

EMPTY HISTORICAL BOXES OF THE EARLY DAYS:
LAYING CLIO'S GHOSTS ON THE SHORES OF NEW HOLLAND*

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THE title does not foreshadow an exhumation of the village Hampdens, as Webb called them,¹ buried on the shores of Botany Bay. In fact, they were probably thieves, but let their remains rest in peace. No, the metaphor in the title is from an analogy from a memorable controversy in value theory in Economics.² The title was meant to suggest the need for giving some historical content to the emotions that have accompanied discussions of the early period. Some of the figures which seem to have been conjured up by historical writers have been given malignancy but not identity. Yet these faceless men of the past, and the roles for which they have been cast, seem to distort the play of life. And indeed, it is perhaps because the historical boxes have remained unfilled, and because the background—the rest of the play and action—has not been fully explored, that some people of the early period, well known to us by name, have been interpreted in the light of twentieth-century prejudice and political controversy.

We know all too little about the quality of day-to-day life in early Australia, the spiritual and material existence of the early Europeans, their energies, their activities and outlook.

In the first stage of an inquiry I have been pursuing into our early social history, I am concerned not with these more elusive yet in a way more interesting questions, but in what sort of colony it was with the officers, the gaol and the port. The attempt to label³ early New South Wales as a penal settlement, or sometimes as a gaol, has distorted the data on which we should assess the congeniality or otherwise of life in early New South Wales between 1788 and 1810.

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The burden of the discovered documentary evidence is that the occasion for the decision to despatch the First Fleet in 1787 was the pressing problem of where to send convict criminals within the framework of the practice of transportation. You will recall that the American Revolution had interrupted the arrangements which had operated regularly since about 1720⁴ and, intermittently, earlier. Until the writing⁵ of Mr. Dallas, Dr. Roe and Miss Atkins, and very recently of Mr. Blainey, most historians,⁶ in the absence of documentary evidence for it, have been suspicious of any attempt to see a grand imperial design in the Pitt Government's plans. Of course, Admiral Sir George Young and James Maria Matra published⁷ their expectations of benefit to the Mother Country from a settlement here, which could be well summarized in Sir Joseph Banks's famous phrase⁸ that "... New Holland . . . will furnish matter of advantageous return"—

* Substantially the Presidential Address delivered to the Association on 31 October 1967. The author has not revised the paper to incorporate the subsequently published research of others, but has referred to some of the more significant publications.

in external trade, loyalist settlement, flax and other maritime materials, strategic advantages, as well as a convict destination. Mr. Dallas has argued that England needed New South Wales for a maritime base, and Dr. Roe and Miss Atkins, in the line of giving a role to New South Wales in Harlow's conception⁹ of the founding of the second British Empire as consisting of commercial and trading outposts and not of settlement colonies, speculated as to the interest in England in trade between New South Wales and the East. There is, however, very little evidence¹⁰ that contemporary official opinion was impressed by the strategic arguments, nor is there any evidence of any considerable use of New South Wales subsequently by the Admiralty. Mr. Blainey erected a very ingenious circumstantial argument on the basis of the shortage for Britain of maritime materials at a time when her sources of supply in the Baltic were threatened, and those in North America cut off. He ended, however, by describing¹¹ flax as a hollow conqueror of the distance from England to Australia, hollow in view of the failure of local flax. Yet we should note that Alexander Dalrymple, the hydrographer of the East India Company, had forecast¹² the unsatisfactory effects of this—although he had suggested transplanting flax to England. The East India Company's Charter, granted by the Crown in 1600, gave it¹³ the sole right to trade and navigation between the Cape of Good Hope and the Straits of Magellan in certain latitudes which included New South Wales. Dalrymple had objected to the "intended thief colony at Botany Bay", as he regarded it, his reasons including his fear that the Company's rights would be breached. If the influence of the Company has not been over-estimated, Blainey and anyone who puts forward a *separate* motive of trade in the 1780s to explain the foundation of New South Wales will have to show that the British authorities were then prepared to disregard the views of the Company in regard to trade as distinct, of course, from government-conducted enterprise, to which, indeed, the Company may also have objected. Shepherd¹⁴ had put up the hypothesis that the East India Company's opposition may not only have been a factor delaying until 1786 the Government's decision on the suggestions made by Matra and Young in 1783 and 1784, but also may have accounted partly for the purely penal emphasis in the explanation in the communications¹⁵ of 1786 and the King's speech¹⁶ of 1787 of the decision to establish the colony.

Accordingly, there seem to be objections to arguing that New South Wales was founded with external trade and commerce strongly in mind. Yet, as we know, New South Wales very soon developed some and the East India Company's rights were modified, and this process, which has been described by Professor Ward,¹⁷ took place well within the convict period of New South Wales.

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To reiterate, however, the conclusion that New South Wales was founded because of the disposal of the convicts is not to deny the comprehension, even before the colony was founded, of local trading activities and of means of commercial and productive livelihood in any place that was, as New South Wales was to be,¹⁸ proclaimed as a place to which convicted felons could be transported. We

have sometimes tended to assume that the conduct of a place of transportation, and commercial activity there, were thought to be inconsistent with each other.¹⁹

We think of a penal destination as being an overseas gaol, and we tend to think of gaols in the late eighteenth century as having approximately the role they have today, or that we believe them to have. In his recent book²⁰ Professor Shaw heads the chapter which deals with the development of assignment in the 1820s "Prison Without Bars", somehow implying a gaol-like administration for the convict who was not assigned. In historical fact, in Britain in the eighteenth century, the gaols or prisons²¹ were primarily places of detention, not of punishment. Many of their inmates were accused persons awaiting trial, or debtors. The gaol was for many only the temporary lodging of persons tried and sentenced. Some were executed, some were transported. Not many were imprisoned for a long period in England. The legislators and others, meditating whether transportation should be resumed, would be thinking not of a gaol overseas, but rather of removing criminals, and, as Dr. Dunmore Lang remarked,²² the British authorities did not think much about the criminals once they had been transported to America. In fact, even an historian²³ finds some difficulty in distinguishing the convicts from among those other categories who endured or submitted themselves to white servitude in some of the American colonies. But, just as the domestic prisons of the eighteenth century differed in kind and function from those of today, so we must be careful not to step thoughtlessly into a view of the overseas gaol as resembling either our present gaols—for example, Long Bay on the shores of Botany Bay—or an English gaol of the eighteenth century.

After the American War made it impracticable for convicts to be transported to America, hulks were being experimented²⁴ with, although they finally became part of the transportation system, and we know that some prisons and some penitentiaries were discussed, and even started. But it is likely that the old view of transportation would have been that in mind when it was to be resumed, and we must recall that a number of places was canvassed. The old view, summarizing it rather drastically, was of criminals assigned in plantations and in colonies, separated from each other, and later, after the period of sentence, able to proceed to a life in the Colony. The criminal would not be living in a confined space, not necessarily in a gaol bounded by natural frontiers such as the Pacific Ocean, the Blue Mountains, and the rivers as he did for the first 25 years in Australia. The Reverend Sydney Smith was to write²⁵ later, "The felon transported became an insulated rogue among honest men. He lived for years in the family of some industrious planter, without seeking a picklock, or indulging in pleasant dialogues on the delicious burglaries of his youth. He imperceptibly glided into honest habits, and lost not only the tact for pockets, but the wish to investigate their contents." And, according to Patrick Colquhoun²⁶ who, among his roles, was a magistrate closely acquainted with the American arrangements, "The rigid discipline which the colonial laws authorized the masters to exercise over servants, joined to the prospects which agricultural pursuits, after some experience was acquired, afforded to these outcasts, tended to reform the chief part, and, after the expiration of their servitude, they mingled in the society of the country under circumstances highly beneficial to themselves and even to the colony. Possessed in general (as every adroit thief must be) of good natural abilities, they availed themselves of the habits of industry they acquired in the years of their servitude—

became farmers and planters on their own account, and many of them, succeeding in these pursuits, not only acquired that degree of respectability which is attached to property and industry, but also in their turn became masters, and purchased the servitudes of future transports sent out for sale."

These rather rosy views have to be reconciled with those of Abbott Smith, who has done one of the most recent investigations on transportation to America. He thought²⁷ that a good many less than ten per cent of the convicts actively settled down comfortably in the colonies; some certainly moved to different parts of America. Earlier, he had expressed²⁸ the view that each transported felon had "the opportunity which was vouchsafed to any servant to make his way in the New World". Fiske, in his book *Old Virginia*, wrote²⁹ that the most depraved freed men "if they did not become loungers in taverns and at horse races earning a precarious livelihood or violent death by gambling might withdraw from the haunts of civilization to lead half savage lives in the backwoods". Very strange tales are told of the gentlemen of New South Wales, but a correspondent of the *London Magazine* in 1773 wrote³⁰ a fascinating vignette of a lady, Sarah Wilson. Perhaps we should describe her more correctly as a woman, since she attended a Maid-in-Waiting to the Queen. Sarah Wilson was transported to Maryland after stealing valuable jewels from her mistress. She was "purchased" [*sic*] by a settler, but soon decamped with the jewels and escaped to Virginia, across which she travelled in state to South Carolina via North Carolina. She assumed the title of Princess Suzannah Carolina Matilda, pronouncing herself the Queen's sister. She moved from one gentleman's house to another, making astonishing impressions; to some she promised governments, to others regiments, to others merely promotions. It was difficult to raise a hue and cry even once she had been rumbled by some of the more sensible colonists, because she had levied contributions on some of the higher ranking citizens, they had had the honour of kissing her hand, and they were reluctant to admit her a felon. It would be ungallant to Her Serene Highness, as this former member of a royal household was styled, to regard her behaviour as typical, but the discussions by the colonists on escapes and convict activities suggest anything but an immobile closed gaol.

