



Topic 5.1: The colonies introduce Responsible and Representative Government and the impact on Aboriginal and Torres Strait Islander peoples

Colonial events that led to treason laws: The attempt to assassinate Prince Alfred

On a sunny Sydney day on 12 March 1868, shots rang out during a charity picnic in Clontarf. Queen Victoria's second son, [Prince Alfred](#), on the first royal tour of Australia, was shot by [Henry James O'Farrell](#).

O'Farrell had emigrated to Australia from Ireland as a child. As the Prince walked with the Chief Justice through the crowd towards the band, O'Farrell pulled out his revolver and shot Prince Alfred in the back. According to the [Sydney Morning Herald](#), the Prince fell to his knees, saying 'Good God, my back is broken'. The Chief Justice, Sir William Manning, then 'sprang at the would-be assassin, who jumped back and aimed the murderous weapon at Sir William'. The gun misfired and Sir William ducked, lost balance and fell. As he tried to get up, O'Farrell took aim at Sir William again, but another man then grabbed 'the dastardly assailant', pinning his arms, causing the shot to be fired towards the ground. It went through the foot of a by-stander, who fainted.

While the Prince was carried off to a tent to be examined by the doctors who were also attending the picnic, the crowd set on O'Farrell. The [Sydney Morning Herald](#) [reported](#) that the 'people shouted "lynch him," "hang him," "string him up," and so on, and there was a general rush to get at him'. The police grabbed O'Farrell and had 'the greatest difficulty in preventing the infuriated people from tearing him limb from limb'. He was dragged aboard a nearby ship, by which time much of his clothing had been torn off and he was bruised and bloodied.

The crowd then held an 'indignation meeting' and decided to bring O'Farrell back to shore and execute him on the spot.

They tried to storm the ship, but the captain was ordered to prevent this by hauling off immediately and heading back across the harbour to the centre of Sydney. O'Farrell was taken to gaol, while the Prince was taken to Government House.

O'Farrell failed at being an assassin. The Prince was not mortally wounded. He was nursed back to good health by two nurses that [Florence Nightingale](#) had recently sent to Australia. [Queen Victoria](#) wrote in her diary on 18 May 1868 that she was most shocked by the danger in which 'poor dear Affie' had been placed and considered his escape truly 'marvellous'.

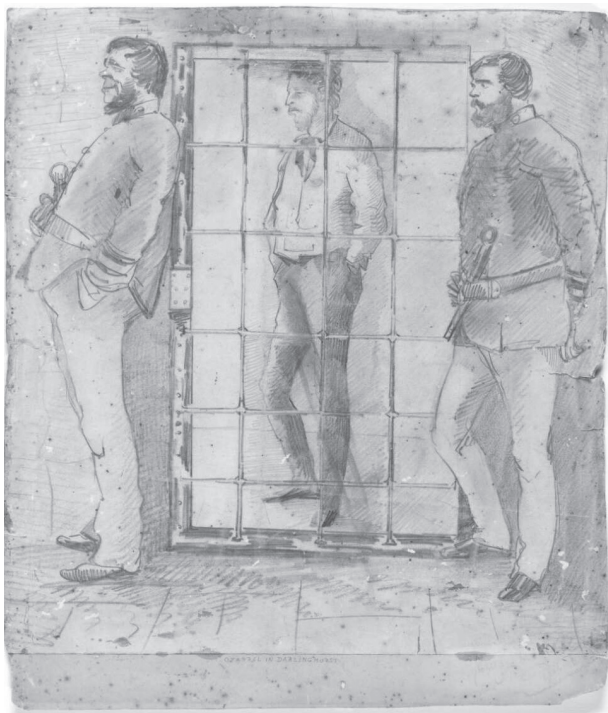


H.R.H. Prince Alfred, K.G. in
Melbourne 1868
Source: National Library of
Australia

The reaction

Parliament was sitting at the time the assassination attempt occurred. Once the news reached Parliament there was a sense of shock, then anger, then profound shame felt by Members that such a thing could have happened in their own colony. Public rallies and 'indignation meetings' were held across the colony to express collective anger, shame and sorrow about what had occurred. This was converted into a fund-raising campaign, which [raised money](#) for the establishment of the Royal Prince Alfred Hospital, in gratitude for Prince Alfred's survival.

But the anger was also converted to a need for vengeance. O'Farrell originally claimed he was part of plot by Fenians (i.e. Irish republicans) to assassinate the Prince. Later he admitted that this was fantasy. He had become obsessed with the wrongs that had been done to Ireland and responded by shooting at the Prince. O'Farrell was quickly [convicted](#) and executed at Darlinghurst Gaol on 21 April 1868.



O'Farrell [i.e. O'Farrell] in Darlinghurst |1868
Source: National Library of Australia

The NSW Parliament also passed legislation to deal with treasonous plots and 'disloyalty'. The British had previously realised that juries were reluctant to convict people of 'treason' because it resulted in an automatic death penalty.

'Treason felony' was therefore established in Britain as a separate offence which was punishable by imprisonment or transportation to Australia. At least four of Queen Victoria's would-be assassins were transported to Australia, one of whom was involved in the construction of the Launceston General Hospital. So the Australian colonies already contained would-be royal assassins at the time of Prince Alfred's visit.

