

RULE OF LAW 1788

STUDENT ACTIVITY PACK

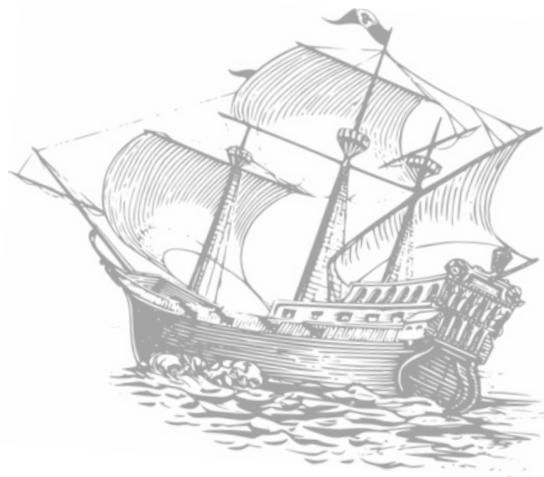
*How a set of
instructions shaped
our nation today*



RULE OF LAW
EDUCATION CENTRE

CONTENTS

	terra nullius	2
	Lord Viscount Sydney Sir Thomas Townshend	4
	The First Australian Governor - Arthur Phillip	5
	The Instructions POSTER	6
	The First Charter of Justice 1788 POSTER	7
	Convict Fleet Passengers	8
	A Colony of Convicts	12



Rule of Law Education Centre is an independent, non-profit organisation and provides education resources for schools about how the rule of law operates in Australia.

Rule of Law Education aims to strengthen community understanding of the rule of law and human rights in Australia through education.

For more information and resources go to: www.ruleoflaw.org.au



terra nullius

A law relating to new land discoveries and how they were formally recognised by European powers. This law gave countries the authority to govern new territories across the world.

*Land that is legally deemed to be unoccupied or uninhabited
Land that is unowned*

From 1770, the power and authority of land ownership of the entire Australian continent came under British colonial rule, leaving the native inhabitants with no property rights in their own land.

How did this happen?

When setting out on his first voyage of discovery, Captain James Cook was given the task to head south and search for the great southern continent called New Holland. His responsibilities included using his skills as an excellent cartographer to map and chart parts of the coastline as he observed.

In addition to this, the British government gave Cook secret orders; to endeavour to cultivate a friendship and alliance with any people who may be living there, for the purpose of gaining land for possible colonisation.

These orders gave Cook clear instructions to not claim any land if he saw that it was inhabited. Instead, he could negotiate with the natives to purchase land using any resources which was considered acceptable to both parties of the agreement. Resources could include trading goods, offering protection from the British government, or currency.

This was the procedure that was commonly taken in other parts of the world where agreements would be made to buy land, such as from native American Indians, or for the purchase of land in west Africa needed to transport convicts to and begin colonisation. In fact, *terra nullius* was not a standard policy used to claim colonial land beyond Britain.

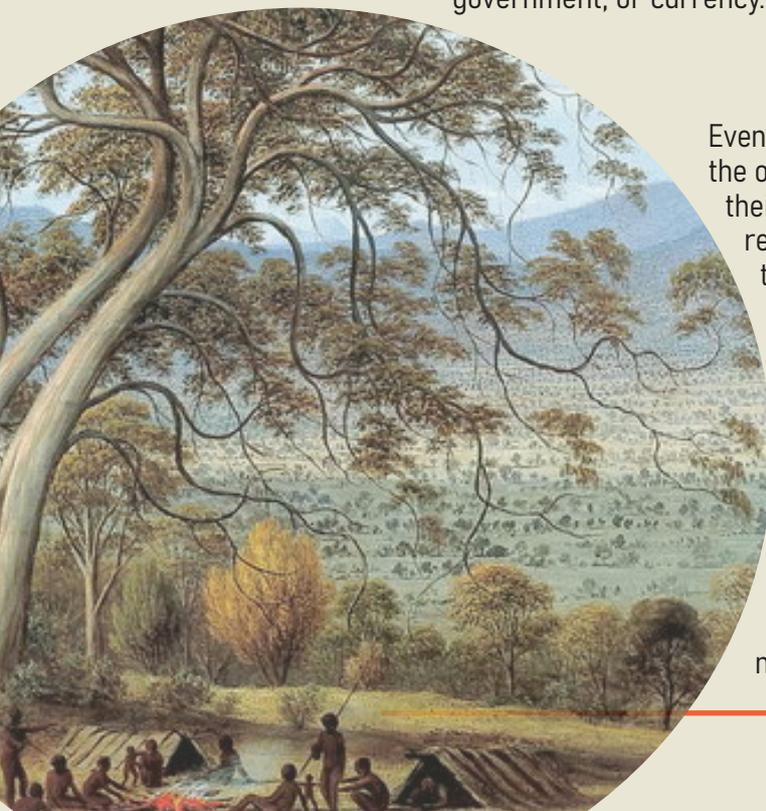
James Cook could take possession of land for His Majesty, **only if he found the land uninhabited.**

