

Punishment as pacification: The role of Indigenous executions on the South Australian frontier, 1836–1862

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Black men, this is the white's punishment for murder, the next time white men are killed in this country more punishment will be given. Let none of you take these bodies down, they must hang till they fall in pieces. We are now friends, and will remain so, unless more white people are killed, when the Governor will send me, and plenty more policemen, and punish much more severely. All are forgiven except those who actually killed the wrecked people, who, if caught, will also be hung. You may go now, but remember this day, and tell what you have seen to your old men, women, and children.²

— Police Commissioner Thomas O'Halloran addressing the Milmenrura (through a translator) after the execution of two Indigenous men following the 'Maria Massacre' in 1840.

When Major Thomas O'Halloran articulated the government's position to the Milmenrura in front of a makeshift gallows at the Coorong in August 1840, he may as well have repeated it at every one of South Australia's 23 Indigenous executions. The gibbetting of the bodies was unique on this occasion but the idea that Indigenous hangings were to serve both a punitive and an elevated didactic function in the colony was not. Unlike public executions for European offenders which always took place in or around the Adelaide Gaol, public Indigenous hangings occurred at the scene of the crime with settlers and fellow tribesmen encouraged, sometimes forced, to watch. Recognising that race was

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2 O'Halloran quoted in Tolmer 1972 [1882]: 190.

a determining factor in the treatment of a capital offender, this paper shows how pioneering South Australians placed great value on the violent theatre of the gallows, as it was thought to pacify a troublesome Indigenous population who did not share British culture or language. It was a belief that culminated in the successful passage of an 1861 amendment through the South Australian Parliament that made provisions for the reintroduction of public executions for Indigenous offenders.³ This was after public executions for all capital offenders, regardless of race, had been abolished three years prior in 1858.⁴

In the analysis below, the spectacle of frontier hangings are invested with much greater significance than has previously been the case in major South Australian contact histories.⁵ Sentencing an Indigenous person to death was more than just punishment; it was a calculated stage-play intended to simultaneously terrify and teach Indigenous people that resistance to British colonisation would not be tolerated. The limited scholarship dedicated to capital punishment in South Australia has also failed to articulate this role of the gallows when directed at Indigenous peoples.⁶ This is in contrast to a number of scholars working in non-South Australian contexts who have noted, with varying brevity, how public executions were calculated to edify, and even terrify, Indigenous audiences.⁷ Capital punishment was an active ingredient in colonisation and ought to sit alongside more conventional thinking about how Europeans came to dispossess and pacify traditional societies – the appropriation of productive land, forced cultural and linguistic assimilation, exclusion from the political process and unchecked settler violence to name but a few. With a deeper understanding of the role of public executions in South Australian contact history, the argument presented below will provide long-term context to some of the individual case studies of Indigenous hangings that already exist in this jurisdiction.⁸ It may also provide a point of comparison to those who have written on specific clusters of Indigenous hangings in other Australian colonies.⁹ Finally, it is hoped the

3 *Act to amend an Act, no. 23 of 22nd Victoria, intituled 'An Act to Regulate the Execution of Criminals' 1861 (SA) (25 Victoria, no. 1).*

4 *Act to Regulate the Execution of Criminals 1858 (SA) (22 Victoria, no. 23).*

5 Foster and Nettlebeck 2012; Foster et al. 2001; Pope 1989, 2011.

6 Griffiths 1970; Towler and Porter 1990; Porter 1995. The focus of a recent paper by Paul Sendziuk and myself was on the high number of criminals with convict backgrounds executed in South Australia, not Indigenous hangings, see Anderson and Sendziuk 2014.

7 Connors 1992; Finnane and McGuire 2001; Hogg 2001; McGuire 1998.

8 Hamann 1979; Liddy 1993; 'Pivot Point', 'Murder and Mistrust' and 'Battara Battlefield' in Pope 1989: 57–65, 66–72, 93–97; Schmaal 1975.

9 Adams 2009; Barber 1975; Connors 1992, 2009; Davies 1987; Finnane and Richards 2010; Harris 1982.

discussion will add more detail to the existing literature on South Australian legal history as well as provide a postscript for how the ritual of public executions, originally borrowed from England, was transformed to suit frontier contexts.¹⁰

Western Australia offers the best comparison to South Australia regarding the distinctive treatment given to Indigenous capital offenders. The colony mimics a legal narrative in which public executions gave way to private executions in 1871, only for the law to be amended in 1875 to allow for the resumption of public executions for Indigenous offenders.¹¹ Similarly, Western Australia often carried out Indigenous executions at the scene of the crime as well as occasionally displaying the body after death.¹² The proportion of Aborigines executed in both South Australia and Western Australia approaches 50 per cent of the total number of people hanged during the colonial period.¹³ Queensland never formally reintroduced public executions after they were discontinued in 1855, but sometimes allowed for a controlled number of spectators to attend non-European prison hangings well into the 1890s.¹⁴ The proportion of Indigenous people executed in Queensland was much lower though, supplanted by a high number of Islander and Asian capital offenders to go with the Europeans.¹⁵ In complete contrast are the colonies of New South Wales, Victoria and Tasmania, which seldom altered the public execution ceremony for Indigenous people and never contemplated its formal reintroduction once abolished.

10 For scholarship on the legal history of South Australia in the period concerning this paper, see especially, Ward 2010; Hague 2005; Castles and Harris 1987. For an overview of the legal history of Australia with a strong focus on the colonial period, see Castles 1982; Kercher 1995. The South Australian practice of public executions was borrowed from the English experience. For the extensive scholarship on the gallows in their original English context, see among others, Devereaux and Griffiths 2004; Gatrell 1994; Linebaugh 2003; McGowen 1994.

11 *An Act to provide for carrying out of Capital Punishment within Prisons 1871* (WA) (34 Victoria, no. 15); *An Act to amend 'The Capital Punishment Amendment Act, 1871'* 1875 (WA) (39 Victoria, no. 1).

12 Purdue 1993; Adams 2009.

13 Of the 120 people executed in Western Australia during the period 1840–1900 exactly half were Indigenous, see McGuire 1998: table opposite 187. Of the 47 people executed in South Australia during the period 1836–1900, 23 were Indigenous, see Towler and Porter 1990.

