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Botany Bay Penal Settlement

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Introduction

The present country of Australia is relatively young in comparison with European countries. Its history since the beginning of the European settlement is relatively well documented, but the causes of its establishment remain controversial. In 1788 the penal colony in New South Wales was started when the first fleet of convicts arrived. However, despite all the planning carried out by the participants in the event, the settlement was nearly doomed to failure due to insufficient support and rash hopes on the part of the British. Over 160,000 of Great Britain's unwanted criminals were transported to Australia from 1787 to 1863 with little hope of return. The realities of the effects of the laws, the courts, the society and the politics of Great Britain are what I wish to look at in this report to determine the reason for sending the First Fleet to Botany Bay.

Explorers and traders not only from Great Britain, but also from Holland and Portugal had previously discovered the continent. The apparent barrenness in conjunction with the mistaken belief about its physical situation and connection with other countries helped to deter further exploration along with various wars and political and political reasons. It was with Captain Cook's discovery and coastal exploration of the apparently fertile east coast in 1770 that Great Britain could lay claim to the land. However, it took more than sixteen years before a permanent settlement was planned and eighteen before it was founded there; with such a settlement, legal ownership could be claimed by the British using the legal concept of Terra Nullus which effectively denied the natives any say as the country was considered to be unoccupied by a civilised and legitimate government.

Botany Bay, just south of present day Sydney on the east coast of New South Wales, was the principal destination for the convicts and the term Botany Bay became the generic name for the destination for convicts who were sentenced to transportation in the late 18th century and onwards even though that particular bay was not used for convicts. The name Botany Bay even features in an old convict song purportedly written early in the 19th century and which is known by most Australians.

2. Problem

This study will be looking at the various reasons and existing conditions in Britain that helped determine why the British government in 1786 decided to establish a penal colony at Botany Bay on the east coast of the newly discovered New South Wales that was situated many thousands of kilometres from English ports and outposts. Several theories for the settlement have been put forward and it continues to be a moot point of discussion for researchers. However, the discussion has to a large degree gone unnoticed by the general populations of Australia, Great Britain, Ireland and other countries from where convicts were sent. From a European point of view, Australia was built up from an empty country into the industrially developed democracy that it is now, and that has over 20 million inhabitants.

Were there certain structural systems that pre-existed in Britain at the time of establishment that could have influenced or even precluded the decision? Was the decision even a totally conscious effort on the part of the English to establish something for the future or possibly merely a continuance of a well functioning system of criminal deterrence that suffered a hiatus after the American War of Independence? Does the makeup of the convicts of the First Fleet give any indication for the way the settlement started? Did the type of convict sent out fit an old worn pattern of punishment? What roll were women expected to fulfil, how did they fit into the scheme?

3. Purpose

The purpose of this report is to illuminate structural, political, economic and personal reasons for the British government's decision to send the first 785 convicts to the Botany Bay area in New South Wales. The course that the decision-making process took needs to be understood to comprehend the various avenues of action open and why the decision was made. The reason for looking more closely at these questions is that despite much previous research by historians, there appear to be questions that warrant further investigation.

4. Theory and Method

The decision that led to the establishment of a penal colony in New South Wales in 1788 was taken at a time when certain fundamental structural changes occurred in Britain. It is contended here that the decision was made during a time when social, political and economic norms failed to adapt to the newer streams of thought and development that were occurring then and that various persons had their own agendas to fulfil in this episode. These norms were too rigid to cope with the amount of criminality and were themselves part of the problem to be resolved but the visible symptoms of the failure to cope with change were easier to hide than fixing the disease, and therefore, the decision to establish a settlement at Botany Bay was one taken by the responsible minister in order to alleviate the overcrowding of the prison system existing in Britain at that time.

The method of gathering information to test the above thesis has involved personal research of source material at the British Library, the Public Records Office at the Kew Archives, Kew Gardens Archival Library, The Natural History Museum of London, all in London, as well as consulting numerous books that take up certain aspects of British society and life that had a bearing on the decision. Statistical information has been consulted in order to discover patterns of movement of the convicts during the years as well as the types of criminals that were sent. It is mainly a qualitative approach to the question but with quantitative data used to reinforce certain arguments where necessary.

5. Materials

The range of materials that has formed the basis of this study includes parliamentary papers, commissions and speeches, correspondence between ministers themselves as well as correspondence from private people and certain government and semi-government representatives who had to some degree offered advice or ideas on the various arguments and uses for Botany Bay. The journals of Captain James Cook and of Joseph Banks give some valuable information. Joseph Banks, the main botanist on Cook's voyage of 1770, gave valuable information to Lord Sydney and other ministers and to an earlier commission investigating the advisability of establishing a settlement in New South Wales. I have perused original documents, laws and materials at the British Library, the Public Records Office at Kew as well as the Archives at Kew Gardens; all of these repositories are in London. Further correspondence to and from Sir Joseph Banks has been read. A great deal the correspondence

is in original handwriting that in keeping with much of the primary material is difficult to read.

A book by Mollie Gillen, *The Founders of Australia*, is a valuable source of records for the convicts and the accompanying naval personnel on the First Fleet. Whilst she presents her theory for the establishment of the colony in her book, it is possible to utilise her research about the status of the first people sent out independently of her theory for the purposes of this report. Old laws and legislation as well as works on the economy and social structure pertaining to the period have been investigated to help establish the social, political and economic atmosphere of the time.

6. Limitations

This report is mainly, but not wholly, limited to the time period between Captain Cook's discovery of the country and a period fairly shortly after the arrival of convicts in the early 18th century. This means that it is limited to the various reasons discussed by the politicians and government officials and to the social, legal, and economic structures that were in place at the time. It looks at the precautions, planning and preparations taken for the settlement and the various influences that affected the settlement. It is not the intention of the report to discuss in depth the hardships and sorrows that befell the convicts and navy personnel in the first years of the settlement or the remedies undertaken by the governing officer, Arthur Phillip, except where such matters reinforce or give a fuller insight for an argument relating to the decision to establish the colony.

7. Definitions

The word *Convicts* refers herein to the convicted felons who were sentenced to punishments that made them eligible for transportation to parts of the British Empire in order to serve their penalties. The penalties were usually in the form of servitude and, therefore, the convicts were usually legally bound to someone or an organisation including a government after sentencing. First Fleet, Second Fleet and Third Fleet are references to the first three fleets of transportation and supply ships sent out to Australia from Britain in the late 1780s and early 1790s.

Botany Bay is the area just south of the present city of Sydney in Australia.

8. Research Position

The present research situation into the starting of the colony centres on several conflicting theories. The most commonly accepted and widespread theory is that the colony started off as the mere repository for the unwanted convicts of Britain. This theory still holds much weight despite newer and very plausible arguments presented by historians since the 1960s. For many years the emphasis of research into the colony has been placed upon the individual transported convicts with Australians being especially interested in seeking information regarding their ancestral backgrounds. Specific interest has been placed particularly on the First, Second and Third Fleets to New South Wales and more generally on the following transports and poor conditions, hardships and successes of the convicts as they started and developed the colony.

Professor Manning Clark, emeritus professor of history at the Australian National University, was of the opinion that the convicts were sent out as a result of the successes of the American colonies in gaining their independence from Britain and that the temporary methods of keeping the criminals in order during the war had become permanent and subsequently unmanageable and the government chose this solution to relieve the situation.¹

Professor Geoffrey Blainey, another renowned Australian historian, expounded the theory in his book, *The Tyranny of Distance*, that the colony was started not only to help relieve the serious situation of overcrowded gaols and hulks in Britain, but also to help strengthen the ability for Britain to protect her commercial interests in Asia so that trade to all parts of the Empire could be promoted with the support of a port at Botany Bay. He further maintains that the great distance between Britain and New South Wales would effectively reduce the chances for the criminals to return to Britain and that the flax plant on Norfolk Island could be grown at Sydney and used in the navy with the trees from Norfolk Island.² He expresses doubts that the only reason was for a far off prison as the British government could have built prisons like other countries did and that if the politicians chose Australia cognizant of other alternatives just for a prison “then they must have been temporarily deranged”.³ Geoffrey Blainey has extrapolated a much more complex hypothesis based partly upon the premise in

¹ Clark, M. pp. 19-20

² Blainey, G. pp. 17-25

³ Ibid. p. 24

the foregoing citation that it was too simple to say that the only reason was for a prison. The debate regarding Australia's beginnings gained momentum with Geoffrey Blainey's claims despite even historically earlier ideas such as those presented by the historian Ernest Scott in 1916.¹ In any case the government did not build more prisons for the specific problem despite promises and agreements to do so.

Other historians have subsequently looked at reasons for the founding of the colony and have found further possible reasons. Alan Frost has written in support of the theories that Geoffrey Blainey put forward and has helped to refine Blainey's argument slightly in that Frost maintains the Botany Bay colony would support only the Indian trade routes with the supply of timber and flax for the vessels there.² H. T. Fry, writing in 1971, proposed the theory that the colony was mainly to be built up into a trading base for the Asian region.³ A fair amount of agreement therefore exists between several historians. These historians at times rely on events and circumstantial evidence that occurred after the decision to establish the settlement at Botany Bay to justify the decision. As such their reasoning is not fully plausible. Another historian, Frank Clarke writing in *History of Australia*, contends that as the government had lost the American colonies there was a need to look further a field to maintain its strategic balance in the world and its close ties with its trading partners.⁴ Frank Clarke says that the convicts were considered as dead as far as the law was concerned for the duration of the sentence if a convicted offender was sentenced to transport. Therefore, he reasons, the British government consciously utilised the convicts to build the colony for general development sake, and not just use the area as a dumping ground for the convicts.

The historian Ged Martin disputes Blainey's idea that the flax and timber was a basic ingredient in the decision making as these appear to be afterthoughts to the whole scheme. Martin does see the settlement as a way of setting up a port in order to ease the route to China as the main reason.⁵ But the idea of sailing around the south of Australia to avoid the troubled waters of the straits to the north of New Holland, which were in effect controlled by the Dutch, on the way to China is to stretch the point too much. Mollie Gillen in her relatively new book, entitled *The Founders of Australia*, is steadfast in the belief that the landmass named New South Wales was to become "a receptacle for the people Britain did not want".⁶

¹ Scott, E. *A Short History of Australia*. 7th edition 1952.

² Frost, A., pp. 606-611.

³ Fry, H.T. pp. 501.504

⁴ Clarke, F. P.23

⁵ Martin, G. A London Newspaper on the Founding of Botany Bay, August 1786-May 1787. *Journal of the Royal Australian Historical Society*. Sydney. 1975.

⁶ Gillen M. p. XXI

9. Discovery of Botany Bay

It seems rather odd that the inquisitive, adventurous and imperialistic British took so long to even get on with the business of investigating, let alone colonising, Cook's discovery of the land so long sought after. Cook was sent on three voyages to the Pacific, and his untimely death on February 14, 1779 in Hawaii brought a halt to further explorative investigations on a broad basis. His voyages of exploration brought forth the sense of distance in the far seas but also helped to reduce its isolation. His first exploratory trip in search for a southern land started in conjunction with his planned trip to Tahiti to study an eclipse. He did not know from the beginning that his scientific trip was to be extended into a search for a land in the Southern Seas. The first trip is really the most important for Australia's history and for the man in charge of the scientific discoveries, Joseph Banks. The secret instructions that led Cook and Banks to Australia outline the course of action he was to take when he was instructed to try to establish whether a mysterious great land in the south existed.¹ Whilst he did discover it, he did not conclusively know it. His two other trips were for discovery as well, with the second one to still locate the land in the south or at least to establish that there was no other land between South America and New Zealand. It was also on the second voyage that Norfolk Island was discovered, an island that was to play a crucial part in the course of the beginnings of New South Wales. During his travels though, and despite war with certain countries he was afforded immunity against interruption by the other countries.

