Law and Order under La Trobe: the first prisons of Port Phillip

By Dr Ashleigh Green

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Shortly after the Port Phillip District separated from New South Wales to become the independent colony of Victoria on 1 July 1851, a cartoon was published called 'Hail Victoria the Free'. This cartoon (next page) features a cannon of 'public opinion' lit by the flame of 'liberty' firing cannonballs of 'anti-transportation' at a convict ship. In case there was any doubt as to the meaning of the piece, it is accompanied by some lines of verse which read in part:

> By public voice alone she strives,
> Eschewing dread wars rattle;
> Those who should spend in gaol their lives
> Shall never tend her cattle –
> So Pentonville or Parkhurst bay,
> Or Vandemonian Pet,
> Adieu your wished Victorian joy,
> No living here you'll get.
> Melbourne, 15th July 1851[1]

This piece tells us a great deal about the culture of the Port Phillip District: it reminds us that transportation was still very much ongoing, and that free colonists fiercely opposed convict labour and the 'convict stain' being brought to their communities.[2] Yet, from the beginning, convicts, ex-convicts, and ticket-of-leave workers formed a huge part of the workforce in the District and were an essential part of the economy.[3] This paper will interrogate the idea of 'Victoria the Free' put forth by the colonists by exploring the first prisons of Port Phillip that were constructed in the city of Melbourne, using the physical buildings as touchstones to craft the narrative.

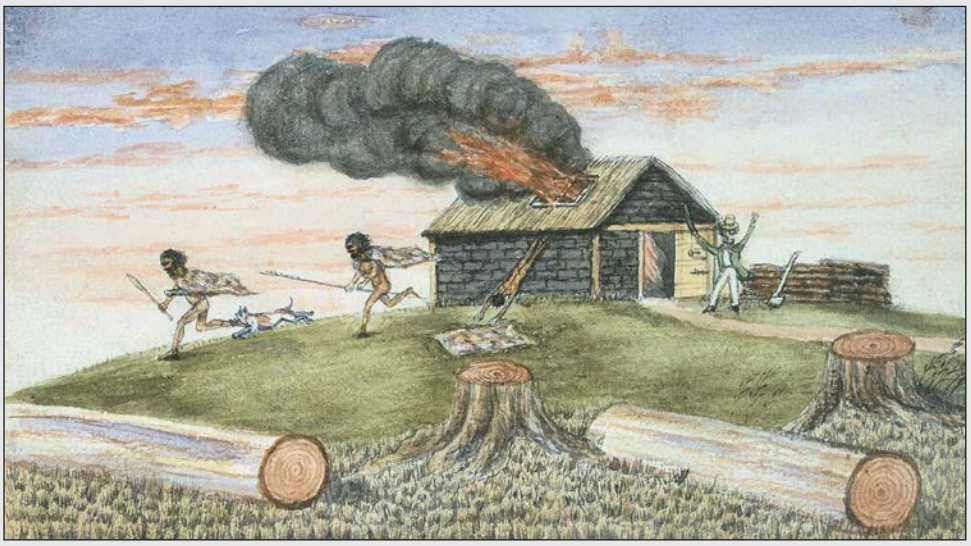
The story begins in 1835 with the arrival at what became Melbourne of John Batman (representing the Port Phillip Association), John Pascoe Fawkner and other Vandemonians. These men were officially trespassing on Crown Land, as well as invading the lands of the Kulin Nations. Richard Bourke, Governor of New South Wales, recognised that what was done could not be undone, and so the colonisation of the land south of the Murray began.[4] On 29 September 1836, HMS *Rattlesnake* arrived, bearing Captain William Lonsdale and three police constables: Robert Day, James Dwyer and William Hooson. Lonsdale had military and civil authority over the District. The military initially played a huge role in keeping order, while Lonsdale's civil constables were supported in their efforts by the ex-convict William Buckley, who had escaped from the failed Sullivan Bay penal settlement in 1803 and lived among the Wadawurrung people for thirty-two years. A bonded convict Edward Steel was also employed as a scourger for the cost

Charles Norton, 1826-1872, artist
Hail Victoria the free, 15th July 1851
Brown ink on buff coloured paper
Pictures Collection, State Library Victoria, H88.21/87

of one shilling a day. Lonsdale, three policemen, a runaway convict and a bonded scourger comprised our first police force! So it was that 'law and order' came to Port Phillip.[5]

At this stage, the only gaol in Melbourne was an insecure thatched hut on John Batman's sheep run, close to the location of Southern Cross Station today.[6] There were no court facilities, so any serious criminal charges required the offender to be transported to Sydney by ship to stand trial. Lonsdale opined that people 'would often rather hide a crime when they know they must go to so great an expense, loss of time and inconvenience in travelling so far to prosecute the offender'. He begged for a Court of Quarter Sessions to be established and also requested the appointment of magistrates, a matron for female prisoners, and 'as soon as possible… a Gaol, Solitary Cells, Court House, Prisoners Barracks and Hospital'.[7] With a lack of gaol facilities, petty offences that Lonsdale had jurisdiction over were often dealt with on a summary basis through the use of fines and placing men (and some women) in the stocks. The stocks were a particularly colourful part of early Melbourne. Garryowen describes them for us, saying they were 'intended for the feet instead of the head and hands' and that 'only offending ticket-of-leave convicts and incorrigible drunkards used to be condemned to this pillory'. On the rare occasions that a woman was 'stocked', the concession was made in the lady's favour 'that only one of her feet was shackled, and she could kick away as she liked with the other'.[8]

