

# **BICENTENARY OF THE LEGISLATIVE COUNCIL**

## **SEMINAR 1**

### **PEOPLE, PLACE AND POLITICS: NEW SOUTH WALES IN 1823**

**Thursday 24 November 2022**

*Second Day (resumption)*

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## WELCOME

**Mr DAVID BLUNT [Clerk of the Parliaments]:** Welcome to the second day of our first bicentenary conference, *The State of the Colony: People, Place and Politics in 1823*. We're so pleased that you could join us here today at Parliament House. Welcome also to those who are joining us online on the live stream. Of course, the conference has been a little disjointed, with day one taking place on Thursday 8 September, but what a wonderful day that was. The expert panel discussion led by Professor Kirsten McKenzie, which introduced us all to the phenomenon of colonial commissions of inquiry and placed the work of Bigge in a proper context, was simply outstanding; so too the mind-expanding Reading of Country from Dr Danièle Hromek.

But the session I want to briefly touch on this morning is the delightful and informative conversation that we heard between Ray Ingrey and Paul Irish, "Hidden in Plain View", which explored the lives of Sydney's coastal people since 1788. Combining the oral histories of Ray's family and Gadigal Elders with the traditional historical and archaeological work of Paul, the story was compelling. We heard of the devastation initially wrought by smallpox in 1788-89. But then the focus was upon the resilience of the surviving families and their ongoing lives around the harbour and the eastern suburbs, their strategic relationships with members of this place, the two Houses of Parliament—who, these days, we would refer to as helpful allies—and the continued resilience of the Gadigal people after being forced into the settlement at La Perouse.

If I can add a personal epilogue to what we heard from Ray and Paul on that day, I would like to briefly mention a wonderful day that President Mason-Cox and I spent in the company of Ray's brother Chris at La Perouse earlier this year. We were privileged to witness the work of the Gujaga Foundation and its language programs. We saw the work of the Gamay Rangers out on the bay alongside the National Parks and Wildlife Service, and we spent time at IndigiGrow, which is far more than a nursery and is doing amazing things bringing back culturally significant vegetation to the eastern suburbs and providing business opportunities for a range of Aboriginal business enterprises. It was quite an inspiring day. So, with that vignette, it's my honour to acknowledge the Gadigal people and their Elders and thank them for their custodianship of this land on which the Parliament is situated, as well as acknowledging the Elders of the custodians of the lands on which those of you who are participating online are located today.

Before I move to the program for today, I must, of course, acknowledge the reason we are having day two now, at the end of November, having first met on 8 September for a two-day conference. Of course, early on the morning of Friday 9 September, Sydney time, news came through of the passing of Her Majesty Queen Elizabeth II. That prompted us to make the very difficult call to postpone the second day of the conference. I know that was inconvenient for many of you, and I thank you for your patience and your tolerance in coming back again today. We did that for two reasons: firstly, as a mark of respect to the late sovereign and, secondly, because the President, the Black Rod and I—particularly the Black Rod and President—were immediately pulled into the task of arranging a very rare and historic constitutional event in collaboration with Government House, the Department of Premier and Cabinet and our colleagues in the Legislative Assembly and the Department of Parliamentary Services.

That ceremony was the proclamation of the King here at Parliament just two days later on 11 September. It was quite an undertaking to organise that in 48 hours. You may have heard reference to plans called "London Bridge". There were leaks from the United Kingdom over a number of years and public discussions of the plans for what would happen on the death of Her Late Majesty. That included a proclamation of the new King in London and the accession ceremony that many of us witnessed on TV over the weekend. Following the proclamation in London, royal protocol dictates that a new sovereign's ascendancy to the throne is then proclaimed in quick succession in all the King's realms, which, of course, includes Australia.

That proclamation was made by the Governor-General at Parliament House in Canberra at 12 noon on 11 September and then in each State at 12.30 p.m. Here in Sydney the Presiding Officers received the Chief Justice, the Premier and Her Excellency the Governor in a formal ceremony resplendent with special salutes before Her Excellency proclaimed the King before a crowd of thousands on the veranda where you entered Parliament House today. As the last similar ceremony had occurred over 70 years ago, it was a significant proceeding to bear witness to and one that required meticulous planning and cooperation from many agencies. I thought you might like to see a clip of what happened on that day.

*[Video played.]*

It was quite an occasion. As you will no doubt remember, that ceremony on the Sunday was followed by 10 days of mourning in the United Kingdom, including the Queen's coffin lying in state for public visitation and the grand and very touching funeral at Westminster Abbey on 19 September. Those significant constitutional events are a striking and rather timely reminder of the broader mechanisms of government and governance in which the New South Wales Parliament and the Legislative Council are located, as we meet here today to reflect not only on the constitutional development of the Council but also, importantly, on the key figures and events that shaped the early colony and, since then, our early democracy.

So I trust that you are ready for another thought-provoking and illuminating day. This morning we start with Professor Kirsten McKenzie, Professor Emerita Penny Russell and Dr James Dunk, who will lead a discussion focused on interpersonal politics, the courts and the press. That will be followed by Reverend Dr John Harris and Caleb Cugley, who will explore executive power, particularly in the context of the legacy of Governor Macquarie. Kim Eberhard, Westpac Group archivist and historian, will then scrutinise the intersection of the Bigge reports, Australia's first currency and banking in the early colony. The penultimate presentation of the day will be delivered by Jessica North, who will paint a picture of the lives of some truly extraordinary women from the early colonial period. And, to finish, we are honoured that Ms Ita Buttrose, AC, OBE, will be delivering our closing keynote address.

Both Kim Eberhard and Ms Buttrose will be addressing us over Zoom. We will then finish the day with the reception in the Fountain Court. There will be an opportunity to tour both Chambers, although you will find the Chambers looking a little different today than they usually do. You will also find the foyers looking different; the walls are a little bare. This is probably the last public event that will be happening in this building before a very significant heritage restoration and building program begins next Monday. That's why we wanted to squeeze in day two of the conference this week. We are very lucky that all the speakers were available today.

Morning and afternoon tea will be available in the Fountain Court at 10.30 a.m. and 2.45 p.m. respectively. Lunch will be held from 12.15 p.m. to 1.30 p.m. Those who opted for the lunch back in September will be able to gather in the members' lounge. Hopefully we can make up for the postponement of day two in September by offering you a truly delicious menu that incorporates "a selection of native Australian flavours, grown in the rooftop garden here at Parliament House". I hope you'll all enjoy that. To ensure each session runs to time, we ask that everyone is back in their seats five minutes before the scheduled session start time. You can get water from the water fountain in the Fountain Court—not the fountain in the middle, but a small water fountain. There are bathrooms on the northern side of the Fountain Court. If you have any questions, just look for one of the Black Rod staff members—the people who greeted you as you came in this morning.

**POLITICS AND THE PEOPLE:  
INTERPERSONAL POLITICS, THE COURTS AND THE PRESS**

**Professor KIRSTEN McKENZIE**, University of Sydney

**Professor Emerita PENNY RUSSEL**, University of Sydney

**Dr JAMES DUNK**, University of Sydney

**Mr DAVID BLUNT [Clerk of the Parliaments]:** I invite one of our newer members of the Legislative Council, the Hon. Chris Rath, to introduce the first session. Chris Rath has notable experience in how youth politics engages with society at large. Chris joined the Liberal Party when he was in year 11 and was elected to youth and other leadership positions from 2007 onwards. That must have been at a very young age, Chris! Outside of politics, Chris' interests include marathon running, opera, history and free market economics. An author in his own right, Chris wrote a chapter focused on intergenerational equality that was published in a book about Australian political thought entitled *The Forgotten People – Updated: Liberal Essays on Modern Australia*. In addition, Chris is a board member of the Commonwealth Day Council and the Australian Youth Trust. Please welcome the Hon. Chris Rath.

**The Hon. CHRIS RATH [Member of the Legislative Council]:** Thank you for the introduction, David. It's great to be here to celebrate the bicentenary of the Legislative Council. The theme of this conference is "1823: The State of the Colony". This morning's first session strikes right at the heart of that theme. Led by our experts, we will explore the relationship between formal politics and the informal politics of everyday life in Sydney at the time the Legislative Council was formed in 1823. How could people exercise agency or find a voice in a society that as yet had no formal politics of representation? In what promises to be a standout session, our panel will explore lesser-known events—small scandals and darker stories of swindling, sexual violence or attempted suicide—which were amplified by those whose power lay close to the new constitutional politics, becoming public struggles over reputation and power.

To take us on that journey, you will remember Professor Kirsten McKenzie of the University of Sydney, who presented on our first day in September an analysis of the transformative effects of the Bigge inquiry. Kirsten's published works include *Scandal in the Colonies, A Swindler's Progress* and *Imperial Underworld: An Escaped Convict and the Transformation of the British Colonial Order*. She is a fellow of the Australian Academy of the Humanities and the Royal Historical Society. Her current work on imperial commissions of inquiry is funded by a collaborative Australian Research Council project, *Inquiring into Empire: remaking the British world after 1815*, which is led by Professor Lisa Ford.

Penny Russell, FAHA, is an historian specialising in gender, class and culture in nineteenth-century Australia, with a particular interest in families, intimacy and colonial encounters. Her recent books include *Honourable Intentions? Violence and Virtue in Australian and Cape Colonies, c. 1750 to 1850*, with Nigel Worden, and the award-winning *Savage or Civilised? Manners in Colonial Australia*. Penny is Professor Emerita at the University of Sydney, where from 1990 to 2021 she taught Australian and gender history. In 2022 she received a lifetime achievement award from the Australian Historical Society.

Dr James Dunk is a research fellow in the School of Humanities and the Sydney Environment Institute at the University of Sydney. His research joins histories of health and medicine and the environmental humanities. His first book, *Bedlam at Botany Bay*, won the Australian History Prize at the 2020 NSW Premier's History Awards and was shortlisted for several other prizes. He is currently president of the Australian and New Zealand Society of the History of Medicine. His articles have been published in *The New England Journal of Medicine*, *History of Psychology*, *Rethinking History* and other journals and his literary writings appear in various magazines. Against that impressive backdrop of expertise and achievement, it is my pleasure to hand over to our first presenter, Professor McKenzie.

**Professor KIRSTEN McKENZIE:** Thank you, Chris, for that kind introduction, and thank you all for coming back. It's wonderful to see you. I'd like to begin by acknowledging the Gadigal people of the Eora nation, on whose unceded lands we stand, and to pay my respects to Elders past and present. This session is on interpersonal politics and the courts and the press. I normally begin by making a joke about how I have recently been publishing on riveting topics like constitutional law, but that irony is perhaps a little lost on this audience, who do find constitutional law riveting. I began life as a historian of scandal—so from the ridiculous to the sublime—but the topics of scandal and constitutional law are far less apart than we might think. That's a point that I will be making later.

In this first introductory talk of our three, I will talk about what scandal can offer us as a research agenda. Someone once told me I wasn't afraid to write frivolous history. Of course, these topics are not frivolous at all; scandal is a very powerful social force, as I hope you will understand by the end of this session if you don't already. It's a route into understanding how politics works—in this case, in New South Wales in the early 1820s and beyond. In the first book I published in this country, *Scandal in the Colonies*, I argued that scandal can be our entry point into politics large and small, from the small-scale interpersonal politics of everyday life to the large-scale politics of legislative or policy changes. When one woman in the streets of Sydney tells another that she is an adulterous whore and a regiment of soldiers would not satisfy her, what does that mean about interpersonal competition and disputes in neighbourly life? What happens when transportation to New South Wales has ended? What role might scandal play in that?

Scandal offers us a window into the past because what is scandalous in one time and place is not necessarily scandalous in another. Scandals also provoke talk. Transgressions have to be known about for there to be a scandal. If something is hidden, there is no scandal. Talk, broadly defined, leaves the traces that we historians need in order to tell our stories. So, without some kind of publicity, there is no scandal. The concept of audience is built into the very law of libel and slander itself. Even the most trivial incident of scandal can be grist to the historian's mill, often because the dispute is about something else or has a hidden agenda other than what it might seem on the surface.

Let me give you an example from elsewhere. Those of you who attended last time will know that I'm a historian not just of New South Wales but also of how imperial worlds are interconnected. This story comes from our project on imperial royal commissions of inquiry. Now, there's a lot of very serious stuff in those investigations, but a great deal of ink is spilled in investigating something called "the affair of the trousers". It involves Governor Edward Barnes of Ceylon. Barnes is accused of damaging the authority of Britain after the head of his civil department loses his pants in a gambling evening with the Governor. Today we have strip poker, and some people in this room may be practitioners of that art. I personally am not, but we're not judging here. So perhaps the best way to describe what happened in this incident is "strip whist". Who knew that was a thing? And one bloke's luck is out in this strip whist, and he ends up being carried home in a palanquin in his underwear.

This is the so-called "affair of the trousers", and it will probably surprise no-one that the man who makes these accusations to a royal commission of inquiry is someone who is seeking revenge for having lost a cushy job in the government service: one John Whitchurch Bennett. Now, like the controversies we heard about from Dr Matthew Allen last time, Governor Barnes makes an enemy of Bennett for leaving him off a dinner invitation list. Again, all of this seems entirely trivial, but personal spleen is, of course, not how Barnes frames the story. He presses official buttons by claiming that this gambling incident is a dangerous loss of white imperial prestige. It is "subversive of the respect due from the natives of Ceylon". So, for him, this is serious political business.

I don't need to tell this audience in this place that scandals can be marshalled by opponents to do serious political damage to individuals, causes and policy agendas. For the historian, the task is to look at what accusations mattered to people at the time and why. So why might a trivial incident like the affair of the trousers be taken so seriously and investigated so thoroughly? To what political use might an accusation of misconduct in public or private life be put? Where, indeed, is the line drawn between the public and the private? How are different sorts of people vulnerable to scandal, and what does this tell us about their status in a particular community?

Again, it might not surprise you that if we look at New South Wales actions in the civil courts in the 1820s, we see that men bring libel actions when their creditworthiness and their business practices are attacked. Women bring actions in defence of their sexual reputation, often in breach of promise of marriage actions or in seduction claims. All of these legal actions are based on reputational risk, and those risks have real financial consequences, whether they are breach of promise of marriage or whether they are libel actions in relation to creditworthiness in the colonial economies.

People use the law or attempt to use the law to their own advantage. Whatever the actual statutes laid down, they try to get what they want. So, just like in the affair of the trousers, we need to be attentive to the arguments that are being used by historical actors in court and to how they frame their own stories, as well as to what kind of evidence they produce. Beyond the courts themselves, we can ask what kind of issues get traction in public debate and how that evolves over time. Often scandals start out being about one thing and morph into something else. Anyone trying to use scandal as a political or personal strategy to get what they want should beware; it often backfires. No less a personage than the Prince Regent, later King George IV, discovers this just a few years before 1823. Those of you who know the story will know that the Prince Regent is a well-known libertine. He's had a string of mistresses and he thinks he can rely on the double standard of sexual morality. In a breathtaking act of hypocrisy, he tries to get rid of his estranged wife by accusing her of adultery. Those of you who know the story will know that this does not turn out well. It's a severe miscalculation.

So scandal is a force that is difficult to control, but it is a force in all societies because respectability is a relational concept. Some people are respectable only because others are not. However, I would suggest that there is something arguably particular about colonial scandals. So, if scandal is operating across the board, is there something particular about colonial scandals, which is what we're talking about here today? New South Wales in 1823, if we are looking at a particular stratum of it—white New South Wales, European migrant New South Wales, settler New South Wales—is a relatively small society. People know one another's business. Scandal can operate by word of mouth, but it's also tapped into a global imperial network. It's clear from the way scandals work here and in other colonial societies that reputations are considered to be global, just like trading and administrative networks are. What is gossip in one place will soon become gossip in another. Equally, if societies have reputations just like individuals do, then scandal impacts colonial societies, potentially, in distinctive ways.

This is where we get to the constitutional position of New South Wales in 1823. So this is much more than what we might think of, dismissively, as the cultural cringe—the idea that people in colonial society might care about what the so-called "mother country" thinks of them. Policy towards colonies is decided in Britain's Parliament and thus, even in limited ways, is subject to British public opinion. The franchise in Britain might be extremely limited, but the expansion of the periodical press in that country, despite attempts at official censure, ensures that popular influence extends far beyond the formal right to vote. So, for example, historians talk about the first mass movement in British political history being the campaign against the slave trade and, later, against slavery itself. This is a key example of this. It's driven by many people—women, marginal people, working people—who cannot vote. They have no enfranchised rights, but they are still pushing a political agenda. So it actually does matter what politicians, lobbyists and, indeed, ordinary people in Britain think about New South Wales, and trying to influence that reputation is a key goal of many vested interests both here and abroad.

These are societies that were linked by goods, by people, and by ideas carried by word of mouth and by a constant stream of paper. This brings me, then, to speak about the press. This session is called "Interpersonal Politics, the Courts and the Press" and scandal sits at the interface of these. When I wrote *Scandal in the Colonies* about Sydney and Cape Town, it struck me very strongly that in both cities the first independent newspapers are founded in the same year, in 1824. In both colonies these presses get into almost immediate strife with the local administrations. In Cape Town, the independent press lasts only a matter of months. It is shut down by the authorities for reporting the trial of a man who is accused of libelling the Governor.

This is a man called William Edwards. He uses his trial to grandstand his views on the corrupt Cape administration, particularly around illegalities to do with the ending of the slave trade. The accusations are all duly written down and reported in the local paper, which means they are then reported in other papers around the world, including in Britain. Edwards throws in some juicy gossip about the Governor having an affair with a former enslaved woman. He even tries to call this woman as a witness, but the judges shut that down quite quickly. The news is soon shipped out to London, to regional Britain, to Sydney and to elsewhere across the empire, so even those who cannot get into the courtroom in Cape Town or get their hands on the Cape Town newspaper can read extracts in their own local papers.

William Edwards was a Cape Town notary. He was a self-appointed anti-corruption whistleblower—a kind of Julian Assange of the 1820s, if you like. He was also, although he went to his death denying it, an escaped convict from New South Wales called Alexander Kaye. He becomes a thorn in the flesh of two colonial administrations: New South Wales and the Cape. He is the subject of that book with the curious subtitle that Chris read out earlier, *Imperial Underworld: An Escaped Convict and the Transformation of the British Colonial Order*; he is the escaped convict. He escapes from New South Wales, changes his identity and ends up at the Cape. The scandals he provokes are gleefully reported by newspaper editors critical of local government, in both Sydney and in Cape Town.

These editors and other lobbyists are seeking to influence their political allies in London and to use the scandal to get what they want in a broader sense. So reputations matter: reputations of governments, of colonies, of societies and, of course, of people. This has concrete implications for policy decisions. The courts and the press are a global force that allow marginal individuals and events to become surprisingly impactful. They have a disproportionate impact on imperial politics. Whether we call him Alexander Kaye or William Edwards, he causes so much trouble that he eventually ends up on Norfolk Island in 1828. There his story ends tragically; he hangs himself within days of being sent to the island. He is dissected after his death.

Just as an aside, the reason they dissect him is because they know that Alexander Kaye broke his collarbone in Newcastle when he was a convict. Does William Edwards have this broken bone? Can they definitively prove that William Edwards and Alexander Kaye are the same person? The problem is that the dissection causes so much of an uproar, because only convicted prisoners can be dissected in this period, that the outcome remains mysterious, so we still don't definitively know. The dissection causes yet another scandal. Anecdotally, I think that William Edwards and Alexander Kaye are the same person, but for me the interest is not

so much about the truth behind the story, but much more about how the story is then weaponised for political effect. It is weaponised very much by critics in New South Wales who want to accuse Governor Ralph Darling's administration of tyranny.

Cases of seditious and criminal libel that colonial governments launch against newspapers in New South Wales allow editors to just as publicly defend themselves in court, with all the rhetoric of English liberty at their command. We know even now that libel actions can be a double-edged sword. These courtroom pyrotechnics were given top billing in their own papers. They get dragged to court for libel, they libel more in the court, they report on the libel and then they publish it. This is laid out for the benefit of an increasingly vocal reform lobby in London as well as those who are squeezing into the court building in Sydney. The independent press lasts a matter of months in the Cape Colony, although it is later resurrected and protected with some limitations by legislation that is passed there in 1829.

It is easier to shut down the Cape press because the colony has previously been Dutch—it's now English—so it still has a Roman-Dutch legal system. There are severe limitations on press freedom that the British governors gleefully use, including exercising what is known as political removal—what a great executive power!—or "politieke uitzetting" in Dutch. Political removal is the power to exile on executive order if someone is deemed dangerous to public security, and that decision is entirely in the Governor's eyes. They get rid of the newspaper editors by exiling them, but there are still scandals that are provoked by this and by the closure of the press. It is a clear moment where the investigations by John Thomas Bigge, which are happening both here and in South Africa, are causing questions to be asked about these draconian executive powers, in this case in the Cape Colony. That's what happens in the Cape.

What happens in Australia, in New South Wales, is somewhat different. The first independent newspaper in Sydney not run by the government, *The Australian*, which is founded in 1824—the same year as the *South African Commercial Advertiser* is founded in Cape Town—sails very close to the wind. Many of you will know that it has barrister editors William Charles Wentworth and Robert Wardell—it's always useful to have a lawyer dealing with a newspaper. Edward Smith Hall's *The Monitor*, which is founded in 1826, is even more on the edge. But neither of these papers is actually banned, as happens in Cape Town, nor are the editors forcibly exiled, although it is clear that Governor Ralph Darling would very much have liked to have exiled these editors. He had different legal weapons at his disposal; he used licensing laws and there were actions for seditious libel. Hall spends a large proportion of 1829, for example, editing *The Monitor* from gaol. He oscillates between the Supreme Court, where he is convicted of seditious libel, and the cell, where he returns to write more seditious libel. Then it goes back to court et cetera.

Darling is hamstrung by the New South Wales Act of 1823, by the strengthening of the judiciary relative to executive power that results and by his own Chief Justice, Francis Forbes. The Bigge reports—and I'm sure we'll hear more about this in relation to executive power—are often remembered in Australia as a time of tightening of authority over convicts, for example, but the story is complex. There are checks on executive power that mark this royal commission moment, not just in New South Wales but also in the Cape and elsewhere, and open up some significant freedoms. Forbes is using the New South Wales Act to disallow Darling's more draconian actions against the New South Wales press because he argues they are inconsistent with the law of England, which is loosened up in this time.

Alan Atkinson—whose latest book on the Macarthurs is wonderful—is a historian of great renown. He points out in previous work that Wentworth and his editorial allies at *The Australian* are blind to the battle of land and liberty being fought by Aboriginal people facing an invading settler force. Ironically, this is in stark contrast to their equivalents in Cape Town. There the newspaper editors are very strongly enmeshed in the protests of both enslaved people and First Nations people against the colonial state, so there is a rather interesting contrast there. In Sydney, for the newspaper editors, it's government-allied elites—the so-called "exclusives"—who are the villains. The emancipist convicts are the victims of the story being told to policymakers. In the absence of an elected colonial legislature, the press and the courtroom are the stage where those who see themselves as men of influence are enacting their calls for constitutional change. I'll end my introductory talk with a quote that is the complaint of Governor Ralph Darling: "The people are taught by the papers to talk about the rights of Englishmen and the free institutions of the Mother Country, many of them forgetting their actual condition." Thank you.

**Professor Emerita PENNY RUSSELL:** Thank you, Kirsten. For years after the Legislative Council came into existence in 1823, it was not a representative body. Disagreements about the direction of New South Wales society were threshed out not in Parliament but in the press, where papers like *The Australian* or Edward Smith Hall's *The Monitor* constituted themselves robust critics of government and defenders of the spirit of liberty, with Hall as champion, in particular, of the respectable emancipist or ex-convict. New papers appeared in the 1830s, the decade in which my stories today take place. Only a few papers, most notably *The Sydney Herald*, lasted for more than a few years. Most were erratic and short-lived, serving as a platform for their owners' and

editors' views as much as a source of news. They thrived on controversy, even if it involved editors in legal trouble or exposed them, as it sometimes did, to violent retribution.

One of the more controversial of the 1830s papers was *The Colonist*, owned by that peppery Presbyterian, the Reverend John Dunmore Lang. Lang founded his paper, in part, to defend himself against the attacks of his many critics and, in part, to combat the licentiousness and immorality of the colony and deplore the baneful influence of the emancipist press in particular. Hall and Lang, then—very different men—were both self-styled moral crusaders. They are very important to my story. They tied their views on sexual morality directly to their critiques of the governance, formal and informal, of New South Wales.

