

The Western Australian Convicts

(a crucial phase in the British convict transportation phenomenon)

ABSTRACT

Much has been handed down about the severity and iniquities of the Australian convict system, but much has been falsely mythologized. The Western Australian period of British convict transportation, 1850 – 1869, was one with rehabilitation rather than retribution as its central tenet.

This paper is an encapsulation of the main points contained within a PhD thesis which argues that the new environment played a considerable role in modification of attitudes and behaviour among the convicts, even among the formerly most intransigent. The convict experience in Western Australia proved to be, economically and socially, a positive and progressive phase for both the free and bond elements within that struggling embryo society.

The arrival of the first convict transport ship *Scindian* off Fremantle, Western Australia, 1 June 1850, not only brought 75 convicts from Portsmouth but with them came a new era in convict administration, a far cry from the transportation system which had its provenance during Elizabethan times.

Although the 9,500 British convicts who were sent to the Swan River Colony between 1850 and 1868 may seem insignificant against the 150,000 who were sent to New South Wales and Van Diemen's Land between 1788 and 1853, the Western Australian experience has an importance beyond mere numbers. It proved to be a revolutionary bridge between the iniquities of many past practices and what was to come in more modern times. A far more benign, positive approach to penal administration was implemented, the core elements of which are still with us today – a rehabilitation rather than retribution philosophy.

Alexander Maconochie arrived in Van Diemen's Land with John Franklin's entourage in January 1837. He subsequently wrote a *Report on the State of Prison Discipline in Van Diemen's Land*. It was published as a parliamentary paper and used by the 1837 Molesworth Committee investigation into the transportation system.¹ One of the committee's findings had been, 'it is the restraint on freedom of action, the degradation of slavery, and the other moral evils, which chiefly constitute the pains of transportation, and of which no description can convey an adequate idea to that class in whom Transportation ought to inspire terror.'² The report ventured the opinion that, 'the Assignment System was insufficient as a deterrent from crime, remarkably efficient in further corrupting prisoners and encouraging the vicious propensities of those

1 John V. Barry (1967), Alexander Maconochie (1787-1860), *Australian Dictionary of Biography* – online edition; John Clay (2001), *Maconochie experiment: how one man's extraordinary vision saved transported convicts from degradation and despair*, London, John Murray Ltd, pp. 70-77.

2 Quoted in Ian Brand (undated), *Port Arthur, 1830-1877*, Hobart, Regal Publications. p. 4.

transported.’³ Van Diemen’s Land historian Ian Brand added, ‘It was the lottery of punishment which was objected to, both by the authorities and the convicts.’⁴

Maconochie was appalled at the assignment system. Convicts were allocated by Government to eligible settler applicants, free of charge. The convicts were not paid but the settlers were required to feed and clothe their assignees on government determined ration scales and provide accommodation for them, but Maconochie believed that the convicts were often worse off than negro slaves. ‘He saw the convict system as “cruel, uncertain, prodigal” and as bringing about neither reform nor example. It was maintained “by extreme severity” and by a “severe coercive discipline, which defeats, in consequence, its own important objects; instead of reforming it degrades humanity, vitiates all under its influence, multiplies petty business, postpones that which is of higher interest, retards improvement, and is, in many instances, even the direct occasion of vice and crime.”’⁵

Maconochie saw the paradox of punishment for past offences supposing to improve prisoners’ future conduct. His remedy was to separate the two. ‘Prisoners should be “punished for the past, and trained for the future” via a stage treatment process, a mark system for good behaviour, to finally be habituated to feel tolerably free.’⁶

Governor Arthur disagreed. He was in favour of continuing the established system. Nevertheless the report of the Molesworth Committee comprehensively condemned the practice. Two basic tenets were at the core of the report. Firstly, that punishment should not be vindictively conceived but should aim at the reform of the convict; secondly, it asserted a convict’s sentence should be indeterminate, with release

3 Quoted in Brand, *Port Arthur, 1830-1877*, p. 9.

4 Brand, *Port Arthur, 1830-1877*, p. 4.

5 Clay, *Maconochie experiment*, pp 70-71.

6 Clay, *Maconochie experiment*, p. 75.

depending not on the lapse of time but on his own industry and exertions during incarceration.

At the suggestion of the Molesworth Committee, Maconochie was appointed superintendent of the penal settlement at Norfolk Island in March 1840. Contrary to expectations, the period of his administration proved positive. Although he did not advocate a lenient approach he implemented a marks system for good work and behaviour.⁷ Those who accrued sufficient marks were accorded privileges such as swimming, the freedom to walk about the island and to make and maintain gardens. On a visit to the island in March 1843 Governor Sir George Gipps reported that he found good order prevailing everywhere. However, he expressed disapproval at the extent of the radical reforms and he thought, too, that the treatment of the convicts had become too soft.⁸ Old attitudes die hard.

After four years Maconochie was recalled by the Colonial Office. He proved to be a pioneer in penal reform and, as such, suffered the ‘slings and arrows’ of men in advance of their times, but his concepts and many of his practical measures are now the basis of modern Western penal systems. His thinking was to have, subsequently, a profound influence on convict administration in Tasmania and Western Australia. They were later largely adopted in the *Declaration of Principles* at Cincinnati, United States of America in 1870, embodying the fundamentals of modern penology.⁹

When C.J. La Trobe took over as Acting-Governor of Tasmania he reported to the Secretary of State, Earl Grey, in 1848: ‘In spite of all the superior arrangements of the system, vice of every description is to be met with on every hand; not as an isolated spot, but as a pervading stain.’¹⁰ He advocated change, and in consequence the system was

7 Alan Brooke and David Brandon (2005), *Bound for Botany Bay: British convict voyages to Australia*, Kew, Surrey, British National Archives, pp. 232-233.

8 W. Macdonald (1999), *Transportation Ends*, South Yarra, Macmillan Education Australia, p. 29.

9 Barry, Alexander Maconochie - Biographical entry, *Australian Dictionary of Biography* – online edition, p. 3.

10 *Australian Dictionary of Biography* – online edition, p. 104. The proclamation for the cessation of

modified. Prisoners were to serve a term in England and arrive in Tasmania with a probation pass, which entitled them to seek work and receive an increasing proportion of their earnings.¹¹

The following year the probation system was abandoned and the 'exile' system appeared. After landing, convicts were granted a ticket-of-leave which entitled them to a free life provided they reported periodically to a police magistrate. Under the exile arrangement, with fewer and a better class of transportee arriving in Tasmania, under a superior administration, the system improved almost out of recognition. When the time came for the transportation of convicts to Western Australia in 1850 a similar system was adopted. It reflected a more enlightened, humanitarian approach.

The infant Swan River Colony, founded in 1829, had struggled through the first two decades of its existence. Landowners began to talk of abandoning their enterprises. On 5 November 1848, Gerald De Courcy, who had leased a property with his brother at Springhill, near Northam, bemoaned the fact that the price of wool was awful.¹² On the 19 November he added: 'If the home government makes this a penal settlement we will remain here. If not, we will start God alone knows where. This place in its present state is too diminutive and grovelling to do anything in it. I hope they will; the sooner the better.'¹³ In a region where the primary pursuits were in agriculture the Swan River Colony was perilously close to disintegration. In desperation, many began to think of the unthinkable.

