

THE QUEEN VS AH PEW

MURDER, MYSTERY AND CONTROVERSY AT COLONIAL CASTLEMAINE

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Abstract

This paper sets out to recover the significance of The Queen vs Ah Pew, a dramatic 19th-century murder case in which a Chinese miner was accused of the brutal killing of a local school girl on the central Victorian goldfields. The murder, and the subsequent trial, shook the colony of Victoria and dragged questions of colonial justice and Chinese social integration out into the open. Taking a micro-historical approach and chasing interweaving paper trails through the archives, this article follows a general trend in Chinese Australian history towards close readings of communities and locales. In doing so, it encourages the reader to approach history from the ground up and to seek broader understandings through human stories.

That men have, unfortunately been put to death on insufficient evidence, is unhappily, too true, but we are confident that in modern times, such an event hardly ever occurs. Judges and juries now always give the prisoner the benefit of any rational doubt, and should anything favourable to him have been overlooked in the trial, the Executive are ready to interpose.

Daylesford Mercury and Express, 26 May 1870.¹

JUST AFTER DAYBREAK ON SATURDAY 18 FEBRUARY 1870, Samuel Hunt, a farmer from Glenluce, a small mining hamlet on the central Victorian goldfields, set out from his property with a group of friends. As they fanned out across the area, investigating paddocks, diggings and bushland along the Loddon River, the men's business was solemn and determined. The previous afternoon Samuel's nine-year-old daughter, Anne Elizabeth Hunt, who was known as 'Annie' to her friends and family, had failed to return from school. Deeply disturbed by his daughter's mysterious disappearance, Hunt, with his neighbours had spent the night searching in vain. Now, as the morning sunlight swept the Loddon gullies, the small party pushed on through the sloping countryside (Figure 1 below), looking

for any sign of the missing girl.

As he approached Rocky Gully (also known as Chinaman's Gully), one of a number of dry channels branching out from the Loddon River, Samuel Hunt's tired eyes caught a glimpse of something out of place. There, at the base of a neighbouring paddock, amidst the mud and the grime, lay her body. Cooeing to his friends, Hunt rushed towards his daughter and was greeted by a truly horrific scene. From the blood and bruises it was clear that Annie had been severely battered. Her mouth was stuffed full of clay. Later, when the coroner examined the body, he found traces of gravel in Annie's lungs. His report concluded that the attacker had forced the mud and rock into the girl's mouth to silence her during an attempted rape.² Within days, news of this 'horrible story' and the apprehension of a suspect, 'a Chinaman' from Glenluce, echoed across the colony of Victoria.³ In *The Queen vs Ah Pew*, the sensational murder trial that followed, the position of the Chinese in 1870s Victoria and their treatment by the colonial legal system came to the fore.

For historians, records of crime and punishment have long provided important points of access to the societies in which they were created. More than a century ago, commenting on the wealth of historical evidence to be found in murder trials, British historian F.W. Maitland noted that:



Figure 1: The landscape at Glenluce, by the Loddon River. Located south of Castlemaine, Glenluce has been part of the Vaughan Glenluce Mineral Springs Reserve since 1878.⁴

If some fairy gave me the power of seeing a scene of one and the same kind in every age of history of every race, the kind of scene I would choose would be a trial for murder, because I think that it would give me so many hints as to a multitude of matters of the first importance.⁵

If records of crime can throw up insights into the stark social realities of the past, they can also preserve rare archival impressions of those sections of the community neglected in traditional historical

discourse. In recent years, this realisation has produced a number of exciting developments in Chinese–Australian history, as specialist historians (together with the Public Record Office Victoria) have begun investigating interactions between Chinese goldseekers and colonial legal systems. These studies, which have considered Chinese–Australian prisoners, policemen, court appearances and inquest records, are reshaping our understanding of cultural exchange on the Victorian goldfields.⁶

Building on these research foundations, this article seeks to rediscover and re-examine the events surrounding the dramatic trial of Chinese miner Ah Pew, who in the autumn of 1870 was charged with the murder of Anne Elizabeth Hunt. As a well-documented capital trial and a window on to the treatment of the Chinese in colonial courtrooms, *The Queen vs Ah Pew* offers up a rich collection of documentary source material. Given the sheer brutality of the crime involved, it also shines a light on the ‘sensational’ in 19th-century Victoria, particularly in terms of press coverage, popular reaction and community interest. This paper seeks to balance a study of this public sentiment and press hyperbole with a sustained focus on the personal and the intimate.⁷ Taking a micro-historical approach, and substituting regional complexity for scale, it reflects the author’s belief in the importance of detailed stories in creating engaging and meaningful history.⁸ By working within this framework and chasing a number of interweaving paper trails through the archives, we can descend into the gullies of the central Victorian goldfields and travel along the broad avenues of colonial Castlemaine to revisit *The Queen vs Ah Pew*.

A Satisfactory Proceeding

On Monday 23 May 1870, just three months after Anne Elizabeth Hunt’s body had been found in a shallow miner’s drive, Ah Pew, a Chinese miner from Glenluce, went to the gallows in Castlemaine Gaol (Figure 2 below). Though he had known Annie Hunt, Ah Pew had continued to deny any involvement in her murder, insisting to all who would listen that the authorities had condemned the wrong man. Now, as he came face to face with Victoria’s executioner, the fearsome ex-convict William Bamford, he cried out ‘No! No!’ as the noose was placed around his neck. The prisoner maintained his innocence to the last, though his pleas had little effect on the seasoned hangman, who proceeded in ‘his work with a relish, which added to the repugnance of its character’.⁹ As the final chapter in the ‘Glenluce tragedy’, Ah Pew’s execution brought an end to this tale of

murder, mystery and controversy that had captured public interest across the colony of Victoria. Throughout the autumn, community outrage over Annie Hunt's murder and the apprehension of a Chinese suspect had been reflected (and probably inflamed) by detailed local press coverage, which marked the crime as symptomatic of Chinese moral degradation.¹⁰ The reality, however, was inevitably more complex, with Ah Pew's trial sparking fierce public debate and a war of words between Melbourne's *Age* and three regional newspapers.

