THE PROSECUTION PROJECT

INVESTIGATING THE CRIMINAL TRIAL IN AUSTRALIAN HISTORY

» MARK FINNANE

I

The Prosecution Project[1] had its beginnings in a paper on an obscure murder case. Not one of Australia's famous trials, it deserves to be better known.

In 2009 I was doing archival work in the State Records Office of Western Australia, looking for materials related to the nineteenth-century criminal prosecution of Aboriginal defendants for crimes committed against other Aborigines. This was not where I had started, in an inquiry into responses to violence in Australian history. The Australian historical literature on violence involving Indigenous people is almost entirely preoccupied with the national shame, the story of the violence done to the original inhabitants of the country during dispossession. This is a story whose narrative has been recounted in numerous histories and fictions, in a variety of media and for diverse places across the Australian continent and its islands. But what struck me in the early years of my research on Australian homicide was not just the relative absence of inter-racial killings resulting in criminal trials but also the relative frequency of colonial prosecution of Aborigines for killing other Aboriginal people. This was and remains an uncomfortable topic, but one that turned out to have some important ramifications for our understanding of what it meant to say that Australia had been settled under British law. In a study of the long history of contests over criminal jurisdiction in Australia Heather Douglas and I concluded that the practice of criminal law, found in the evidence of prosecution, judgment and sentencing, was always more pluralist than the presumption of a single criminal law had imagined.[2]

Yet those archival searches also turned up the unexpected. Following up the indexed reference to the trial in 1898 of one Pompey for the murder of another man Nipper in the Eastern Kimberley I discovered that this was in the first place an error. The man prosecuted in a criminal trial in Perth was not Pompey, who was a potential witness in the case, but another named Wonnerwerry. And this was no killing whose context of cultural reference was likely to be found mainly within an Indigenous circle, to be understood in the oft-reported language

(above)

Attacking the mail, bushranging, N.S.W. 1864, by Samuel Thomas Gill. Chromolithograph, 19.8 x 25 cm.

PHOTO: NATIONAL LIBRARY OF AUSTRALIA, NLA.OBJ-139537074[8]


A THRILLING NEW TALE BEGUN IN THIS NUMBER.

THE BANNER OF TRUTH.

A Weekly Record of Passing Events, and

POLICE NEWS

Nº 9. MELBOURNE, JANUARY 20, 1877. ONE PENNY.

PLUCKY CARLTON GIRLS ARRESTING A THIEF.

(above)

Plucky Carlton Girls arresting a thief (*Police News*, 1877).

PHOTO: STATE LIBRARY OF VICTORIA, PN20/01/77/00[3]

of the time as 'tribal murder', or 'savage customs'. For tangled up in the prosecution of Wonnerwerry was that of his employer, who had been arrested and charged with him by an independent-minded police constable in the remote outpost of Wyndham.

This employer just happened to be Jeremiah ('Galway Jerry' as he was known) Durack, a member of the famed pastoralist family. Durack featured occasionally in an icon of Australian pioneer literature, *Kings in Grass Castles* (1959),[3] by his niece Mary, and a little more in a later volume *Sons in the Saddle* (1983),[4] where his murder in 1901 by other Aboriginal employees led to another trial of those accused. What Mary Durack studiously avoided was an inquiry into the process by which Jerry in 1898 managed to escape entirely from his prosecution for homicide, after his employee, Wonnerwerry, was convicted on a similar charge. As I have explored elsewhere, these events, richly documented in the archives, constituted an exemplary 'politics of prosecution'.[5] They prompted questions about the organisation of justice on Australian frontiers, about the reach of law into remote areas, about the influence of powerful people on legal proceedings, about the justice of outcomes.

For me another question followed — was such a case an outlier, or were there others like it? And how would we know? One way of approaching those questions would be the time-honoured one followed by historians, that of case study, achieving understanding through a method attentive to the detail of institutional arrangements as the context for the interactions of players on the small stage of their daily encounters. Through such an approach we can go a long way to appreciating what it meant to be brought to trial in colonial Australia, and what followed from that process. In the following pages I develop such a case study. Later I explore what we might learn by broadening the scope, stepping back from the day-to-day to look at an entire system in action, over long periods of time, and using methods that lend themselves to the use of new technologies, and even new research communities.

II

In April 1865 the New South Wales Chief Justice Sir Alfred Stephen arrived in the southern town of Goulburn. The judge was on circuit, accompanied by the colony's Sheriff and a court officer known as the Clerk of Arraigns. Also attending were two barristers, one of them the 31-year-old William Charles Windeyer, a future judge himself, prosecuting for the Crown; the other was prominent counsel R. M. Isaacs, also a member of the New South Wales Parliament. Isaacs was on hand to take up the cases of those who could afford a defence lawyer, or to be assigned to defence by the court in the trial of a capital case. Some defendants would be referred to these barristers by one of the three local solicitors present in court that day. The Supreme Court sitting in circuit was regularly reported as the assizes, on this occasion as the Goulburn Assizes, a term that called up the English origins of the colonial legal system. The reception of English law into the colonies is a common theme in case law and legal histories. But there was also a cultural transmission. It can be described in terms of the ceremonial and architectural forms that attended the establishment of legal authority in colonial cities and towns.

