

## Obscured but not Obscure: How History Ignored the Remarkable Story of Sarah Wills Howe

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**Abstract:** From 1790, a small but significant number of free wives accompanied or followed their convict husbands to the penal colony of New South Wales. Through the case study of Sarah Wills Howe, a free wife of a convict, the unique power and capabilities exercised by these women is explored, particularly in relation to their legal and economic agency. According to the common law doctrine of coverture a married woman had no independent legal existence and no economic or legal rights, these having ceded to her husband upon marriage with whom she was “one person in law.” The unique legal position of free wives of convicts stands as a rare exception to the legal incapacity of coverture and yet this group of married women and their significance has been largely overlooked by historians. The story of Sarah Wills Howe points to the more nuanced capacity and experience of married women in the earliest years of settlement.<sup>1</sup>

**Keywords:** Australian colonial women, marriage, coverture, free wives of convicts

*We are still making money very fast ... Thanks to God for the provision he has enabled us to make for our children (“Sarah Wills, to Mother”)*

In the early history of colonial Australia women existed only in simple, caricatured relief. Whether as wanton, illiterate, abused prostitutes on the one hand or virtuous, moralising wives of officers on the other, colonial women were invariably depicted as hopelessly constrained, devoid of opportunities, and entirely lacking individual agency. This historical chimera of “colonial women” not only reduced women to a false duality of good or bad, it precluded any recognition, much less understanding, of their diverse legal and economic capacities in the first decades of settlement. In Oxley’s arch critique; “in the grand narrative of colonial growth, women are largely missing. Our lack of knowledge is treated as their lack of activity” (Oxley 1).

The forgotten story of Sarah Wills, land-owner, entrepreneur and free wife of a convict, profoundly challenges this lasting historical fiction, pointing both to the general occlusion of women and to the more varied experience and significance of women in early colonial New South Wales. In particular, the story of Sarah Wills and of other free women married to convicts in the earliest years of penal settlement reveals a unique group of women with a remarkable degree of legal and economic autonomy that has been largely overlooked in the history.

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Sarah Wills was an intelligent, literate and strong-minded young woman of twenty-two when she joined her convict husband on the transport ship, the *Hillsborough*, for New South Wales (Baxter, *Muster and Lists* 101). Sarah's husband, Edward Wills, had been convicted in 1797 for highway robbery and sentenced to death, later commuted to transportation for life to the penal colony ("Convict Indents &c"; Sayers). Sarah Wills was one of only six free wives, neither charged nor convicted of any offence, who joined the 300 male convicts on board the *Hillsborough*, the infamous "fever ship" on which nearly one hundred convicts died during a horrendous and protracted journey (Noah 7; Nicholson 215). Soon after the *Hillsborough's* arrival in Sydney cove, Governor Hunter described the condition of the wretched survivors to the Secretary of the Colonies;

The *Hillsborough* has just arrived with a cargo of the most miserable and wretched convicts I ever beheld. Were you, my dear Sir, in the situation in which I stand, I am convinced all the feelings of humanity, every sensation which can occasion a pang for the distresses of a fellow creature, would be seen to operate in you with full force. (qtd. in Clune 40)

Not only did Sarah Wills make the almost unheard of decision to accompany her husband on the convict transport, she did so with their two year old daughter, and all three members of the family survived. So few free women accompanied their convict husbands to Sydney in these early years, and even fewer did so with a child, that their number has been seen as neither calculable nor significant, and there is almost no mention of the free wives of convicts as a discrete group in the literature on those early years (Robinson, *The Women of Botany Bay* 29-34). Sarah Wills was, by any measure, most unusual for the early years of the colony.

### **Marriage, Coverture and the "Special Position" of Free Wives of Convicts**

In the first three decades of European occupation, New South Wales was an overwhelmingly male dominated society. Free women, however, were always present, in small numbers from the outset and their number grew. Thirty-five free women arrived with the First Fleet at Sydney Cove in January 1788, the wives of government officials, naval officers, marines and seamen, having sailed with their spouses and their twenty-two children. The total number of female settlers who migrated to New South Wales in those early years is sketchy and remains contested, with figures varying from 173 in 1818 to 333 by 1820 (Oxley 182; Perrott 25).