Other problems were in hand for the British to deal with and these were of such magnitude that the outstretched British arm could hardly be expected to colonise a still unexplored country at the same time. The Seven Years War was relatively newly won with increased territorial gains on the North American continent; Britain continued to establish and expand its power in India in competition with other European countries and later the American colonies went into revolt and required men and financial resources for its resolve. Prisons for rehabilitation were not seen as alternatives to other forms of punishments and the number of criminals increased despite the improved economic situation that many managed to enjoy during the 18th century in Britain. Trade with the colonies centred on the supply of raw goods and food to England and the resale of finished products from there. The transportation of

¹ National Archives of Australia presents documents of importance for Australia:
http://www.foundingdocs.gov.au/resources/transcripts/nsw1_doc_1768.pdf November 2005.

convicts to the American colonies continued until 1776, but the outbreak of hostilities by the American colonies made it impossible to continue the activities.

The British response to the enforced halt to the wholesale trade of convicts to the colonies was to establish temporary holding places for them in the form of old ship hulks placed out in the Thames under the provisions of the Hulks Act.¹ Canada apparently was not considered as a repository for the convicts. Serious references to the idea of using Canada as a penal colony have not been found, although a few convicts were taken from Canada to Australia in the 1830s.

Lord Shelburne, the Prime Minister in 1782-3 signed the documents of recognition of the Independence of the American country in 1783, but even before this recognition occurred the British tried to continue sending criminals over the Atlantic to Virginia. The ship, the *Swift*, on its run over to Virginia, was overrun by the convicts in the Channel and those convicts that did not escape were sent to Maryland where their acceptance gave the British courage to send another ship, the *Mercury*. The convicts in turn captured this ship and many escaped. The remaining prisoners were added to with other convicts from Somerset and sent onto the former colonies that subsequently refused to accept them. Several of these convicts were later part of the first cargo to Botany Bay; several were given death sentences, however, after being reprieved from the death sentence the re-captured escapees were sent to rot in the hulks in the Thames.

10 The Actual Line of Decision for Botany Bay

10.1 Mounting Pressures and the Bunbury Committee

The pressures of the American War of Independence on the British government and monarchy could not preclude the interest that was necessary for the relief that London and its environs needed from the increased numbers of criminals as mentioned elsewhere. Despite the general knowledge of the existence of New Holland, better known as New South Wales, and specifically after its discovery by Cook and Banks, a Parliamentary Committee was appointed and headed by Sir Charles Bunbury in 1779² to investigate how the criminals could be better disposed of as the transportation had ceased to the American colonies, and the Hulks Act of 1776³ was not working as expected and this act was even considered as impossible to morally

¹ Geo.18.III.c.62, The Hulks Act 1776.

² The Bunbury Committee on Transportation 1779. *Journal of the House of Commons*, Volume 37, p.311.

³ Hulks Act, Op Cit..

enforce as it was against the English sense of personal freedom. Several witnesses were heard at the committee among those of which was Joseph Banks whose standing, as mentioned elsewhere, within government circles had increased steadfastly during recent years. In response to the particular question asked at the inquiry: where if it “...*should be thought expedient to establish a colony of convicted felons in any part of the Globe, from whence their escape might be difficult... and where they might ... be able to maintain themselves, after the first year*”¹, Banks suggested that the place he would recommend for establishing a prison colony would be Botany Bay on the coast of New Holland as recorded in the Parliamentary Journal of 1779:

*“... the place which appeared to him best adapted for such a Purpose, was Botany Bay, on the Coast of New Holland, the Indian Ocean, which was about seven Months Voyage from England; that he apprehended that there would be little Probability of any Opposition from the Natives, as during his stay there, in the year 1770, he saw very few, and did not think there would be above Fifty in all the Neighbourhood,... and those he saw were naked, treacherous, and armed with Lances, but extremely cowardly, and constantly retired from our People when they made the Appearance of Resistance; ...the climate...was similar to that of Toulouse in the South of France, having found the southern Hemisphere colder than the Northern;... the Proportion of rich soil was small in proportion to the barren, but sufficient to support a very large Number of People;...If the people formed among themselves a Civil Government, they would necessarily increase, and find Occasion for many European Commodities; and it was not to be doubted that a Tract of Land such as New Holland, which is larger than the whole of Europe, would furnish Matter of advantageous Return.”*²

Banks had probably only been as far as four or five miles inland from the coast at Botany Bay with his party of explorers as is witnessed by his account from his journal from the trip there where he and a party of nine others walked inland for the day.³ The land was described as sandy with several types of trees growing there, a somewhat less than promising site for a colony, even though they seemed not to encounter problems with the ‘Indians’ on any of the days from the first sighting on 21st April and the first landing on 28th April until May 6th 1770 when they sailed northwards. If one compares his later descriptions of the country it can be seen that Botany Bay (originally Stingray Bay) is probably the best area.⁴ In any case, Banks had recommended that Botany Bay would be a good place for a colony and, it is felt,

¹ The Bunbury Committee. Op.cit., P. 306

² Ibid., p.311.

³ The Endeavour Journals, 1770, May 1. <http://gutenberg.net.au/ebooks05/0501141.txt> . 280304.

⁴ Ibid, Entry for October.

that he had no doubt about what he said in view of the historical fact that the former colonies in America had similarly started from small beginnings.

Apart from the war with America to contend with there were the threats of drawn out entanglements with France and Spain closer to home and thus little was actually done at that time in response to the committee's findings. The Hulks, however, continued as floating prisons with various and small improvements suggested and carried out, but on the whole the situation was untenable.

10.2 Plans in the Making

Later, when the American War of Independence was finally over with the signing of the peace agreement after a great deal of negotiation between Benjamin Franklin and the British contingent in France in 1783, there were further political tensions to be dealt with. King George III tried to retain his influence and power within the parliament; he was extremely upset about the loss of the American colonies. The pressures of the criminals and the influx of returning soldiers, loyalists and the effects of industrialism on the population movements caused the transportation problem to once again become important. At this time, a plan for the establishment of a colony at New South Wales was presented. James Mario Matra (Magra), who had also been on the *Endeavour* with Cook on the voyage when the existence of New South Wales was conclusively established, continued to have correspondence with Banks later in the 1770's, and it is contended that Banks really generated the ideas and support for Matra's plans regarding the starting of a colony in New South Wales for the Loyalists from America. Matra refers to Banks often. In a letter to Joseph Banks on July 28th 1783, Matra states directly that he has heard rumours of two plans for settlements in the South Seas and he would be very interested to know of these but he had basically been snubbed by one of the principals, Sir George Young; and further that he had considered plans for schemes in that hemisphere.¹ Within three weeks and in close liaison with Banks, Matra had been able to formulate and put the ideas on paper. The proposals that Matra presented on 23rd August 1783 to Lord North, formerly the Prime Minister but now Home Secretary, were not acted upon and appear to have been put aside. The plans were termed 'A Plan for Establishing a Settlement in New South Wales to Atone for the Loss of our American Colonies' and detailed ideas for the establishment of a colony of free settlers made up of mainly loyal subjects that had been

¹ Carter, H. B. pp 212, 213.

forced to leave the American colonies’¹ Indeed the main ideas of the proposal were to establish a colony for the disenfranchised loyalists where they could develop a place near China and India and therewith develop crops and especially the New Zealand flax which could prove highly advantageous to the British Navy. James Matra added in his proposal that, “*Sir Joseph Banks’ high approbation of the scheme, which I have here proposed, deserves the most respectful attention of every sensible, liberal, and spirited individual amongst his countrymen.*”²

It was later in the year 1783 when William Pitt the Younger eventually became Prime Minister in his own right after the elections and despite having previously rejected the King’s offers and support to be Prime Minister that Matra’s plans resurfaced. With Pitt’s appointment as Prime Minister, Thomas Townshend (Lord Sydney) was made the Home Secretary in thanks for his support for both Pitt and for his vote for the Peace with America,³ and with that Pitt could get on with fixing the disastrous economy while the problem of the criminals became Townshend’s problem. This problem was exacerbated, as mentioned below, by the problem of many of the Loyalists coming over to London and these for the most part requested recompense for their losses after the peace agreement. James Matra was able to discuss his plans later that year with Lord Sydney and it appears to have been received fairly well. However, Lord Sydney was more concerned with the placement of the criminals than with the loyalists who, as mentioned elsewhere, were being helped.⁴ James Matra added more to the proposal wherein he suggested that a settlement or colony started out in New South Wales could easily accommodate criminals if needed and even help the settlers from the American colonies. This is termed as ‘Supplement to James Matra’s Plan’⁵. Evidence that James Matra and Sir Joseph Banks worked in conjunction on the ideas is also convincing in these letters and it appears that James Matra had hopes of initially being in charge of the new colony. In any case, the plan was once again not acted upon but the criminals continued to increase in numbers and caused continuing problems for Lord Sydney. James Matra wrote to Sir Joseph Banks on the 16th of October 1784 asking him if he knew “*if the Minister is decided to reject the Plan?*”⁶ James Matra also wrote to Evan Nepean, the under secretary to Lord Sydney, to propose that the costs of £15 per convict could be maintained if regular trips of convicts to New South Wales were made thus resulting in an increase in the number of

¹ Matra’s Proposals: CO 201/3; f 57.

² Ibid.

³ Norris, J.M. *Shellburne and Reform*. MacMillan Publishers, London. 1963. pp. 242, 296.

⁴ CO 201/3 f 65.

⁵ CO 201/3 f 62.

⁶ CO201/3 f. 65.

ships to China and therewith trade. It seems clear that Matra proposed ongoing shipments to New South Wales as well as introducing more financial enticements for the scheme.¹ But soon James Matra was to be appointed to other duties as his resources became even more strained although he was to give even more input at the Beauchamp Committee; Sir Joseph Banks was able to get him appointed to be a consul at Tangiers and he served there and on Gibraltar.

The new cabinet with Pitt as Prime Minister met in December 1784 and even discussed the problem of criminals and the proposals by Matra. It is clear from the draft by Evan Nepean that the ministers knew what they were looking at and included even a reference to the type of criminal that could be sent with benefit, ie. “*young offenders whose crimes have not been of the most heinous nature*”; this draft also indicates that Nepean was the person in the government most involved with the direction of New South Wales use at this stage.² The other areas in Africa were also mentioned in the draft and these were discussed in the following Beauchamp Committee.

Before the Beauchamp Committee was set in motion, another young aspiring naval officer, Sir George Young, presented a plan that later came, via the Attorney General, to Lord Sydney’s attention in January 1785. The purpose of this plan was clearly similar to Matra’s, including the resettlement of enterprising Loyalists, but Young’s plan had more emphasis on getting immigrants from the friendly islands and China in order not “to depopulate the parent state”, but later in the plan he added that convicts here could be used in the new settlements. Also more emphasis was placed on the trade and naval attributes that could be achieved.³ He more or less offered himself as a person worthy of the challenges of starting the settlement as well. Interestingly, his proposals include the value of the New Zealand flax for the navy and as a secure supply if Russia should stop its export to England, but his list of supplies to be sent also gives no mention of tools or machinery for its processing. Young’s plan, which was probably already in thought before Matra’s plans first surfaced, provides for a continuation of the American colonial life.