After landing in Botany Bay 1770, Cook observed a sparsely populated land, noting sightings of small native gatherings sitting around campfires and various groups fishing in nearby waters. He recorded observations in his journals, including “the natives do not appear to be numerous.” Joseph Banks, the accompanying botanist also scribed in his journal “this immense tract of land, considerably larger than all of Europe, is thinly inhabited” They incorrectly determined the remainder of the continent must be ‘totally uninhabited.’

Even though they had not travelled to the interior and across to the other side of the land to confirm this, Cook and Banks based their conclusions on imagining how limited food or fresh water resources would be available for anyone to successfully survive the harsh environment. Therefore, Britons believed Australia was a mostly empty continent.

Countries throughout Europe agreed that it was not lawful for settlers to claim inhabited land. *But they had never considered what they could do with land that appeared to be sparsely inhabited.*

In addition to this, the British believed the aborigines were not very technologically advanced, particularly in agricultural practices. They did not appear to know about the skills of cultivation as they were hunters and gatherers, not farmers.



The lack of evidence of native farming was also an important point in determining legal claim to the land, as the British believed engaging in agriculture gave property rights to landowners.

By the time the First Fleet arrived in 1788, British law had still failed to recognise Australian indigenous populations, which would now be subject to the laws of the Crown.

As the colonists grew in number, they cleared the land for farming. New laws in property rights were established and brutally enforced. Highly influential and powerful leaders of the colonies decided the location of their new land and how much they chose to claim for themselves. Inevitably, indigenous people would cross newly acquired settler's property, which was now considered unlawful. The crime of trespassing resulted in severe disciplinary action.

Soon, many of the indigenous people occupied the prisons alongside the convicts and in most cases, they were killed as murder was considered a rightful action by the newcomers when defending their land rights.

Colonial governments established a large police force, consisting of military men and convicts, to split up aboriginal groups and move them on to other places to avoid conflict.

After initial tolerance and curiosity, indigenous people found they were not welcome in their own land and their populations suffered through introduced diseases and illness, such as smallpox and viral infections. They found themselves in constant conflict with the colonisers.

Within the first 100 years, the indigenous population was severely reduced, and the British government finally decided to protect the people who were left. Official policies created at the time included instruction on how to manage Aboriginal and Torres Strait Islander people, including forcing them to live in designated areas called reservations. The British establishment imposed new social and religious order, placing indigenous ancestral and spiritual beliefs in danger of being lost forever.

Terra nullius remained the law in Australia up until 1992. After decades of fighting for recognition of indigenous land rights, the **Native Title Act** was passed in 1993 by Australia's High Court.

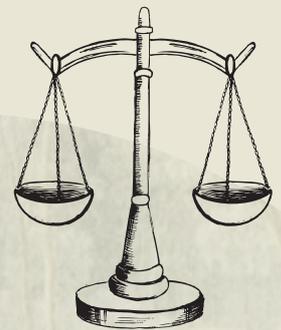
INQUIRY TASKS

Terra nullius

Write an explanation of your understanding of this law, including how the British government of the time used it against Australian indigenous populations during the first twenty years of European settlement.

The **Mabo Case** was a significant legal case in Australia that recognised land rights for indigenous people. Investigate the Mabo Case Act and write about its importance and impact on how Australia manages land claims today.