The first free wives of convicts—six in total—arrived in the colony in 1790 on the Second Fleet (Flynn 737-8). While there are no definitive figures on just how many free wives of convicts lived in the colony at any one time, their numbers were acknowledged as extremely small. There were only twelve "free women wives of convicts" residing in Sydney in 1791, while in 1807, the total figure for *all* married women was 395, the majority of whom were either convicts themselves or in marriages where both spouses were free ("Statement of the Settlements" 299; House of Commons 40). From 1790, when the first free wives of felons arrived in the colony, to the 1814 muster, just over a hundred free wives had followed their convicted husbands from Britain and Ireland, usually either on the same vessel or within a year or two of their spouse's arrival (Archives Authority of New South Wales; Biographical Database of Australia).

As a distinct group, free wives of convicts have been easy to ignore, firstly because there were so few of them and secondly, because of the way in which they have been categorised in the earliest historical literature. Official colonial records carefully differentiated between convict women and free women, regardless of their marital status—as a convict settlement

the critical marker was not whether married or single but whether convict or free. Much of the early academic literature however simply presumed the status of the free wife as consonant with that of their convicted husband, and considered them as an undifferentiated part of the convict group (Dixson 121). The effect of this elision has been to reconstitute the free wives of convict men as convicts themselves, rather than as free women (Teale 34-37; Dixson 122). Teale's *Sources on Australian Women* for instance mentions free wives of convicts only briefly, describing them as "socially assigned to the convict class." Teale's brief consideration of these free wives is given in a chapter that is itself titled "Convict Women," rather than in the chapter titled "Free Women" were they in fact belong (Teale 34-37). By reinventing these free women as convict women simply by reference to their convict husband, their unique and significant role has not only been overlooked, it has been wilfully ignored. Portia Robinson, one of the few historians to recognise the significance of free wives of convicts, has rightly described this group as "the really forgotten women of Botany Bay" (Robinson, *The Women of Botany Bay* 156).

Until the 1812 "Report from the Select Committee on Transportation," the imperial government had thought little about free wives of convicts, and permission for a wife to accompany or follow her convicted husband had been arbitrary and piecemeal, "seldom granted, and that only to the wives of men transported for life or for 14 years" (House of Commons 13). Just days prior to the Second Fleet's departure from England in early 1790, the imperial government suddenly announced that free passage was available to any wife who wished to escort her convict husband to New South Wales. Six women took advantage of the opportunity, with all six of these free wives surviving the voyage on the *Neptune*. With thirty-one per cent of passengers on the *Neptune* dying on route, their arrival in Sydney was no small feat (Flynn 46). In 1802, the imperial government again offered free passage to the colony on board the *Calcutta* for thirty free wives of convicts, together with 291 male prisoners (Robinson, *The Women of Botany Bay* 173-4). Rather than because of specific government policy, the desire for family reunions or notions of colonial improvement through marriage, it appears that these announcements were made on an ad hoc basis simply because there was room on board the ship.

Following the release of the 1812 House of Commons report, authorities began to consider, or at least acknowledge, free wives as a collective and commenced the long, protracted process of formulating policies to encourage them to migrate to the new colony. This was not a direct result of the pleas of convicts or their wives seeking to accompany or join their spouses in New South Wales, nor a consequence of the financial hardship and distress transportation imposed on those left behind, many of whom were left destitute in Britain or Ireland. This was a policy, rather, that was born of the idea that marriage would encourage an ordered and disciplined society, something both the colonial and home offices desperately desired for New South Wales (House of Commons 13). Marriage, it was anticipated, would lead to:

a softening of the asperities of society, whereas a distinct separation had invariably tended to render the males savage, and the females, abandoned. One would, therefore, be inclined to recommend the encouragement of marriage [in the colony], under the expectation of beneficial results. (Henderson 18)

At the time of colonial incursion, the single most important fact of a married woman's life was her legal status, specifically the British common law doctrine of coverture, according to which a woman's legal and economic rights and identity were subsumed by those of her

husband upon marriage. A married woman no longer held the rights and capacities of a single woman or widow, a *feme sole*, and emerged instead with a new legal status as a dependent, controlled and incapacitated *feme covert*:

By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, [it] is incorporated and consolidated into that of the husband: under whose wing, protection, and cover, [that is, 'coverture'] she performs every thing; ... and her condition during her marriage is called her coverture. (Blackstone 442-3)

