SECONDARY PUNISHMENT IN THE PENAL PERIOD IN AUSTRALIA 1788–c. 1850

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> Though man is greater than bird or beast,
> Though wisdom is still his boast,
> He surely resembles Nature least,
> And the things that vex her most.
>
> Henry Lawson: *May Night on the Mountains.*

The history of punishment has many aspects of medical and legal interest. My present viewpoint is somewhat unconventional. That it may be appreciated, I must begin by summarising my concepts of medical history and the role of the historian of medicine; I apologise to those who have heard or read of this before. In any given society, health and disease and the interplay between them are the result of environmental influences, both physical and social (the latter comprehending cultural and psychological components as well as physical factors). Medical history, in the technical sense, is merely the record of disease and death, or of medical and scientific progress, perhaps also of the methods of providing health and medical care. This kind of history is not difficult to compile and it has considerable value, mostly to "health professionals". On the basis of my initial proposition, I believe medical historians have a responsibility to go further; they must offer an interpretation of the history of medicine in terms of the environmental influences. By way of rather simplistic illustration, it is desirable, if not obligatory, to explain variations in indices of disease (such as mortality rates in relation to age and sex) in environmental terms, whether one is concerned with lung cancer, suicide or malingering. The same applies to demographic indices, such as birth rates and life expectancy tables and it should also be applied to the provision of health services, to the prevalence of compensation claims (and their magnitude), or to the psychological aberrations of "bikies".

There is also a significant corollary to the proposition that the health status of a community is the product of interacting physical and social environmental forces: it offers a means of testing a

hypothesis. It is inconceivable that the medical and social history of a community can be divergent or contradictory; the two must be consistent. Social history which is not firmly based on epidemiology and vital statistics, perhaps also social psychology, may be usefully descriptive but it is necessarily superficial and sometimes merely anecdotal. More than this, particularly in extreme situations such as famine, war, totalitarian oppression, economic depression or cultural repression, the medical history of a community may provide the vital clue to its attitudes. I imagine that most of you, if asked, would reflect the now well-indoctrinated view that starvation was the major cause of mortality in the first five years of Australian settlement—that is, of course, if you were taught any Australian history, while if you have learned it recently from one authoritative source, you will be unaware that the prospect of death often dominated the community's thoughts—but the mortality, at one stage, reached the same fearsome levels as in the worst periods of the Great Plague of London and, several times, the mortality of the influenza pandemic of 1919 (which caused panic enough in relatively sophisticated communities). The truth is that the mortality was never lower than during the protracted periods of semi-starvation in the first settlement at Sydney. Mortality was confined to selected groups and selected periods and it was not due to starvation, nor to any single, specific disease. To take another example, the humanitarian administration of Captain Maconochie on Norfolk Island: in evaluating its success or otherwise, could it be relevant that in the "new" prisoners specifically allocated to his new system the mortality and morbidity from dysentery reached quite extraordinary levels, appalling to Maconochie himself, whereas this disease was unimportant in those "old hand" convicts? Could it be significant that both the prevalence and the manifestations of malingering in the prisoners were quite different during his administration than they were before or after him?

At best Australian historiography tends to underestimate historical data from medical, scientific and even technological fields, whilst at worst it ignores or misinterprets them. At the same time, I acknowledge that until recently the specialist has made little effort to present his material in a form which demands or challenges the attention of the general or social historian. I am sure that the analogy between legal history and medical history will not have escaped my legal colleagues: few historians of the law in Australia, as far as I am aware, have ventured far beyond the confines of the technical evolution of the law to ask what were the environmental factors which determined it, which ones influenced its practice, which determined its social impact and which led to change.

And so, what is my interest in punishment? My introductory historical philosophy was not without purpose for, in considering secondary punishment[1] in the penal era, I am concerned with precisely the principles which I have outlined. A very high proportion of the Australian population—it is difficult to give a precise estimate, but perhaps a third or more—in the mid-nineteenth century had been subjected to secondary punishment, or the constant threat of it, or else a parent had been. Did this experience influence the national character, attitudes to society, to work, politics, religion or even to change of any kind in the social order and mores?