In his objections to the proposal to settle New South Wales, Dalrymple had considered³¹ that if there was to be intercourse with the penal Colony, then there would be illicit trade and smuggling, but he recognized that the penal Colony in New South Wales would have to contain some productive life within it, when he suggested that if there was not intercourse "the necessities of the people will drive them to provide for themselves by excursions". This was essentially Professor Butlin's problem³² of the hinterland of production required to feed the gaol.

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One problem in trying to establish what the official view of the new settlement was, is the contrast between the two commissions issued to Arthur Phillip. The second, issued in April 1787, was more comprehensive than was the first, issued in October 1786, and was moulded far more closely on the lines of some of the commissions of the First Empire; in other words, on the traditional pattern of colonial commissions. It is therefore more consistent with a wider view of the

settlement than the first, which Sir Victor Windeyer has described³³ as a commission to a military governor. It is very similar to that issued to a governor of a fort or castle, or a garrison, whether colonial or domestic.

Of course, given the use of precedents, it is sometimes quite difficult to decide what significance has to be attributed to a particular form of words. The sentence enjoining obedience of officers does not by itself differentiate a military commission from a civil commission, if we use the words in the contrasting sense to which De Quincey objected. In the first commission Phillip was Governor, he was to command all towns, garrisons and forts. In the second commission there were military powers and he was designated Captain General.³⁴

In the eighteenth century "command of forts and garrisons" still had some relevance. Vice-Admiral Waldegrave in Newfoundland argued,³⁵ I think unsuccessfully, that the style of his commission "Governor and Commander-in-Chief over all the forts and garrisons" established him as a military governor. "Surely, Sir," he wrote, "the above words not only apply to the Stone-Walls but the troops that are contain'd in them." Even as late as the 1870s, when the drafting of the commissions for the Governor of South Africa and the High Commissioners for the adjoining British territories in Africa was being considered, it was thought in the Colonial Office³⁶ that inserting the words "Captain General" in the commission might give the Governor more power than might be given by making him Commander-in-Chief of the Colony. Some questions such as capitulation, which were happily not obvious to either governor or commander in normal times, were involved. The style "Captain General and Commander-in-Chief" had acquired a different substance by the nineteenth century when responsible government had complicated the problem, as it was now sometimes a matter of relations between the governor and his local ministry, as well as between him and the garrison commander. Some of the niceties of drafting in these commissions may elude us and make them uncertain guides to policy. However, some light may be cast by noticing the views of the Select Committee of the House of Commons of 1785, generally known as the Beauchamp Committee, which was inquiring into the possible destinations to which convicts sentenced to transportation might be sent. This Committee reported in July 1785 and had examined witnesses several months previously.

There were, in principle, three sorts of settlement: the first, one in which the convicts were simply left to fend for themselves and manage their own subsistence with perhaps some contribution towards their rations and with some guard confining them to a given area; there was a second type of society in which they might be attached to a garrison, even perhaps enlisted; and the third was a wider form of governed civil society: the society of which they were a part might contain non-penal and colonial elements in the settlement. Regarding the first category of the Committee, its members had been told by Evan Nepean, the under-secretary of the Home Department, of the proposal for the convicts to be left on the island of Lemane with materials for constructing shelter and engaging in agriculture. When settled "they were to be left to themselves" with a guard ship to prevent the convicts escaping. Someone appointed by them out of their number was to distribute their provisions and stores. Considering this plan, which Nepean had not fully worked out, the Committee asked a number of its witnesses about the practicability of a colony of convicts on the island of Lemane "without

any government but such as they might establish among themselves". Even when the Committee was considering the settlement of felons without control—that is, the first category—a question addressed to Sir George Young assumed that the convicts would trade with the natives in Africa, and according to Evan Nepean some women convicts would be sent with men convicts to the island of Lemane. According to Commodore Thompson, who was in charge of the naval forces patrolling the African coast, without these women the convicts would marry with the natives who would readily part with their women if any presents of a trifling sort could be made. Thus even the anarchic penal settlement was conceived to require some provisioning and the convicts were expected to trade.

Some of the reasons for rejecting this conception may have been peculiar to Africa. If the convicts relied on their own medical help, "the greater part", said Commodore Thompson, "would perish within a few weeks". This was not just a matter of humane feeling because not two in a hundred Europeans would survive if they had to support themselves if full labour was necessary. John Barnes, a merchant in the African trade, who had been there, doubted the possibility of self-sufficiency when he said that "Africa was not a place where Europeans got their living by labour". Sir George Young echoed this when he said that such a colony "could not subsist by Labour but by Enterprise". Another reason was the impossibility of keeping the convicts without government in an area allotted to them "unless confined in irons". Their conduct "would incense the natives to be more barbarous", according to Commodore Thompson. According to Admiral Sir George Young, the effect of natives trading with British factories in Africa would be "all riot and confusion" and the lives of British traders would be threatened by the natives who would take "every white man for an English thief". James Matra assured the Committee that, on the contrary, the East coast of Australia was so long that a convict colony at Botany Bay would not interfere with a colony of free men at Bustard Bay, and, as Sir Joseph Banks, who had landed only in Botany Bay, assured the Committee that there were few natives on the East coast of Australia, it was not surprising that this Committee rejected the idea that the new penal destination (and the places considered were primitive and unsettled, New South Wales had not yet been decided upon), should be composed of convicts alone without any control. In the sense in which "civil" is equated with "State", not non-military, the Committee thus decided that a civil government was necessary and recommended that the convicts be put to useful work, actually mentioning assignment, presumably to the Loyalists who were intended to be amongst the settlers.

From the context of its questions, as well as from these recommendations, we can regard the Committee as considering civil government in a wide sense that comprehended a non-penal element in the population, that is, it decided on the third conception. However, even a settlement without control—the first category—as discussed had revealed a much looser and wider life than that of the gaol of this century.

It may have been that the first commission derived not from the Committee's Report but from the previous experience in Africa, and that the convicts were to be enlisted. The arrangement that had obtained for 350 convicts who had been sent to Africa may have suggested that this form of commission was appropriate. The convicts sent to Cape Coast Castle had been enlisted as troops under military

discipline with "proper officers". It is strange, however, if this was so, that it should have been regarded as a desirable precedent as the arrangement had not worked well. The convicts could not be kept under discipline and some escaped to the Dutch and even themselves manned two or three forts and, according to Commodore Thompson, who should have known, a score of them went on "a piratical intent to sea". This was known in 1786 and had even been drawn to the attention of the Committee, and the Heads of a Plan published in 1786 contained some material which may have been derived from the same source as the Committee's Report³⁷ but it explicitly embodies the colonial idea in regard to New South Wales.

When one bears in mind the vagueness of the preparations of the African penal settlement which, the Committee was told as early as May 1785, if decided upon, it was hoped to make at the beginning of 1786, we need not be surprised if there was an *ad hoc* recourse in the case of New South Wales, one might even say a temporary relapse, to the commission appropriate to a garrison. The earlier failure in Africa may have been recalled and realized early in 1787. The sequence of narrow to wider commission need not destroy the view of an eighteenth-century destination for transportees assuming some trade but something short of a full Colony. Yet even the penal arrangement by which form the convicts had been enlisted in the Cape Coast Castle garrison, that is the second category, embraced more than the modern gaol for the community of the Castle, including the convicts. The development therefore in the commissions may have some significance for the colonial controversy over the foundation of New South Wales but it need not, by itself, destroy the view of what is implicit in transportation which has been developed above.

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Mr. Blainey and Mr. Dallas see the connection between transportation and activity in trade, but Blainey considers trade and strategic supplies of larger importance than transportation and, to Dallas,³⁸ "transportation is a mercantile device for providing any likely colonial venture with a sufficiency of unskilled labour". The fact that New South Wales had to be settled for the first time, as well as started as a place of transportation, was significant in many ways. There was no existing European society; there were no employers to receive convicts; Professor Butlin has aptly written³⁹ of the obvious Robinson Crusoe-ish aspects; and, in fact, even if there had been notions of a systematic gaol with graduated terror and reform,⁴⁰ the pre-occupations of pioneering would have interrupted their application. But even if we could assume that pioneering difficulties did not exist, we may not assume that a very systematic treatment of prisoners would have occurred given the limited domestic role of gaols and the way they were conducted. Dr. O'Brien (remember that he is an Irish-born dignitary of the Church of Rome, full of compassion, and, perhaps for both these reasons, inclined to see mainly the evils of private enterprise in the period of the early industrial revolution) was impressed, as most of us are, by Phillip's courage, stark honesty and capacity for detailed planning, and accepted the state of affairs that the work of establishment left. Yet, though he stated⁴¹ categorically that there was no system, his book then leaves the reader with the impression that the purposes

of punishment and reformation were subverted by the rise to power of the officers and the growth of trade. "The Breaking of the System" is his description of the chapter centrally relevant.⁴² The "military oligarchy" and its behaviour, its rise to influence in the administration of petty justice, its economic power on the basis of its activity in agriculture, with the help of the assignment of convicts and the granting of Crown land, the Corps' growth to wealth in trade—this group was the cause of the "decline of the penal system".⁴³ In Dr. O'Brien's treatment, "the breaking of the system" and the moral decline of the Colony are associated. The ex-convicts as well as convicts are prejudiced by the rise of the officer-traders—the ex-convicts at least spiritually as well as materially, the convicts in discipline and in reformation.