According to the legal fiction that the husband and wife were one person, the common law of coverture consigned women to an effective civil death on marriage, existing only through and with the approval of her husband.<sup>2</sup> Any property a woman owned before marriage thereby became her husband's and anything she might earn or inherit during the marriage would legally belong not to her but to her husband. A married woman could neither buy nor own property in her own right, she could not make contracts or incur debts without her husband's approval, and a married woman could not sue or be sued in a court of law except jointly with her husband. For wives of convicted felons, the equally brutal fact of "felony forfeiture"—the confiscation of the goods and chattels of the offending husband—further condemned them to penury, dependence and legal incapacity. Between the disabilities of coverture and the depredation of their husbands' felony, those few free wives who joined their convict husbands on their transportation to New South Wales were, if recognised at all, presumed to be impossibly constrained. The reality however, was quite different.

In the earliest decades of colonial New South Wales, the legal infantilisation of married women demanded by coverture created an institutional problem particular to the colony—the added dependency of a now destitute wife on the already depleted and inadequate government stores needed to clothe and feed the colony's officers, their families and convicts. What is apparent from the archival materials, although largely overlooked in the historiography, is a subtle but no less remarkable practical suspension of coverture for free wives of convicts in early New South Wales. In keeping with the distance between British law and its colonial adaptation in those first decades, colonial officials treated free wives of convicts as temporary *femes sole* while their husbands remained under sentence, with the same legal agency and powers as single women who were not subject to coverture. Legal historian Bruce Kercher describes free wives of convicts as being "in a special position at common law," most importantly being able to own land in their own name and to engage in litigation in their own name due to their husband's legal incapacity (Kercher 66). In "this muddle of law" (Kercher 68) that was the colony's creative application of British law, free wives of convicts were able not only to enter into litigation as *femes sole* but to own land, sue, collect debts and enter into credit, *in their own name*.

Where then is the law of coverture in early colonial NSW and why has its apparent suspension for the small group of free women married to convicts so rarely been explored? For the answer to this intriguing forgotten history we owe a great deal to the scholarship of Kercher and historian Portia Robinson. In recognising the significance of free wives of convicts in early New South Wales, Robinson points to the paucity of the scholarship and the resultant "incomplete and contradictory" evidence about them (Robinson, *The Hatch and*

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<sup>2</sup> See the discussion in Amy Ronner, "Husband and Wife are One—Him: Bennis v. Michigan as the Resurrection of Coverture." *Michigan Journal of Gender and Law* 4 (1996-7): 129-169.

*Brood of Time* 32). Kercher argues that free wives of convicts constitute a rare exception to “the patriarchal spirit of the common law” in colonial New South Wales (Kercher 73). They are caught between the twin denials of legal and civil rights, the denial of rights to married women on the one hand and to convicts on the other. In this, the needs of the developing colony for viable settlement and subsistence prevailed over the strictures of inherited British law. In the new landscape, practicality won over traditional ties. To do otherwise during the first twenty years of settlement, before the mostly male convicts had been pardoned in greater numbers, would leave the colony in stasis and its inhabitants dependent on the inadequate resources of the government stores.

This small group of married women, the free wives of convicts, therefore not only had an economic and legal independence, they had an economic and legal independence that was, ironically, denied to wives of free men for whom the doctrine of coverture had removed all rights and who required the formal consent of their husbands to own land, to engage in trading activities and to sue or be sued. This capacity to engage in trade and to sue and be sued in their own name was ineluctably extended to the wives of free men, thereby averting the otherwise noxious fact that the wives of the lowest social strata, convicts, would have greater rights than those of the highest (Kercher 71).

### **The Remarkable Sarah Wills**

The effect of this dramatic upending of established British law for free wives of convicts can be seen in the first record of Sarah Wills’ colonial life. On her arrival in New South Wales, she was granted thirty acres of land *in her own name*, a legal impertinence which no married woman could then achieve. It was the first step for Sarah Wills in small-scale farming subsistence that would soon grow into a successful business, trading and retail all under her own name and with a legal and economic agency that was then considered impossible for a married woman. For the next three years, with her husband still under sentence, Sarah Wills lent money, exchanged livestock and crops for promissory notes, bought and sold property in her own name and initiated numerous court cases in Sydney’s rudimentary Magistrates Court and before the Judge Advocate’s Bench. The list of her litigations covered cases relating to land ownership, debts owed for work done and goods traded in her thriving commercial business (Judge Advocate’s Bench; “Old Register of Assignments and Other Legal Instruments”). In this, Sarah Wills and other free women married to convicts operated as *femes sole*, overturning the strictures of coverture and revealing a complex and dynamic relationship between legal status and economic agency that belies the popular representations of colonial women.

