

**THE MACQUARIE BICENTENNIAL:  
A REAPPRAISAL OF THE BIGGE REPORTS  
THE ANNUAL HISTORY LECTURE  
HISTORY COUNCIL OF NEW SOUTH WALES  
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At 2.00pm on Thursday, 7 October 1819, Governor Lachlan Macquarie, the bicentennial of whose assumption of office we will commemorate on 1 January next year, laid a foundation stone for a new building on the edge of the unkempt open space, partly used as a racetrack, upon which the Governor had grandiloquently conferred the aspirational title, Hyde Park.<sup>1</sup> In accordance with the practice of the time, the stone bore no inscription as to the intended use of the building. That was fortunate. The building, designed by the convict architect, Francis Greenway, was proclaimed on that day to be a courthouse. In fact, the building, with slightly modified plans, primarily above the level of the eaves, became St James' Church.

The change would occur at the insistence of John Thomas Bigge, who had just arrived to execute a Royal Commission, with wide ranging terms of reference, into the conduct of the administration of the colony. Bigge quickly came to reject what he regarded as extravagance in the execution of public works on the part of Governor Macquarie. One example was the elaborate design for a large building to become the Anglican cathedral, not far from the site where St Andrew's Cathedral does now stand and to which the foundation stone Macquarie had laid was subsequently moved. The plans for a courthouse were considerably less elaborate and Bigge decided they were too good for a court, but good enough for a church.

There are indications that, despite an express direction from Lord Bathurst, Secretary of State for War and the Colonies, that Macquarie should adopt Bigge's recommendations,<sup>2</sup> the headstrong Governor originally intended to proceed with his plans for the court building.

Bigge visited Tasmania in February and March 1820 and upon his return discovered that Macquarie's building plans had not changed in the way he had expected. Work had in fact continued on the

large cathedral and Greenway had prepared a design for the Hyde Park site with what appeared to be an entrance foyer more appropriate for an imposing court than a church. Macquarie had a habit of misleading London about his building plans but, with a man on the spot who had frustratingly co-ordinate authority, he had to submit.<sup>3</sup> The court became a church, although, after Bigge's departure, an Ionic colonnade was added to the design of St James.<sup>4</sup>

The resultant gross inadequacy of the accommodation for the Supreme Court of New South Wales was only partially alleviated in the 1890s. The first time the court was properly housed was in the 1970s, regrettably at a time when the transient architectural fashion was concrete brutalism. The best thing about working inside the Supreme Court building is that you do not have to look at it.

I have struggled to overcome my institutional resentment with Commissioner Bigge's mean mindedness.

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One hour before the laying of the foundation stone for what became St James', the great and the good of Sydney town had assembled at Government House, then situated where Governor Phillip Tower now stands, for the formal inauguration of Bigge's Commission of Inquiry, with the taking of oaths and a reading of the terms of reference. At that investiture Bigge had identified the primary purpose of his inquiry to be the role of the settlement as a gaol, to determine whether it was still fulfilling its purpose of instilling a sense of what he called "salutary terror",<sup>5</sup> and what we would now call general deterrence, amongst the criminal classes of the United Kingdom.

The Bigge Commission was created by Lord Bathurst, Secretary of State for War and Colonies from 1812 to 1827, the significance of whose contribution to the culminating phase of the war against Napoleon was attested by the fact that he was the only civilian invited by the Duke of Wellington to the annual dinner in celebration of the victory.

A doughty representative of aristocratic society, the third Earl Bathurst exercised authority effortlessly. He was a quietly competent, indeed sometimes self-effacing, but serious and

shrewd decision-maker, with conservative, but not reactionary, instincts and the personal confidence to be the last man in London to wear a pigtail. His principal political virtue was loyalty. He gave it and expected it in return. Commissioner Bigge, located towards the base of the pyramid of social deference, knew that he had to execute his instructions to the letter.

Bathurst and Macquarie approached their responsibilities with diametrically opposed philosophies. Bathurst had unwavering faith in the old order and, as historian D M Young has noted, he was “at heart a sceptic with little faith in the possibility of improvement of men or society”.<sup>6</sup> Macquarie was an improver. He was not a reformer in the sense that he thought there was something wrong that needed to be changed. Rather, he was an improver in the sense that he believed that individuals and social arrangements could always be made better. His faith in the civic virtues was a product of the Scottish Enlightenment.<sup>7</sup>

Bathurst’s approach was a manifestation of what A V Dicey would later describe as “the obstinate Toryism” that was at that time “the accepted creed, if not of the whole nation, yet assuredly of the governing classes”.<sup>8</sup> Contemporary historians have

modified this Whiggish interpretation.<sup>9</sup> Nevertheless, the politics of the Tory Government, which Commissioner Bigge instinctively reflected, was hostile to the spirit of improvement that Macquarie represented.

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The principal outcomes of the Reports of Commissioner Bigge – particularly the first, on *The State of the Colony of New South Wales*, published in 1822 – were the enhancement of severity in the punishment of serving convicts, the diminishment in the social standing of emancipated convicts and a substantial reduction in public expenditure. In each respect, Bigge reversed the policies, and undermined the legacy, of Governor Macquarie. The consequences for the development of the colony were so palpably adverse that Commissioner Bigge has acquired a pre-eminent place in the annals of Australian infamy.

In important respects the Bigge Reports, either by reason of direct recommendation or as a stimulus to further decisions, made positive contributions to the development of Australia. Nevertheless, critical aspects of the Reports, particularly with respect to convicts, emancipists and public works, impeded or

delayed such development. It is, of course, natural for Australian commentators and historians to focus on these negative aspects. This must, however, be recognised to be a parochial perspective.

It is not possible in an address such as this to comprehensively review the conduct and content of Commissioner Bigge's work. I do, however, wish to highlight that it is important to understand his work in the context from which he came: the preoccupations and requirements of London, the Imperial centre.

