Plunkett Lecture

Liberty not licence: The law's response to the challenges of ethno-religious sectarianism in nineteenth and early twentieth century Australia

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Introduction

In this era of rapid communication, barely a day passes when buzzwords such as 'culture wars', 'identity politics', 'hate speech' and 'cancel culture' do not appear in the news feeds on our devices. Often they are accompanied by opinion pieces with earnest predictions of the imminent demise of democracy.

Although such buzzwords are mostly the product of the late twentieth century, they have only come into vogue in the past decade.[1] Yet, the lived experience which they denote has been with us ever since humans adopted forms of social organisation.

Psychological research shows that 'selective pressures have sculpted human minds to be tribal' and 'that tribal bias is a natural and nearly ineradicable feature of human cognition and that no group — not even one's own — is immune'.[2] Making and administering laws to ensure social harmony in the face of intergroup conflict or tribalism has always been a challenge. Recurring debates over s 18C of the *Racial Discrimination Act 1975* is testament to the difficulty of meeting that challenge.

In this lecture, I will look back to the nineteenth and early twentieth centuries to examine instances of tribal or intergroup conflict under the rubric of sectarianism between Catholics, mostly of Irish descent, and Protestants, mostly of British descent, which, were they to occur today, would be described using those buzzwords. I will also examine how law makers, in particular Attorney-General John Hubert Plunkett, responded to the challenges

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1 K Amira and A Abraham, 'How the Media Uses the Phrase "Identity Politics"' (2022) 55(4) *PS: Political Science & Politics*, p 677; C McGrady, 'The Strange Journey of "Cancel," from a Black-Culture Punchline to a White-Grievance Watchword', *Washington Post*, 2 April 2021. The *Oxford English Dictionary* traces 'identity politics' to 1973 and 'cancel culture' to 2016 <https://www.oed.com> (accessed 3 October 2024). Although 'culture war' was first recorded in 1875–1880 as a loan translation of German *Kulturkampf*. The contemporary sense was first recorded in 1985–1990 <https://www.dictionary.com/browse/culture -war> (accessed 3 October 2024). 'Hate speech' may be older with the OED's earliest evidence dating to 1938 <https://www.oed.com> (accessed 3 October 2024).

2 CJ Clark et al, 'Tribalism Is Human Nature' (2019) 28(6) *Current Directions in Psychological Science*, p 587.

that sectarian conflict posed for Australia's emerging democracy seeking to build a society based on religious tolerance and social harmony freed from the conflicts of the old world.

Some say history repeats itself, others that it merely rhymes. As an historian, I am not so sure. But what the study of history has taught me is that the author of *Ecclesiastes* was right when several millennia ago he wrote: 'What has been will be again, what has been done will be done again; there is nothing new under the sun'.[3] Thus, there is utility in examining how our forebears faced the challenges of sectarian conflict, just as we in our day struggle to meet the challenges of intergroup conflict we now call 'culture wars' and 'identity politics'.

Our disturbed past

Although Australia is generally, and rightly, regarded as a relatively stable country where civil disturbances are rare, it is also true that insurrections, rioting and the breaking up of political meetings have been a feature of the country's history from the founding of the penal colony at Sydney Cove in 1788. Insurrections such as the Castle Hill rebellion of 1804, the Rum Rebellion of 1808, and the Eureka Stockade of 1854 have been well documented. So too, the pitched battles between workers and police during industrial disputes such as the shearers' strikes of the 1890s and the lockout of miners at Rothbury in 1929. The conscription referendum campaigns of 1916 and 1917 provide many instances of meetings being broken up by one side or the other. Race riots, including those directed at Chinese goldminers at Lambing Flat in 1860–1861 are well known.[4]

Less well known is the spate of sectarian riots that occurred across the country in the nineteenth and early twentieth centuries. While stories of sectarian riots in Belfast, Liverpool and Glasgow might come as no surprise, few would be aware that Australia too has a history of sectarian rioting. In fact, at least 20 such riots occurred between 1843 and 1922 across all six Australian colonies or states, some of them with fatal consequences.

But first we need to consider what sectarianism means in the Australian context.

Sectarianism in the Australian context[5]

When the First Fleet arrived in Sydney Cove in 1788 it brought not only convicts and their gaolers but also the baggage of centuries of religious hostility and ethnic antagonism. This baggage was the product of more than 600 years of English domination of Ireland and 250 years of religious schism

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3 *Ecclesiastes* 1:9.

4 For an overview of Australia's tumultuous past, see P N Grabosky, *Sydney in Ferment: Crime, Dissent and Official Reaction 1788 to 1973* (Australian National University Press, 1977).

5 For a discussion of sectarianism in Australia see M Hogan, *The Sectarian Strand: Religion in Australian History* (Penguin, 1987); J Kildea, *Tearing the Fabric: Sectarianism in Australia 1910–1925* (Citadel Books, 2002); M Lyons, 'Aspects of Sectarianism in New South Wales Circa 1865 to 1880', PhD Thesis (Australian National University, 1972).

following Henry VIII's withdrawal of English Christianity from the jurisdiction of Rome. As a result, the English, the Welsh and the Scots became predominantly Protestant, while the Irish largely remained Catholic. The combination of racial and religious difference between the Irish and the British was a potent mix that led to a series of wars and civil disturbances in both Ireland and Britain.

For the purposes of this lecture, the two most significant of these was the Battle of the Boyne in 1690 and the Battle of the Diamond in 1795. The first occurred in County Meath about 50 kilometres north of Dublin, when the Protestant King William III, formerly Prince William of Orange, whom Parliament in 1689 had proclaimed King of England, defeated the deposed Catholic King James II. William's victory ensured Protestant hegemony in both Britain and Ireland. It was a hegemony reinforced by penal laws that would last into the nineteenth century.[6]

The so-called Battle of the Diamond was a sectarian affray near Loughgall in County Armagh, in which the Protestant Peep o' Day Boys beat off members of a Catholic association known as the Defenders, leading to the establishment of the Loyal Orange Institution, also known as the Orange Order. Named in honour of William III, the Order's members pledged themselves to support the Protestant ascendancy, to oppose the fatal errors and doctrines of the Church of Rome, and to resist the extension of the Catholic Church's temporal power. From the 1840s, Protestant Irishmen from the north of Ireland formed Orange lodges in the Australian colonies and each year on the Twelfth of July Orangemen would celebrate the anniversary of the Battle of the Boyne.[7]

