



RESEARCH ARTICLE

# Murder in a quarry: violent encounters and distant intimacy on a Cape convict station

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## Abstract

This article uses a micro-historical approach to examine an escape and murder among convict labourers between Cape Town and Stellenbosch in Southern Africa in the 1840s. It does so to demonstrate how imperial mobilities and legal conceptions of property crime were interconnected within settler colonial capital and the intimacies of colonial social worlds. Reforms in penal practice in the British Empire – in this instance, adopted in the Cape Colony from Tasmanian experiments in convict labour and moral improvement – formed part of post-abolition shifts in labour control and the management of the itinerant poor, increasingly guided by anxieties over race. Michael O'Brien, the murderer, was a suspected escaped convict from Australia, who claimed to have survived violent encounters in the Pacific as a missionary. His narrative contrasts with the predominantly regional mobilities and crimes of the other Cape convicts – notably stock theft and petty robbery – that occurred in the contested spaces of law, colonialism and property. This article discusses convict narratives around crime and redemption across a maritime empire, and the affective relations of coercion and care between convicts, overseers, constables and superintendents on the smaller scale of a convict station. It further contends that changes in criminal justice and governance in Southern Africa were thus contingent on the intimacies of scale and affect, on connections between the local, the global and the biographical.

## Résumé

Cet article utilise une approche micro-historique pour examiner une évasion et un meurtre entre forçats, entre Cape Town et Stellenbosch en Afrique australe dans les années 1840. Il démontre ainsi comment les mobilités impériales et les conceptions juridiques du crime contre les biens étaient interconnectées au sein du capital des colons et de l'intimité des mondes sociaux coloniaux. Les réformes de la pratique pénale dans l'Empire britannique (en l'occurrence, adoptées dans la colonie du Cap à partir des expériences tasmaniennes de main-d'œuvre pénale et d'amélioration morale) faisaient partie des changements post-abolitionnistes dans le contrôle du travail et la gestion des pauvres itinérants, de plus en plus guidés par des inquiétudes concernant la race. Michael O'Brien, le meurtrier, soupçonné d'être un détenu évadé d'Australie, affirmait avoir survécu à de violents affrontements dans le Pacifique en tant que missionnaire. Son récit contraste avec les mobilités essentiellement régionales et les crimes des autres détenus du Cap (notamment le vol de bétail et les larcins) commis dans les espaces contestés du droit, du colonialisme et de la propriété. Cet article

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examine des récits de forçats autour du crime et de la rédemption dans un empire maritime, ainsi que les relations affectives de coercition et d'assistance entre les détenus, les surveillants, les policiers et les surintendants à l'échelle d'un bagne. Il soutient en outre que les changements dans la justice pénale et la gouvernance en Afrique australe dépendaient donc de l'intimité d'échelle et d'affect, des liens entre le local, le global et le biographique.

## Resumo

Este artigo utiliza uma abordagem micro-histórica para analisar uma fuga e um homicídio entre trabalhadores condenados entre a Cidade do Cabo e Stellenbosch, na África Austral, na década de 1840. O objetivo é demonstrar como as mobilidades imperiais e as concepções jurídicas do crime contra a propriedade estavam interligadas no capital colonial dos colonos e nas intimidades dos mundos sociais coloniais. As reformas da prática penal no Império Britânico – neste caso, adotadas na Colônia do Cabo a partir das experiências da Tasmânia em matéria de trabalho condenado e de melhoramento moral – faziam parte das mudanças pós-abolição no controlo do trabalho e na gestão dos pobres itinerantes, cada vez mais orientadas por preocupações de ordem racial. Michael O'Brien, o assassino, era um presumível fugitivo da Austrália, que afirmava ter sobrevivido encontros violentos no Pacífico enquanto missionário. A sua narrativa contrasta com as mobilidades e os crimes predominantemente regionais dos outros condenados do Cabo – nomeadamente o roubo de gado e os pequenos furtos – que ocorreram nos espaços contestados da lei, do colonialismo e da propriedade. Este artigo examina das narrativas dos condenados sobre o crime e a redenção num império marítimo, e as relações afectivas de coerção e cuidado entre condenados, supervisores, guardas e superintendentes na escala reduzida de uma estação de condenados. Defende-se ainda que as mudanças na justiça criminal e na governação na África Austral dependiam assim das intimidades de escala e de afeto, das ligações entre o local, o global e o biográfico.

Around lunchtime, and while fellow convicts rested after a long morning quarrying stone in late October 1846, the Irishman Michael O'Brien murdered the convict Onverwagt with a blow to the head from a shovel. Convicts were then building the first hard road between the two oldest colonial towns in the region, Cape Town and Stellenbosch. O'Brien's actions were motivated, witnesses claimed, by an attempt to silence Onverwagt from revealing the details of a botched escape attempt from the Tygervalley convict station, east of Cape Town.<sup>1</sup> It is easy to gloss over such violent episodes as isolated and ordinary events within the social worlds of colonial crime and punishment, without delving deeper through examining archival traces to understand broader contexts.

One means to integrate a history of intimacy and violence within colonial and postcolonial Africa is through biography. Using archival documents in the Cape archives, this article uses Onverwagt's murder in a quarry near Cape Town to ask wider questions around what Linda Colley (2007: xix) has termed a need to write histories that connect the 'conspicuous mobility' of people within 'a distinctive and

<sup>1</sup> Western Cape Archive and Records Service (CA), Colonial Office (CO) 561, *Queen v O'Brien*, criminal sessions, Supreme Court, Cape of Good Hope, 1847 (hereafter *Queen v O'Brien*, 1847).

markedly violent phase of world history'. A useful approach towards understanding violence and intimacy is through microhistories of the 'exceptional normal' narrative of a life and an event (Ginzburg 1993: 33). If microhistory concerns itself with 'ever smaller and more intimate snatches of history' (Wood 1995: 695), it is not reduced scale that enables discussion of intimacy, but a focus on the unexpected, unscripted or unrehearsed within social interaction that links and even transcends the artificial conceptual divides between the local and the global. Building on microhistory, a cultural history approach influential since the 1980s, historians have placed increased emphasis on connection and mobility within micro-spatial analysis (Ghobrial 2019; De Vito 2019; Medick 2016; Andrade 2011). More specifically, 'distant intimacy' emerged out of this mobility – that is, separation from kin on distant shores or at the other end of a colony resulted in narratives of sympathy enhanced by the emotional gulf created by physical distance (Glovinsky 2020). Conversely, the confined spatiality of convicts brought into contact by the law and not choice resulted in 'stranger intimacy', not as alternative forms of belonging (Shah 2011), but as dynamics of distrust and mutual dependence inherent within the coercion of carceral institutions. These approaches present a productive paradox for embarking on the concept work necessary to understand the entangled meanings of violence and intimacy: the paradox of the confined spaces of penal institutions in Southern Africa read against the global mobilities and distance inherent within empires.

