



Teacher Reference Document 12



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

The first criminal court in Australia

In 1788, when the First Fleet arrived in Sydney, it brought not only convicts, but also British laws, including criminal laws. Aboriginal law was not recognised by the colonists.

Even though the British were setting up a penal colony in Australia, they realised that it was likely that new crimes would be committed, by convicts, the military, officials or civilians. This meant that there needed to be a court and a judge, so that those who committed criminal offences could be dealt with fairly, under the rule of law. Before the First Fleet departed England, the British Parliament passed a law to create a court in New South Wales.

On board one of the ships of the First Fleet, the *Sirius*, was Deputy Judge-Advocate David Collins. Collins was not a lawyer and had no legal training. He was an officer in the marines – a special armed force that supports the navy. He had joined up at the age of 14 and had served in America during its War of Independence. Faced with the prospect of peace and living on half-pay, he agreed to join the First Fleet. He was put in charge of the legal system in New South Wales. This meant he issued all legal documents and sat as a judge on the criminal court (with six fellow military officers) and as a judge on the civil court, with two ‘fit and proper persons’ to assist him. Due to his lack of legal training, he had to rely on his common sense. The Governor of the Colony, Arthur Phillip, was the Appeal Judge who had the power to pardon those held guilty of criminal offences or reduce their sentence.

As the British population in New South Wales was primarily made up of convicts, the main aim of the legal system, according to Collins, was ‘the punishment of vice, the security of property and the preservation of peace and good order’.



Deputy Judge-Advocate David Collins
Source: National Archives of Australia

There was difficulty controlling the convicts. They stole things and some refused to work. Some soldiers did not believe it to be their job to oversee the convicts. The Court was assembled for the first time on 11 February 1788 to remind the convicts that there would be punishment for anyone who broke the law.

Historians have described the actions of the first court in Australia as harsh. One historian, Alex Castles, described it as ‘the best known and often most dreaded tribunal in New South Wales’.

Unlike the courts in England, the first New South Wales criminal court did not have a jury (i.e. a group of ordinary people who listen to the evidence and decide guilt or innocence). Instead, military officers decided whether a person was guilty, and they could be biased. Because there was no gaol at the penal colony, the court tended to impose sentences such as flogging or execution.

On 11 February 1788 the convict Samuel Barsby was found guilty of assaulting two of the colony's drummers and was given 150 lashes. On the same day the convict William Cole was found guilty of stealing two planks of wood and was sentenced to 50 lashes, but was later given clemency (i.e. mercy) by Governor Phillip, so he wasn't punished. Thomas Hill was found guilty on that day of stealing bread. His punishment was to be banished to a small island in Sydney Cove, now known as 'Pinchgut' or 'Fort Denison' for a week on his own.

David Collins wrote in his book [*An Account of the History of the English Colony in New South Wales*](#):

'The mildness of these punishments seemed rather to have encouraged than deterred others from the commission of greater offences; for before the month was ended the criminal court was again assembled for the trial of four offenders, who had conceived and executed a plan for robbing the public store during the time of issuing the provisions.'

Food was in short supply in the early days in the colony and Governor Phillip was worried hunger could cause a riot. Robbing the public store, where the food rations were held, was a major crime. The Marines were already annoyed that the convicts were getting the same food rations as them. There was a real risk of starvation if the rations ran out before the colony was able to grow its own food or find local food.

On 27 February 1788, the Criminal Court found Thomas Barrett, Henry Lavell, Joseph Hall, and John Ryan guilty of stealing provisions from the store. [Barrett](#) had first been convicted of theft in 1782 and sentenced to death. This was commuted to transportation to America, but on the way there he was involved in a mutiny. He was sentenced to death a second time, which was again commuted to transportation. This time he was transported to New South Wales in the first fleet on board the *Charlotte*. It was only a month after arriving in the colony that he was caught committing a capital crime. On 27 February 1788, just hours after he had been found guilty of stealing from the food stores, Thomas Barrett, as the ringleader, was hanged. He wasn't able to escape death a third time.



