

## **What Counts? Essays from the Prosecution Project (Editorial)**

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## What Counts? Essays from the Prosecution Project

Mark Finnane

A recent special issue of *Australian Historical Studies* (Volume 47, 2016) considered the wide range of possibilities for 'Big Data' in historical research. There are very real challenges posed to historical research and researchers by the parallel expansion of big data's companion, digital affordance.<sup>1</sup> Notwithstanding those challenges, this special issue on research from the Prosecution Project (<https://prosecutionproject.griffith.edu.au/>) embraces the necessity of working with the possibilities of digitisation and the associated sharing of research materials.

At one level the Prosecution Project, an Australian collaborative research enterprise focussed on the history of the criminal trial in Australia, is an exercise in data collection of the kind increasingly familiar to historians seeking to improve access to archives and explore links between them. At another the Prosecution Project may be characterised by its research aim, the systematic exploration of the conditions under which crime is defined, perpetrated, discovered, investigated, prosecuted, punished or ignored, over time and across space. The scope of the project is ambitious, no less than the complete accession into digital storage for future researcher and community access of the records of criminal proceedings brought against individuals for serious crimes committed in all the Australian jurisdictions from the beginning of European settlement until at least the 1960s. The success of the undertaking so far opens up the prospect of developing related data collections for lower level courts, for police watchhouse arrest books, for courts martial in fields of war, for prisons and other institutional managers of populations – not to mention the voluminous textual archive found in the depositions of individual trials, and still available in vast quantities in many state repositories.

Two questions arise - why do this, and how is it being done? The project originated in discussions posed around the unknown relationship between the official statistics of crime and the often very comprehensive record of case level data relating to trials held in Australian archives. The two-dimensional structure of official statistics limited our understanding of the interplay of the multiple factors involved in criminal behaviour. As archival researchers we knew that going back to the sources from which such statistics were derived opens up a world of information about events and actors in their historical context, enabling a perspective inaccessible in official statistics. We knew of some very significant projects that had already

been undertaken to use digital technology and the World Wide Web to retrieve and then make publicly accessible the criminal justice records of the past – some of it work closely related to Australia’s colonial history, *Founders and Survivors* (<https://foundersandsurvivors.com/>: accessing the records of Tasmania’s convict past); the *Old Bailey Online* (<https://www.oldbaileyonline.org/>: digitising the 250 year record of trial proceedings at the Old Bailey from which so many Australian convicts began their journey); and in a different setting altogether *Digital Harlem* (<http://digitalharlem.org/>: documenting everyday life in early-twentieth century Harlem). As criminal justice researchers in Australian nineteenth- and twentieth-century sources, we were aware of the potential of the various state archival repositories to be accessed in similar, systematic fashion.

How would it be done? With the assistance of funding support from the Australian Research Council and Griffith University, the project team worked with IT developers to design a web interface that would facilitate transcription from archive images into the forms of a relational database for secure storage, and future use. At an early stage we knew that even a multi-person research team was not likely to be able to undertake the data entry at a scale required even by the limited volume of appearances at Australian Supreme Courts, our first level of data. The project design was informed by an emerging awareness of the value of crowd-sourced ‘citizen science’. The data-entry site was thus designed to enable participation not only by researchers working in different locations across Australia, but also by volunteers, who were recruited to the project through writing to community and family history societies, as well as state archival volunteer groups. Over the seven years of the project to date (2013 on) about 400 volunteers have contributed at one time or another, with a smaller group of long-term contributors. One historical society (the Carnamah and District Historical Society, based in Western Australia) has made an especially large and continuing contribution. In a way not anticipated at the outset, the project has thus become one of those undertakings that draws from as well as contributes to a general community and public understanding of the value of an understanding of Australia’s historical heritage.<sup>2</sup>

Such a project also relies on the collaboration of data holders (the archive offices and the supreme court chief justices) as well as the survival of adequate records. The support of data holders has generally been very good, in some cases outstanding in their commitment. Accessing suitable records throws up numerous challenges. Remarkable as the survival of continuous records of the courts may be, there are frustrating interruptions to some series, uneven or close to illegible record-keeping in others. In the case of the Northern Territory,

the available records were lost in war or cyclone. Fortunately, much can be remedied through alternative sources, especially the inestimable Trove (<https://trove.nla.gov.au/>), and Australia's rich collections of official public sources, increasingly digitised, above all case law in the history collections of Australasian Legal Information Institute, or AustLII, (<http://www.austlii.edu.au/>), and the various jurisdictional *Police Gazettes*.

What is the Prosecution Project data? Records are collected at the case level from court registers that historically maintained a one-line record of each person prosecuted, with details including name, offence, trial location, verdict, sentence and punishment. Depending on the source, other information may be available including the names of witnesses, judicial officers, bail guarantors, defending lawyers, original committal dates and places. Each case represents an individual appearance – and further details about that person may be harvested by consulting other material (whether online or in other archival sources). The design of the database enables the importation of data from other sources, in some cases contributed by other researchers. As at March 2020 then, the data held by the Prosecution Project includes trial appearances at Australian supreme (or equivalent) courts from as early as 1788 through to 1965, as well as Australian prison data from prison record books or police gazettes, and twentieth century courts martial records – in total nearly 700,000 records. The research referenced in the articles published here draws on such data.

