

NHH21. Shirt-lifting Down-Under Sodomy in Sydney Town

WC 3777

On 26th January, 1788 the new Colony of New South Wales inherited English law and as part of the package, the capital offense of sodomy. Of course, from the very moment they ran the Queen Anne Jack up the flagpole at Sydney Cove, our law began to deviate from that of Mother England, but the die was cast and from then until June 1984, sodomy was a serious crime in New South Wales. But the criminal law was not all we inherited from England — along with it came a host of anti-homosexual prejudices, many of which are still with us today.



Despite the fact we had the death penalty for sodomy until 1883¹, during the early decades of European settlement in Australia, sodomy and associated “unnatural” practices were often the best a man could hope for in a land where distance and the scarcity or absence of women left him little choice. In the convict era, 1788-1842², in Sydney Town the ratio of men to women was approximately 10:1. In the bush, it was more like 20:1 and in some places, for example in the remoter parts of The Argyle and the Limestone Plains, European women would have been even scarcer..

Men not only chose other men for intimacy and sexual release: in the prisons and on the chain-gangs, they were frequently raped or at best, coerced into having sex with other men. Prison sex, of course, is a well-known phenomenon and often has more to do with the power politics of the prison than with mutual affections and desire. The ever-present horror of such brutal abuse has probably left its mark as a home-grown rather than imported part of Australian homophobia.

However, not all was prison sex. Many men, not always convicts, found intimate companionship with other men. Such relationships with one’s “mate”

¹ The death penalty was repealed in 1861 in England but the flow-on to the Colony took time: in 1862, John Hargraves, the attorney-General introduced the Criminal Law Consolidation Bill into the Legislative Council which did away with the death penalty but created another crime, “attempted sodomy, with or without consent” which until then was treated as an attempt to commit a felony. However, the Bill was not passed until 1883.

² Transportation ceased at different times for the different Colonies: e.g., the last convicts arrived in Western Australia in 1867.

or “best mate” was not necessarily sexual in a genital sense, but it was certainly deeply loving and caring. And in many cases these mateships were indeed sexual partnerships.

The Way Here

Historians seem agreed that homosexual sex was uncommon in the British prisons where men and boys were held awaiting trial. However, once convicted and sentenced to transportation, most were transferred to the "hulks", the old ships specially fitted out as floating prisons which were moored permanently in the estuaries and harbours of England. There, records suggest, many of them had sex, often forcibly, with the other inmates.

The general view around the hulks was that a young man or a boy, even if he was a virgin when he first came on board in chains, certainly would not leave the hulk for New South Wales inexperienced in the ways of prison sex.

"Buggery," wrote Robert Hughes,³ *"is to prisons what money is to middle-class society. It was utterly pervasive in the world of hulks and penal settlements as it is in modern penitentiaries"*.

Hughes also quotes the great prison reformer, Jeremy Bentham who, in a report

"...claimed that prisoners entering the Woolwich hulks were raped as a matter of course: 'An initiation of this sort stands in the place of garnish and is exacted with equal rigour... (A)s the Mayor of Portsmouth, Sir John Carter, very sensibly observes, such things ever must be'."

Throughout the period of transportation, convicts were brought to Australia in specially chartered ships. With a few exceptions, these transports were sound ships modified into prison ships for the voyage out. The prison quarters were usually situated 'tween decks, the actual space itself of course being determined by the overall size of the vessel. Generally speaking, however, men were crowded together so closely that eventually the authorities became alarmed. From then on, not only were the transport ships for the journey out modified but in the Colony, new buildings were designed and some older ones altered to minimise the contact one man could have with another during the night.

Efforts to separate the boys from the men also increased as Regency gave way to Victorian morality. There was a growing concern that the younger men and what were termed "boys" (although pre-pubertal convicts were rare) would be contaminated by the already debased morals of the adult men. This notion of "moral contagion" as the reason for such segregation was quite at loggerheads with the experience of jailers and supervisors throughout most of the history of the penal system, that it was the boys who caused most of the trouble, by their

³ Op. cit. p 244.

flirting and sexual manipulations, rather than the boys suffering from the men's sexual attentions.