The co-existence of convicts, their military gaolers, and free settlers. Watercolour by Edward Charles Close, 1817.
Source: Wiki Commons

Convicts outnumbered the Marines in the colony, so it was thought best to carry out the execution quickly to avoid a rebellion. The drummers were playing, and the sound drew the Aboriginal people from the bush to observe the hanging. Thomas Keneally records that even the first fleet children were made to watch the hanging and learn about the broad power of authority and the need to obey the law.

Lavell and Hall were also sentenced to death, but Governor Phillip intervened to save them as they walked to the noose. Their death sentences were commuted to banishment. John Ryan, who was thought not to be as guilty as the rest, was to be given 300 lashes. Ryan was pardoned by Governor Phillip and the banishment of the other two was never carried out.

Capital punishment continued to be used to deter crime. But it didn't always work. Joseph Samuel was transported to Australia after being convicted of robbery. He escaped from the penal settlement in Sydney Cove but was later convicted of robbing a woman and murdering a police officer. He was sentenced to death by hanging at Parramatta on 26 September 1803. He was strung up, but the rope snapped and he fell down, hurting his ankle. He was strung up again, and this time the noose slipped off his neck and he fell again. The third time, the executioner was very careful, but the rope snapped again and Samuel fell to the ground.

The crowd broke into a rage. The Governor was called and inspected the rope. He agreed with the crowd that it was a sign from God that Samuel had not committed a crime deserving execution, and his sentence was commuted to life imprisonment.



Pinchgut Island (Fort Denison) Sydney Cove
Source: National Library of Australia

The first Court remained in place until 1824 when it was dismantled and replaced by a Supreme Court. Through this period there were seven different Judge-Advocates, with one person in the role twice. The first Judge-Advocate to have actual legal training was Richard Dore in 1798.

David Collins later went on to become the first Lieutenant-Governor of Van Diemen's Land, now called Tasmania. He died in Hobart on 24 March 1810.

Joseph Samuel, the man who failed to be hanged, was sent to Newcastle to work in the mines. He later escaped from Newcastle on a boat and was declared drowned, although his body was never found. Perhaps he had escaped death again and went on to live a quiet life elsewhere. We will probably never know.



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Topic 4.2: A conflict of laws and perspectives

Thomas Barrett – thief, mutineer, forger, and artist - the first person hanged in Australia

Thomas Barrett was born in London around 1758. Not much is known about him until July 1782, when he was tried in the Old Bailey Court in London. It was [claimed](#) that he stole two silver mugs, a silver waiter, two silver spoons and a silver wine strainer, from the home of William Lewis. There were no witnesses to the crime, but witnesses had seen Barrett near the home of Mr Lewis in Covent Garden in London, just before the items were stolen. Barrett's defence called two witnesses who gave him good character references and he was found not guilty.

