THE COLLECTED WORKS OF JEREMY BENTHAM

PANOPTICON VERSUS NEW SOUTH WALES *and* OTHER WRITINGS ON AUSTRALIA

EDITED BY TIM CAUSER AND PHILIP SCHOFIELD

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THE COLLECTED
WORKS OF
JEREMY BENTHAM

General Editor
Philip Schofield

PENOLOGY AND CRIMINAL LAW

The present edition of *Panopticon versus New South Wales and other writings on Australia* consists of fragmentary comments headed 'New Wales', dating from 1791; a compilation of material sent to William Wilberforce in August 1802; three 'Letters to Lord Pelham' and 'A Plea for the Constitution', written in 1802–3; and 'Colonization Company Proposal', written in August 1831. Of this material, Bentham printed and published the first two 'Letters to Lord Pelham' and 'A Plea for the Constitution', but the remainder is published here for the first time.

These writings, with the exception of 'Colonization Company Proposal', are intimately linked with Bentham's panopticon penitentiary scheme, which he regarded as an immeasurably superior alternative to criminal transportation, the prison hulks, and English gaols in terms of its effectiveness in achieving the ends of punishment. He argued, moreover, that there was no adequate legal basis for the authority exercised by the Governor of New South Wales. In contrast to his opposition to New South Wales, Bentham later composed 'Colonization Company Proposal' in support of a scheme proposed by the National Colonization Society to establish a colony of free settlers in southern Australia. He advocated the 'vicinity-maximizing principle', whereby plots of land would be sold in an orderly fashion radiating from the main settlement, and suggested that, within a few years, the government of the colony should be transformed into a representative democracy.

The Collected Works of Jeremy Bentham

The new critical edition of the works and correspondence of Jeremy Bentham (1748–1832) is being prepared and published under the supervision of the Bentham Committee of University College London. In spite of his importance as jurist, philosopher, and social scientist, and leader of the utilitarian reformers, the only previous edition of his works was a poorly edited and incomplete one brought out within a decade or so of his death. The overall plan and principles of the present edition are set out in the General Preface to *The Correspondence of Jeremy Bentham*, vol. 1 (Athlone Press, 1968; reissued by UCL Press, 2017), which was the first volume of the *Collected Works* to be published.

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AND
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ON
AUSTRALIA

edited by
TIM CAUSER AND PHILIP SCHOFIELD

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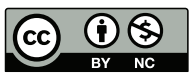

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PREFACE

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No volume of *The Collected Works of Jeremy Bentham* is produced in isolation. We would like to thank, in particular, the co-investigator on the AHRC grant, Professor Margot Finn, for her support and advice. Our Bentham Project colleagues Dr Oliver Harris, Dr Michael Quinn, Dr Chris Riley, Dr Katy Roscoe, and Dr Louise Seaward were a never-failing source of expertise and encouragement, while Mr Philip Baker provided valuable administrative assistance. Dr Riley and Dr Roscoe assiduously checked the text and editorial annotation for accuracy, checked transcripts, and provided valuable supplementary material for the annotation. Several scholars have provided advice in the elucidation of certain references in the text, and we would like to place on record our thanks to Professor Hilary Carey, Professor Margot Finn, Associate Professor Kristyn Harman, Dr Margaret Makepeace, Professor Harriet Ritvo, and Professor Richard Whatmore. Ms Sarah Arkle, Technical Services Librarian at Queen's College Library, Oxford, kindly provided images of original Bentham works in the Library's collections.

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Archives of the United Kingdom, Kew. In addition, Dr Causer would like to thank the following friends and colleagues who provided advice and accommodation during a research trip to Australia and New Zealand: Professor Hamish Maxwell-Stewart and Dr Clare Smith; Babette Smith; and Dr Valerie Wallace and Jamie Eng.

Thanks are due to University College London Library's Special Collections for permission to publish material from its Bentham Papers, and to its staff, in particular Gill Furlong, Dan Mitchell, Mandy Wise, and Steve Wright, for their help. The task of working on Bentham's manuscripts has been greatly facilitated by the digitization of the Bentham Papers, carried out by Alejandro Salinas Lopez, Miguel Faleiro Rodrigues, and especially Raheel Nabi of UCL Digital Media Services, overseen by Tony Slade. Grateful acknowledgment is also made to the authors, editors, and translators of standard reference works such as the *Oxford Dictionary of National Biography*, the *History of Parliament*, the *Australian Dictionary of Biography*, and the *Loeb Classical Library*, and of digital resources such as the *Old Bailey Papers Online*, the *Digital Panopticon*, the *Dictionary of Sydney*, and the *Decisions of the Superior Courts of New South Wales*, without whose scholarship the annotation of a volume such as this would hardly be feasible. We utilized the *Transkribus* platform to produce initial OCR versions of the printed texts included in this volume, and we would like to thank our colleagues on the European Commission-funded *tranScriptorium* and *Recognition and Enrichment of Archival Documents* (*READ*) projects who created *Transkribus*.

Finally, we would like warmly to acknowledge the contributions of the volunteers of *Transcribe Bentham*, the award-winning crowdsourced transcription initiative launched in 2010 by the Bentham Project, in collaboration with UCL Library Services, UCL Centre for Digital Humanities, UCL Digital Media Services, the University of London Computer Centre (now CoSector), and the British Library. *Transcribe Bentham* has been generously funded by the AHRC, the Andrew W. Mellon Foundation, the European Commission's Seventh Framework and Horizon 2020 programmes, and by UCL. Though most of the texts in the volume are based on work prepared and printed by Bentham himself, a survey of the relevant manuscripts related to those texts was required. We would like to record our sincere thanks to the following *Transcribe Bentham* volunteers for helping to produce draft transcripts of this material: Ali_how; Kadie Clancy; Jan Copes; Simon Croft; Paul Dargue; Egralton; Katiefitzp; Naomi Fogerty; Diane Folan; Mary Foutz; Damian T. Gordon; Gill Hague; Peter Hollis; Joanna Iranowska; Paul Israel; JennyJen; Diane Jonker; Daniel Kason; Joy Lloyd; Rob Magin; Alyssa Metzger; Olga

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T.C., P.S.

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SYMBOLS AND ABBREVIATIONS

Symbols

| |	Space left in manuscript.
[to]	Word(s) editorially supplied.
[?]	Reading doubtful.
[. . .?]	Word(s) proved illegible.
⟨. . .⟩	Torn manuscript.

Abbreviations

BL Add. MS	British Library, Additional Manuscripts.
Bowring	*The Works of Jeremy Bentham*, published under the superintendence of . . . John Bowring, 11 vols., Edinburgh, 1843 (initially issued in 22 parts 1838–43).
Collins, i.	David Collins, *An Account of the English Colony in New South Wales: with Remarks on the Dispositions, Manners, &c. of the Native Inhabitants of the Country. To which are added, Some Particulars of New Zealand; compiled, by permission, from the MSS. of Lieutenant-Governor King*, London, 1798.
Collins, ii.	David Collins, *An Account of the English Colony in New South Wales, from its First Settlement, in January 1788, to August 1801: with Remarks on the Dispositions, Customs, Manners, &c. of the Native Inhabitants of that Country. To which are added, Some Particulars of New Zealand; compiled, by permission, from the MSS. of Lieutenant-Governor King; and An Account of a Voyage performed by Captain Flinders and Mr. Bass; by which the Existence of a Strait separating Van Dieman's Land from the Continent of New Holland was ascertained. Abstracted from the journal of Mr. Bass. Vol. II*, London, 1802.
CW	This edition of *The Collected Works of Jeremy Bentham*.

HRA	*Historical Records of Australia*, Series I.
HRNSW	*Historical Records of New South Wales*.
MS alt.	Alternative manuscript reading, usually interlinear or marginal.
MS del.	Word(s) deleted in manuscript.
MS orig.	Original manuscript reading.
NSWSupC	*Decisions of the Superior Courts of New South Wales, 1788–1899*.
SRNSW	State Archives and Records Authority of New South Wales.
TNA	The National Archives of the United Kingdom.
UC	Bentham Papers in the Library of University College London. Roman numerals refer to boxes in which the papers are placed, Arabic to the leaves within each box.

EDITORIAL INTRODUCTION

The present edition of Bentham's writings on Australia consists of fragmentary comments headed 'New Wales', dating almost certainly from the spring of 1791; a compilation of correspondence and marginal contents[1] sent to William Wilberforce[2] in August 1802; three 'Letters to Lord Pelham' and 'A Plea for the Constitution', written in 1802–3; and 'Colonization Company Proposal', written in August 1831. Of this material, Bentham printed the first two 'Letters to Lord Pelham' and 'A Plea for the Constitution' in 1802–3, and eventually published them together under the title of *Panopticon versus New South Wales* in 1812. Since this material forms the core of the present edition, this collective title has been chosen to represent its contents. The remaining material, namely the 'New Wales' fragments, the compilation sent to Wilberforce, 'Third Letter to Lord Pelham', and 'Colonization Company Proposal', is published here for the first time. All the writings in the present edition, with the exception of 'Colonization Company Proposal', are intimately linked with Bentham's panopticon penitentiary scheme, which he regarded as an immeasurably superior alternative to criminal transportation, both in terms of its effectiveness in achieving the ends of punishment and in terms of its expense.

Bentham appears to have drafted the 'New Wales' fragments around the same time that he was composing the 'Postscripts' that appeared in 'Panopticon; or, The Inspection-House', which was printed in 1791.[3] In the 'New Wales' fragments, Bentham reacted to concerns raised in Parliament in early 1791 about the state of the recently established penal colony in New South Wales. He returned to the topic of transportation to New South Wales in 1802–3 when he was trying to persuade the government to continue with the panopticon scheme. In the course of composing 'A Picture of the Treasury' in 1801–2, in which he gave an account of his recent dealings with the administration in relation to the panopticon,[4] he had discussed the four

[1] For Bentham's normal working practice, and a description of the various categories of manuscript found in the Bentham Papers, including text sheets, marginal contents sheets, and rudiment sheets, see pp. civ–cv below.

[2] William Wilberforce (1759–1833), philanthropist and slavery abolitionist, was MP for Kingston-upon-Hull 1780–4, Yorkshire 1784–1812, and Bramber 1812–25.

[3] 'Panopticon; or, The Inspection-House: Containing the Idea of a New Principle of Construction Applicable to Any Sort of Establishment, in Which Persons of Any Description Are to be Kept Under Inspection; and in Particular to Penitentiary-Houses', 3 vols., London, 1791 (Bowring, iv. 37–172).

[4] For the relevant manuscripts see UC cxx. 20–469, cxxi. 1–331.

'grounds of relinquishment' for the scheme that had been put forward in a Treasury Minute of 13 August 1800.[1] One of these grounds was 'the improved State of the Colony of New South Wales', a question which he had intended to discuss, along with the three other 'grounds of relinquishment', in just one of the seventeen or eighteen sections of which 'A Picture of the Treasury' would be composed. The topic of transportation to New South Wales burgeoned, however, into the three 'Letters to Lord Pelham' and 'A Plea for the Constitution', which occupied Bentham for much of his time between March 1802 and February 1803. In the meantime, Bentham was relying on Sir Charles Bunbury[2] to act as intermediary with the Home Secretary Lord Pelham,[3] in the hope that the new Addington administration would be more sympathetic to the panopticon than Pitt's administration had latterly become.[4] In order to explain the latest developments in the negotiations to William Wilberforce, a supporter of the panopticon, at the end of August 1802 Bentham prepared a series of documents consisting of letters exchanged with Bunbury, a letter from Pelham to Bunbury, a note from Bentham to Pelham, and the marginal contents for an early version of the first 'Letter to Lord Pelham', together with several explanatory notes. This material is reproduced, under the title 'Correspondence, sent to William Wilberforce, of Jeremy Bentham to Sir Charles Bunbury', for the first time in the present edition in the format in which Bentham compiled it.

Bentham arranged the first 'Letter to Lord Pelham', which appeared in print in November 1802, around 'five ends of penal justice', namely example, reformation, incapacitation, compensation, and economy. Drawing extensively upon the first volume of David Collins's *Account of the English Colony in New South Wales*,[5] Bentham sought to demonstrate

[1] For further details see pp. xxvi–xxx below.

[2] Sir Thomas Charles Bunbury (1740–1821), MP for Suffolk 1761–84, 1790–1812, was a penal reformer who had sat on the committee that had framed the Penitentiary Act of 1779 (19 Geo. III, c. 74).

[3] Thomas Pelham (1756–1826), Baron Pelham, second Earl of Chichester, Chief Secretary for Ireland 1783–4, 1795–8, Secretary of State for Ireland 1796–7, Home Secretary 1801–3, Postmaster General 1807–26.

[4] Henry Addington (1757–1844), later first Viscount Sidmouth, Speaker of the House of Commons 1789–1801, leader of the administration as First Lord of the Treasury and Chancellor of the Exchequer 1801–4, and afterwards Lord President of the Council 1805, 1806–7, 1812, Lord Privy Seal 1806, and Home Secretary 1812–22, and William Pitt the Younger (1759–1806), leader of the administration as First Lord of the Treasury and Chancellor of the Exchequer 1783–1801, 1804–6. Pitt had resigned as leader of the administration on 3 February 1801 and Addington had succeeded him on 14 March 1801.

[5] David Collins, *An Account of the English Colony in New South Wales: with Remarks on the Dispositions, Customs, Manners, &c. of the Native Inhabitants of that Country. To which are added, Some Particulars of New Zealand; compiled, by permission, from the MSS. of Lieutenant-Governor King*, London, 1798. Collins (1756–1810), Deputy Judge Advocate of New South Wales 1787–96, published the work, which detailed the history of the colony

that New South Wales fell short against each of these ends, whereas the panopticon penitentiary would achieve them. In 'Second Letter to Lord Pelham', which appeared in print in December 1802, Bentham presented further evidence, derived in the main from the second volume of Collins's *Account of the English Colony in New South Wales*, of the continuing failure of New South Wales as an instrument of penal policy, and contrasted it with positive accounts of the penitentiaries of Philadelphia and New York—institutions characterized by inspection and hard labour, and in these respects resembling what might be expected from the panopticon penitentiary. In 'Third Letter to Lord Pelham', which was written in late 1802 and early 1803 but only partially printed, Bentham criticized the condition of the hulks, and in particular the rate of mortality amongst prisoners there, and laid the blame on the government. He claimed that the appointment of an Inspector of the Hulks was an attempt to cover up the abuses rather than to expose and reform them. According to Bentham, the first 'Letter to Lord Pelham' and 'Second Letter to Lord Pelham' dealt with transportation to New South Wales on the grounds of '*policy*', whereas 'A Plea for the Constitution' dealt with it on the grounds of '*legality*'.[1] In this latter work, which Bentham had originally written in continuation of the first 'Letter to Lord Pelham' and which was printed early in 1803, he claimed that there was no legal basis for the foundation of the penal colony in New South Wales and that ministers had known this but had not dared to go to Parliament to obtain the necessary powers since that would have led to questions as to why the Penitentiary Acts of 1779 (19 Geo. III, c. 74) and 1794 (34 Geo. III, c. 84), which had authorized the building of the panopticon, had not been implemented. Ministers had, according to Bentham, established a despotism in New South Wales and thereby overthrown the British Constitution.

With the three 'Letters to Lord Pelham' and 'A Plea for the Constitution', Bentham hoped to put pressure on the government to proceed with the panopticon scheme, but in June 1803 he was informed that the government had in effect decided that the panopticon would not be built. This was not, however, the end of the project, since a revival of interest in the construction of a national

from its establishment in 1788 to his departure in 1796, following his return to England. In 1802 he published a second volume, containing a continuation of the history of the colony to 1801, based in large part on official dispatches by John Hunter (1737–1821), naval officer, Governor of New South Wales 1795–1800. In January 1803 Collins received a commission to form a new penal colony at Port Phillip, though soon after arriving there in October 1803 he relocated the settlement to Sullivans Cove, Van Diemen's Land, where he remained Lieutenant Governor until his death in 1810. An abridged, single-volume edition of *Account of the English Colony in New South Wales*, overseen by Collins's wife Maria, née Proctor (*c*. 1760–*c*. 1830), novelist and editor, was published at London in 1804.

[1] See 'A Plea for the Constitution', p. 317 below.

penitentiary led to the appointment of a Select Committee of the House of Commons in 1811, prompting Bentham to publish the first 'Letter to Lord Pelham', 'Second Letter to Lord Pelham', and 'A Plea for the Constitution' under the title of *Panopticon versus New South Wales*. Despite Bentham's renewed efforts, the panopticon scheme was again rejected, and a penitentiary based on entirely different principles of design and management from those he advocated was eventually opened in 1817 at Millbank, on land that Bentham had originally purchased for the panopticon.

Though he had opposed colony-holding throughout much of his career, in 1831 Bentham composed 'Colonization Company Proposal' in support of a scheme proposed by the National Colonization Society to establish a colony of free settlers in southern Australia. He advocated the 'vicinity-maximizing principle', whereby plots of land would be sold in an orderly fashion radiating from the main settlement, and suggested that, within a few years, the government of the colony should be transformed into a representative democracy. It is followed by a short account, written by Edward Gibbon Wakefield,[1] who appears to have been responsible for prompting Bentham's interest in the scheme, of the factors that would determine the price of land in the proposed colony.

HISTORY OF THE WORKS

New Wales

The American War of Independence had ended criminal transportation to North America in 1776. The British government looked for alternative destinations and on 31 August 1786 the Home Secretary Sydney announced that a new penal colony would be established at Botany Bay.[2] On the same day Richard Clark[3] wrote to Bentham, who was in Russia visiting his younger brother Samuel,[4] informing him of the decision 'to send off seven hundred convicts to New Wales, under convoy of a man-of-war, where a fort is to be built, and a colony established, and that a man has been found who will take upon him

[1] Edward Gibbon Wakefield (1796–1862), promoter of colonization.

[2] Lord Sydney to the Lords of the Admiralty, 31 August 1786, *HRNSW*, i. Pt. II, 20–2. Thomas Townshend (1733–1800), first Baron and first Viscount Sydney, Paymaster General 1767–8, Secretary-at-War 1782, Home Secretary 1782–3, 1783–9.

[3] Richard Clark (1739–1831), attorney, Sheriff of London 1777, Lord Mayor of London 1784, City Chamberlain 1798–1831, had known Bentham since 1765.

[4] Samuel Bentham (1757–1831), naval architect and inventor, had arrived in Russia in 1780 and remained there until January 1791. Bentham had set out for Russia in August 1785, reached his brother at Krichëv in January 1786, and stayed there until November 1787. He arrived back in England in February 1788.

the command of this rabble'.[1] Bentham was soon afterwards sent further news by George Wilson: 'Government are going at last to send the convicts to Botany Bay in New Holland; the Hulks being found, by sad experience, to be academies for housebreaking, and solitary confinement to any extent, impracticable from the expense of building.'[2] Both Clark and Wilson no doubt had in mind Bentham's criticism of transportation in 'A View of the Hard-Labour Bill', printed in 1778. He had argued that transportation, which consisted of both banishment and servitude, had five major failings as a punishment. First, the punishment was '*unequal*', in that a man might have the resources to buy off the servitude, and while some persons 'would have been glad to go [to America] by choice; others would sooner die'. Second, it was '*unexemplary*' in that its effects were unknown to those whose actions the punishment was designed to deter. Third, it was '*unfrugal*' in that it led to the waste of lives and money. Fourth, while it might result in '*disabling* the offender from doing further mischief to the community', it did not do so 'in so great a degree as the confinement incident to servitude'. Moreover, it was 'easier for a man to return from transportation, than to escape from prison'. Fifth, if it did serve 'the purpose of *reformation*', it was only by chance, given that the convict was placed 'under the uncertain and variable direction of a private master, whose object was his own profit'.[3] Bentham had been prompted to write 'A View of the Hard-Labour Bill' in response to a Bill introduced into the House of Commons on 11 May 1778 that eventually led to the substantially amended Penitentiary Act of 1779 authorizing the construction of two penitentiaries, one for males and the other for females.

The news of the proposed establishment of the Botany Bay penal colony appears to have stimulated Bentham into preparing his own scheme for a panopticon penitentiary, characterized by a round or polygonal building which would facilitate the key principle of central inspection. At the end of 1786 Bentham sent a copy of his panopticon 'Letters' to Wilson, which he asked him to prepare for printing,[4] as well as to gather as much information as he could regarding the 'Expense per man of the New Zealand [i.e. Botany Bay] expedition', the 'Expense

[1] Richard Clark to Bentham, 31 August 1786, *The Correspondence of Jeremy Bentham*, vol. iii, ed. I.R. Christie, London, 1971 (*CW*), p. 488. Arthur Phillip (1738–1814), naval officer, would be Governor of New South Wales from 1788 to 1793. He received an initial commission to found a penal colony in New South Wales on 12 October 1786 and a second more detailed commission on 2 April 1787: see *HRA*, i. 1–2 and 2–8 respectively.

[2] George Wilson to Bentham, 24 September 1786, *Correspondence* (*CW*), iii. 491.

[3] 'A View of the Hard-Labour Bill', London, 1778, pp. 2–4, 108–9 (Bowring, iv. 1–35 at 6–7, 31–2).

[4] The 'Letters' formed the first volume of 'Panopticon; or, The Inspection-House' (Bowring, iv. 40–66) when it was eventually printed in 1791.

per man per month in prison before sent there', and the annual expense per man of the hulks.[1] In the panopticon 'Letters', Bentham noted that he had heard no objections to the arguments against transportation that he had advanced in 'A View of the Hard-Labour Bill' and that the government had been motivated to resume the practice not because it was convinced of its effectiveness as a punishment, but because it was concerned by the expense of building a penitentiary. However, if it transpired that the panopticon would accommodate prisoners 'at no *greater* expense' than to transport them, then given the failings of transportation as a form of punishment, 'even this moderate success would be sufficient to put an end to so undesirable a branch of navigation'. Moreover, even if transportation continued, a penitentiary would be needed for those convicted of crimes that did not warrant so severe a punishment and for those sentenced to transportation while they awaited a ship, and it was better that they were working in the panopticon rather than 'lounging in an ordinary jail, or rotting on board a ballast hulk'.[2]

Having returned to England in February 1788, only a matter of days after the First Fleet had reached Botany Bay,[3] Bentham turned his attention to the publication of *An Introduction to the Principles of Morals and Legislation*[4] and to commenting on political events in France.[5] He did not resume work on the panopticon proposal until around August 1790 when he entered into ultimately unsuccessful discussions with Sir John Parnell[6] about building a penitentiary in Ireland. He also approached the government at home. On 23 January 1791 Bentham wrote to William Pitt to offer 'in general terms a proposal for carrying into execution the Penitentiary system, somewhat I hope improved, at about half the annual expence of that pursued on board the Hulks', and at around half the capital cost of constructing a penitentiary 'upon the late Mr. Blackburn's plan'.[7] Bentham pointed out that time

[1] Bentham to Wilson, 19/30 December 1786, *Correspondence* (*CW*), iii. 514–15, 518.

[2] 'Panopticon; or, The Inspection-House', i. 96–7 (Bowring, iv. 58).

[3] The first ships of the First Fleet reached Botany Bay on 18 January 1788, whereupon the settlers were relocated to Sydney Cove in Port Jackson.

[4] *An Introduction to the Principles of Morals and Legislation*, ed. J.H. Burns and H.L.A. Hart, London, 1970 (*CW*). The bulk of the work had been written and printed in 1780, but was not published until 1789.

[5] See *Political Tactics*, ed. M. James, C. Blamires, and C. Pease-Watkin, Oxford, 1999 (*CW*), and *Rights, Representation, and Reform: Nonsense Upon Stilts and other writings on the French Revolution*, ed. P. Schofield, C. Pease-Watkin, and C. Blamires, Oxford, 2002 (*CW*).

[6] Sir John Parnell (1744–1801), Irish Chancellor of the Exchequer 1785–99, Irish Commissioner of the Treasury 1793–9.

[7] William Blackburn (1750–90), surveyor and architect, had won a competition with a design, now lost, for the national penitentiary for male prisoners authorized by the

should not be lost since convicts aboard the hulks[1] had died at the 'habitual rate' of between a fifth and a sixth of their number each year. Bentham was concerned, moreover, that the recent 'bad tidings of the New-Wales establishment' might have already prompted Pitt to search for an alternative and feared that the panopticon plan 'might have found the door shut against it by pre-engagement'.[2] The 'bad tidings' were a series of reports in the London press during December 1790 and January 1791 describing the wrecking of HMS *Sirius*, the flagship of the First Fleet, at Norfolk Island on 19 March 1790, which left the colony with only a single substantial vessel at its disposal, and near-starvation conditions which, it was argued, could only be alleviated by the arrival of provisions from England.[3]

Such reports, together with an apparent increase in crime at home and the poor state of the local prisons, had on 9 February 1791 prompted Sir Charles Bunbury and his allies in the House of Commons to call for an inquiry into the state of the colony of New South Wales and for an account of the number of convicts already sent and of those awaiting transportation. In seconding the motion, Joseph Jekyll[4] pointed out that, since around 1,800 convicts were soon to be transported to New South Wales,[5] an immediate investigation was needed to assess whether or not the colony 'could bear such an addition, which in the point of view presented by general rumour, would be a measure equally repugnant to policy and humanity'. Pitt claimed that the rumours were unfounded, and that when the relevant information was presented to the Commons, it would 'afford a very different representation of things'. Bunbury thereupon moved three further motions for information concerning the expense of transportation, the quantity and expense of the provisions sent to New South Wales, and the expense of maintaining the civil and military establishments there.[6] Bunbury's requests had not been complied with by 21 February 1791,

Penitentiary Act of 1779. Though his building was never realized, Blackburn was generally recognized as the leading contemporary authority on prison architecture.

[1] The hulks, officially established in 1776 first on the Thames and later at Plymouth and Portsmouth, had been sanctioned by the Criminal Law Act, or Hulks Act, of 1776 (16 Geo. III, c. 43), which suspended the Transportation Act of 1718 (4 Geo. I, c. 11) for two years. Though intended as a temporary expedient to hold convicts sentenced to transportation, the hulks remained in use in Britain until 1857.

[2] Bentham to Pitt, 23 January 1791, *The Correspondence of Jeremy Bentham*, vol. iv, ed. A.T. Milne, London, 1981 (*CW*), pp. 223–4.

[3] See, for instance, the *London Chronicle*, 23 December 1790, p. 611; the *Gazetteer and New Daily Advertiser*, 27 December 1790, p. 2, and 10 January 1791, p. 2; and the *Public Advertiser*, 28 December 1790, p. 3.

[4] Joseph Jekyll (1754–1837), lawyer and politician, MP for Calne 1787–1816.

[5] Of the ten vessels constituting the Third Fleet, nine set sail from Plymouth or Portsmouth in March 1791 and one from Cork in April 1791.

[6] *Parliamentary Register* (1790–1), xxviii. 344–6.

when he moved an additional motion that copies should be printed of all letters and papers received from Governor Arthur Phillip which gave 'an account of the nature and fertility of the land in and adjoining to any settlement in New South Wales, and in Norfolk Island; and of the probability there is of raising any, and what provisions thereon; and of the employment of the convicts which have been sent there'.[1] The government accounts, containing most of the information requested by Bunbury, were presented to the House of Commons on 18 March 1791 and ordered to be printed on 8 April 1791.[2]

Bunbury supplied Bentham with a copy of the accounts of New South Wales, which he left at the Bedford Row home of William Browne, Bentham's solicitor friend with whom he was residing on his visits to London.[3] Bentham collected the document on 29 April 1791 and found, as he told Bunbury, that it confirmed his impression that New South Wales was a 'truly curious scene of imbecility, improvidence, and extravagance', adding that he meant 'on the part of those who planned, not on the part of those who have conducted it'. The scheme was expensive, morally bad, and, with a view to establishing a colony and thereby increasing national wealth by trade, 'the most hopeless' that could be devised. He was 'strongly tempted to attempt before the public a slight picture of it as soon as I have a little leisure'.[4] The 'New Wales' fragments, which draw directly upon the government accounts, appear to constitute Bentham's putative attempt to provide such a sketch, though he appears to have quickly abandoned it. None of the surviving sheets are dated, though they were almost certainly written in May or June 1791, since the arguments correspond with those advanced in the second 'Postscript' to 'Panopticon; or, The Inspection-House', which was being printed at this time.[5] In 'New Wales', Bentham rehearsed arguments concerning the economic disadvantages of colony-holding, which he afterwards expanded in 'Jeremy Bentham to the National Convention of France', composed around late December 1792 and early January 1793,[6] but

[1] Ibid. 399–400.

[2] See 'Extracts of Letters, &c—and Accounts, Relative to the Settlements in New South Wales', 8 April 1791, in *House of Commons Sessional Papers of the Eighteenth Century*, ed. S. Lambert, 145 vols., Wilmington, Delaware, 1975, lxxxiii. 241–58.

[3] Bentham's main residence at this time was Dollis Farm, near Hendon, Middlesex. Browne acted as legal agent for Jeremy and Samuel Bentham.

[4] Bentham to Bunbury, 6 May 1793, *Correspondence* (*CW*), iv. 277–80.

[5] See ibid. 279, and 'Panopticon; or, The Inspection-House', iii. 224–7 (Bowring, iv. 169–70), where Bentham refers to the government accounts given to him by Bunbury.

[6] The work was eventually published as *Emancipate Your Colonies! Addressed to the National Convention of France Aº 1793, Shewing the Uselessness and Mischievousness of Distant Dependencies to an European State*, London, 1830 (reproduced in *Rights, Representation, and Reform* (*CW*), pp. 289–315).

also considered the specific circumstances of New South Wales and, in particular, how it might be retained without harm to both Britain and the colony's inhabitants.

'New Wales', which is published for the first time in the present edition, consists of a series of passages taken from nine text sheets and two rudiments sheets, all of which bar two are bifolia. With the exception of the passages taken from the rudiments sheets, which have been placed at the conclusion of the text, the material is presented in the order in which it appears in the Bentham Papers.[1] Each text sheet, with the single exception mentioned below, carries the main heading 'New Wales', which has been adopted as the main title. The section headings, which were not numbered by Bentham and have not been numbered in the present edition, have been taken from the sub-headings on the text sheets. The section dealing with 'Extended Empire' is itself composed of three discrete passages, which have been distinguished by the insertion of short rules. The sheet which does not carry the main heading 'New Wales' has been transferred by Bentham from some other unidentified work, but probably connected with the panopticon penitentiary scheme.[2] The text is completed with the rudiments sheets, the first of which, containing three discrete passages, is headed 'New South Wales Expence'; and the second 'Botany Bay—Resolutions against'.[3] In the former Bentham sought to calculate, using data from the government accounts provided by Bunbury, the actual extent of public expenditure on New South Wales up to 18 March 1791, as well as to project the future cost of the colony. The latter consists of two proposed resolutions, which summarize the major themes of the 'New Wales' material, namely that no colony could ever return a profit to the mother country on the capital invested in founding, maintaining, and defending it, and that no colony where men greatly outnumbered women could ever 'be of any use in respect to population'.[4] Bentham may have drafted these resolutions with a view to Bunbury's introducing them in the House of Commons, but there is no evidence that Bentham transmitted them to Bunbury or showed them to anyone else.

[1] UC cxix. 87–97 and 85–6 respectively. For the manuscripts used in the present edition see the Table of Manuscripts, pp. cvii–cix below.

[2] i.e. UC cxix. 89, which carries the main heading 'Convict Proposal' and the sub-heading 'New South Wales'.

[3] UC cxix. 85 and 86 respectively.

[4] See p. 22 below.

Correspondence, sent to William Wilberforce, of Jeremy Bentham with Sir Charles Bunbury

The composition of the three 'Letters to Lord Pelham' and 'A Plea for the Constitution' in 1802–3 was a product of Bentham's convoluted negotiations with the successive administrations of Pitt and Addington in relation to the panopticon prison scheme. In July 1793 Pitt and Henry Dundas, the Home Secretary,[1] had visited Bentham's home at Queen's Square Place to view models of the panopticon prison and to discuss the proposal. Pitt and Dundas had given their approval to the scheme and had told him that he should begin to make preparations for building the prison.[2] The Penitentiary Act of 1794 and the Appropriation Act of 1799 had given parliamentary approval to the scheme.[3] Two issues that bedevilled it were the problem of finding a suitable site—Bentham tried to acquire land successively at Battersea Rise, Hanging Wood at Woolwich, and Tothill Fields, before finally purchasing the Millbank estate from the Marquis of Salisbury[4] in 1799—and obtaining a definitive statement concerning the number of convicts who would be housed in the proposed panopticon. According to the draft contract of 1796 between Bentham and the government, the prison would be built to accommodate 1,000 convicts.[5] On 17 August 1799, while in the process of purchasing the estate at Millbank, Bentham wrote to Charles Long[6] at the Treasury, pointing out that no preparatory work on the construction could begin until he was informed of 'the *number of Prisoners* to be provided for'. Having examined the number of transportable convicts then confined in the gaols and aboard the hulks, Bentham suggested that the panopticon should be built for a minimum of 2,000 prisoners.[7] On 25 March 1800 Long informed Bentham that the Treasury, having received a letter

[1] Henry Dundas (1742–1811), first Viscount Melville, Home Secretary 1791–4, Secretary for War 1794–1801, First Lord of the Admiralty 1804–5.

[2] See Bentham to Archbishop Markham, 11 August 1793, and Bentham to Earl Spencer, 13 August 1793, *Correspondence* (*CW*), iv. 443 and 446 respectively.

[3] The Penitentiary Act of 1794 had authorized the construction of the panopticon and granted Bentham the sum of £2,000 to begin making preparations, while the Appropriation Act of 1799 (39 Geo. III, c. 114, § 23) had granted Bentham the sum of £36,000 to purchase land at Millbank 'for a Penitentiary House'.

[4] James Cecil (1748–1823), seventh Earl and first Marquis of Salisbury, Treasurer of the Household 1780–2, Lord Chamberlain 1783–1804, Joint Postmaster General 1816–23.

[5] See 'Draft of a Contract between the Lords Commissioners of the Treasury and Jeremy Bentham Esquire', in 'Twenty-Eighth Report on Finance', Appendix F. 3, in *House of Commons Sessional Papers of the Eighteenth Century* (1798), cxii. 71.

[6] Charles Long (1760–1838), first Baron Farnborough, Junior Secretary to the Treasury 1791–1801, Lord of the Treasury 1804–6, Joint Paymaster General 1807–17, Paymaster General 1817–26.

[7] Bentham to Long, 17 August 1799, *The Correspondence of Jeremy Bentham*, vol. vi, ed. J.R. Dinwiddy, Oxford, 1984 (*CW*), pp. 188–9.

from the Home Secretary the Duke of Portland,[1] had resolved 'that the proposed Building of a Panopticon is to be calculated to accommodate Two Thousand Persons'.[2] Since this represented a doubling of the number of convicts from that specified in the draft contract, and since prices had increased in the meantime, Bentham prepared what he termed an 'Armed Memorial', that is armed with reasons, which he sent to the Treasury on 21 April 1800 and in which he requested more money and a larger site.[3] On 10 June 1800 Bentham attended a meeting, organized by his supporter Evan Nepean,[4] with Long and Treasury Solicitor Joseph White,[5] where the 'Armed Memorial' was deemed inadmissible. Nepean intervened to ensure that Long agreed to receive a memorial consisting of a single page. In consequence, on 19 June 1800 Bentham submitted an 'Unarmed Memorial' to the Treasury. In an unsigned document dated 'Treasury Chambers, 14th July 1800', it was stated that, although land had been purchased for a penitentiary, 'the further Proceedings in the Business is delayed in consequence of Mr. Bentham having . . . presented a new Statement and Memorial to the Board, differing materially as to the Terms on which he proposes to enter upon the Undertaking, from those which he formerly offered, which Statement and Memorial are now under the consideration of the Board'.[6] The matter was considered by the Treasury at a meeting on 13 August 1800, at which the following minute was produced:

My Lords, considering the Number of Years which have elapsed since the first Steps were taken, with a View to the adoption of any Plan of this Kind, and the Variation of Circumstances which have occurred during that Period; the improved State of the Colony of New South Wales . . . as well as the various Improvements which have since taken place in the different Gaols of this Kingdom; and the great Increase of Terms which Mr. Bentham now proposes; are of Opinion that it would not be expedient to carry into Effect this Plan to the whole Extent proposed by Mr. Bentham. But they submit to his Grace [i.e.

[1] William Henry Cavendish Cavendish-Bentinck (1738–1809), third Duke of Portland, First Lord of the Treasury 1783, Home Secretary 1794–1801, and leader of the administration as First Lord of the Treasury 1807–9.

[2] Long to Bentham, 25 March 1800, *Correspondence* (*CW*), vi. 279.

[3] The 'Armed Memorial' is reproduced in ibid. 471–85.

[4] Evan, later Sir Evan, Nepean (1752–1822), Under Secretary at the Home Office 1782–94, Under Secretary at the War Office 1794–5, Secretary of the Admiralty 1795–1804, Chief Secretary to the Lord Lieutenant of Ireland 1804, Lord of the Admiralty 1804–6, Governor of Bombay 1812–19.

[5] Joseph White (d. 1815), Treasury Solicitor 1794–1806.

[6] The document appears under the heading of '28th Report—Penitentiary Establishment', in 'Further Proceedings of the Lords Commissioners of His Majesty's Treasury, &c. respecting the matters stated in the Reports of the Committee of Finance, so far as they relate to the several offices concerned in the Receipt and Expenditure of the Public Money', 15 July 1800, in *Commons Sessional Papers of the Eighteenth Century* (1800), cxiv. 278.

the Duke of Portland], whether, by way of Experiment, it may be fit to carry it into Effect on a more limited Scale, or whether under all the Circumstances it may be adviseable, at the present Time, to relinquish the Plan altogether.

Were the plan to be relinquished, the Treasury would be prepared to offer appropriate compensation to Bentham.[1] On 25 August 1800 the substance of the minute was transmitted to the Home Office,[2] whereupon John King responded that since 'under the present Circumstances of New South Wales, and the Prospect that at no very distant Period it will be in such a State of Improvement, as to be capable of receiving in each Year the whole Number of Convicts which it may be necessary to send from the different Gaols in the Kingdom', the Duke of Portland agreed with the Treasury that the panopticon, 'if adopted at all', should be so 'to a limited Extent, only by way of Experiment', and suggested 'that a Building large enough to contain 500 Convicts will be sufficient'. However, 'whether it will be right to relinquish the Project altogether, and allow a liberal Compensation to Mr. Bentham', was a matter for the Treasury to determine.[3] Portland's response gave rise to a Treasury Minute of 18 March 1801, in which it was resolved to write to Bentham to ask him 'under what Terms' he would be willing to build a penitentiary for 500 persons, but if the plan was 'relinquished altogether', to state the compensation to which he considered himself entitled.[4] On 10 September 1800 Bentham had unofficially learned of this alteration to the scale of the panopticon when 'by accident' he had met John King, who had told him that 'it was as good as settled that I was to have but 500 [convicts], and building money accordingly'.[5] He did not, however, receive official notification until 24 March 1801, when Charles Long, in accordance with the Treasury Minute of 18 March 1801, asked him to state his terms 'for building a Penitentiary House for 500 Persons, and for maintaining the Convicts, if the Measure should be resolved upon', but if the plan were relinquished, the compensation to which he considered himself entitled for his 'Expenses and Loss of Time in preparing for the Undertaking'.[6]

[1] See 'Copy of Treasury Minute, of the 13th August 1800', in 'Further Proceedings of the Lords Commissioners of His Majesty's Treasury, &c. respecting the matters stated in The Reports of the Committee of Finance, so far as they relate to The Several Offices concerned in the Receipt and Expenditure of the Public Money', 12 June 1801, in *Commons Sessional Papers* (1801), vi. 585.

[2] Charles Long to John King, 25 August 1800, ibid. 585–6. John King (1760–1830), Under Secretary at the Home Office 1791–1806, Junior Secretary to the Treasury 1806, Comptroller of Army Accounts 1806–30.

[3] King to Long, 17 March 1801, in *Commons Sessional Papers* (1801) vi. 586–7.

[4] 'Copy of Treasury Minute of 18th of March 1801', ibid. 587.

[5] Bentham to Nepean, 10 September 1800, *Correspondence* (*CW*), vi. 352.

[6] Long to Bentham, 24 March 1801, in *Commons Sessional Papers* (1801) vi. 587. The original letter is reproduced in *Correspondence* (*CW*), vi. 382–3.

Bentham had come to the view that the real purpose of the government was to defeat the panopticon scheme on account of what he alleged were corrupt and illegal promises made by Pitt to Earl Spencer[1] that the penitentiary would not be built on his land at Battersea Rise and to Viscount Belgrave[2] that it would not be built at Millbank on land adjacent to his estate.[3] At an audience with John King at the Home Office in October 1800, Bentham had been shown a letter from Portland to the Treasury, dated 14 October 1799,[4] in which Portland claimed that the purpose of the penitentiary proposed in the Penitentiary Acts of 1779 and 1794 was to hold such convicts as could not be accommodated in the county gaols until such time as they could be transported to New South Wales. Moreover, stated Portland,

> it would be very inexpedient to remove such persons from the Country Gaols, unless the crowded state of these Gaols should render it absolutely necessary, for it would naturally tend not only to check that spirit of improvement which now so universally prevails in the several Counties in respect to the Gaols but would be the means of the Gaols themselves being neglected by which the greater part of the Prisoners who are now, or may be hereafter, confined in them, would necessarily be sent to the Panopticon where the Expences attending their custody must be borne by Government instead of being defrayed by the respective Counties.[5]

Bentham surmised that Portland, John King, and William Baldwin, the Home Office legal counsel,[6] had engaged in a 'conspiracy' with the Treasury for the purpose of 'illegally obstructing, and if possible preventing', the establishment of the panopticon, authorized by Act of Parliament, as a favour first to Spencer and then to Belgrave. Bentham was convinced that ministers had decided to continue the policy of transportation in preference to the panopticon scheme and thereby serve the interest of noble landowners who did not, for reasons of their own, wish to see the panopticon built. In response to

[1] George John Spencer (1758–1834), second Earl Spencer, Lord Privy Seal 1794, First Lord of the Admiralty 1794–1801, Home Secretary 1806–7.

[2] Robert Grosvenor (1767–1845), styled Viscount Belgrave, who on 5 August 1802 succeeded as second Earl Grosvenor and in 1831 was created first Marquis of Westminster.

[3] See, for instance, UC cxx. 46–56 (12–14, 24 January 1802), part of a section of 'A Picture of the Treasury' entitled 'Secret Plan for Rendering the Purchase Useless'.

[4] For Bentham's account of the meeting see UC cxxi. 52–3 (19 February 1802), and for the extract he took from the letter on that occasion see BL Add. MS 33,543, fos. 143–4, docketed '1799 Oct. 14. Panopt. D. of Portland, Whitehall to Commrs. of Treasury. Number for Panopt. Rough notes of Copy Taken by J.B. when left with him (in a room in the office by Secretary King while he was in an adjacent one) for perusal.' Further copies are at UC cxvi. 387 (in Bentham's hand) and cxvi. 400 and cxxi. 220 (in the hand of copyists).

[5] Portland to the Lords Commissioners of the Treasury, 14 October 1799, TNA, HO 42/48, fos. 182–3.

[6] William Baldwin (*c.* 1737–1813), MP for Malton 1795–8 and Westbury 1802–6, Counsel in all questions relating to the criminal business of the Home Office 1796–1813.

the perceived breach of faith—to himself and to Parliament—on the part of Pitt and his administration, Bentham composed 'A Picture of the Treasury' in which he gave a detailed account of his dealings with government over the panopticon from 1798 to early 1802. In one of the proposed seventeen or eighteen sections of this work, Bentham addressed the four potential 'grounds of relinquishment' for the panopticon penitentiary which had been enunciated in the Treasury Minute of 13 August 1800.

Bentham hoped that the change of ministry in 1801, when Pitt was replaced by Addington as leader of the administration, would lead to a change of policy in relation to panopticon. He was, therefore, keen to persuade the new Home Secretary Lord Pelham of the advantages of sending convicts to a panopticon penitentiary at home as opposed to transporting them to New South Wales and, if not to persuade, then to cajole and even threaten him, and the government generally, into actively supporting the construction of the prison. The compilation which Bentham produced for the information of William Wilberforce,[1] a supporter of the panopticon scheme, was in effect a brief history of Bentham's campaign during the spring and summer of 1802, with Bunbury acting as intermediary between him and Pelham.

The compilation contains copies of fourteen items, of which items 1–9 and 11 consist of letters exchanged with Sir Charles Bunbury between 12 April and 21 August 1802; item 10 consists of a letter from Pelham to Bunbury of 19 August 1802; and items 12–14 consist of a 'private note' from Bentham to Pelham of 9 August 1802 and two sheets which accompanied it, containing the marginal contents for 'Panopticon versus New South Wales', the original title of what became the first 'Letter to Lord Pelham'. The compilation is interspersed with Bentham's comments in the form of explanatory notes. The compilation, which survives intact in the hand of a copyist,[2] was sent to Wilberforce on 27 August 1802.[3] On the same day Bentham sent Wilberforce copies of three of the explanatory notes under the heading, 'Notes to M^{r} Wilberforce in the copy of the correspondence sent to him of Mr B. with Sir C. Bunbury'.[4] It is from this heading that

[1] Bentham from time to time updated Wilberforce on the progress, or lack of it, of the panopticon scheme.

[2] UC cxx. 12–19. A brouillon for Bentham's letter to Bunbury of 21 August 1802, headed 'L^{d} Pelham distressed', is at UC cxvi. 461. While the items of correspondence and the 'Introductory Note' have been reproduced in *The Correspondence of Jeremy Bentham*, vol. vii, ed. J.R. Dinwiddy, Oxford, 1988 (*CW*), the compilation in the form prepared by Bentham is published for the first time in the present edition.

[3] See Bentham to Charles Abbot, 7 September 1802, *Correspondence* (*CW*), vii. 128.

[4] See Bentham to Wilberforce, 27 August 1802, ibid. 91–2, containing the notes to the letters from Bentham to Bunbury of 12 and 25 April and 9 August 1802: see pp. 25, 26 n., and 33 below respectively.

the title given to the material in the present edition has been adapted. It is possible that the copy that Bentham sent to Wilberforce had omitted the notes in question, and hence he wrote in order to supply the deficiency.[1]

In the 'private note' to Pelham, Bentham alludes to an interview that took place at the Treasury on 9 July 1801, at which the conspiracy between the Home Office and the Treasury to cancel the panopticon scheme had, in his view, been exposed.[2] On 23–4 August 1802 he wrote an account of this interview under the heading 'Meeting with Long at Hiley Addington's'.[3] It is possible that Bentham at some stage intended to include the account with the materials sent to Wilberforce (in the title Bentham refers to 'the present purpose'), though in the event did not do so. This account is reproduced in an Appendix.[4] On 3 September 1802 Bentham drafted a comment on the allusion that Pelham had made to Bentham's state of mind in his letter to Bunbury of 19 August 1802.[5] While probably never intended to be seen by Wilberforce, the comment was quite probably prompted by Bentham's reflection on Pelham's remark while preparing this compilation, and so it is reproduced in the present edition. While it should strictly have been presented in an editorial footnote, it has been presented as a Bentham footnote for ease of annotation.[6] The compilation concludes with the marginal contents for 'Panopticon versus New South Wales',[7] which, as noted above, was the original title of the first 'Letter to Lord Pelham'. On 9 August 1802 Bentham had sent the marginal contents to Bunbury, stating that, 'The paper itself . . . is ready to follow at the first word. There are about 60 or 70 pages of it.'[8]

With this compilation,[9] Bentham was seeking to enlist Wilberforce's support in applying pressure on the administration. He told his

[1] If the surviving copy was the copy sent to Wilberforce, the three notes must have been added after it was returned.

[2] See pp. 46–7 below. Bentham believed that he had been 'entrapped' into this interview: see Bentham to Charles Abbot, 7 September 1802, *Correspondence* (*CW*), vii. 129.

[3] i.e. Charles Long and John Hiley Addington (1759–1818), Chief Secretary to the Treasury from March 1801 to July 1802.

[4] UC cxxi. 333–45 (23–4 August 1802), reproduced at pp. 57–66 below.

[5] See p. 36 below.

[6] See UC cxxi. 332 (3 September 1802), reproduced at pp. 36–7 below.

[7] Bentham later adopted this title for the compilation of 'Letter to Lord Pelham', 'Second Letter to Lord Pelham', and 'A Plea for the Constitution', published in 1812. The marginal contents sheets that were sent to Pelham are in the Pelham Papers, BL Add. MS 33,109, fos. 334–6.

[8] See Bentham to Bunbury, 9 August 1802, *Correspondence* (*CW*), vii. 71. The marginal contents correspond to the printed text of the first 'Letter to Lord Pelham' up to, but not including, the final section of 'V. Economy' on the reputed advantages of colony-holding (i.e. up to p. 149 below).

[9] For further discussion of the content see pp. xlii–xlv below.

Genevan friend and editor Étienne Dumont[1] that its contents were 'as full of fire and flame, and scorn and menace to Pitt and Portland, etc. etc.—Addington himself not excluded, and Ld Pelham half-included—as I could cram them'.[2] Bentham had, however, failed to anticipate how Wilberforce would react. When he returned the compilation on 3–4 September 1802, Wilberforce suggested that Bentham's disappointments had led him 'to feel acutely and to express himself warmly', that his judgement had been 'warped', that he had 'kindled too keen a desire of Vengeance', and that 'both on private and still more on public Grounds' he should consider adopting 'a diff^{t} tone and course of Conduct from that which you seemed disposed to assume'. He was particularly concerned by Bentham's attacks on members of the administration and argued that his attempts to threaten and intimidate ministers would be counter-productive, resulting in 'not only blasting whatever Prospect there may be of effecting *your* plan, but opposing an almost insuperable obstacle in the way of establish^{g} any similar Institut^{n}'. Wilberforce was optimistic that progress towards the establishment of the panopticon would be made in the forthcoming parliamentary session, but promised that if these efforts 'should prove in vain, then I will no longer try to avert or suspend the Storm you threaten', although he did not think that it would achieve any good effect. In the meantime, Wilberforce advised Bentham to continue to gather evidence concerning the evils of New South Wales, 'or in any other way furnish argum^{ts} in fav^{r} of Panopt^{n}', and that, when Parliament met, the supporters of the panopticon scheme 'should hold a Council of War and consider What Course it will be best to pursue'.[3] On 7 September 1802, on the day he began a journey to Paris, Bentham reported to his step-brother Charles Abbot, the Speaker of the House of Commons,[4] that, in regard to the panopticon, Wilberforce 'preaches passive obedience and non-resistance' for the forthcoming session of Parliament, giving him 'a dispensation for hostility should this prove fruitless', and 'recommends that Botany Bay should be exposed in a quiet way and on the ground of immorality only—I mean without blame to any body'. Bentham, however, had no intention of following Wilberforce's advice, since in his own experience he had found that 'the principle of terror operate[s] in several instances and no other principle in any'. Wilberforce was 'all in a flutter about his friends' in government, whom he did not wish to see 'exposed', and thus 'shuts

[1] Pierre Étienne Louis Dumont (1759–1829) produced five major recensions of Bentham's works between 1802 and 1828.

[2] Bentham to Dumont, 29 August 1802, *Correspondence* (*CW*), vii. 93.

[3] Wilberforce to Bentham, 3–4 September 1802, ibid. 117–23.

[4] Charles Abbot (1757–1829), first Baron Colchester, was Speaker of the House of Commons from February 1802 to May 1817.

his eyes against the facts'.[1] Hence, on his return from Paris in early October 1802, Bentham continued to work intensively on the material that would become the three 'Letters to Lord Pelham' and 'A Plea for the Constitution'.

Letter to Lord Pelham

The long gestation of the three 'Letters to Lord Pelham' and 'A Plea for the Constitution' throughout most of 1802 and into early 1803 took place against the background of Bentham's attempts to negotiate with government over the building of the panopticon penitentiary. The works emerged from Bentham's discussion in 'A Picture of the Treasury' of the four 'grounds of relinquishment' for the panopticon scheme—namely the number of years that had elapsed, the improved state of the colony of New South Wales, the improvements that had taken place in the local gaols, and 'the great Increase of Terms' proposed by Bentham. These 'grounds', as noted above, had been put forward in a Treasury Minute of 13 August 1800 and repeated in Charles Long's letter to John King of 25 August 1800 and in King's response, on behalf of the Duke of Portland, to Long of 17 March 1801. Bentham considered each of these grounds in turn in one of the seventeen or eighteen projected sections of 'A Picture of the Treasury', which he had written over the winter of 1801–2, but in March 1802 appears to have decided to compose a discrete essay focusing on the claim that 'the colony of New South Wales' was in an 'improved state'. The connection between the two projects is illustrated by a surviving text sheet forming part of an introduction to the discussion in 'A Picture of the Treasury' in which Bentham gave a short description of compensation and economy as the third and fourth ends of punishment respectively, and went on to say that he would compare New South Wales and the panopticon penitentiary in relation to the four ends.[2] If the first two ends of punishment, which were presumably described in a preceding but now missing sheet, were reformation and incapacitation, this would match the content and order of the discussion in the first 'Letter to Lord Pelham', with the exception of example,

[1] Bentham to Abbot, 7 September 1802, *Correspondence* (*CW*), vii. 130.

[2] UC cxvi. 236 (23 March 1802). In a related fragment headed 'Grounds of relinquishmt. 4. New South Wales' at UC cxvi. 237 (n.d. March 1802), Bentham complained that Portland and other government officials such as Long, George Rose, King, and Baldwin, had no interest in the ends of punishment but only in 'the art of making the wheels of government run smooth and easy—the art of accommodating our friends'. George Rose (1744–1818), Secretary to the Treasury 1782–3, 1783–1801, Joint Paymaster General and Joint Vice-President of the Board of Trade 1804–6, Vice-President of the Board of Trade 1807–12, Treasurer of the Navy 1807–18.

which Bentham seems to have added afterwards as the first end of punishment. In discussing the themes of transportation, the ends of punishment, and the perfidy of administration, the account in 'A Picture of the Treasury' anticipates both the subject-matter and the structure of the first 'Letter to Lord Pelham'.

Bentham compiled a first draft of the work which became the first 'Letter to Lord Pelham' in March 1802. The final draft of much of the text had been prepared by August 1802, when the marginal contents sheets were sent to Pelham.[1] Thereafter the final part of the discussion of 'Economy' was added to the text, and the whole presumably copied and possibly revised. With the exception of the final paragraph which, in the printed text, is dated 2 November 1802,[2] the work was completed by mid-October 1802. The final draft consisted of a main sequence running from page 1 to page 90, though the enumeration excludes passages in footnotes and additional pages inserted in the text, which Bentham indicated with a star for the first sheet inserted in a sequence (for example 20*), two stars for a second (20**), and so on.[3] The work was in print by early November 1802.

A few text sheets survive from the first draft of March 1802, which, as noted above, appears to have consisted of discussions of reformation, incapacitation, compensation, and economy. Several sheets on the topic of reformation were incorporated, possibly after being rewritten, into the final draft and thereupon into the printed text.[4] None of the surviving material for the remaining three topics was incorporated into the printed text, with the exception of one sheet on the topic of economy.[5] In the surviving material for incapacitation, Bentham pointed out that, after the completion of their sentences, many transported convicts remained in New South Wales because of the impossibility of return, more did manage to return than the 'contrivers' of the system had hoped, and speculated that it would be the more dangerous characters who would be the most likely to find the means to return;[6] that in order permanently to stop convicts returning, despite their banishment being temporary, it was necessary 'that the very fountains of law should be poisoned and the administration of this branch of penal law converted into a scene of sad and solemn mockery and irremediable oppression';[7] and that

[1] See p. xxx above.
[2] See pp. 163–4 below.
[3] The sheet containing the final paragraph was presumably not included in this enumeration.
[4] i.e. UC xciv. 155^{v}, 319^{v}, 337^{v}, xcvii. 186, xciv. 336^{v}, 335^{v}: for further details see p. xxxvi n. below.
[5] i.e. UC xciv. 339^{v}: for further details see p. xxxix n. below. Since only a small proportion of the final draft of the first 'Letter to Lord Pelham' survives, it is possible that other sheets from the first draft of March 1802, which are now missing, were incorporated into it.
[6] UC cxvi. 324^{v}, 325^{v} (24 March 1802).
[7] UC cxvi. 234 (24 March 1802).

convicts had been transported whose legal term of punishment had expired even before they had reached New South Wales.[1] It is possible that the surviving sheets on compensation represent the whole of the discussion in the first draft. Bentham pointed out that compensation was never intended to form part of the colonization system, since no wealth was produced that could be extracted, but that it was a feature of the panopticon system.[2] In a sheet written for economy, and sub-headed '3. Trade. Trade limited by capital', Bentham argued that capital was better employed at home than in the colonies and that colonies were only useful when 'the prospect opens of a population that, within no great distance of time, will become no longer capable of finding subsistence within the limits of its land'.[3] In a further passage sub-headed '5. *Mala fides.* Condition *known* to be bad', Bentham argued that 'the official conspirators against the Penitentiary system', despite their claims that New South Wales was flourishing, knew that the state of the colony was bad, as proved by the fact that they never dared to publish any accounts of it despite being recommended to do so by the Finance Committee,[4] and that those MPs who were supporters of panopticon had not dared to expose the state of New South Wales in Parliament for fear that Pitt and Rose would retaliate by crushing the panopticon scheme.[5]

As well as the material which originated with the first draft of March 1802, the final draft and subsequent printed text consists of material written at different times during the spring and summer of 1802, when Bentham added to the text, rewrote various passages and sections, and composed a significant amount of material that he did not incorporate into the final draft. The draft introduction to the essay, for which one text sheet survives,[6] together with a further text sheet

[1] UC cxvi. 235 (24 March 1802).

[2] UC cxvi. 114–15 (23 March 1802), with a related note at cxvi. 112–13 (23 March 1802) discussing 'a few instances', mentioned by Collins, in which, for an offence committed in the colony, 'the offender was made to labour in a condition of stricter confinement, and the produce of his labour, or a part of it' applied in compensation. When originally drafted, Bentham envisaged this material as the third point in the discussion of the ends of punishment, but then altered the text at UC cxvi. 114 to indicate that it would form the fourth point, presumably because the topic of example had been added as the first point.

[3] UC cxvi. 414 (23 March 1802).

[4] i.e. in the House of Commons Finance Committee's Twenty-Eighth Report of 1798.

[5] UC cxvi. 262–6 (24–5 March 1802). UC cxvi. 263, which carries an earlier heading 'Grounds of Relinquishment' and is dated 9 January 1802, was presumably written for 'A Picture of the Treasury' and thereafter incorporated by Bentham into its present sequence. A fragment at UC cxvi. 304 (n.d.), headed 'N.S. Wales', mainly discussing William Baldwin and Evan Nepean, may be related to the first draft.

[6] UC cxvi. 305 (27 May 1802). This sheet is not paginated in the main sequence and may, therefore, represent a second draft. A sheet at UC cxvi. 306 (21 June 1802), referring to the Penitentiary Acts of 1794 and 1799, is paginated to follow cxvi. 305, but was not incorporated into the printed text. An early brouillon for the work is at UC cxvi. 436 (31 May 1802).

which contains a copy of the first three notes,[1] would probably have comprized no more than three or four text sheets. No draft of the first end of punishment, 'Example', survives, though it probably comprized only a single text sheet. There survive eight text sheets from the draft of the second end, 'Reformation',[2] together with four text sheets in the hand of a copyist containing footnotes.[3] There survive several related fragments that were not incorporated into the printed text. In a passage sub-headed 'Emigrants to East Indies', on which Bentham has noted 'Omitt for the present', he copied an extract from *Bell's Weekly Messenger*, 10 January 1802, which stated that many convicts who had served their time at Botany Bay had gone to India and that, 'Most of the lower Mechanics in the City of Calcutta are of this description, and are very useful members of the community.' Bentham commented that the greater the number of these emigrants, the fewer the number of settlers in New South Wales; that the difference in behaviour could be accounted for by the difference between settling at a place 'already filled with a population of the thrifty kind' as opposed to one with 'the sort of population' that had been sent to New South Wales; and that it would make more sense to send convicts directly to India.[4] In a further passage, Bentham listed three occasions, dated February 1789, June 1792, and August 1792, where Collins had remarked on the good behaviour of the convicts,[5] and from which point, he noted, 'progress appears to have run on without stoppage from bad to worse', and linked this 'progress' to the increase in the number of expirees—convicts whose sentences had expired—and the fact that as such they were subjected to less inspection. The problem was no doubt exacerbated, argued Bentham, by 'the cruel insincerity' with which they were treated by government, whereby a public declaration had been made

[1] UC cxvi. 27 (date illegible).

[2] The relevant manuscripts, preceded by their page numbers, are as follows: (12) UC xciv. 155^{v} (23 March 1802); (13) xciv. 319^{v} (23 March 1802); (15) xciv. 337^{v} (27 March 1802); (Note to 15) cxvi. 26 (11 October 1802); (16) xcvii. 186 (30 March 1802); (18) xciv. 336^{v} (27 March 1802); (20) xciv. 335^{v} (27 March 1802); and (23) xciv. 333^{v} (14 June 1802). A sheet at UC xciv. 334^{v} appears to have been numbered page 21 in the draft, but was excluded by Bentham from the printed text.

[3] UC cxvi. 22 (n.d.); cxvi. 2 (6 June 1802), 4 (15 October 1802); and cxvi. 306 (21 June 1802). For the addition of the text at UC cxvi. 4 to that at cxvi. 2 see pp. 79–80 n. below. A draft of the continuation of the note at UC cxvi. 306 dealing with 'the importation of the *hulk* system from the Thames' is at cxvi. 127 (Bentham turned the sheet upside down to write this material).

[4] UC cxvi. 238–40 (1 June 1802). The first sheet in the sequence also contains a cancelled extract purportedly from *The Times*, 13 April 1802, concerning 'a general insurrection among the Irish Convicts' on the voyage of the *Hercules I* bound for Botany Bay. No such report appeared in *The Times*, though the report did appear in *The Sun*, 13 April 1802, and thereafter in a number of provincial newspapers (for instance in the *Derby Mercury*, 15 April 1802, and the *Ipswich Journal*, 17 April 1802).

[5] See Collins, i. 54, 216, and 230 respectively.

that their return to Britain would not be opposed, yet had been accompanied by a secret determination to oppose the return of all but a few.[1] Collins had cited two instances of good behaviour at Norfolk Island, dated March 1792 and April 1794,[2] with 'no subsequent observation to the contrary', a fact which Bentham attributed to the greater facility for inspection. He then went on to point out that 'this seat of comparative morality, if not of piety' had not had a permanent minister of religion, and if things had gone on so well without priests or bishops there, one might ask whether the same might be the case in Britain.[3] In a passage sub-headed 'Jail the ultimate', Bentham wryly observed that, despite the fact that men had been 'sent off by hundreds and thousands to the antipodes' in order to avoid the building of the panopticon, it had been found necessary to build a jail in New South Wales.[4]

There survive ten text sheets from the draft of the third end of punishment, 'Incapacitation',[5] together with fifteen text sheets containing footnotes,[6] and two text sheets in the hand of a copyist containing the 'Table of Convict Emigration' and accompanying commentary.[7] There also survives, in the hand of a copyist but with emendations by Bentham, a marginal contents sheet for the whole section, with the exception of the final two text sheets, which were written after the compilation of the marginal contents sheet.[8] In a related fragment

[1] Bentham cited Collins, i. 140, 230 for evidence.

[2] Collins, i. 275–6 and 363 respectively.

[3] UC cxvi. 242–3, 98, 244 (8 August 1802).

[4] UC cxvi. 258^{v} (3 June 1802).

[5] (30) UC cxvi. 132^{v} (28 May 1802); (44) xciv. 153^{v} (20 June 1802); (45) xciv. 152^{v} (29 May 1802); (46) xciv. 150^{v} (29 May 1802); (49) xciv. 346^{v} (21 June 1802); (50) xciv. 318^{v} (21 June 1802); (51) cix. 8 (21 June 1802); (62) cxvi. 276 (13 August 1802); and (63) cxvi. 58^{v} (13 October 1802). A sheet at UC cxvi. 326^{v} (28 May 1802) appears to have been numbered page 32 in the draft, but was excluded by Bentham from the printed text.

[6] The note comparing the old and new transportation systems at pp. 99–102 n. below is at UC cxvi. 5–10 (7, 9 October 1802); that on the 'caution which dictated the words' and part of that on the old transportation laws at pp. 112 n. and 112–13 n. below are at cxvi. 12 (n.d. October 1802); the first four paragraphs of that part of the longer note headed 'Return without Permission, easy' at pp. 115–17 n. below is at cxvi. 307 (n.d.); the second paragraph of the note on the *Glatton* at pp. 117, 120 n. below is at cxvi. 13 (n.d.); and that on the connection between interest and duty at pp. 128–31 n. below is at cxvi. 14–16 (13 October 1802), cxvi. 128^{v} (n.d.), cxvi. 16–17 (13 October 1802). Bentham may have intended to conclude this final note with a passage at UC cxvi. 18–19 (13 October 1802) in which he complains of the difficulty of dealing with officials if one showed a greater degree of intelligence than that which 'habitual intercourse or internal consciousness may happen to have familiarized them with'.

[7] UC cxvi. 11, 296 (n.d.) A draft note, which Bentham later appears to have thought was intended for the 'Table', in which he states that '[w]hen this was written' he had been unaware that there was no legislative authority for detaining convicts in New South Wales beyond the expiry of their sentences, is at UC cxvi. 241 (7 August 1802). For the 'Table of Convict Emigration' see p. 118 below.

[8] UC cxvi. 272 (7 August 1802), containing forty-one marginal contents. The two text sheets are at UC cxvi. 276 (13 August 1802) and cxvi. 58^{v} (13 October 1802), comprizing the final five paragraphs of the text of this section: see pp. 133–4 below. A draft of the

sub-headed 'Fraud upon the legislature proved', Bentham expanded on his claim that transportation to New South Wales amounted to a life sentence, even though the lawful sentence was for seven or fourteen years, and that ministers had thereby committed 'a sort of *surprise*, not to say *fraud*, upon the legislature'.[1] He offered to 'retract the imputation' if it could be shown either 'that the supposed difficulty of return was not among the considerations that contributed to the choice made of this unprecedently distant spot' or if ministers had mentioned 'this supposed advantage' in Parliament. The only question, in Bentham's view, was the date at which the fraud originated: whether with the Penitentiary Act of 1779, or after that date but before the sailing of the First Fleet in 1787 when the possibility of transportation to West Africa had been abandoned.[2] Bentham's own view was that the penitentiary scheme had been put aside in 1783, when Rose had told him that it had been temporarily suspended because of 'the supposed enormity of the expence', and given that, as Secretary to the Treasury, Rose was responsible for 'the province of economy', to him belonged 'the merit of the choice made of New South Wales, with the merits of all kinds appertaining to that choice'.[3]

There survive two text sheets from the draft of the fourth end of punishment, 'Compensation',[4] together with one text sheet in the hand of a copyist containing the two associated notes[5] and a marginal

marginal contents sheet containing the first 26 marginal contents, in the hand of a copyist but with emendations by Bentham, is at UC cxvi. 274 (19 June 1802). A brouillon that deals with the 'Treatment of Expirees' and contains a draft of the 'Table of Convict Emigration', p. 118 below, is at UC cxvi. 457 (n.d.) This brouillon also contains draft titles for 'The True Bastille', 'Panopticon versus New South Wales' (the original titles for 'A Plea for the Constitution' and the first 'Letter to Lord Pelham' respectively), and 'On the dispensing power exercised by the Duke of Portland'.

[1] He had used the phrase 'a fraud upon the legislature' at UC cxvi. 326^{v}, and so this fragment may have been written with that passage in mind, rather than the passage in the printed text.

[2] During 1785 a plan to establish a penal colony on Lemain Island (renamed MacCarthy Island in 1828), around 200 miles inland from the mouth of the Gambia River, was abandoned following criticism by a Committee of the House of Commons appointed to inquire into putting into effect the Transportation Act of 1784 (24 Geo. III, Sess. 2, c. 56). The Committee questioned the wisdom of establishing a penal colony in such a remote region with the prospect of high death rates and suggested instead the establishment of a commercial station at Das Voltas Bay where convict labour might be used to resupply passing East Indiamen (*Commons Journals* (1785) xl. 1161–4). The Das Voltas scheme was subsequently abandoned when no suitable site could be identified.

[3] UC cxx. 98–100 (11 June 1802). In what may have been intended as a conclusion to this material at UC cxx. 97 (11 June 1802), Bentham argued that if the difficulty of return was not among the considerations that led to the choice of New South Wales, then there was nothing else to recommend it, and if it was among the considerations, then 'the choice thus made of it is an offence against the authority of the legislature'. An abandoned fragment, which refers to 'passages' elsewhere concerning occasions on which ministers exercised powers reserved to Parliament, is at UC cxx. 101 (10[?] June 1802).

[4] (64) UC xciv. 332^{v}; (65) 331^{v} (5 August 1802).

[5] UC cxvi. 1 (17 October 1802).

contents sheet for the whole of this section and the first part of the fifth end, 'Economy', dealing with 'Convict and Penitentiary Expense', in the hand of a copyist but with emendations by Bentham.[1] The first part of 'Compensation', comprizing three text sheets, was a later interpolation.[2] In an incomplete fragment, Bentham expressed his 'surprize and pleasure' that he had found examples in Collins where an offender convicted of felony had been subjected to hard labour and that this had produced compensation for the injured party.[3] An incomplete and cancelled text sheet contains a note in which Bentham refers to 'the supposed romanticalness or, as the word is sometimes, flightiness that dictated' the panopticon scheme.[4] The point is taken up in two text sheets, which carry the original sub-heading 'Introductory Notes / Private to L^{d} Pelham' and the alternative sub-heading 'Compensation', containing a note in which Bentham remarks on Addington's allusion to his '*flights*' as an attempt to discredit the panopticon scheme by suggesting that Bentham was suffering from insanity.[5]

With the exception of two text sheets, the whole of the draft for the first part of 'Economy' dealing with 'Convict and Penitentiary Expense' survives,[6] together with three text sheets containing the note to the table comparing the annual expense of maintaining convicts in panopticon and in New South Wales[7] and four text sheets containing the bulk of the note on the Irish rebels.[8] There also survive two drafts for the note on the 'Armed' and 'Unarmed' memorials, but both were discarded in favour of the version used in the printed text.[9] Only the

[1] UC cxvi. 273 (7 August 1802). This marginal contents sheet was compiled at the same time as that for 'III. Incapacitation' at UC cxvi. 272.

[2] i.e. interpolated between (63) UC cxvi. 58^{v} and (64) xciv. 332^{v}. The marginal contents sheet indicates that there were three sheets in the sequence preceding UC xciv. 332^{v}.

[3] UC cxvi. 116–17 (5 August 1802).

[4] UC cxvi. 99 (12 October 1802).

[5] UC cxvi. 20–1 (n.d.), with a cancelled copy at cxvi. 100 (n.d.) Addington had made the remark in one of his conversations with Nepean in September 1802 in relation to Bentham's proposal that he would pay a fine for any subsequent offence committed by a convict who had been liberated from the proposed panopticon penitentiary: see Bentham to Abbot, 3 October 1802, and Bentham to Dumont, 19 October 1802, *Correspondence* (*CW*), vii. 139–40 and 148 respectively.

[6] (66) UC xciv. 339^{v} (23 March 1802); (67) xciv. 329^{v} (29 May 1802); (68) xciv. 330^{v} (31 May 1802); (69) xciv. 328^{v} (31 May 1802); (70) xciv. 327^{v} (1 June 1802); (71) xciv. 325^{v} (1 June 1802); (72) xciv. 326^{v} (1 June 1802); (73) xciv. 324^{v} (1 August 1802); (74) xciv. 323^{v} (1 June 1802); (75) xciv. 322^{v} (1 August 1802); and (78) xciv. 321^{v} (1 June 1802): see pp. 138–49 below. The sequence was originally continued by (79) UC xciv. 349^{v} (27 March and 1 June 1802), in which Bentham ironically suggested that the expense of New South Wales might be borne by the poor rates. A list of extracts from Collins, which Bentham compiled for use in this section of the work, is at UC cxvi. 449 (n.d.)

[7] UC cxvi. 25, 23, 24 (6 October 1802): see pp. 143–5 n. below.

[8] UC cxvi. 28 (14 October 1802), xciv. 321^{v} (1 June 1802), cxvi. 29–30 (14 October 1802): see pp. 149–50 n. below.

[9] See p. 140 n. below. UC cxvi. 130 (n.d.) appears to have been the earlier draft and cxvi. 128 (n.d.) the later.

first and final text sheets survive for the second part of 'Economy' dealing with 'Colonial Advantages',[1] together with four text sheets containing the bulk of the note dealing with trade and currency.[2] There is, however, a complete earlier draft of 'Colonial Advantages', which would have formed the text had it been printed at the time that the copies of the marginal contents were sent to Pelham and Wilberforce in August 1802.[3] Bentham argued that, far from providing a profit either in terms of wealth or in population—for instance by providing men for the armed forces—all colonies produced loss to the mother country, while New South Wales, if the expense of defence were taken out of the account, would produce a greater loss than any other colony in existence. There were no specific advantages, such as fertility of soil, cheapness of labour, or the availability of minerals and precious metals, that the products of New South Wales possessed over those from elsewhere in the world and located considerably closer to Britain. While it would have been better if Britain had never founded or conquered any colonies, they should not now be abandoned because their inhabitants and property-owners had 'acquired a sort of right to the protection of this country', but in New South Wales there was no security for property and there was not a single inhabitant who would probably not rather be somewhere else.[4] In a sequence not incorporated into the printed text, Bentham commented on accounts from New South Wales of November 1801 and reported in *The Times*, 26 June 1802, claiming that 'the Colony was in a flourishing state', that Governor King[5] was attempting to supply the colony with pork from Tahiti, and that coal and timber for ships' masts had been discovered. He argued that improved communication with Tahiti would lead to 'openings for escapes', both for expirees and non-expirees, that it was

[1] (80) UC xciv. 148^{v} (6 October 1802); (90) cxvi. 407 (date torn away). The final paragraph on this latter sheet, headed 'Recapitulation', was not used in the printed text.

[2] UC cxvi. 31–4 (15 October 1802): see pp. 153–6 n. below.

[3] See the marginal contents prepared for Wilberforce at pp. 48–55 below.

[4] UC cxvi. 101 (1 June 1802), cxvi. 102–11 (2–3 August 1802). The corresponding marginal contents appear at UC cxvi. 273 (7 August 1802) in continuation of those for the first part of the section on 'Convict and Penitentiary Expense'. At the conclusion of the marginal contents, Bentham has noted: '☞ To conclude with an examination of the supposed possible utilities of New South Wales in the character of a *Colony*: introduced by remarks relative to the general question of the utility of Colonies: to which may be subjoined an unpublished tract on that subject.' The tract in question was presumably 'Jeremy Bentham to the National Convention of France'.

A fragment at UC cxxi. 332^{v}, cxvi. 408 (4 June 1802), in which Bentham discussed the likelihood of finding any animals that might be useful and the insecurity of property in New South Wales, may belong to an earlier draft. This sequence was possibly continued by a discussion of the expense of colonies in terms of a burden on taxpayers in the mother country at UC cxvi. 255 (5 June 1802) and then by a fragment on the patronage created by colonies at cxvi. 256 (n.d.)

[5] Philip Gidley King (1758–1808), Govenor of New South Wales 1800–6.

unlikely that the coal could be exploited economically, and concluded by mocking Belgrave to whom he assigned responsibility for the irreligious state of New South Wales.[1] In a further sequence, which was intended for a note, Bentham reproduced an extract from a paper produced by a committee of the East India Company questioning the wisdom of a proposal that would result in the export of capital in the form of bullion to India, commenting that it supported his view concerning the loss involved in transferring capital to colonies. He went on to argue, following Adam Smith, that wealth was not equivalent to the quantity of gold, silver, or money in circulation, but depended upon the quantity of labour.[2]

In a sequence sub-headed 'Decrease probable?', referring to the likelihood of a decrease in the expense of the colony once it was able to provision itself and composed for 'Economy' but not included in the printed text, Bentham argued that it was highly unlikely that the free settlers would provide 'a secure and permanent gratuitous stock of the means of subsistence' and went on to begin a comparison of maintaining convicts in New South Wales with maintaining them in panopticon.[3] He has marked each sheet in this sequence 'Supposed Superseded'. The pagination indicates that it was written as part of a much longer sequence, and may, therefore, have originally formed part of the draft for the printed text before being discarded.[4] In a sequence sub-headed 'Famine probable', Bentham argued that, when Britain ceased to send supplies from elsewhere, the colony, in the event of a bad harvest, would not be able to produce enough grain to feed itself, and hence the Governor would need to open a magazine as a security for subsistence, but that there was little likelihood of such a measure being implemented.[5] In a fragment with the sub-heading

[1] UC cxvi. 249–54 (26 June 1802).

[2] UC cxvi. 257–60 (31 July 1802). Adam Smith (bap. 1723, d. 1790), moral philosopher and political economist, was author of *An Inquiry into the Nature and Causes of the Wealth of Nations* (first published in 1776), ed. R.H. Campbell, A.S. Skinner, and W.B. Todd, 2 vols., Oxford, 1976 (*The Glasgow Edition of the Works and Correspondence of Adam Smith*), where the relationship between wealth, gold and silver, and labour is summarized at i. 47–8.

A related fragment, sub-headed 'Loss by growing produce in N.S. Wales rather than in Britain and Tobago', in which Bentham argued that the extra cost of freight for the produce of New South Wales in comparison with that of Trinidad would be dead loss is at UC cxvi. 125, 126a (31 July 1802).

[3] UC cxvi. 245–8 (31 May 1802).

[4] It is possible that this sequence was replaced by UC cxvi. 330^{v}, 328^{v} (31 May 1802), which are sub-headed 'Decrease—chance of'. A fragment, sub-headed 'Decrease' and marked 'Superseded', in which Bentham complained that no plan had been devised (perhaps for reducing expense), is at UC cxvi. 97 (1 August 1802), but its exact relationship to the printed text is unclear.

[5] UC cxvi. 89–93 (22, 25 October 1802). In writing this passage, Bentham drew on a series of text sheets, at UC cxvi. 55–7 (n.d.), in the hand of a copyist and sub-headed 'Danger of Famine', containing extracts from the second volume of Collins.

'Profit and Loss', Bentham appears to have intended to discuss the loss caused by the setting aside of panopticon in favour of transportation to New South Wales, but the surviving text deals only with the profit to William Pitt from proposals to erect a statue and hold an anniversary dinner in his honour.[1] In a fragment headed 'Colonies. Thoughts', Bentham focused on the economic burdens that colonies placed on the mother country and their role as the source of war,[2] while in a further fragment he pointed out that, while he had argued that the establishment at New South Wales was unfit both for the reformation and incapacitation of convicts, he was not opposed to colonies in all circumstances, and pointed to Sierra Leone as a colony where there was hope of reformation and incapacitation, and as one which had, moreover, been founded without expense to the mother country.[3] In fragments sub-headed 'Conclusion', Bentham pointed out that, given that there was no prospect of reformation, it made little difference whether, 'in regard to the subordinate end of economy', the loss would be greater or smaller,[4] and noted that, of the 'four grounds of relinquishment' put forward for the abandonment of the panopticon scheme, that of the 'improved Colony' was 'the best imagined' because of its obscurity.[5] Finally, Bentham discussed the lack of a legislative basis for the Governor's authority over the services of transported convicts, since such powers were given by the relevant Acts of Parliament to the contractor who transported the convicts, but

[1] UC cxvi. 417–18 (8 June 1802).

[2] UC cxvi. 230–2 (4 June 1802). There is no conclusive evidence that this sequence was specifically intended for the first 'Letter to Lord Pelham', but given the date and the theme, it was presumably related to it. A fragment headed 'Emancip. v. N.S. Wales' and sub-headed 'Preface', in which Bentham points to his longstanding anti-colonial principles, is at UC cxvi. 229 (4 June 1802). An abandoned fragment on the value of imports and exports is at UC cxvi. 308 (21 June 1802).

[3] UC cxvi. 261 (15 June 1802), with the main heading 'N.S. Wales' and the sub-heading 'Sierra Leone'. Bentham presumably had in mind the establishment in March 1792 of the Freetown settlement by around 1,200 Black Loyalists, former slaves who had fought for the British during the American War of Independence and who had subsequently been relocated to Nova Scotia. The establishment of Freetown was funded by the Directors of the Sierra Leone Company, but the colony was not commercially successful and from 1796 the British government made annual grants to the Company until Sierra Leone became a Crown colony on 1 January 1808. Freetown was the successor to the Granville Town settlement, established in May 1787 by the Committee for the Relief of the Black Poor, which had originally aimed to provide subsistence to distressed members of London's 'Black Poor', many of whom were former slaves. Members of the Committee, including Granville Sharp (1735–1813), author, slavery abolitionist, and in whose honour Granville Town was named, devised a scheme to establish a self-governing colony of the Black Poor in Sierra Leone. Though the British government provided considerable financial support to the venture, it left practical arrangements to the Committee, which arranged the voyage of around 400 people to Granville Town. The settlement ultimately failed, largely owing to disease, and in 1789 was burned down by the local Temne ruler, King Jimmy.

[4] UC cxvi. 88 (n.d.)

[5] UC cxvi. 127 (6 August 1802).

not to anyone else, and furthermore questioned the legal basis of the contract that had recently been given to convey convicts in the King's ship *Glatton*. He concluded:

> In another place, I may have occasion to shew to Your Lordship, and on distinct grounds, that the powers that [have] been exercised over the Convicts there, after the expiration of their respective terms, have been exercised without and against law. Already, or I am much mistaken, the same illegality has been proved to attach upon the powers exercised over them during the continuance of such their terms.[1]

He would take up this theme in detail in 'A Plea for the Constitution'.

When on 9 August 1802 Bentham sent Bunbury the marginal contents of the first 'Letter to Lord Pelham', he hoped that the arguments he had advanced would rescue the panopticon scheme. Once Bunbury had informed Pelham of the 'existence' of the work, he envisaged two possible scenarios. The first was that Pelham would acknowledge it and thereupon proceed with the panopticon scheme. The second was that Pelham would either ignore or refuse to acknowledge it. In the latter case, explained Bentham, 'to work goes the other engine without mercy: then, if they are mad and stand out, they will be blown to atoms, the whole gang—ins and outs together: or if at any time they submitt and save their bacon, it will be at the expence of their reputation—a prodigious slice of it'. Bentham was threatening to make 'Letter to Lord Pelham' public in the expectation that the revelations it contained would either embarrass the ministry, and thus give them an incentive to go forward with the panopticon scheme, or destroy them. He went on to indicate to Bunbury that should Pelham 'wish to see the substance of the paper in print, (for example to serve him as an ostensible warrant for doing his duty, and to afford him the plea of necessity for breaking so many illegal and corrupt promises as there will be to break), he could be accommodated without difficulty'.[2] At the same time, Bentham sent to Bunbury, for presentation to Pelham, together with the marginal contents sheets, a document described as 'Introductory Note. Ms private to Ld P', which explained that the marginal contents sheets had been '*detached*' from 'the course of a

[1] UC cxvi. 118–23 (8 October 1802). A related fragment, in which Bentham explained that in the case of transportation to America the contractor had been given the legal power to assign the convict to an independent purchaser, but that this provision had been dropped, presumably because the convict was not to be sold to a purchaser but handed over to a government official, is at UC cxvi. 124 (9 October 1802). For Bentham's claim that his discussion of this question in the first 'Letter to Lord Pelham' gave rise to the Transportation Act of 1802 see pp. xlix–l below.

[2] Bentham to Bunbury, 9 August 1802, *Correspondence* (*CW*), vii. 72, and 'Correspondence, sent to Wilberforce', pp. 30–1 below. The 'illegal and corrupt promises' were presumably those made to Spencer and Belgrave: see p. xxix above.

Narrative [i.e. 'A Picture of the Treasury'], which though at its outset destined to be submitted, in the way of private communication', to Pelham, 'became in its progress too voluminous for manuscript'.[1] On 11 August 1802 Bentham met with Bunbury and asked him to send, rather than to give, his letter of 9 August 1802, the 'Introductory Note', and the two sheets of marginal contents to Pelham,[2] and then sent a letter to Bunbury requesting that, in his covering letter to Pelham, he would state that if Pelham did not respond to Bentham within a week, he would conclude that no response would ever be forthcoming and his 'future proceedings would be built on that *declared* ground'.[3]

On 13 August 1802 Bunbury reported to Bentham that he had on the previous day sent the documents to Pelham as requested, and promised to 'let [Bentham] know as soon as I hear from him'.[4] Bentham informed his brother Samuel that the panopticon scheme 'seems approaching to a crisis—Bunbury being Mediator with Ld Pelham'.[5] Bunbury had received no reply from Pelham by 17 August 1802,[6] when Bunbury wrote to him again, urging him

> to *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 *whether it is the Intention of Ministers to have his Plan carried into Execution*.[7]

Pelham responded to Bunbury on 19 August 1802 with a promise to investigate 'what steps have been taken by the Treasury' in relation to the panopticon scheme before sending for Bentham, since 'to give him any false hopes, would in the present state of his mind, produce the very worst effects'. Pelham indicated that he would 'endeavour to get something settled before the meeting of Parliament'.[8] Forwarding this letter to Bentham, Bunbury hoped that Pelham's answer would 'prove satisfactory, as it seems to imply approbation, and promises immediate attention to the business'.[9] Bentham was not convinced

[1] Bentham to Bunbury, 9 August 1802, *Correspondence* (*CW*), vii. 74–5, and 'Correspondence, sent to Wilberforce', p. 46 below.

[2] See 'Correspondence, sent to Wilberforce', p. 33 below.

[3] Bentham to Bunbury, 11 August 1802, *Correspondence* (*CW*), vii. 76, and 'Correspondence, sent to Wilberforce', p. 33 below.

[4] Bunbury to Bentham, 13 August 1802, *Correspondence* (*CW*), vii. 77, and 'Correspondence, sent to Wilberforce', p. 35 below.

[5] Bentham to Samuel Bentham, 14 August 1802, *Correspondence* (*CW*), vii. 79.

[6] Pelham was preoccupied by the fact that his wife Mary was dangerously ill: see Pelham to Addington, 4 August 1802, Pelham Papers, BL Add. MS 33,109, fo. 327.

[7] Bunbury to Pelham, 17 August 1802, ibid., fo. 376.

[8] In the event, the newly elected Parliament opened its session on 16 November 1802.

[9] Pelham to Bunbury, 19 August 1802, and Bunbury to Bentham, 20 August 1802, *Correspondence* (*CW*), vii. 79 & n., and 'Correspondence, sent to Wilberforce', pp. 36–7 below.

that anything had changed. He told Bunbury that Pelham's response was 'the old lay, over and over for the hundredth time', namely 'a perseverance in the same system of complicity and evasion' that Pelham and his colleagues had adopted since entering office. Pelham regarded Bentham himself both as 'a *patient* labouring under a sort of mental derangement', as well as 'a *suitor*—an unfledged suitor—prone to embrace phantoms for realities, and panting for the felicity of falling at his feet'. Bentham claimed that he could discern 'terror' in the minds of Pelham and Addington, though 'not yet enough indeed to open either of them . . . to fearless honesty, but however to drive gentlemen upon this fresh and *speaking* attempt at evasion, instead of their former *silence*'. They had attempted to gain time in order to hold '*councils of war* about the job' and decide 'which of the two repugnant engagements it were best to break definitively—(the original legal engagement, or the last in the succession of illegal ones)', and, in the former most probable case, 'by what kind of botchery the breach may be best cobbled'.[1] Bentham informed his brother Samuel that, while he did not regard Pelham's response to Bunbury to be 'a symptom of compleat conversion' to support for the panopticon scheme, he did consider it to be 'a symptom of salutary terror, which I shall not fail to improve'.[2]

Bentham made a further attempt to influence government through his step-brother Charles Abbot, the Speaker of the House of Commons, whom he asked to intercede with Addington. On 3 September 1803 Bentham wrote to Abbot with a lengthy account of his recent dealings with the Treasury and the Home Office and the alleged conspiracy to destroy the panopticon scheme. He also outlined certain 'discoveries' he had made concerning the 'illegality of the Government of New South Wales'.[3] Bentham feared that should his discoveries become known in the colony, 'all subordination—all government there—would be at an end'. He had, therefore, not only withheld his findings from publication, in order to avoid 'insurrection' in New South Wales, but also from the Opposition, who, he noted, 'for the sake of making the better attack upon Ministry . . . would be glad to see N. S. Wales in a flame: and some hundreds of throats cut on both sides'. He would not reveal his findings until the meeting of Parliament, but asked Abbot to make private representations on his behalf to Addington, with his 'demand' being 'an extremely simple one', namely that the

[1] Bentham to Bunbury, 21 August 1802, *Correspondence* (*CW*), vii. 81–2, 85, and 'Correspondence, sent to Wilberforce', pp. 38–9, 42 below. The 'last in the succession of illegal engagements' was the promise made to Belgrave.

[2] Bentham to Samuel Bentham, *c.* 21 August 1802, *Correspondence* (*CW*), vii. 88.

[3] For Bentham's discoveries and their relationship to 'A Plea for the Constitution' see pp. lxxxii–lxxxiii below.

government agree to the construction of the panopticon on the basis of his 'Unarmed Memorial' of 19 June 1800.[1] Bentham explained that he was not satisfied with Pelham's promise, made to Bunbury, that he would look into the matter, since Pelham could not bind Addington, but he could have confidence in any promise made by Addington to Abbot, given the latter's position as Speaker. This would, Bentham warned, be his 'last *private* attempt, to drive into the head of Mr Addington the sense of justice. Should this pass unnoticed, or prove fruitless, *the die is cast*'. If Abbot had not replied by 13 September 1802, he wrote, 'it may be necessary for me to take steps that may be irrevocable'.[2] Bentham presumably had it in mind to make his findings public, but his plans were interrupted when, on 7 September 1802, he set out for Paris, both for reasons of health and to meet with Étienne Dumont.[3]

When Bentham returned to London on 2 October 1802, he found two letters from Abbot waiting for him. In the first of 7 September 1802, in response to his letter of 3 September 1802, Abbot told him that there would be 'no good' and 'much probable hindrance' in communicating 'the greater part of its contents', and that, 'Of all the invectives and threats', he had 'not communicated one word' to Addington. 'Of the Facts', he continued, 'I have communicated so much as in my Judgment I thought desireable.' Abbot had been informed that Addington would soon be in London and would 'inquire into the [panopticon] business—and will see Nepean upon it—if possible'.[4] In the second letter of 17 September 1802, Abbot reported that a meeting between Addington and Nepean had taken place, and that Nepean would that day see Addington again 'to refresh his memory'.[5] During Bentham's absence, Bunbury had continued to lobby Pelham. They had met during the week prior to 30 September 1802, when Bunbury had asked Pelham to see Bentham and inform him 'what steps he intended to take in the Business of the Panopticon Prison'. Pelham had replied that he would do so, 'as soon as he had read through [Bentham's] Books,[6] and conversed with the chancellor, and the Judges on the Subject'. Bunbury had also extracted a commitment

[1] See p. xxvii n. above.

[2] Bentham to Abbot, 3 September 1802, *Correspondence* (*CW*), vii. 101–15.

[3] Bentham to Abbot, 7 September 1802, and Bentham to Bunbury, 3–4 October 1802, ibid. 128 and 140 respectively. Dumont had been overseeing the publication of *Traités de législation civile et pénale*, 3 vols., Paris, 1802, the first of his five major recensions of Bentham's works.

[4] Abbot to Bentham, 7 September 1802, *Correspondence* (*CW*), vii. 131.

[5] Abbot to Bentham, 17 September 1802, ibid. 134.

[6] According to Bentham to Abbot, 3 October 1802, ibid. 139, the books were 'A View of the Hard-Labour Bill'; 'Panopticon; or, The Inspection-House'; and 'Outline of a Work entitled, Pauper Management Improved', London, 1798 (reproduced in *Writings on the Poor Laws: Volume II*, ed. M. Quinn, Oxford, 2010 (*CW*), pp. 487–693).

from Pelham that, if panopticon were to be abandoned, compensation would be offered to Bentham.[1]

It was this exchange between Bunbury and Pelham that prompted Bentham to set about printing the first 'Letter to Lord Pelham'. In a letter to Bunbury of 3–4 October 1802, Bentham expressed his scepticism that Lord Chancellor Eldon[2] and the judges would be 'unanimously ready to give an opinion without documents, on a question of great extent to which their thoughts have never been conducted', and expected that Pelham 'never will find leisure' to read his books. Bentham was, moreover, concerned that, by agreeing to receive compensation, it would be inferred that he had consented to relinquishment. Given that it was Pelham's intention to consult Eldon and the judges in relation to the panopticon scheme, he asked Bunbury to inform Pelham that he considered it 'a point of common prudence as well as justice, for me to submitt to the same highly respected quarter my own state of the question as between that same establishment and New South Wales'. Hence, Bentham expected 'to have sent to the press by tomorrow [i.e. 5 October 1802] that paper of which he [Pelham] has already seen the marginal contents'.[3] On 11 October 1802 Bunbury responded that while he was happy to 'promote the Success of the Panopticon Plan', it was his 'wish to act as a Mediator, and to conciliate, rather than defy', and that if Bentham was 'determined to send Challenges, you must select a more Warloving Friend for a Messenger'.[4]

Undeterred, Bentham went ahead with the printing of the first 'Letter to Lord Pelham', which appears to have been completed in early November 1802.[5] Bentham had, however, perhaps become worried about whether the pamphlet might lead to his prosecution for libel. On 1 November 1802 Samuel Romilly[6] had warned him that 'On the dispensing power exercised by the Duke of Portland and his confederates', another work which had emerged from 'A Picture of the Treasury', was 'in point of law, a libel on the duke'.[7] Bentham thereupon

[1] Bunbury to Bentham, 30 September 1802, *Correspondence* (*CW*), vii. 137.

[2] John Scott (1751–1838), first Baron and first Earl of Eldon, Solicitor General 1788–93, Attorney General 1793–9, Chief Justice of Common Pleas 1799–1801, Lord Chancellor 1801–6, 1807–27.

[3] Bentham to Bunbury, 3–4 October 1802, *Correspondence* (*CW*), vii. 140–3.

[4] Bunbury to Bentham, 11 October 1802, ibid. 146.

[5] The work is dated 2 November 1802, though only the final paragraph was composed on that date: see p. xxxiv above.

[6] Samuel, later Sir Samuel, Romilly (1757–1818), Solicitor General 1806–7, was one of Bentham's most intimate friends.

[7] Romilly to Bentham, 1 November 1802, *Correspondence* (*CW*), vii. 154–5. The manuscripts for 'On the dispensing power exercised by the Duke of Portland and his confederates' are at UC cxx. 470–591, including a partial fair copy at cxx. 570–91, which may have been the version sent to Romilly.

asked Romilly to advise him whether the first 'Letter to Lord Pelham' contained 'any objectionable passages' before he distributed copies to Eldon, the judges, and 'some of the ministers'. Were Romilly to indicate any passages that required alteration or omission, Bentham was willing to reprint 'as much as is necessary'.[1] Whatever Romilly's advice might have been, Bentham does not appear to have made any changes to the printed text. On 29 August 1802 he informed Dumont that,

> [A] pamphlet of mine ready for the press will have some such title as the following. *Panopticon versus New South Wales*. Shewing the compleat and incurable repugnancy of the system of penal Colonization to the several ends of penal justice, as contrasted with the degree of perfection in which the same objects are provided for under the Penitentiary system, kept in suspense for these eight years by corrupt influence, in contempt of an imperative Act of Parliament, and a long train of engagements grounded on it.