In his 1971 book, *Who's Master? Who's Man?*, Michael Cannon⁴ says that

Child offenders of the London street who arrived in Sydney were imprisoned in the "Carters' barracks" at Brickfield Hill⁵ near the Benevolent Asylum. Here, by the frequent application of the birch, they were taught a trade and then released on a tied apprenticeship system, with a gaol sentence in view if their new masters lodged any complaints against them.....

..... The extent of homosexual relations among convict boys and men is very difficult to gauge. Considering their brutish conditions, endless sentences, and the predominantly male society into which they finally emerged, it is possible that homosexuality was very widespread indeed. The roman-Catholic Vicar-General of New South Wales, W.B. Ullathorne, told the Molesworth inquiry that the crowding of boys together on convict ships always led to 'moral pollution', which became far worse when men associated with the boys. 'Unnatural crime' was so prevalent that it had caused him 'pain' and 'torture of mind'.

Sodomy in the Antipodes

The Colony's first sodomy trial was held on April 23, 1796. On that occasion, Francis Wilkinson was acquitted of a charge of attempting an "unnatural offence". Not so lucky were Dubliner, Richard Moxworthy and Bristol-born John Hopkins who came into Sydney on board the US ship *Hero* on July 10, 1808. Moxworthy was second mate on this privateer and trader and was aged 42. Hopkins was only 16. The two were caught having sex when the ship was somewhere off Mexico. They were immediately relieved of duty and placed in irons until the *Hero* arrived in Sydney.

Despite the fact the alleged offence had been committed on an American vessel (not to mention that the Rum Corps administration was illegal itself), they were tried on 25 July before Acting Deputy Judge Advocate, Capt. AF Kemp of the NSW Corps, found guilty and sentenced to death. It seems certain they would have hung but for the opportune arrival in the Colony of the new Lieutenant Governor, Joseph Forveaux who, in the *Sydney Gazette* for August 14, 1808, announced the "Royal Clemency" for the unfortunate lovers. After receiving a Conditional Pardon, Moxworthy again went to sea, this time as coxswain of the

⁴ Cannon, M.: *Who's Master? Who's Man?*, Nelson, Melbourne 1971 (Chapter 4: The Convict Stain, pp 59-60)

⁵ Today, roughly a little to the west of the entrance to the country train platforms at Central Railway Station.

government sloop *Blanche*. Hopkins was not so successful: on April 26, 1822 the *Sydney Gazette* carried an advertisement offering £10 reward for the capture of John Hopkins who had absconded from his parole and was wanted for "diverse and other robberies". There is no evidence that he was ever captured and that is the last we have heard of him.

Although sodomy was officially a hanging offence and many were "awarded" the death sentence, unless there were other features — such as a brutal rape or as we will see later in the case of Alexander Brown, abuse of authority — the usual practice was for the judge to put on the black cap and pronounce the mandatory sentence. Then, shortly afterwards, the Governor granted the Royal Clemency and substituted imprisonment with hard labour, sometimes in irons, usually at one or other of the hellish colonial penal settlements, for life.

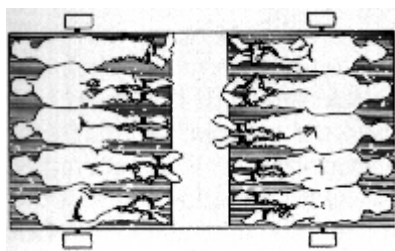
However, in 1828 the death sentence was actually carried out on Alexander Brown, making him the first man to die in Australia for the crime of sodomy. Nonetheless, Brown was not the kind of man one would wish to claim as a gay martyr. Brown was the chief officer on the 441 ton whaler, *Royal Sovereign*, which had left London on 9 July on a voyage hunting sperm whale. She put into Sydney on 27 November 1828 to refresh her crew, many of whom were down with scurvy while Brown himself was under close arrest. He was taken from the ship and together with a member of the crew, Richard Lister, charged with sodomy. The case came to trial on 17 December and both men were found guilty and sentenced to death.

