

'Circuit Journeys' (1889). A view from the Bench.

Introduction:

Today I am discussing 'Circuit Journeys', the diaries of Lord Henry Cockburn, who was one of the judges of the High Court of Justiciary for Scotland in the 19th century. Lord Cockburn presided over High Court sittings at Perth from around the mid-1830s until 1853. The diaries were published in 1889, thirty years after Cockburn's death in 1854. They have recently been reprinted. To any researchers into convict history in Scotland, his candid views offer a rare insight and an unusual perspective.



Map of Scotland: The High Court held sittings in Edinburgh, Jedburgh, Dumfries, Ayr, Glasgow, Stirling, Inverness, Aberdeen and Perth. All these centres sent female convicts to Van Diemen's Land.

The High Court was and is the most senior of judicial settings, based in Edinburgh but holding trials in several cities on the circuit throughout Scotland. The Judges of the Court travelled on southern, western and northern circuits. The northern circuit, including Perth, had cases heard in the spring and autumn of each year.

My current research investigates the stories of 220 convict women from the area of the east coast of Scotland, who were tried at Perth. I identified my case-study subjects through the list of convicts from the British Isles, published on the web-site of the Female Convicts Research Centre here in Hobart.

The notion of a Prologue:

The notion of a prologue suggests a prelude to the main act of a drama. There was no shortage of drama in the imposing proceedings of the High Court of Justiciary for Scotland at its venues throughout the country. The women in this current research were sentenced to be transported to Van Diemen's Land. Many were sentenced by the Lord Justice Cockburn. The women who were brought to trial at Perth faced the full panoply of a theatrical demonstration of the might of the law.



An Impression of a Scottish High Court Judge. An imposing and disapproving figure to face the women across the Court.

They would be brought up from the prison behind the court buildings to face a disapproving judge in full bottomed wig and scarlet robes and they would hear their fate pronounced in the following terms.

'---by the laws of this and every other well governed realm, THEFT, especially when committed by a person who has previously been convicted of theft, is a crime of a heinous nature and severely punishable-----'. (From a trial transcript).

I am sure that through prison gossip and precedents they were well-aware before they appeared in Court as to what their fate would be.

Lord Cockburn and his views:

Lord Henry Cockburn, one of the 'red Lords' as the High Court judges were known (because of their scarlet robes) lived in Edinburgh, and was a lawyer and then a judge throughout his adult life. At the time of his work in the High Court he and his family lived in this mansion on the outskirts of Edinburgh.



The baronial mansion which was the home of Lord Cockburn and his family.

In 'Circuit Journeys' (1889) he describes his travels throughout Scotland as he moved from Court to Court on the trial circuit. He writes of his experiences at various Court sittings and offers his critical opinion on the transgressors who were brought before him and on the general direction in which he believed Scottish law was developing. As a researcher, I have found these opinions both illuminating and somewhat chilling.

Cockburn is pessimistic. He prophesies doom. His fears, and those of the upper and middle classes in British society were not without foundation. The spectacle of the French Revolution was played out in the not so distant past. Nearer to home, to the horror of the Establishment, respectable, middle-class men had expressed support for the ideals of Liberty, Equality and Fraternity—or at least they did so until the 'reign of terror' set in.

There were groups of these 'Radicals' throughout Scotland and, indeed, in Dundee and Perth itself. Such was the alarm of the ruling elite that one Englishman, a minister preaching in Dundee, Thomas Fyshe Palmer was tried in Edinburgh for sedition and sentenced to be shipped in chains to Botany Bay. His 'crime' was to attempt to have published a list of 'complaints' ranging from questioning the cost of taxation for the war with France, through a suggestion for shorter Parliamentary terms, to an appeal for universal male suffrage. Dangerous ideas indeed!

So, fearing an uprising of the poor, exploited masses in industrial cities, the authorities' solution was to remove criminals and any other dangerous revolutionaries by 'exporting' them, in Lord Cockburn's words, as far away as was possible. To Van Diemen's Land, in fact.

Living conditions in Dundee



This is a photo from Dundee Central Library of one of the main streets in Dundee, with its cobbles and dark tenement buildings.

In Britain, the Industrial Revolution was gathering speed. In Scotland, social conditions in the cities of Glasgow and Dundee were abysmal. The population of Dundee stood, at the beginning of the 19th century, at around 20,000. By the end of the century 90,000 souls were crammed into the same living spaces, with families of mother, father and perhaps eight children sharing one or two rooms in a run-down tenement building. They would have access to perhaps one toilet for the building and perhaps one tap in the back yard. The water supply would be unsafe, leading to outbreaks of cholera and typhoid.



If the main streets of the industrial cities were grim, then the back courts and alleys were horrendous. Yet this is where the women working in the jute mills had to make their homes.



A child in the Dundee slums. A little boy, maybe four or five years old, ill-fed, filthy, clothed in rags. This was childhood for the slum children.

The Jute mills:

Over sixty jute mills were situated throughout the town, polluting the air. They provided a workplace for women and children, but for very few men. Over 40% of the married women in the town were at work there (compared to 7% of married women employed outside the home in Glasgow and Edinburgh) —with pay set at ten shillings and nine pence for a week's work.