14 This was especially the case for capital offenders from the Pacific Islands where a limited number of spectators, drawn from the same ethnicity, were permitted to watch the private execution, see McGuire 1998: 203–208.

15 McGuire 1998: table opposite 187.

1836–1858: Accounting for Indigenous ‘outrages’ on the frontier

Of the 66 people executed in the history of South Australia 23 were Indigenous, all of whom were hanged within the first 26 years of European settlement.¹⁶ What these numbers fail to reveal is that the crimes of executed Aborigines tended to be committed on the then fringes of European civilisation. Starting in the immediate vicinity of Adelaide, the epicentre for confrontation soon migrated to the Eyre Peninsula, where 14 of the 23 Indigenous executions took place. Like a heat map tracking the advancing frontier, Indigenous crime did not rise in the colony of South Australia but was instead created by the steady march of colonisation ever outward. The victims of Indigenous aggression and resistance were the most isolated men and women of the colony – shepherds, hutkeepers and their families. Capital punishment accounted for such ‘outrages’ on the frontier, to borrow a popular expression of the era, yet also began to perform a number of surplus functions for settlers, not all strictly punitive. During the first decades of colonisation, official law enforcement was ineffectually papered over a vast frontier.¹⁷ Into this physical void the primitive theatre of the scaffold was harnessed to graphically illustrate to the traditional owners of the land that future violence against settlers would not be tolerated.¹⁸

The first Aborigines to be hanged were Yerr-i-Cha and Wang Nucha¹⁹ on 31 May 1839 in the Adelaide Parklands.²⁰ Although they were executed for two separate instances of murder, their crimes were quite alike and based on the want of food.²¹ Yerr-i-Cha was convicted of murdering a shepherd named William Duffell on the bank of the River Torrens on 21 April 1839.²² Only a week later, Wang Nucha killed James Thomson who was minding sheep near the Little Para River.²³ *The Register* concluded that the double execution ‘will act

16 ‘Execution, Whippings and Commuted Death Sentence Register’, GRS 2625/1, State Records of South Australia (hereafter SRSA); Towler and Porter 1990. For a concise table of Indigenous offenders sentenced to death during the period 1836–1862 with brief case details see Pope 2011: 175–178.

17 Even Governor Gawler acknowledged the impossibility of safeguarding those on the frontier: ‘it must be evident to every one who fully examines the subject, that no measures of police can be sufficient, in a territory so widely extended, absolutely to protect isolated individuals’, *The South Australian Gazette and Colonial Register*, 18 May 1839: 2. See also Clyne 1987; Nettelbeck and Foster 2007; Pope 2011.

18 Though far removed from the frontiers of South Australia, much has been made of amplifying the spectacle of punishment in particular periods of European history when the state’s grip on the monopoly on the use of force was contestable, see Foucault 1995 [1975]; Spierenburg 1984.

19 The names of some Indigenous offenders have been spelt differently in the studies of Pope, Towler and Porter, and Griffiths due to inconsistencies found in the primary documents. In this paper I have largely followed the naming conventions of Towler and Porter.

20 *The South Australian Register*, 1 June 1839.

21 ‘Pivot Point’ in Pope 1989: 57–65.

22 *The South Australian Gazette and Colonial Register*, 25 May 1839: 2–4.

23 *The South Australian Gazette and Colonial Register*, 25 May 1839: 2–4.

as a terror' to the Aborigines and 'be a means of deterring them in future from interfering in any way with the property or lives of the settlers'.²⁴ Later that year, the newspaper did not waiver in its conviction that the hangings had served their expressed purpose:

Since the terrible example of May last of the execution of two blacks ... the natives generally have conducted themselves in the most peaceful manner, so much so, as to have dispelled in the minds even of the most timid, all apprehensions of future danger from that source.²⁵

The experience of the 'Maria Massacre' would, however, make those statements appear naively optimistic. In late July 1840, a brig called the *Maria* with 26 passengers on board ran aground near the Coorong.²⁶ More worryingly, it was rumoured that the survivors had fallen foul of the local Milmenrura clan, a group of the Ngarrindjeri people, who were engaged to guide the Europeans back to Adelaide.²⁷ Captain W. J. S. Pullen was quickly despatched to investigate and, after a 16-day expedition, his journal made for gruesome reading:

[T]he sight I witnessed was truly horrible. There were legs, arms, and portions of bodies, partially covered with sand. In one place was a body with the flesh completely off the bones, with the exception of the hands and feet ... The bodies were in a complete state of nudity and dreadfully bruised about the face and head.²⁸

Whether the hellish scene Pullen stumbled across was born of European arrogance, sexual misdemeanours, or a simple misunderstanding over payment has been a topic of subsequent speculation.²⁹ Though, after spotting a group of Aborigines with bloodstained blankets and clothing, Pullen was sure he was among the perpetrators. Specifically, two Milmenrura men looked the most responsible, for 'if looks were a sufficient condemnation ... they were the most villainous looking characters I ever saw'.³⁰

Described as a grizzly tale of 'villainy' and 'uncivilized aggression', the 'Maria Massacre' was the single largest murder of Europeans by Indigenous people in Australian colonial history.³¹ At a special meeting of the Legislative Council convened the day after receiving Pullen's journal, the Judge and Advocate-General of the colony shared their belief with the Governor that the 'crimes in question were beyond the reach of ordinary British law, and that it was

24 *The South Australian Register*, 1 June 1839.

25 *The South Australian Register*, 26 October 1839: 4–6.

26 *The Southern Australian*, 25 July 1840.

27 Foster et al. 2001: 13.

28 *The South Australian Register*, 15 August 1840: 6.

29 Foster et al. 2001: 17–19.

30 *The South Australian Register*, 15 August 1840: 6.

