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# A ‘trifling punishment’: Australian redcoats as convicts

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Misbehaving troops were an enduring problem throughout the British Army in the nineteenth century. Boredom, poor living conditions and harsh discipline quickly dispelled any ideas recruits held of adventure and glory. Some 6,500 soldiers or former soldiers were transported to the Australian colonies, while about 426 soldiers were sentenced within the colonies to death, transportation or ‘penal servitude’—the Imperial replacement for transportation—from 1788 to 1868. This number included soldiers sentenced in New Zealand because most of these were from detachments of Australian-based regiments. Military officers were convinced that the bad discipline causing these convictions arose from association with convicts, who ‘contaminated’ the soldiers and in some cases incentivised them to deliberately commit crimes to receive a transportation sentence. This article explores some of the circumstances under which the soldiers were sentenced to transportation and examines whether their conduct could have resulted from their close association with convicts and the penal system, or whether it reflected that of soldiers transported from other parts of the empire. It will show that of all the troops serving in Australia during the transportation period, only 426 were executed or transported, representing less than 1 per cent of the total garrisoned there. And of those, only 30 (or 7 per cent of the colonially convicted) committed crimes in association or collusion with convicts. It will then compare the offences committed by the garrison soldiers with those of the 2,436 soldiers transported to New South Wales whose offences are known, to determine whether there was any significant difference in offending patterns between the two groups. I argue that close associations with convicts and the penal system had minimal influence on military colonial convictions resulting in transportation sentences.

Some officers blamed the convicts for the low morale of troops garrisoned in the Australian colonies. Among them was Lieutenant-Colonel Henry Breton, commander of the 4th Regiment in New South Wales from 1832 to 1836. This was a period when both officers and soldiers were closely involved with road gangs. He informed a British parliamentary select committee in 1837 that service in New South Wales had the ‘worst possible’ effect on soldiers’ discipline, because of the:

Constant intercourse with the convicts on shore; they form all the guards; they are constantly making long marches with gangs, very often drinking with them in towns; we had more punishments for that than anything else; we could not keep the soldiers separated from the convicts.<sup>1</sup>

Other contemporaries accused the soldiers who were sentenced to transportation of deliberately seeking the punishment because they believed convict punishment was lighter than military punishment, and life as a convict preferable to life in the army. In 1848 Lieutenant-Governor Sir William Denison of Van Diemen's Land represented to the secretary of state, Earl Grey, the 'trifling punishment' that transportation imposed upon soldiers compared to the harsh discipline of military life.<sup>2</sup>

The reality was more complex. Many factors influenced the troops' behaviour over the 80 years of transportation to the Australian colonies. In several cases, the poor performance of the officers 'contaminated' the soldiers. An officer aspiring for promotion considered an appointment to the Australian garrison an unattractive proposition and acted accordingly. The first two military units garrisoned in Australia—the marines and the New South Wales Corps raised especially for garrison duty—set an inauspicious precedent for the future line regiments. The young officers refused to cooperate with the governor in carrying out the necessary duties of guarding and supervising the convicts. Later, when an administrative infrastructure had been established, they sought appointment to colonial positions to supplement their pay and support their lifestyles. Other reasons for transportation included ambiguities in the constantly changing Mutiny Act, by which discharge was both a reward and a punishment, and doubts about whether transportation necessarily resulted in discharge.

## Numbers and patterns of transportation

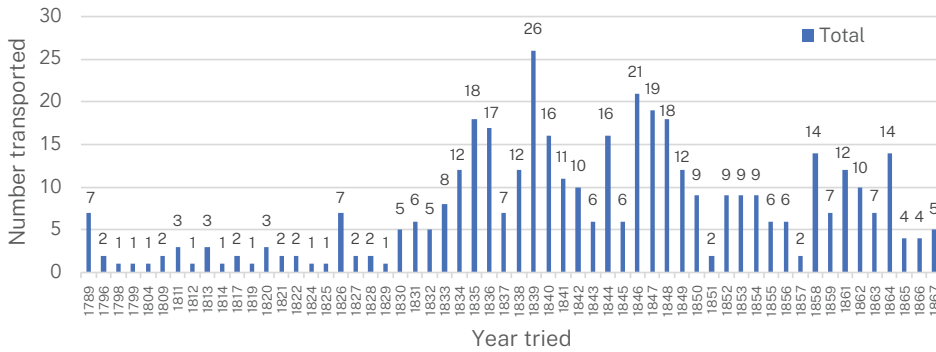
Any underlying motivations behind military crimes resulting in transportation can be investigated by plotting the numbers of soldiers transported annually (see Figure 1). Doing so reveals that the quantity of the transported coincided with specific conditions for soldiers in the Australasian colonies. The garrison was initially small, and as such few soldiers were transported in the early years. A sudden increase in 1826 reflects seemingly widespread discontent among soldiers of the 57th regiment, of which the famous Privates Sudds and Thompson (see below) were just two examples. The rise in convictions during the 1830s corresponded with the soldiers becoming obliged to guard and supervise the road and ironed gangs—a detested task that brought them into close contact with convicts undergoing secondary punishment. Throughout this period, soldiers committed a range of military and civil offences, including desertion and highway robbery. In 1839 a mutiny in the 80th Regiment at Norfolk Island

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1 Great Britain, House of Commons, *Report from the Select Committee on Transportation* (London: HMSO, 1837), [518], XIX.1, Q.2071.

2 Denison to Grey, Despatch no. 217, 27 October 1848, WO 1/574, f. 85, The National Archives, Kew (hereafter TNA).

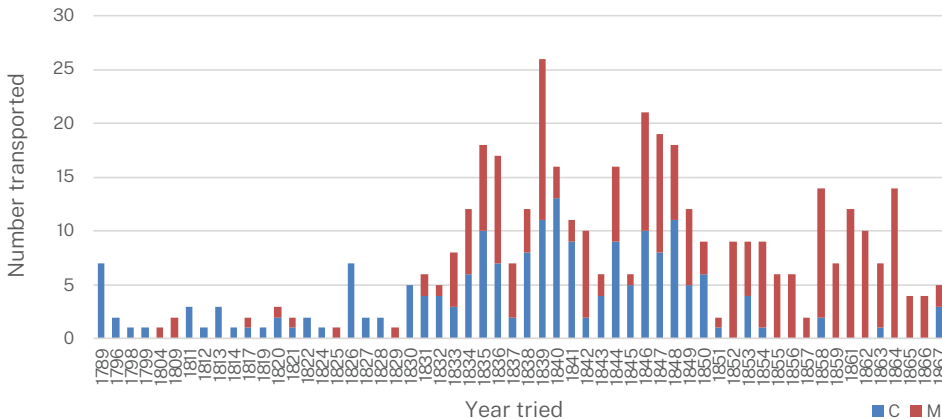
resulted in seven soldiers being sentenced to transportation for life. Then during the 1840s the soldiers were plunged into war in New Zealand against a fearsome Māori opponent and suffered many losses. Each of these periods raises specific issues which will be discussed, but there were also enduring themes that provide some insight into why the soldiers committed offences and how the authorities reacted.



**Figure 1: The number of soldiers garrisoned in the Australian colonies and stationed in New Zealand annually executed or sentenced to transportation, 1789–1867.**

Source: NRS-906, NRS-2422, NRS-13681, MHNSW-StAC; CON 35, CON 37, SC 147, Tasmanian Archives; various newspapers.

## Military and civil courts



**Figure 2: The number of soldiers garrisoned in Australia or stationed in New Zealand annually transported by the military and civil courts, 1788–1870.**

Note: C — civil courts; M — military tribunals.

Source: NRS-906, NRS-2422, NRS-13681, MHNSW-StAC; CON 35, CON 37, SC 147, Tasmanian Archives; various newspapers.

Like all British citizens, soldiers were subject to the law and conviction in the civil courts, while courts martial were used for military offences such as desertion and insubordination. Figure 2 distinguishes the soldiers convicted in the civil courts (C) from those in the military tribunals (M). Few were transported by court martial until

1833, partly because of problems with the Mutiny Act under which, as explained below, the only offence punishable by transportation until 1833 was desertion. After 1854, when transportation by the empire's criminal courts was replaced by local punishment, all soldiers transported from within were sentenced by court martial, with a few exceptions from New Zealand and Van Diemen's Land. Overall, 191 soldiers were sentenced in the criminal courts and 235 by the military tribunals.

## Offences

Table 1 lists the offences which resulted in transportation. The most common were the military ones of violence or threatened violence to a superior officer (90) and desertion (63). The prevalence of these offences alongside others such as insubordination (24) and mutinous conduct (18) suggests a difficult relationship between the private soldiers and their non-commissioned and commissioned officers. As Peter Burroughs has pointed out, the ordinary soldier had no means of protesting or promoting reform other than 'negative, unconstructive' behaviour that invariably resulted in punishment and degradation within the regiment.<sup>3</sup> The next sections will examine this relationship and the resulting offences more closely.

**Table 1: Civil and military offences, 1788–1868.**

Offence	Civil	Military	Total	Percentage
Violence to superior		90	90	21.1
Stealing	62	3	65	15.3
Desertion		63	63	14.8
Highway robbery	29		29	6.8
Burglary/House breaking	25	1	26	6.1
Insubordination		24	24	5.6
Mutiny/Mutinous conduct		18	18	4.2
Deserting/sleeping on post		17	17	4.0
Shop stealing	13		13	3.1
Assault	8	1	9	2.1
Shooting with intent	1	7	8	1.9
Robbery	7	1	8	1.9
Highway robbery/wanted discharge	7		7	1.6
Murder	7		7	1.6
Escaping prison/cells	1	5	6	1.4
Rape	5		5	1.2
Manslaughter	5		5	1.2
Receiving	5		5	1.2

<sup>3</sup> Peter Burroughs, 'Crime and Punishment in the British Army, 1815–1870', *The English Historical Review* 100, no. 396 (1985): 546.

