
Whores Aboard and Laws Abroad: Reputation in Colonial New South Wales and the Global Slander of Women Movement

Jessica Lake 

In the nineteenth century, a gendered reform movement – the Slander of Women Acts – swept through the British common law world, making it easier for women to sue for defamatory allegations of sexual immorality. By examining two slander cases brought by women in early New South Wales and radical reforms passed in 1847, this article locates the Australian colonies within this global campaign. Arguing that slander worked to reinscribe a woman's colonial category, police 'savage' speech and rectify respectability for economic purposes, it shows how ideas of reputation and its protection diverged across the UK, USA and Australia at this time.

In the nineteenth century, a gendered reform movement known as the Slander of Women Acts swept through the British common law world, making it easier for women to sue for defamatory allegations of sexual immorality. Under these laws, first passed in North Carolina in 1808, a woman called a 'whore' or 'unchaste' could bring a civil action for slander (spoken defamation) without needing to prove economic loss, termed 'special damage'. These reforms, while technical in language, reflected important shifts in understanding about gender, social status and speech and carried significant social and cultural implications. At one level, they enabled individual women to vindicate their reputations, obtain financial compensation and silence their attackers. More broadly, the Slander of Women laws overturned centuries of English precedent – structured around class hierarchies, shaped to address men's injuries, and premised on distinctions between common law and ecclesiastical courts. In the USA, these reforms connected with revolutionary sentiments, an emphasis on 'character' and a paternalistic desire to 'protect' the purity of republican wives and daughters in the domestic realm. But what spurred the Australian colonies, New South Wales (NSW) in particular, to break with Britain on this issue? How did unique circumstances of respectability, civilisation and commerce influence the direction and development of defamation laws in this far-flung penal colony? Exploring such questions sheds new light on the ways in which gendered ideas about reputation and the regulation of expression diverged across the Anglo-Saxon world during the nineteenth century.

As historians have argued, the history of English defamation law and its protection of reputation is riddled with doctrinal anomalies and unparalleled complexity.¹

Between the sixteenth and nineteenth centuries, important gender, class and jurisdictional distinctions emerged, fostering distinctions between ‘spiritual’ and ‘temporal’ offences, written and spoken words, different classes of persons defamed and categories of damage. When it came to sexual slander, scholarship has demonstrated how such actions were primarily brought by women in the English ecclesiastical courts. James Anthony Sharpe has documented the steep rise of slander during the sixteenth and seventeenth centuries in England – asserting that ‘litigation aroused by slander was a phenomenon of the age’.² Laura Gowing has revealed the degree to which this remarkable rise was due to women crowding the courts with sexual slander suits.³ Stephen Waddams has shown how the popularity of sexual slander and its pronounced gender pattern continued well into the nineteenth century. The most common insult was ‘whore’ and the defendants were largely men.⁴ For this reason, the ecclesiastical jurisdiction became known as the ‘woman’s court’.⁵

In contrast, the English common law courts were decidedly masculine in orientation. A difference was drawn from 1640 onwards between libel (written defamation) and slander.⁶ Libel – affecting the interests of powerful or prominent men – was considered serious and was made easier to prosecute, in that damage was presumed to flow and thus did not need to be proven.⁷ Slander actions, on the other hand, could only be brought if the words spoken fell into a particular category, ‘likely to affect the complainant in *his* liberty, office or means of livelihood’ such as imputations of criminality, carrying an infectious disease, corruption or incompetence.⁸ If the slander fell outside these categories and was considered merely ‘spiritual’ – adultery, unchastity – the plaintiff faced an additional hurdle. They needed to prove specific economic loss that was the ‘natural, immediate, and legal consequence’ of the slanderous words in question.⁹ This was known as ‘special damage’. In 1812, Lord Mansfield confirmed these distinctions, stating: ‘the law gives a very ample field for retribution by action for words spoken in the cases of special damage, of words spoken of *man* in his trade or profession, of a *man* in office, of a magistrate or officer; for all these an action lies’. He went on: ‘But, for mere general abuse spoken, no action lies’.¹⁰ As will be shown, the carving out of sexual imputations and verbal abuse from the common law carried significant consequences for women.

Historians have also demonstrated the extent to which English defamation law was influenced and differentiated by class hierarchies. Relief depended not only on the words spoken, but upon ‘the quality of the person of whom the words [were] spoken’.¹¹ Gowing notes that sexual slander cases were largely brought by the wives and daughters of tradesmen, craftsmen, sailors and farmers and were characterised by a ‘particular social milieu’.¹² Waddams concurs that English sexual slander plaintiffs in the nineteenth century were of modest social status or the middle classes.¹³ John C. Lassiter has demonstrated the rise and fall of the English doctrine *scandalum magnatum* (‘scandal of the magnates’) between the fifteenth and nineteenth centuries, which allowed members of the aristocracy or peerage to sue for verbal abuse that undermined or threatened their honour or nobility.¹⁴ In 1768, leading English jurist William Blackstone stated: ‘words spoken in derogation of a peer ... though they be such as would not be actionable in the case of a common person, yet when spoken in disgrace of such high and respectable characters, they amount to an atrocious injury’.¹⁵ Upper classes in England traditionally sued for libel or *scandalum magnatum*. The

professional reputations of men were guarded by common law of slander. The lowest classes – commoners, criminals – were assumed not to possess reputations worth defending. And middling women crowded the ecclesiastical courts to fight epithets of sexual immorality.

But the gender and class distinctions embodied within the English common law became problematic as the British empire expanded, particularly for women. Colonies inherited English common and statute law (including defamation rules) and civil jurisdiction for determining disputes, not ecclesiastical courts. Therefore, women subject to verbal attacks on their sexual morality – labelled ‘whores’, ‘fornicators’, ‘unchaste’ – could only obtain legal relief if they could prove ‘special damage’. This was an onerous task, especially given that ‘special damage’ was limited for women to the loss of an upcoming marriage with a specific person. Writing in 1813, English jurist Thomas Starkie stated: ‘The necessity of proving a specific loss, falls with particular hardship upon unmarried females, who are thereby frequently debarred from maintaining actions for imputations most unfounded and injurious’. Starkie asked why women should be maligned by their communities and their futures destroyed without redress, when at the same time the law ensured ‘the skill and integrity of the lowest mechanic’ could not be impugned.¹⁶ The English common law of slander envisioned a man attempting to rectify his reputation as an honest carpenter or skilled physician, but for whom sexual slurs were merely ‘spiritual’ and without material consequence. Such laws were ill-equipped to cope with the abuse, disparagement and ruin of women in the New World.

Several historians, such as Mary Beth Norton, Clare Ann Bowler and Donna Spindel, have studied the operation of slander across colonial America.¹⁷ Their scholarship indicates how the prevalence and outcomes of women’s slander claims varied widely. For instance, while some colonies, such as Maryland, experienced high numbers of women claimants and sexual slander actions, other jurisdictions, such as North Carolina, encountered few. Together, their work suggests that the adherence (or not) by each colony to the strict English rules of slander determined the gendered pattern of defamation disputes. In other words, whether the word ‘whore’ was deemed actionable determined women’s reputational rights. Local conditions and circumstances in each US colony pushed and pulled at English precedent, creating widely different standards for the regulation of abusive speech against women.