To achieve this analysis, the article first places Michael O'Brien's crimes within the wider socio-economic contexts of property, crime and punishment within the Cape Colony, and how these were inseparable from global connections. It then explains the role of intimacy and violence within the spaces of the penal system in the Tygervalley convict station in which O'Brien served as a convict. Lastly, the murder itself comes under the spotlight, using court records and letters to analyse the narrative uncertainty of O'Brien's global life leading up to the murder. In short, the imperial mobility of men like Michael O'Brien, especially as a suspected convict escapee from Australia, undermined the certainty of distance as punishment and the surveilling reach of colonial ledgers that recorded the movements of convicts and free immigrants.

### **Violence, intimacy and convict historiography**

Places of convict labour and criminal internment in Africa are well-known sites of violence perpetrated by the colonial state, whether political exile on Robben Island or the segregated prisons that punished the behaviour of Africans deemed to have challenged or broken colonial laws. These political technologies of incarceration have long genealogies stretching back to gaols inside coastal forts, the bodily chains of slavery and slave lodgings, and the rudimentary lockups of early colonial conquest before the adoption of modern prison buildings and systems of punishment and reform (Killingray 2003; Bernault 2007). Historians have emphasized prisons in post-abolition colonies and nation states – including Jamaica, Brazil, the USA and Angola – as contiguous with the disciplinary regimes of forced labour before and prior to slave abolition. This was a continuation rather than an abrupt rupture from carceral practices and laws that served racial capitalism. Liberal and humanitarian reforms existed alongside and were entangled with labour coercion and the persistence of

bodily punishment as a method to maintain and extend the racial order (Lopes 2022; Jean 2022; Olsavsky 2021; Paton 2004).

Confined in close quarters, sometimes chained together when at work, and with little but each other's company during their sentences, prisoners inhabited intimate worlds that have long fascinated historians and criminologists of Southern Africa (van Onselen 1985; Steinberg 2004). In what Ann Laura Stoler terms 'psychological and physical duress' or 'the "slow violences" of a life "primed" for petty crime and vagrancy', it was often the poor who bore the brunt of structural violence that sought to manage bodies, minds, social relationships and labour: in the bridewell, the workhouse, the asylum or the prison, not only in the European metropole but also in colonies (Stoler 2018: 374, 377; Nixon 2013). The coercive spaces of convict labour and incarceration not only exerted state violence on the convicted; they also heightened colonial dynamics of interpersonal conflict within the intimate bounds of state attempts to curate (im)mobility.

Colonial archives with their violent logics of governmentality present an illusion of order and bureaucratic knowledge that may appear devoid of intimacy. On closer inspection, these documents reveal processes of uncertainty, rather than a catalogue of things, and thus expose the urge of those within the colonial state for intimate knowledge of their subjects (Stoler 2008: 19). This encompasses a wider affective ambit than the more narrowly defined intimacy of amorous liaisons or sexual assault. Violent intimacies, rather than solely intimate violence, were shaped by spaces and mobilities, and the 'messiness' of human actions that did not always run according to script – a murder, a drunken official, a convict escape – and that exposed the fault lines of imperfect colonial rule as well as the affective capacity and limits of individuals.

Dwyer and Nettelbeck caution against strict definitions of violence as necessarily physical, spectacular or the result of brute force (2018: 4). It is also useful to consider violence beyond the physical in what Pierre Bourdieu (1991: 51, 239–43) calls 'symbolic violence' – the ways in which social structures and hegemonies render systemic social and economic inequalities. In contrast, intimacy is often mediated through permeable boundaries of the public and private, with archival sources themselves – whether court records or private diaries – shaping the types of questions historians could ask (Jackson 2018: 5–6). The intimacies discussed in this article occurred within spaces of criminal reform and official oversight over convicts, with physical and symbolic violence part of the everyday intimacies of labour, discipline, surveillance and social interaction. By bringing intimacy into analysis, we can approach 'governance through the microphysics of daily lives' that can cut against the grain of official scripting of the sources through attention to the 'stray emotions' or 'tacit knowledge' around 'how people made sense of ... colonial conditions' (Stoler 2006: 7).

The history of the prison and confinement is one place to begin. Carceral histories remain underexamined in pre-industrial Southern Africa, but recent scholarship has connected the Cape Colony, in particular, to global circuits of exile and convict transportation, whether the traffic of convicted people or the circulation of ideas around policies and practices of punishment (Ward 2009; Anderson 2016). The coerced movement of these subaltern lives of criminal precarity reveals the extent to which race, travel and carcerality were common features of maritime-connected empires (Anderson 2012). Although Cape convicts were not transportees from other colonies

but locally convicted, several were suspected runaways from Australian colonies or absconded sailors. Many of these itinerant colonial subjects on the fringe of empire have left intimate details in the archives – affecting memorials, letters and court testimonies appealing for mercy from the state – documents that undercut neat assumptions around the operations of colonial power.

### Labour, property, law and crime in the 1840s Cape Colony

Six months before the murder in the quarry, on 4 May 1846, and armed with a knife, the bricklayer Michael O'Brien cut, wounded and hamstrung a horse belonging to local retail dealer, Thomas Venn, near Stellenbosch. The sentence was five years of hard labour in chains.<sup>2</sup> O'Brien's crime of maiming and killing a horse, and thus damaging property, was not uncommon. Between 1844 and 1848, the majority of offences in the colony before the courts were property crimes. There were 155 'crimes against property, with violence' and 711 'crimes against property, without violence'.<sup>3</sup> One could argue that these were intimate crimes against the person, as property crimes sometimes involved home invasion or at the very least caused damage to owners' assets. Destruction of property could be an attack on status, or an act of resistance or revenge, as much as an act of desperation motivated by poverty (Ruff 2001: 98, 146, 195). Historians attribute the harshness of sentences for property crimes (many were capital offences, when rape was often not) to their immediate threat to the centrality of private property and thus personal status or worth within mercantilist and, later, capitalist economic systems (Wood 2004: 3). Crimes against property were thus a possible metonym for a physical attack on the property owner's person: an attack on entrepreneurial status tied to business and private property as honourable masters of labour.

