Heartbreak and Hope, Deference and Defiance on the Yimmang: Tocal's convicts 1822-1840

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(Signed):…….

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Editorial notes

This thesis has been written and formatted to meet the requirements of the History Discipline in the School of Humanities and Social Sciences, University of Newcastle. The Discipline requires candidates to use the 'Chicago' bibliographic conventions as outlined by Kate L Turabian, *A Manual for Writers of Term Papers, Theses, and Dissertations* (Chicago: University of Chicago Press, 6th edition, 1996). The 'Chicago' style does not use *ibid.*, *op.cit.* and similar notations.

For non-bibliographical conventions such as capitalisation and hyphenation, the thesis has been guided by the Commonwealth of Australia's *Style Manual for Authors, Editors and Printers* (Canberra: John Wiley & Sons, 6th edition, 2002).

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Synopsis

This thesis examines the lives of 142 convict men and boys who were assigned to the Tocal estate in the Hunter Valley of New South Wales. The study is based on a detailed reconstruction of their assignment and punishment records that were destroyed in the nineteenth century, complemented by other, personal information. The study tests the findings of previous, broader studies of New South Wales convicts against the data collected for the Tocal estate, develops an in-depth understanding of the day-to-day operation of the estate's nearly all-convict workforce, and demonstrates how changes in policies of colonial convict administration impacted on the individual lives of Tocal's convicts and on the estate itself. Case studies and micro-narratives reveal a picture of the lives of the convict men and boys assigned to Tocal and provide a window through which to glimpse their inner, personal worlds, to listen for the faint echoes of their voices and to appreciate their individual responses to their bondage, their heartbreaks and hopes, joys and fears, pleasures and pain as they served their time at Tocal.

The thesis exposes the dynamics of assignment in action, explores convict working conditions, lifestyle and interaction with Aborigines at Tocal. It reveals the complex web of power relations between master and convict servants, the nature and extent of secondary punishment, the struggle for many to achieve emancipation and their fate once free. The level of local detail and analysis provided is uncommon among studies of convicts in New South Wales, enabling a closer examination of some of the more contentious and problematic claims of convict historiography, and in the process, partly supporting and partly disputing some revisionist interpretations.

The thesis proposes that the complex and diverse individual experiences of Tocal's convicts are best understood, not by sweeping generalisations, but by a conceptual framework encompassing a series of dualisms or dichotomies that include paternalism and punishment, domination and resistance, deference and defiance, mateship and collaboration, trust and betrayal, freedoms and restraints, and cruelty and comfort.

Abbreviations

ABGR	Australian Biographical and Genealogical Record
CS	NSW Colonial Secretary
COF	Certificate-of-freedom
CP	Conditional Pardon
HRA	Historical Records of Australia
LB	Copies of Letters to Benches of Magistrates, Justices of the Peace and Superintendents of Police
ML	Mitchell Library (State Library of NSW)
NR	Not recorded
NSW	New South Wales
NSWBDM	New South Wales Registry of Births, Deaths and Marriages
NSWDL	NSW Department of Lands
pers. comm.	Personal communication
PRO	Public Record Office, London
PSC	Principal Superintendent of Convicts (New South Wales)
SRNSW	State Records of New South Wales (formerly NSW Archives Authority)
TOL	Ticket-of-leave

Introduction

This thesis examines the lives of the convicts who worked on the Tocal estate in the Hunter Valley of New South Wales between 1822 and 1840. The study has three main purposes, the first of which is to test the findings of previous, broader studies of New South Wales convicts against the comprehensive information compiled for the Tocal estate. The Tocal findings do not fully support the conclusions of some previous studies undertaken without access to such local and individual detail.

The second purpose is to gain an in-depth understanding of the workings of a large rural estate during the period in which its labour force consisted almost entirely of convict men and boys. The day-to-day operation of the estate at that time occurred within the context of changing policies and procedures of colonial convict administration, and this study shows how those changes impacted on individual convict lives and on the estate itself.

The third and most challenging purpose is to understand the lives of the convict men and boys who were assigned to Tocal at some stage during their sentence, to appreciate something of their personal, inner worlds, their attitudes, hopes and fears, joys and sorrows, and to reveal something of what it was like for them to live and work at Tocal. Chapter two begins this process by examining the Tocal convicts transported for riot or rebellion and their connectedness to turmoil and civil disobedience in Britain and Ireland, in order to appreciate the backgrounds, experiences, attitudes and values they brought with them to Tocal. Chapter three exposes the dynamics and complexities of convict assignment and the range of personal experiences for assignees. Chapter four explores the details of day-to-day working conditions and lifestyle at Tocal, followed in chapter five by an analysis of the practical and personal dimensions of the interaction of the Tocal men with the local Aboriginal people. Chapter six reveals the complex web of power relationships between master and servant, the systems of rewards and punishments employed, and the various responses and reactions of individuals to their bondage. Chapter seven analyses the means by which Tocal's convicts became free

from servitude, as well as their diverse experiences after emancipation and the extent to which they rebuilt their lives and regained important aspects that had been taken from them when transported.

From the detailed study of these men and boys over several years emerges the persistent impression that their lives were characterised by complexity, turbulence and an all-pervading struggle—with authorities, themselves and each other—a struggle to stifle youthful indignation and the urge to defy authority, to resist the temptation to abscond in search of relief, recreation and carnal pleasures, and to strike a balance between mateship and serving the interests of their master in the hope of better treatment and early release. Their experiences are best understood within a conceptual framework encompassing a series of dualisms or dichotomies that co-exist without paradox or logical contradiction. These dualisms include paternalism and punishment, domination and resistance, deference and defiance, mateship and collaboration, trust and betrayal, freedoms and restraints, and cruelty and comfort.

Tocal prior to 1822 European ownership

The location of the Tocal estate is shown on the following page. 'Tocal' is part of the ancestral land of the Wonnarua Aboriginal people, and in their language it means 'big' or 'plenty', reflecting the abundance of birds, fish and animals attracted to the extensive waterways and wetlands of the area.[1] This land that provided plenty for the Wonnarua also had the potential to become prime agricultural land, with its frontage to the Yimmang (know by Europeans as the Paterson River) and bisected by Pumby Brook, a tributary that could provide a permanent supply of fresh water for livestock and households.[2]

[1] Until recently 'Tocal' was thought to mean 'plenty of ducks' but the weight of evidence does not support this. For details and sources see AC Archer and BP Walsh, "The Name Tocal", in *Tocal History Notes XV*, ed. AC Archer (Paterson: CB Alexander Foundation, 2005), 3-4.
[2] Yimmang was the Aboriginal name for the Paterson River: John Dunmore Lang, *An Historical and Statistical Account of New South Wales as a Penal Settlement and as a British Colony*, 2d ed., vol. 2 (London: AJ Valpy, 1837), 64. Pumby Brook is now named Webbers Creek.

The location of Tocal in the Hunter Valley of New South Wales

Note: In colonial times, Maitland was often referred to as Wallis Plains, Singleton as Patricks Plains, and the Paterson area as Patersons Plains. In the thesis the area covered by the map is sometimes described as the 'Lower Hunter'.

As early as 1801 Europeans were aware of the abundance of cedar trees growing along the Hunter and Paterson Rivers,[3] and with the establishment of a permanent convict settlement at Newcastle in 1804, gangs of convicts began cutting cedar and other desirable timbers. They would manhandle the logs into the river, form them into rafts and float them to Newcastle for shipping to Sydney and beyond.[4] The cedar close to Newcastle was soon exhausted and the convict gangs then worked further up the Hunter and Paterson rivers. It was these convict gangs that provided the first regular European presence at Patersons Plains in the neighbourhood of Tocal. After Governor Macquarie's visit to the area in 1812, a few well behaved convicts were allowed to

[3] James Jervis, "Cedar and the Cedar Getters", *Royal Australian Historical Society Journal and Proceedings* 25, no. 2 (1939): 133.
[4] John Thomas Bigge, *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales* (London: 1822; facsimile, Adelaide: Libraries Board of South Australia, 1966), 115.

settle on small holdings on the river at Patersons Plains.[5] By the time of Macquarie's second visit in July 1818 there were eight small farms there, two occupied by free men and six by convicts.[6] By now at Patersons Plains there was also a permanent cedar cutters' camp named 'Old Banks'. With the exception of these small convict farms, the Old Banks camp and a glebe block, most of the Patersons Plains district was not settled by Europeans when James Webber was granted Tocal in 1822.[7] Until that time the majority of the colony's agricultural land was still located on the Cumberland Plains in the Sydney, Parramatta and Hawkesbury districts.[8] When Governor Brisbane took over from Macquarie in December 1821 he decided to move the Newcastle penal settlement to Port Macquarie and open up the Hunter Valley for settlement.[9] Webber was only the second European to obtain a grant of land at Patersons Plains after the area was opened to settlers, and he took possession of Tocal in March 1822 accompanied by his first four convict servants.[10]

Methodology

The data underpinning the thesis is essentially a reconstruction of the individual assignment and punishment records of 142 convicts who worked at some period of their sentence on the Tocal estate in the Hunter Valley of New South Wales between 1822 and 1840. These records are complemented by other, more personal data such as petitions by the convicts and their loved ones, and family histories where available. The reconstructed individual records for Tocal's convicts are analysed in two principal ways. Firstly, they are aggregated to draw general conclusions particularly in relation to labour efficiency, the extent of reassignment, and the nature and scope of secondary punishment. Secondly, the reconstructed records allow various aspects of convict life, administration and procedures to be illustrated at the personal level by means of individual case studies.

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[5] WJ Goold, *The Birth of Newcastle* (Newcastle: Hunter and District Historical Society, 1981), 16, 21, 26, 38.
[6] TM Perry, *Australia's First Frontier: The Spread of Settlement in New South Wales 1788-1829* (Melbourne: Melbourne University Press, 1963; reprint, 1965), 61.
[7] CS to Nicholson, 8 March 1822, CS Letters Sent, 4/3504A, 539 [reel 6008], SRNSW.
[8] 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), 199-200.
[9] Goulburn to Morisset, 21 Feb 1822, as cited in Perry, *Australia's First Frontier*, 65-66. The closure of the penal settlement at Newcastle was completed in 1823: *Sydney Gazette*, 11 Sept. & 16 October 1823.
[10] CS to Nicholson, 8 March 1822, CS Letters Sent, 4/3504A, 539 [reel 6008], SRNSW; Brian Walsh, *Tocal's First European Settler—James Phillips Webber* (Paterson, CB Alexander Foundation, 1999), 17-24.

The initial Tocal land grant to James Phillips Webber in 1822 consisted of 2,000 acres (809 hectares).[11] It increased, by purchase of adjacent Crown land, to 3,300 acres (1,335ha) by 1825.[12] Tocal was fairly typical of Hunter Valley rural estates established in the early 1820s in terms of its activities and the composition of its workforce, although it was larger than average.[13] The delay in the wider settlement of the Hunter Valley until the early 1820s, after the departure of Governor Macquarie, meant that the Valley contained many large estates taken up by wealthy settlers and operated with large numbers of assigned convicts. Until the late 1830s Tocal was run almost exclusively with convict labour, and in 1828 there were only two free men working there.[14] The number of convicts assigned to Tocal at any one time rose to 34 in 1828, and remained at around this level until 1834, after which the number gradually declined.[15] In August 1834 Tocal was purchased by Sydney merchants Caleb and Felix Wilson,[16] and most of Webber's Tocal convicts were subsequently transferred to them.[17]

In New South Wales, in contrast to Tasmania, few individual records for convicts have survived, as most of the records of the office of the Principal Superintendent of Convicts (NSW) were destroyed in 1882, possibly to protect later generations of Australians from their convict past.[18] As a result, landmark studies of Australian convicts such as those undertaken by Shaw, Robson, Hirst and Nicholas were based largely on generic records for NSW convicts such as shipping indents, musters, census and various aggregated returns on secondary punishment.[19] Their conclusions have, of

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[11] Webber initially applied for 1,500 acres and changed his request to the 2,000 acres that was subsequently granted. CS to Webber, 18 September 1822, CS Letters Sent, 4/3506, 279 [reel 6009], SRNSW; Walsh, *Tocal's First European Settler*, 20-23.
[12] 27 May 1825, CS Correspondence (List of Warrants for Land Purchase), 2/1925, 24 [fiche 3260], SRNSW.
[13] Perry, *Australia's First Frontier*, 75.
[14] *Census of New South Wales 1828*; Walsh, *Tocal's First European Settler*, 64-65. Note, despite the 'Came Free' status of John Heenly (Hanley) in the 1828 census, he did not become free until 1829: COF 29/0986, 4/4299 [reel 985], SRNSW.
[15] Details and sources regarding convict numbers at Tocal are provided in table 3.1 in chapter three.
[16] Old System Title G/345, NSW Department of Lands.
[17] *NSW Government Gazette*, 3 June 1835, 394 (Transfers of male convicts between 1st October and 31st December 1834).
[18] There is no documentary evidence concerning the destruction of these records. There is an oral tradition that they were dumped in Sydney Harbour (*pers comm* Senior Archivists of NSW State Records, 2004), however it is more likely the records were in the basement of the Garden Palace in Sydney when it burnt down in 1882, establishing a long tradition, possibly a myth, that the fire had been deliberately lit to destroy these records (*pers comm* Carol Liston, University of Western Sydney, 2004).
[19] AGL Shaw, *Convicts and the Colonies, A Study of Penal Transportation from Great Britain and Ireland to Australia & Other Parts of the British Empire* (London: Faber & Faber, 1966; Carlton South:

necessity, been drawn without the benefit of access to the detailed individual records on assignment and punishment that were destroyed.

Fortunately a great deal of information on individual convicts who served their sentences in New South Wales has survived, albeit in a fragmented and often un-indexed form, spread across a diverse range of sources.[20] Given time and a painstaking approach, it is possible to reconstruct comprehensive individual records of assignment and punishment from these sources, and this has been undertaken for 142 convicts who were assigned to the Tocal property at some stage during their sentences. The names and brief details of these convicts are listed in appendix one. The example of a reconstructed individual record provided in appendix two demonstrates that a pattern of multiple assignment of a convict can be identified and a comprehensive account of colonial punishments built from the surviving records. Of particular value for this latter purpose are the colonial gaol and hulk entrance books, New South Wales Colonial Secretary's correspondence, newspaper reports, extant bench books, other court records and surviving returns of summary punishments. The information compiled for each convict is not limited to their time at Tocal but spans the period from initial conviction to eventual freedom and/or death, and includes colonial marriage information if available. The limitations and biases of the official records, particularly their inherent class/power relationships, are discussed in detail later in the chapter, and in subsequent chapters these records are often read 'against the grain' in order to reveal aspects such as convict agency that were not part of the purpose intended by the records' creators.

The use of individual case studies throughout the thesis is an important aspect of the methodology—specific Tocal experiences illustrate or challenge the findings of previous, broader studies, and at the same time those previous studies serve to interpret and explain the circumstances in which Tocal's convicts found themselves and the policies and politics that shaped their lives from above. Like Daniels' study of convict women, the Tocal study moves between the minor narratives that constitute the

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Melbourne University Press, 1998); LL Robson, *The Convict Settlers of Australia* (Carlton: Melbourne University Press 1965; 2d ed. paperback, 1994); JB Hirst, *Convict Society and its Enemies* (North Sydney: Allen & Unwin, 1983); *Convict Workers, Reinterpreting Australia's Past* ed. Stephen Nicholas (Cambridge: Cambridge University Press, 1988).

[20] Australian convicts are among the best documented citizens of the 19th century British Empire: Norma Townsend, "Reconstructed Lives: The Swing Transportees in New South Wales", *Australian Studies* 16, no. 2 (2001): 19.

experiences of individuals and their interpretation within the broader, changing landscape of convictism and its management.[21]

Another type of reconstruction is made in the thesis, namely a detailed compilation of working and living conditions on the Tocal estate during the convict era. First-hand information on conditions at Tocal in the period is relatively rare, and has been supplemented with records and settlers' diaries from other convict estates in the Hunter Valley and elsewhere, along with relevant local histories and general accounts of convict lifestyle, to facilitate a meaningful interpretation of the men's lives at Tocal. Similarly the voices of Tocal's convicts are rarely heard first-hand but the thesis listens for them in a variety of ways that are discussed in detail within the context of broader historiographical trends in the next section of this chapter.

While the reconstruction has been comprehensive, it is important to note its limitations. Firstly, it has not been possible to identify all the convicts assigned to Tocal. It is estimated that between 145 and 150 convicts served at Tocal from 1822 to 1840, of which 142 have been identified and researched.[22] Secondly, parts of some individual assignment and punishment records are irretrievably missing. In some cases a complete or nearly complete reconstruction is possible, and in other cases only a partial reconstruction can be achieved. In nearly all cases, however, the process provides a useful picture. The two main areas where information is incomplete relate to the transfer of convicts between masters, or in some cases between masters and government service, and the summary punishment of convicts ordered by local benches that often resulted in a flogging. This is demonstrated in William Halfpenny's case in appendix two. His initial assignment record has not survived but punishment records show him working at Tocal a month after arriving in the colony. It is also probable that Webber returned Halfpenny to Government as unsatisfactory, for only three months later Halfpenny appears on the punishment records as assigned to another master. Similarly, due to incomplete bench records, Halfpenny may have received more lashes than his reconstructed record shows. These limitations and their consequences are discussed in more detail in the relevant chapters of the thesis.

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[21] Kay Daniels, *Convict Women* (Sydney: Allen & Unwin, 1998), vii.
[22] Details and sources regarding convict numbers at Tocal are provided in table 3.1 in chapter three.

A further limitation affecting a small number of convicts in this study is the occasional difficulty in the records in distinguishing between two convict masters who were brothers, James Phillips Webber and John Phillips Webber. Both owned properties on the Paterson River, James at Tocal from 1822 and John at Penshurst further upstream from 1826,[23] and obviously both had the same initials. In most cases where records show convicts assigned to 'JP Webber, Paterson', it has been possible to resolve the ambiguity from other sources, but in a few cases the ambiguity remains. These individuals have not been excluded from the research but the ambiguity has been noted in their data sheets. The final limitation of the reconstructed data is size or number. While the records of 142 convicts provide a rich picture of the convict history of the Tocal estate, the number is not sufficient to allow reliable quantitative conclusions about convict matters for New South Wales in general. The data certainly raises questions about the conclusions of previous quantitative studies, particularly those of Robson and Nicholas, but the wider implications of the Tocal study need to be considered cautiously given the relatively limited number of convicts involved.[24]

Overview of convict historiography

This overview of the historiography indicates broadly where the thesis is located within the literature and within the dynamically evolving interpretation and understanding of convicts and convictism. As the chronology of the historiography unfolds below, it is evident that the tensions and disputes in studies of Australian convicts generally centre around two recurring themes or issues, namely stereotypes and methodology.[25] Stereotypes originated either within the convict period itself or in more recent times and have often represented blinkered partisan-political or moral positions. As such they have created a legacy or 'unconscious scaffolding' that has ensnared many convict studies, particularly those up to the late 1980s.[26] There are two main stereotypes—one of which views convicts as professional criminals or prostitutes rather than as ordinary

[23] CS Register of Land Grants and Leases, vol. 5, Counties of Durham and Brisbane 1823-1837, 7/456 [reel 2548], SRNSW.
[24] Robson, *Convict Settlers*; *Convict Workers*, ed. Nicholas.
[25] There are other tensions in convict studies less pertinent to this thesis, such as the reasons for the initial settlement of Botany Bay—for penal, trade or naval purposes. See for example, AGL Shaw, "The Convict Question 1966 and 1998", *Tasmanian Historical Studies* 6, no. 2 (1999): 4-5.
[26] I have borrowed the term 'unconscious scaffolding' from Kay Daniels, "Prostitution in Tasmania During the Transition from Penal Settlement to "Civilized Society"", in *So Much Hard Work: Women and Prostitution in Australian History*, ed. Kay Daniels (Sydney: Fontana Books, 1984), 27.

working class people, and embedded in this stereotype are moral judgments on convict origins, character and recidivism, convicts being regarded as ruthless, worthless and irredeemable people who shunned conventional relationships and family values.[27] This moral position served convict masters and the pro-transportation lobby to justify their policies and practices,[28] but such judgements, including connotations of the word 'convict', have diverted attention from the real issues of convict life and work.[29] The other principal stereotype concerns how convicts were treated by their masters and the state. Within this stereotype there is the 'benign treatment' position that ignores or downplays the punitive and penal aspects of convict management and control as well as the social and emotional impact of transportation and bondage.[30] In contrast there is the view put about by opponents of transportation that convicts were brutalised and abused by corrupt and exploitative masters and suffered greatly at the hands of the lash, iron gang and places of secondary punishment.[31] Convict studies that are ensnared by the benign view include *Convict Workers* while those caught up in the brutal view include *Fatal Shore*.[32]

The second pivotal theme in the historiography relates to the methodology of the convict studies themselves. Writing history is like fishing—where historians choose to fish and the type of tackle they use predetermines the nature of their catch.[33] Some convict studies have examined convicts in an aggregated way, often via statistical analysis of the shipping indents, seeking to define and describe 'the convict' as a collective abstraction rather than studying convicts as individual historical agents. While some of these studies have yielded valuable insights, it is arguably a reductive

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[27] Grace Karskens, "Defiance, Deference and Diligence; Three Views of Convicts in New South Wales Road Gangs", *Australian Journal of Historical Archaeology* 4 (1986): 17-18; David Neal, *The Rule of Law in a Penal Colony* (Oakleigh: Cambridge University Press, 1991), 47-49; Daniels, *Convict Women*, 36; Hamish Maxwell-Stewart, "The Search for the Convict Voice", *Tasmanian Historical Studies* 6, no. 1 (1998): 75; Michael Sturma, "Eye of the Beholder: The Stereotype of Women Convicts, 1788-1852", *Labour History* 34 (1978): 3-5.

[28] The view of women convicts as drunken prostitutes also served the anti-transportation Molesworth Committee: Sturma, "Eye of the Beholder", 5.

[29] Deborah Oxley, "Representing Convict Women" in *Representing Convicts—New Perspectives on Convict Forced Labour Migration*, ed. Ian Duffield and James Bradley (London: Leicester University Press, 1997), 100-102.

[30] Tamsin O'Connor, "A Zone of Silence: Queensland's Convicts and the Historiography of Moreton Bay" in *Representing Convicts*, ed. Duffield and Bradley, 134-136, 143; Neal, *Rule of Law*, 41-42.

[31] Daniels, *Convict Women*, 38; Oxley, "Representing Convict Women", 98-102.

[32] *Convict Workers*, ed. Nicholas; Robert Hughes, *The Fatal Shore* (London: Collins Harvill, 1987; Harvill Press, 1996).

[33] EH Carr, *What is History?* (London: Penguin, 1990), 23.

inanity to use the term 'convict' as a hold-all definition of those transported.[34] Unless the convict experience is personalised and enriched by the study of individual cases, convict histories risk shallowness and the presentation of a 'tamed and commodified convict past, which offends no one and means nothing'.[35] Consequently other studies have sought to reveal the complexities, diversity and intricacies of individual convict experiences, and examples of both methodologies are given below.

It is therefore essential that a sound understanding of the paths historians have trodden through the web of stereotypes and research methods be applied to the Tocal study in order to interrogate and interpret the comprehensive data collected (both aggregated and individual) to reveal significant insights without the legacy of moralising or shallow generalisations. The summary of the historiography below also serves to pre-empt the main issues with which the Tocal study engages and indicates where the findings and conclusions of the thesis challenge or support key studies.

Early twentieth-century analysis gave Australians a comfortable picture of their convict past that absolved them from the stain of their ancestors by presenting the stereotype of convicts as victims rather than villains. The transportees were seen not as hardened criminals but either as working-class people driven to petty crime by starvation and poverty or as political protestors and social reformers. In 1922 Wood paid particular attention to social reformers and to villagers driven to poaching by starvation. He said of the former, 'we may take them as representatives of a class of convicts who were convicts because they desired something to eat, and, when starved, asked their scandalised rulers for more'. [36] He also focused on the agricultural rioters from the Swing disturbances of the early 1830s and asked rhetorically, 'Is it not clearly a fact that the atrocious criminals remained in England, while their victims, innocent and manly, founded the Australian democracy?'.[37] Wood concluded that the majority of convicts were first offenders convicted of trivial offences and victims of the 'condition of society in which criminality was so inevitable that he who understands will forgive'.[38]

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[34] Christina JV Picton-Phillipps, "Convicts, Communication and Authority: Britain and New South Wales, 1810-1830" (Ph.D. thesis, University of Edinburgh, 2002), 9, 12.
[35] Comment made by David Young about the historic Port Arthur site, as quoted in Picton-Phillipps, "Convicts, Communication and Authority", 17.
[36] GA Wood, "Convicts", *Royal Australian Historical Society, Journal and Proceedings* 8, no. 4 (1922): 182-183.
[37] Wood, "Convicts", 187.
[38] Wood, "Convicts", 189.

During the 1930s there were dissenters from this sanitised view,[39] and in 1956 the myth of men and woman 'more sinned against than sinning' was exposed by Manning Clark in his analysis of convict origins based on an examination of a small sample of convict shipping records. He found that Australia's convicts were drawn almost entirely from the working classes, they mainly committed crimes of theft, and between one quarter to one third on them were second offenders. He concluded that convictions of political protestors and social reformers represented only a small number of those transported, and the majority of convicts were part of a separate, distinct criminal class.[40]

Clark's analysis was followed in the mid 1960s by the studies of Shaw and Robson that were to dominate the historiography of Australian convictism for the next two decades.[41] Like Clark, Shaw firmly rejected the romantic view of Australian convicts as 'more sinned against than sinning' and acknowledged that this myth was now firmly embedded in the national ethos where it would no doubt remain for generations. Shaw re-iterated the now uncontested profile of Australian convicts as predominantly young, single, male, and convicted for some form of theft. Controversially, however, Shaw perpetuated the contemporary stereotype of criminality, stating 'many juveniles were professionals' and many of the urban, English convicts were drawn from a distinct body of people who were professional and habitual criminals.[42] He acknowledges that circumstances played a role in the crimes committed and, of the English he concluded that 'overall most of the convicts were not the "atrocious villains" so often spoken of, though some of them were; but most were ne'er-do-wells, stimulated to crime by low wages, a bad poor law, bad living conditions, periodical unemployment, lack of education and non-existent family life'.[43] Shaw was aware that his conclusions regarding ne'er-do-wells and professional criminals were not strongly supported by his sources, evidenced by his caveat that 'no simple description can do justice to the manifold variety of the prisoners who were sent out'.[44] Writing 32 years later, Shaw claimed his views on convicts as professional criminals had been misinterpreted.

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[39] WK Hancock, *Australia* (London: 1930; Brisbane: Jacaranda Press, 1966), 25; SH Roberts, "English Background of Australian Settlement", *Sydney Morning Herald-Sesquicentennial Supplement*, 24 January 1938, 2.
[40] M Clark, "The Origins of the Convicts Transported to Eastern Australia, 1787-1852", *Historical Studies Australia and New Zealand*, 7 (1956): 128-134, 327.
[41] Shaw, *Convicts and the Colonies*; Robson, *Convict Settlers*.
[42] Shaw, *Convicts and the Colonies*, 146-147, 161, 165.
[43] Shaw, *Convicts and the Colonies*, 164.
[44] Shaw, *Convicts and the Colonies*, 147.

Apparently he did not mean convicts were an economic class of people who earnt a living exclusively from crime, but rather a moral grouping of perennially petty thieves, mostly poor, who were willing to indulge in theft when opportunity arose.[45] (Such opportunistic theft by working-class people is convincingly, if fictionally, portrayed in Kate Grenville's *Secret River*).[46]

In the same period Robson undertook a mainly quantitative analysis of the crimes and origins of Australian convicts based on a '1 in 20' sample of indents (shipping records), his findings largely supporting and complementing those of Shaw and Clark. Robson added weight to the view that convicts were mainly drawn from a criminal class, concluding that 'the convicts were neither simply "village Hampdens" nor merely "ne'er-do-wells from the city slums". But if all the Hampdens are placed on the one side of a scale and ne'er-do-wells on the other, the scale must tip toward the ne'er-do-wells'.[47] Decades later Robson softened his view, preferring to describe Australian convicts not as ne'er-do-wells or Hampdens but as 'pretty ordinary'.[48] Decades later Garton observed that the 'obsession' of historians such as Clark, Shaw and Robson with the moral character of the convicts was counterproductive and had diverted attention from the diversity of convict experience.[49] Garton's observation is consonant with the approach taken in the Tocal study, where judgement is suspended and attention largely focused on individual experiences.

After Shaw and Robson's somewhat closed studies of the 1960s, a more open-ended understanding of the complexities of the convict system began to emerge. In 1979 Atkinson explored the reciprocal, if unequal, power relations between convicts and their masters, and the nature and significance of convict protests in negotiating and maintaining those rights and relationships.[50] Atkinson thus replaced the previous one-dimensional view of convicts toiling in powerless subservience to their masters, forced to work by the brutal application of the lash. Similarly, Kay Daniels in *Convict Women* explored the way in which female convicts helped to shape the culture in which they

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[45] Shaw, "The Convict Question 1966 and 1998", 6-7.
[46] Kate Grenville, *The Secret River* (2005; Melbourne: Text Publishing, 2006), 9-59.
[47] Robson, *Convict Settlers*, 135.
[48] Lloyd Robson, "The Convict Cargo Re-inspected", *Bulletin of the Centre for Tasmanian Historical Studies* 2, no. 1 (1988): 37.
[49] Stephen Garton, "The Convict Origins Debate: Historians and the Problem of the 'Criminal Class'", *Australian and New Zealand Journal of Criminology* 24 (1991): 79.
[50] Alan Atkinson, "Four Patterns of Convict Protest", *Labour History* 37 (1979): 28-51.

lived. She cautioned, however, that 'to have influence at the margins often serves only to demonstrate ultimate powerlessness' and that convict women did not create their own world but they did attempt to reshape the world offered to them.[51] Such studies of convict power and agency provided one of the stimuli for the Tocal study and one significant area of interaction between the Tocal data and the historiography (particularly in chapter six).

In 1983 JB Hirst's *Convict Society and its Enemies* further explored the complexities of transportation and the seeds of its demise, arguing that the case against transportation was well developed before the colony was firmly established.[52] His book was hailed as a 'bracing re-assessment' of the convict history of New South Wales but not quite a revisionist approach.[53] Hirst examined the rights and 'freedoms' of the convicts, their relations with their masters and their place in society. His comparison of New South Wales convicts to slaves is a recurring element of the historiography,[54] and was also a contemporary issue for penal reformers, opponents of transportation and commissioners of enquiry into the convict system.[55] Hirst also discussed the tensions and contradictions inherent in the convict system in New South Wales, writing that 'slavery is forced labour but what masters want is willing workers'.[56] He remained ensnared to some extent, however, in the stereotype of the criminality and bad character of the convicts, stating that 'large numbers of them were professional thieves'.[57]

In 1987 Robert Hughes' *Fatal Shore* was published at a time of renewed interest in Australian history fuelled by the imminent bi-centenary celebrations. His book enjoyed buoyant sales and remains in print two decades later. For Hughes the Australian convict system was essentially penal and punishment centred, with little acknowledgement of convicts as productive workers. He portrayed the Australian convict period as brutal and bloody and likened transportation to the mass deportations of the 'Gulag' period of Soviet history.[58] Hughes did this without sufficiently exploring the complexities of, or

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[51] Daniels, *Convict Women*, viii-ix.
[52] Hirst, *Convict Society and its Enemies*, 20.
[53] LL Robson, Book Review, *Journal of Australian Studies* 13 (1983): 90-91.
[54] Hirst, *Convict Society and its Enemies*, 28-77.
[55] William Molesworth, *Report from the Select Committee of the House of Commons on Transportation* (London: Henry Hooper, 1838; Adelaide: Libraries Board of South Australia, 1967), 10 (for example).
[56] Hirst, *Convict Society and its Enemies*, 31.
[57] Hirst, *Convict Society and its Enemies*, 32-33.
[58] Hughes, *The Fatal Shore*, 2, 168.

the differences between, these systems and the limitations of the slave and gulag metaphors when applied to transportation.[59] His emphasis on the horrors of places of secondary punishment such as Norfolk Island misrepresents the violence of the penal system, given that only a minority of convicts experienced secondary transportation.[60] Atkinson criticised *Fatal Shore* for its focus on the exotic and dramatic but superficial aspects of convict life and its over-reliance on the machinations of empire (a Gulag needs a Moscow and colonial Australian make sense only in the shadow of Whitehall), arguing that there is less evidence of a rigid, pervasive convict system than historians assume.[61]

The productivity of convicts as workers was recognised intuitively by Mary Gilmore in about 1900 in her poem 'Old Botany Bay' that reads in part 'I split the rock, I felled the tree, the nation was—because of me'.[62] It was closer to a century later, however, that convict productivity was highlighted by historians. In 1988 the publication of *Convict Workers* introduced what was arguably the first revisionist convict study since Clark contested the 'convict myth' in 1956. *Convict Workers* used quantitative techniques to develop a history of forced labour in New South Wales that examined the efficiency, skills and effectiveness of convicts as workers within the context of other forced labour such as slavery, and as part of voluntary and involuntary global migration. It viewed convicts as human capital and migrants rather than as transported felons. *Convict Workers* concluded that Australian convicts were a representative cross section of ordinary British and Irish working classes rather than professional and habitual criminals. In fact, according to *Convict Workers*, there was no such criminal class in Victorian Britain.[63] As ordinary workers the convicts brought with them an equally representative range of useful skills that were matched to a 'remarkable extent' to the work needed in the colony through the allocation of workers to government or assignment to settlers.[64] Furthermore, the convicts as a whole were fit, healthy and

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[59] Ian Duffield, "Blockbusting Transportation", *Australian Studies* 1 (1988): 92-93; Alan Atkinson, *The Europeans in Australia, a History: Volume One* (Melbourne: Oxford University Press, 1997), 58.
[60] Thirteen per cent of Tocal's convicts served at a place of secondary transportation, details of which are provided in chapter six.
[61] Alan Atkinson, "Writing About Convicts: Our Escape from the One Big Gaol", *Tasmanian Historical Studies* 6, no. 2 (1999): 18-23.
[62] John Currey, *A Treasury of Favourite Australian Poems* (Melbourne: O'Neil Publishers, 1982), 15; Atkinson, "Writing About Convicts", 25.
[63] Stephen Nicholas and Peter Shergold, "Unshackling the Past", in *Convict Workers*, ed. Nicholas, 8.
[64] Stephen Nicholas, "The Convict Labour Market", in *Convict Workers*, ed. Nicholas, 125.

mostly within the productive 16 to 35-year-old age group. The contributors to *Convict Workers* concluded unequivocally that convicts 'offered an exceptional workforce in terms of age, sex, migratory experience and effectiveness'. [65] Later Deborah Oxley examined the economic assets of convict women and reached similar conclusions regarding their productivity.[66]

Convict Workers challenged the previous studies of Shaw, Clark, Hirst and Robson, particularly in relation to the existence of a distinct criminal class from which the majority of convicts were drawn, the extent of secondary punishments such as floggings, and the view of convictism as a brutal and inefficient system of forced labour.[67] However Nicholas and Hirst were themselves criticised for over-correction. According to Neal, both accounts 'play down the extent to which punishment set the tone in New South Wales… While the revisionists provide a valuable corrective to a simplistic rendering based on brute force, they over-correct by draining almost all the blood from the story. The penal purposes of the colony cannot be pushed to the margins and the important differences between free workers, slaves, immigrants and convicts should not be elided.' Neal claimed that to understate the penal dimension of convict life in New South Wales is a fundamental misunderstanding.[68] Other historians subsequently supported Neal's view, discrediting the 'benign treatment' stereotype of convictism through specific studies.[69]

While the tension between punishment and productivity has engaged present-day historians, it also pervaded the inquiries of Bigge in 1819-1820 and Molesworth in 1838.[70] It is significant, therefore, that the Tocal study explores at a local level the range and extent of both punishments and rewards used by convict masters to control and

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[65] Stephen Nicholas and Peter Shergold, "Convicts as Migrants", in *Convict Workers*, ed. Nicholas, 59-60.
[66] Deborah Oxley, *Convict Maids: The Forced Migration of Women to Australia* (Cambridge: Cambridge University Press, 1996).
[67] Stephen Nicholas and Peter Shergold, "Transportation as Global Migration", in *Convict Workers*, ed. Nicholas, 34.
[68] Neal, *Rule of Law*, 207-208.
[69] O'Connor, "Zone of Silence", 131, 134-135; Raymond Evans and William Thorpe, "Power, Punishment and Penal Labour: *Convict Workers* and Moreton Bay", *Australian Historical Studies* 25 no. 98 (1992): 103; Hamish Maxwell-Stewart, "Convict Workers, 'Penal Labour' and Sarah Island: Life at Macquarie Harbour, 1822-1834", in *Representing Convicts*, ed. Duffield and Bradley, 156-157.
[70] Bigge, *Inquiry into the State of the Colony*, *ins*. 5-6; Molesworth, *Report on Transportation*, 9-10; Hamish Maxwell-Stewart, "The Bushrangers and the Convict System of Van Diemen's Land, 1803-1846" (Ph.D. thesis, University of Edinburgh, 1990), 90.

motivate its assigned convicts to work productively. It also examines the disruptions to assignment and work output caused by punishment. The detailed local findings question *Convict Workers'* espousal of the 'benign treatment' stereotype and its conclusions regarding the productivity and efficiency of convict labour. The Tocal study shows that the productivity of convict labour was constrained by its penal dimensions and this group of convicts was not the 'exceptional' workforce predicted by *Convict Workers*.

Convict Workers represented a pivotal stage in Australian convict historiography but its confrontational style (at one stage asking 'How did Australian historians get it so wrong?) drew predictably hostile reviews from affronted scholars.[71] Evans and Thorpe provided one of the most insightful and balanced criticisms of the book in 1992. They praised how *Convict Workers* placed Australian convicts within the wider context of global forced migration, highlighted the value of convict labour, revealed the diversity and sophistication of the labour market and political economy and debunked the myth that convicts were drawn predominantly from a criminal class.[72] It was their criticisms of *Convict Workers*, however, and the alternative approach they offered that indicated a new stage in convict historiography was underway.

Evans and Thorpe criticised *Convict Workers* for its reliance on quantification and its failure to examine the class/power relationship between the collectors and the sources of information being collected. They argued that official convict records—shipping indents, court records and musters—represent a form of what Foucault called a power/knowledge discourse that empowers the classifiers and cannot reveal the convicts' essential nature.[73] As Duffield explained in his discussion of the Evans and Thorpe article, 'To Foucauldians, such sources cannot tell us who the convicts were *to themselves*, even if subjected *Convict Workers*-style to massive statistical interrogation. Indent data are not sheer fictions but neither are their instrumentalist privileging and ordering neutral'.[74] The crucial point of these arguments is that the quantitative techniques used in *Convict Workers* exclude convict agency and qualitative convict

[71] Ian Duffield, "Problematic Passages: 'Jack Bushman's' Convict Narrative", in *Representing Convicts*, ed. Duffield and Bradley, 21 (the hostile reviews are listed in endnote 13 of this work). The editor and lead author of *Convict Workers* also summarised and responded to its numerous reviews: Stephen Nicholas, "Beyond *Convict Workers?* Unanswered Questions about Convict Economy and Society", in *Beyond Convict Workers*, ed. Barrie Dyster (Sydney: University of New South Wales, 1996), 3-20.
[72] Evans and Thorpe, "Power, Punishment and Penal Labour", 92.
[73] Evans and Thorpe, "Power, Punishment and Penal Labour", 94-95.
[74] Duffield, "Problematic Passages", 23.

experience: 'The multi-dimensional human actor is largely blotted from the landscape by a deluge of numbers'.[75]

Other historians have reinforced the limitations of the official convict records. O'Connor cautioned against uncritical acceptance of such documents and advocated the need to read the historical records against the grain to extract the experiential meaning of servitude, to counteract a view of convict experience refracted through their gaolers' eyes.[76] Bradley and Maxwell-Stewart proposed that the official records were an act of incarceration in themselves, and they questioned the power of the state record to know its subject.[77] Maxwell-Stewart argued that the official records construe convicts as objects to be catalogued and described,[78] thus providing a perspective of convicts that is inadequate to understand their individual and private experiences. Furthermore, the official records were part of the toolkit of ideological domination employed by convict and slave masters and the state, an ideology that relegated convicts and slaves to the low moral ground and helped to justify their exploitation.[79] This and the associated concept of paternalism represent a departure from a myopic focus on productivity or terror and an emergent deeper understanding of the complexities of convicts and convictism within the broader context of forced labour such as slavery. These concepts underpin the interpretation of the Tocal data, particularly in relation to the meaning and significance of colonial 'offences' in chapter six.

Seeking to address the limitations of the official records and the inherent silencing of the convict voice, Evans and Thorpe presented the recollections of convict Thomas Brooks, alias Jack Bushman, who was sentenced to Moreton Bay in 1825. They argued that provided such accounts are evaluated critically, they 'seem to amplify remarkably accurate, authentic convict voices'.[80] Although the study of convict narratives was not

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[75] Evans and Thorpe, "Power, Punishment and Penal Labour", 94.
[76] O'Connor, "Zone of Silence", 130-134; Similarly, Gilchrist notes that our access to the past is largely gained through the official discourses of the ruling classes—Catie Gilchrist, "'A life of noisy riot, of filth, indecency and profaneness': The Convict Voice and the Bourgeois Imagination", *Journal of the Royal Australian Historical Society* 92, no. 1 (2006): 40.
[77] James Bradley and Hamish Maxwell-Stewart, "Alexander and the Mother of Invention", in *Chain Letters - Narrating Convict Lives*, ed. Lucy Frost and Hamish Maxwell-Stewart (Carlton South: Melbourne University Press, 2001), 198.
[78] Maxwell-Stewart, "Convict Workers, 'Penal Labour'", 143.
[79] James Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven: Yale University Press, 1990), 198; Maxwell-Stewart, "The Search for the Convict Voice", 75; Sturma, "Eye of the Beholder", 3-10.
[80] Evans and Thorpe, "Power, Punishment and Penal Labour", 95.

new,[81] the presentation of Thomas Brooks' recollections was symptomatic of a new wave of convict studies that sought to discover or recover authentic convict voices through narrative and other means.[82] Notable amongst these was *Representing Convicts* published in 1997 as a collection of articles that analysed convict experiences through studies of convict texts and aspects of their bodies such as tattoos and head shaving.[83] In the final chapter Joy Damousi's examination of headshaving of convict women as a gendered activity marks another dimension within the increasing diversity of convict studies.[84] Similarly Evans and Thorpe analysed the masculinist dimensions of gendered power relations between those administering convict discipline and control and those who were subject to it. Their study embraced the masculinities of the hegemonic males in the competing reformist and punitive factions, and the emasculating or feminising effects of flogging on the masculinities of convicts as the punishment reduced them to a state of helplessness and impotence.[85]

Duffield's opening chapter of *Representing Convicts* is indicative of yet another stage of convict historiography, characterised by the exploration of the limitations of convict narratives and the problematic way in which they represent or fail to represent authentic convict voices. Duffield pointed out that narratives, along with official records, have critical limitations, and while there are numerous examples of convict narratives available, 'the analytical literature on them, as distinct from empirical quarrying, is limited'.[86] Duffield used Evans and Thorpe's presentation of Jack Bushman's recollection as the focus of his criticism. He argued that Bushman's story, in common with other such works, suffered from editorial intrusion by a literate editor or amanuensis who did not hesitate to weave middle-class political and moral agenda into the narrative. Convict autobiographies are also characterised by omission, selection,

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[81] For example, Anne Conlon, "'Mine is a Sad yet True Story': Convict Narratives 1818-1850", *Journal of the Royal Australian Historical Society* 55, no. 1 (1969): 43-82.
[82] For a list of such 'new wave' studies see Picton-Phillipps, "Convicts, Communication and Authority", 4. According to Pybus and Maxwell-Stewart, the most important convict texts in existence are the narratives of the American patriots transported to Van Diemen's Land in the late 1830s: Cassandra Pybus and Hamish Maxwell-Stewart, *American Citizens, British Slaves—Yankee Political Prisoners in an Australian Penal Colony 1839-1850* (Melbourne: Melbourne University Press, 2002), xiv.
[83] *Representing Convicts*, ed. Duffield and Bradley.
[84] Joy Damousi, "'What punishment will be sufficient for these rebellious hussies?' Headshaving and Convict Women in the Female Factories", in *Representing Convicts*, ed. Duffield and Bradley, 204-214.
[85] Evans and Thorpe, "Commanding Men: Masculinities and the Convict System", *Journal of Australian Studies* 56 (1998): 17-25.
[86] Duffield, "Problematic Passages", 23.

exaggeration and sometimes by misinformation.[87] Brook's voice can still heard, but less distinctly and more intermittently. Nevertheless, the contradictions and editorial transmutations in Bushman's tale are invaluable, providing an insight into both the anti-transportation agenda of the colonial middle class as well as a cry of lived convict experience.[88] Therefore, while an un-problematically authentic 'convict voice' does not exist, convict narratives are 'not to be discarded as biased, inaccurate or inauthentic but analysed for their meaningful contradictions and contestations, pregnant silences, [and] revelatory packagings'.[89]

Taking up the challenge to personalise the convict experience, several studies have analysed groups of individual convicts in detail.[90] Notably, Kristine McCabe's detailed examination of the assignment and punishment experiences of convict women in the Hunter Valley parallels the Tocal analysis in some respects.[91] In 2001 a key collection of articles titled *Chain Letters* sought to further personalise the convict experience in various creative ways with stories of 'loss and hope, escapes and acts of fraud, love and betrayal, power, wit and imagination'.[92] Some recent studies have demonstrated the interconnectedness of individual convict histories in Australian with those in Britain and Ireland and revealed the emotional impact for the transportees and the loved ones they left behind. Kent and Townsend examined the economic and social conditions surrounding the 'Swing' riots of the early 1830s and followed the lives of the 132

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[87] Toni Johnson Woods, "Virtual Reality", in *Representing Convicts*, ed. Duffield and Bradley, 44; Jennifer Harrison and JG Steele (ed.), *The Fell Tyrant or the Suffering Convict* (London: J Ward, 1836; reprint, Brisbane: Royal Historical Society of Queensland, 2003), 1.

[88] Duffield, "Problematic Passages", 22-33; Conlon in 1969 also discussed the limitations of convict narratives and noted their predictable framework and moral tale: Conlon, "Convict Narratives", 45.

[89] Ian Duffield and James Bradley, "Introduction: Representing Convicts?", in *Representing Convicts*, ed. Duffield and Bradley, 5.

[90] Babette Smith, *A Cargo of Women: Susannah Watson and the Women of the Princess Royal* (Kensington: New South Wales University Press, 1988); Barbara Hall, *A Desperate set of Villains—The Convicts of the Marquis Cornwallis, Ireland to Botany Bay 1796* (Coogee: B Hall, 2000); Phillip Tardif, *Notorious Strumpets and Dangerous Girls—Convict Women in Van Diemen's Land 1803-1829* (North Ryde: Collins/Angus & Robertson, 1990); Janice K. White, "A Master and his Men: A Different Perspective on the Reverend Samuel Marsden in New South Wales from 1794 to 1851" (Masters thesis, University of New England, 1994); Diane Parton, "Faces from a Crowd: The Men of the Marquis of Wellington, 1815" (Masters thesis, University of New England, 1992); David Kent and Norma Townsend, *The Convicts of the Eleanor, Protest in Rural England, New Lives in Australia* (London: Merlin Press, 2002).

[91] Kristine McCabe, "Discipline and Punishment: Female Convicts on the Hunter River, 1830-1840, 'What can we do with her?'", *Journal of Australian Colonial History* 1, no. 1 (1999): 38-61; Kristine McCabe, "Assignment of Female Convicts on the Hunter River, 1831-1840", *Australian Historical Studies* 113 (1999): 286-302.

[92] Lucy Frost and Hamish Maxwell-Stewart, "Introduction", in *Chain Letters*, ed. Frost and Maxwell-Stewart, 1.

Swing rioters/machine breakers transported to New South Wales on the *Eleanor* in 1831.[93] The study showed how convict assignment operated as this group of men attempted to rebuild their lives in New South Wales. Kent and Townsend also released the previously unpublished writings of Joseph Mason, a machine breaker transported to New South Wales. Mason's memoir is notable among convict narratives because it was not intended for publication, and is therefore free of the usual editorial intrusions and moral agenda.[94] A machine breaker, Robert West, was assigned to Tocal, and Mason's writing provides valuable background to West's experiences. West's 'micro narrative' is part of the study of the interconnectedness of Tocal convicts with unrest in Britain and Ireland that is addressed in chapter two.

Another important example of the connection between the two hemispheres is Picton-Phillipps' detailed study of NSW convicts and their communications with loved ones in Britain via letters and petitions. The study unravels the profound emotional consequences of transportation that had been sorely neglected for so long,[95] and explores the meanings transportation held for those whose affectionate personal relations were disrupted.[96] Through this 'connectedness', Picton-Phillipps attacks the stereotype of the friendless convict who lacked strong affections or family ties. Convicts were not the grotesque, fictional figures from nineteenth century novels but diverse, ordinary people caught up in extraordinary situations, negotiating their survival or self-promotion at individual or collective levels.[97] Picton-Phillipps' use of petitions is notable, as they are a peculiar form of convict narrative that, although constrained by conventional syntax and couched within a vocabulary of deference and humility, gave convicts a rare opportunity to tell their version of events. Petitions therefore have a special relationship to official convict records, providing both a counterpoint to, and a component of, official transcripts.[98]

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[93] Kent and Townsend, *The Convicts of the Eleanor*.
[94] David Kent and Norma Townsend, eds., *Joseph Mason – Assigned Convict 1831-1837* (Carlton South: Melbourne University Press, 1996), 22.
[95] Historians had previously not completely neglected the feelings and emotions of convicts and the trauma of exile—see for example Neal, *Rule of Law*, 38-39.
[96] Picton-Phillipps, "Convicts, Communication and Authority", 328.
[97] Picton-Phillipps, "Convicts, Communication and Authority", 13-19. For further detail and evidence regarding the strong affections and family ties of convicts see Alan Brooke and David Brandon, *Bound for Botany Bay—British Convict Voyages to Australia* (Kew, UK: The National Archives, 2003), 60-88.
[98] O'Connor also used petitions to reveal the private attitudes and feelings of convicts, including the often irretrievable separation from loved ones and consequent loss suffered by convicts as a result of

In a different approach Karskens analysed convict escapes within the context of a range of emotions such as homesickness and a convict's opportunity (or lack thereof) during bondage to re-create things that really mattered, such as community, culture, companionship, a familiar place, a sense of connection, and family.[99] Her analysis was part of a collection of essays in 2005 on convict escape, providing another example of the divergent ways in which individual convict experiences are being recovered. Karskens also recovered individual convict experiences in her study of the construction of the Great North Road. She showed that leadership by diligent convict and ticket-of-leave overseers, combined with a sprinkling of highly skilled convict artisans, enabled convict gangs to construct road and bridges that are a testament to their perseverance, organisation skills, expertise and craftsmanship. The vanished world of these men working in iron gangs persists in the archaeological evidence, and the surviving structures present another opportunity to recover convict voices.[100] Atkinson agreed, proposing that with the help of archaeology and local history, 'buildings become surfaces on which human beings cast their shadows. A plate or a pipe picked up where they were dropped by their convict owners, embedded in the earth they knew, suddenly shines with intimacy.'[101]

Tattoos have been subject to several studies in recent years and serve a dual role in convict history.[102] Details of convict tattoos entered into the official records assisted the state to classify convicts and identify them when they absconded or assumed a false identity. For the convicts these same indelible marks on their bodies were outside the state's control and could record a range of meanings, such as declarations of affection for loved ones, religious beliefs, hope, personal philosophies, solidarity or attestations to individuality and independence.[103] Similar studies have been made of convict love

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transportation: Tamsin O'Connor, "Raising Lazurus", in *Chain Letters*, ed. Frost and Maxwell-Stewart, 153-161.

[99] Grace Karskens, "'This spirit of emigration': the Nature and Meaning of Escape in Early New South Wales", *Journal of Australian Colonial History* 7 (2005): 33.

[100] Karskens, "Defiance, Deference and Diligence", 17-28.

[101] Atkinson, "Writing About Convicts", 26.

[102] James Bradley and Hamish Maxwell-Stewart, "Embodied Explorations: Investigating Convict Tattoos and the Transportation System", in *Representing Convicts,* ed. Duffield and Bradley, 183-203; Hamish Maxwell-Stewart, Paul Donnelly and Timothy Millett, "Dr Martin and the Forty Thieves", in *Chain Letters*, ed. Frost and Maxwell-Stewart, 177-189; David Kent, "Decorative Bodies: The Significance of Convicts' Tattoos", *Journal of Australian Studies* 53 (1997): 78-88.

[103] Evans and Thorpe, "Commanding Men", 18-27; Bradley and Maxwell-Stewart, "Alexander and the Mother of Invention", 195-198; Atkinson, "Writing About Convicts", 24.

tokens, and of the distinctive vocabulary of the convicts themselves, each seeking an insight into the inner world of the individual convict in their own way and each challenging stereotypes in the process. [104] It is revealed, for example, that love tokens were not part of a criminal subculture but part of the wider British culture in which moral and emotional sentiments were expressed via material mementos.[105]

Atkinson pointed out the limitations of all convict studies that analyse particular, tangible elements of convict experience such as tattoos, skills or muscle power. He warned that historians are in danger of becoming on-lookers at the punishment parade, reducing convicts to a mere snippet, glimpse or impression. He advocated striking a balance between these tangible elements of convict experience and their inner, personal experiences. He concluded that the final identity of convicts is not to be found in any aspect of what they looked like, but in what they felt, thought and said. For Atkinson, 'voices are the only real medium of the soul, and hunting for voices is the historian's essential task'.[106]

The detailed study of Tocal's convicts engages with several elements of the historiography outlined above. It uses local data to test and explore aspects of the ongoing debate on the effectiveness and efficiency of the assignment process and convict labour, the extent of secondary punishment, the reciprocal rights of Tocal's convicts and their masters, and the associated struggles to assert and preserve those rights. The thesis acknowledges the limitations of the official, state records used extensively in the study, but it is not necessary to boycott them.[107] Just as convict experience can be understood as a series of dualisms that underscore its complexity, the official records also possess an inherent dualism. They were created by gaolers for the purposes of control but they record the various responses of convicts to their bondage. In creating what they regarded as a ledger of criminality and dubious character, colonial public servants unwittingly left behind records of convict agency, resistance and

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[104] Michelle Field and Timothy Millet, eds., *Convict Love Tokens, The Leaden Hearts the Convicts Left Behind* (Adelaide: Wakefield Press, 1998); Amanda Laugesen, *Convict Words, Language in Early Colonial Australia* (South Melbourne: Oxford University Press, 2002); Bradley and Maxwell-Stewart, "Embodied Explorations", 183-203.
[105] Maxwell-Stewart, "The Search for the Convict Voice", 81-82; Picton-Phillipps, "Convicts, Communication and Authority", 5; Field and Millet, *Convict Love Tokens*, 13.
[106] Atkinson, "Writing About Convicts", 24-26.
[107] Duffield, "Problematic Passages", 23.

accommodation that provide fascinating insights into what it was like to be a Tocal convict.

At the beginning of my candidature I was, as Atkinson warned, a spectator at the punishment parade, accumulating records of lashes and colonial 'offences'.[108] The shift in focus of the Tocal study over time parallelled the shift in convict historiography over the past two decades. While still actively researching the official records, I now suspended judgement on these men and boys, no longer ensnared by the criminality stereotype but searching for their individual experiences and listening for the faint echoes of their voices. No first-hand narrative has survived for a Tocal convict but the thesis draws on a range of other evidence such as petitions, built heritage, tattoos, depositions and records of actions and reactions. The official record of investigation into the killing of a man at Tocal in 1837, for example, provides an insight into one aspect of the life of teenage convict James Clements, who revealed his fear of the alcohol-fuelled violence that recurred at Tocal, and his habit of removing himself from the huts to hide at the first sign of any fighting.[109] Contact with descendants of Tocal's convicts has also revealed details of loved ones left behind in Britain.

While the thesis takes every opportunity to listen for the voices of Tocal's convicts, their recovery can at best be partial. There is another story to be told but there is also the 'inevitable inadequacy of any retrospective attempt to piece together the elements of that telling'. Any study seeking to recover inner, personal convict experience faces the charge of speaking for convicts in our own latter-day middle-class voices. This is unavoidable, as no order can be imposed on the past except within the historical consciousness of the present.[110] The Tocal study may not recover the inner, personal experiences of its convicts to any large degree but it reveals significant insights that challenge and question some of the conclusions drawn by previous studies. The Tocal data also provides precious glimpses into the private worlds of these men and boys as they struggled through their bondage.

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[108] Atkinson, "Writing About Convicts", 25.
[109] Clerk of Peace, Depositions—Supreme Court, Paterson 2 May 1837, Rex vs Bernard Lyons and James Lemon, 9/6309, SRNSW.
[110] Frost and Maxwell-Stewart, "At Large with the Run-a-ways", in *Chain Letters*, ed. Frost and Maxwell-Stewart, 206; Maxwell-Stewart, "The Search for the Convict Voice", 84.

Chapter 1: Overview of Tocal's convicts and their masters

Demographic and anthropometric profile of the convicts

The demographic and anthropometric profile of Tocal's convicts is taken primarily from the shipping indents, supplemented by other sources where required.[1] The broad convict studies of Robson and Nicholas were based on the shipping indents, and it is therefore possible to compare the various parameters for Tocal's convicts with those for New South Wales as a whole and to note any significant differences. While the thesis focuses mainly on individual convict experiences, the broader profile establishes a reference point for the Tocal convicts in relation to previous aggregated studies.

All of Tocal's 142 convicts were males—a mix of men and boys mainly from Great Britain and Ireland, the majority of whom were young, unmarried and sentenced for some sort of theft. They arrived in New South Wales between 1811 and 1840 although obviously none was assigned to Tocal before the estate was established in early 1822.

When convict ships arrived in Sydney, it was standard practice from at least 1810 to muster the convicts on deck while a team of government clerks and officials recorded the personal details of each convict, including a detailed physical description that would permit later identification in the event of absconding or disputed identity.[2] The ship's muster thus provided the nucleus of the surviving information on New South Wales convicts, and a first hand account of the process is as follows:

> On the 5th a sergeant came to warn us that we were to be reviewed... and that we were to make ourselves ready. In due course... three persons came on board, and immediately we were called up on deck, and in succession were pointed out and named. We were asked our age, birth place, occupation, whether we were married or single, whether we could read and write, etc.
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> At ten a.m. on the 6th we were ordered up on deck, and were examined from head to foot. The most detailed description of each of us was recorded. Our features, the colour of our hair and our eyes, the number of

[1] For example—Home Office, Criminal Registers HO 26 & HO27, PRO; *Census of New South Wales 1828*.

[2] Bigge, *Inquiry into the State of the Colony*, 13-14. Note however that details of scars, tattoos and disabilities were recorded consistently in the shipping indents only from 1826.

> teeth missing, all the marks that we had on our bodies, hands and legs – nothing was omitted.[3]

The main demographic and anthropometric features of Tocal's convicts are discussed below.

Country of Origin

Table 1.1 shows that half of Tocal's 142 convicts were English, nearly half were Irish, seven were from Scotland, one from Sweden and another from the East Indies.[4] The proportion of Irish convicts at Tocal (44 per cent) is higher than the average for New South Wales where the Irish represented about one third of all convict men.[5] The reason for the over-representation of Irish convicts on Tocal is unclear. It may be a random variation but it more likely reflects a preference by Tocal's first owner, James Webber, for Irish convicts because of their predominantly rural backgrounds and farm skills compared to English convicts with largely urban backgrounds. Given his family ties with Ireland and probable first-hand experience of the country and its people, Webber may have held a more favourable view of the working-class Irish than the jaundiced and bigoted stereotype of them held by many in the colony including Governor Brisbane.[6] If the higher proportion of Irish convicts on Tocal is a reflection of Webber's preferences, then it also indicates he had some influence on the process of convict assignment.

Table 1.1 Country of birth

England	71
Ireland	62
Scotland	7
Other	2
Total	**142**

As shown in the following sections, in comparison to English convicts, Tocal's Irish convicts (and Irish convicts in general) tended to be older, and more of them were likely to be married, first offenders and from a rural background.[7] At least two of Tocal's Irish convicts could not speak English on their arrival in New South Wales. The two 'Gaelic-

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[3] Leon Ducharme, *Journal of a Political Exile in Australia*, trans. George Mackaness (Sydney: George Mackaness, 1944; Dubbo: Review Publications, 1976), 33.

[4] Country of origin as indicated by 'Native Place' rather than 'Place of Trial' in the shipping indents. Pre-transportation migration is discussed later in this chapter.

[5] Shaw, *Convicts and the Colonies*, 183; Nicholas and Shergold, "Convicts as Migrants", 45; Robson, *Convict Settlers*, 77.

[6] HRA 1, XI, 382 (Brisbane to Bathurst, 28 October 1824). Webber's father was born in Ireland, his first cousin was an Irish Peer, and another cousin was a Dublin-based lawyer and British Commissioner to Ireland: Walsh, *Tocal's First European Settler*, 7; Brian Walsh, "Tocal's First European Settler, James Phillips Webber—Supplement". *Tocal History Notes* 5 (2001): 16; Nowlan family papers, RB/Coll Q994.02 NOWL-1, Newcastle University Archives.

[7] Shaw, *Convicts and the Colonies*, 166; John Williams, *Ordered to the Island—Irish Convicts and Van Diemen's Land* (Sydney: Crossing Press, 1994), 34, 158.

only' speakers were John Lawler from Queens County who arrived in 1828 with a seven year sentence for picking pockets,[8] and John Shea from County Kerry who arrived in 1828 with a seven year sentence for lamb stealing.[9]

Religion

As expected from the proportion of British and Irish at Tocal, 43 per cent of Tocal's convicts were Catholics and 57 per cent Protestants. As also expected, there is a small cross-over, with four English Catholics and six Irish Protestants.

Urban/Rural background

The classification of convicts by urban or rural background from the information in the shipping indents is problematic. *Convict Workers* took the simple approach that if a city was given for 'native place' the convict was urban and if a county was given the convict was rural.[10] This is not a particularly robust method, as often in the indents, 'county' or 'city' were not specified, for example the entry was simply 'Cork' and could refer to the city or the county of Cork. It is therefore impossible to classify in these cases.[11] In table 1.2 Tocal's convicts have been classified using this method to allow comparison with Nicholas' findings. They have also been classified by analysing their 'trade or calling'—if this indicates farm skills, they are considered rural, and if it indicates city skills they are considered urban. Thirdly a combination of 'native place' and 'trade or calling' has been used to obtain the classification. This third method involves a higher degree of judgement in a few cases, but it is a pragmatic approach that yields the most useable results. It shows that Tocal's convicts were evenly split between rural and urban backgrounds.

Table 1.2 Background of Tocal's convicts

Classification method	Urban	Rural	Total classified	Not classified
By 'native place'	39 (36%)	69 (64%)	108 (100%)	34
By 'trade or calling'	68 (53%)	60 (47%)	128 (100%)	14
By combination	69 (50%)	69 (50%)	138 (100%)	4

[8] PSC, Bound Indents, 4/4013 [fiche 669], 88, SRNSW. The indent indicates that John Lawler was assigned to JP Webber, Penshurst (owned by John Phillips Webber), but the 1828 census of NSW shows him assigned to JP Webber, Markham, (owned by James Phillips Webber). By 1832 Markham had been renamed Tocal: Walsh, *Tocal's First European Settler*, 24.
[9] PSC, Bound Indents, 4/4013 [fiche 669], 91, SRNSW.
[10] Nicholas and Shergold, "Convicts as Migrants", 44.
[11] There is a further problem with the classification of London and its surrounds, as before 1888 different parts of London were spread across the three counties of Middlesex, Surrey and Kent: James Jupp, *The English in Australia* (Cambridge: Cambridge University Press, 2004), 37-38.

Table 1.3 Background by country of origin, using 'combination' method

Country	Urban	Rural	Total
English	42 (60%)	28 (40%)	70 (100%)
Irish	20 (34%)	39 (66%)	59 (100%)
Other	7 (80%)	2 (20%)	9 (100%)
Total classified	69	69	138

The above table shows that 60 per cent of Tocal's English convicts had urban backgrounds, and conversely, two thirds of Tocal's Irish convicts had rural backgrounds. This is in accord with the overall situation in NSW where the English convicts came from predominantly urban backgrounds and the Irish convicts largely from rural backgrounds.[12] It should be noted that pre-transportation migration (detailed later in this section) reduces the sharpness of demarcation between 'rural' and 'urban', given that some convicts with urban trades may have originated in rural areas and could also have rural skills.

Age

The average age of Tocal's convicts was 25, almost exactly the average age of convicts in New South Wales and Van Diemen's Land, namely 25.9 years.[13] More than one third of Tocal's convicts were under 21 and three quarters were under 30. As expected, Tocal's Irish convicts were on average three years older than its English convicts.

The following 'micro narratives' of Tocal's oldest and youngest convicts are a reminder of the faces and individual experiences behind the quantitative profile, and serve to balance the statistical and personal perspectives. Tocal's youngest convict, James Clements, was tried at the Old Bailey in London the day before his thirteenth birthday in 1833 and received a life sentence for stealing a handkerchief despite having no previous convictions.[14] On arrival in Sydney later that year he was assigned to James Webber at Tocal, transferred to Tocal's new owners in 1834 and remained on the estate, receiving a ticket-of-leave for the Paterson district in 1841.[15] He received a conditional

[12] Shaw, *Convicts and the Colonies*, 166; Kris Corcoran and Stephen Nicholas, "Statistical Appendix", in *Convict Workers*, ed. Nicholas, 206 [table A4]. In table A4 the English situation is not so clear-cut, with urban/rural birthplace split nearly 50/50 for English convicts.
[13] Robson, *Convict Settlers*, 159.
[14] PSC, Bound Indents, 4/4018 [fiche 687], 5, SRNSW; PSC, Printed Indents, X635 [fiche 704], 99, SRNSW.
[15] Home Office, NSW Convicts Arrived 1833-34, HO10/30, PRO; *NSW Government Gazette*, 3 June 1835, 394 (transferees were listed by occupation—Clements can be positively identified as the only 'servant boy' among the Tocal convicts transferred); TOL 41/1892, 4/4154 [reel 941], SRNSW.

pardon in 1847 on the recommendation of two magistrates and his former Tocal employer, Felix Wilson. At the age of 27, with no colonial convictions recorded against him, he was free after 14 years in the penal system.[16] The convict-master relationship survived emancipation and Clements worked at Tocal until about 1855. He married and became a landholder and well known, respected citizen in the Paterson district.[17]

Another young English thief who rebuilt his life at Tocal was William Woollard. He was aged 15 with two previous convictions when given a life sentence in London in 1833 for picking pockets.[18] By 1835 he was assigned to Tocal and in that year received 50 lashes for absconding and a further 50 for neglect of work.[19] He remained at Tocal and evidently settled down, earning his ticket-of-leave for the Paterson district in 1841.[20] He continued to work at Tocal, and was a member of the Tocal team in the 1845 ploughing competition at Maitland Show.[21] In 1846 he received a conditional pardon but before he could enjoy its benefits he dropped dead while digging out stumps in a Tocal paddock.[22] The anecdotal cases of these two young London thieves do not suggest origins in a class of criminals or ne'er-do-wells, habituated to a life of crime from an early age as proposed by Robson and Shaw. Rather they suggest the errors of working-class youths who had the innate capacity to rebuild their lives in other circumstances.

Two convict boys were assigned to James Webber at Tocal in 1832 as part of a quasi-apprenticeship scheme for convict boys in New South Wales devised by Governor Bourke. The two boys were Frederick Scammell who arrived on the *Hercules* at age 14,[23] and William Smith on the *Planter* at age 16, both with seven year sentences for stealing.[24] They were among 11 boys from the *Planter* and 20 from the *Hercules* who

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[16] CP 47/475, 4/4451 [reel 783], SRNSW.
[17] Marriage record, V1846 539 31C, NSWBDM; Pauline Clements, *The Clements-Paterson Connection* (Paterson: Paterson Historical Society Inc, 1994), 3-7.
[18] PSC, Bound Indents, 4/4017 [fiche 685], 204, SRNSW; PSC, Printed Indents, X635 [fiche 703], 49, SRNSW.
[19] Colonial Trials and Records, Benches of Magistrates 1832-36, Paterson, X708 [reel 662], SRNSW.
[20] TOL 41/1300, 4/4152 [reel 940], SRNSW.
[21] *Maitland Mercury*, 19 April 1845.
[22] CP 48/590, 4/4456 [reel 786], SRNSW; *Maitland Mercury*, 15 August 1846.
[23] PSC, Bound Indents, 4/4017 [fiche 683], 108, SRNSW; PSC, Printed Indents, X634 [fiche 701], 133, SRNSW; *NSW Government Gazette*, 26 December 1832, 486; *Sydney Gazette*, 27 December 1832.
[24] PSC, Bound Indents, 4/4017 [fiche 683], 96, SRNSW; PSC, Printed Indents, X634 [fiche 701], 119, SRNSW; Home Office, NSW Convicts arrived 1828-32, HO10/29, PRO.

were assigned to settlers, with the following instructions issued to their masters by the Government:

> it is the intention of Government to continue these Boys in their [masters'] service for the full period of Seven Years... It is expected that they [the masters] will make a point of neither returning nor transferring them during an equal time. It is expected that each Master will exert himself to impart to these Boys such habits of industry and propriety as may render them useful and if possible respectable Members of Society when they attain the Age of Manhood.'[25]

Despite the Governor's instructions, Frederick Scammell did not stay at Tocal for the whole of his sentence. By 1837 he had been re-assigned to Alexander Park at Paterson.[26] Scammell received his certificate-of-freedom in 1839,[27] married the same year, had a family and died in 1849.[28] The two boys had different responses to their bondage. Scammell deferred to authority and was, according to Government intentions, rendered a useful and respectable member of society. Smith, however, was somewhat defiant and failed to acquire such habits of industry and propriety immediately upon reaching manhood. He was re-convicted several times and felt the lash and solitary confinement before his seven year sentence expired.[29]

Tocal's oldest convict was Michael Keily, an Irish farmer who was 60 when he received a life sentence for counterfeiting.[30] He was assigned to JP Webber at Paterson and later died at Port Macquarie in 1844 while holding a ticket-of-leave. The burial register records his age at 83.[31] If this is correct he would have been 68 rather than 60 when he arrived at Paterson. The next oldest, Robert West, was 50 when he received a life sentence for 'machine breaking' during the Swing disturbances in England.[32] He is one of Tocal's English rioters whose stories are told in detail in chapter two.

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[25] CS to PSC, 31 October 1832, CS Letters Sent, 4/3675, 457-459 [reel 1046], SRNSW.
[26] *General Return of Convicts in New South Wales 1837*, ed. NG Butlin, CW Cromwell and KL Suthern (Sydney: Australian Biographical and Genealogical Record, 1987), 539.
[27] COF 39/2065, 4/4353 [reel 1004], SRNSW.
[28] *pers comm,* descendant.
[29] Punishment Book, Patricks Plains 1833-39, 7/3714 [reel 689], 69, 91, SRNSW.
[30] PSC, Bound Indents, 4/4014 [fiche 671], 6, SRNSW. Keily's offence is shown on the indent as 'Base Coin'.
[31] Convict Death Register, 1828-79, 4/4549, SRNSW. The entry is for Michael Reily (not Keily), ship *Governor Ready*. There was no Michael Reily on the *Governor Ready*. This death is confirmed as that of Michael Keily by the entry in Gwendoline Griffin and Ronald Howell, *The Winding Sheet—the Burying Grounds, Port Macquarie 1821-1886* (Port Macquarie Historical Society, 1996), 215.
[32] PSC, Bound Indents, 4/4017 [Fiche 682], 10, SRNSW; PSC, Printed Indents, X634 [fiche 699], 43, SRNSW.

Crime and sentence

Most Tocal convicts were transported for some form of theft. As the table below shows, 15 per cent stole animals, six per cent picked pockets, six per cent committed highway robbery and 56 per cent stole various items ranging from clothes, watches, snuff boxes to bagpipes and a flute. There is a full list of the crimes of Tocal's convicts in appendix one.

Table 1.4 Crimes of Tocal's convicts

Crime	Number	Per cent
Stealing animals	21	15
Picking pockets	9	6
Highway robbery	9	6
Stealing - other	79	56
Protest/rebellion	12	8
Other	11	8
Unknown	1	1
Total	**142**	**100**

As might be expected from their largely rural background, more of Tocal's Irish than English convicts were sentenced for animal stealing (12 compared to nine).[33] Some of Tocal's convicts were convicted for more serious offences—two for murder, one for abduction and one for rape. Other crimes included insubordination, desertion and perjury. Twelve committed crimes of protest or rebellion, arguably fighting for a cause rather than acting for their own immediate gain. These convicts are studied in detail in chapter two.

Slightly more than half of Tocal's convicts received seven year sentences, seven per cent received 14 year sentences, one convict had a 15 year sentence and the remaining 39 per cent received life sentences.

[33] This is in accord with a detailed study of Irish convicts in VDL where relatively more Irish had been convicted of animal stealing: Williams, *Ordered to the Island*, 160.

Previous convictions

Table 1.5 Previous convictions of Tocal's convicts by country of origin

Prev. convictions	England	Ireland	Scotland	Other	Total
0	29	32	3	1	65
1	12	0	1	0	13
2	5	3	1	1	10
3	3	1	0	0	4
4	0	0	1	0	1
Total	**49**	**36**	**6**	**2**	**93**
Not recorded	22	26	1	0	49

Table 1.5 shows that 65 out of 93 of Tocal convicts (70 per cent), had no previous convictions when sentenced to transportation, indicating a recidivist rate of 30 per cent for the group. Previous convictions were recorded on the convict shipping indents only from 1826 onwards, hence the number shown as 'not recorded' in the table. Shaw's analysis that found that 45 per cent of convicts who arrived in NSW between 1830 and 1840 had prior convictions, and Nicholas and Shergold's study of a larger sample indicated a 39 per cent recidivist rate for NSW convicts.[34] The lower number of previous convictions for the Tocal group is explained by its higher proportion of Irish convicts, the majority of whom were first offenders. This is demonstrated in table 1.5, where 89 per cent (32 out of 36) of Tocal's Irish convicts were first offenders compared to 59 per cent (29 out of 49) of its English convicts. This English/Irish difference is in accord with Shaw's studies where he found that only one third of English convicts were first offenders compared to nearly three quarters of the Irish.[35] Nicholas and Shergold also noted the difference but in their study 59 per cent of the English were first offenders, the same rate as in the Tocal group.[36]

Table 1.6 Previous convictions and colonial convictions.

	Numbers on arrival in NSW	Number of men with colonial convictions
Nil prev conv	63	30
1+ prev conv	30	18
Total	**93**	**48**

[34] Shaw, *Convicts and the Colonies*, 151; Nicholas and Shergold, "Convicts as Migrants", 46. Note from his 1 in 20 sample, Robson estimated a prior conviction rate of 60 per cent for NSW and VDL convicts combined, but the higher rate for VDL convicts makes it difficult to reach a conclusion for NSW from his analysis: Robson, *Convict Settlers*, 154.
[35] Shaw, *Convicts and the Colonies*, 151 and 166.
[36] Nicholas and Shergold, "Convicts as Migrants", 47.

Table 1.6 shows only a weak relationship among Tocal's convicts between previous convictions prior to transportation and subsequent convictions while serving their sentences in New South Wales. Taken from 1826 when records of previous conviction are available, 18 of the 30 men who arrived with previous convictions were re-convicted in NSW compared to 30 of the 63 men who arrived with no previous convictions. The Tocal finding cannot be compared with previous studies as it is impossible to derive this correlation without reconstructed colonial behaviour records such as those compiled in this thesis. The lack of correlation, however, lends weight to the *Convict Workers*' argument that the concept of a professional criminal class from which the majority of convicts were drawn is fundamentally flawed. If the concept were valid, it would be reasonable to expect those with previous convictions, habituated to a life of crime, to continue their criminal ways in New South Wales. The data for Tocal's convicts, with reconstructed individual records of colonial crime and secondary punishment, does not support this conclusion. The colonial crimes and secondary punishments of Tocal's convicts are studied in detail in chapter six.

Marriage and education

One quarter of Tocal's convicts were married or widowed before transportation, and 71 per cent could read or read and write.[37]

Table 1.7 Marital status and education of Tocal's convicts.

Marital status		**Education**	
Married	22 (23%)	Reads & writes	39 (42%)
Widowed	2 (2%)	Reads	26 (29%)
Single	71 (75%)	None	26 (29%)
Total	**95 (100%)**		**91 (100%)**
Not recorded	47		51
Total	142		142

There were some differences in marital status and education for Tocal's convicts from different countries. More Irish than English were married (29 per cent compared to 24 per cent) although the difference is not as great as expected.[38] More of Tocal's Irish

[37] The pre-transportation marital status and education of some of Tocal's convicts is not known because the earlier shipping indents did not record this information.
[38] Robson, *Convict Settlers*, 167.

could read or read and write compared to its English convicts (74 per cent compared to 65 per cent) and this is the reverse of the trend for NSW convicts taken as a whole).[39]

Height

The average height of Tocal's convicts was 164cm. Excluding those under 21 years who were still growing (in the early 1800s boys reached their adult height at an older age than at the present day),[40] the average height of the Tocal adult convicts was 168cm, the shortest of these 154cm and the tallest 180cm. In the 'under 21s' the shortest was 16 year-old George Splenoenburg at 136cm, followed by 14 year-old Frederick Scammell at 137cm. The heights of Tocal's convicts are similar to those found in Nicholas and Shergold's analysis, where the average height for adult male convicts was around 167 to 168 cm. They found that the convicts transported to New South Wales were not short by contemporary British and Irish standards, indicating comparable nutritional status and a similar level of labour efficiency.[41] I argue in chapter three, however, that when factors clearly evident at Tocal such as a high turnover of workers and frequent disruptions due to punishment are included in the analysis, the comparability of productivity becomes rather questionable.

Skills classification

Convict Workers argued that convicts brought a considerable range of skills to the Colony of New South Wales and these men were not assigned at random but allocated to make effective use of their skills.[42] Both these conclusions can be tested on Tocal's convicts whose broad range of pre-transportation occupations included labourers, ploughmen, farm men, shepherds, reapers, milkers, grooms, errand boys, weavers, brass founders, brickmakers, file cutters, butchers, tailors, shoemakers, blacksmiths, stone masons, a hawker, soldier, sailor, baker, rope maker, brush maker, coachsmith and a hairdresser. Table 1.8 shows the skills of Tocal's convicts classified by the Nicholas-Shergold method used in *Convict Workers*.[43] The table supports the first conclusion,

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[39] Corcoran and Nicholas, "Statistical Appendix", 210.
[40] Stephen Nicholas and Peter Shergold, "Convicts as Workers", in *Convict Workers*, ed. Nicholas, 80. Terminal height seems to have been reached soon after the age of 20.
[41] Nicholas and Shergold, "Convicts as Workers", 82.
[42] Nicholas and Shergold, "Convicts as Workers", 62-68.
[43] Corcoran and Nicholas, "Statistical Appendix", 223-224. This study did not provide a summary description of categories 5 to 9 and the descriptions for these categories in column 1 of table 1.8 are mine rather than theirs.

indicating that only 27 per cent (38 men) fall into the unskilled categories 1 and 2, while nearly three quarters of the men possess some degree of occupational skills on arrival in NSW, particularly in the categories of skilled or semi-skilled manufacturing, transport and rural.

Table 1.8 Skills classification of Tocal's convicts.

Skills category	Number of men
1. Urban unskilled	14
2. Rural unskilled	24
3. Construction, skilled or semi-skilled	9
4. Manufacturing/transport, skilled or semi-skilled	44
5. Rural, skilled or semi-skilled	44
6. Retail	0
7. Armed forces, regulatory	3
8. Urban, skilled	0
9. Domestic, skilled	2
Total	140
not recorded	2

The specific occupation of convicts while at Tocal is known in only 34 cases, and table 1.9 below compares these colonial occupations with the pre-transportation skills of the men as shown on their shipping indents. There is no clear pattern of skills matching to emerge from this table. Many of those with rural skills before transportation worked in rural semi-skilled or unskilled jobs at Tocal, but several others underwent a complete change of occupation. Examples of this include errand boy to tobacconist, linen weaver to cooper, groom to shoemaker, ropemaker to tobacconist, hairdresser to shepherd, brush maker to tobacconist, and errand boy to sawyer. This absence of a deliberate match between the occupation on the indent and the assigned work was also evident in the study of the 132 convicts of the *Eleanor*, and neither the Tocal nor the *Eleanor* study supports Nicholas and Shergold's findings in this regard.[44] The effectiveness of the assignment process, of which skills matching is one criterion, is examined in detail in chapter three, including the way in which pre-transportation migration and multiskilling confound the analysis.

[44] Kent and Townsend, *The Convicts of the Eleanor*, 182.

Table 1.9 Pre-transportation skills and colonial occupation

Name	Ship	Year	Trade or calling	Tocal Occup
Brearly, John	Hooghley	1825	ploughs & shears	labourer
Callaghan, Daniel	Marquis of Huntley	1828	errand boy	tobacconist
Campbell, John	Countess of Harcourt	1827	farm man	labourer
Caroll, Denis	Hooghley	1825	ploughman	shepherd
Cooper, Alfred	Phoenix	1828	mason's labourer	servant
Costigan, Patrick	Countess of Harcourt	1827	farm man	labourer
Crick, Jonas	Phoenix	1828	plough & fisherman	labourer
Dobson, Roger	Ocean	1823	ploughman	labourer
Fee, Michael	Boyne	1826	linen weaver	labourer/cooper
Geere, William	Sesostris	1826	groom & gardener	shoemaker
Hanley, John	Earl St Vincent	1823	shepherd	shepherd
Hughes, Richard	Guildford	1822	rope maker	tobacconist
Hutchins, John	Dick	1821	blacksmith	shepherd
Jameson, John	Guildford	1827	hairdresser	shepherd
Keating, Thomas	Earl St Vincent	1823	ploughman	labourer
King, George	Asia	1825	print blocker	carpenter
Kipling, John	Bussorah Merchant	1828	piecer	labourer
Lawler, John	Borodino	1828	plough, shepherd	shepherd
Levitt, John	Bussorah Merchant	1828	farm labourer	shepherd/o'seer
Logan, James	Bussorah Merchant	1828	brush maker	tobacconist
Mooney, Lawrence	Mangles	1828	carter	labourer
Murdock, Hugh	Hooghley	1825	shear & thrashers	labourer
Murphy, Edward	Mangles	1828	farm servant	labourer
Musk, James	Phoenix	1828	labourer	labourer
Padmore, Alfred	Asia	1822	errand boy	sawyer
Ryan, Patrick	Hooghley	1825	ploughman	labourer
Sheehan, Maurice	Boyne	1826	farmer's labourer	labourer
Sheppard, John	Ocean	1823	carter & coal miner	labourer
Shields, James	Surrey	1816	servant & labourer	overseer
Slowey, Patrick	Mangles	1828	farm s'vant/shepherd	shepherd
Smith, John	Phoenix	1828	plough & stableman	shepherd
Snell, John	Norfolk	1825	plough shear	stock keeper
Truelove, William	Sir William Bensley	1817	labourer	labourer
Waggoner, John	Minerva	1821	coachsmith	labourer

Pre-transportation migration

Previous studies found that 38 per cent of the English and Irish convicts transported to New South Wales between 1817 and 1840 had already left their county of birth before transportation. They had experienced free migration before being sentenced to forced migration, thus easing their adjustment to Australia.[45] As expected, 40 of Tocal's convicts (29 per cent) were tried in a county other than that of their birth, and eight of

[45] Nicholas and Shergold, "Convicts as Migrants", 54.

them were tried in a different country to that of their birth. Only one of Tocal's Irish convicts was tried in England and two of the English in Ireland. The inter-county and inter-country migration of Tocal's convicts conforms approximately to the pattern identified by Nicholas and Shergold although it is exhibited to a lesser extent.

