


Drunkennes, insolence and abuse. The recidivism of women convicts

1788-1790

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KEYWORDS

First Fleet; women's crime; Bench of Magistrates; convict stereotyping; convict recidivism; domestic violence

ABSTRACT

Since the very earliest days of transportation, female convicts were stereotyped as 'habitual and recalcitrant offenders' who were a corruptive force in colonial society.¹ This article investigates the extent and nature of the criminal recidivism of First Fleet women in the settlements of Port Jackson, Rose Hill and Norfolk Island during the period 1788 to 1790. It also makes significant revelations concerning the early colonial court's capacity to protect the interests of women in cases of domestic violence and sexual abuse and, in so doing, highlights the androcentric nature the early colonial legal system. In assessing the validity of the claim that convict women were irreclaimable, vicious and perverse, this article makes a valuable contribution to the historiography relating to convict women, their reputations, character and their treatment by both the colonial courts and the male population in general.²

¹ Eleanor Conlin Casella, "'Doing trade': A sexual economy of nineteenth-century Australian female convict prisons," *World Archaeology* 32, no. 2 (2000): 219.

Kirsty Reid, *Gender, crime and empire: convicts, settlers and the state in early colonial Australia* (Manchester, UK: Manchester University Press, 2007), 3. Quoting the 'Report of the Select Committee on Treanportation', British Parliamentary Papers II, 1812, p. 164

Michael Sturma, "Eye of the Beholder: The Stereotype of Women Convicts, 1788-1852," *Labour History*, no. 34 (1978): 3, <https://doi.org/10.2307/27508305>, <http://www.jstor.org/stable/27508305>.

² Portia Robinson, *The Women of Botany Bay: a reinterpretation of the role of women in the origins of Australian society* (Melbourne, Vict: Macquarie Library, 1988), 44. Robinson writes that 'A minority of the women selected for transportation in 1787 were such vicious characters as to support the belief in Britain that the convict women were irreclaimable.' Sturma, "Eye of the Beholder: The Stereotype of Women Convicts, 1788-1852," 3.

Introduction

The generalised stereotype of convict women as a corrupting force, links to the ‘damned whore’ misnomer, a term first used in 1787 by Lieutenant Ralph Clark. Clark, the First Fleet officer of the marines and regular diarist, repeatedly condemned the colony’s convict women as ‘dam[n]ed whores’, adding that they were ‘a disgrace to ther [sic] Whole Sex’.³ Clark’s perspective can perhaps be explained by the ‘hothousing’ that occurred as a result of free, middle-class males – who, during this period, comprised the majority of the colonial population – living and working amongst the convict orders and experiencing cultural and behavioural norms that significantly differed to their own.⁴ The fact that these men captured their derision on paper, resulted in a systematic group-discrimination which continued, virtually unchallenged, for over 150 years.⁵

Known as ‘cultural stereotyping’, the beliefs held by these free, literate, middle-class males, legitimised the social, cultural and gendered inequality which existed in the colony.⁶ The dominant class’s male-lens concept of the feminine was understood in terms of subservience, passivity, dependence and fragility, qualities which were often irrelevant, or at

³ Ralph Clark, *The Journal and letters of Lt. Ralph Clark 1787-1792. Volume 1. (Electronic version)*, 2003 ed. (Sydney: University of Sydney Library, 1787-1792), XVI. <http://purl.library.usyd.edu.au/setis/id/clajour>. Clark first used the reference 'damed [sic] whores' on May 16 1787, then again on 19 June 1787 when he wrote of three convict women that 'ther was never three great whores living than they are...they are a disgrace to ther Whole Sex B.....s that they are I wish all the Women Wair out of the ship'. On 3 July 1787 he called them 'these D....d troubelsem Whores', and on 1st August 'damed whores'.

⁴ Australia was a distinct colonial outpost. Convicts made up the majority of the colonial population. To gain an appreciation of this, Rose Hill (Parramatta) had 1336 male and 133 female convicts, 26 children, 104 free men (94 troops, 7 civil servants, 3 seamen settlers), and 16 free women on 3 December 1791. These statistics highlight three issues. Firstly; the colony’s significant sexual imbalance. Secondly; that hothousing occurred. The 104 free men, a number of them literate middle-class men, were outnumbered by predominantly working-class convicts by 10:1. As such the cultural norms of the majority would have challenged and ‘swamped’ the minority. Thirdly; of the free men, totalling 104, only 9 of the 94 troops appear to have had free wives or partners and none of the civil servants or seamen settlers. The remainder would have looked to convict women as wives, mothers, mistresses and servants. [Statistics from Tench as referenced]. W. Tench, *Sydney's First Four Years: Being a Reprint of "a Narrative of the Expedition to Botany Bay and a Complete Account of the Settlement at Port Jackson*, Erskineville, 1961, p. 258.

⁵ J. Sidanius et al., ‘Social Dominance Theory: Its Agenda and Method’, *Political Psychology*, Vol. 25, No. 6, November 2004, p. 847.

Narissa Phelps, "Maligning Molly Morgan: A convict woman of 'dominant influence', sexualised and stereotyped," *Journal of Australian Colonial History* 21 (2019): 183.

⁶ Dovidio et al., *op. cit.*, p. 280.

the very least, impractical for the majority of female convict settlers.⁷ The negative stereotyping of working-class convict women continued until the closing decades of the twentieth century. As late as 1988, Portia Robinson, who was amongst the pioneers in reinterpreting the role women played in the early colony, continued to refer to the behaviours of the first fleet convicts, both during their transportation and ‘in the first two or three years of settlement’, as ‘disorderly, vicious, immoral, degraded and drunken’.⁸

This ground-breaking analysis of the recidivism of First Fleet women, and the response of the courts and administration to the legal cases in which they were involved, provides a more balanced understanding of the nature of the settlement’s earliest female settlers, challenging the stereotype of the women’s widespread vicious and disorderly behaviour, whilst providing insight into the struggles that First Fleet women experienced when dealing with an androcentric colonial legal system. It does so through analysis of the records of the Court of Criminal Jurisdiction and the Bench of Magistrates, as well as the Norfolk Island journals of Philip Gidley King and Ralph Clark.⁹ John Copley’s collated records provide valuable insight into the summary punishments meted out during these early years of colonial settlement, and are therefore instrumental in identifying those crimes which are not indexed in official court records.¹⁰ Whilst this analysis sits within the broad context of historical scholarship on crime, it makes no attempt to use its historical analysis of early colonial recidivism to speak to contemporary legal concerns.¹¹ It cannot be classified in any way, therefore, as historical

⁷ Joy Damousi, *Depraved and Disorderly: Female Convicts, Sexuality and Gender in Colonial Australia*, Cambridge, 1997, p. 39.

⁸ Robinson, *The Women of Botany Bay: a reinterpretation of the role of women in the origins of Australian society*, 44.

⁹ John Hunter, *An historical journal of events at Sydney and at sea 1787–1792: with further accounts by Governor Arthur Phillip, Lieutenant P.G. King, and Lieutenant H.L. Ball.*, ed. John Bach, ed. John Bach (Sydney: Angus and Robertson in Association with the Royal Australian Historical Society, 1968, 1968).

Clark, *The Journal and letters of Lt. Ralph Clark 1787-1792. Volume 1. (Electronic version)*.

¹⁰ John Copley, *Sydney Cove 1788* (North Ryde, NSW: Angus & Robertson Publishers, 1987).

John Copley, *Sydney Cove, 1789-1790* (Angus and Robertson, 1963).

¹¹ David Churchill, "Towards historical criminology," *Crime, histoire & sociétés (Crime, history & societies)* 21, no. 2 (2017): 380.

criminology, although it does think historically about crime and justice in the earliest years of the colony.¹² This paper successfully casts light on aspects pertaining to the women's navigation of the legal system during a particular period and context, revealing issues associated with legal marginalisation and privilege specific to that era and setting.¹³

Mary Phillips: a case study in summary colonial justice

In February 1789, Mary Phillips was punished with 25 lashes for 'Baking flour over a fire with an iron spade'.¹⁴ Her punishment was ordered by David Collins, captain of marines and the colony's Judge-Advocate. Phillips had no trial or defence, but was given a summary or on-the-spot punishment for what was deemed a minor offence. Described as 'a mere mockery of justice', summary punishment was recognised as ignoring 'the merits of the charges', and imposing punishment 'without an oath, on hearing ten words from the lips of their villainous accusers'.¹⁵ Whilst acknowledging the scarcity and value of tools in the infant colony, there can be little doubt that this offence, the only one for which Phillips was punished in the colony, was a relatively minor one. Whilst it is one of the 69 cases of misconduct committed by First Fleet women and examined for this study, it is fair to say that it does not warrant Phillips being labelled a disorderly and corrupt influence. Rather, it reflects a woman's day-to-day struggle to survive in a new and hostile penal environment. Phillips went on to have children, was a settler on Norfolk Island between 1790 and 1813, and became one of the early colonists sent to Tasmania, dying there in 1850 aged 96. In many ways, her biography typifies the stereotypical 'pioneering colonial woman', contributing to the transplanting of 'Anglo-Saxon'

¹² David Churchill, "What is 'historical criminology'? Thinking historically about crime and justice," *British Society of Criminology Newsletter* 82 (2018): 9.

¹³ Ibid.

¹⁴ Cobley, *Sydney Cove, 1789-1790*, 10.