¹ CO201/3 f. 66. Letter undated.

² CO 201/ 3 f 67.

³ CO 201/3 ff. 51, 52.

10.3 The Beauchamp Committee

In order to help resolve the problem for the government another Committee was set up to investigate alternatives, suggest solutions and discuss the possibilities available to it. The Beauchamp Committee in April 1785 investigated African alternatives again and witnesses were called to give opinions about the various areas that could be considered. Evan Nepean, the Under Secretary of the Home Office, discussed the area Lemane in Africa because the African Company would not accept criminals anymore. As reported by the clerk at the committee, Nepean said also that the reason that they would be sent to Africa was because, *“they are notorious Felons, who are every Day expected to break Prison, some of them having already made Attempts to do so, and are a Class of People too dangerous to remain in this country; and it is thought there is no proper Place in America to transport them to, at least within the King’s Dominions. ... therefore the island of Lemane, There they could set up to fend for themselves basically ... and also it would save money.”*¹

Evan Nepean also stated that there were no plans to send criminals to Cape Breton², or *“...any British settlements in America?”* as is recorded about the negative responses from those areas; *“To which he replied that no and that strong representations against this have come from Nova Scotia and there are very few settlers in Cape Breton and he has heard of no plan to send to Canada.”*³ This indicates that for him, there were no other real alternatives than Africa, but he did not mention anything about the ideas that had been circulating for New South Wales.

Another witness at the committee was negative to the idea of Lemane; *“Mr John Barns, acquainted the Committee that he first presented the idea to Lord Sydney and in conversations had worked out the plan for sending them there but despite a good island... with trees and space, the blacks would only hurt them.”*⁴ Evan Nepean seems to have supported the plan but further witnesses were negative to the place.

Others spoke against the Lemane, for example Mr Thomas Nesbitt; *“...as it was easy to escape from and Natives used for recapturing them would be unreliable and expensive.”*⁵ Mr Smeathern said that he lived four years on the coast and found those natives to be vindictive and unsafe. They killed the crew of a French ship in retaliation for white men’s [actions]. He

¹ *House of Commons. Sessional Papers*, Volume 49 George III, pp 5, 6.

² *Ibid.* P 8.

³ *Ibid.* p 9.

⁴ *Ibid.* p. 12.

⁵ *Ibid.* p. 13.

also said that if 200 prisoners were landed not even 100 would last six months.¹ A surgeon, Mr John Boon, advised that “...*Putrid fevers from July to November exist.*”² These were people who had been there. Sir George Young was recorded as “*being against it and cited sickness, blacks... and it would require “not less than Four Vessels of about 150-200 Tons with 30 seamen per vessel... and Convicts ironed every night” ... and a Man of War would be required to carry them to the place of the Destination*”. Other parliamentary members who spoke against the Lemane idea include Mr Call, Mr Stuart and a Commodore Thompson who said, “...*it was bad as well and even inland it was bad and sickly country.*”³ Mr Call was the man responsible for the prisoners on the Hulks and could be biased against a reduction in the use of the Hulks, however this is unclear.

Lord Beauchamp, in view of the negative testimonies given for Lemane, recommended that that island not be used,⁴ however, the idea of sending criminals to some point in Africa was not totally disbanded and Beauchamp mooted the Bay of Das Voltas. This area was known of by Lord Sydney and with William Pitts’s backing a ship was sent immediately to investigate the area with Joseph Banks supplying a suitable botanist to survey the area, but the results were discouraging and hence dropped as a site for a convict settlement despite prepared plans to send a shipment of over 1000 felons there.⁵

This negative report was to prove to be another setback for Lord Sydney who was the one principally in charge of the problem and for Evan Nepean who appeared to do most of the groundwork. The pressures of finding a suitable and lasting solution to the problems caused by the Hulks and prison overcrowding, increasing lawlessness and lack of deterrent punishments available made the urgency even more acute and other matters that arose in the Beauchamp Committee gave the final lead for the two to take. Sir Joseph Banks was asked in the Beauchamp Committee what his views on the idea of getting land at the place known as Botany Bay were. He said that there should be no problem attaining the land as the natives there would retreat if threatened and that the area would be suitable for growing appropriate amounts of food and a that a settlement should prosper there.⁶ His comments were in line with the thoughts that he had about the place since he was able to think about it more on his

¹ Ibid. p. 14.

² Ibid.

³ Ibid. p. 15.

⁴ *Journals of the House of Commons*, volume 40 p. 1162.

⁵ Gillens. M. pp. 12-13.

⁶ Beauchamp Committee. HO 7/1.

journey when leaving the mainland in late 1770 as is confirmed by his journal from the trip with James Cook.¹

James Matra was questioned in the Beauchamp Committee and he recommended Botany Bay as a place to send “500 convicts with safety” and further, “*For instance, if convicts were sent to Botany Bay, a colony might be settled at Bustard Bay without any danger of being molested by the convicts being transported to Botany Bay, and There is such an extent of Coast that soon colonies might be established without having any intercourse with each other.* When asked if he *would undertake it as a regular colony or as a colony of Convicts?*” he replied, “*Both or Either*”, but not without military or governmental backing.² Sir Joseph Banks knew of all of these areas and actually had more time at Endeavour River than at Botany Bay although he does not refer to them.

10.4 Recommendations and Results

The Beauchamp recommendations were centred on disposal of the convicts, that is, transportation. With that in mind the best result of the situation would be that if convicts of both sexes were sent out to a place that offers a reasonable climate and they are forced into a situation where there was no return and where their own honest work could result in their survival. This would lead to both their physical and moral benefits, but that there should be strict control over them. Further the Committee estimated that there appears to be about one thousand five hundred convicts a year that would need to be disposed so as to allow the prisons around London and the nearby outlying areas (the Home Counties) to function and that if deportation were to be used as a means of relieving the distress then, though its cost would be high and support would be necessary for many years, these costs would be far lower than to not do so as the Hulks system was then a dead loss economically anyhow. However, with careful nurturing the possibilities for future rewards could be great in view of the “*commercial and political advantages*” that would indemnify the original costs.³ So finally they recommended that a colony in Africa and by extrapolation anywhere overseas, would only be worthwhile if prospects existed there for that colony to flourish later.⁴

¹ Banks, Joseph. Bank’s Endeavour Journals 1770. http://www.sl.nsw.gov.au/banks/series_03/03_view.cfm

² CO 201/2 nr. 68. Interestingly this little statement by Matra is not enclosed in the printed copy in the Journals of the House of Commons held at the British Library and elsewhere referred to.

³ *Journals of the House of Commons*, op cit., p. 1161.

⁴ *Ibid.* p. 1164.

The reports and schemes that were hatched and rejected to send convicts to other parts of the world that had been or still were parts of the British Empire had one main driving idea and that was how best and cheapest to get rid of the problem of the convicts on the Hulks in the Thames and in the overfilled prisons. Despite the knowledge of New South Wales and the existence of many interested parties in the guise of the Loyalists and other free people that could have travelled there if ample help had been given it was not considered as economically or politically feasible to do so and with that the Loyalists were left out of the plans.

After the Beauchamp recommendations and abandoned attempts for an African solution to the convict problem, little was heard from within the government although pressure for a solution was constant. It was not until the 18th of August 1786 when the Secretary of the Home Office, Lord Sydney, with William Pitt's full consent, presented a detailed plan to the Lord Commissioners of the Treasury for sending convicts to New South Wales. The plan clearly outlines that the intention is to send convicts to Botany Bay on the east coast of New South Wales in order to get rid of them. Various amounts of supplies, victuals and equipment are listed in the 'Heads of Plan' and some inference to the benefits that might be attainable from the penal settlement are given and mainly refer to the flax and hemp that might be produced from the settlement in the short term and general long term benefits. But the very first paragraph, which is normally the most important, gives in no uncertain terms the purpose of the plan;

*"...for effectually disposing of convicts, and rendering their transportation reciprocally beneficial both to themselves and to the State, by the establishment of a colony in New South Wales, a country which, by the fertility and salubrity of the climate, connected with the remoteness of its situation (from whence it is hardly possible for persons to return without permission), seems peculiarly adapted to answer the views of Government with respect to providing a remedy for the evils likely to result from the late alarming and numerous increase of the felons in this country, and more particularly in this metropolis."*¹

In many ways the intentions and the prerequisites for a definite and long term solution that were envisioned within the findings of the Beauchamp Committee were those proposed by Lord Sydney in this 'Heads of Plan' presented to the Lords of the Treasury. With both the short term immediate problems being addressed and the enticement of the long term benefits being presented, the whole scheme was made to seem quite worthwhile and the expected costs for the settlement were calculated but not finalised and the Treasury was instructed to advise

¹ CO 201/2, f. 19. Also in HRNSW vol 1, part 2, pp. 17-18. The 'Heads of a Plan' is actually an enclosure to the whole address to the Lords of the Treasury.

what it thought the total cost could be. In the address to the Lords there was also a reference to the fact that about 200 females could be obtained ‘from places in its neighbourhood, as companions to the men.’¹ That is to say, women could be enticed from the nearby islands for the benefit of the Marines; later on, Captain Phillips opposed this and it was not carried out as he also opposed the use of slaves for the settlement.²

Lord Sydney, in a letter dated 31st August 1786 addressed to the Lords of the Admiralty informs them basically to supply the ships and means necessary for the transports according to the ‘Plans’ and to appoint the officers and men required and that these were to be placed under the control of the Home Department.³ With this letter Lord Sydney told the Admiralty that he was in charge and that the Admiralty was to tow the line and be quick about it, which it was, as on the 3rd September 1786, Lord Howe, the First Lord of the Admiralty at that time, said that he did not know much about Captain Phillip but deferred to Sydney’s judgement about him, but he also delicately requested that the King be informed and agree to the Home Office being placed in charge of the naval sections that the Admiralty were to supply.⁴ This indicates that Lord Sydney had already picked out Captain Phillip to lead the settlement even before the main announcement in August. Captain Phillip knew a little about farming which he had occupied his free time between naval duties with. But perhaps more importantly were his services as a spy for Lord Sydney when working with the Portuguese navy in the 1770s when he transported Portuguese convict servants (slaves) to Brazil where he was also the commandant with control over that area.⁵

The Admiralty on 12th October 1786 acknowledged the King’s pleasure about the arrangements and promptly proceeded to fulfil the wishes as outlined in the ‘Plan’ and prepared ships and men for the tasks. Once the decision was taken then all haste was made for its execution and the Admiralty expected the time for departure to be early enough so that the ships could make it to China by January 1788 and thus save costs as otherwise the ships would have to remain in the services and at the expense of the Home Office, which is what happened in the end as preparations of the ships and the passengers took longer than expected. The King, George the Third, announced the scheme and plans as well as the intention of the settlement, and the reasons given were economic. In January 1787, when opening the Parliament, the members were officially made known of the plan as the King said, “*My Lords*

¹ HRNSW. Vol 1, part 2, p. 15.

² Ibid. p. 53.

³ CO 201/2 f 25. Also in HRNSW vol 1. part 2, pp. 20-22.

⁴ CO 201/2 f 31.

