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

Brian Patrick Walsh, B Rur Sc (Hons), BA, M App Sci Ag

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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**

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

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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, 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. 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

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settle on small holdings on the river at Patersons Plains. 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. 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. 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. 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. 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.

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.

3 CS to Nicholson, 8 March 1822, CS Letters Sent, 4/3504A, 539 [reel 6008], SRNSW.
5 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.
The initial Tocal land grant to James Phillips Webber in 1822 consisted of 2,000 acres (809 hectares). It increased, by purchase of adjacent Crown land, to 3,300 acres (1,335ha) by 1825. 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. 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. 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. In August 1834 Tocal was purchased by Sydney merchants Caleb and Felix Wilson, and most of Webber’s Tocal convicts were subsequently transferred to them.

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. 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. 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. 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


experiences of individuals and their interpretation within the broader, changing landscape of convictism and its management.\textsuperscript{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.\textsuperscript{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.

\textsuperscript{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, 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.

**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. 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. There are two main stereotypes—one of which views convicts as professional criminals or prostitutes rather than as ordinary

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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. This moral position served convict masters and the pro-transportation lobby to justify their policies and practices, but such judgements, including connotations of the word ‘convict’, have diverted attention from the real issues of convict life and work. 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. 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. Convict studies that are ensnared by the benign view include Convict Workers while those caught up in the brutal view include Fatal Shore.

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


31 Daniels, Convict Women, 38; Oxley, “Representing Convict Women”, 98-102.


inanity to use the term ‘convict’ as a hold-all definition of those transported. 

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’. 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’. 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?’ 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’.

35 Comment made by David Young about the historic Port Arthur site, as quoted in Picton-Phillipps, “Convicts, Communication and Authority”, 17.
During the 1930s there were dissenters from this sanitised view, 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.

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. 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. 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 “atrocity 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’. 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’. Writing 32 years later, Shaw claimed his views on convicts as professional criminals had been misinterpreted.

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

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. 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. His book was hailed as a ‘bracing re-assessment’ of the convict history of New South Wales but not quite a revisionist approach. 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, and was also a contemporary issue for penal reformers, opponents of transportation and commissioners of enquiry into the convict system. 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’. 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’.

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. Hughes did this without sufficiently exploring the complexities of, or

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51 Daniels, *Convict Women*, viii-ix.
the differences between, these systems and the limitations of the slave and gulag metaphors when applied to transportation. 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. 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.

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’. 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. 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. Furthermore, the convicts as a whole were fit, healthy and

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60 Thirteen per cent of Tocal’s convicts served at a place of secondary transportation, details of which are provided in chapter six.
63 Stephen Nicholas and Peter Shergold, “Unshackling the Past”, in Convict Workers, ed. Nicholas, 8.
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’. Later Deborah Oxley examined the economic assets of convict women and reached similar conclusions regarding their productivity.

*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. 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. Other historians subsequently supported Neal’s view, discrediting the ‘benign treatment’ stereotype of convictism through specific studies.

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. 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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67 Stephen Nicholas and Peter Shergold, “Transportation as Global Migration”, in *Convict Workers*, ed. Nicholas, 34.  
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.
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

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.
80 Evans and Thorpe, “Power, Punishment and Penal Labour”, 95.
new, 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. 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. 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. 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.

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’. 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,
exaggeration and sometimes by misinformation. Brook’s voice can still be 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. 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’.

Taking up the challenge to personalise the convict experience, several studies have analysed groups of individual convicts in detail. 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. 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’. Some recent studies have demonstrated the interconnectedness of individual convict histories in Australia 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

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.
Swing rioters/machine breakers transported to New South Wales on the *Eleanor* in 1831. 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. 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, and explores the meanings transportation held for those whose affectionate personal relations were disrupted. 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. 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.

93 Kent and Townsend, *The Convicts of the Eleanor*.  
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 transportation: Tamsin O’Connor, “Raising Lazurus”, in Chain Letters, ed. Frost and Maxwell-Stewart, 153-161.

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.\textsuperscript{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.\textsuperscript{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’.\textsuperscript{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.\textsuperscript{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


\textsuperscript{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.


\textsuperscript{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’. The shift in focus of the Tocal study over time paralleled 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. 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. 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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109 Clerk of Peace, Depositions—Supreme Court, Paterson 2 May 1837, Rex vs Bernard Lyons and James Lemon, 9/6309, SRNSW.