

History Australia

ISSN: 1449-0854 (Print) 1833-4881 (Online) Journal homepage: https://www.tandfonline.com/loi/raha20

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To cite this article: David Andrew Roberts (2017) Colonial gulag: the populating of the Port Macquarie penal settlement, 1821–1832, History Australia, 14:4, 588-606, DOI: 10.1080/14490854.2017.1389228

To link to this article: https://doi.org/10.1080/14490854.2017.1389228

Published online: 09 Nov 2017.

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HISTORY AUSTRALIA, 2017
VOL. 14, NO. 4, 588–606
https://doi.org/10.1080/14490854.2017.1389228

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RESEARCH ARTICLE

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Colonial gulag: the populating of the Port Macquarie penal settlement, 1821–1832

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ABSTRACT

Recent developments in convict and penal studies are placing that field at the forefront of the 'digital humanities'. In that vein, this article employs some newly digitised records relating to the Port Macquarie penal settlement in the 1820s to rectify the neglect of that settlement in the historical literature. The rise and fall of the colonial penal settlements involved monumental and rapid population movements that were meticulously documented by the colonial authorities. Nevertheless, despite some key works in recent years, there exists a rather meagre understanding of the processes by which the penal settlements were populated, and of the composition and status of their populations. In this article I demonstrate how data extracted from the bureaucratic infrastructure of convict management can be analysed to reveal some fundamental trends and particulars concerning the demography of the Port Macquarie population, and to reveal the various means, terms and conditions under which they were sent. It is hoped that this study might platform future re-evaluations of the history of that settlement, and of the colonial penal settlement system more broadly.

KEYWORDS

Penal settlements; convicts; punishment; colonial Australian history

In 1821 Port Macquarie became the second convict 'penal settlement' established in New South Wales, founded to facilitate the closing of the first station at Newcastle (1804–1823) and predating the establishment of Moreton Bay (from 1824) and Norfolk Island (from 1825). As zones of extra punishment, penal stations buttressed the preservation of law and discipline in the convict colony, becoming vastly more important in the wake of the 1819–1821 Bigge Commission of Inquiry when a greatly increased number of convicts were maintained in public employ and private assignment. These colonial gulags, however, remain an underexplored facet of Australia's convict past, neglected by decades of scholarship that have sought more positive and palatable representations of the convict 'system'.[1] Although a number of studies have bucked that trend by examining the extraordinary nature of life and labour on some

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[1]Inspired especially by J. B. Hirst, *Convict Society and Its Enemies: A History of Early New South Wales* (North Sydney: Allen and Unwin, 1983); S. Nicholas, ed., *Convict Workers: Reinterpreting Australia's Past* (Cambridge: Cambridge University Press, 1988).

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settlements,[2] there has been little precise attention paid to the processes by which they were populated.[3] Rather, there is a tendency to describe them rather too amorphously as 'secondary settlements' for 'doubly convicted' or 'twice-convicted prisoners', for 'repeated offenders' and 'convicts who committed further crimes'.[4] The penal settlements were, more precisely, punishment zones for individuals who received *colonial* sentences. Although they evolved as sites of exemplary punishment for convicts already under a British sentence of transportation (referred to as one's 'original sentence'), penal settlements also received locally convicted free men and women, including emancipists, the colonial born, immigrants, soldiers, sailors and Indigenous people.

Port Macquarie remains the most ignored penal station, though recent research has shown that it operated as a most instructive and transitional episode within the larger history of incarceration, penal labour and criminal transportation in colonial Australia.[5] My aim here is to lay foundations for further examination of the history of that settlement, and to invite renewed study of the penal settlements more broadly. I do so by explaining how Port Macquarie was populated. Between 1821 and 1826 roughly 2400 people were sent there, constituting one of the most significant population movements in the colony in that period. My research is enabled by a number of key sources recently digitised and indexed for the genealogy market. These materials, so valuable for tracing individual life histories, are also amenable to the type of quantitative analyses that are now placing convict studies at the forefront of the 'digital humanities'.[6] My contribution is to show how data extracted from the bureaucratic infrastructure of convict management can be used to comprehend a few fundamentals and particulars that must platform any re-evaluation of the penal settlements.

First, I consider those who were *not* sent to Port Macquarie under colonial sentence: the founding contingent that volunteered to establish the settlement in early

[2]For example, R. Evans and W. Thorpe, 'Freedom and Unfreedom at Moreton Bay: The Structures and Relations of Secondary Punishment', in *Beyond Convict Workers*, ed. B. Dyster (Sydney: University of New South Wales, 1996), 64–82; R. Evans and W. Thorpe, 'The Last Days of Moreton Bay: Power, Sexuality and the Misrule of Law', *Journal of Australian Studies* 53 (1997): 59–75; T. O'Connor, 'Buckley's Chance: Freedom and Hope at the Penal Settlements of Newcastle and Moreton Bay', *Tasmanian Historical Studies* 6, no. 2 (1999): 115–28; R. Tuffin, 'The Evolution of Convict Labour Management in Van Diemen's Land: Placing the "Penal Peninsula" in a Colonial Context', *Papers and Proceedings: Tasmanian Historical Research Association* 54, no. 2 (2007): 69–83; H. Maxwell-Stewart, *Closing Hell's Gates: The Death of a Convict Station* (Sydney: Allen and Unwin, 2008); D. A. Roberts, 'Dissent and Ill-Discipline: The Newcastle Penal Settlement, 1804–1823', in *Radical Newcastle*, ed. J. Bennett, N. Cushing and E. Eklund (Sydney: NewSouth Publishing, 2015), 16–23; L. Marshall, 'A Benign Institution? Convict Health, Living Conditions, and Labour Management at Port Arthur Penal Station, 1868–1870', *Journal of Australian Colonial History* 18 (2016): 65–94.

[3]A notable exception is T. J. Causer, '"Only a Place Fit for Angels and Eagles": The Norfolk Island Penal Settlement, 1825–1855' (PhD thesis, University of London, 2010), which features an unprecedented analysis of the backgrounds and sentencing of the Norfolk Island convicts.

[4]J. Hirst, 'The Australian Experience', in *The Oxford History of the Prison: The Practice of Punishment in Western Society*, ed. N. Morris and D. J. Rothan (Oxford: Oxford University Press, 1995), 253; J. Harrison, '"Adopting a Regular System of Prison Discipline": Moreton Bay and 1820s Penal Settlements in the "Plan of Punishment"', *Queensland History Journal* 21, no. 12 (2013): 809; A. Brooke and D. Brandon, *Bound for Botany Bay: British Convict Voyages to Australia* (Kew, Vic: National Archives, 2005), 236; J. Hirst, *Freedom on the Fatal Shore: Australia's First Colony* (Melbourne: Black Inc., 2008), vii–viii.

[5]L. Ford and D. A. Roberts, 'Legal Change, Convict Activism and the Reform of Penal Relocation in Colonial New South Wales: The Port Macquarie Penal Settlement, 1822–26', *Australian Historical Studies* 46, no. 2 (2016): 174–90.

[6]See especially 'The Digital Panopticon: The Global Impact of London Punishments, 1780–1925', a collaboration between the Universities of Liverpool, Sheffield, Tasmania, Oxford and Sussex, accessed 5 August 2016, http://www.digitalpanopticon.org; J. Bradley, R. Kippen, H. Maxwell-Stewart, J. McCalman and S. Silcot, 'Research Note: The Founders and Survivors Project', *The History of the Family* 15, no. 4 (2010): 467–77; 'The Prosecution Project', Griffith University, accessed 5 August 2016, https://prosecutionproject.griffith.edu.au.

