

THE CRIMINAL CLASS AND THE MAKING AND BREAKING OF AUSTRALIA

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The articles by Oxley and Garton make fascinating reading for contemporary criminologists; the editorial board members of the *Australian and New Zealand Journal of Criminology* responsible for this special issue must be congratulated for this exercise in widening our disciplinary horizons.

Both articles I have been asked to comment on are about just who these convicts were who first settled our country. Garton asks whether Manning Clark was right to describe them as members of a professional criminal class. Oxley asks what the women were like: were generations of historians correct to describe them as whores and prostitutes, violent, depraved, blacker in many ways than the male convicts?

Let us deal with the women first. Oxley's article shows that only a minority of the convict women were prostitutes. Even among these, the prostitution would seem to have been more episodic than professionalised – something that had to be resorted to occasionally to survive. With respect to the women, Oxley shows that Clark was in error with the image he painted of convicts as professional and habitual criminals: 'crime is an occupation just as plumbing, carpentering, etc, are occupations for other members of the working classes' (Clark, 1956: 133).

What Clark and so many others among the great Australian historians were responding to was a popular bourgeois conception of criminality. It is the conception one would get for the 20th century through watching television cop shows, reading the press releases of Ted Pickering or the criminological texts of Bob Bottom. One thing 20th century criminological research has shown rather clearly is that the criminological stories that become popular and enduring are those that paint in the blackest black characters that are quite grey (eg, Cohen, 1973). What about Ned Kelly, you might say? Ned, one might argue, is a character from a more wholesome Australian era – in terms of a capacity to see grey as grey – than either the present Australia or the pre-Victorian England that constituted our criminal class. A little more on this era later.

So what were the female convicts like according to Oxley's research? They were mostly episodic thieves. The people they stole from, the people who caused them to be transported, were in a large proportion of cases their employers. Two-thirds of them were transported for first offences. This is not to deny that some even among these first offenders may have committed a great many nasty crimes. Some were murderers. But Oxley's data seems persuasive that these were a small minority. There is little evidence of criminal professionalism among the women who came out on the ships. Not only does what we know of the frequency of their stealing fail to support this, but also Oxley points out that the things that were stolen were often small in number and low in value – a blanket, a pair of gloves, even a prayer book. What kind of whore was this who would steal a prayer book?

Oxley concludes that the women were rarely Artful Dodgers of the criminal class who systematically worked the crowd. They were more often 'individuals making criminal decisions based upon availability, need or even a sense of employment

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justice: seizing the “perks” of the job.’ The reason the women who built our country were stigmatised as whores, Oxley suggests, may be that they were women who stepped out of line – by pilfering from those whom they saw as their exploiters, or simply by being single women working in the paid economy. In some ways, then, we might say that the qualities that made women whores were just the qualities one would want in women charged the responsibility of building a new nation from the foundations up. The convict women indeed did fulfil that mission with great distinction in 19th century Australia. While these women played a central role in the building of what could have become a great nation, they do not have these accomplishments tainted so terribly as do the 19th century men by the destruction of the Aboriginal peoples.

Nevertheless, the very positive things that came with being stigmatised as a whore should not distract us from the fact that mixed in among the exploited workers of the convict women were many who had perpetrated large numbers of very evil deeds. This brings us to Garton’s account, which encompasses the (predominantly) male convicts. Garton traces the ebb and flow of the images of the convicts in historiography. Educated Australians up to the 1920s were obsessed with suppressing the convict stain, with covering up any convict ancestry they might have had, and they were clear about the depraved character of the convicts. Garton notes the impact of Wood’s (1922) radical new account of the convicts as ‘children of misfortune’, political dissenters, hapless victims of exploitation who were guilty of trifling offences. Garton shows that this is far from an accurate picture of the convicts. Few of them were political dissidents. Many of them had committed very serious offences.

Garton also shows that that majoritarian historiographical reaction against this view (in Clark, Robson, Shaw, Fletcher, M B and C V Schedvin, Hughes, Hirst and even McQueen) – the convicts as a professional criminal class – has been equally inaccurate. Garton does a masterful job of showing that these historians swallowed the dramatisation of criminal class evil in the writings of 19th century moral entrepreneurs. They made the mistake a 21st century historian would make by judging what crime was like in the 1950s, by reading the newspapers and books like A E Manning’s, *The Bodgie: A Study in Psychological Abnormality*. They would not read the stories of casual petty deviance that rings true with those of us old enough to remember Saturday night outside the flicks in the 50s. They would read of an organised and evil bodgie ‘cult’ who wore a ‘garish type of uniform’ (*Sunday Truth* (now the *Sunday Sun*, 1 January 1954). They would read of the whoredom of Widgies who would greet men with an invitation to shake hands: ‘Thumb me daddy; give me flesh’. (Braithwaite and Barker, 1978).

