

The Forbes Flyer

The newsletter of the Francis Forbes Society for Australian Legal History

Winter 2010

History reports itself

This is one of our longest Flyers yet, designed to provide the discerning legal historian with a distraction from the federal election campaign.

There are a number of important dates, and I urge everyone to scan the contents page, alongside this column, to check whether something is coming up that they want to get to. Two dates that are upon us are **25 August 2010** (when the Forbes and Selden Societies co-sponsor a lecture about an 850-year-old piece of litigation) and **31 August 2010** (the cut-off for suggested papers for the 2011 British Legal History Conference).

David Ash

Editor

Richard Anstey and the Sackville inheritance

The Hon John P Bryson QC will deliver a lecture on "Richard Anstey and the Sackville Inheritance" at **5.15pm on Wednesday, 25 August 2010** in the NSW Bar Association Common Room in Phillip Street, Sydney. This Lecture is co-sponsored by the Selden Society and the Forbes Society, in conjunction with the Association. The story of this litigation which took place in the king's court and the church courts is the story of the origins of the English-speaking legal professions around the world today. Attend and find out where it all began.

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The Twentieth British Legal History Conference: Call for Papers

The Twentieth British Legal History Conference will be held in Cambridge **from Wednesday 13 July 2011 to Saturday 16 July 2011**.

The conference theme will be Law and Legal Process. The conference addresses the intersection between law and legal process, the ways in which the processes of courts and other tribunals, the practices of judges and lawyers, and the needs of litigants, influence each other and shape the development of the law; and the influences in turn of legal doctrine upon the practices of those coming into contact with the law. The conference organisers welcome papers concerning all jurisdictions, branches of the law and historical periods. Ideally, papers should reflect the conference theme. Papers reflecting the results of innovative legal history research are most welcome. Submissions from doctoral students are encouraged.

Proposals for papers (up to 500 words) are invited, to reach the organisers – preferably by email attachment (in Word or pdf format) sent to the address below – by **31 August 2010**. If potential contributors are unsure whether their proposals suitably reflect the theme, the organisers are very happy to be contacted informally by email (again to the address below). A draft programme and details of registration and accommodation will be circulated early in 2011. Conference organisers are Professor Sir John Baker; Professor David Ibbetson; Dr Neil Jones; Dr Isabella Alexander and Dr Matt Dyson.

Conference email: LawBLHC@hermes.cam.ac.uk.

The 2010 Forbes Lecture

A number of members were able to get to Gleebooks in Sydney's inner west for the launch of Dr Lisa Ford's *Settler Sovereignty* (2010, HUP). A study of settler law in Georgia and New South Wales, "it is less a comparison than an exploration of continuity between two very unlike places joined by language, institutions of local government, a history of settlement, and cultures of common law".

The work has taken the Thomas J. Wilson Memorial Prize. This "honors the memory of Thomas J. Wilson, director of Harvard University Press from 1947 to 1967. It is awarded annually to the beginning author whose first book manuscript, approved for publication by the Board of Syndics of Harvard University Press, in any calendar year is judged outstanding in content, style, and mode of presentation."¹

We are fortunate indeed that Lisa has agreed to deliver the 2010 Forbes Lecture, which is set for **9 November 2010**.

2010 Australian Legal History Essay Competition

The question for the 2010 Australian Legal History Essay Competition is "Can Australian history teach us anything about the role of altruism and personal responsibility in the law?" The competition offers an opportunity to explore the concept of a "duty of care" in the civil law of negligence; the idea, found in the criminal law of homicide, that, outside war, no person is entitled to save his or her life by killing another; and the notion of "Collective Wrongs" epitomised by the Australian Parliament's apologies to "The Stolen Generations" and "The Forgotten Generations". The deadline for submission of essays is **15 November 2010**. Conditions, guidelines and materials are on the Society's website.

The 29th Annual Australian and New Zealand Law and History Conference

The theme for this year's conference is "Owning the Past: Whose Past? Whose present?" Hosted by the Australian and New Zealand Law and History Society (ANZLHS), the conference is set for **13 to 15 December 2010** in Melbourne. The site (www.waikato.ac.nz/law/anzlhs/) says:

The use and study of the past is constantly being refashioned and reinterpreted to construct meaning in the present, imparting understandings of a common but chaotic humanity. Because everyone and no one 'owns' history, the ownership of historical events and the right to speak of them remains deeply contested. What are the outcomes and practical challenges surrounding the construction of historical consciousness through and about law? Whose past is told and by whom? How does law's past influence history's present? And is there any such thing as the orderly evolution of legal ideas? This conference invites papers on the subject of ownership in history and law, and may include contributions on any of several broad themes: the contestation of memory; the ethics of representation and remembrance; the commoditization and consumption of traumatic pasts; transcultural and transgenerational trauma; new technologies of historical documentation; testimony and bearing witness; Indigenous knowledge; identity politics; citizenship; the ethics of reproducing historical narratives; colonialism and hegemony; 'dark' tourism and artefacts of law; and new legal imaginings and the contest with the legal past.

This is an interdisciplinary conference and papers are invited from scholars across a broad range of disciplines, as well as chronological and geographical contexts.