The Swan River colony had been founded on strong principles of free settlement. However, so desperate had circumstances become that many colonists began to agitate

transportation to Tasmania was issued in 1853 and the last ships arrived in 1854. In 1855 the island became independent of the Crown and the name 'Tasmania' was officially adopted.

11 *Ibid.*

12 Bruce and Anne Buchanan (eds.) (2003), *The Journal of Gerald De Courcy Lefroy*, Private Printing, pp. 136-138.

13 *Ibid.*

for urgently needed new sources of labour. Initially, however, there was strong resistance to the introduction of convicts. When Charles Fitzgerald replaced Governor John Hutt in 1848 the initiative gained momentum despite continuing ambivalence within the community. On 1 May 1849, an Order-in-Council was passed at Westminster nominating Western Australia as a place to which convicts could be sent from the United Kingdom.¹⁴ A late decision by the Secretary of State calmed the fears of many still opposed to the scheme. He declared that an equal number of free settlers to convicts would be sent out. The convicts would be solely in the control of the government for employment on public works. They would only be available to colonists for labour when they were free from the building of public roads, bridges and buildings.¹⁵

Several weeks later free settler J. W. Hardy protested:

This monstrous, insane, and outrageous act on the rights and liberties of a free people, is neither more or less than the resurrection of that beastly and unnatural monster, the Slave Trade.¹⁶

A letter from London, dated 20 December 1849, may well have soothed some of the heated objections. Earl Grey's secretary, B. Hawks, assured the inquirer that the intention was to furnish much needed labour to improve harbours, open new roads, cut valuable timber, extend public works and that it would be at the expense of the British Treasury. In order to achieve best results the convicts would be selected from those with good conduct records and that they would not be subject to any assignment system. In conclusion he stated that Grey hoped that the convicts would contribute greatly to the

14 J. S. Battye (1924 - facsimile edition, 1978), *Western Australia: A History From Its Discovery to the Inauguration of the Commonwealth*, Crawley, UWA Press, p. 207.

15 *Ibid.*

16 *Perth Gazette*, 30 November 1849, p. 2.

progress of the colony, eventually render the environment more attractive to free settlers of all classes and further the economy.¹⁷

The initial insertion of convicts into Western Australian colonial society was relatively untroubled. The system undoubtedly benefited from the lessons learned through experiences in the eastern colonies. In Western Australia there was no assignment to employers; convicts went to wide-ranging hiring depots and negotiated with prospective employers. This small degree of personal autonomy is notable.

Additionally, under the ticket-of-leave system the convicts were not at the mercy of their masters, although they were still under an inducement to behave well. Tasmanian convict historian Hamish Maxwell Stewart, in his paper 'Reckoning with convict workers in Van Diemen's Land', cites John West's observation in *The History of Tasmania*: 'True, he (the convict) was well fed, while many in England laboured hard, and yet went hungry and poor, but nothing reconciled the prisoner to his bondage; he compared his condition not with the British pauper, but [to] theirs who, though working in the same field, were masters of their own labour.'¹⁸ The Western Australian convict was able to negotiate with his prospective employer wages and conditions. To a considerable degree he became master of his own destiny after being granted a ticket-of-leave. Very importantly, coercion to work, with its inherent, consequent inefficiencies, did not apply to the extent it had done in New South Wales and Tasmania.

Additionally, by the time his ticket had expired the Western Australian convict was likely to have a little money and useful experience in the colony. With the high demand

17 *Western Australian Almanac*, 1849, p. 5

18 Hamish Maxwell-Stewart (1990), 'Reckoning with convict workers in Van Diemen's Land', Working Papers in Australian Studies, number 61, Sir Robert Menzies Centre for Australian Studies, Institute of Commonwealth Studies, University of London, p. 11; John West (1852; re-print 1966), *The History of Tasmania*, Launceston, Henry Dowling; Libraries Board of South Australia, Vol. 2, p. 231.

for labour, life was certainly more promising for them than for the free labourer back in England in circumstances of widespread national unemployment and destitution. For the next four years the assimilation of around 2,500 convicts into the fledgling society went relatively smoothly.

In 1853, however, Westminster's Penal Servitude Act (16-17 Vict. C. 99) abolished the sentence of transportation and inserted the term 'penal servitude'. The relatively minor miscreant, generally sentenced to 7 or 10 years incarceration, would now serve the period at home. However, those with more severe sentences (14 years plus) could continue to be transported.¹⁹ It was a decision based not so much on humanistic altruism but on the British Government's commercial labour necessities to maintain the all important docking and harbour facilities for its commercial and naval shipping fleets. The result was that the prisoners now sent to the one remaining colony taking transported felons, Western Australia, were men officially regarded as more serious criminals than those who had earlier made the long sea voyage to the Swan River. There was now the potential for visiting upon the peaceful, small colony a whole new range of social and administrative problems. An examination of the Tables B, D and E (pages 9 and 10) will show the very changed situation.

Combining three categories of sentence (crimes of violence, life sentences and repeat offending) many of the transports arriving at Fremantle after the invocation of the 1853 Penal Servitude Act, contained within their contingents a very high proportion of 'serious criminality.' Of the 268 convicts aboard the *Nile*, which arrived at the end of 1857, 33% of the group had originally been convicted of crimes of violence, 23.7% were repeat offenders and 73 had been given life sentences. Similarly, of the 191 strong Bermudan convict contingent which arrived in the *Merchantman* in February 1863, 134 had been either sentenced for crimes of violence, were 'lifers' or repeat offenders (that

19 The Penal Servitude Act 1853 (16 & 17 Vict. C.99), *The Short Titles Act 1986*, www.parliament.uk.

is a 70% 'serious criminality' 'rating'). There were variations. Within the *Belgravia*, which arrived in July 1866, of the 275 convicts aboard, 50 had been sentenced for crimes of violence, 10 had received a life sentence but 208 were repeat offenders. Altogether, a 'villainous' lot!

In the years that followed one would expect, in consequence, major problems as the convicts filtered into the general community. Remarkably, it did not occur! From within the *Nile* contingent only 18 were recorded as having subsequently re-offended in Western Australia.²⁰ None of the 77 'lifers' seriously re-offended and neither did any of those originally sentenced for crimes of violence. Of the 79 repeat offenders only 11 were re-convicted in W.A.²¹

From the *Merchantman* only 12 are recorded as having subsequently re-offended in Western Australia. Of the 54 men originally sentenced for crimes of violence, none re-offended and only one 'lifer' did so. Of the 41 repeat offenders aboard, only four were re-convicted. Similarly with *Belgravia* only 11 subsequently re-offended. Only one of the 50 sentenced for crimes of violence re-offended, none of the 10 'lifers' did so and of the 208 repeat offenders, 11 (5.3%) were subsequently recorded as re-offenders.²²

20 See statistical table B, D and E, Chapter Six. Note: The far greater number of minor offences, such as drunkenness and disorderly behaviour, were dealt with by local resident magistrates.