Offence	Civil	Military	Total	Percentage
Animal theft	3		3	0.7
Burglary/Assault	3		3	0.7
Shop stealing/wanted discharge	2		2	0.5
Unnatural crime	2		2	0.5
Forgery	2		2	0.5
Threatening to shoot		2	2	0.5
Arson	1		1	0.2
Bushranging	1		1	0.2
Stealing/wanted discharge	1		1	0.2
Perjury	1		1	0.2
Embezzlement		1	1	0.2
Disgraceful conduct		1	1	0.2
Insubordination/wanted discharge		1	1	0.2
<b>Grand Total</b>	<b>191</b>	<b>235</b>	<b>426</b>	<b>100.0</b>

Source: NRS-906, NRS-2422, NRS-13681, MHNSW-StAC; CON 35, CON 37, SC 147, Tasmanian Archives; various newspapers.

## Marines and their officers

During Arthur Phillip's governorship (1788–92), the behaviour of the marine commandant Major Robert Ross exacerbated fractious relationships in the tiny settlement. To the governor's frustration, led by Ross, the marine officers refused to supervise convict work gangs, seeing their duties as strictly to protect the colony.<sup>4</sup> Because of a technicality, and of the marine officers' intransigence, no marine was tried by general court martial, the highest military tribunal and the only military court that could impose capital punishment or, later, transportation. In October 1788 the marine officers refused to assemble for a general court martial of a marine, convened by the governor in accordance with his commission from the King. The officers pointed out that marine forces on shore were governed by their own Marine Mutiny Act that specified that commissions to convene general courts martial were issued only by Admiralty. By an oversight, Phillip had sailed without that commission.<sup>5</sup> Although Judge Advocate David Collins admitted that by the 'strict Letter of the Law' the officers were correct, he recommended that, in the best interests of the settlement, they should abide by the governor's orders, and later seek indemnity from Admiralty for non-compliance with the Act.<sup>6</sup>

<sup>4</sup> Governor Phillip to Lord Sydney, 16 May, 9 July, 30 October 1788, Frederick Watson, ed., *Historical Records of Australia. Series I: Governors' despatches to and from England* (Sydney: Library Committee of the Commonwealth Parliament, 1919) (hereafter *HRA I*), vol. 1, 35, 56, 96.

<sup>5</sup> Governor Phillip to Lord Sydney, 27 October 1788, *HRA I*, vol. 1, 90–94.

<sup>6</sup> Collins's Legal Opinion of 13 October 1788, Frederick Watson, ed., *Historical Records of Australia. Series IV: Legal Papers* (Sydney: Library Committee of the Commonwealth Parliament, 1922) (hereafter *HRA IV*), 22.

Nevertheless, the impasse remained, and the marine soldiers knew that they were immune from punishment by the highest military court. That is not to say that they were not punished severely by the criminal courts. The largest number of men executed to date occurred on 27 March 1789 when, after being tried in a criminal court ‘composed entirely of their own officers’,<sup>7</sup> six marines were hanged for systematically stealing, over many months, from the public store with a manufactured key. Private John Easty wrote that, at the hanging, ‘there was hardly [sic] a marine Present but what Shed tears, offacers [sic] and men’.<sup>8</sup> Six months later the same criminal court sentenced Private Henry Wright to death for the rape of an infant. In this case, Phillip commuted the sentence to transportation for life to Norfolk Island, reasoning that his crime was not one which warranted a deterrent example.<sup>9</sup>

Yet, apart from these few aberrations, the marine soldiers themselves seemed to have behaved better than their officers. While Ross at one time had five of his officers under arrest for disobedience,<sup>10</sup> the historian John Moore has calculated the minor offences of the soldiers as ‘less than 20 for a detachment of 212 on a four-year tour of duty in circumstances of considerable privation’.<sup>11</sup> He suggested that ‘the calibre of the ordinary marine was superior to that of his British Army counterpart in the 1780s’, especially the First Fleet marines because they were all volunteers for New South Wales. But he also noted that the marines were kept in their companies and as far apart from the convicts as possible—a critical factor, as we shall see, affecting the discipline of the soldiers in later years. He claimed that the corps’ sound reputation was tarnished by its officers and ‘obscured by the reputation of its commander’.<sup>12</sup> In 1789 the secretary of state, when informed of the discontent in the marines and their desire to return home, announced their recall and replacement by the New South Wales Corps.<sup>13</sup> But it seems most of the discontent was among the officers, all of whom returned home except for Deputy Judge Advocate David Collins, who remained until 1796, and George Johnston who transferred to the incoming corps.<sup>14</sup> On their departure in December 1791, despite his ‘inexpressible hatred’ of Ross, Collins called them ‘as valuable a corps as any in his Majesty’s service’.<sup>15</sup>

7 Watkin Tench, *A Narrative of the Expedition to Botany Bay; with an account of New South Wales, its productions, inhabitants, &c.*, 2nd ed. (London: J. Debrett, 1789), 145.

8 John Easty, *A Memorandum of the Transactions of a Voyage from England to Botany Bay, 1786–1793* (Sydney: The Trustees of The Public Library of New South Wales in Association with Angus and Robertson, 1965), entry for 27 March 1789, 111.

9 Phillip to Sydney, 12 February 1790, *HRA I*, vol. 1, 144.

10 Phillip to Sydney, 16 May 1788, *HRA I*, vol. 1, 36–43.

11 John Moore, *The First Fleet Marines 1786–1792* (St Lucia: University of Queensland Press, 1987), 158.

12 Moore, *The First Fleet Marines*, 11, 287.

13 Grenville to Phillip, 19 June 1789. This despatch did not arrive at Sydney until 5 June 1790. *HRA I*, vol. 1, 122.

14 Moore, *First Fleet Marines*, 275; Mollie Gillen, *The Founders Of Australia: A Biographical Dictionary of the First Fleet* (Sydney: Library of Australian History, 1989), 443.

15 David S. Macmillan, ‘Ross, Robert (1740–1794)’, *Australian Dictionary of Biography*, National Centre of Biography, The Australian National University, 1967, [adb.anu.edu.au/biography/ross-robert-2608](http://adb.anu.edu.au/biography/ross-robert-2608), first published in hardcopy 1967, accessed online 18 June 2019; David Collins, *An account of the English colony in New South Wales, with remarks on the dispositions, customs, manners, etc. of the native inhabitants of that country*, 2 vols., vol. 1, [1798] (Sydney: A.H. & A.W. Reed, 1975), 159.

## The New South Wales Corps and their officers

Of the New South Wales Corps—a body of experienced soldiers who were recruited specifically as the permanent garrison for the colony—it is again the officers and ex-officers who are remembered, mostly for their infamous overthrow of Governor Bligh on 26 January 1808. The merits of their actions have been hotly debated. Some scholars, notably H. V. Evatt, portrayed them as greedy monopolists and rum traffickers who brought down Governors Hunter, King and Bligh. Others such as Malcolm Ellis and Brian Fletcher argued that the corps, officers and men, were of the 'average quality' of regiments raised at that time, that they put the struggling colony on its feet and laid the foundations for economic prosperity, in sheep, wool, bloodstock horses and agriculture.<sup>16</sup>

Of the social composition of the soldiers, some of whom were ex-convicts and others taken from the Savoy military prison in London, opinion has been mixed. In the 1960s A. G. L. Shaw and T. G. Parsons argued that the low reputation of the men, as complained of by Governors King and Bligh, was justified, and cited examples of the pardoned criminals and other reprobates who joined the corps. The army historian Maurice Austin rejected these claims, pointing out that Shaw and Parsons had generalised the character of the whole corps from the actions of a few miscreants.<sup>17</sup> Pamela Statham showed that many of them were veterans of wars in America and India. Only about 54 were ever recruited from the Savoy, and their numbers peaked at 40 (7 per cent) in 1799.<sup>18</sup> Well-behaved convicts were also allowed to enlist, and in 1802 their numbers peaked at 96 (14 per cent). Collins wrote that in 1793 the 30 ex-convicts then in the corps, many of whom had previous military service, had with one exception 'conducted themselves with remarkable propriety', and Lieutenant William Minchin informed Bligh in 1807 that they were 'the best men we had'.<sup>19</sup>

Officers were responsible for moulding the character of a new corps. There is little doubt that the five senior men who served throughout the period of the corps' existence had the worst influence on the soldiers, and led them to believe that they could do anything they wished.<sup>20</sup> As J. F. Nagle has commented, after Phillip's departure, when Major Francis Grose governed the colony, the latter gave preference

16 H. V. Evatt, *Rum Rebellion: A Study of the Overthrow of Governor Bligh by John Macarthur and the New South Wales Corps*, [1938] (Hawthorn, Vic.: Lloyd O'Neil Pty Ltd, 1971); M. H. Ellis, *John Macarthur*, 3rd ed., [1955] (Sydney: Angus & Robertson, 1973), 12–13; Brian H. Fletcher, *Landed Enterprise and Penal Society: A History of Farming and Grazing in New South Wales before 1821* (Sydney: Sydney University Press, 1976), 76–77.

17 M. Austin, 'Paint My Picture Truly', *Journal of the Royal Australian Historical Society* 51, no. 4 (1965): 353.

18 Pamela Statham, *Ins and Outs: The Composition and Disposal of the NSW Corps, 1790–1810*, Working papers in economic history (Australian National University), no. 105 (Canberra: The Australian National University, 1988).

19 Collins, *Account of the English colony*, vol. 1, 254; *HRA I*, vol. 6, 405.

20 George Johnston, Joseph Foveaux, Edward Abbott, William Paterson and Surgeon John Harris. Pamela Statham, 'A New Look at the New South Wales Corps', *Australian Economic History Review*, no. 1 (1990): 60.

in rations, housing and land to the military, who ‘henceforth ... were to be the first-class citizens’.<sup>21</sup> Consequently, the soldiers treated the convicts with contempt and sometimes viciousness.

