



# Teacher Reference Document 11



AUSTRALIAN  
CONSTITUTION  
CENTRE

Unit 2: How British laws and principles, including the rule of law, were brought to Australia by the First Fleet in 1788 and their impact on Aboriginal and Torres Strait Islander peoples – Year 4 - Civics and Citizenship (C & C) Strand: Laws and Citizens

Topic 4.2: A conflict of laws and perspectives

## Civil death and civil rights for convicts in colonial New South Wales: Give me back my parcel

[Henry Kable](#) was only 18 years old when he committed his crime in England. He joined his father in robbing a house of blankets, bed linen, a copper saucepan and [other household goods](#). Three weeks later, they were caught with the goods. They were sent to a grim prison in the old [Norwich Castle](#) while awaiting trial. Both Henry and his father were convicted. The judge then put a black cap on his head and sentenced Henry and his father to death by hanging.

Because Henry was so young, his sentence was 'commuted' (i.e. changed) to seven years' transportation. His father was not so lucky. Henry could hear the bells ringing and the roars of the crowd as his father was taken outside the Castle and hanged. But prison life was not all bad. Male and female prisoners were allowed to mix. Henry met a female prisoner, [Susannah Holmes](#). They fell in love. Susannah, who had been convicted of stealing £2 worth of linen, was also sentenced to death, but later to transportation. They asked for permission to marry, but it was refused. Susannah became pregnant and they had a baby son, named Harry.

Then trouble struck. The first fleet of convicts to be sent to Botany Bay was being organised. They needed more women prisoners. Susannah was chosen, but Henry was not. He begged to go with her, but permission was refused. The little family was to be torn apart. Susannah and her five month old baby were sent off to the [hulk Dunkirk](#) (i.e. an old ship where prisoners were kept temporarily) while the fleet was being prepared.

John Simpson, who was a prison gaoler, rowed Susannah and her baby out to the hulk. But the Captain said that the paper-work did not mention a baby. So he forced a screaming Susannah onto the ship, leaving her baby, who was still being breast-fed, in the rowboat with Simpson.

Simpson was appalled. He could not believe what had just happened. He rowed back to the shore and decided to take action. He took a coach all the way to London, with the baby on his lap, trying to feed him as best he could along the way. Once he got to London he tried to see Lord Sydney, who was the Minister in charge. He was told he couldn't see him. But Simpson was a persistent fellow, so he waited around the building.

Eventually he spotted Lord Sydney coming down the stairs. He told him the whole story, and Lord Sydney listened. He agreed that Susannah and her baby should be reunited. But Simpson then also explained how they had been separated from Henry, who was still in Norwich Castle. Lord Sydney then ordered that Henry should also join them so they could be reunited as a family.

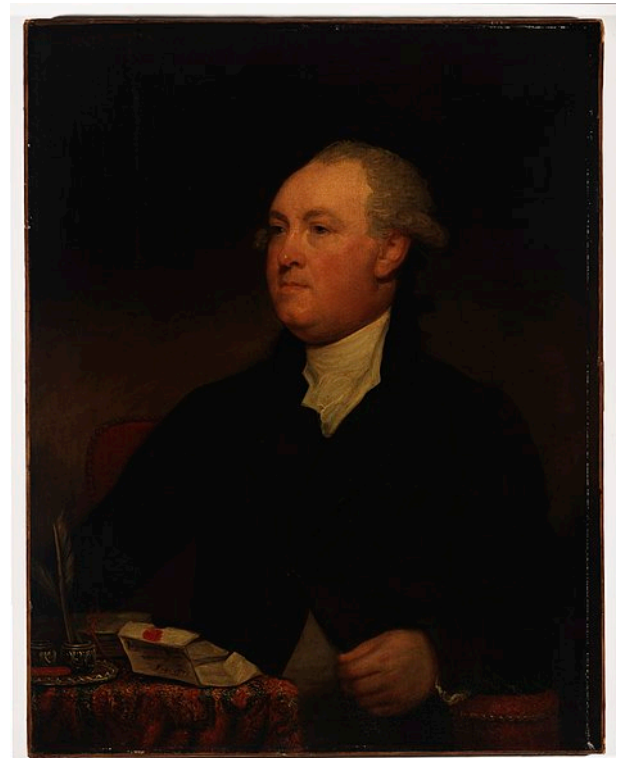


Henry Kable's grave. St Matthews Church of England, Windsor, New South Wales  
Source: Wiki Commons

Simpson then caught another coach and set off for Norwich, with baby Harry on his lap again. He collected the astonished Henry from the Castle prison and then they took a coach to Plymouth. Simpson estimated that he had travelled over 700 miles with the baby on his lap, but it was worth it. He later wrote that he was unable to describe the extraordinary joy with which Susannah received her baby and her husband-to-be.

Simpson's great journey received publicity in the newspapers. The English people were touched by his humanity and the plight of this little family that was off to an unknown land on the other side of the world. The public raised money (much like crowd-funding today) to support them. They raised £20, which was a large amount at the time, especially for convicts. It was used to buy clothing and other things for their new life in Botany Bay. These goods were wrapped in a parcel and entrusted with the master of the ship the *Alexander*, who promised to give it to Henry Kable when they all arrived in Botany Bay.