The legal language of the court's verdict connected damaging property with symbolic violence: O'Brien's crime was 'with intent then and there wrongfully, unlawfully and maliciously to injure the said Thomas Venn'.<sup>4</sup> It is unclear what the motive was – whether an act of revenge due to personal disputes, an act of cruelty, or possibly both. Social historians have likened animal maiming in the nineteenth century, although not as common as other property crimes, to 'a form of symbolic murder', stemming from a personal feud or labour discontent between farm workers and landowners (Archer 1985: 147). An attack on a horse held particular meaning in settler colonial contexts: horses, as well as oxen, were the main source of travel across vast distances, a tool for the mobility of capital and goods. They were also a status symbol, since a person on a horse rather than on foot usually had sufficient financial means (Swart 2005).

Racial capitalism in the Cape Colony emerged within global shifts in criminal justice and labour laws, oscillating between liberal humanitarian pressure for improved labour rights and calls from settlers for increased labour control through stricter terms of indenture (Benton 2001: 177–8). Ordinance 50 of 1828 – which had

<sup>2</sup> CA CSC 1/2/1/38, no. 5, *Queen v Michael O'Brien*, Stellenbosch Circuit Court, May 1846.

<sup>3</sup> In contrast, there were eleven murders, thirty culpable homicides, sixteen rapes and fourteen assaults. Montagu to Maitland, 27 July 1849, House of Commons Parliamentary Papers (HCPP) 1850 (104), p. 37.

<sup>4</sup> CA CSC 1/2/1/38, no. 5, *Queen v Michael O'Brien*, Stellenbosch Circuit Court, May 1846.

shortened labour contracts, outlawed flogging and weakened vagrancy laws – was replaced by Ordinance 1 of 1841, with harsher criminal sanctions against labourers who damaged property, breached their contract, were insolent or refused to work (Dooling 2007: 92–5, 121). The 1856 Masters and Servants Act introduced stricter labour control, extending definitions of criminal infractions to insolence, drunkenness or absconding from the place of employment. Most farmers chose to discipline their workers privately and away from what some viewed as the intrusive arm of the magistrate. Nevertheless, property crimes were more serious because of the threat to security of property, resulting in the transfer of disciplinary power from farmers to the courts and the colonial authorities (Scully 1989: 293–4).

In rural areas, including the Stellenbosch district where much of the hard road's construction took place, farmers used courts extensively against their workers. According to Scully (1989: 297), petty theft by farm workers in the mid- to late 1800s was the result of inadequate rations and 'formed the locus of a contest of rights to land and produce'. These were social crimes against the meagre wages and economic dependencies inherent within the colonial economy that undercut opportunities for independent subsistence. Yet colonial officials viewed property crimes differently and often through a racial lens. Commenting on the relationship between vagrancy, race and crime, the secretary to government John Montagu noted that 'more than one-half of the criminals convicted of [property] offences . . . belong to that portion of our population denominated Hottentots, bushmen and free blacks'. The cause of crime in the colony, he continued, 'is easily accounted for in the character of the country; the great variety of its spontaneous productions capable of supporting life; the love of a wandering life, and of indolence common to all men before the comforts and wants of civilized life have been felt'. Under a system of effective 'convict discipline', such men, Montagu argued, 'are generally found the most tractable and docile'.<sup>5</sup>

O'Brien's life demonstrates how shifting legal regimes around the punishment of property crimes sat uneasily next to settler assumptions that colonial crime was predominantly perpetrated by black subjects. In Cape Town, the largest city and the colony's capital with 24,000 inhabitants, around 1,000 cases came before the magistrates' courts in the 1840s. Ordinance 2 of 1840 to reform the police, in response to a spate of robberies in Cape Town and elsewhere in the colony, was among several measures to improve security of property in the post-emancipation colony (Elks 1987: 43, 46). Michael O'Brien, as a white labourer, may have been exempted from many of the prejudices that stemmed from the 'aristocracy of skin' then developing within the colony (Watson 2012: 265), but as an Irishman he also faced prejudice of racial degeneracy around his work ethic and moral character. The Irish – within Britain, Ireland and globally – were often suspected of vagrant and criminal tendencies and as being 'not quite fully' European (Fitzpatrick 1989). Introducing Irish criminals on the eastern Cape frontier, London's *Morning Herald* cautioned in 1849, might result in lessons taught to the amaXhosa 'tribes in the use of vitriol and broken glass'.<sup>6</sup> Similar attitudes around the social dangers of the Irish to the rule of law existed across the colony (McCracken 1992) and as part of trans-oceanic discourses of crime and social

<sup>5</sup> Montagu to Smith, 27 July 1849, HCPP 1850 (104), p. 39.

<sup>6</sup> *Morning Herald* (London), 30 March 1849, quoted in *The South African Commercial Advertiser*, 30 June 1849.

disorder in a port city such as Cape Town, a crossroads for ships bound for India or Australasia. Alongside former slaves, indigenous Khoisan, and black Africans from the eastern Cape, immigrants and sojourners entered the colonial fray, among them O'Brien, with many in search of economic opportunities beyond the rural poverty or urban squalor of Britain and Ireland.

### **Reform and the intimate spaces of the Cape Convict system**

Convict stations served to correct and reform workers who committed crimes, but they were also spaces of confinement where cordial and violent intimacies emerged between convicts and overseers, between guards and the superintendent, and between convicts themselves. The system of convict labour and reform implemented from 1843 in the Cape Colony by the secretary to government John Montagu were informed by what he termed 'close and merciful watchfulness' (Penn 2008). Montagu, previously stationed in the penal colony of Van Diemen's Land (Tasmania) in the same role, helped draft regulations for the system of convict probation that surveilled, disciplined and managed the labour of thousands of men convicted of crimes in Britain and Ireland. Despite regulations to observe and measure convict behaviour and labour, the probation system in Van Diemen's Land was not successful. This was largely because too many transported convicts in the 1840s overwhelmed the system of surveillance, resulting in intimacies between male convicts – familial, sexual and profane – that shocked the Colonial Office into discontinuing Van Diemen's Land's probation system in 1846 (Brand 1990; Reid 2007). In contrast, the Cape convict labour system implemented by Montagu was largely successful in reducing recidivism. An increasingly technocratic Colonial Office in London recognized convict stations as a successful institutional reform not only in the Cape but also within the empire, as they combined efficient measurable governance with Christian utilitarian conceptions of scripture-led reform of the criminally and socially deviant (Penn 2008; Carey 2019).