¹⁵ Thomas Cook, *Exiles lamentations; or a biographical sketch*, 1841, State Library of New South Wales Mitchell Library, A1711, 58—59.

characteristics to an Australian bush setting.¹⁶ However, Mary Phillips would also have been regarded by Ralph Clark as a ‘damned whore’. In November 1788 she is recorded as spending the night with one man whilst the man she usually lived with was away, and four men fathered her five children, all born outside wedlock.¹⁷

The current perception we have of Phillips as more colonial pioneer than ‘damned whore’, is built on the foundation of a historiographical reputational transformation of convict women that began in the 1950s. Michael Roe believed that convicts were generally more law abiding than previously believed, a view shared some three decades later by Portia Robinson.¹⁸ Jess Hill, who created biographies of over 4500 women convicts in the 1970s, and Babette Smith who conducted biographical research into the female convicts aboard the *Princess Royal*, personalised the convict ‘girls’, enabling a greater empathy and understanding of the lives and challenges faced by female convicts.¹⁹ Historians including Anne Summers, Miriam Dixson and Michael Sturma, paved the way for a reassessment of the moral character of convict women, further challenging their typecast as a corruptive force of incorrigible prostitutes and unmarriageable reprobates.²⁰ Portia Robinson, Monica Perrott and Annette Salt’s work further contributed to a change of attitude towards female convict colonists, who gradually emerged through the literature as succeeding in the face of challenge.²¹ Early scholarship succeeded in

¹⁶ Richard Waterhouse, "The pioneer legend and its legacy: In memory of John Hirst," *Journal of the Royal Australian Historical Society* 103, no. 1 (2017): 10.

¹⁷ Mollie Gillen, *The Founders of Australia* (Sydney, NSW: Library of Australian History, 1989), 287.

¹⁸ Michael Roe, "Colonial society in embryo," *Australian Historical Studies* 7, no. 26 (1956).

Portia Robinson, *The hatch and brood of time: a study of the first generation of native-born white Australians, 1788–1828* (Hong Kong: Oxford University Press, 1985).

Robinson, *The Women of Botany Bay: a reinterpretation of the role of women in the origins of Australian society*.

¹⁹ Jess Hill’s work acted as a foundation for a project undertaken by the Society of Australian Genealogists. “Ironclad Sisterhood: Telling the Stories of Convict Women” is gradually being made available through a website of the same name.

<https://ironcladsisterhood.sag.org.au/convict-women/>

Babette Smith, *A Cargo of Women: Susannah Watson and the Convicts of the Princess Royal* (Sydney, NSW: NSW University Press, 1988).

²⁰ Anne Summers, *Damned whores and God's police* (Harmondsworth, UK: Penguin Books, 1975).

Miriam Dixson, *The Real Matilda: Woman and Identity in Australia 1788–1975* (Harmondsworth, UK: Penguin, 1999).

Sturma, "Eye of the Beholder: The Stereotype of Women Convicts, 1788-1852."

²¹ Robinson, *The hatch and brood of time: a study of the first generation of native-born white Australians, 1788–1828*.

Robinson, *The Women of Botany Bay: a reinterpretation of the role of women in the origins of Australian society*.

defining a comparison between the criminality and immorality demonstrated in Britain, and the law-abiding, hard-working and reformed nature of the emancipists who prospered in this new 'land of opportunity'.²² More recent scholarship has cemented these claims. Leslie Taylor concludes that during the first fifteen years of settlement, criminal activity was uncommon, criminal recidivism rare and that the most common criminal activity comprised theft following drink. She believed that the opportunity to attain land grants enabled the convict order a stake in the colony's future, providing motivation for more law-abiding behaviours. Employment was more readily-available, and the colony provided a haven free of the negative economic conditions that had prevailed in Britain.²³

The criminological analysis of convicts that took place in the 1990s, further enhanced debate concerning the 'depraved character' of the convict order. Stephen Garton argued strongly that, in neglecting to apply criminological theory, Australian historians focussed solely on the morality of the convict orders rather than gaining a vital understanding of crime and the social meaning of criminal activity.²⁴ Certainly, it is the morality of the First Fleet female convicts that has attracted the greatest attention, resulting in an imperfect and sexualised portrayal of the colony's earliest female settlers. Garton concluded that only a small proportion of female convicts were professional criminals, and that they were driven by circumstance to commit largely petty crimes.²⁵ Deborah Oxley reviewed criminological literature for her analysis of the types of criminals that the women were in Britain, pre-transportation.²⁶ Her

Monica Perrott, *A Tolerable Good Success: Economic Opportunities for Women in New South Wales, 1788–1830* (Sydney, N.S.W.: Hale & Iremonger, 1983).

Annette Salt, *These outcast women: the Parramatta Female Factory 1821–1848* (Sydney: Hale & Iremonger, 1984).

²² Stephen Garton, "The convict origins debate: historians and the problem of the 'criminal class'," *Australian & New Zealand Journal of Criminology* 24, no. 2 (1991): 72.

²³ Leslie Taylor, "Were the early years of Australia a 'golden age' for convicted criminals? An examination of social pressures on criminal law, legal administration, and punishment with a discussion on the incarceration of offenders in Britain and Australia from 1789 to 1830" (PhD Charles Sturt University, 2022).

²⁴ Garton, "The convict origins debate: historians and the problem of the 'criminal class'," 78–79.

²⁵ *Ibid.*

²⁶ Deborah Oxley, "Women transported: gendered images and realities," *Australian & New Zealand Journal of Criminology* 24, no. 2 (July 1991).

focus on female crime between 1826 and 1840, revealed that two-thirds of the women were transported for their first offence and only 3 per cent of women offended on three or more occasions.²⁷ Nor were the crimes extremely heinous given that crimes of violence and property crime accompanied by violence accounted for only 1.5 per cent of female convictions during that fourteen-year period.²⁸ Oxley concluded that the preoccupation with whoredom had resulted in moralistic and judgemental stereotyping of convict women. The women in her study were not members of a professional criminal class, nor were they known recidivists. They were neither cruel nor vicious, but rather guilty of single, small-scale property crimes.²⁹ Their offences were, according to Oxley, generated by their need to survive in an economy of fluctuating employment, employment discrimination and lack of welfare support.³⁰ Mary Phillips' crime of using a spade for her baking, supports Oxley's conclusion, suggesting that Mary was not so much committing a crime, as trying to survive colonial challenges using the finite resources available to her.

The dread of perishing by famine

The primary and secondary sources are rich in information regarding the wide-spread challenges faced by colonists in the first three years of settlement. David Hill calls his chapter on this period *The Early Days of Struggle*, a fitting summation indeed.³¹ The soil and weather challenged successful agriculture, food stocks declined, rations were reduced, accommodation under canvass or in simple huts was crude, and the availability of equipment, tools and clothing was critically insufficient. Watkin Tench wrote 'Famine...was approaching with gigantic steps,

²⁷ Oxley, "Women transported: gendered images and realities," 91.

²⁸ *Ibid.*, 92.

²⁹ *Ibid.*, 96.

³⁰ *Ibid.*

³¹ David Hill, *The making of Australia* (North Sydney: Penguin Random House, 2015), 21—37.

and gloom and dejection overspread every countenance'.³² He added that 'the dread of perishing by famine stares us in the face'.³³

Of relevance to Mary Phillips' crime was Governor Phillip's remark that 'two or three hundred iron fryingpans will be a saving of spades'.³⁴ This statement provides not only context, but a defence for Mary's misdemeanour. Without legal representation, or the opportunity to challenge the charges for which she received summary punishment, Mary was more the victim of circumstance than a criminal. Alexander Britton wrote that 'When people were obliged to use spades instead of fryingpans, hardly any better proof could be furnished of the low conditions to which the commissariat [public store] had been reduced'.³⁵

Other women committed crimes directly associated with the famine and deprivation they experienced during the starvation years of 1788-1790. In June 1788, Elizabeth Pulley was charged with receiving 12 pounds of goat's flesh, some of which was used in a pie eaten to celebrate her wedding to Anthony Rope.³⁶ She was acquitted on evidence that the goat was found dead. Elizabeth Pipkin's story of starvation is a poignant one. In February 1789, she was accused of 'stealing 2 1/2 lbs of flour from Mary Davis'.³⁷ Davis stated that Elizabeth came to her hut 'complaining of Hunger' She gave her some food and 'kept her to dine with her', then went to work. The prisoner took the flour in her absence and 'acknowledged she had taken it'. In her defence the prisoner admitted her guilt, stating that she 'meant to return it again'. She was sentenced to repay the Provisions and to receive 25 lashes. In March 1789, Mary Turner and Tamasin Allen received 50 lashes each when they were found guilty of stealing six

³² Alexander Britton, *History of New South Wales from the Records*, ed. F.M. Bladen, vol. 2 (Sydney: Charles Potter, Government Printer, 1894), 36.

³³ *Ibid.*, 35.

³⁴ *Ibid.*, 32.

³⁵ *Ibid.*

³⁶ Court of Criminal Jurisdiction. State Archives New South Wales, NRS 2700, [5/1147A, pp. 37-43], Reel 2391.

³⁷ AONSW, Bench of Magistrates. Minutes of Proceedings 1798-1800. Reel INX-11-2676, p. 139, 7 February 1789.

cabbages.³⁸ In October 1789, Ann Mather and Phoebe Flaharty received twenty-five lashes each for ‘stealing 14 ounces and ½ of pork’, each denying the charge and blaming the other.³⁹ In a colony beset by famine, these were serious crimes, yet they undoubtedly speak more to the dire state of the colony and the unique nature of the colonial legal system, than they do to the recalcitrant nature of the women involved.

The fabric of colonial legal justice

The colonial legal system was dominated not by lawyers, but by officers of the navy and army.⁴⁰ The fabric of colonial justice was established by Letters Patent as the Charter of Justice in 1787, and carried to Australian shores by the First Fleet.⁴¹ The Court of Criminal Judicature, which dealt with criminal matters, was presided over by Collins as deputy judge-advocate and six naval or military officers. Sentences were restricted to the death penalty for capital offences, and corporal punishment, usually by flogging.⁴² Originally, trials operated in much the same way as a court martial, lacking both a jury and legal rigor and process. The role of the judge-advocate was potentially compromised by the fact that they had little formal legal training and were the military subordinates of the governor.⁴³ The first sitting of this higher court was held on 11 February 1788, but it was not until 1809 that a barrister was appointed to the role of deputy judge-advocate, finally bringing legal expertise and rigor to the role.⁴⁴ It was 1817-1818 before colonial judgements began to resemble conventional law reports, ‘with a greater

³⁸ Bench of Magistrates, INX-11-348, p. 151, 5 March 1789. Indexed only under surname Allen.