The officers also deeply resented any alleged ‘interference’ in the administration and discipline of the corps. In 1796 members of the corps attacked the ex-convict carpenter John Baughan and his wife, after a dispute with a soldier who had previously worked for him. The soldier was on sentry duty near where Baughan was working, when he put down his musket and engaged in a derogatory conversation with another man about Baughan, which the latter was meant to hear. Baughan, noticing that the soldier had left his firearm, picked it up and handed it to the sergeant of the guard, for which the soldier was confined. The next day the ‘whole of the Corps off duty’, according to Hunter, demolished Baughan’s house and furniture, threw Baughan to the ground with an axe to his neck, and threatened his wife.<sup>22</sup> The victim and witnesses named four soldiers, but the man was too frightened to prosecute. Naval surgeon William Balmain, acting in his capacity as a civil magistrate, counselled Baughan that he had a duty to prosecute, and if he did not, then he, Balmain, would consider prosecuting Baughan for compounding a felony.<sup>23</sup> This conversation came to the notice of Captain Macarthur and the corps’ officers, and a series of inflammatory letters was exchanged, in which the officers expressed their ‘indignation at his [Balmain’s] shamefully malevolent interference in the affairs of their corps’, and Balmain replied that he considered Macarthur ‘a base rascal and an atrocious liar and villain’.<sup>24</sup> A duel was threatened, but both sides eventually agreed to a ‘mutual forgiveness’ and an offer by the corps to recompense Baughan for his loss.<sup>25</sup> After pleading from the officers, Hunter withdrew his warrant for the court martial of three of the soldiers. The secretary of state censured the governor for allowing ‘the conduct of the military ... of so flagrant a nature’ to go unpunished, but Hunter seemed powerless to confront the military officers.<sup>26</sup>

## Transportation by court martial

The first soldier sentenced by court martial to transportation within Australia was Private John Carr of the New South Wales Corps, although his sentence was illegal. In 1803 parliament had decided that a general court martial should be able to sentence deserters to transportation instead of flogging. Before then, the authorised military punishments for desertion were death, corporal punishment, or service in

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21 J. F. Nagle, *Collins, the Courts & the Colony: Law and Society in Colonial New South Wales 1788–1796* (Sydney: UNSW Press, 1996), 210.

22 Governor Hunter to the Duke of Portland, 10 August 1796, *HRA I*, vol. 1, 575–76.

23 Nagle, *Collins, the Courts & the Colony*, 273.

24 Governor Hunter to Surgeon Balmain, 19 Jun 1798, and enclosure, *HRA I*, vol. 2, 174–77.

25 Brian H. Fletcher, ‘Balmain, William (1762–1803)’, *Australian Dictionary of Biography*, National Centre of Biography, The Australian National University, [adb.anu.edu.au/biography/balmain-william-1736](http://adb.anu.edu.au/biography/balmain-william-1736), published first in hardcopy 1966, accessed online 5 January 2019.

26 Duke of Portland to Governor Hunter, 25 May 1798, *HRA I*, vol. 2, 106.



a regiment beyond the seas for life or a term of years. The small number of soldiers previously transported after a court martial had been capital respites—sentenced to death but pardoned by the King on condition of transportation. A few had also been sent from around the empire to 'serve abroad' in the corps, which refused to take them.<sup>27</sup> Parliament now recognised that all soldiers were obliged to serve abroad, so that which was a duty could hardly also be a punishment.<sup>28</sup> The *Mutiny Act* of 1803 thus removed the punishment of service abroad in the so-called 'penal regiments' and allowed the court to sentence deserters to death, corporal punishment, or transportation.<sup>29</sup>

Carr was serving in the detachment at the settlement at Risdon Cove, Van Diemen's Land, commanded by Lieutenant John Bowen, RN. On 21 April 1804, after two nights on guard, Carr was ordered to stand a third. He informed first his sergeant and then his commanding officer, Lieutenant William Moore, that he was fatigued and ill, and so would not comply.<sup>30</sup> Two other soldiers, William Burke and William Page, joined him. As Lieutenant-Governor Collins, who had just arrived from Port Phillip to establish his colony at Sullivan's Cove on the other side of the Derwent, wrote, if they had said they could not stand guard 'nothing unpleasant would have happened; but instead of stating that they *could* not, they said they *would* not Mount the Guard'.<sup>31</sup> Moore confined the three to the guard house, whereupon Carr, evidently believing an injustice had been served, sent for the surgeon and told Moore that he 'was unworthy to wear a Sword as an Officer, and it was a damned shame of them that gave him a Commission'.<sup>32</sup>

This open insubordination resulted in the three soldiers being sent to Sydney to face a general court martial, on 3 September 1804, for mutinous conduct. The president of the court convened to try the soldiers was Major George Johnston and the judge advocate, responsible for the judicial oversight of the proceedings, was the civilian Richard Atkins—a man 'addicted to liquor, immorality and insolvency'. Atkins was not a trained lawyer, and admitted he knew nothing about military law.<sup>33</sup> Burke and Page were sentenced to 500 lashes each, which the governor remitted because of

27 For example, William Abrams and John Davies, sent from Rio de Janeiro per the ship *Anne* 1801, F. M. Bladen, ed., *Historical Records of New South Wales (HRNSW)* (Sydney: Printed by Charles Potter, Government Printer, 1893–1901), vol. 4, 264.

28 Great Britain, House of Commons, *Debates* (22 February 1803), 98–99.

29 *An Act for Punishing Mutiny and Desertion, and for the Better Payment of the Army and their Quarters*, 43 Geo. III c.10 (24 March 1803), s.4.

30 Phillip Tardif, *John Bowen's Hobart: The Beginning of European Settlement in Tasmania* (Hobart: Tasmanian Historical Research Association, 2003), 137–40.

31 Collins to Governor King, 24 April 1804, Frederick Watson, ed., *Historical Records of Australia. Series III: Despatches and Papers relating to the Settlement of the States* (Sydney: Library Committee of the Commonwealth Parliament, 1921) (hereafter *HRA III*), 235.

32 John Carr, General Court Martial, NRS-5609 [5/1155] 17/8, Museums of History NSW—State Archives Collection (hereafter MHNSW-StAC).

33 J. M. Bennett, 'Atkins, Richard (1745–1820)', *Australian Dictionary of Biography*, National Centre of Biography, The Australian National University, [adb.anu.edu.au/biography/atkins-richard-1723/text23945](http://adb.anu.edu.au/biography/atkins-richard-1723/text23945), first published in hardcopy 1966, accessed online 22 May 2018.

Moore's testimony for their former good behaviour. The court sentenced Carr, who had also been a major player in the corps' assault on John Baughan,<sup>34</sup> to 1,000 lashes and to be transported to Risdon Cove for seven years.<sup>35</sup> The governor altered the destination to Norfolk Island, no doubt because of the complaint made by Collins about his infant settlement being made a receptacle for 'flagitious Characters [who] have been adjudged by the Sentence of the Criminal Court to serve for a certain Number of Years at Risdon Creek'.<sup>36</sup> After receiving 175 lashes, in March 1805 Carr arrived at Norfolk Island, where he was employed as pilot while undergoing his sentence.<sup>37</sup>

When the judge advocate general of the army in London reviewed the proceedings, he was astonished, and wrote to Governor King that 'a Sentence of Transportation from a Settlement at New South Wales can scarcely have been in Contemplation of the Legislature'. The judge also pointed out, 'with a view to any the like circumstance which may occur in future', that transportation was only applicable to desertion and not to mutiny, and in any case was not allowed in addition to corporal punishment but only in lieu thereof.<sup>38</sup> The governor evidently decided to allow the sentence to stand, because Carr had already been discharged from the corps.<sup>39</sup> In March 1810, when the corps was being withdrawn and the Norfolk Island establishment broken up, Carr still had 17 months of his sentence to serve. The commandant, Captain John Piper, recommended him for an absolute pardon, which Macquarie approved. Henceforth the military strictly adhered to the *Mutiny Act*, and the two soldiers tried by general court martial in 1809, both for desertion, were transported to Norfolk Island for life.<sup>40</sup>

## Transportation by the civil power

The judge advocate general in London might have been unaware that the New South Wales Criminal Court had been sentencing convicts to a form of transportation from the beginning of the settlement. In its first sitting in February 1788 the court sentenced a convict for stealing bread, which in England was a transportable offence, 'to be confined in irons, for the space of one week, on bread and water, on the small white

34 Collins, *Account of the English colony*, vol. 1, 379–80.

35 John Carr, NRS-5609 [5/1155] 17/8, MHNSW-StAC.

36 Collins to Governor King, 29 February 1804, *HRA III*, vol. 1, 226.

37 John Carr, NRS-5609 [5/1155] 17/8, MHNSW-StAC; Governor King to Judge Advocate General Sir Charles Morgan, 20 December 1804, *HRA I*, vol. 5, 242; Raymond Nobbs, ed., *Norfolk Island and its First Settlement, 1788–1814* (North Sydney: Library of Australian History, 1988), 192.

38 Judge Advocate General Chas. Morgan to Governor King, 16 July 1805, *HRA I*, vol. 5, 496.

39 Nobbs, ed., *Norfolk Island and its First Settlement*, 192; Colonial secretary papers relating to Norfolk Island, NRS-898 [4/1169] pp. 133–37, MHNSW-StAC.

