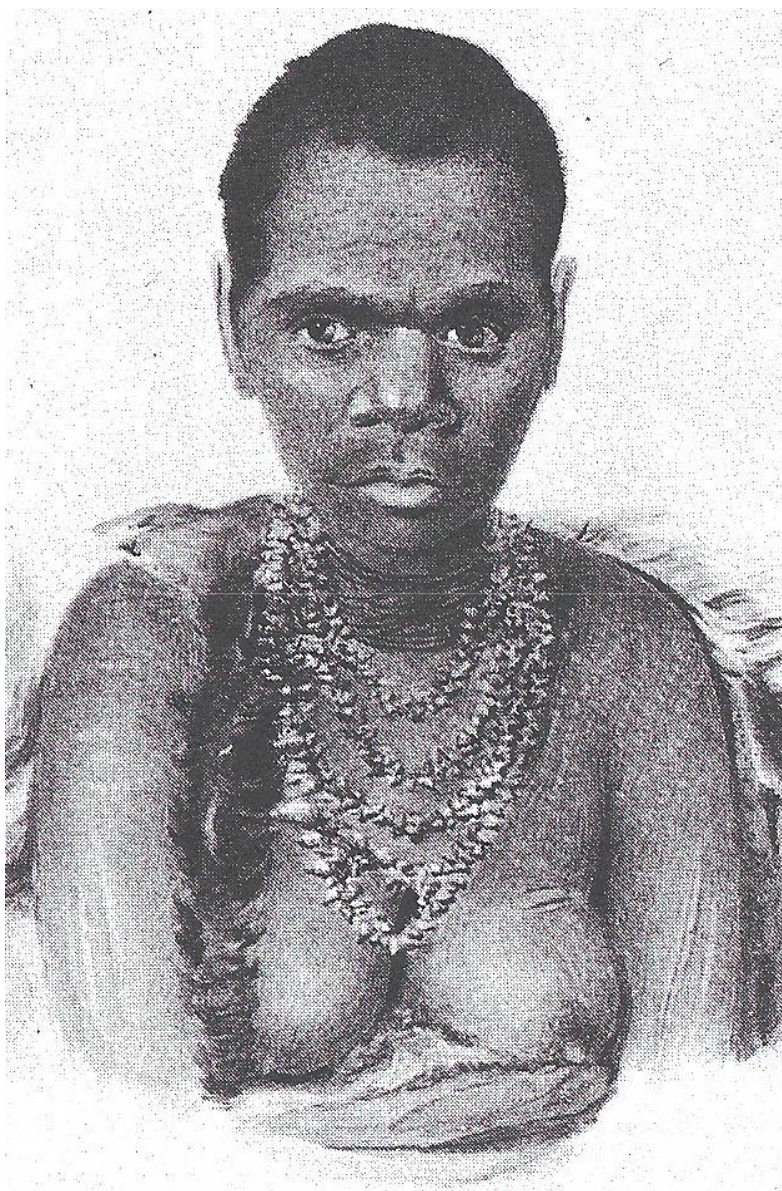


# LEST WE FORGET



*Tunnerminnerwait*

**The Tunnerminnerwait and  
Maulboyheenner Saga**



*Planobeena*

# **LEST WE FORGET**

## **The Tunnerminnerwait and Maulboyheenner Saga**

**ISBN 0 9758219 46**

**Dr. Joseph TOSCANO**

**National Convenor /**

**Tunnerminnerwait and Maulboyheenner Commemoration  
Committee**



**Anarchist Media Institute  
P.O. Box 20  
Parkville 3052  
Melbourne  
AUSTRALIA**

**Mobile: 0439 395 489**

**[www.anarchistmedia.org](http://www.anarchistmedia.org)**

**[anarchistage@yahoo.com](mailto:anarchistage@yahoo.com)**

***‘Anarchist World This Week’ -*  
Broadcast live from the studios of 3CR  
in Melbourne Australia across Australia,  
on the National Community Radio Satellite,  
streaming live on 3CR.org.au  
The Radio program is now podcast**

**The Anarchist Age Weekly Review published  
weekly since 1991. The world's only weekly  
English language Anarchist publication.**

Copyright © Joseph TOSCANO, 2008  
All inquiries regarding copying for other purposes apart from study, research, criticism or review  
are to be made to the publishers at the above address.

# Tunnerminnerwait and Maulboyheenner Commemoration Committee

**AIMS:** To hold a yearly commemoration on the 20th of January at the site the execution took place - (Cnr Bowen & Franklin Sts, Melbourne),  
To acknowledge the injustice of what happened in January 1842,  
To highlight the unfinished business that still exists between indigenous and non indigenous Australians,  
To work towards the establishment of a significant public monument to publicly acknowledge what happened on that fateful day.

**PATRON:** Carolyn BRIGGS - Elders Spokesperson for Boon wurrung Foundation

**CONVENOR:** Dr. Joseph TOSCANO

**COMMITTEE MEMBERS:** Wendy BAINGER, Peter BRAMMER, Michael CARBINES, Doug CHESSMAN, Dave KERIN,  
Joy FRENCH, William FRENCH, Bill GLUYAS, Ellen JOSE, John O'BRIEN, Rick SIMPSON.

**[www.tunnerminnerwaitandmaulboyheennercommemorationcommittee.com](http://www.tunnerminnerwaitandmaulboyheennercommemorationcommittee.com)**

**Email:** **[tunnermaul@gmail.com](mailto:tunnermaul@gmail.com)**

**Address:** **P.O. Box 5035  
Alphington 3078  
Melbourne, Victoria  
AUSTRALIA**

**Tel:** **0439 395 489**

**JOIN US EVERY YEAR  
AT MIDDAY 20<sup>th</sup> JANUARY  
at the corner of Bowen & Franklin Streets Melbourne  
to commemorate the execution of the indigenous freedom fighters  
Tunnerminnerwait and Maulboyheenner**

# FOREWORD:

## Joseph TOSCANO EAM

In 2003, while rummaging through the books in a second hand bookshop in Hampton Melbourne, I stumbled across Jan Roberts' seminal work *Jack of Cape Grim* written in 1986. The book recounts a story of passion, love, treachery, murder, vengeance, resistance, freedom and death.

When I finally put the book down, I promised myself that I would do all I could to bring the story of the Aboriginal freedom fighters in the book to a wider audience. I thought about organising a commemoration for a number of years. Finally after discussing the project with members of the *Anarchist Media Institute* and the *Wednesday Action Group*, Bill Pickering urged me to stop talking about it and organise an event to commemorate their sacrifice.

In 2006 and 2007, the *Anarchist Media Institute* organised a commemoration that occurred on the spot the execution took place, on the day it occurred, to mark the 164<sup>th</sup> and 165<sup>th</sup> anniversary of a story that has more to teach us as a people than all the stories we hear about Ned Kelly and Gallipoli could ever teach us.

The decision was made by the participants who attended the 2007 commemorations to set up the *Tunnerminnerwait and Maulboyheenner Commemoration Committee* to organise future commemorations. '*Lest We Forget*' was published to coincide with the 166<sup>th</sup> anniversary commemorations that will be held on Sunday the 20<sup>th</sup> of January 2008. We intend to hold yearly commemorations to mark an event that needs to be acknowledged and remembered.

We need to reclaim our history and use that history to understand the present and change the future. The first step towards reconciliation involves non indigenous Australians acknowledging the past. Publicly acknowledging the story of the five Tasmanian Freedom fighters and erecting a substantial public monument to their memory, at the site Tunnerminnerwait and Maulboyheenner were executed, is one small way we can acknowledge the past and take the first step towards reconciliation based on justice, not charity.

Melbourne, January 2008

# CONTENTS:

FOREWORD	VI
CONTENTS	VII
INTRODUCTION	VIII
What Is In A Name?	10
Move ‘em Out!!	11
The Move	12
Assistant Protectors Deployed	13
The Myall Creek Massacre	14
To Be Forewarned Is To Be Forearmed	15
From Little Things, Big Things Grow	16
All Out Warfare	17
Fun And Games	18
End Game	19
Judge Willis	20
Legal Manoeuvrings – Part I	22
Legal Manoeuvrings – Part II	22
Legal Manoeuvrings – Part III	23
The Verdict	24
Architectural Marvel	25
Carnival Time	26
What Happened To The Other Tasmanians?	28
Lest We Forget	29
SELECTED BIBLIOGRAPHY	30



# INTRODUCTION

## 'LEST WE FORGET'

At 8.00am on Tuesday the 20<sup>th</sup> of January 1842, over 5,000 people, a quarter of Victoria's white population, gathered at the outskirts of Melbourne crowding round the gallows erected on a small rise east of Swanston Street and north of La Trobe Street. The crowd, in a carnival mood, had come to see the public execution of Tunnerminnerwait and Maulboyheenner – the first two people executed in Victoria.

