

Reference Number: **2016.0082**

Collection/Series Title: **A TREATISE ON CRIMES AND  
INDICTABLE MISDEMEANORS**

<b>Creator</b>	Barry, Sir Redmond
<b>Creator's Activity/Occupation</b>	Chancellors - Lawyers - Judges
<b>Creator's Historical Note</b>  <p>Sir Redmond Barry was born on 7 June 1813 at Ballyclough, County Cork, Ireland. He graduated from Trinity College, Dublin (B.A. 1837) and was admitted to the Irish Bar in 1838. After the death of his father in 1838, he emigrated to Australia, landing in Sydney, later settling in Melbourne in 1839. He established a practice in the minor courts, and eventually in the Supreme Court following its establishment in 1841. Having represented several Indigenous people in cases Barry became in 15 Dec 1841 the Standing Council for Aborigines. In these cases Barry challenged the legal basis of British authority over Aborigines who were not at this time citizens, advocating that they should be tried before a jury which included Aboriginal people.</p> <p>As the colony of Victoria progressed, so did Barry's appointments: he was the first solicitor-general in 1851 and elevated to the new bench of the Supreme Court of Victoria in 1852.</p> <p>Barry was involved in the development of almost every social, cultural and philanthropic activity in Victoria in his era. He was a prime founder of the University of Melbourne and its first Chancellor from 1853, as well as of the Melbourne Public Library and Art Gallery.</p>	
<b>Date Range of Collection/Series</b>	c1844
<b>Size/Extent</b>	1 Volume (0.05m)
<b>Access Conditions</b>	Access: Closed currently undergoing digitisation (May 2018)

**Scope and Content of Collection/Series**

**SCOPE AND CONTENT**

This volume of British criminal jurisprudence was used by barrister Redmond Barry who arrived in the District of Port Phillip [later renamed Melbourne] in 1839. That same year George Augustus Robinson (1788-1866) previously a 'conciliator' between settlers and the Indigenous peoples of Tasmania, became the 'Chief Protector of Aborigines' of Port Phillip District. He brought with him a group of sixteen Palawa, Tasmanian Aborigines, to Port Phillip District to help him with his work (and perhaps also in part because of the failed settlement in Flinders Island).

In 1841, George Augustus Robinson investigated the frontier violence in the Western District. Tunnerminnerwait (c.1812-1842), a Parperloihener man from Cape Grim (Tas) worked as a guide with Robinson to collect testimonies relating to the Convincing Ground massacre (1833-1834) where an estimated 20-200 members of the Gunditjmarra people killed by whale hunters in Portland Bay. In October 1841 five of the sixteen, including Tunnerminnerwait, stole ammunitions, two guns, raided stations Dandenong to Western Port in the Mornington Peninsula - wounding four white men and killed two whalers. They were captured and return to Melbourne (26 Nov 1841) where they appeared before the Judge John Walpole Willis on 20-22 December 1841. The two men Tunnerminnerwait, and Maulboyherrner were charged with murder, the three women Truganinni, Palnoabeena, and Pytterrur as accessories to murder. Full and alternative names noted below.

It has been speculated that investigation the Convincing Ground massacre, which left only two survivors of the Gunditjmarra people, may have been a catalyst to these actions. Tunnerminnerwait's life was punctuated by the violence of white settlers and the resistance of Indigenous people. He was eleven years old at the time of the Cape Grim massacre (1828) in North West Tasmania, where an estimated 30 Aboriginal men were killed - resulting in the fracturing of his family unit. It is speculated that his direct experience of witnessing massacres in Tasmanian and again finding evidence of them in Victoria may have driven the group to respond so soon after his return from that trip. The lives of the women were similarly punctuated by frontier violence and loss.

Having represented several Aboriginal people in cases during 1841, Redmond Barry was appointed the Standing Council for Aborigines, 15 December 1841. In this, and in previous cases, Barry in their defence, challenged the legal basis of British authority over Aborigines who were not citizens; advocated that they should be tried before a jury which included Aboriginal people, and in this case, asserted that the evidence was dubious and circumstantial. During the brief trial - the five defendants were not permitted to give evidence, which was a normal legal procedure at the time to prevent self-incrimination; however, they were not able to be called as witnesses either - due to the fact they were not Christians and consequently could not take the Oath.

Very little of Redmond Barry's early defences survive. This volume contains handwritten annotations of Redmond Barry in setting out his legal defence. Indigenous oral history suggests the events which led to the murder of the two whalers may have occurred because the men were seeking revenge against the abduction of Aboriginal women (See: Land, Claire, 2014 p.8); annotations by Barry on the 'Forcible abduction of females' (pp. 570-571) lends support to this. Other annotations Barry made in his defence case, relates to the culpability of the three women Truganinni, Palnoabeena and Pytterrur. 'Of persons capable of committing crimes - subject of others' (p.16); 'Murder' (p. 421); 'Means of Killing' (p. 425) as well as 'Compounding Offences' (p. 136). There are further annotations relating to 'Offences by Persons in Office - Extortion (pp. 144-145); 'Of Bribery' (p. 156); 'Of Libels Making and Publishing' (p. 239), it is unclear if this is related to this case or others.