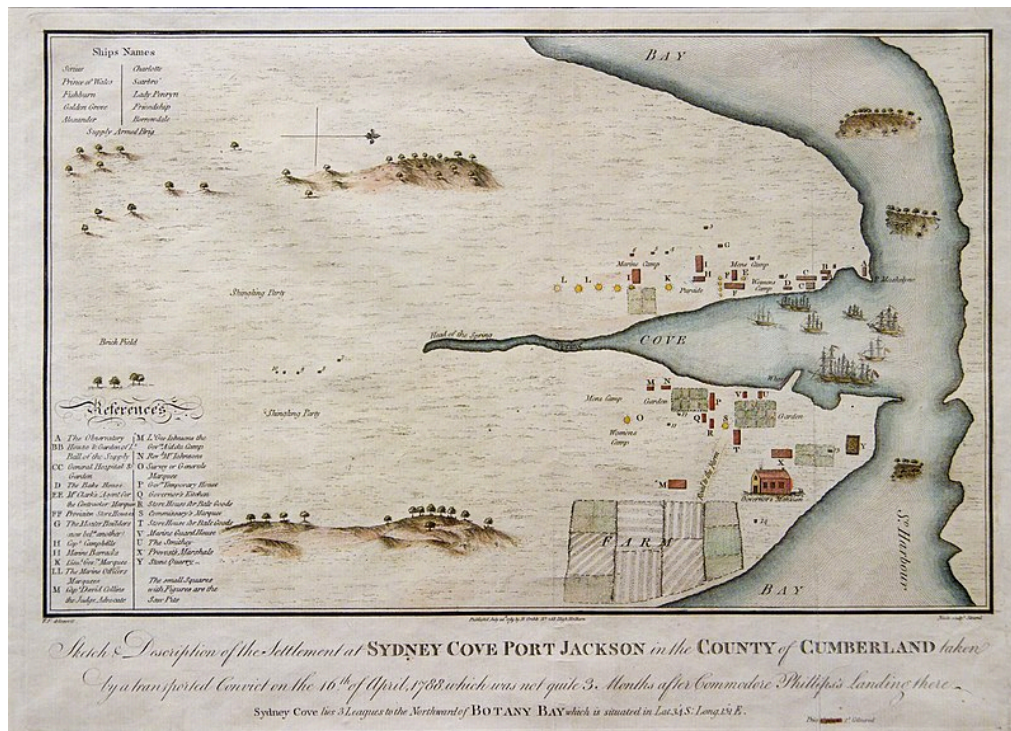
It was only a few months later that he was in the Old Bailey again. This time he had been caught red-handed running from the home of Anne Milton, holding a silver watch, a chain, and some other items. He was [found guilty](#) on 11 September 1782 and sentenced to death. His sentence was later commuted to transportation of seven years and he was held in a prison hulk on the River Thames waiting for somewhere to go.

Eventually, in 1784 he was taken to a ship, the Mercury, which was headed for Georgia in America. He and other convicts aboard took over the ship in a violent conflict only a short way into the journey. Initially the mutineers had planned to sail the ship to Ireland, but bad weather forced them to return to England. Some of the convicts escaped the ship, including Barrett. He was, however, later captured and put on trial again.

Back at the Old Bailey once again, he received the death penalty for the mutiny. But luck was with him because for a second time his sentence was commuted to transportation for life.



The Charlotte Medal
Source: National Museum of Australia



Barrett was reportedly the ringleader of the *Mercury* mutiny. But he had intervened to save the steward's life and prevented the captain's ear from being cut off. This was enough to save his life. Convict records show that his sentence was 99 years – meaning, life.

Barrett was held aboard the *Dunkirk* hulk moored (i.e. tied up to a pier) at Plymouth waiting to be transported. He was reported to be 'in general, tolerably well behaved but troublesome at times'. By this time, it had become clear to England that America was not going to accept any more convicts. In fact, the ill-fated *Mercury* had sailed to Georgia with the convicts that had remained aboard, plus an additional 22 convicts, and had been refused entry to America. The *Mercury* convicts were taken to Honduras and their fate remains unknown.

With the prison hulks in England filling up and America not allowing any more convict transportation another plan had to be hatched. It was decided that Britain would set up a new penal colony in New South Wales. Sixty-seven convicts that had mutinied on the *Mercury* were carried to Australia on the First Fleet. Thomas Barrett was one of them and he was aboard the *Charlotte* which set sail on 17 May 1787.

Bound for Botany Bay, the 11 ships sailed via the Canary Islands, Rio de Janeiro and the Cape of Good Hope (the southern tip of South Africa). Barrett got to work on board the *Charlotte* forging coins out of belt buckles, buttons and spoons that were probably supplied to him by the Marines.

