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THE AUSTRALIAN LAW JOURNAL

Michael Kirby

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Michael Flynn, *The Second Fleet: Britain's Grim Convict Armada of 1790*, Library of Australian History, Sydney, 1993, Foreword v-vi; contents vii; list of illustrations, viii; acknowledgments ix-x; text and references 1-88; guide to biographies 89-124; biographies of the "Second Fleeters" 125-636; Biographies of "The Waysiders", 636-726; appendixes, 727-740; bibliography 741-744; names index, 745-768; places index 769-776; general index 777-780; subscribers 781-787.

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In a recent issue of *The Bulletin* (6 April 1993) Professor Richard Harding of the Law School of the University of Western Australia, has drawn attention to a statistic which should be of interest to Australian lawyers. With the opening in March 1993 of the new Junee prison in western New South Wales, Australia has a "higher proportion of prisoners housed in privatised prisons than any other country in the world." Together with "Borallon" near Ipswich and Brisbane's "Arthur Gorrie Correction Centre" in Queensland, the total number of prisoners in private institutions in this country is almost 600. This is about 8% of Australia's total prison population. The statistic (and the potential problems of private punishment on behalf of society) make significantly relevant this new book on the Second Fleet of 1790.

Britain's policy of transporting convicted felons to distant prison settlements was the not unfamiliar response of a hard-pressed government to a problem of prison overcrowding. The solution dated back to the 16th century. A good proportion of the early settlers in

the American plantations could trace their origins to British penal policy. When the American colonies were lost in 1776 various options were considered to help empty the over-crowding of the prisons and the ships moored in the Thames. Outposts in West and South-West Africa were suggested until someone in Whitehall came up with the idea of Botany Bay, so lately and vividly described by Joseph Banks who had sailed there with Captain Cook.

The programme of transportation which was then set in train provides the sombre beginning to the modern settlement of Australia. Yet out of the jaws of misery and degradation the commander of the First Fleet, Captain Arthur Phillip, snatched a marvellous achievement. Most notably, in his seven month voyage to the unknown continent he lost only 2.8% of the prisoners in his charge. Unsurprisingly, a Second Fleet was soon prepared. Captain Phillip kept pressing the British Government to send it. In letters despatched via China and Batavia he urged the need for new supplies, new people with training and agriculture and troop reinforcements to begin the task of ensuring the long-term success of the settlement.

When, however, in June 1790 the three "hell ships" of the Second Fleet arrived in Sydney Harbour, nearly 300 out of a little more than 1,000 convicts despatched were dead. Within a further eight months many more had died of the ravages of scurvy, dysentery and malnourishment which they had suffered on the voyage. The final death rate was 40%. Captain Phillip was outraged as the horror unfolded before him. The settlement's chaplain, Richard Johnson, described the sight as "truly shocking to the feelings of humanity". He said that the prisoners were full of filth and lice. Scurvy "was not the only nor the worst disease that prevailed". Many of the prisoners had been kept in irons, partially submerged in water, until

just before the Fleet entered Sydney Harbour. For fifty years the Admiralty had known of how to combat scurvy on long voyages. But under the insistence of the agent, calls by the Second Fleet for fresh vegetables were cancelled as the sad and dwindling armada pressed on its way to the unknown South Land.

The captains of the vessels in the Second Fleet made a "killing" in the hard-pressed market in Sydney by the sale of food and other goods which they had held back from the prisoners whose lives were plainly regarded by them as disposable. Even the news which the Second Fleet brought of the French Revolution, of the pending war between Britain and France and of the illness and recovery of King George III could not distract Phillip and his dutiful officers from the profound shock they felt on the sight of such gross inhumanity. Phillip sent a despatch to the British Government which, although aimed at the contractors who carried the convicts, contained an implied attack on the Government's whole handling of the enterprise.