By the 1860s Goulburn was not only an episcopal seat but an assize town — one day it would have the buildings that proclaimed that fact. In 1847 it had become the main assize court for the Southern District jurisdiction of New South Wales, taking over from 'the dull little village of Berrima', as one scribe put it.[6] The opening of the first assizes in Goulburn had occasioned a large demonstration: 'Long before His Honor approached the town, an immense number of gentlemen in carriages and on horseback, met His Honor, and escorted him to his lodgings, at Mandelson's, the Goulburn Hotel'.[7] This was a ritual transmitted from eighteenth-century English assize towns, where the judges had arrived in the kind of splendour that expressed their authority, their majesty.[8] In 1847 the courtroom in Goulburn was makeshift, a part of the police station, pending the building of a modest new court in 1848 and its replacement in 1880 with a very grand edifice that still stands. The principal fault in 1847 was said to be that it was short on room for 'the bystanders and witnesses'.[9]

In colonial times, those who could not make it to court to witness the quarterly spectacle of the assizes could nevertheless expect to read all about it later. The court was a public space, a theatre for entertainment as much as justice, and reporting its business filled many pages of the myriad papers of the colonies. Major cases, or just curious ones, produced voluminous stories, syndicated, cribbed and plagiarised in other newspapers within and across colonial boundaries.

Before the stories commenced at Goulburn on Monday 24 April 1865 there were other preliminaries. One was the reading by the clerk of arraigns of Her Majesty's proclamation against vice and immorality, a tedious document read at the opening of each assizes, whose title suggests its burden. On this day the Chief Justice followed the reading of the proclamation with a lengthy discourse of his own, on the crisis in the interior that had led to the Felons Apprehension Act. This was a piece of emergency legislation directed against bushrangers, a statute which allowed them to be declared as outlaws and so able to be taken alive or dead. It enabled a constable to establish immunity from prosecution in a fatal encounter with such an outlaw.[10]

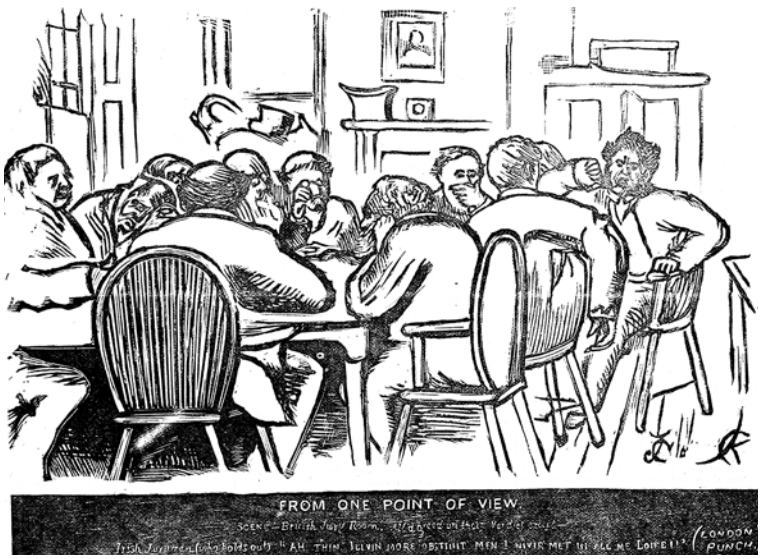
For Stephen the necessity of alerting the district to the new statute was also to be found in the evidence of local sympathies with bushrangers. The Chief Justice had tried many bushrangers and had a well-deserved reputation for the harshness of his sentencing.[11] His earlier experience of such trials had led him to recommend a change in the law to facilitate the prosecution of those found to be harbouring criminals. The result was legislation that increased penalties from 2 to 15 years for such harbouring, as well as easing the burden of proof.

Stephen's address was a discourse on the state of the country, in the midst of a crisis of authority. He reached back to the Burrangong (Lambing Flat) riots as the symptom of declining values. Near Young in 1861 white miners had ferociously attacked Chinese diggers, seeking to drive them off the goldfields. The Chinese had been protected by a local squatter, who allowed those fleeing the rioters to camp on his land.[12] The New South Wales police had been centralised in the aftermath of the riots. In 1863 their ineffectiveness in the face of an outbreak of bushranging became a major political headache for the liberal government of Charles Cowper.[13] Cowper lost office but bushranging continued, as did criticism of the police. Stephen in 1865 was their defender; they were with 'few exceptions... highly intelligent, faithful, zealous, active, and gallant public servants'. Their energies were sapped by the lawlessness of the rural regions that harboured the bushrangers, and against

(below)

The jury room, 1877 (*Police News*, 1877).