This uneven patchwork became more uniform after the American revolution, when ideologies of equal legal rights and an emphasis on the republican family influenced defamation law.¹⁸ As Michael Grossberg has argued, the family and women’s roles within it became a lawmaking focus in the early republican period.¹⁹ Further, feminist historians such as Linda Kerber, Ruth Bloch and Jan Lewis have shown how domestic life – embodied by white women as wives and mothers – was regarded as inextricably linked to the health of America’s political and civic life.²⁰ A slip in standards – maternal, sexual – became not just interpersonal grievance but a matter of state security. Andrew King has demonstrated how judges acted paternalistically in the nineteenth century to ‘protect’ the sexual purity and innocence of American wives and daughters, treating them as a vulnerable and ‘dependent’ group.²¹ Lisa R. Pruitt has highlighted how sexual slander cases reinforced women’s place in the private sphere and commodified their sexual virtue.²² Similarly, Diane Borden has shown how American

judges used slander law to reinforce cultural stereotypes, tying women to domesticity and pressing sexuality as their most important attribute.²³ In the USA, women's reputations for sexual morality were regarded as critical to the sanctity of the home and health of civic virtue.²⁴ In 1790, a New Jersey court declared that slander against women was 'so odious and detestable' that such an action was 'maintainable' despite the backward 'laws of England'.²⁵ And in 1808, North Carolina became the first jurisdiction in the British common law world to enact legislation – the Slander of Women Act – making it easier for women to sue for sexual slander.²⁶ Other state jurisdictions in the USA followed.²⁷

This article pioneers research into the place of the Australian colonies within the global Slander of Women reform movement, by introducing the first cases for sexual slander brought by women in NSW and the *Slander and Libel Act* passed in 1847. In doing so, it connects court archives with scholarship on gender, sexuality and honour in early colonial Australia, and international literature concerning the history of defamation. There has been, to date, scant historical research on women and defamation in Australia. Bruce Kercher's work on civil law in colonial NSW discusses some slander cases in passing, as does Kirsten McKenzie's book *Scandal in the Colonies*.²⁸ Mainstream legal histories of Australian defamation law generally only mention Slander of Women cases or reforms as a footnote, if at all.²⁹ Alice Krzanich, whose work focused on sexual slander in New Zealand, briefly mentions sexual slander reforms enacted in South Australia and Victoria in 1865 and 1887, but does not mention the earlier cases and legislative changes in NSW.³⁰ Previous legal histories on honour in colonial NSW have largely focused on cases of breach of promise to marry or seduction or libel cases brought by men.³¹ And as highlighted above, scholarship on sexual slander has predominantly focused on the USA (and to a lesser extent the UK). By investigating other British colonies, such as NSW, this article demonstrates how gendered ideas about reputation diverged across the common law world during the nineteenth century.

Despite occurring twenty years apart, the two cases examined within this article, *Lewin v Thompson* (1799) and *Spencer v Jeffrey* (1826), are factually similar.³² Both were instigated by newly arrived English women of precarious social status and concerned slurs of 'whore' and rumours of sexual immorality spread about them by men during voyages from England. They paint a picture of the reputational vulnerabilities suffered by women as they travelled across the world in this period. They also illuminate the ways in which the meanings of reputation and the functions of slander law changed across space and time. This article argues that in colonial NSW, slander worked initially to defend feminine respectability by reinscribing a person's colonial class category (convict/servant vs. free/married). In addition, by punishing certain types of speech, it played a vital role in prescribing ideas of 'civility' and proscribing base or 'savage' masculinity. In a precarious society, depraved or disruptive conduct was deeply threatening. Publicly calling a woman a 'whore' questioned 'civilised' gendered ideals of feminine chastity as well as proper or 'cool' manly restraint.

However, by the 1820s, the doctrine of slander took a decidedly commercial turn, becoming emmeshed with emancipist motivations for a more egalitarian market society. Conduct became more socially significant than one's origins or station, and motivations for a respectable reputation became pragmatic – necessary for securing

employment and attracting capital – for women, as well as men. NSW's jurists argued that a woman's loss of paid labour was a form of 'special damage' – standing in stark contrast to US discourses that emphasised domesticity. In 1847, NSW passed radical reforms removing the burden of proving 'special damage' for sexual slander suits. They did so using gender-neutral language and much earlier than other common law jurisdictions, such as New York. Nonetheless, this article illuminates their place within the Slander of Women global reform movement.

***Lewin v Thompson*: Immoral house maid or 'modest, virtuous' wife?**

The American Revolution spurred New Jersey to become the first US state to depart from English common law of slander in 1790 and protect the virtue of republican wives and daughters. But it also pushed Britain to find new locations for criminals and secure its position in the Asia-Pacific. The British government settled upon NSW. But despite being yet another English common law colony, the penal society constructed became home to distinctive norms of gender and status. When Governor Phillip steered the First Fleet to Botany Bay in 1788, the area that subsequently became Sydney was home to approximately thirty different Aboriginal clans and together the Indigenous peoples of the region far outnumbered Europeans during the first few decades.³³ The First Fleet comprised between over 700 convicts (fewer than 200 of them women) and around 550 sailors, government officials, marines and their families and some free settlers. It was an intimate, isolated and inhospitable place to build a society. By 1800, the year the first sexual slander case was decided, the European population was estimated as only 3000, with women a clear minority.

NSW's layout first echoed a military camp, and later a scattered English village. Convicts did not reside in gaols but worked outdoors. It was far from idyllic, but rather a place of 'contrariety', promising unique hardships as well as fresh starts, at the 'ragged edge of empire'.³⁴ Ruled by an autocratic Governor, whose orders were enforced by soldiers and marines, governance was direct and the administration of justice *ad hoc* and rudimentary. The first courts were established via a ceremony on 7 February 1788, when David Collins became the first Judge-Advocate to preside over disputes and the English common law was adopted, so far as relevant and convenient. Housing and provisions were basic, and food was scarce. Male convicts worked in sawpits, quarries and brickfields; female convicts in domestic service. The settlement offered basic pleasures: gambling, drinking, fighting, sex. As James Dunk has noted, many early arrivals went mad, and without asylums, wandered the bush or were imprisoned.³⁵

Due to these harsh and isolated conditions, particular social norms and gendered dynamics developed. Penny Russell has highlighted how the idea of civilisation became a source of anxiety and preoccupation. She writes: 'here in the wilderness, the power of civilization as an idea, a habit, a way of being, faced its most dangerous test'.³⁶ Not only did rough conditions and extreme distance from the metropole make efforts of cultivating 'civil' society difficult, but justifications for violently dispossessing Aboriginal people were premised on an imagined dichotomy of 'savage' and 'civilised'. Degradation and depravity within the European settlement threatened the hypothesis of superiority on which the mythical moral equation of colonisation rested.³⁷ Joy Damousi has also pointed out how the presence of female convicts

fuelled anxieties about gender, sexuality and social disorder.³⁸ The persistent ‘visibility’ of feminine promiscuity and appearances of depravity and chaos was offensive to authorities. Michael Sturma has shown how perceptions of unchastity amongst female convicts by officials derived from middle-class gender expectations being applied to working-class realities.³⁹ As yet, however, the ways in which such dynamics played out within ‘civil’ law remain largely unexamined. As a doctrine focused upon moral transgressions, social status and a tool for punishing speech, slander is well suited for such investigations.