Brown was hanged by the notorious official hangman, Alexander Green, on 22nd December, together with seven other men, the first occasion on which the repulsive little hangman 'topped' eight men simultaneously (he later did a larger 'job lot' on Norfolk Island with the men convicted for the Myall massacre). Richard Lister was reprieved and deported on the first available ship from the Colony. Why this should have been so cannot be fully explained because most of the records no longer exist. However, a deposition does exist for another trial which helps throw some light on why Brown was hanged and Lister reprieved. When the *Royal Sovereign* docked in Sydney, Richard Lister charged a ship-mate, James Higgins, with making an indecent assault upon him with the intention of committing an unnatural crime. "*This*", he deposed, "*was before the piece of business about the Chief Officer*".

Lister (who signed his own name as Lester but is everywhere else recorded as Lister) seems to have been a kiss-and-tell man, maybe even a prick teaser, but he did claim to have resisted Higgins and backed it up by bringing charges against both men. Maybe Alexander Brown was hanged, not so much for committing sodomy on this member of his crew, but because he abused his authority, as Chief Officer, to obtain his way. Higgins, by the way, was committed to trial for a misdemeanor.

Road Gangs

All roads, at least in the earlier days of NSW, led to Macquarie Place and the Obelisk there from which all distances were measured. Roads were vital to the opening up and development of the Colony and much of the Colonial funds and energies of the convicts were devoted to their construction. Roads also have close links with the homosexuality of our early days because it was among the overseers and convicts working on the road construction gangs that the worst and most brutal 'prison sex' occurred. Indeed, the only record we have of homosexual practices among convicts written by a convict comes from such road gangs.



Thomas Cook was a Shropshire man assigned to the road gang at Honeysuckle Flat where convicts were set to work cutting the Great Western Road through the bush and sandstone of the Blue Mountains. In the 1840s Cook published *The Exile's Lamentations*, his memoirs of life as a convict in the '30s. In the rather turgid style of his time he described his gang mates who, for warmth in the cold mountain nights, slept huddled together in the mobile boxes or "demountable" prisons used on these construction sites. These caravan-like mobile cells were mounted on small wooden wheels so that the convicts who lived in them could drag them from site to site as the road construction proceeded over the mountains.

Eventually Cook lost so much sleep defending his honour that his health suffered and he was transferred to another construction site. But there was no let up even there in what Robert Hughes⁶ called "the fumbling and rooting" which went on at night. When the poor fellow remonstrated with a gang mate who made a pass at him, he was insulted and derided by the others for his trouble.

Because Cook remained recalcitrant, refusing to the end to join in the "fumbblings and rootings" going on around him, he consequently fell deeper and deeper into the system, being sent first from gang to gang and finally to Norfolk Island. Fortunately for him, he landed on Norfolk during the enlightened regime of Alexander Maconochie where, even if he still did not approve of it, at least the homosexuality was consensual and based to some degree on affection and love. The contrast with the awful prison sex of the road gangs could not have been greater: according to Robert Pringle Stuart, the Convict Department Magistrate who made a visit of inspection to the island, many convicts during Maconochie's⁷ rule on Norfolk called each other

⁶ Hughes, op. cit

⁷ For an account of this unusually humane "experiment" on Norfolk, see Clay, J: *Maconochie's Experiment*, John Murray, London 2001

"husband and wife" and as many as 150 such couples lived together in domestic relationships. "*The natural course of affection is quite distracted,*" said Pringle Stuart, "*and these parties manifest as much eagerness for the society of each other as members of the opposite sex.*"

A charge of something unnatural⁸

On 31 August 1828, the head cook and a sentry at Government House in Sydney were charged with "Indecently and Unnaturally exposing their persons to each other in or by a Privy". The privy in question was the toilet at the back of the old Government House which in those days still stood at the corner of Bridge and Phillip Streets. These days, this is the location of the Museum of Sydney.

The trouble began some time between 10 and 11 o'clock on the Sunday evening when the head cook, William Williams went to the room of his under-cook and asked him where he had put the beer. The under-cook, Thomas Kinger told him and Williams left immediately but his question, at such a late hour, aroused the under-cook's suspicions. He looked out his window and observed Williams talking with the sentry and then shortly afterwards, the sentry drinking something. After exchanging a few more words (which the eavesdropping Kinger could not properly hear), Williams and the sentry went behind the wall which screened the toilets from the rear of Government House.