Often lost among official praise for the system was the post-emancipation context of forced labour within a decade of slavery's end. Housed in temporary barracks close to the roads and mountain passes that they built, several convicts were former slaves or descendants of slaves whose intimate relationships were inherently gendered by the past denial of ordinary domestic lives (Scully 1997). Separated from partners or wives, children and kin, incarceration was thus for many a continuation of or variation from the norm rather than the exception. This was especially so for convicts without partners or fixed filiations, or whose social world was marked by transience, repeat convictions and what colonial officials would have deemed a roving, dissolute life.

Under an affective lens, systems of convict reform can appear sterile and unhomey, with a series of rules and schedules, ledgers of conduct, and hierarchies of surveillance that we can too easily reduce to carceral worlds devoid of human emotion and personal interaction. If 'various corporeal technologies, and most specifically bodily violence, have acted to mark and constitute boundaries of alterity' within disciplinary regimes of imperialism, as Rao and Pierce (2006: 5) contend, incarceration also created technologies of affect, from religious instruction to school lessons, that sought to manage social interactions and shape the morality and



character of convicts. Imperial emotions thus involved liberal humanitarian reform as entangled within the violent logics of colonial rule (Lydon 2020). Histories of the relationship between imperial intimacy and violence require attention to the local as well as to longer distances, whether spaces of work and home, spaces travelled across, or spaces of confinement. As Ballantyne and Burton (2009: 8) ask of the relationship between intimacy and the imperial state, 'How did bodies on the move both capture and elude the gaze of those in charge of policing them?' Thus, there is as much that can be said about what was not seen and surveilled, what was not officially scripted by imperial regimes of governance, and what convicts thus experienced beyond the gaze of officials.

Before Cape reforms in the 1840s, open association between convicts and the public troubled officials, especially since some convicts were employed in law enforcement, which amounted to an intimacy that in officials' eyes damaged social morals and did little to reform convicts (Penn 2008; Deacon 1989). 'Convicts are employed in the streets by night and day, to bring in drunken and refractory persons, to kill dogs and fowls, to impound horses and cattle, to inflict corporal punishments and assist at the execution of criminals,' John Montagu wrote with alarm in 1843, 'all of which employment he [the governor] considers extremely objectionable for convicts, and desires they may be immediately discontinued.'<sup>7</sup> The new system required order and discipline, but also the distancing of convicts from society to train them into reformed labourers for the colonial economy. Instead of bricks-and-mortar prisons with prison cells and workshops, nineteenth-century penological experiments in Britain and its empire occurred through open-air labour on public works, with convicts housed in fixed or mobile barracks (Harling 2014).

A Cape magistrate argued that 'the circumstances of the lower classes of this colony are more favourable to the success of a simple penitentiary system than those of any denser population'. This was because 'crimes against property are not resorted to as a calling, but generally arise from immediate want, produced by indolence and improvidence'.<sup>8</sup> On paper, if not fully in practice, the superintendent of the convict station was instructed to serve as a 'moral trainer and religious instructor ... [and to] establish ... sobriety, industry and self-control'. The affective scope of surveillance entailed:

observing minutely and recording in his journal daily, for the information of the Government, whatever is indicative of the state and feeling at the time ... [H]e will not fail to inculcate incidentally such truths and maxims as are most likely to ... arouse moral feeling ... leading to a right apprehension of guilt.<sup>9</sup>

Criminal reform therefore required intimate knowledge of convicts' personal histories, their prior occupation, their habits and the reasons for their crime and conviction.

Despite rules that convict discipline be administered in silence, intimacies on the station disrupted the script of order in ways that sometimes alarmed officials,

<sup>7</sup> Montagu to King, inspector of police, Cape Town, 30 August 1843, HCPP 1847 (742), p. 56.

<sup>8</sup> Moodie to Montagu, 4 January 1845, HCPP 1850 (104), p. 8.

<sup>9</sup> Regulations, 1 January 1844, in Napier to Stanley, 23 January 1844, HCPP 1847 (742), p. 74.



including constables and overseers gambling and drinking excessively, although they did not share alcohol with convicts.<sup>10</sup> In their everyday interactions with convicts, such drunken behaviour was uncommon, although ‘harshness of language’ by overseers and constables was occasionally ‘duly censured and checked’.<sup>11</sup> Tension between convicts and their gaolers was most apparent within the chain gang. Onverwagt, who O’Brien would later murder in October 1846, was on the chain gang for the entire year. In January, Onverwagt used ‘insolent expressions’ against an overseer, stole bread from the convict Adonis, and was found with unmarked trousers in his possession; in May, he was caught gambling on a Sunday; in June, he sold a stolen knife; and in September, he stole a tin from another convict. Each offence resulted in between one and eight days of solitary confinement on rice water.<sup>12</sup>

It was not until the 1880s that authorities racially segregated the Cape’s colonial prisons (Deacon 1996). Before this, the meticulous listing of convicts according to race did not yet cohere to a clear or unified taxonomy of racial difference, although it did reflect stereotypes about skin colour, cultural difference and racial mixing. One Tygervalley station record categorized convicts as ‘Hottentots and free blacks’, ‘emancipated slaves’, ‘natives from the border tribes’, and ‘European and of European descent’; another listed ‘7 Europeans, 6 white colonists, 20 Aborigines, [and] 73 other persons of colour’.<sup>13</sup> Such categories arose alongside hardened racial prejudices in the decade following slave emancipation, in part because of settlers’ increased pressure for labour control, as well as three frontier conflicts with the amaXhosa between 1834 and 1853 (Watson 2012: 239–40).

Racial assumptions around convict behaviour were tied to the labour system in the colony. In the words of a convict superintendent, model convicts upon release were ‘valuable acquisitions to the laboring class’,<sup>14</sup> with hard labour increasingly considered the lot of black inhabitants because of lower wages and tighter labour laws. Nevertheless, the very lines between convicts, slavery and indenture had long been blurred within the Cape Colony and globally, especially during the Dutch period, with convicts and bonded labour often working alongside each other (Ward 2009: 239–82). In the post-abolition British Empire, these blurred categories of convictism and indenture continued to be noticeable, as in Mauritius (Allen 2014). The distinct management of labour under penological experiments in criminal reform in Southern Africa was nonetheless part of a wider ‘civilizing process’ towards creating pliant colonial labourers (Hynd 2015; Worger 2004; Corry 1977).