Australia’s very first case for sexual slander rested upon a fateful decision. On 8 June 1798, English artist and naturalist John Lewin and his wife Maria boarded *HMS Buffalo* for their voyage to NSW. John was tasked with collecting and painting Australian birds and insects for British patron and entomologist Dru Drury. However, while waiting to depart, John left suddenly to retrieve something and the ship set sail without him. John Grant recounted the incident some years later:

Mr Lewin married before he came, but by a fatality which has made them prize each other more since, Mrs Lewin was left on board at Portsmouth, while he foolishly went back to London for something; in interim a wind sprung up, and he was left behind, and did not arrive here till 12 months after her.⁴⁰

Maria, distressed, was forced to embark upon the long journey alone. John followed her on the next available ship, the *Minerva*, a convict transporter. In his biography of Lewin, Richard Neville writes that, in contrast to John, nothing much is known about Maria. However, her petition to the Colonial Office for a pension and her death certificate in London register her birth date as 1765, making her thirty-three years old at the time of travel to NSW and five years older than her husband.⁴¹ *HMS Buffalo*, a storeship, was captained by master mariner and merchant, William Raven. On board was his wife, Frances Raven, as well as stock, provisions and tools for the struggling colony, and a handful of free emigrants.⁴² Despite its name, the bow of the Buffalo featured a carved wooden kangaroo. Barrington’s *History of New South Wales*, printed in London in 1808, observed: ‘the natives appeared very much pleased, not expecting to see the animals of their country represented by us in wood’.⁴³

The voyage from England appears to have been fraught with rumours and innuendo. Gossip about Maria Lewin having sex with men onboard washed about the ship. Without a husband and unconnected to other families, she had few defenders. And in the months after arriving, Lewin chose – with the help of ally Reverend Richard Johnson – to put an end to the verbal abuse by suing George Thompson, Captain Raven’s servant, in the Court of Civil Jurisdiction. The hearings for Lewin’s slander case lasted for three days in late 1799 and early 1800. Lewin’s evidence was summarised in depositions written by Johnson, who called Lewin ‘innocent’ and ‘a modest virtuous woman’ and described Thompson’s character as ‘base’ and ‘wicked’.⁴⁴

Thompson contended that the allegations of sexual impropriety against her were true. He called upon Elizabeth Grono, wife of Captain John Grono, to testify that she saw Lewin standing at second mate Hugh Machin’s cabin door at an ‘unreasonable hour of the night’ and that on another occasion she and Lewin had a ‘private little conversation’ about Mr Lewin being sexually ‘deficient’ or ‘impotent’.⁴⁵ Thompson also called Lieutenant Thomas Hobby, who stated he overheard a ‘quarrel’ between

Lewin and Machin in Rio De Janeiro where Machin ‘upbraided’ Lewin for being on shore with Captain Callender ‘at a great many bawdy houses’. Hobby also stated that Lewin was ‘very improper as a married woman’ and Mrs Raven had reported to him that she’d seen ‘Mrs Lewin go out of Captain Callender’s cabin in a bed gown at a very early hour’. This rumour was confirmed by Machin, who testified Thompson told others Lewin had emerged from Callender’s cabin ‘half-naked’ and was once seen sitting on his bed ‘drawing on her stockings’. These salacious rumours and new ones continued to circulate after the ship’s arrival in Port Jackson, and on one occasion Thompson called Lewin a ‘whore’ before numerous bystanders. Machin testified that William Frazier (a convict) was pressured by Thompson and Frances Raven into spreading rumours about Lewin, and that Frazier, Thompson and a man called ‘Dusty’ were ‘under the influence’ of Frances Raven. Raven and Thompson appeared to be close, allied for strategic or personal reasons, and seemed to have a joint interest in injuring Lewin.

The *Lewin* case highlights the ways in which women of unclear class background, travelling alone, were vulnerable to verbal attacks on their sexual virtue. English ideas of class intermingled with intimate and inhospitable conditions. During the trial, it was revealed that the respectable Grono family told others on board that Lewin had been ‘a kitchen maid and a kept mistress’ in London. This story caused and compounded suspicion about Lewin’s morality. Sturma has argued that contemporary English attitudes lumped domestic servants and convicts – both lower class – together as sexually promiscuous and bereft of refined feminine virtue.⁴⁶ Damousi has also highlighted how prostitution and sexual activity were common aboard vessels transporting female convicts, generating anxieties amongst colonial officials about sexual disorder, social chaos and pollution.⁴⁷ Kay Daniels has noted that ‘the need for a protector (the government or an individual) ... characterised the female convict experience’. Women learned to appeal to patriarchal authority for the benefit of their private lives.⁴⁸ An entangled culture of intimate relations between servants, convicts, sailors and captains pervaded. Daniels, Sturma and Damousi’s work all focuses on female convicts, but Lewin’s case demonstrates how similar dynamics played out on merchant vessels carrying free women. Status for many was fragile and in flux, and leverage was complex, particularly for those on the brink of social categories. Alliances – strategic, intimate – gave those of lower rank like Lewin and Thompson a way of advancing or protecting their interests. But private alliances did not equate with public repute. Perhaps Lewin did find comfort, security or passion with Hugh Machin or Captain Callendar on the gruelling voyage. But once she disembarked, reinstating her respectability required appealing to a different kind of patriarchal power. Bringing a ‘civil’ slander action worked to move Lewin from the brink of one colonial category – sexually promiscuous servant – into another: ‘virtuous’ married woman.

This case also highlights the fundamental role of speech – gossip, whispers, abuse – in shaping status within the isolated, illiterate penal colony of Sydney Cove. This was a largely oral culture where information and insults travelled via tongue and voice, not ink and paper. In 1800, approximately 40 *per cent* of men and 60 *per cent* of women in England were illiterate.⁴⁹ Literacy rates were likely lower in the colony of NSW due to the large number of convicts from lower classes being transported. For instance, between 1815 and 1819, only 18 *per cent* of female convicts could sign their names

upon marriage.⁵⁰ Verbal spats were common and constituted a threat to order, as well as official authority. As Alan Atkinson has noted, clashes and negotiations between the ‘weighty, broad and permanent conversations of pen and paper’ and ‘the narrow and ephemeral conversations, the living, burning, sharp-edged exchanges of individuals face to face’ were constant.⁵¹ Slander was a meeting point for such collisions: between local insults, remarks and rumours and the written laws and authority of the British empire.

Slander actions also worked to police masculine manners. Russell notes the degree to which language marked out modes of respectability in early colonial communities.⁵² Cursing and licentious speech were associated with ‘savage’ masculinity and posed a threat to authority and attempts to cultivate more refined manly attributes of restraint, respect and self-control. In *Lewin*, witnesses frequently commented not just upon the allegations of immorality, but the method of their delivery: ‘a great deal of gross language’, ‘threaten and speak abusive language to her’, ‘frequently heard the defendant abuse Mrs Lewin’. And Johnson’s depositions described to the ‘Gentlemen’ of the court Thompson’s ‘base’ character and wicked behaviour ‘void of all shame and modesty’. In England, the common law of slander specifically focussed on reputational injury and not ‘mere abuse’. But in NSW – where the future settlement rested on the discipline and reformation of convicts – slander was used to punish forms of disruptive and ‘uncivilised’ speech.

This preoccupation in slander actions with masculine manners is well illustrated in another action brought the same year as Lewin’s, by Richard Atkins, retired military officer and Judge-Advocate, against surgeon John Harris.⁵³ Court documents state that Harris publicly accused Atkins of being a ‘swindler’. However, reading the proceedings, it is clear this defamation claim was not simply, or even primarily, about reputation. Rather, it was a forum for performing and pressing civilised masculine conduct and language. Like in *Lewin*, references abound to ‘very unbecoming language’, ‘very improper language’, ‘make use of improper Language to me as a Gentleman’, ‘infamous and diabolical language’, ‘grossly insulted in my official Capacity as a Magistrate’, ‘envenomed Tongue’ and ‘such opprobrious and high disgraceful Expression’. In fact, Atkins was more offended by Harris’ uncivilised manner of speech than he was about its content. In his opening statement, he pleaded he was ‘not accustomed to be spoke to in such a manner for, Gentlemen, the mode of expressing words are often more insulting than the words themselves’.⁵⁴ He appealed to the members of the court in their ‘cool manly and firm conduct’ as ‘Gentlemen’ and the ‘Coolness and Deliberation’ of judicial proceedings. Slander, in early NSW, was as much about proscribing forms of savage masculinity – hot headed, impulsive, vulgar and unrestrained – as it was about prescribing ideals of feminine modesty.