Many convict workers lived in Melbourne around this time, usually sent down from Sydney to clear the land, pull out stumps, and build roads.[9] Serious lawbreakers among this population were typically flogged by Steel the scourger, who was kept very busy in the early months, though he too found himself at the mercy of the law. One of the first arrests in the colony was of Steel himself, fined ten shillings for being in the tent of a female without a lawful reason.[10] Steel's inauspicious start set the pattern for Lonsdale's policemen, and all three of the original constables were dismissed in disgrace: Dwyer and Day in early 1837 for repeated drunkenness, and Hooson in late 1837 for accepting bribes.[11] Day was replaced by John Batman's brother Henry Batman, but he too was discovered taking bribes and died of alcohol poisoning. Finally, in August 1838, a man named William Wright took over as Chief Constable. Better known as 'The Tulip' for his bright red face and green uniform, he was a former convict himself. Tulip was '"fly" to every dodge of a reputed or actual rogue',[12] and a pillar of authority in the community, the first constable to retire with a spotless record. The gaolers were



Wilbraham Frederick Evelyn Liardet, 1799-1878, artist
An escape from the first gaol (1838), 1875
Watercolour, pencil, pen and ink
Pictures Collection, State Library Victoria, H28250/4
Liardet's view of the thatched hut turned gaol

initially little better than the first constables. The first, a man named Thomas Smith, was fired after just a few months for neglect of duty and repeated drunkenness. It is no surprise that escapes were common at this time, and Smith's description of an escape impresses upon us how insecure the gaol truly was. He writes, 'Henry Smiley, a prisoner… made his escape from the gaol on Monday morning at 2 o'clock the 24 July by breaking through the straw roof and shifting one of the slabs'.[13] After Smith's dismissal, the next gaoler was a man named James Waller. Though Waller promised Lonsdale his 'utmost exertions, vigilance, sobriety and integrity', Lonsdale unfortunately reported that 'on the day I told him of his appointment… he went to the lowest public house in the town, got very drunk and made a public exposure of himself'.[14] With the gaolers unfit for duty, it often fell to the constables to run the gaol. The few gaol records from this time were made by constables Hooson and McKeever, granting us insight into the nature of the prisoners there. About half were convicts and half were free men (and women); the most common crimes were petty theft, drunkenness (including being drunk and disorderly), and breach of contract, with insolence and disobedience also common among the bonded population.[15] It is worth acknowledging how frequent incidences of drunkenness were: huge amounts of alcohol were produced and consumed by the colonists, and much of the working male population consisted of itinerant ex-convicts, single men who had no families or social support. They often thought of nothing except spending their earnings on liquor.[16] Milton Lewis tells us that in 1841, 1,603 males and 59 females were convicted of drunkenness in Melbourne at a time when the population of the town was around 6,000.[17] Drunkenness, addiction, and alcohol withdrawals were all huge problems; in addition, drinking bad liquor, or being 'hocussed' could lead to insanity or death, presumably due to methanol or other contaminants poisoning the spirits.[18]

At the beginning of 1838, Mr George Wintle was appointed the new gaoler. He held the position for many years, resulting in the Melbourne Gaol gaining the nickname 'Mr Wintle's hotel'.[19] Wintle was not without his controversial moments, but Garryowen in the 1880s only had good things to say about him, implying that whatever had gone on behind the gaol walls, the general population remembered him fondly. Not long after Wintle's appointment came the first big shock to the prison system. In early 1838, George Langhorne, who operated the first Aboriginal mission on the south side of the Yarra (near the modern-day Botanic Gardens) reported that a number of Aboriginal men had been caught stealing potatoes because they were 'very hungry' and had been fired at by colonists.[20] Two men, Tullamarine and Jin Jin, were arrested and sent to gaol to await transportation to Sydney for trial. They managed to break free by setting fire to the gaol, and while Tullamarine escaped into the mountains with his wife and child, Jin Jin was recaptured, and he explained that Tullamarine accomplished the feat by getting 'a long piece of reed which he thrust through an opening in the partition

William Strutt, 1825-1915, artist
The old lock-up, police station and stocks (1839), 1850
Pencil and wash
Victoria the Golden, plate 6, Parliamentary Library of Victoria
Located in Market Square behind the Customs House
By this time a new police office and watch house had been built at Eastern Hill

between the place he was confined in and the guard room, and after lighting the reed by the guard's candle he drew it back and set fire to the thatch roof'.[21] Fortunately, no-one was hurt, but the gaol and some of the government stores were destroyed.

While Lonsdale waited for a new gaol to be planned and erected, he was obliged to rent a building owned by John Batman to house prisoners. The rented gaol was located at the modern-day junction of Flinders and William Streets, and was described as a 'brick and mortar habitation, 12 x 12 [13½ square metres], with about room enough to swing a cat round'.[22] Garryowen describes it as 'a small brick building, said to be a store, but more like a stable with a hay-loft overhead. The entrance was endways from Flinders Street and access was to the second story [*sic*] by means of a step ladder… a high ti-tree paling or stockade was put up all round'. Such a building hardly sounds secure, but Garryowen adds: 'There were always a couple of military sentries as an outer guard with loaded guns, on the watch and ready for action at any hour of day or night'. He also provides the additional detail that men were confined on the ground floor, and women in the upper storey.[23]

