Contesting corporal punishment:
Abolitionism, transportation and the British imperial project

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Between the 1820s and the 1840s, anti-slavery ideas shaped debate about the treatment of convicts in the Australian penal colonies. This thesis investigates the impact of abolitionism on one key aspect of convict life: the use of corporal punishment. It traces the rise and decline of abolitionist rhetoric in the work of three vocal critics of flogging: newspaper editor Edward Smith Hall (1786-1860); English politician William Molesworth (1810-1855); and penal reformer Captain Alexander Maconochie (1787-1860). It highlights the connections between their opposition to flogging and their anxieties about the legitimacy of the wider British imperial project.
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Introduction

For over half a century, slavery was one of the main issues on the British political agenda. Between 1787 and 1838, the parliamentary and public struggle to abolish the slave trade and slavery gave the issue an “unprecedented” position in British politics.\(^1\) In turn, abolitionism informed political debate on other social issues, providing reformers with a convenient language of “documentation and persuasion”.\(^2\) By the 1820s, its impact could be felt in a very different facet of imperial policy: the debate over the transportation of convicts to Australia.

In 1838, the Select Committee on Transportation, constituted the previous year to investigate the state of the penal colonies, condemned convictism as a form of slavery.\(^3\) It was a controversial charge, which generated heated debate at the time and has fuelled historical debate ever since, with historians divided over its validity. While I revisit the debate in this thesis, my concerns are rather different. Instead of assessing the accuracy of the charge of ‘slavery’, I examine the complex history of its rhetorical force, within the colonies and across the empire.

By zooming in on one strand of the transportation debate – contention over the legitimacy of corporal punishment – this study illuminates the complex process by which reformers appropriated abolitionist arguments to the convict cause. I highlight how the selective and sometimes even contradictory use of anti-slavery language

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\(^3\) Select Committee on Transportation, "Report, Minutes of Evidence, Appendix, Index" in *House of Commons Parliamentary Papers* (1837-38).
strengthened but also complicated opposition to the flogging of convicts. Moreover, I investigate how the use of abolitionist rhetoric fuelled reformers’ anxieties about the legitimacy of the wider British imperial project.

In tracing the influence of abolitionism on the flogging debate, this thesis contributes to a growing body of literature which seeks to place Australian history in a global context.\(^4\) The cat-of-nine-tails is one of the major icons of Australia’s convict past. From readers of Robert Hughes’ *The Fatal Shore* to visitors to the (now closed) theme park, Old Sydney Town, Australian audiences have been captivated by the spectacle of flogging.\(^5\) Historians too have attached great significance to the flogging of convicts, treating it as somewhat of a litmus test of the wider penal system.

This thesis brings a fresh perspective to what might otherwise be considered an exhausted subject. I suggest some of the different ways in which the insights of the new imperial history, with its greater sensitivity to the role of race, gender and class “difference” and its emphasis on the “interconnectedness” of colony and metropole, can be used to rejuvenate old debates about convict life and to deepen our understanding of the penal colonies’ place in the British imperial venture. Three key themes from the new imperial history recur throughout this thesis: the contested nature of English and British identity; the complex ties between colony and metropole; and the nature of the bourgeois “civilising” project of empire. The strong

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resonance of these themes in the debate over flogging attests to a broader need to situate analysis of the convict era in an imperial context.

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Corporal punishment of convicts was frequent in the early years of white settlement, but was increasingly curtailed, in theory if not in practice, from the 1820s. Floggings of several hundred lashes were commonly reported in the first two decades of settlement whereas, by 1832, the maximum sentence awardable in New South Wales was 100 lashes.\textsuperscript{6} Alternative punishments, such as solitary confinement, were increasingly favoured instead.\textsuperscript{7} Colonial Australia was in this sense an exemplar of penal reform, displaying the contemporary shift from punishment of the body to punishment of the mind.\textsuperscript{8}

Critically, concerns about the use of corporal punishment pre-dated the 1820s. From the administration of Governor Philip King onwards, a series of government orders served to limit the conditions under which flogging could be ordered.\textsuperscript{9} These early

\textsuperscript{6} In the first decades of settlement, floggings of up to 500 strokes could be ordered by a magistrate. Stuart Macintyre, \textit{A Concise History of Australia}, Cambridge Concise Histories. (Cambridge; Melbourne: Cambridge University Press, 1999). 44  
\textsuperscript{9} In 1800, Governor Philip King forbade masters from beating or whipping their assigned servants, thereby placing corporal punishment under the jurisdiction of the colony’s magistracy. To enforce this rule, masters were required to sign indenture papers for their servants listing the terms and conditions on which they were held. A decade later, Governor Lachlan Macquarie took the regulation of corporal punishment a step further by setting a limit on the number of lashes; he ordered that a single magistrate
decisions indicate that the legitimacy of flogging was never simply taken for granted, but required careful management. However, while concerns about corporal punishment were by no means new, their form changed radically in the 1820s: reformers began to articulate their objections to flogging through the rubric of anti-slavery. They would continue to do so into the 1840s, with varying degrees of confidence and emphasis.

This period represented a crucial stage in the history of both transportation and abolitionism. It was a time of significant upheaval in the penal colonies, with the British Government’s transportation policy changing dramatically from one decade to the next.10 It also corresponded roughly with the duration of the second wave of abolitionism (1823-38), when the campaign against the flogging of slaves was at its most forceful.11 It was an opportune time for critics of the penal system to appropriate abolitionist rhetoric to the convict cause.

One strategy adopted by critics was to make explicit comparisons between the flogging of convicts and slaves. This analogy resonated across a broad cross-section of colonial society. At one end of the spectrum, we find convicts comparing themselves to slaves on the basis of their common subjection to the lash. Linus Miller, one of the “Patriot exiles”, published his autobiography Notes of an Exile to Van


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10 The British Government’s commitment to transportation was reaffirmed with the commissioning of the Bigge Inquiry in 1819; however, by 1840 transportation to the mainland had been abolished. Mark Finnane, Punishment in Australian Society, Australian Retrospectives. (Melbourne: Oxford University Press, 1997). 9, 13

11 There were two distinct phases to the abolitionist movement. During the first phase, from 1787 to 1807, abolitionists called for an end to the slave trade. During the second phase of abolitionist campaigning, from 1823 to 1838, abolitionists demanded the full emancipation of slaves. Seymour Drescher, "Public Opinion and the Destruction of British Slavery" in Slavery and British Society 1776-1846, ed. James Walvin (London: Macmillan, 1982). 24
Dieman’s Land in 1846.\textsuperscript{12} According to Cassandra Pybus, it was the ubiquitous use of the lash, as well as reliance on bonded labour, that “most convinced” Miller that convictism was slavery.\textsuperscript{13} At the other end of the spectrum, we find colonial administrators making similar connections. Governor Richard Bourke, for example, surmised in 1834 that magistrates’ authority to flog convicts for the elusive offence “other disorderly or dishonest conduct” would be “out of place in any but a slave code”.\textsuperscript{14} Although these direct comparisons were important, they were not the only means by which abolitionism became linked to the convict cause.

Perhaps more importantly, opponents of the flogging of convicts began to talk about corporal punishment in terms closely derived from the abolitionist anti-flogging model. The particular ways in which they appropriated abolitionist language will be explored in the three chapters of this thesis. In the meantime, it is important to familiarise ourselves with the two core components of the abolitionist anti-flogging model: first, their commitment to the rights of slaves; and second, their alarm at the behaviour of settlers. Abolitionist arguments need to be carefully analysed before attempting to identify where the case against the flogging of convicts intersected and diverged.

\textsuperscript{12} Linus Miller was one of the 92 “Patriot exiles” transported to Van Dieman’s Land in 1840 after being captured in armed incursions into the colony of Upper Canada. For a detailed account of the history of the “Patriot exiles” see: Cassandra Pybus and Hamish Maxwell-Stewart, \textit{American Citizens, British Slaves: Yankee Political Prisoners in an Australian Penal Colony 1839-1850} (Carlton South, Vic.: Melbourne University Press, 2002).


\textsuperscript{14} "Extracts of a Despatch from Major-Governor Bourke, addressed to Mr. Secretary Stanley, dated Government House, Sydney, 15 January 1834", contained in Appendix 2 of Select Committee on Transportation, "Report, Minutes of Evidence, Appendix, Index" in \textit{House of Commons Parliamentary Papers} (1837). 78
Abolitionism was grounded in a conception of universal rights. A product of Enlightenment philosophy, it upheld the notion of a “universal individual”, the rational being who was the bearer of equal political rights.\footnote{Nancy Leys Stepan, "Race, Gender, Science and Citizenship" in Cultures of Empire: Colonisers in Britain and the Empire in the Nineteenth and Twentieth Centuries, ed. Catherine Hall (Manchester: Manchester University Press, 2000). 63} Abolitionism was also closely connected to the evangelical revival of the eighteenth century, which had at its heart a concern with individual salvation, achieved through personal struggle rather than pre-determined by God.\footnote{Leonore Davidoff and Catherine Hall, Family Fortunes, Rev. ed. (London; New York: Routledge, 2002). 25} In this respect, abolitionism represented a radical challenge to prevailing ideas about the racial inferiority of slaves: it conferred subjectivity, and thus personal autonomy.

A key tenet of abolitionism was that slavery violated the individual’s right to bodily sanctity. Thus, abolitionists framed their opposition to flogging in terms of the physical suffering experienced by slaves. Abolitionist journals, such as the Anti-Slavery Reporter, depicted in gory detail the cases of slaves who had been cruelly punished by their masters.\footnote{One of the most high profile cases featured in the Anti-Slavery Reporter concerned Reverand George Bridge, one of Jamaica’s leading advocates of slavery. His slave, Kitty Hilton, accused him of severely kicking and flogging her, leaving her naked. See Anti-Slavery Monthly Reporter no. 66 (September 1830), 373-375. The case is discussed in: Catherine Hall, "William Knibb and the Constitution of the New Black Subject" in Empire and Others: British Encounters with Indigenous Peoples, 1600-1850, ed. Martin Daunton and Rick Halpern (London: UCL Press, 1999). 311} Slave narratives, often heavily mediated by abolitionists who facilitated their publication, recounted at length the physical effects of the floggings their authors had endured or witnessed.\footnote{Two of the most prominent examples of this genre are: Mary Prince and Moira Ferguson, The History of Mary Prince, a West Indian Slave (London; [New York]: Pandora Press, 1987); Olaudah Equiano, The Life of Olaudah Equiano, or Gustavus Vassa, the African (New York: Negro Universities Press, 1969).} Prominent abolitionists also
reported their own conversion to the cause in terms of their exposure to the pain experienced by slaves.  

Abolitionists' focus on physical suffering was deliberate. It appealed to the emerging bourgeois culture of sensibility, in which compassion and reluctance to inflict pain were identified as distinctly “civilised” emotions. More importantly, the focus on physical suffering enabled the reader to relate to and empathise with the slave’s experience. As in other nineteenth century humanitarian narratives, the body served as the “common bond” between those who suffered and those who would help. The immediacy of pain, rather than the abstract wrongs of slavery, facilitated a personal identification with the anti-slavery cause. The abolitionist critique of flogging was in this sense deeply sentimental.

The second aspect of the abolitionist case against corporal punishment concentrated on its effects on the settlers, particularly the West Indian planters. Abolitionists expressed alarm at the apparently gratuitous nature of floggings carried out in the slave societies, implying that planters gained an illicit pleasure from flogging their slaves. These objections tapped into pre-existing fears that the repeated sight of corporal punishment aroused a taste for cruelty in spectators. They were expressed

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19 Granville Sharpe, one of the earliest British abolitionists, reported that he took up the anti-slavery cause after he encountered a black man waiting at the door of his brother to be treated for wounds inflicted on his back by his West Indian owner. See: Thomas W. Laqueur, "Bodies, Details, and the Humanitarian Narrative" in The New Cultural History: Essays, ed. Lynn Hunt (Berkeley: University of California Press, 1989). 178

20 Along with flogging, a variety of other violent practices such as cruelty to animals, public executions, war, duelling, prize fighting and even “football” were attacked as a result of this heightened awareness of pain. See: Karen Halttunen, "Humanitarianism and the Pornography of Pain in Anglo-American Culture" The American Historical Review 100: 2 (1995). 319-20

21 Laqueur, "Bodies, Details, and the Humanitarian Narrative". 177

22 Halttunen, "Humanitarianism and the Pornography of Pain in Anglo-American Culture". 324
most explicitly in relation to female slaves. Abolitionists protested just as much against the exposure of women’s bodies during flogging (slaves were often stripped before hand) as to the severity of the lash. In 1829, for example, the Anti-Slavery Reporter lamented “the pleasure of titillation excited in colonial nerves by the exercise of the constitutional right of the flogging of women”.

Abolitionists thus linked flogging to the allegedly degraded character of the West Indian planters. Displays of whips created a “dramatic and palpable sense of social distance” between the British audience and the planters, highlighting the disparity between metropolitan and colonial norms. This focus on moral degradation tied into abolitionists’ broader claim that settler violence tainted the reputation of the British nation as a force for civilisation, a claim which was quickly redeployed to provoke outrage at the plight of indigenous people in the colonies, including Australia.

Abolitionists provided a powerful model of anti-flogging rhetoric, which touched not only on questions of slavery but human nature. Their opposition to flogging was grounded in a commitment to the rights of slaves, and thus reflected their faith in the human capacity for rationality and redemption. At the same time, abolitionists were alarmed by the behaviour of settlers and highlighted a disturbingly violent, indeed “savage”, side to human nature. Moreover, abolitionists provided a successful model of anti-flogging rhetoric. In 1824, abolitionists achieved a limited victory when the

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24 Anti-Slavery Monthly Reporter, no. 53 (October 1829). 130
25 Drescher, "Public Opinion and the Destruction of British Slavery". 48
British Government introduced an Order in Council for the Crown Colonies, which included a ban on female flogging.\textsuperscript{27} In August 1838, they achieved their ultimate objective: the emancipation of all slaves in the British Empire.

In evaluating the legacy of abolitionism in the debate over the flogging of convicts, it is important to gauge the relative importance of these different factors; to weigh up to what extent reformers’ appropriation of abolitionist language to the convict cause reflected shared concerns about human nature, and to what extent it was motivated by political expediency. In resolving this dilemma, I am mindful of the fact that critics of the penal system were not the only group to build on the abolitionist case. Military reformers who had been campaigning for the eradication of flogging in the British army since the late eighteenth century began to draw explicit comparisons between the treatment of soldiers and slaves.\textsuperscript{28} Similarly, sailors couched their demands for an end to flogging in abolitionist terms.\textsuperscript{29}

Significantly, these groups did not always use abolitionist rhetoric in a way which was sympathetic to the anti-slavery cause. Indeed, what seemed to concern them most was that “Englishmen” had been “reduced” to the state of the “negroes”, an argument which depended upon the “otherness” of the black slave.\textsuperscript{30} These precedents hint at some of the complexities behind reformers’ appropriation of abolitionist arguments.

\textsuperscript{27} Only crown colonies were covered by this order. Colonies with their own legislatures, such as Jamaica and Barbados, were not covered and failed to introduce ameliorative legislation of their own. See: Altink, ”An Outrage on All Decency” 108


\textsuperscript{30} Land, ”’Customs of the Sea’” 177-180
They indicate that historians should be wary of assuming that abolitionist rhetoric was simply reproduced in the penal colonies. Yet close attention to the nuances of abolitionist rhetoric is exactly what is missing in the existing historiography on the transportation debate: the impact of abolitionism tends to be taken for granted, with little regard to the conflicts engendered by its use. The following section explores the reasons for this oversight, and its repercussions for previous histories of convict flogging.

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The influence of abolitionism on the transportation debate is well recognised by Australian historians. Even before the penal colonies were established, the policy of transportation was a target of criticism from penal reformers, as it stood in the way of their campaign for the penitentiary system.\(^{31}\) However, the tide of public opinion only began to change in the 1830s when anti-transportation campaigners attacked the assignment system, under which convicts were allocated to private masters, as a form of slavery.\(^{32}\)

Although the significance of this charge has not been lost on Australian historians, close analysis of the process by which abolitionist rhetoric was appropriated to the anti-transportation cause has not been forthcoming. Instead, historians have tended to become embroiled in debate over the validity of comparing convicts to slaves. This

\(^{31}\) Finnane, *Punishment in Australian Society*. 26-28

\(^{32}\) John Ritchie, "Towards Ending an Unclean Thing: The Molesworth Committee and the Abolition of Transportation to New South Wales, 1837-1840" *Historical Studies* 17: 67 (1967). 145
has left a major gap in the historiography of the transportation debate, a gap which is particularly noticeable when we look at the scholarly literature on flogging.

As Catie Gilchrist has recently observed, for most Australian historians the purpose of studying flogging has been to determine whether convict society was “brutal or benign”. Over the past two decades, the use of flogging has featured prominently in debates over the extent and severity of punishment in the penal colonies. At one end of this debate are historians who claim that flogging was relatively inconspicuous in colonial Australia, particularly in the later years of convict transportation; at the other end, are those who emphasise the constant and inhumane nature of flogging.

One prominent strand of this debate has focused on the prevalence of flogging in Australian colonies compared to the American slave societies, in an effort to demonstrate whether the conditions faced by convicts were better or worse.

