1838 Eleven men are tried for the slaughter of Aborigines at Myall Creek

AN EYEWITNESS HISTORY OF AUSTRALIA
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EDWARD SMITH HALL
Sydney Monitor, 19 November 1838

Edward Smith Hall has been called the 'father' of Australian civil liberties. He edited the Sydney Monitor, *campaigned strenuously against the repressive rule of Governor Ralph Darling, and did more than any other individual to secure three major reforms: trial by jury, freedom of the press and representative government.*

He did not stop fighting, using the one weapon he had: his eight-page, shilling-a-copy, once-a-week newspaper. He was the champion of convicts, and of freed prisoners — 'I consider the free and the freed as one class, possessing equal rights,' he wrote. He exposed corruption of officials and magistrates, he ridiculed the actions of Darling's chief supporter, Archdeacon Scott, he condemned the Governor's censorship of the press. Not surprisingly, Hall was convicted often of criminal libel — always by military juries, hand-picked by the Governor. As a result of these convictions, he spent more than a year in Sydney jail.

Rusden's Official History of Australia *records that: 'the Governor directed the libel law to be put in force with great rigour, and the proprietors of both the* Monitor *and the* Australian *newspapers were prosecuted, civilly and criminally, and both were heavily fined and imprisoned.'*

One of Hall's great triumphs came when Darling — mainly through the efforts of Hall, William Charles Wentworth and Dr Wardell — was recalled in 1831; Hall had received advance notice of the recall, and Darling learned of it in the columns of the Monitor.

Hall demonstrated his zeal as a crusading editor after the outrage which has become known as the Myall Creek Massacre. In June of 1838, twelve stockmen employed in cattle and sheep stations along the Big River in northern New South Wales banded together to attack a party of forty Aborigines peacefully encamped beside a homestead on the Myall Creek station. Twenty-eight of them were cruelly and deliberately murdered, without excuse and without mercy; men, women and children were tied together and then cut down or shot in cold blood.

It was, as Hall pointed out in his Monitor, *'a deed for which we cannot find a parallel for cold-blooded ferocity, even in the history of Cortez and the Mexicans or of Pizarro and the Peruvians'. The* Sydney Herald *(which became the* Sydney Morning Herald *eleven years after its inception in 1831) did not share such concern. Its leading articles, most of them written by the Rev. John Garvie, made it clear that it considered the blacks as pests, deserving of no more consideration than the dingo or the rat.*

On 15 November 1838, the trial of eleven men charged with the Myall Creek slaughter took place in the Supreme Court at Sydney before the Chief Justice, Sir James Dowling, and a civil jury. The Attorney-General, John Hubert Plunkett, prosecuted, and argued that 'the life of a black is as precious and valuable in the eyes of the law, as that of the highest noble in the land'. The jury took just fifteen minutes to acquit the eleven accused. It was a popular verdict, one which was seen as a triumph for common sense, progress and for the united stand of the landowners. It was not popular with Edward Smith Hall. This is what he wrote about the case on 19 November 1838:

The trial of eleven men for the slaughter of a company of Aborigines of both sexes and all ages, from sucking infants to hoary hairs, took

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place on the 15th inst., when they were *acquitted.*

From the violent articles published by the Colonial press during the last months against the black natives, we had been impressed with the belief, that not only had these slaughtered aborigines committed some wanton murders on our stockholders residing in their neighbourhood, but that their slaughter had been perpetrated in retaliation for such murders.

But in all the evidence given on the trial, our readers will perceive, that the eight-and-twenty persons put to the sword by the eleven stock-keepers are not accused of committing any personal violence whatever, at any time, either on these eleven men, or on their neighbours. The only thing laid to their charge by the murderers , is, that they had committed a "depredation" on some sheep *once*; and had once "rushed" the cattle in charge of *one* of the prisoners. The nature and extent of the "depredation" on the sheep is not explained. With respect to "rushing" of cattle, our readers lately arrived in the Colony will please to understand, that cattle when much left to themselves, "rush", that is, make off at full gallop to a great distance, and into the glens and passes difficult of access to their keepers, on falling in with either blacks or whites. There is however an exception to this rule as regards such cattle as are inspected once a fortnight or so, by their stock-keepers. On seeing their own keeper they will not "rush", unless his visits have been very few and far between. But if cattle see the *Blacks*, they are apt to rush on all occasions, even cattle that are reckoned to be pretty tame. If therefore the "rushing" of the cattle be in future to be considered as an apology for putting the Blacks to the sword, the whole race must soon be exterminated, inasmuch as they get their living, not by staying at home, but by hunting in their native wilds.

But the company or tribe of blacks put to the sword by these eleven men, had not only been innocent of all personal violence, but they had become domesticated *among these very men*. One of them (Kilmaister) had been the chief cause of their taking up their residence near his hut, and he himself seems to have formed a friendship for them; for, in the evening on his return from his journeys after his cattle, he was in the habit of playing and dancing with their children. One of the witnesses indeed states, that this man always denied being of the party. But the man made no attempt on his trial to prove an *alibi*; and other witnesses swore to him being of the party.