Watch this video to understand how a historic decision was handed down for Australian indigenous peoples: [Mabo Day and Native Title: Who was Eddie Mabo and what was his legacy?](#) 3:28mins



Research the **Native Title Act** passed in 1993 by the High Court. Write a report on what the Act is about and explain the impact it has had on both indigenous and other Australian communities to this day.

FURTHER RESOURCES

[The National Museum of Australia](#)

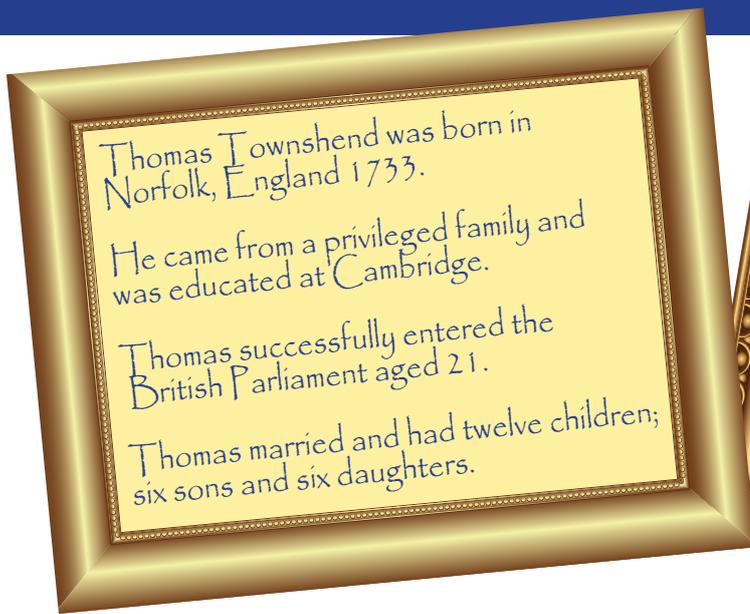
[My Place - 1788 Warwi](#)

[Australian Together - Our History](#)

[ABC Education Interactions between Europeans and Aboriginal Tasmanians](#)

LORD VISCOUNT SYDNEY

Sir Thomas Townshend



Thomas Townshend became British Home Secretary in 1782. His responsibilities included managing immigration and citizenship. In 1783, Thomas became Baron Sydney of Chislehurst and entered the House of Lords as Lord Sydney. He chose Sydney as a name in honour of a distant relative named Algernon Sidney. Lord Sydney carried much of Algernon's beliefs and supported individuals having rights and liberties, regardless of their status in society.

Throughout the early to mid-1700s, convict transportation stopped when Great Britain found itself at war with the Americas. The prisons became unbearably overcrowded and the British Government needed to find a solution to the growing number of hulks, housing the overflow of felons, anchored around London. Alternative arrangements had to be found quickly.

After great debate, the decision was made to transport convicts to Botany Bay, New South Wales. As Home Secretary to the British Cabinet, Lord Sydney was given the responsibility to plan and supervise the program.

Lord Sydney selected Captain Arthur Phillip in 1786 to be the first governor of the colony of New South Wales. He knew Phillip well after working together on previous naval campaigns in the Americas. Sydney identified Phillip as a highly organised and compassionate individual, who would be the best person to manage the complex task of setting up a penal colony in a harsh and challenging environment. Captain Phillip was also a compassionate man who shared Sydney's values on supporting rights and freedoms for all people.

The first governor would need to establish the rule of law if the colony was to survive and flourish in the years ahead.

Lord Sydney gave *Instructions* for the governor to grant rights to all individuals who would become part the new society. These *Instructions* were made effective from the moment the First Fleet left England in 1787. To protect these rights, Lord Sydney set up a blueprint called The **First Charter of Justice**. The Charter provided a plan for Governor Phillip to establish a civil and criminal court system, to administer justice and manage grievances in the colony. This was highly unusual as felons were not allowed to have rights in British law.

The first civil case in Australian history involved two convicts, Henry and Susannah Kable successfully suing a ship's Captain for the loss of their personal possessions during the voyage from England. Lord Sydney had set the grounds for access to fair representation for everyone, even convicts.

When Captain Arthur Phillip sailed the First Fleet into Port Jackson and landed on shore 1788, he named the area Sydney Cove in honour of Lord Sydney. The following year in 1789, Lord Sydney became Viscount Sydney.