Much of this debate was prompted by the publication in 1983 of John Hirst’s revisionist study, *Convict society and its enemies: A history of early New South Wales*. Hirst argued that terms such as “slave” and “slavery” operated as “magic words” in anti-transportation literature; “one touch of these and colonial society was left without a shred of decency”. However, he was ultimately much less concerned

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33 Catie Gilchrist, “‘This Relic of the Cities of the Plain’: Penal Flogging, Convict Morality and the Colonial Imagination,” *Journal of Australian Colonial History* 9 (2007), 3


36 Hirst, *Convict Society and Its Enemies*. 26
with tracing anti-transportation campaigners’ appropriation of abolitionist discourse than he was with discrediting their claim that the convicts were treated like slaves. Above all, Hirst sought to demonstrate that these claims had distorted historians’ understandings of convict society.\textsuperscript{37} He argued that historians had placed too much weight on the punishment of convicts, and not enough on the rewards for their good behaviour. Furthermore, he contended that flogging in New South Wales was “institutionalised and controlled”, and that subsequently the opportunities for “indulging” the “perversion” of sadism were “very much less than in the slave societies in the Americas”.\textsuperscript{38}

Five years later, the landmark economic history, \textit{Convict Workers}, gave further credence to Hirst’s argument. In his chapter on the care of convicts, Stephen Nicholas argued that the lash was used “judiciously” in colonial Australia, and that physical punishment was balanced against rewards as a means of motivating labour.\textsuperscript{39} He calculated that almost two-thirds of the convicts received only one beating or no beating at all during their sentences; and concluded that many other coerced workers, including American and Spanish slaves, received “more brutal treatment” than Australian convicts.\textsuperscript{40}

Not surprisingly, other historians quickly took issue with revisionist attempts to downplay the prevalence of violence in the penal colonies – to “muffle” the lash as

\begin{itemize}
\item \textsuperscript{37} Ibid. 27
\item \textsuperscript{38} Ibid. 61
\item \textsuperscript{40} Ibid. 183
\end{itemize}
Tamsin O’Connor put it. However, they have been slower to dispute revisionists’ fixation on the convict/slave analogy. Where Hirst asserted that the use of flogging was relatively restrained in New South Wales, David Neal simply turned the argument around. He maintained that the figures on the use of flogging, and the bitter complaints from magistrates about restrictions on their powers, suggested an “arguably higher” degree of reliance on coercion in the penal colonies than in the contemporary slave-holding societies. More recently, Michael Wolter has stressed that flogging was used “to elicit the sounds of convicts’ complete physical and emotional subjection”, revealing a “sub-humanising tendency” traditionally associated with slave-holding societies.

While the topic of flogging has evoked some of the most passionate scholarship on the convict era, the terms of historiographical debate have remained narrowly defined. The preoccupation with whether convict society was “brutal or benign” has certainly fuelled speculation over the comparative rates of flogging in the penal colonies and slave states, but it has added little to our understanding of the influence of abolitionism on debates over corporal punishment, or transportation more generally.

This thesis returns to the starting point of the revisionist case: anti-transportation campaigners’ claims that the status of convicts was synonymous with that of slaves. However, rather than seeking to test the validity of these claims, I explore the impact of the analogy on debate over the use of flogging. Rather than assuming that the “enemies” of convict society simply reproduced abolitionists’ objections to flogging, I

41 O’Connor, "Buckley’s Chance". 117
42 Neal, The Rule of Law in a Penal Colony. 139
43 Wolter, "Sound and Fury in Colonial Australia". 3
investigate to what extent abolitionist arguments were modified. Most importantly, rather than assuming that the appropriation of abolitionist arguments strengthened opposition to flogging, I suggest that in particular ways they served to complicate that opposition. This alternative approach is grounded in the wider scholarship of the new imperial history.

The new imperial history “has at its heart the importance of difference… and its ascription and maintenance among colonisers as well as colonised”. 44 Such an approach calls for greater sensitivity to the interaction of class, race and gender in the making of colonial subjects. These considerations are particularly important to bear in mind in determining the ways in which abolitionist discourse was modified by opponents of the flogging of convicts. Critics of the penal system had to contend with several important differences between the circumstances of convicts and slaves. To begin with, the notion that convicts stemmed from the “professional criminal classes” and were considered “incorrigible” lent weight to the belief that convicts, unlike slaves, had brought their degradation upon themselves. 45 Nor can we automatically assume that the “whiteness” of convicts was a factor in their favour, as many were considered to be racially inferior due to their Irish background. 46 The fact that only male convicts were flogged after 1817 also altered the gender dynamics of the debate. 47 As such, this thesis seeks to clarify the different ways in which the convicts’


45 For a discussion of nineteenth century notions of criminality and convicts see: 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).


47 While convict women were flogged in the early years of settlement, the vast majority of cases involved men; furthermore, the flogging of female convicts was explicitly prohibited in 1817. Cases of
criminality, race and manliness became a subject of contention in the debate over flogging, and how this complicated reformers’ efforts to appropriate abolitionist rhetoric.

This thesis is also founded on an understanding of the “interconnectedness” of the British Empire. A key objective of scholars of the new imperial history, exemplified in Catherine Hall’s *Civilising Subjects*, has been to place colony and metropole in a single analytic framework: to see people, commodities and ideas as circulating “not only from the metropole, but to the metropole and between multiple imperial sites”.

In tracing the influence of abolitionism on the transportation debate, this thesis offers a concrete example of how these colonial networks operated, highlighting links not only between Britain and the Australian penal colonies, but the slave colonies, particularly those of the West Indies.

Most importantly, this thesis is indebted to the new imperial history for its emphasis on the “tensions” generated by colonial rule. Three recurrent sources of unease stand out in this period and are formally explored in individual chapters. One persistent cause of concern was the question of who could claim British “rights and liberties”; while colonists were often viewed disparagingly from the metropole, they continued to insist on their “Englishness” to promote their interests, for example in debates over

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self-government. A related set of anxieties revolved around the negotiation of metropolitan and colonial interests which, though traditionally understood as dichotomous, were constantly being redefined and contested. A third source of concern arose out of the “civilising” objectives of British imperialism which, from the nineteenth century, was increasingly driven by the middle-class “philanthropic moralising mission” and directed not only at colonised subjects but the colonists themselves.

This thesis explores how these tensions played out in the transportation debate by focusing on the work of three vocal opponents of flogging: newspaper editor Edward Smith Hall (1786-1860), English politician Sir William Molesworth (1810–1855) and penal reformer Captain Alexander Maconochie (1787-1860). In focusing on their work, it is by no means my intention to suggest that they were “leaders” of the anti-flogging cause in colonial Australia. Indeed, if anything I hope to demonstrate that their opposition to flogging was deeply ambivalent, and to debunk the mythology surrounding them as “extraordinary” reformers. However, Hall, Molesworth and Maconochie are representative of a range of different positions from which the flogging of convicts was contested, both within and outside the colony. They also stand out for their unrelenting involvement in public debate about corporal punishment.


51 Stoler, Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things. 98-101
The benefits of focusing on the “life histories” of individual colonists and colonial observers have been highlighted by numerous scholars of the new imperial history. Catherine Hall suggests that the study of individual lives provides a natural “starting point” for a history concerned with the “making” of colonial subjects.52 Meanwhile, David Lambert and Alan Lester observe that colonial lives “constituted meaningful connections across the empire in their own right”; the study of “life histories” thus enables us to reconstruct colonial relations with greater precision.53 The structure of this thesis broadly follows this model, with each chapter focused on the work of one figure.

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In 1838 the lives of Sir William Molesworth, Edward Smith Hall and Captain Alexander Maconochie were briefly drawn together by the Select Committee on Transportation. The Committee was appointed to inquire into the efficacy of transportation, the “moral state” of the penal colonies and their susceptibility to improvement. Its findings, presented to the House of Commons on 3 August, were definitive: the final report portrayed the colonies as a place of depravity and called for the abolition of transportation.54

53 Lambert and Lester, "Imperial Spaces, Imperial Subjects". 2
54 Select Committee on Transportation, "Report, Minutes of Evidence, Appendix, Index". xlvi
For Sir William Molesworth, the instigator and chairman of the Select Committee, it was a gratifying moment. The young Parliamentary Radical had spent over a year busily interviewing witnesses and reviewing colonial papers, compiling the case against transportation. But as Molesworth celebrated his political victory, the colonies were in uproar. Edward Smith Hall, a resident of New South Wales since 1811, was among those outraged by the report. An ardent supporter of transportation, he rejected the claim that the colony had outgrown the convict labour supply. While Hall accepted the accusations of colonial immorality, he argued that the uneven sex ratio, not the transportation system itself, was the root of vice. His newspaper, *The Monitor*, railed against the report’s findings. Colonists’ wrath was directed not only at the report but at those who had testified before the Committee. In Van Dieman’s Land, Lieutenant-Governor Sir John Franklin dismissed his private secretary, Captain Alexander Maconochie, when it was revealed that Maconochie’s criticisms of the convict assignment system had been published in England and were heavily referenced in the Select Committee’s report. It would be over a year before Maconochie received a new appointment.

In the aftermath of the Select Committee, Molesworth, Hall and Maconochie found themselves in very different, indeed antagonistic, positions. Yet although they stood divided over the future of transportation, they were united in the belief that there was

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something deeply wrong with the existing system. All three were vocal, if ambivalent, opponents of the flogging of convicts. Moreover, all three articulated their opposition to corporal punishment through the rubric of anti-slavery. Ironically, the central claim of the Select Committee’s report – that convictism was a form of slavery – was a point on which they all agreed.

Hall, the first of the three men to appropriate abolitionist rhetoric to the convict cause, was an outspoken opponent of flogging in the late 1820s. However, his position on flogging was erratic, reflecting the volatile nature of colonial opinion. He drew extensively on the abolitionist language of rights but used it in contradictory ways. As we will see, at the heart of his dilemma over flogging was the contested nature of the “rights of Englishmen”, an issue he conscientiously struggled to resolve.

Writing at the height of abolitionist fervour in the late 1830s, Molesworth took up the second component of the abolitionist anti-flogging model: their objections to settler violence. As the chief author of the Select Committee’s final report, his use of the convict/slave analogy is well-known and has often been dismissed as a product of metropolitan prejudice. Yet a different perspective of the power dynamics behind his accusations of settler violence can be gained by moving away from a traditional dichotomy between metropolitan and colonial interests.

Maconochie, who was eventually appointed commander of Norfolk Island in 1840, was the least enthusiastic of the three men in his use of abolitionist rhetoric. A prolific writer on questions of penal reform, he appropriated abolitionist language extensively in the late 1830s, but had discarded it by the mid-1840s. He is fascinating not only for
his critique of corporal punishment, but for the alternatives he envisioned. His marks system of prison discipline was an exemplary example of the bourgeois “civilising” project of empire.

While Hall, Molesworth and Maconochie were among the most vocal critics of corporal punishment, their opposition was always tentative. By tracing their selective and sometimes even contradictory use of abolitionist language, this thesis seeks to untangle some of their ambivalence. It resituates the debate over the flogging of convicts in its original imperial context.
Chapter 1

Edward Smith Hall: Flogging and the “rights of Englishmen”

Edward Smith Hall made a name for himself in New South Wales through his provocative newspaper, *The Monitor*. A gentleman settler and former banker, Hall shocked his contemporaries with his renegade views. First published in 1826, fifteen years after Hall arrived in the colony, *The Monitor* soon became known as “the Convict Journal”.58 The inaugural edition set out his political sympathies, promising “firm, consistent, persevering and prudent” support for the “injured and oppressed, high or low, bond or free”.59 The newspaper drew Hall into more than his share of public controversies, including numerous criminal libel cases, one of which landed him in jail in 1829.60 It also sparked an on-going conflict with Governor Ralph Darling, who regarded *The Monitor* as a leading cause of convict insubordination in the colony.61

Given Hall’s political sympathies, one might expect *The Monitor* to have adopted a strong anti-flogging platform. Yet Hall defies easy categorisation: he was clearly troubled by the use of flogging, but his opposition was tentative and faltered at several key moments. As editor of *The Monitor*, Hall was assigned convicts and thus personally experienced some of the difficulties of enforcing discipline, including the

59 *The Monitor*, 19 May 1826, 2
61 Ihde, *A Manifesto for New South Wales*. 152
“unpleasant” necessity of flogging.\(^{62}\) As we will see, those considered “incorrigible” were a particular source of anxiety for him.

This chapter explores how Hall’s underlying ambivalence about flogging was compounded by his contradictory use of the convict/slave analogy. Abolitionist ideas were central to Hall’s critique of corporal punishment. The Monitor was founded just three years after the second wave of abolitionist campaigning took off, and Hall was quick to align the plight of convicts with that of slaves. However, he did not always use abolitionist rhetoric in a way which was sympathetic to the anti-slavery movement. Instead, he often followed the precedent set by military reformers in the early nineteenth century and treated the suffering of convicts and slaves as rival causes. The military reformers’ campaign, while not as high profile as that of abolitionists, gained public support in the aftermath of the wars with the French Revolutionary and Napoleonic armies (1790-1815).\(^{63}\)

By tracing the competing influence of abolitionists and military reformers on Hall’s ideas about flogging this chapter explains his ambivalence in terms of broader anxieties about who could claim the “rights of Englishmen”. These two models drew on very different understandings of rights: abolitionists adhered to a notion of universal rights, whereas military reformers’ definition was far more circumscribed.

\(^{62}\) Two of his convict servants were flogged in April 1834, after he complained to the police that they were incorrigible; one received 50 lashes and the other 75 lashes. Ihde, A Manifesto for New South Wale. 157-58

As we will see, Hall’s stance on flogging changed as he grappled with the question of which version of the “rights of Englishmen” best applied to the case of the convicts.

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In the late 1820s, Hall was one of the most outspoken opponents of flogging in New South Wales. In a series of articles published in *The Monitor* in 1826, he condemned the infliction of illegal punishments on convicts, including the use of flogging to elicit confessions. Hall’s exposé was based on the findings of an investigation into court bench proceedings, carried out by the Legislative Council in the previous year. The investigation implicated several leading magistrates, who were subsequently protected from prosecution by an Act of Indemnity passed by the Legislative Council. Due to his provocative coverage of the illegal punishments, Hall was accused of inciting discontent and insubordination amongst the convict ranks. However, he dismissed the threat of a convict revolt on the basis that the convicts were “scattered” across the colony and thus unable to “act mutinously as a body”.

Disappointed as he was by the reaction of his fellow colonists, Hall clearly felt vindicated when the findings of the investigation were presented to the House of Commons in April 1826. The “light of English freedom doth occasionally break our gloom”, he wrote on 22 September 1826. The illegal punishments “have been visited with that measure of abhorrence which we felt they deserved, and hoped they would

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66 *The Monitor*, 29 May 1828, 1200
receive!” He used the opportunity to cast himself as a true British patriot, singling out leading members of Parliament who shared his concerns about the illegal punishments episode.67

Moreover, Hall set out to shame his fellow colonists by casting aspersions on their Britishness. Deliberately fostering their sensitivity to the metropolitan gaze, he used English newspaper commentary to chastise the colonial government, re-publishing numerous articles in which New South Wales stood condemned. The Times questioned the colony’s future within the British Empire, warning “it is time to contract the limits of British Government, if its extremities begin to display a rottenness like that [in New South Wales]”.68 The British Traveller carried this theme even further, expressing astonishment that such events could take place “in a colony under British jurisdiction”. According to the editor, the colonial magistrates were not just a “disgrace to the name of England”; their cruelty was on par with “Turkish barbarity” and the “horrors of the Inquisition”.69

The important point here is not whether the comments selected by Hall accurately represented English opinion, but that he presented them as the definitive metropolitan perspective and sought to thereby strengthen his case against flogging. Hall had previously made similar analogies himself – in July 1826, for example, he referred to “the Australian inquisition”70 – but to be able to use the words of English politicians

67 The Monitor, 22 September 1826, 148
68 Ibid. 147
69 The Monitor 17 November 1826, 218-19
70 The Monitor, 14 July 1826, 68
and newspapers themselves added an additional level of authority. For a colony sensitive to metropolitan opinion, such accusations carried significant weight.

Only a few years later, however, Hall appeared to have joined the ranks of the colonists he had previously sought to shame. In 1832, Governor Bourke introduced the *Summary Jurisdiction Act*, the first comprehensive legislation regulating corporal punishment in the colony. The Act largely served to consolidate previous government orders, but it also included some new restrictions on magistrate’s powers. A backlash quickly followed, particularly in the Hunter Valley region, only to intensify after a convict revolt broke out at James Mudie’s Castle Forbes estate in November 1833. Hall surprisingly joined in, calling for harsher discipline and decrying the leniency of the “old-women Justices” whose laxity was “opening a door to Colonial ruin”.

Where Hall previously dismissed the threat of convicts, now he played to colonists’ anxieties. The settlers had begun to fear their men, he warned; at night they “lie down in dread of what may happen to their property”. To strengthen his case, Hall published letters from subscribers claiming that that convicts no longer dreaded the lash. The new standard cat which had been issued was no heavier than a “fly-beater”.