I shall not attempt to answer this question this evening but I propose to examine some relevant aspects in an exploratory rather than definitive fashion. We shall look at the attitudes to punishment of authorities with Australian experience, at some of the physical and psychological aspects of the common secondary punishments and, by way of contrast, at the system adopted on Norfolk Island by Captain Maconochie.

The Attitudes of Some Authorities

The views of Governor Arthur Phillip, the first and most outstanding leader in this country's history, deserve some consideration, especially as he adopted the unique approach of greater severity towards the gaolers (marines and seamen) than towards the convicts: never again was the discipline for the gaolers as great as for their charges. Although not established with certainty from the records, it seems that his greater leniency to the convicts became apparent on the voyage out: there are hints (but no more) in the journals of the marines, Sergeant Scott and Easty, and the naval officer, Bradley. According to G. B. Worgan and A. Bowes, surgeons with the First Fleet, Phillip, in his initial address to the convicts early in February, indicated that leniency had failed. In future, justice would take its course inexorably and crimes, such as the theft of provisions, would inevitably be punished with death. This was at variance with his view on capital punishment before the Fleet set sail: "Death", he wrote, "I should think would never be necessary." Only sodomy and murder would merit this punishment, but he proposed that for these crimes the criminal should be delivered to the natives of New Zealand, and "let them eat him. The dread of this will operate much stronger than the fear of death". Thus, although humane and even lenient to a fault, he held to the conventional concept of punishment as primarily a deterrent. In spite of his unequivocal statements after the experience of the voyage and a few days of settlement at Sydney Cove, he did

reprieve some convicts sentenced to death for thefts; as Lieut. Bradley sceptically put it, "instead of meeting the fate they deserved, they received an extraordinary mark of the Governor's lenity". In March 1789 he had no hesitation in hanging six out of seven marines (the seventh was the informer) who conspired to rob the government stores. "There was hardley a marine Present but what Shed tears offacers and men" said Pte. Easty. But this was a later event. Reverting to February 1788, Surgeon Bowes became critical of the discipline when a marine "got amongst the women" and beat one of the most infamous of them, with whom he had formed a connection on the voyage out. For this he received two hundred lashes, but a convict who had struck a sentry on duty got only one hundred and fifty: "The Severity shown to the Marines and Lenity to the Convicts has already excited great murmuring and discontent . . . & where it will end unless some other plan is adopted, time will discover". His criticism became even more severe when Phillip summarily, and perhaps rather arbitrarily, ordered fifty lashes for a seaman who had traded with a convict, not knowing this to be a crime. Bowes observed: "Marines and sailors are punish'd with the utmost severity for the most trivial offences, whilst the Convicts are pardon'd (or at most punish'd in a very slight manner) for Crimes of Blackest die", contrary to the Governor's promise in his address. No good effects could proceed from "such an inconsistent & partial mode of acting."

There is no doubt that this differential treatment was a matter of deliberate policy on Phillip's part and, indeed, this emerges from observations made by Collins in February and March 1789. I believe the reasons are not far to seek. In my view:

> Because of the special responsibility in setting and maintaining standards which he (Phillip) expected of the marines, they were punished more severely than the convicts, with whom there was nothing to lose, and possibly something to gain, through leniency; the calculated risk of offending some of their officers had to be taken. Destruction of the settlement would assuredly follow if the marines or soldiers failed . . . his security risk lay with the military and its morale.

It must also be kept in mind that the commanding officer of the marines, Major Ross, was proving difficult and even unco-operative; to a lesser extent, so were some of his officers.

What could happen in other circumstances is illustrated in 1796 by the affair of John Baughan, an ex-convict master carpenter, whose house and furniture were partly destroyed, and Baughan himself attacked, by several soldiers of the New South Wales Corps (also mostly ex-convicts), an expression of what might be termed a long-standing