For example, the superintendent considered Jephtha, sentenced to five years’ hard labour as an accomplice in the theft of nineteen sheep, to be ‘sober and very industrious’ and ‘able to perform every description of work required for farming’.<sup>15</sup> Labour was often entangled within the domestic spaces of farms. Whether in their prior occupations as artisans, like Michael O’Brien, or as farm workers, proximity within or near domestic spaces was necessary for their work. Relations between

<sup>10</sup> CA CO 6204, de Villiers to Montagu, 18 December 1845.

<sup>11</sup> Montagu, 4 January 1845, in HCPP 1850 (104), p. 8.

<sup>12</sup> CA CO 6209, superintendent’s monthly reports, Tygervalley Convict Station, 1846.

<sup>13</sup> Convict Return, Tyger Valley, 1 January 1845 to 31 December 1845, HCPP 1850 (104), pp. 21, 37–9.

<sup>14</sup> Le Sueur to Montagu, 2 January 1845, HCPP 1850 (104), p. 425.

<sup>15</sup> CA CO 6208, de Villiers to Maitland, 2 June 1845.

master and servant were thus often paternalistic and familial. The very function of convicts' separation from society under a carefully surveilled convict labour system was because their crimes, particularly those against property, had betrayed the trust required for the deferential intimacy that maintained the colonial economic order.

### The escape

Some convicts were less willing to fill the role of obedient and confined labourers. This included nine convicts from the Tygervalley convict station who escaped on 24 October 1846, making off with a musket, a bayonet, scabbards and two pistols from startled sentries.<sup>16</sup> A convict struck one sentry on the head, and in turn was stabbed in the chest by the sentry. Authorities captured three escapees soon after, and several more from the chain gang would likely have escaped if the overseer Tyers had not blocked their path, whereupon he was attacked with sticks in a 'confused mass' before the superintendent and others arrived to assist and secure the convicts inside the barracks.<sup>17</sup> Among the men who failed to escape were Michael O'Brien and his accomplices Craig and Onverwagt.<sup>18</sup> Field cornets sent men to cover possible escape routes, including the mountain passes.<sup>19</sup> The convicts escaped towards the Hottentots Holland Mountains, secreting themselves within gullies, along routes similarly employed by escaped slaves for more than a century, who would form *droster* gangs to survive through the raiding of isolated farmsteads (Penn 1999: 73–99). The escaped convicts bided their time, hiding in bushes, betrayed by the rattling of chains if they moved. The authorities distributed printed notices and notified local farmers, whereafter some free labourers observed a diverging 'spoor' (track).<sup>20</sup>

The authorities granted two convicts from the nearby Kuils River station – skilful at tracking and thus probably Khoesan – mitigations of their sentences when they traced the path of the six convicts who escaped. They noticed visible marks left by the convict chains when they 'trod in molehills' and where a fire had been lit the previous night.<sup>21</sup> Four days after the escape, farmers caught five convicts asleep by the Palmiet River; the sixth was in the Stellenbosch gaol.<sup>22</sup> Even if O'Brien and his accomplices had managed to escape, they would likely have been apprehended and would have faced a lengthened sentence and flogging – '50 lashes with a cat o' nine tails', the fate of the escapee Michiel Witbooy, who remained on the loose for ten days.<sup>23</sup>

John Montagu was convinced that escapes from convict stations were instigated through 'the influence of one man of superior ability and unusual daring leading away a number of weaker intellects'. Men such as O'Brien at Tygervalley were to blame,

<sup>16</sup> CA CRB 36, Short to Tennant, 26 October 1846.

<sup>17</sup> CA CO 6209, Short to Montagu, 24 October 1846.

<sup>18</sup> CA CO 561, *Queen v O'Brien*, 1847.

<sup>19</sup> In the Cape Colony, a field cornet (Dutch *veldkornet*) was a civilian official within a *drostdy* (local government district) who combined the authority to act as a magistrate with the ability to conduct military and policing functions.

<sup>20</sup> CA CO 6209, de Villiers to Montagu, 24 and 26 October 1846.

<sup>21</sup> CA CO 6208, de Villiers to Montagu, 25 October 1846.

<sup>22</sup> CA CO 6209, Short to Montagu, 28 October 1846. These were listed as 'Galant Damon, Samuel Smith, Keister, Xodolo and Izani'.

<sup>23</sup> CA CO 6204, de Villiers, report, 1 February 1845.

Montagu claimed, as without their involvement escapes were ‘an unlikely occurrence amongst convicts of so many different races’, and, by implication, different languages and allegiances. Officials identified a ringleader in another escape earlier that year from the Cradock’s Kloof convict station near the town of George, 400 kilometres to the east of Cape Town, the amaXhosa convict Macomo.<sup>24</sup> The latter highlights how convict stations also served as safety valves to forcibly move and isolate individuals from sites of colonial frontier wars or civil unrest.

One of the escapees from the Tygervalley convict station, Ruitter Philander, had submitted a memorial to the Cape governor nine years earlier, requesting ‘a spot of waste Crown land’ as he was ‘a poor Bastard having no ground upon which he can permanently settle and [who] is compelled to lead a wandering life with his cattle’.<sup>25</sup> The memorial clearly played to colonial stereotypes around itinerancy, yet it also reveals the important connection between how alienation from land led to economic precarity, and thus increased pressure to seek labour on settler farms.

Between August 1851 and early 1852, rumours circulated among Cape farmers that ex-slave and Khoesan workers planned a violent revolt to reclaim land by murdering landowners and their families (Bradlow 1989; Ross 2013: 274–6). Although the rumours proved unfounded, they exposed the anxiety present among white settlers in post-emancipation economies, which were far more vulnerable and less stable than they may at first appear (Fischer-Tine and Whyte 2016). In November 1851, the former superintendent of the Tygervalley convict station, John Short, now stationed at Bain’s Kloof pass, dealt with a conspiracy by three convicts to liberate their fellow inmates in order to join a prophesied rebellion across the Boland region. However, it is misleading to consider even this as a locally motivated attempt at a rural rebellion, since the leading conspirators were convicts convicted for their part in the failed Kat River Rebellion earlier that year in the eastern Cape (Bradlow 1989: 411–12). Many escapes were opportunistic rather than evincing premeditated unified motives (Truter 2005), although the very act of escape reveals resistance through convicts’ lack of faith in the legitimacy of the carceral system or the logics of disciplinary labour.