Speakers

Eve Darian-Smith (University of California)

David Williams (University of Auckland)

Larissa Behrendt (UTS)

Tracey Lindberg (University of Ottawa)

Robert J. Miller (Lewis and Clark Law School, Chief Justice Court of Appeals, Grand Ronde Community of Oregon)

Jacinta Ruru (University of Otago)

Julian Burnside, QC, Melbourne

Enquiries to: lawhistoryconference@latrobe.edu.au

Crimes of the times

On 2 April 2010, Sydney Morning Herald published a piece by journalist Joel Gibson, "Crimes of the colony brought to trial". In it, Mr Gibson says:

Professor Bruce Kercher and researcher Brent Salter, from Macquarie University, have for the first time compiled the goings-on in NSW's earliest courts into a fat and entertaining tome called *The Kercher Reports: Decisions of the NSW Superior Courts, 1788 to 1827*. An amalgam of notes and correspondence kept by those present and those reporting the results to London, the book is a major contribution not just to legal history but to Australian history, according to Chief Justice Jim Spigelman, the state's most senior judge and one of its keenest legal historians. In a foreword, he says it demonstrates what the politician H.V. Evatt said in his book on the Rum Rebellion: that the courts were the "true forum" of the early colony. "They had no competitors as a means of expressing individual or public grievances. There was no legislature, no municipal government, no avowed political association or party, no theatre, and no independent press," Evatt wrote. A Sydneysider wandering into a courtroom in 1788 would have found a very different place from the forum where we deal with today's disputes and civil sins.

Read the whole article @ www.smh.com.au/nsw/crimes-of-the-colony-brought-to-trial-20100401-ri4r.html. Please note, Andrew Tink's review of "The Kercher Reports" has been published in a recent issue of the Australian Bar Review, (2010) 33 Aust Bar Rev 189.

Leading Cases Conference, Wellington, New Zealand, June 2010

Bruce Kercher has provided the following report.

This conference was held to mark the near completion of the New Zealand Lost Cases website (<http://www.victoria.ac.nz/law/nzlostcases/default.aspx>). There are now about 2500 cases online, from the beginning of case law in the 1840s.

There were about a dozen papers, each concentrating on an individual case from the Lost Cases collection. These included cases about repugnancy, native title, marriage law, contempt, commercial law and land law. The conference was particularly notable for the interaction of the judiciary, the profession and the academy. One paper was delivered by Dame Sian Elias, the present Chief Justice of New Zealand. Her case was *Busby v White* (1859), in which the plaintiff sought to show that titles purchased from Maori were sometimes superior to titles based on Crown grants. Busby was the British Resident in New Zealand (1833-1840) and a principal author of the Treaty of Waitangi. He had bought thousands of acres of land around Waitangi, which he sought to retain after the Crown declared in 1840 that it would in future be the source of titles. He spent much of his life trying to prove his title or at least gain compensation, travelling to England and the United States.

The papers are to be published by the conference host, the Faculty of Law at Victoria University of Wellington. The conference was preceded by the Second Salmond Lecture, about the importance of legal history. It was delivered by Professor Jim Phillips, who is well known to members of the Forbes Society.

The Lost Cases website is more than a gift to the law and history of New Zealand. It is a model for other jurisdictions, and allows us to engage in comparative legal history without stepping outside into the cold. It is another great step towards the history of the British legal empire.

The Queensland Supreme Court History Program Yearbook

The *Supreme Court History Program Yearbook*, now in its fifth year of publication, has proven a valuable addition to the libraries of historians and lawyers alike. As the only publication of its kind in Queensland, the Yearbook features scholarly articles on Queensland's legal history, together with tributes to retiring judges, legal personalia and a review of significant judicial and legislative developments for the year. This volume serves as a significant resource for those seeking an overview and enduring record of the Queensland legal profession in 2009.

To download an order form, go to archive.sclqld.org.au/scldpub/2009-SCHP/order.pdf. Edited by Michael White and Aladin Rahemtula, the volume includes:

TRIBUTES to

The Hon PD Connolly CBE CSI QC

The Hon Justice PR Dutney

The Hon Emeritus Prof KW Ryan CBE RFD QC

Mr T Parslow RFD ED QC

ARTICLES

The Hon Emeritus Prof KW Ryan CBE RFD QC,
Crises in Parliamentary Government

The Hon JB Thomas AM QC, *Judicial Leap-Frog in the Forties: The Philp–Mansfield Rift*

His Hon Judge M Shanahan — *History of the Public Defender in Queensland*

Professor L Mulcahy — *Fortresses, Cathedrals and Monuments to Law: What does the Architecture of the Law Court tell us about the Role of Law in Society over Time?*

Professor WR Prest — *What Sort of Lawyer was Blackstone?*

Mr AM Curtin — *The Separation Day Observance in Queensland*

Dr N Aroney — *Reinvigorating Australian Federalism*

BOOK REVIEWS

Most Rev JA Bathersby DD on Religion

The Hon Justice JD Heydon on Tom Bingham, Maurice Bowra, and William Wentworth

The Hon IDF Callinan AC on The Art of Australia

The Hon Justice MJ White on Sir John Downer

The Hon Justice CE Holmes on Stella Miles Franklin

The Hon Justice A Wilson on Law and Literature

Consolidating a range of primary source information in a single historical volume, the 2009 *Yearbook* is designed to continue the tradition of the *Queensland Almanac* (1865–1925) and the *Queensland Legal Directory* (1952–1982).