21 A re-conviction was for an offence serious enough to warrant a return to Fremantle Gaol.

22 Source: Fremantle Prison website – convict database.

Table B - Percentage of Convicts Sentenced for Crimes of Violence
Source: Fremantle Prison website

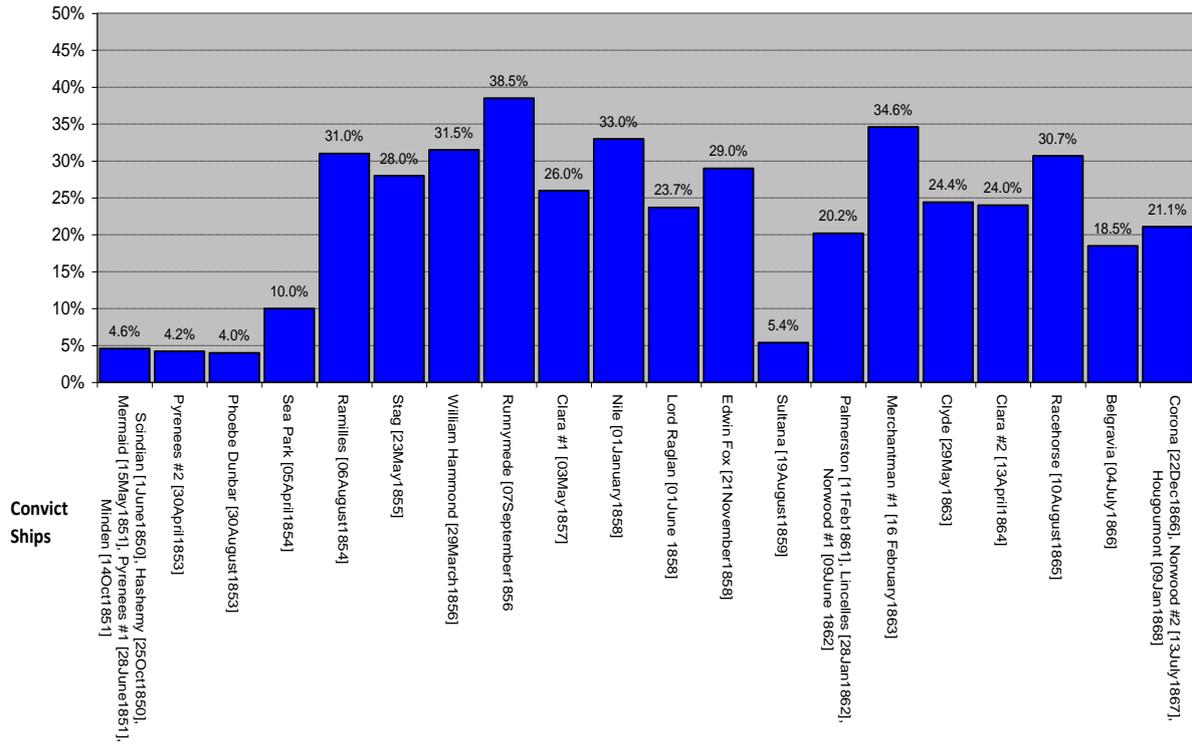


Table D - Percentage of Convicts who were Repeat Offenders
Source: Fremantle Prison website

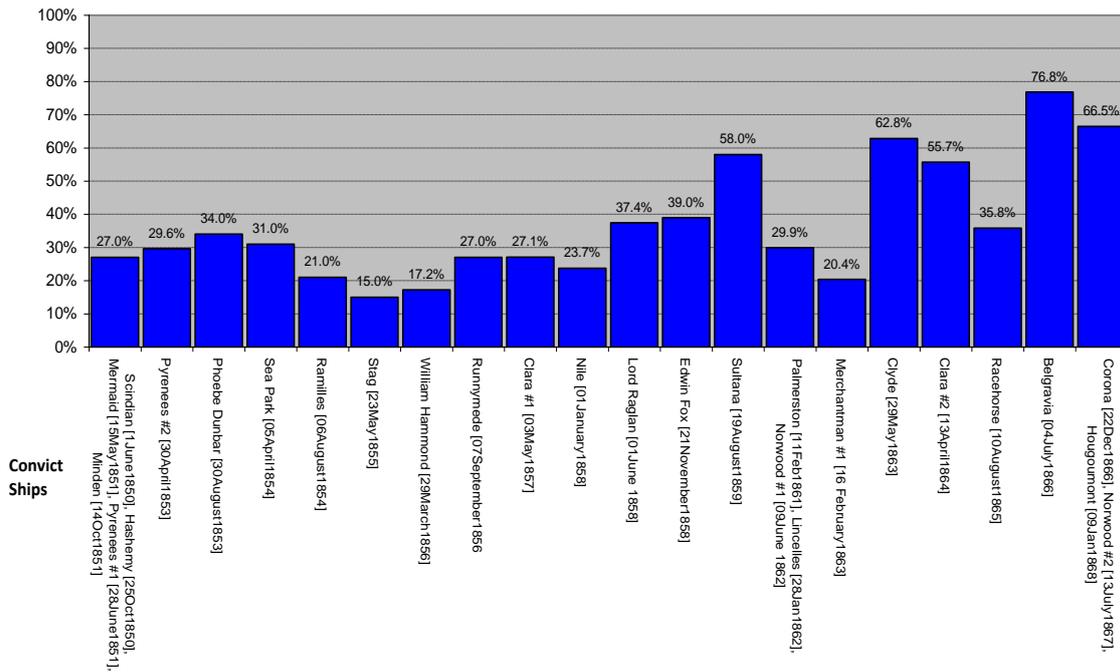
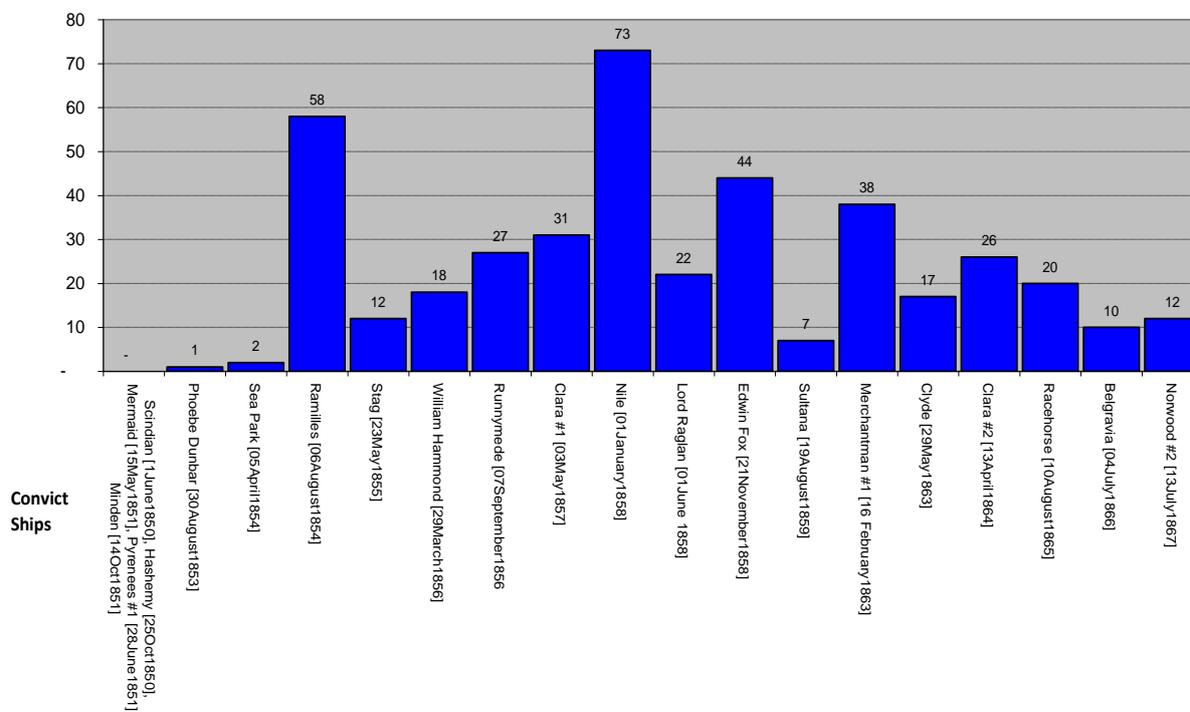