This same group was the villain for Brian Fitzpatrick.⁴⁴ It was the local interest which vitiated a policy of establishing peasant agriculture in Australia. Fitzpatrick believed that there was such a policy which, broadly speaking, he identified with ex-convict settlement on small holdings. He stated this rather than argued it, I think incorrectly.⁴⁵ To Dr. O'Brien, the demoralization of the penal classes was completed in respect of the smaller settlers—the ex-convict settlers—by preferential access on the part of the officers to the Government Store, and also by the aggressive discouragement of religion in the Colony.⁴⁶ The store was at first the sole market for grain.

John Howard and other prison reformers, and the critics of the early transportation arrangements, and the Italian philosophers of crime, may have been known to some of those in authority in New South Wales. Yet there is no evidence that the administration⁴⁷ in England was in a condition to impart to the colonial Governor, living at first in his canvas tent,⁴⁸ the advice and the resources necessary for the systematic terrorizing and reformation of the convicts in New South Wales. It is therefore not at all clear that there was, when Phillip left, a systematic treatment of convicts to be subverted. One may, however, briefly assume for the purposes of considering Dr. O'Brien's views on the interregnum 1792-5, and the change to disciplining by the officers, that there was such a systematic treatment.

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We may briefly take Dr. O'Brien's points in turn, noting that his views and the writing of Fitzpatrick, published slightly earlier, on this period have dominated the interpretation in recent times of our early history. If we consider Dr. O'Brien's point as to criminal petty justice, it is not clear that the substitution of military officers for civil officers as magistrates, which Francis Grose, Phillip's successor in charge of the government, put into effect⁴⁹ without any enlightening explanations, had much effect on the position of the officers economically. Nor is it clear that they would have administered petty justice more or less harshly, or with terror and reformation more present in their minds, than did some of the civilians.⁵⁰ We know that, when John Hunter assumed the government, he restored⁵¹ the civil magistracy, but there is no evidence that the lessening of military "uncontrolled rule", or unfettered military control, to use the rather grandiose phrases applied⁵² by Fitzpatrick, affected the convicts' discipline or the economic power of the officers. It certainly did not create any greater freedom

of movement in the settlement either for all of the few non-official persons who had come free, or for all of the ex-convicts.⁵³ In fact, as the settlement expanded and became more complex, we gradually find formal limitations⁵⁴ on the movement of persons without authority including, in the Port of Sydney, the licensing of boatmen and restrictions on who could travel.

The complex matter of agricultural production cannot here be discussed so fully as to traverse completely Dr. O'Brien's point. Dr. O'Brien's remarks in his second edition,⁵⁵ and the work of Professor Shaw,⁵⁶ do not suggest that Grose was extravagant in his support for the officers relatively to others, particularly the ex-convicts. The officers may have taken advantage of the lack of stamina of the other grantees (to consider only the formally granted land). Much of the area used for agriculture was not really suitable for it, and the climatic difficulties were not lessened by the lack of supervision, of natural fertilizer,⁵⁷ of man-made equipment,⁵⁸ of good seed,⁵⁹ of skill in the cultivators,⁶⁰ and of sufficient competent advice. Probably many of the ex-convicts whom Dr. O'Brien believed the officers had ruined,⁶¹ had been urban bred and had grown up into a life of crime.⁶² Their grip on their resources, which the military group is supposed to have unfastened, was tenuous in the extreme.

The assignment of convicts⁶³ (which urgently needs to be investigated by an historian with legal knowledge) and the granting of land without consideration were the main means by which private agriculture could be assisted by the state, or, more simply, by the Governor. It seems very likely that government agriculture was not as efficient or as progressive as private agriculture. The materials for calculation to make this judgement conclusive do not, however, exist.⁶⁴ Grose quite frankly believed⁶⁵ that the officers were the only group in whom he had confidence to tend livestock and to grow the grain the colony so desperately needed. His views are sustained by the analysis of Professor S. J. Butlin, who sees⁶⁶ them as the natural entrepreneurs in the early Colony, with their background of education, some managerial capacity, and with leisure. Moreover, it was most important that, at first, the officers, civil and military, were the only group with access to foreign exchange through their pay and through a certain market for their produce at the growing and expanding Government Commissariat Store in New South Wales. The store performed the functions of a primitive bank. In this hastily planned authoritarian economy there had been no currency provided of the normal sort.

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And now to trading. If the view in this article of the notion of transportation is correct, then, whether there was an extra "distinct" external trading ingredient in the reasons for founding New South Wales or not, we would not expect any great official surprise in the United Kingdom to have been shown when the officers in New South Wales entered into trading. And there was no surprise, so far as I have been able to discover,⁶⁷ although there was disapproval. It seems that historians have been disposed to *assume* that the Secretary of State at home and the officials dealing with the affairs of this infant Colony opposed trading as distinct from the entry of the officers into trade. This may be partly because

of the exuberance of Philip Gidley King, waiting impatiently to take over effectively the government of New South Wales from tired old Hunter, as he regarded⁶⁸ him, and meanwhile issuing public orders like thunderbolts from high Olympus.⁶⁹ King had come a long way since the days when he carried out Phillip's instructions to clean the bilges in the *Alexander*.⁷⁰ We find King issuing⁷¹ orders against trading as part of his self-imposed mission to rid the Colony of the exploitative effects, as he saw⁷² them, of the officers in the spirit trade, but he generalized his attitudes. We can correctly distinguish between a systematic concern for convict discipline and obvious threats to the ex-convicts' subsistence in agriculture in this country, and a sustained interest in the application of penal and reformatory doctrine. This country was remote from the political preoccupations of the authorities in England who were concerned with matters such as the French Wars and the aftermath of the Revolution. Moreover, we can distinguish between a concern for law and order, which it was thought would be disturbed by the uncontrolled availability of spirits, and thus an opposition to trade in spirits on the one hand, and a hostility to trade as such, or to the participation of the officers in it, on the other. Lord Hobart, the Secretary of State, wrote⁷³ to King, the then Governor of New South Wales, towards the end of February 1803: ". . . I am apprehensive that you have not completely understood the spirit of the instructions conveyed to you . . . No idea was entertained here of extending this restriction [on the price of articles] to articles imported into the settlement from Europe on the speculation of individuals . . . but the commerce carried on by individuals must be open and unrestrained, and the authority of Government must by no means be interposed, excepting in the prohibition against spirits, or under very peculiar circumstances . . ."

It would have been strange had officers of the British Army in New South Wales in the late eighteenth and early nineteenth century not been interested in trade in view of the activities of their colleagues elsewhere in the Empire in the years preceding and following the turn of the century. In New South Wales the officers had combined originally to defeat the exactions of visiting skippers who were well aware of the scarcity value of the goods they brought.⁷⁴ The word "monopoly" has been applied by Fitzpatrick,⁷⁵ by Evatt⁷⁶ and by Dr. O'Brien,⁷⁷ quite without precision. Surely we should recall the role of the price mechanism as a form of rationing, and as a means of inducing a further supply of goods through the entrepreneur. And the activities of the entrepreneurs should be described as cornering and huckstering, something of the order of starting price bookmaking⁷⁸ or rackets in which some could get easily involved. Writers have referred⁷⁹ to the officer settlers, the larger settlers, and have associated these unnamed villains with the New South Wales Corps. Elizabeth Macarthur in her famous but imprecisely known letter was writing⁸⁰ of military *and* civil officers, and few who have written on this have disclosed any substantial evidence as to the scale of the trading of the military officers, the number of them in trade, and the significance of their trade in relation to other trade. The poor reputation of the New South Wales Corps seems to have stemmed from the Rebellion and to have been fostered by the opinions of Hunter and King, not, of course, after their uncomfortable terms as Governors, detached observers in New South Wales; and also by the opinion⁸¹ of the self-styled Irish General Joseph Holt, one of His Majesty's involuntary guests in our fair land.

Recently, Dr. Parsons has argued⁸² with that somewhat unnecessary bellicosity and aggressiveness which historians of Australia are wont to demonstrate, that the Corps was composed of many disreputable members. Brigadier Austin has, with restraint, taken issue⁸³ with him and is in the course of valuable work which will resolve this matter of the Corps's composition relatively to that of the rest of the contemporary Army. So far, Brigadier Austin has discovered⁸⁴ only four or five military officers who were definitely in trade. We do not suggest that no officers were in trade, but that few of them have been established so to be. We suggest, too, that the absence of knowledge and interest among Australian historians in the history of the armed forces of the Crown, the presence of interest in the distributive aspects of the early days, and the misunderstanding of the nature of the "gaoi", the first two at least probably reflecting more generally found trends in the community, have left undefined the precise nature, significance and effort of this trading *vis-a-vis* the other trading and the penal settlement itself.

It has, of course, long been recognized that as the number of ex-convicts increased and some of them entered into trade, the so-called monopoly was loosened as the basis of trade was broadened. Lord, Kable and Underwood have been the classic names. In a sense the officers in trading become only a part of the commercial life of early Sydney with the taking in of each other's washing and the growth of domestic activity.

Under the supervision of Professor Jacobs who whetted many appetites with a lecture on the early settlement, delivered in Sydney many years ago, Miss Catherine MacLean⁸⁵ has presented interesting material on the development of the Port of Sydney. Years ago, Professor Ward drew attention⁸⁶ to the importance of the maritime industries, which were, in addition to wool, an early manifestation of free economic activity in early New South Wales. Professor Greenwood explored⁸⁷ the early contacts with the Americans and Dr. Cumpston showed⁸⁸ how extensive was the shipping visiting Port Jackson. The cumulative effect of all this, un-reformulated by the authors, has been to etch the activity of a growing town and port, with its entrepreneurial activity and external trade—and yet a community still largely dependent on government purchases of its agricultural produce. And as the background is filled in, the faceless figures which have been the foreground of the work earlier this century seem to shrink, and we can recognize and name only a few of these phantoms which have been so influential in our impression of the first two decades of settlement.

