

Penal Violence

David Brown

Introduction

Penal violence figures prominently in Australia's national story. A white settler colonial society founded on the dispossession and expropriation of the Indigenous inhabitants was built over the period from 1788-1868 through the transportation of 160,000 British convicts. This exercise of imperial statecraft and the violence, brutality, cruelty and deprivation involved in the convict experience, has largely been incorporated into Australian national history (Baskerville 2011: 80), to the neglect of transportation's global dimensions (Australian Government 2008; Hogg & Brown 2017). The sites of 'secondary punishment' (additional punishment for further offences such as drunkenness, insolence, refusal to work, absconding, and assault) such as Macquarie Harbour, Sarah Island (1821-1822) and Port Arthur (1830) in Van Diemen's Land (Tasmania); Norfolk Island (1824); Port Macquarie (1821) in New South Wales; and Morton Bay (1824) in Queensland are notorious for the extreme violence inflicted on convicts. These were described by Governor Bathurst approvingly as a 'culture of Salutary Terror' (Evans 2009: 60; Hughes 1987). The same violence featured in early Australian literature such as Marcus Clarke's *For The Term of His Natural Life* (1874). The cultural memory of this has not faded. Tours of convict sites tend to play up the extreme violence, escapes, the horrific ghostly and bizarre, calculated as more commercially appealing than stories of boredom, deprivation or successful transition to free society (M Brown 2009: 85-121; Strange & Kempa 2003).

Some contemporary accounts of high security regimes draw a link between the convict secondary punishment regimes and what are often dubbed by the media as 'supermaxes', such as those in New South Wales: at Grafton, Katingal, and now Goulburn High Risk Management Unit; and in Victoria: Pentridge H Division, Jika Jika and now the Acacia and Melaleuca High Security Units in Barwon prison (Brown & Carlton 2013; Carlton 2007; Morris 2002). By contrast, Braithwaite (2001) has sought to displace the focus on violence, torture and cruelty and the Foucauldian framework of sovereign versus disciplinary power within which it is often fixed; he emphasises the reintegrative, rights-respecting and inclusionary aspects of transportation, stressing the more

This is a preview. Not all pages are shown.

to the pains of imprisonment, a way of managing and protecting a masculine self-identity which is not 'deviant' but which connects to broader societal values and ideologies. The work of Craig Minogue illustrates the way a form of revenge discourse which has very strong supports in media, political and public circles circulates as an incitement to and justification for attacks and killings of despised outsiders such as child sex offenders, a form of 'private justice', enacted inside the prison and in the 'community'. Furthermore, an examination of institutionalised state violence in the form of the Grafton bash regime reveals both a recent history of prolonged state penal violence and the way it reproduces violent acts, crimes and individuals, the very thing the prison purports to protect the community against.

Penal violence is highlighted in this analysis as inhabiting not just the confined spaces of the prison cell and yard, but as present, authorised, incited, condoned and celebrated in a myriad of places, mentalities and discourses beyond prison walls, and far closer to home than many of us would like to acknowledge. This invites us to examine our own role as 'penal spectators', a status which involves a kind of 'experiential distance' which 'shields us from the most fundamental feature of punishment – its infliction of pain' (M Brown 2009: 8-9). For 'punishment constitutes one of the most precarious spaces of the human condition in its seductive invitation to rely on the acts of others, both real and imagined, to justify our own infliction of pain rather than see our place in its problematic pursuit' (M Brown 2009: 11).

References

- Alexander, A, 2014, *Tasmania's Convicts – How Felons Built a Free Society* Allen & Unwin, Sydney.
- Australian Government, 2008, *Australian Convict Sites – World Heritage Nomination* Department of the Environment, Water, Heritage and the Arts, Canberra.
- Baldry, E, 2010, 'Women in Transition: From Prison to ...' 22(2) *Current Issues in Criminal Justice* 253-268.
- Baldry, E, McDonnell, D, Maplestone, P and Peeters, M, 2006, 'Ex-Prisoners, Accommodation and the State: Post-release in Australia' 39(1) *ANZ Journal of Criminology* 20-33.
- Baskerville, B, 2011, 'Outstanding Universal Value: Is Something Happening to the Writing of Convict History?' in *Islands of History – Proceedings of the 25th Anniversary Conference of the Professional Historians Association* (NSW) Anchor Books, Sydney, 76-96.
- Blagg, H, 2008, 'Issues in Aboriginal Law and Aboriginal Violence' in Anthony, T and Cunneen, C (eds), *The Critical Criminology Companion*, Federation Press, Sydney, 129-143.

