

LA TROBEANA



Journal of the C. J. La Trobe Society Inc.

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Vol. 8, No. 2, June 2009

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FRONT COVER

Thomas Woolner, 1825 – 1892, sculptor
Charles Joseph La Trobe
1853, diam. 24.0cm. Bronze portrait medallion showing the left profile of Charles Joseph La Trobe. Signature and date incised in bronze l.l.: T. Woolner. Sc. 1853/M
La Trobe, Charles Joseph, 1801 – 1875. Accessioned 1894
La Trobe Picture Collection, State Library of Victoria.

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Crime in the Port Phillip District 1835-51

By His Honour Paul Mullaly QC

Introduction

It is appropriate to commence this lecture by acknowledging the remarkable contribution Prof A G L Shaw has made to our understanding of the history of the Port Phillip District and the State of Victoria. This contribution involved studying and writing about that history and also involved teaching history to many who later made their own contribution to that history. I thank him for his contribution.

I also acknowledge the contribution made by the RHSV & the La Trobe Society

When the English Government decided to colonize New South Wales, the decisions made as to how to go about that enterprise were made in the context of experience in India and the East Indies and in North America and the West Indies. So too, some of the settlers and their financiers in England and Scotland had some knowledge of the colonial experience in those countries.

The law made applicable in the Port Phillip District was the Common Law of England, English Legislation and local Legislation passed by the NSW Council. That law was to apply in all settled areas both to settlers and convicts and, in so far as was necessary, to any Aborigines with whom the settlers and convicts had contact. The common use of the word 'Aborigines' by the authorities was not derogatory – it was then used to refer to the original settlers in any land, even England.

The law applicable in this community had developed over centuries and reflected the community attitudes of those centuries but did not always reflect the views of all of the current community.

The Community

Although NSW was originally a convict colony, by the 1830s there were also urban and rural settlers. Some settlers were bounty migrants and some 'codies' were then being brought in from Asia. There are references in the contemporary material relating to criminal cases to people 'of colour' as distinct from Aborigines. By 1851 the population of the Port Phillip District had grown to some 77,000 of whom about 23,000 lived in Melbourne.

People often think that transportation meant that all convicts were locked up in a prison and might be made to work in chains. However, the preamble to a Transportation Act in 1718 declared that its object was not only to deter criminals by removing them but also to provide the colonies with labour. By 1800, the practice had developed of allowing the families of some prisoners to accompany them or of assisting the later migration of those families. The policy was to reform the convict and to provide more colonists. John Pascoe Fawkner arrived in Sorrento in 1803 with his convict father.

Although prisons were established in most colonies and some prisoners worked in ironed gangs, the more usual practice was to assign the transported prisoner to some settler as labour. There were conditions limiting the freedom of such assigned servants but they could move freely around the area in which they were stationed. Some, including females, were assigned to people living in Melbourne.

After a prisoner had served part of the sentence of transportation, he or she could apply for a ticket-of-leave. Persons with tickets-of-leave were subject to the control of the Magistrates and Police and had to report periodically and there were some limits as to their movements and as to what work they could do, eg. they could not be publicans nor have other convicts as assigned servants. In the material relating to crimes in the Port Phillip District there is plenty of evidence of the friendly relations between many settlers and their assigned servants and this indicates that many transported convicts did settle into the community in which they lived.

However, the level of absconding by assigned servants and ticket-holders was high as was the movement of such absconders from what is now New South Wales or from Van Diemen's Land to the Port Phillip District. Those from Van Diemen's Land usually came via Port Albert.

During the early 1800s the penitentiary type prisons were developed in America and England in which it was thought that the new systems in place would lead to reformation. In England this involved the construction or enlargement of prisons and, in order to avoid overcrowding, the 'Exile' system was introduced. Prisons such as Pentonville, Millbank and Parkhurst were used as penitentiary type prisons. This 'Exile' system involved that the prisoner be sent to a Colony and, on arrival there, to be given a conditional pardon. Some 1727 exiles arrived in the Port Phillip District between 1844-49. They were mainly young men and were then commonly referred to as 'Pentonvillians'. The settlers wanted them as labour. The urban population did not want them at all.

The estimates are that some 4,000 convicts & ex-convicts came to the Port Phillip District prior to 1851. The records then kept of those convicted in the 1840s indicated that less than half of them had previous convictions. After Separation, the volume of crime in Victoria was a matter of great concern and a Parliamentary inquiry rechecked the status of those convicted after 1843. This revealed that about three-quarters of those convicted had previously been convicted.

The Administration of the Law

Among those who came to the Port Phillip District in the early days was Joseph Tice Gellibrand, who had been Attorney-General in Van Diemen's Land, and, eventually, was a major **influence in the formation of the Port Phillip Association.** He visited Port Phillip early in 1836 and kept a journal of his travels. On 12 February 1836, he was with a party of men in the vicinity of the Plenty River and headed back to the Settlement on the Yarra River on the next day. On arrival at the Settlement, he found about 150 Aborigines had gathered and he heard of an act of aggression against an Aboriginal woman. Investigation showed that she was one of three wives of an Aborigine and was with the tribe near the Saltwater River. She was proceeding to the Settlement to visit her mother and fell in with a shepherd 'who laid hold of her, brought her to the hut tied her hands behind her, and kept her there all night, and either that night or the next morning abused her person'. She complained to her husband and was assaulted by him. Gellibrand arranged for William Buckley to act as interpreter and had two shepherds from that hut shown to the woman. She said they had been in the hut when the other man brought her there with her hands tied. Gellibrand had them removed from the Settlement. He records on his next trip to Port Phillip, on 24

March 1836, that the woman had identified the attacker, an assigned servant, and he had been removed to George Town in Van Diemen's Land. Gellibrand commented: 'It was in fact all the punishment which we had the *power* but not all that we had the *will to inflict*'

John Pascoe Fawcner refers to this same incident in his journal. It was reported to Governor Bourke in Sydney by George Stewart, a NSW Magistrate, whom Bourke had sent to the Port Phillip district to investigate what was happening in that area. Stewart reported that 'the friends of the female' **were quite satisfied with the punishment.**

In late 1836 William Lonsdale was sent to Melbourne as Police Magistrate with additional administrative functions and, in 1839, Charles La Trobe arrived as Superintendent. Both were subject to the Governor in Sydney and, although both were involved in the administration of the criminal law and knew about the criminal activity, neither interfered in the conduct of trials. Until 1839 all those charged with serious offences had to be sent to Sydney to be tried. This caused problems for witnesses who had to travel there for trials.

After La Trobe arrived, Lonsdale continued as a Magistrate and other Magistrates were later appointed for various parts of the Port Phillip District. In some parts of the District, the local Commissioner of Crown Lands was also the Magistrate for the district over which he had control. Reputable citizens were appointed as Justices of the Peace and, particularly in rural areas, they were involved in the administration of the criminal law.

In 1839, a Court of General Quarter Sessions was established in Melbourne with the power to hear most serious offences but some crimes, such as murder, still had to be heard in Sydney. The Chairman of the Quarter Sessions was the barrister, Edward Brewster, and he continued until a Judge of the NSW Supreme Court was appointed to sit, as a Resident Judge in Melbourne. The jurisdiction of the Resident Judge in Melbourne covered what is now Victoria and also any offences on British registered ships which eventually docked in Melbourne.