Table 1.10 Pre-transportation migration of Tocal convicts.

Migration	**Inter-county**	**Inter-country**
Yes	40 (29%)	8 (6%)
No	100 (71 %)	133 (94%)
Total	**140 (100%)**	**141 (100%)**
Not recorded	2	1

Scars and disabilities

From 1826 onwards when the information was consistently recorded, nearly two thirds of Tocal's convicts had scars of some sort, a reflection on the daily hazards of working and living in Britain and Ireland in the early nineteenth century. Eleven per cent had some form of physical disability recorded on the shipping indent, such as a speech impediment, squint, dislocated joint or shortened limb.

Tattoos

When Storer Graves disembarked from the *Fergusson* at Port Jackson in March 1829 prior to his assignment to Tocal, colonial authorities recorded on the shipping indent that he carried on his right arm the tattoo 'Ah me, who is me, Ah misery. SG. MG. AG. EG & Moon' (the misquote 'who is me' of the phrase 'woe is me' is presumably a transcription error by authorities or a blunder during tattooing). Graves was married with two children when convicted of street robbery and sentenced to transportation for seven years.[46] His tattoo poignantly represented the grief and despair of his forced separation from his family, their initials providing an indelible reminder of attachment and the moon probably symbolising his lasting affection for them throughout the ordeal of his trial, voyage and bondage.[47]

Convict tattoos such as these are doubly important. On the one hand they were embedded within the working-class popular culture of Britain (and to a lesser extent of

[46] PSC, Bound Indents, 4/4014 [fiche 671], 135, SRNSW.
[47] Kent, "Decorative Bodies", 82.

Ireland) and as such are part of the evidence that convicts were not drawn from a distinct, criminal class.[48] On the other hand, and more importantly for the Tocal study, records of convict tattoos are arguably 'the closest to the "convict voice" that it is now possible to attain',[49] despite the criticism that they provide only a glimpse or mere snippet rather than a substantial insight.[50] Regardless of their use by government for classification and control, the form and content of tattoos were independent of the state, and the tattoos of Tocal's convicts present a precious opportunity to recover something of their inner world of emotional and personal sentiments, of affection, individuality, independence and even subversive sentiments of solidarity against the penal order itself.[51]

Between one quarter and one third of all male convicts transported to Australia carried some form of tattoo, one source indicating the average was 27 per cent.[52] Tocal's convicts fell within the high end of the range, with 33 per cent of the Tocal men who arrived in Sydney from 1826 onwards carrying tattoos (tattoos were recorded in the shipping indents from 1826). As expected, Tocal's English convicts were markedly over-represented among those with tattoos while the Irish were under-represented. Many tattoos were acquired after imprisonment—either while in gaol, on the hulks or on-board ship during the voyage to New South Wales. They were implemented during confinement by puncturing the skin with a needle and lamp-black or soot or gunpowder.[53] The time and situation of acquisition is an important consideration in their interpretation, which is a difficult and imperfect process because of the selective recording of tattoos by authorities and the use of acronyms, short hand and sometimes complex and obscure iconography within the tattoos themselves.[54]

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[48] Kent, "Decorative Bodies", 79-80.
[49] Bradley and Maxwell-Stewart, "Alexander and the Mother of Invention", 198.
[50] Atkinson, "Writing About Convicts", 24-26.
[51] Evans and Thorpe, "Commanding Men", 18-27; Bradley and Maxwell-Stewart, "Alexander and the Mother of Invention", 195-198.
[52] Maxwell-Stewart, "The Search for the Convict Voice", 78; Bradley and Maxwell-Stewart, "Embodied Explorations", 184; Kent, "Decorative Bodies", 85-86; Maxwell-Stewart, Donnelly and Millett, "Dr Martin and the Forty Thieves", 182.
[53] Kent, "Decorative Bodies", 80; Hamish Maxwell-Stewart and Ian Duffield, "Skin Deep Devotions: Religious Tattoos and Convict Transportation to Australia", in *Written on the Body: The Tattoo in European and American History*, ed. Jane Caplan (London: Reaktion Books, 2000), 128.
[54] Maxwell-Stewart, "The Search for the Convict Voice", 79-80.

Storer Graves' tattoo described above was typical of the clear majority of the Tocal men's tattoos that carried messages of hope and affection for family members and other loved ones. Of the 30 tattooed Tocal convicts, 13 sported the initials of family members and others, often in combination with their own initials. Five tattoos indicated affection in the form of rings on fingers or bracelets on wrists, and two tattoos included the symbol of a woman alongside initials. Similarly, of the six tattoos that included an anchor, five were combined with initials or the symbol of a woman. For sailors an anchor signified safety and good luck but for others it symbolised hope and constancy.[55] In stark contrast to these affirmations of hope, William Addey had 'JA TA & wreath' tattooed on one arm and 'WA MA & wreath' on the other,[56] perhaps a heartfelt cry of desperation and despair at his forced separation from family members (or maybe a memorial to deceased family members). Six of the Tocal tattoos consisted solely of the convict's own initials, possibly a statement that although these men had forfeited their liberty they would retain their identity.[57]

Seven of the Tocal men's tattoos indicated possible religious leanings via symbols such as a fish, cross, crucifix, crucifixion, altar or the acronym 'IHS'. Some tattoos were grounded in popular culture rather than directly associated with imprisonment and separation. These included several mermaids, one with a comb and glass in her hand (as per a contemporary sea-shanty), a jolly sailor, a bottle and glass. Most of the tattoos of the Tocal men were on their fingers, hands or lower arms, but two are notable for their position within more private space not usually bared to the public (particularly in the colder northern hemisphere)[58]—John Lawler had 'IHS' tattooed on his right breast and James Douglas had 'PD' on his upper left arm.[59]

In conclusion, the demographic profile of Tocal's 142 convicts conforms in most respects to that found in previous studies, indicating they were typically young, single males transported for some form of theft. The Tocal group had a higher proportion of Irish convicts than found in NSW as a whole. As expected from previous studies, when compared to their British counterparts, Tocal's Irish convicts were older, more had rural

[55] Kent, "Decorative Bodies", 81; Maxwell-Stewart and Duffield, "Skin Deep Devotions", 125.
[56] PSC, Printed Indents, X640 [fiche 727], 75, SRNSW.
[57] Kent, "Decorative Bodies", 83.
[58] Kent, "Decorative Bodies", 83.
[59] PSC, Bound Indents, 4/4013 [fiche 669], 88, SRNSW; PSC, Bound Indents, 4/4014 [fiche 673], 248, SRNSW.

backgrounds, more were married and significantly more were first offenders. More of Tocal's Irish also had some form of education than expected.

Tocal's convict masters

James Phillips Webber was Tocal's first convict master, his term beginning with the original land grant in 1822. Webber then sold Tocal to the father and son combination of Caleb and Felix Wilson in 1834, who jointly became the second and final masters of the estate during the convict era.[60] The profile of Tocal's convict masters highlights the dramatic differences in background, class, wealth and lifestyle between these men and their convict servants. The profile also underpins the understanding of relations between Tocal's masters and their convicts, which is developed at various stages in the thesis, particularly with regard to convict working and living conditions at Tocal in chapter four and the management, motivation and control of the convict workforce through a mix of paternalism, rewards and punishment in chapter six.

James Phillips Webber was born in northern Wales in July 1797,[61] the eldest son of wealthy and well-connected parents. His father had pursued a superficially impressive but somewhat leisurely career in the British army, using family wealth to purchase his initial commission and subsequent promotions until attaining the lofty rank of Lieutenant-General in 1830.[62] His rank obscured the fact that he had permanently withdrawn from active service onto 'Half-Pay' while a Captain in 1789.[63] James' mother, Charlotte Phillips, was a daughter of the once immensely wealthy Colonel Frederick Philipse III, a loyalist who had owned large estates in New York until they were confiscated during the American Revolution because of his continuing allegiance to Britain. He and his family fled to England in 1783 where he was handsomely compensated by the government (to the extent of £53,000) for his loyalty to the British Crown.[64] It is not surprising, therefore, that when James Webber wrote to Lord Bathurst in May 1821 to announce his intention to migrate to New South Wales and to request a

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[60] Walsh, *Tocal's First European Settler*, 50-55.
[61] *Overton Parish Registers, Baptisms and Burials 1783-1812* (Wrexham: Clwyd Family History Society, 1994), 16.
[62] Walsh, *Tocal's First European Settler*, 5.
[63] Walsh, "James Phillips Webber—Supplement", 15-16.
[64] Stefan Bielinski, *An American Loyalist: The Ordeal of Frederick Philipse III* (New York: New York State Parks and Recreation, 1976), 13-31; Jacob Judd, "Frederick Philipse III of Westchester County: A Reluctant Loyalist", in *The Loyalist Americans: A Focus on Greater New York*, ed. Robert East and Jacob Rudd (Tarrytown, New York: Sleepy Hollow Restorations, 1975), 25-43.

grant of land, he could declare, at the age of only 23, that he had £3,000 in cash and credit at his disposal.[65]

Among James Webber's relatives was his first cousin, Percy Smythe, who was the sixth Viscount Strangford and the first Baron Penshurst. Percy made a distinguished career as a foreign diplomat, serving as English ambassador to Lisbon in 1806, to Sweden in 1817 and Russia in 1825.[66] Percy did not hesitate to use his status and influence on James Webber's behalf, his intercession with British authorities in 1829 resulting in an additional land grant to Webber.[67] James also had a cousin who was a Dublin-based lawyer and a British Commissioner to Ireland.[68]

James Webber was not yet 25 years of age when he became the first grantee of Tocal shortly after arriving in the colony carrying very strong recommendations to Governor Brisbane.[69] He quickly consolidated his status in the colony, becoming a foundation member of the Agricultural Society of New South Wales along with high-profile colonials such as Piper, Wollstonecraft, Blaxland, Howe and Oxley.[70] As testament to his reputation and status, Webber was not yet 28 when appointed as the first magistrate at Patersons Plains in 1825, a position he held until his departure from the colony in 1835.[71] By 1827 Webber was president of the Paterson Farmers Club and active in promoting fledgling colonial industries such as tobacco.[72] Details from the sale of his library in Sydney in 1835 prior to his departure reveal his intense interest in agriculture, as evidenced by his extensive collection of agricultural texts.[73]

James Webber spent the second half of his life in Europe, particularly Italy and Sardinia. In 1851 he purchased land on the isolated island of La Maddalena in the north of Sardinia where he constructed a magnificent villa in 1855. Villa Webber, reputed to

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[65] Webber to Bathurst, 31 May 1821, Colonial Office, CO201/108, PRO.
[66] Edward Barrington de Fonblanque, *Lives of the Lords Strangford* (London: Cassell Petter & Galpin, 1877), 114-149; Walsh, *Tocal's First European Settler*, 7.
[67] HRA 1, XV, 176 (Strangford to Hay, 9 September 1829).
[68] Nowlan family papers, RB/Coll Q994.02 NOWL-1, Newcastle University Archives. Daniel Webber served as a Commissioner of Inquiry into Law Courts in Ireland in 1822 and into collection of revenue in Ireland between 1821 and 1826.
[69] CS to Morisset, 21 January 1822, CS Letters Sent, 4/3504a, 327 [reel 6008], SRNSW.
[70] 5 July 1822, CS Papers, 4/1753, 160a [reel 6052], SRNSW.
[71] 19 January 1825, CS Papers, 4/5782, 196-200 [reel 6017], SRNSW.
[72] *The Australian*, 26 September 1827.
[73] Catalogue of the Remaining Part of the Library of James P Webber Esq., ML 018.2W.

be one of the finest in Sardinia, survives today in a dilapidated state.[74] Webber joined the British diplomatic service in 1857 as Vice-Consul to La Maddalena but resigned the post within 12 months.[75]

In contrast to the inherited wealth and status of James Webber, the father and son duo who purchased Tocal in 1834 were of more humble origin. Caleb Wilson, an English tailor, arrived in Sydney in 1804 with his two-year-old son Felix, their wife and mother having died on board ship during the passage to the colony.[76] Initially Caleb farmed a 100 acre grant at Richmond[77] before establishing a hardware shop in George Street, Sydney, by 1820. Caleb and Felix developed their shop into a lucrative business and accumulated considerable wealth. In 1833 Felix married Esther Holt, grand daughter of 'General' Joseph Holt.[78] Caleb and Felix purchased Tocal in 1834 and operated it as a country estate, no doubt relying heavily on their superintendent for day-to-day supervision and management of the estate and its nearly all-convict workforce. Caleb died in 1838 and in 1841 Felix began construction of a two-storey homestead at Tocal that survives today as the centre point of the estate.[79] It replaced James Webber's original homestead that was destroyed by fire in 1835.[80] Unlike James Webber, Felix Wilson never lived permanently at Tocal, preferring instead to reside in Sydney where his principal business interests lay. He held the position of director of the Bank of New South Wales from 1843 to 1850, by which time he had permanently leased Tocal to others, and the convict era was rapidly drawing to a close in New South Wales.[81]

The photographs of the grand houses of James Webber and Caleb and Felix Wilson on the following page are tangible evidence of the enormous differences in wealth, status and lifestyle between Tocal's masters and their assigned convict servants.

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[74] Speranza Von Schwartz, *Excursion a l'Ile de Caprera* (Geneve: Pfeffer et Pury, 1862), 36-37; Alberto Sega, *L'uomo di Padule: La Storia di James Webber e della sua Villa a La Maddalena* (Sassari: Tipografia Editrice Giovanni Gallizzi, 2002), 57-60; Giovanna Sotgiu and Alberto Sega, *Inglesi nell' Arcipelago da Nelson all Fine dell' Ottocento* (La Maddalena: Comitato Ricerche Storiche Maddalenine, 2005), 223-232; Walsh, "James Phillips Webber—Supplement", 5-6.
[75] *Foreign Office List and British Diplomatic and Consular Handbook* (London: Harrison, 1864), 159.
[76] Zeny Edwards, *William Hardy Wilson* (Sydney: Watermark Press, 2001), 24-27.
[77] *Musters of New South Wales and Norfolk Island 1805-1806*, ed. Carol Baxter (Sydney: ABGR, 1989), 136.
[78] Edwards, *William Hardy Wilson*, 24-27.
[79] Jo Hathway, *Guide to Tocal* (Paterson, NSW: CB Alexander Foundation, 2003), 6.
[80] *The Australian*, 8 September 1835.
[81] RF Holder, *Bank of New South Wales, a History: Volume 1, 1817-1893* (Sydney: Angus and Robertson, 1970), 126, 155.

The grand houses of Tocal's convict masters

Caleb Wilson's residence at Potts Point, Sydney, built in 1834 and dubbed 'frying pan castle' or 'Caleb castle' because of his newly acquired wealth.[82]

Felix Wilson's Tocal Homestead, built in 1841 as his country residence.

James Webber's now dilapidated 'Villa Webber' built between 1855 and 1857 on the island of La Maddalena and reputedly once one of the finest in Sardinia.[83]

[82] Image PXB 351, ML; Edwards, *William Hardy Wilson*, 27.
[83] Photograph courtesy of Cameron Archer.

Chapter 2: Tocal's English rioters and Irish rebels

This chapter presents micro-narratives of the 12 Tocal convicts who were transported for crimes of protest or rebellion. It examines their circumstances and the prevailing social and political conditions in Britain and Ireland that gave rise to their protests and convictions, along with their disposition and experiences in New South Wales during bondage and emancipation. The study of these 12 men serves several purposes. It places this sub-group of Tocal convicts within a wider historical context, reinforces their connectedness to loved ones, circumstances, and struggles in Britain and Ireland, and challenges the stereotype of convicts as irredeemable criminals who shunned conventional relationships and family values. It highlights the turmoil that these Tocal men left behind when transported, and indicates some of the attitudes and values they may have brought with them to the estate. The study of these rebels and rioters constitutes one significant component of the diverse experiences of Tocal's convicts.

Before beginning the task, it is worth noting that not all the connections between Tocal's convicts and political protest in Britain were as obvious as those exhibited by the 12 men who are the subject of this chapter. A far more subtle link, indicative of the high regard held by convicts for working-class agitators and reformers was provided by Tocal convict Edward Hunt. In the records his first name 'Edward' is used interchangeably with his nickname 'Henry' on several occasions,[1] the nickname probably referring to, and demonstrating admiration for, radical reformer Henry Hunt who spoke at the mass protest rally in Manchester in 1819 that became the Peterloo massacre.[2]

[1] For example the indent indicates 'Henry' while the 1837 muster indicates 'Edward', both records positively identifying the same individual by ship and year of arrival (there was only one Hunt on the *Planter* in 1832): PSC, Bound Indents, 4/4017 [fiche 683], 93, SRNSW; *Convicts in New South Wales 1837*, 316.

[2] EP Thompson, *The Making of the English Working Class* (Victor Gollancz, 1963; Middlesex: Penguin, 1974), 253, 508-10, 746-60; Rob Meppem, "Convict Runaways, Rebels and Protestors 1824 to 1830" (Hons thesis, University of New England, 1991), 10-11.

Some early twentieth century historians suggested that those transported for political or social crimes constituted the majority of Australia's convicts, but later studies indicated they were in the minority.[3] Rudé identified the difficulty of distinguishing crimes of protest or rebellion from other crimes, given that the law itself makes no such distinction and some historians view all crime as a form of protest and all criminals as victims of society in some way.[4] Rudé distinguished between 'the common-law offender who, however acute the provocation, simply helps himself or settles a purely private score and the one who either acts with others or appears to do so in pursuit of political or social goals'. He used the term 'protest' in the sense of a collective act even though it may not have been carried out in the company of others.[5] He cites examples such as machine-breakers, demolishers of turn-pikes, takers of unlawful oaths and city rioters.

Rudé's definition of protest has been criticised as too narrow, as it excludes, for example, black Jamaican freedom fighters who were transported to Australia.[6] Rudé himself admits the definition is not precise and there are grey areas, for example the man who poaches to assert his rights as a free-born Englishman compared to the man who poaches simply to feed his family or earn some money. Similarly, sheep maiming or killing was a common rural crime in England usually committed to sell the carcase for profit or to feed the family. In Ireland, however, cattle maiming was a recognised form or reprisal or rebellion.[7] This latter example is particularly relevant as one of Tocal's convicts, William Linegar, was convicted of 'cutting and maiming' at the Nottingham Assizes in July 1832 but he has not been included as a rebel or protester in this chapter given Rudé's conclusion about such crimes committed in England.[8]

Rudé concluded that 3,600 or one in 45 of all convicts transported to Australia were protesters or rebels.[9] This compares with the Tocal group where 12 protesters or rebels have been identified, representing about one in 12. The higher proportion at Tocal partly

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[3] Shaw, *Convicts and the Colonies,* 152-153; Robson, *Convict Settlers*, 189.
[4] George Rudé, *Protest and Punishment, the Story of the Social and Political Protesters transported to Australia, 1788-1868* (Oxford: Oxford University Press, 1978), 1-3.
[5] Rudé, *Protest and Punishment*, 3.
[6] Ian Duffield, "'Stated This Offence': High-density Convict Micro-narratives", in *Chain Letters*, ed. Frost and Maxwell-Stewart, 126.
[7] Rudé, *Protest and Punishment*, 5-6.
[8] It is presumed Linegar's act was directed at an animal rather than a person: PSC, Bound Indents, 4/4018 [fiche 687], 106, SRNSW; PSC, Printed Indents, X635 [fiche 705], 131, SRNSW.
[9] Rudé, *Protest and Punishment*, 10.

reflects the likelihood of random variation in a group of this size, partly the above-average number of Irish convicts on the estate and the related fact that six Irish rebels from the one ship, the *Earl St Vincent*, were assigned to Tocal (see table 2.1). Rudé's estimates of the extent of protest among Australia's convicts have not been accepted without question, particularly in relation to the Irish. Reece argued that much of the rural violence in Ireland was the result of family disputes and inter-family feuds rather than crimes of protest. He indicated that faction fighting was endemic in Irish society as a kind of ritualised violence whose original causes were long forgotten.[10] In any case, O'Farrell considered the debate over the number of Irish political and social protesters to be academic in the sense that regardless of the precise figures the dominant perception of Irish convicts from 1788 was created by the rebel element despite this element being a minority of Irish convicts transported.[11] Although Rudé's distinction of crimes of protest is problematic, it is useful as it allows a focus in this chapter on those Tocal convicts whose transportation was a manifestation of particular social and political conditions in their home country and an example of the collective response to those conditions.

English rioters

Two of Tocal's English convicts committed crimes of protest in separate uprisings, John Hoyle taking part in the power-loom riots of 1826 and Robert West in the Swing riots of 1830. In general English protestors have been depicted as victims rather than villains, reacting to desperate circumstances and standing out from other convicts by the nature of their crime and by their respectability and high moral character, most of them being villagers with no previous convictions.[12]

John Hoyle, known as 'Red John', became involved in the power-loom riots that took place in Lancashire from 24 to 27 April 1826.[13] At the time he was a farm labourer, aged 29, married with one child.[14] By the 1820s the income and employment provided

[10] Bob Reece, *Irish Convicts—the Origins of Convicts Transported to Australia* (Dublin: University College Dublin, 1989), 10. See also Williams, *Ordered to the Island*, 161.
[11] Patrick O'Farrell, *The Irish in Australia—1788 to the Present* (Kensington: University of New South Wales Press, 2000), 30.
[12] EJ Hobsbawm and George Rudé, *Captain Swing* (London: Readers Union, 1970), 247-249.
[13] W Turner, *Riot! The Story of the East Lancashire Loom-Breakers in 1826*. (Preston: Lancashire County Books, 1992), 53-56.
[14] PSC, Bound Indents, 4/4012 [fiche 665], 120, SRNSW.

for a great number of people in Lancashire by handloom weaving of cloth was seriously threatened by the large-scale establishment of factories containing power-looms driven by steam engines, some factories having more than 240 such looms. Handloom weavers faced increasingly longer hours and lower wages, and by the spring of 1826 they were desperately poor and near starvation. Their plight, however, cannot be fully ascribed to power-looms—the weavers were semi-employed, defenceless and under-cutting each other's wages a decade earlier when there were few power-looms.[15] In 1826, after negotiations for minimum wages failed and the British Government showed no sign of changing its non-interventionist policies, weavers in Lancashire took matters into their own hands. Mobs of weavers and other villagers began systematically moving from factory to factory, destroying the power-looms. Although the four days of rioting started on a Monday, John Hoyle is recorded as being involved in the riots only on Wednesday 26 April 1826 at Robert Munn's Old Clough factory near the village of Bacup. In 1824 this factory had invested in a steam engine and 52 power-looms to weave cotton. When the mob arrived, its leader went through the now established formality of requesting entry, which was duly refused. After the factory door was broken down, between 40 and 50 men and women burst into the loom room and smashed all 52 power-looms in just 35 minutes.[16]

One witness took particular notice of John Hoyle and watched for ten minutes from ten yards away as John, at the far end of the loom room, used a piece of broken loom to smash the others. The witness heard someone say 'Look at Red John! Watch out!' as Hoyle swung a swagger weight (a cast-iron weight used to keep tension on the warp in the loom) left and right in such a violent manner that he was a danger to the others.[17] The crowd of onlookers gave three cheers as the wreckers emerged from the factory. Soldiers arrived soon after and the mob dispersed without casualty although six rioters were killed by the military during the week.

Some two weeks later, on 11 May, John Hoyle was arrested and taken to the prison in Lancaster Castle along with other men and women involved in the riots. The men spent the summer of 1826 in the male felons' prison at the Castle. At the Assizes that began

[15] Thompson, *The Making of the English Working Class*, 309-310.
[16] W Turner, *Riot!*, 13, 53-54.
[17] W Turner, *Riot!*, 54.

on 8 August 1826 in Lancaster Castle, John Hoyle was among the 66 prisoners charged with rioting and destruction of property. The judge in his opening remarks did not provide any comfort to the prisoners when he said 'there has been much distress [but] men must not take the remedy into their own hands. However misguided they might be or however pitiable their situation—it is necessary they be taught, sometimes by fatal examples, that they must not attempt to remedy their distress by acts of violence'. John Hoyle was one of 41 rioters sentenced to death but their sentences were commuted to transportation for life.[18]

In October 1826 John Hoyle was sent from Lancaster Castle to the prison hulk *Dolphin* at Chatham in Kent where he remained until transferred to Plymouth on 5 March 1827 in preparation for sailing to Australia. His record for the *Dolphin* carries the notation 'convicted once before, character and connections bad', which is at odds with his convict shipping indent that records no previous conviction.[19] In March 1827 John Hoyle sailed on the *Guildford* and on arrival in Sydney in July he was immediately assigned to Tocal. His entry in the shipping indent confirms the red hair that brought him to the attention of witnesses during the riot.[20] The NSW census for the following year, 1828, indicates Hoyle was employed as a shepherd at Tocal, his allocation to this unsupervised position probably indicating a diligent attitude and trustworthy nature.[21] He was appointed as a special police constable in 1831, further evidence of good behaviour and a positive response to this bondage. Hoyle is a good example of those who, when faced with dire circumstances in England, were prepared to risk everything, later to become 'policemen and shopkeepers, or at least acceptable members of society in Australia' under completely different circumstances.[22] John Hoyle obtained a ticket-of-leave in 1837, a conditional pardon in 1845, and possibly died in Parramatta in 1877.[23] There is no evidence that Hoyle applied for free passage of his wife and child to join him in the colony, his narrative thus including a permanent separation from loved

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[18] W Turner, *Riot!*, 87, 94, 196.
[19] Home Office, *Dolphin* Hulk Returns, 31 March 1827, HO 9/1/184, PRO, as reported in W Turner, *Riot!*, 177.
[20] PSC, Bound Indents, 4/4012 [fiche 665], 120, SRNSW.
[21] *Census of NSW1828*. Note, Tocal was then referred to by its previous name of Markham. The role of shepherds is examined in detail in chapter four.
[22] H McQueen, "Convicts and Rebels", *Labour History* 15 (1968): 20.
[23] PSC, Bound Indents, 4/4012 [fiche 665], 120, SRNSW; *Census of New South Wales 1828*; Darlington Police Office to CS, 30 November 1831, CS In-letters, 31/9934 in 4/2122, SRNSW; TOL 37/89, 4/4109 [reel 926], SRNSW; CP 45/125, 4/4446, 249 [reel 781], SRNSW. Death record, 1877/7932, NSWBDM.

ones, the high price of taking an unlawful stand against desperate circumstances and perceived economic injustice.

Tocal's other English rioter and machine breaker, Robert West, did not fit the typical profile of a convict, particularly with regard to age. At the time of his trial he was a 50 year-old gardener and ex-soldier from Norfolk, married with two sons and a daughter, and no previous convictions.[24] He was sentenced to death for his part in the Swing riots in Norfolk in 1830 and later his sentence was commuted to transportation for life. The Swing riots broke out across 34 counties in the south and east of England in 1830 in the face of low rural wages and underemployment. Kent and Townsend summarised the fundamental economic and social conditions leading to the uprising as follows:

> During the winter of 1830-31 much of southern, central and eastern England was shaken by the upheaval of rural discontent, the product of long-endured poverty and hunger. From the 1790s, the processes of agrarian capitalism had made the rural labourer a pauper. By 1830, most adult labourers had only ever known an existence of inadequate poor relief, combined with regular underemployment and periodic unemployment. This kept them and their families in constant poverty and often on the brink of starvation. The labourers wanted little from life beyond a living wage and the opportunity to earn it, but even these most basic expectations were increasingly difficult to realise.[25]

In Norfolk, church tithes were also an issue—they squeezed farmers financially and reduced their ability to pay higher wages to their farm workers. One study indicates, however, that the Swing riots cannot be satisfactorily explained as a spontaneous outburst of protest by agricultural labourers against adverse economic and social conditions. Rather, the large scale of the riots and their rapid spread was fuelled by grass-roots militants or village radicals who played a key role in mobilising villagers to take collective action against their masters.[26]

Swing riots typically started with the sending of letters to farmers threatening arson and other damage if wages were not increased and threshing machines destroyed. These letters were usually signed by Captain Swing, the fictitious leader of the riots. The letters were often followed by setting fire to farm buildings and hay ricks. The main

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[24] PSC, Bound Indents, 4/4017 [fiche 682], 10, SRNSW; PSC, Printed Indents, X634 [fiche 699], 43, SRNSW.
[25] Kent and Townsend, *Joseph Mason*, 2.
[26] Andrew Charlesworth, *Social Protest in a Rural Society: The Spatial Diffusion of the Captain Swing Disturbances 1830–1831* (Suffolk: Geobooks, 1979), 1-52.

focus of the Swing riots, however, was the hated threshing machine that was depriving rural labourers of their traditional winter work, the hand threshing of cereal crops. Cheaper, portable threshing machines were now widely used in the counties affected by the Swing riots. In all, 387 threshing machines were destroyed during the riots, many by the rioters themselves but others were voluntarily destroyed by farmers to save themselves from mob attack and arson. Compared to the agricultural uprisings of 1816 and 1822, the 1830 uprising occurred on a massive scale and was the greatest machine-breaking episode in English history.[27]

While threshing machines were the principal target of the Swing riots, other industrial machines were also attacked as part of a wider resentment of machinery as the cause of unemployment. Robert West was part of a mob that attacked paper mills at Taverham and Lyng near Norwich on 27 November 1830, causing between £2,700 and £5,000 damage to machinery at the two mills.[28] He was committed for trial in June 1831 and tried at the Summer Assizes held at Norwich Castle on 23 July where he was found guilty of 'riotously assembling with others and with force demolishing machinery prepared for the manufacture of paper'.[29] West was sentenced to be hanged but this was commuted to transportation for life.[30] He was taken to the prison hulk *Leviathan* in Portsmouth and from there transferred to the ship *Portland* on 14 November 1831.[31] The *Portland* sailed from Portsmouth later that month and arrived in Sydney in March 1832.[32]

Robert West was only one of 481 Swing rioters transported. In general the rioters were dealt with harshly by the British judiciary. The government was concerned by the lenient treatment of the first of the Swing rioters to be tried and the apparent sympathy of judges in some counties. It therefore set up a Special Commission to dispense justice to the Swing rioters and to hand out harsh penalties as a deterrent to further outbreaks. Kent and Townsend note that: 'No other social protest had ever been treated so savagely. More were transported for their part in the Swing disturbances than for all

[27] Hobsbawm and Rudé, *Captain Swing*, 17; Andrew Charlesworth, *An Atlas of Rural Protest in Britain 1548-1900* (London: Croom Helm, 1983), 151.
[28] Hobsbawm and Rudé, *Captain Swing*, 224.
[29] Calendar of Prisoners at Norwich Castle 1825-57, PCOM 2/348, PRO.
[30] Home Office, Judges Returns and Correspondence 1831, HO 6/16, PRO.
[31] Home Office, Quarterly Returns of Prisoners held on Hulks Sept 1830 - Dec 1831, HO 8/30, PRO.
[32] Charles Bateson, *The Convict Ships 1787-1868* (Glasgow: Brown, Son & Ferguson, 1969), 350-351.

other protests that troubled the English authorities between 1790 and 1848 put together'.[33] A total of 1,976 prisoners were tried by 90 courts in 34 counties and 252 prisoners were sentenced to death but only 19 were eventually executed. A total of 481 sailed for either Van Diemen's Land or New South Wales, 644 were imprisoned, seven fined and one whipped. Of the 144 Swing rioters transported to NSW, 133 arrived together on the *Eleanor* in 1831 and the balance on five ships including the *Portland* that carried Robert West.[34]

Three days after their arrival at Sydney, Robert West and the other convicts on the *Portland* were mustered on deck in the presence of the Colonial Secretary while clerks recorded their particulars. At five foot ten inches (177 cm) and 50 years of age West was taller and older than most. His dark brown hair was greying and several of his front teeth were missing.[35] On 15 August 1832 West was assigned to James Webber at Tocal,[36] and in 1834 his assignment was transferred to Caleb and Felix Wilson when they purchased the estate from Webber.[37] There is some indication that Robert was put to work at Tocal in his previous occupation as a gardener and that a cottage was built especially for him. By 1836 West was in his mid 50s and not in good health, and his own accommodation would have provided respite from the frequent drinking, arguing and fighting that occurred in the men's huts.[38] The obvious compassion for an aged and infirm convict at Tocal illustrates the complexity of treatment of convicts and the range of individual convict experiences. It stands in marked contrast to emphasis on brutal treatment and degradation portrayed in convict works such as *The Fatal Shore*.[39] Sometime in 1836 or 1837 West spent time in Newcastle Hospital,[40] and was then

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[33] Kent and Townsend, *The Convicts of the Eleanor*, 113.
[34] Hobsbawm and Rudé, *Captain Swing,* 262-265. There are discrepancies between this source and the earlier study: George Rudé, "Captain Swing in New South Wales", *Historical Studies, Australia and New Zealand* 11 (44, 1965): 467-480. Presumably the more recent source is more accurate. Kent and Townsend indicate 132 Swing rioters on the *Eleanor*, not 133 as indicated by Rudé: Kent and Townsend, *The Convicts of the Eleanor*, 3.
[35] PSC, Bound Indents, 4/4017 [Fiche 682], 10, SRNSW; PSC, Printed Indents, X634 [fiche 699], 43, SRNSW.
[36] *NSW Government Gazette*, 15 August 1832, 238.
[37] *Convicts in New South Wales 18*37, 645.
[38] In a letter written in 1837, Tocal's superintendent mentioned 'a cottage built for the late gardener': Clerk of Peace, Depositions—Supreme Court, Paterson 2 May 1837, Rex vs Bernard Lyons and James Lemon, 9/6309, SRNSW. In these detailed depositions by several Tocal convicts and ex-convicts, it is recorded that quarrels and fights occurred regularly. One convict, James Clements, made a habit of leaving the hut at the first sign of any trouble.
[39] Hughes, *The Fatal Shore*.
[40] There are two entries for Robert West (*Portland*) in *Convicts in New South Wales 1837*, 645. These records were based on the 1836 census, with the addition of updated entries for 1837. In one entry Robert

transferred to Port Macquarie where he died in hospital on 4 December 1837 while still under sentence.[41] Had he lived another 12 months he might have received a pardon. By November 1838 all the Swing rioters who arrived in NSW on the *Eleanor* were pardoned except for six with numerous colonial convictions and 18 recommended for pardon whose warrants had gone astray.[42] Robert West's micro-narrative is thus permeated with sadness, dying as a bonded servant in his later years without the comfort and support of his wife, children and possibly grandchildren in Norfolk, his story a tragic part of the diverse experiences of Tocal's convicts.

Irish rebels

Ten of Tocal's convicts were Irishmen transported to New South Wales for acts of rebellion in their native country. Nine of the ten were ploughman or shepherds and one was a linen weaver. Six arrived on the ship *Earl St Vincent* in 1823, two on the *Hooghley* in 1825, and one each on the *Boyne* in 1826 and the *Java* in 1833.[43]

All but one of Tocal's Irish rebels were convicted under the *Insurrection Act* that was first introduced in 1796 to control unrest and rebellion in certain 'disturbed' counties of Ireland. The act authorised the Lord-Lieutenant of Ireland to proclaim disturbed counties, impose a curfew, ban meetings, execute those administering unlawful oaths and sentence those taking the oaths to transportation for life. The act was revised and re-introduced several times in the following years, the fifth and final *Insurrection Act* operating from 1822 to 1825 in counties such as Cork, Kerry, Limerick and Tipperary where disturbances were common.[44] One feature of the act was that trial by jury was suspended and justice summarily dispensed by magistrates. Among about 330 convicts who were transported under the fifth *Insurrection Act* were nine who later worked at Tocal.

West is shown as assigned to C & F Wilson at Paterson and in the other as being in the general hospital in Newcastle. In this latter entry his year of arrival on the *Portland* is incorrectly shown as 1831. The *Portland* made its first voyage to Sydney in 1832 but due to this clerical error the two separate entries have survived, giving an indication of Robert West's movements in 1836 and 1837.

[41] Griffin and Howell, *Port Macquarie*, 119.

[42] Hobsbawm and Rudé, *Captain Swing*, 274.

[43] PSC, Bound Indents, 4/4009A [fiche 650, 653, 659, 655], 4/4011 [fiche 661], 4/4018 [fiche 688], SRNSW; Warrants of the Lord Lieutenant of Ireland Relating to Convict Vessels from Ireland ('Irish Indents'), X31 [reel 2749], X32 [reel 2749], SRNSW.

[44] Rudé, *Protest and Punishment*, 72-76.

Although the situation was complex, the fundamental cause of civil unrest in Ireland in the 1820s was poverty combined with unemployment, high property rents, tithes and a large population. Individual agrarian outrages were usually triggered by specific factors such as poor harvests or sudden increases in rent, but the size and spread of Irish agrarian disorder can only be explained by broader social and economic factors. The first of these was the rapid expansion of Ireland's population from the mid eighteenth century to the end of the Napoleonic wars. The second factor was the increasing commercialisation of Irish agriculture and the consequent shift from pastoral to tillage activities.[45] This increased the demand for land tenures and led to the renting of land to the highest bidders, which in turn threatened the peasantry's customary hold on the land. Consequently agrarian 'outrages' in the 1820s were carried out mainly by peasant farmers (small land-holders who relied on family labour to work their holdings) rather than labourers.[46] The third factor was the payment of tithes by landholders engaged in tillage, to support the Protestant Church of Ireland. This was the most persistent of all agrarian grievances in Ireland until the late 1830s.[47]

While rents and tithes were the main grievances for these small landholders, charges by the Catholic Church also figured in some disturbances when these charges were deemed excessive.[48] Another social factor underpinning agrarian upheavals was the strong tradition of lawlessness in rural Irish society, and this should be borne in mind when exploring the *modus operandi* of Whiteboys (see below).[49] Most major agrarian upheavals were preceded by severe slumps in agricultural prices, making the payment of rents, tithes and Catholic Church fees extremely difficult and threatening the peasant farmer with loss of his land.[50] After 1815 the struggle of the peasant to remain on the land in the face of pressures to turn him into an agricultural or industrial labourer provides the essential context for Whiteboyism in the first half of the nineteenth century.[51]

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[45] James Donnelly and Samuel Clark, eds., *Irish Peasants—Violence and Political Unrest 1780-1914* (Wisconsin: University of Wisconsin Press, 1983), 26-30.
[46] Michael Beames, *Peasants and Power, the Whiteboy Movements and Their Control in Pre-famine Ireland* (Sussex: The Harvester Press, 1983), 54-55.
[47] Donnelly and Clark, *Irish Peasants*, 30.
[48] Beames, *Peasants and Power*, 28.
[49] Paul Roberts, "Caravats and Shanavests: Whiteboyism and Faction Fighting in East Munster, 1802-11", in *Irish Peasants*, ed. Donnelly and Clark, 70.
[50] Donnelly and Clark, *Irish Peasants*, 33.
[51] Beames, *Peasants and Power*, 30.

Many of those convicted under the *Insurrection Act* of 1822, including nine Tocal convicts, were known as 'Whiteboys'. The Whiteboy movement started in 1761-62 in the counties of Tipperary, Cork, Limerick and Waterford, and became a generic term for activities involving civil unrest, particularly for outbreaks of agrarian terrorism. The names of Whiteboy groups varied and, for example, many of those engaged in Whiteboy activities from 1819 to 1823 were known as Rockites. In certain regions of Ireland, agrarian rebellion was so frequent that it became a deep-seated tradition. By the end of the eighteenth century most counties outside Ulster had experienced Whiteboy unrest and it had become the dominant mode of Irish rural protest.[52]

Most of those transported for Whiteboy activities in the early 1820s had committed offences such as being absent from home after curfew (between sunset and sunrise), possessing arms and ammunition, taking unlawful oaths, unlawful assembly, and sending threatening letters or posting threatening notices.[53] To interpret the convictions that led to the transportation of Tocal's Irish rebels, it is therefore necessary to briefly examine the method of Whiteboy operation, which fell into two broad categories, namely activities that tended to unite the population, and punitive measures that could be divisive. Secret meetings combined with the administering and swearing of oaths of secrecy and loyalty were the main vehicle for the first objective. The essential clauses common to Whiteboy oaths were to be true to their captain until death, to rise out on all lawful occasions when called upon by their captain, to assist all fellow Whiteboys and to slash or kill any who acted against the Whiteboy oath or constitution. Once a Whiteboy cell had been formed in the local population by administering oaths, the next step was the posting of threatening notices and letters to landlords and tithe proctors and the stealing of arms prior to mounting an operation. The inevitable punitive measures consisted of destroying property (such as burning houses or crops), assault and battery, all of which were an integral part of Whiteboyism.[54]

In 1823 when the *Earl St Vincent* sailed from Cork bound for New South Wales, 47 of its 157 male prisoners had been convicted of insurrection. Of the 47 rebels, eight were transported for unspecified offences under the *Insurrection Act*, 30 for being 'idle and

[52] Beames, *Peasants and Power*, 24, 26, 43.
[53] Rudé, *Protest and Punishment*, 104-106.
[54] Beames, *Peasants and Power*, 65, 71, 74-80.

disorderly', eight for administering unlawful oaths and one for making pikes.[55] The details of those on the *Earl St Vincent* who were subsequently assigned to James Webber at Tocal are as follows:

Table 2.1 Tocal's Irish rebels on the *Earl St Vincent*

Name	Crime	Age	Place tried	When tried	Sent.
William Doyle	Insurrection Act	39	Malo (Co. Cork)	Nov 1822	7 yrs
John Hanley	Absent from home[56]	23	Co. Limerick	Oct 1822	7 yrs
John Hassett	Insurrection Act	26	Co. Cork	Nov 1822	7 yrs
Thomas Keating	Administering oaths	30	Co. Cork	Apr 1823	life
Michael Magner	Insurrection Act	27	Malo (Co. Cork)	Nov 1822	7 yrs
Thomas Magner	Insurrection Act	25	Malo (Co. Cork)	Nov 1822	7 yrs

The above five men who were tried in County Cork were rather unlucky in a statistical sense. Of the 282 tried in that county under the *Insurrection Act* from 1822 to April 1823, only 36 were convicted and 21 of these were pardoned, leaving just 15 to serve out their sentences.[57] It is remarkable that five of these 15 men served their time at Tocal.

Four of the six men in the above table, namely Doyle, Hassett and the two Magner brothers, were convicted for their joint role in an incident that demonstrated their readiness to take drastic action in response to desperate economic circumstances and harsh treatment by landlords. Together with another man they swore at and then assaulted two keepers (guards) on a property whose tenants had been evicted, probably for non-payment of rent. The five were arrested and taken to Cork County Gaol to await trial at the Mallow (Malo) special sessions.[58] The two guards, William Hunt and Patrick Bush, were key witnesses at the trial and had to be taken to the police barracks for their own protection. Outraged by the arrests and unable to access the witnesses, friends of the accused burnt Hunt's wife and family out of their lodgings.[59] William Hunt and

[55] Warrants of the Lord Lieutenant of Ireland Relating to Convict Vessels from Ireland ('Irish Indents'), X31 [reel 2749], SRNSW.
[56] The Irish Indents list Hanley's offence as 'idle and disorderly' but the National Archives of Ireland Transportation database records it as 'absent from home' and notes he has convicted under the *Insurrection Act*: Warrants of the Lord Lieutenant of Ireland relating to convict vessels from Ireland ('Irish Indents'), X31 [reel 2749], SRNSW; Archives Relating to the Transportation of Convicts from Ireland to Australia, document PPC 1934, reel 12, M2136, National Archives of Ireland.
[57] Beames, *Peasants and Power*, 175.
[58] Register of Prisoners in County Cork Jail, D/Justice 8/11, 1444/1822 & 1445/1822, National Archives of Ireland, as quoted in TF Magner, "Irish Convicts in America and Australia", *Mallow Field Club Journal* 13 (1995): 116-131.
[59] State of the County Papers, series 1. SOC/2347/34, National Archives of Ireland, as quoted in Magner, "Irish Convicts", 125.

Patrick Bush each received £25 from the Government to leave the district after the trial but Hunt failed to do so, the decision almost proving fatal. The Chief Constable at Doneraile reported on 29 December 1822 that 'Last night between the hours of 8 & 9 o'clock an attempt was made to take away the life of Mr. Hunt who prosecuted the Doyles and Magners by firing at him near his House at the upper end of Grove land in the town'.[60] Colonel Sir Hugh Gough, military commander of the area, hoped the turmoil in the district would subside with the arrest of the five men but within two weeks he reported that further armed parties of men broke into houses to steal arms and then severely beat up the guards of another house from which tenants had been evicted and burnt the house before it could be sold to offset rental arrears.[61]

Meanwhile in the same area of Doneraile another soon-to-be Tocal convict, Thomas Keating, was arrested and charged with burglary and administering oaths of Whiteboyism. He was acquitted on the first charge but convicted on the second and sentenced to transportation for life. The administration of oaths was regarded as a more serious offence than taking oaths and carried the death penalty under some versions of the *Insurrection Act*.[62] Keating's petition to the Lord Lieutenant of Ireland for mitigation of the sentence, couched in the expected form of deference and humility, gave Keating the opportunity to present his version of events and provides an indication of the judicial process faced by some of these rebels. The petition dated 15 April 1823, 11 days after his trial, is reproduced in full below, with original spelling and grammar.

> To his Excellency Marquis Welesby, Governor General & Lord Leutenant of Ireland in Greeting
>
> The Petition of James Brown, Nicolas Cook, & Thomas Keating most humbly sheweth that said petitioners have been obliged to stand their trial in the County Court house of Cork at the Instance of one Michael Sheehy, who upon oath made by Major Carter of Doneraile Charged & prosecuted the other day at the assises of Cork the said petitioners for burglary, robery committed on him said Sheehy on the 12 of Sept. 1822 & that the said petitioners also draged him out of his Lodgings on the night of the 15th of said month & year into an adjacent field & then and there administered to him unlawful oaths.
>
> Now its humbly submitted to your Excellencys Consideration, humanity & Wisdom, that the said petitioners have been clearly acquitted of the alleged

[60] State of the County Papers, series 1. SOC/2347/63, National Archives of Ireland, as quoted in Magner, "Irish Convicts", 129.
[61] State of the County Papers, series 1. SOC/2347/40, National Archives of Ireland, as quoted in Magner, "Irish Convicts", 127.
[62] Rudé, *Protest and Punishment*, 72.

> charges i.e. Burglary & Robery by the clear evidence of William Hearlihy in whose house said Michl. Sheey the prosecutor lodged before, after & during said pretended charges of Burglary & Robery alleged to have been committed in said lodgings on the night of the 12th of last Sept. But why are the petitioners convicted to transportation for life on the third charge i.e. of having draged said Sheehy out of his Lodgings on the night of the 15th of September into an adjacent field when they compelled him to take the oath of Whiteboyism, all of which said Hearlihy can prove to be as false, as the other two charges, which have evidently to the satisfaction of the entire court proved to be totally untrue - the inference to be drawn is clearly just, that Sheehy was no more pulled out of his bed on the night of the 15th than he was robed on the night of the 12th But Hearlihy proved the later to be false . Ergo, if Council animadverted to this, the former charge could be proved equaly incorrect.
>
> Because in either case of the 12th or 15th the door should be broken open by the petitioners to accomplish their end which Hearly could not but hear & know as sleeping on the loft over said Sheehys bed, but as mentioned above, he proved he never heard any such thing.
>
> The Parish priest Revd. C. Donoghue lives within a few yards of the house where said Sheehy lodged, but not one word has he heard of the transaction from the 12 of last Sept. 22 until the 14th of March 23 - from Sheehy or any one else, this Sheehy was twice a week in the habit of shaving said Parish priest.. All this the said priest will prove upon oath in the presence of Colonel Sir Hug Gough, & Major Carter before whom the above Informations were sworn by said Sheehy, if his Excelency should deem it necessary towards respiting or at least mitigating the poor petitioners hard sentence & as in duty bound wilever pray.[63]

Keating's petition was unsuccessful and he sailed on the *Earl St Vincent* with the others, abruptly and permanently separated from his wife, Honora, and two young sons, John and Thomas.[64]

The sixth Tocal convict on the *Earl St Vincent* was John Hanley, transported for being 'idle and disorderly'. His conviction was almost certainly under the *Insurrection Act*, and this conclusion is supported by a petition on behalf of him and 22 other convicts to the Lord-Lieutenant and Governor-General of Ireland seeking a mitigation of sentence. The petition declares in part that 'on trial no Charge of importance could be preferred against them, save that but being absent from their Dwelling houses, mostly transacting their lawful business'.[65] The petition was unsuccessful and the *Earl St Vincent* sailed

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[63] Archives Relating to the Transportation of Convicts from Ireland to Australia, document PPC 1826, reel 101, M2225, National Archives of Ireland.
[64] Webber to Darling, 20 May 1826, CS Families of Convicts 1824-42, 4/1112.1 [reel 697], SRNSW.
[65] Archives Relating to the Transportation of Convicts from Ireland to Australia, document PPC 1934, reel 12, M2136, National Archives of Ireland.

from Cork on 29 April 1823 with Doyle, Hassett, Hanley, Keating and the Magner brothers on board, bound for New South Wales.

The next of Tocal's Irish rebels, Denis Caroll and Patrick Ryan, arrived on the *Hooghley* in April 1825. Both were ploughmen from Co. Tipperary who were convicted of insurrection at Cashel in separate trials in 1824. Caroll was aged 34 and married with four children. Ryan was 21, his marital status not recorded. The circumstances of their convictions are not known but they were among a total of 17 on the *Hooghley* convicted of insurrection, all from Co. Tipperary.[66] When the *Hooghley* arrived in Port Jackson on 22 April 1825, both Caroll and Ryan were immediately assigned to James Webber at Tocal.[67] Tocal's other Irish rebels were Michael Fea (Fee) from Co. Mayo who arrived in 1826, aged 30, married with two children, with a life sentence for 'unlawful oaths', and Patrick Wallis from Co. Kilkenny, aged 28, single, who arrived in New South Wales in 1833 charged with 'firearms'.[68]

The rebellious spirit of these ten men was not particularly evident after transportation. All of those with seven year sentences received their certificates-of-freedom almost exactly seven years after their trials but most gained their freedom earlier by obtaining a ticket-of-leave for good behaviour. Michael Fea, one of the two Irish rebels with life sentences, gained his ticket-of-leave after the prescribed minimum eight years servitude and died two years later, while the other 'lifer', Thomas Keating, probably died in 1829, well before the opportunity for emancipation. Table 2.2 below summarises the rebels' time in NSW:[69]

[66] Warrants of the Lord Lieutenant of Ireland Relating to Convict Vessels from Ireland ('Irish Indents'), X32 [reel 2749], SRNSW.
[67] PSC, Bound Indents, 4/4009A [fiche 655], 162, 168, SRNSW.
[68] PSC, Bound Indents, 4/4011 [fiche 661], 96 & 4/4018 [fiche 688], 216, SRNSW.
[69] TOLs and COFs (various), SRNSW; *Census of NSW 1828*.

Table 2.2 Tocal's Irish rebels

Name	Arriv. NSW	At Tocal	Tocal occup'	TOL	COF
William Doyle	1823	1823-27p		1827	1829
John Hanley	1823	1825-29p	shepherd		1829
John Hassett	1823	1823-27			1829
Thomas Keating	1823	1824-28	labourer		
Michael Magner	1823	1823-27p		1827	1829
Thomas Magner	1823	1823-27p		1827	1829
Denis Caroll	1825	1825-29p	shepherd	1829	
Patrick Ryan	1825	1825-29p	labourer	1829	1831
Michael Fea	1826	1826-34	labourer	1834	died '36
Patrick Wallis	1833	1837			1841
Abbreviations: TOL = ticket-of-leave; COF = certificate-of-freedom; p = probably remained at Tocal until this time (there is no record of re-assignment away from Tocal)					

Only three of Tocal's Irish rebels re-offended in NSW. John Hanley absconded in May 1827 and spent three months in an iron gang before returning to Tocal. In November of that year he absconded again from Tocal but still managed to complete his sentence there.[70] Patrick Ryan was in Darlinghurst Gaol in 1843, only two years after becoming free, but there is no record of the details of his colonial crime or sentence.[71]

John Hanley was appointed as a police constable at Paterson in 1830, dismissed in 1835 and re-appointed.[72] In 1828 William Doyle and Michael Magner were living in a hut on 25 acres of Clergy and School land that they were renting at Patersons Plains near Tocal. In 1830 when they were in danger of being evicted in favour of another tenant, Tocal's owner James Webber wrote to the Church Corporation on their behalf. In his letter Webber said they were 'very honest and industrious characters and well known to me from having received Tickets of Leave for four years of good service in my employment'.[73] Some time later Michael Magner returned to Ireland and brought about 12 relatives back to New South Wales before settling in the Morpeth area. His brother Thomas married, purchased land at Paterson and Raymond Terrace, established himself in Sydney as a stock agent and ship owner, and later became a general dealer in Maitland.[74]

[70] Sydney Gaol Entrance Book 1825-1828, 4/6430 [reel 851], SRNSW; *Sydney Gazette*, 26 Nov 1827, 3 Dec 1827.
[71] CS Return of Punishments in H.M. Gaol Darlinghurst September 1843, 43/7161 in 4/2631, SRNSW.
[72] CS to Aubin, 10 November 1830, CS LB, 4/3829, 207 [reel 2808], SRNSW; Paterson Police to CS, 29 April 1835, CS In-letters, 35/3313 in 4/2291.5, SRNSW; *NSW Government Gazette*, 3 February 1836, 94.
[73] Webber to Cowper, 2 February 1830, CS Correspondence with the Occupants of Patersons Plains, 9/2714, 31-32, SRNSW.
[74] Merrick Sims, "A Brief Account of the Magner Family's First Thirty Years in Australia", internet online http://www.magner.org/merricksims.htm [8/07/2007].

The overall impression is that Tocal's English and Irish rebels had fallen foul of the law while protesting violently against the desperate circumstances in which they had found themselves and, once removed from these circumstances, most were willing to abide by the law and rebuild their lives in the colony. It is particularly notable that six of them obtained tickets-of-leave in the minimum time possible, a strong indication of their good behaviour and drive to positively re-shape their situations.[75] The Tocal rebels and rioters who were married before transportation would have suffered the profound emotional impact of separation from their wives and children,[76] and three of these men sought reunion with their families via the government scheme offering free passage for families of deserving convicts.[77] Tragically, Michael Fee died only a short time after receiving news that his wife and children had declined the offer of free passage to New South Wales. Thomas Keating had died a few years earlier in strangely similar circumstances after gaining approval for his family to join him in the colony, only to discover they did not undertake the journey.[78] Fee's death was described by the coroner as 'accidental', and the exact circumstances of Keating's demise are unclear.[79] The timing and family situations surrounding the deaths of both these Irish rebels raises the possibility of suicide, or at the risk of being fanciful, death from a broken heart.[80]

Conclusion

Tocal's Irish rebels and English rioters stand out because of the nature of their crimes—they acted not for immediate personal or private gain but as part of a collective response to particular social, economic and political circumstances and struggles. As such, the micro-narratives of these rebels and rioters connect the wider historical context of the northern hemisphere with New South Wales and Tocal in specific ways and highlight the complexity and diversity of the individual experiences of Tocal's convicts before, during and after bondage. At the same time, the narratives of these Tocal protesters

[75] Details of ticket-of-leave regulations and eligibility criteria are provided in chapter seven.
[76] Picton Phillips, "Convicts, Communication and Authority", 328; Kent and Townsend, *The Convicts of the Eleanor*, 15.
[77] Archives Relating to the Transportation of Convicts from Ireland to Australia, FS 1828 [R101 M2225], National Archives of Ireland; Webber to Darling, 20 May 1826, CS Families of Convicts 1824-42, 4/1112.1 [reel 697], SRNSW; 10 January 1835, CS 4/3680, 356 [reel 1048], SRNSW.
[78] There is no evidence of the migration of Keating's family following approval of free passage.
[79] Register of Coroner's Inquests, 4/6611 [reel 2921], SRNSW.
[80] The incidence of suicides and attempted suicides at Port Arthur, for example, was nearly five times higher for convicts than for free persons from 1830 to 1877, but only a small minority of convicts committed suicide: Lynette Ross, "The Final Escape: An Analysis of Suicide at the Penal Settlement of Port Arthur", *Journal of Australian Colonial History* 7 (2005): 181, 190.

serve to reinforce their connectedness to loved ones in Britain and Ireland, and the profound emotional trauma some suffered as a result of forced separation. Their general good behaviour during servitude and their early emancipations suggest that any simmering attitudes of rebellion and civil disobedience they may have brought to Tocal soon dissipated under changed colonial conditions and fresh circumstances.

Chapter 3: Tocal's assigned convicts—'ne'er-do-wells' or exceptional workers?[1]

> Veracity boldens me thus humbly to submit my grievance to your Excellency's charitable consideration … Your Petitioner begs to inform Your Excellency that the only punishment he received was shortly after his arrival in the Colony when unacquainted with good order. But since I arrived at the years of my Manhood I made it my constant study to Act in compliance to my Masters wishes and those placed over me.[2]

In 1837, Alfred Padmore, a convict assigned to Tocal, petitioned the Governor for a ticket-of-leave, an indulgence that had so far eluded him. Padmore's veracity, however, was found wanting. When his petition was passed to the Principal Superintendent of Convicts it was discovered that his record was punctuated with numerous punishments, including an iron gang sentence, and consequently he was not eligible for a ticket until 1840. Other records reveal that Tocal was Padmore's fourth assignment since he arrived in NSW in 1822, aged nineteen, under a life sentence for housebreaking.[3] Padmore's struggle for freedom is part of the complexity of the assignment experience for Tocal's convicts and their masters, a complexity that renders broad statements about convict assignment rather problematic.

The assignment system, the process whereby convicts were allocated to work for settlers and others in private enterprise, played an essential role in the granting of the Tocal land in 1822 and the development of the estate for two decades based almost entirely on convict labour. This chapter begins with an overview of assignment in New South Wales, then documents the changing number of convicts assigned to Tocal, the various ways in which they were assigned, and the turnover of Tocal's convict workforce. The main focus of the chapter is on the operation of the assignment system for Tocal's convicts throughout their sentence and it is not limited to their term of assignment at Tocal.

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[1] Parts of this chapter are largely based on my journal article: Brian Walsh, "Assigned Convicts at Tocal: 'Ne'er-do-wells' or Exceptional Workers?", *Journal of Australian Colonial History* 8 (2006):67-90.
[2] Padmore to Bourke, 1 May 1837, CS In-letters, 37/5360 in 4/2375.2, SRNSW.
[3] PSC, Bound Indents, 4/4008 [fiche 648], 165, SRNSW; *NSW Government Gazette*, 15 August 1832, 236; CS Alphabetical List of Convicts who are not Mechanics 1822-1824, 4/4570D [reel 586], 97, SRNSW; Hely to McLeay, 1 September 1830, CS In-letters, 30/6653 in 4/2158, SRNSW.

Although few comprehensive records of assignment have survived, the detailed reconstruction of the individual assignment histories of Tocal's convicts sheds new light on convict assignment in action on a rural estate and challenges previous findings regarding the productivity of convict labour and efficiency of the convict labour market. This chapter reveals a convict workforce split fairly evenly between a group of seldom-punished, cooperative workers who remained on the estate for most or all of their sentences, and a band of frequently punished, uncooperative workers who were returned to government or re-assigned or sentenced to secondary punishment off the estate. Each group had a significant impact on the operation of the estate, the former providing effective human capital for its development and the latter constraining the productivity of the convict workforce.

Overview of convict assignment in New South Wales

Under the various Transportation Acts, New South Wales governors were given a 'property in the services' of each convict which authorised them to transfer that property to others, thus providing a mechanism whereby convicts could be assigned to settlers and officers, outside the immediate control of government. Assignment was not slavery in a legal sense, as only ownership of the services of convicts (rather than ownership of the convicts themselves) could be transferred under these Acts.[4] Governor Phillip began assigning convicts to non-government service in the first few years of settlement in New South Wales, and his policy was sanctioned by the Secretary of State for the Colonies on the grounds of easing pressure on the Treasury. By the time of Phillip's departure, the majority of government servants were assigned to private masters.[5]

By the end of Macquarie's term in 1821, however, the majority of convicts in New South Wales were allocated to government and had become a significant drain on the public purse. Macquarie's tight control of the allocation of convict labour in Sydney bred criticisms of favouritism and patronage. From 1819 to 1821 Bigge's Commission

[4] FK Crowley, "Working Class Conditions in Australia 1788-1851" (Ph.D. thesis, University of Melbourne, 1949), 75; Norma Townsend, "A 'Mere Lottery': The Convict System in New South Wales Through the Eyes of the Molesworth Committee", *The Push from the Bush: A Bulletin of Social History* 21 (Oct 1985): 60.

[5] Bruce Kercher, "Perish or Prosper: The Law and Convict Transportation in the British Empire, 1700-1850", *Law and History Review* 21 (2003): 527-583; Barrie Dyster, "Public Employment and Assignment to Private Masters, 1788-1821", in *Convict Workers*, ed. Nicholas, 128-130.

of Inquiry heard comprehensive evidence on the shortcomings of assignment and subsequently recommended the system be overhauled and the majority of convicts allocated to settlers rather than government.[6] When Governor Brisbane took over from Macquarie at the end of 1821 he restructured much of the convict system in accordance with Bigge's recommendations.

Brisbane transferred control of convict assignment from the Principal Superintendent of Convicts to the NSW Colonial Secretary and thereafter convicts were mustered on arrival and distributed according to their skills and the needs of settlers and government.[7] Settlers outside Sydney applied through their local magistrate who forwarded a list to the Colonial Secretary. During this period convicts allocated to outlying districts were usually delivered by a police constable but later the settlers or their agents had to collect them from Hyde Park Barracks. Convicts sometimes had to find their own way to their place of assignment, and in 1825 John Snell was re-assigned to Tocal after he spent some time wandering the Patersons Plains district searching unsuccessfully for the master to whom he was initially assigned.[8]

Governor Brisbane introduced other reforms relating to convict assignment, such as hiring convict mechanics (artisans) to settlers, forming clearing gangs, and obligating land grantees to take on assigned convicts. Convict mechanics such as blacksmiths, stonemasons and carpenters were much sought after by settlers, and Brisbane broke the previous government stranglehold on their use by hiring mechanics to settlers for a fee of 3s 6d per head per week.[9] In 1825 he was able to inform London that the objections to a monopoly on mechanics raised in Bigge's report no longer existed.[10] James Webber at Tocal took advantage of Brisbane's new scheme and paid for the services of a convict mechanic, although it is unclear which trade his mechanic possessed. According to the list of mechanics assigned, Webber hired Thomas Smith from the ship *Mangles* in March 1822 but no such person had arrived on the *Mangles* by that time, and circumstances indicate the mechanic was Thomas Smith, a barber from the ship

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[6] Bigge, *Inquiry into the State of the Colony*, 18-19, 166, 157-163; CA Liston, "New South Wales under Governor Brisbane, 1821-1825" (Ph.D. thesis, University of Sydney, 1980): 93-94.
[7] HRA 1, XI, 75-77 (Brisbane to Bathurst, 23 April 1823); Liston, "New South Wales under Governor Brisbane", 96-99.
[8] Webber to CS, 10 October 1825, CS In-letters, 4/1812 , 113 [reel 6068] and reply 19 October 1825, CS Letters Sent, 4/3515, 453 [reel 6015], SRNSW.
[9] HRA 1, XI, 81 (Brisbane to Bathurst, Government and General Order, 22 December 1821).
[10] HRA 1, XI, 573 (Brisbane to Bathurst, 14 May 1825).

Malabar.[11] According to the Mechanic Bond Account, James Webber owed £2 3s 6d to 30 June 1822, £2 5s 6d to 30 September and 16s 6d at 31 December 1822 for the services of one convict mechanic.[12] What a curious indulgence, to pay for the services of a barber at a time when artisans such as blacksmiths and carpenters could be used to great advantage in the early phase of developing the estate.

Clearing gangs were another means by which settlers could obtain the services of convicts. These gangs were established by Brisbane in 1822 in response to Bigge's recommendations, although Brisbane claimed the idea for himself.[13] Settlers could apply to the NSW Colonial Secretary for the use of these gangs of unskilled convict labourers to fell trees, burn timber and remove stumps, and in return settlers had to pay in grain delivered to government stores. The gangs operated mainly in the older settled areas and those who applied from the newer region of the Hunter Valley were unsuccessful in procuring their services.[14] This included James Webber at Tocal who applied for a clearing gang in February 1822 as follows: 'I am anxious to having 50 acres of Land cleared upon the terms advertised by Government, upon the land I have applied for adjoining the Glebe at Patersons Plains. Sir Thomas Brisbane was good enough to inform me yesterday that this payment of the Grain would not be expected until after the ensuing harvest. I am therefore anxious that the clearing should commence immediately in order that I may be able to take advantage of the present season.'[15] Despite Webber's discussion with the Governor, there is no evidence that he obtained the services of a clearing gang or that any such gang ever operated in the vicinity of Tocal.[16]

During Macquarie's rule, land grants were made to settlers with sufficient capital to successfully establish themselves and, although there was no precise ratio of land granted to capital available, Oxley's recommended scale of 500 acres for £500, up to 2,000 acres for £3,000 of available capital apparently guided Macquarie's discretion in

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[11] CS Artificers and Convict Overseers Assigned, 4/4520, 17 [reel 586], SRNSW.
[12] CS Mechanic Bond Account, X53 10, 23, 36, 52 [fiche 3296], SRNSW.
[13] Bigge, *Inquiry into the State of the Colony*, 159; Brisbane to Bathurst, 30 August 1822, as cited in Shaw, *Convicts and the Colonies*, 190-191.
[14] Liston, "New South Wales under Governor Brisbane", 116-117.
[15] Webber to CS, 19 February 1822, CS In-letters, 4/7014, 95-96 [reel 6022], SRNSW.
[16] For example there is no evidence of clearing gangs operating in the Hunter Valley according to the location of gangs in the 1823-25 Muster of NSW or the following records: CS Chronological List of Applications for Clearing Gangs 1822-23, 4/3508, 515 [reel 6010]; CS Clearing Gangs and Debts due the Government for Land Cleared 1822-23, 4/7014 [reel 6022], SRNSW.

the matter.[17] Bigge, however, as part of his formula for combining punishment and profit, recommended that settlers should receive grants of land 'in proportion to the number of convicts they engaged to employ, as well as the numbers of sheep and cattle [they] take with them'.[18] Upon taking office, Brisbane anticipated Bigge's final report by requiring settlers to support one convict off the government stores for every 100 acres granted. Apparently he acted on his own initiative and, despite initial doubts from London,[19] Brisbane's policy was made official in November 1824.[20] At this time settlers could also purchase livestock from the government herds at a nominal price, and so these regulations were described by some as 'one cow for every 100 acres and one convict for every cow'.[21]

James Webber at Tocal was initially an unwilling participant in the new regulations for land grants. Before departing for New South Wales he wrote to Earl Bathurst at the Colonial Office in London in May 1821 stating the amount of capital at his disposal and requesting a land grant.[22] By the time Webber arrived in January 1822, Governor Brisbane had been in office only a few weeks but had already changed the conditions of land grants, with the result that the NSW Colonial Secretary advised Webber on 16 January 1822 that land would be granted 'in proportion to the means which you may possess of bringing the same into cultivation, immediately on your sending in a statement to this Office of the number of Convicts those means will enable you to take permanently off the stores'.[23] Webber replied that such arrangements did not fit with his plans for growing wool under 'the most rigid economy' and requested an exemption from the new rules, adding he was unaware of these conditions when he migrated and the support of convicts would take up a fourth of his capital 'without a prospect of their

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[17] John Thomas Bigge. *Report of the Commissioner of Inquiry on the State of Agriculture and Trade in the Colony of New South Wales* (London: 1823; facsimile, Adelaide: Libraries Board of South Australia, 1966), 48.
[18] Bigge, *Inquiry into the State of the Colony*, 161; John Ritchie, *Punishment and Profit—The Reports of Commissioner John Bigge on the Colonies of New South Wales and Van Diemen's Land, 1822-1823; their Origins, Nature and Significance* (Melbourne: Heinemann, 1970), 222-223.
[19] B Dyster, "A Series of Reversals: Male Convicts in New South Wales 1821-1831", *The Push from the Bush: A Bulletin of Social History* 25 (October 1987): 27; Henry Green, "The Pioneer Settlement of the Hunter River Valley 1821-1831" (M.A. thesis, University of Newcastle, 1975), 17-18.
[20] HRA 1, XII, 827 (note 95, Government Notice, 8 November 1824). Note that policy regarding quit-rent on land grants also became interwoven with convict assignment—Dyster, "A Series of Reversals", 27.
[21] Transcript of a letter from Thomas Crawford, 23 March 1826 in: Richard Crawford, *Young and Free* (Canberra: by the author, 1995), 135.
[22] Webber to Bathurst, 31 May 1821, Colonial Office, CO201/108, PRO.
[23] CS to Webber, 16 January 1822, CS Letters Sent, 4/3504A, 313 [reel 6008], SRNSW.

labour being directed to any profitable end'.[24] Brisbane was unwilling to give special treatment, indicating Webber had 'failed in establishing to his satisfaction the propriety of breaking through a rule only adopted on mature consideration'. Webber capitulated and on 31 January 1822 he informed Brisbane he would take 15 men off the stores and requested a grant of 1,500 acres.[25] Within a few months he increased this to 20 men and his initial grant was subsequently adjusted to 2,000 acres.[26]

In an interesting arrangement to assist some of the Hunter Valley's new land grantees, Webber's first convicts continued to be victualled and clothed by government after assignment to him, in return for a commitment by Webber and a few others to supply grain to the government store in Newcastle. The rate was initially set at 150 bushels of maize or 75 bushels or wheat for each convict per annum but was subsequently reduced to 120 bushels by the Commandant at Newcastle, Major Morisset, following representations by Webber, Dun and Brown. By May 1823 Webber owed 562 bushels on account of the convicts initially assigned to him.[27]

By 1825 the supply of convict labour to settlers in NSW had changed from surplus to shortage, as the number of arriving convicts could not match the demand for labour by the increased number of new settlers and the accelerated pace of land grants.[28] This shortage of convict labour underpinned Governor Darling's changes to the system of convict administration and assignment after taking office in 1825. He directed that applications for assigned servants be lodged with the Principal Superintendent of Convicts (as they were under Macquarie's governorship) who would forward them to a Land and Assignment Board for processing.[29] To govern the functions of the newly formed board, Darling issued a set of assignment regulations on 1 May 1826 that gave preference to new settlers, and to settlers who would employ their assignees in the

[24] Webber to CS, January 1822, CS In-letters, 4/1832, 404 [fiche 3055], SRNSW.
[25] CS to Webber, 30 January 1822, CS Letters sent, 4/3504A, 368 [reel 6008], SRNSW; Webber to CS, 31 January 1822, CS In-letters 4/1832, 406 [fiche 3055], SRNSW.
[26] Webber to CS, 18 September 1822, CS In-letters, 4/1833, 203 [fiche 3058], SRNSW.
[27] Webber, Dun and Brown to CS and reply, May 1822, CS Correspondence, 4/1808, 93, 111-113, 4/1809, 71b [reel 6067], SRNSW; Morisset to CS, 8 April 1822, CS In-letters, 4/1809, 71 [reel 6067], SRNSW.
[28] HRA 1, XI, 649 (Brisbane to Horton, 16 June 1825); Liston, "New South Wales under Governor Brisbane", 101-102.
[29] HRA 1, XII, 153 (Darling to Hay, 2 February 1826).

country rather than in the towns.[30] Darling justified his changes on the basis that assignment was unsystematic under his predecessor,[31] but he was equally driven by pragmatic financial concerns given that from 1827 Britain paid for convict expenses while the colonies funded civil expenses, hence Darling's astute removal of convict assignment from the Colonial Secretary to the Principal Superintendent of Convicts.[32]

In another reversal of previous practices, Darling quietly abandoned the use of clearing gangs (which Brisbane had described as one of his 'happiest innovations').[33] In 1825 Earl Bathurst in London had requested a reduction in the number of these gangs in view of the shortage of convicts and Darling evidently thought it preferable to assign all of these men.[34] In addition, Darling no longer hired out mechanics as a result of the difficulties of collecting payment for their services, and because of the pressure from London to assign mechanics as labourers in the country rather than allow them to practice their trades in towns where their punishment would be lightened and their chances of reformation diminished.[35] Darling was concerned about London's insistence that convicts, whether mechanics or not, be assigned to the country rather than to towns, and he protested that 'the present Instructions must be injurious in the highest degree to the Town of Sydney'.[36] Nevertheless he complied with London's wishes and in March 1827 issued a Government order that as far as possible convicts were to be assigned 'up the country'.[37] This policy directly benefited rural estates such as Tocal that consequently had assigned to it a range of mechanics and its full entitlement of convicts in the late 1820s and early 1830s in spite of the overall shortage.

Settlers could also access convicts through Darling's practice of lending men from government gangs and road parties to assist during the harvest season so crops could be brought in quickly to avoid spoilage. In the Hunter Valley applications for extra men at

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[30] HRA 1, XII, 252-253 (Darling to Hay, 1 May 1826); SG Foster, "Convict Assignment in New South Wales in the 1830s", *The Push from the Bush: A Bulletin of Social History* 15 (April 1983): 36-37.
[31] HRA 1, XIII, 672-673 (Darling to Goderich, 31 December 1827).
[32] Shaw, *Convicts and the Colonies*, 259-260.
[33] CS Letters to Private and Official Persons, 4/1618, SRNSW as cited in Paula J Byrne, *Criminal Law and Colonial Subject—New South Wales 1810-1830* (Cambridge: Cambridge University Press, 1993), 21; Brian H Fletcher, *Ralph Darling—A Governor Maligned* (Melbourne: Oxford University Press, 1984), 124.
[34] Dyster, "A Series of Reversals", 27.
[35] HRA 1, XII, 592 (Bathurst to Darling, 1 October 1826); Dyster, "A Series of Reversals", 23.
[36] HRA 1, XIII, 136 (Darling to Bathurst, 1 March 1827).
[37] HRA 1, XIII, 166 (Darling to Bathurst, 17 March 1827).

harvest were made through the magistrate at Maitland,[38] and James Webber at Tocal was one of the local settlers to benefit from the arrangement—in November 1829 an extra 13 men from a road party assisted with the harvest at Tocal.[39] Darling made further changes to convict regulations in 1831. Masters were now required to pay one shilling per day for the rations of their convicts being treated in hospital, to collect convicts from Sydney or their place of assignment (thus reducing expenditure on the constabulary) and to pay 20 shillings for their convict's clothing issued on arrival from Britain or Ireland.[40]

When Bourke took over from Darling he consolidated the previous numerous Government orders and notices relating to convict assignment into one detailed document in 1832 and rendered the assignment process more transparent by publishing in the newly established *NSW Government Gazette* alphabetical lists of masters to whom convicts were assigned, indicating the number and occupation of convicts received.[41] Following a thorough review of the system, Bourke issued new regulations in May 1835 in which landholding became the principal criterion of eligibility to receive assigned convicts.[42] Under the 1835 Regulations, Tocal was entitled to 27 assigned convicts compared to 33 under Brisbane's regulations a decade earlier, which partly explains why in table 3.1 (shown later in the chapter) there were 34 convicts on the estate under Webber in 1830 and only 26 under the Wilsons in 1836/37.[43]

When Governor Gipps took over from Bourke in 1838 he issued additional regulations to stem abuse of the system by settlers who took out short term leases or leased land in their children's names in order to acquire extra convicts.[44] Gipps' main role, however, was to wind down the assignment system, and his 1838 regulations stipulated that

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[38] CS LB, 4/3829, 69 [reel 2808] & 4/3833, 384 [reel 2809], SRNSW.
[39] Webber to CS, 3 June 1830, Aubin to CS, 4 June 1830, CS In-letters, 30/4406 & 30/4607 in 4/2076, SRNSW.
[40] HRA 1, XVI, 295-296 (Darling to Goderich, 8 July 1831); Government Order 29 June 1831, *New South Wales Calendar and General Post Office Directory 1834* (Sydney: Stephens and Stokes, 1834), 153-156.
[41] Regulations Respecting Government Servants, 17 November 1832, *Post Office Directory 1834*, 144-149; Crowley, "Working Class Conditions", 80.
[42] *NSW Government Gazette*, May 1835, 306-313; *NSW Government Gazette*, 23 December 1835, 931-932; Foster, "Convict Assignment", 39.
[43] The December 1835 entitlement of 27 convicts assumes 120 acres under cultivation (the area shown for Tocal in the 1828 census). If Wilson's 580 acres at nearby Brisbane Grove is included, they would have been entitled to about 30 men.
[44] HRA 1, XIX, 603-604 (Gipps to Glenelg, 8 October 1838); *NSW Government Gazette*, 15 August 1838, 625-626.

assignment of male convicts to towns would cease on 1 January 1839 and that of male domestic servants on 15 August 1839. All assignment of convicts ended on 1 July 1841, and by then only a few convicts were still assigned to Tocal.[45]

The assignment system in NSW not only provided for the allocation of convict servants to masters, but also for their withdrawal if masters failed to provide for their convicts in accordance with the regulations. At times this power was challenged and contentious, particularly when Darling used it arbitrarily to remove assigned convicts from his enemies.[46] In 1836 Tocal received a convict butcher named John Lynn who in his former assignment had been permitted to operate a butchery in Pitt Street, Sydney, while living 'in an improper state with a woman'.[47] The Government took a dim view of prisoners 'with no indulgences' acting as tradesmen, attorneys and brokers in Sydney, believing that 'nothing can be more opposed to the views of the Home Government in transporting offenders than such employment, nor more injurious to the interests and expectations of free persons of good character coming out to settle in Sydney'.[48] It is not surprising, therefore, that Lynn was withdrawn from his Sydney master and reassigned to Tocal while his previous master was banned from receiving further convicts.

Tocal's owner, James Webber, was also on occasion subject to government sanction. The assignment of Hugh Murdoch to Tocal was revoked in 1830 when Webber refused to recommend Murdoch for a ticket-of-leave, despite Murdoch's unblemished record, his reputation for hard work and favourable references from both the Maitland Police Magistrate and Tocal's overseer.[49] The Governor also withdrew convicts from estates in the neighbourhood of Tocal for reasons such as failing to provide sufficient clothing and rations, not providing supervision by a free or ticket-of-leave overseer (in one case supervision was provided in the owner's absence by his convict mistress), allowing

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[45] *NSW Government Gazette*, 16 April 1841, 523; HRA 1, XXI, 442 (Gipps to Russell, 21 July 1841).
[46] HRA 1, XIII, 488 (Government Notice, 30 July 1827); Shaw, *Convicts and the Colonies*, 231-233; Foster, "Convict Assignment", 60-61; Kent and Townsend, *The Convicts of the Eleanor*, 182; Neal, *Rule of Law*, 110-113.
[47] Police Office to McLeay, 9 January 1836, CS In-letters, 36/282 in 4/2333.2, SRNSW; McLeay to PSC, 16 January 1836, CS Letters Sent, 4/3681, 511-512, SRNSW.
[48] McLeay to Princ. Sup. Police, 19 November 1832, CS LB, 4/3833, 386, SRNSW.
[49] Webber to McLeay, Aubin to McLeay, 3 & 4 June 1830, CS In-letters 30/4607 & 30/4406 in 4/2076, SRNSW; McLeay to Webber, 25 June 1830, CS LB, 4/3828, 448-449, SRNSW.

cohabitation of assigned convicts, assault by the master or overseer, and because one master's house was 'a constant scene of riot and drunkenness'.[50]

The return of convicts by masters was far more common than revocation of assignment by the governor, as settlers frequently dispatched unsatisfactory workers and applied for others to replace them. Governors King, Macquarie and Brisbane tried unsuccessfully to compel settlers to keep assigned convicts for a minimum of six to twelve months.[51] Darling stipulated that masters who frequently returned convicts would not receive replacements 'until all applications, from less exceptionable persons, are complied with'.[52] To this end, lists would be kept of masters who returned convicts for 'insufficient reasons', and these lists would be sent monthly to the assignment board to guide them in their subsequent allocation of convicts. In 1829 Darling ordered that all convicts returned by masters were to spend six months in a road party before being re-assigned. In 1830 he required masters to pay for the cost of the transport of the convicts being returned. Despite these measures, as Darling explained, the fact remained that some convicts were unfit for assignment, 'settlers finding it impossible from the badness of their characters to retain them'.[53] Those who were frequently returned by settlers ended up in government gangs, including road parties, and contemporary estimates of their extent vary from 30 per cent of convicts in 1827 to 18 per cent in 1836.[54] According to Hirst, a ratio of 'incorrigibles' of one in ten was the more usual estimate, with a minimum of one in twenty.[55]

Daniels cautions, however, that Hirst was captive to the contemporary concept of 'the incorrigible' convict, a construct that assumed the same mythic importance in recent studies that criminal class had assumed decades earlier.[56] Nevertheless the Tocal data indicates that nearly half of the men did not end their assignment on the estate but were

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[50] McLeay to Webber, 25 October 1826, CS Letters Sent, 4/3825, 26, SRNSW; McLeay to Patersons Plains Bench, 15 September 1830, CS LB, 4/3829, 72, SRNSW; McLeay to Aubin, 27 January 1831, CS LB, 4/3829, 380-381, SRNSW; McLeay to Patersons Plains Bench, 10 February 1831, CS LB, 4/3829, 401, SRNSW; McLeay to Anley, 12 May 1831, CS LB, 4/3830, 72-73, SRNSW; CS to Aubin, 2 November 1830, CS LB, 4/3829, 186 [reel 2808], SRNSW; CS to Anley, 30 September 1831, CS LB, 4/3830, 412 [reel 2808], SRNSW; Robertson and Allman to CS, 10 February 1829, CS In-letters, 29/1357 in 4/2029, SRNSW; Foster, "Convict Assignment", 68-72.
[51] Liston, "New South Wales under Governor Brisbane", 101.
[52] HRA 1, XII, 252 (General Regulations, 9 March 1826).
[53] Darling to Goderich, 31 December 1827 as quoted in Shaw, *Convicts and the Colonies*, 256.
[54] Shaw, *Convicts and the Colonies*, 257.
[55] Hirst, *Convict Society and its Enemies*, 72.
[56] Daniels, *Convict Women*, 39.

returned to government or sent away for punishment, and about one third of them were assigned four times or more during their sentence. Incorrigibles or not, the high incidence of forced exit and re-assignment affected the work output and operation of estates such as Tocal.