I'm a social historian, and I find the politics of scandal most interesting for what it reveals of people and their everyday lives. We know that scandals were far from representative and often not true, and that what we read in the colonial press is not a direct authentic account of personal experience or how people behaved. As Kirsten has shown, scandals are often most revealing of their political context. We learn a lot about a society by paying attention to what they paid attention to and noticing the political purposes that lay behind accusations of misconduct.

But I like to come at this question from a different direction because scandals can also tell us a lot about what a society normally judged to be not worth noticing but, for certain reasons, occasionally did. They offer, in this sense, horrifying glimpses of conduct and sufferings that were most often found unworthy of attention. They give us some tools to prise open the often invisible world of gender relations by asking what effect that everyday indifference may have had upon many women who remain voiceless in our colonial history. In this paper, I briefly recap two stories unearthed and controversially paraded by those vocal moralists, Hall and Lang. The first, in particular, contains some distressing details; I apologise for that and I won't linger on them. Instead, I want to show the processes by which these events became public stories and then reflect on what we can, nonetheless, learn from them about women's condition.

In May 1832 three soldiers from the 39th Regiment were indicted at the Supreme Court of New South Wales for violating the person of Catherine Hayes more than three months earlier. Hayes, an Irish-born ex-convict and the wife of a convict who was still serving his sentence, had been on her way home from Bathurst to Richmond when she got separated from her party. She accepted the escort of a soldier who was going her way, headed for the weatherboarded hut where he was stationed with a small detachment of the 39th. The official duties of this group were to escort convict gangs from one station to another, to apprehend bushrangers—that is, any convict at large without permission—and to protect travellers crossing the Blue Mountains. It's doubtful that anyone felt the safer for their presence, however, for the soldiers were notoriously violent and disorderly. Reports said that two women had recently been taken by them and held, one for a night, the other for a week, before being released.

The weatherboarded hut stood high in the mountains at the site of the present-day Wentworth Falls. Besides the garrison, the only significant building was the neat little inn that stood opposite. In this isolated community, the small military force held significant power in numbers, authority and sheer weight of arms. It was a power they seemed only too willing to abuse. Lonely and bored, their chief recreations were drinking and gambling. When drunk, they were terrifying. They lorded it, unchecked, over the district, becoming not its protectors but its greatest menace. Hayes and the soldier, Thomas Brennan, proceeded together on foot. Hayes later said that Brennan propositioned her along the way but offered her no violence when she refused. It seemed to be an everyday event. When they reached the weatherboarded hut, she bought him a drink and one for herself and requested a bed for the night, fearing to continue her journey in consequence of the bad name she had heard of the soldiers taking women into the bush.

Too soon, it became apparent that the protection of the inn would be insufficient for her. Three more soldiers came in, clearly having heard of her arrival. Before they entered, they could be heard asking Brennan outside, "Can we have that woman?" When he told them that she had refused his offer of money for sex, they responded, "We will have a trial, however." Upon entering the house, one told Hayes crudely that if he had come along the road with her he would have known whether she was a man or a woman, and he would know it before 10 o'clock. Hayes defiantly bet them a shilling they would not have her that night. This speech, Chief Justice Sir James Dowling, who presided over the trial later, would describe as "a rash throwing down of the gauntlet to a group of drunken soldiers" and as a provocation that she would have known they would take as a challenge.

Soon afterwards, the soldiers used a simple ruse to persuade her to approach the door of the inn, then seized her and dragged her outside. There followed, according to the hapless eyewitnesses from the inn, an attack of surpassing brutality. For five hours, at first within view and throughout within earshot of inn staff, all four soldiers repeatedly raped Hayes, deaf to her pleas for mercy, cries for help, and repeated screams of murder. Hayes complained as soon as possible to the police magistrate at Penrith, Thomas Edward Wright. Wright, however, was the captain of the company to which the accused soldiers belonged, and his response was discouraging. He told



her that no-one could be charged with the offence unless she was able to name names, and that she herself would have to bear the cost of bringing the men to Penrith to face the charges against them. Unable to meet either of these requirements, she left, angry and distressed, saying it was clear she would find no justice there.

No more would have been heard of the case had not the outrage come to the attention of Sir John Jamison, a justice of the peace at Penrith who had old grounds for enmity against Wright. Jamison enthusiastically took depositions from staff at the weatherboarded hut and acquired a statement from Hayes herself. He pressured a full bench of magistrates to consider the matter and, in the teeth of Wright's vocal ongoing opposition, they agreed to refer the case to the Supreme Court. Those depositions had established unequivocally, it seemed, that a rape had taken place. But when the matter came before the Supreme Court, the two key witnesses for the prosecution, Hayes herself and Mary Heylin, the innkeeper's wife, substantially changed their testimony. Hayes, who had previously testified unambiguously that penetration had occurred, now declared, "I became insensible. I don't know what happened after. As long as I had my senses, they did not injure me."

Heylin, who had provided explicit testimony of both witnessing the assault and seeing, the following morning, horrifying evidence of the injuries Hayes had suffered, now spoke of bruises only to the woman's back and shoulders, adding that "I was so much confused, I did not take notice of it. I did not observe anything more than usual." She also provided damning testimony as to Hayes' apparent character, telling of the wager she had made with the soldiers and declaring that, from her manner and behaviour, one could not think anything other than that she gave encouragement to the soldiers. "I felt ashamed of having such a woman in my house", she said. In the face of these testimonies, the Attorney General abandoned the prosecution. Hayes had failed to establish the essential evidence and, as no lesser charge of assault had been brought, other than rape, he abandoned the case and Dowling instructed the jury that they had no alternative other than to find the accused not guilty.

I feel particularly awful going through these details in these august surroundings, but it does make me think of Catherine Hayes trying to bring this case in the Supreme Court, and just how intimidating those surroundings would be. Most newspapers ignored the case, but Edward Hall published an account in *The Monitor*, which he used to press an issue close to his heart: his conviction that the colony was under the yoke of military tyranny. Describing the jury as "the usual military commission", he wrote that Dowling had energetically pressed the Attorney General to proclaim to the wide world that there was no ground for the charge. "It was in poor taste", he wrote, "for a judge to make proclamation, in a loud voice and with unusual energy of manner, of the innocence or guilt of parties, whether military or civilians."

He added that the defence counsel, Roger Therry, had thrown doubt on the inquiry, saying that it would not have happened but for the magisterial activity of Sir John Jamison. Jamison was, in turn, incensed by the suggestion that he had got up the case for reasons of his own. He wrote an impassioned letter for publication in *The Monitor* and also asked them to publish, at his own expense, the depositions he had taken earlier, which, therefore, were placed on the public record and can still be read. He also expressed his strong conviction that Hayes and Heylin had been bribed, presumably by members of the 39th, to change their testimony and thus undermine the prosecution's case. Hall printed all of this in *The Monitor*, alongside a long letter of his own to the Secretary of State for the Colonies in Britain, in an attempt to globalise this scandal, in a way, along the lines that Kirsten talked about.

In this letter Hall likened the power of the military in New South Wales to that of the clergy in England before the Reformation. It was no surprise, he wrote, that the staff at the inn were unable to intervene to protect Hayes, for they were at the mercy of the soldiers. There was no civil constabulary to whom they could turn. The ostler and the waiter were both ticket-of-leave men who knew that their freedom could be taken away at any moment by any civil or military officer exerting influence with the colonial government or magistracy. The innkeeper himself was a free man, but as a licensed publican he depended on local magistrates for the renewal of his license. Since military officers were magistrates, he would hesitate to interfere in the affairs of their men. That the police magistrate to whom Hayes complained was the captain of the company she complained of was just one more example of a corrupt system. The baneful influence of the military could be seen at every step of this sorry case, said Hall.

Jamison had been especially enraged by the reported comments of Justice Dowling. In an effort to show that that indignation was unfounded, *The Sydney Gazette* published its own belated account of the trial, in which Dowling's words seemed much more moderate. Captain Wright wrote to *The Monitor* defending himself and impugning Jamison's motives and good faith in the business, prompting yet another indignant response from Jamison. The matter swirled on in the press for weeks, filled with claims and counterclaims from men jockeying for power and imagining freedom in the colony. Amidst all of this, Catherine Hayes' sufferings and her thwarted, perhaps always half-hearted demands for justice were speedily forgotten. This scandal, after all, had never really been about her. She fades from sight, her life beyond this point impossible to discover.

Shortly before the Catherine Hayes affair, an obscure young man calling himself John Thomas Wilson arrived in Sydney to make his fortune. From a humble position as a shopman, he rose swiftly to become partner in and then sole owner of a large ironmongery in George Street. His showrooms were the admiration of the town and Wilson himself a landmark figure—wherever you looked, you saw him. His name stood prominent among the managers of joint-stock companies and he was at the head of every religious, philanthropic and literary institution in the town. No-one knew who he really was or where he came from and publicly, at least, no-one cared to ask. Such questions could be tactless in 1830s Sydney. It was a place where ex-convicts could forget the disgrace of penal servitude, gentlemen could suddenly sport titles to which they had no legal claim, unfortunate liaisons and escapades could be left behind in Britain and, where necessary, whole new identities could be forged.

Wilson's own performance in this regard was not impeccable. As early as 1831, a new arrival in Sydney thought he recognised in the bustling shopman a man he had known in England by another name and knew to be married. When he learned that the shopman was paying court to his boss's daughter, he warned the family against the machinations of "as hollow-hearted and remorseless a villain as ever lived". The possibility that Wilson already had a wife in England and was masquerading under an assumed name became part of regular Sydney gossip. But it did not slow his rise to prosperity and influence, nor did the immorality of his present way of life, although this was becoming increasingly conspicuous. If a man was doing well, let alone if he was doing good, as J. T. Wilson still appeared to be, then Sydney society would let him get on with it without interference.

Such moral duplicity enraged John Dunmore Lang. Early in 1836 his paper *The Colonist* embarked on a campaign to condemn public indecency. When arguments from general principle had little effect, he stepped up his attack with some thinly disguised profiles of particular individuals. At the end of March, the paper published a poem titled, with intentional irony, "The Family Man", in which Sydneysiders could easily recognise John Thomas Wilson. It laid out details of his relationship with a notorious actress, alluded to that wife at home in England and deplored the morals of those religious and philanthropic figures in the town who, while knowing his character, still welcomed him onto their committees. J. T. Wilson was furious. At the first opportunity he seized and horsewhipped the hapless editor of *The Colonist*, Henry Bull, thus, as the paper was swift to point out, identifying himself with the John Thomas of the poem. This in turn licensed the paper—or so they claimed—to print explicit details of his iniquities to establish the truth of what they had previously only implied.

So it was that Sydney readers, and historians later, learned the sad tale of Marianne Cavill. After falling victim to a bigamist in London, Cavill had emigrated to New South Wales with her infant daughter, her two sisters and a brother, all under the aegis of Lang himself in one of his assisted emigrant passages. The sisters set up as dressmakers, but Cavill soon fell victim to Wilson's wiles. Despite her brother's efforts to protect or, perhaps, to restrain her, she chose to leave her family and live with Wilson, trusting to his promise that he would eventually marry her. It was soon apparent that he had no such intention. When she fell pregnant, he put her on a boat to Hobart. After she miscarried and returned to Sydney, he persuaded her to go to England, promising that he would follow and marry her there. Within months of her departure, he could be seen disporting himself with the actress Maria Taylor, thus arousing the brother's anguish and J. D. Lang's crusading spirit.

Lang's efforts to expose Wilson's immorality seemed to fall largely on deaf ears. The other Sydney newspapers declared, as one, that a man's private affairs had no place in public discourse and argued that Lang's exposé, far from protecting the morals of the community, threatened instead to undermine them by making distasteful details public. Nonetheless, Wilson's standing in the community was damaged with his customers and, more importantly, with his creditors. Wilson's rise to apparent prosperity had relied on shady deals and generous backers. Now his affairs were in such danger that he had to make over his ironmongery business to his friend and supporter Thomas Burdekin and hastily announce his departure from the colony, hinting at an unexpected legacy. With creditors snapping at his heels he got safely away, but his voyage turned out to be a long one. By the time he reached London, his debts in Sydney had been discovered; he was arrested at the port and was thrown into a debtors' prison. Burdekin, meanwhile, had discovered that in taking over Wilson's business, he had inherited a debt of £30,000, which was a monstrous sum. He could see no way of recovering the sums he had lost, unless Wilson could make more money to repay him, so he asked friends to arrange for Wilson's release on condition that he returned to Sydney.

Thus began the second, rather curious phase of Wilson's swindling career, during which he became an auctioneer. He would pay for goods with a promissory note or an IOU, sell them for cash and then hold on to the cash. His clients allowed him to do this and said nothing. They were using his promissory notes to pay for other goods and thus became enmeshed in a net of debt that would drag them all down if Wilson defaulted or was declared bankrupt. Once they had chosen to believe in his moral character and now, in self-defence, they pretended to believe in his financial integrity. Only when he escaped from the colony on a ship bound for India, bearing with him all that accumulated cash, did the burghers of Sydney discover how thoroughly they had been duped. Only then did Sydney's newspapers begin to publish a steady stream of stories of Wilson's many deceits, both commercial and sexual.

What of Marianne Cavill? When Wilson reached England she had already left, sailing back to Sydney in an effort to retrieve her relationship. There she learned of Wilson's infidelity, his fall from grace and his hasty departure. She wrote a letter that would be published anonymously in the Sydney press much later—but was clearly her—in which she lamented four years of unrequited love and blasted affection and predicted that her name would be handed down to posterity as a disgraced, abandoned being. Posterity may prove more forgiving than she feared, and even in her own lifetime she was able, with impressive efficiency, to clerically repair her damaged reputation. After two well-placed marriages in succession, we find her flourishing as Mrs Pawsey, proprietress of a highly respectable servants' registry.

What can we learn from stories like these? Catherine Hayes and Marianne Cavill emerge fleetingly from the record as colourful, high-spirited characters, capable of speaking up for themselves when opportunity offered and even, to some degree, in moments, agents of their own destinies. Their stories also underline the difficulties that women faced in seeking redress against masculine violence or deceit. The point I want to make today is, that while such stories rarely reached the public eye, the way in which they were reported suggests that the behaviour they reveal was more commonplace. These stories would have gone nowhere were it not for the intervention of interested men making them into public stories. The universal indifference to the individual fates that is evident within these stories also shows, in a way, that their sufferings were far from unique and not really taken seriously.

When we read the predominantly masculine histories of colonial New South Wales, it is easy to forget what that male dominance meant for the women who lived under it. We enjoy stories of the few women who achieve public prominence or economic success in this era and rightly applaud the resilience and ingenuity that they displayed in difficult circumstances. But such women stood out because of their rarity. The muted stories of Hayes and Cavill remind us of a hidden history of a much darker hue. Women who were denied access to democratic citizenship faced serious disabilities. Excluded from the rhetoric, let alone the enjoyment, of liberty, they were, with monotonous regularity, held morally to blame for their own sufferings while the men who inflicted them escaped without penalty. The political rights of women today remain precarious wherever sexual violence, intimidation or slander is used to police their public engagement. Stories from colonial New South Wales are a reminder of just how precious and critical those rights really are. Thank you.

**Dr JAMES DUNK:** Good morning. We heard last month about democracy emerging gradually in the midst of those enormous imperial mechanics; about how convicts, merchants, soldiers, magistrates and others were heard during the Bigge commission; and how those interviews and reports helped to bring forth and amplify a great many ordinary voices—or some voices: the voices of white men, largely ignoring not only women but Aboriginal people and the deep intelligence and creativity of their interactions with country and with each other. Here I want to move ahead a little—although back a little bit from the 1830s—to go even deeper into individual lives, to see some of the human troubles and costs submerged, perhaps, beneath the shifting politics and institutions of the Darling administration, which ran from 1825 to 1831: the New South Wales Act, the new Supreme Court and the new Legislative Council.

So I want to tell a story, and the story is about suicide. If this is a difficult subject, please feel free to step out; I fully understand. John Thomas Bigge, as we have heard, had been tasked with making New South Wales simultaneously more terrifying to would-be criminals and more attractive to migrants and investors—a place of state savagery and private prosperity. The first was relatively straightforward; there would be more flogging, more execution, fewer pardons, new punishments and new penal stations. But prosperity was more complex. Declarations were made, land policies were enacted and ads were placed in London newspapers. Free emigration and capital flow began to increase. I am simplifying this story a little. A Colonial Office memorandum warned that those seeking land grants would now be assessed according to moral as well as financial criteria, something that Darling felt quite seriously about.

Following his arrival in 1825, Darling clearly favoured the colonial elite, which led him into frequent conflicts with the liberal elements of colonial society, such as they were, as well as with the population of former convicts and their children. A rigid and combative man, Darling often acted at or beyond the limits of the law. The battle with the liberal elements was partly staged in the colony's newspapers and courts, as we have heard a little about already. Three of Darling's main irritants in these arenas had arrived just before him: two barristers and a newspaper plant, all together on a ship called the *Alfred*. This was William Wentworth and Robert Wardell and their newspaper, *The Australian*. They are all well known and we have heard about them. Their lawyers fought the Governor at turns in the courts and in print. According to John Macarthur Jr, they often left political opponents, like Darling, spluttering with frustration.

*The Australian* is one key player, and another is *The Monitor*, which was edited by Edward Smith Hall. This is the same set of characters that we are hearing about from different angles. Hall was a restless, religious man who had worked as a coroner before. Founded in 1826 and pressing for trial by jury, for the rights of convicts and small settlers, and for representative government, *The Monitor* became a special thorn in the side of the

Governor. Darling singled it out as a seditious rag and had Hall imprisoned several times. Also travelling on the *Alfred* was a fourth adversary: the incoming sheriff, John Mackaness. We will return to him in a moment. A political scandal erupted, not least in the papers, late in 1826. Two soldiers had committed minor crimes to secure dishonourable discharges, but Darling, not satisfied with the standard punishments, had personally and illegally intervened to have them publicly stripped of their uniforms, dressed in convict clothes, placed in byzantine iron collars and set to hard labour. One of the men was sick and died six days later.

In the aftermath, Hall delivered an extensive critique of Darling's first year of government, with its "abhorrent system of excise duties, with all its detestable consequences of informations, stealth, gambings, trickings, perjuries, fines, imprisonment, suicides, disgrace, wretchedness and degradation". The word "suicides" stands out in that list, I think. It is an impressive list, but suicide stands out as a final and heavy item on a list of passing troubles. But what suicides was Hall writing about? A man called Patrick Shennan had shot himself in Bathurst that year, but he was a successful and popular colonist, apparently, who had eagerly awaited his wife and child and then killed himself just after they arrived. Of course, some histories will remain unwritten and some details unknown. But the editorial prefigured a rush of suicides later that year and through the rest of Darling's administration, which I will talk about now.

It was not long after this that George Galway Mills, Registrar of the Supreme Court, began to grow very anxious about his job. Born in 1765 into a failing West Indies plantation family, Mills was later gaoled by the King's Bench for grandiose debts upwards of £43,000. He got free by securing a seat in parliament, much to the outrage of creditors and his fellow MPs—I don't think that works anymore—and then fled to Europe to be a diplomat and a middling spy. After his wife died in 1820, he accepted an unlikely post, Registrar of the Supreme Court of New South Wales, which came with £800 a year. Francis Forbes, Chief Justice of the court, thought the appointment was a sinecure, a provision for past services. "It were impossible to suppose," he said, "that he could have been expected to perform the duties of his office." Such appointments were symptoms of the general malaise that we have heard about, and Darling saw this. He wanted to change things. There was no colony where the selection of individuals was so important, he said. Not only the character of the government but the moral improvement of the people depended on the integrity of office-bearers.

And so his autocratic tendencies came into full view, and he set about a purge. He began with John Mackaness, the sheriff. Darling had decided that Mackaness had joined forces with, as he said, the Wentworths and the Wardells, and that this made him, in some degree, dangerous. Mackaness was secretary of the Turf Club, a horse-themed social club. At a public dinner in January 1827, there had been several enthusiastic toasts given to the previous Governor before a toast was then proposed to Darling. Again, we have the politics of the toast. But the band struck up a raucous rendition of *Over the Hills and Far Away*, to the general amusement of the Turf Club. Furious that a person in government employ should participate in such a base affair, Darling requested that the Colonial Office fire Mackaness—and it did so—for association and intercourse with certain factious individuals, the common defamers of the Government.

But this was only the opening volley. "The dismissal of all other persons who have given these individuals their countenance," Darling wrote to London a couple of weeks later, "is necessary to the due support of the Government. There is not a man of character or consequence amongst them." He dismissed Henry Douglass from the Court of Requests, suspended W. H. Moore, the Crown Solicitor, and was moving to do the same to his brother, all of them for Turf Club indiscretions. "This policy has had the best effect," Darling effused late in 1827. "A few more such examples will tend to the peace and happiness of society and render the conduct of the Government comparatively easy."

George Mills was likely in Darling's sights, and he certainly felt that he was. Just weeks after these other dismissals, Mills called upon Dr William Bland and asked what was the easiest method of self-destruction. Was not a certain dose of laudanum almost immediately fatal, he wanted to know. Two days later, in the evening, a constable was struck by Mills' altered appearance as he walked along, driving his umbrella into the ground and muttering, "It must be that. That must be it." Early the next morning, he visited a gunsmith and selected a brace of pistols. He said he was going "up the country". He didn't want a quality pair; he said they were for a servant. He met Dr Bland later that morning in the street, who found him calm and composed, and that afternoon he shot himself. He was found with a pistol ball in his coat and a bottle of laudanum in his desk.

"George Galway Mills, Esq., committed suicide whilst labouring under a temporary fit of insanity," the coroner's inquest concluded. But an inquest, as we might know, is a public ritual as well as a legal procedure. It is an opportunity for friends, family members and colleagues to try to understand and perhaps come to reconcile their own understanding, their own stories, of a person and the fact of that person's death. They can be close and intimate explorations of isolation, anxiety and despair. They can also be grim indictments of structures of carelessness and abuse. And so, at Mills' inquest, witnesses spoke, stories were told and reasons were given. It

was clear that Mills had been disturbed. Dr Bland said that he had frequently seen him in fits of momentary insanity and thought his intellect had been deranged for several weeks.

Mills' servant Charles Horton agreed that his master often talked about Dr Douglass and others who had been suspended from their situations but attributed his death to complications arising from the £3,000 or £4,000 that the sheriff had borrowed from Mills. Mackaness, the sheriff, for his part, thought it was the purge. "Mills," he said, "laboured under an apprehension that he would be dismissed from his office and had lately become quite secluded, and never mixed in society. In a strong mind, certainly," said the sheriff, "this would not produce insanity, but then Mills never did have a strong mind, and he had developed a considerable aberration and depression of mind—a mania."

Chief Justice Francis Forbes agreed that Mills had been terrified of losing his job. For all his failings as a clerk and businessman, Forbes quite liked Mills; he could talk with him about the classics. Reflecting on the sad episode in a private letter, Forbes placed this sadness in the context of his own protracted, acrimonious conflict with Darling, which we already heard about. But it was not only the Governor. When the Chief Justice had stopped wearing his wig during the Australian summer, people wrote to London about his republican tendencies and said his simple lifestyle was unbecoming of his high office. John Macarthur Jr said he had theoretical views concerning liberty. "When I look around me," Forbes wrote, "and see how little of what makes life so captivating in England is to be found in this sad exile, I repent in bitterness that I ever ventured beyond the circle of civilised life." Returning to Mills, he wrote, "I cannot get rid of the belief that he has been cruelly sacrificed."

*The Australian* blamed Darling outright for the way that buoyant, vivacious Mills had sunk into mental disquietude, into the "mental alienation which has terminated in self-destruction". Mills had followed this purge closely; he had been on tenterhooks with the news coming out and the rumours. The apprehension that he would lose his office, according to *The Australian*, had taken possession of his mind and sat heavily on his heart. "At last," the account ran, "he sank under the impression they produced." "If anything could move the Government or the Colonial Office, it must be this event," said the editor, "which, while it is the most disastrous, is also the most instructive that could have happened." *The Monitor* was a bit blunter. "These sort of dismissals," it thundered, "make gentlemen blow out their brains."

A week later, John Mackaness accosted Robert Howe, editor of the conservative newspaper *The Gazette*, in the street. He called him a scoundrel and a vile slave to the Government. Howe simply showed him his horsewhip and fired back in his next issue: Better to be a slave to his duty than enslaved to his passions like Mackaness. He rejected *The Monitor's* bold assertion, unblushingly and maliciously invented, "We appeal to every colonist in Australia and fearlessly ask them if, directly or indirectly, the Government could possibly have prompted the unhappy gentleman to have committed suicide." Well, of course it could. Governments have enormous power over the lives of individuals and employers over their employees' lives. But whether this death would become a lesson in the exercise of that power—the power of government, a strong power in New South Wales—was another matter.