On 2 May 1870, the *Mount Alexander Mail* declared that 'the conviction and sentencing of Ah Pew for the murder of Elizabeth Anne Hunt has produced a feeling of satisfaction throughout the whole district that does not always follow a trial in which a human being has been consigned to the gallows'.¹² The *Mail*'s statement of 'satisfaction' began its exhaustive response to an editorial that had appeared in Melbourne's *Age* a few days earlier, which declared that the 'conviction and sentencing to death, at the Castlemaine Circuit Court this week, of the Chinaman AH PEW on the charge of murdering the little girl ELIZABETH ANNE HUNT, at Glenluce ... is not by any means a satisfactory proceeding'.¹³

From the outset, the proceedings of *The Queen vs Ah Pew* had reflected the intense level of community feeling tied up in the case. On Tuesday 26 April 1870, a crowded circuit court opened at Castlemaine, 'the number of Chinese spectators especially being very large'.¹⁴ In 19th-century Victoria, circuit court sittings were significant events in regional centres. Moving throughout the countryside, along a pre-determined circuit, justices established themselves in major towns and tried cases beyond the jurisdiction of local magistrates.¹⁵ In opening his prosecution, Crown Prosecutor C.A. Smyth admitted that 'the case had excited a great deal of attention', and he asked the jury 'if they had formed any ideas or received any impression ... to dismiss that from their minds'.¹⁶ In response, defence counsel G.A. Leech availed 'himself to the utmost of his right to challenge, [by objecting to] ... almost every juror who lived within a short distance of the scene of the murder'.¹⁷ Leech's concern about the weight of feeling in the local community ran so deep that his challenges eventually exhausted the entire jury panel.¹⁸

The trial of Ah Pew took place at a time when the fortunes of the Chinese near Castlemaine were in decline. In his report to the governor's Executive Council, Police Superintendent John Winch found that Ah Pew had 'arrived in the colony in 1856 ... [and had been] living at Glenluce about four years,



Figure 2: Old Castlemaine Gaol as it appears today from the top of the city.

Ah Pew was executed in the prison on Monday 23 May 1870.¹¹

during which time he was employed as a miner'.¹⁹ By 1870, the number of Chinese in Victoria and those employed in mining had both significantly declined.²⁰ Many of those who remained lived a life of precarious economic survival, banding together in small groups with limited community support.²¹

A report conducted in 1868 by the Reverend William Young into 'The Chinese Population in Victoria', published in

Victorian Parliamentary Papers, had found 'Chinese miners hav[ing] very hard times of it ... some barely earn[ing] their food, and some get[ting] nothing'.²² Supplementing his mining income by doing odd jobs for Europeans, Ah Pew probably did not quite fit the popular 19th-century image of 'John Chinaman' as 'separated ... by language, and occupying an isolated position in the community'.²³ On the day of her disappearance, Annie Hunt had been sent by her mother to ask Ah Pew to repair a boiler. According to Hunt's father, Samuel, Ah Pew had also visited their home many times. He spoke very good English and was described by several European witnesses during his trial as being of 'good character'.²⁴

The Facts Cannot Lie

In the wake of Annie Hunt's murder, local police and specialist members of the detective branch from Melbourne concentrated their investigations on four Chinese miners from Glenluce. When these four men (including Ah Pew) were apprehended and taken to Castlemaine Gaol, their statements, supplemented by the accounts of various members of the local community, became the basis for the prosecution case. In his presentation to the court, Crown Prosecutor C.A. Smyth laid out the following sequence of events.

After leaving school on the day of her disappearance, Annie Hunt made

her way home via a path that passed Ah Pew's mining claim. According to family members, Ah Pew and Annie had been friends for some time, so it was not unusual for her to call by his hut. After initial hesitation, Ah Pew admitted that Annie had paid him a visit on the day she was murdered. Later in the afternoon, he left his hut for about an hour. He explained that he had visited a local store to purchase some nails (this statement was verified by the storekeeper), though a local farmer's wife claimed that she saw him heading in the direction of the murder scene. Ah Shem, the storekeeper, and other witnesses who saw Ah Pew that afternoon, described his behaviour as uncharacteristically nervous, noticing he looked older and more stressed than usual. According to Crown Prosecutor Smyth, it was during this afternoon excursion, prior to his trip to the store, that Ah Pew had killed Annie Hunt. His argument was strengthened by the testimony of Ah How, who informed investigators that, when Ah Pew returned home, he buried one of his boots in the garden. This statement became central to the case when medical evidence showed Annie Hunt had been trampled with a man's boot. The final elements of the prosecution case came from the police. At the murder scene, they discovered a pipe stem belonging to the suspect, while in his hut they found bloodstained trousers and a jacket with samples of hair matching Annie Hunt's. Local police and city detectives also argued that the prisoner had incriminated himself by changing his story several times.

In response to the prosecution case, defence attorney G.A. Leech presented a number of challenges. He began by questioning the crown's reconstruction of events. According to testimony presented by witnesses and confirmed by the prosecutor himself, Ah Pew had only been away from his hut for about one hour on the afternoon of the murder. He had spent half an hour buying nails and conversing at Ah Shem's store, from which travel time to the murder site was at least 15 minutes each way. Taking into account the journey there and back, Leech argued, Ah Pew had no time to ravage and murder the victim. The defence attorney also attacked the crown prosecutor for relying on the testimony of Ah How, who, he pointed out, had been the original police suspect, and whose testimony was coloured by an obvious desire for self-preservation. Finally, he critiqued the work of the police, asking why Ah Pew's pipe stem had not been found during initial investigations and had only been discovered at the murder site after police had collected other belongings from his hut. Concluding his response, Leech argued that the blood on the prisoner's clothes could

not be identified as human and that the hair on his jacket did not match a sample of Annie Hunt's taken by the police.

Having heard the arguments from both sides, presiding Justice Edward Williams informed the court that the case against Ah Pew was built around 'circumstantial evidence', which he described as 'more valuable than direct testimony because the facts cannot lie'.²⁵ The jury adjourned for an hour before returning a verdict of guilty. Williams informed Ah Pew through an interpreter that 'he had been found guilty on most cogent evidence' and sentenced the defendant to death, without hope of mercy.²⁶

Following the trial, Victorian newspapers aligned themselves with the legal arguments presented in the case. The *Mount Alexander Mail*, the *Castlemaine Representative* and the *Daylesford Mercury and Express* supported the arguments put by Crown Prosecutor C.A. Smyth, while the *Age* backed the defence of attorney, G.A. Leech. In Castlemaine and Glenluce, petitions were prepared and letters were written. The press published daily reports on the condition of the prisoner, as an eager public awaited the Executive Council's decision on whether Ah Pew's sentence would be carried out.

In the Interest of Justice

In reflecting on *The Queen vs Ah Pew*, we should note that one aspect of the trial that attracted significant attention in contemporary analysis was the influence of presiding Justice Edward Williams. Aware of local expectations when circuit courts arrived in regional areas, 18th- and 19th-century judges generally embraced their role as conspicuous representatives of state authority.²⁷ From his surviving case notes, it seems that Williams recognised the importance of court proceedings to provincial communities and was keen to show the local population that justice was being served.²⁸ Though his intentions may have been noble, the judge's questionable performance during the trial, particularly his time management, had a significant impact on the outcome of *The Queen vs Ah Pew*.

