmaster and 12 bandsmen	1090/10/0
Rations, clothing, re-mounts forage etc	4860/0/0
Extra expense of 40 Europeans (in lieu of black troopers).	1490/0/0
Rations, re-mounts, clothing, forage and contingencies	4860/0/0
Total	£23161/15/0

Appendix H
Queensland's Prison Population

Year	Total Received For year	No. of Aborigines in gaol on 1 Jan of each year
1889	2646	95
1890	2948	116
1891	3377	122
1892	3083	107
1893	3214	120
1894	3214	160
1895	3018	160
1896	3367	132
1897	3191	112
1898	4041	111
1899	3208	114
1900	2332	37*
1901	2148	25*

* Probably reflects transfers to reserves like Fraser Island.

Source: Reports of Sheriff and later, Comptroller - General of Prisons OVP, 1890-1902.

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