40 Private Garrett Armstrong, *Sydney Gazette*, 18 June 1809, 1. Armstrong was a recidivist, with a long list of prior and subsequent convictions, and a history of absconding; Private John Neale, *Sydney Gazette*, 23 December 1809, 1. Neale was an ex-convict, arrived per Atlantic 1791, 7 years by Kent Assize for theft.

rocky island adjacent to the cove'.<sup>41</sup> Bruce Kercher has suggested that the island, known as Pinchgut, 'became the first place of secondary punishment in Australia'.<sup>42</sup> High Court Judge Sir Victor Windeyer, however, has stated that 'imprisonment on bread and water on Pinchgut Island in Port Jackson ... was a corporal punishment' because 'it was not one of a pecuniary kind, or one having consequences affecting property'. The judge also noted that the military law of the day used corporal punishment in the same sense.<sup>43</sup> The eighteenth-century jurist William Blackstone defined corporal punishment as 'whipping, hard labour in the house of correction or otherwise, the pillory, the stocks, and the ducking-stool'.<sup>44</sup> The military had certainly used varying forms of corporal punishment in earlier times: according to Francis Grose in 1786:

Soldiers are sometimes by the sentence of a court-martial confined for a short time in the black-hole, or locked up in a bread and water house, that is, a place of confinement where they have no other nourishment but bread and water.<sup>45</sup>

These punishments had disappeared by the time of the *Mutiny Act* of 1788, but by custom would have been well known to the all-military members of the court.

By 1790 the criminal court's sentences had extended to formal transportation to Norfolk Island, although, as David Roberts has noted, the court often used creative language in its sentencing to avoid the use of the word transportation.<sup>46</sup> In November 1796 for example, when widespread robbing of the stores by soldiers and convicts alike had become a problem, Private Martin McEwin and three convicts were executed for the crime, while Private John McDuell/McDuel and two convicts were pardoned 'on condition of residing for life on a dependent island'. The colony was then on full rations, and Collins claimed that the offenders stole anything they could sell to purchase spirituous liquor.<sup>47</sup> Several of the convicts at Risdon Cove were there under colonial sentences of transportation, either directly by the criminal court or after a pardon for a capital offence on condition of being transported.<sup>48</sup> On 28 April 1804 Commandant Bowen—without a trial—further 'banished' eight convicts, suspected of planning an uprising, to Smooth Island, a small island near the Tasman Peninsula, and left them there with one month's provisions.<sup>49</sup>

41 John Cobley, ed., *Sydney Cove 1788: The First Year of the Settlement of Australia* (London: Hodder and Stoughton, 1962), 68–69.

42 Bruce Kercher, *An Unruly Child: A History of Law in Australia* (Sydney: Allen & Unwin, 1995), 24.

43 Victor Windeyer, 'A Birthright and Inheritance': The Establishment of the Rule of Law in Australia', *University of Tasmania Law Review* 1, no. 5 (1962): 650.

44 Cited in David Andrew Roberts, 'Exile in a Land of Exiles: The Early History of Criminal Transportation Law in New South Wales, 1788–1809', *Australian Historical Studies* 48, no. 4 (2017): 474.

45 Francis Grose, *Military Antiquities, Respecting a History of the English Army, from the Conquest to the Present Time*, 2 vols (London: Printed for S. Hooper, 1786; reprint, 1788), 201–2. This Francis Grose (1731–1791) was the father of Francis Grose (1758–1814) of the New South Wales Corps.

46 Roberts, 'Exile in a Land of Exiles': 477–78; Alex C. Castles, *An Australian Legal History* (Sydney: Law Book Co, 1982), 64–65; Kercher, *Unruly Child*, 28.

47 Privates John McDuel/M'Douall, tried 29 November 1796, and Edward Toon, tried 4 August 1798, Collins, *Account of the English colony*, vol. 2, 6–7.

48 Lieutenant-Governor Collins to Governor King, 29 Feb 1804, *HRA III*, vol. 1, 226.

49 Collins to Governor King, 31 July 1804, *HRA III*, vol. 1, 251.

As deputy judge advocate, Richard Atkins routinely used re-transportation as a punishment. Roberts has noted that from 1797 to 1807, during which Atkins served two periods as judge advocate, ‘at least ninety-seven sentences of transportation were issued for non-capital convictions’ and some of the 110 death sentences were pardoned on condition of transportation.<sup>50</sup> Apart from McEwin and McDuel who were tried on 29 November 1796—outside Roberts’s timeframe—only one of the transportees is known to have been a soldier, the ex-convict Edward Toon, who had enlisted in Sydney in 1798 and was re-transported for theft that same year.<sup>51</sup> The low number of soldier transportees might be a consequence of preferential treatment. But it could also support the claim that, like the marines before them, the soldiers of the New South Wales Corps were relatively well-behaved in a colony of convicted criminals despite the poor leadership of their officers.

## The line regiments and their officers

The 73rd Regiment’s arrival with Governor Macquarie in 1810 promised a new start for the colony in terms of law and order and military discipline. But elements of the New South Wales Corps were to remain for several years. Army regulations allowed soldiers serving abroad in a regiment about to depart for home to transfer to the regiment that replaced it. When over half of the 794-strong corps transferred to the 73rd Regiment, the potential for ‘contamination’ of the 900-strong elite unit by their fellow soldiers could have been disastrous.<sup>52</sup> Yet there is no evidence that the new members behaved any differently from the other members of the regiment. Only one ex-corpsman was transported while serving in the 73rd Regiment. In 1811 Private Jeremiah Briant/Bryant was committed for trial in the criminal court for the capital offence of robbing the Port Dalrymple store of ‘slop’ clothing and other items. There was no court in Van Diemen’s Land competent to try capital cases, but Macquarie wanted to save the expense of sending the accused and witnesses to Sydney and reckoned the death penalty was unlikely to be handed down. ‘With the Advice of the Judge Advocate, Mr Bent’, the governor directed the soldier be tried by the bench at Port Dalrymple, a case:

Which they are fully Competent to decide on, so far as the inflicting of exemplary Corporal Punishment, with Transportation and hard Labor for the Space of Seven Years in Case of his being Convicted.<sup>53</sup>

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50 Roberts, ‘Exile in a Land of Exiles’, 479.

51 Edward Toon was convicted at the Leicester assize, 28 July 1790 of grand larceny and transported per Royal Admiral 1792 for 7 years. Edward Toon, Convict Indent, NRS-1150 [SZ115] p. 178, MHNSW-StAC. He enlisted in the corps in 1798, was reconvicted in the criminal court as a soldier on 4 August 1798 for theft, and sentenced to seven years’ transportation; In May 1813 Toon was subsequently stabbed to death in a drunken brawl at Wilberforce where he was living with William and Mary Mason. *Sydney Gazette*, 15, 29 May; 5, 12 June 1813.

52 Statham, ‘A New Look at the New South Wales Corps’, 62.

53 Secretary Campbell to Captain Ritchie, 1 July 1811, NRS-936 [4/3492] pp. 37–39, MHNSW-StAC.

The bench complied, and Bryant was duly sentenced to transportation for seven years, although he apparently stayed in Port Dalrymple as a convict. Some 18 months later, possibly because he had misinterpreted the advice of Bent, Macquarie, finding 'some degree of informality in his trial and sentence', remitted the remaining portion and instructed him to 'return to his duty as a Private Soldier in HM 73rd Regiment'.<sup>54</sup>

The general conduct of the 73rd Regiment, which had performed with distinction under Macquarie in India, rapidly deteriorated in New South Wales. This was so much so that by 1813 he reported with distress to the secretary of state, Earl Bathurst, that:

Gross irregularity of behaviour and an alarming degree of Licentiousness have for a length of time past, but too strongly, marked the general Conduct of the Officers and Privates of the 1st Battalion of the 73rd Regiment.<sup>55</sup>

Macquarie requested that the regiment be immediately removed and replaced with one from England, and that no officers be allowed to exchange into the incoming regiment to 'prolong the evil, they have so much fostered and been the authors of, and which it is so desirable to get fully suppressed'. He also suggested that future regiments remain in the colony for 'no more than three years at the utmost', to guard against the men forming relationships with local women, 'whereby they lose sight of their Military duty and become in a great degree identified with the lowest Class of the Inhabitants'.<sup>56</sup>

The immediate cause of Macquarie's distress, again, was the behaviour of some officers. Had they set a better example, he opined, the privates would follow. But instead of restraining and supervising the soldiers, they were 'the foremost in trampling down all Order, and in exhibiting Scenes of disgraceful riot and confusion to the dread and terror of the peaceful Inhabitants'.<sup>57</sup> The previous month Lieutenants Archibald McNaughton and Philip Connor, both drunk and in plain clothes, had attacked a man named William Holness outside his residence in Pitt Street by knocking him to the ground, beating him with large sticks and leaving him to die. The officers had made an improper remark to Elizabeth Winch, who was walking along the street with John Brown, and the couple ran into the Holnesses' house for protection. The officers outside continued to bang on the door and demand that Mrs Holness and Elizabeth Winch come outside. When William Holness arrived home, they attacked him, and he died shortly after.

Macquarie convened a criminal court to try the two officers. As mentioned, the members of the court were required to be military or naval officers, and with only one regiment in the colony, the court comprised Judge Advocate Bent, four officers of the 73rd Regiment and two of the Veteran Company, some of them friends of

<sup>54</sup> Campbell to Ritchie, 13 May 1813, *ibid.*, 224.

<sup>55</sup> Governor Macquarie to Earl Bathurst, 31 July 1813, *HRA I*, vol. 8, 1.

<sup>56</sup> Governor Macquarie to Earl Bathurst, 31 July 1813, *HRA I*, vol. 8, 1–5.