Early map of Sydney Cove, Port Jackson, 1788
Source: State Library of NSW

When the ship stopped in Rio de Janeiro some of the convicts attempted to do trade out of the port holes with the Portuguese traders who had rowed out to them. In what became a diplomatic problem, the forged coins were discovered by the traders. As this was a British Navy ship some careful apologies had to be given to the traders. The Surgeon-General John White who was the doctor on the *Charlotte* wrote:

The officers of marines, the master of the ship, and myself fully explained to the injured Portuguese what villains they were who had imposed upon them. We were not without apprehensions that they might entertain an unfavourable opinion of Englishmen in general from the conduct of these rascals; we therefore thought it necessary to acquaint them that the perpetrators of the fraud were felons doomed to transportation, by the laws of their country, for having committed similar offences there.

The Surgeon-General was very impressed with the forged coins and thought that if they had been made with better metal they might have passed as genuine. He then asked Thomas Barrett to make him a reminder of the voyage.

In the six days between landing at Botany Bay and moving to Sydney Cove, Barrett created the Charlotte Medal for John White. It is thought to be made from a metal kidney bowl that had probably been supplied by the Surgeon-General. On one side of the medal is an engraving of the *Charlotte* with the sun, the moon and the stars and the inscription 'The Charlotte at anchor in Botany Bay Jan 20 1788'. On the other side of the medal are the navigational details of the voyage. A second, cheaper, medal was made from [copper](#), perhaps for a servant.

The '[Charlotte Medals](#)' are both now held in the [Australian National Maritime Museum](#) in Sydney and are considered the first pieces of Australian artwork by a non-Indigenous person. Barrett now 30, had arrived in Sydney along with other convicts, the sailors, marines, officers and some wives and children. Because this was a completely new colony, the supplies were limited and were therefore rationed. The convicts were warned that stealing food would be punished by death. One of the first persons tried in the new Court on 11 February 1788 was found guilty of stealing bread from another person and given a sentence of 50 lashes. This was later pardoned as it was thought that he may have just found another convict's stash. A week or so later the convict rations were equalled to the Marines' rations in an attempt to prevent anyone stealing food. Governor Phillip was worried that hunger could bring everything undone.

The rations were stored in a tent that was guarded by the Marines. Barrett and his accomplices devised a plan to rob the store. The following night they carried out their robbery of 'butter, pease and pork'.

On 27 February 1788, the Court found Thomas Barrett, Henry Lavell, Joseph Hall, and John Ryan guilty of stealing provisions from the store. Just hours after being found guilty, Thomas Barrett, as the ringleader, was hanged. He was not able to escape death a third time.



Thomas Barrett plaque on the corner of Essex and Harrington St, Sydney
Source: CEFA

You might wonder why the execution was carried out so quickly. The convicts outnumbered the Marines and so it was thought best to act fast to avoid any risk of rebellion. His three accomplices managed to avoid the same fate. However, one of them, John Ryan, had to act as the executioner under the threat of being shot himself.

Thomas Barrett was buried near the tree that he was hung from in what is now known as the Rocks in Sydney. There is a plaque on the corner of Essex and Harrington St that marks the approximate location.



Topic 4.2 Lesson/ Activities Eight



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The First Criminal Court in Australia and the story of Thomas Barrett Thief, Mutineer, Forger and Artist and the first person hanged in Australia.