The earlier tendency had been to disregard the economic and social significance of the maritime industries for the more familiar romance of the golden fleece still coming off the sheep's back with its evocation of the wide open spaces in the interior of this country, geologically old but only after some years of settlement coming to be known. Mr. Blainey, and more recently Mr. Holder, an economist engaged in a study of the history of the Bank of New South Wales, have pointed out⁸⁹ that until the 1830s the maritime industries accounted for more export from New South Wales than did wool. All this blurs to the point of destruction, the image of a model penitentiary and the ex-convicts' fulfilment in agricultural settlement subverted by officer trading. The lot of convicts was always subordinated empirically to the purposes of colonization, although it was originally the colonization of the convicts that was contemplated. And thus, in a sense, punishment and

reform were arbitrary, for, under the wide use of the arrangement of assignment, uniform treatment and conditions could not be enforced.

The next aspect of Dr. O'Brien's accusations against the officers is that they discouraged and, with their preferential access to the Government store, completed the demoralization of the smaller settlers. His accusations also referred to the influence of this on the convicts themselves. He has suggested⁹⁰ that in the post-Phillip regime, the practice of religion was not only neglected but discouraged. The convicts were not compelled to attend religious services and Grose disregarded religion as a means of reform. Dr. O'Brien, however, qualified substantially the significance of this comment when he doubted⁹¹ that the chaplain, the Reverend Samuel Marsden, had real contact with the problem. He described Marsden as "typical of the contemporary English clergyman . . . Soon he would become a great landowner, an expert breeder of sheep, and an industrious and severe magistrate, but, as a clergyman, he never adopted an intelligent spiritually-reformative attitude towards the convict section."

If we were to pursue the implications of the qualification we have quoted, could we not become pessimistic of the power of religion in the settlement? We may leave aside the major question⁹² of how far the Church of England of the day and its ministers were interested in such problems, as also the relation between spiritual belief and religious observance in the Mother Country. We should recall that at this time the clergy of the Church of England were the only recognized clergy in the colony. Even if we assume individual clergymen were interested, was not the position of the Established Church even more delicate in the authoritarian gaol settlement than in the Mother Country? An analogy can surely be made with colonial military prisons, and some of the reports of the chaplains tabled in Parliament are very depressing. In Marcus Clarke's novel we see the difficulty of a relationship of confidence between a chaplain and a prisoner, although there one of the chaplains (North) was guilty, spiritually tortured⁹³ and unconvicted, while the convict (Dawes) was innocent even after physical torture. Should we have large expectations of the reformative efficacy of the prison chaplain in Van Diemen's Land, for instance, who believed⁹⁴ he was reforming the prisoners by teaching them to recite from memory the 39 articles, "lest they be led astray by every wind of false doctrine"? Even those spiritual fishers of men with both feet on the ground would have had to spread their net very widely in the Colony. We may admit that, even if they could have brought more than private spiritual comfort to the tormented, there were far too few of them to do even this.

Surely had the officers been angels rather than earthly phantoms their wings might have beat vainly to sustain a "spiritually reformative" regeneration by the clergy. If we descend to the more mundane matter of spirituous indulgence and its contribution to both private material and private spiritual ruin, there is some evidence that the ex-convicts were vulnerable to the "baneful lure of spirits",⁹⁵ although Jeremy Bentham and historians may have given⁹⁶ us the impression that there was something peculiar and something unexpected about the amount of over-indulgence in the Colony. We see this is incorrect when we consider the consumption by Britons in the homeland even in the later part of the eighteenth century. Even the use of spirits in exchange was exaggerated according to Professor Butlin.⁹⁷ The Governors were aware of the incentive value of alcohol in the absence of conventional necessities. Consider John Hunter's plaintive words,⁹⁸ "a little porter,

ale or grog on such occasions and it really performs miracles of exertion", and George Caley, a botanist investigator in New South Wales, saw⁹⁹ the incentive value. Indeed, he was sceptical about the dangers of spirits. He considered they had a bad effect on many individuals, but this was owing to the high prices and would apply to any other article of necessary or general use. "With regard to pernicious effect," Caley wrote,¹⁰⁰ "they have little tendency upon the lower classes, if we except a few branches of morality, in general these are confined to those in higher life. And if we take a universal view of mankind, we find that something of an intoxicating quality is used more or less by all." Caley appears from his Journal as an acute observer of affairs in the Colony. His patron, Sir Joseph Banks, however, wrote¹⁰¹ to one of his other protégés, Philip Gidley King, of the "effusions" of the "ill-judging spirit" of this man. Banks's next sentence, "had he been born a gentleman, he would have been shot long ago in a duel", is revealing, and we should bear in mind that when Caley expressed opinions about the Colony, he was reporting to his patron about the territory governed by other protégés.

* * *

The so-called Rum Rebellion has been presented¹⁰² as the results of the officers' extra-professional activity. William Bligh has been associated with the *Bounty*¹⁰³ and with savage quarter-deck discipline, John Macarthur is known as one of the pioneers of the golden fleece. Are these associations a reason why we have failed to see through the spirituous vapours in which the conduct of the officers is wreathed, to the social and economic mosaic of the early days, which we have only very roughly indicated or, rather, implied? It is a story of near-violence without all the consequences of violence, a story which has lent itself to vivid over-simplification. Even after Jenks described¹⁰⁴ the Rebellion as perhaps the most picturesque incident in the early history of the Colony, he rather wistfully added that it was "the incident which most reminds us of the events which used to form the staple of European histories". With the maturity produced by our growth, by more contact with the world, and by several wars, we of "the lucky country" may perhaps be content to prefer the excitement of satisfying analysis to the thrills of sensational labelling.

The period of Bligh's governorship of New South Wales is a topic on which the emotions can run hot, without much control from the discipline of competent historical detection and reflection. And present-day prejudices and band waggons interfere with our search for the truth although they add force and conviction to the writing. Fitzpatrick applied, as did Evatt, an outlook which was hostile to private enterprise in the present world. On the other hand, Mr. Malcolm Ellis, one of the most enthusiastic and prolific of writers on the Australian past, may have been peculiarly qualified temperamentally to understand John Macarthur's point of view, and certainly he has¹⁰⁵ no belief in the virtues of a society dominated by government. It is only recently with the work of professional specialists such as Professor S. J. Butlin and Brigadier Austin that we are coming to see enough of the background. Their work has illuminated such matters as the pay of the soldiers, the working of the Government Store, the understanding of military morale, of recruiting, the composition and discipline of the Services—these matters throw considerable light on the poor relations between naval governors and the military garrison, and hence on the Rebellion itself.

We must consider the attitudes and behaviour of British garrisons in various parts of the Empire and the tendency for rebellion and revolt,¹⁰⁶ as in Madras in 1776, and again in 1808. There is, in fact, a larger number of cases of serious disputes between the Governor and the garrison, not all of which erupted into mutiny or rebellion. In Bermuda in 1795, James Crawford, the civil Governor, intervened in the internal discipline of the 47th Regiment, which he thought too severe and too irregular, and likely to have predictable effects on military morale. He regarded this as particularly serious at a time of expected slave uprising and of war. The situation is somewhat analogous to New South Wales in the sense of the restless and overwhelmingly larger number of convicts among which the military establishment had to maintain order. Moreover, one of the issues between Bligh and the Corps in New South Wales had been the insult to Mrs. Putland, Bligh's daughter who had been recently widowed, which he alleged¹⁰⁷ she had received from the Corps in church without any rebuke from officers. In Bermuda, the Governor and Miss Crawford, his daughter, had regarded themselves as insulted when the garrison commander authorized the prosecution of Miss Crawford's negro servant.¹⁰⁸ The servant was a *sans culotte*, and a promoter of emancipation, and had nearly killed one of the handsomest men of the 47th. The Secretary of State generally endorsed¹⁰⁹ the Commander-in-Chief's view that the Governor's interference was ill-judged. In Newfoundland, Vice-Admiral Sir William Waldegrave engaged¹¹⁰ in controversy with Lieutenant-General His Royal Highness Prince Edward, Duke of Kent, Commander-in-Chief of the British Forces, Nova Scotia and its Dependencies. The argument was none the less firm for the extreme courtesy which marked the exchange of formal letters. Admiral Waldegrave claimed¹¹¹ that he was the military, as well as the civil, governor. The central issue was the military control of Fort Townsend which he thought¹¹² was as "wholly independent of Nova Scotia as of the Empire of China". As in New South Wales, distance complicated the matter, and also there were in Newfoundland very similar difficulties to those here¹¹³ over the convening of a general courtmartial, such was the shortage of qualified officers. We see the same Naval impatience with the Army's delay in administering discipline as Brigadier Austin has suggested¹¹⁴ may explain some of the antagonisms in New South Wales, and also the same issue of control by an officer of one arm over another. These problems were to recur, and they partly account for the Colonial Regulations designed to clarify, and generally to modify, the authority of the governor.¹¹⁵

If we are to explain the precise form of the Rebellion on that odd twentieth anniversary of the founding of the Colony, we can hardly ignore the characters of Bligh and Macarthur. Humour is a quality of great assistance to authority and to the exercise of political power—in the sense of being able to manipulate loyalties and to exercise restraint with a due regard for other people's problems and dignity. It may be that we can find in Bligh mirth at the discomfiture of others,¹¹⁶ but there is no wry sense of an awareness of his own incongruities, no capacity to laugh at himself or the crises of life, no sense of occasional self-doubt or criticism, which, in other people, often go with a sense of humour. In spite of his hot language, there is a coldness in understanding the feelings of others. James Cook, for instance, could be a very stern disciplinarian when the occasion arose, but he had a wry humour. Consider his comment¹¹⁷ on the incident of which he suspected James Matra (whom he subsequently exonerated), particularly his

remark that a member of a crew ought to be able to lie down dead drunk without finding when he got up that both of his ears "had been cut off". Nor was Bligh an easy man. His cholera may have been explained by his migraines¹¹⁸ and may not have been malicious. It may have explained his intemperate language, violent even by the standards of the age.¹¹⁹ Evatt, in extenuating Bligh's role, has pointed¹²⁰ to his affectionate and gentle family life. This, of course, may be said equally truly of his principal antagonist in New South Wales, John Macarthur.¹²¹ Indeed, they were, in Macaulay's words,¹²² "ordinary household decencies which half the tombstones of England claim for those who lie beneath them".

