

# THE 1789 CONSTITUTIONAL CRISIS IN AUSTRALIA

When Australians hear the term 'Constitutional Crisis' we of course think of when the Governor General Sir John Kerr, sacked the Prime Minister, Gough Whitlam in 1975. We all subsequently became much more aware that a Constitution was more than a written document. It also consists of conventions, protocols, and abstract notions, like the 'Reserve Powers' of the Governor-General.

What has to be borne in mind is that the Australian Constitution of 1901 was in fact an Act of the British Parliament. But it was not the first British statute of constitutional importance to Australia. The original decision in 1786 to colonise Australia as a dumping ground for Britain's convicts and excess population, was all enabled by specific legislation and regulations that set out the powers and duties of the key players in the First Fleet.

The conflict that began to manifest itself, right from when the First Fleet arrived in January 1788, had two major players - the Governor, Captain Arthur Phillip, and the Lieutenant-Governor, Major Robert Ross, who was also the Military Commander of the colony.

Historians have tended to view the rancorous conflict that developed between Phillip and Ross in 1788-89, as essentially a personality conflict, but it was much more than that. The conflict also represented a clash in the basic purposes for establishing the colony, as represented in the enabling legislation and the respective Letters Patent of Phillip and Ross.

The reality was that Britain hoped to 'peacefully settle' Australia, but also had a contingency plan in the event of violent objection by the local inhabitants. The Lords of the Admiralty had learned a hard lesson in the North American Indian Wars of the 1860's, that native forces could cause great embarrassment to the British Army.

In the end, the only things that had saved the British from annihilation in Pontiac's Rebellion, was the survival of the Pitt and Detroit Stockades, plus the use of smallpox as a biological weapon.

Major Ross had prior firsthand experience with the use of smallpox for military purposes. Not only had he served in the Indian Wars, but he had also served in the American War of Independence when the British had again used smallpox as a biological weapon. So, the plan of the British in establishing the NSW colony was crystal clear. It was going to be a peaceful invasion, -or else!

The plain fact is that Ross was placed at the head of a military force of two hundred and fifty Marines. By the 1786 Decree of King George the Third, Ross had the duty to not only ensure civil order in the colony, but also for: '*defence of the settlement against incursion by the natives.*'

On the other hand, the Letters Patent for Phillip emphasised the prior hope for peaceful settlement, and King George accordingly instructed that Phillip should: *'...conciliate their affections, enjoining all our subjects to live in amity and kindness with them...'*

This instruction has in the past been given great prominence by historians, but the ulterior needs of Empire were also covered by the powers vested in Lieutenant Governor Ross. His Letters Patent actually gave him explicit superiority over Governor Phillip in: *'the rules and disciplines of war.'*

For the first few weeks after they arrived, the colonists enjoyed convivial relationships with the Eora. However, when the Eora went to share a catch of fish that had been netted, Marines fired a volley of shots over their heads to stop them 'stealing' the fish. By midyear the harbour had been fished out and both the colonists and the Eora were facing starvation. Relationships plummeted over the rest of 1788. Attacks escalated and by the beginning of 1789, Ross considered that a full scale attack by the natives was imminent.

To make matters worse, the Marine Corps was by this time practically out of ammunition. So, Ross recommended that Phillip authorise the urgent construction of a stockade. When Phillip refused, Ross was livid and considered it to be a breach of his legally stipulated authority over Phillip in matters of war. Ross complained by letter to the Admiralty, but any reply was at least six months away.

The colony therefore seemed to be on the brink of insurrection, save only for the fact that Ross was alienated from his own Marine Officers, who were all loyal to Phillip. The only officer firmly in Ross' corner was his second in command, Captain James Campbell.

Then at the peak of the crisis, seven Marines under the direct command of Campbell were found to have been systematically robbing the government store. They were tried on March 25 1789 and duly hanged. Then, by amazing coincidence three weeks later, on April 15 1789, smallpox broke out in the Aboriginal community. It swept around the continent, ultimately killing at least two and a half million Australians.

Problem solved. The imminent attack, the need for a stockade and the looming constitutional crisis suddenly disappeared on 15th April 1789. It is however rather puzzling why historians have never thought to ask if the end of this constitutional crisis and the outbreak of smallpox at Sydney Cove, really was a coincidence?

It was of course not.