Lord Sydney's vision established the foundations for Australia's governance and legal system we use today. Its principles are based on justice and supporting rights for all citizens.

Thomas Townshend died in 1800, aged 67.

GOVERNOR ARTHUR PHILLIP

1786 - 1793

1

Arthur Phillip was the founding Governor of New South Wales 12 October 1786 - 23 July 1793. He established the first permanent European settlement in Australia.

Phillip had extensive skills and experience in commanding naval operations and was fluent in five languages. He was described by Lord Sydney as brave, honest, obedient, reliable, self-sacrificing, trustworthy, adventurous, and most importantly - resilient. Phillip's task was to establish a British penal settlement in Botany Bay. This is the site of the City of Sydney today.

Captain Phillip commanded the First Fleet, consisting of 11 ships carrying over 1450 convicts, soldiers, sailors, and free passengers. The arduous voyage lasted 8 months. On arrival in Botany Bay, 18 January 1788, Phillip surveyed the area. However, on 26 January, he relocated the fleet to Port Jackson after observing the scarcity of natural resources required to support a settlement, such as fresh water.

Governor Phillip was highly conscious of his responsibility for the survival of every person in the new colony. The Crown gave him complete authority to exercise power over all inhabitants and to establish British law. Phillip established civil and criminal courts to implement laws based on the rule of law, that administered justice and ensured the laws were applied equally and fairly.

Phillip's task seemed insurmountable as his authority was challenged by rebellious convicts and disobedience from officers of the Marines, and later the New South Wales Corps. He constantly battled against members of the Corps who assigned convict labour for personal gain over other immediate needs. Phillip was committed to the colony's success and worked hard to avoid friction between civil and military authorities. He believed in human rights and equality before the law, this included vowing never to allow slavery to take hold in the new society. Phillip had witnessed first hand the level of human suffering it had caused in other parts of the world.

The fledgling colony struggled to survive the harsh conditions and Phillip's skills and knowledge as a farmer, undoubtedly served the colony well through difficult times. Sending Lieutenant Philip Gidley-King to colonise Lord Howe Island also helped to successfully ward off famine.

Phillip endeavoured to develop positive relationships with the indigenous people. However, his actions of claiming land to build the new colony, without recognising indigenous ownership rights, was a major obstacle and he failed to establish peace between the settlers and the natives. Phillip based his actions on a British law called *terra nullius*.

Arthur Phillip returned to England 11 December 1792 due to poor health. He died at his home in Bathampton, England 1814.

What was Arthur Phillip's occupation before being appointed Australia's first governor?

Why did Lord Sydney choose Arthur Phillip to be in charge of a penal settlement?

What is the rule of law and why is it so important to uphold?

Arthur Phillip operated as a spy for the British Government in France, 1785. Who did he spy on that made Lord Sydney fast track preparations for the First Fleet to sail to Botany Bay?

How did Arthur Phillip administer the rule of law in the new colony?



The Instructions

LORD SYDNEY



Now listen up...

When you get to Botany Bay, it's going to be chaos.

I've given you the instructions you'll need to follow which will help you maintain law and order

ARTHUR PHILLIP



OK
Got that.

Rules and laws must be established, along with courts to settle disputes.

You'll be busy.

Remember...
Everyone has to get a fair go.

Does that include
all the convicts?

Absolutely!

Set it up so whoever comes after you can maintain law and order. Establish this new society under a similar legal system we have here in Britain.

They're a rowdy rabble and you're going to need it!

I'll see what I can do...



RULE OF LAW 1788

THE FIRST CHARTER OF JUSTICE

*The government and the people
were bound and protected by the law*

**THE ULTIMATE SAFEGUARD
OF LIBERTY AND DIGNITY**



RULE OF LAW
EDUCATION CENTRE



Convict Fleet Passengers

Choose a passenger card from the following pages and research the life experiences of that particular convict, including their amazing journey to Australia.

Investigate and describe what life would have been like for them when they arrived in Sydney Cove.



Discover what achievements and important contributions they made towards the establishment of a new Australian society. You can present your findings in a variety of ways.

