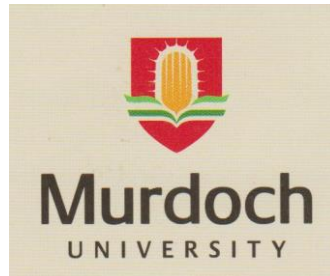


The Convict Era in Western Australia: Its Economic, Social and Political Consequences

by

William J. Edgar



History

**School of Arts,
Murdoch University**

A dissertation submitted for the Degree of Doctor of Philosophy

Declaration

Except where I have indicated, I declare that this dissertation is my own work and is an account of my research that has not been submitted for assessment for a degree at a University or other Tertiary Institution.

(Signed)

William J. Edgar

Copyright Acknowledgment

I acknowledge that a copy of this dissertation will be held at Murdoch University Library.

I understand that, under the provisions of s51.2 of the Copyright Act 1968, all or part of this dissertation may be copied without infringement of copyright where such a reproduction is for the purposes of study and research.

This statement does not signal any transfer of copyright away from the author.

(Signed)

William J. Edgar

Full Name of Degree: Doctor of Philosophy

**Dissertation Title: The Convict Era in Western Australia: Its Economic,
Social and Political Consequences.**

Author: William J. Edgar

Year: 2014

Acknowledgements

I acknowledge Professor Michael Sturma's research guidance, his professional mentoring approach and his expert editing skills in the preparation and refining processes of this dissertation.

I further acknowledge Mrs Annette Roberts, great-granddaughter of Henry Maxwell Lefroy, for allowing me to quote from her ancestor's private letters.

Acknowledgement is also due to Michael and Isabel Kilkenny, psychologists, for their insightful comments on the likely influences of environment on the behaviour of the convict fraternity after arrival in Western Australia.

Acknowledgment is due to the late Sister Mary Albertus Bain and to Clem Mulcahy for allowing me to study sections of the unpublished biography of Governor John Hampton.

I acknowledge Graeme Rymill of the Reid Library, University of Western Australia, for guiding me to the goldmine that is the Irish University Press collection of the British Parliamentary Convict Transportation papers.

I acknowledge Roland Hamp for his technical expertise as I prepared statistics and graphs for this dissertation.

I also acknowledge the expertise and patient assistance of the staff at the J.S. Battye Historical Library, Perth.

Acknowledgement is also due to the editing skills of Jennifer Newman, for her attention to the minutiae of literary presentation.

ABSTRACT

This thesis assesses the economic, social and political consequences of the transportation of convicts to Western Australia from 1850 onward. The work examines firstly the initial trouble-free ‘bedding in’ process during the first five years. Matters then changed with the passing of the ‘Penal Servitude Act’ at Westminster in 1853. From mid 1854 onward a more serious criminal ‘type’ was loaded aboard the transports to Western Australia.

With the potential for social disaster, and to tighten the fiscal management of the colony, the authoritarian Dr John Hampton was appointed Governor in 1862. Despite popular perceptions, Hampton proved to be a capable administrator. Although he was blamed for many of the perceived ills of the convict system he transformed the fortunes of the colony, economically and politically.

While much has been handed down about the severity and iniquities of the convict system, much has been falsely mythologized. The Western Australian period of convict transportation from Great Britain was the end phase in a penal methodology that had started with the first transportation act in 1597. It metamorphosed from one of extreme cruelty in its earliest phases in the 17th century to one with rehabilitation rather than retribution as its central tenet during its Western Australian phase.

This thesis argues that the new environment played a considerable role in modification of attitudes and behaviour among the convicts, even among the formerly most intransigent. Though a penal colony, Western Australia remained, overall, a law-abiding society during the period. The relatively small free population against the relatively large residue of former convicts, however, was perceived as a limiting imbalance by conservative, ‘responsible’ citizenry and served to delay the granting of self-governing status until 1889. Yet overall 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.

Table of Contents

Introduction:	7
Chapter One: Prelude to Western Australian convict transportation	33
Chapter Two: Agitation for convict labour	64
Chapter Three: The first convicts – a harrowing journey	80
Chapter Four: Arrival – early administrative arrangements	105
Chapter Five: The system consolidates	129
Chapter Six: Change and New Challenges - 1854-59	150
Chapter Seven: Continuing opposition to convict transportation – a plea for a reformatory colony	175
Chapter Eight: A new decade – the Transportation debate continues	205
Chapter Nine: Governor Hampton – an ‘iron’ administrative hand amid community agitation from great political autonomy	242
Chapter Ten: Immediate post-transportation influences	268
Chapter Eleven: From stagnation to prosperity	292
Conclusion – the legacy	314
Bibliography:	329

Introduction

The Convict Era in Western Australia: Its Economic, Social and Political Consequences

While an appreciable amount of literature has been produced on the convict systems of New South Wales and Tasmania, there remains no detailed, comprehensive analysis of the Western Australian convict period. In fact, of the major studies of the convict period in Australia, L.L. Robson's *The Convict Settlers to Australia* (1965) excluded Western Australia's convicts altogether, A.G.L. Shaw's *Convicts and the Colonies* (1966) mentioned them only as a postscript, Robert Hughes' *The Fatal Shore* (1987) gave only seven pages out of 603 to Western Australia and J.B. Hirst, in his *Convict Society and its Enemies* (1983), a contrasting view to the Robert Hughes expositions of evils and iniquities, made no comment at all.¹ Nevertheless, it is Hirst's work on the New South Wales convict system, in particular, which most effectively describes many similarities to the later Western Australian system. However, major contrasts will also be recognized. With the passing of time and the evolution of new penal philosophies in the intervening years a more benign and enlightened convict administration was practiced within Western Australian during the 1850s and 1860s.