On hearing about Mills' death, and before anything had been printed or written, Darling wrote to his superiors in London. He said Mills was a man of profligate character and dissolute habits who was heavily indebted to the sheriff. "Together with the impossibility of extracting himself from the difficulties which immediately surrounded him," he said, "Mills appeared to have been driven to desperation by some distressing news from England. There were some who would make this event out to be proof," he wrote, "of the unhappy state of the colony, to be sure." But the Governor was pleased to report that quite the opposite was true. While some immediate associates of Mills and Mackaness might feel their perilous situation, few others expressed or felt surprise at these violent ends. Whatever degree of commiseration the frailties of human nature may excite, he said—apparently little—he hoped these events would not be without effect. Everyone wanted this suicide to mean something.

But when, six weeks later, the patently respectable Charles Throsby shot himself, there was rather a lot of surprise. Throsby, a surgeon and landowner, had become a very large grazier and had amassed considerable wealth through what *The Gazette* called "extraordinary and patriotic attention to the rearing of stock of a very superior quality". Darling was very taken with Throsby and had chosen him to sit on the Legislative Council. Maybe Darling had mistaken depression in the colony for tranquillity. From 1826, the colony was subject to a punishing drought that ruined harvests, sparked fires and eroded fortunes. "The country wears a melancholy aspect," wrote Elizabeth Macarthur. Charles Throsby lost some 40 head of cattle at his property in the Southern Highlands. The price of wool was falling, and he was also struggling with some physical illness.

But he retained 20,000 acres in "two fine estates", together with "large and valuable herds of cattle", Darling wrote, quite bemused. He was not the sort of man who might be expected to kill himself. Some 20 years prior, Throsby became guarantor for another of these debts, a £5,000 loan to his friend Garnham Blaxcell, a

flamboyant and opportunistic rum rebel who fled the colony and his debts. Throsby had been found liable for the debt, and that was apparently part of the reason that he had killed himself. This time, the "melancholy intelligence", reported *The Gazette*, "seemed to produce general petrification". Darling set about trying to replace Throsby, but few people in the colony met his exacting standards. He fixed upon William Browne, a free settler who had been worth £12,000 when he emigrated from Bengal in 1816 on account of his asthma.

But as Darling was moving to appoint him, Browne also tried to kill himself. This was enough to shake even Darling. "I may be permitted to observe," he wrote to London, "that persons who have suffered from any temporary aberration of mind should not be sent to this colony. If there is nothing in the climate which induces absolute derangement, there is undoubtedly something peculiar which affects the spirits and produces extraordinary depression." The year 1829 was brutal. In January, a man stabbed himself and bled out, saying, "Trouble—I cannot bear my troubles." In late March, there were no less than three instances of attempted suicide in the colony in the space of one week. One had been in the service of a doctor who found out that he was committing fraud. The man grabbed a razor and cut his throat, but his master sewed the wound and sent him to hospital.

In May, *The Australian* bemoaned that its last issue "presents an unusual number of melancholy cases—murder, attempted murders, suicide et cetera, et cetera". The last was Benjamin Smith, a comb maker who was aggressive when drunk and dejected when sober. He had been exhibiting symptoms of melancholy frenzy before he was found at the Talbot, on George Street, with his head nearly severed by a razor—a most awful and appalling spectacle. In August, a junior clerk in government service, Patrick Brodie, lay in his own blood, his right hand clenching a pistol. There was some mention of intense jealousy and the coroner concluded it was a momentary aberration of mind, but *The Monitor*—the newspaper published by Edward Hall—saw some dots that might be profitably joined. "This is the third suicide which has occurred in the present administration by gentlemen connected with the Government," he declared, "Throsby, Mills, and now Brodie." And who could forget the collared soldier who had died, indeed, of severity of treatment?

The final year of Darling's administration, 1831, saw an alarming string of suicides. A convict was found swinging from a rafter in his master's stable. After listening patiently, the jury returned a verdict of insanity. In August, a middle-class woman took rat poison, leaving her husband with two infant children, himself nearly bordering on distraction. "She was an exemplary wife and mother," mused *The Gazette*, "and by no means a person of violent passions." It was somewhat difficult to account for her tragic end. The police officer attending the suicide then procured half an ounce of arsenic and drank it with gin at a pub. These events incited four further attempts at suicide, and then four more, all within a fortnight.

Listen to *The Gazette* editorial: "This horrid mania, like an infectious disorder, has passed from street to street through our metropolis, plunging family after family into anguish and distress, and creating a feeling of intense interest and excitement in the minds of the public generally." But was this a spreading contagion, perhaps the natural, almost biological consequences of dissipation? Was it a climatic thing, like Darling thought? Or was it, as others said, government moral policy coming home to roost—the natural consequences of terror? There are real questions here about the way insanity functioned in these politics of suicide—a medical fiction, really, which allowed the unspeakable and unthinkable to be reconciled through this idea of temporary insanity and momentary aberration, which could be used to explain something that was inexplicable.

We might ask about the role of the newspapers in promoting suicide—the way media commentaries showed a callousness which, though better concealed, might have rivalled that of a Governor conducting a moral purge. Or we could ask about the relationship between the suffering and anguish that is captured in these short stories and the anguish which is not captured, including that of the friends and families of those people involved; and of the other stories of suffering which went unnoticed; and the great histories of states, empires and institutions, which we have touched on already in this event. Those great, consequential histories always carry awful things in their midst. These things are often deemed inconsequential, but perhaps they carry the most consequence of all. Thank you.

**The Hon. CHRIS RATH:** Thank you to our three speakers for that incredibly interesting and insightful presentation. We will now be taking questions from the audience both in person and online. The team will be reading out comments from our live stream audience. If you have a question, please raise your hand. We have two roving microphones in the audience. If I call on you, please wait for one of the team to come over with the mic before speaking. We will do our best to get through as many questions as possible.

**QUESTION:** This is a question for Dr Dunk. I was reminded of the suicide of Castlereagh and how that had some influence on changes to legislation about suicide. If you suicided, your property was confiscated, or something like that. I'd like to know whether the spate of suicide in the time of Darling was before or after. How does it fit chronologically with the suicide of Castlereagh and with the idea that suicides had their property

confiscated and therefore the defence, as it were, of temporary insanity could actually save the heirs of the person who suicided from being left without any property at all?

**Dr JAMES DUNK:** That's a great question, because I mentioned the other purposes which temporary insanity could be put to as a verdict. The obvious one is that temporary insanity could absolve the person who had ended their own life from those sorts of financial consequences and save their families from some of those effects—a further legacy of very material consequences, in addition to the others. I actually can't recall when Castlereagh's suicide was.

**Professor KIRSTEN McKENZIE:** I think it was 1822. That's just off the top of my head. So it is afterwards.

**Dr JAMES DUNK:** Yes, it is afterwards. I guess there is a question there about the effect of these changes. We might look to a government to then respond to something like this and to notice and to do something. There is no evidence that laws around suicide changed in the immediate aftermath, certainly not in New South Wales.

**QUESTION:** I was just wondering what the population of the colony was when all of these suicides were happening. Was it statistically abnormal? Just put it into context.

**Professor KIRSTEN McKENZIE:** I'm functionally innumerate. I can never remember what the population is; I always have to look it up.

**Professor Emerita PENNY RUSSELL:** I would say it's in the hundreds of thousands, as distinct from millions. So it's relatively small, and there's still a very strong gender imbalance throughout this period—and still a predominately convict population, with many, many boatloads of convicts being delivered to the colony through the '20s and '30s.

**Professor KIRSTEN McKENZIE:** But, if I could add to that—Jamie, you might want to, as well—there's the sense that everyone knows the context. The interpersonal relations of this group of people are relatively close, so it is obviously not just something you hear in an anonymous way.

**Professor Emerita PENNY RUSSELL:** Yes, it's still small enough to be very intimate. The local politics matter extremely. In a sense, the whole of Sydney is still a matter of local politics, but a local politics of broader consequence.

**Professor KIRSTEN McKENZIE:** Is that your sense, Jamie?

**Dr JAMES DUNK:** Absolutely. There is backstory to a lot of these stories, that the newspaper discussion around these things and the reporting runs in parallel to the conversations other people are having and what's actually happening. So the question is partly is this a lot of people trying to kill themselves, or is it a lot of talk about people trying to kill themselves? It's a good question. I'm not sure about the statistics, which are notoriously unreliable. How many suicides go unnoticed? How many go unreported because that's not the conversation that families might want to have around it? My other work is with mental illness and, particularly in this period, I'm extremely sceptical about statistics of admissions and symptoms and things. I feel similarly about suicide. It's actually quite hard to get a grasp of the precise proportions.

**QUESTION:** As you were talking, I thought, "Are they actually suicides or murders?" As you were talking, there was this doubt coming in. Maybe I'm just a CSI nut.

**Dr JAMES DUNK:** That is something we will never know. By and large, there is probably some historical investigative work that could be done to uncover very cold cases indeed. I think there's probably another question, though, which is "Why not suicide?" These are awful experiences and very difficult circumstances. It's not surprising to me, a lot of the time, that people would choose to try and end their life. That's the question in the inquest. That's a moment for people to be able to voice some of the things that are horrible about life or difficult about the society and then say, "And it was madness." So we can then absolve everything, and everything can return to a narrative that works.

**QUESTION:** You've mostly or entirely mentioned male suicides. Did women commit suicide during these times?

**Dr JAMES DUNK:** I'm sure they did. Those are the suicides which seem to be in the pages of the newspapers. Again, I guess it's a question of what is actually happening and what is actually reported. But, as Penny mentioned, it's a heavily male society still in the 1820s. And so, statistically, the population is actually male. But also suicide tends to skew, in most times and places, to males of a certain age, statistically. I did mention the one woman who tried to kill herself, I think. I can't remember if she was successful or not. Her stomach was pumped; I think she survived. I apologise for the language of success.

**QUESTION:** I'm not a historian, but I do have Google—

**Professor KIRSTEN McKENZIE:** So do historians.

**QUESTION:** —and it says the population of Australia in 1830, if you count Aboriginal people, was in the hundreds of thousands. But the estimate of the population not including Aboriginal people, as they weren't part of any census, was 36,928—far less. But it raises an interesting question, doesn't it, about the ratio of those many suicides. That was for the whole of Australia, not just New South Wales.

**Professor Emerita PENNY RUSSELL:** It was more or less the same thing, at that point.

**The Hon. CHRIS RATH:** We are unfortunately running out of time, but I might finish with a question. At this point in time, in 1823, what sort of numbers of convicts were still arriving? Was there a push to end convicts coming to Australia as early as then? Given all these scandals and everything that you've spoken about, what was the perception of Australia and of the colony at the time in Westminster, in the United Kingdom? I assume they probably didn't have a very good opinion of the colony in 1823.

**Professor KIRSTEN McKENZIE:** To answer your first question, convicts are increasing exponentially after the end of the Napoleonic Wars, when there's a perceived crime wave in the UK and there's also not the ability of the army to absorb marginal people, which had happened very much up into 1815—even criminals going directly into the army. My colleague and friend Hamish Maxwell-Stewart is doing a lot of really interesting work on condemned men who are in the British military, often sent to the West Indies, which is sort of a death sentence in itself. Once the war ends, there's demobilisation. There's economic distress. There's a perceived crime wave, and that's exactly why Bigge is instructed to make transportation an object of real terror to all classes of the community, which is the famous quote, because you obviously don't want it to be seen as a ticket to a better life if you commit a crime.

So numbers of convicts are increasing. But, as Jamie was saying, they are also increasing as the labour force for migrants with small amounts of capital. You just have to read Jane Austen's novels to think about all these officers on half pay who are demobilised and struggling for money. Many of them come out to New South Wales with small amounts of capital and then take on convict labour. So there's a mixed reputation. It's seen as a business opportunity. It's also seen as a place of terror because these places of secondary punishment, like Norfolk Island, Port Arthur, Port Macquarie and Sarah Island in Tasmania, are all being formed as places to reform the convict system and make it less of an easy ride to land and opportunity, as the perception is.

So, as always, a historian will answer, "It's complicated." But it is a little early to be talking about an anti-transportation moment. That really comes a bit later, in the 1830s, when scandal becomes very prominent, as I've argued, in the way in which the anti-transportationists draw on all this rhetoric of Botany Bay, the depraved place, to essentially push their agenda to end transportation in the 1830s. Of course, they try to start it up again in the 1840s, but that's another story.

**The Hon. CHRIS RATH:** Unfortunately we have run out of time. Could everyone please join me in thanking our three fantastic panellists. Now we have morning tea in the Fountain Court.

**(Short adjournment)**



**EXECUTIVE POWER: UNRESTRAINED AND RESTRAINED**

**Reverend Dr JOHN HARRIS**, Charles Sturt University and Bible Society Australia

**Mr CALEB CUGLEY**, Alphacrucis University College

**Mr DAVID BLUNT [Clerk of the Parliaments]:** Before we get underway I would like to acknowledge one very special guest who is here with us today. I am absolutely delighted that my immediate predecessor as Clerk of the Parliaments and also a former Usher of the Black Rod, Lynn Lovelock, is here with us today. We are in the process of commissioning Lynn, who is an historian by training, to do some research for us over the next 12 months. We are hoping that at next year's conference in September 2023, in History Week, Lynn will be one of the presenters—no pressure, Lynn! I now introduce Jenelle Moore, the Usher of the Black Rod.

**Ms JENELLE MOORE [Usher of the Black Rod]:** Thank you, David. I hope everybody had a lovely morning tea. It is my pleasure to introduce two presenters with a deep and nuanced understanding of Governor Lachlan Macquarie—both his successes and his failings. Reverend Dr John Harris is the author of *Judging the Macquaries: Injustice and Mercy in Colonial Australia*. John Harris has spent much of his life involved with Aboriginal people as a child, a teacher, a linguist and an advocate. John has a particular interest in Aboriginal people and early colonial history. The author of numerous books and papers, John holds a PhD in Aboriginal languages, a ThD in theology and a DD from the Archbishop of Canterbury and Her Late Majesty Queen Elizabeth II.

Caleb Cugley currently teaches English and history to secondary students at St Philip's Christian College in Port Stephens. Caleb graduated from St Philip's Teaching School, in conjunction with Alphacrucis University College, in 2021 with a Bachelor of Education (Secondary). Caleb loves bringing history to life and found a particular love of early Australian colonial history while working on the Reacting Education event *Judging the Macquaries*. Caleb created character profiles of key participants in Governor Macquarie's time in Australia and completed further study to ensure his own performance in the event was as accurate as possible. This promises to be a thought-provoking session. I hand over to Reverend Dr John Harris.

**Reverend Dr JOHN HARRIS:** Thank you very much. This paper is an attempt to summarise my most recent book, called *Judging the Macquaries*. Thank you for mentioning it. It is hard to do in the time available. If we are to judge Lachlan Macquarie as the last of the autocratic Governors—the last of those after whom it was deemed that there needed to be a Legislative Council, a group to assist the governing of the colony—we must first understand the man. And so my role is to understand what it was to be the last of the autocratic Governors.

Born in 1762 in western Scotland on the rugged island of Ulva, where the small Macquarie clan eked out a precarious existence, he farmed a barren island, harvesting its rough seacoast. His clan was allied to the larger Maclaine clan. Lachlan's uncle Murdoch Maclaine was the eighteenth chief of the Maclaines of Mull. These relationships, although important, conferred no wealth or status on Lachlan. He grew up in poverty, but his relationship to his clan was tribal. He grew up knowing who he was and belonging to an extended family. Obligated to work on the farm, Lachlan's education was erratic. His father's death brought him under the protection of his kindly uncle Murdoch, through whom, at 15, he commenced his army career. Maclaine, an officer of the 84th Royal Highland Regiment, took his nephew to the American Revolutionary War.

Lachlan was commissioned as an apprentice officer, an ensign, at the age of 15. By 19, he was a lieutenant, serving in the Americas for seven years. In 1787, Lachlan was commissioned to the 77th Regiment in India, where he served the next 15 years, thus spending all of his formative years overseas in the army. Promoted to captain in 1789 and major in 1801, he paid off his family's debts and assisted his struggling friends and relatives in Scotland. His honesty, reliability and competence were evident. He gained administrative appointments: paymaster, deputy adjutant general, military attaché to the Governor of Bombay. In India, in 1792, Lachlan married Jane Jarvis, daughter of Thomas Jarvis, Chief Justice of Antigua, and heir to his sugar plantations in the West Indies. Jane, tragically, died of tuberculosis three years later. Lachlan was inconsolably grief-stricken and left emotionally crippled. In time, he threw himself back into his career.

We cannot understand Lachlan without understanding Elizabeth, and they were joined at the hip. Elizabeth Campbell was born in 1778, daughter of John Campbell, fifth laird of Airds. The Campbell and Macquarie clans were related by blood, so Elizabeth and Lachlan were distant cousins. The Campbells were Episcopalian—that is Anglican in today's terms—rather than Presbyterian, so they had fought on the side of Bonnie Prince Charles in the Jacobite revolution. They were now oppressed by a government dominated by the Presbyterian Church. They sent their children to London for education, enabling them to grow up in the tradition and practices of the English church. These London years were integral to Elizabeth's adult Christian character,

maturing as she did during vigorous, outward-looking years for the Church of England. William Wilberforce and other Anglican and Quaker Christians were spearheading the movement for the abolition of slavery.

Elizabeth experienced at first hand the church's growing enthusiasm with social justice, which would remain forever deeply embedded in her adult Christian worldview. An intelligent, strong-minded, self-reliant woman with a well-developed social conscience, Elizabeth was frustrated by a society with such little opportunity for women other than marriage and motherhood. Elizabeth and Lachlan met for the first time in 1804 at Murdoch Maclaine's deathbed vigil: Lachlan, a middle-aged widower and career army officer, and Elaine, a nanny to her younger sister's children and, at 26, resigned to single life. They soon became engaged. Lachlan returned to India for another stint in the army, where he was promoted to lieutenant colonel. Elizabeth went to Holsworthy to be governess for the grandchildren of the vicar Owen Meyrick, whose compassion and social conscience influenced her greatly.

Lachlan returned to London in 1807. He and Elizabeth were married immediately by Owen Meyrick at Holsworthy. Of course, these are names that we know in New South Wales. Meyrick gave her Boswell's *The Life of Samuel Johnson*, which she kept by her bedside until the day she died, reading and rereading it and annotating it profusely, modelling herself on Samuel Johnson's loyal Anglican faith: regular prayer and Bible reading, and deep compassion for the poor, the marginalised and the abused. They moved to Perth, Scotland, where Lachlan's 73rd Regiment was stationed, and Elizabeth settled into being an army wife. On 15 September 1808 Elizabeth gave birth to a daughter. Lachlan named her Jane Jarvis Macquarie after his first wife. How Elizabeth felt about this is not recorded, but she had long accepted her husband's emotional devotion to the memory of his first love. Tragically, the happiness of parenthood did not last long. Infant Jane died three months later, and they would both bear this deep scar forever.

### Surprising New Beginning

Unknown to the Macquaries, a decision dramatically affecting their lives was being made at the highest levels of government. Difficulties in governing New South Wales, a distant penal colony at the other end of the world, prompted the British Government to rethink the way in which the colony was administered. Governors had been naval officers following the precedent of the first fleet when the commandant became the Governor. Tension had flared between naval Governor William Bligh and the powerful colonial elite led by John Macarthur, a wealthy landowner. An ex-officer himself, he had the support of the wealthy officers of the New South Wales Corps, the 102nd Regiment of Foot, with business interests in the colony. Led by Major George Johnston and the regimental band, the 102nd Regiment marched on Government House and arrested Bligh. This was soon known as the Rum Rebellion, in which Bligh was deposed in Australia's only military coup.

With a difficult dilemma on the other side of the world, the British Government recalled the New South Wales Corps for participating in the mutiny, replacing them with Macquarie's 73rd Regiment. The commander of the regiment would be Governor, with authority over both the secular and military spheres. General Nightingall was appointed to Macquarie's regiment. As second in command, Macquarie would be in charge of the regiment, ensuring the Governor's ideas were enforced. This unexpected appointment was a shock. The Macquaries felt the choice unfair, with the 73rd Regiment having served 24 years in regiment and only just settled back home.

General Nightingall, however, declined the appointment to such a distant and insignificant outpost of empire, which he thought would compromise his professional advancement. Now desperate, Lord Castlereagh, as Secretary of State for War and the Colonies, promoted Lachlan to colonel and appointed him Lieutenant-Governor. He was to sail with the regiment to New South Wales as a temporary Governor until the new Governor arrived. But, before they sailed, the King himself, annoyed at the colonial officers' dillydallying, instructed them to make Lachlan Governor. Lachlan and Elizabeth reached Portsmouth on 11 May 1809, Elizabeth stoically pretending to be well enough to travel while suffering one of her many miscarriages. On Monday 22 May they set sail down the Channel. On Wednesday afternoon, 24 May 1809, England disappeared below the northern horizon. Lachlan added one of his special question marks to his diary. They were now on their long journey to the largest penitentiary on Earth.

### The Journey to the Other Side of the World

The long journey took them south from England, down the Atlantic Ocean, around the cape and east to Australia with extended stopovers in Rio de Janeiro and Cape Town. Lachlan had spent much of his life overseas, but it was all new to Elizabeth, who experienced culture shock when ashore. The most formative event on their journey occurred when they encountered and briefly detained a Portuguese-flagged slave ship, which they released, slavery still being legal under Portuguese law. There were 532 slaves, all of them teenage girls. An infectious fever had been spreading among them. Fifty-two who had already become ill had been thrown overboard. The captain said he expected to lose half the cargo of slaves this way.

For Elizabeth, this was the first time she had encountered the horrors of the Atlantic slave trade as more than a theoretical construct. She wrote in her diary, "To put a stop to the infection, they had resorted to a precaution at which humanity must shudder. When I saw this, I thought on dear Mr Wilberforce." The longest stretch at sea was from Cape Town to Australia. The first land sighted was Tasmania, which they skirted to the south, sailing slowly against the wind up the east coast, daily watching the smoke signals from the Aboriginal fires, which signalled ahead that a ship was travelling north. Finally, on 28 December 1809, they anchored in Sydney Harbour.

### The New Governor

Lachlan was neither conceited nor self-important, but he knew he must make a strong impression entering a colony where order had broken down and people were divided. He understood the emotive power of ceremony and military precision. When he set foot on shore he wanted people to know, without a doubt, that the old regime had ended and that good governance had arrived. On Sunday, New Year's Eve, Lachlan and Elizabeth, with the official party, came ashore on a barge flanked by the ships' captains in their boats. The crews of the *Dromedary* and *Hindustan* manned the yardarms while the men of the 73rd, in brand new uniforms, stood to attention on the decks, cheering as each ship fired 15-gun salutes, answered by the guns of the battery at Dawes Point.

Lachlan's was a vice-regal position, and in his pocket was his royal commission, which gave him extraordinarily wide-sweeping powers over convicts, free settlers, the judiciary and the church. He could even go to war. Lachlan intended carrying out his commission without fear or favour, but in that document were the seeds of the immense resistance he would face. He had no idea yet how difficult it would be to control the judiciary and the church, nor how much resistance he would face from the free settlers. At midday the next day, the 73rd Regiment disembarked and marched to the parade ground, impressively disciplined, smartly uniformed, outshining, of course, the 102nd Regiment of Foot. When the official party arrived, Lachlan handed the royal commission to the new judge advocate, Ellis Bent. Troops presented arms. The band played the national anthem. Bent read the Governor's commission followed by the other new commissions, including his own. The troops fired three volleys. Lachlan then gave a short but powerful speech with what both newspapers called "peculiar energy". He said:

I am sanguine in my Hopes, that all those Dissentions and Jealousies which have unfortunately existed in this Colony ... will now terminate for ever, and give way to a more becoming Spirit of Conciliation, Harmony, and Unanimity, among all Classes and Descriptions of the Inhabitants ...

Lachlan thought that promoting peace between settlers and the Aboriginal people and treating them with kindness were too obvious to need mentioning, but he did anyway:

I need not, I hope, express my wish that the Natives or this Country, when they come ... in a peaceable Manner, may not be molested in their Persons or Property by any one; but that ... they may always be treated with Kindness and Attention ...

Lachlan concluded with his hope that all people of the colony should be as comfortable and happy as any other of His Majesty's subjects:

To make them so, as far as depends upon me, is not only my Duty, but will at all times constitute my chief Happiness; and the honest, sober, and industrious Inhabitant, whether Free Settler or Convict, will ever find in me a Friend and Protector.

