

In Jimmy Governor's archive

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This article examines a selection of archival records created and preserved in relation to the Aboriginal outlaw Jimmy Governor. It focuses in particular upon a special diary kept by the officers guarding him during his time in the condemned cell at Darlinghurst Gaol in 1900–01. The article considers these records and the various microfilm and digital surrogates used by scholars in terms of the affordances of their specific materiality. It advances an argument about how these particular archival records function as evidence of law, duty and public administration. Whereas in the past Jimmy Governor's story has primarily been told in the genre of law-breaking, this article argues that these archival records instead reveal him as an agent of law-making. When examined as pages and as paper, the various documents that comprise the Jimmy Governor archive provide evidence of a commitment to the rule of law in a colonial society on the brink of Federation.

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A. ‘Diary kept by officer doing duty over Jimmy Governor’

In January 1901, Jimmy Governor was hanged at Darlinghurst Gaol in Sydney, Australia. A convicted murderer of white women and children, the 25-year-old Governor, an Aboriginal fence-builder, was Australia's last proclaimed outlaw.¹ ‘Diary Kept by Officer Doing Duty Over Jimmy Governor’ is the title of a document held in the State Records Authority of New South Wales in Sydney. In the catalogue, the diary is described as ‘the only one of its kind in the State archives collection’.² It is a small bound volume in landscape format with mottled cardboard covers; the pages have begun to come loose from the spine, leaving threads exposed and its pages unsecured. It was kept by three prison warders at Sydney's Darlinghurst Gaol during the time that Jimmy Governor was in the condemned cells, where he awaited his execution in January 1901. The diary starts about one week after Governor was sentenced to death for murder on 23 November 1900, and it ends almost one week before his execution on 18 January 1901. Every day, three warders each kept an eight-hour watch over Governor, and during their shift they were obliged to answer a series of questions about the prisoner: *Conduct of prisoner. Is he communicative? Anything important to be recorded here? Is he sullen or cheerful? Does his demeanour indicate a disposition to suicide?*

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For how long has he slept? Does he eat well? A note on the catalogue record speculates that the 'unique' diary was kept 'due to the special interest in the case', and that it 'seems to indicate a particular if primitive interest in the prisoner's psychology'.³

This article takes the prison diary as a case study, one which demonstrates how the Governor brothers' crimes inaugurated and exemplified a legal regime founded upon the rule of law. The papers and files generated by the Governors' criminal rampage illuminate a very particular mode of administration, recordkeeping and surveillance, and this article examines the materiality of this archive in order to disclose some of the operations of the colonial common law on the cusp of Federation and to explore some of the challenges and benefits successive material instantiations of these archival artefacts offer to researchers. I ask what can be learned about the rule of law from the papers generated by the Governors' crimes, and I investigate the significance of materiality in undertaking legal historical research into the early Federation period.

I am not the first scholar to have written about the prison diary. When GP Walsh compiled Jimmy Governor's entry in the *Australian Dictionary of Biography*, he wrote that Governor 'spent his last days reading the Bible, singing native songs and blaming his wife', information he presumably gleaned from the diary.⁴ Governor's best-known popular biographer, Frank Clune (1959), however, did not use the diary;⁵ Thomas Keneally, whose novel *The Chant of Jimmie Blacksmith* (1972) is based upon Clune's book, also does not refer to it;⁶ nor does Fred Schepisi's film adaptation of Keneally's novel (1978).⁷ The poet Les Murray appears not to have consulted the diary either; yet his poem about Governor's time in prison, despite being almost entirely imagined, is to date the finest writing about this missing fragment of the Governor story.⁸ Governor's most rigorous biographers, Laurie Moore and Stephan Williams, and also his most recent biographer, Maurie Garland, did consult the diary and quoted various passages.⁹ Moore and Williams seem to have assumed the diary was a typical prison record;¹⁰ Garland contends that it was kept so that Governor did not 'cheat the hangman'.¹¹ In both of these accounts, the diary appears through several fragmentary quotations as a source, and these authors assume that it offers evidence of the truth of its representations. There is no attempt to engage with it or to describe it as an archival artefact. In contrast, this article takes the diary as a subject, rather than as a source. Its existence – independent of its contents – is evidence of a legal and administrative regime that becomes visible when the diary *itself* becomes the basis for an archival inquiry. The diary itself inaugurates a unique archive story. Following Annelise Riles, a document might be investigated as an 'ethnographic artefact'.¹² Alternately, as Cornelia Vismann insisted, working *with* official records 'write[s] the history of the law'.¹³