¹ L.L. Robson (1965), *The Convict Settlers to Australia*, Melbourne, Melbourne University Press; A.G.L. Shaw (1977), *Convicts and the Colonies: A Study of penal transportation from Great Britain & Ireland to Australia and other parts of the British Empire*, London, Faber & Faber; Robert Hughes (1987) *The Fatal Shore: A History of the Transportation of Convicts to Australia, 1787-1868*, London, Collins-Harvill; J.B. Hirst (1983), *Convict Society and its Enemies*, Sydney, George Allen and Unwin.

Hirst emphasizes that although the convict and ex-convict communities in New South Wales had little social standing, the continuing chronic labour shortages within the developing colony gave them considerable economic capital and therefore substantial influence. It was a pattern emphasized too by Michael Sturma, Babette Smith and Stephen Nicholas in their studies on the legacy of the convict era in New South Wales.² Michael Cannon, in the first of his trilogy of works on Australia in the Victorian age, *Who's Master, Who's Man?*, makes a similar point.³ Other social commentators similarly argue that this phenomenon - labour capital - is the core source of Australia's relative egalitarianism to this day. Employers, although of a different education and social class, were obliged to treat their workers with consideration in the infant days of the new country, even though a residue of class division transported from Great Britain remained intact. That this cultural division was considerably modified in the Australian workplace had its wellspring in the need for economic survival among the landowner and business 'classes'. The Western Australian environment proved no exception.

The assignment system had ended in Van Diemen's Land by 1842 and forms of probation were then used until 1853, influential forerunners to the formulation of effective ticket-of-leave arrangements subsequently adopted in Western Australia. Ian Brand's *The Convict Probation System: Van Diemen's Land, 1839-1854* (1990)

² Michael Sturma (1983), *Vice in a Vicious Society: Crime and Convicts in mid-nineteenth New South Wales*, St Lucia, Brisbane, University of Queensland Press; Babette Smith (2008), *Australia's Birthstain: The Startling Legacy of the Convict Era*, Crow's Nest, New South Wales, Allen and Unwin; Stephen Nicholas (1988), *Convict Workers: re-interpreting Australia's past*, Cambridge, England, Cambridge University Press.

³ Michael Cannon (1971), *Who's Master, Who's Man*, Melbourne, Nelson.

and the undated, *Port Arthur, 1830-1877* give useful facts and background, as does Hamish Maxwell-Stewart's, *Closing Hell's Gates, the death of a convict station* (2008) and his *Chain Letters, narrating convict lives* (2001), written in conjunction with Lucy Frost. Maggie Weidenhofer's *Port Arthur: A Place of Misery* (1981) and John Clay's invaluable *Maconochie Experiment: how one man's extraordinary vision saved transported convicts from degradation and despair* (2001) proved useful reading for an understanding of the evolution of convict administration from within the early New South Wales environment, on through the Van Diemen's Land experience and finally to Western Australia from 1850 onward. Alison Alexander's *Tasmanian Convicts: How Felons Built a Free Society* also describes the relative success of the majority of ex-convicts translated into the Australian environment.⁴

As for works specifically on Western Australia, W.B. Kimberly's *A History of Western Australia* (1897) concentrated almost exclusively on the transportation period itself (1850-68), as did J.S. Battye in his *Cyclopedia of Western Australia* (1912-13).⁵ Jennie Carter emphasized the disparity of views between the two authors in her perceptive 1981 article, 'Two Historians and Convictism: W.B.

⁴ Ian Brand (1990), *The Convict Probation System: Van Diemen's Land 1839-1854*; Hobart, Blubberhead Press; Ian Brand (undated), *Port Arthur, 1830-1877*, Launceston, Regal Publications; Hamish Maxwell-Stewart (2008), *Closing Hell's Gates: the death of a convict station*, Crow's Nest, Allen & Unwin; Hamish Maxwell-Stewart and Lucy Frost (2001), *Chain Letters: Narrating Convict Lives*, Melbourne, Melbourne University Press; Maggie Weidenhofer (1981), *Port Arthur: A Place of Misery*, Melbourne, Oxford University Press; John Clay (2001), *Maconochie Experiment: how one man's extraordinary vision saved transported convicts from degradation and despair*, London, John Blair Ltd.; Alison Alexander (2010), *Tasmanian Convicts: How Felons Built a Free Society*, Crows Nest, Allen & Unwin.

⁵ W.B. Kimberly (1897), *History of Western Australia: A Narrative of her Past Together with Biographies of Her Leading Men*, Melbourne, F.W. Niven; J.S. Battye (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.

Kimberly and J.S. Battye’⁶ Carter comments that Kimberly was of the opinion that though many convicts were reformed the system was not reformatory, and the absence of crime had more to do with a lack of opportunity. On the other hand, Battye ‘contends that the convict system’s underlying principle was remedial – to reform the prisoner and to offer him every inducement to once more become a respected member of society.’⁷

Both authors, however, acknowledged the benefits to Western Australia of the convict period, although for Battye the ‘stain’ lingered on. Kimberly was of the view that the free population remained relatively unaffected by it, although maintaining there was a deep social gulf between free and bond. It was a point emphasized by Bob Reece in ‘Writing About Convicts in Western Australia’ when he suggested that the elite class kept a divisive tradition alive to serve its hegemonic interests.⁸ That view is open to question. The evidence given by the Burges brothers of the property, *Tipperary*, six miles north of York, at the 1861 Select Committee on Transportation examining transportation to Western Australia, would suggest that many of the free property-owning settlers paid respect and deference to their ticket-of-leave employees, regarding them as valuable assets in the survival and promulgation of their enterprises - and treated them accordingly.⁹

⁶ Jennie Carter (1981), ‘Two Historians and Convictism: W.B. Kimberly and J.S. Battye’, in C.T. Stannage, (ed.), *Convictism in Western Australia*, Nedlands, University of Western Australia Press, pp. 68-69.

⁷ Carter, ‘Two Historians and Convictism’, p. 69.

⁸ Bob Reece (2006), ‘Writing About Convicts in Western Australia’ in J. Sheriff & A. Brake (eds), *Building a Colony, the Convict Legacy*, , Crawley, UWA Press.