Bigge was first and foremost an imperial civil servant. He served as Chief Justice of Trinidad and, after executing the New South Wales Commission, was appointed to lead a similar Commission of Inquiry in South Africa, Mauritius and Ceylon. In all of these capacities he executed his duties with diligence and competence but, understandably, in the interests of the imperial authority which he represented. It is inappropriate to assess his work as a Commissioner in Australia solely from the perspective of the missed opportunities to extend and consolidate the progressive policies of Macquarie. He came with clear instructions to reverse those policies and he did so. That was his job.

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Commissioner Bigge was the emissary of an imperial capital still in the process of painful social and economic adjustment after two decades of almost continual warfare, amidst the Schumpeterian gales of creative destruction arising from the Agricultural and Industrial Revolutions. With respect to the subject of his inquiry, the dominant concern of the British political nation – extremely limited in its scope by a restricted franchise – was fear of the lower orders, both in terms of criminality and also political radicalism. Bigge shared this concern and, in any event, was told to act upon it.

After the final victory against Napoleon in 1815 Britain suffered an economic depression. Unemployment increased sharply with the return of demobilised soldiers and sailors and the reduction of military expenditure on armaments and shipbuilding, aggravated by a famine inducing drought. The depression created what was widely perceived to be a crime wave. Although the statistics are, understandably, fragmentary, historical studies confirm that criminality did increase significantly after the war.<sup>10</sup> Furthermore, the number of convicted criminals to be transported

increased because they were no longer pressed into the army and navy.

The post-war depression also stimulated popular agitation and gave renewed prominence to politically radical ideas, especially directed to reform of the corrupt and socially exclusive political system, so well established that it was called “the Old Corruption”. As the British Marxist historian E P Thompson characterised the era, this was “the heroic age of popular Radicalism”.<sup>11</sup>

Dominating the intellectual mindset of this political nation was the apocalyptic experience of the French Revolution. There was a visceral fear of what the political elite called “the Mob” and political radicals called “the People”. This was reinforced, no doubt, in the minds of the critical Ministers who made the relevant decisions, by the fact that in 1812 Spencer Perceval was the first, and to this day remains the only, British Prime Minister to be assassinated in office. Although that was an act of a deranged individual, to the contemporary political elite it must have been an indication of what was possible.

Perceval's successor, Lord Liverpool, Prime Minister from 1812 to 1827, described the elite's fear of popular revolution as arising from what he characterised as the collapse of "all respect for established authority and ancient institutions".<sup>12</sup> Lord Bathurst shared this opinion and so did Commissioner Bigge. Transportation to Australia was part of the solution.

The fear of the mob is well encapsulated in the title of the most recent conspectus history of the era in the *New Oxford History of England* series: *A Mad, Bad & Dangerous People?*<sup>13</sup> This volume title, together with its sceptical question mark, was adopted in intentional contrast to the predecessor volume in the series for the 18<sup>th</sup> century which was entitled *A Polite and Commercial People*. That was a quotation from a self-satisfied remark by William Blackstone.<sup>14</sup> In fact, the 18<sup>th</sup> century was characterised by crime, riots and widespread unrest.

There is no doubt that the fear of the people, both in terms of criminal activity and of political radicalism, was at its height during the years 1817 to 1822, when the Bigge Commission was instigated, conducted its investigations and reported.

Although the reform agitation was not continuous, there were frequent incidents which reinforced the moral panic of the political nation about the mob and reinforced its determination to control and extirpate any popular mobilisation.

- Between 1812 and 1815 was the height of the attacks by the Luddites, often in the form of military style gangs, deploying violence, especially against the new machines of the Industrial Revolution, in support of traditional community values. There were mass trials and those not executed were transported to Australia.
- In December 1816, a drunken reform meeting at Spa Fields in London, spurred on by a small group of radical extremists who planned an uprising, marched on the City and were dispersed by force.
- In January 1817, the window of the coach of the Prince Regent, the future George IV, was smashed when driving through London, a shocking event for the times.
- The Spa Fields incident and the attack on the Prince Regent's coach led to repressive legislation including the suspension of *habeas corpus* and restrictions on public meetings. Ministers were convinced that there existed a treasonable conspiracy, but that there was insufficient

evidence to convict the ringleaders. This was based on a parliamentary report of what was appropriately called the “Committee of Secrecy”, which investigated seditious societies.<sup>15</sup> William Cobbett went into exile in the United States.

- In March 1817, a large crowd of blanket carrying weavers sought to march in support of political reform from Manchester to London. This ‘March of the Blanketeers’, as it became known, was dispersed by force.
- In June 1817, there was an uprising of about 300 textile workers at Pentrich in Derbyshire, urged on by a Home Office agent provocateur, which was put down by force. Forty-five people were tried for treason, three were hanged and 30 transported to Australia.<sup>16</sup>
- In August 1819, a peaceful crowd of some 60,000 assembled in support of constitutional reform on St Peter’s Fields in Manchester. The local magistracy panicked and ordered regiments of the hussars and the local yeomanry to disperse the crowd by force. Eleven people were killed and 400 wounded. The occasion was immediately characterised as the Massacre of Peterloo, a sarcastic adaptation of the triumphal military victory at Waterloo.

- As protest meetings and pamphleteering escalated after the massacre, the Government reacted with a series of new repressive and coercive measures, notorious as the Six Acts of 1819: public meetings of greater than 50 persons had to have a licence from the local magistrate; any form of drilling was prohibited; the stamp duty on newspapers and pamphlets was increased as a means of damaging the radical press; laws against blasphemy and seditious libel were clarified and extended.
- In February 1820, a plot – known to history as the Cato Street Conspiracy – being a plan to murder the entire Cabinet at dinner, was foiled as a result of infiltration by government spies. Five conspirators were executed for high treason, and another five were transported to New South Wales.
- In August 1821, the public rioted at the funeral of Princess Caroline – the spurned wife of the new King George IV. Caroline was the first ‘Peoples’ Princess’. She had the same intense public support as Princess Diana in our era, and for much the same reasons. These riots led to significant clashes between the public and the military, including a number of fatalities. They have been characterised by Boyd

Hilton as “arguably the largest movement of the common people during the early nineteenth century”.<sup>17</sup>

The Government’s determination to increase the severity of criminal punishment after transportation must be understood against this fervid social landscape. What was at stake was the protection of the social and political power of the ruling elite.