Following the founding of the colony at Sydney Cove, it was not long before the antagonisms of the old world took root in the soil of the new. Reverend Samuel Marsden, an English-born magistrate known as 'the flogging parson', regarded the Irish as 'the most wild, ignorant and savage race that were ever favoured with the light of salvation'. Marsden's stereotype took hold in the colony, where the Irish were often scorned as stupid, lazy, rebellious drunkards and depicted in cartoon form with monkey-like features.[8] Another antagonist of Australia's Irish Catholics was Scottish-born Presbyterian Reverend John Dunmore Lang. Concerned at the influx of Irish Catholic immigrants under the government's assisted immigration scheme, Lang published in 1841 a pamphlet entitled 'The Question of Questions! or,

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6   J Childs, *The Williamite Wars in Ireland, 1688–1691* (Humbledon Continuum, 2007) pp 205–225; CI McGrath, 'Securing the Protestant Interest: The Origins and Purpose of the Penal Laws of 1695' (1996) 30(117) *Irish Historical Studies*, p 25.

7   J Smyth, 'The Men of No Popery: The Origins of the Orange Order' (1995) 3(3) *History Ireland*, p 48; Loyal Orange Institution of NSW, *Early History of the Loyal Orange Institution N.S.W.* (Grand Lodge of New South Wales, 1926). Although the Orange Order in Australia initially comprised Ulster Protestants, this changed during the century with increasing British membership even though Orange celebrations continued to concentrate on Irish historical events such as the Siege of Derry and the Battle of the Boyne.

8   D Hall, '"Now Him White Man": Images of the Irish in Colonial Australia' (2014) 11(2) *History Australia*, p 167.

Is this Colony to be transformed into a Province of the Popedom?', in which he warned that the colony was 'going to be swamped by bog-Irish Catholics'.[9]

Through most of the nineteenth century, the Irish made up between a quarter and one third of the immigrants to the Australian colonies while the British made up two-thirds to three quarters. Furthermore, the Irish were mostly Catholics and Catholics were mostly Irish by birth or descent so that Catholics were about a quarter of the population — a sizeable minority. But a word of caution. While it is broadly true that in nineteenth- and early twentieth-century Australia to be Catholic was to be Irish and to be Irish was to be Catholic, it is nevertheless a generalisation. One needs to bear in mind that a significant minority of the Irish in Australia were Protestants and a significant minority of Catholics were not of Irish birth or descent.[10]

In his 1972 PhD thesis, historian Mark Lyons argued: 'Catholics were very largely responsible for bringing hostility upon themselves. Much of that hostility was a reaction against Catholic sectarianism, rather than the expression of an anti-Catholic predisposition'. To Lyons, Australia was a new world in which there emerged 'a broad liberal movement with a clear vision of a harmonious colonial society' including an important anti-sectarian strand. He charged that 'whatever conflict existed was largely a consequence of the rejection by Catholics of a social milieu that positively sought their assimilation and eschewed the bigotries of the old world'.[11]

Recent research has tended to support an alternative view. Historian Geraldine Vaughan has marshalled much of that research in a recent book on anti-Catholicism in Britain, Canada and Australia.[12] Unlike Lyons, who regarded anti-Catholicism in Australia as the product of Catholic rejection of the anti-sectarian olive branch of colonial liberalism, Vaughan argues that anti-Catholicism was 'a multi-faceted phenomenon with theological, political, social and economic dimensions' that existed throughout the British empire because of an association between Protestantism and British identity. In other words, she contends: 'Catholics and their Church were rejected on account of their un-Britishness'.[13] As if to confirm Vaughan's thesis, Tas Vertigan wrote in his 1979 history of the Orange Order in Victoria:

> The Orange Order was in the vanguard of movements seeking to maintain and strengthen the ties of kinship [between Australia and Great Britain] and promote loyalty to the Throne. This loyalist attitude was responsible for attracting

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9 Hogan (n 5) p 62. In 1847, Lang published another pamphlet, 'Popery in Australia and the southern hemisphere, and how to check it effectually'.

10 Between 80 and 85% of Irish emigrants to Australia were Catholics: see D Fitzpatrick, *Oceans of Consolation: Personal Accounts of Irish Migration to Australia* (Cornell University Press, 1994) p 14; O MacDonagh, 'Emigration from Ireland to Australia: An Overview' in C Kiernan (Ed), *Australia and Ireland 1788–1988: Bicentenary Essays* (Gill and MacMillan, 1986) p 121, 132.

11 Lyons (n 5) p viii.

12 G Vaughan, *Anti-Catholicism and British Identities in Britain, Canada and Australia, 1880s–1920s* (Palgrave Macmillan, 2022). See also J Wolffe, 'Anti-Catholicism and the British Empire, 1815–1914' in HM Carey (Ed), *Empires of Religion* (Palgrave Macmillan, 2008) p 43; J Wolffe, 'A Comparative Historical Categorisation of Anti-Catholicism' (2015) 39(2) *Journal of Religious History*, p 182.

13 Vaughan (n 12) pp 5–6, 15–17.

members — people who regarded, not without cause, many migrants from Ireland, and their offspring, as antipathetic to the British way of life.[14]

Vaughan also contends that Protestant anti-Catholicism increased through the nineteenth century as a reaction to growing Catholic assertiveness following the *Catholic Emancipation Act of 1829*.[15] That Act had repealed most of the remaining penal laws that had been enacted after 1690, most significantly the laws that had prevented Catholics from becoming members of Parliament or holding high office in government and the judiciary. As a result of their new status, Catholics exhibited a resurgence in the political, social and economic life of the United Kingdom. As historian Neil Maddox notes: 'Emboldened by their success, ... the Catholic population would no longer accept their position as the subject caste of Irish society'.[16] This stoked Protestant fears of a Roman threat to the British constitution and to the Protestant state enshrined in the *Act of Settlement of 1701*.