difference of opinion. Baughan, understandably frightened, was loth to take any action, but Surgeon Balmain, in his capacity as a magistrate, urged him to take out a warrant against the intruders. This action prompted Captain John Macarthur, an argumentative and unlovable character, and his brother officers to abuse Balmain for interfering in Corps affairs. The incredible upshot of this was the noble challenge of all those gallant officers to Balmain to "give him satisfaction" in succession! Governor Hunter ultimately intervened, got an apology from Macarthur and his colleagues and pardoned all concerned, an act the Duke of Portland considered to have been weak—and rightly so, although with no support from his military establishment it is not easy to see what Hunter could have done. Balmain was also dissatisfied, referring in 1798 to "the feeble efforts" of Hunter to restore "that system and method" which had characterised Phillip's governance. Phillip had ensured that no such florid insubordination could take place, possibly thus providing an example of punishment as a deterrent, but more likely it was simply the deterrent effect of firm leadership. Incidentally, it was during Hunter's governorship that two unusual forms of secondary punishment were employed; a man guilty of manslaughter was sentenced "to be burned on the hand and imprisoned for 12 months", while three perjurers were sentenced to stand in the pillory, "to which, as an additional punishment, their ears were to be nailed". As a further indication of the decline in morality and penal discipline after Phillip, one may note that in 1800 and again in 1802 Governor King was obliged to issue a general order prohibiting officers and others from summarily horsewhipping their convict servants for "real or supposed offences". He also set the punishment for a convict striking a free man at two hundred lashes, and for a free man striking a convict at two pounds and a bond to keep the peace—an inevitable change of emphasis by comparison with Phillip.

Although in some respects Phillip's attitude towards secondary punishment may seem ambivalent, the measure of his success lies in the survival of the settlement in the face of extreme adversity and isolation, the installation of a will to live in the First Fleet convicts (nearly ninety per cent were alive after six years in his care) and, with some reservations concerning more recent arrivals in the Third Fleet, the relatively good behaviour of most of the convicts. Phillip would have agreed with another distinguished penal governor, George Arthur, that the prevention of crime amongst convicts was better achieved by "affording them no opportunities for indulgence" than by inflicting harsh punishments: "I do not imagine that any severity, . . . that any system of punishment whatever, will deter men from crime

merely through fear." Another of Arthur's views would also have met with Phillip's approval: "coercive measures must be bounded by humanity; if they are not, the criminals are driven into a state of mind bordering upon desperation". Let us now consider the methods which did drive the convicts to this state, a state often so extreme as to deny the principle of self preservation.

Physical Punishments and their Effects

By far the commonest form of punishment was flogging and its incidence rose to incredible proportions at certain periods, particularly in New South Wales and in the secondary penal settlements. Worgan was the first of a series of surgeons to indicate its futility as a deterrent, either collectively or in the individual: "I believe the Devil's in them and can't be flogged out."[2] Over the years similar views were expressed by numerous administrators, clergymen and even convicts (who sometimes conceded its deterrent effect until such time as the prisoner had received his first flogging, after which he was careless of more). The flogging of women (on the breach, which proved embarrassingly impractical at certain times, as Surgeon Bowes noted) was stopped by English law in 1791; but women were stilled flogged naked at Norfolk Island some fifteen years later. The number of lashes which could be ordered was limited to three hundred in 1812 but flogging, although less often used, was not abolished for most offences until the 1870's. It does not seem that the limit of three hundred lashes was observed in Moreton Bay c. 1825-1830, but Governor Darling then limited commandants to a penalty of one hundred lashes in one day. In New South Wales in 1833, summary punishment by magistrates for a first offence was laid down as a maximum of fifty lashes, with a discretionary power to order less. The measure proved controversial. The *Currency Lad*, a newspaper which was not entirely unsympathetic to the convict's lot, inveighed against this "false notion of leniency" on the grounds that with the modern instrument fifty lashes was equivalent to only twenty-five in the (good?) old days, the convicts held a mere twenty-five lashes "in perfect contempt", and it would be merciful in the long run for a first offence, however trivial, to incur the "certain visitation" of fifty lashes (18 May 1833). At this period, an allegation of neglect of work, speaking disrespectfully or not touching the hat to a superior could earn a flogging; even suspicion of committing a crime in a secondary penal establishment, or the schoolboy crime of hands in pockets, invited severe retribution. It seems probable that the separate issues of leniency and of ineffectiveness were confused, deliberately or otherwise, for there was suffi-