### The trial and narrative of Michael O’Brien

On 22 January 1847, the convict Michael O’Brien was sentenced ‘to be hanged by the neck until he be dead’. Three months earlier, on 28 October 1846, O’Brien had murdered his fellow convict Onverwagt as they lay resting in a gravel quarry along the stretch of road under construction east of Cape Town, in the direction of Stellenbosch. O’Brien struck him on the head with a spade or shovel, and then attempted a blow on the convict Craig, which he evaded. Craig then jumped over a ditch and ran shouting, ‘For God’s sake save us!’ Five days later, Onverwagt would succumb to his injuries. When questioned immediately after the murder by the overseer of convicts then on duty, O’Brien was defiant. Ordered to sit down, he initially refused, and when threatened with a shot from the overseer’s pistol, O’Brien

<sup>24</sup> CA CO 6841, Montagu to White, 24 December 1846, ff. 154–6. The convict Macomo mentioned here was not the amaXhosa leader Maqoma, who would later be imprisoned on Robben Island from 1857.

<sup>25</sup> CA CO 3989, no. 32, Philander to D’Urban, memorial, 22 September 1836. The Civil Commissioner’s Office responded on 10 December 1836 with a note that the land referred to was commonage ‘already disposed of in favour of inhabitants of the Onderbokkeveld’.

responded with 'Blow away'. He soon admitted to the crime, stating: 'I did it and the black bugger shall not spill my blood.'<sup>26</sup> O'Brien used the racial slur to soften culpability by attempting to cast dishonour on Onverwagt as a black, and thus untrustworthy or immoral, colonial subject (Watson 2012: 220–1). O'Brien's fateful actions and racially charged confession reveal the more complex dynamics of violence and intimacy beyond the event of the crime. It also poses questions about the reasons for such a violent act.

Onverwagt's wound was gruesome: the constable Lewis described 'a man's head . . . half cut off'. The surgeon John Laing was more clinical, but no less graphic, noting a 'cut through the scalp, skull and membranes of the brain'. Laing identified the spade displayed in court as the likely weapon, with 'the mark of blood which is now visible on it'.<sup>27</sup> What had caused such an act of acute violence, perpetrated by a convict who clearly knew the other in the intimate confines of imprisonment – men who ate, worked, slept, joked and prayed together? The most likely cause was the failed escape a week earlier – when six convicts had managed to escape – and the alleged betrayal of O'Brien by the convicts Craig and Onverwagt, who threatened to reveal him as a ringleader. O'Brien, they alleged, had plotted to 'cut the throats' of the superintendent Short and the overseer Tyers, a charge he denied since these men 'had shewn [sic] him the greatest kindness'. O'Brien, already three months into a five-year sentence of hard labour in irons, faced a lengthened sentence. Those who had escaped received an additional two-year sentence and sixty lashes. He admitted that he 'brooded over the affair . . . of which he was innocent . . . until his better judgement gave way to a violent excitement, and . . . [then] a moment of madness'.<sup>28</sup>

The archives contain not only O'Brien's testimony, but also that of several witnesses, testimonies that are lengthy and detailed not because the trial reached the Supreme Court, the highest judicial body in the colony, but because this was a murder perpetrated by a white man. The overseer Thomas Tyers claimed that he heard O'Brien in the preceding months 'frequently complain of his previous trial, murmuring and talking about it with other prisoners. He spoke in a wild and flighty manner . . . [and said] several times that he had not had a fair trial.' Despite this, Tyers considered him 'in his right senses'. O'Brien's belief in his innocence likely animated his decision to plan the escape along with fellow convict and ringleader Craig. With the escape a failure, the motive for the murder of Onverwagt and the attempt on Craig's life was a sense of betrayal. Tyers spoke in court of the addition of an extra set of leg irons that appeared to 'pray on his mind' and which would cause additional bodily discomfit for O'Brien as he pondered his next move, along with being a visual marker of further stigma within the chain gang.

Taking the stand, Craig described the period before the murder of Onverwagt and the attempt on his life. Craig agreed 'to screen him [O'Brien] and take all the blame', a stance that Onverwagt opposed. On the morning of the murder, Craig overheard O'Brien ask: 'Do you say I had any hand in it?' Onverwagt responded: 'Yes, you were as bad as Craig was.' They then began to 'curse and swear at each other'. Later that

<sup>26</sup> CA CO 561, *Queen v O'Brien*, 1847.

<sup>27</sup> *Ibid.*

<sup>28</sup> CA CO 4034: Memorials Received, O'Brien to Maitland, 26 January 1847; CA CO 6210, Rivers to Montagu, 28 October 1846.

morning, during an 11 a.m. break from work in the quarry, O'Brien offered Craig and others 'a chew of tobacco'. Several convicts ate and smoked, and some rested or slept, among them Craig, who covered his head, but not eyes, with his waistcoat. This decision likely saved Craig's life, as the murder of Onverwagt occurred soon after.<sup>29</sup> In colonial societies where bondage was a pronounced part of everyday life, men often resorted to violence in defence of personal honour or in reaction to shame within the intimate pressure of their interpersonal worlds (McKenzie 2016b). It is possible that the violent murder by O'Brien arose from a sense of wounded masculinity and slighted honour as much as it was motivated to avoid a lengthened sentence.

Several details startled officials. Three weeks before the murder on 28 October 1846, reports reached John Montagu that O'Brien was possibly an escaped convict from the penal colony of Van Diemen's Land. Well versed during his tenure in colonial Australia in identifying convicts from examining the scars on their bodies, which served as ledgers of their criminal past, Montagu first communicated with the governor of the Cape, Sir Peregrine Maitland, and then communicated his instructions to the superintendent at the Tygervalley convict station:

I am directed by the Governor to request that you have him [O'Brien] carefully examined to see if there are any marks on his body or any appearance of his having undergone corporal punishment, and to obtain such further information as to his having been a convict for should such prove to be the case, he will have to be sent back to Van Diemen's Land.<sup>30</sup>

As a common name, Michael O'Brien appears often in the records of convicts transported to Van Diemen's Land or New South Wales. It is possible that he was the Michael O'Brien born in 1805 and convicted at the age of twenty-three at the Chester assizes in England for the crime of forgery; or maybe he was born in Limerick, Ireland, in 1814, and convicted at the age of nineteen for stealing.<sup>31</sup> Perhaps aware of official suspicion that he was an escaped convict transportee, O'Brien entered the trial with clear intent to prove his good character, itself a move motivated by an attempt to avoid the sentence of death by hanging; he appeared resigned to his guilt, but not to an end to his natural life.<sup>32</sup> O'Brien's criminal and dissolute past followed him throughout the trial.