The first sitting of the Supreme Court was in April 1841 when Justice Willis sat. He was somewhat odd having been moved from the office of Judge in Canada and then annoyed the authorities in British Guiana who arranged that he would not return after he went on leave. He was then sent to Sydney and so annoyed his colleagues on the Supreme Court there that they arranged for him to be sent to Melbourne. His problems were mainly with the elite in the community and he was removed again in June 1843. There is a general view that, despite his personality, he was a good criminal lawyer.

His successor until early 1845 was William Jeffcott, again a good Judge in criminal matters, but concerned about the legality of his appointment because of concerns about the circumstances of Willis' removal. Roger Therry was the judge in 1845 and he then returned to Sydney. William a'Beckett followed Therry and eventually became the first Chief Justice of Victoria. Again, Therry and a'Beckett were good Judges in criminal cases although a'Beckett was sometimes criticized, in the press, for imposing lenient sentences.

Jeffcott's problems about the legality of Willis' removal were mainly concerned with that part of the law which held that it was judicial murder if a man, who was wrongly appointed as a judge, sentenced a prisoner to death and that sentence was carried out.

Jeffcott's concerns about this aspect of the law led to an arrangement with the authorities in Sydney that, although the death sentence would be passed or recorded in the appropriate cases, it would not be carried out. There were no hangings in the Port Phillip District between September 1842 when the Aborigine, Roger, sentenced by Willis, was hung and January 1847 when Jeremiah Connell was hung. This execution was after the Privy Council had ruled that Willis had been wrongly removed and he then resigned. Only 11 hangings occurred in the Port Phillip District before Separation.

The Barristers

James Croke was appointed as Crown Prosecutor in Melbourne in 1838.

Croke's role as Crown Prosecutor can be assessed in the light of a study of the cases in which he was involved. It is clear from the surviving records that Croke's conduct of criminal trials and his advice to the governing authorities, about the administration of the criminal and civil law, was based on common sense, having regard to the realities of life in the community being served. It is also clear that, on occasions, his personality was such that he could easily annoy people in and out of Court.

Not many prisoners were represented in criminal cases but the barristers who usually defended them were Redmond Barry, Archibald Cunninghame, (who returned to England about 1842), The Honourable James Erskine Murray (who was killed in Borneo in 1843), William Foster Stawell, Sidney Stephen and Edward Eyre Williams. Barry, Stawell and Williams later became Justices of the Victorian Supreme Court and Stephen became a Judge in New Zealand. They were sensible defence barristers, although Redmond Barry tended to take very technical points in trials and would have annoyed all concerned.

Arrangements were made in January 1842 that Redmond Barry would defend all Aborigines and would be junior counsel for the prosecution in cases where Aborigines were the victims.

The Police

~~The office of constable had existed for centuries but it must~~ be remembered that Sir Robert Peel did not create his Police Force until 1829. Some constables accompanied Lonsdale from Sydney and others were later appointed to serve in the Port Phillip District. Some came from Van Diemen's Land. Over the years, special but separate units such as Mounted Police, Border Police, Native Police and Water Police were established to provide for particular needs, sometimes in particular places.

The contemporary records and newspaper reports support the widely held view that the character and behaviour of some Police, in the early days of Melbourne, was not of a very high standard. Many of the early members were of convict background or prone to drunkenness and spent but a short time in the force. However, I am left with the clear impression that, during the 1840s, the Police became more ~~proficient and of better character.~~

A special detective branch was eventually established in Melbourne. From May 1849, there are constant references in Sergeant James Ashley's evidence, at committals, to the 'detective police' whom he directed. From these depositions it is possible to conclude that there were 4 detective constables in 1849-50. A reading of the depositions in which these detectives gave evidence indicates that they knew what they were about. James Ashley gave evidence in about 40 cases between 1849-51. Reading his evidence and what others said about him leaves no doubt that he was a most competent policeman.

The evidence, given in various criminal cases, indicates that ~~the Police had access to firearms from official depots but~~ that they were rarely armed while on ordinary duty. It is also ~~clear that their 'staff of office' could be used as a baton type~~ weapon.

It is clear from many depositions that the Police had a visible presence on the streets and worked during the night. They gave evidence of hearing the cry of 'Murder', 'Robbery' or 'Stop Thief' and going to the scene. The work on the streets was not without its risks - there were many assault type offences against Police. Often, civilians involved in an incident, tell how they went looking for a constable and seemed to know where the Police were likely to be found in the streets. So too, evidence given by Police that, before an incident was reported, they had seen particular persons and noted how they were dressed would indicate a regular Police presence in public areas.

Evidence given by Police indicates that they often knew the identity of an offender from the description given them and also knew where they were likely to be found. They knew where known or suspected criminals lived and congregated and were aware of the location of brothels. The fact that convicts with tickets-of-leave had to report to the authorities probably helped Police acquire some knowledge of who was in a district and where they were likely to be found.

Police training was an 'on-the-job' activity and the evidence given by Police of their searches of suspects and premises reveals that their backgrounds probably limited the amount of training they needed. They used respectable women, who happened to be around, to search females. Between 1836-51, there are records of some 300 different Police giving evidence.

Criminal Proceedings

When a serious crime was committed and the alleged offender was arrested, sometimes on a warrant, a committal proceeding was held, usually before a Magistrate, often the Mayor of Melbourne, in urban areas but in rural areas often before 2 or 3 local Justices of the Peace. This proceeding involved that, in the presence of the alleged offender who could be represented by a lawyer, the witnesses would give sworn evidence and be cross-examined about the alleged crime; this evidence was recorded in writing and signed by the witness, frequently by mark. The level of signing by mark is some indication of the level of literacy in the community. Documents or personal property might be tendered as exhibits. When the prosecution was complete the offender was cautioned and could make a statement but not give ~~evidence but could call witnesses.~~ If there was sufficient evidence of guilt the prisoner was committed for trial, usually in custody – bail was rare. The written record of the evidence and the prisoner's statement were called 'the depositions' and were sent to the Crown Prosecutor.

~~If James Croke decided there was sufficient evidence to~~ warrant a trial he made an Information which was the formal process to commence a trial. In March 1850, Dennis Owen was charged with assault with intent to rape Maryann Boxshall and the evidence given at his committal raised ~~issues about human identification, which would be familiar to~~ those experienced in the administration of the criminal law. It was one of those cases in which no one would doubt that the offence had occurred but most would have a reasonable doubt whether the true offender had been apprehended.

On the fold of the depositions, Croke has noted the charge as 'Assault with intent to commit a rape'; he refers to the contradictory nature of the evidence and adds 'but as the prosecutrix will swear so positively to the allegation, must send this case to the jury'. Such an approach was quite consistent with my assessment of Croke's attitude in such cases. Dennis Owen was acquitted by the jury.

If James Croke decided that a trial was not warranted he used a different formal process to end the proceedings and secure the release of the prisoner. Trials were sometimes held within a short time after the offence had been committed.

The procedure on the trial was that the prisoner was arraigned and, if the plea was not guilty, a jury of 12 men was empanelled, the prosecutor outlined the case and called the crown witnesses who could be cross-examined. The prisoner could not give sworn evidence but could make a statement to the jury. This was often written in the form of a petition and if the prisoner was illiterate it was read by a court official. The defence could call witnesses and address the jury. The judge directed the jury on the law and summed up the facts. The jury then considered the case and returned the verdict. Sometimes they did not retire from the court but delivered an immediate verdict. Trials were short – sometimes 3 or 4 in a day.