### Lachlan Macquarie's New Order

Macquarie's small office was in Government House, Sydney. His secretary, John Thomas Campbell, became a loyal friend and an unswerving supporter. Unofficially, Elizabeth actively assisted him, ever his most trusted advisor and fiercest defender. Macquarie was immediately challenged to restore legal governance and good order in a socially and politically divided colony of 10,454 people, two-thirds of whom were male. Whatever Governor Bligh's faults, he had been illegally disposed of as a Governor, and this had to be dealt with. Ringleaders John Macarthur and George Johnston had already been recalled to England, but Macquarie knew it remained strategically important to act. Humanity and forgiveness could wait a few days. On his first day in office, he issued two strongly worded proclamations published for all to read in *The Sydney Gazette*. The first expressed the King's anger, or "high displeasure", at the forceful overthrow of his legal representative. The second dismissed all appointments made by the illegal Government and reversed all court decisions and land grants. Next, he reinstated all officials removed from office by the illegal administration.

By the end of the following week, Lachlan felt confident enough to begin his second stage: his plans for reconciliation and peace. Relieved that Macarthur and Johnston were far away in England, Macquarie chose to regard them as the culprits and to be as conciliatory as possible to everyone else involved. As a military man himself, Macquarie was prepared to overlook the actions of the ordinary soldiers in the 102nd Regiment, accepting that they were under orders. Elizabeth and Lachlan understood the power of hospitality in establishing cordial relationships. They tried to be hospitable to everyone, Aboriginal people included. With sincere desire to be inclusive, the Macquaries quickly stretched out the hand of fellowship to all implicated in the mutiny, including

entertaining all of the officers of the 102nd Regiment. Lachlan offered them inducements to join his 73rd Regiment or to remain in New South Wales as free settlers, and half of the 102nd Regiment did.

But many thought Lachlan far too forgiving. Whether supporter or detractor, no-one doubted what they called his humanity, his benevolence or his leniency, but his critics thought him not stern enough. They questioned his ability to govern, particularly in whatever way would best advance their own interests. Commissioner John Bigge, in the report which would finally force Lachlan's departure, concluded that he had erred in carrying a humane principle too far. Too far? What does it mean for a Christian—or anybody, for that matter—to have a reputation of being compassionate to a fault? Lachlan was arguably someone who tried to live out the scriptural injunction to make every effort to live at peace with all people. Would this really lead him into error?

### Improving the Life of the Colony

Lachlan and Elizabeth both cared deeply about the lives and conditions of the convicts, which they saw as their chief responsibility and as a Christian duty enjoined upon them by the Bible itself. Controlling and regulating the legal system and the law courts, ensuring just sentencing and managing the police, who themselves were ex-convicts, were particularly challenging. To Macquarie, flogging, as a punishment, was too redolent of slavery. He reduced the maximum lashes from 500 to 50, enjoining the developments of alternatives to flogging. Macquarie embarked upon an ambitious program of public works, which you can see here today, incurring considerable unbudgeted expense, which caused a great deal of consternation in London, given the huge costs of the Napoleonic Wars. Lachlan would eventually be accused of extravagance, but he was determined that a large proportion of his building program would improve the lot of the neediest of people, making Sydney a more livable city.

Elizabeth and Lachlan had a deep concern for the colonial children, particularly the children of convicts, and greatly extended the size and scope of the public charity schools. Macquarie built orphanages and hospitals, actively improving the quality of staff, supplies and services. This was originally one of the hospitals. Wanting Sydney to be a happy community, he carved off a slice of land from the government domain for recreation, including horseracing and cricket, naming it after London's Hyde Park. He retained what he regarded as a small plot, still called the Domain today, as the gardens of Government House. He replaced his regiment's old, crowded quarters with barracks to house 1,000 soldiers and their families.

Macquarie planned infrastructure to improve the commercial prospects of the colony: bridges, wharves, markets and Australia's first toll road from Sydney to Parramatta. Successive governments have regarded that as the major success of Macquarie and have continued to make toll roads from Sydney to Parramatta. He familiarised himself with towns and farms outside of Sydney, regularly visiting all of the outlying settlements. His most satisfying and exciting task was planning and laying out new subdivisions, such as Windsor and, of course, Campbelltown, named after his wife. Gradually, as new settlements were established, Macquarie gave them all the names of his family and friends, but he didn't forget his betters, such as Wilberforce and Bathurst. When he could, he got Aboriginal names too, like Warragamba.

### Macquarie and the Convicts

Lachlan Macquarie's experience as a military leader conferred many valuable qualities on him, which he brought to the role of Governor: setting a good example, having an orderly working day, taking responsibility, making quick decisions, working hard, getting the job done, and showing respect and compassion for people in his charge. He was, however, totally unrealistic in expecting that all the things that he wanted done would be obeyed. Elizabeth made a surprising gesture, entertaining to dinner all 58 convicts working on the Government House renovations. This marked, in a public way, what was to Elizabeth and Lachlan their new and enlightened era for the colony, in which all classes of people would be treated with respect and dignity and afforded the opportunity to improve themselves and contribute to society. It raised many eyebrows among the free settlers in Sydney. It also raised eyebrows across the other side of the world when the gossip reached England.

Macquarie set about emancipating convicts as soon as they showed character and promise, granting them land and setting them back on the path to re-enter society. To the Macquaries, forgiveness was a major outworking of their deep Christian faith. Lachlan underlined, in his prayer book, the words of the Anglican absolution that God "desireth not the death of a sinner, but rather that he may turn from his wickedness and live". That underlined book is in the Mitchell Library today. To the Macquaries, this meant that the ultimate goal of a penal colony was not punishment, but restoration. That Macquarie passionately set about doing this abundantly is evident in the statistical records. His predecessor, Governor Bligh, emancipated two convicts. Macquarie issued 1,665 pardons and 2,319 tickets of leave, which we would call parole. He also ensured that land was speedily granted to all freed convicts so that they could become independent citizens. This policy would be Macquarie's greatest legacy. The emancipists became successful pastoralists, businesspeople, tradespeople and professionals. In many ways, it was

they who created the Australia we know today, and it was they who coined for him later, after he had left, the name "the father of Australia".

Yet, in this, the most enlightened of Macquarie's policies, lay the seeds of his downfall. Ex-convicts were despised by free settlers. Most free settlers came from the petit bourgeois of semi-autonomous British peasantry, having managed to rise from the labouring class to the lowest rung of the middle class. Most arrived in the colony with their families and no resources. Macquarie suspected that some were fugitives, escaping debt or other personal difficulties. On arrival, they were granted generous tracts of land and supported with food and materials from the government stores until their lands produced. Very few were people of status in England, but in New South Wales they became the de facto upper class, expecting all manner of privileges and becoming disgruntled if they didn't get them.

### Macquarie's Enemies

The Macquaries did not, at first, grasp the seriousness of the threat posed to them by the easy access of disgruntled and self-seeking colonists to influential people in Parliament. Lachlan was at a strategic disadvantage, being an untitled Scotsman, a clansman, with few connections in high places. One of the biggest problems was that letters criticising him and being sent to England took six months to get to England. He didn't know a letter had been written. Then, maybe six months later, he would hear about it, and then he would perhaps respond. He didn't know who had written the letter and, by the time the response had got there, two years had elapsed. This, of course, made the whole thing extremely difficult.

Of the exclusivists most strongly opposed to Macquarie's policies on the emancipation of convicts, who continually wrote condemnatory letters to influential people, the best-connected person in London was the senior chaplain, the Reverend Samuel Marsden. A prolific letter writer, he knew the advantage he held. His opposition to both Lachlan and Elizabeth was particularly significant in bringing the Macquarie administration into disfavour and participating in Lachlan's resignation. The deep rift between the Macquaries and Marsden was a theological rift, which needs to be understood. To Marsden, God was a God of wrath. He pleaded with the British Government to make all convicts convicted for life, and he saw that God's judgement upon them was in his hands; whereas the Macquaries, both Elizabeth and Lachlan, regarded their role as restoring the convicts. In fact, Lachlan regarded their transportation as the punishment, and when they stepped on shore, in a sense, their punishment had ended.

### Macquarie and the Aboriginal People

The colony was over 20 years old when the Macquaries arrived. It is unlikely that it ever occurred to them that colonialism was an invasion where all the Aboriginal rights were infringed. It is unlikely that he'd ever heard the term "terra nullius". Basically, the Macquaries believed that when the British flag was raised down here at Warrane Cove the Indigenous people became British subjects. In his speech after his commissioning, Lachlan was careful to proclaim that Aboriginal people be treated with respect and kindness, but they had still been invaded. Lachlan went to immense personal lengths to demonstrate his acceptance of Aboriginal people: socialising with them, inviting them to Government House—much to the consternation of the free settlers—and entertaining them on ships in the harbour.

They eventually had a son, Lachlan Jr, and Lachlan Sr made sure that Lachlan Jr always played with Aboriginal children. It was an ultimate irony when Lachlan granted Aboriginal people land—land that they had owned in the first place—but they recognised his good-heartedness and accepted what he gave. Macquarie had homes constructed for them and gave them provisions, tools, and fishing boats. He regarded them as British free citizens and, therefore, he gave them convict labour. In the colony, however, Macquarie made it clear that Aboriginal people were under the protection of British law. For many years he gave them the benefit of the doubt when a settler or convict was injured or killed by an Aboriginal person. Macquarie persisted in his view that the Aboriginal people had been wronged, particularly by the abuse of Aboriginal women, so that violence towards a settler was justifiable. This made Macquarie very unpopular with the settlers for five years.

There came here to New South Wales, and particularly to Sydney, what we are now experiencing with La Niña and El Niño. There were record floods on lands that have been flooded in recent months at Windsor, and the crops were destroyed. This was followed by El Niño and drought, and the meagre crops failed. Convicts died of hunger, and Macquarie sent ships to India and China for food. The Gundungurra people came from the Blue Mountains, where water had dried up, into what is now the west of Sydney, something which they had done every summer, for years and years immemorial, to forage in the flats. But those flats were now occupied and fenced, and so aggression broke out.

In the worst of the cases, when Macquarie sent army detachments to the north, to the south, to the west, and along the Nepean and Hawkesbury river, at least 14 people were killed at Appin. That probably doesn't include those who threw themselves over the cliff and those who died of wounds later. It was a terrible tragedy and it mars

the record of a good man. My judgement of Macquarie is that he was a good man who made a fatal error. But I do not think that Macquarie should be made to bear the sins of the British Empire. It was not just Macquarie's error. It was not just one bad mistake by a good man. It was a man who tried, impossibly, to serve the Empire and to be loyal to it, perhaps blindly, and who committed a mistake. That, in a sense, was only a small mistake compared to the ultimate mistake of invasion. Thank you.

**Mr CALEB CUGLEY:** Thanks, John. How I follow on from that I'm not really sure, but I'll try anyway. As mentioned earlier, I am a teacher, so if all of a sudden I ask you to start a research project, just remind me that is not what we're doing here. I am talking about the contextual drivers during Macquarie's governorship that made the New South Wales Act and the Legislative Council a viable option for the colony. In the years preceding the establishment of the Legislative Council in New South Wales in 1823, a single question dominated the intellectual and political spheres: How much power should one man be given? Some remarked wryly that, in fact, the Governor of New South Wales had more de facto and, in some cases, de jure power than the King he formally represented. The French and American revolutions were fought over this question. Enlightenment thinkers debated the nature of autocracy and, in response, a series of legislative bodies were created across the British Empire, designed to aid autocratic Governors in their use of executive power in mixed military-penal-civil settings.

This is the context for the Legislative Council in which we stand today, the oldest legislative body in Australia. Created in 1823, it sought to address not just the numerous problems that Governor Lachlan Macquarie faced in his 11 years of governorship, but also the growing problems associated with autocratic governorship in Britain's scattered global empire. How was one to deal, for example, with the increasing numbers of convicts being sent from Britain at the end of the Napoleonic Wars? How was government to deal with challenges from free settlers, with their connections to the British Parliament, to Macquarie's emancipation and public works programs, not to mention the ever-increasing complexities of an expanding colonial outpost on the other side of the world from its superiors? The Council was created to aid the Governor in areas of legislative and judicial importance and, as a consequence, was filled with officers who also reported to the Governor. Inevitably, however, effectiveness and balance of power were issues into which representation could not insert itself.

This notion of a self-governing colony was already well established through similar councils in Canadian and American colonies, prior to the American Revolution of 1775. The contextual drivers during Macquarie's governorship exacerbated the already complex task of autocratic governorship, which, in turn, made a one-man administration untenable in the colony. Upon seeing this issue, the British Parliament used tried-and-tested methods of self-governorship to find the balance between a self-sustaining colonial outpost and a harsh and frightening penal colony. However, the Council was not a complete break with the Macquarie administration. Macquarie's own secretary and personal confidant, John Thomas Campbell, was one of the founding members of the Legislative Council. An ardent supporter of Macquarie's, as well as a personal friend, Campbell continued to fight for Macquarie's vision of the colony well after the Governor was dishonoured by factional interests in the British Parliament.

To understand this first Council, it is important to place it within both the global historical debate surrounding the notion of executive power and the growing administrative burden and complexity presented by the colony of New South Wales. Indeed, only by noting how the colony lived within the global flows can we fully understand the reasons behind the establishment of the Legislative Council in 1823. Following the numerous complaints levied at Governor Macquarie during the eleven years of his autocratic rule in the colony of New South Wales, the British Parliament passed the New South Wales Act in 1823. This established the Legislative Council of New South Wales in an attempt to resolve the issues faced by previous Governors' times in office, as well as the growing belief that executive power in British colonies, which had significantly and rapidly expanded through the wars of the eighteenth century and the defeat of Napoleon, needed to be restrained.

The British Government, having fought an enormously expensive global war involving mass mobilisation in the name of freedom and feeling the pricks surrounding the loss of the American Revolutionary War over representation, was more responsive to factional voices, particularly from Ireland, than it had long been. The New South Wales Act also established the New South Wales Supreme Court, separated the colony of Van Diemen's Land from New South Wales and provided Van Diemen's Land with its own court. This Act was written largely in response to Macquarie's governorship in New South Wales from 1810 to 1821 and the scathing review penned by Commissioner John Bigge towards the end of Macquarie's administration.

Sir Thomas Brisbane had taken over the governorship of the colony in a similarly autocratic style to Macquarie. However, after only two years of Brisbane's autocratic reign, the New South Wales Act established the Council to help Brisbane govern, despite the fact that Brisbane, to his peril, had largely found a solution to the burdensome administrative detail by simply handing off much of the work to his colonial secretary. The Council consisted of between five and seven members at any one time, appointed by the Governor. Further, the Act

stipulated that the Council was to "make laws and ordinances for the welfare and good government of the said colony of New South Wales". The Governor presided over meetings and only he could propose new legislation to the Council. The Council had the power to veto laws with a majority decision, as long as the reasons for doing so were recorded in the meeting minutes. However, if the Governor believed the law to be essential to the peace and safety of the colony then he could, with support of at least one other member of the Council, go forward with the law despite the dissent from the majority of the Council. However, he did have to seek a certificate from the Chief Justice that stated that the law was consistent with English laws and appropriate for New South Wales.

The Legislative Council was designed to help Governor Brisbane with the complexities of governing the colony without taking away too much of his executive power; hence the need for Brisbane to have a significant say in the make-up of the Council, the legislation being debated and the overarching veto powers. The Council's function was not to act as a constraint on the Governor's executive power but rather to aid in the complexities of governorship. These complexities were observed continuously throughout Macquarie's time in office. The time it took to receive permission from the Colonial Office in Whitehall for major decisions, including building projects and limits to the Governor's power—as observed with Macquarie's firing of Chief Justice Jeffery Hart Bent—made close oversight impossible. With the Council able to provide assent, the timeliness of approvals from the Colonial Office became less of a problem for Brisbane. Further, the Council provided the free settlers of the colony a forum in which to voice their concerns about the governorship of the colony. The Legislative Council was thus created primarily to aid the Governor in ruling the colony, rather than to restrain his executive power. This idea, however, was still prevalent in the New South Wales Act.

The notion of restraining executive power was not unique to New South Wales and the precedent of establishing a Legislative Council to act as a restraint against autocratic power had been established in the British colonies in the New World. The Legislative Council in New South Wales was the continuation of a theme for a number of British colonies, specifically those in America and Canada. The primary example was in Jamestown, Virginia. The Virginia Assembly, established in 1619, was formed by the Virginia Company, which was led by a group of investors close to King James I who oversaw the colony. The Assembly was formed in order to overcome the colony's problems, including the deaths of settlers, mismanagement in the colony and persistent financial issues. The Assembly was made up of 22 elected burgesses, two from each borough in Virginia. Further, the Assembly included the Governor, Sir George Yeardley, and four appointed officials. The British Parliament designed the council to "establish one equal and uniform government over all Virginia", as well as to introduce "just laws for the happy guiding and governing of the people there inhabiting".

The Virginia council was the first established legislature in any English colony and, as such, can be considered the forerunner of all future British elective bodies elsewhere in America, Canada, South Africa and Australia. Similar to the New South Wales colony, the Virginia Assembly's mandate included oversight over various activities, including trade, directing the moral code of the colony, overseeing religious matters and relations with indigenous populations. Further, the council acted as the legislative body and general court. Despite the differences, being from another century and in a distant hemisphere, it is clear that the councils of both colonies were established in response to increasing complexity in social dynamics exacerbated by the contextual drivers of their time.

The New South Wales Council had significantly less power and breadth of responsibility compared to its American counterpart. This is in part due to the different functions of each settlement. Virginia served as a new opportunity for British settlers, albeit supported by convict labour, while New South Wales' founding purpose was as a place of punishment for British convicts. An elected body designed to appease the free settlers in Virginia was considered too weak a source for the sort of fear required to hold English criminals in check. While the burgesses in the Virginia Assembly could propose and pass legislation, the New South Wales Council could only debate legislation proposed by the Governor. Further, for a law to pass in the Virginia Assembly, a one-fourth majority of the council was required, regardless of who was a part of that majority, whereas the New South Wales Governor merely required one member of the Council and the Chief Justice to impose a veto.

From the beginning, the American colonies were inspired to restrict executive power. Despite the differences in time and place, the Virginia Assembly provided a precedent for colonial self-government in the British Empire when the New South Wales Council was established. The Virginia Assembly model also led to the legislative assemblies in other British colonies, most notably in Canada. The British colony of Nova Scotia established its council, known as the Council of 12, in 1719. This council was similar to the New South Wales Council in several ways but had significantly more power. The Council of 12 had executive and judicial powers and acted as a cabinet for the government. The first elected representative body, known as the Legislative Council, was established in 1758. This newly elected assembly weakened the position of the Council of 12 until the assembly demanded separate councils, one to wield executive power and the other for legislative power. This led the British Government to dissolve the Council of 12 in 1838.

This demonstrates that the notion of colonial self-governance had been in existence for some time but that the New South Wales Act did not go nearly as far as the elected body in Canada. This was due to a number of factors but primarily the fact that the Canadian Parliament was establishing a free society largely independent from British rule, although still a colony of the empire, whereas New South Wales was first and foremost a penal settlement. Hence, when Brisbane received his orders to establish a legislative assembly in 1823, it was not without significant precedent set by the British colonies in the New World. By the end of the Napoleonic Wars in 1815, the British Government had amassed a significant debt, via the Bank of England, of £792 million, equating to 250 per cent of the British national income. The debt had substantial ramifications upon Britain's overseas colonies, particularly when said colonies required more money to continue developing infrastructure and support programs, as was the case during Macquarie's tenure as Governor of New South Wales.

Britain's monetary problems significantly impact Macquarie's ability to implement his sweeping plans for the colony of New South Wales. As the Scots military man and aspirational laird laid out plans for a Georgian architectural revival across the colony—with new churches and public buildings embodying the work that he and his wife, Elizabeth, were envisaging for the social, moral, religious and cultural transformation of the colony—the War and Colonial Office, from which both colonial administration and British war fighting were organised, was sending increasingly urgent instructions for Macquarie to rein in the spending.

In 1797, in the midst of continuing conflict with the former American colonies and France, a lack of confidence in the Bank of England had led to a run on money reserves, forcing the bank to suspend payments. This decision took Britain off the gold standard and continued to damage public confidence in the institution. In order to combat this and continue to fund war efforts overseas, the Parliament issued a suspension of payments, giving the Bank of England the power to suspend all payments in gold until 1821. This led to a greater reliance upon paper money, now being printed in more significant quantities, to alleviate some pressures caused by the suspension of payments. This, in turn, led to inflation, such as we are now experiencing in our own times—a standard tool used by governments to fund extraordinary national efforts such as war or the fighting of a pandemic. The financial strain this placed upon the Government in wartime was immense, and the tools to constrain it were yet relatively unformed. However, the Government continued to spend a significant amount of money, further driving up the national debt.

The British Government was not only financing its own war efforts but was also subsidising the war efforts of allies, including the Emperor of Germany, who received over £6 million across two loans, much of which was not repaid. Other payments to Portugal, Orange and the Bourbons were now in default or slow in repayment. The British further subsidised military spending to every European nation. The total amount paid to allies was in excess of £57 million, a level of spending which continued until the culmination of the war in 1815, leaving Britain with a national debt of £816 million. The introduction of an income tax in 1799 was intended to alleviate some of this strain; however, it could not overcome such a large sum of money. The post-Napoleonic peace years were required to stabilise the fiscal crisis that grew out of that war. The Bank of England did not come back onto the gold standard until 1821.

Macquarie was no stranger to this. He had cut his teeth fighting against French allies in India, and his own brother had died in captivity in North America. Yet, he was charged with somehow furthering the society of New South Wales. Macquarie believed that infrastructure would significantly improve the run-down and dilapidated colony. Macquarie repeatedly asked the Colonial Office for more funds for critical infrastructure works, such as the Female Factory. Under the pressure of debt, these requests were rejected. Thus, Macquarie was faced with running a colony on a significantly reduced budget which was heavily scrutinised.

These problems would not change for Governor Brisbane. However, the introduction of a Legislative Council to assist in the financial aspects of the colony was, in part, a reflex of this new definition of sound fiscal management for the colony. The Legislative Council limited the executive power of the Government such that major financial decisions did not come down to the whim of one man, as had been the case under Macquarie. Moreover, the increased reliance on the colony's own ability to tax and raise philanthropic funds for public endeavours, such as the Female Orphan School and various elementary schools and churches, gave the growing emancipated and free population of the colony greater voice. The Legislative Council became a sounding board for this.

A significant shift was occurring in the hearts and minds of elite Britons, and so among the British Parliament, in the latter eighteenth and early nineteenth centuries. This shift dramatically affected how the Parliament viewed the world and, specifically, the place of human reason within it. The Scottish Enlightenment placed emphasis on human rationality. Scottish thinkers such as Hume did not create these ideas; they drew heavily upon the works of philosophy, including Plato, Aristotle, Tacitus and Machiavelli. Plato, in *The Republic*, argues, through the voice of Socrates, that justice and political unity are key to a harmonious city. Plato's student Aristotle also bases his political philosophy on justice; however, he rejects Plato's emphasis on political unity.



Aristotle argues that, for the betterment of every individual citizen, every citizen—a small, select number of candidates in Aristotle's system of governance—should hold both private property and, contingent on that, public office. This aligns more with a representative system of government than an autocracy.

This ideal, emphasising the individual freedoms and happiness of property-holding citizens, directly influenced the work of later writers who drove the philosophical and political discourse in the early nineteenth century. Hence, the classical writers, although differing in their final judgements on the ideal political system, agreed on the virtues which should be associated with political philosophy: those of justice and the happiness of citizens. The Scottish Enlightenment also emphasised the freedom of speech and the importance of public opinion. Since the Scottish Enlightenment was focused on the growth of human rationality, it was clear in the writing of Hume and others that modern humans were more capable of reasoned and rational opinions than were their ancient forerunners. This led to a growing belief in the rationality of others, thus paving the way for self-government in the colonies.

Despite this belief, Scottish thinkers did not go so far as to endorse programs of emancipation or equality for women, in order to limit revolutionary politics that may disrupt the current political system through which they believed their overall goals could be met. This is significant, as Macquarie's program of emancipation would have been considered revolutionary by the standards of key Scottish thinkers such as Smith and Hume. The Scottish Enlightenment, which directly influenced the political philosophy of the British Empire and beyond, maintained the classic authors' emphasis on justice and happiness for citizens, while also introducing the belief in human rationality.

During Macquarie's tenure as Governor, particularly towards the end of his rule, the flood of letters and complaints that engulfed the British Parliament from free settlers of New South Wales declared that Macquarie's governorship had denied the citizens of New South Wales both justice and happiness. Hence, due to the intellectual context of the British Parliament in the early nineteenth century, the move towards limiting executive power in the colony of New South Wales was a natural progression due to the colony's needs and the apparent failures of a series of autocratic Governors.