Early in October 1841, Tunnerminnerwait, Maulboyheenner, Pyterruner, Truganini and Planobeena – 5 of 16 Tasmanian Aborigines who had been brought to Melbourne by Robinson in 1839 to 'civilise' the Victorian 'blacks', stole two guns and some ammunition from a settler's hut at Bass River. Over the next seven weeks, they robbed many stations in Dandenong and Mornington, wounding four white men and killing two sealers 'Yankee' and William Cook. All five were captured by a party of police, settlers, soldiers and black trackers on the 20th of November 1841. Five days later when they arrived in Melbourne, they were charged with murder. They appeared before Judge Willis on the 20th December 1841. The five were defended by Redmond Barry – the standing Defence Council for Aborigines (as Chief Justice he sentenced Ned Kelly to hang 39 years later in 1880). He argued that as they were not naturalised citizens, half the jury should have been made up of people not subjects of the Queen.

The only evidence to link the party of Aborigines with the murders was the confessions of the Aborigines themselves. Barry, the Defence Council, continued to question the legal basis of British authority over Aborigines. He claimed the evidence was dubious and circumstantial. Truganini turned Queen's evidence and claimed the men had killed the sealers. Maulboyheenner implicated Tunnerminnerwait; Pyterruner, Planobeena and Tunnerminnerwait refused to shift the blame on the others. Later that night, the jury took only 30 minutes to find the two men guilty of murder; they acquitted the women. The jury made a very strong plea for clemency *"on account of general good character and the peculiar circumstances under which they were placed"*.

Judge Willis ignored the plea for clemency. On the 20<sup>th</sup> of January 1842, the men were dressed in white, paraded through the streets of Melbourne in an open cart drawn by two grey horses. The executioner John Davies, a convict who had been sentenced to life for sheep stealing, was promised his freedom and ten pounds if he acted as executioner. Eighteen convicts had competed for the post of public executioner; some wanted the heads of the Aborigines as payment. A carnival atmosphere surrounded the execution until the trapdoor was opened.

The men only fell a short distance, not enough to break their necks. *"There was a dead pause and a cry of shame from the crowd. The two.....twisted and writhed convulsively in a manner that horrified even the most hardened"*. A spectator kicked away a piece of timber holding up the trap door and they fell to the full length of the rope. Tunnerminnerwait died instantly. Maulboyheenner continued to struggle



wildly as his noose had dislodged. The bodies hung for the regulation hour; they were stripped of their clothes (a regular perk for executioners), their naked bodies were put in wooden coffins and buried in the Aboriginal cemetery (the site of the current Queen Victoria Market).

One hundred and sixty six years later, its no accident their story plays no part in the history of Melbourne. The collective amnesia that surrounds the brutality surrounding the early days of the European colonisation of Victoria and the rest of Australia, is nothing new. What is new are the repeated attempts by historical revisionists in Australia over the past decade to re-write the history of first contact. They have successfully alienated indigenous Australians' from the community and have weakened indigenous Australians' attempts to achieve justice through the courts and the political arena.

Nothing highlights the continuing hostility towards indigenous people living in Melbourne more than the hysteria that surrounded the occupation of a tiny portion of the Kings Domain by indigenous activists during and immediately after the Commonwealth Games in 2006. Their demands for a small area of Kings Domain to be permanently set aside as an indigenous Information Centre to educate both visitors and residents alike about Melbourne's black history, were mocked and those who were involved in the occupation were publicly humiliated. The Bracks led Victorian government changed the law to disperse the occupation and the Melbourne City Council refused to intervene on the side of the occupiers.

The past is a pantheon of pivotal moments. For governments to recognise some and ignore others - is a tragedy. Any resident or visitor wandering through Melbourne would be hard pressed to find any public acknowledgement of this city's indigenous past. In 2006 and 2007, the *Anarchist Media Institute* organised a small gathering at the site of the execution to acknowledge Tunnerminnerwait's and Maulboyheenner's role in the history of Melbourne.

In 2008, the Tunnerminnerwait and Maulboyheenner Commemoration Committee have organised the commemoration. We encourage our fellow citizens to join us at Midday on Sunday the 20<sup>th</sup> of January at the corner of Franklin Street and Bowen Street, Melbourne to commemorate the judicial murder of the indigenous freedom fighters Tunnerminnerwait and Maulboyheenner on the spot the execution occurred so many years ago.

Considering the number of statutes and monuments that have been erected around Melbourne to honour the Europeans who founded it, it would be appropriate if a public monument was erected on the spot Tunnerminnerwait and Maulboyheenner were executed to mark their contribution to the story of the City of Melbourne and Australia.

**Dr. Joseph TOSCANO – January 2008**

## THE TUNNERMINNERWAIT AND MAULBOYHEENNER SAGA

### WHAT IS IN A NAME?

Tunnerminnerwait – the son of Keeghernewboyheenner – was born on Robbins Island in Tasmania in 1812. He was also known as Peevay, Napoleon, Jack of Cape Grim and Tunninerpareway. When he was born, European sealers had been hunting elephant seals and kangaroos on Robbins Island in North West Tasmania for the last 8 years. By the time he had turned 13, nearly all the elephant seals and kangaroos on the island had been wiped out. One year later, the Tasmanian Land Company moved onto the North West tribes land, establishing sheep stations at Circular Head and Cape Grim.

On the 27<sup>th</sup> of November 1827, an Aboriginal came across sheep and several shepherds at Cape Grim. The meeting ended in disaster for the North West tribes when one Aboriginal man was shot dead and one shepherd was wounded in the scuffle that developed when the shepherds attempted to entice the Aboriginal women into their huts. A few days later, the Aborigines drove a mob of sheep to their deaths over the cliffs at Victory Hill in revenge for the Aboriginal man's death. Six weeks later, the shepherds ambushed a group of Aborigine's mutton birding, killing 30 men, women and children. They threw their bodies over the same cliffs, giving Cape Grim its name.

The North West tribes continued to suffer at the hands of the sealers and shepherds; Aboriginal men were shot on sight, women were kidnapped and taken to the sealers camps on Kangaroo Island and Southern Victoria, where they were forced into sexual servitude. Within 3 years of white colonisation, only 60 of the 500 members of the North West tribe had survived the onslaught. In June 1830, George Augustus Robinson – the Chief Protector of Aborigines in Tasmania – reached North West Tasmania. He was attempting to round up the remnants of the free tribes of Tasmania and resettle them on an island off the North coast to prevent them being 'exterminated'. The only Aborigines in North West Tasmania he came into contact with were 6 abducted women and one abducted man – an 18 year old youth who had been named Jack of Cape Grim. He forced the sealers to give up the North West tribal Aborigines by threatening to prosecute them for shooting their husbands. Robinson persuaded the Aborigines to come with him, promising they would be able to return to their tribal lands.

Tunnerminnerwait escaped from Robinson a few months after his initial capture, because he realised that he had no intention of returning him to Robbins Island. He was recaptured by Robinson soon after and became part of the group that accompanied Robinson in the search for the Big River people between October 1830 to January 1831. Tunnerminnerwait developed a long and complex relationship with Robinson and in October 1835, he accompanied him to Flinders Island. Robinson held Tunnerminnerwait in high regard and spoke of him as *"an exceeding willing and industrious young man"*

*who was stout and well made, of good temper, and performed his work equal to any white man”.*

Maulboyheenner – Robert Smallboy, Jemmy, Timmy, Tinney Jimmy, Robert of Ben Lomond and Bob, were some of the European names Maulboyheenner was known as. Maulboyheenner came from one of the inland tribes that had lived on the Ben Lomond highlands. He came into contact with Robinson as a relatively young man and in early 1830 accompanied him, his party of white assistants and the five survivors of the Bruny Island people (Woorraddy, his two sons Peter and Davy Bruny, and two young girls Dray and Pagerly) on the difficult journey along the west coast to help persuade the west coast guerrilla bands to lay down their arms and move to Flinders Island.

Maulboyheenner was also part of Governor Arthur’s infamous ‘black line’ campaign that was conducted later that year to drive Tasmanian Aborigines away from the ‘settled’ areas. Maulboyheenner joined the dynamic leader of the Stoney Creek tribe - Kannerherlargenner (Eumarrah) and Tunnerminnerwait in October 1831 to find the Big River tribe and force them to join Robinson’s group. In 1832, Maulboyheenner accompanied Robinson on his second foray down the west coast.