Numbers of convicts assigned to Tocal

The number of convicts assigned to the Tocal estate at any one time rose from the initial four in 1822 to a peak of 34 from 1828 to 1830 as shown in table 3.1 below. Numbers declined prior to Webber's sale of Tocal to Caleb and Felix Wilson in 1834, probably because of Webber's intention to leave the colony.[57] Following the 1834 sale, 15 of the 23 convicts still assigned to James Webber were transferred to the Wilsons at Tocal and the other eight to Captain WH Clarke, the new owner of Webber's Munmurra Station situated between Merriwa and Cassilis.[58] The Wilsons supplemented their ex-Webber convicts by relocating some of the men previously assigned to them in Sydney. Consequently convict numbers at Tocal recovered to 26 in 1836/37 but declined sharply thereafter, and there were probably only a few convicts on the estate when assignment was abolished in 1841.[59]

[57] Walsh, *Tocal's First European Settler,* 50-55.
[58] *NSW Government Gazette*, 25 June 1834, 439; 3 June 1835, 394.
[59] Tocal convicts initially assigned to Caleb and Felix Wilson in Sydney include James Dowling and Elijah Corrigan (both per ship *James Laing* 1834, see HO10/30, PRO), and Michael Lynch (*Eliza* 1832, see HO10/29, PRO). For end of assignment see *NSW Government Gazette*, 16 April 1841, 523.

Table 3.1 Assigned convict numbers at Tocal at various times[60]

Year	Number	Free workers	Estate size
1822	4	***Unknown***	1,500 acres
1823 Sept	6	"	2,020 acres
1827 Oct	23	"	3,300 acres
1828 Nov	34	2	"
1829 Nov	34	2	"
1830 May	34	3	"
1834 Oct-Dec	15	***Unknown***	"
1836/37	26	"	"

Based on extant records and identified patterns of assignment, it is estimated that in total about 145 convicts were assigned to Tocal between its initial land grant in 1822 and the end of assignment in 1841.[61] At times some convicts assigned to Tocal were allocated to work on other land owned or leased by Tocal's proprietors and, therefore, there was some convict movement between the various holdings. Apart from Tocal, James Webber briefly owned a property of 2,560 acres (1,036 hectares) on the upper Paterson River that he named 'Emral'. This land was granted to him in 1831 but he made no improvements to it (such as fencing, clearing or erection of buildings) before selling it in 1834.[62] It is likely Webber used Emral as a sheep run in the same way he used the various parcels of land he leased from time to time in the Paterson district, including part of the village reserve that adjoined the southern boundary of Tocal.

[60] Numbers refer to those assigned to Tocal's owners and exclude any convicts working there temporarily to assist with the harvest. CS Alphabetical List of Convicts who are not Mechanics 1822-1824, 4/4570D [reel 586], SRNSW; Artificers and Convict Overseers Assigned 1822-1825, 4/4520 [reel 586]; CS Correspondence, 4/3509, 230 [reel 6011], SRNSW; CS Letters Relating to Land Matters 1826-1860, 2/8001 [reel 1195], SRNSW; *NSW Government Gazette*, 3 June 1835, 394; *Census of New South Wales 1828*; *Convicts in New South Wales 1837*. Note that the 1837 Convict Muster is in fact a composite record based on the 1836 census of New South Wales with updates for 1837 (see page xii for further details); Walsh, *Tocal's First European Settler*, 64-66.

[61] The number cannot be exactly determined because many individual convict assignment details were destroyed and details of assignment have been reconstructed from other, surviving records. For example records are available for the number of convicts applied for and received in some years, and from 1832 onwards the numbers of convicts assigned to estates was printed in the *NSW Government Gazette*; Return of Male Convicts 1829—Governor's Despatches, Jan-April 1830, ML A1206 [reel CY539]; Return of Male Convicts 1831—Governor's Despatches, 1832, ML A1210 [reel CY543]; Return of Male Convicts 1832—Governor's Despatches, 1833, ML A1211 [reel CY544].

[62] CS Register of Land Grants and Leases, 6, Counties of Durham and Brisbane 1837-1847, 7/457, 141 [reel 2548], SRNSW; *Sydney Herald*, 23 October 1834.

Webber also owned property on the Hunter River but there is no evidence he worked this land, and his ownership was probably restricted to the role of mortgagor.[63] It is reasonable to assume that some of Webber's convict shepherds and stockmen based at Tocal would have at times lived in rough huts on Emral and on leased sheep runs while tending Webber's livestock.

A few of Webber's convicts moved beyond the Paterson district in the service of their master. In 1833 Webber purchased 1,380 acres (558 hectares) in New South Wales between Cassilis and Merriwa, which he named 'Munmurra Station' and today is part of 'Pembroke'.[64] Little detail has survived regarding his operation of Munmurra, but in 1834 there was an overseer and eight convicts working there who had previously been assigned to Webber at Tocal.[65] Webber probably sent men to the less supervised, remote posting at Munmurra after they had proved themselves to be trustworthy and reliable at Tocal. The eight convicts were transferred to the new owner of Munmurra, Captain WH Clarke,[66] after he purchased the station from Webber in 1834.[67] Some of these ex-Tocal convicts obtained their tickets-of-leave for the Cassilis area while others were issued tickets for the Paterson district, very likely returning to friends and the area familiar to them from their previous assignment at Tocal.[68] Tocal's convicts experienced less travel in the line of duty after the Wilsons purchased the estate in 1834. Tocal was the Wilson's main rural holding, and they owned nearby 'Brisbane Grove' which consisted of 580 acres.[69] It can be reasonably assumed that convicts assigned to the Wilsons at Paterson moved between the two local properties of Tocal and Brisbane Grove as needs dictated.

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[63] Old Systems Titles Registers, H48, H49, NSWDL. In Old Systems Title Registers it is sometimes difficult to distinguish between a mortgagor and an owner in possession.
[64] CS Register of Land Grants and Leases, 6, Counties of Durham and Brisbane 1837-1847, 7/457 [reel 2548], SRNSW.
[65] Maitland NSW, Court of Quarter Sessions Papers, 4/8413, 291 [reel 2408], SRNSW.
[66] *NSW Government Gazette*, 25 June 1834, 439
[67] Old Systems Titles Registers, G33, 2 & 3 May 1834, NSWDL.
[68] For example Roger Dobson's ticket-of-leave was issued for Paterson: TOL 34/152, 4/4092 [reel 920], SRNSW.
[69] *Sydney Herald*, 23 October 1834.

Assignment and re-assignment in practice

The key convict studies of Shaw and Robson in the 1960s presented a rather dismal view of Australia's convicts, concluding that the majority were ne'er-do-wells and repeat offenders drawn predominantly from a distinct criminal class.[70] If this view was accurate, it would have presented a grim prospect indeed for settlers who relied predominantly on a convict workforce. However, a more optimistic view of the capabilities and merits of assigned convicts was set out in *Convict Workers* (1988) which concluded that convicts were 'an exceptional workforce' comprising a young, fit and healthy cross section of the British and Irish working classes who brought with them a range of useful skills that were efficiently matched to the requirements of local employers.[71]

Studies of the assignment of convict women underwent a similar revision. Deborah Oxley used the shipping indents to construct an inventory of the economic assets convict women brought to the colony. Adopting broad indicators of productive potential, she argued that convict women helped make 'white Australia a flourishing concern'.[72] Similarly, Kris McCabe re-examined 'some of the myths associated with female convict assignment, particularly in a rural setting' by focusing on the assignment experiences of 165 convict women in the Hunter Valley during the 1830s. By documenting the number and length of assignments, patterns of distribution and the nature of misdemeanours during assignment, she concluded that most female assignees were determined, working-class women making the most of their situations.[73]

Convict Workers' optimistic view of convicts as human capital and of the effectiveness of assignment has received only limited testing in specific regional or local circumstances. This highlights the importance of the detailed Tocal assignment data that tests, and in many respects challenges, the overarching conclusions of *Convict Workers* and provides a more accurate understanding of the assignment experience in the process. Within *Convict Workers* itself, Perkins analysed the structure and discipline of the convict workforce assigned to the Australian Agricultural (AA) Company estate at

[70] Shaw, *Convicts and the Colonies*, 164-165; Robson, *Convict Settlers*, 135.
[71] See especially Nicholas and Shergold, "Convicts as Migrants", 59-60; Nicholas, "The Convict Labour Market", 125.
[72] Oxley, *Convict Maids*, 15, 41, 129-169.
[73] McCabe, "Assignment of Female Convicts", 286-302; McCabe, "Discipline and Punishment", 38-61.

Port Stephens, finding dual and sometimes contradictory objectives of production and punishment. His conclusion, that the productivity of convict labour on the AA Company estate was low, is supported by Bairstow's study and sits uneasily with the general tenor of *Convict Workers*.[74] Similarly, Kent and Townsend tracked the colonial careers of the rural Swing rioters of the *Eleanor* in 1831, finding little correlation between the colonial employment of these men and the skills they claimed to possess on arrival. At least in 1831, assignment seems to have been determined mainly by the applicant's place on the waiting list, with the possible exception of the assignment of a few artisans.[75] The Tocal data, presented below, allows further local testing and comparison with the above studies.

Table 3.2 shows that nearly two thirds of Tocal's convicts were allocated to the estate as their initial assignment on disembarkation in New South Wales. The remaining one third were transferred or reallocated to Tocal from a range of previous situations. Many had been returned to government by settlers or had been reassigned after completing a period of colonial punishment in an iron gang or a secondary penal station such as Port Macquarie, Moreton Bay or Norfolk Island. In the first two years of Tocal's operation, several convicts were assigned to the estate after completing sentences at the nearby penal settlement of Newcastle before its closure in 1823.[76] Four men were transferred to Webber at Tocal in 1829 from the deceased estate of William Clayton at Paterson, and another convict, John Kidd, came to Tocal when his previous master sold the Williams River estate on which Kidd was working.[77]

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[74] John Perkins, "Convict Labour and the Australian Agricultural Company", in *Convict Workers*, ed. Nicholas, 167-179; Bairstow's study of the AA Company also revealed reports of very mixed performance by the company's convicts, ranging from reasonable to such low output that they were not considered to be worth their maintenance: Damaris Bairstow, *A Million Pounds, a Million Acres: The Pioneer Settlement of the Australian Agricultural Company* (Sydney: by the author, 2003), 98-99, 148, 163.
[75] Kent and Townsend, *The Convicts of the Eleanor*, 182.
[76] Goold, *The Birth of Newcastle,* 25, 27.
[77] Hely to McLeay, 20 July 1829, CS In-letters, 29/5763 in 4/2040, SRNSW; McLeay to Hely, 22 July 1829, CS Letters sent, 4/3668, 455, SRNSW; McLeay to Anley & Sullivan, 25 & 26 May 1832, CS LB, 4/3831, 511-512 [reel 2809], SRNSW.

Table 3.2 Circumstances under which convicts were assigned to Tocal

Method of assignment to Tocal	Number	Per cent
First assignment on arrival in NSW	92	65
Transfer from deceased or sold estates	5	3
Transfer from Government or other settlers	34	24
Transfer after period of secondary punishment	11	8
Total	**142**	**100**

There is sufficient information in the reconstructed records to enable the calculation of indicators, albeit limited ones, of the convicts' work performance while under sentence. These three indicators are: number of assignments, length of stay at Tocal, and number of secondary punishments during their entire sentence. The relationship of these indicators to actual work performance is somewhat tentative and problematic, but the indicators are useful as they provide a different perspective to the *Convict Workers'* study that was based on predictors of potential productivity such as age and arrival skills. Table 3.3 shows the average and range of the three 'performance' indicators for Tocal's convicts.

Table 3.3 'Performance' indicators for Tocal's convicts[78]

	Number of Assignments	Length of stay at Tocal (years)	Punishments (whole sentence)
Mean	2.9	3.2 – 3.9	2.0
Range	1 – 11	0.1 – 10.6	0 – 13

Before interpreting the Tocal indicators, some discussion of their limitations is required. Care needs to be taken regarding the significance of the number of assignments and punishments experienced by individual convicts. The local bench could be used as a mechanism for disposing of troublesome workers (or perhaps surplus workers, after the completion of a harvest, for example) using a flimsy charge or the pretext of a misdemeanour that could be overlooked or handled differently in other circumstances.[79]

[78] The punishment figures in tables 3.3, 3.4, 3.5 and 3.7 differ slightly but insignificantly from figures previously published due to new information since discovered and a review of the method of calculation/categorisation: Walsh, "Assigned Convicts at Tocal", 76-82.
[79] Maxwell-Stewart, "The Bushrangers", 120-122.

However, there was no guarantee a conviction would result in relocation, as is well illustrated by repeated bench appearances for some Tocal convicts. Some settler-magistrates may have had a tacit understanding with fellow settlers regarding the use of the bench as a firing mechanism, but Tocal convicts were usually brought before a Police (Stipendiary) Magistrate at Patersons Plains. In any case, by 1825 convicts were in short supply and remained so until the end of the assignment period.[80] Thus, in 1829, James Webber applied for ten men, but received only eight. In 1832 he applied for 25 and received only 13.[81] In the context of this shortage, settlers were unlikely to offload cooperative and able-bodied workers, regardless of their level of skill, so these workers would generally have a low number of assignments. Similarly, these workers would experience a longer stay at Tocal, with the obvious qualification that length of stay also depended on time already served when assigned to Tocal, and eligibility for a ticket-of-leave.

The number of colonial punishments for individuals in this study reflects to some extent their attitude to work and their preparedness or otherwise to defer and comply. The scant records of the Paterson Bench for this period, however, make it difficult to be specific about the circumstances surrounding the punishment of Tocal's convicts. Based on the literature of convict protest, we can imagine that convict behaviour at Tocal was motivated by diverse, often personal circumstances, often involving perceptions of unfair treatment and the apparent deprivation of certain rights or privileges, but also sometimes reflecting the need for self-preservation, or the desire for recreation and adventure.[82] The many forms of defiance, resistance and protest that were intrinsic to convict life were evident at Tocal and on other rural estates in the Hunter Valley during this time, one study suggesting convicts could be categorised as 'getting back, getting on, or getting by'.[83]

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[80] HRA 1, XI, 649 (Brisbane to Horton, 16 June 1825); Liston, "New South Wales under Governor Brisbane", 101-102.
[81] Return of Male Convicts 1829, Governor's Despatches Jan-April 1830, ML A1206; Return of Male Convicts 1832, Governor's Despatches1833, ML A1211, State Library NSW.
[82] David Andrew Roberts, "A 'change of place': Illegal Movement on the Bathurst Frontier, 1822-1825", *Journal of Australian Colonial History* 7 (2005): 97, 115.
[83] WM Robbins, "The Lumber Yards: a Case Study in the Management of Convict Labour 1788-1832", *Labour History* 79 (2000): 154. Defiance, resistance and protest by Tocal convicts is explored in detail in chapter six.

Apart from indicating convict attitudes to work, the number of punishments reflects other factors such as level of skills, willingness and ability to acquire new skills, and the circumstances faced during assignment. Skilled convicts were less likely to be flogged given the care-intensive nature of their work compared to the effort-intensive nature of the work of unskilled labourers.[84] Similarly, unskilled workers were more likely to be allocated to work in gangs, where flogging was a more prevalent method of control, and so were more likely to be flogged than convicts allocated to settlers.[85] When assigned to settlers, some convicts were punished for rejecting poor quality rations, housing and clothing provided by their masters. Such 'offences', whether disrespect, absconding or refusal to work, reflect not only the convict's attitude but also the treatment received and the master's propensity to use the Bench.[86] In addition, coercion by corporal punishment was one option in a range of punishments and rewards used to manage convicts and does not necessarily imply a reduction in labour productivity *per se*, despite the time taken up in court proceedings and healing. Nevertheless, the number of punishments received by individual convicts, when considered together with the number of assignments and interpreted in the context of a labour shortage, does indicate something of their work performance and preparedness to defer, tolerate and comply.

Because of the gaps in the extant records, the number of assignments and punishments are minimum figures. For many Tocal convicts, the reconstructed figures for assignments and punishments would match the actual records but in other cases they may be understated, particularly for convicts who were frequently returned to government and/or often punished. The 'length of stay' indicator is more problematical. In many cases the precise date of assignment to and departure from Tocal is known, but

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[84] Stephen Nicholas, "The Organisation of Public Work", in *Convict Workers*, ed. Nicholas, 160-162; Hamish Maxwell-Stewart, "The Rise and Fall of John Longworth: Work and Punishment in Early Port Arthur", *Tasmanian Historical Studies* 6, no. 2 (1999): 104-106.

[85] From 1822, however, the majority of new arrivals were assigned to settlers rather than to government gangs. This is reflected by the fact that 88 per cent of the Tocal men were initially assigned to non-government service, either at Tocal or elsewhere.

[86] At Tocal in 1829, 13 convicts refused to work without the usual indulgence of sugar and milk at harvest time: Aubin to McLeay, 4 June 1830, CS In-letters, 30/4406 in 4/2076, SRNSW. In one study of Tasmanian road gangs, poor clothing, housing and inadequate diet appeared to be the chief motive for disobedience and absconding: Peter MacFie, "Dobbers and Cobbers: Informers and Mateship among Convicts, Officials and Settlers on the Grass Tree Hill Road, Tasmania 1830-1850", *Papers and Proceedings, Tasmanian Historical Research Association* 35, no. 3 (1988): 116. See also Hamish Maxwell-Stewart, "'I could not blame the rangers...' Tasmanian Bushranging, Convicts and Convict Management", *Tasmanian Historical Research Association Papers and Proceedings* 42, no. 3 (1995): 115.

in other cases a convict may, for example, be recorded at Tocal in the (November) 1828 census, and then appear in an iron gang a year later without a surviving court record to determine the exact date of departure. Length of stay has therefore been calculated as upper and lower-bound estimates, and provides a broad indication rather than a precise measure.

On average, Tocal's convicts were assigned nearly three times while serving their sentences, but the number of assignments for individuals ranged from one to eleven. Table 3.4 below shows that 45 men (32 per cent) served their full sentences at Tocal, having been assigned there on arrival in NSW and remaining there until the end of their sentences or until granted a ticket-of-leave or pardon. Two men, John Shea and Job Townsend, were each assigned at least eleven times, but in different circumstances, one being a young, serial offender and the other older and evidently unfit for work. Shea arrived on the *Countess of Harcourt* in 1822, aged nineteen, and was assigned to six settlers in just over two years, each of whom returned him to government. Shea's seventh assignment was to James Webber at Tocal in April 1825, but he was back in government service within two years. Shea's colonial convictions and secondary punishments include 50 lashes for disobedience of orders, one month in a gaol gang for drunkenness, separate iron gang sentences for house robbery and sodomy, secondary transportation for stealing, and various short terms of imprisonment.[87]

In contrast, Townsend was about 54 years old when he arrived in New South Wales in 1823. He was assigned and returned five times in eighteen months before reaching Tocal in September 1824, where he was again returned to government within a short period. Townsend had no colonial punishments recorded against him and very likely his age and lack of fitness for work was the problem. He was eventually sent to Port Macquarie in May 1834, by which time Port Macquarie was no longer a place for repeat offenders but a destination for those deemed unfit for assignment.[88] He died there in

[87] CS List of Convicts Assigned, 26 December 1822, 4/3507, 116, SRNSW; Alphabetical List of Convicts who are not Mechanics 1822-1824, 4/4570D, 113, 116-118, SRNSW; Convict Trials Liverpool, 9 August 1824, 4/6671, 33, SRNSW; CS List of Convicts Assigned, 2 April 1825, 4/4522, SRNSW; McLeay to the Sheriff, May 1831, 4/3897, 98, 149, SRNSW; Register of Complaints and Trials, Newcastle Bench of Magistrates, 4/8543, SRNSW; Phoenix Hulk Entrance Books, 4/6281& 4/6286, SRNSW; Sydney Gaol Entrance Books, 4/6432, 4/6433, 4/6434, 4/6435, 4/6436, SRNSW; PSC, Bound Indents, 4/4008 [fiche 649], 243, SRNSW; Warrants of the Lord Lieutenant of Ireland Relating to Convict Vessels from Ireland ('Irish Indents'), X40, SRNSW.

[88] Beverley Earnshaw, "The Lame, the Blind, the Mad, the Malingerers: Sick and Disabled Convicts within the Colonial Community", *Journal of the Royal Australian Historical Society* 81, no. 1 (1995): 31.

1837 at the age of 68.[89] Townsend's combination of numerous assignments and no punishments was unusual because for most Tocal convicts there is a strong relationship between the two indicators.

While Tocal's convicts were assigned on average just under three times, table 3.4 shows the range and spread in more detail. Just over half the group (55 per cent) were assigned only once or twice, indicating a notable degree of stability that undoubtedly had a positive effect on the output of the estate. In contrast, 29 per cent were assigned four times or more. The average length of assignment at Tocal was about three and a half years, but ranged from a few weeks to ten years and seven months, the latter being for Roger Dobson who was assigned to Tocal on arrival in NSW with a life sentence.[90] Dobson absconded twice from Tocal in the early years of his sentence, was punished and returned to the estate where no further punishments were recorded against him, but his early convictions delayed the granting of his ticket-of-leave until he had served over ten years on the property.[91]

Table 3.4 Number of assignments for Tocal's convicts

Assignments per man	Number of men	Per cent of men	Time at Tocal (years)	Punishments each (whole sentence)
1	45	32	5.3 – 5.4	0.4
2	32	23	2.9 - 3.7	0.6
3	23	16	2.3 - 3.0	1.4
4	19	13	1.9 - 2.4	3.6
5+	23	16	1.2 – 2.6	6.0
Total	**142**	**100**	**3.2 – 3.9**	**2.0**

[89] The shipping indent records his age on arrival as 32 but this is almost certainly an error in transcribing, as confirmed by his age as shown in the 1837 muster and on his burial record: List of Convicts Assigned, 11 March 1823, 4/3507, 421, SRNSW; Alphabetical List of Convicts who are not Mechanics 1822-1824, 4/4570D, 123, 125 & 4/4521, 74, 105, 111, 142, SRNSW; CS Prisoners to Port Macquarie, 15 May 1834, 4/3899, 86, SRNSW; Death Record, V1837 253 44B, NSWBDM.

[90] Alphabetical List of Convicts who are not Mechanics 1822-1824, 12 September 1823, 4/4570D, 31, SRNSW.

[91] Register of Complaints and Trials, Newcastle Bench of Magistrates, 22 December 1823, 4/8543, SRNSW; TOL 34/152, 4/4092 [reel 920], SRNSW; *Sydney Gazette*, 14 October 1826. Records for the Paterson Bench have not survived for the period Dobson was at Tocal so he could have received other minor punishments.

The relationship between the number of punishments and assignments is clearly evident in tables 3.4, 3.5 and 3.7. In general those who were frequently punished were also frequently returned to government by settlers or relocated by magistrates. Although on average each Tocal convict was assigned three times and punished twice during his bondage, most of the re-assignments and punishments were concentrated in a small number of Tocal's convicts. This is particularly evident in table 3.4, where those convicts with five or more assignments, comprising 16 per cent of the Tocal group, received six punishments each. The colonial punishments of the Tocal men, examined in detail in chapter six, typically arose from absconding, disrespect, disobedience or refusal to work, and theft or robbery. In the period in which the Paterson Bench returns of summary punishments are complete, from July 1835 to November 1836, only six of the 26 Tocal convicts assigned to the estate appeared before the bench, charged with three instances of absconding, nine of insolence, disobedience or neglect of work, and one of pilfering. Five of the men appeared only once while the sixth appeared five times.[92] This evidence suggests that only a minority of Tocal's convicts were punished by official judicial process and that rewards and incentives usually operated as an effective alternative.

Table 3.5 shows the indicators for Tocal convicts grouped by mode of assignment to the estate. Those convicts assigned to Tocal on disembarkation scored better on each of the three indicators than those who arrived at Tocal after previous assignments. Those assigned to Tocal after a stint in an iron gang or penal settlement fared the worst of these three groups—they were the most frequently assigned and the most punished. And despite their upward promotion through the levels of the convict system to private assignment, they remained at Tocal the shortest time.[93]

[92] Benches of Magistrates, Returns of Summary Punishments, Paterson 1835-36, X708 [reel 662], SRNSW.
[93] Chapter six discusses promotional levels of the convict system. See also Maxwell-Stewart, "The Bushrangers", 97-101.

Table 3.5 'Performance' indicators for Tocal convicts by mode of assignment

Mode of Tocal assignment	No. (%)	Av No. Assignmts	Av length stay (years)	Punishments (whole sent.)
Initial assign't or dec/sold est.	97 (68%)	2.2	3.6 - 4.1	1.6
Transfer - from Govt or settl.	34 (24%)	4.0	2.2 – 3.6	2.4
Transfer - after sec punmnt.	11 (8%)	5.5	2.3 – 2.8	4.5
Total	142	2.9	3.2 – 3.9	2.0

An equally important insight into the operation of the assignment system can be gained by analysing the ways in which the convicts finished their assignment at Tocal. Given the shortage of assigned convicts, if Tocal's workforce comprised mainly cooperative, tolerant and able workers, the analysis would show that most convicts remained on the estate until emancipation. Table 3.6 shows that this occurred in 41 per cent of cases, although a further 12 per cent departed due to the sale of Webber's other land or because of illness or death.[94] Nearly half the Tocal group departed in other circumstances, especially for reasons relating to secondary punishments, or in some cases for reasons unknown but probably because they were deemed unfit or unsuited to Tocal's needs.

Table 3.6 Circumstances under which convicts left Tocal

Mode of exit from Tocal	Number	Per cent
Gained freedom or Ticket-of-leave or Pardon	59	41
Transferred due sale of land	8	6
Died or unfit due to age or illness	8	6
Sent to further punishment (eg iron gang)	36	25
Returned to Government	8	6
Left for unknown reason	23	16
Total	142	100

[94] Webber sold his upper Hunter estate of 'Munmurra' in 1834 and eight convicts who had worked at both Tocal and Munmurra were transferred to Munmurra's new owner: *NSW Government Gazette*, 25 June 1834, 439.

The exit analysis of Tocal's convicts demonstrates the ambivalence surrounding the work performance of assigned convicts. It suggests about one half were deferent and able workers, probably prepared to learn new skills, who remained on the estate for long periods. Given the shortage of available convicts, the deference and ability of the other half is questionable, regardless of the level of their arrival skills. Table 3.7 shows the indicators for Tocal's convicts grouped by mode of exit from the estate. As expected, those with an unblemished exit had a much lower than average number of assignments and colonial punishments and a longer stay at Tocal. Those who left for penal reasons had a significantly higher than average number of assignments and colonial punishments, and a shorter stay. What is not expected, however, is that a roughly similar proportion of those who were transferred to Tocal from government gangs or penal settlements remained there until gaining their freedom as those who were assigned directly to the estate on arrival in the colony (47 per cent compared to 54 per cent—this is not shown in the table). It seems nearly half of the transferees appreciated what Governor Darling described as 'a desirable release from a painful and degraded situation' (of working in iron gangs) and managed to defer and cooperate sufficiently to remain at Tocal until free.[95] Not all convicts regarded assignment to settlers as preferable to working in government gangs, and some deliberately misbehaved in order to be returned to Government.[96] Perhaps this partly explains the similarity in mode of exit from Tocal for transferees and those assigned directly to the estate.

Table 3.7 'Performance' indicators by mode of exit from Tocal

Mode of exit	No. (%)	Av No. Assignments	Av length stay (yrs)	Punishments (whole sentence)
Freedom, land sale, death	75 (53%)	1.9	4.9 – 5.1	0.8
Punished, returned	44 (31%)	4.6	1.0 – 2.3	4.4
Reason unknown	23 (16%)	2.8	1.3 - 2.8	1.0
Total	142 (100)	2.9	3.2 – 3.9	2.0

The analysis by exit mode again provides evidence of the polarisation of Tocal's workforce between those men who were frequently re-assigned and punished and those who were not. The analyses by both commencement and termination of assignment at

[95] HRA 1, XIII, 140 (Darling to Bathurst, 1 March 1827).
[96] HRA 1, XVI, 711-714 (Bourke to Goderich, 20 August 1832).

Tocal indicate that about one third of the estate's convicts (32 and 31 per cent respectively) fall into the former category. The Tocal study suggests that the impact of frequent re-assignments on the performance of the convict workforce needs to be re-assessed, and that it may not be sufficiently accommodated in studies such as *Convict Workers* that present a static view of assignment based on data from the shipping indents. The Tocal data indicates that up to half of the convicts assigned to an estate could depart under sentence to an iron gang or penal settlement or be sent back to government as unsatisfactory, or could abscond and in many cases be captured and returned, only to abscond again. This constant turnover of the workforce required the continual application by masters for replacements and the ever-present need to retrain new arrivals in the work of the estate.

The high turnover of convicts on rural estates, as evidenced by the Tocal data, reinforces Perkins' analysis of the AA Company estate.[97] While on an estate, serial offenders required a disproportionate amount of supervision to ensure they worked at all, and did not damage and disrupt the estate by losing livestock or breaking tools and equipment. When informal rewards and sanctions, such as the supply or withholding of tea, tobacco and various liberties, failed to keep their behaviour within acceptable bounds, much otherwise productive time was taken up by the superintendent taking the man to the local bench, often resulting in a flogging and the return to the estate of a wounded and resentful convict.[98]

The critical issue, of course, is the extent to which the number of re-assignments and punishments reflected a convict's work performance rather than the circumstances of his assignment, his level of skills, and his master's preference for punishments over rewards. The Tocal findings of frequent re-assignment of a portion of men in a climate of shortage of available convicts leads to the tentative conclusion that colonial offences, defiance and lack of deference by some assigned convicts constrained this supposedly exceptional workforce from reaching the productive potential indicated by age, health and arrival skills.

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[97] Perkins, "Convict Labour", 176.

[98] For resentment after punishment see Bruce Hindmarsh, "Scorched Earth: Contested Power and Divided Loyalties on Midlands Properties, 1820-1840", *Tasmanian Historical Studies* 6, no. 2 (1999): 64. For management time on a Hunter Valley rural estate taken up with court appearances of convicts see James Gilchrist, "Diary for Burrowel, Seaham, Williams River, 1839". [Typed copy of handwritten original]. CB Alexander Foundation Archives, 35-39.

The exit analysis for Tocal's convicts brings some specific data to bear on the question of whether assignment to rural estates was reformatory. Commissioner Bigge in his 1822 report had no doubt about the 'superior advantages of every kind of agricultural occupation in effecting the reform of convicts', and the various assignment policies from Governors Brisbane to Gipps had a common element of removing convicts from the temptations of urban settings, assigning them instead to rural environments where they might acquire useful skills, regular habits and responsible attitudes.[99] Governor Bourke thought that reform was 'in the great majority of cases obtained by this imperfect and unpromising process' of assignment to the extent that emancipists became law-abiding, but he doubted 'whether any real reformation of heart and disposition has been affected [*sic*]'.[100] Tocal's owner, James Webber, wrote a glowing report on the reformatory effects of assignment to his cousin, Lord Strangford, in 1831, that read in part:

> Another most important consideration is the effect which the present System has in punishing and reforming the Convicts. In the employment of Government so many of them are collected together as to prevent them from forgetting their old habits, on the contrary in the employment of the Settlers they are subject to a continual restraint, after a time they become habituated to and interested in the ordinary occupations of a farmer, their conversation becomes directed to Crops and weather instead of Prisons & Robberies and after the Years of Probation are passed I have had the satisfaction of seeing men able and willing to obtain an honest livelihood who came to me ignorant of everything except the arts of preying upon the Community. And this is the case with every Settler.[101]

Webber's report sits uneasily with the fact that nearly half of his convicts left the estate for punishment or were returned as unsatisfactory. Webber was, after all, writing to his cousin in the British parliament at a time when the continuation of transportation was being questioned and the conventional labour force of rural estates was under threat.[102] In contrast, Webber was far less enthusiastic about assignment the following year when writing to support a neighbour's claim for government compensation, where he described assigned convicts as refractory and idle servants who resorted to sabotage and arson in order to be returned to government.[103] Given that nearly half of Tocal's

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[99] Bigge, *Inquiry into the State of the Colony*, 156; HRA 1, XIII, 166 (Darling to Bathurst, 17 March 1827); *NSW Government Gazette*, 1835, 306-313.
[100] Hazel King, *Richard Bourke* (Melbourne: Oxford University Press, 1971), 207.
[101] Webber to Strangford, 25 February 1831, MS 4219, National Library of Australia.
[102] Hirst, *Convict Society and its Enemies*, 198-199.
[103] HRA 1, XVI, 711-714 (Bourke to Goderich, 20 August 1832).

convicts made a forced exit from the estate, the reformatory effects of assignment to country estates seems doubtful.

The Tocal data can also be used to examine the extent to which the arrival skills of convicts matched the needs of their colonial employers, and whether this process was effective or a 'mere lottery'. Bigge and Molesworth both criticised assignment as being a lottery, but for different reasons. Bigge used the term literally, referring to the process whereby ex-convict settlers had to draw lots for any remainder of convicts available for assignment after government and 'honest' settlers had taken their pick.[104] Molesworth was more critical of the arbitrary nature of assignment, the effects of which ranged 'between the extremes of comfort and misery', allowing 'lesser offenders ... to be punished with disproportionate severity, while greater criminals escape with greater impunity'.[105]

Nicholas, in *Convict Workers*, tested this 'damning criticism of the efficacy of the colonial labour market' by comparing convicts' occupations on arrival with their colonial work situations as shown in the 1828 census. Nicholas concluded that the convicts' industrial, building and agricultural skills were used in New South Wales to 'a remarkable extent', while unskilled urban workers and domestic servants were not in great demand and this segment of the convict workforce took the brunt of job restructuring in the colony. Those with rural skills, however, were more likely to be placed in similar jobs to those they held back home. At the time of the 1828 census of New South Wales, 34 per cent of farm occupations were filled by unskilled urban workers and general servants and, as an example, 42 per cent of weavers were employed as rural labourers.[106] On this basis, rural estates had to cope with lower levels of skills matching than other sectors of the economy.

These findings are consistent with the Tocal data. Between 1822 and 1840, about 50 per cent of convicts on the estate came from an urban background, and the majority of them were, of necessity, given rural tasks. At the time of the 1828 census about two thirds of the convicts' occupations at Tocal roughly matched their pre-transportation callings, although this stretches the concept of skills matching, as included in this are those

[104] Bigge, *Inquiry into the State of the Colony*, 18.
[105] Molesworth, *Report on Transportation*, 11.
[106] Nicholas, "The Convict Labour Market", 120-125.

previously categorised as farm men, ploughmen and stable hands who are listed simply as 'labourers' at Tocal. The other third showed a remarkable level of adaptation and retraining, such as the three men with the previous occupations of errand boy, rope maker and brush maker who are listed as tobacconists at Tocal. There are similar transformations from groom to shoemaker, hairdresser to shepherd and errand boy to sawyer. In fact, most of the skilled and semi-skilled occupations at Tocal in 1828 were filled by assignees without recorded pre-transportation skills in those areas. Overall, there is no evidence of 'remarkable' skills matching at Tocal, in which sense the Tocal data is more consistent with the findings of Kent and Townsend with regard to the fate of the Swing rioters of the *Eleanor*.[107]

When the methodology of skills matching in *Convict Workers* is examined closely, it is not surprising that regional and local studies do not fully support its findings, even after allowing for the lower level of matching expected on rural estates. *Convict Workers* used only 1,389 convicts or seven per cent of its total sample of 19,711 in the analysis of skills matching. This sub-sample excluded those in gaol and penal settlements, but included those who were free or paroled,[108] probably generating a higher level of skills matching in the study than existed in practice, and leading to an over-optimistic view of the efficiency of convict labour allocation in NSW. Butlin estimates that when those in government gangs are put back into the analysis, the British-Australian convict skills match falls below 40 per cent.[109] Another factor working against accurate skills matching is multi-skilling, particularly as a result of pre-transportation migration. About one third of Tocal's convicts had migrated to another county or country before transportation, and thus some would have acquired urban work skills and vice versa. In addition, factory and farm were close together in early nineteenth century Britain, and itinerant workers frequently moved between urban and rural work.[110] Therefore, multi-skilling somewhat blurs the arguments and conclusions on skills matching.

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[107] Kent and Townsend, *The Convicts of the Eleanor*, 82. Roberts noted similar discrepancies in the case of the remote public farm at Wellington Valley: David Andrew Roberts, "'A sort of inland Norfolk Island'? Isolation, Coercion and Resistance on the Wellington Valley Convict Station, 1823-26", *Journal of Australian Colonial History* 2, no. 1 (2000): 61.
[108] Nicholas, "The Convict Labour Market", 120-121.
[109] NG Butlin, *Forming a Colonial Economy, Australia 1810-1850* (Cambridge: Cambridge University Press, 1994), 51.
[110] Geoff Raby, *Making Rural Australia: An Economic History of Technical and Institutional Creativity, 1788-1860* (Melbourne: Oxford University Press, 1996), 46.

Apart from skills matching, assignment to Tocal was a lottery in so far as it involved an element of chance for both convicts and masters. As convicts travelled to take up their assignment they must have wondered what Tocal would be like. Would Tocal's master favour the lash or rewards, would he issue extras such as tea, sugar and tobacco, would they spend long periods on isolated outposts as shepherds or be near the township with ready access to company and alcohol, and would they be treated fairly and recommended for a ticket-of-leave when eligible? (Most of these questions are examined in subsequent chapters). For Tocal's owners, assignment was a lottery because of the variability of the skills and attitudes of the convicts being assigned. This conclusion is supported by a contemporary observer, Roger Therry, NSW legal counsel from 1829 and later a judge of the Supreme Court, who noted that 'the probability of obtaining a good servant under the system of assignment was at best a lottery'.[111] Nevertheless, the analogy of a lottery should not be taken too far when describing a system that was planned and deliberate in many respects. Chance played a part but, as Townsend cautioned, 'chance itself was not the major determinant of a convict's treatment, experiences and future'.[112]

The unremarkable level of skills matching at Tocal and the relatively few convict mechanics assigned to the estate at any one time (for example, only three at the 1828 census) does not imply a lack of division or hierarchy among its convicts. Nicholas and Shergold proposed an elite upper stratum based on skills and literacy which, they argued, defined a worker's relationship with his fellow workers and separated the convict artisan from the general convict population in terms of values, wage levels and indulgences.[113] Although not directly relevant to Tocal, another notable and distinct group of convicts within the colony were the so called 'specials', consisting of clerks, small businessmen and 'swells' or gentlemen convicts such as sons of the gentry, former military officers, clergymen and lawyers. The 'specials' were perceived as a threat because of their 'combined intelligence and malevolence', and many of them were banished to a remote penal settlement at Wellington in western New South Wales,

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[111] R Therry, *Reminiscences of Thirty Years Residence in New South Wales and Victoria* (London: Sampson, Low, Son and Co, 1863; Sydney: Sydney University Press, 1974), 135.
[112] Townsend, "A Mere Lottery", 80.
[113] Stephen Nicholas and Peter Shergold, "A Labour Aristocracy in Chains", in *Convict Workers*, ed. Nicholas, 105.

and later to Port Macquarie.[114] Other 'specials' were firmly entrenched in the government and legal offices, education and the press, where their skills were in demand.[115] Roberts proposes that the 'specials' remain neglected in the convict historiography, despite the opportunity they present to explore class divisions and hierarchies among convicts.

In a Tasmanian study, Hindmarsh found a division among convicts, between those who supported their mates' tactics of arson and sabotage in a battle with their masters over power and privileges and those who, being loyal to their master, were prepared to inform on fellow convicts.[116] Another Tasmanian study suggests that paternalism was a convict master's best defence against disloyalty, in order to 'anchor a grateful convict population in a deferential system of values'.[117] This latter basis of differentiation on the basis of loyalty and deference is particularly relevant to Tocal, given the small number of mechanics and the nature of work on the estate. I propose that the highly variable assignment and behavioural records of Tocal's convicts can be partially explained by a hierarchy of diligence, trust and adaptability that overlaid and possibly displaced any differentiation based on skills.

The need for diligence, trust and adaptability to successfully perform many key tasks on the Tocal estate is well illustrated by the list of workers in the 1828 census, showing seventeen labourers, nine shepherds, three tobacconists and three mechanics. Unless shepherds performed their work carefully and without daily supervision, there were dire consequences for their master. Each shepherd was responsible for a flock of around 300 sheep, often tending them in locations remote from the homestead, and the consequences of negligence were high.[118] This was also the case for Tocal's tobacconists. They had to give constant attention and water to the fragile tobacco

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[114] David A Roberts, "'Binjang' or the 'Second Vale of Tempe': The Frontier at Wellington Valley, New South Wales, 1817-1851" (Ph.D. thesis, University of Newcastle, 2000), 99-100; Earnshaw, "Sick and Disabled Convicts", 31.
[115] Sandra Blair, "The Felonry and the Free? Divisions in Colonial Society in the Penal Era", *Labour History* 45 (1983): 4-5.
[116] Hindmarsh, "Scorched Earth", 64, 76.
[117] Hamish Maxwell-Stewart and Bruce Hindmarsh, "'This is the bird that never flew': William Stewart, Major Donald MacLeod and the *Launceston Advertiser*", *Journal of Australian Colonial History* 2, no. 1 (2000): 13.
[118] James Atkinson, *An Account of the State of Agriculture and Grazing in New South Wales* (London: J Cross, 1826; Sydney: Sydney University Press, 1975), 74; Peter Cunningham, *Two Years in New South Wales* (London: Henry Colburn, 1827; Sydney: Angus and Robertson, 1966), 133-134.

seedlings, transplant them and then patrol daily to remove caterpillars.[119] Unless they were observant and diligent, this difficult but highly profitable crop would fail. In fact Tocal's tobacco crop was highly successful over several years.[120]

It was therefore not just mechanics who stood out from the large group of labourers at Tocal, but also those men who could be trusted to perform work where the consequences of negligence were high for the master. And it was not necessarily previous skill that determined who were allocated to these demanding tasks. Several men with previous farm experience appear as labourers at Tocal in the 1828 census, while an errand boy, rope maker, brush maker and hairdresser were allocated to trusted tasks as shepherds and tobacconists. As expected, Tocal's trusted and diligent, such as its shepherds, tobacconists and mechanics, were less punished than the estate's 'labourers' and received informal rewards such as extra rations or liberties for their efforts. Michael Fee, for example, a linen weaver who acquired the skills of a cooper at Tocal, was allowed to travel to Maitland unsupervised to purchase goods for the estate.[121]

As part of the system of rewards on a rural estate, the trusted and diligent could be given the opportunity to learn a trade as an offsider to a convict artisan, or gain permission to practice shearing on dead sheep or those about for be slaughtered for meat.[122] The concept of convicts as learners and convict assignment as workplace training and a form of compulsory apprenticeship has received little attention in the historiography.[123] Provided they were prepared to defer and cooperate, Tocal's errand boys, brush makers, linen weavers and hairdressers, along with its Irish and English farming men, could gain a range of workplace skills during assignment that might benefit them when free. Many were employed on Tocal and neighbouring estates after

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[119] *Australian*, 18 November 1826; Atkinson, *State of Agriculture and Grazing*, 47-49. Aktinson's quoted paper on tobacco was originally published in a supplement to the *Sydney Gazette*, 20 February 1823.
[120] Webber to McLeay, 20 November 1829 & 1 May 1830, CS Letters Received Relating to Land Matters 1826-1860, 2/8001, SRNSW; *Australian*, 14 November 1828; *Sydney Gazette*, 4 & 6 March 1830.
[121] Clerk of Peace, Depositions—Supreme Court, Paterson 2 May 1837, Rex vs Bernard Lyons and James Lemon, 9/6309, SRNSW. Tocal's shepherds, tobacconists and mechanics in 1828 as a group averaged 0.8 punishments during their sentence, compared to 1.7 for the labourers on Tocal at that time.
[122] Hirst, *Convict Society and its Enemies,* 50-51.
[123] Assignment as a form of compulsory apprenticeship is acknowledged briefly in Raby, *Making Rural Australia*, 47. Apprenticeship of convict juveniles is better covered—see for example B Earnshaw, "The Convict Apprentices 1820-1838", *The Push from the Bush* 5 (1979): 82-97; Kerin Gorton, "Carters' Barracks and Point Puer: The Confinement Experience of Convict Boys in Colonial Australia, 1820-1850" (Ph.D. thesis, University of Newcastle, 2002), 217-220.

obtaining tickets-of-leave for the Paterson district or certificates-of-freedom, successfully earning a living and supporting themselves using skills gained or refined during assignment. Errand boy, Alfred Padmore, whose petition heads this chapter, acquired the skills of a sawyer during assignment, and when he finally received his ticket he was employed as such.[124]

Conclusion

The Tocal data allows a closer examination of some of the more contentious and problematic claims of convict historiography. The data partly supports and partly disputes the revisionist interpretations embodied in *Convict Workers* of an exceptional convict workforce. About half of Tocal's convicts were evidently cooperative workers who remained on the estate for most or all of their sentences, were seldom punished and gave an element of stability and continuity to the estate's workforce. The other half, frequently punished and apparently uncooperative, disrupted the work routines of the estate as new convicts were constantly sought to replace them as they absconded or were returned to government or sent away for punishment. It is these dynamics of assignment-in-action that reveal the operational constraints to the productivity of the convict work force, constraints that were not sufficiently accommodated in the *Convict Workers*' study. Furthermore, at Tocal, a convict's preparedness to adapt, learn new skills and work diligently was more likely to result in his allocation to critical tasks than the skills he possessed on arrival. A hierarchy of trust, diligence and adaptability is a useful concept to at least partly explain the marked individual differences in number of assignments and punishments. Specific evidence from one estate cannot constitute a new synthesis on its own, and the extent to which more general conclusions can be drawn from this Tocal data is difficult to assess. Nevertheless, more detailed local case studies will allow the broad claims about convict assignment to be further tested, and if not refuted, then at least refined.

[124] Gilchrist, "Diary for Burrowel", 45.

Chapter 4: Working and living at Tocal

> Last night I went to Costigans hut, there was no quarrelling when I first went in. about half an hour after I was in the hut Costigan and another man brought in two Gallons of Wine. They asked me to sing a song, which I did, before I finished the song Lyons told me to stop my singing. He then came up and struck me in the nose he then struck me a second time. Jas Lemon told Lyons not to strike me and parted us…He, Lyons, then said to Costigan I have been long looking out for you. I also heard several blows struck as with a stick. I then ran towards the barn yard when I stopped about five minutes all was then quiet and I returned towards the hut and I met Shields, who said, Oh my God, Barney has killed Costigan (Lyons is generally called Barney). Shields then went with me to the hut. When I got there Partridge Lemon & I believe Clements were in the hut and Costigan was in his bed. I got a firestick to examine Costigans head. I did not examine his head as they told me not to do it. I then requested Shields to go home with me as I was afraid of Lyons. Shields was not tipsy. Lemon & Costigan were tipsy. Thos Atkinson was in the hut all the time but drunk and fast asleep.[1]

Present-day visitors to Tocal can enjoy its rich, convict-era heritage, ranging from an impressive convict-built barn, barracks, cottage and bridge, through to less obvious remnants such as an overgrown convict quarry, the stones on Webbers Creek that mark the site of a convict sheep-wash or the barely discernible mounds of Webber's vineyard. This archaeological evidence on its own, however, tells little of what it was *really* like to live at Tocal as a convict. In contrast, the deposition of Thomas Whitford quoted above, one of several recorded at Tocal in May 1837, is replete with clues to the character of convict lifestyle on the estate, a lifestyle that included some remarkable freedoms, mateship, drinking, violence and fear. When the mute archaeological evidence is interpreted with extant records, the combination presents a precious opportunity to recover something of the personal lives of Tocal's convicts. Grace Karskens proposed that such evidence can become holograms that yield vivid glimpses of *people doing things* and provide the 'clues by which a human dimension may be built

[1] The deposition of convict Thomas Whitford, made at Tocal in 1837: Clerk of Peace, Depositions—Supreme Court, Paterson 2 May 1837, Rex vs Bernard Lyons and James Lemon, 9/6309, SRNSW.

up layer by layer'.[2] This is precisely the purpose of the chapter—to construct a detailed view of what it was like for convicts to live and work at Tocal.

The chapter explores the notable diversity of tasks undertaken and the equally notable diversity of skills required for their successful completion. The range, quality and quantity of agricultural goods produced on the estate are testament to the efforts of Tocal's largely-convict workforce. Although some of the Tocal men contributed mere muscle power, digging ditches and toiling with hoes, others learnt how to grow and process tobacco, make barrels or become involved in the pioneering of viticulture and wine-making in the colony. One convict was trusted to carry arms and maintain order on the estate as 'farm constable'. Many of the tasks required diligence and reliability—attributes that some of Tocal's convicts were evidently prepared to display while others were less cooperative, each responding to bondage in their own, individual way. The chapter also explores living conditions on the estate, how the men were housed, what they ate, their remuneration, working hours, religious inclinations (or lack thereof), access to health care, and how they spent their leisure time.

By the 1830s Tocal and the surrounding neighbourhood of Patersons Plains had access to the many services and facilities of an established district but in other ways retained elements of the disorder, danger and remoteness of a frontier. Furthermore, the convicts themselves brought to the estate a remarkable diversity in terms of nationality, culture, age, experience, attitude and behaviour—first offenders and old lags, boys and men, rural Irish who could speak little or no English, street-wise urban British, believers and atheists, the violent and the gentle, the heavy drinkers and the sober, the resentful and defiant living and working alongside the deferent and the diligent.[3]

Wherever possible the chapter uses records and evidence directly associated with Tocal and its convicts, supplemented by local district records including settlers' accounts and diaries, and drawing on sources from further afield where necessary to reconstruct details of working and living conditions at Tocal. The chapter listens for the voices of Tocal's convicts amongst the diversity, complexity and frequent turbulence of their

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[2] Grace Karskens, *The Rocks: Life in Early Sydney* (South Carlton: Melbourne University Press, 1997), 7.
[3] My use of descriptors has been partly influenced by the following: Marchington's categorisation of contemporary workers as 'getting back, getting on or getting by' in Robbins, "The Lumber Yards", 154; and Karskens, "Defiance, Deference and Diligence", 17-28.

individual experiences and lifestyle that ran the full gamut of pleasures and deprivations, hopes and fears, violence and fraternity, freedoms and restraints, and religious commitment or contempt.

Overview of agricultural activities at Tocal

In order to fully appreciate the tasks faced by Tocal's convicts it is necessary to understand the state of the Tocal lands at the time of their occupation by Webber in March 1822. Apart from the likely removal of some of its cedar trees, the land was in 'pre-European' condition at this time, its vegetation reflecting thousands of years of occupation and management by Aboriginal people. Parts of its alluvial river and creek flats were covered in dense rainforest that included virtually impenetrable vines, gigantic figs and gum trees and some remnant cedar trees.[4] Figure 4.1 shows the likely extent of rainforest in the pre-1800 vegetation map of Tocal. Other parts of Tocal's lowlands and the majority of its uplands, the undulating to hilly country, were lightly timbered and grassy country that could be termed as open woodlands.[5] The Wonnarua had regularly burnt these woodlands as part of their management regime, described by Europeans as 'fire-stick farming'.[6] The burning helped with hunting, brought fresh green grass to attract kangaroos and other game, and controlled the regrowth of shrubs and eucalypt seedlings.[7] The change from Indigenous to European land management at Tocal, with its associated land clearing and the cessation of regular burning, would have resulted in dense regrowth of shrubs and eucalypts within a few decades, if not years.[8]

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[4] Allan Wood, *Dawn in the Valley—The Story of Settlement in the Hunter River Valley to 1833* (Sydney: Wentworth Books, 1972), 2. Further evidence of the dense coastal vegetation of the Hunter Valley, ranging from thick vine brush on the rich alluvial soils to open forest on less fertile soils is given by John Benson and Phil Redpath, "The Nature of Pre-European Vegetation in South-eastern Australia: a Critique of Ryan, D.G., Ryan, J.R. and Starr, B.J. (1995) 'The Australian Landscape-Observations of Explorers and Early Settlers' ", *Cunninghamia: A Journal of Plant Ecology* 5, no.2 (1997), 304.

[5] Perry indicates that the broad alluvial flats of the Hunter and its tributaries were mostly thinly timbered grassy plains: Perry, *Australia's First Frontier*, 55.

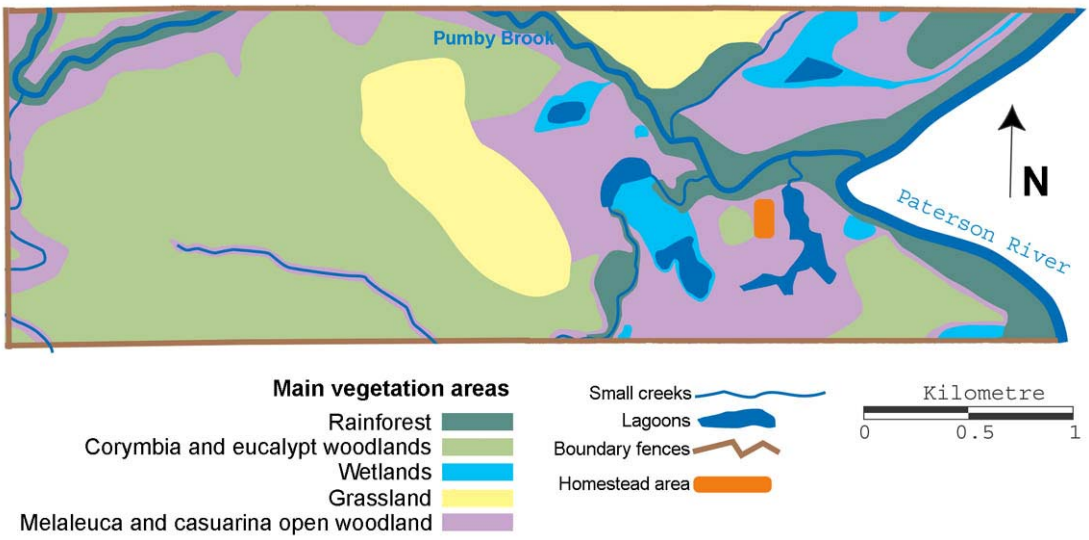
[6] DG Ryan, JE Ryan and BJ Starr, *The Australian Landscape: Observations of Explorers and Early Settlers* (Wagga Wagga: Murrumbidgee Catchment Committee, n.d. c1996), 2-8; Rhys Jones, "Fire-stick Farming", *Australian Natural History* 16, no. 7 (1969): 224-8; NG Butlin, *Our Original Aggression—Aboriginal Populations of Southeastern Australia 1788-1850* (Sydney: George Allen & Unwin, 1983), 95.

[7] There is little doubt that Aborigines actively burnt the land to attract game, but the extent of Aboriginal fire and its effects on vegetation is contentious. Some claim fire was not widespread and regular, and its role in vegetation change during the transition from Indigenous to European land management has been overemphasised—Benson and Redpath, "Pre-European Vegetation", 291-296. Others argue to the contrary, for example—Timothy Flannery, "A Reply to Benson and Redpath (1997)", *Cunninghamia: A Journal of Plant Ecology* 5, no.4 (1998), 779-781.

[8] Ryan, Ryan and Starr, *The Australian Landscape*, 6, 12-15; Benson and Redpath, "Pre-European Vegetation", 323.

This regrowth required clearing by the convict workforce before it could be used for cropping or for grazing at higher stocking rates.

Figure 4.1 Generalised vegetation map for Tocal, pre 1800[9]



[9] Jennifer Laffan and Cameron Archer, *Aboriginal Land Use at Tocal—The Wonnarua Story* (Paterson: NSW Agriculture, 2004), 4-5.

Tables 4.1, 4.2 and 4.3 below indicate the scale and types of activities and agricultural production with which the Tocal convicts were directly involved and the outputs for which they provided most of the labour.

Table 4.1 Overview of the Tocal estate[10]

	1822 (Sep)[11]	**1827** (Oct)	**1828** (Nov)[12]	**1829** (Nov)	**1830** (May)	**1834** (Mar/Oct)[13]
Land (acres)						
-total	1,500	3,280	3,280	3,760[14]	3,280	3,320
-cleared	7	250	160	300	350	ns
-cultivated	3	ns	120	ns	ns	>300
Fencing (miles)	ns	3.25	ns	6.5	8.0	ns
Labour						
-convicts	4	23	34	34	34	ns
-free	ns	0	2	2	3	ns
Livestock						
-horses	0	3	3	4	4	4
-cattle	3	130	222	350	380	600
-sheep	0	1,300	1,674	2,226	2,800	2,930
-pigs	22	ns	ns	ns	ns	some

ns = not stated

Table 4.2 Disposable produce on hand at Tocal [15]

20 November 1829	**£ value**	**1 May 1830**	**£ value**
2,500 bu maize at 5/-	625	3,500 bu maize at 5/-	875
1,000 bu wheat at 10/-	500	500 bu wheat at 8/-	200
700 bu barley at 3/6	122	500 bu barley at 5/-	125
25,000 lbs tobacco at 1/6	1,875	40,000 lbs tobacco at 1/6	3,000

[10] 1827, 1829 and 1830 as per CS Letters Received Relating to Land Matters 1826-1860, 2/8001 [reel 1195], SRNSW.

[11] *General Muster and Land and Stock Muster of New South Wales 1822*, ed. Carol Baxter (Sydney: AGBR, 1988), 585. The entry appears as John Webber but it applies to James Webber who was the only Webber land grantee in the area (and the colony) at that time, and the area shown matches the initial Tocal grant. The muster indicates the three acres cultivated was planted to wheat, and there was half an acre of garden and/or orchard.

[12] *Census of New South Wales 1828*; Census of NSW 1828 [handwritten colonial copy], SZ983 [reel 2556], SRNSW. The Sainty and Johnson modern edition of the 1828 census, along with the PRO London contemporary copy, confuse the landholdings and stock of the brothers John Phillips Webber and James Phillips Webber. The colonial handwritten copy of the census is undoubtedly correct in this regard—see also Walsh, *Tocal's First European Settler*, 66.

[13] *Sydney Gazette*, 27 March 1834; *Sydney Herald*, 23 October 1834.

[14] This figure is obviously incorrect in view of the figures that pre and post date it.

[15] CS Letters Received Relating to Land Matters 1826-1860, 2/8001, [reel 1195], SRNSW.

Table 4.3 Details of houses and buildings at Tocal [16]

16 October 1827	£ value	20 November 1829	£ value
House	500	Dwelling house	500
Barn	100	Barn	100
Maize barn	25	Dairy, store & granary	180
Kitchen	15	Kitchen	20
House for servants	20	Tobacco sheds	100
Two small houses for servants	20	2 Pressing houses	100
		Maize barns & smaller buildings	50

Tocal's sizeable estate and large quantities and diversity of agricultural products provided a multitude of tasks for its nearly all-convict workforce. Undoubtedly for some of these assigned servants, the tasks represented nothing more than compulsory work, but for others who had a positive attitude and were prepared to learn, the estate offered opportunities to acquire new skills that would enhance their prospects for employment and better wages once they were free. In order to build an accurate picture of convict work at Tocal, it is essential to examine the range of skills required to operate the estate, and the structure and organisation of the workforce.

Clearing, stumping and ploughing

One of the first and ongoing tasks on the estate was to clear land so it could be ploughed and sown to crops. Webber had cleared 160 acres of Tocal by 1828,[17] which was quite an achievement considering the enormous physical work involved. One 1820s description of the clearing process was as follows:

> the trees are cut through with [an axe] at about three feet above the ground. Having felled as many as they think will clear sufficient ground for their first crop, they next lop off the branches and pile them round the middle of the trunk so as to burn it in two pieces, these are afterwards rolled round so as to form one large fire. The smaller trees are also cut up and rolled to the large ones.[18]

[16] CS Letters Received Relating to Land Matters 1826-1860, 2/8001, [reel 1195], SRNSW.
[17] As per table 4.1.
[18] Atkinson, *State of Agriculture and Grazing*, 30. See also Bigge, *Agriculture and Trade*, 12.

This method of clearing left the tree stumps in the ground, and settlers did their best to hoe or plough around them, but the exposed or shallow roots would often catch on and damage a plough. Atkinson, writing in the mid 1820s, estimated that between half and three quarters of the cultivated lands in the colony had the stumps left in them.[19] Baron von Hügel, an overseas visitor to New South Wales in the 1830s, was not impressed with the large number of stumps left in the ground at the Nepean estate of Sir John Jamison where 'in front of *his* house… you will find the greatest number of stumps to be seen in front of any planter's residence in the whole colony'. Von Hügel was evidently pleased to observe the fields of James Macleay 'which differ from Sir John's in that not a single stump is to be found'.[20] In order to cultivate land without hindrance, the stumps had to be removed in a process called 'stumping', for which an assigned convict named Joseph Mason has provided a first hand account:

> The…time is occupied in clearing the earth of the stumps that are standing in the ground & cutting the roots partly through in which state they are left a month or two to dry when the trunks are rolled with levers into the holes around the stumps & some of the shortest of the pieces of the branches which are reserved for the purpose is wedged into the open spaces & then the operation of firing commences again which requires to be attended to night & day to keep the logs rolled up to the stumps as fast as they burn away so that the latter may be burnt quite out of the ground deep enough for the plough to go clear. [21]

Mason's observation that the fires needed to be attended 'night & day' is particularly interesting in terms of the implications for the organisation of convict work and the system of rewards implemented on estates such as Tocal to achieve the flexible working hours required by a range of agricultural operations such as burning, shepherding and the harvesting of crops which, by their nature, could not be confined to set daily hours. These rewards, often in the form of additional rations or extras such as tea, sugar, tobacco and milk, or the granting of other privileges, are explored in detail in chapter six.

Today it is difficult to appreciate the sheer physical effort convicts exerted in manually moving parts of huge tree trunks and limbs onto stumps in order to burn them completely, but this effort was not lost on one contemporary observer who noted that

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[19] Atkinson, *State of Agriculture and Grazing*, 41.
[20] Carl Freiherr von Hügel, *NewHolland Journal: November 1833-October 1834*, trans., D. Clark (Melbourne: Melbourne University Press, 1994), 260, 269.
[21] Kent and Townsend, *Joseph Mason*, 102-103.

the 'difficulty and labour required in packing the logs in piles of sufficient thickness and height, to cause them to burn out, is very considerable'.[22] A melancholy postscript to stumping operations at Tocal was provided by William Woollard, a convict assigned to the estate from 1835 to 1837 who returned to work on the estate in 1846 while holding a ticket-of-leave.[23] Woollard suddenly dropped dead at the age of only 26 while digging out stumps in a Tocal paddock.[24]

Another method of clearing included grubbing the whole tree and roots out of the ground but this was restricted to shallow-rooted tree species in soft soils in open forest land and is unlikely to have been practical at Tocal.[25] Yet another method, the so-called American way of clearing, was to kill the standing trees by ringbarking them, leaving them for about two years to dry out and then firing them, at which stage they would burn down to the roots.[26] Ringbarking was used in later decades on Tocal to control regrowth in Tocal's upland grazing country[27] but is unlikely to have been used to any significant extent on the estate in the convict era to clear land for cropping, simply because of the two years required to complete the process. Settlers during the convict period generally preferred the quicker but more labour intensive method of felling and stumping.[28] In the first few years Webber's convicts would not only have cleared some of the dense rainforest from Tocal's alluvial river flats, but also its more accessible and less densely timbered country adjacent to the flats.[29] This less fertile upland country took far less effort to clear and was often intensively cropped until the soil was exhausted and then left fallow for years as fresh upland country was cleared to replace it. This system of farming was later described as 'bush fallow' but at the time Atkinson thought it a 'miserable system', presumably because it differed so much from British methods and depleted the soil in the process.[30] Bush fallow was used to a lesser extent

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[22] Robert Dawson, *The Present State of Australia* (London: 1830; Norfolk: Archival Facsimiles, 1987), 393. Dawson had knowledge of regional conditions as the AA Company's agent at Port Stephens.
[23] Colonial Trials and Records, Benches of Magistrates 1832-36, X708 [reel 662], SRNSW; Clerk of Peace, Depositions—Supreme Court, Paterson 1837, 9/6309, SRNSW; TOL 41/1300, 4/4152 [reel 940], SRNSW.
[24] *Maitland Mercury*, 15 August 1846.
[25] Atkinson, *State of Agriculture and Grazing*, 84.
[26] Hügel, *New Holland Journal*, 260.
[27] David Brouwer, *Crimes of Passion on the Tocal Run* (Paterson, NSW: CB Alexander Foundation, 2005), 42.
[28] Raby, *Making Rural Australia*, 53.
[29] AS Madew, "The Agriculture of the Hunter River Valley, 1830-50" (M.A. thesis, University of Sydney, 1933), 24-25.
[30] Atkinson, *State of Agriculture and Grazing*, 31; Raby, *Making Rural Australia*, 48-53.

on large estates such as Tocal, particularly as they became more developed and farmed the land more intensively.[31]

Once land had been cleared, the next task for convicts was to cultivate it in preparation for sowing crops. Hoes were almost invariably used to cultivate freshly cleared land because the tree stumps were still in the ground[32] and this made it extremely difficult to use a plough, as the exposed and shallow tree roots, particularly those of eucalypts, caught and damaged it.[33] The hoes used by convicts were typically large, the blade sometimes measuring ten or eleven inches by six or seven inches (250-275 by 150-175 mm), with a short handle.[34] By the time Tocal was granted, however, ploughs were in widespread use in New South Wales, particularly by the larger settlers who had the capital to purchase a team of bullocks, a plough and associated equipment and whose land was more completely cleared than that of smaller, ex-convict farmers.[35] Therefore Tocal's convicts would initially have used hoes for cultivation and continued to do so on freshly cleared land, but would mostly have used single furrow wooden ploughs (and possibly iron ploughs) pulled by bullocks, or 'oxen' as they were sometimes called.

Bullocks were cheaper and more readily available in New South Wales than draught horses and consequently were widely used. In the 1820s a pair of draught horses cost £90 while the work equivalent of four bullocks cost only £60.[36] Dangar in his guide to immigrants written in 1827 advised settlers with sufficient capital to purchase a team of four oxen (bullocks) and harness at an estimated cost of £50.[37] Atkinson indicated that one plough and three bullocks could handle all the cultivation required to crop 80 acres.[38] It is known that Webber used bullocks, because at the sale of his farm equipment in 1834, a neighbour purchased 10 of Tocal's working bullocks and

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[31] Raby, *Making Rural Australia*, 48.
[32] Dawson, *The Present State of Australia*, 393.
[33] WC Wentworth, *Statistical, Historical and Political Description of the Colony of New South Wales and its Dependent Settlements in Van Diemen's Land* (London: G & WB Whittaker, 1819; Adelaide: Griffin Press, 1978), 90.
[34] Nowlan family papers, 4, RB/Coll Q994.02 NOWL-1, Newcastle University Archives; Raby, *Making Rural Australia*, 53.
[35] Wentworth, *Description of the Colony*, 89-90; Fletcher, *Landed Enterprise and Penal Society*, 214; Raby, *Making Rural Australia*, 44, 78.
[36] MJ Kennedy, *Hauling the Loads: A History of Australia's Working Horses and Bullocks* (Melbourne: Melbourne University Press, 1992), 28.
[37] H Dangar, *Index and Directory to Map of the Country Bordering upon the River Hunter* (London: Joseph Cross, 1828), 116.
[38] Atkinson, *State of Agriculture and Grazing*, 41.

associated harness.[39] It is not known if this was the total number of working bullocks on the estate at that time, or a portion of them. The use of teams of bullocks on Tocal provided the opportunity for its assigned convicts to learn and exercise a range of skills associated with these animals, such as handling, harnessing, driving and the most skilled practice of all, 'breaking in' or training young bullocks to work in harness in a team. No doubt the skills of Tocal's assigned carpenters, sawyers and blacksmiths were adapted to making and repairing the timber and iron harnesses used by the bullocks, just as the skills of the estate's assigned shoemakers were probably used to make and repair the leather harness used by horses. These activities may even have earned them money in their spare time.[40]

Growing, harvesting and processing crops

Tocal's convicts were heavily involved with the growing, harvesting and processing of a range of crops including maize, wheat, barley and tobacco, as shown in tables 4.1 and 4.2. By 1828 they were cultivating 120 of the 160 acres they had cleared, and by 1834 the area under cultivation had effectively doubled to over 300 acres. The quantities of produce on hand at Tocal in 1829 and 1830 (table 4.2) provide some indication of the extent of cropping but unfortunately they do not account for quantities harvested and used or sold before the inventory was taken. All stages of cropping, from cultivation to harvest and threshing the grain, were far more labour intensive than livestock operations, and would have occupied a large proportion of Tocal's convict working time during the year.[41]

Maize, or Indian Corn as it was sometimes called, was a versatile and hardy crop that could be used for human food (usually made into a porridge called 'hominy'), or for brewing in lieu of barley, but was more commonly used as stock feed, particularly for poultry and pigs.[42] It was also used by James Webber as in-kind payment to the colonial government for the victualling of Tocal's convicts from the government store in Newcastle in 1823, at the rate of 120 bushels of maize per annum for each man until the

[39] C Boydell, "Journal and Cash Book, March 1 1830 – Sept 14 1835", vol. 2, 90a, May 1834, FM4/1532, Mitchell Library, Sydney.
[40] Hirst, *Convict Society and its Enemies*, 51.
[41] Raby, *Making Rural Australia*, 42.
[42] Raby, *Making Rural Australia*, 53.

estate was self sufficient.[43] Maize was almost invariably the first crop planted in freshly cleared land, and was sown around October or November.[44] Tocal's convicts would have planted it in holes from three to six feet apart, dropped five grains into each hole and covered them with soil using a hoe. They then had to hill and weed the plants twice during the growing season before harvesting the cobs between March and May, and pulling and burning the stalks.[45] The cobs were then carted into one of Tocal's barns or sheds where they were stored until there was spare labour available to separate the seeds from them in an operation called 'shelling'.

Wheat prices were consistently higher than those for maize, and consequently wheat became the principal cereal crop grown in the colony during the convict period. The differences in value of the two crops is evident in table 4.2 where Webber valued Tocal's wheat at ten shillings a bushel in 1829 compared to five shillings for his maize, and eight shillings compared to five in 1830. Wheat was usually sown in March or April but could be sown at late as July if the autumn had been particularly wet. Wheat was sown by broadcasting the seed by hand and it was then chipped with a hoe or harrowed-in with bullocks to cover it.[46] The wheat was harvested in November and it could be immediately followed by a crop of maize sown into the same land,[47] thus providing continuous cropping and an extremely busy work schedule for convicts. Up until 1821, wheat and maize had been the principal crops in the colony but after that time, other winter cereal crops such as barley, rye and oats were more widely grown.[48] They were usually sown in June and July[49] and harvested in spring. Table 4.2 confirms that barley was grown at Tocal during the convict period.

Harvesting of Tocal's wheat, oats and barley would have been undertaken by convicts using a sickle, a light hand-held tool with a curved blade; heavier scythes were not

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[43] Webber, Dun and Brown to CS and reply, May 1822, CS Correspondence, 4/1808, 93, 111-113, 4/1809, 71b [reel 6067], SRNSW; Morisset to CS, 8 April 1822, CS In-letters, 4/1809, 71 [reel 6067], SRNSW.
[44] Bigge, *Agriculture and Trade*, 12; Atkinson, *State of Agriculture and Grazing*, 31, 37. Maize planting sometimes commenced in September, see Paul Edmund de Strzelecki, *Physical Description of New South Wales and Van Diemen's Land* (London: Longman, Brown, Green and Longmans, 1845; Adelaide: Libraries Board of South Australia, 1967), 377.
[45] Raby, *Making Rural Australia*, 53; Atkinson, *State of Agriculture and Grazing*, 31.
[46] Atkinson, *State of Agriculture and Grazing*, 31; Raby, *Making Rural Australia*, 54-56.
[47] Bigge, *Agriculture and Trade*, 12.
[48] Fletcher, *Landed Enterprise and Penal Society*, 201.
[49] Dangar, *Index and Directory*, 104.

commonly used as they tended to shatter the ears of the grain.[50] To use the sickle 'a handful of heads [of grain] were held and the stalks cut in a single stroke. These were tucked under the free arm of the harvester until enough had been gathered for a sheaf'.[51] The sheaves of grain were then stacked in storage, either clear of the ground in staddles or in barns, until labour was available to thresh the grain.[52] Table 4.3 shows that barns and a granary had been constructed on Tocal to store the harvest. The staddle is an ancient form of above-ground grain storage found throughout Europe and there is a surviving example in the Paterson area near Tocal, but it is not known if any of Tocal's barns or granary were constructed in that form.[53] Bullock-drawn wagons probably assisted the cartage of the harvest into the stacks and barns at Tocal.

In the 1820s only a few farms in New South Wales had threshing machines and most of the grain was threshed by hand using a flail to dislodge the grain from the seed heads and then wind or fans to separate the grain from the chaff.[54] This is almost certainly the method Tocal's convicts used at this time, the threshing being scheduled in those months following harvest when labour could be spared, which sometimes meant that threshing of the November harvest was not completed until the following autumn or even winter. Threshing machines came into general use in Britain in the 1820s. Portable machines went from farm to farm threshing for a district, the farmer providing men and horses to power the machine and by the 1830s some were being introduced into New South Wales.[55] In May 1832 the *NSW Government Gazette* announced that numerous agricultural implements, including a portable 'thrashing machine', were on display at the Carters' Barracks in Sydney where they could be inspected and patterns taken, presumably to encourage the manufacture and uptake of these new technologies in the colony.[56]

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[50] Raby, *Making Rural Australia*, 56; Atkinson, *State of Agriculture and Grazing*, 41.
[51] Raby, *Making Rural Australia*, 81.
[52] Atkinson, *State of Agriculture and Grazing*, 41. Atkinson used the term 'steddle' rather than the more usual 'staddle'.
[53] Cameron Archer and Val Anderson, *Colonial Silo Mysteries* (Paterson, NSW: CB Alexander Foundation, 2003), 39.
[54] Atkinson, *State of Agriculture and Grazing*, 42.
[55] Raby, *Making Rural Australia*, 89.
[56] *NSW Government Gazette*, 16 May 1832.

By 1835 'an enterprising gentleman at Williams River' had introduced a threshing machine to the district.[57] That gentleman was James King of Irrawang,[58] and a rare first-hand account indicates that in April 1837 King's machine was operating at Tocal along with three of his men. Tocal's superintendent, Ralph Mills Clarke, wrote a report to absent Sydney owners Caleb and Felix Wilson, that read in part:

> … the three men belonging to Mr King also Cooked their provisions [in the cottage], but slept in the barn. On Saturday last the men Worked very hard, & late, at the thrashing having in that Day thrash'd, Cleaned, & brought to the Stores, 212 Bushells of Wheat Consequently it was late before the men had their Rations on that evening... The machine Commenced on last Monday and has during the Week thrash'd 833 Bushels of Wheat & Barley. The fly in Weavil has not done any Damage to signify. I have four more stacks of wheat to thrash.[59]

This report indicates Tocal did not own a threshing machine in 1837 but hired the services of one in the district along with three men to operate it. The report is also interesting in terms of the flexible working hours at Tocal during times of peak labour demand. While the threshing machine was there, Tocal's men were needed to cart the seed heads to the machine and cart the grain to storage after it was threshed. Consequently all the men worked late into Saturday evening, and this implies a system of rewards was in place to achieve this flexibility and departure from set hours.

While wheat, maize and other cereal crops were an important part of Tocal's production, tobacco was for several years its largest crop as indicated by the quantities on hand in 1829 and 1830 (table 4.2). Tocal's owner, James Webber, proved to be an innovator and pioneer of tobacco growing in New South Wales and mastered the art and science of this crop that was difficult to grow and process. According to Bigge, tobacco had been cultivated in the colony for some time but 'as the art of curing and drying it was not known, no profit had been derived from it'.[60] The colonial government had some success growing tobacco at Port Macquarie and was able to sell 14,034 kg of leaf to the public in 1826.[61] Dawson observed that tobacco crops were easily destroyed by dry seasons and the only chance of growing it successfully was on alluvial river flats,

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[57] *The New South Wales Calendar and General Post Office Directory 1835* (Sydney: Stephens & Stokes, 1835), 104.
[58] Raby, *Making Rural Australia*, 89.
[59] Clerk of Peace, Depositions—Supreme Court, Paterson 1837, 9/6309, State Records, Sydney.
[60] Bigge, *Agriculture and Trade*, 51.
[61] Robin Walker, *Under Fire: A History of Tobacco Smoking in Australia* (Melbourne: Melbourne University Press, 1984), 10.

but it was an expensive and labour-intensive crop that few settlers had grown to any extent.[62] In September 1827 James Webber said in his presidential address to the Paterson Farmers' Club that the cultivation of tobacco was in its infancy and he looked forward to receiving 'some papers' on the topic.[63] Webber evidently wasted no time in learning about the crop and implementing his findings. From the tobacco he planted in late 1827 he was able to advertise for sale in November the following year 'excellent NEGROHEAD TOBACCO, in casks of from 50 to 100 pounds weight, at the rate of one shilling and sixpence sterling per pound'.[64] His 1828 planting resulted in 25,000 pounds weight of tobacco in storage at Tocal in November 1829, and a remarkable 40,000 pounds in May 1830, valued at £3,000. Webber successfully cured and dried his tobacco at Tocal in tobacco sheds and pressing houses that had been built specifically for this purpose by 1829.[65] He sold a large quantity in the Paterson district and in March 1830 he sent ten casks of it by ship to Sydney for sale, at the same time supplying a sample to the *Sydney Gazette*. The newspaper congratulated Webber on his success and reported it was 'not aware that this refreshing weed was grown in that part of the Colony'. It commented that the appearance and smell of Webber's tobacco was 'most promising' and undertook to try it further in its 'evening whiff'.[66] Two days later the *Gazette* reported 'We have tried Mr. Webber's tobacco. It fully equals the best Colonial tobacco we have met with, and wants age alone to make it as pleasant as the Brazil… even as it is, the slight inferiority of its flavour ought not to deter the patriotic smoker from giving the preference to an article from which this country may reap such benefits.'[67] It seems that by 1830 Webber had established a wide market for his tobacco, for in that year the Australian Agricultural Company at Port Stephens received a shipment of his tobacco along with a quantity of tobacco stalks that were used as the basis of a chemical wash to treat sheep for a disease called 'scab'.[68]

Tobacco was an exacting crop that required constant attention from diligent, reliable, and observant workers in order to be successfully grown and processed. As a crop that

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[62] Dawson, *The Present State of Australia*, 409.
[63] *The Australian*, 26 September 1827.
[64] *The Australian*, 14 November 1828.
[65] As per table 4.3.
[66] *Sydney Gazette*, 4 March 1830.
[67] *Sydney Gazette*, 6 March 1830.
[68] Edward Parry, *Early Days of Port Stephens: Extracts from the Diary of Sir Edward Parry, Appointed Commissioner for the Australian Agricultural Company in 1830* (Newcastle, Cambridge Press, n.d.), 66.

was not a normal part of British and Irish agriculture, it also provided the opportunity for some Tocal convicts to acquire completely new skills and knowledge. Atkinson indicated that one acre of tobacco tied up one man completely until the crop was ready for harvest.[69] It is not known exactly how Webber organised his convict workforce with respect to tobacco. Three of his convicts were sufficiently involved with the crop for their occupation to be described as 'tobacconist' in the 1828 census, standing out from most of the estate's convicts who were simply described as labourers, with a few shepherds, a shoemaker and a carpenter. Webber's three tobacconists are a fascinating case study in themselves, showing a diversity of backgrounds, adaptability and learning while under sentence, and different pathways and pitfalls in their journey towards rebuilding their lives in New South Wales. All three had been convicted of house breaking or burglary; they were a 15 year-old Irish errand boy named Daniel Callaghan, a twenty year-old Scottish brush maker named James Logan and a 25 year-old English rope maker named Richard Hughes.[70] Only the teenager, Callaghan, gave any trouble and Webber evidently returned him to Government, as he was in a road party by January 1831.[71] The other two remained at Tocal until gaining their tickets-of-leave, without any recorded offences while on the estate. Hughes went on to become a Police Constable at Patersons Plains in 1833, almost certainly on the recommendation of his former employer James Webber who was a magistrate on the Patersons Plains Bench, perhaps an indication of the underlying importance of this skill to his former employer.[72]

No doubt other Tocal convicts assisted with the tobacco at times of peak labour demand, particularly during harvesting, carting, drying and pressing. It would have been Tocal's specialist tobacconists, however, that raised the tobacco seedlings in a bush nursery, growing them from tiny seeds, shading and watering them until they were robust enough to plant out in rows along the alluvial river flats, and shading them again with bark until the transplanted seedlings were established. They then had to regularly patrol the young crop and check each plant for caterpillars and grubs, manually

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[69] Atkinson, *State of Agriculture and Grazing*, 49.
[70] PSC, Bound Indents, 4/4013, 28 [fiche 668]; 4/4013, 107 [fiche 669]; 4/4008, 135 [fiche 648], SRNSW.
[71] *Sydney Gazette*, 3 February 1831.
[72] TOL, 32/1138, 4/4084 [reel 819] & 34/1293, 4/4420 [reel 2688], SRNSW; CS to Anley, 22 February 1833, CS Letters Sent, 4/3834, 93 [reel 2809], SRNSW.

removing and killing them before the grubs could seriously damage the young plants. As the plants grew, Tocal's tobacconists needed to carefully weed around them with a hoe, remove the lower, damaged leaves from each plant, and finally lop the top off the plant leaving only as many leaves as each plant could properly support. Tobacco growing was not a job for resentful, defiant or unreliable men, and the good behaviour record of two of Tocal's three specialist tobacconists attests their suitability to the task. Harvest was a relatively simple, if laborious affair, involving cutting the leaves off the plant while leaving the plant in the ground with a few inches of stalk protruding, from which a second and sometimes a third crop could be obtained before the winter frosts set in. The tobacco thus harvested was carted into sheds to dry, and to be sweated and processed before being pressed, made into 'hands' and packed into casks ready for transport and sale. The sweating operation was as much art as science, and the quality of the tobacco depended very much on getting it right. If sweated for too long, the tobacco became weak and mouldy, if sweated insufficiently it became acrid and pungent.[73] Judging by the accolade the *Sydney Gazette* gave Webber's tobacco, Tocal's convict tobacconists and their supervisors had mastered the art, a tribute to their innovation, attitude and skills.