Slaughter of the innocents

As his contributions to the Society and beyond attest, Tony Cunneen has a passion and expertise for the area of law and war, in particular the many and varied roles played by Australian legal practitioners in time of national conflict.

The Australian Army Journal has recently published a moving piece on one man's involvement in that national calamity we commemorate as Gallipoli. Tony has been kind enough to provide an outline for this edition of the Flyer.²

While for the most part lawyers who enlisted in World War I had successful, if occasionally tragic military careers, one Sydney Magistrate, Lieutenant Colonel Alfred Ernest Chapman, was not so fortunate. He was sent home in disgrace, having been unfairly made the scapegoat for a little known but none the less catastrophic military bungle on Gallipoli in August 1915.

Lieutenant Colonel Chapman from Crows' Nest was a Boer War veteran, a graduate of Sydney University, and a well-known police magistrate. He had been active in the militia for years before the war and had enlisted in the AIF and put in command of the Sydney based 18th Battalion.

His second in command was a solicitor, Major Arthur James McDonald .of Double Bay. Also in Headquarters was a Sydney barrister, William Samuel Hinton. There were a number law related professionals scattered through the unit. Chapman had led his 1000 man battalion as part of a huge parade in front of 200,000 celebrating Sydney-siders through the city streets on Saturday 24 April 1915 – a day before the Landing on Gallipoli. It was the last great military celebration before the casualty lists ruined the enthusiasm for war.

Within weeks Chapman's battalion sailed as part of the Reinforcements for the campaign against Turkey. The 18th Battalion had barely two weeks of haphazard training in Egypt before the men were bundled on board transports and transported to Gallipoli. They were rowed ashore to be on the beach at Anzac cove on the morning of 20 August 1914. Within two days hundreds of those who came ashore were dead or wounded after one mad assault on a well-entrenched enemy position at an obscure rise known as Hill 60.³ Lieutenant Colonel Chapman's military career was in ruins.

When the newly arrived Australians were first seen on the beach by the Official Historian, Charles Bean, on 21 August he reported that they were "great big cheery fellows" like a "fresh breeze from the bush" to the ragged, thin Gallipoli veterans.⁴ Gaunt soldiers in tattered uniforms who had been on the peninsula since the early days drifted down from the heights to gaze at the sleek, well-fed new arrivals.

However, Lieutenant Colonel Chapman had much to prove to the battle hardened officers who directed operations on the Peninsula. Battalion commanders were expected to leap at the chance to throw their men into a fray. In one famous incident in the first days of the Landing, the Sydney solicitor Major Macnaghten was told to attack the Turks. He said to his commander: "Right, You take the left and I'll take the right." The two men simply lined up the Battalion and ran at the enemy. Lieutenant Colonel AJ Onslow Thompson, one of the country's leading citizens, was killed. Macnaghten later went mad as a result of his experiences. They were the

model for the reckless bravery expected of battalion commanders, who could be profligate with the lives of their men.

Chapman's Commanding Officer on Gallipoli, Brigadier Holmes, was well-known in Sydney. He had been awarded the DSO in the Boer War, been Secretary of the Water Board and commanded the first contingent of troops to New Guinea in 1914. He was keen on battle for the honour of his Brigade, even if it meant the loss of life of his men. Accordingly, he did not challenge the orders which placed the 18th Battalion as part of a New Zealand and British force a day after landing. They were to be placed directly into the front line of battle.

Lieutenant Colonel Chapman's men were a long way from their Sydney district homes when they were suddenly awakened around midnight on 21 August and told to move off to the extreme north of the ANZAC positions. Chapman himself tried to resist the order to move, saying his men were 'tired' and lacked rations. There was some argument between him and his commanders with confusing orders, rumours and messages rattling around the darkness.

Regardless of their lack of preparation and minimal supplies, the men of the 18th Battalion scrambled off into the darkness and travelled around the mysterious dark tracks to form up in a fold of land near Hill 60. There had been an unsuccessful attempt to take the Hill that day. There were bodies of Anzacs and other allied troops all around. In the gloom of early morning Chapman was simply told to line his men up and attack the hill. His protests to his commanders about the lack of bombs and rations for his men were to no avail. The men of the 18th Battalion were duly lined up in a sunken road at the base of the hill. Until that moment his men had no idea they were about to go into battle.

At 5am on 22 August Chapman blew his whistle and in the morning light the first wave of men blundered out through a break in the olive trees into the open – it had been planned as a night attack but went ahead anyway. The Turkish troops were

firmly entrenched only 75 metres away. The men from Sydney were cut down in waves. It was a classic slaughter. A lucky few made the Turkish trenches, but they were isolated and of little help to the next wave ordered forward in a pigheaded display of obtuse military perversity by the New Zealand officer, Major Powles. Chapman was aghast. The impossibly brave Lieutenant Addison, part of an extended family of lawyers,⁵ leapt forward with the bullets marking his path in the dust. He was killed within metres of starting out. Hundreds were wounded or killed. The attack faltered. The men retired in shock and grief.

