

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.

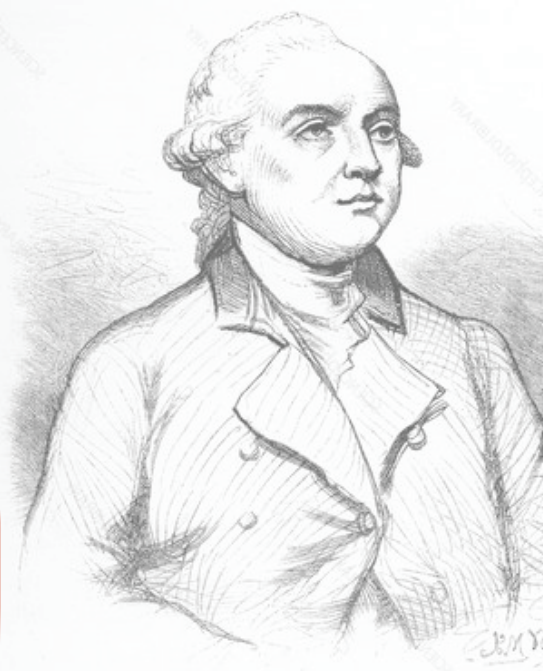
However, the new inhabitants would also face harsh and difficult conditions in order to survive, so it's difficult to imagine why the British government would take the action of dumping their unwanted citizens of English society on a remote island, and leave them there to fend for themselves.



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 with 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.