Within five years of her arrival in New South Wales, Sarah Wills had become a successful businesswoman and in 1805 she purchased a further twenty-two acres of land, “Roberts Farm,” for £100, again in her own name (Judge Advocate’s Bench no. 671 116). The particular significance of this purchase is that it was transacted after her husband, Edward, had received a conditional pardon, suggesting that the suspension of coverture due to both the circumstances of the colony and the convict husband’s own lack of legal capacity, was not immediately reversed upon the husband’s conditional pardon. The temporary suspension of coverture appears also to have blunted the usual embargo on married women trading and owning property, and the records point to many cases in which business women and traders continued to be recognised after their husband’s pardon and for whom coverture was never fully restored.

In 1808, Sarah Wills wrote to her mother in England:

I must tell you, my dear Mother, that we are still making money very fast, and when we think we have got enough to live at ease we will come home to give our dear friends a party. I frequently please myself with the thoughts of our next meeting and return. ... Thanks to God for the provision he has enabled us to make for our children. (“Sarah Wills, to Mother”)

The rent lists for this period show that Sarah Wills owned several properties in central Sydney, that she was one of thirteen women granted a liquor licence in 1813 and was later one of only ten women granted a spirit licence (Colonial Secretary’s Papers; Perrott 114). Her largest holding was a warehouse in George Street, variously described as hers, her husband Edward’s or just “the warehouse of Sarah and Edward Wills” (Atkinson 272-3).<sup>3</sup> Yet according to both the established common law doctrine of coverture and the historiography of women in colonial Australia, married women remained subsumed under the cover of their husbands, they lacked agency and had neither legal nor economic identity—they had no capacity to be the woman that Sarah Wills in fact was.

### **Obscured but not Obscure**

Despite Sarah Wills’ obvious business and legal success in the colony she remains an elusive figure, as do other free wives of convicts who have been overlooked in the history. Yet in the archival records these women and their legal and commercial activities are clearly visible. Sarah Wills can be seen in the Minutes of Proceedings for the Court of Civil Jurisdiction where she frequently appears as both plaintiff and defendant, (usually revolving around her business interests); in the *Sydney Gazette* where her businesses advertised their sales; and in the Colonial records which show her land grants and purchases in her own name. These records at every turn indicate that a woman’s status as convict or free, and not her marital status, was the single most important determinant of her colonial status. It can be seen in the routine use of the designated labels “convict” and “came free” in the extensively well-documented reports and compendia on the penal settlement, and is reflected in the early musters which categorised every member of the population as either “C” (convict), “P” (pardoned), “FS” (free by servitude), “BC” (born in the colony) or “CF” (came free) (Baxter, *Musters of NSW*). In the 1791 population figures for the settlements of Sydney, Parramatta and Norfolk Island, along with the categories of “free people” and “convicts”, there was a separate category for the “free women wives of convicts,” denoting their particular circumstance as free married women (“Statement of the Settlements” 299).

What is surprising is just how readily these free wives of convicts, and the significance of their lives, can be located in publicly available primary sources and yet are so completely obscured in the secondary literature. Free wives of convicts have been lost to history not because they are absent from the original records but because our earliest, mostly male, historians (and many subsequent ones) simply failed to notice them. Their ignorance of women’s varied lives and the gendered assumptions that underpinned that ignorance, had not only erased these women from history but then too frequently ascribed their economic, financial and material success to their husbands or their sons.

The *Australian Dictionary of Biography* (ADB) for instance has no entry for Sarah Wills. Yet among the notable colonial identities whose significance is assured by their schematic biographical inclusion there is Sarah’s second husband, her youngest son, her step-son, her

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<sup>3</sup> See also numerous mentions in the *Sydney Gazette*.

sons-in-law (but neither of her daughters), her nephew, and her grandson. Although the common thread in all these entries, Sarah Wills herself can be glimpsed only in their muscular shadows, as the metaphoric footnote to history. She emerges in the *ADB* in a peripheral reference under her second husband's entry where she is described as "Sarah, the widow of Edward Wills, *who had inherited a profitable store from her husband*" (Byrnes, authors' emphasis). Thus, her own achievements and agency have not only been rendered invisible but have been re-inscribed as those of her first husband and, in turn, inherited by her second. This is not, in itself, unusual. The "near total exclusion" of women from biographical dictionaries in Britain, the US and Australia has long been noted (Ware 416). Contemporary chroniclers of history deserve better than the continued reliance on such jaundiced "definitive sources."