However, this self-governance was limited due to New South Wales' primary function: that of a penal settlement. Macquarie governed New South Wales in a time of increased geopolitical turmoil that greatly influenced the social make-up of the colony through the ever-increasing number of convicts sentenced to transportation in Britain. The sheer number of convict ships arriving in New South Wales each year effectively demonstrates this problem. In the first full year of Macquarie's governorship, in 1810, five convict ships arrived in the colony. Compare that to the last year, in 1821, when there was a total of 22 convict ships. The increased number of convicts made New South Wales more challenging to run, particularly as an autocracy. Macquarie needed to make crucial decisions on wideranging and multiplying issues, including sending convicts to free settlers to work as labourers, providing food and shelter for government convict work gangs, and limiting the ability of convicts to get into further trouble while in the colony. Further, Macquarie had to tend to issues related to the safety and upkeep of female and male convicts while pursuing his own program of emancipating those he believed deserved additional freedoms.

These issues were complex enough in 1810, with a reasonably limited number of convicts arriving each year. However, by the end of Macquarie's governorship, these problems had expanded, with Macquarie hamstrung by his superiors in London to effect any lasting change to the system's overall efficacy. The Transportation Act, passed into British law in 1717, had stated that convicted felons would be sent to Britain's North American colonies; however, during the American War of Independence, convicts were instead sent to New South Wales. According to the law, felons were given seven years for lesser offences and 14 years for major offences, often replacing the death penalty.

This system worked effectively for many years, from a British perspective, with the number of felonies rising due to the rapid changes brought about by the Industrial Revolution. The mass migration of people to the cities in search of work, combined with long hours of hard, physical labour in factories for very little pay, led to an increase in crime to survive. This led to overcrowding in British prisons, leading policymakers to keep large barges on the River Thames as large numbers of young men arrived back in Britain with no jobs after fighting in the war. Further, the war economy that had developed over many years of fighting was no longer needed, putting more people out of work. This led to increased numbers of convicts being sent to New South Wales.

The British Parliament was aware of this problem, at least by 1817. In that year, Earl Bathurst called for an inquiry into the effectiveness of the system in a letter to Lord Sidmouth. Increasing numbers of convicts not only placed more pressure on Macquarie, but also shifted the societal dynamic in New South Wales. The morals and religion of the colony were also under Macquarie's supervision, and, as such, this change was just one more problem Macquarie had to address. The complications that arose with increasing numbers of convicts further

demonstrate how the contextual drivers of Macquarie's governorship greatly influenced the increasing complexity of the colony. A Legislative Council would be one answer to aiding the Governor in creating laws and legislation to continue the sound management of the colony.

However, once convicts had landed in New South Wales, Macquarie saw that the punishment of convicts was largely over. The transportation to the colony itself was the primary punishment, not the years of hard physical labour. Hence, he set about emancipating deserving convicts in larger numbers than had ever been seen before or after, restoring them to their place in society. This angered not only the British Parliament, but free settlers of New South Wales as well. The conflict regarding emancipation and the restoration of emancipists to society pointed to a deeper debate: that of the ultimate purpose of the colony. The British Parliament determined that the colony's primary purpose was as a gaol with a severe reputation to create fear in the minds of the British public. This belief is in direct contrast to Macquarie's system of emancipating convicts.

As John said earlier, during his 11 years of governorship, Macquarie granted—and I am quoting John Harris' book here—300 absolute pardons, 1,365 conditional pardons and 2,310 tickets of leave. Macquarie went further than granting emancipation to a significant number of convicts. He demanded that they take up an equal place in society to free settlers. Hence, the British Parliament established the Legislative Council to help create laws to govern an increasingly difficult issue in New South Wales society: convicts. However, it also demonstrates the change in New South Wales society as it moved more towards being a self-sufficient colonial outpost where free settlers had a say in governance, rather than a pure penal colony. This same issue is also why Brisbane was extended significantly more power than was available in the Canadian or Virginian councils. It was, ultimately, his responsibility to ensure that New South Wales was a harsh and unforgiving environment for convicts, which struck fear into the British people back home.

This desire from Macquarie for a more humane society angered several vocal free settlers, or exclusivists, who were unwilling to allow emancipists to re-enter society on an equal basis. The more vocal of these settlers included personalities such as Jeffery Hart Bent and Samuel Marsden. A number of these settlers were involved in the Rum Rebellion, which deposed Governor Bligh in 1808, and the removal of his predecessor, Governor King. This behaviour demonstrates the continual problem autocratic Governors had with disaffected settlers and their power through contacts in Britain and became a significant problem in Macquarie's governorship.

Discontented settlers, unhappy with a program of emancipation they believed would undermine their position in society, took it upon themselves to enact a change in leadership. Hence, Macquarie found himself the target of a concerted campaign to damage his reputation as a fair and humane Governor, which led to his resignation in 1817. Hence, the New South Wales Legislative Council had to answer a significant problem that had plagued numerous Governors before and after Macquarie. The Council allowed the Governor to enact legislation with the consent of prominent free settlers who spoke for the wider community. While this would not solve every problem faced by Governors of New South Wales, it is clear that this Council was, in part, a reaction to pacify discontented settlers in New South Wales. This demonstrates the wider recognition of the exclusivists that executive power needed to be restrained in order for their needs to be met.

The British Parliament established the Legislative Council of New South Wales to aid the Governor in an increasingly complex society. The contextual drivers of the early nineteenth century made self-governance a viable option through the precedents set by colonial governments in Virginia and Canada, and created in the War and Colonial Office a sense of the necessity of the expanded local government in New South Wales. The Council was a response to increasing complexities related to convicts, the focus of which was placed back on punishment rather than on emancipation, creating the necessity for a strong Governor, thus weakening the Council's power compared to the Canadian or Virginian councils.

The Council also demonstrated the shift in policy regarding the ultimate purpose of New South Wales, moving away from a pure penal society and towards a self-sufficient colonial outpost. Further, the Council gave disaffected settlers methods through which they could effect change in society more than writing criticisms of the current Governor to their contacts in Britain. The Council was a literal space in which the aspiring local governing class could test out their capacities and find preferment. Finally, the Council helped the Governor in various areas of governance under his command, including town planning, the economy and issues regarding the Church and the morals of society. Hence, the contextual drivers of the post-Napoleonic years pushed New South Wales towards self-governance through the precedents of other colonial governments and an increasingly complex society to govern.

**Ms JENELLE MOORE:** Thank you, John and Caleb. We often comment here that this is a difficult time in history to be in government, but I think that's a good reminder that governance is always hard. We will now take some questions from the audience.

**QUESTION:** Thank you very much for your very informative speech. I can't wait to read your book on Governor Macquarie. I don't know if it's splitting hairs but, as I understand it, Bligh put Macarthur in gaol, and it was George Johnston who got him out of gaol. So why do people say that it was Macarthur who led the Rum Rebellion when it was really George Johnston, as I understand it?

**Reverend Dr JOHN HARRIS:** I believe that Macarthur was the brains behind it, but he had, by then, left the 102nd Regiment to become a wealthy landowner, and so his mate, Major Johnston, actually did the deed. I think that's how it worked, but both of them were sent to England.

**QUESTION:** Hi, John. My name is Ashley and I'm with the Audit Office of New South Wales. I'm interested in asking you about your processes as a writer. It must be really difficult, with the amount of information on Macarthur in the archives in Australia, to actually condense that all down into a book. I'm here with a writing team and an author who is researching history books. I'm interested in how you navigated all of the information. Any insights into your writing process would be gratefully appreciated.

**Reverend Dr JOHN HARRIS:** I learned long ago, writing in controversial areas, that you have to have footnotes for everything, and you have to have chapter and verse. But you've got to love the research. You've got to love the detective side of it. We have such good tools. A lot of things are online. The libraries here are extremely helpful with materials. Trove is excellent. I am sure my colleagues here will know, with what they have written—they have been talking about the newspapers. Those newspapers are on Trove, so you can read them at your desk. There is a lot of help these days, but you've got to love the task. You've got to love the detective task and be excited about what you find. Then you have to find ways to make it accessible to other people who are going to read your work. Those are the two challenges.

**QUESTION:** John, as I remember the numbers you gave, you said that when Macquarie arrived in 1809 there were 10,500 people here, apart from the Indigenous population of the area. Then there was the parade ground and there were salutes fired off and there was the church and the judiciary. Soon there were roads to Parramatta and there were areas of farming out in what is now the west of Sydney. It seemed like a lot going on for such a small number of European settlers, a lot of them convicts.

**Reverend Dr JOHN HARRIS:** Well, there were a lot of convicts, and you had to find something for them to do. So the construction of all of those things was a way of using the convicts. Being smart about the use of convicts meant that Macquarie achieved remarkable things. He built the road over the Blue Mountains in an incredibly short space of time using convict labour. That's one of the criticisms of him in the Bigge report because he was so excited about their achievement that he emancipated the lot: everybody who worked on the road. But then he said, "Well, what is wrong with my gift to men who did a good job?" That was his attitude. He had the labour to do it, and that's one of the things that the settlers criticised. They wanted that labour on their properties, but he used the government labour for what he thought was the good of the community and the expansion of the settlement.

**QUESTION:** Dr Harris, you mentioned that there were some Aboriginal people that had convicts working for them once. Do you have any examples of that?

**Reverend Dr JOHN HARRIS:** Yes. There were examples at Elizabethtown and the one that was up on South Head. They were given convict labour. I know the massacre was a terrible thing but, prior to that time—I'm not forgiving Macquarie, but he showed immense patience for five years. But I think, in the end, he was a Governor of a colony and he had to feed his people. He had a mind snap or whatever, and he did send the troops against the Gundungurra people. But after that, there was a period of peace, and he increasingly was drawn towards the Aboriginal people. He spent his last day in the colony exclusively in the company of Aboriginal people. Increasingly, he sought them as people to go and sit and have a cup of tea with, as his friends. When he went back he didn't live long. He was living in a windswept little house on his property that was in debt and sitting at a desk where the wind came in and blew the coals on the fires. He had a painting of an Aboriginal man that he stared at all day.

**Ms JENELLE MOORE:** Unfortunately, we're out of time for questions. John and Caleb will be joining us for lunch today, so there will be another chance to talk then. Thank you to everybody who has asked questions. We will now head to lunch. After lunch we have a fantastic session with Kim Eberhard from Westpac, who, drawing on the Macquarie theme, will be showing us a picture of the bank charter signed by Macquarie that was recently on display here at Parliament House. Could those with tickets to lunch please meet the Black Rod team in the Legislative Council foyer, just to the left as you exit from here. We don't have reserved seating, so please find a seat that suits you. If you have dietary requirements and you have advised us beforehand, you will have been given a place card. Please take that place card with you. If you haven't been given a place card, let one of us know and we'll make sure that you're sorted out. If you don't have a ticket to lunch, I trust you've been finding

some good options around town. If you need any suggestions, let one of us know and we'll point out some places. Please be back in the Jubilee Room by 1.25 p.m. for a prompt start at 1.30 p.m. Thank you.

**(Luncheon adjournment)**

**MONEY CHANGES EVERYTHING:  
THE BIGGE REPORTS, CURRENCY AND BANKING IN THE COLONY**

**Ms KIM EBERHARD**, Westpac Group Archivist and Historian, via videoconference

**Mr DAVID BLUNT [Clerk of the Parliaments]:** Good afternoon and welcome back. It's my pleasure to introduce the Deputy President of the Legislative Council, the Hon. Wes Fang, who will welcome Kim Eberhard and her fascinating session about colonial economics and currency. Wes Fang is a member of The Nationals and trained as an officer and a pilot in the Australian Army. Later, he flew helicopters for Child Flight, the dedicated emergency transport service, before exploring his interest in politics. Wes is also a former director of the Wagga Wagga Business Chamber and a small business owner. Here at Parliament, Wes is a particularly enthusiastic participant in committees. He is a committee chair, a deputy chair and a member or participating member of 14 committees. Wes, how on earth did you get the afternoon off? Please welcome Wes Fang.

**The Hon. WES FANG [Member of the Legislative Council]:** Our next session is rather aptly titled "Money Changes Everything"—and doesn't it just! Earlier today we considered the legacy of Governor Macquarie, and this afternoon we will be considering his role as the architect of the now famous holey dollar and the dump, bringing Australia's first currency to the colony. Westpac recently lent the Parliament these original currencies for our bicentennial exhibition *Unlocking the House*. I was particularly fascinated to see the actual holey dollars and dumps and even some early notes, including one very convincing counterfeit note. As an aside, one of my early family members was sent here for counterfeiting notes in the UK. I'm really looking forward to hearing more about the currency's origins today.

Kim Eberhard is Westpac Group's archivist and historian. She contributed to the book and major exhibition produced for the bank's 200th anniversary and also arranged for the listing of the bank's earliest records, which date back to 1816, on UNESCO's Memory of the World Register. Kim's 25-year career has been spent principally in the private sector, with community-based organisations, businesses, religious orders and independent schools. Kim holds a bachelor degree in communications from the University of Technology Sydney and a Master of Information Management from the University of New South Wales. She is also about to start a doctorate at The Australian National University examining the life of former Bank of New South Wales CEO Sir Alfred Davidson and his contribution to Australia's economic history. So it's a wonder that she has time to present to us today, but we very much welcome her attendance.

A former president of the Australian Society of Archivists from 2006 to 2008 and a member of the executive board of the International Council of Archivists from 2009 to 2012, Kim was one of the authors of the *Universal Declaration on Archives*, which was adopted by UNESCO in 2011. A passionate advocate for records, archives and the stories that they hold, Kim has also written a number of award-winning publications, including the centenary history of North Sydney Boys' High School and *In Good Faith: Waverley College and the Great War 1914–1918*. She also writes for the profession, with a number of journal articles and industry standard textbooks to her credit. It is my pleasure to welcome and introduce Kim Eberhard, who will be presenting virtually. Welcome, Kim.

**Ms KIM EBERHARD:** Welcome, everyone. I am in Lane Cove, and I am living proof that the COVID wave that we're talking about is real. That's why I'm not with you today. I'm really sorry about that. I'm really looking forward to sharing, in depth, some of the amazing history of Australia's first bank and oldest company. I know that sounds like a corporate line but, when you peel back that corporate overview, this is actually the truth. We have been around, in one way or another, since 1816 and, of course, came into being in April 1817. So we definitely straddle this amazing period that we are looking at in terms of Macquarie, and then, of course, into the period that we are celebrating: the 200th anniversary of the Legislative Council. It's my joy to be here to do a bit of a deep dive into this period with you. Normally, I do not get to spend this long on 12 years of history.

We shall start with this rather twee image. This is a 1960s artist's impression of the building that was down at Macquarie Place, in a section called Reiby Place, that allegedly had the first location of the first branch of the Bank of New South Wales. Anybody who knows anything about colonial history, of course, knows that that's entirely implausible. There is no way that everybody was that neat and tidy and clean. I certainly can't imagine that being so. However, it's useful for me to use, in our corporate context, because most of the people that I get to speak to are not history graduates. They are economics people. They are finance wizards. Increasingly, they are tech wizards. They know all sorts of things about stuff that I don't even vaguely comprehend, and I am chuffed to be able to draw a bit of a picture for them that says, "It hasn't always been thus." Thinking about the fact that I'm talking to you via Zoom right now, I had a weird thought at about two o'clock this morning. I thought,

"Oh, my God! Imagine how much easier it would have been if Macquarie had had Zoom." Then I realised that, if Macquarie had had Zoom, we probably wouldn't have had the Bank of New South Wales.

Let's see what we can draw out of the first 12 years of our story. We will be looking at the steps taken to establish the bank. We will be talking about currency, as Wes noted. We are going to touch on some of the social issues which then, as now, actually played out in our boardroom. Then we are going to look at the governance issues, which took a very, very long time to be resolved. Apart from this image, all of the things that I'm showing you today are actually in our collection. I may regret this but, if anybody is interested in coming out to the archives to have a look, while we are not generally open to the public, I'd be very happy to have a few people come out and visit and have a look at these treasures for real.

In 1810, when Macquarie arrives, we have a situation of monetary chaos. We have a complicated system that reflects local conditions, and that was characterised by the absence of a reliable medium of exchange. Forms of exchange that were deemed to be most reliable were dubbed "sterling" and could be defined as any form of money which was roughly equivalent in value to bills drawn on the Treasury—that is, the ultimate promise to pay in Bank of England notes in London. These included government and paymasters' bills, commissary receipts and any coins other than copper. All the rest was currency: copper coins and promissory notes, including those issued by local merchants, which were not much better than a simple IOU because there was nothing to back up that promise. The absence of that thing that backed up the promise is why the Bank of New South Wales was established. We became the entity that backed up all of that.

Shortly after arriving in March 1810, Macquarie wrote to Castlereagh, noting, "There being no other circulating medium in this colony than the notes of private individuals, and this practice having already been productive of infinite frauds, abuses and litigation, I am very apprehensive it may, at some future period, occasion a general bankruptcy and prove ruinous to individuals as well as to the interests of the colony." In other words, he was saying to London, "Look, there's a problem. We need to do something about it." As early as 1810, he outlined to London, "Maybe we should set up a bank." He had seen these in practice in some of his earlier postings so he knew that it would work. London, in its infinite wisdom, instead sent out a shipment of coins that were to be customised for local use—this is where we get the holey dollar and dump from.

In 1813, £10,000 in Spanish dollars arrived to relieve what was considered by London to be a currency shortage. The centre of each dollar was cut out to form a dump and given the local value of one shilling and threepence. The remaining rings formed the holey dollar, and they were given the face value of five shillings. Despite all efforts and hopes they didn't work, mainly because the intrinsic value of the silver of those coins was probably on par with, if not higher than, the face value of these new coins. People would hoard them, a lot of them would go back out into the ether because they were exchanged for shiploads of goods, and we have anecdotal evidence that people would shave bits of silver off the outside or inside of the ring. They were fabulous as a means of fixing the currency problem and stood up to the task quite well, but they were not a good long-term solution.

In the image, there are a couple of promissory notes. One of them is backed up by a Scottish bank—which is probably as far from Sydney as you could possibly get—and the other is an unbacked IOU. It is quite a sophisticated one. I have seen ones that are just handwritten notes, which would be the equivalent of me saying to anybody I meet, "I'll owe you \$20 in two months' time." The problem with them was that when it came to the time for exchange, you might not get the face value; you might only get \$18 of that \$20 that I promised you. That is no way to set up a financial future. That lack of certainty is one of the main reasons the Bank of New South Wales was eventually called into being.

All of this happened pretty quickly. After the holey dollars and dumps did not work, the new judge advocate, John Wylde, arrived in 1816 and it became clear to him that there was no solution to the monetary chaos. He also noted that disputes over currency were the most common form of cases that he was presiding over. There were so many of them that he said to Macquarie, "I've got to stop this. We have to work out a solution." They came up with something that looks like a three- or four-day plan. Their solution was to simultaneously prohibit currency—all of the things that were not authorised—and set up a new mechanism for the issue of sterling.

On 20 November 1816 Macquarie instructed his secretary, John Thomas Campbell, to invite a select group of magistrates and merchants to what was called "a friendly consultation". Almost no records survive of that event. Two days later, on 22 November—almost 206 years ago today—a second meeting was held, which produced definite and recorded decisions. They form the very first entries of the first minute book of the Bank of New South Wales and they have been in our collection since 1816. This select group gathered "to take, by direction of His Excellency the Governor, into consideration the present state of the colonial currency and what would be the consequence of an immediate sterling circulation". By sterling they mean something that is backed up by an entity and that has proper value. The decision was the establishment of a public colonial bank and the passing of

resolutions to implement it. Once they had agreed to implement the sterling medium, this group of merchants, mainly, decided that they needed to set up the bank in the following terms:

That a Sum of not less than Twenty Thousand Pounds, in Shares of not less than One Hundred Pounds each be invested in a Public Colonial Bank... [This] will be necessary for supplying a circulating medium for the uses of the colony.

In other words, we are going to have capital sitting in an institution against which notes could be issued. Another resolution was:

That the general object and Business of the Bank be to advance, upon due Interest and credit of the Bank, pecuniary assistance to the Colonial Trader, Agriculturalist and Settler, as well as to afford a Safe Depository of Money, committed to its Security and charge.

On 23 November, three or four days after Macquarie had set this in train, a proclamation was issued suspending the use of anything other than a sterling medium of exchange. All of those promissory notes that were not considered to be sterling were henceforth not to be used. One of the things that is not clear—certainly not from our records—is how much Macquarie and Wylde discussed the legal aspects of what they were doing. Some issues must have been raised, including whether Macquarie had the power to grant a charter of incorporation to set up this new entity or whether he needed to consult London. That question is something that we will come back to later. It was something that dogged the Bank of New South Wales at least until 1828, and some people would say it dogged the bank until 1850.

There were some subscribers and account holders. In addition to Macquarie and John Wylde, another early figure involved in all this was John Thomas Campbell, who, despite or maybe because of the fact that he was Macquarie's secretary, played a significant role in the establishment of the Bank of New South Wales. Macquarie had come across J. T. Campbell at the Cape of Good Hope and Campbell had been recommended to Macquarie as someone who had alleged banking experience. On the basis of a fairly tenuous recommendation, Campbell then became Macquarie's chief assistant and the very first president or chair of the board. Apparently he was not very well liked. He was described as being frugal and reserved—I'll let you decide whether that's an appropriate image for a banker—and frugal and reserved is what he was. I suspect he didn't have very many friends on the board.

But it is thanks to Campbell's incredible skills as a secretary that we have absolutely incredible, detailed and relatively easy-to-read minutes that cover almost every step that was taken from that 22 November meeting right through to the establishment of the bank the following April and for the entire time that Campbell was the president of the board. There was a group of people that got together from these initial subscribers to draft what became the bank's first rules and regulations. The people that are in bold on the slide in front of you—William Redfern, Thomas Wylde, Robert Jenkins, D'Arcy Wentworth, Alexander Riley and John Harris—were elected as the first directors. We will talk about Riley later on, because one of the things that he represents is one of the indications that the establishment of this bank was not as smooth as we like to think it was.

In 1816-17 we had no such thing as share certificates, so we developed something that looked a bit like a receipt and issued those in exchange for the substantial sums of money that were being put forward for the capital of the bank. On the top there is one of the receipts issued to D'Arcy Wentworth, who eventually, by 1819, was the proud owner of 10 shares, which was £1,000 worth of shares. John Thomas Campbell beat that—he had 12. Richard Moore and Thomas Moore, who were later associated with the Moore Theological College, had 500 each. Samuel Terry, a major merchant, had 500. Surprisingly, Elizabeth Macquarie is noted as one of our very early shareholders, with £300 worth of shares, so three shares. In 1819 we had proper share certificates issued. Because we had no share register at the time, the transactions of the sale and exchange of those shares were recorded on the back of the original certificate. This practice predates the Sydney Stock Exchange by quite a number of years.

The first stock exchange—the first proper stock exchange that we would now recognise—was established in Melbourne in 1861 and later in Sydney in 1871. These records of the exchange of shares that are on the back of our surviving share certificates are probably the first records of such transactions in Australia. Shares could be purchased in instalments. As you can see on the slide, Wentworth is holding a receipt for three-quarters of his initial allotment. By the end of 1819, there was only £10,850 of the initial required £20,000 in paid-up capital, so the enthusiasm for contributing to, being part of or buying shares in this bank did not match the actual reality. It took quite a long time for that paid-up capital to genuinely be paid up.

We go back to our step-by-step process. It was fairly straightforward once the initial step had been taken to set up the rules and regulations. First, a public meeting was held on 5 December 1816, and the call for that appeared in *The Sydney Gazette*. It is the first recorded public use of the name "Bank of New South Wales". On 18 December a general meeting of subscribers was called and the committee was appointed to draft the rules and regulations, which were ready by 7 February 1817. There were 50 rules and regulations and they were discussed and passed unanimously except for rule 7. Rule 7 had three conditions attached to it to work out whether a

proprietor was eligible for election as a director. The three conditions were that the proprietor had to be a subscriber to the capital, that he could not reside outside Sydney, and that he was unconditionally free.

This was the only rule to be debated—and it was hotly debated, which was a reflection of Macquarie's support for emancipists. John Harris, one of the other directors, was adamantly opposed to emancipists holding positions as directors. Macquarie's influence appears to have overruled this, as the composition of the board included some well-known emancipists. Commissioner Bigge would later question a number of individuals about that rule, and the details they provided him that have survived give us an insight into the rationale behind some of the reasons why they did not want time-served convicts to be on the board.