The *Habeas Corpus Act 1679* applied in the Port Phillip District – it was the basis on which Judges could grant bail but more significantly it contained a provision that if a prisoner had not been tried by the time there had been two sittings of the Supreme Court after the committal, then the prisoner was entitled to be discharged, theoretically on bail. There were many such cases of discharge when prosecution witnesses did not attend the trial.

If the witnesses were part of the crew of a ship which happened to be in Melbourne it was more likely than not that the ship and its crew would depart before any trial could be held. Another problem was the difficulty in communicating notice of the trial date to witnesses living outside Melbourne.

One sometimes suspects that the failure of a witness to attend a trial could have been due to the realization by the witness that any publicity about the circumstances in which he became the victim would reflect unfavourably upon him.

John Williams was 'a labourer with Armytage' and one night, in November 1850, he was in the Woolpack Inn in Geelong and was invited by Elizabeth Gladall (Gladwell) 'to go home

with her'. Williams 'asked her what she would charge and she said ten shillings'. They were walking near the 'Gully' when Charles Bunting 'caught me by the throat and another man (Thomas Bray) kicked me in the legs and rifled my trowser pockets and took my money', '£4 in notes and some silver'. Williams reported the robbery to Police who arrested and charged Charles Bunting, Thomas Bray and Elizabeth Gladall who were duly committed for trial to the February 1851 Sittings of the Supreme Court at Geelong. Williams was subpoenaed for the February, March and June sittings but did not attend and the prisoners were discharged at the June sittings.

Spending money in hotels and shops indicated to those around that you did have money and where you kept it. Robbery after such display was common.

If convicted, the prisoner was sentenced in accord with the law relating to his crime. The sentences available included:

- Death sentence – passed or recorded – recording the death sentence was an indication that the Judge thought the sentence should be commuted
- Imprisonment
- Transportation

The sentence of transportation was used in the Port Phillip District from the time Quarter Sessions commenced in Melbourne in May 1839 until October 1847 when local NSW legislation substituted other forms of punishment for transportation. By 1841, arrangements were in place that prisoners convicted in Melbourne and sentenced to transportation could be sent directly to Van Diemen's Land.

Sentences could be commuted or remitted by the Governor in Sydney. La Trobe did not have this power but could make recommendations if the matter was referred to him. He usually did so, in such cases, after offence cases, if the child was under 10 years of age, consent or failure to object was not a defence. If a female child was between the ages of 10 & 12 years her consent to intercourse was not a defence but the penalty was not as severe when the victim was in that age group. Females over the age of 12 years could consent to sexual activity.

As criminal sexual activity with young males usually involved sodomy or attempts thereat, consent or failure to object was not a defence. What are now called acts of gross indecency were not criminal until late in the 19th century.

Transported convicts, still serving their sentence, required the permission of the authorities before they could marry. These rules resulted in the use of an alias in some marriages. In July 1839, Henry Robinson, who had been transported in 1835, applied for permission to marry but then used the name Henry Joseph Grimaldi when he married Elizabeth Heard (Hurd) before his application was granted. The use of the alias 'Grimaldi' is interesting as Joseph Grimaldi was a famous English dancer and actor who introduced the white-faced clown.

A letter from Lonsdale to the gaoler in Sydney about Robinson indicates that there were some doubts held whether the written consent by the parents to the marriage of the under-age Heard was legitimate or a forgery.

I have not been able to trace any Heards or Hurds but there was a Herd family who came from Sydney on the *Hope* which arrived in Melbourne on 3 January 1839. Eliza Herd was then 14 years of age. The phonetic spelling of this girl's name is typical of how confusing the records of this period could be when people had to be traced.

Aborigines

Not long after the Supreme Court was established in NSW the question arose of how Aborigines were to be tried when charged with criminal offences. In a murder trial of an aborigine in 1828 Dowling CJ refused to allow the trial to proceed; he said 'this man is a savage. He stands before the Court in the same light as a dumb man - as void of all intellect'.

The view that Aborigines were 'entitled to all the privileges and protection which the British law affords to its own immediate subjects' was adopted in the Port Phillip District and, in trials involving Aborigines, the issue of 'fitness to plead' was usually raised.

At a trial the proceedings commenced by reading the Information (the charge) to the prisoner and then asking how the prisoner pleaded to each count in the Information. Normally, the response was a plea of 'guilty' or 'not guilty' in which case, the trial proceeded with the selection of the jury. However, the prisoner might not answer and this usually meant that the issue of fitness to plead had to be tried. The issue was that of whether the person was mute of malice or mute by visitation of God. This issue was tried by a jury especially sworn for that purpose. If the prisoner was found to be mute of malice, a plea of not guilty was entered and

the trial proceeded; if mute by visitation of God, other issues arose. In the case of Aboriginal prisoners, the issue usually related to their knowledge of English or whether interpreters would communicate with them about the trial processes or the evidence.

If the prisoner was found to be unfit to be tried, the consequence depended on the circumstances. In some cases, where the issue was that of communication with an Aboriginal, the trial was postponed while attempts were made to educate the prisoner.

If the aborigine was unable to enter a plea he could not be tried. Even if he could enter a plea the next issue was **whether he sufficiently understood what a trial was about** and whether he could make a defence. In most cases, aborigines could not be tried and were then released, usually into the custody of the Protectors. They were allowed to go about their ordinary life and this caused many complaints in the community as they continued their criminal activity.

It is estimated that between 11,000–15,000 aborigines were living in the Port Phillip District. They belonged to some 38 tribes which varied in size and each occupied a recognised area, spoke a common language and called **itself by a specific name. Although there were some settled groups, most lived and moved in small groups gathering for social or ceremonial occasions.** The UK authorities had set up an Aboriginal Protectorate for the Port Phillip District in 1837. The investigation and prosecution of Aborigines and white men concerned in what the local authorities regarded as criminal activity often involved the Protectors and it is clear, from the surviving records, that there was a high degree of tension between James Croke, the Crown Prosecutor, and the Protectors. Their failure to adhere to the law in investigating crimes or in conducting committal proceedings often rendered evidence inadmissible when white men were charged and they sometimes attempted to **prevent suspected Aborigines from being identified.** There was also some disagreement between the Chief Protector and individual protectors about the way they did their work.

The depositions relating to cases in which Aborigines were involved indicate the extent of everyday contact between them and the whites. Some contact was so frequent that the whites gave names to those with whom they had regular contact. Jack Napoleon, Lallah Rookh, Old Billy, Borjion, Jacky Jacky, John Bull, Bullet-Eye, Gentleman Jemmy, Bonnie Laddie, Cocknose, Jupiter, Bumbletoe and Cold Morning were some examples. Cold Morning knew some

of those living in Portland so well that when he was robbing Joseph Ellis in 1842 he addressed Ellis by Ellis' nick-name 'Tygers'. Cold Moming, who was tried under his tribal name, recorded as 'Park -poo -amer-min', could not understand what a trial was about so he was discharged. The depositions indicate that Cold Moming did know how to rob Ellis of a dray containing flour, wheat and barley.