Sarah Wills may be obscured in history, but she is not obscure. An interdisciplinary sensibility would have led historians to see what the historical and legal archives had already revealed, that Sarah Wills had been able to establish a sizeable commercial venture in her own name as a married woman precisely because her husband, while still a convict, could not. She had built up a highly successful merchant, seal-skin and shipping business, much of it later in partnership with the emancipated convict entrepreneur, Mary Reibey. Interestingly, however, unlike Sarah Wills, Mary Reibey—whose reputation endures and who adorns the Australian twenty dollar note—did not commence her business endeavours in her own name until *after* the death of her husband, because of the strictures of coverture while her husband was alive. With the death of her husband, Mary Reibey was once again a *feme sole* and began her exceptional path to commercial and material success, trading, buying, selling and suing in the courts as a widow. Mary Reibey's historical standing is secured as the trope of "female convict made good"—confirmation of a stereotype of the limited possibilities available to colonial women, and not as a challenge to them.

For Sarah Wills by contrast, at the time of her first husband's death in 1811, her assets were already extensive and included three separate land parcels, three ships co-owned with Mary Reibey and over £5,000 in stock and debts due (Wills Cooke 13). Governor Macquarie then granted Sarah Wills a further 200 acres on the death of her husband, at which point she was clearly an extremely wealthy woman (Irvine 81). Her daughters married into two of the major colonial families—the great Sydney convict turned doctor and fervent emancipist, William Redfern, and Captain Henry Antill, one of Governor Macquarie's aides (Clune 105, 174).

### **Sarah Wills and Her Quasi-Colonial "Pre-Nup"**

It was soon after her husband Edward's death that Sarah Wills' remarkable legal prowess became most apparent. She had ensured that her husband's will was meticulously structured, with herself as sole executor, so as to provide for her and their children in perpetuity, that is, until her second marriage, to the feckless and perpetually impecunious government printer, George Howe in 1812. It is as a result of this unfortunate marriage that the name Sarah Wills Howe will forever be attached to one of the most important decisions in colonial matrimonial law, *Howe v Underwood and Robinson* (1832).

On the eve of her second marriage, Sarah Wills appears to have had concerns, effectively over the fact of coverture that now loomed with her pending marriage, and approached the colony's best-known lawyer, the redoubtable W.C. Wentworth, to draw up a deed of trust to protect her assets. Sarah Wills and her second husband to-be, George Howe signed this deed—it might now be seen as an early colonial pre-nuptial agreement—the day before their wedding. Her actions show a remarkable understanding of the fragility of her own legal and

financial position because of the common law doctrine of coverture from which Sarah had been temporarily free while her convict first husband was still under sentence, but which would now again apply to her vast assets that she had herself accrued.

The deed of trust was constructed to ensure that Sarah Wills' second husband could not take her existing estate nor her children's inheritance which, true to form, he subsequently tried to do. The legal testing of this arrangement, in *Howe v Underwood and Robinson (1832)* some decades later, became a landmark in colonial law, establishing that Sarah Wills Howe's "pre-nup" did indeed protect her and her children from what the magistrate called the "fraudulent" actions of her second husband (*Howe v. Underwood and Robinson (1832)*). This was a decision with dramatic repercussions as it effectively overturned what was then considered settled law—the common law doctrine of coverture—through the overlay of the deed of trust. And yet, outside the field of legal history this case, and Sarah Wills' pivotal role in it is largely unknown, reflecting the near-total absence of any consideration or understanding of free wives of convicts as a distinct and significant colonial grouping.