Here are some suggestions to help you:

- ⇒ Create a mini information book
- ⇒ Create a poster
- ⇒ Make a PowerPoint presentation
- ⇒ Make a short documentary film
- ⇒ Present a newscast to the class
- ⇒ Write a narrative about your convict's life story
- ⇒ Write three journal entries, one from their time on the convict ship at the beginning, through to the end of their life explaining what has happened to them
- ⇒ Create a class newsletter combining all information about the convicts below

New Holland Transportation Card
Fourth Fleet - Royal Admiral

Family Name Haydock (Reibey)
Given Name Mary
Sex Female
Occupation Servant
Age on Sentence 13 years
Trial Date August 1791
Trial Place Stafford Assizes
Crimes Horse Stealing
Value of Crimes Not recorded
Original Sentence Transportation
Sentence Term 7 years



New Holland Transportation Card
First Fleet - Friendship

Family Name Kable
Given Name Henry
Sex Male
Occupation Labourer
Age on Sentence 20 years
Trial Date 1 February 1783
Trial Place Thetford, Norfolk
Crimes Burglary
Value of Crimes 5 pounds 10 shillings
Original Sentence Transportation
Sentence Term 7 years



New Holland Transportation Card
First Fleet - Friendship

Family Name	Hudson
Given Name	John
Sex	Male
Occupation	Chimney Sweep
Age on Sentence	9 years
Trial Date	10 December 1783
Trial Place	Old Bailey, London
Crimes	Breaking and entering Stealing
Value of Crimes	22 shillings
Original Sentence	Transportation
Sentence Term	7 years



New Holland Transportation Card
Convict Transport - General Hewitt

Family Name	Greenway
Given Name	Francis Howard
Sex	Male
Occupation	Stonemason and Architect
Age on Sentence	35 years
Trial Date	March 1812
Trial Place	Newgate Prison, Bristol
Crimes	Forgery
Value of Crimes	50 shillings
Original Sentence	Transportation
Sentence Term	14 years



New Holland Transportation Card
Second Fleet - Lady Juliana

<i>Family Name</i>	<i>Wade</i>
<i>Given Name</i>	<i>Mary</i>
<i>Sex</i>	<i>Female</i>
<i>Occupation</i>	<i>Street Sweeper</i>
<i>Age on Sentence</i>	<i>10 years</i>
<i>Trial Date</i>	<i>14 January 1789</i>
<i>Trial Place</i>	<i>Old Bailey, London</i>
<i>Crimes</i>	<i>Assault and Theft</i>
<i>Value of Crimes</i>	<i>50 shillings</i>
<i>Original Sentence</i>	<i>Transportation</i>
<i>Sentence Term</i>	<i>Life</i>



New Holland Transportation Card
First Fleet - Scarborough

<i>Family Name</i>	<i>Ruse</i>
<i>Given Name</i>	<i>James</i>
<i>Sex</i>	<i>Male</i>
<i>Occupation</i>	<i>Farmer</i>
<i>Age on Sentence</i>	<i>23 years</i>
<i>Trial Date</i>	<i>29 June 1782</i>
<i>Trial Place</i>	<i>Scarborough Assizes</i>
<i>Crimes</i>	<i>Breaking and entering and stealing</i>
<i>Value of Crimes</i>	<i>5 pounds 10 shillings</i>
<i>Original Sentence</i>	<i>Transportation</i>
<i>Sentence Term</i>	<i>7 years</i>



A Colony of Convicts 1788

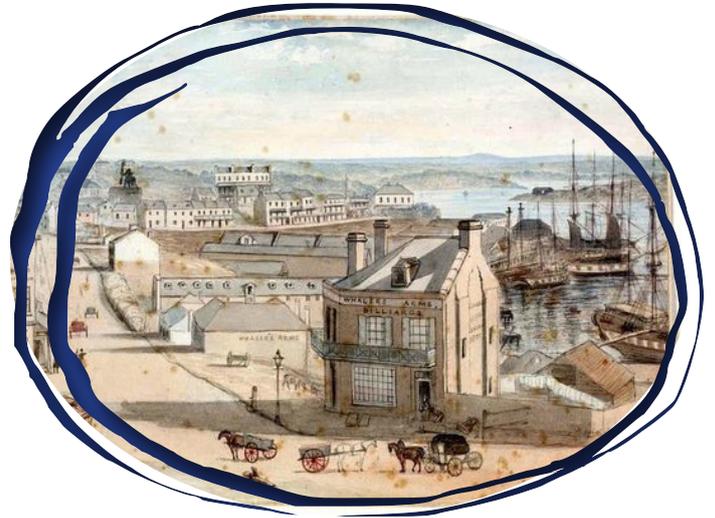


European settlement in Australia began in 1788 as a colony of convicts. Its purpose was to re-locate and contain unwanted felons, transported from the other side of the world.