He added that 'the substance of it might be published, though with a tamer title, to warrant [the ministry] proceeding in consequence' with the panopticon.[2] Bentham did, in the event, adopt a 'tamer title', and on 6 November 1802 forwarded copies of 'Letter to Lord Pelham' to Eldon and the judges, along with a circular explaining the reasons for their having received it.[3] Around the same time, Bentham sent copies of the work to Pelham[4] and Bunbury.[5]

In an undated passage headed 'Preface to Letters to L^{d} Pelham', Bentham noted that, when preparing to circulate the first 'Letter to Lord Pelham' to the judges, in order to obviate the impression that the blanks (that is the continuous dashes inserted in place of certain names), which were 'the resource of the anonymous libeller', might suggest that 'fear or shame' had prevented him from 'speaking without disguise', he had added 'a hasty line in manuscript, noticing these gaps, and undertaking to account for them'. He then explained

[1] Bentham to Romilly, 2 November 1802, *Correspondence* (*CW*), vii. 155–6.

[2] Bentham to Dumont, 29 August 1802, ibid. 96–7.

[3] For the 'Circular' see p. 69 below. A copy of the circular, signed by Bentham and addressed to Sir Giles Rooke (1743–1808), Justice of Common Pleas 1793–1808, is at UC clxxiv. 78. The final page of the work contains the printer's imprint: '*Wilks and Taylor, Printers, Chancery-lane.*' Wilks and Taylor, of Chancery Lane, had been established in 1800 by John Taylor (1750–1826), wool factor and hymn writer, and a Mr Wilks, on the understanding that Taylor's son Richard (1781–1858), printer and naturalist, would become a partner upon reaching his majority. The partnership was dissolved in May 1803 following a quarrel between Wilks and Richard Taylor, with the business subsequently becoming R. Taylor and Co.

[4] According to Bentham to French Laurence, 18 December 1802, *Correspondence* (*CW*), vii. 165, 'Letter to Lord Pelham' had been 'in the hands of Lord Pelham for this month past'. Laurence (1757–1809), Regius Professor of Civil Law at the University of Oxford from 1796, MP for Peterborough 1796–1809, was the literary executor of Edmund Burke (1729/30–97), politician and author.

[5] See Bentham to Bunbury, 3 December 1802, ibid. 157.

that the evidence for the observations he had made had not appeared in the work itself (presumably he had in mind the fact that he had presented his evidence in 'A Picture of the Treasury'), and so his 'strictures' would have appeared 'groundless', and he did not have time to re-write the material. He went on to say that he had had no response to the first 'Letter to Lord Pelham' because it was not convenient for judges or ministers to say anything in response.[1]

The first 'Letter to Lord Pelham' may have prompted the government to pass the Transportation Act of 1802. On 10 December 1802 in the House of Commons, Spencer Perceval, the Attorney General,[2] introduced a Bill 'to facilitate and render more easy the transportation of felons', in order to permit the Crown to use its own ships for transporting convicts rather than hiring private contractors. The problem, as he explained, was that 'the contractor was bound to enter into a certain security, for taking such felons to the place of their destination', but that 'an officer who had the command of a ship of his Majesty's could not enter into this security, it being needless, he being already under command—but as the law now stood, the learned judges could consign the care of such prisoners only to such persons as should enter into such security'. The proposed Bill would 'empower those who may have the command of his Majesty's ships, and who may have the charge of such prisoners, to take them without entering into such security'.[3] On the following day, having seen newspaper reports of the proceedings, Bentham sent a copy of the first 'Letter to Lord Pelham' to Perceval and to the Solicitor General Sir Thomas Manners-Sutton.[4] On 13 December 1802 Perceval responded by thanking Bentham for his work and promising to read it, but adding that the Bill he had introduced was not connected 'with the subject of [Bentham's] "Considerations"', since its only object was to enable the Crown to employ its own ships for the transportation of convicts, 'instead of being obliged to contract for their transportation in hired Vessels'.[5] In the first 'Letter to Lord Pelham', Bentham had made the point that the transportation of convicts by the Royal Navy vessel HMS

[1] UC cxvi. 468–9 (9 January 1803). Bentham made a similar point about the silence of the administration in a fragment at UC cxvi. 465–6 (10 December 1802) and, in a fragment at cxvi. 467 (21 December 1802), promised to reveal names when appropriate in order to further the individual responsibility on which good government depended. The former fragment is headed 'Letter 3d' and the latter 'Panopt. v. N.S. Wales'.

[2] Spencer Perceval (1762–1812), Solicitor General 1801–2, Attorney General 1802–6, Chancellor of the Exchequer 1807–9, and leader of the administration as First Lord of the Treasury 1809–12.

[3] *Parliamentary Debates* (1802), i. 324–5.

[4] Bentham to Perceval, 11 December 1802, *Correspondence* (*CW*), vii. 160. Sir Thomas Manners-Sutton (1756–1842), first Baron Manners, Solicitor General 1802–5, Lord Chancellor of Ireland 1807–27.

[5] Perceval to Bentham, 13 December 1802, ibid. 161.

Glatton—which had sailed from England on 23 September 1802—was illegal, on the grounds that the active Transportation Acts provided only for convicts to be transported by private contract.[1] He told Romilly that he considered Perceval's response to be an admission that 'the sole object of the Bill is to stop up one of the flaws pointed out in the pamphlet in question p. 37 note'.[2] If Romilly had the opportunity to do so, Bentham hoped that he would encourage Perceval to read the first 'Letter to Lord Pelham' and to point out to him 'the coincidence between little men's *notes* and great men's *bills*, and take notice of what he says to it'.[3] On 29 December 1802 Perceval's Bill received the Royal Assent as the Transportation Act of 1802.[4]

Second Letter to Lord Pelham

Following his return from Paris in early October 1802, Bentham turned his attention to 'Second Letter to Lord Pelham'. As noted above, Bentham drew largely on the second volume of Collins, a copy of which he had acquired and read by the time that he wrote to Bunbury on 9 August 1802.[5] He appears to have composed a single draft, from which he had a single copy taken, both of which were presumably destroyed after printing. The material which does survive appears to represent the first version of a few short passages that Bentham decided to rewrite. There survives a cancelled draft, in the hand of a copyist with Bentham's corrections, of the second paragraph of '§ II. Further features of Reformation'.[6] This is followed by a later addition in Bentham's hand stating that, according to the Duke de Liancourt,[7] a reform had been

[1] See 'Letter to Lord Pelham', p. 113 n. below. Bentham returned to the point in 'A Plea for the Constitution', pp. 317–20, 331 n. below.

[2] i.e. pp. 112–13 n. below.

[3] Bentham to Romilly, 16 December 1802, *Correspondence* (*CW*), vii. 162. In a letter to French Laurence, 18 December 1802, ibid. 165, Bentham similarly claimed that his footnote 'may not improbably have been the occasional cause of this Bill'.

[4] 43 Geo. III, c. 15.

[5] See *Correspondence* (*CW*), vii. 72–3. Bentham was soon afterwards producing an analysis of its contents: see UC cxvi. 445 (14 August 1802), headed 'II. Collins. Quotations.' A brouillon for the second volume of Collins is at UC cxvi. 448 (n.d.), and a further brouillon in which reference is made to it is at cxvi. 434 (15 August 1802). These brouillons, together with another at UC cxvi. 432 (17 August 1802) in which Bentham analysed the depravity in New South Wales under headings similar to those adopted in the text, and compared the reformation of criminals to the cure of the medically sick (a theme he had touched upon in the first 'Letter to Lord Pelham', p. 102 n. below), may represent the beginning of Bentham's work on 'Second Letter to Lord Pelham'.

[6] See p. 173 below.

[7] Duke de Liancourt, *A Comparative View of Mild and Sanguinary Laws; and the good effects of the former, exhibited in The Present Economy of the Prisons of Philadelphia*, 2nd edn., London, 1796 (first published anonymously as *Des prisons de Philadelphie, par un Européen*, Philadelphia, 1796).

forced upon the Pennsylvanian legislature by Quakers,[1] and going on to lament the fact that no such 'force' or 'spirit of philanthropy' in England was 'capable of surmounting the *vis inertiæ* of government'.[2] There survive two marginal contents sheets containing extracts from Collins that correspond to the passages quoted in §§ IV–IX, with the content, ordering, and hence the enumeration differing in some degree from that in the text.[3] There survive two sheets that formed part of the draft for '§ VI. Depravity—Particular Exemplifications—Incendiarism'. The first of these sheets, containing the second to fifth paragraphs of 'Observations' to No. 7,[4] has been crossed through by Bentham,[5] while the second, containing the ninth and tenth paragraphs,[6] has been marked 'Superseded' and partially crossed through and partially cancelled by Bentham.[7] In both cases, the content was re-drafted for the printed text. In a note to this latter page, but not included in the printed text, Bentham argued that incendiarism would not be a distinct crime in 'a well methodized code' and that it was an example of the way in which 'Imperfect conceptions give rise to imperfect language, and that to imperfect laws.'[8]

A cancelled passage of three sheets, in which Bentham cast scorn on the notion that a word from the Governor of New South Wales might put an end to criminality, might have originally been intended for '§ XV. New South Wales—Economy', but was then adapted for use in '§ VII. Remedies unavailing—Spiritual'.[9] A single sheet appears to have formed the original draft of '§ IX. Main Cause of Non-Reformation, Drunkenness',[10] but was replaced by the discussion in the printed text. The clue lies in the content of the sheet itself. Having identified drunkenness as the 'principal and perennial source' of all the other vices in New South Wales, Bentham remarked that, 'To prove this by quotations would be to copy a great part of [Collins's] book.' In the printed text, he did indeed decide to make his proof 'by quotations', using sixteen of them.[11] Bentham may, moreover, have considered this sheet for use in 'A Plea for the Constitution' as indicated by the title 'II. Examples

[1] Probably either the Pennsylvania Law Amendment Act of 1786 or the Penal Laws Act of 1790: see pp. 166–7 below.

[2] UC cxvi. 488 (18 November 1802).

[3] UC cxvi. 446–7 (n.d.)

[4] See pp. 190–1 below.

[5] UC cxvi. 41^{v} (1 November 1802), sub-headed 'Incendiarism. Succeeding Observations.'

[6] See p. 192 below.

[7] UC cxvi. 52 (1 November 1802), sub-headed 'Incendiarism.'

[8] UC cxvi. 267–8 (5 November 1802), sub-headed 'Incendiarism.'

[9] UC cxvi. 94–6 (27 October 1802). The first sheet carries the original sub-heading 'Economy', which has been crossed through, and then 'or Reformation. Remedies unavailing' added, while the second and third sheets both carry the original sub-heading 'Economy' which has been crossed through and replaced with 'Reformation'. All three sheets are also sub-headed 'Governor's Sermons.'

[10] UC cxvi. 282 (18 July 1802). The sheet is paginated 58, indicating that it belonged at one time to the full draft of 'Second Letter to Lord Pelham'.

[11] See pp. 209–17 below.

of Ordinances having for their object the prevention of Drunkenness', and the sub-heading (in the hand of a copyist) 'IV. Assumption—Samples', which appear to be later additions. He may have thought the sheet relevant in that it contains the suggestion that the Governor's ordinances against drunkenness were necessary for the survival of the colony, but nevertheless illegal—a point developed in 'A Plea for the Constitution'.

Three sheets related to '§ X. Per Contra—Penitentiary System,—General Reformation, as attested in general expressions', none of which appear in the printed text, indicate how Bentham proceeded in assembling it. One sheet, in the hand of a copyist but with headings and cancellations in Bentham's hand, consists of three clipped pages, of which two contain an extract from Thomas Eddy[1] and one contains an extract from Liancourt, and which have been pinned to a backing page.[2] A second sheet, in the hand of a copyist but dated, headed, and sub-headed by Bentham, contains an extract from Turnbull, together with an extract from Liancourt on a clipped page that is pinned to it.[3] A third sheet, in the hand of a copyist but with sub-headings in Bentham's hand, contains an extract from Liancourt, together with a further extract from Eddy on a clipped page that is pinned to it.[4] It appears, therefore, that Bentham identified relevant passages from the various works and had them copied, probably in the page sequence of the original texts, and then cut the sheets to form the clipped pages and pinned them onto backing pages and thereby placed them in the order in which they are presented in the text. Other sheets follow a similar pattern. A sheet related to '§ XI. Main Cause:—Sobriety, Strictness.—Universality and good effects of it in the Penitentiary House', not used in the main text, consists of two clipped pages, containing an extract from Turnbull and an extract from Eddy respectively (both in the hand of a copyist but with headings in Bentham's hand), pinned to a backing page. Beneath the two extracts, on the backing page, Bentham has added 'Observations.'[5] A sheet related to '§ XII. Central Inspection Principle: Escapes, for want of it, from the American Prisons', consists of three clipped pages pinned to a bifolium

[1] i.e. [Thomas Eddy,] *An Account of the State Prison or Penitentiary House, in the City of New-York. By one of the Inspectors of the Prison*, New York, 1801. The second extract is mistakenly attributed to Robert J. Turnbull, *A Visit to the Philadelphia Prison; Being an accurate and particular Account of the Wise and Humane Administration Adopted in every Part of that Building; containing also An Account of the Gradual Reformation, and present Improved State, of the Penal Laws of Pennsylvania: with Observations on the Impolicy and Injustice of Capital Punishments. In a Letter to a Friend*, Philadelphia and London, 1797. A list of extracts from this work, headed 'Eddy. New York Prison', is at UC cxvi. 456 (n.d.)

[2] UC cxvi. 36. The first two clipped sheets are not dated, while the third is dated 9 November 1802.

[3] UC cxvi. 83 (2 November 1802).

[4] UC cxvi. 84 (n.d.)

[5] UC cxvi. 35 (n.d.)

containing various superseded notes and jottings. The three clipped pages, in the hand of a copyist but with headings and sub-headings in the hand of Bentham, consist of two extracts from Liancourt and one from Eddy respectively.[1] The first part of the first quote has been marked round and crossed through in red ink, and this text appears as the quote from 'Liancourt, 1795; p. 6.' in the printed text,[2] where neither the remainder of this extract, nor the second extract from Liancourt and that from Eddy, are reproduced.

A sheet related to '§ XV. Fruit of the Penitentiary System, in point of Example as well as Reformation. Decrease of Crimes' contains two clipped pages containing extracts from William Bradford[3] and Liancourt respectively (both in the hand of a copyist but with headings and corrections to his own short commentary in relation to the former extract in Bentham's hand), pinned to a full page. Both above and below the two extracts, on the full page, Bentham has added comments in pencil. The extract from Bradford expresses the view that 'when the Botany Bay scheme' had been 'sufficiently tried', the 'rational expedient' of penitentiary houses would 'probably be adopted',[4] while the extract from Liancourt notes that men would 'doubtless' be found in England who would 'devote themselves' to the 'important work' of reforming criminals,[5] which prompted a series of outraged questions from Bentham directed towards members of the administration.[6] A further sheet, with the sub-heading 'Death', mainly in the hand of a copyist, contains an extract from Eddy to which a clipped page containing two extracts from Caleb Lownes[7] and Liancourt has been pinned, all making the point that in Philadelphia, since the amelioration of the penal laws and punishments more proportioned to the crime, juries were more willing to convict and officials less likely to pardon before some evidence of reformation had been shown by the criminal.[8] There survives a sequence of three text sheets written for the same section, sub-headed 'Death', but excluded from the printed text, in which Bentham pointed out that capital punishment undermined penal law in general and encouraged criminality because, amongst other things, it encouraged a reluctance to prosecute on the part of the victim, a reluctance to find a guilty verdict on the part of the

[1] UC cxvi. 42 (n.d.)
[2] See p. 226 below.
[3] William Bradford, *An Enquiry how far the Punishment of Death is Necessary In Pennsylvania. With Notes and Illustrations. To which is added, An Account of the Gaol and Penitentiary House of Philadelphia, and of the Interior Management thereof. By Caleb Lownes, of Philadelphia*, Philadelphia, 1793.
[4] See ibid., p. 51.
[5] See Liancourt, *Comparative View of Mild and Sanguinary Laws*, p. 39.
[6] UC cxvi. 41 (9 November 1802).
[7] Lownes's essay appears in Bradford, *Enquiry how far the Punishment of Death is Necessary*, pp. 73–108.
[8] UC cxvi. 46 (n.d.)

jury, and set humanity in opposition to justice.[1] In a related sequence sub-headed 'Death. Pardon', intended for a note, Bentham mentioned the case of two notorious convicts sentenced to the death penalty who were pardoned at the request of an officer who was raising a corps, and suggested, from personal observation, that pardons were dispensed, possibly for a monetary consideration, by 'a Secretary's Clerk's Clerk' in the Home Office.[2] Bentham at one point considered including a sixteenth section entitled 'American public spirit', gathering together three extracts from Liancourt, and writing a short introduction in the margin.[3] He then appears to have composed a revised introduction under the title 'Candour and public spirit manifested in the American reforms'.[4] There survives a single, but abandoned, sheet with the sub-heading 'Objection—*stale*', for a proposed '§ XVII. Conclusion', in which he began to refute the objection that the American experience was out of date.[5]

In the event, the fifteenth and final substantive section of 'Second Letter to Lord Pelham' was entitled 'New South Wales—Economy—Prospects, as per last accounts'. No sheets for the draft or copy of the printed text survive, but there does survive some fragmentary material that seems to have been written with this section in mind. On a cancelled sheet sub-headed 'Economy', Bentham gave a list of topics he intended to include under the general headings of 'reformation and economy'. The topics he listed under the head of reformation accord in general with those treated in the first nine sections of 'Second Letter to Lord Pelham'. He continued:

> Under the head of economy, so much of the matter as belongs to it will be found ranged under the subordinate titles following—1. *Free Settlers necessary*: passage respecting the necessity of a population of this kind to the prosperity of the establishment, and the possibility of rendering it subservient in any tolerable degree to its intended use. 2. *Unwillingness to settle*—well-grounded. Free Settlers: passages evidencing the repugnancy on the part of persons of different descriptions either to the taking upon themselves that condition of life or to the persevering in it when assumed. 3. Subsistence essentially insecure: various causes of destruction, mostly unavertable, threatening the crops and stock at all times.[6]

[1] UC cxvi. 43–5 (16 November 1802). Bentham considered incorporating this material in 'Third Letter to Lord Pelham', as indicated by the alteration of the main heading from '2^{d} Letter' to '3^{d} Letter'.

[2] UC cxvi. 47–8 (⟨. . .⟩ November 1802).

[3] UC cxvi. 39 (9 November 1802).

[4] UC cxvi. 38 (18 November 1802).

[5] UC cxvi. 40 (18 November 1802). This sheet carries the main heading 'Letter 3^{d}', but this may be a later addition.

[6] UC cxvi. 54 (26 October 1802). This sheet and several others carry the heading 'Supplement', which suggests that § XV may have been a later addition to the text. A rudiments sheet headed 'Supplement' and 'Panopt. v. N.S.W.' is at UC cxvi. 462 (27 October 1802).

In the printed text, Bentham appears to have decided to omit the first two topics dealing with free settlers but retain the topic of subsistence.[1] He also states in the printed text that, for the sake of brevity, he will not, as he originally intended, provide full quotations from Collins, but merely give references.[2] In line with these original intentions, Bentham gathered four extracts from Collins, in the hand of a copyist but with headings and additions in his own hand, spread over three clipped pages, which he has attached to a backing page.[3] There are, moreover, several sequences of extracts from Collins, in the hand of a copyist with occasional interventions in Bentham's hand, dealing with the dangers arising from spontaneous fires, arson, drought, storms, flooding, pests, 'Native hostility', and 'Hostility by Vagrants, Maroons, Fugitives',[4] 'Buyer want',[5] and 'Seller want'.[6] These were points intended to give support to Bentham's argument that no free settler would go to New South Wales 'without insanity on his part, or cruel treachery on the part of those who sent him'.[7] A sequence sub-headed 'Settlers hopeless' indicates how he would have used this material. He stated that a large number of free settlers were necessary for 'any considerable and permanent degree of moral improvement' in New South Wales, but that such a prospect was both 'altogether hopeless' and undesirable, given the likely harm that would befall anyone who embarked 'in any such desperate and bootless and ruinous adventure'. Security for life and subsistence depended on labour and 'the faculty of exchange', namely a market where one might both buy and sell goods, but the emergence of such a market in New South Wales would be either difficult or impossible. Moreover, the security for property was undermined by 'nine perfectly distinguishable causes of destruction':

> 1. Drought. 2. Fire by hostility of native savages. 3. Fire by hostility of intestine malefactors. 4. Fire, even by the spontaneous inclemency of unassisted Nature. 5. Drought parching up the vegetation of the earth, spontaneous as well as cultivated, and cutting off for a whole season together all hopes of supply. 6. Caterpillars and a variety of other vermin producing, by their ravages, the appearance and the effects of drought. 7. Tempests tearing up, 8. inundations sweeping away into the Sea, the hoarded produce of a vainly favourable season—whatever has been spared by earlier and therefore less cruel causes

[1] See pp. 240–7 below. Bentham does, however, return to the topic of free settlers at the end of § XV: see pp. 245–6 below.
[2] See p. 240 below.
[3] UC cxvi. 82. The backing page is dated 21 June 1802, headed 'Collins. Extracts. N.S. Wales', and sub-headed 'Economy. Free-settling hopeless.'
[4] UC cxvi. 58–69 (n.d.) Bentham drew on this material when compiling the references for § XV.
[5] UC cxvi. 70–4 (n.d. except for cxvi. 71, which is dated 15 October 1802).
[6] UC cxvi. 75–8 (n.d. except for cxvi. 76–7, which are dated 15 October 1802).
[7] See p. 245 below.

of desolation. 9. Rapacity continually letting loose upon the industrious and peaceable subject the hostility of three implacable enemies—Convict depredators—native savages—and fugitive depredators, deserters from cultivated to savage society, self-converted into a species of Maroons, giving direction as well as inflaming the violence of their barbarous allies.

The result was 'perpetual danger not only of general dearth, but of actual famine'.[1] In related fragments, Bentham argued that such were the extraordinary endowments and talents that were needed in New South Wales, they might be put to better use in 'some of the boards at home—to the Victualling Board, to the Navy Board, to the Board of Ordnance, to the Admiralty Board, to the Treasury Board—that his Majesty's dominions might have the services of such rare talents upon the largest scale',[2] and called for the establishment of a government shop in the colony.[3] In a related fragment sub-headed 'Analysis. Corruption and Depravity', Bentham analysed moral failings in terms of self-regarding, social, and anti-social interest in order to show that 'there is not one that exists not in perfection in New South Wales'.[4] In a further fragment, Bentham was led by a remark upon 'obligation' in Liancourt[5] to write a digression concerning Vansittart's and Pelham's failures to consult each other over the fate of the panopticon prison scheme.[6]

In two cancelled sheets, neither of which contain any headings or dates, but which do contain marginal contents and which may be consecutive, Bentham stated that the second volume of Collins had 'just made its appearance'. Given that Bentham had a copy by the time that he wrote to Bunbury on 9 August 1802, this material was presumably written around that time. He pointed out that the institution of the colony in New South Wales was 'in a state of radical repugnancy' to all the ends of penal justice, that as soon as the illegality of the government of New South Wales were known, government there 'would very probably be at an end', and that the 'moral turpitude' of 'M^{r} Pitt and his associates' consisted in the violation of a series of Acts of Parliament which had appointed a limited term to transportation and 'the keeping on foot this scene of misery and wickedness, not to speak of bottomless expence' in order to frustrate the panopticon penitentiary scheme, and went on to offer his own services in devising

[1] UC cxvi. 85–7 (15 October 1802). The enumeration has been editorially emended for the sake of consistency.

[2] UC cxvi. 79 (27 October 1802), sub-headed 'Buyer & Seller want.'

[3] UC cxvi. 80–1 (27 October 1802).

[4] UC cxvi. 482–7 (18–19 August 1802). Bentham considered incorporating this material in 'Third Letter to Lord Pelham', as indicated by the addition of 'Letter 3^{d}' to the main heading.

[5] See Liancourt, *Comparative View of Mild and Sanguinary Laws*, pp. 40–1.

[6] UC cxvi. 49–51 (25 November 1802).

a plan for the relinquishment of the colony.[1] Bentham did not, in the event, devise any such plan, though the remaining themes were developed in 'A Plea for the Constitution'.

During November and the first half of December 1802 Bentham saw 'Second Letter to Lord Pelham' through the press. By 18 November 1802 the printers Messrs Wilks and Taylor admitted that they were struggling with 'the extreme intricacy of some parts of the Manuscript', asked for more copy, and recommended 'that the parts having much interlineations and marginal insertions might be rewritten, as otherwise they are fearful of getting the compositors to proceed with it without an additional charge'.[2] On 3 December 1802 Bentham informed Bunbury that 'Second Letter to Lord Pelham' was 'on the point of coming out of the press, after an unexpected course of typographical delays'. He expected that the work would run to 'upwards of 60 pages more, of 42 of which I have *proofs*'.[3] Bentham was being overly optimistic. A further two weeks elapsed before he sent the final paragraph of the text, which is dated 17 December 1802,[4] to the printers. On 18 December 1802 Bentham sent what was presumably a partial version of the printed text to Abbot, asking him to read it and thereafter to meet with him for 'a few words'.[5] Bentham had anticipated that the printer would deliver copies of the work on 19 December 1802,[6] and then on 21 December 1802,[7] and he was still describing it as being 'almost in readiness' on 23 December 1802.[8] He had, however, sent copies to Bunbury, Romilly, and Richard Clark by 30 December 1802.[9]

Bentham had, as noted above, sent a version of 'Second Letter to Lord Pelham' to Charles Abbot around 18 December 1802, in the hope of meeting with him after Abbot had read it.[10] In reply on 24 December 1802 Abbot confessed that he had 'not yet had time to read Lter the first—nor am I likely for a day or two to have time to read the first and second but if you wish to see me under these Circumstances I shall be at your Service'.[11] In a letter of 30 December 1802, Bentham explained that he wanted Abbot to read both 'Letters to Lord Pelham' before they met so that Abbot might point out 'any thing particularly

[1] UC cxvi. 35^{v} and 22^{v} (n.d.)
[2] Messrs Wilks and Taylor to Bentham, 18 November 1802, *Correspondence* (*CW*), vii. 157.
[3] Bentham to Bunbury, 3 December 1802, ibid. 158. 'Second Letter to Lord Pelham' ran, in fact, to 72 pages.
[4] See p. 248 below.
[5] Bentham to Abbot, 18 December 1802, *Correspondence* (*CW*), vii. 163.
[6] See Bentham to Sir John Anderson, 18 December 1802, ibid. 164.
[7] See Bentham to Richard Brinsley Sheridan, *c.* 19 December 1802, ibid. 166.
[8] Bentham to James Neild, 23 December 1802, ibid. 169.
[9] Bentham to Abbot, 30 December 1802, ibid. 178–9.
[10] Bentham to Abbot, 18 December 1802, ibid. 163.
[11] Abbot to Bentham, 24 December 1802, ibid. 172.

objectionable' in 'Second Letter to Lord Pelham', whereupon he might 'cancel it'. He explained that, apart from Abbot himself, he had sent copies of 'Second Letter to Lord Pelham' to Bunbury, Romilly, and Clark. Abbot had revealed that he had passed his copy of 'Second Letter to Lord Pelham' to Perceval, for which Bentham was 'not sorry', since it demonstrated both that Abbot did not deem it 'absolutely unfit for communication' and that he had presumed it would be of interest to Perceval, which Bentham might not otherwise have realized.[1] Bentham seized the opportunity that Abbot had afforded him by writing directly to Perceval to explain that he had not intended to distribute 'Second Letter to Lord Pelham' until 'it had undergone the scrutiny of four confidential friends, 'of whom Mr Abbot, Sir Charles Bunbury and Mr Romilly were three'.[2] He planned to send a copy to Pelham himself on 3 January 1803, but added that if Perceval saw 'any reason . . . for suspending the distribution, it would be in my power to profit by it'. In relation to the Transportation Act of 1802, which had received the Royal Assent on the previous day,[3] Bentham told Perceval that he had

> been putting a patch upon a pimple. You will have a foul ulcer to practise upon, ere long: ask Mr Romilly else:—already you must have descried some symptoms of it. I am truly sorry to be thus troublesome: better employment, I should have thought, might have been found for both of us. The power of Mr Percival surely might find worthier occupation in the removal of oppressions, than in helping to load or fasten on the yoke.

Bentham added that he 'had however neither part nor privity in the trouble given you in the *House*' during the debate on the Transportation Bill, though he had 'reason to think it will not be the last'.[4]

In Perceval's view, Bentham had not helped his cause by his confrontational attitude. In a letter written around the New Year, Perceval returned to Abbot an 'enclosure' which the latter had sent him, presumably Bentham's letter to Abbot of 30 December 1802, 'together with another which I have received from the same hand', namely Bentham's letter to Perceval of the same date. Perceval told Abbot that 'he may commit to the flames that which was sent to me, as I have no further occasion for it'. He agreed with Abbot that the panopticon should receive 'a full and dispassionate and attentive Consideration', and for that reason regretted 'much in the Style of your Friend's Composition, which . . . is not the best formed to secure *dispassionate* attention'. He went on to echo the Treasury Minute of 13 August 1800 that had so provoked Bentham in stating that, among the 'obstacles' to

[1] Bentham to Abbot, 30 December 1802, ibid. 178–9. Bentham sent Abbot a replacement copy of 'Second Letter to Lord Pelham' on 2 February 1803: see ibid. 195.
[2] The fourth was Richard Clark.
[3] See pp. xlix–l above.
[4] Bentham to Perceval, 30 December 1802, *Correspondence* (*CW*), vii. 180.

the adoption of the panopticon, were the prospect of abandoning 'the Botany Bay Colony in the state to which we have brought it' and 'the Check to be given to the Spirit of improvement in our County Gaols'.[1] Nevertheless, on 10 January 1803, having read both the first 'Letter to Lord Pelham' and 'Second Letter to Lord Pelham', Perceval did respond directly to Bentham. He admitted that the works contained 'many important facts and observations' which deserved 'serious and dispassionate observation', but wanted to hear what might be said on the other side of the question before forming 'a definitive judgement' of his own.[2] Bentham pinned his remaining hopes on Perceval. On 11 January 1803 he told Bunbury that the best outcome for panopticon would be that Perceval should be given 'full powers', and this would be 'a natural enough termination of the business', were the administration, from the 'pressure' of Perceval's opinion, 'added to what may be done in Parliament', forced 'to give up the corrupt and clandestine promise given to Lord Grosvenor'.[3]

From mid-December 1802 Bentham began to distribute copies of the first 'Letter to Lord Pelham' more widely. He sent copies to Sir John Anderson[4] and French Laurence, who had spoken critically of government policy in regard to prisons and New South Wales in the House of Commons during the Third Reading of the Transportation Bill.[5] During late December 1802 Bentham sent copies to Richard Brinsley Sheridan,[6] Charles Price, Baron Auckland,[7]

[1] Perceval to Abbot, TNA, PRO 30/9, fo. 33, reproduced in *Correspondence* (*CW*), vii. 180–1 n. The letter is undated, but in closing Perceval wrote: 'The best Comp[ts.] and Wishes of the Season attend you and Mrs. A. from this House.' Abbot had married Elizabeth, née Gibbs (1760/1–1847) in 1796.

[2] Bentham to Perceval, 10 January 1803, *Correspondence* (*CW*), vii. 185–6.

[3] Bentham to Bunbury, 11 January 1803, ibid. 187. Belgrave had, by this time, succeeded as Earl Grosvenor.

[4] Sir John William Anderson (1735/6–1813), MP for London 1793–1806.

[5] Bentham to Anderson, 18 December 1802, *Correspondence* (*CW*), vii. 164. Bentham had seen the brief account of the debate in *The Times*, 18 December 1802, p. 2.

[6] Richard Brinsley Sheridan (1751–1816), playwright, was MP for Stafford 1780–1806, Westminster 1806–7, and Ilchester 1807–12. See Bentham to Sheridan, *c.* 19 December 1802, *Correspondence* (*CW*), vii. 166 & n. The draft of this letter, at UC cxvi. 396, is undated, but Bentham stated to Sheridan that he had sent 'Letter to Lord Pelham' to him 'by desire of Sir Charles Bunbury'. Bunbury had arranged to meet Bentham on 19 December 1802 in order 'to talk over what passed in the House' on the Third Reading of the Transportation Bill, in which Bunbury had spoken in favour of panopticon: see Bunbury to Bentham, 18 December 1802, *Correspondence* (*CW*), vii. 166. It was presumably at this meeting that Bunbury encouraged Bentham to send a copy to Sheridan.

[7] On the draft of his letter to Sheridan of *c.* 19 December 1802, at UC cxvi. 396, Bentham indicated that a similar letter had been sent to Charles Price (1748–1818), merchant, MP for London 1802–12, Alderman 1798–1818, Sheriff 1799–1800, and Lord Mayor of London 1802–3, and to William Eden (1744–1814), first Baron Auckland, politician, penal reformer, and diplomat: see *Correspondence* (*CW*), vii. 166 n. For Auckland's acknowledgement of the receipt of 'Letter to Lord Pelham' see Auckland to Bentham, 26 December 1802, ibid. 174.

James Neild,[1] Sir Frederick Morton Eden,[2] and, presumably around this time, to John Coakley Lettsom.[3] On 16 February 1803 Patrick Colquhoun,[4] an active supporter of the panopticon penitentiary scheme, forwarded copies of both 'Letters to Lord Pelham' to Thomas Eddy.[5] During early 1803, copies of both works were received by Benjamin Hobhouse,[6] Samuel Parr (who subsequently presented them to Charles James Fox),[7] Sir John Sinclair,[8] and Joseph Jekyll,[9] while a copy of 'Second Letter to Lord Pelham' went to Sir Frederick Morton Eden.[10] Bentham also sent copies of both works to Collins, who thanked him 'for the Pamphlets which he so obligingly sent him' and expressed his regret 'that he has never had the Pleasure of any where meeting Mr. Bentham, and fears that his sudden Departure for New

[1] Bentham also promised to send a copy of 'Second Letter to Lord Pelham' to Neild 'as soon as any one goes into any other hands than [Pelham's]'. See Bentham to Neild, 23 December 1802, ibid. 169. For Bentham's contact with James Neild (1744–1814), penal reformer and philanthropist, see pp. lxiv–lxix below.

[2] Sir Frederick Morton Eden (1766–1809), insurance company manager and writer on the poor laws, pointed out that, in his table of convict mortality (see p. 132 n. below), Bentham had probably overestimated the proportion of 'natural deaths'; that, when considering their exposure to disease, the convict population was 'neither aged nor infantine'; that a passage in Collins referred to a clergyman visiting Norfolk Island and so it was not as devoid of religious oversight as Bentham claimed (see p. 78 n. below); and that he had mistakenly referred to Claudius rather than to Caligula (see p. 162 below): see Sir Frederick Morton Eden to Bentham, 27 December 1802, *Correspondence* (*CW*), vii. 174–6.

[3] John Coakley Lettsom (1744–1815), physician and philanthropist, was the author of *Hints Respecting the Prison of Newgate*, London, 1794, and with James Neild published a series of seventy-six letters on prisons in the *Gentleman's Magazine*, the first appearing in vol. lxxiii (December 1803), 1103–5, and the last in vol. lxxxiii (May 1813), 431–2. Lettsom's copy of 'Letter to Lord Pelham', inscribed by Bentham 'To D^{r} Lettsom. From the Author', is at British Library shelfmark T. 153. (4).

[4] Patrick Colquhoun (1745–1820), Lord Provost of Glasgow 1782–4, stipendiary magistrate at Worship Street, Finsbury Square 1792–7 and at Queen's Square, Westminster 1797–1818.

[5] See Samuel L. Knapp, *The Life of Thomas Eddy; comprising an Extensive Correspondence with many of the most Distinguished Philosophers and Philanthropists of this and other countries*, New York, 1834, p. 197. Thomas Eddy (1758–1827), Quaker, banker, politician, and philanthropist, had during 1796 assisted New York Senators Philip Schuyler (1733–1804) and Ambrose Spencer (1765–1848) in drafting the legislation providing for the construction of Newgate, the New York state penitentiary. Eddy designed the prison and served as its first Agent and Inspector from 1797 to 1804.

[6] Bentham to Hobhouse, 15 January 1803, *Correspondence* (*CW*), vii. 188–9. Benjamin, later Sir Benjamin, Hobhouse (1757–1831), MP for Bletchingley 1797–1802, Grampound 1802–6, and Hindon 1806–18.

[7] See p. lxxxv below. Samuel Parr (1747–1825), schoolmaster, writer, and clergyman, was a close friend and supporter of Charles James Fox (1749–1806), Foreign Secretary 1782, 1783, 1806.

[8] See Bentham to Sinclair, 17 February 1803, and Sinclair to Bentham, 18 February 1803, *Correspondence* (*CW*), vii. 202–3 and 204 respectively. Sir John Sinclair (1754–1835), writer on finance and agriculture, MP for Caithness 1780–4, 1790–6, 1802–6, 1807–11, Lostwithiel 1784–90, and Petersfield 1797–1802, President of the Board of Agriculture 1793–8, 1806–14.

[9] See Jekyll to Bentham, 1 March 1803, ibid. 206.

[10] Eden to Bentham, 27 January 1803, ibid. 194–5.

South Wales, will now totally put it out of his Power'.[1] Bentham must have then made contact with Collins, since they had dined together on three occasions by 22 February 1803, twice at Bentham's home at Queen's Square Place and once at the home of Bunbury,[2] before Collins returned to Australia.[3] Bentham also sent copies of both the first 'Letter to Lord Pelham' and 'Second Letter to Lord Pelham' at some point to Caroline Fox,[4] Lady and Baron Sheffield,[5] Richard Till,[6] and the Library of Queen's College, Oxford.[7]

Third Letter to Lord Pelham

Bentham closed 'Second Letter to Lord Pelham' with a promise that he would soon provide Pelham with a 'supplement of very moderate

[1] Collins to Bentham, 11 January 1803, ibid. 188.

[2] Bentham to Samuel Bentham, 22 February 1803, ibid. 205.

[3] On 14 January 1803 Collins had been commissioned as Lieutenant Governor of a new penal settlement which he was to establish at Port Phillip on the south coast of New South Wales. He sailed from England on 24 April 1803 and eventually relocated the settlement to Sullivans Cove on the Derwent River in Van Diemen's Land, thereby founding Hobart Town.

[4] Caroline Fox (1767–1845), diarist and correspondent. Fox's copy of 'Letter to Lord Pelham', inscribed by Bentham 'To the Hon^{ble} Miss Fox from the author', is at UC shelfmark Bentham Collection 2.L.3.

[5] John Baker Holroyd (1735–1821), first Earl of Sheffield, MP for Coventry 1780, 1781–4 and Bristol 1790–1801, had married his third wife Lady Anne North (1764–1832) in 1798. Her copy of 'Letter to Lord Pelham', inscribed by Bentham 'To Lady Sheffield. From The Author', is at the National Library of Australia, Canberra shelfmark FC F348, while Sheffield's copy, inscribed by Bentham 'To Lord Sheffield. From the Author', is at the University of London Library, Goldsmiths'-Kress Library of Economic Literature shelfmark [G.L.] B. 802 [Bentham].

[6] Richard Till (*c.* 1748–1824), Principal Clerk to the Commissioners of the Land Tax for the City of London. Till's copy, inscribed by Bentham 'To Richard Till Esq$^{re.}$ From the Author', is at National Library of New Zealand, Alexander Turnbull Library, shelfmark REng. BENT. Lett. 1802.

[7] Copies of the first 'Letter to Lord Pelham' and 'Second Letter to Lord Pelham', both inscribed by Bentham 'For Queen's College Library from the author. 24. Oct. 1803', are at Queen's College Library Vault shelfmark HH.h.394(1), while a copy of 'A Plea for the Constitution', inscribed by Bentham 'For Queen's College Librar[y] from the author. 24 Oct. [1803]', is at Queen's College Library Vault shelfmark HH.h.394(2). Bentham had entered Queen's College, Oxford as a student in 1760.

Bentham at some point added the following list of names in pencil to UC cxvi. 458 (for which see p. lxxii n. below): '$^{+}$1. Nares. $^{+}$2. Speaker [i.e. Charles Abbot]. $^{+}$3. Wilson. 4. $^{+}$Romilly. 5. L^{d} Ellenborough. 6. Addington? 7. L^{d} Moira. 8. Colquhoun. 9. L^{d} Pelham. 10. Monthly Review. $^{+}$11. S.B. [i.e. Samuel Bentham.] $^{+}$12. L^{d} St Helens. $^{+}$13. L^{d} St Helens.' The symbol $^{+}$ may indicate either that one or other of the works, or more likely that sets of copies of the works, had been sent to the person in question. It is unclear whether the repetition of St Helens is a slip or whether he received two sets of copies.

Robert Nares (1753–1829), philologist and clergyman; Edward Law (1750–1818), first Baron Ellenborough, Attorney General 1801–2, Chief Justice of King's Bench 1802–18; Francis Rawdon Hastings (1754–1826), second Earl of Moira and first Marquis of Hastings, military officer and politician, Governor-General of India 1813–23, Governor of Malta 1824–6; Alleyne Fitzherbert (1753–1839), first Baron Saint Helens, diplomatist.

length', in which he would examine the '*Hulks* and "*Improved Prisons*"'[1] and thereby complete his 'review of the several modifications of *chronical* punishment . . . exemplified or proposed, among Britons and men of British race'.[2] In 'Third Letter to Lord Pelham' Bentham sought to contrast the shortcomings of the hulks and local gaols of England and Wales with the advantages of the panopticon penitentiary, while at the same time maintaining that New South Wales was inferior to both as an instrument of penal policy. Bentham argued that, though the hulks were 'pernicious', they were 'at any rate a *less* pernicious receptacle for convicts than New South Wales', and that it would, therefore, have been more understandable had the panopticon been sacrificed for the hulks rather than for the penal colony.[3] As well as comparing these modes of punishment, Bentham exposed what he saw as the illegal power exercised by the Duke of Portland in seeking to establish a network of around 240 local penitentiaries 'instead of the one national one prescribed by Parliament',[4] and thereby shift the financial burden of imprisonment from the central government onto the local poor rates.[5] In Bentham's view, Pelham, Portland's successor as Home Secretary, rather than remedying the evils, in particular the conditions aboard the hulks that had led to the deaths of substantial numbers of convicts, had instead, through the appointment of a supine Inspector of the Hulks, sought to cover them up from public view.

'Third Letter to Lord Pelham' consists of three sections, numbered §§ XVII–XIX in continuation of 'Second Letter to Lord Pelham'.[6] It was written between late November 1802 and early January 1803. Bentham composed an initial draft of §§ XVII–XVIII on 22–4 November 1802, to which he made additions at various points in December 1802 and early January 1803.[7] He began § XIX on 20 December 1802 and, with the

[1] The 'various Improvements which have . . . taken place in the different Gaols of this Kingdom' was one of the four 'grounds of relinquishment' of the panopticon scheme listed in the Treasury Minute of 13 August 1800 (see p. xxvii above) and alluded to such local prisons as were constructed following the passage of the Gaols Act of 1784 (24 Geo. III, sess. 2, c. 54) and which were designed, or embodied the principles of design recommended, by William Blackburn.

[2] See p. 247 below.

[3] See p. 254 below. Bentham contrarily told Hobhouse that 'the penal Colonization system is, in every point of view, so bad . . . as to be absolutely *untenable*', but that the hulks were 'if possible still worse': see Bentham to Hobhouse, 15 January 1803, *Correspondence* (*CW*), vii. 189.

[4] See p. 260 below.

[5] For Portland's letter to the Treasury of 14 October 1799 in which he stated that, were prisoners maintained in the panopticon rather than in local gaols, the expense 'must be borne by Government instead of being defrayed by the respective Counties' see p. xxix above.

[6] In both the draft and the copy, Bentham numbered the sections XV, XVI, and XVII respectively, but the enumeration has been editorially emended to render it continuous with that of the sections in the printed version of 'Second Letter to Lord Pelham' and hence consistent with Bentham's intentions.

[7] The draft begins with an undated single sheet at UC cxvi. 534 containing the introduction. In the copy (see UC cxvii. 254 and p. 250 below), the date is given as 18 December

exception of a single sheet containing a note, completed it by the end of the year.[1] The original draft was heavily revised by Bentham, with superseded readings being crossed out and certain passages being completely rewritten, before being given to the copyist. Bentham thereupon reviewed the copy and made some minor revisions.[2] The copy is complete, except for the final page, which contained all except the first word of the final three sentences of the text. In the present edition, this missing material is reproduced from the draft. Bentham began to print the text, but all that survives—and probably representing as much as was printed—are two partial proof copies.[3] The title page in the present edition follows the printed proof, while the text is based on the corrected copy. Where evident mistakes have been made by the copyist and left uncorrected by Bentham, the text follows the original draft on the grounds that it represents the most authentic reading of the word or words in question. When Bentham looked over the draft in preparation for its being copied, he excised a number of passages. These passages are reproduced in an Appendix.[4] An indication of their original location in the text is given by means of editorial footnotes.

1802, indicating that the introductory sheet was written on or before this date. The draft for § XVII is at UC cxvi. 535–8 (20, 22 November 1802) and that for § XVIIII at cxvi. 539 (23 November 1802), 540 (n.d.), 541 (5 December 1802), 542 (n.d.), 543 (23 November 1802), 544 (n.d.), 545 (12 December 1802), 546 (11 December 1802), 547 (n.d.), 549 (12 December 1802), 548 (24 November 1802), 550 (21 December 1802), 551 (n.d.), 552 (12 December 1802), 553 (23 November 1802), 554 (n.d.), 555–6 (11 December 1802), 557 (17 December 1802), 558 (20 December 1802), 559 (n.d.), 560–2 (3 January 1803), 563–6 (n.d.), 567 (22 December 1802), 568 (n.d.), 569 (11 December 1802), 570–1 (24 November 1802), 572 (n.d.), 573 (24[?] November 1802), 574 (1 January 1803), 575 (2 January 1803), 576–7 (n.d. December 1802), and 578–81 (2 January 1803). UC cxvi. 543 may have originally been followed by cxvi. 498^{v} (23 November 1802), which has been crossed through by Bentham and which was presumably superseded by cxvi. 544–6. An earlier draft for UC cxvi. 578–9 is at cxvi. 585^{v} (n.d.), which has been crossed through by Bentham. A fair copy of the marginal contents corresponding to UC cxvi. 569–71 is at cxvi. 455 (n.d.) Some sheets in this sequence carry the main heading 'Letter 2^{d}', which suggests that Bentham may not have decided to deal with the hulks in a discrete third 'Letter' until November 1802.

[1] The draft for § XIX is at UC cxvi. 582–3 (20 December 1802), 584 (27 December 1802), 585 (3 January 1803), 586 (27 December 1802), 587 (29 December 1802), 588 (n.d.), 589 (20 December 1802), 590 (27 December 1802), 591–4 (28 December 1802), 595 (29 December 1802), 596 (n.d.), 597 (22 December 1802), 598 (27 December 1802), 599 (28 December 1802), and 600–3 (31 December 1802). A revised draft of part of UC cxvi. 599, which Bentham excluded from the text, is at cxvi. 501 (31 December 1802), 506, 505 (6 January 1803): see Passage M, Appendix, pp. 310–11 below.

[2] The copy of 'Third Letter to Lord Pelham' is at UC cxvii. 254–60, cxvi. 605–14, 604, 615–47 (n.d.)

[3] The copies of the printed proof, running to six octavo pages and containing the title, salutation, the four introductory paragraphs, and the first part of § XVII through to and including the first paragraph after the table comparing the three penal systems, are at UC cxvii. 261 and 262. Bentham has made several proof corrections to the first two pages of the former and to the first and fifth pages of the latter, to which he has added page numbers.

[4] See pp. 303–11 below.

In addition to the excised passages, Bentham composed a number of passages that he did not incorporate into the text. In relation to '§ XVIII. Penitentiary system in England—Improved local prisons', in what appears to be an earlier draft of the footnote dealing with Portland's 'plan ... for crowding Gaols and taxing Counties',[1] Bentham explained that the 'plan' could be regarded as no more than a 'project' until it was communicated to the county magistrates who would be required to levy taxes to fund the proposed local gaols,[2] while in a fragment comparing the expense of maintaining prisoners in the panopticon with possibly the offer of the unidentified 'Worthy Magistrate' to pay £400 to the county of Middlesex in consideration for the profits of the labour of the Cold Bath Fields prisoners,[3] he expressed frustration at the length of time Pelham had spent in deliberating 'whether he shall or shall not ruin me'.[4] Bentham, moreover, produced a table listing the prisons which had been 'Improved à la Blackburne', those 'Not Improved', and those 'Improved otherwise than à la Blackburne'.[5] An initial list was drawn up from James Neild's *An Account of the Rise, Progress, and Present State, of the Society for the Discharge and Relief of Persons Imprisoned for Small Debts throughout England and Wales*,[6] which contained a short description of prisons visited by Neild. Bentham had discovered the work on a visit to Bunbury's on 19 December 1802.[7] Bentham had neither met nor corresponded with Neild prior to writing to him on 23 December 1802, enclosing a copy of the first 'Letter to Lord Pelham' and asking for information concerning 'the number of prisons throughout England and Wales that have been rebuilt or received improvements according to the ideas of Blackburn or my old friend Howard', since 'the press waits for the number of improved prisons'.[8] On 24 December 1802 Neild asked Bentham 'to call on him after Church tomorrow', since 'a few Minutes conversation will tend to forward very considerably Mr Bentham's Philanthropic design'.[9] It is quite likely that Bentham

[1] See pp. 269–70 n. below.

[2] UC cxvi. 493–6 (21 December 1802). Bentham was alluding ironically to the reference to the panopticon scheme as a 'Project', rather than as a 'Plan', in John King to Charles Long, 17 March 1801: see p. xxviii above.

[3] The 'Worthy Magistrate' was the anonymous author of a work describing the House of Correction, Cold Bath Fields: see 'Third Letter to Lord Pelham', § XVIII, pp. 254–83 below.

[4] UC cxvi. 498 (n.d.)

[5] UC cxvi. 454 (26 December 1802).

[6] James Neild, *An Account of the Rise, Progress, and Present State, of the Society for the Discharge and Relief of Persons Imprisoned for Small Debts throughout England and Wales*, London, 1802.

[7] See Bunbury to Bentham, 18 December 1802, *Correspondence* (*CW*), vii. 166, inviting Bentham to see him the following day.

[8] Bentham to Neild, 23 December 1802, ibid. 168–70. For Bentham's intention to insert the information in 'Third Letter to Lord Pelham' see p. 255 n. below.

[9] Neild to Bentham, 24 December 1802, *Correspondence* (*CW*), vii. 173.

did call on Neild, since on 27 December 1802 Neild sent him a list of prisons that he had visited since July 1802,[1] which Bentham used to supplement his table, giving a total of '58 improved' and '86 not d°'. A further list distinguishes twenty-five prisons into those in which work was provided for prisoners, those where there was no work, and those where work was allowed.[2] Bentham also drew up a list of the earnings of prisoners in a house of correction from 8 October 1801 to 7 October 1802.[3]

A considerable amount of material excluded from the final text survives for '§ XIX. Hulk Mortality—Sinecure made to screen it'. This section was written in response to what Bentham saw as the machinations of Pelham, and more particularly his Under Secretary John King, in relation to the appointment of Aaron Graham as Inspector of the Hulks,[4] a post created by the Hulks Act of 1802 and which carried a salary of £350 per annum.[5] In March 1802 Neild, together with Sir Henry Mildmay,[6] had inspected and reported on the hulks at Portsmouth and Langstone Harbours,[7] and it is their report that forms the basis of Bentham's description of the state of the hulks. Bentham regarded Pelham's appointment of Graham as a corrupt attempt to deceive the public into believing that the condition of the hulks was being addressed by government. The patronage, though ostensibly exercised by Pelham, was, in fact, exercised by John King, 'the gentleman by whom every thing is done' at the Home Office, who had 'a friend [i.e. Graham] in his pocket for the place'.[8] The creation

[1] Neild to Bentham, 27 December 1802, ibid. 177–8.

[2] See UC cxvi. 454. With the exception of a column of apparently unrelated notes in Bentham's hand, the lists are in the hand of a copyist, with the additions taken from Neild's letter in the same hand but in red ink. It is possible that a draft, now missing, was originally compiled by Bentham himself.

[3] UC cxvi. 443 (9 January 1803). It is unclear to which house of correction Bentham's figures relate, since the place name is uncertain in Bentham's heading 'Earnings. Boston[?] from Neild'. The copyist, who has reproduced the relevant figures, has transcribed the place in question as 'Preston', but has indicated his uncertainty with a question mark. No such figures for either Boston or Preston appear in Neild's work, though both places are mentioned in Neild to Bentham, 27 December 1802, and Bentham may have acquired the information on a visit to Neild's house, to which Neild invited him to view 'Papers Plans Etc': see *Correspondence* (*CW*), vii. 177–8.

[4] Aaron Graham (*c.* 1753–1818), sailor, civil servant, and police magistrate, Secretary to the Governor of Newfoundland 1779–91, held the position of Inspector of Hulks from 25 March 1802 until his resignation at the end of 1814.

[5] 42 Geo. III, c. 28.

[6] Sir Henry Paulet St John Mildmay (1764–1808), MP for Westbury 1796–1802, Winchester 1802–7, and Hampshire 1807–8.

[7] For Neild and Mildmay's report see Neild, *Account of the Society for Discharging Small Debts*, pp. 307–19.

[8] See p. 292 below. A list of deaths on board the hulks *La Fortunée* and *Ceres* at Langstone Harbour, near Portsmouth, as well as of those shot, drowned, and escaped, between 1 June 1792 and 1 January 1802 is at UC cxvi. 271 (n.d.), in the hand of a copyist, with a fair copy at cxvi. 402–3 (n.d.)

of the Inspectorship for Graham by Pelham was, Bentham argued, 'In design—conduct—result—in every thing . . . as scandalous a job as a corrupt or weak man or both need wish to organize, or an honest man expose'.[1]

A passage that may have originally been part of the original draft of this section, but which has been heavily amended and in large part cancelled, has been divided by Bentham into two proposed notes, the first pointing out that Pelham had, when first appointed as Home Secretary, tried to be active but had long since given up the struggle, and the second complaining of John King's unfitness for office, that Neild and Mildmay should have been appointed Inspectors of the Hulks, and stating that he would have undertaken the role himself gratis.[2] Bentham revisited the theme of the inspection of the hulks in a passage in which he asked, 'who shall inspect the Inspectors?' In the panopticon, the public would perform this role, but under Pelham's Act—that is the Hulks Act of 1802—there would soon develop an 'undisturbed harmony' and 'mutual confidence' between the Inspector and those who were supposed to inspect him. Moreover, the 'universally promiscuous association' which characterized the hulks made inspection pointless.[3] This passage was possibly followed by a discussion contrasting the beneficial effects of open inspection by 'the public at large' with the pernicious effects of close inspection by 'an obsequious . . . privileged one or few', and went on to praise Samuel Bentham for his practice, in contrast to that of Pelham, of filling offices by merit, his 'exertions' being 'employed not in finding places for men, but in finding men for places'.[4]

In a further passage with the sub-heading 'Concluding Observations' which was not incorporated into 'Third Letter to Lord Pelham', Bentham stated that there was no point sending any information to Pelham by which 'the public might be served' and, therefore, no point in recommending Neild for appointment to a commission for examining the state of the prisons. He argued that Pelham was ruled by John King, in that what Pelham wanted was just what King wanted, and what King

[1] Bentham to Bunbury, 10 June 1803, *Correspondence* (*CW*), vii. 238.

[2] UC cxvi. 510–12 (23, 26 December 1802). In related fragments, Bentham commented on the rapid evaporation of the optimism felt at Pelham's entry into office at UC cxvi. 519 (6 January 1803), expressed the view that Portland and Pelham were responsible for deaths in the hulks at cxvi. 518 (6 January 1803), and remarked on their contempt for Parliament at cxvi. 503 (n.d.)

[3] UC cxvi. 520–4 (10 January 1803). A portion of this sequence appears to be based directly on a draft, in the hand of a copyist and possibly originally dictated by Bentham but thereupon heavily emended by him, at UC cxvi. 515–17 (n.d.)

[4] UC cxvi. 423–5 (10 January 1803). In related fragments at UC cxvi. 502 (28 December 1802) and cxvi. 504 (30 December 1802), Bentham commented on the appointment of Graham to the Inspectorship of the Hulks.

wanted was salaries for his friends in the form of sinecures, to maintain and to screen the abuses in the hulks, and to defeat the panopticon scheme.[1] This draft was re-written and considerably expanded in a further sequence which again was not incorporated into the final text, but in which Bentham made reference to an 'Appendix' dealing with the 'secret letters' between the Treasury and Home Office which had since been 'rendered half-public'.[2] This was, of course, an allusion to the letters printed in 'Further Proceedings of the Finance Reports', which Bentham did indeed discuss in a sequence carrying the main heading 'Appendix' and the sub-heading 'Further Proceedings'. Here Bentham took up the fraud that lay behind the imputation that he had demanded a 'great Increase of Terms' for building the panopticon penitentiary and which had been given as one of the reasons for the relinquishment of the scheme in the Treasury Minute of 13 August 1800.[3] He explained that the increase in costs had arisen because the government had asked him to double the number of prisoners from 1,000 to 2,000 and because of the rise in prices which had occurred since the original plan had been submitted. Moreover, he had not, as the government had tried to suggest, said that either the terms had to be complied with or he would relinquish the scheme, but claimed that he would have been prepared to accept an 'abatement' if that had been proposed.[4]

In 'Third Letter to Lord Pelham', Bentham included extracts from a letter from the hulk convict Samuel Hadfield, dated 11 October 1802, in which he described the poor conditions and bad quality of the food aboard the *Captivity*. Bentham had been shown Hadfield's letter by James Neild,[5] who continued to supply Bentham with information about the hulks. In mid-February 1803 Neild forwarded to him a letter from George Lee, a convict aboard the *Portland* at Langstone

[1] UC cxvi. 525–6 (30 December 1802). [2] UC cxvi. 513–14, 507–9 (6–7 January 1803).

[3] *Commons Sessional Papers* (1801), vi. 585.

[4] UC cxvi. 529–31, 527–8 (26 December 1802). In a related discussion at UC cxvi. 489–91 (10 December 1802), which was written for § XVIII and earmarked for a possible note, Bentham explained that government had 'hit upon' the pretence that he had gone back on his own terms and that he would not amend his terms, even though he had studiously avoided saying this and that the episode amounted to a deceit of Parliament.

A fragment at UC cxvi. 532 (n.d.), sub-headed 'Conclusion. L[d] Belgrave', contains notes, presumably for possible development, concerning the opposition of Belgrave and 'Noble Lords' more generally to penal reform. In a fragment of a single sentence at UC cxvi. 500 (n.d.), Bentham suggested that there was no hope for anything good to be accomplished under Pelham, while in a cancelled fragment at cxvi. 37 (n.d.), he referred to the fact that the mistake he had made in the first 'Letter to Lord Pelham' respecting Claudius and the shells (see p. lx n. above) had been pointed out to him as evidence that the 'Letter' had been opened, but that no further letters 'with a direction in the same hand' would be. The error had been pointed out, not as Bentham implies by a member of the administration, but by Frederick Morton Eden: see p. lx n. above.

[5] See 'Third Letter to Lord Pelham', pp. 300–1 below.

Harbour,[1] to Mildmay, concerning 'the sodomistical Practices on board the hulks'.[2] Lee wrote that, owing to 'the bad police and injudicious government so prevalent' in the hulks, they had become 'in reality seminaries, not of penitence & reform as they ought and might be made by a more enlightened and salutary discipline: but of every vice which degrades human nature below the ferocious brute'. He had found that only the ship's chaplain and surgeon were 'truly respectable and exert themselves to the utmost for the general good', whereas 'imposition on all hands by Contracters, Agents, Victuallers & Captains' had, as recently as November 1801, led to convicts lying 'dead on the shore the victims of raggedness, filth, and starvation'. Lee claimed that 'the horrible crime of Sodomy rages so shamefully' throughout the *Portland*, 'that the Surgeon & myself were more than once threatened with assassination for striving to put a stop to it', and that it was 'in no way discountenanced by those in command: and morality meets with still less encouragement'.[3] On 17 February 1803 Neild forwarded to Bentham a letter 'on the same subject' from Sir John Carter[4] to Mildmay.[5] Commenting on Lee's allegations concerning sodomy, Carter noted that it 'still continues and how it is to be prevented appears difficult—tho' I am assured many have been punished', and stated that Lee's account had been 'sent to Lord Pelham & to many others'.[6] Bentham informed Romilly that he had 'distinct evidence' that, at the hulks at both Portsmouth and Woolwich, 'amusements are common—little less I believe than universal—which are infinitely more shocking to John Bull than the most exquisite miseries . . . and—what is more—equally distinct evidence of Lord Pelham's having notice of it',[7] but that he had

[1] George Lee was almost certainly the man of that name convicted of possessing a forged bank note at the Worcester Assizes on 6 March 1802 and sentenced to transportation for fourteen years. He was received aboard the *Portland* in June 1802, aged 22, and was subsequently transported to Port Phillip aboard the *Calcutta*, which sailed from England on 24 April 1803: see 'Convict hulks moored at Portsmouth: Portland, Captivity, Leviathan. Register of Prisoners', TNA, HO 9/8, fo. 34.

[2] Neild to Bentham, 17 February 1803, *Correspondence* (*CW*), vii. 203–4.

[3] The original letter from Lee to Mildmay is at UC cxvii. 252 and a partial copy at BL Add. MS 33,544, fos. 14–15.

[4] Carter (1741–1808) was Mayor of Portsmouth on nine occasions between 1769 and 1804.

[5] Neild to Bentham, 17 February 1803, *Correspondence* (*CW*), vii. 203–4. Neild asked Bentham to show both Carter's and Lee's letters to Patrick Colquhoun and then to return them so that he could show them to Wilberforce.

[6] The original letter from Carter to Mildmay is at UC cxvii. 253.

[7] Bentham's information about allegations of sodomy at Portsmouth were no doubt derived from the letters of Lee and Carter, while his information about the Woolwich hulks appears to have come from the Reverend Dr Thomas Brownlow Forde, the Ordinary of Newgate gaol. In early March 1803 Bentham drafted, but did not send, a letter to Wilberforce, which is in part docketed 'Hulk Sexual Irregularities', and on

excluded the subject from 'Third Letter to Lord Pelham' since 'in that place they would have been threats'. He suggested that Romilly might mention the matter in conversation with Spencer Perceval.[1] There is no indication that Romilly did so.

Having composed all three 'Letters to Pelham', Bentham made some desultory attempts to compose what appears to be a 'Preface' for either the first two or possibly all three of them. An undated sheet headed first 'Conclusion' and then 'Preface to Letters' contains a series of notes, broadly on the theme of official duplicity.[2] A further series of notes, headed 'Two Letters' and sub-headed 'Preface', again on the theme of official duplicity in relation to the panopticon penitentiary scheme, is more developed.[3] In a sequence headed 'Two Letters' and sub-headed 'Preface. Angry', Bentham argued that the conduct of ministers could be seen to be consistent on the grounds that they were determined to violate engagements, that Bentham and Parliament had both been treated as objects of contempt, and that the dilemma one faced when dealing with men in power was that if you were submissive, you would be 'oppressed without a pretence', but if you proved your case, you would be characterized as an angry man and 'oppressed with a pretence'.[4] Bentham was still considering writing a 'Preface' in the middle of April 1803, when he once again prepared a series of notes on the theme of official duplicity, emphasizing the fact that Pelham had hidden behind silence.[5] A further undated fragment took up the theme of the silence of ministers together with their violation of public faith.[6] It is possible that two further fragments were intended for a justificatory introduction, but neither contain headings or date. Bentham explained that he had 'no . . . guilt to charge myself with', since he had merely copied from Collins,[7] and that what was before regarded as 'wild, romantic, speculative, visionary, enthusiastic, absurd and impractical' became practical when done by a man in office.[8] Bentham may also have had it in mind to write a general 'Appendix'. On a sheet headed 'Two Letters' and sub-headed 'Appendix', he stated that he regarded it as unlikely that the judges would contradict anything said by Pelham, and thereupon added a series of notes for further development, but

10 June 1803 forwarded a copy to Bunbury and added the docket, 'Dr Ford's intelligence of sexual irregularities in the Hulks'. See *Correspondence* (*CW*), vii. 212–14 at 212 n. and 237. Forde at some point must have heard about 'Third Letter to Lord Pelham', since on 12 May 1803 he wrote to Bentham 'begging to know if your third Letter to Lord Pelham be yet published': see ibid. 226.

[1] Bentham to Romilly, 7 March 1803, ibid. 208–9.
[2] UC cxvi. 470 (n.d.)
[3] UC cxvi. 471–2 (26 February 1803).
[4] UC cxvi. 475–7 (9 February 1803).
[5] UC cxvi. 473 (17 April 1803), headed 'Two Letters' and sub-headed 'Preface'.
[6] UC cxvi. 474 (n.d.)
[7] UC cxvi. 53 (n.d.)
[8] UC cxvi. 126b (n.d.)

does not appear to have composed any other material for such an appendix.[1]

On 3 December 1802 Bentham informed Bunbury that a '3d letter, of perhaps 16 or 18 pages, is reserved for the subject of the *hulks* and the "*improved prisons*"'.[2] On 18 December 1802, having seen an account of the debate on the Transportation Bill in which Sir John Anderson had complained of the expense of maintaining convicts incurred by the City of London, for which Anderson was one of the MPs, Bentham wrote to inform him of Portland's plan to throw the cost of supporting convicts upon the counties, rather than using the '*general* Funds marked out for the purpose by Parliament', and promised to print the extract he had taken from Portland's letter of 14 October 1799 'in the 3d of three Letters to Ld Pelham'.[3] On 11 January 1803 Bentham suggested to Bunbury that Pelham had 'sunk entirely into the pocket of Mr King', adding, in relation to the hulks and gaols, that there 'never has been—there never can have been—a more decided determination to resist reformation from all quarters—to pocket abuse in all shapes'. He reported that,

> A 3d letter (with vouchers) is nearly made out of all this: but the facts are so disgraceful even without the comments, that much more reserve must be observed in regard to the distribution of this, than the two preceding ones; which considering the strength of the dose, sit (as far as I can judge) upon the stomach of the Atty Genl [i.e. Perceval] better than one should have expected.[4]

In the event, Bentham did not proceed with printing 'Third Letter to Lord Pelham'. He does, however, appear to have shown a version, or most likely a proof of the first six pages, to Bunbury by 10 June 1803. On that date, while suggesting that Bentham should defer the publication of the first two 'Letters to Lord Pelham' until he had met with Pelham,[5] Bunbury recommended the addition, at the end of 'Second Letter to Lord Pelham', of 'a *Sheet* with the *comparative view* of New *South Wales*—The *Hulks* and the *Panopticon*', but '*leaving out* that satirical Preface to Ld P on his apparent Inattention, which began a *third* Letter'.[6] Bentham did not, despite Bunbury's recommendation, add the table comparing the penitentiary system, the hulks, and New South Wales,[7] to 'Second Letter to Lord Pelham'.

[1] UC cxvi. 533 (n.d.)
[2] Bentham to Bunbury, 3 December 1802, *Correspondence* (*CW*), vii. 158.
[3] Bentham to Anderson, 18 December 1802, ibid. 164. For the extract from Portland's letter see 'Third Letter to Lord Pelham', pp. 265–6 below.
[4] Bentham to Bunbury, 11 January 1803, *Correspondence* (*CW*), vii. 187.
[5] See p. lxxxix below.
[6] Bunbury to Bentham, 10 June 1803, *Correspondence* (*CW*), vii. 237.
[7] See 'Third Letter to Lord Pelham', pp. 252–3 below.

A Plea for the Constitution

Bentham began to write 'A Plea for the Constitution', under its original title 'The True Bastile', in the summer of 1802 as a continuation of the first 'Letter to Lord Pelham'. As noted above, Bentham stated that, while in 'Letters to Lord Pelham' he examined New South Wales on the ground of '*policy*', in 'A Plea for the Constitution' he examined the colony on the ground of '*legality*'.[1] A passage dated 24 June 1802 indicates that Bentham conceived the work as the sixth section of what became the first 'Letter to Lord Pelham', with the short sub-heading '6. Conduct'—the persons whose conduct was in question being Pitt and other members of the government—and hence intended it to follow on directly from the discussion of 'Economy', the fifth end of punishment. Bentham began by reiterating the arguments he had made in the previous sections concerning the failings of New South Wales in achieving the ends of punishment and, in contrast, the potential of the panopticon penitentiary to achieve them. He then appealed to the new administration to change the policy of Pitt's government, whose *mala fides* would become Pelham's if he persisted with the same illegal policy. He listed four points of illegality which he proposed to discuss:

I. Powers necessary to the very existence of the Colony omitted to be created. Powers of judicature the only ones applied for and obtained from Parliament.—Of legislation, no power whatever. Consequences of the omission. Causes of it.

II. No care taken at the outset, nor for several years, for obtaining for the Mother Country a security against the return of the transported Convicts during their state of legal bondage—i:e: before the expiration of the penal terms indicated by their respective sentences.

III. When measures were taken at length on this view—arbitrary and illegal tenor of these measures: the restraint extending to all persons without distinction—but equally to emancipated Convicts—after the expiration of their terms—in direct repugnance to the several laws whereby their respective terms of transportation were prescribed and limited.

IV. No care taken to place the bondage upon any certain or consistent footing.[2]

These points, greatly expanded and elaborated, would form the core of the printed text, in which Bentham, as in the case of the first 'Letter

[1] See 'A Plea for the Constitution', p. 317 below, and Bentham to Abbot, 3 September 1802, *Correspondence* (*CW*), vii. 105.

[2] UC cxvi. 176–80, 330^{v} (24 June 1802). A cancelled draft of the second page in what may be the original draft of '6. Conduct', and which is related in content to § I of the printed text, is at UC cxvi. 160 (18 June 1802). The fourth page of this draft is at UC cxvi. 181 (25 June 1802).

to Lord Pelham' and 'Second Letter to Lord Pelham', drew information about the state of New South Wales from Collins.[1]

Marginal contents sheets, which give the full title as 'The True Bastile: 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', show that Bentham had written a complete draft of the text probably by late July 1802.[2] Three successive lists of contents appear on the earliest of these marginal contents sheets, and show how the short sub-headings which appear on the manuscripts collate with the longer, descriptive section titles.

[1] A sheet, in the hand of a copyist, at UC cxvi. 458, contains lists of page numbers and brief descriptions of passages from the first volume of Collins arranged under the following headings: 'I. Illegal orders directed to Expirees. II. Punishment of Expirees for offences not outrages or misbehaviours if committed in Britain. III. Orders directed to all without exception and thence illegal with reference to Expirees—Officers—and Free-settlers.' Bentham has added the instruction 'Copy' or noted 'Copied' over several of the references.

[2] The first of the two sheets that formed the original draft of the marginal contents at UC cxvi. 430 (13 July 1802), consisting of 44 consecutively numbered marginal contents spanning 23 pages of text, has been much emended by Bentham. This material was reworked, while retaining much of the same content, for a second draft, of which the first sheet of marginal contents, in the hand of a copyist but with corrections by Bentham, is at UC cxvi. 464, and consists of three sequences of 10, 6, and 42 consecutively numbered marginal contents respectively. The marginal contents on this sheet have been copied at UC cxvi. 270 (n.d.), which takes the third sequence up to 54 marginal contents (in this latter sequence, marginal content 28 has been deleted by Bentham and the remaining marginal contents renumbered, so that 29–42 at cxvi. 464 are equivalent to 28 to 41 at cxvi. 270). Bentham appears to have then made emendations to UC cxvi. 464, which do not appear on the copy at cxvi. 270. UC cxvi. 464 is continued by cxvi. 269 (n.d.), consisting of marginal contents 43–55 (equivalent to 42–54 at cxvi. 270), and then two further sequences of 13 and 33 marginal contents respectively.

In relation to the term '*Outrages*' in the title, Bentham has added the following note at UC cxvi. 430: '*Outrages* may seem vague and declamatory. But it is one of the two legal words upon which the whole system of government is made to turn in the New South Wales Act 26 G. 3. c. | |.

'Of the strong terms of reprobation here employ'd, the use is strictly justified by the points of law and fact demonstrated. If the present Administration redress the grievance, the hostility of the stile may be softened: if not, it must be retained and sharpened, that among the body of the people, such as may think Magna Charta, the Bill of Rights and the Habeas Corpus Act worth preserving, may conceive a just alarm and give a constitutional expression to their feelings.

'As a pledge of responsibility, the title page will bear my professional description as well as my name.'

The Act in question was the New South Wales Courts Act of 1787 (27 [not 26] Geo. III, c. 2), in which the second of 'the two legal words' which Bentham had in mind was 'Misbehaviours'. For Bentham's further discussion of these terms see 'A Plea for the Constitution', § 2, pp. 324–7 below, and for his discussion of Magna Carta of 1215, the Bill of Rights of 1689 (1 Wil. & Mar., sess. 2, c.2), and the Habeas Corpus Act of 1679 (31 Car. II, c. 2) see § 14, pp. 377–94 below.

On the copy at UC cxvi. 464, 269, Bentham has added 'by Jeremy Bentham of Lincoln's Inn, Esquire, Barrister at Law' to the title, and added the final paragraph above as a separate note, retaining the remainder as a note to the word '*Outrages*'.

			Equivalent in printed text.
I. I. Legislation—necessity of it.	I. I. Powers—Necessity.	§ 1. Legislative powers necessary.	§ 2.
II. Non-existence though assumed.	II. Powers—Non-existence.	§ 2. Legislative powers &c. none created.	§ 3.
III. Proof of non-existence.	III. Non-existence proved.	§ 3. Legislation void without Parliam$^{t.}$	§§ 4–9.
IV. Its assumption shewn by Ordinances for various objects.	IV. Assumption—Samples.	§ 4. Legislation exercised—instances.	§§ 10–11.
V. Mischiefs from the omission recapitulated.	V. Mischiefs?		
VI. Causes of the Omission on the part of Pitt &c.	VI. Causes.	§ 5. Legislative powers why not applied for.	
II. VII. Escapes. Quitting the Colony—negligence and oppression in respect of it.	II. VII. Escapes.	§ 6. Tyranny and Negligence. Expirees detained. Non-expirees escape.	§§ 12–13.
VIII. Punishment impending over the authors.	VIII. Jeopardy.	§ 7. The Tyrants' Doom under the Hab. Corp. Act.	§ 14.

Taking the plan listed first, the first part of the work, containing the first six sub-sections, deals broadly with the legal authority of the Governor to issue general legislation, while the second part, consisting of the final two sub-sections, deals more specifically with the illegal treatment of the convicts. Bentham dropped the fifth section which appears in the first two lists from the third list and added the following note to § 5 in the third list (the equivalent of the sixth section in the first two lists): 'This section is not here inserted. The topic of it is that M^{r} Pitt, conscious that his system required an anti-constitutional despotism, as well as the screwing up of every modification of temporary transportation to perpetual, was afraid of trusting Parliament with a fair view of it.'[1]

[1] UC cxvi. 430. The first two lists are crossed through, while the third list is copied at UC cxvi. 464.

The discussion of 'Conduct', therefore, was initially divided into the sub-sections listed in the table above and, as the work expanded, the retained sub-sections were further divided into the eventual fourteen sections of the printed text. Hence, Bentham assembled the text of 'A Plea for the Constitution' from the original draft of 'Conduct' from the summer of 1802 and from redrafted and additional material written at the end of 1802 and beginning of 1803.

The Preface and § 1 of the printed text, for which no equivalents appear on the plans of the summer of 1802, seem to have been amongst the later additions to the text, given that the draft that survives for the whole of § 1 was written in January 1803.[1] The Preface, however, may have been adapted from the first part of a draft sub-headed 'II. Treatment' with the title 'IV. No care taken to place the Bondage upon any certain or consistent footing', which was not included in the printed text. Bentham queried the legal foundation of the power exercised over convicts in New South Wales. On arrival, the merchant assigned the convicts to the Governor, but legally, under the Transportation Act of 1718, the merchant might dispose of the convicts in a different manner, for instance to some person willing to pay for him and thereupon set him free. However, where the transportation was performed by an officer of the Crown, the officer had no authority to dispose of the convicts.[2] What was done was done either without law or through a sham contract. If the convicts were handed over to the Governor without a contract, it was plainly illegal, and if with a contract, contrary to the spirit of the law. Bentham then discussed the difference between transportation of felons convicted for clergyable as opposed to unclergyable offences,[3] before returning to a further discussion, under the sub-heading 'Convict Lot', of the sham contract that ministers might or might not have made with the Governor. If ministers had used the fiction of a contract, it

[1] UC cxvi. 346–51 (8–9, 11 January 1803), headed 'New S. Wales. Illegality. True Bastile.' A cancelled fragment at UC cxvi. 480 (9 January 1803) formed the original continuation of a cancelled and crossed through paragraph at the bottom of cxvi. 347, in which Bentham compared the 'sensation' that he had felt on learning of 'the wound that appeared to have been given, through the vitals of the constitution, to the whole body of the state' to that felt by 'the most jealous lovers of that constitution by the use made in the Wilkes case of General warrants'. For a related fragment from the draft of summer 1802 see p. lxxi n. above. For the arrest of John Wilkes (1725–97), MP for Aylesbury 1757–64 and Middlesex 1768–9, 1774–90, and the subsequent declaration of the illegality of general warrants see p. lxxvi n. below.

[2] The situation was rectified by the Transportation Act of 1802: see pp. xlix–l above.

[3] UC cxvi. 207–8 (12 June 1802), 209 (13 June 1802), 210–12 (13 June 1802). This sequence was originally continued by UC cxvi. 161 (13 June 1802), in which Bentham claimed that ministers were blameable for rendering obscure the state of the law in New South Wales. The corresponding marginal contents sheet is at UC cxvi. 451 (1 July 1802).

represented a further fraud put upon Parliament. Bentham noted that the difference between bondage to America and that to New South Wales was that between interested and trust management respectively. Pitt knew the difference, as illustrated by the fact that he had applied to Parliament to pass the Penitentiary Act of 1794 in order to change the trust management provisions of the Penitentiary Act of 1779 (though he had also relieved Spencer of the need to give up his land at Battersea Rise for the purpose). Parliament should similarly have been asked to change the basis of transportation from interested to trust management. In the new system, the distinction should have been drawn between banishment and bondage and 'to give to the Crown, in express terms, and with such limitations, if any, as should appear fitting and convenient, such powers as should be thought fit to be given in regard to each'. In conclusion, Bentham promised that, for fear of setting New South Wales 'in a flame', no copy of this part of the printed work would be given to any person who could not be depended upon not to send it to New South Wales until Parliament had been given the opportunity to remedy the defect.[1]

There survives a draft for the first four paragraphs of § 2, written in July 1802;[2] a copy of a section from the Naval Prize Act of 1739 (13 Geo. II, c. 4, § 20) which is quoted in § 4;[3] a draft of the first five and penultimate paragraphs of § 5;[4] a draft of the first paragraph of § 6;[5]

[1] UC cxvi. 213–19 (28–9 June 1802). A fragment, in which Bentham referred to the vesting of the power of Parliament in Richard II (1367–1400), King of England from 1377 to 1399, and a committee of twelve peers and six commoners in 1398 as helping to form an estimate of the 'fraud', is at UC cxvi. 311^{v} (7 July 1802).

[2] UC cxvi. 309 (2 July 1802), sub-headed '6. Conduct. I. Powers necessity.' Fragments of an early draft dealing with the failure to create legislative power in New South Wales, sub-headed '6. Conduct. Legislation omitted. Causes', is at UC cxvi. 312^{v}, 160, 412, 257^{v}, 162 (17–18 June 1802). According to the corresponding marginal contents sheet at UC cxvi. 457 (1 July 1802), this sequence was followed by a discussion in which Bentham claimed that ministers had devised no plan respecting the return of convicts whose terms had expired. The only surviving sheet from this sequence is at UC cxvi. 420 (19 June 1802), in which Bentham contrasts the justice and humanity that motivated the Penitentiary Act of 1779 with the oppression, fraud, anarchy, and despotism of the New South Wales Courts Act of 1787.

[3] UC cxvi. 136 (n.d.), quoted at p. 334 below.

[4] UC cxvi. 311 (7 July 1802), 312 (n.d.): see pp. 336–7, 340–1 below. In a fragment at UC cxvi. 175 (14 July 1802), sub-headed 'Conduct', in a passage that anticipates the discussion in § 5, p. 340 below, Bentham argued that he did not mean to confound utility and law, but that on this occasion utility and law were consonant, in that the foundation of New South Wales was repugnant to law.

[5] UC cxvi. 164 (3 July 1802), sub-headed '6. Conduct. 2. Causes. Crown's right none': see pp. 341–2 below. The relevant part of the text has been crossed out by Bentham. In the discussion that continues on the remainder of this sheet and at UC cxvi. 165 ([?] July 1802), Bentham states that in the case of the American colonies, the colonists had consented to the exercise of the powers granted by the Crown, while in New South Wales illegal punishment had been added to legal and men had been punished for trying to return to England at the end of their sentences.

a draft of the note to 'this realm' in § 7;[1] and a draft of the fifteenth paragraph, part of the nineteenth through to part of the twenty-first paragraph, and the final four paragraphs of § 9.[2] A considerable amount of material, sub-headed 'Conduct. III. Non-existence proved', written towards the end of July 1802, is related to the theme of § 9 in the printed text. In a passage that may constitute an earlier draft of part of the section, Bentham pointed out that, in Calvin's case, Edward Coke[3] had expressed the opinion that the King did not have the authority to legislate over Englishmen without the consent of Parliament, but that George III[4] and Pitt had legislated over non-consenting Englishmen in New South Wales;[5] that even if it were adjudged that the King had a right to legislate in a conquered colony, it would not apply to New South Wales, and given that such a judgement would be repugnant to the decision in Clark's case of 1588, so would it have been at the time of the Jamaica case of 1722 and the Grenada case (*Campbell v. Hall*) of 1774;[6] that if Pitt was relying on the notion of conquest for authority to legislate in New South Wales, then it would be necessary to maintain that there was a pre-existing right to kill the governed;[7] and, moreover, that Magna Carta, Clark's case, and the Bill of Rights might have been cited in order to show that, even where colonists gave their consent, and even where conquered subjects were in question, the King could still not legislate without the consent of Parliament, since the danger was that he might thereby raise a standing army and obtain an independent source of money.[8] Bentham went on to consider the objection that this latter argument was concerned with policy, whereas the proper question was concerned with judicature. In response, he noted that, according to the Bill of Rights, which was more authoritative than the decision of any judge, it was illegal to raise a standing army without the consent, or to levy money for the use

[1] UC xcvii. 187, lxxxi. 222^{v} (13 July 1802), sub-headed 'Conduct. Non-existence proved': see pp. 347–8 n. below. The sequence was originally continued by UC lxxxi. 221^{v} (14 July 1802), where Bentham remarked on the difficulty of transplanting laws and referred to his discussion of the matter in the recently published *Traités de législation civile et pénale*, iii. 329–44 (Bowring, i. 180–4).

[2] UC cxvi. 372 (n.d.), cxvi. 313 (26 July 1802), and cxvi. 314–15 (7 July 1802) respectively: see pp. 355–6, 357–8, and 359–60 below. An early draft of the fourth paragraph of § 9, p. 353 below, together with a fragment comparing the tyranny of the French Consulate with that of Pitt, is at UC xcvii. 188 (27 July 1802). Extracts from the case of *Campbell v. Hall* (1774), in the hand of a copyist, but with notes in Bentham's hand, are at UC cxvi. 133–5 (n.d.)

[3] Sir Edward Coke (1552–1634), Chief Justice of Common Pleas 1606–13, Chief Justice of King's Bench 1613–16.

[4] George III (1738–1820), King of Great Britain and Ireland from 1760.

[5] UC cxvi. 139–43 (23–4 July 1802). For Calvin's case see p. 354 n. below.

[6] UC cxvi. 149–52 (23–4 July 1802). For these cases see 'A Plea for the Constitution', §§ 5 and 9, pp. 336–41 and 353–60 below respectively.

[7] UC cxvi. 137–8 (23 July 1802).

[8] UC cxvi. 144–8 (24 July 1802).

of the Crown without the grant, of Parliament, and pointed out that Edmund Burke, in his speech on American taxation, had stated that it had been the opinion of George Grenville[1] that the colonies could not legally grant any revenue to the Crown.[2]

In cancelled material related to '§ 10. Governor's illegal Ordinances exemplified. 1. For Prevention of Famine', Bentham pointed out that though there was no right in the Governor to legislate for New South Wales, there was an urgent need to do so. The Governor was a pure despot, exercising absolute legislative, executive, and judicial power, whether he personally wished to be so or not, because he had been placed in that position by ministers.[3] While the printed text contains various examples of the Governor's illegal ordinances,[4] a passage discussing 'Non-payment of Bills given for Corn' was not included.[5] Bentham wrote a much longer discussion for the central part of '§ 11. Governor's illegal Ordinances exemplified. 2. For Prevention of Drunkenness' (excluding the first four paragraphs and the final

[1] George Grenville (1712–70), Secretary of State for the Northern Department 1762, First Lord of the Admiralty 1762–3, leader of the administration as First Lord of the Treasury and Chancellor of the Exchequer 1763–5.

[2] UC cxvi. 153–6 (25 July 1802). The extract from Burke's speech, marked 'Entered in Conduct. Non-existence proved', together with an extract from a law report on the illegality of general warrants, is at UC cxvi. 421 (22 July 1802). For the use of Burke's speech in 'A Plea for the Constitution' see p. 356 below.

[3] UC cxvi. 167 (12 July 1802), 168 (7 July 1802), with a related note at cxvi. 166 (12 July 1802), sub-headed 'Conduct'. The corresponding marginal contents sheet at UC cxvi. 452 (13 July 1802) shows that these sheets were originally part of a draft dealing with the Governor's ordinances, of which cxvi. 157 (see below) also formed a part. According to the marginal contents sheet, this material was followed by a discussion of the New South Wales Courts Act of 1787 at UC cxvi. 204–6 (14–15 July 1802), in which Bentham wondered why this measure 'for trying measures against existing laws' had been introduced 'when no powers were obtained for introducing any new law, much less for trying offences against such new law?' The answer was that the intention had been to deceive Parliament and everyone else into thinking that the colony had been founded by Parliament and that any acts of power exercised there by officials had the sanction of Parliament. Soon after the establishment of the colony, the Governor had declared martial law, in order to take possession of all the property in the colony, as a means of relieving famine. (Martial law had, in fact, been declared not in New South Wales, but in Norfolk Island in 1792: see p. 382 n. below.) Bentham did not condemn the Governor for acting from necessity, but wondered whether ministers had illegally authorized the use of martial law instead of gaining the requisite authority from Parliament. In any case, no indemnity had ever been sought from Parliament and 'Martial law stands triumphant in New South Wales'. A related fragment, in which Bentham stated that, having established the 'defectiveness' of the Act of Parliament—presumably the New South Wales Courts Act of 1787—the question was whether Pitt's administration was punishable, is at UC cxvi. 203 (13 July 1802).

[4] A list headed 'N.S. Wales. Governor's Orders', drawn up from the first volume of Collins, is at UC cxvi. 450 (25 June 1802).

[5] UC cxvi. 174 (14 July 1802). This sheet is entitled 'Examples of despotism. I. Despotism in substance', suggesting that it was intended to open the sequence of examples. This is confirmed by a note at the top of the sheet: 'Despotism—in 1. Substance. 2. Form. 3. Language.' In the event, Bentham organized the examples of despotism according to the purpose of the ordinances in question.

two sentences of the final paragraph) than that which he eventually printed. He has crossed through the passages, mainly his commentary, and explained his decision to exclude this material from the printed text in a marginal note: 'Necessity, expedience and illegality—the same unnatural combination here as elsewhere. If not necessary, only by accident: if legal, only by accident. The test of legality is already given. To try the ordinances by this test would be tedious past endurance.' Under each example, Bentham added comments on 'Proof of the *utility*' and 'Proof of the *illegality*' of the ordinance, all of which, together with a passage on the Governor's issuing licences to ten alehouse keepers, he excised.[1]

According to the plans of the summer of 1802, it was at this point that Bentham had originally intended to insert the material on 'Mischiefs' and 'Causes'. In two sheets that may have belonged to the same longer draft, but of which the original sub-headings have been obliterated and replaced by 'V. Mischiefs', Bentham explained that any attempt by the Governor to enforce his orders could lawfully be met with resistance on the part of the convicts, and that the convicts might at any time realize that the Governor had no legitimate authority, and that no legislative power was included in the New South Wales Courts Act of 1787.[2] Bentham reiterated, in two short passages, what he saw as the mischiefs to which the Governor and the colony had been subjected by the neglect of administration to provide appropriate legislative powers. In the later of these, he noted that the non-existence of legal power to legislate coupled with the exercise of legislative power would result in nullity, anarchy, and confusion.[3] In the earlier, he argued that the founders of New South Wales were responsible for the mischiefs that had arisen, that they had been negligent in relation to reformation, incapacitation, justice, and economy, and explained that he would go on to discuss, first, the cause of this system of neglect, and second, the conduct pursued in relation to convicts' freedom to leave New South Wales.[4] This material was, it seems, intended as a summary of the corresponding discussion in the

[1] UC cxvi. 157–9, 169–73 (12–13 July 1802). A related fragment, in which Bentham complained that Pitt had so encouraged drunkenness in New South Wales that the Governor could not oppose it without acting illegally, is at UC cxvi. 163 (2 July 1802).

[2] UC cxvi. 220 (12 June 1802), 221 (18 June 1802), 135^{v} (12 June 1802). According to the marginal contents sheet at UC cxvi. 433 (n.d.), this material was originally preceded by cxvi. 133^{v}, 134^{v} (26 June 1802), in which Bentham anticipated part of § 3, pp. 327–32 below, by drawing up a list of the classes of persons in the colony with a view to showing whether, in relation to each of them, the ordinances of the Governor were legal or illegal, and then by missing material in which he argued that sending out the Governor without legal powers had resulted in anarchy and famine in New South Wales. This material was in turn preceded by an introductory sequence in which Bentham explained that no legislative power existed in New South Wales, and of which the only surviving sheet at UC cxvi. 193 (2 July 1802) contains a passage on 'organized anarchy'.

[3] UC cxvi. 224–5 (23 July 1802).

[4] UC cxvi. 222–3 (13 July 1802).

first 'Letter to Lord Pelham'[1] and as an introduction to the discussion of 'Causes' and 'Escapes'.

At the beginning of what appears to be a complete draft of 'Causes', Bentham explains that, having shown 'the natural consequences' of Pitt and Rose's 'way of doing business'—presumably the 'mischiefs' resulting to the colony—he would go on 'to speak more distinctly of the probable causes of the choice thus made of it'. According to Bentham, the administration could not have overlooked the possibility that the whole colony would perish either from famine or civil war. What accounted for their conduct? They had resolved to colonize New South Wales, but Parliament had been deluded into thinking that the system of government would be based on a division of power, whereas it had in fact been placed on a novel basis. The power of legislation had been vested in a single hand, that of the Governor. Pitt had not dared attempt to get Parliamentary approval, since it might have been objected that the convicts should be placed in the panopticon penitentiary at home. Hence, the Governor had been sent without legal powers. The Governor had had no choice but to exercise arbitrary power. Pitt's motivation was to save trouble. He had learned his lesson in disregard for the constitution from his father, William Pitt the Elder.[2] The father had once said that America had been conquered in Germany; the son had conquered the British Constitution in New South Wales.[3] Bentham then added a sequence in which he argued that it was possible that 'the prime movers' were 'conscious of the illegality of their conduct, but depended upon it's being taken for legal, and as such submitted to by the several parties interested', drawing on the tendency of lawyers to assume that there was no such thing as a legal vacuum, and where there appeared to be one, making up law to fill it, just as Camden,[4] during the corn scarcity of 1766, had made up a law authorizing the Privy Council to suspend the laws of Parliament.[5]

[1] See pp. 96–135 below.

[2] William Pitt the Elder (1708–78), first Earl of Chatham, Paymaster General 1746–55, Secretary of State for the Southern Department 1756–7, 1757–61, and leader of the administration as Lord Privy Seal 1766–8.

[3] UC cxvi. 182–3 (1 July 1802), 184–6 (27 June 1802), 187 (18 and 27 June 1802), 188–91 (27 June 1802), 192 (11 July 1802). For Pitt the Elder's remark on the conquest of America in Germany see p. 399 n. below.

[4] Charles Pratt (1714–94), first Earl Camden, Attorney General 1757–62, Chief Justice of Common Pleas 1762–6, Lord Chancellor 1766–70.

[5] UC cxvi. 195–201 (5–6 July 1802). The marginal contents sheet for the whole sequence comprizing UC cxvi. 182–92, 195–201 is at cxvi. 453 (11 July 1802). A related fragment on the relationship between 'the real existence' of legal powers and belief in their existence is at UC cxvi. 194 (4 July 1802). A further related fragment, in which Bentham stated that, at the time of the establishment of the colony, Pitt's conduct was characterized by extreme 'incapacity and carelessness', but later by *mala fides* or criminal consciousness, is at UC cxvi. 202 (9 July 1802). For the suppression of the Corn Laws in 1766 see p. 324 n. below.

'§ 12. Expirees forcibly detained' and '§ 13. Expirees, during Detention, kept in a State of Bondage' had originally formed the seventh sub-section of 'Conduct'. There survives for this topic most of a draft and all of a cancelled copy, both sub-headed 'VII. Escapes'. This discussion is more extensive than the version that appears in the printed text. Bentham pointed out that the design of ministers had been to render it impossible for convicts sent to New South Wales ever to return. The colony had been converted into 'an immense *Bastile*' from which no one could leave without the permission of the Governor. In the meantime, the Governor faced the dilemma that if he gave permission to leave to a bad man, he would do mischief elsewhere, and if he gave permission to a good man, the colony could ill-afford to lose him. Hence 'the whole system' established and condoned by Pitt's administration was 'a system of the most audacious illegality', detaining persons whose right to leave by law, because either their sentences had expired or they had gone there as free settlers, was 'indisputable'. The foundation of the colony had been illegal, while the illegal detention of persons in the colony was 'a crime without the shadow of an excuse'.[1] This material, as noted above, was re-written as two sections in January 1803. There survives a draft of almost the whole of § 12 from the seventh paragraph onwards[2] and of the first five paragraphs of § 13.[3]

The final section of the printed text, '§ 14. Statutes transgressed by the Legislation and Government of New South Wales', emerged from

[1] The draft, originally preceded by four unidentified sheets, is at UC cxvi. 316–18 (12 June 1802), 319 (19 July 1802), 320 (27 June 1802), 321 (n.d.), 322 (27 June 1802), 323 (18 July 1802), 324–9 (9 July 1802), 330a (30 July 1802), 330b (n.d.), 331–2 (20 July 1802), 333 (28 July 1802), several unidentified sheets, 334 (20 July 1802), and several unidentified sheets. The copy is at UC cxvi. 286–302 (n.d.) A related fragment, in which Bentham noted that he had pointed out the rights of legally emancipated convicts to the Treasury in 1798, and on which he has noted, 'Note to p. 71' and '☞ This sheet and the next not to be copied now', is at UC cxvi. 226–7 (20 July 1802). The reference to page 71 is to UC cxvi. 293. What appears to have been intended as the conclusion of the section, arguing that the flogging of those who had attempted to leave was unnecessary, and on which he has noted, 'Not to be inserted, but yet Copied', is at UC cxvi. 132 (9 July 1802). Much of the sheet is crossed through, but the final paragraph is not and has been copied at UC cxvi. 131 (n.d.) In a further fragment, which has been crossed through by Bentham, in which he mentions that seventy-one persons had got away from New South Wales with permission and a further seventy-one without, is at UC cxvi. 256^{v} (20 July 1802).

[2] UC cxvi. 362–3 (18 January 1802), 352 (16 January 1803), 363, an unidentified sheet, 364–6 (18 January 1803): see pp. 368–72 below.