In 1835, Robinson boasted the entire Tasmanian Aboriginal population had been removed to Flinders Island. He received a reward of 1,000 pounds for his services to the government. The 33 year war between the European colonisers and the Tasmanian Aborigines was finally over. Over 10,000 Aborigines had lived in Tasmania when Europeans first colonised Tasmania in 1803. By 1835, less than 350 had survived the holocaust. Three quarters of those who were transferred to Flinders Island died by 1837. Only 89 Tasmanian Aborigines were left when Robinson decided to offer his ‘services’ to the New South Wales government. The Tasmania government, keen to see the back of the last of the Tasmanians, offered to bankroll his ‘generous’ offer as long as he was allowed to take all the Tasmanian Aborigines that had survived the European holocaust to the mainland.

### **MOVE 'EM OUT!!**

George Augustus Robinson had big plans for himself and ‘his’ Aborigines. He never had any intention of returning the survivors of the 33-year holocaust back to their tribal lands. Robinson wanted to use ‘his domesticated’ Aborigines to ‘civilise’ the mainland blacks. Even before John Batman set up his illegal settlement at Port Phillip Bay, the Governor of Van Diemens Land - Sir George Arthur, wrote on the 27<sup>th</sup> of September 1835 to the Colonial office in England informing them that George Robinson was willing to take ‘his’ Aborigines from Flinders Island to the newly established settlement at Portland Bay on the Australian mainland, to “*open a friendly communication with the natives there*”.

The Tasmanian authorities, keen to deport the last of the Tasmanian Aborigines, even offered to pay for their maintenance in New Holland. The NSW authorities strongly opposed the deportation of the Tasmanian Aborigines to the Australian mainland, although the British Colonial office was in favour of the move.

Governor Arthur highlighted that the deportation of the last surviving Tasmanian Aborigines to Flinders Island had greatly increased the value of Crown land in Tasmania, and he believed Robinson could, using the same tactics he used in Tasmania, do the same for the value of Crown land on the mainland.

A British House of Commons Select Committee in 1837 recommended that a Protector of Aborigines be appointed at Port Phillip because of the numerous reports of atrocities that were being committed by the new settlers against the Aboriginal population. Governor Arthur and the new Tasmanian Governor Franklin lobbied to have Robinson take up the post of Chief Protector at Port Phillip. Governor Franklin highlighted in August 1838 that life would be safer for the Port Phillip settlers if they allowed Robinson to bring across the Tasmanian Aboriginal survivors from Flinders Island to Port Phillip because of the mixing of 'domesticated' blacks with the 'less civilised' tribes at Port Phillip would make them less dangerous. He repeated Governor Arthur's offer to pay for their upkeep at Port Phillip.

A NSW Legislative Council Committee headed by the Anglican Archbishop of Australia claimed in 1838 it would be a serious mistake to let the Tasmanian Aborigines on the mainland because of the risk of "violence, rapine and murder". The Committee was concerned the lessons the Tasmanian Aborigines had learnt in their 33-year war against the white colonisers, would encourage the local Aborigines to do 'the same fierce and hostile deportment towards the settlers'. The Legislative Council Committee suggested that if the Tasmanian Aborigines were civilised, they should be set free, not deported to the mainland.

On the 12<sup>th</sup> of December 1838, Robinson was appointed Chief Protector of Aborigines at Port Phillip. He was allowed to bring 'one family' of Tasmanian Aborigines with him to act as his personal attendants.

## THE MOVE

Sir George Gipps – the Governor of NSW – made it clear to the Colonial Office in England that he did not support Robinson's plan to bring across the Tasmanian Aborigines to Port Phillip. He only allowed Robinson to bring one family with him to act as his personal attendants. Robinson, full of his own self-importance, brought 16 of the surviving 89 Tasmanian Aborigines with him to Port Phillip. Governor Gipps informed Robinson that the NSW government would only provide rations for a family of four. Robinson and the 16 Aborigines from Flinders Island arrived at Port Phillip in January 1839. He

intended to use the Tasmania Aborigines as mediators and educators. Even a man as hardened as Robinson was shocked by the '*disease, destitution and wretchedness*' displayed by the Port Phillip Aborigines who were living on the outskirts of Melbourne.

Robinson wanted Victorian Aborigines to be able to continue to live on government owned remnants of land in the districts they had traditionally lived on. The Chief Protector introduced the Tasmanian Aborigines to the Yarra tribes almost as soon as he arrived. He noted in his diary – "*their reception was of the utmost friendly character*".

James Dredge, William Thomas, Edward Parker and Charles Sievwright came to Australia from England to take up their positions as Assistant Protectors. The Assistant Protectors set up their tents on an old Aboriginal camping ground on the south side of the Yarra. Robinson moved into an abandoned police hut and the Tasmanian Aborigines had to build grass shelters for themselves.

The party organised a great feast in February 1839 to which all the Port Phillip Aborigines and Melbourne's town folk were invited. Beef, mutton and bread were supplied to everyone. The Aborigines initially refused to eat the food prepared for them because they were concerned they would be poisoned, as poison was liberally being used by the squatters to 'solve' their Aboriginal problem. Games and competitions were held and fireworks were set off to show the Port Phillip Aborigines that the Protectors had come with good intentions. The Aborigines mistakenly assumed that they would be supplied with free rations and goods to compensate them for the loss of their lands.

Governor Gipps, concerned about the cost involved, complained to the Colonial Office. He severely limited the rations that could be given to Aborigines after October 1839.

### **ASSISTANT PROTECTORS DEPLOYED**

George Augustus Robinson had four Assistant Protectors to help him "*ameliorate the lot of local tribes in the face of introduced disease, the ravages of alcohol and tribal warfare, interracial massacres and poisonings*". The Chief Protector of Aborigines was expected to do his job despite overt hostility from white settlers and the press, and very little financial support from the Sydney Treasury. When Robinson arrived with 16 Aborigines from Flinders Island, no government supplies were allocated for the Aborigines. Some months after their arrival, Superintendent La Trobe provided rations for four of them. The Tasmanian Aborigines were expected to look after themselves.

Robinson's four assistants had been appointed by the British Colonial Office; none had been to Australia before. Charles Dredge, Edward Parker and William Thomas were Methodist school teachers. The fourth assistant - Charles Sievwright - was a former military Officer who had been forced to sell his military office to pay off his gambling debts.

On the 26<sup>th</sup> of March 1839, after the new Assistant Protectors had familiarised themselves with their positions, they were allocated areas of responsibility by Robinson. Dredge was sent to North East Victoria, Parker to the North West Victoria, Sievwright to the Western Districts and Thomas was responsible for Melbourne and Westernport.

Siewwright was shocked to find that on his first journey to the Western Districts, two stations he visited had Aboriginal skulls placed over the doors as a warning to any Aborigines that came to the station.

Robinson was more interested in creating an empire for himself than taking an interest in the plight of the Aborigines he was employed to protect.

Faced with hundreds of Aborigines camped around Melbourne, many of them dying from typhus fever, dysentery, syphilis, pneumonia, the cold and famine – Robinson lost interest in the plight of the 16 Aborigines he brought across with him from Flinders Island. Some were loaned out to work for Robinson's sons; others were expected to look after themselves.

On the 2<sup>nd</sup> of October 1840, the New South Governor released Robinson from any responsibility for the Tasmanian Aborigines he had brought to Port Phillip.

### THE MYALL CREEK MASSACRE

In June 1838 at Myall Creek, north of Sydney, 28 Aborigines - mainly women and children - were tied up and hacked to pieces with swords. Their dismembered bodies were partially burnt. Seven assigned convicts were brought to trial for the massacre. They were acquitted by a jury after 15 minutes discussion. The *Anti-Slavery Society* in England and the *Aborigines Protection Society* in London were disgusted by the massacre; the trial and the comments made by the jurors involved in the trial: - *"I look on the blacks as a set of monkeys and the earlier they are exterminated from the face of the Earth, the better"*.

An active *Aborigines Protection Society* in London and a sympathetic colonial administration in England forced NSW Governor Gipps to hold a retrial. After the second trial, the assigned convicts working as shepherds were found guilty. They were hung soon after the second trial on the 18<sup>th</sup> of December 1838. Interestingly, their masters – the squatters who ordered the massacre - were never questioned, charged or brought to trial for ordering the massacre. The 7 assigned convicts were executed to keep the Colonial office off the NSW Government's back. In May 1839, Gipps the NSW Governor who was also responsible for the newly established Port Phillip settlement, declared in the government gazette he wanted to bring the settlers and the Aborigines *"to equal and indiscriminate justice"*. The hanging of the 7 assigned convicts in Sydney in late 1838, and Governor Gipps announcement 5 months later, caused consternation among the Port Phillip settlers. The Port Phillip Press

thundered against 'pseudo philanthropists' who didn't know what they were taking about.