On 14 May 1787, the fleet of eleven ships set sail from Portsmouth. Henry, Susannah and baby Harry were on the *Friendship*. After a long journey they landed in Botany Bay (Kamay) in January 1788. Governor Phillip decided that it was not suitable for a settlement, so they moved up the coast to Port Jackson, settling on 26 January in a spot that Phillip named 'Sydney Cove' after Lord Sydney, the man who had ordered that Henry, Susannah and baby Harry be reunited. Not long afterwards, on 10 February 1788, Henry and Susannah were married by the Reverend Johnson in the first wedding in the colony.



Lord Sydney, after whom the city of Sydney is named  
Source: Wiki Commons

## The first civil case in New South Wales

But where was the parcel? Henry went to see the master of the *Alexander*, Duncan Sinclair to demand his parcel. Sinclair said it couldn't be found. All that was left were a few books, which were not much use to Henry and Susannah, neither of whom could read. Presumably, whoever stole the contents of the parcel couldn't read either.

MEMORANDUM.	
<b>HENRY CABEL, the YOUNGER.</b>	Convicted at the assizes holden at <i>Thetford</i> the 14th of <i>March</i> , 1783, for burglary and felony, is ordered to be transported to America.
<b>ELIZABETH PULLEY.</b>	Convicted at the assizes holden at <i>Thetford</i> the 14th of <i>March</i> , 1783, for burglary and felony, is ordered to be transported to America.
<b>THOMAS SMITH.</b>	Convicted at the assizes holden at <i>Thetford</i> the 19th of <i>March</i> , 1784, for horse-stealing, is ordered to be transported to America.
<b>NICHOLAS NIXON.</b>	Convicted at the assizes holden at <i>Thetford</i> the 19th of <i>March</i> , 1784, for horse-stealing, is ordered to be transported to America.
<b>SUSANNA HOLMES.</b>	Convicted at the assizes holden at <i>Thetford</i> the 19th of <i>March</i> , 1784, of felony, is ordered to be transported to America.

Source: National Library of Australia, Trove

On 1 July 1788, Henry and his wife Susannah, even though they were still convicts, sued Duncan Sinclair in the new Court of Civil Jurisdiction in Sydney. They demanded the rest of the contents of the parcel, which had been entrusted to Sinclair, or to be paid its value, which was around £15.

The Court heard the case on 5 July 1788. The Court was made up of three officers – the Judge Advocate, the surgeon and Reverend Johnson. None of them (not even the Judge Advocate) had any legal training or qualifications. But they were more than capable of reaching a practical outcome based upon the fairness of the situation.

One potential complication was that both Henry and Susannah had been condemned to death. Under English law, they were 'attainted' and suffered what was sometimes known as 'civil death'. This meant that they had lost all their legal rights and therefore could not sue in a court. However, this was not considered by the court. This could be because no one was a qualified lawyer so they did not know about it.

More likely, however, there was a practical decision made that if the convicts in New South Wales had no legal rights, this could result in mayhem and undermine the whole system of 'law and order'. So at least in this case, the legal rights of convicts won out. Henry won his case and was awarded £15 – which must have been of enormous benefit to his young family. The fact that a convict could successfully sue the captain of one of the ships and a senior figure in this new settlement says a lot about how seriously the system of justice and the rule of law was treated by the British.

## A letter to home

On 17 November 1788, Henry sent a letter to his mother. He probably still did not know how to write, so it may have been written for him by a friend.

In the letter, Henry talked about the difficulty of growing food and the lack of local fruits. He was amazed by the different animals, such as one 'called a canкуро' (which we now call a kangaroo) as well as possums and flying squirrels. There were lots of different birds and fish, the climate was healthy and the 'sun goes to the left from the eastward', he said.

Henry told his mother that they had a little garden that provided them with cabbage and turnips and he had grown a small crop of peas. He had been given work as an 'overseer over the women' prisoners. He proudly announced that 'our little boy Harry is a promising little fellow, and goes to school'.

Henry went on to become Chief Constable and later ran a successful shipping business. He and Susannah led a happy and prosperous life with eleven children. Henry died in 1846 at the age of 84 – a long life for a man condemned to death at 18, who could never have imagined that he would spend so much of his life on the other side of the world.



## Topic 4.2 Lesson/ Activities Seven



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### ' Civil death and civil rights for convicts in colonial New South Wales: Give me back my parcel' A Case Study on the story of convicts Henry Kable and Susannah Holmes and their baby. Attempts to apply the British principle of the "Rule of Law"