Table E - Number of Convicts With Life Sentences (crimes against persons/property)

Source: Fremantle Prison website



Overall, taking 14 sample convict transports spread evenly through the period encompassing 1850 to 1868, of the 3,625 convicts transported aboard these ships, only 120 (3.3%) were subsequently re-convicted in Western Australia.²⁴ Remarkable, because within the fourteen ships surveyed, 63% of those aboard had originally been convicted of violent crimes, had life sentences or were repeat offenders.

A register in the Western Australian state historical library (Battye) displays a telling statistic.²⁵ During the course of British Government control of the Fremantle Prison ‘Establishment’, between 1850 and 1886, only 612 convict prisoners (of the 9,500 total) were retained in that facility for serious offences. That is a figure of 6.2%, which

24 *Scindian & Hashemy* (1850), *Pyrenees* (1855), *Phoebe Dunbar* (1853), *Sea Park* (1854), *Stag* 1855), *William Hammond* (1856), *Nile* (1857), *Lord Raglan* (1858), *Sultana* (1859), *Clara* (1864), *Merchantman* (1864), *Belgravia* (1866) and *Norwood* (1867).

25 Convict Shipping and Description Lists, 1850 – 1886, Battye Library, Perth, ref: F929.3941WES.

is remarkable when compared with the 2010 figure of 52.6% within the modern Australian penal system for a similar array of offences.²⁶

So, why did this ‘serious criminality’ (as defined by the British courts) not create chaos within the colony, or even serious problems from 1854 onward?

Population distribution undoubtedly played a large part in convict behaviour. Agricultural pursuits and associated activities in wide-spread country localities were the main occupations.²⁷ This meant a widespread dissemination of convicts and ex-convict labour. In consequence, their lives had considerably changed. The opportunities and the environment for defying the law and good order of society were, largely, no longer available. Affirming this, Comptroller-General Henderson wrote: ‘these men are forever removed from a community where they existed by robbery and violence, and where many of them would have reverted to that system of depredation for which the public pays so heavily.’²⁸ He pointed out to the Governor the ready employment and fair wages for all men of the ticket-of-leave and ex-convict class, and the relative quiet and good order prevailing throughout the colony. In conclusion, he remarked on the change of circumstances for them: ‘the renovation of hope [is] to the mind what changes of air and generous diet are to the body, and the history of a large number of convicts who have come here with very bad characters, [goes] far to prove that transportation

26 Georgina Fuller (2011), *Australian Crime: Facts and Figures*, Canberra, Australian Institute of Criminology, p. 115.

27 Seddon, G. & Ravine, D. (1986), *A City and its Setting, Images of Western Australia* Fremantle Arts Centre Press, p. 277. Note: The 1861 census recorded there were 9,843 males in the colony and 5,750 females and that of the 6,603 specified occupations in the colony, 3,176 were involved in agriculture and grazing (48%), 424 in trade and commerce (6.4%), 876 in mechanics and as artisans (13.3%), 61 in the professions (0.9%), 230 as government civil servants (3.5%), 595 were domestic servants (9.0%) and 1,241 were categorized as ‘other’ labourers (18.8%). The efficacy of the census, however, is questionable – 8,990 (57.7%) of the occupations were placed in an ‘unspecified’ category, reflecting both the paucity of administrative capacity and the difficulty of communication within such a large, sparsely populated land area. See: British Parliamentary Papers, 1863-1873, *Population, Censuses England and Wales (and the Australian Colonies)*, Volume 15 (1971), Dublin, Irish University Press, p. 234.

28 Point 47 in the Comptroller-General’s 1862 report on the W.A. Convict Department, in British Parliamentary Papers, Crime and Punishment Series, *Transportation* (1970), Volume 15, Dublin University Press, pp. 26-27.

judiciously carried out is not only most just to the mother country, but the most merciful and enlightened system of action toward the convict.’²⁹

The fact that relatively few convicts were inserted into the vast area of the Western Australian landscape over a 19-year period (approximately 500 per year) mitigated against associations and assemblies of convicts and ex-convicts with prospective, violent ‘mischief’ in mind. This was in contrast to the Tasmanian experience where an approximate average of 1,000 convicts per year arrived in that state and were distributed through a much smaller land mass with, because of much more amenable soil and climatic conditions, smaller acreages under more intensive cultivation. Association and assembly in number would have been, therefore, far easier for groups of the Tasmanian convict body bent on any agitation.

The ‘reformation’ rather than ‘retribution’ philosophy of such an influential personage as the Anglican Bishop of Perth, Mathew Hale, was endemic within a community with predominantly Church of England cultural influences.³⁰ His views, and his intimate identification with the convicts’ experiences, were well known. The Western Australian convicts had a champion in high places. And even while serving out a ticket-of-leave period, a convict could apply for the lease of a grant of land to begin an agricultural enterprise for himself. Given these distinctive characteristics it is not remarkable that over the course of the convict transportation period to Western Australia, statistics affirm that 93% (8,800 ex-convicts out of a total of a little over

29 Point 48 in the Comptroller-General’s 1862 report on the W.A. Convict Department, in British Parliamentary Papers, Crime and Punishment Series, *Transportation* (1970), Volume 15, Dublin University Press, pp. 26-27.