[3] UC cxvi. 367 (18 January 1803): see pp. 372–3 below. In a cancelled fragment at UC cxvi. 368 (19 January 1803), Bentham pointed out that since there were already as many as 600 expirees by March 1797, and the settlement had remained undestroyed, the plea for keeping new expirees in a state of bondage on the grounds of necessity or expediency was undermined. An alternative version of the final note in § 13, p. 376 n. below, on the distinction between exile, confinement, and bondage is at UC cxvi. 281, 283–5 (2 February 1803).

the projected eighth section of the original version of 'Conduct', which was sub-headed 'Jeopardy', that is the jeopardy to which ministers had exposed themselves in acting illegally. With the exception of the final three paragraphs and the accompanying notes, a draft survives for the whole of § 14, compiled from drafts written in July 1802 and January 1803. The draft of the introductory first paragraph and the fourth sub-section consists of a passage written in January 1803,[1] into which Bentham has inserted a passage written in July 1802, which constitutes the first two sub-sections,[2] and a passage again written in January 1803, which constitutes the third sub-section.[3] The surviving draft of the fifth sub-section, consisting of the first five paragraphs, was also written in January 1803.[4] Bentham wrote an 'Appendix' for § 14, entitled 'Answer to objection grounded on the words of the Habeas Corpus Act', which he did not include in the printed text, but in which he responded to the objection that a strict reading of the wording of the Act would not cover the case of prisoners sent to New South Wales by arguing that, under the Act, it was illegal to detain

[1] UC cxvi. 352–5 (16 January 1803), 356–7 (28 January 1803): see pp. 377, 384–8 below. As noted above, a paragraph from UC cxvi. 352 appears in § 12.

[2] UC cxvi. 336–8 (4–5 July 1802), 340–1 (5 July 1802), 339 (12 July 1802): see pp. 377–81 below. A draft of the note at p. 377 n. below referring to the discussion of terms in the Habeas Corpus Act of 1679, which Bentham had considered for an 'Appendix' (see below), is at UC cxvi. 358 (28 January 1803). The sequence originally began with an unidentified sheet followed by UC cxvi. 335 (10 July 1802), which constituted an early version of the introduction to 'Jeopardy'. In this sheet, Bentham referred to the history of Perillos of Athens, the reputed inventor of the brazen bull, and likened Rose and Pitt to the ministers of Idomeneus, King of Crete and afterwards of Salente, in François de Fénelon's *Telemachus* (first published in 1699), a comparison he had elaborated upon in a discarded sheet at UC cxvi. 339^{v} (27 June 1802). The material on this sheet, with additions, appears on a cancelled copy at UC cxvi. 303 (n.d.), sub-headed 'VIII. Jeopardy', in which Bentham goes on to suggest that Pitt and Rose would be punished severely 'unless Parliament, in its wisdom, should vouchsafe to shew mercy to those who have shewn none'. It seems likely that this sheet was originally intended to introduce what became § 14, since it is placed immediately after, and is in the same hand as, the material that constitutes the copy of §§ 12–13 at UC cxvi. 286–302, and was probably pinned to it.

[3] UC cxvi. 369–71 (29 January 1803): see pp. 381–4 below. This sequence was originally continued by UC xciv. 154^{v} (29 January 1803), which was not incorporated into the printed text.

[4] The first four paragraphs are at UC cxvi. 359–60 (28 January 1803), sub-headed 'Jeopardy', and the fifth at cxvi. 373 (29 January 1803), sub-headed 'Conclusion': see pp. 389–90 below. A cancelled note, which did not appear in the printed text, beginning at UC cxvi. 359 and continuing at cxvi. 361 (28 January 1803), deals with statutes in which the length of transportation was left to the discretion of the judge, provided it did not exceed a certain number of years. A fragment, which appears to be the beginning of a 'Conclusion' to this section, in which Bentham stated that the people of Britain and Ireland, if they allowed the grievances of the convicts in New South Wales to remain unredressed, would themselves suffer from oppression at home is at UC cxvi. 228 (23 July 1802). A sheet containing rudiments on a similar theme is at UC xciv. 151^{v} (n.d.)

persons after the expiry of their sentence irrespective of whether they were in prisons at home or overseas.[1]

When he began drafting the first 'Letter to Lord Pelham', Bentham claimed, he had not suspected that the penal colony of New South Wales had been established on an illegal basis. He had, however, arrived at this view by mid-June 1802. Even though a version of 'The True Bastile' had been completed in July 1802, Bentham decided not to print or publish it, on the grounds that it might produce insurrection in New South Wales, and because he wished to give Parliament the opportunity to rectify the situation. On 29 August 1802 he reported to Dumont that he had 'of late made a discovery of a piece of villainy, on the part of Pitt, Portland and others of the late gang, which, for the sake not only of justice and humanity (both very pretty things, children of the utility family) but for the sake of this old constitution of our's for which (forgive my weakness) I can not but confess that I have a whoreson kind of tenderness that hangs on me—I should like to see punished'. Bentham went on to list six 'enormities' related to New South Wales. First, sentences of transportation had been illegally extended by preventing those whose terms had expired from leaving the colony; second, 'various lengths and modifications of equally illegal *bondage*' had been added to this 'illegal *confinement*-and-*banishment*'; third, 'powers very little short of pure despotism' had been vested in the Governor, who had used these powers to legislate illegally; fourth, convicts who had already served out most of their sentences in England had nevertheless still been transported; fifth, convicts had been transported without official documents specifying their sentences and had thereby been kept in confinement for an indefinite term; and sixth, on account of these illegalities, ministers were liable to punishment for offences against Magna Carta, the Bill of Rights, and the Habeas Corpus Act. He went on to inform Dumont that 'The True Bastile', in which he pointed out his discoveries, was 'ready for the press'. He explained that 'the accuracy of the views I have taken of the matter of law has received the most unreserved confirmation from Romilly'[2] and expressed his fear that if he were to publish the pamphlet, 'before Parliament is in readiness to do any thing, the great probability is that the Colony would be in a flame', since its inhabitants

[1] UC cxvi. 375 (22 January 1803), 376 (27 January 1803), 377–83 (22 January 1803), 384–5 (24 January 1803), followed by at least one unidentified sheet. A fragment which contains a discussion of a further objection, namely that Bentham's construction of the Habeas Corpus Act would render illegal every act of imprisonment of an English subject, is at UC cxvi. 374 (27 January 1803).

[2] Romilly had, the previous day, returned to Bentham unspecified portions of the pamphlet, commenting that, 'What you state respecting Botany Bay has very much astonished me. It has the more astonished me because I take the law upon the subject to be exactly as you have stated it'. See Romilly to Bentham, 28 August 1802, *Correspondence* (*CW*), vii. 92.

were 'ready for revolt most of them at all times without any pretence'. Once Parliament reconvened, it could give the appropriate legal powers to the Governor. Bentham anticipated that Parliament would pass a Bill of Indemnity 'to save Secretaries of State and perhaps Members of the Council Boards with their respective subordinates' from punishment, while the Opposition might ensure that 'the whole official history of the Colony' was 'laid before Parliament', thereby exposing the ministry's 'enormities, to public shame'. He went on to discuss the means by which his discoveries might be made use of by the Opposition through the mediation of Dumont, should he be precluded from publishing them by any arrangement he might come to with ministers in relation to the panopticon scheme. Though Romilly had indicated to Bentham that 'neither Opposition, nor Ministry, nor the public at large care a straw about Convicts—or would manifest any sort of resentment for any injustice that ever has been or could be done to them', Bentham believed that, even if they were to be regarded 'as so many logs of wood', they 'could be made use of as so many clubs to beat the Ministry past and present about the head with'.[1] Around the same time, in a letter to his brother Samuel, Bentham expressed similar views, fearing that 'a natural consequence' of publishing his 'discoveries . . . would be the setting of the whole Colony in a flame', and he would not do so until Parliament was 'in a condition to apply the remedy: and the remedy I mean to try at, is the evacuation of that scene of wickedness and wretchedness'. Bentham expected that, in passing a Bill of Indemnity, the administration would be 'most miserably mauled and kept in hot water by the Opposition by the way: for N.S. Wales as I shall take care to have it known in every ginshop is the True Bastile'.[2] Bentham also explained his six 'discoveries' in his letter to Abbot of 3 September 1802, informing him that he had set out his arguments 'in detail, in a paper, which, though in substance a law argument, wears at present the form of a letter addressed to Lord Pelham'. 'The sort of spirit it is written in', continued Bentham, 'is that which would naturally be called forth by the enormities displayed in it, and is purposely preserved, in the view of exciting in the public mind that attention which would be necessary to the applying to the grievance whatever may be the proper remedy.' The work then occupied 56 manuscript pages, and no-one other than Romilly had seen it. Bentham sent Abbot the marginal contents of the work in order to give him a 'tolerable conception' of its 'substance'.[3]

[1] Bentham to Dumont, 29 August 1802, ibid. 94–100.

[2] Bentham to Samuel Bentham, *c.* 21 August 1802, ibid. 88–90.

[3] Bentham to Abbot, 3 September 1802, ibid. 102–4. For the marginal contents in question see p. lxxii & n. above. An unruled sheet at UC cxvi. 542^{v} containing a fair copy of the title, to which is added 'Marginal Contents—2 Sheets', dated 3 September 1802, appears to form a cover-sheet for the marginal contents of 'The True Bastile'.

Bentham thereupon put the work to one side as he turned his attention to the three 'Letters to Lord Pelham', but, as noted above, returned to it in early 1803, having evidently decided to send it to the printers. As well as redrafting various parts of the text written in the summer of 1802, he made several attempts to compose a Preface. In a draft 'Preface', written in January 1803 and still with the main heading 'True Bastile', Bentham explained that when he set out on his enquiry as presented in the first 'Letter to Lord Pelham' and 'Second Letter to Lord Pelham', he had not suspected that the penal colonization of New South Wales was illegal. The first 'professional friend'[1] whom he had informed of his 'discovery' 'would not hear of it', while the second,[2] 'having less faith and more patience, took the paper, read it, considered it, reconsidered it, professed himself convinced, and spoke of the arguments as incontrovertible'. Bentham attributed the illegality of the measure to its inexpediency, which meant that government had not been prepared to go to Parliament to ask for the necessary powers. The situation could be remedied by an Act of Parliament, but Parliament would need to consider 'whether an indemnity from punishment ought to be granted, without some notice taken of the delinquency'. Bentham summarized his argument as follows:

> The end in view gave its character and complexion to the means. It was because the end was not fit to be avowed that the course taken for the accomplishment of it was thus illegal: it was because the effect meant to be produced was contrary to natural justice, that the means chosen in the production of it were contrary to law. It was because the measure was such as Parliament would not have approved of that the effect was produced by power usurped from Parliament. The transgression was, therefore, not of that blameless kind which arises from simple misconception, but of that immoral, and in case of inferior delinquents punishable, kind which is accompanied with what lawyers call *mala fides*: that kind of consciousness which, on the part of all those who are not above law, is deemed criminal, and gives to the act to which it attaches and taints the denomination and consequences of a crime.[3]

A few days later Bentham drafted what appear to be points for development under the sub-heading 'Preface or Beginning', and to which he gave the title 'The True Bastile: or Britain and her Constitution conquered in New South Wales'.[4] In a fair copy, the proposed title of the work appears as 'The British Constitution conquered in New South Wales: Shewing the enormities committed, in breach of Magna Charta, the Petition of Right, the Habeas Corpus Act, and the Bill

[1] Unidentified.
[2] i.e. Romilly: see p. lxxxii above.
[3] UC cxvi. 342–5 (8 January 1803).
[4] UC cxvi. 478–9 (12 January 1803).

of Rights, in the design, foundation, and government, of that Penal Colony', part of which was integrated into the title of the printed text. This title is followed by a list of contents that corresponds to that of the printed text, thereby indicating that it was prepared after the main text had been finalized, and then by a version of the preface in which Bentham drew a parallel between the forty-days' tyranny of the Elder Pitt[1] with the tyranny introduced into New South Wales by the Younger Pitt and explained that his purpose was to restore King and Parliament to their rightful constitutional place.[2]

Bentham appears to have given a copy of this version of the draft 'Preface' to Samuel Parr when he dined at Bentham's home on 3 February 1803. Parr had, according to Bentham, begun 'of his own accord a conversation about the Letters to Lord Pelham', and suggested that he might present 'a Copy' on Bentham's behalf to Charles James Fox. Bentham had explained to Parr that he had avoided sending 'Letters to Lord Pelham' to Fox, since 'it had not been my intention to attempt troubling Mr Fox upon any such minor concerns—that I 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 violations of the Habeas Corpus Act'. Nevertheless, at Parr's insistence, he gave 'a Copy', presumably of both the first 'Letter to Lord Pelham' and 'Second Letter to Lord Pelham', to Parr,[3] who presented them to Fox on 8 February 1803. Parr was, moreover, 'firmly of opinion that the Preface sh^{d} not be cast aside', though he suggested a number of stylistic changes.[4] Bentham also showed the 'Preface' to Romilly, who told him bluntly: 'I don't like your preface and if I were to decide bet^{n} that and none should vote for omitting it altog$^{er.}$' He thought that it contained 'too much levity', and that the title was 'too tragic' and the 'Preface' itself 'much too comic'. He objected to the comparison between 'the attempted Conquest of America and the attempted Conquest of the Constitut^{n}' in 1766, and concluded that, 'notwithst^{g} what has been done at Botany bay the Brit Constit^{n} is not conquered but still remains as it did', even though it might have been 'disregarded or violated' by ministers, since Parliament sat and juries decided cases.[5] In the event, Bentham appears to have accepted Romilly's criticisms, rewriting the 'Preface' and presumably changing the title from 'The True Bastile' to 'A Plea for the Constitution'.

[1] For the 'forty days tyranny' of 1766 see p. 324 n. below.
[2] UC cxvi. 275 (n.d.), reproduced in the Appendix, pp. 397–400 below.
[3] Bentham to Dumont, 9 February 1803, *Correspondence* (*CW*), vii. 198–9.
[4] Parr to Bentham, 8 February 1803, ibid. 197–8.
[5] Romilly to Bentham, 15 February 1803, ibid. 200–2.

Bentham had, no doubt, wished to receive feedback on the 'Preface' since he was in the process of printing the work.[1] The printers Wilks and Taylor were working on the text in mid-February 1803, requesting that Bentham return 'the proof and likewise the whole of the copy, if ready, or as much as is, as the compositors are now wanting some of it—Proofs will be sent shortly.'[2] Bentham was at the same time attempting to find a publisher. On 23 February 1803 he approached Messrs Brooke and Clarke, law booksellers at Bell Yard, Lincoln's Inn, but they declined on the grounds 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'.[3] The work eventually appeared in late February or early March 1803 with the names of the publishers Mawman and Hatchard on the title page.[4] While the work was prepared for publication, it does not appear to have been put on public sale, rendering its status in this respect somewhat ambivalent.

On 5 March 1803 Romilly gave Bentham an account of 'a short Conversation' he had held with Attorney General Spencer Perceval, reporting that Perceval, who had only read the title and preface, had not been offended by Bentham's reference to him and 'on the contrary he seems to think that you have spoken very civilly of him',[5] but he had been 'shocked very much by the *title*' and had cast doubt on whether, were he 'disposed to interest myself to have the Panopticon established and have [Bentham] placed at the head of it', he would be able to 'recommend to a Secretary of State to place in such a situation a Person who had written such things of him or his predecessors'.[6] Bentham remained hopeful that his strategy was succeeding. He told Romilly that he discerned 'in the language of the Attorney General *symptoms of squeaking*'. He speculated that Perceval had read 'A Plea for the Constitution' in its entirety and had given the 'hints about his disposition to recommend etc. in the view of quieting me till he had had an opportunity of stating to his principals the plague he apprehended for them from the scrapes they had got into'.[7] Bentham wanted Romilly

[1] Bentham to Dumont, 9 February 1803, ibid. 200. Bentham complained that, owing to 'Accidents at the printers', there had been 'a sad delay in regard to my pamphlet on the constitutional question, which ought to have been out by this time'.

[2] Messrs Wilks and Taylor to Bentham, 18 February 1803, ibid. 204.

[3] Messrs Brooke and Clarke to Bentham, 24 February 1803, ibid. 206.

[4] See the title page of 'A Plea for the Constitution': 'London. Printed for Mawman, Poultry; and Hatchard, Piccadilly, By Wilks and Taylor, Chancery Lane. 1803.' Joseph Mawman (*fl.* 1800–28) was a bookseller and publisher based at Poultry in the City of London and John Hatchard (1769–1849) was a bookseller and publisher based at Piccadilly.

[5] For Bentham's comment on Perceval see p. 319 below.

[6] Romilly to Bentham, 5 March 1803, *Correspondence* (*CW*), vii. 207.

[7] Bentham to Romilly, first letter of 7 March 1803, ibid. 208.

to ask Perceval if he would be willing to take charge of the panopticon scheme on behalf of government.[1] Bentham insisted, however, that Romilly make it clear to Perceval 'that the pamphlets[2]—shocking or not shocking—are not to be suppressed for any body's beautiful eyes'. He admitted that Perceval was 'more or less an honourable man', but feared that Pelham and Addington would aim 'to gain time' and 'to do so would not scruple to treat the Att^{y} Gen^{l} with those false demonstrations with which they have been treating Bunbury, Wilberforce, and I don't know who besides, for these two years'. Bentham noted that he had spent more than £70 and a great deal of time on the production of his pamphlets, and would recoup some money were they to be put on sale, but he would not accept payment from government, if it were to be offered: 'they should understand—and understand distinctly—that they are not to expect gratuitous submission on one part, while there is nothing but perfidy and oppression on the other'.[3] Bentham reported Perceval's 'shock' at the title of 'A Plea for the Constitution' to Bunbury, who warned Bentham to consider 'the bad Effects which might ensue from *it's being seen* by those who are inclined to be *hostile*; and whether it would not be 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'.[4] 'The caution was what had occurred to myself,' Bentham replied, 'and has been religiously observ'd.'[5]

Bentham's caution appears to have partially evaporated by early April 1803, when he began to distribute 'A Plea for the Constitution', albeit in a very limited manner. Romilly had presumably been amongst the first to receive a copy.[6] On 4 April 1803 David Collins wrote to Bentham 'in lieu of a personal Farewell', being on the verge of leaving London to prepare for his departure for Port Phillip.[7] In response, Bentham sent Collins a copy of 'A Plea for the Constitution' to demonstrate to him 'the gunpowder you are treading upon', that is in accepting the Lieutenant-Governorship of a new Australian penal colony. Were Collins 'bold enough to continue your command after looking at it', Bentham suggested that he would 'at least feel it prudent to insure your life in some good office'. The 'poor Attorney-general'

[1] Bentham to Romilly, second letter of 7 March 1803, ibid. 209–11. The second letter was written with a view to Romilly's showing it to Perceval.

[2] i.e. 'Letter to Lord Pelham', 'Second Letter to Lord Pelham', and 'A Plea for the Constitution'.

[3] Bentham to Romilly, 8 March 1803, *Correspondence* (*CW*), vii. 215–16.

[4] Bunbury to Bentham, 8 March 1803, ibid. 214.

[5] Bentham to Bunbury, 8 March 1803, ibid. 214.

[6] See the presentation copy, inscribed by Bentham 'To Samuel Romilly Esq$^{re.}$ From the Author', at BL shelfmark 1127. c. 4. (1).

[7] Collins to Bentham, 4 April 1803, *Correspondence* (*CW*), vii. 219–20. For Collins's departure see p. lxi & n. above.

had been 'sadly shocked . . . by the title', and had 'confessed to a friend of mine,[1] that what is there said . . .[2]—fact, law, and everything—is true'. Bentham hoped that Collins would 'acquit' him of 'incendiarism', since 'it is to you I present the squib, not to any of your crew'.[3] On 6 April 1803 Bentham sent a copy to Joseph Jekyll, noting Bunbury's 'injunction against the letting off the . . . Squib'. Bentham reported that Bunbury and his allies were planning to lobby Addington on behalf of panopticon, though their 'attack' would be directed against the hulks rather than New South Wales.[4]

It appears that no progress had been made, at least none to Bentham's satisfaction, when on 2 May 1803 Bentham asked Bunbury whether the 'storming party', that is the Parliamentary supporters of the panopticon scheme who Bunbury had promised to mobilize, was showing 'any signs of life?' Bentham reminded Bunbury that, following his advice, he had halted circulation of 'A Plea for the Constitution' on the grounds that, by causing offence, it would serve Addington as a means of defence, but suggested that it was 'high time' that the 'Letters and Plea' were published, 'if no good is to be got by forbe[a]rance'.[5] On 8 May 1803 Bunbury explained that he had been away from London for nearly three weeks, and since his return had been, 'like many others waiting in daily Expectation of hearing whether we were to be at Peace or War' with France, and 'before that great Question is decided, Ministers will not talk on any other Subject'. He had not had any contact with Pelham, and was due to leave London again for eight or nine days, but would see him upon his return. If Pelham's 'Determination' were '*unfavourable*', Bentham might 'publish your Letters when you please', but asked him not to do so 'before I make one more Trial'.[6]

Having heard nothing in the meantime from Bunbury, on 1 June 1803 Bentham sent him a copy of 'A Plea for the Constitution', noting that though Perceval had 'expressed himself shocked . . . by the Title . . . he did not contest any thing I had advanced'.[7] On 6 June 1803 Bunbury responded to Bentham in unequivocal terms:

> 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 irreconcileable, and procure you Friends only amongst the Malefactors of New South Wales. It's Ingenuity, and Acuteness render it more objectionable, for the sharper the

[1] i.e. Romilly.
[2] The source of this letter, Bowring xi. 401–3, has 'of him', but this transcription seems questionable.
[3] Bentham to Collins, 5 April 1803, *Correspondence* (*CW*), vii. 222.
[4] Bentham to Jekyll, 6 April 1803, ibid. 223–4.
[5] Bentham to Bunbury, 2 May 1803, ibid. 225.
[6] Bunbury to Bentham, 8 May 1803, ibid. 225–6.
[7] Bentham to Bunbury, 1 June 1803, ibid. 235.

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.[1]

Bunbury's letter either immediately followed or preceded a meeting with Bentham, who wrote back to confirm that Bunbury's 'advice—conversation and note together' was 'to publish the two Letters to Ld Pelham immediately—not to publish the Plea for the Constitut[n]?' Bentham would proceed on this basis 'forthwith', if he heard 'nothing to the contrary' from Bunbury.[2] Bunbury was attempting to see Pelham and on 10 June 1803 reported that, though he had so far 'endeavoured in vain', he hoped 'to do so in a Day or two' and asked whether it would be 'better to defer the *Publication* of the two Letters, till I have had another conversation with him on the Subject?'[3] Bunbury did eventually meet with Pelham on 13 June 1803, when, he told Bentham, Pelham 'heard my Arguments in Favour of your Plan 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 with it at present'.[4] Bentham reminded Bunbury that 'from the first I had never any expectation from his Lordship of any thing better than chicane. I knew full well the force of the secret influence: it was impossible for me to doubt of his disposition to give way to it: the only chance of his determining to do his duty was of his feeling himself pinned down to it by the force of fear and shame'.[5] Bunbury's meeting with Pelham marked the point when Bentham was finally forced to accept that the government would not, at least in the foreseeable future, proceed with the panopticon scheme.

Subsequent reception and distribution of the works and the publication of Panopticon versus New South Wales

A catalogue of works on politics in the *Monthly Review* of July 1803 listed '*First and Second Letters to Lord Pelham*' as '8vo Pamphlets. Mawman' and '*A Plea for the Constitution*' as '8vo Pamphlet. Mawman. 1803',[6] and added a short anonymous review.[7] A French translation of

[1] Virgil (Publius Vergilius Maro), *Aeneid*, VII. 312: 'If I am unable to bend the upper world, I will move the lower.' Bunbury to Bentham, 6 June 1803, *Correspondence* (*CW*), vii. 236.
[2] Bentham to Bunbury, 6 June 1803, ibid. 236.
[3] Bunbury to Bentham, 10 June 1803, ibid. 237.
[4] Bunbury to Bentham, 15 June 1803, ibid. 240.
[5] Bentham to Bunbury, 17 June 1803, ibid. 240–1.
[6] For Mawman and Hatchard see p. lxxxvi n. above.
[7] *The Monthly Review; or Literary Journal Enlarged*, vol. xli (July 1803), 323. Bentham may have sent the works himself to the journal: see the list of recipients at p. lxi n. above.

'Letter to Lord Pelham' and 'Second Letter to Lord Pelham', produced by Adrien Duquesnoy,[1] appeared as *Lettres à Lord Pelham* at Paris in 1804.[2] Dumont drew on the first 'Letter to Lord Pelham' for the chapter entitled 'De la déportation à Botany-Bay' in *Théorie des peines et des récompenses*, published in 1811.[3]

Bentham eventually published a compilation of 'Letter to Lord Pelham', 'Second Letter to Lord Pelham', and 'A Plea for the Constitution' under the title of *Panopticon versus New South Wales* in 1812. The sheets printed for the three works in 1802–3 were used for the published version in 1812, with the addition of a main title page.[4] Bentham was prompted into publishing *Panopticon versus New South Wales* by the revival of interest in building a prison in London. In June 1808 an attempt had been made in the House of Commons, led by James Abercromby,[5] to institute an inquiry into transportation and the construction of a national penitentiary. Bentham claimed that Abercromby had been inspired by the first two 'Letters to Lord Pelham' and 'A Plea for the Constitution', which he had received from Romilly.[6] Abercromby's initiative produced no immediate result, but on 5 June 1810 Romilly introduced a motion in the House of Commons calling for the implementation of the Penitentiary Acts of 1779 and 1794. Following the debate on Romilly's motion, Charles Bragge Bathurst,[7] on behalf of the government, introduced a motion, calling for the matter of a national

[1] Adrien-Cyprien Duquesnoy (1759–1808), lawyer and merchant, member of the National Assembly for Bar-le-Duc 1789–91, Mayor of the 10th Arrondissement of Paris 1801–3.

[2] *Lettres à Lord Pelham, Renfermant un parallele du systême de colonisation pénale, adopté pour la Nouvelle-Galles du Sud, et de celui des Maisons de repentir érigées dans la Métropole, dont l'exécution a été prescrite par deux actes du Parlement, des années 1794 et 1799; Traduites de l'Anglais de M. Jérémie Bentham, et publiées en Français par Ad. Duquesnoy*, Paris, 1804 (year XII). This was the thirty-sixth of thirty-nine translated works, which had originally appeared in England and the German states, published by Duquesnoy on topics of charitable provision and poor relief on behalf of the Ministry of the Interior with a view to informing debate in France: see *Recueil de mémoires sur les établissemens d'humanité, traduits de l'allemand et de l'anglais*, 18 vols., Paris, 1798–1804. Duquesnoy's name appears in a list of foreign recipients of 'Letter to L[d] Pelham' at UC cxvi. 422 (4 January 1803).

[3] See *Théorie des peines et des récompenses*, ed. É. Dumont, 2 vols., London, 1811, i. 179–200. This chapter, under the title 'Of Transportation', subsequently appeared in *The Rationale of Punishment*, London, 1830, pp. 327–50 (Bowring, i. 490–7). This work was Richard Smith's English translation of the first volume of *Théorie des peines et des récompenses*. Smith, Collector of Stagecoach Duties at the Stamp and Taxes Office, edited fifteen works for the Bowring edition: see Bowring, x. 548 n.

[4] For further details see the Collation, pp. 437–8 below.

[5] James Abercromby (1776–1858), later first Baron Dunfermline, MP for Midhurst 1807–12, Calne 1812–30, and Edinburgh 1832–9, Speaker of the House of Commons 1835–9.

[6] See Bentham to Samuel Bentham, 19 June 1808, *Correspondence* (*CW*), vii. 507.

[7] Charles Bathurst (1754–1831), afterwards Bragge Bathurst, MP for Monmouth 1790–6, Bristol 1796–1800, 1801–2, Bodmin 1812–18, and Harwich 1818–23, Treasurer of the Navy 1801–3, Secretary at War 1803–4, Master of the Mint 1806–7, Chancellor of the Duchy of Lancaster 1812–23, President of the Board of Control 1821–22.

penitentiary to be examined early in the next session, which was unanimously passed.[1] On 4 March 1811 a House of Commons Committee was accordingly established to 'consider of the expediency of erecting a Penitentiary House or Penitentiary Houses under the acts of the 34th and 19th of His present Majesty'.[2] The first of the three Reports of the Committee, whose Chairman was George Holford,[3] signalled a final, decisive rejection of the panopticon scheme and Bentham's principles of management.[4]

On the title page of the published edition of *Panopticon versus New South Wales*, Bentham noted: 'In June, 1811, this Work, together with three others, by the same Author, relative to the Management of Convicts, or other persons maintained at the Public charge, having been laid upon the Table of the HOUSE of COMMONS Committee on Penitentiary Houses, is referred to in the Appendix to their Report, of that same date.'[5] The Appendix to the Committee's First Report—ordered to be printed on 31 May 1811, rather than in June 1811, as Bentham states—contained evidence from several witnesses, including Bentham, but in neither his oral nor written evidence did he refer either to the first two 'Letters to Lord Pelham' or to 'A Plea for the Constitution'.[6] Bentham must, therefore, have had in mind

[1] *Parliamentary Debates* (1810), xvii. 322–52.

[2] *Commons Journals* (1810–11), lxvi. 144.

[3] George Peter Holford (1767–1839), MP for Bossiney 1803–6, Lostwithiel 1807–12, Dungannon 1812–18, Hastings 1818–20, and Queenborough 1820–6, Secretary to the Board of Control 1804–6, 1807–10. Holford was later a member of the management committee of Millbank penitentiary from 1816 until his death.

[4] See 'Report from the Committee on the Laws relating to Penitentiary Houses', 31 May 1811, in *Commons Sessional Papers* (1810–11), iii. 569–689.

[5] See p. 438 below. The same note appeared on the title page of *Pauper Management Improved: particularly by means of an application of the panopticon principle of construction. Anno 1797, first published in Young's Annals of Agriculture: Now first published separately*, London, 1812 (reproduced in *Writings on the Poor Laws: II* (*CW*), p. 695), and *Panopticon, or, The Inspection-House; in which by persons stationed in a central lodge, and seeing without being seen, any number of other persons, may at all times be inspected without change of place; And the Establishment managed, upon a Plan, applicable (with the requisite Variations) to Penitentiary and other Prisons, Work-Houses, Manufactories, Mad-Houses, Lazarettos, and Schools. Printed Anno 1791, with the ensuing Title-Page: now first published*, 2 vols., London, 1812, which was a reissue of 'Panopticon; or, The Inspection-House', London, 1791. The third work was possibly 'A View of the Hard-Labour Bill'.

[6] See 'Appendix No. 1. Minutes of Evidence. Committee on Laws relating to Penitentiary Houses', in 'Report from the Committee on the Laws Relating to Penitentiary Houses', 31 May 1811, *Commons Sessional Papers* (1810–11), iii. 591–656. Bentham gave evidence before the Committee on 27 March and 1 April 1811, in which he did refer to 'Panopticon; or, the Inspection-House', noting that a copy was 'in the hands of the Committee': see ibid. 630–5, 642–50, esp. 634, 643, 646–7. In addition to his oral evidence, letters from Bentham to Holford dated 29 March 1811 and 1 April 1811 were included in the Committee's evidence: see ibid. 635–7 and 638–42 respectively (reproduced in *The Correspondence of Jeremy Bentham*, vol. viii, ed. S. Conway, Oxford, 1988 (*CW*), pp. 111–16 and 119–27 respectively).

the Committee's Second Report, which was ordered to be printed on 10 June 1811, and which did not contain an Appendix but consisted solely of a letter from Bentham to Holford of 6 May 1811,[1] in which Bentham referred to '*Pauper Management Improved*', '*Panopticon*', and 'the tract intituled Panopticon versus New South Wales, Letter II, pages from 54 to 61'.[2] On 24 January 1812 Bentham received a request from Thomas Beeby, Clerk of the House of Commons, on behalf of Holford, for a copy of the 'book intituled "Panopticon" etc and also the other books referred to in your Evidence the same being continually wanted to refer to by the Members and should have been placed amongst the other papers'. Bentham's books had been presented to the Committee by Nepean, a member of the Committee, but he had subsequently removed them.[3] Bentham sent copies of 'Panopticon; or, the Inspection-House' and 'Pauper Management Improved', but explained that one of the works, namely 'the *Two letters to Ld Pelham* and the *Plea for the Constitution* which three have been put up together in one', had been 'rendered imperfect by the negligence of the printer in whose custody they were', and it was 'impossible' for him to predict when he might be able to complete them. Bentham recalled, however, that he had, 'a little before the sitting of the [Penitentiary] Committee'—the Committee had heard its first witness, the prison reformer Sir George Onesiphorous Paul (1746–1820), on 8 March 1811[4]—sent 'a *perfect copy*' and a second copy 'wanting, if any thing, nothing but the title page', to Richard Ryder, the Home Secretary,[5] through his Under Secretary John Beckett, either of whom might, therefore, supply the 'temporary deficiency'.[6] It is possible that this request from Holford prompted Bentham to publish *Panopticon versus New South Wales* as well as *Panopticon, or, The Inspection-House* and *Pauper Management Improved*.

[1] 'Second Report from the Committee on the Laws relating to Penitentiary Houses', 10 June 1811, in *Commons Sessional Papers* (1810–11), iii. 691–702. Bentham's letter to Holford of 6 May 1811 is reproduced in *Correspondence* (*CW*), viii. 135–46. The hulks were examined in 'Third Report from the Committee on the Laws relating to Penitentiary Houses', 27 June 1812, in *Commons Sessional Papers* (1812), ii. 363–422.

[2] See *Commons Sessional Papers* (1810–11), iii. 699, referring Holford to this passage in 'Second Letter to Lord Pelham' (i.e. pp. 226–34 below) as constituting a comprehensive discussion of the 'difficulties, which upon an *ordinary* plan of construction, for want of that source of simplification [offered by the panopticon] attends the business of management' in the case of 'several *American* Prisons'.

[3] Beeby to Bentham, 24 January 1812, *Correspondence* (*CW*), viii. 224.

[4] See 'Report on the Laws relating to Penitentiary Houses', Appendix 1, in *Commons Sessional Papers* (1810–11), iii. 591.

[5] Richard Ryder (1766–1832), MP for Tiverton 1795–1800, 1801–1830, was Home Secretary 1809–12, and John Beckett (1775–1847), MP for Cockermouth 1818–21, Haslemere 1826–32, and Leeds 1835–7, was Under Secretary at the Home Office 1806–17.

[6] Bentham to Thomas Beeby, 24 January 1812, *Correspondence* (*CW*), viii. 225–6.

No advertisements or reviews of *Panopticon versus New South Wales*, nor of the other panopticon-related works published by Bentham in 1812, have been located. Bentham did at some point draft an advertisement:

> This day are published, having been laid on the Table of the H. of Commons Committee on Penitentiary Houses: June 1811: and referred to in the Appendix to their Report of that date. '*1. A View of the Hard-Labour Bill*', '*2. Panopticon or the Inspection House*', '*3. Pauper Management Improved*', and '*4. Two Letters to L^d^ Pelham:* followed by *Plea for the Constitution*: &c. in which the Panopticon Penitentiary System and the Penal Colonization system are compared'.[1]

It remains unclear precisely when in 1812 *Panopticon versus New South Wales* was published. On 17 September 1812 Bentham sent to the Home Secretary Addington, now Lord Sidmouth,[2] a letter and enclosure which contrasted the panopticon plan with that proposed by the new Penitentiary Act of 1812,[3] accompanied with 'Five tracts', printed in 1778, 1791, 1797, 1802, and 1803.[4] These must have been 'A View of the Hard-Labour Bill', 'Panopticon; or, the Inspection-House', 'Pauper Management Improved', the first and second 'Letters to Lord Pelham', and 'A Plea for the Constitution' respectively. Although Bentham does not refer to the two 'Letters to Lord Pelham' and 'A Plea for the Constitution' under their amalgamated title, they may have been sent in the form of the published version of *Panopticon versus New South Wales*.

Bentham continued to circulate the first 'Letter to Lord Pelham', 'Second Letter to Lord Pelham', and 'A Plea for the Constitution', presumably in the form of *Panopticon versus New South Wales*, though he often referred to them under their separate titles.[5] In June 1817

[1] UC cxlix. 187 (n.d.) The draft advertisement is headed with an instruction to 'Print this on one 8^vo^ sheet for the purpose of being delivered to Newspaper &c. to be advertised', and ends with another to 'Print Copies 750.' No copy of a printed advertisement has been located and it does not appear that 'A View of the Hard-Labour Bill' was reissued at this time.

[2] Following the assassination of Spencer Perceval on 11 May 1812, and the formation of a new ministry under Robert Banks Jenkinson (1770–1828), styled Lord Hawkesbury 1796–1808, second Earl of Liverpool, First Lord of the Treasury 1812–27, Sidmouth had replaced Ryder as Home Secretary in June 1812.

[3] The Act (52 Geo. III, c. 44) endorsed the principles of convict management favoured by Holford and led to the construction of the Millbank penitentiary.

[4] See Bentham to Sidmouth, 17 September 1802, *Correspondence* (*CW*) viii. 263–8 for the letter and 269–82 for the enclosure.

[5] There is some ambiguity in Bentham's use of the title 'Panopticon versus New South Wales'. This was, of course, the original title of the first 'Letter to Lord Pelham' (see p. xxx above) and in a list of a parcel of books sent in October 1811 to James Madison (1751–1836), President of the United States of America 1809–17, Bentham distinguished between 'Panopticon versus New South Wales', by which he perhaps meant the two 'Letters to Lord Pelham', and 'A Plea for the Constitution': see Bentham to Madison, 30 October 1811, *Correspondence* (*CW*), viii. 214.

Bentham listed them among the works he intended to send, through John Quincy Adams, to James Monroe, Daniel Tompkins, William Harris Crawford, and Thomas Cooper.[1] In December 1817 Bentham asked John Adams Smith to present a copy of 'Letters to Lord Pelham' to Richard Rush, since it was a work in which Bentham had 'appeared in the character of a Philo-Yankee'.[2] In July 1820, in response to Bentham's enquiry concerning which of his works were available in the United States, William Plumer Jnr. reported that '*Letters to Lord Pelham*' and '*Plea for the Constitution*' were among those he had 'sought without success'.[3] In January 1821 Bentham presented John Bowring with a copy of *Panopticon versus New South Wales*.[4] During August 1823 the bookseller Effingham Wilson told Bentham that he had a customer for several of Bentham's works, including 'Letters to L^{d} Pelham etc' and 'Plea for the Constitution', and that if he had 'more copies than one to spare', he expected that he would be able to sell them.[5] In October 1823 Wilson again wrote to Bentham to request, amongst other works, a copy of 'Letters to Lord Pelham' for 'a particular order', and should Bentham 'have more than one on hand', he had 'no doubt they will sell'.[6]

[1] Bentham to Adams, 7 June 1817, *The Correspondence of Jeremy Bentham*, vol. ix, ed. S. Conway, Oxford, 1989 (*CW*), p. 16. John Quincy Adams (1767–1848), Minister to the United Kingdom 1815–17, Secretary of State 1817–25, President of the United States 1825–9, had become friendly with Bentham during 1817, before returning to the United States to take up the post of Secretary of State; James Monroe (1758–1831), Minister to the United Kingdom 1803–7, Secretary of State 1811–17, Secretary of War 1814–15, President of the United States 1817–25; Daniel D. Tompkins (1774–1825), Governor of New York 1807–17, Vice President of the United States 1817–25; William Harris Crawford (1772–1834), Senator for Georgia 1807–13, Minister to France 1813–15, Secretary of War 1815–16, Secretary of the Treasury 1816–25; and Thomas Cooper (1759–1839), radical, writer, and scientist, emigrated to the United States in 1794 and was Professor of Chemistry at the University of Pennsylvania 1816–19.

Whether the works were sent is doubtful, since, according to Bentham to Francis Place, 7 June 1817, ibid. 17, 'Letters to Lord Pelham etc. etc. (or Panopticon versus New South Wales)' were missing from the list of articles which Place had delivered to Adams's London address. Place (1771–1854), radical and reformer, had been a close friend of Bentham since 1812.

[2] Bentham to Smith, 22 December 1817, *Correspondence* (*CW*), ix. 137 & n. Smith (1788–1854), the nephew of John Quincy Adams, was Secretary to the American Legation to London. Richard Rush (1780–1859) had been appointed Minister to the United Kingdom on 31 October 1817 and became a friend of Bentham.

[3] Plumer Jnr. to Bentham, July 1830, *The Correspondence of Jeremy Bentham*, vol. x, ed. S. Conway, Oxford, 1994 (*CW*), p. 37. William Plumer Jnr. (1789–1854) was Member of the House of Representatives for New Hampshire 1819–25.

[4] See the copy, inscribed by Bentham 'To John Bowring Esq$^{re.}$ From the Author. 11 Jan^{y} 1821', at UC shelfmark Bentham Collection 2.D.22. John, later Sir John, Bowring (1792–1872), merchant, radical MP, and diplomat, had become acquainted with Bentham in 1820 and was later to be his literary executor.

[5] Wilson to Bentham, 7 August 1823, *The Correspondence of Jeremy Bentham*, vol. xi, ed. C. Fuller, Oxford, 2000 (*CW*), p. 279.

[6] Wilson to Bentham, 15 October 1823, ibid. 307.

On 27 March 1830 Thomas Egerton[1] requested that Bentham might 'inform him whether he has published any work on Transportation and where it may be procured', since the Home Secretary Robert Peel wished to have a copy.[2] The following day Bentham wrote to Peel, stating that 'no work written directly and by its title on the subject of that mode of punishment was ever published or written by me'. He did, however, tell Peel that 'a work having for its object the superseding that mode of punishment altogether by the substitution of a better has been on sale among the Booksellers ever since the year 1791 or thereabouts under the name of "Panopticon; or the Inspection House"', and recounted for Peel the story of the panopticon scheme.[3] Remarkably, Bentham did not mention that he had ever written 'Letter to Lord Pelham', 'Second Letter to Lord Pelham', and 'A Plea for the Constitution', nor compiled them in *Panopticon versus New South Wales*. In a little over a year later, however, Bentham's interest in Australia had been reawakened, but this time in relation to the possibility of establishing a free settlement.

Colonization Company Proposal

After writing the three 'Letters to Lord Pelham' and 'A Plea for the Constitution', Bentham showed occasional interest in Australian affairs. Though the exact circumstances are unknown, at some point he acquired a manuscript, headed 'Memorandoms by James Martin', containing the only surviving first-hand account of the escape on the night of 28 March 1791 from Port Jackson of William Bryant (b. *c*. 1758–61, d. 1791), his wife Mary, née Broad (bap. 1765), their two children, and seven other men, including James Martin or Martyn (b. *c*. 1757–63), their voyage in a six-oared fishing boat to Dutch-controlled Kupang, Timor, where they arrived on 5 June 1791, and their subsequent arrest and return to England.[4] During late summer 1811, when John Cartwright reported the arrival in London of three free settlers from New South Wales with documents concerning abuses there, Bentham, who was staying at Oxted in Surrey, declined to see them, recommending instead that they meet with Sir Francis Burdett,[5]

[1] Thomas Egerton (fl. *c*. 1781–1837), bookseller and publisher.

[2] Egerton to Bentham, 27 March 1830, UC xi. 356. Robert Peel (1788–1850), Home Secretary 1822–7, 1828–30, leader of the administration as First Lord of the Treasury and Chancellor of the Exchequer 1834–5 and as First Lord of the Treasury 1841–6.

[3] Bentham to Peel, 28 March 1830, Peel Papers, BL Add. MS 40,400, fos. 134–7 at 134. A copy of the letter is at UC xi. 357–9.

[4] See UC clxix. 179–201, with an amended copy at clxix. 202–5, reproduced in *Memorandoms by James Martin: An Astonishing Escape from Early New South Wales*, ed. T. Causer, London, 2017.

[5] Sir Francis Burdett (1770–1844), MP for Boroughbridge 1796–1802, Middlesex 1802–4, 1805–6, Westminster 1807–37, and Wiltshire North 1837–44.

or otherwise that they sign a letter stating the facts of the case, perhaps organizing them with help from the section titles and running headings 'in that pamphlet of mine which you have', and present it to the Home Secretary.[1] He corresponded with his friend William Effingham Lawrence, who had emigrated to Van Diemen's Land in 1822,[2] and in 1823 and 1824 acquired papers printed by the House of Commons relating to New South Wales and Van Diemen's Land.[3] In 1829, in the 'Postscript' (dated 24 June) to *Emancipate Your Colonies!*, originally printed in 1793 under the title of 'Jeremy Bentham to the National Convention of France' but not published until 1830, Bentham touched upon the colonization of the Australian continent. He noted that, as a 'citizen of *Great Britain and Ireland*', he was 'confirmed in the same opinions, and accordingly the same wishes' that he had expressed when writing the essay, namely the utility and justice of emancipating overseas possessions. However, as 'a citizen of the British Empire, including the sixty millions already under its Government in British India, and the forty millions likely to be under its Government in the vicinity of British India . . . his opinions and consequent wishes are the *reverse*'. Bentham was of the same view in regard to the colonization of Australia, 'especially, if the account given of the intended settlement on the *Swan River* in the Quarterly Review for April, 1829, and from it in the *Morning Chronicle* of 26 April 1829, be correct'.[4] It was, Bentham expected, 'preponderantly probable that, long before this century is at an end, the settlements in that vast and distant country will, all of them, have emancipated themselves, changing the Government from a dependency on the English Monarchy, into a

[1] See Cartwright to Bentham, 29 August 1811, and Bentham to Cartwright, 30 August 1811, *Correspondence* (*CW*), viii. 169 and 170–2 respectively. At some point, therefore, Bentham must have presented a copy of 'A Plea for the Constitution' to John Cartwright (1740–1824), naval officer, Major in the Nottinghamshire militia, and political reformer.

[2] William Effingham Lawrence (1781–1841), merchant and colonist, left England for Van Diemen's Land in May 1822 and arrived at Hobart Town in February 1823.

[3] On 16 June 1823 Bentham asked James Mitchell (d. 1833), Assistant Deliverer of the Vote at the House of Commons from 1789 and Deliverer of the Vote from 1812, to send him copies of the Bill that became the New South Wales Act of 1823 (4 Geo. IV, c. 96) and 'Accounts Relating to Receipt and Expenditure of Van Diemans Land and New South Wales, 1815–1821', 6 June 1823, in *Commons Sessional Papers* (1823), iii. 549–70 and xiv. 627–30 respectively: see *Correspondence* (*CW*), xi. 265. On 1 April 1824 he asked Mitchell to send him a copy of 'Accounts of Vessels and Passengers to New South Wales and Van Dieman's Land; and, Official Value of Goods Exported;—1822, 1823', 30 March 1824, in *Commons Sessional Papers* (1824), xvii. 249–50: see *Correspondence* (*CW*), xi. 429.

[4] See 'Regulations for the Guidance of those who may propose to embark, as Settlers, for the New Settlement on the Western Coast of New Holland', *Quarterly Review*, April 1829, vol. xxxix, no. lxxviii, 315–44, and 'Note I.—On the Swan River', ibid., 520. Extracts from these articles appeared in the *Morning Chronicle*, 22 April 1829 (not 26 April 1829 as Bentham states), giving a positive account of the free colony on the western coast of Australia and an expectation of its 'rapid' advancement.

Representative Democracy'.[1] Almost two years later, in 'Colonization Company Proposal' Bentham gave consideration to the establishment of a colony in Australia and how it might be formed into a representative democracy.

'Colonization Company Proposal' was a response to a plan, proposed by the National Colonization Society,[2] to establish a colony on the south coast of Australia. Having first met in February 1830, the members of the Society had been inspired by Edward Gibbon Wakefield's plan of 'systematic colonization', that is the emigration of selected free people, funded by the sale of colonial lands, to a colony of concentrated settlement which would be granted powers of self-government as soon as was practicable.[3] The Society had initially issued a prospectus in 1830,[4] but in May 1831 submitted a revised proposal to the Colonial Office, with a view to establishing a colony at Gulf St Vincent that would be overseen by a joint-stock company. Having been requested by the Colonial Office further to develop and resubmit its proposal, the Society did so in August 1831, proposing that, in return for the Company's being granted a Royal Charter, its directors would bear the entire cost of establishing the colony. On 3 August 1831 the Committee of the Society approved the printing of its revised proposal, which appeared as 'Proposal to His Majesty's Government for Founding a Colony on the Southern Coast of Australia'.

While there is no evidence that Bentham was directly involved with the National Colonization Society, he was acquainted with a number of its members, including its Chairman Robert Torrens,[5] Robert Owen,[6] and Edward Gibbon Wakefield. It appears most likely that Wakefield interested Bentham in the scheme and prompted him to compose

[1] See 'Emancipate Your Colonies!' in *Rights, Representation, and Reform* (*CW*), pp. 289–315 at 314.

[2] i.e. the National Society for the Cure and Prevention of Pauperism by Colonization.

[3] See Wakefield's anonymous 'Sketch of a Proposal for Colonizing Australasia, &c. &c. &c.', [London, 1829,] and *Letter from Sydney, the Principal Town of Australasia. Edited by Robert Gouger. Together with the Outline of a System of Colonization*, London, 1829 (reproduced in *The Collected Works of Edward Gibbon Wakefield*, ed. M.F. Lloyd Pritchard, Glasgow and London, 1968, pp. 93–186). The Appendix to the latter work contains a modified version of 'Sketch of a Proposal'. *Letter from Sydney* had been serialized in the *Morning Chronicle* between 21 August and 6 October 1829. Robert Gouger (1802–46), writer and settler, was later Colonial Secretary of South Australia 1836–7, 1839–41, Member of the South Australian Legislative Council 1836–7, 1839–41.

[4] *A Statement of the Principles and Objects of a Proposed National Society for the cure and prevention of pauperism, by means of Systematic Colonization*, London, 1830.

[5] Robert Torrens (*c*. 1780–1864), political economist, MP for Ipswich 1826–7, Ashburton 1831–2, and Bolton 1832–4, Chairman of the Crown Commissioners for the Colonization of South Australia 1835–9.

[6] Robert Owen (1771–1858), socialist, educationalist, and manufacturer, who had previously been manager and part-owner of the New Lanark Mills, in which Bentham was a shareholder.

'Colonization Company Proposal'. It is not known when Bentham and Wakefield first met and no direct correspondence between them has been located, though by July 1829 Bentham had for some time been acquainted with Wakefield's father Edward,[1] who was friendly with Bentham's associates James Mill,[2] Francis Place, and Henry Brougham.[3] In July 1829, while confined in Newgate prison, having been found guilty of abduction, the younger Wakefield anonymously sent Bentham his 'Sketch of a Proposal for Colonizing Australia'.[4] They had met by 4 August 1831, the day that Bentham began work on 'Colonization Society Proposal', since on that day he told Joseph Hume[5] that he had recently read Wakefield's *Facts Relating to the Punishment of Death in the Metropolis*,[6] finding it 'a most valuable work' and Wakefield himself 'a most valuable man'. He added: 'I have thrown my mantle over him and shall turn him to good account'.[7]

In *England and America*, published in 1833 (Bentham had died on 6 June 1832), Wakefield credited himself with persuading Bentham to view colonization as 'a work of the greatest utility'. Bentham had long held a 'prejudice against colonization', explained Wakefield, 'on the ground of the mischievous loss of capital which it might occasion to the mother country', and which had originated in 'a *non-sequitur* which had got possession of his mind', namely that 'labour is employed by capital, [and] capital always finds a field in which to employ labour'. Wakefield continued:

> During the summer of 1831, Mr. Bentham's attention was called to this subject. At first he urged the objection to colonization which has been here examined, but finally abandoned it. Then, immediately, notwithstanding his great age and bodily infirmities, he proceeded to study the whole subject of colonization, and even to write upon it at some length [presumably 'Colonization Company Proposal']. His written remarks upon the subject, now in my possession,[8] show that he lived to consider colonization, not 'an agreeable folly,'[9] but a work of the

[1] Edward Wakefield (1774–1854), philanthropist, land agent, and writer on political economy.

[2] James Mill (1773–1836), political philosopher and historian of India.

[3] Henry Peter Brougham (1778–1868), first Baron Brougham and Vaux, Lord Chancellor 1830–4.

[4] Bentham's copy, which he has inscribed 'Jeremy Bentham. 13 July 1829. Received from the Unknown Author without accompanying note', is at BL shelfmark C.T. 77. (10).

[5] Joseph Hume (1777–1855), radical politician, MP for Weymouth and Melcombe Regis 1812, Aberdeen Burghs 1818–30, Middlesex 1830–7, Kilkenny City 1837–41, and Montrose Burghs 1842–55.

[6] Published at London in 1831, this work is reproduced in *Collected Works of Edward Gibbon Wakefield*, pp. 187–267.

[7] Bentham to Hume, 4 August 1831, Hume Correspondence, BL Add. MS 89,039/2/1.

[8] It is unclear to what 'written remarks' Wakefield was referring.

[9] This phrase appears in *The Rationale of Reward*, London, 1825, Bk. IV, Ch.14. Colonies Desirable?, pp. 287–301 at 288: 'If colonization is a folly when employed as a means of

greatest utility. I am proud to add, that the form of the present treatise was suggested by one of the wisest and best of mankind.[1]

A similar account appears in the first of two letters addressed to the Editor of the *Westminster Review*, dated 23 October 1834, and published in *The Spectator*, 8 November 1834. The letter, which is signed 'A Benthamite', appears either to have been written by Wakefield himself or by someone close to him. The author argued that a recent article in the *Westminster Review* had misrepresented Bentham's views by claiming that he was opposed to the establishment of the colony in South Australia, since, on the contrary,

the novel plan of colonizing to be pursued in South Australia, was warmly approved by Mr. BENTHAM. The project of founding a colony at that place, and upon that plan, having been submitted to him not long before his death, he at first urged many objections to it; but, after examining it with great care, he declared his unqualified approbation of it, wrote in favour of it at some length, mentioned it frequently to his friends in terms of admiration, advised its author to publish a treatise on the subject, and actually made a sketch of what he considered the best form for such a treatise. In compliance with that advice, and in strict conformity with that sketch, the author of the plan did write a treatise on the subject . . . published . . . about this time last year, in two volumes, under the title of *England and America;* and what is more, the second volume contains a statement of the fact, that the form of the work was suggested by BENTHAM.[2]

When sending a copy of a new edition of the first volume of Smith's *Wealth of Nations* containing a commentary of his own[3] to Leigh Hunt,[4] probably in late 1835, Wakefield noted that it

enrichment, it is at least an agreeable folly.' *Rationale of Reward* is a translation into English, by Richard Smith, of the second volume of *Théorie des peines et des récompenses*. In the Bowring edition, Book IV of *Rationale of Reward* appears in 'Manual of Political Economy', which Smith edited: see Bowring, iii. 31–84 with the relevant passage at 52. For further details concerning Smith's editing of 'Manual of Political Economy' see *Writings on Political Economy: Volume I*, ed. M. Quinn, Oxford, 2016 (*CW*), Editorial Introduction, pp. lxxxiii–lxxxv.

[1] [Edward Gibbon Wakefield,] *England and America. A Comparison of the Social and Political State of Both Nations*, 2 vols., London, 1833, ii. 102–4 & n., reproduced in *Collected Works of Edward Gibbon Wakefield*, p. 517 & n.

[2] *The Spectator*, vol. vii, no. 331 (1 November 1834), 1038–9, written in response to an article in the *Westminster Review*, vol. xxi, no. 42 (1 October 1834), 441–76, which reviewed three recent works on Australia, including [Edward Gibbon Wakefield], *The New British Province of Australia; or a Description of the Country, Illustrated by Charts and Views; with an Account of the Principles, Objects, Plan, and Prospects of the Colony*, London, 1834. For the second letter of 'A Benthamite' see p. cii & n. below.

[3] Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations. With a Commentary by the Author of 'England and America'*, 4 vols., London, 1835–9. Though six volumes were projected, only four were published.

[4] (James Henry) Leigh Hunt (1784–1859), poet, journalist, and critic.

contains the best statement of that principle of *Combination* of Labour which forms the base of the System of colonization. You will also find in that vol., under the head of profits & wages, a fuller explanation than is given elsewhere of the grounds on which, as is told in 'England & America', Bentham altered his opinion as to the utility of colonization—I allude to the new doctrine of *superabundance* of *capital* as well as population, which calls for the creation of new fields of employment for both capital & labour.[1]

Wakefield also recounted a remark of Bentham on colonization. When giving evidence in 1836 to the Select Committee on the disposal of lands in the British colonies, Wakefield described the 'interstices' between grants of land given to settlers as land that was 'not given to any body, but . . . placed in a situation where nobody would wish to possess them.' 'The principle upon which these interstices were taken from the use of some, and yet not used by others,' Wakefield continued, 'has been called, and I think very properly, the "Dog-in-the-manger principle." That term was applied to it by the late Mr. Bentham, in my hearing.'[2]

Over a period of eleven days, from 4 to 14 August 1831, Bentham drafted around fifty sheets of manuscript for a work he initially entitled 'Colonization Society Proposal' and then 'Colonization Company Proposal', which in effect constituted a commentary upon the National Colonization Society's 'Proposal for Founding a Colony on the Southern Coast of Australia'. He began by drafting a title page and contents, in which he divided the text into two Parts: the first would deal with the 'specific ends in view' and the 'means of effectuation' of the proposed plan on the part of, and the inducements to, colonists, founders, and constituted authorities; and the second with earlier, unsuccessful colonization plans. In a note dated 5 August 1831, Bentham considered whether it might be better to reverse the order of the two Parts, and, after 'specific ends in view', deal first with actual or potential causes of failure of alternative plans, and second with the 'means of effectuation' of the proposed plan.[3] In the event, Bentham

[1] See Wakefield to Leigh Hunt, 30 November [n.d.], Correspondence of Leigh Hunt, BL Add. MS 38,523, fo. 149.

[2] 'Report from the Select Committee on the Disposal of Lands in the British Colonies; together with the Minutes of Evidence, and Appendix', 1 August 1836, in *Commons Sessional Papers* (1836), xi. 567.

An envious dog prevented the oxen from entering a stable so that they were unable to eat the hay, despite the dog itself not wanting to eat it: see *The Fables of Aesop as first printed by William Caxton in 1484 with those of Avian, Alfonso and Poggio*, ed. Joseph Jacobs, 2 vols., London, 1889, ii. 165. For another instance of Bentham's allusion to the fable see *Colonies, Commerce, and Constitutional Law: Rid Yourselves of Ultramaria and other writings on Spain and Spanish America*, ed. P. Schofield, Oxford, 1995 (*CW*), p. 312.

[3] UC viii. 166^{v} (4 August 1831), where the title appears as 'Colonization Society. Proposal for a system of Colonization on a plan, as herein detailed, and agreed to, by a Society, instituted and acting under that name.' On a copy of the title and contents at UC

did not deal with alternative plans, but concentrated on the means of effecting the Colonization Society's recently printed plan, discussing in particular its characteristic 'vicinity-maximizing principle', the inducements to the various parties, and the form of the colonial government. On 11 August 1831 he drafted a new list of Chapter and Section titles, which he copied with minor amendments to form part of the final version of the title and contents page.[1] On 4 August 1831 Bentham wrote the first draft of Ch. IV, § 1,[2] and on the following day the 'Preface',[3] Ch. I,[4] and a first draft of Ch. II, § 1 on the vicinity-maximizing principle, where he revealed his doubts about whether he could proceed with the work. Having noted that, 'Of the principle I should expect to find the propriety incontestably established. But the proof of it has been diffused and scattered through a variety of small publications: and require (it should seem) to be condensed, and placed the whole of it under this *one* head', he went on to state: 'Here I am aground: for I can not spare time for the endeavour to extract from all the pamphlets in question the matters which seem to me needful under the several other heads. J.B.'[5] The fact that he signed the note with his initials suggests that it was intended for some other person or persons to read. Bentham did, however, resume work on the text on 9 August 1831 and, with the exception of one sheet written on 14 August, had written the remainder of the surviving text by 13 August 1831. The text consists, in the main, of a single draft,[6] with

viii. 165^{v} (9 August 1831), Bentham has amended the title as follows: 'Colonization Society Proposal. Proposal for a system of Colonization on a new principle, as herein explained, agreed to and applied by a Society instituted and acting under the name of the Colonization Society.' At various points, Bentham makes cross-references, apparently using his own enumeration rather than page numbers, to passages in 'Proposal for Founding a Colony on the Southern Coast of Australia'.

[1] The draft is at UC viii. 172 (11 August 1831) and the final version at viii. 149 (11 August 1831), where Bentham has settled on the revised title of 'Colonization Company Proposal'.

[2] UC viii. 174 (4 August 1831).

[3] The 'Preface' is at UC xli. 459^{v} (5 August 1831), where the text has been crossed through, and the original heading 'Proposal for a Colonization Establishment' amended to 'Colonization Proposal'. This 'Preface' was presumably superseded, either by a copy or a second draft, but no other version has been located. Bentham did intend that a 'Preface' should feature in the work, since on the title page at UC viii. 149 he added the following note alongside the heading for the 'Preface': '☞ Should not this come *before* and be independent of—the Contents?' Bentham's suggestion has been followed in the present edition.

[4] UC viii. 150–1 (5 August 1831). A copy of the first sheet, in the hand of Richard Doane, is at UC viii. 152 (9 August 1831). Doane (1805–48) entered Bentham's service in 1819 to be trained as his amanuensis and remained with him until 1831, having been called to the bar in 1830.

[5] UC viii. 176 (5 August 1831).

[6] For the manuscripts used in the present edition, reference should be made to the Table of Manuscripts, p. cix below. The ordering of the manuscripts, insofar as they exist, is generally unproblematic, with the exception of the final part of Ch. IV, § 2, where the enumeration of the pages is inconsistent.

the exception of the draft material noted above and several related fragments,[1] though no material survives, or perhaps was ever written for, several of the titles that appear on the Contents page. The text was reviewed by an unidentified individual, who has made several comments in the margin.[2]

There is no evidence to indicate that Bentham contemplated publishing 'Colonization Company Proposal' during his lifetime, which is perhaps reflected in the fact that the text resembles a sketch or outline rather than a finished work. After his death, in the second of two letters addressed to the Editor of the *Westminster Review*, dated 29 October 1834, and published in *The Spectator*, 8 November 1834, 'A Benthamite' claimed that 'some of BENTHAM'S written arguments in favour of the new colony [i.e. South Australia] are about to be published'.[3] If 'A Benthamite' was Wakefield or one of his associates, and given Wakefield's statement that he had written *England and America* 'in strict conformity with [Bentham's] sketch', it seems entirely possible that Wakefield had taken a copy of 'Colonization Company Proposal', but in the event no such publication occurred. Hence, 'Colonization Company Proposal' is published in the present edition for the first time, as is the short account in Wakefield's hand, which is headed 'E. Gibbon Wakefield on the Colonization Society's Plan' and dated 23 August 1831 by Bentham, and which appears in an Appendix.[4] The manuscripts for this short discussion, which deals with the factors that would determine the profits that the proposed Company might expect from the sale of land, follow those of 'Colonization Company Proposal' in the Bentham Papers.[5]

Following protracted and unsuccessful negotiations to gain a Royal Charter for the proposed colony, the National Colonization Society was essentially defunct by late 1831. It was succeeded by the South

[1] On the sheet containing the draft contents of 11 August 1831 at UC viii. 172, Bentham made some rough calculations that formed the basis for the figures concerning the profit that might be made from the sale of land presented in Ch. IV, § 1, p. 415 below. It is possible that Bentham had it in mind either to rewrite or to expand his discussion, since a sheet that Bentham has sub-headed 'Ch. IV. Means of effectuation. Inducements to § 1. Shareholders and Contributors. Compte simulé. II. Sources of expected Profit', is at UC viii. 175 (12 August 1831), but contains no text. In a fragment at UC viii. 173 (10 August 1831), which appears to be related to Ch. IV, § 2, pp. 416–19 below, Bentham suggested that the proposed Company would need an official—the Grantor-General—permanently resident in the new colony in order to oversee the sale of lands, and made a brief list of 'expence per head of the Settlers exported at the Company's expence'. In a fragment at UC viii. 160 (9 August 1831), related to Ch. IV, § 3, pp. 419–20 below, Bentham has cancelled a passage in which he noted that 'an assurance' had been formed that more, rather than fewer, settlers than was regarded as 'useful' and 'desirable' would go to the new colony.

[2] These comments have been recorded in editorial footnotes.

[3] See *The Spectator*, vol. vii, no. 332 (8 November 1834), 1066–7.

[4] See pp. 433–6 below.

[5] UC viii. 192–7. These manuscripts consist of single sheets of octavo letter-paper.

Australian Land Company, which also failed when its scheme was rejected by the Colonial Office. At its first meeting on 2 December 1833 the South Australian Association, founded by Robert Gouger, agreed that the Association would, instead of seeking a Charter for a colony administered by a joint-stock company, seek a Charter for a crown colony established by an Act of Parliament, and administered by commissioners. In August 1834 Parliament passed the South Australia Act (4 & 5 Will. IV, c. 95), resulting in the establishment of the colony of South Australia on 28 December 1836.

TEXT

The Printed Texts

The present edition of 'Letter to Lord Pelham', including the 'Circular to the Lord Chancellor and the Judges',[1] 'Second Letter to Lord Pelham', and 'A Plea for the Constitution' corresponds as closely as possible with the style and conventions, including spelling, capitalization, punctuation, and the use of italics and other devices, of the texts as originally printed in 1802 and 1803. A number of obvious slips have been corrected, and are indicated by editorial footnotes, while several minor errors of spelling, punctuation, and enumeration have been silently corrected. There are some minor variations: double quotation marks are replaced here with single quotation marks (consequently, single quotation marks indicating quotations within quotations are replaced with double quotation marks); the symbols used in the original editions to indicate Bentham's footnotes are replaced here with superscript letters (editorial footnotes are indicated by superscript numerals), with a separate sequence for each page of text; and Bentham's square brackets are replaced with braces. Internal cross references in the original texts have been amended to accord with the pagination of the present edition. The original editions of each of the three works were paginated in the following sequences: 'Letter to Lord Pelham' pp. [1]–80; 'Second Letter to Lord Pelham' pp. [1]–72 ; and 'A Plea for the Constitution' pp. [i]–[x], [1]–68. Bentham's erratum to 'A Plea for the Constitution' has been incorporated into the present edition. Running headings from the original printed texts have been adopted on the recto page. For the sake of clarity, the title of the work appears on the verso page.

The three printed texts were reissued in published form in 1812 under the title *Panopticon versus New South Wales*, using the sheets

[1] See p. 69 below.

printed in 1802 and 1803, with the following variations: a new title page for the compilation as a whole; the removal of 'Circular to the Lord Chancellor and the Judges'; and the amendment of the title of 'Letter to Lord Pelham' and some minor amendments and truncations made to the text on the first two pages in order to avoid the need to re-set subsequent pages.[1] The texts were subsequently reproduced in the fourth volume of the Bowring edition of Bentham's works, in which 'Letter to Lord Pelham' appeared under the title 'Panopticon versus New South Wales',[2] while 'Second Letter to Lord Pelham' and 'A Plea for the Constitution' appeared under separate titles.[3]

The Manuscripts

The texts of 'New Wales', 'Correspondence, sent to William Wilberforce, of Jeremy Bentham with Sir Charles Bunbury', 'Third Letter to Lord Pelham' (with the exception of the title page), and 'Colonization Company Proposal' have been reconstructed from Bentham's manuscripts. There also survives a significant amount of manuscript material related to the printed texts, partly consisting of drafts of the texts themselves, sometimes in Bentham's hand and sometimes in the hand of a copyist, and partly of material that was not incorporated into the printed texts. In general, Bentham drafted his works on single sheets of foolscap, ruled with a wide margin and with a double line at the top, where he inserted the date and main heading. At the top of the margin he added a subheading or series of subheadings. The main exception in the present edition is that most of the material for 'New Wales' appears either on both sides of bifolia or both sides of single sheets. For a significant proportion of his material, Bentham composed marginal contents, which were summaries of the subject-matter of the text. The marginal contents are not reproduced in the present edition,[4] since they were not intended for publication, but were used by Bentham as a means of organizing his material. Once Bentham had drafted a body of material corresponding to an intended section or other division of the text, it was his practice to transfer the marginal contents to other sheets of foolscap known as marginal contents or marginal summary sheets. These sheets are

[1] For further details see the Collation, pp. 437–8 below.

[2] 'Panopticon versus New South Wales: or, The Panopticon Penitentiary System, and The Penal Colonization System, Compared. In a Letter addressed to the Right Honourable Lord Pelham. By Jeremy Bentham, of Lincoln's Inn, Esq.', in Bowring, iv. 173–211.

[3] See ibid. 212–48 and 249–84 respectively, adopting the titles given at pp. 165 and 313 below respectively.

[4] The exception is the marginal contents for 'Panopticon versus New South Wales' reproduced as part of 'Correspondence, sent to Wilberforce', pp. 48–55 below.

ruled into four columns with a double line at the top for the date and heading. There also survive a small number of rudiments sheets, containing general statements or positions, notes of ideas and themes for possible development, examples for illustration, and plans. These sheets normally consist of single or double sheets of foolscap, each sheet being ruled into four columns with a double line at the top for the date and headings. Many of the text sheets contain rudiments, that is short notes that Bentham wrote as *aides-mémoires*, immediately beneath the main date and heading: such rudiments have not usually been reproduced in the present edition.

Bentham would typically have his autograph manuscript copied, go on to correct and revise the copy, and perhaps have a fair copy made, before sending the text to the printer. Once a text had been printed, it was his usual practice to destroy the manuscripts. A number of relevant text sheets survive because Bentham re-used them. It was his normal practice to write on only one side of a sheet, but, perhaps due to a paper shortage, he re-used some of the sheets containing the drafts of the printed texts, and so material for 'Letter to Lord Pelham', which would have formed the original recto, now appears on the verso of sheets containing material for other texts. Moreover, a number of the text sheets were subsequently copied, and a number were compiled from other authors' works (according to Bentham's instructions) by an amanuensis. These copied sheets might be left uncorrected by Bentham, or they might bear considerable additions, deletions, and emendations, and occasionally were themselves recopied. In the case of 'Third Letter to Lord Pelham', nearly three-quarters of the text was copied onto both sides, and the remainder on one side, of single sheets of foolscap.

Many of the manuscripts are found in paper wrappers, which Bentham termed 'spencers', and on which he inscribed titles or descriptive headings. These titles or headings are sometimes detailed and specific, where the number of manuscripts is small and they compose one continuous sequence, and at other times more general, where the number of manuscripts is larger and more wide-ranging. The latter tends to be the case with the manuscripts used in the present edition. Spencers were used by Bentham as an index to the content, and thereby as a convenient means of identifying and organizing his material. However, the spencers in the UCL Bentham Papers were not given folio numbers when the collection was catalogued, and hence many have been misplaced, and are not always a reliable guide to the manuscripts they now enfold.

It has been editorial policy to reflect as far as possible the manuscript sources on which the relevant texts are based, but without sacrificing

clarity or sense. Bentham's spelling and capitalization have been retained in most instances, although editorial discretion has been more liberally exercised with regard to his punctuation, which is often inconsistent and sparse. Punctuation marks have been adjusted and supplied where clearly indicated by the sense, but not in cases where this might involve a dubious interpretation of the meaning. The words and phrases underlined by Bentham for emphasis have been rendered in italics, as have all foreign words and phrases and titles of published works, some of which Bentham underlined and some of which he did not. Straightforward errors made by Bentham in the enumeration of lists have been silently corrected. Where Bentham has used the same type of numerals for both the main series and a sub-series, the sub-series has been silently altered—for instance from Arabic to lower case Roman numerals—for the sake of clarity.

The manuscripts contain many additions (either interlinear or marginal), deletions, and emendations that represent Bentham's later corrections to the text. The latest variant has usually been preferred, while original readings have not usually been indicated. Square brackets in the text are reserved for editorially inserted words, while Bentham's original is, where appropriate, given in an editorial footnote. Bentham's square brackets are replaced by braces. Roman brackets are those supplied by Bentham. Vertical strokes indicate a gap or blank space left in the manuscript. Bentham's own notes are indicated by superscript letters, with a separate sequence for each page of text. Editorial footnotes are indicated by superscript numerals, again with a separate sequence for each page of text. The organization of the relevant texts has been ascertained by paying regard, where applicable, to the plans, the pagination of the text sheets, the number of the chapters, sections, and marginal contents, and, of course, the sense. The location of any related fragments has been indicated above. The running headings have been editorially supplied.

For the manuscripts used in the present edition, reference should be made to the Table of Manuscripts below.

Table of Manuscripts

Note. Where the manuscript is undated, or part of the date has never been added, the abbreviation 'n.d.' is employed.

New Wales

	MSS (UC)
Plan	cxix. 87
Disposal of Convicts—Management—Separation—Sexes	cxix. 88
Convict Proposal—New South Wales	cxix. 89
Public Wealth	cxix. 90–1
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Correspondence, sent to William Wilberforce, of Jeremy Bentham with Sir Charles Bunbury

	MSS (UC)	*Date (1802)*
N^{o} 1. M^{r} Bentham to Sir C. Bunbury. 12th April 1802	cxx. 12	n.d.
N^{o} 2. M^{r} Bentham to Sir C. Bunbury. 25th April 1802	cxx. 12	n.d.
N^{o} 3. M^{r} Bentham to Sir C. Bunbury. 30th July 1802	cxx. 12	n.d.
N^{o} 4. Sir C. Bunbury to M^{r} Bentham. August 1st 1802	cxx. 12	n.d.
N^{o} 5. M^{r} Bentham to Sir C. Bunbury. 2nd August 1802	cxx. 12	n.d.
N^{o} 6. M^{r} Bentham to Sir C. Bunbury. 9th August 1802	cxx. 13	n.d.
N^{o} 7. M^{r} Bentham to Sir C. Bunbury. 11th August 1802	cxx. 13	n.d.

	MSS (UC)	*Date (1802)*
N^{o} 8. Sir Charles Bunbury to M^{r} Bentham. 12th August 1802	cxx. 13	n.d.
N^{o} 9. Sir Charles Bunbury to M^{r} Bentham. 20th August 1802	cxx. 14	n.d.
N^{o} 10. Lord Pelham to Sir Charles Bunbury. 19th August 1802	cxx. 14	n.d.
N^{o} 11. M^{r} Bentham to Sir C. Bunbury. 21st Aug. 1802	cxx. 15–16	n.d.
N^{o} 12. Title in case of impression. Introductory Note—private to Lord P.	cxx. 17	n.d.
N^{o} 13. Panopticon versus New South Wales Marginal Contents (not yet printed 9th August 1802) in two Sheets. Sheet 1.	cxx. 18	n.d.
N^{o} 14. Panopticon versus New South Wales Marginal Contents (not yet printed 9th August 1802) in two Sheets. Sheet 2.	cxx. 19	n.d.
Appendix	cxxi. 333–45	23–4 August

Third Letter to Lord Pelham

Section	*MSS (UC)*	*Date (1802)*
[Preface]	cxvii. 254–5	n.d.
XVII	cxvii. 256–60	n.d.
XVIII	cxvi. 605–14, 604, 615–34	n.d.
XIX	cxvi. 635–47 cxvi. 603	n.d. 31 December

Colonization Company Proposal

Chapter	*Section*	*MSS (UC)*	*Date (1831)*
Title		viii. 149	11 August
Preface		xli. 459[v]	5 August
Contents		viii. 149	11 August
1		viii. 150–1	5 August
2	1	viii. 154	9 August
	2	viii. 155	n.d. August
		viii. 156	12 August
3		viii. 153	9 August
4	1	viii. 165–9	11–12 August
	2	viii. 161–3, 157, 164	9–10 August
	3	viii. 158–9	10 August
	4	viii. 170–1	13 August
5	1	viii. 177–80	13 August[1]
	2	viii. 186–8	13 August
6		viii. 189	13 August
7	1	viii. 181–2	13 August
	2	viii. 183–4, 190, 185, 191	13–14 August
Appendix		viii. 192–7	23 August

[1] UC viii. 179 is dated 13 May 1831, but this is presumably a slip.

NEW WALES[1]

[1] This material, consisting of several related but fragmentary passages, was written in 1791. For further details see the Editorial Introduction, pp. xx–xxv above.

Plan

An enterprise of colonisation hold[s] up to a sanguine imagination a groupe of very pleasing images—extension of empire[1]—encrease of national wealth—augmentation of public force—propagation of the true religion—extension of and diversification of trade—discovery and introduction of new articles in the animal, vegetable and mineral kingdoms—addition made to the stock of innocent enjoyments by the multiplication and diversification of the means.

The making use of convicts as the instruments under God of accomplishing so many important objects gives an additional lustre to the scene: sloth transformed into industry: vice of all kinds into virtue: dross converted into sterling:—value given in the scale of public estimation to objects whose value had been less than nothing: and if considerations of so undignified a nature can be mentioned in the same breath with the above, the expence of making provision for those outcasts of society reduced from the permanent charge of maintenance and confinement to the momentary cost of transportation. What if, as the value of labour and the art of turning it to account comes to be better understood, even the small expence of transportation should be covered by the value which the article would find immediately upon its arrival at the place of its destination?

Unfortunately, this, like so many other pictures of human prosperity, does not, upon a near approach, bear examination. Perhaps the reader, if his patience will carry him through to the end of this, will see reason to think that the establishment in New South Wales is among the instances that may be adduced in support of the general observation:

1. Whether it be in the nature of things that a plan of colonisation any where carried on by government, and at the expence of government, should be productive of advantages adequate to the expence.

2. Whether there be any reasonable ground for expecting that the establishment in New South Wales will.

3. What are the courses that might be or might have been taken for turning it to most advantage on the supposition of its being kept up.

4. Should the keeping it up be deemed ineligible, what is the properest course to be taken in regard to the discontinuance of it, and in regard to the provision to be made for the individuals of which at that time it will be composed.

[1] For this topic see pp. 16–18 below.

The establishment in New S. Wales may be considered in two points of view: 1. as a scheme of colonisation at large: 2. as a mode of disposing of convicted criminals. Its use in the latter way is probably that which composed the principal share in the mass of inducement: but as the other object appears also not to have been without its weight, it is this other which must be spoken of in the first place, as being the only one of the two that will admitt of a separate consideration.

Disposal of Convicts—Management—Separation—Sexes

I propose not on the present occasion to undertake a comparative view of all the various modes that have been practised or proposed for the disposal of Convicts. Materials and leisure are both wanting. In particular I lay willingly aside any examination into the comparative eligibility of the Colonization system. The truth is that, if, by colonization, propagation were intended, and the one were meant to be pursued no further than the other can go along with it, between this and the Penitentiary system,[1] there could be little interference. In the Penitentiary system, it is the female prisoners that are too many: in the Colonization system, it is precisely of them that there never can be enough. As a Colony for the propagation of the species, the utility of it, the very possible use, must be limited by the number of females, and of females in a state for child-bearing. Out of these must be deducted, in the first place, all such as by their age are past child-bearing: 2. all such as, by prostitution or disease, have rendered themselves unfit: no inconsiderable proportion probably of such a company: 3. all such as are already provided with husbands who choose not, or are not permitted, to bear them company: unless adultery be meant also to be propagated, or the sentence of banishment is to involve in it a sentence of divorce. If you want children, you must be content to obtain them in the ordinary way. The age of miracles is past: heaven will not empty its stores to repair the oversights of office. The social nativity of Orion,[2] the inoculation that gave the God of jollity[3] to the world,[4] the dance of Deucalion and Pyrrha[5]—all these receipts have lost their virtue. The

[1] For Bentham's penitentiary scheme see 'Panopticon; or, The Inspection-House', 3 vols., London, 1791 (Bowring, iv. 37–172).

[2] In Greek mythology, Orion fathered fifty sons with as many nymphs.

[3] MS orig. 'Bacchus'.

[4] In Greek mythology, when Hera learned that Zeus had impregnated the mortal Semele, she disguised herself as a nurse and persuaded Semele to insist that Zeus appear before her in his true form. Semele was killed when Zeus did so, but he rescued the child Dionysus, the god of winemaking and fertility, from his mother's womb by sewing the child into his thigh and carrying him until he was 'born' for a second time.

[5] Ovid, *Metamorphoses*, i. 313–415, recounts how Deucalion, son of Prometheus, and Pyrrha, daughter of Epithemeus, having taken refuge for nine days and nights in a chest,

temporary enabling and compelling Act that gave Xanthippe a sharer in the embrace of Socrates[1] would not avail us here:[2] even the commodious ingenuity of Thelypthora, far from relieving, would but aggravate the dearth:[3] though Religion were to be mended for the purpose, we should be in this respect but where we were. Were the redundance on the female side, the unseemliness of polygamy, as that of incest in the beginning,[4] might, to the eye of an indulgent divine, be covered by the broad mantle of necessity. Each colonist might be a Jacob:[5] and in a state so near to the patriarchal, patriarchal privileges might revive.[6] But to a redundance on the opposite[7] side, neither law nor licence can afford any possible corrective. So many supernumeraries, so many forlorn wretches, who, for any thing they could contribute to the execution of the first law,[8] might as well receive millstones about their necks, and be thrown into the Sea.[9] To the propagation of the Gospel,

were the sole surviving humans after Zeus flooded the earth. When they consulted an oracle of the Titaness Themis on how they might repopulate the earth, they were instructed to veil their heads, loosen their robes, and throw stones over their shoulders. The stones thrown by Pyrrha transformed into women and those thrown by Deucalion into men.

[1] Socrates (469–399 BC), the celebrated Athenian philosopher.

[2] See Diogenes Laertius, *Lives of the Ancient Philosophers*, ii. 26: 'Aristotle says that he [i.e. Socrates] married two wives: his first wife was Xanthippe, by whom he had a son, Lamprocles; his second wife was Myrto . . . . By her he had Sophroniscus and Menexenus. Others make Myrto his first wife; while some writers, including Satyrus and Hieronymus of Rhodes, affirm that they were both his wives at the same time. For they say that the Athenians were short of men and, wishing to increase the population, passed a decree permitting a citizen to marry one Athenian woman and have children by another; and that Socrates accordingly did so.'

[3] Martin Madan (1725–90), barrister and Church of England clergyman, had advocated the benefits of polygamy in the anonymously published *Thelyphthora; or, A Treatise on Female Ruin, in its Causes, Effects, Consequences, Prevention, and Remedy; considered on the basis of the Divine Law: Under the following Heads, viz. Marriage, Whoredom, and Fornication, Adultery, Polygamy, Divorce; With many other Incidental Matters; particularly including An Examination of the Principles and Tendency of Stat. 26 Geo. II. c. 33. commonly called The Marriage Act*, 2 vols., London, 1780, i. 74–319.

[4] Bentham presumably had it in mind that the children of Adam and Eve must have committed incest in order to propagate the human species.

[5] i.e. the patriarch of the Israelites, whose twelve sons were the progenitors of the tribes of Israel.

[6] Bentham presumably had in mind the custom of *jus primae noctis*, also known as *droit de seigneur* and *droit de cuissage*. François Marie Arouet, known as Voltaire (1694–1778), in 'Cuissage ou culage, droit de prélibation, de marquette, &c.', in *Questions sur l'encyclopédie, distribuées en forme de dictionnaire. Par des amateurs*, 9 vols., Geneva, 1770–2, iv. 195–8, suggested that the right had its origin in Scotland, while William Blackstone, *Commentaries on the Laws of England*, 4 vols., Oxford, 1765–9, ii. 83, stated that the practice had never existed in England, but had done so in Scotland, under the name of 'mercheta' or 'marcheta', until abolished by Malcolm III (d. 1093), King of Scots from 1058. Sir William Blackstone (1723–80) was first Vinerian Professor of English Law at the University of Oxford 1758–66, Justice of Common Pleas 1770, 1770–80, and Justice of King's Bench 1770.

[7] MS orig. 'male'.

[8] Bentham presumably had in mind God's injunction to Adam and Eve, 'Be fruitful, and multiply, and replenish the earth', recorded at Genesis 1: 28.

[9] Matthew 18: 6.

these new-missionaries might contribute, according to the measure of their zeal: and the pious self-gratulations of a Right Reverend Divine might for a time receive a warrant from the event: but unless, along with the Gospel, the species be also propagated, the plant with all its beauty would be but of sickly growth: it would be the fancied gourd of Venice.[1] Say that the Rape of the Sabines might be re-acted upon the theatre of New Wales.[2] The exhibition would transfer indeed, but would not mitigate, the dearth. It would be peopling the country by unpeopling it after the manner of Mexico and Peru.[3]

The Colonisation system, then, in as far as it is really a Colonisation plan, and not a plan of mere barren transportation, can interfere in but a small degree, and that rather in the character of an aid than of an obstacle, with the Penitentiary System. Those to whom it is impossible to contribute to the purpose of a Colony can not, upon any plan of colonisation, be sent to colonize.

Was it, then, intended as a plan of colonisation? If not, what is [it] intended for? To the noble Lord,[4] to whose generous ambition [belongs] this heroic title of founder of nations,[a] it can be no secret

[a] The foundation of nations is indeed, to use the language of Lord Bacon,[5] *opus heroicum*, an heroic work:[6] better suited to the heroic times, perhaps, than to the present: more suited to the sentiments of heroism than to those of vulgar prudence.

[1] The *Marina di Chioggia*, i.e. the Chioggia sea pumpkin, which is squat in appearance and has a dense, hard, and lumpy green skin, was known in Venice as the *zucca santa*, i.e. the holy pumpkin. See James Aug Galiffe, *Italy and Its Inhabitants; An Account of A Tour in That Country in 1816 and 1817*, 2 vols., London, 1820, i. 126–7: 'The poorest class [in Venice] lives almost exclusively on pumpkins, of which there are two sorts. The first and cheapest is that round and insipid kind, which is known all over Europe: it is called *Zucca barucca* . . . . The other sort is called *Zucca Santa*: it is more substantial, less insipid, and proportionally dearer; and is the favourite and usual food of that portion of the lower classes who are just above begging. Its form is that of a very long pear, its taste is not unlike that of a carrot, and the rind, when fried, forms a sort of resinous substance which is esteemed a great delicacy by the pumpkin-eaters. These pumpkins or gourds are sold, ready fried, in three or four different moveable stalls in every street: you cannot go ten paces, without meeting with some.'

[2] According to Livy, *Ab urbe condita*, I. ix, shortly after Rome's foundation, and to ensure the overwhelmingly male city's continuation, Romulus sent envoys to neighbouring cities to request alliances and to allow intermarriage between their respective peoples. The envoys were rebuffed, but at a subsequent harvest festival to honour Neptune Equester, which was attended by many of their neighbours, the Romans abducted the Sabine women and compelled them to marry Roman men.

[3] The decline of the population of Spain from the beginning of the sixteenth century was generally attributed, amongst other causes, to emigration to Central and South America: see, for instance, Edward Clarke, *Letters concerning the Spanish Nation: Written at Madrid during the Years 1760 and 1761*, London, 1763, p. 283.

[4] i.e. Thomas Townshend (1733–1800), first Baron and first Viscount Sydney, Paymaster General 1767–8, Secretary-at-War 1782, Home Secretary 1782–3, 1783–9.

[5] Francis Bacon (1561–1626), first Baron Verulam and first Viscount St Alban, philosopher and writer, Lord Chancellor 1618–21.

[6] The phrase appears in *De novis Digestis Legum* in Francis Bacon, *De Augmentis*

how the species is propagated in this our clime: his science stands demonstrated by his practice.[1] With regard to the 5th Continent,[2] what was his theory? was it that in distant space, as in distant time, Nature might obey other laws? Or was it peradventure that the same eye which looks at home, and looks to good effect, might not be altogether equally well adapted to a wider range?

Convict Proposal—New South Wales[3]

The security thus afforded for their good behaviour, it must be confessed, is not so entire as that afforded by the present colonisation plan which, under the name of transportation for various terms, is in effect transportation for life. Neither can it be made so, without a fresh law to compel each prisoner, on pain of continuing in the Penitentiary establishment, to make his option between the army service, the navy service or an engagement from year to year in the subsidiary establishment, unless he can find a responsible person to stand security in a moderate sum from year to year for his maintenance and good behaviour.[4] Such obligation, if inflicted by law, may seem a hard and unjust extension of the original sentence: but the utmost of such hardship and injustice is trifling in comparison of that which they undergo at present by a perversion of the law. It is upon this very perversion that all the advantage in this point of view reaped from the colonisation plan actually depends: if, in consequence of being legally sentenced for 7 Years, a man is physically detained for life, then the perversion takes place: if no such perversion takes place, and he returns to his country after the expiration of his sentence, the security is gone.[5] With these three options, the condition of a convict, even of one who could find no friend to answer for him, would be three times as good as that in which many numerous descriptions of persons to whom no crime is imputed are placed by a variety of laws now in force: witness the Vagrant Act, 17 G. 2. c. 5, under which a man, merely for begging

Scientarum (first published in 1623), Bk. VIII, Aphorism 59, in *The Works of Francis Bacon*, ed. J. Spedding, R.L. Ellis, and D.D. Heath, 14 vols., London, 1857–74, i. 817.

[1] Sydney and his wife Elizabeth, née Powys (1736–1826), had six sons and six daughters.

[2] i.e. the Australian continent.

[3] It is possible that Bentham wrote this passage, which is headed 'Note', for 'Panopticon; or, The Inspection-House' or some related text, and that he subsequently placed it with the 'New Wales' material. The passage originally began with the following paragraph, which has been crossed through by Bentham: 'Hitherto the great difficulty has been supposed to lie in the ensuring employment to such as would be willing to accept it: but some of them may make no such option.'

[4] For the provisions for prisoners released from the panopticon see 'Panopticon; or, The Inspection-House', iii. 208–32 (Bowring, iv. 165–71).

[5] In the margin, Bentham has noted at this point: 'Take away the injustice & you take away the security.'

or for want of employment, may be consigned in the first instance to the House of Correction for above 8 months: for the second offence, to the same place with unlimited whippings for above two years: and for the 3[d], to transportation for seven years.[1] Witness the Act of 2 Ann. c. 6, by which innocent children may be consigned without any option to the sea service for 11 years:[2] witness the 43 Eliz. c. 2, by which children of any age may be bound till the age of 24, and adults from year to year, without any option as to the person or the employment.[3]

Public Wealth

All Colonies that have not diamond or gold or silver mines of the richest quality are, and in the nature of things ever must be, drains to the mother country: until the mutually happy and every where too long protracted æra of independence. But of these drains, some may be more, some less, voracious. The colony in New South Wales is in its nature among the most voracious that could have been chosen or imagined.

The advantages that men reap in compensation for the heavy and many disadvantages they sustain by quitting a cultivated country for a wild one at a distance are the getting rid of land-rent, the exaction of land monopolists, taxes and bad laws: these universally, to which may be added better climate and land richer and better situated, if they are happy in their choice.

[1] Bentham has slightly misrepresented the Justices Commitment Act of 1743 (17 Geo. II, c. 5, § 9), which provided that, for a first offence, a 'Rogue or Vagabond' might be sentenced by Justices at General or Quarter Sessions to hard labour in a house of correction for up to six months, while an 'Incorrigible Rogue' might be confined for between six months and two years. In either instance, such persons might be 'corrected by Whipping, in such Manner, and at such Times and Places within their Jurisdictions, as according to the nature of such Person's Offence, they [the Justices] in their Discretion shall think fit', while a male prisoner of more than twelve years of age might, if the Justices deemed it proper, be sent 'to be imployed in his Majesty's service, either by Sea or Land'. If any 'Incorrigible Rogue' broke out of the house of correction in which they were confined, or reoffended 'in like Manner' after being released, they were to be considered as having committed a felony, and if convicted might 'be transported for any Time not exceeding Seven Years, in the same Manner as by the Laws now in being other Felons may be transported'.

[2] The Navigation Act of 1703 (2 & 3 Ann., c. 6, § 1) provided that any boy in England and Wales aged ten years and upwards who was, or whose parents were, chargeable to the poor rates, or who begged for alms, might be bound as an apprentice to the Royal Navy until the age of twenty-one.

[3] The Poor Relief Act of 1601 (43 Eliz. I, c. 2, § 5) provided that the Churchwardens and Overseers of a parish might, with the agreement of two Justices of the Peace, bind a child whose parents could not support him or her as an apprentice to 'where they shall see convenient' until the child reached the age of 24 in the case of a male, or reached the age of 21 or was married in the case of a female. The Act made provision for 'setting to work' all adults who had no means of maintaining themselves, but not for binding them to particular masters, as Bentham suggests.

When, to these general advantages, they add the fortuitous one of a mine of the pretious gems or metals, the advantage may be so great, that, though the sovereign step in and exact a rent for that part of the land, the superiority of advantage may not yet be exhausted. Such is the case in some parts of the Colonies of Spain and Portugal.

Putting in its claims in time, it is, therefore, possible for the Mother Country to come in for a share, though it can be but a small share, of the landlord's monopoly. And in the very particular situations just described, it is possible (for it actually has place) that this profit may exceed the charge of government.

Bating this accidental case, if the mother country derives a benefit adequate to the burthen, or any benefit at all, it must be by taxes. Will the Colonies, do they, pay the value of the paring of a nail in the way of taxes?—They deserve to be stripped to the bone for their folly.

The East Indies yield taxes: but the East Indies are not a colony, but a conquest. Even under the pressure of those taxes, the quiet and secure and steady government of European masters, with all its exactions, may be a less evil than the least bad of their own bloody and fluctuating and unsecure and barbarous ones. Their lot would be too happy if, like the antient Peruvians under the Incas, they could remain under the government of a more civilised race, with eyes and attachments fixed to the spot and backs turned to the ignorant and unfeeling government of a distant clime.

If the productions of a Colony could be confined to that spot and the rate of taxation be made to rise *ad libitum* with the avarice of the exactor, an advantage more or less considerable might be derived from the preeminence over that colony by a taxation of imports into the mother country from that colony, and, were the Colonists weak enough to submitt to it, by a taxation of the imports into that Colony from the Mother Country or elsewhere. But few are the instances in which the productions of any Colony can be confined to that Colony: the rate of taxation of imports into the Mother Country from the Colony, as from every other place, is limited by the faculty of smuggling: and the power of laying taxes on the imports into the Colony extends no further than the weakness and the folly of the Colonists.

If the nature of trade with Colonies were that the Colonists gave the produce of their Country gratis and the merchant of the mother country got the goods for nothing, dominion over Colonies might still be of advantage in the way of trade. Unfortunately for this system, the Colonist is as little disposed to give his goods for nothing as the Merchant in the Mother Country is to give his. Each gets as much as he can and each gets as much as the other, so that in time[?] more

is not got by[1] belonging to the governing than [by][2] belonging to the governed nation, nor any thing by either.

If the dealers in the Colony were restricted in their dealings to a single customer in the mother country, that customer might gain by them more than they gained by him: for having no competitor, he might raise his rate of profit as high as he pleased to the extent of the limits set to it by the faculty of smuggling: and the case would be nearly the same had the monster monopoly assumed the shape of a Company. But except the old Goliah of the East Indies,[3] which ere long may meet with a David[4] (and God grant that it may be soon!), to endure such monsters is not the policy of Britain. The Colonists from Great Britain would no otherwise be confined in their dealings than to the 12 or 14 millions that compose those who have the faculty of dealing in the Mother Country.[5] 12 or 14 millions afford a number of competitors as capable of pushing the price demanded to its highest terms, and the price offered to be taken to its lowest terms, as 12 or 14,000 millions: so that all that Britain and France gain by the monopolies, which are the so much boasted sources of their wealth, is that the dealers of the British Mother Country are restricted to the British Colonies, and those of the French Mother Country to the French Colonies, without [there][6] being a single dealer fewer in both countries taken together than if the monopoly did not exist: upon the whole, French and English Colonies taken together, the number of the traders is not lessened, only the direction of the trade prescribed and regulated. Nothing, therefore, is gained to either by the monopoly: nor any thing lost except what is lost by the perversion of the current from the natural and straight channel into an unnatural and tortuous one.[a]

O nations! when will your eyes be open to these inestimable truths, sole bands and pledges of charity, philanthropy and peace!—Then and not before, when the generous flame of philanthropy has given expansion to your hearts. For such is the decree [of] the author of human nature—that they shall ever keep pace with each other—the expansion of the heart and the strength of the intellectual eye. As ye grow wise, ye will grow generous: and as ye grow generous, ye will grow wise.[7]

[a] Expence of freight encreased; goods manufactured or shipped at a place where it costs more to manufacture or ship them than it would had trade been left free to the rival country.