Making up 'hands' of tobacco once processing was complete may have provided Tocal's convicts the opportunity to earn money in their own time. On a similar estate at nearby Seaham in July 1839 the manager noted in his diary that the assigned boys had commenced to make up tobacco on their own time, at 3d per lb. in 1oz figs.[74]

Viticulture and horticulture

Some of Tocal's convicts worked in the estate's vineyards and possibly assisted in the process of winemaking itself. Tocal's owner, James Webber, was one of the pioneers of the wine industry in the Hunter Valley, and indeed in the colony, in the early 1830s. Although official returns for viticulture in New South Wales did not appear until 1843, the name of 'James P Webber at Tocal' appears on a list of ten settlers in the Hunter Valley who were growing grape vines in 1832. At that time Webber at Tocal and William Ogilvie at Merton were the largest growers with three acres of vines each,

[73] *The Australian*, 18 November 1826; Atkinson, *State of Agriculture and Grazing*, 47-49. Atkinson's quoted paper on tobacco was originally published in a supplement to the *Sydney Gazette*, 20 February 1823.
[74] Gilchrist, "Diary for Burrowel", 44.

followed by George Wyndham at Dalwood and George Townshend at Trevallyn with two acres, and then a few others with smaller areas.[75] In May 1833 the *New South Wales Magazine* named James Webber as one of the four pioneers of viticulture in the colony, the others being Sir John Jamison at Nepean, MacArthur at Camden and Shepherd at Sydney.[76] (It seems this magazine was unaware of the activities of Gregory Blaxland who was making wine in the colony by 1816 and in 1823 won a gold medal for his wine in London).[77] In 1834 *The Australian* described James Webber's viticultural efforts at follows:

> Mr Webbers Grapery at the Hunter, the finest in that part of the Colony has produced an unusual crop of fine grapes this season of the Oporto description; this gentleman expects next season to produce no insignificant quantity of wine from his vineyard.[78]

Only a few days after the sale of Tocal in 1834, George Wyndham at Dalwood visited Webber and then sent two men to collect Oporto and Govais cuttings from the Tocal vineyard. Consequently Tocal's genetic stock may have played some role in the early development of Dalwood which, now trading as Wyndham Estate, is one of Australia's leading wine producers.[79]

Tocal's viticultural activities demanded a mixture of hard work and skill from its convicts. It took one convict servant 12 months to trench one acre of land in preparation for the planting of vines,[80] so Tocal's three acres represented three man-years of unskilled, manual labour involving digging and trenching before planting could begin. The rows and trenches of Webber's vineyard that were dug by his convicts are still visible at Tocal today as part of the estate's archaeological evidence in which the skills and outputs of the convict workforce are encoded. Once the ground preparation had been completed, more skilled work was required in planting the vines and attending to their ongoing care. Busby calculated that it took six month's labour by one convict to maintain an acre of vineyard, the principal tasks comprising pruning the vines and

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[75] WP Driscoll, *The Beginnings of the Wine Industry in the Hunter Valley* (Newcastle: Newcastle Public Library, 1969), 11-12. According to Driscoll, the list of growers appears in James Busby's handwriting on the flyleaves of a copy of James Busby, *A Manual of Plain Directions for Planting and Cultivating Vineyards and for Making Wine in New South Wales* (Sydney: R Mansfield, 1830).
[76] *New South Wales Magazine* 1 no. 2, September 1833, 96.
[77] Fletcher, *Landed Enterprise and Penal Society*, 203.
[78] *The Australian*, 21 March 1834.
[79] A Wyndham and F McInherny (eds), *The Diary of George Wyndham of Dalwood 1830-1840: A Pioneer's Record*, (Branxton, NSW: Dalwood Restoration Association, 1987), 82.
[80] Busby, *Directions for Vineyards and Making Wine*, 17.

dressing the soil (presumably weeding) in the winter months of June and July. Based on his calculations, several convicts would have been more or less fully engaged in Webber's vineyard during winter. A grower could expect to make a little wine in the fourth year, with a 'tolerable vintage' the following year and full vintages after that.[81] Vintage occurred in February and would have occupied many convicts until harvesting of the grapes was completed. The process of wine making no doubt gave a few trusted and diligent convicts at Tocal the opportunity to learn new skills that would enhance their prospects after their period of servitude had ended.

Tocal convicts would have tended the estate's orchard and vegetable gardens. Such gardens were found on most farms in New South Wales at the time, and by 1821 stone and citrus fruits accounted for the largest acreages sown in the colony, second only to cereals such as wheat, maize and barley. Visitors invariably remarked on the abundance of peaches, apples, apricots, oranges, lemons and grapefruits growing on farms. [82] As early as September 1822 Tocal had half an acre of garden and orchard, and this area undoubtedly increased as the estate grew.[83] In 1834 Tocal had 'a fine orchard', suggesting a substantial area and a range of fruit trees.[84] Peaches were particularly popular because they could be used to brew a potent alcoholic cider, while surplus fruit made good feed for pigs.[85] Some convicts on Hunter Valley estates tended their own small gardens in their own time as a means of supplementing their diets or earning money, although there is no direct evidence for this at Tocal.[86] The issue of fresh fruit and vegetables from the estate's orchard and gardens as extra rations for Tocal's convicts, or the granting of permission to establish their own garden plots, may have formed part of a complex system of rewards for good behaviour and diligent work.

Being allocated to the task of tending Tocal's garden and orchard was a reward in itself, given it was lighter and more pleasant work than many of the other jobs on the estate. One convict who no doubt appreciated being allocated to garden duties was Robert

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[81] Busby, *Directions for Vineyards and Making Wine*, 19.
[82] Fletcher, *Landed Enterprise and Penal Society*, 201-203; For a similar description of an orchard in the Paterson district see GF Davidson, *Trade and Travel in the Far East; or Recollections of Twenty-One Years passed in Java, Singapore, Australia, and China* (London: Madden and Malcolm, 1846), 130-137.
[83] *Muster of New South Wales 1822*, 585.
[84] *Sydney Herald*, 23 October 1834.
[85] Wentworth, *Description of the Colony*, 434-435.
[86] Some masters encouraged the practice and provided plants and seeds to their convicts. Minutes of evidence, Commission of Inquiry at Patricks Plains, *Sydney Monitor*, 21, 28, 31 January and 3 February 1834, & internet online http://www.une.edu.au/arts/ACF/cf1833/index.html and assoc pages [6/6/2006].

West, an ex-soldier and gardener aged in his 50s who was assigned to Tocal on arrival in the colony in 1832 and employed as a gardener on the estate until ill-health and infirmity forced his transfer to Newcastle Hospital and then Port Macquarie in 1836 or 1837.[87]

Shepherds, stockmen and milkmen

James Webber's original intention on migrating to New South Wales was to produce fine wool,[88] and he certainly achieved that aim, running large numbers of Merino sheep along with beef and dairy cattle and pigs. Tocal's livestock production thus provided a range of employment for the estate's nearly all-convict workforce as shepherds, stockmen and milkmen. By 1828 Tocal had about 1,700 sheep tended by nine convict shepherds[89] and sheep numbers peaked at just under 3,000 when Webber sold Tocal in 1834. The bulk of Webber's flock consisted of ewes of various ages,[90] and consequently his convict shepherds had the added responsibility of supervising and sometimes assisting ewes during the autumn lambing, and caring for both ewes and lambs.[91] The biggest challenge for a convict shepherd was to keep his flock together in unfenced pastures and protect them from attack by dingoes (or 'native dogs' as they were more commonly known). Each shepherd usually tended a flock of around 300 ewes or 400 wethers, the ratio depending on the type of country, with larger flocks possible in more open country.[92] On this basis, Webber's ratio of one shepherd per 190 sheep in 1828 is a little low, although one source indicates two shepherds attended each flock during the day, in which case Webber's ratio would be unremarkable.[93]

A shepherd lived a lonely life, isolated from the relative comforts and diversions of the homestead area, living in a rough bush hut for long periods with his dogs, one or two other shepherds and a hut-keeper. On one sheep station, the hut consisted of 'only a few sheets of bark set up round an area of about 6 feet square, with a roof of the same',

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[87] Robert West is documented in detail in chapter two of this thesis.
[88] Webber to Brisbane, January 1822, CS In-letters, 4/1832, 404 [fiche 3055], SRNSW.
[89] *Census of New South Wales 1828*.
[90] As indicated by the advertisement for the clearing sale of all Webber's sheep: *Sydney Gazette*, 27 March 1834.
[91] Cunningham, *Two Years in New South Wales*, 134; Bairstow, *A Million Pounds, A Million Acres*, 65; Boydell, "Journal and Cash Book", 15 April 1833, 61.
[92] Bigge, *Agriculture and Trade*, 17; von Hügel, *NewHolland Journal*, 265; Cunningham, *Two Years in New South Wales*, 133; Atkinson, *State of Agriculture and Grazing*, 74.
[93] Jesse Gregson, *The Australian Agricultural Company 1824-1875* (Sydney: Angus and Robertson, 1907), 72.

although some huts were larger, another described as '10 feet by 14, made with split slabs, and having a roof of bark… at one end was the fire-place [and]… at the other the shepherds used to sleep'.[94] Because of their remoteness shepherds stood more risk of being attacked by Aborigines. In 1828 *The Australian* reported that a man from 'Webber's Station' had been killed by Aborigines, and one local history has assumed the death occurred at Tocal.[95] A closer investigation, however, reveals that the man, Patrick Drum, was almost certainly assigned to James Webber's brother further up-river.[96] The incident nevertheless illustrates the dangers faced by assigned convicts working in the bush at any distance from the homestead.

Shepherds took their flock out to graze before sunrise and brought them back after sunset into temporary yards or 'folds' made of rough timber panels called 'hurdles'. These hurdles were essential equipment for sheep farms, and new settlers were advised to budget £40 for the purchase of hurdles in the first year.[97] Often two or three flocks were yarded adjacently at night so that several shepherds and their night watch-keepers shared the one hut.[98] The watchman spent the night with the flock while the shepherds slept in the hut. According to one first-hand account the watchman had 'a small weather-proof watch-box to sleep in, and is assisted by a watch dog; he keeps up a good fire, which generally deters all native dogs from approaching the fold… [The hurdles] are shifted to fresh ground daily'.[99] The daily moving of hurdles was an attempt to prevent the serious and widespread sheep disease '*psoroptic* mange', commonly known as 'scab'.[100] Webber constantly sought to obtain extra land by grant, lease or purchase to provide sufficient clean country for his flocks to avoid scab.[101] Consequently Tocal's

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[94] An Emigrant Mechanic (Alexander Harris), *Settlers and Convicts or Recollections of Sixteen Years' Labour in the Australian Backwoods* (London: 1847; Melbourne: Melbourne University Press, 1953), 126, 182. For recent research on the identity of the 'Emigrant Mechanic', see Lorraine Neate, *Alexander Harris: A Mystery No More* (Sydney: by the author, 2000).
[95] *The Australian*, 14 March 1828.
[96] Boris Sokoloff, *Aborigines in the Paterson Gresford Districts* (Paterson: Paterson Historical Society, 2006), 9, 40; Patersons Plains Magistrates to CS, 8 March 1828, CS Registers of Letters Received, 28/2197, 5/2343 [reel 2563], SRNSW; PSC, Bound Indents, 4/4011 [fiche 662], 149, SRNSW.
[97] Wentworth, *Description of the Colony*, 412.
[98] Gregson, *The Australian Agricultural Company*, 72; Cunningham, *Two Years in New South Wales*, 133; Bigge, *Agriculture and Trade*, 17.
[99] Cunningham, *Two Years in New South Wales*, 134.
[100] Wood, *Dawn in the Valley*, 213; John Fisher, "Technical and Institutional Innovation in Nineteenth Century Australian Pastoralism: The Eradication of *Psoroptic Mange* in Australia", *Journal of the Royal Australian Historical Society* 84, no. 1 (1998): 38.
[101] CS Letters Received Relating to Land Matters 1826-1860, 2/8001 [reel 1195], SRNSW; Walsh, *Tocal's First European Settler*, 42-47.

shepherds could find themselves not only working on distant parts of Tocal but also on other leased sheep-walks in the district.

The sheep were counted into the yard each night and out again each morning, and both shepherds and watch-keepers could be held accountable by their master for loss of sheep, and inattentive shepherds could be sent before the local bench, resulting in a flogging. Elias Suffolk, who had served part of his time at Tocal and was then assigned to a Mr Lethbridge, was sentenced to 50 lashes by the Patricks Plains' Bench for losing his master's sheep.[102] It is not known if shepherds received the same treatment while at Tocal but there is no evidence of it from the five years of surviving local bench books although some were flogged for neglect of work.[103] It is clear, however, that shepherding was one of the occupations on the Tocal estate that by its nature had to be performed by convicts who had proved themselves to be diligent and trustworthy, and shepherds were selected from the more reliable of the unskilled men.[104] To assign unproven or negligent men to the task was to risk huge sheep mortalities from lost animals and depredations by dingoes.

Sheep shearing was an especially busy time, because all the sheep on the estate had to be washed beforehand to remove grease and dirt from their fleeces. Various methods of sheep washing were used in New South Wales, the most common consisting of swimming the sheep across a river or stream several times to loosen up the grease and dirt, and then manually taking each sheep into the stream, where several convicts would duck them under the water, rub their fleeces with their hands and pass the sheep onto the next man downstream for further washing, who in turn passed the animal to another man until the sheep was rinsed and allowed to drain and dry in a temporary yard or fold on the bank. There were variations to the method, involving the construction of temporary wooden pens in the stream to hold and control the animals during the washing process.[105] In the late 1820s the MacArthurs at Camden and the Australian Agricultural Company at Port Stephens used a warm-water method of sheep washing,

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[102] Punishment Book ("Black Book") Patrick Plains 1833-1839, 7/3714, 91 [reel 689], SRNSW.
[103] Tocal's convicts appeared before the Newcastle Bench from 1822 to 1825 until the Paterson Bench began operating. Newcastle Bench records have survived for 1822 to 1825 along with those of the Paterson Bench in 1835/36: CS Monthly Returns of Punishments, Newcastle 1810-1825, 4/1718 [reel 6023]; Return of Convicts Tried at Paterson from July 1835 to November 1836, X708 [reel 662], SRNSW.
[104] Wood, *Dawn in the Valley*, 214.
[105] Cunningham, *Two Years in New South Wales*, 135-136; Raby, *Making Rural Australia*, 105-106.

that required pumps, a furnace and sheep pens but was more effective than cold water washing and generated fewer complaints by the washers regarding rheumatism.[106] The cold-water method prevailed, however, during the convict period on estates such as Tocal where running water was readily available. The remains of a sheep-wash can be seen at Tocal today on the bank of Webbers Creek (then Pumby Brook), marking the site of sheep washing during the convict period and constituting an important element of the estate's archaeological evidence of its convict workforce and early work practices.

Men standing in a creek washing sheep[107]

Sheep washing was cold, unpleasant work for convicts that involved standing up to their waist in water in Pumby Brook all day for several days, probably towards the end of Spring[108] when the water temperature was still uncomfortably low. In fact, on a list of the most dreaded jobs on the estate, sheep washing was probably at or near the top. Nor did it just involve the shepherds, who possibly managed to keep dry during the process. Usually about a dozen men formed the washing team and, although estimates vary, a flock a day (around 300 sheep) seems to have been the usual rate of throughput. A typical washing team would consist of the overseer, the shepherd who brought his flock to the steam for the day and herded them into holding pens on the bank, two men who

[106] Raby, *Making Rural Australia*, 105; *New South Wales Magazine*, October 1833, 171; Bairstow, *A Million Pounds, A Million Acres*, 70, 243-244.
[107] Watercolour by TS Gill: Bob Raftopoulos, ed., *S.T. Gill's Rural Australia 1818-1880* (Oz Publishing, 1987; Sydney: Mallard Press, 1989), 25.
[108] Cunningham, *Two Years in New South Wales*, 134.

caught the sheep and supplied them to the washers in the stream, and about eight washers.[109] A return of labour for 1827-28 for the Australian Agricultural Company shows twelve convicts washing sheep compared to eleven men shearing,[110] and similarly there were 12 to 14 convicts washing sheep at Castle Forbes in the Upper Hunter in 1833.[111] A case for a hierarchy of convicts within the Tocal estate, based on attitude, reliability, trustworthiness and diligence, has already been made.[112] As a consequence of this hierarchy, it would have been the estate's unskilled labourers and the unproven, unreliable and defiant men not prepared to adapt and learn new skills who had to stand in Pumby Brook day after day wrestling with sodden sheep until all three thousand of them were clean enough to be shorn. On some Hunter Valley estates the 'washers' were supplied with rum 'in good measure' as reward and compensation for the unenviable job.[113]

Twelve of Tocal's convicts were able to shear according to the shipping indents, and very likely some of the others with farming backgrounds had also mastered the skill although it was not specified on their record. It is therefore safe to assume convicts performed some and possibly most of this skilled task on the Tocal estate, supplemented by emancipist or free-immigrant shearers if available in the district. Shearing usually took place under a rough wooden shelter built of poles and roofed with bark. Here the men removed the fleeces from the sheep using hand-shears, and then a team of six strong men were needed to compact the wool into 250 lb (113 kg) bales using a wooden press and a lever.[114] Once baled the wool was ready for shipping to market in Sydney or beyond. The detailed 1834 survey of Tocal, part of which is reconstructed in figure 4.2 below, shows a prominent set of sheep yards and large sheep sheds in the homestead precinct, and it was probably in these sheds that the shearing and pressing took place.

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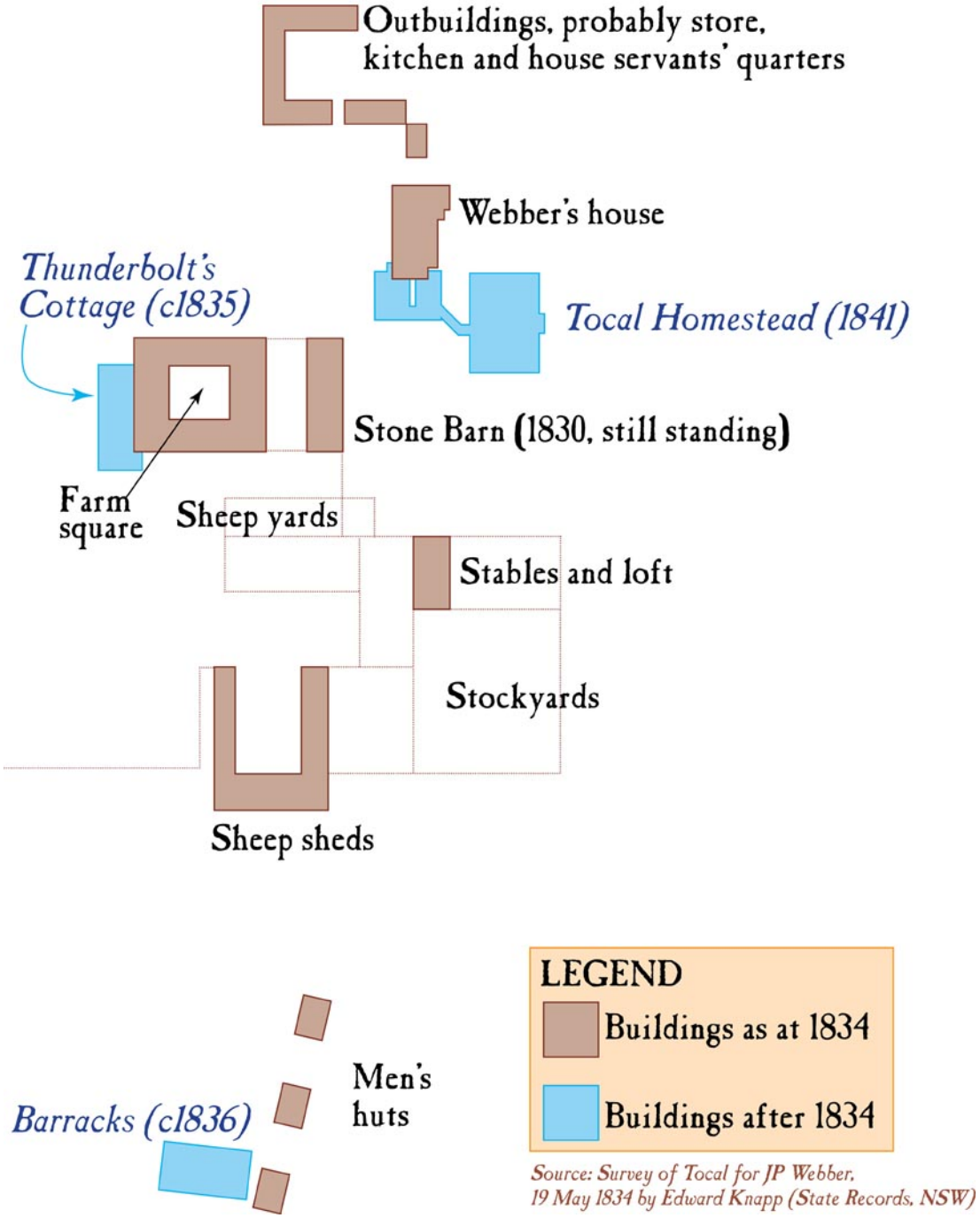
[109] *New South Wales Magazine*, October 1833, 172.
[110] Bairstow, *A Million Pounds, A Million Acres*, 70.
[111] *Sydney Gazette*, 12 December 1833.
[112] Details are provided in chapter three.
[113] Wood, *Dawn in the Valley*, 213; similarly 'grog', a mixture of rum and water, was issued to sheep washers by the AA Company: Bairstow, *A Million Pounds, A Million Acres*, 244.
[114] Wood, *Dawn in the Valley*, 213.

Figure 4.2 Tocal homestead precinct in the 1830s and 1840s



In comparison to sheep, Tocal's cattle were much easier to look after. Usually they did not need to be yarded at night, were relatively disease-free, did not suffer depredation from dingoes except during calving, and in general required far less attention and husbandry from the estate's convict workforce.[115] It is no surprise, therefore, that only one convict was listed as a 'stockman' at Tocal in the 1828 census compared to nine shepherds. Webber began with three head of cattle at Tocal in 1822 and in January 1823 he purchased twenty horned heifers from the government herd at the Cowpastures, these heifers no doubt forming the foundation of his beef breeding herd that grew to approximately 350 head by 1829 and 600 head by 1834, described at that time as 'highly improved horned cattle, well known to graziers upon the Hunter'.[116] Beef was one of the main components of convict food rations (detailed later in the chapter), and one of the recurring jobs for convicts on the Tocal estate would have been to slaughter a cow or bullock for consumption by the men. Several of Tocal's convicts were skilled in this task—four of them were butchers by trade before transportation and another was a 'butcher's boy'.[117] Other Tocal convicts who were willing to acquire new skills probably also became competent in slaughtering farm animals and cutting up the carcases into edible portions for distribution. A nineteenth-century slaughter house can still be seen at Tocal today, along with a butcher's shop located on the lower level of Webber's 1830 convict-built stone barn, tangible present-day evidence of convict workplaces on the estate.

Not all Tocal's cattle were used for beef production. In common with other estates at the time, Tocal had a herd of dairy cattle and some convicts would have been employed to milk the cows twice daily, separate milk into cream, and make butter and cheese. A dairy was specifically mentioned in Webber's list of buildings at Tocal in 1829 but some sort of dairy and milking yard would very likely have been constructed soon after Webber's occupation of the land in 1822.[118] The scale of dairy production in the Hunter Valley and probably at Tocal during the convict era should not be underestimated. Dairy

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[115] Raby, *Making Rural Australia*, 42; Dawson, *The Present State of Australia*, 427; Wentworth, *Description of the Colony*, 436.
[116] CS Returns of Horned Cattle Issued from Government Herds, 4/7028C, 244 [reel 6031], SRNSW; *Sydney Gazette*, 25 March 1834; Cattle numbers as per table 4.1.
[117] As per the shipping indents. Tocal's convict butchers were James Brownlea, James Forrester, Robert Gray and John Lynn. Its butcher's boy was Frederick Scammell.
[118] Buildings as per table 4.3. For settlers' early attention to a dairy and milking yard: Atkinson, *State of Agriculture and Grazing*, 98.

products, and milk in particular, formed a significant addition to the diet of convicts on estates in the region and comprised a component of their rations not usually acknowledged in studies of convict rations.[119]

In 1827 Webber declared in a public speech that the district had already earned a reputation for its dairy produce that 'reflects the highest credit upon its settlers' and recommended that the Paterson Farmers' Club offer a sum on money as a prize for the best cheese produced in the district.[120] A visitor to Patersons Plains in that same year, who stayed at an estate neighbouring Tocal, said 'most of the settlers make a cheese a day, weighing about fifteen pounds… at this rate cheese must come down in price. One settler makes one hundred and fifty pounds of butter per week for the Sydney market'.[121] Cheese was more likely to be produced than butter between November and February because of the impracticality of shipping butter any distance in hot weather.[122] Certainly Tocal's convicts were involved with dairy production for use on the estate and probably also produced and packaged butter and cheese for the Sydney market. It seems the art and science of cheese making can be added to the list of skills that some Tocal convicts had the opportunity to learn if willing to do so.

Pig production went hand-in-hand with dairy production on rural estates during the convict era (and later), as pigs were fed the skim milk remaining after cream was separated, and were also fed whey, a by-product of cheese-making. Tocal ran pigs from 1822 to 1834 although numbers were not often recorded.[123] They were probably kept in a wooden yard with shelter provided by a wooden sty, and Tocal's convicts would have carted the skim milk and whey to them from the dairy, tended to their husbandry and slaughtered them for pork and bacon.

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[119] Minutes of evidence, Commission of Inquiry at Patricks Plains, *Sydney Monitor*, 21, 28, 31 January and 3 February 1834 & internet online http://www.une.edu.au/arts/ACF/cf1833/index.html and assoc pages [6/6/2006]. For example, milk is not included in Nicholas' examination of diet and calorie intake by convicts: Stephen Nicholas, "The Care and Feeding of Convicts", in *Convict Workers*, ed. Nicholas, 183-187.
[120] *The Australian*, 26 September 1827.
[121] Ian Grantham, ed., *XYZ Goes North: "An Account of a Trip to Hunter's River" and "A Visit to Wollombi and the Cumnaroy"* (Lower Macdonald, NSW: Convict Trail Project, 1999), 27.
[122] Lang, *Account of New South Wales*, vol. 2, 95; Wood, *Dawn in the Valley*, 186-187.
[123] As per table 4.1.

Building, fencing, draining and repairing

One of the first tasks James Webber and his four convicts faced in March 1822 when they took up residence at Tocal as its first European settlers was to build accommodation appropriate to the master and his assigned servants. Many convict-built structures, including barns, a dairy, store, granary, stables, sheep sheds, tobacco sheds and pressing houses, became part of Tocal over the next five to ten years as the estate developed and its range of residential and farm facilities expanded. An accurate picture of buildings at Tocal in the convict era is presented in figure 4.2 and table 4.3 earlier in the chapter. The estate's convicts possibly were assisted in construction by emancipist or free-immigrant tradesmen, but such people were in short supply at the time, and it was left largely to the assigned servants to undertake the tasks. Many of the sheds and buildings were crude timber structures such as huts with earthen floors, timber slab walls and bark or thatch roofs (some of these roofs were later replaced by wooden shingles). Although most of the various farm sheds such as a dairy, piggery and granary, were constructed in the aforementioned fashion, Tocal also had an impressive two-storey stone barn with a shingle roof by 1830, and by about 1836 a two-storey brick 'convict barracks' and a split-level brick and shingle overseer's cottage, these three substantial buildings still standing today as a testament to the skills of the estate's assigned servants.

On Tocal there is a quarry dating from the convict era, and it is probably from here that the stone blocks for Webber's 1830 barn were hewn, shaped and carted by bullock wagon to the building site.[124] Because of their weight and the associated logistics of transport, bricks for the circa 1836 barracks and supervisor's cottage were probably made and fired on the site with the skill of the resident convict brickmaker, Edward Chauntry, who was assigned to Tocal from 1836 to 1843.[125] His availability probably influenced the choice of brick rather than stone construction, just as the assignment of stonemason and plasterer Dennis Long in 1829 probably influenced Webber to build his 1830 barn out of stone.[126] Apart from Chauntry and Long, a few other Tocal convicts

[124] Hathway, *Guide to Tocal*, ii, 16, 28.
[125] PSC, Bound Indents, 4/4019, 320 [fiche 694], SRNSW; *Convicts in New South Wales 1837*, 107. William Dun on neighbouring Duninald brought bricks up river in 1822 but this was unusual and probably was necessitated by the lack of a local brickmaker at the time: Jane Reynolds, *An Eye for Excellence: The Reynolds of Tocal* (Paterson: CB Alexander Foundation, 2006), 82.
[126] PSC, Bound Indents, 4/4014, 6 [fiche 671], SRNSW.

had pre-transportation construction skills, the estate being assigned at various times a cabinet turner and wheelwright, another stonemason, a mason's labourer and three plasterer's labourers who presumably could contribute more than mere muscle power to these tasks.[127]

Tocal's 1830 convict-built stone barn[128]

Tocal's ample archaeological evidence from the convict era, such as its stone barn, brick barracks, supervisor's cottage and stone bridge abutment, are precious indications of the skills and outputs of the estate's convicts. In the absence of comprehensive written records, these structures serve to encode and preserve a convict 'footprint' in which can be heard an echo of their voices, a faint murmur from the past of satisfaction and achievement by skilled artisans who took pride in their work despite their bonded status and sometimes turbulent servitude.[129] Dennis Long, for example, was back in government service by 1832 and in May of that year was sentenced the six months on mountain roads for 'false pretences' while at Hyde Park Barracks.[130]

Apart from buildings, a comprehensive range of wooden and iron objects were routinely fabricated by convict and emancipist tradesmen on estates like Tocal, as well demonstrated in the case study on the nearby Burrowel estate presented later in the chapter. Such items included gate and door hinges, various hand tools and farm implements, furniture, shoes and boots, and harness and equipment for working horses

[127] PSC, Bound Indents (various), SRNSW.
[128] Reynolds Collection, CB Alexander Foundation Archives, Tocal.
[129] Grace Karskens' investigation of the archaeology of the convict-built Great North Road alerted me to the importance of such evidence: Karskens, "Defiance, Deference and Diligence", 17-28.
[130] Police Reports, Hyde Park Barracks, X825, 57 [reel 661], SRNSW.

and bullocks. Tocal's assigned convicts included four shoemakers, two blacksmiths and a coachsmith, who would have been kept busy making and repairing such items that were in everyday use on the estate.

Fencing was another important activity on Tocal, and by 1830 eight miles of fences had been erected on the estate.[131] Fences were relatively uncommon on rural estates in New South Wales up to the early 1820s and trespass of animals onto neighbours' crops and consequent claims for damage were everyday legal issues for the colony.[132] Bigge said in his report at about this time that 'the more opulent settlers have begun to fence their estates'.[133] The first priority on most rural estates was to *fence out*—to fence paddocks where crops were grown to protect them from damage by livestock. On this basis Tocal's first fences were probably concentrated around the alluvial river flats and cropping areas. The next priority was to *fence in*—to keep animals within the boundaries of the estate to avoid trespass onto neighbouring property and the risk of stock being impounded and damages claimed. 'Fencing in' the boundaries of large estates such as Tocal was a gradual process that was incomplete in 1829 when James Phillips, owner of the neighbouring Bona Vista estate, brought his convict stockkeeper before the Patersons Plains Bench for neglecting his stock on several occasions, 'by which my Cattle were twice impounded for trespassing on Mr Webber's land and also three times returned for the same offence without being impounded'.[134] The boundary fence between Tocal and Bona Vista was still not fully secured several years later, as an emancipated Tocal convict, John Kipling, was employed on its construction in 1835.[135] The convict era preceded the availability of fencing wire, and all fences were constructed of timber posts and rails at that time. The construction of timber fences was hard, skilled work. A fencer had to fell the trees, remove the bark, cut the trunks into suitable lengths called billets, split the posts and rails from the billets using a hammer

[131] CS Letters Received Relating to Land Matters 1826-1860, 2/8001, [reel 1195], SRNSW.
[132] Byrne, *Criminal Law and Colonial Subject*, 222-224; John Pickard, "Trespass, Common Law, Government Regulations, and Fences in Colonial New South Wales 1788-1828", *Journal of the Royal Australian Historical Society* 84 no. 2 (1998): 132-133; Erin Ihde, *Edward Smith Hall and the Sydney Monitor 1826-1840* (Melbourne: Australian Scholarly, 2004), 106-111.
[133] Bigge, *Agriculture and Trade*, 14.
[134] Phillips to CS, 11 August 1829, 29/6657 in 4/2071, SRNSW.
[135] Maitland Court of Quarter Sessions, Papers 1835, 4/8414, 131 [reel 2408], SRNSW.

and wedges, and roughly shape them with an adze and broadaxe. Finally he dug the post-holes and erected the fence.[136]

Atkinson suggested that fencing was usually performed by free men who had acquired the skills since their arrival in the country,[137] and Kipling's employment as a fencer at Tocal supports this observation to some extent. Lieutenant Close at Morpeth, not far from Tocal, said in 1823 that the countryside was 'over run with free men, sawyers and fencers who could never agree with their employers in their contracts', but Close was complaining about how busy he was as a magistrate, and probably overstated the situation.[138] Free men were generally in short supply during the convict era and Webber at Tocal seems to have employed few of them (see table 4.1). It is therefore more likely that much of Tocal's fencing was constructed at least with the assistance of the estate's convicts. One of these convicts was Alfred Padmore, an English errand boy who was assigned to James Webber at Tocal in 1832 where he gained skills as a sawyer.[139] Upon gaining his ticket-of-leave in 1838 Padmore was hired as a sawyer by the Burrowel estate at nearby Williams River.[140]

Tocal has large areas of wetlands, and evidently James Webber expended some effort in drainage and earth works on these areas in order to improve their productivity for agriculture. Webber's early drainage efforts, still evident at Tocal today, were commented upon most favourably by Dawson in 1830. Dawson said that few settlers were aware of the benefits of draining and embanking in low areas, and Webber's example on the Paterson river ought to convince everyone 'how important it is to set about reclaiming of lands which are covered to a great depth with vegetable deposits, and which lie in situations where neither blights nor droughts are likely to affect their produce'.[141] One can therefore imagine Tocal's convicts toiling in the estate's wetlands, their efforts with shovels probably augmented by bullock power to move the large quantities of soil required to cut drains and form banks. As will be seen in the case

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[136] Cameron Archer, Eric Martin and Rod Morris, *Conservation of Timber Buildings and Fences at Tocal* (Paterson, NSW: CB Alexander Foundation, 2002), 17-21.
[137] Atkinson, *State of Agriculture and Grazing*, 92.
[138] Close to Goulburn, 11 December 1823, as quoted in Perry, *Australia's First Frontier*, 71.
[139] PSC, Bound Indents, 4/4008[fiche 648], 165, SRNSW; *NSW Government Gazette*, 26 December 1832, 485; *Sydney Gazette*, 27 December 1832.
[140] Gilchrist, "Diary for Burrowel", 45.
[141] Dawson, *The Present State of Australia*, 401-402.

study later in the chapter, drainage was also a significant activity on the nearby Burrowel estate.

Other convict duties and roles on the estate

Wooden barrels and casks were required to store the wine and tobacco produced at Tocal, and evidently at least some of these were convict-made on the estate. Michael Fee, an Irish linen weaver originally convicted of rebellion and 'unlawful oaths', was assigned to Tocal on arrival in 1826, and by 1830 he was described as the estate's cooper, his newly acquired skills no doubt being put to good use making wooden water casks, tobacco casks, buckets and wine barrels.[142] Fee would have been kept busy at his new trade, as judging by the quantities of tobacco produced at Tocal and packed into casks each containing between 50 to 100 pounds weight, over 400 wooden casks could have been required for the tobacco alone in one year.

A few assigned convicts would have catered for the needs of Tocal's resident master, James Webber, attending to the master's cooking, cleaning his house and fetching his firewood and water. As a wealthy gentleman accustomed to an upper-class lifestyle,[143] Webber probably allocated a few convicts to domestic duties at his house at Tocal, no doubt taking care to choose those who could be trusted to work unsupervised amongst his belongings. Some Tocal convicts were obvious choices for the role on the basis of their pre-transportation calling of servant boy, indoor servant, baker and barber,[144] although it is hard to imagine Webber trusting the barber, Thomas Smith, to shave him, if Smith's record of colonial behaviour is any indication of his attitude towards his masters.[145]

A description of convict work at Tocal would not be complete without recording the unique role of farm constable. In the 1830s, in order to maintain law and order, Tocal and some of the other larger estates employed farm constables as part of an unofficial system of policing and control along with the use of private lockups on rural estates.

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[142] PSC, Bound Indents, 4/4011 [fiche 661], 96, SRNSW; NSW Supreme Court Papers, T32 no. 38 31/9 & Clerk of Peace Depositions T148 no. 38 31/9, SRNSW.
[143] Walsh, *Tocal's First European Settler*, 5-8.
[144] PSC, Bound Indents (various), SRNSW.
[145] The reconstruction of Thomas Smith's colonial behaviour record indicates three sentences to secondary transportation, a flogging, sentence to an iron gang, absconding on six occasions and 14 years in Irons on Norfolk Island for bushranging.

Masters were empowered to appoint convicts still under sentence to act as farm constables, and it is hardly surprising that this practice attracted criticism for abuse of power and arbitrary actions.[146]

Tocal's farm constable in 1837, a 53 year-old convict named George Stotter, led an eventful life. He had arrived in NSW in 1830 with a 14 year sentence for house breaking.[147] He was assigned to Tocal in 1832 and applied for a ticket-of-leave in September 1836 but was refused because of previous punishments—seven days on the treadmill in 1830 for insolence and disobedience, 28 days on the treadmill in 1831 for absence and disobedience, and 50 lashes for absconding from Webber's service in 1833.[148] Stotter must have settled down considerably after absconding from Tocal in 1833, as he was farm constable in April 1837 when Bernard Lyons killed Patrick Costigan in a drunken fight at Tocal, but Stotter's only recorded role in the incident was to escort Lyons to the lockup next morning (it is unclear if there was a lockup on Tocal or whether Stotter took Lyons to the government lockup at Paterson). In the same year Stotter gained his ticket-of-leave for bravery by apprehending 'two notorious offenders'.[149] He continued as Tocal's farm constable while holding a ticket-of-leave, and in December 1837 a Tocal convict named Hugh McQuiggan was sentenced by the court to 75 lashes for drunkenness and obstructing the farm constable in his duty.[150] Stotter was armed while on duty, and in the following year in the scrub at Tocal he shot and killed a runaway convict who was about to shoot a free-immigrant worker, and received a conditional pardon for his courage.[151]

Burrowel case study

In order to describe how convict work on the Tocal estate was organised and structured, it would be ideal to have a detailed, first-hand, daily account of the tasks undertaken, a record of which men were allocated which tasks, the problems and contingencies that arose, and in general the practicalities of managing and running the estate largely with

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[146] Harris, *Settlers and Convicts*, 82-83, 227; Neal, *Rule of Law*, 156-157; Crowley, "Working Class Conditions", 109.
[147] PSC, Bound Indents, 4/4015 [fiche 675], 62, SRNSW.
[148] *NSW Government Gazette*, 4 July 1832, 166; Dun to CS (and enclosures), 17 January 1839, CS In-letters, 39/1711 & enc. in 4/2433.2, SRNSW.
[149] TOL 37/900, 4/4112 [reel 927], SRNSW.
[150] CS Petitions for Tickets of Leave, 39/7075 in X645 [reel 591], State Records, Sydney.
[151] Dun to CS (and enclosures), 17 January 1839, CS In-letters, 39/1711 & enc. in 4/2433.2, SRNSW; CP 40/74, 4/4438 [reel 778], SRNSW.

convict labour. Such a record does not exist for Tocal, but is available for a nearby rural estate named 'Burrowel'. The record covers the whole of 1839 and is in two parts. The first part consists of weekly labour sheets that detail the work undertaken and how the men were organised into groups. The second part is titled a 'Journal of Transactions' and consists of a daily diary kept by Burrowel's overseer, James Gilchrist, for the same time period.[152] The unpublished records are held by a descendant of the original Burrowel grantee and have not previously been used for convict studies.[153] Fortunately copies have been obtained by the Tocal archives along with permission for their use in historical research. These records offer a unique insight into the operation of an estate using convict labour and their detailed examination provides a framework of evidence that can be interpolated to explain Tocal's likely *modus operandi* with respect to convict work organisation and hierarchy. Burrowel is on the Williams River at Seaham, only 20 kilometres east of Tocal.

Burrowel initially consisted of 640 acres purchased in 1830 by Sydney businessman George Mosman. In 1835 he purchased an adjoining 476 acres, bringing Burrowel to 1,116 acres. Mosman owned a further 4,000 acres further upstream and leased another 4,000 acres.[154] The similarities between the Burrowel and Tocal estates are striking. Both are situated on navigable branches of the Hunter River, Tocal on the Paterson and Burrowel on the Williams, providing the estates with access by ship to the river ports of Morpeth and Raymond Terrance, and hence market and travel access to Sydney. Both estates' owners had significant additional land further upstream that was used mainly for livestock, particularly for sheep runs, while the home estate was the focus of cropping and other intensive agricultural and horticultural enterprises. There was a similar mix of cropping and livestock activities on both properties although Burrowel, unlike Tocal, did not run sheep on the home estate, at least not during 1839. For the period covered by the Burrowel diary, the owners of both estates lived in Sydney and visited from time to time, leaving their country properties under the control of an overseer. Both estates had extensive areas of wetlands and spent significant efforts on drainage and embankment of these areas. Both estates used bullock teams to assist with

[152] Gilchrist, "Diary for Burrowel".
[153] The Burrowel diaries have been used in a brief overview of the estate and its owner, see Cynthia Hunter, Kevin McDonald, Martin McLeod, Dick Holroyde, *Essays on Seaham* (Seaham, NSW: Seaham Public School P&C Association, 2002), 31-46.
[154] Hunter, McDonald, McLeod, and Holroyde, *Essays on Seaham*, 31-32.

the farm work. Most importantly, both estates relied largely on an all-male convict workforce—in 1837 there were 35 men and boys assigned to the Burrowel estate and 26 to Tocal.

One of the most notable aspects of the Burrowel estate is the precise way in which the men were organised into work groups based on skills, and the hierarchy implicit in this organisation. Heading the estate on behalf of the absent owner was the free-immigrant manager, James Gilchrist, to whom we are indebted for the surviving records. Next in seniority and chain of command was a ticket-of-leave overseer, Joseph Bratfield, a blacksmith by trade who obtained his conditional pardon during 1839 and remained at Burrowel's as a free overseer.[155] Gilchrist's weekly labour record, formatted as a week to a large page, consisted of seven columns, with Bratfield's daily activities occupying the first column and a junior blacksmith the second. The third and fourth columns were for a senior and junior carpenter, the fifth for the labourers, of whom there were between 12 and 17. The next column was reserved for the activities of the four to six bullock teams and their handlers that were constantly at work on the estate, and the final column contained remarks on the weather. Thus the estate's convict workforce exhibited a hierarchical organisation based on skills, consisting of two pairs of mechanics, namely the blacksmiths and carpenters, a large group of labourers, and a group of men who handled and worked the teams of bullocks. This organisation is similar to that of the Tocal convict workforce as recorded in the 1828 census, where the majority were simply categorised as labourers, while those with more skilled occupations were identified in the categories of shepherds, tobacconists and mechanics. The Burrowel artisans worked individually or in pairs for most of the time, while the labourers usually worked in teams or gangs, but there was some scope for individual work.

Burrowel's blacksmiths were remarkably multi-skilled and versatile, evidenced by their construction and repair of an impressive array of items in iron, timber, leather, copper, brass and glass. The senior blacksmith, Bratfield, regularly killed a bullock or cow as rations for the estate, salted the meat and cut sides of leather that he used to make and repair saddles, bridles, harness and other leather items. He constantly repaired all

[155] Gilchrist, "Diary for Burrowel", 36.

manner of things including gates, doors, cart wheels, chains, household furniture, a brass pistol, boats, launches and punts, and even spent four days repairing trousers. At times he assisted with branding calves and cutting colts, at other times he completely fabricated new farm machinery including a threshing machine, a winnowing machine and a straw cutter. He spent a few days sawing in the pits, and frequently sharpened saws. He also met and unloaded boats, and weighed wheat being sent to the mill and flour returning from the mill. Bratfield was involving in various building activities including slabbing a saddle room, ripping, tonguing and grooving boards, and making door and window frames and flood gates.

The junior blacksmith's duties consisting mainly of shoeing horses, repairing and sharpening a vast array of tools and farm equipment, as well as manufacturing a range of iron items such as bolts, cattle brands, spikes, hammers, wedges, bars, axles and gates. Both he and Bratfield spent much of February 1839 constructing a winnowing machine, and later in the year completely constructed a new horse-drawn carriage and a farm cart between them. As further evidence of their versatility, in October they were busy mowing as part of the harvest along with all hands on the estate. The detailed work records of both these men clearly show the limitations of records such as the shipping indents or the 1828 census in which skills are often described by single categories. Such limited descriptors mask the degree of multi-skilling on rural estates where, because of a limited supply of artisans, those with skills had to use them far beyond the bounds suggested by a simple naming of their trade. Thus during the year, in response to the needs of the estate, the two Burrowel blacksmiths between them filled the additional roles of boatbuilder, gunsmith, sawyer, saddler, tailor, coppersmith, farrier, butcher, glazier, wheelwright, carpenter, coachsmith, stockkeeper and farm hand.

In contrast, Burrowel's two carpenters worked closer to their trades, mainly making various timber structures during the year, and at times occupying the related roles of timber cutters and sawyers. One of them also spent two weeks working in the rock quarry and a few days in the lime kiln.[156] Between them they felled trees, split, cut and squared timber posts, slabs, plates and shingles for new sheds. They built barns, an oat 'stedle' (staddle), a 'smithie' (blacksmith's shop), an extra room and chimney on

[156] Gilchrist, "Diary for Burrowel", 17-21.

Bratfield's house, wooden flood gates, a bridge, dairy and cheese room, and renovated the stables.

In 1839 Burrowel's 12 to 17 labourers performed the expected range of farm work dictated by the seasons. In summer they planted corn and tobacco, weeded around the young plants with hoes, watered the tobacco, and cleaned and threshed the wheat, oats and barley harvested the previous spring. In autumn they pulled and cleaned corn, continued to clean and thresh wheat, oats and barley, dug drains in the wetlands and removed the stumps of previously felled trees (a process known as 'stumping'). Their winter was largely taken up with stumping, as well as felling trees and burning them. In spring, stumping gradually gave way to planting corn and tobacco, and by late October the harvesting of winter crops began, and was in full swing in November, at one stage all hands including the carpenters and blacksmiths being occupied with mowing, raking, binding, stacking and carting the harvest. Other jobs for the labourers during the year included branding calves, digging potatoes, loading and unloading boats, quarrying, and for one or two men, assisting the carpenters and blacksmiths. One of the so-called 'labourers' evidently had other skills, as he spent two weeks making boots. Another, by the name of Champion, was in charge of Burrowel's livestock, comprising horses, working bullocks, beef and dairy cattle, and pigs. Presumably Champion's livestock duties exempted him from the more mundane labouring tasks. Due to the lack of fences, much time was spent looking for and returning straying horses and cattle. During wet weather, all hands were occupied indoors shelling corn, cleaning sheds, repairing bags and other odd jobs.

During the year Burrowel's three to six bullock teams were constantly at work. Some of them ploughed for most of the year, while others were busy carting water for the tobacco, bringing in the harvest, carting stone from the quarry, lime from the kiln, timber from the bush, as well as transporting wooden plates, posts and shingles to where they were needed. In general the bullock teams and their convict handlers supported all the various Burrowel activities, ranging from construction of buildings, fences and flood gates to ploughing, harvesting and taking grain and flour to and from the boats and the estate's store. Thanks to the precision and detail of James Gilchrist's diary, their importance on the estate and contribution to its productivity is clearly evident.

Gilchrist's diary reveals that Burrowel's convicts were managed by a system of rewards and punishments, with rewards more frequently employed than punishments. The convicts were issued with extra rations in the form of tea, sugar and tobacco. Up to 20 milking cows were allocated for the men's use, and when seasonal conditions allowed, milk was given to the men instead of tea and sugar. The amount of tobacco issued was evidently varied according to the men's behaviour and work output, as Gilchrist noted on 7 May 1839 that 'Tyne [was] ordered to get 4 instead of 3 oz Tobacco weekly'. [157] In September a pointer dog went missing in suspicious circumstances and consequently 'All the men [were] put on Government rations',[158] indicating the extras in the form of tea, sugar and tobacco were withdrawn, the men being issued only with meat and flour. A week later their full rations were restored when no information was forthcoming regarding the missing dog. Other, more subtle, rewards for good behaviour are evident in the diary. Several men were frequently allowed to travel alone to Raymond Terrace and other locations on estate business, giving them a measure of trust and temporary release from more arduous duties. [159] One of the labourers, Ryan, was 'taken off out door work to make boots for the men', presumably by mutual agreement. Others were given an occasional day off during the working week.[160]

Only two instances of floggings are noted for Burrowel's convicts during 1839 and, given the precision of Gilchrist's diary, it is unlikely that other instances went unrecorded.[161] On 8 August Murray was sent to the lockup for insolence and four days later Gilchrist attended court where Murray was sentenced to 50 lashes for insolence and disobedience of orders. On 14 October two convicts absconded from Burrowel and were apprehended at Raymond Terrace, where Gilchrist went to identify them. Their punishment is not recorded, and evidently they did not return to Burrowel. On 13 December Tinker was at court for insolence and disobedience, and was sentenced to receive 50 lashes on the back and another 50 on the breech. On Christmas night, two men were away at Raymond Terrace drinking and fighting, and did not return until 11.00am the next day, but no action was taken against them.[162] With so few incidents in

[157] Gilchrist, "Diary for Burrowel", 38, 42.
[158] Gilchrist, "Diary for Burrowel", 48.
[159] For example, Laidlaw and Gurnie: Gilchrist, "Diary for Burrowel", 36-37.
[160] Gilchrist, "Diary for Burrowel", 39-40.
[161] Bench of Magistrate records for Butterwick and Raymond Terrace have not survived for this period, so it is not possible to check.
[162] Gilchrist, "Diary for Burrowel", 46, 49-50, 52.

twelve months, it appears that a general reliance on rewards, supported by officially administered corporal punishment as a last resort, was effective in managing Burrowel's convicts. The balance of punishment and rewards will be explored in more detail in the Tocal context in chapter six. What is evident from Gilchrist's diary, however, is that colonial charges against assigned convicts could take up a large amount of management time. This observation is based on the incident where Burrowel's stockkeeper, Champion, was accused of receiving stolen goods, and arrested. He appeared in the local court and was committed for trial at Maitland Quarter Sessions where he was subsequently acquitted. The whole incident tied up Gilchrist, the owner (Mr Mosman) and some Burrowel convicts for days as they assisted the constable to search for the stolen goods and appeared in two courts as witnesses (the Maitland hearing lasting two days). Champion was apparently a valued worker, as Gilchrist sent a £5 money order to him in Newcastle Gaol.[163]

Tocal's calendar of operations

The description of convict work on the Tocal estate given earlier in the chapter, together with the detail available for nearby Burrowel, enables the construction of a calendar that indicates the likely timing and duration of Tocal's main operations during the year. In the absence of a Tocal diary, much of the calendar is indicative, although some aspects are confirmed by actual records.[164] The calendar, as set out in table 4.4 below, reveals that spring and summer were the busiest times on the estate, followed by autumn. Winter was a less demanding time when convicts could be spared for developmental work such as clearing, stumping, draining and fencing. The calendar of operations provides an overview of the remarkable diversity and intensity of operations on the estate during the year, and the associated range of skills and work practices required by Tocal's convict workforce.

[163] Gilchrist, "Diary for Burrowel", 35-39.
[164] For example, threshing of grain in April, as per Clerk of Peace, Depositions—Supreme Court, Paterson 1837, 9/6309, Rex v's Bernard Lyons & James Lemon, SRNSW.

Table 4.4 Indicative calendar of operations for Tocal, 1820s & 1830s

	Summer	**Autumn**	**Winter**	**Spring**
	Dec Jan Feb	**Mar Apr May**	**Jun Jul Aug**	**Sep Oct Nov**
Wheat, oats, barley	<--plough--> <---thresh and store grain----	<-----plough & sow---------- ---------->	---------->	<----Harvest---->
Maize (corn)	<hill and weed>	<harvest, pull & burn stalks>	<clean and shell> <plough>	<plough><--------sow--------->
Tobacco	--transplant--><-weed, grub--	--trim><-------harvest---------->	<--dry & sweat-><sow seed>	<-------transplant------
Vineyard	<harvest>	<wine making>	<-------prune and weed------>	
Sheep		<------lambing------->		<washing, shearing>
Cattle	<cut & brand calves>			<----calving---->
General		<clearing--	--stumping and draining-------	---------->
Work ongoing throughout the year included building, fencing, milking, feeding pigs, making butter and cheese, tending fruit and vegetable gardens, shepherding sheep and herding cattle.				

Wages paid and hours worked

In 1822 and 1823 Tocal's owner, James Webber, had to pay his assignees a wage that was set by Government regulation at £10 per year for each male convict. If he provided the regular allowance of clothing, the annual wage was reduced to £7. Prior to 1816, convict wages were paid only for extra work but by Tocal's occupation in 1822 the wage represented a fixed annual amount to convicts working full-time for their master and not for themselves in those periods of the working week previously regarded as their own time, for example after 3.00pm.[165] In his 1822 report, Bigge summarised the situation regarding convict wages as follows:

> By the last order of Governor Macquarie, and by the decisions of the magistrates, the convicts are considered to be entitled to demand their wages in money; but the difficulty they find in purchasing the different articles that they require, and the evil consequences of the unrestrained purchase of spirits, have given rise to the custom of paying the largest proportion of wages in New South Wales in articles of consumption, such as tea, sugar, and tobacco, and which are better known under the general designation of "property". The prices of these articles vary from 40 to 70 per cent. above the wholesale ready money prices, and from 25 to 35 per cent. above the retail prices of Sydney.[166]

When Governor Macquarie's wage order was repealed in 1823, many masters continued to pay wages as an incentive, although the practice was condemned by government.[167] One convict master in the Hunter Valley said in 1824 that he preferred to give his convicts £10 per year in wages in accordance with the old regulations.[168] From 1823 wages were often not paid to new assignees but to convicts who, after a period on the estate, could 'prove themselves qualified and fit to be entrusted with a plough, the care of a flock of sheep, or any other situation where a degree of skill, care, and confidence are required'.[169] Convicts who were not paid wages could not buy tea, sugar and tobacco unless they earned money in their own time. They had to rely on the goodwill of their masters to supply these 'extras', and this was part of the range of rewards and

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[165] Hirst, *Convict Society and its Enemies*, 45-46; Bigge, *Inquiry into the State of the Colony*, 74-75; Crowley, "Working Class Conditions", 97-99.
[166] Bigge, *Inquiry into the State of the Colony*, 77.
[167] David Meredith, "Full Circle? Contemporary Views on Transportation", in *Convict Workers*, ed. Nicholas, 15, 20.
[168] Helenus Scott to Augusta Scott, 8 May 1824, Helenus Scott correspondence 1821-1879, A2264, ML.
[169] Atkinson, *State of Agriculture and Grazing*, 115.

punishments available to masters in the management of their convicts that are detailed in chapter six.

With regard to the length of the working day, up to 1819 it was usual to provide 'task work', particularly to those in government gangs.[170] Each convict was allocated a fixed amount of work to complete each day, for example plough a certain area or cut a specified quantity of timber. Once the convict completed the task, the rest of the day was his to spend as he wished. He could work for himself or for wages or take his leisure. Task work was not designed to maximise output but simply to set a minimum acceptable amount to be performed.[171] Fixed daily quantities or 'tasks' could be determined easily for some operations such as brickmaking, sawing timber and shoemaking, but jobs performed by other artisans such as wheelwrights and blacksmiths could vary considerable in difficulty and duration. Labourers could be, and were, tasked for some operations but where jobs were dependent on the weather and other variables, tasking had to be flexible.[172] During the 1820s and 1830s on large estates such as Tocal, task work for some jobs was still practised by some masters. The Australian Agricultural Company at Stroud, for example, expected its convicts to thresh an allotted three bushels of grain per day.[173] However, convicts usually worked the full day. One writer, when advising convict masters in 1827, equivocated regarding the merits of task work: 'To get work readily and quietly done, the best method is certainly to task them, and allow them to get through it as they please; but as it is an object to accustom them to regular industry, it will eventually serve your purpose better, and benefit them more, to keep them at constant work'.[174] Based on widespread practice in the 1820s and 1830s it is likely that Tocal convicts worked the full day, five days a week, and a shorter day on Saturday.[175] JD Lang, who was well briefed on the workings of his brother's farm 'Dunmore', only a few kilometres from Tocal, wrote in 1837:

[170] Stephen Nicholas, "The Organisation of Public Work",162.
[171] Robbins, "The Lumber Yards", 150.
[172] Nicholas, "The Organisation of Public Work", 162.
[173] Bairstow, *A Million Pounds, A Million Acres*, 284.
[174] Cunningham, *Two Years in New South Wales*, 279.
[175] Crowley, "Working Class Conditions", 100.

> On my brother's farm at Hunter's River – and I believe a similar system is pursued on most of the large agricultural farms throughout the colony – the overseer rises at day-break, and rings a bell, which is affixed to a tree, as a signal for the men to proceed to their labour. The greater number follow the overseer to the particular agricultural operation which the season requires; the rest separate to their several employments, one to the ploughs, another to the garden, and a third to the dairy, while a fourth conducts the cattle to their pasture. The bell is rung again at eight o'clock, when the men assemble for breakfast, for which they are allowed one hour; they again return to their labour till one o'clock, when they have an hour for dinner, and they afterwards labour from two till sunset.[176]

Lang's account of working hours is valid for most of the year but during the shorter days of autumn and winter, starting in May, the men had breakfast before commencing work.[177] An 1826 account adds further detail to Lang's description:

> The usual hours of labour are from sun-rise to sun-set, with an hour or an hour and a half for dinner. Ploughmen perform their day's work at one yoking, and are then at liberty for the rest of the day … Some people keep a watchman about their premises at night, which is a very useful precaution in many respects; this man takes care to rouse everyone in due time in the morning, and before he quits his post goes into the pasture and brings the working cattle into the yards; the ploughmen, when they come from their huts, have then nothing to do but to harness up and to go to their work, which prevents a deal of lost time and much confusion.[178]

It is clear from the detailed descriptions of tasks on the Tocal estate presented earlier in the chapter that operations such as shepherding and burning could not be confined to such 'usual' hours, their nature requiring round-the-clock attendance. Similarly, a first-hand account of Tocal in 1837 indicates the men were required to work late into the evening while a threshing machine from the district was operating at Tocal.[179] Many hands would have been needed to cart the grain to the machine and thence to the granary to make maximum use of the machine while it was there. Without further surviving details for Tocal, it can only be assumed that the required departures from set working hours were rewarded in some way, as explored in chapter six.

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[176] Lang, *Account of New South Wales*, 11.
[177] Gilchrist, "Diary for Burrowel", 42; Parry, *Early Days of Port Stephens*, 21.
[178] Atkinson, *State of Agriculture and Grazing*, 121.
[179] Clerk of Peace, Depositions—Supreme Court, Paterson 1837, 9/6309, Rex v's Bernard Lyons & James Lemon, SRNSW.

Organisation and structure

The Tocal workforce was structured according to the usual hierarchy,[180] headed by the resident owner, James Webber, [181] with day-to-day supervision and management of the estate under the control of a free superintendent, this role being performed by Ralph Mills Clarke for much of the convict period.[182] The superintendent was assisted by one or two ticket-of-leave or emancipist overseers, and in November 1828, for example, Tocal's overseer was William Leach, who was free-by-servitude.[183] On large rural estates the superintendent gave the orders to the workers, issued passes for convicts who had permission to travel beyond the estate, and allocated rations from the estate store.[184] Overseers also occupied a central position in day-to-day management, providing a buffer between the master and the convict workforce, accounting for stock and farm equipment and checking fences.[185] Tocal's assigned convict workforce was augmented by a few free workers, by convicts from government gangs who were brought in to help at harvest time, and by contract fencers at various times.[186] In 1835 John Kipling, who had previously been assigned to Webber and was now free-by-servitude, was erecting a boundary fence between Tocal and the neighbouring Bona Vista estate.[187] Tocal had two tenant farmers in the 1820s but it is not known if they provided labour to the estate as part of their tenancy agreement.[188] Similarly it is not known if clearing leases were used at Tocal to increase the rate at which land was brought into production.

Judging by the Burrowel records and the groupings of Tocal's convicts in the 1828 census, the organisation of the convict workforce at Tocal was achieved by a mix of team and individual work. Michael Fee, the estate's cooper would have worked on his own or possibly with one assistant. Tocal's nine shepherds tended their flocks alone during the day and probably had the company of one or two other shepherds at night. Tocal's three tobacconists would have tended the tobacco together but separate from the

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[180] For an example of the hierarchy and command structure on a large rural estate see Alan Atkinson, "Master and Servant at Camden Park, 1838, from the Estate Papers", *Push from the Bush: A Bulletin of Social History* 6 (1980): 44-47.
[181] After Webber sold Tocal in 1834, the new owners resided in Sydney.
[182] Cynthia Hunter, *The Settlers of Paterson's Plains* (Paterson: Paterson Historical Society, 1997), 33-34.
[183] *Census of New South Wales 1828.*
[184] Byrne, *Criminal Law and Colonial Subject*, 57-58.
[185] Maxwell-Stewart and Hindmarsh, "The Bird that Never Flew", 17.
[186] Webber to CS, 3 June 1830, Aubin to CS, 4 June 1830, CS In-letters, 30/4406 & 30/4607 in 4/2076, SRNSW.
[187] Maitland Court of Quarter Sessions, Papers 1835, 4/8414, 131 [reel 2408], SRNSW.
[188] Wentworth Family Papers—Lists of Landowners 1826-27, ML A767, 56 [reel CY 736], Mitchell Library.

larger group of labourers except at times of peak demand such as transplanting and harvest. The 17 men simply described as 'labourers' in 1828 would have mainly worked in groups for operations such as clearing, burning, stumping, and harvest. Others such as the stockkeeper and the men who handled and worked the bullock teams would have worked individually at times and in varying sized groups at other times, depending on the nature of the work. Jobs with set procedures and clearly defined outcomes such as ploughing may have been 'tasked' but other jobs such as patrolling tobacco plants to remove caterpillars, or tending sheep, could not be performed on a task basis.

Living at Tocal

Specific aspects of convict lifestyle at Tocal—such as food, recreation and religion—are examined below, but there were also general factors that partly shaped what it was like to live at Tocal as a convict. Despite the constraints of bondage, lifestyle on the estate borrowed much from popular British culture, such as heavy drinking, smoking and a passion for gambling. Convict lifestyle also borrowed from the attitudes of the contemporary working-class, which were framed within a general precariousness of life and an average life span of only 45 years. These attitudes included immediacy of action, a readiness to grasp opportunities, reliance on self and mates, risk-taking, stoic acceptance of fate and resignation when disaster struck. The mix of ethnic backgrounds, mainly English and Irish, also shaped lifestyle at Tocal. Although the Irish convicts may not have formed a distinctive class of their own, they probably brought to Tocal a preference for their own kind and more subtle, intangible traits such as superstition, a heightened awareness of the wonderful and tragic, and a cheerful melancholy.[189]

Accommodation, food and clothes

The supply of food, shelter and clothing to assigned convicts on rural estates represented far more than the routine provision of basic needs. For masters it provided the opportunity for reward and motivation, punishment and control. For convicts it could become the focus of a battle with their masters over entitlements and perceived rights, an arena in which the reciprocal but unequal power of masters and servants was

[189] Karskens, *The Rocks*, 10, 42-49; Karskens, "Meaning of Escape", 13; Richard Waterhouse, *Private Pleasures, Public Leisure* (Melbourne: Longman, 1995), 21-37; Robert Malcolmson, *Popular Recreations in English Society 1700-1850* (London: Cambridge University Press, 1973), 19, 34-51; James Waldersee, *Catholic Society in New South Wales 1788-1860* (Sydney: Sydney University Press, 1974), 70.

contested, with the local magistrate often acting as arbiter and referee. Assigned servants could be, and were, withdrawn from masters who failed to provide adequate food, clothing and supervision for them.[190] Convicts could receive a flogging or other punishment if they protested unreasonably about rations or other conditions. One Tocal convict received 50 lashes for false accusations against his master, James Webber, presumably as a result of complaining about treatment he received.[191] As will be seen below, such punishments did not deter a group of convicts at Tocal from staging a revolt over rations.

There were no specific regulations for the housing of assigned convicts in New South Wales apart from the general obligation by masters to provide shelter. On larger estates such as Tocal, the convicts mostly lived in crude timber huts, with from four to eight men in each hut, but on some estates convicts slept in the barn. Sometimes convicts had to wait until the settler had been established for a few years, by which time the assignees were housed in the original hut while the master moved to a much improved structure. The walls of convict huts were usually constructed of wooden slabs, with a roof of bark or thatch.[192] Sometimes the hut walls consisted of a mix of timber and clay, known as 'wattle and daub' or 'wattle and plaster' construction, and several convict huts at Patersons Plains in the 1820s were of this type.[193] A convict named Joseph Mason who was assigned in New South Wales from 1831 to 1837 provided a credible, first-hand account of the rough and ready state of convict huts as follows:

> At a distance round about the farm buildings is erected a number of huts which vary in length from 12 to 20 feet and in width they are 8 to 10 feet [T]hey are mostly built of Slabs split out of the trees… sometimes trimmed a little with an axe or adze and sometimes not and as they are frequently put up green and shrink afterwards it is as common as otherwise to see crevices 2 and 3 inches apart between the two slabs...[S]ome large sheets of bark that is stripped from the trees an[d] tied to the rafters with strings of Green hide and thus the hut is completed with the exception of a fire place which is made of Slabs also... utensils consist of an Iron pot and Frying pan for general use with an axe to cut wood and a quart tin to each Individual to boil tea in and sometimes a pint pannican to drink it out of A piece of coarse stuff which they call Ossenburgh is served out to each man who is a prisoner for a bed tick which he can sew up himself and stuff with

[190] For example: CS LB, 4/3830, 72-73; 4/3829, 72, 380-381, 401 [reel 2808], SRNSW.
[191] CS Monthly Returns of Prisoners Punished at Newcastle, January 1825, 4/1718, 199 [reel 6023], SRNSW.
[192] Cunningham, *Two Years in New South Wales*, 277; Bigge, *Inquiry into the State of the Colony*, 77-78; Lang, *Account of New South Wales*, II, 10; Crowley, "Working Class Conditions", 96-97.
[193] Hunter, *The Settlers of Paterson's Plains*, 16-19.

> straw. If they choose not to lay their bed on the ground which from the innumerable quantity of fleas and ants and the like would be very uncomfortable to say nothing of the hazard of finding a snake coiled up in the blanket they must take an axe to the bush and cut some forked sticks and poles... on which is placed a sheet of bark and the business of constructing a bedstead is over.[194]

Mason went on to describe the other spartan furniture in the huts, consisting of rough tables and chairs made from bush timber and bark. He left no doubt about how he regarded the usual standard of convict accommodation on farms, commenting that 'if a person altogether unacquainted with the country' were to view a group of huts from a distance he could 'hardly be persuaded without ocular evidence that they were the abode of human beings who had their origin in a civilized country. Many cowsheds and pigsties that I have seen in England ... are palaces compared with these huts'.[195] Nevertheless, a fire place in each hut made them tolerable during winter. Lighting was provided possibly by candles, but more likely by homemade slush lamps consisting of animal fat and a cloth or reed wick in a jam tin.[196]

In the detailed 1834 survey of Tocal shown in figure 4.2, there were three 'men's huts' at some distance from James Webber's residence, with barns and farm buildings in between. There were other convict huts on the estate outside the homestead precinct, such as one near the boundary of Tocal and Bona Vista just above the tidal reach of Webbers Creek, and various shepherds' huts in the bush.[197] A fire in 1835 destroyed most of the timber buildings at Tocal,[198] but some timber huts were either spared or quickly rebuilt according to detailed court depositions in 1837. These records specifically mentioned two huts that were separated only by wooden slabs, with a fireplace in at least one of them.[199] Accommodation for some of Tocal's convicts improved markedly in the late 1830s under the new ownership of Caleb and Felix Wilson. These wealthy Sydney merchants expended a 'considerable sum' on the buildings at Tocal, including the construction about 1836 of a two-storey brick convict

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[194] Kent and Townsend, *Joseph Mason*, 43-44.
[195] Kent and Townsend, *Joseph Mason*, 45.
[196] Geoffrey Blainey, *Black Kettle and Full Moon: Daily Life in a Vanished Australia* (Melbourne: Penquin Books, 2003; paperback 2004), 47-48.
[197] NSW Supreme Court papers, T32 no. 38, 31/9, The King v's James Stiles and John Shepherd, 4 January 1831, SRNSW.
[198] *The Australian*, 8 September 1835.
[199] Clerk of Peace, Depositions—Supreme Court, Paterson 1837, 9/6309, Rex v's Bernard Lyons & James Lemon, SRNSW.

barracks consisting of four apartments and a detached communal kitchen as shown in the photograph below. It is also known that in 1837 three men were sharing 'a cottage built for the late gardener'.[200] The Wilsons built four of these brick cottages facing the convict barracks.[201] While the barracks have survived to this day, the cottages have not, despite their brick construction.

Tocal's convict barracks and detached slab-timber kitchen[202]

The range of convict accommodation at Tocal in the late 1830s, from crude timber huts to brick barracks and cottages, provided further scope for rewarding diligent and reliable men with better accommodation. It is therefore interesting to examine more closely the three men—Costigan, Partridge and Clements—who were sharing the late gardener's cottage in 1837. Costigan was assigned to Tocal in 1827, had no re-offences recorded against him, obtained his freedom in 1833 and continued to work at Tocal as an emancipist. Partridge was also working at Tocal as a free man in 1837, while Clements was a teenage convict, a well behaved and gentle soul who disappeared at the first sign of any fighting among the men.[203] The rationale and hierarchy implicit in allocating the better standard, brick cottage to emancipists and a well behaved convict teenager is clearly evident.

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[200] *The Australian*, 8 September 1835; Clerk of Peace, Depositions—Supreme Court, Paterson 1837, 9/6309, Rex v's Bernard Lyons & James Lemon, SRNSW.
[201] Old Systems Title, Book 1, no. 182, NSWDL; Reynolds, *An Eye for Excellence*, 15.
[202] Reynolds Collection, CB Alexander Foundation Archives, Tocal.
[203] Clerk of Peace, Depositions—Supreme Court, Paterson 1837, 9/6309, Rex v's Bernard Lyons & James Lemon, SRNSW; PSC, Bound Indents, 4/4012 [fiche 664], 96, & 4/4018 [fiche 687], 5, SRNSW; COF 33/0731, 4/4316 [reel 991], SRNSW; Home Office, New South Wales, Convicts Arrived 1833-34, HO10/30, PRO.

The usual convict 'fare' or meal according to Alexander Harris was 'some tea... a piece of fine corned beef, and a wheaten cake baked on the hearth'.[204] The food issued to convicts assigned to private masters was either regulated or influenced by the rations issued to those in government service, depending on the time period. Until 1823, settlers were compelled by regulation to issue each convict a standard weekly ration of seven pounds of meat and eight pounds of wheat, but usually 14 pounds of wheat were issued.[205] Commissioner Bigge noted that 'the allowance of wheat is ground into flour by the convicts themselves, by means of steel hand mills, and is made into heavy cakes [dampers], baked in the embers of their own fires, and frequently afterwards fried in the fat of pork'.[206] From 1823 masters were no longer compelled to issue the standard ration—they were simply obliged to provide an adequate one—but most continued to issue the same amount of meat and an increased quantity of flour. This made it difficult for magistrates to judge what was 'adequate' when complaints were made, and consequently in 1831 Governor Darling regulated that private masters must once again supply a specified ration to their assigned convicts.[207] The regulated weekly ration from 1831 was 12 pounds of wheat or nine pounds of seconds flour (although maize could be partly substituted for wheat), seven pounds of beef or mutton, or four and a half pounds of salt pork, plus two ounces of salt and two ounces of soap.

Darling's regulation did not end the disputes over food, as there was no guarantee that masters or indeed government outposts would issue the prescribed ration.[208] In the vicinity of Tocal, one of John McIntyre's assigned convicts was forcibly withdrawn from his service because McIntyre issued 'meat of a bad quality'.[209] At Bona Vista, immediately neighbouring Tocal, when James Phillips had two of his convicts taken into custody and charged for slaughtering one of his sheep for their rations they told him bluntly 'you should have given us more to eat and these things would not happen'.[210] (Phillips was also criticised by magistrates and government for failing to issue adequate

[204] Harris, *Settlers and Convicts*, 23.
[205] Hirst, *Convict Society and its Enemies*, 46.
[206] Bigge, *Inquiry into the State of the Colony*, 77.
[207] Hirst, *Convict Society and its Enemies*, 46-48.
[208] At times, convicts at Moreton Bay did not receive the regulated ration: Evans and Thorpe, "Power, Punishment and Penal Labour", 104.
[209] Aubin, Reid and Townshend to CS, 31 August 1830, McIntyre to CS, 3 September 1830, CS In-letters, 30/6898 & 30/6899 in 4/2081, SRNSW.
[210] Maitland Court of Quarter Sessions Papers, January 1834, 4/8409, 111-117 [reel 2407], SRNSW.

bedding and clothing).[211] An inquiry into the 1833 convict revolt at the Hunter Valley estate of Castle Forbes revealed two of the underlying causes of the events that led to the hanging of five men were the provision of inadequately salted, rotten beef and blue-black flour made from 'smutty' wheat. On the other hand, the same inquiry revealed that is was common for Hunter Valley convict masters to exceed the regulated ration by providing large quantities of milk—Dangar, Blaxland, Brooks, Wynne and several others routinely issued around two quarts (1.9 litres) of milk to each convict daily, often as one quart of 'new' (whole) milk and one quart of skim milk.[212] As discussed below, however, Webber may not have followed this practice at Tocal.

Prior to 1831 settlers were not compelled to issue soap to convicts, nor was it an item convicts often purchased. This, combined with the need to carry water to the huts or to wash in a waterhole or watercourse, contributed to a 'want of cleanliness in the convicts'. [213] Some used a rough home-made soap based on pipe clay or the skimmings of pot grease and wood ashes,[214] but assigned servants could present somewhat of an olfactory affront to those masters who chose not to issue soap prior to it becoming mandatory in 1831.

According to Government policy, any articles supplied by the master beyond meat, wheat, salt and soap were considered to be indulgences that he was at liberty to discontinue whenever he thought proper.[215] These so-called 'indulgences' consisted of tea, sugar, milk and tobacco, and most masters issued at least one or two of these, particularly tea and tobacco. Cunningham observed that the usual allowance was 'two ounces of tea, two ounces of tobacco and a pound of sugar weekly; the majority of settlers permitting them to raise vegetables in little gardens allotted for their use, or supplying them occasionally from their own gardens'.[216] These extras were the principal instruments of reward for well-behaved convicts, and their withdrawal for misbehaviour

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[211] Aubin to CS, 12 October 1829, CS In-letters, 30/2806 & encl. in 4/2071, SRNSW.
[212] Minutes of evidence, Commission of Inquiry at Patricks Plains, *Sydney Monitor*, 21, 28, 31 January and 3 February 1834 & internet online http://www.une.edu.au/arts/ACF/cf1833/index.html and assoc pages [6/6/2006].
[213] Bigge, *Inquiry into the State of the Colony*, 78.
[214] Morisset's evidence to Bigge, 17 January 1820, in JW Turner, ed., *Newcastle as a Convict Settlement: The Evidence before J.T. Bigge in 1819-1821* (Newcastle, NSW: Newcastle Public Library, 1973), 60.
[215] HRA 1, XVII, 326 (Bourke to Stanley, 15 January 1834).
[216] Cunningham, *Two Years in New South Wales*, 277. Lang supports Cunningham's observation that tea, sugar and tobacco were routinely issued and the cultivation of vegetables was permitted - Lang, *Account of New South Wales*, II, 10.

or poor work represented a punishment considered by some to be more effective than flogging, leading to the now well-known observation in 1826 that 'the belly is far more vulnerable and sensitive than the back, and that depriving men of any part of their accustomed enjoyments will be much more effectual in correcting their faults than the lash of the flogger'.[217]

Convicts and others in colonial New South Wales were ardent tea drinkers so it is no wonder they were sensitive to its supply. Tea was cheap, an effective thirst quencher, and easy to transport and prepare. According to one colonial statistician, New South Wales had the highest rate of tea drinking in the world, with the possible exception of China. Australians certainly drank far more tea than those in Britain—10 to 12 pounds of tea per head annually in the 1830s in New South Wales compared to only one and a half pounds in Britain at that time.[218]

It is not known precisely if extras such as tea and sugar were issued at Tocal, but incidents on the estate in 1829 and 1830 provide some insight. Tocal's owner, James Webber, described the incident in November 1829 as follows: 'being in the midst of my harvest some men from a road Party refused to work without an addition to the Indulgence which they received, they were joined by some of my men'.[219] Captain Aubin, the police magistrate at Maitland, investigated the revolt and his report confirmed that 'Mr W. brought a number of his men (13) before me on 23 Nov. for refusing to work without they rec.d the usual indulgence allowed in harvest time viz. sugar or milk'. Aubin singled out three ringleaders for punishment, and another Tocal convict, Hugh Murdoch was given 50 lashes for disrespect after speaking out at the inquiry and stating that Webber was a hard master.[220] This revolt is a good illustration of protest action by convicts faced with the loss of their perceived rights as a consequence of a master not prepared to follow customary procedure in the issue of extra items or 'indulgences' that were not subject to government regulation.

There was a further incident the following year when two Tocal convicts broke into the homestead store on the neighbouring estate of Bona Vista and stole a large quantity of

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[217] Atkinson, *State of Agriculture and Grazing*, 116.
[218] AE Dingle, "'The Truly Magnificent Thirst': An Historical Survey of Australian Drinking Habits", *Historical Studies* 19, no. 75 (1980), 243.
[219] Webber to CS, 3 June 1830, CS In-letters, 30/4607 in 4/2076, SRNSW.
[220] Aubin to CS, 4 June 1830, CS In-letters, 30/4406 in 4/2076, SRNSW.

sugar, tea and coffee. At that time burglary of a dwelling house was a capital offence and they received the death penalty but their sentences were commuted to three years in an iron gang.[221] It is difficult to interpret their motives—perhaps the tea and sugar were simply the spoils of an opportunistic and reckless raid, but they could have been desperate enough to take such a risk because Webber did not issue tea and sugar and they did not have money to buy it. Fortunately the witness depositions for the case shed some light on the situation. John Levet, an overseer at Tocal, accompanied Webber to search the huts and found a quantity of sugar hidden in a bed. Levet stated 'Mr Webber does not issue sugar to his men'. Michael Fee, the estate's cooper, then stated 'last Thursday fortnight I brought two pounds of sugar and four ounces of tea from Mr Simpson at Wallis Plains for the Prisoner, Shepherd', but it was not the same as the sugar found in Shepherd's bed. Evidently Webber did not routinely issue tea, sugar or milk to his men, even at harvest time. Consequently, Murdoch's comments during the 1829 Tocal sugar and milk revolt that Webber was a hard master appear to be credible, at least in this regard, given the issue of these extras by convict masters was common practice but not universal.[222]

Unlike those in government gangs, convicts assigned to settlers were not required to wear distinctive dress and on most estates they were indistinguishable from free labourers. [223] There was one notable exception to this—on Castle Forbes, the Hunter Valley estate of James Mudie, the convicts were apparently compelled to wear the regular convict dress branded with a number and Mudie's name as their master.[224] There is no record of a similar requirement at Tocal. From 1831 masters were required to issue annually to each convict two frocks or jackets, three shirts, two pairs of trousers, three pairs of shoes, and one hat or cap, in instalments in May, August and November.[225]

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[221] NSW Supreme Court papers, T32 no. 38, 31/9, The King v's James Stiles and John Shepherd, 4 January 1831, SRNSW; Clerk of Peace, depositions, T148 no. 38, 31/9, SRNSW; Sydney Gaol Entrance Book 1830-1831, 4/6432 [reel 851], SRNSW.

[222] For example, most convict masters at Patricks Plains in the Hunter Valley issued milk but some did not issue other extras such as tea, sugar and tobacco: Minutes of evidence, Commission of Inquiry at Patricks Plains, *Sydney Monitor*, 21, 28, 31 January and 3 February 1834 & internet online http://www.une.edu.au/arts/ACF/cf1833/index.html and assoc pages [6/6/2006].

[223] Karskens, "Defiance, Deference and Diligence", 22.

[224] Crowley, "Working Class Conditions", 113. This dress requirement is not evident in the report of the 1833 inquiry into Castle Forbes and may therefore not have applied at all times on the estate: Minutes of evidence, Commission of Inquiry at Patricks Plains, *Sydney Monitor*, 21, 28, 31 January and 3 February 1834 & internet online http://www.une.edu.au/arts/ACF/cf1833/index.html and assoc pages [6/6/2006].

[225] HRA 1, XVII, 326 (Bourke to Stanley, 15 January 1834).