Outraged, Kinger rushed into the Servants' Hall where he found Charles Othams, the Governor's butler, quietly reading. Othams, who was 27 and had come out from England only the previous year as a free settler, seems to have been a fairly level-headed young man and was not too pleased when the under-cook came in clamouring that something very improper was happening and demanding he accompany him out the back.

When the butler and under-cook reached the screen wall they found the two men just standing there, Williams holding up his trousers with both hands and "looking confused". "*Haloo! What are you doing here?*" Kinger exclaimed but Williams and the sentry left without reply. Othams returned to the Hall but after a few minutes' consideration, went out again and asked the sentry what had been going on. Sensibly the private, Thomas Holt, 25, of the 39th ("Dorsetshire") Regiment of Foot, at first said

⁸ The following is a synopsis of my biography of William Williams in Hay, B. : "A Charge of Something Unnatural – A Brief History from the Records of Australia's Earliest Known 'Homosexual' Convict", in *Gay Perspectives II: More Essays in Australian Gay Culture*, Aldrich, R (Ed)., Department of Economic History and the Australian Centre for Gay and Lesbian Research, University of Sydney, 1993. pp. 63-82

nothing and so Othams turned to leave but the young soldier relented and blurted out that Williams had "*asked him to take hold of his thing*". "*I suppose you mean his private parts?*" asked the butler to which Holt said "*Yes*" and confessed that he had done so.

Shortly afterwards Othams reported the matter to Sergeant John Lynch, the sergeant of the guard, and the police were called in. However, because there were so many inconsistencies in the evidence, so much of it was hearsay and most of all, because no one had actually seen any crime committed, the case was dropped.

Although the other actors had interesting bit parts to play, it was William Williams, the erstwhile head cook, who was of most significance in Australian gay history, mostly because he left such a trail of records behind him relating to his sexual adventures. Williams was born in Montgomeryshire c1776, twelve years before the First fleet dropped anchor in Botany Bay. On 8 February 1817, at the age of 41, he was tried and convicted at the Old Bailey on a charge of stealing £3/14/- (\$7.40) worth of furniture and furnishings from his employer⁹. In his defence Williams said only that his employer "*Mr Stewart gave me the things*", and perhaps because he believed this, he had made no attempt to hide them or dispose of them. In the event, he was sentenced to 7 years transportation.

He came to Australia on the *Glory* which arrived here on 14 September 1818 with a cargo of 170 male convicts under military guard. As was the practice in Governor Macquarie's day, after he had served 4 of his 7 years, Williams was granted a Ticket of Leave but this was revoked when, on 21 August 1821 he was convicted of "an unnatural offence" and sent to Newcastle where he served the remainder of his sentence.

After he gained his Certificate of Freedom on 4 March 1824, Williams obtained a post as cook to the newly-arrived Colonial Treasurer, William Balcombe at his house in O'Connell Street. This however was short-lived because, on 7 July 1824 Williams was convicted of stealing food from his employer and was sentenced to 9 months hard labour in the old Sydney Gaol. It is hard to understand this last crime: as the cook in an important house Williams would have been well fed and had no need to pilfer. It is tempting to speculate that he commonly gave food or provisions to men he fancied.

William's last encounter with the law in New South Wales was more ominous. In 1842 — fourteen years after the Government House matter and a month after

⁹ Personally, I suspect Williams was charged with stealing rather than for having some kind of sexual relationship with his employer exposed and consequently both men being charged with capital offences. The problem was that it was the employer's wife who discovered the "theft"....

Sydney was officially proclaimed a city — he and an Indian sailor were charged and convicted of sodomy. This time the evidence was impeccable.

On Monday 5 September, the recently re-named *Sydney Morning Herald* published a long list of "Police Business", including among others,

... John Solomon, an Indian, and William Williams were committed to take their trials for an unnatural offence; Richard Ayes, for stealing a cockatoo...

After a delay of more than a month, Williams and Solomon appeared at the Supreme Court (next to St James' Church) before Chief Justice Sir James Dowling. The *Sydney Morning Herald* for 11 October reported the case but said the details were unfit for publication.