31 Foster et al. 2001: 13.

imperative that retribution should be inflicted'.³² Gawler responded by ordering a punitive expedition under the command of Police Commissioner Major Thomas O'Halloran. Gawler also declared martial law at this point (although it was not declared publicly at the time) to indemnify the participants against any adverse legal repercussions stemming from their actions.³³

Governor Gawler's order to O'Halloran was to travel to the site of the killings and 'apprehend, and bring to summary justice, the ringleaders in the murder, or any of the murderers (in all not to exceed three)'.³⁴ Upon arriving in Milmenrura territory O'Halloran's party began to 'capture' groups of people, ask for the identity of the murderers and then search their 'wurleys' for evidence.³⁵ Two Milmenrura men who ran from O'Halloran's troopers by swimming across a nearby lake were shot and wounded pursuant to the orders of the Police Commissioner.³⁶ The investigation continued until two Milmenrura men were eventually charged by O'Halloran and convicted at a drumhead court martial.³⁷ It was said that the first, Mangarawata, was the murderer of the *Maria* survivors and the second, Pilgarie,³⁸ was the murderer of a whaler named Roach – a European killed in the area two years prior.³⁹ As for the burden of proof applied to the two men, O'Halloran reported upon his return to Adelaide that 'neither of the culprits denied [murdering the Europeans], though they would not actually confess their guilt'.⁴⁰ After one false start in which the rope was too long and the sand not cleared from under their feet, Pilgarie and Mangarawata were hanged at the scene of the massacre on 25 August 1840.⁴¹

The government's punitive response to the 'Maria Massacre' clearly demonstrates how capital punishment was to account for any 'outrages' on the South Australian frontier, just as it had in the less sensational cases of Yerr-i-Cha and Wang Nucha the previous year. In a reflection published in *Hansard* 21 years on from the summary trial and execution at the Coorong, O'Halloran appeared pleased by the expedition's outcome: 'The effect of that execution was marked and lasting; the gallows were even left standing by the blacks, and instead of molesting the whites, they have been known to bring some who had lost themselves on

32 Tolmer 1972 [1882]: 178.

33 *The South Australian Register*, 19 September 1840: 2.

34 *The South Australian Register*, 19 September 1840: 4.

35 *The South Australian Register*, 12 September 1840: 2.

36 *The South Australian Register*, 12 September 1840: 2; Pope 2011: 18.

37 Hague 2005: 767.

38 Pilargie is the name given in Tolmer's account but the second person executed is also referred to as Moorcangua in O'Halloran's report.

39 *The South Australian Register*, 12 September 1840: 2.

40 O'Halloran quoted in Pope 2011: 18.

41 Tolmer 1972 [1882]: 189.

to Encounter Bay.⁴² Notwithstanding some of the contemporary criticism of his actions, O'Halloran concluded that 'he had done what was right, and as a soldier he had done his duty'.⁴³

The practice of public executions was adopted as the colonisation of Australia's southern shores moved westward. Excluding the four 'Rainbird Murderers' executed in 1861 (discussed below) and the case of Wera Maldera hanged for a murder in the Coorong in 1845, between 1841 and 1862 all Indigenous executions were for crimes committed on the Eyre Peninsula. Stories of Aborigines purposefully driving away livestock, raiding European crops and plundering the supplies of outlying stations were commonplace on the Eyre Peninsula, especially in the early years of settlement.⁴⁴ Due to the continuing resistance offered by the local Indigenous peoples, the population of Port Lincoln fell from 270 in 1840 to 128 in February 1842, stifling economic growth.⁴⁵ The remaining settlers even began to flirt with the idea of abandoning the township of Port Lincoln entirely during the worst days of 1842.⁴⁶ To combat Indigenous resistance, the *Southern Australian* demanded that the response at Port Lincoln echo the one taken by O'Halloran at the Coorong in 1840:

[There] are few acquainted with Encounter Bay but would know the good effect which this proper example had. Would not the same judicious step do good at Port Lincoln, on any of a tribe who were known to be at a murder, instead of waiting till the identical one is taken who threw the fatal spear, of which there is as much chance of catching the crow which stole the seed of wheat?⁴⁷

If there were any doubts about the serious situation on the Eyre Peninsula, they would be wholeheartedly dispelled at two related trials in the Supreme Court in 1843. There Charles Stubbs twice took to the witness stand bearing not just his testimony but several wounds and only one of his eyes – the other had been lost to a spear. At the first trial in March, Stubbs appeared for the prosecution in the case of two Aborigines, Nultia and Moullia, who were charged with the murder of Rolles Biddle on 28 March 1842.⁴⁸ Stubbs was a shepherd for Biddle and present when approximately 36 Aborigines raided the station. According to his testimony, the attackers were arranged in rows and began throwing spears at the hut for almost an hour while potatoes and clothing were stolen. After a brief intermission, the raiding party returned but this time they numbered around

42 *South Australian Parliamentary Debates* (hereafter *SAPD*), 14 May 1861: 92.

43 O'Halloran quoted in, *SAPD*, 14 May 1861: 92. *The Register* was his most vocal opponent, stating that O'Halloran's summary trial was 'illegal and unconstitutional', with the two Indigenous men executed upon evidence insufficient to 'hang a dog', see *The South Australian Register*, 19 September 1840: 2.

44 Clyne 1987: 73–79; Pope 1989: 74–78, 93–97; Foster 2009: 68.3; Wanklyn and Wanklyn 1971: 7–14.

45 Wanklyn and Wanklyn 1971: 7.

46 Wanklyn and Wanklyn 1971: 7.

47 *The Southern Australian*, 29 March 1842 quoted in Clyne 1987: 75–76.

48 *The South Australian Register*, 25 March 1843: 2–3.

80. Four Europeans were at the station by this point: the witness (Stubbs), his wife, Biddle and another station hand named Fastings. On seeing the swollen number of Aborigines, the males in the party attempted to protect the hut using a shotgun, hitting at least three of the attackers.⁴⁹ Soon Fastings was speared in the thigh and they eventually retreated to the station hut which became surrounded. The first to die was Biddle from a spear thrown through the window, second was Fastings who was murdered with a pitchfork and, finally, Stubbs' wife was stabbed to death using a pair of sheep shears.⁵⁰ Stubbs himself was speared four times; once in the head, another in his left eye and twice on his right side.⁵¹ Left for dead, the shepherd somehow managed to escape and become the Crown's only witness.