1821. Answering a request from the Port Macquarie & District Family History Society, the aim is, for the first time, to identity some of those volunteers. Second, I consider those convicts removed to Port Macquarie from Newcastle between 1821 and 1823 during the protracted disbanding of the older station. This mass transferral is frequently alluded to by historians but has never been quantified or analysed in detail. Finally, I examine those who were sent directly to Port Macquarie under recent colonial sentences, noting the range of authorities responsible for their sentences and the variety of sentencing terms and conditions at a pivotal time when the legitimacy and character of colonial sentencing was under scrutiny.

The sources

Historians are fortunate to have inherited an outstanding and intact record of who was at Port Macquarie, and of the authority and terms under which they were sent. There are two key sources, complimentary but significantly different. The first are the 'Gaoler's Lists', prepared and signed by the Sydney gaoler as convicts were drafted onto the vessels that conveyed them to Port Macquarie. Based on the committal warrants provided by the sentencing authorities, these lists were approved by the governor then forwarded to the Port Macquarie commandant. They survive today as copies in the Colonial Secretary's out-letter books, at least until mid-1824.[7] This bureaucratic innovation commenced during the Newcastle years, from mid-1811, although early lists were very rudimentary, becoming more detailed as the decade progressed.[8] From mid-1818, reflecting the growing emphasis on penal settlements as places of labour and production, the lists noted each individual's trade.[9] Then, from April 1820, they include each convict's 'original place of trial and sentence', allowing the local commandant to deal with convict requests for release. Constantly beset with such requests, the Port Macquarie authorities relied on their lists. They were, Commandant John Rolland noted, 'invariably referred to before a prisoner under sentence here is liberated'.[10]

The second principal source I call the Port Macquarie Population Book, also kept by the Colonial Secretary.[11] This itemises every convict sent to the settlement under a colonial sentence between 1821 and 1826, in the chronological order of their embarkation. The book includes those convicts transferred from Newcastle between 1821 and 1823, the only means of identifying precisely who was relocated. The keeping of the Population Book appears to have commenced in August 1824. The first 69 folio sheets are a type of précis of the lists compiled to that date, although they omit vital details that could be gleamed by referring back to the older paperwork. After August 1824 a

[7]Colonial Secretary, Copies of Letters to Port Macquarie, June 1822–October 1825, State Records New South Wales (SRNSW) 4/3864.
[8]The earliest Gaoler's List for Newcastle is dated 22 August 1811, SRNSW 4/3492: 54.
[9]D. A. Roberts and D. Garland, 'The Forgotten Commandant: James Wallis and the Newcastle Penal Settlement, 1816–1818', *Australian Historical Studies* 41, no. 1 (2010): 5–24.
[10]Rolland to Goulburn, 28 June 1824, SRNSW 4/1815: 215.
[11]The Population Book survives in two parts at the end of the Colonial Secretary's Copies of Letters to Port Macquarie, June 1822–October 1825, SRNSW 4/3864, and September 1825–July 1830, SRNSW 4/3865. A comparable record for the Moreton Bay settlement survives in the Out-Letters Books for that settlement, SRNSW 4/3794 and 4/3795. For Moreton Bay there is an additional record, seemingly kept by the local authorities, known as the Chronological Register of Convicts 1824–1839 and held by the Queensland State Archives, Series ID 5653.

'new form' had the information slightly reorganised, with new columns recording each convict's ship and date of embarkation for the settlement, as well as detailing when and sometimes why a convict was later returned to Sydney.[12] The Population Book, cross-referenced with the Gaoler's Lists, provides a vital means of tracing both the fate of individual characters and the broader patterns of movement to and from the settlement over time. It does not, however, account for those sent to the settlement under circumstances other than a colonial sentence. The many wives allowed to join their convicted husbands were not recorded in the book; nor were the so-called Port Macquarie volunteers, as I discuss below.

Port Macquarie's 'First Fleet'

The Port Macquarie volunteers were the advance guard who sailed in March and April 1821 on three vessels under the leadership of the Irish soldier, Captain Francis Allman, appointed by Governor Lachlan Macquarie as the settlement's first commandant. Local historians refer to this illustriously as Port Macquarie's 'First Fleet'.[13] Comparable arrangements were made on the formation of settlements at Macquarie Harbour (Tasmania), Moreton Bay and Norfolk Island, although in the case of Port Macquarie there is no surviving document naming those volunteers.[14] Captain Allman was instructed to take with him some carpenters, sawyers, shoemakers, a blacksmith, a tailor and 50 labourers, up to 60 men in total. These were to be selected from among 'the best behaved convicts now belonging to the different gangs at Sydney', with preference given to those who volunteered their services. They were 'not to be considered as sent thither by way of punishment', but rather motivated by the promise of 'tickets of leave, or Conditional Pardons' after eighteen months' service at the settlement, should they exhibit 'good conduct, sobriety and industry' and set an example to those who followed.[15]

There were other volunteers sent in June 1821 to salvage the *Lady Nelson* that lay badly damaged at Port Macquarie for most of 1821.[16] Others later volunteered from Newcastle. Undoubtedly they, like Benjamin Johnson (*Tottenham* 1818), an American seaman from Savannah (Georgia) who volunteered for the Port Macquarie lifeboat in July 1822, hoped they 'might not be thought entirely unworthy of sharing in the same' reward as 'was held out to the other men'.[17] The volunteers from Newcastle, however, received no promise of mitigation, although a handful, like the cedar cutter Joseph McManus or 'Boldboy' (*Surrey* 1816), obtained Governor Macquarie's personal promise of 'a similar indulgence to that received by the Volunteers' during the vice-regal inspection of Port Macquarie in November 1821.[18] Johnson was not so

[12]This commencement of a 'new form' is referred to in a memo at the bottom of the Gaoler's List (Port Macquarie), 20 July 1824, SRNSW 4/3864: 174.
[13]I. McLachlan, *Place of Banishment: Port Macquarie 1818–1832* (Sydney: Hale and Ironmonger, 1899), 55–60.
[14]The Moreton Bay volunteers are recorded at the beginning of the Population Book for that settlement, SRNSW 4/3794. For Macquarie Harbour, see Arthur to Brisbane, 30 September 1825, with enclosures, SRNSW 4/6974.1: 41–51. There is no extant list of the Norfolk Island volunteers.
[15]Allman's Instructions, 16 March 1821, SRNSW 4/1748: 287–88.
[16]Goulburn to Allman, 13 June 1821, SRNSW 4/3504: 88.
[17]Johnson to Nicholson, 20 August 1822, SRNSW 4/1866: 6.
[18]Petitions of Joseph McManus, 1 April 1823, SRNSW 4/1870: 29, and 4 March 1825, SRNSW 4/1874: 148; Register of tickets of leave, 15 August 1826, SRNSW 4/4060.

fortunate, serving out the remainder of his seven-year original sentence before returning to Port Macquarie under another colonial sentence in 1825 for stealing clothes from a ship.[19] He was not the only Port Macquarie volunteer to so return.