Vismann makes the observation that, in the English language, a distinction is drawn between the materiality and the function of a document. 'File' relates to the former, its physicality, whereas 'record' relates to the latter, the data recorded therein.¹⁴ She asserts, 'for the administrations of the Western world, a life without files, without any recording, a life *off the record*, is simply unthinkable'.¹⁵ Jimmy Governor's time in the condemned cell at Darlinghurst was already on the record; the 'Condemned Prisoners' Daily Record' is a register of all the prisoners in the condemned cells between 1892 and 1903.¹⁶ In this respect the diary that I am examining might be regarded as a surplus record. Yet, the additional diary kept by the officers doing duty over Jimmy Governor is fascinating not only for what it records, but for the fact of its existence.

The diary was *not* a typical record. There is no other known prisoner in the history of New South Wales whose time in custody was recorded in this way. I have made many visits to the State Records Authority in an attempt to establish its custodial

history, as well as why this diary was kept and why its entries stalled prematurely a week before the execution. The answers, I have discovered, are contained in correspondence that has been destroyed, lost or otherwise not retained. Indexes and registers refer to the existence of such correspondence, but the letters themselves are missing. Of course, all of these archival records, including those that are lost, emerge from a legal regime in which Aboriginal people were under persistent surveillance and subject to ongoing recordkeeping. This legal history provides the broader colonial context which overshadows this article, and which reminds us that the administration of Jimmy Governor occurred within a larger project in which the colony, and colonisation itself, were produced by law.¹⁷

Vismann has written that when files were formally separated from registers, the files 'were free to lapse into a state of complete disorder';¹⁸ in the State Records Reading Room, the archivist had a ready range of reasons for why the correspondence had not reached the archives: bad storage, flood, mould, rats. It is unlikely that the unfinished diary or the absent papers in the archive are instances of Harold Garfinkel's 'bad records' – records which are incomplete, disordered or missing – and which in some institutions are a uniform feature of their records.¹⁹ Indeed, what remains in the Jimmy Governor archive discloses a very conscientious attitude towards recordkeeping. As a result, the materiality of Jimmy Governor's archive generates new questions and new connections, about individuals, about institutions and about systems of authority. The handwritten words on paper told one story and the scribbles overleaf and the faint initialled margins told another one, about a pre-Federation commitment to the rule of law, and about bureaucracy and surveillance in a carceral regime. Riles draws attention to how 'practices of documentation' are implicated in the constitution of modern institutions and states, with the creation and maintenance of files as emblematic of modern bureaucracy.²⁰ Citing Thomas Osborne, Riles explains that this kind of recordkeeping established 'the ethical competence to rule',²¹ for its commitment to transparency, accessibility and accountability.²² The paper records kept in relation to Jimmy Governor demonstrate the bureaucratic aspirations of the colonial rulers. Creating and keeping records about an Aboriginal outlaw shows a clear intention to depart from earlier practices in which unruly Indigenous subjects simply disappeared, and their disappearance left no documentary traces.

B. The 'careers' of documents

I first came across the diary about 10 years ago, when I was last working on the Governor story. At that time, I could not think of how I might write about it, or use it in any way, because it seemed such a strange record. On its face, the diary is the work of three junior warders charged with guarding one of Australia's most notorious serial killers, the axe murderer of women and children, who might also have been an Indigenous freedom fighter, who was probably our last bushranger, and who was certainly Australia's last proclaimed outlaw. These guards, with rather scratchy handwriting and some irregular spelling, made very brief records of his sadness, his happiness, his fantasies and his attention to his Bible. Two of the warders developed a hesitant yet curious interest in their subject. The third warder mostly watched over a sleeping Governor. Apart from the requirement that they answer the prescribed questions, the warders appear not to have had any guidance or instructions in deciding what to record about the prisoner. Three junior warders seem to have been required to record whatever they deemed worth recording, and this has resulted in an idiosyncratic chronicle. Marilyn