cient evidence, not only expert opinion but also statistical and biographical data, to indicate that corporal punishment did not prevent crime in Australian penal establishments, whatever its alleged prophylactic value in a "normal" community. As far as I know, nobody in Australia objected to flogging on the same simple grounds as Sir Charles Napier, in his essay on military law (1837): it was torture "of a very unequal infliction". The most cogent evidence to indicate its uselessness is provided by the introduction of other methods of punishment, which certainly were torture. This related particularly to secondary penal establishments, where corrupting power was in the hands of one man remote from higher authority. Very often, these punishments were associated with flogging carried to an extreme, doubtless stemming from administrative frustration, but possibly contributed to by the military backgrounds of most of the commandants of secondary penal establishments. To them, flogging was a routine and accepted punishment for quite minor disciplinary breaches and they probably failed to understand the different social environments of the convict and the soldier. Alexander Maconochie, the penal reformer and former naval officer is, I believe, the only contemporary authority to have drawn attention to this difference:

> "It is very remarkable how much more Prisoners are injured by flogging than Sailors and Soldiers. So many circumstances attending the latter sustain their self-respect, that the Evil is thus partially neutralized. Sailors also bear no Grudge against the Boatswain's mate who flogs them, even less than the Soldiers against their Drummer; the necessity of Discipline is more familiarly brought home to their Understandings, and their Instinct is thus to support it. But a Scourger amongst Prisoners is the vilest of the vile . . . the Instinct (and there is often much Reason in Instincts) is among the whole Body against the present System of Discipline in every Form, and this one especially."

It is significant that Maconochie used the term "injured" to comprehend the psychological consequences of flogging. Maconochie may well have had in mind the oft-quoted remark of an incorrigible offender who observed to Judge Therry "When I landed here I had the heart of a man in me, but you have plucked it out and planted the heart of a brute in its stead." Therry knew the lash made men more recalcitrant; of the bushrangers in his experience there was not one "who had not been over and over again flogged before he took to the bush". As another convict put it, victims of multiple floggings "entirely forget themselves *as men*, and . . . indulge in everything that is odious and execrable". To do Governor Macquarie justice, he

established gaol gangs "for the purpose of avoiding, as much as possible, the necessity for resorting to corporal punishments", although the local magistrates (including the noted Dr. H. G. Douglass) felt that these gangs were not an effective deterrent—the labour was too light and the food too generous!

The gaol gangs (essentially supervised day labour, with nights spent in barracks) were amongst the alternatives to corporal punishment. They belong to a group of punishments which might be termed legitimate and to which I can give only brief mention. Others were consignment to road or ironed gangs (involving hard labour, and often incarceration in a cage or box at night on limited rations), solitary confinement (often implying little light, air or food, as well as too little space to move and no sanitary facilities), ration restriction (often on a background of chronic malnutrition), banishment (to Pinchgut Island in Sydney Harbour, or Phillip Island off Norfolk Island), and consignment to hazardous, unpleasant or noxious occupations (carrying lime, coalmining). The proportion of floggings in the total number of punishments tended to decline in favour of solitary confinement and chain gang servitude during the 1830's, suggesting that the futility or undesirability of corporal punishment was being appreciated. A more or less arbitrary extension of the original sentence, or of the period before a ticket-of-leave could be acquired, was often associated with any conviction, while the latter could be lost for any misdemeanour or indiscretion and some secondary punishment substituted. Late in the penal era the "silent system" was imported from England, but I do not think it was then extensively used except as part of the "separate system" for a period at Port Arthur. Judge Therry saw the arrival at Port Phillip of prisoners from Pentonville managed by this system, and although some had benefited, its disadvantage was

> " . . . strikingly observable . . . It . . . unfitted them for domestic and general service. It imparted to them abstracted and eccentric habits; for instance, when alone, they spoke imaginary dialogues aloud, supplying questions and answers, as if some other person was present . . . in other respects their conduct impressed the medical profession that this silent system had seriously impaired the mental faculties . . .".

Of all these punishments, perhaps solitary confinement received the most support as an alternative to corporal punishment. The Quakers, James Backhouse and G. W. Walker, considered it one of a number of beneficial measures which had "greatly disarmed them (convicts) of that desperation of character, which prevailed under a

more rigorous discipline" with greater recourse to the lash. Widespread adoption of solitary confinement was difficult without accommodation, so that in Norfolk Island, for example, it meant a much worse punishment than the term suggests.