It is unclear precisely how many convicts accompanied Allman's 'First Fleet'. By the time they were due for their reward, in late 1822, the colony was under a new administration and it was not entirely certain what was to become of them.[20] We know that some *were* returned to Sydney in October 1822, Allman tersely remarking that they had not 'conducted themselves imperfectly'.[21] The names of a few can be detected from the correspondence to and from Port Macquarie, usually on account of death or misfortune. The 'prisoner named John Baker', who shortly after the fleet's arrival was reported to have 'disappeared' and had 'not been heard of', was probably the long-suffering veteran John Baker (*Glatton* 1803), who was later returned to Port Macquarie under a life sentence for a violent robbery at Prospect.[22] Another, Benjamin Warhurst (*Hadlow* 1818), was named as 'one of the volunteer men' when he drowned in Port Macquarie harbour in December 1821.[23] The Irishman John McCabe (*Guildford* 1816) described himself as one 'of the number who volunteered their services to form the new settlement', although he may actually have been in the commandant's private service as a tutor to Allman's children. He was promised a mitigation of his sentence during Macquarie's inspection of the settlement in November 1821 and was granted an absolute pardon as soon as Macquarie returned to Sydney, although it is unlikely he had received that news when, weeks later, he drowned alongside Benjamin Warhurst.[24] Another volunteer, William Judd (*Earl Spencer* 1813), can be identified from his own words. Precisely 18 months after he sailed with Allman as the commandant's clerk, Judd was back in Sydney, seeking clerical employment with the chief engineer while waiting for 'the Indulgence promised by His Excellency Major General Macquarie to those prisoners who volunteered their services on the first formation of that settlement'.[25] Judd received his ticket of leave, but the privilege did not last long. Three years later, when applying to marry his long-term partner, he was convicted of possessing a stolen watch. His ticket was cancelled, his application to marry refused and he was sent back to Port Macquarie, joining the ranks of volunteers who returned ignominiously under a colonial sentence.[26]

The key to locating other Port Macquarie volunteers lies in the promise made to them of a mitigation of sentence after 18 months' service. The problem is that the extant ticket of leave registers, maintained by the Principal Superintendent of Convicts, begin in July 1824, almost two years after the volunteers were due to be

[19] *Sydney Gazette*, 10 February 1825, 3.
[20] Allman to Goulburn, 4 August 1822, SRNSW 4/1815: 104.
[21] Allman to Goulburn, 21 October 1822, SRNSW 4/1815: 121.
[22] Allman to Goulburn, 24 May 1821, SRNSW 4/1815: 19–20; Reports of Prisoners Tried in the Court of Criminal Jurisdiction, September–October 1823, SRNSW X820: 107; Gaoler's List (Port Macquarie), 26 November 1823, SRNSW 4/3864: 92.
[23] Allman to Goulburn, 15 December 1821, SRNSW 4/1815: 39–40.
[24] Petitions of John McCabe, October 1820, SRNSW 4/1861: 36, and 7 November 1821, SRNSW 4/1863: 21; Allman to Goulburn, 15 December 1821, SRNSW 4/1815: 39–40; McCabe's Absolute Pardon, 8 November 1821, SRNSW 4/4486: 61.
[25] Judd to Ovens, 7 October 1822, SRNSW 4/1866: 11.
[26] Goulburn to Judd, 18 July 1825, SRNSW 4/3515: 46; Port Macquarie Population Book, SRNSW 4/3864: 530–31.

Table 1. The Port Macquarie volunteers.

A) Identified from the Colonial Secretary's correspondence
1. John Baker (*Glatton* 1803)
2. William Judd (*Earl Spencer* 1813)
3. John McCabe (*Guildford* 1816)
4. Benjamin Warhurst (*Hadlow* 1818)

B) Identified from the ticket of leave registers 1824–1833 (replacement tickets for originals issued expressly in consideration of volunteer services at Port Macquarie)
1. Mark Brown (*Malabar* 1819)
2. William Essom/Elstone (*Prince of Orange* 1821)
3. John Foley (*Hadlow* 1820)
4. Michael or Nicholas Headon (*Daphne* 1819)
5. Frederick Hildruth/Heldruth (*Mariner* 1816)
6. John Hudson (*Canada* 1819)
7. John Hughes (*Daphne* 1819)
8. John Maguire (*Martha* 1818)
9. James Ram (*General Stewart* 1818)
10. William Shean (*Daphne* 1819)
11. Daniel Taile Jr (*Prince Regent* 1820)
12. George Weightman (*Tottenham* 1818)

C) Identified from the 1822 Muster, and known to have received tickets of leave in late 1822 and 1823
1. Thomas Baxter (*Ocean* 1818)
2. James Boyd (*Martha* 1818)
3. Joseph Brookhouse (*Tottenham* 1818)
4. Benjamin Chattaway/Chadaway (*Shipley* 1820)
5. William Plomer Daniel (*Malabar* 1819)?
6. John Davis (*Morley* 1817)
7. Anthony Joseph (*Surrey* 1814)
8. James Molloy (*Almorah* 1820)
9. Patrick Reed (*Guildford* 1818)
10. George Sidnall (*John Barry* 1819)
11. Thomas Wilcox (*Larkins* 1817)

D) Identified from the 1822 Muster, but no supporting evidence
1. Charles John Clifford (*Somersetshire* 1814)
2. James Close (*Malabar* 1819)
3. Bryan Derham (*Almorah* 1820)
4. William Fowler (*Eliza* 1820)
5. Benjamin Francis (*Recovery* 1819)
6. Joseph Glasspoole/Glasspool (*General Stewart* 1818)
7. John Harwood (*Somersetshire* 1814)
8. William Hallson (*General Stewart* 1818)
9. Edward Holmes Jr (*General Stewart* 1818)
10. John Kidwell (*Surrey* 1814)
11. James Marin (*Neptune* 1820)
12. John Martin (*Mangles* 1820)
13. John Price (*Baring* 1819)
14. George Scarfe (*Mary* 1819)
15. John Thompson (*Prince Regent* 1820)
16. James Tofield (*Tottenham* 1818)
17. William Tooley (*Fanny* 1816)
18. John Wilford (*Bencoolen* 1819)

rewarded.[27] Government notices listing the recipients of tickets, published regularly in the *Sydney Gazette*, date only from January 1823 and do not specify why a ticket was awarded. Tickets issued in the last quarter of 1822, such as that evidently received by the clerk William Judd, were presumably registered in an earlier volume that has not survived. However, tickets were frequently reissued or replaced in later years, when the originals were reported lost or mutilated, or when approval was given for a change in the holder's place of residence. Generally, though not consistently, a reissued ticket restated the reasons why the original had been granted. As early as 9 September 1824, only weeks after the surviving register commenced, a ticket was reissued to James Ram (*General Stewart* 1818) 'in lieu' of an original that had been 'granted in consideration of his having volunteered his services to the settlement of Port Macquarie'.[28] Between then and 1831, at least 12 individuals received

[27]Principal Superintendent of Convicts, Registers of tickets of leave, 1824–1833, SRNSW 4/4060–4/4062.
[28]James Ram, ticket of leave no. 365/1299, 9 September 1824, SRNSW 4/4060.

replacement tickets for originals issued expressly in consideration of volunteer services at Port Macquarie 'at its first establishment' (see Table 1).

There is no means of naming other Port Macquarie volunteers with absolute certainty. However, the Population Book, because it lists only those sent under colonial sentence, yields some possibilities when it is cross-referenced with another vital demographic source. That source is the monumental 1822 Muster, archived in the Home Office papers in the National Archives (London), transcribed by the Australian Biographical and Genealogical Record in 1988 and now digitised by Ancestry.com as part of its 'Australia Convict Musters, 1806–1849' collection.[29] The muster was taken at Port Macquarie in early September, simultaneous to its compilation in the central districts. That was just before the Port Macquarie volunteers were returned to Sydney. Thus, convicts recorded in the muster as being at Port Macquarie who are *not* listed in the Population Book may be assumed to be volunteers. Of these, some received tickets of leave in that critical period of late 1822 and 1823, though we cannot confirm that these were awarded for service at Port Macquarie. Through these methods, and pending further and finer research, the list of 45 names in Table 1 is submitted as the rump of Port Macquarie's First Fleet of 1821.