The open warfare that had been occurring between Aborigines and squatters in the Port Phillip region and the rest of Victoria became a secret covert war of destruction almost overnight. Nobody talked about what was happening; bodies of Aborigines with gunshot wounds were dismembered and burnt. Robinson's Assistant Protectors were shunned. William Thomas, the Assistant Protector for the Melbourne region, reported that the squatters and their shepherds were incensed about the Sydney hangings. Thomas reported that poisoning had become the favourite weapon of the coloniser and the blacks stopped accepting flour, milk and bread from the squatters because of their fear of poisoning.

The local Aborigines now found themselves in an impossible situation, driven from their lands at the point of a gun, concerned about the very real possibility that the provisions that were being offered to them by squatters and Assistant Protectors alike could be poisoned, and unable to hunt and gather food on their traditional lands - many died of starvation. Those like Tullamarine and Jin Jin who stole potatoes grown in South Yarra or killed sheep to survive, were treated as criminals. The lucky ones like Tullamarine and Jin Jin were arrested; the unlucky ones were legally hunted down and slaughtered.

### **TO BE FOREWARNED IS TO BE FOREARMED**

The Van Diemens Land Aborigines were of little use to the Chief Protector Robinson. Maulboyheenner and Walter Arthur were sent to assist white 'explorers' trek to South Australia. Woorrady and a few of the older men were sent to work on Robinson's sons properties. He found the women hard to handle. They absconded on a number of occasions and had to be recaptured by Robinson. In August 1840 Superintendent La Trobe, concerned about Robinson's capacity to deal with the local Aborigines, asked the NSW Governor to relieve him of responsibility for the Van Diemens Land natives. He was officially relieved of any responsibility for their care on the 2<sup>nd</sup> of October 1840.

Left to their own devices, they tended to gravitate to the Westernport region where Thomas, the Assistant Protector for the Melbourne region, had been sent to set up a Blacks camp - to distribute rations to encourage the hundreds of blacks that were camped round the settlement in Melbourne to move away from Melbourne. It is known that Isaac, one of the 16 Van Diemens Land blacks, was in early 1841 going around the Westernport region telling the settlers to arm themselves as 5 'black fellows' were coming down to cause mischief. On the pretence that they were going to join Thomas' camp - Tunnerminnerwait, Maulboyheenner, Pyterruner, Truganini and Planobeena - 5 of the original party of 16, vanished into the Westernport bush by August 1841. Planobeena was Tunnerminnerwait's wife; Maulboyheenner was involved in a relationship with Truganini.



William Thomas, the Assistant Protector's oldest son, wrote in his private journal:- *"He (Jack of Cape Grim) talked about what they had suffered at the hands of the white man, how many of their tribe had been slain, how they had been hunted down in Tasmania – now was a time for revenge, they were not cooped up in an Island (Flinders), they had unlimited bush to roam over at their will"*.

This little band of 2 men and 3 women were familiar with the white man's ways. They knew how to use firearms; they knew how to survive in the bush. It was 6 years since Melbourne was formed - over 8,000 whites lived in the new town. The local Aborigines had to a large degree been subdued and posed little threat to the settlers in Melbourne. In October 1841, fear and trepidation swept through the town as the exploits of the Tasmanian blacks became known. Many of the settlers had come to Melbourne from Tasmania, they were aghast their old foes – the Tasmanian Aborigines who were only defeated after a 33 year brutal and bitter struggle when Aborigines were legally shot on sight – were mounting a determined resistance to white settlement on the outskirts of Melbourne in Dandenong and the Westernport region.

### **FROM LITTLE THINGS, BIG THINGS GROW**

In 1840, the Dandenongs and the Westernport region were dense bush. The stations set up by the squatters were established in clearings they had hacked from the scrub. The Tasmanian Aborigines began their campaign in the Dandenong region. They robbed Mr. Horsefal, a squatter living in the Dandenongs, of his fowling piece. Walking up to 30 miles a day to evade capture, they robbed a number of other stations. They mainly stole firearms, sugar, flour and tea. The firearms they collected were much more than they could use themselves. Considering they were trying to move quickly through the bush to evade capture, it is highly likely they were collecting firearms to distribute to the local Aborigines. It is recorded their first strike against the squatters was conducted with the help of local Aborigines.

The Tasmanian Aborigines raided the hut of Mr. Watson, the overseer of a small open cut cliff face mine at Cape Patterson that had been established to provide coal for Melbourne. Following their normal practice, they spared the women in the hut, ordering them into the bush, stole guns and ammunition and then set fire to the hut, ensuring that it couldn't be used by the settlers in the future.

On one of the few occasions when they didn't get away without exchanging shots, the hut's overseer and his son-in-law Walter Inman began shooting at the party; the Aborigines fired back wounding Walter in the leg. Walter Inman and Mr. Watson made their way to a squatter's station for assistance. A party of 7 whalers, who were walking along the beach from their camp at Lady's Bay, came across the deserted mining settlement, soon after shots were

exchanged. Seeing some people a few hundred metres away in the bush, who they thought were the miners, two of the whalers – William Cook and Yankee – went into the bush to investigate. Within 5 minutes of them leaving, two shots rang out.

## ALL OUT WARFARE

The Tasmanian Aborigines set up an ambush for Mr. Watson and his son-in-law William Inman. The two whalers William Cook and Yankee stumbled into the ambush prepared for Watson and Inman. Cook dropped dead as a result of a gunshot through the ear; Yankee shot in the side, was killed by a number of blows to the head. Samuel Evans, one of the whalers who was concerned about the missing men, organised the rest of the party to look for them. They walked into the path of Watson and Inman, who concerned about the approaching men, shot over their heads. One of the whalers, who continued the search for the men, stumbled across their bodies on the beach. The whalers and miners saw the party of Aborigines who killed the whalers on a nearby hill. They chased them, but soon lost sight of them. They returned burying the bodies near the mouth of the Powlett River.

Superintendent La Trobe had been notified two days earlier - the 4<sup>th</sup> of October 1841 - that a party of Aborigines had robbed Mossies station at Westernport. La Trobe decided that same night to send troops to deal with the situation. Mr. Powlett, the Commissioner of Crown Lands (who came to Westernport to sell off the Aborigines land to the squatters) and two police joined Lieutenant Samuel Rawson of the 28<sup>th</sup> Regiment who had been sent to Westernport in early October to protect the squatters from Aboriginal attack. On the 10<sup>th</sup> of October, four days after the killing of Yankee and Cook, Rawson and Powlett were notified about their deaths. They left in an open row boat hoping to quickly find the Tasmanian Aborigines. By this time, 14 armed men were involved in the hunt for the Aborigines. After a fruitless day of searching, they decided to return to Melbourne to find Aboriginal trackers to help them in their hunt.

On their way back, they called in to see Mr. Westaway and his labourers, who told them they had been shot at during the night. The Tasmanians had stolen guns and ammunition and 22 pounds in banknotes. Tunnerminnerwait, hoping to drive Westaway's workers from Westernport, burnt the notes realising the timber cutters would leave their employer if he could not pay them. It took Rawson and Powlett five days by boat to get back to Melbourne. They called in at all the squatter camps they came across raising the alarm about the Tasmanian Aborigines.

On the 29<sup>th</sup> of October 1841 almost a month after the first raids had started, the *Port Phillip Herald* carried the first report about the raids across Dandenong and Westernport that were being conducted by the heavily armed Aborigines.

Rawson and Powlett arrived in Dandenong on the 29<sup>th</sup> of October to meet up with a party of 6 policemen, 6 black trackers, Mr. Thomas - the Aboriginal Protector for the Melbourne area, a cart, a tent and a few squatters. The Tasmanian Aborigines had travelled from Cape Patterson back to Dandenong on the same day the search party arrived to steal more guns, ammunition and supplies from the squatters.

On the 30<sup>th</sup> of October, the Aborigines laid down the gauntlet to the pursuing party, leaving messages at a station that they would not be taken alive and would fight to the last man and woman. By now, the police party had swelled to 18 men on horseback and 6 on foot.

## **FUN AND GAMES**

Powlett and his party, guided by the black trackers, soon came across the Tasmanian Aborigines footprints. The Aborigines had robbed a station on their way to Westernport stealing 2 guns, pistols and 8 canisters of powder under the nose of the posse. The following day, the party hunting the Tasmanians had swelled to 24; 18 were mounted on horseback. The Aboriginal black trackers had been given muskets and pistols when they became increasingly nervous about following fresh tracks into the bush. Hearing 2 gun shots and seeing people less than 200 yards away, the party rode across what first appeared to be a flat open piece of land. Within a few minutes, the horses were floundering in a swamp. They were surprised the Tasmanian Aborigines had not taken advantage of their predicament by firing a few shots into the sinking crowd of horsemen.