Lieutenant Colonel Chapman was distraught and clearly left in shock after the battle. His panicked men moved aimlessly about the area. Brigadier Holmes arrived and took control from the shattered Chapman who appears to have had some kind of complete nervous collapse after the battle. His superior officers were most unimpressed with his demeanour as was Charles Bean who visited the area a day later. Chapman made loud protests about the order to attack. It was not a good idea. Chapman's days of command were numbered.

Over the ensuing week Lieutenant Colonel Chapman tried to resist further orders to attack. He eventually had a blazing row with his commanding officers. Brigadier Holmes did not support him. In anger, Chapman resigned both his command and his commission in the AIF. Technically he was then a civilian on Gallipoli. The 18th Battalion fought again in a murderous attack beginning on the 29th August and again the men were cut down in droves. Chapman is not recorded as having taken part in this attack.

Lieutenant Colonel Chapman was evacuated sick and in shock to Egypt. He was an outcast and tried to rescind his resignation to no effect. He returned home in 1916 as did the severely ill Major MacDonald. They appeared at the sombre, grief ridden memorial services for the 18th Battalion in Sydney. The sudden loss of so many men who had been cheered so lustily only four months earlier was

an incomprehensible shock to their disbelieving relatives.

In later years Chapman was the focus of much sympathy from his men who considered him most unfairly treated. His legal career as a magistrate continued with some distinction throughout the 1920s and the early 1930s. He died in 1933, ending one of the little known but grubbier episodes of World War I. The majority of bodies of the men of the 18th Battalion have never been identified. Some are interred in a mass grave. The bones of the others can still be found scattered about the farmland that had once been the battlefield below Hill 60 on Gallipoli.

www.macquarie2010.nsw.gov.au

On 24 July 2010, a number of society members enjoyed the Governor's Dinner at Parramatta, one of the many events forming part of New South Wales's celebration of the 200th anniversary of Lachlan Macquarie's appointment as Governor of New South Wales. Please keep an eye on the site. The stewardship of Macquarie is a significant period for those interested in the relationship between civilization and the rule of law. Some say each defines the other. Conflicts during this period allow us to question such a view. Following is a speech delivered by the chair of the committee in charge of the celebrations. It gives a fine overview of this controversial figure.

Lachlan Macquarie: builder and reformer

The following speech was delivered by the Honourable John Aquilina MLA on 27 July 2010 to members and guests of the Waverley Historical Society. Apart from being Leader of the House, Mr Aquilina is the chair of the Lachlan Macquarie Bicentenary Commemorations Committee. It is reproduced with Mr Aquilina's consent.

From the outset I wish to acknowledge the custodianship of the land on which we stand by the Cadigal clan of the Eora nation, and to pass on my respects to their elders past and present, as well as on to any members of our indigenous community who may be present this evening.

I am grateful to the Waverley Historical Society for this invitation, and for providing me with the opportunity to address your members and guests about Lachlan Macquarie. All would be aware that on January 1, 1810 Lachlan Macquarie was sworn in as the 5th Governor of New South Wales. This year, 2010, marks the 200th anniversary of Lachlan Macquarie's accession. It is therefore appropriate that we commemorate the achievements of Lachlan and his wife Elizabeth, and highlight the many outstanding contributions which they made to the early Colony.

In January 2009 I was honoured to have been invited by the then Premier, the Honourable Nathan Rees, to chair a committee to commemorate this bicentenary. This committee, known as the Lachlan Macquarie 2010 Bicentenary Commemorations Committee, has 16 members comprising persons with a broad range of knowledge and experience, and has as its Patron Her Excellency Professor Marie Bashir, the 37th Governor of New South Wales. Already there have been a substantial number of commemorative events organised by Government departments and local councils as well as by private organisations and individuals. The majority of these commemorations has been endorsed by the Committee, and they are listed on the Committee's website. There is still a steady stream of applications being submitted for endorsement by various bodies, and the website itself is yielding a broad range of historical information and detail about Lachlan and Elizabeth Macquarie, as well as about the period during which Lachlan governed.

Among the most memorable and enjoyable of the commemorations to date have been Macquarie Visions, which I trust everyone here had the opportunity to enjoy, as well as ParraMac, which saw the illumination of some of Parramatta's most historic buildings in a way which has never been experienced in Parramatta's history. Last Saturday the Governor's Dinner was held at the Riverside Theatre at Parramatta in commemoration of Governor Macquarie and Mrs Elizabeth Macquarie, and currently Alex Buzo's play "Macquarie" is being staged at the same theatre. It still has a few

nights to run, so if anyone has missed out on seeing it, I would strongly urge that you make immediate enquiry and reserve yourself a seat.