Melbourne's first Court of Quarter Sessions took place in April 1839. Commentary leading up to the date declared: 'The gaol is crowded, and the hands of the Bench will be full of cases for trial'.[24] The Quarter Sessions did not do enough to alleviate pressure on the gaol, however; vociferous complaints continued as to the gaol's crowded state. One man wrote, 'We possess a Jailer [*sic.*], who upon a salary of £100 a year, and single handed without even a turnkey, in a miserable building, has to guard fifty prisoners!'[25] To ease the situation, Lonsdale received permission to build a gaoler's hut and a watch-house on the Market Reserve formed by 'William Street and the lane' – very near to the rented gaol.[26] Around this time, tenders for the new gaol – which would eventually become Melbourne Gaol – were called for, though no suitable tenders had been received when Lonsdale was suddenly informed that he could no longer rent the current gaol from Batman, as the property had actually already been leased for a period of seven years, and the lessee had returned unexpectedly and was demanding use of the building.[27]

This, then, was the tumultuous world into which Charles Joseph La Trobe stepped when he arrived as Superintendent of Port Phillip on 3 October 1839. In his reply to the address of welcome, La Trobe set the tone for his term in office by declaring 'Let us remember, that religion is the only great preventative of crime, and contributes more, in a far more endurable manner, to the peace and good order of society, than the Judge and the sheriff – the gaol and the gibbet united'.[28] La Trobe would go on to be heavily involved in the administration of justice and the construction of courts and gaols throughout his tenure. As the senior public servant in the District, prisoners also wrote to him for clemency and relied on him to intervene and order inquiries when abuses in the prison system came to light. One example is the story of a twelve-year-old boy who unwittingly breached liquor licence laws while working at his father's shop and was fined the vast sum of thirty pounds. He was then committed to gaol until the fine was paid. The boy's father appealed to La Trobe, and La Trobe wrote to Governor Gipps in Sydney to waive the fine so the father could secure his release, which the colonists approvingly said was a credit 'both to his head

Robert Hoddle, 1794–1881, artist
Melbourne, Port Phillip, from Surveyor-General's Yard, 1840 (detail)
Pencil and watercolour
Pictures Collection, State Library Victoria, H258
The temporary gaol (1839), complete with bars on the windows and stocks at the front facing Collins Street West

and to his heart'.[29] Another example occurred in 1843 when the gaol was so desperately overcrowded that Wintle wrote to La Trobe for assistance. La Trobe personally inspected the gaol and, working with the resident judge, discharged eighteen prisoners who had been imprisoned under the *Hired Servants' Act* and for non-payment of fines.[30]

La Trobe's first task was to deal with the fact that in a few short weeks there would be no gaol in Melbourne at all; the rented gaol had to be returned to its lessee, and the planned gaol would take far too long to construct. Working with Lonsdale, La Trobe authorised the immediate construction of a temporary gaol at the intersection of Collins and King Streets with the use of convict labour. While it was being built, prisoners were moved from the rented gaol to the recently-built watch house nearby, where they were guarded by soldiers.[31] These were a difficult few months; the new turnkey resigned over low wages, the gaol sentries frequently left their posts, and on New Year's Day the prisoners in the yard somehow managed to procure spirits and get drunk.[32] In response to the sentries' misconduct, La Trobe lamented that 'The whole has arisen from the unsuitable nature of the place used as a prison, but I hope that within a few weeks the completion of the new gaol will assure the safety of the prisoners, and render the duties of the parties in charge more clear and definable'.[33]

In February of 1840 the temporary gaol was completed and occupied.[34] This small, brick, T-shaped gaol would serve as the Melbourne Gaol until the permanent edifice was completed. Extra cells and other improvements were made in the ensuing months, and a penal treadmill was also installed for those undergoing the sentence of hard labour, although it broke almost as soon as it was installed and was almost always in a state of disrepair.[35] The temporary gaol was a truly wretched place, with one description declaring that 'The prisoners are huddled together at night in this miserable hole' with no distinction as to the severity of their crime or sentence. During the day they were 'driven out to the street in front of the gaol, and there kept in custody by a guard of soldiers'.[36] Conditions were particularly intolerable during summer. One man confined there wrote to La Trobe, desperate for help: 'I was yesterday doomed to this miserable hole, closely confined during the whole night with two others in a room scarcely ten feet [three metres] square with disgusting atmosphere and the heat about 120 [49C] degrees – the room filled with vermin of all descriptions'. He reports that ninety people were crammed into the gaol and that owing to his ill-health 'the doctor will certify that he believes a few days confinement in this place might cause my death'.[37]

Around this time a new watch-house was erected at the eastern end of Little Collins Street (at the Eastern Market, corner of today's Exhibition Street), called the Eastern Hill Watch House. Partly because this building had a wall around it, and partly due to the gaol overflowing, it was converted from a watch-house to a 'house of correction' in January 1842.[38] Typically it housed short-term prisoners, drunks and 'lunatics', while serious offenders with hard labour sentences stayed at the temporary gaol.

In the meantime, the permanent Melbourne Gaol was beginning to take shape at the intersection of La Trobe and Russell Streets. Although this is in the central business district today, in the early 1840s it lay on the very outskirts of town, looming over the settlement. The locals, ever wary of anything to do with convicts and convictism, initially grumbled at