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For Lord Bathurst, New South Wales remained primarily what he called “a distant Colony of Convicts” or “a rascally Community”.<sup>18</sup> He was of course aware that continued development moved New South Wales towards a true colony, rather than just a place of punishment. However, he regarded such development as “a Secondary consideration”.<sup>19</sup>

Prior to the appointment of the Commission, Bathurst was subject to considerable pressure in public debate and from the Home Office about what was perceived to be excessive leniency on the part of Governor Macquarie in the administration of the penal colony. The terrors of exile to what was, originally, an incomprehensibly distant and unknown destination, had dissipated.

It had become widely believed, not least Bathurst thought, amongst the criminal classes, that being sent as a convict to New South Wales was preferable to being unemployed in England. It probably was. In fact, contrary to Bathurst's expressed views and public perception, it had been from the beginning.<sup>20</sup>

It would be quite wrong to characterise Macquarie's policies as weak and merciful. He was no stranger to public executions, flogging and other forms of harsh punishment. However, he did, in a number of respects, manifest a humanitarian streak with which others disagreed.

As has always been the case with punishment for crime there was a diversity of views. The issue was then, as it is now, one of balance and, from a political perspective, one of perception. Bathurst had come to the opinion, or found it necessary to act on the basis, that convict conditions in New South Wales were too lenient and had significantly reduced the deterrent effect of transportation.

Lord Bathurst's instructions to Commissioner Bigge expressly asserted the primacy of New South Wales as a penal colony. Bathurst told Bigge in his formal letter:

"[Y]ou will ... constantly bear in mind that Transportation to New South Wales is intended as a severe Punishment applied to various Crimes, and as such must be rendered an Object of real Terror to all classes of the community. ... If ... by ill considered Compassion for Convicts, or from what might under other circumstances be considered a laudable desire to lessen their sufferings, their Situation in New South Wales be divested of all Salutary Terror, Transportation cannot operate as an effectual example on the Community at large, and as a proper punishment for those Crimes against the Commission of which His Majesty's Subjects have a right to claim protection, nor as an adequate Commutation for the utmost Rigour of the Law."<sup>21</sup>

The words "salutary terror" were dutifully repeated by Commissioner Bigge in his investiture speech at Sydney's Government House the next October.

Macquarie's liberality towards both convicts and emancipists, whilst not always manifest in his conduct, did emerge as a fundamental policy to which he was increasingly committed. Subject only to good behaviour, further punishment was not normally imposed. The rations were good. Compulsory labour varied in its harshness, but was generally tolerable. Convicts in fact received payments like wages and those in the city had time off to supplement their income by other work or to pursue less morally acceptable pursuits. Tickets of leave and conditional pardons were more readily available than the disciplinarians thought appropriate.

In his 10 years of office, Macquarie gave 366 absolute pardons, 1,365 conditional pardons and 2,319 tickets of leave.<sup>22</sup> The ticket of leave system was an important measure, subsequently adopted in England as the foundation of the parole system.

Early in his administration, Macquarie had promulgated detailed regulations for the circumstances in which persons could acquire tickets of leave or pardons. His formal regulations were widely accepted as appropriate. They required varying periods –

in effect non-parole periods – prior to an indulgence becoming available, which periods varied with the severity of the offending conduct for which convicts had been transported. However, the regulations were not implemented in practice. On one calculation out of 2,730 indulgences granted in the period 1813-1820, 710 were made by Macquarie contrary to his own regulations.<sup>23</sup>

Bigge had no discretion to decide that the treatment of convicts in Australia at that time was appropriate. His express instructions were to review the entire system for the purpose of increasing the severity of the convict experience in Australia in such a manner as would ensure that potential criminals back in England knew about it. He was further instructed to explore the possibility of creating centres of secondary punishment within Australia so that, if confinement, hardship and flogging were proving insufficient, then those convicts who did not respond appropriately would be dispatched to isolated locations, where the prospect of any form of social interaction was impossible and even harsher punishment could be inflicted.

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Closely related to the deterrent value of transportation was what happened to convicts after they had served their sentence. Then, as now, it was recognised that rehabilitation was a possible result of punishment. However, if forgiveness was too readily available that, of itself, would tend to diminish the deterrent value of the sentence. In this respect Bathurst knew that policy instructions from the Imperial centre had to take into account the peculiarities of this small community and Bigge was instructed to do so.

The social system of Australia in this era was based on castes. Different social groupings were segregated by differences of function and culture – almost as distinct as the castes of the Indian subcontinent. The castes included convicts, emancipists, free settlers, civil officials, the military, the native born and Aborigines together with the human flotsam of a seaport in the Rocks.

The principal source of Macquarie's conflict with elements of the community he governed – especially the military, the judiciary, many free settlers and some clergy – was his liberal approach to emancipists. Once a convict had served his or her term, or had

been pardoned, Macquarie believed that s/he was entitled to be restored to the position in society which s/he had occupied before their conviction. This 'clean slate' policy served the purposes of rehabilitation, which Bathurst and others, including the future George IV, then Prince Regent, purported to promote. It was also an enlightened and pragmatic approach to the future development of the colony beyond its penal origins.