30 Hale, Mathew Blagden (1857), *The Transportation Question; or Why Western Australia Should Be Made a Reformatory Colony Instead of a Penal Settlement*, Cambridge, Macmillan & Co., pp. 15-16; Taylor, Sandra (1981), ‘Who Were the Convicts?: A Statistical Analysis of the Convicts Arriving in Western Australia in 1850-51, 1861-62 and 1866-68’, in C.T. Stannage (ed.), *Convictism in Western Australia*, Crawley, University of Western Australia, pp. 19-45. Note: The 1861 census recorded that 11,749 (75%) of the population were Protestant (i.e.: Church of England). See: British Parliamentary Papers, 1863-1873, *Population, Censuses England and Wales (and the Australian Colonies)*, Volume 15 (1971), Dublin, Irish University Press, p. 6.

9,500) blended into the community without a return to the Fremantle ‘Establishment’ and a likely period of service on a chain gang.³¹

Additional reasons why the former convicts caused so little serious, comparative disruption within the Western Australian environment must include the compromising social and economic conditions in the Home Country - the struggle for survival - as contributing factors in the original array of transgressions. The discipline of the British prison system, rigid and harsh, would have played a part in making most accustomed to the requirements of staying within strict bounds. The convict on the work party, the ticket-of-leave man and even those conditionally pardoned, would have been wary about transgressing again. There was little opportunity to adopt old habits and negative associations and, importantly, in the new environment, the working classes, ex-convicts among them, enjoyed, generally, far better physical conditions than in their former lives. The prospect of new opportunities, too, would have been influential in the adaptation to a life of relative obedience to law and order. Former Comptroller-General Edmund Henderson, reporting to the 1863 Royal Commission into the penal system, thought transportation should continue to Western Australia indefinitely since the colony was thriving and, as he had previously noted, the country was ‘one vast gaol’. But men also had the ‘prospect of getting an honest living’ because they were removed from their old haunts and bad companions.³²

Contrary to popular belief, close police supervision was not always at hand. At the end of 1861, when the convict and ex-convict population in the colony was in the vicinity of five and a half thousand, the full police complement was 91 officers, or one to every

31 Opinions vary on how many ex-convicts left the colony – estimates range from 1,500 to 2,500. Of those recorded, most left in the 1870s and 1880s. There would have been a number who left ‘illegally’ and were unrecorded, but it would not have been easy and the number would have been, in consequence, minimal.

32 Quoted in Bosworth, M. (2004), *Convict Fremantle, A Place of Promise and Punishment*, Nedlands, University of Western Australia Press, pp. 77-78.

61.7 of the 'bond' or former 'bond' class.³³ By 1871, ten years later, when the total number of convicts transported to Western Australia had reached a little over 9,500, the proportion of fully-sworn officers available to police the 'bond' class was one to every seventy. If one takes out the number of police administrative staff, such as the Superintendent, Sub-Inspectors and clerks stationed in the Perth office, and also allowing that there were, in all, 33 native assistants/trackers in the total contingent, the number of fully 'sworn' operative officers dropped to 54, or one for every 96.2 of the bond or former bond class.³⁴

Allowing that a large proportion of the convicts and ex-convicts were spread over vast areas, and that there were extreme difficulties in readily reaching many of these areas quickly, it can be appreciated that close supervision was mostly impossible. This fact may have resulted in fewer arrests for petty crimes but serious offences would still have been followed up with available resources. Why then, were the serious crime rates so low in the colony considering the extremely high percentages of sentences for serious crimes originally imposed upon the transportees in Britain?

Writing of this, historian Anne Latham is of the opinion that convict families were not necessarily more tireless workers than comparable free people, but their convict background may have had positive effects in this direction. A ticket-of-leave man had to be circumspect in his behaviour. Although permitted to acquire land, a ticketer's property reverted to the Crown if he was found guilty of misconduct. He could be arrested without warrant for the smallest misdemeanour and tried without a jury by a single magistrate. An expirée was under closer scrutiny by the police than other

33 The actual number of convicts landed in the state to that point was 5,619. There is a record of the expirées who left the port of Albany between 1863-1884 (microfilm Accession 318, Battye Library). These figures relate to Certificate of Freedom men. Most left the colony during the 1870s and 1880s, well after the cessation of convict transportation. No figures exist for those who illegally 'migrated' to other parts of the continent.

34 Public Service Lists [W.A.] Blue Books, 1837-1905, W.A. *Government Gazette*, J.S. Battye Library.

members of the community. His every act had to be above suspicion if he wished to advance himself. With such an ambition it was necessary for him to be scrupulously law abiding as well as hard working.³⁵

Coultsman Smith's book, *Shadow Over Tasmania*, though now well outdated and his opinion supposedly discredited, refuted the negative images of brutalization and the romanticized inaccuracies of inhuman harshness attached to the convict experience.³⁶ He alleged that, in Tasmania, the convict was fed and clothed far better than most other classes of prisoner or workman in Britain at the time. The transportee who reconciled himself to his lot and behaved tolerably had a life to be envied by the English poor. However, modern historians make similar points. J.B. Hirst, writing of the New South Wales convict experience, argued that there are many modern misconceptions. The fact was that, though initially a penal colony, it quickly spawned a law abiding society.³⁷ Western Australia, it would seem, did not even have to go through that tortuous process. It was a moral, law-abiding society before the arrival of the convicts and, despite a proportionately high injection of 'villainy' into the population over an 18 year period, it remained so with the overall co-operation of the transportees. Hirst argued that, 'New South Wales [w]as a society with convicts rather than a convict society.'³⁸ Not everyone agrees with him. Stephen Nicholas in his more recent *Convict Society* argues that, 'The domination of the convicts, particularly their feelings, emotions, dignity and culture, made New South Wales a slave society, even though incentives, rations and living conditions of convicts might have been superior to that of free

35 Anne Latham (1983), 'Robert and Phoebe Carter', in Rica Erickson's *The Brand On His Coat*, Carlisle, Hesperian Press, (2009 edition), p. 82.

36 Coultsman Smith (1941), *Shadow Over Tasmania*, Hobart, J. Watch & Sons, pp. 9-10.

37 J.B. Hirst (1986), *Convict Society and Its Enemies*, Sydney, George Allen and Unwin, pp. 7, 39-40, 77, 85, 210.

38 N. Morris and J. Rothman (eds, 1998), *The Oxford History of the Prisons: The Practice of Punishment In Western Society*, New York, Oxford University Press, p. 407.

Englishmen.’³⁹ He adds to his argument by quoting from the 1838 William Molesworth report: ‘it is the restraint on freedom of action, the degradation of slavery and the other moral evils, which chiefly constitute the pain of transportation ...’⁴⁰

But in Western Australia the convicts, via a combination of the extreme shortage of labour and the ticket-of-leave system, found themselves with an autonomy and a freedom to negotiate the conditions of their labour through the hiring depots. And their input was an urgent, economic necessity. As is evidenced, particularly by the Burges brothers of *Tipperary* near York, who testified at the 1861 British parliamentary enquiry into transportation on behalf of fellow landowners, the convict workers were valued members of their Western Australian community.⁴¹ John Hirst’s contention regarding New South Wales being a society with convicts rather than a convict society, while having its opponents within that state, given the differing circumstances in Western Australia, rings, overall, credible.