⁹ British Parliamentary Papers, Crime and Punishment, *Transportation*, Volume 3, Sessions, 1837 to 1861 (1971), Dublin, Irish University Press – section on report of 1861 Select Committee on Transportation examining transportation to Western Australia, pp. 577.

C.T. Stannage in his *The People of Perth* paints a picture of a dissolute, ‘besotted community as the ex-convicts drank their problems away ... others turned to crime, both petty and great.’¹⁰ He wrote that between 1850 and 1860, 40% of the cases heard before the Court of Quarter Sessions involved convicts and ex-convicts as defendants. This rose to 72% of cases heard by the Supreme Court between 1861 and 1870. What is not mentioned are the actual numbers arraigned before the courts, relative to the total convict population in the state. They were, in fact, quite minimal, as is attested by an examination of the statistics. In the 1868 Blue Book returns for Western Australia, only 17 convictions were recorded in the Supreme Court. No free man received a conviction; nine expirees, five conditional pardon men, two ticket-of-leave holders and one escapee from prison did receive convictions. In their 2006 publication *May It Please Your Honour*, Bolton and Byrne quoted a comment from the *Perth Gazette*: ‘... although a convict colony we have seldom an offence committed of sufficient importance to call for notice ...’ This was reinforced by Chief Justice Burt when he remarked to Governor Hampton in 1864 that ‘our community is small, and forensic business is very limited.’¹¹

On the other hand, to that point in time there had been a total of 2,977 convictions in the courts of petty sessions recorded against expirees, conditional pardon and ticket-of-leave men (a rate of 94.3% against those still held on the government ‘charge’).¹² By far the greatest category of conviction was for

¹⁰ C.T. Stannage, (1979), *The People of Perth*, Perth, Perth City Council, p. 98.

¹¹ G. Bolton & G. Byrne (2006), *May It Please Your Honour*, Perth, The Supreme Court of Western Australia, p. 40.

¹² Resident Magistrates’ Records, various, series 1600, J.S. Battye Historical Library, Perth.

drunkenness – 1,391 (46.7% of convictions). The next most serious transgression was for breach of ticket-of-leave regulations – 96 cases (2.6%). The rate of petty crime could be considered alarming, but it is remarkable that the rate of violent crime among those transported after 1854 did not generally translate into their subsequent lives as ticket-of-leave holders or ex-convicts after arrival in the colony. It had proven to be similarly so in earlier New South Wales. John Hirst comments on this in his ‘Convict Society’ chapter in *Sense and Nonsense in Australian History*. He wrote: ‘Whatever their reputation for slovenliness and drunkenness, the settlers were part of the settled interest of the country; they were [now] masters of servants and suppliers of grain.’¹³ In Western Australia the former convicts, despite a relatively high rate of dissolute behavior, were also melding into the economic community. Only 7% of the 9,500 convicts sent to Western Australia between 1850 and 1868, most often for serious crimes committed in Britain and Ireland, ever sufficiently offended again in the Swan River Colony to require a return to Fremantle Prison and further secondary punishments.¹⁴

Alexandra Hasluck’s 1959 *Unwilling Emigrants: A Study of the Convict Period in Western Australia*, although using the letters of convict William Sykes’ wife Myra as the centre piece of the work, did include a brief discussion on the society and penal system from which Sykes came.¹⁵ C. Gertzel’s University of Western Australia 1949 Honours thesis gives a useful coverage of the mechanics of the convict system within

¹³ John Hirst (2009), *Sense and Nonsense in Australian History*, Melbourne, Black Inc. Agenda, p. 111.

¹⁴ Fremantle Prison website – convict data base.

¹⁵ A. Hasluck (1959), *Unwilling Emigrants: A Study of the Convict Period in Western Australia*, Melbourne, Oxford University Press.

Western Australia, as does Martin Carroll's study of the sojourn in the colony of Fenian convict John Boyle O'Reilly.¹⁶

Frank Crowley's contention in his *Australia's Western Third* was that the convict system brought many benefits but the downside was the shame and ignomy, the solitary confinements, the floggings, the humiliations and injustices and the great degradation of work in the chain gangs.¹⁷ Crowley followed the course of many commentators on the convict system; he concentrated on the harshness and iniquities rather than the manifold positive aspects. As is statistically attested, the vast majority of the 9,500 convicts transported to Western Australia between 1850 and 1868 never seriously offended again. The system rewarded good behaviour and in the new environment gave every incentive to become contributing citizens in the infant society. Indeed, historians make little comment on the efficacy of the system as a conduit to reformation from what had been formerly disaffected and wasted lives back in Great Britain. Yet, as evidenced in the 1861 British Parliament's Select Committee Enquiry into the convict transportation system, the successful infusion of the transportees into Western Australian society was the single most important factor in having the system continued, despite strong opinion within the British Parliament that there should be a cessation of the system.¹⁸

¹⁶ C. Gertzel (1949), 'The Convict System in Western Australia, 1850-1870', Crowley, Honours thesis, University of Western Australia; M. Carroll (1954), 'Behind the Lighthouse: A Study of the Australian Sojourn of John Boyle O'Reilly', PhD thesis, University of Iowa.

¹⁷ F.K. Crowley (1960), *Australia's Western Third: A History of Western Australia from the first settlements to modern times*, London, Macmillan.

¹⁸ 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.

The Western Australian convict system, a derivative of the earlier New South Wales and Tasmanian systems but with the assignment of labour removed, was, overall, fairly administered. J.E. Thomas and Alex Stewart in their book *Imprisonment in Western Australia* (1978), argued that insistence on the rule of law by the senior military officers who founded the Imperial Convict Establishment, ‘was probably the most important single reason why the convict experience in Western Australia was so much less brutal than it had been in the Eastern States. ... The law would admonish and protect him as it did everybody else.’¹⁹ This is a tribute to the British authorities, but John Hirst points out that the NSW convicts were similarly treated: ‘The convict was still a subject of the Crown and he retained important political and legal rights,’ although he also points out that, ‘the convict was much less a subject of his master than a slave.’²⁰ It is an important difference to note between the NSW system of convict administration and that practiced in Western Australia, where the convict in the latter environment enjoyed a far greater degree of personal autonomy through the ticket-of-leave system.