The legacy of Lachlan and Elizabeth Macquarie is evident in many forms. In a physical sense we see much of Lachlan as a builder. It is true to say that upon his arrival, he found the colony to be little more than a collection of huts and shanties. In his report to Earl Bathurst dated July 27, 1822 Macquarie wrote:

I found the Colony barely emerging from an infantile imbecility and suffering from various privations and disabilities, the country impenetrable, agriculture in a yet languishing state; commerce in its early dawn; public buildings in a state of dilapidation and mouldering to decay; the few roads and bridges formerly constructed almost impassable; the population in general depressed by poverty; no public credit, no private confidence; the morals of the great mass of the people in the lowest state of debasement and religious worship almost totally neglected....

He immediately set about straightening the roads and drawing up a program for the orderly construction of substantial buildings. Some of these buildings, recently highlighted by the Macquarie Visions commemorations, are today among Australia's most historic and important buildings. I am privileged to work on a daily basis in one of them, namely the Parliament of New South Wales, which saw its origin as the North Wing of what was to become known as the Rum Hospital. Other buildings of substance within a short distance of the Parliament, in or around Macquarie Street, are the Sydney Conservatorium of Music, built originally as the stables for a future Government House, the Mint, which was to be the South Wing of the Rum Hospital, and the Hyde Park Barracks.

St James' Church, which during Macquarie's time was the Court House, was converted into a Church by Commissioner John Thomas Bigge, who convinced his brother-in-law Thomas Scott to take Holy Orders, and whom he then promptly installed as Archdeacon of Sydney, at the same salary which Lachlan Macquarie had received as Governor. Hyde Park is also a legacy of Lachlan Macquarie, having

had its origins as the very first racecourse in the colony, thereby giving birth to one of Australia's greatest sports and industry; horseracing.

And, one would surmise, appropriately close by to the racecourse, dressed in full Masonic regalia, and attended by the most senior Masons in the colony at the time, Lachlan Macquarie laid the foundation stone for the predecessor of what in time would become St Mary's Cathedral, the prime Catholic place of worship in Australia. The trowel which the Governor used for the occasion had been presented to him by the Roman Catholics of the Colony, many of whom Elizabeth had befriended. It is recorded that after completing the ceremony, Lachlan wiped the trowel with his handkerchief and put it in his bosom saying, as he addressed the priest,

You must know, Mr Therry, that, although I never laid the first stone of a Catholic church before, I am a very old Mason.

The story of physical building is truly one to be admired, researched and documented. Much work has already been done, but there is still much more to do.

It is a credit to Lachlan Macquarie that during his term as Governor, extensive exploration was undertaken far and wide which resulted in substantial discoveries and much opportunity for European settlement. However, Lachlan Macquarie did not only just pursue the task of physical builder of public buildings, roads and bridges. He also pursued the task of building a new nation, which he would refer to as 'Australia', and which would, with some justification, earn him the title as 'Father of Australia'.

Besides being a builder, Lachlan, along with his wife Elizabeth, is recognised as being an outstanding reformer. As we have already heard from Lachlan's own account to Earl Bathurst at the end of his period as Governor, when he and Elizabeth arrived in the colony, not only was the colony's physical appearance ramshackle and disorderly, but the behaviour of both the convicts and their masters left much to be desired.

After all, Lachlan arrived following the illegal arrest and dismissal as Governor of his predecessor, the notorious William Bligh. However, what he observed upon his arrival, was far more than what Lachlan expected to find. Back in England, the powers that be were not unaware of the dramatic need for reform in the colony. In signing Macquarie's commission on May 8, 1809, Lord Castlereagh stated –

The great objects of attention are to improve the morals of the colonists, to encourage marriage, to provide for education, to prohibit the use of spirituous liquors, to increase the agriculture and stock, so as to ensure the certainty of a full supply to the inhabitants under all circumstances.

A tall order indeed! Lachlan and Elizabeth wasted no time in setting about this task. Lachlan immediately gave instructions to the military and the marines about what he considered to be orderly and disorderly behaviour. He took steps to control the distribution of liquor, issued edicts about attendance at religious services on Sunday and undertook steps to ensure that persons who wanted to marry were given the opportunity to do so.

However, his attempts at reform not only envisaged the reform of the colony, but also the reformation of its convicts. This policy, more than any other, was to bring him into conflict with the free settlers, the so-called "exclusives" who would continue to agitate against him throughout the whole of his term, sending venomous reports of his administration back to London, and eventually bringing about the inquiry into the colony by Commissioner John Thomas Bigge.

Lachlan Macquarie's "crime" was that although he strongly believed in punishment for one's misdeeds, he also believed in reformation of the character, asserting strongly that once punishment has been served, there was no reason why an emancipated person, providing that person was of good character and standing, could not be reinstated to his or her former rank. Indeed, some of the most notable persons of the term of the governorship of Lachlan Macquarie were former convicts.

The legacy of such persons as the architect Francis Greenway, Surgeon William Redfern and Surveyor James Meehan, is very much with us today. Former convicts Simeon Lord and Andrew Thompson were made magistrates shortly after Lachlan Macquarie's arrival in the colony. Isaac Nichols was appointed principal Superintendent of Convicts and the blackmailer Michael Massey Robinson was appointed as the country's first and only Poet Laureate.