³⁹ Cobby, *Sydney Cove, 1789-1790*, 100.

⁴⁰ David Neal, "Law and Authority: The Magistracy in New South Wales, 1788-1840," *Law in Context: A Socio-Legal Journal*. 3 (1985): 46.

⁴¹ "Early Courts," Supreme Court History, Supreme Court of New South Wales 2023, accessed 8 May, 2024, <https://supremecourt.nsw.gov.au/about-us/supreme-court-history/early-courts.html>.

⁴² "Court of Criminal Jurisdiction guide," Museums of History NSW, 2024, accessed 10 May, 2024, <https://mhns.wa.gov.au/guides/court-criminal-jurisdiction/>.

⁴³ Neal, "Law and Authority: The Magistracy in New South Wales, 1788-1840," 48.

⁴⁴ The first trial was R v Barsby. For details see: Bruce Kercher and Brent Salter, *The Kercher Reports: decisions of the New South Wales superior courts, 1788 to 1827* (Sydney: Francis Forbes Society for Australian Legal History, 2009), 1—7. "Early Courts."

Neal, "Law and Authority: The Magistracy in New South Wales, 1788-1840," 48.

concentration on judicial statements of law'.⁴⁵ During the colony's early years, the governor's influence upon the law was significant, given that he appointed the military panel who sat with the judge-advocate, and exercised the royal prerogative over sentencing.⁴⁶

The majority of cases analysed for this paper, were heard before the Bench of Magistrates, which handled civil matters and was presided over by two 'fit and proper' residents of the colony appointed by the governor.⁴⁷ Trial transcripts lack insight into the legal reasoning behind sentencing, often resulting in more questions than answers, and in some cases, the accused was denied the basic right of defence. Norfolk Island, settled just five weeks after Sydney, was still a very small settlement during this era.⁴⁸ The diaries of King and Clark indicate that, whilst Norfolk held its own Bench of Magistrates hearings, significant trials were referred to Port Jackson.⁴⁹ The records of those Bench of Magistrates hearings are missing, so information pertaining to crimes committed on Norfolk Island was obtained largely from the diaries of King and Clark.⁵⁰ The first punishment of a female convict on Norfolk Island was on the 29th August 1789. King recorded that Ann Coombs 'received fifty lashes at the cart's tail, for defrauding Thomas Jones of some provisions.' King added that 'this punishment, however, did not deter her from committing crimes of a similar nature; for the very next day she was detected stealing two new check shirts from Francis Mew...and punished with 100 lashes.'⁵¹

⁴⁵ Kercher and Salter, *The Kercher Reports: decisions of the New South Wales superior courts, 1788 to 1827*, viii.

⁴⁶ Neal, "Law and Authority: The Magistracy in New South Wales, 1788-1840," 48-49.

⁴⁷ "Early Courts."

⁴⁸ Hunter, *An historical journal of events at Sydney and at sea 1787-1792.*, 266. When King departed the island in March 1790 there were only 498 inhabitants, including 100 female convicts.

⁴⁹ *Ibid.*, 242. King states that when one Thomas Watson was arrested for the theft of a bag of flour, King determined that the crime most likely warranted the death penalty so he 'ordered him [Watson] into confinement, with an intention of sending him to Port Jackson to take his trial'.

Clark specifically referenced his participation in hearings brought before 'members of the Council'. In the first of those (27 May 1790), Clark sat as a member along with two others. The second was referred to as a 'Court Martial', despite pertaining to various crimes committed by convicts. The court met then went 'throu the different Evidences for and against the Priseners as also the Priseners defences the Court have found them all Guilty'. Clark, *The Journal and letters of Lt. Ralph Clark 1787-1792. Volume 1. (Electronic version)*, 171, 86.

⁵⁰ Bruce Kercher, *Debt, seduction and other disasters: the birth of civil law in convict New South Wales* (Annandale, NSW: Federation Press, 1996), 51.

⁵¹ Hunter, *An historical journal of events at Sydney and at sea 1787-1792.*, 249.

On 7 September 1789 Catherine Johnson ‘was punished with fifty lashes for abusing the store-keeper, and accusing him of theft wrongly.’⁵² These appear to have been the only offences committed by the women in the first two years of Norfolk’s settlement, although that number increased later in 1790.⁵³

Kercher and Salter emphasise the unique nature of colonial law which ‘had a tang of eucalyptus mixed with the distinctive scents of old England’.⁵⁴ One of the notable colonial variations from English law was that Judge-Advocate David Collins ignored the law of convict attain, which denied convicted felons legal rights. Instead, Collins allowed convicts to instigate legal proceedings, give evidence in court, act for another person, sue in the civil court and hold property.⁵⁵ Several of the legal cases examined for this paper feature convict women instigating legal proceedings against fellow-convicts, and in many instances and contrary to conventional law, women gave evidence in court.

Flogging. The means of conquering ‘every refractory spirit among them’.

Whilst the common law may have taken a decidedly colonial form, punishment retained its barbaric English characteristics. Flogging was the most common sentence delivered to both males and females during the period under study. The comments made in December 1787 by Arthur Bowes Smyth, the surgeon aboard the *Lady Penrhyn*, provide invaluable insight into the punishment meted out to female convicts. Smyth referred to these women as an

⁵² Ibid.

⁵³ With the arrival in March 1790 of the vessels *Supply* and *Sirius*, Lt. King departed the island, and Ralph Clark arrived. It is Clark’s journal that replaces that of King as the source of information from that date.

⁵⁴ Kercher and Salter, *The Kercher Reports: decisions of the New South Wales superior courts, 1788 to 1827*, vii.

⁵⁵ Bruce Kercher, *An unruly child: a history of law in Australia* (St Leonards, NSW: Allen & Unwin, 1995), 22.

abandoned set of wretches...so totally abandoned and calloused to all sense of shame and even common decency that it frequently becomes indispensably necessary to inflict corporal punishment on them.⁵⁶

That corporal punishment included the use of thumb screws and iron fetters on the women's wrists, but also cutting off their hair and shaving their heads.⁵⁷ Smyth stated that at first flogging took place 'on the naked breech' (bottom) 'but as there are certain seasons when such a mode of punishment cd. not be inflicted with the attention to decency...it was totally laid aside'.⁵⁸ The women were 'so very abusive' whilst under punishment 'that there was a necessity for gagging them'.⁵⁹

The imposition of humiliation and torture associated with such punishments rested upon what Russell Hogg and John Scott identify as 'a view of the body as a target of sovereign power'.⁶⁰ Flogging represented being 'drowned in powerlessness' and, as a result, Robert Hughes concludes that 'what the cat-o'-nine-tails instilled was not respect for discipline, but a sullen conviction of one's own impotence in the face of Authority'.⁶¹ Flogging 'brutalised and degraded' all involved – be they the victim, the perpetrator or the witnesses – resulting in 'a general coarsening of the social and moral fabric'.⁶² Long after 1817, when the flogging of women in the colony officially ceased, the government appears to have still sanctioned its use.⁶³

⁵⁶ Arthur Bowes Smyth, *A Journal of a Voyage from Portsmouth to New South Wales and China - in the Lady Penrhyn, Merchantman - William Cropton Sever, Commander. 1787—1789*, 66, Mitchell Library, State Library of New South Wales, SAFE 1/15.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Russell Hogg and John Scott, "Masculinity, sexuality, and violence in the Australian convict colonies," in *Prison Masculinities. International perspectives and interpretations.*, ed. Tess Bartlett and Rosemary Ricciardelli (Oxfordshire: Routledge, 2022), 16.

⁶¹ Robert Hughes, *The Fatal Shore: A History of Transportation of Convicts to Australia, 1797-1868*, Collins Harville, (London, 1987), 429.

⁶² Hogg and Scott, *Op. cit.*, 16.

⁶³ Joy Damousi, *Depraved and Disorderly. Female convicts, Sexuality and Gender in Colonial Australia* (Cambridge University Press, 1997), 31.

In 1831, Robert Espie, the surgeon aboard the *Elizabeth*, wrote that 'I saw clearly I had committed an error by being too lenient, I therefore prepared myself with a good stout piece of rope and when I thought they deserved it, I whipped them

Mary Thompson received 25 lashes when she was found guilty of drunkenness and insolence in 1788, and this appears to have been the most commonly issued punishment for women.⁶⁴ However, punishments in excess of 25 lashes occurred with some regularity. In January 1789, Rebecca Holmes was sentenced ‘to receive 50 Lashes, 20 on the E. side (of the town), 20 on the W. side, and 10 at the farm’ for the purchase of stolen goods.⁶⁵ The interesting nature of Rebecca’s punishment, where lashes were to be administered in different parts of the settlement, aimed at serving as an example to the greatest distribution of convicts. This supports Evans and Thorpe’s belief that floggings were an ‘exemplary exercise before captive convict audiences...orchestrated, even formal rituals...which observed certain repetitive procedures...a calibrated process of administering pain’.⁶⁶ In January 1789, Amelia Levy, accused of the theft of a white linen shift, pleaded guilty and was sentenced to ‘fifty lashes, at the Cart’s Tail, three successive Saturdays, while the Provisions are issuing’.⁶⁷ Her very public flogging not only served as a deterrent to the maximum number of witnesses, but enabled her one day of recovery before returning to work on Monday.⁶⁸

Elizabeth Fowles, found guilty of the theft of clothing and provisions in June 1789, was sentenced ‘to be publickly flogged with fifty Lashes, for three successive Thursdays; to have her Head shaved and to wear a Canvass Cap with the word THIEF on it’.⁶⁹ Joy Damousi believes that the punishment of head shaving reinforced particular ideas about gender.⁷⁰ She

most soundly over the arms, legs and back and this was continued...till I had conquered every refractory spirit among them’. He added that ‘the government of New South Wales was perfectly satisfied with my conduct in every particular’.