Environment, too, can play a considerable role in modification of attitudes and behaviour, even among many of the most intransigent. Many modern psychologists are of the view that it is circumstance rather than character that most often determines the behaviour and the fate of any citizen.⁴² That was not the prevailing view among the law-makers and penal administrators of Victorian Britain. Penologists Thomas and Stewart wrote that the central assumption of the Victorian age criminal administrators, validated for them by religious dogma, was that people were either good or bad, and that anyone could be placed in one or other of these categories through an evaluation of

39 Stephen Nicholas (ed.), (1988), *Convict Workers: re-interpreting Australia’s past*, Cambridge University Press, p. 112.

39 Nicholas, *Convict Workers*, p. 113.

41 Report from the Select Committee on Transportation (1861), British Parliamentary Papers, Crime and Punishment series, *Transportation*, Volume 3 (1970), Dublin, Irish University Press, pp. 573-4.

42 See 1971 Stanford University experiment by Phillip Lombardo: ‘the power of social, institutional forces to make good men engage in evil deeds.’, in Eysenck (1981), *Mindwatching*, London, Michael Joseph, pp. 45-48.

their behaviour in respect to the law.⁴³ There was lingering hope that the bad could be made good through the infliction of punishment interspersed with periodic doses of religious exhortation. But this was largely unsuccessful work. Many believed that bad character was inherited and, in a world agog with allegedly scientific revelations, such a notion was highly acceptable.

But, in Western Australia, it is quite arguable that environmental factors played a considerable part in breaking down long established personal practices and attitudes. Linda Steg, Agnes Van Den Berg and Judith I. M. De Groot, in their British Psychological Society publication *Environmental Psychology*, have observed: 'If habits are a direct and automatic link between situational cues and specific behavioural patterns, a change or removal of relevant cues should result in de-activation of the habits. As habits react rather inflexibly to situational change, the cue alteration has to be substantial ...'⁴⁴ That the cue alterations for the convicts arriving in Western Australia from Great Britain were more than considerable there is little doubt. The authors went further, writing of the relationships between setting new goals in new environments: 'Another strategy to de-activate habits is the use of implementation of intentions. ... Implementation intentions include a concrete plan on when and where to perform the intended behaviour ... implementation intentions effectively reduce the importance of habit strength.'⁴⁵ Doubtless there were vastly new platforms in Western Australia for setting differing goals from those that had been ingrained in most convicts' former lives in Great Britain.

43 Thomas, J.E. and Stewart, A. (1978), *Imprisonment in Western Australia, Evolution Theory and Practice*, Nedlands, University of Western Australia Press, pp. 43-44.

44 Linda Steg, Agnes Van Den Berg and Judith I. M. De Groot (2013), *Environmental Psychology: An Introduction*, Oxford, John Wiley and Sons, pp. 206-207

45 *Ibid.*

Environmental psychologist, Tony Cassidy, has given another view on the role of the environment - through the senses. In his work, *Environmental Psychology: Behaviour and Experience in Context*, he adopted the perspective that physical factors are inextricably linked in their influence on human behaviour and experience, and that the world in which a person lives is changed in consequence.⁴⁶ In a chapter entitled, 'Sensing the Environment', he talks of the effects of noise, smell, colour, light (night and day) and even weather and climate, all of them having considerable impact on behaviour, including performance and productivity. The starkly different array of sensual inputs within the Western Australian landscape, therefore, according to Cassidy's contentions, would have engendered quite different emotional and physical responses among the newcomers.

Experienced psychologist Michael Kilkenny, familiar with the Western Australian physical landscape and the problems faced by early settlers, when interviewed by the author, gave the opinion: 'Leopards may not change their spots any more than humans change their pigmentation, but behaviour, beliefs, emotions and responses are another matter. Leopards do change behaviour to a small degree in response to changes in the environment but humans have a relatively vast degree of ability to respond to change in the environment. Your reference to this fact is appropriate in the context of penal systems, rehabilitation, prejudice, religion and social structures.'⁴⁷

As part of the overall environmental argument one can factor in too, that the convict was generally better fed, clothed and sheltered than had been largely the case within the Home Country. This allowed him to think beyond the rudiments of day to day survival to what might be possible next week, next month or even the following year. Statistics indicate that, in Western Australia, he began that process. With a full

46 Tony Cassidy (1997), *Environmental Psychology: Behaviour and Experience in Context*, Hove, Psychology Press; (2013), Hoboken, Taylor and Francis, pp. 119-171.

47 Interview with W.J. Edgar, January, 2010.

stomach, adequate clothes and dry, clean and comfortable shelters, rudimentary as these may have been, his circumstances were appreciably different within the new environment.

Life was still physically hard and the new country could be harsh, unforgiving and lonely. But the convicts and ex-convicts were now far from the depressed agricultural landscapes or the vast, burgeoning, industrial cities of their former country. And, eventually, with a pardon granted, perchance to dream? In the United States of America, Abraham Lincoln had pronounced to his people a few years earlier: 'There is no permanent class of hired labourers among us. Free labour has the inspiration of hope.'⁴⁸ Labour in Western Australia was in critically short supply. The arrival of the convicts filled an urgent need. Providing their behaviour was good, their presence was valued and they were treated accordingly. It was a positive situation for both the free settlers and for the former felonry.

Nevertheless, there was a continuing, persistent disquiet surrounding transportation within Britain and the eastern colonies. The British Parliament's Select Committee into Transportation had deliberated and reported in May 1861.⁴⁹ Despite the fact that little attention has been paid to it, it is a critical document which tells much about both opposition to Western Australian convict transportation and the continuing proponents of the system. Additionally, it gives insights into the economic and political influences within British society and their parliament at Westminster which directly determined the administration of the system within the colonial environment a half world away. Though many submissions put before the committee centred on why transportation to Western Australia should be terminated, the most telling reason for continuation – that

48 Quoted from Von Drehle/David Springfield, 'What Would Lincoln Do?', *Time* magazine, 16 February, 2009, p. 32.

49 Report from the Select Committee on Transportation (1861), British Parliamentary Papers, Crime and Punishment Series, *Transportation*, Volume 3 (1970), Dublin, Irish University Press, pp. 505-715.

convicts had a far greater chance of rehabilitation in the colony than at home – finally swayed the members to recommend to parliament that further convict contingents should be sent.⁵⁰

Lockier Burges, a free settler in Western Australia, in giving evidence to the Select Committee, told the members: ‘The great benefit we have received has been that the convicts are better servants than the free men; I would sooner have them.’⁵¹ He confirmed that while he had a good deal of trouble with free men he had never had occasion to bring a convict before a magistrate. He added that after service of sentence, convicts had a greater tendency to settle than free settlers. Burges added: ‘I have had several whom I have given farms to. I have bought land and given them teams, and [equipment], charging them interest for the money.’ Asked by Lord Alfred Churchill what class of crime his employees had formerly committed, Burges replied that he was never informed. ‘The word convict is never used in my service. The man is classed as a free man.’ According to Burges most pastoralists had similar attitudes and arrangements to his own regarding the employment of convict labour. In the face of a British Parliament under pressure at ‘Home’ to disassemble convict transportation, it proved to be telling evidence.