Smoking

Smoking was so widespread that for many convicts it was more a necessity than an optional or recreational item. Peter Cunningham observed that 'all the lower classes are determined smokers, [and] there is consequently an immense consumption'.[226] One contemporary report estimated that eight or nine out of every ten labouring men used tobacco.[227] Consequently many masters issued tobacco to their assigned convicts as an instrument of reward and control, but the practice was far from universal and it is not known if it was issued at Tocal.[228] On the nearby Burrowel estate, tobacco was issued in varying quantities as a reward, and withdrawn as a sanction when undesirable incidents occurred on the estate.[229] In an effort to identify a man involved in a robbery on the Australian Agricultural Company's estate at Port Stephens in 1830, the tobacco ration of all convicts was stopped 'to try to get someone to squeal'. Three weeks later, when no information was forthcoming, the tea ration was also stopped.[230]

It would have been provocative for convict masters not to issue tobacco unless they provided some alternative compensation such as the provision of wages to allow its purchase. According to ES Hall, editor of the *Sydney Monitor*, 'the convicts in the interior cannot nor will not work without it', adding that in his own experience convicts became desperate for it—'Many a time have our own convicts at Lake Bathurst offered us to forego half their ration of food, for half the value thereof in tobacco'.[231] Cunningham similarly observed that 'without the aid of that magic care-killer, the pipe, I believe the greater portion of our "pressed men" would "take to the bush" in a week after their arrival'.[232] The lighting of pipes in the convict era was not always simple. Lucifer matches became available in 1833 but convicts were unlikely to purchase them, carrying instead a flint and tinder box or lighting up from the embers of an open fire.[233] An archaeological dig in the earthen floor of Tocal's convict barracks in 1995 revealed

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[226] Cunningham, *Two Years in New South Wales*, 132.
[227] *Sydney Gazette*, 10 April 1832 as quoted in RB Walker, "Tobacco Smoking in Australia, 1788-1914", *Historical Studies* 19 (1980): 270.
[228] John Ritche (ed.), *The Evidence to the Bigge Reports: Volume 2, The Written Evidence* (Melbourne: Heinemann, 1971), 83. Several convict masters in the Hunter Valley issued tobacco: Minutes of evidence, Commission of Inquiry at Patricks Plains, *Sydney Monitor*, 21, 28, 31 January and 3 February 1834 & internet online http://www.une.edu.au/arts/ACF/cf1833/index.html and assoc pages [6/6/2006].
[229] Gilchrist, "Diary for Burrowel", 38, 42, 48.
[230] Bairstow, *A Million Pounds, A Million Acres*, 286.
[231] *Monitor*, 4 February 1828 as quoted in Walker, "Tobacco Smoking in Australia", 270.
[232] Cunningham, *Two Years in New South Wales*, 278.
[233] Cunningham, *Two Years in New South Wales*, 142; Blainey, *Black Kettle and Full Moon*, 60-62.

a quantity of clay smoking pipes dating from the convict era, tangible evidence of the role tobacco played in the lives of Tocal's convicts.[234]

Recreation

Recreation has received comparatively little attention in convict studies, which is unfortunate because an appreciation of convict leisure time is an important part of a meaningful understanding of what it was like to be a convict.[235] Leisure time provided convicts a way of temporary escape through activities that were outside the control and scrutiny of masters and government (provided those activities remained within certain bounds). The leisure time for convicts working regular hours (which excluded shepherds and the like) consisted of weekday evenings, part of Saturday afternoons, and most or all of Sundays depending on whether attendance at divine service was required. There were also several public holidays—Christmas, Good Friday, the King's Birthday, St. Patrick's and St. George's days (the latter two granted in alternative years). Most convicts assigned to private service had the means to finance their recreation—some were paid wages by their masters, and many earned extra money by working in their own time. Convict recreation mainly consisted of drinking and gambling, punctuated by occasional attendance at cockfights, prize-fights, cricket matches and horse races.[236]

Convicts assigned to rural estates such as Tocal had considerable freedom of movement in their own time. Technically they were required to obtain a pass to travel off the estate but in practice there was little restraint on their movements after dark provided they were back on the estate to turn out for work next morning. This was certainly the case at Tocal, where the records indicate convicts walking at night to neighbouring properties to buy spirits or to burgle storehouses.[237] Moreover, spirits were readily available from the sly grog-shops that inevitably sprang up near large rural estates or other areas where

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[234] Dennis R Aartsen, *Tocal Homestead: The Barracks—An Archaeological Survey of the Earthern Floors* (Paterson: CB Alexander Foundation, 1995), 3-9, 14-16.

[235] Some studies have included convict and working-class recreation in the colony, for example Karskens, *The Rocks*, 42-49. Others have investigated aspects of convict leisure in Tasmania, for example Bruce Hindmarsh, "Beer and Fighting: Some Aspects of Male Convict Leisure in Van Diemen's Land", *Journal of Australian Studies* 63 (1999), 150-205.

[236] Waterhouse, *Private Pleasures, Public Leisure*, 21-37. Many of these were common working-class recreations in Britain at the time: Malcolmson, *Popular Recreations*, 19, 34-51.

[237] NSW Supreme Court papers, T32 no. 38, 31/9, The King v's James Stiles and John Shepherd, 4 January 1831, SRNSW; Clerk of Peace, depositions, T148 no. 38, 31/9, SRNSW; Clerk of Peace, Depositions—Supreme Court, Paterson 2 May 1837, Rex vs Bernard Lyons and James Lemon, 9/6309, SRNSW.

numbers of convicts were assigned.[238] There was an inn at Paterson by 1828, about three kilometres from Tocal, on the opposite side of the river.[239] If Tocal's convicts ventured into Maitland with or without permission, they would have found a public house every 100 yards by the early 1830s, and by 1839 there were 19 licensed inns in the Maitland area.[240] It took nearly three hours to walk from Tocal to Maitland (unless they managed a lift in a cart or a boat from Paterson to Morpeth), but by whatever means, some of the estate's convicts made the journey.[241] Commissioner Bigge thought that assigned convicts who worked hard all day for their masters would be overtaken by fatigue and disposed to tranquillity and rest at night, but as shown below, he underestimated the energy of Tocal's mainly youthful males and their liking for alcohol.[242]

The drinking habits of convicts and others in colonial New South Wales have been exaggerated, romanticised and fabricated into legend by some observers and historians. For example Baron von Hügel, a visitor to New South Wales in the 1830s, observed that the convicts' sole objective in life was to 'acquire enough money to get themselves drunk'.[243] The problem with such generalisations is that they obscure a more diverse picture. One of Tocal's convicts, Richard Hughes, was appointed as a police constable at Paterson while holding a ticket-of-leave, and was then exchanged with one of Maitland's police constables who had already lost his ticket for drunkenness. The exchange took place because Hughes was a man of sober habits who was 'less addicted than men of his class usually are to the prevailing vice of Maitland'.[244] Russel Ward in *The Australian Legend*, after studying the drinking habits of those in New South Wales in the first part of the nineteenth century, stated that 'no people on the face of the earth

[238] Waterhouse, *Private Pleasures, Public Leisure*, 24; Anne McKay, "The Assignment System of Convict Labour in Van Diemen's Land 1824-1842" (M.A. thesis, University of Tasmania, 1958), 307. At the Australian Agricultural Company there was much traffic in spirits by the 'lower classes' of free servants that led to frequent scenes of drunkenness among the convicts: Bairstow, *A Million Pounds, A Million Acres*, 167.
[239] Elizabeth Guilford, "Hunter Valley Inns and Innkeepers, 1823-1850: Part 1, The 1820s", *Journal of Hunter Valley History* 2, no.1 (1986): 69-70.
[240] Wood, *Dawn in the Valley*, 250; Guilford, "Hunter Valley Inns and Innkeepers", 75.
[241] NSW Supreme Court papers, T32 no. 38, 31/9, The King v's James Stiles and John Shepherd, 4 January 1831, SRNSW; Clerk of Peace, depositions, T148 no. 38, 31/9, SRNSW.
[242] Bigge, *Inquiry into the State of the Colony*, 76.
[243] Von Hügel, *New Holland Journal*, 201.
[244] Police Magistate Maitland to CS, 17 October 1834, CS In-letters, 34/2571 in 4/2251.2, SRNSW.

ever absorbed more alcohol per head of population, or swore so foully and fluently'.[245] Not to be outdone, AGL Shaw claimed they drank six times as much spirits as those in England.[246] The claims of Ward and Shaw do not stand up to the scrutiny of quantitative studies of alcohol consumption in colonial New South Wales that show it was not the highest in the world.[247] Hyperbole and legend-making aside, drinking was a favourite recreational activity for a great many convicts and drunkenness was endemic to convict lifestyle.[248] Per capita consumption of alcohol in colonial New South Wales peaked in the 1830s, averaging 4.6 gallons of spirits annually, in addition to 4.2 gallons of beer and 3.5 gallons of wine, making a total of around 12 gallons per head per year.[249] During the convict era, spirits in the form of rum, brandy and gin were the main form of alcohol consumed due to their ready availability compared to beer. An overseas visitor to the Hunter Valley in 1828 noted the entrenched drinking habits of convicts and ex-convicts, who he said were 'as fond as ever of the keg of rum'.[250]

The heavy use of alcohol by convicts has been attributed to habit, escapism and sexual deprivation. Heavy drinking occurred in all strata of British and Irish society in the seventeenth, eighteenth, and early nineteenth centuries, and many convicts brought their drinking habits with them to Australia.[251] According to one historian, a tradition of spirit, beer and tea drinking was so thoroughly grounded that the demand was more a need than a desire.[252] Drink was one of the few comforts available to convicts, and it provided a temporary and pleasurable escape from the harsh realities of life.[253] 'From being the "quickest road out of Manchester", drink now offered the quickest route out of Botany Bay'.[254] It has also been suggested that sexual deprivation and constrained

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[245] Russel Ward, *The Australian Legend* (Melbourne: Oxford University Press, 1958; paperback, 2003), 35.
[246] Shaw, *Convicts and the Colonies*, 72. Shaw qualified his remarks by saying that little beer was available in New South Wales and the proportion of adult males in the population was larger.
[247] Dingle, "The Truly Magnificent Thirst", 241-243; NG Butlin, "Yo, Ho, Ho and How Many Bottles of Rum?, *Australian Economic History Review* XXIII, no. 1 (1983), 25; Keith C Powell, *Drinking and Alcohol in Colonial Australia 1788-1901 for the Eastern Colonies* (Canberra: AGPS Press, 1988), 12.
[248] For example, drunkenness was widespread among the Australian Agricultural Company's convicts at Carrington and Stroud: Bairstow, *A Million Pounds, A Million Acres*, 147.
[249] Dingle, "The Truly Magnificent Thirst", 230-232.
[250] RD Townsend, ed., *Rambles in New South Wales: The XYZ Letters* (Sydney: Sydney Grammar School Press, 1996), 23.
[251] Powell, *Drinking and Alcohol in Colonial Australia*, 5.
[252] JM Freeland, *The Australian Pub* (Melbourne: Melbourne University Press, 1966; revised, Sun Books, 1977), 7.
[253] Hindmarsh, "Beer and Fighting", 154.
[254] Dingle, "The Truly Magnificent Thirst", 237.

libidinal impulses of convicts resulting from a gender imbalance and shortage of female companions in the colony contributed to the heavy drinking.[255] Forced dislocation from their homeland and loved ones, plus a lifestyle that required compulsory participation in a labour system regulated by fear, physical pain and reward, placed additional emotional pressures on these men that probably led to increased use of alcohol. A Tasmanian study indicated that the degree of alcohol use by convicts was closely related to their levels of surplus income, and consequently the incidence of alcohol-related offences was highest among ticket-of-leave holders and lowest among convicts in road parties and iron gangs, with those assigned to private service occupying a middle position.[256]

A more radical significance has also been attached to the heavy use of alcohol by convicts, namely that of protest and subversion of authority. Glimpses from Tasmanian convict records suggest that drinking provided an important opportunity for socialisation and communication between convicts, whether it occurred on licensed premises or in sly grog-shops, huts, barns and other secluded areas of farms. Furthermore, the tone of convict responses to their masters when they returned to work from drinking sessions supposedly indicated something of the character of the convicts' conversations while imbibing—'emboldened by ardent spirits they often dropped the deferential demeanour, voicing otherwise harboured resentment' and telling their masters in no uncertain terms what they could do.[257] Hindmarsh concluded that convicts' social activities, particularly drinking, claimed this non-working time for themselves and in doing so challenged the authority of their masters. Secondly, he concluded, shared recreational time promoted a sense of convict identity and common rights that in turn were essential in establishing and giving meaning to convict resistance.[258] Hindmarsh's conclusions are certainly plausible—communal drinking sessions on rural estates would have given convicts the opportunity and licence to express grievances against masters in a supportive environment, and perhaps to fuel simmering discontents and hatch plans for resistance. One wonders if the revolt by 13 convicts at Tocal in 1829 over the non-receipt of sugar and milk was planned over a few pannikins of rum or brandy the previous night in the men's huts.

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[255] Powell, *Drinking and Alcohol in Colonial Australia*, 3; Dingle, "The Truly Magnificent Thirst", 238.
[256] Maxwell-Stewart, "The Bushrangers", 113-114.
[257] Hindmarsh, "Beer and Fighting", 153.
[258] Hindmarsh, "Beer and Fighting", 155-156.

Not all simmering discontent that surfaced after tippling was directed at the master. At Tocal in 1837 a convict named Bernard Lyons killed fellow worker Patrick Costigan in a drunken fight after a group of the Tocal men had consumed two gallons of wine purchased from a sly grog-shop on a neighbouring property. Just before Lyons stove in Costigan's head with a large lump of firewood he said to him 'I have been long looking out for you'. The incident indicates the not-surprising association of alcohol and violence, and the depositions of the case show that the two often went together at Tocal. Some of the men, conditioned by previous incidents, left or hid at the first sign of trouble. According to the Coroner, one of the youngest convicts there at the time, James Clements, invariably left his comrades when there was any quarrelling, and he was not the only one to be wary. William Partridge left the hut immediately the first blow was struck and Thomas Whitford initially hid under a bed during the fight before escaping to the barn.[259] Violence and fear was the price paid for the pleasure of alcohol use at Tocal, at least on some occasions. The pattern of violence associated with alcohol was similar for the convicts of the Australian Agricultural Company, and was directed at both fellow workers and constables.[260]

For Tocal's convicts, the many recorded incidents of drunkenness were almost invariably associated with other offences, the usual combination being 'drunk and disorderly', but their drunkenness was also combined with absenting, absconding, assault, insolence and obstructing the farm constable.[261] Five of these offences occurred while Tocal convicts were holding a ticket-of-leave, and in four of the five cases their tickets were completely withdrawn as a result, the men forced to return to bonded service. In the fifth case, the ticket was suspended for three months.[262] Given that only 73 tickets-of-leave were issued to Tocal's convicts, the five withdrawals or suspensions for drunkenness represent seven per cent of Tocal's ticket holders. It would be an interesting area of future research to investigate a larger sample of convicts in New South Wales from extant magistrate bench books or ticket-of-leave butts to discover the extent of loss of tickets resulting from drunkenness. For those Tocal convicts charged

[259] Clerk of Peace, Depositions—Supreme Court, Paterson 2 May 1837, Rex vs Bernard Lyons and James Lemon, 9/6309, SRNSW.
[260] Bairstow, *A Million Pounds, A Million Acres*, 284.
[261] See for example John Moors in Bench of Magistrates Maitland, 7 June 1836, X708, 60 [reel 662], SRNSW; Hugh McQuiggan in CS Petitions for Ticket of Leave, 25 June 1839, 39/7075 in X645 [reel 591], SRNSW.
[262] Tickets of Leave 29/1088, 34/1293, 40/1765, 30/765 and 44/2641, SRNSW.

with drunkenness while bonded, the penalties ranged from 25 to 75 lashes, or solitary confinement from one to seven days. In one case, that of Simon Rouse who was convicted of being drunk and disorderly while assigned to Tocal, the penalty was six months in a gaol gang working in the Newcastle coal mines. This was the only colonial offence recorded against Rouse and seems a harsh penalty for one incident. Perhaps the 'disorderly' component of the offence was more pronounced than usual, attracting a stern response from the magistrate. It seems that heavy drinking bouts took their toll on the health of some Tocal convicts, one being described by the estate's superintendent as having 'never received punishment except through liquor'.[263] In context this means the convict was never flogged but suffered nevertheless from the self-inflicted effects of alcohol.

Gambling, a favourite convict past-time that often accompanied drinking, was also endemic to convict lifestyle.[264] Convicts gambled on games of cards and dice, and when cards were not available they would make them from whatever printed material was at hand, in one instance shocking an observer when they cut up bibles in the process.[265] If convicts lacked money for wagers, they would gamble their clothes or even their food rations.[266] Cockfights, prize fights, horse races and cricket matches became popular and well established in New South Wales in the early 1830s, and these events provided convicts with further ways to gratify their urge to gamble.[267] Convicts on rural estates such as Tocal had less opportunity to attend these events than those assigned in and around Sydney, but evidently participated on occasions.

Cockfighting was ardently pursued in New South Wales in the 1830s but attempts by the authorities to suppress it resulted in venues moving from city hotels to more remote locations away from the watchful eye of the law.[268] Cockfighting was also popular in rural areas. For example, crowds of spectators attended two cockfights that were held in one week at Morpeth (near Tocal) in 1845.[269] Given that Maitland was the second

[263] Clarke to CS, 5 June 1838, CS In-letters, 38/6320 in 4/2425, SRNSW.
[264] Waterhouse, *Private Pleasures, Public Leisure*, 22-24; Bairstow, *A Million Pounds, A Million Acres*, 147.
[265] Peter Charlton, *Two Flies up a Wall: The Australian Passion for Gambling* (Sydney: Methuen Haynes, 1987), 16.
[266] Bigge, *Inquiry into the State of the Colony*, 116; Turner, *Newcastle as a Convict Settlement*, 133; Charlton, *Two flies up a Wall*, 16-19.
[267] Waterhouse, *Private Pleasures, Public Leisure*, 32.
[268] Waterhouse, *Private Pleasures, Public Leisure*, 36-37.
[269] *Maitland Mercury*, 1 November 1845.

largest centre of population in New South Wales at this time, with nearly 3,000 residents by 1841,[270] it is likely that cockfights were held within walking distance of Tocal's convicts. Prize fighting was also popular in the 1820s and 1830s, and the 'mills' or fights for small sums of money (sometimes for as little as £2 a side) were usually fought in country areas while major fights in the cities attracted an enormous interest.[271] Convicts eagerly sought to attend prize fights, making all sort of excuses to their masters for their absence from the farm.[272] Sometimes convicts organised local prize fights on rural estates, inevitably accompanied by drinking and gambling.[273]

Horse racing became well established in all Australian colonies in the 1830s and spread quickly to country areas of New South Wales. In Maitland, a convict was withdrawn from his master's service after the convict attracted the attention of authorities by organising an unofficial horse race through the town's streets in 1832.[274] Authorised horse races were held regularly at Maitland from 1833, evidently well within the reach of Tocal's convicts.[275] Thomas Caton, probably the last convict to serve on the estate, attended the 1844 Maitland Christmas races while still assigned to Felix Wilson at Tocal. Caton was consequently brought before the bench for fighting with another man at the racecourse, sentenced to 14 days in the cells and returned to government.[276]

Not all convict spare time was spent drinking and gambling. On rural estates convicts could earn money for themselves in the their spare time by making sheep hurdles, breaking-in and training young bullocks, making up hands of tobacco, and various other activities for which masters would pay.[277]

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[270] 1841 Census of New South Wales as tabulated in: Brian Walsh and Cameron Archer, *Maitland on the Hunter*, 2d ed., (Paterson, NSW: CB Alexander Foundation, 2007), 125.
[271] Chartlon, *Two flies up a Wall*, 31; Waterhouse, *Private Pleasures, Public Leisure*, 37-38.
[272] Barrie Dyster, *Servant and Master: Building and Running the Grand Houses of Sydney 1788-1850* (Sydney: New South Wales University Press, 1989), 154.
[273] Hindmarsh, "Beer and Fighting", 154-155.
[274] CS to Anley, 22 October 1832, CS LB, 310, 4/3833, [reel 2809], SRNSW.
[275] Elizabeth Guilford, "The Glendon Stud of Robert and Helenus Scott, and the Beginnings of the Thoroughbred Breeding Industry in the Hunter Valley", *Journal of Hunter Valley History* 1, no.1 (1985): 68; Waterhouse, *Private Pleasures, Public Leisure*, 33; James Backhouse, *A Narrative of a Visit to the Australian Colonies* (London: Hamilton, Adams & Co., 1843; New York: Johnson Reprint Corp., 1967), 396.
[276] *Maitland Mercury*, 28 December 1844.
[277] Harris, *Settlers and Convicts*, 178; Hirst, *Convict Society and its Enemies*, 51.

Religion

Sundays, the traditional time of divine worship for most Christians, are a complex part of colonial convict history and their study provides useful insights into convict lives and the importance or otherwise that religion played in them. Sundays could represent contested time, a clash between the sacred and secular, between government and convicts, and the arena for sectarian battles over the minds and bodies of convicts. By the time the first assigned convicts arrived at Tocal, the practice of compelling convicts to attend Sunday muster and divine service was well established. Governor Macquarie reissued earlier orders in December 1817 that stated:

> All the Male Convicts, whether assigned to Settlers or on Tickets of Leave in each District... are to assemble and be mustered by the District Constable every Sunday morning at Ten O'Clock in such Central Part of the District, as shall be pointed out by the magistrate; and to proceed from thence ... to the nearest Church or place of Divine Service, in case there shall be one within Three Miles of the Place of Muster. It is expected that the assigned Servants and Persons on Tickets of Leave shall not only be punctual in their Attendance, but also clean and decent in their appearance...'.[278]

In the early 1820s divine service in the Hunter Valley usually consisted of prayers read by laymen rather than clergy. William Dun, a settler on an estate just across the river from Tocal, read the service at Patersons Plains where the Sunday musters were 'reported to be dutifully attended'.[279] The service was held at the military post at Old Banks, three kilometres south of Tocal, in a building that also served at times as a courthouse and school.[280] Tocal's convicts were compelled to walk the round trip of six kilometres each Sunday in all weathers, neatly attired and clean shaven, to be counted and attend the ceremonies of organised religion which, as argued below, would have carried little or no spiritual meaning for many of them.

In July 1821 the Reverend George Middleton was appointed pastor to the penal settlement at Newcastle, and in the same year was given the use of 400 acres of glebe

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[278] HRA 1, IX, 516 (Macquarie to Bathurst, 4 December 1817). This was a re-issue of Macquarie's 1814 proclamation, see Bigge, *Inquiry into the State of the Colony*, 78.
[279] Wood, *Dawn in the Valley*, 36-37.
[280] Cynthia Hunter, "Government Cottages at Hunter's River 'For Sundry Useful Purposes at my Discretion'", *Journal of Hunter Valley History* 2, no.1 (1986): 146-147; James Raymond, *The New South Wales Calendar and General Post Office Directory 1832* (Sydney: by the author, 1832; Public Library of New South Wales, 1966), 136-137.

land at Patersons Plains adjoining Tocal's southern boundary. A few years later he was granted 2,000 acres in his own name on the north western border of Tocal.[281] It seems Middleton himself was torn between the metaphysical and the material, devoting much time to his land and livestock near Tocal rather than to his pastoral duties, his absenteeism and agricultural pursuits bringing him into conflict with government and church authorities. Although he was sole pastor in the lower Hunter Valley from mid 1821 to mid 1827, his ministry to convicts was minimal and perfunctory, limited mainly to marrying convict couples and baptising some of their children.[282] It was not until a few years before assignment of convicts to settlers ended that the first resident clergyman arrived at Paterson, a Presbyterian named William Ross, followed in 1839 by a Church of England minister, John Jennings Smith. Prior to that, the district was serviced by the occasional visit of itinerant ministers, or by laymen such as Dun, although the Reverend JD Lang conducted the first Presbyterian service in the Hunter Valley in 1827 at Dunmore, just a few kilometres from Tocal.[283] There was no resident Catholic chaplain at Paterson during the convict era. Followers had to rely on intermittent visits from Sydney-based Father Therry from 1827 to 1835, and after that from priests based at Maitland who had to cover the whole Hunter Valley.[284] In 1840 a slab timber Catholic church was built at Summer Hill, the first in the Paterson Valley, but still there was no resident chaplain.[285] (Notably, ex-Tocal convict Richard Clarke donated half the land for the Summer Hill Catholic Church from his land holdings).[286]

The compulsory Sunday muster was a contentious issue in the colony, and opinion on its effects was very much divided. The protagonists argued that it presented a valuable opportunity for male convicts to wash, shave, make themselves presentable and further

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[281] Brian N Roach, "George Augustus Middleton - A Prodigal Priest?" (M.A. thesis., University of Newcastle, 2003), 5, 51; *Muster of New South Wales 1822*, 568; *The First Title Holders of Land in the Counties of Camden, Cook, Hunter, Durham, Gloucester*, comp. Geoff Cannon (Maitland, NSW: by the compiler, CDROM, 2004).

[282] Roach, "George Augustus Middleton", 16, 52, 65. Elkin supports Roach's view, see AP Elkin, *The Diocese of Newcastle* (Sydney: Australasian Medical Publishing Company, 1955), 33; Hunter, *The Settlers of Patersons Plains*, 12-13.

[283] Cameron Archer and Jack Sullivan, *A History of St Ann's Presbyterian Church Paterson* (Paterson, NSW: Paterson Historical Society, 2004), 7, 11-12.

[284] Harold Campbell, *The Diocese of Maitland 1866-1966* (Maitland, NSW: publisher not stated, 1966), 13-26.

[285] Patrick F Moran, *History of the Catholic Church in Australasia* (Sydney: Oceanic Publishing Company, 1896), 230; Kay Ingle, *Sacred Heart Church and Cemetery Summer Hill, Paterson Valley* (Paterson, NSW: Paterson Historical Society, 2001), 4, 11; Polding to the Bourke, 6 May 1836 as quoted in Moran, *History of the Catholic Church*, 293.

[286] Ingle, *Summer Hill*, 12.

their moral welfare. Bigge added it gave convicts the chance to meet weekly with their district constable and report any deficiency of rations or clothing they may be suffering at the hands of their masters. The opponents pointed out the irony of the situation—mustering convicts to further their moral welfare simply presented them with 'temptations to dissipation and indulgence', the opportunity to embark on drinking and gambling sprees, and to plan and undertake robberies. Commissioner Bigge devoted three pages to this issue in his report. He detailed the different viewpoints and admonished in particular Mr Marsden and Mr Macarthur who, without informing the Governor, had 'exercise[d] their own discretion in relaxing the operation of a public order which they had been enjoined to enforce, and which the Governor had considered to be useful'.[287] As a result of these differences of opinion, the Sunday musters were very much neglected in some districts and observed with some regularity in others, Bigge concluding that the main problem was a lack of supervision by district constables on a Sunday. Cunningham agreed, observing that unless a responsible person was available to bring them back, convicts would convert Sunday into a day of drunkenness and plunder.[288]

The issue was equally contentious in the Hunter Valley where magistrate Benjamin Singleton made an official complaint that James Mudie and his men did not attend Singleton's Sunday muster. Mudie mounted a convincing defence, pointing out that he read prayers for his family and assigned servants in his house, and was the only settler at Patricks Plains to pay any attention to the Sabbath. He added it was better for his men to have prayers read on the farm than require them to walk eight miles (there and back) to attend Singleton's muster, particularly after a hard week's work.[289]

In some districts where the Sunday muster and attendance at divine service was enforced, Catholic convicts were compelled to attend Protestant services due to the scarcity of ministers of their own persuasion, a compulsion that many bitterly resented. Furthermore, those who refused were sometimes flogged or punished in other ways.[290]

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[287] Bigge, *Inquiry into the State of the Colony*, 78-80.
[288] Cunningham, *Two Years in New South Wales*, 278.
[289] Wood, *Dawn in the Valley*, 37.
[290] Parry, *Early Days of Port Stephens*, 45-46; Eris O'Brien, *Life and Letters of Archpriest John Joseph Therry* (Sydney: Angus & Robertson, 1922), I, 111; Allan M. Grocott, *Convicts, Clergymen and Churches: Attitudes of Convicts and Ex-convicts Towards the Churches and Clergy in New South Wales from 1788 to 1851* (Sydney: Sydney University Press, 1980), 214.

This situation caused a storm of protest from Catholic convicts and from colonial Catholic priest, Father Therry, who wrote to convict masters and magistrates involved in the practice in an attempt to stop it.[291] Apparently Father Therry received complaints from Catholic convicts at Patersons Plains, and he wrote to local magistrate and Tocal owner, James Webber, to express his concern. Webber's reply to Therry in October 1827 showed Webber's tolerant and non-sectarian approach to the issue, as follows:

> I have to acknowledge the receipt of your letter of 26 October and to inform you in reply that I have never required the attendance of Catholic prisoners at public worship unless performed by a Minister of their own persuasion, and have discountenanced as far as lay in my power any attempts to compel them to attend a protestant minister.[292]

After the compulsory Sunday muster at Patersons Plains, the majority of Tocal's Protestant convicts must have envied the Catholics who were exempt from attendance at divine service during Webber's magistracy. In general, the English working class was not particularly religious and many of the English convicts brought their religious indifference with them to New South Wales.[293] Most Irish Catholics also showed apathy, indifference and dereliction in religious matters.[294] It is hardly surprising, therefore, that contemporary evidence indicates the majority of convicts were hostile, cynical or indifferent to organised religion, hated compulsory worship, and showed a lack of respect for clergy.[295] Cunningham observed that clergymen were of little service to convicts in the colony, and Harris recorded that on outlying estates, where convicts were exempt from compulsory attendance at divine service because of distance, Sundays were nothing more than a holiday and a chance to grind their week's wheat, wash their shirts and visit friends.[296]

The Reverend Middleton, the only pastor at Patersons Plains up to 1827, was ignored, if not rejected, by convicts, and was accorded little respect, his parsonage being robbed by them.[297] The Reverend Samuel Marsden's experiences with convicts were similar. He

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[291] Moran, *History of the Catholic Church*, 16-19; O'Brien, *John Joseph Therry*, I, 63-65, 111; Therry, *Reminiscences of Thirty Years*, 145.
[292] Webber to Therry, 27 October 1827, Catholic Archdiocesan Archives, Adelaide; Webber, who was a Protestant, further demonstrated his religious tolerance in 1830 when he signed a petition for Father Therry's re-instatement as Government Chaplain: O'Brien, *John Joseph Therry*, I, 361.
[293] Jupp, *The English in Australia*, 6, 21, 22.
[294] Patrick O'Farrell, *The Irish in Australia* (Kensington: New South Wales University Press, 1986; paperback, 1987), 40; Waldersee, *Catholic Society in New South Wales*, 190-194.
[295] Grocott, *Convicts, Clergymen and Churches*, 103, 173, 213.
[296] Cunningham, *Two Years in New South Wales*, 278; Harris, *Settlers and Convicts*, 128.
[297] Roach, "George Augustus Middleton", 15, 67.

noted that they had no need of him or his preaching and would readily steal from him.[298] It is hardly surprising that convicts ridiculed and mocked the clergy behind their backs, given the 'solemnly humourless manner' in which the clerics exercised their authority over convicts.[299] Such mockery signified a rejection of the totalising power of the state and its proxies such as clerics, and constituted an important component of the hidden transcript within the battle of ideological domination and resistance played out between the state, clergy and convicts masters on the one hand, and convicts on the other.[300]

Grocott's influential work *Convicts, Clergymen and Churches*, with its emphasis on the irreligious nature of convicts, has been challenged by Vincent, Maxwell-Stewart and Duffield. Vincent argued that clergy acted as spokesmen for the 'lower orders' and had far more contact with ordinary people than realised. Vincent contended that Grocott underestimated convicts' association with non-formal and non-conformist or minority religions in his assessment of their irreligious status.[301] Vincent's evidence, however, is restricted to the extent to which convicts and emancipists participated in church marriages and baptisms. Her evidence is convincing regarding the extent to which clergy interacted with convicts in this context, particularly as those convicts wishing to marry were compelled to seek government permission through the agency of the clergy. In this respect she concluded that the clergy had far more contact with people who did not attend church willingly than has been realised. Vincent found a higher rate of participation by Catholics in baptism than other sects, namely 62 per cent of Catholic convict or ex-convict couples baptised children within two years of marriage compared to 36 per cent for Church of England couples.[302] Other studies show a wide variation in the incidence of baptism of children of convict and ex-convict couples—90 per cent of children fathered by a group of Swing rioters were baptised while, on the other hand, only 24 per cent of convicts married in the colony in 1838 christened a new-born baby within two years of marriage.[303] Vincent's arguments are less convincing in challenging Grocott's claims of religious indifference of convicts in contexts other than marriage

[298] Marsden to Bigge, 31 January 1821, as quoted in Waterhouse, *Private Pleasures, Public Leisure*, 21.
[299] Maxwell-Stewart and Duffield, "Skin Deep Devotions", 129.
[300] Scott, *Domination and the Arts of Resistance*, 3-23.
[301] Alison Vincent, "Clergymen and Convicts Revisited", *Journal of Australian Colonial History* vol. 1, no. 1 (1999): 106, 108, 110-113.
[302] Vincent, "Clergymen and Convicts Revisited", 106, 108-109.
[303] Kent and Townsend, *The Convicts of the Eleanor*, 244; Alan Atkinson, "Convicts and Courtship", in *Families in Colonial Australia*, ed. Patricia Grimshaw, Chris McConville and Ellen McEwen (Sydney: George Allan & Unwin Australia, 1985), 29.

and baptism, and she admits those engaging in these activities did not otherwise attend church willingly.

The view of convicts as irreligious, championed by Grocott, is an historiographical tradition 'based on the literal reading of works authored by nineteenth century chaplains, Tractarians and other middle class moral entrepreneurs'. In contrast, based on a study of the Macquarie Harbour Penal Station, Maxwell-Stewart and Duffield speculated that the convicts' own understanding of religion, particularly for those suffering brutal treatment at penal settlements, helped them to come to terms with their experiences of transportation.[304] The crucial factor in their argument is the convicts' *own understanding* of religion. These convicts still held organised religion and its clerics in contempt as an arm of the State, but upheld their own form of religion in which they found parallels between their sufferings and Christ, the ultimate convict, who was condemned like themselves by the judicial authorities of the day. By identifying with the sufferings of Christ, convicts were able to turn their brutal world upside down and follow an ideology 'which damned the apparatus of criminal justice and its penal instruments, while elevating the condemned to the ranks of the saved'. Thus subversive, popular religion possibly arrived in Australia with the convicts.[305]

It is therefore important on several grounds not to dismiss religiosity entirely from the lives of Tocal's convicts. It is particularly significant that some of them declared religious inclinations through their tattoos. From 1826, when tattoos where first recorded consistently on NSW convict shipping indents, 30 Tocal convicts had tattoos on their bodies, and seven of them expressed religious sentiments in various forms such as a fish, cross, crucifix, crucifixion, altar or 'IHS'. Some tattoos were a combination of two of these symbols.[306] Four of these men were Protestant and three Catholic. The significance of these religious markings should not be underestimated. In a study of convicts who arrived in New South Wales in 1831, symbols of the crucifixion and crosses together were the third most popular convict tattoo, [307] and this sounds a caution

[304] Hamish Maxwell-Stewart and Ian Duffield, "Beyond Hell's Gates: Religion at Macquarie Harbour Penal Station", *Tasmanian Historical Studies* 5, no. 2 (1997): 83.
[305] Maxwell-Stewart and Duffield, "Religion at Macquarie Harbour", 92.
[306] PSC, Bound Indents, SRNSW, for Elijah Corrigan (*James Laing*, 1834), William Holseworth (*England*, 1826), John Lawler (*Borodino*, 1828), Dennis Long (*Governor Ready*, 1829), James Musk (*Phoenix*, 1828), Frederick Scammell (*Hercules*, 1832), Patrick Wallis (*Java*, 1833).
[307] Kent, "Decorative Bodies", 80-81.

to those who would summarily label convicts as irreligious. At least seven Tocal men were prepared to wear their religious feelings 'on their sleeve' (almost literally) in an indelible declaration, although the link between such declarations and genuine religious inclination is speculative. Most Tocal convicts, however, would have been indifferent to, or contemptuous of, organised religion, its ceremonies and clerics. Some may have subscribed to a subversive, popular religion that placed convicts among the saved and those in authority among the damned.

Medical Services

Tocal's convicts had better access to medical services than to clergy. William Evans, who was assistant surgeon at the Newcastle penal settlement from 1811 to 1822, retired to a land grant of 1,130 acres at 'Bellevue' on the west bank of the Paterson River, only three kilometres south of Tocal. Despite a debilitating injury to one hand, Evans continued medical practice in his retirement, and may have established a small private hospital at Bellevue.[308] Another doctor, Isaac Nind, was established at Paterson by 1834 and operated a private hospital at 'Tillimby' north of Tocal. In his private practice Nind attended to convicts and others in the district, and acted on an official basis when required as surgeon for coronial inquiries.[309] By 1833 the establishment of private medical practitioners such as these facilitated a marked shift in the provision of convict health care in the lower Hunter Valley. Masters were no longer willing to pay one shilling per day per convict for their treatment in government hospitals such as Newcastle, preferring instead to send them to private doctors in the district.[310] This shift to private medical practice was officially sanctioned by government as a means of reducing the inconvenience to settlers caused by convicts demanding passes to hospital

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[308] Elizabeth Guilford, "From Convict's Surgeon to Settler: The Life and Times of Dr. William Evans", *Journal of Hunter Valley History* 2, no.2 (1988): 50-51, 76-78; Elizabeth Guilford, "Dr William Evans: Colonial Surgeon and Settler", in *Early Newcastle—The Fettered and the Free* (Newcastle: Newcastle Family History Society, 2005), 246.

[309] Rex versus 'Jacky'—*Sydney Gazette*, 12 August 1834, *The Australian*, 12 August 1834; *Maitland Mercury*, 10 September 1898; Dulcie Hartley, *John Herring Boughton of Tillimby, Paterson* (Paterson, NSW: Paterson Historical Society, 2000), 11. Some local history writings suggest Nind held an official government position in relation to convict medical services in the area, but this has not been confirmed by the records, and probably stems from his official services to the coroner and reminiscences in the *Maitland Mercury* in 1898 that stated Nind's hospital at Tillimby was for settlers 'to send their Government men to when sick'.

[310] A side effect of this change was that convict masters no longer maintained the services of agents in Newcastle to collect convicts when discharged from hospital, so that agents were also no longer available to collect convicts from Newcastle Gaol after serving a short stint in the cells. If their men were not picked up within 48 hours of the expiry of their sentences, they would be re-assigned and therefore lost to their master: 27 August 1833, CS LB, 4/3835, 76 [reel 2810], SRNSW.

for 'slight or pretended ailments'.[311] Convicts with more serious or longer term conditions were still subject to government health care. When Robert West became gravely ill at Tocal in 1836, for example, he was transferred firstly to Newcastle Hospital and then to Port Macquarie.[312] Other Tocal convicts may have spent time in Maitland Hospital which was operating from at least 1834 to 1839.[313] In the 1830s, when convicts were no longer fit for assignment due to illness, age or disability, they were usually transferred to an invalid gang at Port Macquarie, and it is therefore no surprise that three of Tocal's convicts died there.[314]

Extrapolating from Tasmanian data, the death rate for convicts assigned to rural estates such as Tocal is likely to have been relatively low, in fact slightly lower than the rate for British troops stationed in barracks in the British Isles in the 1830s. The annual death rate among non-ganged convicts at Port Arthur was 13 per 1,000 compared to 48 per 1,000 for those working in gangs and 14 per 1,000 for the aforementioned British troops.[315]

Conclusion

The diverse living and working conditions of Tocal's convicts again reveal a series of dichotomies that include pleasures and deprivations, freedoms and restraint, mateship and violence, and religious commitment and contempt. Despite the varying efforts of Tocal's nearly all-convict workforce, outputs of the estate at the time were impressive, among them herculean achievements in clearing, fencing and building, an annual wool clip from nearly three thousand sheep by 1830, the production of large quantities of tobacco of a quality to rival Brazilian imports, and notable pioneering efforts in viticulture and wine making. Convict-era structures at Tocal that have survived to the present day are testament to the skills of the estate's convict artisans, and when Tocal's archaeological evidence is combined with extant records, a vivid picture emerges of the personal dimensions of convict lifestyle on the estate. Up to 34 men and boys lived together, mainly in crowded, leaky, rough slab timber huts, sustained by a basic diet of

[311] CS to Sullivan, 21 September 1831, CS LB, 4/3830, 392 [reel 2808], SRNSW.
[312] Robert West's case is explored in detail in chapter two of this thesis.
[313] Gilchrist, "Diary for Burrowel", 49; CS, 34/1278 in 4/2248, SRNSW; W Nichol, "'Malingering' and Convict Protest", *Labour History* 47 (1984): 26.
[314] Earnshaw, "Sick and Disabled Convicts", 31. The three Tocal convicts who died at Port Macquarie were Michael Keily, Job Townsend and Robert West.
[315] Maxwell-Stewart, "The Rise and Fall of John Longworth", 104-105.

beef and damper with a few supplements. Although the basics of food and accommodation at Tocal were unremarkable, there was considerable tension between master and assigned servants regarding the supply of keenly sought-after extras such as tea, sugar and tobacco. At the risk of a flogging or jeopardising future tickets-of-leave, Tocal convicts took drastic, collective action on one occasion when not issued with the usual 'indulgences'. Two Tocal convicts were also prepared to risk their necks, quite literally, to obtain tea and sugar through burglary.

Heavy drinking, smoking and gambling were ubiquitous and endemic components of convict lifestyle. Tocal's convicts were evidently free to wander at night and buy alcohol from neighbouring estates, and to attend events such as cockfights, prize fights and horse racing in their own time. Drinking and gambling provided a means of escape and the opportunity to claim alternative space and time free from the supervision of their masters, but at Tocal the price of this escape was alcohol-fuelled violence, frequent fighting and fear, tempered in some instances by the support and protection of mates. In light of this evidence, Tocal's 1830 stone barn comes alive not just as a place where convict-grown tobacco was stored, but also as a refuge for frightened convict men and boys during drunken, violent fights in the huts.

A few Tocal convicts wore their religious beliefs 'on their sleeves' in the form of tattoos but organised religion meant little or nothing to most of the men. Nevertheless Sundays represented turbulent time and space. In the vicinity of Tocal, Catholic convicts were flogged for refusing to attend Protestant services until Tocal's owner intervened as local magistrate and disallowed the practice. Many convicts mocked religion and its clerics, and contempt for religion, like escape through alcohol, provided another means to reject the totalising power of the state and its proxies, the clergy. Yet many Tocal convicts eventually sought the services of clerics in order to gain government permission to marry, or to have their children baptised for respectability or salvation.

Chapter 5: The silence of convict-Indigenous relations at Tocal

In 2002 a ceremonial Aboriginal waddy was excavated from a convict-era silo at Tocal.[1] This discarded relic of the Gringai Clan of the Wonnarua people is now disconnected from its cultural context and, enshrouded in silence, its significance is unlikely to be adequately recovered.[2] A similar silence surrounds relations between Tocal's convicts and the local Aboriginal people, and in some ways this silence is a subset of the 'The Great Australian Silence' described almost 40 years ago by the anthropologist WEH Stanner when lamenting the lack of interest then shown by Australians in the history and culture of Aboriginal people.[3] Despite the breaking of the Great Australian Silence in the following years,[4] the richness and complexity of European/Indigenous relations at Tocal during the convict period remains largely mute. There are few surviving records or oral traditions for either group, and according to Grace Karskens the subject is generally relegated to a shadowy world that is explored in intimate and sustained detail only by novelists.[5] Consequently one of the more difficult tasks of this thesis is to interrogate the silence of this shadowy world and develop a tentative synthesis, not only from surviving information but also from the silence itself.

The chapter approaches the scarcity of Tocal records firstly by noting key developments in the historiography of European-Indigenous contact in New South Wales, including changing notions of the 'frontier', and the impact of contemporary stereotypes on how

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[1] Archer and Anderson, *Colonial Silo Mysteries*, 26.

[2] There are differing opinions about the people to whom the Gringai clan belonged, but Miller, a Gringai descendant, places them within the Wonnarua rather than the Worimi, as do Laffan and Archer who based their assumptions on the geographical boundaries of river and rainforest likely to separate the Wonnarua from the Worimi, and on the notes of early Europeans: James Miller, *Koori: A Will to Win* (Sydney: Angus & Robertson, 1985), 12; Laffan and Archer, *Aboriginal Land Use at Tocal*, 1.

[3] WEH Stanner, *After the Dreaming - The Boyer Lectures 1968* (Australian Broadcasting Commission, 1969), 25, as quoted in Robert Manne, *Whitewash - on Keith Windschuttle's Fabrication of Aboriginal History* (Melbourne: Black Inc. Agenda, 2003), 1.

[4] For example, Charles Rowley, *The Destruction of Aboriginal Society* (Canberra: Australian National University, 1970); Charles Rowley, *Outcasts in White Australia* (Canberra: Australian National University, 1971); Charles Rowley, *The Remote Aborigines* (Canberra: Australian National University, 1971); Henry Reynolds, *Frontier—Aborigines, Settlers and Land* (Sydney: Allen & Unwin, 1987); Henry Reynolds, *The Other Side of the Frontier—Aboriginal Resistance to the European Invasion of Australia* (Townsville: James Cook University, 1981).

[5] Grace Karskens, "Nefarious Geographies: Convicts and the Sydney Environment in the Early Colonial Period", *Tasmanian Historical Studies* 11 (2006): 19.

historians have viewed the cultural exchanges and collisions. Secondly, a brief chronology of European-Indigenous contact in the Hunter Valley is presented, noting the possible implications for convict-Indigenous relations at Tocal. Within this broader framework, information from official records, newspapers and the diaries of Hunter Valley settlers has been combined with precious scraps of evidence from Tocal itself to reach a tentative but hopefully meaningful conclusion regarding interactions and relations between Tocal's convicts and the Wonnarua people of Patersons Plains.

Initially, many of the studies that contributed to the breaking of the 'Great Australian Silence' focused on the conflict, violence and bloodshed that undoubtedly occurred on the frontier as Indigenous and European cultures collided.[6] The term 'frontier' itself has been used by historians in diverse ways and contexts to represent a process, a place, a borderline, an hypothesis or 'an abstract or mythical construction of the cultural imagination'. In his study of the convict settlement at Wellington, Roberts used the term 'frontier' in a temporal sense to represent an early phase of colonial occupation and in a spatial sense to convey remoteness in terms of politics, lines of supply, communication, and access to law and order.[7] Gender imbalance was another characteristic of a frontier, accompanied by a remoteness from, and scarcity of, sexual partners.[8] Most significantly Roberts used 'frontier' to denote an area 'characterised by meetings and exchanges between cultures' rather than as a fixed boundary.[9] A more recent review of the historiography of the frontier re-affirmed this view of the frontier as a place rather than a boundary, where Aboriginal people moved backwards and forwards.[10] At Patersons Plains prior to the 1820s, convict timber-cutters lived and worked on the frontier near Tocal, remote from the penal settlement at Newcastle, and by virtue of this remoteness were possibly less accountable for their behaviour. As the pace of settlement at Patersons Plains increased markedly in the 1820s, the frontier status of the area began to diminish, with improved communication and transport links to Maitland, Morpeth, Newcastle and Sydney, and the establishment of a local judicial infrastructure through

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[6] For example, Henry Reynolds, *The Question of Genocide in Australia's History: an Indelible Stain?* (Ringwood: Viking, 2001).
[7] Roberts, "The Frontier at Wellington Valley", 4-12. Quotes are from page 4.
[8] BM Penglase, "Marriage and the Settlement of the Hunter Valley, 1818 to 1838", *Journal of Hunter Valley History* 1, no.1 (1985): 108.
[9] Roberts, "The Frontier at Wellington Valley", 4.
[10] Bain Attwood, "Historiography on the Australian Frontier", in *Frontier Conflict*, ed. Bain Attwood and SG Foster (Canberra: National Museum of Australia, 2003), 172.

the appointment of a magistrate and scourger in 1825, and the construction of a lock-up.[11]

Given the initial focus on violent aspects of the frontier, in 1993 the widely-read historian Geoffrey Blainey coined the phrase 'black armband history' to describe approaches that threatened the generally optimistic view of Australia's past.[12] He was joined in 1996 by the then newly elected Prime Minister, John Howard, who regarded historians who spoke of dispossession and massacres as 'the politically correct brigade'.[13] Howard wanted Australians to be comfortable and relaxed about their history and not to spend their lives apologising for the past. Those who shared the Howard/Blainey view came to be labelled 'white blindfold' historians.[14] A maturing historiography of the European/Aboriginal collision has since emerged from this polarisation and controversy, and it now encompasses a more flexible notion of 'frontier' and a more complex, diverse and subtle understanding of the nature of the cultural exchanges that took place within it. Both Roberts' and Attwood's reviews of the historiography of the frontier indicated its progression from a violence/resistance paradigm with respect to European-Indigenous contact to a concept that includes accommodation and conciliation.[15] The frontier was more intimate and personal than previously allowed, with as much sharing as confrontation between black and white cultures.[16] Knowledge was one item shared between cultures, and some convicts learnt about the natural environment, bushcraft and 'bush tucker' from the Indigenous people with whom they interacted.[17] Therefore an understanding of the nature and extent of conflict, resistance, sharing and accommodation on the frontier in the lower Hunter Valley is fundamental to the interpretation of relations between Tocal's convicts and the

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[11] 19 January 1825, CS Letters sent, 4/5782, 196-200 [reel 6017], SRNSW; *Sydney Gazette*, 1 September 1825, 30 September 1826.
[12] Geoffrey Blainey, "Drawing Up a Balance Sheet of Our History", *Quadrant* 37, no. 7-8 (1993), 11.
[13] Bain Attwood and SG Foster, "Introduction", in *Frontier Conflict - the Australian Experience*, ed Attwwood and Foster, 13.
[14] The term arose from a comment by Justice Marcus Einfeld: Colin Tatz. *Genocide in Australia* (Canberra: Australian Institute of Aboriginal and Torres Strait Islander Studies, 1999), 42.
[15] Attwood, "Historiography on the Australian Frontier", 171; Roberts, "The Frontier at Wellington Valley", 4-12.
[16] Tom Griffiths, "The Language of Conflict", in *Frontier Conflict*, ed. Attwood and Foster, 148; A notable, personal example of more nuanced and sometimes intimate 'race relations' is given by Evans and Thorpe, "In Search of 'Jack Bushman'", 40.
[17] Karskens, "Nefarious Geographies", 18, 20.

Indigenous residents of the district and an essential part of interrogating the silence associated with these relationships.

Another influence on the interrogation of the silence is the changing way in which both convicts and Aboriginal people are seen and understood. Kociumbas argued recently that contemporary stereotypes heavily influenced colonialist representations of convict and Aboriginal people, and that these stereotypes underlaid a 'myth of implacable enmity' between the two groups and obscured the various kinds of co-operation that developed between them, particularly the formation of consensual partnerships between Aboriginal women and convict or ex-convict men.[18] These stereotypes have influenced recent accounts in which contacts between convicts and Aborigines have been portrayed as 'extremely antagonistic, based on mutual animosity and fear'. Among others, Kociumbas cites Yarwood and Knowling's quotation that convict men 'brutalized by Gin Lane, the rookeries of crime, the hulks and the chain gangs, found sadistic pleasure in abusing Aborigines, and most of all hurting the native women, desperately as they needed them sexually'.[19] Although there was wide-scale and well documented cruelty by white men against Aboriginal women, there is also much evidence of amicable convict/Aboriginal relations. Consensual 'wife-lending' was sometimes part of contracts between Aboriginal people and convicts, and such arrangements could be gentle or violent. Kociumbas argues that views of convicts and Aboriginal people were further obfuscated by demonisation of the main players and the idealisation of convict bushrangers.[20]

Kociumbas also tracks the changing views of Aboriginal women. The earliest revisionist histories, seeking to write Aboriginal people back into the record, tended to present Indigenous women as 'somewhat faceless and helpless, abstract pawns in the white man's game'.[21] In recent, post-colonial histories they are portrayed as wily, ingenious and daring, 'actively negotiating with the colonisers and engaging in mutually enriching processes of cultural exchange'.[22] Kociumbas calls for a balanced view, and

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[18] Jan Kociumbas, "'Mary Ann', Joseph Fleming and 'Gentleman Dick': Aboriginal-Conflict Relationships in Colonial History", *Journal of Australian Colonial History* 3, no.1 (2003): 28.
[19] Kociumbas, "'Mary Ann', Joseph Fleming and 'Gentleman Dick', 30.
[20] Kociumbas, "'Mary Ann', Joseph Fleming and 'Gentleman Dick', 33-35, 40, 48-49.
[21] R. Evans, "'Don't You Remember Black Alice, Sam Holt?' Aboriginal Women in Queensland History", *Hecate* 8, no.2 (1981): 7-21 as quoted in Kociumbas, "'Mary Ann', Joseph Fleming and 'Gentleman Dick', 36.
[22] Kociumbas, "'Mary Ann', Joseph Fleming and 'Gentleman Dick', 36.

cautions dwelling on the positive, cultural aspects of colonisation at the risk of reverting inadvertently to assimilationist approaches of the past. She contends that in convict colonies, Aboriginal women were more likely to be desperate refugees than powerful negotiators, with little choice but to link themselves to convicts. The implications for the Tocal study are clear—relations between convict men and Aboriginal women could be forced or consensual, violent or gentle, and casual or enduring.

European/Indigenous contact in the Lower Hunter Valley

Early contact between Europeans and Aboriginal people at Newcastle and in the Lower Hunter was often friendly but punctuated by occasional clashes. In 1799 Collins observed that the Newcastle Aborigines acted with 'kindness and civility' towards Europeans who frequently visited the area to collect coal, but in April of that year Henry Hacking was forced to fire on Aborigines at Newcastle after they became aggressive.[23] Dr Mason observed at Newcastle in 1801 that 'between 60 and 70 natives (men, women and children) came in here without spears, and manifested the most friendly dispositions'.[24] In contrast, Ensign Barrallier narrowly escaped during an unfriendly encounter with Aborigines while surveying the nearby Paterson River in November 1801.[25] Following the establishment of a permanent settlement at Newcastle in 1804, the commandant advised Governor King that 'we always have been and still continue on the most friendly terms with the numerous Natives here'.[26] However, isolated conflicts at Newcastle continued, often as the result of immediate provocation or previous mistreatment by other Europeans, with aggression by one party prompting retaliation by the other.[27] The initially friendly relations at Newcastle were repeated two decades later as the Australian Agricultural Company began to occupy and settle its land grant at Port Stephens. The Company's agent, Dawson, noted, 'I cannot omit to state how much assistance I have derived from the Natives who are very friendly and were anxious to make themselves agreeable to us. Without them our own people could

[23] David Collins, *An Account of the English Colony in New South Wales* (London: T Cadell and W Davies, 1802; Sydney: AH & AW Reed, 1975), vol. II, 146-147.
[24] *Newcastle Morning Herald*, 10 December 1897.
[25] Andy Macqueen, *The Life and Journeys of Barrallier 1773-1853* (Springwood: by the author, 1993), 64-65.
[26] HRA 1, V, 415 (Menzies to King, 1 July 1804).
[27] *Newcastle Morning Herald*, 24 September 1897.

not have had Huts on their arrival... Provided they are not ill treated by the Convicts I have no fear of their enmity'.[28]

Dawson's caveat points to the more complex situation that developed after initial friendly contact, as convicts and other Europeans interacted with the local Aboriginal people in various situations. Convicts based at Newcastle in the early 1800s came into direct and sometimes unregulated contact with Aborigines in two ways, firstly as members of cedar-cutting parties working for extended periods on the Hunter and Paterson Rivers at considerable distance from Newcastle, and secondly as runaways seeking to subsist in the bush or traverse it to reach destinations such as Sydney. Both these situations gave rise to conflict, the former often associated with sexual relations between convicts and Aboriginal women, and the latter because Aborigines were encouraged to capture and return escaping convicts.

Gangs of convict cedar-cutters were the principal form of European contact with Aboriginal people in the Paterson area for the first decade of permanent settlement at Newcastle. The tenor of relationships established during this time would, for better or worse, influence the disposition of Aborigines towards land grantees such as James Webber at Tocal and his convicts when large-scale settlement of the area began in 1822. As early as 1804, a sawyer was 'severely beat by a party of Natives up Paterson's River' and commandant Menzies at Newcastle advised Governor King that boats going up river for cedar had to be accompanied by two or three trusted armed men. Trusted convicts were apparently in short supply at Newcastle in 1804, Menzies remarking 'I am necessarily obliged to put Arms in their hands for their protection and Your Excellency is well aware of the Characters here'.[29] Cedar-cutters were often the first contact with Aboriginal people, and some historians have given them a notably bad reputation, describing them variously as desperate ruffians, barbaric, intemperate and wretched white men who antagonised Aborigines to such as extent that much of the later conflict between Aborigines and settlers could be attributed to their misdeeds. In his examination of first contacts between Aborigines and Europeans in the Northern Rivers of New South Wales, however, Prentis argued it would be a mistake to conclude

[28] Australian Agricultural Company, Index to Company Dispatches, A6427(xvii), 24 April 1826, Newcastle University Archives, Newcastle (Aust.).
[29] HRA 1, V, 423-424 (Menzies to King, 5 November 1804).

there was general hostility between Aborigines and cedar-cutters. There is no doubt cedar-cutters were a rough lot, and clashes between them and Aborigines did occur, often as a result of 'thieving' by Aborigines, or white abuse of black women and unmet reciprocal obligations expected of such liaisons.[30]

On some occasions, conflict was triggered by unprovoked cruelty by cedar-cutters. At Port Stephens in 1826 four of them were convicted of the murder of an Aboriginal boy, the case comprising one of a number of incidents in which timber-cutters in the area shot Aboriginal people for trifling causes.[31] Despite these incidents, there is no proof of general and sustained hostility between cedar-cutters and Aborigines. Cedar-cutting did not threaten the supply of game for Aborigines, and relationships between the two parties were complex and included the emergence of mutual dependence and consensual arrangements. Prentis argued that, in general, relations between cedar-cutters and Aborigines were better than between squatters and Aborigines.[32] In her study of the settlement of the Nambucca area, Townsend also found that relations between cedar-cutters and Aborigines were far better than relations on pastoral frontiers, and cedar-cutters posed the least threat to Aboriginal food sources and habitat. Townsend argued that Aboriginal violence towards cedar-cutters was invariably provoked, usually by European ignorance of reciprocal obligations in sexual access to Aboriginal women, or from sexual abuse of them.[33] Roberts records a similar situation in the Wellington Valley where the private grazing frontier was far more aggressive, more expansive and less supervised than the government frontier comprising the convict settlement.[34]

By 1820 convict cedar-cutters at Patersons Plains were always accompanied by a military guard 'to prevent them stealing their provisions from each other as well as to protect them from the natives who are sometimes both troublesome and formidable'.[35] Given the overall silence surrounding relations between convict cedar-cutters and

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[30] Malcolm Prentis, "Prelude to Dispossession? First Contacts between Aborigines and Europeans in the Northern Rivers Region of New South Wales, 1770-1840s", *Journal of The Royal Australian Historical Society* 70, no.1 (1984): 11.
[31] Margaret Rule, "Relations Between the Aborigines and Settlers in Selected Areas of the Hunter Valley and in the Liverpool Plains, 1800-50" (Hons. thesis, University of Newcastle 1976),17; Bairstow, *A Million Pounds A Million Acres,* 85, 86.
[32] Prentis, "Prelude to Dispossession", 12-14.
[33] Norma Townsend, *Valley of the Crooked River—European Settlement on the Nambucca* (Sydney: New South Wales University Press, 1993), 13.
[34] Roberts, "The Frontier at Wellington Valley", 219.
[35] Turner, *Newcastle as a Convict Settlement*, 58-59.

Aborigines along the Paterson River, it is probable there was a complex mix of conflict and accommodation, understanding and misunderstanding, inter-racial intimacy and distance, with sporadic incidents of conflict that were seldom reported. It is possible, however, that the continuing presence of cedar-cutters at Patersons Plains from 1804 had a large impact on local Aboriginal people. If their cohabitation with Aboriginal women was extensive, it would have been accompanied by a high incidence of venereal disease, consequent reduced fertility of the infected women, a number of 'half-caste' children that were probably killed at birth, and the dislocation and marginalisation of these women from their own people.[36]

The next phase of convict-Aboriginal contact in the Tocal precinct occurred after Governor Macquarie's visit to the area in 1812, when he allowed a few well-behaved convicts to settle on small holdings at Paterson Plains on the eastern bank of the river, not far from Tocal.[37] By the time of Macquarie's second visit in July 1818 there were eight small farms there, two occupied by free men and six by convicts.[38] Given the tiny size of these holdings and the small number of them, their invasive impact on Aboriginal food sources and hunting areas was small and unlikely to have strained relations. The only clues regarding such relations are provided in the evidence to the Bigge Inquiry by Constable John Allen and Major Morisset. Bigge asked Allen, who was stationed at Wallis Plains (Maitland) where Macquarie had allowed 10 convicts to settle on small holdings in a similar manner to those at nearby Patersons Plains, 'Are the settlers much annoyed by the natives?'. Allen replied 'They are in the corn season but not otherwise'. Allen said the convict settlers lived on very good terms with the local Aboriginal people, who would occasionally labour for them for short periods.[39] Morisset, in his evidence to Bigge, indicated the convict settlers at both Patersons Plains and Wallis Plains were very much annoyed by the Aborigines in the corn season when they stole large quantities of it, but he did not elaborate further, his reticence supporting Allen's comment that the annoyance was limited.[40] Apart from this evidence, silence is

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[36] Patricia Grimshaw, Marilyn Lake, Ann McGrath and Marian Quartly, *Creating a Nation* (Ringwood, Vic: McPhee Gribble, 1994), 139-140; AT Yarwood and MJ Knowling, *Race Relations in Australia: A History* (Sydney: Methuen Australia, 1982), 101. Additional sources regarding cohabitation and venereal disease appear later in the chapter.
[37] Hunter, *The Settlers of Patersons Plains*, 3-10; Goold, *TheBirth of Newcastle*, 26.
[38] Hunter, *The Settlers of Patersons Plains*, 3-10; Perry, *Australia's First Frontier*, 61.
[39] Turner, *Newcastle as a Convict Settlement*, 150.
[40] Turner, *Newcastle as a Convict Settlement*, 75.

again the predominant legacy of relations between these small-scale, convict settlers and the Aboriginal people at Patersons Plains.

More evidence has survived regarding the relations between Europeans at the Newcastle settlement and Aboriginal people. In January 1820 a convict named William Abrey, who would later be assigned to Tocal, was serving a three-year secondary sentence at Newcastle when he ran away, was captured and brought in by natives.[41] Abrey's mode of capture was no coincidence, as the military at Newcastle encouraged the local Aborigines to track and capture escaped convicts, rewarding them for their efforts with corn, fish-hooks, tobacco or blankets. This arrangement brought Aborigines into direct conflict with the convicts who resented this adversarial role. Apparently the local Aboriginal people would enthusiastically track runaway convicts, surround them and, if necessary, spear them in the legs before stripping them of their clothing and returning them to the settlement. When escapees made it as far as 'the mountains' Aborigines would kill them. Newcastle convicts retaliated with violence towards local Aboriginal people. For example in 1819 and 1820 several convicts at the settlement were punished for ill-treating and intimidating Aborigines who had captured bushrangers. Again in that year at Newcastle an absconded convict was charged with stabbing an Aboriginal who was attempting to recapture him.[42] Bigge was apparently pleased with the exertions of Aborigines in apprehending runaway convicts and recommended that such assistance be encouraged as official policy.[43]

By the time of the Bigge enquiry there was a permanent cedar-cutters' camp named 'Old Banks' on the Paterson River near Tocal.[44] In 1820 a military barracks was erected at Old Banks and staffed by a constable and four soldiers, comprising a corporal and three privates.[45] The objective of this official government presence near Tocal was to maintain order and protect the settlement from the Aborigines, the settlement in 1820 consisting only of cedar-cutting gangs and a few convict settlers.[46] Given the number of Aborigines in the area at the time, this was a token military and police presence that

[41] 28 January 1820, CS Letters sent, 4/1807, 75 [reel 6067], SRNSW.
[42] Bigge, *Inquiry into the State of the Colony*, 117, 186; Turner, *Newcastle as a Convict Settlement*, 73, 75, 95-96, 237, 250.
[43] Bigge, *Inquiry into the State of the Colony*, 186.
[44] Hunter, *The Settlers of Patersons Plains*, 13.
[45] Turner, *Newcastle as a Convict Settlement*, 223.
[46] Turner, *Newcastle as a Convict Settlement*, 75.

lacked the capacity to control a major disturbance. It indicates a lack of large-scale conflict with Aboriginal people in the area and a general degree of underlying goodwill or at least resignation and adaptation between the two parties despite sporadic, small-scale conflict. Associated with the official government presence was a policy of protection and conciliation with respect to the local Aboriginal people, a policy severely strained by convict resentment towards the government use of Aboriginal trackers and at times frustrated by prejudice and unwillingness of settlers to conciliate.[47] That policy was later to turn to thinly guised 'control by retaliation', as Governor Darling encouraged Upper Hunter settlers to take whatever means were necessary to protect their interests in the face of conflict with Aborigines.[48]

When James Webber took possession of Tocal in March 1822, [49] the Lower Hunter Valley has only recently been opened for large-scale settlement.[50] Webber was one of only a handful of settlers who took up land in the area that year but by 1825 most of the alluvial land on the Lower Hunter had been granted.[51] The commencement of large-scale settlement at Patersons Plains in 1822, and the allocation of the majority of convicts to private assignment, marked a change from government to private frontier in the district. This new pastoralist-expansion phase of the frontier in the Lower Hunter resulted in far more contact between Europeans and Aboriginal people than previously. It was also more invasive, causing greater dispossession of Aboriginal land and providing increased potential for conflict. As expected, the records show a mix of conflict and accommodation, with an absence of sustained or substantial clashes in the Lower Hunter during the 1820s and 1830s.[52] The Upper Hunter, however, did not escape major incidents, possibly because of a larger number of Aboriginal people residing there at that time and reduced supervision associated with the more distant land grants.

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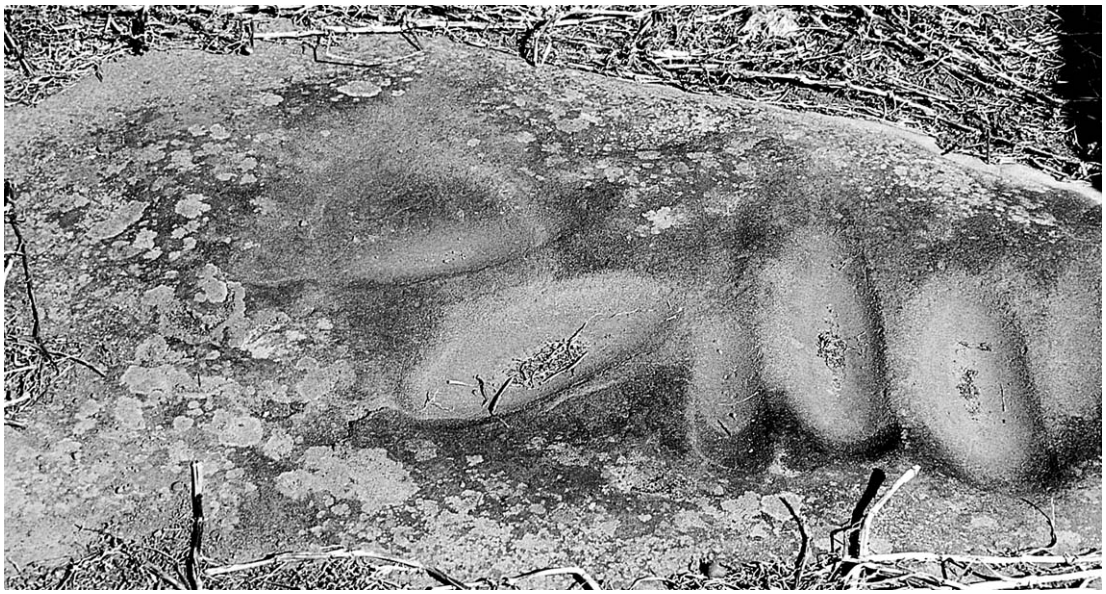
[47] Roach, "George Augustus Middleton", 85; Rule, "Relations between Aborigines and Settlers", 1.
[48] HRA 1, XII, 577 (Darling to Landholders at Hunters River, 5 September 1826).
[49] CS to Nicholson, 8 March 1822, CS Letters sent, 4/3504A, 539 [reel 6008], SRNSW.
[50] Goulburn to Morisset, 21 February 1822, as cited in Perry, *Australia's First Frontier*, 65-66.
[51] Perry, *Australia's First Frontier*, 67.
[52] For example, according to Miller, the *Sydney Gazette* reported no incidents of conflict between Aborigines and Europeans in the Hunter Valley from 1822 to late 1825. The contact experiences of Miller's extended family suggest less European/Aboriginal violence on the Paterson than the Hunter River: Miller, *Koori: A Will to Win*, 33, 41.

During 1826 there were 10 months of conflict in the Upper Hunter between settlers and Aboriginal people, with several killings on both sides.[53] Governor Darling refused requests to declare martial law but provided an increased military presence in the area, and the conflict culminated in a government inquiry into the actions of the mounted police who shot three Aborigines. The incidents in the Upper Hunter at this time exposed the governor's *de facto* policy towards Aboriginal people, namely the use of punitive measures by the military and settlers to repress Aboriginal resistance. For example, in September 1826 Darling, in a letter to Upper Hunter settlers, said 'vigorous measures amongst yourselves would more effectively establish your ascendancy than the utmost power of the military... I therefore strongly recommend you to unite to take measures for your own defence and you may be satisfied that, in any exertions you may make, you shall receive every necessary support'. A week later Darling reported in a dispatch to London that he had sent troops to the area to punish Aboriginal aggressions.[54] The ensuing official inquiry into the actions of the Mounted Police during these punitive missions illustrates the duplicity of government policy towards Aboriginal people during this period, firstly encouraging retaliatory measures and then disciplining those who carried them out.

Aboriginal grinding grooves at Tocal, only a few metres from the convict barracks



[53] Miller, *Koori: A Will to Win*, 34-37.
[54] HRA I, XII, 574-578 (Darling to Hay, 11 September 1826); 608-628 (Darling to Bathurst, 6 October 1826).

In contrast to the Upper Hunter, one has to search records and settlers' diaries closely to find indications of European/Aboriginal relations in the Lower Hunter during this period.[55] At Newcastle during 1827, for example, Lieutenant Coke enjoyed excellent and friendly relations with the local Aboriginal people.[56] At Patersons Plains, however, there were several incidents involving settlers. In 1827 only a few kilometres from Tocal, on the property of Edward Gostwyck Cory, a convict was speared while shearing sheep within a short distance of the homestead. The attack was a reprisal because the man had killed an Aboriginal dog that had been savaging Cory's sheep. The convict was only slightly wounded and recovered. Local magistrate, James Webber, reported to the Governor that two of the Aborigines involved in the spearing were known and the police were endeavouring to apprehend them. At Webber's request, two Mounted Police were stationed at Cory's for this purpose.[57] What happened next is a matter of conjecture. One newspaper reported that 12 Aborigines were killed by Cory's men in a consequent affray, but Cory vigorously denied it.[58] The truth of this and similar incidents will never be known and, despite Cory's denial, the possibility of such devastating retaliation cannot be dismissed.

Up-river from Tocal, the convict overseer for James Webber's brother was apparently killed by Aborigines in March 1828.[59] *The Australian* claimed the man had been eaten, but this is unlikely as cannibalistic practices by Australian Aborigines were rare and restricted to the ritual eating of particular organs in some circumstances.[60] A Tocal convict, Thomas Casey, was killed by Aborigines while working for the Australian Agricultural Company at Port Stephens only a few months after obtaining his ticket-of-leave, according to a Police Magistrate report.[61]

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[55] A government report confirmed that the disturbances were confined to the Upper Hunter: CS Miscellaneous Correspondence relating to Aborigines, 5/1161, 42-49 [COD 294 A], SRNSW.
[56] Cynthia Hunter, *The 1827 Newcastle Notebook and Letters of Lieutenant William S Coke H.M. 39th Regiment* (Raymond Terrace: Hunter House Publications, 1997), 31-53.
[57] Webber to Macleay, 15 February 1827, CS In-letters, 27/1949 in 4/1923, SRNSW.
[58] *The Australian*, 3 March 1828; *Sydney Gazette*, 22 March 1827, 24 March 1827, 18 April 1827.
[59] Patersons Plains Magistrates to CS, 8 March 1828, CS Registers of Letters Received, 28/2197, 5/2343 [reel 2563], SRNSW.
[60] *The Australian*, 14 March 1828; RHW Reece, *Aborigines and Colonists - Aborigines and Colonial Society in New South Wales in the 1830s and 1840s* (Sydney: Sydney University Press, 1974), 97; Miller, *Koori: A Will to Win*, xv-xvi.
[61] Thomas Casey, *Mariner* 1827—notation on his shipping indent, his ticket-of-leave butt and the convict death register.

The diary of Charles Boydell, a settler on the Paterson River north of Tocal, indicates both accommodation and conflict with the local Aboriginal people. In January 1833 Boydell commenced cutting his tobacco crop and 'with the assistance of the blacks got [it] in the most prosperously'.[62] Two months later his corn was 'dreadfully pillaged by blacks and cockatoos'. He wrote 'the rascally Blacks with their natural cunning left unpulled what was immediately by the river and outside and went into it that their traces might not be too evident'.[63] Similar isolated incidents of conflict and accommodation are recorded for Burrowel at nearby Williams River where in 1834 a stockman was killed by an Aboriginal who was consequently tried for murder and convicted of manslaughter.[64] Five years later, in 1839, Burrowel's overseer recorded that Aborigines assisted with the corn harvest.[65] At Richmond Vale in the Lower Hunter, John Palmer requested protection from the Mounted Police after one of his assigned convicts was assaulted and large numbers of his sheep and cattle speared by Aborigines.[66] The Mounted Police were also called to the upper reaches of the Paterson River in 1835 when two shepherds were killed by Aborigines, and in this same area several settlers' properties were attacked and livestock speared in the following year.[67] In contrast, visiting missionary James Backhouse recorded that on the Paterson River in 1836, one settler and his wife 'maintained a kindly feeling towards the Aborigines, who live about them in quietness and confidence'.[68] George Wyndham's property 'Dalwood' on the Lower Hunter was also peaceful, as his diary from 1830 to 1840 carries only two entries about Aboriginal people. In Wyndham's typically terse and cryptic style he reported on 21 February 1833 'The blacks are saucy in Mr Harper's brush', and four days later 'Police after blacks'.[69] His entries shed no light on the nature of the incident and it is impossible that this was Wyndham's only interaction with Aboriginal people in the decade covered by his diary. Once again, silence predominates.

An incident at Tocal in July 1830 showed the willingness of local Aboriginal people to cooperate with convict masters and act as adversaries to assigned convicts. Two of

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[62] Boydell, "Journal and Cash Book", 51.
[63] Boydell, "Journal and Cash Book", 59.
[64] *Sydney Gazette*, 12 August 1834.
[65] Gilchrist, "Diary for Burrowel", 13.
[66] Palmer to CS, 30 December 1831, CS In-letters, 32/62 in 4/2130, SRNSW.
[67] Sokoloff, *Aborigines in the Paterson Gresford Districts*, 8.
[68] Backhouse, *Narrative of a Visit*, 402.
[69] Wyndham and McInherny, *Diary of George Wyndham*, 70.

Tocal's convicts broke into the storeroom of the neighbouring Bona Vista property and stole quantities of sugar, tea and coffee. Bona Vista's owner, James Phillips, stated that when he discovered the robbery 'I immediately got the Blacks and we followed the track of the two men from my house to the hut of the prisoners who are Mr Webber's assigned servants. Mr Webber and his overseer searched the hut occupied by the prisoners and found some sugar'.[70] As a result of the successful Aboriginal tracking, the two Tocal convicts were identified and bought to justice.[71] It is not known if Aboriginal tracking of convicts at Paterson caused the same enmity and simmering resentment among convicts assigned in the district as it had done at Newcastle during the operation of the penal settlement there from 1804 to 1823.

Accommodation and conflict are also recorded between Aborigines and the Australian Agricultural Company at Port Stephens. In April 1827 the Company's agent, Dawson, reported that Aboriginal women were employed for two months picking seeds and other unwanted materials out of the wool, in return for the supply of small quantities of biscuits, flour or tobacco.[72] In 1830 one of the company's watchmen was speared by Aborigines while out with a flock of sheep. Commissioner Parry recorded in his diary:

> 14 to 20 blacks had come with a decided intention of killing some of the sheep if they could not get flour. They had knocked down and carried away eight Colonial sheep. The shepherds were much scared, as was very natural, and came to beg that I should double the flocks so that two of them might always be together. To this, as the present means of quieting them, I was obliged to accede. I also gave them a musket.[73]

In several of these recorded incidents, convict shepherds and their watchmen working in isolated areas remote from the main homestead feared for their safety as they were easy targets. Therefore the interpretation of convict and Aboriginal relations in the Lower Hunter Valley, and particularly at Tocal, needs to acknowledge that, at least on some occasions, fear was an element in the day-to-day lives of both parties.

The overt causes of the above incidents of conflict include dispute over Aboriginal dogs killing sheep, or Aborigines taking settlers' corn or livestock. Nevertheless, it is often

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[70] NSW Supreme Court papers, T32 no. 38, 31/9, The King v's James Stiles and John Shepherd, 4 January 1831, SRNSW.
[71] Sydney Gaol Entrance Book 1830-1831, 4/6432 [reel 851], SRNSW.
[72] Australian Agricultural Company, Company Dispatches, B263, 30 April 1827, Newcastle University Archives, Newcastle (Aust.).
[73] Parry, *Early Days of Port Stephens,* 30.

difficult to accurately determine the underlying causes, and the exchanges need to be interpreted carefully against a background of dispossession from tribal lands and loss of hunting areas and traditional sources of food. This dispossession and loss required adaptation in a variety of ways, part of which included an acquired demand or need for sheep, flour, tobacco and other goods associated with the lifestyle of the newly arrived Europeans. These adaptations required complex and novel cultural interactions with the colonisers, transactions that were potentially fraught with conflict. One significant source of conflict arose from sexual relations between convict men and Aboriginal women, and this aspect of cultural exchange on the frontier is explored below.

Cohabitation and sexual relations between convict men and Aboriginal women were common and widespread in New South Wales.[74] For example, Reece claimed that in 1835 every shepherd and hut-keeper in the Wellington Valley had an Aboriginal mistress.[75] These relationships resulted in extensive infection with venereal diseases among both parties.[76] In the Lower Hunter, the Australian Agricultural Company at Port Stephens provides an example of the situation—in a general order from the Company on 10 May 1828 the following instructions were given:

> The Indented Free Servants, Prisoners and other persons in the employment of the Company are required to abstain in future from visiting the Native Black Camps. All persons who may presume to disobey this order will be punished with the utmost severity the Law will admit. The free people by Fine and Imprisonment, the Prisoners by Corporal punishment and reduction of the usual Indulgences... It is hoped that the Principal Officers of the Establishment will set an example to the Inferior Servants, and exert themselves to check a disgraceful and pernicious intercourse between the two sexes, which has already proceeded to a length of almost entirely putting a stop to the further increase of the Native Population, and has made no inconsiderable number of the Prisoners incapable of labour.[77]

A week later a further report from the company indicated the extent of the problem: 'from the 23rd January last to the 30th of April, 68 of the convict servants have

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[74] For example Roberts, "The Frontier at Wellington Valley", 212; *Sydney Gazette*, 25 February 1832; *New South Wales Aborigines*, *Replies to a Circular Letter Addressed to the Clergy of all Denominations, by order of The Select Committee on the Condition of the Aborigines* (Sydney: Legislative Council, 1846), 4-5, 17, 25, 28.
[75] Reece, *Aborigines and Colonists*, 52.
[76] Reece, *Aborigines and Colonists*, 54; Townsend, *Rambles in New South Wales*, 83; *New South Wales Aborigines*, *Replies to a Circular Letter*, 5.
[77] Australian Agricultural Company, Index to Company Dispatches, B873-B874 26 May 1828, Newcastle University Archives, Newcastle (Aust.).

contracted a disease by intercourse with native women, which deprive the Company of their Services while they were under medical treatment for longer or shorter periods'.[78] It has been estimated that between 7.5 and 10 per cent of the Company's convicts were unable to work in the late 1820s due to illness from venereal diseases contracted through sexual relations with Aboriginal women.[79]

Aboriginal women were not always coerced to liaise with European men and sometimes entered into such relationships consensually for motives such as profit, gratification, and security. Nevertheless, Roberts claimed that Aboriginal women bore the brunt of European colonisation in a brutal and exploitative fashion and they, along with blankets, were the most salient and frequent items of cultural exchange between Europeans and Aboriginal people on the frontier.[80] The conflict that frequently arose from cohabitation of European men with Aboriginal women usually stemmed from procurement by force, maltreatment, and unmet obligations.[81] The subsequent widespread cruelty and mistreatment suffered by Aboriginal women at the hands of European men was a major ingredient in the souring of race relations on the frontiers of colonial settlement.[82] It was a significant cause of conflict at Newcastle in the 1820s where the Aborigines resented the convicts because of their treatment of Aboriginal women.[83] Even when Aboriginal women were not taken by force or maltreated, conflict could still arise from cross-cultural misunderstandings and the failure of convict men to meet expectations and obligations associated with the exchange. For example, men were often expected to supply the relatives of Aboriginal women with food, tobacco, and clothing, and to release the women when required.[84] Despite these causes of conflict, the frequent instances of amicable liaisons between convict men and Aboriginal women suggest that

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[78] Australian Agricultural Company, Index to Company Dispatches, B823 17 May 1828, Newcastle University Archives, Newcastle (Aust.).
[79] Perkins, "Convict Labour", 176.
[80] Roberts, "The Frontier at Wellington Valley", 224; Grimshaw reinforces Roberts' observations regarding consensual relationships: Grimshaw, Lake, McGrath and Quartly, *Creating a Nation*, 139.
[81] In 1837 a letter from the police magistrate at Cassilis to Governor Bourke indicated that convicts were forcibly procuring Aboriginal women: King, *Richard Bourke*, 135; The Rev Threlkeld noted that Aboriginal women were often taken by the whites for 'improper purposes', which generated frequent complaints: *Sydney Gazette*, 23 February 1832.
[82] Reece, *Aborigines and Colonists*, 52; Miller, *Koori: A Will to Win*, 34, 52.
[83] Kociumbas, "'Mary Ann', Joseph Fleming and 'Gentleman Dick', 40; Roberts, "The Frontier at Wellington Valley", 224; Rule, "Relations between Aborigines and Settlers", 12; John Turner and Greg Blyton, *The Aboriginals of Lake Macquarie: A Brief History* (Lake Macquarie: Lake Macquarie City Council, 1995), 28.
[84] Rule, "Relations between Aborigines and Settlers", 33; Reece, *Aborigines and Colonists*, 53-54.

in this respect the frontier was characterised more by ambivalence and fluidity than by one sharply-defined or dominant mode of interaction.[85]

It is difficult to gauge the extent of cohabitation between Tocal's convicts and Aboriginal women. Many of the incidents of extensive cohabitation arose in situations where there was minimal supervision of convicts due to the expanse of the frontier, or in the case of the Australian Agricultural Company, the large number of convicts being supervised and the size of the grant. It is therefore necessary to be cautious when extrapolating these findings to the Tocal situation. During a court case in 1834 involving the killing of a stockman at Burrowel on the Williams River, one witness was questioned about the extent of cohabitation of convicts with Aboriginal women. He indicated it was common practice on stations in the interior but was unsure if it occurred at Burrowel.[86] His uncertainty may have been a convenient cover-up or may have reflected a low incidence of cohabitation. Given the similarities between Burrowel and Tocal, his testimony reinforces the need for caution. Some convicts at Tocal probably cohabited with Aboriginal women, but to an unknown extent. Perhaps it was limited mainly to convicts such as shepherds and hutkeepers who were less supervised while living and working remotely from the Tocal Homestead. It is also possible that Tocal's convict masters, in common with some others, turned a blind eye to interracial cohabitation on the grounds that it lessened the prevalence of other 'immoral practices'[87] (presumably homosexual and bestial practices). If convict masters were driven by such pragmatism, they would have also needed to take into account the loss of productivity through incapacitation of workers from venereal disease contracted during these liaisons.