"Medical and surgical journal of the female convict ship Elizabeth from 29 April 1836 to 24 October 1836," UK Royal Navy Medical Journals, The National Archives, 1836, <https://discovery.nationalarchives.gov.uk/details/r/C4106573>.

⁶⁴ Bench of Magistrates, INX-11-3850, p. 85, 29 August 1788.

⁶⁵ Ibid, INX-11-1968, p. 122, 3 January 1789.

⁶⁶ Raymond Evans and Bill Thorpe, "Commanding men: Masculinities and the convict system," *Journal of Australian Studies* 22, no. 56 (1998): 24—25.

⁶⁷ Bench of Magistrates, INX-11-1141, p. 131, 17 January 1789.

⁶⁸ "Jewish Convicts on the First Fleet," *The Australian Jewish News* (Melbourne), 22 January 1988, p. ii.

⁶⁹ Bench of Magistrates, INX-11-2871, p. 188, 25 June 1789.

⁷⁰ Joy Damousi, "Chaos and order: Gender, space and sexuality on female convict ships," *Australian Historical Studies* 26, no. 104 (1995): 352.

saw it as a 'theatre' that 'engendered feminine humiliation and shame'.⁷¹ It also elicited a particularly hostile response amongst women, given that it 'humiliated, defeminised and desexed them', violating their femininity.⁷² Evans and Thorpe state that women with shaved heads, caps and chains, attracted male derision and raillery, which became an 'important psychological part of the women's punishment'.⁷³ This jest and sarcasm aimed to 'apportion further humiliation upon the disgraced women'.⁷⁴ Arthur Bowes Smyth, when detailing the corporal punishments used aboard the First Fleet transports, stated that having their 'hair cut off and their head shaved' was a punishment the convict women 'seemed to dislike more than any other punishment they underwent'.⁷⁵ In 1866, an article described hair cropping as 'the severest punishment of all given that it not only deprived the woman of their most cherished natural ornament, but it branded them as infamous...and rendered them objects of ridicule and derision'.⁷⁶

Sentences were carried out as soon as they were read out, although at times the more complex punishments required more time to execute.⁷⁷ The governor also had it within his power to alter the sentence awarded by the court. Ann Smith Powell, who was found guilty of insolence and abuse, was sentenced to 'be flogged through the camp'. Her court papers were marked 'The sentence remitted', and signed by 'A. Phillip'.⁷⁸ In the case of the death sentence, remissions were also occasionally extended by the governor.⁷⁹

⁷¹ Damousi, "Chaos and order: Gender, space and sexuality on female convict ships," 352.

⁷² *Ibid.*, 371.

⁷³ Evans and Thorpe, "Commanding men: Masculinities and the convict system," 29.

⁷⁴ *Ibid.*

⁷⁵ Smyth, *A Journal of a Voyage from Portsmouth to New South Wales and China - in the Lady Penrhyn, Merchantman - William Cropton Sever, Commander. 1787—1789*: 66.

⁷⁶ "Life on Board a female Convict Ship," *The Englishwoman's Domestic Magazine* 1866, vol. 1, 311–17, <https://books.google.com.au/books?id=sBwGAAAAQAAJ&printsec=frontcover#v=onepage&q&f=false>.

⁷⁷ Cobley, *Sydney Cove 1788*, 70.

⁷⁸ Bench of Magistrates, INX-11-2717, p. 60, 14 June 1788.

⁷⁹ For example, on 29 February 1788, Daniel Gordon, found guilty for stealing 5 bottles of 'the wine of Teneriffe', was sentenced to death, but pardoned on 1st March 'on condition of...residing during the term of their natural lives in some one or other of the islands dependent on this Territory'. On 4 June 1788, Gordon was fully pardoned due to 'difficulties...in the execution of the conditional pardon' and the fact that he had 'since...manifested a deep sense of the heinousness of the crime'.

Ann Davis. A woman ‘generally reviled and unpitied by the people of her own description’.

The first and only woman to be executed during the period under study was Ann Davis (alias Judith Jones), a repeat offender who was found guilty on 21 November 1789 of ‘feloniously breaking and entering’ and stealing a variety of clothing ‘against the peace of one said Lord the King, his Crown and Dignity’.⁸⁰ She had been transported to the colony for feloniously stealing eight pairs of silk stockings, to the value of eight shillings. In the colony, Davis had been twice brought to trial prior to her hanging offence. In January 1789 she was charged with stealing a white shirt, but was acquitted, and in February 1789 Davis received 25 lashes for creating a disturbance.⁸¹ There was no trial for this offence, rather it was a summarily administered punishment for what was deemed a minor infringement not warranting trial.

During her final trial, Ann declared that she was with child but, after examination by ‘a Jury of twelve Matrons’, this was declared to be untrue.⁸² The significance of this early use of a jury of matrons cannot be underestimated. Dr. Rachel Franks emphasises that ‘the jury of matrons were the first civilians to participate as jurors in a criminal trial in New South Wales’.⁸³ Described by Collins as ‘twelve of the discreetest [sic] women among the convicts, all of whom had been mothers of children’, the matrons’ assessment of Ann’s pregnancy status

Cobley, *Sydney Cove 1788*, 90, 93, 160.

⁸⁰ The next execution of a woman was in July 1799, when Elizabeth Jones, a second fleet convict, was hung for murder. Her body was handed over for surgical dissection.

"R. v. Davis [1789] New South Wales Supreme Court 5. Court of Criminal Jurisdiction, Minutes of Proceedings, Feb. 1788 to Oct. 1794, State Records N.S.W., 1147A ", (<https://peopleaustralia.anu.edu.au/uploads/obituaries/30703/ann-davis-1789-trial.pdf>).

⁸¹ Bench of Magistrates. INX-11-1968, p. 122, 3 January 1789. In her defence, Ann stated that the shirt had been given to her ‘to pay her for several things...and that she took it accordingly’.

Cobley, *Sydney Cove, 1789-1790*, 11. Summary punishment administered under her alias, Judith Jones.

⁸² “R v Davis [1789] New South Wales Supreme Court.

⁸³ Rachel Franks, "The first woman hanged in Sydney," in *Dictionary of Sydney* (Sydney: State Library of New South Wales, 2020). https://dictionaryofsydney.org/blog/the_first_woman_hanged_in_sydney.

demonstrated a rare and noteworthy involvement of convict women in the normally patriarchal legal process.⁸⁴ Given that legislation allowing women to serve on juries in New South Wales was not approved until over a century later, Ann's trial was a ground-breaking one.⁸⁵ Although it is difficult to ascertain the legal principle behind Davis' death sentence, her hanging appears to have resulted, not so much from the theft of clothing, but rather her attempt to '[in]criminate another person', namely a free man who worked on the vessel *Sirius*.⁸⁶ Jacob Nagle, another seaman aboard the *Sirius*, wrote that 'She strove to bring a free man in guilty...it being proved by a number of witnesses that he was innocent. Otherwise, she might have been saved'.⁸⁷ David Collins added that before her execution, Ann acknowledged 'at that fatal moment...that she was about to suffer justly' and that her plea of pregnancy and her attempt to incriminate another were 'advanced merely for the purpose of saving her life'.⁸⁸ She died, according to Collins, 'generally reviled and unpitied by the people of her own description'.⁸⁹

Domestic disputes in early colonial courts

Also of significance, was the very first case heard before the Bench of Magistrates on 19 February 1788, in which Mary Jackson was accused of 'detaining' clothing 'the property of Edward Deane, a seaman of the *Lady Penrhyn*'.⁹⁰ Deane gave evidence that he had given Jackson the clothing to be washed, for which she was paid 'a Pound of Tea to vilify [sic] her for her Trouble and some Soap to wash them'. He stated that Jackson refused to return the

⁸⁴ David Collins, *An Account of The English Colony in New South Wales. With remarks on the Dispositions, Customs, Manners etc of the Native Inhabitants of that Country*, ed. Brian H Fletcher, 2 vols., ed. Brian H Fletcher (Sydney: A H & A W Reed, 1975), vol. 1, p. 70.

⁸⁵ Franks, "The first woman hanged in Sydney."

⁸⁶ David Collins, *An Account of the English colony in New South Wales*, vol. 1, p.70.

⁸⁷ Jacob Nagle, *Jacob Nagle his Book A.D. One Thousand Eight Hundred and Twenty Nine May 19th. Canton. Stark County Ohio', 1775-1802, compiled 1829* (State Library of New South Wales. SAFE/MLMSS 5954, Safe 1/156).

⁸⁸ Copley, *Sydney Cove, 1789-1790*, 115. Quoting David Collins.

⁸⁹ *Ibid.*

⁹⁰ Bench of Magistrates. INX-11-525, p. 1, 19 February 1788.

clothes to him and, when he returned, accompanied by a private marine, 'she gave up the Things first cutting or tearing the frock and throwing the other things out of the Tent'. It is apparent from the evidence that Deane and Jackson were, or had been, in a relationship, a fact confirmed when Jackson stated that 'he asked her often to go on board with him one night bringing a Hat & a great coat to take her in Disguise & that she refused to go with him & that in consequence of such refusal he came to demand his things off her'. Rather than a crime, this was a petty domestic dispute based on proprietary rights, and Jackson was rightly discharged. This case highlights that, once a charge was laid, a criminal hearing followed immediately, with little consideration of mitigating circumstances or the worthiness of the case for trial. As a result, a significant number of the cases analysed for this study, were discharged through mitigating circumstances, or a lack of evidence supporting the charge made against the woman.

