Presentation to WAHTA Spring seminar series, 14 September 2010

1. Introduction: 'No honour among thieves' - the Maungatapu murders

- Resource: NZhistory.net.nz feature on the Maungatapu murders including related media gallery
- Resource: map showing locations for this story

On 12 June 1866 James Battle, a lone gold prospector, was set upon and killed while walking on the Maungatapu track south-east of Nelson. The following day Felix Mathieu, James Dudley, John Kempthorne and James de Pontius met a similar fate as they headed for Nelson with cash and gold dust worth £320 (about $30,000 in today's money). These killings resembling something from the American 'wild west' shocked the colony. Within a week those responsible – the so-called Burgess gang - were captured. In early August the trial began in the Nelson High Court. Not surprisingly it quickly captured the imagination of people throughout the country. Matters became even more sensational when one of the gang, Joseph Sullivan, turned on his co-accused. His evidence sent his co-accused – Richard Burgess, Thomas Kelly (AKA Thomas Noon) and Philip Levy (AKA William Levy) to the gallows. Sullivan in highlighting that there is 'no honour among thieves' escaped the noose.

This sorry tale is more than just an interesting yarn from 'the good old days'. It provides a useful insight into a number of aspects of life in nineteenth century New Zealand which will be of value when considering possible topics for either a significant decision or significant historical situation in your exams. Sometimes in attempting to deal with the big picture as required with the broad survey of New Zealand in the nineteenth century it is helpful to illustrate with memorable tales such as this.

The Maungatapu murders can be used to illustrate:

- law and order on the goldfields and the development of policing in New Zealand
- the connections between New Zealand and Australia and indeed New Zealand's place as the last stop in the great gold rushes of the Pacific
- the impact of the gold rushes on the type of population that emerged as well as the attempts by provincial governments to deal with what were seen as the problems of an unstable, transitory, male population

I am going to spend a little time outlining this story in its broadest sense before attempting to put it into the broader context of life in nineteenth century New Zealand.

2. The lure of the South Island gold rushes

- Resource: Te Ara entry on Gold and gold mining

- James Belich in speaking of contact before the signing of the Treaty of Waitangi spoke of how it was often ‘strained through Sydney first’. In this instance it was Victoria. All four members of the Burgess gang had come to New Zealand via the goldfields of Victoria, Australia. Three of them also had the shared experience of having been transported to Australia for crimes committed in England. They were the sort of 'career criminals' that some of the authorities in Otago had feared would arrive following the discovery of gold in the province.

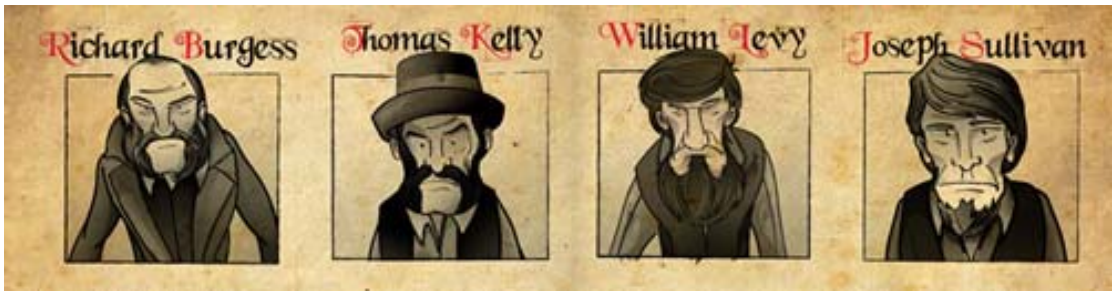
- Crimes carried out by gangs of criminals were rare in New Zealand. Crime was generally the work of individuals, and often a spontaneous act fuelled by alcohol. Nevertheless it was a real fear amongst those in power in firstly the Otago provincial government and then Canterbury (as the gold rush moved to the West Coast) that organised crime would find many opportunities on the goldfields. As the non-Maori population of New Zealand doubled in the 1860s it was accepted that there would be a fair number of rat-bags in this number.

- Authorities in New Zealand were also keen to avoid a repeat of incidents such as Victoria’s 1854’s Eureka Rebellion. This organised rebellion by gold miners in Ballarat, Victoria culminated in The Battle of Eureka Stockade in December 1854 and resulted in the deaths of 28 people (including 6 soldiers). It remains Australia's only armed civil uprising.