In an age preoccupied by status, for those who could not rely on the presumption of respectability conferred by aristocratic birth or lesser forms of "breeding", actual conduct alone revealed the character entitling one to gentry status. Once a person had manifested a defect in character, only his or her exclusion from polite society could restore the proper social order. This policy of social exclusion was so widely accepted that those, like Macquarie, who took a different view could not escape censure by those whose status was thereby rendered less secure.

In a private letter to Commissioner Bigge which, unlike his formal instructions, Bathurst may not have had to show to the Prince Regent, the future George IV, he said:

“I allude to the Propriety of admitting in Society Persons, who originally came to the Settlement as Convicts. The Opinion, entertained by the Governor and sanctioned by The Prince Regent, has certainly been with some few exceptions, in favour of their reception at the expiration of their several Sentences upon terms of perfect Equality with the Free Settlers. But I am aware that the Conduct of the Governor in this respect, however approved by the Government at home, has drawn down upon him the Hostility of many persons, who hold associations with Convicts under any circumstances to be a degradation. Feelings of this kind are not easily overcome”.<sup>24</sup>

Macquarie was, generally, steadfast in the application of his basic principal that former convicts, subject to good behaviour, were entitled to be restored to the position in society which they had originally occupied. There would be no permanent convict stain.

His policy was particularly focused on those persons who came to the colony with some skill, or had acquired wealth after

arrival. These were the people whom he invited to dine in Government House, with the result that some free settlers and most military officers refused his invitations. Macquarie's 'clean slate' policy, which was more meritocratic than egalitarian – he was, at best, a benevolent autocrat – was an anathema to the social exclusivists at the Imperial centre and their colonial epigoni.

The pragmatism of a military man, who was most concerned with what works, led to Macquarie's promotion of the emancipists who had manifested competence in practical affairs. His policy was in part a product of Enlightenment principles, and in part a product of Macquarie's own achievement as a self-made man who had risen from a family background of abject poverty, albeit with such claims to gentility as rural Scotland could proffer.

Macquarie, not atypically for a military officer turned administrator, regarded disagreement as a form of insubordination. Some of his behaviour in this respect bordered on the petulant and, in reaction to local criticism, he began to discriminate in favour of ex-convicts, rather than treating them on the basis of equality. He was once driven to declare:

“There were two types in the colony – those who had been transported and those who should have been.”<sup>25</sup>

Commissioner Bigge could not accept Macquarie’s policy.<sup>26</sup> He had imbibed the values of an aristocratic system, preoccupied with matters of status and convinced that breeding mattered more than achievement and that character mattered more than competence. A product of the minor gentry, this bachelor bureaucrat was pleased to serve what he, no doubt, called his betters and to receive such signs of approval as they deigned to confer upon him. His snobbery was derivative but firm.

When his final reports were presented, it was clear that Commissioner Bigge believed that the free settlers were entitled to retain their sense of moral superiority over the emancipists. This was a social ascendancy which his recommendations did much to perpetuate. Bigge proposed that ex-convicts should no longer be entitled to grants of land or to have convicts assigned to them. He wanted to reinforce the caste system.<sup>27</sup>

A critical flashpoint was the appointment by Macquarie of ex-convicts as local magistrates. During the course of Macquarie’s

dispute with the local judiciary, over whether emancipists would be allowed to practice as attorneys, Lord Bathurst indicated clearly that that would not be appropriate, even though he rejected the way in which the judges had behaved.<sup>28</sup> He had also expressly told him that he did not think it “judicious” to appoint a former convict as a magistrate. Rehabilitation, Lord Bathurst said, “may be carried too far”.<sup>29</sup> Macquarie did not take the hint about the need to recognise limits beyond which an emancipist could not be accepted in polite society.

The idea of a convicted criminal playing a determinative role in the administration of justice, including criminal justice, was too awful for many to contemplate. Early in Bigge’s visit, Macquarie insisted on carrying into effect his intention to appoint the emancipist William Redfern as a magistrate. The Commissioner made it quite clear, correctly as it transpired, that this would not be tolerated in London.<sup>30</sup> This led to an early confrontation between them, a confrontation from which their relationship never recovered.

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Macquarie brought a vision to the structure of the township and to its infrastructure and built form which has rarely been equalled, let alone surpassed. In all of this his wife Elizabeth made a critical contribution – it was she who brought a book of building and town designs – recognised in the title of the road and point, Mrs Macquarie’s Chair, and in the not well remembered fact that Elizabeth Street is named after her.

One of Macquarie’s first acts was to organise and plan the roads – so that they would be at least 50 feet wide – which required some houses to be removed; to build new roads, including Elizabeth Street; to rename all the principal roads: the main street after the King – George – and the parallel roads after four of his sons, the Dukes of York, Clarence, Kent and Sussex, and leading political figures – Pitt and Castlereagh, together with streets named after Macquarie’s predecessors – Phillip, King, Hunter, Bligh. Never having suffered from false modesty, he named the putative principal official thoroughfare on the eastern ridge of the town, Macquarie Street.

Macquarie brought a sense of civic order to a streetscape where before, as James Broadbent has put it:

“no honest man could fall drunk without fear of being savaged by foraging pigs or trampled by straying cattle.”<sup>31</sup>

The same sense of order was displayed in the plans for the Macquarie towns: Castlereagh, Wilberforce, Pitt Town, Windsor and Richmond.

Perhaps the principal reason why Governor Macquarie is remembered with a degree of fondness not afforded to any of the other early Governors is his legacy of public buildings – buildings of urbanity and gentility – which, at least over recent decades, have come to be admired as a fundamental part of our urban, indeed national, heritage. In his ultimate defence to criticism of his governorship, Macquarie reported to Bathurst that during his term 265 buildings were constructed. He listed them all.<sup>32</sup>

The first major public building was Sydney Hospital – of which two wings remain – Parliament House and the Mint – clearly influenced by Macquarie’s time in India, with their graceful verandahs of double Tuscan-upon-Tuscan colonnades. The hospital was built by private enterprise, at a time when Macquarie

had been told not to spend any money on buildings, in exchange for a three year monopoly on the import of rum. It was, like many of Macquarie's projects, open to criticism – it was too big, there were no kitchens or lavatories – but it is a precious inheritance. The “Rum Hospital”, as it became known, was Australia's first private-public partnership, and in many respects, is the model for the construction of most of the tunnels and expressways that have been built in this city in the last two decades. Only the unnecessary step of charging the public through the intermediation of alcohol has been superseded.