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71 The *Summary Jurisdiction Act* set out a detailed list of offences for which corporal punishment could be ordered, including absconding, absenting, neglect of work, disobedience, insolence, drunkenness and disorderly conduct. It also restricted magistrate’s powers to punish offenders, setting a maximum of 50 lashes for a first offence, and 100 lashes for a second offence; and prohibiting single magistrates from awarding more than 50 lashes. Bourke also ordered floggings to be inflicted by a standard instrument, to be issued by the Hyde Park Barracks. See: Gryphon Books Pty. Ltd., and Dove Bindery. *Convict Discipline, 1833 : A Facsimile of the Rare Colonial Circular No. 33-48 and Other Related Documents* (Melbourne: Gryphon Books, 1977). 11-17

72 *The Sydney Monitor*, 18 August 1832

73 Ibid.
an “Old Grazier” asserted. 74 Another correspondent claimed to have been told by a convict who had received a dozen lashes that they “might give it him from morn to night!” 75

Moreover, where Hall previously cast flogging as an affront to British morality, now he explicitly justified its use in terms of the English law. In August 1832, we find references to standard practice in England in order to justify stricter measures in New South Wales. Hall reassured himself that vagabonds and petty thieves “at home” were also subjected to flogging because “the law holds, and experience has shewn, that there is no other way of keeping a prison population... by any other means”. 76 This example highlights once again the selective and pragmatic nature of Hall’s references to metropolitan opinion.

The contrast between Hall’s exposé of illegal punishments in 1826 and his reaction to the Summary Jurisdiction Act in 1832 and 1833 is perhaps the most dramatic example of his inconsistent attitude to flogging. However, as Erin Ihde demonstrates in his recently published study, A Manifesto for New South Wales: Edward Smith Hall and the Sydney Monitor, 1826-1840, it is misleading to see it as an abrupt break from the past. Even before Bourke’s reforms arrived on the scene, Hall’s views on corporal punishment were confused. 77

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74 The Sydney Monitor, 30 March 1833
75 The Sydney Monitor, 27 April 1833
76 The Sydney Monitor, 18 August 1832, 4
77 Ihde, A Manifesto for New South Wales, 160
Hall’s stance on flogging vacillated, depending on the nature of the offence and the circumstances in which it occurred. In July 1826, he opposed the flogging of runaways, for example, on the basis that convicts’ attempts to escape reflected their sense of honour and self-respect; and defended a barber who was flogged for drunkenly threatening a constable.\(^8\) But in the very same sentence he urged the scourging of the “infamous” Robert Rawlins for exposing his person and using obscene language towards two young women, asserting:

> We… should have been as pleased to hear of the infamous Rawlins being scourged, as we were grieved at the fate of the poor barber and attempting run-a-way, when they had to endure the like torture for such natural and venial offences…\(^79\)

In Hall’s eyes, what was “torture” for one group of convicts, was fair treatment for another. He singled out rape, bestiality and blasphemy as crimes to which he thought flogging was “justly applicable”.\(^80\) Falling back on a notion of convict incorrigibility, he insisted that the “brutish consciences” of “low characters” would not respond to any other form of discipline than flogging.\(^81\)

Hall’s stance on flogging also vacillated in relation to questions of gender. Like many of his contemporaries, he believed that convict women were irredeemable. When the women had been “at home” in England, they were “humble enough” he wrote; in the colony, however, they became indolent and insolent.\(^82\) What’s more, he complained,

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\(^78\) The Monitor 14 July 1826, 66; see also The Monitor 30 June 1826, 50

\(^79\) The Monitor 14 July 1826, 66

\(^80\) Ibid. 66

\(^81\) The Monitor 20 October 1826, 178

\(^82\) The Monitor, 16 August 1827, 587
their behaviour went by unpunished. The flogging of women throughout the British Empire had been banned in 1817, and even before this the practice had been largely phased out in New South Wales. Yet Hall deplored what he considered to be the subsequent disparity between the treatment of male and female convicts. Throughout The Monitor, we find cases of Hall decrying the flogging of men, while urging more severe treatment of women. In August 1826, for example, he complained that a man had received 50 lashes for tying a pig belonging to a neighbour, while a female convict, found guilty of perjury, was “scarcely punished at all”.83 Again in November 1827 he complained that “male prisoners” were flogged for idleness, insolence, drunkenness or gross unchastity but:

> decency and humanity will not in the present day… allow of such punishments being inflicted on our female convicts, even though they were a hundred per cent more abandoned than those free women in England…84

He thus appeared torn between the standards of “decency and humanity”, and his belief that the “abandoned” female convicts had forfeited their right to proper treatment.

It was not just Hall’s views on who should be flogged that varied over time. Even his views on the manner in which flogging should be administered changed erratically. In 1830, Governor Darling issued a proclamation on penal settlements which included a

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83 The Monitor 11 August 1826, 101. The convict referred to, Bridget Stewart, was translated from the first class – the only class from which convict women were assigned – to the third (or penal) class, for those considered to have committed serious offences and incarcerated in the female factories. On the classification system see: Kay Daniels, Convict Women (St. Leonards, N.S.W.: Allen & Unwin, 1998). 79

84 The Monitor, 19 November 1827, 774
clause allowing commandants to order successive punishments of up to 100 lashes over three days. Hall criticised this method as “a cruelty of punishment exceeding any which Captain Logan ever inflicted”. He argued that it would be more “merciful” to give the 300 lashes in one go. Less than a year later, however, Hall approved of dividing scourgings into multiple portions on the basis that it caused less harm to the convict’s health, while increasing the “agony of anticipation”. Importantly, in both cases Hall’s arguments were based on the assumption that flogging was a legitimate punishment, so long as it was administered in a proper and humane manner.

Clearly, Hall never fitted comfortably into either the pro-flogging or the anti-flogging camp. His opposition to flogging vacillated depending on the nature of the offence, the character of the offender, and the method of administration. How do we explain this ambivalence? Most historians have treated Hall’s inconsistency as a sign of political expediency or hypocrisy; they portray him as betraying his promise to expose the injustices of the convict system. For example, R. B. Walker attributed Hall’s response to the Summary Jurisdiction Act to his links with James Mudie, who provided financial backing to The Monitor in 1833. However, Ihde’s more recent study departs significantly from this conventional depiction of Hall as a political opportunist. He instead highlights Hall’s commitment to the principle of mutual

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85 Captain Patrick Logan was a member of the 57th Regiment, which arrived in New South Wales in April 1825. He was appointed commander of the Moreton Bay penal settlement in 1826, where he developed a reputation for cruelty. Robert Hughes describes Logan as a “relentless flogger”. A journal kept by a convict clerk for Peter Spicer, the superintendent of convicts, showed that from February to October 1828, Logan ordered 200 floggings, for a total of 11 100 lashes. See Robert Hughes, The Fatal Shore: A History of the Transportation of Convicts to Australia, 1787-1868 (London: Collins Harvill, 1987). 446

86 The Sydney Monitor, 13 November 1830

87 The Sydney Monitor, 18 August 1832, quoted in Ihde, A Manifesto for New South Wales. 160

obligation and his subsequent belief that it was unfair for a master to flog his convicts if their offence resulted from poor treatment – for example, if they refused to work because their rations were inadequate – but reasonable under other circumstances. At play here was a distinction between the morally deserving and undeserving.\textsuperscript{89}

Significantly, both of these approaches explain Hall’s attitudes to corporal punishment in terms of the local conditions of the colony. The first focuses on the power politics of colonial elites, and the impact of patronage on Hall’s editorial policy. The second emphasises the need to carefully balance the power of master and convict. More importantly, both approaches tend to portray Hall’s ambivalence as a product of his idiosyncratic personality: his personal vendetta against Governor Darling, on the one hand; and his intellectual disposition, on the other hand. While these factors may explain the immediate causes of Hall’s ambivalence, they do not account for the broader cultural anxiety about flogging.

Historians’ focus on the local and personal factors behind Hall’s ambivalence has blinded them to the trans-imperial context in which debate about the flogging of convicts occurred. Yet close examination of The Monitor demonstrates that Hall was not only aware of concurrent debates about the flogging of slaves and soldiers elsewhere in the British Empire, but that they were an important reference point for his views on convicts. His ambivalence about flogging needs to be understood in this wider context. We need to pay close attention to the ways in which the ideas of abolitionists and military reformers strengthened, or alternatively complicated, his opposition to flogging.

\textsuperscript{89} Ihde, \textit{A Manifesto for New South Wales}. 143-175
One of the figures who appeared repeatedly in *The Monitor* during its early years was a one-armed convict shepherd who, “though thin and sickly from starvation”, had received a sentence of 500 lashes from the Liverpool bench. The man had complained of insufficient rations, and warned his overseer “of the folly of giving him only half-a-belly of victuals, when he is at the same moment entrusted with the charge of a thousand pounds’ worth of sheep in lambing time”. He had also implied to the overseer that “it was in the power of such men as him, in lambing time, to revenge themselves for the ill-usage they received”. His complaints thus fitted into a broader pattern of convict protest based on the principle of compensatory retribution.

Hall treated the “poor shepherd” as the emblematic convict victim, the standard against which all other cruelties were to be compared. One of the most striking aspects of the case he built around the “poor shepherd” is that it invoked the English law. Hall expressed outrage that the man had been punished so severely for these mere “pieces of talk, which were no offences in English law”. In this respect, the “poor shepherd” case reflected one of Hall’s main preoccupations: paramount in his

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90 *The Monitor*, 15 September 1826, 149
91 *The Monitor*, 13 April 1827, 380
92 *The Monitor*, 15 September 1826, 149
93 Alan Atkinson identifies compensatory retribution as one of four patterns of convict protest. He defines compensatory retribution as an act designed to punish the convict master for specific acts of injustice. Atkinson notes that compensatory retribution usually involved wilful damage to or loss of a master’s property, for example the deliberate loss of stock animals and rick-burning. See Alan Atkinson, "Four Patterns of Convict Protest" *Labour History* 37 (1979). 30, 39-41
94 *The Monitor*, 15 September 1826, 149

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mind was the right of convicts to the protection of the English law. He framed his opposition to flogging in terms of the “rights of Englishmen”.

Hall’s preoccupation with the “rights of Englishmen” is a key theme in Ihde’s *A Manifesto for New South Wales: Edward Smith Hall and the Sydney Monitor, 1826-1840*. Ihde explains Hall’s incessant references to the “rights of Englishmen” as part of his struggle to maintain an English identity whilst at the same time adapting English ways to Australian conditions.95 However, he overlooks the ways in which Hall’s understanding of the “rights of Englishmen” evolved in relation to other parts of the empire, and in relation to other British subjects.

Indeed, the “rights of Englishmen” was by no means a static concept which Hall simply brought with him from England. Rather, it was informed by on-going debates in the metropole and beyond to which he remained attuned after his arrival in New South Wales. An avid reader of English newspapers, Hall kept up with developments throughout the empire, and through *The Monitor*, he sought to expose colonists to them as well. He explicitly promised to include more parliamentary intelligence and foreign news in *The Monitor* than other colonial newspapers.96

In adopting the phrase “the rights of Englishmen”, Hall drew on two distinct models of anti-flogging discourse: abolitionist and military reformist. Both of these campaigns capitalised on the rhetorical power of the “rights of Englishmen”, yet they used the term in very different ways. As previously noted, abolitionists adhered to a conception of universal rights and framed their arguments against flogging in terms of

95 Ihde, *A Manifesto for New South Wales*. xxv
96 Ibid. 73
racial equality. Thomas Fowell Buxton, a founding member of the Anti-Slavery Society in 1823, expressed his abhorrence to flogging in the following terms:

The heart of man revolts at the notion that because my skin is white I have therefore a right to inflict torments and degradation… Nature has not given to the white men a right to the bodies of black men.\textsuperscript{97}

Importantly, abolitionists’ stated commitment to racial equality rested on condescending assumptions about the British bestowing freedom and civilisation on the negro. The “official” image of abolitionism – a kneeling slave asking “Am I not a Man and a Brother?” – captured this confusing mixture of egalitarianism and paternalism.\textsuperscript{98} Despite these qualifications, abolitionists’ conception of universal rights represented a radical challenge to the existing colonial order.

The arguments of military reformers built on the abolitionist case, but not necessarily in a way that implied support for the anti-slavery cause. In their campaign for an end to flogging, military reformers made explicit comparisons between the suffering of the slave and the soldier, but they did so in a way that was often reactionary rather sympathetic. For example, Whig MP Henry Brougham criticised fellow abolitionists in 1811 for expressing their abhorrence at the flogging of negroes but not of British soldiers even though the latter were “a gallant and manly race of beings”.\textsuperscript{99} Racial difference, rather than universal rights, was at the heart of the military reformers’

\textsuperscript{97} Anti-Slavery Monthly Reporter, no. 36 (May 1828), 229-30


\textsuperscript{99} Quoted in Steiner, "Separating the Soldier from the Citizen: Ideology and Criticism of Corporal Punishment in the British Armies, 1790-1815." 20
arguments. They adopted a far more circumscribed view of who could claim the “rights of Englishmen”.

Hall referred to the anti-flogging campaigns of both abolitionists and military reformers in *The Monitor*, but which did he consider most persuasive? Working out just where Hall positioned himself in relation to the two causes, and which model of rights he subscribed to, can help in turn to clarify his ambivalence about the flogging of convicts.

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Having joined the evangelical movement as a young man, Hall had direct links with the anti-slavery cause in England. Indeed, his application to migrate to New South Wales was supported with recommendations from none other than leading British abolitionist William Wilberforce.¹⁰⁰ Once in the colony, Hall kept up with the progress of the abolitionist cause. The very first edition of *The Monitor* included extracts from the House of Commons debate over slave amelioration in the West Indies, which included measures to prohibit the flogging of female slaves; and limit the flogging of male slaves.¹⁰¹ Over the course of the next year and a half, Hall continued to publish material on this topic. On 23 June 1826, *The Monitor* reproduced a speech by Buxton which included a lengthy section on the flogging of female slaves.¹⁰² In August and September 1837, Hall published extracts from the Second Report of the Society for the Mitigation and Gradual Abolition of Slavery throughout

¹⁰⁰ Kenny, "Hall, Edward Smith (1786 - 1860)".
¹⁰¹ *The Monitor*, 19 May 1826, 6
¹⁰² *The Monitor*, 23 June 1826, supplement
the British Dominions which drew attention to planters’ resistance to amelioration and the persistence of flogging in the West Indies.\textsuperscript{103}

Abolitionist ideas informed Hall’s opposition to the flogging of convicts on a number of levels. Here I focus on how the theme of slavery was woven into his case against the use of illegal punishments in the period 1826 to 1830. As demonstrated at the beginning of the chapter, this issue sparked his earliest objections to flogging, and also provoked a vehement response from the authorities. It is thus pertinent to consider to what extent abolitionism strengthened his resolve to speak out on the issue, and to what extent he directly incorporated abolitionist rhetoric into his critique.

Due to his provocative coverage of the use of illegal punishments, Hall was accused of inciting discontent and insubordination amongst the convict ranks. Governor Darling warned commandants of penal settlements and superintendents of penal gangs to prevent their convicts from having access to the \textit{Monitor}.\textsuperscript{104} Accusations along these lines came not just from the Government but from Hall’s own readers. Hall was aware that most of his readers did not share his views on convict discipline; in September 1827, he estimated that two-thirds of subscribers differed from him on this matter.\textsuperscript{105}

Nonetheless, Hall was adamant that he must follow his conscience; that he must write from his “heart and understanding”, rather than simply follow “popular feeling”.\textsuperscript{106}

\textsuperscript{103} See: \textit{The Monitor}, 30 August 1827, 621; 3 September 1827, 629; 13 September 1827, 637
\textsuperscript{104} Ihde, \textit{A Manifesto for New South Wales}. 152
\textsuperscript{105} \textit{The Monitor}, 3 September 1827, 630
\textsuperscript{106} \textit{The Monitor}, 20 April 1827, 388
Indeed, he appeared to derive a peculiar satisfaction from his controversial position as a sign of his moral integrity, comparing himself with Wilberforce and his opponents with the West Indian planters:

We will be egoists enough to acknowledge, that in a Society in which the servants are bondmen, our opinions are likely to be about as fashionable, as Mr. Wilberforce’s are in Jamaica or Barbadoes [sic].

Hall thus constructed an elaborate analogy between colonists’ response to his exposure of convict abuse, and West Indian planters’ response to the anti-slavery cause. Positioning himself as a moral crusader, he aligned the causes of convicts and slaves with one another.

Hall’s belief that his opposition to the illegal flogging of convicts aligned him with the anti-slavery cause is also demonstrated by his decision to directly target his message at abolitionists in England. In July 1830, while in prison on charges of criminal libel, Hall wrote to Buxton in the hope that he would take up the plight of the convict “outcasts”. Hall had been consistently rebuked by the Colonial Secretary, but hoped that Buxton, who was “renowned even in this remote Colony” for his benevolence, would show more interest in the matter.

Hall carefully framed his case against illegal floggings in a way which would speak to Buxton’s concerns as an abolitionist. He explicitly compared the situation of the convicts to that of the slaves. The convicts’ subjection to the summary jurisdiction of

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107 *The Monitor*, 3 September 1827, 630
108 *The Sydney Monitor*, 17 July 1830
magistrates, he wrote, was “analogous to the taking of the negroes of our West Indian
Colonies from under the protection of His Majesty’s Judges and the old laws of
England, and placing them in the power of their planter-overseers”. In spelling out
the connection between the two causes, Hall sought to ensure that Buxton would pay
closer attention to his argument.