⁵ King, R. J. *Arthur Philip, Defender of Colonia, Governor of New South Wales*.
http://web.mala.bc.ca/black/amrc/index.htm?home.htm&2_010206

and Gentlemen, A Plan has been formed, by my direction, for the transporting of a Number of Convicts, in order to remove the inconvenience of criminals which arose from the crowded state of the gaols in the different parts of the kingdom” ..., and that would be economically beneficial to the country. This is another expression of the economic benefits derived by sending the convicts to New South Wales.¹

The rule of New South Wales was to develop under the military and naval control of Arthur Phillip, which really meant that the Home Office had control. The rights and freedoms of British citizens were carried over as well and these were to form the basis of a freer prison settlement than perhaps had been foreseen from the outset of the presentation of the ‘Plan’ by Lord Sydney. However, Sydney’s letter of appointment to Phillip in April 1787 as Captain General and Governor in Chief authorised him to establish a Court of Civil Jurisdiction within the said territory.² This combined with the acts passed by parliament formed the basis for the laws of England to be transferred to the new settlement.³

10.5 Life after Punishment

Governor Phillip was given the means to ensure that the convicts were to stay in the new land, apart from the distance from England, the convicts were to be given grants of land after their sentences had been fulfilled or if there were mitigating circumstances that Governor Phillip felt were suitable, to allow rewards and encouragement for. Land grants were to be given plus support from the government for a period of up to a year or even two if necessary after successful completion of the sentence; the marines were also to receive help during their stay and even land grants if they wished to stay. The power to give grants was given in Governor Phillip’s Commission along with other duties for him regarding the courts and jurisdictions.⁴ In such a way, the convict was to be rehabilitated by both coercion and encouragement as long as they stayed away from England.

11. Economic Problems for William Pitt

William Pitt the Younger gained the Prime Ministership in his own right in 1784 and was immediately determined to remedy the economic problems that were causing hardship for the

¹ *Journal of the House of Lords*. Vol XXXVII 1783 to 1787. pp 578-579.

² CO 201/2 f 142-143.

³ HRNSW. Vol 1. part 2, pp.67-69.

⁴ HRNSW *ibid.*, pp 61-67.

country. The economic problems to a large extent had developed as a result of the costly war in the American colonies and its final loss. Whilst certain ministers were of the opinion, which proved correct in the long term, that it would be better to have peace with America and start proper trading relations than to continue the hopeless fight, the loss of the colonies was a devastating blow to the British government and King George had great difficulty accepting it. William Pitt also had plans to reform the parliamentary system to avoid corruption and unfair distribution of seats and voters in the rotten boroughs. However, he was subsequently defeated in 1785 in Parliament in his attempts and concentrated more on the economy.

The budget was in deficit because of the great debts incurred for the war effort were circular in that the government was forced to borrow to pay the interest on the war loans. His method of fixing the economy at the time when the convicts' destination was being discussed involved changing the customs rates imposed on many imported goods, which in turn promoted smuggling and therefore loss of revenue. He turned the tide dramatically by making it unprofitable to smuggle goods into Britain and the revenues increased as the tax of only 25% was introduced compared to over 110% were removed. He stopped the government from borrowing on the private family markets, usually with high interest rates and introduced a proper auditing system for government expenditure as well as a tender system for borrowing money which reduced the interest rates as the market was opened. He also increased the tax basis and rates for luxury goods and installed a professional state corps of financial administrators.¹

He reformed and started the Postal service according to John Palmer's proposals thus not only increasing revenues but also ensuring a reliable and workable service that business could rely on. William Pitt, as a supporter of the peace with the America, which was also contingent on peace with France and Spain, foresaw the trade and economic benefits with a free America that subsequently underwent a fourfold increase. On top of this he set up a Sinking Fund in which one million pounds was invested annually. The interest and revenues from this were greatly welcomed and later needed.²

With his attentions and energy turned towards essentially improving Britain's economic woes and laying the groundwork for a more equitable and trade oriented Britain, the problems of the convicts played a minor part for him. In the context of costs for alleviating the convict problems, estimates of three to four thousand pounds for resolving the niggardly problem

¹ Bloje, M. *The Age of George III. Pitt the Younger's Economic Policies.*
<http://dSPACE.dial.pipex.com/town/terrace/adw03/c-eight/pitt/taxpitt.htm> . 151006

² Ibid.

were small when compared just to the costs of the King or the Prince of Wales. William Pitt showed little interest in reforming the criminal laws or the prison system and this is evident in the fact that Lord Sydney was made responsible for the convicts as seen in the section on decision process.

12. Botany Bay Not as Expected

The general background of English life and the influence of the rational thought, religious thought and practices, the lack of humanism seen in the society as it is portrayed in the arts and literature of the time will help to clarify the situation of the convict. The provisions listed in Appendix 2 that were sent out with the First Fleet give an indication of the type of work and settlement that was to be started. It is apparent that there were considerations given to the women as well as the men in that warm woollen clothing was prepared for although Captain Arthur Phillip was disappointed that the women's clothing was forgotten as well as the lists of crimes and duration of punishments and a list of the skills of the convicts. Great amounts of farming material and tools are listed as well as separate tents for the women and a prefabricated house for the lieutenant governor. There have been many reports that the farming tools and axes were of poor quality, however, there is little evidence that these were deliberately made of poor materials or of poor quality and these tools may well have been of standard quality for any normal farm in England. Captain James Cook had expressly related that the soils were of high quality being rich and black in the area at Botany Bay.¹ Joseph Banks and others had also vouched for the goodness of the soils.² However, in Australia, the soils are often of poorer quality because there are long periods of little rain which means in turn that the flora has deep and far reaching roots that in turn leads to the soils being hard to plough. Without even the availability of oxen or horses, the first agricultural attempts were almost doomed from the beginning. The trees in Australia are far harder than most European types and this was an unexpected factor to be dealt with. An example is the Iron Bark eucalyptus tree that can grow to in excess of 30 metres and it is so hard that any good quality axe can easily be broken if great care is not taken, hence its name. In any case, the list of provisions on *The Guardian* indicate that further tools for farming were sent out and that a reasonable amount of food and clothing and able gardeners and farmers were on their way as

¹ CO 201/3 f 53. Letters from Phillip to Sydney. Phillip calls the site Sydney Cove as of July 10 1788.

² *Journals of the House of Commons*, Report from the Select Committee on Returns presented to the House Respecting Convicts. Vol. 18 p. 311.

well as more convicts.¹ Unfortunately most of the provisions on the cargo ship, *The Guardian*, were lost when it rounded the Cape of Good Hope and struck an iceberg on its journey to the penal colony. Some crew members were lost immediately as was some of the goods that were thrown overboard or flooded on the lower decks; some of the crew who valiantly helped and the farmers specifically chosen for the settlement were returned to England. The remaining goods that Captain Riou managed to save were partially loaded on *The Juliana* whilst the remainder was left to rot at great expense in the Dutch port.

One of Governor Arthur Phillips's personal letters to Lord Sydney, dated 5th July 1788, wherein he states that a "*small number of families be sent out would do more in cultivating the land than all the convicts under the present circumstances...I have only but two people in the colony capable of taking charge of a farm*",² informs us of the predicament that was allowed to occur through bad planning and distrust of the unfortunate convicts as a group. Once again the fact that few properly skilled tradesmen were sent to the colony adds to the evidence supporting the theory that the colony was only a method to spare England from the problem of the criminals. By this date, Arthur Phillip understood that the prospects of a successful outcome were to be hard found as the conditions were worse than anticipated.

13. Naval and Trade Role for the New Colony.

As mentioned above, it has been contended that certain reasons for the establishment of the colony at Botany Bay existed other than for the permanent removal of the undesirable criminal element from Britain. Blainey contends that prime reasons include the establishment of a naval base in the south seas in order to have a secure port from which to operate in case war broke out with the usual enemies such as France or Spain and the establishment of an English port for trade with the Dutch and Chinese and other Eastern countries and the idea that one could use the area there as a base for the expected returns from Norfolk Island as a sources for hemp, flax and timbers for naval requirements.³ These are reasons that were circulating within the government in the period after the change of ministers and the appointment of William Pitt the Younger to the position of Prime Minister in December 1783. These suggestions were even given by Lord Sydney in his announcement in Parliament in August 1786, "*... it may not be amiss to remark in favour of this plan...cultivation of ...hemp*

¹ Nash. M. D. *The Last Voyage of The Guardian*. Pp 3-4, 26-28, 213-217.

² Cobley. J. p. 176. Phillip's letters to Lord Sydney with further requests made for bricklayers and carpenters, p 178 and more farmers, p 179.

³ Blainey. G. p. 27-33

or flax plant...would be of great consequence to us as a naval power...from New Zealand any quantity of masts and ship timber for use of our fleets in India...” however the actions of the following years tend to directly dispute that the intent was to use the area as anything more than a penal settlement.¹

Lord Sydney and other members, as mentioned previously, were satisfied by the penal plans for Africa in order to merely alleviate the prison overcrowding; no mention of reciprocal trade was made and this actually is what occurred at Botany Bay. Botany Bay fulfilled several of the criteria that had been discussed in the previous plans for Africa although dispute arose as to its distance that later became one of the arguments for its acceptance. The distance ensured the non-return of the convicts. Very few inhabitants populated the new colony and consequently only a small amount of naval personnel were sent, soldiers as needed later followed these. Perhaps a very compelling reason for lack of trade is that the East India Company had the monopoly on trade east of South Africa. The supply ships travelling to and from the settlements were under the control of the navy and the ships that Arthur Phillip sent to Cape Town were not permitted to engage in any trade with the Asian or Dutch outposts. The East India Company guarded its monopoly well and in 1805 commandeered a ship that was loaded with sealskins and oil.² This ship had not followed the rules as expected, but then trade had taken a new direction with the increase in seal and whaling trade. The mandate that the Company had for trade with India, Malaya, China and Asia was not removed until 1812 thus leaving New South Wales to itself.

This is not to say that there was some trade being carried on as the colony developed in the early years as the ships bringing the convicts could not all return by the Asian ports to take up goods, although the merchant ships on the first and following two fleets were expected to pick up a cargo in India and Indonesia as the instructions to Arthur Phillip stipulated. Another factor in trade was that William Pitt managed to curtail the powers of the East India Company already in 1784 and 1785 and direct it more to follow his policies and be subject to reasonable rules of accountability.

¹ CO 201/2 f19.

² Shaw. A.G.L. *Convicts and the Colonies*. p. 53 and 55.

14. Laws of Britain and Crime Rates

The laws of Britain were such that they formed in themselves a structural basis for the surprising amounts of felons and harsh penalties that helped to exacerbate the problem that Lord Sydney had to contend with.

The people of Britain were subject to various laws which governed, of course, the types of activities that were considered as criminal. In any modern society these laws are usually enforced by a police force and an independent justice system that protects both the rights of the victim and even those of the perpetrator. To varying degrees, but not in Ireland, the rights of the accused in 18th Century Britain were protected by the issue of a writ of *Habeas Corpus* wherein an accused had the right to a court appearance within a short period of time, or at least by the next time the circuit court was in place, usually quarterly. Habeas Corpus, which stemmed from 1679 when it was first codified, also gave the convicted protection in that it forbade transportation or banishment as a punishment unless there had been a formal trial before a magistrate.¹ There the charges could be proved correct with a penalty being imposed by the magistrate or the matter could be found unsubstantiated and the accused released. The peculiarities of the English system in the 18th century were that there were no paid police and the person making the charges on another person was required to drive the accusations as a private person in a private prosecution in the court system. The system involved paying the various actors in the process for their different jobs. The courts, the jailers and the jurors were bound to receive a payment and, therefore, the cost of prosecution could be rather more than the loss of the property.² In order to avoid the high costs and to show a resolute will to stop the thieving and damage, many merchants and warehouse owners banded together, more so in the latter part of the 18th century.³ The private prosecutor, if successful in the prosecutions and assuming the penalty harsh enough or if straight out hanging was not prescribed, could then transport the offender to America where the transported could be sold.