Slander was important for regulating sexual and social order in early NSW. Kercher notes that until 1810, all defamation claims in NSW were ones of slander (not libel) and they were relatively common. Between 1788 and 1809, most actions heard by the Court of Civil Jurisdiction concerned debt or succession (inheritance). Slander came in third place (above shipping, sale of goods, land titles).⁵⁵ However, perusing the court minutes in the NSW State Archives, it becomes clear that slander actions took greater amounts of court time. Debt claims were often minor and resolved quickly. Slander

trials were lengthy, complicated and high profile. The stakes were not a discrete sum of money, but someone's future standing and the colony's social mores.

Women, a minority of the population, of course formed a minority of plaintiffs. In fact, on available records, Lewin's case was the only slander action initiated by a woman at this time. In an 1802 case, Esther Julian brought an action for assault against notoriously litigious and violent Thomas Biggars after he seized her by the throat and threw her to the ground during a dispute over cabbages.⁵⁶ Julian, like Lewin, occupied an ambiguous social position. She was a former convict and yet de facto wife of Lieutenant George Johnston (Biggar's affidavit refers disparagingly to Julian as Johnston's 'housekeeper'). According to a maid, Biggars also slandered Julian, stating: 'You Whore! I am under no Bond now and I'll do for you!' But Julian didn't sue for defamation, only assault, likely due to her ignominious background. Unlike Lewin, she could not argue a virtuous or innocent past. Other actions turning upon female morality, such as seduction and breach of promise, were very uncommon during this early period. And, unlike slander, they were usually initiated by fathers or masters for their losses, not by women themselves.⁵⁷

After the hearings, Lewin's social class and virtue was vindicated, and Thompson's 'gross language' punished. He was ordered to pay her thirty pounds in damages but was then imprisoned for failing to do so. If this case had occurred in England, Lewin would likely have initiated it in the ecclesiastical courts, for an action at common law required proof of 'special damage' – an almost impossible task. But in early NSW, such technicalities were not raised, likely due to ignorance and the need to reinforce gendered standards of civilised behaviour. Governor Phillip had been instructed via Crown prerogative in the 1780s to implement English civil and criminal law (not administer ecclesiastical courts or canon law), but colonial authorities applied only so much as suited local conditions. Much of the arcane complexity was left behind, as the Empire's concern was for an efficient, inexpensive and orderly penal colony, not a strictly legal one. Much of the court's decision-making accorded more with notions of 'common sense'.⁵⁸ Such a rudimentary and flexible legal system, and heightened anxieties about sexual order, social class and masculine manners, allowed women like Lewin to more easily bring and win slander cases. This changed, however, with the arrival of English-trained lawyers, the establishment of the Supreme Court of Civil Judicature in 1814 and the Supreme Court of New South Wales in 1823. Increasing adherence to British law worked to disempower and disappoint defamed women in the next decades.

***Spencer v Jeffrey*: Do the words 'disqualify her from holding her station'?**

Viler far the wretch, whose aim,

Is worth and beauty to defame;

With innuendo, hint and sneer;

To wound of modesty the ear;

Raise on her cheek the burning blush

Bid the indignant tear to gush

And, at her mild, ingenuous heart,

To level slander's barbed dart!⁵⁹

On 9 June 1825, the *Sydney Gazette* published a verse condemning the sexual slander of women in the colony. It asked could 'no remedy be found' to stop those who 'raise[d] a glow on virtue's cheek' and injure[d] the 'innocence' of women in ways that were presently 'beyond the law'? The following year, this injustice was highlighted by the high-profile case of *Spencer v Jeffrey* (1826), which like *Lewin*, involved allegations of impropriety against a woman who recently voyaged from England. But NSW had changed significantly since 1800. After the end of the Napoleonic Wars, free migration rapidly increased, as did convict transportation, to fuel the labour demands of a growing entrepreneurial population. The rudimentary, intimate and rather chaotic penal community structured along particular social categories – 'savage', convict, free, 'civilised', gentleman – was transformed into a more self-sustaining and egalitarian market society. As Stuart Macintyre writes, 'a social order based in rank and station, in which relationships were personal and particular, yielded to the idea of society as an aggregation of autonomous, self-directed individuals, everyone seeking to maximise their own satisfaction or utility'.⁶⁰ Spencer's slander case was intertwined with commercial concerns and a desire for prosperity.

In early 1825, Annette Harriett Elizabeth Spencer was working as a governess for George Henry Law, Bishop of Bath and Wells in England, and his wife Jane, when she came across an advertisement placed by Margaret Campbell, wife of Sydney entrepreneur Robert Campbell Jr, for someone to look after the Campbell children in the colony. Spencer applied for the position, believing the climate of Wiltshire had affected her lungs and that a change would cure her ill health and offer a fresh start. Campbell offered to pay Spencer 50 guineas for the first year and 60 guineas for each following year. This was a good rate. The average wage for governesses in this period was between 20 and 45 pounds per annum.⁶¹ Arrangements were then made for the voyage of Campbell, her children, Spencer and another 'female servant' on the *Toward Castle*. One imagines Spencer must have regarded the impending journey with some degree of trepidation. Many months spent at sea in cramped quarters sailing to a far-off colony would have posed an 'endurance test', a 'harrowing experience' or at the very least 'a long and dreary monotony'.⁶²

The ship departed London on 17 August and reached Madeira, Portugal on 15 September, where Captain Jeffrey exhorted Campbell to leave the ship, without her servants (including Spencer), and join the other passengers at a hotel on shore. But Campbell refused, stating that she had promised to treat her governess as family and Spencer's situation entitled her to 'be treated with respect'. The court minutes relay that Campbell 'looked upon Miss S. as her second self and wished her to be treated with equal respect'.⁶³ Jeffrey responded angrily: 'Oh governesses are not considered on that footing in England!'⁶⁴ Jeffrey and Campbell continued arguing, with Jeffrey declaring that the girls left alone on board would 'be perfectly safe!' The exact reasons why Campbell refused to abide by the usual convention of leaving the ship at port is unclear, but it was likely due to a perceived threat to Spencer's physical safety, her reputation or both.

It is significant that Jeffrey and Campbell's dispute turned upon Spencer's class status, as governesses occupied, as historian M. Jeanne Peterson has described, 'a situation of conflict and incongruity'.⁶⁵ A governess was expected to be a 'lady in every sense of the word', derived from a good family, well educated and able to teach her skills and observe social conventions. But due to circumstance, she was also forced to work and earn money, rather than remain idle in the house of her father or husband. In 1848, writer Elizabeth Eastlake described the status of the English governess in stark terms: '[o]ur equal in birth, education and manners but our inferior in worldly wealth'.⁶⁶ Being paid a wage was an insult to social rank and placed governesses below the ladies and children they served, although they still hovered above other household servants and maids. This situation of class ambiguity was exacerbated when travelling to an increasingly egalitarian antipodean colony. As will be explored, being categorised as servant no longer carried presumptions of promiscuity in NSW.