### **Women's Evolving Place in the Australian Colonial Historiography**

In order to redress this neglect, historians must first, recognise women and second, acknowledge that women's lives existed beyond their dominant stereotypes and third, adopt an interdisciplinary gaze that enables women's activities to be seen outside the narrow confines of the home and family and include other traditionally public domains, such as the law and business. Until the second-wave feminists from the 1970s began to question the lack of women in the historical narrative, women rarely featured in Australia's story and Australia's history was predominantly androcentric. As Spongberg describes it, the dominant and enduring view was, "that enforced whoredom was the inescapable destiny of Australia's first white women settlers" (Spongberg 7). Much of it was written by men about men and, as such, the stories became "unacknowledged affirmation[s] of [men's] present identity through a celebration of their past selves" (Dixson 12). When women were acknowledged, for instance in Shaw's *The Story of Australia* or Manning Clark's *A History of Australia I*, they were secondary and appeared to have little (if any) value in the new colony. In *The Story of Australia*, Shaw's first mention of non-Indigenous women comes in the second chapter (which is incidentally titled "Founding a Colony") where he approvingly cites Tench's description of women as having "lived in a state of total idleness" (Shaw 40).

Nevertheless, during this time some notable women were featured in histories, more as celebration than exploration. These were the "successful" women placed on pedestals and celebrated. As Dixson puts it, "when women are discussed [in this way], historians tend to bend over backwards, making women larger than life ... thus, replacing an insult of omission by an insult of commission" (Dixson 190). Flora Eldershaw's 1938 book *The Peaceful Army: A Memorial to the Pioneer Women of Australia 1788-1938* is an illustration of this approach, as is Eve Pownall's 1959 *Australian Pioneer Women* which tells the stories of pioneering stoicism, "of women who faced those spirit-testing hardships" (8). While such works championed the place and success of some "exceptional" women, it left a gap where the voices of the "ordinary" were difficult to hear.

From the 1970s, women were placed squarely, yet still narrowly, in the historical frame as a new group of historians depicted colonial women, particularly convict women and emancipated convict women, as key figures in the colony's development.<sup>4</sup> They portrayed

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<sup>4</sup> See, for example, Miriam Dixson, Anne Summers, Kay Daniels and Mary Murnane, and Nancy Keesing.



colonial women as key figures in the colony's expansion, as economic drivers, as bearers and nurturers of future generations and as victims of a patriarchal, gendered society. Dixon concedes that "unhappily, the concept of woman has to be virtually uncovered, disinterred, inferred, teased out, from the received versions of our national identity" (51) as women had previously been so poorly represented, if at all. They argued that women's traditional work and roles were important to colonial society and nation building, that they were worthy of inclusion in historical narratives. As a concern of second-wave feminists in Australia, emphasis was placed on women, especially convict women, as sexual objects, as victims of men's lust, misogynist thinking and patriarchal attitude.<sup>5</sup> While the lives of women were, at last, acknowledged as important, the portrayal of them remained nonetheless heavily circumscribed.

One of the most influential works of this era was Anne Summers' 1975 book, *Damned Whores and God's Police*, which confronted the paucity of the historiography in relation to women. Summers writes: "there exists a profound ignorance about the roles which women have played in our history and also of the ways in which women have been suppressed and prevented from moving outside those roles" (18). Women were typecast, she argued, into "descriptive and prescriptive" opposing roles that centred on the debauched and wanton "damned whore" and the morally righteous "God's police" (Summers 153). Forty years later, *Damned Whores and God's Police* remains a pivotal work in Australia's historiography. It shone a light into neglected aspects of the nation's story and made people see it anew. Yet the light did not reach all the dark corners of women's nuanced and varied activities and, in its own way, the success of Summers' analysis further cemented the role of women into these opposing and limiting stereotypes in the popular imagination with the resonance of its powerful title. Class considerations and indigenous women were merely glanced at and over, as were other women outside the norm, such as free wives of convicts.

The subject of women and work gained popularity in the 1980s and 1990s and the experiences of women as workers in early New South Wales were explored in some depth. The term "work" was redefined to include activities that took place within the home and beyond its walls, from looking after a house and family, to being an employee, employer, license holder or trader. The concept of work was expanded beyond the traditional, male-centric definition of physical labour or financial gain to one that included women, at least within the domestic sphere. Several historians contributed to this new wave of investigation, including Monica Perrott, Deborah Oxley, Portia Robinson, Stephen Nicholas and Katrina Alford. When discussing work beyond the confines of the home and family, however, women's activities were frequently conflated with that of their husbands, thereby minimizing or rendering invisible their own achievements. Even then, the experiences of women were largely seen as homogenous, with little recognition of the legal and commercial possibilities open to some colonial women and once again, the free wives of convicts remained hidden.