The laws for banishment stem from Elizabethan times and formed part of the Poor laws even then. The system of transportation to America started in about 1663 and the main destinies were Maryland and Virginia.⁴ Shipping Merchants became responsible for the transportation of the criminals and they expected to recoup the costs by selling them to

¹ Ibid. p. 24

² Friedman, D. *Making Sense of English Law Enforcement in the 18th century*.
http://www.davidfriedman.com/Academic/England_18thc./England_18thc.html Parts 1 + 11. 011103.

³ Friedman, D. Op. cit., Part III.

⁴ Smith, A. p 308.

colonial plantation owners at considerable profit. This system, however, resulted in that many older or sick prisoners were left to rot in the temporary prisons and clog the system because no real long-term prisons were built. The alternatives for punishments were whipping, hanging or, often, a pardon, even for murder. The judge often had discretionary powers and if he felt that the defendant was not guilty, he could pardon him totally or reduce the severity of the charge and thus avoid too severe punishments occurring.

It was after the changes to the law in 1718 with The Transportation Act that it became easier for the merchants to transport the criminals as the merchants received subsidies varying from three pounds to send them. Later this came to be a standard five pounds, however, Irish convicts were still subsidised to the tune of only three pounds. This system provided for the transportation of over thirty thousand convicts and remained intact until the final loss of the American colonies in 1776.¹ It is therefore possible to see that the system of transportation had been in place with no real alternative for punishment being possible. The British government allowed and encouraged free enterprise to do the work of transporting the criminals; it was economically profitable and socially practical and acceptable for the government to continue with this system.² The subsidy system that started after 1718 extended the system of transportation that had actually developed in the 17th Century (see section Convict practice to American Colonies). It is crimes against property, that is, theft, robbery, assault whilst stealing and forgery that form the basis of most of the crimes that the First Fleet convicts were sent out for.

The alternatives for sentencing were few and transportation as a means of avoiding hanging was usual. Transportation was also the principal alternative when the accused was unable to claim clergy. Clergy was a peculiar feature of the English Law wherein the Church was given the right to enter into the proceedings. Clergy essentially meant that the prosecuted claimed that he could read the Bible; this was often accepted as true by the magistrate before the Act of Transportation in 1718 came into being. The offender was tested and if successful he was branded on the thumb and usually pardoned or if hanging was the punishment then often converted to transportation. After the Act of 1718, magistrates were even further empowered to test the person themselves and thus remove interference from the Church. Before the Act of 1718, it was actually illegal to punish with transportation as it removed the criminals' rights under Habeas Corpus and those rights under common law against exile unless the convicted

¹ Morris, N., Rothman, D. J. p 84.

² Smith, A. op. cit., p. 128.

agreed, but after the Act, transportation was made an alternative directly available for the magistrates.¹

There were over 160 different types of crime that warranted death as the punishment and the prosecutor considered death as being too severe.² Bargains with the offenders were often struck in those cases, not so much from concerns for the offender but for economic reasons; it was easier to buy the goods back from the thief and recoup some of the costs quickly rather than risk losing everything with an eventual conviction and possible further outlay of money. This risk taking and lack of motivation was removed to a degree in 1776 when prosecutors could be reimbursed even when a prosecution failed.³ Pardons could also be negotiated and these acted to spread the cost of the crime from only the offender himself to the offender and his family or friends, thus resulting in a deterrent for further crime.⁴

The harshness of the punishments is a reflection of the society of the times shown in the norms that the magistrates and other levels of arbitrators were compelled to operate under. These norms were those operating within the society and, as in historical research, one should look at the society as it was then to appreciate the gravity of the punishments. A brief description of 18th century English society is given elsewhere in this report, but it should be noted that the system of justice at that time was based on deterrence through the use of many statutory examples and not as an all encompassing system. The Waltham Black Act from 1722⁵ extended the amount of smaller crimes that could be punished in the most severe way and it really paved the way for the judicial system to punish with impunity the lesser crime as if it were a great crime against society. Those who formulated the laws were usually propertied and well off; therefore it was only natural to have laws that protected property. The Black Act also came after John Locke's treatise about property and that the government's only real duty was to protect property. Locke's ideas had, according to Maureen Waller, been taken extremely literally by the Whigs.⁶ What we see as excesses may well have been seen by the contemporaries as reasonable although Blackstone, an eminent lawyer of the time, remarks that certain crimes could not possibly be intended to be met with the ultimate punishment of death. The breaking of a fishpond where the punishment could be hanging was

¹ Smith, A. op. cit., p. 91.

² Rose, J. H., Bell, G. p 433.

³ Friedman, D. *Making Sense of English Law Enforcement in the 18th Century*. Part IV. http://www.davidfriedman.com/Academic/England_18thc./England_18thc.html 011103.

⁴ Friedman, D., *ibid*. Part V.

⁵ An Act: 9 Geo. 1, c22.

⁶ Waller, M. p. 308.

hardly realistic.¹ Extremes of the laws can also be seen as further proof of the deterrent effect in that many of the prosecuted were reprieved from death and those that did swing at one of the many places of execution satisfied the authorities as examples to the people of what could happen if convicted. It was later in the 1830s with Prime Minister Peel's reforms that the actual extremes of penalties were reduced to levels that reflected the realities of the general punishments, rather than the extreme, that were meted out.² Of interest is that the Scottish criminal law code was less severe and was somewhat more humane.

Statistics in relation as to how much crime existed in the 18th century, especially the latter part, are not easy to assemble. According to Professor Emsley, this is due to several factors; firstly, the numerous types of courts assize courts, petty session courts, inconsistent record keeping at the Public Records Offices and, secondly, the use of other forms of punishment and private negotiation used in allaying the effects of a crime on both the perpetrator and the victim by a family member or friend and, thirdly, the high number of unreported crimes that were perhaps too small to be bothered with or especially in the case of fraud were not reported for fear of loss of confidence in a business, bank or high standing person.³ Fraud and forgery became more serious offences in the 18th century as the use of promissory notes became more common.⁴ The number of prosecutions for capital crimes in the second half of the 1700's relied on statutes dating from the Tudors and is rated at about 95% despite the large number of new statutes, referred to as the Bloody Code, that were enacted in the 18th century.⁵ Many of the punishments for the felons under these capital acts resulted in a greater range of types of criminals in the later transportations both to the American colonies and later to New South Wales. The expansion of the number of laws for the protection of private property grew in the 18th century and has even been suggested as a result of the Whig government's desire to put greater ranges of criminals at risk in order to have a ready group of people from which to raise armies through press ganging and for other activities. Further, Emsley mentions that the statistics for rates of criminality are hard to check because there was a great amount of criminals whose charges were dropped in exchange for joining the army during wartime and that this may even account for a drop in the number of prosecutions despite the fact that war time led to periods of hardship for the less well-off.⁶

¹ Appendix 1 contains a brief example of Blackstone's evaluation of the law at the time.

² Shaw, A. G. L. p. 8.

³ Emsley. C. p. 21-25.

⁴ Blackstone. Blackstone's Commentaries on the Laws of England. Avalon Project.
<http://www.yale.edu/lawweb/avalon/blackstone/bk4ch1.htm> Book IV, Chapter 17. Dec 2003

⁵ Emsley, C. op. cit., p. 33.

⁶ Emsley, C. op. cit., p. 34.

The population of England grew greatly in the 18th century and London became the largest city in Europe with an estimated population of 575,000 in 1700, 675,000 in 1750 and 959,000 in 1801, provincial Manchester grew from roughly 8 to 9000 people in 1700 to 75,000 by 1801.¹ However, the amount of criminality in relation to the populations of the towns and countryside is difficult to estimate and one is unable to really say if there was a relatively high amount of crime or not.²

When looking at this problem it should be noted that the politicians in England did actually estimate that about a thousand or so criminals would need to be sent out to New South Wales to keep the balance of prisoners from getting totally out of hand in England. A letter from either Lord Sydney or Nepean Evans wherein the figure was given for the following ships in the Second Fleet and an estimate of those for next few years.³ The number of convicts actually sent during the whole period of Australian transportation amounted to a little over 160,000 spread over approximately seventy-six years which gives an average of 2105 per year and this figure includes the political prisoners that really started being sent from Ireland on the Third Fleet. The first transports had far less than the average, but interestingly the average during the whole time was still maintained despite the belated reforms in England after Peel's reforms.

15. Attempts at Penal Reform

There were moves afoot by some of the enlightened reformers who felt that humane prisons should be built where the criminal element could be kept separate from the bad debtors and that the emphasis should be put onto rehabilitation and not on deterrence as a means to check the rising criminality. These moves had been around for some years and especially with the rising incidence of vagrancy, the poor were to be helped or rehabilitated in places called the bridewells, a sort of workhouse cum detention centre dating from Elizabethan times. These were intended for short term incarceration, but the idea failed and magistrates during the 18th century increasingly used them as short term prisons instead.⁴

James Oglethorpe, an early prison reformer in the early 18th Century, entreated the government to reform the prisons and build new ones in order to remove the corruption and vice that existed. Once again the private greed of the jailers was allowed to run rampant; a

¹ Sweet. R. p. 3.

² Emsley, C. op. cit., p. 33

³ CO201/3 nr.151. It is not possible to determine the author.

⁴ Morris, N., Rothman, D., op. cit., p. 83.

sign of the times. Oglethorpe though, according to Alex Pitofsky, was intent on promoting the spirit of the English law as regards freedom and liberty that to his mind were being undermined by the actual prison system that ran as a private business.¹ The law and justice system was not Oglethorpe's prime concern; the prison system was. Despite his attempts at reform he eventually gave up and hoped to establish Georgia as a Utopia. Pitofsky maintains two main reasons for the failure of Oglethorpe's prison reforms: the acceptance of the system by the public that was used to the squalor and violence of the street life and that prison life was a deterrent and that prisons were seen as little else than holding pens used to keep the criminal element separate from the general public because as a majority of prisoners were to be hanged or transported, their conditions were of little consequence; and secondly, that Oglethorpe's reports and claims about the conditions were seen to be similar to a prosecutor directing charges to specific prison officials and not the actual use of private enterprise to keep the criminal under lock and key and thus the actual system was apparently endorsed by Oglethorpe, and not the extremes of some officials.² Many of the ideas behind prison developments appear to have been generated by private interests that saw the possibility of running the prisons as businesses in a manner suggested by Howard and Bentham, although of course both of these great thinkers as well as others contributed far more than prison ideas to society, but more as a result of their general humaneness to others.