Upon hearing Stubbs' testimony the jury found the two prisoners guilty without having left the court. Despite the jury's haste, Moullia's sentence of death was later commuted to a lesser punishment by Governor George Grey who thought it was possible Stubbs had misidentified him.⁵² The Governor's decision was reached after a meeting of the Executive Council where persistent doubts over Moullia's involvement in the murders were personally raised by Police Commissioner O'Halloran as well as the court interpreter.⁵³ After initially being 'left in shackles at Port Lincoln gaol', Moullia was eventually pardoned in 1845.⁵⁴ For Nultia, known to Stubbs before the incident, a case of mistaken identity was deemed less likely. Nultia was hanged on 7 April 1843 upon a scaffold symbolically erected outside Biddle's ransacked hut, 20 miles from Port Lincoln.

The murders at Biddle's station were destined to re-emerge as a prominent issue in the colony just months later. On 23 June 1843, Ngarbi, a 'Port Lincoln black', was charged with assaulting a local settler by the name of Edward McAllister but was then tied to the Biddle murders.⁵⁵ As one newspaper explained:

It appears that on Wednesday, 10 May [1843], while Mr. McAllister was working in his garden at Port Lincoln, about forty or fifty blacks suddenly presented themselves, armed with spears and clubs. They told him to be off, that the murderers of Mr. Biddle were there, and that they would murder him too if he did

49 *The South Australian Register*, 25 March 1843: 2–3.

50 *The South Australian Register*, 25 March 1843: 2–3.

51 *The South Australian Register*, 22 July 1843: 2.

52 Governor Grey had respected the opinion of the majority of the Executive Council that found, two votes to one, that Moullia's death sentence should be commuted, Minutes of the Executive Council, 28 March 1843, GRG 40/1/Vol. 3 (1843–1855): 3–7, SRSA.

53 Minutes of the Executive Council, 27 March 1843, GRG 40/1/Vol. 3 (1843–1855): 1–3, SRSA.

54 *The Southern Australian*, 18 April 1843: 2; Pope 2011: 89. For a collection of essays on the historical use of mercy in Australia, England and Canada during the era of violent bodily punishment, see Strange 1996.

55 Pope suggests that McAllister was a 'cruel and barbaric' station owner who was particularly loathed by the local Aborigines for his readiness to use firearms in the vicinity of his property, Pope 1989: 81.

not go. The Prosecutor then went into his house, barred his doors and windows, and fired at the blacks through a port-hole. One of them at last dropped from the effects of his shot, and the rest went away.⁵⁶

When Ngarbi was brought into custody a month after this incident, McAllister identified him as one of the ‘forty or fifty’ Aborigines present at his house that day. Consequently, Ngarbi was ordered to stand trial for the murder of Elizabeth Stubbs, the wife of the Crown witness who testified at the earlier trial for the murdered Rolles Biddle.⁵⁷ Proceedings at the Supreme Court began in July 1843 when the prosecution swore in Charles Stubbs to the witness stand once more. After recounting for a second time how Biddle’s station came to be swamped by 80 Aborigines (Ngarbi now included), the jury found the defendant guilty of killing Elizabeth Stubbs ‘almost immediately’.⁵⁸ This was despite Stubbs revealing at this second trial that he had severely restricted sight when the murders were happening. Speared in the left eye, Stubbs ‘could not see for blood’ when Ngarbi was said to have murdered his wife.⁵⁹ Ngarbi’s sentence of death was carried out on 1 August 1843, but this time the execution occurred outside Adelaide Gaol.

As the European presence grew more permanent on the Eyre Peninsula such large-scale Indigenous ‘raids’ were replaced by smaller conflicts with isolated shepherds and hutkeepers. On 9 November 1849, Kulgulta and Mingulta were executed at Taunto, 54 miles from Port Lincoln for the murder of the shepherd James Beevor.⁶⁰ Seven years later, on 14 January 1856, ‘four Aboriginal natives of Port Lincoln’ – Waduilli, Pangulta, Ilyelta and Weenpulta – were executed at Franklin Harbour for the murder of a local shepherd named Peter Brown.⁶¹ One story emerged after the execution of Kulgulta and Mingulta in *The Southern Australian* which would have assured many colonists on the Eyre. After ‘some exertion’ by the police to round up an audience of ‘natives’, only the attendance of one Indigenous boy was secured:

The boy went away and was next heard of at Mr Dunkin’s station, about five miles to the west of Taunto [the place of execution], where by that time a number of natives had assembled. To them he went through in pantomime the whole scene of death, erecting a mimic gallows and imitating even the last struggles of

56 *The Southern Australian*, 27 June 1843: 3.

57 *The Southern Australian*, 27 June 1843: 3.

58 *The South Australian Register*, 22 July 1843: 2.

59 *The South Australian Register*, 22 July 1843: 2. Hearing his wife call out ‘Oh Jemmy’ at the moment of her death was enough to put Ngarbi at the scene of the crime by Stubbs’ reckoning because, regrettably for Ngarbi, he was assigned the name ‘Little Jemmy’ by some of the Europeans on the Eyre Peninsula.

60 *The Adelaide Times*, 17 November 1849: 3–4; Towler and Porter 1990: 48.

61 *The South Australian Register*, 21 January 1856: 4; Towler and Porter 1990: 59.

the murderers. It is the opinion of the settlers of the district, many more of whom would have been present but that they were in the midst of the shearing, that the example will have a beneficial effect.⁶²

Six more Indigenous people were hanged on the Eyre Peninsula: Manyella at Streaky Bay in 1860, Nilgerie and Tilcherie at Fowlers Bay in 1861, Karabidne and Mangeltie at Venus Bay in 1861 and Meengulta at Venus Bay in 1862. Collectively, their victims consisted of two hutkeepers, a shepherd and the wife of a shepherd, but the circumstances of these hangings are more appropriately discussed in later sections.