In March 1870, the Victorian government had offered a £100 reward, or a free pardon to 'any person implicated in the murder' besides the killer, for information leading to a conviction.²⁹ Whether or not this incentive played a role, the prosecution was able to call upon 'about forty witnesses' as the basis for its case.³⁰ In his report to the Executive Council, Justice Williams reflected that 'the case occupied a considerable time'.³¹ In fact the court's business was conducted in one exhaustive session 'sitting from half-past

9AM on the 26th of April to half-past 1AM on the following morning', with only an hour and a half adjournment over the entire day. In an apology to the jury at the conclusion of the trial, Williams 'expressed his regret that they had to suffer through the public business' but explained that he saw the case as 'not justifying an adjournment'.³²

Given the prosecution had called so many witnesses, Williams' decision not to hold the case over could only disadvantage the defendant. When defence attorney Leech finally addressed the jury, it was five minutes to ten, twelve and a half hours after the trial had begun. After delivering his brief but effective response, Leech confessed himself:

Painfully conscious of having left unsaid much that he ought to have said, for at that late hour, after a protracted trial, he was to a certain extent physically unable to deal with all the weak points in the case of the crown. In that physical exhaustion he did not doubt that the jury to some degree shared.³³

As he had allowed a charge of rape to be held over the previous evening, the judge's refusal to adjourn the case may simply have been due to pressing commitments outside of Castlemaine.³⁴ But, in not allowing time for further consideration and forcing the resolution of a capital case in the middle of the night, Justice Williams also implied a level of certainty regarding Ah Pew's guilt. As he pronounced sentence of death without hope of mercy over Ah Pew's protestations of 'I did not do it', he summed up by declaring that no one in the court who had heard the evidence could 'believe the verdict but a just one'.³⁵

Responding in its review of the trial, the *Age* labelled that which Williams considered 'most cogent evidence' as little more than 'circumstantial ... [and] meagre in the extreme'.³⁶ Condemning his failure to adjourn proceedings, the Melbourne daily could 'not go along with the learned Judge in the views he produced', sparking retaliation from the regional newspapers.³⁷ On 2 May, the *Castlemaine Representative* rebuked the *Age* and what it saw as an attempt to 'severely reprobate the conduct of Mr. Justice Williams'.³⁸ The *Mount Alexander Mail*, which had at first suggested that postponement might have been 'in the interest of justice', apparently resented Melburnian criticism and changed its tune, asserting that Williams' time management was appropriate given 'testimony so overwhelmingly conclusive'.³⁹

Justice Williams' management of the trial, and the subsequent press debate, brought into the public arena a number of questions relating

to standards of evidence in Victorian courtrooms. At the heart of these debates was the question of whether the testimony presented had been sufficiently damning to negate the need for an extension of the trial and further examination.

A Problematic Witness

After Leech's rushed challenge to most of the prosecution case, Justice Williams recorded in his trial notes that the 'principal evidence [remaining] against the accused is the testimony of his mate Ah How'.⁴⁰ While it was forgotten by a number of commentators during the trial, Ah How had been the original 'Chinaman' whom police suspected of murdering Annie Hunt.⁴¹ Ah How, however, had claimed complete ignorance of Hunt's murder and instead provided the testimony at the heart of the prosecution case against his 'mate', Ah Pew. He was, to say the least, a problematic witness. As the original suspect, Ah How had by far the most to gain from Ah Pew's demise.⁴² In his case report, Williams himself admitted that:

If what Ah How said was false he could have no motive in telling his story save to shield himself from suspicion of having committed the murder and it would almost seem inevitable had the Prisoner been found Not Guilty that Ah How should have been put upon his trial.⁴³

In the debate that followed Ah Pew's conviction, suspicion of Ah How was compounded by claims from members of the Chinese community that he had bragged he would testify 'to get the reward so offered and ... go home to China' (Figure 3 below).⁴⁴ Ah How denied these accusations, swearing he had no knowledge of any rewards. He also claimed that he had failed to cooperate with police in the early stages of their investigations because no one had bothered to ask him what he knew.⁴⁵ Justice Williams chose to accept Ah How's statements, tied though they were to the witness's own self-preservation in the midst of a capital trial.

The judge's acceptance of Ah How's testimony raises broader questions relating to the admissibility of Chinese evidence on the Victorian gold-fields.⁴⁷ At one level, translation was the key issue. The Reverend Young's report into Victoria's Chinese population had called for higher standards of training and greater accountability for interpreters.⁴⁸ Reflecting on the case, Williams noted that 'in estimating the honesty of a Chinese witness rendered as it is into English by the interpreter, the Judge has not the same powers of observation as he would have with a European'.⁴⁹ However, when the *Mount Alexander Mail* argued that it saw no need for concern if all Chinese

evidence was sufficiently 'corroborated' by European sources, it touched on a deeper theme: the prevalence of doubts about the legal validity of non-European testimony. Ironically it was Leech, defending an Asian, who first made this issue explicit. Urging the jury to give Ah Pew, 'Mongolian as he was, as much consideration as the highest type of their [European] race', he simultaneously stressed that Chinese testimony was evidence 'of a dangerous kind'.⁵⁰ The strategy tried to harness anti-Chinese prejudice and direct it against Ah How's credibility, while at the same time attempting to shield Ah Pew from similar racial characterisation. The *Age* picked up the technique following the trial, declaring the Chinese 'remarkable for their indifference to truth and their disposition towards lying speech'. The Melbourne daily argued that Ah Pew could not be justly sentenced to death on the 'unsatisfactory' evidence of Ah How.⁵¹

As Ah Pew's advocates tried to utilise anti-Chinese sentiment to aid his cause, the prosecution and the pro-conviction newspapers used the same technique to take an opposite position. The *Castlemaine Representative* argued that Ah Pew's 'contradictory statements ... [were] indicative of that peculiar cunning which is so strong a feature of the Oriental character', while 'not a single circumstance' threw Ah How or his testimony into question.⁵² The argument went further over the defence's attempts to discount the statements of Elizabeth Clifton, a local farmer's wife, and Albert de Forrest Jr, the son of the Glenluce schoolmaster. Realising that Chinese evidence carried more weight when supported by European sources, both sides then debated whether the testimony of a woman and a boy could substantiate Ah How's claims.⁵³ While the evidence stood, these arguments over the reliability of Chinese testimony reveal some of the racially prejudicial assumptions present in the courtroom. As each side vied for support, both inside the courtroom and out, they competed to harness racial prejudice to their cause.