[1] MS del. ‘for’.
[2] MS ‘for’.
[3] i.e. the British East India Company.
[4] For the slaying of Goliath by David see I Samuel 17.
[5] MS orig. ‘Great Britain’.
[6] MS ‘their’.
[7] Perhaps an echo of Proverbs 31: 26.

Of the two hundred Merchants that the quantity of capital that can be afforded by France and England can afford to Jamaica and S^{t} Domingo,[1] one hundred go to the former, the other hundred to the latter. If, instead of the one hundred to the one and the other hundred to the other, both hundreds went to either without distinction, where in point of competition would be the difference? The more an Englishman bought at S^{t} Domingo, the less he could afford to buy at Jamaica. The more a Frenchman bought at Jamaica, the less he could afford to buy at S^{t} Domingo.

I forget in what address of the proprietors of one of the Colonies to the National Assembly of France, the addressors reckon up their wealth and pointing to it say—See, this is all your's.[2] Is the wealth of S^{t} Domingo, then, the wealth of France?—Yes, that it is: as much as the wealth of Britain is the wealth of France, as much as the wealth of France is the wealth of Britain, and no more. If S^{t} Domingo, giving three millions worth of goods, receives three millions worth of France, and Britain, with goods to the same value, receives of France goods to the same value, the wealth of Britain is as much the wealth of France as is the wealth of S^{t} Domingo: France as much interested in the prosperity of Britain as in the prosperity of S^{t} Domingo. O nations, nations who fight with colonies and for colonies, what can your wickedness be equalled by but your folly![a]

[a] What is the real interest that inspires some of the Colonists with such fears of a separation?—the danger lest, in the headlong spirit of French reform, a man who has one estate in one country and another in the other, should not be permitted to retain both. Such apprehensions could have no place but in a nation where the interests of men are so ill-understood or so little regarded as they are in a nation where the rulers were as discerning and as regardful of the interests of men as others have been forward to declare and to violate their rights.

[1] Jamaica and Saint-Domingue were British and French colonies respectively.

[2] The address to which Bentham alludes may have been a representation made to the National Assembly from planters and merchants in the slave colonies, who feared that, following the adoption of the Declaration of the Rights of Man and of the Citizen on 26 August 1789, slavery might be abolished and the colonies emancipated. In early March 1790 the National Assembly established a Committee on Colonies, chaired by Antoine Pierre Joseph Marie Barnave (1761–93), with a view to producing a report and drafting a decree as to how order might be restored in the colonies (*Procès-verbal de l'Assemblée Nationale*, vol. x, no. 217 (3 March 1790), p. 5 and no. 218 (4 March 1790), p. 5). In its Report, the Committee argued that the retention of the colonies and slavery was vital to the maintenance of French national prosperity: 'Abandonnez les Colonies, & ces sources de prospérité vont disparoître ou décroître. Abandonnez les Colonies, & vous recevrez à grands frais des Etrangers ce qu'ils achetent aujourd'hui de vous. Abandonnez les Colonies, au moment où vos Establissmens son fondés sur leur possession; & la languer succède à l'activité, la misère à l'abondance: une foule d'Ouvriers, de Citoyens utiles & laborieux, passent subitement d'un état aisé à la situation la plus deplorable; enfin, l'Agriculture & les Finances sont bientôt frappes du désastre qu'éprouvent le Commerce & les Manufactures.' In its draft decree, the Committee stated that, having considered the petitions of

Influence

I have no fanatic terrors of the influence of the Crown.[1] Though tolerably fixed, my notions are very easy on that head. I could see it doubled without being in much pain except on account of the expence: but on that same account, I could see it reduced to nothing, in as far as power remained untouched, with much more pleasure. I could behold with pleasure the crown of Hindostan fished out of the filth of Leadenhall Street[2] and added to the regalia in the tower:[3] but it is with transport I should see the precedent of Spain and Naples,[4] the precedent of France and Spain,[5] the precedent of Austria and Tuscany,[6] pursued in the British empire, and behold the diadem of Hindostan bound upon the brow of one of his Majesty's sons, emancipated, forisfamiliated, and sent to live among his people. He would not want for followers, nor the golden harvests of India want for English reapers.

Perish this hand, e'er I stoop to take an unfair advantage, e'er I think one thing and say another, e'er I lay hold of a prejudice and inflame it because I find it on my side.

The safety of the people lies not in the virtue of their pretended representatives—not in the exertions of the pampered sons of opulence and its inseparable attendants, indolence and ignorance—but in the vigilance of the people. The less they are cared for, the more they

commercial towns in France and representations made by colonial deputies, it had not been intended that the colonies be included in the new French Constitution or to alter 'des branches du Commerce soit direct, soit indirect de la France avec ses Colonies', that is the slave trade, and proposed instead to grant assemblies to the colonies in return for their loyalty. See 'Rapport fait a L'Assemblée Nationale, le 8 Mars 1790, au nom du comité des colonies, par M. Barnave, Député du Dauphiné. Imprimé par ordre de l'Assemblée Nationale', Paris, 1790, pp. 9, 20–2.

[1] The question of the influence of the Crown had been a contentious issue in British politics and had given rise to the famous motion 'that the influence of the Crown has increased, is increasing, and ought to be diminished', proposed by John Dunning (1731–83), first Baron Ashburton, barrister and politician, and passed by the House of Commons on 6 April 1780: see *Parliamentary History* (1780–1), xxi. 347.

[2] i.e. the headquarters of the East India Company.

[3] i.e. the Tower of London.

[4] Following the conquest of Naples and Sicily by a Spanish army in 1734 during the War of the Polish Succession, Charles (1716–88), Duke of Parma and Piacenza 1731–5, the younger son of Philip V (1683–1746), King of Spain 1700–24 and, after briefly abdicating, again from 1724, had been installed as King of Naples and Sicily. He subsequently succeeded as King of Spain as Charles III in 1759.

[5] In 1700 Philip V, who was the grandson of Louis XIV (1638–1715), King of France from 1643, had been named as heir to the vacant Spanish throne.

[6] In 1736 Francis Stephen (1708–65), Duke of Lorraine 1729–37, had been installed as heir to the Grand Duchy of Tuscany in compensation for the loss of Lorraine under the terms of the preliminary peace which ended the War of the Polish Succession. He succeeded as Grand Duke of Tuscany in 1737 and, as Francis I, Holy Roman Emperor in 1745.

will care for themselves: the more regularly and pertinaciously and palpably they are betrayed by the aristocratical representation, the more seriously they will think of insisting on a real Deputation. The liberties of a country like this can never be in danger till the liberty of the press is destroy'd, which, spite of the endeavours of lawyers, it will never be, for the patience of the people of this country has its bounds.

I regard, therefore, the encrease of influence as a very subordinate consideration: a consideration which I should never think of placing in the front of any enquiry, much less represent as capable of outweighing the advantage to be derived from any establishment advantageous in its own nature. But however [subordinate],[1] it makes still a consideration. As such, it ought never to remain unnoticed where it has place. It will go to swell the account of disadvantage in the instance of an establishment useless or pernicious in itself: and those who give it, in their own minds, a weight which it possesses not in mine will be disposed and intitled to attribute to it that degree of weight which it possesses in their estimate.

Here the illustrious Herschel stands again unrivalled. The pure atmosphere of the *Georgium sidus* knows not the contamination of influence.[2] On this errand, the English place-hunter may be not less eager to go to the heaven of free-quarters than was the esurient Greekling of old Rome,[3] but the heaven that encircles that purest of all acquisitions will not receive him. Even the winged steeds that bore the adventurous Spaniard from these sublunary to the lunar regions would tire in the chase.[4]—Lords of the Georgian star and of other stars without number, may the dynasty of the Georges never add to their present territories any other dominions than these!

[1] MS 'subordination'.

[2] William Herschel (1738–1822), musician and astronomer, in 1781 was the first to identify the planet Uranus, which he originally named the 'Georgian Star', in honour of George III (1738–1820), King of Great Britain and Ireland from 1760. The name was not readily accepted outside Britain and the German astronomer Johann Elert Bode (1747–1826) successfully proposed naming the planet Uranus.

[3] See Juvenal (Decimus Iunius Iuvenalis), *Satires*, I. iii. 78–9: *omnia novit Graeculus esuriens: in caelum iusseris ibit*, i.e. 'your hungry Greekling has every talent. Tell him to go to heaven and he will.' For Herschel's place-hunting see p. 18 n. below.

[4] Don Quixote and Sancho Panza are blindfolded and tricked by a Duke and his wife into believing that they are flying into the region of fire between the moon and heaven on the back of an enchanted wooden horse named Clavileño: see *The Life and Exploits of the Ingenious Gentleman Don Quixote de la Mancha. Translated from the Original Spanish of Miguel Cervantes de Saavedra. By Charles Jarvis, Esq.*, 2 vols., London, 1742 (first published in Spain as *El Ingenioso Hidalgo Don Quixote de la Mancha* in two volumes in 1605 and 1615), Bk. II, Chs. VIII–IX, ii. 204–15.

Right wanting[a]

One question there is which at once goes to the root of all projects of discovery and improvement, of all works of not absolute [necessity],[1] in as far as they are carried on with public money, and that is [whether][2] the trustees of the people have any right to make any such use of the money of the people?—My notion lies, I must confess, on the negative side.[3]

In using in this way the word *right*, I mean nothing less than to open a metaphysical battery under favour of the clouds in which that word stands involved to many an apprehension.—In speaking of the government of this country, I am speaking of those who, as far as legal right goes, have a right to do with us and our money as they please. But morally speaking, have they a right, or to keep clear of all objection, is it right on their parts, to convert our money to this use? The affirmative side of this question is what I must take the liberty to dispute.

For money which is to be collected by taxes, that is which is to be taken from the contributors by force, and without and even against their consent, for it is that which distinguishes a tax from a voluntary contribution, I know no legitimate destination but the application of it to the purposes of common Defence: defence against foreign enemies, defence against domestic disturbers, and defence against calamities, which are the hostilities of nature. I am not going to plead the original contract. I can build, I hope, without taking fiction and nonsense for my foundation:[4] but if government be a trust, and there be such a thing on the part of government as a breach of trust, the disbursement in question seems to be of the number of those which come within the idea. I do not say it is what the people have not consented to: just the same thing might one say of any the most necessary expenditure.—They have [never][5] given their consent to any thing—how should

[a] In this place, let it be observed, I am considering the business merely as a business of colonization at large: considered as a mode of disposing of convicts, it will be considered afterwards.[6]

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[1] MS 'necessary'.

[2] MS 'with'.

[3] In the margin, Bentham has noted at this point: 'Is not this laying out upon ruffles money given to buy shirts?'

[4] For Bentham's condemnation of the view that government was founded on an 'original contract', generally associated with John Locke, *Two Treatises of Government* (first published in 1689), as a fiction see 'A Fragment on Government', Ch. I, paras. 36–48, in *A Comment on the Commentaries and A Fragment on Government*, ed. J.H. Burns and H.L.A. Hart, London, 1977 (*CW*), pp. 439–48.

[5] The addition is required by the evident sense of the passage.

[6] The insertion of Bentham's footnote at this point is speculative. The passage appears at the foot of the first page of this section. Bentham appears to be addressing the point concerning the 'addition made to the stock of innocent enjoyments' at p. 3 above.

they? when they are never asked? when they know of nothing till it is done. But would they, were they to be asked, and had they a judgment capable of perceiving the relation to their interest, is it to be believed that the poor, of whom the bulk of this nation, as of every nation, is composed, would willingly sacrifice a part of their poor pittance to lay out in projects for the amusement of the rich? Is there a man that can lay his hand to his heart, and make answer in the affirmative?

What Goth, what Vandal, have we got here! an enemy, a professed one, to every thing that is elegant and ornamental in human life! to invention—to discovery—to philosophy—to the sciences and to the arts!—Not I, truly: these are delightful things, and few, I may say, there are who take more delight in them than I do. But my notion is this, and I hope it is not so singular as to be confined to me—that whatever amusement is mine and mine only, I and I alone ought to pay for: and that my happening to have it in my power to take money from my poor neighbours against their wills and apply it to my own use is no reason to justify my applying my power to any such use: and that, supposing out of 10 millions, 100,000 more having the same taste with myself and the same powers, their rights to gratify the one in this way and exercise the other would not stand upon any better ground than mine. No—matters of delight and entertainment to the privileged few are subjects for voluntary contribution: not for forced levies wrung from the grasp of the reluctant poor by the claw of the Exciseman.

This is no romantic theory—I speak from what I see. Take two instances—the establishment for the encouragement of the British fisheries,[1] and that for the prosecution of discoveries in the interior parts of Africa.[2] In both instances, those only who are to share in the benefit bear any share of the burthen. In the one we see amusement joined with hope of solid profit: in the other, with science. In one or other way, both bear a near relation to the establishment in question: the first a plan of colonisation; the other of geographical discovery.

One thing ought never to be forgotten: and this is not the only instance in which it ought to be had in remembrance.—Who pays for this? the very poorest of the poor.—You mean their share?—No: I mean the whole. By what tax is the money raised? By the most

[1] The British Society for Extending the Fisheries and Improving the Sea Coasts of this Kingdom was a joint-stock company established by the British Fisheries Society Act of 1786 (26 Geo. III, c. 106). The subscriptions raised by the Society were to be used to improve or build fishing towns, villages, and stations throughout the Highlands and Islands of Scotland.

[2] The Association for Promoting the Discovery of the Interior Parts of Africa was founded at the St Alban's Tavern on 9 June 1788 by nine members of the Saturday's Club, who resolved that every member of the Association was to subscribe five guineas per year, initially for three years: see 'Plan of an Association' in *Proceedings of the Association for Promoting the Discovery of the Interior Parts of Africa*, London, 1790, pp. 3–11.

oppressive, the most impoverishing, the most unconstitutional, the most ineligible in every point of view which the dictionary of our finance affords.—How so?—because by abstaining from this expenditure, that most ineligible of all taxes, whatever it be, (for I care not what it is) might be and ought to be—to the extent of the sum in question—saved.[a]

If this be just, down falls the whole of the colonization system at once: I mean always unless matter of sufficient solidity can be found in so much as regards the disposal of convicts for the support of it: of which in due time and place.

But the demonstration of its impropriety rests not exclusively by any means on any such novel and, on that account alone to many an eye, unsubstantial ground. Let us come close to it, and examine it upon its own bottom.

Extended Empire

Approach the picture—take it part by part—Image after image—phantom after phantom!

The first is extension of empire.—If this circumstance can be carried to the side of advantage in any public view, it can not be abstractedly on its own account: of my 100 acres, the value does not *ipso facto* receive any encrease, because, to the 50 millions of acres that were before under the same government, an addition is made of 50 millions more: if at all, it must be from some addition made or likely to be made either to the national wealth or to the national security, that is to the national defensive force. Does the establishment promise any addition in either of these two ways? That we shall see under those respective heads.

Meantime other additions are made, consequences that are indisputable, and that unfortunately on the other side—addition to the expence of government—addition to the influence of the crown—addition to the fund of matter liable to breed war— addition to the standing army—addition to the dangers that inviron the constitution—addition to the sphere of vulnerability and consequently to the charge of the provision for defence.[1]

[a] This is one of the bases on which I found my theory of national expenditure: I think it will not be found an unsubstantial one.[2]

[1] In the text, the following abandoned sentence appears at this point: 'So much for the blessings of extended'.

[2] See *A Protest Against Law Taxes, Shewing the Peculiar Mischievousness of all Such Impositions as Add to the Expense of Appeal to Justice*, London, 1795, reproduced in *Writings on Political Economy: Volume I*, ed. M. Quinn, Oxford, 2016 (*CW*), pp. 269–93.

Were the extended empire indeed a blessing, this of New South Wales, alias New Holland, would be in truth no despicable one: to our own two little European islands, another of itself equal to all Europe. True it is that the Dutch were there before us, that the Dutch have the prior right to it, if the taking up here and there a straw gives a right to the contents of the whole manger—that the Dutch might be disposed to fight for their right as well as we for our no-right, and then we should have to beat them out of it. True: but t'other day we forced the Dutch to be our friends:[1] therefore they will be our friends freely tomorrow and for ever.

Great indeed and wonderful are the accessions of dominion which the dominion of our present most generous Sovereign [has][2] received since his accession to the throne. Many and vast and brilliant are the gems which, since that auspicious period, have been added to the royal diadem! May they remain to the end of time in their state of primæval lustre, never to be tarnished by the impure touch of any official lapidary.

The glories of the immortal Capt. Cook, from whose dutious hand our gracious King has received richer presents than sovereign ever received from subject before or ever can again,[3] stand upon ground distinct from any use that has been made or ever may be made of them. Peace and honour be to his manes! though to my humble and muddy eye, the *civic* crowns he has earnt in the preservation of so many lives, past, present and to come, shine far brighter than all his *naval* ones.[4]

Yet setting aside these less resplendent merits, the man to whom I, as a subject in whom loyalty is governed and directed by civic views, could pay a tribute more unreserved and unqualified is Herschel! The gifts of Cook are here and there a spot in one of the planets, and that a small one: the tribute paid by Herschel is a whole one.[5] The presents

[1] The Triple Alliance of 1788–91, formed by Britain, Prussia, and the Dutch Republic, was a military alliance aimed against the Russian Empire.

[2] MS 'have'.

[3] On 22 August 1770 while at Possession Island, Captain James Cook (1728–79), explorer, claimed the eastern seaboard of the Australian continent in the name of George III.

[4] In March 1776 Cook had been elected a Fellow of the Royal Society and awarded the Copley Medal for his work on the prevention of scurvy during the first voyage of the *Resolution* 1772–5.

[5] For Herschel's naming of the Georgian Star in honour of George III see p. 13 & n. above.

of the navigator have cost the nation £400,000 in four years:[1] and this but a beginning of those sorrows that are the fruits of prodigality: the offerings of Herschel have cost the gratitude of a munificent master £200 a year, but the nation not a farthing.[2] New Holland, with its insatiable maw, robs our little island of its sustenance: the *Georgium sidus* (heaven be for ever praised for it!) is out of the reach of colonization.

[1] For Bentham's calculation as to the total cost of New South Wales to Britain as of 18 March 1791 see p. 19 below.

[2] In July 1782 Herschel applied to the Crown for, and received, a pension of £200 per annum, on the condition that he reside near Windsor Castle and show the planets to the Royal Family upon request.

New South Wales Expence[1]

Convicts shipped	2,029[2]
Convicts intended to be sent in the Ships now (Mar. 18 1791) under orders	1,830[3]

Expence.	[£	s	d]
Charged to the head of transporting	161,075	17	2
King's Ships	95,601	0	0
Stores for Settlement	84,553	4	8¾
Establishment Civil & Military 4 years or less	42,860	13	10
	384,090	15	8¾[4]

All this is on account of the 2,029. The 450 Tons of provisions shipped in Feb. 1791 (9,514–10–2) appear to have been not for those who are to go out, but for those who are there already.[5]

	£	s	d
Freight of Transports	42,271	–	4
Charge of first expedition—Numbers not mentioned	81,899	11	6
Deducenda.			
For a Store at S Wales	16,205	3	–
Tools, Implements of Husbandry &c.	3,056	8	7

[1] For the figures presented in the tables below see 'Extracts of Letters, &c.—and Accounts, relative to the Settlements in New South Wales', 8 April 1791, in *House of Commons Sessional Papers of the Eighteenth Century*, ed. S. Lambert, 145 vols., Wilmington, Delaware, 1975, lxxxiii. 241–58 at 252–5. On 29 April 1791 Bentham had acquired a copy from Sir Thomas Charles Bunbury (1740–1821), MP for Suffolk 1761–84, 1790–1812: see Bentham to Bunbury, 6 May 1791, *The Correspondence of Jeremy Bentham*, vol. iv, ed. A.T. Milne, London, 1981 (*CW*), p. 278.

[2] i.e. the convicts embarked on the transports of the First Fleet, namely the *Alexander*, *Charlotte*, *Friendship*, *Lady Penrhyn*, *Prince of Wales*, and *Scarborough*, which sailed from England on 13 May 1787, on the transports of the Second Fleet, namely the *Surprize*, *Neptune*, and *Scarborough*, which sailed from England on 19 January 1790, together with those on the *Lady Juliana*, which sailed on 29 July 1789, the *Guardian*, which sailed on 12 September 1789, the *Mary Ann*, which sailed on 16 February 1791, and HMS *Gorgon*, which sailed on 15 March 1791.

[3] i.e. the convicts embarked on the transports of the Third Fleet, namely the *Matilda*, *Atlantic*, *Salamander*, *William and Ann*, *Active*, *Albemarle*, *Britannia*, and *Admiral Barrington*, which sailed from England on 27 March 1791, and the *Queen*, which sailed from Ireland in April 1791.

[4] Bentham has supplied this total.

[5] See *Commons Sessional Papers* (1791–2) lxxxiii. 255. The provisions were sent to the colony by HMS *Gorgon*, which was converted into a storeship and which, as noted above, sailed from England on 15 March 1791, contrary to the statement in ibid. and repeated by Bentham.

Marquees & Camp Equipage for Marine Officers	389	4	1
Portable House for Governor	130	–	–
Medicines, Drugs, Surgeon's instruments & Necessaries	1,429	15	5
Seed Grain	286	17	4
Old Canvas for Tools &c.	69	–	9
Heaths & Coppers &c.	118	10	3
	21,684	19	5
Add Cloathing, Slops & Bedding—though part of this expence goes to that of the passage	4,939	16	8
	26,624	16	1[1]

Provision

1. In case of their being brought back, enormous expence.
2. And no provision.

Are they, when their terms are respectively expired, to be brought back from thence or not? In the one case, there is an enormous addition to the expence. In the other, it is a very tyrannical and dishonourable, if not illegal, conversion of transportation for a limited term into transportation for life. In the case of American transportation, the means of return were easy. Now they are physically impossible.

The great object is to get Ministers to speak out.

The total expence is | |.[2] This, were it full 4 years ago that the first embarcation was made,[3] and were the whole 2,000 all embarked at that time, would make £48 per man per year.

But I believe it is not full 4 years ago: and it is certain that the whole 2,000 did not embark at once.[4] I believe it will be found that upon an average at least half of them have not been embarked above half the time: if so, half the expence of half the number is to be added to the expence per man per annum, that is the expence amounts to £60 per man per annum.

[1] Bentham has supplied this total.

[2] Given the following calculation, Bentham presumably intended to insert the figure of £384,000, corresponding to the total expense of New South Wales that he had calculated at p. 19 above.

[3] The first embarkation of convicts for New South Wales took place on 6 January 1787, when 184 convicts from the Woolwich hulks *Ceres*, *Justitia*, and *Censor* boarded the *Alexander*, which sailed from England with the First Fleet on 13 May 1787.

[4] For the various dates of the sailing of the transports of the First and Second Fleets see p. 19 n. above.

Separanda[1]

1. Expence of conveyance.
2. Expence of Cloathing &c. that must at all events be received.
3. Expence of Food and other articles which the Settlement may supply.
4. Capital advanced at first in implements of husbandry & other articles of a nature more or less durable.
5. Annual expence to pay for wear & tear & keep up the stock.
6. Expences that will encrease in proportion to the numbers of the Convicts.
7. Expences that will not at all be encreased with the number of the convicts—or not in equal proportion.

[1] i.e. things to be separated.

Botany Bay—Resolutions against[1]

Resolved—that it can never be an object of National benefit to establish a Colony with a view to trade, unless there be good ground for being assured, that the profit upon the capital likely to be employ'd in trading with such Colony will, within the probable lifetime of men now living, exceed the greatest profit that could otherwise be made of the same quantity of capital employ'd in any other trade, by a sum greater than the whole amount of the expence of founding, maintaining, governing and providing for the defence [of] such colony.

Resolved. That in any Colony, a number of males superior in any considerable degree to the number of females can not be of any use in respect of population.

That even among [an equal] number of both sexes, no considerable progress in population can reasonably be expected to be made where the greatest part of the inhabitants live in a state of promiscuous copulation.

That a state of promiscuous intercourse between the sexes is not conformable to the commonly [held] notions of good morals, nor to those of Xtianity as professed by the Church of England.

[1] These resolutions were presumably intended for debate in the House of Commons.

CORRESPONDENCE,

SENT TO

WILLIAM WILBERFORCE,

OF

JEREMY BENTHAM

WITH

SIR CHARLES BUNBURY[1]

[1] For the source of this title see the Editorial Introduction, pp. xxx–xxxi above.

N^{o} 1.[1]
M^{r} Bentham to Sir C. Bunbury.[2]

12th April 1802.

Dear Sir

By what I understood from my Brother[3] t'other day, according to what he understood from you—You had the goodness to say that you had not only mentioned the Penitentiary business to Lord Pelham[4]—but that you should have no objection to mention it in Parliament.[5] In the event of your continuing in the same mind, it would be of great use to me to have an interview with you on the subject, provided you could find time enough for what would be necessary to say about it, which would not be less than half-an-hour. In that event if you would be kind enough to name time and a place, I would attend you thankfully & with pleasure.

☞ Sir Charles thereupon called upon M^{r} Bentham, that day or the next in Queen Square Place.[6]

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[1] An autograph draft of this letter, at BL Add. MS 33,543, fo. 561, is reproduced in *The Correspondence of Jeremy Bentham*, vol. vii, ed. J.R. Dinwiddy, Oxford, 1988 (*CW*), p. 13.

[2] Bunbury had been an admirer of Bentham's panopticon penitentiary scheme since 1791 (see Bunbury to Bentham, 19 February 1791, *Correspondence* (*CW*), iv. 238) and had supported Bentham's panopticon penitentiary proposal in a debate in the House of Commons on 31 May 1793, when he moved resolutions critical of the treatment of prisoners awaiting transportation and the conditions they encountered on the voyage to New South Wales (see *Parliamentary Register* (1793) xxxv. 607–11).

[3] Sir Samuel Bentham (1757–1831), naval architect and inventor, who was at this time Inspector-General of Naval Works.

[4] Thomas Pelham (1756–1826) was Home Secretary from July 1801 to August 1803 in the administration of Henry Addington (1757–1844), later first Viscount Sidmouth, Speaker of the House of Commons 1789–1801, leader of the administration as First Lord of the Treasury and Chancellor of the Exchequer 1801–4, and afterwards Lord President of the Council 1805, 1806–7, 1812, Lord Privy Seal 1806, and Home Secretary 1812–22. On 29 June 1801 Pelham had been summoned to the House of Lords in his father's Barony of Pelham of Stanmer and hence was styled Lord Pelham until he succeeded as second Earl of Chichester on his father's death on 8 January 1805.

[5] Bunbury did not raise 'the Penitentiary business' in the then current session of Parliament, which ended on 28 June 1802 and which was followed by a general election, but did so in the following session when on 17 December 1802, in a debate on the Transportation Bill (enacted as 43 Geo. III, c. 28), he argued that prisoners awaiting transportation should be held in a panopticon: see *Parliamentary Debates* (1802) i. 435.

[6] i.e. Bentham's home in Westminster.

Nº 2.[1]
Mr Bentham to Sir C. Bunbury.

25th April 1802.

Dear Sir

Penitentiary Establishment.

Inclosed are some papers[a] which will serve to shew you how the business stands as between me and the present Treasury.

As soon as you can find time, after you have cast an eye over them, I hope to be favoured with an interview for the purpose of concerting further operations:—and I flatter myself that there will be no need for me to wish to trouble you, to say any thing about the business in Parliament.

Nº 3.[2]
Mr Bentham to Sir C. Bunbury.

30th July 1802.

Dear Sir

I do not exactly recollect—neither is it necessary—how many weeks it is, since I had the honour of attending you at your house. At my request you had the goodness to take charge of some papers for Lord Pelham. They consisted of my correspondence with the present Treasury,[3] and

[a] These were the correspondence of Mr Bentham with Messrs Addingtons and Vansittart,[4] together with the Memorial mentioned in the next letter.[5] The correspondence was the same as that sent on a former occasion to Mr Wilberforce.[6]

[1] A copy of this letter, at BL Add. MS 33,543, fo. 562, is reproduced in *Correspondence* (*CW*), vii. 15–16.

[2] A copy of this letter, at BL Add. MS 33,543, fos. 574–5, is reproduced in *Correspondence* (*CW*), vii. 67–8.

[3] See above.

[4] i.e. Henry Addington and his brother John Hiley Addington (1759–1818), who was Chief Secretary to the Treasury from March 1801 to July 1802, and Nicholas Vansittart (1766–1851), later first Baron Bexley, who was Financial Secretary to the Treasury from March 1801 to July 1802, when he succeeded Hiley Addington as Chief Secretary, a position he held until April 1804 and again from Februrary 1806 to April 1807. Vansittart was subsequently Chancellor of the Exchequer 1812–23. For Bentham's correspondence with them in relation to the panopticon penitentiary scheme see *The Correspondence of Jeremy Bentham*, vol. vi, ed. J.R. Dinwiddy, Oxford, 1984 (*CW*), pp. 383–5, 391, 396, 403–8, 411, 443–4, 446.

[5] See p. 27 below.

[6] William Wilberforce (1759–1833), politician, philanthropist, and slavery abolitionist, was a supporter of Bentham's panopticon penitentiary scheme. Bentham states at p. 41 below that he had sent the material to Wilberforce in December 1801.

a suppressed Memorial, which if Mr Long[1] had not contrived by a trick to sink it, would have been delivered in to the late Treasury.[2] You said you would make a point of seeing his Lordship, if possible, in the course of the two or three days that remained before the day fixed for your leaving Town, (the then next Saturday or Sunday) and you had the goodness to add spontaneously, that you would let me know what passed. Not having heard from you since, my conclusion is—either that some letter of yours to me has miscarried—or that you were not fortunate enough to catch his Lordship—or that your conversation with him was such as it was not pleasant to report—terminating possibly by a desire of silence ⟨on⟩ his part towards me.

The particular object of the trouble I am now giving you, is—to beg to know what is become of those papers: as likewise to beg you would be kind enough if they have not been sent, to send them to Lord Pelham, or if that be not agreable to you, to return them to me as soon as you can make it convenient. I should of course be glad to hear any thing in relation to them, that you have no objection to communicate.

I have a communication just ready to make to his Lordship of a very different sort, though arising out of the same business; and it will be giving him abundance of useless trouble (not to speak of other trouble which is of no value) if instead of referring him to those papers as being already in his hands, I should have a long story to tell him, about the ineffectual pains taken so long ago in the hope of getting them there.[3]

Believe me &c.

[1] Charles Long (1760–1838), later first Baron Farnborough, Joint Secretary to the Treasury 1791–1801, Lord of the Treasury 1804–6, Joint Paymaster General 1807–17, and Paymaster General 1817–26.

[2] Bentham had submitted what he termed his 'Armed Memorial', that is a document containing reasons, to Long on 21 April 1800. According to Bentham's account in 'A Picture of the Treasury' (UC cxxi. 135–41), at a meeting on 10 June 1800 arranged by Evan, later Sir Evan, Nepean (1752–1822), Under Secretary at the Home Office 1782–94, Under Secretary at the War Office 1794–5, Secretary of the Admiralty 1795–1804, Chief Secretary to the Lord Lieutenant of Ireland 1804, Lord of the Admiralty 1804–6, Governor of Bombay 1812–19, between Long, Joseph White (d. 1815), Treasury Solicitor 1794–1806, Nepean himself, and Bentham, Long declared the 'Memorial' to be inadmissible, whereupon Nepean, who proved himself a steadfast supporter of Bentham's panopticon penitentiary scheme, intervened and ensured that Long agreed to receive an 'Unarmed Memorial' consisting of a single page. On 19 June 1800 Bentham sent his 'Unarmed Memorial' to the Lords Commissioners of the Treasury. For the 'Armed Memorial' see *Correspondence* (*CW*), vi. 471–85.

For further details concerning 'A Picture of the Treasury' and its relationship to the writings in the present edition see below.

[3] Bentham was referring to 'A Picture of the Treasury', which was addressed to Pelham and contained a detailed account of his dealings with the Treasury in relation to the panopticon penitentiary scheme between 1798 and 1801. The three 'Letters to Lord Pelham' and 'A Plea for the Constitution' developed from one section of this work. For further details see the Editorial Introduction, pp. xxxiii–xxxiv above.

P.S. Being under great difficulties and anxieties for want of knowing what is become of these papers, I cannot but hope to receive relief from you by return of post, as to *that point*; supposing you not to have time to say any thing more. Other difficulties I have none.

N^{o} 4.[1]
Sir C. Bunbury to M^{r} Bentham.

Brighton, August 1st 1802.

My Dear Sir

I have just received your's. The Papers I sent very soon after I received them to Lord Pelham. I had called several times upon him in vain, but I met him in Pall Mall, and told him I had received from you the Papers which he desired me to send to him; at the same time I spoke in favour of your plan, and reprobated the treatment you had met with; I was going on when other Gentlemen came up and interrupted us. I then said I should be glad of an opportunity, when he had read the papers, of conversing with him more fully on the subject. He has never sent to me, and I have never seen him since; as, soon after I went into Suffolk, the Elections came on &c. &c.[2] But I expect he will be here in a few days, and I intended, if I had not received your letter, to have resumed the subject whenever he fell in my way.

As I had nothing to tell you, but that I had delivered the papers, as I said I would, to Lord Pelham, and as I thought you knew me to be punctual enough to do that I said, or to give you an account why I could not do it, I did not write to you, which I am very sorry I did not, & hope for your forgiveness; but I certainly *took for granted*, Lord Pelham would send for you, & see you, when he had read the Papers, as I am sure I should have done so if in his situation. That he has not, much surprises me, & looks as if some persons had endeavoured to prevent him, since he seemed by his manner to agree with my remarks in your favour, though he said only he was inclined to approve the plan of Penitentiaries.

Yours &c.

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[1] The autograph letter, at BL Add. MS 33,543, fos. 576–7, is reproduced in *Correspondence* (*CW*), vii. 69.

[2] Bunbury was returned for Suffolk without a contest on 15 July 1802.

N° 5.[1]
M^r^ Bentham to Sir C. Bunbury, Brighton.

2nd August 1802.

Dear Sir

I am most thankful, as I ought to be, for the favour of your most kindly prompt and ingenuous letter. From the circumstances you mention, it is but too plain, that on the part of M^r^ Addington in the first instance, and through him on the part of Lord Pelham, the force of imagined personal interest is no match for the sense of public duty, though backed by the obligations of justice. My expectations (for I confess to you I am not yet without my expectations) are not bottomed on any such precarious grounds. That they should do their duty without being forced, is indeed what I do not expect: but I still expect that they will do their duty, because I do expect that they will be forced to it. All perfidy—all treachery—all unavowable conduct in public men—is founded on wrongheadedness: &, in the present instance, so it has happened—that the same incapacity and short-sightedness that led the former people (with whom the present people are linked)[2] into the commission of so much injury, led them moreover into scrapes which they are probably little aware of, & have thereby given to the party injured certain advantages, which happily *he is* aware of, & will not be backward to pursue.

As to Parliament—You yourself, my dear Sir, with all your experience in Parliament, cannot be more fully aware than I with my no-experience have always been, how very faint a chance would be possessed by a case like this, if success depended upon the obtaining against the existing Administration of the Country, a Vote of Parliament. Happily my expectations, such as they are, rest on no such aërial ground.

Believe me &c.

P.S. Think not from any thing above, that I regard with the less interest, the kind efforts you announce: to yourself they will not be dishonourable, & it might be matter of use probably, of curiosity certainly, to me to be apprized of the dispositions manifested in consequence, before or during the working of other engines.

P.S. 2nd. Saturday 7th August. The above was written at date, but kept in expectation of something that has not happened. You would oblige

[1] A copy of this letter, at BL Add. MS 33,543, fos. 578–9, is reproduced in *Correspondence* (*CW*), vii. 70–1.

[2] The 'former people' were those involved in the administration of William Pitt the Younger (1759–1806), First Lord of the Treasury and Chancellor of the Exchequer 1783–1801, 1804–6, and the 'present people' those in the administration of Addington.

me much by sending me, on the day you know of L^d^ Pelham's arrival,[a] a piece of paper saying L^d^ P. is come.

N^o^ 6.[1]
M^r^ Bentham to Sir C. Bunbury, Brighton.

9th August 1802.

Dear Sir

Your sentiments have hitherto been (I believe) to a certain degree in favour of Botany Bay: a sufficient proof to me that you are not sufficiently apprized of the facts belonging to it. To recognize its utter repugnance to every one of the proposed or supposed objects of it, would not cost you a tenth part of that candour for which Panopticon was in so eminent a degree your debtor, in its comparison with a much worthier rival.[2]

The perusal of the two sheets herewith sent[b] will not call for more of your time than I flatter myself you will indulge me with. The paper itself, of which they are the contents, is ready to follow at the first word. There are about 60 or 70 pages of it.[3]

As to Lord Pelham and C^o^, if they dare look the truth in the face, the use of the *paper* to them is—that in case of a reformation on their part, whatever be the *real* motive, they may not be unprovided with an *ostensible* one.

Having notice from you of its existence, if he receives it and gives an answer to it, it is well: if not, or no positive answer comes—in a word if he shuffles as the Addingtons did (not to speak of his Lordship's own constantly useless dispositions entertained for almost this twelvemonth) to work goes the other engine without mercy:[4] then, if they are mad, and stand out, they will be blown to atoms the whole gang—in and out together: or if at any time they submitt and save their bacon, it will be at the expence of their reputation—a prodigious slice of it.

[a] viz: at Brighton.

[b] N^os^ 13, 14.[5]

[1] The original letter, at Pelham Papers, BL Add. MS 33,109, fo. 331, is reproduced in *Correspondence* (*CW*), vii. 71–3.

[2] Bentham presumably had in mind the various prisons built in the late 1780s and early 1790s inspired by plans drawn up by William Blackburn (1750–90), surveyor and architect.

[3] i.e. a draft of what would become the first 'Letter to Lord Pelham': for further details see the Editorial Introduction, pp. xxxiv–xliii above.

[4] i.e. Bentham would publish his writings on New South Wales.

[5] See pp. 48–55 below.

The halter they have about their necks is such an one as I dare venture to say there is no example of in history: for the particular *degree* of its strength, I expect every hour the opinion of a Council of the first eminence:[1] but to know that it is strong enough to do their business, in one way or other, no such Oracle is necessary: *edanch'io*[2] *son pittore*.[3] In the course of the eight years provocation I have endured,[4] I think you must have given me credit for something in the way of *sang froid* & prudence at least, in never having stooped to go to Acheron[5] with my story:—Oh! how would his chops water did he but know of the *bonne bouche* I could treat him with!

Should Lord Pelham wish to see the substance of the paper in print (for example to serve him as an ostensible warrant for doing his duty, and to afford him the plea of necessity for breaking so many illegal and corrupt promises as there will be to break)[6] he could be accommodated without difficulty. The hostilities in it would cost me much less trouble to put out than it did to put them in. They were put in, why? because the conduct of this present Administration has all along been such to me, as never to hold out to me any *hopes* but from their *fears*.

Losing the post of yesterday has since given me time for running over Collins's continuation of his New South Wales History from Sept[r]

[1] The 'Council' was presumably Bentham's friend Sir Samuel Romilly (1757–1818), Solicitor General 1806–7, to whose 'opinion' on the matter Bentham later referred in a letter to him of 27 August 1802: see *Correspondence* (*CW*), vii. 90–1.

[2] MS '*ed io anch'io*' is incorrect.

[3] i.e. 'And I too am a painter.' This was the remark attributed to Antonio Allegri da Correggio (1489–1534) on seeing the painting *The Ecstasy of St Cecilia* by Raffaello Sanzio da Urbino, known as Raphael (1483–1520), at Bologna in 1525. See, for instance, Martin Sherlock, *Letters from an English Traveller. Translated from the French Original printed at Geneva and Paris. With Notes. A new edition, revised and corrected*, London, 1780, pp. 43–4, and Charles M'Cormick, *Memoirs of the Right Honourable Edmund Burke; or, An Impartial Review of His Private Life, His Public Conduct, His Speeches in Parliament, and the different productions of his pen, whether political or literary. Interspersed with A Variety of Curious Anecdotes, and Extracts from his Secret Correspondence with some of the most distinguished characters in Europe*, London, 1797, p. 30.

[4] i.e. since the passing of the Penitentiary Act of 1794 (34 Geo. III, c. 84), which authorized the establishment of a panopticon penitentiary.

[5] Perhaps a slip for Charon. In Greek mythology, Acheron was a son of Helios and either Gaia or Demeter, who had been turned into the underworld river that bore his name, and over which the newly dead would be ferried by Charon. Bentham may have had in mind the leader of the Whig opposition Charles James Fox (1749–1806), Foreign Secretary 1782, 1783, 1806, who would thereupon have ferried the present ministers into opposition.

[6] The most notable of these alleged promises, in Bentham's view, were those made to George John Spencer (1758–1834), second Earl Spencer, Lord Privy Seal 1794, First Lord of the Admiralty 1794–1801, Home Secretary 1806–7, that his land at Battersea Rise would not be compulsorily purchased as a site for a penitentiary and to Robert Grosvenor (1767–1845), styled Viscount Belgrave 1784–1802, second Earl Grosvenor and first Marquis of Westminster, that a penitentiary would not be built on land at Millbank adjacent to his estate.

1796 to August 1801.[1] The predictions I had hazarded as above, are verified to a degree astonishing even to myself. The most promising settlements (Hawkesbury & Norfolk Island) either abandoning or recommended to be abandoned. Famine, at the time of the greatest possible future plenty at all times probable, from any one of five sources—1. Drought. 2. Inundation. 3. Fire (natural). 4. Incendiarism & 5. Savage hostility, against which defence is unavailing. As to returns to England the idea of preventing them on the part of Expirees (an imprisonment always illegal) is now disclaimed, though illegal exceptions continue to be made. Returns by Non-expirees less and less preventible. The profligacy always universal and at its maximum: the D. of P. with M^{r} K,[2] with full notice of it, spreading lies to the contrary, for no better purpose than that of pimping to the whims of Lord B. about his Milbank Estate, to the prejudice of his real interests, as declared by all his professional advisers.[3] *Impeachable* matter crowds in, in such quantities, the only perplexity is about the choice. A single drop in this ocean of guilt and that demonstrable by record, has been declared assets for impeachment by professional men of the first eminence—no party men—and in the coolest blood. I have exhausted my own paper and (I fear) your patience.

Yours &c.

Talk of Bastiles?—New South Wales the true Bastile: the other,[4] if true, a molehill to a mountain.

[1] On his return to Britain, David Collins (1756–1810), Deputy Judge Advocate of New South Wales 1786–96, later Lieutenant-Governor of Van Diemen's Land 1803–10, published *An Account of the English Colony in New South Wales: with Remarks on the Dispositions, Customs, Manners, &c. of the Native Inhabitants of that Country. To which are added, Some Particulars of New Zealand; compiled, by permission, from the MSS. of Lieutenant-Governor King*, London, 1798, which detailed the history of the colony from its establishment in 1788 to his departure in 1796, and then *An Account of the English Colony in New South Wales, From its First Settlement, in January 1788, to August 1801: with Remarks on the Dispositions, Customs, Manners, &c. of the Native Inhabitants of that Country. To which are added, Some Particulars of New Zealand; compiled, by permission, from the MSS. of Lieutenant-Governor King; and An Account of a Voyage Performed by Captain Flinders and Mr. Bass; by which the Existence of a Strait Separating Van Dieman's Land from the Continent of New Holland was Ascertained, Vol. II*, London, 1802, containing, as Bentham states, a continuation of the history of the colony to 1801. Bentham drew extensively on Collins's works in his writings on New South Wales.

[2] William Henry Cavendish Cavendish-Bentinck (1738–1809), third Duke of Portland, First Lord of the Treasury 1783, Home Secretary 1794–1801, and leader of the administration as First Lord of the Treasury 1807–9, and John King (1759–1830), Under Secretary at the Home Office 1791–1806.

[3] Bentham reported to Nepean that, according to Belgrave's Land Steward Edward Boodle (*c.* 1750–1828), Attorney of 41 Lower Brook Street, and his Land Surveyor William Porden (bap. 1755, d. 1822), architect, the panopticon penitentiary would not have resulted in 'any prejudice to the Grosvenor Estate' and, according to Boodle, might even have proved beneficial: see Bentham to Nepean, 10 March 1800, *Correspondence* (*CW*), vi. 263–4.

[4] i.e. the notorious prison in Paris, the storming of which was generally said to have marked the commencement of the French Revolution.

☞ Sir Charles being at this time on his return from Brighton, the above letter, instead of being sent on, was kept by him at his house in Pall Mall. On the 11th Mr B. called on him at Pall Mall, and proposed to him, that instead of troubling himself to hunt for Lord Pelham with but little chance of finding him, he should send to his Lordship the above letter with the accompanying papers {Nos 12, 13, & 14}[1] which he might do without saying it was at the desire of Mr B. Sir Charles accordingly promised to do so: but Mr B, anxious to provide against a sort of treatment to which he had been so much accustomed, as soon as he got home, wrote to Sir Charles a letter of which the following is a copy.

No 7.[2]
Mr Bentham to Sir C. Bunbury.

11th August 1802.

Dear Sir,

If no particular time is mentioned, within which it is expected that notice should be taken of my papers,[3] no notice will ever be taken of them, until some adverse step on my part is known to have been taken, and then it will be said of me—*the fault lies in his own rashness—for had his patience lasted him but a day longer, the notice he was wishing for would have come.* Therefore it is, that I set pen to paper once more, for the purpose of begging of you to say in your letter to Lord Pelham, that on your promising to write to his Lordship on the subject, it was my special request to you, that you would have the goodness to give his Lordship to understand very distinctly, that if, within a week from this date 11th August 1802—I were not fortunate enough to receive the honour of a letter in his Lordship's hand addressed to myself, my *conclusions* would be that no such good fortune ever would befall me, and that my future proceedings would be built on that *declared* ground. If the paper at length were sent in the first instance, the length of it might afford a plea for taking it *ad referendum*: but when the question is merely whether he will or will not read a paper of which these are the marginal contents, that excuse has no place. As to *dictating* a time

[1] See pp. 46–55 below.

[2] An autograph draft of this letter, at BL Add. MS 33,543, fos. 582–3, is reproduced in *Correspondence* (*CW*), vii. 76–7.

[3] i.e. Nos. 13–14, pp. 48–55 below.

to his Majesty's Secretary of State, most certainly I have no such absurd pretensions: but as to any conclusions of my own, presented to my own judgment, by my own memory and my own reflections, they depend upon the *premises*, and are as independent even of my own will, as they are of that of his Majesty's Secretary of State.

Question (possible) on the part of Lord Pelham. How came Mr B. never to apply to me all this time?

Answer 1. One reason is given in the correspondence (Mr B. with Messrs Addington and Vansittart) which you had the goodness to transmit to Lord Pelham.[1]—2. Another is—Mr B. had no pretence to the honour of being *remembered* by his Lordship. Mr B.'s Brother the General had: he was on speaking terms. When Genl B., after permission asked and obtained, waited on Ld P., at his house in Stratton Street, for the purpose of speaking to him on this subject as well as another (it was before he had possession of his office in the Treasury)[2] his Lordship gave him to understand by a servant, that it was *not* convenient to see him then, and did *not* give him to understand, that there would be any *other* time at which a visit would be less unacceptable.

In a separate paper, is a list of documents. The trouble of description will be saved to you if you will have the goodness to send it to me by post, with the date filled up and your signature. Pardon, if you can, this *Major Cautela*[3] (he is a sad troublesome old fellow) and believe me most truly yours &c.

August 1802

[1] See p. 26 & n. above.

[2] According to Mary Sophia Bentham, *The Life of Brigadier-General Sir Samuel Bentham, K.S.G., formerly Inspector-General of Naval Works, lately a Commissioner of His Majesty's Navy, with the Distinct Duty of Civil Architect and Engineer of the Navy*, London, 1862, p. 207, Samuel Bentham, acting in his capacity as Inspector-General of Naval Works, had in June 1801 applied to Pelham (presumably on the grounds that he was about to be appointed Home Secretary) on behalf of 'some of the most deserving' convicts then working at Portsmouth dockyard, whose good conduct had been noted by his subordinates. These men had been ordered to be transported to New South Wales, despite their sentences of transportation being due to expire within twelve months. Though Samuel was not 'fortunate enough to find Mr. Pelham at home, he enclosed to him a list of the deserving men in question', and stated that '"The transporting men of this description, besides being evidently unjust, and productive of unnecessary expense, seems also particularly objectionable on account of its tendency to diminish very materially the inducement for good behaviour in all other convicts, who cannot fail to observe that the most meritorious conduct has only served to single these men out for transportation, whilst numbers of the most profligate and disorderly are suffered to remain in the country till their terms have expired."' Samuel was, Mary Sophia added, 'much gratified by a ready compliance with his request'. Mary Sophia, née Fordyce (1765–1858) had married Samuel on 26 October 1796.

[3] i.e. 'greater caution'.

Sent to Lord Pelham the papers following—
Nº 1. Mr Bentham, Q.S.P. to Sir Charles Bunbury, Brighton. 9th Aug. 1802.[a]
Nº 2. Panopticon versus New South Wales Marginal Contents—2 folio Sheets each written on one side inclosed in Nos 2 & 3.[b]
Nº 3. Introductory Note to dº private to Lord Pelham: one 4to sheet on one side.[c]

Nº 8.[1]
Sir Charles Bunbury to Mr Bentham.

12th August 1802.

Sent to Lord Pelham the papers following—
Nº 1. Mr Bentham, Q.S.P. to Sir Charles Bunbury, Brighton. 9th August 1802.[d]
Nº 2. Panopticon versus New South Wales Marginal Contents—2 folio sheets each written on one side inclosed in Nos 2 & 3.[e]
Nº 3. Introductory Note to dº—private to Lord Pelham: one 4to sheet on one side.[f]

Newmarket, August 13th 1802.

Dear Sir
I sent the above mentioned papers to Lord Pelham's in Stratton Street yesterday morning the 12th. He was expected in Town in a day or two. I hope Lord P. is friendly both to you, & the Panopticon Plan, and therefore should not wish to hold any language that might seem hostile. I will let you know as soon as I hear from him. I did *not* fix any time for his seeing you, as I can do that in a second letter, when I know he is arrived in London, and has received the Papers. Yours &c.

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[a] Nº 6.[2]
[b] Nos 13, 14.[3]
[c] Nº 12.[4]
[d] Nº 6.
[e] Nos 13, 14.
[f] Nº 12.

[1] This copy of the letter is reproduced in *Correspondence* (*CW*), vii. 77–8.
[2] See pp. 30–2 above.
[3] See pp. 48–55 below.
[4] See pp. 46–8 below.

Nº 9.[1]
Sir Charles Bunbury to Mr Bentham.

Great Barton, 20th August 1802.

Dear Sir

I have received the enclosed letter from Lord Pelham,[2] to whom I wrote in favour of the Panopticon Prison, and your strong claims on Government.

I hope his answer (which I send you in confidence) will prove satisfactory, as it seems to imply approbation, and promises immediate attention to the business, and a decision upon it by the meeting of Parliament.

I shall pass through London again in about a month, when I will call upon you and give any further aid in my power.

Yours &c.

If you write to me, be pleased to direct to me at the Post office Chester.

Nº 10.[3]
Lord Pelham to Sir Charles Bunbury.

Wimbledon, 19th August 1802.

My dear Sr Charles

I have received Mr Bentham's Papers, and will find out what steps have been taken by the Treasury before I send for him, as it appears to me that to give him any false hopes, would in the present state of his mind, produce the very worst effects.[a] At all events I will apply my

[a] This observation,[4] about the state of my mind—a point perfectly immaterial to the business in hand—is the only sort of notice that either his Lordship or Mr Addington or Mr Hiley Addington have ever been able to bear to take of it.

When on Thursday 9th of July 1801, after leaving Mr Hiley Addington and Mr Long together,[5] I was sitting in Mr Vansittart's room, according to the appointment he had made with me, Mr Hiley Addington, in passing through

[1] This copy of the letter is reproduced in *Correspondence* (*CW*), vii. 79–80.

[2] i.e. Nº 10 below.

[3] A copy of this letter, at BL Add. MS 33,543, fo. 586, is reproduced in *Correspondence* (*CW*), vii. 79 n.

[4] This note, taken from UC cxxi. 332 (3 September 1802), should strictly appear in an editorial footnote, but has been rendered as a footnote to the text for ease of annotation. For further details see the Editorial Introduction, p. xxxi above.

[5] For Bentham's account of his interview with Hiley Addington and Long on 9 July 1801 see pp. 57–66 below.

mind to the subject, and endeavour to get something settled before the meeting of Parliament.

With very sincere regard ever Your's most faithfully.

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the room, treated me with the observation that *I was angry*: although at that very moment, I was cool enough to be discussing with M^r^ Vansittart, with the most perfect composure, a business of great intricacy, that bore not the smallest reference to it.[1] This is the recourse of men who, knowing that the part they are taking is indefensible, are bent upon persevering in it. So long as the destined victim keeps to the line of sollicitation, they take no notice of him at all: when, for the purpose of trying the powers of fear upon minds callous to justice, he assumes the tone of inculpation, then the notice they take is that he is *angry*: and then the hope is, that his anger may swell to such a pitch as to afford (as in M^r^ Palmer's case)[2] a subsequent pretence for the predetermined injustice. For terrifying the confederacy, and, if possible, frightening them into the path of probity, I did choose to be angry enough, and ever angry enough, and am angry enough and always will be angry enough, and they were and are frightened accordingly: for giving them any advantage over me, I do not choose to be angry enough, nor will they ever find me so.

If, on an action upon a Contract, a Judge were, from the argument of the Counsel, to make the discovery that the Counsel was angry, or from the fact of the bringing of the action that the Plaintiff was angry, and so give judgment for the defendant, his regard for justice would be an exact copy of that which has been manifested now for this year and a half by the Mess^rs^ Addington and Lord Pelham. Whether their real corruption is to be washed clean by my pretended anger, in the eyes of the public and Parliament, is an experiment to be tried.

Though my anger, real or supposed, is nothing to the purpose, that is very far from being the case with the notice they are pleased to take of it. It shews how perfectly self-convicted they are and confounded by conscience—how unable to find so much as the shadow of an excuse.

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[1] In a note dated 27 August 1802 and written for 'A Picture of the Treasury' at UC cxvi. 393, Bentham recalled that Vansittart had written to him on 7 July 1801 (missing), asking him to call on him at 10.30 a.m. on 9 July 1801 to discuss what was almost certainly Bentham's annuity note scheme. See also p. 57 below.

[2] John Palmer (1742–1818), theatre proprietor and postal reformer, MP for Bath 1801–8, had been involved in a long-running dispute with government over compensation for the postal reforms he had initiated, at his own expense but on the basis of a verbal agreement with Pitt, in the 1780s and over his suspension from the office of Surveyor and Comptroller-General of the Mails in 1793, and which culminated on 31 May 1799 in a vote in the House of Commons at which his claims were dismissed. He was eventually awarded compensation by the Grant of John Palmer, Esquire (Post Office Services) Act of 1813 (53 Geo. III, c. 157).

Nº 11.[1]
Mr Bentham to Sir C. Bunbury.

21st Aug. 1802.

My Dear Sir

I have this moment to thank you for your kind letter inclosing that of Lord Pelham.[2] And has this passed upon Sir Charles Bunbury for 'satisfaction'? My dear Sir, you have not been at the fair lately. This is the old lay over and over for the hundredth time. This is Sanconiathon and the Cosmogony, again and again, with Ephraim Jenkins,[3] Pitt, Rose,[4] Long, King, Portland, Addington, Robertson,[5] Lathrop Murray[6] at the bottom of it.

To be serious.—In your situation, stranger as you happily are to the incidents, with which my memory is stocked, in such minute detail and such unhappy abundance, his letter appears to have produced (as it was but natural it should produce) the effect it was intended to produce—viz: that of appearing to 'imply approbation'. But what approbation?—that very approbation which was somewhat more than implied almost a twelvemonth ago, but without producing the smallest particle of that satisfaction, the hope of which (such is your good opinion of your friend) continues notwithstanding to be produced by it. For my own part, I wish it were possible for me to see any thing better in it than a *qualis ab incepto*[7]—a perseverance in the same system of complicity and evasion, that he and his Colleagues adopted at their entrance into the Ministry, with the materials for decision passing through their hands, and staring them in the face. Till the

[1] A copy of this letter, at BL Add. MS 33,543, fos. 593–6, is reproduced in *Correspondence* (*CW*), vii. 81–7.

[2] i.e. Nº 10 above.

[3] In *The Vicar of Wakefield: A Tale. Supposed to be written by Himself*, 2 vols., Salisbury, 1766, by Oliver Goldsmith (*c.* 1728–74), Ephraim Jenkinson convinces the unworldly Vicar, the Reverend Dr Primrose, of his intellectual credentials by making a speech about the creation of the world, citing Sanchoniathon as a philosopher who had attempted to explain cosmogony. Jenkinson swindles the Vicar of some money, but when the Vicar encounters him again, he exposes him as a fraud.

[4] George Rose (1744–1818), Secretary to the Treasury 1782–3, 1783–1801, Joint Paymaster General and Joint Vice-President of the Board of Trade 1804–6, Vice-President of the Board of Trade 1807–12, Treasurer of the Navy 1807–18.

[5] Possibly a female swindler named Robinson who, according to 'Chronicle', pp. 12–13, in *The Annual Register, or a View of the History, Politics, and Literature, For the Year 1801*, London, 1802, had defrauded tradesmen of goods valued at upwards of £20,000.

[6] The *London Gazette*, 30 March–3 April 1802, p. 335, announced that on 1 April 1802 a Royal Warrant had granted permission to a person styling himself 'Sir Robert Lathropp Murray, bart.' to change his surname to 'Brown-Clarke', but according to ibid., 10–13 April 1802, p. 374, on 13 April 1802 the Warrant had been cancelled. *The Times*, 15 April 1802, reported that the person concerned had no connection with the baronetage.

[7] See Horace (Quintus Horatius Flaccus), *Ars Poetica*, 127: *qualis ab incepto processerit, et sibi constet*, i.e. 'have it kept to the end even as it came forth at the first, and have it self-consistent'.

meeting of Parliament,[1] he has obtained a respite from you (so he thinks at least) by his talk about 'endeavours': when Parliament meets, he shirks you (as before) as long as he can, and when you have caught him at last, and forced him to speak out, then it is that you will learn, that *he is sorry for it but his 'endeavours' have been fruitless*.

The amusement it affords me to see what turn evasion takes in such a mind—in such a situation—and in such circumstances—is the only satisfaction I have derived from his epistle. The two characters in which he affects to view me, are—that of a patient labouring under a sort of mental derangement (though, the hope is, but a temporary one) and that of a suitor—an unfledged suitor—prone to embrace phantoms for realities, and panting for the felicity of falling at his feet. As to the '*present state of*' *my* '*mind*' you may venture to assure his Lordship, that it is precisely the same as it was above a twelvemonth ago, as he has seen in my papers (if he has been pleased to look at them)—in my papers of that date[2]—as it has been ever since—and as it will continue to be, so long as the like impressions continue to be made upon it by the action of the like causes. He may see the same 'mind' in the same 'state' in my printed evidence, as laid, in June 1798, before the Committee of Finance:[3] and, if such things were worth preserving, you yourself my good Sir, could furnish him with some copies of it, written four years earlier,[4] at a time when perfidy and corruption were in the bud, and when Lord Spencer, after seating himself for the first time at the same table with M^{r} Pitt, stood up and said, *I am now above the law*—M^{r} Pitt answering and saying—*So you are*.[5]—For his Lordship's determination not to 'give' me any of those 'false hopes' which, in a state of mind less compassionable, another man in my place might have been treated with, and which I have been saved from being plied with in consideration of the tremendous effects (those indescribable '*worst effects*') of which an application of that sort might in my place have been productive, he is certainly not to be blamed: not indeed in respect of any such bad effects, or any effects

[1] The newly elected Parliament opened its session on 16 November 1802.

[2] See pp. 26–7 above.

[3] Bentham's examination before the House of Commons Select Committee on Finance on 23 June 1798 had been printed in 'Twenty-Eighth Report from the Select Committee on Finance, &c. Police, including Convict Establishments', 26 June 1798, Appendix G, in *House of Commons Sessional Papers of the Eighteenth Century* (1798), cxii. 3–216 at 78–82.

[4] Bentham perhaps had in mind his 'Memorial' addressed to the Lords Commissioners of the Treasury of 16 August 1794, written with a view to acquiring the originally designated site at Battersea Rise for the proposed panopticon penitentiary. A copy of the 'Memorial' is at UC cxviii. 43–66.

[5] Bentham believed that Spencer had used his position in Pitt's Cabinet to prevent the compulsory purchase of his land at Battersea Rise as the site for the panopticon penitentiary: see also p. 31 & n. above.

that any machinery in use for the raising of such phantoms could have produced (for all the powers of mechanism could not add any thing to the exhibitions of that sort that have been so familiar to me for these eight years), but because no attempt in that way can be of any use to him and his associates, whereas the abstaining from it leaves a load the less on their character and their conscience.

Throughout the whole of the business, from the time when the finger of corrupt and clandestine opposition was held up by the first in the train of successive Lords,[1] the general rule has been to give nothing but '*hopes*', and those hopes 'false' ones. Witness one sample instead of a thousand:—Orders—official orders (24th March 1800) to make preparations for 2,000 Convicts—these orders in a letter concerted, between the two floors of the Treasury,[2] for the express (and afterwards even avowed!) purpose, of making a pretence for giving none.[3] All this (you say) is old and stale. The new incident then, is—that for once—*pro hâc vice*[4]—this rule, is now (it seems) to be departed from: departed from, not *de jure*, but *ex gratiâ*,[5] in consideration of the particular circumstances of this very particular case. Understand always, provided his Lordship continues to the end in the sentiments now professed: an expectation in which this very letter forbids me to indulge myself.

I will tell you, my good Sir, what their plan, and what my chance is under it: judge whether it can content me.

In the first place they fall at the feet of the '*bag of oats*:'[a] that gained (which is impossible) then, with that in their hand, they fall at the feet (such feet as adders have) of the *deaf adder*:[6]—I mean the pious

[a] A most noble Duke, whose aspect, on the occasion of any application made to him which is either unpleasant to him or unintelligible (of which latter sort are most applications that are made to him) has been depictured under that emblem by persons who have had more opportunities of observing it than I have.[7]

[1] i.e. Spencer and then Belgrave.

[2] The Treasury and the Home Office were located on the first and second floors of the Treasury Building respectively.

[3] See Long to Bentham, 25 March 1800, *Correspondence* (*CW*), vi. 279, stating that the Treasury had agreed that the proposed panopticon penitentiary should accommodate 2,000 prisoners. For further details concerning Bentham's negotiations with the Treasury following his receipt of this letter see the Editorial Introduction, pp. xxvi–xxviii above.

[4] i.e. 'for this occasion only'.

[5] i.e. 'not from right, but out of grace'.

[6] See Psalm 58: 4–5.

[7] Bentham perhaps had in the mind 'The Farmers Toast', 20 March 1801, in which happy and prosperous farmers drink a toast to the Duke of Portland against the backdrop of piles of sacks inscribed 'Sample'. A widely publicized letter from Portland to George Spencer (1739–1817), fourth Duke of Marlborough, in his capacity as Lord Lieutenant of Oxfordshire, had been held responsible for a rise in the price of corn by encouraging farmers to withhold their corn from the market: see, for instance, J.W., *Democracy the Cause of the Present Dearth, and Sufferings of the Poor*, London, 1801, p. 17.

Lord, who is so well known to take that hero of Scripture history for his model:[1] but lest they should fail in either—(and they will fail in both—) thence come the expeditions of discovery—the expeditions for finding out what steps have been taken at the Treasury, and the fears about the giving of false hopes. Shut against every thing that could be said about his land, and about the effect of the Penitentiary Establishment upon the value of it, by his Land Surveyor and his Land Steward,[2] you will judge whether the ears of that personage are likely to open themselves with more facility upon those topics to the representations of a First Lord of his Majesty's Treasury, or his Majesty's Secretary of State.

So long ago as the 10th of September 1801, Mr Vansittart (as declared by him in a letter, copy of which had been already for a month or two in the hands of Lord Pelham at his Lordship's desire, as signified to you) Mr Vansittart, acting Secretary to the Treasury, was labouring in the fruitless endeavour of finding '*an opportunity of consulting with Lord Pelham*'.[3] Now on the 19th of August 1802, Lord Pelham on his part, is setting out on this his expedition of discovery, bent upon '*finding out*' (maugre all concealments) what steps have taken 'by the Treasury', i:e: by Mr Vansittart: the packet put by you as above into his Lordship's hands, certifying that no steps at all had been taken by the Treasury other than those exhibited by it, and the motionless state of the business being the declared cause why he was then troubled with it.

All this while, within a stone's throw of both these Ministers, whose efforts to find one another out, at the distance of the two contiguous floors of the same house, had for a twelvemonth been so unavailing—in sight of them both, sat Mr (now Sir Evan) Nepean,[4] from whom both personages, and above both Mr Addington, were determined with equal resolution never to find out what steps to his (Sir Evan's) knowledge 'had been taken by the Treasury' (the former Treasury)[5] in the business—determined by this most coercive of all reasons—that he was the only man in office from whom they could be *apprehensive* of receiving any *true* account of it.

In a copy I sent of this letter of Mr Vansittart's among other papers in Decr last to Mr Wilberforce, I find a comment which accompanied it in

[1] On 27 May 1799 Belgrave had introduced a Bill into the House of Commons for the suppression of Sunday newspapers, on the grounds that they had become 'an additional weapon in the hands of infidelity', but on 11 June 1799 the measure had been defeated on its second reading. See *Parliamentary Register* (1799), viii. 601 and ix. 1–8.

[2] i.e. Porden and Boodle respectively: see p. 32 n. above.

[3] See Vansittart to Bentham, 10 September 1801, *Correspondence* (*CW*), vi. 446.

[4] Nepean had been raised to the Baronetage on 10 July 1802.

[5] i.e. under the former administration of Pitt.

pencil, in these words. 'When Mr Wilberforce spoke on the subject to Lord Pelham, neither Mr Vansittart, nor either of the Mr Addington's, had had any such opportunity. They knew better things. They did not intend to have it: they durst not have it to any purpose.'[1]

To return to his Lordship's letter. The point I looked to in it, was—whether, amidst so much guilt—by the former people, amidst accusations upon accusations, never yet denied—frequently, though always in the view of adding to it, even confessed—any symptoms were to be found, of those regrets, which, in his situation, a man who meant honestly and really intended to turn over a new leaf, would, in my view of the matter, not dissemble. Finding no such indications, my exertions—(I mean in the line spoken of in my former letters) far from being relaxed, will be quickened, by the intended opiate.

One thing I understand pretty distinctly: *dates* are to me a sufficient proof of it. It is after taking a week to hear,[2] and hearing accordingly, and from the Treasury, not only what steps have been taken, but what steps (under providence) will be taken, that he is setting out upon his expedition, to that unknown and distant clime, for the discovery of the facts that have been in his pocket for these six weeks.[3] In this circumstance my little mind, even '*in the present state of it*', reads the present state of two great ones.[4] I see terror enough in both places—not yet enough indeed to open either of them like the little one to fearless honesty, but however to drive gentlemen upon this fresh and *speaking* attempt at evasion, instead of their former *silence*. I see enough to put them upon employing the time they think they have thus gained—upon employing it, and even in good earnest—in holding councils of war about the job with those from whom they received it, and in those councils considering which of the two repugnant engagements it were best to break definitively—(the original legal engagement, or the last in the succession of illegal ones:)[5] and in the former event (being the most probable one) by what kind of botchery the breach may be best cobbled. It is to this that his Lordship's mind is '*at all events*' *to* '*apply*' *itself*: for if it had at any more straitforward—any less crooked object—what

[1] For Wilberforce's conversation with Pelham see p. 43 & n. below.

[2] In the copy of the letter at BL Add. MS 33,543, fos. 593–6, Bentham has noted at this point: 'My letter was sent him to his house in Town 12 Aug. 180⟨2.⟩ His letter, to Sir C. Bunbury, is date⟨d⟩ 19th Aug.' Bunbury had forward Bentham's letter to Pelham on 12 August 1802 (see p. 35 above), and Pelham had responded on 19 August 1802 (see pp. 36–7 above).

[3] Presumably since Bunbury had sent Pelham the papers that Bentham had asked him to forward in No 2, p. 26 above.

[4] In the draft of the letter at BL Add. MS 33,543, fos. 609–10, Bentham has identified the 'two great' minds as Pelham and Addington.

[5] i.e. the Penitentiary Act of 1794 or the promise made to Belgrave respectively.

should have hindered its applying itself to it near a *twelvemonth* ago,[1] upon the spur of those impressions which even then it found its convenience in pretending to have received? what *has* it been applying itself to all this while? what is it *now* applying itself to? What was it put for where it is? What did it take the sceptre for from King Log? Was it to give him a King Stump for Successor?[2]

In November last at the latest (how much earlier I know not) Lord Pelham thought New South Wales a bad thing—he thought the Penitentiary plan a good thing.[3] At that same time he knew (for all his industry could not prevent him from knowing) that it was his duty to see to the carrying of that good thing into effect, without a moment's further delay; and that every day lost to it was not only a day of fraud, corruption and injustice, but a day of contempt & disobedience to Parliament. And now it is, that at the end of nine months from that time, after promise upon promise, and neglect upon neglect, and after receiving papers upon papers, the object of which was to render it no longer practicable for him not to know what he could not but know already—now, when the post of neglect and ignorance is no longer tenable—now it is at last that he is to '*apply his mind*' to the subject, under the *declared* apprehension, that any '*hopes*' that might be entertained of seeing his Majesty's Secretary of State, and the First Lord of his Majesty's Treasury, do their duty, might prove '*false*' ones!

One thing I should be glad to know, as to the 'present state' of that same noble mind. Is it out of doubt with him, or is it not yet out of doubt, that there is no such virtue in New South Wales as to quash an imperative law of Parliament, and to rescind the engagements taken in regard to Panopticon in consequence? In the former case, why does he not come forward with his declared support immediately? In the other case, why did he not call upon me for the *proffered* papers,[4] the object of which was to put an end to all doubts? I mean always to all pretences of such doubts? My calculation was—that, for appearance sake at least, his Lordship might wish to have it supposed, that it was by considerations relative to the *merits*, that his suffrage, if favourable to Panopticon, had been gained: that accordingly he would either read, or make as if he had read, those papers: but in this you see already one article in my apprehended budget of 'false hopes'.

[1] In the copy of the letter at BL Add. MS 33,543, fos. 593–6, Bentham has noted at this point: 'Dec^{r} or Nov^{r} 1801. M^{r} Wilberforce, as he told me in Dec^{r} had been speaking to L^{d} Pelham, by whom the sentiments expressed were favourable.' For Bentham's contact with Wilberforce in early December 1801 see *Correspondence* (*CW*), vi. 460–1, 462–4.

[2] In Aesop's fable, when the frogs complained to Zeus of the inactivity of the log he had sent them as a king, he then sent them a stork, which ate them all up.

[3] Presumably when Pelham had his conversation with Wilberforce.

[4] i.e. the text corresponding to the marginal contents in N^{os} 12–13, pp. 48–55 below.

If, instead of wavering between corruption and incorruption, and to hide his indecision, pretending to be going upon sham errands, while he was sounding the ground and looking out for loop-holes—if, instead of this, he had decided manfully, and taken at once the post of duty, a letter still shorter than even this short one might have sufficed. There lies the engagement of his predecessor for the 2,000 Prisoners:[1] there lies the Memorial (I mean the *suppressed* one you put into his hands) expressive of the *terms* grounded on that engagement:[2] those very terms to which the approbation of Mr Long had been whispered over and again to Mr Nepean, under the determination of not granting either *those* terms or any *other*.[3] To send this Memorial to the Treasury, with a letter urging compliance with the prayer of it, was and is the one thing needful[4] on his Lordship's part. I mean officially, and in black and white: verbal explanations might have been sufficient for the rest. This was exactly the course taken in 1794 by Mr Dundas,[5] to wash his hands of the corruption he saw even then going on between Mr Pitt, and the first of the titled subscribers to his statue.[6] Think not however that I mean this as a judgment altogether peremptory upon his Lordship's honesty: but you see that if the badness of these 'very worst effects' depends upon the sanguineness of my hopes, nothing very serious is to be apprehended. I shall be upon the look out for you at the time you have the goodness to mention. By that time sincerity will have been manifested or disproved. More could not be done by man than you have done. You see I have scarce left myself room to thank you for it, or to stamp upon my gratitude the mark of

Jeremy Bentham.

P.S. My confidence about the grand globe of compression spoken of in my last,[7] has received—and in the amplest manner—the confirmation

[1] See p. 40 & n. above.

[2] i.e. the 'Armed Memorial': see p. 27 n. above.

[3] In material written for 'A Picture of the Treasury' at UC cxxi. 135–6 (23 February 1802), in relation to the meeting between Long, White, Nepean, and Bentham himself on 10 June 1800 (see p. 27 n. above), Bentham claimed that Long's strategy had been to pretend to Nepean that he had no objection to the 'substance' of the 'Armed Memorial'.

[4] Luke 10: 42.

[5] On 31 October 1794 Bentham had sent a memorial to Henry Dundas (1742–1811), first Viscount Melville, Home Secretary 1791–4, Secretary for War 1794–1801, First Lord of the Admiralty 1804–5, and on either 1 or 2 November 1794, according to Bentham's docket, Dundas had forwarded it to the Treasury: see Bentham to Dundas, 31 October 1794, *The Correspondence of Jeremy Bentham*, vol. v, ed. A.T. Milne, London, 1981 (*CW*), p. 99 & n.

[6] Spencer's was the first titled name in a list of subscribers, dated 3 May 1802, for the erection in the City of London of a statue of Pitt, which appeared in *The Times*, 11 May 1802. In the event, the project was halted by Pitt.

[7] In the copy of the letter at BL Add. MS 33,543, fos. 593–6, Bentham has noted at this point: 'The Praemunire under the *Habeas Corpus* Act.' In the Habeas Corpus Act of 1679 (31 Car. II, c. 2, § 12), it was declared illegal to send any subject of the realm a prisoner into parts overseas subject to the penalties ordained under the Statute of Praemunire of 1393

hinted at.[1] *Impeachment* is a popgun to it. I have sent my homage to Lord Pelham in the shape of three Russia-bound volumes:[2] but of MS not a syllable.

At my last conference with Sir Charles Bunbury (it was at his house in Pall Mall 11th August 1802) he had the goodness to make a spontaneous apology for his inaction, from the time when the business went before the Committee of Finance, to the time of the change in Administration.[3] He mentioned the resentment of Messrs Pitt and Rose at the change they had found it necessary to make in a tax bill at his instance,[4] as a bar set up in two such implacable minds to the success of any exertions he could have made: and he added, that impressed as he was with the idea of Mr H. Thornton's influence over Mr Pitt, when (as he thought) he saw the business in Mr Thornton's hands, he looked upon the success of it as a matter of course.[5]

(16 Ric. II, c. 5). Bentham perhaps had in mind his letter to Bunbury of 9 August 1802, No 6, pp. 30–2 above, rather than his letter of 11 August 1802, No 7, pp. 33–5 above.

[1] Bentham appears to have sent a draft of 'The True Bastile' (the original title of 'A Plea for the Constitution', pp. 313–94 below) to Romilly (see Bentham to Étienne Dumont, 29 August 1802, *Correspondence* (*CW*), vii. 96), which Romilly had returned to Bentham on 28 August 1802 (see ibid. 92), with the comment: 'What you state respecting Botany Bay has very much astonished me. It has the more astonished me because I take the law upon the subject to be exactly as you have stated it.' For further details see the Editorial Introduction, pp. lxxxii–lxxxiii above. Bentham's Genevan friend and editor Pierre Étienne Louis Dumont (1759–1829) produced five recensions of his writings between 1802 and 1828.

[2] i.e. volumes bound in Russian leather. The 'homage' in question perhaps consisted of 'Panopticon; or, The Inspection-House', which had been printed in three volumes in 1791.

[3] i.e. between June 1798, when the Twenty-Eighth Report of the Finance Committee was printed, and the resignation of Pitt and appointment of Addington as leader of the administration in March 1801.

[4] In a campaign begun on 22 December 1797 and culminating in a vote in the House of Commons on 25 June 1798, Bunbury had, despite opposition from Pitt, secured the exemption of market carts from taxation under the Duty on Taxed Carts Act of 1798 (38 Geo. III, c. 93): see *Parliamentary Register* (1797) iv. 504; (1798) v. 340–1, 409–10; (1798) vi. 402–3, 453–4.

[5] Henry Thornton (1760–1815), banker, political economist, and philanthropist, MP for Southwark 1782–1815, as a member of the House of Commons Select Committee on Finance, had actively supported the panopticon penitentiary scheme: see Thornton to Bentham, n.d. March 1798 and 27 June 1798 (two letters), *Correspondence* (*CW*), vi. 18 and 47–9 respectively.

N° 12.[1]
Title in case of impression.

Panopticon versus New South Wales: containing a comparative view of the Penitentiary system and the new penal Colonization system in respect of their subserviency to the several ends of penal justice: in a letter to Lord Pelham &c. to which may perhaps be subjoined some observations on Colonies in general.

Introductory Note—private to Lord P. The sheets now detached, were written in the course of a Narrative,[2] which though at its outset destined to be submitted in the way of private communication, to the Noble Lord to whom it is addressed, became in its progress too voluminous for manuscript. In case of publication, a word or two, to do away the abruptness of the commencement, would be prefixed of course.

The *three* other of the *four* grounds of '*relinquishment*' of which *this* makes the *fourth* were 1. Lapse of time. 2. Encrease of terms (Panopticon.) 3. Improvement in existing Prisons. {This fourth: being the 'improved state of the Colony' of New South Wales.} The documents in which the disposition to 'relinquishment' is manifested, are those printed in 'Further Proceedings of the Treasury' 12th June 1801.[3] Not long after, the intention—the unchanging and unchangeable intention—of *establishment* instead of *relinquishment* was most

[1] The original letter, at Pelham Papers, BL Add. MS 33,109, fo. 332, is reproduced in *Correspondence* (*CW*), vii. 74–5. Together with N^os^ 13–14, pp. 48–55 below, it was sent by Bentham to Bunbury on 9 August 1802, and forwarded by him to Pelham on 12 August 1802: see p. 35 above.

[2] i.e. 'A Picture of the Treasury'.

[3] 'Copy of Treasury Minute, of the 13th August 1800', a letter from Charles Long to John King of 25 August 1800, a letter from King to Long in response of 17 March 1801, 'Copy of Treasury Minute of 18th of March 1801', and a letter from Long to Bentham of 24 March 1801, appeared under the heading of '28th Report—Penitentiary Establishment', in 'Further Proceedings of the Lords Commissioners of His Majesty's Treasury, &c. respecting the matters stated in the Reports of the Committee of Finance, so far as they relate to the several offices concerned in the Receipt and Expenditure of the Public Money', 12 June 1801, in *Commons Sessional Papers* (1801), vi. 585–7. In the Treasury Minute, 13 August 1800, it was stated that, 'My Lords, considering the Number of Years which have elapsed since the first Steps were taken, with a View to the adoption of any Plan of this Kind, and the Variation of Circumstances which have occurred during that Period; the improved State of the Colony of New South Wales, . . . as well as the various Improvements which have since taken place in the different Gaols of this Kingdom; and the great Increase of Terms which Mr. Bentham now proposes; are of Opinion that it would not be expedient to carry into Effect this Plan to the whole Extent proposed by Mr. Bentham. But they submit to his Grace [i.e. Portland], whether, by way of Experiment, it may be fit to carry it into Effect on a more limited Scale, or whether under all the Circumstances it may be adviseable, at the present Time, to relinquish the Plan altogether. In the latter Event, their Lordships shall feel it incumbent on them to make such Compensation to Mr. Bentham as the Loss he has sustained in preparing for this Undertaking may appear to them to deserve.'

vehemently asserted, in a conversation brought on by design, under the mask of accident, for the purpose of evading my demand of justice,[1] against suppressions having the effect of forgery, committed in support of insinuations so glaringly false that, though official, no man could be found bold enough to authenticate them with his name:—('See *Further Proceedings of Treasury 15th July 1800 p. 50*')[2] an omission altogether unprecedented. The course taken for impressing me with the belief of an intention never entertained, was—the accusing me, with an air of affected peevishness, of *stupidity* for so much as doubting of it, or rather of *insincerity* for *pretending* to look upon it as dubious. But the utter falshood of those protestations was as fully known to me at the time, as it has since been abundantly confirmed by the event. The pretended intention of establishment upon a reduced scale, with compensation for the deficiency, was seen through at the instant.[3] The falshood of the protestation is established by those very declarations of the protestor's own, which are in print,[4] and which in the confusion of trembling guilt he had forgotten, together with every thing else that he had ever done, or read, or written, or said, in Parliament or elsewhere. The intention expressed in the documents is neither *relinquishment* nor *establishment*, but either the one or the other, to be determined by the computed convenience of each moment, according as fear of disgrace, or confidence of impunity, might happen to predominate.

[1] For Bentham's account of his meeting with Hiley Addington and Long on 9 July 1801 see pp. 57–66 below.

[2] This reference, which appears in the margin of the Treasury Minute of 13 August 1800 as reproduced in *Commons Sessional Papers* (1801), vi. 585, is to an unsigned document dated 'Treasury Chambers, 14th July 1800', which appears under the heading of '28th Report—Penitentiary Establishment', in 'Further Proceedings of the Lords Commissioners of His Majesty's Treasury, &c. respecting the matters stated in the Reports of the Committee of Finance, so far as they relate to the several offices concerned in the Receipt and Expenditure of the Public Money', 15 July 1800, in *Commons Sessional Papers of the Eighteenth Century* (1800), cxiv. 50, and in which it was noted that lands had been purchased at Tothill Fields for a penitentiary establishment, but that 'the further Proceedings in the Business is delayed in consequence of Mr. Bentham having, on the 20th of June 1800, presented a new Statement and Memorial to the Board, differing materially as to the Terms on which he proposes to enter upon the Undertaking, from those which he formerly offered, which Statement and Memorial are now under the consideration of the Board'.

[3] In his letter to Bentham of 24 March 1801, Long, writing on behalf of the Treasury, had asked Bentham to 'state under what Terms you are willing to contract for building a Penitentiary House for 500 Persons, and for maintaining the Convicts, if the Measure should be resolved upon; and if upon Consideration of that Proposal, the Plan should be relinquished altogether, my Lords desire you inform them what Compensation you conceive yourself entitled to for your Expenses and Loss of Time in preparing for the Undertaking': see *Commons Sessional Papers* (1801), vi. 587, and *Correspondence* (*CW*), vi. 382–3.

[4] i.e. the Treasury Minute of 18 March 1801 and the subsequent letter to Bentham of 24 March 1801.

The colours laid in this paper on the characters of *persons*, are such as had been forced into my hands, by the incidents related in preceding ones.[1] Were this part to be printed separately, the passages bearing reference to these incidents might come to be omitted, modified, or enlarged, according to circumstances, such as the order in which each publication might happen to present itself &c. &c.

As to personalities, no statement of equal length was perhaps ever so compleatly *im*personalized, as that given in my Evidence as printed in the 28th Report of the Committee on Finance 26th June 1798:[2] a complaint produced by a *then* no more than *four* years course of perfidy,[3] for a purpose too corrupt to have been ever defended, though too notorious to have been ever denied.[4] The only reward for the forbearance manifested under that injury having been the doubling the duration of it (for to this purpose the variegated mass of additional injury crowded into the same space is scarce worth mentioning) it is thus by necessity that I find myself impelled to hold men up to view individually, and by their names, lest, for want of a mark to fix upon, public indignation should spend itself upon the air without any use to justice.

N° 13.
Panopticon versus New South Wales Marginal Contents (not yet printed 9th August 1802) in two Sheets. Sheet 1.

I. Ends of penal justice the standard.[5]

1. Of the four grounds that have been alledged this is the only remaining one upon which the 'relinquishment' has been attempted to be justified.

2. It supposes that: 1. The New South Wales system is preferable to the Panopticon system.

3.—and [2.] to such a degree as to justify the relinquishment of the latter spite of all inconveniences of it, breach of public faith included.

4. If the New South Wales system is preferable, it must be with reference to the five *ends* of punishment viz:

1. Example.
2. Reformation.
3. Incapacitation (for fresh offences).
4. Compensation.
5. Economy.

[1] i.e. in 'A Picture of the Treasury'.
[2] See p. 39 n. above.
[3] i.e. from the passing of the Penitentiary Act of 1794.
[4] i.e. the promise made to Spencer: see p. 31 & n. above.
[5] For the text corresponding to the marginal contents reproduced under this heading see 'Letter to Lord Pelham', pp. 73–5 below.

II. 1. Example.[1]

1. Example. With reference to this end, New South Wales does nothing: the whole scene being out of view.

2. Under the Panopticon system, exemplarity is at its *maximum*.

III. 2. Reformation.[2]

I. General Principles.

1. New South Wales system—its radical inaptitude for reformation. Cause of the demand for reformation—a sort of morbid sensibility coupled with the want of *inspection* for the checking of it. Analogy between delinquents and persons of tender age or insane.

2. Under the New South Wales system, the power of *inspection* is at its *minimum*. No check to any forbidden practice or propensity: viz—

1. Sloth.
2. Drunkenness.
3. Gaming.
4. Venereal irregularities.
5. Profaneness.
6. Quarrelsomeness.
7. Mischievousness.
8. Rapacity.
9. Improvidence.
10. Prodigality.

3. Under the Panopticon system, at its maximum: scarce one of the ten is *possible*.

4. Instead of *extra-inspection*, it was thought fit to send out an ordinary assortment of such instruments of *reformation*, dead and living, as are looked upon as sufficient in *ordinary* situations.

4.[(a)] Of Priests, if useful, there should be one to each distinct settlement (i:e: no individual should be settled any where but within a short walk's distance of a Church), whereas there was scarce one to five.

Also one to each Religion. There was none to 887 Persons in Norfolk Island for | | years.

5. Cause of the indifference to all effectual means:—being sent purposely out of *sight*, their dependence was on their being out of *mind*: viz: the public mind.

6. Under the Panopticon system, the inspective and reformative power could not but be applied and to the greatest possible advantage.

II. Experience, per Collins.

7. The badness, absolute as well as comparative, of the New South Wales system, being thus deduced from *theory*, follows the confirmation of it from *experience*.

8. Chief evidence, its professed advocate, the Judge Advocate. The determined suppression of other documents is thereby rendered useless.

9. Preface shewing his disposition to put the best face upon the system that truth would permitt.

[1] For the text corresponding to the marginal contents reproduced under this heading see 'Letter to Lord Pelham', p. 75 below.

[2] For the text corresponding to the marginal contents reproduced under this heading see 'Letter to Lord Pelham', pp. 75–95 below.

10. Care taken here, to avoid misrepresenting his evidence.

11. According to him, down to September 1796 worthlessness was at the *highest pitch*, and *universal*; with scarce one exception in a hundred or more.

12. But, the longer they have had the effect of the New South Wales discipline, and the more they are out of the way of *inspection*, they are by much the worse.

12.[a] Passages in proof of both propositions.

13. Further evidence relative to *incapacitation &c.* and *economy* will be exhibited under those heads.

III. Later experience.

14. State of the Colony in respect of reformation at subsequent periods according to general results from other evidence entitled to particular confidence.

15. 1. 20th May 1799 from Governor Hunter.

16. From that evidence reformation appears hopeless—depending on a condition repugnant to the end of the institution viz: the not sending thither the worst disposed.

16.[a] Passages in Collins speaking of the necessity and absence of inspection.

17. 2. 7th Octr 1800 from the Lady of the commanding officer.

18. Carelessness &c. of the Duke of Portland and Mr King &c. of the rising generation in their '*improved Colony*.'

19. While Lord Belgrave was 'propagating the Gospel', the above, for his accommodation, were in conspiracy with Mr Pitt &c. propagating immorality in New South Wales.

IV. Contra in Old Colonies.

20. Objection from experience answered. Have not Colonies proved conducive to reformation? Yes: but not *such* Colonies. Efficient causes of this property in the old Colonies—

1. Community, *ready formed*.
2. The great majority, *thrifty*.
3. *Employer*, ready—
4. —a man of *thrift*.
5. *Neighbours*, ready to join against a fugitive or refractory bondsman.
6. The *bondsmen*, in small proportion and dispersed.
7. *Masters*, *engaged* by interest to reform them.
8. A thrifty community to *settle in*, *after* emancipation:—

21. Not these circumstances but the opposite ones were, and are, *inherent* in the New South Wales system.

21.[a] Quotations. References to Collins, as to the *Natives*.

22. These obstacles to reformation are irremoveable. A majority of thrifty settlers being hopeless for many generations, for want of *security* as well as *sources of profit*.

23. The exertions made under these circumstances by Administration to inveigle honest settlers are a cruel fraud. Reference to Economy for proofs.

IV. 3. Incapacitation[1]

I. This the sole real end.

1. Incapacitation by mere distance, without reformation, seems to have been the only real object in this choice.

2. Misbehaviour, the result of *non-reformation*, not being regarded, so as it was out of Britain & *unseen*.

3. The contrivance was in every instance either unjust or inefficacious.

II. Injustice of the design.

4. Injustice of the expedient.

Historical sketch.—Since the Restoration, transportation to the American Colonies has been coming into use; and has been marked out, in lots of *different* lengths, with great apparent care.

5. The Penitentiary Act of 1779 affords an eminent example of this care.

6. To America, transportation had partly fulfilled the objects of punishment, partly failed.

7. Reformation being difficult, and incapacitation by local exclusion appearing easy, when a fresh spot was to be looked out for, New South Wales recommended itself on the score of *distance*.

8. *Distance* was the only circumstance that *could* have recommended it.

9. In idea, the expedient was a *simple* one.

10. But the *effects*, on the system of transportation punishment, as laid down in so many laws, were extremely *complicated*.

11. In an oblique way (which will be delineated presently), the punishment in almost all cases of transportation underwent an *encrease* prodigious and *unprecedented*.

12. In the almost obsolete practice with regard to *mayhem*, damages found by the Jury may be encreased by the Judge—but the benefit goes to the party injured.

13. In the case of *pardon*, executive rigour is made to fall *short* of that of the law—in no other case to stretch *beyond* the law, as here.

14. It is no justification to say the *right* of return remains—since the physical power is taken away or meant to be taken away, more especially than it could be even by taking away the right.

15. The existing law of transportation *is* as much broke in upon, as the law against *murder* would be, by throwing a man into a dungeon and leaving him to starve.

16. The mode of producing the effect was particularly objectionable, as well as the effect produced.

The alteration would have been unjust, though it had been made *regularly* by Parliament.

17. But it was made by a deceit put upon Parliament:—powers

[1] For the text corresponding to the marginal contents reproduced under this heading see 'Letter to Lord Pelham', pp. 96–114 below.

given, for the purpose of *continuing* transportation on its *former* footing, being applied to the putting it upon a quite *different* footing.

18. Even in the Act of 1787 in which New South Wales was mentioned, there was another deceit on Parliament, which will be laid open elsewhere.

19. The punishments being still, by the tenor of the several laws, of *different* lengths, while in *effect* they were to be all of *one length*—viz: perpetual—hence a continual (though unheeded) mockery of justice on the part of Parliament as well as Judges.

20. With respect to Convicts already under sentence, the extension had all the iniquity of an *ex post facto* law.

21. Pernicious example set by this perfidy on the part of Pitt, Rose, &c. Indication afforded by it of the perfidy exemplified afterwards in the dealings of the same persons in respect of Panopticon.

22. If but a month were to be added by direct order to Hulk confinement here at home, what a sensation in the public mind!

23. Though the *bondage* may not have been thus meant to be made perpetual, yet the *banishment was*—which is the only part of the punishment expressly warranted by law.

III. Inefficacy.

24. Though the banishment was intended by the contrivers of the system to be perpetual, the intention has succeeded but imperfectly. A considerable number *return*—

25. —worse corrupted by the discipline of New South Wales.

N° 14.
Panopticon versus New South Wales Marginal Contents (not yet printed 9th August 1802) in two Sheets. Sheet 2.

IV. 3. Incapacitation.[1]

III. Inefficacy.

26. While the *injustice* is *compleat*, the *benefit* expected from it is thereby *incompleat*.

26.(a) Quotations.

1. No care taken at home for 4½ years to prevent *un*lawful returns—care taken *then* to prevent *lawful* ones.
2. Returns without permission *easy*: return, not settlement, the general object.
3. Table of returns from Collins.

27. The use of the place, and the security afforded by it in this

[1] For the text corresponding to the marginal contents reproduced under this heading see 'Letter to Lord Pelham', pp. 114–35 below.

respect, grows less and less as the Colony is in other respects more and more '*improved*'.

27.[a] Though the employing King's ships exclusively (ex. gr. the *Glatton*) will diminish the facility, it will not put an end to it while any private ships are admitted.

28. It is to the most pernicious and dangerous characters, that *escape* to England is easiest—

1. the opulent receiver.
2. the enterprising burglarer &c.

IV. Panopticon *contra*.

29. Panopticon system.—*During* the penal *term*, its efficacy, under the head of incapacitation, is at a *maximum*.

30. Thenceforward, instead of *incapacitation*, its reliance is upon *reformation*.

31. The extreme oppositeness to New South Wales in every point of view on which reformation depends—

1. Absence of drunkenness and gaming &c. total.
2. Religious exercise constant.
3. After the term of punishment, eligible employment certain v. supra.

32. In case of a *second* offence, Panopticon for life would incapacitate for any *third*.

V. Dernier resort, Inspection.

33. In New South Wales, necessity drove men to an application, however imperfect, of the *Inspection* principle.

34. The Governor *there*, having more power than Parliament has *here*, built a general Jail for that island; which was what Parliament attempted in vain to do for this.

35. In a society, thus corrupted by the original principle of its institution, the tutelary principle of *inspection* was found necessary to be applied even to the *Soldiery*.

VI. Surest resource Death.

36. *Death*, a particular mode of *incapacitation*, in respect of which the efficiency of the New South Wales system was preeminent. In the voyage they were more than *decimated*.

37. The fault lay not in the Contractors, but in Pitt and C°, by their incapacity and inhuman negligence—their bad management, making a bad system worse.

38. Causes of the mortality—

1. Length of the Voyage.
2. Want of interest on the part of the Contractors in the preservation of the lives of the Cargo.

39. Neither of these causes of mortality had place even in the old transportation system.

40. In the Panopticon system, the opposite causes of security are at the *maximum*.

41. Struggles which it cost the author to preserve to this article its place in the *Contract*; notwithstanding the consent given to it in the *Proposal*.

V. 4. Compensation.[1]

1. Fourth object, *compensation* or *satisfaction*: viz: for the damage by the offence, for which the punishment of transportation was inflicted.

This, though it *ought to be* among the ends of penal justice, *is not* under the English law in the case of transportable offences.

2. Cause of this omission. The profit to the King by forfeiture was the only direct object of penal justice under the feudal barbarism.

3. Feelings, opinions, and labours of the author on this subject.

4. His plan for introducing the principle into penal legislation at his own expence. His struggle with the Treasury to keep the article for that purpose in the Contract.

5. In New South Wales, compensation out of that fund is altogether *impossible*; the value of a man's labour there being £46 a year less than nothing.

6. But the object will hardly be denied to be a *desirable* one.

7. —if so, in so far as the Panopticon system contributes to it, it has the advantage of the New South Wales system.

8. The compensation with which the *author* was amused for *his* injuries, belongs to another head and will be spoken of in another place.

VI. 5. Economy.[2]

I. Past comparative Expence.

1. Convict expence—reference for grounds and calculations to the 28th Finance Report. Past expence.

2. In New South Wales, annual expence per Convict as per Do, Minimum £33 9s 5½d; Maximum (the most probable) £46 7 0¼.

3. Do of Panopticon, if established when promised, £13 10s.

4. Ratio, from more than ½ to less than ¼ of New South Wales.

5. Latterly the £13 10s was raised to £18 10 by the lapse of time, the work of Mr Pitt for the accommodation originally of Ld Spencer.