By the 1830s in the Lower Hunter, the period of intense inter-cultural contact between Aboriginal people and European settlers and their convicts had passed. Conflict in the area during the 1830s was minimal, as the frontier moved out of the Hunter Valley and onto the Liverpool Plains and beyond.[88] In the 1830s Aboriginal numbers in the Lower Hunter declined markedly, but not as quickly at Paterson as in other parts of the region.

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[85] Kociumbas, "'Mary Ann', Joseph Fleming and 'Gentleman Dick'", 48.
[86] *Sydney Gazette*, 12 August 1834.
[87] Crowley, "Working Class Conditions", 113.
[88] Rule, "Relations between Aborigines and Settlers", 31; As an example, *The Monitor*, 4 August 1828 documented clashes between Europeans and Aboriginals on the Liverpool plains, resulting in the death of several Aboriginal people.

For example, detailed reports to the Select Committee on the 'Condition of Aborigines' in New South Wales in 1846 indicated there were only 29 Aborigines at Newcastle, none in or around East Maitland, and 23 at Morpeth. In comparison the report indicated there were approximately 150 in the district of Paterson, of whom up to 25 were encamped in the township. The number in the Paterson area at that time had decreased by about one third in the past seven years. The Rev William Ross, Presbyterian minister at Paterson, noted two causes of the decrease—'the vice of drunkenness, to which they are, both male and female, very much addicted; and disease contracted through the intercourse of their women with the whites. There may be other causes but these are the principal.'[89]

Another cause of decreasing numbers of Aboriginal people in the Hunter Valley and elsewhere was a smallpox epidemic from 1829 to 1831 in which mortalities may have exceeded 30 per cent of the Aboriginal population.[90] This widespread epidemic probably started in the Hunter Valley and after its passing, Aborigines survived in numbers only in the Upper Hunter but not in the Lower Hunter area. The impact of the epidemic was increased by the high incidence of venereal diseases that greatly reduced the reproductive capacity of the Aboriginal population to recover from the mortality of smallpox. Additional causes of declining numbers included other introduced diseases such as influenza, measles and whooping cough, conflict among Aborigines themselves, and conflict with Europeans.[91]

In the 1830s the Aboriginal people around Paterson and Tocal, faced with declining numbers, followed the established pattern of 'coming-in'—living in semi-permanent camps on various rural estates, where settlers provided them with food in return for occasional work and the knowledge that livestock and crops would not be attacked.[92] The 'coming-in' of Aboriginal people began in the early phases of European contact

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[89] *New South Wales Aborigines*, *Replies to a Circular Letter*, 5, 7, 9, 26. Estimates of numbers of Aborigines need to be interpreted with caution, given the movement of people between areas for religious, social or economic reasons that were not always well understood by European observers. Nevertheless, the detail provided by the Rev Wilton regarding numbers at Newcastle, and by clergy reporting on other regions, suggests a considered and credible response.
[90] Judy Campbell, "Smallpox in Aboriginal Australia, 1829-31", *Historical Studies* 20 (1983): 536, 555.
[91] Butlin, *Our Original Aggression*, 12-13, 35.
[92] Rule, "Relations between Aborigines and Settlers", iii, 18-19; Reece, *Aborigines and Colonists*, 19-20; Miller, *Koori: A Will to Win*, 54; Backhouse observed Aborigines living in and around Newcastle and Maitland in 1836 and doing small jobs in return for European foodstuffs: Backhouse, *Narrative of a Visit*, 381, 389.

and historians have variously attributed this behaviour to an irresistible and self-destructive attraction to European resources, ecological pressures arising from pastoral expansion, or a political decision and rational choice from the few options available.[93] 'Coming-in' certainly occurred at Merton in the Upper Hunter, and at the Australian Agricultural Company's land at Port Stephens.[94] Others drifted into towns—in the late 1830s up to 90 were encamped in the township of Paterson, while another group was living and working in Maitland in the late 1830s and early 1840s.[95] It is not known if remnant Aboriginal groups encamped at Tocal, but it is clear that the process of subjugation and dispossession of the Aboriginal people of the Paterson district at the hands of the colonisers and their convicts was nearly complete by the 1830s.

It is also clear that Aboriginal deaths at the hands of Europeans in the Lower Hunter were sometimes, perhaps often, unreported, and when exposed were covered up by a conspiracy of silence. For example, in 1826 three Aboriginal men were shot by soldiers at Wallis Plains (Maitland). It was alleged they were shot while trying to escape, but a subsequent inquiry into the death of one of them revealed it was more likely he was deliberately taken from the lockup by soldiers into nearby bushland and shot. A conviction was not recorded against the soldiers involved, and Governor Darling was frustrated at his unsuccessful attempts to obtain details because of the 'indisposition of everyone to give information on the subject'.[96] Only a few months later at Patersons Plains a police constable who had been detained on a charge of murdering a local Aboriginal, managed to escape from the local lockup. The *Sydney Monitor* was critical of the shootings at Wallis Plains and at Patersons Plains, closing its report on the latter incident with the caustic remark 'this will prove another of those little shootings which have distinguished Hunter's River during the last nine months'.[97] This remark suggests recurring violence and cover-up in the Lower Hunter at this time.

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[93] Roberts, "The Frontier at Wellington Valley", 208; Henry Reynolds, "The Other Side of the Frontier—Early Aboriginal Reactions to Pastoral Settlement in Queensland and Northern New South Wales", *Historical Studies* 17 (1977): 60-61.
[94] George Farwell, *Squatter's Castle—The Story of a Pastoral Dynasty* (Melbourne: Lansdowne Press, 1973), 94; Reece, *Aborigines and Colonists*, 19.
[95] *New South Wales Aborigines*, *Replies to a Circular Letter*; Backhouse, *Narrative of a Visit*, 389; *Hunter River Gazette*, 22 January 1842.
[96] HRA I, XII, 608-628 (Darling to Bathurst, October 1826); *The Australian*, 23 May 1827; HRA I, XIII, 179-180 (Darling to Hay, 23 March 1827); 317 (Darling to Taylor, 22 May 1827).
[97] *Sydney Monitor*, 1 September 1826, 9 March 1827.

Conclusion

The few surviving records regarding European-Aboriginal relations at Paterson and Tocal indicate degrees of conflict and accommodation, but over the two decades of convict assignment at Tocal there is mostly silence. Presumably the silence indicates that conflict was sporadic, and attacks on Europeans by Aborigines were not serious enough to trigger official reports or require the presence of soldiers or police in greater numbers than the token force stationed at Patersons Plains (or the occasional patrol of the Mounted Police stationed at Maitland from 1827).[98] Retaliatory attacks and killings of local Aboriginals by settlers, soldiers and police in the vicinity of Tocal occurred to an unknown extent and were either unreported or misrepresented to avoid judicial proceedings. The silence therefore speaks of cover-up and the relative unimportance placed on Aboriginal affairs in the surviving European records. Above all, the silence speaks of the speed of dispossession, decline in numbers and subjugation of the Aboriginal people at Patersons Plains.

The fate of the ceremonial Aboriginal waddy excavated from a convict-era silo at Tocal in 2002 parallels to some extent the fate of the local Aboriginal people themselves.[99] The waddy has languished among the trappings of European colonisation and is now disconnected from its rich cultural significance, a significance that intersected and at times collided with the lives of Tocal's convicts. For at least some of these convicts, the Aboriginal people of Yimmang (Paterson River) were a source of fear, danger, curiosity, knowledge, sexual gratification, and possibly intimacy and companionship. The silence refuses to speak further of the diversity, fluidity and ambivalence of the inter-cultural exchanges between Tocal's convicts and the Gringai clan of the Wonnarua Aboriginal people.

[98] CS to Robertson, 7 May 1837, CS LB, 4/3825, 338 [reel 2807], SRNSW.
[99] Archer and Anderson, *Colonial Silo Mysteries*, 26.

Chapter 6: Paternalism and punishment, deference and defiance

> The most humble petition of George Millway per ship Hercules most respectfully shewith. That your Excellencys petitioner was ... apprehended and convicted of Absence [from his road gang] before Captain Forbes at the petty sessions where that Gentleman presided unassisted by another magistrate – That your Excellencys Petitioner was sentenced to work in irons for a period of 12 months and that while in transit to No.3 Stockade the escort in charge of the committing warrant were obliged to wait at Mr Mudies residence to obtain that Gentlemans joint signature to the Committal with the view of rendering the instrument legal – And that as your Excellencys petitioner is informed on credible authority that such proceedings are unauthorised by your Excellencys Government. [1]

The above is part of the petition of George Mildmay (alias Millway) written in January 1838. This errand boy from Dublin landed in New South Wales in 1830 at the age of 16 with a seven-year sentence for shop robbery, and was initially assigned to James Webber at Tocal.[2] His case is particularly informative on several counts. Firstly, his full 'police record' is one of the few that have survived, allowing an examination of his several encounters with the law and a tentative interpretation of their significance.[3] Secondly, his petition to the Governor regarding the illegality of his sentence to an iron gang demonstrates an awareness of his rights and a preparedness to fight for them through official channels. This 'appeal to authority' is one of the four patterns of convict protest identified by Alan Atkinson in his ground-breaking analysis of NSW bench records, part of the historiography of convict protest and resistance examined in this chapter.[4] Thirdly, the success of Mildmay's petition is symptomatic of the bitter struggle between the Hunter Valley 'exclusives'—comprising magistrates and settlers—and Governor Bourke over the power of the magistracy and the extent of convict discipline. In this case, Bourke ignored magistrate Forbes when Forbes remonstrated 'it is quite impossible I would have done anything so illegal', and gave Mildmay his

[1] Mildmay to CS, 12 January 1838, CS In-letters, 38/383 in 4/2394, SRNSW.
[2] PSC, Bound Indents, 4/4016, 8 [fiche 677]; Home Office, NSW Convicts Arrived 1828-32, HO10/29, PRO.
[3] Records for individual NSW convicts were destroyed (see chapter 1) but Mildmay's police record was incorporated into a surviving report to the Governor: 30 April 1838, CS Correspondence, 38/4229 in 4/2394, SRNSW.
[4] Atkinson, "Four Patterns of Convict Protest", 28-51.

freedom, declaring the iron gang sentence to be illegal because only one magistrate had heard the case and two were required to hand down that punishment.[5] Later in the chapter it is revealed that Tocal's owner, James Webber, was one of the prominent 'exclusives' in this struggle.

Mildmay's police record in table 6.1 below illustrates the gamut of issues addressed in this chapter. He was at Tocal for just over 12 months before Webber's paternalism and system of informal rewards and incentives failed to extract sufficient labour and/or deferential conduct from Mildmay, leading to his first bench appearance and flogging for 'neglect', followed by a further appearance seven months later. By mid 1833 Mildmay had clearly had enough of Tocal, whether it be the working conditions, quality of rations and accommodation, or temptations further afield. The deferential relationship between servant and master could no longer be maintained by reward or coercion. In September 1833 he absconded for the third time in three months and was apprehended in the Patricks Plains (Singleton) area. After capture he was sentenced to 12 months in an iron gang for his resolve not to remain at Tocal any longer. A sound understanding of the possible significance and meaning of Mildmay's actions is essential to the integrity and utility of this chapter and, indeed, to the thesis as a whole.

Table 6.1 Police History for George Mildmay, per *Hercules* 1830

Date	Punishment	Charge
15 Nov 1831	Thirty six lashes	neglect
5 June 1832	Thirty six lashes	feigning sickness
2 July 1833	Fifty lashes	absconding
1 August 1833	One hundred lashes	ditto 2nd time
3 October 1833	Twelve months ironed gang	absconding
23 March 1835	Twelve months ironed gang	absconding
February 1837	Seventy five lashes	outrageous abusive conduct
February 1837	Fifty lashes	absconding
February 1837	Fifty lashes	absconding
February 1837	Twenty five lashes	neglect of duty
March 1849	Three years labour on roads	[unknown]

Source: PSC to CS, 30 April 1838, CS In-letters, 38/4229 & encl. in 4/2394, SRNSW.

To summarily label Mildmay as a recidivist or as incorrigible, based on his police history, would be to fall into the Shaw/Robson trap, or as Maxwell-Stewart argues, to uncritically deploy the contemporary slur of criminality as many convict histories have

[5] At the time of his petition, Mildmay had completed his iron gang term some time ago, but remained in servitude on account of the extension to his original sentence that accompanied the iron gang sentence.

done.[6] This slur functioned well enough at the time to morally justify the subjugation of convicts and the forced extraction of their labour, but it does not function well today in the process of understanding convicts. Neither the slur, nor its associated stereotype of convicts as lazy, scheming criminals intent on avoiding hard work, helps to unravel the meaning of colonial 'offences' of convicts.[7] Apart from being based on the now-discredited notion that convicts were drawn predominantly from a criminal class,[8] these positions ignore or divert attention from the complex work and life experiences of individual convicts and their responses to their situations. In short, they deny convicts a 'voice'. In contrast, an interpretation of Mildmay's record that recognises his agency in shaping the conditions of his bondage, rather than viewing him as the passive recipient of brutal control, begins to retrieve him and other convicts from what Grace Karskens describes as 'the facelessness, the sheer insignificance accorded them in traditional imperial history'.[9] In the process of this retrieval, however, there is delicate methodological ground to negotiate in order to avoid a collapse into the 'credulity of theoretical innocence'.[10] Mildmay's subsequent sentence to three-years labour on the roads in 1849 highlights the interpretative complexity—the sentence occurred eleven years after he gained his freedom and is clearly not associated with protest or resistance to bondage.

This chapter explores the discourse of domination and resistance between master and convict servant, the nature and extent of rewards, coercion and protest amongst Tocal's convicts within the maturing historiography of this field. Like the thesis in general, the chapter confronts the persistent dualisms—such as pleasure and pain, freedoms and restraint, coercion and reward, defiance and deference, trust and betrayal—that form the core of a comprehensive understanding of the complexities of convicts and convictism. The data presented in this chapter is unique, as there are few detailed regional or local studies of this type on convicts in New South Wales. Scarce examples include David Roberts' study of the men who served at the remote government station in the Wellington Valley and Kristine McCabe's study of the discipline and punishment of

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[6] The principal findings of Shaw and Robson were reviewed in chapter 1. Maxwell-Stewart, "I Could Not Blame the Rangers", 110.
[7] Stephen Nicholas, "A New Past", in *Convict Workers*, ed Nicholas, 199.
[8] Nicholas and Shergold, "Unshackling the Past", 7-8; Duffield and Bradley, "Introduction", 8; Maxwell-Stewart, "I Could Not Blame the Rangers", 110.
[9] Karskens, "Meaning of Escape", 26-27.
[10] O'Connor, "Zone of Silence", 136.

165 female convicts in the Hunter Valley.[11] The Tocal study therefore provides a degree of detail about the nature and extent of secondary punishment of convict men at a local level in New South Wales that is uncommon among convict studies. In addition, the later part of the chapter reveals, for the first time, James Webber's pivotal role in the conflict between Hunter Valley exclusives and Governor Bourke, a conflict that provides a fascinating insight into the perspectives and political agendas of Tocal's convict master and his fellow settlers and magistrates. Above all, the chapter attempts to listen, without the distraction of judgement, to the voices of Tocal's convicts that are embedded in their so-called 'colonial offences' in order to understand the personal meanings and significance of their actions.

Paternalism, rewards and deference

Convicts are no longer seen as powerless tools at the mercy of brutal masters. This stereotype has been replaced by a three-dimensional view of convict life that includes a reciprocal (if unequal) power relationship between convicts and masters.[12] Convicts' power partly arose from the demand for, and scarcity of, their labour and skills. There were few free labourers or artisans available, and convicts were essential to the commercial viability of settlers' farms and other colonial enterprises. At Tocal, for example, there were only two free employees in 1828 compared to 34 convicts.[13] In addition, settlers were forced by circumstance to place valuable capital resources, such as livestock and farm equipment, in the care of convicts. Settlers could suffer large economic losses if convicts broke equipment, lost or maimed livestock, or in extreme cases, set fire to barns, haystacks and granaries.[14] Even less-dramatic losses caused by inattention and neglect could significantly affect profitability in the fragile business of farming. Furthermore, much rural work did not lend itself to close supervision (shepherding for example), making it essential for masters to obtain a degree of cooperation by providing incentives rather than relying solely on coercion.[15]

[11] Roberts, "The Frontier at Wellington Valley"; Roberts, "Inland Norfolk Island", 50-72; McCabe, "Discipline and Punishment", 38-61.
[12] Neal, *Rule of Law*, 33.
[13] *Census of NSW 1828*.
[14] Examples of such damage on farms neighbouring Tocal are provided later in the chapter.
[15] Maxwell-Stewart and Hindmarsh, "The Bird that Never Flew", 12.

A convict's power was underpinned by basic rights resulting from government regulation of the standard of food, clothing, wages, accommodation and supervision that masters were required to supply. Some of these rights, such as rations and clothing, were precisely specified, while others such as accommodation were prescribed only in vague terms that were open to diverse interpretation by convicts and masters.[16] Along with these prescribed rights, convicts brought to the power struggle with their masters a set of assumed and perceived rights, ranging from the issue of tobacco, tea and sugar, that masters provided as an indulgence but convicts soon regarded as a right, to popular notions of fair treatment and natural justice, described by some historians as forming part of a convict moral economy.[17] Alan Atkinson observed that 'rights do not exist only in the minds of those with the power to concede them; they evolve within a system of unequal relationships, and they depend on the dynamics of the system'. He cautions, however, that convict rights were somewhat fragile and inconsistent, and the reciprocal power relationship between convicts and masters was 'circumscribed by terror'.[18] The threat of a flogging or sentence to an iron gang or penal settlement coloured negotiations between masters and convicts—'the carrot was always proffered under shadow of the stick'.[19] Maxwell-Stewart also pointed out that no matter how well rewarded some convicts may have been, even if in some cases they experienced better conditions that English labourers, nothing compensated them for their bondage and their status as objects to be duly catalogued and described.[20]

The inherent antagonism between masters and their involuntary convict labour force was not only contained and managed by reward and punishment—it was also mediated by the ideology and practice of paternalism, a term used to describe a type of relationship characterised by an almost child-like dependence of subordinates (such as serfs, slaves or convicts) on superordinate lords or masters, who assumed a role akin to a father or head of a household.[21] Thompson notes that, while useful, paternalism is a

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[16] The degree of regulation of convict rations varied over time, and relevant detail is provided in chapter four.
[17] Hindmarsh, "Scorched Earth", 66, 71; Maxwell-Stewart, "I Could Not Blame the Rangers", 115. Meppem, "Convict Runaways", 5, 48.
[18] Atkinson, "Four Patterns of Convict Protest", 43.
[19] O'Connor, "Zone of Silence", 135.
[20] Maxwell-Stewart, "Convict Workers, 'Penal Labour'", 143.
[21] W Nichol, "Ideology and the Convict System in New South Wales, 1788-1820", *Historical Studies* 22, no. 86 (1986): 1-14; Maxwell-Stewart, "The Bushrangers", 127; Eugene Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Pantheon Books, 1972), 4-6.

loose, blunt and indiscriminate term that has considerably less historical specificity than terms such as feudalism or capitalism.[22] Not surprisingly, therefore, the origins of paternalism are somewhat obscure. Genovese claims its origins can be traced to relations between lords and serfs in medieval Europe where subtle moral pressures of an ascendant Christianity had converged to shape a world in which lords and serfs faced each other with reciprocal demands and expectations.[23] According to Thompson, paternalism, along with its associated old-world roles, was eroded in England during the eighteenth century as workers became more mobile, less dependent on the social controls of the manorial village, as non-monetary 'favours' were increasingly translated into payments and subordination was displaced to some extent by negotiation. Despite the erosion, Thompson notes that men of power and money still exercised enormous control, but it was increasingly located primarily in cultural hegemony and only secondarily in economic power.[24] Although workers were breaking free from daily dependency, 'the larger outlines of power, station in life, political authority, appear to be as inevitable and irreversible as the earth and the sky'.[25]

Regardless of its origins and erosion, paternalism was one element in the trilogy of determinants of master-convict relations along with rewards and punishment. At the core of paternalism is an established social and class order, a hierarchy that shapes the way masters and servants behave towards each other—servants are required to show deference and loyalty to their masters who in turn are required to care for their dependent subordinates with kindness, in accordance with Christian principles and the dictates of respectability and social position. Power relationships between master and servants are an essential part of paternalism, encompassing the reciprocal rights and leverages previously discussed. Paternalism in the context of master-convict relations was far more relevant to larger rural estates such as Tocal that were owned and run by the colonial gentry (such as Webber) than to small holdings where assigned convicts could share the house and table of the emancipist land owner. While the ideology of paternalism is important, it contains inherent contradictions—deference could simply be

[22] EP Thompson, "Eighteenth-century English Society: Class Struggle without Class?", *Social History* 3, no. 2 (1978): 135-137.
[23] Genovese, *Roll, Jordan, Roll*, 5.
[24] EP Thompson, "Patrician Society, Plebeian Culture", *Journal of Social History* 7, no. 4 (1974): 382-387.
[25] Thompson, "Patrician Society, Plebeian Culture", 388.

a veneer, a mere pretence,[26] and paternalism embraced cruelty as well as kindness. Its manifestation in practice was prosaic and pragmatic, the rewards bestowed and care shown by the master rarely being associated with filial love or affection.[27] Therefore paternalism's role in convict-master relations should not be overplayed.

Nevertheless, in the power struggle with their convicts, paternalism became a key strategy by masters to protect them from attacks on their equipment, livestock and person, and from other disruptions to production on their estates. A master's best defence against this danger was to 'anchor a grateful convict population in a deferential system of values'. The colonial gentry's virtual monopoly on the magistrates' bench gave them command of, and easy access to, a range of means of inflicting terror on their convicts. This was 'counter-balanced by the master's ability to extend a forgiving hand, protecting his charges from the torture of life in a gang or a mangling at the hand of the flogger'.[28] Paternalism in practice not only provided masters with some protection from sabotage, it also provided convicts with a range of rewards and incentives—it gave them 'something to lose' if they misbehaved or failed to defer to their master.[29] Paternalism had widespread importance to masters, whether convict or slave, as ruling élites generally relied on the belief that 'Sambo', the archetypal obedient servant, could pose no threat.[30] Drawing further on the literature of slavery, paternalism had little to do with benevolence and kindness, but arose from the need to control its subjects and morally justify the system of exploitation, to disguise, however imperfectly, 'the appropriation of one man's labour power by another'.[31] The production of deferential convicts through a system of rewards, underpinned by behaviour and attitudes that were mediated through paternalism, was therefore a key strategy in the maintenance of the power and privileges of the colonial gentry.

A glimpse of the effectiveness of paternalism and rewards at Tocal is provided in a rare first-hand account of convict work, contained in a letter written in 1837 by Tocal's superintendent to the then Sydney-based owners that reads in part 'On Saturday last the

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[26] Scott, *Domination and the Arts of Resistance*, 129 (for example). In practice, paternalism could be as much theatre and gesture as effective responsibility: Thompson, "Patrician Society, Plebeian Culture", 397.
[27] Nichol, "Ideology and the Convict System", 8.
[28] Maxwell-Stewart and Hindmarsh, "The Bird that Never Flew", 13.
[29] Fitzpatrick to Hobart in Nichol, "Ideology and the Convict System", 13.
[30] Maxwell-Stewart, "I Could Not Blame the Rangers", 119.
[31] Genovese, *Roll, Jordan, Roll*, 4-6.

men Worked very hard, & late, at the thrashing having in that Day thrash'd, Cleaned, & brought to the Stores, 212 Bushells of Wheat Consequently it was late before the men had their Rations on that evening'.[32] The 'men', nearly all convicts, were working late on a Saturday because of the need to complete the threshing while a hired machine was on the estate. There is no hint of discontent arising from the extended hours, or of any disruption to the busy schedule. Evidently in this instance at Tocal, rewards in conjunction with the social order bestowed by paternalism had the desired effect.

Masters had a range of incentives to provide to, or withdraw from, their convicts in order to foster a paternalistic approach. The most common was the provision of tea, sugar and tobacco, the usual weekly allowance being two ounces of tea, two ounces of tobacco and a pound of sugar.[33] On the estate adjoining Tocal on its southern boundary, the Nowlans issued more than this to their assigned convicts, stating 'if they would but work well for us, that is all we require'.[34] Incentives that were routinely issued to convicts were withdrawn on occasions as a sanction against unacceptable behaviour or work practices.[35] For example, on the Burrowel estate at Williams River in the lower Hunter Valley, tea, sugar and tobacco was withdrawn when a pointer dog went missing in suspicious circumstances.[36] When a substantial sum of money was stolen at the Australian Agricultural Company at Port Stephens, 'the tobacco ration to all convicts at or near Carrington [was] stopped to try to get someone to squeal'.[37] Many settlers also allowed convicts to raise vegetables in small gardens allocated for their use, and sometimes masters would provide seeds and plants.[38] Convicts came to regard tea, sugar and especially tobacco as virtual necessities although there was no legal obligation on the master to provide them.[39] The withdrawal of these extras represented a punishment

[32] Clarke to Wilson, 1 May 1837, in Clerk of Peace, Depositions—Supreme Court, Paterson 2 May 1837, Rex vs Bernard Lyons and James Lemon, 9/6309, SRNSW.
[33] Cunningham, *Two Years in New South Wales*, 277; Lang, *Account of New South Wales*, II, 10.
[34] Nowlan family papers, RB/Coll Q994.02 NOWL-1, Newcastle University Archives.
[35] At Camden Park, a bonus of tobacco was issued as a reward for killing native dogs and £3 in goods proffered as a lambing prize: Atkinson, "Master and Servant at Camden Park", 48; Chrissy Fletcher, *Arthursleigh—A History of the Property 1819 to 1979*, 25 (n.p.: by the author, 2002).
[36] Gilchrist, "Diary for Burrowel", 48.
[37] Bairstow, *A Million Pounds, A Million Acres*, 286.
[38] Minutes of evidence taken by the Commission of Inquiry at Patricks Plains, *Sydney Monitor*, 21, 28, 31 January and 3 February 1834 & internet online http://www.une.edu.au/arts/ACF/cf1833/index.html and assoc pages [6/6/2006].
[39] HRA 1, XVII, 326 (Bourke to Stanley, 15 January 1834).

considered by some to be more drastic than flogging, as encapsulated in the 1826 expression that 'the belly is far more vulnerable and sensitive than the back'.[40]

Given the importance of these items in the incentive-based management of convicts, it is surprising that Tocal's master, James Webber, did not issue them to his convicts, at least at some stages, leading to the revolt of 13 men at Tocal in 1829 that is discussed later in the chapter. Unfortunately it is not known if he compensated with other incentives, particularly the payment of wages that would allow his convicts to purchase these items. (Some masters continued to pay wages to well-behaved, hard-working convicts after Macquarie's wage order was repealed in 1823).[41] Before judging Webber's stance as atypical, it should be noted that the depositions of a number of convict masters in the Hunter Valley in 1833 showed substantial variation regarding the issue of indulgences. One master, for example, did not issue tobacco at all after a quantity was stolen from him. Another did not issue it but allowed convicts ground on which to grow tobacco, while another issued it only to 'well disposed men'.[42]

Another powerful incentive was the type of work allocated to the convict. The range of tasks performed on the Tocal estate varied considerably in terms of working conditions, whether indoors or outdoors, in company with others or alone, within standard or extended hours, based at isolated outposts or at the homestead within reach of social and recreational opportunities, the degree of interest or tedium involved, the amount of trust extended or supervision provided, and the opportunity to learn new skills that could earn money in a convict's spare time or after emancipation. The Tocal data indicates that arrival skills were not the sole determinant of work allocation. Favourable attitudes of deference, diligence, trust and adaptability very likely played a large role. A convict who was prepared to defer and comply was more likely, for example, to find himself the shepherd bringing a flock of sheep in for washing prior to shearing rather than the man standing in the creek all day, waist deep in water, washing the sheep. It has also been demonstrated that errand boys, rope makers and brush makers could, with favourable

[40] Atkinson, *State of Agriculture and Grazing*, 116.
[41] Meredith, "Full Circle?", 15, 20.
[42] Minutes of evidence taken by the Commission of Inquiry at Patricks Plains, *Sydney Monitor*, 21, 28, 31 January and 3 February 1834 & internet online http://www.une.edu.au/arts/ACF/cf1833/index.html and assoc pages [6/6/2006].

attitudes to work and good behaviour, become tobacconists at Tocal while the less deferential could revert to the status of labourers despite previous farming experience.[43]

Other rewards and incentives for assignees evident on Hunter Valley estates included payment of money when convicts performed essential work on a Sunday such as during harvest when wheat had to be cleaned, bagged and stored quickly to avoid spoilage from the weather. Mechanics on the Castle Forbes estate were particularly well treated—a carpenter was paid 30 shillings by the master for a plough made in the convict's own time, while the estate's tailor was treated to dinner in the kitchen when he worked on Sundays because the estate was short of clothing for the men. He also took the opportunity to earn money for himself by making clothes in the evenings. Unskilled men at Castle Forbes did not fare so well. They did not receive the tea and sugar ration given to the mechanics, and one man, a hawker by trade, deposed 'I never got anything extra since I came to the farm'. Another labourer, according to the tailor, 'often complained he had not enough to eat. He used to call at my hut for a bit of bread and I used to give it to him'.[44] On one Hunter Valley estate employing 70 convicts, those men standing in the creek washing sheep at shearing time received three glasses of rum while those not in the water received half a pint of wine and one glass of rum. A nearby estate issued five glasses of rum to the men at shearing time and the shearers were each given a shirt.[45]

On the Burrowel estate at Williams River, based on the details of an overseer's daily diary, several subtle rewards were granted for good behaviour, including permission to travel to other locations on estate business, release from outdoor work to indoor tasks and occasional time off during working hours (presumably with the issue of a pass if the convict wished to leave the estate).[46] Such rewards are also evident at Tocal. Michael Fea, a convict who gained the skills of a cooper while assigned to Tocal, was allowed to travel to Maitland unsupervised during working hours to purchase items for the estate.[47]

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[43] Details are provided in chapter three.
[44] Minutes of evidence taken by the Commission of Inquiry at Patricks Plains, *Sydney Monitor*, 21, 28, 31 January and 3 February 1834 & internet online http://www.une.edu.au/arts/ACF/cf1833/index.html and assoc pages [6/6/2006].
[45] Minutes of evidence taken by the Commission of Inquiry at Patricks Plains, *Sydney Monitor*, 21, 28, 31 January and 3 February 1834 & internet online http://www.une.edu.au/arts/ACF/cf1833/index.html and assoc pages [6/6/2006].
[46] A detailed case study of Burrowel is provided in chapter four.
[47] NSW Supreme Court papers, T32 no. 38, 31/9, The King v's James Stiles and John Shepherd, 4 January 1831; Clerk of Peace, depositions, T148 no. 38, 31/9, SRNSW.

On William Evans' estate near Tocal, one reward was far from subtle. Evans allowed two of his assigned convicts 'for some years to live in houses on their own, and to cultivate portions of his farm on their own account', an irregular practice that Evans was required to explain to the governor.[48]

A much-coveted reward for convicts was their master's recommendation to the local bench for a ticket-of-leave once they had served the required minimum portion of their sentence. Technically, a master's recommendation was not essential following Governor Darling's regulations in 1827,[49] but in practice a convict had better prospects of gaining a ticket if the application was signed by his master. Thirty six convicts received a ticket-of-leave while assigned to Tocal, many of them achieving their ticket in the minimum time possible under the regulations. The Irish brothers Michael and Thomas Magner, for example, received their tickets on Webber's recommendation after serving only four years of their seven year sentences.[50] Hugh Murdoch, however, was not so fortunate. Webber refused to recommend him for a ticket-of-leave despite Murdoch's reputation for hard work and favourable references from the Maitland Police Magistrate and Tocal's superintendent. It is not known if Webber's position arose out of self interest, namely the reluctance to lose a hard worker, or if there was a long-standing tension between master and servant. Regardless of the reason, Governor Darling was not impressed with Webber's stance, and directed that Murdoch be withdrawn from his service.[51]

Other rewards that a Tocal convict could receive under Webber's patronage included recommendation for free passage for his wife and children to Australia in order to reunite the family. Webber made this recommendation on at least four occasions, and there are no refusals recorded.[52] Webber's paternal hand also extended beyond emancipation. He recommended John Waggoner, a Tocal convict then holding a ticket-of-leave, to be appointed as Police Constable at Patersons Plains, and interceded with

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[48] Robertson and Allman to CS, 10 February 1829, CS In-letters, 29/1357 in 4/2029, SRNSW.
[49] Dyster, "A Series of Reversals", 32-33.
[50] TOL, 27/824 & 27/825, 4/4066 [reel 910], SRNSW; *Sydney Gazette*, 10 December 1827.
[51] Webber to CS, 3 June 1830, and Aubin to CS, 4 June 1830, CS In-letters, 30/4607 and 30/4406 in 4/2076, SRNSW; CS to Webber, 25 June 1830, CS Letters Sent, 4/3828, 448-449 [reel 2808], SRNSW.
[52] Keating to CS, 20 May 1826, CS Families of Convicts, 4/1112.1 [reel 697], SRNSW; Fee to CS, 10 January 1835, CS In-letters, 4/3680, 356 [reel 1048], SRNSW; 12 March 1834, CS Letters Sent, 4/3679, 345 [reel 1047], SRNSW; 9 October 1828, Archives relating to the Transportation of Convicts from Ireland to Australia, FS 1828 1 [R101 M2225], National Archives of Ireland.

the authorities on behalf of ex-Tocal convicts Michael Magner and William Doyle when they were in danger of being evicted from the Clergy and School land they were leasing near Tocal.[53]

> Here I beheld legions of traitors
> Hangmen gaolers and flagellators
> Commandants, Constables and Spies
> Informers and Overseers likewise
> In flames of brimstone they were toiling
> And lakes of sulphur round them boiling.[54]

It is no accident that 'Frank the Poet' included traitors, spies and informers in his 'convict's tour of hell'. Given the powerful range of rewards and incentives that masters could bestow, convicts were under considerable pressure to accept and defer to the hand of paternalism and to align their interests with those of their master. Acceptance of paternalism by convicts or slaves brought them into conflict with their peers and undermined solidarity by linking them as individuals to their oppressors.[55] Consequently, the incidence of collaboration by convicts has generated much discussion, some historians arguing there was a ready willingness of convicts to betray each other.[56] If the situation revealed in two Tasmanian studies was typical, Tocal's assigned servants would have been divided in their loyalties between their master and their fellow convicts.[57] Loyalty to their master could involve informing on other convicts, refusing to harbour or assist runaways, and at times revealing their whereabouts. Informers became in effect their masters' agents, patrolling sites such as huts and unsupervised work places where a hidden transcript of disrespect for the master might be enacted and subversive activities (such as absconding) planned.[58] To encourage collaboration, authorities established an economy of rewards or cash payments for information and assistance, evidence of which can be found in the records relating to Tocal's convicts.[59] For example, two convicts received a £10 reward and a ticket-of-leave for assisting in the capture of Thomas Smith, a Tocal convict who had

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[53] Webber & Anley to CS, 27 August 1832, CS In-Letters, 32/6518 in 4/2154, SRNSW; Webber to Cowper, 2 February 1830, CS Correspondence with the Occupants of Patersons Plains, 9/2714, SRNSW.
[54] An extract from the poem "A Convict's Tour of Hell" in John Meredith and Rex Whalan, *Frank the Poet: The Life and Works of Francis MacNamara* (Melbourne: Red Rooster Press, 1979), 47.
[55] Genovese, *Roll, Jordan, Roll*, 5.
[56] Maxwell-Stewart, "I Could Not Blame the Rangers", 122; Hirst, *Convict Society and its Enemies*, 136-137; McQueen, "Convicts and Rebels", 26-27.
[57] MacFie, "Dobbers and Cobbers", 112-127; Hindmarsh, "Scorched Earth", 63-80.
[58] Scott, *Domination and the Arts of Resistance*, 129.
[59] Byrne, *Criminal Law and Colonial Subject*, 148.

become a notorious bushranger.[60] Another two assigned convicts caught and secured Tocal's James Hazell while he was on the run, their 'spirited and exemplary conduct' also earning them early 'tickets'.[61] On the other hand, maintaining solidarity with peers often involved keeping a conspiratorial silence and risking punishment for harbouring or assisting absconded convicts. Hindmarsh has argued that convict solidarity was enhanced by shared recreational time that promoted a sense of convict identity and common rights that were essential in establishing and giving meaning to convict resistance.[62]

Each position had its advantages and dangers, and the stakes could be high. Convicts loyal to their masters risked serious injury from their peers, while those loyal to their fellow convicts risked forfeiting a favourable recommendation for a ticket-of-leave or being banished to a government gang. Simon Rouse, assigned to Tocal in 1825 and later sent to Sydney as a Crown witness to a robbery by convicts, was allowed to remain in Sydney after the trial due to the danger of injury from fellow convicts if he returned to the district.[63] James Shields was a convict overseer at Tocal in 1830 when the Paterson Bench recommended him for a ticket-of-leave for 'apprehending four bushrangers and bringing to justice one harbourer of bushrangers'.[64] George Stotter gained his ticket-of-leave in similar circumstances. While employed at Tocal in 1837 as 'farm constable' he gained a ticket-of-leave for bravery in apprehending 'two notorious offenders'. The following year he shot and killed a runaway convict who was about to shoot a free-immigrant worker at Tocal, and received a conditional pardon for his courage. [65] There is no doubt where the loyalties of these two men lay, nor of the rewards they received as a result.

The inherent tension and antagonism between loyalty to the master and loyalty to fellow convicts is well demonstrated in the depositions made by convicts assigned to Castle Forbes at the inquiry following the 1833 convict revolt on that estate. Several men deposed that those who wore a 'white shirt' were disliked by the others. One of the

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[60] CS to Superintendent of Police, Windsor, 16 January 1832, CS LB 4/3831, 179 [reel 2809], SRNSW.
[61] Brown to McLeay, 19 May 1829, CS In-letters, 29/4025 in 4/2031, SRNSW.
[62] Hindmarsh, "Beer and Fighting", 155-156.
[63] CS to Princ Sup Convicts, 22 June 1827, CS Letters Sent, 4/3665, 376 [reel 1041], SRNSW; MacKay to CS, 3 July 1827, CS In-letters, 27/6250 in 4/1936, SRNSW.
[64] TOL 30/874, 4/4077 [reel 914], SRNSW.
[65] Johnstone to CS, 26 November 1838, CS In-letters, 39/1711 in 4/2433.2, SRNSW.

estate's convicts explained 'It was considered a disgrace on the farm to deserve a white shirt, that is to give information'.[66] A white shirt was a tangible sign of a convict's close alliance with his master, the term possibly originating from the gift of a white shirt by James Mudie (master of Castle Forbes) to selected convicts to be worn instead of the usual slop clothing.[67] As the above quotation shows, however, the term came to be used figuratively, so that convicts who received special privileges were said to 'wear a white shirt'. Tellingly, this phrase contrasted sharply with 'getting a red shirt', the convict vernacular for a flogging.[68]

Although mateship has featured prominently in Australian history,[69] it clearly had its limits. Mateship among convicts was constrained not only by collaboration and informing, but also by alcohol-related violence towards fellow convicts that was endemic at Tocal and elsewhere.[70] It is notable that the most violent incident recorded at Tocal during the convict period was not directed at the master, but involved the killing of an emancipist by a convict in a drunken brawl. The two men had lived and worked together at Tocal for several years and one harboured a simmering resentment of the other.[71] Convict mateship was further constrained by stealing from each other and homosexual rape, the latter particularly occurring among men allocated to government gangs.[72] Collaboration and mateship, trust and betrayal can therefore be added to the list of dualisms that constituted the complexities of convict life.

While convicts assigned to private service had to decide where their loyalties lay, masters had to strike a balance between rewards and punishments that would yield the best results in terms of harmony, productivity and protection of their assets. Incentives and rewards were generally more effective than punishments, and many misdemeanours were consequently overlooked. According to Hamish Maxwell-Stewart, examples of

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[66] Minutes of evidence taken by the Commission of Inquiry at Patricks plains, *Sydney Monitor*, 21, 28, 31 January and 3 February 1834 & internet online http://www.une.edu.au/arts/ACF/cf1833/index.html and assoc pages [6/6/2006].
[67] Minutes of evidence taken by the Commission of Inquiry at Patricks plains, *Sydney Monitor*, 21, 28, 31 January and 3 February 1834 & internet online http://www.une.edu.au/arts/ACF/cf1833/index.html and assoc pages [6/6/2006].
[68] Harris, *Settlers and Convicts*, 185.
[69] For example Ward, *The Australian Legend*, 2.
[70] Details are provided in chapter four.
[71] Clerk of Peace, Depositions—Supreme Court, Paterson 2 May 1837, Rex vs Bernard Lyons and James Lemon, 9/6309, SRNSW.
[72] Crowley, "Working Class Conditions", 48-49.

significant friction between master and servant were atypical as most employers encouraged their convicts to identify their interests with those of their master.[73] This view is supported by John Hirst who noted that most masters trod a mid path between extremes of firmness and kindness.[74] Masters did not always get the balance right, however, and irrational management practices did occur. For example, several Hunter Valley masters failed to supply adequate bedding and clothing to their assigned servants,[75] and although possibly driven by economic circumstances, their actions jeopardised convicts' motivation to work and the future supply of assignees to their estates. This situation was confirmed by the first-hand experiences of Hunter Valley land-holder Edward Eyre who recorded that while most assigned convicts were well treated, 'there were exceptions where even a sense of self-interest could not restrain the vicious passions and propensities of human nature in the master. In such cases cruelty and tyranny took place'.[76] Across the river from Tocal, William Dun was repeatedly plagued by dramatic episodes with his convicts, compared to Tocal's owners who had far less trouble.[77] Isolated incidents could be attributed to the chance assignment of difficult and resentful individuals, but problems over an extended period suggest that Dun's management may have failed to strike an effective balance between rewards and punishments.

Masters and overseers could usually rely on rewards and, in the interests of harmony, overlook minor misdemeanours of otherwise good workers, but there were limits beyond which punitive action was virtually essential, as an incident at the Hunter Valley estate of Castle Forbes demonstrated. John Poole was a skilled carpenter and joiner assigned to Castle Forbes who was extremely well treated by the estate's owner, James Mudie. Poole was also known by fellow convicts and overseers alike to be stubborn, sulky and have a dreadful temper. When the overseer, John Lanarch, asked Poole to paint the shaft of the windmill at Castle Forbes, Poole refused and told Lanarch in front of other convicts 'damm and b—r the farm and you'. Lanarch told the inquiry that when

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[73] Maxwell-Stewart, "The Bushrangers", 112, 127.
[74] Hirst, *Convict Society and its Enemies*, 77, 184.
[75] For example, CS to Anley, 12 May 1831, CS LB, 4/3830, 72 [reel 2808], SRNSW; Aubin to CS, 12 October 1829, CS In-letters, 30/2806 & encl. in 4/2071, SRNSW.
[76] Edward John Eyre, "Autobiographical Narrative of the Residence and Exploration in Australia of Edward John Eyre" [unpublished, ML] in *Convicts and Colonial Society 1788-1853*, ed. Lloyd Evans and Paul Nicholls (Sydney: Cassell Australia, 1976), 148.
[77] HRA 1, XVI, 711-714 (Dun to Bourke, 15 February 1832, 15 March 1832; Bourke to Goderich, 20 August 1832); Newcastle Bench Book 1835-1836, 4/5608, 141-148 [reel 2721], SRNSW.

Poole had been difficult and insolent on previous occasions, no others had been present and he could therefore overlook the incidents, but on this occasion Poole left him with little choice. Lanarch stated 'If he was not so insolent in the presence of some of the other men, I would not have brought him to court'.[78] The nature, extent and significance of punishments of Tocal convicts are explored in the following sections.

The judiciary, coercion and punishment

In September 1833 William Truelove was sentenced to 50 lashes by the Paterson Bench for 'neglect of duty' while assigned to Tocal. According to the report of the Police Magistrate at Paterson, Truelove 'bled greatly' during the flogging and appeared 'faint and exhausted'.[79] His punishment is an example of what could happen when paternalism and incentive-based management reached their limits. *Convict Workers* has been criticised for rendering punishment as incidental, and for its failure to recognise that there was much more to the convict labour experience than paternalism and rewards.[80] Neal cautions that to focus on the power that convicts held and to forget the dimensions of their punishment is to misunderstand their world.[81] In fact rewards and coercion through punishment operated side by side in a complementary manner as one of the dualisms of the convict experience, without contradiction or paradox. Criminal law and punishment validated and underpinned paternalism.[82] Both strategies were employed where appropriate, and the punishments of Tocal's convicts presented below are testament to this.

The New South Wales colonial government established a network of official judicial 'machinery' to administer the coercion and punishment of its convicts. A magistrate's Bench was established at Patersons Plains in 1825 with the appointment of Tocal's owner, James Webber, as honorary magistrate. In the same year a scourger was appointed to the district, allowing settlers to have their convicts sentenced and punished

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[78] Minutes of evidence taken by the Commission of Inquiry at Patricks plains, *Sydney Monitor*, 21, 28, 31 January and 3 February 1834 & internet online http://www.une.edu.au/arts/ACF/cf1833/index.html and assoc pages [6/6/2006].
[79] Anley to CS, 30 September 1833, in *Report from the Select Committee on Transportation* (London: 1837, in British Parliamentary Papers, Reports from Committees-Transportation; Shannon: Irish University Press, 1968), 87.
[80] O'Connor, "Zone of Silence", 135; Hamish Maxwell-Stewart, "Convict Workers, 'Penal Labour'", 144.
[81] Neal, *Rule of Law*, 56.
[82] Byrne, *Criminal Law and Colonial Subject*, 2.

locally without the need to travel to a distant Bench. Police constables and a wooden lock-up that doubled as a courthouse completed the judicial infrastructure for Patersons Plains.[83] Webber, however, could not sentence his own convicts, and therefore Tocal's superintendent (or master) had to travel with them to a Bench further afield. For example, four convicts were sentenced by the Newcastle Bench in February 1825 while assigned to Tocal.[84] By 1827 the official machinery of convict control for the district included a command of the Mounted Police stationed at Maitland.[85] This mobile force, described by David Roberts as a 'tailored cavalry', was one of the government's strategies in stemming the 'surge of convict disorder' at this time. By virtue of their mobility, they played a key role in apprehending convict absconders and bushrangers.[86] The Mounted Police was under military control and usually operated independently of the civil police who were controlled by magistrates. In 1829 a police (stipendiary) magistrate, Captain Aubin, was appointed at Wallis Plains (Maitland). He was instructed to sit on the Paterson Bench at least once a week and to 'visit Patersons Plains as circumstances require'.[87] From this point on, Tocal's convicts could be, and were, sentenced locally.

The fact that many Tocal convicts faced a stipendiary rather than an honorary magistrate reflects a significant stage in the development of the judiciary in New South Wales. The first stipendiary magistrates were appointed in 1825 for various reasons including the need for more magistrates and in response to complaints about honorary magistrates who did not attend to their duties or failed to perform them satisfactorily. Some honorary magistrates, members of the colonial gentry, consequently regarded the appointment of stipendiary magistrates as a threat to their authority and a criticism of their performance. Although stipendiary magistrates were in the minority, their presence represented a shift of power from the rural colonial elite to government and a reduction in the gentry's control over law enforcement in rural areas.[88]

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[83] 19 January 1825, CS Letters Sent, 4/5782, 196-200 [reel 6017], SRNSW; *Sydney Gazette*, 1 September 1825; Hunter, "Government Cottages at Hunter's River", 131-132.

[84] February 1825, CS Monthly Returns of Punishments, Newcastle 1810-1825, 4/1718 [reel 6023], SRNSW.

[85] CS to Robertson, 7 May 1837, CS LB, 4/3825, 338 [reel 2807], SRNSW.

[86] Roberts, "A 'change of place'", 98-99.

[87] CS to Patersons Plains Bench, 15 August 1829, CS LB, 4/3827, 491 [reel 2807], SRNSW.

[88] Neal, *Rule of Law*, 124-126, 158.

Captain Aubin's appointment as stipendiary magistrate at Wallis Plains in 1829 followed Bathurst's authorisation to Governor Darling to establish stipendiaries in two or three of the most important townships so that more than one magistrate could sit on country benches.[89] At that time Wallis Plains was the largest centre of population outside of Sydney,[90] so Captain Aubin's appointment was partly motivated by the need for supervision and administration of the large numbers of police in the district, reflecting changing demographics as the Newcastle convict establishment wound down and the town of Maitland rapidly expanded. However, there was more to Aubin's appointment than changing demographics. In May 1829 a group of Hunter Valley magistrates and land-holders petitioned the governor to appoint a police magistrate in the district because of the 'influx of police business' due to increased absconding from penal settlements and road gangs, and that 'few private Gentlemen are competent to the duties of the Magistracy, without a serious sacrifice of their own immediate interests, and in some instances of health'. The petitioners, including Tocal's James Webber, suggested Alexander McLeod be appointed to the position.[91] McLeod, however, was not likely to have been on Darling's short list for the position.

In the years preceding the appointment, the records show several incidents of abuse of government resources for private gain in the Maitland and Newcastle districts, typically by officials using their positions to divert convicts in government gangs to work on private farms or on the construction of private buildings. Several officials including Newcastle's Superintendent of Convicts and Public Works were ordered by Governor Darling to account for their behaviour. [92] Magistrate Alexander McLeod, a member of the Maitland Bench who resided at Luskintre only a few kilometres from Tocal, was asked by Darling to explain why one of the police constables under McLeod's command had reportedly worked on the construction of McLeod's bridge over Wallis Creek at Maitland, a private toll-bridge essential to travel between Newcastle and Maitland.[93] Governor Darling left no doubt about his distrust of McLeod when he gave instructions that the Maitland Bench was not to sit unless Aubin presided. Darling did not place a similar restriction on the Patersons Plains Bench, apparently trusting Webber

[89] Shaw, *Convicts and the Colonies*, 197.
[90] Walsh and Archer, *Maitland on the Hunter*, 125.
[91] *Sydney Gazette*, 12 May 1829.
[92] CS to Warner, 26 September 1828, CS LB, 4/3826, 464 [reel 2807], SRNSW.
[93] CS to McLeod, 9 April & 13 June 1829, CS LB, 4/3827, 244, 360 [reel 2807], SRNSW.

and Townshend to operate when Aubin was not available. Darling went further to address the problems in the Lower Hunter, removing Newcastle as the centre of district policing and appointing Captain Aubin at Maitland as district Superintendent of Police and, for a period, as officer commanding the Mounted Police at Hunters River. In doing so, Darling placed all the key judicial components of the district, including those usually performed by civil magistrates, under paid military control. Governor Darling eventually dismissed McLeod as magistrate in 1831.[94]

Webber was never the focus of the governor's concerns regarding corruption, but tensions ran high between Webber and Aubin as they sat side by side on the Paterson Bench. In June 1830 each complained to the Governor about the performance of the other after Aubin recommended one of Webber's convicts be granted a ticket-of-leave without Webber's recommendation.[95] At Tocal, official judicial and police mechanisms were complemented by the employment of a 'farm constable', a type of unofficial, private police often used on larger estates to maintain law and order and, when the situation required it, to escort convicts to the official lock-up to await a court appearance.[96]

Once a Tocal convict came before the local bench, he faced the possibility of a variety of punishments if convicted, ranging from a flogging, or sentence to gaol, to a period in an iron gang or secondary transportation to a penal station such as Port Macquarie, Moreton Bay or Norfolk Island. The treadmill was a punishment also experienced by Tocal's convicts, but not while assigned to the estate, as such a facility was not available in the area. To administer convict discipline, the government established a series of 'levels' within the system, each with differing degrees of supervision, incentives and reliance on corporal punishment. An understanding of these 'levels' is essential to the interpretation and analysis of colonial convictions, punishment and resistance. The 'levels' in the New South Wales convict system shown in table 6.2 below are similar but not identical to those shown by Maxwell-Stewart in his study of the colonial convictions and punishments of Tasmanian convicts.[97]

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[94] CS to McLeod, 22 April 1831, CS LB, 4/3830, 24 [reel 2808], SRNSW.
[95] Webber to CS, 3 June 1830, CS In-letters, 30/4607 in 4/2076, SRNSW; Aubin to CS, 4 June 1830, CS In-letters, 30/4406 in 4/2076, SRNSW.
[96] Details of the role of Tocal's farm constable are given in chapter four.
[97] Maxwell-Stewart, "The Bushrangers", 97-99.

Table 6.2 'Levels' in the New South Wales convict system

Ticket-of-leave
Private assignment
Government – not ganged
Government – ganged but not ironed (eg road and bridge parties)
Government – ganged and ironed (iron gangs)
Government – penal settlement

The 'government – not ganged' category does not appear in Maxwell-Stewart's analysis but has been added here to accommodate those convicts assigned to government on an individual basis such as a millwright servicing mills in Newcastle, those assigned to assist government officials such as surveyors, or in the case of Tocal convicts, Daniel Cain working as a wardsman in Newcastle Hospital and George Nelson serving with the Colonial Architect's Office.[98] The six levels provided a loose promotional and demotional framework for the administration of convict discipline and control, ranging from the release on parole provided by a ticket-of-leave to the severity of a term in a penal settlement. The promotional framework was less distinct and in some cases arguable at the second and fourth levels. Some convicts preferred doing 'the government stroke' in a road gang to working in private assignment for a master who expected hard work from his assigned servants. Some therefore deliberately misbehaved in private service in order to be returned to government.[99] The levels of the system shaped the types of punishment available, from non-demotional forms such as flogging, short periods in gaol or on the treadmill, to demotional forms such as withdrawal of a ticket-of-leave, transfer from private service to a government road gang or bridge party, or from one of these gangs to an iron gang, or removal to a penal settlement.

As a general rule, the upper levels of the system were characterised by less supervision and more reliance on positive incentives, while at the lower levels, those working in gangs were closely supervised and controlled predominantly by flogging.[100] Maxwell-Stewart found that the promotional levels of the convict system interacted with the nature and extent of both convictions and punishments. Those employed in the lower levels experienced a higher rate of annual committals for colonial crimes than those in the higher levels. The Tasmanian data also revealed a high degree of mobility between

[98] Monthly Returns of Prisoners Punished at Newcastle, CS 4/1718, 185, 189 [reel 6023], SRNSW; 16 September 1838, Hyde Park Barracks Bench of Magistrates, X707 [reel 662], SRNSW.
[99] HRA 1, XVI, 711-714 (Bourke to Goderich, 20 August 1832).
[100] Maxwell-Stewart, "The Bushrangers", 129.

levels—many men experienced several levels of the system in relatively short periods of time while serving their sentences.[101] Forty eight per cent of the Tocal men experienced a similar movement between the levels of the convict system, serving part of their sentence with government, mostly ganged, some in irons and some at penal settlements. This affected their treatment and record of behaviour, particularly as the types of offences with which the men were likely to be charged depended to some extent on their current place in the system. In the Tasmanian study, those in gangs and penal settlements were more likely to be charged with malingering and more likely to be flogged. Those assigned to private service were more likely to be charged with neglect of duty and were more likely to be reprimanded or discharged, although the rate of reprimand and discharge for country Benches in the Hunter Valley of New South Wales was extremely low.[102] A convict's position in the system could be determined by his own behaviour, such as committing a misdemeanour that resulted in demotion from private assignment to a gang, but sometimes his position was unrelated to previous behaviour and outside his control. This could occur, for example, if assigned to a government gang or road party on arrival in New South Wales on account of a particular skill or simply by circumstance.

The nature and extent of the colonial convictions of Tocal's convicts is summarised in table 6.3 below. The incidence and pattern of the various types of 'colonial crimes' for which the Tocal men were convicted are similar in general terms to those found in other analyses of New South Wales Convicts, such as Sturma's study of the Patrick Plains Bench for 1834-35 or the Government returns of floggings for 1830 to 1837.[103]

[101] Maxwell-Stewart, "The Bushrangers", 97-100.
[102] Patricks Plains and Merton (Muswellbrook) Benches of Magistrates, 5/7685 [reel 679] & 4/5599 [reel 670], SRNSW.
[103] Michael Sturma, *Vice in a Vicious Society—Crime and Convicts in Mid-Nineteenth Century New South Wales* (St Lucia, Qld: University of Queensland Press, 1983), 17; HRA 1, XIX, 653-654 (Gipps to Glenelg, 8 November 1838); Byrne, *Criminal Law and Colonial Subject*, 32-34.

Table 6.3 Colonial convictions for Tocal's convicts

Convictions [104]	Over whole sentence		While at Tocal	
	Incidents	Convicts	Incidents	Convicts
Absconding	136	52	38	24
Refuse to work, disobey, neglect work	41	28	14	10
Theft/robbery	31	21	4	4
Disrespect/insolence to master	16	15	3	3
Drunk or drunk & disorderly	16	12	2	2
Disorderly conduct	7	7	1	1
Assault (including aggravated)	6	6	1	1
Fighting	2	2	1	1
Manslaughter or murder	2	2	1	1
Allowing himself to be robbed	1	1		
Breach of contract[105]	1	1		
Contempt of court	1	1		
Dishonest conduct	1	1		
Dissolute & immoral conduct	1	1		
False accusations against master	1	1	1	1
False pretences	1	1		
Feigning sickness	1	1	1	1
Improper state with a woman	1	1		
Killing cattle	1	1		
Losing his blanket	1	1		
Losing sheep	1	1		
Losing a shovel	1	1		
Lurking at an improper hour	1	1		
Obstructing the farm constable	1	1	1	1
Riotous conduct	1	1		
Punished, offence unknown	29	26		
Total	**302**	**(82)**	**68**	**(36)**

Source: compiled from the reconstructed behaviour and punishment records for Tocal's convicts[106]

Due to the nature of the surviving records, most of the more serious charges (those resulting in sentences to gaol, iron gangs or penal stations) have been captured in the above table, but the data is less complete for convictions resulting in summary punishments such as floggings, making it difficult to accurately assess the extent of minor charges.[107] The Paterson Bench returns of summary punishments are complete from July 1835 to November 1836, and six Tocal convicts appeared before the Bench during that time, charged with three instances of absconding, nine of insolence, disobedience or neglect of work, and one of pilfering. Five of the six appeared only once but the other man, Elijah Corrigan, appeared five times. Their punishments usually

[104] The number of recorded convictions is slightly higher than the number of recorded punishments due to some punishments being for multiple charges, for example 50 lashes for absconding and theft. Table 6.3 differs slightly from a similar table previously published due to new information since discovered and a review of the method of calculation/categorisation: Walsh, "Assigned Convicts at Tocal", 80.
[105] Conviction while holding a ticket-of-leave.
[106] Details of the sources and method of reconstruction are provided in chapter one.
[107] Sentences to iron gangs or penal stations left a more extensive paper trail than floggings, including newspaper reports of higher court proceedings, entries in gaol entrance books while in transit, and correspondence with the Sheriff (who was responsible for such convict movements).

consisted of 25 or 50 lashes, although Corrigan received 100 lashes on one occasion and 14 days in the cells on another.[108] About 26 convicts were assigned to the estate at this time, suggesting that only a minority of Tocal's convicts were punished by official judicial process and that rewards and incentives operated as an effective alternative. The years of missing local Bench records introduce a bias in table 6.3 because abscondings were reported independently in the press or *Government Gazette* and can therefore be recovered for the analysis, while other offences such as neglect of work or disobedience that were not punished by relocating the convict cannot usually be recovered. The incidence of these offences is therefore likely to be understated in table 6.3. Nevertheless the pattern of offences in table 6.3 is consistent in general with a detailed analysis of cases brought before the neighbouring Patricks Plains Bench in 1834 and 1835, where absconding and absence were the most frequently occurring type of offence.[109]

Over the whole of their sentences, more than a third of the Tocal men absconded at least once, and nearly as many were punished for refusal to work, disobedience, neglect of work or disrespect. Appendix three provides further details of the convictions of the Tocal men that resulted in a flogging, and the number of lashes inflicted. Overall during their sentence, according to the surviving records, 58 per cent of the group received one or more punishments, and 27 per cent received at least one flogging. There are two important points to be noted here. Firstly, these are minimum figures, and the impact of the missing Bench Books on the overall conclusions is discussed below. Secondly, while a majority of the convicts assigned to Tocal were punished at least once, a minority of the group (about one third of them) received the bulk of punishments and re-assignments.[110]

The Tocal data on secondary punishment has wider significance because the extent of flogging of convicts in New South Wales is a contested area of convict historiography in which a range of conclusions have been drawn from incomplete data. Flogging also holds an emotive significance to a wider audience as it shapes popular views and judgements about the degree of brutality and suffering associated with the convict

[108] Benches of Magistrates, Returns of Summary Punishments, Paterson 1835-36, X708, SRNSW.
[109] Sturma, *Vice in a Vicious Society*, 17.
[110] Details were provided in chapter three.

history of Australia. It is therefore important to extract as much information as possible on secondary punishment, and particularly on floggings, from the detailed data on Tocal's convicts, making allowances where necessary for known gaps in the records. Punishments are recorded for only 63 of the 136 reported incidents of absconding by Tocal convicts. The remaining 73 abscondings were reported in the press or *Government Gazette* but the results of the court proceedings that inevitably followed capture have not survived. By making some reasonable assumptions about the outcomes of these missing proceedings, a probable flogging rate for the Tocal group can be calculated with some degree of accuracy. After adjusting for the reported abscondings for which punishments are unknown,[111] about 35 per cent of the Tocal group received at least one flogging during the whole of their sentence. A few would have received time in the cells or on the treadmill as punishment for absconding, but on the other hand, many abscondings from country estates were not reported in the press or the *Government Gazette*, so this figure is conservative.[112] A conservative estimate has also been made of the impact of the missing local Bench records with respect to convictions other than absconding, such as neglect of work or insolence, based on the rate of bench appearances at Paterson in 1835/36.[113] When this adjustment is made, it is feasible that at least two thirds of Tocal's convicts received one or more punishments and more than 45 per cent of them received at least one flogging at some stage during their sentence.

The Tocal results are consistent with the overall annual returns of floggings for New South Wales in the 1830s when there was one flogging per year for every four or five convicts.[114] The incidence of floggings per man cannot be precisely calculated from these annual returns, as the number of men who received more than one flogging each year is not known, and repeat floggings would have reduced the proportion of convicts flogged.[115] Unfortunately it is therefore impossible to further compare the Tocal flogging data per man with the overall figures for New South Wales.

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[111] Eighteen men not otherwise flogged constituted part of the 73 abscondings for which punishments are not recorded. If 70 per cent of these men were flogged for their first offence, it would add about 13 men to the number flogged.
[112] HRA 1, XV, 767 (Hely to MacLeay, 12 August 1830); Roberts, "'A Change of Place'", 111-112.
[113] Tocal men appeared before the local bench at the rate of four per year in 1835/36 (some of these appeared several times). It is conservatively assumed that only one man, who had not previously been flogged, was flogged each year for offences other than absconding for the 14 years of missing local bench records, adding 14 men to the number flogged.
[114] HRA 1, XIX, 653-654 (Gipps to Glenelg, 8 November 1838); Sturma, *Vice in a Vicious Society*, 18.
[115] Townsend proposes the rate could be as low as one in ten: Townsend, "A 'Mere Lottery'", 66.

Other studies have shown that the rate of flogging of assigned convicts could vary greatly between estates. In a Tasmanian study, one master did not bring a single charge against his 10 convicts in 1830 while another master brought 32 charges against his 31 convicts in the same year.[116] There was a similar variation in New South Wales, where some large land-holders were reluctant to use the courts at all, preferring to rely on incentives, while a few masters used the magistrates' bench far more frequently than most.[117] This variation was evident in the Hunter Valley within 20 kilometres of Tocal, where one master of 15 men rarely took them to court, preferring to overlook trifling offences. In 1833 this master had not sent a convict to court in the past 12 months. Even on Castle Forbes, a Hunter Valley estate with a reputation for frequent recourse to the lash, in December 1833 there were 28 men, representing over half the estate's workforce, who had not been punished since 1831.[118] At Tocal, both convict masters (Webber to 1834 and the Wilsons thereafter) were prepared to send convicts to the Bench on occasions, and the extant records indicate that 19 convicts received 32 floggings while assigned to the estate. Had all the Paterson Bench records survived, the number would have been higher.

It has been suggested that some variation in use of the local bench depended on estate size and the social status of its owner. Wealthy landowners who comprised the rural gentry were more likely to bring cases of convict disobedience, disrespect and insolence to court, as an indignant reaction to not receiving the degree of deference they believed they deserved, and the associated threat to their status and position in society.[119] It has also been suggested that convicts from a rural background were more likely than those from an urban background to submit and defer to the authority of the convicts masters to whom they were assigned in New South Wales. The former were accustomed to a clearly-defined social structure and habituated to respectful behaviour towards landlords and gentry while the latter were drawn from an environment where 'notions of

[116] Maxwell-Stewart, "The Bird that Never Flew", 16.
[117] Byrne, *Criminal Law and Colonial Subject*, 10; Sturma, *Vice in a Vicious Society*, 16-17.
[118] About 30 convicts were assigned to Mudie at this time and about 20 to his overseer, Larnach. The two groups were treated operationally as the one workforce: Minutes of evidence taken by the Commission of Inquiry at Patricks plains, *Sydney Monitor*, 21, 28, 31 January and 3 February 1834 & internet online http://www.une.edu.au/arts/ACF/cf1833/index.html and assoc pages [6/6/2006]; BT Dowd and Averil Fink, "Harlequin of the Hunter: 'Major' James Mudie of Castle Forbes (Part I)", *Journal of the Royal Australian Historical Society* 54, no. 4 (1968): 382.
[119] Byrne, *Criminal Law and Colonial Subject*, 60.

deference and patriarchy were now irrelevant'.[120] This argument is supported by the Tocal data. The Tocal men from a rural background were punished for secondary offences on average 1.3 times during their sentences while those from an urban background were charged and punished 2.3 times. However, as discussed below, this may be partly attributed to a difference in skills, with those from an urban background less able to contribute relevant skills while working at Tocal. There was virtually no difference in frequency of punishment between Tocal's English, Irish and Scottish convicts.

Skilled convicts were less likely to be flogged given the care-intensive nature of their work compared to the effort-intensive nature of the work of convict labourers.[121] Similarly, unskilled workers were more likely to be allocated to work in gangs, where flogging was the prevalent method of control. Thus unskilled workers allocated to a government gang such as a road party were more likely to be flogged than those allocated to settlers.[122] This indicates that those convicts who worked in government gangs either before or after their assignment to Tocal are more likely to have been flogged than those who, either because of skills, circumstances or behaviour, managed to avoid working in such gangs. In addition, the number of floggings and other punishments received depended on conditions faced during assignment and the convicts willingness to accept or tolerate these conditions without resistance and protest. This latter factor is explored further on in the chapter.

In addition to the variables discussed above, diverse views on the extent of flogging add further to the complexity of the convict historiography in this area. Nicholas argued that the traditional picture of indiscriminate, brutal use of the lash and convicts terrorised by corporal punishment is not borne out by the evidence. In contrast, Evans and Thorpe claimed that flogging was ubiquitous and represented a ritualised form of violent, systematic assault calculated to impose a sense of submission, helplessness,

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[120] Waterhouse, *Private Pleasures, Public Leisure*, 20.
[121] Nicholas, "The Organisation of Public Work", 160-162. As further evidence, there were over 80 convicts allocated to timber-cutting duties at Pennant Hills in 1822, most of them skilled workers, and only 'a couple' appear in the local Bench book for that year: Ralph Hawkins, *The Convict Timbergetters of Pennant Hills* (Sydney: Hornsby Shire Historical Society Inc., 1994), 53.
[122] From 1822, however, the majority of new arrivals were assigned to settlers rather than to government gangs. This is reflected by the fact that 88 per cent of the Tocal men were initially assigned to non-government service, either at Tocal or elsewhere.

vulnerability, humiliation, impotence and emasculation.[123] They also claimed that experiential accounts of the violence of flogging were not overstated and 'come closer to a rounded depiction of contingent historical truth than the recording of a number of inflicted strokes'.[124] A comprehensive analysis by Pybus and Maxwell-Stewart of the narratives of American patriots transported the Van Diemen's Land supports Evans and Thorpe's view of flogging as violent, brutal and barbaric.[125]

The Tocal data cannot shed light on the brutality of flogging but it does provide fresh evidence regarding its frequency. Previous analyses by Robson and Shaw, the former based on a detailed study of the conduct registers in Van Diemen's Land (the equivalent registers not having survived in New South Wales) indicated that 38 per cent of Tasmanian prisoners were flogged at least once in the period up to 1840, and that flogging was more widespread in New South Wales. Robson proposed that frequent use of the lash was the most profound factor preventing reformation, hardening convicts' hearts and perhaps driving them to persistent offences.[126] Nicholas, in arguing the exaggeration of reliance on flogging stated 'convicts assigned up-country would have been unlikely to have seen, let alone experienced, a flogging'.[127] Whilst the Tocal study supports Nicholas' view that corporal punishment was not the sole or even the dominant strategy employed in master-convict relations, the Tocal data clearly indicates that definitely one quarter, almost certainly one third, and probably up to one half of these 'up-country' men experienced a flogging. This finding is more in accord with Evans and Thorpe's revision of *Convict Workers*' calculations regarding the prevalence of floggings, the revised calculations indicating that around three quarters of convicts may have been flogged at least once.[128]

Caution is required when extrapolating data from one estate to a wider situation, but the Tocal findings question and challenge Nicholas' revisionist view that floggings were of minor significance. Similarly, the conclusion of studies of Marsden's convicts and the men who disembarked from the ship *Marquis of Wellington*, that respectively only 13

[123] Evans and Thorpe, "Commanding Men", 24-25.
[124] Evans and Thorpe, "In Search of 'Jack Bushman'", 39.
[125] Pybus and Maxwell-Stewart, *American Citizens, British Slaves*, 108-115.
[126] Robson, *Convict Settlers*, 79-98; Shaw, *Convicts and the Colonies*, 201 .
[127] Nicholas, "The Organisation of Public Work", 161; Nicolas, "Care and Feeding of Convicts", 181-183.
[128] Evans and Thorpe, "Power, Punishment and Penal Labour", 97-98.

and 25 per cent of these men re-offended in the colony, probably reflects the limited range of records consulted in these investigations rather than findings which are at odds with the Tocal rate of an absolute minimum re-offence rate of 58 per cent, based on an extensive reconstruction of behaviour records.[129]

The full range of punishments experienced by Tocal's convicts as a result of their colonial convictions is shown in table 6.4 below.

Table 6.4 Types of punishment for Tocal's convicts over whole sentence[130]

Type of Punishment	Punishments	Number of men
Flogging	82	39
Iron gang	38	27
Gaol	29	22
Penal settlement	25	17
Ticket-of-leave withdrawn	18	17
Treadmill	7	6
Relocation[131]	4	4
Admonished/reprimanded	3	3
Extension of sentence[132]	1	1
Not recorded	80	38
Total	287	(82)

Source: compiled from the reconstructed behaviour and punishment records for Tocal's convicts[133]

Only seven sentences to the treadmill have been recorded for Tocal's convicts. Punishment on the treadmill consisted of walking upstairs on a set of revolving steps. The treadmill was introduced in Sydney as a less brutal alternative to the lash, and authorities hoped it would be equally effective as a deterrent to further crime. By 1825 there were two treadmills in Sydney and they were used to drive mill wheels for grinding grain into flour. For a fee, residents could bring their grain along to have it ground at these convict-powered mills, and in this way the colonial government combined revenue raising with deterrence.[134] Time spent on the treadmill by Tocal convicts ranged from three days by John Moors for being absent overnight from his

[129] White, "A Master and his Men", 80; Parton, "Faces from a Crowd", 49-50.
[130] The number of punishments in table 6.4 is slightly lower than the number of charges/convictions in table 6.3 due to some punishments being for multiple charges, for example 50 lashes for absconding and theft.
[131] Other than to an iron gang or penal settlement. These demotions were: 12 months clearing party; six months on mountain roads; three years labour on the roads; returned to government; Newcastle mines.
[132] As sole punishment rather than in combination with sentence to an iron gang or penal settlement.
[133] Details of the sources and method of reconstruction are provided in chapter one.
[134] *Sydney Gazette*, 12 December 1825; Crowley, "Working Class Conditions", 160; James Jervis, "The Tread Mill", *Royal Australian Historical Society Journal and Proceedings* 31, no. 5 (1945): 337-340. There was also a treadmill at the government station at Wellington Valley: Roberts, "Inland Norfolk Island", 70.

barracks, to 28 days for William Geere for absconding, and one month for John Sheppard for disorderly conduct.[135] Further details are in appendix four.

Short gaol sentences also offered authorities a less brutal alternative to flogging as a punishment for minor offences, but required the transport of convicts under police escort and were therefore usually an option only when a gaol or lock-up was available in the vicinity. Fifteen per cent of Tocal's convicts were punished in this way, and their sentences ranged from three days to three months. Their gaol time could involve the additional constraint of 'bread and water' or solitary confinement. George Edwards was sentenced to 21 days solitary confinement for absconding from Tocal in 1832, and served his time in Newcastle Gaol after transfer from Maitland.[136] George Nelson spent 14 days in the cells on bread and water for being absent from his duties with the Colonial Architects in Sydney in 1836 (he had previously been assigned to Tocal in 1828).[137]

Nineteen percent of Tocal's convicts served a period in an iron gang at some stage during their sentence, a similar proportion to the colony of New South Wales as a whole between 1826 and 1836.[138] Iron gangs represented an escalation of the terror, calculated severity and intended deterrence within the range of secondary punishments available to convicts. Iron gangs underpinned master-servant relations in New South Wales, setting a limit to the range of convict behaviour possible within the complex discourse and negotiation of working and living conditions and expectations between master and convicts. Maxwell-Stewart argues that in this respect iron gangs functioned in a similar way to 'nigger breakers' in the *ante bellum* South: typically poor white farmers who rented labour at minimal rates from planters who wanted their slaves cured of 'impudence'.[139]

The significance of being sentenced to an iron gang needs to be interpreted with caution. According to Grace Karskens, when Governor Darling described the convicts in road gangs as 'the refuse of the whole convict population' he constructed the popular

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[135] Hyde Park Barracks Bench of Magistrates, X707, 138 [reel 662], SRNSW; *Sydney Gazette*, 16 August 1826; Parramatta Bench of Magistrates, X708, 141 [reel 662], SRNSW.
[136] 28 August 1832, Newcastle Gaol Entrance Book 1829-1833, 2/2004 [reel 755], SRNSW.
[137] Hyde Park Barracks Bench of Magistrates, X707 [reel 662], SRNSW.
[138] Shaw, *Convicts and the Colonies*, 216.
[139] Maxwell-Stewart, "Convict Workers, 'Penal Labour'", 146.

image of these men that would persist for the next 150 years or more. Karskens' study of the government gangs that constructed the Great North Road shows that Darling's description overlooked a richer picture, in which gangs led by diligent convict and ticket-of-leave overseers, and containing a sprinkling of highly skilled artisans, constructed roads and bridges that are a testament to their perseverance, organisation, diligence and expertise. Despite the high level of absconding and punishment of the men in these gangs, there was also opportunity for promotion and the chance to learn new skills. On this basis Karskens exposes the pitfalls of accepting contemporary views of criminality at face value. She demonstrates that the vanished world of the men working in iron gangs and their supervisors persists in archaeological evidence, and moreover, the surviving structures present an additional means of recovering the voices of convicts.[140] The nascent richer picture of iron gangs is therefore another example of the complexity of the convict experience and of the danger of accepting superficial, contemporary viewpoints.

At the same time, the concentration of so many defiant convicts in gangs stretched the colonial administration to the limits of its ability to supervise and control the men. Governor Darling introduced the formation of iron gangs in 1826, consisting solely of men working in chains, because of the large number of men 'under orders to be worked on the roads in chains', his objective being to isolate them from the unchained convicts in road parties. The need for iron gangs was sharpened by the increasing numbers of convicts arriving in the colony, the resultant increase in 'colonial offences' and the limited capacity of penal settlements.[141] Darling's scheme provided that once a man had served his time he would be transferred to a road party to continue his original sentence. The governor specified that men in iron gangs be mustered at 5am and work until 6pm, with an hour for dinner, except in winter where the hours were from seven o'clock to five o'clock. Because of the great number of men escaping from iron gangs, Governor Darling decided in 1830 that these gangs would be placed under a military guard of 22

[140] HRA 1, XIV, 69 (Darling to Huskisson, 28 March 1828); Karskens, "Defiance, Deference and Diligence", 18-19.
[141] Ian Webb, *Convict Road Gangs 1826-1836* (Wahroonga: Convict Trail Project, 2003), 6-7, 11; Shaw, *Convicts and the Colonies*, 214.

soldiers for each gang of not more than 40 men.[142] Despite the increased surveillance, Tocal's Thomas Smith managed to abscond from Iron Gang 3 in 1831.[143]

Appendix five reveals the most common reason for a Tocal convict serving time in an iron gang was repeated absconding. This reflects colonial government policy, clearly stated by Governor Bourke when he informed the resident magistrate at Patersons Plains 'it is very important that the heaviest penalty of the Law for a Second absconding, namely Twelve Months to an Ironed Gang, should never fail to be awarded'.[144] The next most common reason for Tocal convicts finding themselves in an iron gang was some form of theft including burglary, highway robbery and bushranging. There were also sentences to iron gangs for violent crimes such as assault and manslaughter. A few Tocal men served multiple terms in iron gangs, mostly for serial absconding. Philip Byrne topped the list with three terms. Byrne was an 18 year-old Irish groom with a life sentence who was assigned to Tocal on arrival in New South Wales in 1825. He was sentenced to six months in an iron gang for stealing in 1831, 12 months in irons on mountain roads for running away from his road party in 1832, and six months in an iron gang for aggravated assault in 1833.[145] In the case of George Mildmay (whose petition heads this chapter) and many others sentenced to an iron gang, the time in irons represented a double punishment because it was added to the term of the original sentence, thus prolonging the overall period of servitude and delaying the opportunity for freedom.

The extension of a convict's sentence was evidently one of the most dreaded forms of secondary punishment. It had been a standard punishment for convicts in the American colonies but it was not legally possible to extend a convict's sentence in New South Wales until the 1820s.[146] Once this power was granted, it could be used as an adjunct to iron gang sentences (as shown in the preceding paragraph) or as a stand-alone punishment. One Tocal convict, William Halfpenny, was sentenced by the Newcastle

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[142] Webb, *Convict Road Gangs*, 13-14, 42-45.
[143] *Sydney Gazette*, 2 June 1831.
[144] CS to Anley, 23 March 1833, CS LB, 33/222 in 4/3834, 186 [reel 2809], SRNSW.
[145] 1 July 1831, Sydney Gaol Entrance Book 1830-1831, 4/6432 [reel 851], SRNSW; 14 May 1832, Hyde Park Barracks Bench of Magistrates, X825 [reel 661], SRNSW; 9 & 13 May 1833, Clerk of Peace, Quarter Sessions Campbelltown, 4/8387, 349 [reel 2400], SRNSW.
[146] Evans and Thorpe, "Power, Punishment and Penal Labour", 99; Hirst, *Convict Society and its Enemies*, 64.

Bench simply to one year 'additional to original sentence' for theft in 1826.[147] As Halfpenny's original term was for life, presumably the extra time extended the period he had to serve before becoming eligible for a ticket-of-leave. This is the only recorded case of extension of original sentence being used on a stand-alone basis for Tocal's convicts, supporting Hirst's view that authorities were reluctant to use this punishment because it would have embittered convicts to the extent they would be 'more dangerous and less useful'. Hirst adds that, whatever its other effects, flogging did not dispel the hope of release.[148]

Twelve per cent of Tocal's convicts were sentenced to secondary transportation to a penal settlement, the penultimate step in the hierarchy of terror and brutality of colonial punishment (hanging being the final step). The first penal settlement in New South Wales was established at Newcastle in 1804 following the Castle Hill rebellion (the so-called Battle of Vinegar Hill), and several Tocal convicts served time there as a result of colonial sentences. The first Tocal convict to endure secondary transportation was not sent to Newcastle, however, but to 'the Derwent' in Van Diemen's Land in 1814.[149] There was a fundamental change in policy and practice following Bigge's inquiry and report, leading to a stricter, more military and authoritarian approach to the secondary punishment of convicts that incorporated his recommendations regarding 'hardships of restraint, ... privation of comforts [and] severe labour'.[150] It was in this context that other penal stations were established at Port Macquarie in 1821, Moreton Bay in 1824 and Norfolk Island in 1825.[151] Appendix six records the details of the Tocal men's secondary transportation including their convictions, duration and place of sentence. They were well represented at the penal settlements of Newcastle, Port Macquarie, Moreton Bay and Norfolk Island. The most common reason for their conviction was some form of theft, including armed robbery and highway robbery. (It is interesting to note that these were offences were not unique to convicts, in contrast to absconding that was a uniquely convict offence and the most common reason for sentence to an iron

[147] October 1826, Register of Complaints and Trials Newcastle 1818-1834, 4/8543 [COD120], SRNSW.
[148] Hirst, *Convict Society and its Enemies*, 64.
[149] Richard Clarke, later to be assigned to Tocal, was transported to the Derwent per ship *Wyndham* in 1814 along with a number of other secondary transportees: 4 April 1814, CS list of convicts to be sent to the Derwent per *Wyndham*, 4/3493, 127, 133 [reel 6004], SRNSW; CON 13/1, 33, Archives Office of Tasmania.
[150] Bigge, *Inquiry into the State of the Colony*, 175.
[151] Evans and Thorpe, "Power, Punishment and Penal Labour", 101-102.

gang). The next most common reason for sentence to a penal settlement was repeated absconding. Six of the Tocal men experienced sentences to both iron gangs and penal settlements. Others served more than one term at a penal settlement. For example, James Hazell was transported to Port Macquarie in 1824 after absconding twice from the government establishment at Emu Plains. He ran away from Port Macquarie, was captured and consequently sent to Moreton Bay on the *Amity* in 1824. It is ironic that Hazell, one of the first four convicts to set foot on Tocal in 1822, was also one of the first convicts to arrive at Moreton Bay where he would have been required to assist in establishing the settlement.[152]

Penal settlements occupy a troubled and contentious place in the historiography of convicts and convictism. This is well illustrated in O'Connor's review of the historiography of Moreton Bay and the 'zone of silence' that dominates much of its history. This silence is aligned to the wider historiographical trend to view convicts as professional criminals and prostitutes. From this perspective, penal settlements become an inevitable requirement, to punish and control recidivists and hardened criminals whose intrinsic deviance and inability to reform is taken for granted. Criminality thus became a convenient way to explain the existence, role, and *modus operandi* of penal settlements.[153] These paradigms of criminality and brutal punishment, as espoused for example by Shaw, Robson and Hughes, fail to listen to the convict voices and divert attention from the ongoing discourse of domination and resistance that was manifest in the complex interactions between convict and master in their day to day struggles, even in penal settlements.