PHOTO: STATE LIBRARY OF VICTORIA, PN18/08/77/00[2]



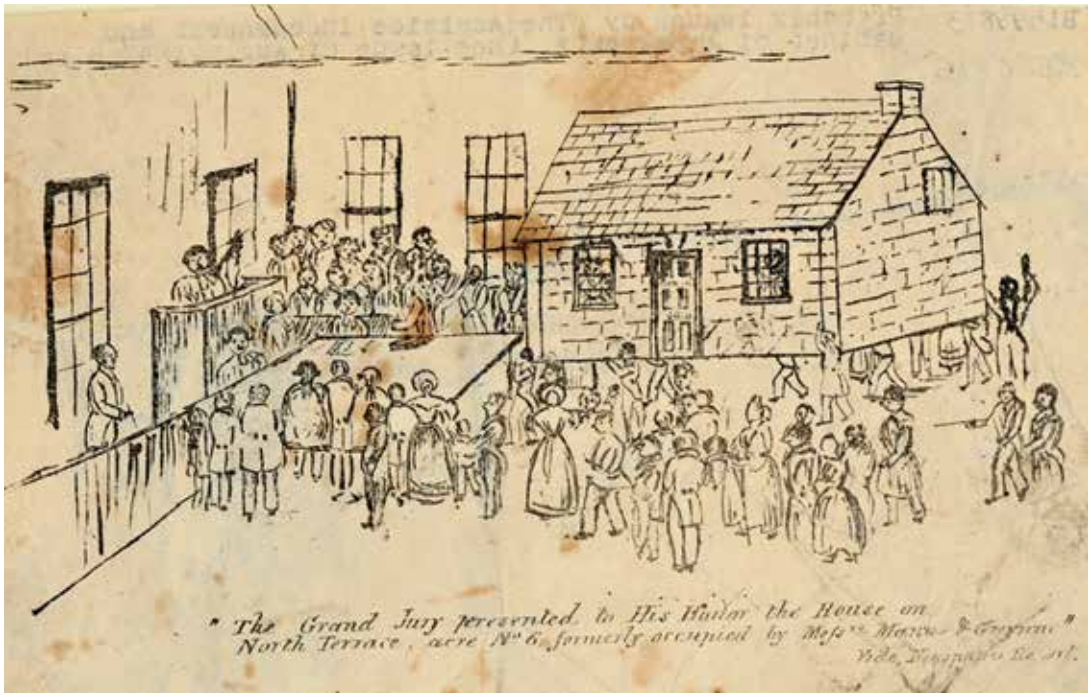
which the emergency legislation of 1865 was in part directed. A symptom of the defiance of law and order had been jury nullification evident in the fact that the rioters of 1861 had been mostly acquitted at trial: and so 'the mob which commences with one illegal act, impelled by whatever object, soon rushes into other excesses, and ends by breaking open prisons, and burning or pillaging a city'.[14] For Stephen bushrangers and their protectors were not the only enemy; so also were those who shirked the responsibilities of the jury, or failed to assist the authorities in the prosecution of criminals.

This was stirring stuff, delivered to a small courtroom in a rural town of post-goldrush New South Wales, population no more than about 4000. The Chief Justice was addressing his comments less to the potential objects of the law's repression than to those in whose interests it was deployed. He was also anxious that the new statutory powers of police and the courts not be undermined by thoughtless appeals to the liberty of the subject, or declamations 'that a man cannot be made moral by an Act of Parliament'. These measures, both just and merciful in their provisions, were also entirely 'in accordance with the principles of our ancient English law'.[15]

It is however one thing for chief justices and learned writers to discuss the principles of our ancient English law, and another for those who enter into court to be judged by them. It was the role of chief justices in the colonies to determine the fate not only of those who might be threatening to burn down the city, but of those who had just run foul of the criminal law in its more mundane aspect. And so, having finished his address to the inhabitants of the southern districts, the Chief Justice was brought to the business of the assizes.

III

Sitting over four days, Sir Alfred Stephen was presented with indictments for offences ranging from common assault to embezzlement, from receiving stolen property to armed robbery,



(above)

Trial in progress, Dubbo, New South Wales.

PHOTO: STATE LIBRARY OF NEW SOUTH WALES, AT WORK AND PLAY – 05117[4]

(right)

The Grand Jury. Political cartoon, Adelaide, 1841.

PHOTO: STATE LIBRARY OF SOUTH AUSTRALIA, B+15998/3[5]

from infanticide to murder, from bigamy to arson. The defendants included the 'native born' and the immigrant, an Aboriginal bushranger and two Chinese gold miners, nineteen men and six women. In the crowded courtroom the jury complained from the start of the poor amenity, especially the 'filthy state' of the jury room. On the Saturday the court moved its business to the hall of the mechanics institute, in consequence it was said of the 'unhealthy state of the court-house'.