Mr. Hobson, one of the pursuers, showed some initiative when he mounted a tree and took a pot shot at somebody he saw hiding in the scrub. Surrounding the area, the posse demanded the intruders surrender or be shot. Imagine their surprise when one of the local squatters Mr. Andersen and 4 of his servants (who had been shooting swans) came out of the scrub with their hands held above their heads. Andersen and his party joined the posse; as Andersen was one of the group which had found the murdered whalers 4 weeks previously.

Somehow this disorganised group stumbled across the Tasmanians. They easily outran their mounted pursuers by fleeing across a swamp. The Aboriginal black trackers, concerned about their safety, refused to continue the hunt. Powlett and Rawson soon realised they could not continue without the help of black trackers. They decided to disband the group. Powlett returned to Melbourne on the 2<sup>nd</sup> of November, Rawson decided to stay at his station for a few more days. Becoming increasingly concerned about the Tasmanians continued presence in the area, he returned to Melbourne on the 8<sup>th</sup> of November. On the following day, the *Port Phillip Herald* reported the merry chase Powlett, Rawson and their posse were led on by the 5 Tasmanians.

The Aboriginal Protector Thomas accompanied by 3 black trackers continued to search for the Tasmanians'. He located their camp near Westernport. Powlett and Rawson organised a new hunting party. They met at Dandenong 3 days later. Receiving information from Thomas that he had located the Tasmanians camp, they set out for Westernport adding new people to their posse as they called in at stations for help. The inability of the military and the police to locate and arrest the Tasmanians had caused consternation in the district.

Many of the stations on the Mornington Peninsula were deserted; their owners retreating to the relative safety of Melbourne. On the 16<sup>th</sup> of November, Corporal Jennings and 8 soldiers joined the new posse. The following day 9 mounted police, 9 soldiers, 4 Aboriginal black trackers and 6 settlers all armed to the teeth, made their way to the camp where the Aboriginal Protector Thomas and 4 more black trackers were waiting.

## **END GAME**

The Tasmanians' arrived at Anderson's station on the 17<sup>th</sup> of November. They waited till the men had left and then entered the house. Finding 2 women and a child in the house, Tunnerminnerwait led them out and stood guard over them while Maulboyheenner ransacked the house. The Tasmanians' took all the weapons they could find and all the supplies they needed. In all the raids they carried out, they never harmed any women or children. The men that were shot in the raids they carried out were usually shot in the heat of battle. They burned down the houses they raided to drive the squatters back to Melbourne.

Although they hoped the local Aborigines would be inspired by their example, not one joined their little group. If it wasn't for the assistance of the Aboriginal black trackers who became involved in the chase because they were promised they would receive guns and provisions for their help, it is highly unlikely the Tasmanians' – survivors of a bitter and brutal 33 year war against the British in Tasmania – would ever have been captured. Ironically the black trackers received a few trinkets and blankets for their troubles, although they had been allowed to carry guns during the chase.

The following day, the pursuit party which had now grown to 29 men on horseback, arrived at Anderson's station. They were confident that with the help of the black trackers they would soon overtake the 2 men and 3 women travelling on foot who had caused consternation and panic among the squatters in the Dandenongs, Westernport and the Mornington Peninsula. The following day, they were camped less than a mile from where the Tasmanians' had set up their camp. That evening, William Thomas, the Assistant Protector, volunteered to negotiate with the Tasmanians. The rest of the party, believing the end of the chase was near, refused Thomas permission to negotiate.

Soldiers, police, squatters and black trackers woke up about 4am on Saturday the 20<sup>th</sup> of November. They moved out in single file, armed to the teeth, hoping to end the Tasmanians rebellion by daybreak. They walked about a mile through a lagoon and across sand hills until the Aboriginal trackers pointed out the smoke coming from the Tasmanians fire that was less than 30 metres away. The party was standing on top of a sand hill that overlooked the camp that had been set up in the gully below them. They formed a semi circle, the men less than 2 metres away from each other, had advanced to within 2 metres of the camp fire, when all hell broke loose. The Tasmanians dogs rushed at the posse, the Tasmanians tried to slip into the scrub amid a hail of bullets. Samuel Rawson, believing all the Tasmanians were dead, entered the camp. He found 2 of the women hiding under blankets. After putting handcuffs on them, he put a gun to their heads and forced them to call out to those in the scrub to surrender. A woman emerged from the scrub covered in blood. She had sustained a superficial wound to her head; the only casualty from the 30 to 40 shots that were fired at the heads of the sleeping Aborigines. One of the men who tried to escape from the scrub was captured, while the other man who had made his escape, decided to return when the women who had guns trained at their heads, pleaded for him to return.

The 5 freedom fighters were handcuffed and had chains put on their legs. While they quietly awaited their fate, the ravenous soldiers, black trackers, police and squatters made cakes from the 60 pounds of flour and sugar the Tasmanians had with them. The prisoners were marched through the bush and arrived in Melbourne 6 days later. They were taken before the Police Magistrate Major St. John who took evidence from 12 witnesses. He committed Tunnerminnerwait and Maulboyheenner for the murder of William Cook and Yankee, and the 3 women Pyterruner, Truganini and Planobeena as accessories before and after the fact.

### **JUDGE WILLIS**

The five resistance fighters were put on trial for the murders of the whalers on the 20<sup>th</sup> December 1841 before Judge John Walpole Willis. In 1841, 5 years after the establishment of Melbourne, the first Supreme Court was housed in a temporary structure at the corner of King and Bourke Streets. Judge Willis arrived at Port Phillip on the 9<sup>th</sup> of March 1841. Before Willis' arrival, serious offenders who were committed for trial had to be sent with military and police escorts back to Sydney for trial. The expense involved in this undertaking gave Governor Sir George Gipps the excuse he needed to send Judge Willis - the most quarrelsome and difficult member of the NSW Supreme Court - to preside over the newly established Supreme Court at Port Phillip. To say Willis had a colourful past is an understatement.

Judge Willis left many bitter memories in his wake. His first appointment to the Court in Upper Canada in 1827 ended when facing a revolt by the locals; he was removed by the British Colonial Office. Using his extensive contacts in

England, he was able to obtain and hold onto an appointment on the British Guiana Court from 1831, despite being removed from the Court in Upper Canada. His attempts to return to the British Guiana Court after 12 months sick leave in England were bitterly opposed by the shell shocked citizens of that community. Instead he was sent to sit on the Supreme Court in Sydney in 1837.

When he arrived, true to form, he took an immediate dislike to the NSW Chief Justice Sir James Dowling. Judge Willis had a habit of sitting in the court when Dowling delivered his judgments, loudly exclaiming "*Why does he not get his facts right?*" and "*Did you hear the like*". When the decision was made to open up a Supreme Court at Port Phillip, Governor Gipps took the opportunity to transfer the Judge - 'who some people think cracked' - to Melbourne.

Governor Gipps was wrong in believing that sending Judge Willis to Melbourne would solve his problems. Arriving in Melbourne, Willis continued his sparring with the NSW Supreme Court, making decisions that challenged the legitimacy of British rule in Australia. In September 1841, 3 months before the trial of the 5 Tasmanian freedom fighters, a local Aborigine called Bonjon appeared before Justice Willis on a charge of murdering another Aborigine.

In 1840, the squatters who had established the settlement at Port Phillip were concerned about the large number of Aborigines who were camping on the Yarra banks. The Aborigines had come to the settlement to receive the rations they had been promised. In October 1840, in a show of force, 200 Aborigines were arrested after a dispute in the camp led to the death of an Aborigine. By the time Bonjon appeared before Judge Willis, the other 199 had 'escaped'.

Bonjon's Defence Counsel made the point that "*Port Phillip having become appended to the British Crown by occupancy, and no treaty had been entered into by the natives, they were not subject, nor had they submitted themselves to the British Crown*". Judge Willis agreed with the Defence Counsel, citing examples in NZ, Ireland and the East Indies, making the point that Aborigines cannot be considered foreigners in their own lands. He ruled that Aboriginal law had legal force in Australia in matters concerning the relationship between Aborigines. Judge Willis ruled that he did not have the authority to try Bonjon for a crime he had committed against another Aborigine, and set him free.

Judge Willis' decision was overruled by the NSW Supreme Court. In May 1842, the Colonial government in London stepped in when Judge Willis stated "*My opinion although overruled, still stays the same*". The law that Judge Willis administered in Port Phillip was based largely on the laws of England. His interpretation of those laws in the Bonjon case was overturned because his decision called into doubt the legality of the British colonisation of Australia.

