The utilitarian philosopher and reformer Jeremy Bentham’s reputation, owing to his ‘Letters to Lord Pelham’ and ‘A Plea for the Constitution’, as one of the foundational critics of transportation to New South Wales, has been recognised by scholars.¹ For example, as John Gascoigne has noted, ‘the advocates and critics of transportation [of the nineteenth century] … inevitably tended to couch their arguments against a Benthamite background’.² Yet the ‘Letters’ and the ‘Plea’, key interventions in debates surrounding transportation, are sometimes characterised as the product of Bentham’s fury at the seemingly imminent abandonment by the British government of his panopticon penitentiary scheme.³ (The panopticon being, of course, Bentham’s proposed circular prison in which the cells would have been arranged around the outer wall and an inspection tower occupied the central space, from which the inspector – Bentham himself – could look into the cells at any time. However, the inmates would be unable to see the inspector, and Bentham expected that the ‘central inspection principle’ would ensure that the prisoners, believing they were constantly being watched, would modify their behaviour positively in order to avoid inevitable punishment for breaching the prison’s rules, and these newly-instituted powers of self-control would ensure that the prisoners would be released into the community as reformed, useful citizens). While it is undeniable that these works gave form to Bentham’s anger, less well-recognised is the practical purpose behind their writing, which was that they were Bentham’s tools in his


² Gascoigne, Enlightenment and European Australia, 125–6.

attempt to pressure the administration during 1802 and 1803 into proceeding with the establishment of the panopticon.

From Bentham’s perspective, from 1791 when he offered the panopticon to the Pitt administration, to June 1803 when it was effectively killed off by the Addington administration, the attempt to bring to fruition Bentham’s penitentiary was beset by wilful delay and obstruction on the part of ministers and their underlings. This was despite, in Bentham’s opinion, the institution’s potentially unrivalled benefit to the public, and despite its construction having been twice authorized by statute. These delays and obstructions had led Bentham, by January 1802, to more or less accept that the panopticon would never be built. One of his responses was to begin drafting ‘A Picture of the Treasury’, a 200,000-word contemporary history of the government’s Kafkaesque dealings with him. The ‘Picture’, to modern readers, sometimes has the hallmarks of a sitcom – one farcical scene sees Bentham chase Charles Long, Secretary to the Treasury, who was purposefully avoiding Bentham, into a porters’ waiting room – but this should not disguise Bentham’s seriousness of purpose, namely cataloguing the machinations and deliberate non-functioning of government at the turn of the nineteenth century.

In an outline of the ‘Picture’, Bentham indicated his intention to discuss the government’s ‘Pretences for relinquishment’ of the panopticon, one of which was the recent ‘improved State of the Colony of New South Wales’. The outline implied that the discussion of the colony would be relatively confined to a sub-section, but the more Bentham researched the subject, the more attention he found it demanded. This sub-section ultimately grew into three major essays, namely the two ‘Letters’ and the ‘Plea’, which Bentham wrote and had

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4 In 1811–12 Bentham’s hopes were raised and dashed again when the Perceval administration briefly appeared to show interest in the panopticon: see Semple, Bentham’s Prison, ch. 11.
5 The Penitentiary Act of 1794 had authorized the construction of a panopticon penitentiary, and the Appropriation Act of 1799 had granted Bentham £36,000 towards the building of it.
7 Bentham Papers, box cxx, folio 262, University College London Library, hereafter ‘UC’.
8 See UC cxxi. 14. After Bentham was informed that he should prepare to receive 2,000 prisoners, rather than the 1,000 he originally envisaged, he submitted revised costings for the panopticon. In response, on 13 August 1800, the Lords Commissioners of the Treasury presented four reasons as to why it ‘would not be expedient to carry into Effect this Plan to the whole Extent proposed by Mr. Bentham’. These were: ‘the Number of Years which have elapsed since the first Steps were taken … the improved State of the Colony of New South Wales … the various Improvements which have since taken place in the different Gaols in this Kingdom; and the great Increase of Terms which Mr. Bentham now proposes’. See the ‘Treasury Minute’, 13 August 1800, Commons Sessional Papers (1801), cxviii. 79–80.
privately printed in 1802–3, though they were not actually published and available to the public until 1812 in a single volume entitled *Panopticon versus New South Wales*.9

The gloomy Bentham seemed energised by writing about New South Wales, sensing an opportunity to prevent the government from abandoning the panopticon. In a letter of August 1802 to his younger brother Samuel, he described how, by exposing the illegalities of the colony, he would ensure that the administration was ‘most miserably mauled and kept in hot water by the Opposition’, and would ‘have it known in every ginshop’ that New South Wales was ‘the true Bastile and the oppressions exercised in it some hundred times as great as those exercised in the Cold Bath Fields Bastile’.10 Yet, notwithstanding his boasts Bentham expressed concern that the ‘natural consequence’ of making public his ‘discoveries’ about New South Wales would be the ‘setting of the whole Colony in a flame’. He therefore intended to delay showing his hand until Parliament returned in mid-November 1802, when he would lobby the government to remedy the evils he had identified, and the ‘remedy I mean to try at, is the evacuation of that scene of wickedness and wretchedness’.11

Drawing upon Bentham’s writings, correspondence, and unpublished manuscripts, and other unpublished official and private material, this paper will first briefly examine Bentham’s general attitude towards transportation, and then the first two of three phases of specific interest in New South Wales, during May and June 1791 and the first half of 1798 respectively. However, its main focus will be on the third and most important phase, that of 1802–3 when Bentham deployed his writings on New South Wales in the cause of the


New, critical editions of the texts will be published as *Writings on Australia*, edited by Tim Causer and Philip Schofield, as a volume of the *Collected Works of Jeremy Bentham* in 2020. Freely-available, pre-publication versions of these texts were made available in September 2018. References in this article to the texts in question are to the pre-publication versions. For a summary of the contents of the forthcoming volume, and links to download the pre-publication texts, see https://blogs.ucl.ac.uk/bentham-project/2018/09/05/benthams-writings-on-australia-pre-publication-versions-now-online/.

10 Bentham alluded to conditions in Coldbath Fields gaol, which were subject to a commission of inquiry in 1800. The issue dominated the campaign in Westminster during the General Election of 1802: see C. Parolin, *Radical Spaces: Venues of Popular Politics in London, 1790–c. 1845* (Canberra: ANU E-Press, 2010), 49–82.

panopticon. In so doing, he wrote what was perhaps the first detailed critique of transportation to the colony by a major philosopher of punishment.

1. Bentham and transportation

Bentham’s opposition to transportation dates back to at least ‘A View of the Hard Labour Bill’,12 his 1778 clause-by-clause analysis of the bill which became the Penitentiary Act of 1779. Though Bentham’s brief discussion here was of transportation to the American colonies, the ‘View’ established his general philosophical opposition to transportation, and contained the kernels of arguments he later deployed against New South Wales.

