

“So Grave a Crime”: Redemption and Legacy in Van Diemen’s Land

by **Yvonne Jackson**

I was moved to present this talk because of the shocking discovery I made when delving into these records in the search for my family’s history – a discovery which moved me deeply. I wanted to find out how life turns out for a woman convicted in 1847 of “so grave a crime” which was how it was described by the judge at her trial. As one of her descendents, I needed to find out if and how her actions impacted the generations that followed.

Was she able to turn her life around? Did she find freedom from the burden of her past? What kind of legacy did she leave?

Let me take you straight to the scene of the crime as the first step in the journey of discovery I have been taking.



This is part of the Edinburgh and Glasgow Union Canal, a waterway linking the two cities, one of many such canals constructed during the industrial revolution I would like you to imagine it when the sun has gone down, but it is not yet completely dark. It is winter, and on this February day the temperature has not risen above 6 degrees C. Travelling along this

path, my ancestor, twenty three year old Elizabeth Yates, finds herself at probably the lowest point in her life. She has walked many miles in the last few days, from where she has been living in Leith, in the docks area of Edinburgh. Until a few days ago she had a home with her sister and brother-in-law. Now she is homeless. She has lost her job at the pottery and with it the extra income she needs to survive. The one shilling and six pence a week she receives from the parish as an unmarried mother is not enough to pay her board and so they have turned her out. After spending the night with neighbours, she had taken the canal boat part of the way, and walked the rest of the way to the town of Blackburn. There she had hoped to persuade William McIntyre, the man who had fathered her child, to take her and their baby in.

Perhaps she had hoped that on seeing baby Murdoch, now ten months old, he might soften towards her. William had acknowledged the baby boy for the first three weeks after his birth by paying one shilling and sixpence a week. But then he had stopped paying, and left town. And now he has rejected her again, sending her off with a shilling and telling her never to follow him again.

So Elizabeth is walking back along the tow path in the direction of Edinburgh, carrying the baby who is wrapped up against the bitter cold. Her trial papers describe a woman who is desperate, as being in “distracted state of mind” following William’s rebuff earlier that day.

So it is near this spot on the path, just around Bridge Number 11 – the Long Hermiston Bridge – that she walks down to the water’s edge, strips the clothes off her little boy and holds him under until she can no longer feel him moving.

I am still shocked when I reflect on this moment in time. What was Elizabeth thinking to take such a desperate step? What happened to the nurturing instinct that drives a mother to protect her child? I find it hard to overcome my shock that she could do such a thing. But rather than pass judgement on Elizabeth myself, I turn to the justice system and the account of her trial. After all the witnesses have been heard, the Lord Justice Clerk instructs the jurymen on the points of law that they must consider. They are to satisfy themselves as to whether Elizabeth was “not a conscious agent at the time”. If that is what they find, then she was “not responsible for what she did”. But he made it very clear that if they found her guilty of murder, the law gave him no discretion whatever except to deliver a sentence of death.

It took only ten minutes for the jury to return with a guilty verdict, but with their unanimous request for the Crown's mercy. As the judge donned his black cap and pronounced Elizabeth's punishment - death by hanging - all eyes in that courtroom must have been on her. According to a newspaper report¹ of the trial, she showed no evidence of any emotion. I can picture her there, frozen numb by grief and the enormity of her actions and their consequences.

The jury's plea for mercy was granted by the Crown. Her punishment was not to be carried out at the gaol yard gallows, but endured as transportation for life to Van Diemen's Land. This meant my ancestor went on to live for another forty years, two thirds of her life in fact in circumstances she had not expected and in a place very different from where she had grown up. How would these different circumstances shape her life? Would she be able to find a better self? Did she transcend her crime, finding release from the terrible burden of her action?

I have no data for her inner life – no letters or journals - since she could not write. So at this point I had to rely on whatever evidence I could find to discover the legacy she left, beginning with records such as the Births Deaths and Marriage Register. And naturally I was curious to know of any records of criminal behaviour that might surface.

And since the theme of today is crime in families, I will be introducing you shortly to one of her descendants.

The change in her circumstances began with her marriage to Henry Weston, a ticket of leave man, a little over a year after her arrival. In between the record of her marriage and that of her burial in March 1892, are the events that shaped her life over more than forty years. For a woman these events relate very much to the births of her children, and Elizabeth and Henry's family grew to include six sons and one daughter, with one baby boy not surviving. Following the lives of these children led me to the discovery of the role of one in particular in the criminal milieu of Tasmania.

¹ High Court of the Justiciary", *The Scotsman*, Wednesday 24 March 1847, *The Scotsman Newspaper Archives*, Accessed 18 April 2013

This person is their second eldest son, Samuel Edmund Weston. But far from repeating the sins of his parents, Samuel's life is notable for a distinguished career in the Tasmanian Police Force that saw him awarded the Imperial Service Medal, presented for outstanding public service. The many newspaper articles in which he is mentioned reveal a diligent officer, well liked by colleagues and respected by the community. So, while Samuel was occupied in crime, it was on the right side of the law! I greeted this discovery with a sense of relief!