One line of defence was insanity. Philip, a mason living in Rondebosch and a former colleague five years earlier, testified that O'Brien 'sometimes drank very hard', but that his erratic behaviour went beyond madness.

He one night ran away and it appeared then as if he were half mad. I can't say whether he had been drunk before but he was not drunk that night. It

<sup>29</sup> CA CO 561, *Queen v O'Brien*, 1847.

<sup>30</sup> CA CO 6841, Montagu to visiting magistrate, 7 October 1846.

<sup>31</sup> The National Archives, United Kingdom (TNA) HO 8/00715247; TNA HO 17/68/19; Convict indent 31785, Ship and Arrivals Registers, 1788–1868, <<https://www.digitalpanopticon.org/life?id=cin31785>>, accessed 20 March 2022.

<sup>32</sup> CA CO 4034: Memorials Received, O'Brien to Maitland, 26 January 1847.

sometimes happened that when at work he got into a kind of fit as if he had a twin in his head and then he ran away.<sup>33</sup>

During a year in which they had lived together, Philip recalled at least five or six such episodes. A surgeon noted that a man named 'John O'Brien' was admitted in 1840 to the Somerset hospital 'afflicted with Mania', while a common explanation for this was *delirium tremens*, a mental ailment caused by his prolonged and excessive consumption of alcohol. Symptoms included hallucinations, trembling, insomnia and violent behaviour. Patients in the mid-nineteenth century were considered unsuitable for the 'moral therapy' undertaken in the new mental asylums in Europe and America (Osborn 2006: 196). But the surgeon at the convict station, Dr Laing, did not consider O'Brien of 'unsound mind'. This was a man he considered 'one of the shrewdest and most cunning men', a view echoed by the clerk of the peace in Stellenbosch. The latter had dealt with O'Brien's trial and sentence in May 1846, when the defendant had conducted his own defence, including cross-examining witnesses.<sup>34</sup> This was thus a man whom experts judged suitable for reform in the convict station to which he was sent.

Insanity might mitigate O'Brien's sentence, a clear reason why this line of argument persisted in his letters and in cross-examination. Nevertheless, as Deacon (2003) and Swartz (2015) have shown for the Cape Colony, rudimentary knowledge of mental illness also exposed the racial parameters of sympathy and social control. Treated with more dignity than their black counterparts, the white insane could be cast as victims of socio-economic circumstance or personal tragedy, or as deviants who subverted social convention and who challenged the white colonial order through vagrancy, drunkenness or the crossing of racial boundaries. For an individual like O'Brien, who claimed to have travelled and lived in the Pacific, Southern Africa and Britain, to embrace madness within his personal narrative played to Christian concern about the violence and alienation of the colonial world. In the penal colonies of Australia, madness was frequently ascribed to convicts as a moral malady brought on by a dissolute past and made worse by distance from Britain and its 'civilizing' influence (Dunk 2019). The globetrotting poor – whether transported or escaped convicts, seafarers or fortune seekers – were the most vulnerable to such aspersions. Of these subaltern types, those who challenged powerful men in the colonial world could be labelled as possibly insane, such as the escaped New South Wales convict William Lockaye, who accused the then governor of the Cape Colony, Charles Somerset, of corruption in 1824. Lockaye subsequently faced trial for libel and was transported back to Sydney (McKenzie 2016a).

There is little or no documentary evidence that O'Brien was aware of official suspicion of his alleged convict past in Australia. The murder and impending trial placed a temporary hold on further inquiry.<sup>35</sup> Cape courts had sentenced several European and Khoekhoe to transportation since the early 1820s, shipped to New South Wales and later to Van Diemen's Land. The final transportees would leave for Hobart in late 1846 aboard the *Mona* (Harman 2012; Malherbe 2001; 1985; Duly 1979).

<sup>33</sup> CA CO 561, *Queen v O'Brien*, 1847.

<sup>34</sup> *Ibid.*

<sup>35</sup> CA CO 6841, Montagu to visiting magistrate, 2 November 1846.

In early October 1846, authorities forwarded from the Tygervalley convict station to the Cape Town gaol two men sentenced to transportation to Van Diemen's Land, Charles William Mill from St Helena and the deserted soldier Francis Doonan. By mid-November, both men boarded the brig *Pryde*, a journey that O'Brien might also have undertaken if not for the murder at the end of October.<sup>36</sup> But it is quite possible that O'Brien had raised earlier suspicion of an Australian convict past, perhaps as a tale to his fellow convicts at the Tygervalley convict station, that as a young man he had travelled the Pacific in the service of the Wesleyan missionaries. This redemptive narrative of Christian endeavour after the trial, whether true or not, rendered his claims of insanity as a call for sympathy rather than scorn. It was not drunkenness at the root of his mental state, so O'Brien claimed, but a blow to his head inflicted first in 1829 when he fractured his skull after falling from a cliff pursued by native inhabitants on the island of Malaita in the Solomon Islands, and second by a Maori club in 1836 while defending the life of the Reverend John Williams in the Bay of Islands, New Zealand. Since at least 1823, O'Brien wrote:

[He] several years ago resided in the Islands of the South Seas, and was of the utmost service to the British Missionaries settled in that quarter . . . whom he assisted in the translation of the Holy Scriptures into the Tonga and New Zealand dialects – and he has also rendered them his gratuitous assistance, in his trade as a Mason, in building churches in various parts of Polynesia, more especially in the Island of Eona [‘Eua], in the Tonga Group.<sup>37</sup>

In his memorial to the governor, O'Brien relied on and adapted one of the most popular missionary narratives then in circulation within the British Empire, John Williams' *A Narrative of Missionary Enterprises in the South Sea Islands* (1837). This book received a boost in sales after the murder and alleged cannibalistic consumption of Williams on the Pacific island of Vanuatu in 1839. The fabricated dates and details are the first inconsistency in O'Brien's narrative; the second is that Williams was an employee of the London Missionary Society, and not their counterparts the Wesleyans. O'Brien may have encountered reference to Williams' missionary endeavours during a sermon in the Cape, and thus witnessed the power of narratives of missionary heroism in colonial contexts.<sup>38</sup> Narratives of distant intimacy could elicit sympathy since they were familiar to settler audiences who themselves maintained or had lost connection with family and kin on further shores. Yet such narratives presented a tightrope between, on the one hand, artifice, exaggeration and disbelief, and, on the other, familiarity and genuine sympathy.