But Hall also spoke to Buxton’s concerns as an abolitionist in less explicit, and
perhaps even unconscious ways. Hall sought to exploit the paternalistic dimension of
abolitionism by selecting cases involving convicts who were obviously weak or
injured – a cripple who received 50 lashes for no apparent reason; and an old and
lame ex-soldier who received 50 lashes for feigning sickness and died later that
week. His representation of the suffering of convicts similarly targeted Buxton’s
paternalism. In a highly provocative passage, he combined the language of pain with a
sense of the convicts’ powerlessness, emphasising the “silent pleadings” and “dumb
eloquence” of their wounded bodies:

The chief evidence which I, as a public prosecutor, should have to put my trust in, would be,
by directing the felon witnesses to strip, and to shew their backs to the Jury, furrowed,
knotted, mahogany-coloured, and fleshless. I should depend upon the sight of their emaciated
forms, and on the silent pleadings of their wounds, healed indeed, but still apparent… I should
trust to the dumb eloquence of their lacerated bodies rather than to their confused, frightened
statements.

109 Ibid.
110 *The Sydney Monitor*, 17 July 1830
111 Ibid.
This passage appealed to Buxton’s abolitionist concerns on another level as well. It raised a familiar dilemma regarding the difficulty of verifying the testimony of convicts (or in Buxton’s case, the testimony of slaves) against that of their superiors. One strategy developed by abolitionists to resolve this dilemma was to argue that the bodies of slaves spoke for themselves. Thomas Pringle, the editor of *History of Mary Prince*, for example, reassured readers that female abolitionists had verified the scars on Mary’s back.\(^{112}\) Hall’s suggestion that the sight of the convicts’ bodies was the “chief evidence” of their suffering was highly reminiscent of the abolitionist case.

Finally, and most importantly, when Hall appealed to Buxton he used the language of universal rights. Citing religious doctrine in his favour, he wrote that the convicts were “outcasts, but still *men*, bearing the image of the Supreme Being, defaced indeed, deeply defaced, but still his image”.\(^{113}\) He thus emphasised their innate rights as human beings, and as men, rights which he argued prevailed despite the criminal offences which they had committed.

Clearly, Hall’s case against illegal punishments relied heavily on abolitionist rhetoric. But in evaluating the overall importance of abolitionism, it is important to keep in mind the audience that he was writing for. Hall’s message was targeted not just at a colonial audience but at abolitionists such as Buxton in the metropole. This raises the question of whether his use of abolitionist rhetoric was a simply matter of political expediency. It is noteworthy that while Hall used the language of universal rights when he was appealing to Buxton, this did not necessarily carry through to his

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\(^{113}\) *The Sydney Monitor*, 17 July 1830
arguments elsewhere. Indeed, in *The Monitor* the abolitionists’ language of universal rights was forced to compete with a far more exclusive definition of the “rights of Englishmen”: that of the military reformers.

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Just as *The Monitor* featured material on the progress of the abolitionist cause, it also featured articles about the use of flogging in the British army. In October 1827, Hall published extracts from the House of Commons debate on the Mutiny Bill, in which arguments against corporal punishment were put forward on the basis that it was both unnecessary and degrading.¹¹⁴ More thrilling was an extract from *Scenes and Sketches of a Soldier’s Life*, included in a December 1826 edition. This extract spared no details: the “healed backs torn open afresh” and the “bare muscle” which “quivered under the scourge” were vividly described in an effort to arouse the reader’s disgust and abhorrence.¹¹⁵

The extract from *Scenes and Sketches of a Soldier’s Life* was also a prime example of the conflict between the abolitionist and military reform discourses. The author of *Scenes and Sketches of a Soldier’s Life* drew attention to the incongruity of abolitionists petitioning Parliament to prohibit the flogging of slaves, while the “groans” of soldiers, their “countrymen”, were ignored:

> And yet all this was done under the eyes of people professing Christianity and civilisation – who were yearly inundating Parliament with petitions against flogging negroes with a cart-    

¹¹⁴ *The Monitor*, 18 October 1827, 709  
¹¹⁵ *The Monitor*, 29 December 1826, 262
whip – yes, while the blood of their countrymen was sprinkling a barrack square, and their cries were ringing in their ears! They saw it not – heard it not – their feelings were too fine for aught but distant misery. The groans of their tortured countrymen were given to the wind – no voice was heard on their behalf – no arm was raised to save!\textsuperscript{116}

The passage exploited the abolitionist rhetoric of pain, drawing attention to the physicality of flogging – the blood, the cries and groans – while at the same time implying a clear demarcation between the two campaigns. It pitted the plight of soldiers against the plight of slaves, as competing rather than complementary causes. Moreover, in using the term “countrymen”, the author drew on an exclusive notion of British citizenship, rather than the universalist notion underpinning abolitionism. The extract implied that soldiers were “countrymen” but “negroes” were not.

This more exclusive notion of citizenship is also apparent in an excerpt from William Cobbett’s newspaper *The Political Register* which Hall, a great admirer, published in *The Monitor* in November 1830. Cobbett was one of the principal English radicals to take up “Country” arguments against the flogging of soldiers in the 1810s.\textsuperscript{117} In the passage printed in *The Monitor*, we find Cobbett reapplying these arguments to the fate of convicts:

Is it not notorious, that, of late years, thousands of Englishmen have been compelled, under pain of the dungeon and the lash, to draw wagons and carts like cattle? Have you, or Wilberforce, or your bishop, or any other friend of the blacks, ever made a single effort to rescue these men from this suffering and degradation?\textsuperscript{118}

\textsuperscript{116} *The Monitor*, 29 December 1826, 262

\textsuperscript{117} Steiner, “Separating the Soldier from the Citizen: Ideology and Criticism of Corporal Punishment in the British Armies, 1790-1815.”; Kenny, “Hall, Edward Smith (1786 - 1860)”. 32

\textsuperscript{118} *The Sydney Monitor*, 13 November 1830
In attacking Wilberforce and other abolitionists for failing to take up the suffering of convicts, Cobbett, like the author of *Scenes and Sketches of a Soldier’s Life*, drew on a distinction between “Englishmen” and “blacks”.

In publishing these extracts from *Scenes and Sketches of a Soldier’s Life* and *The Political Register*, Hall identified himself at least in part with this discourse. It was, of course, another matter altogether to integrate military reformers’ arguments into his own commentary on the flogging of convicts. It is therefore important to assess to what extent Hall reproduced these exclusive notions of citizenship, and to what extent he distanced himself from them.

One approach Hall took was to simply sidestep the question of rights altogether and rely instead on arguments about the “brutalising” effects of flogging. In these instances, Hall was able to refer to military reform in a way which did not conflict with abolitionist arguments. For example, in November 1827 *The Monitor* reported disapprovingly that a newly-appointed Policy Country Magistrate was rumoured to have inflicted 2,275 lashes in his first week on the bench, 1,200 in his second week, and 800 in his third week. Hall advised the magistrate that “the scourge is now considered by the most enlightened men in the army as well as out of it, a brutalising punishment” and warned that its use “is considered a reflection on every Magistrate who wishes to stand well in the estimation of that part of modern society, whose good opinion is most worth having”. In this case, Hall’s reference to military reform did not depend on arguments about the competing claims of “Englishmen” and “negroes”.

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119 *The Monitor*, 5 November 1827, 744
However, at other times the military reformers’ model of exclusive citizenship crept into *The Monitor* in ways which sat rather uncomfortably beside his appeals to abolitionism. In June 1827, Hall’s emblem of convict suffering, the “poor shepherd”, reappeared in *The Monitor* in a somewhat unexpected context – a story about a Jamaican slave tortured to death:

*The Australian* of the 22\textsuperscript{nd} of June, gives an account of the encaging of a negro in Jamaica, where he was left to die of hunger (the cage being suspended to a tree) for having killed his Overseer. The birds of prey picked the eyes out of his head, and the flesh off his bones through the bars of his cage, while swarms of insects were feasting on the lacerated and inflamed flesh. ‘How long have you hanged there’? said the traveller – ‘Two days – and me no die! – the birds – the birds – Ah me!’ Awful cruelty! Almost equal to the 500 lashes inflicted on the one armed convict shepherd the other day…\textsuperscript{120}

Hall vividly described the agony of the slave’s prolonged death – the birds and insects “feasting” on his flesh, and his cries for help – but for what purpose? Ultimately, Hall seemed to be less concerned about the suffering of the Jamaican, than how the story could be used to promote his case against convict mistreatment. Rather than garnering sympathy for the Jamaican slave, his objective was to garner sympathy for the convict shepherd. This example reveals Hall’s underlying suspicion that the slave’s suffering was only ever “almost equal” to that of the convict.

An even more explicit case of Hall’s reproduction of this circumscribed notion of the “rights of Englishmen” appeared in a July 1826 edition of *The Monitor*, when he

\textsuperscript{120} *The Monitor*, 26 June 1827, 465
argued that the use of the scourge had “reduced” the convicts to “a level with the negro”:

the people of New South Wales are a poor grovelling race, who cannot be inflamed – because they no longer think nor feel like Englishmen: their spirit is gone – the scourge, and the fetters, and the dungeon, and the Australian inquisition, have reduced them to a level with the negro – they are no longer Britons, but Australians!  

Here, Hall linked corporal punishment not simply to pain and suffering, or to moral degradation, but to racial disorder. Implicit in his comment was a distinction between the “negro” and the “Englishman”, a distinction he argued was threatened by the constant use of flogging. This final example thus underlines the fluidity of the slave/convict analogy. Just as it could be used to signify racial equality, it could also be used to denote racial difference. Hall’s contradictory use of the analogy suggests that he was never fully comfortable with abolitionist rhetoric.

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Hall represented a new phase in anti-flogging sentiment, in which objections to the corporal punishment were increasingly articulated through the rubric of anti-slavery. The example set by abolitionists strengthened his resolve to speak out on the issue of illegal punishments. It also provided him with the tools with which to discredit corporal punishment: the language of pain, moral degradation and universal rights.

121 The Monitor, 14 July 1826, 68
Yet ultimately the convict/slave analogy did more to confuse than clarify Hall’s position on flogging as he was never quite certain where the two groups stood in relation to each other. When Hall wrote for an abolitionist audience, he consciously aligned the suffering of convicts and slaves with each other. But when he appealed to his colonial readers, a different sentiment emerged: an underlying suspicion that the suffering of convicts was greater than that of the slaves, and more unjust due to their superior racial status.

At stake in the debate about flogging was the problem of imperial order: the hierarchy of colonial subjects, and their relationship to the metropole. Hall’s views on just who was entitled to the “rights of Englishmen” were never a clear matter. At one moment we find him adopting the abolitionists’ framework of universal rights to which all British subjects, white or black, might lay claim. At other times he appeared to share more in common with the military reformers with their circumscribed view of rights – rights as a privilege, rather than an innate entitlement.

In this respect, Hall’s contradictory use of the convict/slave analogy sheds new light on his inconsistent attitudes to flogging outlined at the beginning of this chapter. Significantly, as soon as Hall moved in the direction of seeing rights as a privilege, it also became easier to argue that these rights might be forfeited under certain circumstances. It made sense therefore to condemn the flogging of harmless convicts such as the “poor shepherd” whilst advocating the flogging of convicts who threatened the stability of colonial society: insubordinate convicts who rose up against their masters; “low characters” whose offences compromised the moral order of the colony; and perhaps even “abandoned” convict women whose unruly behaviour
disqualified them from the dictates of “decency and humanity”. In this sense, Hall departed from abolitionist rhetoric not only by using the convict/slave analogy to denote racial difference, but also in his insistence that the flogging of some categories of convicts was necessary and even beneficial.

As Hall pondered whether or not convicts could claim the “rights of Englishmen”, he grappled with the elusive question of human worth. In a very different sense, the debate about corporal punishment was also a testing for English politician Sir William Molesworth’s understanding of human nature. Instead of contemplating the character of convicts, Molesworth was primarily concerned with that of the free colonists. As the following chapter will demonstrate, he exploited the second aspect of abolitionist rhetoric: the motif of settler violence.
Chapter 2

Sir William Molesworth: Settler violence or metropolitan prejudice?

English politician Sir William Molesworth is notorious among Australian historians for his role as instigator and chairman of the Select Committee on Transportation (1837-38). Like Molesworth’s contemporaries, historians have found it difficult to ignore the Select Committee’s final report, with its powerful accusation that transportation corrupted penal society in the same way that slavery corrupted the West Indies. Since the release of John Hirst’s *Convict Society and Its Enemies*, Molesworth’s contention that the status of the convict was synonymous to that of a slave has been heatedly debated.122

Preoccupied with determining the validity of this claim, few historians have sought to closely investigate the different ways in which Molesworth used abolitionist discourse to build his case against transportation. The complexities of his argument have been lost in the furore over the accuracy of his allegations. One of the few exceptions to this tendency can be found in Kirsten McKenzie’s study of bourgeois discourse in colonial New South Wales. Rather than seeking to either prove or disprove the claims of the report, McKenzie remains focused on its rhetorical practices, in particular, Molesworth’s use of the abolitionist language of sexual scandal and moral transgression.123

122 See discussion on Hirst in the introduction.
Following this later model, this chapter explores a second aspect of abolitionist discourse exploited extensively in the report: the rhetoric of settler violence. Molesworth’s claim that convicts were treated like slaves rested, at least in part, on the widespread use of flogging in the penal colonies. For Molesworth, as for Hall, the lash epitomised the shared suffering of the convict and the slave. Yet it was not so much this suffering per se that troubled Molesworth, as the causes behind it. A member of the group of “colonial reformers”, he was far less concerned about the rights of convicts than he was about the actions of free colonists. He framed the flogging of convicts as part of a wider pattern of lawlessness in the British Empire.

This chapter explores the nexus between Molesworth’s opposition to flogging and his anxieties about the character of British colonists. Through a close textual analysis of the Select Committee’s report, the witness evidence, and Molesworth’s speeches on colonial reform, it illuminates his understanding of the dynamics of settler violence. Moving away from a traditional dichotomy of metropolitan and colonial interests, it draws attention to the way in which Molesworth’s use of abolitionist rhetoric complicated his relationship with the free settlers. In doing so, it seeks to explain a glaring contradiction in Molesworth’s political activism: his commitment to colonial self-governance on the one hand, and his dismissal of colonial opinion on the other.

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The flogging of convicts was one of many issues which commanded the attention of the Select Committee. It was by no means their only, or even their main preoccupation, but nor was it a mere side-issue. Almost all of the witnesses who had
resided in the colony were asked about the extent of flogging, and their views on its effectiveness.\textsuperscript{124} Returns of punishment, including the number of floggings, were cited in the main body of the report;\textsuperscript{125} and a large collection of papers relating to the conflict between Governor Bourke and the Hunter Valley settlers over the \textit{Summary Jurisdiction Act} was included in the appendix, further proof of the political force behind this issue.\textsuperscript{126}

The final report conveyed a decisively unfavourable view of corporal punishment. Consistent with the rest of the report, Molesworth articulated his objections to flogging through the rubric of anti-slavery. One strategy he used was to explicitly compare the flogging of convicts with that of slaves. Commenting on the unpredictability of the transportation system, he observed that the convict might be “well fed, well clothed, and well treated by a kind and indulgent master… Or he may be the wretched praedial slave of some harsh master, compelled by the lash to work”.\textsuperscript{127} In a similar vein, he quoted Governor Bourke’s statement that the disciplinary laws of New South Wales, enabling single magistrates to order up to 50 lashes for insolence and other offences amounted to a “slave code”.\textsuperscript{128} In this sense, Molesworth employed the terms “slave” and “slavery” as “magic words” as Hirst has

\textsuperscript{124} Of the 23 witnesses interviewed by the Select Committee, 16 had spent time in the Australian penal colonies. Of this group, only Reverend Jack Dunmore Lang and Dr Morgan Prince did not specifically comment on the use of corporal punishment.

\textsuperscript{125} Select Committee on Transportation, "Report, Minutes of Evidence, Appendix, Index" in \textit{House of Commons Parliamentary Papers} (1837-38). xii, xxiii-xxv

\textsuperscript{126} The main collection of papers on the dispute can be found in ———, "Report, Minutes of Evidence, Appendix, Index" in \textit{House of Commons Parliamentary Papers} (1837). See: Appendix No. 2 ‘Correspondence respecting Secondary Punishment’, 85-102; and Appendix 9, ‘Correspondence on the State of Convict Discipline’, 228-256

\textsuperscript{127} ———, "Report, Minutes of Evidence, Appendix, Index". xx-xxi

\textsuperscript{128} Ibid. xii
previously argued. Yet this was not the only means by which Molesworth connected the two systems. Abolitionist discourse also informed his discussion of flogging in less obvious ways.

To begin with, Molesworth drew on abolitionists’ language of pain to discredit the flogging of convicts. Contrary to the prevailing view that transportation was a light sentence, the report found that the “average amount of pain inflicted upon offenders… is very considerable”. With some difficulty, Molesworth sought to quantify the “average amount of pain” by calculating the typical number of lashes awarded to convicts. Like many historians today, he treated corporal punishment as a litmus test of the transportation system – the sheer quantity of flogging was offered as evidence of the severity of transportation. For further evidence of brutality, Molesworth directed readers to Captain Alexander Maconochie’s ‘Report on Van Diemen’s Land’, which described the floggings inflicted on convicts as “severe, even to excessive cruelty”. Molesworth made it clear that he shared Maconochie’s horror at the “cruelty” of corporal punishment.