This policy of rewarding emancipists by giving them senior roles in government and society set him at odds with the free settlers, arousing in some cases extreme hostility among a number of influential landholders and senior military officers. His appointment of former convicts as magistrates, and of allowing others to act as lawyers, also put him at odds with the judiciary. Supreme Court Judge Jeffery Hart Bent refused to preside over a Court for at least twelve months as he would not recognise magistrates who had been former convicts, and the advocates who had also been former convicts acting on behalf of individuals. Attempts to introduce a jury system were frustrated for years because of disagreement over allowing former convicts to act as jurors.

However, Lachlan persisted, insisting on giving everyone "a fair go" and "a second chance", thereby giving birth, through his reforms, to another couple of distinctive features of the Australian character. And so, Lachlan Macquarie, builder and reformer, the first person to use the term 'Australia' in official documents, becomes a champion of "the second chance" and "a fair go".

As we have seen, Lachlan had his detractors in his own lifetime, both in the colony and back in London. Unfortunately, he also continues to have detractors today. I can well remember during my schooldays being taught that Lachlan Macquarie was a hard and tough autocratic ruler who mercilessly hung and flogged criminals and convicts without fair trial. Thankfully, our views about his behaviour now are much more informed.

One area, however, which still causes substantial

controversy, is his treatment of the indigenous community. Regrettably, there is still much misunderstanding about his relationship with the aborigines. Upon arriving in the Colony, Macquarie was under official instructions to treat the indigenous population with humanity. He started from the outset trying to befriend them and to reward those who might show some inclination to become “civilised”. The word “civilised” is his choice, not mine, and in itself sums up much of the problem which Lachlan and Elizabeth encountered.

Today we are far more sensitive and aware of the rights of the aboriginal community. It may be noticed that at the start of this presentation I paid my respects to the elders past and present of the Cadigal clan of the Eora nation. In Lachlan’s day there was no concept of an aboriginal nation or nations, although Lachlan and the British settlers were mindful of the fact that the members of the indigenous community were being expelled from their own lands. It was with some irony, therefore, that one of the ways in which Lachlan attempted to befriend the aborigines was by giving some of them land grants of parts of country which had been theirs in the first place.

Similarly, in another failed attempt to befriend them, he established a Native Institute where boys could learn mechanical arts, girls could learn needlework and where they could be equipped for eventual “assimilation” into white society. Neither Lachlan nor Elizabeth could really comprehend why their attempts to clothe the boys and girls in velvet uniforms were doomed to failure. Understandably, the parents, fearing that their children would lose their culture, became increasingly cautious of allowing them to attend the Institute. On another note, most of us would shudder at the thought of having selected leaders wearing engraved brass breastplates proclaiming them to be kings or leaders of their tribes.

In today’s terms, these actions seem at best foolish, in some cases patronising, and in the worst cases downright insulting. But that is judging these actions by today’s standards, and not by

the standards of those times. Lachlan also tried to experiment with “civilising” aborigines by building villages and settling several couples in locations such as Georges Head, Elizabeth Bay and Blacktown. Besides having huts built for them, these aboriginal communities were supplied with clothes, food, seed for farming, tools and in one instance, also a fishing boat. But these attempts were also doomed to failure, and it was not long before the aborigines walked away, leaving the huts behind.

With the ever-pressing need to provide more fertile land for agriculture so as to safeguard the colony from famine, settlers ventured further into the countryside, dispossessing aborigines of more of their land. The increasing contact between the white settlers and the aborigines created extreme tension, often resulting in bloodshed. In 1816 a group of aborigines attacked settlers along the Hawkesbury-Nepean River. Lachlan Macquarie records in his journal that reluctantly he sent a military expedition with orders to take prisoners and shoot any who resisted or attempted to flee, hanging their bodies in the trees as a warning to survivors. At the end of the expedition, referred to today as the Appin Massacre, at least 14 aboriginal men, women and children lay dead.

By any yardstick, we would regard this today as extreme, barbaric treatment. But as it is now almost 200 years on, one might argue the case that given Macquarie’s limited understanding of aboriginal culture, and the complex issues Lachlan had to deal with at the time, it would be extremely harsh to judge his actions of that time with our standards of today. Professor Brian Fletcher, in his chapter on Macquarie in the book edited by David Clune and Ken Turner, titled “The Governors of New South Wales 1788-2010” makes the comment

This mixture of well-meaning humanitarianism with harsh recrimination helped frustrate his good intentions. Nevertheless, he did endeavour to behave compassionately and his actions represent an advance on much that had been attempted earlier.

Much of what I have stated so far is richly documented and makes interesting reading and

study. As a prime source of information one cannot really do better than Lachlan Macquarie's own journals. The Mitchell Library has an outstanding collection of these journals and many can now be found online. There are also now several authoritative biographies dealing extensively with the lives of both Lachlan and Elizabeth. They all make interesting reading.

Personally, however, I very much favour Martin Ellis's biography "Lachlan Macquarie; His Life, Adventures and Times" first published by Angus and Robertson in 1947. This edition is almost impossible to find and is in every sense a collector's item. I managed to secure a copy earlier this year and it is now one of the most treasured possessions in my extensive library. However, there have been several further reprints since that time, including a soft-cover edition released earlier this year. So the book should be readily available in any reputable bookshop. I specifically favour this biography because it makes extensive reference to Macquarie's Journals and Elizabeth's Letters, with detailed footnotes quoting the source of the information conveyed.