In her unpublished biography of Governor John Stephen Hampton, Sister Mary Albertus Bain makes a similar point; the system was not unduly harsh and Governor Hampton saw severe punishments as negative influences on malefactors’ successful re-integration into society.²¹ In fact, she points out that Hampton never ordered any physical punishments at any time. Legally he was unable to do so,

¹⁹ J.E. Thomas and A. Stewart (1978), *Imprisonment in Western Australia, Evolution, Theory and Practice*, Nedlands, University of Western Australia Press, pp. 21-22.

²⁰ Hirst, *Sense and Nonsense in Australian History*, p. 111

²¹ Sister Mary Albertus Bain & Clem Mulcahy (ed.), *A biography of Governor Dr John Stephen Hampton*, (unpublished manuscript).

knowing that under English law the Chief Justice of the colony had the power to negate any such direction.

Bain's work, though extensive and written for eventual publication, has not been closely proofed and, as such, cannot be accepted as a definitive work on the career of Dr John Hampton. Nevertheless, it displays painstaking research and has delved in far greater depth than any other work into that controversial character whose administration was pivotal to the economic efficacy of the struggling Western Australian colony between 1862 and 1868. Bain's contention that Governor John Hampton was more benign than popular history has painted him is borne out, in part, by the content of Hampton's own report, included in Ian Brand's *The Convict Probation System: Van Diemen's Land, 1839-1854*, on the improvements in convict administration while he was Comptroller-General of Convicts in Van Diemen's Land. Hampton displayed a determination for efficiency while offering those under his management the distinct opportunity for rehabilitation. In all probability a martinet, one with an eye to correct procedures despite opposition, but he was also one with an eye to proceeding those in his charge onto more positive pathways in society.²²

Much has been handed down on the supposed severities and iniquities of the convict system in Western Australia, but much has been falsely mythologized. The subjective and largely unfettered press of the period played a substantial part in painting a warped view of the era. Bias takes many forms. Xenophobia is an

²² Brand, *The Convict Probation System*, pp. 100-101.

emotion of the ages, but nowhere is it better exemplified than in the pages of the colonial press, and even in the pages of *Hansard*.²³ The arrival of an alien group of people, outside the social and cultural ‘pale’, unwelcome but very necessary to survival, provides a wide array of ambivalent commentary and valuable insights into the period.

The supposed severity of the Hampton administrative period was greatly exaggerated by the lucid, colourful but very subjective editorials regularly contained within the columns of the *Perth Gazette and W.A. Times*. In an era of a relatively unfettered press and insufficiently powerful libel laws to moderate an intemperate pen, the newspaper’s editor, Arthur Shenton, muddied the waters and has done so for later generations of historical commentators.²⁴ A statistical analysis of the colony’s economic resurgence during Hampton’s tenure of office belies the accusations of Shenton and his editorial coterie. It exemplifies the dangers to a community, and to historians, of public comment based on human factors rather than factual evidence. Shenton disliked Hampton intensely on a personal basis and said so publicly, often. His comments, therefore, must be regarded as unbalanced and of questionable historical validity.

²³ *The Perth Gazette; The Inquirer; The Fremantle Argus; The Melbourne Argus*.

²⁴ Arthur Shenton was appointed Government Printer in 1850 before he took over the newspaper. His ‘loose’ editorial style eventually caught up with him. In 1870 he was fined 100 pounds and sentenced to a gaol term of two months by Chief Justice Burt for contempt of the Supreme Court of Western Australia. His period as editor and proprietor of the *Perth Gazette and W.A. Times* ended with his death in 1874..

It is a useful exercise to undertake a close examination of *The Inquirer* newspaper of the period, revealing that it often contained contrary views to the *Perth Gazette*. By juxtaposing the opposing editorial commentaries one gains considerable insights and is better equipped to make more balanced judgments regarding the complexities of the economic, political and social affairs of the colony at the time. Fortunately, in more recent times, that has occurred. While Bain was something of an apologist for John Hampton, and Shenton an overt detractor, arguably the most balanced view of the Hampton era of governorship was penned by Peter Boyce in 1979. He concluded: ‘Perhaps he now deserves more honourable mention for his impressive legacy of public works and a balanced budget, his sins, personal and otherwise, having been “more or less ephemeral.”’²⁵

Economic historian Pamela Statham contended that it was not a shortage of labour but rather a shortage of capital that influenced the request by a small group of influential pastoralists for the transportation of convicts to Western Australia.²⁶ It is a debatable point. Many of the early landowners were in fact initially well financed, but without the necessary labour their economic prospects progressively dwindled in the face of a dearth of the required skills and physical capabilities to make a difficult and alien environment flourish.

²⁵ Peter Boyce (1979), ‘J.S. Hampton, The Governor’, in *Westralian Portraits*, L. Hunt (ed.), Nedlands, University of Western Australia Press, pp. 45-52.

²⁶ Pamela Statham (1981), ‘Why Convicts I: an Economic Analysis of Colonial Attitudes to the Introduction of Convicts’ in C.T. Stannage (ed.), *Convictism in Western Australia*, Nedlands, University of Western Australia Press, pp. 1-10; Pamela Statham (1981), ‘Why Convicts II: the Decision to Introduce Convicts to Swan River’ in C.T. Stannage (ed.), *Convictism in Western Australia*, Nedlands, University of Western Australia Press, pp. 11-18.