Above all, Molesworth relied on the abolitionists’ rhetoric of settler violence. As noted in the introduction, abolitionists expressed alarm not only at the effects of flogging on slaves but their masters: they implied that planters gained an illicit pleasure from flogging their slaves. Drawing on this model, Molesworth argued that

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130 Select Committee on Transportation, "Report, Minutes of Evidence, Appendix, Index". xix
131 The report found that in Van Diemen’s Land, about 50 000 lashes were inflicted in 1834 (not including Port Arthur), and about 30 000 in 1837. The Committee did not have access to returns from New South Wales, but based on figures for one month, estimated that over 108 000 lashes were inflicted in 1833. See: Ibid. xii, xxiii-xxv.
132 Ibid. xiii
the flogging of convicts was carried out in an arbitrary manner. He redeployed two familiar arguments against transportation – that it failed to deter crime or to reform the offender – to show that colonists turned to the lash to gratify their own violent urges.

First, Molesworth deemed the use of flogging to be gratuitous because it failed to deter potential offenders. In a speech to the House of Commons in 1840, two years after the Select Committee’s report was handed down, Molesworth protested that “much more suffering is inflicted in the penal colonies than is credited in this country; suffering, therefore, unknown; unproductive of good; pure, gratuitous, evil”. 133 There was a distinctly utilitarian bent to this argument. Molesworth implied that the suffering of convicts might be justified if it served the purpose of preventing crime at home. However, the British “criminal population” remained under the false impression that life in the penal colonies was easier than at home, negating any beneficial side-effects of flogging. 134 It was thus the “unknown” nature of flogging which made it problematic, and which made the motivations of settlers questionable.

Second, Molesworth concluded that the use of flogging was gratuitous on the basis that it was an ineffective mode of punishment. He repeated the common argument that flogging “hardens” and “brutalises” offenders, and insinuated that convicts’ dread of the lash contributed to crime rates as it “excites revengeful feelings”. 135 Moreover, he claimed that reliance on flogging rendered the offender “incapable of moral

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134 Ibid. 110

135 Select Committee on Transportation, "Report, Minutes of Evidence, Appendix, Index". xiv
restraint”.136 While it might induce a temporary improvement in convicts’ behaviour, it could have “no effect in deterring him from the immediate gratification of his desires when exposed to temptation”.137 Given that flogging was an ineffective punishment, Molesworth speculated that its continued use in the penal colonies could only be explained by a malicious streak in settler society.

Reading through the witness evidence from the Select Committee, it is not difficult to see how Molesworth reached this conclusion. Almost every witness could recall a tale about at least one bad master, commanding officer or overseer who arbitrarily dealt out floggings. Accurate or not, witnesses’ testimony fuelled Molesworth’s perception of gratuitous violence. Some witnesses offered up cases of their own accord. John Barnes, former surgeon at Macquarie Harbour, was particularly forthcoming.138 He offered the example of Anderson, a convict overseer who “seemed to delight in seeing his fellow-convicts punished”:

I believe scarcely a day passed over without four or five, and in some instances 16 or 17 individuals, being flogged upon the report of the man [Anderson]. If the gang, during the time they were at labour, had been idle, or any man that he had a spite against, he [Anderson] would go before the commanding officer, and swear that he had been idle; of course the man complained of would receive a flogging.139

136 Ibid. xxii-xxiii
137 Ibid. xxii-xxiii
138 Barnes resided in Van Dieman’s Land from 1822 to 1828, serving as the surgeon at Macquarie Harbour penal settlement.
139 John Barnes, 12 February 1838, evidence to the Select Committee on Transportation, 12 February 1838, in "Report, Minutes of Evidence, Appendix, Index" in House of Commons Parliamentary Papers (1837-38). 45.
Anderson seemed to exemplify the worst elements of penal system. But far from suggesting that his was an isolated case, Barnes presented such abuses of power as the norm. He told the Select Committee that he had even heard of a commanding officer at a penal settlement “ordering a man to be flogged because he did not take his hat off when he passed by the Government House”\textsuperscript{140} His testimony spoke to Molesworth’s fears that flogging corrupted all levels of colonial society, from the convict overseers to high-ranking officials.

Not all of the witnesses were as obliging as Barnes, but even those who required more prompting from the Select Committee eventually came up with tantalising stories of convict abuse. Peter Murdock, a former superintendent of convicts, originally stated that he did not believe there was a great deal of punishment inflicted on the “settler’s men” – that is, convicts under assignment.\textsuperscript{141} But when pushed a little, he recalled a case “where the punishment was so very bad, under one master, that Colonel Arthur called for a return of the number of lashes inflicted on his men, and he was ordered to receive no more convicts; one man chopped off his hand to leave his employ”.\textsuperscript{142} Meanwhile, John Russell, a military surgeon and former commandant of Port Arthur, knew of a “very stout, strong” master who “always punishes his servants by giving them a good thrashing”\textsuperscript{143} Both cases suggested a pattern of vindictive and self-

\textsuperscript{140} Ibid. 44

\textsuperscript{141} Peter Murdock, 22 March 1838, evidence to the Select Committee on Transportation in "Report, Minutes of Evidence, Appendix, Index" in *House of Commons Parliamentary Papers* (1837-38). 122. Murdock served as superintendent of convicts at Emu Plains from 1821 to 1824, and was then posted to the penal settlement at Maria Island. He owned properties in New South Wales and Van Dieman’s Land, where he resided until February 1837.

\textsuperscript{142} Ibid. 123

\textsuperscript{143} John Russell, 19 February 1838, evidence to the Select Committee on Transportation in "Report, Minutes of Evidence, Appendix, Index" in *House of Commons Parliamentary Papers* (1837-38). 57. Russell resided in Van Dieman’s Land from 1829 to 1833. He was posted to the colony as assistant-surgeon to the 63\textsuperscript{rd} regiment, but also served in the civil hospital at Launceston. He acted as commandant at Port Arthur for one year, starting in September 1830.
gratifying violence, providing Molesworth with further ammunition against transportation.

Clearly there was a compelling case to be made from the witness testimony that the floggings carried out in the penal colony were acts of gratuitous violence. However, this perspective was not the only one presented to Molesworth and the Select Committee. Several witnesses made the counter argument that the flogging of convicts was, or at least could be, carried out in an orderly and regulated fashion. Moreover, they expressed concerns that the floggings inflicted on convicts were not severe enough. Three witnesses stand out for their pro-flogging views.

Thomas Livingstone Mitchell, ex-surveyor-general of New South Wales, defended the use of corporal punishment on practical grounds: the need to obtain labour from the convicts. He blamed the inefficiencies of penal labour on the fact that overseers lacked the authority to punish convicts on-the-spot. 144 Emphasising the role of flogging in promoting a more orderly labour process, he advised the Select Committee that the unlimited power of punishment was “indispensable” to supervisors.

Where Mitchell focused on questions of labour productivity, Henry Breton, a lieutenant-colonel, stressed the role of flogging as a deterrent. When Breton was appointed police magistrate, he quickly discovered that a sentence of 100 lashes in the

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144 Major Thomas Livingstone Mitchell, 1 March 1838, evidence to the Select Committee on Transportation in "Report, Minutes of Evidence, Appendix, Index" in House of Commons Parliamentary Papers (1837-38). 76. Mitchell was posted to New South Wales in 1827, where he served as assistant-surveyor general and then surveyor general. His responsibilities included the management of roads and bridges. He was on leave in England for eighteen months when he was interviewed by the Select Committee. D. W. A. Baker, "Mitchell, Sir Thomas Livingstone (1792 - 1855)" Australian Dictionary of Biography 2 (1967), http://www.adb.online.anu.edu.au/biogs/A020206b.htm?hilite=Thomas%3BLivingstone%3BMitchell.
penal colonies “was not equal to five lashes given to a soldier”. He subsequently insisted on supervising floggings and claimed that he had thereby ensured that they became an “object of terror”, noting that he “had only one single instance of a man being sent to me a second time”.

The most extensive defence of flogging was put forward by Ernest Augustus Slade, former superintendent at Hyde Park Barracks. Like Breton, Slade complained to the Select Committee that the floggings in the colony were not sufficiently harsh. He protested that there were “cases where men have been sentenced to receive 50 lashes… where the skin has not been broken”. In cool terms, Slade went on to describe how he had remedied this situation. He ordered a new whip, two feet long with five lashes, each in turn with six or seven knots. He also insisted on supervising floggings, and recommended to Governor Bourke that all other magistrates should be compelled to do the same. Slade boasted to the Select Committee that 50 lashes under his supervision were “equal to 1, 000 under any other man’s ever before in the colony”; and that he never saw a case where he did not break the skin in four lashes.

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145 Henry Breton, 12 May 1837, evidence to the Select Committee on Transportation in "Report, Minutes of Evidence, Appendix, Index" in *House of Commons Parliamentary Papers* (1837), 144. Breton was a lieutenant-colonel in the fourth regiment. He served in NSW for four years until March 1836.

146 Ibid. 145


148 Mr Ernest Augustus Slade, 25 April 1837, evidence to the Select Committee on Transportation in "Report, Minutes of Evidence, Appendix, Index" in *House of Commons Parliamentary Papers* (1837), 56.

149 Ibid. 56

150 Ibid. 56
Far from dwelling on the gratuitous nature of flogging, Mitchell, Breton and Slade emphasised the laxity of the penal system – indeed, their primary concern was the lack of violent punishment inflicted on convicts. Furthermore, they portrayed their subsequent efforts to institute harsher floggings not as an abuse of the penal system, but as a responsible use of the power invested in overseers, magistrates and superintendents. However, their message was lost on Molesworth. Although they approached the defence of flogging from a slightly different angle, his response to the three witnesses was virtually identical: their views on corporal punishment were not just misrepresented, they were totally ignored. Mitchell and Breton’s comments on flogging were not acknowledged in the report, although reference was made to their evidence on other matters.\textsuperscript{151} Slade suffered the worst treatment: not a single reference was made to his evidence; it was almost as though his support of flogging – alongside his confessions of sexual impropriety – was so objectionable that his evidence was rendered inadmissible.

Molesworth’s interaction with these witnesses, and his decision to privilege one set of views over the other in the final report, raises interesting questions about the power dynamics of the inquiry. The notion that Molesworth was an agent of metropolitan interests holds strong in the existing historiography. Likewise, it is tempting to explain his use of the abolitionist rhetoric of settler violence as the product of metropolitan prejudice. Yet such an account rests on a vastly oversimplified understanding of colony-metropole relations. While colonial relations were never

\textsuperscript{151} Breton was quoted in reference to: the condition of convicts in relation to food and clothing; convicts’ right to legal redress; and the punishment of women convicts. Mitchell was quoted in reference to the system of road parties, but in his support for giving overseer’s an unlimited power to punish was not mentioned.
evenly dispersed, nor were they simply static and uncontested.\textsuperscript{152} The following section revisits the debate over the role of metropolitan prejudice in the inquiry, in order to develop a fuller understanding of his appropriation of abolitionist discourse.

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Molesworth is an unpopular figure amongst most Australian historians. They have tended towards a rather cynical view of his role in the Select Committee, emphasising his political ambitions as a member of the Parliamentary Radicals. Furthermore, they have tended to regard his report as a product of metropolitan prejudices. Even those who have challenged other assumptions about the report have preserved the notion of a strict dichotomy between metropolitan and colonial interests. Two key examples of this approach are the works of John Ritchie and John Hirst.

John Ritchie’s study, published in 1967, challenged the conventional assumption that the Select Committee was the decisive factor behind the abolition of transportation. Ritchie argued that the Whig Government had largely anticipated Molesworth’s investigation and was relatively uninfluenced by its recommendations. He instead placed Lord John Russell, Viscount Howick and the Colonial Office at the centre of the story, arguing that it was their efforts to ameliorate the criminal code that provided the main impetus for the abolition of transportation.\textsuperscript{153} However, Ritchie did not simply seek to correct conventional assumptions about the role of Molesworth, but to

\textsuperscript{152} David Lambert and Alan Lester, "Imperial Spaces, Imperial Subjects" in Colonial Lives across the British Empire: Imperial Careering in the Long Nineteenth Century, ed. David Lambert and Alan Lester (Cambridge: Cambridge University Press, 2006). 8

\textsuperscript{153} John Ritchie, "Towards Ending an Unclean Thing: The Molesworth Committee and the Abolition of Transportation to New South Wales, 1837-1840" Historical Studies 17: 67 (1967). 158
discredit his findings. Ritchie’s study of the Select Committee was infused with nationalist sentiment. He objected that Molesworth’s interpretation was “unfair” and “unprincipled”, based on the “manipulation of evidence to antecedently determined, if high-purposed, ends”.^154^ Ritchie portrayed the colonists of New South Wales as victims of Molesworth’s prejudice: “A people who had struggled to their feet and who were taking their first halting steps towards self-respect, permanent stability and independence were placed in the position of the mute accused and had slurs heaped upon them”.^155^ His account accentuated the clash between metropolitan and colonial interests.

A similar argument about the Select Committee emerged in John Hirst’s *Convict Society and its Enemies*. Hirst reiterated many of Ritchie’s objections – that Molesworth had to “distort” the evidence and that he “brushed aside” alternative viewpoints. Moreover, in his discussion of the reception of the report in New South Wales, Hirst emphasised the sense of betrayal experienced by colonists. Not only had the colony’s reputation been tainted by fellow colonists such as Reverend Jack Lang and landowner James Mudie; but it seemed as though Britain itself had turned its back on New South Wales. Hirst argued that the crisis surrounding the report led to the “clear realisation that the colony’s interests might be injured or ignored by the mother country”, and subsequently produced “a strengthened and more widespread determination to achieve local self-government”.^156^ Hirst’s interpretation of the report was again premised on the tension between metropolitan and colonial interests.

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154 Ibid. 150
155 Ibid. 149-50
156 Hirst, *Convict Society and Its Enemies*. 205
This conventional assessment of the report as a product of metropolitan prejudices is not entirely unwarranted. As suggested previously, a comparison of the report and the witness evidence demonstrates that Molesworth was highly selective in his treatment of the issue of flogging. Indeed, Molesworth’s response to the evidence of witnesses who spoke in favour of corporal punishment demonstrates that he was highly prepared to dismiss evidence that he disagreed with. But in their attempts to discredit Molesworth for this selectivity, historians have oversimplified the power dynamics of the inquiry process. The complexities behind this process become clearer when we delve deeper into the witness testimony on flogging and settler violence.

First and foremost, historians have failed to acknowledge the fact that witnesses brought their own agendas to the inquiry. While Molesworth certainly exercised significant influence over the final report, it would be wrong to see him as completely in control of the inquiry. Molesworth could seek to direct the interviewing process, but witnesses were equally in a position to obstruct it. For example, Molesworth consistently sought to prompt comments about flogging as a source of “degradation”. While some witnesses responded suitably, others were less forthcoming. Reverend William Ullathorne was reliably melodramatic, singling out the scourge as the epitome of the transportation system’s failings. The “flogged man is a worthless man” he told the Select Committee; “there is a feeling of degradation about him, that even among the prisoners themselves he has lost caste”. By contrast, when


158 Rev. William Ullathorne, 8 February 1838, evidence to the Select Committee on Transportation in "Report, Minutes of Evidence, Appendix, Index" in House of Commons Parliamentary Papers (1837-38), 20-21
Molesworth sought Colonel Arthur’s reassurance that the convict’s vulnerability to summary punishment “must make him feel in every way degraded” and “destroy all self-respect”, he received a far less effusive response. Arthur’s acknowledged Molesworth’s point, but did not elaborate any further.\footnote{Colonel George Arthur, 27 June 1837, evidence to the Select Committee on Transportation in "Report, Minutes of Evidence, Appendix, Index" in House of Commons Parliamentary Papers (1837). 289. Arthur served as Governor of Van Dieman’s Land from 1824 to 1837. A. G. L. Shaw, "Arthur, Sir George (1784 - 1854)" Australian Dictionary of Biography 1 (1966), http://www.adb.online.anu.edu.au/biogs/A010034b.htm?hilite=colonel%3Bgeorge%3Barthur.} Indeed Molesworth’s attempts to direct the interview process did not always deliver the results he expected. Sir Edward Parry, for example, insisted that degradation was in fact an “essential feature” of transportation; that “the object of sending people there [to the penal colonies] is in some degree to degrade”.\footnote{Sir Edward Parry, 26 February 1838, evidence to the Select Committee on Transportation in "Report, Minutes of Evidence, Appendix, Index" in House of Commons Parliamentary Papers (1837-38). 70. Parry was commissioner for the Australian Agricultural Company from 1829 to 1834. He oversaw 300 to 400 convicts on the company’s estate at Port Stephens and occasionally acted as a magistrate. Ann Parry, "Parry, Sir William Edward (1790 - 1855)" Australian Dictionary of Biography 2 (1967), http://www.adb.online.anu.edu.au/biogs/A020282b.htm?hilite=edward%3Bparry.} The interviewing process was thus an unpredictable process, not always within Molesworth’s control.