There can, I think, be no doubt about Bligh's courage, nor that of Macarthur. The incident of Bligh in the bed-chamber was exploited in rebel propaganda,¹²³ and in legend it grew again. As Rutter has suggested,¹²⁴ there is apparently something more ridiculous or even odious in a Governor's hiding under a bed than a king's hiding in an oak tree. Rutter thought¹²⁵ that there is some association with Restoration comedy which accounts for this.

Bligh was not an excessively severe disciplinarian by the standards of his times, and he commanded the respect and loyalty of some of those whom he had disciplined.¹²⁶ On the other hand, Macarthur, certainly the instigator of the actual physical revolt,¹²⁷ although his relations with the Corps after he left it have not been investigated, was very similarly violent; no less aggressive, but more subtle and ingratiating, and more a man of the world. Bligh had less imagination. As a mutiny-prone person, he was dogged by its spectre, and yet unable ever really to recognize its imminence.¹²⁸

Caley did not like¹²⁹ Bligh as a man and thought him unfit to be Governor. He was very critical of the midnight grants from Bligh's predecessor, and he did not respect Bligh's judgement and his partiality for flattery. He wrote that the Governor "was a man whom nature has intended to be the subject of abuse", yet he supported him against the rebels.¹³⁰

We come back to the garrison, so easily manipulated by Macarthur. In this "timeless land",¹³¹ the civil and military staff were "tented round by loneliness",¹³² the Governor even more so, and Dr. Law's empirical study¹³³ of the conduct of Antarctic personnel could well be applied to the early garrison which was another isolated group. Apart from the inter-service differences of procedure and outlook and the rivalries, there were the grievances¹³⁴ over land and convicts, over prices and currency. These were matters of dispute between the Governor and the Corps.

Evatt has not established the connection that he imputes¹³⁵ between the various cases in the civil court. He stated rather than argued, that these were a series of disputes in which Macarthur was trying to discredit the Governor. You will recall that the Governor was closely involved in the judicial process, as the Court of Appeal. He had the disadvantage of having very little competent legal advice¹³⁶—he had, of course, to rely on that intemperate drunkard, Richard Atkins, who was the Judge Advocate, and on the ex-convict attorney Crossley, convicted several times for perjury. There were few law books in the Colony; and it is one of the ironies of the rebellion that Bligh was using¹³⁷ an edition of Blackstone's *Commentaries* edited by Edward Christian, Downing Professor of Law and Fellow of St. John's College, Cambridge, but also the brother of Fletcher Christian, one of the leaders of the mutiny in the *Bounty*. Nor has Evatt established his view that the New South Wales Corps were fighting a rearguard action for their privileges

against Bligh's near success in doing away with them. Miss Steven has amplified Evatt—her application¹³⁸ of Max Weber seems a little ponderous—rather than trying to pursue further the bearing of her interesting work on Campbell on the Rebellion outside his framework.

One need not deny the concern¹³⁹ of the governors for the fortunes of the ex-convicts, as a matter of humanity, economy, and the responsibility of government to be sceptical about an explanation of the Rum Rebellion, cast purely in socio-economic terms. It is surprising, if one considers only intellectual factors, that such a distinguished jurist as Evatt should, in his prosecuting, so easily submerge his detachment, and with it any concern for the rights of Englishmen which he might have reached by investigating more substantially the institutional context. For instance, if Professor Butlin is right¹⁴⁰ in his view as to King's proclamation of sterling currency, then Evatt is wrong¹⁴¹ as to the legal correctness of Bligh's decision in the promissory note case. This is material as this judgement apparently¹⁴² gave Bligh a reputation for sympathy for debtors—in personal terms, many of the ex-convicts—in their disputes with creditors, such as Macarthur and some of the officers, after the inflation of prices caused by the destruction of the great Hawkesbury floods of March, 1806. Again, the occasion on which Macarthur uttered the allegedly seditious and inflammatory comments can surely not be maturely assessed without regard to the substantial issue of whether the Governor had been right in his application of the Port Regulations to the *Parramatta* case, and whether in fact Macarthur had legally surrendered the vessel to Government. Neither Evatt¹⁴³ nor the counsel for the defence, Mr. Malcolm Ellis, has fully argued¹⁴⁴ whether Macarthur had, in fact, in the context of his correspondence and conversations with the Naval Officer, breached these regulations.

* * *

It appears from the work of Sir Victor Windeyer and Professor Enid Campbell¹⁴⁵ that the prerogative power of the Crown was sufficient to support many of the Governors' actions in the Colony of New South Wales, including some of those to which some of the free settlers objected. There may have been¹⁴⁶ a strong Whig sense of distrust of executive authority and concern with the rights of Englishmen. The fact that this point of political principle—often inconveniently to the executive—made common cause, as it always does, with self-interest, should not obscure its significance for us, especially today when the scope and power of the executive government are ever-increasing. We are constantly shaken and sometimes "sent up" by our students who seem oblivious of the importance of the arduous and not always peaceful work out of which the recognition of individual and political rights in English law has been reached. Sir Victor Windeyer has written¹⁴⁷ so wisely: "Those who said that the government and institutions of the colony were illegal were wrong—yet, again, in a deeper sense, they were right. It was not that the legal foundations of the first settlement had been insecurely laid. It was that a time had come when those foundations would not support the growing weight of a British colony breathing the spirit of the common law." Those words were written in reference to the administration of criminal justice but they bear on our judgements of conduct at that time. Macarthur had voluntarily contracted into the situation in the Colony. However, even if he misunderstood

the law or should have understood it, the issue cannot be merely whether he broke the law. The historian cannot in his own assessments of the protagonists make the conclusions about the law the only basis of judgement, and this is because of the complexity of the matter and because of the way people today characteristically behave; in spite of whatever way they should behave according to the law.

* * *

If we agree that present-day life without morality would be a surrender of reason to return to the jungle, we would find historical inquiry without the application of moral judgements to be sterile and unfruitful in perspective. Yet to make moral judgements rationally implies some choice on the part of him judged. If anything indisputable comes out of this paper, it is that Australian historians should be quite sure before they luxuriantly proceed to judgement that they have done their best to postulate all the relevant boxes and have tried conscientiously to fill them. I recall Professor Tawney's dry comment:¹⁴⁸ "after nearly four centuries Martin Luther's apprehensions of a too hasty establishment of the Kingdom of Heaven appear somewhat exaggerated."

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- ² The series of articles in the *Economic Journal*, the first of which was J. H. Clapham, "Empty Economic Boxes", vol. XXXII, September, 1922.
- ³ See e.g. F. K. Crowley's chapter "The Foundation Years 1788-1821" in *Australia—A Social and Political History*, ed. G. Greenwood (Sydney, 1955). As in so many cases much material relevant to the fundamental problem is contained here, but it is developed in the penal framework.
- ⁴ E. O'Brien, *The Foundation of Australia: A Study in English Criminal Practice and Penal Colonization in the late Eighteenth Century* (London, first pub. 1937), 2nd ed., 1950, p. 86.
- ⁵ K. M. Dallas, "The First Settlements in Australia considered in relation to sea power in world politics", in *Papers and Proceedings of the Tasmanian Historical Research Association*, vol. I nos. 3 and 4 respectively (1952); M. Roe, "Australia's Place in the Swing to the East, 1788-1810", *Historical Studies: Australia and New Zealand*, VIII (May 1958); B. Atkins, "Australia's Place in the Swing to the East 1788-1810: Addendum", *Historical Studies: Australia and New Zealand*, VIII (Nov. 1958); G. Blainey, *The Tyranny of Distance* (Melbourne, 1966). Since this address was delivered, the controversy which concerns naval supplies rather than naval strategy has continued. See particularly A. G. L. Shaw, "The Hollow Conqueror and the Tyranny of Distance"; G. Blainey, "A Reply: 'I came, I Shaw . . .'", both in *Historical Studies: Australia and New Zealand*, XIII (April 1968); G. C. Bolton, "The Hollow Conqueror; 'Flax and the Foundation of Australia'" and "Broken Reeds and Smoking Flats"; G. Blainey, "Botany Bay or Gotham City" in *Australian Economic History Review*, VIII (April 1968), IX (March 1969), VIII (September 1968), respectively.

⁶ E.g. E. Scott, "British Settlement in Australia 1783-1806" in *The Cambridge History of the British Empire*, vol. VII, part 1, Australia, ed. J. H. Rose, A. P. Newton, E. A. Benians (C.U.P., 1933), pp. 58, 91.

⁷ *H.R.N.S.W.*, vol. I, part 2, pp. 1 and 10 respectively.

⁸ "Evidence before a Committee of the House of Commons on Transportation, 1 April 1779", *Journals of the House of Commons*, vol. XXXVII, p. 311.

⁹ V. T. Harlow, *The Founding of the Second British Empire 1763-1793*, vol. I (London, 1952), p. 6.