Transferral of convicts from Newcastle

Even before Port Macquarie was located and surveyed, it was decided that Newcastle, which had operated as the colony's main receptacle for recidivists for almost 20 years, was to be superseded by a new 'place of Banishment', somewhere to the north where prisoners could be 'secured against Desertion by Distance and Natural Barriers'.[30] Port Macquarie was chosen in March 1821 and almost immediately colonial magistrates began to name it as a destination in their sentencing, although by the end of that year the settlement was still not considered 'in a fit state to receive' large-scale drafts of convicts direct from Sydney.[31] The transferral from Newcastle occurred in three phases over two years, the final and largest being in the last days before Newcastle was closed (Table 2). Staggered over two years, this was the largest mass removal of convicts from one penal settlement to another until the closure of Norfolk Island 30 years later.[32]

The earliest transferrals from Newcastle to Port Macquarie can be regarded as a distinct sub-category deserving particular notice. These were the Newcastle absconders or 'bushrangers'. In early 1822 the new governor, Sir Thomas Brisbane, promised that bushrangers who surrendered would be pardoned for any non-violent crime committed while at large and returned to work without punishment.[33] Those who had absconded while under colonial sentences at Newcastle, however, did not go wholly unpunished. Instead they were ordered to Port Macquarie 'until the expiration of

[29]C. J. Baxter, ed., *General Muster and Land and Stock Muster of New South Wales 1822* (Sydney: ABGR in association with the Society of Australian Genealogists, 1988).
[30]Macquarie to Bathurst, 19 July 1819, *Historical Records of Australia, Series 1* (*HRA 1*), 10: 178–79, and 8 March 1819, *HRA 1*, 10: 43–44.
[31]Goulburn to Morisset, 12 December 1821, SRNSW 4/3505a: 142–43. See Gaoler's List (Newcastle), 11 July 1821, SRNSW 4/3504: 149–50 for early magisterial sentences to Port Macquarie.
[32]*Argus*, 4 October 1853, 5; Causer, "Only a Place Fit for Angels and Eagles", 285.
[33]Proclamation, 15 December 1821, in *Sydney Gazette*, 15 December 1821, 1.

Table 2. Newcastle convicts under colonial sentence removed to Port Macquarie, 1821–1822.

Date/ship	Newcastle runaways	Regular removals direct from Newcastle
PHASE 1 (December 1821–March 1822)		
1821, 27 Dec per *Sally*	6	
1822, c. Jan ship(s) not given	1	71
1822, 6 Feb per *Newcastle*	20	
1822, 27 Feb per *Newcastle*	20	
1822, 25 Mar per *Sally*	3	
PHASE 2 (February–March 1823)		
1823, 15 Feb per *Sally*		29
1823, 25 Feb per *Mermaid*		41
1823, 24 Mar per *Lady Nelson*		34
PHASE 3 (September 1823)		
1823, 15 Sept per *Mermaid*		60
1823, 25 Sept per *Elizabeth Henrietta*		60
1823, 25 Sept per *Lady Nelson*		39
1823, 26 Sept per *Sally*		19
TOTALS	**50**	**353**

Source: Port Macquarie Population Book, SRNSW 4/3864: 342–49, 388–97, 418–35.
Note that there are 409 entries for convicts removed from Newcastle to Port Macquarie. Lewis Lazarus (*Isabella* 1818) and John Harris (*Minerva* 1821) appear twice. Lazarus is here retained for the figures for the *Mermaid* and deducted from those of the *Sally* in February 1823. Harris and four others are deducted from the totals altogether, not being under colonial sentence at Newcastle but rather in the 'ordinary' public service or assigned to the growing number of settlers in the district. These five are included in Table 4. See entries for John Ellison (*Guildford* 1820), Joseph Eaton (*Eliza* 1820), Stephen Green (*Minerva* 1821) and others, Port Macquarie Population Book, SRNSW 4/3864: 394–95, 430–31.

their original or colonial sentence, whichever appears to be the longest period'.[34] When the cutter *Sally* went to Port Macquarie for cedar in the closing days of 1821, it carried the first batch of six Newcastle absconders.[35] There followed two larger shipments of 20 in February 1822, and another three men in March (Table 2). In total, 50 Newcastle runaways were sent to Port Macquarie in the wake of Brisbane's proclamation, dispatched so hastily that Commandant Allman was not provided with detailed Gaoler's Lists for some of them.[36] The confusion worked poorly for James Martin, who was apparently mistaken for a namesake and thus found himself detained at Port Macquarie 'without any specific charge, or [without] being brought before any court of jurisdiction'.[37] The obscurity briefly suited others, like the bush-ranger who surrendered under the name of Francis Clark but was soon exposed as Richard Bradburn, recently transported for his role in the notorious 'Cato Street Conspiracy' to assassinate the British cabinet in February 1820.[38]

Governor Brisbane's determination was that all Newcastle absconders would hence-forth be demoted to the more remote settlement at Port Macquarie.[39] This marked the beginning of a policy pursued over the next decade, as the proliferation of new penal settlements fostered a vision that they could operate in a hierarchy, graded by differing degrees of severity and deprivation. Discipline and order might be

[34]Gaoler's List (Port Macquarie), 6 February 1822, SRNSW 4/3504a: 494.
[35]Gaoler's List (Port Macquarie), 27 December 1821, SRNSW 4/3504a: 205–6.
[36]Allman to Goulburn, 14 April 1822, SRNSW 4/1815: 63.
[37]Rolland to Goulburn, 28 June 1824, SRNSW, 4/1815: 215; Petition of James Martin, 1824, SRNSW 4/1866: 82.
[38]Allman to Morisset, undated, SRNSW 4/1808: 207–9; Allman to Goulburn, 13 August 1822, SRNSW 4/1808: 205–9, and 23 August 1822, SRNSW 4/1815: 105.
[39]Goulburn to Allman, 27 December 1821, SRNSW 4/3504: 206.

maintained by the threat of relegation to a more severe and remote station.[40] Although it fluctuated and was inconsistently applied, the policy generated significant movements of individuals within the penal settlement system during the 1820s and 1830s, surviving doubts as to whether or not it was legal for a convict sentenced to one penal station to be removed to another.[41] The removal of Newcastle absconders to Port Macquarie heralded some of the policy's key failings. The Newcastle commandant disapproved, preferring his runaways be sent back to him for an exemplary flogging, not least because they seemed unperturbed by the risk of being removed to Port Macquarie. It having 'neither Jail nor Penitentiary', they felt they 'would have more liberty there'.[42] Certainly, Newcastle absconders sent to Port Macquarie tended to abscond again. Punishing runaways by relegating them to a harsher and more remote environment seemed merely to relocate and possibly intensify the problem, as explained below.

The first regular removal of 72 convicts from Newcastle took place, on Governor Brisbane's orders, in January 1822.[43] Only weeks after Brisbane arrived in the colony, this indicated his immediate determination to hasten the closure of Newcastle, although it was soon after decided that Port Macquarie was still not 'ready to relieve' Newcastle to any substantial extent.[44] It was another year before the next large-scale removal was undertaken. Shortly after his inspection of Newcastle in January 1823, Brisbane ordered that prisoners be selected for embarkation on vessels bound for Port Macquarie with provisions and Newcastle coal.[45] Another contingent sent north on the *Lady Nelson* in March brought the total relocated in this phase to 104 convicts. The third and final phase of relocation from Newcastle occurred in the final weeks of September 1823 when 178 convicts went north in four batches, after which Newcastle was 'no longer considered a place of banishment'.[46] With the earlier removals, including the bushrangers, a total of 403 of the Newcastle population was moved to Port Macquarie in the space of two years (Table 2). As a very loose estimate, based on the Newcastle population at the time of the 1822 Muster, the disbanding of that settlement involved roughly half of its population being moved north to Port Macquarie.