Furthermore, the witnesses were quite prepared to perform the role of the “benevolent” settler while indicting others. Barnes, for example, noted the gratitude of a convict whose flogging he had prevented on the grounds of poor health. The convict was among a group of bushrangers who held Barnes up at Coal River; Barnes told the Select Committee that the convict “recollected the circumstance with a little gratitude, or probably I might have been more severely handled”\footnote{Barnes, 12 February 1838, evidence to the Select Committee on Transportation, 41}. Barnes thus sought to juxtapose his own benevolence against the horrors of convict discipline. Nor was he alone in doing so. Even landowner James Mudie was happy to point the finger at others, so long as it did not bring into question the legitimacy of his own practice of
ordering floggings as a magistrate. His statements to the Select Committee are worthy of particular attention given his reputation as a harsh disciplinarian.

Following his appointment as a justice of the peace in 1830, Mudie served on the bench at Maitland and built a reputation as a fearsome magistrate due to his frequent sentences of flogging for even minor offences. He was also renowned as the owner of the Castle Forbes estate, site of the convict mutiny in November 1833. Mudie made no attempt to conceal his reputation as a “flogger” from the Select Committee. He described convicts’ jubilant reaction to his removal from the position in 1836: one convict who passed him on the street called out “No more fifties [fifty lashes] now, you bloody tyrant.” Mudie also proudly told the Select Committee how he had threatened to flog a scourger caught out for accepting a bribe.

Simultaneously, however, Mudie presented himself to the Select Committee as a sensitive and respectable settler. By contrasting his lawful conduct as magistrate against the misuse of power by others, Mudie sought the favour of Molesworth. He vividly described a scene at Newcastle settlement in the mid-1820s involving the commandant and a convict who momentarily left his post:

the commandant abused the man, and called him a damned scoundrel, and said, ‘Where have you been, and why were you not in attendance,’ and he kicked him, and in fact knocked him down, and he then ordered them to send for the flogger to flog him; the people were at that

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163 James Mudie, 21 April 1837, evidence to the Select Committee on Transportation in "Report, Minutes of Evidence, Appendix, Index" in House of Commons Parliamentary Papers (1837), 37

164 Ibid. 118
time in church, and it occasioned a considerable deal of talk; he ordered the man to be flogged, and he was flogged.165

By drawing on this example of maltreatment, Mudie demonstrated to the Select Committee that he, too, shared their concerns about the arbitrary, uncontrolled use of flogging. Most importantly, he did so without implicating himself or bringing into question the legitimacy of his own practice as a magistrate. With witnesses like Mudie clearly bringing their own agendas to the inquiry, Molesworth could never be fully in control.

The power dynamics of the inquiry process were clearly more complicated than historians have previously conceded. But perhaps more importantly, historians have neglected the implications of the report for Molesworth’s own political outlook. Molesworth, a member of the group of “colonial reformers”, had previously spoken out in favour of colonial self-government. Yet the process of investigating the penal colonies fundamentally challenged his vision of the colonies. This final section of this chapter explores how Molesworth’s use of the abolitionist rhetoric of settler violence complicated his personal commitment to colonial self-government. It places the findings of the Select Committee’s report in the context of his speeches on colonial reform.

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When Molesworth was elected to the House of Commons in December 1832, he joined the “colonial reformers”. The group, which also included Lord Durham and

165 Ibid. 120
Charles Buller, were advocates of Edward Gibbon Wakefield’s ideas on systematic colonisation. Molesworth took a keen personal interest in this matter, and became a member of the South Australian Association in 1833, and of the New Zealand Association in 1837. His brother, Francis Alexander, was among the first emigrants to Wellington in 1840.166

The “colonial reformers” were also vocal supporters of self-government in the colonies. One of the causes that attracted their attention were the 1837-38 rebellions in Canada, which they attributed to the British government’s failure to maintain colonists’ loyalty.167 In 1837, Molesworth vocally opposed a proposal to enable the Governor of Lower Canada to override the decisions of the Canadian House of Assembly on monetary matters. Speaking in defence of colonial self-government, Molesworth expressed a vision of the Canadian rebels as responsible and virtuous citizens, and as true Britons. He reminded the House of Commons, that the “Saxon will permit no one to interfere with his purse; he will fight for it first; that is the peculiarity of his race”.168 He cast himself as a defender of colonists’ interests.

Molesworth’s biographer, Millicent Garrett Fawcett, greatly admired his commitment to colonial self-government. Writing in 1901, she argued that Molesworth “foresaw, as very few did in his time, that the root of Colonial loyalty could flourish only in Colonial freedom”.169 In the aftermath of the Boer War, it seemed to her that this

167 Ibid.
169 Ibid. 4
“prophecy” had indeed been “amply fulfilled”. But since Fawcett published her glowing biography, few have shown much interest in Molesworth’s ideas on colonial reform. Her fear that he would “fall into undeserved neglect” is borne out by the dearth of work on Molesworth outside of convict history. More importantly, even within Australian history, his views on colonial reform remain neglected.

Yet Molesworth’s anti-transportation stance and his commitment to colonial reform were closely connected. Indeed, in March 1838, just five months before the Select Committee on Transportation handed down its final report, he made a lengthy speech in the House of Commons setting out his fears that Britain’s colonies were in disarray. Sure enough, the “moral contamination” of the penal colonies was a major preoccupation of the speech. It might surprise some Australian historians to discover that, far from blaming the free settlers for the state of the penal colonies, Molesworth looked to another cause altogether.

Consistent with his stance on colonial self-government, Molesworth attributed the problems of transportation not primarily to the colonists, but to maladministration by the Colonial Office, and above all the ineptitude of the Colonial Secretary, Lord Glenelg. The penal colonies were in a “condition of national infamy”, he argued, yet Glenelg had done nothing to resolve the problem. The country was instead “solely indebted” to the Lord for Stroud (and by implication Molesworth himself) for supporting his motion for the establishment of the Select Committee on

170 Ibid. 5
171 Ibid. 3
Transportation. More generally, Molesworth accused Glenelg of incompetence and neglect, and concluded that British colonists “might be justified in inferring that there really is no such person in existence as the Colonial Minister, that Lord Glenelg is a merely imaginary presence, a nominal being, without functions to perform, or at least without capacity to perform them”. On these grounds, he unsuccessfully moved a vote of censure against Glenelg.

While Molesworth’s attack on Glenelg reeked of political point-scoring, there was also a serious side to his allegations. During the parliamentary debate, Molesworth was criticised for singling out Glenelg for censure rather than the Government as a whole. Yet Molesworth did so deliberately in order to demonstrate that the structure of the department, and the position of Colonial Secretary, in particular, was fundamentally unsound. In his eyes, colonial governance was riddled with problems of mismanagement, misinformation, and above all, ignorance. The “governing of our Colonies”, Molesworth told the House of Commons, “has been far more objectionable, more ignorant, necessarily on account of the great distance between subjects and the seat of all authority”. Raising the spectre of foreign rule, he claimed that the British colonial system had started to resemble “the Spanish system of governing in all things from a distance”.

This was not the only occasion on which Molesworth made it clear that he blamed maladministration by the Colonial Office for the state of the penal colonies. In a

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173 Ibid. 22
174 Ibid. 26
176 Molesworth, "On Lord Glenelg's Colonial Administration, 6 March 1838". 10-11
speech on transportation in 1840, he criticised the home government for establishing
the penal colonies in the first place, and creating the structure in which violent
punishment had become normalised – for it was the home government which had
“given birth to the most depraved communities in the universe”. Furthermore, he
blamed the home government for failing to take measures to end transportation
sooner.

Time and time again, Molesworth made it clear that the problems of the penal systems
were a product of the distance between colony and metropole. Yet the great irony in
Molesworth’s situation was that he himself got caught up in the messy politics of
distance. While his first instinct was to blame the Colonial Office, Molesworth started
to have niggling doubts about the reliability of the colonists. In taking up the
abolitionist rhetoric of settler violence, he started to reconsider his earlier vision of
colonists as responsible and virtuous British citizens.

Central to Molesworth’s dilemma was the fact that he himself had never ventured to
the colonies. His knowledge of imperial affairs was thus always second-hand, the
product of parliamentary inquiries and personal reading rather than direct experience.
When Molesworth was eventually offered the opportunity to make his mark in the
colonies, he shied away, declining Wakefield’s suggestion that he head a second
settlement in New Zealand in 1840. For Molesworth, as for many others, the
colonies remained in the realms of the imagination. With no direct experience of the
penal colonies, he was thus forced to recognise that the witnesses had unique
authority on the subject. Molesworth reassured the House of Commons that “there

177 ———, "On Transportation, 5 May 1840". 126
178 Burroughs, "Molesworth, Sir William, Eighth Baronet (1810–1855)".
could be no doubt either of the knowledge of or the veracity of the witnesses examined”. Yet increasingly he did not seem so sure himself that they could be trusted.

Weighing heavily on Molesworth’s mind was the concern that some witnesses’ views on the colony had been corrupted by the length of their stay. The report of the Select Committee suggested that the accounts of those who resided in the colonies for relatively short periods were more reliable than others. It placed greater emphasis on the observations of Captain Cheyne and Captain Alexander Maconochie, for example, on the basis that they had not “resided so long in that colony as to have their feelings hardened on the subject”. Cheyne himself sought to cultivate this view of the colonists, suggesting that the settlers “accustomed” to seeing convicts in “a state of moral prostration before them, manacled and tortured” had lost the capacity to empathise with their “fellow creatures”. Molesworth reiterated this argument in an annotated version of the report which he independently organised to have published. Demonstrating just how seriously he took the claims about the impact of flogging on colonists, Molesworth added a footnote to the report alleging that constant exposure to the lash “deadened” the “heart” of the settler:

> every kind and gentle feeling of human nature is constantly outraged by the perpetual spectacle of punishment and misery, by the frequent infliction of the lash, by the gangs of slaves in irons, by the horrid details of the penal settlements, till the heart of the emigrant is

179 Molesworth, "On Lord Glenelg's Colonial Administration, 6 March 1838", 22
180 Select Committee on Transportation, "Report, Minutes of Evidence, Appendix, Index", xxxii
181 Ibid. xxxii
gradually deadened to the sufferings of others, and he becomes at last as cruel as the other gaolers of these vast prisons.\textsuperscript{182}

The use of flogging thus not only became a sign of the moral corruption of the penal colonies; it also became grounds for dismissing colonial opinion.

In turn, Molesworth distinguished himself from the colonists on the basis of his sensitivity. The language of pain was invoked continuously in the report, to describe both the physical and psychological sufferings of convicts. The terms “suffering” and “torture” were used indiscriminately, in what might appear to the modern reader to be a mere exercise in hyperbole. But there was indeed a greater rationale behind this wording – it was part of Molesworth’s strategy of setting himself apart from the colonists, juxtaposing his sensitivity to pain against the latter’s apparent lack thereof.

From the safety of the metropole, Molesworth thus distanced himself from the unsettling behaviour of the colonists. Disturbed by the breakdown of British “civilisation” on the frontiers, a self-proclaimed champion of colonial self-government turned on the colonists and instead came to be seen as the agent of metropolitan interests. Against the will of the majority of colonists, he called for the immediate end to transportation.

* \textsuperscript{182} William Molesworth, \textit{Report of the Select Committee of the House of Commons on Transportation; Together with a Letter from the Archbishop of Dublin on the Same Subject: And Notes by Sir William Molesworth, Bart., Chairman of the Committee} (London: Henry Hooper, 1838). 36
Molesworth’s use of abolitionist rhetoric went well beyond simplistic analogies between the flogging of convicts and slaves. More than anything else, Molesworth was troubled by what flogging revealed about and did to the free colonists. It was through the abolitionist rhetoric of settler violence that he was able to articulate these concerns, and to build a case, based both on general principles and witness testimony, against the use of corporal punishment. But while Molesworth was able to sustain a far more consistent anti-flogging position than Hall ever did, his use of abolitionist rhetoric was not without problems: they opened him up to the charge that his understanding of the penal system was a product of metropolitan prejudice.

However, as this chapter has demonstrated, to explain Molesworth’s use of abolitionist rhetoric purely as the product of metropolitan prejudice is to misrepresent the complex dynamics behind the report. In focusing on the colonists as the “victims” of the inquiry, historians have failed to consider what impact it had on Molesworth himself. What is interesting about the whole episode is that it not only stirred debate in the colonies about their ties to the “mother country”, but that it disrupted Molesworth’s own views of how the British Empire should be run.

Although his initially blamed the Colonial Office for the state of the penal colonies, Molesworth gradually found himself condemning the colonists themselves for failing to live up to his vision. His use of the abolitionist rhetoric of settler violence forced him to reflect on the character of British colonists. Flogging seemed to reveal a perverse, even savage side to human nature: a taste for violence which sat uneasily beside Molesworth’s early idealism. The colonists of New South Wales and Van
Dieman’s Land were a long step away from the responsible and virtuous British subjects of his imagination.

Yet for all his despair at the state of the penal colonies, Molesworth was not without hope that new methods of discipline might mitigate the worst of transportation and that the reputation of British colonists might still be restored. One of the schemes he deemed worthy of further consideration was that of penal reformer Captain Alexander Maconochie: the marks system. Maconochie was soon given the chance to trial this system at Norfolk Island. He promised much, but to put his plans in practice proved more difficult than he had foreseen. The next chapter tracks the development of Maconochie’s ideas over the course of the late 1830s and 1840s.

183 Select Committee on Transportation, "Report, Minutes of Evidence, Appendix, Index". xlv
Chapter 3

Captain Alexander Maconochie: Convict reformation and the bourgeois “civilising” project

When Captain Alexander Maconochie arrived at Norfolk Island in March 1840, he was confronted by the “most formidable sight” of 1,400 doubly-convicted prisoners, the “refuse” of New South Wales and Van Dieman’s Land. “A more demoniacal looking assemblage could not be imagined”, he declared. Over the course of the next four years, these doubly-convicted prisoners were joined by several hundred newly-arrived convicts from England. Together they became the subjects of Maconochie’s ambitious penal experiment.

Maconochie accepted the position of commander at Norfolk Island on the understanding that he would be permitted to trial a scheme of prison discipline which he had long been developing: the marks system. He proposed that instead of a conventional time sentence, prisoners should receive a sentence of marks (or points) to be earned. Convicts would receive marks for each day’s labour and other good behaviour. Conversely, marks would be deducted for idleness, insubordination and other misconduct. Once a convict earned a specified number of marks, he would be recommended for the remission of the remainder of his sentence.

184 Alexander Maconochie, Norfolk Island, 1840-44 (Hobart: Sullivan's Cove, 1973 (1847)). 8-9
185 Prior to 1840, Norfolk Island was reserved for doubly-convicted prisoners, that is, convicts who committed additional offences in the penal colonies and whose sentences were subsequently extended. In August 1840, transportation to the mainland ceased and all newly-arrived convicts were sent to Norfolk Island and Van Dieman’s Land. Maconochie was only officially authorised to trial his marks system on the newly-arrived convicts but within a week of his arrival he decided it was impossible to treat the two groups separately. John Vincent Barry, Alexander Maconochie of Norfolk Island: A Study of a Pioneer in Penal Reform (Melbourne: Oxford University Press, 1958). 100-102
186 An early version of his marks system was set out in his first publication, Australiana: Thoughts on Convict Management and Other Subjects Connected with the Australian Penal Colonies. He continued to refine the system over the course of the next decade. See: Alexander Maconochie. “Australiana: Thoughts on Convict Management and Other Subjects Connected with the Australian Penal Colonies”
The introduction of Maconochie’s marks system represented a sharp break from the island’s past. Previous commanders were renowned for their brutal treatment of convicts. His immediate predecessor, John Anderson, was a “firm disciplinarian and a flogger”, who was alleged to have once ordered five men to 1 500 lashes before breakfast. By contrast, the marks system was designed to make flogging redundant. Following the legacy of earlier penal reformers, Maconochie hoped that convict labour would no longer by stimulated by the fear of the lash but rather by the desire to reform.

In making the case for this alternative approach, Maconochie reiterated many of the familiar objections to corporal punishment outlined in the preceding chapters. However, there was also a discernible shift in his arguments against flogging between the late 1830s and the mid-1840s. His writings highlight the declining influence of abolitionist rhetoric, and its replacement by the dispassionate language of penal science. As we will see, Maconochie’s critique was distinctive for its lack of emphasis on physical pain. He eschewed the sentimentalism that pervaded earlier abolitionist rhetoric, and instead framed his case in terms of the question of convict reformation. The implications of this transition are explored in the first half of this chapter.

188 For a discussion of the influence of the theories of earlier penal reformers, such as Cesare Beccaria (1738-1794) and Jeremy Bentham (1748-1832), on Maconochie’s marks system, see: Barry, Alexander Maconochie of Norfolk Island. 75-79
Maconochie was also in a much better position than Hall or Molesworth to put his ideology into practice. In assessing his contribution to the debate on corporal punishment, we not only need to consider his objections to flogging, but the alternatives that he envisioned. As such, the second half of this chapter explores the assumptions underpinning the marks system. It highlights the close ties between Maconochie’s scheme and the bourgeois “civilising” project of empire.