An examination of the accounts of prominent early settlers, Samuel Viveash, the Burges brothers and Henry Maxwell Lefroy, confirm the extreme difficulties encountered when the early settlers failed to reconcile English farming methods and technologies with the hostility of the Western Australia landscape.²⁷ They also underline their difficulties securing and retaining the skills and presence of a viable labour force. Added to this were numerous varieties of poison plants encountered by the early settlers, an encompassing, insidious factor in the struggle to sustain viability in the early livestock industry, circumstances very often not countenanced by historians with little practical experience of working the land.²⁸

Statham asserts that it was the lobby of the struggling farming fraternity that most influenced the decision to take in convicts from Great Britain, but Margaret Kerr's 1953 article on the British background claimed that the decisive pressure came from the Secretary of State for the Colonies, Earl Grey.²⁹ Andrew Gill, however, in presenting a study of the 'Parkhurst Boys', the 234 juvenile offenders sent to W.A. between 1842 and 1851, suggested that the Colonial Office and the colonists were equally responsible.³⁰ It must be pointed out that among the Governor's advisory council in the late 1840s, containing official functionaries such as the Colonial Secretary, the Surveyor-General, the Advocate-General and,

²⁷ S. Viveash (1851), 'The Diary of Samuel W. Viveash', *1838-1851*, Guildford, W.A.; G. O'Mara (2000), *The Burges Saga*, Cottesloe, O. Burges, private publication; C.E.C. Lefroy (1934), *Memoirs of Henry Maxwell Lefroy*, Surrey, Billing and Sons.

²⁸ T.E.H. Aplin (1971), *Poison Plants of Western Australia*, Perth, Western Australian Department of Agriculture reference publication.

²⁹ M. Kerr (1953), 'The British Parliament and Transportation in the Eighteen-Fifties', Sydney, *Historical Studies, Australia and New Zealand*, Volume 6, Issue 21, pp. 29-44.

³⁰ Andrew Gill (2004), *Convict Assignment in Western Australia: The Parkhurst 'Apprentices'*, 1842-1851, Maylands, Blatellae Books.

usually, around four or five other prominent members of the community, most were substantial landholders, most often in the Avon Valley region (York and Toodyay in particular). It is from among this influential minority grouping of farming ‘strugglers’, anxious to protect their investments, that the urgent petitioning for convict labour was put very directly before Governor Fitzgerald for his approval and transmission to the Colonial Office.³¹

Sandra Taylor, in the 1981 publication *Convictism*, edited by C.T. Stannage, set out a statistical analysis of 3,000 of the convict transportees to Western Australia covering the years 1850-51, 1861-62 and 1866-68.³² However, what was probably the most crucial period was not covered, that following the 1853 Penal Servitude Act at Westminster, whereby those handed down sentences of 7 years or less would thereafter serve their time at home. It is a considerable omission. Following the passage of the Act a more serious criminal ‘type’ was sent to Western Australia, beginning the next year in 1854. In fact, as the statistics attest, the incidence of convicts sent on ships who had been sentenced either to ‘life’ or for a crime of violence or as repeat offenders following this crucial act of parliament rose from an average of around 4% in the first five years of transportation to over 50% in many of the subsequent ships.³³ The potential for a socially malignant influence within the colony rose appreciably. The first Bishop of Perth, Mathew Blagden Hale, warned

³¹ Rica Erickson (1988) *The Bicentennial dictionary of Western Australia*, Nedlands, University of Western Australia Press; ‘Minutes of the Proceedings of the Legislative Council of Western Australia, 1832-1870’ (Hansard), Perth, W.A. Parliament, pp. 576-577

³² Sandra Taylor (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*, Nedlands, University of Western Australia Press, pp. 19-45.

³³ Statistics compiled from Fremantle Prison website - convict data base.

of the difficulties that would arise in a book he wrote on the Western Australian convict system.³⁴

Hale was a strident opponent of Western Australian convict administration. His major criticism was that, upon being granted a ticket-of-leave, the recipient, now free to choose his own employment, was left to his own devices, apart from mandatory, periodic reporting to authorities. Hale contended that the ex-convicts, without the necessary support networks to engender an effective transition into society, were ill-equipped to complete a positive integration. The Bishop, a disciple of William Wilberforce, John Howard and Elizabeth Fry and strongly attached to what many regarded as overly precious 'evangelical' philosophies, was a vehement opponent of the convict transportation system generally.³⁵ His 1857 treatise is an insightful document on the machinations of British penal administration, especially its applications at the Swan River.³⁶ He accused the British Government of base social and political cynicism. He regarded the whole system of convict transportation as a travesty, a moral outrage and a philosophical blight on the British nation. The Western Australian governmental Blue Book statistics support Hale's view that not enough was being done, with the high incidence of drunkenness among the ticket-of-leave and ex-convict fraternity the major case in point. But the more serious convict 'type' sent to the colony from 1854 onward did not help matters and it was only after the precarious 1857 voyage of the *Nile*, on which Hale

³⁴ Hale (1857), *On the Transportation Question*, Cambridge, Cambridge University Press.

³⁵ John Hirst, *Convict society and its enemies*, pp. 18-19.

³⁶ Mathew Blagden Hale (1857), *The Transportation Question; or Why Western Australia Should Be Made A Reformatory Colony Instead of a Penal Settlement*, Cambridge, Macmillan & Co.

was unfortunate enough to be a passenger, during which the threats of mutiny were ever present, the Home Office, facing considerable adverse publicity, revised its selection procedures for prisoner transportation, for a short time at least.³⁷ Hale was very much the public face in Western Australia of the anti-transportation feelings that were prominent both in Britain and within the eastern colonies at the time.

Ian Van Den Driesen's 1986 statistical survey of early demographic patterns in Western Australia reveals that convicts made up 54% of the adult male population in 1859 and that in 1870 they still amounted to 36%.³⁸ The high proportion of convicts to free citizens was seen by some as a threat to social equanimity, but it must be said, as is attested by statistics and Alexandra Hasluck's work, that with around two-thirds of the population of the colony living in country/agricultural areas, the convict population was widely dispersed through the growing multiplicity of farming areas. It can be argued, therefore, that they had relatively little impact on the supposed degradation of law and order.³⁹

The Irish convict presence in W.A., though in total never amounting to more than around a thousand (10.5%) of the convict population, has nevertheless received closer analysis than other groups. Keith Amos's study of the Fenians in

³⁷ W. Curedale (2002), *The Treasures of Consanguinity*, Perth, Curedale, private publication; CO 18, folio 107, AJCP reel 766, pp. 256 - 259 (Nile voyage report by Surgeon-Superintendent to Jebb).