Jimmy

Edwin Partridge was a white bullock driver and, on Saturday 23 September 1848, he was on Capt William Lonsdale's station 'The Grange' at Strathkeller, near Hamilton. There were 'about 30 blacks' there and Partridge saw one named Jimmy 'throw a spear at a lubra from about 4 or 5 yards away'. John Stot, a white labourer at this station, heard Partridge say that Jimmy had speared a 'lubra' and he went to the door of his hut and saw Jimmy strike her with a large waddy with a sharp edge which felled her. Then Jimmy had to defend himself from an aborigine known as Jack and, whilst they were fighting, another aborigine, Jackey, thrust a spear into the lubra on the ground and also struck her with a waddy. Then another aborigine 'old Man Johney' struck her several times on the shoulder with his waddy. Stot was 'remonstrating with the blacks and a lubra told him that the one killed was a "wild lubra"' and advised him to go back into the hut. Then the blacks left and Stot examined the lubra and found her 'just dead'. He buried her 'to protect her body from crows' and went to The Grange to tell the chief constable. John Richards was also a labourer on the station and heard the disturbance. He saw Jackey strike the 'stranger lubra with a waddy as she lay on ground' and then saw Old man Johney strike her.

Chief Constable Peter Tighe was informed that Jimmy had assisted in the killing and he went to Acheson French's station at Monivae where he found him. Tighe had 'expected him to be there'. Jimmy said he 'did not kill her but only struck her on the head with a waddy'. On 26 September, Tighe went with Dr Walton and Ephraim Howe JP to Muddy Creek and saw the body; it was 'dreadfully mutilated'. Howe held a committal on 27 September 1848 and committed Jimmy for trial. There is no record that Jackey or 'old Man Johney' were ever apprehended. The trial was held before Justice a'Beckett on 18 October 1848 and Redmond Barry defended Jimmy. None of the surviving material indicates there was any problem in Jimmy being able to plead when charged or understanding what the trial was about.

It would seem that James Croke put the prosecution case on the basis that all the attackers were acting in concert whilst Barry was contending that the 'wild lubra' was the victim of individual violence. Dr Walton swore that he was 'not prepared to say whether the wounds caused by a spear or a waddy caused death'. Barry submitted there was 'no evidence' against Jimmy that his actions had caused the death and Justice a'Beckett 'appeared to coincide' and directed the jury that there was 'no evidence the wound caused by the prisoner caused death'. Jimmy was acquitted.

Redmond Barry had taken the same defence in an earlier case when an aborigine, known as Roger, led a group of aborigines who attacked and killed Patrick Codd, an overseer on a station at Mount Rouse, in 1840. Roger was convicted of murder in 1842 and executed. In Roger's case, La Trobe had recommended that the sentence be commuted. Willis recommended that it be carried out at Mount Rouse. This recommendation was in line with the then UK practice of sometimes executing prisoners at the scene of the crime if it was outside London.

Witnesses

Only witnesses who understood the nature of an oath could give evidence in legal proceedings. The witness had to understand that there was a God who would punish, in an afterlife, those who did not tell the truth. Legislation allowed Quakers and Moravians to make an affirmation instead of taking an oath. Jews took the oath in accord with their religious practices. A Koran was available and used in Melbourne in the 1840s.

Husband & wife – husbands and wives could not give evidence against each other except in cases where the husband or wife was charged with an offence of extreme violence against the other. A husband could not be charged with raping his wife.

Aborigines' evidence – the rules about the nature of an oath meant that most Aborigines could not give evidence in criminal proceedings. Most attempts to instruct them failed. This meant that it was usually impossible to try Aborigines or white people where the incident had occurred solely in the presence of Aborigines.

There were many proposals that local legislation should allow Aborigines to give unsworn evidence in appropriate cases but these proposals failed. Those opposed to this legislation took the view that aborigines were morally and intellectually inferior.

Children's evidence - the rules about the nature of an oath also meant that most young children could not give evidence and many sexual charges failed on this account. Children could be instructed about the nature of an oath but sometimes the judge would conclude that even though the child could give correct answers about the nature of an oath he or she really did not understand that nature. The practice of attempting to instruct children was well established and sometimes La Trobe and the Anglican or Catholic bishops were involved in making arrangements for such instruction.

Robert Graham lived in Collingwood in 1847 and some depositions concerning a case of a domestic assault on his wife indicate he had problems concerning drinking and violence. Catherine Graham, wife of the prisoner, swore that 'on Saturday last he was drunk all day struck me and raised tomahawk and struck me over eye - threw me to ground and kicked me and illused (sic) me in a most shameful manner - drinking last 3 days and constantly ill uses me - threatened to run me through with a knife. Women then used the word 'illuse' to describe a 'rape'. He was not convicted on that occasion.

In August 1850, Graham was still living with his wife, Catherine, and they had two children, Maria and John. The ages of these children are uncertain but Maria referred to John as 'my little brother'. There was another violent domestic incident on Sunday 25 August 1850 when Graham was seen to 'thrust his wife out of doors and give her a blow on her back with his fist'. Sometime later, Maria came out of the house and told her mother and a neighbour that her father 'had kicked her brother'. Later, Catherine Graham was able to return to the house with a male neighbour who described John as 'lying on floor of room insensible but breathing'. Doctor David Elliot Wilkie was called and, whilst finding no signs of external injury, was told of convulsions and, when the child died the following day, he conducted a post mortem examination and concluded 'death in this instance was the result of a sudden shock to the system and concussion of the brain the result of external injury'.

A few days later, Dr. William Bryan Wilmot, the experienced coroner, conducted an Inquest with a jury who found that the child had been murdered. Catherine Graham did not give evidence at this Inquest. As was the practice in such cases, the inquest depositions were sent to James Croke. Accompanying the depositions was an unsigned statement of Maria Graham, the daughter of Robert and Catherine Graham; the jurat indicates it was taken by Wilmot on 29 August 1850:

That on Sunday morning last the 25th of August inst. I was in our house with father, mother and the deceased. Father beat mother and turned her out of the house. After mother was turned out, ~~deceased was running about the floor of the room~~ and I was in the room at the time. Father laid hold of my little brother and twisted his neck and said "you little bastard go after your mother". Father then pushed him down on the ground and kicked him whilst there, he also fell on him and walked on him. Deceased cried for a long time. I saw blood come from his nose and mouth - deceased then crept into bed. Father afterwards chucked deceased out of bed outside the door - a good while after this mother returned home and brought him into the house.

In the margin of this statement Wilmot has written -

Maria Graham not being competent to be put upon her oath, the accompanying statement was taken and is now forwarded to the Crown Prosecutor's information - thinking that she may be better instructed in the interval of the trial as to the nature of an oath.

On 13 September 1850, at Croke's suggestion, La Trobe wrote to Dean Coffey at St Francis Church, Melbourne, to arrange for Maria Graham to be instructed as to nature of oath. On 16 September 1850 Robert Graham's trial was postponed on Croke's application. The newspaper report was that Croke did not assign any reason for this application. On 18 December 1850 the Graham trial was again adjourned as 'the principal witness against him, his own child, not having been sufficiently tutored as to the nature of an oath.' Justice a'Beckett granted bail but Graham was not released as no one was prepared to go surety for him.