In thinking about punishment Bentham famously began from the position that ‘all punishment is mischief: all punishment in itself is evil’,13 and that inflicting the evil of punishment could only be justified if it deterred further offending. On this score Bentham found transportation ill-conceived from the outset, being fundamentally disproportionate: nothing could ‘be more unequal than the effect which the change of country has upon men of different habits, attachments, talents, and propensities. Some would have been glad to go by choice; others would sooner die’. (Here is perhaps an origin of the ‘transportation as lottery’ argument so prominent in anti-transportationist critiques of the 1820s and 1830s). In addition, Bentham found transportation to be ‘unexemplary’, that is, the pain inflicted was ‘unknown to the people for whose benefit it was designed’, i.e. those in Britain and Ireland who contemplated offending. Transportation was expensive, both monetarily and in the ‘great waste of lives’ during the voyage. It was generally unrefromative, since there was no guarantee that expirees would not reoffend if and when they returned to the mother country, although Bentham conceded – in a way he never would for New South Wales – that convicts transported to America might be reformed ‘every now and then’. However this reformation was less about transportation than the servitude endured by the convict under the ‘uncertain and variable direction of a private master’.14 In short, for Bentham transportation was unscientific, archaic, and anything advantageous achieved by its infliction was incidental.

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12 Bowring, iv. 1–36.
14 Bowring, iv. 6–7.
while those incidental advantages were better and more consistently achieved by instituting a domestic system of imprisonment with hard labour and close surveillance.

Bentham was visiting his brother Samuel (with whom the ‘central inspection principle’ originated) in Russia during 1786, who was then working for Prince Potemkin, when he first heard of the plan to establish a penal colony at Botany Bay and subsequently alluded to it in the ‘Panopticon Letters’ which he sent to London at the end of 1786. Even before the First Fleet had reached Port Jackson, Bentham was convinced that the adoption of the panopticon would herald the demise of this new penal colony: even if it transpired that the panopticon accommodated prisoners ‘at no greater expense’ than transporting them to New South Wales, given transportation’s other failings, even this ‘moderate success would be sufficient to put an end to so undesirable a branch of navigation’.

Bentham’s subsequent detailed interest in New South Wales is broadly divided into three ‘phases’, each of which correlated to key points in the panopticon campaign. Though R.V. Jackson suggested that Bentham ‘waged at least three campaigns to have the colony abandoned in the dozen years or so after 1791’, as will be shown below, only the third phase can genuinely be described as a ‘campaign’.

1.1: The first phase— the ‘New Wales’ fragments of May and June 1791

Prompted by the lobbying of Charles Bunbury MP and his allies in the Commons, and following press reports describing near-starvation conditions at Sydney, in April 1791 the government published the latest official accounts of New South Wales. Bunbury, later the panopticon’s most steadfast supporter, passed a copy of these accounts to Bentham, from which Bentham concluded that the colony was a ‘scene of improvidence and extravagance’
about which he was ‘strongly tempted to give before the public a sketch’. The unpublished ‘New Wales’ fragments may have been his abortive attempt at doing so.

In the fragments Bentham examined whether New South Wales should be regarded primarily as a ‘mode of disposing of convicted criminals’ or as a ‘scheme of colonisation at large’. Since so few women had been transported, he concluded that as ‘a Colony for the propagation of the species’ New South Wales would inevitably fail. Additionally, allowing expiroes to return to Britain would surrender the one alleged advantage of the colony, namely the security afforded to the mother country by deporting its criminals there, whereas if expiroes were forced to remain in the colony they would be victims of ‘false banishment for life’ and require expensive maintenance. As Bentham pithily put it: ‘Take away the injustice and you take away the security’. The panopticon, by comparison, was the ‘cheapest as well as the best course in every point of view that could be taken’ and, once built, in an ideal world a fleet would set sail for Port Jackson to ‘re-import the whole colony at once’.

At this time Bentham also drafted two resolutions against New South Wales which neatly complemented the ‘New Wales’ fragments. The first dealt with economics, resolving that the colony would ‘never be an object of national benefit’ and that sinking the same amount of capital into ‘any other trade’ as had been expended on New South Wales would return a greater profit. The second pointed to sexual morality, resolving that any colony where men were ‘superior in a considerable degree to the number of females can not be of any use in point of population’, and growth in New South Wales could only be expected where ‘the inhabitants live in a state of promiscuous copulation’. This was not, of course, ‘conformable to the commonly [held] notions of good morals nor to those of Xtianity as professed by the Church of England’. Bentham may have considered approaching Bunbury

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22 Ibid., p. 3.
23 Ibid., p. 3.
24 Ibid., p. 8 n. Original emphasis.
26 Bentham, New Wales, p. 24. Bentham made a connected point in ‘Panopticon Postscript, Part II’, written around the same time, when he stated that in New South Wales there were ‘2,000 convicts of both sexes, and 160 soldiers (not to speak of officers,) jumbled together in one mass, and mingling like beasts’: see Bowring, iv. 141.
to introduce these resolutions in the Commons, but there is no evidence that he went on to circulate either them or the ‘New Wales’ fragments.

1.2: The second phase—The Twenty-Eighth report of the Select Committee on Finance of 1798

Encouraged by George Rose at the Treasury, Bentham regarded the gathering of evidence, during the first half of 1798, for the Finance Committee’s report on the police and convict establishments as an opportunity to force the government finally to commit, after several years, to a site on which the panopticon might be built. This vexing issue had led Bentham to believe that the government preferred to act in the private interests of the nobility rather than in the public interest. The report, which was ordered to be printed in June 1798, was strongly critical of the existing establishments, and made a case against New South Wales mostly based on the seemingly rocketing cost per head of transportation. In addition, the Committee called for there to be no further delay in executing the contract with Bentham and instituting the less expensive and more beneficial panopticon.

The report also proposed that New South Wales be subject to a parliamentary inquiry, noting that the ‘Security held out by the Difficulty of Return on the Part of the Convicts is the only Advantage’, and wondering whether such security ‘might not be purchased upon less exceptionable Terms’. If this, and the report’s other criticisms of New South Wales seem familiar, it is with good reason: Bentham had a hand in its preparation, collaborating with the Committee’s chair and his step-brother Charles Abbot MP, the police magistrate Patrick Colquhoun, and Reginald Pole-Carew MP, the latter of whom drew up the report. As R.V. Jackson noted, Bentham was ‘directly responsible for preparing most of the material on New South Wales’ and ‘a significant part’ of the draft was incorporated into the report with little alteration. This is especially notable when it is recognised that the estimated costs per head

27 Commons Sessional Papers (1801), cxviii, 1–214.
28 To summarise, George Spencer, second Earl Spencer had objected to the construction of the panopticon at Battersea Rise, while subsequently Richard Grosvenor, Earl Grosvenor, and his son Robert, Viscount Belgrave, had objected to it being built at Tothill Fields. For a detailed account see Semple, Bentham’s Prison, 192–217, and Hume, ‘Bentham’s panopticon—I’, 708–21.
29 Commons Sessional Papers (1798), cxii. 21.
30 Commons Sessional Papers (1798), cxii. 27.
of New South Wales convicts were prepared by Bentham; when discussing the expense of the colony in the first ‘Letter’, Bentham appealed to the authority of the Finance Committee but was in fact appealing to his own.\textsuperscript{33}