³⁸ I. Van Den Driesen (1986), 'Convicts and Migrants in Western Australia 1850-1868', *Early Days*, Journal of the Royal Western Australian Historical Society, volume. 72, part 1, June 1986, pp. 50-59.

³⁹ A. Hasluck (1988), in Bob Reece, 'Writing About Convicts in Western Australia' in J. Sheriff, & A. Brake (eds), *Building a Colony, the Convict Legacy*, Nedlands, University of Western Australia Press, pp. 98-113.

Australia, including Western Australia, was published in 1988.⁴⁰ Paul Weaver's 1993 essay on two Irish transports in 1853, *Phoebe Dunbar and Robert Small*, contended that Irish convicts received less favourable treatment than British, a debatable point.⁴¹ Geoffrey Bolton's 'The Fenians are Coming, the Fenians are Coming' and his 1991 essay on William de la Poer Beresford, together with Rica Erickson's collection of convict biographies in *The Brand on His Coat*, add considerable humanity to the factual evidence.⁴²

Noeline Reeve's 1994 doctoral thesis challenged the economic historian Stephen Nicholas' argument that the convicts were more literate than their British and Irish contemporaries.⁴³ In his article, 'The Control and Coercion of Convicts', Mathew Trinca emphasizes that 'control of the convict population in Western Australia depended on substantial regulation, sanction and formal coercive and surveillance forces.'⁴⁴ In 2003, Peter Millett's doctoral thesis provided a thorough examination of the policies and practice within the Fremantle Convict Establishment.⁴⁵ Both studies are commendably detailed and there is little doubt these well established

³⁰ K. Amos (1988), *The Fenians in Australia, 1865-1880*, Sydney, University of New South Wales Press.

⁴¹ P. Weaver (1993), 'The Voyage of the *Robert Small* and *Phoebe Dunbar* to Fremantle in 1853', in R. Reece (ed.), 'The Irish in Western Australia', in *Studies in Western Australian History*, Nedlands, University of Western Australia Press, pp. 231-255.

⁴² G. Bolton (1981), 'The Fenians are Coming, the Fenians are Coming', in C.T. Stannage (ed.), *Convictism in Western Australia*, Nedlands, University of Western Australia Press, pp. 62-67; G. Bolton (1993), 'The Strange Career of William de la Poer Beresford', in B. Reece (ed.), *Exiles From Erin: Convict Lives in Ireland and Australia*, London, Macmillan, pp. 284-303; R. Erickson (1983), *The Brand on His Coat*, Crawley, University of Western Australia Press.

⁴³ N. Reeves (1985), 'X – This Is His Mark: Convicts and Literacy in Western Australia', *Westerly* magazine, volume 30, no. 3, pp. 50-56; N. Reeves (1994), *The Development of a Literate Society: A Case Study of Western Australia, 1850-1914*, PhD thesis, Murdoch University, pp. 128-168.

⁴⁴ M. Trinca (2006), 'The Control And Coercion Of Convicts', in *Building a Colony, the Convict Legacy*, Nedlands, Studies in Western Australian History, Centre for Western Australian History, in association with University of Western Australian Press, The University of Western Australia.

⁴⁵ P. Millett (2003), '[A] mild but firm system of discipline: British convicts and their punishment in Western Australia, 1850-1886', Nedlands, University of Western Australia PhD thesis.

penal practices underpinned the administrative workings of the convict system in Western Australia and, by their presence, provided incentives for former felons to avoid further involvement with the law. In practice these methodologies, developed of necessity over a long period of time, were not entirely relevant to the overall Western Australian convict experience. The minutiae of the Fremantle 'Establishment' administrative procedures does not fit into the wider societal context of the colony. Only a small proportion of the transported convicts spent any appreciable time at the prison itself and therefore, apart from an insidious background presence, the impacts of the Convict Department penal administration methods, and the Fremantle Prison itself, were minimal. The bulk of the convict and ex-convict fraternity were simply elsewhere within the general community.

It is a point in parallel with the notorious Port Arthur facility in Tasmania. Though now an outdated work, Coultman Smith, in his 1941 *Shadow Over Tasmania*, pointed out that the modern view of the Tasmanian convict system, centered largely on the extremes of the Port Arthur facility and the Macquarie Harbour, Sarah Island experience, is flawed and unbalanced.⁴⁶ He asserted that only 5% of the total convict population of that state ever spent any time at Port Arthur. His figure is questionable because of the paucity of available data, but Maggie Weidenhofer in her 1981 *Port Arthur: A Place of Misery* broadly agrees. The facility acted as a deterrent to the ex-convict and convict population at the time. Today it is a symbol of the perceived convict 'stain' rather than representative of

⁴⁶ Coultman Smith (1941), *Shadow Over Tasmania*, Hobart, J. Watch & Sons.

the true situation in Van Diemen's Land during the convict period.⁴⁷ Alison Alexander also concurs. She contends that about 10% of the island's convicts were sent to one of the brutal secondary penal stations, MacQuarie Harbour or Port Arthur. She wrote: 'The [Van Diemen's Land] convict system did not produce many traumatized ex-prisoners unable to function in the wider society: if it had, Tasmania would not have been able to transform itself so quickly from a convict colony to an ordered, peaceful society.'⁴⁸

Michal Bosworth has produced a popular account of the workings of the convict system in Fremantle, as has Stan Gervas with a chapter in his *Freo (A Portrait of a City)*, on the Fremantle 'Establishment'.⁴⁹ Archeologist Martin Gibbs' article, 'The Convict Places of Western Australia' provides valuable insights into the placement and the workings of the convict hiring depots and Penelope Hetherington, in her book on the poor and their fate in W.A., gives details into what happened to many of the convicts who, as they grew older, were unable to fend for themselves.⁵⁰ Geoffrey Bolton, in his 2008 *Land of Vision and Mirage, Western Australia since 1826*, has included a chapter, 'Convictism and its Legacy, 1850-1879', which gives an overview and a series of insights into the W.A. convict era.⁵¹ Alison Cromb in her *History of*

⁴⁷ Maggie Weidenhofer (1981), *Port Arthur: A Place of Misery*.