Macquarie managed to ignore or evade most attempts to constrain his public works programme. He has left us, amongst numerous public buildings, some of our most graceful churches, an obelisk, the Government House stables, now occupied by the Conservatorium of Music, the Female Factory at Parramatta, the Hyde Park Barracks, the South Head Lighthouse – the present structure being a replica when the unsafe original had to be torn down. There is a striking photograph of the two lighthouses side by side.<sup>33</sup> Some of Macquarie's public works have not survived – I particularly regret the loss of the folly that was the Newcastle lighthouse in the shape of a Chinese pagoda.<sup>34</sup> Macquarie's

legacy would have been much greater but for the intervention of Commissioner Bigge.

Bigge reserved his greatest distaste for what he described as the unnecessary ornamentation in Macquarie's buildings.<sup>35</sup> To some extent this seems to have been a philistine reaction to the elements of the buildings which manifested the then new fashion of the Gothic revival, such as the crenellations and pointed arches on the stables for Government House, and on the gateway to the turnpike road to Parramatta – Australia's first toll road – and ornamental elements for the proposed Cathedral. However, Bigge's objection to unnecessary expenditure, for what he was instructed had to remain in substance a penal colony, extended to classic elements, such as the Grecian obelisk and the canopy of the fountain in Macquarie Place.

Our disappointment as to what might have been the legacy of Lachlan and Elizabeth Macquarie, without the intervention of Commissioner Bigge must, however, be tempered by an acceptance of the "he who pays the piper" principle. This was a time when the development of Australia, in every respect, depended on subsidy from the British taxpayers who never met

less than 90 per cent of public expenditure.<sup>36</sup> They footed the bill. It is not unreasonable that their representatives also insisted on deciding how much they were prepared to pay. I use the word “they” advisedly, because it is an anachronism of hindsight. Contemporaries both in London and here regarded the settlement as an outpost of Britain itself.

The creation of Australia was a major act of British public investment involving the transfer of capital – both human and material. Virtually all salaries, transport, shipping, food, clothing stores, equipment, ships and arms were supplied from British public revenue.<sup>37</sup> It should come as no surprise that those responsible for paying the bills wanted to know why they kept growing.

Australian residents had shown themselves to be adept at exploiting the British taxpayer, at a time when the fiscal control by the Treasury over the diverse range of agencies that spent money on the colony was, at best, rudimentary. This process of exploitation redounded to the personal advantage of all local residents including officials, settlers and emancipists. It was facilitated by the inefficiencies of the system of audit and control of

public expenditure.<sup>38</sup> Much of the conduct – I hasten to say not Macquarie’s conduct – could only be regarded as corrupt. This included corruption by the Treasury’s own representatives in the Sydney Commissariat.

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The years in which Bigge’s Commission of Inquiry was instigated, conducted and reported were years of fiscal crisis in Britain. After the defeat of Napoleon the national debt and public expenditure moved to the centre of political disputation. The Government was attacked by both radicals and conservatives for waste and corruption.

During the 18<sup>th</sup> century taxation had never exceeded 10 per cent of the national income. During the Napoleonic wars it jumped to 20 per cent. The Government had introduced an income tax – explicitly as a war tax – which had in fact been suspended during the interlude of peace in 1802-1803.<sup>39</sup> Public debt had quadrupled during the Napoleonic wars and absorbed half of the total tax revenues,<sup>40</sup> by way of interest and in sinking fund payments. The Government sought to continue the income tax after the war. In

1816, Parliament rejected that attempt and again, in 1819, refused to accept the introduction of a modified form of income tax.

This substantial reduction in revenue, together with the fixed overheads required to service the national debt, led to a fiscal crisis. Increased reliance on regressive indirect taxation stirred popular unrest.

Furthermore, between 1820 and 1822 the landed gentry responded to a collapse in the price of wheat, and the inflation caused by a return to the gold standard as the basis of monetary policy, by engaging in what has been called “the Squires’ Revolt”.<sup>41</sup> The response, in terms of further tax reduction, exacerbated the ongoing fiscal crisis.

In response to the fiscal crisis, numerous government offices were abolished, departments were downsized and official salaries, including ministerial salaries, were slashed by 10 per cent across the board. Even the Regency monarchy grudgingly gave up £50,000 per annum. Indeed the years 1815-1822 have been characterised by Philip Harling as “the politics of retrenchment”.<sup>42</sup> When the fiscal position in the United Kingdom eased somewhat,

during the economic upturn of 1822-1825, Commissioner Bigge's Reports had already been tabled and endorsed.

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The administration of Lord Liverpool was accurately criticised by George IV who said: "The misfortune of this government is that it is a government of departments".<sup>43</sup> Amongst the most independent of all departments were those under the administration of Lord Bathurst. In a process described by N G Butlin as "calculated non-co-operation",<sup>44</sup> he resisted all attempts by the Treasury to interfere in his administration by supervising expenditure. On one occasion he emphasised the need to let the Treasury do no more than was its absolute legal right to do, saying that Treasury officials "seem more anxious to extend their duties than to discharge them".<sup>45</sup>

Bathurst was determined to retain control of all that fell within his administration. Subject to compliance with his directions, he would not allow anyone else – not even the Treasury – to interfere with his men on the ground, like Macquarie.