II. Prospect of Decrease.

6. In New South Wales, decrease of the expence how far probable.

7. But there is no chance of its ever being reduced so low as the above £13 10s nor even as the £18 10.

8. Long before it were reduced below the Panopticon expence, the Panopticon expence would be reduced to 0.

9. Probable decrease—amount of it according to the supporters of New South Wales viz: not so much as ⅕, reducing it, from £46 5s a year per Convict, say to £37.

10. —which is the exact double of Panopticon expence, as

[1] For the text corresponding to the marginal contents reproduced under this heading see 'Letter to Lord Pelham', pp. 135–8 below.

[2] For the text corresponding to the marginal contents reproduced under this heading see 'Letter to Lord Pelham', pp. 138–49 below.

enhanced by Pitt and perfidy; and near treble, if unenhanced.

11. Combined view of the *economy*, *morality*, & *logic* displayed in the conduct of the Treasury in the relinquishment of Panopticon, compared with the support given to New South Wales.

12. Economy was the stronghold and was to make up for all deficiencies in respect of the four direct ends of punishment.

13. M^r^ *Rose's* sentiments appealed to, on the regard due to 'arithmetic and its calculations'— Pamphlet on the Civil List. 1802.

14. *Panopticon* expence, *cessation* certain—the duration reduced already by the manufactured lapse of time: i:e: by waste of J. & S.B.'s lives.

III. Prospect of Encrease.

15. Per contra, chance of encrease on the Military and Naval Establishments.

16. Demand for fresh force as stated in the Lady's letter—

17. In two paragraphs.

17.[(a)] Bell's paper 3^rd^ January 1800.

18. The expence will not be capable of being concealed, by any such contrivance as that of throwing it upon a wrong fund, as in the case of Prisons.

☞ This was the contrivance of the D. of Portland as stated in his letter to the Treasury 14^th^ Oct^r^ 1799, throwing it upon the Poor-Rates by his own authority instead of the General Fund assigned by Parliament.

☞ To conclude with an examination of the supposed possible utilities of New South Wales in the character of a *Colony*: introduced by remarks relative to the general question of the utility of Colonies:[1] to which may be subjoined an unpublished tract on that subject.[2]

[1] See the continuation of 'Letter to Lord Pelham', pp. 150–63 below.

[2] Bentham did not, in the event, subjoin his unpublished pamphlet, namely 'Jeremy Bentham to the National Convention of France' (originally printed in January 1793 and later published as *Emancipate Your Colonies!*, London, 1830), reproduced in *Rights, Representation, and Reform: Nonsense upon Stilts and other writings on the French Revolution*, ed. P. Schofield, C. Pease-Watkin, and C. Blamires, Oxford, 2002 (*CW*), pp. 291–315.

APPENDIX[1]

Relation of what passed at the interview alluded to in | | the Introductory Note to *Panopticon Versus N.S. Wales*:[2] or so much of it as is material to the present purpose.

On the 27th of June 1801 I sent the letter {A. 5.} addressed to Mr Hiley Addington,[3] and having for its object, the obtaining redress for the injury done to me, by the charging me with a departure from my terms:[4] such departure being made a professed ground for the relinquishment of the Penitentiary Establishment: and by the suppression of the Documents which would have shewn the groundlessness of that charge.[5]

Had the request made by this application[6] been acceded to within a few days after it was made, the Session was not yet so far elapsed[7] but that there might have been time for supplying the omission, and thereby making reparation for the injury.

No answer to that letter ever came to me from Mr H. Addington to whom it was addressed, or any body else.

On the 7th of July, however, having with Mr Vansittart, the other Secretary of the Treasury, an intercourse by letter on a subject no wise connected with this, I received a note from Mr Vansittart, appointing me to call on him at the Treasury at ½ past 10 on the then next Thursday, being July the 9th 1801.[8]

Thursday 9th of July 1801, I attended accordingly. The person of Mr Vansittart was as yet unknown to me: whether mine was so to

[1] For the provenance of this Appendix see the Editorial Introduction, p. xxxi above.

[2] The interview, which took place on 9 July 1801, is alluded to in the 'private note' to Pelham, No 12, pp. 46–7 above.

[3] See *Correspondence* (*CW*), vi. 403–8. The letter is given the reference A. 5. in 'A Picture of the Treasury'.

[4] In the margin, Bentham has noted at this point: 'Anonymous communication as from the Treasury.' For the unsigned document of 14 July 1800 see p. 47 n. above. Bentham's complaint was that the additional expense of the panopticon penitentiary had resulted from the instruction to double the number of convicts (see p. 40 n. above), and that the rise in prices between 1794 and 1800 had increased its nominal but not its real cost, yet this had been represented as an increase in his terms.

[5] The documents in question, which Bentham had listed in a letter to Hiley Addington, 27 June 1801, consisted of his 'Armed' and 'Unarmed' Memorials and letters from Charles Long to John King, 27 September 1799; the Duke of Portland to the Treasury, 14 October 1799; Long to Bentham, 25 March 1800; and King to Long, 28 July 1800: see *Correspondence* (*CW*), vi. 405–7.

[6] i.e. that the suppressed documents be printed.

[7] i.e. the Parliamentary session, which ended on 2 July 1801.

[8] For Bentham's meeting with Vansittart, presumably to discuss the annuity note scheme, see p. 37 n. above.

him or no, I know not. Being earlier than he at the Treasury, in one of my habitual walks to & fro in the passages a little before 10, I met a person whom afterwards I recognized for him. I took the earliest opportunity of apprizing several of the Attendants about the office of my being there, waiting by appointment to be introduced to Mr Vansittart: giving in to one of them my name on paper or card as usual. In the course of it might be an hour, I observed the other late Secretary of the Treasury Mr Long going into the apartment of Mr Hiley Addington. I took notice of an appearance of alarm and anxiety upon his countenance. I waited upwards of two hours or perhaps three: having learnt that Mr Vansittart had been there since eleven or earlier, and wondering that no notice should be taken of me. Mr Long and Mr Hiley Addington had been together it may be an hour or an hour and a half—when a message was brought out to me in one of the passages that Mr Hiley Addington was ready for me, and wished to see me. I had never enquired for Mr Hiley Addington, but as he had sent out a message expressive of his desire to see me, I could do no otherwise than comply with it. I found with him Mr Long, in whose countenance I remarked the same anxious appearance of gravity, sadness and anxiety. It gave me concern to see him; because recollecting that the purport of the unanswered application to Mr H. Addington went to convey imputations very seriously and prejudicial, though to my conception not injurious, to the character of the Ex-Secretary, and that it appeared that every thing that in this forced conference should pass between Mr H. Addington and myself was designed to pass in the presence of Mr Long, the summons seemed to have no other object than the producing between myself and Mr Long a sort of altercation for which they had prepared themselves, but which to me was matter of extreme surprize and, to my apprehension, of no possible good use.

The conversation began on the part of Mr H. Addington by an observation directed to me.

Mr H. Addington. Why, Mr Bentham, you are extremely impatient—very impatient indeed!

Mr Bentham. Impatient, Sir? I really know not what your meaning is—there must be some mistake in this. I never asked for you: it was you asked for me. It was Mr Vansittart and him only that I asked for—and that only because I had received from him a spontaneous note, desiring me to call upon him here. I have been here these 2 or 3 hours. With your leave, I will go to him now: my fear is that he has never heard of my having asked for him: while we are speaking, he may be thinking that I have broken my appointment and neglected him.

No, this could not be: Mr Vansittart was just then engaged: and since I was there something might be said in relation to my letter.[1] But so satisfied was the Honourable Gentleman with the part that had just been put into his hand, the charge of impatience was still harped upon, over and over, just as if there had been a ground for it. How stood the fact in regard to impatience? I had waited for my answer from him already till the time for doing any thing upon it was past. I had written nothing.[2] I had said nothing—I had done nothing: a dead man or a stone could not have been more patient: and for this patience, what was my reward? a repeated reprimand from the gentleman thus new in authority and for my impatience.

I was all astonishment to think to what further frauds this strange self-betraying bootless fraud could be a preface.

Finding there was no retreat, I prepared myself in the midst of my astonishment for the combat which I saw already had been prepared for me. Mr Long, whom I had not seen for above a twelvemonth—who for weeks or months had fled from me—and who, when at last I caught him, had expressly forbidden my attempting to see him any more,[3] this same Mr Long had now, I presumed, planned to catch me by surprize with a gentleman as closely linked to him, as strange to me, for his support. All decorums being, as it appeared to me, cast off—I determined to avail myself of the opportunity of establishing, as well as I could hope to do by the testimony [of] a most partial and naturally unwilling [witness],[4] two or three points which I had much at heart.

Mr Bentham. Well Sir (to Mr Long), and was it then to meet me that you have been stationed here for such a length of time? This is indeed an honour as unexpected as it is new: an honour I have not had for above this twelvemonth, refused me for months together by acts and at length by express words?

The answer consisted in denying the fact and in the same breath admitting it, saying that it was for my own advantage that he desired

[1] i.e. Bentham's letter to Hiley Addington of 27 June 1801.

[2] Bentham had, in fact, written to Hiley Addington on 6 July 1801 asking whether he had it in mind to answer his letter of 27 June 1801 (see *Correspondence* (*CW*), vi. 411), though this was after the close of the Parliamentary session.

[3] According to the account in 'A Picture of the Treasury', UC cxxi. 89–91 (19 February 1802), in April 1800 Bentham had followed Long into his chamber at the Treasury to discuss Belgrave's opposition to the panopticon: 'Give in a Memorial—was his only answer—his answer in so many words. A Memorial? about what says I? What am I to say in it?— — —You know well enough—how can I tell?— — —You'll see it first?— — —No—that he would not. You are engaged now—another time you will give me leave to attend you on the subject?—No—no—no:—was the answer—the answer, not in articulate words only but in the much more expressive and decisive language of tones and gestures. Another moment, and I should have been pushed out—I went out—and the door was clapt to in my face.'

[4] MS 'evidence' appears to be a slip.

a Memorial of me, that I might be at a certainty and so forth. N.B. In driving me from his presence, and without provocation or pretence of provocation refusing to see me any more, he had indeed said to me, Give in a Memorial, but had refused to tell me, either then or at any subsequent time, what was to be the purport or so much as the object of it.[1]

Mr Bentham. Well, Sir—this is a point that may be better cleared up, when the time comes, by the evidence of Mr Nepean. For as it was the absolute impossibility of direct access to you that constituted the sole *real* cause of that application to him on my part which produced the negotiation between him and you, so was it the *declared* one:[2] and looking upon such a banishment as nether compatible with my own rights nor with your duties, and as requiring, were it only for the sake of my own character, a pretty explicit explanation as to the cause of it, I begged of him with no small earnestness to take the first opportunity of asking you in the most pointed terms, whether, in the course of the six years that I have been a suitor to your office, you yourself ever conceived yourself to have, on any score whatever, any the smallest reason to complain of me? To that question, Your answer, as repeated by him to me, was most explicitly in the negative. I now embrace this further opportunity of establishing that same point—and now in the presence of this gentleman, Your friend whom I understand to be Mr Hiley Addington, I beg leave to put the same question to you: meaning always to except the moment of this to me very unexpected interview, for that you should be altogether satisfied with every thing you have now been hearing from me is, I confess, rather beyond my hopes.

Mr Long's declaration to the above effect was thereupon as explicit, as according to Mr Nepean, it had before been to Mr Nepean.

From this point, by a line, the precise course of which I do not exactly recollect, the conversation was drawn, but not by me, to the subject of the Penitentiary Establishment, according to the reduced scale spoken of in the correspondence. I now perceived what was the ultimate object of the interview with which I had so unexpectedly been honoured. It was—to lead me to understand—as a thing decided upon from the first—that the establishment would be

[1] In consequence, Bentham had submitted his 'Armed Memorial' on 21 April 1800: see p. 27 n. above.

[2] Bentham had first sought the assistance of Nepean during September 1799 through Nepean's wife Margaret (d. 1833), when the Home Office had failed to inform him how many prisoners the panopticon penitentiary was to accommodate. Nepean had spoken to Long on the subject on 23 September 1799: see *Correspondence* (*CW*), vi. 192–3, 201. For Nepean's arrangement of Bentham's subsequent meeting with Long and White on 10 June 1800 see p. 27 n. above.

given to me upon the reduced scale of 500 instead of the originally stipulated 1,000, and the subsequently promised 2,000: and that, for the part defalcated, a sufficient compensation would be allowed to me. This being beyond any expectation held out by either the letter to myself[1] or the subsequently printed correspondence between the Treasury and the Secretary of State's Office,[2] I saw at once what was the object of the lure. It was to put me to sleep without the demanded satisfaction—the publication to be made by authority, the publication of the omitted documents.

To help reconcile me to so extraordinary a departure, from the terms acceded to six years before and acted upon ever since, the word *experiment* was introduced: it was to be *a measure of experiment*. Upon my observing, amongst other things, that it was a change not more reconcileable to the interests of my own character than to the principles of good faith, that a quantum of confidence which had so lately been doubled should be cut down all at once to half and without the smallest reason assignable or assigned—and that after the probation I had undergone, and at my time of life, it was an humiliation I could not submitt to, to see a measure held up for so many years as a definitive one converted in this way into a measure of experiment. I was asked what difference it could make to me, receiving as I should, of course, the most liberal compensation for every reduction that should be made.

My answer was—That I saw no reason whatsoever for saddling the public with any such burthen—that I did not choose to be made an instrument of burthen to the public in any shape:—that adequate compensation was, in the nature of the case, impossible: that the Treasury had not at that time any legal power for affording any on any such ground—that it did not appear to me that any good ground for any such expence could be made to Parliament: that, in company with the establishment, upon any scale howsoever reduced, the idea of compensation was altogether new to me—and that whatsoever might have been my willingness to accept of it, I had never descried the least appearance of any disposition to afford it to me.

Upon this, both gentlemen joined in expressions of astonishment, that for a moment I could suppose that any such reduction was not

[1] See Long to Bentham, 24 March 1801, *Correspondence* (*CW*), vi. 382–3, asking Bentham to state 'under what terms you are willing to Contract for building a Penitentiary House for *500 Persons*, and for maintaining the Convicts, if the measure should be resolved upon: and if, upon consideration of that proposal, the plan should be relinquished altogether, my Lords desire *you will inform them* what compensation you conceive yourself entitled to for your expenses and Loss of Time in preparing for the Undertaking'.

[2] i.e. the letters from Long to King, 25 August 1800, and King to Long, 17 March 1801: see p. 46 n. above.

intended to be accompanied with compensation. Direct assurance was too weak a form for the expression of the original and unvaried determination taken on that topic. The precise words I do not recollect: but the manner was magisterial and to the last degree emphatical. The idea was—that blindness—not to say wilful blindness—absurdity—perversity—were the causes of my not seeing if that were really true which was scarce credible, viz: that I did not see that, from the first to the last, no idea of reduction, unaccompanied with compensation, was ever entertained. Upon turning to the documents, it will appear: that no compensation even in any case was categorically promised to me: in the next place, that in the hypothetical discourse on that subject, it is to the case of entire relinquishment that the talk of compensation is confined:—confined by express words.

So far as above, I did say: what I did not say was that, of the two Honourable Gentlemen whose associated vehemence was thus joining in upbraiding me for unbelief, there was one at least[1] who was confident in his own mind that no such prediction would be ever verified.

A fact which I know with as full assurance as evidence can give, was—that the sole cause of obstruction operating on the Treasury, was the promise of utter relinquishment, made, on the occasion I know of, to Lord Belgrave:[2] and the existence of the establishment upon any scale—original—augmented or reduced—was alike incompatible with that promise and the imaginations that had exacted it.

Accordingly in the letter to me[3]—which, of all the manifestations that have since been made, was the only one that at that time had been ever intended to meet my eye, not even compensation for non-establishment—much less establishment—was promised. On both points I was called upon to give in my proposals, but in the evident view that neither of them (unless possibly some miserable pittance under the name of compensation) should be followed by any effect. Should any thing be found in them to cavil at, they were to be pronounced in express terms inadmissible. Should they be found impregnable on all points, they were to be answered of course, as so many other applications from the same quarter had been answered, by the habitual silence.

With the nature and habitual hardness of the place, artifice had now combined, in substituting, to that explicit and satisfactory assurance which good faith as well as humanity would have prescribed, a set of interrogatories which, instead of satisfaction, promised an addition to the injury. As M^{r} Palmer had by ill-usage been put off his guard, and by that means made to afford a pretence for breaking the public

[1] i.e. Long.
[2] See p. 31 n. above.
[3] i.e. Long's letter of 24 March 1801.

faith with him,[1] so was a pretence to be thus created for breaking it with me. But I flatter myself that, even without Mr Palmer, it neither has been nor ever will be a matter of much difficulty to be angry enough for their shame, and at the same time avoid sinning for their benefit. When any expressions of my anger come to be published, I am pretty well assured that the publication will come—not from any of the Honourable Gentlemen who have ever been the objects of that emotion, but from the person moved by it.

Though, as far as concerned the dupe principally intended, the stratagem compleatly failed, yet the rule I lay down in all cases of ascribing every act to the most honourable of the motives capable of accounting for it requires that I should regard Mr Hiley Addington as the dupe of this contrivance rather than the accomplice. My notion is—that he had been made a real believer in the professed intention of carrying the establishment (meaning always upon the reduced scale) into effect. He had been prepared for doing his part towards the production of that effect. But the confidence was (and Mr Long had thus far done me justice) that what he had rendered impossible to accomplish, I should not be brought to undertake: but if, spite of probabilities, rashness should make this conquest over prudence, and the task of making bricks without straw should be embraced by me, the sacred promise to Lord Belgrave would, at the critical moment, be found by Mr Hiley Addington and his associates an obstacle as unsurmountable as it had been made by and to Mr Long: and then the tyro administration would have the knot to cut as well as they could, with the assistance of the precedents that had been set to them, and such advice, if necessary, as might be afforded to them, by their veteran predecessors.

The seeds of perplexity were thus sown by Mr Long in the mind of his friend without his knowledge: the fruit of them would not appear, if at all, till afterwards.

Intermixed with these specific propositions, some general ones had been agitated, between the two Secretaries on the one part and their Suitor, *malgré lui*, on the other:[2] some general ones, in which the sentiments expressed were as wide as any two points that can be conceived. By me, two things were considered as binding upon gentlemen in administration: the law of the land, and their own engagements. But these claims (for such they were and have ever been to me) were by both gentlemen treated without disguise as cobwebs: and it is for the Painter, and not the Reporter, to convey any tolerably correct idea of the scorn and contempt that were poured out from both fountains

[1] For John Palmer's dispute with government over compensation see p. 37 n. above.
[2] In relation to the remainder of the sentence, Bentham has noted: 'Alter.'

upon the head of the ignorant bookworm, that could suppose it possible for gentlemen in their high stations to be bound by any thing but their own will and pleasure. As the specimen of a drunken slave was employ'd by Spartans as the most impressive lesson that could [be] given in the chapter of sobriety,[1] so if any exhibition could have the effect of implanting more deeply than another the love of the British Constitution in any wavering breast, I do think it would have been this scene. While I have breath, it will never be out of my eyes.

The idea of obligation was rejected plainly and simply: rejected as inapplicable not only to the case in hand, but to any other that could be supposed. In speaking of cobwebs, I fell short of the mark: Cobwebs, though an ineffectual resistance, might oppose resistance and annoyance: Acts of Parliament—engagements—were, I should not have said cobwebs, I should have said moonshine, to Secretaries of the Treasury and Secretaries of State. Were I inclined to exaggerate, all the hyperboles I could find or make would not enable me to exaggerate. In speaking of him who, over and over again and in a tone of disdain and scorn, disclaims all regard to laws—all regard to engagements—holds himself bound by neither—not denying the existence of either—how is it possible to exaggerate!

On this occasion, it would be an act of injustice to M^r^ Hiley Addington not to observe that his part in it seemed rather a subordinate one. The doctrines were laid down principally, if not exclusively, by M^r^ Long. Informant of the oracles, rather than invention, was the task of his new-entered successor. Being, from what judgment I could make in so short an interview, a good-natured man—his tone and manner were adapted to the more lenient part: the part of soothing and smoothing away, by a mixture of reproof and kindness, such obstinacy as mine. His words were as oil to the vinegar which I had been used to receive on the few, as few as possible, occasions, on which till now any thing could ever be squeezed out of the other cruet. All the axioms, whether of politics or ethics, that had been laid down by this Anti-Fortiscue,[2] about the nullity of parliaments—about the futility of the fancied distinction between absolute and limited monarchies—about the exemption belonging to gentlemen in such high offices as touching moral obligations, were so many truisms to M^r^ Hiley Addington: but the notions seemed rather adopted in deference to such high authority, than brought out as the fruit of his own reflections and experience.

Every thing M^r^ Long came out with in the course of his apology (for, notwithstanding his acknowledged superiority to parliaments,

[1] See Plutarch (Lucius(?) Mestrius Plutarchus), *Life of Lycurgus*, XXVIII. 4.

[2] An allusion to Sir John Fortescue (*c.* 1397–1479), justice and political theorist, whose work *De laudibus legum angliae* was celebrated as a defence of constitutional liberty.

he seemed to feel some sort of account of himself due from him in point of prudence to the friend and supporter at his elbow) plunged me still deeper and deeper in astonishment. Every thing that had not happened was asserted—every thing that had ever happened was denied *in globo*[1]—for the purpose of the argument: and the argument ran about the compass like the wind in a hurricane: utter confusion was thick-painted on his pale countenance: but still the wonder was how such effusions could flow even from such a source. The Treasury were only Ministerial and had no choice: though every thing of choice is the work of an act—and the Treasury is the only authority by which any thing is to be done. The Treasury had no choice about the spot or any thing: though Mr Long and he alone was the very person by whom the spot in question was promised to me for my choice. All depended upon the Secretary of State: though, by the Secretary of State (Mr Dundas), a gentleman favourable to the plan, even to enthusiasm, I was turned over to the Treasury[2]—that is to Mr Long's own because nothing could be done elsewhere. Whatever part he had ever taken in the business was so much beyond any part he had any need to take in it, and instead of accusing him as I did, I ought to be thankful for it: though by official duty he was bound to carry it into effect, and by treachery he had sacrificed his character and his conscience to the overthrow of it. He had never taken any part beyond necessity, any where, and in particular none in Parliament: whereas in a debate that took place in the House on the third reading of the Bill,[3] he had said more than any body on this subject, had defeated the Opposition, and with the air of a conquering hero had strode up and overtaken my Brother and me on our return from the Park home, reslaying the slain and resnuffing up the incense of our acknowledgements—for Lord Spencer's will and pleasure on the subject was at the time understood to be favourable.

Pity the establishment was not set up at Battersea Rise: that was the proper place—the only proper place—but I was indifferent about it—and so that place was lost: whereas the Memorial by which I clung to it was rejected by himself as forcible and irrefragable beyond endurance, besides being snarled at in a letter[4] which I should think myself fortunate in having to produce against him, if it were not still easier to deny fleeting sounds uttered in presence of a most confidential friend,

[1] i.e. 'in the whole'.

[2] See p. 44 & n. above.

[3] The third reading of the Penitentiary Bill of 1794 took place in the House of Commons on 28 May 1794. No record of the debate has been located, though *The Times*, 29 May 1794, noted the third reading and passing of the Bill.

[4] On 16 August 1794 Bentham had submitted a Memorial to Dundas asserting his right to acquire the site at Battersea Rise, and had received a response from Long on 25 September 1794, including the return of the Memorial: see *Correspondence*, v. 54–69, 78–9.

whose kind forgetfulness can not be less to be depended upon than his more active and more difficult assistance.

The Duke of Portland was ever and anon pointed to with distinct reverence, as the arbiter of life and death—the tapestry Solomon by whose awful sentence my devoted offspring was to be cut in two and sacrificed:[1] the Duke of Portland was pointed up to as that most puissant prince whose everchanging pleasure was at all times to have the vigor of law—a vigor beyond and contrary to the law of Parliament: the Duke of Portland's pleasure, though at no time a law to itself, because incapable of binding itself, was to be law above Parliament and against me. Seeing day-light through the shade of this terrific spectre, to whom the warning cock had already begun to crow—but, says I, granting the present omnipotence of the existing Secretary of State, does not an equal omnipotence await his successor? May not Lord Pelham keep entire, what the Duke of Portland had [. . .?] to rend in twain?[2]—O, yes—the idea was caught at by all four hands, as the happiest *échappatoire* imaginable.

[1] See I Kings 3: 16–28.

[2] An echo of Matthew 27: 51.

LETTERS TO LORD PELHAM[1]

[1] This title has been editorially supplied.

CIRCULAR.

To the LORD CHANCELLOR and the JUDGES.

(COPY.)

Queen's Square-Place, Westminster,
6*th Nov.* 1802

MY LORD, {*or* SIR,}

LORD PELHAM having communicated to Sir Charles Bunbury, for my Information, the Determination his Lordship had come to 'of conversing on the Subject of my Penitentiary Plan with the Lord Chancellor and the Judges,'[1] *I take the Liberty of submitting to your Lordship the inclosed Printed Paper on that Subject, for the Reason mentioned in the Second Page,*[2] *and have the Honour to be, with all Respect,*

My Lord,

Your Lordship's most obedient,

and humble Servant,

JEREMY BENTHAM.

[1] In a letter to Bentham of 30 September 1802, Bunbury reported that he had seen Pelham, who had agreed to 'inform [Bentham] what steps he intended to take in the Business of the Panopticon Prison . . . as soon as he had read through [Bentham's] Books, and conversed with the chancellor, and the Judges on the Subject': see *Correspondence* (*CW*), vii. 137. The 'Books' were 'A View of the Hard-Labour Bill', London, 1778, 'Panopticon; or, The Inspection-House', and 'Outline of a Work entitled Pauper Management Improved', [London, 1798]: see Bentham to Charles Abbot, 3 October 1802, *Correspondence* (*CW*), vii. 139.

[2] See p. 72 below.

LETTER

TO

LORD PELHAM,

&c. &c. &c.

GIVING

A COMPARATIVE VIEW

OF

THE SYSTEM OF PENAL COLONIZATION

IN NEW SOUTH WALES,

AND THE

HOME PENITENTIARY SYSTEM,

Prescribed by two Acts of Parliament of the Years 1794 *&* 1799.

MY LORD,

THE Letter, of which these printed pages form a part, was begun in the view of its being submitted to your Lordship in manuscript.[1] The business of it was—to represent the treatment experienced, during a period of eight or nine years, from the servants of the Crown, by a plan that had twice at their own sollicitation received the sanction of Parliament:[2] the second time, after urgent reasons given by the Committee of Finance for the continually professed execution of it,[3]

[1] The subject-matter of the present 'Letter' was originally intended to form part of one section of 'A Picture of the Treasury': for further details see the Editorial Introduction, pp. xxxiii–xxxiv above.

[2] Bentham's panopticon penitentiary scheme had been sanctioned by the Penitentiary Act of 1794, which granted authority to the Treasury to fix upon a piece of land on which a penitentiary might be constructed and to contract with an individual to build and manage it, and the Appropriation Act of 1799 (39 Geo. III, c. 114, § 23), which granted Bentham the sum of £36,000 'for a Penitentiary House'.

[3] In 'Twenty-Eighth Report on Finance', in *Commons Sessional Papers of the Eighteenth Century* (1798), cxii. 23, the Select Committee on Finance had urged that there should be no further delay in the 'Execution of the Contract' with Bentham for the panopticon

and no reasons ever given by any body for the suspension of it:—to exhibit the considerations, by which the disposition at length expressed in regard to the relinquishment of the plan now termed a '*project*'[1] (after a contract drawn and land purchased in execution of it)[2] had at length been attempted to be justified:—to submit to your Lordship, whether it were in the nature of the matters of fact insinuated to afford any thing like a warrant for the determination indicated:[3]—and whether, by means of the evidence adduced, the really efficient causes of it were not to be traced to certain other considerations—considerations of a purely private nature, and altogether foreign to the merits, of the plan thus marked out for sacrifice.[4] The narrative, with the arguments interwoven in it, had drawn near to its conclusion, when having, through an authentic channel, received intimation of an intention on your Lordship's part, to 'converse on the subject with the Lord Chancellor and the Judges,'[5] it occurred to me, that whatever opinion, if any, were eventually to be obtained from any such high and ever revered authority, any such opinion would not be the less instructive, if in this, as in other instances, it were to have had the opportunity of grounding itself on such evidence as the nature of the case afforded.[6]

penitentiary, on the grounds that the public continued to be deprived of the benefits of a scheme 'productive of the most essential Advantage, both in point of Œconomy and Police'.

[1] On 3 October 1802 Bentham (who had left London for Paris on 7 September 1802 and had returned on 2 October 1802) informed Charles Abbot that he had just seen Nepean, who had reported that, in an interview he had had with Henry Addington on the subject of the panopticon, 'the plan was spoken of throughout [by Addington] as if it had been a project quite unknown to Parliament, and which he was fully at liberty to throw aside, as if it had then been brought on the carpet for the first time': see *Correspondence* (*CW*), vii. 138–9. On the same day, in a letter to Bunbury, Bentham noted that, 'The ground Mr A put it [the panopticon penitentiary] upon was that of an intirely new project, which nobody had ever heard of till that moment': see ibid. 142.

[2] The Millbank estate had been purchased by the Treasury in 1799 from James Cecil (1748–1823), seventh Earl and first Marquis of Salisbury, Treasurer of the Household 1780–2, Lord Chamberlain 1783–1804, Joint Paymaster General 1816–23, with a view to the erection of the panopticon penitentiary.

[3] An allusion to the four 'grounds of relinquishment' mentioned in the Treasury Minute of 13 August 1800, which Bentham goes on to describe below.

[4] An allusion to the promises made to Belgrave and Spencer: see p. 31 n. above.

[5] See p. 69 n. above.

[6] On 4 October 1802 Bentham informed Bunbury that he had decided to print the present 'Letter to Lord Pelham', in order to submit to the Lord Chancellor and the Judges his own view on the 'state of the question' as between the panopticon penitentiary and New South Wales: see *Correspondence* (*CW*), vii. 143. In a letter to Dumont of 19 October 1802, Bentham complained that he regarded the reference to the Lord Chancellor and the Judges as 'an evasion', and 'considered it as calling upon me, upon the principle of self preservation, to tell my story to those same personages. I have accordingly sent to the press "*Panopticon versus New South Wales etc*" in the form of a letter to Lord Pelham, stating the above intimation of his as the occasion of my taking that method of multiplying copies, for the edification of the said personages': see ibid. 148–9.

After this explanation, I proceed to submit to your Lordship that part of the originally intended address, which bears more particularly upon the point in question: detaching it, on the spur of the occasion, from whatever was originally designed to precede or follow it.[a] [1]

Fourth and last ground for the *relinquishment* of the Penitentiary System:—'*the improved state of the Colony of New South Wales.*'

Of the three other grounds[b] the inanity has been displayed:[2] there remains this single ground to bear the strain of the whole measure:—I mean—not of the Penitentiary Establishment itself, but of the *relinquishment* of it.

To justify the predilection shewn for the distant establishment, and the use thus made of that predilection, those who have taken upon themselves to make this collateral use of it, have two propositions to make good.

1st. That, of the two rival modes of punishment—the punishment by transportation to New South Wales, and the punishment by confinement under the intended Penitentiary Establishment—the former is the preferable one.

2d. That it is to such a degree preferable, as to justify the laying aside the other altogether, and inclusively the imposing on the public that expence—expence in all its shapes—money, public faith, character of public men—with which the ultimate sacrifice of the thus long suspended establishment would be attended.

The first proposition is the leading one: in this is contained the principal point in issue: this being determined in the negative, the other will be superseded. How then shall it be tried? By analytical investigation, supported by specific evidence? or by vague assertion,

[a] The 'relinquishment' here in question was hypothetical, and but hypothetical in form, though hitherto it has been categorical in effect.

[b] The three other grounds were, 1. Lapse of time. 2. Increase of terms, meaning thereby of public expence (an increase barely 'proposed' and studiously forborne to be insisted on). 3. Improvements observed to have been made in some of the existing gaols.[3] Of two of these three grounds, a recapitulatory glimpse may come to be given, in the course of the present pages, under the concluding head of *Economy*.[4]

[1] Bentham did not simply detach 'Letter to Lord Pelham' from 'A Picture of the Treasury', but considerably revised and expanded it: for further details see the Editorial Introduction, pp. xxxiii–xxxiv above.

[2] i.e. in 'A Picture of the Treasury': see UC cxxi. 190–252 (10 January–5 May 1802).

[3] For the Treasury Minute of 13 August 1800, in which the 'grounds for relinquishment' were stated, see p. 46 n. above.

[4] See pp. 138–63 below.

supported by a few customary phrases? In the former mode, certainly, says a voice which I recognize for your Lordship's, being that of reason and justice: by the former mode, as being the only true one, how far soever it may be from being either the more generally commodious of the two, or the more usual.

The two rival systems in question being systems of punishment, whichever of the two is the preferable one must be that which will prove to be so, on joint reference to the several *objects* or *ends* of penal justice.

Objects, or ends of penal justice, five.

1st. *Example*—prevention of similar offences on the part of individuals at large, viz. by the repulsive influence, exercised on the minds of bystanders, by the apprehension of similar suffering in case of similar delinquency.

2dly. *Reformation*—prevention of similar offences on the part of the *particular individual* punished in each instance, viz. by *curing* him of the *will* to do the like in future.

3dly. *Incapacitation*—prevention of similar offences on the part of the same individual, by depriving him of the *power* to do the like.

4thly. *Compensation* or *satisfaction* (viz. to be afforded to the party specially injured, where there is one).[a]

These four from Blackstone[1] and from every body: to these four I will venture to add a fifth, *Economy*—The four first, *direct* ends:—ends to which the several measures adopted ought to tend in a direct course: the last, an *indirect* or *collateral* end: a mark which, though not the direct object of any such measure, ought not to be departed from to any greater distance, than the pursuit of the other direct ends shall be found to render unavoidable.

The list of these objects belongs to the A. B. C. of legislation: if the application of it to practice had been equally familiar, your Lordship will judge whether it would have been possible the country should

[a] Of all these ends, *example*, be it observed, is beyond comparison the most important: in the case of *reformation*, and *incapacitation* for further mischief, the parties in question are no more than the comparatively small number of individuals, who, having actually offended, have moreover actually suffered for the offence. In the case of *example*, the parties are as many individuals as are exposed to the temptation of offending: that is, taking the calendar of delinquency in the aggregate, the whole number of individuals of which the several political communities are composed—in other words all mankind.

[1] In *Commentaries on the Laws of England*, iv. 11–12, Blackstone stated that the end of punishment was to prevent future offences either by means of 'amendment of the offender himself', or 'by the dread of . . . example', or 'by depriving the party injuring of the power to do future mischief': in Bentham's terms, by reformation, or example, or incapacitation respectively. Blackstone did not mention compensation in this context.

ever have seen any such establishment as Mr. Pitt and the Duke of Portland's 'improved Colony of New South Wales.'[a]

Assuming these *five* to be, what without dispute they ought to be, the common objects of both systems, let us consider each object by itself; and calling in the two systems one after another, hear what each promises to perform, or may be considered as having performed, towards the attainment of that common end.

I. First object, *Example:* Prevention of future offences by means of it. What in the first place is the course taken for this purpose by the *colonial,* the *transportation* system? The convicts and their punishment are removed by it to the Antipodes, as far as possible out of the view of the aggregate mass of individuals, on whose minds it is wished that the impression should be made.

What is the course taken in the same view by the *penitentiary* system? *Scene of punishment,* the vicinity of the metropolis: the very spot which contains the greatest number of spectators of all descriptions, and in particular of those, in whose instance there is the strongest reason for wishing that the impression may be made.

Plan of management, such as has for its object the pointing the impression, by all imaginary contrivances to this end: the strengthening it by all apposite means, the multiplying by every imaginable device the number of the visitors and spectators: a perpetual and perpetually interesting drama, in which the obnoxious characters shall, in *specie* at any rate, be exposed to instructive ignominy, the *individuals* being, with equal facility, capable of being exposed to it or screened from it, as, in the judgment of those to whom it belongs to judge, may be deemed most eligible upon the whole.

II. Second object, *Reformation.* Under this head, what in the first place does the 'improved Colony?'—Delinquency, in the case of offences in

[a] The words used in the secret correspondence between the two offices. Documents dated 13th August 1800: 25th August 1800: 17th March 1801: Disclosed (on the change of ministry)[1] in '*Further Proceedings of the Treasury*,' printed (for the use of the House of Commons) by order dated 12th June 1801, pp. 79, 80, 81.[2]

[1] Pitt had tendered his resignation as leader of the administration on 3 February 1801. It had been accepted by George III on 5 February 1801 on condition that he remained in post to introduce the Budget on 18 February 1801. Addington was appointed as leader of the administration on 14 March 1801.

[2] The Treasury Minute of 13 August 1800, Charles Long to John King, 25 August 1800, and King to Long, 17 March 1801, *Commons Sessional Papers* (1801), vi. 585–7, each cite 'the improved State of the Colony of New South Wales' as a reason for relinquishing the panopticon penitentiary. Bentham's pagination refers to that in 'Further Proceedings of the Lords Commissioners of His Majesty's Treasury, &c. respecting the matters stated in the Reports of the Committee of Finance' rather than that in the relevant volume of the *Commons Sessional Papers* as a whole.

general, and the class of offences here in question more particularly, may be considered as having for its *positive* and *primary* cause a sort of morbid sensibility, with reference to those enjoyments and those sufferings or uneasinesses, the pursuit or avoidance of which, have respectively given birth to the offence. It may be considered again, as having for its *negative* and *secondary* cause, the absence of those peculiar appropriate restraints, from which, had they been present, that vicious propensity might have received an efficacious check. Delinquents, especially of the more criminal descriptions, may be considered as a particular class of human beings, that, to keep them out of harm's way, require, for a continued length of time, that sort of sharp looking after, that sort of particularly close *inspection,* which all human beings, without exception, stand in need of, up to a certain age. They may be considered as persons of *unsound mind,* but in whom the complaint has not swelled to so high a pitch as to rank them with *idiots* or *lunatics.* They may be considered as a sort of *grown children*, in whose instance the mental weakness attached to non-age continues in some respects beyond the ordinary length of time.[a]

To this mental debility it is the characteristic feature of the system in question, transportation to a new planted colony, to be radically incapable of administering that corrective aid, which, in the case in question, is so perfectly indispensable. *Field husbandry* is, under this system, the principal employment: field husbandry, carried on by individuals or heads of families, each occupying a distinct dwelling, the interior of which is altogether out of the habitual reach of every *inspecting* eye. At sleeping-times, meal-times, times of recreation, no inspection whatsoever: even at working-times, none but what is imperfect, interrupted, and accidental. Hence no preventive check

[a] Policy, or I am much mistaken, the deepest and steadiest policy, will be found to concur with the tenderest humanity, in regarding the criminal world in this instructive and unimpassioned point of view. To an eye thus prepared, the most profligate offender will present—on the one hand no fitter object of unprofitable resentment—on the other hand no less necessary object of preventive coercion—than would be presented by a refractory patient, or a froward child. Guided by this analogy, the favourite remedy *death,* has for this five-and-thirty years appeared to me (in the cases at least in which it is ordinarily applied) scarce in any degree less absurd in a political, than it would be in a medical point of view.[1] In point of fact, nothing that can with any tolerable propriety assume the name of policy—not sober reason—not so much as reflection—appears at any time to have been the efficient cause of the use so abundantly made of it: Vengeance, passion, began the practice; prejudice, the result of habit, has persevered in it.

[1] Bentham's earliest surviving material on capital punishment was written in 1775 and appears in 'Principles of Penal Law', Bowring, i. 365–580 at 441–50, where he dates his opposition to the practice to the late 1760s.

to those propensities, the peculiar strength of which has been but too plainly demonstrated, by the offence by which the individual was conducted to the scene of punishment: propensities, the indulgence of which is either itself a crime, or introductory to those vicious habits which are regarded as the immediate sources of crimes: sloth, drunkenness, gaming, venereal irregularities, profaneness, quarrelsomeness, mischievousness, rapacity.

Thus then, on the ground of controul to vicious propensities, stands the parallel between the transportation system and the penitentiary system: the transportation system, according to the New South Wales edition of it: the penitentiary system, according to that edition of it, to which, even in the act of sacrificing it on the altar of secret influence, no man ever durst take upon him to refuse the appellation of an *improved* one. Colonizing-transportation-system, characteristic feature of it, radical incapacity of being combined with any efficient system of inspection. Penitentiary system, characteristic feature of it, in its original state, frequent and regular inspection: in its extraordinary and improved state, that principle of management carried to such a degree of perfection, as till then had never been reached even by imagination, much less by practice.

Inspection, the only effective instrument of reformative management, being thus essentially inapplicable, and the founders of the colonial system having thus given themselves the nature of things to fight against, they set about it at their ease. Reformation, it was understood, is a species of manufacture: like other manufactures, it requires its particular capital or stock in trade; the assortment being good, that is in sufficient quantity and of the accustomed quality, the business will go on in the regular course, like other businesses. Different sorts of workmen must be got, most of them in red clothes: but to complete the set there must be some in black, and these must have a particular sort of workshop to themselves with tools belonging to it. Accordingly an assortment was provided, not only of officers civil and military, but of ministers of religion. Besides soldiers, and barracks, and guns, there were to be, and were accordingly, sooner or later, in a proportion more or less adequate, chaplains, and chapels, and good books. Thus far the head-reformers saw: farther than this it was not given them to see.[1] Would the books be read? the chapels visited? the chaplains heard? That was the concern of the chaplains when they got there. Was it in the nature of the case that any of these events should ever happen?—a wild, speculative, out of the way question this—quite out of the line of practice. With great submission, however, to better judgments, it

[1] An echo of Matthew 13: 11.

would not, I will venture to say, have been altogether an irrelevant one: A trigger is scarce pulled before the breath may be driven out of a refractory body; but to purify a corrupted heart, especially where nothing is to be got by purifying it, is an operation not quite so simple or so sure.[a]

[a] Number of Chaplains, at one time one, at another two.[1] Stations, at first but one.[2] Before Captain Collins left the Colony, from five to ten, each to appearance at too great a distance from the rest to send auditors to a congregation collected at any other. In the map annexed to Captain Collins's book, I observe about this number of separate stations, without including such small ones as, being to appearance, each of them within two or three miles of some other, may be supposed not too far distant for that purpose.[3] Are the labours of the sacred function to be regarded as an essential article among the efficient causes of reformation? Then the establishment of from four to eight of these stations, of every number above that of the Chaplains, was, and continues to be, indefensible. Instead of being a necessary, is religious service a mere luxury? Then no such officer as a Chaplain should have been sent out at all, none at least for the Convicts, none unless it be a regimental Chaplain for the benefit of the military: though indeed of the military themselves the distribution must have been regulated in some measure by that of the Convicts; that of the watchmen by that of the persons to be watched.

Of late, malcontents from Ireland have been sent in multitudes to New South Wales: part of them, probably the greater part, must have been of the Catholic persuasion.[4] Among these have there been any Priests? It seems not improbable; and if so, so far as their quarters may have been within distance of the stations of their lay-companions, so far all may have been right. Have there been no priests? Then surely one priest at least should have been sent out on the same voluntary footing as the clergymen of the Church of England. If there be a difference, of all branches of the Christian religion, the Catholic is surely that in which the services of a consecrated minister are most strictly indispensable.

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[1] Richard Johnson (*c.* 1753–1827) was first Chaplain to New South Wales 1788–1800 and Samuel Marsden (1765–1838), magistrate and pastoralist, was Assistant Chaplain 1794–1800 and Senior Chaplain 1800–38 (he acted as Senior Chaplain following Johnson's departure for England in 1800, but was not officially appointed until 1810).

[2] i.e. Sydney.

[3] The map, dated 26 May 1798, preceding the title page in Collins, i., appears to show eleven main settlements in New South Wales (excluding Norfolk Island), namely Sydney, Wooloomooloo, Lane Cove, Hunters Hill, Kissing Point, the Field of Mars, the Northern Boundary and Ponds, Parramatta, Toongabbie, Prospect Hill, and Richmond Hill.

[4] Although Irish convicts had been transported to New South Wales from the sailing of the First Fleet in 1787, the first ship to sail directly from Ireland was the *Queen*, which departed from Cork in April 1791. Subsequent transportations from Cork, up until the end of October 1802 (by which time the first 'Letter to Lord Pelham' had been printed) consisted of the following vessels: the *Boddingtons*, which departed on 15 February 1793; the *Sugar Cane*, on 12 April 1793; the *Marquis Cornwallis*, on 9 August 1795; the *Britannia*, on 10 December 1796; the *Minerva* and the *Friendship*, on 24 August 1799; the *Anne I* (also known as the *Luz St Anna*), on 26 June 1800; the *Hercules I* and the *Atlas I*, on 29 November 1801; and the *Atlas II*, on 30 May 1802. In total, 1,928 convicts were embarked upon these ships. See C. Bateson, *The Convict Ships, 1787–1868*, 2nd edn., Glasgow, 1985, pp. 132, 138, 145–51, 157–71, 338–9.

Circumstances so favourable to a system of incapacity and negligence could scarce in any other case have presented themselves.

In Norfolk Island how is it?[1] If there be a clergyman now (and I have not found that there is one) there was no such officer at least so late as on the 18th of October 1796;[2] though at that time the number of inhabitants was already 887.[a] Quere 1. How many fewer souls to be saved have 887 persons in Norfolk Island, than the same number of persons in New South Wales or Great Britain? Quere 2. If, out of 4848 persons, sacerdotal service be needless to 887 taken at random, what need is there of it for the rest? In January 1792, a minister of religion (the chaplain of the New South Wales corps) did, it appears, pay a visit to that spot. It was, however, the first visit of the kind in so many years; and that a mere temporary excursion, the fruit of spontaneous zeal, and not of any particle of attention that appears ever to have been paid to the subject by the arch reformers here at home.[b]

But, to judge from the whole tenor of Captain Collins's Journal, as well as from the nature of the case, the truth is, that so far as the convicts were concerned, the real service which it was in the power of any ministers of religion, of any persuasion, or in any number, to render to these poor wretches, was in all places alike: presence or absence made no sort of difference.

What is above was written before the historian's second volume had made its appearance.[3] In this continuation it appears, that in one of the importations of

[a] I Collins, pp. 504. 508. 512. 497.[4]

[b] Ib. p. 194.[5]

[1] Prior to the sailing of the First Fleet, Arthur Phillip (1738–1814), Governor of New South Wales 1786–93, had been instructed to 'send a small establishment' to Norfolk Island 'as soon as circumstances will admit of it', in order to forestall its potential occupation by the French and to secure access to its flax and pine trees. The British settlement at Norfolk Island was established with the arrival of HMS *Supply* on 6 March 1788, bringing Philip Gidley King (1758–1808), naval officer, Lieutenant-Governor of Norfolk Island 1788–90, 1791–1800, later Governor of New South Wales 1800–6, together with a small group of free people and convicts. See Governor Phillip's Second Commission, 25 April 1787, and Governor Phillip to Lord Sydney, 15 May 1788, *HRA*, i. 13, 20.

[2] In 1798 Reverend Charles Haddock had been appointed by the Society for the Propagation of the Gospel as a missionary to Norfolk Island, but had decided not to travel. Henry Fulton (1761–1840) of the Church of Ireland, who had arrived in New South Wales on 11 January 1800 aboard the *Minerva*, after having been convicted of sedition and sentenced to transportation for life at Tipperary in August 1799, was appointed Assistant Chaplain at Norfolk Island in February 1801. See Acting-Governor King to the Duke of Portland, 21 August 1801, *HRA*, iii. 125, 760 n.

[3] The second volume of Collins's *Account* probably appeared in July 1802. The dedication is dated 26 June 1802 and Bentham had obtained a copy by the time he wrote to Charles Bunbury on 9 August 1802: see pp. 31–2 above.

[4] According to Collins, i. 512, when Collins himself reached Norfolk Island on 16 October 1796 aboard the *Britannia*, the population of 887 consisted of 533 men and 354 women and children. At Bentham's other references, Collins presents an alternative description of the population (i. 504), an account of the livestock held by government and individuals (i. 508), and gives the total population of New South Wales and its dependencies as 4,848, with 889 at Norfolk Island (i. 497).

[5] See Collins, i. 194: 'Mr. Bayne, the chaplain of the New South Wales corps, (who offered his services, as there had never been a clergyman there,) embarked on board the Queen transport for Norfolk Island'. Reverend James Bain arrived at Norfolk Island on 21 January 1792, and remained there until 27 February 1794. According to ibid. 183,

The measure was indeed a measure of *experiment*, and experiment is that sort of operation which calls for the exercise of all sorts of faculties: But the subject matter of experiment was, in this peculiar case, a peculiarly commodious one; a set of *animæ viles*,[1] a sort of excrementitious mass, that could be projected, and accordingly was

convicts from Ireland, a priest of the Catholic persuasion (Harold by name) was actually comprised.[a]

If instead of this seditionist, a loyalist clergyman of the same religious persuasion had been sent out, such an addition to the civil establishment might in that country, one should have thought, have been not ill worth the expence. The *political* sanction might thus have found in the *religious* an useful ally: a useful defence against the hostility of the *popular* sanction. The spirit of tumultuary violence, the epidemic malady, for the cure of which these deplorable objects had been ordered to this disastrous watering-place, might, in that case, instead of being constantly stimulated, have been gradually allayed. The rebel priest, the most pernicious pastor that could have been found for the rebel flock, might have been consigned to Norfolk Island, on the supposition of their remaining, all of them, in New South Wales. The two lives, which it was afterwards deemed necessary to sacrifice to public justice and security, might thus have been preserved,[b] and the exigence which has given birth to so dangerous an expedient and precedent as that of volunteer associations among unreformed convicts[c] might never have taken place.

[a] II Collins, p. 293.[2] [b] Ib. p. 333.[3] [c] Ib. p. 303.[4]

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contrary to Bentham's statement, in November 1791 Reverend Richard Johnson had 'voluntarily visited Norfolk Island for the purpose of performing those duties of his office which had hitherto been omitted through the want of a minister to perform them'.

[1] See Virgil (Publius Vergilius Maro), *Aeneid*, XI. 372–3: *nos animae viles, inhumata infletaque turba, sternamur campis*, i.e. 'let us, whose lives are worthless, be strewn over the fields, a mob, unburied and unwept'.

[2] Collins states that, following an investigation in May 1800 into an alleged conspiracy among Irish convicts, Harold was found to be 'concerned in some seditious conversations', though nothing was discovered 'whereby he could be criminated'. Father James Harold or Harrold (1744–1830), Roman Catholic priest and United Irishman, had arrived in New South Wales as a convict in January 1800 aboard the *Minerva*. He was subsequently sent to Norfolk Island in October 1800 after being implicated in an alleged conspiracy among Irish convicts to mutiny: see also pp. 148–9 below.

[3] John Wolloughhan or Hoolahan and Peter McLean were summarily executed at Norfolk Island on 14 December 1800. Major Joseph Foveaux (1767–1846), Lieutenant-Governor of Norfolk Island 1800–4, was informed by Henry Grady or Gready, a convict serving a life sentence at Norfolk Island for rape, that around a hundred convicts, many of whom had recently arrived from Sydney after being implicated in conspiracies to mutiny, were plotting to murder the Island's officers and their families. Thirty pikes were located and, after Grady named Wolloughhan and McLean as the ringleaders, at a meeting on 14 December 1800 the officers 'unanimously agreed' that 'an immediate example of capital punishment' should be made. The two men were seized after that morning's church service and hanged in the afternoon. See 'A Conspiracy at Norfolk Island', 14 December 1800, *HRNSW*, iv. 266–7.

[4] Collins states that in September 1800, owing to the alarm caused by rumours of mutinous plots among Irish transportees, some 'of the most respectable inhabitants were formed into two volunteer associations of fifty men each, and styled the Sydney and Parramatta Loyal Associated Corps'. For the alleged conspiracy see pp. 148–9 below.

projected—projected, and as it should seem purposely—as far out of sight as possible.

Turn now, my Lord, to the penitentiary system; in which, if the principles pursued as above, are to be considered as the standard of orthodoxy, the scent of heresy must be acknowledged to be but too strong. In a Panopticon penitentiary house, supposing religion to be really a source of benefit, supposing it good for any thing beyond a show, men would have had the full benefit of it. Church attendance would *there* neither have been forcible nor yet eludible.[1] The presence of my chaplain, it would have been little less possible for them to fly from, than from that of the Almighty whom he served. Unable, neither would they have wished to fly from it. It would have been adorned and fortified by those accompaniments, which in ministering to this branch of instruction, would have combined with it as much appropriate and congenial entertainment, as inventive industry could contrive to bring together, in a situation from which every rival attraction might so effectually be excluded. Yes, my Lord, my whole treasury of artifices would have been ransacked, for contrivances to render the tuition as interesting as possible to the pupils; my whole dispensary would have been rummaged for sweets and conserves, to render the physic of the soul as palatable as possible, to a class of patients in whom the need of it is so eminently deplorable. Nothing which, in the judgment of my superiors *ad hoc* in the spiritual college, should in consideration of its conduciveness to the end, stand approved, or though but tolerated, would on account of the novelty of it have been shrunk from, or on account of the expence of it, have been grudged. *Valeat quantum valere potest*,[2] would have been my maxim: and that (mistake me not, my Lord,) not as a pretence for indifference and neglect, but as a memento and a spur to attention and activity. Men who have the interests of religion most at heart, and whose endeavours have been most conspicuously bent, to the turning it to the best possible account in the way of practice, such are the men my hopes had always pointed to for counsel and support. Such, my Lord, were *veneficia mea*,[3] my pious frauds; the stock of them, I assure your Lordship, was not a scanty one. Delinquency (if —— and ——[4] would have given leave), delinquency in habit, in act, even in idea, would have been shut out;

[1] For the arrangements for religious services in the panopticon penitentiary see 'Panopticon; or, The Inspection-House', i. 19, ii. 51–8 (Bowring, iv. 43, 78–9).

[2] i.e. 'let it have effect to such extent as it can have effect': a legal maxim.

[3] See Pliny the Elder (Gaius Plinius Secundus), *Naturalis Historia*, XVIII. 43: *Veneficia mea, Quirites, haec sunt, nec possum vobis ostendere aut in forum adducere lucubrationes meas vigiliasque et sudores*, i.e. 'These are my magic spells, citizens, and I am not able to exhibit to you or to produce in court my midnight labours and early risings and my sweat and toil.'

[4] Possibly either Pitt and Rose or Portland and John King.

shut out, not merely by spiritual bars, by moral bars, by legal bars, but by physical ones.

In no point did my system rest itself upon cold forms. In body, in mind, in every way, if my patients suffered, I suffered with them. By every tie I could devise, my own fate had been bound up by me with theirs. *Vicinity* to the public eye, vicinity was the object with me, not distance. Recluse by inclination, popular at the call of duty, I did not shun the light, I courted it. Self-devoted to the task of unremitting inspection, it would have been a reward to me, not a punishment, to be as unremittingly inspected.[1]

Thus, in so far as reformation is concerned, stands the comparison between the two systems, on the ground of general principles or *theory*, if a word so much in disgrace with men in whose vocabulary *practice* is synonymous with *wisdom,* may for the moment be endured. A theory is indeed no farther good than in so far as its indications receive, as occasion serves, the confirmation of *experience*. But experience, though an instructive guide, is apt to be a costly one. In the present instance, in the compass of ten or eleven years, it had cost, four or five years ago, upwards of a million:[a] by this time little less, probably, than a million and a half, of which near the odd million (as your Lordship will see) might have been saved, and with it the shame of a project involving in its very essence the impossibility of success—saved, together with lives by hundreds, and crimes and immoralities without account, if antecedently to the experiment, in addition to the tongue of an orator,[2] there had been an eye at the Treasury, capable of reading in the book of human nature.

Under a system of suppression persevered in, spite of Parliamentary warnings,[b] for these ten years,[c] from what source shall the testimony

[a] 1,037,230*l.* 28th Finance Report, 26th June 1798, p. 22.[3]

[b] See 28th Report of the Committee of Finance, Anno 1798.[4]

[c] The last official communications, made to the House of Commons on the subject of New South Wales, bear date in 1792.[5]

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[1] For Bentham's arrangements to encourage the public to visit the panopticon penitentiary see 'Panopticon; or, The Inspection-House', i. 29–30 (Bowring, iv. 45–6).

[2] i.e. Pitt.

[3] In 'Twenty-Eighth Report on Finance', in *Commons Sessional Papers of the Eighteenth Century* (1798), cxii. 24, and Appendix O, 122–3, the Select Committee on Finance estimated that, up to 31 December 1797, the total cost of transporting, clothing, and victualling convicts, and of the civil, military, and marine departments of New South Wales and Norfolk Island, had amounted to £1,037,230 6s. 7¾d.

[4] Bentham perhaps had in mind the passage at *Commons Sessional Papers of the Eighteenth Century* (1798), cxii. 30, where the Select Committee, after enumerating all the difficulties of New South Wales, notes that much of what it says about the colony 'is but Conjecture; many Points might probably be elucidated and explained to Satisfaction on further Inquiry, but on the Part of Your Committee further Inquiry is impossible. In the Year 1792, a considerable Body of Evidence relative to the State of this Colony up to that

 [*See opposite page for n. 4 cont. and n. 5.*]

of experience be collected? Happily a more competent—a more instructive—a more authentic source—a source in any point of view more valuable, could scarce have been wished for, than that which the public, during the sleep of superior office, has been put in possession of by an eye-witness—the professed moral historiographer of the colony, the late Judge Advocate, *Captain Collins.* Nor yet simply the historiographer, but the panegyrist, the professed panegyrist likewise: a character which, when accompanied, as in this instance, with that candour and those internal marks of correct veracity with which it is so rare for it to be accompanied, renders the testimony, in this point of view, more than doubly valuable.

Fortunate it is, that, whether from firmness in one quarter, or from negligence in another, the principle of suppression has passed by a mass of information, that renders its exertions elsewhere of little use. The work is dedicated, and dedicated by permission, to the late Lord Sydney: in great letters, the title of 'PATRON of the work,' as well as that of 'ORIGINATOR of the PLAN of COLONIZATION,' are conferred upon the Noble Lord.[1] 'To your patriotism' (says the Panegyrist to the Patron) 'the plan presented a prospect of *political* and *commercial* advantage.' 'The following pages' (continues the worthy magistrate with perfect simplicity, and with unquestionable truth) 'will serve to evince with how much wisdom the measure was suggested and conducted; with what beneficial effects its progress has been attended; and what future benefits the parent country may with confidence anticipate.'[2]

In the Preface he concludes with acknowledging himself to be 'anxiously solicitous to obtain' for the Colony 'the candid consideration of his countrymen; among whom' (he says) 'it has been painful to him to remark a disposition too prevalent for regarding it with odium and disgust.'[3] . . . 'Its utility' consists, according to him, in that, 'besides the circumstance of its freeing the mother country from the depraved branches of her offspring, in some instances *reforming* their dispositions, and in all cases rendering their *labour* and talents *conducive*

Period, was printed by Order of the House. Conscious of the extreme Imperfection of their own Labours on this Head, Your Committee cannot but recommend, as a Measure necessary to enable the House to perform a proper Judgment, that as soon as convenient after the next Arrivals, Information should be called for on a Plan equally copious, exhibiting the State of the Colony down to the latest Period.'

[5] See 'Accounts and Papers Relating to Convicts on Board the Hulks, and Those Transported to New South Wales', 10 and 26 March 1792, ibid. (1791–2), lxxxiii. 259–367.

[1] Sydney, as Home Secretary, had supported the establishment of a penal colony at Botany Bay and in 1788 the main settlement at Port Jackson had been named Sydney in his honour.

[2] Collins, i. p. vi. Minor infelicities in the rendering of this and other passages from Collins have not been noted. Unless otherwise noted, the emphases, here and below, are Bentham's.

[3] Ibid. p. x.

to the public good, it may prove a valuable *nursery* to our *East India* possessions for *soldiers* and *seamen*.'[1] He speaks of a time in which 'he began to think . . . . . that some account of the gradual reformation of such flagitious characters, as had by many' (he very candidly adds, and those not illiberal) 'persons, in this country, been considered as past the probability of amendment, might be not unacceptable.'[2] . . . . So far the magistrate historian: as to the flagitious characters, there is no want of them; but as to any evidence of their reformation, here and there a white blackamoor excepted, it is all of it in his wishes, there is none of it in his book. How far the general conceptions, thus conveyed in the Preface, are in agreement with the rigid truth of things, will appear from the more specific statements collected a little further on, at the bottom of the page. For these little inadvertencies, if such they should prove, the interests of the public service are but so much the more in the author's debt: since, if, confining himself to the province for which he appears so eminently qualified, the superior province of the historian, he had left the task of the panegyrist to inferior hands, the satisfaction which, as matters stand, I flatter myself with being able to afford your Lordship on this ground, might have been less complete.

Of passages to the like effect with those which are here transcribed, enough might have been found to fill a volume. Those which are given here are selected as exhibiting the condition of the Colony at the latest points of time: this being the stage, at which the reforming tendency of the discipline, had it possessed any such tendency, had had the longest time to operate. General statements and observations are moreover preferred to histories of individual criminals or crimes, partly out of deference to the logical rule—*syllogizari non est ex particulari*[3]—partly, because the particular anecdotes of this kind, being the materials of which a very considerable part of that large but interesting work are composed, could not possibly have been comprised within the limits prescribed by the object of this address.

The persons spoken of as *reformed,* are for the most part spoken of by name: in number they would scarcely, I think, be found to exceed a score—certainly not double that number, even including the many backsliders. The number of the unreformed is to that of these reformed characters, as a hundred or so to one. A bettermost sort of rogue; a man, in whom on any occasion the smallest degree of confidence

[1] Ibid. pp. ix–x. [2] Ibid. p. viii.

[3] i.e. 'A general conclusion cannot be formed from a particular instance.' The rule appears in Robert Sanderson, *Logicae artis compendium*, Oxford, 1741, III. iii, p. 94, the edition of the work studied by Bentham when a student at the University of Oxford.

can be reposed, appears in that country to be beyond comparison a scarcer animal than a *black swan*.[1] One thing the historian is clear in; that, as to all but the few *lusus naturæ*[2] thus distinguished, the longer they stay in that scene of intended reformation, and the more they are left to themselves (that is, the more entirely they are left to the separate influence of the pure principle of *colonization*, without any admixture of its discarded rival, the principle of *inspection*) the worse they are: those who have the yoke of bondage still about their necks, being a sort of half-honest, half-sober, half-provident profligates, in comparison of those called '*settlers*,' whose term is at an end.[a]

[a] I. *Improbity, uncorrected and incorrigible.*

No. 1, p. 382, July 1794. 'An honest servant was in this country an invaluable treasure; we were compelled to take them as chance should direct from among the common herd; and if any one was found who had some remains of principle in him, he was sure to be soon corrupted by the vice which every where surrounded him.'

No. 2, p. 419, June 1795. 'With very few exceptions, it was impossible to select from among the prisoners, or those who had been such, any who would feel an honest interest in executing the service in which they were employed. They would pilfer half the grain entrusted to their care for the cattle; they would lead them into the woods for pasturage, and there leave them until obliged to conduct them in; they would neither clean them nor themselves. Indolent, and by long habit worthless, no dependance could be placed on them. In every instance they endeavoured to circumvent.'

No. 3, p. 445, December 1795. 'At Sydney, another attempt being made to steal a cask of pork from the pile of provisions which stood before the storehouse, the whole was removed into one of the old marine barracks. The full ration of salt provisions being issued to every one, it was difficult to conceive what could be the inducement to these frequent and wanton attacks on the provisions, whenever necessity compelled the Commissary to trust a quantity without the store. Perhaps, however, it was to gratify that strong propensity to thieving, which could not suffer an opportunity of exercising their talents to pass, or to furnish them with the means of indulging in the baneful vice of gaming.'

No. 4, p. 473, April 1796. 'No punishment however exemplary, no reward however great, could operate on the minds of these unthinking people.'

II. *Improvidence, extreme and universal.*

No. 1, p. 414, April 1795. 'The farmers now began every where putting their wheat into the ground, except at the river,[3] where they had scarce made any preparations, consuming their time and substance in drinking and rioting; and trusting to the extreme fertility of the soil, which they declared would produce an ample crop at any time without much labour.'

No. 2, p. 435, Nov. 1795. 'Instead of completing in a few hours the whole labour which was required of a man for the day, the convicts were now to work the whole day, with the intermission of two hours and a half of rest. Many advantages were

[1] See Juvenal (Decimus Iunius Iuvenalis), *Satires*, II. vi. 165: *rara avis in terris nigroque simillima cycno*, i.e. 'a rare bird on this earth, exactly like a black swan'. The black swan was frequently invoked as a mythical creature before it was encountered in Australia.

[2] i.e. 'freaks of nature'.

[3] i.e. the Hawkesbury River.

Reformation being the topic at present upon the carpet, it is to this that the present string of extracts will therefore be confined. The other

gained by this regulation; among which not the least was, the diminution of idle time which the prisoners before had, and which, emphatically terming *their own time*, they applied as they chose, some industriously, but by far the greater part in improper pursuits, as gaming, drinking, and stealing.'[1]

No. 3, p. 458, February 1796. 'They {the settlers} seldom or never shewed the smallest disposition to assist each other. Indolent and improvident even for their own safety and interest, they in general neglected the means by which either could be secured.'

No. 4, p. 467, March 1796. 'At the Hawkesbury, *where alone any prospect of agricultural advantages was to be found*, the settlers were immersed in intoxication. Riot and madness marked their conduct; and this was to be attributed to the spirits, that in defiance of every precaution found their way thither.'

No. 5, p. 470, April 1796. 'In the beginning of this month a very liberal allowance of slops were served to the prisoners, male and female. As it had been too much the practice for these people to sell the clothing they received from Government as soon as it was issued to them, the Governor on this occasion gave it out in public orders, that whenever it should be proved that any person had either sold or otherwise made away with any of the articles then issued, the buyer or seller, or receiver thereof, would both subject themselves to corporal or other punishment.[2] *Orders, however, had never been known to have much weight with these people.*'

No. 6, p. 482, June 1796. 'The settlers at the different districts, and particularly those at the Hawkesbury, had long been supposed to be considerably in debt; and it was suspected that their crops, for two or more seasons to come, were pledged to pay these debts.'

No. 7, p. 483, June 1796. 'The gentlemen who conducted the enquiry found most of the settlers there {the Hawkesbury} oftener employed in carousing in the fronts of their houses than in labouring themselves, or in superintending the labour of their servants in their grounds.'

No. 8, p. 483, June 1796. 'The practice of purchasing the crops of the settlers for spirits had too long prevailed in the settlement: . . . . it was not possible that a farmer, who should be idle enough to throw away the labour of twelve months, for the gratification of a few gallons of poisonous spirits, could expect to thrive.'

No. 9, p. 492,[3] August 1796. 'They {the settlers} were in general of such a thoughtless, worthless description, that even this indulgence might induce them to be, if possible, more worthless and thoughtless than before; as, to use their own expression, they had now to work for a dead horse.'[4] The indulgence consisted in the being suffered to give assignments on their crops then in the ground, to save themselves from imprisonment for debt.

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[1] Collins's emphasis. For the regulation in question see Governor Hunter to the Duke of Portland, 12 November 1796, Enclosure, Government and General Orders (17 November 1795), *HRA*, i. 681–2. John Hunter (1737–1821), naval officer, was Governor of New South Wales 1795–1800.

[2] For the orders in question see Governor Hunter to the Duke of Portland, 12 November 1796, Enclosure, Government and General Orders (7 April 1796), *HRA*, i. 691.

[3] *Recte* 492–3.

[4] i.e. to work for wages already paid: see Francis Grose, *A Classical Dictionary of the Vulgar Tongue*, London, 1785.

topics, glanced at in the passages quoted out of Mr. Collins's preface, belong to the head of *Incapacitation* (I mean with reference to the

III. *The longer the Application of the supposed Cause of Reformation, the worse the Effect.*

No. 1, p. 358, March 1794. 'Had the *settlers*, with only a common share of honesty, returned the wheat which they received from Government to sow their grounds the last season, the reproach which they drew upon themselves, by not stepping forward at this moment to assist Government, would not have been incurred; but though, to an individual, they all knew the anxiety which every one felt for the preservation of the seed-wheat, yet when applied to, and told (in addition to the sum of ten shillings a bushel) that any quantity which they might choose to put into the store, should be brought from their farms, without any expence of carriage to them; they all, or nearly all, pleaded an insufficiency to crop their ground for the ensuing season; a plea that was well known to be made without a shadow of truth.'

No. 2, p. 394, October 1794. '*The presence of some person with authority* was become absolutely necessary among those settlers, who, finding themselves free from bondage, instantly conceived that they were above all restrictions; and, *being without any internal regulations*, irregularities of the worst kind might be expected to happen.'

No. 3, p. 432. 'It appears likewise by this muster, that one hundred and seventy-nine people subsisted themselves independent of the public stores and resided in this town.[1] To many of these, as well as to the servants of settlers, were to be attributed the offences that were daily heard of; they were the greatest nuisances we had to complain of.'

No. 4, p. 471, April 1796. 'At the Hawkesbury, the corn store was broken into, and a quantity of wheat and other articles stolen; and two people were apprehended for robbing the deputy surveyor's fowl-house.'[2]

No. 5, p. 471, April 1796. 'All these depredations were chiefly committed by those public nuisances, the people off the stores.'

No. 6, p. 473, April 1796. 'The Hawkesbury (was) the refuge of all the Sydney rogues, when in danger of being apprehended.'

No. 7, p. 474,[3] May 1796. 'Daily experience proved that those people whose sentences of transportation had expired, were greater evils than the convicts themselves .... Many were known to withdraw themselves from labour and the provision store, on the day of their servitude ceasing. On their being apprehended, punished for a breach of order, and ordered again to labour, they seized the first opportunity of running away, taking either to the woods to subsist by depredations, or to the shelter which the Hawkesbury settlers afforded to every vagabond that asked it. By these people (we were well convinced) every theft was committed.'

Thus far Captain Collins. The corruption which it thus appears was so general among the settlers, *i.e.* among those whose terms of bondage were expired,

[1] The muster in question took place at Sydney on 26 September 1795: see Governor Hunter to the Duke of Portland, 25 October 1795 and 12 November 1796, Enclosure, Government and General Orders (23 September 1796), *HRA*, i. 540–1, 678.

[2] On 23 April 1796 Thomas Hope and John Brewster were convicted at the Court of Criminal Judicature and each sentenced to receive 500 lashes for having on 8 April 1796 stolen two geese valued at fifteen shillings from the Parramatta house of Charles Grimes (1772–1858), Deputy Surveyor of Roads at Norfolk Island 1790–4, Deputy Surveyor of Roads in New South Wales 1794–1801, Surveyor General of New South Wales 1801–11. For the trial see SRNSW, NRS 2700, 5/1147B (Reel 2391), pp. 95–7.

[3] *Recte* 474–5.

commission of fresh offences within the limits of the Mother Country); to *Incapacitation,* I say, and *Economy.* The merits of the plan, in relation to these objects, will be considered apart, under their respective heads.[1]

Such was the state of the 'improved Colony' in September 1796, at the termination of the period comprised in the first and already published history of Mr. Collins. A continuation from the same able and candid hand is promised (I see) by the public prints, for a time which may perhaps have arrived, before these pages of mine have reached your Lordship's eye.[2]

What subsequent improvements the Colony may have received in relation to this same head, is a point on which I cannot pretend to any information from that source.[a]

In the mean time, so far as concerns general results, which are all your Lordship would endure to see crowded into this place, accident has put into my hands two testimonies of no mean account. In one

who by that means had recovered a degree of independence, and had withdrawn themselves more completely out of the reach of every inspecting eye, had (as might have been expected) this independence, this exemption from inspection for its cause. For, so late as in August 1792, a time when the residence of those who had arrived first in the Colony had not been so long as five years, and when few had as yet regained their liberty, and none had been in possession of it for any length of time, 'with very few exceptions,' (says Captain Collins, p. 210,)[3] the uniform good behaviour of the convicts was still to 'be commended.'

[a] Since the above paragraph was written, the public has been put in possession of the promised information; and surely never did the deductions of reason receive a more ample confirmation from experience, than has been afforded in the present instance, by the actual condition of the 'improved' colony, as exhibited in this second volume, dedicated by permission to the Noble Lord in whose hands the management of it had by that time been reposed.[4] Extracts, in continuation of those given from the first volume, are intended to accompany this address.[5]

To keep clear of all possible imputation of intrigue, I abstained purposely from every endeavour, to open any sort of communication, direct or indirect, with the respectable historian, to whose ulterior testimony I was looking forward with such well-grounded confidence.[6]

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[1] See pp. 96–135 and 138–63 below respectively.

[2] A notice that the second volume was 'In the Press, and speedily will be published' appeared, for instance, in the *Morning Chronicle*, 9 March 1802. For the publication of the second volume see p. 79 n. above.

[3] *Recte* 230.

[4] Robert Hobart (1760–1816), fourth Earl of Buckinghamshire, had been appointed Secretary for War in March 1801 and had then received responsibility for colonies in July 1801. He served as Secretary for War and Colonies until the dismissal of the Addington administration in May 1804.

[5] Such further extracts eventually appeared in 'Second Letter to Lord Pelham', pp. 165–248 below.

[6] Bentham subsequently met Collins, dining with him on three occasions, twice at his own home in Queen's Square Place and once at the home of Bunbury, in early 1803: see Bentham to Samuel Bentham, 22 February 1803, *Correspondence* (*CW*), vii. 205, and the Editorial Introduction, p. lxi above.

respect they have the advantage, of any which even your Lordship's authority could command. They are, in each instance, the uninfluenced and undisguised effusions of the pen, committed to paper without the idea of being made subservient to this or any other public purpose. They wear no factitious colours; neither of that flattering cast, which is so apt to give a tinge to the smallest piece of paper that can ever find its way from any such quarter to your Lordship's office, nor yet of the opposite cast.

The first is an extract of a letter from Captain Hunter, at that time Governor of the Colony; the date of it is the 20th of May, 1799:[1] about 2½ years had been at that time added to the experience reported by Captain Collins.

'Sydney, New South-Wales, 20th May, 1799.

'The fatigue to which the Governor of this territory must submit, both mental and corporeal, is far beyond any idea you can have of the nature of his duty rendering such fatigue necessary in the Commander in Chief.

'My former knowledge and acquaintance with this country encouraged me in a hope, which however in some respects proved delusive, that I should, with ease to myself, and with proper effect and advantage to the public, have been able to manage all the duties of my office. But I had not been long entered upon it, before I was awakened from that dream of comfort and satisfaction, the prospect of which I had so vainly indulged. The seeds of those vexations which had so disappointed me, had been sown for a very considerable time; and, being rather of a prolific nature amongst such people, had gained so much strength that it will require immense labour to grub them up by the root. I have persisted in my attempt to that end, and mean not to change my system; which, be assured, from being calculated to lay restraints upon every species of vice and immorality, cannot, amongst such characters, be a very popular one: that, however, will be a matter of no immediate concern with me, if I succeed only in a small degree to check the growing profligacy and abandoned turn of the lower classes of the people.

'This is a good *country,* and will do well; but its progress in improvement would be considerably hastened, *could Government be prevailed upon not to overstock us with the worst description of characters;* for, *whilst the mass of the people continue to be of that class*, our difficulties will ever be very considerable: *the industrious and well-disposed become a continual prey to the idle and worthless.*'

[1] The letter, addressed to Samuel Bentham, is at BL Add. MS 33,543, fos. 36–7, and is reproduced in *HRNSW,* iii. 673–5.

It was not to myself that this letter was addressed; neither had I then, nor have I since had the honour of any personal acquaintance with the gentleman from whom it came. It was a letter perfectly spontaneous; addressed to a person with whom he had never before had any written intercourse.[1]

Your Lordship sees what it is the Governor of the improved Colony, down to that time, could find to speak of:—great labours, no successes. Could any thing have been found that could have been made to wear the appearance, though it were but of a half-success, would it have passed unnoticed? Mean time, if in the line of *moral* improvement, the Governor made such small advance, it was not (if the Governor himself, or the Judge Advocate, is to be believed) for want of trying for it.

The country (your Lordship sees) is a '*good country;*' but the word *good* might lead to conclusions rather wide from truth, if a distinction were not to be made between God Almighty's work and *****'s.[2] To its Almighty Creator it is indebted for those capabilities which neither neglect nor mismanagement can deprive it of: the use made of them had been depending upon *****. Your Lordship sees upon what condition its chance of improvement depended: (in the opinion of the Governor at least, upon whom every thing had been depending under *****:) upon its not being applied to the chief, if not the only purpose, for which it had been established, and for which it continues to be kept up: the purpose with reference to which, according to *****, it was so much superior to every thing else. By the Governor, after all the labours of which he speaks so feelingly, the nature of things could not be changed. While those, who have become bad for want of inspection, remain without any inspection,[a] (as they must do there,

[a] I. *General Necessity of Inspection*.

No. I, p. 63, March 1789. 'Being advanced in years, he' (the person intrusted with the direction of the convicts at Rose-hill) 'was found inadequate to the task of managing and controlling the people who were under his care, the most of whom were always inventing plausible excuses for absence from labour, or for their neglect of it while under his eye.'[3]

[1] Hunter had known Samuel Bentham for some time. Elsewhere in the same letter he had remarked that, 'Altho' my original acquaintance with you commenced when you was very young, I have notwithstanding had opportunities of marking the progress of your particular genius—and that turn of talent which so eminently qualifies you for the very important office which you now fill [i.e. Inspector General of Naval Works], an Office which will afford an ample and extensive field for the exercise of that ability in mathematical & mechanical study which you so highly possess'.

[2] The asterisks here and below obscure references to 'M^{r} King', i.e. John King: see the draft at UC xciv. 336^{v} (27 March 1802).

[3] James Smith, who had arrived at Port Jackson in January 1788 as a free passenger aboard the *Lady Penrhyn*, had been initially employed as Head Constable and Chief Superintendent of Convicts. In February 1789 he had been appointed to assist the Commissary at the Rose Hill public farm (renamed Parramatta in 1791), but had soon afterwards been dismissed.

such of them as are not in jail there)[a] they will remain as bad as ever; or rather, according to the estimate given of them, as above, by the late Chief Magistrate, become still worse.

No. 2, p. 400, December 1794. 'Our settlements had now become so extensive, that orders did not so readily find their way to the settlers, as runaways and vagrants, who never failed of finding employment among them, particularly among those at the river.'[1]

[a] II. *Necessity of Jails, and Jail-Gangs, for closer Inspection.*

No. 1, p. 383, July 1794. 'During this month, a building, consisting of four cells for prisoners, was added to the Guard-house on the east side of the cove.[2] This had long been wanted; and the whole being now enclosed with a strong paling, some advantage was expected to be derived from confinement adopted only as a punishment.'

No. 2, p. 402, December 1794. 'A jail-gang was also ordered to be established at Toongabbe, for the employment and punishment of all bad and suspicious characters.'[3] If I understand this *Jail-gang* right, it was composed of a set of workmen, working, not within the walls of a jail, (a place in which there could hardly be any work to be done) but, though in an unconfined space, an uninclosed field, yet under the close inspection of persons set over them as guards, with or without the addition of fetters to keep them from running away.

No. 3, p. 487, July 1796. 'The town of Sydney was shortly after filled with people from the different settlements, who came to the Judge Advocate for certificates of their having served their respective sentences.[4] Among these were many who had run away from public labour before their time had expired; some who had escaped from confinement, with crimes yet unpunished hanging over their heads; and some, who being for life, appeared by names different from those by which they were commonly known in the settlement. By the activity of the watchmen, and a minute investigation of the necessary books and papers, they were *in general* detected in the imposition, and were immediately sent to hard labour in the town and *Jail-gangs.*

'To the latter of these gangs additions were every day making; scarcely a day or a single night passed, but some enormity was committed or attempted either on the property or persons of individuals.'

No. 4, p. 493, August 1796. 'The *Jail-gang*, at this time, notwithstanding the examples which had been made, consisted of upwards of five-and-twenty persons, and many of the female prisoners were found to be every whit as infamous as the men.'

* * * * *

To crown the whole, and that nothing might be wanting that could help to demonstrate the complete inefficacy and inutility of every thing that is peculiar

[1] i.e. the Hawkesbury River settlements.

[2] i.e. Sydney Cove.

[3] Convicts summarily sentenced to a term of hard labour were from 1792 liable to be sent to Toongabbie, or the 'New Ground', one of several public farms established during 1791.

[4] Governor Hunter had ordered every person in the colony who had been struck off the stores to travel to Sydney or Parramatta, where those who had been 'regularly discharged from the Commissary's books' would be issued with certificates, while settlers were told that they could only employ individuals possessing such certificates: see Collins, i. 486–7, and Governor Hunter to the Duke of Portland, 12 November 1796, Enclosure, Government and General Orders (11 July 1796), *HRA*, i. 694–5.

The next article, from a source, than which that distant region never furnished a more respectable one, bears date the 7th of October 1800. The part that applies to the present purpose comes after a paragraph of considerably greater length, which I may have occasion to submit to your Lordship under the head of *Economy.*[1]

'Governor King, who has the command, will make many regulations, as far as is in his power, for the security and advantage of the Colony; and likewise pay some attention to the morals and instruction of the rising generation, *to which none has hitherto been given*; for certainly, if we ever hope to see worth or honesty in this settlement, we must look to *them for it,* and not the *present* degenerate race.'

What your Lordship might not otherwise have supposed, this letter is from a female pen, as well as to a female eye:[2] not a word more in

to the penal colonization system—one of its latest improvements has been the importation of the *Hulk* system from the Thames. In August 1801, The Supply (we are informed by Lieutenant-Colonel Collins, in the continuation of his History,) was 'fitting up as a *Hulk,* to receive such convicts as were incorrigible.' II. 330.[3]

To avoid employing *prisons* and *hulks* at home, expeditions upon expeditions are fitted out, to employ convicts in farming at the antipodes. In the course of a few years a discovery is made, that drinking is preferred to labour, and that nothing is to be done without *hulks* and *prisons* even *there*, though in a situation in which profitable labour under confinement is impossible; and it is this combination of particular forced idleness, with universal unbridled drunkenness, that is given, not only as an 'improved' system, but a system to such a degree improved, as to justify the proscription of a system of sobriety and industry, that would have been carried on at home at a fraction of the expence.

At this time, at the expence of 3954*l*., the Colony had been put in possession of what is called '*the County Gaol*,' a convenient sort of a building, which, besides that its standing use, serves occasionally as a bonfire. The same gaol, the Sydney gaol (metaphysical discussion about identity apart), had served once in that capacity already, as well as another at Paramatta. II Collins, p. 197. 276. 331.[4] The country is particularly favourable to such exhibitions. Things take fire there of themselves: {II Collins, p. 72.}[5] *a fortiori* with a little assistance.

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[1] See pp. 138–63 below.

[2] This letter was written by Elizabeth Paterson (*c.* 1760–1839), wife of William Paterson (1755–1810), soldier, explorer, and botanist, Lieutenant-Governor of New South Wales 1794–5, 1800–8, Commandant at Port Dalrymple 1804–9, and the recipient was Mary Sophia Bentham, the wife of Samuel Bentham. A partial copy of the letter is at BL Add. MS 33,543, fos. 423–4.

[3] *Recte* 330–1. The plan to convert the condemned vessel *Supply* into 'a receiving hulk for incorrigible convicts' was, in fact, abandoned in favour of using the ship as a receiving depot for prisoners recently arrived in the colony: see Acting-Governor King to the Duke of Portland, 1 May 1801, Enclosure No. 4, Government Vessels employed for the Public Service of His Majesty's Colony in New South Wales (30 June 1801), *HRA,* iii. 92.

[4] The thatched Sydney gaol burned down on the night of 11 February 1799 (Collins, ii. 197–8), while the replacement stone 'county gaol' was constructed at a cost of £3,954 (ibid. 331). The log gaol at Parramatta burned down either on 24 December 1799 (according to ibid. 276) or on 28 December 1799 (according to Governor Hunter to the Duke of Portland, 7 January 1800, *HRA*, ii. 434).

[*See opposite page for n. 5.*]

it that bears reference to any thing that can be called *politics*. Mere accident threw it into my hands. For authentication sake, designation will (I suppose) be regarded as indispensable; but where that sex is concerned, the most reserved mode that can be thought of, is the most respectful and the best.[a]

Such was the state of this 'improved' and ever improving Colony, with the benefit of at least a year's improvements more than ——— and ———[1] could as yet have heard of, at the time (I mean July 1800) when the idea of '*relinquishing*' the Penitentiary System, in consideration of the superiority of their improved Colonial System, was first declared in black and white, after having been determined *in petto* for a length of time unknown to me.[2] A year's improvements more, and still ——— and ———[3] did not know that there were children there, or, if there were, that they were worth saving from the gallows.

But have not Colonies (says your Lordship), *has not transportation to those Colonies, been a source of good? and even in this particular line? Have not reformation and honest industry been among the experienced fruits of it?* Yes, my Lord, where the bulk of the population has been ready formed, and composed of men of thrift and probity; where, the mass of the population being found, the children of improvidence have been dropped-in in driblets, absorbed, and assimilated as they dropped in, by the predominant mass of the population into which they were received. In America, a master, waiting to take charge of the delinquent as soon as landed—that employer a man of thrift—one of a neighbourhood all composed of men of thrift—all ready to make common cause against a fugitive or refractory bondsman:—the bondsmen, not collected together in any one place in numbers, but distributed among a number of families, one or a few at most in each. Such was the sort of society in which each convict would have to serve, and be trained up, in unremitting habits of unavoidable industry, during his bondage: of the same cast was the society in

[a] Oblique as it was, when the announced designation presented itself in print, my resolution failed me, and I expunged it. The sex of the writer, and the fidelity of the extract, being admitted, whatever claim to confidence can be given by situation will be found stamped upon the style.

[5] Collins, ii. 72–3, reports that the weather during December 1797 was 'exceedingly hot; and as, at this season of the year, the heat of the sun was so intense that every substance became a combustible, and a single spark, if exposed to the air, in a moment became a flame, much evil was to be dreaded from fire'.

[1] 'M^{r} King and his Grace' (i.e. John King and the Duke of Portland), according to the draft at UC xciv. 335^{v} (27 March 1802).

[2] For the 'grounds of relinquishment' of the panopticon penitentiary scheme see p. 73 n. above.

[3] Again, 'M^{r} King and his Duke', according to UC xciv. 335^{v}.

which, if he settled at all in that quarter of the world, he would have to settle, upon his restoration to independence.[1]

Thus it was in *America:*—thus it was with the convict, consigned to any one of those *old established* Colonies. How was it in *New South Wales?*—The native inhabitants—a set of brutes in human shape, the very dregs even of savage life—a species of society beyond comparison less favourable to colonization than utter solitude—a set of living nuisances, prepared at all times for all sorts of mischief;—for plundering the industrious;[a] for quarrelling with the quarrelsome;[b] for affording harbour to the fugitive.[c] Other inhabitants, none, but the very profligates themselves, who were thus sent by thousands, from British gaols, to be turned loose to mix with one another in this desert, together with the few task-masters that were to set them to work in the open wilderness, and the military men who were sent out with them in large but still unequal numbers, to help keep within bounds the mischief they would be sure to occupy themselves with, when thus let loose. Excepting these military guardians, whom the endeavour was, though a vain one, to keep from mixing with their wards, it was of the very dregs of society, of men unfit to live at large in society, of men proved to be such by experience, and those collected together in multitudes, that the mass of society in this Colony has hitherto been, was even meant to be, and for some generations at least would, for any rational ground that the founders could have for expecting the contrary, continue to be, composed.

[a] I Collins, 444. 458, 459.—II. 15. 31. 33. 56. 204.[2]
[b] Ib. 30. 415.—II. 281.[3] [c] Ib. 459.—II. 34. 40. 59. 299.[4]

[1] The Transportation Act of 1718 (4 Geo. I, c. 11) provided that individuals convicted of offences coming within benefit of clergy, other than receivers and buyers of stolen goods, might be transported to the North American colonies for a period of seven years, while those convicted of capital crimes might be transported for fourteen years in lieu of execution. The shipping of prisoners to North America was privately contracted to merchants who were granted 'Property and Interest in the Service of such Offenders', and who were permitted to sell, as indentured labour, the service of transportees for the duration of their sentences to colonists. Between 1718 and 1776, when the American Declaration of Independence brought an end to the practice, around 50,000 men, women, and children were transported from the British Isles to the North American colonies.

[2] Collins, i. 444, 458–9, ii. 15, 31, 33, 55–6, 204–5, describe attacks by Indigenous Australian people on the settlers at the Hawkesbury River settlements, Lane Cove, Kissing Point, and at the Hunter River, and the reprisals carried out by British soldiers.

[3] Collins, i. 30–1, 415–17, ii. 281–3 respectively describe the killings in May 1788 of two convicts by Indigenous Australian people in reprisal for the theft of a canoe; frontier warfare at the Hawkesbury River during May 1795; and the trial in October 1799 (which Collins mistakenly dates to January 1800) of five settlers for the torture and murder of two Indigenous boys and the attempted murder of a third.

[4] Collins, i. 458–9, ii. 34–5, 40, 59, 299–300, describe several occasions on which, as he believed, Indigenous Australian people had been incited to attack settlers and their property, or had been assisted in so doing, by escaped convicts.

To an eye incapable of seeing further into things than their names, the two above contrasted scenes of existence were indeed the same, since both were *Colonies*. But in themselves no two measures could in this respect be more different, than transportation of convicts in retail, into a Colony ready formed by honest men, and transportation of convicts by wholesale, into a Colony not formed, but to be formed, and to be formed of convicts.

But may not a set of regularly honest settlers be collected thither by degrees? and thus, with the addition of the improved characters, how few soever at first, among the emancipated convicts, accumulate in time into whatever majority may be requisite to form the basis of an industrious and thriving population? Possibly, my Lord: the bounds of possibility are wide: not even very improbably, so it be in some future century. In the present one, hardly. For what is there that should draw thither men of thrift and capital? draw them to a place which, except a part of the stock of necessaries for its own inhabitants, neither does produce, nor presents any the smallest indication of being about to produce, any thing that will not be at the very time produced in other places, as well as imported into Britain from other places, at a much cheaper rate; to a place in which, in the mean time, '*the industrious and well-disposed*' will (as the late Chief Magistrate, and the late Governor, seem to agree in observing) '*become a continual prey to the idle and worthless.*'[1]

Loud and frequent have been the complaints (nor altogether, I suppose, without truth) about *inveigling* men (as it is called) to North America:[2] *cruel* and *fraudulent* are the epithets given to the practice: to North America, where, if manners are not upon the whole so amiable, yet crimes of all sorts probably, crimes of depredation certainly, are even more rare than here: to America, where a human being not employed in industry, productive or professional at least, is scarcely to be found. If to invite men to such a country be an act of fraud and cruelty, what must the act of that man be, who should seek to engage an honest settler to sink his capital, his industry, and his prospects, in New South Wales?

But of the prospect of advantageous produce, from this as well as all other sources, more will come to be said presently, under the head of *Economy,* to which it more immediately belongs.[3]

[1] See p. 89 above.

[2] The activities of emigration agents in encouraging skilled workers to migrate to the North American colonies gave rise to the Artificers Act of 1718 (5 Geo. I, c. 27), which refers to such agents promising workers high wages in the colonies and their use of 'other Arts to inveigle and draw them away'. Complaints against inveigling were still being made later in the eighteenth century: see, for instance, John Lind, *An Answer to the Declaration of the American Congress*, London, 1776, p. 105, and *The Times*, 18 September 1794, p. 2. John Lind (1737–81), clergyman, barrister, political writer, and unofficial minister for Poland, was a close friend and collaborator of Bentham.

[3] See pp. 150–63 below.

III. Third object or end in view, *Incapacitation:* rendering a man incapable of committing offences of the description in question any more: understand in the present instance, *in the same place:* the only place (it should seem) that was considered as worth caring about in this view.

In this object, was seated, to all appearance, the strong hold and main dependance of the system: of reformation, it would (I dare believe) have been acknowledged in a whisper, there was nothing meant but the form: it was a mere make-believe: in the expedient employed for rendering it impossible for a man to do any more such mischief, in the only spot in the world worth thinking about, consisted the sum and substance of the new system of compulsive colonization.

This contrivance was as firmly laid in school logic as could be wished. Mischievously or otherwise, for *a body to act in a place, it must be there*.[1] Keep a man in New South Wales, or any where else out of Britain, for a given time, he will neither pick a pocket, nor break into a house, nor present a pistol to a passenger, on any spot of British ground, within that time.

Depredation, though committed out of Britain, would indeed not the less be depredation: but, happily for our statesmen, here came in another rule of logic to their aid. *Things not apparent, and things not existing, belong to the same account*:[2] the depredation, and all other kinds of mischief and vice, not making their *appearance*; that is, not here in Britain; it is the same thing as if there were none. Of the aggregate mass of his Majesty's subjects, good, bad, and indifferent, taken together, such as remained in this and the next island,[3] constituted, according to this mode of taking stock, the only articles that had any pretensions to a place in the inventory. Those who were to be sent out of it, belonged neither to the list of souls to be saved, nor to the list of moral beings. On these principles, how the people thus sent thither behaved while there, was a point which, so long as they did but stay *there,* or at any rate not come back *here,* was not worth thinking about. Such was the religion, such the morality, which presided over the design and execution of the picture of industry and reformation in New South Wales.

[1] Bentham perhaps had in mind the contention of Aristotle (384–322 BC), Athenian philosopher, that the initiator of movement must be in direct contact with the thing that it immediately moves (see, for instance, *Physics*, VII. ii. 243ª3–15). A short dialogue on whether or not there can be 'action at a distance' (*actio in distans*) appears in Nicholas Amhurst, *Terræ-Filius: Or, The Secret History of the University of Oxford, in Several Essays*, 2 vols., 2nd edn., London, 1726, i. 121, a work cited by Bentham in *'Swear not at all:' containing an exposure of the needlessness and mischievousness, as well as Antichristianity, of the ceremony of an oath*, London, 1817, p. 94 (Bowring, v. 228).

[2] A reference to the legal maxim *de non apparentibus, et non existentibus, eadem est ratio*, i.e. 'of things not apparent and things which do not exist, the rule is the same'.

[3] i.e. Great Britain and Ireland respectively.

Admitting that immorality and misery are rendered matters of indifference, by being shifted from place to place; and that mischief of all kinds, so it be excluded from certain parts of his Majesty's dominions, may be regarded as annihilated—two points remain still to be considered:

One is, in what degree the contrivance thus hit upon for securing the country in question, against the future presence of the individuals in question, is productive of that effect?

The other is, how far the advantage thus purchased is consistent with the principles of law and justice?

The answer, not to keep your Lordship in suspense, will, I believe, be found to be, that so far as the object is attained, it is attained at the expence of justice: but that, even with that expence, the degree in which it is attained is very imperfect: imperfect from the first, and in the nature of things destined to become more and more so, the longer the establishment continues: and that, upon the whole, the *shame of inefficacy* is, in the very nature of the project, added to the *odium of injustice*.

The nature of the expedient being to be stated in the first place, before the efficacy of it can be examined into, the topic of justice will demand, on this as well as other accounts, the precedence. A word or two in the way of history is on this occasion unavoidable.

Transplantation to the Colonies, a measure employed for the first time (at least under authority at this time reputed legal) soon after the Restoration,[a] is a mode of punishment which, in lieu of, or in addition to, the other punishments annexed to offences comprised under the unfathomable and inexpressive appellation of *Felonies,* extended itself gradually into use, so long as the now independent States of America

[a] 13 and 14 C. II. c. 1. § 2. c. 12. § 23.[1]

[1] The Quakers Act of 1662 (13 & 14 Car. II, c. 1, § 2) provided that if they refused to take a lawful oath, before a magistrate, on the grounds that it was 'contrary to the Word of God', if they induced another to do the same, or if they assembled in public in groups of five or more, Quakers or other separatists would be subject to a fine of up to £5 for a first conviction, up to £10 for a second, and liable to be transported for a third. The Poor Relief Act of 1662 (13 & 14 Car. II, c. 12, § 23) provided that Justices sitting at Quarter Sessions might sentence 'such Rogues, Vagabonds, and Sturdy Beggars, as shall be duly convicted and adjudged to be incorrigible' to transportation 'to any of the *English* Plantations beyond the Seas'.