As well as contributing to the Committee’s report, during the summer of 1798 Bentham worked on what Janet Semple described as a ‘shadow report’ in which he ‘pays off old scores’ over the panopticon in pseudo-parliamentary style and language.\textsuperscript{34} However, it appears from the manuscripts that no complete version of this ‘shadow report’ exists, and it cannot be neatly distinguished from Bentham’s contribution to the published report. Nevertheless, a consistent section of the ‘shadow report’ dealt with transportation, in which Bentham suggested that convicts sent to America endured a ‘condition susceptible of the name slavery, working by compulsion for an individual master’, but since it was ‘established out of sight, it was not regarded as a grievance’.\textsuperscript{35} In turning to New South Wales he discarded this line of attack – though later anti-transportationists would return to it – and rehearsed the economically-based anti-colonial arguments of the ‘New Wales’ fragments, finding that the abandonment of the colony, already costing £137,000 per year and carrying the threat of an ‘indefinite increase’ in expenditure, could soon be ‘absolutely indispensable’.\textsuperscript{36} Bentham proposed the sale of the colony to a foreign power, handing it to a member of the royal family to rule over provided they lived there,\textsuperscript{37} or simply abandoning it to ‘the colonists to settle the business of government among themselves’.\textsuperscript{38} As was the case with the ‘New Wales’ fragments, there is no evidence that the ‘shadow report’ went beyond Bentham’s desk, but it is clear that he continued to regard New South Wales as a major threat to the panopticon, and that his hostility towards the colony had only grown during the last seven years.

1.3: The third phase—1802 and 1803

\textsuperscript{33} For a discussion of Bentham’s methodology in calculating his figures, see Jackson, ‘Luxury in Punishment’, 49–55.
\textsuperscript{34} Semple, \textit{Bentham’s Prison}, 208.
\textsuperscript{35} UC cl. 342.
\textsuperscript{36} UC cl. 357, 360.
\textsuperscript{37} Compare with the similar point made in Bentham, \textit{New Wales}, pp. 12–13.
\textsuperscript{38} UC cl. 360.
According to Bentham, his two ‘Letters to Lord Pelham’ approached transportation to New South Wales ‘on the question of policy’, while ‘A Plea for the Constitution’ dealt with the colony ‘on the question of law’. What follows is a short summary of Bentham’s key points in these works, before the focus shifts from the substance of Bentham’s arguments to what he hoped to achieve with them between August 1802 and June 1803.

The first ‘Letter to Lord Pelham’ is a masterful piece of rhetoric in which Bentham arranged his analysis around his five ‘ends of penal justice’, namely (i) example, (ii) reformation, (iii) incapacitation, (iv) compensation, and (v) economy, measured against each of which New South Wales failed. By example Bentham meant deterring future offending, which he considered the most important aim of any system of punishment. Yet transportation removed offenders ‘as far as possible out of the view of the aggregate mass of individuals’ upon whom the deterring example was supposed to operate, whereas the panopticon would have been in the very heart of the metropolis. In terms of reformation, Bentham considered prisoners to be ‘persons of unsound mind’ or a ‘sort of grown children’ whose conduct would only be remedied by systematic inspection, which would, in the panopticon, be carried ‘to such a degree of perfection, as till then had never been reached even by imagination, much less by practice’. Meanwhile, New South Wales, where convicts worked across the colony ‘altogether out of the habitual reach of every inspecting eye’, had a ‘radical incapacity of being combined with an efficient system of inspection’.

Under the heading of incapacitation Bentham expanded upon the disjuncture he had observed as early as 1778 between the justice of, and supposed security afforded by, transportation. He found that ministers’ talk of reformation was ‘make-believe’, and that their adherence to transportation was the attractiveness of removing individuals from the British Isles—how they behaved subsequently was of no consequence. There were thus two questions to consider: how effectively were transportees prevented from returning to Britain, and how was this security ‘consistent with the principles of law and justice’? Bentham answered both questions in the negative: artful transportees absconded and returned home,

39 Bentham to Charles Abbot, 3 September 1802, Correspondence, vii. 105.
41 Ibid., p. 34.
42 Ibid., p. 34.
while those who did not were detained illegally in the colony after their sentences had expired.

By compensation or ‘satisfaction’, Bentham meant granting restitution to the injured party, and while the value of convict labour might be so purposed within the panopticon, it was impossible in New South Wales. Finally, Bentham turned to economy, condemning the expense of the ‘colonial-transportation’ system and predicting that New South Wales would fail, now not because of demographic shortcomings as he had envisaged in 1791, but because it yielded no produce of value. Furthermore, Bentham claimed, ‘military despotism’ had been planted in New South Wales, a ‘vast conservatory of military law’ odious ‘to the sense of every Briton’.

In the ‘Second Letter to Lord Pelham’ Bentham sought, by proliferation of example, to demonstrate the manifold failings of New South Wales and to compare the colony unfavourably to American penitentiaries—the closest existing approximations of the panopticon. Chief among Bentham’s allegations in the ‘Plea’ was that since Parliament had not legislated for the establishment of the colony or its government, New South Wales had been illegally founded. Therefore the powers assumed by the colony’s governors in issuing local ordinances had no legal basis, nor did the punishments inflicted upon individuals for violating them. Bentham concluded that a ‘tyranny of fourteen years’ and ‘an authority as completely autocratical as was ever exercised in Russia’ had thus been established in New South Wales. With these texts and these ideas, Bentham believed he was well-armed against the penal colony.

2. Bentham versus New South Wales

In promoting the panopticon Bentham had in the past unsuccessfully flattered, cajoled, and conciliated those in power. From August 1802 he began to adopt an adversarial stance to seize what he believed was his chance to, if not salvage the panopticon, at least gain the attention of those who had thwarted it and, perhaps, achieve a modicum of revenge in so

\[43\text{Ibid., pp. 115–16.}\]
doing. In his more hopeful moments, Bentham even imagined that he might bring about the impeachment of the former Home Secretary, the Duke of Portland.\footnote{See Bentham to Samuel Bentham, \textit{c.} 21 August 1802, \textit{Correspondence}, vii. 88–90.}

On 9 August 1802 Bentham asked Bunbury to pass to Pelham a two-page outline of the first ‘Letter’, with the full text ready to follow ‘at the first word’. If, Bentham warned, Pelham failed to reply by 18 August 1802, then ‘my future proceedings would be built on that \textit{declared} ground’.\footnote{Bentham to Bunbury, 9 August 1802, and Bentham to Bunbury, 11 August 1802, \textit{ibid.}, 71 and 76. Original emphasis.} In case the threat to publish the ‘Letter’ was too subtle, Bentham noted that should Pelham ‘wish to see the substance of the paper in print’ and the government’s conduct towards him and the reality of New South Wales exposed, then ‘he could be accommodated without difficulty’.\footnote{Bentham to Bunbury, 9 August 1802, \textit{ibid.}, 72.}

Pelham had not replied before 17 August 1802\footnote{Lady Mary Pelham was dangerously ill around this time. See Pelham to Henry Addington, 4 August 1802, Pelham Papers, Add. MS 33,109, fo. 327, British Library (BL), London.} and the dutiful Bunbury sent a reminder, hoping Pelham would

> have the Goodness to \textit{see Mr Bentham without Delay} … as the neglect he has been mortified with from former Ministers, and the many Years his mind has been agitated, & his Fortune injured by the frequent disappointments he has suffered, have naturally rendered him very uneasy, & impatient to have a decisive answer \textit{whether it is the Intention of Ministers to have his Plan carried into Execution}.\footnote{Bunbury to Pelham, 17 August 1802, Add. MS 33,109, fo. 376, BL. Original emphasis.}