Governors of New South Wales had what has been described as a "virtual *carte blanche*" to draw on parliamentary

funds, in a manner otherwise only permitted for military expenditure.<sup>46</sup> The virtually unregulated ability of the Governor of New South Wales to simply sign a bill to be presented on the Treasury in London, and to have it paid, effectively without supervision, was an almost unique privilege.<sup>47</sup>

Nevertheless, the administration of the colonies was not immune from the fiscal crisis. Expenditure was curtailed in all colonies.<sup>48</sup> Bathurst demanded expenditure restraint from Macquarie, who purported to obey those instructions and did so in part. Bathurst was not, however, always diligent in enforcing the demands of the Government which he had conveyed. However, he expected the fiscal retrenchment to be implemented.

At the time he was appointed in 1810, Macquarie was told by the then Secretary for the Colonies to restrain any extravagance in public works and not to build anything without prior approval.<sup>49</sup> He never obeyed. Furthermore, he regularly deceived London by delaying dispatches until any reply could not interfere with the building work which he had commenced without prior approval.<sup>50</sup>

Lord Bathurst frequently gave clear instructions to Macquarie to exercise restraint in expenditure.<sup>51</sup> However, the principal difficulty with exercising restraint was that from 1813 onwards the numbers of convicts sent to the colony increased dramatically. Between 1806 and 1821 the proportion of the population who were prisoners rose from 26 per cent to 41 per cent.<sup>52</sup>

As Macquarie justifiably noted, although total expenditure had increased, expenditure per convict had in fact decreased. There was a need for continued public spending on persons and infrastructure.

It is noteworthy that Bathurst's instructions to Bigge did not include an express demand that he review public expenditure with a view to significant reduction. He was, however, instructed to investigate whether locally generated revenue could be increased.<sup>53</sup>

However, Bigge did have access to the previous correspondence between Bathurst and Macquarie, which was replete with references to fiscal restraint and the difficulty of doing that in the face of the significant increase in the number of convicts

transported. In any event, Bigge would have been well aware of the British Government's fiscal crisis, which was, perhaps, the most salient political issue of the day.

Bigge's direct intervention to curtail Macquarie's public works programme was driven by this consideration.

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Early in his investigations, Commissioner Bigge focused on an idea by which increased severity of the convict experience could be attained in such a way as to also reduce public expenditure in the colony. This could be achieved by ensuring that a greater proportion of convicts were assigned to private employers, especially pastoralists. Public works expenditure would decline and the obligation to feed, clothe and house convicts would be removed.

Bigge formed the view that assignment to pastoralists involved longer hours of harder work. Furthermore, removal from the temptations of urban life would be beneficial. The way in which convicts had manifested a preference to work for the Government, at least in Sydney as distinct from road gangs

outside the town, together with what was seen as excessive liberality in the treatment of convicts in government employ in the town – Bigge called them “luxurious indulgence[s]”<sup>54</sup> – indicated the leniency involved in the existing system.

Alternative industries which were beginning to thrive – such as whaling and sealing – offered opportunities for escape. A rural life, whether on grazing properties or in road gangs, was the best option.

It was a feature of Bigge’s conduct as a Commissioner that once he developed an approach, his investigation was directed to reinforcing his opinion. Evidence to the contrary, if he came across it at all, because he did not look for it, was given little weight.<sup>55</sup> That is what happened with this neat solution.

The key element in his Report was the assertion that the increased number of convicts transported could have been put to useful employment by assignment to private enterprise, particularly to pastoralists. That would not have been the case during the recession in the colony between 1812 and 1815 and was unlikely to have been the case for some years thereafter.

As it transpired, Macquarie's successors were able to successfully implement a system in which convicts were generally assigned to private enterprise. That is not to say that Macquarie had not been anxious to do all he could in that respect also. For him, the issue was not one of quantity, so much as of quality. Macquarie appropriated for the public sector the overwhelming proportion of the skilled migrants.<sup>56</sup> Their skills were critical to his active public works programme. Understandably, the settlers were unhappy with receiving such a low number of skilled convicts on assignment.

Subsequent experience, when Bigge's policies were implemented, suggests that, at least by that time, they were appropriate policies. In particular, his early recognition of the possibilities of the wool industry proved to be more insightful than many of his witnesses' opinions. The opportunity cost, in terms of lost public infrastructure, is invisible.

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Bigge made numerous specific recommendations to increase the "salutary terror" of the convict experience. Although

Macquarie had already taken some steps to reduce the degree of freedom that convicts had enjoyed in the colony, for example by sequestering a significant number in the large Hyde Park Barracks,<sup>57</sup> Bigge recommended harsher and further steps be taken in these respects. The payment of wages to convicts which gave them a certain amount of freedom was to be abolished, as was their ability to control property.

The results, not all recommended by Bigge, were an escalation in the level of cruelty of punishment within the colony: the number of floggings increased, as did the maximum number of strokes per flogging; pillories and treadmills were introduced; the number of public executions increased. Furthermore, on Bigge's express recommendation secondary penal centres, where even harsher treatment was to be administered, were created at Port Macquarie, Moreton Bay, Norfolk Island and Port Arthur.

The comparative freedom of an open air prison – what has been called “a patriarchal penal farm”<sup>58</sup> – in which humanitarian principles had a prospect of implementation, and which Macquarie had already partially altered, was even further curtailed. The Sydney tradition in which convicts had the personal liberty of a

certain amount of free time, which Macquarie had reduced, was finally abolished.<sup>59</sup>

The benefits for the Imperial centre were immediate. Macquarie's successor, Governor Brisbane, halved the bills drawn on Treasury within seven months and reduced the number of convicts in government service by two-thirds within 20 months. Over 1,200 skilled convicts were transferred from the public sector on private assignment. Brisbane was able to claim that the demand for assignees exceeded supply.<sup>60</sup>

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The basic themes of Commissioner Bigge's Reports, for all their historical particularity, have a timeless quality. To this day we debate the emphasis to be given to the different objectives of criminal punishment – rehabilitation punishment, deterrence, incapacitation. This is a debate that will know no rest, because there is no correct answer on which widespread unanimity can be expected. Both Macquarie and Bigge – as far apart as they were – would stand well beyond the disciplinarian end of the spectrum of reasonable opinion today. However, the moral panic of the political nation which led to Bigge's instructions to devise a system

of increased severity is an experience that has often been repeated. The oscillation between an emphasis on mercy and an emphasis on severity is with us still.