I have described these punishments as legitimate in a humane rather than a legal sense, to indicate punishments which were reasonable in principle in the context of the times. The illegitimate means were torture techniques, and they were born of the deterrent philosophy and the frustration induced by the failure of conventional methods, including flogging, completely to repress insubordination. Already in 1788, David Collins was referring to the difficulty of devising punishments appropriate to the crime, especially for the women, for whom shaving the head was as much of value as other techniques intended to engender shame. But Collins realised that punishments of this type lacked impact on a homogeneous community composed of wrong-doers, and I imagine that the stocks (first used for a drunken settler in 1792) to be seen in an early print of Parramatta failed for the same reason.

An ingenious device for providing unfailing hard labour was the treadmill, which was accepted in England and elsewhere as "legitimate" from about 1818. The device was like a water wheel but wide enough for a row of perhaps twenty convicts to stand side by side on each "paddle". When a bolt lock was removed from the machine it began to rotate and there was no alternative for the convict, steadying himself by means of a fixed horizontal handrail, but to step onto the next blade as his feet fell away from him. It seemed perpetual motion, onwards and upwards, six-inch steps, sixty-four steps a minute, about fifteen minutes rest an hour, a climb of 12,000 feet per day, requiring an expenditure of energy which was rarely, if ever, equalled by the daily calorie intake. The manpower was usually directed towards grinding grain: half a ton weekly was produced in Sydney in 1840 and distributed to the poor. I never see the mill at Wickham Terrace, Brisbane, without thinking of the men who powered it, as owing to faulty construction wind would not turn the sails. "An excellent punishment", observed a relatively enlightened commandant at Port Macquarie in 1824, which "may terrify the Idle, while it inures him to the Fatigue of industrious Occupation, to which he was perhaps, before unaccustomed". Nevertheless, the same Commandant Rolland was ahead of his time in preferring incentives as a stimulus to work in preference to punishments for its neglect. I believe that one (unstated) reason for the treadmill's popularity was the psychological escape route which it offered to the authorities—superficially, it was not a form of direct physical torture.

Frank torture reached its most sophisticated development in the secondary penal establishments, notably Norfolk Island, Moreton Bay, Macquarie Harbour and Port Arthur, but the first mention of it is by Surgeon Bowes during the First Fleet's voyage to Botany Bay. Those irrepressible, irreclaimable, virulent viragoes, the ladies in the *Lady Penrhyn*, were sometimes punished with thumbscrews. Later, chains, leg-irons and spiked neck collars, introduced in 1791 for "flagrant offenders", all of varying weights, were commonplace and might be worn for almost indefinite periods. Chains came to symbolise Australian felonry as Wentworth's "Australasia" records:

> " . . . the outcast convict's clanking chains Deform thy wilds, and stigmatize thy plains."

The tube-gag was held in position with straps, often causing bleeding and oral ulceration; the surgeons considered its use for eight hours of the twenty-four enough. The bridle was a similar instrument, a metal head frame supporting the gag; Norfolk Island had its own variant, which covered the mouth with leather, leaving only a small breathing orifice. Hanging the subject up by the thumbs for some hours was also employed at Norfolk Island, probably with a wooden peg below one foot to take part of the weight, as in the army punishment of picketing. The spread-eagle is a self-explanatory term; the arms "were painfully stretched out to ringbolts". A new instrument of torture, named "the stretcher", was an iron frame, like a bedstead, with transverse bars about a foot apart; the convict was lashed to this on his back and left with his head hanging unsupported over the end. The straitjacket was also employed; in one notorious case a man suspected of tampering with his eyes was put on an iron bed in a jacket and left thus for about a fortnight; when he attempted to complain of the pressure sores on his back, he received a flogging for insolence. This case history illustrates the significant point that torture is not simply a matter of the physical means employed; there is the inevitability, the duration, the knowledge that one punishment is almost certainly to be followed by another. There are indications also that, as in mediaeval times, "punishment" was used in an attempt to obtain information. Convicts were easily punished more than once for the same offence, with or without due "legal" processes. It is also important to remember that often secondary punishments led to some extension of total sentence. The legality of this procedure is, I understand, debatable, but the illegality of some of the other practices is undeniable, in spite of their everyday occurrence. Inevitably, there were gross inequities; there was little concern for justice, or equitable punishment, real or even apparent, for such concepts were not for the