Eventually, we were issued with a charter. Macquarie signed it in March and it was delivered to the board by John Thomas Campbell. Before that, though, there were a lot of practicalities that had to be dealt with, including the appointment of Thomas Wylde as the law solicitor—so the legal counsel for the bank. Premises had to be found, so there was an ad put out looking for suitable premises. Mary Reibey said, "No, I've got a place that you can use," and they agreed. We rented those premises for £150 a year for two years. We stayed there until June 1822, when we moved up to George Street into an old hotel. That became a bit of a thing that we did after the 1850s; we quite often moved into public houses to set up interim branches until we could afford to establish and build our own branches.

The lease was quite a substantial sum of money for Mary Reibey at that stage. Although she is often confused as being one of the founders of the Bank of New South Wales, she in fact held back until 1819. My theory is that she wanted to be absolutely sure that the bank was not going to fall over. Perhaps it was the bank's reluctance to actually engage with her on any level other than as a landlord that fuelled that reluctance. We have a record of her asking for a mortgage based on the lease, on the value of her property and on the value of the holdings that she had within the Bank of New South Wales as an account holder, and the bank said no. I wonder if this is one of the first instances of the way women were treated in business. But that is the subject of another paper altogether.

An engraver had to be engaged to design and print banknotes. We had the first lot of denominations, which included two shillings and sixpence, five shillings, 10 shillings, one pound and five pounds—the same as the old 25, 50, a dollar, one pound and so on. On 8 April 1817 two of the directors wandered across Macquarie Place from John Thomas Campbell's house to open the branch between 10.00 a.m. and 2.00 p.m. The directors were what we would now refer to as the bank staff. Some of our new tellers get quite a tickle out of that; they think it's quite amusing that someone who might be a director was actually in the same position that they are. We had three staff. There was Joseph Hyde Potts, after whom Potts Point was eventually named, who was the servant and porter. He eventually rose up to become secretary and along the way he designed a set of banknotes later in the 1820s. Edward Smith Hall was the cashier and secretary. Robert Campbell Jr, who was the nephew of Campbell of the Wharf, was our head accountant and bookkeeper until 1818. I believe he also had a bit of a dispute with our John Thomas Campbell.

The charter was a two-page document. "Document" is not the right word, but it's the way we'll go. The charter that set out the purpose of the bank was on one page and the rules and regulations on the other. They were large pieces of vellum; they are not the sort of thing you can easily share around. George Howe, who was one of the original subscribers to the Bank of New South Wales and was heavily involved with *The Sydney Gazette*, very helpfully transcribed both the charter document and the rules and regulations and published them for distribution. He also was quite generous in his support of the bank in his paper. I wonder whether—well, no, there is definitely no instance of money changing hands, but he basically acted as the bank's first unofficial public relations agent. I'll read you some of the very florid prose that he wrote in December 1816, just at the point when the bank was still in the process of being set up. His editorial reads:

... in announcing to the inhabitants of New South Wales, that the period is now arrived when a measure, fraught with advantages so numerous and important to all the interests of this rising Colony, and which will be felt through every rank of its population, that our present limited columns are totally inadequate to give any thing like a competent idea of its extensive and important benefits; but we have no hesitation in saying, that the public Meetings on the 22d ... and on the 5th ... have given birth, efficacy, and stability to the Establishment of the New South Wales bank, which will not easily be shaken.

I don't know about you, but the cynic in me says that I can't imagine that sort of ad flying these days. It sits alongside a letter that Macquarie wrote back to the original founders, who had thanked him for signing the charter. He wrote back a letter that we quote quite a lot internally. It reads:

Persevere, Gentlemen, in your exertions to foster this Infant Establishment and be assured it shall ever have my warmest support and patronage—and that the time is not far distant when the Bank will on its own merits obtain a public confidence, and gradually flourish, to the Credit and Benefit of the Proprietors and the Country at large.

It is a lovely, aspirational statement and a wonderful vote of thanks. I'll leave you to ponder on the connection between Macquarie and Campbell and the other directors. We've talked about a few of our people who were



involved in this. There are some other substantial figures involved in the establishment of this bank, including D'Arcy Wentworth. As all of you would know, Wentworth was a surgeon, one of the contractors for the Rum Hospital and eventually treasurer of the Police Fund, which was deposited with the Bank of New South Wales. He was on friendly terms with Macquarie's successor, Sir Thomas Brisbane, and his longevity in the colony made him one of the most significant and influential people in the colony, which is why having him involved in the establishment of this bank was such a big deal.

John Harris, who was a surgeon, was opposed to social and professional freedom of emancipists, which must have made board meetings quite an interesting experience. He made the first deposit on opening day, which was 8 April 1817, of £138 1s 4d. His descendants replicated that deposit at each significant point in the bank's history: in 1956, when we were given a savings bank licence, and then again in 1982, when the Bank of New South Wales merged with the Commercial Bank of Australia to form Westpac. There's a nice thread through history through the John Harris family. Robert Jenkins was a pioneer farmer in the Illawarra. He eventually resigned and became a committee member of the organisation that eventually became the New South Wales Savings Bank.

There are other notable figures involved in the early months of the bank. Samuel Terry was an emancipist and a major shareholder, who opened his account in 1817. He benefited—and again I will let you draw your own inferences from this—from the board decision to increase the total amount of loans that were being issued in relation to the amount of paid-up capital and to allow the use of town allotments as security. I am not going to say there was land speculation that was supported by the Bank of New South Wales, but I'll let you think about how that may have played out. He unsuccessfully stood for election as a director in 1818, 1819 and 1820. When he was finally elected in 1822, he refused to take his seat on the pretext that he was not unconditionally free.

William Redfern attracted Bigge's attention because of his position as an emancipist and Macquarie appointing him as a magistrate, even though Bigge had warned Macquarie not to. There are very clear indications that the roles held outside the bank by people involved in the bank started to have an impact on what was going on internally. Edward Eagar was an emancipist and another major shareholder. He was involved in drafting the rules and regulations and wanted to be a director, but he was prohibited because of rule 7—he wasn't unconditionally free. There seems to be a bit of a disconnect there because Redfern, being an emancipist, ended up as a director, but Eagar, also an emancipist, did not become a director. The speculation is that it was to do with the length of time and the depth of the personal relationship between Macquarie and some of these individuals.

Turning back to women, I've already mentioned Mary Reibey and the fact that we set up shop in one of her buildings. She became a shareholder once it was clear that the Bank of New South Wales was going to turn a profit, which was in 1819. Those shares were retained in the family for multiple generations. We have subsequent records in the 1860s and the 1870s that show the Reibeys still held some of that initial holding. Her account balance in 1819 was the third highest of any individual in the bank. She had £1,073 and that was behind only D'Arcy Wentworth and Henry Antill. We know this because we have—and I do not know how this has survived—an account ledger that captures all of the deposits, all of the withdrawals and all of the exchanges for all of our customers between 1817 and 1820.

That ledger also has, effectively, the financial statements for each half-year for those same years—1817 to 1820. After that, we have no more records until 1850, so this little snapshot of what was going on financially and economically in Sydney is gold—it's absolutely amazing. You can trace who was in business with whom, what sort of amounts were being exchanged and traded and who was relatively successful and who may not have been quite so successful. In that ledger we have evidence of seven other female account holders. They range from Anne Mulcock in 1819, who had a deposit of £10, right up to Mary Reibey, who had a general balance of around the £1,000 mark. By 1819 we have two female shareholders. One was Elizabeth Macquarie, who I've already mentioned, and the other was Margaret Campbell.

We now come to the issues that were raised over the process of establishing the bank and its first few years of operation. The first was the validity of the charter. There were whispers about this right from the start. The consensus was, and has been confirmed, that Macquarie had no specific power under his commission to grant a charter of incorporation. He was acting on Wylde's advice, who considered that there was implied power. The Governor exercised wide fiscal authority and had the power to establish boroughs and cities, so why not extend that power, or assume that you can extend that power, to set up a charter of incorporation on a business entity.

Wylde and Macquarie believed that the business community would not risk subscribing without some guarantee against losing more than the contribution by each individual subscriber in the event of a failure, hence the need for this charter. Wylde argued that the bank was a matter of public interest and could only succeed if it was incorporated, which would then give it implied limited liability. Wylde also suggested that he had the strongest confidence that the British Government would not reject the proposal recommended for so long by the

Governor—remember that Macquarie had been asking for this since 1810—which also had such public support. We know all of this because Wylde articulated it to Bigge during the inquiry.

The other thing that played into this was that Macquarie didn't report the establishment of the bank to London until March 1817, several months after the initial November meetings and after he had signed the charter of incorporation. Apparently, there was no early ship available for this documentation to be sent to London. But the move also fits with a pattern of what I have seen described as "Macquarie-esque" behaviour, such as dispatches requesting permission for building works being delayed until the works had started, meaning it was too late and the programs had to continue. This element is one of the things that resonates quite strongly within the bank. Macquarie knew that the bank was needed. He knew that, eventually, he would get some sort of authority to make sure that it would operate, but he also took the chance and got the bank underway before he had proper authority. This idea of taking a risk and backing yourself is something that resonates quite strongly within the bank today. The matter of validity and the protection that it provided for the subscribers and shareholders was something that wouldn't be resolved for another 10 years.

Another issue that was raised was the idea of management and oversight. Security was tight. There was one gun, at least. There was a safe. There were employees who slept on the premises. This ensured a degree of prevention against theft from external opportunists. What was not taken into consideration was that you might need to be on the lookout for internal opportunists. The rules stipulated that each banknote had to be signed by the president and a director, and countersigned and recorded by the accountant when it was issued. It turns out that multiple directors took notes home in preparation for issue and didn't tell anybody about it. This sort of laxity opened the way for internal fraud and, in 1821, there was a series of events eventually referred to as the Williams affair. Our cashier at the time, Francis Williams, managed to give unauthorised loans to the extent of about £2,000 and gave credit to his friends for payments that were never actually made.

This led to a shortage, the scope of which extends to somewhere between £5,000 and £12,000. Remembering that the initial subscription base was £20,000, that £12,000 figure is really substantial. There is also no real evidence of skill in actually running a bank amongst any of the people that were involved in setting the bank up. We have Macquarie saying that John Thomas Campbell had some sort of experience back in Ireland, but what that experience was and whether that translated into any skill or expertise is a big, open question. I guess it's fair enough, with hindsight, to realise that it was probably very difficult to find staff who knew how to run a bank, but it is one of the things that Bigge picked up on in one of his reports: There was no genuine skill or expertise actually underpinning the running of this bank.

The third thing that pops up in relation to the establishment of the bank is the competition that it was going to raise amongst the merchants in Sydney, many of whom were making money by issuing their own promissory notes. They backed them up with their own businesses, which was not as good an authority as an authorised bank but still a line of trade for them where they earned commission on the exchange of bills. Quite a number of the merchants who thought that establishing a bank would be a great idea realised, a little bit later on, that they might be undercutting themselves if they supported it. Alexander Riley, who was one of the originally elected directors, realised in February that he couldn't go on with it because, if he was agreeing to support the Bank of New South Wales, he would effectively be destroying his own line of business. There is a lovely letter in our archives explaining why he couldn't go on with that. There are others in similar positions. They included the Waterloo Company, Bostock and McQueen, and various enterprises that Daniel Cooper was in the process of setting up at that stage.

The other thing that was starting to emerge was the idea that a bank might actually be profitable. If it's profitable for one bank, why would it not be profitable for another bank? Again, this is something that Bigge tapped into. Robert Campbell Sr, or Campbell of the Wharf, was present at some of the foundation meetings for the establishment of the Bank of New South Wales, but he declined to become a shareholder and therefore did not become involved in the establishment of our bank. In 1819 he decided he would set up the savings bank that eventually morphed into the Government Savings Bank of 1914—a very different process and a very different thrust, but it shows that there was space for competition once it was realised that a bank would be profitable.

The fourth thing to take out of all of this was the idea of social acceptance. Bigge eventually said that Macquarie setting up this bank was just another way for him to impose his social mores on the colony of New South Wales, and that was evidenced by the fact that he had let the emancipists run the show. Edward Eagar, who had been keen to be a director, was disappointed because of rule 7, and yet Redfern was not. So there was that distinction. It was almost as if there was a game of favourites being played. There was antagonism in quite substantial portions of society about this bank, which led to a coalescing of people around John Macarthur saying, "We don't want to be associated with a bank that is a convict bank. Let's set up our own and let's tap into that exclusives idea." They eventually set up the Bank of Australia in 1826. Even though there is not a completely

direct line, we now recognise that as NAB—the National Australia Bank. That is what it eventually became, in time.

What is a discussion about banks without a few facts and figures? The year 1817 was quite grim. There is scope to account for the fact that we are only dealing with April to December, but the gap between the figures for that 1817 year and the figures in 1818-19 is much too big to be compensated for by that shorter 1817 year. Come 1818, when it was clear that this bank was not going to fall over immediately, it was pretty obvious that it was a good venture and it was going to be the sort of thing that could really fly. Eventually, John Thomas Campbell stepped away from the bank in 1821, and that coincides a little bit with a reduction in the proactivity of the bank in seeking new business. It was also opening itself up to being trampled on by competition because there was this big reluctance to do anything. I think they had been scared by the Williams affair. They had been worried by the press discussion of the limited liability or not and the validity of the charter. By the mid-1820s, the bank had lost its premier position. It had a few other competition entities, and it was suffering from a lack of the same level of leadership it had had under John Thomas Campbell's direction. Nevertheless, its establishment is universally regarded as a major, significant step.

Of course, we have the Bigge commission that occurred. I don't know if any of you know, but Bigge was a Bank of New South Wales customer. I don't know if that is an unqualified endorsement of the institution, but it remains a fact that he definitely deposited his money with the Bank of New South Wales. Perhaps it was the only place that he could keep it. It does make you wonder. We know that he was critical of Macquarie in relation to the emancipists. One of his comments was "The efforts of Governor Macquarie have not been confined to the introduction of the emancipated convict into general society. He has attempted it in the formation of the Bank of New South Wales, in that of an agricultural society and in placing them upon the judicial seat as members of the Governor's court in which the Judge Advocate presides."

Bigge took issue with the fact that emancipists had a hand in writing the rules and regulations. He also questioned the idea that the bank needed to be well run. How could you be certain that it would be well run if it was being run by convicts? So Bigge's report summarised the state of agriculture and trade. If we were marking it as a school assignment, you would probably give the Bank of New South Wales a five or six out of 10, according to Bigge. He decided that the establishment of the Bank of New South Wales in the early part of 1817 "has greatly added to the facility of commercial transactions within the colony". But he then pointed out that there were insufficient controls in the charter to provide immunity from the ordinary risks of partnerships. So he pointed out immediately that the charter did not provide protection to the subscribers.

Bigge also pointed out that there were gaps, shall we say, in the way the bank was managed. He summed up his overall opinion of the bank by basically saying, "The term of the charter expires soon enough. There's plenty of room for competition, so maybe the Bank of New South Wales will die a natural death anyway." It wasn't exactly a ringing endorsement. I suspect it's a combination of his rejection of Macquarie's embrace of the emancipists' ideals and the fact that the Bank of New South Wales was not run particularly well, from a management point of view, for that early period.

In 1823 the charter was due for renewal so, no matter its positives or negatives, it needed to be re-signed in order for the bank to continue. Bigge had issued his reports by the time this was due, although not all of them had been read in Sydney. Macquarie had been replaced by Sir Thomas Brisbane, and there was some alarming press in the Gazette and also *The Monitor*. In 1823 a letter from a colonist described the charter, saying, "The greatest evil which has been brought upon this country, even during the very worst of times, has been the establishment of the bank." So it was not particularly popular at this point. The letter continued, "The approaching dissolution of this body by the expiration of the instrument so improperly called a charter will be a subject of congratulation to the whole colony", and—terribly stinging, when I first read this—"If only the Bank of New South Wales will abandon its charter, which is thought to be no more than wastepaper." We get very excited when we look at the charter these days, and the idea that someone would refer to it as "wastepaper" is deeply wounding, I must tell you.

Despite this, the proprietors gathered together and set in train the motions to get this re-signed. The only person from the original board who was still on the board at this stage was D'Arcy Wentworth. The new directors were John Piper, who was the president, William Walker, Thomas Macvitie, John Oxley, James Norton, William Cox, R.C. Pritchard, E.S. Hall and William Moore. The charter was approved by the board and quietly signed by Brisbane. Most economic historians have it that Brisbane decided he would just let it go; he wouldn't challenge the status quo, and the best way of doing things was to do as little as possible. But, in reality, the legitimacy and the protection of the shareholders was still a live issue. Nothing had changed.

In 1824 we had a very interesting deviation from standard practice. There was a decision made that we would, for some unknown reason, deviate from pound sterling as the form of currency and we would henceforth

adopt Spanish dollars. There is a theory that it was Goulburn, who was the new colonial secretary, who could see that there was some way of advancing his own interests. Alexander Berry, a major businessperson of that time after whom Berry on the South Coast was named, noted that the dollars were rather curiously foisted upon the colony. They weren't sure where this idea came from but, nevertheless, all of a sudden Macquarie's 1816 proclamation banning anything other than sterling was rescinded, which meant that everybody and anybody was free to make contracts, issue notes and draw bills in terms of currency or other money. The old holey dollars and the dumps were even called up for a period of six weeks, so they were back in circulation. The Bank of New South Wales, being the bank of note issue, had to then scramble to reconfigure itself so that it could issue new currency in the new Spanish dollars.

The framework for the use of these Spanish dollars was not complete. There were some notes in circulation, but not all of them. Store receipts were accepted in pounds, as deposits, and the bank's capital remained in pounds; but it paid dividends in dollars per share. So what you have is this funny half-adoption of this new approach to currency. The bank and private note issuers actually found themselves doing what they were doing in 1816, which was operating a dual system of the old currency, which was not really authorised but they used it anyway, and sterling, which was authorised but was really hard to get. This obviously was not working and, in 1825, Brisbane tried to come up with something that would make it a bit easier to manage by putting in a fixed exchange rate between the Spanish dollar and the British pound.

London, once again, stepped in. It operated all of its colonies in pound sterling, so what was New South Wales doing, suddenly going with Spanish dollars? This was not going to work. So they basically pulled back, and from the beginning of 1826 everybody reverted back to pound sterling, which, of course, meant another reissue of the notes in various denominations. By 1826, Joseph Hyde Potts, who had started as the Bank of New South Wales porter and servant, had risen to the position where he was the guy designing and creating the banknotes. In 1826 Darling passed the Currency Act, which repealed the dollar Act of 1824, and that series of events confirmed the use of pounds in the colonies and later in Australia, and it stayed that way until the decimal system was introduced in 1966.

Did this re-signing of the charter solve our issues? No, it did not. Again, the Gazette was quite vocal, pointing out that it was "sorry to observe that the directors and majority of the meeting seemed to set such a high value on that roll of sheepskin, tape and sealing wax called the charter". So, we had "wastepaper" for the Brisbane charter and we had Darling's written off as a "roll of sheepskin, tape and sealing wax". Clearly, the legality of this charter and the legal foundations of the Bank of New South Wales were still in question. *The Monitor*, a rival to the Gazette, decided in its editorial that the only way to deal with this problem was for a charter to be issued by the new Parliament, and that is exactly what happened in 1828. We were finally able to apply to the Governor for an Act of Council to underpin our operations and, in March 1828, the Legislative Council passed an Act that actually authorised the Bank of New South Wales "to sue and be sued in the name of its President". The form of the bank was to remain stable as a partnership in law and as a joint stock company with unlimited liability in organisation.

This remained in place until 1850, when we were given a completely different Act of Parliament, but that's a very different chapter and something we would have to talk about at another time. But I hope this has given you an idea of some of the highs and lows of our first 12 years of operation. It was definitely not as smooth as what Sydney Butlin, a major economic historian, was basically saying in 1950, when he blithely wrote, "When Macquarie arrived, the colony was primarily a penal settlement. When he left, it was clearly going through a rapid transition to a free market, capitalist economy." It sounds really simple; it sounds really straightforward, and, of course, it was anything but. I will leave it there. I thank you for your indulgence today and for your time. I'm happy to take any questions that you might have.

**The Hon. WES FANG:** Thank you so much, Kim, for that fascinating presentation. Does anybody have any pressing questions that they would like to ask Kim?

**QUESTION:** That was very interesting. Thank you, Kim. I'd like to find out some more about the early days of the bank. Is there any written material that is accessible to the general public?

**Ms KIM EBERHARD:** A very comprehensive history was written in 1970, and that is relatively widely available. We have some of our early records digitised, but I do not have a platform to sit them on. The bank, being a corporate entity and a business, sees history as kind of a nice thing to have, and it is difficult for me to get real estate on our internet and intranet sites to post what are very large files of our first minute book, the account ledger and all of those sorts of things. I would love to have them available, but I don't have the means of making them available easily. I am happy to share them individually, but that's a very long, slow process.

**QUESTION:** Thanks, Kim. I also work for Westpac, so this is a bit of a money-related question. When shares in the Bank of New South Wales were originally purchased, what currency was used to purchase those shares?

**Ms KIM EBERHARD:** They were purchased in pounds. People had to stump up actual pounds sterling. If you remember, early on, I made the distinction between sterling and currency; sterling was defined as "any form of money which was roughly equivalent in value to bills on the Treasury", which was the ultimate promise to pay in Bank of England notes. So the original forms of money or means of exchange that were stumped up would have been bills on Treasury in London, representing a particular value.

**Mr DAVID BLUNT:** Given the building we are meeting in today, this is a somewhat ironic question: Did the Bank of New South Wales ever take deposits in rum?

**Ms KIM EBERHARD:** No, it did not. I don't know that there would have been anywhere to put it because the safe that they bought was actually a cane crate, and the poor porter and servant had to sit on that. So, by the time they had put their notes and bills and goodness knows what else in there, there wouldn't have been any room for rum anyway. That's not to say that there wouldn't have been a bill of exchange on a quantity of spirits that may or may not have been imported in or out of the colony but, definitely, no actual jugs of rum anywhere.

**The Hon. WES FANG:** I wonder if some of the interest payments might have been made in rum. Noting that we are now, unfortunately, out of time, I'd like to thank Kim for what was an absolutely fascinating presentation today. Thank you so much for making yourself available under trying circumstances. It was a triumph of technology and we lost absolutely nothing through the presentation.

**Ms KIM EBERHARD:** Thank you very much. Take care.

**Mr DAVID BLUNT:** Thank you, Wes, and thank you, Kim, for that fascinating insight. We have a very generous 30-minute break for afternoon tea now, after which we will be returning for Jessica North's captivating stories of key colonial women and, of course, our final presentation from Ita Buttrose.

**(Short adjournment)**

## HERSTORY: EXTRAORDINARY WOMEN IN EARLY COLONIAL NEW SOUTH WALES

Ms JESSICA NORTH, Author

**Ms JENELLE MOORE [Usher of the Black Rod]:** Welcome back, everybody. These are our final two sessions of the afternoon. For our next session, could I introduce the Hon. Aileen MacDonald. As the newest member of the Legislative Council and former country vice-president of the New South Wales Liberal Women's Council, I would now like to welcome Mrs MacDonald. Aileen is a passionate supporter of regional New South Wales and advocate for small business. Having been named Guyra's Citizen of the Year in 2019, Aileen received an Order of Australia medal in 2020 for her dedication to the business community in Guyra and her services to Rotary and the Liberal Party. Aileen brings a rural perspective to Parliament and is working to deliver services and infrastructure to regional New South Wales. Please join me in welcoming the Hon. Aileen MacDonald.

**The Hon. AILEEN MacDONALD [Member of the Legislative Council]:** Thank you for the lovely introduction, Jenelle. We are coming to the best part; we are talking about women, which is one of my other passions, besides small business. This afternoon we have the great privilege of turning our minds to the true stories of some remarkable women from early colonial New South Wales, told by an accomplished historian and gifted storyteller, Jessica North. Jessica has worked at the Australian Research Institute for Environment and Sustainability at Macquarie University for the past 15 years, including five years as its director. She has also spent the past 10 years researching the lives of some fascinating colonial women. She is the author of two books, *Esther* and *Mary Ann and Captain Piper*, which are published by Allen and Unwin and are top sellers in Amazon's history of Australia category.

Incidentally, I went and bought *Mary Ann and Captain Piper* the last time we were here because I wanted to get some context. Jessica was able to bring back to life those characters. I know there are some women in the audience today who are descendants, and they are particularly interested. Dr Catie Gilchrist, from the University of Sydney, has described Jessica's writing as "so utterly beautiful and compelling that reading her prose is akin to hearing the remarkable history for the first time". The personal journeys we will join Jessica on today include those of the first women to manage a large agricultural estate—and it wasn't Elizabeth Macarthur—the subject of the first civil law case, the instigator of the first prenuptial agreement, and the child of convicts who became a society queen promoting Australia to the world. Jessica, what a pleasure to introduce you today.