While the governor stated the number to be removed from Newcastle, the decision on who to remove lay with the Newcastle commandant. Contemplating this in early 1823, Commandant James Thomas Morisset thought to select those he deemed 'likely to take to the bush', while retaining at Newcastle those who seemed most 'quiet'.[47] The men he selected for Port Macquarie included many individuals recently punished for 'deserting from the settlement', 'attempting to escape' or 'taking to the bush'. John Miller (*Hadlow* 1818) was put among them only days after he attempted to stow away

[40]Brisbane to Wilmot-Horton, 24 March 1825, *HRA 1*, 11: 553.
[41]This was questioned most prominently in the 1827 Supreme Court trial of John McGinnis in relation to the piratical seizure of the brig *Wellington*. McGinnis was deemed to have been 'irregularly removed' from Port Macquarie to Norfolk Island. *Sydney Gazette*, 24 February 1827, 3.
[42]Morisset to Goulburn, 2 January 1822, SRNSW 4/1808: 1–2.
[43]Port Macquarie Population Book, SRNSW 4/3864: 342–49; Morisset to Goulburn, 3 January 1822, SRNSW 4/1808: 3.
[44]Goulburn to Morisset, 21 February 1822, SRNSW 4/3505a: 478. A 'General Statement of the Population of New South Wales' in late 1821 records 92 convicts at Port Macquarie, before the arrival of the Newcastle men. Macquarie to Bathurst, 30 November 1821, *HRA 1*, 10: 575.
[45]Goulburn to Morisset, 11 February 1823, SRNSW 4/3507: 327, and 17 February 1823, SRNSW 4/3507: 339.
[46]*Sydney Gazette*, 11 September 1823, 2.
[47]Morisset to Goulburn, 25 February 1823, SRNSW 4/1809: 24–24c, and 27 February 1823, SRNSW 4/1809, 26–26a.

from Newcastle in a visiting ship. Others had an older history of punishment, sometimes stretching back years and including multiple incidences of absconding, mutinous conduct, refusal to work, assault, theft and gambling. Of the 177 convicts sent north from Newcastle by March 1823 (excluding the bushrangers, who were not locally selected), at least 76 had been previously punished.[48] Technically, the transferral of Newcastle men to the more remote and crude settlement at Port Macquarie involved an alteration of the conditions of an existing sentence, rather than a specific punishment for some additional offence. Nonetheless, the local commandant's selection criteria allowed some to feel that they were being surreptitiously if not illegally punished.[49]

While character and career evidently played some role in the selection of convicts sent north during the closure of the Newcastle settlement, the selection was also determined by the length of time individuals had left to serve of their colonial sentence, particularly in the last phase when Newcastle was being hurriedly emptied. The Newcastle convicts were mostly under old sentences, awarded in Sydney and Hobart during Governor Macquarie's administration. Of the 403 convicts, 146 (36%) were serving substantial colonial sentences of life, 14 or 7 years. The percentage was higher among those transferred in Newcastle's closing days in September 1823 (44% or 79 of the 178). Some had but a year or less left to serve; others were not due for release until the 1830s. At least 86 who were under colonial sentences for life faced the prospect of serving at Port Macquarie indefinitely. Others who arrived in New South Wales under life sentences and were then ordered to serve the 'remainder' of that sentence at a penal settlement faced a similar uncertainty. Not until 1829 were limits prescribed for penal station sentences, 'to keep alive the hope of ultimate relief and amendment'.[50] For the Newcastle convicts, transferral to Port Macquarie was either the latest misfortune in a long, sometimes unlimited period of servitude, or a late demotion at the time when they were anticipating release.

Whether these men and women were aggrieved by their removal or, as Morisset suggested, welcomed it as a relaxation in the power to detain and surveil them, on the whole they reacted defiantly. Their primary response was to abscond, the 'Distance and Natural Barriers' of Port Macquarie failing to contain them. In early 1822, 13 men stole away with arms and supplies, apparently intending to make for the western settlement at Bathurst. Allman's soldiers overran and captured nine of them and another was shot dead.[51] In August 1822, nine men stole a government whaling boat, making it to the Hawkesbury River where they robbed a house.[52] Others reached the cedar-cutting camps 250 kilometres south at Port Stephens, or made it back to Newcastle, which so concerned the authorities that military and

[48]Monthly Returns of Prisoners Punished at Newcastle, 1810–1825, SRNSW 4/1718. See March 1823 for the punishment of John Miller.
[49]For example, Petition of Patrick Sloane, 20 June 1823, SRNSW 4/1809: 81–81b.
[50]'Instructions Issued by the Governor of New South Wales for the Regulation of Penal Settlements, 1 July 1829', and 'Report of a Board Appointed … [to Propose] a "Code of Regulations for the Conduct and Discipline of Penal Settlements"', in Darling to Murray, 13 August 1829, *HRA 1*, 15: 105–15. A working draft of the instructions with appended memos and documents can be found in SRNSW 4/7088.1.
[51]Allman to Goulburn, 16 January 1822, SRNSW 4/1815: 51–53. *Sydney Gazette*, 1 February 1822, 3, misnames the deceased 'White'. It was John Davis (*General Stewart* 1818). Port Macquarie Population Book, SRNSW 4/3864: 342–43.
[52]*Sydney Gazette*, 11 October 1822, 2; Reports of Prisoners Tried at Court of Criminal Jurisdiction, September 1822, SRNSW X820: 69.

police were strategically stationed to 'prevent their spreading themselves over other parts of the colony'.[53]

Of the 228 men transferred from Newcastle up to March 1823 (including the bushrangers), at least 85 (37%) absconded from Port Macquarie, either immediately or within a year or two. By comparison, convicts drafted to Port Macquarie direct from Sydney between March and December 1822 (discussed below) absconded at a rate of 19%. Notwithstanding that Port Macquarie, like the earlier settlement at Newcastle, leaked like a sieve, the rate of absconding by the former Newcastle men was especially high. The confounding problem was whether they should be returned for exemplary punishment or relegated to another punishment zone. Governor Brisbane resolved to relocate some to the notorious station at Macquarie Harbour in Van Diemen's Land, until the volume of men sent provoked high-level protests.[54] Although Port Macquarie runaways continued to be earmarked for Macquarie Harbour until the end of 1824, the desperation of the authorities resulted in many actually making a circuitous return to Newcastle. No longer a penal outpost, Newcastle was a site of established facilities and concentrated public works where the capacity for surveillance, confinement and onerous labour was considerable, although it was not secure enough to prevent some of these fugitives from absconding yet again.[55] Soon the far northern settlement at Moreton Bay offered another solution, but similar problems were replicated there, ensuring that approaches to the problem of serial absconding remained scattered and fluid for the remainder of the decade.

One outcome of the mass relocation from Newcastle to Port Macquarie, soon appreciated acutely by the authorities, was the transferral and probable intensification of a plethora of convict grievances. These arose from a widespread sense of being demoted in terms of their level of comfort, security and familiarity, but also often from objections to old and sometimes dubious sentences passed long before due attention was paid to the legality and justice of colonial sentencing practices. That sense of grievance at Port Macquarie would only be swelled by the arrival of thousands of freshly sentenced convicts between 1821 and 1826.

'Fresh sentences'

The overwhelming bulk of the entries in the Port Macquarie Population Book – around 1900 men and some women, or 79% of the settlement's population – are of convicts drafted directly from Sydney to Port Macquarie under colonial sentences issued from about mid-1821 until early 1826. As with Newcastle in the previous decade, prisoners came to Port Macquarie via three distinct jurisdictions, each revealing some of the interesting customs and curiosities of colonial sentencing.

[53]Morisset to Goulburn, 28 July 1822, 4/1808: 187; Goulburn to Morisset, 20 August 1822, 4/3506: 189.
[54]For example, List of Runaways from Port Macquarie sent to Hobart, 27 November 1822, SRNSW 4/3506: 479. See also Sorell to Horton, 30 November 1824, *HRA 3*, 4: 583–84; Bathurst to Brisbane, 20 January 1825, *HRA 1*, 11: 480–81; *Sydney Gazette*, 28 April 1825, 2. The last surviving lists of Port Macquarie runaways sent to Macquarie Harbour (totalling 44 men) are dated 15 and 20 March 1824, SRNSW 4/3522: 26–27.
[55]For example, compare Returns of Fines and Punishments in the Police Office, July–December 1824, SRNSW 4/6671, with List of Runaways from Port Macquarie forwarded to Newcastle per *Mars*, 15 December 1824, SRNSW 4/3513: 97. See also List of Runaways, 14 November 1825, SRNSW 4/3515: 615.