In his answer of 19 August 1802 Pelham promised to investigate ‘what steps have been taken by the Treasury’ in relation to the panopticon before sending for Bentham, explaining that ‘to give him any false hopes, would in the present state of his mind, produce the very worst effects’.\footnote{Pelham to Bunbury, 19 August 1802, \textit{Correspondence}, vii. 79n.} Bentham believed that Pelham was stalling, and was irritated at the implication that he had come unhinged. Rather, Bentham believed that the only disturbed minds were those of Pelham and Addington on account of his claims about New South Wales, but that neither

\begin{thebibliography}{99}
\bibitem{}See Bentham to Samuel Bentham, \textit{c.} 21 August 1802, \textit{Correspondence}, vii. 88–90.
\bibitem{}Bentham to Bunbury, 9 August 1802, and Bentham to Bunbury, 11 August 1802, \textit{ibid.}, 71 and 76. Original emphasis.
\bibitem{}Bentham to Bunbury, 9 August 1802, \textit{ibid.}, 72.
\bibitem{}Lady Mary Pelham was dangerously ill around this time. See Pelham to Henry Addington, 4 August 1802, Pelham Papers, Add. MS 33,109, fo. 327, British Library (BL), London.
\bibitem{}Bunbury to Pelham, 17 August 1802, Add. MS 33,109, fo. 376, BL. Original emphasis.
\bibitem{}Pelham to Bunbury, 19 August 1802, \textit{Correspondence}, vii. 79n.
\end{thebibliography}
mind had yet been disturbed sufficiently ‘to open either of them … to fearless honesty’, or to take positive measures over the panopticon.\(^{50}\)

Emboldened, Bentham began marshalling his private influence. He turned first to his step-brother Charles Abbot, now Speaker of the House of Commons, setting out in detail on 3 September 1802 his intended plan of action. Bentham explained that while drafting ‘A Picture of the Treasury’, to his own ‘astonishment as well as that of my eminently learned friend’ the lawyer Samuel Romilly, he had made six ‘discoveries’ about New South Wales. First and most seriously, he found that expirees had ‘collectively, and for an indefinite time—and with the evident intent of adding to the expired legal punishment, a perpetually illegal one’ been detained in the colony. This violated the Habeas Corpus Act of 1679\(^{51}\) protecting against ‘illegal imprisonments beyond the seas’, and provided for compensation to those subjected to such a false detainment of treble costs and damages of at least £500. Any person responsible for such an illegal detainment was liable to ‘incur and sustain the pains, penalties and forfeitures’ provided for by the Statute of Praemunire of 1392, namely confiscation of their property and possible life imprisonment.\(^{52}\) What on the surface might appear as an appeal to arcane mediaeval statute law instead demonstrates the depth of Bentham’s working knowledge of prior legislation, and by inference what he regarded as the government’s dangerous ignorance of it when it established New South Wales.

In the second instance, Bentham found that transportees’ sentences had been illegally extended and modified in the colony itself. Third, individuals sentenced to seven years’ transportation and who had served upwards of five years on the hulks had nevertheless been transported and then illegally detained in the colony after their sentences expired. Fourth, ‘whether by negligence, or (as the repetition would indicate) by design’, paperwork confirming the length of every transportee’s sentence had not been transmitted to New South Wales, and those claiming to be free were forced to continue on the footing of convicts until the relevant papers arrived in the colony; Bentham regarded it perverse that ‘the presumption instead of being “in favorem libertatis”, has been in favorem servitutis’. Fifth, Bentham argued that the governors had exercised ‘an absolute and illegal power of legislation’ countenanced by ‘persons here at home’, and sixth, all colonial office-holders, from the

\(^{50}\) Bentham to Bunbury, 21 August 1802, ibid., 85.
\(^{51}\) 31 Car. II, c. 2, § 12
\(^{52}\) 16 Ric. II, c. 5.
governor downwards, were ‘exposed to ruin’ if transportees brought legal actions pertaining to the other five ‘discoveries’ against them.53

Since these findings were so shocking Bentham wished to proceed carefully, at least to begin with, fearing that as soon as the ‘illegality of the Government of New South Wales were known in New South Wales … all subordination—all government there—would be at an end’. Therefore, Parliament had to legislate to retrospectively legitimize the colony, but only on condition of ending a convict system so ‘replete with misery and wickedness’.

Bentham told Abbot that had he been as ‘insensible to human misery and wickedness as the founders and maintainers of that scene of abominations have shewn themselves … I should publish immediately: and, as the bulk of the inhabitants, indifferent to life and death, are ripe for insurrection at all times’ they would destroy the colony.54 Elsewhere, Bentham stated that he had deliberately chosen to keep his findings from the opposition, fearing that ‘for the sake of making the better attack upon Ministry, they would be glad to see N. S. Wales in a flame: and some hundreds of throats cut on both sides’. In particular, Bentham feared the radical John Horne Tooke would ‘sell his soul to ten thousand devils for the satisfaction of contributing to such a scene as that of a general massacre in N. S. Wales’.55

Bentham’s letter to Abbot marked a crucial moment in the story of the panopticon, demonstrating clearly Bentham’s belief that, in his writings on New South Wales, he had struck upon his best chance of securing for it a positive resolution. To this end, the remainder of his long letter to Abbot – in fact the majority of it – was taken up with a recapitulation of the ‘long-spun and elaborate, yet always transparent treachery’ of the Treasury and the Home Office during the previous decade, the Duke of Portland’s ‘intrigues’, and the Treasury’s conspiracy to ‘ruin’ him, financially and reputationally, by entangling him in litigation with about ‘twenty unoffending families’ with leases on the Millbank estate.56 Bentham thought that Addington, like Pitt, hoped to see him ‘die broken-hearted, like a rat in a hole’, but he refused to give them the satisfaction: as long as ‘perfidy, and treachery, and oppression, and corruption, and arbitrary power, and contempt of Parliament, and the persevering propagation

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53 Bentham to Abbot, 3 September 1802, Correspondence, vii. 103. Bentham also summarised his ‘discoveries’ in a letter to Étienne Dumont dated 29 August 1802, ibid., 94–5.
54 Bentham to Abbot, 3 September 1802, ibid., 104–5.
55 Bentham to Dumont, 29 August 1802, ibid., 99–100.
56 Bentham to Abbot, 3 September 1802, ibid., 105–11.
of immorality and misery are the order of the day with him, so long as I live he will find me living to his annoyance’.  

Spelling out his proposed plan of action, Bentham declared himself ‘no longer hare but hunter’ and ‘the spirit that animates hunters is come upon me’. Bentham would avail himself of Bunbury’s offer to introduce a petition to the Commons, and whether or not his prayer was granted ‘all the perfidies—all the treacheries—all the oppressions—all the corruption’ he had endured would be publicly exposed. Finally, Bentham warned that this would be his ‘last private attempt, to drive into the head of Mr Addington the sense of justice’ regarding the panopticon. If Abbot did not reply within ten days, Bentham would take ‘irrevocable’ steps, or, in other words, publish his findings about New South Wales. This dramatic plan was, however, abandoned within days when on 7 September 1802 Bentham hastily left London for Paris, having ‘had an attack of a complaint that warns me as I tender my health (not to speak of life) to try what [a] change of air will do for me’.  