**Ms JESSICA NORTH:** Thank you so much for that lovely introduction, Aileen. It has been fascinating learning all about what was happening in New South Wales 200 years ago. Now it is time for all of you to sit back and relax while I tell you the stories of those four women that Aileen mentioned. At the end, I will reveal the name of another woman, who walked through Sydney's Government House completely naked. Let's travel back in time together to the early colony of New South Wales. The first time I went there was when I was writing my book about Esther Abrahams. I had first met Esther in a small paragraph in a book about women in Australian history.

I read that she had been a convict on the First Fleet and, amazingly, had later become First Lady of New South Wales. I thought, "Well, that can't possibly be true because we would all know about her", and I had never heard of her. Most books about our colonial past have, quite understandably, focused on the powerful and influential men of the time. When Major George Johnston arrested Governor Bligh during the famous Rum Rebellion and then became Acting Governor himself for a while, the fact that Johnston was living with an ex-convict woman called Esther would seem completely insignificant—except, of course, to Esther, who was briefly thrust into that role of First Lady. I was most intrigued by her story, and I decided to find out more about it.

Esther was only 16 when she was convicted at the Old Bailey for stealing some lace. Why she stole it remains a mystery, because she seems to have come from a good family. At her trial, someone was wealthy enough to pay for a barrister, and that was most unusual. And it wasn't any old barrister, either; it was William Garrow. He would go on to become famous for introducing the concept of innocent until proven guilty, and it is probably due to Garrow that Esther was not hanged for her crime. Instead, she was sentenced to seven years' transportation. But, first, she spent many months in the infamous Newgate Prison, and while she was there she gave birth to a baby. When her baby was just six weeks old, Esther was put in chains and taken to one of the ships of the First Fleet that would be sailing to Botany Bay. The ship was the *Lady Penrhyn*.

All the ships of the First Fleet were remarkably small, and the *Lady Penrhyn* was smaller than our eastern suburbs ferries. Imagine it coming all that way. It had been built to carry 70 prisoners, but it ended up transporting 101 female convicts. They lived below deck, under a low ceiling, so they couldn't stand upright. There were no

portholes. Candles were forbidden for fear of fire, so the only light that reached them came through the square hatch through which they had climbed. One hundred and one women, a few babies, lots of chamber pots—living in the semi-dark. The journey took eight months. Well, I wanted to know the details. Was Esther in chains during all that time? Was she ever allowed up on the top deck in the fresh air and sunshine? Did her little baby survive?

I am happy to tell you that her baby did survive the voyage, and she grew to become the gorgeous young woman in the picture I am showing. Esther was Jewish, so her daughter, Rosanna, was the first free Jewish settler in Australia. During the first few years of the colony, everyone lived as an Anglican, whatever their religion. So Esther lived as an Anglican. She was married as an Anglican. She was buried as an Anglican. Her children were brought up as Anglicans. But, nevertheless, she passed on her great love and respect for the Jewish religion to her children and her grandchildren. One of her grandsons, George Nichols, became a New South Wales parliamentarian, and he advocated successfully for Jewish rights. The York Street synagogue presented him with a beautiful silver cup as a gesture of their thanks.

The man whom Esther eventually married was George Johnston. He was tall and blonde with clear blue eyes. He was Scottish, and he had joined the British marines—later the Royal Marines, but then the British marines—at the age of 10 to fight alongside his father in the American War of Independence. When he was 12, he was promoted to the rank of second lieutenant, and he fought at sea against the French. He was chosen as part of the elite marine guard that would guard the 11 ships of the First Fleet during their voyage and guard the colony during its early couple of years. When he also boarded the *Lady Penrhyn*, he was a first lieutenant, aged 22. Later, Johnston was hailed as a hero for his actions during a convict uprising which was known as the Battle of Vinegar Hill. Johnston is the one on the brown horse in the picture on the screen. Then, of course, he arrested Governor Bligh during the famous Rum Rebellion.

Johnston had become the third-largest landholder in New South Wales. He had properties along the Georges River, beginning the new area of Bankstown. On one of those properties he built a substantial farmhouse he called George's Hall. On the screen is a painting of George's Hall. It is very faded, but we can forgive it that because it was painted 200 years ago by George and Esther's eldest son when he was just 15. It is the first known artwork ever painted by a non-Indigenous Australian. On the very right-hand side, about one-third of the way up, you might be able to make out a whitish building. That is the original George's Hall. However, Johnston's main estate, where he lived, was the impressive Annandale estate. It was large; it covered what are now the whole suburbs of Annandale and Stanmore. Johnston was a leading supplier of meat and grain to the Government, which used that as food for the convicts. But Johnston had to return to England twice. The second time was to face a court martial for having arrested Governor Bligh, and he was away for a total of six years.

Many historians assumed that, during his absence, his substantial properties would have been managed by his overseers. But I found, instead, that Esther was actually the first woman in Australia to manage a large agricultural estate, and she paved the way for other women to follow her, such as Elizabeth Macarthur, who began managing Elizabeth Farm about a year later. When Johnston's estate was under Esther's management, the sales of meat and grain to the Government were larger than at any other time. She was very capable, and she had had nine children by then, as well. Many sources of information I found provided only small threads of detail, but, when woven together, they created the rich tapestry of Esther's life. I was able to build her world around her, and it was a particularly fascinating world because it included those powerful and influential men of the time. Through Esther, we meet the early Governors: Phillip, Hunter, King, Bligh and Macquarie. We get to know Blaxland, Lawson and Wentworth long before they set off to find a way across the Blue Mountains, and we see them complete that intrepid expedition. We also meet the wily Bennelong and his marvellously feisty wife, Barangaroo, who is a woman we should also know much more about.

Writing the story of Esther's life gave me the opportunity to explore just what it was like for a female convict to endure that voyage of the First Fleet and then to step ashore at Sydney Cove and live through all the drama of those early years—the deprivation, the starvation, the toil, the floggings, the shipwrecks, the murders, the bushfires, the floods and the friendships. As it turns out, that seemingly insignificant ex-convict called Esther is actually an important historical figure. She really did become First Lady of New South Wales. She was influential in the early respect gained by the Jewish community in Australia and was the first woman in Australia to manage a large agricultural estate. But most people have never heard of her.

My second story is about Susannah Kable. Back in 1783, four years before the First Fleet set sail, 19-year-old Susannah Holmes, as she was then, was convicted of stealing some spoons and some clothing. She was imprisoned at Norwich Castle gaol, and that's where she met another prisoner named Henry Kable. They became close. Henry applied to marry Susannah three times, but the prison governor would never give his permission. Nevertheless, they managed to get together and Susannah had a baby, which she named Harry. But then, when her baby was eight months old, Susannah was chosen to be among the female convicts of the First Fleet. She was chained to two other women and was put with her baby on the outer seat of a public coach, at the

back, exposed to the weather. The women were being taken to Plymouth, where they would be imprisoned in a hulk until the ships of the First Fleet were ready to sail. Henry Kable was left back at the gaol.

Plymouth was in the south of England, 300 miles away from Norwich. The journey took several days, and Susannah had to hold baby Harry on her lap the whole way. Hulks were old ships that were permanently moored as floating prisons to hold the hundreds of convicts awaiting transportation. When Susannah and the other women finally climbed up onto the deck of the *Dunkirk* hulk, its captain refused to take baby Harry because there were no papers for him. While Susannah was still chained to the other women, a burly guard stepped forward, wrenched her baby from her arms and handed him to the gaoler who had escorted the women from Norwich and would be returning there. The gaoler climbed back over the side of the hulk into the waiting rowboat and Susannah could just watch her crying baby disappear over the side, knowing that she was about to sail to the other side of the world.

The gaoler, whose name was John Simpson, was a good man. He sat with the squirming baby Harry on his lap, rocking and jolting in a coach and stopping overnight at inns along the way, where he would try to tempt the baby to take a little warmed milk or oatmeal pap. He pleaded at the inns for old cloths that he could use as nappies. Instead of going straight back to Norwich, when the coach reached London, he got out and he left baby Harry with a woman he knew there. He then went to the office of the Colonial Secretary, whose name was Lord Sydney. He was told Lord Sydney was away from his office and, anyway, he would have no time to talk to somebody like Simpson. But Simpson didn't give up. He paced up and down outside Lord Sydney's office for hours until he finally saw Lord Sydney descending a nearby staircase, and he rushed over to speak to him. He explained what had happened, and he pleaded for the baby to be able to join his mother. He was so convincing that, by the time he left, he had a signed contract for baby Harry to be able to join his mother and he had another one for Henry Kable to be sent to Botany Bay as well.

Simpson then took baby Harry all the way back to Norwich Castle, collected Henry Kable then escorted them all back to Plymouth, just so that that little family would have a chance to be together. The story got into the London papers and a wealthy lady raised £20 in donations for Susannah, which was equal to about twice a labourer's annual salary—quite a lot of money. The lady spent the money on books and clothes and other items that she thought would be useful to Susannah in the new colony. Then she had them all wrapped up in a large hessian parcel and given to the captain of the *Friendship*, the ship on which Susannah was due to sail. Of course, the colony wasn't established at Botany Bay and all the ships moved up to Port Jackson.

On the first Sunday after the convicts arrived in Sydney Cove, Susannah and Henry Kable were finally married. But then, Susannah discovered that the captain had plundered her parcel and only a few of the books remained. When she repeatedly asked for her missing items, the captain just shrugged her off. She was a convict. He knew she had no legal rights. There was nothing she could do about her missing belongings. However, Governor Phillip wanted to encourage the convicts to live good and honest lives once they had served their sentences. He thought that if the Kables could successfully sue the captain for their missing items it would prove to the convicts that their rights would be upheld later. He had the power to change the British law to suit the individual circumstances in New South Wales. So Phillip summoned the captain to appear in Australia's first civil law case. The captain was found guilty and was ordered to pay the Kables £15, which was the approximate value of the missing items. It was a landmark case, and it changed Australian law forever. Over 200 years later, *The Bulletin* magazine named Susannah Kable in its 100 most influential people in Australian history. But most people have never heard of her.

My third story is about Sarah Wills. Sarah's husband was a convict who was transported about 10 years after the First Fleet had arrived. Sarah was one of the few wives who came out to New South Wales with her husband to remain with him. After they arrived, her husband was assigned as a convict servant to his free settler wife. According to British law, a married woman had no legal rights. When she married, any property she owned became the property of her husband. Anything she earned or inherited after her marriage also belonged only to him. A married woman could not sign any contracts or run a business because she was not considered to be a person in her own right. Legally, she was treated as one of her husband's possessions. That created a specific problem for women like Sarah because convicts weren't able to own any land or property or businesses either, so they couldn't make any money. That meant that the free wives of convicts had to be provided for from the government stores.

The early Governors got a bit creative with the law and decided to treat the free wives of convicts as though they were single women. Then they could own land and run businesses—something that was impossible for the respectable wives of the free settlers, who were still the possessions of their husbands. So Sarah Wills was given a grant of land in her own name. She worked hard, with the help of her convict servant. She grew crops and livestock. She bought and sold property. She lent money and she established a successful trading business. She and her husband then formed a partnership with someone you probably do know: Mary Reibey and her husband.



Here is Mary Reibey on our \$20 note. The two couples built ships and a large trading enterprise together. But then Mary Reibey's husband died, and soon afterwards Sarah Wills' husband died as well. Governor Macquarie granted each of the widows a small block of land so they could go away and live on little farms. That wasn't what either of those women had in mind.

Of course, Mary Reibey went on to build an enormously successful business enterprise. But what about Sarah Wills? Well, she married her husband's friend George Howe, who—as we heard just recently—was the publisher of the colony's only newspaper, *The Sydney Gazette*. Howe was an ex-convict and not such a good man. He had five illegitimate children with a mistress in Sydney, but he up and left them all to marry the wealthy Sarah Wills. By that time, Sarah was 35 and she had six children of her own. She owned this grand mansion in George Street—it's the tall one in the middle. She also had a fully stocked warehouse, three farms, a ship that she co-owned with Mary Reibey, and hundreds of cattle and sheep and horses.

Sarah was not prepared to allow everything she had worked for to become the property of her new husband. So one week before her marriage she had a deed of trust drawn up to protect her own property for herself and her children. In Britain, a legal document such as that was the preserve of only the very wealthy and the male. But in Sydney this working-class woman challenged the patriarchy by instigating Australia's first prenuptial agreement, and in the process she made legal history. When George Howe died in 1821, his will left Sarah's George Street mansion to only his own children. So William Wentworth was engaged to test Sarah's prenup in court.

That case, rather like Dickens', lasted for 10 years. Sarah died before it ended, but Wentworth eventually won the case, and number 96 George Street was preserved for Sarah's children. That was another landmark case in Australian law. The *Australian Dictionary of Biography*, as I'm sure you all know, has entries for anyone who was anyone in Australian history. It has an entry for Henry Kable, but not for Susannah. It has entries for both of Sarah Wills' husbands, for her son, for her stepson, for her sons-in-law, for her grandson and for her nephew; but there is no entry for Sarah Wills, and most people have never heard of her.

My last story is about Mary Ann Piper. After my biography of Esther Abrahams was published three years ago, I had no plans to write another book. I thought my work was done. But then my crafty publisher said to me, "You know Mary Ann Piper is a bit of an enigma. You could have a little look." And I thought, "I don't know." Mary Ann was a mere silhouette behind the colourful character of her husband, Captain John Piper. Historian friends told me that she was a child of convicts, and she had had illegitimate children before marriage. She would have been completely cast out of colonial society. I would struggle to find anything about her in the historical records.

But I knew from my research for Esther that often the women are there in the historical records. It's just that historians haven't noticed them. The collection of Captain Piper's family papers in the State Library includes about 900 handwritten letters, all needing a bit of deciphering—particularly the ones that are written crisscross on the page, which was a technique often used by women in order to save paper. It can be very tempting for historians to overlook the letters to and from women because they assume they'll just be about domestic and social issues. And they can also skip over the little invitations to dine and the written acceptances. But they are like little golden treasures for me because they show me where everyone was and who they were seeing.

So I decided to begin having a look for Mary Ann to just see what I could find. I first found her here, on Norfolk Island, in 1805. The white house in the middle there is the island's Government House. The island was a pleasant place then. It was long before it became the gruesome destination for repeat offenders. It was a farming community of convicts, and Mary Ann had been born on the island. Running around as a barefoot 13-year-old girl, she was destined to become a simple farmer's wife. But then, just after she turned 14, the island's 31-year-old commandant took her to his bed.

What? Who was this rogue of a man taking advantage of such a young girl? Well, it was Captain John Piper, and I was all set to dislike him. But the man I found was disarmingly charming, kind and generous, and I enjoyed his company, just like everybody else did. He had been a favourite among the respectable ladies in Sydney, such as John Macarthur's wife, Samuel Marsden's wife and several others. He continued to send them letters and gifts, and the ladies all shared his letters between them. When Piper had moved to Norfolk Island, several of the ladies had rushed forward to offer to look after his pet dog and horses while he was away, with the Reverend Samuel Marsden's wife winning that particular prize. Even Governor Macquarie's wife, Elizabeth, seemed remarkably close to him, later writing, on one occasion, "If you happen to be disengaged, I should be glad to see you for a few minutes this morning", and, another time, "I hope you will come soon as there is no time to lose."

Gentlemanly though he was, Captain Piper did take maximum advantage of his time and place in history. It was socially acceptable then for military officers such as himself to sow their wild oats, and girls of 14 were

considered to be adults. At 14, they left school and they sought work or marriage. Even so, during just the two years that Captain Piper was on Norfolk Island, he fathered five illegitimate children with four different mothers. Now I was hooked, and I was desperate to find out what happened to Mary Ann. I watched eagerly as she was the only girl who moved into that island Government House to live with Captain Piper, and I followed her when she was the only one that he took with him back to Sydney. On the left of this picture is Government House, and a little bit to the right is a tall Norfolk Island pine, which Mary Ann would have immediately recognised when she first sailed in to Sydney Cove. In the middle at the back, on top of the hill, is the long military barracks building where she lived with Captain Piper. That's the area which is now Wynyard Park.

Before I knew it, there I was again walking through the streets of early Sydney, peering into the colonists' windows to see what they were all up to. Only this time, it was much more fun because Mary Ann was a generation on from Esther. Gone were the years of struggle and starvation. Sydney was a thriving trading port and it was just ready to become a party town. A year or so after they arrived in Sydney, Mary Ann and Captain Piper set off on a voyage to London aboard the *Providence*. I hunted down a copy of the first mate's journal for that particular voyage so I would know everything that had happened. I knew that at night Mary Ann had stood on the top deck of the ship with Captain Piper, marvelling at the Great Comet of 1811, which streaked across the sky every night for a week as they sailed over the Pacific Ocean. The journals of other women who had sailed to the same ports around the same time told me that Mary Ann would have been repulsed by all the cockroaches scuttling over the ships but that she would have been delighted by the beauty of the flowers and the birds in Macau, in China, where she lived for a month. She would have been tormented by fleas in Cape Town and buffeted by the strong winds on the island of Saint Helena.

After a long voyage of 11 months, Captain Piper and Mary Ann finally arrived in Regency, London. I walked beside Mary Ann when she visited shops such as the world's first department store, Harding, Howell & Co. When I saw Captain Piper take Mary Ann to Scotland to visit his family, I investigated travel in a Royal Mail coach so I could describe just what it was like for the passengers as the horses galloped through the snowy countryside. Not long after their visit to Scotland, Piper was appointed as Sydney's new naval officer, which was a bit like a customs officer. It was a civilian position—it had no uniform—but in typical Captain Piper style, he designed an impressive uniform for himself and commissioned his London tailor to make it up for him before he left London. The high-collared coat was fastened at the front with a decorative brass clasp. Eleven brass buttons marched down each side of his chest and shimmering gold epaulettes adorned each shoulder. He even added a dress sword to swing by his side for this completely civilian position. Captain Piper was then ready to return to Sydney and take up his new post. The naval office building, perched right on the shore of Sydney Cove, was where Mary Ann and Captain Piper lived after their return from London.

Piper's salary was 5 per cent of all the import duties he collected, but it just so happened that in the years after his appointment, Sydney's trading boomed—and so did Piper's income. Before long, he rented the elegant Burwood House so his family could live in style. Then, one hot summer's day, Captain Piper was in a boat being rowed down Sydney Harbour to meet an incoming ship when he received word that this ship had been delayed, so he thought he'd cool off with a swim. He was rowed to the shore, where he got out, stripped off some of his clothes and plunged into the cool water. But almost immediately, he was aware there was another swimmer nearby. It was a woman. Being the gentleman that he was, he got out of the water and rode away to leave her to her privacy. Soon afterwards, he was invited to Government House, where his friend Governor Macquarie explained that the female swimmer had been the Governor's wife, Elizabeth, and that she had appreciated his gallantry. As a reward, Governor Macquarie granted Piper 190 acres of prime waterfront land in an area that the grant stipulated was to be renamed Point Piper. Piper's land extended far inland, right up to what is now Oxford Street. He owned all that.

By this time, Captain Piper had become one of the colony's wealthiest gentlemen. He built a waterfront mansion in the area inside the red circle there. The mansion was called Henrietta Villa after Elizabeth Macquarie's middle name. It was the most magnificent house in Australia. Even today it would be a fabulous home. A serpentine path led up from the water's edge to the palatial house, which was surrounded by sweeping lawns. Almost all the surviving paintings of it show only two wings, and many historians thought that that was all there was. But there were actually four wings, which formed a quadrangle around an internal courtyard garden. The two front wings faced the harbour and had ceilings two storeys high. Two enormous domes with highlight windows were perched on opposite corners of the slate roof. A ballroom sat beneath one of the domes and a banqueting hall lay beneath the other. Tall French windows along each side let in plenty of light and gave expansive views of the harbour. A rare painting by Lycett shows, on the left, one of the two-storey rear wings; that one housed the family's private rooms. A fourth wing across the back, which faced the hill at the back, housed the servants' quarters.

I researched all the details of daily life in a wealthy household such as the Pipers'. This is the sort of thing I found. Their day would have begun with breakfast in the dining room. On the left of the screen here is a typical

table setting plan for breakfast, and on the right are some curators' replications of it that were exhibited a few years ago at Elizabeth Bay House. The table setting is taken from a wonderful letter that was written by a female relative to Governor King's daughter when she married John Macarthur's nephew in Australia. The letter contains almost everything a young lady needed to know when setting up a genteel household, including what food to serve and how to serve it. It warns, for example, that ham and tongue must never be served together at lunch unless one of them is in a pie, that poultry is only suitable as a second course if it follows fish or soup and that steak is only ever served to one's intimate friends. This breakfast includes pots of tea, coffee and hot chocolate, freshly baked bread rolls and butter, toast, ham, eggs, chicken, prawns, lobster, almonds, dried cherries, fresh fruit and cake.

The family would have been served by footmen wearing livery. Footmen were chosen for their matching heights and their attractiveness—it was known as "calves before character". It was at breakfast that a footman might deliver the mail on a silver tray. Letters wafted to and fro all around the world. They were trustingly handed to the captain of a ship that was leaving the writer's port and along the way, at various ports, the captain would hand the letters on to the captains of other ships who were sailing more directly to the destination. Amazingly, most of the letters actually arrived.

Piper's new wealth meant that Mary Ann had to dress in keeping with her husband's financial status. In London she would have seen all the latest fashions, and she now became one of the best dressed women in Sydney; she would spend more on one dress than her lady's maid would earn in a year. I was thrilled to discover a lovely ball gown that belonged to Mary Ann, which is now carefully stored in the archives of Sydney's Powerhouse Museum. Captain Piper's clothes, too, would have been the height of fashion, like close-fitting breeches that accentuated his calves, decorative waistcoats, and coats with padding to enhance his manly silhouette. The cravat was a crucial part of a gentleman's dress. It was tied around the neck with a knot at the front, and the most fashionable cravats were heavily starched to keep their high shape throughout the day. When dressing, a gentleman would look up at the ceiling while the cravat was tied around his neck, and then he would slowly lower his chin in the hope of creating certain fashionable creases. It took a lot of time and patience to get it right, and there would be dozens of discarded attempts strewn around the floor.

Living in their amazing home, the Pipers had 100 servants to look after them, and they entertained on a scale that had never been seen in Australia before. They hosted garden parties for 100 guests at a time. There was no road to the house for many years, and so the guests arrived by boat and were greeted by footmen holding silvered trays of crystal glasses filled with sparkling champagne and by Piper's personal band playing music on the lawn. They also hosted sumptuous balls for over 200 guests in their magnificent ballroom. During the heat of summer, large French windows allowed the cool evening air to waft in and push the hot air up into the domes, so Henrietta Villa was the most favoured place in Sydney to dance the night away. Piper even placed a row of small brass cannons on his lawn so that he could fire salutes to all the visiting dignitaries as they arrived, and they included four different Governors, over the years.

Mary Ann's world was dominated by the changes being made by Governor Macquarie to the colony's finance, culture and architecture. It also included the powerful East India Company in whose ships Mary Ann had sailed and at whose outposts she had stayed at Macau, Cape Town and St Helena. There was, of course, the beginning of Parliament in New South Wales. There were the first boat races on Sydney Harbour, which Captain Piper organised and generally won. And there was the first bank, which we've heard about, of which Captain Piper was president.

Henrietta Villa was described as a "fairy palace". Captain Piper was known overseas as the Prince of Australia, and Mary Ann ensured that their every event was a triumph. The newspapers of the day reported that the Pipers had made Sydney famous around the world as a welcoming port. They were the top celebrity couple in New South Wales. When Commissioner Bigge arrived in Sydney, the Pipers lent him an opulent carriage so that he could drive around the colony in comfort. They held a magnificent garden party in his honour, and they invited him to their grand balls, with Piper firing his cannons in salute each time the commissioner arrived.

When the Macquaries returned to England, three years later, Elizabeth sent Mary Ann her own cello as a gift. On the screen is a picture of Mary Ann, with four of her children, inside the magnificent Henrietta Villa. Her elaborate cap is trimmed with silk flowers and sheer streamers. She is wearing rings on both of her hands, pendant earrings, and a gold watch tucked into her waistband. The portrait was painted shortly after she had given birth to the eleventh of her 14 children. Sadly, five of them died before reaching the age of 12. Then, when the Pipers were at the peak of their popularity, they were struck with financial ruin. Henrietta Villa, and just about everything else they owned, had to be sold. Captain Piper was devastated and, in the middle of one of the last dinner parties at Henrietta Villa, he dramatically attempted suicide.