Contrary to Bentham's statement, transportation was first used as a criminal punishment, not after the Restoration of the monarchy in 1660, but with the issue of an open warrant of the Privy Council of 23 January 1615, which provided that able-bodied individuals convicted of capital felonies, excepting those of burglary, murder, rape, or witchcraft, might have their sentences remitted on condition that they agreed to be sent to labour in colonial possessions, and authorized the handing over of seventeen reprieved men to Sir Thomas Smythe (*c.* 1558–1625), politician, merchant, and colonial administrator, Governor of the East India Company 1601, 1603–5, 1607–21. See *Acts of the Privy Council of England*, 46 vols., London, 1890–1965, xxxiv. 23–5.

remained upon the list of British Colonies. This, like other *chronical* punishments, being divisible *ad libitum* into portions of all lengths, different lengths, adapted to the supposed exigency of the different cases of delinquency, have on different occasions, with great care and precision, been marked out: seven years, fourteen years, and for life:[1] the length beyond comparison the most common, seven years: to say nothing of other lengths, not without example, such as terms between seven and fourteen years, and between 0 and seven years. The statute in which the pains taken, about the measurement of these lots, are more conspicuous (I believe) than in any other, is a Statute of the present reign; the Statute of 1779;[a] the original Penitentiary Act: one of the two Acts which, in a letter that will probably be one day presented in a more particular manner to your Lordship's notice, *** declares himself to have '*examined*' and '*understood the object of.*'[2] In this Statute, the several gradations of this species of punishment, or those of them at least which are in use, are brought together: and a sort of system of equivalence is established, between the several degrees of *this* species of *chronical* punishment, and a set of corresponding degrees, in three corresponding scales of so many *other* species of *chronical* punishment: confinement in the *hulks,* confinement in the *then* intended *national* and definitive *penitentiary houses*, and confinement in the then existing *gaols,* in their destined character of so many local and temporary substitutes to those general penitentiary houses.

This punishment, while British America continued the scene of it, had fulfilled the ends of punishment in some points, failed in others. To the primary object, that of *example,* it was most obviously and incurably incompetent. Unequal in its essence, rendered still more unequal by its accidental concomitants, it was to one man as bad as death, to another a party of pleasure. By an irregularly applied, as well as unexplicitly declared distinction, on most individuals it imposed the additional yoke of *bondage*; others it left in possession of *independence*.

[a] 19 G. III. c. 74.

[1] Under the Transportation Act of 1784 (24 Geo. III, sess. 2, c. 56, § 1), offenders sentenced to death might have mercy extended to them, 'upon Condition of Transportation to any Place or Places, Part or Parts beyond the Seas, either for Term of Life, or any Number of Years'.

[2] Bentham intended to insert Portland's letter to the Treasury, 14 October 1799, together with an account of how he had been given access to it by John King (see UC cxxi. 52–4), in 'A Picture of the Treasury'. Having 'examined' the Penitentiary Acts of 1779 (19 Geo. III, c. 74) and 1794, Portland stated that, 'I understand the object of those Acts to be that such Penitentiary Houses should be used principally as receptacles for such transportable Convicts, as the several Gaols of the respective Counties cannot contain, from the time of their receiving Sentence, till an opportunity may offer for their being transported'. Bentham eventually included extracts from Portland's letter in 'Third Letter to Lord Pelham', pp. 265–6 below. For further details see the Editorial Introduction, pp. xxix–xxx above.

To any one who had proposed to himself a spontaneous emigration to the same place, it presented a licence for practising with impunity such offences as would send him there. So far was pure incongruity. With reference to the two other objects, *reformation* and *incapacitation*, it proved efficacious or inefficacious, according to contingencies: contingencies altogether out of the thought, as well as view and influence, not only of those *to* whom it was administered, but of those *by* whom it was administered, as well as of those by whom it was *ordained*. In some instances, a man became in a greater or a less degree reformed; and in those instances the mother country commonly saw no more of him: in others, he remained unreformed: and in those, she was sure to receive him back.[a]

[a] Under the *old* transportation system, all this inequality was the result of the course taken for ridding the country of these its obnoxious inmates. Powers being given for the purpose by Parliament, they were made over by Government to a contractor, who, for the profit to be made by selling their services, for the penal term, to a master in America, engaged to convey them to the destined scene of banishment, or at least to convey them out of the country (the mother country) from which they were to be expelled. Taking the punishment thus upon the face of the letter of the law, the effect of it would be, in all cases alike, to add to the fundamental and introductory part of it, *banishment,* the ulterior and perfectly distinct punishment of *bondage:* banishment from the mother country, bondage to be endured in the country to which the convict was to be expelled. Such being in all cases the effect in appearance, such also would it in general be in practice: because in general the poverty of the convict precluding him from purchasing any indulgence, the price paid for his services by a stranger in America was the only source of profit to the first purchaser: I mean the merchant, who in Great Britain insured the conveyance of the convict to that distant quarter of the globe. But a very moderate sum of money was sufficient to enable a man to exempt himself from this most afflictive part of the punishment: for wherever it happened that, through the medium of a friend or otherwise, he could bid more for himself, than would be bidden for him by a stranger, liberty thereupon of course took place of bondage. Poverty therefore, rather than the crime of which a man was convicted, was the offence of which the bondage was the punishment: and so far as the amount of the depredation is to be taken as a measure of the magnitude of the crime, the greater the crime, the better the chance which the criminal would in this way give himself for escaping the severer part of his lot. The profession of a receiver of stolen goods, a connection with an opulent and successful gang, were among the circumstances that would in general secure to a man an exemption from this most salutary as well as afflictive part of the penal discipline.

Under the *new* transportation system, the system of transportation to the land of *general* bondage—this inequality received a pretty effectual correction, far as the nature of the punishment was from being improved, and the condition of the convict population from being meliorated, upon the whole. The person on whom the lot of the convict in this respect was made to depend, was no longer in any instance a friend or trustee, converting the nominal bondage into real liberty; he was in every instance one and the same person: the general Agent of the

Reformation is a very complex object: thought and contrivance are requisite to the pursuit of it. *Local exclusion* is a very simple object; it

Crown, the Governor of the Colony, who with regal powers, dealt out justice or mercy in each instance, according to the joint measure of his own humanity and his own wisdom. Bondage was not now to be bought off for money: at the same time, it was but natural, that in the case of an individual whose education and mode of life had habitually exempted him from ordinary labour, a proportionate degree of indulgence should be manifested, in respect of the quality or quantity of his task. So far, so good: on the other hand, the instances, to which this improvement extended, were but few and accidental: while in point of industry, sobriety, and other features of moral amelioration, the condition of the many was, by the causes already stated, rendered worse, not better, by the change. Under the old transportation system, the person on whom the condition of the convict depended—a master employing him for his own (the master's) benefit—would stand engaged, by the tie of personal interest, to extract from him as much labour as could be extracted; to watch over his conduct in that and every other respect with the most uninterrupted vigilance; and upon the whole, in respect of quality as well as quantity of work, to give the utmost value to his service. Under this new transportation system, the management being mere *trust* management, management under the general orders of the Governor, conducted for the benefit of the public purse—management therefore without interest, at least without pecuniary interest, as well as without any other than a very loose inspection—the effect of it was in this respect such as from the nature of man might be expected. By the late Chief Magistrate of the Colony, the average amount of a day's labour was estimated (as will be seen further on) at not more than a third of what would have been rendered by a free labourer working on the ordinary terms.[a] True it is, that a considerable part of the convict population has all along been distributed among the officers, to be employed by them for their own benefit:[1] in which case, it can scarce be doubted, but that in all points, and especially in that of industry, more attention was paid, to the conduct of the convicts thus disposed of, than was or could be paid to such of them as were retained, on the footing above exhibited, in the public service. Still however in this case, the closeness of inspection would on many accounts fall short of that which under the old transportation system (the system of transportation to America) would have been generally kept up. In America, the masters becoming such by purchase would, without exception, be persons already engaged in habits of vigilance and industry. In a society composed of military men, a character of this sort could not reasonably be expected to be found equally prevalent. In America, the master's own choice had in every instance fixed him, and for life, in that employment, for the purpose of which he took upon himself to purchase the interest in question in the convict's services. In New South Wales, the profession of the species of master in question

[a] II Collins, p. 40.[2]

[1] According to Dundas to Lieutenant-Governor Grose, 31 June [sic] 1793, *HRA*, i. 442, civil and military officers were each allowed two convict servants, who could be maintained from the public stores for two years, but thereafter had to be maintained at the officer's expense.

[2] According to Collins, 'More labour would have been performed in this country by 100 people from any part of England or Scotland, than had at any time been derived from 300 of these people, with all the attention that could be paid to them.'

may be aimed at almost without thought. In the one case, if any thing is effected, it must be by mind operating on mind; although operations

is of the number of those, which are embraced more frequently through disinclination, than through any predilection, for money-getting industry: thoughts and wishes pointing homewards the whole time: and the continuance of the situation, by which the demand for such compulsive service is afforded, short-lived and precarious. Service that was to be had for nothing, would not naturally (it is true) in that situation, any more than in any other, be refused: but, on the other hand, neither does it seem reasonable to suppose, that, in such circumstances any such advantage would, upon an average, be derived from it, as in America, under the old transportation system, would have been generally extracted, by a purchasing master, from the services of his purchased bondsman.

The emancipated convicts, under the name of *settlers,* constituted indeed another class of masters, who, under the authority of the Governor, either on the same gratuitous terms as in the case of the officers, or for wages, on the footing of a free contract, shared in a considerable proportion whatever benefit was to be reaped from the labour of their fellow convicts, during their respective penal terms in some instances, as well as in other instances after the expiration of those terms. But, in the way of moral improvement, as well as *steady* industry, still less benefit (it is evident) was to be expected from this source than from the other. Accordingly, at the Hawkesbury Settlement, (in a passage which your Lordship has already seen, p. 467, anno 1796, stated by the late Chief Magistrate as the only one of all the settlements 'where any prospects of agricultural advantage were to be found')[1] it is moreover stated (in another passage which your Lordship has also seen, p. 487,) that 'the settlers were found oftener employed in carousing before the fronts of their houses, than in labouring themselves, or superintending the labour of their servants, on their grounds.'[2]

Thus much as to the degree of pecuniary interest on the part of the master, and the quantity and quality of the effect it may be expected to have on the pecuniary value of the labour of the convict servant. But (setting aside rare and extreme cases, such as that of labour extorted in such excess as to shorten the thread of life) the moral interest of the convict bondsman, and the pecuniary interest of the purchasing master, will (we may venture to say) be found pretty exactly to coincide: since the more steadily a man's time and thoughts are occupied in profitable labour, even though the profit be not his own, the more effectually they will all along be diverted from all unlawful objects; the general consequence is, that while the fortune of the master is receiving improvement from the labour of the once criminal workman, the moral habits of the workman himself will, in the same proportion, be receiving improvement from the same cause.

Two circumstances—two disastrous circumstances—have in a greater or less degree been common to transportation punishment under both its forms: in point of comfort, the condition of each convict, under and during the punishment, has been matter of pure contingency: while in point of morality, his reformation, depending upon the same unforeseeable events, has been left alike to be the sport of fortune. In both respects, happiness and morality, his condition has been thrown altogether out of the view of every eye, in the country, under the laws of which, the discipline, such as it was, had been administered: of the legislature, by which the species of punishment had been selected and allotted to the species

[1] See p. 86 n. above.

[2] See ibid.

purely physical may (as I have had already occasion to observe) be among the means employed, and with assured efficacy, in that view. In the other case, body operating upon body, is sufficient to the task. This observation may serve to explain the ground, of whatever little portion of thought, can possibly have been concerned, in the choice made of New South Wales. In a plan in other respects proper and adequate, simplicity is unquestionably a recommendation of no mean importance. But it will neither stand in lieu of *efficacy,* nor atone for *injustice.*

When, for persons of the description in question, the obtainment of the accustomed situations in America was found to be, or supposed to be, or said to be, no longer practicable, another spot came to be looked out for, and the spot chosen was this new discovered and pre-eminently distant region, that had been christened, or new christened, *New South Wales.*[1]

of offence: of the Judges and the Executive Government, by whose authority the individual had been consigned to that species of punishment: of that public, which has so important an interest in the efficacy of every punishment, as well in the way of reformation as in the way of example, not to mention the interest which, on the score of humanity, every community has in the well-being of the meanest of its members. Under the transportation system, under that system in both its forms, the state of the convict, in relation to all these essential points, was and is, under the former by *dispersion,* under the latter by *distance,* thrown, as it were purposely, into the shade. Under the Panopticon system, and that alone, light, the clearest and the most uninterrupted light, takes place of all such darkness. Considered with a view to moral health, as well as to physical comfort, a Panopticon is a vast hospital: but an hospital of that improved and hitherto unexampled description, in which, without prejudice to the management, and thereby the efficacy of the regimen, the condition of the patient is at all times open to all eyes. In this home scene neglect is as impossible, as any sufficient attention is in the distant one.

Among savages, when to a certain degree a man is sick in body, he is cast forth, and thought no more of. In a nation civilized in other respects, the same barbarity is still shewn to this at least equally curable class of patients, in whose case the seat of disorder is in the mind. Not indeed to every division in this class. For patients labouring under insanity, known and characterized by that name, no man has yet prescribed a voyage to New South Wales. The inefficacy of such a prescription however could not be more complete, in the case of that description of patients, than it has hitherto been, and from the nature of the case ever must be, in the instance of the other description to which it continues to be applied.

[1] The eastern coast of the continent called New Holland by the Dutch was given the name New South Wales by Captain James Cook during the voyage of the *Endeavour* 1768–71. Botany Bay, part of the country of the Eora people, was first visited by the British on the same voyage. It was partly owing to the favourable reports given by Joseph Banks (1743–1820), the naturalist on Cook's voyage, that the British government decided to establish a penal colony there. The First Fleet reached Botany Bay on 18 January 1788, but Governor Phillip decided to relocate the settlement to Sydney Cove in Port Jackson. Nevertheless, 'Botany Bay' remained for many years a synonym, often pejorative, for New South Wales.

The word *distant*, were it not for the appearance of affectation, should have stood in capitals. In it will be found not only the grand recommendation of the plan, but the only assignable or so much as imaginable property which, though it were but for a moment, can have presented itself in that light. Of the several efficient causes of probable *reformation*, to be looked out for in a Colony, as having actually been afforded by the *old* Colonies, as above, not a single one could have been found existing any where in this new found land. Existing demand for bondsmen—for bondsmen to be employed in separate families—in a ready formed community composed of men of thrift—with an opportunity of settling in a society of the same complexion, on the return of independence—conveyance thither at an inconsiderable expence, or without any expence—all these requisites were altogether wanting, together with all others that can be imagined.[a] *Distance*, the indisputable attribute of this favourite spot, *distance*, the supposed mother of *security*, was the virtue which, it is evident, was regarded as making up for the absence of every other. Of this attribute it was seen to be possessed, in a degree altogether beyond dispute. The moon was then, as it continues to be, inaccessible: upon earth there was no accessible spot more *distant* than New South Wales. The security that had been afforded by *America* in this respect, the security against the return of the expelled emigrants, had been but an incomplete one:—why? because the *distance* was comparatively so small: means of communication, accordingly so abundant. The security, promised in that same way by *New South Wales*, was the best possible: why? because the *distance* was the greatest possible: means of communication *already established*, none: and such as for this purpose would be to be established, would be to be established by Government itself: consequently (it was taken for granted) would be altogether at the command of Government. From such premises, the conclusion, true or false, was obvious enough. *Let a man once get there, we shall never be troubled with him any more.*

Setting aside law and justice, the expedient was at any rate a plausible one: and, except the revolutionary *noyades* and *fusillades*,[1] the

[a] I mean of course with reference to the only declared objects of the measure: for as to mere existence, requisites with relation to that object—such as *climate* affording sufficient warmth, and *earth* affording the usual choice of soil—these, however material in *other* points of view, were mere blanks with reference to the objects professed, on *this* occasion, to be aimed at.

[1] Bentham alludes to the summary execution of several thousands of people at Nantes between November 1793 and January 1794, ordered by Jean Baptiste Carrier (1756–94), who had been sent there by the National Convention in October 1793 to suppress local opposition, by means including the so-called *noyades*, when rebel prisoners had been drowned in the Loire, and *fusillades* or mass shootings.

Calcutta Black hole,[1] and a few other such foreign devices, a remedy against living nuisances could hardly be more promising or more simple. But, suppose for a moment any such considerations as those of *law* and *justice* to be intitled to a place in the account, surely never did *this* country witness an exercise of power more flagrantly reprehensible, more completely indefensible.

In the design of it, if this was really the design of it, it amounted to neither more nor less than the converting at one stroke all inferior degrees, of the species of punishment in question, into the highest: all finite lengths into one infinite length. In its conception, the operation is simple enough: banishment for life—for so many years as a man shall live—is as easy to conceive as banishment for any other number of years, fixed or limited: more so than banishment in different lengths, for different numbers of years. But the effects of it, upon the legal system which it was thus sporting with, would take a volume to delineate. All the distinctions which, under this head, the Statute-book affords in such numbers, between punishment and punishment; adjusted with so much care to so many corresponding distinctions, real or supposed, between guilt and guilt; all this elaborate pile of distinctions, which, for near a century and a half, the legislature had been employing itself in building up, was, upon this plan, to be undermined and levelled at one blast.

In the whole body of the law, if *effects* are regarded, and not mere *words*, where shall we find a feature that bears any the least resemblance to this case? I protest I know not. A punishment has been precisely fixed by law: fixed not in *specie* only but in *degree:*—fixed thus by each particular law upon the *species* of delinquency, it has been fixed afterwards upon each *individual* delinquent, by a sentence grounded upon that law. The fixation thus performed, comes, upon the back of it, another punishment, a punishment of prodigiously greater magnitude, a punishment added by one knows not who, added by an invisible hand, added by the hand of power, (for, in default of literal designation, we must resort per force to figurative) added by the hand of power, without a hearing, and to all appearance without thought. In truth, so oblique was the course by which the object was pursued, no adequate idea of it can possibly be conveyed

[1] The infamous Black Hole was a small dungeon at Fort William in Calcutta, in which British prisoners-of-war were confined overnight on 20 June 1756 following the capture of the fort by the forces of Mirza Muhammad Siraj ud-Daulah (1733–57), Nawab of Bengal 1756–7. According to the account of John Zephaniah Holwell (1711–98), East India Company surgeon, presented in *A Genuine Narrative of the Deplorable Deaths of the English Gentlemen and others who were suffocated in the Black Hole in Fort William, at Calcutta, June 1756*, London, 1758, only 23 of 146 prisoners remained alive by the following morning.

by any concise form of words: a description of it will be attempted a little further on.[1]

For a measure of this stamp, in what quarter of the English law can a *precedent* be looked for with any prospect of success? One case there is, in which after a verdict of conviction, and damages found by a jury, the court, if they think fit, have it in their power to increase the damages. It is the case of *mayhem:* I mention it as the nearest case, though at so wide a distance. Even in that case not an atom of suffering is imposed upon the injuror, that is not, in the shape of compensation, converted into enjoyment for the benefit of the party injured.[2] But—so strange is the institution to an English eye, so incongruous to the spirit and general tenor of English law—this singular instance of an apparent extension of punishment, or something like punishment, after sentence, or what is equivalent to sentence, would scarcely have been thought of but for its singularity, having scarce ever, within my memory, been brought to view by practice.

For a lot of punishment to be *cut down*, cut down by royal prerogative, from the length marked out by law, to a length short of that which has been marked out by law, is a case common enough; a case within every day's observation: a case but too common, were it not that, in this quarter of the law, unhappily so loose and incongruous is the texture of it, as to render it matter of praise, perhaps even of merit, on the part of one of the three estates of the legislature, to make changes, even regular and habitual changes, in the work executed at former periods by the whole. Be this as it may, the case of rigour *short of the law* is in every day's experience. But, of rigour *beyond the law,* this surely may be set down for the first (as I dare hope it will prove the last) example. When the work of mercy and lenity is performed, as above, by the King's prerogative, it is performed in *retail*; performed by a separate decision, pronounced in each individual case. Where, by an abuse of the same sacred instrument, (an abuse, the nature and progress of which may perhaps receive a more particular explanation in another place,)[3] the work of *rigour* has been performed, as here, it has been performed by *wholesale:* in a word, in the same summary and compendious style as that of the *noyades* and *fusillades* above mentioned.

[1] See pp. 108–10 below.

[2] See Blackstone, *Commentaries on the Laws of England*, iii. 333: 'in an action of trespass for maihem, the court, (upon view of such maihem as the plaintiff laid in his declaration, or which is certified by the judges who tried the cause to be the same as was given in evidence to the jury) may encrease the damages at their own discretion'. Blackstone goes on to state that the court might do the same 'upon view of an atrocious battery'.

[3] For a criticism of the practice of pardoning see, for instance, *Jeremy Bentham to his Fellow Citizens of France, on Death Punishment*, London, 1831, pp. 7–10 (Bowring, i. 528–30).

In speaking of a *rigour beyond the law*, I must take the liberty of warning your Lordship against a wrong reading, which otherwise might have been suggested by preceding recollections. *Rigour* is the word here, not *vigour:*—not to vigour—not to any thing like what is commonly understood by *force*—but rather to *fraud*—to the very opposite of open and manly force—belongs the credit, of whatever is done in the way of *rigour* in the present instance.

Oh but (I have heard it said) *whatever may here be done, the law remains unchanged: rights remain untouched: rights remain inviolate. Now, as before, so long only as a man's term of transportation continues, does his return to Britain stand prohibited: now, as before, the term ended, the prohibition is at an end. Let him come back then, if he chuses it, nor if he is able, is there any law to hinder him: no more law to hinder him, than if, in execution of his sentence, he had been conveyed to America, as in former times.*

I answer, So far as actual prohibition is concerned, legality out of the question, the fact is not precisely so; but of this afterwards. Supposing it were so, the plea might indeed serve, if *words* alone were of any importance—if *effects,* and such in particular as consist in human suffering, were not worth notice. When laws are issued, to what end are they issued, but to that of producing certain effects? When a law is issued, prohibiting a man from coming into a certain place, to what end is it issued but to that of preventing him from being there?

In both cases—in the supposed case of prohibitive law, and in the actually exemplified case, of a system of coercion applied, some how or other, without the intervention of a prohibitive law—the object aimed at is the same. In both cases it is *prevention:* prevention of the return of the individual or individuals on whom sentence of banishment has been pronounced. In both cases it is by the opposing of *obstacles* to the deprecated event, that the prevention of it is aimed at. Thus far the two cases run together: where then lies the difference? In the supposed case, the obstacles employed are of that sort which, in the very nature of the case, are at all times liable to be surmounted, and in experience are in fact but too frequently surmounted: mere threats, mere words, by means of which an influence is endeavoured to be exercised over the *will*. In the really existing case, the obstacles employed, supposing them actually applied, are in the very nature of them insurmountable: absence of the necessary means and instruments of self-conveyance. In the one case, it is the *will* only that is practised upon: in the other case, the very *power* is taken away, or endeavoured at least to be taken away. In short, for what reason is it that physical obstacles have thus been preferred to moral ones? why? but because those physical means were regarded as more sure. In both cases, so far as obstacles of any kind

are opposed to the exercise of the obnoxious act, the right of doing it is infringed to every substantial purpose. In the case where the obstacle is most powerful, so far is the right from not being infringed, it is in this case surely that the infringement is most complete.

Suppose it a case between individual and individual. Let us borrow *Ugolino* for a moment from *Dante* and *sir Joshua*. A strong man has thrown a weak man into a dungeon; turned the key upon him, and left him there to starve. Not a syllable to forbid his eating, not a syllable to forbid his coming out. The wretch lives for a week or so, and then expires.[1] Physical obstacles, which rendered it impossible to him to escape and live, are employed in preference to ineffective threats. What follows? That while he lives it is not false imprisonment? that when he dies it is not murder? No: but that the imprisonment is so much the more rigorous, the murder so much the more barbarous.

In this *feigned* case, it was by the strong man that the weak man was forced into the cave of death. In the *real* case, it is by authority of the law, that men by hundreds and thousands have been forced into New South Wales. If, in this but too *real* case, staying there for life, because return has, with this express view, been rendered impracticable—if while thus kept there for life, their stay there is not to be imputed to those who in that view sent them thither—then neither in the *feigned* case is the death of the prisoner to be imputed to the man, whom no one, I suppose, that thinks of the case will scruple to call his murderer.

The mode of proceeding, chosen in the view of securing the proposed effect, was of a piece with the effect itself. Had an Act of Parliament been passed, abrogating *pro tanto* in the lump the whole system of the transportation laws, and declaring that, in future, in whatsoever case transportation should be provided, nominally for this or that term of years, in effect the banishment should be for life, the measure would have been a severe one, it would have worn the appearance of an inordinately severe, and not very well considered one: but still, in respect of the course pursued for the accomplishment of it, it would have been an unexceptionable one. For, in this case, being to be established by the direct authority of the Legislature, and in the express

[1] In July 1288, after repeatedly switching allegiance between the Ghibelline and Guelfic factions, Count Ugolino della Gherardesca (*c.* 1220–89), Pisan politician and military commander, with two of his sons and two of his grandsons, was betrayed and imprisoned for treason in the Torre dei Gualandi by his erstwhile ally Archbishop Ruggieri degli Ubaldini (d. 1295). In March 1289 Ruggieri ordered that the doors of the tower be nailed shut and the keys thrown into the River Arno, whereupon the prisoners starved to death.

In *Inferno*, Canto XXXIII, Dante Alighieri (1265–1321), poet and statesman, placed Ugolino and Ruggieri in the second ring of the ninth circle of Hell, reserved for traitors to their families, countries, and parties, entombing them together in ice, with Ugolino gnawing upon Ruggieri's skull. The painting *Count Ugolino and His Children in the Dungeon*, by Sir Joshua Reynolds (1723–92), was first exhibited at the Royal Academy in 1773.

words of the Legislature, it could not but have been submitted to the Legislature, submitted in its own genuine shape and colour, and, in that shape and colour, passed through all stages and all forms.

Unexceptionable in the *mode*, unexceptionable in point of *form*, the measure would not have been the less exceptionable in point of *effect* and *substance*. So palpably exceptionable, that I almost fancy your Lordship rejecting it as incredible, and saying to me, *Why encumber the argument thus with improbabilities? why perplex it with extreme cases?*

My lord, if this be not precisely what was done, at any rate this and more, and worse, (your Lordship has seen already)[1] was actually done: done—or at least, so far as this was the real design and object of the settlement, endeavoured to be done. To give a particular and precise delineation of the course that was taken for doing what was done, would be a digression here, and must be referred to another place. To speak in generals—what was done in this behalf, was done by Administration, by a sort of *surprise*, not to say *fraud* upon the Legislature. By an Act of 1779, the same by which Parliament supposed itself to have established the Penitentiary System—by this Act, in a hasty clause, suggested by the exigency of the moment, the system then regarded as the preferable one not being capable of taking effect for some time, power was given to change the *locus ad quem* in transportation, from the *quondam*[2] Colonies in America to any other place, 'beyond the seas:'[a] less latitude not appearing sufficient to ensure to the transportation system even that temporary continuance, which was all that was then intended for it. The evident object of that Act was, to continue that mode of punishment upon a footing as near as possible to that on which it had stood ever since it was first instituted. Observing the latitude given for this purpose in the Act, the founders of New South Wales laid hold of it, and upon the strength of it, changed the real nature of the punishment, and placed it upon a footing as different from any footing on which it had ever stood before, as different from any that had been in contemplation of Parliament, in all essential particulars as widely different (your Lordship has seen) as possible. Of a measure, thus legal in form, thus illegal in spirit and in substance, one knows not well what account to give. It is and is not the Act of the Legislature. The *power* of Parliament was applied to it:

[a] 19 Geo. III. c. 74. § 1.[3]

[1] Bentham presumably had in mind the transformation of a sentence of transportation for a term of years into a sentence for life: see p. 104 above.

[2] i.e. 'the place to which' from 'the former'.

[3] The Penitentiary Act of 1779, § 1, provided that any person sentenced to transportation to America might, if the sentence had not been carried into effect, be 'transported to any Parts beyond the Seas, whether the same be situated in *America*, or elsewhere'.

the *will* of Parliament was *not* applied to it. Neither the will nor understanding of Parliament had had any cognizance of what was done. Parliament was dealt with by Administration, as a man would be dealt with by an attorney, who should give him a lease for life to sign and seal, telling him it was a lease for years.

True it is, that after the choice was made, and New South Wales was fixed upon, true it is that then, under colour of a clause in a later Act, but to the same effect,[a] a fresh Act was obtained from Parliament:[b] an Act of which the object, and even the sole object, was the foundation of this new Colony. By *foundation*, I mean the doing all that was thought fit to be proposed to be done by Parliament for that purpose: viz. the creation of powers for the organization of one *Judicial Court:* on the subject of *legislative power* an inviolable silence being preserved, for reasons which I may have occasion to speak of in another place.[1] But this fresh Act, in which not a syllable was said of any of the existing Transportation Acts,[2] nor of the virtual extension which the several transportation terms respectively created by them were destined to receive, this fresh Act was but the produce of a fresh fraud of the same kind, coming upon the back of the former fraud, and committed in support of it. From the very tenor of the Act, as well as from a variety of collateral circumstances relative to it, your Lordship will (I dare venture to say) see the allegation put out of doubt: the inquiry, I am inclined to think, will not be altogether an uninteresting one; but, as already intimated, it must wait for another place. What I acknowledge accordingly is, that the choice made of that situation has the authority of Parliament for its sanction, and in so doing I acknowledge it to be *legal*. But what I assert, and undertake to shew, is, that the mind of the Legislature has never gone with it: and thence it is

[a] 24 Geo. III. c. 56. § 1.[3]

[b] 27 Geo. III. c. 2.[4]

[1] See 'A Plea for the Constitution', pp. 313–94 below.

[2] Contrary to Bentham's statement, the New South Wales Courts Act of 1787 (27 Geo. III, c. 2, § 1) does refer to the Transportation Act of 1784, though not to any other.

[3] The Transportation Act of 1784, § 1, provided that convicts might be transported to 'any Place or Places, Part or Parts beyond the Seas', as determined upon by the King and the Privy Council.

[4] The preamble to the New South Wales Courts Act of 1787 notes that the Transportation Act of 1784 had empowered the King and Privy Council 'to declare and appoint to what Place or Places, Part or Parts beyond the Seas . . . Felons or other Offenders shall be conveyed or transported', and that an Order-in-Council of 6 December 1786 had declared that convicts named in two annexed lists were to be transported to the 'Eastern Coast of *New South Wales*, or some one or other of the Islands adjacent'. The preamble goes on to state that, 'whereas it may be found necessary that a Colony and a Civil Government should be established in the Place to which such Convicts shall be transported . . . a Court of Criminal Jurisdiction should also be established within such Place as aforesaid, with Authority to proceed in a more summary Way than is used within this Realm, according to the known and established Laws thereof'. The Order-in-Council of 6 December 1786, but not the annexed lists, is reproduced under the title of 'Order for Transportation' at *HRNSW*, i. Part 2, 30–1.

that, in speaking of it, I may here and there have suffered my pen to run on with a degree of freedom, such as, had I considered it as substantially the Act of the Legislature, my respect for so sacred an authority might scarce have permitted me to assume.

Thus it is, that for authorizing in express terms the conversion of all finite lengths of transportation-banishment into infinite, no Act of Parliament was in fact passed or intended to be passed: but what was intended, and in part accomplished, and this under colour of an Act of Parliament, (viz. the Act just mentioned),[1] was, that the fate of the wretches in question should be exactly the same as if an Act of Parliament to that effect had really been passed. Judges were accordingly to continue, and have continued with the accustomed gravity, sentencing men to transportation for fourteen years, or for seven years, or for any number of years not greater than seven, or for any number of years between seven and fourteen (for thus stands the law in some cases), understanding or not understanding, that under a sentence of transportation for seven years, the convict was to continue in a state of banishment from his native country—in a state of confinement within the limits of that unknown country—for the remainder of his life. Parliaments were to go on in the same strain, establishing the same distinction in words, and with the same determination on the part of the servants of the Crown, not to suffer any of those distinctions to be carried into effect. In the case intended to be realized, and in the case above supposed, but rejected as too bad to be supposed, the indiscriminating rigour, the groundless oppression, are just the same: the difference is, and the only difference, that in the imaginary case, the rigour, the oppression, stands clear of fraud—in the actual case it is defiled by fraud; by fraud aggravated by a solemn mockery of the forms of justice: a fraud organized by the servants of the Crown, and forced upon the Judges, who have it not in their power to refuse the part they act in it.

Nor yet was it by a mere fraud—the fraud of conveying a man, under colour of an Act which meant no such thing, to a place from which no prohibition (it was hoped) would be necessary to prevent his return—it was not in this simple way alone, that measures were taken for that purpose. Positive orders your Lordship will see issued, addressed to men whose punishment was expired, prohibiting them from leaving the Colony in express terms. Orders issued in full and direct contempt of the several Laws of Parliament, on which the punishment had been grounded. But of this in another place.[2]

Nor is this all—for in this cluster of abuses was involved, at the outset of the business, the monstrous, and in this country almost

[1] i.e. the New South Wales Courts Act of 1787.
[2] See 'A Plea for the Constitution', §§ 10–13, pp. 360–76 below.

unexampled iniquity, of an *ex post facto law:* nor yet a mere *particular ex post facto law,* such as that which, under the name of *privilegium*, has been consigned, by Cicero to infamy,[1] but a general *ex post facto law:* a law of this most odious cast, established upon a wide extending scale. At the outset, Convicts were found by hundreds, lying under sentence of transportation, for terms of different limited lengths, from seven years or under, to fourteen years. In all these instances, to a punishment appointed according to law, and by a legal sentence, was superadded, or at least endeavoured and thought to be superadded, a punishment of much greater magnitude, inflicted, or meant at least to be inflicted, silently and without sentence: a punishment for the remainder of life, superadded to a punishment for years.

If, among the groupe of Convicts whose sentence has consigned them to a Hulk, so much as a single individual were to be confined by the Hulk-keeper, with or without an authority from a Secretary of State, that Secretary of State acting therein with or without an authority from the Council Board—if, in this way, a portion of punishment, though but for a month, were to be added to the length of punishment appointed by the law, what a sensation! what an outcry! Nor yet surely without cause. Here—not in one instance only, but in hundreds of instances at once—to a punishment, of from fourteen years down to one year or less, is superadded a punishment of the same kind for ninety-nine years (to express the duration by the phrase used by lawyers to express it) *for ninety and nine years, if* in each instance the wretch *shall so long live*.[2]

I do not mean to say, for the case is not exactly so, that in effect there is no difference at all, between the lot of him whose sentence is for seven years, and that of him whose term of transportation is for life: no, not even supposing them both to remain for life in the common scene of their intended fate. *Transportation* is indeed the punishment named by the law in both cases:—Transportation, i.e. banishment, and that intended to continue for life, is thereupon the punishment they are alike doomed to in both cases. But, to mark the distinction between the two lots, here comes in the necessity of taking a second glance of another abuse, which has been already touched upon;[3] and for which the only apology that could ever have been made, is, that it was an antient one. *Transportation* is the word used alike for all transportable Convicts in the Acts of Parliament: *Transportation* is therefore (I take for granted) the word that has been used for all alike in the judicial sentence or

[1] For the condemnation by Marcus Tullius Cicero (106–43 BC) of *privilegia*, that is laws applying to particular persons, see *De legibus*, III. xi. 44, and *De domo*, XVII. 43–4.

[2] See, for instance, Blackstone, *Commentaries on the Laws of England*, ii. 156, referring to 'a grant [of landed property] for ninety nine years, provided A, B, and C, and the survivor of them, shall so long live'.

[3] See pp. 98–9 above.

order, in virtue of which, in execution of these Acts, the Convicts have been sent abroad. Yet, somehow or other, so it has been in practice, that under the same provision in the Act, and under a judicial sentence or order couched in the same terms, *transportation* has been (as your Lordship has seen) to one man simple banishment, to another man banishment aggravated by bondage: as if to men in general, and in particular to men of British blood, the difference between bondage and liberty were a matter not worth speaking about.

This being the case, as to such part of the suffering as, in the cases of two Convicts sentenced to different lengths of transportation, is imposed by the express appointment of the law (I mean the simple banishment), the extension thus given, under the present system, by this clandestine act of power, is in both cases really the same: what difference there is, lies in a point overlooked by the law, overlooked from the very first, as not worthy of its notice. The banishment—I mean the simple banishment—the mere continuance in the destined scene of banishment, *is*—or at least is *hoped*, and, by all who can find any thing to say for the measure, *expected*, to be in both cases for life: the only part of the punishment that has a different termination in the two cases is the *bondage:* the accidental accompaniment which the Law in its wisdom has never yet looked upon as worth mentioning or caring about.

The *bondage* does not receive, nor therefore was meant to receive, any prolongation, at least any regular and avowed prolongation, from the choice made of New South Wales:[a] it is the *banishment* alone that does. But the banishment is the only part of the punishment, which the statute law either speaks of in that light, or takes any care for the enforcement of: the *bondage* comes in by the bye: it was put in only to save charges.[b]

[a] The caution which dictated the words '*at least any regular and avowed prolongation*' was not a groundless one. In the so often quoted History of the Colony, and especially in the continuation of that history, instances where the bondage has been prolonged, regularly or irregularly, are to be found to no inconsiderable amount.[1] By '*avowed*' I meant, of course, avowed by the supporters or advocates of the penal colony here at home: in the colony, whatever is done in this way by the Governor, cannot of course but be avowed *there,* avowed by the Governor by whom it is done.

[b] By the old transportation laws, the person who shall contract for the transportation of the convict, is declared to 'have a property in his service,'[*a*] and that

[*a*] 4 G. I. c. 11. § 1.[2]

[1] See 'A Plea for the Constitution', § 13, pp. 372–6 below.

[2] The Transportation Act of 1718, § 1, granted the 'power to convey, transfer and make over, such Offenders, by Order of Court, to the Use of any Person or Persons who shall contract for the Performance of such Transportation, to him or them, and his and their Assigns', and gave them 'property, and interest in the service of such offenders'.

In speaking of the prolongation thus given to all these different lengths of banishment, a point I have all along been careful to keep

property is made transferable to '*assigns:*' and, for the sake of what was to be got in America by the sale of that property, Contractors were, latterly at least, if not from the first, ready and willing to take upon themselves the charge of the transportation, without further recompense. Under the modern transportation laws,[a] the same form of words is still copied, the practice under them being (as already stated) as far as the condition of the convict at least is concerned, as different as possible. In saying '*the form of words*,' I mean so far as concerns the giving, to the transporter and his assigns, a property in the service of his passengers: though, (as every body knows) at the end of the voyage, there is nothing to be got by selling them, nor so much as any person to whom they can be sold: the transporter being paid, not by a purchaser in any such sale, but by Government itself.—*Quere the first.* By what law does the Governor exercise the power he takes upon himself to exercise in New South Wales over the Convicts during their terms? Is the property of the service of each convict assigned over to him by the Merchant transporter under his contract?—*Quere the second.* By what law does the Commander of a King's ship (the Glatton for instance) 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?[1] Powers obtained from Parliament for one purpose are employed for another, and that an opposite one: powers given for the institution of domestic bondage, under management on private account in single families, are applied to the institution of public bondage; under management on trust account, in gangs. Whoever said any thing to Parliament, of this radical change, passed through Parliament, under cover of the identity of the words?

[a] 24 G. III. sess. 2. c. 56. § 1. 13.[2] 28 G. III. c. 24. § 5.[3]

[1] HMS *Glatton*, with approximately 400 convicts on board, departed from Portsmouth on 23 September 1802 and arrived at Port Jackson on 11 March 1803. Bentham discusses the absence of legislative authority for the transportation of convicts by the *Glatton*, the first King's ship employed for the purpose, in 'A Plea for the Constitution', pp. 317–20, 331 n. below. The practice of employing King's ships was subsequently authorized by the Transportation Act of 1802: for further details see the Editorial Introduction, pp. xlix–l above.

[2] The Transportation Act of 1784, § 1, empowered the court sentencing an offender to transportation to 'order such Offenders to be transferred to the Use of any Person or Persons, and his or their Assigns, who shall contract for the due Performance of such Transportation', while § 13 authorized the court, in instances where it was impossible to transport prisoners to the place specified in their sentence, 'to order that such Offender shall be transported to any other Part or Place beyond the Seas', and that the 'Person or Persons, so contracting as aforesaid, his or their Assigns, by virtue of such Order of Transfer as aforesaid, shall have a Property in the Service of the said Offender, for the Remainder of the Term for which the Offender was originally ordered to be transported'.

[3] The Continuance of Laws Act of 1788, § 5, provided that every contract entered into for the transportation of offenders 'shall be equally valid and effectual, and every Person contracting for the Transportation of any Offender or Offenders with any Person or Persons so authorised by his Majesty as aforesaid, shall have the like Property in the Service of such Offender or Offenders, as if such Contract had been made' in the manner stipulated by the Transportation Act of 1784.

in view, is, the distinction between *design* and *execution,* between the effect intended to be produced, and the effect actually produced. In its intention it has to all alike been banishment for life. In effect, what has it been? To some perhaps what it was intended to be: to others, to many others, no such thing. For, not even at the first moment, at the time when the difficulty of evasion was at its highest pitch, did the effect come up with any uniformity to the intention: and the longer the punishment continues in use, the further and the further will it be from the attainment of this end. Many, whose terms are expired, and who, with whatever views, pant for the exercise of those rights to which the Law, as if it were in derision, pretends to have restored them, do indeed remain debarred from the exercise of those rights, according to the intention of those who devised and organized this plan of perfidy. But many more in abundance than these politicians could have conceived, escape from this scene of intended annihilation, to afflict their mother country a second time with their pernicious existence.

Then it is, that this expelled, this fruitlessly expelled mass of corruption—then it is, that instead of putting on incorruption,[1] as it was expected to have done by miracle, without any human means provided for the production of the effect, it is found (as your Lordship has seen) to have put on a worse corruption, if possible, than before.

The price, in the way of injustice—the whole price is thus paid for the expected benefit: and it is but in an imperfect degree that the benefit is reaped. The proportions of penal justice are confounded; the poison of perfidy is infused into the system of government; and still the obnoxious vermin remain unextirpated.[a]

[a] I. *No Care taken in England, for* 4 *Years and a Half, to prevent unlawful Returns: Care then taken to prevent lawful ones.*

No. 1. August 1792, pp. 229, 230. 'During this month, the Governor thought it necessary to issue some regulations, to be observed by those Convicts whose sentences of transportation had expired. The number of people of this description in the Colony had been so much increased of late, that it had become requisite to determine with precision the line in which they were to move. Having emerged from the condition of convicts, and got rid of the restraint which was necessarily imposed on them while under that subjection, many of them seemed to have forgotten that they were still amenable to the regulations of the colony, and appeared to have shaken off, with the yoke of bondage, all restraint and dependance whatsoever. They were, therefore, called upon to declare their intentions respecting their future mode of living. Those who wished to be allowed to provide for themselves were informed, that on application to the Judge Advocate, they would receive a certificate of their having served their several years of transportation; which certificate they would deposit with the Commissary, as his voucher for striking them off the provision and clothing lists; and once a week they were to report in what manner and for whom they had been employed.

[1] An echo of I Corinthians 15: 53–4.

Your Lordship sees below[1] how large, how indefinite, the number is of these exiles, that may be expected to return: the number of all

'Such as were[2] desirous of returning to England were informed, that no obstacle should be thrown in their way, they being at liberty to ship themselves on board of such vessels as would give them a passage. And those who preferred labouring for the public, and receiving in return such ration as should be issued from the public stores, were to give in their names to the Commissary, who would victual and clothe them, so long as their services might be required.

'Of those, here and at Parramatta, who had fulfilled the sentence of the law, by far the greater part signified their intention of returning to England by the first opportunity; but the getting away from the colony was *now* a matter of *some* difficulty, as it was understood that a clause was to be inserted, in all *future* contracts for shipping for this country, subjecting the masters to certain penalties, on certificates being received of their having brought away any convicts or other persons from this settlement without the Governor's permission; and as it was not probable that many of them would, on their return, refrain from the vices or avoid the society of those companions who had been the causes of their transportation to this country, *not many could hope to obtain the sanction of the Governor for their return*.'

No. 2. February 1793, p. 268. 'A clause was inserted in the charter-party {of the Bellona}[3] forbidding the master to receive any person from the colony without the express consent and order of the Governor.' {The day mentioned as the day of her sailing from England is the 8th of August 1792.}[4]

II. *Return without Permission, easy:—Return, not Settlement, the general Object.*

No. 1. October 1793, pp. 315, 316. 'Seven persons whose terms of transportation had expired, were permitted to quit the colony in these ships, and the Master of the Sugar Cane had shipped Benjamin Williams, the last of the Kitty's people who remained undisposed of. One free woman, the wife of a convict, took her passage in the Sugar Cane.[5]

'Notwithstanding the facility with which passages from this place were procured, (very little more being required by the Master[6] than permission to receive them, and that the parties should find their own provisions) it was found, after the departure of these ships, that some convicts had, by being secreted on board, made their escape from the colony; and two men, whose terms as convicts had expired, were brought up from the Sugar Cane the day she sailed, having got on board without permission; for which the Lieutenant-governor directed them to be punished with fifty lashes each, and sent up to Toongabbe.'

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[1] See 'Table of Convict Emigration', p. 118 below.

[2] Collins 'should be'.

[3] The *Bellona* had arrived at Port Jackson on 16 January 1793, carrying stores and seventeen female convicts: see Bateson, *Convict Ships*, pp. 145–6.

[4] See Collins, i. 261.

[5] Francis Grose (1758–1814), Lieutenant-Governor of New South Wales 1789–94, granted permission for eight expirees (not seven, as Collins states) to leave the colony by the *Boddingtons* and the *Sugar Cane*, which had arrived at Port Jackson on 7 August 1793 and 17 September 1793 respectively (see Bateson, *Convict Ships*, pp. 145–7). Grose also gave permission for the master of the *Sugar Cane* to take on board a free woman and 'one seaman, left from the Kitty transport' (see Grose to Nepean, 12 October 1793, *HRA,* i. 455). The seaman was Benjamin Williams, who had led two other crewmen in a mutiny on the *Kitty*. The men had been taken ashore and summarily flogged, and the ship had sailed without them on 4 June 1793 (see Collins, i. 288–90).

[6] Collins 'masters'.

descriptions: of those, whose return the Governor may have been willing to *permit*; of those, whose return the Governor may have been

No. 2. October 1793, p. 320. 'Charles Williams, the settler so often mentioned in this narrative, wearied of being in a state of independence, sold his farm, with his house, crop, and stock, for some thing less than one hundred pounds . . . . .[1] James Ruse also, the owner of the Experiment farm, anxious to return to England, and disappointed in his present crop, which he had sown too late, sold his estate with the house and some stock (four goats and three sheep) for forty pounds.[2] Both these people had to seek employment until they could get away; and Williams was condemned to work as a hireling upon the ground of which he had been the master . . . . .

'The greatest inconvenience attending this transfer of landed property, was the return of such a miscreant as Williams, and others of his description, to England, to be let loose again upon the public.'[3]

No. 2.[4] July 1794, p. 382. 'The Hope[5] sailed this month for Canton, the Master being suffered to take with him one man, John Pardo Watts, who had served his time of transportation.'[6]

No. 3. November 1794, p. 398. 'This man {the Master of the Revolution}[7] had been permitted to ship as many persons from the settlement, as he had stated to be necessary to complete his ship's company; notwithstanding which, there was not any doubt of his having received on board, without any permission, to the number of twelve or thirteen convicts, whose terms of transportation had *not* been served. *No difficulty had ever been found by any Master of a ship, who would make the proper application, in obtaining any number of hands that he might be in want of;* but, to take clandestinely from the settlement the useful servants of the public, was ungrateful and unpardonable.'

No. 4. Dec. 1794, p. 400. 'The Master of the transport {the Dædalus}[8] had permission to ship twelve men and two women, whose sentences of transportation had expired.'

No. 5. 18th September 1795, p. 429. 'We found after their departure, {that of the ships Endeavour and Fancy}[9] that, notwithstanding so many as fifty persons,

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[1] In October 1793 Charles Williams (*c.* 1762–1815), also known as Christopher Magee, convict and farmer, sold his farm near the Parramatta River, which had been granted to him in July 1791, for a little under £100 to Lieutenant William Cummings of the New South Wales Corps.

[2] In October 1793 James Ruse (1759–1837), convict and farmer, the first expiree to receive a grant of land in New South Wales, sold Experiment Farm at Parramatta for £40 to Dr John Harris, in the hope of using the proceeds to fund his return to England. Instead, Ruse spent the money and requested—and received—another grant, and was allotted a thirty acre farm on the Hawkesbury River in January 1794, to which a further forty acres were added in June 1797.

[3] Collins, i. 320.

[4] Bentham's misnumbering has been retained.

[5] The *Hope*, an American trading ship engaged in conveying skins to China, had arrived at Port Jackson on 24 December 1792.

[6] Thomas (not John) Pardo Watts, having been convicted at Warwick on 26 March 1787 and sentenced to transportation for seven years, had arrived in New South Wales aboard the *Salamander* on 21 August 1791: see SRNSW, NRS 12188 4/4003, p. 12.

[7] John Locke was the Master of the *Resolution* (not the *Revolution*).

[8] The merchant ship *Daedalus* sailed from Port Jackson on 17 December 1794.

[9] The *Endeavour* and the *Fancy* both sailed from Port Jackson on 18 September 1795.

not willing to permit: of those, whose return he may have been willing to *prevent,* according to law: of those, whose return he may have been willing to prevent, contrary to law.

On this head, two further considerations may be not altogether unworthy of notice: one regarding *number* again—the other, *quality.*

As to *number* of returners, whatever it may have been hitherto, it may naturally be expected to be greater and greater, the longer the establishment continues: because, the longer it continues, the greater the population of it may be expected to be, and, on that and other accounts, the greater the number of vessels that touch there in a year; whether for the purpose of bringing in more Convicts or for any other purposes: whether belonging to this country or belonging to other countries.[a]

[*See p. 121 for continuation.*]

whose sentences of transportation had expired, had been permitted to leave the colony in the Endeavour, nearly as many more had found means to secrete themselves on board her.'

No. 6. February 1796, p. 457. 'In her {the Otter} went Mr. Thomas Muir[1]. . . . and several other convicts, whose sentences of transportation were *not* expired.'

No. 7. March 1796, p. 469. 'The Ceres . . . . sailed . . . . for Canton. Being well manned, the Master was not in want of any hands from this place; but eight convicts found means to secrete themselves on board a day or two before she sailed.'[2]

See further, Supplement.[3] Besides the natural facility of returns, lawful or unlawful, two other points may have been noted in this part of the case: the care *not* taken in the first instance, as to the prevention of unlawful returns:—the care taken afterwards for the prevention of lawful ones. But of this more particularly in another place.[4]

[a] Now lately a King's ship (the Glatton formerly of 54 guns) has been appointed (I see) to the service, instead of a contracting Merchant's vessel, as before.[5] Amongst other advantages, this course, as far as it is pursued, may reasonably be expected to put an end to the unpermitted emigrations. But the other channels

[*See p. 120 for continuation.*]

[1] Thomas Muir (1765–99), lawyer and political reformer, who had in August 1793 been convicted of sedition and sentenced to transportation for fourteen years, had arrived at Port Jackson in October 1794 on the *Surprize*, but in February 1796 absconded on the *Otter*, an American fur-trader captained by Ebenezer Dorr (1762–1847).

[2] Eight would-be escapees were found secreted aboard the *Ceres* prior to its sailing in early March 1796 and were returned to the authorities.

[3] Bentham may have had in mind 'Second Letter to Lord Pelham', §§ XII–XIII, pp. 225–34 below.

[4] See 'A Plea for the Constitution', § 12, pp. 366–72 below.

[5] In December 1801 Pelham drafted a proposal that convicts should be transported to New South Wales, at regular six-monthly intervals, in Royal Navy vessels at government expense, and at around half the expense of contracting privately owned vessels: see 'Heads of a Plan for removing and employing Convicts both in the Hulks and in Botany Bay by Lord Pelham', 13 December 1801, HO 42/62, fos. 595–9. Pelham's proposal was approved by George III in March 1802 (see Lord Hobart to Governor King, 29 August 1802, Enclosure No. 4, Lord Pelham to Lords Commissioners of the Admiralty (9 March 1802), *HRA*, iii. 570), and on 23 September 1802 HMS *Glatton* departed with convicts for Port Jackson and on 24 April 1803 HMS *Calcutta* with an expeditionary force and convicts to found a new penal colony at Port Phillip (see p. 318 & n. below).

TABLE OF CONVICT EMIGRATION:

Shewing the Number of Convicts that, in about Five Years and a Half, viz. from 22d August 1790 to March 1796, are reported by the late Judge Advocate, as having quitted or attempted to quit New South Wales: distinguishing whether with or without Permission of the Governor, and if without, whether *Expirees,* (Persons whose Sentences were expired) or *Non-Expirees.*

No.	Page	Time.	Vessel.	Quitted.			Prevented.	
				With Permission.	Without Permission.			
					Expirees.	Non-Expirees.	Expirees.	Non-Expirees.
1	130[1]	22d Aug. 1790.	Neptune[2]	—	—	—	2[c]	1[d]
2	136	26th Sep. 1790.	Open Boat[3]	—	—	5	—	—
3	156	28th Mar. 1791.	Open Boat[4]	—	1	8	—	—
4	190	3d Dec. 1791.	Albermarle & Active[5]	—	'Some'	'Some'	—	—
5	268	19th Feb. 1793.	Bellona[6]	2	—	—	2	2
6	283	24th Apr. 1793.	Shah Hormuzear and Chesterfield[7]	5	—	—	—	—
7	290[8]	4th June 1793.	Kitty[9]	11	—	—	—	—
8	315	13th Oct. 1793.	Sugar Cane and Boddingtons[10]	7	—	'Some'	2	—
9	398[11]	9th July 1794.[12]	Resolution[13]	Some[a]	—	13	—	—
10	400	15th Dec. 1794.	Dædalus[14]	14	—	—	—	—
11	429 461[15]	18th Sep. 1793.[16]	Endeavour and Fancy[17]	50	—	nearly 50	—	—
12	457	18th Feb. 1796.	Otter[18]	—	—	'Muir and several others'	—	—
13	469	Begin. Mar. 1796.	Ceres[19]	—	—	—	—	8
				89[b]	1[b]	76[b]	6	11

[a] As many as were necessary to complete the Ship's Company. [b] These totals give the ascertained numbers, exclusive of the unascertained ones. [c] Of whom one flogged. [d] Flogged.

[*See opposite for notes.*]

From the inspection of this Table, result the following observations:

1. Considering that, in the list of Non-expiree escapers, there are three parcels in unascertained numbers, for one which there is in the list of Expiree escapers, there seems reason to think that the number of these emigrants, to whom the liberty of departure had *not* been thought fit to be allowed, was little, if at all, inferior to the number of those to whom that liberty *had* been thought fit to be allowed. What would be said of the plan of safe-custody pursued at home, if from Newgate[20] the escapes were found to be as many as the pardons?

2. Among those who, in ascertained numbers, obtained this liberty by their own forbidden exertions, without permission from above, the number of those who had *not* a right to it was 76 times as great, as of those who *had* a right to it.

3. Among those who, in ascertained numbers, having a *right* to this liberty, attempted to exercise it, the number of those who *failed* was six times as great as of those who *succeeded.*

4. Of the two individuals, who were at the same time *flogged* for an unsuccessful attempt to exercise this liberty, one had, by the laws under which he had been sent thither, as good a *right* to it, as those by whose orders he was flogged.[21]

Notes to Table of Convict Emigration.

[1] *Recte* 130–1.

[2] According to Collins, on 22 August 1790 information was received that convicts had secreted themselves on board the *Neptune*, which was lying in harbour. A search party of marines went on board and apprehended a woman and Joseph Sutton. During the night, another man, who claimed to be free, was captured while attempting to swim out to the ship. The *Neptune* sailed from Port Jackson on 24 August 1790.

[3] On 26 September 1790 five convicts working at the Rose Hill farm—John Turwood or Tarwood (b. *c.* 1761), George Lee (b. *c.* 1769), George Connoway (*c.* 1770–1808), John Watson (b. *c.* 1766), and Joseph Sutton—travelled in a small boat down the Parramatta River to Sydney, where they acquired a larger vessel and sailed from Port Jackson. Collins speculated that the men intended to sail for Tahiti, but they were instead driven ashore at Port Stephens, where they lived among the Worimi people until 23 August 1795, when Turwood, Lee, Connoway, and Watson—who claimed that Sutton had died—were picked up by HMS *Providence*, captained by William Broughton (1762–1821), and returned to Sydney. An account of their reappearance is given in Collins, i. 425–6.

[4] On the night of 28 March 1791 William Bryant (b. *c.* 1758–61, d. 1791), his wife Mary, née Broad (bap. 1765), and their two children Charlotte (1787–92) and Emanuel (1790–1), William Allen (b. *c.* 1737–46), Samuel Bird *alias* John Simms (1763/4–92), Samuel Broom *alias* John Butcher (b. *c.* 1742–4), James Cox *alias* James Rolt (b. *c.* 1759–65, d. 1791), Nathaniel Lillie (b. *c.* 1753–63), James Martin or Martyn (b. *c.* 1757–63), and William Morton (b. *c.* 1759–63, d. 1792), sailed out of Port Jackson in the colony's six-oared fishing boat and eventually arrived at Dutch-controlled Kupang, Timor, on 5 June 1791. The manuscript of the only first-hand account of this escape, headed 'Memorandoms by James Martin', was acquired by Bentham and is at UC clxix. 179–201, with an amended copy at UC clxix. 202–5 (both versions are reproduced in *Memorandoms by James Martin: An astonishing escape from early New South Wales*, ed. T. Causer, London, 2017).

[5] According to Collins, after the *Albemarle* and *Active* had sailed from Port Jackson, it was discovered that 'several people', both expirees and convicts, 'were missing from the settlement'.

[6] According to Collins, i. 268–9, the *Bellona*'s charter-party with the government forbade its Master from receiving on board 'any person from the colony, without the express consent and order of the governor'. Governor Phillip had granted permission for two expirees to leave the colony by the vessel, but when the *Bellona* was smoked before sailing, 'four people were found secreted on board, two of whom had not yet served the full periods of their sentences'.

[7] According to Collins, the *Shah Hormuzear* and the *Chesterfield* sailed from Port Jackson on 24 April 1793 with four male expirees and one female expiree on board.

[*See p. 120 for notes 8–21.*]

will remain open: unless it should be thought fit to shut up the ports of New South Wales, like those of Japan:[1] an expedient which would cut up by the roots every idea of *trade,* and profit in the way of trade, the great object looked to, or professed to be looked to, in all *Colonies.* See the head of *Economy,* Colonial Advantages.[2]

Whether this preventive effect was among the considerations that gave birth to the change, I do not pretend to know: One should rather hope it were not. The observation still remains in full force, that in this way nothing can ever be gained, that is not gained at the expence of law and justice. If by a reimportation at the public expence, the banishment of these exiles were made regularly to cease, as soon as it ceased to be legal, on these terms and no others, the exclusion of all other means of return might (whatever became of trade) be reconciled to justice. *Nullus liber homo . . . exulet . . . nisi per legale judicium parium suorum, vel per legem terræ.*[3] Violating this right by *deeds* while it is allowed in *words,* is tearing *Magna Charta* to pieces to patch up a bad measure of police.

Notes to Table of Convict Emigration.

[8] *Recte* 290–1.

[9] According to Collins, when the *Kitty* sailed from Port Jackson, amongst its passengers were five men and a woman 'who, their terms of transportation being expired, were permitted to return to their friends', along with a further five men 'permitted to enter on board the *Kitty* for the purpose of navigating her', as replacements for the mutinous crewmen removed from the ship on 2 June 1793 (see p. 115 n. above). Bentham assumes that these latter five men were expirees, but Collins indicates that only two of them had been convicts, while a third was a seaman 'lately discharged from the *Daedalus*'.

[10] For the expirees carried by the *Sugar Cane* and the *Boddingtons* see p. 115 n. above.

[11] *Recte* 397.

[12] According to Collins, the *Resolution* sailed from Port Jackson on 9 November 1794, and not 9 July 1794.

[13] The Master of the *Resolution*, John Locke, had been granted permission to take on board as many people as he thought necessary to complete his crew, but, according to Collins, 'there was not any doubt' that he had, in addition, surreptitiously taken on board 'twelve or thirteen' convicts still under sentence.

[14] Collins states that the *Daedalus* sailed from Port Jackson on 15 December 1794, when it in fact sailed on 17 December 1794. Lieutenant-Governor Grose had granted permission to the Master of the *Daedalus* to take on board twelve male and two female expirees.

[15] *Recte* 429–30, 460–1.

[16] According to Collins, the *Endeavour* and the *Fancy* sailed from Port Jackson, via Norfolk Island and New Zealand, for India on 18 September 1795, and not 1793.

[17] According to Collins, around fifty expirees were permitted to leave New South Wales by the *Endeavour,* while 'nearly as many more had [also] found means to secrete themselves on board her'.

[18] According to Collins, when the *Otter* sailed from Port Jackson, it had on board Thomas Muir, and 'several other convicts whose sentences of transportation were not expired', namely Muir's two convict servants.

[19] See p. 117 n. above.

[20] i.e. Newgate Prison in the City of London.

[21] The two flogged men were Joseph Sutton and the unnamed man who swam out to the *Neptune* during the night of 22 August 1790 and who claimed to be free.

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[1] The closure of Japan to ships from foreign countries, except at certain ports and under severe restrictions, instigated by the Sakoku Edict of 1635, issued by Tokugawa Iemitsu (1604–51), Shogun of Japan 1623–51, is described in Engelbertus Kaempfer, *The History of Japan*, trans. J.G. Scheuchzer, 2 vols., London, 1727, ii., Appendix, pp. 71–5.

[2] See pp. 150–63 below.

[3] See Magna Carta, c. 39 (1215), in *English Historical Documents 1189–1327,* ed. H. Rothwell, London, 1975, p. 320: 'No free man shall be . . . exiled . . . except by the lawful

The consequence is, that the greater the use made of the Colony in this or any other way—the greater the increase of it in wealth as well as population—the greater in a word the degree of '*improvement*' it receives in all other points of view—the more incapable it becomes of answering the expectations formed of it, in regard to this its primary object:—the more unfit, with reference to this the only real and substantial use, that any body has ever seen or professed to see in it.

Already has an open boat been known to furnish the means of escape: and that through the vast space between New South Wales and Timor.[1] One of these days, as stations multiply, and the coasts become more and more difficult to guard, we may expect to see better boats, stolen or even built, for voyages of escape, to Otaheite or some other of the many shorter voyages, with the help of a seaman or two, to each of them, to command it.

Lastly, as to the *quality* of the persons; the sorts of characters I mean, whose return may in the greatest proportion be expected. These are precisely those, from whom, on one account or another, the most mischief is to be apprehended. The species of delinquents, who with the greatest certainty can command the means of their return, are those who occupy the highest ranks in the hierarchy of criminality:—the men of science and connection among depredators;—the master-dealers, who have accumulated a capital out of the profits of their trade;—the receivers of stolen goods, those wholesale merchants who, by the very nature of their prolific department in the division of criminal labour, are, in a swarm of connected depredators, what the queen-bee is in the hive.

It is the indigent, and unconnected malefactor alone, that stays there for want of the means of buying his way back:—among these, it is the unenterprising, and thereby the least dangerous species of malefactor, that will be most apt to stay there, for want of being able to employ with success those means of escape, which his more ingenious or more audacious, and on either account more dangerous comrades, make such abundant and successful use of.

In the contemplation of the beauties of the Colonial establishment, your Lordship has almost lost sight (I doubt) of the establishment sacrificed to it, and the parallel that was to be kept up between the favourite and the discarded measure.

judgment of his equals or by the law of the land.' Magna Carta was first issued in 1215 by John (1166–1216), King of England from 1199, reissued in slightly modified form in 1216 and 1217, and attained its final form when reissued in 1225 on the majority of Henry III (1207–72), King of England from 1216.

[1] For the escape of nine convicts and two children from Port Jackson on 28 March 1791 see p. 119 n. above.

During the continuance of the penal term, at any rate, the advantage, so far as the article of *incapacitation* for fresh offences is concerned, may, I flatter myself, be stated as being clearly enough on the side of the Penitentiary establishment. Even in an ordinary prison, an escape is not a very *common* incident: under the new and still more powerful securities, of so many sorts, superadded to the common ones, in a prison upon the Panopticon plan, I have ventured to state it as, morally speaking, an *impossible* one.[1]

After the expiration of the penal term, the part of the Penitentiary House at home, so far as prevention of future delinquency is concerned, becomes—in comparison of that of the Colony at the antipodes, I must confess, but an under part. My means would have had for their limits those of law and justice: I could not have added an illegal indefinite punishment to a finite legal one: I could not have flogged men for the exercise of their rights. I am not a ———[2] to tread upon the law. No not in any case: so that how little soever he may have done in this way, in comparison of what he meant to do, that little will always be so much more than could in this way have been done by me.

For *reformation* indeed (as your Lordship has seen)[3] I had strong means, and even *physical* means: but as to absolute *incapacitation,* incapacitation with regard to future mischief, physical means (I must acknowledge) fail me. It was on reformation (I must confess) I had placed my first reliance: first in order at any rate—and it was not a weak one. *Drunkenness,* in the 'improved Colony' universal: in a Panopticon Penitentiary House, impossible. *Religious exercise—there* odious, and generally eluded:—*here* uneludible, and by every imaginable and becoming device rendered as inviting and interesting as possible. *Profitable employment—there* again odious, in a great degree eludible, and eluded as much as possible:—*here,* uneludible again, and by diversification (the opportunities of which would be abundant) and choice, as far as choice is admissible, rendered from the first not odious, and, by habit and universal example, easy and even agreeable.

After emancipation, profitable employment—*there* not *wanting* indeed, but still generally irksome, because, under preceding habits, all along rendered so, by habitual sloth, drunkenness, and dissipation:—*here* certain, and in whatever shape, habit, concurring with choice, may have rendered most agreeable, to bodies and minds invigorated by inviolable temperance.[4]

[1] See 'Panopticon; or, The Inspection-House', iii. 161 (Bowring, iv. 156): 'I look upon escape out of a Panopticon, I have said so over and over, as an event morally impossible.'

[2] i.e. 'M^r^ Pitt', according to the draft at UC cix. 8 (21 June 1802).

[3] See pp. 81–2 above.

[4] See 'Panopticon; or, The Inspection-House', iii. 208–32 (Bowring, iv. 165–71).

Constituted as human nature is, it may be too much to expect, that even these securities should in every instance be effectual: but where they fail to be so, here presents itself, in dernier resort, *incapacitation:*—absolute incapacitation with regard to any third offence, after conviction of a second. I mean of course by consignment to the Penitentiary House for life.[1] Take away this instrument of incapacitation, and there remains (as at present) no other but the savage and unnecessary resource of death, or the ineffectual resource of transportation: transportation, nominally, and frequently but nominally, for life.

Experience is a standard I never miss appealing to, so far as it can be employed. On one side, on the side of the Penitentiary establishment, no direct reference can, unfortunately, be made to it. To afford experience, it must have had existence: and that it should not, gentlemen took effectual care. Yet notwithstanding all their industry, added to all their negligence, (for the article of *escapes* has shown your Lordship how difficult it is to distinguish the one from the other by their effects) a testimony nearer to that of direct experience—of experience of the Penitentiary Plan itself—than could easily have been imagined, has actually started up: experience, though not precisely of that very instrument of security, yet of those means of security that are most like it, and stand next to it.

The characteristic principle of the Colonization Plan, (loose confinement, without inspection) having been tried and found to fail—to fail as completely as it was possible for a principle to fail—one resource alone remained. This was the opposite principle, close inspection:—inspection as close as there were means for making it:—with or without confinement, also according to the means. A jail is not quite so easily built as talked of: not even in England, as I have had occasion to know but too well: still less in New South Wales, where even the make-shift dwelling-places could not be put together fast enough. A jail however being found to be the one thing needful[2]—and among all countries most needful in that remotest of all accessible regions, to which delinquents were thus sent, on pretence of saving the expence of it—a jail, such as it was, was accordingly erected, as soon as it could be erected:—and moreover as jail-room—room in a real immoveable jail—in that which in the literal sense of the word is meant by *a jail*—could not, with every exertion, be provided fast enough, a *succedaneum* to it was added, a sort of metaphorical ambulatory jail, in which, the eye of an Inspector, assisted or not by fetters, supplied, as well as it could, the place of prison walls. The jail—as might have been expected—a jail built under such circumstances—was not

[1] Bentham does not, in fact, appear to recommend such a course of action in his printed writings on the panopticon penitentiary.

[2] Luke 10: 42.

always man-tight: it was however better than none at all, and, with all its imperfections, whatever they were, was still the best and ultimate dependence.[1]

This then was the real fruit of the establishment: to shew (to such eyes I mean, whosesoever they may be, as are not self-condemned to incurable blindness) to shew its own perfect inefficacy, and the absolute necessity of that other establishment, which, in its two different shapes, has twice been sacrificed to it, and, in the vain hope of saving the honour of so many Honourable and Right Honourable Personages, still continues to be sacrificed to it.[2] Such was the upshot of this grand Colony-founding expedition!—to save the expence of an originally improvable, and afterwards beyond all former conception improved, system of inspection-management, men sent off year after year by hundreds to the antipodes, to be kept without employment, to corrupt one another, under a sort of incomplete inspection-management, in a make-shift jail, at an expence (for this too your Lordship will see)[3] from twice to four times as great as that of the system sacrificed to it. Happily on those terms, and at that distance, the necessary jail, such as it was, was built.[a] In New South Wales, under the law of fabricated necessity, as in Constantinople under the *Lex regia*, the will of the *Imperator* was the sole law.[4] Sole undisputed law:—law not in name, but in effect: law, not to be dealt with like the law of Parliament—not to be trod upon, but to be obeyed. It was law paramount, my Lord: and without any *dispensing power,* such as (your Lordship will see)[5] has

[a] I Collins, p. 383.[6]

[1] Collins, i. 383, states that in July 1794 'a building, consisting of four cells for prisoners, was added to the guard-house on the east side of the cove. This had long been greatly wanted; and, the whole being now inclosed with a strong high paling, some advantage was expected to be derived from confinement adopted only as a punishment.' This building was presumably superseded by the larger wooden gaols at Sydney and Parramatta, respectively eighty and one hundred feet in length, which were completed in 1797 but burned down by unknown incendiaries in 1799 (see p. 92 n. above and Governor Hunter to John King, 25 September 1800, Enclosure No. 2, 'Return of public buildings erected in New South Wales since October, 1796, exclusive of many others completely repaired or enlarged', *HRA*, ii. 560–3 at 560). The 'metaphorical ambulatory jail' was the gaol gang established at Toongabbie in December 1794 (see p. 91 & n. above).

[2] Bentham presumably had in mind the sacrifice of the panopticon penitentiary to the wishes of Spencer and Belgrave: see p. 31 n. above.

[3] See pp. 138–49 below.

[4] See the explanation given by the jurist Ulpian (d. 223) of the origins of the Roman Emperor's power in *The Digest of Justinian*, I. iv. 1: *Quod principi placuit, legis habet vigorem: utpote cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem conferat*, i.e. 'A decision given by the emperor has the force of a statute. This is because the populace commits to him and into him its own authority and power, doing this by the *lex regia* which is passed concerning his authority.'

[5] Benham may have had in mind 'A Plea for the Constitution', §§ X–XII, pp. 360–76 below.

[6] Collins reports that a replacement gaol at Sydney, built from stone, was completed in June 1801 at a cost of £3,954: see p. 92 n. above.

been exercised in this country, to overrule it. It being the legislator's interest, as well as that of every other honest man in the Colony, that the jail should be erected, and his conception of his interest not being disturbed by imaginations, such accordingly was his will:—a law was passed for the building of that jail—and (how incredible soever it may seem to Honourable and Right Honourable Gentlemen in this country, that a law for building a jail should find obedience) built it was.

In addition to the positive testimony of the fact, it seemed necessary that a demonstration should thus be given of the possibility of such an event, lest, without some such preparation, judging of the state of law and politics *there,* by the state and law of politics *here,* your Lordship should have rejected it as incredible.

The testimony does not stop here. Not only among the Convicts, who were transported to the antipodes to be kept in order, but among the Soldiery that were transported with them to help keep them in order,[1] the root of all disorder was found to lie in a deficiency of inspection: and accordingly, whatever imperfect check was ever given to the disorder, was given to it by supplying that deficiency: supplying it either by inspection simply, or by inspection coupled with confinement, as the *causa sine quá non* for rendering it sufficiently steady and effective.[2]

In that land of universal and continually increasing corruption, the guardian class (as might have been expected) became corrupted by their wards. To stop the contagion, exertions on the part of the Officers were neither deficient, nor yet successful. After years of ill

[1] The New South Wales Marine Corps, consisting of four companies under the command of Major Robert Ross (*c.* 1740–94), Lieutenant-Governor of New South Wales 1788–91, journeyed to New South Wales with the First Fleet. The Marines began to be replaced in June 1790, when the first three companies of the New South Wales Corps, an infantry regiment first raised in England in June 1789, arrived at Port Jackson with the Second Fleet. The command of the New South Wales Corps was given to Major Francis Grose, though he did not reach Port Jackson until 14 February 1792 aboard the convict transport *Pitt*. From December 1792 until the arrival at Port Jackson of Governor Hunter in September 1795, the colony was administered by the commanding officer of the Corps, namely Grose until December 1794 and subsequently Lieutenant-Colonel William Paterson.

[2] According to Collins, i. 313–14, by September 1793 only one barrack had been erected for the privates of the New South Wales Corps, 'but this was not attended with any inconvenience, as all those who were not in quarters had built themselves comfortable huts between the town of Sydney and the brick-kilns. This indulgence might be attended with some convenience to the soldiers; but it had ever been considered, that soldiers could no where be so well regulated as when living in quarters, where, by frequent inspections and visitings, their characters would be known, and their conduct attended to. In a multiplicity of scattered huts, the eye of vigilance would with difficulty find its object, and the soldier in possession of a habitation of his own might, in a course of time, think of himself more as an independent citizen, than as a subordinate soldier.'

success, what at last was the remedy?—A wall:—Barracks, with 'a high brick wall round them,' or 'an inclosure of strong paling'—to answer the same purpose.[a]

Under the head of *Incapacitation,* one instrument I had like to have omitted, to the credit of which the founders and conductors of this establishment have a most indisputable and exclusive title—and that is *death.* For keeping a man out of harm's way—out of harm's way in both senses—out of the way of doing it—out of the way of receiving it—the homely proverb is applicable in this case with indisputable propriety,—*Stone dead has no fellow.*[1]

In the course of about 8 years and a half, from the 13th of May 1787 to the 31st of December 1795, Convicts shipped, 5196: died in the passage, 522:[b] and all not told. Such care had the founders taken of their Colonists, that, in the mere passage, without reckoning famines at the end of it, they had *decimated* them: more than decimated them, as per account: and the account is evidently an incomplete one: the article of deaths being left unnoticed, in regard to *five* ships out of *twenty-eight.*

Bad enough indeed: but did not the fault lie in the Contractors? Yes, my Lord, there was but too much fault in the Contractors: but it was not the less the fault of those who contracted with them; and of the system under which they contracted.[2] It was the fault of —— and his man of economy,[3] by a double title: for having fixed upon so incurably bad a system, (sacrificing to it the so much better system they found

[a] I Collins, pp. 303, 455.[4]

[b] See Table of Mortality, p. 132.[5]

[1] A proverb usually attributed to Robert Devereux (1591–1646), third Earl of Essex, who, when it was put to him that Thomas Wentworth (1593–1641), first Earl of Strafford, Lord Deputy of Ireland 1632–40, Lord Lieutenant of Ireland 1640–1, should be imprisoned rather than executed for high treason, replied 'stone-dead hath no fellow': see Edward Hyde (Lord Clarendon), *The History of the Rebellion and Civil Wars in England, Begun in the Year 1641*, 3 vols., Oxford, 1702–4, i. 190–1.

[2] Contracts for the fitting out of convict ships were negotiated by the Navy Board until 1794, and thereafter by the Transport Board until 1814, when it once again became the responsibility of the Navy Board. Up to 1803 the majority of convict ships were fitted out by private contract, with the exception of the First Fleet, which sailed from England on 13 May 1787, HMS *Glatton*, which sailed on 23 September 1802, and HMS *Calcutta*, which sailed on 28 April 1803.

[3] i.e. Pitt and Rose respectively. See the corresponding marginal content at p. 53 above: 'The fault lay not in the Contractors, but in Pitt and C°, by their incapacity and inhuman negligence—their bad management, making a bad system worse.'

[4] Collins, i. 302–3, describes the thwarting of a plot among soldiers in July 1793 to seize a longboat and sail to Java, and ibid. 454–5, the attack in February 1796 on the person and property of the colony's master carpenter John Baughan by men of the New South Wales Corps (for which see p. 159 n. below). Following this attack, most soldiers were ordered to live in barracks, and, according to Collins, 'to give this regulation the full effect, a high brick wall, or an inclosure of strong paling, round the barracks, was requisite'.

[5] i.e. 'Table of Convict Mortality', p. 132 n. below.

ordained by Parliament, with the assistance of the twelve Judges;) and for having rendered the management so much worse, than, even under that bad system, it need to have been made.

First cause of the mischief—*length of the voyage:* the effect of the unexampled distance of the spot: of the spot chosen to be colonized, and to be thus colonized.

Second cause of the mischief—*want of interest,* on the part of those, on whose power depended the prevention of it:—the profit which the transporter had it in his power to make by putting people to death—whether by starving them or crowding them—this profit in both cases being left to be reaped with impunity, and unbalanced by any profit, to be got by keeping them alive:[1]—want of that care which might and ought to have been taken, to do what in that instance it would have been so easy to do—to bring the two antagonizing forces—*duty,* and that sort of *narrow interest* which acts in opposition to duty, into coincidence.[2]

These causes were, both of them, peculiar to this *new* transportation system: they had not, either of them, any place in the *old*. While the territory, to which the transportation was allowed to be made, was comprised within the limits of what was then British America, the length of the voyage was scarce the third or fourth part of what it is in the case of New South Wales.[3]—Thus it stood in point of *distance.*—The transportation was performed under the care of those, who in the case of each individual under their charge, not only had nothing to gain by his death, but had every thing to lose by it. The animal was a saleable commodity, the carcase not. The sale was not only *a* source of profit, but the *only* source. Thus it stood in point of *interest.*

Turn now, my Lord, to the Penitentiary System. Under both editions of it, voyage, none. Under the original system, the managers no

[1] Bentham presumably had in mind the voyages of the ships of the Second Fleet, namely the *Neptune*, the *Scarborough*, and the *Surprize*, which sailed from England on 19 January 1790 with 1,006 convicts on board, and subsequently took on board a further 20 convicts who had survived the wrecking of the *Guardian* in December 1789 at the Cape of Good Hope (see p. 182 n. below). By the time the Second Fleet reached Port Jackson on 26–8 June 1790, approximately 267 of its convicts had died. According to the lawyer Thomas Evans, in 'Botany Bay. To the Public', a printed address without place or date, the Second Fleet's contractor, the London shipbroker and slaving firm Camden, Calvert and King, had overcrowded the vessels for monetary gain, while the ships' masters had mistreated the convicts and withheld their rations, which they had subsequently sold in Sydney for a profit. Bentham's copy of Evans's address, to which Bentham has added the date 29 December 1791, is at UC cxix. 99–100.

[2] For the conjunction of interest and duty see, for instance, 'A View of the Hard-Labour Bill', pp. 26–32 (Bowring, iv. 12–13).

[3] The voyage to North America from the British Isles took on average between six and eight weeks, while, from 1787 to 1800, the voyage of a convict ship to New South Wales took on average twenty-eight weeks.

gainers by the death of any mortal under their management: under the improved edition of it, the manager a great loser by every one: a hundred pounds in hard money, besides other losses not susceptible of a precise and concise estimate, but which would in many instances rise to a still superior amount.[1]

This stipulation, to the want of which, more clearly than to any other cause, may be referred the loss of so many lives, as were lost in the passage to New South Wales, was not only contrived by me for my contract, and inserted by me, but maintained by me against a strong reluctance to the contrary: and after all, it was rather to the influence of will over will, of humble importunity over despotic carelessness, than to any influence of reason to such faculties as I had to deal with, that I could find any ground for attributing my success:—if success it can be termed, to receive a plighted faith, with a clandestinely promised and carefully concealed determination to break it, at the bottom of it.

What the cause of this reluctance was, I do not pretend to know: whether the wish was, that the wretches should die to save charges and lighten the budget, or that the influence of profit and loss over the human breast had not been able to demonstrate itself, to gentlemen even in that situation, and after so many examples of it as the voyages to New South Wales had even then been already forcing upon their eyes. The idea of establishing this coincidence, and in some such way as that proposed in the case of the Penitentiary Establishment, has, since that time, (if my recollection does not deceive me) conquered in some other instances the predilection for accustomed abuse in preference to unaccustomed remedy, and forced its way into legislation or administration, I forget which: but the case is not worth hunting for: it would be found (I believe) either in the Convict transportation trade,[2] or in the slave trade, or both.[a]

[a] Since the writing of the paragraph in the text, upon turning to Bryan Edwards's History of the West Indies, (Vol. II. Book IV. ch. iv.) I find the following information on this head. So long ago as the year 1788, in the Act 28

[1] In 'Panopticon; or, The Inspection-House', i. 71–3 (Bowring, iv. 53–4), Bentham proposed that the panopticon prison's contractor would, at the start of each year, be given £10 for each likely death among the prisoners and, at the end of each year, be fined £10 for each actual death, while in the revised insurance scheme outlined in 'Twenty-Eighth Report on Finance', Appendix F. 3, in *Commons Sessional Papers of the Eighteenth Century* (1798), cxii. 68–77 at 75–6, the sum for each likely and actual death had been increased to £100.

[2] The high mortality rate of the Second Fleet, where the contractors were paid £17 7s. 6d. per convict embarked, had led to the adoption of a policy similar to that recommended by Bentham for the panopticon prison. In 1792 and 1793, for instance, the contractor William Richards was paid £17 for each convict embarked in Ireland and an additional £5 for each healthy prisoner landed in New South Wales. See Bateson, *Convict Ships*, pp. 20–2.

In the account of *death*, I have mentioned as yet but one of the efficient causes of this species of security, viz. *duress* on ship-board.

G. III. c. 54, use had been made of the principle of *reward*, for cementing the connection between interest and duty, in the case of the Ship Surgeons, thereby required to be retained, on board the several ships concerned in the Negro import trade.[1] This might be a year or two before the time when, upon drawing up my Penitentiary Establishment proposal, the article in question had first occurred to me. In this legislative provision it is the principle of *reward,* reward alone as contradistinguished to *punishment,* that is applied. But it is the property of the principle of *life-insurance,* as employed in that proposal, to apply, and by the same movement, both springs of human action, *reward* and *punishment* together: reward in the event of a degree of success, and thence as it may be presumed of care and exertion, beyond what is looked upon as the ordinary mark;—punishment, in case of no higher a degree of those desirable results, than what is considered as falling short, by a certain amount, of that ordinary mark. The idea of employing the principle of reward in this way—the principle of reward singly—in the preservation of human life was thus, though a recent one, a principle already fixed in legislative practice, at the time when the idea of this principle of double action thus occurred to me—which double principle, even in this its double form, has so little of novelty in it, that it is in fact no more than the old established practice of life-insurance, applied to the preservation of the thing itself, which is the subject of the insurance. The practice of life-insurance was in itself of comparatively very antient date;[2] but in the form in which it is thus familiar, it has no influence on practice; no influence on the duration of the life, which is the subject of it. The life is in the hands of the owner, and depends not in any respect upon the conduct of the other party—on the conduct of the person who receives the actual premium, on condition of subjecting himself eventually to the payment of the contingent retribution. It is only in particular cases, that the life of one man is lodged in the power of another, in any such way as to be capable of being abridged, not only by positive deliberate design, but by mere negligence; and that in circumstances which render the application of punishment by judicial means impossible. Of these cases the case of the gaoler presents itself as the most extensive and prominent case. To this case the other cases in question may be reduced. A ship employed in the transportation of convicts is a floating gaol, employed for the confinement and conveyance of criminals under the law of the state: a ship employed in the slave-trade is a floating gaol, employed for the confinement of innocent men, under the law of the strongest.

[1] See Bryan Edwards, *The History, Civil and Commercial, of the British Colonies in the West Indies*, 2nd edn., 2 vols., London, 1794, ii. 122–3, referring to the Slave Trade Act of 1788 (28 Geo. III, c. 54), known as 'Dolben's Act' after its proposer Sir William Dolben (1727–1814), MP for Oxford University 1768, 1780–1806 and Northamptonshire 1768–74. The Act regulated, according to tonnage, the number of slaves a ship was legally allowed to take on board after 1 August 1788 and instituted a system of incentives: if no more than two slaves per hundred died during the voyage, the ship's master would be paid £100 and the surgeon £50, or if no more than three slaves per hundred died, then the master would be paid £50 and the surgeon £25.

[2] The form of life insurance familiar to Bentham had emerged in England at the turn of the eighteenth century, though other forms had developed in the Mediterranean in the fifteenth century.

On their arrival at this land of cruel promise, the fugitives from Pestilence were received by Famine.[1] Those, who had escaped the

It appears, therefore, that in the contrivance of this article I had proceeded one step indeed, but no more than one step, and that a step already indicated, and by no means obscurely, to any scrutinizing eye, by the closeness of its analogy to the first. *Reward,* is a principle you get a man to subject himself to the action of without difficulty: punishment, which, even when composed of no stronger materials than those very ones which constitute the matter of reward, is so much the stronger principle of action, punishment, you may in this shape get him to submit also to the action of, upon terms. This accordingly is what is done, by the principle of life-assurance, applied as above, to the relation subsisting between the keeper of a place of confinement and his prisoners.

Under the influence of even the weaker half of the double principle—under the influence of reward alone, introduced as above, into the slave trade, it may not be amiss to observe what effects in practice, had already been the result:—say in July 1793, when the Penitentiary proposal, after two or th[r]ee years of neglect, was unfortunate enough to obtain the acceptance of Mr. Pitt.[2]

Before the slave-trade regulations spoken of, 'a ship of 240 tons would frequently be crowded' (according to Edwards,[a]) 'with no less than 520 slaves; which was not allowing ten inches of room to each individual. The consequence was,[3] oftentimes a loss of 15 per cent. in the voyage, and four and a half per cent. more in the harbours of the West Indies, previous to the sale, from diseases contracted at sea.' After, and doubtless by virtue of, those regulations—with their consequent comforts, prescribed breathing space and professional care, taken together—the separate efficacy of each being undistinguishable—after these regulations, made in 1788, and yet before June 1793 (this being the date that stands in the dedication prefixed to the first edition of Edwards's book) the 15 per cent. loss on the voyage was sunk already to an average of 7 per cent.; an apparent average, which, for the reasons he gives, ought scarcely to be taken for more than perhaps half that rate. This at sea, and the four and a half per cent. loss in harbour, was reduced at the same time to so small a fraction as three fourths per cent.[4]

The experiment has instruction in it:—instruction, derivable from it in more points of view than one.—The difference between loss and loss, shews the influence that may be exercised over human action, by a due application of the

[a] II Edwards, p. 121.

[1] On 1 April 1790, for instance, during a period of severe dearth, the colony was put on short rations but, according to Collins, i. 105, such was the state of the colony's stores that later that month 'it was determined to reduce still lower what was already too low'.

[2] Bentham first addressed Pitt about the panopticon prison scheme in January 1791, but it was not until Pitt and Dundas visited Queen's Square Place in July 1793 that Pitt asked the Bentham brothers to begin making the necessary arrangements: see Bentham to Pitt, 23 January 1791, and Bentham to Earl Spencer, 13 August 1793, *Correspondence* (*CW*), iv. 223–4 and 445–9 respectively.

[3] Edwards 'The consequence of this inexcusable avarice was'.

[4] Edwards's calculation was based on the number of slaves arriving at Montego Bay between 18 November 1789 and 15 July 1791. Thirty-eight ships imported a total of 9,993 slaves; 746 died during the voyage, not including 'the loss of 54 Negroes in a mutiny on the coast', while sixty-nine or 'not quite ¾ *per cent*' died in harbour. See Edwards, *History of the West Indies*, ii. 123–4.

first decimation, were now to go through a second. In one year (1792) out of fewer than 4000 Convicts 436 breathed their last, of whom more than 400 were carried off by famine.[1] I say *by famine:* for such was the degree of natural salubrity in the spot (a degree so prodigiously superior to any thing which antecedent experience could have

principles of *moral dynamics:* by a right management of the springs of action in human nature. The amount of the original customary loss—this amount, compared with the causes that produced it, may serve to shew how insufficient is the utmost check, which the principle of sympathy, supported by whatever assistance it may happen to receive from all other principles of the *social* stamp—religion for instance, and regard for character put together—is capable of opposing, to the influence of the *self-regarding* principle of pecuniary interest, even where human life, where human lives even in multitudes, are at stake. It may at the same time serve to obviate the imputation of passion or propensity to personal satire, if on any occasion a suspicion should be seen to suggest itself, that, in this or that instance, the fate of convicts may have been regarded with indifference, by men hardened possibly in some instances by personal character, naturally more or less in all instances by official situation.—The views thus given are not among the most flattering ones; but the statesman who should on that account shut his eyes against them, would be as little fit for his business as the surgeon was, whose tenderness would not suffer him to observe the course he was taking with his knife.

But to return. The principle on which these regulations were grounded (I mean in particular so much of it as concerns the rewards) had, all this time, not only been introduced into the Statute Book—introduced by that means within the pale of that consecrated ground, to which even the jealousy of office cannot refuse the name of *practice*—but had been agitated, and (one may almost say) beat into every head, in and about the Treasury, at both ears, by those discussions about the Slave Trade, that year after year had been occupying and agitating both Houses of Parliament: and the Act itself by which this principle was first introduced, has since been, year after year, amended and enforced by Statute after Statute.[2]—Of this so much agitated—this so universally accepted principle—accepted at least in its application to the conveyance of the unhappy subjects of the black trade—what use, what application was made in the adjustment of the *contracts* for the conveyance of white men, native Britons, to New South Wales?—The contracts themselves, the contracts alone, were they for this purpose to be called for by Parliament, would serve to shew. It would then be seen—supposing the deficiency, if any, in point of care, to be the result, not of financial design, but of honest negligence—it would then be seen, whether the difference between a white skin and a black one were, or were not, an interval too wide, for such powers of abstraction as the Treasury at that time afforded, to measure and embrace.

[1] See Collins, i. 258.

[2] The Slave Trade Act of 1788, which expired after twelve months, was renewed, and on occasion amended, by the Slave Trade Acts of 1789 (29 Geo. III, c. 66), 1790 (30 Geo. III, c. 33), 1791 (31 Geo. III, c. 54), 1792 (32 Geo. III, c. 52), 1793 (33 Geo. III, c. 73), 1794 (34 Geo. III, c. 80), 1795 (35 Geo. III, c. 90), 1797 (37 Geo. III, cc. 104, 118), and 1798 (38 Geo. III, c. 88), until made permanent by the Slave Trade Act of 1799 (39 Geo. III, c. 80).

promised) that in 1794, out of a greater number there died but 42, and in 1795 but 20.[a]

[a] Medium of the two years, 33: this, taken from the whole number of deaths in 1792, 436, leaves, for the number of deaths by famine in that same year, 403.

TABLE OF CONVICT MORTALITY:

Abstracted from Collins's Account of New South Wales: exhibiting (so far as is there noted) the Deaths that took place on the Voyage, and in the Settlement, from 13th May 1787 to 30th April 1795, Casualties excepted.[1]

		I. On the Voyage.			II. In the Settlement, Died.				
Year	Page	Shipped	Died	Landed	Page	Males	Females	Total	Child.
1787	50	756	33	723	—	—	—	—	—
1788	—	—	—	—	50	28	13	41	9
1789[a]	—	—	—	—	—	—	—	—	—
1790	114, 122,	1222	278[2]	944	145	123	7	130	10
1791	167, 171, 174, 175, 178, 179, 181,	2063[b]	200[c]	1863[3]	194	155	8	163	5
1792	201, 236, 245,	751[4]	10[d]	741?[5]	258	418	18	436	29
1793	261, 304, 311,	321	1[e]	320	332[6]	78	26	104	29
1794	393,	83?	?	83	403	32	10	42	10
1795	—	0	0	0	446	13	7	20	1
	Totals	5196	522	4674	Totals	847	89	936	
					Add died in the Voyage			522	
					Grand total – – –			1458	

[a] No account, for this year, is to be found either in Captain Collins's account of New South Wales, or in the accounts respectively given of the same Colony by Governors Philip and Hunter, and Mr. Surgeon White.[7]

[b] And upwards.

[c] And upwards.[8]

[d] In one ship out of three: of the others nothing said.[9]

[e] In one ship out of three: none in either of the two others.[10]

[1] According to Bateson, *Convict Ships*, 100, 115–23, 127, 138, 144, 147, 151, thirty ships sailed for New South Wales in the stated period, and of the 5,272 convicts embarked in England and Ireland, 545 died during the voyage. While the absolute number of convicts transported given by Collins, and reproduced here by Bentham, may not be accurate, Bentham's claim that those upon convict transports were 'decimated' is in line with the data provided by Bateson, which shows that more than 10% of transportees in this period did not survive the voyage.

[2] According to Collins, i. 123, a total of 277 (rather than 278) men and women, as well as four children, died during the voyages of the four convict ships that reached Port Jackson during 1790.

[3] According to Collins, i. 167, 171–2, 173–4, 175, 179–82, a total of 1,866, rather than 1,863, convicts were landed by the eleven ships arriving at Port Jackson during 1791. Accordingly, the approximate number of convicts shipped in 1791 should be 2,066, rather than 2,063.

[*See opposite for notes 4–10.*]

At the end of the year 1792, the destroying angel having been at work in this way for three years, out of the whole number shipped off within that time, more than one fourth, by sea and land together, had died: out of 4792, 1291.

In this combination of associated scourges (both of them in no small degree, the product of official management) one circumstance requires to be observed. Of the mortality on both elements, that part which took place at sea, deplorable as it was in itself, operated in effect in diminution of the whole. The 522, who by pestilence or famine perished in the voyage—these enviable, because earlier victims—these superfluous wretches, had they landed, would probably, and by a

To separate what may be considered as the *extraordinary,* from what may be considered as the *natural,* rate of mortality, proceed as follows.

1. Instead of being landed year after year, as per Table, suppose the whole number of convicts actually shipped in the 9 years had been landed the first year.

2. Suppose the number of *natural* deaths, to have been the same for each of these 9 years as for the medium of the last two, viz. 33.

3. Multiplying then this medium number, 33, by the number of years, 9, you get for the total number of *natural* deaths in the nine years, – – – – – – 297

4. From the actual *total* number of deaths, natural and extraordinary, in the nine years, viz. – – – – – – } 1458

Deduct the *natural* number of deaths, as above – – – – – – – – 297

5. Remains, for the number of extraordinary deaths, – – – – – – 1161

which, within 6 or 7, is the exact medium between 1-5th and 1-4th of the numbers shipped. But the real proportion (it may have been observed) must on several accounts have probably been above this mark.

[4] According to Collins, i. 201, 236, 245, a total of 747 convicts were embarked in England, rather than 751, on the three ships that reached Port Jackson during 1792.

[5] According to Collins, i. 201, 233, 245, a total of 733 convicts were landed by the three ships arriving at Port Jackson during January 1792.