Procedure was also adaptable to the circumstances of a court which had not sat in this place since the previous October. When James Winderbank was brought up on a charge of stealing eleven gallons of brandy some six months earlier, a solicitor asked for an adjournment; he had been retained just ten minutes before by the accused and so had not had an opportunity to prepare a brief for counsel. When the case was resumed later in the day a barrister was present to defend the accused. At once he showed his hand by challenging police evidence of statements made before a caution had been issued. The judge overruled the objection, though not without voicing disapproval of 'constables making questions of prisoners to entrap them'.[16]

Like police interviewing prisoners, judge and jury were not always clear about the boundaries of their own decision-making. After Charles Petersen was convicted of attempted rape on a girl under the age of ten (a capital crime if it had been rape), the Chief Justice sentenced the prisoner to three years' hard labour on the roads. The following day however, he had Petersen brought into court again. On consulting the statute Stephen had found that the minimum sentence for the crime was five years. The prisoner was advised from the bench that if he behaved himself well the judge would recommend early release after three years. More predictably, juries were frequently puzzled by legal conundrums. Faced with the prospect of sending Mary Holland to gaol for killing her infant child by drowning, both judge and jury strived to find exculpation in her state of mind. After leading the jury in that direction Stephen had later to clarify their uncertainty about the state of the law on a matter that preoccupied many Victorian experts: 'it had been held by the

(above)

Court room, Cobar, New South Wales.

PHOTO: STATE LIBRARY OF NEW SOUTH WALES, AT WORK AND PLAY – 05648[7]

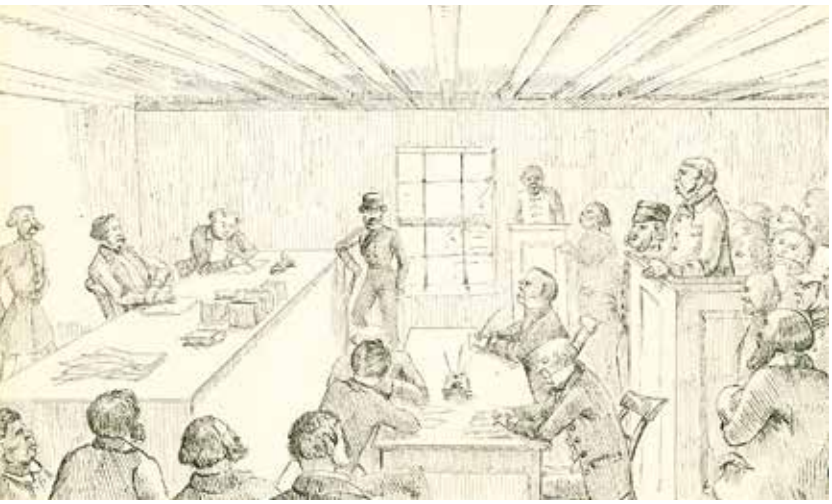
English judges that every person committing an offence was held to be in his right mind unless the contrary were proved'. [17]

English judgements were not the only point of reference for the Chief Justice. After listening to a three-hour address by counsel appearing for a man being tried on a capital charge of robbery and wounding, Stephen reminded the jury of their duties to society. Mr Isaacs had urged the jury that if they had any reasonable

(left)

Sir Alfred Stephen, Chief Justice of New South Wales (State Library NSW).

PHOTO: STATE LIBRARY OF NEW SOUTH WALES, A4363061



(above)

Charles Lyall: Courtroom scene, Victoria, c. 1854.

PHOTO: STATE LIBRARY OF VICTORIA, H87.63/2/7B[6]

doubt about the prisoner's guilt they should acquit. There were numerous conflicts of evidence in the case, even over the man's identity, but Stephen would have none of it. The Chief Justice cited the case of 'Peckham tried at Dublin in 1862'; the Irish court had held that counsel for the defence could not bring up other cases 'where through mistaken identity innocent persons had suffered'. He admitted the possibility of wrongful conviction but the risk of wrongful acquittal was greater; 'there have been mistakes, and many serious mistakes, but he thought they were in acquittals and not in convictions'.[18] With this strong direction the jury convicted, though not without a three-hour deliberation of their own.

If the voluminous record of court proceedings that one finds in the colonial newspapers is any kind of index, then we can be sure that the law meant quite a lot to colonials. The familiarity with which the players in these court dramas are depicted highlights the fact that legal relations of authority and subordination, of those who decided and those who were decided for, were also social relations. When we read these reports in the detail that they demand, are we seeing also evidence that the law's presence in colonial society was one more akin to an older common law tradition of the kind that David Lemmings has suggested was waning in England from the early nineteenth century, increasingly replaced by the instruments of a centralising state, displacing the lawyers with the rule of bureaucrats deploying their statutes and regulations?[19] The colonies may have been exemplary Benthamite experiments at one level but the remnants of legal rights and forms still exercised a powerful sway.