Bigge wrote at a time when the free trade ideas of Adam Smith were gaining traction, soon to be manifest in the repeal of the Corn Laws. The issue he addressed, primarily in the context of assignment of convicts, which was the principal supply of human capital, was the extent to which the public sector could crowd out the private sector. This has a familiar quality. The debate as to the proper balance between the public and private sectors of the economy – first manifest in Australia in these events – has continued for two centuries. As we have witnessed as recently as last year, the oscillation of opinion between an emphasis on market failure and an emphasis on government failure is with us still.

Finally, the waste and injustice of social exclusion remains an abiding concern. It is no longer manifest in the social pretensions of an insecure upper class, desperately trying to mimic the social order and hierarchy of a distant aristocratic society.

Today, exclusivists adopt different criteria for their intolerance. But they are with us still.

Robert Hughes brings the themes together:

“Greenway’s public buildings publicly epitomized one of the ‘distasteful’ facts of penal Australia – that free birth did not confer a monopoly of talent. For all the Exclusives’ obsession with status, and despite the armored barriers of class raised by the Emancipists, the free still had to employ an ex-convict to form and condense their desire for urban elegance and ceremonial space. To worship God in a house built by a forger, while across the way more criminals were confined in another house of equal elegance – this was a piquant contradiction, not to be dwelt on. It summed up the peculiar insecurity of the signals respectable people in Sydney devised to distinguish themselves from their Others.”<sup>61</sup>

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The Bigge Reports are the work of an imperial bureaucrat – written in convoluted and often turgid prose – but thorough,

detailed, practical and full of good sense as well as unconscious prejudice. There was never any reason to expect ambition or vision from such a process or from such a man. That was why he was chosen.

There was no vision of the kind Macquarie displayed when he seized upon and popularised Matthew Flinders' designation of the continent as "Australia" – the very word constituting the essential foundation of further patriotism. Vision for the future was not on the agenda of the "obstinate Tory" Government which Bigge faithfully represented.

There is no doubt that Australia would have developed differently if Commissioner Bigge had not made so comprehensive a set of recommendations to ensure that Australia remained primarily a penal settlement designed to incapacitate British criminals and to deter others.<sup>62</sup> However, that was what he was asked to do.

Macquarie died believing that his reputation had been permanently tarnished by the Bigge Commission. However, the future belonged to the improvers of the world. That his

contribution to Australia could have been greater does not detract from the fact that Lachlan Macquarie stands in the first rank of Australian statesmen.

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<sup>1</sup> John Ritchie, *Punishment and Profit: The Reports of Commissioner John Bigge on the Colonies of New South Wales and Van Diemen's Land, 1822–1823; Their Origins, Nature and Significance* (1970) Heineman, p. 110.

<sup>2</sup> Bathurst to Macquarie, 18 January 1819 in *Historical Records of Australia: Series I – Governors' Despatches to and From England, January 1819–December 1822* (1917) vol X, pp. 2–3 ('HRA, Series I, vol X').

<sup>3</sup> *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, House of Commons, 19 June 1822 (1968) Irish University Press, pp. 50–1 ('Report of Commissioner into the State of the Colony'); Ritchie, *Punishment and Profit*, p. 173.

<sup>4</sup> Ritchie, *Punishment and Profit*, p. 212.

<sup>5</sup> *Ibid.*, p. 109.

<sup>6</sup> D M Young, *The Colonial Office in the Early Nineteenth Century* (1961) Longmans, p. 18.

<sup>7</sup> See generally Lenore Coltheart and Peter Bridges, 'The Elephant's Bed? Scottish Enlightenment Ideas and the Foundation of New South Wales' (2001) *Journal of Australian Studies* 19, 68, pp. 19–33.

<sup>8</sup> A V Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century* (2<sup>nd</sup> ed, 1962) Macmillan, p. 31.

<sup>9</sup> See, for example, J E Cookson, *Lord Liverpool's Administration: The Crucial Years, 1815–1822* (1975) Scottish Academy Press.

<sup>10</sup> See Peter King, *Crime, Justice and Discretion in England 1740–1820* (2000) Oxford University Press, Ch 5.

<sup>11</sup> E P Thompson, *The Making of the English Working Class* (1968) Penguin Books, p. 603.

<sup>12</sup> See Boyd Hilton, *A Mad, Bad and Dangerous People? England 1783–1846* (2006) Oxford University Press, p. 251.

<sup>13</sup> *Ibid.*

<sup>14</sup> Lanford Pole, *A Polite and Commercial People: England 1727–1783* (1998) Oxford University Press.

<sup>15</sup> See Michael Lobban, 'From Seditious Libel to Unlawful Assembly: Peterloo and the Changing Face of Political Crime c1770–1820' (1990) *Oxford Journal of Legal Studies* 10, p. 310.

<sup>16</sup> See Hilton, *A Mad, Bad and Dangerous People?*, p. 252; Michael J Turner *The Age of Unease: Government and Reform in Britain, 1782–1832* (2000) Sutton Publishing, p. 158.