In December 1788, Deborah Herbert accused her husband, John Herbert, 'of beating her without just cause'.⁹¹ *Herbert v Herbert* was the first case of domestic violence brought before the criminal court, and an excellent example of the ability of female convicts to instigate legal proceedings despite their status as convicts. John stated that when he returned home from work, his wife was at a neighbour's house and 'he found his Plants destroyed by some Pigs'. He added that Deborah 'provoked him very much with her tongue' and 'that 'he struck her, that she struck him – she continued for some time – that she went away & left him that she was absent all Night'. The verdict was for Deborah to receive 25 lashes and return to her husband.

This dispute was undoubtedly triggered by the destruction of the family garden, a vital resource in these starvation years. Whilst it is apparent that John blamed Debby for the damage, there is no indication that she was guilty of wilful neglect. Of interest is the fact that, when she emerged from the neighbour's house, John heard Debby state that 'she would go and blow her

⁹¹ Bench of Magistrates. INX-11-3493, p. 114, 5 Decdember 1788.

Gentleman up'.⁹² Michaela Ann Cameron, in her biographical analysis of Debby, believes that she 'was preparing herself for battle, coming out with all guns blazing, and probably not for the first time'.⁹³ John's response was to state that if she did try to 'blow him up...he would beat her'.

The evidence indicates that Debby refused to back down, continuing to 'provoke him very much with her Tongue', and retaliating when John struck her. Debby's determination not to suffer further abuse is further evidenced by her statement in court that 'she would strike him again were he as big as a side of a House if her struck her'. After her absence from the family home overnight, it was John who went in search of Debby, finding her 'in a Hut in the other Camp [and he]...drove her home'. The couple 'agreed to separate', but Cameron concludes that the relationship 'had already deteriorated significantly prior to the great pig invasion'.⁹⁴

Debby was, however, prepared to go one step further, laying a formal accusation of John 'beating her without just cause'. In so doing, she demonstrated resilience and courage in challenging a prevailing norm, namely the legal endorsement of a husband's right to beat his wife. There was a 'lingering belief...that men naturally occupied the position of authority in marriage and, as such, were entitled—duty bound even—to use 'moderate' or 'reasonable' force as necessary to 'chastise' and 'correct' their wives'.⁹⁵ Cameron emphasises, however, that wife-beating was illegal and that Collins' knowledge of the law was limited.⁹⁶ His verdict, in finding Debby the guilty party, punishing her with 25 lashes and forcing her to return to John, appears to demonstrate the disapproval that Collins – and by extension the colonial court – felt towards a woman challenging a man's rights within marriage.

⁹² Ibid.

⁹³ "Deborah Herbert: A Prigger of Toggery," St John's. The Gateway to Old Parramatta, 2018, accessed 2 October, 2024, https://stjohnsonline.org/bio/deborah-herbert/#_ftnref11.

⁹⁴ Cameron, "Deborah Herbert: A Prigger of Toggery."

⁹⁵ Ibid.

⁹⁶ Ibid.

Given that this was Debby's only encounter with the colonial courts, and that she was found to be the guilty party, it can hardly be claimed that Debby was a 'corruptive force'. A feisty and independent woman, Debby certainly defied the middle-class male's stereotype of the feminine, and this appears to have been sufficient to earn her 25 lashes. Cameron concludes her analyse by stating that 'on the whole, the colony...really was no place for a woman who resisted male control. Just as Debby had experienced, if a husband...could not put a wayward woman in her place for the sake of public morality, higher authorities were ever ready to step in'.⁹⁷

A month prior to Debby Herbert laying charges against her husband for abuse, Sarah Crowder was charged with causing a disturbance.⁹⁸ That disturbance consisted of Sarah calling out that her husband, Thomas, was beating her.⁹⁹ Thomas stated that Sarah, having had 'a little liquor', was noisy and would not be quiet. Sarah struck him and he struck her, with Sarah admitting in court that 'she had provoked her husband and that he struck her'. Thomas was reprimanded and discharged, whilst Sarah was sentenced to work for the government for a month. Mary Davis was charged with the assault of John Mara, a gunner on the vessel *Sirius* who, was 'accustomed to sleep' in her hut.¹⁰⁰ Davis was discharged when evidence was given that Mara had called her a bitch, and in reply she hit him over the head. Elizabeth Clark was charged with abusive language against Private William Norris.¹⁰¹ She was discharged when evidence was provided that Norris, whilst under the influence of alcohol, staggered up to Clark and, unprovoked, struck her on the left arm with a switch. She enquired why he struck her, then stated that if he struck her again, she would complain. He responded by calling her a 'bloody

⁹⁷ Ibid.

⁹⁸ Bench of Magistrates, INX-11-1897, p. 113, 27 November 1788.

⁹⁹ This case, whilst it occurred a month prior to *Herbert v Herbert*, did not involve Sarah bringing charges against Thomas for domestic violence. Sarah was charged with a crime and, whilst that crime was linked to domestic violence, it was not the first case of prosecution by a woman for domestic abuse.

¹⁰⁰ Ibid., INX-11-1985, p. 95, 27 September 1788.

¹⁰¹ Ibid., INX-11-1442, p. 38, 27 May 1788.

whore'. Demonstrating her refusal to be abused by Norris, she replied that 'she was no more a whore than he was a Bougre (Bugger)'. He then hit her over the head and filed a complaint against her. The evidence indicates that Elizabeth was the victim of abuse rather than a 'corruptive' force within Port Jackson society, having been falsely charged on the malicious word of Norris.

The case of Sarah Bellamy further exemplifies a woman marginalised by the androcentric colonial legal and social system. On the 15th August 1789, Bellamy was charged with 'disturbing the night'.¹⁰² That 'disturbance' comprised cries of 'murder' in the context of an attempted rape. The case was dismissed, but of interest is the fact that the man who forcibly attempted to enter her hut, Captain James Meredith, had no charges brought against him. This was despite comprehensive evidence suggesting that he was intent on forcing entry in order to commit assault. It is apparent that Meredith threatened Sarah, swearing that he would have his 'revenge' and that he 'would no more mind killing you than I would flying in the Air'. He then beat her and in response, both Bellamy, and the child who was with her in her hut, cried out two or three times. Bellamy stated that she was determined 'not to put up with unmerited treatment from Captain Meredith or any one else'.

Bellamy's case, her only colonial court appearance, has attracted a degree of historical notoriety. Extensive and comprehensive analysis has been undertaken into Bellamy's life and many articles and books written as a result. Historians, including Alan Atkinson, Thomas Keneally, Portia Robinson and Robert Hughes reference Bellamy, and an article by Nolan, Fernon and Kippen explores Bellamy's life and achievements, analysing her in relation to the demographic context of the eighteenth and nineteenth century convict system.¹⁰³ Nolan et al

¹⁰² Ibid., INX-11-2419, p. 210, 15 August 1789.

¹⁰³ Alan Atkinson, *The Europeans in Australia: A History*, vol. 1 (Melbourne: Oxford University Press, 1997), 137—38. Thomas Keneally, *Australians: Origins to Eureka*, vol. 1 (Crows Nest, NSW: Allen & Unwin, 2009), 1, 59, 65, 69, 99, 234. Robinson, *The hatch and brood of time: a study of the first generation of native-born white Australians, 1788–1828*, 77, 230.

state that, having been supported by ‘strong convict witnesses’, and having had her case dismissed, Sarah, ‘perhaps wisely, did not bring charges against Meredith’.¹⁰⁴ This assessment supports the power that males, and especially males of authority, wielded, but also the impotence of women, given the gendered biases of the legal system. Nolan et al add that, whilst we do not know why Meredith chose Bellamy ‘for his attempted assault’, it was possibly because she had given birth during the voyage to the colony, ‘and so was considered a loose woman by many males in the colony’.¹⁰⁵ They add that Bellamy’s response showed ‘that she did not see herself as such and was very much in control of her sexuality’.¹⁰⁶ The fact that Bellamy was believed and therefore her case dismissed was, according to Nolan et al, remarkable.¹⁰⁷

Atkinson concluded that ‘everyone, including Sarah Bellamy...realised that [Meredith] was not likely to be charged with any offence’, but that she did succeed in ‘humiliating him in front of his brother officers and (presumably) getting him a reprimand from his commanding officer’.¹⁰⁸ The greatest significance, according to Atkinson, was that Bellamy’s court case ‘helped to affirm the peculiar relationship which might exist between convict women and the law at Sydney Cove’.¹⁰⁹ In a penal settlement, he concluded, women looked to the courts ‘for a power which could over-ride that of the men they saw about them and which could protect them’, reinforcing their place in ‘an orderly community’.¹¹⁰ Atkinson’s conclusion appears to

Robinson, *The Women of Botany Bay: a reinterpretation of the role of women in the origins of Australian society*, 201.

Hughes, *The Fatal Shore: A History of Transportation of Convicts to Australia, 1797-1868*, 247.

Melanie Nolan, Christine Fernon, and Rebecca Kippen, "Sarah Bellamy, the women transported to botany bay, biographical genres and the 'Australian dictionary of biography'," *Australian Journal of Biography and History*, no. 4 (2020).

¹⁰⁴ Nolan, Fernon, and Kippen, op. cit., 62.

¹⁰⁵ Ibid., 69.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid., 71.

¹⁰⁸ Atkinson, *The Europeans in Australia: A History*, 1, 137.

¹⁰⁹ Ibid.

¹¹⁰ Ibid., 137–138.

rests on the fact that the court believed Bellamy's account of the incident and discharged her accordingly.