One suspects, however, that Burges’s generosity toward his convict employees was not entirely promulgated by pure altruism. The potential for ‘mischief’ by disenchanted workmen on a farm (e.g., sabotage of stock and equipment) was considerable. As a businessman bent on survival and profit, his motives would have been similar to those of Tasmanian dairy farmer, Peter Murdoch. A.G.L Shaw, in his *Convicts and the Colonies*, reported: ‘While Murdoch could have used the apparatus of state as a tool of

50 The 1861 Select Committee Enquiry was told that the cost of maintaining a prisoner at ‘home’ was £32, while in the colony it was £67.

51 Report from the Select Committee on Transportation, pp. 573-4.

work-place discipline, he chose instead to provide his key workers with a wage and all his hands with a ration which was both larger and more varied than in the government issue. Although he employed between fourteen and seventeen convicts, he never once pressed charges against an employee and he considered that this approach was the one adopted by most masters.’⁵²

Serious offences were very rare. The Chief Justice of the Swan River Colony, Archibald Burt, remarked to Governor Hampton that there was seldom an offence committed of sufficient importance to provide work for the Supreme Court.⁵³ He added that on the rare occasions when somebody in Britain enquired about the prospects of making a career as a barrister in Western Australia he was discouraging. ‘Our Community is small, and forensic business is very limited,’ he stated.⁵⁴

In a note to the Secretary of State for the Colonies in 1863, Governor John Hampton wrote of the convicts in the colony: ‘[they] possess in almost every important point the privileges of free men. They are eligible to engage in business, to hold personal property, and in hired service they are generally treated in the same manner as those who have never been in bondage, the chief exception being that all ticket-of-leave men are liable to vigilant police supervision.’⁵⁵

In Western Australia, serious crime remained minimal. In the 1868 Blue Book returns for Western Australia, only 17 convictions were recorded in the Supreme Court (i.e. .086% of the colony’s population). No free man is mentioned, but nine ex-convicts, five conditional pardon men, two ticket-of-leave holders and one escapee from prison

52 A.G.L. Shaw, quoted in Maxwell-Stewart, ‘Reckoning with Convict Workers in Van Dieman’s Land’, pp. 16-17.

53 G. Bolton and G. Byrne (2005), *May it Please Your Honour*, Perth, The Supreme Court of Western Australia, pp. 39-40.

54 Ibid.

55 Hampton to Newcastle, 19 February 1863, BPP, 1863, Vol. XXXIX [3224], pp. 24-25.

received convictions.⁵⁶ By contrast there was a total of 2,977 convictions in courts of Petty Sessions recorded against expeires, conditional pardon and ticket-of-leave men. By far the most common offence was drunkenness – 1,391 (46.7% of convictions). The next most serious transgression was for breach of ticket-of-leave regulations – 96 cases (2.6%). J.S. Battye, writing dismissively of those who had expressed concerns that the introduction of convict labour would weaken the moral fibre of the colony, concluded: ‘the statistics prove that the convict was little more addicted to drink than the free man; that serious crime has never been an outstanding feature of Western Australia.’⁵⁷ This was the fact but, for some, the mere appearance of such behaviour posed a threat open to exaggerated concerns.

Of interest, too, as indicated by Battye, is that of those convicted in the minor courts in 1868, men of the ‘free’ class were almost as evident as the ‘bond’. Free men committed 72 (37.5%) of the total of 192 assaults, while expeires committed 49 (25.5%), conditional pardon men 32 (16.7%) and ticket-of-leavers 39 (20.3%). Of the 145 breach of contract sentences, there were 69 free men (47.6%), while there were 30 expeires (20.7%), 12 conditional pardon men (8.3%) and 34 ticket-of-leavers (23.4%). In the categories of abusive language, profanity and obscene behaviour, free men were convicted 84 times (38%), expeires 57 times (25.8%), conditional pardon men 31 times (14%) and ticket-of-leavers 48 times (21.7%).⁵⁸

Allowing cattle to stray was regarded very seriously by the courts in an era when stock numbers were at the core of economic survival. Significantly, most of the magistrates were property and stock owners. Free men were convicted of this offence

56 Public Service Lists, Blue Book, 1868, J.S. Battye Historical Library, Perth.

57 Battye, J.S. (1912), *The Cyclopedia of Western Australia*, Perth, Cyclopedia Company; (1978 facsimile edition) *Western Australia: A History From Its Discovery to the Inauguration of the Commonwealth*, Nedlands, University of Western Australia Press. p. 171.

58 Ibid. Note: These statistics will, of course, be ‘skewed’ by those charged on more than one occasion during the course of the year.

253 times (81.4%), ex-convicts 32 times (10.3%), conditional pardon men 15 times (4.8%) and ticket holders 11 times (3.5%). This points to why the vexed question of master and servant breaches of regulations were so often prominently placed on the agendas of Legislative Council deliberations during that era.

Governor John Hampton's tenure of office between 1862 and 1868 proved controversial, but following a period as Comptroller-General of Convicts in Tasmania, he instituted a closer supervision of the convict administration within Western Australia. He introduced a much expanded public works program, centred on the construction of commercial infrastructure (roads, bridges and jetties). This was unpopular among many within the agricultural fraternity wanting a continuing supply of cheap labour, as had been the main practice in the 1850s. Newly arrived convicts who, in the previous decade had served only brief periods on government work parties, were now retained at the governor's direction on works for far longer before being issued a ticket-of-leave. Unpopular as it may have been, the building of the infant colony's essential public utilities during his term, with largely convict labour, ensured growing economic stability and progress.

Many convicts no doubt suffered from loneliness and social disorientation, although a survey of the contingents of seven convict transport ships, encompassing 1850 to 1867, showed that the Western Australian convicts lived 19 years longer than the 39.2 year life expectancy for a male in Britain at the time.⁵⁹ Taken over a survey of 28 convict ships (of the 37 transports which arrived in Western Australia with more than 15 convicts aboard) it is recorded that 27% of all arrivals were married or widowed.⁶⁰ If

59 United Kingdom Office for National Statistics. Figures for life expectancy in W.A. were calculated by comparing Fremantle Prison website convict statistics with their death dates from within the Department of Attorney General deaths website. The ships were *Scindian* (arrival June 1850), *Hashemy* (October 1850), *Phoebe Dunbar* (1853), *Stag* (1855), *Nile* (1858), *Merchantman* (1863) and *Norwood* (1867).