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- 17 Hilton, *A Mad, Bad and Dangerous People?*, p. 269.
- 18 N D McLachlan, 'Bathurst at the Colonial Office, 1812-27: A Reconnaissance' (1969) *Historical Studies* 13, p. 485.
- 19 Bathurst to Bigge, 6 January 1819 in *HRA*, Series I, vol X, p. 4.
- 20 J B Hirst, *Convict Society and its Enemies* (1983) George Allen & Unwin, p. 87.
- 21 Bathurst to Bigge, 6 January 1819 in *HRA*, Series I, vol X, p. 7–8.
- 22 John Ritchie, *Lachlan Macquarie: A Biography* (1986) Melbourne University Press, p. 133.
- 23 Fredk Watson, 'Introduction' in *HRA*, Series I, vol X, p. xiv.
- 24 Earl Bathurst to Commissioner Bigge, 6 January 1819 in *HRA*, Series I, vol X, p. 11.
- 25 Ritchie, *Macquarie*, p. 160.
- 26 *Report of the Commissioner into the State of the Colony*, p. 149-150.
- 27 *Report of the Commissioner into the State of the Colony*, pp. 172 ff.
- 28 Bathurst to Macquarie, 18 April 1816, in *Historical Records of Australia: Series I – Governors' Despatches to and From England, January 1816–December 1818* (1917) vol IX at 108 ('*HRA*, Series I, vol IX').
- 29 Bathurst to Macquarie, 3 February 1814 in *Historical Records of Australia: Series I – Governors' Despatches to and From England, January 1813–December 1815* (1916) vol VIII, pp. 134–5.
- 30 Bigge was right. Bathurst subsequently chastised Macquarie and instructed that Redfern not be reappointed. See Bathurst to Macquarie, 20 March 1821 in *HRA*, Series I, vol X, pp. 310–11.
- 31 James Broadbent, 'Macquarie's Domain' in James Broadbent and Joy Hughes (eds), *The Age of Macquarie* (1992) Melbourne University Press, p. 4.
- 32 'Appendix to the Report of Major General Lachlan Macquarie, late Governor of the Colony of New South Wales, being A List and Schedule of Public Buildings and Works erected and other useful Improvements, made in the Territory of New South Wales and its Dependencies, at the expence of the Crown from 1st of January, 1810, to the 30th of November, 1821, both inclusive' in *HRA*, Series I, vol X, pp. 684 ff.
- 33 See Geoff Stuart, *Secrets in Stone: Discover the History of Sydney* (1993) Brandname Properties Ltd, p. 35.
- 34 See James Broadbent, 'Building in the Colony' in Broadbent and Hughes (eds), *The Age of Macquarie*, p. 163.
- 35 See, for example, *Report of Commissioner into the State of the Colony*, pp. 50–1.
- 36 N G Butlin, *Forming a Colonial Economy, Australia 1810-1850* (1994) Cambridge University Press, p. 70.
- 37 See generally Butlin, *Forming a Colonial Economy*.
- 38 See, for example, *ibid*, esp pp. 59–60, 65–7, 69–70; J J Eddy, *Britain and the Australian Colonies 1818–1831: The Technique of Government* (1969) Clarendon Press, pp. 154–9.

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- 39 See Martin Daunton, *Trusting Leviathan: The Politics of Taxation in Britain 1799–1914* (2001) Cambridge University Press, p. 45.
- 40 See Turner, *The Age of Unease*, pp. 135 ff; Daunton *Trusting Leviathan*, esp p. 47.
- 41 See Hilton, *A Mad, Bad and Dangerous People?*, p. 268.
- 42 See Philip Harling, *The Waning of ‘Old Corruption’: The Politics of Economical Reform in Britain, 1779–1846* (1996) Clarendon Press, pp. 163–82.
- 43 W R Brock, *Lord Liverpool and Liberal Toryism 1820–1827* (2<sup>nd</sup> ed, 1967) Frank Cass & Co Ltd, p. 47.
- 44 Butlin, *Forming a Colonial Economy*, p. 60.
- 45 See Young, *The Colonial Office*, p. 188.
- 46 See *ibid*, p. 184.
- 47 The Governor of Sierra Leone was the only other colonial officer with such power.
- 48 Ritchie, *Punishment and Profit*, p. 18–22.
- 49 Liverpool to Macquarie, 26 July 1811 in *Historical Records of Australia: Series I – Governors’ Despatches to and From England, January 1809–June 1813* (1916) vol VII, p. 362 (‘HRA, Series I, vol VII’); Liverpool to Macquarie, 5 May 1812 in *HRA*, Series I, vol VII, p. 481.
- 50 See, for example, Coltheart and Bridges, ‘The Elephant’s Bed?’.
- 51 See, for example, *HRA*, Series I, vol IX, pp. 130–56, to which Macquarie replied, pp. 392–5.
- 52 See Ritchie, *Macquarie*, p. 157.
- 53 Bathurst to Bigge, 6 January 1819 in *HRA*, Series I, vol X, p. 11. See also Marion Phillips, *A Colonial Autocracy: New South Wales under Governor Macquarie, 1810–1821* (1971, originally published 1911) Sydney University Press, p. 64.
- 54 *Report of the Commissioner into the State of the Colony*, p. 48.
- 55 See J M Bennett, ‘Bigge, John Thomas’ in *Australian Dictionary of Biography* (1966) vol 1, Melbourne University Press, pp. 99–100.
- 56 Ritchie, *Punishment and Profit*, p. 221.
- 57 William M Robbins, ‘Spatial Escape and Hyde Park Barracks’ (2005) *Journal of Australian Colonial History* 7, pp. 81–96.
- 58 Eddy, *Britain and the Australian Colonies*, p. 26.
- 59 Hirst, *Convict Society and its Enemies*, p. 46.
- 60 Ritchie, *Punishment and Profit*, pp. 248–9.
- 61 Robert Hughes, *The Fatal Shore: A History of the Transportation of Convicts to Australia, 1788–1868* (1987) Collins Harvill, pp. 341–2.

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For a recent overview see Raymond Evans '19 June 1822: Creating "an Object of Real Terror": The Tabling of the First Bigge Report' in Martin Crotty and David Roberts (eds), *Turning Points in Australian History* (2009) UNSW Press, pp. 48-61.