<sup>57</sup> Governor Macquarie to Earl Bathurst, 31 July 1813, *HRA I*, vol. 8, 1–5.

the accused. As sentences were determined by majority vote, the outcome was unsurprising. The court reduced the charge from murder to manslaughter and imposed fines of one shilling and six months' imprisonment each. Macquarie was outraged at the lenient sentences and referred the matter to the commander in chief, the Duke of York, who ordered the officers' dismissal. The regiment sailed for Ceylon in 1814, and the two dismissals were implemented there.<sup>58</sup>

It was not only the conduct of the officers that distressed the governor. Six soldiers are known to have been executed or transported from the regiment while in New South Wales, all by the civil courts and all for capital offences. Two years before the death of Holness, on 9 March 1812, Private John Gould was hanged for the murder of Margaret Finnie, wife of Private Joseph Finnie, after a party at a neighbour's house while her husband was absent on guard duty. She had apparently rejected Gould's advances and he had stabbed and beaten her. The soldiers were required to witness the hanging, and later that day Macquarie issued a general order in which he declared the episode a 'deplorable catastrophe', and called upon the military especially to reflect on the consequences:

Of giving way to turbulent, licentious, and unruly Passions; and ... above all other Things ... to refrain from the immoderate Use of Spirituous Liquors, which not only incapacitates them from their Military Duties, but also vitiates and depraves their Minds.<sup>59</sup>

Later that year, three soldiers of the 73rd became involved in the bushranging epidemic that raged across Van Diemen's Land during the administration of Governors Davey and Sorell. In 1812, 30 bushrangers were terrorising the inhabitants of the north and south of the island. The most famous was the 'lieutenant-governor of the woods', Michael Howe, but the banditti included Peter Septon, a convict from the Rifle Corps, who had been transported for life in the *Indefatigable* in 1812 after deserting in Spain, and Thomas Coyne/Coine, a soldier sent from the Cape Colony in 1801 to serve in the New South Wales Corps, but who was rejected and treated as a convict.

The soldiers involved, Privates Thomas Connor, Joseph Poney and Peter Gorrie, after drinking all through the afternoon of 25 September 1812, joined two bushrangers to attack William Parish's house outside Hobart and beat him, his wife and sons severely, before stealing goods and clothing. The five accused and witnesses were sent to Sydney to face the criminal court. All were found guilty and sentenced to death.<sup>60</sup> After the sentences were handed down, Macquarie was advised that of the three, only Connor had a previous conviction, having once been sentenced to corporal punishment that was remitted. Connor's officer reported that 'he was a wild boy, but that he never knew him to commit any crime'. The sergeant major could not remember any of the

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58 *HRA I*, vol. 8, 6–26.

59 Government and General Order, 9 March 1812, *Sydney Gazette*, 14 March 1812, 1.

60 *Sydney Gazette*, 2 January 1813, 3; *Sydney Gazette*, 16 January 1813, 2.

three being confined before.<sup>61</sup> For some unstated reason, the governor decided that Gorrie would suffer, and the other two soldiers would be transported for life with hard labour. Gorrie was accordingly executed with the two bushrangers on 21 January 1813. He wrote a dying declaration that Connor and Poney were innocent and he was led into committing the crime by the bushrangers and the influence of alcohol.<sup>62</sup> The two reprieved were sent to Newcastle with hard labour for one year.<sup>63</sup> But on 25 March 1814, as the last companies of the regiment were about to embark, and:

On account of a very favourable Representation, and earnest Solicitation, made on Behalf of these two Delinquents by the Non-commissioned Officers and Soldiers of the five Companies of the 73rd Regiment now here.

Macquarie pardoned them on condition of their re-enlisting in the regiment for life.<sup>64</sup>

The pardoning of two soldiers at the expense of the third might have been the cause of a vengeful rampage. After embarking the regiment in Sydney, the troopship *Windham* called in to Hobart to collect the southern detachment, and on 27 May, while the ship was in the Derwent, the fifer James Gorrie deserted.<sup>65</sup> It is not clear whether he was a relative of Peter Gorrie who had been executed. Within a year he had almost certainly become Peter Geary, one of the leaders of the gangs who continued to loot and murder, from Hobart to Port Dalrymple and between. Some of the prime targets were magistrates, whose crops they burned and houses they plundered. The only party of settlers that attempted resistance suffered when five of its nine members were wounded, two of whom died shortly after. Howe and others of the gang sent threatening letters to Governor Davey and at one stage Geary was seen to swear other bushrangers on oath, reminiscent of the leagues of rebels operating in Ireland at the time.<sup>66</sup>

Detachments of the 46th Regiment and their replacements from the 48th scoured the countryside for two years. Various rewards, usually 50 guineas, and promises of indemnity were offered and these served to split some of the gangs who informed on each other or surrendered. Although some of the minor bushrangers were killed or captured, Geary, the two soldier convicts, Septon and Coyne, and a few other bandits remained at large. In July 1817, after a meeting in Hobart, settlers pledged 520 guineas as rewards for the apprehension of the major perpetrators. As Figure 3 shows, they believed Geary to be the main threat. Two days later, and ignorant of

61 Lieutenant-Colonel O'Connell to Governor Macquarie, 4 January 1813, NRS-897 [4/1728] pp. 336–37, MHNSW-StAC.

62 O'Connell to Macquarie, 4 January 1813, NRS-897 [4/1728] pp. 406–10, MHNSW-StAC.

63 NRS-935 [4/3492] p. 194, MHNSW-StAC.

64 Colonial Secretary – Copies of Government and General Orders and Notices, NRS-1046 [SZ758-759] p. 475, MHNSW-StAC.

65 War Office, WO 12, Commissary General of Musters Office and successors: General Muster Books and Pay Lists, WO 12/8002, f. 37, TNA.

66 Andrew Bent, *Michael Howe: the last and worst of the bushrangers of Van Diemen's Land: narrative of the chief atrocities committed by this great murderer and his associates during a period of six years in Van Diemen's Land, from authentic sources of information* (Hobart Town: Printed by Andrew Bent, 1819), 15.



the rewards, a party of the 46th Regiment led by Sergeant McCarthy came across the gang and managed to kill Geary and wound two others.<sup>67</sup> Shortly after the gang turned on itself, one of the members cut Septon's throat, and Coyne was captured and sent again to Newcastle, New South Wales, from where he later escaped at least five times.<sup>68</sup>

## 520 Guineas Reward.

### Proclamation,

By WILLIAM SORELL, *Esquire, Lieutenant Governor of the Settlements in Van Diemen's Land, &c. &c. &c.*

**W**HEREAS the ARMED BANDITTI, who have for a considerable Time infested the Interior of this Island, did on the 20th Ultimo make an attack upon the Store at George Town, which being left unprotected they Plundered, taking away Two Boats, in which they were afterwards cast ashore at the entrance of Port Dalrymple:—And whereas the Principal Leader in the Outrages which have been committed by this Band of Robbers is PETER GEARY, a deserter from His Majesty's 78d Regt. charged also with MURDER and various other Offences.—And whereas the Under-named Offenders have been concerned with the said Peter Geary in most of these Enormities, the following REWARDS will be paid to any Person or Persons who shall apprehend these Offenders or any of them:—

PETER GEARY; . . . One Hundred Guineas.

PETER SEPTON;

JOHN JONES;

RICHARD COLLYER;

} Eighty Guineas Each.

THOMAS COINE;

BROWN or BRUNE,

*a Frenchman.*

} Fifty Guineas Each.

And whereas GEORGE WATTS, a Prisoner who absented himself from the Coal River previous to the expiration of his Sentence, and who stands charged with various Robberies and Crimes, is now at large. It is hereby declared, that a Reward of EIGHTY GUINEAS will be paid to any Person or Persons who shall apprehend the said George Watts.

And all Magistrates, and Commanders of Military Stations and Parties, and all Constables and others of His Majesty's Subjects are enjoined to use their utmost efforts to apprehend the Criminals above-named.

GIVEN under my Hand, at Government House,  
Hobart Town, this Fifth Day of July, 1817.

“WILLIAM SORELL.”

GOD SAVE THE KING!

Figure 3: Rewards for capture of the bushrangers.

Source: *Hobart Town Gazette and Southern Reporter*, 5 July 1817, 1.

67 *Hobart Town Gazette and Southern Reporter*, 9 July 1817, 1.

68 Bent, *Michael Howe*.



## Escapes and collusion with convicts

One of the greatest fears of the officers was that soldiers, who mostly came from the same 'class' as the convicts, would be contaminated by them. But only 30 proven cases of collusion have been identified, mostly at the penal stations, where soldiers and convicts were thrown together in small detachments in remote areas. One such area was the lime burners' camp at Newcastle. The convict work gang there was housed in a wooden hut, and a corporal guard was placed over the camp. Its isolation made it difficult to obtain extra rations, whereas in the settlement the convicts were allowed to grow them in their gardens and exchange them for tobacco.<sup>69</sup> Private Charles Powell of the 48th Regiment, sentenced to hang for highway robbery in 1819 but transported, was one of the unfortunates to work at the camp. He later cut his irons and 'took to the bush' but was recaptured.<sup>70</sup> In 1823 he was among those transferred to Port Macquarie where the work evidently suited him. In 1835 he was given approval to marry 23-year-old Mary Burrows and he received his conditional pardon four years later.<sup>71</sup>

Rather than collusion, perhaps the soldiers used the convicts to facilitate escape. In 1820 Private Thomas Greenaway of the 48th Regiment was a sentry at the lime burners' camp. With three convicts, he broke into the provisions store for bread and absconded, complete with his arms and ammunition. It is questionable whether the convicts influenced the soldier or the reverse. Greenaway had enlisted in Armagh in 1817, aged 16, just two months before sailing for New South Wales. As Clem Sargent has suggested, the soldier, a weaver, was young, lonely and therefore vulnerable to manipulation by the convicts.<sup>72</sup> The commandant at Newcastle, Major James Morisset, however, described him as 'a Powerful, desperate Blackguard'.<sup>73</sup> The four runaways soon separated; Greenaway was captured on 27 October near Broken Bay about 50 kilometres north of Sydney, and the other three later. Greenaway was tried by general court martial for desertion and transported for 14 years, also to Newcastle.<sup>74</sup> This was a lenient sentence; often soldiers deserting their posts were sentenced to be shot. Perhaps his youth influenced the court after all.

Greenaway, like many convict soldiers, was a serial bolter. He absconded as a convict from Newcastle and received 50 lashes for his attempt. After he was transferred to Port Macquarie in 1823, he ran for a third time, and was sent back to Newcastle. His fourth attempt at freedom resulted in another 50 lashes. Then on 11 May 1825 he had a stroke of luck to be in a party loading the cutter *Eclipse* with coal. The cutter

<sup>69</sup> Bent, *Michael Howe*.