From its very beginnings the project was informed by the desire of the research team to create, not only a durable and verifiable record of Australian criminal prosecution, but one that might be shared across the research community more generally. In this respect digitisation and digital storage provides the great advantage of ready access to Australian materials, not only within the country but across the globe. The project's public website makes available through a public search page a selection of personal data relating to trials of individuals, up to 1940, a date determined in part by archival restrictions as well as ethical considerations on release of personal data. More important in the longer term for public access to the data may be the access facilitated through linking data produced by public institutions to the project – especially the Tasmanian Names Index (<https://www.libraries.tas.gov.au/>), which accesses Prosecution Project data to link a user to original sources in the Tasmanian archives, and Trove's People and Organisations zone (<https://trove.nla.gov.au/people?q=>), which harvests Prosecution Project data as part of a discovery service for finding Australian historical individuals.

For researchers, Prosecution Project data is now also available for continuing research, quantitative as well as qualitative, through the Australian Criminal Justice History Dataverse, accessible through a national repository of research data in social sciences and humanities managed by the Australian Research Data Commons.<sup>3</sup> The development of this facility in 2019 has provided a means to generate archived datasets, derived by particular queries from the Prosecution Project database – whether defined by time period, jurisdiction, offence, attribute of an offender or other trial actor and so on. This protocol will also enable archiving of other data, including prison discharge, or prisoner record, or other institutional personnel records. Over time this promises to provide an exceptional resource for researchers anywhere seeking to access Australian historical data for large-scale longitudinal and comparative research in criminal justice and social history.

The sample of research presented in this volume points to the range of projects that will flow from such data. Such projects will not be limited to the research demands of criminal justice history with its interest in questions of process, justice, fairness as well as crime and its impacts. For an important reminder of the reach of crime and responses to it lies in the use of criminal justice institutional records as elements of the burgeoning industry of family and local histories. Police and prison records, as well as the newspaper reports of court proceedings, provide exceptional access to the lives of ordinary people in the past, sometimes the only access that we have to the ways in which some people spoke and acted – whether in eighteenth century proletarian London, or nineteenth century Aboriginal New South Wales, or twentieth century working-class Melbourne.<sup>4</sup>

The criminal trial is a social event that proceeds through several stages. All lend themselves to historical investigation, of the kind developed in different ways in this collection of articles. The transformation of criminal justice institutions in the nineteenth century resulted in police developing a central role in criminal investigation and proceedings towards prosecution. At the outset their role was viewed with suspicion, but by the mid-twentieth century police were treated with deference by many judges. Lisa Durnian's study of the rise of the guilty plea in Australian criminal trials identifies the central role played by police in this phenomenon, a context for the late twentieth-century controversies over police verballing and corruption. Evidence gathered by police and prosecution authorities makes its way into a trial under historically variable rules of evidence in which the personal status of the witness is constantly in play. In her study of this process as it affected trials involving child witnesses,

Robyn Blewer shows how law reform sought to facilitate the admission of child testimony, but in ways that also rendered more difficult the prosecution of child sex offences.

While the trial is hedged with legal rules that seek to limit the intrusion of highly variable social factors that bring crimes and their perpetrators to court, the historical reality is that these ‘externalities’ are never absent from the process. By examining the statements that convicted prisoners made in the course of sentencing the most common type of offence, that of a male committing a property offence, Alana Piper brings to light the way in which models of masculinity shaped male offenders’ attempts to explain their actions. Conversely, in one of the rare events dealt with by courts, that of a woman committing murder, gendered assumptions about crime motivation and legal responsibility are shown by Carolyn Strange and Les Hetherington to be less at issue than are the factors that produced a singular miscarriage of justice. Finally, in an article that draws on an extension of the Prosecution Project from criminal law in civil society into military justice, Mark Finnane and Yorick Smaal examine the potential in exploring the court martial as a legal event with a political context, evident among other things in the influence in World War 1 of a distinctive Australian stance against capital punishment as a tool of military discipline.

These articles, then, point to some of the ways in which the Prosecution Project enables us to explore new Australian histories. Crime and criminal justice histories are also paths into other social histories. And the resources made accessible through the collaboration of researchers in the Prosecution Project will sustain new Australian stories and story-tellers into the future.

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<sup>1</sup> Lara Putnam, “The Transnational and the Text-Searchable: Digitized Sources and the Shadows They Cast,” *The American Historical Review* 121, no. 2 (April 2016): 377–402, <https://doi.org/10.1093/ahr/121.2.377>; Tim Hitchcock, “Digital Affordances for Criminal Justice History,” *Crime, Histoire & Sociétés / Crime, History & Societies*, no. Vol. 21, n°2 (December 31, 2017): 335–42, <https://doi.org/10.4000/chs.2016>.

<sup>2</sup> For more on the method and on the links to family and community histories and their researchers see Mark Finnane, Andy Kaladelfos, and Alana Piper, “Sharing the Archive: Using Web Technologies for Accessing, Storing and Re-Using Historical Data,” *Methodological Innovations* 11, no. 2 (May 1, 2018): 2059799118787749, <https://doi.org/10.1177/2059799118787749>; Mark Finnane and Yorick Smaal, “The Prosecution Project: Using Crime Records to Access Family and Other Histories,” *Queensland Review* 25, no. 1 (2018): 89–101, <https://doi.org/10.1017/qre.2018.9>.

<sup>3</sup> An initiative supported by ARDC development funding in 2019. For access to the archived datasets see [https://dataverse.ada.edu.au/dataverse/australian\\_historical\\_criminal\\_justice\\_data](https://dataverse.ada.edu.au/dataverse/australian_historical_criminal_justice_data).

<sup>4</sup> Tim Hitchcock and Robert Brink Shoemaker, *London Lives: Poverty, Crime and the Making of a Modern City, 1690-1800* (Cambridge: Cambridge University Press, 2015); Michael Bennett, *Pathfinders : A History of Aboriginal Trackers in NSW* (Sydney, NSW : UNSW Press LTD, 2020), <https://trove.nla.gov.au/work/238727326>.