On 17 February 1851, La Trobe wrote to Bishop Goold informing him that, at the last sittings of the Supreme Court, Maria Graham was 'adjudged utterly incapable of understanding the nature of an oath' and requesting that Goold take 'steps for her further instruction'. Goold expressed the view that she 'could not be sufficiently instructed'.

On 19 March 1851, Justice a'Beckett expressed the view, in court, that it would be better if the examinations to test competency were conducted out of court and he examined Maria Graham and Jane Williams, the victim of a sexual attack, in his Chambers. The examinations took some half hour and then a'Beckett announced, in Court, that he had concluded the answers given on the nature of an oath were what had been 'learnt by rote'. He ruled that these children were not competent to be sworn as witnesses. He then ordered that Robert Graham be discharged without trial as the child was unable to be sworn.

John Fearn had been charged with the rape of Jane Williams, aged 9 years, at Somerton, in January 1851. She had given sworn evidence at the committal and her testimony and that of other witnesses supported the charge of rape but she was an essential witness on any trial. On 18th February 1851 La Trobe wrote to Rev E Tanner at Pentridge asking him to instruct June Williams as to nature of oath in case of John Fearn – Bishop Perry had nominated Tanner. Fearn was discharged.

The Melbourne Daily News of 20 March 1851 reported that, on 19 March 1851, Justice a'Beckett, when dealing with this issue of competency referred to his 'repeated suggestions for legislation' to allow unsworn testimony by young children who understood the need to tell the truth but who did not understand the nature of an oath. a'Beckett was dealing with the Graham murder case on 19 March 1851. The Victorian *Evidence Act* 1864 permitted Aborigines, half-castes and children to give unsworn evidence if they understood the duty to tell the truth.

In the case of Shem Axford in 1846, James Croke told the jury about the policy underlying prosecutions. It is still the policy in our community.

On the morning of 3 January 1846, James Reardon, 'an old man', was driving a horse dray on a road near the Merri Creek quarry. He was 'sitting in the dray with his legs either side of the shaft'. George Milne and John Leary were nearby and saw a chaise cart with a large pony passing the dray and then the dray horse bolted and eventually hit a stump and the driver was thrown out and dragged a short distance. The

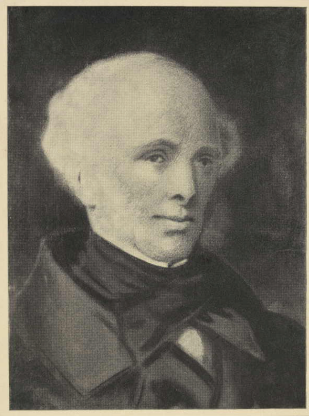
driver of chaise cart was standing up in it and was striking the front with the ends of the reins. That driver 'could not have pulled it up had anyone been in the road'. Leary later swore that the pony was being driven 'at about 7 miles per hour'. Reardon suffered a fractured skull - the dura was exposed - and limb injuries and died the same day, after a limb had been amputated. Dr. Wilmott immediately held an Inquest, at which Dr Cussen gave evidence of the cause of death, and Wilmott issued a warrant for the arrest of the pony driver 'name unknown' for manslaughter. Shem Axford was arrested a few days later and admitted he had driven the pony and cart and that, when he was about 20 yards from the dray, the dray horse took fright.

Axford was tried for manslaughter before Justice Therry on 22 January 1846. William Stawell appeared for Axford and argued that Reardon had 'caused his own death' by the way he had 'pulled the horse to the left where the stumps were and the cart capsized'. Stawell called the well known Edward Curr as a defence witness. Curr swore the prisoner was 'a hard working industrious man' and that the horse he was driving could not exceed 7 miles per hour and that he (Curr) had driven on that road at about 9 miles per hour. Although it was 'a thoroughfare it was not a good road'. In his address, Croke said the policy of such prosecutions 'was to put an end to practices as give rise to homicides similar to that revealed in the evidence'. The Jury retired for 40 minutes and returned a verdict of not guilty but 'considered his conduct highly reprehensible'.

Some cases tell us a lot about the early community in the Port Phillip District and give us some understanding to why our present community reacts so quickly to disasters.

Charles Barnes & Philip Holland had a station at Seven Creeks near the Goulburn. One of their shepherds was John Grey and, on the evening of Monday 1 April 1844, he returned to the hut with his sheep and saw a stranger there with the hutkeeper, Patrick Greene. The stranger was James Hanlon and he stayed overnight. The next morning Grey left with his sheep and noticed Hanlon and the hutkeeper standing outside the door of the hut. On his return that evening, Grey discovered that some of his property – clothing and an unloaded pistol – were missing. The missing items had been in a bag hanging in the hut. John O'Neill, another shepherd in employ of Holland & Barnes, also discovered that some of his clothing was also missing.

William Lonsdale, soldier & administrator, was the first resident Police Magistrate in the Port Phillip District



Flett, James 1906-1986, artist
Capt. William Lonsdale
Date of creation: c1950
postcard : halftone ; 13.5 x 9.0 cm.
Reproduction rights owned by the State Library of Victoria
Accession Number: H30221
Image Number: pc002796



Norton, Charles, 1826-1872, Artist
The Residence of the Honorable William Lonsdale, Colonial Secretary of Victoria.
Date(s) of creation: 1854.
watercolour : on cream paper ; 17.8 x 22.3 cm.
Reproduction rights owned by the State Library of Victoria
Accession Number: H88.21/56
Image Number: b45994



A view of Bulla Bridge over the Deep Creek near Greenvale, Vic.
This bridge is one of blue stone & was built by convicts
Date of creation: [ca. 1914-ca. 1941]
postcard : printed, b&w ; 8.8 x 13.8 cm. approx.
Reproduction rights owned by the State Library of Victoria
Accession Number: H22840
Image Number: a08920
Collection: A.C. Dreier postcard collection



Home of first Police Magistrate, William Lonsdale (1799-1864)

The First Government House was a prefabricated one built for William Lonsdale (1788-1864). William Lonsdale was sent to Melbourne in 1836 to take up residence as the first Police Magistrate with additional administrative functions for the Port Phillip District of New South Wales. Charles La Trobe, as Superintendent of the District, did not arrive until 1839.

Liardet, W. F. E. (Wilbrahim Freerick Eevelyn) 1799-1878, artist

[Captain Lonsdale's house]

Accession number(s): H28250/19

Date of creation: [1875]

Medium: watercolour: with pen and ink, gouache and pencil;

Dimensions: 10.0 x 21.1 cm.

Collection: Liardet's watercolours of early Melbourne



Sears Studio. 'First Government House in Victoria' (A relic of the early days of Melbourne).

Home of William Lonsdale (1799-1864) First Police Magistrate

Date(s) of creation: [Nov. 4, 1933]

photograph : gelatin silver ; 16.5 x 21.3 cm.

Reproduction rights owned by the State Library of Victoria

Accession Number: H20715

Image Number: b51814

News of the thefts was spread around the district and, on Saturday 6 April 1844, Henry Kent Hughes, a settler on the Goulburn near Avenal, saw Hanlon going up a creek and 'on getting up to him he presented a pistol and said he would shoot anyone who apprehended him'. Kent Hughes told his men to keep him in sight and he went home for firearms. He got a gun and a pistol, which he gave to one of his men, and they went in pursuit. They found Hanlon, as Kent Hughes later swore:

... going up a rocky mountain and called on him to surrender – he said he would never be taken alive and if we approached further he would fire on us and he levelled the pistol at me- I was then about 14 paces from him. I fired and struck him in the legs – he dropped the pistol and gave himself up. The pistol looked as if it had snapped fire – it was cocked at the time it was presented. I examined it and it was loaded with ball and the powder appeared to have fallen out.