Another historiographical trend, equally distorting in its view of penal settlements, is the 'benign treatment' paradigm, at the core of which is the view that convicts were generally well treated, and the pain and punishment of iron gangs and penal settlements were of minor significance. This, according to O'Connor, is evident in the works of Hirst and Nicholas, the latter paying little attention to penal settlements in *Convict Workers*, instead placing them on the periphery as being of minor statistical importance.[154] This *Convict Workers'* viewpoint misses the vital role that such places

[152] JG Steele, *Brisbane Town in Convict Days 1824-1842* (St. Lucia: University of Queensland Press, 1975), 8-9.
[153] O'Connor, "Zone of Silence", 124, 131.
[154] O'Connor, "Zone of Silence", 131, 134-135.

played in the overall management and punishment of convicts as 'a potent warning to *any* convict who transgressed authority'.[155] As Maxwell-Stewart argues, penal settlements along with their associated hardships and severity were located in economic and ideological terms at the heart of the transportation system. They played an essential role in informing the dialogue between convicts and managers in the regulation of a complex political economy.[156] The image and reality of secondary transportation to a penal settlement such as Moreton Bay or Norfolk Island defined the boundaries and set the limits of the discourse and struggle between convicts and masters, underpinning the whole system of incentives and punishments. Once this role is understood, the apparent dichotomy in the literature between the supposedly benign treatment of assigned convicts and the brutality of iron gangs and penal settlements is resolved. Reward and punishment are one of the dualisms that coexist without contradiction in the complexity of the convict experience.

Yet even at these places of severe punishment, there was a wide variety of work and conditions, and a promotional framework to balance the repressive mechanisms of the settlements and offer some hope of amelioration of conditions or lessening of punishment as a reward for deferential behaviour and acceptance of the system.[157] In 1829 Governor Darling issued fresh regulations for penal settlements in New South Wales that balanced severity and incentive. On the one hand, hoe and spades were to be used rather than ploughs, and men with hand carts were to replace bullocks for haulage and general cartage. On the other hand, prisoners were to be divided into two classes, with the higher class worked more lightly, issued with tobacco and eligible to be promoted to overseers, constables, clerks and officers' servants, but as yet there was no provision for early release. As soon as Darling left, however, a regular system for the mitigation of sentences on Norfolk Island was established and subsequently endorsed by Governor Bourke on his arrival. This gave prisoners a further incentive to good conduct and the hope of an early release.[158] This arrangement directly benefited James Brownlee, a Tocal convict sentenced to 10 years on Norfolk Island in 1838 for cattle

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[155] Evans and Thorpe, "Power, Punishment and Penal Labour", 103.
[156] Maxwell-Stewart, "Convict Workers, 'Penal Labour'", 156-157.
[157] Maxwell-Stewart, "Convict Workers, 'Penal Labour'", 148, 156; Maxwell-Stewart, "The Rise and Fall of John Longworth", 103-104. See also Hamish Maxwell-Stewart and Susan Hood, *Pack of Thieves? 52 Port Arthur Lives* (Port Arthur Historic Site Management Authority: Port Arthur, 2001), 7;
[158] Shaw, *Convicts and the Colonies*, 204, 207.

stealing, and allowed to return to Sydney after only seven years on the Island, his conduct while at the settlement recorded as 'good shepherd and butcher - generally steady'.[159]

Overall, 27 per cent of Tocal's convicts spent time either at a penal settlement or in an iron gang (after allowing for the six men who experienced both). This compares with Shaw's estimates of between 20 and 25 per cent for the colony as a whole between 1826 and 1836.[160] The slightly higher incidence for Tocal men is partly explained by the estate's proximity to the penal settlement at Newcastle (closed by 1823)[161] and the related fact that eight men were assigned to Tocal in its first years of operation after they had completed terms of secondary transportation at Newcastle, presumably a convenient administrative arrangement compared to bringing assignees from Sydney to Tocal. When this possible bias in taken into account, the incidence of sentence to an iron gang or penal settlement among the Tocal men is similar to estimates for the colony as a whole.

Before concluding this section it can be noted that the figures regarding convictions and punishments of Tocal convicts in New South Wales do not include those incurred after the men became free by servitude or pardon. Fourteen of the Tocal men were convicted of 27 offences while free, for crimes such as theft, forgery, drunkenness and debt, with two of the thirteen amassing eleven of the offences.

Protest, resistance and defiance

The meaning and significance of the colonial convictions and punishments of the Tocal men can now be examined. It is no longer sufficient to view such colonial convictions as the inevitable result of the inherent criminality of the convicts. Rather, it is necessary to place them within the workings of reciprocal power relationships between masters and convicts, as part of an ongoing discourse of domination and resistance played out on rural estates and in government road parties, iron gangs and penal settlements. An examination of the convict actions that led to secondary convictions therefore becomes part of the process of recovering the voice and agency of convicts, and provides a deeper understanding of the richness and complexity of their often turbulent servitude.

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[159] Norfolk Island 1845, CS Correspondence, 4/2698.1 [reel 770], SRNSW.
[160] Shaw, *Convicts and the Colonies*, 216.
[161] *Sydney Gazette*, 11 September and 16 October 1823.

An influential study of convict agency and protest was undertaken by Alan Atkinson in 1979, based on his detailed analysis of surviving magistrate Bench Books for New South Wales. Atkinson defined protest as any confrontation with authority that involved or implied some assertion of general principle, such as a violation of legal or perceived rights. He proposed that convict protest could be classified into four broad types, namely attack, appeal to authority, withdrawal of labour, and compensatory retribution. Of these, attack represented a fundamental rejection of authority, while appeal to authority implied some acceptance of the system by convicts and a belief they had identifiable rights that could be upheld by judicial process.[162] The petition of George Mildmay that heads this chapter is an example of appeal to authority by a Tocal convict, in this case because he was sentenced to an iron gang by a single magistrate, contrary to legislation that required such a sentence to be handed down by a Bench of two or more magistrates.

In a Tasmanian study of convict protest and resistance, Hindmarsh documented a gamut of actions, including insolence, disobedience, violence and sabotage as the means by which convicts dictated the limits of their labours. He makes a useful distinction between daily, low-level strategies of resistance such as insolence, feigning illness and breaking farm equipment, and theatrical displays such as arson or physical attack on overseers or the master. Theatrical displays were likely to be used as a last resort when low-level, day-to-day strategies failed to achieved the desired objective.[163] At Tocal there is no record of theatrical displays of resistance such as arson or attack on overseers or the master, although such actions occurred on neighbouring estates. Just across the river, William Dun's estate was pushed to the brink of bankruptcy by convicts setting fire to barns and granaries, and his wife was assaulted by a convict in the estate's kitchen, the young convict having previously threatened to take to Mrs Dun with an axe.[164] A few kilometres upriver, three convicts assigned to Edward Cory tried to set his house alight,[165] and several years later he was hit over the head with a shovel by one of his assigned convicts, eventually leading to the convict being hanged. The *Sydney Monitor* reported the drama surrounding the incident as follows:

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[162] Atkinson, "Four Patterns of Convict Protest", 30.
[163] Hindmarsh, "Scorched Earth", 69-70, 75.
[164] HRA 1, XVI, 711-714 (Dun to Bourke, 15 February 1832, 15 March 1832, Bourke to Goderich, 20 August 1832); Newcastle Bench Book 1835-1836, 4/5608, 141-148 [reel 2721], SRNSW.
[165] 21 September 1824, Newcastle Bench Books 1823-1827, ML MSS2482/4.

> *Joseph Coleman*, convicted of striking with a spade, with intent to murder Mr E G Cory... is to be forwarded to Paterson's Plains where the sentence of the law will be carried into effect; this man when taken into custody confessed to the constable that it was his intention to murder his master, to free himself and comrades from the tyranny which had been exercised on the farm, and added, that if he failed in his purpose, some other of the men on the farm would complete what he had attempted. His fate may serve to put down this spirit of mutiny and revenge which has appeared to exist so generally at Hunter's River.[166]

The 'spirit of mutiny and revenge' at Hunters River is examined in detail later in the chapter. Joseph Coleman had evidently reached breaking point, the violent attack probably the final event in a prolonged saga of conflict between master and servant over working and living conditions. Dramatic events that occurred when paternalism and punishment failed and the master/convict relationship broke down completely were usually recorded in newspapers or the proceedings of the higher courts, or both. The absence of records for such events at Tocal suggests that master/convict relationships on the estate remained within less dramatic bounds defined by the usual range of rewards and punishments, and that convict agency in the form of protest and resistance on the estate was mostly limited to day-to-day, low-level tactics. The one exception to this is the 1829 tea and sugar revolt that is discussed further on.

There were several recurring issues in convict-master relations that sparked protest and resistance. The quantity and quality of rations issued was a common source of dispute, sometimes resulting in convicts complaining to the local magistrate, and occasionally with the master being directed by the court to improve his practices.[167] At Castle Forbes in the Hunter Valley, the assigned convicts were greatly agitated by the issue of wheat containing smut, as it coloured the grain black or blue and produced rather unpleasant flour. At the same establishment, a shortage of salt and the difficulties of effectively salting fresh beef in summer led to the supply of bad beef to the men, further adding to their discontent about rations. Some masters understood the importance that provision of good rations played in obtaining the cooperation of their convict workforce, and would turn a blind eye to convicts occasionally slaughtering a few sheep to supplement their diets.[168] At Bona Vista, immediately neighbouring Tocal, James Phillips was not

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[166] *Sydney Monitor*, 2 March 1833.
[167] Foster, "Convict Assignment", 65, 69; Aubin, Reid and Townsend to CS, 31 August 1830, McIntyre to CS, 3 September 1830, CS In-letters, 30/6898 & 30/6899 in 4/2081, SRNSW.
[168] Harris, *Settlers and Convicts*, 186.

so understanding. When he found a freshly slaughtered sheep hanging in a tree near the river he waited in the brush for the culprits to return to the scene and had them arrested, leading to their secondary transportation for life. When taken into custody, his two assigned convicts said 'you should have given us more to eat and these things would not happen'.[169] (James Phillips had previously been admonished by the Police Magistrate at Wallis Plains for failing to supply adequate bedding and clothing to his convicts and for taking one convict to the Maitland Bench after the Paterson Bench refused to have him flogged.)[170]

Working hours and conditions, and being asked to work on Sunday, were also common issues. At Castle Forbes one of the critical incidents in the chain of events leading to rebellion (and the eventual hanging of five convicts) was a convict mechanic's refusal to paint the shaft of the estate's mill.[171] Evidently this man felt strongly that such a task was unworthy of his skills as a carpenter and joiner. The failure of masters to issue slops (clothing), blankets and bedding in accordance with the regulations was another source of friction, sometimes ending up with a court order to the master to supply what was due, or in extreme cases, withdrawal of the convict from that master.[172] Abuse and physical assault of convicts by their masters and overseers were also a source of friction and discontent in the Hunter Valley and elsewhere.[173]

Protest and resistance was usually triggered by such specific issues, but there were less concrete, more elemental factors that could predispose convicts to react. These included a convict's general expectations of fair treatment and popular notions of 'justice' that together were embedded in a convict moral economy,[174] 'that balance, that tacit understanding, between governor and governed'.[175] Masters whose treatment of assigned servants strayed outside the boundaries of this moral economy could find

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[169] Maitland Quarter Sessions 1834, 4/8409, 111-117 [reel 2407], SRNSW.
[170] Aubin to CS, 12 October 1829, CS In-letters, 30/2806 & encl. in 4/2071, SRNSW.
[171] Minutes of evidence taken by the Commission of Inquiry at Patricks plains, *Sydney Monitor*, 21, 28, 31 January and 3 February 1834 & internet online http://www.une.edu.au/arts/ACF/cf1833/index.html and assoc pages [6/6/2006].
[172] CS to Anley, 12 May 1831, CS LB, 4/3830, 72-72 [reel 2808], SRNSW.
[173] Examples of convicts in the Hunter Valley withdrawn because of assault by their masters include: CS to Anley, 2 November 1830, CS LB, 4/3829, 186 [reel 2808], SRNSW; and CS to Anley, 30 September 1831, CS LB, 4/3830, 412 [reel 2808], SRNSW.
[174] Hindmarsh, "Scorched Earth", 71; Maxwell-Stewart, "I Could Not Blame the Rangers", 115.
[175] Thomas Bartlett, "An End to Moral Economy: The Irish Militia Disturbances of 1793", *Past and Present* 99 (1983), 42.

themselves the target of protest and resistance despite supplying the basics prescribed by regulation. Even if masters remained within the boundaries of the convict moral economy, it was perhaps inevitable they would experience some protest and resistance from their assignees. The 'hidden transcript' of convicts and slaves, the behind-the-scenes denigration and subversion of a master's authority, arose from impulses of defiance that had to be constantly repressed while they were within sight or earshot of their masters. The need for convicts and slaves to present a veneer of deference, to 'act a mask' in the presence of power produced, by virtue of its falseness, a countervailing pressure that could not be contained indefinitely. Ideological insubordination—the fundamental urge of the dominated to show the dominators what they really thought—can contribute to an understanding of the various forms of convict protest and resistance.[176]

Nevertheless, most convicts did not attempt to challenge the convict system itself. Usually they accepted, perhaps grudgingly, their roles as assigned servants under the control of a master, and attempted to shape the operational terms and conditions of their assignment rather than reject outright the servant/master system of the exploiter and the exploited. Outright rejection led straight to a penal settlement or the gallows, but Hindmarsh disagrees with Atkinson's conclusion that attacks on a master could represent a fundamental rejection of authority. Hindmarsh suggests that 'in certain instances violence might be resorted to by the convict as a final, and costly, assertion of their perceived rights'. However, Atkinson was able to identify incidents of insolence, for example, where the principal motivation of the convict appears to show a basic rejection of the master's authority and status, rather than a violation of convict rights. Atkinson cites the example of James Redhead who refused to take his hat off to his master, or to anyone else, even after 50 lashes.[177] Of course, violence could simply reflect an outburst of passion or anger neither related to perceived rights nor symptomatic of rejection of a master's authority.

Not all convicts actions aimed at negotiating better conditions involved negative sanctions on the master. Loyalty to the master and informing on other convicts were also used by convicts as strategies to shape their living and working conditions.[178] The

[176] Scott, *Domination and the Arts of Resistance*, 3-23.
[177] Atkinson, "Four Patterns of Convict Protest", 31-32; Hindmarsh, "Scorched Earth", 64.
[178] Hindmarsh, "Scorched Earth", 73-75.

self-interest and common sense of both masters and servants usually prevailed to create a *modus vivendi* involving a degree of accommodation by both parties and a general 'docility' on estates run with convict labour.[179] As Kirsty Reid points out in her study of convict women, accommodation and resistance developed simultaneously as two forms of a single process for convicts and for New World slaves.[180] It would be a fundamental error, therefore, to attribute the agency of convicts in shaping the terms and conditions of their bondage solely to actions of resistance and protest. That would ignore the voices of those convicts who chose to accept their situations, to defer to authority and to serve their sentences peaceably in the hope of gaining a smooth and quick passage to freedom. Their decision to align their interests with those of their master is just as much a form of agency and 'voice' as is protest and resistance, although less dramatic or obvious. Therefore it is necessary to examine the full range of convict reactions to their servitude.

Evans and Thorpe proposed a three-fold response by convicts to their bondage, consisting of the collaborator as a compromised soul, the silent server who was vulnerable and fearful, and the resistor with fire in his belly.[181] In a study of convicts in the NSW lumber yards, Robbins observed a contrast between those who resisted negative incentives and those who responded to rewards. He drew on labour process theory to argue that these reactions reflected Marchington's categorisation of contemporary workers as 'getting back, getting on, or getting by'.[182] These correspond closely with Evans and Thorpe's resistors, collaborators and silent servers, and both categorisations serve to highlight the range of convict responses.

This diversity of responses has been observed in Tocal's convicts, and a hierarchy of diligence, adaptability and willingness to learn new skills has been demonstrated as a useful concept with which to interpret the range of behaviour exhibited by the Tocal men in terms of frequency punishment and assignment. The Tocal data showed a convict workforce split between those who were seldom punished and assigned only once or twice, and those (about one third of the Tocal men) who were frequently

[179] Townsend, "A 'Mere Lottery'", 64.
[180] Kirsty Reid, "'Contumacious, Ungovernable and Incorrigible': Convict Women and Workplace Resistance, Van Dieman's Land, 1820-1839", in *Representing Convicts*, ed. Duffield and Bradley, 118-119;
[181] Evans and Thorpe, "Commanding Men", 22.
[182] Robbins, "The Lumber Yards", 154.

punishment and assigned. These findings align well with, and can be relocated within, Evans and Thorpe's silent servers and resistors, or Marchington's workers who were either getting on, getting by, or getting back.

Those who chose to 'get by' or 'get on' accepted the Tocal master's hand of paternalism and responded to positive incentives by working with varying degrees of acceptance, diligence and deference. As shown in table 6.3, those with 'fire in their bellies' employed a range of strategies to resist or 'get back'. Absconding was by far the most prevalent action, with more convicts preferring to bolt from Tocal rather than stay and resist by means such as refusing to work, disobedience, neglect of work and disrespect. There is, however, delicate interpretive ground to be traversed here and important qualifications to be made. As shown below, not all absconding was motivated by resistance—some was purely pleasure seeking. Similarly, not all unsatisfactory work performance can be attributed to resistance. In any group of employees, bonded or free, particularly one with a diverse range of skills, ages and abilities as in the case of the Tocal men, there will naturally be a range of work performance, diligence and commitment. There is an overlap, a blurred area, at the bottom end of this range, where unsatisfactory work performance can be part of either an expected variation or constitute deliberate protest and resistance. Nevertheless, absconding, refusal to work, neglect of work, disobedience and disrespect were uniquely convict offences punishable by local magistrates under summary jurisdiction that did not apply to free workers.[183] These types of actions were important strategies employed by convicts in actively attempting to shape the conditions of their bondage, and to underplay their significance or meaning would be to deny these convicts a voice.

More than one third of the Tocal men absconded at some stage during their sentence, this data supporting Meppem's finding that repeated running was an established mode of behaviour. For example, one in 14 convicts absconded in New South Wales in 1828.[184] The prevalence of absconding by the Tocal men also supports Roberts' claim that absconding or desertion was the principal and preferred means of convict resistance.[185] Given its prevalence and significance, absconding requires further

[183] Maxwell-Stewart, "The Bushrangers", 110.
[184] Meppem, "Convict Runaways", 18, 26.
[185] Roberts, "Inland Norfolk Island", 59.

examination. At the outset it is important to note that absconding was consistently under-reported, both by private settlers and government officials, so the predominance of absconding in the Tocal data in table 6.3 is heightened by the knowledge that these are minimum figures.[186] One reason for under-reporting was the high incidence of temporary absenteeism that masters partly accepted and sometimes overlooked, particularly for skilled or useful workers, as assignees left the estate to meet with friends, drink and play cards.[187] There was therefore an indistinct borderline between absenteeism and absconding, a line that Governor Bourke defined in 1832, ruling that an unauthorised absence of more than 24 hours from the estate was to be treated by magistrates as absconding.[188]

> The hardships we'd to undergo, are matters of record,
> But who believes the convict, or who regards his word?
> For starv'd and flogg'd and punish'd, depriv'd of all redress,
> The bush our only refuge, with death to end distress.[189]

Despite the singular focus on harsh treatment in the above verse by the convict 'Frank the Poet', convicts absented themselves or absconded for a variety of reasons that were underscored by an elemental and passionate desire for a change of place, to 'escape through distraction', to construct 'an alternative social reality' and their own space.[190] Karskens proposes that the incidence of escape and absconding was also underwritten by a convict worldview that revolved around fate and opportunity, and involved a high level of mobility, risk taking and a resignation when disaster struck.[191] In addition to these fundamental predispositions, the reasons for absconding were personal and dependent on need and opportunity. Absconding could be an act of defiance, a measure of self-preservation, a temporary respite, recreation or adventure.[192] Sometimes men

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[186] HRA 1, XV, 767 (Hely to MacLeay, 12 August 1830). This irregularity of reporting absconding by private settlers is supported by examination of the lists published in the *Sydney Gazette* and the *NSW Government Gazette*. In some issues no absconders at all are listed from the Patersons Plains district, whereas in other issues where they do appear, there are almost invariably absconders from several masters in the district, this 'all or none' factor indicating that often the lists of absconders from the district simply did not get published. Under-reporting was also found in a study of the Bathurst Bench Books regarding absconding from the Wellington Valley: Roberts, "A Change of Place", 111-112.
[187] Jennifer A McKinnon, "Convict Bushrangers in New South Wales, 1824-34" (M.A. thesis, La Trobe University, 1979), 175.
[188] CS to Magistrates, 24 September 1832, Circular 32/52, CS SZ79 [cod 182], SRNSW.
[189] An extract from the poem "Seizure of the Cyprus Brig in Recherche Bay 1829" in Meredith and Whalan, *Frank the Poet*, 55.
[190] Roberts, "A Change of Place", 107; WM Robbins, "Spatial Escape and the Hyde Park Barracks", *Journal of Australian Colonial History* 7 (2005): 81.
[191] Karskens, "Meaning of Escape", 13;
[192] Roberts, "A Change of Place", 97; McKinnon, "Convict Bushrangers", 43.

took to the bush to avoid punishment after losing sheep or committing some indiscretion that would result in a flogging.

The reasons for absconding have also been described in terms of 'push' and 'pull' factors, the terms indicating that absconding could reflect either a breakdown in master/servant relations resulting from poor conditions and harsh treatment or a convict succumbing to the lure of pleasures located elsewhere. In Roberts' study of the western frontier of New South Wales, push factors were more prominent, convicts being driven to abscond by alleged or perceived hardships rather that being drawn towards comforts.[193] In one Tasmanian study, poor clothing, housing and inadequate diet were found to be the chief motives for absconding.[194] Push factors were also found to be more important than pull factors in another Tasmanian study where there was a higher proportion of abscondings in road gangs than any other work locations. Convicts absconded from these gangs in an attempt to escape the harsh conditions, particularly short rations.[195] Studies of absconding in New South Wales also found that a higher proportion absconded from Government gangs than from private service, although the Tocal men absconded in equal proportions from settlers and Government.[196] There is also clear evidence of push factors operating in the Hunter Valley, triggered by issues such as poor rations, unreasonable working conditions, failure to receive adequate clothing and bedding, or being beaten by masters or overseers.[197] Pull factors no doubt also operated, as convicts were drawn to the temptations of companionship, sexual gratification and the opportunities to spend money on food and comforts not available in their current situations. According to John Hirst, these temptations combined with a lack of confinement made flogging a 'ritual accompaniment to convicts' pleasures'.[198]

Other factors affected the rate of absconding. More convicts absconded in the summer months when work was hot and arduous while sleeping out in the bush was more comfortable than in winter. In December the absconding rate was often double the rate

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[193] Roberts, "A Change of Place", 113.
[194] MacFie, "Cobbers and Dobbers", 116.
[195] Maxwell-Stewart, "The Bushrangers", 142-145.
[196] Meppem, "Convict Runaways", 26; McKinnon, "Convict Bushrangers", 22.
[197] For example, all of these factors are prominent in the evidence of the Castle Forbes inquiry: Minutes of evidence taken by the Commission of Inquiry at Patricks plains, *Sydney Monitor*, 21, 28, 31 January and 3 February 1834. However their occurrence was not limited to Castle Forbes—see Foster, "Convict Assignment", 65, 69.
[198] Hirst, *Convict Society and its Enemies*, 68.

for the remainder of the year.[199] In addition, country of origin and background may have had some bearing on the rate of absconding. Meppem and Williams both found that Irish convicts absconded in greater proportions than their numbers in the colonies would suggest, and Meppem also indicated that more absconders were from a rural background.[200] The Tocal data does not reflect these conclusions, with the English and those from an urban background over-represented in abscondings by Tocal men.

Because absenteeism was virtually routine and absconding the most common form of colonial offence and protest, it seems that occasional incidents of either could be forgiven by a master after the bolter had suffered the consequences of indulgences withdrawn or punishment by the local bench, particularly if the offender was otherwise a useful or skilled assignee. Shipmates John Hanley and John Hassett, for example, absconded together from Tocal in November 1827 and Hanley was returned to Tocal after capture while Hassett was relocated to a road party. Hanley was apparently forgiven his premature experience of freedom while Hassett was not. After obtaining his freedom by servitude in 1829, Hanley was appointed as police constable at Patersons Plains, presumably with the sanction of his previous Tocal master and local magistrate James Webber. Overall, nine of the twenty four men who absconded from Tocal returned to the estate and served the remainder of their sentences there. Of these, seven obtained tickets-of-leave while at Tocal, a testament to overall acceptable behaviour despite a brief, premature taste of freedom. Absconding by shipmates such as Hassett and Hanley was common, such bonds persisting for years in the colony as a substitute for the kinship links lacking in convict society.[201]

Most of the Tocal men who absconded were recaptured within a few days or weeks but two men remained at large for extended periods. Thomas Hawker, a 'tolerable' shoemaker, absconded from Tocal on 25 October 1839 and posed as a free man to gain employment at Morpeth threshing and storing wheat before bolting again.[202] It was not unusual for absconders to obtain employment as free workers while on the run, and for employers to turn a blind eye, particularly if the bolter was a good worker. Consequently the colonial government passed the *Harbouring Act* in 1825 and the

[199] McKinnon, "Convict Bushrangers", 9-10.
[200] Meppem, "Convict Runaways", 62, 77; Williams, *Ordered to the Island*, 163.
[201] Meppem, "Convict Runaways", 25; McKinnon, "Convict Bushrangers", 156.
[202] PSC, Bound Indents, X636, 35 [fiche 716] & X639, 35 [fiche 721]; *The Australian*, 23 January 1840.

Bushranging Act in 1830 in an attempt to curb such practices.[203] Hawker was at large for three months until captured in Sydney at the end of January 1840.[204] His peripatetic exploits were apparently forgiven temporally and spiritually. Five years later he was employed at Tocal while holding a ticket-of-leave and a decade later he emigrated to California as a devout Mormon.[205] The longest period of illicit freedom was achieved by Daniel Cain, who was not deterred by the 75 lashes he received for absconding from Tocal in 1824. Later that year he absconded from government service in Newcastle and remained at large for 10 months, for which he was transported to Port Macquarie for three years.[206]

One man, Thomas Smith, stands out from the other Tocal absconders because he sought a permanent escape from the colony rather than a brief taste of freedom. In 1820 with four shipmates Smith stole a whaleboat with the intention of sailing to Timor. This was no ill-conceived scheme. When captured they had 200 pounds of biscuits, a water cask, two muskets, powder and lead on board. While this is the only recorded incident of attempted escape from the colony for a Tocal convict, it was by no means unusual. Alan Atkinson suggests that about one third of the male convicts in the First Fleet left the colony (not necessarily by escape), and another source estimates than 132 convicts escaped the colony between 1825 and 1830.[207] Grace Karskens has explored the historiography of convict escape, revealing the diverse views on the subject and a range of meanings ascribed to it, from foolish, ill-conceived acts of stupidity to evidence of convict agency and a genuine thirst for freedom.[208] Thomas Smith fits Karskens' profile of the typical escapee in most respects—he was a new arrival, for whom the colony was 'strangest and most disorienting', and his escape bid was well organised, involved a maritime escape route and was made with others. The odds were against Smith's

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[203] Byrne, *Criminal Law and Colonial Subject*, 142; McKinnon, "Convict Bushrangers", 43-46, 135. The *Bushranging Act* was II Geo. IV. No. 10, 21 April 1830, 'An Act to Suppress Robbery and Housebreaking and the Harbouring of Robbers and Housebreakers'. This superceded the 1825 *Harbouring Act*.

[204] *NSW Government Gazette*, 19 February 1840, 11 March 1840.

[205] Thomas Hawker was working at Tocal when his daughter was born: Marriage and Baptismal Register, Paterson 1837-1865 M/PAT/OS, Ferguson Memorial Library, Presbyterian Church Archives; *Pers comm*., descendant.

[206] CS Monthly Returns of Prisoners Punished, Newcastle 1810-1825, 4/1718, 179 [reel 6023], SRNSW; *Sydney Gazette*, 2 December 1824, 12 January 1826; CS Port Macquarie Penal Settlement 1825-1830, 4/3865 [reel 824], SRNSW.

[207] Alan Atkinson, "The Pioneers Who Left Early", *The Push: A Journal of Early Australian History* 29 (1991): 113; Karskens, "Meaning of Escape", 33 (in particular, footnote 118).

[208] Karskens, "Meaning of Escape", 3.

attempt, as only one quarter to one third of attempts were successful.[209] A few Tocal convicts, however, may have succeeded in escaping the colony while under sentence. Four Tocal men disappeared completely from the records without a ticket-of-leave, certificate-of-freedom, conditional pardon, or any record of their death. They may have met a lonely and unrecorded death in the bush, but their escape from the colony cannot be ruled out.[210]

Thomas Smith stood out from other Tocal absconders not just because of his dramatic bid to escape in 1820. He was also one of only two of the 52 Tocal absconders to take up arms while on the run and to be consequently described as a 'notorious bushranger'. After absconding several times from government road parties and iron gangs, Smith took up arms in 1831 with two other men and for a considerable time 'infested the old road to Hunter's River by the Bulga' where they 'committed a great number of robberies in the vicinity of the Hawkesbury and part adjacent'.[211] After capture, Smith was sentenced to death but his sentence was commuted to 14 years hard labour in irons on Norfolk Island.[212] Tocal's other bushranger, William Halfpenny, was assigned to the estate on arrival in NSW in 1825. He lasted only a few months before being reassigned, and in the next few years was frequently in trouble. In May 1832 he absconded from Parramatta Gaol and began a three-month bushranging spree. Like Smith, he was caught and received a death sentence that was commuted to hard labour in irons on Norfolk Island.[213]

While absconding and workplace disobedience were common, feigning illness was also a recognised form of protest that assigned servants could use to disrupt productivity on an estate and to obtain a temporary change of place in hospital or at least a respite from work routines in their quarters on the estate. Following the change in government regulations in 1831, masters had to pay a daily rate for their assigned servants' care and rations while in hospital, so convicts could inflict a direct financial cost on their masters

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[209] Karskens, "Meaning of Escape", 8-12.
[210] Bernard Lyons (*City of Edinburgh*), John Benson (*Recovery*), John Brearly (*Hooghley*), Joseph Wilkinson (*Marquis of Huntley*).
[211] *Sydney Gazette*, 3 January 1832.
[212] Phoenix Hulk Transportation Entrance Book 1831-1834, 4/4534, 35 [reel 821], SRNSW.
[213] 25 February 1825, CS Monthly Return of Prisoners Punished at Newcastle, 4/1718, 199 [reel 6023], SRNSW; *Sydney Gazette*, 10 May 1832; Phoenix Hulk Transportation Entrance Book 1831-1834, 4/4534 [reel 821], SRNSW. A third Tocal convict, Jonas Crick per *Phoenix*, was also convicted of highway robbery and sentenced to seven years on Norfolk Island but it is not known if his was an armed robbery: Phoenix Hulk Transportation Entrance Book 1833-1848, 4/6445 [reel 820], SRNSW.

as well as a loss of productivity.[214] Nichol has suggested that such behaviour was part of compensatory retribution, one of Atkinson's four patterns of convict protest, as convicts sought to get back at their masters for poor living conditions or unreasonable work demands, either real or perceived.[215] If masters failed to pay the prescribed hospital fee, their assigned servants could be summarily reassigned to another master on release from hospital, at the direction of a local magistrate. A previously undocumented consequence of these regulations was their openness to abuse and favouritism by local magistrates and medical practitioners. When James Phillips at Bona Vista, whose land adjoined Tocal, was tardy in paying hospital dues, his convict servant was immediately reassigned to Dr Rutherford, and the governor's intervention was required to restore the servant to Phillip's service.[216] There were several similar cases involving Newcastle Hospital at this period, in some instances the convicts being reassigned to medical practitioners until the governor ordered their return to their original masters provided the dues were paid.[217] Given that feigning illness was commonplace, it is surprising that only one incident is recorded for Tocal.[218] This may partly reflect harmonious working relationships on the estate and partly the incompleteness of the records of the local Bench of Magistrates.

In November 1829 a dramatic incident occurred at Tocal that was an overt example of Atkinson's third pattern of convict protest, namely withdrawal of labour. The incident also demonstrated what Atkinson described as a rare spirit of cooperation among convicts.[219] According to Maitland Police Magistrate Captain Aubin, 'Mr Webber brought a number of his men (13) before me on the 23 Nov. for refusing to work without they recd the usual indulgence allowed in harvest time viz. sugar or milk'. According to James Webber 'in the midst of my harvest some men from a road Party refused to work without **an addition** to the Indulgence which they received, they were joined by some of my men' (emphasis added).[220] Atkinson stated there are only three

[214] *Sydney Gazette*, 30 June 1831.
[215] Nichol, "'Malingering' and Convict Protest", 21.
[216] CS to Brooks, 30 September 1831, CS LB, 4/3830, 413, 438 [reel 2808], SRNSW.
[217] CS to Newcastle Bench of Magistrates, 16 November 1831, CS LB, 4/3831, 8 [reel 2809], SRNSW.
[218] Minutes of evidence taken by the Commission of Inquiry at Patricks plains, *Sydney Monitor*, 21, 28, 31 January and 3 February 1834 & internet online http://www.une.edu.au/arts/ACF/cf1833/index.html and assoc pages [6/6/2006]; Nichol, "'Malingering' and Convict Protest", 22-23; PSC to CS, 30 April 1838, CS In-letters, 38/4229 & encl. in 4/2394, SRNSW.
[219] Atkinson, "Four Patterns of Convict Protest", 48.
[220] Aubin to CS, 4 June 1830, and Webber to CS, 3 June 1830, CS In-letters, 4/2076, SRNSW.

recorded cases where a number of convict men were 'joined in bargaining for the restoration of their established rights' although he concedes there may be others.[221] The Tocal incident is certainly another case of convict collective bargaining to be added to the list.

To understand why 13 men, some of them lent to Webber from a road party to assist with the harvest, took the dramatic and risky action of staging a revolt by refusing to work, it is necessary to understand that being lent to a settler at harvest time was keenly sought after, as Webb explains:

> Men in the Road Parties had to have been of good character for six months before they were included on the list of men who were assignable for the harvest. Being assigned generally meant that the men were able to supplement their diet with vegetables and fruit, or obtain other goods which were unavailable to them in the Road Parties, such as tobacco, tea, sugar and additional soap, as well as illicit spirits. Some of these items were supplied by the Settlers as a reward for good work, in other instances it was acquired by barter or it was stolen.[222]

The importance to men in road parties of being lent for harvest was demonstrated in 1832 when road parties on the Bathurst Road were tardy in being notified about harvest arrangements. As a result, sixty men absconded in order to find work at the harvest.[223]

In this light the dramatic revolt at Tocal during the 1829 harvest is hardly surprising. The men temporarily assigned to Tocal from the road parties would have arrived having earnt the right, and fully expecting to have access, to a range of indulgences as part of the hard, hot and dusty work and long hours of the harvest. One can imagine their disappointment when they discovered that Webber did not hand out the expected range of incentives. Furthermore, as temporary assignees these men were not under the paternal hand of Webber, thus reducing the consequences of staging a revolt on the estate. Once they had decided to make a stand, they were joined by some of Webber's men for whom their master's paternalism had not lived up to their expectations or delivered their perceived rights. Perhaps Webber had pushed the men too far on this occasion. During Aubin's inquiry into the revolt, a Tocal convict named Hugh Murdoch accused Webber of being a hard master, for which Murdoch received 50 lashes for

[221] Atkinson, "Four Patterns of Convict Protest", 39.
[222] Webb, *Convict Road Gangs*, 21.
[223] Webb, *Convict Road Gangs*, 22.

disrespect (his only punishment during his servitude) and his recently gazetted ticket-of-leave was withdrawn. Webber, however, did not emerge unblemished from the incident—Governor Darling clearly indicated his displeasure with Webber by directing that Murdoch be withdrawn from his service.[224]

Tocal's 1829 harvest revolt illustrates the occasional volatility of the discourse of domination, accommodation, protest and resistance between the master and his assigned servants at Tocal. In particular it shows how expectations, perceived rights and precedent rather than regulations were often central to convict resistance and protest, there being no legal obligation on Webber to provide anything more than the standard ration during harvest.

Overall, the pattern of resistance and protest evident among the Tocal men partially aligns with Atkinson's germinal study. Direct physical attack is absent, and there is evidence of only one appeal to authority (Mildmay's petition featured at the beginning of the chapter) although this probably also reflects the non-survival of many local Bench records. It is also possible that Philip Byrne's 50 lashes ordered by the Wallis Plains Bench for false accusations against Webber while assigned to Tocal in 1825 was an appeal to authority that went wrong. Atkinson's compensatory retribution is faintly discernable in the Tocal data (for example, one charge of feigning illness) while withdrawal of labour, as evidenced by absconding, refusal to work, disobedience and related charges, stands out as the most frequent and preferred mode of convict protest and resistance for the Tocal men. The Tocal data suggests that Atkinson's exclusion of absconding as a form of withdrawal of labour, on the basis that Bench records rarely pursued motives for absconding, could be reconsidered given its prevalence and significance.

Before concluding discussion on convict protest and resistance, a cautionary note needs to be sounded regarding its ideological and practical limits. Maxwell-Stewart argued that while many convicts succeeded in shaping the conditions of their servitude, it is important not to overestimate their success, as 'it was one which ultimately served to strengthen those invisible ideological shackles which bound the prisoner within a

[224] Webber to CS, 3 June 1830, and Aubin to CS, 4 June 1830, CS In-letters, 30/4607 and 30/4406 in 4/2076, SRNSW; CS to Webber, 25 June 1830, CS Letters Sent, 4/3828, 448-449 [reel 2808], SRNSW.

system of naked economic exploitation'.[225] In the absence of detailed depositions or first-hand accounts, the motives of the Tocal convicts for absconding, disobedience and other actions are likely to be diverse and not always associated with protest and resistance. Within this cautionary framework, however, the actions of Tocal's convicts as shown in table 6.3 are precious evidence of their agency and response to their bondage. In the absence of more direct evidence, their actions assist in restoring their voice.

Tocal's 'Botany Bay Tory'?[226]

In December 1834 a group of Hunter Valley settlers sent a petition to His Majesty the King protesting the lack of severity of convict discipline and the ensuing insubordination that resulted from Governor Bourke's *Summary Jurisdiction Act* of 1832. Their missive, dubbed the 'hole-and-corner petition', generated extensive debate and newspaper coverage in New South Wales, and the controversy whipped up by their actions represents a notable event in the convict history of the colony. The event is particularly significant to the study of Tocal's convicts because the estate's owner, James Webber, played a leading role in the development and dispatch of the petition, a document that when interpreted bluntly, called for more blood to flow from the backs of convicts as the key to their control. The petition was so intertwined with colonial politics that it is difficult to separate issues of convict management from factional posturing and retributions. In order to understand Webber's position, it is necessary to explore the events leading up to the petition and the political milieu in which Webber and other Hunter Valley convict masters were situated.

In terms of political affiliations Webber was probably one of Manning Clark's 'Botany Bay Tories'.[227] If not, Webber at least displayed some Tory sympathies, supporting Darling when the Tory governor was threatened with impeachment.[228] Webber also enjoyed the London patronage of an active Tory peer, his first cousin, Lord

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[225] Maxwell-Stewart, "The Bushrangers", 231.
[226] CMH Clark, *A History of Australia II, New South Wales and Van Diemen's Land 1822-1838* (Melbourne: Melbourne University Press, 1968; reprint 1991), 219.
[227] Clark, *History of Australia*, 219.
[228] James Webber was one of 24 signatories of an address presented to Governor Darling from the 'landholders and resident proprietors of the lower district of the River Hunter' objecting to the attempted impeachment of Darling: HRA I, XV, 74 (Darling to Twiss, 7 July 1829); Fletcher, *Ralph Darling*, 274.

Strangford.[229] As a Tory sympathiser, large landholder and magistrate whose wealth was augmented by convict labour, Webber fitted the typical profile of the 'exclusives', the conservative faction of colonial politics who were also referred to as 'free emigrants', 'exclusionists' and 'pure merinos'. The opposing 'emancipist' faction, also termed Botany Bay Whigs, held a liberal viewpoint and, as the name suggests, supported the full restoration of rights for ex-convicts, including the right to serve on civil and criminal juries. Affiliation with the emancipist group was much broader than ex-convicts, the faction receiving the support of many free immigrants and a number of prominent Australian-born citizens. The exclusives dominated the Executive and Legislative councils and were sometimes referred to by Governor Bourke, himself a liberal and a Whig, as the 'Hunter River cabal'.[230] In practice the groups were more difficult to define, and the typical view of each faction is largely a caricature popularised by their opponents.[231] New South Wales society was not as deeply divided along factional lines as the historiography and traditional interpretations suggest, with other factors such as level of skill and social status in the home country (even if a convict) as co-determinants of position in colonial society.[232] Nevertheless, Webber became immersed in a factional struggle that placed him in opposition to the policies of Governor Bourke and, through a process of guilt-by-association, exposed him to the criticism of being a ruthless master determined to achieve wealth through brutality.

The principal cause of the discontent of the Hunter Valley exclusives was Governor Bourke's legislation to curtail the power of magistrates to punish convicts. In August 1832 Bourke's *Summary Jurisdiction Act* (3 Will. IV No. 3) came into force as a single, comprehensive act to define and consolidate magistrates' powers that were previously covered by four separate acts. It went further, however, than the clarification and consolidation of previous acts. It removed the power of local Benches to sentence convicts to penal settlements, vesting that power exclusively with the higher courts (such as Quarter Sessions). It also reduced the maximum summary sentence by a single magistrate from 150 to 50 lashes and required that a minimum of two magistrates sitting

[229] Strangford wrote to Under Secretary Hay requesting James Webber be granted an additional 2,000 to 2,500 acres. HRA I, XV, 176 (Strangford to Hay, 9 September 1829).
[230] Frank Crowley, *Colonial Australia 1788-1840* (Melbourne: Thomas Nelson, 1980 paperback), 439.
[231] Sturma, *Vice in a Vicious Society*, 13.
[232] Blair, "The Felonry and the Free", 2-3.

together in General Sessions could sentence convicts to iron gangs.[233] Bourke justified his new legislation on the basis of 'the illegal sentences daily passed by Magistrates upon Convicts, and which I attributed chiefly to the confused state of the Law affecting Convict punishment, dispersed as they were through four separate ordinances'.[234]

Bourke's 1832 Act, however, did not deter magistrates from passing illegal sentences. Three of Tocal's convicts, including George Mildmay whose petition heads this chapter, were illegally sentenced to iron gangs by single magistrates in the Hunter Valley after the new legislation. When Governor Bourke discovered the judicial transgressions he revoked their sentences.[235] Part of the problem was practical rather than political—it was often difficult for two magistrates in the Hunter Valley to travel large distances to sit as a Bench in General Sessions, particularly as honorary magistrates were frequently absent from their districts on business or pleasure. It was particularly difficult when convicts were currently assigned to Tocal (as in two of the three cases mentioned above) because James Webber, who normally sat on the Paterson Bench, could not sit in judgement on his own men. In these two cases, the Maitland Police magistrate informed Governor Bourke that 'no other magistrate is at present in this district'. Logistics and distance, however, were not the only reasons for illegal sentences. As Elijah Suffolk painfully discovered, the fundamental question of magisterial power over convicts was in dispute. Suffolk had been assigned to Tocal in 1829, and in November 1836 while assigned to Mr Lethbridge was sentenced by the Patricks Plains Bench to 50 lashes for absconding and a further 36 lashes for leaving the farm without permission. These were consecutive entries in the Bench Book on the same date, a flagrant example of 'sentence splitting' to circumvent the judicial restrictions imposed by Bourke's 1832 legislation.[236]

It was not only Bourke's restriction of the power of magistrates that brought him into conflict with Hunter Valley magistrates. In December 1831 Governor Bourke informed Upper Hunter magistrate HC Semphill that his conduct had been 'highly reprehensible'

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[233] *NSW Government Gazette*, 5 September 1832; Shaw, *Convicts and the Colonies*, 200; CH Currey, *Sir Francis Forbes* (Sydney: Angus & Robertson, 1968), 451.
[234] HRA I, XVII, 602 (Bourke to Rice, 14 December 1834).
[235] The other two men were George Savage per *Cambridge* and George Edwards per *City of Edinburgh*. Anley to CS, 2 October 1832 & 8 January 1833, CS In-letters, 33/843 & 34/2571 in 4/2221.2, SRNSW; CS to Hely, 15 March 1833, CS Letters Sent, 4/3676, 387 [reel 1046], SRNSW; Mildmay to CS, 12 January 1838, CS In-letters, 38/383 in 4/2394, SRNSW.
[236] 21 November 1836, Patricks Plains Bench of Magistrates, X709, 69 [reel 662], SRNSW.

in relation to a dispute with a neighbouring magistrate.[237] In May 1832 Bourke then censured Upper Hunter magistrates John Bingle and John Pike because three of Bingle's men were sentenced to 100 lashes each in his own house by Pike as he was passing by. Bourke informed Bingle that his actions were irregular and reprehensible, while he told Pike that 'a more unnecessary, indiscreet and unseemly exercise of such jurisdiction cannot be imagined'.[238] As Allan Wood notes, however, far too much has been made of the trial in John Bingle's house. The fact that Captain Pike was called into Bingle's house by the overseer when passing and was asked to hear the charges in the absence of John Bingle was ignored by Bourke and has continued to be ignored in many later accounts.[239] Bingle's transgression was more political than judicial, as shown by his public defence against Bourke's inquiry. As the Bingle affair demonstrated, the magistracy had become, according to David Neal, 'another legal site for struggles between the governor, the Emancipists and the Exclusives over political power and authority in the colony'.[240]

There were even more fundamental factors propelling Hunter Valley land-holders and magistrates into conflict with Governor Bourke—namely a perceived threat to their class privileges and their ongoing prosperity through the use of convict labour. Their battle with Bourke was as much a struggle to retain power and privilege as it was a reaction to a perceived crisis of law and order. For the exclusives the problem was that Bourke 'treated convicts like gentlemen and gentlemen like convicts'.[241] Bourke's 1832 legislation provided convicts with a degree of protection from 'the vagaries of interested justices' and to some extent ended to a long era of class privilege, an era described by emancipist supporter and journalist ES Hall as being characterised by 'the clamour and misrepresentations of a Host of wealthy, interested and greedy men'.[242] The fact that Bourke was also opposed to the continuation of transportation further added to his mistrust by the exclusives.[243]

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[237] CS to Semphill, 16 December 1831, CS LB, 31/955 in 4/3831 [reel 2809], SRNSW.
[238] CS to Bingle & Pike, 28 May 1832, CS LB, 32/424 & 32/429 in 4/3831 [reel 2809], SRNSW; HRA 1, XVI, 719-723 (Bourke to Goderich, 24 August 1832).
[239] Wood, *Dawn in the Valley*, 238.
[240] Neal, *Rule of Law*, 117.
[241] Parry to Scott, 13 September 1833, in LG Young, "New South Wales under the Administration of Governor Bourke 1831-1837" (M.A. thesis, University of Sydney, 1951), 159.
[242] HRA I, XV, 64 (Hall to Murray, 2 May 1829); Young, "Governor Bourke", 104
[243] Hirst, *Convict Society and its Enemies*, 179.

While the underlying causes of the conflict are clear enough, further explanation is needed as to why the Hunter Valley was the focus of such fierce opposition to Bourke. The Valley was not opened to large-scale settlement until the early 1820s and was thereafter quickly settled by wealthy immigrants. By 1828 the district constituted nearly half the colony's population outside Cumberland County (that takes in Sydney), with a disproportionately large number of free immigrants who held large grants of land, while native born and ex-convicts were under-represented. Consequently huge numbers of convicts were assigned in the Hunter Valley to work the large cropping and grazing estates. The heavy reliance on convict labour, and its associated economic importance, partially explains the district's intense concern about convict discipline and crime.[244] In addition, most land-holders had received their grants under the Tory patronage of Governor Darling, and at the time of Bourke's arrival the majority of Hunter Valley magistrates had been appointed by Darling.[245] Thus when the Whig Governor, Bourke, reduced their powers over convict servants and seemed to favour the emancipist rather than the exclusive faction in colonial politics, he was fiercely opposed by Hunter Valley land-holders.

Such opposition was publicly expressed in a petition to Governor Bourke on 22 August 1833 containing 128 signatures, representing most of the land-holders and magistrates in the Hunter Valley, all of them masters of assigned convicts.[246] (A similar but more mildly worded petition was also sent to Bourke at this time by land-holders at Newcastle and Port Stephens. Both petitions are not to be confused with the 1834 'hole-and-corner' petition). The 1833 Hunter River petition had been drawn up and circulated under the leadership of James Webber, John Bingle and James Mudie.[247] The petition opened with a declaration of anxiety and regret concerning the increase of crime and insubordination in the district since Bourke's 1832 *Summary Jurisdiction Act*, and closed by calling for the Act to be repealed. The petition expressed strong views regarding the need for severity in the management of convicts:

> The limitations of the Power of Magistrates has had the most decisive effect upon the conduct of the prison population, their characteristic depravity cannot be checked without a corresponding severity, in the law; and vigour in its administration, it is only an effective system of coercion,

[244] Sturma, *Vice in a Vicious Society*, 12-15; Ihde, *Edward Smith Hall*, 170.
[245] King, *Richard Bourke*, 162-163.
[246] Governors' Despatches NSW 1832-35, ML A1267-13, 1450-1455 [reel CY 773], ML.
[247] Young, "Governor Bourke", 106.

> tempered with kindness to the deserving, which can preserve them in a state of subordination through which alone habits of industry and reformation can be formed...
>
> ... the former Act was considered too lenient in the Mother Country, and was generally condemned as being insufficient, to answer the ends of justice as a secondary punishment, and the withdrawal of the Convicts has been contemplated by many Members of the House of Commons, your Petitioners are therefore apprehensive that the marked opposition to public opinion in Great Britain on which this Act is founded, will be the cause of measures which your Petitioners cannot anticipate without feelings of the greatest alarm.

Apart from Webber's leadership, the petition is notable on other counts. The petitioners assert the 'characteristic depravity' of their convicts, thus employing the contemporary slur of innate criminality discussed earlier in the chapter. The petition also succinctly records what, in the view of Hunter Valley convict masters, was required for successful management of convicts, namely effective coercion 'tempered with kindness to the deserving'. The self-interest of Hunter River land-holders is evident in their declaration of alarm at the prospect of the end of transportation and the manner in which Bourke's lenient measures would be viewed in the House of Commons. Finally, an indication of the fragility of the evidence on which the petition was based is provided by the fact that the three magistrates of the Invermein (Scone) Bench added a qualifying codicil before signing. They noted 'we have **not** observed a spirit of insubordination existing in our district' and that Bourke's Act 'has a **tendency** to produce the facts complained of' (emphasis added).[248]

Bourke agreed to the need for effective coercion but argued that his Act of 1832 provided ample scope for severity and punishment. Bourke responded to the petition by instructing stipendiary magistrates to observe floggings and report on their severity.[249] He subsequently claimed their reports demonstrated that sufficient severity was provided by his Act, stating 'both the measure of punishment authorised by the law, and the instrument for inflicting it, are sufficient for the purpose intended'.[250] His opponents declared the reports to be 'exceedingly contradictory', and Police Magistrate Anley's report on floggings at Paterson in September 1833 partially supports their argument.[251]

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[248] Governors' Despatches NSW 1832-35, ML A1267-13, 1455 [reel CY 773], ML.
[249] *Report from the Select Committee on Transportation*, 86-87.
[250] 16 October 1833, CS to magistrates, circular 33-48, reprinted in *Convict Discipline 1833* (Melbourne: Gryphon Books, 1977): 49.
[251] Governors' Despatches NSW 1832-35, ML A1267-13, 1456 [reel CY 773], ML.

Although Anley recorded that several men bled profusely and seemed to suffer greatly, he also noted that 'no great impression' was made on James Cavenagh when he received 50 lashes for insolence to his overseer.[252]

By recording the severity of floggings, Governor Bourke no doubt hoped he had effectively countered the arguments expressed in the petition of the Hunter Valley exclusives. That was until a convict revolt on James Mudie's estate at Castle Forbes in the Hunter Valley in November 1833 re-ignited the simmering conflict. Four convicts assigned to the estate absconded and attacked the police constable who was escorting three prisoners to Newcastle to serve time in an iron gang (two of the three prisoners were from Castle Forbes). The attackers freed the two Castle Forbes men and as a group returned to the estate, robbed the house and tried unsuccessfully to shoot Larnach, Mudie's son-in-law and overseer.[253] Mudie immediately wrote to Governor Bourke to inform him of 'one of the most violent and determined outrages I have ever known in this part of the colony'. A £70 reward was posted and the six men were captured within ten days. All were subsequently found guilty, five were hanged and one sent to Norfolk Island.[254] The Hunter Valley exclusives used the incident as conclusive proof of the lack of convict discipline brought about by Bourke's restriction on the power of magistrates and the extent of punishment. Liberals pointed to the frequent floggings and harsh treatment meted out at Castle Forbes as proof, they argued, of the brutality and ruthlessness of Hunter Valley convict masters. Wild rumours about Mudie found their way into the pro-Bourke newspapers—'that he starved his men and operated on the principle that no convict was worth anything until he had had 300 lashes'.[255] Bourke reacted to the situation in much the same way as he had on receipt of the Hunter River petition. He ordered an inquiry into convict conditions and treatment at Castle Forbes, as well as into the conduct and impartiality of the Patrick Plains Bench. The enquiry found little to support the liberal case and that much of what the rebels had said at their

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[252] *Report from the Select Committee on Transportation*, 87.
[253] Hirst, *Convict Society and its Enemies*, 182; Max Waugh, *Forgotten Hero: Richard Bourke, Irish Governor of New South Wales 1831-1837* (Melbourne: Australian Scholarly Publishing, 2005), 63; BT Dowd and Averil Fink, "Harlequin of the Hunter: 'Major' James Mudie of Castle Forbes (Part II)", *Journal of the Royal Australian Historical Society* 55, no. 1 (1969): 86-88.
[254] HRA I, XVII, 542-543 (Bourke to Stanley, 20 September 1834); Hirst, *Convict Society and its Enemies*, 182-183.
[255] Hirst, *Convict Society and its Enemies*, 182-183.

trial was false.[256] The evidence showed that Mudie's son-in-law, Larnach, was a harsh master, that Mudie spent much time away from the estate and when there, he 'played a moderating paternal role'. Despite evidence favourable to Mudie, as John Hirst concludes, 'for political purposes a very different picture had to be painted of Mudie as the mastermind of Castle Forbes tyranny with Larnach merely as his agent'. Hirst adds that most modern accounts 'repeat the liberal propaganda against Mudie and its simplistic assumptions about the causes of the rebellion'.[257]

Frustrated by the failure of their petition and bristling with indignation over the pro-liberal sentiment stirred by the enquiry into the Castle Forbes revolt, the Hunter Valley exclusives rallied to launch a counter-attack on Bourke, with Tocal's James Webber again heavily involved, along with Robert Scott at Glendon.[258] In February 1834 Hunter River land-holders and magistrates met at Leed's Tavern at Black Creek, on the road between Patricks Plains and Maitland, to draw up another petition, this time to the King rather than to the unmoveable Bourke.[259] The degree of secrecy or openness with which the petition was written and circulated became the subject of much debate in the colonial press. Supporters claimed the gathering at Black Creek was a well-attended public meeting while opponents claimed it was a clandestine affair attended by a select few and that the petition was subsequently circulated in secret, with signature only by invitation.[260] The latter view is supported by the fact that the petition did not appear in the press, nor did a public invitation to sign it. Further evidence of its secrecy is the difficulty Governor Bourke had in obtaining a copy, noting that initially none of his friends could 'get a peep at it'.[261] It was not until July 1834 that Bourke obtained a copy from the police magistrate at Patricks Plains who had obtained it from Mr Scott at Glendon.[262]

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[256] Bourke concluded that Mudie 'had not in any remarkable degree transgressed the Regulations of Government' - HRA I, XVII, 543 (Bourke to Stanley, 20 September 1834).
[257] Hirst, *Convict Society and its Enemies*, 183.
[258] Webber, Scott, Dun, Cory and a few other Hunter Valley settlers had met at the inn at Black Creek on 22 October 1833 to demand an answer to why Bourke had not replied to their earlier petition: *The Australian*, 28 October 1833.
[259] *Sydney Herald*, 4 September 1834; Wood, *Dawn in the Valley*, 274; Sandra J Blair, "The Revolt at Castle Forbes: A Catalyst to Emancipist Emigrant Confrontation", *Journal of the Royal Australian Historical Society* 64, no. 2 (1978): 92.
[260] *Sydney Herald*, 4 September 1834.
[261] Young, "Governor Bourke", 159.
[262] HRA I, XVII, 654-655 (Campbell to MacLeay, 23 January 1835; Forbes to MacLeay, 26 January 1835)

Because of the secrecy surrounding it, the document quickly became known as the 'hole-and-corner petition', and not surprisingly, Governor Bourke appears to have been the first to name it in this derogatory fashion.[263] A ticket-of-leave journalist with the *Sydney Gazette* described those masters who advocated severity of convict control as the hole-and-corner men, 'the men who crept into holes and corners like rats rather than stand up before their fellow-men in the full light of day'.[264] The *Sydney Herald* was more restrained in explaining the term to its readers, stating 'A hole and corner petition is understood to mean a writing, which, being got up in the dark, is also the expression of the sentiment of the minority'.[265]

Although the petition represented a minority in terms of the colony as a whole, it was signed by 91 land-holders from all parts of the Hunter Valley. To put this number in perspective, in 1828 there were 96 settlers in the Hunter Valley who owned farms exceeding 500 acres in size, and in 1838 convicts were assigned to 88 masters in County Durham (comprising the core of the Hunter Valley) and to 91 masters in County Northumberland of whom some in the north would have been located in the Hunter.[266] On both these indications, the petition represented a majority of Hunter Valley convict masters. Among the signatories were the 13 honorary magistrates in the area, including the petition leaders, James Webber at Tocal and Robert and Helenus Scott at Glendon. The content of the petition was similar to that sent to Bourke the previous year. The petitioners informed the King that, *interalia*, they were:

> ...suffering in their property and peace of mind from the insubordinate state of the Convict Population, who of necessity form the great bulk of their servants. This insubordination your Petitioners humbly ascribe to the insufficiency of the Act of the Colonial Legislature, the 3rd Wm. 4th No. 3. together with the lax discipline in the different Government Establishments where Convicts are employed.

They argued that the previous Acts repealed by Bourke had maintained strict convict discipline that effectively checked the 'evil inclinations' of the convicts and upheld the due authority of the master. In the 12 months since their first petition to Bourke, they added, numerous outrages had been perpetrated and the jails were crowded with

[263] Blair, "The Revolt at Castle Forbes", 103 (endnote 27).
[264] Clark, *History of Australia*, 209.
[265] *Sydney Herald*, 4 September 1834.
[266] Perry, *Australia's First Frontier*, 74-75; Foster, "Convict Assignment", 50.

'criminals of the deepest dye'. They concluded that 'all hope of redress in this colony is at an end' and pleaded with the King to grant them relief.[267]

While debate on the secret petition raged in the colonial papers and speculation mounted about its imminent dispatch to London,[268] Bourke engaged in some clandestine activity of his own and, as was soon revealed, acted with dubious integrity. He engaged Roger Therry to anonymously write a rebuttal to the petition, published as a pamphlet titled 'Observations on the Hole and Corner Petition' by an unpaid magistrate.[269] Therry was far from unpaid, at the time receiving a government salary of £800 per annum and holding two colonial offices, namely Commissioner for the Court of Requests, and Commissioner for Claims to Land Grants.[270] A further element of the deceit was that Bourke paid Therry for the printing of the pamphlet. It soon became an open secret in the colony that Bourke had commissioned Therry to refute the hole-and-corner petition, Bourke thus losing the advantage of the anonymous publication and attracting much criticism from the press in the process.[271] This did not deter Bourke from sending Therry's pamphlet to London as part of his defence against the petition, stating that 'although it cannot be considered as an official document' it may 'safely be consulted for information, if at any time the matter of the Petition should be brought into discussion'.[272]

Bourke transmitted his unofficial copy of the petition to London in September 1834, but it was not until early December that he received an official copy from James Webber at the same time as the petitioners finally submitted the document to London. The official version included a long covering letter that amplified the arguments of the petition. It is significant, in terms of the Tocal study, that James Webber sent the petition to Governor Bourke and was one of only seven who signed the covering letter, leaving no doubt about Webber's prominent role in the whole affair.[273] It is notable that absconding, the most frequent form of convict resistance and principal means of defiance, was singled

[267] Governors' Despatches NSW 1832-35, ML A1267-13, 1445-1450 [reel CY 773], ML.
[268] *Sydney Herald*, 4, 8, 11 September 1834; *The Australian*, 2, 9, 11 September 1834; *Sydney Gazette*, 1 July 1834, 26 & 28 August 1834, 11 & 20 September 1834.
[269] An Unpaid Magistrate (Roger Therry), *Observations on the "Hole and Corner Petition" in a Letter to the Right Honorable Edward G. Stanley* (Sydney: 1834).
[270] Therry, *Reminiscences of Thirty Years*, 15-19.
[271] Young, "Governor Bourke", 159-160; Bourke's payment to Therry is therein cited as 'Therry to Bourke 24:9:34 in Bourke Papers, vol.11'.
[272] HRA I, XVII, 541 (Bourke to Stanley, 19 September 1834).
[273] The other signatories were Scott, Lethbridge, Townshend, Dun, MacKenzie and Brooks.

out in the covering letter to the petition as 'the fruitful parent of almost every crime and every outrage—the curse of our community'. This is an excellent example of one of the dualisms of convictism in operation—the most frequent method of providing convicts a voice through the agency of defiance was, for convict masters, the curse of the community.

Bourke's official response to the petition and the defence he transmitted to London were entirely predictable, repeating the need for his new legislation because of the number of illegal sentences and the confused state of the previous legislation. He also attempted to discredit the petition itself on the basis of its irregularities (the signatures were on separate sheets) and its minority view. The London bureaucracy supported Bourke's defence, dismissing the petition out of hand.[274] Bourke's 1832 *Summary Jurisdiction Act* was not repealed, and the wave of convict crime and insubordination feared by the hole-and-corner men never eventuated.[275] Perhaps the best indication that the concerns of the petitioners were more associated with politics, power and class privilege than with convict disorder is provided in a document signed by James Webber and other land-holders from Castle Forbes to Morpeth in 1833, on the departure from the district of J Blackburne of the Mounted Police. The written vote of thanks to Blackburne noted that 'at no other period do we remember this settlement so little infested with runaways'.[276] There is no guarantee therefore that Webber's public political position accurately reflected his private views on convict discipline and management. In practice most masters trod a mid course, treating their convicts with kindness and firmness, an approach that 'was accepted by men of both parties when convict discipline was discussed away from the party political battle'.[277]

Webber's concerns, whether political or practical, were apparently heartfelt, and his conflict with Bourke had a personal impact. In August 1834 James Webber sold Tocal,[278] although he continued to reside there, and by October 1834 he had 'entirely ceased acting' as a magistrate on the Patersons Plains Bench.[279] His departure from the

[274] HRA I, XVIII, 23-24 (Glenelg to Bourke, 11 July 1835).
[275] Sturma's comprehensive analysis of the level of crime at the time showed no evident trend, up or down, during this period: Sturma, *Vice in a Vicious Society*, 21-24.
[276] *Sydney Herald*, 25 February 1833; Guildford, "Dr. William Evans", 80.
[277] Hirst, *Convict Society and its Enemies*, 184.
[278] 28 & 29 August 1834, Old Systems Title, G 345, NSWDL.
[279] Campbell to CS, 8 October 1834, CS In-letters, Police Paterson 1834, 4/2252.2, SRNSW.

colony in late 1835 attracted some controversy in the press, one report claiming he was forced to leave because of the degree of convict insubordination and disorder in the colony. Another report refuted this, claiming he was leaving to care for his aged parents in Britain.[280] His real reasons for departure are unknown, but it was not to care for his parents. He spent the first 12 months of his return in continental Europe and his youngest brother cared for their parents until their deaths in 1840 and 1845.[281]

It is fortunate that Webber's leading role in the petitions of 1833 and 1834 provides an idea of his views on convict management, albeit views intertwined with politics. They reveal that the perspectives of master and servant were vastly different. What Webber described as 'coercion tempered with kindness to the deserving' translated into pain, humiliation and degradation for those Tocal convicts flogged for their unwillingness to defer to him, their refusal to play the role of dutiful servant or perhaps to suffer poor rations or harsh treatment. One of Webber's hands may have been outstretched in paternal kindness to the deferent but the other hand was poised to strike in painful retribution, justified by the master's public view of these men as 'criminals of the deepest dye' who demonstrated a 'characteristic depravity'. Nowhere in this study of Tocal's convicts are the complexities and dualisms of the convict experience more poignantly illustrated than in the foregoing analysis of paternalism and punishment, deference and defiance from the perspective of convict and master.

Conclusion

This chapter demonstrates the diverse and complex actions and responses in the reciprocal power relationship between Tocal's masters and their convict servants as they engaged in a discourse of domination and accommodation, submission and resistance. For the master these actions ranged from generosity, kindness and rewards through to pain and terror applied through the court. The response of convicts assigned to Tocal varied from cooperation and deference, through passive acquiescence, to overt resistance and protest, or as expressed in one study, 'getting on, getting by and getting even'.[282]

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[280] *Sydney Monitor*, 8 April 1834; *Sydney Gazette*, 3 May 1834.
[281] Webber to Glenelg, 24 July 1837, Colonial Office, CO 201/268, PRO; Walsh, "James Phillips Webber—Supplement", 14-16.
[282] Robbins, "The Lumber Yards", 154.

The Tocal analysis provides a degree of detail about the nature and extent of secondary punishment of convict men at a local level in New South Wales that is uncommon among convict studies. Overall during their sentence, according to the surviving records, a minimum of 58 per cent of the Tocal men received one or more punishments, and at least 26 per cent received one flogging or more. When the impact of missing court records is taken into account, it is conservatively calculated that at least two thirds of Tocal's convicts received one or more punishments and more than 45 per cent of them received at least one flogging at some stage during their sentence. Although caution is required when extrapolating from the Tocal estate to a broader situation, the Tocal data challenges the conclusions of several convict studies that appear to underestimate the extent of secondary punishment. In particular it challenges Nicholas' revisionist view that floggings were of minor significance.[283]

The Tocal study reveals a remarkable degree of movement between the various levels of convict deployment, with 48 per cent of the estate's convicts experiencing both private assignment and life in a government gang or penal settlement, with or without leg irons. The study also notes the nascent, richer picture of promotional opportunities and scope for rewards within iron gangs and penal settlements that has recently emerged in the historiography, further highlighting the complexity of the convict experience and the danger of accepting the legacy of superficial, contemporary viewpoints.

Above all the Tocal data illustrates some of the persistent dualisms that form the key to a deeper understanding of the complexities of convicts and convictism. In particular the chapter reveals the dualisms of paternalism and punishment, deference and defiance, collaboration and mateship, trust and betrayal. When the contemporary slur of criminality is ignored and judgement suspended, the voices of Tocal's convicts are faintly audible, extant in their responses to their bondage, whether through protest and resistance or through alignment of their interests with those of their master.

Finally, the chapter uncovers the vastly different perspectives of master and servant. Absconding, for example, regarded by James Webber as 'the fruitful parent of almost every crime and every outrage—the curse of our community', was for convicts a

[283] Nicholas, "The Organisation of Public Work", 161; Nicolas, "The Care and Feeding of Convicts", 181-183.

frequently used form of resistance and defiance or a means of adventure and temporary relief from the hardships and tedium of assignment.

Chapter 7: Becoming free

In May 1829 Thomas Keating died in Sydney.[1] Although the ship of arrival of the deceased was not specified, the death was probably that of Tocal convict and Irish rebel Thomas Keating who in 1823 at the age of 30 was convicted of administering oaths and transported for life, leaving behind his wife Honora and two sons John and Thomas.[2] Not surprisingly, in 1826, just two years after his assignment to Tocal, Keating applied for free passage for his loved ones to join him in New South Wales. Tocal's owner, James Webber, endorsed the application, adding that Keating was 'sober honest and industrious and worthy of the Indulgence prayed for'.[3] Keating's application was approved but it appears that his family did not make the journey to the colony. Keating was still at Tocal in November 1828 and then disappeared completely from the records without gaining a ticket-of-leave or a pardon.[4] This chapter provides an interpretive framework within which Keating's flight from Tocal might be seen not as an absconding-gone-wrong but as an act of desperation, loneliness and emotional trauma by a sober and industrious man. On the whole, the emancipation experiences of Tocal's convicts reveal that Keating and his peers did not deserve the label of ne'er-do-wells that historians writing in the 1960s would have us attach to them, nor were they the unfeeling, mute muscle power that aggregated, statistical studies have implied.[5]

The chapter firstly documents how Tocal's convicts became free from servitude, a process characterised by struggle and turbulence for many of these men. The chapter then explores the diverse individual experiences of Tocal's convicts after emancipation, and the varying degrees to which they rebuilt their lives and regained what really mattered—things they had abruptly lost when convicted and transported. These

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[1] Keith Johnson and Malcolm Sainty, *Sydney Burial Ground 1819-1901* (Sydney: Library of Australian History, 2001): 369.
[2] There were three Thomas Keatings in NSW as convicts at that time. The circumstantial evidence suggests the body was that of Thomas Keating per *Earl St Vincent*, the man assigned to Tocal; PSC, Bound Indents, 4/4009 & 4/4009A [fiche 653, 650], 24 & 79, SRNSW; June 1834, CS Monthly Returns of Convicts Assigned in the Counties of Northumberland and Durham, 2/8283 [reel 593], SRNSW.
[3] CS Families of Convicts 1824-42, 4/1112.1 [reel 697], SRNSW.
[4] *Census of New South Wales 1828*.
[5] Shaw, *Convicts and the Colonies*; Robson, *Convict Settlers*; Nicolas (ed.), *Convict Workers*.

included family and loved ones, dignity and respect, community, culture, companionship, a familiar place, a sense of connection, economic opportunity and being master of their own labour.[6] Such dimensions were ignored by contemporary pro-slavery and pro-transportation advocates who stressed the adequate physical conditions in which convicts lived and worked, but excluded emotional and psychological aspects.[7] Consequently the final part of the chapter contends there is more to freedom than emancipation from servitude. Although Thomas Keating never experienced emancipation, there are other freedoms yet to be sought, such as freedom from portrayal as professional criminals incarcerated as impersonal objects within the official records, and from imprisonment within the nineteenth century catch-all construct of 'convict', a shallow descriptor that denies individuality.[8] This chapter argues that Tocal's convicts are still shedding the slur of criminality and still becoming free from voicelessness and heartlessness, a process that advances as our understanding of their individual experiences expands.

Freedom from bondage

Certificates-of-freedom, tickets-of-leave and conditional pardons were the official means by which Tocal's convicts obtained their freedom from servitude. Those with fixed-length sentences, such as seven or 14 years, simply became free when the term of their sentence expired, starting from the date of their trial. This freedom-by-servitude was unconditional—they could return to Britain or Ireland if they had the means and desire to do so, but no record of the repatriation of a Tocal convict has been found in this study. They could also apply for a certificate-of-freedom that provided written evidence of their status if challenged by police or the military. Those with life sentences usually had to firstly gain a ticket-of-leave, followed later by a conditional pardon, so called because it provided emancipation but denied repatriation.

A ticket-of-leave was in effect a release on parole. It allowed convicts to work for themselves in a specified district provided they behaved well, reported regularly to local authorities and, if possible, attended divine worship on Sundays. In 1811 Governor Macquarie ruled that convicts would be eligible for a ticket after a minimum period of

[6] Karskens, "Meaning of Escape", 33; Maxwell-Stewart, "The Bushrangers", 82.
[7] Neal, *Rule of Law*, 38.
[8] Bradley and Maxwell-Stewart, "Alexander and the Mother of Invention", 198; Frost and Maxwell-Stewart, "At Large with the Run-a-ways", 208;

three years of good conduct, regardless of length of sentence.[9] In 1822, the year that Tocal was first granted and convicts assigned to the estate, Governor Brisbane tightened Macquarie's regulations, prescribing that to be eligible for a ticket convicts with seven year sentences must first serve four years, those with 14 year sentences must serve six and those with life sentences eight years.[10] In 1827 Governor Darling further tightened Brisbane's regulations, ruling that convicts who changed masters through misconduct or poor performance must wait longer. For example, men transported for seven years became eligible after serving four years with one master or five years with two.[11] Darling also withdrew the requirement for a reference from the convict's master, to prevent masters retaining hard workers by withholding their recommendation for a ticket.[12] Tocal's Hugh Murdoch benefited directly from Darling's new regulations, being granted a ticket-of-leave without the support of his master, James Webber.[13] Governor Bourke also changed the regulations, directing in 1835 that the period of eligibility be extended by one year for every punishment received by a male convict, and if sentenced to an iron gang or penal settlement, the period of eligibility would recommence from the start of that sentence.[14]

Most Tocal convicts struggled to obtain a ticket-of-leave and, in common with the wider colonial convict population, many never succeeded.[15] The progressive tightening of the ticket-of-leave regulations during the 1820s and 1830s, particularly the fact that eligibility was inversely proportional to the frequency of assignment and punishment, is clearly evident in the records.

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[9] *Sydney Gazette*, 8 June 1811.
[10] Dyster, "A Series of Reversals", 32.
[11] *Sydney Gazette*, 2 January 1827; Fletcher, *Ralph Darling*, 126.
[12] Dyster, "A Series of Reversals", 33.
[13] TOL 30/248, 4/4074 [reel 913], SRNSW; Webber to CS, 3 June 1830, and Aubin to CS, 4 June 1830, CS In-letters, 4/2076, SRNSW; CS to Webber, 25 June 1830, 4/3828, 448-449 [reel 2808], SRNSW. Murdoch's ticket-of-leave was withdrawn shortly after approval.
[14] *NSW Government Gazette*, 25 May 1835.
[15] Between 1825 and 1836 in NSW, less than one fifth of those qualified by time received tickets: Shaw, *Convicts and the Colonies*, 230.

Table 7.1 Tocal's convicts—ticket-of-leave overview

Length of sentence	No. men	No. TOLs	No. gained in min time	Av time (years)	Range (years)
7 years	75	23	11	5	4-6
14/15 years	11	8	4	7	5-12
life	56	42	12	12	7-27
Total	**142**	**73**	**27**		

Source: Ticket-of-leave butts, SRNSW.

As table 7.1 shows, only 31 of the 86 Tocal men with fixed-length sentences gained their ticket before their sentences expired, thus obtaining an early release. This reflects the combination of strict regulations and the evidence that two thirds of the Tocal men were assigned more than once, the same proportion was punished at least once for colonial misdemeanours, and 28 per cent spent time in either an iron gang or a penal settlement. Evidently the majority of Tocal's convicts with fixed-length sentences, either through circumstance or disposition, were not deemed to be sufficiently worthy to gain a ticket-of-leave, and consequently emancipation eluded them until their sentences expired. Table 7.2 below shows that four men with fixed-length sentences died before their sentences expired.

Table 7.2 Tocal's convicts—emancipation from fixed-length sentences

Certificate-of-freedom (COF) issued	75
Died while bond	4
Conditional pardon issued in lieu of COF	2
Did not apply for COF or situation unknown	3
COF not issued due to colonial offences	2
Total number with fixed-length sentences	**86**

Source: Certificates-of-freedom and conditional pardons, SRNSW.

In table 7.1 the struggle for emancipation is also evident for those with a life sentence. Only a minority of this cohort gained their ticket-of-leave in the minimum period of eight years, the group taking 12 years on average to do so. Forty two of the 56 Tocal convicts with life sentences eventually received a ticket-of-leave, their first official step towards freedom. A few of these men did not gain their ticket until they had served more that 20 years, the protracted interval the result of repeated colonial convictions. For example Daniel Cain arrived in the colony in 1819 at the age of 22 and after several abscondings from Tocal and elsewhere, gained his ticket-of-leave in 1841 at the age of

44.[16] Tocal's two armed bushrangers, William Halfpenny and Thomas Smith, gained their tickets after 21 and 27 years, at the approximate ages of 43 and 55 respectively.[17] Ten men with life sentences died before obtaining a ticket and another three disappeared from the records (see table 7.4 below).[18] These three could have escaped the colony, or their deaths may not have been notified to the convict administration. Alternatively, in the decades following the suspension of transportation to New South Wales in 1840, these men may simply have mingled with the growing number of free-immigrant and colonial-born workers in the colony where, with expanding pastoralism and gold rushes, the movement of ageing convicts would have become harder to monitor (and the need to do so presumably would have diminished, at least unofficially).

Once a Tocal convict had gained a ticket-of-leave, his next challenge was to retain it, as tickets could be revoked by a magistrate for minor offences and the holders returned to government service or private assignment. Many Tocal convicts struggled to hold their tickets-of-leave and to exercise self-restraint within their new-found, tentative freedom. The tickets of 17 Tocal convicts, representing nearly one quarter of Tocal ticket holders, were suspended or withdrawn , one man losing his ticket twice, hence the eighteen incidents shown in table 7.3 below. There were various reasons for loss of ticket, the most frequent being convictions for drunk and disorderly conduct or for being absent from assembly or out of the district for which the ticket-of-leave was issued.

[16] PSC, Bound Indents, 4/4006 [fiche 642], 444, SRNSW; CS Monthly Returns of Prisoners Punished at Newcastle, 4/1718, 179-189, SRNSW; TOL 41/806, 4/4150 [reel 940], SRNSW.
[17] TOL 46/1147 & 46/1158, 4/4209 [reel 959], SRNSW.
[18] The three were George Beggs (*Henry Porcher)*, John Benson (*Recovery)* and Joseph Wilkinson (*Marquis of Huntley*).

Table 7.3 Reasons for suspension or withdrawal of tickets-of-leave

Drunk and/or disorderly	5
Absent from district or assembly	4
Stealing, pilfering, counterfeiting	3
Allowing himself to be robbed by bushrangers	1
Breach of contract	1
Disrespect for master	1
Gross prevarication	1
Unable to support himself	1
Unknown	1
Total number TOLs suspended/withdrawn	18

Source: Ticket-of-leave butts, SRNSW.

Convicts holding a ticket-of-leave were subject to intense scrutiny, and the comprehensive records kept of any violations of their 'parole' have survived to this day, providing a complete picture of their behaviour during this stage of bondage.[19] It is remarkable, therefore, that within the considerable number of years of parole accumulated by the 73 Tocal men who held tickets, there were only three instances of stealing (or related offences) that protagonists of the 'slur of criminality' could use as evidence to support their position. Most of the offences resulting in loss of ticket either reflected working-class lifestyle (such as 'drunk and disorderly') or were uniquely convict offences to which the general public were not subject (such as 'absent from district' or 'allowing himself to be robbed'). This is more remarkable when it is noted that the majority of Tocal ticket holders had life sentences, supposedly as a result of more serious crimes in Britain or Ireland. The respect for the law shown by Tocal's ticket-of-leave men was consistent with a wider trend—in 1841 ticket-of-leave holders constituted 4.7 per cent of the colony's population but only 2.6 per cent of persons tried before Superior Courts in New South Wales.[20]

The following two cases of the withdrawal of the tickets-of-leave of Tocal convicts illustrate the diversity of individual convict experiences during the struggle for emancipation, and the limitations of focusing solely on aggregated data. Both cases

[19] Reasons for suspension or withdrawal of tickets-of-leave were almost always recorded on the ticket-of-leave butts, and these records have survived.
[20] Sturma, *Vice in a Vicious Society*, 76.

involved Tocal convicts with life sentences who gained their tickets-of-leave in the minimum eight years, all of which time was served at Tocal without any recorded colonial convictions. The first case was that of John Waggoner, a coachsmith from York with a life sentence for stealing cloth, who was one of Tocal's first four convicts. He was assigned to the estate in 1822 at the age of 18 and remained there until he received his ticket-of-leave in 1830.[21] Waggoner's ticket was withdrawn in unusual circumstances. In August 1832 Tocal's owner, James Webber, and another magistrate recommended Waggoner for appointment as police constable at Patersons Plains, adding that he was 'a very well conducted man'.[22] Waggoner was duly appointed to the position but in September 1833 he gave evidence against the owner of an 'unlicensed house' in Maitland. When it was discovered that Waggoner himself had been drinking there, he was dismissed as a constable and his ticket-of-leave was withdrawn for 'tippling in an unlicensed house' and for 'gross prevarication [corruption] in giving evidence against the proprietor of that house'.[23] Waggoner was therefore forced to revert to servitude and by 1837 was assigned to private service in Maitland.[24] It appears Waggoner then suffered a mental breakdown and in May 1838 he was acquitted of murder by the Sydney Supreme Court on the grounds of insanity and committed to a lunatic asylum where the following year he was recorded as 'decidedly insane and dangerous'. Waggoner died five years later and was buried at St Anne's, Ryde (Sydney).[25] His case raises questions about the emotional and psychological impact of transportation and its long-term effects on the health and well-being of the transportees.