In the particular cases mentioned above of Yerr-i-Cha, Ngarbi and the two Milmenrura men hanged in response to the 'Maria Massacre', serious questions can be raised as to whether the offenders were correctly identified.⁶³ Otherwise, Alan Pope has suggested that, once indicted, Indigenous defendants at murder and manslaughter trials received relatively fair trials given the legal standards of the day.⁶⁴ In Pope's broader view, however, the application of criminal law in South Australia was far from colour-blind during the early decades of settlement and used as an instrument to protect European interests above those of Indigenous peoples.⁶⁵ Such findings are confirmed by a number of passing points relating to the use of the death penalty in South Australian history. To begin with, only one European was ever hanged for the murder of an Indigenous person,⁶⁶ despite the well-documented killing of many more on the South Australian frontier.⁶⁷ Moreover, every Indigenous execution in South Australia was for the murder of a European settler with murders committed *inter se* (between Aborigines) never once punished by death.⁶⁸ Finally, during the colonial period (1836–1901) successive governors were less likely to commute Indigenous capital sentences than their non-Indigenous counterparts, a trend

62 *The Southern Australian*, 16 November 1849: 2.

63 See above for concerns over Stubbs' testimony at the trial of Ngarbi and also for the burden of proof applied to those executed in response to the 'Maria Massacre'. As for Yerr-i-Cha, three Indigenous men were originally tried for the murder of Duffell but he died before a positive identification of Yerr-i-Cha could be made, Pope 1989: 61; Summers 1986: 289.

64 Pope 2011: 104.

65 Pope 2011: 157–173.

66 Thomas Donnelly was executed in 1847 for the murder of Kingberrie, or 'Billy', near Rivoli Bay. His case at the Supreme Court was not helped by the fact that he was a former convict, see Anderson and Sendziuk 2014. For other secondary accounts of Donnelly's case, see Levison 1993; Pitt, 'Thomas Donnelly and the Shooting of the Native "Billy"', Research Note 237, State Library of South Australia; 'Execution of T. Donnelly', GRG 24/6, 1847/358, 382, SRSA.

67 Nettlebeck and Foster 2010. Across Australia, Andrew Markus states that less than 20 cases are known where Europeans were executed for crimes against an Indigenous person, compared to an estimated 20,000 Indigenous people killed by Europeans during the same period, these figures are quoted in Finnane and McGuire 2001: 283; Markus 1994: 46–49.

68 Finnane 2011: 246–247.

that was even more pronounced in the first decades of settlement.⁶⁹ These factors point to the gallows being used in a particular way that was, at the very least, favourable to the prerogatives of colonisation and repression. As for the isolated settler on the frontier, the spectacle of Indigenous hangings was seen not only as a justified response to Indigenous aggression but also a guarantee of their future safety.

1858–1861: Hang the natives ... in private?

By the 1850s a pattern had emerged as to how South Australia's Indigenous offenders should be executed. Never codified into law, convention dictated that the execution was to take place as near to the scene of the crime as possible, in front of the offender's people and for the condemned man's body to be buried nearby. This was the habit for nearly every Indigenous execution in the era of public executions in South Australia (1836–1858). The exceptions to this rule are the aforementioned execution of Ngarbi in 1843 and Wera Maldera in 1845, who were both executed outside Adelaide Gaol. This is in stark contrast to the eight Europeans hanged during the corresponding period who were publicly executed in Adelaide, despite their crimes being committed all over the colony.⁷⁰ Colonial administrators clearly saw some worth in lugging the cumbersome gallows around the colony to account for Indigenous 'outrages' wherever they may occur. The brief pause in the public hanging of Indigenous offenders between 1858 and 1861 clearly illustrates this point.

When the South Australian Parliament moved to abolish public executions in 1858 for all criminals, regardless of race, it was framed as a victory for civilisation. The push to abolish public punishment came from New South Wales (then including the Moreton Bay settlement), Victoria and Tasmania, which had already banished the practice earlier that decade.⁷¹ The decision to introduce private executions for European offenders in South Australia was broadly supported by parliamentarians who thought public executions tended to 'demoralize' those who watched and 'had no beneficial result as an example'.⁷² However, at the second reading of the bill, questions were raised as to whether

69 For the period 1836 to 1901, 47.9 per cent of guilty Indigenous capital offenders had their sentence of death carried out, compared to only 34.4 per cent of non-Indigenous offenders (the remainder were either pardoned or had their sentence of death commuted to a lesser punishment). This gap was more pronounced between 1836 and 1862 (the scope of this paper) when the execution rate for Indigenous offenders was 53.5 per cent but for non-Indigenous offenders dropped to 30.3 per cent. These figures are constructed using the, 'Execution, Whippings and Commuted Death Sentence Register', GRS 2625/1, SRSA.

70 Anderson and Sendziuk 2014; Towler and Porter 1990.

71 McGuire 1998.

72 The Chief Secretary, William Younghusband, quoted in *SAPD*, 21 September 1858: 173.

the same was true for Indigenous offenders; whether they should be executed in the seclusion of the prison yard. Thomas Strangeways was the first to notice the consequences of the proposed legislation:

The Act would entirely prevent the execution of the aborigines in the usual manner. If any of the white population committed a crime, it was perhaps desirable they should be executed under the provisions of that Act, but it had hitherto been considered necessary in the case of an aborigine that he should be executed in the place where the crime was committed, in order that the associations connected with the crime should be connected with the punishment. If that Bill were passed, however, the supposed sentence of death on aborigines would be practically abolished.⁷³

When the Bill went to the committee stage, Strangeways suggested a special clause that would allow the Governor, upon his written consent, to allow for a place of execution other than the Adelaide Gaol. With the insertion of such a clause, the option for the Governor to hang Indigenous offenders in the 'usual manner' would therefore still be a possibility. Chief Secretary William Youngusband – the man who originally introduced the Bill to Parliament – replied that it was his intention to prevent public executions entirely, regardless of racial considerations. This was partly because 'such scenes did no credit to our civilization in the eyes of savages'.⁷⁴ When John Barrow and Lavington Glyde offered their support for Strangeways' position, Youngusband declared that he was 'sorry to hear Hon. Members fall back on the old exploded idea that public executions could produce a good effect even upon the natives'.⁷⁵ The clause was withdrawn and the *Act to Regulate the Execution of Criminals 1858* (SA) was assented to in December 1858.⁷⁶

The will of Parliament to banish public executions for both European and Indigenous offenders was strongly tested over the next three years, beginning at the execution of Manyella in 1860. At trial the 20-year-old Indigenous male was found guilty of wilfully murdering John Jones, a hutkeeper near Mount Joy on 13 May 1860.⁷⁷ Jones was alone in the hut when Manyella entered and fatally struck him on the back of the head, stealing foodstuffs, clothing and a butcher's knife on the way out.⁷⁸ Having been sentenced to death two years after the introduction of private executions, the law dictated that Manyella be executed in private or, in the wording of the legislation, 'within the walls of the Gaol'.⁷⁹ In conflict with the original intention of the 1858 Act that abolished

73 *SAPD*, 7 October 1858: 331.