Bentham returned to London on 3 October 1802 to find two notes from Abbot dated respectively 7 and 17 September 1802. In the first Abbot stated that he thought a great part of Bentham’s earlier letter would have been ‘probable hindrance to your cause’, and therefore during his audience with Addington he had not communicated any of Bentham’s ‘invectives and threats’, only what in ‘my own Judgment I thought desireable’. In the second note Abbot reported that Addington had met Sir Evan Nepean, secretary to the Admiralty, to discuss the panopticon and would do so again shortly.  

Abbot’s warning about intemperate language is notable, particularly given Bentham had been similarly cautioned by William Wilberforce during September 1802 after he had read Bentham’s summary of the first ‘Letter’. While acknowledging Bentham’s ill-treatment, Wilberforce thought the public ‘would not be so forward as you may suppose’ to

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57 Ibid., 114.
58 Ibid., 114.
59 Ibid., 112.
60 Ibid., 115.
61 Bentham to Abbot, 7 September 1802, ibid., 128. Bentham subsequently told Bunbury in early October 1802 (ibid., 140) that he went to Paris ‘by order of one physician (as well as to see another)’, alluding in the latter instance to Dumont, who had recently published *Traités de Législation Civile et Pénale*, 3 vols. (Paris: Bossange, Masson et Besson, 1802), the first of the five major recensions of Bentham’s work he produced between 1802 and 1828. See E. de Champs, *Enlightenment and Utility: Bentham in French, Bentham in France* (Cambridge: CUP, 2015), 155–60.
62 Abbot to Bentham, 7 September 1802 and 17 September 1802, *Correspondence*, vii. 131 and 134.
63 Bentham to Wilberforce, 27 August 1802, ibid., 91.
blame Pitt, who had governed during a period ‘such as never before was witnessed in the History of this Country’. The ‘ludicrous Caricature’ of the Duke of Portland might ‘excite a laugh at his Expence’, but the public would conclude that Bentham was motivated by malice rather than a genuine wish to ‘obtain tardy Justice for yourself, and for the public an Establishment of great Usefulness and even indispensable Necessity’. Wilberforce wondered what Bentham wished to achieve: the first ‘Letter’ might grant to Bentham a reputation as ‘an acute clever biting Satirist’, but a campaign of intimidation could undermine the panopticon’s case. Wilberforce recommended that Bentham continue quietly to gather information about New South Wales and, when Parliament reconvened, Bentham’s friends should hold a ‘Council of War’ to consider how to proceed. If this failed to ‘lay the foundations of the Panoptn’ then Bentham could resume his attack. Bentham believed that Wilberforce’s doctrine of ‘passive obedience and non-resistance’ was borne of a desire not to see his friends in government exposed, and was convinced that applying the ‘principle of terror’ was more effective.

In Bentham’s absence abroad Bunbury had seen Pelham, who promised to send for Bentham once he had met with Lord Eldon, the Lord Chancellor, and the judges, to inform Bentham ‘what steps he intended to take in the Business of the Panopticon’. Fearing Pelham’s prejudicial influence upon Eldon and the judges, Bentham thought it a point of ‘common prudence as well as justice’ to send to them copies of the first ‘Letter’. Yet he was given pause in doing so after, on 1 November 1802, Romilly warned him that another part of ‘A Picture of the Treasury’, namely ‘On the Dispensing Power of the Duke of Portland and His Confederates’, which Bentham had separately prepared and asked Romilly to read, was ‘in point of law, a libel on the duke’. Though he wished to send the first ‘Letter’ to Eldon, the judges, and other ministers without ‘castration or deliberation’, Bentham was concerned that Romilly had found such a closely-connected work to be libellous, and on 2 November 1802 he asked Romilly to look at the now-printed ‘Letter’ in case it contained anything similarly objectionable. If Romilly did read it over then he evidently found nothing to

64 Wilberforce to Bentham, 3–4 September 1802, ibid., 118–9.
65 Ibid., 119–20, 121–2.
66 Bentham to Abbot, 7 September 1802, ibid., 130.
67 Bunbury to Bentham, 30 September 1802, ibid., 137.
68 Bentham to Bunbury, 3–4 October 1802, ibid., 143.
69 Romilly to Bentham, 1 November 1802, ibid., 154–5.
70 Bentham to Romilly, 2 November 1802, ibid., 155–6.
object to, as Bentham sent it unaltered to Eldon and the judges on 6 November 1802.\textsuperscript{71} Despite Bentham’s urgency in circulating it, the first ‘Letter’ had no immediate discernible impact. He occupied himself until mid-December 1802 in finalising the second ‘Letter’,\textsuperscript{72} and in drafting a third, in which he alleged that Portland and Pelham had not only ignored reports of disease, mortality, and sodomy aboard the hulks, but had actively caused the conditions leading to that mortality. Bentham’s third ‘Letter’ demands a fuller, separate discussion, but is evidence that he contemplated widening and deepening his attack on penal policy and the ministers who guided it.\textsuperscript{73}

On 11 December 1802 Bentham’s attention was caught by newspaper accounts of the previous day’s proceedings in the Commons, where Attorney General Spencer Perceval had introduced a bill ‘for the rendering more easy the transportation of Felons’.\textsuperscript{74} Bentham immediately sent him a copy of the first ‘Letter’ which, though grateful for, Perceval thought was irrelevant to his bill, which had ‘no other object but to enable his Majesty … to employ if he should think fit, Ships of his own in their [ie the convicts’] conveyance, instead of being obliged to contract for their transportation in hired Vessels’.\textsuperscript{75} Yet this was precisely why Bentham thought it relevant: in a footnote to the ‘Letter’, Bentham had argued that the transportation of convicts by H.M.S. Glatton—which had sailed from England on 23 September 1802—was illegal, on the grounds that all prior Transportation Acts provided for convicts to be transported only by private contract.\textsuperscript{76} Bentham considered Perceval’s Bill to be ‘an ex post facto law’,\textsuperscript{77} and as he put it

> By what law does the Commander of a King’s ship … take upon himself to transport Convicts? Is he made to sign a contract for the transportation of these his passengers, as an independent Merchant would be for the performance of the same service? If the formality of a contract is employed, where is the legality, if not, where is the honesty, of the practice? Powers obtained for

\textsuperscript{71} Bentham to the Lord Chancellor and the Judges, 6 November 1802, ibid., 156.
\textsuperscript{74} Parliamentary Debates (1802), i. 324
\textsuperscript{75} Bentham to Perceval, 11 December 1802, and Perceval to Bentham, 13 December 1802, \textit{Correspondence}, vii. 160, 161.
\textsuperscript{77} Ibid., p. 52.
one purpose are employed for another, and that an opposite one … Whoever said any thing to Parliament, of this radical change, passed through Parliament [in former Transportation Acts], under cover of the identity of the words?"78

Though Perceval had only received his copy of the first ‘Letter’ in mid-December 1802, a copy had been with Pelham and Eldon, and therefore the ministry, for about a month prior to that. Bentham suspected that his footnote ‘may not improbably have been the occasional cause of this Bill’, drily remarking to Romilly that, the next time he saw Perceval, he should point out to him the ‘coincidence between little men’s notes and great men’s bills’.79

Bentham perhaps had a point. A year earlier, Pelham had sent a ‘Heads of a Plan for removing and employing Convicts both in the Hulks and in Botany Bay’ to Lord Hobart, Secretary of State for War and the Colonies, Earl St. Vincent, the First Lord of the Admiralty, Lord Hawkesbury, Secretary of State for Foreign Affairs, Eldon, and Addington.80 In other words, Pelham submitted his proposal to most of the senior members of the administration. His intention was to institute regular, twice-yearly transportations in ‘Ships belonging to Government and fitted up for that purpose, under the command of King’s Officers’, at around half the cost of contracting privately for the task.81 Pelham gave no indication of a need for a new Transportation Act, discussing only his plan’s potential savings, and potential profit to be secured by importing colonial produce on the vessels’ return journeys. Pelham’s plan had been approved of by George III by early March 1802, when Pelham requested the Lords Commissioners of the Admiralty to prepare and fit out two vessels capable of carrying 350 to 400 convicts, one of which would sail for Sydney every May and the other every September.82 The Glatton had duly sailed in September 1802.