Soon after departing Madeira, according to the testimony of Campbell, Jeffrey took her aside to relate that he had seen Spencer on the ship's deck late at night and that 'people, females more especially, should be particularly cautious in their conduct on board of a ship'.⁶⁷ Campbell immediately reported his comments to Spencer, who was 'much distressed' by the insinuation and explained she had been feeling unwell due to the hot weather and needed fresh air. Soon after, Spencer suffered a fainting fit in her cabin and was attended by William Simmons, the third mate. The doctor was called and testified at trial that Simmons' prompt attendance to Spencer had been 'indelicately discussed' amongst crew members. Sometime later, near the Cape of Good Hope, Jeffrey reported to Campbell further rumours about the Spencer's unchaste conduct, including that Simmons had visited her cabin overnight. Campbell stated at trial that it was clear Jeffrey was suggesting 'a criminal intercourse had taken place' between Spencer and Simmons.⁶⁸

The source of these ruinous rumours was ambiguous. On board, Jeffrey at first refused to 'give up' the 'undoubted authority' behind the information. Then when pressed by Campbell, he nominated Mr James, first officer of the ship, and Mr Scriven, a 'passenger' and 'gentleman', as propagating the salacious gossip. But when Scriven forcefully refuted such accusations, Jeffrey flailed and instead identified his steward, William Thomas from Jamaica. Court minutes reported by *The Australian* newspaper refer to Thomas simply as 'Sambo' and describe him in racial terms as having 'a countenance as black and shining as the lacquered part of a tea tray'.⁶⁹ When Simmons was confronted by Jeffrey about Thomas' reports that he had been visiting Spencer's 'bed', he replied: 'It is false. I understand your black steward has been propagating malicious reports respecting Miss Spencer, and I must insist upon putting him to his oath'.⁷⁰

The court found on the evidence that Captain Jeffrey had no proof of the allegations about Spencer and should not have believed them, particularly if they originated with the 'black steward'. They asked: 'Was it not the business of a captain to prevent slanders going forward from a common steward, against a young lady, who was under his protection, and which might have the effect of banishing an amiable young female from society?'⁷¹ In summing up judgement, Chief Justice Stephen awarded Spencer 50 pounds, declaring:

A woman's feelings, the feelings of a tender female, are in general of too sensitive a nature to be lightly sported wi[t]h. In this country more particularly, the calumnies circulated against plaintiff, could admit of but one construction, and that construction could not fail to sink her in the estimation of the world – to a civilized female, in any part of the globe, a fair reputation is an inestimable possession. It is a jewel, whose lustre should not be sullied by the blighting breath of calumny, nor parted with on trifling terms.⁷²

Race, proper conduct and one's pecuniary interests were intertwined in this trial. Chief Justice Stephen seemed to consider the evidence of a 'black steward' inherently unreliable and emphasised the importance of a 'fair reputation' to a 'tender female' in any 'part of the globe'. Feminine virtue or propriety was a 'possession' of immense value to 'civilised' peoples, to be neither enjoyed nor 'sullied' by 'savage' rumours.

Such ideas accord with statistics from the 'civil' court. No Aboriginal or black litigants took defamation actions in colonial NSW during this period. McKenzie suggests that this was likely a consequence of their absence from the professional and commercial community.⁷³ Macintyre notes that they could not testify on oath and so were limited in their ability to participate in judicial proceedings. Kercher argues that *terra nullius* should have meant Aborigines were British subjects and able to press their rights in the civil courts, but this seldom occurred. Apart from one action for debt initiated by a member of a seal-catching vessel in 1814, Aboriginal people did not appear as witnesses, plaintiffs or defendants within any civil actions.

In addition, racial discourses within colonial society linking honour, respect and civilisation with whiteness and savagery, and unreliability with blackness, worked to deny Aboriginal people reputational respect. Indigenous Australians were considered by many Europeans to live a degraded existence. Liz Conor has suggested that Aboriginal women – as a group – were routinely insulted and dismissed by colonisers as uncivilised and sexually available 'gins' or 'lubras'.⁷⁴ In addition, Aboriginal practices for upholding systems of status and reputation were disregarded. As Russell and Nigel Worden note, 'the honour codes of indigenous societies were rarely recognised as such, and few white colonists were prepared to extend the right to respect to Aboriginal people'.⁷⁵

This trial also demonstrates the degree to which material prospects became intertwined with reputation. During the trial, counsel for the defendant and first free solicitor in the colony, William Moore, constructed his primary argument on Spencer's inability to prove 'special damage'.⁷⁶ This legal point, which the *Australian* newspaper reported as a 'striking anomaly', was also plaguing the cases of numerous women in the USA at the time.⁷⁷ It had been overlooked during *Lewin* due to ignorance and anxieties about sexual and social disorder. But things had moved on since 1800. Spencer's lawyers argued in rebuttal that even though words imputing unchastity were not themselves actionable, 'they became so when spoken of a person in the occupation of an office of profit'.⁷⁸ The finesse of this legal argument demonstrated significant expertise. It relied on the idea that the English common law of defamation protected men's hip pockets – as traders and professionals. So, if a woman was also engaged in paid work, why could not she too prove 'special damage' if allegations of sexual immorality threatened her job?

This submission regarding defamation law was unique in the New World. In the USA, for instance, the issue of 'special damage' was only discussed as a burden upon women's fulfilment of domestic duties. However, in NSW, the Supreme Court

regarded a woman's reputation for sexual morality essential to her acquisition and retention of paid work. While imputations of adultery or unchastity were deemed merely 'spiritual' in England – and thus matters for the ecclesiastical courts – in the Australia colonies, they were framed as material. Miss Spencer would, if unsuccessful with her case, lose her occupation as governess, blighting her economic survival. Thus, Chief Justice Stephen overruled the defendant, declaring that 'the words, as applied to the plaintiff, if true, would disqualify her from holding her situation' and therefore 'were actionable'.⁷⁹ His ruling would have heralded a radical new shift in slander law – internationally, due to its precedential value – but it was successfully appealed, and a new trial ordered. There is no indication the trial went ahead.

Spencer's case highlights the centrality of reputation to women and men's economic prosperity in the colony during this time. Campbell was a successful Sydney entrepreneur, Jeffrey the captain of a merchant ship, Spencer trying to further her occupation as a governess, Moore pursuing professional success as the first free solicitor in the colony. They were all on the make in a place that was experiencing rapidly changing demographics, governance and social dynamics. Free migrants were arriving in ever-increasing numbers, gender imbalances were correcting and the population had exploded (to approximately 30,000 people by 1820). Pastoral exploration and agricultural economies expanded, further violently dispossessing Aboriginal peoples. Transported convicts were subject to harsher penalties, fewer casual opportunities and their labour became more organised. Inhabitants' lives – their marital arrangements, labour conditions and social positions – were subject to greater judicial and bureaucratic surveillance. Bustling urban centres of social fluidity, money and connection thrived. New social categories emerged reflecting a commercial emphasis, evidenced for example by Robert Wilmot Horton's Third Report from the 1826–27 Select Committee on Emigration that encouraged the emigration of 'labourers' who could transform themselves into 'capitalists and colonists'.⁸⁰ A self-sustaining and free trade society developed, governed by a legislature and a more assiduous and professional judiciary. Such shifts were, in large part, also a result of Commissioner John Bigge's reports, published in 1822 and 1823.⁸¹ Within this context, a popular movement of emancipists also gathered force asserting the rights of all colonists, regardless of their origins, to pursue and accumulate wealth.