One area, however, which does not seem to have been appropriately covered in any biography or documentation of Lachlan Macquarie's period as Governor is his contribution to the development of education in the Colony. Indeed, on reading most accounts of early colonial days, one is almost tempted to form the impression that no children existed in the Colony. Rarely is any reference made to children and to their welfare. Children, however, were very much a part of the Colony, even as far back as the arrival of the First Fleet.

In the first week of February 1788 Captain Arthur Phillip disembarked 1,030 British migrants at Sydney Cove. No one has an accurate account of how many survived the passage on the First Fleet, as the exact number has always been in dispute. However, it would appear that approximately three-quarters of those who arrived were convicts, with the remaining quarter being marines and government officers. One fact that is

often overlooked is that among the original 1,030 First Fleeters, there were 17 children of convicts and 19 children of the marines. Arthur Phillip's commission ordering him to establish a Colony made no mention of children or the child convicts whom the British government saw fit to transport.

By 1809, the year during most of which Lachlan and Elizabeth Macquarie were making their way on the "Dromedary" to New South Wales, the War Office decided to appoint regimental schoolmasters. This was no doubt the outcome of a Census undertaken in 1807 by Governor Bligh which revealed that at that time the colony contained 397 married women, 1035 "concubines", 807 legitimate children and 1024 "illegitimate" children.

Many of these children had been abandoned, and many were living in miserable circumstances. In fact, Governor Bligh's predecessor, Governor King, had already sent word back to London advising that these children had to be rescued "from the future misery to be expected from the horrible examples that they hourly witness from their parents and those they live with".

One might say that the good intentions were there with Governor Lachlan Macquarie's predecessors, but in reality little was done until his arrival. In keeping with his general themes of "a fair go" and "a second chance", Lachlan was to set about establishing schools in all principal districts and settlements of the colony. In the Sydney Gazette dated February 24, 1810 it is quoted "the rising generation of this infant colony ... wholly neglected in their education and morals" -- were to be catered for immediately by the establishment of charity schools.

It was further stated:

In these the little inmates were to receive instruction in those principles which alone could render them dutiful and obedient to their parents and superiors; honest, faithful and useful members of society and good Christians.

Regrettably, the parents of these children, by and large, showed little enthusiasm for their education.

Nonetheless, Mr Matthew Hughes agreed almost immediately to open a school free to pupils at Kissing Point at a subsidy of eight pence per week per scholar for spelling and reading, and one shilling for accounts.

A second school was soon established at Parramatta, and by 1821, with Lachlan Macquarie's support, fifteen schools had been established in Sydney and its outlying districts. Martin Ellis advises that a relic of this system still survives today in Australia's oldest school – that of St Philip's Church in Sydney, which, over its portals, bears the date 1812. Included among these schools was an institution now forming part of a campus of the University of Western Sydney, namely; the Female Orphan School to which female orphans were taken in 1818. This building, described by Macquarie himself as "a large handsome brick-built house of three storeys high, with wings and all the necessary outhouses for the accommodation and residence of one hundred female orphans and for the master and matron", stands today as a testimony to the importance that Lachlan and his wife Elizabeth placed upon education. Notably also, it was the first three-storey building to be constructed in the Colony. Male orphans were also gathered and housed in the former Female Orphan residence at Parramatta which had been repaired and fitted up for that purpose.

I have already made reference to the attempt by Lachlan and Elizabeth to provide "civilisation" and education for the indigenous community by the establishment of the Native Institute, first at Parramatta, and then moved to Blacktown. Although this concept was to be ill-fated, and proven to be inappropriate, it was nonetheless a genuine attempt by Lachlan and Elizabeth to bring education also to the indigenous community.

During this period Lachlan also strongly supported the establishment of independent private schools at which, not only the basics of reading, writing and arithmetic were taught, but also needlework for girls was provided, and with some schools offering vocational training for boys. It was during

Macquarie's term that Thomas Reddall, a clergyman and educationist, himself educated at Albany Hall, Oxford, in preparation for a colonial chaplaincy, was appointed by Earl Bathurst as both a chaplain and a schoolmaster in New South Wales, with a salary of both. Reddall arrived in Sydney with his wife Isabella and seven children on September 14, 1820, and immediately set about creating a marked impression. Somewhat uniquely, he attracted the praise of both Governor Macquarie and the Commissioner, John Thomas Bigge. His criticism of the building being erected near St James Church as unsuitable for a school led to its being changed into a Law Court and a new Georgian school in Castlereagh Street was begun.

Towards the end of 1820 Castle Meehan, at Macquarie Fields, was rented for him at the high figure of 180 pounds per year. He opened a private school there with two of his first pupils being Governor Macquarie's son, Lachlan Junior, and the son of Lieutenant Governor William Sorell of Van Diemen's Land. Reddall's arrival in the colony was to see major change in the education system of the state. During the term of Lachlan Macquarie's successor, Governor Sir Thomas Brisbane, Reddall was appointed to the position quoted as being the Director General of all the Government public schools.