Perceval could therefore contend that the government’s intention to use Navy vessels had long been in contemplation, but it seems rather coincidental that he chose this moment to

78 Ibid., pp. 54–5.
79 Bentham to French Laurence, 18 December 1802, and Bentham to Romilly, 16 December 1802, Correspondence, vii. 165, and 162.
80 ‘Heads of a Plan’, 13 December 1801, Home Office Correspondence, HO 42/62, fos. 595–9, The National Archives (TNA), Kew. A second copy, annotated in an unknown hand, is at ibid., fos. 601–6. The ‘Heads of Plan’ is reproduced in Historical Records of New South Wales, vol. iv. (Sydney: Charles Potter, Government Printer, 1896), pp. 635–8, though this reproduction gives no indication to whom it was shown.
81 Ibid., 595.
82 See Lord Hobart to Governor King, 29 August 1802, Enclosure No. 4, Pelham to Lords Commissioners of the Admiralty (9 March 1802), Historical Records of Australia, vol. iii. (Canberra: Library Committee of the Commonwealth Parliament), p. 570.
introduce a bill, hurriedly passed into law as the Transportation Act of 1802, with the specific purpose of legalising precisely what Bentham had suggested was illegal, namely the use of navy vessels as convict transports. In introducing his bill Perceval may have also had in mind the forthcoming departure of H.M.S. *Calcutta*, which sailed with convicts for Port Phillip on 28 April 1803. If the Act was an admission that it had been illegal, prior to its passage, to transport convicts in Navy vessels (or at the very least there had been a failure in process) it is curious that the Act made no attempt to retrospectively legalise the voyage of the *Glatton*.

Towards the latter part of December, the second ‘Letter’ had been printed and Bentham sent it to Bunbury, Romilly, and Abbot for comment, intending to present it to Pelham on 3 January 1803, presumably to maintain pressure on the administration. This schedule was aborted when Bentham learned that Abbot had lent his copy to Perceval. Bentham professed delight at having another opportunity to address the Attorney General, whom he told on 30 December 1802 that his new Transportation Act was merely putting a patch upon a pimple. You will have a foul ulcer to practise upon, ere long … already you must have descried some symptoms of it. I am truly sorry to be troublesome: better employment, I should have thought, might have been found for both of us. The powers of Mr Percival [sic] surely might find worthier occupation in the removal of oppressions, than in helping to load or fasten the yoke.

Perceval forwarded Bentham’s letter to Abbot, inviting him to ‘commit [it] to the flames’ when he had read it, ‘as I have no further occasion for it’. Abbot and Wilberforce’s prior warnings about Bentham’s mode of expression now seemed prophetic: Perceval conceded that though the panopticon deserved ‘dispassionate and attentive Consideration’ he regretted ‘much in the Style of your Friend’s Composition’, which was not ‘best formed to secure

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83 In introducing his bill Perceval may also have had in mind the forthcoming departure of H.M.S. *Calcutta*, which sailed with convicts for Port Phillip on 28 April 1803. The Transportation Act of 1802 (43 Geo. III, c. 15) received the Royal Assent on 29 December 1802, nineteen days after Perceval first introduced the bill. Pelham’s plan for biannual sailings of King’s vessels as transports was ended when Britain declared war on France in May 1803.

84 Bentham to Abbot, 30 December 1802, and Bentham to Perceval, 30 December 1802, *Correspondence*, vii. 178, and 179.

85 Bentham to Perceval, 30 December 1802, ibid., 180.
dispassionate attention’. Nevertheless, Perceval would be pleased to see the panopticon built should it be ‘deemed practically useful’, but he feared its adoption would check ‘the Spirit of improvement in our Country Gaols’ and cause the abandonment of New South Wales, for which he was sure Bentham would be sorry. While Perceval’s note was hardly encouraging for the panopticon, there is circumstantial evidence that Bentham worried both him and Pelham, as the following will show.

On 31 December 1802 Pelham received a paper on the panopticon and New South Wales – seemingly at Pelham’s request, but the request itself has not been located – from Sir Richard Ford, chief police magistrate at Bow Street. A long-term opponent of the panopticon, Ford thought Bentham’s penitentiary would undoubtedly ‘fall very short of the benevolent expectations of those who patronise it’. Ford believed the ‘new System of Imprisonment’, that is, ‘confinement in solitary cells or compelling prisoners to work’, effected no permanent reformation; when released prisoners returned to ‘their vicious practises just so eagerly as those who have been confined under the common & usual plan’. (Ford had misunderstood the panopticon: though in 1786 Bentham had envisaged a penitentiary with single-occupancy cells, the deleterious effects of solitary confinement had led him in 1791 to abandon the idea in favour of multi-occupancy cells). Finally, Ford concluded that transportation offered more security to the public, and warned against concentrating in a London penitentiary large numbers of ‘Desperate Persons’, for fear they would ‘be released should any tumult be created in the metropolis’.

In Pelham’s papers, following Ford’s letter, is an unattributed and undated – though probably written around the same time – ‘Memorandum relative to the Transportation of Convicts to New South Wales and upon Mr Bentham’s Plan’. Though admitting to having read neither of the ‘Letters to Lord Pelham’, the anonymous author called into question Bentham’s accuracy, while stating that even if Bentham was right then the colony could not be judged by the same standards which would cause the ‘abandonment of almost any [other penal] System’. To abandon New South Wales was not merely to close a failed prison, but

86 Perceval to Abbot, undated letter, Colchester Papers, PRO 30/9/33, TNA. Original emphasis. The letter was evidently written at the end of 1802: it follows, in the archive, Bentham’s letter to Perceval of 30 December 1802, and ends with Perceval’s ‘best Compts. And Wishes of the Season’ to Abbot and his family.
87 Semple, Bentham’s Prison, 126.
88 Ford to Pelham, 31 December 1802, Pelham Papers, Add. MS 33,110, fos. 318–9, BL.
89 Add. MS 33,110, fos. 325–6, BL. Another copy of the ‘Memorandum’ is at HO 42/48, fos. 170–9, TNA.
entailed the loss of a British colony. Contra Bentham, the author painted a positive picture of New South Wales: despite ‘enormous’ initial expenditure, the colony was now self-sufficient in grain, its sheep flocks were expanding and, since expenditure would fall over time ‘the inference will be strongly in favour of the ultimate Success of the Colony’. Meanwhile, should the panopticon be adopted at all, the author proposed that, rather than constructing a single penitentiary in London, smaller ones might be ‘erected in the several Counties for the reception of the transportable Convicts of those Counties’. This was, essentially, the position on the panopticon proposed by the Duke of Portland as Home Secretary in October 1799, which Bentham regarded as Portland’s attempt to set aside, on his own authority, the Penitentiary Acts of 1779 and 1794.