Within this more democratic market society, where status became unmoored from class hierarchies, proper conduct became vital to enterprise and employment. Whereas class origin designated quality of character in the old world and new colonial categories – convict, servant, free, gentleman – mattered in 1800, by the 1820s, manners and behaviour could 'sink' you or save you, irrespective of rank or station. Jeffrey and Campbell's dispute about Spencer coming on shore in Portugal displays such shifts in perspective. To Jeffrey, Spencer was merely a servant, and thus available for intimate relations with sailors and subject to moral suspicion. To Campbell, she was domestic labour and yet still able to retain respectability. For women, performing feminine sexual virtue became as important as one's position as maid or governess. At numerous points in the Spencer trial, participants assessed Spencer's 'conduct', 'habits' and whether she 'acted' with propriety. For middle-class men, however, as McKenzie has argued, attributes annexed to their occupational or professional abilities – hard work, creditworthiness, skill – became central to identity more than previous ideas

of gentlemanly refinement or aristocratic honour.⁸² These gendered manifestations of reputation reflected business and economic imperatives. In this mercantile society, reputation – based upon perceptions of proper conduct – had practical uses and pecuniary ramifications.

During this period, the number of libel actions grew as the press began covering the activities of public, political and professional life more assiduously. Some historians have hence suggested that the broader term ‘defamation’ should be used to describe cases concerning reputation in this era, rather than the distinct legal categories of slander and libel.⁸³ But disregarding the difference between libel and slander misses a vital distinction, with profoundly gendered consequences. Men, not women, brought libel claims in early NSW. Both men and women brought slander claims. But only women brought *sexual* slander claims and were thus confronted by the consequences of old common law distinctions between ‘spiritual’ and temporal matters. The English legal rule that ‘whore’ was not actionable slander at common law was a direct impediment to women’s prosperity and respectability in the colonies. This point dashed Spencer’s initial victory. And it would soon lead NSW to break definitively from England and carve its own unique path. It would be the first Australian colony to do so.

Between the 1810s and 1840s, the British parliament debated and formulated various proposals to reform the law of defamation and, in particular, to abolish the distinction between libel and slander. In 1843, Lord Campbell launched the most determined effort, moving for a Select Committee of the House of Lords to investigate the issue, telling their Lordships that ‘on this important subject the law of England is more defective than that of any other civilised country in the world’.⁸⁴ The Select Committee heard from a wide range of witnesses and reported that while at present, there was a remedy for ‘any words reduced into writing’ via libel law, words ‘publicly spoken’ and imputing ‘a Want of Chastity to a Woman’ or ‘Want of Veracity or Courage to a Gentlemen’ cannot be sued upon. They noted contemptuously that, in contrast, any ‘action may be maintained for saying that a Cobbler is not skilful in mending Shoes’.⁸⁵ With the demise of the doctrine of *scandalum magnatum*, only tradesmen and professionals could bring slander cases in the common law courts. It was outrageous to the Select Committee that a lady of ‘high station’ or a ‘gentleman’ was not adequately protected by English defamation law because they could not prove ‘special damage’, but a mere cobbler could.⁸⁶ However, a bill incorporating the Select Committee’s recommendations failed. The Attorney-General, Sir Frederick Pollock, worried about too much litigation and thus wanted to tighten libel law in line with slander, not the converse. And so, the distinction between slander and libel remained. Women subject to slurs of ‘unchastity’, prostitution or adultery in England continued to be barred from bringing claims in common law courts by the almost impossible burden of proving ‘special damage’.

The legal minds of NSW were very much aware of the defamation debates occurring in London. In 1823, the *New South Wales Act* established the first Legislative Council and in 1842 convict transportation ceased. The colony was now partly self-governing and imagining itself anew. In 1846 and again in 1847, a Bill was introduced by journalist, barrister and elected member of the Legislative Council, Richard Windeyer, copying almost exactly the recommendations of Lord Campbell’s Select Committee. Windeyer arrived in the colony as a free migrant in 1835 and was a

champion of law reform and advancing the unique interests of the colony. He believed that despite the reform proposals failing in the House of Commons, ‘the state of circumstances of this colony’ meant they might be ‘advantageously adopted’.⁸⁷ Windeyer argued that defamation unfairly dredged up long-forgotten private details of people’s previous lives – such as their convict or class background – subjecting them to embarrassment and distress that undermined the ‘sociality of the community’.⁸⁸ During his election campaign, he spoke of protecting ‘all men in equal enjoyment of their social rights’.⁸⁹ Defamation reform, as Paul Mitchell has observed, would allow every white man – convict or gentry – the promise of a fresh start in a New World. It put down ‘savage’ abuse and encouraged an egalitarian merchant community.

But importantly – what conventional histories of defamation law have missed – is that Windeyer’s bill significantly enhanced the reputational rights of women. Conduct displaying ‘civilized’ feminine virtue was central to women’s economic prospects in the colony, either via marriage, occupation or both. And paradoxically, removing the burden of proving economic loss (‘special damage’) would allow women greater economic mobility. Reporting on the Bill, the *Sydney Morning Herald* attributed the abolition of the slander/libel distinction directly to the sexual slander of women:

By the first clause ... the same law is made applicable to oral as to written slander, thus doing away with the absurd distinction which now exists between these two classes of cases. By the present law of libel, to call a respectable woman unchaste is not actionable – to write of her the same thing is a libel, and actionable ... This absurdity is put an end to by the clause above mentioned.⁹⁰

The Act was passed, representing a radical departure from British precedent. Though phrased in gender-neutral terms, it established NSW’s place within the global Slander of Women movement. Section one stated: ‘that the right of action for oral slander shall extend to all defamatory words for which an action might now be maintained if the same were reduced to writing’.⁹¹ Ordinary women – former convicts, current servants – in NSW, unlike those in England, could now bring actions for sexual slander in the common law courts without proving ‘special damage’. If called a ‘whore’, they could now press their rights to respectability, obtain compensation and keep their jobs. Under these reforms, Spencer would have won her case.

Conclusion

In the mid-nineteenth century, the Australian colonies joined the USA in passing legislation making it easier for individuals to sue for sexual slander. Though the language of New South Wales’ 1847 Act was gender neutral, its background and context work to locate it within the global Slander of Women movement. These reforms, beginning in New Jersey in 1790, swept across the New World as a succession of judicial innovations or legislative interventions, rejecting English law and removing the burden of proving ‘special damage’ for women called ‘whores’ or subject to ruinous allegations of sexual immorality. In England, as legal and social historians have documented, defamation developed with complex and long-standing distinctions, which worked along class and gender lines to privilege certain types of claims and claimants. The powerful were well protected by assaults on their honour by libel and *scandalum magnatum*, professional men and traders by the common law of slander, and middling women by the ecclesiastical courts, which took primarily responsibility for sexual

slander – deemed a ‘spiritual’ offence. However, as the British Empire expanded, such laws were transported and proved ill-fitted to the New World. In the USA, Slander of Women reforms were influenced by revolutionary spirit and driven by a paternalistic desire to protect the sexual innocence of republican wives and daughters, as the domestic embodiment of civic morality.

But what about the Australian colonies, who also inherited the gendered and social hierarchies inherent within English laws concerning reputation? How did distinctive political, cultural and economic conditions influence the gendered nature of reputation and the direction of defamation law? By delving into the detail of two high-profile sexual slander cases brought by women prior to 1847, this article demonstrates that initially, the ‘civil’ law of slander vindicated feminine respectability by reinscribing a woman’s colonial class category – servant, convict, free, married – and also worked as way for authorities to sanction and punish ‘savage’ and unmanly speech (impulsive, hotheaded, lewd, disruptive). In addition, the rudimentary legal system of early NSW disregarded strict English rules, making it easier to police gendered norms.