Like Oxley, Garton concludes that only a minority of the male and female convicts fitted Manning Clark’s description of the ‘professional criminal’. Drawing heavily on the *Convict Workers* collection (Nicholas, 1988), Garton concludes that most convicts were ‘ordinary members of the British working class driven by circumstance to commit petty workplace crimes’. If this is the predominant picture, however, it is not the whole story. Clearly, the convicts were a mixed bag. Just what the true composition of that mix is, we will never fully know. A good number of the men were very violent people, some were professional thieves, and a significant number of the women were prostitutes of varying degrees of professionalism. No amount of historical research can recover the relative proportions. With all the tools of contemporary criminological science, we cannot do a very good job even today in so describing the breakdown of our criminal population.

What seems important about the convicts from a contemporary criminological perspective is that they were perceived as a criminal class by respectable English society. They were seen as the dregs of that society, those whom it would be wise to be rid of. The interesting question is not so much the proportion of cases in which this stigmatising judgment was soundly or unfairly based. The interesting question is what was accomplished by a group of people judged to be the criminal dregs of one nation, judgments solemnly underwritten by judicial deliberation, in building a new nation. The answer is quite a lot. They built it with those sent out to guard them – themselves hardly the cream of the British military. And increasingly as the century progressed, they built it with free settlers.

Oxley poses the question this way:

... in Australia convicts were successful in establishing a socio-economic system which quickly replicated aspects of the Irish-Anglo culture which spawned the settlement, moving quickly to the status of a 'free society', in which female convicts laboured as workers, wives, lovers and mothers. How had such a transition been possible if the fundamental building blocks of the society – the convicts – had been the poorly-trained and poorly-socialised beings that the earlier historiography claimed?

Put in this perspective, the accomplishments of 19th century Australia were dramatic. Crime rates in New South Wales started to fall sharply from about 1830 (a decade before the cessation of transportation) and continued to fall for the next 100 years (see Grabosky, 1977; Braithwaite, 1988). Built though it was on convict stock, Australia did not end up as a nation with a high crime rate. If you wanted to look for a natural experiment to test a genetic theory of crime causation you would look to Tasmania where in 1846 almost half the population were still criminals under sentence, and almost half of the free population were released convicts (Hughes, 1987: 551-2). Then there were the children and grandchildren of convicts or former convicts. Tasmania never enjoyed an economic boom to foster a flood of immigration, and other colonies erected barriers to former Tasmanian convicts emigrating to their shores. We can clearly see the foundations this stock laid for the dangerous criminal society Tasmania was to become in the 20th century!

The economic accomplishments were equally dramatic. By the end of the 19th century Australia was about the richest nation in the world, and socially it was set for a progressive entry to the 20th century with vital Labour and feminist movements that would compare favourably with the rest of the world. The economic accomplishments of the convicts are especially intriguing because 19th century criminological opinion was that the convicts were feckless beings who were 'transported because they thieved and stole rather than worked' (Robinson, 1988: 236). This opinion, ably documented by Oxley and Garton, reminds us of the characterisation of 20th century criminals in the leading writings of Wilson and Herrnstein (1985) and Gottfredson and Hirschi (1990). Mayhew and Binny (1862: 385) must have been influenced by these works to have written that

habitual criminals . . . are . . . less capable of continued application to one subject or object, but more fond of immediate pleasure, and, consequently, less willing to devote themselves to those pursuits which yield only prospective ones.

For critical criminologists, one of the problems with such beliefs is their self-fulfilling nature. An effect of stigmatisation of criminal classes as incapable of delaying gratification or succeeding at legitimate work is the passing of those very qualities from generation to generation. Transportation was a great natural experiment of what happens when an outcast minority of depraved criminals becomes the virtual majority upon whose work the system's success depends. It was an experiment that was regarded as bold by many opinion leaders in the other great power of the time,

France. Citizen Toulangeon opined in *Moniteur*, 3 January 1803: 'it is the first time anyone has dared to fashion a society from all that is wicked in another.' A French expedition spent 5 months at Port Jackson in 1802. Its chronicler, Francois Peron concluded that it would be a mistake to react negatively to Botany Bay because of the viciousness of some of its criminals and the harshness of their treatment:

The colony's population was for us a new subject of astonishment and reflection. Never perhaps has a more worthy object of study been presented to statesman or philosopher. Never perhaps has the happy influence of social institutions been proven in a more striking and creditable manner than on the distant shores of which we are speaking. There, brought together, are those terrible ruffians who were for so long the terror of the government of their country: thrust from the bosom of European society, consigned to the extremities of the globe, placed from the first moment of their exile between the certainty of punishment and the hope of a more happy fate, encompassed by constant surveillance, inflexible and assiduous, they have been forced to lay aside their anti-social behaviour. The majority, having atoned for their crimes by a hard bondage, have rejoined the ranks of the citizens. Obligated to concern themselves with the maintenance of law and order to safeguard the property they have acquired, having become nearly at the same time husbands and fathers, they are held to their present state by the most powerful and beloved ties.