Time/Lesson	Learning Goal
<ul style="list-style-type: none"><li>1 hour</li></ul>	Through the story of convicts Henry Kable and Susannah Holmes and their baby, understand the principle of the rule of law that the British brought to the penal colony of New South Wales and that this meant the law applied to all people, including convicts and Aboriginal people.
Rationale	Success Criteria
To appreciate how the colony was governed, and critically evaluate how strict laws, which apply equally to everyone, may sometimes be affected by compassion and mercy.	Students understand the importance of equality before the law, but also appreciate that sometimes there is a need to show compassion and mercy.
Resources	
<ul style="list-style-type: none"><li>'Give me back my parcel': <a href="https://www.youtube.com/watch?v=JDJ942Nd0V4">https://www.youtube.com/watch?v=JDJ942Nd0V4</a></li><li>TRD 11: ' Civil Death and Civil Rights for convicts in Colonial New South Wales: Give Me Back My parcel</li></ul>	
Tuning In	
<ul style="list-style-type: none"><li>Discuss the hardship and poverty faced by many in Britain in the 1700s. Explain why people resorted to crime to survive, when there was no social welfare to help them.</li></ul>	
Teacher Instruction	
<ul style="list-style-type: none"><li>On the first reading watch for understanding. Discuss any questions or misunderstanding the students may have. Tie this discussion back to their prior knowledge from the lessons introducing the rule of law. Reading the resource can be replaced with the video 'Give me back my Parcel' if desired.</li><li>Discuss how Henry has rights (even as a convict) under British law.</li><li>On the second reading, now that students understand the story, discuss the principle of the 'rule of law' - that the law applies as much to the rich and powerful as to the poor and convicts. Henry was able to sue a senior officer in the colony for failing to do the right thing and secure his property from thieves. The court agreed with Henry, even though it was comprised of other senior officers in the colony. They did not favour their friend and colleague. Instead they strictly applied the law.</li><li>Identify the points in Henry's story where his life was affected by compassion and mercy. First, even though he was sentenced to death, he was granted mercy by the King and his punishment was changed to transportation. Next, John Simpson had compassion for Susannah and baby Henry and went to great lengths to reunite them and tell the authorities when he thought that what was being done, under the law, was wrong. Lord Sydney, an important Minister, was also moved with compassion when he heard their story and issued legal orders to right the wrong. His orders allowed the family to be reunited. Then the public had compassion for Henry's family and raised money to provide them with the goods they would need in the new colony. Why was compassion and mercy given to Henry so many times in his life, even though he was a convict?</li></ul>	

## Group/Independent Learning

**Writing home:** Henry sent a letter back to his mother in England, in November 1788 after he had not yet spent a year in New South Wales. Ask students to imagine that they are Henry. What would they say in a letter back home to their mother? Students could be prompted to think about discussing the following:

- how he had been looking forward to getting his parcel on arriving in Australia, but it had gone missing and all that was left were some books;
- his court case, and whether he was afraid that he wouldn't be treated fairly, because he was only a convict;
- his amazing new home, with the beautiful landscape, the birds and the animals, the sounds and the different kind of sunlight;
- his hopes for his family and their new life;
- how he misses his mother and what things he misses from back home;
- how proud he is to have been entrusted with the job of being an overseer of some of the other convicts;
- his interactions with other convicts and the local Aboriginal people - his friendships and fears;
- the things he is grateful for - like the efforts of John Simpson and the decision of Lord Sydney, and all the kind people who donated money to buy things for his family; and
- his determination to make a success of his life and make the most of his opportunities.

**Differentiation:** Henry had missed out on the education that he needed to be able to read and write (although he made sure that young Harry went to school, so he didn't suffer the same disadvantage). Henry probably got someone else to write the letter for him. He would have dictated the letter to a friend or scribe. Students who have difficulties with writing could use an oral presentation to share what they would include in their letter. Alternatively, letters could be prepared in groups, with one member of the group acting as the scribe for it.

- **Extension:** When the King is crowned, the Coronation contains many symbols of the importance of law, justice, equity and mercy. For example, there is a special sword, called the 'Curtana' or 'Sword of Mercy', which has a blunt end to symbolise that the holder will grant mercy, rather than use the sword to injure or kill a person. When the Crown is placed on the King's head, he is holding two heavy sceptres (ie long rods or sticks made of gold and decorated by jewels). One of them, the Sceptre with the Cross, symbolises the rule of law and justice. The other, the Sceptre with the Dove, symbolises equity and mercy. Show pictures of a Coronation and the sceptres to the students. Ask students to brainstorm why these Sceptres are held by the King at the moment that he is crowned? What is it supposed to mean?
- Explain that in the past, Kings had great powers that could affect the lives of their subjects. But with great power comes great responsibility to exercise that power fairly. So just as the Crown symbolically gives the King power, the sceptres are saying that this power is limited by the responsibility to exercise it in accordance with the rule of law, with justice, equity and mercy.
- Tie this back to Henry's story. These days, and even back in Henry's time, most power is exercised by government Ministers and judges, rather than a King. But they too have the responsibility to exercise their powers in a way that complies with the law, but also with justice, equity and mercy. Ask students to identify when Henry was treated with mercy and justice and when as a matter of equity he was treated fairly and equally by those who exercised power.

### Wrapping it up

Students present their letters in written or oral form. Teacher concludes with a discussion on the importance of not only treating people equally under the rules, but also about the need for justice, fairness and mercy in how we treat others.

### Assessment strategies

The presentation of the letters could be used as a part of an assessment portfolio or as summative assessment drawing together all knowledge from the Unit.