74 *SAPD*, 7 October 1858: 332.

75 *SAPD*, 7 October 1858: 334.

76 *Act to Regulate the Execution of Criminals 1858* (SA) (22 Victoria, no. 23).

77 *The Adelaide Observer*, 18 August 1860: 4.

78 *The Adelaide Observer*, 18 August 1860: 4.

79 *Act to Regulate the Execution of Criminals 1858* (SA) (22 Victoria, no. 23).

public executions entirely, Manyella was taken on a long journey back to a police station at Streaky Bay, the closest to the scene of the murder, and hanged in the public gaze. The reason given in the Legislative Council by the new Chief Secretary, George Waterhouse, shows just how important Indigenous hangings were to the settlers on the frontier:

As to the expediency of the procedure, the Government had been requested by the settlers in the neighborhood [sic] to make an example of the murderers in the vicinity of this crime, so that his tribe might receive a salutary lesson. This had been proved to operate most effectually in the case of the execution some years since on the [Eyre] Peninsula, and he [the Chief Secretary] believed it would in this case. He would remark that a petition from the Bishop of Adelaide and others, interceding for the life of this native, set forth that his execution would do no good unless it were carried out in the vicinity of the crime. As far as possible the Government had arranged to carry out this idea, and he trusted they would need no more executions at Streaky Bay.⁸⁰

To conform with the wishes of the settlers and petitioners in regards to Manyella's execution, the disliked provisions set out in the 1858 legislation were overcome by proclaiming the existing police station at Cherriroo, Streaky Bay, a public gaol.⁸¹ After making this decision public in the *Government Gazette*, John Morphett was quick to raise the issue in the Legislative Council stating that the colony's newest gaol was nothing more than a hut.⁸² However, since this new 'prison' did not have any high walls like those enclosing Adelaide Gaol, the execution was performed in full view of the town, as well as 'within the walls of the Gaol' to avoid any accusations that the hanging was illegal. It was a creative solution to a problem that highlighted how this new legislation found itself in complete opposition to the needs and desires of those settling South Australia's outlying districts.

The noble ideals of Parliament were similarly tested the following year with the execution of the 'Rainbird Murderers'. This was the collective term for four Indigenous males ultimately held responsible for the gruesome murder of Mary Ann Rainbird and her two children who were found 'doubled up and thrust into a wombat hole' near Kapunda, north of Adelaide.⁸³ Found guilty at the Supreme Court in Adelaide the four men – Pitta Miltinda, Tankawortya and two people who shared the name Warretya – were returned to their cells to await execution within Adelaide Gaol.⁸⁴ On 7 June 1861, the four men were privately executed on a scaffold erected inside the walls of the gaol.

80 *SAPD*, 25 September 1860: 920.

81 *South Australian Government Gazette*, 20 September 1860.

82 *SAPD*, 25 September 1860: 920.

83 *The Adelaide Observer*, 16 March 1861: 7.

84 'Execution, Whippings and Commuted Death Sentence Register', GRS 2625/1, SRSA.

The public response to the first fully private Indigenous execution in South Australia revealed just how much value had been placed on Indigenous hangings. Kapunda's local newspaper, *The Northern Star*, was vehemently opposed to the colony's new mode of executing Indigenous offenders. The editor of the newspaper did not hold back when suggesting that the hanging of Indigenous people should be performed in public and near the scene of the crime:

The cannibals who murdered Mrs Rainbird and her two innocent children were choked yesterday morning outside the Adelaide Gaol. This is what we have heard from the lips of Mr Patrick Kingston, Member of Parliament, who saw the Niggers dancing upon nothing ... We do not think that, considering all the circumstances of this case, Tommy Reynolds [the then Premier of South Australia] has done justice to the colony – to the district of Light in particular. The fellows should be hanged up here, or they should have been placed at the rifle target for the volunteers to shoot at, so they would have a lingering death ... We have been cheated.⁸⁵

While this local newspaper, in close proximity to the murders, placed more emphasis on the retributive appeal of the gallows, *The Advertiser* assessed the value of Indigenous hangings to the colony more broadly. Employing a more restrained prose, it suggested that private executions for Indigenous offenders were not conducive to the aims of the colonial government:

What effect will this private execution have upon the aboriginal natives? What practical result will follow it? Where is the salutary lesson of terror that it was intended to teach other would-be murderers? The mere destruction of four murderers was surely not *all* that was contemplated by the jury who convicted them; we will venture to say it was not the *principal* idea. Of course, the law inflicts vengeance; and in a still more emphatic sense it holds forth salutary warnings; but what warning to the native tribes is there in the private hanging of these four men? ... Without some explanation, the public will be entirely at a loss to comprehend the policy of the Executive in a line of action so diametrically contrary to what was expected of them, and what, in fact, their own words justified the public in expecting.⁸⁶

The private execution of the 'Rainbird Murderers' was clearly a waste in the eyes of some. In the seclusion of the prison yard, the gallows was shorn of its additional functions that had proved so useful in dealing with disobedient Aborigines and stabilising a vast frontier. When carried out hidden from the public gaze, capital punishment was reduced to a strictly punitive function and it was obvious that the colonist did not warm to the transition.

85 *The Northern Star* quoted in Liddy 1993: 82–83.

86 *The Advertiser*, 8 June 1861: 2 [original emphasis].