¹⁰ Lord Howe to Lord Sydney, 26 December 1784, *H.R.N.S.W.*, vol. I, part 2, p. 10; Hunter suggested to Portland that the Colony "from its situation might prove of much importance" in case of either a Dutch or a Spanish war. His despatch, 39, 1 May 1799, *H.R.A.* I, II, pp. 351 ff., received after his recall, was not acknowledged.

¹¹ G. Blainey, *The Tyranny of Distance*, p. 37.

¹² Alexander Dalrymple's "A Serious Admonition to the Public on the intended thief Colony at Botany Bay" [1786] *With a Memoir*, ed. G. Mackaness (Sydney, 1943), p. 21.

¹³ See the chapter in *Court Records of the East India Company, 1599-1603*, ed. H. Stevens (Vermont, 1886), p. 198.

¹⁴ J. Shepherd, "Austral-Asia", *The Australian Geographer*, III (May 1938), pp. 3 ff.

¹⁵ E.g., Lord Sydney to the Admiralty, 31 August 1736, *H.R.N.S.W.*, vol. I, part 2, pp. 20 ff.

¹⁶ *Journals of the House of Commons*, 23 January 1787, vol. XLII, p. 4.

¹⁷ J. M. Ward, *British Policy in the South Pacific, 1768-1793, prior to the Establishment of the Governments of the Great Powers* (Sydney, first pub. 1948), particularly Chapter 3.

¹⁸ An example of one such order, that of 8 December 1786, is in *H.R.N.S.W.*, vol. I, part 2, p. 30. The series is P.C. 2/132.

¹⁹ This has to be very carefully worked out semantically and in a given perspective. If the penal settlement could not be self-supporting, some production was necessary. The entrepreneurs, whose activity was accepted by the Secretary of State, in the under-supplied Colony might welcome the public and private contributions of penal labour at the same time as they began to chafe at the authoritarian government. After the Reports of Commissioner J. T. Bigge at the end of Macquarie's time, the convict element could co-exist with the pastoral expansion on the new ground discovered largely by private enterprise with the government's sometimes reluctantly extending the rule of law and order.

Soon, again, the efficacy of convict treatment in this community became doubted. There was the attractive power of the staple to migrants who, with other free and freed men, developed a desire for legal and political rights which upset the balance, particularly in the changed economic situation of the Homeland. In the pastoral expansion is implied the important development of a staple.

²⁰ A. G. L. Shaw, *Convicts and the Colonies—A Study of Penal Transportation from Great Britain and Ireland to Australia and other parts of the British Empire* (London, 1964), chapter 10.

²¹ The author has not been able to assemble in a brief form satisfactory statistical evidence of this. Material is, however, to be found in evidence given to Parliamentary inquiries. See, e.g., Report from the Committee on the Laws Relating to Penitentiary Houses, ordered to be printed 31 May 1811, *Parlt. Journal 1810-11* (199) vol. III, p. 367, especially the evidence of Sir G. Paul and Mr. J. A. Neween on 11 March and 25 March 1811 respectively, concerning Gloucester and Newgate. On the subject generally see H. Howard, *The State of the Prisons in England and Wales with Preliminary Observations and an Account of some Foreign Prisons and Hospitals* (1 April 1777-1780), 4th ed. (London, 1792), pp. 480-92.

²² J. D. Lang, *Transportation and Colonization; or the Causes of the Comparative Failure of the Transportation System in the Australian Colonies with suggestions for ensuring the future efficiency in subserviency to extensive colonization* (London, 1837), p. 39.

²³ See, for instance, the different categories of transported persons considered in A. E. Smith, *Colonists in Bondage, White Servitude and Convict Labor in America 1607-1776* (Chapel Hill, 1947).

²⁴ See E. O'Brien, *op. cit.*, pp. 87 ff. and A. G. L. Shaw *Convicts*. Archbishop O'Brien's book is still a most useful reference book for the developments in British penal practice.

²⁵ Rev. S. Smith "[Botany Bay] Review of W. C. Wentworth, *Historical and Statistical Account . . .*", H. C. Bennett, *Letter . . .* and J. O'Hara, *History . . .*", Article 2, *Edinburgh Review*, XXXII (July 1819), p. 49.

²⁶ *Treatise on the Police of the Metropolis* (London, 1800), p. 454.

²⁷ *Colonists in Bondage*, p. 303.

²⁸ A. E. Smith, "The Transportation of Convicts to the American Colonies in the Seventeenth Century", *A.H.R.*, XXIX (January 1934), p. 249.

²⁹ J. Fiske, *Old Virginia and her Neighbours*, 2 vols (London, 1897), vol. II, p. 189.

³⁰ Cited by J. D. Butler in "British Convicts shipped to American Colonies", *A.H.R.*, II (October 1896), p. 29.

³¹ A. Dalrymple (ed. Mackaness), *op. cit.*, p. 27.

³² S. J. Butlin, *Foundations of the Australian Monetary System 1788-1851* (M.U.P., 1953), p. 1.

³³ W. J. V. Windeyer, "A Birthright and an Inheritance—the Establishment of the Rule of Law in Australia", the E. W. Turner Memorial Lecture delivered 6 October 1961, in the *Tasmanian University Law Review*, I (1961), pp. 635-69.

³⁴ The second commission is to be found in P.C. 5/114. At first sight but not when it is realized that Phillip's first commission was very similar to the commission of a governor of a castle or garrison, it may seem odd that in the military type commission Phillip was not designated Captain General. The copy of the commission is in fact to be found in H.O. 51/146, along with other appointments such as the Governor of Edinburgh Castle and the commander of the garrison of Quebec. There was only one Captain General in the Army to whom of course these officers were subordinate. It is almost certain that Phillip's first commission was not approved by the Privy Council, although this seems to be explained by the category of Commissions. The second commission was approved by the Privy Council. The author is pursuing his research into the various forms of commission including procedures in connection with them, and the African Settlements and the Council question.

³⁵ Waldegrave to Dundas, 25 October 1797, WO 1/16.

³⁶ Cape of Good Hope, Letters Patent Instructions re, in C.O. 380/75.

³⁷ Report from the Select Committee of the House of Commons on Transportation, 28 July 1785. *Journals of the House of Commons*, vol. XL, pp. 1161-4. The evidence is also to be found in HO7/1 in the P.R.O., London: Commodore Thompson, Sir George Young, Barnes and Street gave their evidence on 2 May 1785; and Evan Nepean and James on 9 May 1785; Banks 10 May 1785. The Heads of the Plan was dated 18 August 1786 and is to be found in *H.R.N.S.W.*, vol. I, part 2, p. 171. Major Clauson's comment on civil governors, that is to say, "State, not Civilian", is contained in his memorandum of 31 January 1906 (C.A.B. 11/142 P.R.O., London). De Quincey, "the fashionable and most childish use of the word [civil] now current, viz. to indicate simply a non-military person—a use which has disturbed all our past literature for six centuries." R. Bentley, cited by Major Clauson.

³⁸ Dallas, *op. cit.*, p. 12.

³⁹ Butlin, *Foundations*, p. 4.

⁴⁰ This is not to deny the notion of reward for good behaviour, seen sometimes in the attitudes of the governors and, of course, in the official authority to grant lands to ex-convicts, nor to deny the activity of penal reformers and critics. But the parliamentary committees and the official plans show hardly any concern over this but rather with title to land, economy and the practicability of survival.

⁴¹ E. O'Brien, *op. cit.*, p. 193.

⁴² *Ibid.*, p. 36.

⁴³ *Ibid.*, pp. 206-7, 213.

⁴⁴ B. Fitzpatrick, *British Imperialism and Australia 1783-1833: An Economic History of Australasia* (London, 1939), pp. 13, 14, 15, 17.

⁴⁵ See S. J. Butlin, "Review of B. Fitzpatrick, *British Imperialism and Australia 1783-1833. An Economic History of Australasia*" *Australian Quarterly*, XI (June 1939), pp. 108-9; and Butlin, *Foundations*, p. 3.

⁴⁶ E. O'Brien, *op. cit.*, pp. 208, 216 ff.

⁴⁷ On the Home and Colonial Departments see J. C. Beaglehole, "The Colonial Office 1782-1854", *Historical Studies: Australia and New Zealand*, I (1941); and H. T. Manning, *British Colonial Government after the American Revolution, 1782-1820* (Yale, 1933).

⁴⁸ Phillip to Sydney, 15 May 1788. *Historical Records of Australia* (hereinafter cited as *H.R.A.*), I, II, p. 32.

⁴⁹ David Collins's account, *An Account of the English Colony in New South Wales From its First Settlement in January 1788 to August 1801 . . . and an account of a voyage performed by Captain Flinders and Mr. Bass* (1804 ed., p. 242), and Hunter's account in

his despatch "Separate", 12 November 1796 (*H.R.A.* II, 671) were apparently relied upon by Watson in his introduction to this volume (LXXVI). The Select Committee of 1812 was told by Margarot, the Scottish martyr, whose evidence does not give an impression of restraint or reliability, that every officer could order flogging (Evidence, 2 March, 1812). W. Richardson, the servant of Captain Meredith of the Marines, said (20 March 1812) that in Phillip's time his master could not order corporal punishment, but could bring him to a magistrate. But he was orderly sergeant to Governor King, and there was no such thing during his time; i.e., the officers could not administer summary justice. There is no suggestion that the officers administered it less severely. *Report from the Select Committee on Transportation ordered by the House of Commons to be printed 10 July, 1812*, H.C.P. 1812 (341), vol. 2, pp. 626, 628.

⁵⁰ E.g., M. H. Ellis, *John Macarthur* (Sydney, 1955), pp. 53-4.