convict classes, at least those who were reconvicted of offences in this country. The same punishment at Macquarie Harbour may have been a totally different proposition at Moreton Bay, if only for climatic reasons. There were also, for example, the assigned servants: on the surface, they could not be punished except on a magistrate's order and they had the right to complain to a magistrate of harsh treatment from a master. However, master and magistrate might be one, or at least they were neighbours, colleagues and friends, with the mutual obligation to support a social system and maintain a united front. Casual indeed were some of the court proceedings, if such they may be termed; the outcome of up to fifty lashes was virtually predetermined. The convict reaction may be seen in reliable accounts of "fixed" floggings, after which theatrical performances the policeman, the flogger and the flogged retired to the nearest hostelry for a commemorative glass. But this practice was never so widespread as to defeat the system and assigned service remained a sheer lottery.

Reverting to the harsh discipline and intolerable punishments of the secondary penal establishments, I wonder what was the psychology, or psychopathology of those gaolers? They believed, almost to a man, that punishment was good for the individual and for society, it was good both for prevention and cure. Faced with the failure of conventional methods, what alternative was there, other than an unlikely questioning of the underlying dogma, but to increase the punishment? Were they not, therefore, acting normally in the environmental circumstances, reflecting, as a result of some natural selection, one end of a distribution curve of the cruelty in all of us? Power and isolation enhanced opportunity but taken alone are scarcely sufficient to explain the relative uniformity of pattern in the several settlements under many commandants, most of whom seem to have pursued normal enough military careers in other respects. There were of course periods of strict but fair control. The most radical and benign reformer of all, Alexander Maconochie, acknowledged that towards the end of his administration he was obliged to use more corporal punishment; the reasons are complex, but the fact that this idealistic man had to do so implies the presence of strong environmental factors which even he could not counter. Inhumanity was practised by both the highest and the lowest (both convict and free overseers could behave barbarously), and the one could not have achieved its ends without the willing collaboration of the other; the problem cannot be dramatised as a segment of class warfare. The system obviously gave scope to the sadist, but I find it hard to accept that so many people were "abnormal" or psychopathic.[3] The difficulty here is that I do not know how to define sadism or a sadist other than by reference to the

effects. Perhaps it is sadism if a man sets out to control another man's mind, as well as his body, by means of physical torture, and this was, whether admitted or not, the real objective. Marcus Clarke's description of the two kinds of madmen at Port Arthur suggests surprisingly rational reactions to years of persecution: "they cowered and crawled like whipped foxhounds to the feet of their keepers, or they raged howling blasphemies and hideous imprecations upon their gaolers." One may well ponder on what less florid psychological manifestations remained with those who survived their trial by ordeal to regain their freedom. Elsewhere, I have related both the prevalence and the manifestations of malingering to the severity or otherwise of the penal environment.

My own conclusion, and I invite expert comment, is that the gaolers were mostly "ordinary" men with firm beliefs and a faith in their objectives; placed in an adverse environment, remote as much from help as from criticism, they reacted predictably in the only way they knew. I do not believe human nature has changed over the few thousands of years of recorded existence; it could happen here again, even as it has happened, indeed, is happening, elsewhere.

It would be wrong to conclude this summary review of the most unsavoury part of our history without reference to the consistent and active antagonism to the brutality shown by ministers of religion, Protestant, Catholic and Quaker. A number of them emerge with immense credit and their contemporary accounts are invaluable to the historian. The surgeons were less vocal (and less organised) as a profession, but as individuals (at least on Norfolk Island, whose history I am most familiar with) they were usually humane, they effected some control over the extremes of punishment, and they frequently protected individual convicts from further punishment. The administrators and officials came a poor third; few were as enlightened as Captain Tench, who wrote of the first settlement that "punishment, when not directed to promote information, is arbitrary, and unauthorized". Perhaps here we have an indication of the influence of pre-existing beliefs or concepts on the behaviour of three professional groups theoretically with similar objectives placed in the same environment.

The Physical Effects of Flogging

I have one more morbid subject to discuss before concluding on a happier theme and that is to look at the physical effects of corporal punishment. The reason for the examination is not so morbid, in that if we have some appreciation of the physical effects we are at least in a better position to hazard an informed guess at the likelihood of

psychological sequelae—and these, as I have indicated earlier, are the more important to an evaluation of Australian social history.