[6] *Recte* 331.

[7] Arthur Phillip, *The Voyage of Governor Phillip to Botany Bay; with an account of the establishment of the colonies of Port Jackson and Norfolk Island; compiled from authentic papers, which have been obtained from the several departments. To which are added the journals of Lieuts Shortland, Watts, Ball, and Cap't Marshall, with an account of their new discoveries*, London, 1789; John Hunter, *An Historical Journal of the Transactions at Port Jackson and Norfolk Island, With the Discoveries That Have Been Made in New South Wales and the Southern Ocean Since the Publication of Phillip's Voyage*, London, 1793; and John White, *Journal of a Voyage to New South Wales, with Sixty-five Plates of Non descript Animals, Birds, Lizards, Serpents, curious Cones of Trees and other Natural Productions*, London, 1790. No convicts arrived at Port Jackson during 1789, hence the absence of data for that year. Bentham is correct to state that neither Collins, nor any of the above works, give any precise information about the number of deaths in the colony itself during 1789.

[8] According to Collins, i. 182, in 1791, 'Upwards of two hundred convicts, male and female, did not reach the country.'

[9] i.e. the *Royal Admiral*, while the other two vessels were the *Kitty* and the *Pitt*. Collins, i. 246 implies that three of the convicts on board the *Kitty* died.

[10] i.e. the *Sugar Cane*, while the other two vessels were the *Bellona* and the *Boddingtons*.

number still greater than themselves, have increased the multitude of those subsequent victims, whom, by an undisputed title, Famine called her own. From the amount of the least ration necessary to health, take away a certain portion, only a part may die: aggravate the deficiency by a small fraction more, the same fate may involve the whole. The 522 and upwards who perished at sea, may, by having been thus destroyed in time, have saved more than 521 from being destroyed by famine, in addition to the [936][1] or thereabouts, who actually received their quietus from that scourge.

But (says somebody, and not unplausibly) *to what good purpose, seek, at this time of day, to rip up these old sores? In respect of life and death the establishment presents two features: mortality at the outset*; *health and vitality afterwards: the mortality, an affliction common to all new Colonies: the vitality, a blessing in a degree altogether peculiar to this of New South Wales. The bad is past, and without remedy: for the future, (you yourself cannot but allow) the prospect, is, on this side at least, a fair one.*

Yes, my Lord, in the Colony itself, men being once landed there—in the several spots at present settled, and so far as concerns ordinary disease, the healthiness of the climate, and that in a more than ordinary degree, does indeed appear sufficiently established. But should the existence of the settlement (which God forbid on so many other accounts!) be protracted for a period of considerable length—suppose double the length of that which has already elapsed—it will then be seen whether the increase of vitality gained by exemption from ordinary disease, be not dearly paid for by a decrease produced in the same period by the operation of the scourge of *famine.* Further on, as the facts rise to view, I may have occasion to sketch out the very particular nature of this danger, and to submit to your Lordship, whether it be not inextricably interwoven with the unchangeable circumstances of the spot.[2]

The *pestilence* too—the preliminary pestilence during the voyage—will be found, and in a very high degree, not a mere accidental and occasional concomitant, but an essential and irremoveable one: for irremoveable it must be, in no inconsiderable degree, if it be really what it appears to be, the joint result of the character of the passengers, and the duration of the voyage. Leave them unconfined, they mutiny:[3] confine them, they die. Negligence, above or below,

[1] 1802 '639' appears to be a typographical error. The figure of 936 represents the total number of deaths in the colony given in 'Table of Convict Mortality' above.

[2] See 'Second Letter to Lord Pelham', § XV, pp. 241–4 below.

[3] From the sailing of the First Fleet to that of the *Barwell*, which left Portsmouth on 7 November 1797 (the latest transport named in the first volume of Collins), there were alleged, planned, or actual attempts at mutiny on nine voyages, namely those of the

may have augmented, as it does appear to have indeed augmented, the amount of the mortality from this source: care in both places may lessen it; but, in such circumstances, mortality, and that in a most deplorable degree, is an affliction, that, on any right consideration of the nature of the case, can scarcely but be expected ever and anon to take place, spite of the utmost care. Accordingly, as we are informed by Mr. Collins (II. 222), in the Hillsborough—a ship that arrived in New South Wales with convicts in July 1799—the deaths were, out of three hundred, no fewer than 101, not to speak of sickness: although, according to the conception of the same ever candid reporter, 'it was impossible that any ship could have been better fitted by Government for the accommodation of prisoners during such a voyage. The gaol-fever lurking in their clothing,' is the cause to which he attributes this mortality, amounting to upwards of a third. 'The terms of the Charter-party,' he understands to have been 'strictly complied with.'[1]

IV. Fourth object or end in view, *Compensation* or *Satisfaction:* the means of it to be extracted, if possible, out of the punishment, and made over to the party specially injured (where there is one) in satisfaction for whatever loss or other suffering had been brought upon him by the offence.

In speaking of this as among the ends of punishment, I find myself driven, against my wishes, upon a distinction which, as often as it presents itself, can never be other than an unpleasing one: I mean the distinction between what *exists*, and what on the score of public good it were to be *wished* did exist in point of law. That, in the case of *transportable* offences, of offences of the rank of those to which that species of punishment has been annexed, no such result is among the objects of our system of penal law, unless by accident, is but too indisputable: whether it were not desirable that it should be, may be left to every

Scarborough (sailed 13 May 1787), the *Scarborough* again (sailed 19 January 1790), the *Albemarle* (sailed 27 March 1791), the *Royal Admiral* (sailed 30 May 1791), the *Sugar Cane* (sailed 12 April 1793), the *Surprize* (sailed 2 May 1794), the *Marquis Cornwallis* (sailed 9 August 1795), the *Lady Shore* (sailed May 1797), and the *Barwell*. See Bateson, *Convict Ships*, pp. 101, 128–9, 133–4, 143, 146, 148–56, 165–6.

[1] See Collins, ii. 222–3. In June 1800 the Transport Commissioners concluded that the *Hillsborough*'s charter party with James Duncan had been adhered to: the ship had been clean and aired, had not been overcrowded, and had been 'in the best possible order' when it sailed. The Commissioners believed that some convicts had contracted 'gaol-fever or other epidemical disorder', in either the gaols or the hulks in which they had been confined prior to transportation, and that the deaths during the voyage 'might have arisen from circumstances which no human foresight could prevent, the causes being often subtle and latent, and the infection probably conveyed by means imperceptible or unknown'. See Transport Commissioners to the Duke of Portland, 11 June 1800, *HRNSW*, iv. 91–4.

understanding, as well as to every heart, in which the study of law has not extinguished the sense of justice.

Observe, my Lord, the incongruity, the inconsistency.—Where the offence is deemed least enormous, the party injured has his chance of satisfaction for the injury. Where it is deemed most enormous, and punished accordingly, he has no such chance. Not that any thing can be more satisfactory to any body than this arrangement is to Blackstone.[a] As often as a man is hanged or transported, or kept in a jail or flogged, satisfaction is thereby given to somebody or to something: this being assumed, what sort of a thing the satisfaction is, or who gets it, is, in the learned Commentator's account, not worth thinking about.[b]

To your Lordship's most humble servant, since he conceived himself to understand what *satisfaction* meant, nothing but dissatisfaction (he will confess) has ever been afforded by the arrangements thus made with reference to it: and with these feelings, some sixteen or eighteen years ago he set to work, and travelled through divers investigations in relation to the subject.—*Cases,* by injury or otherwise, calling for satisfaction, with the reasons for affording it.—*Party, to whom—party, at whose expence*—it shall be afforded—*Quantity* and *certainty* of satisfaction—Different *species* or *modes* of satisfaction, adapted to the nature of the several *injuries*—Such were among the subjects of those labours, the produce of which, lately rescued from the spiders by a friend,[1] should be laid at your Lordship's feet, could time be spared for any such trifles from your Lordship's sublimer occupations.

Nine or ten years ago, in drawing up the proposal for my Penitentiary Establishment, a thought struck me, that on paying the whole expence of the experiment, I might perhaps be allowed to purchase the

[a] He observes—and with great truth (B. IV. ch. I.) that if the crown takes every thing there remains nothing for any body else. 'As the public crime (says he) is not otherwise avenged than by forfeiture of life and property, it is impossible *afterwards* to make any reparation for the private wrong.'[2] But is it necessary or right, that while damage remains without reparation—injury, without redress—the King who has sustained no damage—that is A. or B. in the name of the King—should take every thing—should sweep away the whole of that fund from which reparation might have been afforded?—The affirmative was found as easy to assume, as it would have been difficult to prove.

[b] 'We seldom hear any mention made of satisfaction to the individual,' (says he):—'the satisfaction to the community' (viz. by the destruction of one of its members) 'being so very great. And indeed, as the public crime,' continues he, giving the reason he is so well satisfied with, as above.

[1] See the discussion of compensation and satisfaction of injured parties in *Traités de législation civile et pénale*, ed. É. Dumont, 3 vols., Paris, 1802, ii. 308–79 (Bowring, i. 371–88).

[2] Blackstone, *Commentaries on the Laws of England*, iv. 6.

satisfaction of stealing the idea into practice.[1] Amidst the blindness and negligence, the marks of which appeared but too conspicuous, my hope was, that, under favor of that vulgar and almost universal jealousy, that would rather lose a tenfold public benefit, than not nibble down to the quick the recompense to the individual who should give birth to it, a plot even for doing good might pass undetected. I had however miscalculated: gentlemen were too sharp for me: what was wanting in discernment had been supplied by prejudice. When the proposal came to be turned into a contract, the battles I had to fight would be here an episode, upon what I fear has already been accused of being itself an episode. Careful of my interests as I myself was negligent, seeing deeper into them by a glance than I had been able to do by the calculations and meditations of months or years, gentlemen trembled lest I should ruin myself.[2] To let your Lordship into a secret, the danger of *loss* was as nothing: *diminution of gain* was all the sacrifice. What I bound myself to do in this way, was limited by considerations of necessary prudence: my *hopes,* and as far as means should extend, my *intentions* were to do more. Your Lordship is now master of my secret: which (to complete the confession) has never been such to any body that would allow me to hope, he might be prevailed upon to listen to it.

To return to the question. In New South Wales the annual value of a man's labour being *minus* £46: 5*s*.[3] or some such matter, the surplus applicable to the purpose of compensation could not be great: I mean the positive surplus, extractible from that negative quantity, for the purpose of being converted into the matter of positive compensation, payable to the individual in Great Britain, who had been a sufferer by the offence, for which the convict in question had been consigned to New South Wales.

I hear your Lordship stopping me. *The idea of compensation being, in such a case, so novel—novel to a degree which you yourself, Sir, have even been forward to acknowledge—the absence of it cannot, consistently with justice, be objected as a blemish, to that system of punishment, of which the scene was laid in New South Wales.*—Be it so, my Lord: but the task in hand is—a parallel to be drawn between this *exotic* system

[1] See Bentham to Pitt, 10 February 1792, *Correspondence* (*CW*), iv. 359: 'Recent considerations and calculations have enabled me to put my proposal of Jan:y 23d 1791 relative to the Penitentiary system [i.e. when Bentham first offered the panopticon to Pitt] into a shape which removes altogether what I have all along understood to be the only objection to which that system has been looked upon as exposed.

'I am now ready to execute the plan stated in that proposal at an expence per man less by 25 per cent than that of the Hulk system: *taking on myself all expence of building*, and that *without* any *advance* to be made by Government for that purpose.'

[2] Bentham appears to have had in mind the reaction of ministers to his proposal to pay compensation according to the number of deaths in the panopticon: see p. 128 n. above.

[3] See p. 143 below.

and the *home* system which has been set aside by it: and the mode of trial chosen by me (not knowing of a better) was, by their respective degrees of conformity to the several *objects* or *ends* of penal justice: and, at the very outset, in speaking of those ends, I assumed the liberty (I hope not altogether an unreasonable one) of adding to those actually and habitually aimed at, such others, if any, in regard to which it might appear reasonable and *desirable* that they *should* be aimed at. But, in regard to this of *compensation*, as far as my opportunities of observation have extended, and from all I have been able to collect from offices of insurance, courts of justice, and other places, it has appeared to me that, when a loss has been suffered, the receiving back again the amount of it, or so much towards it as may be to be had, is an event pretty generally looked upon as a *desirable* one. I mean—in the eyes of him by whom the loss has been sustained: nor, saving Blackstone and those who think with Blackstone, has it ever happened to me to meet with any person, to whom it has presented itself in the opposite point of view, unless those be excepted, at whose expence, and to whose loss, the matter of compensation was to be found: a class of persons whose repugnance would not, I believe, on the present occasion, be regarded as an insuperable obstacle, forasmuch as, by the supposition, it is intended they should undergo punishment—and a degree of punishment, of which the mortification from such loss would be but a part.

If then it may be assumed that *compensation* presents a legitimate title to a place among the ends of penal justice, it appears further to my humble conception, that supposing, with the favourite system of *exotic* punishment in one scale, and the discarded system of *home* punishment in the other, the balance were to be found to hang exactly even (the weights from the four other topics, *example, reformation, incapacitation* for fresh offences and *economy*—being collected, and thrown in on both sides) that on *that* supposition, I say—and *that,* I hope, not a very presumptuous one—a few grains of compensation might—(forasmuch as there could be nothing of the sort in the opposite scale) be found peradventure to preponderate.

This is all I presume to contend for under this head: and here ends all the trouble I wish to give your Lordship, for the present at least, on the subject of this unfashionable and little regarded end of penal justice.

V. Fifth head of comparison between the two systems: Fifth and last object or end proper to be kept in view in a system of penal legislation: the collateral object of *Economy:* Economy, in respect of the aggregate expence, of the establishments allotted to this purpose.

In the 28th Report of the Committee on Finance, your Lordship possesses a document, in which this topic stands discussed, with that comprehensive and demonstrative accuracy, in which the advocates

of the penal colonization system have never ceased to behold their sentence. I beg your Lordship's pardon: instead of *advocates* I should rather have said *supporters:* for, to be an *advocate* of a system, a man must have something to say for it, which in the case of a *supporter* is not necessary. In the present instance, in the character of advocates, I have always found gentlemen as silent and modest, as in the character of supporters they have been found powerful—and by dint of power firm and strenuous.—In the epithet, the so often quoted epithet '*improved*,' consists (as your Lordship will find) not only the substance, but the entire tenor of their argument:[1] and on what sort of foundation that epithet has been applied is a point on which, by this time, your Lordship is not altogether unprepared to judge. Including, as it does, the whole budget of their arguments, for all occasions, on which the merits of the favourite establishment can come in question, it would be injustice to refuse them, on any occasion, the full benefit of it.

According to the calculations in the above Finance Report—in New South Wales, the average annual expence of convicts per head, varying according to a variety of statements and suppositions, is from £.33: 9*s.* 5½*d.*[2] to £.46: 7*s.* 0¼*d.* the highest rate of expence the most probable.[3]

Annual expence per head, of convicts maintained on the intended Penitentiary plan, exclusive of expence of building and out-fitting once paid, as per draught of contract:[a]	12	0	0
Expence of building and out-fitting for the intended number of a thousand, as per ditto, £.19,000.[4] Say for round numbers £.20,000. This at 5 per cent. makes to be added per head per annum.	1	0	0
Expence of land for the building, had the spot at Battersea Rise been taken, that had been appropriated to the Penitentiary establishment by a Jury, under the Act of 1779—£.6,600:[b] or, if an allowance had been made for intervening rise of value, say £.10,000: this at 5 per cent. makes, to be further added, per cent. per annum	0	10	0
Total expence per annum	£13	10	0

[a] 28th Finance Report, p. 71[5]

[b] 34th G. III. c. 84, § 1.[6]

[1] i.e. 'the improved State of the Colony of New South Wales': see p. 73 & n. above.

[2] *Recte* 5¾d.

[3] These figures appear in 'Twenty-Eighth Report on Finance', in *Commons Sessional Papers of the Eighteenth Century* (1798), cxii. 26–7.

[4] See 'Twenty-Eighth Report on Finance', Appendix F. 3, in ibid. 77.

[5] Ibid. 71.

[6] The Penitentiary Act of 1794, § 1, recounts how the Penitentiary Act of 1779 provided for the appointment of three supervisors, who were to select sites on which the national

Say accordingly, Rate of expence of the Colonial establishment to the Penitentiary establishment—in round numbers, from somewhat more than two to one, to somewhat less than four to one.

True it is, that in the course of the seven or eight years, during which the pretence for relinquishment on the ground of *lapse of time*[1] had been manufacturing, the expence of necessaries had received such an increase, that, without some such addition as between £4 and £5, the faith plighted by the acceptance of the proposal in 1793 must (as your Lordship may have observed from my *armed*,[a] and therefore suppressed memorial of April, 1800,)[2] have been violated in substance. True it is also, that by the compliment paid to ——[3] in the change of the spot from Battersea Rise (the spot chosen by the twelve Judges, &c. and valued by a Jury, under the Act of 1779) to Tothill-fields,[4] an additional expence would have been incurred: an expence, the amount

[a] *Armed,* i.e. with reasons: *suppressed*, because the reasons were found troublesome. The distinction is one which it was necessary to note; because in the unarmed memorial, cut out to pattern, as per order, and delivered in instead of the other, no such troublesome reasons might be to be found. The armed one is, moreover, the one which, notwithstanding all suppressions, has been in your Lordship's hands these six months:[5] the harmless one lies very quietly upon the Treasury shelves. The distinction, by no means an uninstructive one, will be explained in the course of the *narrative* by a variety of examples.[6]

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penitentiaries for male and female prisoners might be built. The first set of supervisors, namely John Howard (1726–90), philanthropist and penal reformer, John Fothergill (1712–80), physician and naturalist, and George Whatley, Treasurer of the Foundling Hospital 1779–91, failed to agree on a site. In January 1781, following the death of Fothergill in December 1780, Howard had resigned as a supervisor. A second set of supervisors appointed in early 1781, namely Gilbert Elliot Murray Kynynmound (1751–1814), first Baron Minto, Viceroy of the Anglo-Corsican Kingdom 1793–6, President of the Board of Control 1806, Governor-General of India 1807–13, Sir Charles Bunbury, and Thomas Bowdler (1754–1825), writer and literary editor, eventually identified land at Battersea Rise as suitable for both male and female penitentiaries and a jury had concluded that the landowners were due a total of £6,600 compensation for its purchase.

[1] See p. 73 n. above.

[2] Bentham's 'Armed Memorial' was originally sent to Charles Long on 21 April 1800.

[3] i.e. 'Lord Spencer': see the draft at UC xciv. 329^{v} (29 May 1802).

[4] While the supervisors appointed under the Penitentiary Act of 1779 had eventually selected land at Battersea Rise for the male and female penitentiaries, the Penitentiary Act of 1794, § 1, had empowered the Treasury to purchase that or 'any other as convenient and proper Spot of Ground'. Following opposition from Spencer, Bentham had failed to acquire the site, failed to acquire another site at Hanging Wood near Woolwich, whereupon he turned his attention to Tothill Fields, Westminster, and thereafter to Millbank.

[5] The 'Armed Memorial' had been amongst the papers that Bentham had sent to Bunbury on 25 April 1802 and that Bunbury had subsequently sent to Pelham: see 'Correspondence, sent to Wilberforce', pp. 26–8 above.

[6] For Bentham's account of Long's refusal to consider the 'Armed Memorial' and consequent submission of a one-page 'Unarmed Memorial' see p. 27 n. above. The 'narrative' was 'A Picture of the Treasury'.

of which, though not capable of exact liquidation, might, supposing the lot had been completed, be set down in round numbers at another £10,000: so that upon the whole, the expence per head per annum of the Penitentiary system, on the supposition of the thousand prisoners, would have been to be raised from about £13: 10*s.* to about £18: 10*s.* But the difference, amounting to about £5 a year per convict, belongs plainly to no such account as that of the original and proper expence of the Penitentiary system: It may be set down to the account of public money wasted; wasted between ——— and ——— by the one of these ———— and incorruptible members of ————,[1] in spite of the most strenuous remonstrances on my part, out of compliment to, and for the accommodation of the other.

But the expence, says somebody, *will decrease: it was expected to be great, till the colony raised its own provisions: but now that period is arrived.*

My Lord, if it were put to me to say, honestly and sincerely, whether the expence per head were most likely to increase or to decrease (reckoning from the last amount as stated in the Report of the Committee of Finance) I should certainly answer—to decrease, and that in a considerable degree: though at the same time were I to be asked, whether any considerable decrease would be to be *depended* upon, I could not answer otherwise than in the negative.

On the other side of the question there are two other points, to which I could venture to speak with much greater confidence.

One is, that the rate of possible decrease has its limits; and those limits such, that there is not any the smallest chance whatever, that within the compass of the present century, the rate of expence per head, in New South Wales, will be reduced to a level with the rate, at which, if the public faith had been kept with me at the outset, it would have stood under the Penitentiary system. I might perhaps add—nor even to a level with that at which it would now stand, if so much of the public faith, as at this time can be kept with me, were now kept.

Another is—that, long before the rate of expence per head, in New South Wales, is reduced so much as to the level of what it would *now* be under the Penitentiary system, this latter expence would be reduced to nothing at all.

In relation to the first of these two points—the probable amount of the decrease in the case of the New South Wales system—if our expectations are governed by those which, according to the latest

[1] i.e. 'wasted between M^r^ Pitt and Lord Spencer, by the one of these Right Honourable and incorruptible Members of his Majesty's Cabinet Council': see the draft at UC xciv. 329^v^ (29 May 1802).

documents were entertained by the conductors and supporters of it, *they* at least cannot complain much of the estimate.

Of the expence of the ten or eleven first years of the existence of this settlement, being the period comprised in the accounts signed *Charles Long*, 16th May, 1798, and marked O in the 28th Finance Report, printed 26th June, 1798, the grand total, at that time brought to account, amounted to £1,037,000. This total is compounded of seven divisions. One of them is intituled '*Expence of victualling the convicts and the settlement from home.*'[1] To this division a note is subjoined, expressive of the expectations of the conductors and supporters of this system, in relation to the reduction of the expence. '*It is supposed*,' (says the note) '*this expence*, *compared with the numbers victualled*, *will gradually decrease.*'[2] It is to this division, (your Lordship will have the goodness to observe)—it is to this division that the expectations thus declared confine themselves: of no other of the seven divisions is any such expectation so much as hinted.

The sum expressive of the expence under this head is . . .	£186,270[3]
Lest any thing should be omitted, that can possibly help to swell the amount of the only head upon which any expectation of reduction is so much as professed to be entertained, let it be observed, that (according to another statement in this same account) had the plan of accounting, pursued on and from the fourth year, been pursued during the three first, this division would have received an addition, at the expence of the last preceding one, intituled '*First establishment of settlement and transportation of convicts:*' the total of which, for the ten or eleven years, is	264,433
Say then, instead of £186,270—and for round numbers . . .	200,000
From the grand total, amounting to	1,037,230
Strike off, for the same reasons, the odd	37,230
Remains	1,000,000

[1] The seven divisions were as follows: 'Expense of First Establishment of Settlement and Transportation of Convicts'; 'Expense of Victualling the Convicts and the Settlement from hence'; 'Expense of Clothing, Tools, and sundry Articles'; 'Bills drawn by the Governors, Commissaries, &c. for the Purchase of Provisions, &c. for the Use of the Colony, and paid at the Treasury, together with sundry small Sums'; 'Expense of Civil Establishment'; 'Expense of Military Establishment'; and 'Expense of Marine Establishment'. See 'Twenty-Eighth Report on Finance', Appendix O, in *Commons Sessional Papers of the Eighteenth Century* (1798), cxii. 122–3.

[2] According to ibid. 123 n., a reduction in expenditure on New South Wales could be expected 'as greater Quantities of Land are Daily brought into Cultivation in the Settlement, and in consequence of Settlers and emancipated Convicts taking the Convicts in their Service, and thereby relieving the Public Stores'.

[3] In this and the following figures, Bentham has ignored the shillings and pence given in 'Twenty-Eighth Report on Finance'.

Which gives for the proportion of that one of the seven divisions, on which alone any saving was so much as expected, one *fifth* part of the whole. The saving expected (your Lordship will be pleased to observe) was not the saving *of*, but only a saving *upon,* that branch of the expence: not a saving of the whole, but only a saving of some unspecified and unspecifiable part of it. Let us be more liberal however to Honourable and Right Honourable Gentlemen, than they would venture to be even to themselves. Call it a saving of the whole. On the other hand, let us take for the probable continued amount of the expence per head, setting aside the deduction, the then actual amount, as found by the Committee . . . . £46 7 0¼[1]

From the amount so found, let us, for the sake of round numbers, strike off the odd		2	0¼
Remains	46	5	0
From this sum deduct the supposed saving, amounting to . .	9	5	0
Remains	37	0	0

In this £37 then, your Lordship sees that quantity, *towards* which, according to the expectation of gentlemen, who are urged by every imaginable motive to put the best face possible upon their 'improved' colony, may be considered as likely to be making approaches from time to time, but *to* which, even according to expectations so circumstanced, it can never be considered as susceptible, in the nature of the case, of ever being reduced.

But in this £37, your Lordship sees a rate of expence, the exact double of that of the Penitentiary establishment, taken at its latest and artificially augmented nominal amount £18: 10*s*.

Being the amount to which gentlemen themselves had (as already mentioned) contrived to swell it from the £13 0 0

Which was the original and proper rate.[a]

[a] In addition to this £46: 5*s*. or this £37, the whole produce and value of the whole labour extracted or extractible from the convicts, (while in their state of bondage at least) may be considered as so much thrown away: or, if not considered as thrown away, then whatever may be the value of it ought at any rate to be added to the account of expence, since that account is lessened, and reduced to those sums respectively by the amount of it. On the Panopticon plan, one fourth part of the produce of each man's labour would, without any additional expence to Government, have been employed—partly in insuring to him a maintenance in his declining years, partly in administering present comforts to himself and family, where he has one:[2]—the other three fourths would have been

[1] See p. 139 above.

[2] See 'Draft of a Contract between the Lords Commissioners of the Treasury and Jeremy Bentham, Esquire', Art. 14, in 'Twenty-Eighth Report on Finance', Appendix F. 3, in *Commons Sessional Papers of the Eighteenth Century* (1798), cxii. 74: 'Each of the said Convicts or Prisoners shall be allowed a Share of his Earnings, to the Amount of not less than One Fourth Part of the fair Value thereof'; and Art. 15, ibid. 74–5: 'A Portion of such Share or Allowance (but, unless with the Prisoner's Consent, not exceeding the Half

Here then, as in a nut-shell, your Lordship may see the *morality,* the *economy*, and the *logic* of Right Honourable Gentlemen—all in their genuine colours.

employed—partly in furnishing the capital necessary for the setting to work such convicts as should choose to betake themselves to the establishment for employment, after the expiration of their respective terms; (a good deal of it in the charges of buildings, and other masses of fixt and permanent capital)—partly in affording subsistence and recompense to the various descriptions of persons, employed in the way of management and superintendence.

Under the head of *Incapacitation* (viz. for fresh offences) I have had occasion to point out the advantage reaped in that way from the tranquillizing hand of *Death*.[1] The same active and gratuitous agent, while thus employed in the Police department in cutting short the thread of life, will have been rendering proportionate service in the financial department, by a proportionable abridgment of the thread of expence.

At the time of the last account, the actual *quantum* of the expence, taken in its total, rose no higher than a million and thirty-seven thousand pounds, for the eleven or twelve years at that time elapsed: but, unless gentlemen choose to take credit, as for a service done to His Majesty, for the number of his subjects thus got rid of, to this £1,037,000 should be added, upon a fair estimate, some such matter as one, two, or three hundred thousand more. Bad as it is as a measure of *police*, bad as it is as a measure of *finance*, it would in both characters have been still worse, had it not been for its efficacy in the character of a measure of *destruction*. Some men, I hope, will not, even in the secret of their own bosoms—no man I trust will openly, and in the face of day—be bold enough to set down this destruction, on the *profit* side of the account. Not that even this flagitious profit, if it were one, could be justly placed to the account of this new-invented transportation system: since, by setting or leaving men to rot in gaols at home, the same, or any still more *preventative* and more *economical* degree of destruction, might be effected at a small part of the expence.

Notwithstanding this increase in the total *quantum*, the *rate* of expence per head (it may be observed on the other hand) would in this case have been diminished: since those divisions of the expence, which are fixed, and apply in common to the whole number of persons maintained—such as the expences of the several official establishments—civil, military, and naval—those heads of expence having, by the supposition, a greater number of heads of persons to distribute themselves upon; would fall, in so much the less magnitude, upon each. The truth of this observation must, to a certain extent, be admitted: some heads of expence there are, to which the survivance of the human beings, who perished, would not have added any increase. The expence of *transportation* is an example: but in what degree—or indeed whether in any degree—the expence of the several superintending establishments above mentioned, can with propriety be considered as being in the same case, will be matter of great doubt. Throughout, the scantiness or supposed scantiness, of these several establishments, appears

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thereof) shall be retained by the said Jeremy Bentham and his said Successors respectively, as the Consideration Money for an adequate Superannuation Annuity to be granted by the said Jeremy Bentham and his said Successors, immediately upon the Expiration of such Prisoner's Confinement, to and for the Benefit of each such Prisoner respectively, upon the principle of the Annuities granted by the Societies called Friendly Societies, for the Life of such Prisoner.'

[1] See pp. 126–35 above.

For seven years together, by a course of management which I may have occasion to exhibit elsewhere, they were manufacturing their '*lapse of time;*' and thus was formed *one* of their four grounds for the relinquishment of the incommodious measure.[1]

In a still longer space of time (adding preceding delays) they manufactured a necessary '*increase of terms;*' and this was *another* of their four grounds: and, in these two harmonizing features, your Lordship beholds the *morality* of Honourable and Right Honourable Gentlemen, delineated to the life.

	£.	s.	d.
The genuine expence of the discarded system was as . . .	13	10	0
The expence to which they had contrived to swell it, for the purpose of blasting it, was as	18	10	0
Instead of it, and in the character of a declared ground for discarding it, though there be no incompatibility, they keep up the favourite system, the expence of which, by the latest accounts, was as	46	5	0
And which they themselves could not pretend to say was likely ever to be reduced so low as	37	0	0

to have been matter of general complaint: this complaint, well or ill-grounded, has been among the few complaints which appear to have met with adequate attention here at home, and a very considerable increase in the total of those establishments has been the consequence.[2] Thus stands the matter, notwithstanding the reduction effected in the population, by the causes of destruction above mentioned: can it reasonably be assumed, that, if the population had been in any considerable degree greater, the establishments for the management of it would not in the same degree have been increased?

This topic is mentioned, only (as Necker would say) *pro memoriâ*:[3] to form a precise calculation, would require a mass of labour and paper, disproportionate to the present purpose.

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[1] For the four 'grounds of relinquishment' see p. 73 & n. above.

[2] According to 'Twenty-Eighth Report on Finance', Appendix O, in *Commons Sessional Papers of the Eighteenth Century* (1798), cxii. 122–3, the annual expenditure on the Civil Establishment of New South Wales had increased from £2,877 10s. for the calendar year ending 31 December 1787 to £5,523 10s. for the calendar year ending 31 December 1797, while the expenditure on the Military Establishment had increased from £6,847 1s. 10d. for the calendar year ending 31 December 1789 to £16,906 4s. 2¼d. for the calendar year ending 31 December 1797.

[3] Jacques Necker (1732–1804), Swiss banker, who had effectively been in charge of French public finances from 1776 to 1781, first as Director of the Royal Treasury and then Director-General of Finances, and who again held the latter office 26 August 1788–11 July 1789 and 20 July 1789–18 September 1790, in *L'administration des finances de France*, 3 vols., Paris, 1784, i. 5–36, had, in his calculation of 'Contributions des Peuples', used the term '*mémoire*' rather than '*pro-memoriâ*' in the place of indeterminate quantities. For instance, at ibid., 33, while noting the difficulty of estimating the indirect tax arising from smuggling in France, he stated: 'Je n'entreprendrai point de donner une évaluation positive à cet article, et je le citerai seulement ici pour *Mémoire*'.

And here your Lordship has another sample, of that congenial cast of *economy,* for which the public is indebted to the contrivers of the never-to-be-forgotten *Poor-Bill*.[1]

It is to save the public from being burthened by that '*increase of terms,*' to which, not altogether without reason, they apply the attribute '*great*'—to save His Majesty's subjects from paying £18: 10*s*. that they saddle the present generation with £46: 5*s*.—leaving to some future generation its chance for seeing the expence reduced to a sum between that and the £37.

And here, in conclusion, your Lordship sees a sample of that *logic,* which has led to such *economy,* and proved such *morality* to be conducive to true interest, and compatible with lasting fame.

Your Lordship (I hope) has not forgotten, that in relation to every one of those points which, either have been, or ought to have been, its *direct* objects—*example—reformation—incapacitation* in regard to ulterior offences—*compensation* for the mischief by past offences—the establishment has been (according to the nature of each object) as completely unconducive, or as strenuously repugnant, as it is possible for an institution to be: and it is for so pre-eminent a degree of unfitness with reference to all these its *direct* ends, that a compensation was to be looked for on the *collateral* ground of *economy:*—economy, the only ground so much as hinted at—the strong and favourite ground of Right Honourable Gentlemen:—the only one of the five objects so often mentioned that appears ever to have had any pretensions to the honour of their notice: for, as to the confining the mischievous activity of convicts—confining it, by lawless force, to the spot from which the Law, had its force been equal to that of Right Honourable Gentlemen, would have set them free—confining it to a part of His Majesty's dominions, and thereby preventing it from displaying itself in any part except that one—as to this point, I have already had occasion to observe, that *change of place* and *annihilation* are not the same operation to an ordinary understanding, whatever they may be to extraordinary ones.[2]

'In *arithmetic*' (says Mr. Rose most truly)[a] 'there is no eloquence to persuade, no partiality to mislead. In its calculations, therefore,' (I keep on saying with the Right Honourable Gentleman at my respectful distance) 'if the reader will have the patience to peruse them, plainly and

[a] On the Civil List 1802, p. 39.[3]

[1] For Bentham's comments on Pitt's measure (for the Bill see *Commons Sessional Papers of the Eighteenth Century* (1796–7), ciii. 163–96), which had failed to gain support in the House of Commons and been effectively withdrawn at the end of February 1797, see 'Observations on the Poor Bill', in *Writings on the Poor Laws: Volume I*, ed. M. Quinn, Oxford, 2001 (*CW*), pp. 217–63.

[2] See pp. 126–35 above.

[3] See George Rose, *Considerations on the Debt on the Civil List*, London, 1802, p. 39.

fairly, as they are given in the preceding pages, he cannot be at a loss for his decision. To them the writer of these sheets' (I still keep up with him) 'can with confidence appeal. The subject' (he continues and concludes) 'does not admit of favour, but it cannot fail to obtain justice.' There—there, alas!—he distances me. The subject (the subject in which *I* was concerned) *did* admit of *favour*, and therefore it *could not* obtain justice.

So much for the contingent decrease upon the expence of the favourite establishment. Your Lordship may now compare it with the decrease already hinted at, in the case of its devoted rival. Of this expence the continuance, being limited to that of the longest of two lives, one of them a very insignificant and useless one, was in June 1798, in a valuation printed in the 28th Report of the Finance Committee, estimated at from about 12⅖ to about 13¾ years;[a] and, in the course of the four years and more, which Gentlemen have since contrived to make elapse, those two lives (it will be comprehended without much difficulty) have not, under the care thus taken of them, increased much in value.

Thus much, on the supposition of a *reduction,* under one of the seven heads of expence. Against this, will be to be set the contingency of an *increase*, under two other of these heads:—a contingency which does not present itself as altogether an improbable one.—I mean those of the *Military* and *Naval* Establishments: to say nothing of the *Civil,* which is so much inferior to the least of them.[b]

[a] Appendix H. p. 81.[1]

[b] Comparative State of the three Establishments, civil, military, and naval, in different Years, as per 28th Report of the Committee of Finance, p. 25, and Appendix O to do. p. 121.

	1789.			1797.		
	£.	s.	d.	£.	s.	d.
Civil, App. O. p. 121,	2,877	10	0	5,523	10	0
Military, App. O. p. 121,	6,847	1	10	16,906	4	2¼
	9,724	11	10	22,429	14	2¼
Naval, p. 25,	10,010[a]	0	0	10,010[a]	0	0
				32,439	14	2¼

[a] Average of the whole 11 or 12 years: the separate amount of the respective years being, in the case of the naval establishment, unascertainable.

[1] See 'Twenty-Eighth Report on Finance', Appendix H ('Mr. Morgan's Computation'), in *Commons Sessional Papers of the Eighteenth Century* (1798), cxii. 83, which provides a statement, by William Morgan of the Equitable Assurance Office, of 'How many Years Purchase is a given Annuity for their Lives [i.e. those of Jeremy and Samuel Bentham] and the Survivor of them worth, commencing on the 1st of September 1794, 1795, 1796, 1797, 1798, 1799, and 1800 respectively?' The estimate of 12⅖ years purchase was the value as of 1 September 1798, 'if the Computations be continued at the same Rate of Interest as Money now bears', while the estimate of 13¾ years purchase was the value in 1798 on the supposition that the rate of interest was 5% per annum.

Your Lordship has not failed to notice in its place the Lady's letter.[1] The initial and principal part of it brings upon the carpet this same topic (and sure enough, my Lord, it is not from that source alone that your Lordship has heard of it) the two sorts of things at present needful to the 'improved' colony—more vessels and more troops.—The passage is in these words—

'Port Jackson, 7th Oct. 1800.

'H. M. ship Buffalo returning to Europe,[2] gives me an opportunity of writing to you, and of mentioning the uncomfortable state of anxiety we are kept in by the late importation of United Irishmen.[3]—For these last six months we have been under some apprehensions: but, ... disbelieving their intentions, ... took no steps to prevent their designs, until last Sunday week, which was the day fixed for the destruction of the military and principal families at Paramatta: a considerable settlement 15 miles from this. The alarm being general, prevented their meeting: but above thirty of the ringleaders were apprehended and examined, when the greatest part confessed the horrid plot.[4]—Most of the passengers in the Buffalo treat this business as ridiculous: but this is probably because they are not likely now to partake of our danger, or from their not knowing the dreadful enormities already committed by these people in their own country. Our military force is very little in comparison of the numbers of Irish now in the colony,[5] and that little much divided: the Buffalo's sailing leaves us without any naval protection whatever. Much trouble may befall us before any succours can arrive, even after our critical situation is known: and we have every reason to believe that other ships with the same description of people are now on their voyage to this place.'

[1] i.e. Elizabeth Paterson to Mary Sophia Bentham, 7 October 1800, p. 92 n. above.

[2] HMS *Buffalo* sailed from Port Jackson on 21 October 1800: see *HRA*, ii. 746 n.

[3] The *Minerva* and the *Friendship*, transporting convicts from Cork following the Irish Rebellion of 1798, had arrived at Port Jackson on 11 January 1800 and 16 February 1800 respectively.

[4] In September and October 1800 two separate boards of inquiry were established to investigate rumours that Irish convicts in New South Wales were planning a general mutiny. Though no criminal charges were brought, the investigations implicated around thirty men, of whom several were flogged and the majority sent to Norfolk Island. See 'Papers relating to the Irish conspiracy; and general orders', 4 September 1800, and Acting-Governor King to the Duke of Portland, 28 September 1800, Enclosure No. 13, 'Papers Relating to the Irish Conspiracy', *HRA*, ii. 575–83 and 637–51 respectively.

[5] According to Acting-Governor King to the Duke of Portland, 28 September 1800, and Governor Hunter to the Duke of Portland, 30 September 1800, Enclosure, 'State of the Settlements at Sydney, Parramatta, &c., in New South Wales', *HRA*, ii. 614 and 679–80 respectively, the military establishment in New South Wales consisted of 442 men, while it was estimated that 450 of the 1,558 convicts then under sentence were Irish.

That these apprehensions, though expressed by a female pen, were neither unfounded nor exaggerated, appears pretty well established by posterior accounts. For these indeed I have no other warrant, than that of the newspapers from which they are copied. All the knowledge I have of them is of the negative kind: viz. that I know nothing whatever, either of the authors of the respective articles of intelligence, or of the manner in which they found their way to the respective prints. But even this negative knowledge is not altogether without its use and application, since the result of it is—that the contents cannot have received any undue tincture, from any motives by which the present representation may be supposed to have been tinged.[a]

[a] Porcupine, 10th June 1801.[1] 'A letter from Botany Bay, dated the 7th October, contains the following intelligence. "A very unpleasant circumstance had like to have occurred here lately. The Irish rebels, who were lately transported into this country, have imported with them their dangerous principles, rather increased than subdued by their removal from their native country. They began by circulating their doctrine among the convicts, and a conspiracy had scarcely been formed before it was happily discovered. They had conducted their scheme with great art and secrecy, to which they were generally sworn, and offensive weapons were made, even from the tools of agriculture, for carrying their purpose into execution. In no part of the British dominions upon any occasion, could the troops and principal inhabitants shew more zeal and alacrity in coming forward in support of the Government."'

Such is the account given in the above paper, of an affair, which appears to have been the same, as that spoken of in the Lady's letter.

The account given of the same affair in the continuation of Captain (now Lieutenant-Colonel) Collins's history is as follows.[2] Page 306. 'The Buffalo sailed for England on the 21st of October, and as the Governor had intended to touch and land at Norfolk Island, for the purpose of learning, from his own observation, something of the state of that settlement, some few of the Irish prisoners, who were suspected of laying plans of insurrection and massacre, were taken in the Buffalo, and landed there.'

The prisoners in question appear to have been of the number of those who had been taken up (as the historian informs us) and examined on the suspicion of a plot of this kind, so long before as in the beginning of the preceding month. II Collins, p. 302.[3] Marks of falsehood, (it is to be observed) appear on the face

[1] See *The Porcupine*, 10 June 1801, p. 3.

[2] In the title page of the second volume of Collins's *History*, he is referred to as 'Lieutenant-Colonel'. He had been promoted on 1 January 1798 to the brevet rank of Lieutenant-Colonel of Marines, with the substantive rank of Captain.

[3] Collins, ii. 302–3, gives an account of the evidence presented by Father James Harold to a board of inquiry investigating rumours of mutiny among the Irish convicts (see p. 148 n. above). Harold was implicated in the alleged mutiny of September 1800 and imprisoned, whereupon he 'confessed, that the reports of it were founded in truth, and engaged to discover where the weapons were concealed, of which it was said that many hundreds had been fabricated. In his confession he implicated several of his countrymen, who, on being questioned, in their turn accused several others; and the committee adjudged them all to be deserving of punishment; but Harold was never able to fulfil his engagement of producing the weapons. . . . There was evidently a design to create an

But New South Wales (it may still be said)—*New South Wales, besides being an establishment for the maintenance, employment, and*

of the confessions as reported: but an interpretation that suggests itself, is—that, though the plot, as pretended to be confessed, was false, the object of the falsehood was to conceal a true one. That the belief of a true plot at the bottom of the whole, was generally entertained, appears by the exertions made, under the authority of the Governor, to guard against the apprehended mischief, by so strong a remedy as the formation of *volunteer associations:* 'two volunteer associations of fifty men each' out of such materials as 'the most respectable inhabitants' in a colony so composed. The declared object was the 'increasing the armed force of the colony.'[11] If in the amount of the regular force the deficiency had not, in the judgment of the governing part of the colony, been a very decided one, it may be imagined whether any such auxiliaries, would, in any such number, have been called in to supply it.

Bell's Weekly Messenger, 3d January 1802.[2] 'In consequence of a number of Irish rebels, having been transported and sent to Botany Bay, and there attempting to subvert the Government by various acts of disorder and tumult, that colony became in a state of insurrection, and at Norfolk Island they would have succeeded, but for the manly and spirited conduct of Governor King, and Lieutenant-Governor Patterson, who caused the principal ringleaders to be secured, some of whom were executed.[3] The spirit of insurrection was in some degree revived by the arrival of the Lady Anne transport, in March last, bringing with her one hundred and fifty of the vilest miscreants, of all descriptions, convicted of the worst of crimes, such as murder, &c. &c. but by a timely check it was soon overturned.[4] We are happy to announce, that the military force there behaved throughout with much commendable firmness and spirit; though, at the same time we lament that the present force seems by no means adequate to so dangerous and arduous an undertaking.'

In the newspaper, as above, the time of the occurrence is not mentioned. In Lieutenant-Colonel Collins's continuation, no further mention is made of it, than what is contained in the following short paragraph. Page 333. 'At Norfolk Island it was fortunately discovered, that, on the 14th of December 1800, a plot had been formed by some of the convicts, to murder the officers, and, getting possession of the island, to liberate themselves. Two of the ringleaders were immediately executed.'—So far the historian.—Another circumstance, from which it may be judged, whether the alledged plot, examined into but two months before, was altogether an imaginary one.

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alarm; and this man Harold, from declaring that he alone, through his influence as their priest, was able to come at the facts, was supposed to be aiming solely at making himself of consequence in the colony.'

[1] See p. 80 n. above.

[2] See *Bell's Weekly Messenger*, 3 January 1802, 'Botany Bay', p. 6.

[3] The allusion is to the summary execution of John Wolloughhan and Peter McLean at Norfolk Island on 14 December 1800 (see p. 80 n. above), though at the time of the executions Lieutenant-Governor Foveaux, and not King or Paterson, was in command there.

[4] The *Anne I* reached Port Jackson on 21 February (rather than March) 1801, where over 150 convicts were disembarked. During the *Anne I*'s voyage, prior to it reaching Rio de Janeiro, a mutiny by approximately thirty convicts had been suppressed, with one convict being shot dead during the fighting and a ringleader, Marcus Sheehy, summarily executed by firing squad. See Acting-Governor King to the Duke of Portland, 10 March 1801, *HRA*, iii. 15, and Bateson, *Convict Ships*, pp. 177–8, 381.

reformation of convicts, is moreover a Colony: and, as Colonies in general are admitted to be valuable possessions, so must this too, since this, whatever becomes of it in any other character, remains at any rate a Colony.

My Lord—to confess the truth, I never could bring myself to see any real advantage, derived by the Mother Country, from any thing that ever bore the name of *a Colony*. It does not appear to me, that any instance ever did exist, in which any expence bestowed by Government in the planting or conquering of a Colony was really repaid. The goods produced by the inhabitants of such new Colony, cannot be had by the inhabitants of the Mother Country, without being paid for: and from other countries, or the Mother Country itself, goods to equal value may, without any such additional expence, as that of founding, maintaining, and protecting a Colony, be had upon the same terms. By accident, and for a time, there may indeed be, in the rate of profit obtained in dealing with the inhabitants of the new Colony, a superiority with reference to the rate of profit obtained in dealing with other inhabitants of the Mother Country, or with the inhabitants of other States that are at the whole expence of their own maintenance; but such superiority is either not regarded as worth thinking about, or else tacitly assumed, and at any rate never so much as attempted to be proved: while on the other hand, an inferiority is at least as probable.[a] The supposition universally entertained—the

[a] In a Report made by the Committee of His Majesty's Privy Council in 1789, (a Report which it may be presumed did not meet with much disagreement on the part of either the First Lord or the Secretary of the Treasury)[1] in this Report, as quoted by the late Mr. Bryan Edwards in his History of the West Indies,[a] the value of British capital in these colonies is estimated all together, at £70,000,000.—At the same time the 'mercantile value of the capital per annum' (by which I take for granted he means the annual value of the produce raised by the employment of that capital) is estimated at no more than £7,000,000. This, according to Mr. Edwards's estimate: in which, if I understand the plan of valuation right, the rate assigned is rather higher than in that of their Lordships. Upon 70 million, 7 million is 10 per cent. In Mr. Pitt's and Mr. Rose's estimate, made for the purpose of the Income Tax, 15 per cent. is reckoned upon as the ordinary rate of profit upon mercantile capital, employed

[a] II Edwards, p. 381, 390, B. IV. ch. iii.[2]

[1] i.e. Pitt or Rose.

[2] See Edwards, *History of the West Indies*, ii. 381, 390–1, citing 'Report of the Lords of Committee of Council on the Slave Trade', Appendix 18, 'An Estimate of the present Value of Property in the British Sugar Colonies, as delivered by the West India Planters and Merchants' (see *Commons Sessional Papers of the Eighteenth Century* (1789), lxx. 291), which valued the ownership of 450,000 slaves at £22.5 m., 'lands, buildings, utensils, mules, &c., and crop on the ground' at £45 m., and 'houses, &c. in the towns, the trading and coasting vessels, and their crews belonging to the islands' at £2.5 m.

supposition all along, though tacitly, assumed—the supposition on which statesmen speak, and governments act, is—that the goods of the inhabitants of the Colony—the productions of the Colony—are obtained for nothing:—that the capital employed in carrying on the trade with the Colony would not have yielded any thing—would neither have yielded the ordinary rate of profit—nor any rate of profit at all, had it been employed elsewhere—had it been employed in any other branch of productive industry. On this supposition, the whole amount of the annually imported produce of the Colony, figures annually on the side of national profit, without any *per contrà* on the other side: or rather (what is still worse, and if it were not so universal, more flagrantly absurd) the export, by the sacrifice of which this import is obtained, is also considered as national profit: the loss, not only not deducted from the profit, but added to it.

Thus then stands the real account of profit and loss, in respect of Colonies in general: Colonies in general yield no advantage to the Mother Country, because their produce is never obtained without an equivalent sacrifice, for which equal value might [have] been obtained elsewhere. The particular Colony here in question yields no advantage to the Mother Country, and for a reason still more simple—because it yields no produce.

in the home trade:[a] an estimate which, in the main, appears to be agreed to, and confirmed by Dr. Beeke.[b] It would be a problem, worthy [of] the ingenuity of those Right Honourable Gentlemen, to shew us by what process '*indemnity for the past and security for the future*'[1] are to be bestowed upon this or any other country, by engaging its capitalists to employ their capital in a branch that produces no more than 10 per cent. in preference to so many other branches that produce 15 per cent.

[a] Rose, Brief Examination, &c. 7th edit. 1799, Append. No. 7.[2]
[b] On the Income-tax: 2nd edit. 1800, p. 131.[3]

[1] An echo of the war aims enunciated by Pitt in the House of Commons on 25 April 1793, soon after the commencement of the French Revolutionary Wars: 'this country was justly entitled to proceed on the war against France, to repel her unjust attacks, and, if possible, to chastise and punish her, and to obtain indemnification for the past, and security for the future'. See *Parliamentary History* (1792–4) xxx. 715.

[2] George Rose, *A Brief Examination into the Increase of the Revenue, Commerce, and Manufactures, of Great Britain, from 1792 to 1799*, 7th edn., London, 1799, Appendix 7, notes that, by levying a 15 per cent tax on the profit of domestic trade, the British government would raise £18 m. per annum. On 3 December 1798, when introducing his Income Tax Bill into the House of Commons, Pitt estimated that a tax of 15 per cent upon 'the articles of British manufacture for home consumption' would raise a 'sum of eighteen millions on those articles': see *Parliamentary Debates* (1798–9), vii. 94–125 at 109.

[3] H. Beeke, *Observations on the Produce of the Income Tax, and on its Proportion to the whole Income of Great Britain. A New and Corrected Edition, with Considerable Additions respecting the Extent, Commerce, Population, Division of Income, and Capital of This Kingdom*, London, 1800, p. 131, notes that, by levying a 15 per cent tax on 'the clear income from internal trade', it would be possible to raise approximately £18.1 m. per annum.

The distinction is an essential one: I trust to your Lordship's candour for the keeping it in broad day-light. The proposition, relative to the unprofitableness of *Colonies in general*, is one thing: the proposition relative to the particular unprofitableness of *this particular colony* is quite a different thing. The first may be consigned to the chapter of romance by the admirers of *arithmetic and its calculations:* the other will remain, as firm, as impregnable, as ever. The former, gentlemen may amuse themselves with, and welcome: a good round House-of-Commons laugh will dispose of it: the other will not quite so easily be got rid of. *Ex nihilo nihil fit*[1] is a maxim, which by its antiquity may at least be protected from the reproach of *innovation*. From a Colony in which no *import-worthy* produce can be raised, no import-worthy produce therein raised can be imported.

A trade indeed, and a trade with foreign countries, has all along been carried on in New South Wales, by the inhabitants of New South Wales.—A trade? Yes:—but of what sort?—a trade consisting of buying without selling.—The articles purchased have been such of the necessaries and comforts of life, as the inhabitants, receiving pay immediately or mediately from the Government of the Mother Country, have been willing to purchase, at the expence of the whole or a correspondent portion of such their pay. The articles sacrificed, have consisted—exclusively—of the money of which that pay has been composed: a trade which, with reference to any profit considered as receivable by the inhabitants of the Mother Country, consists in giving to the people of other countries for nothing, and in the shape of hard money, so much wealth raised on those same inhabitants of the Mother Country, by taxes:—a trade which consists in paying tribute, tribute without return, to foreign countries. The people at large, on whom the money is levied, to be distributed, in the shape of pay, among the functionaries of Government in New South Wales, get nothing at all for their money: the functionaries themselves get very little for it, since the goods they have purchased with it have always been sold to them at most enormous prices: prices some number of times perhaps as great, as they would have got the same articles for, had they staid at home.[a]

[a] II Collins, page 202,[2] March 1799. 'The settlement was at this time much in want of many necessaries[3] of life; and when these were brought by speculators and traders, who occasionally touched there, they demanded more than 500 per cent. above what the same articles would have been sent out for from England, with every addition of freight, insurance, &c.'

Ibid. page 280, 3d January, 1800. 'Having touched at Rio de Janeiro, (the Mercury)[4] had brought many articles for sale, as well from that port as from

[1] i.e. 'Out of nothing, nothing comes.' [2] *Recte* 202–3. [3] Collins 'necessary articles'.
[4] Bentham has inserted the name of the ship, but it was in fact the *Minerva*.

Such has been the nature of the trade hitherto: and, if there be any prospect, that the nature of that trade should undergo a change, in any

England, most of which were much wanted by the inhabitants: but the prices required for them were such as to drain the colony of every shilling that could be got together.'

To such a degree had this exhaustion been carried, that, if I apprehend the passage right, a species of paper money, and that issued by Government itself, had been then already, and if so, probably continues to be, current in New South Wales. The Governor, not being supplied from Government at home, with money in sufficient quantity for the purchase of that proportion of the stock of public subsistence which was to be obtained by purchase, from such of the inhabitants by whom it had been produced, found himself under the necessity of coining this fictitious species of money, imposing thereby, on Government at home, a quantity of debt to the amount of it.[1]

Ibid. p. 263. 'The difficulties which were still placed in the way of the commissary in preparing his accounts to be sent home, through the settlers, and other persons, who had not come forward, as they were some time since directed, to sign the requisite vouchers for the sums paid them for the grain or pork which they had delivered at the public stores, {these difficulties still continuing unremoved} the commissary was directed not to make immediate payment in future, but to issue *the government notes* quarterly only, where every person concerned would be obliged to attend, and give the proper receipts for such sums as might be there paid them. This was a most useful regulation, and had been long wanted.'[2] *The* government notes: an expression which seems to imply that the issuing of such notes had then already been in habitual use.

This was in August 1799: four or five months before the time of the complaint made, as above, of the disappearance of hard money.

Down to the last moment, the supposition which the historian proceeds upon, is—that whatever hard-money ever finds its way into the colony in any shape, though it be but in half-pence, will (unless preventive measures such as he suggests be employed) find itself under a perpetual impossibility of staying there. These remedies are—such as unexperienced good sense would naturally suggest, but of the complete and radical inefficacy of which, history, and the reflections that have grounded themselves on that history, might have completely satisfied him.—Though every shilling had been called half-a-crown, no American who received it to take with him to America, would have given so much as thirteen-pence for it.

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[1] In May 1798 Governor Hunter explained that, owing to the 'want of current specie', it had been customary for the Commissary to issue, 'in his own name, on Government account, notes, payable on demand, for all grain or other articles taken into the public store from individuals. Those notes may continue for any length of time in the hands of their possessor, or pass as money for their value in the colony, and at any convenient time the holder may bring them forward and receive a bill upon the Lords of his Majesty's Treasury for their amount.' Hunter had 'considered it improper that any notes payable by Government should be issued without the Governor's approbation', and, following a public order of June 1796, had 'subscribed my name to such notes, without which none of them are valid'. Whenever any notes were to be drawn, they were laid before Hunter 'as a voucher for satisfying me of the necessity of such bill, and the notes are cancelled'. See Governor Hunter to the Duke of Portland, 25 May 1798, *HRA*, ii. 148–54 at 150.

[2] For the regulation see Government and General Orders (29 August 1799), *HRA*, ii. 589.

degree, or any respect more advantageous to the Mother Country, it will rest with those, to whom such prospect has manifested itself, to point it out.

Ibid. p. 271, November 1799. 'Information was at this time received, that copper coinage to the amount of £550, was in the Porpoise, whose arrival might be daily looked for.[1] The circulation of this money would be attended with the most comfortable accommodation to the people in their various dealings with each other; and it might be so marked, as to prevent any inducement to take it out of the colony. If it should ever be found convenient by government to order a silver coinage for the use of the settlement, if it was fixed at not more than half or two thirds of the intrinsic value of what it might pass for, so as to render the loss considerable to any one attempting to carry it away, it would be felt as a considerable advantage, and would effectually prevent the forgeries to which a paper-currency was liable.'

By this same passage, the existence of a paper-currency, though not directly stated, appears however to be pretty effectually confirmed.

In addition to the other imported blessings—idle hulks and equally idle gaols—the foundation, of a sort of *national debt*, appears thus to be laying, if not already laid, in the 'improved' colony.

The particular vessel, to which the exhaustion is ascribed, was (it may perhaps be observed) not a foreign but a British one. But the cause which gave birth to the first manifestation of the effect, would naturally be the cause to which, in a simple and ordinary mode of statement, the effect itself, the whole effect, without distinction of parts and degrees, would be ascribed. By the table of ship-arrivals given by our historian, among 18 vessels that, in the course of the seven or eight years, from November 1792 to February 1800, arrived in New South Wales, with cargoes of goods for sale, it appears that eight were from His Majesty's dominions (Indian possessions included), the other ten from various foreign states.[2]

It is in deference to the more obvious, and what (I believe) are the more common opinions, that a distinction between a trade of this sort, carried on with foreign ships and territories, and a trade of the same sort, carried on with British ships and territories, is thus noted. The more closely it is examined into, the more immaterial will this distinction (I believe) be found to be. What is gained in this way upon His Majesty's subjects resident in New South Wales, by His Majesty's subjects resident in Old Britain, operates in no greater degree in

[1] In April 1799 Portland had informed Governor Hunter that the *Porpoise* would convey copper coin to New South Wales (the Duke of Portland to Governor Hunter, 12 April 1799, *HRA*, ii. 341), but the vessel did not arrive at Port Jackson until 7 November 1800. The delay occurred because the *Porpoise*, after being designed and built in England specifically for colonial service, had been deemed unseaworthy and condemned, renamed the *Diligent*, and sold. The *Porpoise* that eventually sailed for Port Jackson on 17 March 1800 was the Spanish prize formerly named the *Infanta Amelia*.

[2] The table at Collins, ii. 316–19, indicates that sixteen ships, rather than eighteen as Bentham states, arrived at Port Jackson between November 1792 and February 1800 for the purposes of 'speculation'. The eight to arrive from India were the *Arthur* (twice), the *Deptford*, the *Experiment* (twice), the *Fhynne*, the *Hunter*, and the *Shah Hormuzear*. Of the other eight vessels, the *Abigail*, the *Grand Turk*, the *Halcyon*, the *Hope*, the *Philadelphia*, and the *Susan* arrived from the United States of America, the *Argo* from Mauritius, and the *Rebecca*, an American whaler, from the Cape of Good Hope, at that time under British occupation. While Collins's table does not indicate the port of departure of either the *Shah Hormuzear* or the *Rebecca*, the information appears at Collins i. 270 and ii. 201 respectively.

Of real advantages, if the case afforded any, *experience*, with reflexion grounded on it, might furnish out the list: for ideal ones, *opinion*, wherever it may be to be found, is the sole resource.

In a passage that has already been submitted to your Lordship's notice, the late Judge Advocate of the Colony, taking upon himself the task of Advocate in another sense, and calling over the muster-roll of the advantages supposed to result from the establishment, gives the precedence to those, to which, had they any real existence, the precedence would unquestionably be due. I mean those which consist in its supposed subservience to the ends of penal justice: of which supposed subservience I have already had occasion to submit

diminution of taxes, (the taxes raised upon His Majesty's subjects resident in Old Britain) than if it had been gained by those same subjects of His Majesty in other ways, or gained by foreigners. The real mischief is—that wealth in any shape—in that of money as well as in any other, and not more than in any other—that wealth in any shape, raised without equivalent, and therefore in the way of compulsion, by taxes, should be parted with for such a fragment of an equivalent—should, as to so large a proportion of it, be parted with, without equivalent—by those whose means of subsistence are composed of it, and limited in their amount by the value of the goods obtained in exchange for it.—They are thus loaded with a continual tax, to the amount of the difference between the price they are thus obliged to give in the improved Colony, and the price for which they might have provided themselves with the same articles, had they staid at home.

In proposing what presents itself to him in the character of a remedy, the worthy Magistrate does not consider, that the evil, such as it is, is rooted in the very nature of the Colony, and bids defiance, not only to the remedy proposed, but to every other. For many articles which the Colony does not produce, a demand—a continual demand exists in the Colony:—and that demand is (in the language of Adam Smith) an *effectual* demand:[1] since, for a certain portion of what they would wish to have, men have that which will be accepted of by the proprietors as an equivalent—viz. hard-money. If the country produced any thing that would be worth sending to other countries—that would be better worth sending than money—so much as it produced in this shape, so much would be so disposed of, and the equivalent in money saved. But the country does *not* afford any such internal produce. Whatever it does produce is consumed by the inhabitants, affording them a part, and but a part, of their subsistence. Part of it is without changing hands, consumed by the persons by whom it is produced: the remainder changes hands, and is purchased—either by the Governor there, in exchange for the hard money he receives from England, or by the functionaries of Government, in exchange for money received by them in the shape of pay, from the same source.

In the nature of men and things, is it possible to keep money from going out of a country, where, (besides that the export of money out of it is not prohibited) men have on the one hand *wants*, on the other hand *money*, and nothing but money, to give in exchange?

[1] See Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (first published in 1776), ed. R.H. Campbell, A.S. Skinner, and W.B. Todd, 2 vols., Oxford, 1976 (*The Glasgow Edition of the Works and Correspondence of Adam Smith*), i. 84.

to your Lordship a somewhat different estimate. Of any of the advantages commonly looked for in Colonies—(advantages derived from population, produce, or trade) I find no specific mention. Two other supposed advantages are however added, the account of which, that no injustice may unawares be done to it, is here given in the respectable author's own words. The passage has been already quoted.[1] 'Valuable nursery to our East India possessions for *soldiers:* valuable nursery to our East India possessions for *seamen*.' Nothing indeed of all this does the learned Advocate state it as having as yet proved: but all this he supposes that one day or other '*it may prove*.'[a]

As to *soldiers*, in as far as it lies within the bounds of physical possibility, that soldiers, stationed in New South Wales, may be sent from thence to the East Indies, in so far may New South Wales be considered as *capable* of serving as a nursery for soldiers, with reference to the East Indies. But, forasmuch as the nearest port in New South Wales is further from the Mother Country than the furthest port in the East Indies is, further, in point of time, by a third or so of the way—and forasmuch as it is not New South Wales that is in the way to the East Indies, but the East Indies that are in the way to New South Wales—on these considerations it should seem, that to be at hand for service in the East Indies, any given number of soldiers would be rather more usefully stationed, if landed at once at that port, whatever it be, of the East Indies, which at any given point of time seemed likely to afford the speediest demand for their services, than if sent onwards, two or three months voyage further, to New South Wales, for the chance of getting them back again upon occasion by another voyage of the same length. The two wars with Tippoo Saib[2] present the two occasions on which, since the foundation of the Colony, the demand for soldiers in the East Indies seems to have been at its highest pitch. I dare venture to hope, that, for some years at least, if not generations, there will not be such another. It does not appear, that on either of those occasions any great use was made of that part of His Majesty's army which was stationed in New South Wales.

If not in any state of things resembling the present, I am at a loss to conceive in what probable future state of things, gentlemen here at home should, on any principles whatsoever, be either warranted in keeping up, or in any degree even disposed to keep up, in the ever so

[a] I Collins, Preface, pp. 9, 10.

[1] See p. 84 above.

[2] The Third and Fourth Anglo-Mysore Wars of 1790–2 and 1798–9 respectively were prosecuted against Sultan Fateh Ali Tipu (1750–99), known as Tipu Sultan, the *de facto* ruler of the kingdom of Mysore in southern India from 1782 until his death on 4 May 1799 at the Siege of Seringapatam.

much 'improved' Colony, a superfluous detachment, applicable to the service of the Mother Country in the East Indies.

As to *seamen*, men and boys may be sent on this voyage, with for aught I know as much advantage, in point of instruction in seamanship, as on any other voyage or succession of voyages of the same length: but their proficiency in point of seamanship would not, I suppose, be much the less, if the voyage were performed at once, in those other tracks, with reference to which a voyage in this track is proposed to serve as a *school* or '*nursery*,' and if there were something to be brought, that were worth bringing so far, from the country to which they are sent. When the vessels, that have carried out from Britain goods and passengers to New South Wales, have brought any thing home, it has been (if I am not mistaken) either from China or the East Indies: so that the advantage, in respect of the nursery for *seamen*, has been pretty much of the same sort and degree, as the advantage just mentioned in respect of the nursery for *soldiers*. If, in this case, there be any occult property in a roundabout voyage, that renders it preferable to a direct one, the case (I think) must be much the same in other voyages: in which case the policy would be, to establish some general and comprehensive system, for preventing vessels in general, from arriving at their respective places of ultimate destination, so soon as they would otherwise.

Wise or otherwise, the argument, it must be confessed, is far enough from being an unpopular one: navigation—(conveyance on the favourite element—) navigation, like trade, considered as an *end*, rather than as a *means:*—or if as a means, as a means with reference to Colonies.—Here again comes in the antient and favourite circle: a circle by which, in defiance of logic and mathematics, political conduct is squared, and wars generated. What are Colonies good for?—for nursing so vast a navy. What is so vast a navy good for?—for keeping and conquering Colonies.

A construction, that might possibly have been put upon the supposed utility of the Colony in the character of a *nursery*, receives a direct and decided negative from the author, in the course of the book. I mean the supposition that it was from among the convicts themselves, that the two branches of the public service were to receive their recruits. Upon this construction a negative is put, not only by declared opinion, but by the specific experiences, by which that opinion was produced.[a]

[a] No. 1, September 1794, p. 391. 'Eight Convicts were pardoned, on condition of their serving in the New South Wales corps until regularly discharged therefrom.

'It was pleasing to see so many people withdrawing from the society of vice and wretchedness, and forming such a character for themselves as to be thought

Be this as it may, of this stamp (it may naturally enough he conceived) were the ingredients of that mass of '*political advantage*,' 'the

deserving of emancipation.'—Pleasing certainly, for the time:—but observe the upshot, as per No. 3.

No. 2, October 1794, p. 395. 'A guard of an ensign and twenty-one privates of the New South Wales corps were on board the transport.[1] Six of their people were deserters from other regiments brought from the Savoy; one of them, Joseph Draper, we understood had been tried for mutiny (of an aggravated kind) at Quebec.[2]

'This mode of recruiting the regiment must have proved as disgusting to the officers, as it was detrimental to the interests of the settlement. If the corps was raised for the purpose of protecting the civil establishment, and of bringing a counterpoise to the vices and crimes which might naturally be expected to exist among the Convicts, it ought to have been carefully formed from the best characters; instead of which we now found a mutineer, (a wretch who could deliberate with others, and consent himself to be the chosen instrument of the destruction of His Sovereign's son,) sent among us, to remain for life, perhaps, as a check upon sedition, now added to the catalogue of our other imported vices.'

No. 3, February 1796, p. 455. 'The most active of the soldiers in this affair,' (a riot)[3] 'had formerly been *convicts*, *who, not having changed their principles with their condition,* thus became the means of disgracing their fellow soldiers. The corps certainly was not much improved by the introduction of people of this description among them. *It might well have been supposed, that, being taken as good characters from the class of prisoners, they would have felt themselves above mixing with any of them afterwards; but it happened otherwise.* They had nothing in them of that pride which is termed *esprit de corps:* but at times mixed with the convicts familiarly as former companions; yet when they chose to quarrel with, or complain of them, they meanly asserted their superiority as soldiers.'

No. 4, May 1796, p. 475.[4] 'Arrived two officers of the Bengal army and a surgeon of the military establishment, for the purpose of raising two hundred recruits from among those people who had served their respective terms of

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[1] i.e. the *Surprize*, which reached Port Jackson on 25 October 1794.

[2] Private Joseph Draper was one of four Royal Fusiliers court-martialled at Quebec on 14 January 1792 and found guilty of plotting mutiny and the murder of their commanding officer Prince Edward (1767–1820), Duke of Kent. Having been sentenced to death, on 9 April 1792 Draper was reprieved on the gallows by Prince Edward, providing that he enlisted in the New South Wales Corps. See *The Gentleman's Magazine and Historical Chronicle*, lxiii. (1793), 661, and 'Annals of Canada', *The Canadian Monthly and National Review*, ix. (1876), 57.

[3] On 4 February 1796 John Baughan or Bingham, *alias* Innis Buffin (1754–97), the colony's master carpenter, reported a private of the New South Wales Corps for being without his arms, for which the soldier was confined. The following day the soldier's fellows demolished Baughan's cottage and destroyed his possessions, while he was forced to watch, and threatened to behead him with an axe if he intervened. Condemning the soldiers' actions, Governor Hunter complained to the Home Office that recruiting for the New South Wales Corps from the Savoy military prison, and from among 'characters who have been considered as disgraceful to every other regiment', threatened the colony's security. See Governor Hunter to the Duke of Portland, 10 August 1796, and Enclosure No. 1, 'Statement of the Case of John Baughan', 10 August 1796, *HRA*, i. 573–6 at 574.

[4] *Recte* 475–6.

prospect of which' (our historiographer informs us) 'was' actually 'presented by the plan to the patriotism of its noble originator'[1] (the late Lord Sydney); a prospect which appears to have all along presented itself, in colours equally pleasing, to his Lordship's successors on the second floor of the Treasury, as well as to his and

transportation.[2] They were to be regularly enlisted and attested, and were to receive bounty-money. . . .

'On the first view of this scheme it appeared very plausible, and we imagined that the execution of it would be attended with much good to the settlement, by ridding it of many of those wretches, whom we had too much reason to deem our greatest nuisances: but when we found that the recruiting officer was instructed to be nice as to the characters of those he should enlist, and to entertain none that were of known bad morals, we perceived that the settlement would derive less benefit from it than was at first expected. There was also some reason to suppose, that *several settlers would abandon their farms*, and, leaving their families a burden to the store, *embrace the change* which was offered them *by enlisting as East-lndia soldiers*. It was far better for us, if any were capable of bearing arms and becoming soldiers, to arm them in defence of their own lives and possessions, and, by embodying them from time to time as a militia, save to the public the expence of a regiment or corps, raised for the mere purpose of protecting the public stores and the civil establishment of the colony.

'Recruiting, therefore, in this colony for the Bengal army, being a measure that required some consideration, and which the Governor thought should first have obtained the sanction of administration, he determined to wait the result of a communication on the subject with the secretary of state, before he gave it his countenance. At the same time he meant to recommend it in a certain degree, as it was evident that many good recruits might be taken, without any injury to the interests of the settlement, from that class of our people who, being no longer prisoners, declined labouring for Government, and, without any visible means of subsisting, lived where and how they chose.'

Good—in the mouth of a Governor of the 'improved' colony, looking to the interests of that same colony, and to no other interests:—the worse the nuisance, the better the riddance. But, a Governor of Bengal?—what, on such an occasion, might be expected to be *his* language? Let the late Chief Magistrate of the 'improved' colony, Lieutenant-Colonel Collins, speak for him.—'What community,' (says he, speaking of the colony at the latest and most improved period of its existence, May 1800, II. [294],[3] and on the very question, respecting the endurance, of the emigrants from thence, in this very country of Bengal) 'What community, where honesty and morality was cultivated, would not deprecate even the *possibility* of such characters mixing with them, with as much earnestness as a people in health would dread the importation of *a plague or a yellow fever!*'

[1] See Collins, i. pp. v–vi and p. 83 above. Only the words 'political advantage' are a direct quotation from Collins.

[2] Collins states that, 'On board of this ship [the *Britannia*] arrived two officers of the Bengal army, Lieutenant Campbell and Mr. Phillips, a surgeon of the military establishment', i.e. only two officers of the Bengal army travelled to New South Wales from India, rather than the three that Bentham's rendering implies.

[3] 1802 '295'.

their colleagues on the first;[1] I mean always, down to a point of time, the fixation of which I must beg leave to submit to your Lordship, to whom it is as precisely known, as it is completely unscrutable to me, at my humble distance.

The importance, of these same elements of political advantage, will appear in the clearer light, if they be admitted to be, what to my humble apprehension they appear to be, fair and correct samples of all those '*indemnities for the past*'—all those '*securities for the future*'[2]—which have ever been presented, by any thing else that has ever borne the name of a Colony, to the scrutinizing optics of those well-exercised cultivators—some of them, (as your Lordship has seen) professed panegyrists—'*of arithmetic and its calculations.*'[3] If a fit standard of 'appeal' on the subject of the burthens on the Civil List, it can scarcely be a very unfit one on the subject either of the burthens or of the benefits from this or other Colonies.—But it is only where wisdom or fortune happen to have put Right Honourable Gentlemen in possession of what presents itself to them as a good case, that they have either pens, or tongues, or so much as ears, for any such undistinguished and undistinguishable individual, as he who, on this ground, as well as some other already mentioned corners of the field of economy, would be proud to wait upon them in the character of a co-appellant.[4]

In what then consists the real acquisition?—the real advantage derived from the plan of colonizing the antipodes—colonizing them with settlers selected for their unfitness for colonization?—This real acquisition—(for *one* real one I do not dispute) I will beg leave to present your Lordship with an honest view of.

Two hundred and fifty plants or thereabouts—two hundred and fifty new-discovered plants—composed the amount of the stock of vegetable curiosities, that had been imported from thence in 1796, according to the estimate communicated to me—(in 1796 I think it was, or 1797) by Lieutenant Colonel Paterson—the chief upon the botanical staff of that Colony, as well as upon the military.[5]

[1] i.e. the Home Office and the Treasury, whose offices were on the second and first floors respectively of the Treasury building in Whitehall.

[2] See p. 152 n. above.

[3] See pp. 146–7 above.

[4] Bentham had been attempting to interest the administration in his annuity-note scheme: see p. 37 n. above.

[5] The communication from Paterson has not been located, though around September 1797 Bentham informed Arthur Young (1741–1820), agricultural reformer and writer, editor of *Annals of Agriculture, and other useful Arts* 1784–1820, Secretary to the Board of Agriculture 1793–1820, that he could obtain for him an account of the 'latest present state' of agriculture in New South Wales 'from a professed Botanist, and the greatest and best Farmer there—Major Paterson' (see *Correspondence* (*CW*), v. 375 n.) The account, containing information respecting livestock, prices, and land under cultivation, was published anonymously as 'New South Wales and Norfolk Island Agriculture', *Annals of Agriculture*, vol. xxxi (1798), 397–417.

In these two hundred and fifty plants, together with such others as may have been added to the number since, your Lordship sees the whole of the real gain that has ever been reaped, or can, on any tolerably rational ground, be expected ever to be reaped, by this our mother country from that ever so much 'improved' Colony. In speaking of this as a *gain*, I admit it to be a *real* one: in my own person, by the evidence of my own taste, I feel it such. But plants, my Lord, as well as gold, may be bought too dear: and moreover, though it were fit to make as light of money as Right Honourable Gentlemen appear on this occasion to have made of it, still in the account of population, for each vegetable acquired, your Lordship would find, I believe, some number of human lives most miserably destroyed: nor after all, is it altogether necessary to the gathering seeds in a country, that a Colony should be planted in it.

I know that, for economy like that in question, something like a precedent might be found: but unfortunately it is not broad enough. What the Island, to which Botany Bay has given its name and character, was to the first Lord Sydney, this island of ours was, in its day, to a still more illustrious student in natural history, that first of conchologists and of concholegists—the Emperor Claudius. I say, my Lord, with submission, the precedent is not broad enough. To reap the fruit of his expedition to this wild country, the Emperor employed an army, we are told, in gathering shells here.[1]—So far the parallel runs, but no further. Employ an army here in shell-gathering?—Yes:—but he did not leave one here.

In return for so many choice and physical plants, transplanted *from* the Colony, there is one plant, though it be but a metaphorical one, which has been planted *in* the Colony, and of the planting of which the founders of Botany Bay have the indisputable merit—(God forbid that it should ever be of the number of those *transplanted hither!)* and that is—the plant of *military despotism*. Of this plant, in the soil and situation in which it is thus planted, it may be said, with at least as much truth, as once, by a celebrated verbal florist,[a] it was said of *true glory* (I think it was—or some such vegetable) *radices agit et propagatur*.[2] Unhappily,

[a] Cicero.

[1] The shell-gathering incident is said to have occurred during the reign of Gaius, better known as Caligula (12–41), Roman Emperor from 37, rather than that of Claudius I (10 BC–54 AD), Roman Emperor from 41. According to Suetonius (Gaius Suetonius Tranquillus), *De vita Caesarum*, IV. xlvi, in early 40 Caligula arranged his army on the northern shoreline of Gaul and 'suddenly bade them gather shells and fill their helmets and the folds of their clothes, calling them "spoils from the Ocean, due to the Capitol and Palatine"'.

[2] See Cicero, *De officiis*, II. xliii: *Vera gloria radices agit atque etiam propagatur*, i.e. 'True glory strikes deep root and spreads its branches wide.'

in the next island to this, we have it already, though it is there (God be thanked!) but an annual plant:[1] and even there, men had rather see it on the dunghill than in the hot-house: nor, in saying *men*, am I uncandid enough to except even the very men who planted it there. In the other island—the seven months distant island—it is perennial: and the very geographical position of the country—with or without the particular nature of the use thus made of it—is enough to make it such.

My Lord, I could not use a poisoned weapon, though life depended upon it. Without discrimination, I neither condemn *martial law*—nor even *torture*. Of words significative of ideas thus complex and thus extensive, a proposition can scarcely be framed, that shall at once be clear of all exception, and be true. Knowing that Government throughout is but a choice of evils, I am on every occasion ready to embrace the least of any two, whatever may be its name. In speaking of the Colony as a vast conservatory of military law, I am therefore far enough from saying, either that *that* law ought now to be abolished there, (supposing the settlement, with its abominations, to be persevered in)—or even that it ought not to have been introduced. Odious as the plant is—fœtid as it is, even at that vast distance, to the sense of every true Briton—yet, in that distant country in which it has thus been planted, I admit it to be an useful one—I admit it even to be a necessary one. Yet this, my Lord, I will be bold to say—and let those to whom it is sweetest contradict me if they dare—that the *end* for which it is employed must be pure and clear of all objection—must be pure indeed—if there be virtue in it to afford a sanction to such *means*.

I have already mentioned (p. 88) my intention of submitting to your Lordship a view of the subsequent symptoms of improvement, that have manifested themselves in the improved colony, according to the history of it, as brought down to the time of the latest accounts, (dated August 1801) by the second volume of the valuable book so often mentioned.[2] To this view it has since occurred to me to subjoin, by way of contrast, a view of the effects of the Penitentiary system, as established in several of the *American states:* pointing out, at the same time, in these latter establishments, a few particulars, from whence a conception may be formed, whether their salutary efficacy would have

[1] Bentham presumably had in mind the Irish Habeas Corpus Suspension Acts of 1797 (37 Geo. III, c. 1), 1798 (38 Geo. III, c. 14), and 1800 (40 Geo. III, c. 18) and, following the Union of Great Britain with Ireland, the Habeas Corpus Suspension (Ireland) Act of 1801 (41 Geo. III, c. 15).

[2] i.e. the second volume of Collins.

experienced any diminution, had the economical and moral features of the system been crowned by the *architectural* features of the *Panopticon* or *central-inspection* principle. At the outset of the letter, not to trouble your Lordship oftener than necessary, my intention was to have included this ulterior matter in the compass of it: but, considering that, of the three months, within which your Lordship had the goodness to say you would 'endeavour to get something settled,' (I mean between the 19th of August and the meeting of Parliament)[1] two months and a half are already gone—and considering that there remains accordingly but a fortnight for the accomplishment of those endeavours—and considering that under your Lordship's anxiety for the accomplishment of them, the conversations your Lordship was to have had with the Chancellor and the Judges,[2] may have been brought to a conclusion any day, while these pages were but bringing to a conclusion—under the spur of all these incentives, I find myself compelled by necessity, to refer to a further day, and to a second letter,[3] all such supplemental matter—and for the moment, to subscribe myself thus abruptly,

My Lord,

Your Lordship's

most obedient

and humble Servant,

JEREMY BENTHAM.

Queen's-Square-Place, Westminster,
2*nd November,* 1802.

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[1] See pp. 36–7 above. [2] See p. 69 & n. above. [3] See pp. 165–248 below.

SECOND LETTER
TO
LORD PELHAM
&c. &c. &c.

IN CONTINUATION OF
THE COMPARATIVE VIEW
OF
THE SYSTEM OF PENAL COLONIZATION
IN NEW SOUTH WALES,
AND THE
HOME PENITENTIARY SYSTEM,
Prescribed by two Acts of Parliament of the Years 1794 *&* 1799.

MY LORD,

I RESUME the pen. I now submit to your Lordship the promised continuation, together with the promised contrast.[1] On the one hand, the effects of the Penal Colonization System in New South Wales: on the other hand, the effects of the Penitentiary System in North America: the good effects of it, even in its least perfect state: subject still to those imperfections, for which the *central-inspection* principle presents, as I flatter myself your Lordship will recognize, a most complete and indisputable cure.

Before the picture of reformation, as it has shone forth in that rising quarter of the world, is begun to be displayed, a few words will be necessary for the purpose of fixing places, times, and vouchers. Permit me accordingly to convey your Lordship's attention for a moment to that scene of quondam transportation; suffer me to set it down among our ci-devant colonies;—the now happily independent (and long may they remain!) *United States*. Instruction grows there:

[1] See 'Letter to Lord Pelham', pp. 163–4 above.

your Lordship would not disdain it, though it were from enemies: how much longer shall it remain unprofited by, sent to us, as it has been so long ago sent to us, from relatives and friends?

It was Pennsylvania took the lead. To the task of reformation, or at any rate to the change which presented itself under that name, the first hand was there set in 1786. In that year passed an act for a new system of punishment, under which hard labour should take place of imprisoned idleness:—labour, and that hard enough: but to be performed in public, in an ignominious garb, in irons, by men in gangs, on the roads, and even in the streets.[1] Under this first plan, though already in use in Switzerland, and as such indicated by Howard,[2] success was soon observed to fall short of expectation.[a] The friends

[a] Lownes, p. 76.[3] 'In the year 1776, the convention of Pennsylvania directed a reform of the penal laws, and the introduction of *public* hard labour, as a punishment for offences.[4] This was attended to by the Legislature; and an essay was made in the year 1786, by a law which directed, that the convicts should be employed in cleaning the streets, repairing the roads, &c. have their *heads shaved,* and be distinguished by an *infamous* habit.[5] This was

[1] The Penal Law Amendment Act of 1786 substituted a system of 'continued hard labor, publicly and disgracefully imposed . . . in streets of cities and towns, and upon the highways of the open country and other public works', in the place of capital and corporal punishment: see *The Statutes at Large of Pennsylvania from 1682 to 1801*, 18 vols., Harrisburg, Pennsylvania, 1896–1915, xii. 280–90 at 280–1.

[2] See John Howard, *The State of the Prisons in England and Wales, with Preliminary Observations, and an Account of some Foreign Prisons and Hospitals*, 3rd edn., Warrington, 1784, pp. 125–6, for an account of prisoners undertaking public labour in the streets of Berne. Bentham cites the third edition in 'Third Letter to Lord Pelham', p. 254 n. below.

[3] See Caleb Lownes, 'An Account of the Alteration and Present State of the Penal Laws of Pennsylvania, containing also an account of the gaol and penitentiary house of Philadelphia and interior management thereof', in William Bradford, *An Enquiry how far the Punishment of Death is Necessary In Pennsylvania. With Notes and Illustrations. To which is added, An Account of the Gaol and Penitentiary House of Philadelphia, and of the Interior Management thereof. By Caleb Lownes, of Philadelphia*, Philadelphia, 1793, pp. 75–91 at 76–7. Caleb Lownes (1754–1828), Quaker, ironmonger, and writer, was a founding member of the Philadelphia Society for Alleviating the Miseries of Public Prisons and a member of the Board of Inspectors of Walnut Street gaol 1790–9. William Bradford (1755–95), lawyer and military officer, was Attorney General of Pennsylvania 1780–91 and Attorney General of the United States 1794–5.

[4] The 'Plan or Frame of Government' of the Constitution of Pennsylvania of 28 September 1776, § 39, provided that, 'To deter more effectually from the commission of crimes, by continued visible punishments of long duration, and to make sanguinary punishments less necessary; houses ought to be provided for punishing by hard labour, those who shall be convicted of crimes not capital; wherein the criminals shall be employed for the benefit of the public, or for reparation of injuries done to private persons: And all persons at proper times shall be admitted to see the prisoners at their labour': see *The Constitution of the Common-Wealth of Pennsylvania, as Established by the General Convention Elected for that Purpose, and Held at Philadelphia, July 15th, 1776, and Continued by Adjournments to September 28, 1776*, Philadelphia, 1776, p. 28.

[5] The Penal Law Amendment Act of 1786, § 8, provided that male prisoners were to have their heads and beards 'close shaven at least once in every week', and were to wear clothing 'uniform in color and make and distinguished from all others used by the good citizens of this commonwealth and also have some visible mark on the outer garment

of reformation, were however not to be discouraged. An experiment of four years was on that theatre deemed a sufficient trial. Men were not there too dim-sighted to see, too careless to observe, too unfeeling to regret, too proud to confess an error, or too indolent to repair it. In 1790, after a hard fought battle, of such battles as quakers fight, and on both sides, it is confessed, an honest one—(on both sides, my Lord, what is essential to honesty, an open one) by an act of that date they set on foot another experiment—they obtained a second change.[1] The

literally complied with, but, however well meant, was soon found to be productive of the *greatest evils:* and had a very opposite effect from what was contemplated by the framers of the law. The disorders in society, the robberies, burglaries, breaches of prison, alarms in town and country—the drunkenness, profanity and indecencies of the prisoners in the streets, must be in the memory of most. With these disorders the numbers of the criminals increased to such a degree as to alarm the community with fears, that it would be impossible to find a place either large or strong enough to hold them. The severity of the law, and disgraceful manner of executing it, led to a proportionate degree of depravity and insensibility, and every spark of morality appeared to be destroyed. The keepers were armed with swords, blunderbusses, and other weapons of destruction. The prisoners, secured by cumbrous iron collars and chains, fixed to bomb-shells. Their dress was formed with every mark of disgrace. The old and hardened offender daily in the practice of begging and insulting the inhabitants—collecting crowds of idle boys, and holding with them the most indecent and improper conversation. Thus disgracefully treated, and *heated with liquor,* they meditated, and executed, plans of escape—and when at liberty, their distress, disgrace, and fears, prompted them to violent acts, to satisfy the immediate demands of nature. Their attacks upon society were well known to be desperate, and to some they proved fatal!'

Observations.—In this disastrous and justly exploded, though neither unexampled, nor in every respect discommendable system, your Lordship will immediately recognize the New South Wales *jail-gangs*.[2] Not that the parallel reflects any thing like blame upon those who instituted them in the 'improved' colony.[3] What is one man's meat is another man's poison. Mischief could not *but* be done by them in Philadelphia: mischief could *not* be done by them in New South Wales. In Philadelphia their deportment was an object of disgust and terror to the great bulk of the passing multitude: it became notwithstanding—such is the power of example, even the example of wretchedness and infamy, over some minds—it became, in one way or other, a source of corruption to a few. In New South Wales, society was proof against both mischiefs. No eye, to which the deportment of the profligate was not much more familiar than any other: no ear, which had any unlearned wickedness to learn of them. Jet cannot be blackened: putridity cannot be corrupted.

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designating the nature of the crime for which [they were] sentenced, that so they may be marked out to public note as well while at their ordinary occupations as when attempting to make their escapes': see *Statutes at Large of Pennsylvania*, xii. 284.

[1] The Penal Laws Act of 1790 acknowledged that the Penal Law Amendment Act of 1786 had failed owing to the 'exposure of the offenders employed at hard labor to public view and from the communication with each not being sufficiently restrained within the places of confinement', introduced, as a remedy, a system of 'unremitted solitude' in addition to hard labour, and authorized the construction of a new block containing cells for solitary confinement in Walnut Street gaol: see *Statutes at Large of Pennsylvania*, xiii. 511–28 at 511, 515.

[2] See 'Letter to Lord Pelham', p. 91 n. above.

[3] For 'the improved State of the Colony of New South Wales' see ibid., p. 73 & n. above.

badge of infamy was now pulled off: 'The iron entered no longer into the afflicted soul:'[1] separation, as far as means permitted, took place of promiscuous aggregation: seclusion, yet not unseen, succeeded to tumultuous publicity. This second experiment was successful, almost beyond hope: how eminently so, your Lordship will see as we advance.

Penitentiary houses, at present two: at Philadelphia, and New York. In that at Philadelphia, the plan of management under its present form, commencing in April 1790;[2] the prison in New York, begun in 1796, completed in 1797:[a] month not mentioned. I speak of those, from which accounts have reached us. Two others already in existence in New Jersey and Virginia:[b] Two more in contemplation last year, and begun perhaps by this time—in Massachusetts and South Carolina.

Historians, four: I mention them in the order of their dates: dates are not to be despised in histories.—For the Philadelphia House, three:—1. *Lownes*, the chief projector, whose account of it comes at the end of a pamphlet on the punishment of death by his co-operator *Bradford*, then one of the Judges of the State, since deceased; date in the preface, Feb. 26, 1793:—2. The *Duke de Liancourt,* a visitor, (a veteran in the service of the prisoner and the poor;) Philadelphia printed, London reprinted, second edition, date in title-page 1796;[3] year of visitation, from private information, 1795:[c]—3. *Turnbull,* of

[a] Eddy, p. 17.[4]

[b] Ibid. p. 70.[5]

[c] It was in that year that it came to me in French, from the worthy author, in manuscript, and (for I know not what cause relative to the calamities of the times) under the seal of secrecy.[6] It was not till the next year I had the satisfaction of finding myself released from the obligation, by an advertisement announcing a translation of it in English.

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[1] See the rendition of Psalm 105: 18 in the Book of Common Prayer: 'Whose feet they hurt in the stocks: the iron entered into his soul'.

[2] The Philadelphia Gaol Act of 1773 authorized the construction of a gaol at Walnut Street. Prisoners were first admitted in 1776 and were housed in large dormitories until the construction of the new block containing individual cells prescribed in the Penal Laws Act of 1790: see *Statutes at Large of Pennsylvania*, viii. 300–4, and p. 167 n. above.

[3] François Alexandre Frédéric de La Rochefoucauld (1747–1827), duc de La Rochefoucauld-Liancourt, politician and social reformer, was author of *A Comparative View of Mild and Sanguinary Laws; and the good effects of the former, exhibited in The Present Economy of the Prisons of Philadelphia*, 2nd edn., London, 1796 (first published anonymously as *Des prisons de Philadelphie, par un Européen*, Philadelphia, 1796).

[4] See [Thomas Eddy,] *An Account of the State Prison or Penitentiary House, in the City of New-York. By one of the Inspectors of the Prison*, New York, 1801, p. 17. Thomas Eddy (1758–1827), Quaker, banker, politician, and philanthropist, had during 1796 assisted New York Senators Philip Schuyler (1733–1804) and Ambrose Spencer (1765–1848) in drafting the legislation providing for the construction of Newgate, the New York state penitentiary. Eddy designed the prison and served as its first Agent and Inspector from 1797 to 1804.

[5] According to Eddy, the state penitentiaries 'already in existence' were those at Trenton, New Jersey, and Richmond, Virginia, opened in 1798 and 1800 respectively, while those 'in contemplation' were the state penitentiaries at Charlestown, Boston, Massachusetts, and Columbia, South Carolina.

[*See opposite for n. 6.*]

South Carolina, *(another philanthropic visitor)* date in preface, 4th August 1796: date in title-page 1797.[1]—For the New York House, one: *Eddy*; New York printed; date in title-page, 1801: date of Subsequent Report annexed, 9th February 1802.[2]

The Pennsylvania House is that which, as the date itself shews, served as an example, and naturally, as far as circumstances permitted, as a model. New York follows next. Caleb Lownes took the lead in Philadelphia. Thomas Eddy followed him in New-York. In both these men your Lordship would find, under the garb of a quaker, the head of a statesman, as well as the pen of an academic.

After this short introductory view of the transactions in North America, permit me to wait upon your Lordship back again, for a moment, to New South Wales.

Facts compose the chief matter of this supplemental address: and in how eminent a degree the general propositions advanced in the preceding one[3] will be found to receive confirmation from these facts, is a point I have already ventured to give intimation of.

In a track like this, history in its own order is but a labyrinth: but to this labyrinth, here as before, the *ends* of penal justice hold out a clew.[4]

Under the head of *reformation*, replaced in New South Wales by *corruption*, I will beg leave to attend your Lordship from effects to

[6] In July 1795 Liancourt had written to Bentham from Philadelphia, expressing his admiration for the Pennsylvanian prison system, and presenting Bentham with a copy of *Des prisons de Philadelphie*, but requesting that 'his name may not be mentioned as the author of the remarks, lest he should awaken an attention he desires to avoid': see *The Correspondence of Jeremy Bentham*, vol. v, ed. A.T. Milne, London, 1981 (*CW*), p. 145.

[1] Robert James Turnbull (1775–1833), lawyer and planter, was author of *A Visit to the Philadelphia Prison*; *Being an accurate and particular Account of the Wise and Humane Administration Adopted in every Part of that Building*; *containing also An Account of the Gradual Reformation, and present Improved State, of the Penal Laws of Pennsylvania*: *with Observations on the Impolicy and Injustice of Capital Punishments. In a Letter to a Friend*, Philadelphia and London, 1797.

[2] According to Bentham's note at UC cxvi. 448, Eddy had on 6 June 1802 written to Patrick Colquhoun (1745–1820), Lord Provost of Glasgow 1782–4, stipendiary magistrate at Worship Street, Finsbury Square 1792–7 and at Queen's Square, Westminster 1797–1818, enclosing a 'Report' of 2 (rather than 9) February 1802. According to the version of the letter reproduced in Samuel L. Knapp, *The Life of Thomas Eddy; comprising an Extensive Correspondence with many of the most Distinguished Philosophers and Philanthropists of this and other countries*, New York, 1834, pp. 141–4 at 143, Eddy sent Colquhoun a copy of the 'last report of the Inspectors of the State prison to the Legislature', which had 'passed a law to build a prison, for solitary confinement, on the plan recommended in the Report'. The 'Report' of 'The Inspectors of the State-Prison', which is, as Bentham states above, dated 9 February 1802, is reproduced in *Journal of the Assembly of the State of New-York. At their Twenty-Fifth Session, began and held at the city of Albany, the twenty-sixth day of January, 1802*, Albany, n.d., pp. 79–84.

[3] i.e. the first 'Letter to Lord Pelham', pp. 71–164 above.

[4] An allusion to the Greek myth in which Ariadne gave Theseus a clew, that is a ball of thread, with which he laid a trail to find his way back out of the Labyrinth after slaying the Minotaur.

causes; and among effects again from smaller to greater—from the lighter shades of depravity to the darker: presenting the effects in this order, lest the opposite one, though in other respects perhaps the more obvious one, should have produced the sensation of an anticlimax. In subordination however to these *logical* principles of arrangement, the *chronological* one will have its use: it will serve all along to shew, and in an order perfectly natural, the progress of the 'improved' colony from bad to worse. Matter thus pregnant cannot but give birth to a variety of observations; but these will in general be most readily apprehended, and most effectually recommended, when preceded by the particulars by which they were respectively suggested.