This all boded ill for the panopticon. But what is most notable is that Ford’s opinion was dated and sent to Pelham, the anonymous memorandum and probably Ford’s letter were sent by Pelham to Perceval, and Perceval perused and returned them to Pelham, all on 31 December 1802, the day after Bentham wrote to Perceval. This flurry of activity perhaps belied a fear that Bentham’s lobbying and writings could cause trouble, with Perceval suggesting to Pelham that it was very desirable that the materials which should be known for the purpose of forming a correct opinion [on New South Wales] should be as easily accessible as possible, as I think no one can say that Governt may not be called upon to take some very distinct line upon the subject in Parliament at a very Short notice. If therefore you, who seem to have given it much thought already, would give directions in your Office for collecting together the result of the Accounts from that Settlement, bringing them down to the latest period, I think it might be very useful.

Such concern proved fleeting. The administration was not called upon to make a statement about New South Wales, and on 10 January 1803 Perceval replied to Bentham with a non-committal note inviting no further correspondence: while admitting that the ‘Letters to Lord

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90 Add. MS 33,110, f. 324, BL.
91 Add. MS 33,110, f. 328, BL.
92 Add. MS 33,110, f. 329, BL.
94 Perceval to Pelham, 31 December 1802, HO 42/48, fos. 180–1, TNA.
Pelham’ deserved ‘serious and dispassionate’ consideration, Perceval wished to hear from ‘those who think differently from you upon the subject’ before forming an opinion.  

Bentham turned in frustration to Nicholas Vansittart, senior Secretary to the Treasury, begging that after enduring ‘a nine years’ course of oppression’ a decision on the panopticon might be made. There was no reply, and in a subsequent unsent note to Vansittart Bentham described his waiting, on 25 January 1803, upon him in vain in the hope of ‘exchanging a few words’, but eventually being told that though Vansittart had arrived ‘he was invisible and would be so the whole day’. Bentham tartly noted that ‘The invisibility was perhaps an absolute one but from circumstances I could not help suspecting it to be a relative one’. In short, Bentham was in no better position than when he had sent the outline of the first ‘Letter’ to Pelham in August 1802. His assault on New South Wales, which promised that it might bear fruit only weeks before, was slowly fizzling out—though it was to have a final flourish.

During early 1803, Bentham continued to distribute the two ‘Letters’ to members of Parliament. He also gave copies to Samuel Parr, associate of the leading Whig Charles James Fox MP, who in turn presented the ‘Letters’ to Fox, much to Bentham’s irritation: he considered the ‘Letters’ to be ‘minor concerns’ with which he had ‘purposely avoided’ troubling Fox, having ‘reserved in my own mind his interposition for points of greater moment, such as the wound given to the constitution by the system of illegal legislation, and the violation of the Habeas Corpus Act etc’. This led to the final act of Bentham’s campaign against New South Wales, in which he sought to bring to bear the recently-completed ‘Plea’.

When first setting out his findings on New South Wales, Bentham remarked that, for ‘this old constitution of ours, I can not but confess that I have a whoreson kind of tenderness’, and that he would like to see ‘punished’ those who had violated it when establishing the penal colony. The means to this end was the ‘Plea’, about which he took great care when circulating. Given its dense and potentially dangerous legal argument, Bentham first called

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95 Perceval to Bentham, 10 January 1803, Correspondence, vii. 186.
96 Bentham to Vansittart, 19 January 1803, ibid., 190.
97 Bentham to Vansittart, 25 January 1803, ibid., 192.
99 Parr to Bentham, 8 February 1803, ibid., 197–8.
100 Bentham to Dumont, 9 February 1803, ibid., 199.
101 Bentham to Bunbury, 11 January 1803, and Bentham to Romilly, 7 March 1803, ibid., 187 and 209.
102 Bentham to Dumont, 29 August 1802, ibid., 94.
upon Romilly for advice, who on 15 February 1803 agreed that in founding New South Wales ‘Ministers have done what is illegal’ and that the constitution had been ‘disregarded or violated’.103 A few days later, Messrs Brooke and Clarke, who were to publish the ‘Plea’, decided that,

> On a reperusal of the Title … it occurs to us that the Object of the Work in question is rather of political concern and very proper matter for discussion in Parliament, but does not afford any topics of legal investigation which are the peculiar objects of our business to publish.—We therefore have to request your permission to decline the favour intended to us which will be so much better placed and more acceptable in other hands.104

That Brooke and Clarke referred to Bentham’s argument as ‘proper matter for discussion in Parliament’ perhaps belied their nervousness at being associated with the ‘Plea’, and also a fear of prosecution for publishing what might amount to seditious libel.

In what was perhaps the most obvious example of its potential to cause trouble, in early March 1803 Romilly showed the preface to the ‘Plea’ to Perceval, who was ‘shocked very much at the title’105 and stated

> If I were disposed to interest myself to have the Panopticon established and him [Bentham] placed at the head of it and I should really be glad to do it if I saw a proper Opportunity how could I recommend to a Secretary of State to place in such a Situation a Person who had written such things of him or his predecessors.106

Bentham professed delight: ‘You will smile at my propensity to self delusion, my dear Romilly, but … in the language of the Attorney General symptoms of squeaking are

103 Bentham Romilly, 15 February 1803, ibid., 202.
104 Messrs Brooke and Clarke, 24 February 1803, ibid., 206.
105 Bentham to Romilly, 5 March 1803, ibid., 207. Original emphasis. The ‘Plea’ was then known by its original title of ‘The True Bastile [sic], shewing the outrages offered to Law, Justice and Humanity by Mr Pitt and his Associates in the foundation and management of the penal colony of New South Wales’. See Jeremy Bentham, *Writings on Australia, VI. A Plea for the Constitution*, pre-publication version, The Bentham Project, 2018. Available from: http://discovery.ucl.ac.uk/10055304/.
106 Romilly to Bentham, 5 March 1803, ibid., 207.
discernible’, and thought Perceval ‘threw out those hints about his disposition to recommend etc. in the view of quieting me till he had an opportunity of stating to his principals … the scrapes they had got into’. The ‘Plea’ was, in Bentham’s mind, a potent weapon which might be leveraged to force Perceval into becoming the ‘arbiter’ of his and the panopticon’s fate.

Though Bentham may have considered Perceval’s reaction as a form of progress, on 8 March 1803 Bunbury warned of the ‘bad effect’ were the ‘Plea’ seen by those ‘inclined to be hostile’ to the panopticon, and counselled that it was prudent to ‘let it lye dormant, and not be seen at all, whilst your Friends are trying to assist you, and have any Hopes of success’. Perhaps acknowledging the truth of Bunbury’s caution Bentham hurriedly wrote again to Romilly to tell him that, regarding the ‘Plea’, he should ignore the wilder claims of his previous letter and instead be guided by ‘yr own judgm’ in impressing upon Perceval ‘that there must be a quid pro quo—and that the pamphlets … are not to be suppressed for any body’s beautiful eyes’. Though he might recoup the £70 he had spent on the ‘Letters’ and ‘Plea’ by selling copies, Bentham did not wish Perceval to think that he was asking to be paid for his silence, rather that the administration ‘should understand … that they are not to expect gratuitous submission on one part, while there is nothing but perfidy and oppression on the other’.