John Grey later identified that pistol as the unloaded one stolen from the hut. Hanlon also had the stolen clothing with him.

Hanlon, who was Free by Servitude, was handed over to police and, after being committed for trial, was convicted, later in April 1844 before Justice Jeffcott, of larceny of the clothing, pistol and powder and sentenced to be transported for 7 years and was sent to Norfolk Island. During Kent Hughes' evidence at the trial, Justice Jeffcott was critical of him, saying that Kent Hughes, not being a Magistrate, had no authority to apprehend or fire at Hanlon. This criticism was technically correct, but Hughes said that if settlers didn't act then bushranging would never be suppressed. When the jury convicted Hanlon, the foreman, Capt. G Cole, a prominent businessman in Melbourne, said that the jury wished to thank Kent Hughes. Kent Hughes then pointed out the good work of Ellis, a ticket of leave man, who had told him where Hanlon was; Jeffcott said he would inform the Government of what Ellis had done. Henry Kent Hughes was the great uncle of Sir Wilfrid Kent Hughes – the soldier and politician.

The evidence, in this case, is an example of the then community's reaction to bushranging and this case is an example of how the early community's response to problems established an attitude towards problems affecting the community which has continued in the present community.

His Honour Paul Richard Mullaly, Q.C., B. A, LL.B, Dip. Theol.

Paul Mullaly was educated at the University of Melbourne and Deakin University. He went to the Victorian Bar in 1952, was a Prosecutor for the Queen 1961-1979, Crown Counsel 1977-79 and a Judge of the County Court of Victoria 1979-2001.

He was commissioned as a cadet Infantry Lieutenant in 1946. He retired in 1982 with the rank of Major (Legal Corps). His retirement has been devoted to historical research, reading and water colour painting. He has 6 children and 14 grandchildren. He is a member of both the Royal Historical Society of Victoria and the La Trobe Society.

An Official Residence: La Trobe's Cottage The Move to the Domain in 1961

By Phyllis Murphy

In 1969 Phyllis Murphy, the architect, gave the following talk on the ABC called 'An Official Residence: La Trobe's Cottage'. In it she discussed the work she and her late husband John Murphy undertook for the National Trust which saw the removal of La Trobe's cottage from its original location, in the grounds of the Bedgood factory in Jolimont, to its site near the Herbarium. This talk also provides, in its own right, a fascinating account of the preservation methods used in 1961 by Phyllis, her husband, John, and those who worked on the project. Phyllis Murphy has kindly given us permission to reproduce this talk, which outlines an historic moment in the life of the cottage.

In 1961, the National Trust of Australia (Victoria) decided to make Governor La Trobe's cottage a permanent record of our early history. The portion of the cottage which still existed in Agnes Street, Jolimont, was to be removed to a more suitable site, and money raised to make possible the repairs and completion of the building in an authentic manner.

It was then proposed that it should be appropriately furnished and opened to the public.

It is fitting that this cottage should be kept for posterity, for in it our first Governor, Charles Joseph La Trobe, lived from 1839 to 1854. Under its humble roof many of the problems of the Colony were discussed, for La Trobe arrived here only four years after the first white settlement, the population then being 6,000. By the time he left, it had increased to 300,000 and the Victorian goldfields were booming.

The results of La Trobe's work are all around us today; for instance, it was his decision to establish the Botanical Gardens which the people of Melbourne have enjoyed for so many years.

After some effort, the Trust obtained a really superb site for the cottage. Standing near Birdwood Avenue, in the Domain, it has similar characteristics to those which would have appealed to La Trobe in 1839 – the southern slopes and surrounding native trees. His house was described by a visitor in 1852, as 'small – but elegantly furnished – standing in spacious grounds exhibiting a great variety of native trees and shrubs'.

It is very interesting to contrast such a modest cottage with the present Government House, which stands close by.

Once a suitable site was found considerable research into the details of the original building was partly carried out by the School of Architecture, at the University, and by reference to the State Library and the La Trobe family records. Architectural students made measured drawings of all the original parts of the building which still remained, and sections and details were drawn up.

Part of the cottage was prefabricated in England and transported here in sections. This part was a rectangular building of approximately 38 by 19 feet. When La Trobe arrived in Melbourne, he obtained temporary accommodation, and in readiness for his house, he purchased 12 ½ acres of sloping land, east of the Yarra. Here, he had a room commenced, using local materials, and this later became the dining room which joined directly into the living room at the western end of the prefabricated section.

Many additions had apparently been made to the original building over the years, although at the time restoration work

commenced, only the dining room, an adjoining room and one-third of the pre-fabricated section remained. Soon after La Trobe's return to Europe, it can be assumed that a gradual demolition was commenced, for the first subdivision and sale of the land took place in 1854.

The National Trust decided to restore the cottage to be a replica of what it was in 1839. This was considered a suitable date as there existed a sketch and a plan of the building, executed, signed and dated by La Trobe himself. The cottage of this time consisted of a six feet wide central hall, a main bedroom, 15 by 18 feet, and a drawing room, 15 by 12 feet, which together formed the rectangular prefabricated section. Behind the drawing room were two closets, each six feet wide, and a large opening in its west wall led to the 16 feet dining room.

In 1899, the cottage, together with the crockery warehouse which was built in the meantime, was purchased by the Bedgood family. For many years the factory caretaker lived in the cottage, but in 1931 the owners had a garden designed to give access from Agnes Street to the west side of the building.

On completion, this area and the part of the house which still remained were opened to the public on 15 September 1932. This was carried out by the Lord Mayor of Melbourne at that time, who remarked on the coincidence that, in the year 1854, La Trobe had left Victoria, and Daniel Bedgood had arrived in Australia. The care and preservation of the cottage remained in the hands of this family; however, in 1959, the City Council placed restrictions on street parking in the Jolimont area, and some of the garden had to be demolished to provide off-street car space.

It became obvious that urgent action was needed to save the building. In July, 1963, the site in Birdwood Avenue, South Yarra was made available, and the Bedgood family handed over the job of preserving the cottage to the National Trust.

Before starting the job of removing the remains of the cottage, existing prefabricated wall panels, windows and other details were carefully examined. The builder was asked to construct exact copies, both in dimensions and materials. The existing building was dismantled – the dining room, being of standard stud frame construction, had to be cut at the corners, and the complete walls were carted away on a truck, while the prefabricated section was broken up

into its original three feet wide units. When removing the ceiling to the butler's room it was discovered that the original rafters matched, in length, those of the west verandah. Short rafters had been spiked to the sides to give the extra width of the room. This confirmed the non-existence of this room in 1839, and explained its omission from the sketch of that date. It was clear, then, that the verandah originally returned to the north side and so it was reconstructed in this way.

It was found possible to divide the sloping ceiling into two sections which were moved intact with the lining boards still nailed to the old ceiling joists, and only at the cut lines was it necessary to fit new material.