The NSW [Treason Felony Act 1868](#) largely followed the British one. Section 1, drawing on English laws dating back to 1351, made it an offence to 'compass', 'imagine' (which in this context meant to plan) or intend to kill or wound the Queen or her heirs. Section 2 made it an offence to seek to remove them from the throne or to 'overawe' the Houses of Parliament or encourage invasion. The unique provisions of the Act, however, were sections 9 and 10.

Section 9 said that 'if any person shall use any language disrespectful to Her Most Gracious Majesty or shall factiously avow a determination to refuse to join in any loyal toast or demonstration in honour of Her Majesty' or shall express sympathy with or praise a person who has committed treason felony, then he or she was guilty of a misdemeanour (i.e. a crime) and could be apprehended by any person without a warrant. Conviction was punishable by imprisonment, with or without hard labour, for up to two years. Section 10 applied similarly to the publishing of words disrespectful to the Queen, but in this case the maximum penalty was three years' imprisonment, with or without hard labour. A 'sunset clause' was included which said that these sections expired after 2 years.

The point of these provisions was to arrest Irish-Australians who sympathised with O'Farrell or showed any form of public disrespect to the Queen. But the British thought the provisions went too far.

In those days, any law enacted in NSW had to be sent to London, and the British Government could advise the Queen to 'disallow' it (i.e. stop it being a law). Normally, the British were more subtle – they would suggest that changes to the law be made and would hold off disallowance until the law was fixed. So the British Minister in charge of the Colonies, the Duke of Buckingham, wrote to the NSW Governor saying he thought that sections 9 and 10 were 'extreme in their scope and in the severity of their penalties'. He said that he relied on the NSW Government to prevent the abuse of these 'unusual' powers and that he would wait before advising the Queen on disallowance, until the NSW Government advised him that it proposed to modify those sections. This was a polite way of saying 'change the law or I will advise the Queen to disallow it'.



Ordinarily, the NSW Government would then change the law (and the public would be none the wiser about British interference), but this time it stood firm.

Attempt on the life of the Duke of Edinburgh, arrest of O'Farrell
Source: National Library of Australia

It said that the NSW Parliament was 'better qualified to judge' the need for such laws 'than persons residing in England'. It claimed that it was 'universally admitted' that 'prompt and vigorous action' was necessary for the preservation of public order. It said that in 'a time of great excitement' the law was necessary to prevent the 'open and habitual expression of disloyal sentiments and the making of disloyal demonstrations'. This time it was the British who surrendered. As sections 9 and 10 would only apply for two years, it was not worth the fight.

But sections 1 and 2 remain part of NSW law today. They have become sections [11](#) and [12](#) of the *Crimes Act 1900* (NSW). So don't 'imagine' the death of the monarch or seek to overawe the Houses of Parliament.



Topic 5.1 Lesson Four



AUSTRALIAN
CONSTITUTION
CENTRE

Colonial assassination attempt on Prince Alfred that led to the treason laws we still have today

Time/Lesson	Learning Goal
<ul style="list-style-type: none">1 hour	The students will understand the events that led up to the development of treason laws in NSW in 1868 and consider why these laws are still in force.

Teaching Reference Document:
TRD 18 - Colonial events that led to treason laws - The attempt to assassinate Prince Alfred

Resources

- Sections [11](#) and [12](#) of the *Crimes Act 1900* (NSW)

Teacher Instruction

Lesson outlines and guiding questions:

- Indignation meetings – Break the class up into groups and ask them to pick a subject about which to hold an ‘indignation meeting’. It could be a complaint about the school or the local community, an issue of popular culture or a larger matter, such as a lack of action on climate change or a government policy.
 - Ask each group to set out a list of the points they would make in showing their indignation. Then ask them to list possible positive and negative responses that they could make as a result of the indignation.
 - In the case of the shooting of Prince Alfred, the positive response was to raise money for a hospital, which still helps people today over 100 years later.
 - The negative response was to attempt to tear the assailant limb from limb on the spot and to make a new law that suppressed, among other things, free speech.
 - Ask students to consider the circumstances in which negative responses are necessary, and whether, overall, positive responses are more effective.
- Old laws and archaic language – Ask students to look at sections 11 and 12 of the *Crimes Act 1900* (NSW). Consider the language that was used and how those words may have a different meaning today. Discuss the intention behind the provisions. Words such as ‘compassing, imagining, inventing, devising, or intending’ were directed at people who were planning or intending to cause or encourage others to cause the death or injury of the monarch. It was not directed at people who merely imagined what would happen if the Queen died, or did planning for her funeral, etc. Equally, section 12 is not directed at anyone who engaged in a school debate on the question of whether there should be a republic, or anyone who proposes a legally valid change to become a republic – even though this might involve imagining that the Queen or her heirs cease to hold their royal titles with respect to Australia
 - Ask students to brain-storm how these provisions could be re-written to make sense in current day language
 - Discuss the the rule of law and the importance of laws being written in a plain and simple way so that everyone can understand what they mean and their legal obligations.
 - Then ask students to look at the substance of the offences.
 - Is it still appropriate that there is a law that makes it an offence to engage in war against ‘[any other of Her Majesty’s dominions and countries](#)’? _____
 - Should we have a separate law about planning to kill or injure the monarch or should the ordinary criminal law apply?

Extension Activity

- Australia no longer has the death penalty. Study the High Court Case Study – [Even a murderer deserves a fair trial](#). Then organise a class debate on the topic 'should Australian governments reintroduce the death penalty for murder'?