IV

But if such legacies of law and authority are readily uncovered in the records of colonial Australia what can we say of their fate? Criminal law is only one of the domains of law's empire. But for what it says about a society's norms and boundaries, about the relations of law and authority to the lives of common people, it is a very important one. Yet we know surprisingly little about the transitions from the world of the circuit court in a colonial town to the forms of contemporary criminal justice that seem less visible today. The Prosecution Project seeks to provide us with the means to learn more about those transitions, to do so in a way that broadens understanding of the history of crime and punishment, and to add to the stock of knowledge of Australian social histories in a way previously unimaginable. Its possibilities are enabled by approaches deploying new technologies and an expanded conception of the research community in order to explore some not-so-new questions with some methods tried and tested in other disciplines, if less often in the practice of historians.

The questions include some touched on earlier. What happened to the criminal law after its introduction to Australia? How were its processes of prosecution and trial shaped by the colonial context? And what kind of legacy for contemporary criminal justice was left by those colonial transitions? Those questions in turn may be addressed through specific histories that track key features of the criminal justice process — the relative decline of the jury trial as the most common resolution of prosecution of serious crime, the outcome of more common use of guilty pleas; the increasing duration of those trials that did take place, an effect of burgeoning rules of evidence, and the expanding role of professional investigation and growth of forensic sciences; the changing status of legal subjects (Aborigines, children, women); the shifting responsibilities of prosecution authorities, including police and public

prosecutorial officers; the impact of public policy on penal options and judicial discretion, a story that entails the end of capital and corporal punishments as well as the growth of a diverse array of other penalties; the shaping of the criminal trial as a cultural event, a process that has always entailed both the self-conscious performance of roles within the court as well as the representation of these in newspapers and other media; and of course the trial as an emotional event, one in which public as well as private expectations of justice and fairness may take a roller-coaster ride, with reverberations in the public world that enlarge the significance of these quite discrete events.

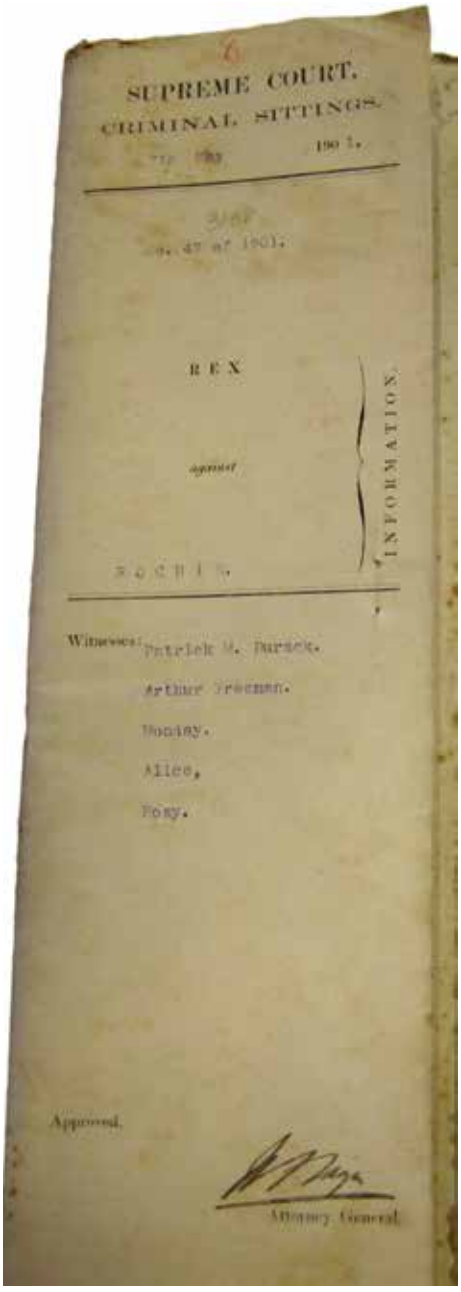
The conventional method for approaching such histories has been textual and contextual. The powerful institutional weight of the apparatus of law exercises its own influence on the way in which the history of criminal law is written. The trial, its antecedents in investigation and preparation of briefs of evidence, and its outcome in judgment and sentence, perhaps mediated by appeal, is above all a linguistic event. And so the history of the criminal law has to hand a ready array of textual materials, the (nevertheless select) record of past cases above all, the volumes of statutes and jurisprudence, the transcripts of proceedings.

What matters for the institutions of law, however, does not exhaust the scope of legal history or its significance in the life of publics and communities as well as individuals. Nor by any means does it exhaust the archive that law leaves. The law libraries are filled with the reports of judgments, but it is in the archives of courts, and the record of their proceedings in newspapers, that we find the materials also needed to answer the range of questions the Prosecution Project seeks to address.

V

The scope of the criminal justice archive is formidable. It ranges from the registers of cases brought before courts, through the preparatory records of investigation and prosecution offices, to the record of trial proceedings (largely a twentieth-century development) and the publication of outcomes in various forms — before we even come to the voluminous records of prisons with their own technologies of tracking and documenting lives of those within their domain. Some idea of the challenge of comprehending such an archive is evident in the now completed digitisation of the Old Bailey Proceedings, originally published from 1674 for public edification and extending to 1913.[20] The text archive now runs to some 200 million words — for one court, admittedly an important one, though accounting for only one-fifth of the convicts transported to Australia.