What the Herald found unfit to publish is contained in the depositions given in evidence at Williams' trial. These show that at about 10 o'clock on Thursday 31 August, Assistant Chief Constable John Price and Inspector Higgins went into Stewart's Public House¹⁰ in George Street where they saw Williams and a "black man", later identified as the Bombay-born sailor John Solomon, talking together. Price said he knew "*Williams to have been took up some years back on a charge of something unnatural*" so they followed the two men when they left the bar. They went up George Street, "past the Old Toll Bar" (roughly where George Street now joins Railway Square) and stopped in a paddock "on a line with Botany Road" (now Regent Street, so the paddock must have been where now there is a mass of railway lines just north of the old Mortuary Station). Price swore on oath:

... in a few minutes I saw Williams unbutton his breeches and stoop down. I saw the black man stand in rear of Williams. They were in that position for about 5 seconds before I ran up to them. When I got close to them I saw the prisoners were committing an unnatural crime. I pulled them asunder and saw the penis of the Black Fellow erect. I called Inspector Higgins to examine them which he did. We then took them into custody.

At the trial, an interpreter conveyed John Solomon's defence that he had been drinking and did not know what he was doing. Williams apparently said nothing. In any case, both men were found guilty and on 21 October, the death sentence was passed. However, they were reprieved on 3rd November and their sentence commuted "*to transportation for life to Van Diemen's Land or any other Penal Settlement.*"

¹⁰ I was unable to locate this actual place but the interesting thing is that the police knew of premises men frequented when looking for sex, implying even at that date, Sydney had a homosexual underground.

When he was transported per *Louise* on 17 February 1844 and this time, for life, William Williams was 66 years old.

As Governor Gipps had recommended, it was to Port Arthur that he was sent, arriving there on 1 March 1844. Almost a year later, on 1 February 1845, this old man served 6 days solitary confinement although what he did — which of the myriad petty rules he broke — to deserve it was not recorded. At that time, “solitary” often amounted to the convict being chained in a box rather like a dog kennel in front of which was a pile of stones which he spent his days breaking, the only sound that of hammers on rock. Most probably this is what Williams' did during those six days in February 1845 while nearby, at Sandy Bay, Hobart society played the first game of lawn bowls ever recorded in Australia.

William Williams died the following year. He was 70. The Port Arthur records give two different dates. One says that he died on 2 May 1846 at Port Arthur. The other, the one more likely to be correct, says he died in the General Hospital at New Norfolk on 26 July of that year. Neither show why he died or even his place of burial.



Governor Sir Richard Bourke

Cleaning up the Colony

One of the most telling arguments of the growing anti-transportation movement in the Colony was the objection to the part convicts played in the decline of public morality. Perhaps as a result of the significant increase in the numbers of convicts in the 1830s, Governor Bourke (for whom Williams Williams had been the head cook) issued orders for a general clean-up and, as a result, there was about a 40% increase in the number of men prosecuted for “unnatural offences”.

Even more pronounced was the “clean-up” carried out in the 1860s. Walter Fogarty¹¹ says that

Eighteen buggery cases were tried during the decade, more than three times the number for the same period previous. Half the convictions

¹¹ Fogarty, W.: “Certain Habits: the Development of a Concept of the Male Homosexual in New South Wales Law, 1788-1900”, in *Gay Perspectives I: Essays in Australian Gay Culture*, Aldrich, R. and Wotherspoon, G. (Eds) Department of Economic History, University of Sydney 1992, pp 59-76.

resulted in the death sentence. The period also saw a considerable number of men convicted of crimes relating to sexual behaviour with other men short of buggery — attempted buggery and indecent exposure. The increase in the prosecution of unnatural offenders in the 1860s continued through the remainder of the century. The increase occurred amidst a general decrease in the number of other sex crimes prosecuted in the colony. By the end of the nineteenth century unnatural offences represented the highest percentage of all sex crimes prosecuted in New South Wales..... The growing number of trials and the broadening of the offence represented an attempt by society to regulate the expressions of sexuality specifically between men. Such attempts acknowledged the creation of the homosexual, and his existence as a negative element in society.