The second case was that of Alfred Cooper, an English convict with a life sentence for picking pockets who was assigned to Tocal from 1828 to 1836.[26] Cooper became a victim of circumstances and a scapegoat for the colonial administration when his ticket-of-leave was withdrawn. He was at the Union Inn at Brookfield near Dungog on 30 November 1840 along with several free immigrants, another ticket holder and several

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[21] PSC, Bound Indents, 4/4007 [fiche 646], 437, SRNSW; CS Prisoners not artificers assigned 1822, 4/4521 [reel 586], SRNSW; TOL 30/765, 4/4077 [reel 914], SRNSW.
[22] Webber and Anley to CS, 27 August 1832, CS In-letters, 32/6518 in 4/2154, SRNSW.
[23] Anley to CS, 30 September 1833, CS In-letters, 33/6593 in 4/2203.3, SRNSW.
[24] *Convicts in New South Wales 1837*.
[25] CS to the Sheriff, 21 & 23 May 1838, CS Letters Sent, 4/3900, 356 [reel 1064], SRNSW; Monthly Report of Lunatics July 1838, 38/8205 in 4/2401.5, SRNSW; Nominal List of Patients Confined by Criminal Courts at the Lunatic Asylum Tarban Creek, 39/6674 in 4/2493, SRNSW; Death record, V1844 484 29, NSWBDM.
[26] PSC, Bound Indents, 4/4013 [fiche 669], 94, SRNSW; TOL 36/1487, 4/4106 [reel 925], SRNSW.

assigned convicts when the group was attacked and robbed by the notorious Jewboy gang of bushrangers that had been terrorising the Lower Hunter area. In his report on the incident the owner of the inn said that the two ticket-of-leave holders Alfred Cooper and John Lenon 'offered to follow me if I would commence the attack in capturing them [the bushrangers], but unfortunately had no fire arms, therefore I did not think it judicious or safe to commence'. The colonial administration, however, was tired of the assistance given to bushrangers by convicts and ex-convicts who often provided them with food and shelter and failed to report them to authorities. Therefore the Police Magistrate at Dungog made the following recommendation to the governor regarding those present at the Jewboy Gang's attack on the Union Inn: 'if it please His Excellency to make an example it will… make the Prisoners and ticket-of-leave men interested in the Peace of the Colony, and Bushranging will speedily cease'. The Governor agreed and cancelled Cooper's ticket-of-leave, sending him to Pinchgut Island for seven days before re-allocation into servitude.[27] Cooper's ticket was re-instated in 1842 and he received a conditional pardon in 1847.[28]

While a convict could lose his ticket for poor conduct, he could also gain one for bravery. James Shields was a convict overseer at Tocal in 1830 when the Paterson Bench recommended him for a ticket-of-leave for 'apprehending four bushrangers and bringing to justice one harbourer of bushrangers'.[29] Despite numerous colonial convictions that would otherwise have rendered him ineligible, Elias Suffolk, who was assigned to Tocal in 1829, received a ticket-of-leave in 1841 for 'having rendered assistance in the capture of 3 armed bushrangers known as the Blacksmiths Gang on the Hunter'.[30] Suffolk's assistance reflected loyalty rather than bravery—he was simply the messenger who informed authorities of the bushrangers' whereabouts.[31] George Stotter also gained emancipation for bringing bushrangers to justice, but in a more dramatic fashion. While employed at Tocal in 1837 as farm constable he earned his ticket for bravely apprehending 'two notorious offenders'. The following year he shot and killed a

[27] Cook to CS, 17 December 1840, CS In-letters, 40/12813 in 4/2505.7, SRNSW; 30 January 1841, Newcastle Gaol Entrance Book 1841-45, 2/2008 [reel 756], SRNSW; 1 February 1841, Sydney and Darlinghurst Gaol Entrance Books 1839-1841, 4/6439 [reel 853], SRNSW.
[28] TOL 42/2049, 4/4166 [reel 945], SRNSW; CP 47/246, 4/4450 [reel 783], SRNSW.
[29] TOL 30/874, 4/4077 [reel 914], SRNSW.
[30] CS to PSC, 13 February and 4 March 1841, CS Letters Sent, 4/3689, 35, 78 [reel 1053], SRNSW; TOL 41/870, 4/4150 [reel 940], SRNSW.
[31] Bench of Magistrates, Singleton Letter Book 1837-1841, 4/5659 [reel 2738], SRNSW.

runaway convict who was about to shoot a free-immigrant worker at Tocal, and received a conditional pardon for his courage.[32]

Overall, only 30 of Tocal's 56 convicts with life sentences, or just over half this group, eventually obtained a conditional pardon, as shown in table 7.4 below.

Table 7.4 Tocal's convicts—emancipation from life sentences

Tickets-of-leave (TOL) for life sent.			**Conditional pardons** (CP)	
Tickets-of-leave issued	42		Conditional pardons issued	30
Died before TOL	10		Died while holding TOL	8
Disappeared from records	3		CP not issued, reason unknown	4
Lunatic	1		**Total TOL holders with life sent.**	**42**
Total number with life sentences	**56**			

Source: Ticket-of-leave butts and conditional pardons, SRNSW.

Eighteen men, or one third of this group, died before gaining their freedom via a pardon (ten before gaining a ticket-of-leave and a further eight while holding their ticket). The higher number of deaths before emancipation for those with life sentences compared to those with fixed-length sentences reflects the longer period to be served by those in the former category. Once convicts had been recommended for a pardon, they waited anxiously for it to be gazetted, as one first-hand account describes (with original spelling and grammar):

> I become very anxious to see my name in the Sydney Government Gazette; announcing my free pardon... There have been instances in which free pardons have been granted to individuals who have been living in the interior and they have been ignorant of the joyful news for as much as two years; but I was not in much danger of being cheated; for if my master was inclined to do so, it was now to late as I had become acquainted with the news by letter, and that letter... came to me without passing through his hands. I once got two other letters in a similar way which I had long been expecting, and when they was brough to me I found wrought on them "Refused by Mr. Macarthur".[33]

Several Tocal convicts were transferred to Port Macquarie in the 1830s and 1840s when they became unfit for government service or private assignment because of age or ill-health. In 1832 Port Macquarie was closed as a penal settlement and repeat offenders

[32] Johnstone to CS, 7 February 1839, CS In-letters, 39/1711 in 4/2433.2, SRNSW; TOL 37/900, 4/4112 [reel 927], SRNSW; CP 40/74, 4/4438 [reel 778], SRNSW.
[33] Kent and Townsend, *Joseph Mason*, 160-161.

were now sent to other settlements such as Moreton Bay and Norfolk Island. Port Macquarie retained a role in the convict system as a place for 'specials' (well educated convicts), invalids and the weak of mind.[34] This explains why four Tocal convicts died at Port Macquarie, including Job Townsend and Robert West, both still serving life sentences but having been transferred there due to advanced age and ill-health.[35] Another Tocal convict, James Scully, was already aged 40 when assigned to Tocal on arrival in New South Wales in 1829.[36] In the following few years Scully became unfit for service and was transferred to Port Macquarie. He was an invalid in Port Macquarie hospital in 1836 when his seven year sentence expired and he was discharged as a free man despite being 'totally unable from disease, imbecility and lameness, to procure a livelihood'. The NSW Colonial Secretary was informed that on his release Scully 'so harassed the residence of the Rev W Cross, as to force that gentleman to call upon the Police to retrieve him from the residence'.[37] After a few weeks of freedom, Scully, unable to procure his own food, was taken back into government care and placed in the invalid ward of the Port Macquarie convict barracks. He died in Newcastle Hospital in 1837.[38]

Scully was not the only Tocal convict to revert to government support after becoming free. William Truelove was taken back into government care when his ticket-of-leave was cancelled in 1846 because he was unable to support himself due to ill health. Truelove had arrived in New South Wales with a life sentence in 1817 at the age of 30 after having been convicted in the Old Bailey of stealing a handkerchief valued at one shilling and six pence. He served at Tocal from 1827 to 1834, and did not gain a ticket until 1838 due to several abscondings and other colonial convictions. He was aged about 59 when his ticket was cancelled, but evidently his health improved and his ticket was re-issued in 1848. After serving 35 years from the time of his trial he eventually received a conditional pardon in 1851 at the age of 64.[39] His period of servitude had

[34] Shaw, *Convicts and the Colonies*, 204; Iaen McLachlan, *Place of Banishment, Port Macquarie 1818 to 1832* (Sydney: Hale & Iremonger, 1988): 223-229; Griffin and Howell, *Port Macquarie*, 67; Earnshaw, "Sick and Disabled Convicts", 31.
[35] Death record, V1837 253 44B, NSWBDM; PSC Bound Indents, 4/4017, 10 [fiche 682], SRNSW; Death record, V1837 3000 21 & 306 44B, NSWBDM.
[36] PSC, Bound Indents, 4/4014, 10 [fiche 671], SRNSW.
[37] Sullivan to CS, 7 March 1836, CS In-letters, 36/2796 in 4/2332.1, SRNSW.
[38] Sullivan to CS, 18 April 1836, CS In-letters, 36/3436 in 4/2332.1, SRNSW; Death record, V1837 2848 21, NSWBDM.
[39] PSC, Bound Indents, 4/4005, 293 [fiche 637], SRNSW; Old Bailey Session Papers, FM4/5848, ML; 31 March 1824, CS Returns of Fines and Punishments by Bench of Evan, 4/6671, 69 [reel 6023], SRNSW;

been longer, more turbulent and painful than most. His back carried the scars of several floggings that resulted from his determination to abscond, and we can imagine the emotional scars he may have carried to his grave.

On emancipation, a few Tocal convicts were able to withdraw money they had deposited in convict bank accounts kept by the colonial government on their behalf. This was money they had either brought out with them or earned in the colony from work performed (usually extra work in their own time) or perhaps deposited by friends or relations. These arrangements arose from one of Commissioner Bigge's recommendations that money belonging to convicts should be taken and deposited, and not be made available 'till their condition was improved by their good conduct'.[40] On receiving their certificates-of-freedom Jonas Crick withdrew £10, James Logan £1 12s, William Miller £5 3s, John Shaw £12 and Frederick Wyatt £1.[41]

Life after emancipation

Despite the diverse situations of Tocal's convicts after emancipation, the most notable feature of their experiences is sheer ordinariness. Some sought to be re-united with loved ones in Britain and Ireland, some took colonial brides and many remained bachelors. As a group the Tocal men provided scant evidence of heartless criminals incapable of regular employment or emotional attachment. Instead, in common with another group of convicts whose emancipation experiences were studied,[42] most of the Tocal men became unremarkable working-class citizens. Only a few prospered or fell foul of the law, while most supported themselves in gainful employment, some in trusted positions as police constables or, as a measure of their adaptation, in situations where they could use the new skills they had learnt during assignment.[43] Many re-gained attachment to place and community, some of them at Tocal itself, the involuntary bond between master and servant now replaced by a mutual agreement. Others, through circumstance, lived a lonely and peripatetic lifestyle characterised by

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Sydney Gazette, 31 December 1827; *NSW Government Gazette*, 28 May 1834; TOL 38/485, 4/4118 [reel 929] & 40/1899, 4/4143 [reel 937] & 48/74, 4/4215 [reel 961], SRNSW; CP 51/284, 4/4473 [reel 795], SRNSW.

[40] Bigge, *Inquiry into the State of the Colony*, 158.

[41] Various savings warrants as per CS Correspondence, 4/3680, 212, 389 [reel 1048]; 4/3682, 53 [reel 1049; 4/3685, 107 [reel 1051]; 4/3671, 379 [reel 2650], SRNSW.

[42] Kent and Townsend, *The Convicts of the Eleanor*, 243.

[43] Thirteen Tocal men were convicted of 26 offences while free, for crimes such as theft, forgery, drunkenness and debt, with two of the thirteen amassing eleven of the offences.

anonymity. Very few could reasonably be labelled as 'ne'er-do-wells' or exhibited as part of a 'convict stain'.

About 25 per cent of Tocal's convicts left wives and children behind in Britain and Ireland, and this separation from their loved ones would have been the most wounding aspect of their punishment according to a study of another group of convicts.[44] When one of Tocal's first four convicts, Stephen Hover, was arrested in Sussex he had two daughters named Harriet and Caroline, and his wife Harriet was pregnant with a son who was born about the time Stephen arrived in the colony. Harriet named their newborn 'Jabez' which in biblical terms means 'born in pain', possibly a tangible sign of the financial and emotional trauma of the forced separation of the family from their father. This family was never reunited, as Stephen Hover died four years later while assigned to Tocal.[45]

The face of a loved one left behind—Harriet Guy, daughter of Stephen Hover. Harriet never saw her father again after he was transported and assigned to Tocal. (Photo courtesy of Rowena Sloan)

Many convicts managed to maintain their family ties through regular correspondence, and lack of literacy was not an insurmountable barrier to this process.[46] For the fortunate, the forced separation from family was not necessarily permanent. As an incentive for good behaviour, convicts who had served part of their sentence could apply for free passage for their wives and children to join them in New South Wales. Various arrangements for free passage for convict families had operated from the early days of the colony and were formalised by Governor Macquarie in 1817, the main criterion then being the provision of sufficient proof that the convict had the means to support his family without government expense once they arrived.[47] In 1830 Governor Darling republished the 1817 regulations and added the requirement that a convict demonstrate 'continued good conduct during at

[44] The group of married men were Swing rioters: Kent and Townsend, *The Convicts of the Eleanor*, 15.
[45] PSC, Bound Indents, 4/4008, 53 [fiche 647], SRNSW; Stephen Hover's family details: *pers. comm.*, Rowena Sloan; Death record, V1826 6846 2C, NSWBDM.
[46] Kent and Townsend, *The Convicts of the Eleanor*, 247; Picton Phillipps, "Convicts, Communication and Authority", 282-319.
[47] *Sydney Gazette*, 1 March 1817; Picton Phillipps, "Convicts, Communication and Authority", 108-110.

least half the period required to procure him a ticket-of-leave' (two to four years, depending on length of sentence).[48] In 1833 Governor Bourke further tightened the regulations, requiring convicts to serve with good conduct for the full period required for eligibility for a ticket-of-leave, namely four to eight years, before becoming eligible to apply for free passage for their family.[49] Shaw estimates that about one sixth of married convicts with families took advantage of these schemes.[50]

Four Tocal convicts, all of them Irish, applied for free passage for their wives and children to join them in New South Wales. In 1828 Denis Caroll, a ploughman from County Tipperary convicted of insurrection, received approval for his family to be sent out, as did another Irish rebel, Thomas Keating, but there is no indication that their families emigrated.[51] Michael Fea, a linen weaver with a life sentence for 'unlawful oaths', successfully applied as soon as he finished his sentence at Tocal, but his wife refused to emigrate.[52] John Shea was assigned to Tocal in 1829 and after his sentence expired he applied for free passage for his wife Johanna and one child.[53] His application was approved and his wife accepted but when his family was to embark they apparently had second thoughts and could not be found.[54] The nine years that had elapsed between Shea's trial and his wife's refusal to join him might explain her reluctance, she probably having adapted and re-settled during the prolonged separation. As these four Tocal men painfully discovered, the refusal by families of convicts to emigrate was the most typical response to the offer of a free passage to the Australian colonies.[55]

At least 36 of Tocal's convicts, representing 25 per cent of the group, married in New South Wales.[56] This is higher than the average, as about 20 per cent of male convicts

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[48] *Sydney Gazette*, 27 February 1830.
[49] *NSW Government Gazette*, 8 May 1833.
[50] Shaw, *Convicts and the Colonies*, 229.
[51] Archives relating to the Transportation of Convicts from Ireland to Australia, FS 1828 [R101 M2225], National Archives of Ireland; Webber to Darling, 20 May 1826, CS Families of Convicts 1824-42, 4/1112.1 [reel 697], SRNSW.
[52] PSC, Bound Indents, 4/4011, 96 [fiche 661], SRNSW; 10 January 1835, CS to Hely, CS Correspondence, 4/3680, 356 [reel 1048], SRNSW; Drummond to Bourke, 20 August 1836, CS In-letters, 37/737 in 4/2359.2, SRNSW.
[53] PSC to CS, 20 July 1829, CS In-letters, 29/5763 in 4/2040, SRNSW; CS to PSC, 22 July 1829, CS Letters Sent, 4/3668, 455 [reel 1043], SRNSW.
[54] Archives relating to the Transportation of Convicts from Ireland to Australia, FS 1835 Lists 1 & 5, FS 1835-6 A 27, FS 1836 Lists 1, 2 & 4, National Archives of Ireland.
[55] Brooke and Brandon, *Bound for Botany Bay*, 87.
[56] Given the difficulty of positively identifying those with common surnames in the marriage registers, this represents a minimum or lower-bound figure.

married in New South Wales during this period.[57] The overall low rate of males marrying resulted from a gender imbalance—in 1820 there were nine males for every female in the colony and by 1828 the ratio was four to one.[58] Consequently many men married into the next generation, choosing wives who were 20 or 30 years younger than themselves.[59] There was of course a degree of co-habitation in the colony, and it probably applied to only about 10 per cent of adult males but was as high as 25 per cent among convict couples from 1828 to the end of the 1830s.[60] On this basis, between 35 and 50 per cent of Tocal's convicts were either married or co-habiting in the colony after their emancipation. The significant extent of this pairing supports Snowden's contention that the focus on convicts as workers has overshadowed their domestic experiences, and that male convicts are rarely depicted as husbands or partners, and even less so as fathers.[61]

Marriage in New South Wales in the convict period was a competitive event for males, and many of those who succeeded were drawn from the more economically advantaged groups who possessed good income-earning ability.[62] Conversely, it was difficult for an ex-convict labourer to find a wife, as character and prospects influenced the outcome more than romantic attraction—affection could follow marriage rather than provide the impetus for it.[63] Convicts who had gained their ticket, accumulated a little capital and established substantial households were particularly likely to marry.[64] There was also a drawback to marriage for males, as it was more difficult for married men to find employment, particularly in the nineteenth century pastoral economy where squatters and overseers preferred labourers without encumbrances. In this economy, bachelor

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[57] Kent and Townsend, *The Convicts of the Eleanor*, 216; David Kent and Norma Townsend, "Some Aspects of Colonial Marriage: a Case Study of the Swing Protestors", *Labour History* 74 (1998): 41-43; Based on the 1828 census, Belcher estimates that only 14 per cent of males in NSW were married, cohabiting, widowed or separated in that year: Michael Belcher, "The Child in New South Wales Society 1820 to 1837" (Ph.D. thesis, University of New England, 1982), 123-124.
[58] Daniels, *Convict Women*, 229. By 1836 the ratio was 3 to 1 : Belcher, "The Child in New South Wales", 119.
[59] Robson, *Convict Settlers*, 108.
[60] Kent and Townsend, *The Convicts of the Eleanor*, 230; Belcher, "The Child in New South Wales", 144-145.
[61] Dianne Snowden, "Convict Marriage: 'The Best Instrument of Reform'", *Tasmanian Historical Studies* 9 (2004): 68.
[62] Kent and Townsend, "Aspects of Colonial Marriage", 41; Kent and Townsend, *The Convicts of the Eleanor*, 230; Belcher, "The Child in New South Wales", 147-149.
[63] Atkinson, "Convicts and Courtship", 26-27.
[64] Alan Atkinson, "Marriage and Distance in the Convict Colonies, *The Push from the Bush: A Bulletin of Social History* 16 (1983): 64.

bands of shearers, drovers, farm-hands and stockmen went wherever work could be found.[65] The above factors explain why up to three quarters of Tocal's convicts remained unmarried, but not necessarily un-partnered, in the colony.

Government rules and regulations compounded the difficulties for male convicts wishing to marry while under sentence or holding a ticket-of-leave. From 1826 Governor Darling imposed strict procedures for convict marriages, requiring government permission if either party was not free.[66] If the male did not hold a ticket-of-leave, permission would only be granted if his master gave a written undertaking to support both husband and wife until the man gained his ticket.[67] Not surprisingly therefore, none of Tocal's convicts married before gaining a ticket-of-leave. Of the 36 who married, 15 held tickets-of-leave at the time and the others were free, either by servitude or pardon. In contrast, convict women frequently married while serving their sentences. The practice was sanctioned by authorities and it allowed these women to modify the circumstances of their servitude or to escape 'the factory'.[68] Consequently near half (17 out of 36) of the wives of Tocal's convicts were still serving sentences at the time of their marriage.

A number of convict marriages failed between application and the altar. In New South Wales in 1838, for example, 601 couples applied for permission to marry, 448 were approved but only 323 married.[69] Of the 30 permissions-to-marry granted to Tocal convicts, only 23 led to actual marriage. Convicts could not obtain permission to marry if they were recorded 'in the books' as married on arrival in the colony. Only three of Tocal's 36 convicts who married in Australia had been married before transportation. One of the three, James Brownlee, had a habit of marrying, starting a family and being transported. He had been convicted of cow stealing in Ireland in 1827 and transported for seven years, leaving behind a wife and two children. Brownlee was assigned to Tocal on arrival in 1828 and married in Maitland in 1834, just three months after the end of his sentence.[70] As a free man marrying a free woman he did not require

[65] Sturma, "Eye of the Beholder", 9.
[66] Kent and Townsend, "Aspects of Colonial Marriage", 41.
[67] Atkinson, "Convicts and Courtship", 23.
[68] Kent and Townsend, *The Convicts of the Eleanor*, 213. For convict women, freedom from servitude or assignment did not automatically follow marriage: Kent and Townsend, "Aspects of Colonial Marriage", 44.
[69] Atkinson, "Convicts and Courtship", 25.
[70] PSC, Bound Indents, 4/4013, 71 [fiche 669], SRNSW; Marriage record, V1834 2453 93, NSWBDM.

government permission, so his previous marriage was not a barrier. In 1838 he was convicted of cattle stealing in the Maitland Quarter Sessions and sentenced to ten years on Norfolk Island. Again he left behind a wife who had 'three young and helpless children and [was] Pregnant of the Fourth'.[71]

Unlike Brownlee, when John Kidd applied for permission to marry in 1840, he had to prove that his English wife was deceased. Many convicts seeking permission for colonial marriage forged letters stating that their wife in Britain or Ireland had passed away, and consequently the New South Wales authorities carefully evaluated the authenticity of such letters.[72] In John Kidd's case, Tocal's overseer Ralph Mills Clarke attached a statement to Kidd's application stating that Kidd had 'received a letter from his Brother in England Informing him of the Death of his Wife some time previous. From having read the letter myself I can with safety state this to be a fact, and if Necessary would state the same by Affidavit'.[73] Clarke's statement was apparently accepted, as permission was granted and the marriage proceeded. [74] Kidd-family historians, however, have been unable to find evidence of his first wife's early demise and believe she was alive when he remarried in the colony.[75]

Due to exceptional circumstances, a convict named Richard Clarke may have brought his colonial wife and family to live with him at Tocal, the only convict to do so before emancipation. Richard Clarke arrived in New South Wales in 1811 with a life sentence and in 1814 was re-transported to Van Diemen's Land for a colonial offence.[76] In December 1818, while holding a ticket-of-leave, he married an Irish convict woman at Hobart Town and was granted a conditional pardon in 1820.[77] In 1821 he was found guilty of receiving a stolen sheep carcase and was re-transported to Newcastle for three years, bringing his wife Catherine and daughter Mary with him.[78] By September 1823

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[71] CS Norfolk Island 1845, 4/2698.1 [reel 770], SRNSW; Brownlee to Gipps, 1838, CS In-letters, 38/11654 in 4/4203.3 [reel 2211], SRNSW.
[72] Atkinson, "Convicts and Courtship", 28.
[73] Clarke to CS, 26 March 1840, CS Marriage Banns, 4/2481.93 [reel 737], SRNSW.
[74] Marriage record, V1840 616 24B, NSWBDM.
[75] Brouwer, Meehan and Brown, *At Home Amongst the Stock*, 16; Esme Meehan and Lois Brown, *The Kidd Family in Australia 1829-2000* (Largs, NSW: by the authors, [2000]), 10.
[76] PSC, Bound Indents, 4/4004, 366 [fiche 633], SRNSW; CS List of Convicts Sent to the Derwent, 4/3493, 127, 133 [reel 6004], SRNSW.
[77] Tardif, *Notorious Strumpets*, 243; CP 1312, 4/4430 [fiche 822], SRNSW.
[78] Court of Criminal Jurisdiction—Returns of Trials Van Diemen's Land 1821-1823, X726, 1-32 [reel 2652], SRNSW; *Sydney Gazette*, 28 April 1821; CS to Nicholson, 28 May 1821, CS Letters Sent, 4/3504, 53-54 [reel 6008], SRNSW.

Richard Clarke was assigned to James Webber at Tocal, where he served about six months.[79] If Catherine and Mary lived at Tocal with him they were probably the first European females to reside on the estate, but it is unclear if they moved to Tocal or remained in Newcastle. As detailed later, Clarke went on to become a successful landowner in the Paterson district.

Marriage did not guarantee freedom from further clashes with the law. Tocal's convict stonemason, Dennis Long, married as a free man in 1838 but was sentenced to 12 months in an iron gang in 1842 for larceny. In 1846 his wife was imprisoned for 18 months, also for larceny, leaving him with "three helpless children". His struggle to pay others for their upkeep while he was working away from home was, according to his petition for clemency for his wife, a source of "unspeakable anguish".[80]

Just as ticket-of-leave status enabled Tocal convicts to marry, it also provided the opportunity for appointment to the police service. Accordingly, five Tocal convicts served as police constables at Paterson and Maitland, three of them while holding tickets-of-leave.[81] Police were in short supply in NSW in the 1830s and convicts holding a ticket-of-leave were frequently appointed as constables. Governor Darling also allowed convicts without tickets to be appointed provided they were able bodied, active, intelligent and well behaved, and one Tocal convict named John Hoyle was appointed as a special constable before gaining his ticket.[82] However Darling's successor, Governor Bourke, discouraged even ticket holders from appointment, directing that preference be given to free immigrants. As a result of Bourke's policy, a Tocal convict named Richard Hughes, who was appointed constable at Paterson in 1832, was dismissed in favour of a free immigrant on Bourke's instructions shortly after appointment. One month later the free constable was dismissed for drunkenness and neglect of duty, and Hughes was re-instated to pursue a rather chequered career with the

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[79] CS to Kennyes, 11 September 1823, CS Correspondence, 4/3509, 230 [reel 6011], SRNSW.
[80] Marriage record, V1838 1728 22, NSWBDM; 28 May 1842, Sydney Gaol Entrance Book, 4/6440 [reel 854], SRNSW; Long to Gipps, 5 January 1846, CS In-letters, 46/86 in 4/2736.2 [reel 2266], SRNSW.
[81] John Hanley per *Earl St Vincent*: CS to Aubin, 10 November 1830, CS LB, 4/3829, 207 [reel 2808], SRNSW; James Shields per *Surry*: CS to Anley, 13 January 1832, CS LB, 4/3831, 164 [reel 2809], SRNSW; John Hoyle per *Guildford*: Darlington Police to CS, 30 November 1831, CS In-letters, 31/9934 in 4/2122, SRNSW; Richard Hughes per *Guildford*: Police Office Paterson to CS, 7 February 1833, CS In-letters, 33/1198 in 4/2204.3, SRNSW; John Waggoner per *Minerva*, Webber & Anley to CS, 27 August 1832, CS In-letters, 32/6518 in 4/2154, SRNSW.
[82] Gov order 23 May 1831: *Sydney Gazette*, 24 May 1831; Darlington Police to CS, 30 November 1831, CS In-letters, 31/9934 in 4/2122, SRNSW.

police.[83] In 1834 the Police Magistrate at Maitland ordered a temporary exchange of duties between Hughes at Paterson and Cussen of Maitland because Cussen who had already lost his ticket for drunkenness was 'associated with the most worthless and abandoned characters' of Maitland while Hughes was 'less addicted than men of his class usually are to the prevailing vice of Maitland'.[84] Unfortunately, even the steady Hughes succumbed to the temptations of the town. One of his new duties was to escort female prisoners from Maitland to Newcastle Gaol, and only a week after his transfer he was charged with delivering several women in a drunken state and in one instance spending the night with a female prisoner in Newcastle before bringing her to the gaol next morning.[85] Despite the charge, Hughes retained his police appointment until he resigned towards the end of 1835, but his exploits illustrate why Governor Bourke held out little hope of a decent constabulary force in New South Wales at this time.[86]

Many of Tocal's convicts from urban backgrounds gained new skills while assigned to the estate that proved useful to them in earning a living after emancipation. Facilitated by on-the-job training at Tocal, urban convicts made the transformation from errand boy, rope maker and brush maker to tobacconists, from groom to shoemaker, hairdresser to shepherd, linen weaver to cooper and errand boy to sawyer.[87] There was little demand for their previous occupations in the predominantly rural-based, colonial economy, so their mandatory assignment became the opportunity to re-train and gain the skills they required to support themselves after emancipation. For example, Alfred Padmore, an errand boy who was 19 years old when convicted of housebreaking in England, gained the skills of a sawyer during his six year assignment to Tocal.[88] Upon obtaining his ticket-of-leave for the Paterson district in 1838 Padmore was employed in this trade on the Burrowel estate at nearby Williams River where he was engaged to cut timber at the rate of 10 shillings per 100 feet.[89]

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[83] Police Office Paterson to CS, 7 February 1833, CS Paterson Police 1833, 33/1198 & 33/2079 in 4/2204.3, SRNSW.
[84] Campbell to CS, 17 October 1834, CS Paterson Police 1834, 34/2571 in 4/2251.1, SRNSW.
[85] Newcastle Bench Book, SZ80, 387 [reel 2721], SRNSW.
[86] *NSW Government Gazette*, 4 November 1835, 783; Shaw, *Convicts and the Colonies*, 199.
[87] Based on initial occupations listed on the shipping indents and colonial occupations as per the 1828 Census of NSW and other records, details provided in chapter three.
[88] PSC, Bound Indents, 4/4008, 165 [fiche 648], SRNSW; Home Office, Criminal Registers, HO27/22 [reel 2766], PRO.
[89] *NSW Government Gazette*, 26 December 1832; TOL 38/2244, 4/4125 [reel 931], SRNSW; Gilchrist, "Diary for Burrowel", 45.

A few Tocal convicts became landowners after emancipation, and some became tenant farmers. Historians have largely overlooked tenant farming in New South Wales, but it represented a widespread and significant means of access to land, particularly before 1861 (in 1861 Robertson's Crown Land Acts provided the opportunity for free selection by those with little capital).[90] Tocal convicts Michael Magner and William Doyle leased 25 acres of the Clergy and School lands at Patersons Plains near Tocal in 1830 as sub-tenants. Their ex-master, James Webber, interceded with the Church Corporation on their behalf when their lease came under threat.[91] As sub-tenants, however, they did not gain title to this land when the Clergy and School Lands were dispersed, and financial success eluded both of them. William Doyle was imprisoned in Sydney Gaol for three days in 1838 on account of unpaid debt.[92] Michael Magner did have sufficient means to return to Ireland to bring about 12 relatives back to NSW before settling in the Morpeth area.[93] In May 1844 Michael's sister-in-law wrote to the NSW Colonial Secretary requesting that Michael be admitted to the lunatic asylum because his friends and relatives could not support him. She went on to say 'The wife of Michael Magner is my sister, and she is now left destitute at Hinton in the County of Durham with a family of three children one of whom I have taken upon myself to support.' The NSW Governor approved Michael's admittance to the Lunatic Asylum at Tarban Creek (Ryde) and he died there in November 1844.[94] The records indicate he was probably buried in the vicinity of fellow Tocal convict John Waggoner who died in the same institution in the same year.[95]

Success in business was the most frequent way for ex-convicts to regain respectability.[96] Three Tocal ex-convicts achieved notable financial success after emancipation but their

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[90] During the 1840s and 1850s tenant farmers in the Hunter Valley outnumbered freeholders by four to one, and were also prevalent in other areas: Alan Atkinson, *Camden: Farm and Village Life in Early New South Wales* (South Melbourne: Oxford University Press, 1988; paperback 1992), 68.
[91] Webber to Cowper, 2 February 1830, Correspondence with the Occupants of Patersons Plains, 9/2714, 31, SRNSW.
[92] Sydney Gaol Entrance Book 1837-1838, 4/6437 [reel 853], SRNSW.
[93] Merrick Sims, *A Brief Account of the Magner Family's First Thirty Years in Australia*. Internet online http://www.magner.org/merricksims.htm [22/04/2002].
[94] Sullivan to CS, 29 May 1844, CS In-letters, 44/4244 in 4/2650.5, SRNSW.
[95] Death record, V1844 497 29, NSWBDM.
[96] Alison Alexander, "The Legacy of the Convict System", *Tasmanian Historical Studies* 6, no. 1 (1998): 51.

prosperity should not be regarded as typical.[97] To do so would repeat the contemporary misconception whereby a handful of successful and wealthy emancipists such as the Terrys and Lords were shrewdly held up to public view while, according to Francis Forbes, Chief Justice of New South Wales during the 1820s, 'thousands of nameless wretches who have lingered out the remains of a burdensome life, are as forgotten as their graves'.[98] Nevertheless, while maintaining a sense of perspective, the success of the three Tocal men illustrates part of the diversity of the emancipation experiences of Tocal's convicts. At Patersons Plains at the time of the 1828 census Richard Clarke (assigned to Tocal in 1823 and mentioned previously because his wife and daughter may have lived at Tocal during his assignment) leased 230 acres, owned 32 cattle, and had two convicts assigned to him.[99] In 1832 he was authorised to take possession of an 120 acre grant in the Vacy area, on the Paterson River upstream from Tocal.[100] In 1835 he purchased 100 acres of Crown land adjoining his grant for £35.[101] As further evidence of his financial success, Richard Clarke subscribed £3 to the fund for the erection of St John the Baptist church at West Maitland and donated half the land for the building of the Summer Hill Catholic church near Vacy. Clarke had rebuilt his life in many ways, enjoying not only the benefits of family and modest prosperity, but also citizenship and respectability. He served, for example, on the committee overseeing the construction of St Joseph's at East Maitland.[102]

James Clements also enjoyed family life, modest financial success and respectability after emancipation. He was one of Tocal's youngest convicts, having been assigned to the estate in 1833 at the age of 13 and remaining there until 1853, 12 years after receiving his ticket-of-leave.[103] While at Tocal he married Ann Clarke, widow of Ralph Mills Clarke who had been Tocal's overseer until accidentally killed at Tocal in 1841. Clarke was overseer while Clements was a convict, so Clements married his overseer's widow. James Clements' first three children were born at Tocal. About 1855 the family

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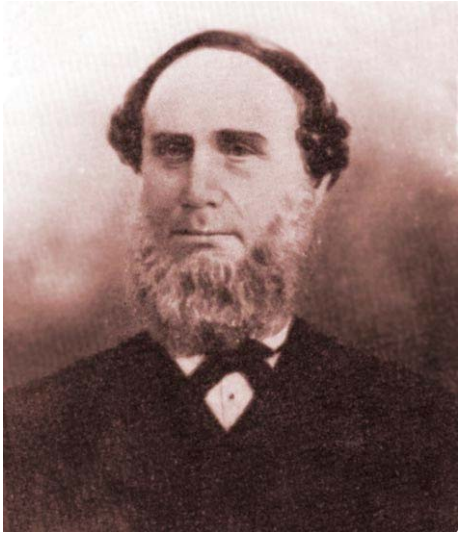
[97] A detailed study of the post-emancipation fate of a group of Swing rioters found that substantial success was unusual, the more typical outcome being characterised by 'sheer ordinariness': Kent and Townsend, *The Convicts of the Eleanor*, 248.
[98] Neal, *Rule of Law*, 41.
[99] *Census of New South Wales 1828*.
[100] *NSW Government Gazette*, 1839, 91, 674.
[101] *NSW Government Gazette*, 1835, 93-94, 365.
[102] *Maitland Mercury*, 18 February 1843; Ingle, *Summer Hill*, 12.
[103] PSC, Bound Indents, 4/4018, 5 [fiche 687], SRNSW; PSC, Printed Indents, X635, 99 [fiche 704], SRNSW; TOL 41/1892, 4/4154 [reel 941], SRNSW.

moved to their own land at nearby Webbers Creek where he and his wife lived for the rest of their days. James died in 1907 at the age of 87 and is buried at St Paul's Paterson.[104] The accompanying photograph of James Clements is the only known surviving image of a Tocal convict.[105]



Thomas Magner, one of Tocal's Irish rebels and brother of Michael mentioned previously, was Tocal's most entrepreneurial convict who left the largest imprint in the records after emancipation. He married, purchased land at Paterson and Raymond Terrace and then moved to Sydney as a stock agent and ship owner, operating a fleet of ships trading between Sydney and Morpeth, most of which were built at Clarencetown. Later Thomas retired and returned to Maitland as a general dealer, and in March 1866 was killed when he fell from his dray at Hinton.[106]

While most Tocal convicts did not enjoy the same level of prosperity as the above three, some regained community attachment and possibly a 'sense of place' during their emancipation, as the following cases show. William Woollard was a 13 year-old native of London when he arrived in New South Wales in 1833 with a life sentence for picking pockets.[107] By July 1835 Woollard was assigned to Tocal, and during the year he received 50 lashes for absconding and 50 lashes for neglect of work. His association with Tocal survived his colonial convictions, as he was still on the estate in April 1837 and earned his ticket-of-leave for the Paterson district in 1841.[108] Although now permitted to work anywhere in the district, he continued his employment at Tocal, the

[104] Marriage record, V1846 539 31C, NSWBDM; Clements, *The Clements—Paterson Connection*, 1-7.
[105] Photograph courtesy of Pauline Clements.
[106] *The Australian*, 18 May 1839; Elizabeth Guilford, ed., *Hunter Valley Directory: 1841* (Newcastle: Hunter Valley Publications, 1987), 163; *NSW Government Gazette*, 1839, 257; Old Systems Title Registers, H839, NSWDL; *Maitland Mercury*, 29 March 1866.
[107] There is a discrepancy in Woollard's age, the Bound Indents indicating 13 years and the Printed Indents 15 years. The former is probably correct, as the Printed Indents were created from the Bound Indents: PSC, Bound Indents, 4/4017, 204 [fiche 685], SRNSW; PSC, Printed Indents, X635, 49 [fiche 703], SRNSW.
[108] Colonial Trials and Records, Benches of Magistrates 1832-36, X708 [reel 662], SRNSW; Clerk of Peace, Depositions—Supreme Court, Paterson 2 May 1837, Rex vs Bernard Lyons and James Lemon, 9/6309, SRNSW; TOL 41/1300, 4/4152 [reel 940], SRNSW.

convict-master relationship being strong enough to survive the transition to emancipation as has been noted in a Tasmanian convict study.[109] In April 1845 he entered a ploughing competition at Maitland Show in the team of Charles Reynolds (who had leased Tocal the previous year).[110] Woollard's place in the Tocal team had symbolic and practical significance. Despite a tough and painful adolescence, he had rebuilt his life, gained permanent employment and a sense of attachment, and had earned a place in the Tocal and Paterson community. Perhaps this rebuilding dulled the pain of the separation from the loved ones whose memories were indelibly retained in the initials and blue rings tattooed on his arm and fingers. In August 1846, at the age of 26, Woollard dropped dead while digging out stumps in a Tocal paddock.[111]

The Tocal convict-master relationship also survived emancipation for Thomas Hawker and John Kidd. The way in which Hawker rebuilt his life was atypical, further emphasising the diversity of experiences during emancipation. He was a shoemaker who was assigned to Tocal in 1836 at the age of 19 with a life sentence for highway robbery.[112] Despite two colonial convictions he remained at Tocal after receiving his ticket-of-leave in 1844 and marrying the same year. Next year his first child was born at Tocal.[113] Thomas and his wife then became devout Mormons and sailed to America in 1854 along with their four children and 70 others of the same faith. They landed in California and lived in San Bernadino, raising a total of nine children. Thomas was naturalised in 1869 and died in San Bernadino in 1905.[114] In contrast it is ironic that John Kidd, transported from England for stealing a horse, later played a key role in the operation of Tocal as a leading Australian horse stud. He was 25 years old when he arrived in Sydney in 1829 and after a period was assigned to Tocal. Kidd was well behaved and received his ticket-of-leave for the Paterson district in 1837 and married in 1840. He then received a conditional pardon in 1845 on the recommendation of two

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[109] Maxwell-Stewart and Hindmarsh, "The Bird that Never Flew", 14.
[110] *Maitland Mercury*, 19 April 1845.
[111] *Maitland Mercury*, 15 August 1846.
[112] PSC, Printed Indents, X636 & X639, 35 [fiche 716 & 721], SRNSW.
[113] Colonial Trials and Records, Benches of Magistrates 1832-36, X708 [reel 662], SRNSW; *The Australian*, 23 January 1840; *NSW Government Gazette*, 1840, 179, 241; Marriage record, V1844 552 29, NSWBDM. Matilda Hawker was born at Tocal on 27 July 1845: Marriage and Baptismal Register, Paterson 1837-1865 M/PAT/OS, Ferguson Memorial Library, Archives of the Presbyterian Church of Australia in the State of New South Wales.
[114] *pers. comm.*, descendant.

magistrates and his former Tocal employer Felix Wilson.[115] By 1856 John Kidd had returned to live and work at Tocal with his wife and family, marking the beginning of an association between the Kidds and Tocal that continued unbroken for three generations. John Kidd and his descendants became the backbone of Tocal's livestock operations throughout the period in which the Reynolds family, the lessees of Tocal from the 1840s, achieved considerable agricultural success and established Tocal as nationally renowned for its Hereford cattle and Thoroughbred horse studs.[116] When John Kidd died in 1881 a large number of people from Paterson and surrounding district 'attended to mark their respect for an old colonist, a respected resident, and a faithful servant'.[117] John Kidd could measure his personal success by the significant extent to which he rebuilt his life during emancipation, regaining family, a permanent position as a skilled and valued employee, respect in the local community, and a new sense of place.

Even when a Tocal convict-master relationship endured after emancipation, it could yet turn sour, as the following case illustrates. John Kipling was assigned to Tocal on arrival in the colony in 1828, obtained his certificate-of-freedom in 1834 and was employed the following year to erect a boundary fence between Tocal and the neighbouring Bona Vista estate. While in this employment he was arrested, gaoled, tried and convicted for stealing two maul rings.[118] Kipling was one of 14 Tocal men who had 27 convictions recorded against them after emancipation. These included six convictions for theft, two for unpaid debts, two for drunkenness and various other charges such as forgery, highway robbery, wounding with intent, and sodomy.[119] Conversely, the majority of Tocal's convicts were law-abiding during emancipation despite the fact that ex-convicts in general were over-represented at trials of New South Wales Superior Courts between 1841 and 1851.[120]

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[115] PSC, Bound Indent, 4/4014, 216 [fiche 673], SRNSW; Clarke to CS, 26 March 1840, CS Marriage Banns, 4/2481.93 [reel 737], SRNSW; TOL 37/1554, 4/4114 [reel 928], SRNSW; Marriage record, V1840 616 24B, NSWBDM; CP 45/356, 4/4447 [reel 782], SRNSW.
[116] Brouwer, Meehan and Brown, *The Kidds of Tocal*, 12-28.
[117] *Maitland Mercury*, 26 November 1881.
[118] PSC, Bound Indents, 4/4013, 107 [fiche 669], SRNSW; COF 34/1225, 4/4324 [reel 993], SRNSW; Newcastle Gaol Entrance Book, 2/2005 [reel 756], SRNSW; Maitland Court of Quarter Session Papers 1835, 4/8414, 131 [reel 2408], SRNSW.
[119] Due to gaps in the records and a limited search of post-1840 records, these numbers are indicative rather than precise.
[120] Sturma, *Vice in a Vicious Society*, 76-77.

Many of Tocal's convicts simply disappeared from the official records after emancipation, their private lives finally beyond government scrutiny. The various case studies presented above demonstrate the wide-ranging diversity of the emancipation experiences of Tocal's convicts, and the varying extent to which they were able to rebuild their lives in New South Wales, to re-establish meaningful and remunerative occupations, respectability, family and community ties, and a sense of place and belonging. In summary, 22 men (15 per cent) died before emancipation, and between one third and one half of the group married or lived with partners in the colony. The rest remained single, circumstances preventing them from rejoining loved ones in their home country or starting new family and kinship ties in the colony. A few achieved a notable degree of material success, while some suffered mental breakdowns or became unable to support themselves due to debility. Health was no doubt adversely affected by the physical and emotional trauma of transportation, colonial conditions and corporal punishment. Transportation's 'legacy of broken human beings' noted by Evans and Thorpe was therefore evident to some extent in the Tocal study.[121] Many of Tocal's convicts who survived their bondage would have joined the ranks of the rural proletariat as bullock drivers, shearers, shepherds and farm hands—the nomad tribe of itinerants, lonely old men with only dogs for company who left no further trace in the records apart from their death, that event often informed by someone who knew little or nothing of the deceased.[122] Ironically, although characterised by individual anonymity, this band of mobile bushmen who followed seasonal work and lived alone was later to become a key part of the legend of the 'true' Australian.[123]

Other Freedoms

For convicts there was no simple and absolute duality between freedom and 'un-freedom'.[124] Rather, as George Spleyoenburg discovered, 'freedom' is complex, amorphous and elusive in its varying degrees and forms. Spleyoenburg had been assigned to Tocal on arrival in New South Wales in 1833, and was probably still there when he received his certificate-of-freedom in October 1840.[125] The following month he

[121] Evans and Thorpe, "Commanding Men", 17.
[122] Sturma, "Eye of the Beholder", 9; Raymond Evans and William Thorpe, "In Search of 'Jack Bushman'", 34; Robson, *Convict Settlers*, 109.
[123] Ward, *The Australian Legend*, 1-3; Kent and Townsend, *The Convicts of the Eleanor*, 235-236.
[124] Duffield and Bradley, "Introduction", 4.
[125] PSC, Bound Indents, 4/4018, 23 [fiche 687], SRNSW; Home Office, NSW Convicts Arrived 1833-34, HO10/30, PRO; COF 40/1617, 4/4361 [reel 1007], SRNSW.

travelled through the Hunter Valley, most likely looking for work, but his job-seeking was suddenly interrupted when he was arrested at Muswellbrook on suspicion of being illegally at large and 'not having a document to show for his liberty'. Either he had lost his certificate or had not waited for it to be delivered before moving from Tocal. He was taken all the way to Sydney to be identified at Hyde Park Barracks.[126] Spleyoenburg had discovered that respectability and freedom from suspicion did not accompany freedom from servitude, as he and other emancipists could be arrested at the whim of a local constable.

Even if Spleyoenburg had documentary evidence to avoid arrest, he did not live in a free society, as it would be years before emancipists' rights were fully restored, particularly the right to vote for a representative legislature.[127] Before those struggles could be won, emancipists had to overcome the pall of suspicion that persisted long after their servitude had ended. Even when civil rights were fully restored, the slur of criminality, a tool of ideological domination employed by convict masters and proponents of transportation to justify their exploitation and actions, metamorphosed into a latter-day 'convict stain' and persisted in modern-day literature. As Maxwell-Stewart notes, 'up until at least the late 1980s the bulk of Australian historiography has perpetuated the myth of a criminal transported to the shores of Botany Bay'.[128]

Another dimension of freedom is escape from objectification and de-humanisation. One of the challenges in this study has been to partially free Tocal's convicts from their incarceration in the official records where they appear as mute and heartless objects of the convict system, mere muscle power or human capital, without private lives or individual histories.[129] This thesis has told another story, and in its telling the voices of the men and boys assigned to Tocal can be faintly heard in their ongoing process of emancipation, particularly in their quest for freedom from silence. The thesis has demonstrated the complexity and diversity of their individual experiences and responses during servitude and emancipation. It has also sought to explore, within the bounds of scholarship and the surviving records, their possible feelings and emotions. At last the

[126] Muswellbrook Bench Book 1840-43, 4/5602, 73 [reel 671], SRNSW.
[127] Neal, *Rule of Law*, 55-58.
[128] Hamish Maxwell-Stewart, "The Search for the Convict Voice", 76.
[129] Bradley and Maxwell-Stewart, "Alexander and the Mother of Invention", 198; Frost and Maxwell-Stewart, "At Large with the Run-a-ways", 203, 206 & 208; Atkinson, "Writing About Convicts", 25-26.

bereavement of the Tocal men can be acknowledged, a bereavement stemming from loss of family, loved ones, friends, respectability and attachment to place and community. Although they recovered these losses to varying degrees during emancipation, many never became free from an ache in their hearts.

The key to the further liberation of these men lies in the use of our imagination. This is not an imagination that leads to fantasy and fiction, but an 'historical imagination' firmly rooted in reality that can be used to understand past events and situations and to establish connections between the fragments of surviving evidence.[130] Frost and Maxwell-Stewart argue that to admit the impossibility of imagining convicts would be to leave them incarcerated within the nineteenth century constructs of 'thief' and 'convict'.[131] We can imagine the possibility that Thomas Keating died heart-broken in Sydney following his unsuccessful attempt to be re-united with his wife Honora and sons John and Thomas. We can imagine that as William Woollard lay dying in a Tocal paddock his last thoughts were for his loved ones in London whose memory he carried tattooed on his body. We can imagine that when Tocal's Swing rioter, Robert West, faced his last days at Port Macquarie as an old and broken man, he pined for the wife and three children in Norfolk that he would never see again. We can also imagine the joys of James Clements, John Kidd, Thomas Hawker and others as they married and established families and new attachments to community and locality, and we can imagine the loneliness that dogged many to their graves. Historical imagination bounded by scholarship and research can continue to liberate Tocal's convicts.

Conclusion

The analysis of the process of emancipation for Tocal's convicts shows a struggle by many to gain a ticket-of-leave under the much stricter eligibility criteria introduced by governors Darling and Bourke. It also demonstrates a remarkable lack of criminality among Tocal convicts while holding their tickets, perhaps even more remarkable because the majority of ticket holders were 'lifers' who had supposedly committed more serious crimes in Britain or Ireland. The analysis reveals that death during servitude was a far more common outcome for those with life sentences because of the

[130] Marnie Hughes-Warrington, *'How Good an Historian Shall I Be?': R.G. Collingwood, the Historical Imagination and Education* (Exeter: Imprint Academic, 2003), 117-122, 139.
[131] Frost and Maxwell-Stewart, "At Large with the Run-a-ways", 208.

longer periods they were required to serve before emancipation compared to those with fixed-length sentences.

The most notable feature of the diverse experiences of Tocal's convicts after emancipation was their sheer ordinariness. As a group the Tocal men provided scant evidence of heartless criminals incapable of regular employment or emotional attachment. Instead, after emancipation most became unremarkable working-class citizens. Only a few prospered or fell foul of the law, some married, some co-habited, some sought re-unification with loved ones left behind, and most supported themselves by lawful employment. For many the heartbreak of transportation eventually turned to hope as they re-gained attachment to place and community, some of them at Tocal itself, the involuntary bond between master and servant now replaced by a mutual agreement. In emancipation, as in servitude, the diversity and extremes of the experiences of Tocal's convicts are clearly evident—although many re-built a network of family and loved ones, others lived a lonely and peripatetic lifestyle characterised by anonymity.

Despite their emancipation, some aspects of freedom could still elude Tocal's convicts. Respectability, freedom from suspicion, and full civil rights did not necessarily accompany freedom from servitude. Even when the civil rights of ex-convicts were fully restored, the contemporary slur of criminality metamorphosed into a latter-day 'convict stain' that persisted in modern-day histories. The ongoing liberation of these men rests with those who are prepared to listen for their voices within the surviving records and to employ an 'historical imagination' to liberate them from the nineteenth century constructs of 'thief' and 'convict' and the subsequent 'convict stain'.

Conclusion

This study of 142 convict men and boys who served part or all of their sentences on the Tocal estate has revealed a remarkable diversity of individual experiences, actions and attitudes during bondage that are best understood not by sweeping generalisations, but as a series of dichotomies or dualisms that include paternalism and punishment, domination and resistance, deference and defiance, mateship and collaboration, trust and betrayal, freedoms and restraints, and cruelty and comfort.

In terms of demographic and anthropometric profile, Tocal's convicts were fairly typical of the wider population of colonial convicts, comprising mainly young, single males transported for some form of theft. The Tocal group had a slightly higher-than-expected proportion of Irish convicts who were on average a few years older than their British counterparts, and more of the Irish were married and first offenders of rural origin. One minor but distinct component of Tocal's convicts were Irish rebels and English rioters who stood out because of the nature of their crimes—they acted not for immediate personal or private gain but as part of a collective response to particular social, economic and political circumstances. Their micro-narratives directly connect the wider historical context of the northern hemisphere to the Tocal estate and add to the diversity of experiences of Tocal's convicts before, during and after bondage. At the same time, the study of Tocal's protesters reveals their connectedness to loved ones in Britain and Ireland, and the profound emotional trauma many suffered as a result of forced separation. Their general good behaviour during servitude and their early emancipations suggest that any residual attitudes of rebellion and civil disobedience they may have brought to Tocal soon dissipated under changed circumstances.

The Tocal data on convict assignment and punishment has allowed a closer examination of some of the more contentious and problematic claims of convict historiography. The data partly supports and partly disputes the revisionist interpretations embodied in *Convict Workers* of an exceptional convict workforce. About half of Tocal's convicts were evidently cooperative workers who remained on the estate for most or all of their

sentences, were seldom punished and gave an element of stability and continuity to the estate's workforce. The other half, frequently punished and apparently uncooperative, disrupted the work routines of the estate as new convicts were constantly sought to replace them as they absconded or were returned to government or sent away for punishment. The dynamics of assignment-in-action revealed by the detailed Tocal study clearly demonstrate the operational constraints to the productivity of the convict work force. At Tocal, a convict's preparedness to adapt, learn new skills and work diligently was more likely to result in his allocation to critical tasks than the skills he possessed on arrival. It is therefore proposed that a hierarchy of trust, diligence and adaptability may more accurately explain the marked differences in number of assignments and punishments experienced by individual convicts than previous, broad claims of exceptional skills matching and a remarkable convict workforce.

The diverse living and working conditions of Tocal's convicts again reveal a series of dichotomies that include pleasures and deprivations, freedoms and restraint, mateship and violence, and religious commitment and contempt. Despite the varying efforts of Tocal's nearly all-convict workforce, outputs of the estate at the time were impressive, among them herculean achievements in clearing, fencing and building, the production of large quantities of wool and high-quality tobacco, and notable pioneering efforts in viticulture and wine making. Convict-era structures at Tocal that have survived to the present day are testament to the skills of the estate's convict artisans, and when Tocal's archaeological evidence is combined with extant records, a vivid picture emerges of the personal dimensions of convict lifestyle on the estate. Up to 34 men and boys lived together, mainly in crowded, leaky, rough slab timber huts, sustained by a basic diet of beef and damper with a few supplements. Although the basics of food and accommodation at Tocal were unremarkable, there was considerable tension between master and assigned servants regarding the supply of keenly sought-after extras such as tea, sugar and tobacco. At the risk of a flogging or jeopardising future tickets-of-leave, Tocal convicts took take drastic, collective action on one occasion when not issued with the usual 'indulgences'. On another occasion, two Tocal convicts were prepared to risk their necks, quite literally, to obtain tea and sugar through burglary.

Heavy drinking, smoking and gambling were ubiquitous and endemic components of convict lifestyle. Tocal's convicts were evidently free to wander at night and buy

alcohol from neighbouring estates, and to attend events such as cockfights, prize fights and horse racing in their own time. Drinking and gambling provided a means of escape and the opportunity to claim alternative space and time free from the supervision of their masters, but at Tocal the price of this escape was alcohol-fuelled violence, frequent fighting and fear, tempered in some instances by the support and protection of mates. Tocal's 1830 stone barn comes alive not just as a place where convict-grown tobacco was stored, but also as a refuge for frightened convict men and boys during drunken, violent fights in the huts.

A few Tocal convicts wore their religious beliefs 'on their sleeves' in the form of tattoos but organised religion meant little or nothing to most of the men. Many convicts mocked religion and its clerics, and contempt for formal religion, like escape through alcohol, provided another means to reject the totalising power of the state and its proxies, the clergy. Yet many Tocal convicts eventually sought the services of clerics in order to gain government permission to marry, or to have their children baptised for respectability or salvation.

The lives of convicts at Tocal intersected, and at times collided, with the lives of the Gringai clan of the Wonnarua Aboriginal people. The inter-cultural exchanges between Tocal's convicts and the Gringai were characterised by fluidity and ambivalence, conflict and accommodation, and are now mostly shrouded in silence. For at least some of Tocal's convicts, the Aboriginal people of Yimmang (Paterson River) were a source of fear, danger, curiosity, sexual gratification, and possibly intimacy, companionship and knowledge.

The study has revealed diverse actions and responses in the reciprocal power relationship between Tocal's masters and their convict servants as they engaged in a discourse of domination and accommodation, submission and resistance. For the master these actions ranged from the generosity, kindness and rewards that were embodied in paternalism, through to pain and terror applied through the court. The response of convicts assigned to Tocal varied from cooperation and deference, through passive acquiescence, to overt defiance, resistance and protest. The Tocal data provides a degree of detail about the nature and extent of secondary punishment of convict men at a local level in New South Wales that is uncommon among convict studies. Overall during

their sentence, a minimum of 58 per cent of the Tocal men received one or more punishments, and at least 26 per cent received one flogging or more. When the impact of missing court records is taken into account, it is estimated that at least two thirds of Tocal's convicts received one or more punishments and more than 45 per cent of them received at least one flogging at some stage during their sentence. These findings challenge the conclusions of several convict studies that appear to underestimate the extent of secondary punishment.

The Tocal study demonstrates a remarkable degree of movement between the various levels of convict deployment—almost half the estate's convicts experienced both private assignment and work for government (mostly in gangs), and over one quarter served time in a penal settlement or worked in irons. The study also notes the nascent richer picture of promotional opportunities and scope for rewards within iron gangs and penal settlements that has recently emerged in the historiography, further highlighting the complexity of the convict experience and the danger of accepting the legacy of superficial, contemporary viewpoints. When the contemporary slur of criminality is ignored and judgement suspended, the voices of Tocal's convicts are faintly audible, extant in their responses to their bondage, whether through protest and resistance or through alignment of their interests with those of their master.

Analysis of the process of emancipation for Tocal's convicts shows a struggle by many to gain a ticket-of-leave under strict eligibility criteria and demonstrates a distinct lack of criminality among Tocal convicts while holding their tickets, the more so because the majority of ticket holders were serving life sentences. Understandably, death during servitude was far more common for 'lifers' given the longer periods they were required to serve before emancipation. The most notable feature of the diverse experiences of Tocal's convicts after emancipation is their sheer ordinariness. Some sought to be re-united with loved ones in Britain and Ireland, some took colonial brides or partners, and many remained bachelors. As a group the Tocal men provided scant evidence of heartless criminals incapable of regular employment or emotional attachment. Instead, after emancipation most became unremarkable working-class citizens—a few prospered, a few fell foul of the law, but most supported themselves by gainful employment, some in trusted positions as police constables or, as a measure of their adaptation, in situations where they could use the new skills they had acquired during

assignment. For many the heartbreak of transportation eventually turned to hope as they re-gained attachment to place and community, some of them at Tocal itself, the involuntary bond between master and servant now replaced by a mutual agreement. Others, through circumstance, pursued a lonely and peripatetic lifestyle characterised by anonymity. Very few could reasonably be described as 'ne'er-do-wells' or habitual criminals.

Despite their emancipation, some aspects of freedom still eluded Tocal's convicts—respectability, freedom from suspicion, and full civil rights did not necessarily accompany freedom from servitude. Even when the civil rights of ex-convicts were fully restored, the contemporary slur of criminality deployed by convict masters and proponents of transportation to justify their exploitative actions metamorphosed into a latter-day 'convict stain' that persisted in some modern-day histories. The ongoing liberation of Tocal's convicts requires suspension of judgement in order to listen for their voices within the surviving evidence, and the employment of an 'historical imagination' to unchain them from the nineteenth-century constructs of 'thief' and 'convict' and from the subsequent 'convict stain'.

It is hoped that future regional and local convict studies, particularly those that reveal the details of individual experiences, will allow the broader implications of the Tocal findings to be further tested and refined, and their wider application more extensively assessed. Such testing would buttress our knowledge and understanding of convict assignment in action, the relative importance of paternalism, rewards and punishment in convict-master relations, the nature and significance of convict resistance, defiance and compliance, and the extent of secondary punishment in New South Wales. It would also be ideal if those future studies revealed more of the personal worlds, agency, voices and inner feelings of convicts serving their sentences on rural estates in the colony. This would in turn further illuminate the lives of Tocal's convicts.

Appendix 1: List of Tocal's convicts

Name	Ship	Arriv	Age	Offence	Sent.	At Tocal
Abrey, William	Marquis of Wellington	1815	22	house breaking	life	1822
Addey, William	Mangles	1837	19	stealing a coat	7 yr	1837
Andrews, William	Guildford	1827	18	house breaking	life	1829-33
Batt, James	Hercules	1825	19	sheep stealing	life	1825
Beggs, George	Henry Porcher	1825	19	burglary & felony	life	1833
Benson, John	Recovery	1819	26	burglary	life	1823
Brearly, John	Hooghley	1825	26	burglary	life	1825-28
Brownlee, James	Mangles	1828	31	cow stealing	7 yr	1828-33
Byrne, Philip	Ann & Amelia	1825	18	steal iron & brushes	life	1825
Cain, Daniel	Minerva	1819	22	highway robbery	life	1824
Callaghan, Daniel	Marquis of Huntley	1828	15	house robbery	7 yr	1828
Callaghan, Thomas	Asia	1825	25	burglary & robbery	life	1825
Campbell, John	Countess of Harcourt	1827	28	sheep stealing	7 yr	1827-28
Caroll, Denis	Hooghley	1825	34	insurrection	7 yr	1825-29
Carr, Patrick	Asia	1825	25	highway robbery	life	1825
Casey, Thomas	Mariner	1827	23	horse stealing	life	1827
Caton, Thomas	Bengal Merchant	1838	21	house breaking	14 yr	1840-44
Chantry, Edward	Marquis of Huntley	1835	22	house breaking	life	1836-43
Clark, Matthew	Lord Sidmouth	1819	32	stealing	7 yr	1824-25
Clarke, Richard	Providence	1811	21	not recorded	life	1823
Clements, James W	Captain Cook	1833	13	picking pockets	life	1833-53
Clewley, William	Kath.Stewart Forbes	1830	24	picking pockets	7 yr	1830-34
Coghlan, Richard	Mangles	1828	20	stealing clothes	7 yr	1828
Connelly, Michael	Southworth	1822	17	stealing cash	7 yr	1825
Cooper, Alfred	Phoenix	1828	19	picking pockets	life	1828-36
Cooper, John Darby	Atlas	1819	26	house breaking	7 yr	1823
Corrigan, Elijah	James Laing	1834	17	stealing clothes	7 yr	1834-37
Costigan, Patrick	Countess of Harcourt	1827	22	highway robbery	7 yr	1827-37
Crick, Jonas	Phoenix	1828	30	stealing malt	7 yr	1828-32
Cullen, James	Mangles	1828	15	stealing sheets	7 yr	1828
Davenport, John	Ocean	1823	24	stealing	7 yr	1823
Dearden, Adam	Captain Cook	1833	28	stealing duck	7 yr	1833
Dobson, Roger	Ocean	1823	22	highway robbery	life	1823-34
Douglas, James	Layton	1829	24	stealing clock	7 yr	1831
Dowling, James	James Laing	1834	32	cow stealing	life	1836-37
Doyle, Michael	Countess of Harcourt	1827	22	sheep stealing	7 yr	1827
Doyle, William	Earl St Vincent	1823	39	insurrection	7 yr	1823-27
Edwards, George	City of Edinburgh	1832	20	stealing shawl	7 yr	1832
Fee, Michael	Boyne	1826	30	unlawful oaths	life	1826-34
Forrester, James	Lady Harewood	1832	24	stealing in house	7 yr	1832
Geere, William	Sesostris	1826	22	stealing clothes	14 yr	1828
Graves, Storer	Fergusson	1829	28	street robbery	7 yr	1829

Name	Ship	Arriv	Age	Offence	Sent.	At Tocal
Gray, Robert	Captain Cook	1833	24	house breaking	14 yr	1833
Grennan, Peter	Heber	1837	40	stealing money	7 yr	1837-42
Halfpenny, William	Ann & Amelia	1825	24	steal bagpipe & flute	life	1825
Hanley, John	Earl St Vincent	1823	23	absent from home	7 yr	1825-29
Hassett, John	Earl St Vincent	1823	26	insurrection	7 yr	1823-27
Hawker, Thomas	Susan	1836	19	highway robbery	life	1836-39
Hazell, James	Prince Regent	1820	18	picking pockets	7 yr	1822
Healey, Pat	Eliza	1832	41	stealing clothes	7 yr	1832-34
Heny, Bryan	Prince Regent	1824	30	burglary&robbery	life	1824
Hobbs, Abraham	Planter	1832	25	house breaking	life	1832
Holmes, William	Captain Cook	1833	34	sheep stealing	life	1833-41
Holseworth, William	England	1826	17	stealing boots	7 yr	1832
Horton, William	Mangles	1833	16	robbing master	life	1833
Hover, Stephen	Mary	1822	31	stealing	7 yr	1822-26
Hoyle, John	Guildford	1827	29	rioting	life	1827-28
Hughes, Richard	Guildford	1822	20	burglary	life	1825-32
Hunt, Henry	Planter	1832	20	stealing truck	7 yr	1832
Hurley, William	Andromeda	1830	32	horse stealing	life	1830
Hutchins, John	Dick	1821	22	larceny frm person	life	1828-29
Irwin, Henry	Andromeda	1830	19	stealing cloak	7 yr	1830-38
Jameson, John	Guildford	1827	19	shop breaking	14 yr	1827-28
Johnston, William	Heber	1837	17	highway robbery	7 yr	1837
Keating, Thomas	Earl St Vincent	1823	30	asslt/Whiteboyism	life	1824-28
Keily, Michael	Governor Ready	1829	60	Base coin	life	1829
Kidd, John	Norfolk	1829	25	horse stealing	life	1829-37
King, George	Asia	1825	19	larceny	7 yr	1828
King, William	Henry	1823	36	house robbery	14 yr	1823-24
Kipling, John	Bussorah Merchant	1828	19	stealing a shirt	7 yr	1828
Lane, James	Lord Lyndoch	1833	26	house breaking	7 yr	1833-38
Lawler, John	Borodino	1828	21	picking pockets	7 yr	1828-32
Levitt, John	Bussorah Merchant	1828	27	steal ton of bags	7 yr	1828-33
Lewis, Joseph	Mermaid	1830	20	house breaking	7 yr	1830-34
Liddy, Andrew	Hive	1835	40	stealing cloth	7 yr	1836-37
Linegar, William	Lord Lyndoch	1833	25	cutting & maiming	life	1835
Logan, James	Bussorah Merchant	1828	20	house breaking	14 yr	1828-34
Long, Dennis	Governor Ready	1829	23	stealing coat	7 yr	1829
Lynch, Michael	Eliza	1832	23	attacking house	life	1836-37
Lynn, John	Asia	1822	20	assault & robbery	life	1836-37
Lyons, Bernard	City of Edinburgh	1832	26	perjury	7 yr	1832-37
Magner, Michael	Earl St Vincent	1823	27	insurrection	7 yr	1823-27
Magner, Thomas	Earl St Vincent	1823	25	insurrection	7 yr	1823-27
McCarthy, John	Heber	1837	19	stealing chairs	7 yr	1837
McCarthy, Timothy	Governor Ready	1829	35	sheep stealing	7 yr	1829-33
McIneeny, Thomas	Asia	1825	26	rape	life	1825
McQuiggan, Hugh	Java	1833	33	insubordination	7 yr	1836-37

Name	Ship	Arriv	Age	Offence	Sent.	At Tocal
Mildmay, George	Hercules	1830	16	shop robbery	7 yr	1830-33
Miller, William	Burrell	1830	42	obtn money falsely	7 yr	1830
Millsom, Edward	Sarah	1829	20	stealing geese	7 yr	1829-34
Mooney, Lawrence	Mangles	1828	25	horse stealing	life	1828
Moors, John	Champion	1827	31	stealing clothes	life	1833
Murdock, Hugh	Hooghley	1825	32	cow stealing	7 yr	1828-30
Murphy, Edward	Mangles	1828	24	sheep stealing	life	1828-37
Musk, James	Phoenix	1828	19	house breaking	7 yr	1828
Nelson, George	Phoenix	1828	20	stealing a coat	life	1828
Padmore, Alfred	Asia	1822	19	house breaking	life	1832-38
Rouse, Simon	Isabella	1822	35	st watch&banknotes	7 yr	1825
Rowan, Charles	Mermaid	1830	22	stealing carpets	7 yr	1830
Ryan, Patrick	Hooghley	1825	21	insurrection	7 yr	1825-29
Sanders, Peter	Georgiana	1831	25	stealing watches	7 yr	1831-33
Saunders, James	Coromandel (H.M.S.)	1820	18	stealing	7 yr	1823-26
Savage, George	Cambridge	1827	16	picking pockets	7 yr	1832-33
Scammell, Frederick	Hercules	1832	14	stealg snuff boxes	7 yr	1832
Scully, James	Governor Ready	1829	40	pig stealing	7 yr	1829
Shore, Edward	Mary	1822	20	st clothes&rabbits	7 yr	1824-28
Shaw, John	Sarah	1829	31	stealing potatoes	7 yr	1829-34
Shea, John	Borodino	1828	20	lamb stealing	7 yr	1829-34
Shea, John	Countess of Harcourt	1822	19	highway robbery	7 yr	1825
Sheehan, Maurice	Boyne	1826	27	house robbery	life	1828
Sheppard, John	Ocean	1823	19	burglary	life	1827-30
Shields, James	Surrey	1816	23	highway robbery	life	1823-37
Simpson, Patrick	Ann & Amelia	1825	20	steal thread & tape	7 yr	1825
Slowey, Patrick	Mangles	1828	28	murder	life	1828
Smith, James	Phoenix	1828	23	stealing bundle	7 yr	1829-34
Smith, John	Phoenix	1828	20	stealing umbrella	7 yr	1828
Smith, Thomas	Malabar	1819	28	desertion	life	1822
Smith, William	Ann & Amelia	1825	20	stealing money	life	1825-26
Smith, William	Planter	1832	16	robbing shop	7 yr	1832
Snell, John	Norfolk	1825	28	stealing	7 yr	1825-32
Spleyoenburg, Geo	Captain Cook	1833	16	stealing a shirt	7 yr	1833-40
Stiles, James	Marquis of Hastings	1827	23	house breaking	7 yr	1830
Stotter, George	Kath. Stewart Forbes	1830	46	house breaking	14 yr	1832-37
Styles, William	Hercules	1830	19	murder	life	1830-34
Suffolk, Elias	Bussorah Merchant	1828	30	burglary	life	1829
Tadgwell, William	Susan	1836	14	stealing necklace	7 yr	1836-37
Talty, Peter	Jane	1831	25	abduction	life	1831-34
Tattersall, Henry	Susan	1836	14	stealing money	14 yr	1836-42
Tiernan, John	Asia	1825	28	burglary & robbery	life	1825
Townsend, Job	Surrey	1823	32	highway robbery	life	1824
Truelove, William	Sir William Bensley	1817	30	steal handkerchief	life	1827-34
Waggoner, John	Minerva	1821	18	stealing cloth	life	1822-30

Name	Ship	Arriv	Age	Offence	Sent.	At Tocal
Wallis, Patrick	Java	1833	28	fire arms	7 yr	1836-37
West, Robert	Portland	1832	50	machine breaking	life	1832-36
Whitford, Thomas	John Barry	1836	18	picking pockets	7 yr	1836-37
Wilkinson, Joseph	Marquis of Huntley	1826	25	horse stealing	life	1826
Williams, John	Georgiana	1831	39	stealing tools	7 yr	1831
Williams, Thomas	Waterloo	1829	21	robbing person	14 yr	1836-37
Woollard, William	Mangles	1833	15	picked pockets	life	1835-37
Wooton, Charles	John Barry	1839	22	picking pockets	7 yr	1841-44
Wyatt, Frederick	Royal George	1828	23	picking pockets	7 yr	1828
Young, John	Albion	1828	18	sheep robbery	14 yr	1834-37

Appendix 2: Example of a reconstructed Tocal convict's record

HALFPENNY, William

Ship	Date arrived (Sydney)
Ann & Amelia	2 January 1825

Shipping indent(s)

Fiche	Page	Reel	Shelf	Type
654	139		4/4009A	Bound
		2749	X30	Irish

Trial (place, date)	Prev conv	Offence	Sentence
Dublin City, 5 March 1824	NR	Felony bagpipes and flute	Life
Notes: Source = bound indent & Irish indent			

Age	Marr/S	Child'n	Relig	Educ	Native place	Country
24/21			Cath		Co. Dublin	Ireland
Source = bound indent, Irish indent (respective ages). Religion source = 1828 Census NSW						

Trade or calling	Height	Complexion	Hair	Eyes
Carman	5' 3 3qrt	Fresh freckled	Brown	Lt blue
Tattoos: nr				
Other features: nr				
Notes: Source = bound indent				

Assignment

On arrival, to Appin for distribution (as per indent), then to JP Webber [Tocal] as per punishments (see Col Sec below) By May 1825 in the service of William Evans	
At Tocal: 1825	Tocal occupation: NR

Freedom (year, details)

T.O.L.	46/1147 Bathurst 19 August 1846, 4/4209 [reel 959]. Altered to Carcoar 18 February 1847 on letter 46/10905. Cancelled on 4 April 1851 absent from district. Restored, absence explained papers 51/2814.
C.P.	52/89, 19 February 1852 (registered 1 March 1852), 4/4474 [reel 795].

Colonial crime & secondary punishment

Date	Offence	In service of	Punishment
1825	Refusing work	JP Webber	
1825 Feb	Refusing work	JP Webber	50 lashes
1825 May	Neglect work & refuse work	William Evans	50 lashes
1826 Oct	Theft	Govt Newcastle	1 year additional transportation
1829 Aug	Drunk on duty	Govt Newcastle	24 hours solitary confin.
1829 Oct	Drunkenness	Govt Newcastle	50 lashes
1832 Mar	Absconded for the fourth time	Bathurst Bridge Party	Parramatta Gaol
1832 May	Absconded for the fifth time	Parramatta Gaol	
1832 Aug	Highway robbery		Death commuted to hard labour in irons, Norfolk Island
Sources: see Col Sec and 'other' (below)			

Colonial Secretary's correspondence

1825 Feb, May On monthly return of prisoners punished at Newcastle (Reel 6023; 4/1718 pp.199, 205)
February 1825, in the service of James Webber, 50 lashes for refusing work, second offence.
May 1825, in service of William Evans, 50 lashes ordered by JP Webber for neglect of work and refusing to work.
SR, Col Sec, Copies of Letters to Benches of Magistrates, Justices of the Peace and Superintendents of Police, 4/3829, p95 [reel 2808]. ***22 September 1830***. William Halfpenny dismissed as cook at Newcastle Gaol after accusing a man of perjury in a Coroner's Inquest into the death of John Mason.
For further details of his dismissal, see 4 September 1830, from the Sheriff to Col Sec, in-letter 30/6826 in 4/2079.
1832 December 27. On list of prisoners under transportation to Norfolk Island, to be embarked on the brig *Gov Phillip*, properly ironed and narrowly searched (CSLS 4/3898 p169, reel 1063).

NSW Census/musters

1823-25	C, Ann & Amelia 1825, 7 years (sic), Govt servant to Mr Evans, Newcastle
1828	GS, Ann & Amelia 1825, 7 years (sic), Catholic, cook, Newcastle Gaol, 16 acres of which 12 cleared and cultivated.
1837	(not found)

Timeline

Date	Event
1825 Jan	Arrived Sydney and assigned to JP Webber [Tocal] soon afterwards
1825 May	Assigned to William Evans
1826-29	Assigned to Govt Newcastle. In Nov 1828 was cook at Newcastle Gaol and was apparently responsible for 16 acres of land. Dismissed as cook Sept 1830.
1832 Mar	In Bathurst Bridge Party
1832 Dec	To Norfolk Island, hard labour in irons
1845 Dec	Returned from Norfolk Island
1846	TOL
1852 Feb	CP

Other (source, details)

SR. Returns of Trials, Newcastle Bench of Magistrates [COD 120]:

- Oct 1826, in Govt service, theft at John Smith's house, one years additional to OS of transportation [OS = original sentence]
- August 1829, in Govt service, drunk on duty, 24 hours solitary confinement
- October 1829, in Govt service, drunkenness, 50 lashes

SR, Phoenix Hulk Entrance Book 1831-1833, 4/6282 [reel 819]. #73, admitted 10 January 1831 from Hyde Park Barracks to give evidence in criminal proceedings, Young & others. Released to Hyde Park Barracks 15 January 1831, behaviour in hulk "tolerable".

SG 8 March 1832 4.1: Absconded from Government Employ, Bathurst, 4th time of running.

SG 5 April 1832 2.2: On list of runaways apprehended to 2 April, from Bathurst Bridge Party

SG 10 May 1832 2.1: Absconded from Parramatta Gaol, 5th time of running.

SR. Transportation Entrance Book for the Phoenix Hulk 1831-34, 4/4534 [reel 821]:

- Colonial conviction for highway robbery, sentenced by the Supreme Court Sydney on 16 August 1832 to "death commuted to hard labour in irons". On the decision of his Excellency the Governor, sent to Norfolk Island, life on the public works, forwarded from the prison hulk on 28 December 1832.

Notation on shipping indent indicates he returned from Norfolk Island in December 1845 (45/11124)

Appendix 3: Floggings received by Tocal's convicts

Conviction	Lashes received for each offence
Absconding and/or absent	50, 50, 50, 75, 50, 50, 50, 50, 36, 50, 50, 50, 50, 50, 100, 50, 50, 50, 50, 50, 25, 50, 75, 25, 50, 50, 36, 25, 50
Neglect of work or duty	50, 25, 50, 25, 50, 50, 50, 50, 25, 50, 36, 25, 50, 25, 50
Refusal to work, or disobedience	50, 25, 50, 50, 25, 50, 50, 50, 50, 50
Drunk and/or disorderly	50, 50, 50, 50, 50, 25, 25,
Insolence/disrespect to Master	100, 50, 75, 50, 50
Pilfering, theft	50, 50, 50, 75, 75, 75
Assaults and threats	25, 100, 25,
Feigning sickness	36
False accusations against Master	50
Losing sheep	50
Lurking at an improper hour	50
Obstructing a farm constable	50
Dishonest conduct	50
Other	76

Appendix 4: Treadmill sentences

Name	Conviction	Year	Sentence
Benson, John	stealing corn in Gov stables	1828	14 days
Geere, William	absconding	1826	28 days
Lynn, John	improper state with woman	1836	14 days
Moors, John	absent 1 night from barrack	1832	3 days
Sheppard, John	disorderly conduct	1836	1 month
Stotter, George	insolent & disobedient	1830	7 days
Stotter, George	absent & disobedient	1831	28 days

Appendix 5: Iron gang sentences

Name	Conviction	Year	Sentence
Beggs, George	absconding	1834	12 months
Benson, John	absconding and assault	1835	6 months
Byrne, Philip	stealing	1831	6 months
Byrne, Philip	ran from his gang	1832	12 months in irons on the mountain roads
Byrne, Philip	aggravated assault	1833	6 months
Coghlan, Richard	absconded	1834	12 months IG on roads
Corrigan, Elijah	absconding	1836	12 months
Corrigan, Elijah	absconding	1838	12 months
Doyle, Michael	disobedience, bad conduct	1831	3 months
Edwards, George	attempting to rob, abscond	1832	6 months (not completed)
Hanley, John	absconding	1827	3 months
Hazell, James	stealing a pair of trousers	1826	6 months hard lab
Hazell, James	felony	1828	12 months
Hazell, James	stealing	1853	12 months roads
Hunt, Henry	absconding	1835	12 months
King, George	Contempt of court	1827	3 months
King, George	insolence & threats to master	1829	12 months
King, William	neglect of duty, insubord'n	1831	3 months
Linegar, William	absconding	1835	12 months
Linegar, William	pilfering	1848	6 months
Lyons, Bernard	manslaughter	1837	3 years
Mildmay, George	absconding	1833	12 months
Mildmay, George	absconding	1835	12 months
Moors, John	unknown	1846	6 months
Padmore, Alfred	unknown		unknown
Rouse, Simon	drunk and disorderly	1827	6 months
Sanders, Peter	unknown	1832	18 months
Sanders, Peter	runaway	1836	12 months
Savage, George	runaway, apprehended	1832	12 months (served 2 months)
Shea, John	drunkenness, lost a shovel	1827	1 month
Sheehan, Maurice	unknown	1832	six months
Sheppard, John	burglary	1831	3 years
Stiles, James	burglary	1830	3 years
Suffolk, Elias	unknown		unknown
Tadgwell, William	absconding	1841	2 years
Tadgwell, William	assault in court	1843	12 months
Tadgwell, William	unknown	1844	12 months
Williams, Thomas	absconding	1834	12 months

Appendix 6: Secondary transportation to a penal settlement

Name	Conviction	Year	Place, sentence
Abrey, William	stealing corn and maize	1819	Newcastle, 3 years
Benson, John	unknown	1821	Newcastle, 3 years
Cain, Daniel	unknown	1821	Newcastle, 3 years
Cain, Daniel	absconding	1825	Port Macquarie, 3 years
Carr, Patrick	unknown	1832	Norfolk Island
Clark, Matthew	unknown	1822	Newcastle remainder sent.
Clarke, Richard	"colonial offence"	1814	Derwent VDL, 6 years
Clarke, Richard	received stolen sheep	1821	Newcastle, 3 years
Coghlan, Richard	unknown	1832	Norfolk Island
Cooper, John	unknown	1821	Newcastle, 12 months
Cooper, John	steal & hock corn	1822	Newcastle
Halfpenny, William	highway robbery	1832	Norfolk Island
Hazell, James	absconding	1824	Port Macquarie
Hazell, James	runaway from Port Macq	1824	Moreton Bay
Hazell, James	absconding & robbery	1829	Moreton Bay, 7 years
Hunt, Henry	sheep stealing	1837	Norfolk Island, life to 7 years
Mooney, Law'nce	unknown	1832	Moreton Bay
Mooney, Law'nce	killing cattle	1839	Norfolk Island, 10 years
Padmore, Alfred	unknown	1825	Port Macquarie, 3 years
Shea, John	house robbery	1828	Moreton Bay, 14 years
Shields, James	unknown		Newcastle, 3 years
Slowey, Patrick	drunk and disorderly	1841	Moreton Bay
Smith, Thomas	runaway, stole whaleboat	1820	Newcastle, 7 years
Smith, Thomas	unknown	1823	Port Macquarie, 4 years
Smith, Thomas	armed bushranger	1832	Norfolk Island, 14 years

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