In the past such archives have been mined primarily by sampling, whether systematic or simply exploratory. Some dimensions of criminal


SUPREME COURT.
CRIMINAL SITTINGS.
REX
against
INFORMATION.
Witnesses: Patrick D. Durack.
Arthur Freeman.
Monkey.
Alice,
Foxy.
Approved.
Attorney General.

(left)
Indictment – R v Rochie for killing of Jerry Durack, 1902.

PHOTO: STATE RECORDS OFFICE OF WESTERN AUSTRALIA, CONS 3473/3138

justice processes have been assessed through official statistics, better for some jurisdictions than others, and always limited by the principles of selection operating at the point of their collection and collation. Official statistics are also anonymous, de-identified, and so we generally know much more about the convicts, their origin and their life-course than we do about any of the later generations of offenders.

To address these shortcomings the Prosecution Project approaches its task through a collective research effort aimed at reconstructing the criminal justice archive from original materials but in a way that enables new investigations. A brief outline below identifies the scope of the project and its approach.

The first aim of the project is to build an archive of all higher court appearances of those people brought to trial from the middle of the nineteenth to the middle of the twentieth century. We propose to do this as far as possible for the six principal criminal jurisdictions in Australia, that is, the six States of the Commonwealth with their colonial predecessors. From that very large database, researchers (the Prosecution Project research team in the first place, others in the longer run) will be able to draw their own samples for more intensive inquiry.

The feasibility of this process is enabled by the generally robust survival rate of Australian court records, especially various kinds of registers of the court's business. In Western Australia for example, the criminal court registers date from less than a year after the establishment of the Swan River settlement. They were maintained first as a record of the Quarter Sessions sittings held from 1830 and continued in the same format (indeed in the same book) from the establishment of the Supreme Court in 1861. The consistency of the record is impressive; much the same information is available for the 1960s as for the 1830s. No bureaucracy is perfect however; the difficulty of communication between the Perth metropole and its remote outposts in the Kimberleys and elsewhere meant some records for outlying courts were never formally entered in the Supreme Court registers. Fortunately for this investigation another bureaucracy fills much of the gap — the Western Australia Police Gazettes provide another rich source

No	Defendant	Crime or Offence charged	Day of Com.t	Day of trial	Judgment	Sentence	Remarks
1	George Balguerizon	Larceny		1st Oct 1830	Guilty	14 Days Imprist & once publicly whip'd 50 lashes	Whipped at Cart's tail in Fremantle
2	Tom Brown	Simple Larceny		10th Jany 1831	Not Guilty	- - - - - -	forthwith discharged
3	Paul Lorkyer	Simple Larceny		Same	Guilty	1 Cal. Mth Impt with H. L.	
4	Robert Wall	Larceny on River		4th April 1831	Not Guilty	- - - - - -	forthwith discharged
5	Makomene a Lascar	Larceny		Same	Not Guilty	- - - - - -	forthwith discharged
6	William Harrison	Simple Larceny		Same	Guilty	4 Cal. Mths. Impt with H. L.	
7	Charles Spencer	Larceny		Same	Guilty	2 Cal. Mths. Impt with H. L.	
8	John Philip	Burglary		Same	Not Guilty	- - - - - -	Convicted Same for an Assault and sentenced to 4 Cal. Mths. Impt with H. L.
9	Richard Brown	Burglary		Same	Not Guilty	- - - - - -	Remanded on another Indictmt
10	Richard Brown	Assault: Const in Exn of his Duty		Same	Guilty	6 Mths Imprist with H. L.	[illegible]
11	William Green	Arson		Same	Not Guilty	- - - - - -	forthwith discharged

(right)
The first trials, Swan River 1830–1: Court of Quarter Sessions.

PHOTO: STATE RECORDS OFFICE OF WESTERN AUSTRALIA, CONS 3422/1[9]

of information on trial outcomes. Other jurisdictions present the same mix of excellent survival rates for some kinds of registers with occasional unevenness of coverage or format. Nevertheless we were confident at an early stage about the feasibility of collecting significant and continuous records of these courts in the six Australian States.

Another aim of the project is to enable this data collection to be accessible to a group of researchers, exploring different questions perhaps, but able to make use of these longitudinal sets which would be maintained as a legacy of the work of the original research team. This ambition also entails the development of a method of data collection that would be flexible enough to cope with a variety of data sources as well as facilitating data entry from a number of different locations.

In meeting the challenge of collecting data from a variety of sources, the project builds on the tremendous capacity for data collection and data sharing enabled by digital technology and the internet. A collaboration between database and web designers located in Griffith eResearch Services and the research team resulted in the development of a web portal facilitating data entry at any computer linked to the Internet. The process involves the mass digitisation of archival records, producing individual images (for example, of a court register page), which are opened in a web browser by the user. From this image ('zoomable' as needed) the user enters the accessible information into the forms of a structured database (names, trial dates, offence, pleas, verdict sentence, etc). The data is maintained in a relational database, with the full dataset accessible currently by the research team, and some information (for example, names, trial dates, offences) searchable through a public website. In the longer term we will be able to produce datasets accessible to the wider research community through federated archives of the kind promoted through ANDS (Australian National Data Service).