<sup>70</sup> Monthly returns of Punishments, Newcastle, December 1810–October 1825, NRS-898 [4/1718] p. 97, MHNSW-StAC.

<sup>71</sup> Charles Powell, Registers of convicts' applications to marry, NRS-12212 [4/4512] p. 189, MHNSW-StAC.

<sup>72</sup> Clem Sargent, *The Colonial Garrison, 1817–1824: The 48th Foot, the Northamptonshire Regiment in the Colony of New South Wales* (Canberra: TCS Publications, 1996), 56.

<sup>73</sup> Major Morisset to Colonial Secretary, 30 September 1820, NRS-897 [4/1807] pp. 125–26, MHNSW-StAC.

<sup>74</sup> *Sydney Gazette*, 9 December 1820, 3; *Sydney Gazette*, 16 December 1820, 2.

was moored alongside the wharf and only the captain was on deck. Greenaway and 12 other convicts removed their irons, put the captain below deck, slipped the moorings and headed down the harbour. Once out to sea, they put the captain and crew into a boat and sent them ashore unharmed. The *Eclipse* was last seen heading north, possibly to Timor, but was never heard of again. It is notable that the convicts ensured they had a competent navigator in James Johnston who had accompanied Philip Parker King on expeditions along the coast of New South Wales. The incident demonstrates the willingness of both soldiers and convicts to take risks to escape.

Sometimes, duty at the penal stations became intolerable and opportunities to escape too tempting to resist. In January 1825 Private William Yems of the 3rd Regiment was on sentry duty at the Newcastle wharf when, with seven convicts, he stole the commandant's 'gig' or rowing boat, taking his firelock, bayonet, and ammunition with them. The party headed south after leaving the harbour, and had to land at Reid's Mistake, about 15 nautical miles from Newcastle, because their boat had been swamped. They were pursued by Lieutenant Owen in the whaleboat and were soon captured and lodged in Newcastle gaol. Yems, as was the custom, was incarcerated separately from the convicts, and on 2 February the seven convicts broke through the wall into the passageway and rescued him by picking the lock of his cell. They escaped but were captured two days later by settlers at Wallis Plains, aided by some Indigenous 'bush constables'. Yems was sent to Sydney to be tried by general court martial for desertion and collusion.<sup>75</sup> He was sentenced to be shot, but in a bizarre piece of theatre, not unique in the British Army at the time, was conveyed in a cart with his coffin to the execution ground, escorted by a regimental guard and band playing the 'Dead March'. After being paraded before the troops and having his sentence read to him, his commanding officer, Colonel Balfour, advised that Governor Brisbane had reprieved him on condition of being transported to Port Macquarie for life.<sup>76</sup> The soldier reportedly told Balfour that he would rather be shot than sent there.<sup>77</sup> In 1829 the troubled man was hanged in Sydney for escaping from Port Macquarie and threatening the lives of several people in a quest for weapons.<sup>78</sup>

## To 'get rid of the regiment'

It is impossible to know how many soldiers committed crimes specifically to escape the drudgery of soldiering in the colonies and embark on a seemingly more attractive life as a convict. But the clumsy ways in which many committed their offences suggest their attempts were more impromptu and not seriously intended for personal gain, while some openly acknowledged that they were seeking to be transported for their transgressions. In 1826 five soldiers from the 57th Regiment

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<sup>75</sup> Commandant Owen to Colonial Secretary, 2, 5 February 1825, NRS-897 [4/1812] 20c, MHNSW-StAC.

<sup>76</sup> *Sydney Gazette*, 24 February 1825, 2.

<sup>77</sup> *Australian*, 24 February 1825, 3.

<sup>78</sup> *Sydney Gazette*, 18 April 1829, 2; *Sydney Monitor*, 28 April 1829, 3.

were convicted in the civil courts for stealing, culminating in November 1826 with the Sudds and Thompson episode. Privates Joseph Sudds and Patrick Thompson were sentenced by a Court of Quarter Sessions to be transported for seven years. The soldiers, in uniform, had stolen some calico worth 10 pence from a Sydney shop on 20 September. Sudds had walked out the shop with the material under his arm, saying to Thompson that he would leave him to pay for it. Shortly after Thompson, too, left the shop, informing the owner 'that he might do his best to obtain [the money]'. After constables apprehended them with the calico in their possession, the soldiers declared 'it had been their fixed determination to commit some species of theft by which they would be transported, in order to get rid of the regiment'.<sup>79</sup> These are the first known instances in the colony of this way of attempting to leave the army. Governor Ralph Darling informed the secretary of state that he 'was induced in the case of "Sudds and Thompson" to resort to the proceeding ... five Men of their Regiment alone having been convicted of *Larceny*'.<sup>80</sup> He 'commuted' the sentences from seven years' transportation to seven years' labour in irons on the public roads and ordered the soldiers to undergo a 'drumming out' ceremony which the chief justice later described as 'resembling being put in the pillory'.<sup>81</sup>

Soldiers discharged with ignominy from the army were customarily stripped of their regimental buttons and badges in front of their comrades and, with a rope halter placed around the neck and a sheet of paper describing the crime pinned on the back, marched off the parade ground to the tune of the 'Rogue's March'.<sup>82</sup> On this occasion the degradation was even greater. The men were marched from the Sydney gaol to the parade ground, stripped to the skin, dressed in convicts' yellow clothing, and specially constructed chains were placed around their necks and ankles. They were then marched to the barrack gate and returned to the gaol. But they were not discharged from the army. Darling ordered that after the soldiers had completed their sentences they were to be entered into a regiment in the colony, as directed by the governor. Unfortunately, and unknown to the governor, Sudds was ill and, five days later, he died.<sup>83</sup> The political consequences of Darling's actions have attracted much attention.<sup>84</sup> William Charles Wentworth, supported by the 'opposition press' that Darling was attempting to censor, was agitating for self-government and trial by jury, and against autocratic rule by the governors, in the context of the New

79 *Australian*, 11 November 1826, 4.

80 Governor Darling to Sir George Murray, 28 May 1829, *HRA I*, vol. 14, 795.

81 Francis Forbes, Correspondence relating to the Sudds, Thompson and Robison cases, A 743, reel CY 3992, frames 107–151, 6, Mitchell Library.

82 John Shipp, *Military Bijou; or the Contents of a Soldier's Knapsack: being the Gleanings of thirty-three years' Active Service*, 2 vols., vol. 1 (London: Whittaker, Treacher and Co, 1831), 37; Scott Hughes Myerly, *British Military Spectacle: From the Napoleonic Wars through the Crimea* (Cambridge, MA: Harvard University Press, 1996), 85; Patrick Thompson described the usual procedure for drumming out in his testimony in April 1827, forwarded by Governor Darling to Murray, 28 May 1829, *HRA I*, vol. 14, 861.

83 *Australian*, 25 November 1826, 3.

84 The most detailed accounts include C. H. Currey, *Sir Francis Forbes: The First Chief Justice of the Supreme Court of New South Wales* (Sydney: Angus and Robertson, 1968), Chapters 18 and 33; Brian H. Fletcher, *Ralph Darling: A Governor Maligned* (Melbourne: Oxford University Press, 1984), 245–50.

South Wales Bill that was being debated in London. Wentworth sensed Darling's vulnerability after Sudds's death, and used his influence, his political oratory and his knowledge of the law to denounce Darling as a 'tyrant' who overruled the justiciary. In a letter sent directly to the secretary of state, he sought the governor's recall by the British Parliament.<sup>85</sup>

The press, initially supportive of the ceremony, now screamed that 'Sudds and Thomson were illegally subjected to a Military punishment without a military trial'.<sup>86</sup> *The Australian*, whose editor, Doctor Robert Wardell, was a barrister, went further to claim that their sentences were illegal; their crimes were not even petty larceny as the soldiers had not demonstrated an intent to keep and use the material, and they should have been charged with the misdemeanour of failing to honour a bargain (of undertaking to pay for it) and sale.<sup>87</sup> The chief justice, when the governor later asked for his opinion, advised that the latter's action was illegal because the substitution of labour on the roads in chains for transportation was an alteration of the sentence and not a commutation. A review of sentences could be directed in courts martial, but not in civil trials, where it amounted to interference with the judicial system. Darling had relied on a recent local statute that empowered him to withdraw convicts from penal settlements to labour on the roads but, as the judge pointed out, the convicts had first to reach the settlement before they could be withdrawn.<sup>88</sup> When Darling appealed to London, the authorities agreed with the judges and ordered that Thompson be released. Viscount Goderich, the secretary of state, left the matter of expulsion from his regiment in Darling's hands.<sup>89</sup> Somehow the governor managed to keep Goderich's order to himself, from its receipt in November 1827 until March 1829, when he eventually pardoned Thompson, who was now at the Moreton Bay penal settlement, and directed that he be returned to his regiment. *The Australian* astutely inferred that this direction was imposed from 'Home'.<sup>90</sup> Thompson remained with the regiment until October 1829 when he embarked on board the ship *Harmony* to join its depot component in England.<sup>91</sup> There he spent almost all his time in confinement for insubordination, before finally being court-martialled and discharged with ignominy on 14 May 1830.<sup>92</sup>

85 Wentworth to Sir George Murray, 1 March 1829, *HRA I*, vol. 14, 800.

86 *Australian*, 27 December 1826, 2.

87 *Australian*, 20 December 1826, 2.

88 *HRA I*, vol. 12, 763–64, 756; *An Act for the Transportation of Offenders to Penal Settlements and for the more effectual Punishment and Security of the same*, 3 Geo. IV No. 5 (NSW) (16 August 1826), s.6.

89 Goderich to Darling, 11 July 1827, *HRA I*, vol. 13, 440–41. This despatch arrived in the ship *John*, 25 November 1827.

90 *Australian*, 21 March 1829, 2.