However, after 1820, a different landscape developed. Much greater numbers of free migrants arrived, a more equal and entrepreneurial culture emerged, and a more assiduous and English-educated judicial system took shape. In this society, individuals were on the make, eager to get ahead, prosper and prove their status via proper conduct. The Spencer trial evidences that a good reputation became a necessary ‘possession’ for the economic wellbeing of both men and women. Turning on whether the words of a ‘common black steward’ should cause a ‘civilized woman’ to lose her job, legal debate about whether Spencer’s potential occupational consequences equated to ‘special damage’ was exceptional in the context of the global Slander of Women movement. It reveals how in the imagined egalitarian market society of NSW, a reputation for sexual morality was essential to a woman’s material prospects via paid work and such a reputation rested on proper conduct not station or origin. As such, English slander rules, that denied women the ability to effectively clear their names, were regarded as a relic and threat to sociality. Reforming them allowed ordinary women the ability to start afresh and secure their economic futures. Windeyer’s laws of 1847 remained in force in NSW until 2005, when the Uniform Defamation Acts were passed and all other states abolished the distinction between libel and slander (in line with NSW). Lewin and Spencer’s cases and Windeyer’s Act demonstrate how debates about gender, the functions of reputation and the regulation of speech diversified across the British Empire during the nineteenth century and influenced the law in lasting ways.

Acknowledgements

Open access publishing facilitated by Australian Catholic University, as part of the Wiley – Australian Catholic University agreement via the Council of Australian University Librarians.

Notes

1. See, for example, R. C. Donnelly, ‘History of Defamation’, *Wisconsin Law Review* 1949 (January 1949), pp. 99–126; Lawrence McNamara, *Reputation and Defamation* (Oxford: Oxford University Press, 2007); Van Vechten Veeder, ‘History and Theory of the Law of Defamation’, *Columbia Law Review* 3 (1903),

- pp. 546–73; David Rolph, *Defamation Law* (Sydney: Thomson Reuters, 2016); Patrick George, *Defamation Law in Australia* (Chatswood: Lexis Nexis Butterworths, 2017).
2. James Anthony Sharpe, *Defamation and Sexual Slander in Early Modern England* (Heslington: Borthwick Papers, 1980), p. 4.
 3. Laura Gowing, *Domestic Dangers* (Oxford: Oxford University Press, 1996).
 4. Stephen Waddams, *Sexual Slander in Nineteenth Century England* (Toronto: University of Toronto Press, 2016), p. xii.
 5. Re ‘women’s court’, see Richard Wunderli, *London Church Courts and Society Before the Reformation* (Cambridge: Medieval Academy of America, 1981), p. 76.
 6. Donnelly, ‘History of Defamation’, p. 121.
 7. See *King v Lake (1670)* Hardres 470; 145 ER 552.
 8. Thomas Starkie, *A Treatise on the Law of Slander, Libel, Scandalum Magnatum and False Rumours* (London: W. Clarke and Sons, 1813), p. 647.
 9. William Blake Odgers, *A Digest of the Law of Libel and Slander* (London: Stevens & Sons, 1887, 2nd ed), p. 298.
 10. *Thorley v Kerry* (1812) 4 Taunt 355; 128 ER 367 (emphasis added).
 11. William Sheppard, *Action upon the Case for Slander* (London: Ch. Adams, J. Starkey, & T. Basset, 1662), p. 5.
 12. Gowing, *Domestic Dangers*, p. 61.
 13. Waddams, *Sexual Slander*, p. 139.
 14. John C. Lassiter, ‘Defamation of Peers: The Rise and Decline of the Action for Scandalum Magnatum, 1497–1773’, *American Journal of Legal History* 22 (1978), pp. 216–36.
 15. William Blackstone, *Commentaries on the Laws of England. Book the Third* (Oxford, 1768), p. 123.
 16. Starkie, *A Treatise on the Law of Slander*, p. 647.
 17. See Mary Beth Norton, ‘Gender and Defamation in Seventeenth-Century Maryland’, *The William and Mary Quarterly* 44 (1987), pp. 4–39; Clara Ann Bowler, ‘Carted Whores and White Shrouded Apologies: Slander in the County Courts of Seventeenth-Century Virginia’, *The Virginia Magazine of History and Biography* 85 (1977), pp. 411–26; Donna J. Spindel, ‘The Law of Words: Verbal Abuse in North Carolina to 1730’, *The American Journal of Legal History* 39 (1995), pp. 25–42.
 18. Andrew J. King, ‘The Law of Slander in Early Antebellum America’, *The American Journal of Legal History* 35 (1991), pp. 1–43.
 19. See Michael Grossberg, *Governing the Hearth* (Chapel Hill: University of North Carolina Press, 1985), p. 3.
 20. Linda Kerber, *Women of the Republic* (Chapel Hill: UNC Press, 2000); Jan Lewis, ‘The Republican Wife: Virtue and Seduction in the Early Republic’, *The William and Mary Quarterly* 44 (1987), pp. 689–721; Ruth Bloch, ‘The Gendered Meanings of Virtue in Revolutionary America’, *Signs: Journal of Women in Culture and Society* 13 (1987), pp. 37–58.
 21. Andrew J. King, ‘Constructing Gender: Sexual Slander in Nineteenth Century America’, *Law and History Review*, 13 (Spring, 1995), pp. 63–110.
 22. Lisa R. Pruitt, ‘On the Chastity of Women All Property in the World Depends: Injury from Sexual Slander in the Nineteenth Century’, *Indiana Law Journal* 78 (Fall 2003), pp. 965–1018.
 23. Diane Borden, ‘Reputational Assault: A Critical and Historical Analysis of Gender and the Law of Defamation’, *Journalism & Mass Communication Quarterly* 75 (1998), pp. 98–111.
 24. See also, Jessica Lake, ‘Protecting ‘Injured Female Innocence’ or Furthering ‘the Rights of Women?’ The Sexual Slander of Women in New York and Victoria (1808–1887)’, *Women’s History Review* 31 (2021), pp. 451–75.
 25. *Smith v. Minor*, 1 N.J.L. 16 (1790).
 26. 1808 N.C. Sess. Laws 570.
 27. See for example: Act Of 1811, 4 W. Littell, The Statute Law of Kentucky 38; 1813 Ind. Acts 110; 1823 11. Laws 82; 1824 S. C. Acts, C. 4., S; 1845 Mo. Rev. Code 100; 1837 Ark. Acts 729 (Act of December 13, 1837); 1838 Md. Laws C. 114; 1839 Ala. Acts 96; 1871 N.Y. Laws, c. 219
 28. Bruce Kercher, *Debt, Seduction and Other Disasters* (Sydney: Federation Press, 1996); Kirsten McKenzie, *Scandal in the Colonies* (Carlton: Melbourne University Press, 2004).
 29. See, for example, George, *Defamation Law in Australia*; Rolph, *Defamation Law*; Paul Mitchell, ‘The Foundations of Australian Defamation Law’, *Sydney Law Review* 28 (2006), pp. 477–504; David Rolph (ed.), *Landmark Cases in Defamation Law* (Oxford: Hart Publishing, 2019).
 30. Alice Krzanich, ‘Virtue and Vindication: An Historical Analysis of Sexual Slander and a Woman’s Good Name’, *Te Mata Koi: Auckland University Law Review* 17 (2011), pp. 33–59.