Strathern writes of the temptation to proceed as if a documentary artefact suddenly simply 'appear[ed]', and that it contains 'information' to be 'read'.²³ However, she argues that the documents generated by some systems 'belong to a world of [their] own', and enable them to "'observe" their own operations', as exercises in 'self-description'.²⁴ This is the source of some uncertainty or indecision on the part of the archival scholar, as Arlette Farge identifies: 'The physical pleasure of finding a trace of the past is succeeded by doubt mixed with the powerless feeling of not knowing what to do with it.'²⁵ It is not clear what this diary tells us about Jimmy Governor, his crimes or his final days. It is also unclear what it tells us about imprisonment on the eve of Federation. Nor is it clear what it says about recordkeeping, or surveillance or criminal justice. It is a document whose evidentiary status is uncertain. Therefore, instead of examining it as a text, I propose to examine it as a form of real evidence, as a tangible object, one which has led a 'career' which is implicitly probative. While there are no surviving records explaining the custodial history of the diary, in this article I aim to piece together its career from available fragments. Don Brenneis, drawing upon Richard Harper, argues that we can follow the 'career' of a document, marked by moments of commencement and completion, reading, citation, evaluation, meetings with others and its role in achieving certain outcomes for others.²⁶ Of course, the career of the document continues in the archive, where it is subject to the ongoing vicissitudes of scholarly interest and where new inquiries constitute it anew. The Jimmy Governor prison diary can never retire; here I simply redeploy it into another role.

I have written previously about the media reportage of the Governor brothers' crimes during the three months in which they eluded capture.²⁷ The media accounts were another peculiar genre, today available in the newspaper archive. They began in July 1900 with a bold report of the crimes. There was no need to embellish a story in which, late on a Friday night, two, or perhaps three, Aboriginal men went to the Mawbey family home in rural New South Wales when Mr Mawbey was not there, and murdered Mawbey's wife, three of their young children and their 21-year-old schoolteacher with an axe. They also attacked a teenage aunt, who survived although she was permanently disabled. While they were on the run, Jimmy and his brother, Joe Governor, murdered two more men, a heavily pregnant woman already in her confinement and her 15-month-old baby son. They seriously wounded her midwife, and several others. Jimmy was also alleged to have raped a 15-year-old girl. However, as the hunt for the Governors dragged on, newspapers began to report all possible sightings, gossip, rumours and theories, daily and sometimes oftener, and the failure of the police to capture the brothers became the dominant message.

Jimmy and Joe Governor's crimes have left fascinating archival traces, and this may explain why they have generated such a fervent biographical industry and inspired many creative enterprises. In the State Records Reading Room, scholars will likely begin with the police special bundles, a record series created by the NSW Police Department. There were almost 200 police special bundles created between 1846 and 1963, covering a catholic range of topics, including erection of barriers for the funeral of William C Wentworth (1873),²⁸ the Royal Visit (1954)²⁹ and the signposting of bus stops in Gosford (1962).³⁰ There is a special bundle for the papers relating to the hunt and capture of the Kelly gang (1878–80).³¹ Special bundles are open to the public after a 70-year restriction period. In the special bundle created to collect papers relating to Joe and Jimmy Governor,³² scholars can retrieve three bulging folders filled with loose papers. They are somewhat disarranged by earlier users, which has the effect of establishing new and serendipitous relations of proximity between the various papers. The

bundles draw together telegraphs, correspondence, expense claims and other materials, enabling the researcher to begin to apprehend the extent to which the Governors' crimes incited documentation. Piles of paper were produced, transmitted, received, filed and subsequently collected together in these special bundles, anticipating the historians and biographers who would later come to seek them. My project, like several others, began here. However, these bundles, while conveniently drawn together from various different locations, focus almost entirely upon the period during which the Governor brothers were at large and being pursued by an army of police and volunteers – 2000 hunters in total – which at that time was the largest – and the longest – manhunt in Australian history, lasting three months.

In their abundance, these bundles of desiccated paper are probative of the scale of the Governors' depredations, and the extent to which their crimes had gripped the south-east of Australia. My project, however, is to investigate the extent to which their crimes affirmed, or inaugurated, a legal regime founded upon the rule of law, and this project necessitated looking differently at the archive and going beyond these special bundles.