⁴⁸ Alison Alexander, Alexander (2010), *Tasmanian Convicts: How Felons Built a Free Society*, p. 2.

⁴⁹ M. Bosworth (2004), *Convict Fremantle: A Place of Promise and Punishment*, Nedlands, University of Western Australia Press; Stan Gervas (1996), *Freo. (A Portrait of a Port City)*, Maylands, Gervas Books.

⁵⁰ Martin Gibbs (2006), 'The Convict Places in Western Australia', in *Building a Colony, the Convict Legacy*, Nedlands, Studies in Western Australian History, Centre for Western Australian History, in Association with University of Western Australian Press; P. Hetherington (2009), *Paupers, Poor Relief and Poor House in Western Australia 1829-1910*, Crawley, University of Western Australia Press.

⁵¹ G. Bolton (2008), *Land of Vision and Mirage, Western Australia since 1826*, Nedlands, University of Western Australia Press.

the Toodyay Convict Depot gives valuable insights into the minutiae of everyday workings of an up country working convict facility.⁵²

There are other most useful supporting addendums to the convict literature of Western Australia. One is the work by Erickson and O'Mara entitled *Convicts in Western Australia 1850-1887, Dictionary of Western Australians, Vol. IX*.⁵³ Another invaluable source is *Hansard*, volume one, a record of the meetings of the Legislative Council of Western Australia from 1832 to 1870.⁵⁴ It lays out in detail, progressive deliberations on policy and directions for the implementation and administration of the convict system, as directed by the Secretary of State in England and interpreted by a succession of governors and their advisory councils during the convict era. Additionally, it gives intimate insights into the problems of the early settlers and the vexed question of maintaining a viable labour force, juxtaposed against the continuing debate on a succession of ever-changing 'Masters and Servants' regulations. The convict and ex-convict populations were always a considerable influencing factor in the often vigorous deliberations within the Legislative Council. A paper given to the Royal Western Australian Historical Society in 1954 by Professor Frank Crowley, entitled 'Master and Servant in Western Australia, 1851-1901', gives considerable insight into the question of labour balance and

⁵² Cromb, Alison (2010), *The History of the Toodyay Convict Depot*, Dianella, self-published.

⁵³ R. Erickson and G. O'Mara (1994), *Convicts in Western Australia 1850-1887, Dictionary of Western Australians, Vol. IX*, Nedlands, University of Western Australia Press.

⁵⁴ Hansard, *Minutes of the Proceedings of the Legislative Council of Western Australia, 1832-1870*, Western Australian Parliament.

administration and how the convict presence both alleviated and exacerbated some of the problems.⁵⁵

All of these varying commentaries on the convict system in Western Australia, and the external influences that manipulated it, have been used in this thesis to provide an encompassing view of the Western Australian convict experience. However, I have used a wider reference spectrum than those formerly listed, to better illustrate, firstly, the society and circumstances from which the convicts came and, secondly, the considerable influences of the British Parliament and the Colonial and Home Offices on the Western Australian environment. Of most importance were the British Parliamentary Select Committee enquiries and reports of 1856 and 1861 and then the 1863 Royal Commission into ‘Transportation and Penal Servitude’.⁵⁶

In his 1993 *Quadrant* article, ‘Australian History and European Civilization’, John Hirst wrote: ‘Australian history not set within European civilization will convey a very poor understanding of Australian society.’⁵⁷ It is clear this principle also holds true for most of the studies of Western Australia convict history thus far.

⁵⁵ F.K. Crowley (1954), ‘Master and Servant in Western Australia, 1851-1901’, *Early Days*, Royal Western Australian Historical Society Journal of Proceedings, Volume 4, part 6, pp. 15-32.

⁵⁶ British Parliamentary Papers, Crime and Punishment, *Transportation*, Volume 4 (1971), Dublin, Irish University Press – reports from the 1856 Select Committee on the provisions and operations of the act to substitute other punishments in lieu of transportation and British Parliamentary Papers, Crime and Punishment, *Transportation*, Volume 3, Sessions, 1837 to 1861 (1971), Dublin, Irish University Press – section on report of 1861 Select Committee on Transportation examining transportation to Western Australia; ‘1863 Report of the commissioners appointed to inquire into the operation of the acts (16 & 17 Vict. C99. and 20 & 21 Vict. C.3.) Relating to transportation and penal servitude’, House of Commons Parliamentary Papers Online (2005), London, ProQuest Information and Learning Company.

⁵⁷ John Hirst (1993), ‘Australian History and European Civilisation’ in *Quadrant*, no.296, cited in John Hirst (2009), *Sense and Nonsense in Australian History*, Melbourne, Black Inc., p. 78.

The general subjectivity of most of the material presented to date has limited a more comprehensive understanding of the era. The array of British Parliamentary Papers together with Colonial and Home Office records included in this thesis aim to provide a wider, more encompassing view.