## LEGAL MANOEUVERINGS – PART I

Judge Willis' magnanimity towards Aborigines did not extend to conflicts between the colonisers and Aborigines. George Bolden, squatted an area near the Hopkins River in the Western District. When an Aboriginal man, woman and child attempted to cross 'his' property to reach a camp set up by Aboriginal Protector - Charles Sievwright - for Aborigines in the Western District, he attacked them on horseback with whips. Tatkier – the Aboriginal man acting in self defence, tried to pull Bolden off his horse; Bolden shot him in the stomach and beat the Aboriginal woman to death. The child escaped to Sievwright's Aboriginal camp. Charles Sievwright sickened by what had happened, reported the matter to Superintendent La Trobe. Bolden was put on trial, but was acquitted on the direction of Judge Willis. The jury, unhappy with Judge Willis' decision, told Bolden – *"he did not leave the court without a stain on his character"*.

In his reasoning for the acquittal, Judge Willis stated:-*"there being no reservation in the grant, lease or licence from government in favour of the Aborigines, the possessor had also a right to turn off by all lawful means any person, whether white or black, who should trespass on his run"*. Superintendent La Trobe shocked at Willis' judgement, asked Governor Gipps whether the legal principle established by the case was *"sound"* and *"incontrovertible"*. He believed there was *"a manifest inhumanity"* in attempting to exclude all Aborigines from the land. La Trobe was concerned that Willis' judgement meant that the squatters would recommence massacring the Aboriginal population. *"It might induce a return to the lamentable scenes of 1839 and the earlier part of 1840"* – (La Trobe was alluding to the numerous massacres that occurred during this period as the squatters fanned across Victoria). Willis clearly stated that, unlike the Bonjon case, the court had jurisdiction in matters of aggression between blacks and white.

On the 20<sup>th</sup> of December 1841, the 5 Van Diemens land Aborigines appeared before Judge Willis – a man described by Governor Gipps in 1843 as – *"an apologist for the cruellest practices by some of the least respectable of the settlers on the Aborigines"*.

## LEGAL MANOEUVERINGS - PART II

If the defendants were unable to understand English or had been ignorant of Christian values, there is a slight possibility they would have been spared prosecution. Unfortunately Robinson's 'civilising' influence and his adamant assertions they had knowledge about the principles of religion, and knew right from wrong, sealed their fate. Judge Willis always believed they were intelligent enough to understand court proceedings and didn't believe *"the humanity of the law that extended to an idiot or a lunatic"* extended to the 5 Aborigines standing trial in his court.



In 1841, Aborigines were not equal in the eyes of the law. They could not testify or lay charges in the courts. The only way they could achieve even a modicum of justice was for a white witness to testify on their behalf. Considering the crimes against humanity that were being perpetrated against Aborigines were conducted in an undeclared frontier war, where those squatters doing the killing were the only white witnesses, the ruling against Aboriginal evidence ensured that crimes committed against Aborigines never made it to the colonial courts.

Five Aborigines were executed in Melbourne, for crimes against whites between 1842 and 1848. Only one white man was convicted in court for killing Aborigines during this period and he only received 2 months incarceration for his crime.

Considering the legal gun was loaded against the Aboriginal defendants because they couldn't call Aboriginal witnesses to speak in their own defence or were even allowed to tender an alibi, Redmond Barry – the Defence Counsel for Aborigines for the Port Phillip region - mounted a spirited defence on their behalf. Just in case the name Redmond Barry seems familiar – the young Irish Aboriginal Defence Counsel is the same Redmond Barry who as a Judge, presided over the trials of a number of the Eureka miners charged with High Treason in 1855 and sentenced Ned Kelly to hang almost 30 years later in 1880, but that's another story.

As a public defender, Redmond Barry canvassed a number of interesting arguments in Judge Willis' court, even arguing against the legal validity of the court proceedings.

### **LEGAL MANOEUVERINGS – PART III**

Redmond Barry began by arguing the defendants' were not naturalised subjects of the Queen and half of the jury should be composed of "*people not subjects of the Queen*". Judge Willis scoffed at this novel idea and refused to grant Barry's request. The Crown Prosecutor, faced with the dilemma that one of his main witnesses Samuel Evans – one of the whalers who 'witnessed' the whalers murders had not turned up to the trial - wanted to drop the charges of murder against the defendants as the only evidence the prosecution had was the defendant's own confessions. Judge Willis, in no mood to accept this argument, ruled the murder charge would stand because he accepted Truganini's pre trial confession that Tunnerminnerwait and Maulboyheenner were responsible for the murders of the whalers.

As the trial progressed, Barry highlighted the evidence was largely circumstantial and the confessions should not be accepted because they were from people "*in a state of terror*". He attempted to win the jury's sympathy by highlighting what every settler in the colony knew, but refused to acknowledge:- "*We must remember the course of their destruction, at first insidious and private, then open and declared, which eventually swept a*

*numerous nation off the face of their native country and transported the remnant to a foreign to them, distant shore”.*

Barry asked the jury how a people treated in this manner could be asked to “*quietly forget*” what had happened to them, and be expected not to exact revenge for their dispossession and misery. He was attempting to get the jury to put themselves in the place of the defendants, hoping the very people who had been responsible for their dispossession and murder would be able to identify and sympathise with the Aborigines.

As there were no white witnesses to the murder, the prosecution’s case swung on the confessions of Maulboyheenner and Truganini. Tunnerminnerwait and Pyterruner and Planobeena made no confessions when captured and while they were held in custody. Evidence which directly implicated Truganini in the murder of the whalers was ignored by the court. The defendants’ inability to give evidence or be cross examined meant that the evidence given by Powlett, Watson and Robert Robins (one of the whaling party) about Tunnerminnerwait’s and Maulboyheenner’s admissions had a greater influence on the jury than it should have.

George Robinson was called on to give character references for the defendants who he had known for 13 years. He praised Tunnerminnerwait and told the court his conduct had always been “*exemplary*”. He told the jury that Maulboyheenner - as Langhorne’s and Bacchus’ servant - had accompanied them on an overland journey from Melbourne to Adelaide and back and had saved Langhorne’s life when they were attacked by Aborigines along the Murray. Robinson told the jury that Truganini had saved his life in Tasmania and made the important observation:- “*I have never found these persons wanting in humanity*”. Robinson sealed the defendants’ fate when he told the court the accused understood the principles of religion and knew right from wrong.

## THE VERDICT

In his closing address, Barry highlighted the circumstantial nature of the evidence and the inappropriate manner by which the confessions were obtained. He pointed out that not one witness could identify any of the accused. Barry urged the jury to acquit the defendants of the crimes they were charged with.

Late Monday night on the 20<sup>th</sup> of December 1841 the jury came to their decision in just 30 minutes. They found Tunnerminnerwait and Maulboyheenner guilty of murder and acquitted Truganini, Pyterruner and Planobeena of all charges. The jury moved by Barry’s arguments, recommended mercy for the men “*on account of general good character and the peculiar circumstances under which they were placed*”.

The next morning, the 5 were returned to court for sentencing. Judge Willis discharged the 3 women into Robinson's care and then addressed the accused:- *"By the confessions of Bob (Maulboyheenner) and the statements of Truganini, there can be no doubt of your guilt..... the punishment that awaits you is not one of vengeance but of terror..... you will be taken to the place of execution and be hanged by the neck until dead"*.

The newspapers applauded Judge Willis' sentence. The *Port Phillip Herald* thundered against the system of Aboriginal protectors. It seems the broadside that is regularly launched against 'bleeding heart liberals' and the 'black arm band brigade' today, was exactly the same type of garbage that was peddled in the media in 1841. Referring to the hanging of 7 shepherds for the Myall Creek massacres in NSW a few years earlier, the *Port Phillip Herald* pointed out *"whilst the laws protect the blacks, the white man's blood must remain unavenged"*.

Not to be outdone, the *Port Phillip Gazette* highlighted that the case against the 5 Tasmanian Aborigines showed the Aboriginal people's *"ineradicable love of destruction and as a consequence, the imperative necessity of coercion in their management"*.

The next day Willis wrote to Superintendent La Trobe reporting he had released the women into Robinson's care and that the men's property on Flinders Island (the sheep they had been given as a reward for helping Robinson in Tasmania) should be forfeited to the Crown. Willis stated some should be given to the inhabitants of Flinders Island and part should be sold off to provide a reward to the civilians who were involved in the Tasmanian Aborigines capture.

La Trobe forwarded the trial notes onto Governor Gipps in NSW regretting he was unable *"to advance anything in favour of the two male convicts, now in goal are waiting his Excellency's decision in any degree calculated to strengthen the recommendation of the jury, or to lend force to the natural disposition, which I am sure his Excellency feels in every case, to exercise the prerogative of mercy delegated to him, whenever it be possible for him to do so"*.