There are some graphic accounts of floggings, but I forbear to describe one beyond drawing an analogy with a Test Match on your local village green, with Dennis Lillee about to bowl the first ball, the surgeon and other performers in their appointed positions, the policeman about to call the score, and the convict spectators. The most detailed personal account of the effects is not Australian but British army in origin: it is too long to quote, beyond the effects of the first stroke. "I felt an astounding sensation between the shoulders, under my neck, which went to my toe nails in one direction, my finger nails in another, and stung me to the heart, as if a knife had gone through my body." He suffered two hundred lashes and, after initial recovery, he developed "boils" where the knots had cut the flesh; neither he nor the attending surgeon saw any causal relation. The cat was not of course sterilised; between operations it may have been soaked in salt water and dried in the sun. Between strokes it was usually drawn through the left hand of the scourger to wipe off any accumulated blood or other matter which might spatter the onlookers. Many fine points of technique, style and timing are recorded. Under the initiative of Sir Richard Bourke, the instrument itself was produced in a superior and standardised version in New South Wales c. 1833: the handle length was increased to two feet, there were five lashes of whipcord each with six or seven knots. Mr. Slade, the designer and then superintendent of the Convict Barracks at Sydney, boasted that twenty-five lashes under his supervision were worth a thousand "under any other person's hand", since those hands were sometimes bribed.

In 1833, after the introduction of the standard instrument, the Government instituted a prospective survey over a month; the magistrates were personally to superintend floggings, and answer specific questions notably regarding the visible signs of bodily suffering.[4] Mr. Slade furnished a comprehensive report, based on eighty cases. It transpires that approximately eighty-eight per cent developed lacerated backs (after an average of thirty lashes), blood appeared in seventy per cent (after an average of twenty-one lashes) and flowed freely in twenty per cent. Only Windsor bettered this performance: ninety-five per cent were lacerated and eighty per cent bled (after only nine lashes). For Maitland the comparative figures were sixty-seven per cent and twenty-nine per cent, while Parramatta and Bathurst recorded laceration rates a little above fifty per cent. Of fourteen cases at Stonequarry, "most did not suffer" and only one or two bled. Fainting occurred in only about two per cent of cases where

the data are sufficiently detailed. From the information provided by Slade, about a third of the adults cried out greatly during the procedure; of those never previously flogged, about half cried out, compared with only a third of those with previous experience of the punishment. Although the series was small, Campbelltown seems to have been the safest place to be flogged; only five per cent bled freely, but in most cases the back "assumed a deep purple colour . . . and there was a breach of the surface over the greater part . . . which might be termed 'raw', but no blood flowed." The magistrate conceded that the punishments were less severe than at Sydney, possibly because "that peculiar art in the flourish of the scourge", employed there and in the army, and adding greatly to the pain, had not been acquired at Campbelltown. Backs neither lacerated nor bleeding were described as "livid", while at the other extreme Slade noted that in one case "the skin was decidedly flayed off" after fifteen lashes, although the convict received the prescribed twenty-five without complaint.

There is only passing reference to the treatment of these lesions. After twenty-five to fifty lashes, the assigned convict was expected to walk home to work on the same or following day. In some secondary establishments, the flagellated were allegedly set to work carrying lime or chained to the bar of an open pepper-grinding mill, but evidence for this kind of refined torture is not conclusive. Saline, Goulard's lotion (containing lead) and, at Moreton Bay, banana leaves are recorded as dressings. After the harsher punishments, especially in the secondary penal establishments where the convicts must often have been malnourished, emaciated and vitamin-deficient, admissions to hospital were frequent (ninety-seven per cent of those flogged at Port Arthur in 1840), complications must often have developed, and both immediate and delayed deaths are occasionally recorded. There are accounts of a convict at Port Macquarie giving the scourger his day's ration to carry him to hospital, and of convicts carrying their mates to Sydney Hospital from the triangle around the corner. Occasionally in the convict literature the suggestion is made that repeated severe floggings impaired the sensation of pain, but I am unsure that this would be so unless after very severe and extensive trauma. Of one man, who received 2000 lashes in three years, at Norfolk Island in the time of Foveaux it was said that his back was quite bare of flesh, and "his collar bones were exposed looking like two ivory polished horns". Two men, who had had 800 lashes, had backs devoid of flesh, and one was a mass of sores; the doctor decided more flogging would be injurious. The endurance of pain was surely largely psychological in the "old hands", who were not expected to wince; the incidence of crying out in one series from a

secondary establishment was only about seven per cent, far lower than in the groups I have mentioned earlier.