The approach adopted here builds on the already very significant products of digital humanities research in Australian institutions, as well as international projects. The Old Bailey Online was an inspiration — though the record of one court only, within a single jurisdiction. Founders and Survivors, the digital record of Tasmanian convicts, a formidable product of Tasmanian researchers working with the State Library and a volunteer community, was another guide.[21] The world-leading initiative of the National Library of Australia's collection of digitised newspapers, freely searchable through the Trove search engine, is an indispensable condition of the research capacity of the Prosecution Project database.[22] So too is the more recent initiative of AUSTLII, the open access Australian legal information database, to develop its Legal History Libraries, including historical statutes and case law.[23] In parallel with the Prosecution Project the Digital Panopticon (based in the UK and funded through the Arts and Humanities Research Council)[24] is also building large datasets of nineteenth-century British criminal justice records; there are plans for the two projects to share and link data (for example, in tracking the life-courses of those transported to Australia and later appearing in colonial courts).

VI

These have not been the only products of the digital world to shape the design of the Prosecution Project. The growth of family and community histories, often with their own very active data collection projects, has increased the value of the kind of records that criminal justice researchers must access. This development is potentially of great research use, but from the researcher's point of view, also brings its own hazards. One is the risk of public records being licensed for commercial use, frequently enabling their digitisation and even indexing but typically in ways that put much information behind a paywall, or constrain its use in other kinds of investigation. The focus of genealogical research is above all on individuals and families, while other kinds of social and economic research demand more flexible approaches to the use of this kind of data. For this reason the Prosecution Project seeks to enable a broader approach to data collection of the criminal justice records, retaining data on names of individuals (subject to the privacy or access constraints of various jurisdictions and kinds of records), while also collecting the

extensive supplementary data contained in the records, for later research use.

In this context the Prosecution Project has accessed the enormous potential of volunteer communities engaged in genealogical and other historical research, 'citizen historians' we might call them. Again the project takes its lead here from the practices of other projects, including the burgeoning world of citizen science (in which for example environmental data is collected through individuals using their own digital devices), as well as the volunteers who daily contribute in their thousands to the digital correction of transcripts of the Trove newspaper collections. By designing a data collection system accessible through the internet the Prosecution Project has joined such projects in expanding the community of those engaged in our research. Late in 2014 we enabled those outside the research team to start the work of data entry on archival images we supply through the web portal. So far more than 300 volunteers have been added to the project, registered from locations all around Australia, with some international. These volunteers are now making daily contributions to a database with the potential to tell them and others more about hitherto unknown events in Australian history. With their aid, the capacity of the database to tell us about criminal justice processes and outcomes also increases the more rapidly.

VII

The Prosecution Project started life as a relatively discrete research enterprise, focused on a particular set of questions about the criminal trial in Australian history. Those questions remain central and will be addressed in the way common to historical research, through articles, chapters, books, perhaps a museum exhibition, possibly even audio or visual documentaries.

Along the way, however, the project is throwing up other kinds of questions and answers about the conduct of historical research and its possibilities in Australia.

One is the value of collaborative research. In our case Australian Research Council funding, matched with significant co-investment by Griffith University, especially in the development of IT infrastructure, has enabled the establishment of a project team of research fellows, postgraduate students, and research support staff, located both on and off campus. The co-location of the on-campus researchers is by itself a stimulus to the development of new research agendas, collaborative learning of new methods, techniques and approaches. The long-term productivity of this kind of collaboration of course remains to be demonstrated by future outcomes. But, in contrast to the generally individualised work practices of historians, this project already offers a productive model for future historical research in areas where such collaboration makes sense.

The second is the way in which the project has enabled outreach to a community of users, of citizen researchers, who mostly have limited previous contact with the academy, though often much experience with cultural institutions such as libraries and archives. For these people the process of historical investigation stems mostly from a very personal motivation about a family or community's history. But, recognising the value they have themselves received through the resources built by genealogical researchers before them, they bring to the Prosecution Project a new energy and considerable additional capacity.

Finally, the experience of working on the Prosecution Project and with colleagues on other projects such as the Digital Panopticon and Founders and Survivors, draws attention to the very great potential of digital technologies, the publication and circulation of images, the development of large datasets, the design of new modes of publishing research outcomes, including visualisation of data, and the delivery of such. But in a research environment where humanities and social sciences continue to be the poor cousins of the other sciences, the need for this potential to be matched by significant infrastructure investment remains pressing. A digital research project that relies on the fast (preferably very fast) and secure transmission of data-hungry archival images, whether of court records or newspaper articles, reinforces the need for a national infrastructure that can support the research

being opened up by the new technologies. We should be wary of lazy public commentary on the National Broadband Network (NBN) which sees it as largely a tool for delivering media entertainment. Humanities research is just one of a large number of areas of innovation that depend on fast, secure and affordable digital communication, an indispensable condition of an enterprise like the Prosecution Project. ¶

MARK FINNANE FAHA FASSA is ARC Laureate Fellow and Professor of History at Griffith University. He has published widely on the history of criminal justice, policing, punishment, and criminal law in both Australia and Ireland. Currently he is directing the ARC-funded 'Prosecution Project', hosted at the Griffith Criminology Institute and the subject of this article.