Table 3. Convicts to Port Macquarie October 1821–April 1824 under sentence of the Criminal Court (total: 239).

1 year	11	}	54 'shorter sentences' (less than 7 years)
2 years	11		
3 years	22		
4 years	9		
5 years	1		
7 years	48		
14 years	21		
Life (outright)	41		
Life (commutation)	75		

These were all sentences issued between and September 1819 and February 1824. The figures exclude four women sentenced in this period who were not sent to Port Macquarie until February 1825. Included here are several Van Diemonian convicts sentenced during court sessions in Hobart in early 1823, although most of the men and women there convicted were sent to the new penal station at Macquarie Harbour.
Sources: Port Macquarie Population Book, SRNSW 4/3864; Reports of Prisoners Tried in the Court of Criminal Jurisdiction, 1820–1824, SRNSW X820; Returns of Trials, Van Diemen's Land, 1821–1823, SRNSW X726.

First and most seriously, convicts were sent under the authority of the superior Criminal Court (or, from 1824, the Supreme Court of Criminal Jurisdiction), constituted to apply the criminal law of England and thus empowered to issue sentences of death or transportation to all colonists, free and bond, for the most serious of crimes including murder, highway robbery, stock theft and burglary. Supreme Court sentences to penal stations were routinely termed 'transportation', either ordered directly by the court or by the governor in commutation of a death sentence. The very first two convicts to arrive at Port Macquarie under a colonial sentence – in October 1821, well ahead of any systematic drafting of convicts to the settlement – came via the Criminal Court, both re-convicted for atrocious crimes committed while under an existing colonial sentence at Newcastle.[56] Two others followed soon after, having long been in Sydney Gaol pending appeals to the Crown.[57] The sending of 21 prisoners to Port Macquarie in the wake of the court's busy session of February–March 1822, including seven of eight individuals whose death sentences had been respited, provided the first indication that the settlement was intended to house the colony's most serious offenders.[58] Between then and the last sitting of the old Criminal Court in April 1824, 239 prisoners were sent to Port Macquarie under formal sentences of transportation (Table 3). The new Supreme Court was responsible for another 83 sentences to Port Macquarie between June 1824 and December 1825, after which sentences of transportation were routinely served at Moreton Bay and Norfolk Island.[59]

Predominately, these sentences were awarded to convicts who remained under an existing 'original' sentence, including those holding tickets of leave. But free citizens – soldiers, sailors, settlers and the local born – were also liable to be transported. Penal

[56]John Read (*John Barry* 1819), a Newcastle absconder who stabbed a fellow inmate while breaking out of Sydney Gaol, and John Brown (*Fortune* 1806), already serving a colonial sentence of transportation for life when he stabbed a superintendent at Newcastle, are the first two names in the Port Macquarie Population Book, SRNSW 4/3864: 342–43. For their convictions, see Court of Criminal Jurisdiction, Returns of Prisoners Tried, July–August 1821, SRNSW X725: 113; Goulburn to Wylde, 10 September 1821, SRNSW 4/3504a: 260.
[57]Macquarie to Wilmot, 3 August 1822, *HRA 1*, 10: 707; Petition of George Fenwick Jackson, 18 November 1825, SRNSW 4/1874: 112; Goulburn to Campbell, 5 December 1821, SRNSW 4/3504a: 118; Macquarie to Wilmot, 3 August 1822, *HRA 1*, 10: 707; Bathurst to Brisbane, 28 March 1823, *HRA 1*, 11: 62–63.
[58]Population Book, SRNSW, 4/3864: 352–55; Reports of Prisoners Tried in the Court of Criminal Jurisdiction, February–March 1822, SRNSW X820: 35–45.
[59]Returns of Prisoners Tried at the Supreme Court, 1824–25, SRNSW X727.

station records had ceased in 1820 to indicate an individual's civil status at the time of their colonial conviction, but free citizens were easily identified by the absence of 'original conviction' details in the Gaoler's Lists and Population Book. At least 22 free arrivals and five locally born individuals were sentenced to Port Macquarie. However, a far greater number of free men and woman transported to Port Macquarie were emancipists: around 72 individuals, or just over one in every five sent under sentence of transportation. Unlike other free citizens, they were identified by reference to their now-expired original sentences, rendering them indistinct from re-transported convicts who had yet to complete their original term of servitude. Although technically free, emancipists tended to be regarded as doubly convicted. When local legislation in 1826 first exempted free citizens from serving at penal stations, it applied only to free immigrants and the colonial born convicted 'for their first offence'.[60]

A large number of transportees to Port Macquarie arrived under respited death sentences. The 'capital respites' occupied a singular position in the hierarchy of the penal settlement, their sentences considered the most serious and binding of all. The practice of sending capital respites to a penal station was entrenched in the 1810s, but the nature and conditions of commutations changed significantly during the life of Port Macquarie. Under Governor Brisbane, commutation warrants nominated Port Macquarie (or Macquarie Harbour in Tasmania) as a specific location of residence and servitude, threatening execution 'without further cause or delay' if one was 'found at large without lawful cause … at any other part or place'.[61] Capital respites at Port Macquarie were required to sign certificates acknowledging the consequences of their leaving the settlement.[62] This was a local articulation of the punishment for 'returning from transportation', a capital crime rarely punished by execution in England unless a fresh crime was committed while at large.[63] However, in New South Wales, at least in a couple of cases, it resulted in execution without trial.[64]

The court also issued direct or outright sentences of transportation for life, and for terms of seven and 14 years, replicating the penalties issued in Britain for offences such as receiving stolen goods and common law larceny. However, in a clear divergence from practices in Britain, the New South Wales Court frequently awarded shorter sentences of less than seven years to Port Macquarie (54 or 23% of the sentences in Table 3). In some cases, such as perjury, the law technically allowed for shorter sentences of transportation, although British courts apparently thought it nonsensical

[60]That principle was established in the 1826 Act for the Transportation of Offenders to Penal Settlements, otherwise known as the 'Port Macquarie Act' (7 Geo IV No. 5, s. 5). See also the 1830 Act for the Punishment and Transportation of Offenders in New South Wales (11 Geo IV No. 12, s. 6).

[61]See the collection of Brisbane's commutation warrants for 1822, SRNSW 4/7020. Compare with Governor Macquarie's Commutations of Sentences, 1810–22, SRNSW 4/7020.

[62]Allman to Goulburn, 20 July 1822, SRNSW 4/1815: 99, and 6 September 1822, SRNSW 4/1815: 109. See the case of William Poole, whose certificate was used to facilitate his execution. Goulburn to Wylde, 23 April 1823, SRNSW 4/3508: 178–79, and 17 May 1823, SRNSW 3/3508: 359–60; Goulburn to Campbell, 21 May 1823, SRNSW 4/3508: 361; Campbell to Goulburn, 21 May 1823, SRNSW 4/3508: 361. The Colonial Secretary ordered a 'special report' to be prepared every time a respite who absconded from Port Macquarie was received into Sydney Gaol. Goulburn to Campbell, 26 May 1823, SRNSW 4/3508: 385.

[63]H. Woolrych, *The History and Results of the Present Capital Punishments in England* (London: Saunders and Benning, 1832), 92.

[64]Aside from William Poole (above), see the case of Robert Grant (*Dromedary* 1820), executed on 15 January 1824 after a last-minute inquiry to confirm his identity. Goulburn to Campbell, 10 January 1824, SRNSW 4/3510: 159; *Sydney Gazette*, 22 January 1824, 2.

Table 4. Convicts sentenced to Port Macquarie by magistrates in 1823, showing location of Bench and length of sentence.