Captain Maconochie's "Marks System of Prison Discipline", Norfolk Island, c. 1842

It may be refreshing to conclude this review with a summary of our study of a far more lenient administration. Curiously, J. V. Barry's thorough examination of Maconochie and his era does not refer to an important document which allows us not only to observe his system in operation, as it were, but also to assess statistically the possible influence of a variety of convict characteristics.

A list partly in Maconochie's handwriting (State Archives, N.S.W.: CSIL with 41/9309 in 4/2566) records approximately six hundred and twenty male prisoners assigned to the "new" system of penal reform on Norfolk Island during his administration. It sets out for each man, *inter alia*, the marks he had earned, the marks he had lost by fines for misbehaviour and a note on character. To this may be added for each individual the conventional information recorded in the convict ship indents. Statistical analysis of these data provides objective information not only on the functioning of the system but more particularly on the factors influencing convict behaviour. The marks credited (on a weekly basis) are related to time and occupational responsibilities on the Island, while they are adversely affected by fines incurred and also by any allowable expenditure (which cannot now be estimated). The fines incurred are not correlated with time on the Island and not directly related to the other factors influencing marks. Attention is therefore directed primarily to the distribution of fines as represented in frequency (prevalence) histograms. Comparisons may be made between a subgroup and the population as a whole, or between subgroups based on defined characteristics.

Age exerted a major influence, nearly ninety-five per cent of those under nineteen years being fined by comparison with only sixty per cent over forty years; the peak of the histogram also shifts progressively towards the left (lower fines) with increasing age. Maconochie's character estimates (classified arbitrarily into five grades from excellent to bad) are reflected in a progressive shift of the distribution curve to the right (higher fines) with a similar shift in the peak; his assessment is independent of the fines in the sense that it was not determined by specific numerical values.

In spite of their older age, those with poor health, mental problems and disability were by no means protected from fines, although their income in marks was reduced. The Irish or Catholic convicts

were fined a little more often than the English or Protestant, but the differences were small and absent in relation to heavy fines. Ability to read and write, longer sentences, professional or tradesman status prior to conviction, and especially supervisory or skilled postings on the Island, had some favourable influence on behaviour in terms of fines. Unfavourable influences were previous convictions, tattoos and single marital status, although the unmarried men included the undisciplined youths.

The analysis suggests that Maconochie's system was applied in a rational or meaningful manner; character and age emerge as the major factors in behaviour. The distribution curves for fines in relation to almost all the characteristics studied are smooth although skewed, with little to suggest definable, or separable, groups of very well-behaved and very badly-behaved convicts.

Conclusion

This review has ranged over a wide field, but I have not attempted to answer my query as to the influence which secondary punishments and their sequelae may have had on later Australian ways. Perhaps I may refer you to John Shaw Nielson's moving *Ballad of Remembrance*, of which I quote only a few lines:

> The man he said, "I may be dull, you speak of English Law,
> Would you so love it had you seen the shameful thing I saw?
> For me that back is always bare, those wounds are always raw."
>
> . . . . "England", I said, "is strong, she does the little nations shield",
> And the man he said, "Some things there are that never can be healed."

1 I am not concerned with primary punishment (transportation) which was of course a pre-existing fact of Australian convict life.

2 One later surgeon had a qualification; attorney's clerks caused a lot of trouble, and he had "invariably found that flogging a lawyer has a wonderful effect in preserving order among the other prisoners".

3 Doubtless some were. Publicly parading naked women before flogging them, as practised in Norfolk Island, seems beyond any reasonable norm in the first decade of the nineteenth century. The commandant, Foveaux, and his chief gaoler were each blamed for this but both, as well as other officials, must accept responsibility.

4 If this matter should appear to be dealt with somewhat lightly, I do so rather to cloak a contrary emotion.