The 1861 Amendment: Reflections on the value and rationale of Indigenous executions

In 1861, the disharmony between the laws of the colony and the will of the people was corrected when an amendment to the 1858 Act was passed along racial lines. The amendment stipulated that any sentence of death passed over 'any aboriginal native ... may be publicly carried into execution at the place at which the crime ... was committed, or as near to such place as conveniently may be'.⁸⁷ The Indigenous offender's body was also to be buried at the place of execution or close by that site. For European offenders, the basic tenet of a private execution taking place inside the gaol walls went unaltered until South Australia's last execution in 1964. Easily passed by a majority of MPs, the restoration of public executions for Indigenous criminals was conclusive proof of the high value placed on capital punishment to the colonial project. The parliamentary debate over the amendment captures this theme and offers a moment in time where lawmakers thought aloud about why the heightened symbolism of Indigenous executions ought to be maintained. Two broad justifications repeatedly emerged in the debate. First, past experience had demonstrated that public executions were successful at quelling Indigenous violence and making it safe for settlers on the frontier. Second, Indigenous people required different punishment to Europeans due to cultural and linguistic differences.

The parliamentary debate, conducted in May 1861, was studded with anecdotal accounts of the past efficacy of Indigenous hangings to the colony. Even two decades on, the perceived success of Major O'Halloran's summary execution at the Coorong was reprised. David Wark was the first to praise the expedition: 'As they dangled in the air, the natives understood that no tedious process was allowed to come between the crime and its punishment; and they remembered that sight with horror; no outrage was committed in that district afterwards, and travellers to Mount Gambier could go their way safely.'⁸⁸ David Sutherland remembered the effect O'Halloran's 'prompt and speedy justice' had on the Milmenrura: 'Why, from that day to this the natives had always been peaceful, and were the Government to do this in all cases now, the same would be the result.'⁸⁹ George Waterhouse was another who referenced the government response following the 'Maria Massacre' which saw the 'Murray blacks' become 'infinitely quieter than they were before'.⁹⁰

87 *Act to amend an Act, no. 23 of 22nd Victoria, intituled 'An Act to Regulate the Execution of Criminals' 1861 (SA) (25 Victoria, no. 1), s. 1.*

88 *SAPD*, 28 May 1861: 111.

89 *SAPD*, 28 May 1861: 113–114.

90 *SAPD*, 14 May 1861: 91.

The same MPs stressed that these past benefits were not just confined to the Coorong but the Eyre Peninsula as well. Sutherland, for example, drew upon personal experience when declaring that '[t]hose that had seen the executions as he had seen them at Port Lincoln, would be aware of the far greater effect which was produced on the minds of the natives ... what terror was inspired'.⁹¹ Edward McEllister was terse in justifying his support for public Indigenous executions: 'At Port Lincoln, where some blacks were hung for a horrible murder, no similar outrage was committed for 10 years.'⁹² Henry Mildred imagined how ineffectual private executions would be if the lives of settlers were threatened again on the Eyre Peninsula: 'The withdrawal of a few natives from Port Lincoln, and their execution privately in Adelaide, would have but little effect.'⁹³ When executing an Indigenous criminal, Mildred believed that government 'should take care to strike terror into the hearts' of the 'natives' and not hide their punishment away from view.⁹⁴ John Bagot also feared future Indigenous violence, a prospect made more frightening if denied access to the pacifying qualities of public hangings. Referencing the recent Rainbird murders he thought that '[i]f some steps were not taken to check such horrible crimes upon women and children, the remote districts would be again given up to savage tribes'.⁹⁵

The second broad justification recurrent within the 1861 parliamentary debate revolved around the idea that Indigenous people required a different mode of execution because they were, in and of themselves, distinct from European man. The first difference cited was the obvious cultural and linguistic barriers that came between the settlers and the original inhabitants of the land. Making intelligible the omnipotence of British law to Aborigines, and that criminal breaches of that law would not be tolerated, were the central messages that the public gallows aimed to broadcast. Yet how such ideas could be communicated to speakers of a foreign language was difficult to determine. 'The poor creatures could not read the newspapers', pointed out Edward Grundy, 'if native criminals were [privately] executed in gaol, how would other blacks know that they were executed?'⁹⁶ For South Australia's Indigenous population, the Chief Secretary John Morphett thought 'they should be made to see the execution of the law on those of their tribe', for the simple reason that '[i]f they were not eye-witnesses of the punishment, they would not believe that it [punishment] really did follow the commission of crime'.⁹⁷ Bagot was another who highlighted the practical barriers to understanding when he postulated that '[i]f only a few

91 *SAPD*, 28 May 1861: 114.

92 *SAPD*, 28 May 1861: 111.

93 *SAPD*, 28 May 1861: 114.

94 *SAPD*, 28 May 1861: 114.

95 *SAPD*, 28 May 1861: 111.

96 *SAPD*, 28 May 1861: 112.

97 *SAPD*, 14 May 1861: 90.

blacks disappeared their fellows would not be likely to make much inquiry about them, as to whether they had been simply taken to Adelaide or whether they had been hanged, and the force of example would be entirely lost'.⁹⁸

Former references to Indigenous people in the parliamentary debate as 'natives', 'blacks' and members of 'savage tribes' who had to be terrified into recognising the wickedness of murder dovetail neatly into the idea of a fundamental distinction between European and Indigenous societies. It fostered an assumption that the punishment of death needed tailoring for 'civilised' as opposed to 'uncivilised' audiences. According to one MP, for 'whites' the effect of executions was 'demoralising' but for the 'blacks' it was another question entirely; a question, 'as different as light from darkness'.⁹⁹ As a cultural construction of the white colonists, 'the aborigines' for much of the colonial period were a people of savage and almost child-like intellectual faculties requiring European intervention to raise them to a higher rung of civilisation.¹⁰⁰ A penchant for public executions in South Australia can be easily read into a broader narrative that demanded distinctive punishment for Indigenous peoples. As they could not intellectually comprehend the consequences of breaking British law they had to be shown it, better still, terrified by it; terrified at the exact spot where the crime was committed and for the perpetrator to be buried nearby. Only such simple, physical, decipherable symbolism was commensurate with the 'uncivilised' mind, or so the argument went.