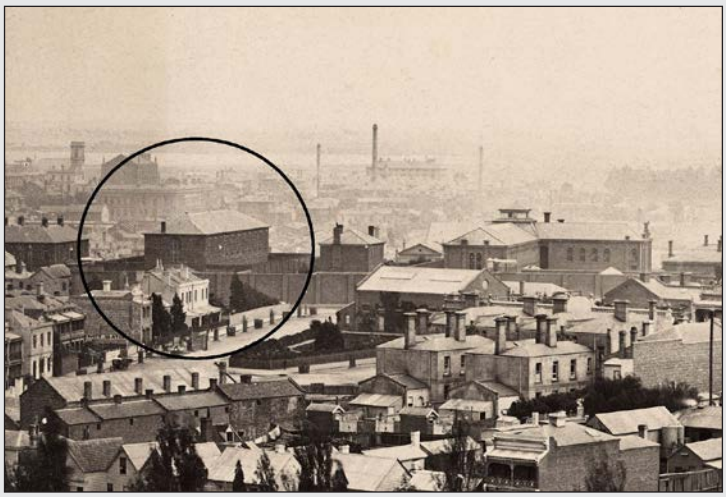
Charles Nettleton, 1826-1902, photographer
View of Melbourne looking east, 1860 (detail)
Photograph, albumen silver
Pictures Collection, State Library Victoria, H2497
The Gaol's first cell block may be seen on the upper left

the size of the new gaol. Others staged outright protests, venting their fury at how huge and costly it was. It was by far the most imposing building in the district at a time when it was difficult to get the New South Wales government to spend money on any public works. It had more or less taken shape at the end of 1842, and an observer described it as having walls 'of the most massive description', 'cells for the reception of 150 persons', including forty solitary – and being three storeys high, 169 feet (51.5 metres) long and with a gaoler's compartment at the end.[39] The cell block was often described as brown owing to it being made of ironstone (limestone with iron oxide deposits), a soft and much-inferior stone to the sturdy and familiar bluestone that would dominate Victoria's prisons in later years. Though the first cell block was torn down in 1907, remnants of the ironstone wall can still be seen at the Old Melbourne Gaol Museum complex, forming part of the wall of the women's yard of the old city watch-house.

At this time in Britain, a 'model prison' known as Pentonville, had just opened. This prison featured the latest innovations, including separate cells and a strict regime that imposed silence, order, and penance on prisoners. It was a prison designed to reform and change minds, a 'mill grinding rogues honest'.[40] Other 'model' prisons included Millbank, Wakefield, Preston and Parkhurst. The prison system was undergoing considerable change in Britain in the 1840s, and while the Pentonville model would come to dominate Victoria's prison system, for Port Phillip the immediate consequence of Pentonville's construction was the exile system.[41] Exiles were men aged between eighteen and twenty-five whose sentences were for not more than fifteen years. They spent eighteen months housed in solitary confinement at Pentonville or Millbank in a bid to reform them. After this they were shipped to the colonies, where they received pardons on the condition that they did not return to Britain before the end of the original sentence.[42] To the people of Port Phillip, exiles were transported convicts by another name. Many residents were furious that they should be shipped to a place that was *not* a penal colony, some declaring: 'We should duck the scoundrels if they attempt to set foot in a country of free men and send them back as they came to the greater scoundrels who sent them hither'.[43]

Yet this was not the only opinion. While ordinary labourers wanted to keep wages high and the exiles out, landowners desperately wanted cheap labour, and with a chronic shortage of labour throughout Port Phillip, La Trobe initially welcomed the exiles.[44] Despite misgivings from the labouring class, all exiles were snapped up into employment virtually as soon as they landed. From 1844 to 1849, just over 1,700 'Pentonvillains', as they were called, arrived at Melbourne, Geelong and Portland.[45] Unsurprisingly, these Pentonvillains would go on to form a significant portion of the District's prison population. Prison records specify whether prisoners were free, convicts, or exiles, and if exiles, which prison in England they came from.[46]

Returning to the first cell block at the Melbourne Gaol, the internal fittings were finally completed and the gaol was occupied on 1 January 1845. It is interesting to consider some of the characters incarcerated in the Melbourne Gaol or watch-house. On one night 'the sly-grog sellers, brothel keepers, and other disorderly characters' were visited by the Chief Constable and his force. They arrested 'a dozen of both sexes of the worst characters in town, who were marched to the watch-house, headed by a little hump-backed woman, drawing out sundry



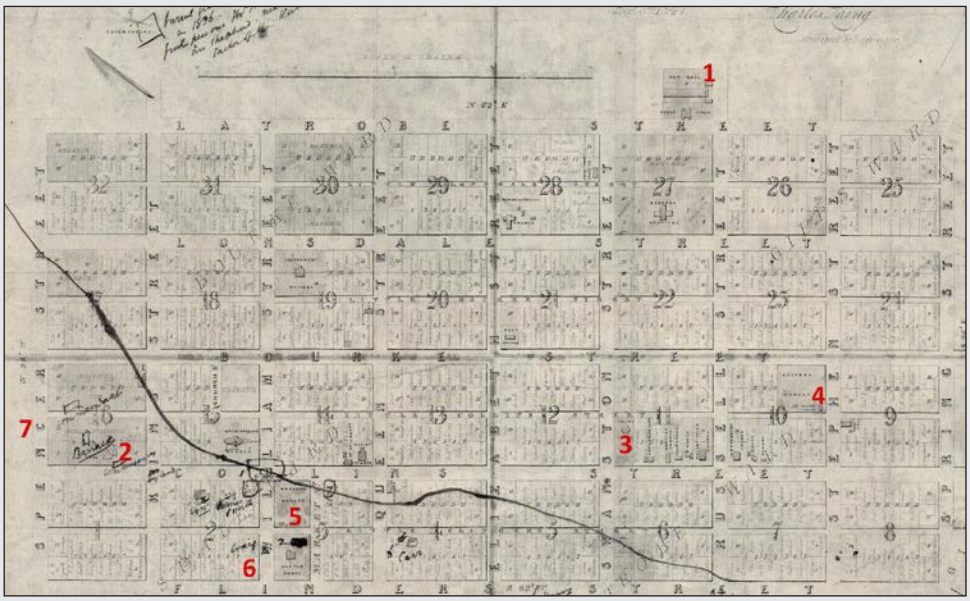
Charles Nettleton, 1826-1902, photographer (attrib.) View from the roof of the Exhibition Building, Carlton Gardens, c.1883 (detail)
Photograph, albumen silver
Pictures Collection, State Library Victoria, H4570
Shows the walls of the first cell block
On the right, the rest of the Melbourne Gaol complex has been completed

sounds from a tambourine, which caused her also being locked up'. In the morning 'they exhibited a most motley group' and received 'various terms of imprisonment, the lady with the tambourine receiving one week for her share'.[47]