However, whilst Meredith may (or may not) have suffered humiliation, and 'presumably' received a dressing down from his superiors, he received no legal consequences as a result of his attempted assault. The courts undoubtedly failed to serve justice in this case. Meredith, whether by his gender, his privilege or his military position, was neither tried nor punished and, in neglecting to bring him to trial, the courts reinforced the powerlessness of convict women in general, and Sarah Bellamy in particular. Contrary to Atkinson's statement, the Bellamy case proved that, not only did a tension exist between the courts, free colonists of power such as Meredith, and the female convict population, but that this tension resulted in the failure of the courts to protect the colony's convict women and address the unfettered power and privilege of men of influence.¹¹¹

In August 1789, Mary Jackson – who charged her husband John Leary with beating her – also experienced the androcentric nature of the colonial court system. In Jackson's evidence she stated that she stood talking outside a hut where she had gone to light her pipe.¹¹² Her husband came and several times struck a man, Mr Bradbury, who was standing there. She went to move away when Leary 'followed her & knocked her down with a Stick (produced) which he broke upon her'. Bradbury supported Jackson's account, stating that after hitting him, Leary 'ran after the woman & beat her violently with the stick which he broke upon her'. Leary stated that he 'beat her for the provocation she had given him'. Jackson gave evidence that 'they have lived a very unhappy Life together'. She added that 'she gave him no reason to beat her so –

¹¹¹ The behaviour of Captain Meredith (at this time living with Mary Hughes who was pregnant with his child) was decidedly anti-familial and misogynistic. Meredith, who had a history of 'hard drinking', repeated antagonistic behaviour, and being brought before several court martials, was never punished in any way for his profligate behaviours. This supports Evans and Thorpe belief that, whilst stereotyping focussed on the heterosexual 'profligacy' of female convicts, men's heterosexual and sometimes lascivious behaviour went largely unrecorded, or was simply taken for granted as normative. Evans and Thorpe, "Commanding men: Masculinities and the convict system," 29.

¹¹² Bench of Magistrates, INX-11-1111, p. 197, 8 August 1789.

that she believes he was jealous of Bradbury. That this is not the first time she has been used ill by him but she never let it known'. The verdict of the court was that 'The Husband and Wife [should be] separated for a time'. Once again, the perpetrator escaped punishment and the court's decision, conscious or otherwise, reinforced the dominance of men within colonial society. Cases such as Bellamy's and Jackson's support Kirsty Reid's conclusion that relations between male and female were 'undoubtedly characterised at times by violence, force, coercion and bids for male domination'.¹¹³ In upholding societal patriarchy during sentencing, the courts succeeded in the legal and cultural marginalisation of women. It is vital therefore, to acknowledge that the existence of legal androcentrism contributed significantly to convict women being denied justice and equality according to contemporary standards. It also contributed to convict women often being regarded as recidivists rather than the aggrieved party.

A 'most detestable crime'. Colonial rape culture.

In its analysis of the response of the courts to cases involving domestic violence and the sexual assault of women, this study compliments that of Andy Kaladelfos, a criminologist who undertook the 'first systematic historical examination on the abandonment of sexual offence cases in common law jurisdictions'.¹¹⁴ His analysis, which focussed on the nineteenth and twentieth century, found that case discontinuation was, in theory, caused through individualised decision-making. In practice however, 'it appears that the decision to prosecute had structural bases in gendered and legal biases that were often conflated under the umbrella of complainant "credibility"'.¹¹⁵ Kaladelfos identified the first recorded case of *nolle prosequ*

¹¹³ Reid, *Gender, crime and empire: convicts, settlers and the state in early colonial Australia*, 255.

¹¹⁴ Andy Kaladelfos, "Gender, victimisation and prosecutorial discretion in the attrition of sexual offences," *law&history* 5, no. 2 (2018).

¹¹⁵ Kaladelfos, "Gender, victimisation and prosecutorial discretion in the attrition of sexual offences," 86.

(unwillingness to pursue), as that of *Munro v Boggis* in 1789, although his article contained no details in regards to that case.¹¹⁶

In September 1788, Lydia Munro appeared before David Collins and John Hunter having accused William Boggis with attempted rape and John Owen with aiding and assisting.¹¹⁷ Munro, accompanied by Elizabeth Cole, was going to bathe and the women were followed by Boggis and Owen. Owen openly stated that ‘he would have Connection with her before he went Home’, forcing Munro and Cole to attempt to escape. They could not, however, ‘get quit of them’ and ‘the Prisoner threw her down in the Woods amongst the Bushes’, demanding ‘Connection’. Despite her telling him to go away ‘or she would have him punished’, he persisted. On her screaming, a ‘Man came to her Assistance who drove him away’. Elizabeth Cole supported Munro’s evidence, adding that she had received a ‘Blow from Owen’ and ‘that Munro cried out & did everything that lay in her Power to resist Boggis’. Daniel Gordon, who had come to Munro’s defence, stated that he ‘found the Prisoner laying upon her, that he struck him with his Stick & bid him to get up. The Girl’s Petticoats were half up’. In his defence, Boggis stated that ‘it is not likely he should want to have Connection with the Woman when there [sic] two or three other People present’.¹¹⁸ Boggis was sentenced to receive 100 lashes, however his punishment was forgiven when, on Saturday 20 September, Boggis convinced the magistrates that Lydia Munro and Elizabeth Cole were considered prostitutes by other convicts. Both men were acquitted.¹¹⁹

¹¹⁶ Kaladelfos, "Gender, victimisation and prosecutorial discretion in the attrition of sexual offences."

¹¹⁷ Bench of Magistrates, INX-11-883, p. 92, 13 September 1788.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

"Andrew Goodwin : Lydia Munro," Descendants of those who arrived with the First Fleet in 1788 with Captain Arthur Phillip, First Fleet Fellowship Victoria Inc, 2012, accessed 4 October, 2024, <https://firstfleetfellowship.org.au/convicts/andrew-goodwin-and-lydia-munro/>.

This case has attracted little scrutiny, yet its implications are significant. Sir William Blackstone, whose book, *The Commentaries of the Laws of England*, formed the very foundation of colonial law, labelled rape a 'most detestable crime' which 'ought severely and impartially...be punished with death'. Blackstone also acknowledged the difficulties associated with proving guilt.¹²⁰ Rebecca Frances King's analysis of attitudes towards sexual consent in England during the period the First Fleeters resided there, concluded that 'the culturally constructed seventeenth and eighteenth century view of women favoured the acquittal of men accused of rape', given the 'belief that women lied about rape, and that women liked a bit of rough treatment'.¹²¹ Whilst there is little in the literature regarding a colonial prostitute's loss of legal rights in proved cases of rape, the case of *Munro v Boggis* supports Raelene Frances' statement that the 'epithet of "whore" was not just socially detrimental: it also had practical, legal, physical and financial effects'.¹²² It appears that merely being labelled a prostitute rendered female convicts particularly vulnerable, not only to gender and legal biases, but also to sexual abuse and harassment, given there was little risk of legal ramification for the perpetrator of rape. It must also be noted that *Munro* was apparently denied the opportunity to contest the accusation, made post-verdict, that she was a prostitute. Victim characterisation and typecasting alone was sufficient to influence the colonial court, serve as a barrier to an already determined conviction, and secure *Boggis*' acquittal. *Munro v Boggis* epitomised the colonial courts tendency to champion the rights of the accused in sexual offence cases, resulting in the legal trivialisation of rape, sexual harassment and violence

¹²⁰ "Commentaries on the Laws of England (1765-1769)," Lonang Institute, accessed 4 October, 2024, <https://lonang.com/library/reference/blackstone-commentaries-law-england/bla-415/>. Book 4, Chapter 15, Of Offenses Against the Persons of Individuals.

¹²¹ Rebecca Frances King, "Rape in England 1600-1800: trials, narratives and the question of consent" (Master of Arts Durham University, 1998), 140, https://theses.dur.ac.uk/4844/1/4844_2313.PDF.

¹²² Raelene Frances, *Selling sex: A hidden history of prostitution* (Sydney: UNSW Press, 2007), 31.

towards women in general and so-called convict prostitutes in particular. This legal facilitation of colonial rape culture served to validate a double-standard of sexuality, enhancing the likelihood of damage to a woman's reputation and an uncontested stereotyping of convict women as harlots.

The nature of colonial crime

Lydia Munro had been transported to New South Wales as a convicted 'prigger of toggery', a woman convicted of the stealing, and repurposing, of clothing and cloth.¹²³ Of the 193 convict women who embarked on the First Fleet, 29 per cent were, like Lydia, convicted of the theft of clothing or materials. Thirty-one per cent were found guilty of stealing items other than clothing (eg tea, household goods, cheese, a sheep, teapot and cups and alcohol); 9 per cent were convicted of burglary; 8 per cent were convicted of assault and robbery; 5 per cent of highway robbery; 4 per cent of receiving stolen goods; 1 per cent of perjury or forgery and 3 per cent had no crime recorded against their verdict. From these statistics it is apparent that stealing, including the theft of clothing and other goods including money, accounted for 70 per cent of convictions in England.¹²⁴

Of the 189 First Fleet women who disembarked in the colony, 40 or 21 per cent of women, were accused of at least one crime during the years 1788 to 1790. Seventy-two crimes in total were committed, with 18 women accused of more than one crime.¹²⁵ Of the 72 misdemeanours, a total of 18 or 25 per cent, were discharged or acquitted; five (7 per cent) were related to the shortage of food and supplies; 3 per cent were related to domestic violence

¹²³ Cameron, "Deborah Herbert: A Prigger of Toggery."

¹²⁴ Rob Mundle, *The First Fleet* (Sydney: HarperCollins Australia, 2014), 343—82.

¹²⁵ Statistics compiled by the author following analysis of the accusations and charges laid against, and by, the First Fleet women, 1788 to 1790 inclusive.

or assault; 7 per cent were related to neglect of duty and 26 per cent were behaviour-related, including disobedience, drunkenness, insolence or creating a disturbance. Separately, five women laid charges for abuse or violence committed against them by men. One woman was hung and 12 crimes were committed (16.5 per cent) that can be regarded as serious crimes including theft, supplying liquor and serious assault.