Today, if you look closely at the walls of the dining room, it is possible to see brown, irregular stains at various places on the surfaces of the plaster. These are caused by chemical action between the old plaster and the new. About one-third of the stud walls remain with the original plaster intact.

Apart from rejecting anything broken or rotten, all the existing materials were re-used. Today the floor boards upon which Governor La Trobe's dining table stood are still in use. They have been laid again and re-surfaced. Although the other floors are of new timber, they match the floor as closely as possible. The Timber Development Association donated most of the new materials in the cottage and went to great trouble to match the existing materials.

On dismantling one of the timber casement windows, those fine glazing bars were found to be made of a mild steel flat, halved at the intersections and backed with a run lead beading, which formed a rebate to hold the glass. All new windows were built in exactly the same way.

When the old layers of paint were cleaned down from the interior surfaces of the 3 ft. prefabricated wall panels, it was found that the original surface had been a brush-on imitation wood grain, finished in a buff colour. Samples of this finish were shown to tradesmen, and painters were able to repeat it.

Old, rotting hardwood shingles were revealed when the galvanised iron roof was stripped. These were replaced with imported softwood shingles with a life span of at least four times that of hardwood and here it was decided to compromise between authenticity and sensible economics.

The original bricks and chimney pot have been used again, although a great deal of the brick paving, which shows on the sketches, had disappeared with previous demolitions. The few remaining areas were used with the addition of similar second-hand bricks.

Although the cottage is generally described as a prefabricated building, it would be more accurate to say that part of it was constructed of sections prefabricated on a modular basis. It appears that the roof and floor structures were probably pre-cut to size only.

The plan has been developed on a three feet module, each way, using a panel 34 ½ inches high, with a three inch square post between each panel. These panels provide the final internal finish and have thin red cedar weather boards nailed to the exterior between the posts.

During one stage of demolition, the fireplace from the principal bedroom was sold. However, the purchaser kindly donated it back, and it was retained in its correct position, with a mantelpiece built of old cedar.

When it was decided to reconstruct the kitchen block, the task was more difficult. There were no well documented plans to follow and it was many years since the building had been demolished, so none of the original materials were in existence. The kitchen block appears in various sketches, and some showed considerable detail of the exterior, but no information could be found relating to the inside finish, the stoves or other equipment. From the sketches, it was possible to work out the overall dimensions by a system of proportions, and by this means the chimney was reconstructed, and the doors and windows were spaced out correctly.

By good fortune, a member of the Trust research team had a photograph which his grandfather, an early amateur photographer, had taken of his own kitchen. Although the photograph was taken at a later date, this kitchen was part of a prefabricated cottage in Darling Street, South Yarra, now demolished, but of approximately the same date as La Trobe's cottage. It seems reasonable to assume that the interior would be authentic and that a similar stove would be in the La Trobe kitchen, so this photograph was used as a basis for the reconstruction.

Only the enthusiasm and interest shown by so many people made the restoration possible. It was necessary to have a standard of workmanship and building materials which is uncommon today. Volunteer labour was given by the Junior Group of the Trust and the Women's Committee raised money, and, through the Furnishing Committee, completed the interior with great skill and charm.

Despite all efforts to keep the building closely matching the original condition, present day requirements imposed certain alterations. For instance, it was necessary to install a fire sprinkler and burglar alarm system. The floors have to be protected with removable runners, for although La Trobe's life as our first Governor was a busy one, the floor was not meant to have 3,000 people a year walking on it.

For reasons of both security and maintenance, it has not been possible to recreate the original external environment, with its garden setting and furniture, and the other charming little touches which can be so clearly seen in the original sketches.

The story of the restoration of La Trobe's cottage provides an example of great promise for the future preservation of our history, right from the attitude of the Bedggood family in staying the hand of demolition, years ago, to the Melbourne City Council's decision to provide a site for the cottage, and the support of the public in providing the £20,000 needed to carry out the job. Many people

donated treasured possessions, and Captain Charles La Trobe, of London, was most generous in giving the sketch books and personal belongings of his grandfather, items of inestimable value.

Much has been learnt from carrying out the preservation of La Trobe's cottage, and the Trust is now involved in similar work throughout the State. However, it is important to realise that the buildings which are preserved in this way are not the only historic buildings worth caring for and retaining.

Anyone who owns a building which is historically interesting has a duty to take care of it. The National Trust was formed to assist in the preservation of buildings; but it is important for people to remember that a building which is maintained and used is most likely to be preserved for posterity.

Phyllis Murphy met her husband John at the University of Melbourne when they were completing their architectural studies after the interruption of World War II. They married and established their practice in 1950. In 1958 they joined the National Trust of Australia (Victoria) and were subsequently made honorary members in recognition of their architectural services. Since John's death in 2004, Phyllis has lived in Williamstown where she follows her retirement interest of collecting, dating and identifying historic wallpapers.



Charles Joseph La Trobe, 1801-1875, artist
Williamstown in early times as first erected 1839
National Trust of Australia (Victoria)

Reports

A Word from the President

It is very pleasing that a new La Trobe Society Fellow has been selected to carry on the important work of the Society. Dr Helen MacDonald's topic of a biographical study of Melbourne's first Mayor is a fascinating and appropriate one for our association to support, since no biography of Condell has been researched and written. As one of Melbourne's 'founding fathers', Condell must have had regular contact with La Trobe as the city and the colony grew up around them, and it will be of great interest to see what aspects of their reportedly very different characters emerge from Dr MacDonald's research. Of course, this Fellowship would not have been possible without the generous support of the AGL Shaw Foundation, and we thank Professor Shaw most sincerely for his generosity. It is important that we now find a sponsor for next year's Fellowship.

With the foundation of a new group as part of the La Trobe Society - the Friends of La Trobe's Cottage - to assist the National Trust in the management of this significant property, we have truly important work ahead of us as we aim to improve the physical fabric of perhaps the oldest building in Melbourne, and to improve access to it for Victorians and visitors alike.

Rodney Davidson
President

A Word from the Treasurer

In the last issue of *La Trobeana*, I stressed the importance of maintaining and increasing our membership. It is in the membership that the strength of the Society lies, and a strong membership allows us to have quality functions, to achieve our aims of encouraging research and access to information about Charles Joseph La Trobe himself, and about his period of tenure and visionary plans for the colony where he was posted.

Very recently, we as a committed and focused association, have established under the umbrella of the La Trobe Society a new group – the Friends of La Trobe's Cottage. There is much to do for the improvement and accessibility of this very early colonial building. There are exciting years ahead as we achieve another of our stated aims.

In the March issue of our journal, I asked if any member had an idea of a potential supporter for the 2010-11 La Trobe Society Fellowship. As an alternative, I suggested that, perhaps, there might be some members interested in forming a consortium of five to provide the Fellowship. It is important to note that such donations are tax deductible. Please give this matter your consideration over the next few months, as we are keen to continue the Society's important role of contributing to research about La Trobe and the colonial period.

John Drury
Honorary Treasurer

Charlotte Pellet's Restored Grave

On Thursday 9 April, a representative number of La Trobe Society members, including her great-grand-daughter, Mrs Joy Harley, attended the graveside celebration of the life of Charlotte Pellet, Housekeeper for the La Trobe family at Jolimont, at the Inverleigh Cemetery in Western Victoria.