Ah Sin and Anti-Chinese Chauvinism on the Goldfields

By 6 May, the *Mount Alexander Mail*, aligning itself with its correspondent, 'the public moralist', had begun to view:

The Glenluce murder ... as about the last and most heinous in the long series of crimes of a similar character ... Scarcely a week has passed during that long period but an assault upon some helpless woman or child has been recorded, each succeeding assault surpassing its predecessor in enormity.⁵⁴

Two years earlier, the Reverend Young had portrayed the goldfields Chi-

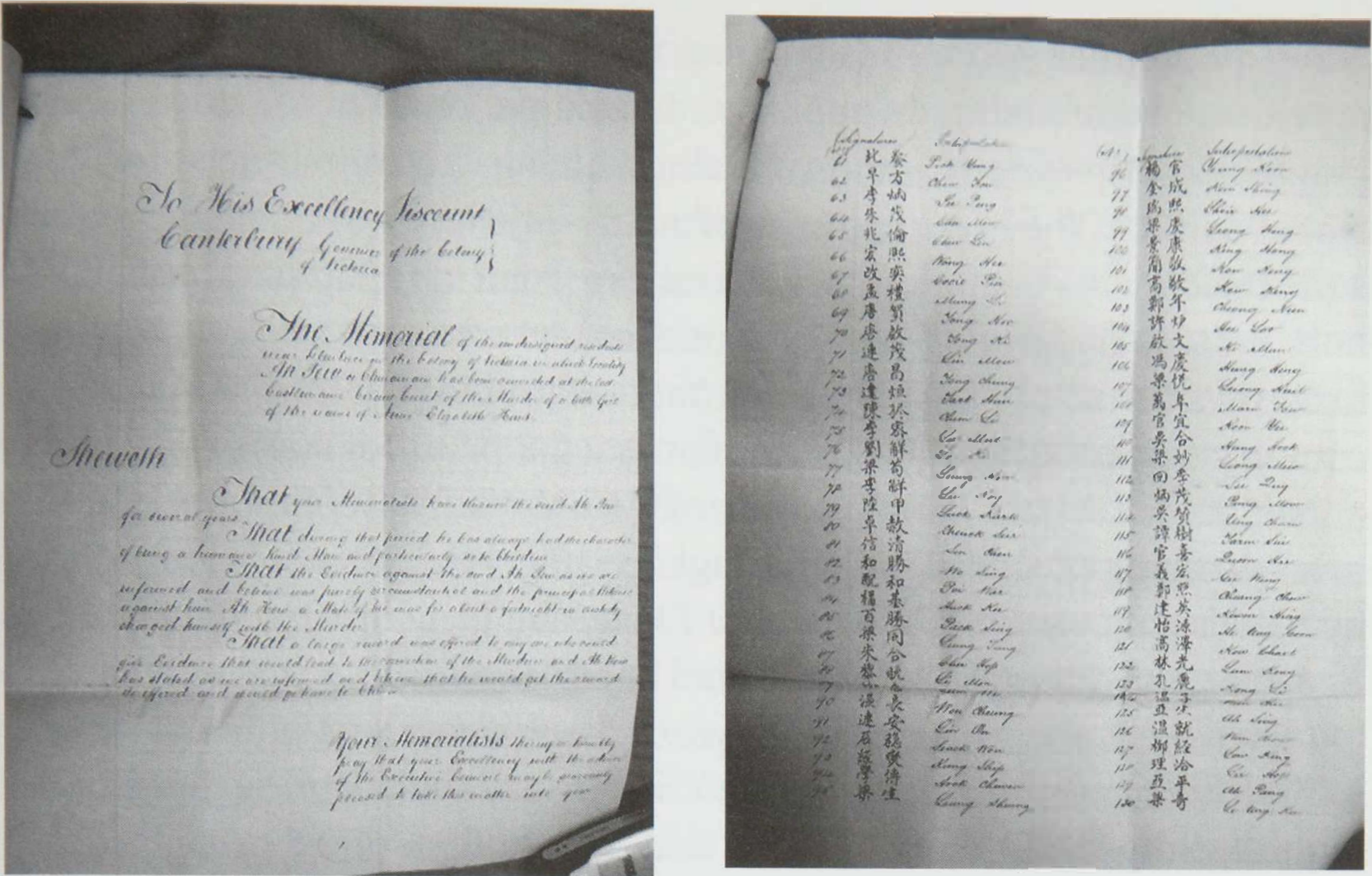


Figure 3: Two sections of a petition from the Governor's Memorialists. Over 100 members of the Chinese community at Castlemaine called for the case to be re-examined, suggesting Ah How was the actual killer and that Ah Pew was an innocent man. Reproduced with the permission of the Keeper of Public Records, Public Record Office Victoria, Australia.⁴⁶

nese as central players in a growing crime problem, and had noted the high cost of maintaining Chinese prisoners. He reported that 400 Chinese had been through Castlemaine Gaol in 1867 and that the growth of immorality among local populations had ‘been most painfully manifest’.⁵⁵ Historian Gary Presland has argued convincingly that violent crimes played only a minor part in the criminal activity of the Chinese and that, in most cases, these acts occurred within Chinese communities.⁵⁶ Despite this reality, it is important to note that the trial of Ah Pew took place at a time when public concern about violent crime on the goldfields was mounting, and the press, seeking a scapegoat, often exaggerated Chinese involvement. The brutality of the ‘wild beast’ that had murdered Elizabeth Hunt was incorporated into these broader narratives of prejudice.⁵⁷

In the years after the boom, the invented stereotype of ‘Ah Sin’, a diseased, opium-riddled and corrupt figure whose lust and immorality were insatiable, personified European fears of Asians on the goldfields.⁵⁸ A perception of Chinese men as sexual predators may have stemmed from the very real shortage of Chinese women in Victoria and a resultant belief

that Chinese men had to be engaging in acts of rape and other sexual depravities.⁵⁹ In mounting his defence, Leech had realised the power of the graphic descriptions of Hunt's murder, which had been public knowledge since March.⁶⁰ The horrific image of a nine-year-old girl being beaten and suffocated by her Chinese attacker as she resisted his attempts at rape could only inflame underlying chauvinism. Ah Pew's lawyer implored the jury to avoid a 'principle in the human mind' of prejudging guilt and ignoring contrary evidence.⁶¹ Ah Pew must not pay the price for Ah Sin.

As public debate on the merits of Ah Pew's trial continued, the two most damning pieces of evidence against him, which had not been heard by the circuit court, were before the Executive Council. The *Castlemaine Representative* claimed to have leaked knowledge of 'medical evidence ... [which would] show that the physique of the Prisoner was such as to render sudden fits of morbid passion likely'.⁶² In his evidence during the coronial inquest, Surgeon O'Hara reported that he had 'examined the Chinaman in custody and found his penis very small and wretched. The scrotum and testicles were both distended as if diseased'.⁶³ Ah Pew's physiology would seem to explain the medical assessment of Hunt's body, which showed 'no symptoms of penetration' though there were 'signs of violence there'.⁶⁴ The document insinuates that Ah Pew had developed venereal disease and that this was a motivating factor in his committing so heinous a crime. The second piece of hidden information, which allegedly 'helped show the beastly lust of the man with regard to children', lay in John Winch's police report to the Executive Council:

About two years ago the criminal was in the constant habit of going to the house of a Mrs. Clifton residing near him at Glenluce. On one occasion Mrs. Clifton came unexpectedly out of the house and there saw Ah Pew exposing his person to the little girls. He was at once turned off the premises and never again permitted to go there.⁶⁵

Though not presented under laws of evidence, this information no doubt reaffirmed Justice Williams' faith in Ah How's testimony. The association of Ah Pew's physical condition with a tendency towards moral instability fits into a broader pattern of attitudes that emerged in the 1870s and 1880s. As a growing number of miners and ex-miners suffered the ravages of the sexually transmitted diseases contracted years earlier, their plight became tied to an association of the Victorian gold rushes with immorality.⁶⁶ The second piece of evidence against Ah Pew though is problematic.