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Maconochie was 52 years old when he was appointed commander of Norfolk Island. Like many of his predecessors, his background was in the armed services. His family had encouraged him to pursue a legal career, but lured by the prospect of adventure, Maconochie instead joined the navy as a first-class volunteer. He served during the Napoleonic wars and was held prisoner at Verdun from 1810 to 1814. After his release, he fought in the war against the United States, but was paid off in 1815 and placed on the reserve list.189 Thus, well before he embarked on a career in the penal colonies, Maconochie was acquainted with the rigours of naval discipline. He had the advantage of being able to ground his arguments against corporal punishment in his personal observation of its effects, giving him an authority which Hall and Molesworth had always lacked. He confidently claimed that he understood the effects of corporal punishment because he had “witnessed” its infliction.190


190 Maconochie, Norfolk Island, 1840-44. 30
Despite their differences in experience, many of the objections Maconochie raised against corporal punishment overlapped with those of Hall and Molesworth. Like them, he warned that corporal punishment “excited sympathy” among other convicts and “kindled resentment” in the victim.\(^{191}\) He also lamented the impact of flogging not only on convicts but its practitioners, warning that those entrusted with the “hazardous power of inflicting at will vindictive punishment” were vulnerable to a “hardening” of feeling.\(^{192}\) Most importantly, Maconochie echoed Hall and Molesworth in so far as he took up the theme of slavery. But whereas abolitionist language was a consistent component of the work of Hall and Molesworth, this was not to be the case for Maconochie. Although he exploited abolitionist rhetoric in his first publication, we find much fewer references to slavery in his later work. Moreover, the way in which Maconochie used abolitionist language changed significantly during this period.

Maconochie was a prolific writer on questions of penal reform. His first published work, *Australiana: thoughts on convict management and other subjects connected with the Australian penal colonies*, appeared in London in 1839.\(^{193}\) It contained his controversial report on convict discipline, as well as papers on a range of colonial topics from representative government to the management of aborigines. The theme of slavery featured prominently in *Australiana*. He repeatedly referred to the assignment system as a form of “domestic slavery” which turned the convicts into “slaves” and their masters into “slave-holders”.\(^{194}\) He also specifically identified

\(^{191}\) Ibid. 31  
\(^{192}\) Ibid. 31  
\(^{193}\) ———. "Australiana"  
\(^{194}\) Ibid. 6, 11, 15, 80, 87, 161
“physical coercion” as one of the key similarities between the two systems. In a footnote, he referred to the evidence given by Colonel George Arthur before the Select Committee on Transportation that the condition of the convict “in no way” differed from that of the slave “except that his master cannot apply corporal punishment to him, but must take him before a magistrate”. More generally, he echoed Hall in warning that the conditions of convicts were worse than those in the slave colonies: he asserted that the form of “bondage” in the West Indies had been “infinitely milder” than in the Australian penal colonies.

Maconochie supplemented his own writings in Australiana with correspondence from colonists, many of whom repeated the argument that flogging was a slave-like form of punishment. One correspondent objected to the flogging of convicts on the grounds that the lash was “the slave’s stimulus”. Another correspondent expressed distress at hearing convict masters and mistresses “talking coolly of fifty lashes”, but reasoned that it was not the fault of any individuals but rather of the assignment system, which had “precisely” the same effects as “slave holding”. In 1839, the association between slaves, convicts and the lash was foremost in the minds of Maconochie and his correspondents.

By contrast, slavery was a far less prominent theme in Maconochie’s next book, Crime and Punishment: the mark system, framed to mix persuasion with punishment

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195 Ibid. 14
196 Ibid. 2
197 Ibid. 8
198 Unnamed correspondent, quoted in Ibid. 37
199 Unnamed correspondent, quoted in Ibid. 40
and make their effect improving, yet their operation severe, published in 1846.  

Where *Australiana* contained over 30 references to slavery, *Crime and Punishment* contained only four. There was also a subtle shift in Maconochie’s use of abolitionist rhetoric. As in *Australiana*, he continued to associate prison labour with slavery and emphasised its degrading influence. However, what was missing in *Crime and Punishment* were the explicit comparisons between the convict system and West Indies slave society. There were no more tales of convict masters and mistresses “talking coolly of fifty lashes” like their planter counterparts.

Instead the term “slavery” was used in a far more generic sense. On two occasions, Maconochie wrote of the need to “banish” slavery from the system of secondary punishments, on another occasion, he called for the replacement of coerced “slave” labour with voluntary labour; and on the final occasion, he lamented that slavery “deteriorates” the condition of the prisoner. While it could be argued that this generic application of abolitionist rhetoric was a sign of its continued authority, I would suggest that the opposite was the case: together with its infrequent use, the generic use of the term “slavery” in *Crime and Punishment* was symptomatic of its loss of relevance. Abolitionist rhetoric no longer evoked the strong associations that it had seven years earlier. It had been reduced to a series of catch phrases, devoid of their original context.

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201 Ibid. viii, 42

202 Ibid. 13

203 Ibid. 43
The declining influence of abolitionism on Maconochie’s thinking was already apparent in the text of *Crime and Punishment*. By the following year, his transition was complete. In 1847, Maconochie published *Norfolk Island, 1840-44*, a series of pamphlets defending his regime at the penal settlement. The main text of the booklet did not contain a single reference to slavery. Moreover, Maconochie not only discarded the term from his critique of corporal punishment, he also turned his back on one of the key strategies of abolitionist anti-flogging rhetoric: he abandoned the standard focus on physical suffering. Noticeably absent from his accounts of flogging in *Norfolk Island* were the gory details which had featured so prominently in the commentary of Molesworth and Hall.

Indeed, at the forefront of *Norfolk Island* was the question of how much weight should be given to sentiment and reason. Maconochie distinguished between two different modes of criticism that could be used to discredit corporal punishment: the sentimental approach, “which laments, however weakly, over the physical sufferings of criminals”; and the penal science approach, “which desires to guard their morals and higher interests”. While he did not see the two approaches as mutually exclusive, he argued that the latter was “much more useful”. Importantly, even for Maconochie, sentimentalism retained some of its attraction – thus we find him warning that “far from feeling too much” when he had witnessed floggings, he was “conscious of having felt too little”. On the whole, however, he insisted that a lack of feeling was in fact desirable when approaching the topic of corporal punishment. In

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204 Maconochie, *Norfolk Island, 1840-44*.

205 There was a passing reference to “chains, and dungeons, and factitious offences, and all the other apparatus of slavery” in the appendix. Ibid. 25

206 Ibid. 29

207 Ibid. 30-31
justifying his fervour for penal reform, he reassured his readers: “I do not think that feeling for bodily suffering had much to do with the matter, but an earnest, perhaps excessive, desire to produce moral impressions.”

Though not always successful, Maconochie tried his best to distance himself from the sentimentalism that characterised abolitionism.

In the interval between the publication of *Australiana* and *Norfolk Island*, the emotionally charged language of abolitionism largely disappeared from Maconochie’s writings. This transition in his thinking was arguably symptomatic of broader changes in British political culture: it corresponded to the general decline of abolitionist influence in public debate. *Australiana* was published in 1839, when the abolitionist victory was still fresh in the minds of the British people; it was less than a year since slaves in the West Indies and the Cape Colony had obtained full emancipation. However, with this goal secured, already the energy which had been directed into the anti-slavery cause was beginning to dissipate. By the time *Crime and Punishment* and *Norfolk Island* were published in the mid-1840s, the heyday of abolitionism was well and truly over.

On this level, the relationship between Maconochie’s shift in language and the decline of abolitionism seems relatively straight-forward. What is less clear, however, is to what extent the shift represented disenchantment with abolitionism itself, and in particular, the principle of racial equality.

Numerous scholars have argued that the mid-nineteenth century witnessed a hardening of racial attitudes. Catherine Hall, a leading proponent of this view,

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208 Ibid. 31

contends that disillusionment with the conduct of freed slaves in the post-emancipation era caused political liberals to reassess their optimism in the existence of a common humanity. Their commitment to racial equality was replaced by a heightened awareness of racial difference, and a subsequent desire to guard the “whiteness” of British colonists.\footnote{210 Catherine Hall, "Of Gender and Empire: Reflections on the Nineteenth Century" in Gender and Empire, ed. Phillipa Levine, The Oxford History of the British Empire, Companion Series (Oxford: Oxford University Press, 2004). 37} Other scholars have convincingly documented an increased emphasis on racial separation in European colonists’ daily lives, for example in the management of their home environments, childrearing practices and sexual arrangements.\footnote{211 Ann Laura Stoler, Race and the Education of Desire: Foucault’s History of Sexuality and the Colonial Order of Things (Durham: Duke University Press, 1995). 97} Historians have also traced an increased preoccupation with racial difference in disciplines such as science and medicine.\footnote{212 Nancy Leys Stepan, "Race, Gender, Science and Citizenship" in Cultures of Empire: Colonisers in Britain and the Empire in the Nineteenth and Twentieth Centuries, ed. Catherine Hall (Manchester: Manchester University Press, 2000). 65-67}

Yet despair at racial difference does not seem to have played a significant role in Maconochie’s decision to discard the language of abolitionism from his critique of corporal punishment. Indeed, racial thinking was noticeably absent from his writings, particularly when placed against those of his contemporaries. Reverend Naylor, who served as the chaplain of Norfolk Island during Maconochie’s administration, expressed anxieties about the racial make-up of the prisoners, lamenting that “the English farm labourer” was “indiscriminately herded” with “Chinamen from Hong Kong, the aborigines of New Holland, West Indian blacks, Greeks, Caffres and Malays”.\footnote{213 Thomas Beagley Naylor and Robert Pringle Stuart, Norfolk Island, 1846: The Accounts of Robert Pringle Stuart and Thomas Beagley Naylor (Adelaide: Sullivan's Cove, 1979). 17-18} By contrast, Maconochie’s work contains no such references.
Rather than looking to race as the determining factor in Maconochie’s case, it is more useful to maintain a broad approach and examine the assumptions about human nature underlying his writings. While it is impossible to sustain the argument that his work represented an attempt to guard the “whiteness” of British colonists, his preoccupation with convict reformation does suggest an underlying belief in the need to regenerate colonial society. His shift away from abolitionist language, while not necessarily precipitated by despair at racial difference, certainly represented a renewed attention to the moral welfare of British colonialists. As such, the following section investigates his understanding of how the marks system fitted into the bourgeois “civilising” project of empire.

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Maconochie’s optimism in the possibility of convict reformation has earned him the admiration of many historians since his principal biographer, John Vincent Barry, took up his case in the late 1950s. Barry painted a glowing portrait of Maconochie, a “great gentleman and true philanthropist”.214 He paid tribute to Maconochie’s success, dedicating an entire section to the remarkable case of Charles Anderson, “The Man who was Chained to a Rock”.215 Almost without exception, historians have followed in this hagiographic tradition. Convict transportation was “one of the blackest chapters in the lexicon of man’s inhumanity”, wrote Sheldon Glueck in the foreword

214 Barry, Alexander Maconochie of Norfolk Island, 225
215 Charles Anderson was transported to New South Wales aged 18 on a conviction of burglary. Due to his frequent attempts to abscond, he was ordered to be chained to a rock on Goat Island for two years. Governor Bourke eventually investigated Anderson’s case and he was sent to Port Macquarie, and finally to Norfolk Island. When Maconochie assumed command of the island, he gave Anderson some unruly bullocks to manage. He gradually became “less wild” and was placed in charge of a signal station. See Ibid. 121-124.
to Barry’s biography, but Maconochie was one of the “few exceptional administrators of these colonies who laboured with dedication to salvage the men entrusted to their oversight”. 216 Robert Hughes went even further, describing Maconochie as “a prophetic reformer, a noble anomaly in the theatre of antipodean terror and punishment”. 217 The most recently published work on Maconochie, a popular biography by John Clay, deviates little from this interpretation, with the front cover promising the story of “How one man’s extraordinary vision saved transported convicts from degradation and despair”.218

Many of these authors had a personal interest in criminal law and prison reform.219 Intent on upholding Maconochie as an enlightened reformer, they tended to take his sympathy for his convict charges at face value and to thus portray him as an exceptional figure, ahead of his times. Yet, Maconochie’s attitudes towards the convicts were far from straightforward. This becomes evident when we unpack some of the ideological premises of the marks system, as well as the inconsistencies between his rhetoric and his practice when it came to the use of flogging.

Maconochie’s optimism in the possibilities of convict reformation reflected his religious outlook. His writings were infused with the evangelical language of salvation. He emphasised the “common nature” of humanity, and spoke of the

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218 Clay, Maconochie's Experiment.
219 Barry, a judge on the Supreme Court of Victoria, was leader of the Australian Delegation at the first United Nations Congress in Geneva in 1955 on the Prevention of Crime and the Treatment of Offenders. Glueck, a Professor of Law at Harvard, was famous his controversial work on juvenile delinquency. Clay, a Jungian analyst, developed an interest in penology while working at Peper Harow, a therapeutic community for disturbed adolescents, in the 1970s.
convicts as “fallen spirits”. He argued that the convicts’ degradation was a transitory state rather than their innate condition – that they were “temporarily fallen”. Furthermore, he asserted that they could be uplifted from this “fallen” state on the basis that they too were God’s creatures with a “stake in this world, and consequently in the next”. Although many of the convicts were “very bad”, he maintained that “every one has human reason, feelings, and affections”; he was adamant that even the worst of the convicts could be reformed so long as these qualities were “properly recognised and appealed to”.

However, for all his proclamations about the “common nature” of humanity, Maconochie remained committed to a hierarchical vision of society. Where radical elements of the evangelical movement used biblical and theological arguments to argue for the abolition of a class-based society, he retained a far more conservative outlook. The very notion that convicts were “fallen” captured his sense of social order. Accordingly, Maconochie had very definite ideas about what the reformation of convicts would entail. His marks system of punishment was an exemplary version of the bourgeois “civilising” project of empire.

With its focus on independence and self-control, the marks system was closely tied to contemporary middle class ideals of manliness: the commitment to hard work and the deferral of gratification. Maconochie argued that traditional approaches to punishment “give no charge to men of their own destiny” and instead treated the

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220 Maconochie, Norfolk Island, 1840-44. 16, 45
221 Ibid. 16
222 ———. "Australiana" 90-91
convicts as “children”. By contrast, he claimed that the marks system was designed to make each convict responsible for his actions, “to place his fate in his own hands”. In doing so, it trained the convicts in the “habits of prudent accumulation, postponing gratification of present tastes and impulses to ulterior advantages”. Prisoners could not simply wait until the time sentence was completed, but were forced to earn their freedom through “industry and self-command”.

Similarly, his understanding of what constituted good conduct was contingent on middle class norms of civility. Marks were to be granted to convicts if they had been “orderly, obedient, sober, zealous, attentive, active, industrious, cleanly in their persons and rooms, civil, temperate”. The sorts of activities Maconochie encouraged the convicts to undertake also accorded with his bourgeois tastes. Convicts’ attendance at church and school, and the learning of musical instruments, were held up as desirable outcomes of the marks system. He even prided himself on having inculcated proper table manners in the convicts: men who were previously “fed more like hogs” and “tore their food with their fingers and teeth”, were given knives and forks and taught to eat in a proper fashion. Maconochie showed a remarkable attention to detail in his attempts to cultivate behaviour consistent with bourgeois values.

224 Maconochie, Norfolk Island, 1840-44. 15
225 Ibid. 7-8
226 Ibid. 18
227 ———. “Australiana” 19
228 Barry, Alexander Maconochie of Norfolk Island. 114
229 Maconochie, Norfolk Island, 1840-44. 9-10
Most importantly, Maconochie sought to develop a sense of loyalty to empire among his convict charges. This objective came to the fore in May 1840, just two months after he arrived on Norfolk Island, when he decided to celebrate the Queen’s Birthday by ordering a general holiday. He provided fresh rations for dinner, gave each prisoner a half tumbler of rum-punch and allowed them free reign of the island.230 To convict Thomas Cook, the day’s celebrations represented the fundamental contrast between Maconochie’s methods and those of his predecessors. Men who had been “ruled with the rod of Iron” and “received their hundreds at the Triangles” for being just a short distance from their barracks were suddenly permitted to range the island “without the least fear”.231 For Maconochie’s admirers such as Cook the Queen’s Birthday reflected the success of his command. For others, however, the day was a sign of his indulgent and reckless methods. He was loudly condemned in the colonial press.232

Critically, Maconochie defended his actions in terms of the national significance of the occasion. He stated that he was disturbed by “the hatred existing in most prisoners … towards their native country and all her institutions”, and that the Queen’s Birthday represented an opportunity “to call out different emotions”.233 He emphasised the ways in which the day’s activities fostered the convicts’ deference to empire, from toasting the young queen at dinner to their participation in “national games”.234 He claimed that the celebrations had been a major success, reviving “the memory of

230 Ibid. 11
232 Barry, Alexander Maconochie of Norfolk Island. 105
233 Maconochie, Norfolk Island, 1840-44. 11
234 Ibid. 11
home, and of home festivals, which had long been forgotten”.235 Indeed, such was the success of the day that he extended the same principle to St George’s, St Patrick’s and St Andrew’s days, and to the anniversaries of the battles of Waterloo and Trafalgar.236

Maconochie’s defence of the Queen’s Birthday celebrations was also carefully designed to play to fears about the insecurity of colonial ties. He emphasised that nothing could be more important in regard to “our distant colonies” than “maintaining home associations with them”. 237 But perhaps more innovatively, Maconochie suggested that the convicts’ attachment to the empire should be cultivated as part of the reforming process itself:

Loyalty and love of country are among the purest and least selfish of all the sentiments of our nature, and thus too among the most important; - and in a reforming system of penal discipline… it will be found well, I am persuaded, to recognise the wisdom of directly cultivating them.238

He implied that “loyalty” and “love of country” could themselves be enlisted as tools of reformation.