As already mentioned, despite the instruction of the British government to Governors that they were to establish schools in the Colony with a view to preventing the children of convicts following the example of their parents, prior to Lachlan Macquarie, very little had been done. Generally speaking, education had been largely neglected during this period. As in so many things, however, Lachlan turned the tide. During this period, he skilfully used the increase in customs duties resulting from growth in imports to fund the expanding number of schools, and to provide additional support to schools that had already existed.

By the end of Lachlan's term as Governor, not only were schools firmly established in Sydney and

Parramatta, but a number also were to be found in the Liverpool and Hawkesbury districts. Although public education in New South Wales was not to be enacted until Henry Parkes introduced the Public Instruction Act of 1873, arguably it may be claimed also that the genesis of a viable education system in New South Wales effectively dates back to the term of Lachlan and Elizabeth Macquarie. Despite the sad and unjust circumstances under which Lachlan and Elizabeth Macquarie returned to England following the damning indictment of Commissioner John Thomas Bigge, one could justly say that Lachlan and Elizabeth's legacies touch every aspect of human endeavour, and not the least of these legacies was the education of the children in the colony.

How sad it is that it has taken the bicentenary of Lachlan's accession as Governor, for New South Wales and Australia to properly recognise and applaud the achievements of this outstanding man, who was so much maligned in his own lifetime, and for so much of the last two hundred years. Long before leaving the Colony, although some time after Lachlan had officially requested Earl Bathurst to end his governorship and allow him to return to London, Elizabeth was to comment in a letter dated December 12, 1817:

As long as the Governor lives he must ever feel much gratification at the recollection of services he has performed in this colony, many persons here are sensible of his merits and I cannot but think when he is gone his absence will be felt; many as honest and as clever men may be found to succeed him, but I could venture to forfeit my head, that no one will take the extraordinary pains, and never ceasing fatigues which he has done, to promote the public service.

What beautiful words! In truth, there can be no better words to sum up Lachlan Macquarie's legacy to Australia than Elizabeth's own tribute to her husband.

Lieutenant Colonel Bert Norris

On 8 July 2010, the *Age* and the *Sydney Morning Herald* ran a story:⁶

ANOTHER two Australian soldiers have been identified among the men buried in mass graves in northern France after the Battle of Fromelles in 1916.

After changing their DNA testing technique and retesting samples, scientists were able to identify Sydney barrister Lieutenant Colonel Ignatius Norris - the highest-ranking officer among the Fromelles missing - and Private Harold Pitt from South Australia.

For details about Bert Norris's involvement in the tragedy of the Great War, see Tony Cunneen's piece *The Law at War* (1916), on the Society's website.⁷

Winter Quarters⁸

In winter 1810

On 21 August 1810, Sweden's Riksdag elected Jean-Baptiste Bernadotte, Marshal of France under Napoleon, as heir presumptive to the Swedish throne. His descendants remain ensconced today.

In winter 1860

On 30 June 1860, seven months after publication of *On the Origin of Species*, a debate on evolution takes place at the Oxford University Museum. Bishop Samuel Wilberforce supposedly asked Thomas Henry Huxley whether it was through his grandfather or his grandmother that he claimed his descent from a monkey and Huxley supposedly replied that he would not be ashamed to have a monkey for his ancestor but that he would be ashamed to be connected with a man who used his great gifts to obscure the truth.

In winter 1910

On 4 July 1910, Jack Johnson defeats James J Jeffries in a heavyweight boxing match, sparking race riots across the United States.

In winter 1960

On 23 June 1960, the US Food and Drug Administration approved Enovid by GD Searle, the first oral contraceptive.

Endnotes

1 www.hup.harvard.edu/news/wilson_prize.html, accessed 5/08/2010.

2 The *Australian Army Journal*, Vol VII, Number 2 Winter 2010; available online shortly at www.defence.gov.au/army/lwsc/Australian_Army_Journal.asp. The research has been part of the World War One Research Project of the Francis Forbes Society conducted by the author. Tony Cunneen is Senior Studies Coordinator at St Pius X College, Chatswood, New South Wales, and may be contacted at acunneen@bigpond.net.au.

3 Not to be confused with the Hill 60 in Belgium. Hill 60 on Gallipoli is now known as *Bomba Tepe*

4 CEW Bean, *Official History of Australia in the War of 1914-1918; The Story of Anzac* (vol VII).1924, Angus & Robertson Sydney, page 739.

5 His uncle, Charles Glentworth Addison, a Sydney barrister, was serving with the 1st Field Ambulance on Gallipoli at the time as when his nephew was killed.

6 newsstore.smh.com.au/apps/newsSearch.ac?page=1&sy=smh&sp=nrm&so=relevance&dt=selectRange&kw=Fromelles&dr=1month&pb=all_ffx&rc=10&sfx=headline&submit=Search, accessed 5/08/2010.

7 www.forbessociety.org.au/documents/law_war.pdf, accessed 5/08/2010.

8 Usually, the Flyer draws the references from timelines.ws or from en.wikipedia.org.



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