On a single day in 1847 there were three more illustrative examples: the first was a Mr James Dunro of Moonee Ponds who 'plunge[d] into a waterhole with the intention of committing suicide'. He was rescued and committed to gaol for seven days, where it was said he would be 'treated kindly' and receive 'the benefit of medical treatment'. The second case was 'Nanguan, an Aboriginal man of the Yarra tribe' who was charged with being a 'dangerous lunatic' after allegedly attacking the Assistant Protector of Aborigines, Mr Thomas. The third was the case of Mrs Jane Worthy who had been deserted by her husband. She was charged with being drunk and disorderly and sentenced to forty-eight hours in gaol; as she had two children, 'one at the breast', they were sent to gaol with her. The Chief Constable personally intervened in this case. While he left the infant in Jane's care, he employed someone to look after the older child, saying he would 'pay whatever cost might be incurred'.[48] Obviously the gaol was performing many roles; it disciplined petty lawbreakers, functioned as a tool of colonisation, incarcerated hardened exiles and convicts, and even functioned as a social safety net, providing shelter and medical care to those who had nowhere else to go. Until Yarra Bend Asylum was completed in 1848, 'lunatics' comprised a significant part of the prison population, a fact that the colonists deeply resented.[49] The Eastern Hill Watch House actually served as the lunatic asylum for a time, and vagrants and drunks were often confined there too, sometimes explicitly just to feed and shelter them or provide them with medical care.[50]

After the first cell block was completed, further improvements were made piecemeal over the following months. The notorious treadmill also made the journey from the temporary gaol, and great pains were taken to install it at the new facility. Penal treadmills were revolving iron staircases that prisoners under sentence of hard labour would climb continually for hours on end. In a young colony where there was a chronic need for labour, it raises the question of why prisoners were not used for road-making or bluestone-breaking as they were in later years. As early as January 1843, La Trobe raised this very point and suggested to the Council that they could apply for prisoners 'to assist in the improvement of the town'.[51] This suggestion was taken badly, as it was seen as promoting convict labour over free labour, and the councillors declared that prisoners should never be employed while free men were available.[52] In mid-1845, the Deputy Sherriff raised the idea again, saying prisoners might be used for road-making, but this time the Public Works Committee replied that it would simply cost too much to appoint overseers or deliver stone to the gaol. And so the treadmill, which produced nothing at all except sweat and misery, was resorted to for those who were under sentence of hard labour.

In the early years of Melbourne Gaol, much of the action seemed to coalesce around the treadmill. The first incident occurred with the very installation of the machine. It was almost a year after the cell block opened that the outer walls and gates were completed, and a contractor installed the treadmill directly into the new wall. People were most gratified to hear that the treadmill was working, but the optimism quickly wore off as the treadmill soon 'ceased its operations, in consequence of the wall within which it was erected having been condemned because the mortar was compounded of loam



Charles Laing, 1809–1857, artist
Plan of North Melbourne, 1847 (detail)
'Exhibiting its subdivision into wards, blocks and allotments, with the names of the original purchasers of all sold lands, the position of public buildings and other valuable topographical information, Decr. 8th, 1847.'
Manuscripts Collection, State Library Victoria, MS 8452, F 4797/16
La Trobe's original annotated copy, presented by Marcel Godet, Berne, 1934
Diagonal line, 'Track to the Saltwater River and Geelong', as marked on Robert Russell's *Map shewing the site of Melbourne*, 1837
Another version accessible at http://handle.slv.vic.gov.au/10381/262139
Law and order institutions: 1. New Gaol, 2. Old Gaol, 3. Police Office, 4. Watch House, 5. Old Police Office, 6. Rented gaol, 7. First gaol, approximate location

and lime, instead of sand and lime'.[53] The shoddy contractor, Daniel Rooney, took the government to court over non-payment for his crumbling wall while the Clerk of Works scrambled to repair the damage. Many more months passed before the walls and treadmill were finally repaired, and once repaired the treadmill yard became a key feature of the gaol, a place of punishment and exercise. Executions were conducted in the treadmill yard, the scaffold being constructed and dismantled as needed.