BENCH	<1 yr	1 yr	2 yrs	3 yrs	4 yrs	5 yrs	7 yrs	remain. original sentence	TOTAL
Airds	–	–	–	5	–	–	1	11	**17**
Bathurst	–	–	–	2	–	–	–	2	**4**
Bringelly	–	2	4	8	–	–	–	7	**21**
Campbelltown	–	–	–	1	–	–	–	–	**1**
Liverpool	–	–	3	1	–	8	–	5	**17**
Minto	–	3	2	6	–	–	–	2	**13**
Newcastle	–	1	4	–	–	–	–	–	**5**
Parramatta	2	10	3	24	–	4	–	8	**51**
Penrith	–	–	–	38	–	–	2	141	**181**
Sydney	–	2	2	3	–	–	–	139	**146**
Windsor	1	5	14	9	1	–	–	26	**56**
TOTAL	**3**	**23**	**32**	**97**	**1**	**12**	**3**	**341**	**512**

Source: Port Macquarie Population Book, SRNSW 4/3864. These calculations are from the numbers sentenced who actually arrived at Port Macquarie.

to send anyone to New South Wales for any term less than seven years. Yet many sentences issued in the colony, for stealing from a person (pickpocketing) or receiving stolen goods, for example, were *below* the minimum terms of transportation mandated by English law.[65] Perhaps these sentences, although unequivocally termed 'transportation', were deemed comparable to the reduced periods of 'imprisonment and hard labour' allowed since 1776 as a substitute for transportation. In the absence of a local penitentiary system, penal stations such as Port Macquarie were the closest approximate to carceral institutions. The colony's internal system of transportation involved sites that were in close proximity, within the jurisdiction of the governor rather than 'beyond the seas', and was applied mostly to convicts already under sentence. These factors seem to have motivated considerable latitude and innovation both in terms of the length of sentence and the conditions under which it was served.

However, court sentences to Port Macquarie accounted for only a small fraction of the settlement's population. Overwhelmingly, convicts arrived on the lesser authority of the colonial magistrates who exercised a summary jurisdiction over all convicts under sentence of transportation. Between May 1822, when Ann Clifton (*Providence* 1822) arrived at Port Macquarie on a three-year sentence passed at Windsor, and February 1826, around 1500 convicts (75% of the freshly sentenced arrivals) came to the settlement under the orders of magistrates. Another 219 men from Newcastle, a little over half of those transferred north between 1821 and 1823, were under older magisterial sentences. In the peak year of 1823 (Table 4), when 512 convicts arrived under magisterial sentence, most came from the main populations centres at Sydney, Parramatta and Windsor, although the Penrith Bench was responsible for the highest proportion (35%), these being mostly absconders from the government establishments at Emu Plains who were routinely 'forwarded to Port Macquarie'.[66] Magisterial sentences were relatively short, three years or less, although Table 4 shows the massive employment of a more dubious and inequitable sentencing option. In 1823, two thirds

[65]Abraham Cullen, for example, a free settler, was transported to Port Macquarie for three years for privately stealing from the person, an offence actually punishable (under the 1808 Larceny Act) by *no less* than seven years' transportation *or* a maximum three years' imprisonment. Reports of Prisoners Tried in the Court of Criminal Jurisdiction, September–October 1823, SRNSW X820: 111.
[66]Goulburn to Wentworth, 27 October 1823, SRNSW 4/3509: 479.

Table 5. A sample of offences for which convicts were sentenced to Port Macquarie by magistrates in 1823.

Offence	Cases	Offence	Cases
assault	2	runaway	
– with attempt to murder	1	– unspecified	13
– with intent to rape	1	– and bushranging	3
bestiality, attempted	1	– and false document	2
embezzlement	4	– and intent to escape the colony	3
felony (unspecified)	1	– and possession of stolen property	2
forgery/fraud	1	– and resisting arrest	2
– intent to	2	– and robbery	10
gross misconduct	1	– and suspicion of robbery	2
harbouring bushrangers	1	– from assignment	9
improper liberties with master's daughter	1	– from clearing party	2
incorrigible	6	– from confinement	4
insolence with abuse/neglect of duty	3	– from escort	1
intoxication	2	– from govt	22
killing stock	2	– from govt and robbery	2
– suspicion of	1	– and suspicion of unnatural crime	1
negligence resulting in death	1	– to evade giving evidence	1
possessing/receiving stolen goods	3	**TOTAL**	**169**
presenting a pistol	1		
perjury	1		
robbery/theft			
– unspecified	17		
– attempted, intent to, suspicion of	5		
– dwelling house	11		
– govt stores	2		
– of govt property	9		
– of stock	7		
– and a runaway	1		
– and neglect of duty	1		
– and resisting arrest	1		

Source: Port Macquarie Population Book, SRNSW 4/3864; Sydney Gaol Description and Entrance Books, 1823, SRNSW 4/6360 and 4/6428.

of the convicts sent to Port Macquarie by magistrates were ordered to remain there until the expiration of their original sentence. As noted above, that condition fell particularly hard on those whose original sentence was for life.[67]

Table 5, presenting a sample of offences for which convicts were sentenced to Port Macquarie by magistrates in 1823, illustrates the vital and diverse power that magistrates assumed over convicts. They adjudicated matters that ought to have been treated as criminal misdemeanours (such as perjury, receiving stolen goods or lesser forms of theft), and even capital felonies (stock theft or robbing a dwelling house, for example). Before mid-1824, when magisterial proceedings were reconstituted by the creation of Courts of Quarter and General Sessions, their power to try such offences was highly questionable. Conventionally, magistrates were concerned with a vast substratum of disciplinary offences such as insolence, abusive language, absconding and malingering, regularly punished by removal to harsher zones of labour, including penal stations. These sentences were generally understood to be less binding than a court sentence of transportation, ceasing to be in force once a convict's original sentence expired.[68] Even though magisterial powers were expanded in mid-1824 to

[67]The controversy surrounding this sentencing option is discussed in Ford and Roberts, 'Legal Change'.
[68]For example, Campbell to Wallis, 16 December 1816, SRNSW 4/3495: 389; Morisset's evidence to Bigge, 17 January 1820, Bigge Appendices (Convict Evidence), Colonial Office, Original Correspondence New South Wales, The National Archives, CO 201-120: 250.

include jurisdiction over non-capital crimes and misdemeanours committed by convicts, the minor disciplinary matters that comprised the bulk of their business were 'status offences', such as absconding, peculiar to the situation of a convict and not punishable by transportation. Increasingly, sentencing to penal stations came to be regarded as a punishment disproportionate to the lesser nature of such offences, and indeed was soon recognised as illegal.[69]

Convicts were also sent to Port Macquarie extra-judicially. Governor Brisbane ordered individuals to Port Macquarie for having misbehaved en route to New South Wales.[70] They were joined by others wryly described as being 'on a second visit to this colony'.[71] In at least one instance, three convicts committed for trial were whisked away to Port Macquarie on Brisbane's orders, before they had appeared in court.[72] Others, acquitted by the Criminal Court, were sent to Port Macquarie anyway because they were 'known as felonious characters' who ought to be 'removed to some other part of the territory' to dispel their 'habits of combination and pillage'.[73] The Judge Advocate sent another two convicts for committing 'foul and malicious perjury' when appearing as witnesses in court, although neither was tried for that offence.[74] Around 30 convicts were arbitrarily removed to Port Macquarie between 1823 and 1825. After the 1824 Transportation Act allowed the Secretary of State to order convicts directly to penal settlements under the terms of their original sentence, the issue of extra-judicial sentencing emerged as one of the key controversies surrounding the operation of colonial penal stations.[75]

It was the legitimacy of magisterial sentences, however, that raised the most searching questions of the period and which in 1826 led to a substantial depopulating of the Port Macquarie settlement. The British Parliament's New South Wales Act of 1823 reconstituted the colony in ways that raised fundamental doubts about both the jurisdiction of magistrates and the customary uses of penal settlements. The settlements were now reserved as special and prescribed zones for the punishment of transportable offences, and complex debates ensued over the circumstances and conditions under which individuals might be sent to such places. This resulted in a mire of legal and procedural introspection that was not adequately resolved until the 1830s. But it *was* quickly determined that magisterial sentences to penal stations issued before the promulgation of the Act needed to be overturned. The new governor, General Ralph

[69]L. Ford and D. A. Roberts, 'New South Wales Penal Settlements and the Transformation of Secondary Punishment in the Nineteenth-Century British Empire', *Journal of Colonialism and Colonial History* 15, no. 3 (2014), DOI: 10.1353/cch.2014.0038.