The Jute Mills employed women and girls, as well as children as young as eight. Girls would be working alongside the grown women from the age of thirteen.

Mary Brookbanks, a Dundee poet who went to work in the mills when she was thirteen, wrote the poem 'The Jute Mill Song'--the anthem of the mill girls. The middle verse goes as follows:

'Oh dear me, I wish the day was done,
Running up and doon the Pass is nae fun,
Shiftin' piecin', spinnin' warp, weft and twine,
Tae feed and clothe my bairnies
Affen ten and nine.

The 'pass' was the passageway between the 'fletts', which were the platforms on which the spinning mills were set. 'Shifters' were the mill-girls who changed the spinning bobbins of hemp fibre. 'Bairnies', as most readers would know, is the Scottish term for children.

The women worked six days a week, ten hours a day, for this princely sum—129 pennies! Their rent would use up around eighteen pennies, coals for heating and cooking another ten pennies, leaving around just over eight shillings (96 pennies) to feed and clothe the family, since the woman was often the only wage earner. Unemployed husbands, if they remained with their family, could not find work. Then when the woman became too exhausted or too ill to work, her options were limited because there was no support for her. She and her children could starve. She might find work as a prostitute. Or she might steal to try to put food on the table.

This mass of poorly paid, exploited female workers and unemployed men was surely fertile ground for insurrection. In Lord Cockburn's succinct view, Dundee was 'the palace of Scottish blackguardism'. All that was required was a charismatic, eloquent spokesman to rouse the rabble and to set fire to the hierarchy of society.

As it happened, Cockburn's fears were groundless. No such leader emerged. The female slum-dwellers of Dundee were far too exhausted after their ten-hour long shift in the jute mills, running constantly to change the bobbins of thread amidst choking dust and ear-splitting noise; they were far too hungry and, in some cases, far too drink-sodden in general to have any appetite for revolt.

Their unemployed menfolk—known as the despised 'kettle boilers' (so-called because they were expected to mind the miserable room in the tenements while their womenfolk and children worked) were left to spend the day in the squalid confines of their 'home', to care for the youngest children, or more likely to gather in the pub with their cronies to drink themselves to amnesia.

Perhaps they abandoned their families altogether to look for work elsewhere, to go to sea as whalers or to join the army. Never-the-less, in Lord Cockburn's view the danger of revolution was present and was most likely to be averted by rooting out habitual criminals from society and 'exporting' them.

Since all but nine of the 220 women whose cases I am examining had multiple prior convictions and had served lengthy terms of imprisonment, nearly all for petty theft—a hen here, a shawl there, it is hardly surprising that they found themselves aboard the transport ships.

The contrast with the wealthy populace:

The value of Cockburn's writing, from my point of view, is that he also offers a window into the lives of a wealthy and 'respectable' class of Scottish society, a view that contrasts painfully with the struggles of the destitute poor. He paints a picture of country mansions, of aristocratic but parsimonious landholders with tenants living in squalor. Lord Cockburn does give indications that he possessed a social conscience. On his travels, he records and condemns the appalling housing provided for poor tenants on the fringes of wealthy estates.



Blair Castle in Perthshire, home to the Dukes of Athol. Lord Cockburn is scathing of the conditions in which the poorer estate tenants were housed at the time of his journeys.

He talks of newly rich employers and of learned judges presiding over trials with their bottle of port and their biscuits beside them to fortify them throughout the task. He describes Circuit dinners of turtle and venison and of innumerable toasts to the health of those present.

His writings confirm that the emphasis on alcohol consumption in society was not the prerogative of the poor, albeit the drinks of choice for himself and his friends were wine and whisky, rather than watered-down ale or home-brewed spirits. No diet of oatmeal, potatoes and butcher's scraps for the upper echelons of society. He was a pious man, or at least one given to an outward show of piety, required in Presbyterian Scotland. He went in procession to Church each Sabbath on his circuit journeys.

He describes his travels by steamer, by train and by private carriage. Within his own social setting he comes across as a pleasant family man, devoted to his wife and children and with a wide circle of wealthy friends and relatives. He stays in country mansions such as Kindrogan House near Pitlochry in Perthshire on his travels between the Courts at Inverness and Perth.



Kindrogan house

Yet on his travels he would have seen living conditions such as these shown below even in country districts. They apparently did not alter his opinion of the worthlessness of the poor.



Fisherfolk at Auchmithie near Arbroath

As a Judge, he seems remote and without empathy or pity. Lord Cockburn is scathing of the wretches brought before him, describing their petty thefts as of no interest to him and the perpetrators as dross. With a record of repeated theft, there are no extenuating circumstances in his eyes. Destitute, half-starved, diseased, widowed, mentally impaired, alcoholic—the procession of women meets the same fate. They are sentenced to seven, ten, fourteen years' transportation to Van Diemen's Land and in two cases to transportation for life. In fact, for all but two women in the present study, this does mean a life in exile.

The Lord Judge reports that the women who came before him were 'she-devils', cursing him when sentence was passed. He records one Glasgow woman closing her trial proceedings with the following diatribe addressed to her judges. Her sentiments seem to summarise the plight of the convict women.

'Ye are twa, damned, auld, grey-headed blackguards. Ye gie us plenty o' yer law, -- but devilish little justice.'