Around this time rumours about Wintle the gaoler, who was accused of selling goods made by prisoners, embezzlement, and mistreatment of prisoners, began.[54] One particularly egregious incident concerned the mistreatment of 'lunatic' prisoners. Dr Cussen, the Colonial Surgeon, visited the gaol to care for some prisoners. With Wintle escorting him, he 'first visited a Mrs Jones' and agreed to let her out for fresh air. Wintle took prisoners out to the treadmill yard where 'another female lunatic named Jessie Miller was confined, and not relishing Mrs Jones' company, seized a piece of wood – a portion of the gallows, as Cussen supposed – and gave her a smart blow on the arm'. Wintle then 'seized the heavy log of wood, and beat her unmercifully on the head'. Dr Cussen was horrified and reported the incident to La Trobe, who duly appointed a board of investigation, though Wintle was eventually cleared of all charges.[55] The incident caused much controversy and conversation about cruelty in the Melbourne Gaol; many anonymous reports were sent to newspapers implicating Wintle.[56] Critics agreed that Dr Cussen was a kind, hard-working and trustworthy man, however, and reports of people, particularly vagrants, being sent to gaol specifically to receive the benefit of medical treatment at his hands have been found.[57]

The treadmill yard was also the focal point for a high-profile prison break by Pentonvillains John Collins and William Booth. They managed to conceal themselves behind the treadmill while the overseer was escorting the prisoners under sentence of hard labour back inside. Details reveal that 'those who have visited the Gaol are aware that the roof of the treadmill is within five feet of the height of the stone wall, surrounding the prison', so Collins and Booth climbed atop the treadmill, jumped to the wall, and then to the roof. Passers-by spotted the men and alerted the sentry, and while Booth managed to make a clean getaway, Collins was recaptured.[58] Not long after this a mass breakout was attempted, organised by a 'notorious and uncontrollable ruffian

named Lovell'. The story went that 'Harris, the executioner, entered the treadmill yard to prepare for the erection of the gallows, and under the mill he fancied he noticed something buried'. Upon digging it up he discovered ropes made from torn and knotted blankets, one over seven metres and the other nearly five metres in length. An enquiry uncovered a conspiracy of twenty-two prisoners, with Lovell as the ringleader. Lovell was sentenced to fifty lashes, and Harris the executioner officiated as flagellator.[59] The flogging caused an uproar in the town, as many objected to the use of flogging on moral grounds. *The Argus* summed up the crux of the debate, writing, 'It is difficult to see what else could be done, but flogging is a nasty remedy, and ought to be left to the penal colonies'.[60] Most, however, were more sympathetic towards Wintle than the prisoners, with one newspaper declaring, 'the 107 prisoners now confined in the Melbourne Gaol, are about as fine a set of ruffians as can be well imagined', the result of 'a mixture of "convictism" and "exileism," so that with Sydney and Van Diemen's Land on one side, against Pentonville and Parkhurst on the other, it is not to be wondered at, what plot, or desperate act, should be attempted'. It continues, 'To control this "mob" there are seven persons within the gaol' – Wintle, the treadmill overseer, and five turnkeys, one of whom was Harris the executioner.[61]

With similar incidents increasing, in January of 1849 disquiet at the Melbourne Gaol reached a climax. The attempted runaway, Collins, spent days complaining of how fatiguing the treadmill was in hot weather and finally snapped, attacking the treadmill overseer along with a band of other prisoners, with 'brutal ferocity'. One of the turnkeys came to the overseer's assistance and Collins turned on him, seizing him 'in the breast with his teeth'. The disturbance was so great that the military was called in to restore order.[62] Collins received fifty lashes as punishment, and this decision also sparked debate about corporal punishment.[63] It was plain that the treadmill was not a viable option for diverting the energies of men under sentence of hard labour, and with transportation and the exile system winding down, it seemed the culture was shifting to allow for the useful employment of prisoners. Commentators began addressing La Trobe to advocate for just this, saying 'we could have our roads mended… and there would be no necessity for Treadmills'.[64]

La Trobe was, in fact, busy planning the instalment of a stockade that would set prisoners to work quarrying stone and building roads at a place called Pentridge Village, just off Sydney Road to the north of Melbourne. Throughout 1850 he hired overseers and co-ordinated the establishment of wooden buildings to house prisoners, and on 5 December 1850, a crowd gathered to watch the first procession of prisoners march from Melbourne Gaol to Pentridge, some of them handcuffed, some shuffling in leg irons, and all with the letters PRG – Pentridge Road Gang – emblazoned on their backs. La Trobe personally supervised the drawing up of rules and regulations for the stockade, and the road gang was kept busy under a watchful guard.[65] During the first twelve months of operation, Pentridge housed, on average, sixty-eight prisoners on any given day, who collectively laid out and metalled over 1,850 square metres of road and cut, formed, or partially metalled over 18,500 square metres of the main road between Pentridge and Melbourne. The stockade itself was improved, culverts and drains were dug, and a bluestone quarry opened – in all, over £2,000 worth of labour if they had employed free men.[66]

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The firm establishment of Pentridge Prison brings us back to the point of Separation in 1851, where the subject of this paper began with the concept of 'Victoria the Free'. Shortly after Victoria became an independent colony, gold was discovered, marking the beginning of a radically different chapter in Victoria's prison history. Yet, in the first primitive buildings of Port Phillip, glimmers can be seen of the system that would come to dominate the later nineteenth century – the model prisons with their emphasis on reform, silence, and separation; the importance of useful hard labour for breaking bluestone and mending roads. This concept of 'Victoria the Free' may now be questioned, and perhaps the proud colonists were right, or perhaps the convict and prison population of Port Phillip was of more importance than they cared to admit.

Endnotes

1 Charles Norton, *Hail Victoria the Free*, Pictures Collection, State Library Victoria, H88.21/87. The Separation Bill came into law on 15 July 1851.

2 Thomas Rogers, *The Civilisation of Port Phillip*, Melbourne: Melbourne University Press, 2018, pp.94-123.

3 A.G.L. Shaw, *A History of the Port Phillip District: Victoria before Separation*, Melbourne: Miegunyah Press, 1996, pp.85, 204; Margaret Kiddle, *Men of Yesterday: a social history of the Western District, 1834-1890*, Melbourne: Melbourne University Press, 1967, p.52; Martin Sullivan, *Men and Women of Port Phillip*, Sydney: Hale and Iremonger, 1985, p.135.