91 *Sydney Monitor*, 31 October 1829, 2.

92 *Sydney Monitor*, 31 October 1829, 2; War Office, Judge Advocate General: WO 86, District Courts Martial Register, Home and Abroad, 1829–1979, WO 86/1, f. 37, TNA.

While Darling had grouped all the larcenies together on the assumption they were all committed with the same motive, there is no evidence that the three earlier ones had been other than normal felonies.<sup>93</sup> Private David Wright had stolen a watch from fellow-soldier Thomas Gueard and sold it for 27 shillings. He was sentenced in the Sydney Quarter Sessions in February 1826 to be transported for three years and was sent to Moreton Bay (Brisbane). He absconded once but was recaptured, and returned to his regiment in March 1829.<sup>94</sup> Privates Patrick Hogan and John Kearney/Carney had stolen two pigs, government property, at Emu Plains in May 1826. They were convicted in the Supreme Court in September 1826 of simple grand larceny and sentenced to be transported for seven years, but their sentences were commuted to three years' labour in irons on the public roads.<sup>95</sup> Hogan served out his sentence and returned to the regiment in September 1829. Kearney absconded, was recaptured, and convicted by the Penrith Sessions of absconding and being an incorrigible character. He was directed to serve the remainder of his sentence in a penal colony and was sent to Moreton Bay. In September 1832 Governor Richard Bourke remitted the final year of his sentence and sent him to Madras in the *Norfolk* to rejoin his regiment, which had left the colony in 1831.<sup>96</sup> This practice became the norm for all but the worst soldiers; altogether 71 of the transported soldiers were returned to their regiments before departure for India.

Bernard McCann admitted at his trial in September 1830 his hope to be discharged, but this seems to have been bravado after the event. Unlike Sudds and Thompson, he and two civilian accomplices successfully conducted a sophisticated operation to steal six chests containing apples and clothing sent from Hobart to Sydney, after which McCann sold the apples to a fruiterer that evening. It was only after the chief justice had sentenced him to seven years' transportation that he reportedly exclaimed 'Your Honour I hope you will get me my discharge'. The judge replied that he 'had nothing to do with it [the soldier's discharge]',<sup>97</sup> but apparently McCann got his wish and his regiment declined to take him back.<sup>98</sup> Despite Darling's fears, then, it seems that the only soldiers who committed an offence in the hope of being transported and discharged during his administration were Sudds and Thompson. The soldiers who committed felonies may have been disaffected with the army, but their actions appear to have been unconstructive protests rather than deliberate attempts.

93 The difference between grand and petty larceny was largely abolished in England in 1827, but the statute was not adopted in NSW until 1828. *An Act for adopting certain Acts of Parliament passed during the Seventh and Eighth Years of His Present Majesty King George the Fourth for the Amendment of the Law and the Improvement of the Administration of Justice in Criminal Cases*, 9 Geo. IV No. 1 (NSW) (26 March 1828).

94 *Sydney Gazette*, 28 January 1826, 2; 8 February 1826, 3; *Australian*, 21 March 1829, 2.

95 John Carney and Patrick Hogan, 9 August 1826, Sydney Gaol Entrance Book, NRS-2514 [4/6430], MHNSW-StAC.

96 WO 12/6656, f. 112, TNA.

97 *Sydney Monitor*, 15 September 1830, 2; 29 September 1830, 2.

98 *Sydney Herald*, 11 January 1838, 2; House of Correction, Carters Barracks, NRS-12217 [4/4569] f. 61, MHNSW-StAC.

## Guarding the convict road gangs

In 1832 Governor Bourke, dissatisfied by the ineffective convict work gangs, removed the convict overseers and installed military officers as ‘assistant engineers’.<sup>99</sup> The non-commissioned officers thus became the gaolers of the mobile prisons. By January 1837, 1,000 convicts were working in 16 ironed gangs, all commanded by military officers.<sup>100</sup> The soldiers were now performing the task that the Marines had refused to do—supervising the convicts. It was detested by the soldiers and officers alike. They were required to guard the convict stockade where the convicts slept in portable boxes, escort the gangs to and from work and supervise the convicts at work. Lieutenant-Colonel Breton told the Transportation Committee in 1837 that the effect of supervising the chain gangs was ‘a most ruinous one to the regiment; it disorganizes the regiment, and the officers become disgusted, and the men become reckless’.<sup>101</sup>

In 1838 an anonymous officer of the 80th Regiment wrote an account of the ironed gangs to the *United Service Journal* in England. His words make clear the unhappy conditions of work:

The duties of the troops are most harassing; there is no relief of sentries; they are posted all day with their loaded firelocks, and constantly on the *qui vive*. At night this hated duty in some degree ceases; the irons of the convicts are examined, and they turn in, twenty-five to a box, which is a strong wooden frame, fitted up like a guard-room, with an inclined plane for beds, and securely fastened. Round these boxes the sentry paces, and hears the professional adventures and tales of vice which most of the convicts have to narrate to each other. All this cannot improve the character; and I venture to say that the regiments in New South Wales are the least soldier-like, and the worst conducted of any her Majesty possesses.<sup>102</sup>

Indeed, it was so bad that in January 1838 Acting Corporal Edward McGinness, principal overseer at the Green Hills Stockade, wrote directly to the governor, ‘praying for the protection entitled to Her Majesty’s Subjects’. He had been supervising the ironed gangs on their way to work, and when he ordered the convicts hauling a hand cart to move faster, the convict James Boyd took a sharpened shovel from the cart and struck McGinness over the head with it. When the soldier took the convict to court, the civil magistrates at Maitland only sentenced Boyd to wear irons for an additional year. As McGinness wrote:

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99 Governor Bourke to Lord Glenelg, 29 December 1836, *HRA I*, vol. 18, 627.

100 Governor Bourke to Lord Glenelg, 29 December 1836, *HRA I*, vol. 18, 626.

101 Evidence of Lieutenant-Colonel Henry Breton, 12 May 1837, Q.2019, *Report from the Select Committee on Transportation*, (518) XIX.1, 135.

102 ‘F.V.G.’, Sydney, 1 May 1838, ‘F.V.G.’, ‘Military Service in Australia’, *United Service Journal and Naval and Military Magazine*, Part 3 (1838): 521–22.

It is very hard for a military overseer to do his duty over an ironed gang when he is not supported by the magistrates. There hath been some individuals in this country who have lost their lives for striking a prisoner overseer.<sup>103</sup>

McGinness had a valid point; in February 1840, when the convict soldier Martin Dempsey struck his overseer, Private John Brown, over the head with a shovel, the Parramatta Quarter Sessions sentenced Dempsey to 10 years' transportation to Norfolk Island.<sup>104</sup>

It is perhaps unsurprising then that this was a bad period for soldiers deserting, and a high period of collaboration with the convicts. Between 1833 and 1840 in New South Wales, 95 soldiers were sentenced to transportation. In 1835, four soldiers of the 4th Regiment, with four convicts and the free overseer, ex-Major Richard Vowell, absconded with their weapons but were all recaptured. The soldiers were tried in the Supreme Court for armed robbery and a sentence of death passed. They claimed their desertion was:

The unfortunate consequence of a resolution suddenly formed during a moment of intoxication; and followed up through fear of the punishment that would have awaited us on returning to the Detachment.

They further claimed they took their arms only for 'protection against such Aboriginal Tribes as they might encounter'.<sup>105</sup> The governor directed they be sent to Norfolk Island for life. They did not return to their regiment.<sup>106</sup>

## The New Zealand Wars

The Australian Garrison's entry into the New Zealand Wars proved a disaster for troop morale. Elements of the 58th, 96th and 99th Regiments were sent across the Tasman in early 1845.<sup>107</sup> They were placed under the command of 59-year-old Lieutenant-Colonel Henry Despard, commanding officer of the 99th Regiment, who had last seen active service in India 30 years previously. On 1 July 1845, with over 600 British troops, he ordered an attack on the heavily fortified Māori pa at Ohaeawai in the North Island, without first ensuring that his bombing had breached the wall of the stockade. As a result, 36 men were killed and another 74 were wounded.<sup>108</sup> A similar

103 Edward McGinness, 28 Regiment, Memorial, 12 January 1838, NRS-905 [4/2411.3] 38/1263, MHNSW-StAC. Civil/Military tensions aside, McGinness may have been unaware that an additional twelve months in irons was the maximum punishment available to magistrates, but the case could have been forwarded to the Maitland Quarter Sessions.

104 Martin Dempsey, Conduct Register, CON33/1/55, Tasmanian Archives (hereafter TA).

105 Samuel Powell, William Marsden, James Shann and William Shaw, Petition, 26 August 1835, NRS-905 [4/2298] 35/6970, MHNSW-StAC.

106 *Phoenix* Hulk entrance book, 18 Jan 1833–10 Oct 1837, NRS-2424 [4/6445] pp. 44–45, MHNSW-StAC.

107 Gipps to Lord Stanley, 7 April 1845, *HRA I*, vol. 24, 314.

108 Barry Sinclair and Morna Sinclair, 'Diary of Cyp Bridge, Major Commanding 58th Regiment', accessed 17 November 2019, [users.tpg.com.au/users/barymor/Diary%20from%20the%20NZ%20%20Wars%201845-46.html](http://users.tpg.com.au/users/barymor/Diary%20from%20the%20NZ%20%20Wars%201845-46.html) (site discontinued). Entry for 1 July 1845.



blunder the following January resulted in the loss of another 12 men killed and 29 wounded.<sup>109</sup> The aftermath of such losses must have been traumatic, for there was an immediate upsurge in civil and military offences. Between May and August 1846 seven soldiers of the 99th Regiment were transported by court martial from Auckland for desertion. These were followed by 20 of the 58th Regiment from 1846 to 1848, for a range of military and civil offences, including desertion, violence to superiors and housebreaking and robbery. By July 1849 there were rumours circulating among the 65th Regiment that soldiers transported from the regiment were receiving tickets-of-leave immediately on arrival in Hobart. The rumours were traced to letters from Privates Michael Gallagher and Patrick Brady, transported for life in 1848 for striking their superior officers.<sup>110</sup> The claims were false; both soldiers underwent the normal progression through the probation system to hired service.<sup>111</sup> Nevertheless, 13 soldiers from the 65th were transported, many of whom openly claimed they had committed their offences to be discharged from the army. Altogether 50 soldiers were transported from New Zealand between 1846 and 1851.