Samuel's long police career began in 1882. The following years would see him stationed in many parts of Tasmania as he rose through the ranks until his retirement from the police force some forty years later. Even then he didn't go quietly, challenging the regulation² that made retirement compulsory at age 65. Sadly the law was not on his side on this occasion, and he was required to leave the job he had loved for so long.

So what was the work of a police officer like in those years spanning the end of the nineteenth century and the first quarter of the twentieth century? One of Weston's duties in those early days included the role of "tide-waiter" – a quaint name, for an officer who boarded vessels to inspect them, a job today we would call a customs officer. At times he acted as sanitation inspector responsible for checking drains and carrying out hygiene inspections, something that would have been very important in preventing illness in the days before antibiotics. His roles included acting as Clerk of Petty Sessions where criminal matters were heard, and working in the civil courts that heard disputes about matters such as non-payment of wages. A police officer's duties were varied, even to supervising distribution of relief to families in remote mining areas in tough times.

An instance of how Weston handled his role as a police officer was the way he dealt with a grieving community at the time of the 1903 Mount Lyell mine accident. Many years after this event, his good judgement was remembered by people on the West Coast. By suspending the inquest into the accidental deaths of the two men killed in the accident he enabled their fellow miners, who were giving evidence at the inquest, to attend the funeral. While legal procedure was important, Weston recognised the need for the miners to honour their dead mates.

² "POLICE RETIREMENT." *The Mercury* (Hobart, Tas. : 1860 - 1954) **13 Jun 1922**: 6. Web. 21 Jun 2014 <<http://nla.gov.au/nla.news-article23548959>>.

Weston did not always get the results he wanted. Perhaps one of the most controversial criminal cases he was involved in was as Chief Detective Inspector, investigating the murder of William Mullins in bushland near Mathinna in 1913. His intense investigation yielded very few clues, but some weeks after the event Weston arrested Daniel Jones, a neighbour of the murdered man.

Weston appeared as the prosecution witness with expertise in forensics. In fact he had been the first Tasmanian police officer to be trained in the use of fingerprint evidence. Among the exhibits at the trial were a blood-stained claw hammer and a distinctive trouser button retrieved from the ashes where the victim's body had been burned.

But it was the evidence of the work-boot and horse-shoe prints that created the most controversy. Since the prints had been taken some weeks after the disappearance of the victim, their reliability was questioned. So there was little other than circumstantial evidence to support the case that Jones had killed Mullins and burned his body.

In a fiery courtroom exchange Jones' defence lawyer suggested Weston's methods of inquiry had bordered on improper and that he was careless in not keeping notes of his interviews. As he was cross-examined it became clear that the evidence presented was too weak to support a conviction.

This murder trial had captured the public imagination and the court room broke into uproar as the Chief Justice declared the prosecution must be aborted. I can imagine Samuel's disappointment at this outcome, but I think he would have understood that justice would not be served without more compelling evidence. As the Judge noted:

³ mere suspicion will not do. You must have conclusive proof that the accused is the person who committed the crime.

With a promotion to Superintendent in 1913, Samuel's last posting was in Launceston, where he worked till his retirement. At his funeral thirteen years later, the mourners included the Mayor of Hobart, the Commissioner of Police, other high ranking officers, and a

³ "MATHINNA MURDER." *Examiner* (Launceston, Tas. : 1900 - 1954) 27 Sep 1913: 7 Edition: DAILY. Web. 3 Nov 2014 <<http://nla.gov.au/nla.news-article50726249>>.

representative of the Attorney General. His career had spanned a period when the police service was modernising, with new technology such as fingerprinting, which he helped to pioneer.

So the second son of convicts Henry and Elizabeth Weston had created a life on the right side of the law. I wonder how his mother felt about his choice of career. Was she proud of him and her other children? And what did they think of her? I found a small clue in the Family Notices published a year after their mother's death.

WESTON. - In loving remembrance of my dear mother, Elizabeth Weston, who died March 15 1892, aged 66 years.

*Oh, for the touch of a vanished hand,
For the sound of a voice that is still.*

Inserted by her affectionate son, William Weston.

And a post-script:

red hair and a glorious singing voice, and as an endearing person who was nevertheless reluctant to talk about Scotland.

Personal correspondence.

Great Aunt Alice's recollections recorded in a letter from Frank Finlayson to Virginia Cooper. 1972

My great aunt Alice recorded her memories of her grandmother in a letter in 1972. She described her as having *red hair* and *a glorious singing voice*, and as an *endearing person* who was nevertheless *reluctant to talk about Scotland*.

So, I'm coming to the conclusion I have the answer to my question. If Elizabeth could sing like this, I sense it was because she had found both release from the burden of her crime and joy in the new life she had been granted in Van Diemen's Land.

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