⁵¹ Hunter to Under-Secretary King, 1 June 1797, *H.R.A.* I, II, p. 13.

⁵² E. O'Brien, *op. cit.*, p. 207.

⁵³ Bligh told the Select Committee of 1812 that prisoners and men not regularly settled in the country were obliged to have a pass which could be granted by the magistrates. He also referred to the Regulation of the Tattoo; after it "had beat, persons who went out from one house to another they had to bear a light and answer an officer"—parole counter-signs were daily given out. (*Report of Select Committee on Transportation*, 26 February 1812, p. 615.)

⁵⁴ In the licensing of boatmen, the relevance of which is to the movement of passengers, see N.S.W. Colonial Secretary in Letters subject Box 326, Call No. 4/1135, N.S.W. Archives. On the later "Bushranging Act" involved for these purposes, see *Settlers and Convicts or Recollections of sixteen years' labour in the Australian Backwoods*, by an Emigrant Mechanic, ed. C. M. H. Clark (1st pub. 1847, M.U.P., 1953), pp. 81 ff.

⁵⁵ E. O'Brien, *op. cit.*, pp. 208, 226, 227.

⁵⁶ A. G. L. Shaw, "Missing Land Grants in New South Wales", *Historical Studies: Australia and New Zealand*, V (November 1952).

⁵⁷ C. J. King, "The First Fifty Years of Agriculture in New South Wales"; Extracts from *The Review of Marketing and Agricultural Economics*, August 1948—December 1949, pp. 40 and 54.

⁵⁸ Elizabeth Macarthur to Miss Kingden, 1 September 1795, *Some Early Records of the Macarthurs of Camden*, ed. S. Macarthur Onslow (Sydney, 1914), p. 49.

⁵⁹ Phillip to Sydney, 7, 28 September 1788, *H.R.A.* I, II, p. 72.

⁶⁰ C. J. King, *op. cit.*, p. 47.

⁶¹ O'Brien, *op. cit.*, p. 246.

⁶² Shaw, *op. cit.*, p. 151.

⁶³ In the matters of convict servitude and land alienation, lay historians use the words "assignment" and "grant" in contexts not identical with that of the lawyer, and this has created confusion both in regard to policy and administration.

⁶⁴ Portland in his despatch to Hunter of 31 August 1797 (*H.R.A.* I, II, pp. 106 ff.) was "far from meaning to assert that the Crown lands would have been rendered as productive as those in the hands of individuals by the employment of the same number of labourers". The functions of incentives etc. are relevant to the comparison over a period of time. Hunter outlined the incentive problem and his fundamental preference for private agriculture in his despatches to the Duke of Portland of 28 April 1796 and 31 August 1797 (*H.R.A.* I, I, p. 558 and I, II, p. 108 respectively.)

⁶⁵ Grose to Dundas 9 January, 16 February 1793; 29 April 1794. *H.R.A.* I, I, pp. 414, 416, 469.

⁶⁶ Butlin, *Foundations*, pp. 2 ff.

⁶⁷ The Duke of Portland disapproved. Indeed, disapproval of Hunter's Order of 25 June 1798 was the occasion for his recall. Portland to Hunter 18 September 1798, 5 November 1799, *H.R.A.* I, II, pp. 225 and 387. An expression of disapproval of the *unauthorized* importation of spirits is contained in the second despatch. See also M. Steven, *Merchant Campbell 1769-1846: A Study of Colonial Trade* (Melbourne, 1965), *passim*.

⁶⁸ King to Hunter, 6 July 1800; Hunter to King, 8 July 1800; King to Hunter, 9 July 1800; Enclosures 6, 7, 8 in King to Portland, 2, 28 September 1800. *H.R.A.* I, II, pp. 606 ff.

⁶⁹ E. Shann, *An Economic History of Australia* (C.U.P., 1930), p. 35.

⁷⁰ J. White, *Journal of a Voyage to New South Wales*, ed. T. Wilson (London, 1790), p. 40.

⁷¹ E.g., that of 1 October 1800, Enclosure No. 5 in King to Portland, 28 September 1800, *H.R.A.* I, II, pp. 606 ff.

⁷² On the matter of King's initiative, see editorial note No. 195, *H.R.A.* I, II, p. 740.

⁷³ Hobart to King, 24 February 1803, *H.R.A.*, I, IV, p. 39. William Bligh in 1812 told the Select Committee that he would never interfere in prices of mercantile concerns except as concerned the barter of spirits. (*Report of the Select Committee on Transportation*, 1812. Evidence 26 February 1812, p. 618.) See also paragraphs 5, 6 and 7 of the Additional Instructions to Governor Bligh in Castlereagh to Bligh, 20 November 1805, *H.R.A.* I, VI, pp. 115 ff.

⁷⁴ Collins, *op. cit.*, p. 242, and Butlin, *Foundations*, pp. 2 ff.

⁷⁵ Fitzpatrick, *op. cit.*, p. 95.

⁷⁶ H. V. Evatt, *Rum Rebellion: A Study of the Overthrow of Governor Bligh by John Macarthur and the New South Wales Corps* (Sydney, 1949), pp. 22 ff.

⁷⁷ E. O'Brien, *op. cit.*, p. 299.

⁷⁸ M. H. Ellis, *op. cit.*, p. 63.

⁷⁹ E.g. C. J. King, *op. cit.* This is the more regrettable since the article is rare in the light it casts on technical facets of agriculture in the early days.

⁸⁰ Elizabeth Macarthur to Miss Kingden, *op. cit.*, 1 September 1795.

⁸¹ *Memoirs of Joseph Holt*, ed. T. Crofton Croker, vol. I. pp. 295. ff. J. D. Lang, *Historical and Statistical Account of New South Wales from the founding of the Colony in 1789 to the Present Day* (London, 1834), p. 60. Dr. Lang's comments on the Corps in fact related more to their sexual morality (e.g. liaisons with convict women) and to their trading, but they seem to have left their mark subsequently on the reputation of the quality of the individual's life.

⁸² T. G. Parsons, "The Social Composition of the New South Wales Corps", *J.R.A.H.S.*, L (October 1964), pp. 297 ff. "The New South Wales Corps—A Rejoinder [to Brigadier Austin]", *J.R.A.H.S.*, LII (September 1966), pp. 239 ff.

⁸³ M. Austin, "Paint My Picture Truly", *J.R.A.H.S.*, LI (December 1965), pp. 350 ff.

⁸⁴ These include Laycock, Harris, Johnston and Abbott. The list overlaps but is not identical with D. R. Hainsworth's for particular enterprises in his Note to his chapter "Trade within the Colony" in *Economic Growth of Australia 1788-1821*, ed. G. J. Abbott and N. B. Nairn (M.U.P., 1969), p. 283. As Hainsworth himself states, the records in the Macarthur Papers which he cites are fragmentary. They cover only a limited period and, without further analysis, appear a slender basis for conclusions about the role of the officers over the whole period. Even if their execution is different most of the authors of this book owe an immense debt in conception to the framework provided by S. J. Butlin, as does D. R. Hainsworth (ed.), *Builders and Adventurers, the Traders and the Merchants of the Colony, 1788-1821* (Cassell, Australia, 1968).

So far Brigadier Maurice Austin, Deputy Adjutant General in the Australian Army, who delivered several series of lectures in the University of Sydney in 1965, 1966, and 1967, has not discovered substantial fortunes salted away. They may, of course, have been lost in speculation. It is likely that the bill books of Cox, Cox and Greenwood, the Army agents in London, record many of the operations of the officers if there are such, and a perusal of them may thus resolve this matter but it seems unlikely that they will be made available.

⁸⁵ Catherine M. MacLean, "The Development of the Port of Sydney 1788-1821", unpublished thesis successfully submitted in 1963 for the Degree of Master of Arts in the University of Sydney.

⁸⁶ J. M. Ward, *op. cit.*, p. 13 and chapters 2 and 3.

⁸⁷ G. Greenwood, *Early American-Australian Relations from the arrival of the Spaniards in America to the close of 1830* (M.U.P. 1944), particularly chapter 3.

⁸⁸ J. S. Cumpston, *Shipping Arrivals and Departures, Sydney 1788-1825* (Canberra, 1963).

⁸⁹ R. F. Holder, "On Writing a History of the Bank", *The Etruscan*, XVI (1967). G. Blainey, "Technology in Australian History", *Business Archives and History* (August 1964), pp. 120-2.

⁹⁰ E. O'Brien, *op. cit.*, p. 217.

⁹¹ *Ibid.*, p. 219.

⁹² Some of the difficulties in regard to observations are suggested by K. S. Inglis, "Churches and Working Classes in Nineteenth Century England", *Historical Studies: Australia and New Zealand*, VII (November, 1957). The author cannot resist referring to the subsequently published words used of Samuel Marsden, the Principal Chaplain, but also (important for the significance of the quotation) a magistrate in New South Wales, by C. M. H. Clark in *History of Australia II, New South Wales and Van Diemen's Land, 1822-1838* (M.U.P. 1968), p. 23. He brushed aside "the warning that no convict was likely to listen to His Reverence on divine love on Sundays if he could sentence him to be flogged alive on Mondays". By contrast, a clergyman of whatever denomination sometimes

softened the harshness of discipline. The implication in Cullen, "Bishop Willson in Norfolk Island", is that the lash was less frequently used during the second visit of the Roman Catholic Bishop of Tasmania (*Tasmanian Historical Research Association Papers*, 1952, no. 2).

⁸⁸ Marcus Clarke, *For the Term of His Natural Life* (first pub. 1874).

⁹⁴ Cited A. G. L. Shaw, "The Origins of the Probation System in Van Diemen's Land", *Historical Studies: Australia and New Zealand*, VI (November 1953), p. 21.

