

## Chapter 8

# Invisible Cargo: The Introduction of English Law into Australia<sup>1</sup>

*J Stoljar*

David Collins followed the other officers as they made their way along the fore-shore. He was wearing full dress uniform like the others – Collins was a captain of the marines. They were moving west from the landing site, through dense trees.<sup>2</sup> Behind them the fleet of 11 ships lay at anchor in the harbour, ensigns flying. It was shortly before 11.00 a.m. on a warm, cloudy morning, 7 February 1788.

Governor Phillip led the way up a low rise till they reached a clearing. Here they were met by a battalion of marines under arms. Flags were flying and a military band was playing. The convicts, more than 700 of them, had been herded to one side. Phillip removed his hat and the marines and officers exchanged formal salutes.

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- 1 The primary sources for this chapter are mostly contained in *Historical Records of New South Wales* (HRN) (references below are to Vol 1, Part 2, unless otherwise indicated) and *Historical Records of Australia* (HRA) (references below are to Series IV, Vol 1). See also Collins, *An Account of the English Colony in New South Wales* (first published 1798, republished Fletcher (ed), Reed, Sydney, 1975); Tench, *A Narrative of the Expedition to Botany Bay* (first published 1789, republished Flannery (ed), 1788, Text, Melbourne, 1996); Bowes Smyth, *The Journal of Arthur Bowes Smyth, Surgeon, Lady Penrhyn, 1787-9* (Fidlon & Ryan (eds), Australian Documents Library, Canberra, 1979); White, *Journal of Voyage to New South Wales* (Chisholm (ed), Angus & Robertson, Sydney, 1962); Bradley, *A Voyage to New South Wales* (Trustees of the Public Library of New South Wales in association with Ure Smith, William Dixon Foundation, Sydney, 1969). Further sources include Windeyer, "'A Birthright and Inheritance': The Establishment of the Rule of Law in Australia" (1961) 1 *Tasmanian Law Review* 635; Clark, *A History of Australia* (Melbourne University Press, Melbourne, 1962), Vol 1; Windeyer, *Lectures on Legal History* (Law Book Co, Sydney, 1949) (*Lectures*); Kercher, *Debt Seduction and Other Disasters: The Birth of Civil Law in Convict New South Wales* (Federation Press, Sydney, 1996); Nagle, *Collins, The Courts and the Colony* (UNSW Press, Sydney, 1996); Ford, *Settler Sovereignty* (HUP, Cambridge, 2010); Hughes, *The Fatal Shore* (Vintage, London, 2003). Useful background on many of the individuals mentioned is contained in Gillen, *The Founders of Australia: A Biographical Dictionary of the First Fleet* (Library of Australian History, Sydney, 1989).
- 2 In his first dispatch to Lord Sydney of 15 May 1788, Governor Phillip remarked that "the summits of the rocks, as well as the whole country round us, with few exceptions, are covered with trees" (HRN, 123). Tench also mentions that the harbour's shores were "covered with trees to the water's edge" (Tench, 43).

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