From the police special bundles supplemented by the contemporaneous media accounts, the story of Jimmy Governor has been told as a story about breaking the law. Through an examination of the materiality of this archive, I reframe the Governors' crimes as a story about *making* the law, and about law's preservation. Governor's crimes coincided with a legal historical moment in which the colony was asserting its distinct legal character within the Empire; Kercher described this as, in part, a period of colonial 'innovation',³³ and Comaroff identified colonies as sites of legal 'experimentation'.³⁴ Indeed, it has been argued that it was through law-making that settler states asserted the legitimacy of their subjugation of Aboriginal peoples.³⁵ Jimmy Governor was outlawed; according to the law, he was no longer entitled to the protection of the law. And yet, at every turn, Governor was given law's protection; law's most senior agents rallied to ensure he was given every benefit of the law, and anyone who breached the law in their dealings with him faced a consequence. This application of the rule of law conforms with McHugh's analysis in which 'ritualism', 'ceremonialisation', 'litigiousness' were all performances of legitimation and assimilation, through which colonisation was authorised as a lawful project.³⁶ Everyone was obliged to do their duty according to law, even though Governor had been placed outside the law – a literal outlaw.³⁷ This interpretation of the Governor story, and its location within the wider legal history of the colonisation of Indigenous subjects, is made available by the material traces left upon the public records. It is a story I did not notice in the microfilmed, photocopied sources, nor in the secondary sources.

C. 'Mundane' documents

While law's work, in one respect, is evident in the voluminous nature of the documents created during the Governors' crimes, hunt and capture, in a more significant respect, law's *aspirations* demand scrutiny of the marginalia at the fringes of these records. To date, most accounts of Jimmy Governor's arrest, trial and execution, of which only very few exist, assume that the horror of his crimes, and his status as an Aboriginal outlaw, disentitled him to law's protection. However, a different account emerged as I began to engage with the embodied nature of these documents, and it is an account that mostly diverges from those assumptions. By examining Jimmy Governor through the 'mundane' documents generated by his crimes and criminalisation, it becomes possible to

see how the law was challenged by his crimes, and then shaped and defended in response to them. Brenneis argues that 'mundane' documents, for their 'ordinariness' and the 'routine responses' they demand, seem 'analytically invisible'.³⁸ However, it is precisely this functional, operational kind of record that I seek as evidence of how law worked when it was not working self-consciously. For this reason, the Jimmy Governor's prison diary needs to be situated within a larger Jimmy Governor archive, drawn together from all of the 'mundane' registers, indexes, memos and telegrams that, for their perfunctory records of administrative acts, generate evidence of the legal bureaucracy *as* a system. The Jimmy Governor archive is a work in progress, needing to be constituted by the scholar who seeks it. As Burton reminds us, 'archives do not simply arrive or emerge fully formed';³⁹ and often they do not readily reveal their own constructedness. For Vismann, the discipline of law has failed to appreciate the 'self-documenting qualities' of its records; she writes, 'Legal studies lack any reflection on their tools' unless and until documents are tendered as evidence in courts.⁴⁰ At that point, the laws of evidence operate, and the authentication of documents – the requirement to demonstrate their origins, their status and that they are what they purport to be – is a precondition for admissibility and proof. A legal history of Jimmy Governor would, in part, draw upon the evidence tendered against him in court, self-consciously attentive to its own relevance and probative force, but it would rely more substantially upon those documents that are administrative 'tools', the mundane and ordinary records that disclose the rule of law in action.