Did Britain want to establish a new prison facility, or did it want to just dump their unwanted prisoners somewhere, while no one else was looking?

It was considered to be the perfect prison location, as the water surrounding the land was vast and would be an excellent deterrent if any convict had ideas of escaping.

However, the new inhabitants would also face harsh and difficult conditions in order to survive, so it's difficult to imagine why the British government would take the action of dumping their unwanted citizens of English society on a remote island, and leave them there to fend for themselves.



To answer this question, we need to go back in time.

1782

A British parliamentary minister called Thomas Townshend was the new Home Secretary in the British cabinet. His responsibilities in this role included immigration and citizenship. He was also given the task of organising the relocation of convicts to other parts of the world, particularly after the option of sending them to the Americas had been stopped due to the War of Independence around that time. Townshend was awarded peerage for his work and became Lord Sydney in 1783.



Lord Sydney was a man of compassion who felt a great responsibility in maintaining the rights of individuals, regardless of their unfortunate circumstances or position in society. So, when preparations were being made for the First Fleet of convicts to sail to Australia, he set out to write a Charter of Justice.

This Charter would provide a plan that could be used to guide the new society, in accordance with British justice expectations and based on principles from Magna Carta. This plan was to be implemented by the commanding officer in charge of the colony to avoid a dangerous and lawless society developing from the early days of settlement.

Lord Sydney also chose Captain Arthur Phillip to fill that role as the first governor of New South Wales, as he believed this was a man of great integrity and fairness who would be sympathetic to the plight of the poor souls being transported.

In the initial days of arrival, the colony was still essentially a prison facility and Captain Phillip looked to the Charter of Justice written by Townshend for guidance and direction. The challenge was great as his officers were going to be dealing with convicts who had endured everything to survive and were afraid of nothing.



The Challenge

To manage the convict colony of New South Wales by establishing a structure where principles of law and order can develop into a fair system, that would be operated by the very people who originally arrived as convicts, alongside new settlers.

The *Charter of Justice* was first established on January 26, 1788 when Governor Arthur Phillip landed in Botany Bay. It outlined how the colony had to be structured, with new language and terminology.

It left some traditions of the old British legal system such as how the common law would be implemented, but also included the new ideas about freedom of liberties and individual rights, that were still emerging throughout the 18th century.

Some traditions needed to be changed in order to cater for the challenging society that was being established. It was not going to be like the British class system of entitlement; such as first class, second class, and the peasants.

Governor Phillip endeavoured to administer principles in fairness, justice, and supporting individual freedoms as the fledgling society developed in harsh conditions.

It soon became evident that convicts were able to accept responsibility in some way for their actions and behaviours. Working conditions could be negotiated to include time off at the end of each day, or convicts could be given a small payment called a wage, in exchange for a committed effort during the hours they did work.

Over time, convicts were given greater freedom of rights, which gave purpose and enabled them to become more engaged in their destiny.



Important individual rights included:

- ➔ Being considered innocent until proven guilty
- ➔ Being able to provide evidence in court. Having an opportunity to explain their side of the story if under accusation kept the free settlers accountable, as anyone was now allowed to give evidence in a case, including a convict
- ➔ Granting permission for convicts to bring actions in court themselves
- ➔ Ownership of property
- ➔ Punishment will be determined only by order of a court (masters could not punish their convict servants themselves)



The system enabled convicts to have more legal rights in the new colony than they ever had back home in England

As time passed and the colony grew, a second Charter of Justice was written. A third Charter was created on 17 May, 1824 and this established the *Supreme Court of New South Wales*.

On 17 May 1999, the 175 year anniversary of the *Supreme Court of New South Wales* was celebrated. The Court has continued to exercise authority in matters of law for Australian communities based on the Charter of Justice, to this day.