4 An *Act to Restrain the Unauthorised Occupation of Crown Lands* was passed in July 1836 authorising the issue of depasturing licences for grazing stock on vacant Crown land outside the limits of settlement (beyond the boundaries of the original Nineteen Counties near Sydney).The first licences were issued in July 1838.

5 'Origins of the Victorian Public Service in 1836', *Historical Records of Victoria*, Vol. 1: *Beginnings of Permanent Government* [hereafter *HRV1*], ed. by Pauline Jones, Melbourne: Victorian Government Printing Office, 1981, pp,77-79; Marjorie J. Tipping, 'Buckley, William (1780-1856), *Australian Dictionary of Biography*, (accessed online 18 May 2023), Robert Keith Haldane, *The People's Force: a history of the Victoria Police*, Melbourne: Melbourne University Press, 1986, pp.1-13.

6 It was declared a common gaol and placed under the jurisdiction of the Sheriff in late 1836, *New South Wales Government Gazette*, 21 December 1836, p.976.

7 William Lonsdale to Colonial Secretary, 13 March 1837, *HRV1,* pp.118-119.

8 Garryowen, *Chronicles of Early Melbourne, 1835 to 1852: historical, and anecdotal and personal*, Melbourne: Fergusson and Mitchell, 1888, Vol.1, pp.97-98.

9 Michael Cannon, *Old Melbourne Town, before the Gold Rush*, Main Ridge, Vic.: Loch Haven Books, 1991, p.16; Sullivan, p.51.

10 Haldane, p.9.

11 Ibid., p.11.

12 Garryowen, Vol.1, p.51. According to Garryowen, Wright resigned in 1841 and was reinstated for a short period in 1842 (pp.52-53).

13 Thomas Smith to Sheriff, 5 August 1837, *HRV1,* p.503.

14 James Waller to William Lonsdale, 3 October, *HRV1*, p.506; William Lonsdale to Colonial Secretary, 6 December 1837, *HRV1*, p.507.

15 'Weekly reports of all the prisoners received into HM Gaol, Melbourne', from 14th October to 27th November 1837, by Joseph W. Hooson, Gaoler, and Patrick McKeever, Acting Gaoler, *HRV1*, pp.508-510.

16 Shaw, pp.78-79. Shaw points out, however, that Port Phillip was not exceptionally drunken by the standards of the time; per capita consumption was more than in the United Kingdom but less than Sydney.

17 Milton Lewis, *A Rum State: alcohol and state policy in Australia*, *1788-1988*, Canberra: AGPS Press, 1991, pp.4-6, 15.

18 For one example of being 'hocussed', see *Melbourne Daily News,* 20 December 1848, p. 2; *Argus,* 19 December 1848, p. 2. For general fear about 'temporary insanity' brought on by liquor, see: *Port Phillip Gazette and Settler's Journal*, 4 April 1846, p.2.

19 T. Macquoid to William Lonsdale, 20 February 1838, *HRV1*, p.512. For the nickname, see *Melbourne Daily News,* 14 May 1849, p.2.

20 G.M. Langhorne to Colonial Secretary, 30 April 1838, *Historical Records of Victoria,* Vol. 2A: *The Aborigines of Port Phillip,* [ed. by] Michael Cannon [and] Ian MacFarlane, Melbourne: Victorian Government Printing Office, 1982, pp.213-214.

21 William Lonsdale to Colonial Secretary, 26 April 1838, *HRV1*, p.512.

22 *Port Phillip Gazette*, 27 October 1838, p.3.

23 Garryowen, Vol.1, p.184.

24 *Port Phillip Gazette,* 20 April 1839, p.2.

25 Ibid., 15 May 1839, p.3.

26 Colonial Secretary to William Lonsdale, 17 January 1839, *HRV1*, p.517.

27 Call for tenders: *New South Wales Government Gazette*, 13 March 1839, p.303. The lessee: William Lonsdale to Colonial Secretary, 9 August 1839, *HRV1*, p.522.

28 *Port Phillip Patriot*, 7 October 1839, p.4.

29 *Port Phillip Patriot and Melbourne Advertiser,* 25 February 1841, p.2.

30 Ibid., 14 March 1842, p.2

31 Security at the watch house was improved before prisoners were moved there: William Lonsdale to Colonial Secretary, 16 September 1839, *HRV1*, p.524.

32 George Vinge to C.J. La Trobe, 2 December 1839; La Trobe to Captain C.F.H. Smith, 11 December 1839; George Wintle to C J. La Trobe, 2 January 1840, *HRV1*, p.525.

33 La Trobe to Captain C.F.H. Smith, 13 November 1839, *HRV1*, p.524.

34 M.W. Lewis to Colonial Secretary, 4 February 1840, *HRV1*, p.525.

35 The treadmill broke because, according to Mr Richard Dawson of the Australian Iron Foundry of George Street, Sydney, the shaft of the treadmill 'was too great a length for the diameter, without any support but at the two ends… The casting was perfectly sound, and had it been nine inches diameter instead of six, it would have answered every purpose'. Owing to this fault in the casting, all attempts to fix the treadmill were foredoomed, *Port Phillip Patriot and Melbourne Advertiser,* 25 August 1842, p.2.

36 Ibid., 5 April 1841, p.2.

37 Mr H.N. Carrington to Superintendent C.J. La Trobe, 27 January 1843 (PROV VPRS 19, Inward registered correspondence, box 41: file no. 43/160).