There were others involved in prison reform but their labours were mostly ignored by the parliaments of the day. However, the Penitentiary Act of 1779 was a start in a new direction as its prime conceiver, John Howard, another major reformer, managed to have enacted into law that maximum sentences of two years in solitary confinement were preferable to the transportation or hanging that was the norm. Whilst it was not a totally new idea on his part, Magistrate Fielding on the Middlesex and Westminster circuit saw the need earlier; solitary confinement gave greater latitude for the magistrates.³ The basic idea was to remove any outside detrimental influence, including alcoholic drinks and any contact with criminal friends, from the prisoner and give him a period of time to think and dwell upon his mistakes and to suffer hard labour in order to learn that work was the path out of the circle of poverty.⁴ A new punishment type was required that was to be considered harsher than death or transportation, although the value of the threat varied from time to time. Indeed, even by the

¹ Pitofsky, A. pp. 88-102.

² Ibid.

³ Semple, J. p. 67

⁴ Jackson, M. *Prisoners of Isolation* p. 5 at <http://www.justicebehindthewalls.net/book.asp?cid=765&pid=818031103>.

beginnings of the 1770's many criminals began to lose fear of the threat of transportation. Hanging had become a festival time in the violent society of London. This was also one reason for the Act; a criminal was apparently given a last meal and plenty of drink, and instead of being the solemn and dour affair on the journey to the gallows one would expect, the prisoner was often plied with even more drink by onlookers and any display of remorse was missing, thus, diminishing the intent of the whole process.¹

Soon after his commission as Governor of New South Wales, Phillip wrote to Evans Nepean for clarification of several points for the success in keeping the convicts in order. As the convicts were already under threat of death if they should commit a felony of murder or sodomy in New South Wales he wanted to be able to retain a threat that was even worse than death as punishment, and that was to “*confine the criminal till an opportunity offered of delivering him as a prisoner to the natives of New Zealand, and let them eat him.*”² This serious suggestion was from a man of his times, but fortunately Lord Sydney in a clarifying letter did not need to respond but could refer to the basic tenets of English law that were to be the guiding ones in the new colony.

The building blocks for a change in the prison system were laid, but the legislation for gaoling the criminals was incomplete and again, despite attempts by the prison reformers, Blackstone, Howard, Bentham, Becceria and others to get the penitentiary system in motion and relieve the stopped up temporary places such as the hulks and Newgate prison, The Fleet and all the pitiful small gaols around the country, the situation for the criminals was thwarted by political indifference, problems with the American war ending and the political turns after the war which led to William Pitt the Younger's rise to power. Neglect and the desire to keep the private system within the prisons for private gain also stopped reforms being put into effect. Bentham's plans involved free enterprise, money making prisons that rehabilitated the criminal whilst providing a good profit. Emsley contends that it was in fact the country courts and administrators that finally facilitated a more compassionate treatment of the imprisoned by renovating old prisons, separating recidivists from first-time offenders, keeping the young from mixing with the older and experienced and keeping men separate from women.³ It was not until the building of the first real penitentiary after the battle of Waterloo (1815) that a shift from profit motivated and heinous prisons began to gain proper support in government circles; therefore, it is clear that at that time transportation in 1787 it was the best and

¹ Emsley, C. Op. cit. p. 264.

² Phillip's Suggestions. HRNSW vol. I part II p 53.

³ Emsley, C. Op. cit., p. 265.

cheapest alternative of those available because other real alternatives were not put into the system by the politicians who had the clout to effect those changes. The question that really needed to be answered was about where the convicts should be sent.

16. The Population Moves to Town

Apart from the immediate influx of loyalists after the loss of America, there had been and continued to be a steady flow of poor from the country to the towns. Industrialism had begun to change the social make-up of the countryside in the early half of the 18th Century and combined with the improvements of farming techniques that led to later formal Enclosure Acts, the country experienced a move from farming life and cottage industries to full industrialism later. Full industrialism made its mark in the latter twenty years of the century. The principle farming developments in the century were those propagated by Jethro Tull with the invention of the rotation method in 1731 and the development of the Drill method.¹ Ashton maintains that the adoption of new operational methods by the titled land owners, who were anxious not to lose ground to the new entrepreneurial class, led to a rapid improvement in the production and accessibility of foodstuffs. He puts Lord Townsend, father to Lord Sydney, in the forefront of development in England because it was Townshend's early adoption of the farming methods which he had seen in Holland that he then introduced on his own sandy and uncultivated lands that helped lead the way in agricultural improvements. Whilst he was ridiculed in the beginning, he had quickly improved the land's value tenfold and his fellow peers soon followed after and the farming improvements that were then taken up by the moneyed classes led to the "new class of...great farmers".² The increased farming productivity both required and funded road and canal building and other capital works in the areas that experienced the farming boon. This was really a forerunner for Industrialism. By investing in farms, the new class of land owners required further rationalisation of the land; the small subsistence farming plots could not be retained as they were too inefficient. A type of forced enclosure method thus ensued partly by the introduction of laws, but mainly through purchase and agreement with present owners. This reorganisation of the rural population meant that fewer labourers were required and the tenants usually given

¹ Ashton and Mantoux, p. 158. Quoting Jethro Tull *The New Horse Hough Husbandry, or an essay on the Principles of Tillage and Vegetation*. The drill method ensured standard and regular placement of seeds for corn and legumes so that farm work could be more easily carried out as well as harvesting.

² Ibid. P 159-160.

longer and better leases could work the land more efficiently.¹ It also led to unorganized attacks on the newer farms as fences were pulled down and previously the aristocracy increasingly used ploughed areas for their recreation purposes, especially hunting. The Enclosure Act of 1760 was actually one of many enclosure acts that in effect removed peoples' traditional ability to utilise the surrounding areas to help eek out a living. Enclosures could be arranged if four fifths or three quarters of the farmers in a parish wished to enclose and then a legal process that eventually led to approval by the king could be undertaken.² Poorer farmers were unable to be a part of this process as they could not muster political clout against the stronger farmers and had too little money to build fences for their own animals or subdivisions; in effect, despite some agreement for the enclosures, there were many people excluded from the decisions. The cottages industries to some degree took up the slack of excess people, however, this was not to last. Rationalisation, experimentation, new breeding and planting methods on the land allowed for the basis for Industrialism to exist. Further industrial development helped to increase the population movements.

James Hargreaves in 1764 improved upon the spinning wheel by increasing the number of reels from one to eight and after finally receiving a patent for the machine in 1770, cotton production increased vastly. A combination of the introduction of the water wheel and the mule as power sources in the cotton industry and the change from cottage industries for cotton products to the establishment of factories increased the level of displacement of people from the more traditional jobs to others or to unemployment as well as driving down the already meagre wages.³ This development from the small to the large scale shows a typical pattern of entrepreneurs combining different facets of energy production and consumer products that could then influence the way in which a particular industry grew and depending on the energy source could influence the survival of a whole area.

Even in the embryonic phases of Industrialism, an overabundance of workers increased strains on the various Poor-help schemes and put them at risk. The unemployed, unskilled, elderly and sick were forced into a mode where survival was attained and never guaranteed. The poor laws were concerned with helping the shire or county's own people and not outsiders that had come in, this inflexibility by the authorities helped to increase the needs of the down and out especially as the agrarian situation changed people's ability to fend for themselves. Industrialism's early development included the iron and coal industries that due

¹ Ibid. 161

² Gray, S. Brief description of enclosure process. *Enclosure*. <http://cla.calpoly.edu/~lcall/enclosures.html> 151103.

³ Shaw. A.G.L *The Story of Australia*. Pp. 433-435.

to a lack of pollution controls led to greater misery for the local inhabitants as “[t]he blast-furnace might pollute the verdure of the surrounding fields, the owner of the cotton-mill might keep under lock and key the child slaves he obtained from the so-called guardians of the poor, villainous new slums might spring up like fungus round the manufacturing works; but it was all very remote from the consciousness of those who ruled England”.¹ London is usually seen as the den of inequity, however, many other towns benefited or suffered from the population movements that by 1780 had begun in earnest. These towns were mainly in the north and western parts of England with a band of higher populations going through the Midlands.² Population increases that were helped by improved supplies of food and improved resistance to disease also put pressure on the infrastructures in towns. An indication of the population movement and increase can be seen by a few chosen statistics of the startling growth of English towns:

Population in thousands,

Year	1700	1750	1801
London	575	675	959
Newcastle	16	29	42
Manchester	8	18	75
Leeds	6	16	53
Birmingham	9	24	74

Source: Sweet, R. p.3.

The country in some areas was on its way already to becoming an urbanised society but the towns responded slowly to the increase. Many towns reduced in size or disappeared totally which also led to problems for people to survive.

17. Convict Practice to American Colonies

The tradition of transport of felons to the colonies and the reliance that the government put onto transportation allowed the government to continually set aside and ignore adequate reforms and methods of dealing with criminals. Abbot Smith in his book *Colonists in Bondage* describes the situation of the indentured servants who made up the bulk of the transported people to the American colonies from the time of its legally sanctioned inception in the beginning of the 18th century. Although the original intention for servants was to enable

¹ Williamson, J. p. 326.

² Ashton and Mantoux. Op. cit., p. 354.

a good supply of labour and new settlers to the colonies, many of the unfortunates who arrived were kidnapped and lured to the colonies by merchants solely for monetary gains; great sources were the poor houses, bridewells or the prisons that catered for the vagabonds and rogues.¹ For the most part, after the Act of 1718², criminals or poor were sent on the transports to the American colonies because that was when the Act allowed for the transportation of actual criminals, in contrast to rogues and vagrants, to be sent without the bargaining or agreement of the criminal. As mentioned not all indentured labourers were criminals, the range of types of persons sent varied. Apart from criminals that had usually been sentenced to transportation instead of receiving death sentences there were the poor who could agree to indenture in return for transportation and political and military transported. The poor received in this respect help (albeit of dubious quality), the political and military opponents received punishment and were rendered unable to engage in anti-royal or anti-government uproars.

Political and military prisoners formed part of irregular shipments to the colonies in America during the 17th and 18th centuries and thus the transportation system began to be used as a method for getting rid of not only criminals and the poor, but also enemies and potential enemies of the country. Scottish soldiers who were captured by Cromwell's armies represented a threat and could not be sent back to Scotland or contained in England, they were sent to America and the Caribbean and sold directly to plantation owners; some were sold as mercenaries to foreign armies. The Irish formed another group of political transported that Smith shows were treated differently. Spain received over 13,000 Irish soldiers by 1653 so that Cromwell would be rid of them. Soldiers of their own kind (English) were not free from the risks of transportation as 1200 superfluous "Puritan" soldiers were sent to Jamaica after the Irish had been subdued, few survived the journey. The puritan soldier and the Catholic priests and lay folk that were exiled along with the vagabonds and rogues of Ireland are, according to Smith, all to be considered as political transported as the causes of their problems were in fact orchestrated by the conquering English.³ Quakers formed another group of transported and the legal basis was a law, the Conventicle Act of 1664, which provided for seven years banishment if caught in a place of religious worship other than an official church more than three times. Scottish rebels from the Monmouth rebellion in 1685 were deported to

¹ Smith, A. Op. cit., p. 68-69.

² Geo. I, Cap. XI. For the Further Preventing Robbery, Burglary, and Other Felonies, and For the More Effectual Transportation of Felons, and Unlawful Exporters of Wool; and for the Declaring the Law upon Some Points Relating to Pirates. 1717/18. In my report referred to as the Act of 1718.