The same revolution, brought about by the same means, has taken place in the women; and miserable prostitutes, gradually restored to more proper principles of conduct, are today bright and hard-working mothers of families.¹

Were it not for domestic French turmoil of the period and fear of how the British would react, the French would have likely emulated the British Penal colony model, perhaps at the site favoured by a 1819 committee of enquiry, South Western Australia (Forster, 1990). It took almost half a century for the French to dabble in half-hearted transportation experiments to French Guyana and New Caledonia. The reaction of the French observers of Botany Bay is fascinating from the perspective of contemporary criminological theory. In Stanley Cohen's (1985) terms, it is a story of a class of people who had been subjected to an exclusionary form of social control being shifted to an inclusionary form of control. In my own theoretical terms (Braithwaite, 1989), it is a story of stigmatised control of a criminal class shifting to reintegrative control, and with success.

This French talk of the reintegrative accomplishments of transportation must have been an embarrassment to English governments which, Whig and Tory alike, were dedicated to the view that transportation was intended to inflict relentless suffering rather than reform of the criminal (Hughes, 1987: 584). Progressive reformers like Maconochie were a worry to them.

Economic development priorities demanded more and more convicts to be released under assignment to be integrated into the working community. This caused Edward Curr, superintendant of the Van Diemen's Land Company to point out in 1831:

It is true that convicts are sent out here as punishment. But it is equally true that it is not in the interests of the master to make his service a punishment, but rather to make the conviction of the convict as comfortable as is consistent with the economy. The interest of the master essentially contradicts the object of the transportation (cited in Hughes, 1987: 584).

It is probably because community integration was pushed by these economic imperatives that it had the success admired by the French observers, but hushed up

¹ Francois Peron (1807) 'Voyage de Decouverts aux Terres Australes', Tome Premier, Paris. Taken from a paper by Colin Forster (1990), as was the previous quote from *Moniteur*.

by the English for fear that it would compromise the terror of punishment. Boys from Point Puer were pushed out into the Tasmanian workforce as soon as they had learnt skills that were needed in the new economy. Some of them became business leaders. And contrary to the predictions of everyone, the children of released convicts evidenced an extraordinarily low crime rate (Hughes, 1987: 357, 588). Had the Point Puer delinquents been subject to the regime of exclusionary control of old England, we can predict that they would have passed on to their next generation the life of desperation and sporadic crime which had long been the lot of their lineage.

Let us not forget the suffering of the boys torn away from their loved ones to be sent to Point Puer, unforgettably captured by Marcus Clarke's fictional suicide of Tommy tying himself with a handkerchief to Billy, who lacked the courage to jump from the cliff. But let us also take seriously Hughes's (1987: 586) claim:

For all its flaws (and one cannot imagine a prison system without defects) the assignment system in Australia was by far the most successful form of penal rehabilitation that had ever been tried in English, American or European history. In assessing it one must remember that many of its critics, in dwelling on the cruelties and injustices that took place within it, were doing so not as objective reporters but as proponents of rival ideologies of punishment.

As hard as the English commentators attempted to play down the success of giving economic opportunities to their criminal class, one cannot resist the temptation to conclude as did Peron and his French colleagues. Reintegration of the criminal class succeeded in a large proportion of cases.

If our story is one of the convicts and their descendants working with the free settlers to take us to the threshold of the 20th century in remarkably good shape, what went wrong? Well, a lot of things. There were two terrible wars and a depression that the whole world suffered. But other societies that picked themselves up from these same disasters in much worse shape than Australia left us behind in a variety of ways. As our post-war crime rate rose, the Japanese crime rate fell; as our economy stagnated, theirs boomed. Social welfare leaders early in the century, Australia became social welfare laggards after World War II (Castles, 1985). Almost every Western European and Scandinavian state has passed us by economically, educationally, culturally and in social welfare.

There are a lot of reasons why Australia lost its way after the promising beginning we were given by Britain's criminal class. One of the most neglected among them is criminological in character. This is that we are looking at the wrong end of our history for an adverse impact of a criminal class upon us. Our economy has truly fallen victim to a 'criminal class' during the last 30 years. During the 1960s the mining boom, the fundamentally corrupted nature of our securities markets first became clear. In spite of the Ray Report (1974), little was done. Also during the 60s, the states that should have been the driving force of our economic development fell into the hands of the corrupt regimes of Joh Bjelke-Petersen in Queensland and Robert Askin in New South Wales. During the 1970s our tax system became so rotten, so systematically evaded, that a credible welfare state became impossible. Again, criminologists who wrote about those problems had a minimal impact. Finally, in the late 1980s with Fitzgerald, WA Inc, and endless stockmarket and corporate fraud scandals, the secret was out. The whole world now knows that Australia is ruled by a criminal class, or at least by a class with an awful lot of criminals in it. Many of our entrepreneurial heroes have become pariahs. Investor confidence in our securities markets is in tatters. When honest Australian business leaders give presentations in New York in futile attempts to attract investment, they get harangued about the untrustworthiness of Australian business institutions.

The fascination with a criminal class has involved attention being focused on the wrong end of the class structure, the wrong gender in the wrong century. This is not a criticism of the articles by Garton and Oxley. Indeed, it is the virtue of historical articles such as these, in this case focused on the notion of our nation being forged by a criminal class, that they prod us to see our current predicament, and the use of our contemporary theories, in a different light.

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