The convict data base within the Fremantle Prison website is a useful tool in providing basic personal information on each of the convicts and convict transport ships sent to Western Australia between 1850 and 1868, sufficient to compile statistics on length and severity of sentences, skill and professional backgrounds, ages of the convicts and marital status. This information was re-arranged from detail originally produced in Rica Erickson's *Dictionary of Western Australians 1850-1868, Volume Two, Bond*.⁵⁸

*

Although the main focus of the work is on the Western Australian convict period, Chapter One contains commentary on the genesis of the British convict transportation system, the English Parliament's 1597 *Acte for the Control of Rogues, Vagabonds and Sturdy Beggars*. It then briefly tracks the transportation pathways to America and the West Indies, thence to New South Wales and Van Diemen's Land. Comment is made on the 'Assignment System' and the progressive modifications made to it, mainly via the considerable influence of pioneering penal reformer Alexander Maconochie. It was an enlightened penal methodology which had a direct bearing on the way convict administration was subsequently implemented in

⁵⁸ Rica Erickson (1979), *Dictionary of Western Australians 1850-1868, Volume Two, Bond*, Nedlands, University of Western Australia Press

Western Australia. In this opening phase the work also assesses the economic, social and political circumstances of the Swan River colony prior to the arrival of the first convict ship in mid-1850. Though Western Australian settlers had initially vowed to remain a ‘free’ colony, their perilous economic circumstances eventually led to petitions for convict labour.

Chapter Two explains how the Western Australian convict system had its provenance in the misjudgments and mismanagement of the first European settlement at the Swan River settlement beginning in June 1829. Extracts from early settler diaries give graphic, intimate detail of the manifold difficulties of the early farming settlers. As a matter of survival these early settlers, despite deep misgivings, began agitation for convict labour, culminating in successful negotiations with the British Government.

Chapter Three comments on the convict ‘type’ and the society from which they came, their Pentonville system experience, their work party period on the hulks and, finally, the daunting voyage to the colony. The protracted period through the British Home Office penal pathways had profound influences upon many convicts, later apparent during their subsequent time in Western Australia.

Chapter Four details the first four years of convict presence in W.A., a period which proved to be relatively and surprisingly benign. Chapter Five describes the workings of the convict system, the building and consolidation of the administrative

infra-structure, the ticket-of-leave system and how it proved a successful conduit for convict integration into general society.

The next six years, 1854 to 1859, is a period when most change took place within the Western Australian convict system. Chapter Six follows the passage of the 1853 Penal Servitude Act at Westminster, following which a different type of convict was loaded aboard the transports. It was a period which had the potential to threaten the good order and equanimity of the Western Australian community. A statistical analysis of the convicts aboard the 1854-59 ships (compared against those in 1850-53), tells a story of British governmental indifference to colonial concerns and scant regard for the preservation of the original agreement.

Chapter Seven explains the often vehement opposition to the convict transportation system and the ambivalent attitude toward it within the colony. Bishop Mathew Hale, a crusader of the ‘evangelical’ humanitarian reform movement, a disciple of William Wilberforce, represented those in opposition to convict transportation, despite the extreme economic difficulties an early cessation would have brought to the early settlers.

Chapters Eight and Nine explain how the 1860s decade was largely dominated by the personality and the actions of Governor John Hampton. It would seem he had been appointed to ‘tighten’ convict administration following the precarious 1854 to 1859 period following the passage and ramifications of the 1853 and 1857 Penal

Servitude Acts. Under his astute although widely unpopular guidance, as is statistically attested, the colony achieved an economic viability for the first time.

Chapter Ten details the wind-down of the convict system within Western Australia and the gradual introduction of a more representative government within the colony. It also examines the considerable part played by the ex-convict fraternity in the considerable delay, although largely unwitting and inadvertent.

Chapter Eleven explains how influential free settlers, who had agitated strongly for self-government in the 1860s, later equivocated and turned against the ideal when they realized, and clearly stated, that it would be counter-productive for the colony if the vote was given to those who did not have the necessary social or educational backgrounds. The chapter follows the pathways through to the final granting of self-government to the colony with the passage of the British Parliament Enabling Bill on 15 August 1890. In parallel this chapter also describes the general fate of the former convicts as they grew old and began to fade from the scene.

The Conclusion firstly contends that the convict transportation period to Western Australia (1850-68) was pivotal to the survival of the struggling Swan River Colony. It turned the fortunes of the settlers from despair to the promise of a viable future but, predictably, altered the cultural landscape considerably despite efforts by influential conservatives to cling to ‘old world’ social traditions.

This final phase of the work incorporates statistics affirming that export earnings rose 15 times during the convict era.⁵⁹ Though it would seem that the settlers had at last begun to manipulate the landscape to their economic ends, there is little doubt that the infrastructures put in place with convict labour to obviate ready movement of products for sale and export, particularly during the 1860s under Governor John Hampton, greatly contributed to a recovery from what had been an impending economic disaster.

There are also, importantly, quantifiable human factors as well. The vast majority of the 9,500 Western Australian convicts, in fact 93%, never again committed serious legal infractions within the colony, a remarkable figure against the modern recidivist statistic of over 54%.⁶⁰ It indicates, overall, the successful integration of most of the transported convicts to Western Australia, many having been formerly categorized in the ‘serious’ criminal category within British legal definitions. They adopted new endeavours and lifestyles within the colony, markedly different from their former lives. It says a great deal about, firstly, enlightened penal practices in the Western Australia of the period and, just as importantly, the influence of a vastly different environment on attitude and behaviour. These positive circumstances gave many hope and incentive for a better future.

Though the transportation of convicts to Western Australia lasted less than twenty years, the effects of the system were more broadly influential than that short

⁵⁹ W.A. ‘Blue Book’ statistics.

⁶⁰ Fremantle Prison website – convict data base; G. Fuller (2011), *Australian Crime: Facts and Figure*, Canberra, Australian Institute of Criminology. p. 115.

time frame would suggest. That crucial nineteen years was short by comparison with the New South Wales and Tasmanian systems, and the comparable numbers of convicts involved were also small. Nevertheless, those two crucial decades saw manifested the final phase of a metamorphosis in penal transportation and administration that had lasted for over 250 years. The Western Australian years encompassed, at last, a defined policy by government of rehabilitation rather than retribution, a far cry from the abject brutality of the initial period during Elizabethan times and well beyond. The nineteen year Western Australian convict period was the end game in convict transportation. It represented an advanced step forward in penal administration whose broad philosophical directions are with us even today.