Elizabeth Clifton, the mother of the children to whom Ah Pew had

allegedly exposed himself some years earlier, became a vital link in the prosecution case in the Hunt murder trial. She testified that she had seen the prisoner walk past her home on the day of the murder, a key piece of evidence linking Ah Pew to the crime scene (Figure 4 below). But, as Leech hastened to point out during the case, Clifton had not seen anyone's face and based her identification of Ah Pew on his clothing. She had stated that 'I turned round [*sic*], a man was on my left and afterwards on my right. I believe that man to be the Prisoner'.⁶⁷ Strangely though, considering previous events, Mrs Clifton had difficulty identifying Ah Pew at Annie Hunt's inquest and even then only picked him from a group of two Europeans and three Chinese, one of whom was very tall.⁶⁸ Two problems may be observed here. First, if the Cliftons had caught Ah Pew exposing himself to their daughters and chased him away, surely Mrs Clifton would have been able to identify him easily? Second, ignoring this oddity, could Mrs Clifton's naming of Ah Pew when she did not see his face have stemmed from a desire simply to see someone punished for these previous acts? Had she done what Leech had warned the jury against and pre-judged his guilt on the basis of suspicion and not fact?

A Masterpiece

To the regional papers, 'the prosecution was a masterpiece on the part of the local police'. When Annie Hunt's body had been found, 'there was scarcely a ray of hope that the murderer would be discovered' but police ingenuity and professionalism had seen this happen.⁷⁰ In contrast, one concerned observer, who wrote to the *Castlemaine Representative* under the pseudonym, 'Watcher', expressed a contradictory viewpoint and bemoaned the formation of what he called a 'police-adoration society'. He branded the case 'one of the most carelessly managed and slipshod ever brought into court', and accused the police of failing to properly examine the murder site and planting evidence.⁷¹ The *Age* took up the most controversial point of his letter. The city daily argued that the police had indeed conducted a masterpiece but one of a completely different kind from that celebrated by the regional papers.⁷² It accused detectives, short on evidence, of planting Ah Pew's pipe stem at the murder site.⁷³ The local papers responded by branding the *Age's* accusations absurd, while grudgingly admitting the police could have been more thorough.⁷⁴

In examining Ah Pew's conviction for killing Elizabeth Anne Hunt, the key question today remains the same as in 1870. Does the evidence pre-

sented point decisively to Ah Pew 'and no other man'?⁷⁵ Four Chinese men had been apprehended on suspicion of the crime, three had testified for the crown and one would probably have faced trial had Ah Pew been found 'not guilty'. Hunt's mother said Annie had trusted Ah Pew completely, though 'she was much afraid of Chinese in general'. Samuel Hunt said at the coronial inquest he had warned the 'children several times not to go near the [other] Chinamen' for fear they would be chased.⁷⁶ Ah Pew openly admitted to police that he had a friendship with Annie Hunt, that he had seen her on the day of the murder and that she was his friend.⁷⁷ One hundred and thirty Chinese residents of Glenluce, who knew the men involved, desperately sought to remind the governor that 'the evidence against the said Ah Pew is purely circumstantial and the principal witness against him Ah How, a mate of his, was about a fortnight ago in custody charged himself with the murder'.⁷⁸ If Ah Pew was innocent, then Ah How was almost certainly the murderer. Yet, along with the two pieces of hidden evidence seemingly incriminating Ah Pew, another underlying factor may help explain why accusations against Ah How continually fell on deaf ears.

While admitting that he was of 'no small legal acumen', the *Mount Alexander Mail* and its contemporaries made no secret of their distrust of Ah Pew's defence attorney, G.A. Leech. Leech's defence of Ah Pew had been skilful but it was clearly 'an eloquent forensic argument marked by the consideration of a clear tactician'. The *Mail* cited Leech's funding as coming from 'clans amongst the Chinese' and painted him as the defender of the despicable, putting his own self-advancement before community welfare.⁷⁹ In short, any argument that Ah How and not Ah Pew might have been the murderer may have been widely discounted simply because Leech was the chief proponent of this line in Castlemaine. It is in the regional newspapers' treatment of Leech that it becomes clear that their reporting of *The Queen vs Ah Pew* fits into a much broader struggle taking place in the town in 1870. Concurrent with coverage of circuit court proceedings, the *Mount Alexander Mail* ran an editorial piece condemning 'the barrister Mr Leech' for a series of public lectures, which it felt had developed into quasi-religious services unsanctioned by the church.⁸⁰ At the same time as debate raged over the fate of his client, Leech and 'Leechites' were the subject of several scathing editorials. The *Daylesford Mercury and Express* described the barrister's teachings as 'a shadowy kind of Deism, and strongly averse to Christianity'.⁸¹ Leech's defence of Ah Pew, and his accusations against Ah How, were easily incorporated into a wider character attack that painted the