In Australia, too, Protestants found cause for alarm. Following the *Emancipation Act*, Catholics could be appointed to high office in the colonial administration.[17] Consequently, Governor Richard Bourke, an Irish Protestant who was a liberal, appointed as the colony's Solicitor-General John Hubert Plunkett, an Irish Catholic and an associate of the promoter of Catholic emancipation Daniel O'Connell. Bourke also appointed as Commissioner of the Court of Requests another Irish Catholic, Roger Therry. Both men would make significant contributions to government and the law in New South Wales. Together they prosecuted the perpetrators of the Myall Creek massacre.[18]

Fear of Irish insurrection was also not far from Protestant concerns in the Australian colonies. During the Castle Hill rebellion of 1804, some 200 convicts — mostly Irish — many of whom were transported for their part in the Irish rebellion of 1798, attempted to march on Parramatta and Sydney. Many of the miners at the Eureka Stockade were Irish and their leader Peter Lalor was the brother of James Fintan Lalor, one of the leaders of the Young Ireland rebellion of 1848. In the 1860s, the rise of revolutionary fenianism in Ireland and amongst the Irish diaspora in the United States became a source of concern in Australia. This was especially so after self-confessed fenian

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14   T Vertigan, *The Orange Order in Victoria: Origins, Events, Achievements, Aspirations, and Personalities* (Loyal Orange Institution of Victoria, 1979) p 72.

15   *An Act for the relief of His Majesty's Roman Catholic subjects* (10 Geo 4, c 7).

16   NP Maddox, '"A Melancholy Record": The Story of the Nineteenth-Century Irish Party Processions Acts' (2004) 39 *Irish Jurist*, p 242, 242. Maddox also observed: 'The formation of the Orange Order and the celebration of July 12 by parading provided an outlet for an increasingly isolated and threatened class to express its cultural identity, to assert its opposition to the reforming zeal of Parliament and to mount political campaigns against the erosion of Protestant freedoms' (at pp 242–243).

17   To remove doubt as to *Catholic Emancipation Act's* application to New South Wales, the Legislative Council adopted it by passing the *Roman Catholic Relief Act Adoption Act 1830* (10 Geo IV, no 9).

18   On Plunkett, see T Earls, *Plunkett's Legacy: An Irishman's Contribution to the Rule of Law in New South Wales* (Australian Scholarly Publishing, 2009); JN Molony, *An Architect of Freedom: John Hubert Plunkett in New South Wales, 1832–1869* (Australian National University Press, 1973). On Therry, see CH Currey, 'Sir Roger Therry (1800–1874)' in *Australian Dictionary of Biography*

Henry James O'Farrell attempted in 1868 to assassinate Prince Alfred at Clontarf on Sydney's Middle Harbour. The 'fenian scare' was as real to nineteenth-century Australians as the fear of Islamic terrorism is to twenty-first-century Australians after September 11 and the Bali bombing. In what we might these days call 'the war on terror', the New South Wales Parliament quickly passed the *Treason Felony Act*, suspending civil rights so as to root out and defeat the perceived fenian threat.[19]

It would be wrong to get the impression that sectarianism dominated Australian life. As Vaughan warns us, we should not mistake a narrow group of fanatics as speaking for the majority. Lyons, too, regards the Catholic and Protestant sectarians as a subcommunity within their larger communities. Furthermore, through the period under review there are many instances of inter-religious cooperation. A prime example is the way people of all faiths and none contributed to the rebuilding of St Mary's cathedral after it burned down in June 1865. Nevertheless, a hard core of activists has the potential to mobilise much larger constituencies, particularly when their communities perceive their rights or fundamental beliefs are under threat. For the purposes of this lecture, such threats were believed to come on the one hand, from Orangemen and ultra-Protestant preachers, and on the other, from fenians and the agents of the Church of Rome.[20]

Sectarian riots

It is against this background that we now turn to look at the sectarian riots that challenged Australia's social harmony in the nineteenth and early twentieth centuries. As mentioned, at least 20 sectarian riots occurred between 1843 and 1922 across all six Australian colonies or states, some of them with fatal consequences. For the most part, those sectarian riots occurred in the context of Catholics of Irish descent reacting to what they regarded as provocations either by Orangemen celebrating the anniversary of William III's victory at the Battle of the Boyne or by ultra-Protestant preachers denigrating in public the beliefs and practices of the Catholic Church.[21] I will now look at a few examples of each type.

Orangemen celebrating William III's victory at the Boyne

Melbourne 1846[22]

The first example relates to the former type and concerns a clash that took place in Melbourne on Monday, 13 July 1846, outside the Pastoral Hotel in the

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19 R Travers, *The Phantom Fenians of New South Wales* (Kangaroo Press, 1986); K Amos, *The Fenians in Australia 1865–1880* (New South Wales University Press, 1988); G Pentland, 'The Indignant Nation: Australian Responses to the Attempted Assassination of the Duke of Edinburgh in 1868' (2015) 130(542) *English Historical Review*, p 57.

20 Vaughan (n 12) pp 2–3; Lyons (n 5) pp 15–19, 397.

21 Of the 20 sectarian riots, 13 were of the latter type, six were of the former, and one was related to the 1843 elections for the Legislative Council. A summary of each is provided in the Appendix.

22 *Melbourne Argus*, 14 July 1846, p 2; 24 July 1846, p 4; *Port Phillip Patriot*, 14 July 1846, p 3; *Port Phillip Gazette*, 15 July 1846, p 3.

city centre when Orangemen preparing to hold their Twelfth of July dinner unfurled from the hotel's window a banner depicting William III crossing the Boyne. Many Catholic Irish considered this a provocative act. The *Leader* newspaper, commenting on a later sectarian disturbance, observed:

> To Catholic Irishmen the picture has a deep and bitter significance ... The figure of William crossing the Boyne means to Irishman the final establishment of English domination, civil and religious; the beginning of a long period of cruel oppression on account of religious opinions.[23]

It was not only the banner that was provocative. Newspaper advertisements promoting the dinner had spoken of King William's glorious victory over 'the Popish Hosts that would enslave British subjects and subvert the moral, political, and religious order of things as established by the British Constitution'. The advertisements urged Orangemen to attend the dinner 'to commemorate Protestant deliverance from Popish ascendancy, tyranny, and thraldom'.[24]

After the banner was unfurled, a large crowd began to assemble in the street outside the hotel. With hooting and jeering, the crowd demanded the removal of the banner. Then some young men started pelting it with stones. Others tried to enter the building. The Orangemen retaliated by firing on the crowd from the hotel, wounding several onlookers. The police intervened and arrested many on both sides. All were bailed to answer charges when called upon but ultimately no one was prosecuted for his part in the riot or the shooting.[25]

Instead, attention turned to the political arena with calls from the mayor and the press for legislation to suppress the activities of religious and political societies that might lead to breaches of the peace such as had occurred that day.[26] In response, Governor Charles Fitzroy on 7 October 1846 sent to the Legislative Council 'A Bill to prevent Party Processions and certain other public exhibitions in the colony of New South Wales'.[27] At that time, New South Wales included the Port Phillip and Moreton Bay settlements.