The Blacks, it appears, were residing at the hut of Kilmaister, in peace and confidence as usual, when a party of men, mounted, and armed with swords and pistols, galloped up to the place. From the *manner* of the party, the Blacks, who are by no means so deficient in intellect as they are represented in *books*, perceived danger, and ran for safety into the hut. They were taken out, and tied one by one to a long rope, used to catch cattle by the horns. Perceiving their fate, they began to weep and moan. The women, though tied, contrived to carry their infants in a net slung from their shoulders. Being all secured, men and boys, women, girls, and sucklings, one of the horsemen led the way, with the end of the rope attached to himself or horse. The other ten horsemen divided into two parties of five each, five placing themselves on one side of the rope, one behind the other, and five on the other side. The funeral procession then commenced its march, amid the tears and lamentations of the victims. It must have been a heart-rending sight to see the aged Black, named "Daddy", led to the slaughter, a man of giant-like stature, and probably brave as he was magnificent in his form; the tears rolling down his aged cheeks at the sight of his wife, children and relatives. The children perhaps scarcely knew their sufferings until the sharp steel had passed through their bodies, and put a speedy end to their troubles.

Arrived at the place chosen for the catastrophe, the slaughter began. All, however, we can glean from the evidence is, that two shots were fired. The sword it should seem did the rest without noise, except the cries of the victims. Decapitation appears to have been considered the readiest way of despatching them, from the great number of skulls afterwards found.

After the slaughter, a fire composed of dead trunks of trees, and many yards in extent, was kindled, and the headless bodies and skulls were placed on the pile. But the party did not stay to see the bodies completely consumed. Perhaps they got alarmed, or were compelled to return home in a given time. It would however have been prudent in one or two of the party to remain at the fire another day. In the course of twenty-four hours every skull and every bone, even the little bones of sucking children might, by diligent searching among the ashes, have been found and consumed, and then what yesterday formed eight-and-twenty living human beings, would have been mere heap of ashes.

A report which is gaining ground, that these men were set upon this deed of darkness by others; a deed for which we cannot find a parallel for cold-blooded ferocity, even in the history of Cortez and the Mexicans, or of Pizarro and the Peruvians. The only monsters whose conduct will furnish us with a parallel, is that of the Buccaneers of the West Indies.

It is not improper that these eleven men should have had counsel hired for them. *Three* counsel however was rather a luxurious number. But while three gentlemen, (the *masters* of these men for instance,) might have hired one counsel each *privately*, it is not to the credit of New South Wales that a *general subscription* should have been raised among the magistrates and graziers of Hunter's River, to an amount much larger than even three counsels could demand.

What was there in this murder of eight-and-twenty poor helpless betrayed men, women, and children, that should induce the magistrates and gentlemen of Hunter's River to hire Counsels for the murderers? Do they hire Counsel for other men when tried for murder? How will this fact *tell* in England, in France, in Austria, in Prussia, and in America? For we doubt not but there are men in the two Houses of Parliament who will *now* make the Colony known all over the world – in kingdoms and cities where it was scarcely heard of before.

The verdict of acquittal was *highly popular!* It was with exertion that the Chief Justice could prevent the audience *from cheering* – such was their delight! The aristocracy of the Colony, for once, joined heart and hand with the prison population, in expressions of joy at the acquittal of these men.

We tremble to remain in a country where such feelings and principles prevail. We have always dreaded an oligarchy. . . The verdict of Thursday shews, that only let a man, or a family, be sufficiently *unpopular* with the aristocracy and the prison population of the Colony *conjoined* (in this case), and their murder will pass unheeded. Money, lucre, profit – *these* are thy Gods, O Australia!

In fact, a second trial for the massacre took place before Mr Justice Burton and a civil jury on 27 November. The Crown officers had been unsatisfied with the verdict, and they indicted seven of the accused on charges of murder of Aboriginal children who had not been mentioned in the first trial. The jury found them guilty 'of the murder of a child unknown'; the prisoners appealed, and their plea was overruled by three judges who found that the jury's verdict was just. The seven were hanged on 18 December 1838.

Edward Smith Hall died in 1860. Sir Henry Parkes, Premier of New South Wales, called him 'one of Australia's noblest patriots'. Persecuted almost constantly by authority, he probably fought harder and accomplished more in terms of individual liberty than any other Australian journalist. It is a sad fact that his name is largely unknown today.

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but there were also cases in which many natives were poisoned by arsenic mixed in flour or inserted in the carcass of a sheep. Gipps tried resolutely to quell the troubles, but his actions to safeguard the natives were not sufficient to pacify critics such as the Rev. J. D. Lang, who accused the Governor of having "black blood on his hands".