- Bosworth, M, 1999, *Engendering Resistance: Agency and Power in Women's Prisons*, Ashgate, Dartmouth.
- Bosworth, M and Carrabine, E, 2001, 'Reassessing Resistance: Race, Gender and Sexuality in Prison' 3 *Punishment and Society* 501-515.
- Bosworth, M and Kaufman, E, 2013, 'Gender and Punishment' in Simon J, and Sparks R (eds), *The Sage Handbook of Punishment and Society* Sage, London, 186-204.
- Bourgois, P, 1995, *In Search of Respect: Selling Crack in El Barrio* Cambridge University Press, Cambridge.
- Braithwaite, J, 2001, 'Crime in a Convict Republic' 64(1) *Modern Law Review* 11-50.
- Britton, DM, 2003, *At Work in the Iron Cage: The Prison as Gendered Organization* New York University Press, New York.
- Brown, D, 1993a, 'Notes on the Culture of Prison Informing' 5(1) *Current Issues in Criminal Justice* 54-71.
- Brown, D, 1993b, 'Prison Informers: Where the Grasses are Greener' 18(2) *Alternative Law Journal* 80-85.
- Brown, D, 2005, 'Continuity, Rupture, or Just More of the "Volatile and Contradictory": Glimpses of New South Wales' Penal Practice Behind and Through the Discursive' in Pratt, J, Brown, D, Brown, M, Hallsworth, S and Morrison, W (eds), *The New Punitiveness* Willan Publishing, Devon, 27-46.
- Brown, D, 2009, 'Review Essay "Too High in Human Terms": The Costs of High Security Imprisonment. Review of *Imprisoning Resistance* by Bree Carlton and *Intractable* by Bernie Matthews' 21(1) *Current Issues in Criminal Justice* 162-179.
- Brown, D and Carlton, B, 2013, 'From "Secondary Punishment" to "Supermax": the Human Costs of High Security Regimes in Australia' in Ross, J (ed), *The Globalization of Supermax Prisons* Rutgers University Press, New Brunswick, 95-110.
- Brown, D and Duffy, B, 1991, 'Privatising Police Verbal: The Growth Industry in Prison Informants' in Carrington, K, Dever, M, Hogg, R, Barga, J and Lohrey, A (eds), *Travesty!: Miscarriages of Justice* Pluto, Sydney, 147-183.
- Brown, M, 2009, *The Culture of Punishment* New York University Press, New York.
- Carlen, P, 1983, *Women's Imprisonment: A Study of Social Control* Routledge, London.
- Carlton, B, 2007, *Imprisoning Resistance* Institute of Criminology, Sydney.
- Carter, 2001, 'The Casuarina Prison Riot: Official Discourse or Appreciative Inquiry?' 12(3) *Current Issues in Criminal Justice* 363-375.
- Chopper, 2000, Andrew Dominic (director), Australian Film Corporation, Mushroom Pictures, Pariah Entertainment Group.
- Clarke, Marcus, 1874, *For the Term of his Natural Life* 1997 edn, Oxford University Press, USA.

- Clemmer, D, 1958, *The Prison Community* Holt, Reinhart and Winston, New York. Extract reprinted in Johnston et al (1970) 479-483.
- Crewe, B, 2009, *The Prisoner Society* Oxford University Press, Oxford.
- Cunneen, C, Baldry, E, Brown, D, Brown, M, Schwartz, M and Steel, A, 2013, *Penal Culture and Hyperincarceration* Ashgate, Surrey.
- De Viggiani, N, 2012, 'Trying to be Something You are Not: Masculine Performances Within a Prison Setting' 15 *Men and Masculinities* 271-291.
- Dobash, RP, Dobash, RE and Gutteridge, S, 1986, *The Imprisonment of Women* Blackwell, Oxford.
- Edger, K, O'Donnell, I and Martin, C, 2003, *Prison Violence* Willan, Devon.
- Evans, R, 2009, '19th June 1822 Creating an Object of Real Terror: The Tabling of the First Bigge Report' in Crotty, M and Roberts, DA (eds), *Turning Points in Australian History* UNSW Press, Sydney, 4248-4261.
- Findlay, M, 1982, *The State of the Prison* Mitchellsearch, Bathurst.
- Giallombardo, R, 1966, *Society of Women: A Study of a Women's Prison* Wiley, New York.
- Goffman, E, 1974, *Asylums* Penguin Books, London.
- Goulding, D, 2007, *Recapturing Freedom* Hawkins Press, Sydney.
- Halsey, M, 2006, 'Negotiating Conditional Release: Juvenile Narratives of Repeat Incarceration' 8(2) *Punishment and Society* 147-181.
- Halsey, M and Harris, V, 2011, 'Prisoner Futures: Sensing the Signs of Generativity' 44(1) *ANZ Journal of Criminology* 74-93.
- Halsey, M and Deegan, S, 2012, 'Father and Son: Two Generations Through Prison' 14 *Punishment and Society* 338-367.
- Haney, C, 2011, 'The Perversions of Prison: On the Origins of Hypermasculinity and Sexual Violence in Confinement' 48(1) *American Criminal Law Review* 121-141.
- Hogg, R, 2014, '"Only a Pawn in their Game": Crime, Risk and Politics in the Preventive Detention of Robert Fardon' 3(3) *International Journal of Crime, Justice and Social Democracy* 55-72.
- Hogg, R and Brown, D, 1998, *Rethinking Law and Order* Pluto Press, Sydney.
- Hogg, R and Brown, D, 2017, 'Punishment and Colonisation: The Case of Transportation and Convictism in the "Global South"' *International Journal for Crime, Justice and Social Democracy*, forthcoming.
- Howe, A, 1994, *Punish and Critique: Towards a Feminist Analysis of Penalty* Routledge, London.
- Hughes, R, 1987, *The Fatal Shore – A History of the Transportation of Convicts to Australia 1787-1868* Pan Books, London.
- ICAC, 1993, *Report on the Investigation into the Use of Informers* NSW GPS, Sydney.
- Irwin, J, 1980, *Prisons in Turmoil* Little Brown and Co, Massachusetts.
- Jacobs, JB, 1977, *Stateville: The Penitentiary in Mass Society* University of Chicago Press, Illinois.