The Sydney authorities acted quickly. On the 5<sup>th</sup> of January 1842 the Colonial Secretary wrote to La Trobe authorising the execution of Tunnerminnerwait and Maulboyheenner *"in the usual manner on Tuesday the 20<sup>th</sup> January 1842 or as soon as thereafter as Your Honour may appoint"*. The Deputy Sheriff was authorised by La Trobe on the 13<sup>th</sup> of January 1842 to carry out the executions on Tuesday the 20<sup>th</sup> of January 1842, giving him just 7 days to prepare for Melbourne's first execution.

## **ARCHITECTURAL MARVEL**

The site chosen for the scaffold was a small rise north west of the building that was being built to house the overflow from Melbourne's first jail – the Eastern

Watch House. The jail had four wards, four sleeping cells, three solitary confinement cells and two small airing yards where prisoners were occasionally taken out to exercise. Prisoners were not allowed to receive letters, food, clothing or visits - although these restrictions did not seem to worry the more wealthy prisoners, as the Deputy Sheriff who was responsible for the prison, the chief gaoler, the three turnkeys and the clerk and messenger who ran the prison, were not adverse to taking bribes to augment their miserable wages.

Tunnerminnerwait and Maulboyheenner spent their last days in these quarters, having to cope with the cramped conditions, lack of sanitation and the rats that shared the accommodation with them. The two men awaiting their execution were not even afforded the luxury of joining the gangs of men in irons who were taken out of the walls each day to work on a treadmill that constantly broke down.

Eighteen convicts competed for the honour to win the post of Public Executioner. Some wanted the heads of the Aborigines as a bonus payment for their services – as Aboriginal heads were attracting a good price from ethnologists in England. A convict named John Davies won the contest. He had been transported for life for sheep stealing in 1831. Arriving as a convict in Sydney, he was sent to Melbourne prison in 1840 to work as the prison's messenger. Davies had been tempted by 2 inducements – the new Executioner would receive a ticket of leave (which enabled him to work locally) and 10 pounds (a fortune for a convict). This 5 foot 4 inches, 46 year old convict with the ruddy face and hideous grin, who had no experience with executions, was to take centre stage at the execution. The prison Scourger (the convict who carried out the whippings) John Styleman – was appointed as Davies' assistant.

The Clerk of Works – James Rattenbury – was responsible for the erection of the scaffold. The scaffold described as a *“narrow shaky stage that barely afforded standing room for two prisoners and their executioner”* consisted of 2 heavy uprights sunk into the ground about 12 feet apart, a beam was nailed on top, around which the ropes were tied. Six feet above the ground, short planks supported the ‘drop’ – another plank hinged at one end and secured at the other by a conglomeration of wood and bricks, which upon a signal from the hangman, could be tugged away by a rope - completed this architectural marvel. This remarkable invention was reached by 2 ladders.

## CARNIVAL TIME

On the eve of the execution, Maulboyheenner refused his supper; Tunnerminnerwait on the other hand *“ate heartily”* and *“smoked his pipe with the utmost tranquillity”*. The next morning Tuesday the 20<sup>th</sup> of January 1842 people began arriving at the gallows trying to find the best spot to view the hangings. At 8am, the prisoners emerged from the Eastern watch house dressed entirely in white, including white calico caps. They were herded into a

cart that thankfully, much to the spectators' annoyance, had cloth stretched around it to give the condemned men some privacy. Mounted and border police led the cart through the city to 'gallows hill'.

The *Port Phillip Herald* reported:- *"an immense crowd..... between 4,000 and 5,000 people, the greater part of whom were women and children. From the laughing and merry faces which were assembled..... the scene resembled more the appearance of the racecourse than a scene of death. The walls and body of the new goal were literally packed with spectators awaiting the awful scene as if it were a bull bait or a prize ring"*.

A quarter of Victoria's white population had come to see the hanging. The detachment of infantry who paraded in their Sunday best, tried to keep some order in the crowd. Aborigines had climbed into the surrounding trees to witness the executions. The cart eventually drew up at the gallows. The *Port Phillip Gazette* reported that the condemned men's arrival was met *"in explosions of uproarious merriment"*. Their arrival was followed by a 20 minute *"farce of prayer reading"* which was interrupted with calls *"to cut it short"*. By this time, Maulboyheenner had become extremely agitated *"his moans"* reported the *Gazette* *"were terrible to hear"*. *"Bob's (Maulboyheenner's) feelings broke out in the most heart rending groans: the terrified and piteous looks he threw around him pressing against everyone that spoke to him as if to catch some chance of salvation, was terrible to witness: he trembled violently"*.

James Dredge, one of the assistant Aboriginal Protectors, wrote in his diary: *"The executioner tied their hands before they went up the ladder and chains hung from their ankles, making it nearly impossible for them. The poor wretches in getting up the ladder, deprived the use of their hands, were obliged to cling to the bars with their knees and chins and be partly dragged and be partly pushed up to slaughter"*.

Tunnerminnerwait calmly ascended the flimsy ladder. Maulboyheenner was dragged up the ladder after Tunnerminnerwait had reached the scaffold. The crowd, seeing Maulboyheenner shaking violently on the scaffold, went quiet. The executioner fixed the nooses, pulled down their night caps over their heads and hurried down the ladder. As the preacher uttered the key words *"in the midst of life we are in death"*, the executioner and his assistant pulled the rope.

The 'drop' only descended half way and a terrible scene followed: *"thus the two poor wretches got jumbled and twisted and writhed convulsively in a manner that horrified even the most hardened"*. The executioner and his assistant did not seem to know what to do. A bystander rushed forward and knocked away the obstruction. Tunnerminnerwait died instantly. Maulboyheenner's noose had become displaced and he kept struggling for a number of minutes before he was strangled to death. The carnival mood that

dominated the scene before the execution evaporated. The crowd angrily turned on the executioner who “*grinned horribly a ghastly smile*”.

The bodies were left on the scaffold for the regulation hour. They were cut down from their nooses, placed in coffins and taken to the Aboriginal section of the cemetery - now Melbourne’s thriving Victoria markets. On the way to the cemetery, their clothes were removed from the bodies (an executioner’s perk). The Chief Aboriginal Protector Robinson was waiting for their coffins at the cemetery beside their open graves.

John Davies – the executioner – soon found that the NSW government had little interest in honouring the Port Phillip Authority’s promises to him (he had been promised 10 pounds and a ticket of leave – which enabled a convict to obtain employment locally) for his services. After an initial refusal, he was only given a “*gratuity*” of 5 pounds for his “*work*”. He was not granted a ticket of leave till the 1<sup>st</sup> of December 1843, almost 2 years after he had carried out the executions.

### **WHAT HAPPENED TO THE OTHER TASMANIANS?**

Robinson was upset that Judge Willis had made him personally responsible for the 3 women who were acquitted of the charges laid against them. La Trobe finally agreed to pay for the remaining Tasmanian Aborigines to be returned to Flinders Island. Truganini, Planobeena and Pyterruner – ‘David Bruny’, ‘Walter Arthur’ and ‘Jack Allen’ a Tasmanian Aborigine who had been brought across from Tasmania by Batman in 1835, were returned to Flinders Island. ‘Peter Brune’ and ‘Johnny Franklin’ remained in Victoria. Nine of the original party of 16 had died during the 3 years they were at Port Phillip.

Those that returned to Flinders Island sought better living conditions and organised the Flinders Island community to petition Queen Victoria in 1846 to grant them some land and remove the European Superintendent from the Island. The Colonial office in London closed down the Flinders Island community as a result of their protests and returned many of the Flinders Island Aborigines to the mainland. In 1847, 45 Aborigines were removed from Flinders Island and transferred to Oyster Cove outside Hobart. Oyster Cove had been abandoned as a convict settlement because of the harsh and damp conditions there. By 1856, 29 of the Tasmanian Aborigines who had been transferred to Oyster Cove had died mainly as a result of respiratory diseases. By 1868, only 3 remained at Oyster Cove.

Truganini was the last survivor at the Oyster Cove community. Aborigines who had remained on the islands in Bass Strait, living in sealers camps, invited her to live with them in 1872. She refused, preferring to live near her traditional lands. She died in 1876 aged 64 – ‘*the last of the Tasmanians*’ in the public’s eye. Two years later, her body was dug up by the Royal Society of Tasmania and put on public display for almost a century. Despite protests from the Tasmanian Museum, her bones were finally cremated on the 1<sup>st</sup> of

May 1976 and her ashes were scattered on her tribal fishing grounds by members of Tasmania's thriving Aboriginal community.