Of the women who committed serious crimes, including theft and assault, several were notorious reoffenders. In January 1789, Amelia Levy received 50 lashes for the theft of a shirt, a crime she acknowledged.¹²⁶ A month later, she was once again accused of stealing a shirt, but was discharged.¹²⁷ Amelia's third appearance in the courts was in November 1789, when she received 50 lashes for abusive language.¹²⁸ Amelia, an illiterate furrier of 19 when sentenced in 1787 to transportation for the theft of silk handkerchiefs, had been described as 'a loose girl' by her hut mate Ann Warburton.¹²⁹ There is no further record of Amelia reoffending after 1789.

Phoebe Flaherty was accused of five offences whilst in the colony. Her story has Dickensian overtones, and makes gripping reading. In England, Phoebe was, according to Mollie Gillen, a waif who roamed the streets around Piccadilly, selling pins and matches. Part of a gang of girls and boys – amongst them prostitutes, shoplifters and pick-pockets – who lacked the skills to make a decent living, they 'took any opportunity to pick up money or goods that could be pawned for money'.¹³⁰ At the age of 15, Phoebe was found guilty of the theft of three muslin shawls and was 'rounded up for the Fleet at the last moment', a victim of the attempt to gain greater gender balance in the colony.¹³¹ Phoebe's life of petty crime, poverty and the fight for survival undoubtedly served as a foundation for her colonial recidivism. In

¹²⁶ Bench of Magistrates, INX-11-1141, p. 131, 17 January 1789.

¹²⁷ *Ibid.*, INX-11-1142, p. 145, 24 February 1789.

¹²⁸ *Ibid.*, INX-11-1047, p. 240, 14 November 1789. Indexed under the name Amelia Lacey

¹²⁹ "Jewish Convicts on the First Fleet," 22 January 1988, p. ii.

¹³⁰ Gillen, *The Founders of Australia*, 128–29.

¹³¹ *Ibid.*, 128.

June 1788, whilst drunk, she was charged with the theft of clothing, then discharged.¹³² In September 1788, she and three other convict women, were charged with abusive language.¹³³ Phoebe acknowledged her guilt, swore she would not do it again, and was discharged. Of this crime, Gillen states that all four of the women ‘were hardly more than children’, although Gillen also notes that Phoebe was undoubtedly ‘a high-spirited girl’.¹³⁴ In October 1789, Phoebe and Ann Mather, each received 25 lashes for the theft of pork, a crime likely driven by starvation.¹³⁵ In March 1790, Phoebe was transferred to Norfolk Island, where she committed her last two colonial crimes. In April 1790 she received 25 lashes for ‘suffering the Hoggs to get into the garden’, and in October 1790 received 26 lashes for ‘coming into town...Repeatly [sic] without leave’.¹³⁶ After 1790, Phoebe became a partner to William Welsh, one of the Piccadilly gang she had belonged to in England as a child. Between 1791 and 1815, Phoebe had seven children to two partners, marrying in 1810 and dying in 1817 aged 44 years. Her colonial story typifies that of the multi-faceted convict woman, one who transcended her criminal background of petty crime to prove herself a resilient woman of diverse colonial experience.

More severe punishment should indicate crimes of greater severity. In 1789, Amelia Levy received fifty lashes for ‘uttering scandalous and abusive language to Serjeant Clayfield’. In her defence she denied using any bad language and stated that the working party under Clayfield’s supervision was pelting her with stones.¹³⁷ The case appears to have been a miscarriage of justice, given that the mitigating circumstances were ignored. In March 1789, Elizabeth Kellyhome was ordered 50 lashes for insolence and drunkenness and Mary Marshall

¹³² Bench of Magistrates, INX-11-2809, p. 58, 13 June 1788. Indexed under Phoebe Flaherty.

¹³³ Ibid, INX-11-2813, p.95, 27 September 1788. Indexed as Phebe Flarity.

¹³⁴ Gillen, *The Founders of Australia*, 129.

¹³⁵ Bench of Magistrates, INX-11-2810, p. 231, 7 October 1789. Indexed as Phoebe Flaherty.

¹³⁶ Clark, op. cit., 159, 209.

¹³⁷ Bench of Magistrates, IVX-11-1047, p. 240, 14 November 1789. It is possible that this was a racial attack, given that Amelia Levy was of Jewish background.

also received 50 lashes for being in possession of a soldier's property.¹³⁸ Catherine Smith was given 50 lashes for 'leaving her farm without permission' and 'being very inpertent [sic]'.¹³⁹ In 1789 whilst on Norfolk Island, Elizabeth Pipkin received 36 lashes for 'infamous behaviour'.¹⁴⁰ Elizabeth Stringer was administered 50 lashes 'for leaving Smiths Farm without leave and coming in to Town to one of the Seamen'.¹⁴¹ Tamasin Allen was sentenced to 50 lashes for her theft of cabbages, whilst Charlotte Ware received a total of 55 lashes for beating Ann Thornton and being insolent to her.¹⁴² Certainly, Ware's beating of Thornton qualifies as assault and, as such, a serious crime, however it of interest that the Bench of Magistrates records list it as a summary punishment, with no hearing and no opportunity to provide defence or call witnesses. Crimes dealt with summarily appear to have been regarded as minor offences. Whilst the above-listed cases were given heavier punishments, the evidence does not support the prevailing stereotype of these First Fleet women being vicious, irreclaimable or perverse.¹⁴³ It appears that this clichéd portrayal of women appears to have been based on what Lucia Zedna describes as 'a highly artificial notion of the ideal woman – an exemplary moral being'.¹⁴⁴ Convict women, through their occasional venture into petty crime, their drinking, impertinence and preparedness to challenge prevailing norms of legal disempowerment, deviated from the stereotypical ideal woman, and their flawed characters were blamed.¹⁴⁵

Disorderly and drunken

¹³⁸ Cobley, *Sydney Cove, 1789-1790*, 18, 11.

¹³⁹ Clark, *op. cit.*, 280.

¹⁴⁰ *Ibid.*, 202.

¹⁴¹ *Ibid.*, 222.

¹⁴² Bench of Magistrates, INX-11-3458, p.139, 7 February 1789. Not indexed but appearing at the bottom of hearings held on that day.

Ibid., INX-11-348, p. 151, 5 March 1789. Indexed only under surname Allen.

¹⁴³ Robinson, *The Women of Botany Bay: a reinterpretation of the role of women in the origins of Australian society*, 44.

Sturma, "Eye of the Beholder: The Stereotype of Women Convicts, 1788-1852," 3.

¹⁴⁴ Lucia Zedner, "Women, crime, and penal responses: A historical account," *Crime and Justice* 14 (1991): 308.

¹⁴⁵ Zedner, "Women, crime, and penal responses: A historical account," 308.

As well as being labelled vicious and corrupt, convict women were also stereotyped as ‘disorderly and drunken’.¹⁴⁶ Marilyn Lake refers to the female convict as an ‘enthusiastic participant in working class pleasures’ such as smoking, drinking, singing and laughing.¹⁴⁷ The evidence from this analysis of First Fleet female recidivism indicates that some First Fleet women were indeed partial to gatherings, partaking in alcohol and smoking their pipes in their spare time. Of the 72 crimes that the First Fleet women committed during the period 1788 to 1790, at least 14 occurred when under the influence of alcohol. Sarah McCormack, whilst ‘in liquor’, was charged with striking a soldier;¹⁴⁸ Ann Martin was twice arrested for alcohol-related issues, firstly in 1788 for drunkenness and then in 1789 for creating a disturbance at night;¹⁴⁹ In March 1789, Elizabeth Callaghan was sentenced to fifty lashes for insolence and drunkenness;¹⁵⁰ when Phoebe Flaherty was arrested on suspicion of the theft of clothing in June 1788, she had been put ‘to bed, being in liquor’ by her friend Ann Smith, who then left her tent to join friends and ‘make merry’;¹⁵¹ Mary Davis was charged with assault when two soldiers came to her hut with ‘grog’. When her partner objected to his sleep being disturbed and called her ‘a Bitch’, she ‘broke a bottle over his Head’;¹⁵² Sarah Crowder was charged with causing a disturbance after having been given ‘a little liquor’ that ‘got into her head’;¹⁵³ Mary Cochran was twice charged with alcohol-related crime in September 1789 including drunkenness, rioting and causing a disturbance;¹⁵⁴ Elizabeth Clark was charged with using abusive language whilst ‘very much in liquor’;¹⁵⁵ In March 1789, Mary Dixon, Susannah

¹⁴⁶ Robinson, *The Women of Botany Bay: a reinterpretation of the role of women in the origins of Australian society*, 44.

¹⁴⁷ Marilyn Lake, "Convict Women as Objects of Male Vision: An Historiographical Review," *Bulletin of the Centre for Tasmanian Historical Studies* 2, no. 1 (1988): 45.

¹⁴⁸ Bench of Magistrates, INX-11-2419, p. 207, 15 August 1789.

¹⁴⁹ *Ibid.*, INX-11-1545, p. 84, 23 August 1788.

Cobley, *Sydney Cove, 1789-1790*, 24.

¹⁵⁰ *Ibid.*, 18.

¹⁵¹ Bench of Magistrates, INX-11-2809, p. 58, 7 June 1788.

¹⁵² *Ibid.*, INX-11-1985, p. 95, 27 September 1788.

¹⁵³ *Ibid.*, INX-11-1897, p. 113, 27 November 1788.

¹⁵⁴ Cobley, *Sydney Cove, 1789-1790*, 94, 96.

¹⁵⁵ Bench of Magistrates, INX-11-1142, p. 38, 27 May 1788.