60 Fremantle Prison website – convict data base.

that percentage is extrapolated to the 9,500 total of convicts (in the total of all 43 ships) it would equate to 2,565 having been married or widowed in Britain. However, in a survey of eight ships containing 2,002 convicts, there is a finding, in fact, that only eleven family reunions (0.51%) in total took place.⁶¹ Additionally, it is estimated by Rica Erickson, that of the total of convicts sent to Western Australia only around a thousand married in the colony.⁶² In other words, it is probable that over 8,000 of the Western Australian convicts did not officially marry.

However, despite the emotional dislocation and considerable physical differences for the convicts themselves, their presence in the colony definitively brought about a much needed economic boost for an agriculturally-based community on the edge of disintegration. During the period of convict transportation to the colony the population grew from 5,000 to around 23,000.⁶³ In that time exports rose from £26,000 in 1850 to £193,000. British Government investment, largely via the administration and maintenance of the convict system, had been a vital influence. At the conclusion of the convict transportation period, the export income of £193,000 translates to an earnings rate of £10-12-0 per person (as opposed to £2-16-0 in 1853). Five years later, in 1874, even though the population had risen by only 1,802 persons, or 360 per year, productivity had risen to £15-10-0 per person and the export income of £409,631 had outstripped the import figure of £367,417. Though immigration had slowed appreciably,

⁶¹ William Jardine (arrived 01-08-1852), *Sea Park* (05-04-1854), *Ramilles* (06-08-1854), *Adelaide* (18-07-1855), *Nile* (01-01-1858), *Merchantman* (16-02-1863), *Clyde* (29-05-1863) and *Racehorse* (10-08-1865).

⁶² Rica Erickson (1979), *Dictionary of Western Australians, 1829-1914, Volume Two, Bond, Nedlands*, University of Western Australia Press, Preface, p. 5.

⁶³ A comparable number of free settlers to convicts arrived in the colony during the Western Australian convict era.

export earnings in the colony had risen to fifteen times what it had been twenty years before in 1853-54.⁶⁴

It was a remarkable turnaround in the economic fortunes of the colony. Though the pastoralist/farming fraternity had undoubtedly made many adaptations in their methods of manipulating an unfamiliar and difficult agricultural landscape, there is also little doubt that the insertion of cheap convict labour into private rural enterprises in the 1850s, and then their greater participation in the construction of essential infrastructure in the 1860s, contributed significantly toward improved production and markedly increased export income. Within the community, too, the increased demand for goods and services created new, viable business opportunities and generated a wider range of commercial activity.⁶⁵

At the conclusion of 1868, the proportionately large numbers of convicts and ex-convicts in the population (in the vicinity of 60% of the male population), still represented a considerable part of the Western Australian community.⁶⁶ After the cessation of transportation and the arrival of the last ship *Hougoumont*, the British Government continued to contribute sizeable funds for the remaining convict infrastructure. Therefore the Colonial Office, in particular, demanded influence in many aspects of colonial affairs via what was, for the time being, still the largest governmental department in the colony. For those urgently intent on attaining complete independence from the Mother Country and fully responsible government, the continuing shadow of the convict system remained a compromising presence. In 1869 the total population of the colony was 24,653, of which 15,320 were males. There was clearly a belief among the 'conservative' element within the colony, that the disproportionately large number of

⁶⁴ Blue Book figures, 1837-1905.

⁶⁵ R. Appleyard (1981), 'Economic and Demographic Growth', in C.T. Stannage (ed.), *A New History of Western Australia*, Nedlands, University of Western Australia Press, pp. 214-215.

⁶⁶ Seddon and Ravine, *A City and its Settings*, pp. 277-279.

the ex-convict class, largely without an education and the necessary social 'background', should not be extended any right to vote. These conservatives, who had agitated strongly in the 1860s for a greater representation in government, later changed their minds and resisted a franchise for the ex-convict population which, for a time, out-numbered the free labour community. They had to wait for self-government until the passage of the Enabling Bill through Westminster on 15 August 1889, thirty years or so after other Australian colonies had been granted the right.

With the advent of the 1890s gold rush and the resultant boom in the colony's population, the sometimes unwelcome influence of the former convict 'class' dissipated considerably under new, dramatically different social and economic directions in Western Australia's affairs. Earlier difficult times faded rapidly in the collective memory, became historically vague quite quickly, and largely remains so to this day. Yet it is quite evident that the convict influence within the Western Australia of the 1850s through to the 1870s and beyond was profound and positive in both the economic and social sense. It laid the foundations for future progress and development in the latter stages of the 19th century and beyond. It also laid the foundations for one of the most egalitarian cultures in the world. Jack became, in many ways, as good as his master during that embryo period of labour shortage and economic desperation.

Few tangible legacies are apparent today of that crucial era, although the physical presence of Fremantle Prison, the attendant Fremantle Cultural Centre (formerly the Lunatic Asylum), the Perth Town Hall, the Barracks Arch and Government House are reminders of the period. As for the lives of the convicts themselves, Shayne Breen in his *Contested Places* writes of social 'centering', an identification with place but, he writes: 'Centering is a creative process authored by people themselves; centering cannot occur when the sense of place or embeddedness is impaired.' For the ticket-of-leave and conditional-pardon convicts, social centering was often compromised by their work

circumstances. Mathew Trinca has written that the ticket-of-leave holder was like a colonial nomad, forced to travel long distances for seasonal, agricultural work. ⁶⁷ Rural district employers, often in parlous financial states themselves, could often only afford to employ men during the crucial phases of their agricultural enterprises, and, in fact, the colonial administrators decreed the farming proprietors were only obliged to employ men for a month at a time and, records attest, that was often the case. Within each individual convict record is a column entitled, 'Known Areas'. The multiplicity of the known areas against most individual convict's details affirm their often nomadic life. ⁶⁸ But it was a lifestyle that was largely free and autonomous.

Their crucial economic impact apart, there is little doubt the majority of Western Australian convicts would have found it difficult to 'embed' physically, socially and culturally. They could be called a 'lost' generation, but for those that did marry or reunite with family we must consider their particular legacy. Western Australian convict descendents include three subsequent state Premiers, a Deputy Premier, various state cabinet ministers, a captain of the All-Australian AFL football side and a variety of prominent citizens. Their influences have been pronounced in the state's affairs during the course of the 20th century and beyond. Additionally, close to three thousand descendants of Western Australian convicts have received authenticated 'Convict Descendant' certificates at ceremonies on Western Australia (Founders') Day during the past 20 years, to affirm an understated but unique and vital contribution to early Western Australian history. ⁶⁹

67 Mathew Trinca (2006), 'The Control and Coercion of Convicts', in J. Sheriff and A. Brake (editors), *Building a Colony, the Convict Legacy*, Studies in Western Australian History, Nedlands, Centre for Western Australian History in association with University of Western Australia Press, pp. 26-36.

68 Fremantle Prison website – convict data base.

69 The Convict Establishment Office, Fremantle Prison

This paper is an encapsulation of W.J. (Bill) Edgar's Doctor of Philosophy dissertation

entitled:

The Convict Era in Western Australia:

Its Economic, Social and Political Consequences

(<http://researchrepository.murdoch.edu.au/21436>)