Nothing transpired during the next couple of months regarding the ‘Plea’, nor with the ‘posse’ of supporters of the panopticon whom Bunbury was to assemble to lobby Pelham. On 2 May 1803 Bentham enquired of Bunbury if there were news of his ‘storming party’ and, given the lack of progress, wondered whether it was ‘high time’ that the ‘Letters’ and the ‘Plea’ were published, provided ‘no good is to be got by forbearance’. On 8 May 1803 Bunbury reported that he had seen Pelham, but ministers were ‘waiting in daily Expectation of hearing whether we were to be at Peace or War’ with France and would ‘not talk on any other subject’. Bunbury would seek out Pelham again as soon as possible, and, if ‘his

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107 Bentham to Romilly, 7 March 1803, ibid., 208.  
108 Bentham to Romilly, 7 March 1803, ibid., 211.  
109 Bunbury to Bentham, 8 March 1803, ibid., 214.  
110 Bentham to Romilly, 8 March 1803, ibid., 215–6.  
111 Bentham to Wilberforce, 6–7 March 1803, ibid., 214.  
112 Bentham to Bunbury, 2 May 1803, ibid., 225.  
113 Britain declared war on France on 18 May 1803.
Determination is unfavourable you may publish your Letters when you please, but I hope you will not before I make one more Trial’.114

When Bunbury himself saw the ‘Plea’ for the first time in early June 1803 he expressed alarm:

The more I read of ‘The Plea for the Constitution’ the more desirous am I that it should not be published: It will bring upon you Enemies irreconcilable, and procure you Friends only amongst the Malefactors of New South Wales. It’s [sic] Ingenuity, and Acuteness render it more objectionable, for the sharper the Knife, the Deeper the Wound.

If you can’t write down the Colony of Thieves at Port Jackson, and annihilate it by Argument, don’t crush it by Rebellion—do not, in Anger, say—Flectere si nequeo Superos, Acheronta movebo.115

Bentham took this to mean that he should withhold the ‘Plea’ but was free to publish the ‘Letters’, but on 10 June 1803 Bunbury clarified that they should also be deferred ‘till I have had another conversation with [Pelham]’.116 That conversation took place on 13 June 1803, where Pelham heard Bunbury’s arguments in favour of the panopticon ‘very patiently, and seemed to assent to several of them, but at last he said, that the Judges did not appear to wish it to be carried into Effect, and he did not suppose Mr Addington would furnish the money necessary to proceed’.117 The panopticon was effectively dead, and Bentham was never again to show any interest in transportation or New South Wales. The ‘Letters’ or the ‘Plea’ were barely again mentioned in his works or correspondence, apart from during mid-1808 when, after being given copies by Romilly, James Abercromby MP proposed moving in the Commons for a committee of inquiry into New South Wales, though this plan did not materialise.118 The ‘Letters’ and the ‘Plea’ had failed to save the panopticon, and Bentham

114 Bunbury to Bentham, 8 May 1803, Correspondence, vii. 225–6.
115 Bunbury to Bentham, 6 June 1803, ibid., 236. (ie ‘If I am unable to bend the upper world, I will move the lower’, a quotation from Virgil, Aeneid, vii. 312.)
116 Bentham to Bunbury, 6 June 1803, and Bunbury to Bentham, 10 June 1803, Correspondence, vii. 236 and 237.
117 Bunbury to Bentham, 15 June 1803, ibid., 240.
118 See Bentham to Samuel Bentham, 19 June 1808, and Bentham to Dumont, 7 August 1808, ibid., 506–9, 517–20.
had no further use of them, beyond publishing them in 1812 more or less unchanged as *Panopticon versus New South Wales*, along with the rest of his panopticon-related writings, when the government briefly again showed interest in his scheme.

As a curious coda, in March 1830 the elderly Bentham appeared to have either forgotten about the ‘Letters’ and the ‘Plea’ or refused to acknowledge their existence, when he received an enquiry from the bookseller Thomas Egerton as to ‘whether he has published any work on Transportation and where it may be procured … he has been unable to hear of any such work among the booksellers and a copy is wanted for the Secretary of State’ [i.e. Home Secretary Robert Peel].\(^{119}\) Bentham subsequently wrote directly to Peel to tell him that ‘no work written directly and by its title on the subject of that mode of punishment was ever published or written by me’, instead acknowledging only that he had authored ‘Panopticon; or, the Inspection House’ and taking the opportunity to regale Peel with a summary of the whole panopticon affair.\(^{120}\)

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\(^{119}\) Egerton to Bentham, 27 March 1830, UC xi. 356.

\(^{120}\) Bentham to Peel, 28 March 1830, Peel Papers, Add. MS 40,400. fos. 134–7, at fo. 134.
3. Conclusion

During 1802 and 1803 Bentham’s dilemma was how to proceed regarding the panopticon. He could, as in the past, continue to play the humble supplicant to ministers and hope for a positive resolution. Alternatively, he could, armed with the ‘Letters’ and ‘Plea’, take measures which might upset the ministers in whose hands his fate rested. Whichever approach Bentham took appeared as though it would lead to the same ending, namely giving ministers the excuse to get what they wanted—the relinquishment of the panopticon, the retention of New South Wales, and ridding themselves of the troublesome Bentham. The only difference was how quickly the end would come: compliance risked dragging out matters for some time, whereas confrontation could have brought things to a very quick close.

The ‘Letters’ and ‘Plea’ were Bentham’s attempt to extricate himself from his dilemma, carrying the veiled threat that ministers should, finally, authorise the panopticon, or he would publicly expose the illegalities and injustices of New South Wales. Yet Bentham was, both publicly and privately, repeatedly indecisive over his course of action. During 1802 and 1803 he made several hollow ultimatums: the implied threat to publish made to Pelham in August 1802; the plan of action described to Abbot in September 1802; the menacing of Perceval with the ‘Plea’ in March 1803; and his wish, in May 1803, to publish everything and be damned. Each threat was initially made enthusiastically, but the enthusiasm quickly faded when friends and associates suggested a more cautious approach. Their counselling preyed on Bentham’s own concerns about the publication of such texts amidst a febrile and potentially dangerous political climate. This was the period of, for instance, the Habeas Corpus Suspension Acts of the 1790s, the persecution of members of the London Corresponding Society, the failed Despard Plot of 1802, and looming war with France, and all of this must have caused him to think twice. Publication of radical and potentially subversive material could have been calamitous for Bentham’s reputation, perhaps even for his liberty, and would likely have ensured that he would never again gain be entertained by anyone in power. If Bentham could not solve his dilemma to his own satisfaction, what hope did he have of influencing ministers and navigating the machinery of government? With the benefit of hindsight it appears that during 1802 and 1803, whatever Bentham tried with his writings on New South Wales, the panopticon’s cause was hopeless.