⁹⁵ Enclosure No. 1 in King to Portland, Separate A, 1 March 1802, *H.R.A.* I, III, pp. 21-2.

⁹⁶ "Extracts from 'A Plea for a Constitution' by Jeremy Bentham, 1883", Appendix B, *H.R.A.* IV, I, p. 890.

⁹⁷ Butlin, *Foundations*, pp. 18 ff.

⁹⁸ Hunter to King, 4 June 1798, *H.R.A.* I, II, p. 155.

⁹⁹ G. Caley, *Reflections on the Colony of New South Wales*, ed. J. E. Currey (1966), p. 145.

¹⁰⁰ *Ibid.*

¹⁰¹ Banks to King, 29 August 1804. (Banks Papers in the Mitchell Library, Sydney, cited Caley, *op. cit.*, p. 94).

¹⁰² M. Steven, *op. cit.*, p. 161. See also the cruder view of C. Hartley Grattan in his preface to H. V. Evatt, *op. cit.*, and, more recently, in *The South-West Pacific to 1900, a Marine History—Australia New Zealand The Islands Antarctica* (University of Michigan Press, 1963), p. 55.

¹⁰³ On the *Bounty* incident and for some comparisons with the situation of other ships' captains, see the exchange between E. Scott and H. Montgomerie, "A Rum Go" and "The Great Rum Racket", respectively in the *Australian Quarterly*, X (September 1938), and XI, (March 1939.)

¹⁰⁴ E. Jenks, *A History of the Australasian Colonies (From their foundation to the year 1911)* (C.U.P., 1912), p. 46.

¹⁰⁵ Mr. Malcolm Ellis died between the delivery of the paper and its publication.

¹⁰⁶ J. J. Auchmuty, "The Background to the Early Australian Governors", *Historical Studies: Australia and New Zealand*, VI (November 1954). "The Background of Australian History", *J.R.A.H.S.*, XLI, 3, (1955).

¹⁰⁷ Adjutant Mitchin's Statement, Enclosure No. 30, 30 September 1807, in Johnston to Castlereagh, 11 April 1808. *H.R.A.* I, I, p. 404. See Ellis, pp. 282 ff.

¹⁰⁸ Captain Fraser to H.R.H. the Duke of York, No. 1/767, f.611, ff. See also Crawford's Minute of 10 August 1795, 1/91 f.147, ff.

¹⁰⁹ W. O. to C. O. 20 November; Portland to Crawford, 1 December 1795; *ibid.* f.607, 637.

¹¹⁰ Waldegrave to Prince Edward, 14 August 1797, enclosed in Waldegrave to Dundas, 25 October 1797, W.O.1/16.

¹¹¹ Waldegrave to Dundas, 25 October 1797, *op. cit.*

¹¹² Waldegrave to Prince Edward, 14 August 1797, enclosed in Waldegrave to Dundas, 25 October 1797, *op. cit.*

¹¹³ Waldegrave to Dundas, 25 October 1797, *op. cit.* Phillip to Sydney, 9, 27 October 1788, *H.R.A.* I, I, pp. 90 ff.

¹¹⁴ One of Brigadier Austin's lectures as yet unpublished treated the matter.

¹¹⁵ See the Memorandum from the Horse Guards 24 November 1825 and a circular despatch to Bathurst 20 November 1824 in W.O. 43/13. The application of this arrangement regarding the military appointment of the civil governor may be seen in the case of Bermuda in June and July 1831 in W.O.4/1020. Major Clauson's minute *op. cit.* summarizes the issue.

¹¹⁶ O. Rutter, *Turbulent Journey: A Life of William Bligh, Vice Admiral of the Blue* (London, 1936), p. 99. H. S. Montgomerie, *William Bligh of the Bounty, in Fact and in Fable* (London, 1937), pp. 11, 261, 265. The impression of Montgomerie not unsympathetic to Bligh may be seen in his reference to the episode of Brown.

¹¹⁷ *The Journals of Captain James Cook on His Voyages of Discovery*, ed. J. C. Beaglehole (C.U.P., 1955), vol. I, 23 May 1770, p. 323.

¹¹⁸ H. V. Evatt, *op. cit.*, p. 75.

¹¹⁹ See Rutter, *op. cit.*, pp. 120 ff. Consider the spellbound admiration for Bligh "who should have a patent for swearing" of a bystander quoted M. Ellis, *op. cit.*, p. 260.

¹²⁰ *Ibid.*, p. 81.

¹²¹ Elizabeth Macarthur to Miss Kingden, 1 September 1798. *Macarthur Papers* A2908, Mitchell Library, Sydney. Cited M. H. Ellis, *op. cit.*, p. 9.

¹²² Lord Macaulay, "Milton", in *Critical and Historical Essays Contributed to the Edinburgh Review* (London, 1877), p. 17.

¹²³ H. S. Montgomerie, *op. cit.*, p. 167.

¹²⁴ O. Rutter, *op. cit.*, p. 233.

¹²⁵ *Ibid.*, p. 236.

¹²⁶ On Bligh's character, his observations connecting his vanity with his language and capacity to command, as well as on other aspects such as Bligh's severity and status as a disciplinarian, J. C. Beaglehole is very illuminating. His concept of capacity to command seems to go to the root of the matter, and he provides some of the material to assist this in "Captain Cook and Captain Bligh", the E. W. Collins Lecture delivered at the University on 3 August 1967 (Victoria University of Wellington, 1967).

¹²⁷ John Macarthur's letter to his wife Elizabeth on the day of the Rebellion and the comment preceding it. *Some Early Records of the Macarthurs of Camden*, ed. S. Macarthur Onslow (Sydney, 1914), pp. 152-3.

¹²⁸ See Montgomerie, *op. cit.*, especially pp. 266-7, and "The Great Rum Racket", *op. cit.*

¹²⁹ G. Caley, *Reflections on the Colony of New South Wales*, ed. J. E. Currey (Melbourne, 1966), p. 147.

¹³⁰ *Ibid.*, p. 161.

¹³¹ E. Dark, *The Timeless Land* (London, 1941).

¹³² M. Barnard Eldershaw, *Phillip of Australia: An Account of the Settlement at Sydney Cove 1788-92* (London, 1938), p. 126.

¹³³ P. G. Law, "The Antarctic Today", an oration delivered at the Pioneers' Memorial Trust, 13 November 1952. (Wangaratta Chronicle Print, 1952).

¹³⁴ These may be culled from *H.R.A.* and from the obvious secondary sources, with the caution that we must distinguish between the Governors' pious hopes and the execution of their plans and orders.

¹³⁵ H. V. Evatt, *op. cit.*, especially pp. 44, 97, 109, 113, 125 and 136.

¹³⁶ See the rebels' examinations of Richard Atkins, John Palmer, Mr. Griffin, enclosures 9 and 16, 10 and 11 in Johnston to Castlereagh, A, 11 April 1808; see also Bligh to Windham October 1807 in *H.R.A.* I, IV, pp. 209 ff. and 144 ff. respectively; on the particular problem of succedaneum for Atkins, see Montgomerie, *op. cit.* pp. 159-60, 234.

¹³⁷ Evatt, *op. cit.*, p. 136.

¹³⁸ M. Steven, *op. cit.*, p. 169.

¹³⁹ The concern, too, is not to be identified with respect or affection but is more a matter of good government, law and order and food supply, with perhaps a sense of sympathy for the underdog. For the opinions of Hunter, King and Bligh on the character of the Emancipists, see Hunter to Portland 39, 1 May 1799, *H.R.A.* I, II, pp. 351 ff.; Enclosure 1 in King to Portland, Separate A, with general letter No. 6, 1 March 1802, *H.R.A.* I, III, pp. 416 ff.; King to Johnston, 18 February 1803; enclosure C.9 in King to Hobart, Military 2, 9 May 1803, *H.R.A.* I, IV, pp. 159 ff.; Bligh to Windham, 31 October 1807, *H.R.A.* I, VI, pp. 144 ff.

What C.M.H. Clark, *A History of Australia from the Earliest Times to the End of the Age of Macquarie* (Melbourne, 1962) calls Hunter's peculiar religious view of the world shows at least his interest in, if not his favourable opinion of the convicts.

¹⁴⁰ Butlin, *op. cit.*, p. 70, note 97.

¹⁴¹ H. V. Evatt, *op. cit.*, p. 109.

¹⁴² Curiously, this point is not discussed in the article of B. Fletcher, "The Hawkesbury Settlers and the Rum Rebellion", *J.R.A.H.S.*, LIV (September 1968), but it may be an implication of Evatt, *ibid.*

¹⁴³ Dr. Evatt does not argue the matter textually in terms of the Port Regulations in Chapter XXI.

¹⁴⁴ M. H. Ellis, *op. cit.*, pp. 302-6. For Macarthur's version see *Some Early Records of the Macarthurs of Camden*, pp. 139 ff.

¹⁴⁵ E. Campbell, "Prerogative Rule in New South Wales 1788-1823", *J.R.A.H.S.*, L (August 1964), pp. 161 ff. "The Royal Prerogative to Create Colonial Courts", *The Sydney Law Review*, IV (August 1964).

¹⁴⁶ W. G. McMinn, "Psychiatry and Whig Principles", *Quadrant*, XIX, no. 2, pp. 76-8.

¹⁴⁷ Sir V. Windeyer, *op. cit.*, the E. W. Turner Memorial Lecture delivered 6 October 1961 in the *Tasmanian University Law Review*, I (1961).

¹⁴⁸ R. H. Tawney, *Religion and the Rise of Capitalism: A Historical Study*, Holland Memorial Lectures 1922 (London, 1926), p. 94.