³ Smith, A. Op. cit., pp. 152, 164, 170 and 174.

the American colonies on the direct orders of the King, James II. The king commanded that several of his friends were to receive between one hundred and two hundred prisoners for use in the settlements. In all about 522 were actually sent out. Already in 1670, there were stirrings from the colonists in Virginia against receiving the transported because of the detrimental effects upon the general well-being of the colony. Virginia's pleas to the king met with some understanding and within twenty years most of the other provinces demanded an end to the convicts, but the trade continued. The war years in 1701 to 1712 disrupted the trade somewhat as the Army and Navy took prisoners into the services on the same conditions as had been given for the indentured labour.¹ After the war there was an increase again in the number of criminals and thus further pressure to transport them, it is in light of this increase that the 1718 Act was passed and a contractor appointed, subsidised by the government to increase and maintain the transporting of the criminals. Overpopulation of the prisons again led to the well worn transports being put into use and, as mentioned, after 1718, the performance of the whole transportation system was left to the contractors that saw to it that profits were to be made. Being both subsidised and by being able, albeit somewhat immorally, to profit on the sale at the receiving end, the contractors ensured that the system operated without problems. The short distance to the American colonies saved many lives even though many lives were lost.

These early transportations show the long tradition of exile that existed in the country and the deep seated lack of foresight on the part of the politicians when faced with population problems and change in the 1780's. Various types of prisoners could be subject to laws of transport depending sometimes on the will of the government and its intention to be freed of various classes of people. At times the government wanted or needed people to fight for it and other times it was the need to get rid of them. Contractors for the transports made good money during the years until the Independence of the American colonies and some even reappeared to transport convicts to New South Wales. The firm of William Richards Jr. is one notable one in that the company had one of the highest death rates when transporting convicts to Botany Bay.

18. Types of Convicts

In order to gain an insight into the status of the convicts and therefore the purpose of the colony, it is necessary to have an idea of the types of convicts that were chosen for transport

¹ Coldham, P. pp. 55-61.

to New South Wales on the First Fleet. The convicts of the First Fleet have often been referred to as having been especially chosen for their skills and crafts that would benefit a new colony and one that from the outset was to be up and running enough to sustain itself within two years. However, after sifting through data from the information that Mollie Gillen has compiled after many years of research, several important conclusions can be arrived at that would tend to dispute the reason of specialty for them being sent. Successive actions and triumphs over personal miseries resulting from being transported may well have given the impression that they were special and can even lend some weight to the idea that rehabilitation was one reason for sending them, but the tribulations suffered are irrelevant to the choices made by the politicians and prison authorities as to which prisoners would go. The results that are given also reflect the social attitudes of the time, as nearly every convict transported on the First Fleet was poor.¹ If one were poor it meant that one had no channel of recourse to take to avoid a severe punishment. Each of the convicts on the First Fleet was sentenced by a court in England with the exception of four that were convicted in Wales. There were several different nationalities sent out, but the majority of the convicts were English, about 10% were Irish, one Scot, four Welsh, four white North Americans, at least four black North Americans of the eleven black convicts, nine Jewish convicts (of which at least two were from North America) and other convicts from Madagascar (1) and the West Indies (2).² The fact that different nationalities were sent out gives an indication of a system that made little discrimination between the prisoners. Possibly the gaol keepers chose certain prisoners because they could not pay for their upkeep in the prisons.

Whether the charges laid on the criminals were true or false is irrelevant in the matter of their being transported, however, it must be stated that many of the charges are said to have been false, especially those concerning the women servants who were often charged with theft of small amounts of clothing or jewelry. Most of the crimes were for theft, often clothing, some for forgery and perjury, but property crimes predominated. Property was considered most important in English Law and is covered in the law section of this report. If pardons were not forthcoming after sentencing for death then the usual was to send them for transportation.

The various charges and convictions show a pattern of the differences in crimes that the two genders could be subject to. Women were often charged by shopkeepers for theft and if it were a servant girl she was often charged by the man of the house; it was not unusual for the

¹ Gillen, M. Op. cit., p XVI.

² Ibid pp. 421 to 424.

latter type of person to expect sexual favours in return for the job or to avoid trumped up charges. This particular type of charge was so common that the magistrates in fact disallowed many reported cases, or the result was the lightest alternative of punishment with a view to total pardon. Normally in these cases it was a woman that suffered because of the weakness of her social standing and the general attitude towards poor women and the fact that a servant was expected to devote the whole of his or her time to the household or master. Prostitutes formed a small part of the female convicts, prostitution was not illegal, and these unfortunate wenches were usually sent for robbery and/or assault and robbery, often in mascopi with other women or men.¹ However, men suffered as well; the case of Benjamin Wager, a nineteen-year-old youth who was charged by his employer for theft of clothing, illustrates that being a male gave no full protection against charges by the mistress of the house.²

It should be noted that whilst most of the crew were British, many nationalities were represented. In any case, most of the navy personal and sailors eventually returned to England, but many stayed on and became part of the constabulary or accepted land for farming and settled there in accordance with the wishes of Arthur Phillip.

In view of the fact that a new settlement of some sort was to be commenced at Botany Bay or its proximity and that the people expected to provide the labour and wherewithal to get the whole project up and running were those on the ships, one would expect a certain degree of skills and knowledge to be found within the midst of the convicts of the First Fleet. The governor, Arthur Phillip, had some farming knowledge and certainly some previous experience in colonies, albeit Portuguese, but the bulk of the labours and work was to fall on the lot of the convicts. The navy personnel often refused to be burdened with the toils of farming, there were several exceptions though.³ What skills did the convicts who were sent have that possibly made them more preferable than those not sent out? It seems that there was rather little in the manner of skills and occupations for most of the convicts, nearly two thirds of the men were unskilled at all or the occupation was unrecorded. Slightly more than a third of the women were skilled or had an occupation before being sent. Of the men, there were three farmers, one husbandman, five bricklayers, five carpenters, thirty-three seaman, ten servants, nine shoemakers and one wheelwright who could be construed as being useful directly. The other professions listed show that little more than labourers were sent out. The skills of the women were perhaps even less useful for a new settlement. Those that could be

¹ Ibid pp. 375 to 397.

² Ibid p. 368.

³ Watkin Tench. *The Settlement at Port Jackson*. Chapter 1. His journal on the Gutenberg site: <http://www.gutenberg.net/etext02/tsapi10.txt> 201103.

considered immediately useful were a nurse, twenty servants, and several dressmakers and needle workers. Gillen has commented that the professions were consistent with those of the general English population.¹ Arthur Phillip had travelled out to Botany Bay without any lists about the various occupations of the convicts or even list detailing how long their sentences were. He had to ask for their occupations while on board the ships.

The ages given for the convicts, however, tend to represent a desirable pattern for starting a new colony; from the figures for the male convicts that arrived in New South Wales, at least 325 were between 20 and 29 years of age and a further 124 between 30 and 39 years of age, another 40 were between 10 and 19 years of age and 35 males between 40 and 49 of age. Only 23 males were over 50 years of age. Of those that were sent but did not last the distance, a further 19 were between 20 and 29 years of age and 10 between 30 and 39 years of age. The proportions in the age groupings were somewhat similar in the figures for the female convicts that were sent, although the females accounted for less than a third of the total number of convicts. The numbers of females that arrived were 92 between the ages of 20 to 29 years, 39 between the ages of 30 to 39 years, 18 between the ages of 10 to 19 years and 10 females over the age of 40 years.² In the respect that most of the convicts sent were in their most productive stages of life, there is a basis for the premise that they were indeed chosen for the job. A comparison of the types that were not chosen would probably give an indication of the quality of the convicts that did travel. Once again, due to the prevailing attitudes of the moneyed folk in England to the poor, the inadequacy of the prison systems combined with the requirements for cheap labour for dredging in the Thames River and work at the docklands, it is possible that, and indeed Gillen maintains that many of the better and hardier criminals were not sent, but retained for labour purposes in various government works.³

The First Fleet prisoners were poor, usually uneducated, but they did create the basis and solidity required to found the colony despite their depravations. The information that Mollie Gillens has been able to supply indicates that no murderers or truly violent persons were sent out on the First Fleet. It has been necessary to go through all the records of over 700 convicts to establish patterns within the group. That there must have been a method of choice wherein the dangerous convicts were kept at home in England while those convicts with some chance of improvement or perhaps only usefulness were sent. It is still difficult to discern the real meaning behind the choices or guidelines laid down, if at all, for the convicts on the First

¹ Gillen, M. Op. cit., p 446.

² Gillen, M. Op. cit., pp. 454-535.

³ Ibid. p XXXIV.

Fleet. Some of the convicts were only newly sentenced and within a matter of days had been placed on a ship bound for Botany Bay and others had been rotting away for years. A few convicts were nearly due for release by the time of their arrival in New South Wales, but were forced to continue as convicts until the proper papers had arrived on the next fleet. Watkin Tench, a naval officer acting under Arthur Phillip, has mentioned in his diaries that the first four years had gone surprisingly well and that no serious offence occurred. There appears to be no mention of political prisoners or specific intention to clean out ethnically undesirable portions of the Mother country with the establishment of the penal colony. All of the convicts were charged and tried for criminal offences as the law stood at that time. It is worth noting that there was no direct religious persecution of a certain group, there is no evidence to suggest that convicts of a certain religious conviction were especially singled out for Botany Bay.

19 The Intended Role of Women

In the original discussions concerning the setting up of the colony and before the announcement in Parliament by Pitt, it had been suggested by both Banks and Matra that there would be no difficulty in picking up native women from the islands for five hundred convict men.¹ When the announcement was made in parliament and preparations set in motion, Arthur Phillip made sure that women convicts were to be included in the shipment and thereby avoid the taking of the native women. Arthur Phillip's experiences in the Portuguese colonies of South America had taught him the virtues of including women. However, women became victims to transportation under the same laws that men were once the defendant was found guilty. As Mollie Gillen has mentioned in regards to the women's occupations being representative of the general population, it is logical to expect them to form a part of the convicts sent to Botany Bay. As little heed was paid to some of the suggestions by the men who led the planning of the settlement, it would be logical that women be included to form part of the cargo to Botany Bay and to perform the duties normally expected of women in any society. It is however suggested that the purpose of the women was to fulfil the needs of the men as Arthur Phillip had suggested. This is certainly what occurred later as the colony developed, but to suggest that women specifically should be subject to the men is not proven.

¹ Banks in 1779 Bunbury Commission on Transportation and Matra in CO 201 1/3 f 62.

20 Conclusions

The decision to send convicts to Botany Bay was a result of several factors. Structural components of English political and legal as well as social and economic life helped to steer the decision to recommence convict transportation that in some ways was reminiscent of the old method to American and West Indian colonies before America's Independence. Several attempts were made to relieve the pressures of the criminals by restarting transportation to the American states, but a resolute negative attitude from the old colonies led the British government to think of new places to send the criminal elements.

With the enforced stop of the convict transports to the American colonies the British government enacted the Hulks Act as a stop gap until normal conditions could be re-established and the system restarted, but with the war dragging out the short term solution of the hulks became untenable and cries were raised for a solution and the resulting Bunbury Committee in 1779 gave few solutions. The committee did allow the idea of using the area at Botany Bay to be seriously raised for the first time when Joseph Banks suggested it as an alternative. Both the political and war situations precluded any decision for New South Wales, and at that stage, the pressures were not so great as to require a new destination and there was the presumption that things would turn out in Britain's favour in The American colonies.