38 *Port Phillip Gazette,* 8 January 1842, p.3.

39 *Melbourne Times,* 10 December 1842, p.2. The original plan was much grander, but Gipps curtailed it to reduce costs, Governor's minute, 12 December 1838 to M.W. Lewis to Colonial Secretary, 5 December 1838, *HRV1*, p.517.

40 Millbank was the first to be constructed, a prototype that was 'a disingenuous modification of an idea put forward by Jeremy Bentham… badly planned and extravagantly built'. Pentonville was an improvement and was officially designated a 'model prison' soon after it was finished. Separate and solitary confinement typified all these prisons. Charles Campbell, *The Intolerable Hulks: British shipboard confinement, 1776-1857,* Maryland: Heritage Books, 1994, p.91.

41 On how the Pentonville model influenced colonial prisons in Victoria, see Peter Lynn and George Armstrong, *From*

Pentonville to Pentridge: a history of prisons in Victoria, Melbourne: State Library of Victoria, 1996.

42 A.G.L. Shaw, *Convicts and the Colonies*: *a study of penal transportation from Great Britain and Ireland to Australia and other parts of the British Empire,* Melbourne: Melbourne University Press, 1978, pp.312-334.

43 Quoted in Alan Gross, *Charles Joseph La Trobe: Superintendent of the Port Phillip District 1839-1851, Lieutenant-Governor of Victoria 1851-1854,* Melbourne: Melbourne University Press, p.69 (from the *Port Phillip Patriot*).

44 La Trobe reported to Gipps that he had a meeting with squatters (pastoralists) who supported the exile scheme; a week later he met with the 'lower classes' who vehemently opposed it. The shortage of labour tipped his opinion in favour of the squatters, A.G.L. Shaw (ed.), *Gipps-La Trobe Correspondence 1839-1846*, Melbourne: Melbourne University Press, 1989, p.297 – letter 291 n3.

45 In 1849, the situation had changed enough that La Trobe resisted exiles being brought to Port Phillip. Ships carrying exiles were not allowed to dock in Sydney and Melbourne, and were forced to land their convicts in Moreton Bay, Queensland. This effectively ended convict transportation to New South Wales, including the Port Phillip District. See Lorraine Finlay, '*The Randolph*: "a harbinger of evil"', *La Trobeana*, vol.18, no.2, July 2019, pp.5-12. On the Pentonvillains, see Ian Wynd, *The Pentonvillains*, Newtown, Vic: Ian Wynd, 1996.

46 Gross, p.70; *Melbourne Daily News,* 13 August 1849, p.2.

47 *Port Phillip Gazette*, 8 January 1842, p.3.

48 *Melbourne Argus*, 26 January 1847, p.2.

49 Newspapers abound with such complaints; as one puts it, 'the Government is inexcusable for delaying so long to establish an asylum or Hospital for the insane'. *Port Phillip Gazette and Settler's Journal*, 4 April 1846, p.2.

50 As in the case of an 'unfortunate man' in a state of 'physical debility' who was confined in the Eastern Hill Watch House; the newspaper judged that 'cleanliness, attention and proper treatment would go far towards altering the patient from a raving lunatic to a quiet and healthy, if not lucid, man'. He was treated by the Colonial Surgeon Dr Cussen, *Port Phillip Gazette*, 26 March 1842, p.3. Then there was a 'poor half-starved' man called James Nugent who was charged with vagrancy. The constable who made the arrest stated that he had taken Nugent into custody 'that he might be provided with shelter from the inclemency of the weather', *Port Phillip Patriot and Melbourne Advertiser*, 1 July 1845, p.2.

51 *Port Phillip Gazette,* 14 January 1843, p.2.

52 *Melbourne Times,* 21 January 1843, p.2.

53 *Geelong Advertiser and Squatters' Advocate,* 25 March 1846, p.2.

54 Throughout 1847, the mistreatment of 'lunatics' at the gaol seemed to be in the news almost constantly. An anonymous correspondent going by the name 'Nemo' frequently wrote to the *Port Phillip Gazette* with intelligence about alleged abuses occurring there.

55 *Port Phillip Gazette and Settler's Journal,* 1 January 1848, p.2. A separate inquiry was previously ordered by La Trobe following the death of a 'lunatic' prisoner by the name of Thomas George Bolton, but Wintle was cleared of all charges then too: *Geelong Advertiser and Squatters' Advocate,* 28 May 1847, p.2; *Melbourne Argus,* 11 June 1847, p.2.

56 For two such examples, see *Port Phillip Gazette and Settler's Journal*, 9 June 1847, p.3, and 23 June 1847, p.3.

57 As one commentator said, 'Dr Cussen… is an attentive and I think humane man – coming at all hours of the night' when prisoners needed medical attention, *Port Phillip Gazette and Settler's Journal*, 12 Aug. 1848, p.2. See also note 50 above.

58 *Port Phillip Patriot and Morning Advertiser,* June 8 1848, p.2.

59 *Geelong Advertiser,* 10 August 1848, p.1.

60 *Argus,* 9 January 1849, p.2.

61 *Geelong Advertiser*, 12 August 1848, p.2.

62 *Melbourne Daily News*, 3 January 1849, p.2.

63 Ibid., 6 January. 1849, p.2.

64 *Port Phillip Gazette and Settler's Journal,* 17 April 1849, p.3.

65 Lynn and Armstrong, pp.26-29.

66 Denton Prout and Fred Feely, *50 Years Hard: the story of Pentridge Gaol from 1850 to 1900,* Adelaide: Rigby Limited, 1967, pp.1-22.