The Bill was the work of the Irish-born Attorney-General John Hubert Plunkett, a prominent Catholic, who modelled his Bill on similar legislation passed by the Westminster Parliament in 1832, prohibiting Orange processions in Ireland.[28] The *Sydney Morning Herald* praised the object of the Bill but complained it was too broad as it captured inoffensive organisations such as total abstinence and temperance societies.[29] An amended Bill confined

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23 *Leader*, 30 November 1867, p 17.

24 *Sentinel*, 9 July 1846, p 3.

25 *Port Phillip Gazette*, 15 August 1846, p 2.

26 *Melbourne Argus*, 4 August 1846, p 4.

27 *Sydney Morning Herald*, 8 October 1846, p 2.

28 2 & 3 William IV, c 118; *Sydney Morning Herald*, 16 October 1846, p 2. The Chief Secretary for Ireland Edward Stanley on presenting the 1832 Bill to Parliament explained: 'The object of his Bill was not to fetter the manifestation of political opinion in any way whatever. His Bill was directed against party processions connected with religious subjects, and calculated to maintain and prolong religious animosities, which moved with banners exciting angry feelings, and which were not unfrequently armed, ready to meet the conflicts they provoked.' (HC Deb, 14 June 1832, vol 13, cc717-28).

29 *Sydney Morning Herald*, 14 October 1846, p 2. These societies registered their own protest

the prohibition to religious and political assemblies and processions in which the participants carried weapons or:

> publicly exhibited any banner, emblem, flag, or symbol the display whereof may be calculated to provoke animosity between Her Majesty's subjects of different religious persuasions or who shall be accompanied by any music of like nature or tendency.

The amended Bill satisfied the press and council members who had advocated for the temperance societies. The legislation, which included a three-year sunset clause, received the governor's assent on 27 October 1846.[30]

The new Act faced its first test with Sydney's St Patrick's Day celebrations the following year.[31] On that day, the St Patrick's Total Abstinence Society assembled as usual at St Patrick's Hall, Church Hill, from where — accompanied by their banners and band — they processed to Macquarie Street, marching back to St Patrick's Church to celebrate solemn high mass.[32]

Although a Catholic and an Irishman, Attorney-General Plunkett was not impressed. He wrote to Father John McEncroe, one of the organisers of the celebrations, advising that it had been represented to him that the procession was a party religious procession in violation of the act and seeking clarification as to its 'real character'. He warned that if there had been a breach of the Act he would prosecute, adding 'I am convinced that the future peace of society depends upon its strict observance'.

Plunkett's concerns were borne out 21 years later in circumstances similar to the 1846 riot that prompted his legislation. During celebrations marking Prince Alfred's visit to Melbourne in November 1867, an image of William III crossing the Boyne was displayed on the Protestant Hall in Stephen Street (now Exhibition Street). This prompted stone throwing and jeering, which were followed by shots fired from the building into the crowd, wounding several onlookers, including a 13-year-old boy, who died a fortnight later of his wounds. Ironically, the boy was an English-born Protestant.[33]

In his reply to Plunkett's inquiry, McEncroe wrote that the St Patrick's Day parade consisted of teetotallers and was thus neither religious nor political. He pointed out that a quarter of the St Patrick's Total Abstinence Society members were Protestants and that the Protestant Total Abstinence Society had been invited to participate. Plunkett responded that he disagreed with McEncroe as to the character of the procession, saying that it was not the

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with petitions to the legislature (*Sydney Morning Herald*, 16 October 1846, p 2).

30   10 Vic No 1. It was notified in the *New South Wales Government Gazette*, 27 October 1846, p 1.

31   Cf the situation regarding the UK Act on which the NSW Act was based: 'In practice, if not intent, the Party Processions Act had only been directed against Orange marches' (AT Morrisette, 'Preventing the Parade: The Party Processions Acts in Ireland and Canada' (2018) 48(2) *American Review of Canadian Studies*, p 110, 117). See also Maddox (n 16) pp 250–251.

32   *Sydney Chronicle*, 20 March 1847, p 2.

33   *Age*, 28 November 1867, p 5; 6 December 1867, p 5; *Argus*, 28 November 1867, p 5; 6 December 1867, p 4.

nature of the society that concerned him but of the procession itself. He wrote that, as it had proceeded to the church for mass, 'it assumed the character of a religious procession'.[34]

Instead of testing the Attorney's opinion in court, the Society publicly expressed its regret for its unintentional infringement of the law and pledged to avoid any semblance of violating the Act in future. This satisfied Plunkett, who did not prosecute. The *Sydney Chronicle*, a Catholic newspaper that had approved the legislation when passed, protested that it was 'a direct infringement upon the religious liberty of the people of this colony to whatever denomination they may belong'.[35] When in the following October the mayor of Melbourne relied on the Act to prohibit members of the Independent Order of Oddfellows (a benevolent society) to march in procession with their banners and insignia, the *Melbourne Argus*, owned and edited by the Orangeman William Kerr, which had also originally approved the legislation, added its voice to the Catholic *Chronicle*'s criticism of the Act.[36]

Notwithstanding the belated dissatisfaction with the Act's application, it was renewed in 1849 for five years. This represented a compromise between those who wanted the Act to lapse and those, including Plunkett, who wanted to extend it to all processions.[37] By the time the five-year period expired, Victoria had separated from New South Wales and responsible government had been granted to both colonies.[38] The outgoing Victorian Legislative Council extended the Act until it could be dealt with by the new Parliament, which initially extended it indefinitely before incorporating the Plunkett prohibition in s 10 of a new public order act, the *Unlawful Assemblies and Party Processions Statute of 1865*.[39] Several re-enactments of that legislation then followed so that even today in Victoria, the party-procession provisions remain in much the same form as Plunkett's Act of 1846, notwithstanding several attempts at its repeal.