There were many well documented irregularities that occurred in the trial. The jury took 30 minutes to return their verdict. Tunnerminnerwait and Maulboyherrner were sentenced to hang for murder, the three women Truganinni, Palnoabeena and Pytterrur, initially charged as accessories, were found not guilty - and returned to Flinders Island. Tunnerminnerwait and Maulboyherrner were the first men to be hanged in Melbourne. On the 20 January 1842, they were taken to Elizabeth Street where 5,000 people gathered for their execution. With their hands cuffed behind their back, and blind folded, they had to climb a ladder using their chin. Judge Willis said their execution was designed to inspire "terror ... to deter similar transgressions."

**NAMES, ALTERNATIVE SPELLINGS, DATES, KIN, LOCATIONS WHERE KNOWN.**

Tunnerminnerwait (c.1812-1842) a Parperloihener man from Cape Grim (TAS). Also known as Peevay, Tunninerpareway, Jack, Jack of Cape Grim.

Maulboyheenner (?-1842) also known as Timmy, Timme, Bob.

Truganini (1812?-76) from Brune Island (TAS). Also known as Trugernanner, Trugernena, Truganina, Trugannini, Trucanini, Trucaminni Trucaninny, Truganini, Lalla(h) Rookh.

Planobeena (?-?) from Port Dalrymple. Partner of Tunnerminnerwait. Also known as Wortabowigee, Fanny.

Pytterrur (?-?) also known as Maytepueminner, Matilda.

KEYWORDS: Palawa / Tasmania people (Tas), Aboriginal, Indigenous

AIATSIS KEYWORDS: History - Frontier conflict - Tasmania - Black War

AIATSIS KEYWORDS: History - Frontier conflict - Victoria

AIATSIS KEYWORDS: Race relations - Violent - Massacres, murders, poisonings etc. - To 1900

AIATSIS KEYWORDS: Law - Cases

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AIATSIS PLACE NAMES: [Grim, Cape \(NW Tas SK55-01\)](#), [Bruny Island \(SE Tas SK55-08\)](#), [Dandenong / Dandenong Ranges \(Vic SJ55-05\)](#), Western Port (Vic SJ55-09)

TINDALE TRIBES Gunditjmarra <http://archives.samuseum.sa.gov.au/tindaletribes/gunditjmarra.htm> (July 2018)

### NOTE ON ITEM

A Treatise on Crimes and Indictable Misdemeanors / by William Oldnall Russell. Volume 1, Second Edition 1826., pp. 779. Personal copy of Redmond Barry. This volume was acquisition by the University of Melbourne Archives in April 1961. The volume has been rebound (date unknown) with a modern cover and dark red endpaper. Text block is sound. Edges exhibit severe acidic staining, particularly on the first pages - some minor edge damage due to fragility of paper. Hand annotations, by Redmond Barry, in black-brown iron gall ink. The front fly-leaf is affixed with his armorial bookplate and annotated "Redmond Barry. Jan. 12th [1844?] Melbourne, Port Phillip" Further marginalia occurs on pages: opposite fly-leaf, title page, pp.16, 136, 144-145, 156, 239, 421, 425, 428, 570-571. Line marking (only) on pp. 19, 20, 21, 22, 44, 136, 146, 211, 213, 535, 540.

### REFERENCE SOURCES USED IN THIS DESCRIPTION

City of Melbourne <http://www.melbourne.vic.gov.au/about-melbourne/melbourne-profile/aboriginal-culture/Pages/tunnerminnerwait-and-maulboyheenner.aspx> (Accessed 29/01/2018)

Indigenous Resistance in early Melbourne history <http://www.takver.com/history/melb/tunnerminnerwait.htm> (Accessed 29/01/2018)

Land, Clare (2014) Tunnerminnerwait and Maulboyheenner: The involvement of Aboriginal people from Tasmania in key events of early Melbourne <https://www.melbourne.vic.gov.au/SiteCollectionDocuments/tunnerminnerwait-and-maulboyheenner.pdf> (Accessed 29/01/2018)

Auty, Kate and Russell, Lynette (2016) Hunt Them, Hang Them <http://www.justice-press.com/publications/434-hunt-them-hang-them> See: Russell, Lynette. Sunday Extra, Radio National Interview – 10/07/2016 <http://www.abc.net.au/radionational/programs/sundayextra/hunt-them-hang-them/7576688> (Accessed 10/07/2016)

Toscano, Dr. Joseph Lest we Forget: The Tunnerminnerwait and Maulboyheenner Saga <http://www.anarchistmedia.org/pdf/The-Tunner-Maulboy-Booklet.pdf> (Accessed 29/01/2018)

Truganini (Trugernanner, Trukanini, Trucanini) (1812?–76) [http://www.utas.edu.au/library/companion\\_to\\_tasmanian\\_history/T/Truganini.htm](http://www.utas.edu.au/library/companion_to_tasmanian_history/T/Truganini.htm) (Accessed 29/01/2018)

Tunnerminnerwait (c.1812-1842) of the Parperloihener clan of the Aboriginal North West nation in Tasmania <https://en.wikipedia.org/wiki/Tunnerminnerwait> (Accessed 29/01/2018)

Collection Category Community and Political, individuals

This document dated 1/08/2018

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