Time/Lesson	Learning Goal
<ul style="list-style-type: none">1 hour	To identify some of the laws in the past, understand why someone might break those laws, and the punishments that were enforced at that time.
Rationale	Success Criteria
Students understand how the criminal law applied, often with harsh punishments, in the eighteenth century. Students appreciate the importance of fair trials and justice in the court system.	Students can retell or summarise the story of Thomas Barrett, make connections to prior learning about the First Fleet and conditions in England in the 1700s, as well as identify what a fair and equitable trial looks like. Students will be able to think critically about the multiple perspectives drawn from the story of Thomas Barrett and understand that opinions on what is considered fair and just change with time.
Resources	Assumed Prior Learning
<ul style="list-style-type: none">Smartboard with access to PowerPoint to guide discussionsWhiteboard, Whiteboard markersTalking ball/talking stickResource #1 for each Triad groupResource #2 (prepared for any students requiring extension)Copy of the text about Thomas BarrettTeacher Reference materialsTeaching Reference DocumentAustralian National Maritime Museum: 'The Charlotte Medal' https://www.sea.museum/-/media/anmm/files/learn/teacherresources/signals-article_charlotte-medal.pdf?la=enAustralian National Maritime Museum, animation 'First Fleet Convict Thomas Barrett and the Charlotte Medal: https://www.youtube.com/watch?v=W7LvWkZR70	Students' understanding of general rules and laws observed by themselves, family members and people they know. Some prior knowledge about the First Fleet and conditions in England during the 1700s may be assumed, due to HASS curriculum links.

Teaching Reference Documents:

- The first criminal court in Australia – TRD 12
- Thomas Barrett – Thief, Mutineer, Forger and Artist – The First Person Hanged in Australia – TRD 13

Tuning In

Activate Prior Knowledge

- Teacher revisits previous lessons, by referring back to display of 'thoughts' around rules, and the 'big juicy questions' they have posed about rules and laws.
- Teacher displays the question 'Have laws and their consequences always been the same in Australia?' Students turn to a knee-partner and discuss their thoughts around this question. Teacher asks for some students to share their thoughts with the class.
- Teacher asks the students 'What does it mean to be fair today?' Does this differ to what was thought to be fair when the First Fleet arrived? Discuss students' thoughts and ideas around this value.
- Teacher explains to the students that the students are going to read about a man named 'Thomas Barrett,' an Englishman whom had a very interesting career as a thief, mutineer, forger and artist! He ended up in Australia as part of the First Fleet.

Teacher Instruction

- Teacher allows students an opportunity to look through the pictures and words that they see in the text about 'Thomas Barrett.' Class discusses their predictions about what might happen in the story, based on what they have already observed, and their prior knowledge.
- Teacher either reads aloud with the students, or allows students to read the text about Thomas Barrett independently. Students may like to highlight particular information, or stop to discuss particular parts of the text. Teacher could encourage students to circle new or interesting words they might not have come across before.
- After reading, teacher allows the class opportunity to summarise and discuss the biography of Thomas Barrett. This might be a good opportunity for the teacher to show students the records from the Old Bailey and the Australian National Maritime Museum listed above.
- Classroom Court: Students re-enact the trial of Thomas Barrett.
- Students research the last hanging in Australia and discuss why Australia has abolished the death penalty unlike some States in the USA.

Group/Independent Learning

- Teacher splits the class into their triad groups, and hands them a copy of Thomas Barrett (Resource #1). Teacher explains that their job is to list the crimes that Thomas Barrett committed, tick on a scale of how serious those crimes were, determine how they affected others, and outline what the punishment was. Students then can answer the question 'Why do you think punishments were so harsh?'
- Teacher allocates time to the students to summarise this information.

Wrapping it up

- Teacher discusses the information collected from Thomas Barrett (Resource #1), summarising the crimes he committed, their effect on others, and the punishments he received.
- Importantly, the teacher shares some of the student insights into why the punishments were so harsh.
- Teacher displays the question 'Why do you think there was so much crime in Britain that they had to send convicts elsewhere?' Class discusses. Contrast the social security support that people have today.
- Students sit in a circle, and using a talking ball/stick, spend time completing the statement: 'Laws were different in the past because...'
- Look at the questions posed in the first lesson, and ask students if they have managed to answer any of the questions during today's lesson.
- Add any new words to the classroom word wall.
- For contemporary relevance teacher can discuss what students think about the value of fairness today and how it compares to the times of Thomas Barrett. Read the extract Resource 4.2 (8) 1 "Equality of opportunity and a 'fair go' before the class discussion and completion of the Lesson worksheets

Differentiation

Support

- Students who have difficulty reading the text about Thomas Barrett, may like to view the animation of his life by the Australian National Maritime Museum, referred to above. Alternatively, teacher could read aloud the biography, stopping to explain and unpack particular parts of the story.