The as-yet-unwritten legal history of Jimmy Governor is filled with instances in which one of Australia's worst criminals was given its most vigorous legal protection, and in which those charged with a duty to *do law* were themselves held accountable for *their* wrongdoings. This give-and-take, this transaction of legal responsibility, this holding to account, will give fresh significance to the more familiar Governor narrative, in which an out-of-control black man is brought to justice. It is a history that will start from the marginal notes on the edges of the papers in the archive, showing the passage of various items of correspondence through the state bureaucracy on the threshold of Federation. This history, which includes a torrid exchange across all levels of the police administration about Governor's improperly obtained confession, demands that the scholar be familiar with the handwriting, the initials and the choice of writing implement of each of the stakeholders, and also whether they prefer to scribble on the back of a memorandum, or to fold its corner and cram their thoughts into that tiny concomitant triangle. It also demands an awareness of these same documents as series of pages and papers. Bonnie Mak, for example, has highlighted the significance of the physicality of the page, identifying it as a crucial site for analysis. The page, she argues, 'is a technological device'⁴¹ and a 'communicative space',⁴² it discloses 'strategies'⁴³ and it embodies the ideas it transmits.⁴⁴ In the Jimmy Governor archive, the page asserts itself in three dimensions. For the scholar to apprehend this archive fully, the page needs to be examined, turned on its side, flipped over; the scholar may find another page pinned to it, or a series of pages clasped together, and these physical connections transmit an idea. The rust stain where the pin meets the paper transmits another idea. These connections and stains transmit to the contemporary scholar a material reminder of the passage of time. As time passes, earlier efforts to group papers together become themselves sites of inquiry: who connected them, and why and when? As Mak identifies, it is here in these encounters with the page that we apprehend the inseparable nature of meaning and materiality.⁴⁵

The specific materiality of the original documents in the Jimmy Governor archive only became significant when I began to work with some of the archival surrogates produced for use by researchers. Certainly, the microfilm copy of the diary provides an adequate insight into the observations recorded by the warders. This first layer of meaning that can be extracted from the written text or the words on the page is what lures the researcher into this extraordinary little volume. A notorious felon awaits his execution in the condemned cells at Darlinghurst Gaol and somebody has thought to ask the warders to make notes about it. Whose idea was this diary, and why? These layers might start to peel away eventually, but first we are with the warders, deciphering their words and unravelling their meaning. The first entry, although it was not Governor's first day in the condemned cells, is made by a 3rd Class warder called Robert Kiernan. Of Governor's conduct he recorded, 'Good gives no trouble whatever paying great attention to his bible. Visited by CE Chaplain 10.40 to 11.50. Exercise 12.15 to 12.50 pm'. To the question – 'Is he sullen or cheerful?' – he answered 'cheerful', and to the question – 'Does his demeanour indicate a disposition to suicide?' – he answered 'no'. Governor had slept 'none' and eaten well – 'yes'.⁴⁶ Kiernan's entry conforms with Vismann's claim that contemporaneous documents constitute 'technologies of presence'.⁴⁷ That these records might be inaccurate or incomplete is, she argues, a late twentieth-century critique enabled by the new standards set by mechanical recording technologies.⁴⁸ Kiernan's entries, and the duty that obliges him to make them, become a process of self-administration. Vismann wrote, 'Once the demand for accountability applies ... to the most banal chores and most secret ideas of an individual, the book-keeping practices common to business offices are transformed into diaries, autobiographies, and other such accounts.'⁴⁹ By producing a diary of Governor's time in the condemned cell, Kiernan is simultaneously producing a record of his own duties; Jeremy Bentham's panopticon generated this form of self-surveillance, achieving the 'same irresistible controul' over the warders as over the prisoners.⁵⁰ In line with this insight, it is possible to imagine the diary as a duty-bound biography of one carceral subject (Governor), and a coerced autobiography of a second (Kiernan).

For 10 years, I only experienced the diary in its microfilm iteration and, even worse, through dirty smudged copies I had made from it. Having decided to examine the diary and its legal-historical legacy in detail, I sought access to the original document and was told that because it was 'rare' I could not order it; the microfilm would have to do. Natalie Zemon Davis describes this as if it were a commonplace: 'At the archive itself, we might be told that a document we sought was too fragile for direct consultation and available only as microfilm.'⁵¹ The arbitrariness of the restriction was not apparent to me until my research assistant visited the archives; young, bespectacled and charming, and with an emerging reputation for unearthing legal sources, the diary was readily handed to him. The idea that I have never held the diary is distracting, generating an instance of what Dever calls 'heightened materiality': those moments when an item's absence makes its materiality felt more keenly.⁵² Writing about her research in Hannah Arendt's papers, Kathleen B Jones describes herself as searching for 'contact with traces of Hannah', seeking to 'touch what she has touched', as if to do so would somehow reanimate the object and, by implication, her subject.⁵³ Jones describes the 'initial resistance' of the archivist to giving her access to the original records, the subsequent decision to grant permission and her sleepless night in anticipation of holding Arendt's papers.⁵⁴ Her account of the following day with Arendt's papers was striking for its significant omission: she was not obliged to wear gloves. Jones describes actually touching Arendt's papers and journals. Farge describes it too: 'in unfolding the document, you