Inhabiting this colonial mindset was Edward Grundy, who proposed an intensification of the macabre symbolism of the gallows beyond that of public executions. Member for the Barossa District, near where the recent Rainbird murders had been committed, Grundy could not envisage another practice that could subdue the 'native' threat more successfully than gibbetting. Acknowledging its disappearance as an acceptable practice in England, Grundy suggested that the 'peculiar circumstances of the colony' demanded such action.¹⁰¹ His amendment to provide for the indefinite display of dead Aborigines following their execution was put under the consideration of the House. Grundy's suggestion developed from a concern that the colony's frontier was developing a reputation for danger and demanded Parliament take action:

Settlers in the outlying districts, who formed the sheet-anchor of the colony, had a right to look to Parliament for protection, especially where human life was involved. Than that of public execution what other method had they of striking

98 *SAPD*, 28 May 1861: 111.

99 David Wark quoted in *SAPD*, 28 May 1861: 111.

100 To see how European constructions of Aboriginal society and intellect influenced the application of punishment in colonial Australia consult Finnane 2011; Finnane and McGuire 2001; Hogg 2001; McGuire 1998.

101 *SAPD*, 30 May 1861: 130.

terror into the breasts of the natives? That the blacks were not civilised as fast as could be desired was seen by the recent events in the Western District, and if mildness and kindness was of no avail, a system of terror must be resorted to.¹⁰²

Grundy argued that sometimes lawmakers must be cruel to be kind: 'Sometimes statesmen appeared cruel; as a medical man, when he amputated a limb, might appear cruel to a disinterested bystander.'¹⁰³ Only through such explicit imagery as hanging and gibbetting could these 'unsophisticated creatures' be dissuaded from future delinquency.¹⁰⁴ Grundy's enthusiasm for the practice was not shared by the other MPs who considered it a remnant from a more barbarous age and voted it down.

After the successful passage of the amendment through the legislature, it was not long until the public execution of Indigenous people resumed on the western frontier. In late August 1861, only months following the debate, a schooner departed Adelaide carrying four Indigenous offenders and a portable gallows.¹⁰⁵ The *Yatala* sailed for Fowlers Bay, at the eastern extremity of the Nullarbor Plain, where two of the passengers, Nilgerie and Tilcherie, had taken the life of a shepherd named Theodore Gustavus Berggoist on 19 January 1861.¹⁰⁶ Upon arrival the pair was executed in front of nearly 100 Indigenous men, women and children in accordance with the 1861 amendment. The onlookers to the punishment were, *The Register* noted, 'among the most uncivilized of Australian savages, and utterly without clothing'.¹⁰⁷ After hanging on the scaffold for an hour, Nilgerie and Tilcherie were cut down and symbolically buried beneath the spot where the shepherd was speared.¹⁰⁸

After the completion of this sombre duty, the *Yatala* immediately made sail for Venus Bay, on the west coast of the Eyre Peninsula, where the two remaining Aborigines on board, Karabidne and Mangeltie, were to be hanged for murdering Margaret Ann Impett. The wife of a shepherd, Impett was alone in the station's hut where the two Aborigines committed their crime on 2 May 1861. The pair was subsequently executed on 14 September 1861 before an audience of local Aborigines and Europeans.¹⁰⁹ For *The Register*, it was the 'expressed belief' of those living near where the murders occurred that 'the effect of these executions will be good, and that no other means would have been so effectual in preventing the reoccurrence of such outrages'.¹¹⁰ The following September the *Yatala* again

102 *SAPD*, 28 May 1861: 112.

103 *SAPD*, 28 May 1861: 112.

104 *SAPD*, 28 May 1861: 112.

105 *The South Australian Register*, 19 September 1861: 2.

106 *The South Australian Register*, 16 August 1861: 3.

107 *The South Australian Register*, 19 September 1861: 2.

108 *The South Australian Register*, 19 September 1861: 2.

109 *The South Australian Register*, 19 September 1861: 2.

110 *The South Australian Register*, 19 September 1861: 2.

travelled to Venus Bay to execute Meengulta who speared a hutkeeper named William Walker after a dispute over rations.¹¹¹ If hanged inside the gaol yard, the *Weekly Chronicle* speculated that Meengulta would be 'indifferent to his fate' but to execute him 'among his tribe' made the sentence of death all the more fearful.¹¹²

Conclusion

For all the effort spent partially restoring public executions in 1861, Meengulta was the last Indigenous person to hang in the history of South Australia.¹¹³ The amendment did, however, linger for over a century longer on the statute books. It was not until 1972, when Don Dunstan was the Premier of South Australia, that the right of a judge to sentence an Indigenous offender to a public hanging was finally revoked.¹¹⁴ Crucially, it survived both the 1876 and 1935 Criminal Law Consolidation Acts, the latter being (notwithstanding ongoing revisions) the primary legislative vehicle in South Australian criminal law that codifies crimes and penalties to this very day.¹¹⁵ It is a fact that complicates the idea that the 1861 amendment simply fell into disuse, rather than being completely objectionable to early twentieth-century lawmakers. Given the obvious enthusiasm for frontier hangings right up until the last Indigenous execution in 1862, more case by case research is needed to investigate why Indigenous offenders convicted after this date had their sentence of death commuted. Nevertheless, in the period concerning this study, it is clear that the spectacle of public Indigenous executions was perceived to pacify resistance to European colonisation on the South Australian frontier. Race obviously played a pivotal role in the administration of the colony's gallows but this one factor can never float free from other complex issues of historical circumstance.

111 Pope 2011: 103. The execution of Meengulta was missed by the otherwise accurate *Hempen Collar*, see Towler and Porter 1990.

112 *The South Australian Weekly Chronicle*, 6 September 1862: 1.

113 Griffiths states that in 1906 an Indigenous person was executed in South Australia but, on closer inspection, the hanged man was in fact a Muslim immigrant by the name of Natalla Habbibulla, Griffiths 1970; *The Adelaide Times*, 17 November 1906.

114 The Act received assent on 29 February 1972 despite carrying the year 1971 in the title, see Lennan and Williams 2012: 676, footnote 135; *Criminal Law Consolidation Amendment Act 1971* (SA) no. 96, s. 4. Capital punishment as a whole was abolished in South Australia five years later in 1977, see Lennan and Williams 2012: 676–677.

115 *Criminal Law Consolidation Act 1876* (SA) (39 & 40 Victoria, no. 38), part II, s. 14; *Criminal Law Consolidation Act 1935* (SA) (no. 2252), s. 307.

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