In New South Wales, the party processions legislation lapsed at the end of 1855 but was revived in January 1857 and made perpetual. In 1901, a new *Party Processions Prevention Act* was passed, repealing the earlier legislation

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34   The correspondence was published in the *Sydney Chronicle*, 3 April 1847, p 3.

35   *Sydney Chronicle*, 3 April 1847, p 2.

36   *Melbourne Argus*, 5 October 1847, p 2.

37   The Continuation Act (13 Vic No 10) extended its operation until 31 December 1855. See also *Sydney Morning Herald*, 7 June 1849, p 2; 14 June 1849, p 3. The two positions reflected the debate at Westminster over the extension of the UK party processions legislation, but there the Act was allowed to lapse. It was re-enacted in 1850 (3 & 4 Vict, c 2) following a clash between Orangemen and Ribbonmen (a Catholic agrarian organisation descended from the Defenders) at Dolly's Brae, County Down during an Orange march in 1849, when several Catholics were killed and many wounded on both sides. The UK Act remained in force until repealed in 1871 (Morrisette (n 31) pp 118, 121).

38   Victoria became a separate colony on 1 July 1851 and attained responsible government under the *Victoria Constitution Act 1855* (Imp) that took effect on 23 November 1855 (*Age*, 24 November 1855, p 2). New South Wales attained responsible government under the *New South Wales Constitution Act 1855* (Imp) that took effect on 24 November 1855 (*Empire*, 26 November 1855, p 4).

39   The *Party Processions Continuation Act 1855* (19 Vic No 1); *Continuation of Expiring Laws Act 1859* (22 Vic No 68); *Unlawful Assemblies and Party Processions Statute 1865* (28 Vic No 247).

but restating the prohibition on party processions in the same form as the 1846 Act. In 1970, the 1901 Act was repealed by the *Summary Offences Act*.[40]

When Queensland separated from New South Wales in 1859, it inherited the 1857 revival Act.[41] That Act was repealed by the *Criminal Code Act 1899* but s 77 restated Plunkett's prohibition on party processions.[42] That section remained in Queensland's Criminal Code until 2008 when it was repealed; the Explanatory Memorandum noting that 'the provision is obsolete'.[43]

Plunkett's strict reading of the *Party Processions Prevention Act* was enough to prompt the abandonment of St Patrick's Day parades and Twelfth of July processions in the colonies for many years. But by the 1880s, such parades had resumed.[44] Writing in 1884 in *The Chronicles of Early Melbourne*, Catholic journalist Edmund Finn, better known by his pen name Garryowen, said of the Act:

> It was never more than a dead letter — dead as the defunct hobgoblin it was meant to exorcise. It was never required, for from the evil of the abortive celebration sprang one good result — viz., that no other July anniversary was bug-beared by an Orange procession.[45]

However, Finn spoke too soon. The Act's continuing relevance was brought into sharp focus 12 years later when sectarian rioting broke out during Twelfth of July celebrations in Brunswick, Melbourne in 1896 and 1897.

Brunswick 1896/1897[46]

In July 1896, advertisements appeared in newspapers giving notice of a proposed procession by members of the Brunswick Orange lodge on 19 July. Reports earlier in the week of processions elsewhere carried headlines such as 'Orange Celebration at Ballarat/Attack on Roman Catholicism' and 'Orangeism on the Warpath' and gave brief accounts of the speeches, which included the usual litany of the errors of the Church of Rome.[47] In response, Father Edmund Luby, parish priest of St Ambrose's Catholic Church, Brunswick, approached the police and claimed that the advertised procession would be illegal under s 10 of the *Unlawful Assemblies Act*. The police agreed, as did the Chief Secretary, Alexander Peacock, who advised the Orangemen they would breach the Act if they marched.[48] As a result, the march was called

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40 *Party Processions Prevention Act 1857* (20 Vic No 6); *Party Processions Prevention Act 1901* (Act No 10, 1901); *Summary Offences Act 1970* (Act No 96, 1970). Today, public assemblies in New South Wales are governed by Pt 4 of the *Summary Offences Act 1988* (NSW) which does not include the provisions of Plunkett's Act of 1846.

41 Queensland became a separate colony with responsible government on 10 December 1859 (*Queensland Government Gazette*, 10 December 1859).

42 63 Vic No 9.

43 Act No 55 of 2008 s 16.

44 In New South Wales, St Patrick's Day processions resumed in 1880 after the Hibernian Society marched from St Benedict's Catholic Church, Broadway to Circular Quay without the authorities attempting to prevent them. Thereafter a parade became a regular feature of Sydney's St Patrick's Day celebrations. See J Kildea, 'Celebrating St Patrick's Day in nineteenth-century Sydney', *The Dictionary of Sydney*, 2012.

45 Garryowen, *Chronicles of Early Melbourne*, vol 2, p 687.

46 *Age*, 20 July 1896, p 5; 21 July 1896, p 5; 19 July 1897, pp 5–6.

47 *Age*, 15 July 1896, p 5; 17 July 1896, p 8; *North Eastern Ensign*, 17 July 1896, p 2.