gained the privilege of “touching the real”;⁵⁵ and where ‘handling the documents’ demands ‘combing’ and ‘slowness of hands’.⁵⁶ Like all researchers in the State Records Reading Room, my research assistant wore the mandatory latex gloves. While I rely entirely upon his account of the size, weight and feel of the diary, I know that he did not really touch it.

He did, however, prudently make digital colour photographs of each page. This is an example of the way that in addition to large-scale archival digitisation projects, scholars are now routinely generating their own digital ‘collections’ with the aid of personal digital capture devices. Alexandra Chassanoff has assessed this as producing ‘interesting organizational and intellectual challenges for future historians’.⁵⁷ It was my research assistant’s digital photographs that eclipsed in my mind – and my research – the microfilm, and, in this version, I found the initialled pages that provided insight into the diary’s origins and its daily progress around Darlinghurst Gaol. Farge, who concedes that microfilm is ‘sometimes necessary but hard on the eyes’, writes that while an archival manuscript is ‘a living document’, microfilm ‘can drain the life out of it’.⁵⁸ Jones is also ambivalent about the creation of digital surrogates of archival records. She acknowledges that digitisation is a ‘labor of love’, but she describes her burning eyes, her aching back and ‘the fleshy pad where the bottom of your palm meets the table [which] goes numb from holding the mechanical mouse while scrolling through yards and yards of documents’.⁵⁹ In this instance, the digital images brought new life to a document that was unavailable to me in its original form, by rendering visible and legible administrative markings that, on microfilm, appeared as accidental stains.

As scholars transition to digital research, or to integrating digital materials into paper-based sources, paper falls under a new kind of scrutiny. As Jerome McGann insists, ‘we have to think clearly about our paper inheritance’.⁶⁰ The availability of digital surrogates, some have argued, can be an ‘attractive alternative’ to the time, cost and distance involved in accessing originals, and also to the ‘bureaucratic processes’ this demands.⁶¹ Whether, in digitisation, the original object’s ‘aura’ is lost or increased has been a subject of debate for scholars.⁶² Some ask how archivists might go about creating ‘authentic digital environments’, those which present materials without losing their context.⁶³ Others argue that digital facsimiles must meet the challenge of capturing the physical qualities of the object, as well as the textual data it contains.⁶⁴ Many have argued that digital and other reproductions cannot fully capture the evidence available in original sources, and that translations between mediums have always resulted in some loss of meaning, as the medium conveys at least part of the message.⁶⁵ There are gains, however, and Manoff urges us on the one hand to recognise the physicality and materiality of electronic objects,⁶⁶ and on the other to appreciate electronic media’s augmented capacity for depth and complexity.⁶⁷ The latter insight was a compelling one in terms of my inquiry. Visible in those digital photographs, but indecipherable in the microfilmed images, are the looped initials ‘AHC’ on nearly every page, usually in distinctive blue pencil, but occasionally in red and sometimes in ink. AHC or Arthur Herbert Collis was the Governor of Darlinghurst Gaol. Any pages not initialled by Collis were initialled by his deputy, James Henry Mansell. HJ Jackson has investigated textual marginalia, and particularly the motives of those who write in books, noting that ‘it is seldom *required* behaviour’.⁶⁸ The initials in the prison diary, however, appear to complete a bureaucratic process, recording the progress of this document through the prison administration, and leaving evidence that a duty has been undertaken. Prison warders and their superiors mark the diary as if it were required of them. It is not clear who is being addressed by marginalia; for whom are these public servants leaving their

initials on the pages of the diary? Is it for a notional superior officer who has come to review their work, or is it an 'irresistible impulse', as Jackson has suggested?⁶⁹ The production of the diary manifests a desire, somebody's desire, to record Governor's imprisonment, and to make that record look a particular way. That it looks like *this*, initialled on almost every page, suggests that in this instance 'marginalia are written for the good of the work itself'.⁷⁰ Certainly, for the scholar, the diary is a richer document for these marginalia. In this instance, the marginalia and their significance was an affordance of the digital photographic images.