There is also something to be said here not only about the apparent fiction of O'Brien's narrative, but also about the body, which lay at the centre of early colonial

<sup>36</sup> CA CO 6841, Montagu to superintendent of police, Cape Town, 7 October 1846; CA CO 6841, Montagu to assistant military secretary, 11 November 1846; Montagu to colonial secretary, Van Diemen's Land, 12 November 1846. The Seventh Frontier War in the eastern Cape resulted in several sentences of transportation for desertion. In March 1847, two months after O'Brien's trial, authorities sentenced three soldiers – William Duncan, Mark McCann and Cornelus Manning – to seven years' transportation. CA CO 561, Menzies to Maitland, 12 March 1847.

<sup>37</sup> CA CO 4034: Memorials Received, O'Brien to Maitland, 26 January 1847.

<sup>38</sup> For John Williams, see Behlmer (2018: 80–90). Williams (1837) does not mention a 'Michael O'Brien'.



encounters between Europeans and indigenous peoples in the Pacific. Violence intended as resistance against colonial incursion and a violation of local customs could instead be read by missionaries and colonists as acts of barbarism and heathenism (Ballantyne 2014). The body, especially one injured in acts of heroism, could also serve as a powerful vector for the embodiment of Christian sympathy within the narrative myth making of the Victorian reading public (Lewis 2018; Lydon 2020). Perhaps, in an age when missionary journeys like those of Williams into the Pacific or David Livingstone into the heart of Africa captivated public regard, O'Brien, awaiting his death in Cape Town gaol in 1847, sought to harness this narrative sentiment to save his life.

O'Brien countered claims against his character with further descriptions of Christian sympathy and humanity in his personal life. His final memorial to the governor appealed to a prerogative held by those in power to mitigate a criminal sentence, an action dating back to the mercy bestowed by the British monarch. As an appeal against the seeming rationality of state-sanctioned violence and the intricate judicial weighing of legal facts that preceded a verdict and sentence, letters calling for mercy appear strangely intimate. Carolyn Strange (1996: 3) quips that if we were to ascribe them affective qualities, 'mercy is soft-hearted and compassionate, whereas justice is hard-headed and unyielding'. Enhancing the legitimacy of the Crown through compassion, mercy petitions served as a litmus test of government willingness to follow public sentiment (Gatrell 1996: 543–88). Mercy might allow O'Brien one last chance at life, through appealing to the compassion of the governor. A final detail entered O'Brien's personal narrative. Despite being a man without family in the colony, he claimed to have adopted a young child within the colony whom he sheltered and cared for as his own, and that he still held strong affections for an 'aged and helpless mother and a daughter of the age of sixteen years in Ireland' who would be left 'utterly destitute and unprovided for'.<sup>39</sup> O'Brien's appeals for clemency came to naught, dismissed with a simple 'no' scrawled in pencil in an official hand. He was executed several days later.

## Conclusion

In examining O'Brien's biography, the appropriate question is not whether O'Brien's narrative of a seaborne life of mission work in the Pacific was true, nor even whether he was an escaped former convict from Van Diemen's Land, although the latter may well have been true. Nor is it helpful to weigh judgment on Michael O'Brien, the murderer, in a crime that was clearly reprehensible. Natalie Zemon Davis (1987), in her history of French pardon tales and letters for remission addressed to the king in the sixteenth century, has alighted on the fictions of these tales as narrative devices of persuasion, rather than as truthful accounts whose lack of embellishment might render less sympathy. New biographical details not mentioned in the trial, real or invented, coupled with heartfelt remorse, might bolster a supplicant's emotive plea for mercy from execution. O'Brien's final letters for clemency likely followed a similar strategy. Regarding the motive for the murder, he may have acted out of revenge against his

<sup>39</sup> CA CO 4034: Memorials Received, O'Brien to Pottinger, 28 January 1847.

co-conspirators in the escape attempt, unwilling to fathom a lengthened sentence if revealed as a ringleader beyond the five years hard labour already allotted to him.

One wonders what narratives convicts whispered to each other as they toiled in the quarry and on the construction of roads and mountain passes, and what affective worlds existed within the coercive spaces of the convict labour system that O'Brien and several others attempted to escape. Colonial records such as court testimonies and memorials can be read against the grain to consider how emotional narratives reveal as much about the intimate lives of their authors and their violent encounters during their criminal past as they expose the contradictions inherent within imperfect (often violent and corrupt) systems of imperial governance. What is certain in hindsight is that emergent total institutions such as the prison and the mine compound, and the concomitant surveillance of labour that held such regimes of power together, would become increasingly racialized and a central mechanism within the capitalist economy of Southern Africa into the twentieth century (van Onselen 1985).

Distance was an integral part of colonial life. For colonists, family could be a months-long sail journey away, connected by chains of letters that nourished emotive narratives of closeness of feeling, if not a closeness of bodies in contact or proximity. Yet, convicts of all races experienced the rupture from social proximity with one's kin brought about by incarceration. New social worlds of prison labour and confinement emerged – austere, regimented, yet also filled with the jealousies and shared commensality of convicts as strangers forced into closeness. The murder in a post-emancipation settler colony, the convict system in which it took place, and the cross-colonial connections within an empire of violence, intimacy and sentiment reveal the global and local connectedness of carceral spaces within the history of colonialism in Africa and globally. These carceral spaces exerted violence not only in the top-down Foucauldian sense of bodies disciplined by the state, but also through the horizontal personal relationships, actions and narratives of the incarcerated. What concerned colonial officials was the unpredictability of subaltern lives like that of O'Brien, whose narrative crossed the line between fact and fiction, and whose criminality and whiteness unravelled settler expectation around race, labour, security of property and emerging systems of punishment and carcerality within the colony and in the wider British Empire.

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