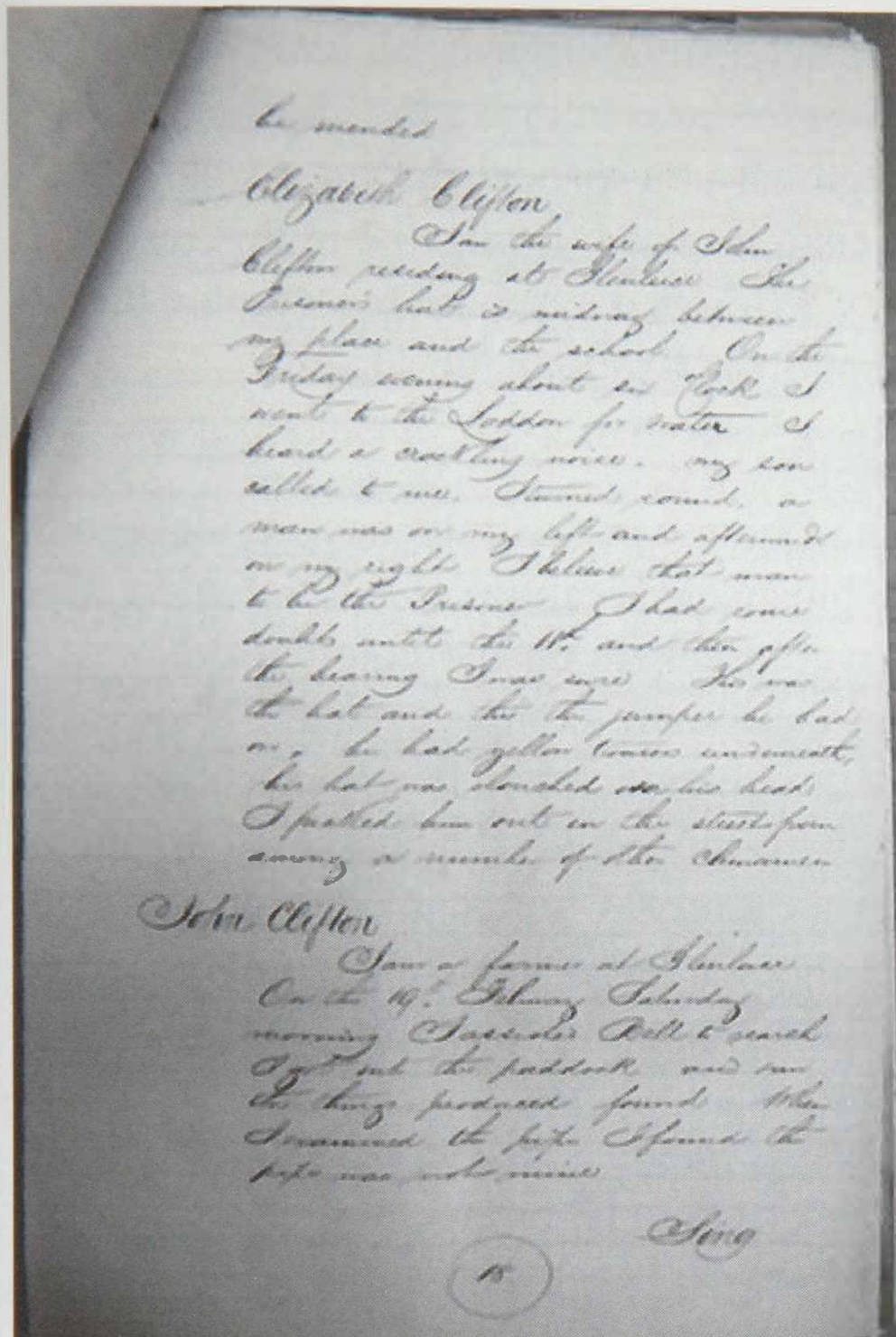


Figure 4: Justice Williams summary of Elizabeth Clifton's Testimony. Reproduced with the permission of the Keeper of Public Records, Public Record Office Victoria, Australia.⁶⁹

barrister as being as much a danger to law and order in Castlemaine as he was to the local church.

Given Leech's controversial reputation, Ah Pew must have held out little hope that the goldfields press would examine the case against him objectively.⁸² The newspaper correspondent, 'Watcher', despaired at the local reporter's willingness to take police allegations at face value, asking, 'don't you think a little straight forwardness and outspokenness would have been equally beneficial at times?'⁸³ It is significant that the voices of resistance that emerged around the case—the *Age*, anonymous correspondents like 'Watcher', and the Chinese petitioners—were all clearly removed from

Castlemaine's local establishment. While regional parochialism seems to have played some part in the goldfields newspapers' approaches to the case, it is also possible to detect a desire to appear both strong and just in uncertain times. In editorialising on crime and punishment generally, the *Mount Alexander Mail* argued:

If the inducements to commit a crime are stronger let the deterrence be stronger. Fear is as much a physical impulse as lust and a man's apprehensiveness might be used to conquer this passion. Deal with the convicted criminal easily, and you weaken his motives to cease to commit crime, while you stimulate others, criminally disposed, to imitate him.⁸⁴

In a climate where the *Mail* saw the judicial system and its legal monopoly

on violence as the only means of deterring criminals such as Ah Pew, the newspaper's failure to dwell on procedural faults in the criminal process is perhaps unsurprising. The regional newspapers put up a wall around the case and fought off the criticism it raised. Ironically, in this regard, it seems Leech and Ah Pew, in very different ways, both represented threats to local newspaper men's conception of Castlemaine society.

The Last Act in a Direful Tragedy

In recent studies, historians of the Chinese in Australia have made significant advances in exploring the sophisticated realities of cultural interaction between Chinese and European goldseekers on the colonial diggings.⁸⁵ While in some ways confirming these more complex readings, this case would also seem to belie them in its outcome. As Ah Pew's execution drew near and he continued to maintain his innocence, the press took a notably one-dimensional approach to the question of Chinese integration into local society. The *Daylesford Mercury and Express* warned about mistaking the 'fatalism of the Oriental ... [for] the firmness which Christianity imparts to the believer in the prospect of death'.⁸⁶ The Chinese might imitate Christian forgiveness but could never renounce their 'former creed' and so, by implication, they could not be trusted to live in white society.⁸⁷ As the execution approached, the desertion of Ah Pew by his European supporters was also noticeable. Despite his involvement with the wider community, of the 130 people who petitioned the governor that they had 'known the said Ah Pew for several years [as a] humane and kind man and particularly so to children', not one was European.⁸⁸ Similarly, either having tired of the disparagement it had received for supporting a Chinese suspect or else concerned to save face in a time of defeat, the *Age* finally admitted a 'general expression' that the 'verdict was just', lamented the 'last act of a direful tragedy' and joined the *Daylesford Express* in its observations about 'Oriental Fatalism'.⁸⁹ For all the publicity surrounding the case, 'the closing scene in the Glenluce tragedy' was a private one, 'witnessed only by those who had a duty to perform'.⁹⁰ Contemplating the fact that so public a case would end with a private execution, the *Age* reflected 'it is the silence of death that makes an execution terrible nowadays'.⁹¹

In the oldest, and crumbling, capital sentence book in the Public Record Office Victoria, case 220 reads: 'Ah Pew (Chinese), April 1870, Murder, Death, Executed'.⁹² This dry entry offers just a tantalising hint of all that *The Queen vs Ah Pew* reveals about crime, law and punishment in colo-

nial Victoria and the position of the Chinese on the Victorian goldfields. On 30 April 1870, the *Castlemaine Representative* captured the moment somewhat more dramatically:

We have become an object of interest ... The outside public looked eagerly for the reports of evidence, and telegrams were asked for and sent to every paper in the colony. An insignificant, and somewhat unpleasant-looking man, who had hitherto “fossicked”, and “puddled”, and “washed”, and smoked through the ordinary routine of a “Celestial” life on the diggings, had suddenly become the object of universal attention.⁹³

But had this ‘insignificant’ and ‘unpleasant-looking man’ received fair and just treatment both in the Castlemaine courtroom and in the public debate that surrounded his trial? Following the execution, a Mr Maclean showed a cast of Ah Pew’s head to reporters at the *Mount Alexander Mail*. He explained to them that its ‘general configuration and ... temperament, denotes a sensual and destructive character, coupled with much cunning and self confidence ... [the phrenology] clearly indicating the excessive activity of a lower animal nature’.⁹⁴ Ah Pew may well have murdered Elizabeth Annie Hunt but the evidence that remains suggests his trial was at best rushed, adversely influenced by his lawyer’s position in the Castlemaine community and, above all, coloured by public expressions of racial prejudice towards the Chinese in 19th-century Victoria.