- A number of issues were behind the unrest in Ballarat; objections to the high costs of mining items, the expense of a Miner's Licence, taxation (via the licence) without political representation and what were regarded as the authoritarian nature of the government and the police and military. The response in New Zealand was electoral reform. To vote in New Zealand you had to own property of a certain value. This notion was extended in the 1860 Miners’ Franchise Act which recognised a miner’s right (which cost £1 per year) as property sufficient to entitle the holder to vote. The qualification was that you had to be an adult British male (those over 21) who had held the miner’s right for 3 months prior to the election. Furthermore goldfield seats were created in Parliament. While the logistics of actually getting to a polling station from the diggings did meant some miners didn’t bother to give up the time the fact remained that the right existed.

- Others opposed extending such political rights to miners who they described as opportunistic and who had no intention of staying in New Zealand once they had made their fortune.

3. The Burgess Gang



So the men involved in this crime were exactly the sort of characters certain officials such as St John Branigan, inspector of the Otago Provincial Police had warned would arrive with the thousands of other miners. More on Branigan in a moment.

Briefly outline backgrounds of the Burgess gang and how they came together.

- **Richard Burgess (originally known as Richard Hill)**
  - transported from London to Melbourne for theft aged 16
  - After his release he resumed a life of crime and served several prison terms.
  - In January 1862 he left Australia for the Otago goldfields
  - Turned to crime teaming up with Thomas Noon, an acquaintance from his prison days in Australia.
  - Specialised in attacking and robbing lone prospectors.

- **Thomas Noon (AKA Kelly)**
  - Like Burgess had been transported
  - Met Burgess while in prison in Victoria
  - Teamed up with Burgess in Otago and eventually both imprisoned for crimes committed on the gold fields in 1862
  - Upon release in 1865 he and Burgess headed for the West Coast

- **William (alias Philip) Levy**
  - Only member of the gang to have emigrated to Victoria as opposed to having been sent there
  - By the 1850s had established himself as a gold buyer and fence. Also helped criminals identify possible targets
  - Moved to Otago and then onto the West Coast where he met Burgess and Kelly in Hokitika where he helped them plan a number of robberies.

- **Joseph Sullivan**
  - Transported from England to Australia in 1840 for robbery
  - By 1853 had established himself as a prizefighter and publican
  - Moved to the West Coast where he teamed up with the other members of the Burgess Gang in April 1866

Henry Garrett and his gang robbed fifteen men on the track between Gabriel's Gully and Dunedin in October 1861. Like Burgess he had been transported to Australia in the 1840s for theft and like Burgess worked on the Victorian goldfields before coming to Otago. In May 1862, Garrett was captured and imprisoned in Dunedin where he was later involved in an attempted prison break with Richard Burgess.

4. St John Branigan and the 'Victorianisation' of the Otago police force

- Resource: St John Branigan biography (DNZB)

After service with the British Army in the Cape Colony (South Africa) the Irish born Branigan moved into law enforcement with the Cape police where he established a strong reputation. In 1853 he decided to try his luck on the Victorian goldfields. Hearing that goods were in short supply he invested all of his money stocking a schooner with goods he intended to sell on the goldfields. He and his wife Margaret set sail for Melbourne but the venture failed. He turned once more to law enforcement joining the Victorian police in November 1854. In coping with the social turbulence generated by the gold rushes Victoria had centralised and reorganised its police force to combine the paramilitary policing modes of the London Metropolitan Police Force and the Irish Constabulary. By 1856 Branigan had achieved the rank of a commissioned officer in this renowned police force.

With the discovery of gold in Otago in May 1861 local authorities here became concerned that the influx of thousands of mainly young men would lead to social unrest. The Otago provincial executive decided to adopt Victorian methods of policing. Cutbacks in the Victorian force had made Branigan's position less than secure and he accepted the position offered by the Otago provincial government to take charge of its new force in July 1861. He planned to replicate the essential features of the Victorian urban and rural patrol police. The Otago provincial government invested heavily in backing Branigan - up to half the provincial expenditure was put into the establishment of the new policing regime.

A number of constables from Victoria were recruited to help establish a London-style beat surveillance system in urban areas, and mobile patrols in the rural districts. Often mounted, the mobile patrols were similar to those of the Irish and Victorian constabularies. Imposing escort parties brought the gold to the provincial capital of Dunedin. Some of Otago's established settlers were concerned about both the challenge of the goldfields and what they saw as the provincial government's coercive response. But those in power came to consider Branigan as indispensable as reflected by their early decision to increase his salary from an already substantial £300 to £400 (around $40,000 in today's money) as well as elevating his rank to that of commissioner.

Branigan established a preventive patrol network attempting to detect crime and criminals early. The publication of the colony's first *Police Gazette* also helped keep the populace informed as to goings on in terms of law and order and highlight crime and criminals. Strict internal discipline prevailed and Branigan saw to it that he was kept in the loop on all matters relating to policing in Otago – a very hand on approach. He routinely made spot checks on police stations throughout the province to examine their degree of efficiency. New arrivals in Port Chalmers were checked over to see if there were any likely recruits. Recruitment remained an issue as pay was not great and many constables found themselves in pretty bleak conditions on the

goldfields where they also stood a greater chance of prosperity if they in fact turned to gold prospecting as opposed to law enforcement.