- Jewkes, Y, 2005, 'Men Behind Bars "Doing" Masculinity as an Adaption to Imprisonment' 8 *Men and Masculinities* 44-63.
- Johnston, N, Savitz, L and Wolfgang, ME (eds), 1970, *The Sociology of Punishment and Correction* 2nd edn, John Wiley, New York.
- Leibling, A with Arnold, H, 2004, *Prisons and their Moral Performance: A Study of Values, Quality and Prison Life* Clarendon Studies in Criminology, Oxford University Press, Oxford.
- Matthews, B, 2004, 22 December, 'A Journey Through the Belly of the Beast, Part 3' *On Line Opinion*.
- Matthews, B, 2006, *Intractable* Pan Macmillan, Sydney.
- Matthews, B, 2007, 3 April, 'Screwed at School for Crime' *On Line Opinion*.
- Minogue, C, 2011, *Seeing Who's Who* PhD, La Trobe University, Melbourne.
- Morris, N, 2002, *Machonochie's Gentleman: The Story of Norfolk Island and the Roots of Modern Penal Reform*, Oxford University Press, New York.
- Mullins, C, W, 2007, *Holding Your Square: Masculinities, Streetlife and Violence* Willan Publishing, Oregon.
- Nagle, J, 1978, *Report of the Royal Commission into NSW Prisons* NSW GPS, Sydney.
- Phillips, C, 2012, "'It Ain't Nothing Like America with the Bloods and the Crips": Gang Narratives Inside Two English Prisons' 14(1) *Punishment and Society* 51-68.
- Pratt, J and Eriksson, A, 2013, *Contrasts in Punishment: An Explanation of Anglophone Excess and Nordic Exceptionalism* Routledge, Oxford.
- Ricciardelli, R, 2015, 'Establishing and Asserting Masculinity in Canadian Penitentiaries' 24(2) *Journal of Gender Studies* 170-191.
- Rowe, A, 2011, 'Narratives of Self and Identity in Women's Prisons: Stigma and the Struggle for Self-definition in Penal Regimes' 13(5) *Punishment and Society* 571-591.
- Scruton, P, Sim, J and Skidmore, P, 1991, *Prisons Under Protest* Open University Press, Milton Keynes.
- Sim, J, 1994, 'Tougher Than the Rest? Men in Prison' in Newburn, T and Stanko, EA (eds), *Just Boys Doing Business?* Routledge, London, 100-117.
- Steering Committee for the Review of Government Service Provision (SCRGSP), 2014, *Report on Government Services 2014, Vol C, Justice* Productivity Commission, Canberra.
- Strange, C and Kempa, M, 2003, 'Shades of Dark Tourism: Alcatraz and Robben Island' 30 *Annals of Tourism Research* 386-405.
- Sykes, G, 1958, *The Society of Captives* Princeton University Press, Princeton, reprinted in Johnston et al, 1970, 447-454.
- Sykes, G and Messenger, SL, 1960, 'Inmate Social System' in Theoretical Studies in the Social Organisation of the Prison, Social Sciences Research Council: New York, extract reprinted in Johnston et al, 1970, 401-408.
- Toch, 1998, 'Hypermasculinity and Prison Violence' in Bowker, L (ed), *Masculinities and Violence* Sage, London, 168-178.

PENAL VIOLENCE

Tolson, A, 1977, *The Limits of Masculinity* Routledge, London.

Venkatesh, SA and Leavitt, SD, 2000, "'Are We a Family or Business?': History and Disjuncture in the Urban American Street Gang' 29(4) *Theory and Society* 427-462.

Vinson, T, 1982, *Wilful Obstruction* Methuen, Sydney.

Zdenkowski, G and Brown, D, 1982, *The Prison Struggle* Penguin, Melbourne.

Cases

New South Wales v Bujdoso (2005) 227 CLR 1

New South Wales v Bujdoso [2007] NSWCA 44