NOTES

- 1 *Daylesford Mercury and Express*, 26 May 1870.
- 2 *Victoria Police Gazette*, No. 9, 1 March 1870.
- 3 *Age*, 22 February 1870. The story had appeared in the *Victoria Police Gazette*, no. 9, 1 March 1870, p. 1; no. 10, 8 March 1870, p. 1; and no. 12, 22 March 1870, p. 1. It also appeared in the *Government Gazette*, 4 March 1870, p. 420.
- 4 ‘Glenluce, by the Loddon River’, photographed by Jennie Courtney, 2006.
- 5 F.W. Maitland, quoted in David Philips, ‘Anatomy of a Rape Case, 1888’, in David Philips and Susanne Elizabeth Davies (eds), *A Nation of Rogues? Crime, Law and Punishment in Colonial Australia*, Melbourne, Melbourne University Press, 1994, p. 102.
- 6 See, for example, Heather Holst, ‘Equal before the Law? The Chinese in the Nineteenth Century Castlemaine Police Courts’, *Journal of Australian Colonial History*, vol. 6, 2004, pp. 113–36; Valerie Lovejoy, ‘The Things that Unite: Inquests into Chinese Deaths on the Bendigo Goldfields 1854–65’, *The Provenance: Journal of the Public Record Office Victoria*, vol. 6, 2007; Gary Presland, ‘Detecting Chinese Crime in Nineteenth Century Victoria’, in Jan Ryan (ed.), *Chinese in Australia and New Zealand: A Multidisciplinary*

Approach, New Delhi, New Age International Publishers & Wiley Eastern, 1995; Gary Presland, 'Detecting Chinese Crime in 19th Century Victoria', *Journal of Police History*, vol. 5, no. 1, 1997, pp. 41–51; Ken Oldis, 'The Chinawoman', unpublished manuscript, 2007; Keir Reeves, 'Goldfields Settler or Frontier Rogue? The Trial of James Acroy and the Chinese on the Mount Alexander Diggings', *The Provenance: Journal of the Public Record Office Victoria*, vol. 5, 2006. 'Forgotten Faces: Chinese and the Law' is an online exhibition developed and hosted by the Public Records Office Victoria, <http://www.prov.vic.gov.au/forgottenfaces> [16 July 2007].

- 7 An excellent summary of the effectiveness of micro-histories in revealing new, sophisticated social insights has been provided by Sigurdur Gylfi Magnusson, Chair of the Centre for Micro-historical Research at the Reykjavic Academy, Iceland. See Sigurdur Gylfi Magusson, 'What Is Microhistory?', History News Network, <http://www.hnn.us/articles/23720.html> [21 August, 2007].
- 8 For historiographical context, see Philippa Levine, *The Amateur and the Professional: Antiquarians, Historians and Archaeologists in Victorian England, 1838–1886*, Cambridge, Cambridge University Press, 1986, pp. 3–7; Cathie R. May, *Topsawyers: The Chinese in Cairns, 1870–1920*, Studies in North Queensland History, No. 6, Townsville, James Cook University, 1984, p. 1.
- 9 *Mount Alexander Mail*, 24 May 1870.
- 10 The case of *The Queen vs Ah Pew* would be reported in the *Argus* 10 times in 1870 (see 'The *Argus* Index' <http://www.nla.gov.au/apps/argus>) and was eventually mentioned in 'every paper in the colony', according to the *Castlemaine Representative*, 30 April 1870.
- 11 'Old Castlemaine Gaol as it appears from the top of the city today', photographed by Jennie Courtney, 2006.
- 12 *Mount Alexander Mail*, 2 May 1870.
- 13 *Age*, 29 April 1870.
- 14 *Daylesford Mercury and Express*, 28 April 1870.
- 15 David Philips, 'Law', in Graeme Davison, J.W. McCarty and Ailsa McLeary (eds), *Australians 1888*, Sydney, Fairfax, Syme and Weldon, 1987, pp. 372–3.
- 16 *Castlemaine Representative*, 26 April 1870.
- 17 *Castlemaine Representative*, 26 April 1870.
- 18 *The Queen vs Ah Pew*, VPRS 30/P000, Unit 370, Public Record Office of Victoria (PROV).
- 19 Police Report of Superintendant John Winch to the Executive Council, VPRS 264/P/000, Unit 6, Disc: Ah Pew, PROV. Winch had been asked to investigate whether the prisoner was an 'Ah Pue' who had spent time in Melbourne Gaol but determined they were separate individuals. Winch could not find 'Ah Pew' in any other police documents.
- 20 Leigh Boucher, 'Unsettled Men: Settler Colonialism, Whiteness and Masculinity in Victoria, 1851–1886', PhD thesis, University of Melbourne, 2005, p. 53. In the decade 1861–71, the number of Chinese employed in mining dropped from 21,161 to 13,374.
- 21 Kathryn Cronin, *Colonial Casualties: Chinese in Early Victoria*, Melbourne, Melbourne

University Press, 1982, p. 126.

22 Rev. William Young, 'The Chinese Population in Victoria, 1868 V.P.P. 35', in Ian F. Maclaren (ed.), *The Chinese in Victoria: Official Reports and Documents*, Melbourne, Red Rooster Press, 1985, p. 39.

23 *Mount Alexander Mail*, 24 May 1870.

24 Testimony of Samuel Hunt, *The Queen vs Ah Pew*. Sam Hunt (Annie's Father) testified Ah Pew spoke 'very good English'.

25 *Daylesford Mercury and Express*, 28 April 1870.

26 *Daylesford Mercury and Express*, 28 April 1870.

27 Douglas Hay, 'Property, Authority and the Criminal Law', in Douglas Hay, Peter Linebaugh & E.P. Thompson (eds), *Albion's Fatal Tree: Crime and Society in 18th Century England*, New York, Pantheon Books, 1975, p. 27.

28 Judge Williams' case notes, VPRS 264/P/000, Unit 6, Disc: Ah Pew, PROV; *Daylesford Mercury and Express*, April 28 1870.

29 *Victoria Police Gazette*, no. 10, 8 March 1870, p. 1.

30 *Daylesford Mercury and Express*, 28 April 1870. The number of witnesses called was actually forty. The reporter's uncertainty may reflect the amount of testimony he had been forced to hear.

31 Justice Williams' case notes.

32 *Mount Alexander Mail*, 27 April 1870.

33 *Mount Alexander Mail*, 27 April 1870.