In 1783, James Matra put a proper and well thought out plan forward, albeit with Joseph Banks as the man behind the plan. However, due to the pressures of the last throes of the American War of Independence and both the political nonchalance on the part of the British government and its disruption, this plan was put aside. With the final signing of the Peace negotiations with America and later with France and Spain, and with William Pitt the Younger taking control and setting about to repair the economy and putting his men in charge, a certain amount of stability was attained in which a proper decision could begin to be made. The pressures mounted after the end of the war and Lord Sydney was the man appointed to find a solution. Lord Sydney received Matra's plan and discussed it with him and amendments were made in the direction that Sydney needed, he also had Young's plan to work on but these were not totally suitable for his needs. The second of the Parliamentary Committees, the Beauchamp Committee in 1785, in combination with the plans by Matra and later amendments to it gave Sydney the lead to his solution. It was, however, not clear-cut in which direction this solution would lead. Sydney, despite pressures from the convict problem

and the loyalist problem, looked for the cheapest method to allay what he saw as the greatest problem, the convicts, wherever the solution might be. African colonies were found unsuitable for the purpose because of their costs and inhumane conditions. The seemingly logical idea of building new prisons around the country in sufficient numbers fell on deaf ears as the solution to the rising criminality seemed still to warrant such a strong deterrent aspect that was to be found in transportation. Prison reformers were unable to engage sufficient support from within the government for prison reform and the growing middle class demanded protection while the politicians saw cost cutting as important. Canada had by 1785/6 become the haven for the Loyalists and to a great extent it became impossible to send convicts there.

After pushing for an African solution and being stumped when each African possibility was bowled he took to the idea of using the new land that Cook had claimed for Britain. Every instance that has been looked at for this report has shown that the prime objective was to get rid of the convicts at the lowest possible cost. This is seen in the Bunbury Committee, the recommendations of the Beauchamp Committee, Sydney's discussions with Matra and the resultant amendments and additions to his plan which was eventually discarded as was Young's. The announcement to the Treasury in 1786 and the opening address by the King to Parliament in January 1787 wherein the problem of the convicts and the low cost of a solution were paramount, as well as Pitt's later defence of the scheme support this claim.

The structural problems that lead to an increase in convicts include; the type of legal system that was based on capital punishment for a huge array of crimes, an unwillingness by the government to reform the prison system, the Hulk system that was filled to overflowing, and the transportation system that had never been totally discarded in the interim of war. Economic factors played a major factor, especially as Industrialism gained momentum, as people were forced to leave the land and move to towns for work and the poor were unable to gain much comfort from the government. Pitt was determined to reduce the government's debt after the war and this remained his main concern as Lord Sydney, as the person in charge, and with Evan Nepean, the one who did much of the groundwork, decided on the plan of action.

The idea that the colony was more than a prison is even more weakened as the brief examination of the types of convicts sent out reveals a lack of farmers or people of ability to build a colony resulting in a mix that represented a cross section of the population in Britain. The lists of materials and tools sent reveal little more than the basic requirements necessary to get a rudimentary colony going and certainly without complete machinery for any serious

production of hemp or its substitute, with insufficient clothing and poor tools for an unknown climate. Even the sending of the ill-fated *Guardian* without an escort on the long journey strengthens the idea of cost minimising.

The calculations that roughly one thousand to one and half thousand convicts annually would be sent certainly does not support an idea of a burgeoning colony or a desire to really develop a trading colony or proper military base for that part of the world for British interests. The first fleets of convicts were much the same sort of person although Irish and political convicts already on the Third Fleet began to be sent. Land grants were officially sanctioned by the British government at the outset for the reformed convicts, but there was no real provision at the start for free settlers to come out. The government did not know enough about the country to expect anything from it although, as Banks said from the outset, there is a great possibility that a great wealth will come from the country. The evidence is clear that Botany Bay as a part, and New South Wales as a whole, were to be used as an extension of the prison system and, therefore, as a repository for the convicts that were not wanted in Britain.

Appendix 1

Blackstone on Law

But even with us in England, where our crown-law is with justice supposed to be more nearly advanced to perfection ; where crimes are more accurately defined, and penalties less uncertain and arbitrary ; where all our accusations are public, and our trials in the face of the world ; where torture is unknown, and every delinquent is judged by such of his equals, against whom he can form no exception nor even a personal dislike ; --- even here we shall occasionally find room to remark some particulars, that seem to want revision and amendment. These have chiefly arisen from too scrupulous an adherence to some rules of the antient common law, when the reasons have ceased upon which those rules were founded ; from not repealing such of the old penal laws as are either obsolete or absurd ; and from too little care and attention in framing and passing new ones. The enacting of penalties, to which a whole nation shall be subject, ought not to be left as matter of indifference to the passions or interests of a few, who upon temporary motives may prefer or support such a bill ; but be calmly and maturely considered by persons, who know what provisions the law has already made to remedy the mischief complained of, who can from experience foresee the probable consequences of those which are now proposed, and who will judge without passion or prejudice how adequate they are to the evil. It never usual in the house of peers even to read a private bill, which may affect the property of an individual, without first referring it to some of the learned judges, and hearing their report thereon ^e. And surely equal precaution is necessary, when laws are to be established, which may affect the property, liberty, and perhaps even lives, of thousands. Had such a reference taken place, it is impossible that in the eighteenth century it could ever have been made a capital crime, to break down (however maliciously) the mound of a fishpond, whereby any fish shall escape ; or cut down a cherry tree in an orchard ^f. Were even a committee appointed but once in an hundred years to revise the criminal law, it could not have continued to this hour a felony without benefit of clergy, to be seen for one month in the company of persons who call themselves, or are called, Egyptians ^g.

Blackstone 1758. Blackstone's Commentaries on the Laws of England.

List of Livestock and Provisions on First Fleet.

- 10 Forges
- 175 Steel Hand Saws
- 700 Iron Shovels
- 700 Garden Hoes
- 700 West Indian Hoes
- 700 Grubbing Hoes
- 700 Felling Axes
- 700 Hatchets
- 700 Helves for Felling Axes
- 747,000 Nails
- 100 Pairs of Hinges and Hooks
- 10 Sets of Cooper's Tools
- 40 Corn Mills
- 40 Wheel Barrows
- 12 Ploughs
- 12 Smith's Bellows
- 30 Grindstones
- 330 Iron Pots
- 6 Carts
- 4 Timber Carriages
- 14 Fishing Nets
- 14 Chains for Timber Carriages
- 5,448 Squares of Crown Grass
- 200 Canvas Beds
- 62 Chauldrons of Coal
- 80 Carpenter's Axes
- 20 Shipwright's Axes
- 600 lbs of Coarse Sugar
- 1001 lbs of Indian Sago
- 1 Small Cask of Raisins
- 61 lbs of Spices
- 3 Hogsheads of Vinegar
- 2 Barrels of Tar
- 1 Dozen Tin Saucepans
- 1 Printing Press
- Type Fonts for DO
- 3 Dozen Flat Irons
- Candlesticks
- 3 Snuffers
- 48 Spinning Brasses
- 7 Dozen Razors
- Bible Prayer Book etc.
- 6 Bullet Moulds
- 700 Steel Spades
- 175 Claw Hammers
- 140 Augurs
- 700 Gimlets
- 504 Saw Files
- 300 Chisels
- 6 Butchers Knives
- 100 Pairs of Scissors
- 30 Box Rules
- 100 Plain Measures
- 50 Pickaxes
- 50 Helvers for DO
- 700 Wooden Bowls
- 700 DO Platters
- 5 Sets of Smith's Tools
- 20 Pit Saws
- 700 Clasp Knives
- 500 Tin Plates
- 60 Padlocks
- 50 Hay Forks
- 42 Splitting Wedges
- 8,000 Fish Hooks
- 48 Dozen Lines
- 8 Dozen lbs of Sewing Twine
- 12 Brick Moulds
- 36 Masons Chisels
- 6 Harness for Horses
- 12 Ox-Bows
- 3 Sets of Ox Furniture
- 20 Bushels of Seed Barley
- 1 Piano
- 10 Bushels of India Seed Corn
- 12 Baskets of Garden Seed
- Coarse Thread (Blue/White)
- Transport Jack
- Ventilators for Water and Wine
- Hoses
- Windsails
- 24 Spinning Whorls
- 1 Set of Candlestick Makers
- Carbins
- Bulkheads
- Beds

- 9 Hackies for Flax
- 9 Hackies Pins
- 3 Flax Dresser Brushes
- 127 Dozen Combs
- 18 Coils of Whale line
- 6 Harpoons
- 12 Lances
- Shoe Leather
- 305 Pairs of Women's Shoes
- 40 Tents for Women Convicts
- 6 Bundles of Ridge Poles
- 11 Bundles of Stand Poles
- 2 Chests of Pins ans Mallets
- 1 Portable Canvas House (Gov. Philip)
- 18 Turkeys
- 29 Geese
- 35 Ducks
- 122 Fowls
- 87 Chickens
- Kittens
- Puppies
- 4 Mares
- 2 Stallions
- 4 Cows
- 1 Bull
- 1 Bull Calf
- 44 Sheep
- 19 Goats
- 32 Hogs
- 5 Rabbits
- Gov. Philip's Greyhounds
- Rev. John's Cats
- Mill Spindles with 4 Crosses
- 2 Cases of Mill Bills and Picks
- 1 Case of Mill Brashes
- 589 Womens Petticoats
- 606 Womens Jackets
- 121 Womens Caps
- 327 Pairs of Womens Stockings
- 250 Womens Handkerchiefs
- Hammocks
- Marines Clothes
- Fig Trees
- Bamboos
- Sugar Cane
- Quinces
- Apples
- Pears
- Strawberries
- Oak and Myrtle Trees
- 135 Tierces of Beef
- 165 Tierces of Pork
- 50 Puncheons of Bread
- 116 Casks of Pease
- 110 Frinkins of Butter
- 8 Bram of Rice
- 10 Pairs of Handcuffs and Tools
- 1 Chest of Books
- 5 Puncheons of Rum
- 300 Gallons of Brandy
- 15 Tons of Drinking Water
- 5 Casks of Oatmeal
- 12 Bags of Rice
- 140 Womens Hats
- 1 Machine for Dress Flax
- 252 Dozen lbs of Cotton Candles
- 168 Dozen lbs of Mould Candles
- 44 Tons of Tallow
- 2 Millstones Spindles etc.
- 800 Sets of Bedding
- 1 Loom for Weaving Canvas
- 2,780 Woollen Jackets
- 5,440 Drawers
- 26 Marquees for Married Officers
- 200 Wood Canteens
- 40 Camp Kettles
- 448 Barrels of Flour
- 60 Bushels of Seed Wheat
- 381 Womens Shifts

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Abstract

Lieutenant James Cook claimed New South Wales for Great Britain in 1770. However, it was not until 1786 that a settlement was authorised there. The settlement was not for free men, but for the unwanted convicts, their masters and protectors; the First Fleet convicts landed at Sydney Cove on January 26, 1788 and Governor Phillip lay claim officially to the country. The decision to establish a settlement in New South Wales took sixteen years. It was not the clear-cut and positive beginning to a country that it could have been.

The emphasis of this report is to look at the factors that contributed to the decision and the line that the decision makers took. This has involved investigation of parliamentary debates, ministers' letters and other sources relevant to the decision. The factors most pressing at the time for the government were the over abundance of criminals and the budget deficit. With a relatively simple move, Lord Sydney was able to relieve the first problem at the same time as his Prime Minister, William Pitt, took on the budget. It is clear that the settlement was established for the dubious benefit of relieving England of the convicts.