[70]For example, Goulburn to Wentworth, 18 December 1821, SRNSW 4/3504a: 162; Brisbane to Bigge, 31 March 1825, Brisbane Letter Book, Vol. 2, A1559, Mitchell Library, Sydney: 169. See also H. Maxwell-Stewart, '"Those Lads Contrived a Plan": Attempts at Mutiny on Australia-Bound Convict Vessels', *International Review of Social History* 58 (2013): 8.

[71]*Australian*, 2 December 1824, 4. The most infamous example is described in K. McKenzie, *Imperial Underworld: An Escaped Convict and the Transportation of the British Colonial Order* (Cambridge: Cambridge University Press, 2016).

[72]Depositions, 'King v. Noble, Toole and O'Bryan', 31 October 1822, SRNSW 4/1762: 32–38; Goulburn to Sydney Magistrates, 18 January 1823, SRNSW 4/3507: 261.

[73]Wylde to Brisbane, 30 March 1822, SRNSW 4/1758: 74; Gaoler's List (Port Macquarie), 25 March 1822, SRNSW 4/3505: 78.

[74]Wylde, Memo, 2 May 1822, SRNSW 4/1758: 91–91b; Redman to Goulburn, 12 August 1822, SRNSW 4/1815: 101; Gaoler's List (Port Macquarie), 25 March 1822, SRNSW 4/3505: 78.

[75]For example, Petition of Abraham Davis and others, 20 September 1826, SRNSW 26/5986, 4/1902; Moore to McLeay, 28 December 1826, SRNSW 26/8807, 4/1918.

Darling, resolved in April 1826 to bring a large portion of the Port Macquarie population back to Sydney, redistributing them into public works and private assignment. In the space of three weeks in June and August 1826, around 400 convicts were repatriated, as many as were previously relocated from Newcastle over the space of two years.[76]

By then, the drafting of prisoners to Port Macquarie had effectively ceased. Virtually no more convicts were sent there under colonial sentence after February 1826, at which point the populating of the new northern settlement at Moreton Bay accelerated dramatically. In August 1826, when legal developments finally compelled the colonial authorities to formally designate sites of transportation within the colony, Port Macquarie was among the three zones to which colonial offenders could be transported.[77] As Darling had already determined to close Port Macquarie, that declaration merely served to validate the ongoing detention of convicts there, or the return of Port Macquarie runaways on occasions when it was decided not to demote them to the settlements at Moreton Bay or Norfolk Island.[78]

Over the next few years the Port Macquarie population was wound down slowly by withdrawing prisoners once their terms expired.[79] Rather than effecting another mass relocation, Port Macquarie was allowed to be steadily reduced over a longer period than had been allowed at Newcastle. By late 1828, when the Colonial Office approved the withdrawal of the settlement in order that the region be 'thrown open' to 'general Colonization', there were still 323 convicts remaining there, just under half the size of Moreton Bay.[80] By mid-1830, when the station was finally closed, there were only 112 convicts remaining, all under life sentences, who it was planned would be redistributed to Moreton Bay and Norfolk Island.[81] Ultimately, 32 men were allowed to remain at Port Macquarie for the service of government and private settlers, having been recommended by the commandant for good behaviour.[82] Those who were still at Port Macquarie in late 1832 were ordered to be assigned locally into private service or returned to Sydney if they had less than three months to serve of their colonial sentence.[83] But in a small-scale replication of the earlier closure of Newcastle, another 80 of the long-term Port Macquarie convicts were removed to Norfolk Island, partially compensated by promises that their families could join them. They arrived on Norfolk Island unaccompanied by any record of their identity or sentence, and also without their families whom the Port Macquarie commandant had neglected to send.[84] Several had their sentences reduced in 1835 and 1836, from life to seven or 14 years, entitling them to be released immediately or shortly after.[85] It was not until the passing of the Transports' Sentences Remission Act of 1838 that some of these very old hands were returned to Sydney to labour in the public works.

[76]Ford and Roberts, 'Legal Change'.
[77]Proclamation, 15 August 1826, SRNSW 5/1159.
[78]Port Macquarie Population Book, SRNSW 4/3865: 7–11.
[79]See, for example, various lists in Colonial Secretary's Out-Letters to the Principle Superintendent of Convicts, SRNSW 4/3669.
[80]Murray to Darling, 26 November 1828, *HRA 1*, 14: 480; Darling to Murray, 16 February 1829, *HRA 1*, 14: 648.
[81]McLeay to Morisset, 3 May 1830, SRNSW 4/3821: 167.
[82]McLeay to Smyth, 23 July 1830, SRNSW 4/3866: n.p.
[83]Harrington to Hely, 8 October 1832, SRNSW 4/3672: 2.
[84]McLeay to Morisset, 24 July 1830, SRNSW 4/3821: 179, and 25 October 1830, SRNSW 4/3821: 195.
[85]McLeay to Anderson, 19 November 1835, SRNSW 4/3822: 413.

By that time, some had served at three different penal stations over a period of 20 years.[86]

Conclusion

This article had a number of aims, from the task of identifying the Port Macquarie volunteers to the more wide-ranging attempt to quantify and contextualise larger movements of individuals to and between colonial penal settlements. The rise of the penal settlements in colonial New South Wales during the early 1800s required a more systematic and sophisticated keeping of records. These critical instruments of penal bureaucracy, recently digitised, are amenable to forms of analysis that are elsewhere revolutionising the study of convict history in Australia and internationally. Here I have extracted from those relating to the Port Macquarie penal settlement a number of basic points that might platform a more meaningful study of that settlement, and of the penal station system more broadly. Closer attention to these records counters the vague and oversimplified assessments that historians have offered about penal stations as being places for the 'doubly convicted'. The penal settlements were also populated by convict volunteers, and by individuals who were no longer – or had never been – convicts at the time of their colonial sentencing. Moreover, at least in the case of Port Macquarie, the overwhelming majority of prisoners were sent under minor magisterial sentences, or were sent extra-judicially, meaning that most were not, strictly speaking, 'doubly convicted' at all. Records such as the Gaoler's Lists and the Population Book also remind us that colonial sentences were ordered by a range of authorities for different classes of offence, and that penal station sentences were served under a variety of terms and conditions. This involved significant innovations and adaptations of English criminal transportation law, and generated debates over whether penal settlements were an apposite and legal means of punishment in certain cases. The first step to a new history of the penal settlements lies in a more precise understanding of how the imperatives of discipline and punishment impelled such monumental population movements, and in extracting from these remarkable records a much finer appreciation of the composition, characteristics and distribution of those populations.

Acknowledgements

This article was originally given as The John Crowe Memorial Address for the NSW & ACT Association of Family History Societies Conference at Port Macquarie in September 2015. I am indebted to Associate Professor Lisa Ford for her invaluable advice and comments.

Disclosure statement

No potential conflict of interest was reported by the author.

[86]Deas Thompson to Sheriff, 13 February 1839, SRNSW 4/3901: 87–89.

Funding

This research is funded by the Australian Research Council [grant no. DP 170103642].

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