Mary Ann's story continues on the other side of the Blue Mountains, where William Wentworth later came to her rescue. But she had already made her mark. Far from being the social outcast predicted by the

historians, that barefoot child I first met on Norfolk Island became a society queen who helped to promote Australia to the world. But most people have never heard of her.

So where were those four women in 1823? Esther Abrahams was 54, and she had once again taken control of the Annandale estate because her husband, George Johnston, died at the beginning of that year. Susannah Kable was 59, and she had retired to the Hawkesbury with her husband. Sarah Wills died in 1823, eight years before William Wentworth won her court case. Mary Ann Piper was at the height of her popularity. She was 31 and living in the magnificent Henrietta Villa.

I promised to tell you the name of a woman who walked through Government House with no clothes on. It was earlier than 1823, and it was the marvellous Barangaroo, Bennelong's wife. Barangaroo did not approve of Bennelong's close association with the British invaders and. Whenever she and Bennelong were invited to formal dinners at Government House, Bennelong would wear the scarlet jacket that had been given to him, but Barangaroo stayed true to her culture and always attended them completely naked. Australia's colonial history has generally been written from a white male perspective. It's great that writers such as Bruce Pascoe are now revealing an Indigenous point of view, and it is also time that we knew more about some of the remarkable colonial women. Now, as I reluctantly bring us all back to the present time, I want to thank you for letting me tell you about some of those women today. Thank you.

**The Hon. AILEEN MacDONALD:** Thank you, Jessica, for taking us back in history and introducing us to some women we didn't know. We will now take a few questions from the audience.

**QUESTION:** Thank you. That was fantastic. What was the cause of the Pipers' financial ruin, and how did Mary Ann re-establish herself on the other side of the Blue Mountains?

**Ms JESSICA NORTH:** The financial ruin was a little bit complex. It was partly because Captain Piper was not good with money. He didn't really pay attention, and he was generous to a fault, I have to say. When goods came in, through trade, they were generally stored in the bond stores that you might have seen in The Rocks, and the duty was supposed to be paid on them as they were imported. But Piper, with gentlemen's agreements, allowed the merchants to take goods out of the store, sell them and then pay the duty after they had made money from the sale. So that was going on. There was a period of severe drought and the economy went flat. The merchants struggled to pay their duties, and it coincided with a time when a new Governor came—Governor Darling—who was very autocratic and knew a bit about customs.

The go was that the duties were to be paid at the end of each quarter. Darling said that they had to be paid every fortnight, from today. Piper was personally responsible for those duties, and he simply didn't have the money. And the merchants didn't have the money to pay him either. So he mortgaged Henrietta Villa and most of its contents with Daniel Cooper. It was an agreement whereby he would have 12 months to raise the money, pay the mortgage back and keep the property. But he wasn't able to do it within the 12 months. The mortgage was called in and he lost pretty much everything. He and Mary Ann and several of their children then travelled for two weeks across the Blue Mountains to a small piece of land that Piper owned called Alloway Bank, in the new little town of Bathurst, and they set up home there.

**QUESTION:** Do you know what happened to the house at Point Piper?

**Ms JESSICA NORTH:** Unfortunately, the house at Point Piper was demolished. Cooper's son, I think, demolished it in about 1850. He built another grand house, called Woollahra House, and that was demolished in about 1920. It's a great shame because Henrietta Villa must have been really something.

**The Hon. AILEEN MacDONALD:** Thank you, Jessica, for sharing your inspiring stories.

**Mr DAVID BLUNT:** Thank you very much, Aileen, and thank you so much, Jessica. That was absolutely fabulous. Like Aileen, I have read *Mary Ann and Captain Piper* and *Esther*, and I can highly recommend them. Jessica, you should have brought a box of each of them to sell.

## CLOSING KEYNOTE

**Ms ITA BUTTROSE, AC, OBE**, Chair, Australian Broadcasting Corporation, via videoconference

**Mr DAVID BLUNT [Clerk of the Parliaments]:** We are nearly at the end of the conference. We have one more presentation to go, and I think it is going to be a real highlight. It will wrap up a range of themes and personalities that we have been hearing about. To introduce our final speaker, can I first introduce the President of the Legislative Council, the Hon. Matthew Mason-Cox. A member of this Parliament since 2006, he has served as a Minister and a Parliamentary Secretary and has served on an extensive list of parliamentary committees. He is now the President of the Legislative Council, in which capacity, amongst doing all sorts of things over the last 18 months, last week he brought to fruition the fifth, I think, review of our standing orders in 160 years—a huge achievement. Today Mr President is dialling in not from the Chamber but from Queanbeyan. Mr President, can I ask you to introduce Ita Buttrose.

**The PRESIDENT [The Hon. Matthew Mason-Cox]:** Thank you very much, David. Aileen and Jessica, that was an absolutely enthralling discussion of those wonderful women from the early colony. I just can't imagine the sort of obstacles they must have overcome during that time. Esther, Susannah, Sarah and Mary Ann blazed trails like we've never seen before. In that regard, Jessica, I can report that I have read your book *Esther*, which is an absolutely ripping yarn, just like your presentation today. If anybody here would love to buy a Christmas gift, I can highly recommend that one. Today I am pleased to be with you via Zoom. I am really sorry that I can't be there in person, but, sadly, COVID has intervened in my life as well—again. I'm not very happy about that, but everything on the home front is pretty good, nonetheless.

The two days of this conference have afforded us a really unique opportunity to reflect upon the complex state of play in colonial New South Wales in 1823 and the years around that time. We have considered themes of power, politics, currency, culture, the experience of our first peoples and of remarkable women—as we have just witnessed—the impact of privilege and scandal, and, of course, the pivotal role played by the press in the early colonial days. Our next speaker recently made the very astute observation that so many themes from across this conference could well and truly play out in the current situation today. I think, of all people that I've met, our next speaker is probably the best placed to make that judgement.

It is my absolute privilege to introduce a truly exceptional Australian, Ms Ita Buttrose, AC, OBE. As you all know, Ita is the legendary media trailblazer, businesswoman, bestselling author, Australian of the Year and, in her spare time, chair of the ABC. In 2014 Ita was the inaugural New South Wales Excellence in Women's Leadership award winner. That year, Sydney's Macquarie University conferred an honorary Doctor of Letters on Ita, to recognise her contribution to the arts. In 2015 Ita was conferred an honorary Doctor of Letters by the University of Wollongong for her contribution to mental health and ageing. In 2018 Ita was conferred the University of New South Wales' highest honour, an honorary doctorate in medicine, in recognition of her eminent service to health, for being an inspirational role model for aspiring women in business, and for making a difference in society. What a line of achievement that is.

In 2019 Ita became a Companion of the Order of Australia for her service to the community through leadership in the media, the arts and the health sector, and as a role model. Ladies and gentlemen, Ita is a stranger to no-one, an inspiration to everyone, an eminent and insightful commentator and, I'm honoured to announce, one of our official Ambassadors of the Bicentenary of the Legislative Council. Please join me in welcoming our final conference keynote speaker, Ms Ita Buttrose, to the virtual stage. Thank you very much, Ita.

**Ms ITA BUTTROSE:** Good afternoon, everyone. I acknowledge the Gadigal people of the Eora nation, on whose land we meet today, and I pay my respects to their Elders past, present and emerging. As a nation, we have been slow to appreciate the history of our own country, perhaps because for so long only British history was taught in our schools. Since our bicentenary in 1988, Australian history has gained increasing prominence. This conference has invited us all to look more deeply at the context and meaning of the major transition that occurred in the colony of New South Wales over 1823 and 1824, with the passing of the New South Wales Act in the British Parliament and the formation of the Legislative Council and the Supreme Court here in Sydney. Over two separated days, our speakers, academics, historians and writers have challenged and broadened our understanding along a number of fronts. We are reminded, by the diverse topics under consideration, of the paradox that the past does not stand still. It is not fixed. It moves and shifts with time and, therefore, it demands revisiting. History has secrets and lessons to offer us, if we care to learn.

Out of this conference, we better understand the heritage and history of Aboriginal people from coastal Sydney. We know more about their interactions with the colonists and their relationship to the country. I certainly

didn't know that the land on which the New South Wales Parliament sits borders a ceremonial meeting place. We also know more of the stories—we just heard some of them a moment ago—of some of the extraordinary women of early colonial New South Wales and have contemplated what life in the colony was like for ordinary individuals. Important questions have been asked. How was it to live in Sydney in 1823 as a colonial subject and not a democratic citizen? How were the codes and morals decided and policed? Where could individuals find their place and have a voice?

I grew up not far from Macquarie Street, in Parsley Bay and its beautiful beachside neighbourhood in Vaucluse. My mother was passionate about history, and my father was a journalist. At school, one of my favourite subjects was, and still is, history, especially our history—Australian history. As a child, roaming the local streets with my brothers, I was well aware of nearby Vaucluse House, the stately home for famed explorer, political figure and newspaperman William Charles Wentworth, who once held a party for 4,000 people to bid goodbye to his nemesis, Governor Darling. According to Wentworth's newspaper, *The Australian*, a marquee on the lawn was filled with "casks of Cooper's gin, and Wright's strong beer", while an entire bullock and 12 sheep were roasted on spits and served on loaves of bread to feed the crowd. The Governor was not a guest, by the way. The raucous crowd waved and called out to the ship carrying the unloved Governor as it disappeared through the heads on its way back to England. By all accounts, the party was still throbbing at dawn, and the city of Sydney was unusually quiet that day.

My family moved to Parsley Bay in 1949, four years after the end of World War II. Naval ships were docked on the hugely long wharf in Vaucluse Bay, opposite the grounds of Vaucluse House, which was badly in need of repair. I don't think it had been given much thought during those bleak years of war, and homes by the harbour were not sought after by people then because two Japanese midget submarines had managed to slip into Sydney Harbour when the anti-submarine boom net was opened for the Manly ferries. So Sydneysiders were actually fearful of harbourside living. One of the turrets of Vaucluse House was shut off, and I seem to remember a beehive, with bees who had made their home in the one room that was closed to the public but not to the elements.

My brothers and I thought of Vaucluse House as a house. With other neighbourhood kids, we played in the grounds, roamed the house, made friends with the sheep who kept the lawns neat and tidy in the large back park; they would follow us anywhere if we tempted them with musk lollies, which we did quite often. It was amazing; they just couldn't get enough of them. The house was open on weekends, but it had few visitors. It wasn't really until the 1960s that Vaucluse House seriously began to be renovated and restored to some of its former glory.

I have spent my entire career as a journalist. You might think that historians and journalists don't have much in common, but all good journalists know this: While the daily news is about what's happening right now, the great investigative stories delve into the past and interrogate it. They come up with not only new answers but also better questions. Over the past two days, the legacy of Governor Lachlan Macquarie has inevitably loomed large. He arrived in the colony in 1810 with almost unlimited, potentially dictatorial, powers. He achieved great progress by promoting emancipists, building physical infrastructure, creating a currency, and founding the Bank of New South Wales. It is true that he did have a Caesar-like tendency to spend a lot of money he didn't have, and, yes, in imperial fashion, he arguably named more places after himself and his family—Macquarie, Elizabeth, Lachlan—than anyone else in Australian history. But perhaps that says a little about Macquarie's ego and even more about his confidence in the future of Australia. He was certainly keen to be remembered by future generations. Only last weekend I read a little piece in one of the papers—I can't remember which one—where he was talking about not building homes on flood plains. And we are still having that discussion in New South Wales today.

At the core of this conference, we have heard a reconsideration of the impact of the Bigge inquiry and report on the state of the colony of New South Wales between 1810 and 1820, with Bigge's famous attack on the performance of Governor Macquarie. Professor McKenzie and her colleagues have invited us to reconsider and reassess the context, mechanics and legacies of that inquiry. As we have heard, directly or indirectly, the most significant outcome of the Bigge inquiry was the New South Wales Act of 1823 and the subsequent formation of the Legislative Council of New South Wales and the Supreme Court of New South Wales—huge milestones in our nation's history. Altogether, this conference has been a wonderful introduction to a series of scholarly and celebratory events that will happen over the next two years. It will include two orations; two further history conferences; the re-enactment of key debates, including the debate in the House of Commons on the New South Wales Jurisdiction Bill 1823; and themed exhibitions that will be shown in the Parliament's Fountain Court and toured around the regions of New South Wales.

We also have a new publication, *Dining at New South Wales Parliament*, which includes a collection of marvellous recipes as well as information on the building, its people, its artworks, its tradition of catering to travel-weary members of Parliament who were far from home, and the occasions celebrated in the building, as

well as the dignitaries who have visited from around the world. The idea was driven by Vanessa Harcourt, Parliament's first female executive chef, with whom I wrote *Eating for Eye Health* for the Macular Disease Foundation, several years ago. Vanessa has created a most beautiful book. Mr President, I heard you talking about Christmas presents; this would be a fantastic Christmas present, I think. It is a truly beautiful book. It is a work of art. It is a reminder that, since the early times of social development, the gathering, preparing and sharing of food has been a pillar of community building.

The celebrations will culminate in an opening-of-Parliament ceremony in 2024. There will, no doubt, be a suitably stately event, perhaps with catering that uses some of the recipes from the past, and a fitting commemoration of our Legislative Council's 200 years. The range of festivities will be illuminating, educational and important. Those events in 1823-24, 200 years ago, profoundly shaped democratic and judicial frameworks and institutions not only in New South Wales but also across Australia. The New South Wales Act, passed in London in 1823, authorised the establishment of a Legislative Council to advise the Governor in making laws for the peace, welfare and good government of the colony. It also authorised the formation of a Supreme Court in New South Wales and a Supreme Court in Van Diemen's Land and provided that Van Diemen's Land could become a separate colony.

The Legislative Council in New South Wales met for the first time on 25 August 1824. It was a great leap forward, but it was no democratic assembly—not yet, and not by a long shot. The first Council consisted of just five nominated officials. In 1825 the Council was enlarged to constitute seven members, but it was hardly a House of the people. The three non-executive members represented the landed interest, wealthy free settlers and squatters, and the modern mind notices that the councillors were all white, all elite, and all men. However, though the Council had no independent power to propose legislation, councillors opposed to a law could, under normal circumstances, veto laws proposed by the Governor.

The Council's deliberations were initially conducted behind closed doors without any rules to regulate its proceedings, bar the 1823 Act. But it soon began to develop its own body of practice and conventions based on those of the British Parliament. Of course, decisions by the Governor and Council were subject to veto by the Crown. Each law had to be certified as compatible with English law by the Chief Justices of the Supreme Court, before it was sent before the British Parliament for approval. Today the vice-regal chair still sits in the Legislative Council, a symbol of that legacy. The late Queen Elizabeth opened the New South Wales Parliament on two occasions: on 4 February 1954 and on 20 February 1992. The purpose of that 1992 visit was the sesquicentenary of the incorporation of the City of Sydney.

I was invited to lunch with the Queen at Sydney Town Hall. There were only four of us at the table, which was very pleasant. I can tell you that the Queen loved Australia, especially our harbour, and she was very knowledgeable about the country. Lunch was actually quite delightful. Mind you, so was the afternoon tea I enjoyed with Prince Philip on the Royal Yacht *Britannia*, in Brisbane. I was hosting the Prince Philip design awards for the ABC, and I had to meet with him beforehand. The royal yacht was more like a floating hotel; it was incredible. The Prince told me to have a look around, and so I did. It was very impressive, and so was the Prince, I've got to tell you. I have covered many royal events, including tours of Australia, royal weddings and, most recently, the funeral of the late Queen. Whatever the future holds for Australia, our connection with the United Kingdom will always be part of our history.

The formation of the Supreme Court also recognised the need to begin the transition to the rule of law in Australia. It, too, was an imperfect operation. The first courthouse for the Supreme Court was constructed next to St James' Church, across the road from the New South Wales Parliament, and it was perhaps symbolic that the court building was so poorly built that, in 1832, Chief Justice Francis Forbes said, "No person can attend the court for a single day in the winter season without serious prejudice to their health." One of the more contentious issues was the matter of properly constituted juries. The authorities were still unwilling to entrust legal decisions to locals, especially emancipated convicts. According to the legislation, civil cases were normally to be heard before the Chief Justice and just two magistrates, although, if all parties agreed, the magistrates could be replaced by a jury of 12 men. In practice, this never happened, and in criminal cases a jury of seven military or naval officers could be assembled. It was imperfect, but it was a start.

We can see here the beginnings of the modern system that still prevails in Australia today: the first step in the separation of powers proper to a functioning democracy, recognition that Australians deserved to have a say in how they were governed, a justice system that was local and equivalent to that in the United Kingdom, and the beginnings of trial by jury. We were now heading from a prison camp to a sovereign, democratic society—from powerless subjects of British rule towards full citizenship as Australians. I note, however, that citizenship recognition for First Nation peoples would be denied, shamefully, until 1967, after the 1966 referendum. In 1823-24 Australia's future was by no means settled. There would be more vigorous debates, robust contests of

ideas, stresses and strains. The pendulum swung markedly between progress and reaction, lurching between liberty and control.

But, as always, an important factor that made power accountable to the people was the rise of a free and independent press. It is always a critical factor in any democratic society. As chair of the ABC, an important part of my role is defending that freedom, while ensuring the ABC is fully accountable to the Australian people, who fund it. During the early days of the colony of New South Wales, there was no such thing, of course, as a free press. The one printing press was used as a government mouthpiece. Genuine public opinion was heard only through the writing of "pipes", as they were called, or lampoons. These were usually critical of the elite exclusives of the colony—the free settlers, the officials, the military officers—who sought to exclude even emancipated convicts from a place in the social order.

One of the most frequent pipe writers was the same William Charles Wentworth of Vaucluse House. Born in 1790, he was a poet, barrister, landholder and agitator. He was a rebel in his youth and a lion in his heyday. He became increasingly conservative and irrelevant in later life. In his mid-twenties, Wentworth is believed to have written one particularly scurrilous attack on the anti-emancipist Lieutenant-Governor George Molle, after which he hurriedly took a ship to England in 1816. He travelled widely in Europe, studied at Cambridge and was called to the bar in London in February 1822. But he was still a true believer in the bright future of Australia. He even wrote a tract promoting Australia as a great place for emigrants. In London, Wentworth met Robert Wardell, a fellow lawyer and editor of the *Statesman*. The two came to New South Wales to create the first independent newspaper, *The Australian*. The timing was perfect. On 25 August 1824 the first meeting of the Legislative Council was held. A few months later, on 14 October 1824, the first edition of *The Australian* was published. The paper proclaimed itself as:

Independent, yet consistent—free, yet not licentious—equally unmoved by favours and by fear—we shall pursue our labours without either a sycophantic approval of, or a systematic opposition to, acts of authority, merely because they emanate from government.

*The Australian*, by the way, is related to the present-day *The Australian* newspaper in name only. I assume Rupert Murdoch decided to borrow the name and resurrect something of the swashbuckling spirit of the original publication. Wentworth and Wardell's plan was to champion the emancipists and smaller free settlers and to campaign for a free press, proper trial by jury, and genuine self-government, including taxation by consent rather than edict. *The Australian*, in its first editorial, proclaimed:

A free press is the most legitimate and, at the same time, the most powerful weapon that can be employed to annihilate influence, frustrate the designs of tyranny, and restrain the arm of opposition.

In typical fashion, Wentworth and Wardell had not sought permission to publish the paper, but Governor Sir Thomas Brisbane wisely considered it "most expedient to try the experiment of the full latitude of the freedom of the press". Brisbane's successor, Governor Darling, however, took no such open-minded view of the virtues of a free press. In 1827, when Wentworth and Wardell took the lead in criticising Governor Darling for his cruel and arbitrary treatment of a pair of convicts, the Governor was inflamed with rage, arguing that "nothing short of a positive coercion" would curb his critics. The Governor tried various tactics to curtail the power of the freedom of the press. The newspaper-regulating Act, for example, compelled publishers to lodge bonds of £300—a huge amount—to ensure payment of any fines for libel and empowered the courts to order banishment from the colony on conviction for a second offence. That's a bit much, isn't it? That particularly bad law was eventually knocked down and, of course, Wentworth triumphed, with his party of the decade at Vaucluse House when Governor Darling went home early.

But the battle of ideas—the struggle for freedom of the press, full representation and equality before the law, self-determination for all Australians—all of these struggles continued, and they still evolve today. We are still on the path to representation that fully reflects our diverse community. Indigenous Australians are still fighting for full and fair recognition. The ABC board was proud to offer a platform to Indigenous leader Noel Pearson for this year's ABC Boyer Lectures, continuing the ABC's role in facilitating open public conversations on matters of national importance. Noel Pearson's lectures are most timely, given the debate leading up to the referendum about the Voice to the Parliament. They are also very good.

As a nation, we are a great success, but we are still a work in progress. Our challenge is to continue to be capable of reconciling our competing views and resolving our battles of ideas, in order to achieve better outcomes for all of us. I want to congratulate and thank everyone involved in organising and contributing to this conference. It has been a great success and, as we have heard, many people over the years have contributed to the ongoing story of New South Wales and, therefore, the story of Australia. As Australia's story continues, we will always need our historians and scholars to help us learn from the past, enabling us to be far better equipped to handle all the complexities and opportunities of the present and those of the future. Thank you very much.



**The PRESIDENT:** Ita, thank you so much for a wonderful, insightful address. It was very sweeping; it is clear you are a student of history. I was very interested to hear your comments about William Charles Wentworth in particular. I would have liked to have been at the party when he farewelled Governor Darling at Vaucluse House. Also, I am intrigued by you giving musk lollies to the sheep. Part of my family comes from a sheep station out near Harden, so I'll take some musk sticks out there to see how well the sheep go with them in this day and age. I'll report back the results of that in due course.

You commented on the importance of history and the importance of probing history, not only to find answers but also to find better questions. I think that's what we've done here over the two days of the conference. We have had the opportunity to probe history with an eminent group of historians and presenters, and I think we have all learnt a lot through that process. When we decided to host this conference—well over a year ago now—our goal was to paint that picture, if you like, of the complex, colourful, uniquely Australian factors that formed the background to and the rationale for the passage of the New South Wales Act in 1823 and the subsequent formation and first meeting of the Legislative Council in 1824.

With the insights from our accomplished speakers over the two days, I am confident that we will all leave this conference with a much better background and a much better painted history of what the factors were at that time. These two days have also given us a wonderful backdrop for what is to come over the next two years as we move into the events that you outlined in your contribution, Ita. As I mentioned, there will be a series of exhibitions, some educational programs, another conference or two, some orations and some panel discussions leading up to the major events of 2024, which include the 67th International Commonwealth Parliamentary Conference here in Sydney and a much-anticipated royal tour. There are a lot of things in front of us and we have got a wonderful program to look forward to.

Before I conclude today, I would like to extend my thanks to all the presenters. From September, the first day, I again thank Danièle Hromek, Paul Irish, Ray Ingre, Kirsten McKenzie, David Roberts, Lisa Ford and Matthew Allen. From today's fantastic program, thanks to you again, Kirsten, and to Penny Russell, James Dunk, John Harris, Caleb Cugley, Kim Eberhard, Jessica North and our final keynote speaker, Ita Buttrose. I invite a round of applause for all these magnificent presentations. I thank also the masters of ceremonies for each of the particular presentations. They included members of the Legislative Council, drawn from across the Chamber. I really do appreciate their personal support for our program moving forward and over the course of this two-day conference. My great appreciation and thanks go to the Clerk, David Blunt, who has done some of that work as well, and to the Black Rod and her wonderful team and our Aboriginal liaison officer for their work coordinating all the arrangements for the conference. It has been a huge job and it has all just worked seamlessly.

I thank also the stand-out AV team from CTS, who have created all of the backgrounds that you were able to enjoy today. Certainly for all our online viewers, it has been a magnificent presentation. I thank our wonderful catering team, who put together the themed lunches over the two days, as well as the magnificent scones with lashings of cream and jam. Again, I'll plug the wonderful book that Ita mentioned, *Dining at New South Wales Parliament*, by our wonderful executive chef. That is a must-have Christmas gift and no doubt if you wander up to the Clerk at the end, he'll be able to provide you with directions about where you might buy it in Parliament, from the staff cafeteria. Most importantly, I extend my thanks to everybody at Parliament and to our attendees. You've been very patient. It was tragic that our second day was postponed with the passing of Her Late Majesty. It was certainly most unexpected, and I thank you for your patience and for your attendance again today.

I hope now those who are in the Jubilee Room will enjoy some refreshments in the Fountain Court. As for Ita and I, well, we'll just go and have a cup of tea. Thank you all so much for being here and for your personal contribution to what has been a very successful conference over the two days. It augurs well for the future as we move forward into two further years of celebrating a very important step in our history—a step towards democracy, which has served us very well and will continue to serve us well in the future. Thank you once again.

**The conference adjourned.**