The restoration project had been managed by Mrs Jennifer Bantow, President of the Geelong Branch of the National Trust and valued La Trobe Society member. From a rather run-down condition, the grave of this stalwart of the La Trobe family is now beautifully refurbished, with a replica of its original picket fence surrounding a surface of marble chips and the original plaque noting her birth in Neuchâtel, Switzerland and death in 1876 at Inverleigh.

Much of the work was carried out *pro bono* by Paul Jenkinson, a heritage builder, and by dedicated members of the Geelong Branch of the National Trust, with necessary supplies either donated or provided at cost.

This restoration was a worthy historical project and the Committee of the La Trobe Society was pleased to make a contribution from La Trobe Society funds, on behalf of the membership.

La Trobe Society Fellowship, 2009-10

The C J La Trobe Society Inc., in association with the State Library of Victoria, awards a La Trobe Society Fellowship each year for the study of the colonial period of Victoria's history during Charles Joseph La Trobe's administration as Superintendent and Lieutenant-Governor (1839-54). The Fellowship is sponsored in 2009-10 by the AGL Shaw Foundation for a period of six months, with a grant of \$25,000.

The Fellowship is intended for the use of the resources of the State Library of Victoria. Subject to this general consideration, the award is to be used to research into and write about the colonial period of Victoria's history during Charles Joseph La Trobe's administration as Superintendent and Lieutenant-Governor (1839-54). It can also be extended to cover the period immediately before La Trobe's arrival, or the effects of his tenure after his departure.

Announced at the State Library on 19 June, the Fellowship winner for this year is:

Dr Helen MacDonald whose topic will be

*The Mysterious Life of Henry Condell,
Melbourne's first Mayor*

Melbourne's first Mayor, Henry Condell, was a mysterious man, the son of a well-to-do Scottish family who came to Melbourne from Hobart in 1839, the same year that La Trobe arrived in the settlement. Condell was variously an alderman, mayor, magistrate, brewer, hotel keeper, husband and father, yet little is known of him or of his shady past. No biography has been written about him; nor is there an entry for him in the **Australian Dictionary of Biography**. Helen will explore his intriguing life, using the unparalleled resources of the State Library, and she also hopes to reveal the inevitable intersection of the lives of Condell and La Trobe.

Friends of La Trobe's Cottage

As foreshadowed by Martin Purslow, CEO of the National Trust of Australia (Victoria) at La Trobe's birthday celebrations in March, a new group has been established under the umbrella of the La Trobe Society. This is the Friends of La Trobe's Cottage which held **its first general meeting at Tasma Terrace on 15 April 2009**. Thirty interested members of the Society came along to discuss how the Society could best assist the National Trust in the management of perhaps its most **significant building**.

The La Trobe Society has, as one of its stated purposes under the Associations Incorporation Act 1981, the aim 'to feature La Trobe's Cottage as an historical and educational venue for all Victorians'. Assistance was offered from the Society to the National Trust in forming and supervising a Friends' group which would maintain a roster of members to keep the Cottage open on a regular basis, monitor maintenance requirements, provide guided tours, and aim at a fund-raising program for further development of the Cottage precinct.

The La Trobe Society will liaise directly with Martin Green, the National Trust's Learning and Access Manager, on activities and plans for the future.

Helen Botham was nominated as Chair of the Friends' group, with John Botham as Vice-Chair, John Drury as Treasurer, and Dianne Reilly as Secretary. Helen and John Botham have already done considerable work in preparing an authentic historical layout for the grounds of the Cottage, and have formulated an appropriate signage system which should be implemented to facilitate self-guided tours.

Several sub-committees with convenors were established for the work to be done. They are:

Master Plan – John Botham

Guides – Lorraine Finlay

Garden – Sandi Pullman

Fund-raising – Cecily Adams

Education – Judith Ryles

Building Maintenance – Max Joffe

Members present at the meeting were asked to indicate which sub-committees were of most interest, and meetings of most of these smaller groups have already been held.

A second general meeting of the friends of La Trobe's Cottage will be held on Monday 17 August at 7.30 p.m. at St Peter's Eastern Hill. Entrance near Bookshop. All are welcome to attend.

The date selected for the 're-launch' of La Trobe's Cottage is **Saturday 3 October**, the 170th anniversary of the arrival of the La Trobe family in Melbourne, when special commemorative activities will be programmed.

The Annual AGL Shaw Lecture

Crime in The Port Phillip District, 1835-51

His Honour Paul Mullaly QC, La Trobe Society member and a former Judge of the County Court in Victoria, gave a tantalising introduction to the subject of crime in the Port Phillip colony during La Trobe's administration at the annual AGL Shaw Lecture, sponsored jointly by the La Trobe Society and the Royal Historical Society of Victoria on Tuesday 9 June. Fifty members of the two societies were introduced to Mr Mullaly's new

study of the administration of criminal law in the Port Phillip District from the arrival of European settlers until the onset of the Gold Rush and the arrival of Separation. Such an in-depth study has been long lacking, and it provides an insight into the frequently controversial legal framework of the early period of Victoria's history.

Paul Mullaly has kindly given us permission to reproduce the lecture he gave for this occasion in this edition of *La Trobeana*. The content of this lecture is based on material in his recently published book- *Crime in the Port Phillip District 1835-51* – and the relevant contemporary records etc are set out therein. His book was awarded the Judges' Prize in the Victorian Community History Awards 2008.

Mullaly, Paul R. *Crime in the Port Phillip District 1835-51*. Hybrid Publishers, 2008

The book is obtainable from the Information Victoria Bookshop or at Hybrid Publishers, PO Box 52, Ormond Vic 3204; 2A Howe St Murrumbeena Vic 3163; Phone (03) 95043462. Cost \$95.00.

Forthcoming Events

Annual General Meeting and Annual Dinner

Tuesday 11 August, 2009 at 6.30 p.m.

The Society's Annual General Meeting, to be followed by dinner, will be held at The Lyceum Club, Ridgway Place, Melbourne on Tuesday 11 August at 6.30 p.m. Club Member, Dianne Reilly, will be our host.

After the meeting, an illustrated lecture will be given by member Mr Kenneth Park, freelance lecturer, art

curator, presenter, fund-raiser, tour leader and writer.

His topic for this address will be:

The Intrepid Traveller: Charles Joseph La Trobe.

Guests are welcome. A booking form was sent out recently. Please advise the Hon Secretary of any dietary requirements when you send in your payment.

Dress code for men is shirt and tie with jacket.

DATE: Tuesday 11 August 2009

TIME: 6.30 p.m.

COST: \$60.00 per person.

Annual Pioneer Service

Sunday 1 November, 2009 at 10.00 a.m.

The Rev'd John Sugars, Vicar of St James Old Cathedral, corner King and Batman Streets, West Melbourne has again invited all La Trobe Society members and friends to the annual Pioneer Service.

This year marks the 170th anniversary of the laying by Charles Joseph La Trobe of the foundation stone of the Cathedral's predecessor, St James Church, on the corner of William and Little Collins Street, Melbourne, on 9 November 1839.

Christmas Cocktails December, 2009

Club Member John Adams will host the Society's Christmas Cocktails for 2009 at the Athenaeum Club, 87 Collins Street, Melbourne.

DATE: Friday 11 December

TIME: 6.30 p.m.

COST: \$65 per person

Please keep this date free in your diaries. A booking form will be sent to Members closer to the date.