Extension

Ask students to create a 'T chart' that outlines how laws in the past had different punishments to today, as a compare and contrast activity (Resource #2).

- Student research "[Tait v the Queen](#)" on the ACC website: 'The Rule of Law - Even a murderer deserves a fair trial'.

Assessment strategies

There are plenty of opportunities to draw upon HASS skills in this lesson, and this can be observed through a whole class checklist (Teacher Resource #1) or individual Assessment Rubric that is used throughout the entirety of the unit (Teacher Resource #2)

Further Extension Activities

- Students research their own family immigration stories or that of their Aboriginal or Torres Strait Islander relatives. They could be first generation stories or go all the way back to the First Fleet. Each student turns their stories into an illustrated booklet and reads it as a presentation to the class. (Teachers should exercise care in relation to this activity, as some students may have traumatic family backgrounds. Students should be appropriately supported.)

**Have laws and
their
consequences
always been
the same in
Australia?**

Resource 4.2 (8) - 1

Fairness: A Core Australian Value

(Extract from Australian Government
– Australian Citizenship Our Common Bond, p.36)

Equality of opportunity and a ‘fair go’

We believe that everyone deserves a ‘fair go’ and people should not be limited by any kind of class distinction. Everyone, regardless of their background, is given an equal opportunity to achieve success in life, and ensuring that everyone has the same legal rights is an important aspect of fairness in Australian society.

What someone achieves in life should be a result of their hard work and talents. This means a person should get a job based on their skills and experience, not because of their gender, wealth or ethnicity.

When an organisation needs to fill a job, the law supports that they select the person with the best skills and experience for the job.

Many new migrants in Australia have become leaders in business, their profession, the arts, public service and sport through their hard work and enterprise.

Lesson 4.2 (8) Worksheet 2



**What do
you think it
means to be
fair in
Australian
society
today?**

Thomas Barrett - Resource #1

What were the crimes he committed?	How harsh were they?	How did it affect others?	What was the punishment?
	Very harsh Harsh Fair		
	Very harsh Harsh Fair		
	Very harsh Harsh Fair		
	Very harsh Harsh Fair		

Thomas Barrett

Why do you think the punishments were so harsh? _____



Resource #2

Past and Present Laws and their punishments

Laws in the Past and their punishments	Laws in the Present and their punishments

HASS Skills Rubric

Teacher Resource #2

		A	B	C	D	E
Questioning	Pose questions to investigate people, events, places and issues (ACHASSI073 - Scootle)					
Researching	Locate and collect information and data from different sources, including observations (ACHASSI074 - Scootle) Record, sort and represent data and the location of places and their characteristics in different formats, including simple graphs, tables and maps, using discipline-appropriate conventions (ACHASSI075 - Scootle) Sequence information about people's lives and events (ACHASSI076 - Scootle)					
Analyzing	Examine information to identify different points of view and distinguish facts from opinions (ACHASSI077 - Scootle) Interpret data and information displayed in different formats, to identify and describe distributions and simple patterns (ACHASSI078 - Scootle)					
Evaluating and Reflecting	Draw simple conclusions based on analysis of information and data (ACHASSI079 - Scootle) Interact with others with respect to share points of view (ACHASSI080 - Scootle) Reflect on learning to propose actions in response to an issue or challenge and consider possible effects of proposed actions (ACHASSI081 - Scootle)					
Communicating	Present ideas, findings and conclusions in texts and modes that incorporate digital and non-digital representations and discipline-specific terms (ACHASSI082 - Scootle)					