Mason and Mary Slater each received twenty-five lashes for supplying liquor to Elizabeth Callaghan.¹⁵⁶

Ann Farmer was charged with drunkenness and riotous behaviour in August 1788.¹⁵⁷ Farmer, who was aged 63 at the time, was found ‘very much in liquor’ and crying in her tent when the guards arrived. She ‘refused repeatedly to stir out of her Tent’. She was left there until morning, then charged. Farmer’s evidence revealed that her hut had been destroyed by a tree falling on it and that all the building materials, ‘which cost her many Days Provision’ had been stolen. The thieves came again in the night ‘and beat her so violently that her Clothes were all covered in Blood’. She could not accompany the soldiers to the guard-house because ‘she had much Property in her Tent, which she was afraid of losing’.¹⁵⁸ Portia Robinson discusses Farmer’s case in light of her ‘overindulgence in liquor’, stating that it typified ‘the problems intoxication added to [Governor] Phillip’s attempts to maintain order and regularity in the infant settlement’.¹⁵⁹ It is perhaps fairer to regard the drunkenness as the response of a relatively elderly woman to the traumatic events of losing her home and possessions and then being assaulted. When these mitigating circumstances are considered, Robinson’s conclusion that Phillip was ‘lenient’ in discharging her case seems inappropriate.¹⁶⁰ Farmer’s behaviour was more reactive than riotous, and her discharge appropriate, given the mitigating circumstances.

Whilst there were fourteen liquor-fuel crimes that occurred in the period under analysis, it must be remembered that this only equates to fourteen incidents over almost three years. Given that even minor charges feature in this study, due to the scholarship of Copley and the

¹⁵⁶ Copley, *Sydney Cove, 1789-1790*, 18.

¹⁵⁷ Bench of Magistrates, INX-11-2476, p. 78, 2 August 1788.

¹⁵⁸ *Ibid.*

¹⁵⁹ Robinson, *The Women of Botany Bay: a reinterpretation of the role of women in the origins of Australian society*, 167. It must be noted that Robinson wrote this in 1988, the very beginning of the movement to cast a different perspective on the reputations of convict women. Her comments reflect the era in which they were written.

¹⁶⁰ *Ibid.*

persistence and determination of Ralph Clark in recording the convict women's misdemeanours, it is likely that the majority of instances when women attracted the attention of authorities and suffered legal ramifications due to drunkenness are captured in these statistics. Given that four of the fourteen cases were dismissed, the evidence fails to convincingly support the allegation that the First Fleet women were, as a whole, drunken and disorderly.

Minor infringements

Several crimes warrant specific comment for being minor infringements. Elizabeth Jones (alias Evans) was convicted of not attending church, and in punishment had two pounds of flour stopped from her ration.¹⁶¹ On Norfolk Island, Phoebe Flaherty received 25 lashes for allowing hogs into a garden and, six months later, received 26 of the 50 lashes ordered for coming into town without leave.¹⁶² According to Gillen, these were 'less crimes than the picadilloes of a light hearted child'.¹⁶³ Likewise, Norfolk Island resident Elizabeth Stringer showed disobedience for coming into town without leave and meeting up with a seaman.¹⁶⁴ It is interesting to note, that on Norfolk Island an unnamed male convict received just five lashes for coming into town without leave, a much lesser sentence than the women received for the same crime.¹⁶⁵ Elizabeth Haywood's only colonial crime was giving insolence to her employer, the Rev. Johnson. For this she received 30 lashes.¹⁶⁶ In October 1790, Charlotte White received six lashes for telling a lie and Mary Marshall, who was accused of using infamous expressions,

¹⁶¹ Cobley, *Sydney Cove, 1789-1790*, 296.

¹⁶² Clark, *op. cit.*, 159. 'Punished Elish. Breezes and Philbay Flattery to women Convicts with 25 Lashes Each for Neglect of duty by Suffering the H

Ibid., Wednesday 6th 1790, p. 209. 'Phoebe Flattery a Female Convict Punished at Charlotte Field with 26 Lashes for coming into town from there Repeatly without Leave – She was ordered 50 but on her promise of not to doe the like again the Remainder were forgiven her'.

¹⁶³ Gillen, *The Founders of Australia*, 129.

¹⁶⁴ Clark, *op. cit.*, 264, 222.

¹⁶⁵ *Ibid.*, 200.

¹⁶⁶ Bench of Magistrates, INX-11-3458, p.139, 7 February 1789. Not indexed but appearing at the bottom of hearings held on that day.

received 25 lashes.¹⁶⁷ Ann Martin was found so drunk that she could hardly stand. Her punishment was to make roofing pegs for one month.¹⁶⁸

Rebecca Davidson gave evidence in the trial of Ann Davis, who was accused of theft of a shirt and, at the end of the hearing, Davidson received fifty lashes.¹⁶⁹ Her evidence stated that she had purchased the shirt 'thinking she came honestly by it'. No justification for the sentence is included in the trial and it can only be assumed that her evidence implicated her for receiving stolen goods. Davidson was sentenced before a military court without having been charged of a crime. She was not informed of the nature of the crime for which she received punishment and was prevented from being able to provide witnesses or have the opportunity of a defence. As such, Rebecca Davidson was undoubtedly denied the 'fair and impartial trial which justice demands'.¹⁷⁰

Conclusion

This article is the first detailed analysis of the recidivism of First Fleet women between 1788 and 1790. Legal decisions such as that pertaining to Rebecca Davidson, epitomise the challenges faced in a penal colony with a primitive legal system under male, military control.¹⁷¹ Transcripts of court hearings, which were run by military men with little legal training, lacked insight into the legal reasoning behind sentencing and, in some cases such as Davidson's, the accused was denied the basic right of defence. The foundational years of the Australian

¹⁶⁷ Clark, *op. cit.*, 212.

Cobley, *Sydney Cove, 1789-1790*, 11.

¹⁶⁸ Bench of Magistrates, INX-11-1545, p. 84, 23 August 1788.

¹⁶⁹ *Ibid.*, INX-11-1968, p. 122, 3 January 1789. Indexed under Ann Davis.

¹⁷⁰ David Plater and Victoria Geason, "'The prisoners could not have that fair and impartial trial which justice demands': A fair criminal trial in 19th century Australia," *Canterbury Law Review* 25 (2019). Quoting the "Alleged Murder of Mr Kinder," *Empire* (Sydney, 19 December 1865) p. 3.

¹⁷¹ Kercher, *An unruly child: a history of law in Australia*, 214–17.

Bruce Kercher, "Recovering and Reporting Australia's Early Colonial Case Law: The Macquarie Project," *Law and history review* 18, no. 3 (2000): 659.

settlement were a period of experimentation in the rights and responsibilities of the convict order. Convict women were legally micro-managed in all aspects of their behaviours, whilst often having their basic legal rights neglected. A number of the cases analysed for this paper indicate that the early colonial justice system was characterised by what we perceive today as perverse verdicts and unjust punishments, influenced not only by paternalism and androcentrism, but hasty legal hearings conducted without thought to realistic trialability.

The evidence suggests that proportionally few females reoffended during the first three years of settlement, despite the challenge, hardship and starvation of these early days of struggle.¹⁷² In ‘a place of unremitting brutality, tyranny and depravity’, just 72 crimes were committed by 40 of the 189 First Fleet women.¹⁷³ Only one woman, Ann Davis, was hung. Eighteen of the 72 cases were discharged, and at least five convictions appear, by today’s standards, to represent wrongful conviction. Only twelve of the cases, therefore, can be regarded as serious crimes within the colonial context.

A number of convict women attempted to assert their right for legal protection against assault, rape and abuse. Instead of receiving appropriate legal redress, there is evidence of the legal facilitation of a colonial abuse and rape culture, and that the fundamental rights of women labelled as prostitutes were blatantly ignored. In this way, women experienced legal disadvantage and inequality based on their social status and gender, resulting in powerlessness. This in turn raises questions in relation to the protection of women’s legal rights and the morality of the British empire, whereby males, be they free or from the convict order, escaped legal repercussions for overtly criminal acts.

¹⁷² Hill, *The making of Australia*, 21—37.

¹⁷³ Hogg and Scott, "Masculinity, sexuality, and violence in the Australian convict colonies," 7.

The legal evidence disproves the stereotype that these First fleet convict women were ‘vicious characters’, ‘a corruptive force’, ‘habitual and recalcitrant offenders’ or ‘disorderly and drunken’.¹⁷⁴ Rather the women attempted to survive these harsh, early colonial years using the finite resources available to them. This conclusion supports the assessment of the colony’s first governor, Arthur Phillip who, in November 1791, wrote that ‘I can still say with great Truth and equal Satisfaction, that the Convicts in general behave better than ever could be expected, & that their Crimes, with very few Exceptions, have been confined to the procuring for themselves, the common necessaries of Life’.¹⁷⁵

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The author has no legal training or experience. This article is intended as an historiographical analysis, rather than a legal one.

About the author

Dr Narissa Phelps has a PhD in history from Griffith University. She now works as an independent researcher and writer, with a focus on the earliest years of colonial settlement, 1788-1810. She is currently researching probate records 1790 to 1820, as well as making an analysis of the colony’s first petitions, written between 1788 and 1810.

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¹⁷⁴ Robinson, *The Women of Botany Bay: a reinterpretation of the role of women in the origins of Australian society*, 44. Robinson writes that ‘A minority of the women selected for transportation in 1787 were such vicious characters as to support the belief in Britain that the convict women were irreclaimable.’

Sturma, "Eye of the Beholder: The Stereotype of Women Convicts, 1788-1852," 3.

Casella, "'Doing trade': A sexual economy of nineteenth-century Australian female convict prisons," 219.

¹⁷⁵ *Historical Records of New South Wales, Vol 1, Part 2, Phillip, 1783–1792*, (Sydney: Government Printer), 537. Governor Phillip to Lord Grenville, Sydney, New South Wales, November 5th, 1791.