The marks system, Maconochie’s grand alternative to corporal punishment, promised much. According to Maconochie, all convicts, however degraded, could be reinvented as manly, civilised and loyal colonial subjects. He implied that they too could share in the bourgeois “civilising” project of empire. Yet the cracks in his vision inevitably

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235 Ibid. 12
236 Ibid. 12
237 Ibid. 12
238 Ibid. 13
began to surface when it came to implementing the marks system. The fact that his system was so heavily premised on bourgeois values would come to be a serious pitfall of the marks system.

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Unlike many of his contemporaries, Maconochie was little inclined to acknowledge some of the ambiguities surrounding convicts’ reformation. Where others worried that convicts’ reformation might only be “outward”, he was adamant that their progress could be objectively measured. He repeatedly emphasised the scientific basis of his system, using numerous medical analogies to highlight this point. He described the marks system as a form of “moral surgery”; and referred to the prisoners as patients to be “cured”.239 Furthermore, Maconochie claimed that his experience at Norfolk Island had confirmed his optimism in the possibilities of convict reform, demonstrating that men “may have fallen very low, yet still desire to recover”.240 Yet beneath Maconochie’s confidence in the possibilities of reformation lurked deep uncertainties, demonstrated by the inconsistencies between his ideology and practice. Our understanding of Maconochie as a staunch opponent of corporal punishment is complicated by the fact that he continued to order floggings of convicts during his time as commander of Norfolk Island.

Maconochie’s use of corporal punishment has generally been explained in the context of official hostility to his methods. On the instruction of Governor George Gipps, Maconochie was forced to continue issuing sentences of flogging. In March 1841, he

239 ———. "Australiana" 20
240 ———, Norfolk Island, 1840-44. 13
reported to Gipps that corporal punishment had lately been applied on seven occasions, for offences including perjury, insolence and attempted assault. He was clearly uneasy about this process, warning Gipps that “the more I see of this form of punishment… the less I like it”.  

Yet Maconochie’s use of corporal punishment cannot simply be explained as acquiescence to Gipps’ orders. By 1843, Maconochie himself defended the use of corporal punishment so long as it was guided by the principle that men were capable of “recovering” themselves. He claimed that he could inflict a flogging while still retaining “the affections and cooperation of all the more manly and consequently valuable men”. Gradually, he seems to have moved to a position of compromise on the issue. In 1847, three years after he left Norfolk Island, he admitted that corporal punishment “had its occasional rare use” so long as it was carried out “privately, with only officers present” and “did not seem to rest on personal favour”. In this setting, corporal punishment “appealed beneficially to those cautious feelings which being in a degree in all men it is as unwise altogether to neglect, as it is an utter mistake entirely to rely on them”. Here we find Maconochie not just making a case for the necessity of flogging as a measure of last resort, but actively defending it as a “beneficial” mode of punishment.

The tension between Maconochie’s criticism of corporal punishments, and his continued use of it on Norfolk Island, is highlighted by his practice of ordering

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241 Alexander Maconochie, March 1841, report to Governor Gipps, quoted in Clay, Maconochie’s Experiment. 185-86

242 Alexander Maconochie, April 1843, rejoinder to Governor Gipps’s report on Norfolk Island, quoted in Ibid. 248

243 Maconochie, Norfolk Island, 1840-44. 31
flogging in cases of “unnatural vice”, or sodomy. From the early years of white settlement, the incidence of “unnatural vice” amongst convicts was a subject of great concern for colonial authorities. Maconochie not only shared these concerns, but advocated harsh punishments for those found guilty of the offence. In Norfolk Island, he reassured his readers that he was “even more severe” than any of his predecessors on questions of “moral offence”. The records of fines of marks kept by Maconochie confirm this practice. One convict, described as a “poor lad, weak and much ashamed”, received a fine of 1 000 marks and “twice 50 lashes” for “unnatural crime”.

There is some irony in this. As Catie Gilchrist has observed, Maconochie regarded sodomy as the product of the brutal effects of the lash. At an 1847 enquiry into prison discipline, he dated the increase in “unnatural vice” on Norfolk Island with the re-introduction of chains and the lash in 1842. He told the inquiry that “the tendency to unnatural offence reoccurred with that change [because] the men had lost their self respect”. In spite of this, he continued to order floggings in cases of “unnatural vice”.

It is unclear to what extent Maconochie was actually conscious of the tension between his rhetoric and practice. He worried that corporal punishment was ultimately

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244 For further discussion see: C. M. Gilchrist, "Male Convict Sexuality in the Penal Colonies of Australia, 1820-1850" (PhD thesis, University of Sydney, 2006).

245 Maconochie, Alexander. "Return of Ill-Conducted English Prisoners under Sentence of Transportation at Norfolk Island, for 20, 15, 10, and 7 Years, with Particulars of Their Offences." In British Parliamentary Papers, Transportation Series, 7 (1846). 802-04

246 Maconochie, Alexander, "Return of Ill-Conducted English Prisoners under Sentence of Transportation at Norfolk Island, for 20, 15, 10, and 7 Years, with Particulars of Their Offences." In British Parliamentary Papers, Transportation Series, 7 (1846). 802-04

247 Catie Gilchrist, "'This Relic of the Cities of the Plain': Penal Flogging, Convict Morality and the Colonial Imagination" Journal of Australian Colonial History 9 (2007). 16

248 Alexander Maconochie, 17 March 1847, evidence to the Select Committee on the Execution of the Criminal Law, House of Lords, quoted in Ibid. 17
ineffective – that it “rather gratifies my own feelings on the subject than improves the
men’s” – but did not seem to see his actions as contributing further to the convicts’
depravity”. Indeed, he seemed to believe that although he had not discovered any
“remedies” to “unnatural vice”, flogging and other measures might operate as
“palliatives”.249

The prevalence of “unnatural vice” at Norfolk Island severely tested Maconochie’s
optimism in the possibilities of convict reformation. Where he otherwise deemed
flogging ineffective and unacceptable, Maconochie argued that it was necessary, even
beneficial for this particular category of prisoner. His reaction to “unnatural vice”, a
fundamental breach of middle class sexual norms, thus exposed the failure of the
marks system to resolve underlying tensions over the legitimacy of flogging. While
the marks system implied that convicts too could share in the bourgeois project of
empire, Maconochie applied a very different logic to those who failed to meet his
terms. His decision to resort to the use of corporal punishment signalled the fragility
of his belief in a “common humanity” and revealed the limits of his reform project.

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In 1844 Maconochie was recalled from his position at Norfolk Island. When he
returned to London in August that year, he was unwilling to concede any flaws on the
part of his controversial administration. Despite the glaring inconsistencies between
his ideology and practice, Maconochie tried his best to evade responsibility for the

249 Alexander Maconochie, 1842, report to Governor Gipps, quoted in Clay, Maconochie's Experiment. 212
failures of his penal experiment. He sought to deflect attention on to the colonial authorities.

Maconochie had good reasons to be bitter. He had been recalled from his position despite a positive report on the progress of the settlement by Gipps. Back in England, no position was forthcoming; the Colonial Office, while maintaining that his recall was not prejudicial to his character, did not offer him any further employment. Moreover, Maconochie soon faced the disapproval of the House of Commons. In July 1846, a revolt broke out on Norfolk Island, which ultimately led to the execution of thirteen convicts. Although the revolt occurred more than two years after Maconochie had left the penal settlement, the crisis was viewed by others as evidence of the failure of his system of convict management.

Seeking to vindicate his position, Maconochie sought to shift the blame for his failures onto others. With his English audience in mind, Maconochie argued that his experiment had been thwarted by antagonistic colonial officials. He had never been given a proper chance: “Nothing could be more unfavourable than my position on Norfolk Island for conducting a great moral experiment”, he wrote in 1847. He complained that his officers were “not at all cordial in their support” and that he had been let down by Gipps, who “frequently hesitated, and not unfrequently even refused, to support me”.

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250 Barry, "Maconochie, Alexander (1787 - 1860)"
251 Ibid.
252 Maconochie, Norfolk Island, 1840-44, 6
253 Ibid. 16-17
Back home, it was easy for Maconochie to shift the blame onto colonial society. Yet the attitudes of colonists to convict discipline, and flogging in particular, were never as clear cut as he later made out. In his very first publication *Australiana*, he commented on their mixed views. On the one hand, he expressed disappointment at the evidence given before the Select Committee, as it demonstrated an “almost incredible indifference” to the convicts’ welfare.\(^{254}\) It offered further proof that the settlers were obsessed with their own “comfort and prosperity”, which they erroneously aligned with the restraint, rather than the improvement, of the prisoners.\(^{255}\) On the other hand, he alluded to a strong and growing support base in the colonies. He supplemented his own writings with correspondence from fellow colonialists in the hope that it would demonstrate “that I am not singular in my opinions, – that many see as I see, and reason as I reason, – and that the light of discussion is breaking in at once from many quarters”.\(^{256}\) More generally, he argued, their communications illustrated that there was still “general intelligence and good feeling to be found, amidst all the injury inflicted by a vicious social system, in the communities of the Penal Colonies”.\(^{257}\) *Australiana*, more so than his later publications, captured the confusion at the heart of the debate on convict discipline: the fractured nature of both metropolitan and colonial opinion.

As this chapter has demonstrated, the fractured nature of colonial opinion was not just something that Maconochie observed, or that stood in the way of his penal experiment – it was something he helped to create. For all his confidence in the possibilities of

\(^{254}\) _______. "Australiana" 93

\(^{255}\) Ibid. 94

\(^{256}\) Ibid. 51-52

\(^{257}\) Ibid. 27
convict reformation, Maconochie was just as ambivalent as his contemporaries about the legitimacy of corporal punishment. His decision to discard abolitionist rhetoric in favour of the dispassionate language of penal science failed to resolve this underlying ambivalence.

Maconochie’s inconsistent attitudes to corporal punishment reflect the paradox at the heart of his marks system. In his attempts to create more manly, civilised and loyal colonial subjects among the convicts, Maconochie implied that they too could share in the bourgeois “civilising” project of empire. But it was also because his marks system was so heavily premised on bourgeois values that he found himself questioning his belief in a “common humanity”. The failure of some convicts to fit into his idealised model of manly, civilised and loyal colonial subjects severely tested his optimism in human nature.

For all its promises of salvation, the marks system did not always succeed and Maconochie subsequently reverted to traditional methods of discipline. His decision to resort to corporal punishment exposed the limits of his reform project. The same logic that had guided Hall two decades earlier continued to apply: what was “torture” for one group of convicts was deemed fair treatment for another. The recalcitrant convict proved to be too much, even for Maconochie’s scientific theories.
Conclusion

From the 1820s to the 1840s, opposition to the flogging of convicts in colonial Australia was energised by the concurrent debate over the flogging of slaves. Contrary to the prevailing view that abolitionist discourse was simply reproduced by critics of the penal system, this thesis has drawn attention to the complexities that accompanied its use. Edward Smith Hall, Sir William Molesworth and Captain Alexander Maconochie each seized on the abolitionist model to bolster their case against the corporal punishment of convicts. However, they did not attach identical importance to abolitionist discourse, nor did they use it in the same ways. In comparing their rhetoric, several important patterns of use emerge.

In following the lives of Hall, Molesworth and Maconochie, we gain a sense of the rise and fall of abolitionist discourse during this period. As early as the mid-1820s Hall articulated his objections to corporal punishment through the rubric of anti-slavery. Writing in the late 1830s, when comparisons between convictism and slavery were well established in colonial political discourse, Molesworth was even more confident in his use of the analogy. By contrast, abolitionism was only a fleeting influence on Maconochie’s writing and by the late 1840s he had explicitly distanced himself from it. The extent to which abolitionism affected the three men changed over time, as abolitionism itself came in and out of fashion.

There were also significant differences of emphasis between Hall, Molesworth and Maconochie in terms of their use of abolitionist rhetoric. The diverse ways in which they incorporated abolitionism into their work shows that it was a flexible discourse.
The aspect of abolitionism which resonated most strongly with Hall was the focus on the right to bodily sanctity, while the question of settler violence occupied the leading place in Molesworth’s work. Maconochie did not rely heavily on either of these aspects of abolitionism, but instead used the convict/slave analogy in a more general sense. All three appropriated abolitionism selectively, borrowing some aspects and discarding others.

The flexibility of abolitionist rhetoric contributed to its immediate appeal, yet it could also be a pitfall. The piecemeal approach to appropriating abolitionist rhetoric led to a variety of problems. This was most blatantly the case for Hall, whose selective use of abolitionist rhetoric ultimately did more to confuse than to clarify his position on whether flogging was a violation of convict rights. In a less obvious way, the appropriation of abolitionist rhetoric proved problematic for Molesworth, as it undermined his commitment to colonial self-government and opened him up to the charge of metropolitan prejudice. Even Maconochie found it difficult to avoid self-contradictions: at the same time that he criticised the sentimentalism of abolitionism, he reverted to arguments about the “hardening” of feeling associated with witnessing corporal punishment.

Reformers’ piecemeal approach to appropriating abolitionist language was not the only source of tension. Ultimately, the use of abolitionist rhetoric in attacks on the penal system proved to be difficult to sustain between the 1820s and 1840s, due to the underlying differences between the circumstances of convicts and slaves. Critics of the penal system departed from abolitionist rhetoric on a number of points. While we might assume that race was the major point of departure, this was not necessarily the
case. Of the three men whose work has been closely analysed in this thesis, Hall was the only one who significantly diverged from abolitionist rhetoric on racial grounds: he used the convict/slave analogy to denote racial difference rather than racial equality. In contrast, Molesworth upheld the abolitionist legacy, emphasising the detrimental effects of flogging upon the character of the British colonist. Meanwhile, racial thinking was noticeably absent from Maconochie’s writings. Hall, Molesworth and Maconochie’s differing responses suggest that while race was an important theme in the debate over flogging, it was not a factor that consistently divided abolitionists and critics of the penal system.

This study has revealed that it was their understandings of criminality that prompted critics of the penal system to depart most significantly from abolitionist rhetoric. Gender and class were both factors at work here, with opposition to flogging remaining conditional on the character and behaviour of convicts. Despite Hall’s assertions about the rights of convicts and Maconochie’s faith in the possibilities of reform, both continued to subscribe to the belief that the flogging of certain categories of convicts – insubordinates and “low characters”, “abandoned” women and “weak” men – was inevitable and possibly even beneficial. Their critique of corporal punishment reached its limits at the conventional notion of convict incorrigibility. Furthermore, opposition to flogging remained conditional in so far as it was tied to fears of lawlessness. In purely focusing on the behaviour of settlers and ignoring the question of convicts’ rights, Molesworth left open the possibility that flogging might be acceptable so long as it served the common good.
Given their selective and problematic use of abolitionist rhetoric, it is tempting to conclude that Hall, Molesworth and Maconochie were more interested in capitalising on the success of this discourse than its actual content. Certainly, there were elements of political expediency in all of their cases: Hall’s use of abolitionist rhetoric changed depending on the intended audience; Molesworth’s attacks on the Colonial Office reeked of political point-scoring; and Maconochie was all too happy to blame colonists for the failures of his marks system. Yet it would be wrong to reduce their use of abolitionist rhetoric to pure pragmatism. This thesis has demonstrated that abolitionists’ concerns about human nature resonated strongly with the each of them. As Hall and Molesworth debated the legitimacy of flogging convicts, they grappled with fundamental questions about human nature: the question of human worth, on the one hand; and the human capacity for violence, on the other. These questions remained at the heart of the flogging debate even when the abolitionist influence waned. Although Maconochie discarded anti-slavery rhetoric, he continued to share abolitionists’ concern for individual salvation.

Perhaps the most important legacy of abolitionism in the flogging debate was that it forced colonists and colonial observers to think about corporal punishment not simply in terms of the local conditions of the penal colonies, but in terms of the broader imperial context. In utilising the abolitionist discourse of universal rights, Hall was compelled to evaluate the status of convicts not only in relation to the free colonists, but in relation to other British subjects. In borrowing the abolitionist motif of settler violence, Molesworth was forced to revise his views on colony-metropole relations. Finally, Maconochie’s use of abolitionist rhetoric in the late 1830s set the tone for his later work, prompting him to clarify his vision of the bourgeois “civilising” project of
empire. In this sense, the debate about flogging not only reflected the “interconnected” nature of the British Empire, it also helped to foster that sense of “interconnectedness”. By integrating abolitionist rhetoric into their case against flogging, Hall, Molesworth and Maconochie helped to cultivate an imperial mentality.

Abolitionism defined opposition to the flogging of convicts between the 1820s and 1840s, often strengthening criticism of the penal system, but sometimes complicating it as well. The complex relationship between abolitionism, flogging and the transportation debate, long overshadowed by a preoccupation with whether convict society was “brutal or benign”, highlights the on-going need to resituate convict history in an imperial context. Historians need to appreciate, as Hall, Molesworth and Maconochie did, that the politics of punishment were inextricably tied to the legitimacy of the British Empire.
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