By April 1862 Otago force with over 100 men at its disposal was the largest in the colony. Within a year Branigan's fame had become legendary; his force, popularly known as **'Branigan's Troopers'**, was 'universally admitted to be one of the best, not only in these Colonies, but in the world'. It was often said that the 'orderly state' of the Otago region compared to goldfields and their hinterlands in other countries, was largely due to his 'able superintendence' of the force which he had brought to such a 'pitch of excellence'. The high profile of his smartly uniformed and heavily armed men revealed the coercive power of the state. Branigan had become one of the most powerful and influential figures in Otago.

After what was seen as the initial 'emergency' was over the Otago provincial government began to impose greater financial constraints upon policing. The ambitious and abrasive Branigan was soon at odds with the province's politicians. He deliberately exaggerated of the number of hard-core criminals arriving from Australia as fought further retrenchment of his force. Despite cuts of around 20% by the end of 1867 Branigan's Troopers remained the most formidable provincial force in New Zealand.

In seeking to prevent 'the social reproduction of crime', Branigan removed vagrant, destitute and orphaned children from the streets and from 'utterly profligate and degraded parents'. He recommended the establishment of a residential industrial school and reformatory for the 'education and training of vagrant and neglected children' leading to the establishment of the Otago Industrial School, the first in the colony, at Lookout Point, Caversham. Branigan wrote its regulations, became its inspector, and visited it almost daily.

Branigan was a key figure in the central government's attempt to demilitarise the Armed Constabulary and transform it into a regular peacetime force...but that is another story...

The Canterbury provincial police followed the Otago example when gold was discovered on the West Coast in 1864. Thomas Broham (DNZB essay) is also worth reading to highlight the continuing 'Victorianisation' of the New Zealand police force.

5. A timeline of crime: May–June 1866

Resource: related page on NZHistory.net.nz

For a few short months the gang embarked upon a crime spree along the west coast of the South Island that would culminate in the murder of five men on the Maungatapu Track.

6. Sullivan rats on the others and the trial

- Resource: Sullivan's betrayal (NZHistory.net.nz)

Without bodies the case was circumstantial. Nine days after the killings searchers found the dead packhorse and the missing men's swags. Rewards for information were offered with little joy but a breakthrough occurred when the government promised £200 and a free pardon to any accomplice (not the actual murderer) who would turn Queen's evidence. This reward poster was placed where the prisoners could see it. This was a clear attempt to encourage members of the gang to turn on each other. When Levy was separated form the rest Sullivan decided to act while he still could and spilled his guts. Claiming to be only the lookout he was not directly involved in the murder of Mathieu and company.

7. The trial

- Resource: The trial (NZHistory.net.nz)
- Resources: NEM report on the trial and Mark Twain's commentary

Pretty sensational stuff in the end in which Burgess conduct's his own defence. Burgess's confession makes for memorable reading.

The trial lasted less than a week and the three remaining gang members found guilty and sentenced to death. Note how Burgess in his cross-examination of Sullivan asked him why he had killed Battle? Judge told him he didn't have to answer but this becomes significant later on. To secure convictions for the killing of Mathieu's party the government had decided that the safest and most efficient option had been to accept the testimony of Sullivan.

8. The twist in the tale...what about James Battle?

- Resource: The trial (NZHistory.net.nz)
- Alfred Saunders letter re-Sullivan

The story of Sullivan illustrates another key part to law enforcement- narcs. To have executed Sullivan would have in the long run have had serious consequences for policing. As Nelson uperintendent Saunders states in a letter to the Canterbury Superintendant:

> I trust I need hardly say that no person could regret more deeply than I do the necessity that compels the release of such a horrible and dangerous character, but I look upon it as a heavy price we are obliged to pay for necessary and important disclosures and as a means of creating a wholesome distrust of each other amongst the desperate villains who may band together for such nefarious purposes, a distrust that would I fear be almost annihilated were we to deal with Sullivan in any other way that which I have now recommended.

9. Executions and aftermath

- Resource: The executions (NZHistory.net.nz)
- Resource: Aftermath (NZHistory.net.nz)

Following executions moulds for casts of the three heads were then taken. This was done in a bid to support the theories of phrenology, a popular discipline of the period, eventually dismissed as pseudo-science. Although Sullivan was seen as the most likely murderer of George Dobson, he was eventually pardoned on the understanding that he leave the country and never returns