1. The Prosecution Project is hosted at Griffith University and with funding through the ARC Laureate Fellowship Program, 2013–18.
2. Heather Douglas and Mark Finnane, *Indigenous Crime and Settler Law: White Sovereignty after Empire* (London: Palgrave Macmillan, 2012).
3. Mary Durack, *Kings in Grass Castles* (London: Constable and Co., 1959).
4. Mary Durack, *Sons in the Saddle* (London: Constable; Australia: Hutchinson, 1983).
5. Mark Finnane, 'A Politics of Prosecution: The Conviction of Wonnerwerry and the Exoneration of Jerry Durack in Western Australia 1898', *Law in Context*, 33 (2015), 60–73.
6. *Sydney Chronicle*, 16 June 1847, p. 2.
7. *The Sydney Morning Herald*, 8 September 1847, p. 2.
8. Douglas Hay, 'Property, Authority and the Criminal Law', in *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, by E. P. Thompson, Douglas Hay, Peter Linebaugh, John G. Rule and Cal Winslow (New York: Pantheon Books, 1975), pp. 26–31; for another reception for the Chief Justice on circuit, on the occasion of the first assize court at Mudgee in 1873, see *Sydney Mail*, 26 April 1873, p. 540.
9. *The Sydney Morning Herald*, 8 September 1847, p. 2.
10. Michael Eburn, 'Outlawry in Colonial Australia: The Felons Apprehension Acts 1865–1899', *ANZLH E-Journal*, (2005), 80–93.
11. Susan West, *Bushranging and the Policing of Rural Banditry in New South Wales, 1860–1880* (Kew, Vic.: Australian Scholarly Publishing, 2009); Martha Rutledge, 'Stephen, Sir Alfred (1802–1894)', in *Australian Dictionary of Biography* <http://adb.anu.edu.au/biography/stephen-sir-alfred-12911> [accessed 4 December 2015].
12. Ann Curthoys, '"Men of All Nations, except Chinamen": Europeans and Chinese on the Goldfields of New South Wales', in *Gold: Forgotten Histories and Lost Objects of Australia,* ed. by Iain McCalman, Alexander Cook and Andrew Reeves (Cambridge: Cambridge University Press, 2001), pp. 110–11.
13. J. B. Hirst, *The Strange Birth of a Colonial Democracy: New South Wales 1848–1884* (Sydney: Allen & Unwin, 1988); West, *Bushranging and the Policing of Rural Banditry.*
14. *Goulburn Herald and Chronicle*, 26 April 1865, p. 2. The speech was reprinted in a volume of the colony's law reports: see 4 SCR 1865, appendix (cited by Eburn, 'Outlawry in Colonial Australia', p. 81.).
15. Ibid.
16. *Goulburn Herald*, 26 April 1865, p. 2.
17. Ibid.; Joel Peter Eigen, *Unconscious Crime: Mental Absence and Criminal Responsibility in Victorian London* (Baltimore: Johns Hopkins University Press, 2003); Arlie Loughnan, *Manifest Madness: Mental Incapacity in the Criminal Law* (Oxford: Oxford University Press, 2012).
18. *Goulburn Herald*, 29 April 1865, p. 3. The prisoner William Corcoran was sentenced to death, later commuted to hard labour for life, the first three years in irons: *New South Wales Capital Convictions Database, 1788–1954* <http://research.forbessociety.org.au/record/2406> [accessed 14 January 2016]. The Irish case was mistakenly reported here, whether by Stephen or by the reporter: it was in fact the case of Thomas Beckham (not Peckham), tried at Limerick (not Dublin) with another for the murder of a landlord. The murder and trial were widely reported in the Australian newspapers, e.g. a long report in the *Illawarra Mercury*, 22 August 1862, p. 3.
19. David Lemmings, *Law and Government in England During the Long Eighteenth Century: From Consent to Command* (Basingstoke Hampshire & New York: Palgrave Macmillan, 2011); David Lemmings, *Professors of the Law: Barristers and English Legal Culture in the Eighteenth Century* (Oxford: Oxford University Press, 2000).
20. *The Proceedings of the Old Bailey, 1674–1913* <http://www.oldbaileyonline.org/>
21. <http://www.foundersandsurvivors.org/>
22. <http://trove.nla.gov.au/>
23. <http://www.austlii.edu.au/>
24. <http://www.digitalpanopticon.org/>