By such presumption of where historical significance is to be found—as singularly male and with women assigned to established yet entirely presumed roles—those diverse, and far more interesting, aspects of women in our earliest colonial history remained invisible. However, subsequent scholarship has begun the process of exploring this diverse and unique group of married women more fully. Oxley, Robinson and Karskens have woven their experience into a larger discourse concerning colonial women, while Perrott has demonstrated their economic agency. More specifically, Catherine Bishop has recently brought this group of free women

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<sup>5</sup> See, for example, Babette Smith, Patricia Grimshaw et al., and Marian Aveling.

married to convicts to the fore, highlighting the role of businesswomen in the nineteenth century.<sup>6</sup>

### **Conclusion**

The story of Sarah Wills allows us to see a most important exception to the long-held dichotomous view of the limited possibilities for colonial women, of dire economic circumstance and bounded opportunity on the one hand and virtuous yet deeply oppressed ‘good Christian women’ on the other. Her story highlights the entrepreneurial significance and economic impact of these women in early colonial development, upending long-held notions of a fundamentally male settlement with an unambiguous gender divide. The suspension of coverture for free wives of convicts in the colony’s first decades profoundly challenges both this bedrock of matrimonial law and the presumed wholesale adoption of British law by the colonial authorities. Sarah Wills’ economic and legal endeavours illustrate the more nuanced position of colonial women, enabling us to see beyond the specifics of her own story to recognise the remarkable, forgotten and transformative position of free wives of convicts in our colonial history.

### **Works Cited**

- Alford, Katrina. *Production or Reproduction?: An Economic History of Women in Australia, 1788-1850*. Melbourne: Oxford University Press, 1984.
- Archives Authority of New South Wales. *Arrivals in the Colonies of New South Wales, Moreton Bay and Port Phillip*. Sydney: The Authority, 1986.
- Atkinson, Alan. *The Europeans in Australia: A History*. Melbourne: Oxford University Press, 1997.
- Aveling, Marian. “Imagining New South Wales as a Gendered Society, 1783-1821.” *Australian Historical Studies* 25.98 (1992): 1-12.
- Baxter, Carol J., ed. *Muster and Lists NSW and Norfolk Island 1800-1802*. Sydney: ABGR, 1988.
- . *Musters of NSW and Norfolk Island 1805-6*. Sydney: ABGR, 1988.
- Biographical Database of Australia. *Biographical Database of Australia Online*. 2017. Web. 25 Mar. 2016.
- Bishop, Catherine. *Minding Her Own Business: Colonial Businesswomen in Sydney*. Sydney: New South Book, 2015.
- Blackstone, William. *Commentaries on the Laws of England*. Vol I. Oxford: Clarendon Press, 1765. Web. 28 Aug. 2016.
- Byrnes, J. V. “Howe, George (1769-1821).” *Australian Dictionary of Biography*. Web. 20 Feb. 2017.
- Clark, Charles Manning Hope. *A History of Australia I: From the Earliest Times to the Age of Macquarie*. Melbourne: Melbourne University Press, 1963.
- Clune, Frank. *Bound for Botany Bay: A Narrative of a Voyage in 1798 Aboard the Death Ship, Hillsborough*. Melbourne: Angus & Robertson, 1965.
- Colonial Secretary’s Papers 1788-1825. Reel 6038, SZ758. State Records New South Wales. Microfilm.
- “Convict Indents &c.” State Records New South Wales. 4/4001 Hillsborough. Microfilm.

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<sup>6</sup> Laura Donati is undertaking a detailed case study analysis of this group of women which will make an important contribution to this growing field, as will Jenny Hocking’s current Australian Research Council Discovery Project, *From Sarah Wills Howe to Thomas Wentworth Wills: An Australian Family Biography*.