Meanwhile a spate of burglaries and stealing in Hobart was the cause of six soldiers being transported by the civil courts from 1846 to 1850.<sup>112</sup> Despard, now commanding the troops in Van Diemen's Land, was determined they would not be transported. In August 1848 he appealed to Governor Denison to order the soldiers to be tried by court martial where, he claimed, they would not be transported but receive an 'equally severe' punishment. This was of course illegal under the *Mutiny Act*, and it was rejected out of hand by Denison's legal advisers.<sup>113</sup> Despard ignored any other morale problems and laid the blame firmly on the convicts. He claimed:

Whatever may be the terrors of transportation in other parts of the world, it has none in these colonies to young soldiers, who are frequently led astray by the convict population with which they associate. ... Convicts have taunted soldiers when on guard over them, by calling them slaves, and saying how much better fed they, the convicts, were, and without having half the work to do.<sup>114</sup>

Despard also objected to the lenient treatment of transported soldiers by the civil authorities:

109 Sinclair and Sinclair, 'Diary of Cyp Bridge'. Entry for 11 January 1846.

110 Great Britain, House of Commons, *Correspondence on Convict Discipline and Transportation* (1850), [1153, 1285], XLV.11, 155, Lieutenant-Governor Denison to Earl Grey, 28 September 1849, and enclosures, ff. 210–12.

111 The probation system involved all convicts working for a probationary period on the public works before supervised assignment. Ian Brand, *The Convict Probation System: Van Diemen's Land, 1839–1854*, ed. Michael Sprod (Hobart: Blubber Head Press, 1990); Michael Gallagher, Conduct Register, CON37/1/4 and Patrick Brady, Conduct Register, CON37/1/5, TA.

112 *Britannia and Trades' Advocate*, 22 June 1848, 3.

113 Despard to James Bicheno, Colonial Secretary, 30 August 1848, CSO24/59/2166, p. 270, TA.

114 Despard to Bicheno, 30 August 1848, CSO24/59/2166, p. 259, TA.



Unfortunately, soldier-convicts are usually looked upon in a more favourable light, and, as such, frequently treated with less strictness, as well as being at a very early period after their conviction, appointed to fill minor situations, such as overseers, etc.<sup>115</sup>

Denison was sympathetic. He represented to the secretary of state, Earl Grey, the 'trifling punishment' that transportation entailed upon soldiers. Not only was the convict better fed, after his short probation period he could receive much better pay as a passholder and lived under much better conditions than his soldier comrades:

Many [soldiers] in this colony have been known to commit offences against the law for the express purpose of being, by transportation, relieved from their military responsibilities; and having learned the evil lesson here, it is practised to a still greater extent when the regiment is moved to India. In that country the offences which are committed are generally such as would induce a court-martial to pass a sentence of transportation, such as striking a superior officer, &c., in fact offences against discipline. Here, on the contrary, the soldier takes care to avoid, if possible, the judgement of a court-martial, and commits a crime which brings him under the jurisdiction of the civil courts.<sup>116</sup>

The governor regretted that any move to improve the soldiers' lot would entail too much expense, so the only solution would be to increase the severity of the punishment. He decided that if it were proved that a soldier convict had committed his offence deliberately to be transported, he, Denison, would ensure that the soldier served half his sentence in a probation gang, or 12 years if transported for life. This was much longer than the normal time of one or two years in the gang before entering supervised private employment. And he suggested that Earl Grey might inform commanders at other stations of this new rule, so that 'an evil of great magnitude may be checked in the bud'.<sup>117</sup>

The secretary of state had no objections to Denison's proposals, although the under-secretary of state, Benjamin Hawes, rightly opined that 'there must be something wrong in our military system if a soldier now prefers transportation to awaiting his discharge in regular course'.<sup>118</sup> The new rules were followed until 1855. From March 1849, 23 soldiers were ordered to the probation gangs for half their sentences, including four 'lifers' ordered to the gangs for 12 years, but all had the unexpired portions remitted in 1855 and they entered the next stage of the probation system—supervised hired service—as passholders.<sup>119</sup> London had decided that, because the public works were to the economic benefit of the colony, the latter should defray

115 Despard to Bicheno, 30 August 1848, CSO24/59/2166, p. 261, TA.

116 Denison to Grey, Despatch no. 217, 27 October 1848, WO 1/574, f. 85, TNA.

117 Denison to Grey, despatch no. 217, 27 October 1848.

118 Earl Grey to Governor Denison, 5 March 1850, *Correspondence on Convict Discipline and Transportation*, (1153, 1285) XLV.11, 155, f. 300.

119 For example, Private Patrick Early, 65th Regiment, transported from New Zealand for life 1849 for striking his officer, was a passholder 24 September 1855 and pardoned 8 March 1859. Patrick Early, Conduct Register, CON37/1/5, TA.

the cost of the convicts employed on them.<sup>120</sup> Reductions in sentences therefore reduced a heavy expense on the colony, and with transportation ended, the need to deter other soldiers also ceased. In September 1854 the New Zealand Government passed the Secondary Punishment Act that abolished transportation (by the civil courts) and substituted penal servitude in the form of hard labour on the roads or public works. This was in response to directions from the secretary of state to devise means to punish European convicts within the colony.<sup>121</sup> Sentences to transportation by court martial were not affected, but on 8 November 1853 the secretary of state directed that soldiers sentenced to transportation by the military court were to be sent to Western Australia, which had commenced accepting convicts in 1850.<sup>122</sup>

## The wider picture

While statistics for military punishment of soldiers are patchy, and those for civil conviction non-existent, it is possible to compare local offences with those of soldiers transported from elsewhere. These do not include the deserters who were not caught (estimated by some as three in four), or those pardoned or whose sentence was commuted to imprisonment. But for a rough comparison, Table 2 shows the known offences of soldiers transported to New South Wales. Desertion, while low, is the most common offence and the top offences are similar to those committed by the garrison. This suggests that the garrison soldiers' protest against their conditions were similar to those in other stations throughout the empire during the nineteenth century.

**Table 2: Known offences of soldiers transported to New South Wales 1788–1842.**

Offence	No. of Civil	No. of Military	Total	Percentage
Desertion		1,085	1085	44.5
Stealing	353	40	394	16.2
Striking superior	1	173	174	7.1
Burglary/housebreaking	111	5	117	4.8
Mutinous conduct		114	114	4.7
Animal stealing	82	2	84	3.4
Insubordination		76	76	3.1
Robbery	50	9	59	2.4
Highway robbery	40	8	48	2.0
Murder	26	15	41	1.7
Forgery	34		34	1.4

120 Governor Wilmot to Earl Stanley, 2 December 1843, Great Britain, House of Commons, *Copies or extracts of any correspondence between the Secretary of State and the Governor of Van Diemen's Land, on the subject of convict discipline. In continuation of the papers presented to the House of Commons, 3 April, 1843, nos. 158 and 159.* (1845), [659], XXXVII.329, 350.

121 Sir John Pakington to Governor Grey, 3 June 1852, Colonial Office, CO 406, New Zealand Entry Books of Correspondence, CO 406/12, f. 182, TNA.

122 Sir John Pakington to Governor Grey, 3 June 1852.

Offence	No. of Civil	No. of Military	Total	Percentage
Sleeping/leaving post		23	23	0.9
Assault	8	14	22	0.9
Receiving	18	4	22	0.9
Manslaughter	17	5	22	0.9
Rape	16	2	18	0.7
Shoplifting	18		18	0.7
Unnatural conduct	7	8	15	0.6
Bigamy	10		10	0.4
Mutiny/mutinous conduct		10	10	0.4
Disobedience of orders		9	9	0.4
Embezzlement	6	2	8	0.3
Theft	6	1	8	0.3
Animal theft	3		3	0.1
Violence to superior		3	3	0.1
Fraud	3		3	0.1
Arson	1	1	2	0.1
Felony	2		2	0.1
Irish Political prisoner	2		2	0.1
Vagabond	1		1	0.0
Larceny	1		1	0.0
Wounding		1	1	0.0
Duelling	1		1	0.0
False pretences	1		1	0.0
Vagrant	1		1	0.0
Perjury		1	1	0.0
Maiming		1	1	0.0
Drunk on duty		1	1	0.0
Extortion	1		1	0.0
<b>Grand Total</b>	<b>820</b>	<b>1,613</b>	<b>2,436</b>	<b>100.0</b>

Source: NRS-1150, NRS-1151, NRS-1152, NRS-1153, NRS-1154, NRS-12188, NRS-12889, MHNSW-StAC.

## Conclusion

This article has revealed some of the fractious relationships that existed between the military and the other elements of Australian society throughout the convict period. Reviled by the convicts they were forced to supervise, and badly led by their officers, some soldiers committed offences against both the civil and military law. While it is impossible to be certain of their motivations, some offences may be seen as a form of protest. As Peter Stanley has argued, these men came from a period of turmoil

and protest in Britain, and they carried those traditions into the army.<sup>123</sup> Many who deserted admitted that they knew they would be punished if caught, and so turned to bushranging and highway robbery to survive. Some may have committed petty thefts to obtain a discharge as they claimed. The article adds to our understanding of the nuances of the convict-military system, and some of the factors that influenced military behaviour in nineteenth-century Australia.

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123 Peter Stanley, "A Mere Point Of Military Etiquette": The Norfolk Island Mutiny of 1839', *Push from the Bush* 7 (1980): 2.

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