48 *Age*, 16 July 1896, p 6; 18 July 1896, p 6.

off, although according to the *Age*, 'not in time to prevent the assemblage of thousands of excited anti-Orangemen on the scene'. Summoned by counter-advertisements, they proceeded to assault Orangemen as they arrived to enter their meeting place in the local Wesleyan chapel and then laid siege to it. The police, who were heavily outnumbered could do little to prevent the violence, and only managed to arrest a handful of men.[49]

In March the following year, the Orange Order sought a ruling that the St Patrick's Day parade would also be in breach of s 10. However, the Chief Secretary, on the advice of the Crown law department, disagreed and the parade went ahead peacefully.[50] When July came, the Chief Secretary made a similar ruling with regard to the Twelfth of July parade, which then went ahead under a heavy police guard. Even so, some in the crowd of 30 to 40,000 lining the route launched attacks on the Orangemen. Many of the assailants were arrested and convicted of riot offences.[51]

They were not the only court proceedings arising out of the incident. A private citizen, Andrew Kennedy, brought a prosecution against several Orangemen for illegally marching in procession contrary to the Plunkett provisions of the *Unlawful Assemblies Act*. The Orangemen were committed for trial but there was no evidence of any banner or flag being displayed and the evidence of the defendants wearing emblems or symbols was inconclusive. The jury took just 15 minutes to acquit the accused. After that, the Act truly did become a dead letter.[52] The following year, the St Patrick's Day parade and the Twelfth of July procession were held in Brunswick, both passing without incident.[53]

Ultra-Protestant preachers denigrating Catholicism

The second type of provocation leading to sectarian rioting was ultra-Protestant preachers publicly denigrating the beliefs and practices of the Catholic Church. There are several examples of this, including: in 1860 at Maitland, where Scottish-born Presbyterian minister Reverend William McIntyre was prevented by a violent mob from delivering a lecture on 'The Heathenism of Popery';[54] in 1866 in Sydney, where in what the newspapers called 'the Battle of York Street', a mob broke up a lecture by another Scottish-born Presbyterian minister and Orangeman Reverend John McGibbon in which he identified the Catholic Church as the Antichrist in scripture;[55] in 1874 in Ipswich, Queensland, where a public lecture on Martin Luther by Irish-born Wesleyan minister and Orangeman Reverend David

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49   *Age*, 20 July 1896, p 4.

50   *Age*, 16 March 1897, p 5; 18 March 1897, p 5.

51   *Argus*, 29 July 1897, p 7.

52   *Age*, 29 April 1898, p 6. The case went to the Full Court of the Supreme Court of Victoria on a procedural point relating to the committal of the defendants: *Kennedy v Purser* (1898) 23 VLR 530; (1898) 4 ALR 54. A prosecution in 1868 under the *Party Processions Prevention Act 1857* (NSW) was dismissed by the police court at Ryde (*Sydney Mail*, 1 August 1868, p 3).

53   *Age*, 18 March 1898, p 6; 18 July 1898, p 6.

54   *Empire*, 31 March 1860, p 5; *Northern Times*, 31 March 1860, p 2.

55   *Empire*, 24 August 1866, p 5; 25 August 1866, p 4. The Antichrist is referred to in 1 *John* 2:18–22; 4:1–6 and 2 *John* 1:7–11.

Porteus was broken up by a mob which then rampaged through the nearby streets.[56] The list goes on. However, in the remaining time, I want to look specifically at the rioting that took place in 1878 in Sydney's Hyde Park, which led to a response from the legislature.

Hyde Park 1878[57]

In the 1870s, the southern end of Hyde Park was one of the liveliest parts of the city on Sunday afternoons. Thousands of people would gather there to promenade along the pathways, to play sports, and to picnic on the grass. In addition, soap-box orators and open-air preachers would attract large crowds of onlookers. Some would listen attentively; others would heckle and shout abuse; a few would engage in anti-social behaviour. The best-known of the preachers was Pastor Daniel Allen, an English-born Baptist minister, whose fiery anti-Catholic rhetoric at his Sunday afternoon services ensured he had the largest and most rowdy meetings in the park.[58]

Opposition to Allen's tirades against the Church of Rome came to a head on 10 March 1878 when his Sunday service was broken up and he was chased out of the park. Crowds of detractors and supporters, estimated in the thousands, pursued him to his home in Castlereagh Street, opposite to what is now the Downing Centre.[59] Undeterred, he returned the following Sunday. Anticipating trouble, the authorities deployed 150 constables on the Elizabeth Street side of the park close to Allen's congregation, while on the College Street side 100 soldiers from Victoria Barracks, in uniform and armed, stood ready to intervene.[60]

This show of force ensured that Allen was able to deliver his sermon without incident. However, as he was leaving the park to walk to his house, thousands again followed, many shouting abuse at the pastor and his entourage. After Allen gained the safety of his home, the mob remained outside haranguing him. A reporter for the *Evening News* wrote, 'Castlereagh Street for nearly a quarter of a mile was thronged by one dense multitude and Liverpool Street much the same'.[61] Events then took a turn for the worse when men wearing orange neckties were spotted in the crowd. Those wearing green attacked them with brickbats. When the police arrested one of the brickbat throwers and began dragging him away, the mob turned on the police. The police drew their batons and charged the crowd, forcing the rioters to retreat. It was only after mounted police with sabres moved in that the mob dispersed. Although several of the rioters were prosecuted, in the end only three were

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56 *Brisbane Courier*, 7 November 1874, p 4; *Queensland Times*, 7 November 1874, p 5.

57 *Evening News*, 11 March 1878, p 2; 18 March 1878, p 3; *Sydney Morning Herald*, 11 March 1878, p 4; 18 March 1878, p 5.

58 M Chavura, 'Daniel Allen (1824–1891)' in *Australian Dictionary of Evangelical Biography* (2020) <https://sites.google.com/view/australian-dictionary-of-evang/a/allen-daniel-1824-1891> (accessed 4 October 2024); J Roe (Ed), *Daniel Allen: Pastor and Pioneer* (CBO Publications, 1998). Allen's writings included: *Roman Catholicism refuted by the word of God* (1861); *The Pope v. The Queen* (1875); *The Total Depravity of Man* (187?); *Oliver Cromwell and his Slanderers* (1877); *History of the Convents* (1878).

59 *Evening News*, 11 March 1878, p 2; *Sydney Morning Herald*, 11 March 1878, p 4.

60 *Evening News*, 18 March 1878, p 3; *Sydney Morning Herald*, 18 March 1878, p 5.

61 *Evening News*, 18 March 1878, p 3.

convicted. They were fined between five and twenty shillings for throwing stones and behaving in a riotous manner.

When MPs raised the riot in Parliament, several members attributed primary blame not to the rioters but to the open-air preachers who excited resentment and antagonism by their fiery rhetoric aimed at people of other creeds. Pastor Allen was singled out and described as a 'firebrand' who used language likely to lead to a riot. Sir John Robertson contended:

> the conduct of Pastor Allen was licentious in the highest degree and to stop him would not be taking from him the liberty of speech. What was liberty? Liberty was to do what they liked without interfering with others. Licence was entering some ground to do something injurious to the liberty of some other man. Could Pastor Allen and his friends not see that he and his friends were invading the rights of other people?