The struggle between squatters and Aborigines in Victoria intensified over the next few years. Hundreds, possibly thousands, of Aborigines were shot, clubbed to death and poisoned. Their bodies were thrown over cliffs, chopped up and buried or cremated as the squatters did not want any evidence of their handiwork to be found. Sheep rapidly replaced the Aboriginal people that had lived in harmony with nature for over 40,000 years.

A Victorian Aboriginal population of over a 100,000 had been decimated by European introduced disease before the first squatter put a foot in Victoria. Only about 20,000 Aborigines had survived the introduction of European diseases when Batman 'signed' his dubious treaty with the Aborigines in 1835. Within 25 years of white colonisation, the Aboriginal population had been reduced to around 2,000.

Tunmerminnerwait's and Maulboyheenner's execution was followed by the execution of 3 European bushrangers – Ellis, Jepps and Fogarty – who were publicly executed on the 5<sup>th</sup> of June 1842.

On the 5<sup>th</sup> of September 1842, Figara Alkepurata (Roger the Russian) an Aboriginal man from the Port Fairy region was publicly executed for the murder of Patrick Codd - a squatter who had a history of murdering Aboriginal people. Although there was a great deal of doubt about who committed the murder, it seems an Aboriginal - any Aboriginal - had to be hanged to set an example to Victoria's Aborigines.

Redmond Barry eventually became a Victorian Supreme Court Judge. He was the Judge who sentenced Ned Kelly to death. He died six days after the execution of Ned Kelly on the 11<sup>th</sup> of November 1880.

In 1847, John Davis, the hangman, was working as a self employed shoemaker in Brighton in Melbourne.

Judge Willis was removed from office for incompetence on the 24<sup>th</sup> of June 1843. He returned to England and lived the life of an English country Squire. He died peacefully in his sleep in 1877.

## **LEST WE FORGET**

The interpretation of history changes with each generation. The difficulty about interpreting Australia's early colonial history is that only the colonisers left written records about what occurred. These records were incomplete. In many cases, you have to read between the lines to find out what really happened. The story of Tunmerminnerwait, Maulboyheenner, Pyterruner, Truganini and Planobeena is a great Australian story that all Australians should be familiar with. It is a love story, a story of survival against all the odds, a story of armed resistance, rebellion, compassion, brutality and most importantly of all – hope.



It is easy to dismiss the group as a bunch of cold blooded murderers, arsonists and thieves, but their behaviour tells another story. The Van Diemens Land Aborigines knew what was in store for the Victorian Aborigines. Survivors of a 33 year war in Tasmania that saw the Aboriginal population reduced from over 10,000 people to a little under a 100, they knew how to use firearms and how to survive in the bush. Their struggle was carried out with a great deal of compassion. The Tasmanians believed that by taking up arms against the squatters, they would be able to ignite an Aboriginal revolt that would drive the invaders into the sea.

The way they conducted their guerrilla campaign highlights they had motives that went far beyond survival and vengeance. They collected and stockpiled firearms whenever they could; they stockpiled food, they burnt down the houses they raided driving the squatters in the Port Phillip region back to Melbourne. They understood the only way to drive the squatters out of the country was by using their own weapons against them. Their struggle was a compassionate one; women and children and many of the squatters were spared. The killing of the two whalers was clearly a case of mistaken identity, as they were believed to be from a party that was chasing the Tasmanians. Those squatters that were wounded were injured in the heat of battle and were not killed.

The Tasmanians capture only occurred as a result of the help of local Aborigines. The colonial authorities had a great deal of difficulty finding black trackers, as the local Aborigines supported the Tasmanians war against the squatters. On several occasions, the Tasmanians were helped by local Aborigines, and on one occasion local Aborigines were involved in the attack on a hut. Ironically, the local black trackers who were lured into the hunt with promises of guns and goods only received a few knick-knacks once the Tasmanians were captured.

The story of Tunnerminnerwait, Maulboyheenner, Pyterruner, Truganini and Planobeena is a story of revolt, armed resistance and survival. It is a story that is as pivotal to the creation of 21st century Australia as Gallipoli and Kokoda were. To acknowledge Gallipoli and Kokoda and ignore their struggle is our loss as a people and a nation.

## **LEST WE FORGET**

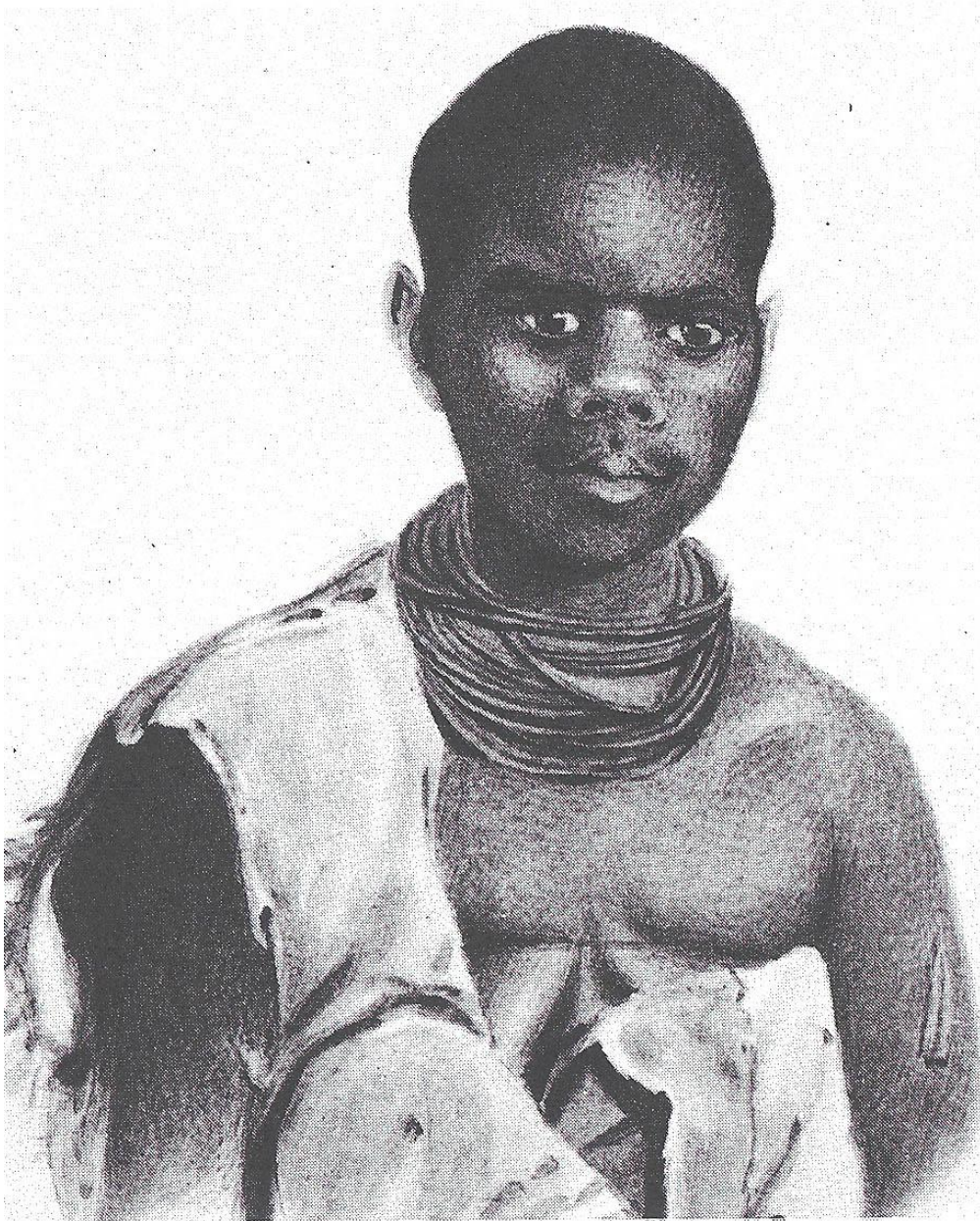
### **SELECTED BIBLIOGRAPHY:**

**'JACK OF CAPE GRIM'**  
Jane Roberts 1986  
Greenhouse Publications – Melbourne  
ISBN 0 86436 007 X

**SOURCE OF ILLUSTRATIONS:**  
La Trobe Picture Collection  
State Library of Victoria

**'1842 – THE PUBLIC EXECUTIONS AT MELBOURNE'**  
Compiled by Ian MacFarlane 1984  
Victorian Government Printing office  
ISBN 0 7241 8294 2

**Thanks to Ruth Martin for proof reading the final manuscript**



*Truganini*



*Maulboyheenner*