Back in Britain, as the news of the horrors and losses of the Second Fleet spread, it caused outrage. At first, the Government sought to place the blame on the agent, Lieutenant John Shapcote who himself had fallen victim to the illnesses which the filthy vessels incubated. But this did not satisfy Thomas Evans, a lawyer who invoked the jurisdiction of the Admiralty Sessions in London to prosecute the Captain of the *Neptune*, by all accounts the worst of the ships of the Fleet. Ultimately, under public pressure, the British Government took over Evans' private prosecution. The Attorney-General appeared. The specific crimes charged could not be proved. However, the captain (Donald Trail) was revealed as a tyrannical and unjust, even sadistic, disciplinarian. Not the least of the offences concerned his treatment of women transported on the

vessels.

The Admiralty prosecution of Trail failed. But the public outcry could not be stilled. A report was sent to the King, urging an inquiry which went beyond the prosecution of particular offences and looked to the system of transportation by private contractors. This proposal was shuffled between the Admiralty and the Treasury. No inquiry was ever established. But as a result of the horrors of the Second Fleet some reforms were introduced. Most notably, contractors were henceforth to be paid for the convicts actually landed.

Under the inspiration of the Bicentenary, a number of books have been published on the First Fleeters, the most important of which is Mollie Gillen's *Founders of Australia*. But now this splendid book has been produced by the Library of Australian History to remind us of the horrors of the Second Fleet and of the British penal system which lay behind it.

The book is a masterpiece with the most painstaking attention to historical detail, accuracy and fairness. It disdains the earlier historical thesis that the convicts were all innocent victims of the class-based British legal system. By painstaking attention to the detail of each case, which could be traced in the court records of London and various court sessions in England, Michael Flynn has demonstrated the realities of the criminal offences for which the convicts were sentenced. Many were sentenced to death, only to be called to the Bar of the Old Bailey to exchange the gallows for the uncertain prospect of transportation. Some refused but were counselled by the prison chaplains. For nearly half of the convicts in the Second Fleet, death could not so easily be escaped.

The short biographies of the Second Fleeters in this book bear testimony to the painstaking research which Mr Flynn conducted,

principally in England. The details of the convicts' offences, extracted from the court records, shows the timelessness of crime. The bureaucratic bungling and the greed of the contractors, captains and others with a motive to cut costs carries a warning against the modern moves to "privatise" custodial punishment in Australia. The "Waysiders" are also recorded in short biographical notes. These are the persons who were ordered for embarkation on Second Fleet but never reached Sydney for various reasons. As Australians become more interested in their forebears and their country's history (and as tracing ancestry to a convict becomes increasingly *de rigeur*) the utility of a book like this to permit a check on one's ancestors, goes without saying.

The book is an important reference work which should find a ready market in libraries throughout Australia and England especially. But it is also intensely readable. Each potted history is a human life - often cut back and suddenly terminating in the monstrous journey of the Second Fleet. The individual biographies may be better understood by the detailed notes and careful historical analysis which precedes them. The author has collected and summarised the biographical notes under subtopics. In this way the book, although one of reference, provides a most readable insight into the early history of Australia. When one learns of such grim beginnings, the cynical and iconoclastic features of our culture can more readily be understood. The sufferings imposed upon the convicts still bear lessons for criminal justice policy in Australia today. Above all, the book teaches the need to superintend private contractors of public punishment with the greatest of care because of the risk that private interest on their part will take primacy over moral and even legal duty.

The book is beautifully printed in Australia. It originates

from the author's study for an MA degree in the University of Sydney. Mr Flynn boasts that seven of his ancestors were convicts transported to New South Wales prior to 1836. A dip into the pages of this book may reveal to many Australians that they too can claim convict ancestors. And if they came in the Second Fleet they must have been strong indeed to survive the terrible sufferings that are recorded here.

It is necessary to see the positive side of the Second Fleet. It did provide supplies to the rustic settlement at Sydney. It brought new people to give a new impetus to the colony's growth. It assured the First Fleeters that they were not alone and forgotten as they sometimes feared. By necessitating improvements in the system of penal transportation the revelation of its horrors helped to reduce the risks of repetition. The exposure of wrongs showed one of the strengths of the society which had expelled the convicts from its shores. The fact that we are still shocked, two hundred years later, shows that we do not tolerate basic inhumanity and are not indifferent to its victims. But it should also teach the need for constant vigilance against repetition of the same kinds of bureaucratic mistakes.