- Daniels, Kay, and Mary Murnane, eds. *Uphill All the Way: A Documentary History of Women in Australia*. St Lucia: University of Queensland Press, 1980.
- Dixson, Miriam. *The Real Matilda*. 4th ed. Melbourne: Penguin, 1999.
- Eldershaw, Flora. *The Peaceful Army: A Memorial to the Pioneer Women of Australia 1788-1938*. Sydney: Women's Executive Committee and Advisory Council of Australia's 150th Anniversary Celebrations, 1938.
- Flynn, Michael. *The Second Fleet: Britain's Grim Convict Amada of 1790*. Sydney: Library of Australian History, 2001.
- Grimshaw, Patricia, et al. *Creating a Nation*. Melbourne: McPhee Gribble, 1994.
- Henderson, John. *Observations on the Colonies of New South Wales and Van Diemen's Land*. Calcutta: Baptist Mission Press, 1832.
- House of Commons. *Report from the Select Committee of Transportation*. 1812. Web. 28 Aug. 2016.
- Howe v Underwood and Robinson (1832)*. NSWSupC 36 1832. Web. 28 Jan. 2017.
- Irvine, Nance. *Mary Reibey—Molly Incognita*. North Sydney: Library of Australian History, 1982.
- Judge Advocate's Bench. "Register of Assignments." A3609-A3620. Mitchell Library. Microfilm.
- Karskens, Grace. *The Rocks: Life in Early Sydney*. Melbourne: Melbourne University Press, 1997.
- Keesing, Nancy. *The White Chrysanthemum: Changing Images of Australian Motherhood*. Sydney: Angus and Robertson, 1977.
- Kercher, Bruce. *Debt, Seduction and Other Disasters*. Sydney: Federation Press, 1996.
- Nicholas, Stephen. *Convict Workers: Reinterpreting Australia's Past*. Cambridge: Cambridge University Press, 1988.
- Nicholson, Ian. *Log of Logs, Vol II*. Nambour: Roebuck Books, 1993.
- Noah, William. *Voyage to Sydney in the Ship Hillsborough 1798-1799 and a Description of the Colony*. Sydney: Library of Australian History, 1978. Web. 28 Aug. 2016.
- "Old Register of Assignments and Other Legal Instruments." RAV/DISC 10/1615. Mitchell Library. CD-Rom.
- Oxley, Deborah. *Convict Maids: The Forced Migration of Women to Australia*. Melbourne: Cambridge University Press, 1996.
- Perrott, Monica. *A Tolerable Good Success: Economic Opportunities for Women in NSW 1788-1830*. Sydney: Hale and Iremonger, 1983.
- Pownall, Eve. *Australian Pioneer Women*. Melbourne: Currey O'Neil Ross, 1983.
- Robinson, Portia. "The First Forty Years." *Pursuit of Justice: Australian Women and the Law, 1788-1979*. Eds. Judith Mackinolty and Heather Radi. Sydney: Hale & Iremonger, 1979. 1-16.
- . *The Hatch and Brood of Time: A Study of the First Generation of Native-Born White Australians 1788-1828*. Melbourne: Oxford University Press, 1985.
- . *The Women of Botany Bay: A Reinterpretation of the Role of Women in the Origins of Australian Society*. Melbourne: Penguin Books, 1993.
- Ronner, Amy. "Husband and Wife are One—Him: Bennis v. Michigan as the Resurrection of Coverture." *Michigan Journal of Gender and Law* 4. 1 (1996-7): 129-169.
- "Sarah Wills, to Mother [Elizabeth Harding]" Sydney. Letter. 1 May 1808. Private Collection of Terry Wills Cooke.
- Sayers, C.E. "Wills, Horatio Spencer Howe (1811–1861)." *Australian Dictionary of Biography*. Web. 20 Feb. 2017.
- Shaw, Alan G. L. *The Story of Australia*. 2nd revised ed. London: Faber and Faber, 1962.

- Smith, Babette. *A Cargo of Women: Susannah Watson and the Convicts of the Princess Royal*. Kensington: NSW Press, 1988.
- Spongberg, Mary. "Australian Women's History in Australian Feminist Periodicals 1971-1988." *History Australia* 5.3 (2008): 1-16.
- "Statement of the Settlements at Port Jackson and Norfolk Island, the 18th of November, 1791." *Historical Records of Australia* 1.1 (1914-1925): 299.
- Summers, Anne. *Damned Whores and God's Police*. 2nd revised ed. Melbourne: Penguin, 2002.
- Teale, Ruth, ed. *Colonial Eve: Sources on Australian Women*. Melbourne: Oxford University Press, 1978.
- Ware, Susan. "Writing Women's Lives: One Historian's Perspective." *Journal of Interdisciplinary History* 40. 3 (2010): 413-435.
- Wills Cooke, T.S. *The Currency Lad: A Biography of Horatio Spencer Howe Wills*. T. S. Wills Cooke. 1997. Web. 20 Feb. 2017.

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