He concluded by saying he thought steps ought to be taken 'to prevent this kind of discussion on Hyde Park that was likely to bring about ill-feeling, or it might be bloodshed'. The Colonial Secretary, Michael Fitzpatrick, assured the house the matter was in hand.[62]

Despite the government's announced intentions to fix the problem, almost a year passed before any prohibition took effect. This was due in part to complications relating to the legal status of Hyde Park. Eventually the park and what are now Cook and Phillip Parks were dedicated and trustees appointed to manage the three. The trustees then passed regulations including one which provided: 'No public meeting of any kind, or assemblage of persons together to the number of twelve or more, for any purpose, in any of the Parks shall be allowed ... [except with] the written permission of the Trustees'.[63]

In Parliament, several Protestant MPs, for whom open-air preaching was an important element of evangelisation, complained that the regulations interfered improperly with the liberty of the subject. The *Sydney Morning Herald* was generally supportive of the regulations while the *Evening News* opposed them, arguing that if people were offended by the language employed by speakers, 'it is a very good reason for enforcing the laws which deal with obscene or blasphemous language, but not for forbidding the use of the Park to those who hold forth in it temperately and inoffensively'. As might be expected, the *Protestant Standard* also opposed the regulations. Protestant MPs convened a public meeting to protest the regulations and to elect a deputation to call on the Premier, Henry Parkes. The Premier proved unsympathetic, telling them that the trustees had acted within their powers, that the park was undoubtedly for the purpose of recreation, and that the rights of the people were not in any way interfered with. He added that if someone desired to hold a public meeting, they need only seek permission.[64]

The government stood firm and in the end, the open-air preachers and orators took their makeshift platforms a kilometre north to the Government

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62 *Evening News*, 20 March 1878, p 2; *Sydney Morning Herald*, 20 March 1878, p 3.

63 *NSWGG*, 5 February 1879, p 517.

64 *Sydney Morning Herald*, 8 February 1879, p 3; 12 February 1879, p 3; 15 February 1879, p 3; 22 February 1879, p 3; *Evening News*, 11 February 1879, p 2; 17 February 1879, p 3; 21 February 1879, p 2; *Protestant Standard*, 15 February 1879, p 5

Domain. Even Pastor Allen resumed his open-air services there.[65] Soon the Domain became the place to hold large public meetings. Although there was no repeat of the 1878 riots, complaints soon emerged of 'disgraceful scenes' in the Domain due to provocative speakers and larrikins intent on breaking up their meetings. Attempts by the government to appoint trustees, as had occurred with Hyde Park, met strong resistance from influential citizens including the mayor, fearful that public meetings would be banned.[66] So, the government took a different course. In 1885, it made regulations for the management of the Domain under powers conferred by the newly enacted *Crown Lands Act 1884*. Unlike the Hyde Park regulations, those for the Domain did not ban public meetings. Instead, they prohibited 'violent or unseemly language, calculated to inflame the minds of the hearers or cause a breach of the peace'.[67] Since then, the Domain has continued to be Sydney's premier venue for soap-box orators and open-air preachers, its popularity waxing and waning due to public taste rather than government dictation.[68] While this approach was not perfect, it meant that anti-social behaviour fell to be deterred by prosecuting individual cases on their merits rather than by an across-the-board ban on public meetings.

Conclusion

When I was at school we had a saying, 'Sticks and stones may break my bones but names will never hurt me'. But if our excursion through the history of sectarian disturbances teaches us anything, it is that my schooldays saying was probably not true. Names do hurt. That, of course, does not excuse those who take the law into their own hands to vindicate their offended ethnic, religious, or other identity. In the disturbances we have discussed, no one in the cool light of day suggested otherwise.[69]

After criticising the rioters and their provocateurs, the newspapers often also reflected on the broader question of the meaning of liberty. For instance, when Reverend McGibbon claimed after the Battle of York Street in 1866 that 'the law protects every man in the perfect liberty of open discussion, provided

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65 Roe (n 58) pp 65–66.

66 *Sydney Daily Telegraph*, 2 November 1883, p 2; *Sydney Morning Herald,* 5 November 1883, p 5; 8 November 1883, p 6; 12 November 1883, p 3; 17 November 1883, p 9.

67 *NSWGG*, 23 October 1885, p 6947. The prohibition on 'violent or unseemly language' continued to apply in one form or another until 2020 when it was reformulated to provide that a person must not use 'indecent, obscene, insulting or threatening language' or 'cause serious alarm or affront to a person by disorderly or unsafe conduct' (*Royal Botanic Gardens and Domain Trust Regulation 2020* (NSW) cl 28).

68 Soapbox Speakers, *Speakers' Corner, Sydney* (Webpage) <https://soapboxspeakers.wordpress.com> (accessed 4 October 2024).

69 Following the Maitland riot of 1860, Bishop Polding travelled from Sydney to personally deliver to his flock a pastoral letter in which he urged them to 'shame your assailant by enduring your wrong in silence' (*Sydney Morning Herald*, 12 April 1860, p.5). After the 1874 Ipswich riot, a meeting of Catholics passed a resolution declaring that 'any ill-advised Catholic who might offer violence or insult to any such procession or meeting should be regarded by the Catholic body as more hostile to its interests and to those of the colonists generally than any member of the Orange association' (*Brisbane Courier*, 9 November 1874, p 3).

his language be within the limits of truth and propriety', the editor of the *Empire* observed:

> Freedom of public speaking, like all other freedoms, can be abused, and is liable to degenerate into license unless used with proper regard for the condition of the society in which it is exercised. There are no greater enemies to real practical liberty than men of ill-balanced minds who insist upon the exercise of the most extreme privileges under all circumstances, and persist in the practice of mere abstract rights, however offensive or injurious to others. ... The time has happily long since gone by when it was necessary for the Press of this colony to vindicate 'liberty of speech and fair discussion'. It is the abuse of these things that has now to be guarded against.[70]

In commenting on the Ipswich riot of 1874, the editor of the *Sydney Morning Herald* reflected:

> Our only security lies in the unquestioned supremacy of law and order. ... No private individual, no sect, no Church must be allowed to restrict the utterances of any other, and to impose silence by coercion. The State alone can do this beneficially, because the State alone represents all, and acts in the interests of all. ... And, as claiming the sole possession of that right and power, the State obviously cannot permit its exercise to be forestalled by private action. But, if the State slumbers upon its rights, and neglects its duties, by allowing private individuals or organisations to take what they choose to call the law into their own hands, the end will be widespread violence and disorder.[71]

Fortunately, sectarianism between Catholics and Protestants has all but disappeared from Australian society. Nevertheless, that 'natural and nearly ineradicable feature of human cognition' tribalism has not, even if today it is cloaked in the language of 'culture wars' and 'identity politics'. Although images of William III no longer have 'a deep and bitter significance' for Australians of Irish descent and terms such as 'the Heathenism of Popery' and 'Antichrist' are no longer publicly hurled at Catholics, offensive or injurious language — which we now call 'hate speech' — continues to exist, although now largely directed at people of other identities. And sometimes, as we have seen in recent years, such perceived offence has led to violent reactions not dissimilar to those I have discussed in this lecture. For example, on 15 September 2012, a protest in Sydney against an anti-Islamic film *Innocence of Muslims* turned violent resulting in injuries to police and protesters.[72]

Ultimately, it falls to the law makers and those who administer the law to determine where lies the line between liberty and licence and, if that line has been crossed, to take such steps as are necessary in the particular circumstances, not to assuage offended feelings, but to preserve the peace and social harmony of the community. As Plunkett himself said, 'I am convinced that the future peace of society depends upon [the Act's] strict observance'. Hopefully, in time, the circumstances that give rise to the need for such state intervention will dissipate and any such new law deemed necessary to deal with that situation will, like Plunkett's *Party Processions Act*, become a dead letter.

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70 *Empire*, 28 August 1866, p 3; 29 August 1866, p 5.
71 *Sydney Morning Herald*, 24 February 1875, p 4.
72 Wikipedia, *Sydney Anti-Islam Film Protests* (Webpage) <https://en.wikipedia.org/wiki/Sydney_anti-Islam_film_protests> (accessed 4 October 2024).

Appendix — Sectarian Riots in Australia 1843–1922

Election

1843 in Melbourne: During the election for the legislative council in the seat of Melbourne, supporters of the Catholic and the Protestant candidate fought each other outside the polling place causing delay to the declaration of the poll. The *Riot Act* was read and mounted police charged the mob, driving them away from the polling place.

Orange display/parade

1846 in Melbourne: During the Twelfth of July celebrations, Orangemen displayed from a hotel window a banner of William III crossing the Boyne. This provoked an angry reaction from Irish Catholics, who pelted the building with stones. The Orangemen retaliated by firing on the crowd from the hotel windows, wounding several people.

1867 in Melbourne: During the visit of Prince Alfred to Melbourne, Orangemen displayed a painting on the Protestant Hall in Stephen Street (now Exhibition Street) depicting William III crossing the Boyne. When one night a crowd singing 'The Wearing of the Green' threw stones at the illuminated painting (or transparency, as it was called), shots were fired from a window of the Protestant Hall. Several people in the crowd were hit, including a 13-year-old boy who died of his wounds a fortnight later. He was an English-born Protestant.

1896 in Brunswick, Melbourne: A crowd of 25,000 had assembled to watch a parade of Orangemen celebrating the Twelfth of July. However, due to threats it was called off. Nevertheless, groups of Orangemen were set upon and several brawls erupted.

1897 in Brunswick, Melbourne: A contingent of 300 police and 30 mounted troopers escorted that year's Twelfth of July parade, watched on by a crowd estimated to be between 30 and 40,000, many of whom broke through the police ranks and attacked Orangemen, their banners and regalia.

1897 in Coolgardie, Western Australia: A parade of Orangemen celebrating the Twelfth of July was attacked by a mob wielding hurley sticks resulting in a general mêlée.

1901 in Boulder, Western Australia: As in Coolgardie four years before, a parade of Orangemen celebrating the Twelfth of July was attacked by a mob wielding hurley sticks resulting in a general mêlée.

Preacher/speaker

1860 in Maitland, New South Wales: At a public lecture on 'The Heathenism of Popery' by ultra-Protestant preacher Reverend William McIntyre, a mob of Irish Catholics attacked the speaker and smashed the windows of his church.

1866 in Sydney: A mob of Irish Catholics broke up a public lecture on 'The Antichrist' by ultra-Protestant preacher and Orangeman Reverend John McGibbon, who identified the Church of Rome with the antichrist of scripture. The press dubbed the ensuing brawl as the 'Battle of York Street'.

1874 in Ipswich, Queensland: A public lecture on Martin Luther by ultra-Protestant preacher and Orangeman Reverend David Porteus was broken up by a mob that then rampaged through the nearby streets.

1878 in Sydney's Hyde Park: Ultra-Protestant preacher Reverend Daniel Allen, well known for his fiery anti-Catholic rhetoric at his open-air services, was chased out of Hyde Park with an estimated 5000-strong crowd pursuing him. When men wearing orange neckties were spotted, those wearing green attacked them with brickbats. When the police arrested one of the brickbat throwers and began dragging him away the scene turned nasty as the mob turned on the police. It was only when mounted police with sabres moved in that the mob dispersed.

1879 in Hobart: A public lecture on the evils of Catholicism by a visiting Canadian ex-priest and Orangeman Charles Chiniquy was broken up.

1886 in Lismore, New South Wales: A public lecture on the evils of the Catholic convent system by visiting American ex-nun Edith O'Gorman organised by the Orange Order was broken up.

1900 in Adelaide, Brisbane, and Kalgoorlie: Public lectures on the evils of Catholicism by a visiting English ex-priest Joseph Slattery were broken up.

1903 in Wyalong and Temora, New South Wales: Public lectures by ultra-Protestant preacher and Orangeman Reverend Dill Macky were broken up. Shots were fired and stones thrown.

1922 in Coolamon and Marrar, New South Wales: Public lectures by ultra-Protestant preacher and Orangeman Reverend William Touchell on the Protestant Federation and the evils of Archbishop Mannix and Catholic convents were broken up and the speaker assaulted.