The initials 'FWN', in a meticulous and measured hand, appear on four consecutive Fridays in the diary, suggesting that it was Captain Frederick Neitenstein, Comptroller General of Prisons, who set the weekly rhythms by which the diary orbited around the prison, and between the prison and his office. Described as 'demand[ing] absolute obedience from his subordinates' and as one who 'revelled in the trappings of office',⁷¹ Neitenstein looms like a spectre over the prison diary, and over all those charged with duties associated with it.⁷² Further research is needed to establish whether the initial decision to keep the diary was his.

The State Records Authority holds a register recording that correspondence was sent about 'special instructions for guarding [Jimmy Governor]', but I have not been able to establish either who sent it, or what it said; the correspondence itself is missing. This register, like other registers and indexes that represent the 'mundane' records in the Jimmy Governor archive, is what Vismann describes as a kind of 'working memory'.⁷³ Registers follow a 'fixed and unchangeable format', prepared in advance, and in anticipation of the information that will come; they are purged of any commentary or context, producing a 'new economy of reading'.⁷⁴ While historians might be seeking out the unique data – there *were* special instructions for guarding Jimmy Governor – the existence of the grid reassures the scholar about the system in which the entry was made; what Vismann has defined as the 'alwaysness' of the register.⁷⁵ Riles traces the history of how 'documentary practices shape behavior within organizations', with 'record keeping as a tool of social control'.⁷⁶ By focusing on Jimmy Governor's prison diary, I do not propose that we discover what his gaolers thought or meant, but instead that we think *through* their records in order to understand the regime to which they owed their duty, and which itself owed duties to Jimmy Governor. For PG McHugh, the late nineteenth century saw an escalation in law's intrusion into the colonial project,⁷⁷ complicit in what he terms the 'legal engulfment' of Aboriginal people,⁷⁸ and which disclosed the extent to which the colonial common law was characterised by enclosure, assimilation, paternalism and protection of Indigenous peoples.⁷⁹ While I argue here that Jimmy Governor was a beneficiary of the rule of law, this is not to suggest that he somehow eluded law's violence.⁸⁰

Another of the warders doing duty over Jimmy Governor was John Dwyer, just a probationary warder, appointed to the prisons service less than six months earlier. He seemed to pay the closest attention to Governor, and his entries were the most detailed, curious and cogent. More than the other two warders, Dwyer appeared to have spoken to Governor about his sentence. In the early days of the diary, almost daily, they seem to have had some kind of conversation about Governor's impending appointment with the hangman: 'he gets very down hearted at times. ... calls on the Lord at times to help him'.⁸¹ The dreadful significance of the death penalty is not lost on Dwyer, and so he seems to be consoling himself by noticing that Governor feels more burdened by the waiting: 'he said that waiting makes him bad tempered and that he wishes it was all over'.⁸² Dwyer's entries, more than those of his two colleagues, remind us that he

created these records from his affinity with Governor; this document records the 'kinship' between the author and his words. Mario Biagioli draws attention to the 'inherent instability' of authorship and authority, and questions of 'credit' and 'responsibility'.⁸³ The records created by Dwyer and his colleagues, while under a duty to make these records, remind us to be attentive to the tension between these representations and their makers. This tension might be what Andrew Pickering describes as a 'dance of agency', where the responses of record-makers are neither 'free' nor 'forced', but both of these at once, entangled.⁸⁴ This entanglement, or tension, is an archive story. By approaching the diary in terms of its materiality – considering the page, its architecture and its markings – it becomes possible to tell stories that are unavailable solely from the textual contents of the source.

On 18 January 1901 Jimmy Governor was hanged. His clothing was burned.⁸⁵ He was buried outside the prison walls. These acts are noted, indexed and registered. By examining the materiality of the traces left in the archive, we can revisit the Governor story through the law itself. The Jimmy Governor archive enables us to see that, despite his crimes, or indeed *through* his crimes, the state performed and recorded its commitment to the rule of law.

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