Inevitably, parties of exploration were frequently in trouble with aborigines, and in numbers of instances lives were lost on both sides. The worst tragedy of the kind was that affecting the party led by E. B. Kennedy from Rockingham Bay to Cape York in 1848; only three of the 13 men of that expedition survived.

Meanwhile, the Secretary of State in London had become greatly concerned about the clashes with aborigines, and, "in the most earnest manner", he reminded colonists of the "solemn nature of the obligation by which we are bound as men and as Christians towards that Race . . ."

How serious the encounters had become may be illustrated by summaries of particular cases.

"The Battle of Pinjarra". When the first white men settled in the Swan River district, W.A., in 1829 they were eager to placate the aborigines (*see* YAGAN). Neither race, however, understood the social systems and property concepts of the other, and very soon trouble developed. Following the murder by natives of a man named Budge and the severe wounding of a man named Morell, public feeling began to rise, and it developed into a demand for punitive action when, in April 1834, Hugh Nesbit, a 19-year-old member of the 21st Regiment Royal Scots Fusiliers, was murdered near Peel Town (Mandurah), about 50 miles south of Perth.

In October of that year the Governor, Sir James Stirling, then recently returned from a visit to England, decided that immediate action was necessary. He led an armed party of 24 police, soldiers, and civilians into the Murray River district, and on the morning of 28th October, when the expedition was near the site of the present township of Pinjarra, it clashed with a band of natives about 80 strong. In the fighting that followed Captain Ellis (in charge of police) was fatally injured by a spear and a constable named Heffron was wounded. The number of natives killed is not definitely known. One early account gave the number as 50 and stated that the bodies were buried in a common grave. A semi-official account put the number at 30. Recently, however, a field-book of Captain J. S. Roe (a surveyor who accompanied the party), has been discovered, and from this it appears that "between 15 and 20 natives were shot dead and eight women and several children secured as prisoners".

Effects arising from the encounter were immediate—the natives of the district dispersed and ceased to cause trouble. Consequently, white settlers regarded "The Battle of Pinjarra" as co[n]clusive, which fact probably gave the incid[ent] greater stature than was really warranted.

An odd sidelight is that the affair inspired th[e] first song to be published in Western Australia; [it] was advertised in the Perth *Gazette* of 15th Nove[m]ber 1834 as "The Jackets of Green", and was sa[id] to be based on the recent "encounter with th[e] natives at Pinjarra".

Faithfull Massacre. Late in 1837 two broth[ers], George and William Pitt Faithfull, left the Hun[ter] River country, N.S.W., with assistants and a con[]siderable number of sheep, for Victoria. When i[n] the region of the Ovens River the party divid[ed] and soon afterwards—11th April 1838—the gro[up] led by an overseer named John Bentley was a[t]tacked by a large number of the sturdy and aggr[es]sive aborigines of the area. The white men we[re] soon overwhelmed and at least 10 and possibly 1[] were killed. No "act of indiscriminate repris[al]" was officially permitted, but severe punishme[nt] was administered to the offending natives b[y] settlers of the district. The site of the massacre [is] now part of the town of Benalla (*see* TREES, HIS[]TORIC). Henry Kingsley used the incident as [a] "ghost story" in his notable novel, *Geoffry Ham[]lyn* (1859)—"Did ye ever hear," asked one of h[is] characters, "how Faithfull's lot were murdered b[y] blacks up on the Merri-merang-bong?"

Myall Creek Murders. The years 1837-8 we[re] troubled ones along the Gwydir and Namoi rive[rs] in northern New South Wales. In September 18[3] two hut-keepers were murdered by aborigin[es] near the Namoi; in November two shepherds we[re] killed near the Gwydir while tending sheep in th[e] bush; and in April 1838 a third hut-keeper wa[s] murdered in the same area.

A general feeling of insecurity gave rise to fe[ar] and on 9th June 1838, during the absence of Wil[]liam Hobbs, superintendent of Henry Dangar[']s Myall Creek station, near the present town [of] Inverell, 12 of the station-hands, mostly assign[ed] servants, seized an opportunity to rid themselve[s] of its cause. At that time a tribe was camped o[n] Dangar's station. The white men forced the native[s] into a hut at gun- and sword-point, bound the[m] and drove them to the outskirts of the run, whe[re] they killed the whole band. On his return Hob[bs] counted 28 heads and bodies, and promptly re[]ported the affair to the authorities. Governor Gip[ps] dispatched a stipendiary magistrate named Day t[o] investigate, an action that was followed by th[e] arrest of 11 men—Charles Kilmeister, John Russel[l], Charles Toulouse, John Blake, Edward Fol[ey], John Johnstone, William Hawkins, George Palise[r], Charles Lamb, James Oates, and James Parr[y]. Their trial on a charge of the murder of one [of] the slain aborigines began in Sydney on 15th November 1838, before Chief Justice Dowlin[g]. All of them were acquitted, but immediately afte[r]