34 The circuit court was due in Sandhurst. He had the final case to be heard in Castlemaine, a conspiracy charge, held over until the next sitting in May.

35 *Mount Alexander Mail*, 27 April 1870.

36 *Mount Alexander Mail*, 27 April 1870; *Age*, 29 April 1870.

37 *Age*, 29 April 1870.

38 *Castlemaine Representative*, 2 May 1870. A similar criticism was made in the *Daylesford Mercury and Express*, 30 April 1870.

39 *Mount Alexander Mail*, 27 April 1870 and 2 May 1870.

40 Judge Williams' case notes. Leech successfully challenged most of the other points raised by the prosecution.

41 *Age*, 22 February 1870.

42 This point was noted by Leech, the *Age*, the governor's 'memorialists' and 'Watcher', a letter writer who criticised the case in the *Castlemaine Representative*, 2 May 1870. The governor's 'memorialists' were 130 Chinese residents of Glenluce who prepared a petition to the Executive Council on Ah Pew's behalf. See petition from the governor's 'memorialists', VPRS 264/P/0000, Unit 6, Disc: Ah Pew, PROV.

43 Judge Williams' case notes.

44 Petition from the governor's 'memorialists'.

45 Ah How's testimony, VPRS 264/P/000, Unit: 6 Disc: Ah Pew, PROV.

- 46 Petition from the governor's 'memorialists'. Reproduced with the permission of the Keeper of Public Records, PROV.
- 47 Cronin, p. 57. There was an established history of discounting the validity of statements from non-Europeans in goldfields courtrooms that had become most evident during the violent confrontations of the 1850s.
- 48 The Reverend William Young was a church missionary of Scottish and Malaysian decent. See Young, p. 55.
- 49 Judge Williams' case notes.
- 50 *Mount Alexander Mail*, 27 April 1870.
- 51 *Age*, 27 April 1870.
- 52 *Castlemaine Representative*, 2 May 1870; *Mount Alexander Mail*, 2 May 1870.
- 53 *Mount Alexander Mail*, 27 April 1870. Elizabeth Clifton had said she saw Ah Pew heading towards the murder site but she did not see his face. Albert de Forrest Jr testified as to Ah Pew's ownership of the pipe found at the murder scene.
- 54 *Mount Alexander Mail*, 6 May 1870.
- 55 Young, p. 53.
- 56 Gary Presland, 'Chinese, Crime and Police in Nineteenth Century Victoria', in Paul Macgregor (ed.), *Histories of the Chinese in Australasia and the South Pacific*, Melbourne, Museum of Chinese Australian History, 1995, p. 381.
- 57 *Mount Alexander Mail*, 2 May 1870.
- 58 Cronin, p. 78.
- 59 G.A. Oddie, 'The Chinese in Victoria, 1870–1890', MA thesis, University of Melbourne, 1959, p. 22. Oddie argues there can be little doubt that many Chinese men suffered from severe sexual deprivation, which can be linked to high rates of Chinese lunacy in Colonial Victoria (1 in 140 in the 1881 Census).
- 60 *Victoria Police Gazette*, no. 9, 1 March 1870, p. 1.
- 61 *Mount Alexander Mail*, 27 April 1870.
- 62 *Castlemaine Representative*, 2 May 1870.
- 63 Dr O'Hara's statement to the coronial inquiry, *The Queen vs Ah Pew*.
- 64 Dr O'Hara's statement to the coronial inquiry, *The Queen vs Ah Pew*.
- 65 Police Report of Superintendent John Winch to the Executive Council, VPRS 264/P/000, Unit 6, Disc: Ah Pew, PROV. The *Age* had reported on 14 March that, at the coronial inquest, John Winch had wanted to question Elizabeth Clifton about these events.
- 66 Milton Lewis, *Thorns on the Rose: The History of Sexually Transmitted Diseases in Australia in International Perspective*, Canberra, Australian Government Publishing Service, 1998, p. 71.
- 67 Testimony of Elizabeth Clifton, VPRS 264/P/000, Unit 6, Disc: Ah Pew, PROV.
- 68 *Mount Alexander Mail*, 27 April 1870.
- 69 Judge Williams' case notes. Reproduced with the permission of the Keeper of Public Records, PROV.

- 70 *Mount Alexander Mail*, 2 May 1870.
- 71 Correspondence in the *Castlemaine Representative*, 2 May 1870.
- 72 The police investigation had been aided by the longest-serving Chinese detective in the Victorian Police—Fook Shing (detective 1868–1886). Gary Presland, ‘Chinese Detectives’, *Journal of Police History*, vol. 2, no. 1, 1993, p. 51.
- 73 Report from the *Age*, quoted in the *Castlemaine Representative*, 28 April 1870. The pipe stem had not been found on the police’s first visit to the murder site.
- 74 *Castlemaine Representative*, 2 May 1870.
- 75 *Mount Alexander Mail*, 27 April 1870.
- 76 Testimony of Samuel Hunt, *The Queen vs Ah Pew*.
- 77 Winch’s notes, *The Queen vs Ah Pew*.
- 78 Petition from the governor’s ‘memorialists’.
- 79 *Mount Alexander Mail*, 2 May 1870. Leech had ‘furnished on more than one instance his ability to disappoint the hangman’.
- 80 *Mount Alexander Mail*, 27 April 1870.
- 81 *Daylesford Mercury and Express*, 26 May 1870.
- 82 The regional papers had all defended and refrained from criticising the judge, jury, police, Ah How, Elizabeth Clifton and the prosecution case in general whenever inconsistencies emerged.
- 83 Correspondence in the *Castlemaine Representative*, 2 May 1870.
- 84 *Mount Alexander Mail*, 6 May 1870.
- 85 See, for example, Keir Reeves, ‘A Hidden History: The Chinese on the Mount Alexander Diggings, Central Victoria, 1851–1901’, PhD thesis, University of Melbourne, 2005; Holst, pp. 113–36.
- 86 *Daylesford Mercury and Express*, 26 May 1870.
- 87 *Daylesford Mercury and Express*, 26 May 1870.
- 88 Petition from the governor’s ‘memorialists’. The names on the petition all appear Chinese. Ah Pew also had an uncle who visited him at his cell after the conviction.
- 89 *Age*, 24 May 1870.
- 90 *Mount Alexander Mail*, 24 May 1870.
- 91 *Age*, 24 May 1870. Public Executions in Victoria had ceased in 1855. See John McGuire, ‘Judicial Violence and the “Civilising Process”: Race and the Transition from Public to Private Execution in Colonial Australia’, *Australian Historical Studies*, vol. , no. 111, October 1996, p. 203.
- 92 VPRS 007853/P/0001, Unit 1, PROV.
- 93 *Castlemaine Representative*, 30 April 1870.
- 94 *Mount Alexander Mail*, quoted in the *Argus*, 25 May 1870.