31. See, for example, Penny Russell and Nigel Worden (eds), *Honourable Intentions?* (London: Routledge, 2016); Kirsten McKenzie, 'Of Convicts and Capitalists: Honour and Colonial Commerce in 1830s-Cape Town and Sydney', *Australian Historical Studies* 33 (2002), pp. 199–222; Alecia Simmonds "'Promises and Pie-Crusts were made to be Broke": Breach of Promise of Marriage and the Regulation of Courtship in Early Colonial Australia', *Australian Feminist Law Journal* 23 (2005), pp. 99–120.
32. *Lewin v Thompson* [1799] NSWKR 8; [1799] NSWSupC 8; *Spencer v Jeffery* [1826] NSWSupC 28.
33. Grace Karskens, *The Colony* (Crows Nest: Allen & Unwin, 2010).
34. James Dunk, *Bedlam at Botany Bay* (Sydney: New South Publishing, 2019), p. 8, 13.
35. Dunk, *Bedlam at Botany Bay*.
36. Penny Russell, *Savage or Civilised? Manners in Colonial Australia* (Sydney: University of New South Wales Press, 2010), p. 7.
37. Russell, *Savage or Civilised?* p. 29.
38. Joy Damousi, *Depraved and Disorderly: Female Convicts, Sexuality and Gender in Colonial Australia* (New York: Cambridge University Press, 1997).
39. Michael Sturma, 'Eye of the Beholder: The Stereotype of Women Convicts, 1788–1852', *Labour History* 34 (May, 1978), pp. 3–10.
40. Grant quoted in Neville, *Mr JW Lewin*, p. 44.
41. Neville, Richard, *Mr JW Lewin, Painter & Naturalist* (Sydney: New South, 2012), p. 44
42. A. T. Saunders, 'HMS Buffalo: Facts Disclosed for the First Time', *The Register* (Adelaide) 28 December 1925, p. 8.
43. George Barrington, *The History of New South Wales* (London: M Jones, 1802), chapter 9.
44. Deposition by Richard Johnson, August 1799. Held by NSW Archives.
45. *Lewin v Thompson* [1799] NSWKR 8. Court minutes held by New South Wales Archives (Kingswood, NSW).
46. Sturma, 'Eye of the Beholder'.
47. Damousi, *Depraved and Disorderly*, p. 12.
48. Kay Daniels, *Convict Women* (St Leonards: Allen & Unwin, 1998).
49. Amy J. Lloyd, 'Education, Literacy and the Reading Public', *British Library Newspapers* (Detroit: Gale, 2007).
50. B. M. Penglase, 'Literacy and the Settlers: New South Wales 1788–1881', *Education Research and Perspectives* 15 (1988), pp. 98–106.
51. Alan Atkinson, *The Europeans in Australia: A History, Vol. 1* (Melbourne: Oxford University Press, 1997), p. x.
52. See Russell, *Savage or Civilised*.
53. *Atkins v. Harris* [1799] NSWKR 4; [1799] NSWSupC 4.
54. *Atkins v. Harris* [1799] NSWKR 4; [1799] NSWSupC 4, Opening address by Richard Atkins.
55. Kercher, *Debt, Seduction and other Disasters*, p. 96.
56. *Julian v Biggars*, August 1802, Court files held by NSW State Archives.
57. See, for example, *Sutton v. Humphreys* [1806] NSWKR 5; [1806] NSWSupC 5. Court files held by NSW State Archives.
58. Kercher, *Debt, Seduction and Other Disasters*, p. 9.
59. 'Poetry', *Sydney Gazette and New South Wales Advertiser*, Thursday 9 June 1825, p. 3.
60. Stuart Macintyre, *A Concise History of Australia* (Cambridge: Cambridge University Press, 1999), p. 55.
61. M. Jeanne Peterson, 'The Victorian Governess: Status Incongruence in Family and Society', in Martha Vicinus (ed.), *Suffer and Be Still* (Bloomington: Indiana University Press, 1972), p. 8.
62. Peter Cunningham, *Two Years in New South Wales* (London: Henry Colburn, 1827), p. 20; Gwenda D. M. Jones, 'A Lady in Every Sense of the Word: A Study of the Governess in Australian Colonial Society' (Masters Thesis, University of Melbourne, 1982), p. 53
63. *The Australian* (Sydney, NSW) 6 May 1826, p. 3 (Testimony of Margaret Campbell).
64. *Sydney Gazette* (Sydney, NSW) 6 May 1826, p. 3.
65. See Peterson, 'The Victorian Governess', in *Suffer and Be Still*; M. Jeanne Peterson, 'The Victorian Governess: Status Incongruence in Family and Society', *Victorian Studies* 14 (1970), pp. 7–26.
66. Elizabeth Eastlake, 'Vanity Fair, Jane Eyre, and the Governesses' Benevolent Institution', *Quarterly Review* 84 (December, 1848), p. 176.
67. *The Australian* (Sydney, NSW) 6 May 1826, p. 3 (Testimony of Margaret Campbell).
68. *Sydney Gazette* (Sydney, NSW) 6 May 1826, p. 3.
69. *The Australian* (Sydney, NSW) 6 May 1826, p. 3: "(Enter steward with a countenance black and shining as the lacquered part of a tea tray.)"

70. *The Australian* (Sydney, NSW) 6 May 1826, p. 3 (Testimony of William Simmons).
71. *The Australian* (Sydney, NSW) 6 May 1826, p. 3 (Testimony of William Simmons).
72. *Spencer v Jeffery* [1826] NSWSupC 28 (Chief Justice Stephen).
73. McKenzie, *Scandal in the Colonies*, p. 86.
74. Liz Conor, 'The "Lubra" Type in Australian Imaginings of the Aboriginal Woman from 1836–1973', *Gender & History* 25 (2013), pp. 230–51.
75. Russell and Worden, *Honourable Intentions*, p. 9.
76. *Sydney Gazette* (Sydney, NSW) 6 May 1826, p. 3.
77. *The Australian* (Sydney, NSW) 6 May 1826, p. 3.
78. *Sydney Gazette* (Sydney, NSW) 6 May 1826, p. 3.
79. *Sydney Gazette* (Sydney, NSW) 6 May 1826, p. 3.
80. See Ben Huf, 'The Capitalist in Colonial History: Investment, Accumulation and Credit-Money in New South Wales', *Australian Historical Studies* 50 (2019), pp. 418–40.
81. See *Report of The Commissioner of Inquiry into the State of the Colony of New South Wales* (1822), 1st Report; *Report of the Commissioner of Inquiry on the Judicial Establishments of New South Wales and Van Diemen's Land* (1823), 2nd Report; *Report of the Commissioner of Inquiry on the State of Agriculture and Trade in the Colony of New South Wales* (1823), 3rd Report.
82. See McKenzie, 'Of Convicts and Capitalists'.
83. Kirsten McKenzie, 'Defining and Defending Honour in Law', in Russell and Worden, *Honourable Intentions*, 27 (note 1).
84. *Parliamentary Debates* (series 3) Vol 66, 13 February 1843 at col 395.
85. House of Lords Select Committee, *Report from the Select Committee of the House of Lords Appointed to Consider the Law of Defamation and Libel and to Report Thereon to the House; With Minutes of Evidence Taken Before the Committee, and an Index* (London: 1843), p. iii.
86. House of Lords Select Committee, *Report from the Select Committee of the House of Lords Appointed to Consider the Law of Defamation and Libel*.
87. *Sydney Morning Herald* (10 June 1847), p. 2.
88. Mitchell, 'The Foundations of Australian Defamation Law', p. 494.
89. Max Thompson, *The First Election: The New South Wales Legislative Council Election of 1843* (1996), p. 70.
90. *Sydney Morning Herald*, 3 July 1847, p. 2.
91. *Libel Act 1847* (NSW) ss1.

Jessica Lake is a Research Fellow in the Gender and Women's History Research Centre in the Institute for Humanities and Social Sciences at the Australian Catholic University (Australia). Her book on a transnational history of sexual slander in the nineteenth century is forthcoming with Stanford University Press.