Our authors not having had themselves any such arrangements in their view, the matter belonging to one head will, every now and then, in the shape in which it comes from their hands, be found intermixed with matter belonging to another. This incongruity, which however is but a merely relative one, cannot always be cleared away: all that can be done with it is to point it out: this done, now and then a repetition constitutes the sum of the inconveniences.

Under each head, each picture has two sides: one for the soi-disant 'improved' colony, the other for those really improved countries, whose apprenticeship in the form of colonies is expired. For each feature of depravity and corruption on the one side, your Lordship will see, on the other side, according to the nature of the feature, either a blank for the absence of it, or a space filled with the opposite feature of virtue and reformation.

I. Reformation.—*First Feature, Industry*; *Opposite Feature of Corruption, Sloth:—Prevalence of it in New South Wales.*

No. 1. P. 23.[1] February 1797.[2] 'An extraordinary theft was committed about the middle of the month, which very forcibly marked the inherent depravity of some of these miscreants. While the miller was absent for a short time, part of the sails belonging to the mill were stolen. Now this machine was at work for the benefit of those very incorrigible vagabonds who had thus, for a time, prevented its being of use to any one, and *who, being too lazy to grind for themselves, had formerly been obliged to pay one third of their whole allowance of wheat, to have the remainder ground for them* by handmills, an expence that was saved to them by bringing their corn to the public mill.'

[1] *Recte* 23–4.

[2] Collins refers to events occurring in March 1797, and not February 1797. Unless otherwise noted, references are to the second volume of Collins, and the emphases are Bentham's.

Sloth— Prevalence of it in New South Wales.

No. 2. P. 40. June 1797. 'In consequence of the proclamation which was issued in the last month, one of the run-away convicts delivered himself up to a constable, and another was taken and lodged in confinement:[1] they appeared to be half starved: yet their sufferings were not sufficient to prevent similar desertions from work in others, nor a repetition of the offence in themselves; such was the strong aversion which these worthless characters had to any thing that bore the name of *work*. More labour would have been performed in this country by 100 people from any part of England or Scotland, than had at any time been derived from 300 of these people, *with all the attention that could be paid to them*.'

Observations.—Which '*all*' (it appears as well from the nature of the case as from passage upon passage in the history) could not be much:—a fresh occasion for bringing to view that deficiency of necessary inspection, which is among the indelible features of the system of forced colonization.

No. 3. P. 202. March 1799. At this time, 'among other public works in hand were, the raising the walls of the new gaol, laying the upper floor of the wind-mill, and erecting the churches at Sydney and Parramatta.[2] Most of these buildings did not advance so rapidly as the necessity for them required, owing to the weakness of the public gangs; and indeed *scarcely had there ever been a thorough day's labour, such as is performed by a labouring man in England, obtained from them. They never felt themselves interested in the effect of their work, knowing that the ration* from the store, whatever it might be, *would be issued* to them, *whether* they *earned* it *or not*; unlike the labouring man whose subsistence, and that of his family, depends upon his exertions. *For* the individual who would pay them for their services with *spirits, they would labour while they had strength to lift the hoe or the axe*; but when government required the production of that strength, it was not forthcoming; and *it was more to be wondered, that under such disadvantages so much, rather than that so little, had been done*. The convicts whose services belonged to the crown were for the most part a wretched, worthless, dissipated set, who never thought beyond the present moment; and they were for ever employed in rendering that moment as easy to themselves as their invention could enable them.

'Of the settlers and their disposition much has been already said. The assistance and encouragement which from time to time were given them, they were not found to deserve. *The greater part* had originally been convicts; and it is not to be supposed, that while they continued in that state their habits were much improved. With these habits, then, they became freemen and settlers; the

[1] For the proclamation, condemning John Jeweson, Joseph Saunders, Moses Williams, and John Wilson (*c.* 1768–1800) as outlaws, see Governor Hunter to the Duke of Portland, 6 July 1797, Enclosure No. 3, Government and General Orders (13 May 1797), *HRA*, ii. 79. Collins does not state which two of the four men surrendered themselves during June 1797, though Wilson was not one of them, as he remained at large until November 1797.

[2] The foundation stones of the churches of St Philip's, Sydney and St John's, Parramatta were laid by Hunter in late 1798: see Governor Hunter to the Duke of Portland, 1 November 1798, *HRA*, ii. 237.

effect of which was, to render them insolent and presuming; and *most of them continued a dead weight upon the government, without reducing the expences of the colony.*'

Observations.—The features of worthlessness are ascribed to them ('*the Settlers*') in general: the non-convicts are alluded to, and are not excepted. In this view of it, the improved Colony presents the picture of a community, in which not only the corrupt members of it are not amended, but the sound members—such as had been introduced into it—are corrupted. If such be the case, there is nothing in it but what ought to have been expected. In Letter I. pages 158–60, instances in proof of it have been already given, in speaking of the *soldiery:* and more will come to be given, under the head of *Public Functionaries*.[1]

No. 4. P. 277. Dec. 1799. 'The harvest was now begun, and constables were sent to the Hawkesbury with directions to secure every vagrant they could meet, and bring them to Sydney, unless they chose to work for the settlers, who were willing to pay them *a dollar each day and their provisions*; for at this time there were a great number of persons in that district, stiling themselves free people, who refused to labour unless they were paid the most exorbitant wages.'

Observations.—Standing out for the best wages that could be got is no proof of sloth: it is rather a proof of that appetite for gain, which is the spur and natural concomitant to industry: but, high as the wages were, it appears there were vagrants, who preferred idleness even to such high wages.

No. 5. P. 314. August 1801. 'Nothing has been said, in this account of the public labour, of preparing the government ground annually for seed and cropping it, or of gathering the harvest when ripe. But these must be taken into the account, as well as threshing the corn for delivery, and unloading the store-ships on their arrival; which latter work must always be completed within a limited time, pursuant to their charters. It has been said before, that it was *impossible to obtain a fair day's work from the convicts when employed for the public:*[2] the weather frequently interfered with out-door business, and occasioned much to be done a second time. Under all these disadvantages, and with a turbulent, refractory body of prisoners, we are warranted in saying, on thus summing up the whole of the public labour during the last four years, that more could not have been performed; and that it is rather matter of wonder that so much had been obtained with such means.'

Observations.—Of wonder indeed! The worse the system, the greater the wonder that any given quantity of good works how small soever, should be shewn forth under it. The more irremediably bad, the more irreproachable the conduct—the more pitiable the lot—of those whose misfortune it was to have the management of it on the spot:—the more

[1] See pp. 201–8 below.

[2] See 'Letter to Lord Pelham', pp. 100–1 n. above.

radically bad the system, the more inexcusable those at home who planned it—but, most of all, those at home who have persevered in it—its deformities all the while staring them in the face. The period is an early one for such reflections: but they accompany the idea of the improved colony from the very first glance, and never leave it till the last.

II. *Further Features of* REFORMATION*—Frugality and Forecast. Opposite Features of Corruption—Prodigality and Improvidence:—Prevalence of them in New South Wales.*

No. 1. Page 21.[1] February 1797. 'It now[2] appeared, that to obtain spirituous liquors, these people, the settlers, had incurred debts to so great an amount, as to preclude the most distant hope of liquidating them, except by selling their farms. Thus all their former industry must be sacrificed to discharge debts, which were contracted *for the temporary gratification of being steeped in beastly intoxication* for a certain length of time. All the cautions which had occasionally been inserted in the *public orders* against this dangerous practice,[3] had not proved of any advantage to those whose benefit they were intended to promote; and it was observed with concern, that several scenes of shameful imposition, which had been practised by the retail dealers in this article, were brought to light by this investigation.'

Observations.—Intermixed with the prodigality and the improvidence (your Lordship sees) comes *drunkenness:* but drunkenness comes in every where and with every thing. We shall however have a head appropriated to it.[4] All this reprobacy too—(is it credible?) spite of all these *public orders*—all this *good advice,* from the Governor: pearls, of which there has never been any want among these swine.[5] Of the water of these pearls, something will come to be said under the head of *Drunkenness.*

No. 2. Page 96.[6] March 5, 1798. Speaking of the business before a court of civil judicature, 'this' (says our author) 'consisted chiefly of litigation, about debts contracted between the retail dealers and the settlers. As a proof to what a height this business had reached, it need only be mentioned, that an appeal was made to the Governor, in one prosecution, for a debt of £868: 16*s.* 10*d.*;

[1] *Recte* 21–2.
[2] The word 'now' is Bentham's interpolation.
[3] One such public order seeking to regulate the colonial trade in spirits, which was issued on 22 March 1796, exhorted magistrates and constables to locate unlicensed public houses, and warned that anyone caught running such an establishment was liable to have their house pulled down 'as a public nuisance': see Governor Hunter to the Duke of Portland, 12 November 1796, Enclosure, Government and General Orders (22 March 1796), *HRA*, i. 690–1.
[4] See pp. 209–17 below.
[5] An echo of Matthew 7: 6.
[6] *Recte* 96–7.

which appeal was however withdrawn, the defendant consenting to pay the debt.'

Observations.—No small mass of property, to be amassed in such a place: but of the *source* of it, mention has been already made, under the head of *Colonies* (Letter I. p. 153.)—and of the *security* of it, more may come to be said under the head of *Economy,* towards the close of the present letter.[1]

No. 3. Page 97, 98. March 1798. 'The Governor, having received from the settlers in each district a clear[2] and correct statement of their grievances and distresses,[3] informed them, that it was with real concern he beheld the effects of the meeting of each civil court, which, for the public accommodation, he from time to time had occasion to assemble. The vast load of debt with which they so frequently felt themselves burthened *through the imposition and extortion of the multitude of petty dealers,* by whom the Colony was so much troubled, with the *difficulties* under which the industrious man laboured *for want of some other mode of providing* the *necessaries* which he required, were grievances of which he was determined to get the better; and, as far as his situation would authorize him, he would adopt every means in his power to afford them relief. To this end he found it absolutely necessary to suppress many of those *licensed public houses* which, when first permitted, were designed as a convenience to the labouring people; but which he now saw were the principal cause whence many had candidly confessed their ruin to have sprung.[4]

'He wished it were possible to dissuade them from heaping such heavy debts upon themselves by the enjoyment of articles which they could do without, or by throwing away their money in purchasing, at every public auction, rags and trifles for which such exorbitant sums were exacted. He urged them, with a paternal anxiety, to consider that their folly involved their whole families in ruin and misfortune, and conjured them to wait with patience the result of some representations which he had made to Government, as well in their behalf, as in behalf of the settlers upon Norfolk Island; by which he hoped that ere long they would have an opportunity of purchasing every European article that they might want at such a reasonable and moderate price as they, by their industry, would be very well able to afford from the produce of their labour.[5]

[1] See p. 246 below.

[2] Collins 'district, through the medium of the two gentlemen whom he sent amongst them for that purpose (the Rev. Mr. Marsden, and Mr. Arndell), a clear'. Thomas Arndell (1753–1821) was a surgeon, magistrate, and landowner.

[3] For settlers' grievances regarding the price of commodities see Governor Hunter to the Duke of Portland, 2 March 1798, Enclosure No. 1, 'Settlers Statement to Hunter' (19 February 1798), and Enclosure No. 2, 'Report of the Rev. Samuel Marsden and Assistant-Surgeon Arndell' (n.d.), *HRA*, ii. 136–46.

[4] In August 1798, for instance, noting that magistrates had issued 'far too many' licences to retail spirits, Hunter limited the number of licences issued for Sydney to eight, for Parramatta to four, and for the Hawkesbury River settlements to three: see Governor Hunter to the Duke of Portland, 20 August 1798, Enclosure, Government and General Orders (6 August 1798), *HRA*, ii. 219.

[5] In his letter of 2 March 1798 (*HRA*, ii. 135–6), Hunter had informed Portland of

'The island upon which Captain Hamilton had run his ship, and thereby prevented her sinking with them at sea, was thenceforward to be distinguished by the name of Preservation Island. From thence the colonial schooner had arrived with what remained of the property.[1] As soon as she was unloaded, the property was put up to sale for the benefit of the underwriters, when *the little effect of the Governor's recommendation of patience was seen, by the most enormous prices being paid for every article. The money that should have been expended in the cultivation and improvement of their farms was thus lavishly thrown away*; and it happened, fortunately enough for the underwriters, that the wheat of this last season had been received into the public granary, and immediately paid for. *Twenty-two shillings were paid at this sale for one common cup and saucer.*'

Observations.—Besides prodigality and improvidence, more drunkenness, more good advice, as pregnant as ever with good effects. But of this in its place, as already mentioned. '*Imposition and extortion*' the fruit of the '*multitude of the dealers*'*?* Say rather, of the smallness of their number. In the multitude of dealers, much more surely than of '*counsellors*,' there is safety.[2] Copies of Adam Smith do not appear to have been abundant in the libraries of New South Wales.[3]

Government to turn shop-keeper!—perhaps a necessary remedy—not improbably a costly, and therefore most certainly a formidable one.—*Away with it,* cries *Adam Smith*.[4] But most assuredly, among the

the 'heavy grievances and distresses' of settlers since February 1798, in particular their frequent bankruptcies and the 'extravagant prices' charged for commodities by those who had monopolized colonial trade. Hunter had further reported that Marsden and Arndell had taken representations from some settlers, that he intended to visit the various districts himself, and would 'encourage the settlers to perseverance and patience until your Grace shall have pointed out the most efficient means for alleviating their distresses, and exonerating the colony of such a combination of dealers, a circumstance as truly essential to its well-being as any step that can be taken'.

[1] Captain Gavin or Guy Hamilton (d. 1798) was Master of the *Sydney Cove*, which in November 1796 set out from India for Sydney laden with stores including 31,500 litres of spirits. The ship sustained serious damage during the voyage and on 9 February 1797 Hamilton was forced to beach it at Preservation Island, off the north-east coast of Van Diemen's Land. On 27 February 1797 seventeen members of the ship's crew set out for Sydney in the ship's longboat, but it was wrecked off the south-east coast of the Australian mainland. When rescued on 15 May 1797 at Port Hacking, only three of the men were still alive. On 30 May 1797 the colonial schooner *Francis* and the sloop *Eliza* sailed from Port Jackson on a salvage and rescue mission. The *Eliza* was lost in a storm on its voyage back to Sydney, though the *Francis* made two further salvage voyages to Preservation Island. See Governor Hunter to the Duke of Portland, 6 July 1797, *HRA*, ii. 82, and Appendix A, 'Narrative of the Shipwreck of Captain Hamilton and the Crew of the Sydney Cove', *HRNSW*, iii. 757–68.

[2] Proverbs 11: 14.

[3] On the relationship between supply and demand see, for instance, Smith, *Wealth of Nations* (*Glasgow Edition*), i. 74–5.

[4] Bentham perhaps had in mind Smith's statement, at ibid. ii. 817–18, that 'Small republicks have sometimes derived a considerable revenue from the profit of mercantile projects. The republick of Hamburgh is said to do so from the profits of a publick wine cellar and apothecary's shop', but went on to comment that, 'The state cannot be a very great one of which the sovereign has leisure to carry on the trade of a wine merchant or apothecary.'

nations whose wealth he had in view, was no such nation as New South Wales. Of this further perhaps under the head of *Economy*.[1]

No. 4. page 120. July 1798. 'The ready sale which the speculators who called here constantly found for their cargoes, together with the ruinous traffic which was carried on by means of the monopolies that existed in opposition to every order and endeavour to prevent them, would, beyond a doubt, without the establishment of a *public store* on the part of Government, keep the settlers and others in a continual state of beggary, and extremely retard the progressive improvement of the Colony.'[2]

No. 5. page 198.[3] Feb. 1799. 'Presuming on the late inefficient harvest, *the Settlers* requested again to be supplied with seed-wheat from the store, but were refused. It was well known, that they sold for spirits, to the last bushel of their crop, and left their families without bread. Then they pleaded poverty and distress, and their utter inability to pay[4] what they had borrowed. When seed has been lent them, they have not unfrequently been seen to sell it at the door of the store whence they received it!'

Observations.—Again *the* Settlers: no exception in favour of *non-convicts*.

No. 6. page 279.[5] 3d January 1800. 'The Swallow, East India packet, anchored in the Cove,[6] on her way[7] to China. She had[8] on board a great variety of articles for sale, which were intended for the China market; but the master thought, and actually found, it worth his while to gratify the inhabitants, particularly

[1] See pp. 244–5 below.

[2] See Governor Hunter to the Duke of Portland, 25 May 1798, *HRA*, ii. 153: 'Should my idea of a public store on the part of Government, upon an extensive plan, for the retail sale of the various articles of comfort and convenience, be adopted, the price of grain must immediately fall, and in the end operate as an encouragement to industry; but without some such measure the settlers cannot live, and far less provide for a family. The speculators who call here, and the ruinous traffic which is carried on through those monopolies, which are made in opposition to my repeated orders and endeavours to prevent, will, beyond a doubt, without the interference of Government, keep the settlers, &c., in a continual state of beggary, and retard the progressive improvement of the colony.'

[3] *Recte* 198–9.

[4] Collins 'repay'.

[5] *Recte* 279–80.

[6] The *Swallow* arrived at Port Jackson on 8 December 1799: see Governor Hunter to the Duke of Portland, 25 September 1800, Enclosure, 'A List of Ships and Vessels which Enter'd Inwards in the Port of Port Jackson, in His Majesty's Colony of New South Wales, between the 3rd day of November, 1799, and the 13th day of May, 1800, following with the particular quantity and quality of the loading of each vessel', *HRA*, ii. 571.

[7] Collins 'voyage'.

[8] Collins 'China. She brought information of the capture of the Dutch fleet in the Texel, and the surrender of the forts upon the Helder. This intelligence was announced to the settlement in a public order, and by a discharge of the cannon on the batteries. The Swallow on her anchoring saluted the fort, which was returned.

'In addition to this welcome news, she had'.

The public order has not been identified, but the allusion is to the Anglo-Russian invasion of the Batavian Republic on 27 August 1799, the retreat of Batavian forces and their evacuation from the fortifications at Den Helder, and the mutiny and surrender of the Batavian fleet at the island of Texel on 30 August 1799.

the females, with a display of many elegant articles of dress from Bond Street, and other fashionable repositories of the metropolis.

'On the 11th the Minerva transport arrived from Ireland.[1] Having touched at Rio de Janeiro, she had brought many articles for sale, as well from that port as from England, most of which were much wanted by the inhabitants: but the prices required for them were such as to drain the colony of every shilling that could be got together.'[2]

Observations.—Of this already (Letter I. p. 153) in speaking of paper money, and the staple trade of this peculiar Colony.

III. *Per contrà—Industry, Frugality, Forecast, in the American Penitentiary Houses.*—1. *Philadelphia House, instituted* 1790.

No. 1. Philadelphia; 1795: Liancourt, page 14. 'Out of his profits the prisoner is obliged to pay his board, and the price of, or in some cases a certain rent or hire for, the instruments he uses. These payments, which are necessarily determined by the current price of commodities, are fixed by the inspectors four times in every year. At present, it amounts to one sixth of a dollar for each man's board. The *most infirm,* however, *may earn* easily *twenty pence per day,* by picking oakum; and *there are some who earn above a dollar.*'

No. 2. Philadelphia; 1796: Turnbull, page 16. 'For each convict a separate account is kept by the jailer, charging him with his cloathing, sustenance, &c. and in which a reasonable allowance for his labour is credited. It is generally rather less than the wages of other workmen in the city. These accounts are balanced at short periods, in order that the overplus or proportion, which might be due to the prisoner, may be paid into the county treasury for safe keeping; and, once in every three months, they are audited before the inspectors. The committee of inspectors, once during the same period of time, fix the charges for the *prisoners' maintenance*, which depend on the existing price of provisions, &c. It is now *one shilling and three pence a day for the males,* and *seven pence for the females.* There are *few who do not earn above two shillings.* The marble sawing and manufacturing of nails are the most lucrative employments followed in the prison. *Several* were pointed out to us, who earned at these occupations *above a dollar,* and *one* in particular, whose daily labour averaged *one dollar and a half.*'

No. 3. Ib. p. 48.[3] 'Some have appropriated the proceeds of their labour, while in confinement, to the support of their families; and several, on leaving the prison,

[1] This sentence is a paraphrase of, rather than a direct quotation from, a passage in Collins.

[2] For the settlers' petition to Hunter, requesting his permission to purchase spirits and other goods brought to the colony by the *Minerva*, see Governor Hunter to the Duke of Portland, 15 January 1800, *HRA*, ii. 436–9.

[3] *Recte* 49.

have received 40 or 50 dollars {4s. 6d.},[1] the overplus of the profits of their labour, and with this capital turned out honest and industrious members of society.'

2. *New York House; instituted* 1790.

No. 4. New York; 1802: Eddy, p. 94. 'The convicts have now become more skilful workmen, and can perform more labour, and to greater advantage, than heretofore.'

Observations.—In this more recent prison, the economy, it appears, had not yet attained to such a pitch of perfection as to afford to the public a profit equal to the expence of the convicts' maintenance. Under the Philadelphia system, no allowance was to commence in favour of any convict, till after the estimated expence of his share in the aggregate expence of the prison, or at least the greater part of that expence, had been reimbursed. The New York institution appears to have had disadvantages of its own to struggle with, which by the last accounts were not yet overcome; but which, by the same accounts, were in a way to be overcome.[2] At Philadelphia the charge against the convict appears to have been fixt at so low a rate, that from the first some surplus went into the pocket of the convict workman, the most unskilful not excepted. Whether the same policy has been pursued, and in the same degree, at New York, I have not found. I should rather expect to find, not: and in that case I am inclined to think that a little more liberality under this head might, even in the way of economy, have been attended with advantage.

Supposing this feature in the Philadelphia system to have been copied in New York, there being no surplus for the convict workman, the virtues of frugality and forecast would not in his instance find any ground to build upon.

3. *Penitentiary System: Panopticon Mode.*

This spur to industry presented itself to me from the first, as a very material implement in the apparatus of reformation.[3] In 1793,

[1] i.e. the standard exchange rate for $1. The figure is Bentham's interpolation.

[2] According to Eddy, *Account of the State Prison in New-York*, pp. 92–4, although calculating that by the end of 1802 the institution would have a debt of $14,598.44, the state legislature noted that 'there is reason to conclude . . . that the profits of the labour of the convicts during the year 1802, may be rendered adequate to their maintenance', and that there would remain 'only the annual expense of the salaries of the keepers, and of the external guard, to be paid out of the public treasury'.

[3] In 'A View of the Hard-Labour Bill', p. 27 (Bowring, iv. 12), Bentham had in 1778 suggested that putting convicts to work would simultaneously 'compensate the expense of the establishment' and ensure that 'the morals of the convicts may be improved by a habit of steady and well-directed industry'.

when I was arranging, with Mr. (now Sir Evan) Nepean (then Under Secretary of State under Mr. Dundas) those terms of *contract,* which without much variation were afterwards approved of at the Treasury, and are printed in the 28th Report of the Committee of Finance—on this occasion, in my accepted *proposal,* on the ground of which we were proceeding, a fourth part having been specified by me as the share I was willing to allow, at the same instant *he* happened to mention a sixth part, as the share he had thought of. Without hesitation I declined taking advantage of this facility. A fourth part (I recollected) was the share mentioned by Howard as that which, judging from his experience, he looked upon as capable of inspiring the requisite degree of *alacrity.*[1] It went against me to give less than what had been recommended by so approved a judge: and moreover, under my plan there was a particular reason for not falling short of that mark; since, for the fulfilment of the article relative to the *superannuation annuity,* I reserved to myself the power of retaining in my hands, as far as the half of each man's allowance: in which case the share received by him in the shape of *present* allowance, would be reduced to an eighth.[2]

While yet on the road to *reformation,* the discussion of these points, though by no means unapposite to that head, has at the same time led us, though prematurely, into a corner of the field of *economy.*—Just entered upon, and that but *en passant*, and already, my Lord, what a light breaks in upon it! In the account of expence, compare this 0, or rather this *minus x*, per annum, with the *plus* 46*l.* of New South Wales.[3]

IV. *General Depravity—Prevalence of it in New South Wales, as attested in general Expressions.*

No. 1. II Collins, page 2. October 1796.[4] 'The frequent commission of the most atrocious crimes, together with the dissipated, turbulent, and abandoned disposition of the convicts, had more than ever at this time been manifest.'

Observations.— Practical inference, resolution to construct the two prisons above spoken of, at Sydney and Paramatta.[a]

[a] Supra, p. 92.

[1] According to John Howard, *An Account of the Principal Lazarettos in Europe; with Various Papers Relative to the Plague: Together with Further Observations on Some Foreign Prisons and Hospitals; and Additional Remarks on the Present State of Those in Great Britain and Ireland*, Warrington, 1789, p. 54 n., 'criminals will gladly work, when in prison, for one-fourth of what they could earn, were they not in confinement'.

[2] See 'Letter to Lord Pelham', p. 143 n. above.

[3] See ibid., p. 143 above.

[4] Collins refers to events occurring in September 1796, and not October 1796.

No. 2. ib. page 3. October 1796.[1] 'Far too many of them were most incorrigibly flagitious.'

Observations.—Practical inference—forming (as above) the most incorrigible of them into a *Jail Gang.* {Lett. I. p. 91.}[2]

No. 3. ib. page 9.[3] October 1796. 'The morality of the Settlement' is expressly stated as 'a point which he (the Governor) could not venture to promise himself that *he should ever attain*.'

No. 4. ib. page 23. February 1797.[4] 'It now[5] appeared by the books' that 'there were at this time not less than 600 men off *the store* and *working for themselves* in the Colony: forming a vast deduction from[6] the public strength, and adding a great many chances against the safety of private and public property as well as personal security.'

Observations.—Written confirmation of the general proposition so often repeated:—under inspection (viz. such inspection as the nature of the institution admitted of), bad enough; out of inspection, worse and worse. To '*working for themselves*' might have been added—*or supposed to work.*

No. 5. page 53. October 1797.[7] 'At this time such' (observes the annalist) 'was the increase of crimes, that thrice in this month was the Court of Criminal Judicature assembled.—Offences—murder, perjury, forgery, and theft.'[8]

No. 6. page 100. March 1798. 'The utmost vigilance was constantly requisite to guard against robbers[9] both on land and water. It was impossible in such a community as this to have a police too strict, or to be sufficiently aware at all times of such a nest of villains. Many examples had been made; but after a few days had elapsed, they were forgotten; and every act of lenity and indulgence was found to be ruinous to the welfare and comfort of the whole. It was to be

[1] Collins refers to events occurring in September 1796, and not October 1796.

[2] Collins, ii. 3, states that the 'most notorious' of the 'incorrigibly flagitious' were formed into a gaol gang and, as an additional punishment, made to work on Saturday mornings on the repair of roads and bridges near Sydney.

[3] *Recte* 3.

[4] Collins refers to events occurring in March 1797, and not February 1797.

[5] The word 'now' is Bentham's interpolation.

[6] Collins 'deduction of labouring people from'.

[7] The following passage is Bentham's paraphrase, rather than a direct quotation from Collins.

[8] According to Collins, ii. 53–5, the Court of Criminal Judicature, sitting on 9, 18, and 24 October 1797, heard the following cases: the acquittal, for want of evidence, of William Millar and Thomas Bevan on a charge of murdering an Indigenous boy known as Tom Rowley; the sentencing of John Morris to be 'burned in the hand' and imprisoned for twelve months for the manslaughter of Charles Martin; the sentencing to death, with a recommendation of mercy, of William Cherry for uttering a forged bill; the sentencing of Robert Williams to transportation to Norfolk Island for life for highway robbery; the sentencing of James Edwards to Norfolk Island for seven years for burglary; and the sentencing of Luke Normington, John Colley, and William Osborne to have their ears nailed to the pillory for perjuring themselves in the case of the aforementioned John Morris. For the trials see SRNSW, NRS 2700 5/1147B (Reel 2391), pp. 353–4, 373–7, 369, 355–60, 365–7, and 379–85 respectively.

[9] Collins 'robberies'.

hoped, however, that the introduction, of *more of the better* and *fewer of the worst sort* of characters, would *in due time* give the balance a favourable turn.'

Observations.—This we see is the ground, weak as it is, upon which, in the expectation of the late Chief Magistrate, as in the view of the late Governor, all hope of moral improvement rests:—the not applying the Settlement to the only purpose, with reference to which it has ever been thought well of by any body.—Quere as to those '*worst*' characters—if not sent to this improved Colony, what else would gentlemen wish to have done with them?—If these most intractable of characters can be disposed of with advantage at a less distance and at a less expence, might not the same economy be applied to the less intractable ones?

My language would be somewhat different.—Give me the worst in preference: the greater the difficulty, the greater the glory. If there *must* be a New South Wales, let rather the least corrupted go to New South Wales.

No. 7. ib. page 105. April 1798. At this time the Settlers are still spoken of as being 'certainly undeserving of the attention which they met with from the Governor.'

Observations.—The Settlers—not now, as in October 1792, 'far too many;'[1] but *the Settlers:*—the Settlers in general. These Settlers, however, were the flower of the flock:—the class, in whose instance the possession of permanent property—a sort of landed property, such as the nature of a government completely arbitrary admitted of—together with a portion of appropriate stock, would, according to received theories, afford that sort of security for good behaviour, which it is in the power of property, in such a state of society, to give: and who, as often as the occasion recurs for mentioning them, are notwithstanding, and without any discrimination, mentioned as the worst.

No. 8. ib. page 130. October 1798. At this time (after speaking of the wilful burning of a building at *Sydney,* used as a *Church* and *School,*[2] (of which afterwards)[3] 'this circumstance' (it is observed) 'must impress upon the mind of every one who may read this account, to what a dreadful state of profligacy the Colony had arrived; which, alarming as it was, might have been still worse, had it not been for the *Civil Police,* which fortunately had been established:

[1] i.e. 'were most incorrigibly flagitious': see p. 180 above.

[2] On 1 October 1798 the church of the Reverend Richard Johnson was burned to the ground. Hunter believed that the arson had been carried out by a convict or convicts angry at his order of 27 August 1798 which made attendance compulsory at Sunday service. See Governor Hunter to the Duke of Portland, 1 November 1798 and 1 May 1799, Government and General Order (27 August 1798), *HRA*, ii. 236–7 and 357 respectively.

[3] See p. 189 below.

for a more wicked, abandoned, and irreligious set of people had never been brought together in any part of the Colony. The hope of their amendment seemed every day to lessen.'

Observations.—No travelling without a passport, &c. &c. A sort of system of general imprisonment *within the rules:* a system which, having necessity for its justification, was not the less subject to endless vexations, oppressions, and abuses.[1]

No. 10.[2] ib. page 210. May 1799. *Backsliders.*—At this time mention is made of a convict (Robert Lowe), one of a number, who, for particular instances of good behaviour on ship-board, 'had received conditional emancipation, and been allowed to provide for their own maintenance.' *Few of these people* however (it is added) '*were in the end found to merit this* reward and *indulgence,* as their future (*i.e.* subsequent) conduct had proved.'[3]

Observations.—Whatever symptoms of previous good dispositions had at any time manifested themselves among the convicts, while subject to such degree of inspection as the economical arrangements afforded, were scarce ever found capable of maintaining themselves against the corruptive effects of the state of society there established:—a society composed of such characters, exempted from all restraints.

No. 11. ib. page 216.[4] 2d July 1799. Still, the older the Settlement, the more universal the depravity, and the more authentic the evidence of it. Two men and a woman had just been hanged for a murder committed on the body of a kind and generous friend (one of the missionaries), to save the repayment

[1] See p. 200 below.

[2] The text does not include a ninth item.

[3] In the passage cited by Bentham, Collins appears to have conflated two individuals named Lowe. The first was Robert Lowe (b. *c.* 1747), who had been convicted at Derby Assizes on 31 July 1784 of receiving stolen silver plate, for which he was sentenced to fourteen years' transportation, and who had arrived at Port Jackson aboard the *Surprize* on 1 June 1790. Having been employed as a government clerk in the livestock department, Lowe, together with Samuel Griffith and Christopher Dodd, was tried at the Court of Criminal Judicature on 19 May 1799 of embezzling government livestock at Parramatta. Though there was insufficient evidence on which to convict Griffith and Dodd, Lowe was convicted and sentenced to 100 lashes and one year's hard labour in the gaol gang. For the trial see SRNSW, NRS 2700 X905 (Reel 2651), pp. 208–13.

The second individual was John Lowe (b. *c.* 1761), who had been convicted at the Stafford Assizes on 8 August 1787 of stealing a leather pocket-book containing bills of exchange to the value of £34 from John Sparrow, for which he was sentenced to death. His sentence had been commuted to fourteen years' transportation and on 8 September 1789 Lowe and twenty-four other convict artisans were embarked on the *Guardian*. On 24 December 1789 the ship had struck an iceberg around 1,300 miles off Port Elizabeth, and the floundering vessel was steered into Table Bay by its Captain Edward Riou (1762–1801) and a crew of sixty men, which included most of the convicts (see p. 203 n. below). Lowe and the other surviving convicts had then been embarked on the *Surprize*, when it called in at the Cape, and had arrived at Port Jackson on 1 June 1790, whereupon he and thirteen others were granted conditional pardons, on Riou's recommendation, on account of their good conduct during the accident.

[4] *Recte* 216–17.

of a sum of 10*l.* lent by him to his murderers.[1] 'The abandoned state in which the Settlement was *at this time* (continues the annalist) cannot be better understood than by a perusal of the following orders.' The principal mischief mentioned is the 'late increased number of nocturnal robberies.' Assigned cause—on the part of the *Petty Constables* and *Divisional Watchmen,* either extreme negligence, or complicity with the malefactors. These subordinate magistrates were the elect among the men of property in the Colony.[a] Remedies proposed—subscription for rewards, and a system of universal vigilance, commensurate to the universal insecurity.[2]

Of these orders it is stated that 'they seemed to have been attended with some effect;' because some vagrants were taken up in consequence. The effect, however, seems not to have been very great, since a statement comes immediately after it—that still 'alarming depredations were nightly committed upon the live-stock of individuals.'[3]

No. 12. page 277.[4] December 1799. The history of this year closes with an ejaculation—'May the annalist, whose business it may be to record, in future, the transactions of the Colony, find a pleasanter field to travel in, where his steps will not be every moment beset with murderers, robbers, and incendiaries!'[5]

No. 13. page 296.[6] June 1800. Mention having been made of executions, 'the number of robbers and sheep-stealers' is mentioned as 'still increasing, notwithstanding the late executions:' whereupon comes a question—'Can it be wondered at, that *so much profligacy prevailed in every part of the settlement?*'[7]

[a] II Collins, pages 8. 64.[8]

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[1] Thomas Jones (*c.* 1763–99), his wife Elizabeth, and William Elberry or Albury were hanged on 6 July 1799, after being convicted on 4 July 1799 of the murder of the Reverend Samuel Clode, a missionary recently arrived in Sydney from Tahiti, who had visited the Jones's house on the evening of 2 July 1799 to collect ten pounds which he had lent them. For the trial see SRNSW, NRS 2700 X905 (Reel 2651), pp. 225–49.

[2] Collins, ii. 217–18, describes Hunter's recommendation (see Government and General Orders (2 July 1799), *HRA*, ii. 586) that the 'chief inhabitants' of Sydney and Parramatta consider among themselves the best way to detect robbers, whether that was by subscribing to offer rewards for their capture, or by establishing regular patrols, as a remedy to the recent increase in 'nocturnal robberies' and the apparent negligence of constables and watchmen in preventing them.

[3] See Collins, ii. 218–19.

[4] *Recte* 277 n.

[5] Collins 'incendiaries.'

[6] *Recte* 296–7.

[7] Bentham conflates two distinct matters. First, 'the late executions' were those of two men convicted at the Court of Criminal Judicature on 26 May 1800 of sheep stealing, for which they were hanged on 2 and 8 June 1800 respectively. Second, after describing how a number of inhabitants of Sydney had resisted paying their contributions towards the erection of a new gaol, Collins asks, 'Such being the conduct of these people, even in a measure where their own personal interests were so essentially concerned, can it be wondered at, that so much profligacy prevailed in every part of the settlement?'

[8] Collins describes Hunter's orders of November 1796 and November 1797, directing the inhabitants of Sydney to elect respectable characters to serve as constables for their respective districts for the next twelve months. For the orders see Governor Hunter to the Duke of Portland, 12 November 1796, Enclosure, Government and General Orders (9 November 1796), *HRA*, i. 701–2, and Governor Hunter to the Duke of Portland, 20 August 1798, Enclosure, Government and General Orders (11 November 1797), *HRA*, ii. 206.

Observations.—Here, or hereabouts, (only four months later) concludes the regular part of the history—the part chronologically arranged.[1] The intelligence by a vessel that quitted the Colony at a posterior date (August 1801) consists of nothing but a few scattered articles, mostly without distinction of date.[2]

2. *General Depravity continued—Females.*

No. 1. page 121. July 1798. 'Great complaints were now made of the profligacy of the women; who, probably from having met with more indulgence, on account of their sex, than their general conduct entitled them to, were grown so idle and insolent, that they were unwilling to do any thing but nurse their children; an excuse from labour which very few were without. Were their value to be estimated by the fine children with which they had increased and multiplied the numbers in the Settlement, they certainly would have been found to deserve every care and attention as useful members of society; but their vices were too conspicuous and prominent to admit of much palliation.'

Observations.—Among these fine children, a curious enough topic of inquiry would be, How many legitimate? how many illegitimate? Another, though not quite so ascertainable, among the legitimate, How many who had for their fathers the husbands of their mothers? The managers of the 'improved Colony' here at home, had they received any such information, my Lord? had they used any endeavour to obtain it? were they afraid of receiving it? or was it beneath their care?[a]

[a] It cannot have been a secret to them. In the unpublished book intitled *Panopticon,* printed in 1791, I find in 84 *on Separation, &c.* the following passage—'Turn now to New South Wales: 2000 convicts of both sexes and 160 soldiers, not to speak of officers; jumbled together in one mass, and mingling like beasts: in two years, from 14 marriages, eighty-seven births: the morals of Otaheite introduced into New Holland by the medium of Old England.'

After this I find a reference as follows:

'See Governor Phillip's Account of the Settlement, 4to. 1791, pp. VIII. 67. Mr. White's ditto, 4to. 1790, and Extracts of Letters and Accounts, printed and laid before the House of Commons, in pursuance of an Order of April 8th, 1791, p. 3.'[3]

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[1] The 'chronologically arranged' part of Collins's second volume ends in October 1800.

[2] Collins, ii. 329, states that dispatches had been 'recently received at Lord Hobart's office [i.e. that of the Secretary of State for War and the Colonies] from New South Wales, dated in August 1801'. Though Collins does not name it, the vessel was the *Albion*, a whaler which had sailed from Port Jackson in late August 1801 and reached England in late March 1802. For the dispatches in question, dated August 1801 and docketed 'per whaler *Albion*', see *HRA*, iii. 120–268.

[3] In 'Panopticon; or, The Inspection-House', iii. 90 & n. (not 84) (Bowring, iv. 219 n.), Bentham cites Phillip, *Voyage of Governor Phillip*, pp. viii, 67, White, *Journal of a Voyage to New South Wales*, p. 126, and Governor Phillip to Lord Sydney, 12 February 1790, in 'Extracts of Letters, &c.—and Accounts, relative to the Settlements in New South Wales',

No. 2. p. 123. August 1798. *Positively* bad in July—another month, and they are become so in the *comparative* degree:—'the women, to their disgrace,' (says their historian at this time) 'were *far worse than the men*.'[1]

No. 3. p. 128. October 1798.[2] In speaking of the *seamen* belonging to 'some of the whalers that were in the harbour'—the *women* of the colony, along with the *spirits* of it, are mentioned as the two temptations so peculiarly calculated '*every where*' to lead them astray.

Observations.—Every where?—Yes: so far as concerns certain vices, such as idleness, prodigality and improvidence: but not every where into crimes. It is only in New South Wales that incontinence exposes a man necessarily and uniformly to the seductions of women '*far worse than the men*'—the men of New South Wales: i.e. far worse than a gang of robbers, burglarers, murderers and incendiaries.

No. 4. p. 138.[3] Nov. 1798. At this time 'the complaints which were daily made, of the refractory and disobedient conduct of the convict women, rendered it absolutely necessary' (it is said) 'that some steps should be instantly taken to

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November 1802. I find now, my Lord, I ought to beg pardon of the beasts; since, by subsequent accounts, there have been times in which, in point of decency, as far as depends upon clothing, the four-footed race have had greatly the advantage.

No. 1. II Collins, p. 101. March 1798. 'Provisions .... stores .... 16 *months* since the last were received—A few[4] slops were served to the male convicts in the beginning of this month; they being *nearly naked,* and the store unable to supply them with covering.'

No. 2. ib. p. 142. January 1799. 'The convicts in general had suffered much through want of clothing and bedding. Indeed, during the late harvest, *several gangs* were seen labouring in the fields, *as free of cloathing of any kind* as the savages of the country. This had made them insolent; and anonymous letters were dropped, in which were threatenings of what would be done at the proper season.'

Nakedness, and thence insolence: and the blame, my Lord, where is it?—With those who wore no cloaths because they could get none, or with those who left them without cloaths?—Suffer till you rot, suffer without complaint, no notice taken: complain, notice taken that you are insolent.—Harsh forms excepted, could not your Lordship's recollection furnish you with something like another instance?[5]

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8 April 1791, in *Commons Sessional Papers of the Eighteenth Century* (1791–2), lxxxiii. 241–3 at 243 (reproduced in full at *HRA*, i. 140–7). Phillip and White both record that fourteen marriages were solemnized in February 1788, and Phillip subsequently reported to Sydney that, from 26 January 1788 to 12 February 1790, eighty-seven children had been born in New South Wales. Bentham overlooks the fact that couples might have been married before they arrived in New South Wales, and that marriages might have been solemnized after February 1788.

[1] See also p. 186 below.

[2] Collins refers to events occurring in September 1798, and not October 1798.

[3] *Recte* 135.

[4] Collins 'received. Public works of all kinds went on slowly; the servants of government being but few in proportion to the labour to be performed by them, and all kinds of implements bad in quality, and scarce. A few'.

[5] i.e. Bentham himself.

make them more clearly understand the nature of their situation and the duties they were liable to perform.'[1]—*Semper eædem,*[2] worse and worse.

No. 5. p. 218. 3 July 1799. Bad beyond endurance. The opinion above given, is not peculiar either to the late chief magistrate writing at a distance from the colony, or to his informant on the spot.[3] It is proclaimed on the spot in public orders by the highest authority in the place. 'The continual complaints which are made of the conduct of the female convicts require (says the Governor in his order of this day)[4] the most rigid and determined discipline, with such characters, who to the disgrace of their sex are *far worse than the men,* and are generally found at the bottom of every infamous transaction that is committed in the colony.'

No. 6. p. 272. November 1799. Speaking of divine service on Sundays, 'The women (it is said)[5] were also directed to be more punctual in their appearance; for these still availed themselves of the indulgence which, as women, they had been treated with, seldom thinking themselves included in the restrictions that were laid upon others.'[6]

No. 7. p. 284. February 1800. This month exhibits a particular example of the effect of such characters, not upon their fellow convicts only, but also upon the *Soldiery.* 'One of these people, a quiet well-disposed young man, fell a victim to an attachment which he had formed with an infamous woman; who, after plundering him of every thing valuable that he possessed, turned him out of the house, to make room for another. This treatment he could not live under; and, placing the muzzle of his gun beneath his chin, he drew the trigger with his foot, and, the contents going through his neck, instantly expired.'[7]

No. 8. p. 290. April 14,[8] 1800. It was in order to make an addition to the numbers of this sex, elsewhere the better half of the species, but in this improved colony '*far the worst,*' that on this day the Speedy Whaler is mentioned as arriving from England, with 50 'female convicts;[9] and what were much more *welcome* and *profitable* (observes the historiographer) 832 casks of salt provisions, which enabled the Governor once more to issue a full ration.'—Profitable?—Yes:—welcomeness depends on appetites and tastes.

[1] According to Collins, every officer or householder employing female convict servants was required to forward their names to the Judge-Advocate's office and to inform the office if they wished to dismiss a servant, and was forbidden from keeping from public labour any servants 'but those whom they were permitted to retain'. For an official account of these measures see Governor Hunter to the Duke of Portland, 1 May 1799, Enclosure No. 3, Government and General Orders (7 November 1798), *HRA*, ii. 360.

[2] i.e. 'Always the same'.

[3] i.e. Collins and Governor Hunter respectively. Collins's second volume was largely based on Hunter's dispatches.

[4] The parenthesis is Bentham's interpolation. For Governor Hunter's order see Government and General Orders (3 July 1799), *HRA*, ii. 586–7.

[5] The parenthesis is Bentham's interpolation.

[6] The paragraph from which this passage is taken is cited in full at p. 195 below.

[7] The soldier was Private John Worship, who was buried on 1 April 1800 in what is now the Old Sydney Burial Ground.

[8] *Recte* 15.

[9] The *Speedy* had departed from England on 23 November 1799 with fifty-three female convicts on board, though three had died by the time the vessel reached Port Jackson on 15 April 1800.

V. *General Depravity—Particular Exemplifications.*

No. 1. page 4. October 1796. At this time, after speaking of 'a murder committed by a man on the person of a woman with whom he cohabited,'[1] 'This (it is added) made the fifth circumstance of the kind which had occurred within the last twelve months: and so excessively abandoned were the people, that it was scarce possible to obtain sufficient proof to convict the offenders.'[2]

No. 2. page 196. January 1799. A burglary committed at this time in the house of the acting commissary (the head keeper of the public stores) is no otherwise worth distinguishing, than as it shows the audacity of the delinquent, and the insecurity of those abodes and masses of property, which would naturally be the best guarded and most secure.[3]

No. 3. p. 197. 8 January 1799.[4] This next page affords an occurrence, distinguished from the herd of crimes by two circumstances—the magnitude of the property stolen, and the multitude of the delinquents associated. 'Before this court (a court held on this day) was brought *part* of a *nest of thieves*, who had lately stolen property to the amount of *several hundred pounds*.'[5]

Observations.—As in the first part, so in this second, the history of the 'improved' and ever improving colony has for its chief ingredients a *pot pourri* of crimes. Giving, if without particular selection, any further additions to the beadroll of individual offences, I might be accused, though in another sense, of adding *piracy* to the list. Dropping all such comparative peccadillos as robbery and burglary, I will therefore commit no further trespass on the respectable historian's well-earned rights of authorship, than by picking out the cases of *incendiarism*, as I find them rearing their heads above the herd of ordinary crimes.

[1] The victim was Katharine Evans, who was murdered by her husband, and was buried on 26 October 1796 in what is now the Old Sydney Burial Ground.

[2] According to Collins, i. 491, 497–8; ii. 4, in early August 1786 David Lloyd was sentenced to receive 600 lashes for the manslaughter of a sailor named John Smith; on 6 August 1796 John Fenlow was sentenced to death for the murder of his servant David Lane; during September 1796 Elizabeth Anderson and William Norman were tried for the murder of Elizabeth Williams; and during October 1796, after the discovery of the body of Simon Raven, two unnamed individuals were arrested, but 'nothing transpired that could fix the offence upon them'.

[3] According to Collins, the house of Acting Commissary James Williamson (1758–1826) was burgled on the night of 24 January 1799. See also p. 209 n. below.

[4] Collins refers to events occurring in February 1799, and not January 1799. Bentham has confused the sitting of the Court of Criminal Judicature, for which Collins does not give a specific date, in February 1799, with the execution on 8 February 1799 of a man 'who had been condemned to die by the last court'. This man was probably James Reece, who was convicted of bestiality at the Court of Criminal Judicature on 31 January 1799: see SRNSW, NRS 2700 5/1147B (Reel 2651), pp. 66, 86, and NRS 2703 5/1145 (Reel 2392), p. 28.

[5] Collins does not provide the details, but alludes to the sitting of the Court of Criminal Judicature on 14 February 1799, when Hannah Fisher was convicted of receiving stolen goods and sentenced to seven years' transportation to Norfolk Island, Joseph Wass was convicted of receiving stolen goods and was ordered to receive 700 lashes, and Samuel Wright was convicted of burglary and sentenced to death. For the trials see SRNSW, NRS 2703 5/1145 (Reel 2392), pp. 33–4.

VI. *Depravity—Particular Exemplifications—Incendiarism.*

No. 1. p. 17.[1] January 1797. 'The Governor, on his return from his excursion, had the mortification of seeing a stack, containing about 800 bushels of wheat, burnt to the ground. This happened at Toongabbe,[2] *near which place the country was every where in flames,* and where much wheat belonging to Government was stacked.[3]—By the accidental vicinity of a jail-gang, and assistance bought of them by a universal pardon, other stacks were saved. Although *at this season of the year* (continues our author) *there were days, when, from the extreme heat of the atmosphere, the leaves of many culinary plants growing in the gardens have been reduced to powder,* yet there was some ground for supposing that this accident did not arise from either the heat of the weather, or the fire in the woods. *The grain that was burnt was the property of Government, and the destruction of eight hundred bushels of wheat made room for that quantity to be received into the stores from the settlers who had wheat to sell to the commissary:* there were, moreover, at this time, some ill-designing people in the country, who were known not to have much regard for the concerns of the public. An enquiry was set on foot to discover, if possible, the perpetrators of this mischief; but nothing could be made of it.'—Thus far our historian. Two other points—the impossibility of obtaining evidence, and the nature of the climate, devoting of itself the fruits of industry to the flames—will be noticed elsewhere.[4]

No. 2. p. 69.[5] December 1797. 'Some time in this month the house of John Mitcham, a *settler* in the district of Concord, was attacked by three villains, and set on fire, together with a stack of wheat, which he had just completed and secured against the weather. This unfortunate man was indebted about £33, which the contents of his wheat-stack would have paid off; but now, besides being very much beaten, he had the world to begin again, with a load of debt which this untoward accident would much increase. The man himself knew not to what cause to attribute it; and he was as ignorant who were his enemies; for two of them had blackened their faces, and to the third he was a stranger.'[6]

No. 3. p. 72.[7] December 1797. 'The weather was now become exceeding[8] hot; and as, *at this season of the year, the heat of the sun was so intense that every substance became a combustible, and a single spark, if exposed to the air, in a*

[1] *Recte* 16–17.
[2] i.e. Toongabbie.
[3] The following sentence is not a direct quotation from Collins, but Bentham's paraphrase.
[4] See pp. 196–9 and 241 below respectively.
[5] *Recte* 69–70.
[6] John Mitcham was assaulted and his house and crops in the district of Concord set alight by three assailants on the night of 20 December 1797. Hunter issued an order promising a conditional pardon to any convict who came forward with information leading to the capture and conviction of the arsonists. Only John Worster was ever brought to trial, but he was acquitted of arson at the Court of Criminal Judicature on 29 December 1797. See Governor Hunter to the Duke of Portland, 20 August 1798, Enclosure, Government and General Orders (22 December 1797), *HRA*, ii. 208, and for the trial see SRNSW, NRS 2700 5/1147B (Reel 2391), pp. 451–5.
[7] *Recte* 72–3.
[8] Collins 'exceedingly'.

moment became a flame, much evil was to be dreaded from fire. On the east side of the town of Sydney, a fire, the effect of intoxication or carelessness, broke out among the convicts' houses, when three of them were quickly destroyed; and three miles from the town another house was *burnt by some runaway wretches*, who, being displeased with the owner, took this diabolical method of showing it.'

No. 4. p. 129.[1] October 1798. 'Between 7 and 8 o'clock in the evening of this day *the Church* on the east side of the cove was discovered to be on fire. Every assistance, as far as numbers could be useful, was given, but ineffectually; for, the building being covered with thatch, which was at this time exceedingly dry and combustible, it was completely consumed in an hour.

'This was a great loss; for, during the working-days of the week, the building was used as *a school,* in which from 150 to 200 children were educated, under the immediate inspection of Mr. Johnson, the clergyman. As it stood entirely alone, and no person was suffered to remain in it after the school hours, there was not any doubt that this atrocious act was the effect of design, and the consequence of the late order which had been given out, and had been rigidly executed, enforcing attendance on divine service;[2] and in the view of rendering, by the destruction of the building, the Sabbath a day of as little decency and sobriety as any other in the week.'

No. 5. p. 132. October 1798. 'On the evening of the 11th, another fire happened in the town of Sydney, which, but for a great deal of care and activity, might have burnt all the houses on the east side. A row of buildings, which had been lately erected for the nurses and other persons employed about the hospital, was *set on fire,* and totally consumed. The flames very nearly reached the boat-yard, in which were many concerns of value.'

Observations.—Taken by themselves, the words '*was set on fire*' suggest the idea of the wilful act of man: but, as nothing is said of rewards offered, or other endeavours used, for the discovery of the authors of the mischief, possibly this occurrence was not meant to be understood as belonging to the calendar of crimes. In the next article however, where the mischief is expressly referred to human will as its cause, the expression is the same, '*was set on fire*,' and nothing is said about *reward*, any more than here.

No. 6. p. 197.[3] January 1799.[4] 'On the night of the 11th, between the hours of eleven and twelve, the *public gaol* at Sydney, which cost so much labour and expence to erect, was *set on fire*, and soon completely consumed. The building was thatched, and there was not any doubt of its having been done through *design*. But, if this was the fact, it will be read with horror, that at the time, there were confined within its walls twenty prisoners, most of whom were loaded with irons, and who with difficulty were snatched from the flames.

[1] *Recte* 129–30. See also p. 181 n. above.
[2] See ibid.
[3] *Recte* 197–8.
[4] According to Collins, the Sydney gaol burned down on 11 February 1799, and not 11 January 1799.

Feeling for each other was never imputed to these miscreants; *and yet*, *if several were engaged in the commission of a crime*, *they have seldom been known to betray their companions in iniquity*.'

Observations.—What a picture of society! The bond of connection, not sympathy but antipathy: not sympathy for one another, but antipathy to Government, the common enemy.

No. 7. p. 277.[1] December 1799.[2] 'About ten o'clock of the night of the same day, the *log gaol* at Parramatta was wilfully and maliciously set on fire, and totally consumed. The prisoners who were confined were with difficulty snatched from the flames, but so miserably scorched, that one of them died in a few days. This building was a hundred feet in length, remarkably strong, and had been constructed with much labour and expence.

'The *rewards* which had been formerly held out upon similar occasions were now offered to any man or woman who would come forward with evidence.'[3]

Observations.—Rewards upon rewards, and always with the same success. A feature so remarkable and characteristic may furnish matter for a separate head.[4]

Of all crimes, those excepted which, by striking at the root of Government itself, threaten the community with the complicated and unlimitedly extensive miseries of foreign or civil war, *incendiarism* may be set down as the most pernicious. If *wilful inundation* be likewise to be excepted, it is only in the comparatively few particular situations, in which, by the removal of some barrier opposed to the force of waters, the wickedness of a rash hand may plunge an indefinitely extended tract of country, in a ruin still more extensive than can be brought upon it by the destructive power of fire.

Wide-spreading as the mischief *of the first order* is but too apt to be, the mischief of *the second order* is sure to be still more so. While individuals, in any number, may have been involved in the actual past calamity, no individual whatever within the reach of the report, can be secure against the terror which the idea of future possible and to appearance more or less probable calamities of the like kind, cannot but inspire:—*exitium ad paucos, metus ad omnes.*[5]

[1] *Recte* 276. [2] See p. 92 n. above.

[3] For the failure of the proffered rewards to lead to the identification of a culprit see Governor Hunter to Under Secretary King, 25 September 1800, Enclosure No. 2, 'Return of public buildings erected in New South Wales since October, 1796, exclusive of many others completely repaired or enlarged', *HRA*, ii. 560. [4] See pp. 196–9 below.

[5] i.e. 'the destruction of the few may be a terror to all'. Bentham has adapted Cicero's statement in *Pro Cluentio*, XLVI. 128: *Statuerunt enim ita maiores nostri, ut, si a multis esset flagitium rei militaris admissum, sortito in quosdam animadverteretur, ut metus videlicet ad omnes, poena ad paucos, perveniret*, i.e. 'Our forefathers decided that if any gross breach of military discipline was committed by a number of persons, it should be visited on certain individuals after the drawing of lots, with the object, clearly, that the warning might be felt

The *final causes,* or *generating motives,* capable of giving birth to it are prodigiously diversified. The specimen your Lordship has just been seeing is not a scanty one. *Enmity, sport, appetite for gain,* may be set down as the most common: and among these, enmity, if not the most frequent, is the most obvious.

Sport, by no means an unexampled one, is to all but the abandoned perpetrator the most horrible and terrific. From the incendiary whose hand is not put in motion but by enmity, those alone have to fear whose misfortune it is to have excited, or to stand connected in a certain way by vicinity of possession with some one who has excited, that passion in his breast. But, from the hand, in which, while spreading destruction in this its most diffusive shape, the force of the social and restraining motives has not proved a match for so pigmy a passion as mere sport—and this too a motive which requires not, as *enmity* does, any particular relation or incident to bring it into action—from the assaults of such a hand where is the individual that can call himself safe?—Who was safe under Nero?[1]—Who was safe under Alexander and Thaïs when in their cups?[2]

Where *appetite for gain* is the generating motive, it can only be in virtue of some special relation, most commonly of the *commercial* kind, the effect of which is, to put into the hands of a particular individual a relative *profit*, derived from an event, the effect of which is, to produce, with reference to the general mass of property, a mere *loss*. Thus, in a case but too often exemplified, a man, who has insured his house for more than it is worth, may derive a profit from the destruction of it. Thus again, in a case (as per No. 1.)[3] which could in no other place have found existence so easily as in New South Wales, a man who has a commodity to sell may, without the intervention of any such source of special relation as a preceding *contract*, derive a gain from the destruction of a stock of the same sort of commodity; whether in the hands of the consumer (as in that case) or in the hands of a rival dealer.

In fact, there is scarce a propensity in human nature, that, by one accident or other, may not, in minds suitably disposed, lead to the commission of this crime. Any object, which, by thwarting this or that

by all, the punishment by a few', and cited, for instance, in Edward Coke, *The Second Part of the Institutes of the Lawes of England*, London, 1642, p. 37, and Blackstone, *Commentaries on the Laws of England*, iv. 11.

[1] Nero Claudius Caesar (37–68), Roman Emperor from 54, was notorious for his cruel and erratic behaviour.

[2] During a drinking session in 330 BC, Thaïs, an Athenian woman, is alleged to have incited Alexander the Great (356–323 BC), King of Macedonia from 336 BC, to lead his soldiers in burning down the palace of Persepolis: see Diodorus (Diodorus Siculus), *Library of History*, XVII. 72, and Plutarch, *Life of Alexander*, XXXVIII. 1–4.

[3] See p. 188 above.

propensity, presents itself as a source of this or that *uneasiness*, or as an obstacle to this or that *pleasure*—every such object, so it be but of a nature easily subjected to the power of the devouring element, is capable of putting in action a generating motive, adequate to the production of this crime. It is in this way that not *jails* only, (as per Nos. 6. and 7.)[1] but *schools* and *churches*, (as per No. 4.)[2] have found incendiaries in New South Wales.

In that privileged seat of depravity, scarce a heart that, in the vulgar motive of enmity, (not to speak of motives of mere casual occurrence) may not at any time experience a generative power, adequate to the production of this crime. In the abstract entity *Government*, each subject beholds there, not as elsewhere, a protector, but an enemy: and that ideal enemy he sees embodied, and made flesh, in the persons of as many individuals as that Government has functionaries.

Even in England, cases are not wanting, where a sort of blind malignity—a mixt propensity, compounded of sport, envy, and despair—has not only without any special provocation, but without any assignable advantage in any shape, given birth to this crime in many a deluded breast, which till that fatal moment had known no guile. In times of scarcity, destruction is the grand remedy of an unthinking populace: and, on these occasions, *fire*, the most commodious of all instruments, is seldom suffered to lie idle. But *scarcity*—simple scarcity—is not so frequent in England as *famine* itself not only has hitherto been, but (as your Lordship I believe will see)[3] may in reason be ever expected to be, in New South Wales.

The speculation is not an idle one; since the greater the number of the motives, each adequate of itself to the production of the offence, the greater at all times the number of chances, that any given hand will, by falling within the sphere of action of some one of all these forces, be drawn into the commission of that offence. In New South Wales, incendiarism (as your Lordship sees) is produced by motives which would scarce lead to it any where else.

Motives are nothing without *facilities*. Facilities, to a degree unexampled elsewhere, are afforded (your Lordship has seen) by the very nature of the climate: while the means of preventing the mischief, or so much as confining it within any given limits, on a soil where every blade is tinder, are not within the reach of industry or art.

On both accounts—on all accounts—this highest upon the scale of ordinary crimes—this outrage of which murder forms oftentimes but a part—this cause of ruin by which the very existence of the whole Colony—stock, subsistence, inhabitancy—is, in such a situation, at all

[1] See pp. 189–90 above. [2] See p. 189 above. [3] See pp. 241–4 below.

times rendered precarious—incendiarism, in a word, has never, in any other country, been near so frequent, as it has been, and from the very nature of the case may ever be expected to be, in New South Wales.

At present it is only in a *moral* point of view that the mischief claims our notice: hereafter, under the head of *Economy*,[1] it may be matter of enquiry, how far, amidst so many ever probable causes of destruction, of which, in such a country so inhabited, this is but one, subsistence can be regarded as tolerably secure, and whether it be worth while spending fourscore thousand pounds a year or so, in combustibles for bonfires, at such a distance?

VII. Remedies unavailing. 1. *Spiritual.*

No. 1. p. 3.[2] Oct. 1796. 'Directing his attention also toward the morality of the settlement, a point which he could not venture to promise himself that he should ever attain, he (the Governor) issued some necessary orders for enforcing attendance on divine service,[3] and had the satisfaction of seeing the Sabbath better observed than it had been for some time past. But there were some who were refractory. A fellow named Carroll, an Irishman, abused and ill treated a constable who was on his duty, ordering the people to church; saying, that he would neither obey the Clergyman nor the Governor; for which, the next day, he was properly punished.'

No. 2. p. 51. Sept. 1797. 'A church clock having been brought to the settlement in the Reliance, when that ship arrived from England,[4] and no building fit for its reception having been since erected, preparations were now making for constructing a tower fit for the purpose; *to which might be added a church*, whenever at a future day the increase of labourers might enable the Governor to direct such an edifice to be built.'

Observations.—In the first place, the *ruffle:*—the shirt to follow it—one time or other, or never, as it might happen. Neither in the literal, nor therefore in the figurative sense, does *edification* appear to have been any great object with Governors, in the improved Colony, any more than with the governed. To speak candidly, why should it have been? Of what use could the externals of religion be, in a community in which the only emotions they could reasonably be expected to give rise to, were those of hatred and contempt? Better no church than to be burnt down; better no service than to be scoffed at.

No. 3. p. 122, 123. Aug. 1798. 'The abandoned and dissipated disposition of most of those who were or had been convicts, so much to be regretted, and so often mentioned, was particularly manifest in a shameful abuse of the Sabbath,

[1] See pp. 240–6 below. [2] *Recte* 3–4. [3] See p. 181 n. above.
[4] HMS *Reliance*, formerly the merchant ship *Prince of Wales*, arrived at Port Jackson on 7 September 1795.

and a profane ridicule with which every thing sacred was treated. A conduct so derogatory to every christian principle had from time to time been severely reprobated; but it had now arrived at a height that called for the exertion of every advocate for morality to subdue. Observing, that, instead of employing the Sunday in the performance of those duties for which that day was set apart, it was passed in the indulgence of every abominable act of dissipation, the overseers of the different gangs were strictly ordered to see their men mustered every Sunday morning, and to attend with them at church. The superintendants and constables were to see this order complied with, and that the women (who, to their disgrace, were far worse than the men) were strictly looked after, and *made* to attend divine service regularly. And, as example might do something, the officers were not only to send a certain number of their servants, but they were also called upon, civil and military, to assist in the execution of this order; to the meaning of which, the magistrates were required in a particular degree to pay their attention, in *compelling* a due obedience thereto, by preventing the opening of the licensed public-houses during the hours of divine service, as well as any irregularity on the day appropriated to the performance thereof.'[1]

Observations.—This was '*compelling them to come in*'[2] with a vengeance: but to what use, or with what fruit?—Where were the *wedding garments?*[3]

As to the fountains of liquid poison, if they could be sealed up—sealed up to any purpose—at church times, why not at other times, and for ever?—But as to this see *Drunkenness*.[4]

No. 4. p. 129.[5] 1st Oct. 1798. 'Between seven and eight o'clock in the evening of this day, the *church* on the east side of the cove was discovered to be on fire. Every assistance, as far as numbers could be useful, was given, but ineffectually; for, the building being covered with thatch, which was at this time exceedingly dry and combustible, it was completely consumed in an hour.[6]

'This was a great loss; for during the working-days of the week the building was used as a *school*, in which from 150 to 200 children were educated, under the immediate inspection of Mr. Johnson, the clergyman. As it stood entirely alone, and no person was suffered to remain in it after the school hours, there was not any doubt that this atrocious act was the effect of design, and the consequence of the late order which had been given out and had been rigidly executed, enforcing attendance on divine service; and in the view of rendering, by the destruction of the building, the Sabbath a day of as little decency and sobriety as any other in the week. The perpetrators of this mischief were, however, disappointed in their expectation; for the Governor, justly deeming this to have been the motive, and highly irritated at such a

[1] For the order see Governor Hunter to the Duke of Portland, 1 May 1799, Enclosure No. 3, Government and General Orders (27 August 1798), *HRA*, ii. 356–7.

[2] See Luke 14: 23. This and the following allusion refer to the parable of the great banquet.

[3] See Matthew 22: 11.

[4] See pp. 209–17 below.

[5] *Recte* 129–30.

[6] For the burning of Johnson's church see pp. 181, 189 above.

shameful act, resolved, if no convenient place could immediately be found for the performance of public worship, that, instead of Sunday being employed as each should propose to himself, the whole of the labouring gangs *should be employed on that day in erecting another building for the purpose:* it happened, however, that a large store-house was just at that time finished; and, not being immediately wanted, it was fitted up as a church; and thus not a single Sunday was lost by this wicked design.'

Observations.—On the Sabbath all work, and no devotion—cries the accusing angel.—Work, yes: answers the recording angel; but holy work—work in order to devotion. What a conflict between the letter and the spirit![1]—*Non in me tantas componere lites.*[2] I leave it to the Saundersons of the age.[3]

No. 5. p. 272. Nov. 1799. 'The very little attention which had long been, and continued to be shewn to the duties of religion, and the want of that decency and respect which were due to the return of the Sabbath, were now so glaringly conspicuous, that it became *necessary to repeat the orders* which had indeed often been given upon that subject, and again to call upon every person possessed of authority, to use that authority in *compelling* the due attendance of the convicts at church, and other proper observance of the Sabbath.[4] The women were also directed to be more punctual in their appearance; for these still availed themselves of the indulgence which as women they had been treated with, seldom thinking themselves included in the restrictions that were laid upon others.'

Observations.—It would be an amusing sight in some respects, if it were not in other respects so melancholy an one, to see the Governor thus fighting the Dæmon of irreligion— fighting him with the same straws, with which your Lordship will behold him presently fighting the hydra of drunkenness.

No. 6. p. 299. Aug. 1800. '*As in defiance*[5] *of the various orders* which had been given to enforce a due attendance on Sunday at divine service, *that day still continued to be marked by a neglect of its sacred duties,* an order was again given out on the 25th, pointing out the duties of the superintendants, constables, and

[1] Bentham perhaps had in mind the commandment prohibiting labour on the Sabbath: see Exodus 20: 8–11.

[2] See Virgil, *Eclogues*, III. 108: *Non nostrum inter vos tantas componere lites*, i.e. 'It is not for me to settle so close a contest between you.'

[3] Robert Sanderson was the author of the textbook on logic that Bentham had studied at Oxford: see p. 84 n. above.

[4] For the order in question see Government and General Orders (29 November 1799), *HRA*, ii. 593, and for prior orders requiring that convicts attend divine service and constables enforce the observance of the Sabbath see Governor Hunter to Under Secretary King, 12 November 1796, Enclosure, Government and General Orders (9 November 1796), *HRA*, i. 701–2, and Governor Hunter to the Duke of Portland, 1 May 1799, Enclosure No. 3, Government and General Orders (27 August 1798), *HRA*, ii. 356–7.

[5] Collins 'In defiance'.

overseers, in this particular instance, and assuring them, that a further neglect on their part would be followed by their dismission from their respective situations.'[1]

Observations.—At this period, along with the *civil* and *military,* ends the *ecclesiastical* history of the 'improved' Colony. What effect has since been produced by these fresh orders succeeding to former orders, as often '*defied*' as issued, may be left to conjecture;—to conjecture grounded on unvaried experience, as well as the unchangeable nature of the case.

[2.][2]———*Per contra,* Penitentiary System.

No. 7. *Philadelphia,* 1793. *Lownes,* p. 89. 'Their {the prisoners} decorum and attention, at times appointed for religious worship, have been obvious, and are such as have obtained the approbation of all those who have been witnesses to it.'

VIII. Remedies unavailing—*Temporal*—1. *Punishments and Rewards—Evidence unobtainable.*

This head will consist in good measure of recapitulations.

No. 1. p. 4. Oct. 1796. Five murders in the year, as above page 187. No. 1. Strong presumptive proof adduced: but 'the kind of evidence necessary to establish the offence withheld.'

No. 2. p. 69.[3] Dec. 1796.[4] 'The house and stock of a poor settler involved in debt, purposely destroyed by fire. Emancipation, with a settlement, offered, and offered in vain, for evidence.'[5]

No. 3. p. 110. May 1798. 'A fine bull calf belonging to an officer was about this time taken from the herd; and though considerable rewards were offered for the discovery of the offender, nothing transpired that could lead to it. This was a serious evil; for the care and attention of years might in one night's time be destroyed by the villainy of a few of these lawless people.'

No. 4. p. 130. October 1798. Burning of the church and school at Sydney. Reward of £30, with emancipation, if a *non-expiree*; return to England, if an

[1] For the 'various orders' requiring compulsory church attendance see Governor Hunter to the Duke of Portland, 1 May 1799, Enclosure No. 3, Government and General Orders (27 August 1798); Government and General Orders (29 November 1799); and Acting-Governor King to the Duke of Portland, 28 September 1800, Enclosure No. 5, General Orders (4 October 1800), *HRA*, ii. 356–7; 593; and 626 respectively.

[2] 1803 '3.'

[3] *Recte* 69–70.

[4] Collins refers to events occurring in December 1797, and not December 1796.

[5] This paragraph is Bentham's paraphrase of Collins's description of the attack on the property and person of John Mitcham: see p. 188 above.

expiree. 'But it was seen with concern,' (adds the historian) 'that *rewards and punishments alike failed in their effect*.'[1]

No. 5. p. 197. Jan. 1799.[2] Speaking of a number of '*executions and punishments*' that took place at this time, 'it might be supposed (observes the historian) that they would have operated as a check to the commission of offences; but they appeared to be *wholly disregarded*.'

No. 6. p. 268. Oct. 1799. 'About this time a young ox was missing from the Government stock-yard at Toongabbe, and there was every reason to suppose it had been driven away and slaughtered .... In the hope of discovering the offender, a notice was published, holding out a conditional emancipation, and permission to become a settler, to any convict for life, who would come forward with the information necessary to convict the persons concerned in this destructive kind of robbery; and an absolute emancipation, with permission to quit the colony, to any one transported only for a limited time:[3] but nothing was ever adduced that could lead to a discovery.'

No. 7. p. 276. Dec. 1799. Burning of the jail at Paramatta, with one of the prisoners in it.—'Rewards, such as had formerly been held out.'—Same exertions, same success.[4]

No. 8. p. 297. July 1800. 'The prisoners who were left for execution at the end of the last month suffered death, two of them at Sydney on the 3d, and the third at Paramatta on the 5th of this month.[5] If examples of this kind could strike terror into the minds of the spectators, they certainly had not lately been without these salutary, though dreadful lessons.'

The inaccessibility of evidence presents two very material observations.

One is—that, in regard to the degree of profligacy prevalent in New South Wales, the criminal calendar, an alleged copy of which is, I observe, extant in print,[6] would, without a proper caution, be apt to

[1] See pp. 181, 189 above.

[2] Collins refers to events occurring in February 1799, and not January 1799. See also p. 187 n. above.

[3] For the notice see Government and General Orders (18 October 1799), *HRA*, ii. 590–1.

[4] See p. 190 above.

[5] Collins does not name the three executed prisoners, though the two individuals hanged at Sydney were probably William Meredith and Thomas Farr and the one hanged at Parramatta Thomas Thompson. Meredith and Farr were convicted at the Court of Criminal Judicature on 27 June 1800 of various charges including forgery, escaping from custody, and stealing while at large, while Thompson was convicted on 28 June 1800 of forgery. For their trials see SRNSW, NRS 2700 X905 (Reel 2651), pp. 471–3 and 475 respectively.

[6] Bentham probably had in mind George Barrington, *A Sequel to Barrington's Voyage to New South Wales, comprising an Interesting Narrative of the Transactions and Behaviour of the Convicts; The Progress of the Colony; An Official Register of the Crimes, Trials, Sentences, and Executions that have taken place: A Topographical, Physical, and Moral Account of the Country, Manners, Customs &c. of the Natives,—as likewise Authentic Anecdotes Of the most Distinguished Characters, and Notorious Convicts that have been Transported to the Settlement at New South Wales*, London, 1800, a work almost entirely derived, without attribution, from the first volume of Collins. An 'Official Register' of crimes committed in the colony since its foundation appears on the book's final six unnumbered pages.

give rise to false inductions, presenting the state of society under an aspect by much too favourable. If every individual offence committed, whether *prosecuted* or not, *detected* or not, were *registered* in it, no:—if the number of offences *committed* were in no greater a *ratio* there than in England, to the number of offences *prosecuted* for, no. But, in a community, in which the members are, almost to a man, in a league against Government—where each criminal has almost as many protectors, if not accomplices, as he has neighbours, the number of crimes *on record*, be it ever so small, affords no indication of any correspondent paucity, in the number of crimes *committed*.

Some cases indeed there are, in which, though the criminal remains unprosecuted, and even undetected, the existence of the crime will commonly be known, or at least suspected, and in both cases recorded. Murder at any rate is of the number.[1] But in the case of a crime of the prædatory class, unless accompanied with force to the person, or violence to the habitation or its contents, the prevalence of the crime may be continual and universal, without any specific *trace* of it, and therefore without any specific *mention* of it.

The other remark respects the degree of depravity, indicated by the universality of this mutual adherence, independently of the actual crimes resulting from it. In the ordinary intercourse of life, fidelity to engagements is a virtue:—why? because in the ordinary intercourse of life, among the engagements taken, there is not one in a thousand, the execution of which is not beneficial to the community upon the whole. That feature of negative sociableness, which disposes men not to obstruct or thwart one another in their enterprizes, even this too is, as far as it goes, a virtue:—why?—because in ordinary life, among the enterprizes engaged in, great and small, there is not one in a million, the success of which is not beneficial to the community as before. But for the same reason that, in the case of innocent and beneficial engagements and enterprizes, *fidelity* and disposition to mutual adherence are *virtues*, in the case of criminal ones, they are vices. *A sort of honour may be found* (according to a proverbial saying,) *even among thieves*. Good, as an *observation*; that is, *true* in fact: but bad, if the fact be regarded with complacency, and either the thieves themselves or the society infested by them are considered as being the better for it. That honour does exist among thieves is not to be doubted: for thieves are a society to one another, and it is only by honour that any society can be kept together. But to regard such honour with complacency, to speak with reprobation of every instance of the absence of it, to speak

[1] Bentham perhaps had in mind the role of the coroner in making enquiry concerning the manner of death when any person was 'slain or dies suddenly': see Blackstone, *Commentaries on the Laws of England*, i. 337.

with elogium of every instance of the manifestation of it, is indeed a natural enough prejudice, but, in some of its consequences, a very pernicious one. Without honour, society, even among thieves, could not exist:—true: but the thing to be wished for is, that among thieves, in so far as they are thieves, society never should exist. Of thieves, as of other men, the thing to be desired is, that they should observe the laws of honour in some cases, not observe them in others:—observe them on the occasion of their honest engagements; not observe them on the occasion of their dishonest ones: observe them in their ordinary dealings with other men; not observe them in their dealings with one another, in their capacity of thieves. By whatsoever cause produced, infidelity to criminal engagements is *repentance:* and wherein is a man the better, for being without repentance? To give birth to such infidelity—to purchase such repentance—is the object of every *reward* offered for the discovery of accomplices in crimes. To censure a man for the acceptance of any such offer—to commend him for the refusal of it—is to employ so much of the force of the popular or moral sanction, in a direction diametrically opposite to that of the action of the political sanction; diametrically opposite to the interest of society—of every society, but that of malefactors.

The application of this argument is susceptible of extensions: for example, subject to certain modifications, to the case of common *informers*. At present, let us content ourselves with applying it to the present case:—the more pertinacious and extensive this species of sinister fidelity, the more intense, and extensive, and incorrigible surely, is the depravity which it serves to indicate. If, indeed, in the case of this sinister fidelity, it were *sympathy*—sympathy on the part of the individuals as towards one another—that were in any degree the root of it, so far the inference would fail: but, over and over again, the absence of such sympathy, and that to a degree unexampled elsewhere, is attested as well by particular incidents as by general observations: the true root of this fidelity is—(so it appears throughout) not in any sympathy on their part for one another, but in their *antipathy* to Government—to the common bond by which society is held together.

—2. *Police.*

No. 1. p. 8. Nov. 1796. 'The useful regulation of numbering the different houses in the town of Sydney, particularly those in the occupation of the convicts,[1] was followed up by another equally serviceable, which directed the

[1] For the regulation that instituted the numbering of houses in Sydney see Governor Hunter to the Duke of Portland, 12 November 1796, Enclosure, Government and General Orders (9 November 1796), *HRA*, i. 701.

inhabitants of each of the four divisions of the town (for into that number it was portioned off) to meet, and from among themselves elect three of the most decent and respectable characters, who were to be approved by the Governor, and were to serve for the ensuing year as *watchmen*, for the purpose of enforcing a proper attention to the good order and tranquillity of their respective divisions. Many of the soldiers being allowed to occupy houses for their families in the vicinity of the barracks, the commanding officer was desired to appoint his own officer for the military division of the town, and to order them to report to him.' For the behaviour of these watchmen, see above p. 183, where they are stated as guilty of 'extreme negligence, or complicity with the malefactors.'

No. 2, p. 26. March 1796. At this time, for any but officers, no travelling without a *passport:* the passport to be *inspected* in each *district* by a *constable:* penalty for being found without one, a month's imprisonment for the first offence, arbitrary punishment in case of repetition. 'The frequent and unrestrained passing and repassing of idle and disorderly people from one part of the colony to another, and the mischievous correspondence which was kept up by such means, was productive of great evil. To check this as much as possible, *all persons,* the officers excepted, who were travelling from one district of the settlement to another, were required to furnish themselves with a *passport*, which, on a proper application, they would obtain without any difficulty. This was *to be shewn to and inspected by the constables in each district*; and, if found without it, they were to be *imprisoned* during a month for the first offence, and *otherwise punished* if it was repeated.[1] *But the best local arrangements were set at defiance by those hardened vagabonds, who seemed daily to increase in number and in infamy.*' For the effect of this expedient, see the next head. No. 10. July 1799.[2]

No. 3. p. 64. Dec. 1797. 'The annual election of *constables* took place in this month. These municipal regulations were attended at least with the advantage of introducing something like a system of regularity into the settlement, than which nothing was more likely to check the relaxation which had lately prevailed in it.' For the behaviour of these constables, see the next title, No. 7.[3]

No. 4. p. 197.[4] Jan. 1799.[5] 'Were it not evident that certain punishment awaited the conviction of offenders, it might be supposed that a relaxation of the civil authority had begotten impunity; but far otherwise was the fact: *the police was vigilant, the magistrates active,* and the Governor ever anxious to support them, and with incessant diligence, endeavouring to establish good order and morality in the settlement. *But, such was the depravity of these people*, from the habitual practice of vice, that they were become alike fearless of the punishments of this or of the world to come.'

[1] For the order requiring the carrying of passes see Governor Hunter to the Duke of Portland, 6 July 1797, Enclosure No. 3, Government and General Orders (20 March 1797), *HRA*, ii. 76–7.

[2] See p. 204 below.

[3] See p. 203 below.

[4] *Recte* 198.

[5] Collins refers to events occurring in February 1799, and not January 1799.

—3. *Functionaries corrupt—Servants worthless.*

No. 1. p. 60.[1] Nov. 1797. 'There can scarcely be recorded a stronger instance of human depravity, than what the following circumstance, which happened in this month, exhibits. A convict, who had formerly been a school-companion with the Rev. Mr. Johnson, had been taken by that gentleman into his service, where he reposed in him the utmost confidence, and treated him with the kindest indulgence. He had not been long in his house before Mr. Johnson was informed that his servant, having taken an impression of the key of his store-room, in clay, had procured one that would fit the lock: he scarcely credited the information; but, being urged to furnish him with an opportunity, he consented that a constable should be concealed in the house, on a Sunday, when all the family, this servant excepted, would be attending divine service. The arrangement succeeded but too well. Concluding that all was safe, he applied his key, and, entering the room, was proceeding without any remorse to plunder it of such articles as he wanted; when the constable, seeing his prey within his toils, started from his concealment, and seized him in the act of taking the property.

'Thus was this wretched being, without "one compunctious visiting of nature,"[2] detected in the act of injuring the man who, in the better day of his prosperity, had been the companion of his youth, and who had stretched out his hand to shelter him in the present hour of his adversity.'

No. 2. p. 104. April 1798. 'The proprietors of this valuable article of stock' (horses) 'were rather unfortunate in the care of it, notwithstanding the high price which it bore. The acting commissary[3] lost a very fine mare, through the stupidity of an Irish servant, who put a short halter round her neck, with a running knot, by which she was strangled in the night; and information had been received of the death of two foals belonging to Government. This accident proceeded from want of proper care in those who were appointed to look after them; but *unfortunately, though they were often changed, the change was never found to be for the better.*'

No. 3. p. 105.[4] April 1798. 'They' (the settlers) 'laboured under another evil, which was the effect of an unbounded rage for traffic, that pervaded nearly the whole settlement. The delivery of grain into the public store-houses, when opened for that purpose, was so completely monopolised, that the settlers had but few opportunities of getting the full value for their crops. A few words will place this iniquitous combination in its proper light. The settler *found himself thrust out from the granary, by a man whose greater opulence created greater influence*. He was then driven by his necessities to dispose of his grain for less than half its value. To whom did he dispose of it?[5] To the very man whose greater opulence enabled him to purchase it, and whose greater influence could get it received into the public store!'[6]

[1] *Recte* 60–1.
[2] An echo of *Macbeth*, I, v. 2.
[3] James Williamson.
[4] *Recte* 105–6.
[5] Collins 'it!'
[6] For complaints by settlers regarding the monopolization of the public granary see, for instance, Governor Hunter to the Duke of Portland, 5 January 1800, and Enclosure Nos. 1–3, *HRA*, ii. 427–32.

Observations.—The english of this seems to be, that those, on whom it depended to choose of whom the Governor should make these his purchases, gave the preference to those who would bribe highest.

No. 4. p. 111. May 1798. 'The deceptions and impositions which were daily in practice among the labouring part of the colony, to the great injury of the concerns of Government, rendered it highly expedient that the Governor, who had those concerns to attend to, should be assisted by trusty and active persons, in every situation where public works might be carrying on. Having made some discoveries of this nature in the department of the sawyers, he issued a public order, specifying the hours which should be employed in every branch of public labour. This had by no means been the first attempt to check the impositions of these people; but it was found, that *the private concerns of those who should superintend the various public works occupied so much of their time, that their duty was either wholly neglected or carelessly performed.* This created such a relaxation of discipline, that *a repetition of orders and regulations* was from time to time published, to keep the labouring people constantly in mind, that they were the servants of the crown, and remind those who were appointed to look after them, that they had neglected that duty which should ever have been their first and principal consideration.'[1]

No. 5. p. 134.[2] Nov. 1798. 'An instance of the fatal effects of misguided conduct, and a too late sense of criminality, occurred in the tragical end of Nathaniel Franklyn, the Governor's steward. This man, whom he brought from England, had the whole care and management of the Governor's domestic concerns entrusted to him. He had been repeatedly cautioned by his master against the many artful and designing acquaintances which he had formed in the town, and was pointedly desired to be aware of not suffering himself to be influenced by their opinions. It was proved that he had not had fortitude enough to withstand their solicitations, but had consented to rob the Governor to a very considerable amount, abusing the confidence he had placed in him, and making use of his name in a most iniquitous manner. Of the infamy of his conduct he was at last sensible, and, retiring into the shrubbery in the garden of the Governor's house, shot himself through the head.'[3]

No. 6. p. 138. Dec. 1798. 'On the 19th died, very suddenly, Mr. Stephenson, the store-keeper at Sydney.[4] As his death was not exactly in the common way, so neither had been the latter part of his life; indeed, all that part of it which he

[1] According to the order in question (see Governor Hunter to the Duke of Portland, 20 August 1798, Enclosure, Government and General Orders (15 May 1798), *HRA*, ii. 214), it had become customary among convict sawyers to do their government labour in the mornings and then work in the afternoons on their own account. 'From this shameful practice', the order continues, 'it appears that if the [weather in] the forenoon of every day in the week shou'd prove bad no work wou'd be done by the servants of the Crown as their public duty', whereupon convicts were directed to complete their allotted weekly task before working for their own benefit.

[2] *Recte* 134–5.

[3] For Hunter's account of the suicide of Franklyn, his 'principal servant', see Governor Hunter to the Duke of Portland, 15 November 1799, *HRA*, ii. 396.

[4] William Stephenson had arrived at Port Jackson as a convict aboard the *Atlantic* on 20 August 1791 and held the position of storekeeper at Sydney from 13 September 1796 until his death.

had passed in this country; for, by an upright conduct, and a faithful discharge of the duties of the office with which he had been entrusted, he secured to himself the approbation of his superiors while living, and their good name at his death.

'Stephenson *had been emancipated for his orderly behaviour,* and to enable him to execute the office of store-keeper.'

Observations.—If I misrecollect not, this is the *single* instance of reformation, mentioned by our historian, directly or indirectly, in the compass of the last five years—the period comprised in this his second volume.

No 7. p. 139. Dec. 1798. 'The annual election of constables recurring about this time,[1] the magistrates were desired to be very particular in their selection of the persons returned to them for that purpose, as there was reason to fear, from the frequent escapes of prisoners from the different gaols, that *the constables had been tampered with so shamefully to neglect their duty.*'

No. 8. p. 196. Jan. 1799. 'On the night of the 24th, the acting commissary's house was broken into, and robbed of articles to a considerable amount. The thieves appeared to have got in at the office window, and loosened the bricks of a partition wall; by which opening they got into the store-room, and, forcing the locks of the chests and trunks, carried away every thing that they could manage.[2]

'*One evil among others which attended the frequent arrival of ships* in the port *was, the ready market which these plunderers found for disposing of their stolen goods*; *the seamen not hesitating to become the purchasers on leaving the place.*'

No. 9. p. 210. May 1799. 'At the same court, one man, Robert Lowe, was adjudged corporal punishment, and one year's hard labour, for embezzling some of the live stock of Government, which had been entrusted to his care.[3] He was a free man, and had been one of the convicts who were with Captain Riou in the Guardian, when her voyage to New South Wales was unfortunately frustrated by her striking upon an island of ice;[4] on account of which, and of their good conduct before and after the accident, directions had been given for their receiving conditional emancipation, and being allowed to provide for their own maintenance. *Few of these people, however, were in the end found to merit this reward and indulgence*, as their future conduct had proved; and this last act of delinquency pointed out the necessity of a free person being sent out from England, to superintend the public live stock, with such an allowance as

[1] For the order requiring the election of constables in Sydney for 1799 see Governor Hunter to the Duke of Portland, 1 May 1799, Government and General Orders (5 December 1798), *HRA*, ii. 361.

[2] For the robbery of Acting Commissary James Williamson's house see p. 187 & n. above.

[3] See p. 182 n. above.

[4] Edward Riou had command of the *Guardian* when it struck an iceberg around 1,300 miles off Port Elizabeth on 24 December 1789 (see p. 182 n. above). On his return to England, Riou was formally court-martialled for the loss of his vessel, but was honourably acquitted and promoted to Post-Captain. Riou returned to active service but was killed at the Battle of Copenhagen on 2 April 1801.

would make him at once careful of his conduct, and faithful in the execution of his trust.'

No. 10. p. 219. July 1799. 'Still alarming depredations were nightly committed upon the live stock of individuals, and were doubtless effected by those *wandering pests to society*; *the regulations which had long since been established as a check to such an evil being wholly disregarded*. It was discovered, that hogs were stolen, and delivered on the victualling-days at the public store, without any enquiry being made, as to whose property they were, or by whom delivered, any person's name which they chose to give in being considered by the store-keeper as sufficient to authorize him to receive it, although printed vouchers for the delivery of such pork (and grain likewise) were left at the store, for the purpose of being signed by the party offering it. This certainly operated as an encouragement to the commission of these thefts; and it became necessary to order, that such persons as attended the receipt of any of these articles at the store should direct whoever delivered them to sign the voucher of the quantity received by him;[1] the Governor being determined never to approve of any bill laid before him for that purpose, unless the Commissary should produce the voucher, properly signed by the person in whose name such bill was made out.'

Observations.—By '*the regulations established as a check to those wandering pests to society*,' I understand the regulations requiring *passports*, the measure above spoken of under the head of *Police*: No. 2.[2]

No. 11. p. 267.[3] Oct. 1799. 'A number of the public labouring servants of the crown having lately absconded from their duty, for the purpose either of living by robbery in the woods, or of getting away in some of the ships now about to sail, that none of those concerned in the concealing them might plead ignorance, public notice was given, "that any officer or man belonging to the above ships, who should be known to have countenanced or assisted the convicts above alluded to in making their escape, would be taken out of the ship, and punished with the utmost severity of the law; and as the most strict and scrupulous search would take place on board,—for every convict which should be found concealed, or suffered to remain on board without regular permission, so many of the ship's company should be taken out and detained for daring to encourage such escape.'[4] . . . . . .

'On the day this order was issued, the *Hillsborough,* which was moving out of the Cove, and preparing for sea, was strictly searched; and several convicts being found on board, they were brought on shore, and each received a severe corporal punishment. One of them was excused, on condition of his declaring who the people were that had encouraged that concealment, and prepared hiding-places for them. He accordingly deposed to *two of the seamen*, who were

[1] See Government and General Orders (29 August 1799), *HRA*, ii. 589.
[2] See p. 200 above.
[3] *Recte* 266–8.
[4] See Government and General Orders (9 October 1799), *HRA*, ii. 590.

also brought on shore, *punished*, and afterwards drummed to the wharf, and sent back to their ship. The foregoing order was then published.

'How well it was attended to, and *what effect the punishment of the seamen* and convicts *produced*, were instantly seen. The *Hunter*,[1] preparatory to a voyage to Bengal, where she was to freight with goods for the colony, went out of the harbour. A woman, named Ann Holmes, being missing, the Governor ordered an armed boat from the *Reliance* to follow the ship, with some of the constables, and search her; with directions, if any persons were found on board who had not permission to depart, to bring her into port again. Having found the woman, the ship was brought up the harbour and secured.

'*Several of her crew having behaved in a most insolent and mutinous manner to the officer of the Reliance*,[2] having armed themselves against the constables with cutlasses, and one of them having presented a musquet to the chief constable, they were secured, ordered to be punished on board their own ship, and afterwards turned on shore. But it was necessary to do something more than this; and, a criminal court being assembled for the purpose, the *master of the ship* was brought to trial, charged with aiding and abetting a female convict to make her escape from the colony. As the offence consisted in aiding a *convict*, it was requisite to prove that such was the person found on board his ship; but, upon referring to a list of the prisoners who were embarked in the *Royal Admiral*, the ship in which Ann Holmes had been sent out to New South Wales, no specific term of transportation was found annexed to her name. On the question then, whether the master had aided a convict in making an escape, *he was acquitted*, *it not being possible by any document to prove that Holmes was at that moment a convict*.[3] But the master was reprehensible in concealing any person whatever in his ship, and ought to have felt the awkwardness of his situation, in being brought before a court for the breach of an order expressly issued a short time before to guard him and others against the offence that he had committed.

'When the *Hillsborough* was searched, not less than *thirty convicts* were found to have been received on board, against the orders and without the knowledge of the officers, and *secreted by the seamen*. This ship and the *Hunter,* shortly after these transactions, sailed on their respective voyages.'

No. 12. p. 331. Aug. 1801. 'It appeared on examining the registers of the several terms of transportation of the convicts, that the *clerks*, who necessarily had had access to them, had *altered* the *sentences of* about *two hundred prisoners, receiving* a gratuity from each equal to *ten or twelve pounds*. This was a very serious evil; and proper steps to guard against it in future have been

[1] The Spanish vessel *Nostra Senora de Bethlehem*, having been captured during its voyage from Lima to Guayaquil by the whalers *Cornwall* and *Kingston*, had reached Port Jackson on 24 April 1799. It was condemned as a prize at a Vice-Admiralty Court on 1 May 1799 and subsequently renamed the *Hunter*. See Governor Hunter to the Duke of Portland, 1 May 1799, *HRA*, ii. 355–6, 730 n.

[2] Bookless Masley, Mate of the *Reliance*.

[3] John or William Kingston, Master of the *Hunter*, was tried at the Court of Criminal Judicature on 22–3 October 1799 on a charge of 'aiding and Assisting Ann Holmes a prisoner to escape out of lawful Custody': see SRNSW, NRS 2700 X905 (Reel 2651), pp. 363–86. Ann Holmes's convict indent states against her name, 'No Indent or other Return': see SRNSW, NRS 1150 SZ115, p. 250.

taken both at home and in the colony.' Quere, Of how many hundred prisoners could the terms have been shortened by clerks in a *Penitentiary House?*

Observations.—'If the salt hath lost its savour, wherewith shall it be seasoned?'[1]

At a former period, in more instances than one, the terms of the convicts, instead of an abridgment, as here, obtained a prolongation. The cause of it was—not any activity on the part of any clerks or other persons in New South Wales, but the negligence (let us hope at least that it was nothing worse than the negligence) of certain persons here at home: ship after ship, convicts were sent out, and no calendar of their terms sent with them.[a] In England the presumption is *in favorem libertatis:*[2] at the antipodes, where justice was turned topsy-turvy, it was, naturally enough, *in favorem servitutis*.[3] *We have no proof*—(says Government there to these convicts) *gentlemen who sent you out have given us none—of our having a right to detain you—any of you—so much as a single day: therefore, in the first instance, we detain you—all of you—for life. To each of you, we give an estate for life in banishment and bondage: yes, for life, in the first instance, defeasible indeed, as to the bondage, by what lawyers call in England a possibility upon a possibility.*[4] Thus it was, that in New South Wales, gentlemen of the highest ranks, with the help of gentlemen at home, tacked on, in a wholesale way, to the several legal, so many illegal portions of punishment, bondage and banishment together. In the case at present in question, gentlemen of an inferior rank, instead of tacking on illegal portions of punishment, struck off so many portions of legal punishment: not *in toto* indeed, bondage and banishment together, but bondage alone, in general at least leaving the banishment pretty much upon the same footing as they found it. Nor yet were the portions of bondage struck off freely and gratuitously, but for the valuable consideration of £10 or £12 a head: in other words, part of the bondage was thus *compounded for*, and *commuted* into a fine. The fine, it is true, did not go immediately, nor I fear was intended ever to go, if it could safely be prevented from going, into the proper reservoir for fines, the *Privy*

[a] I Collins p. 74. II. pp. 131. 212. 267.[5]

[1] Matthew 5: 13. [2] i.e. 'in favour of liberty'. [3] i.e. 'in favour of servitude'.

[4] See, for instance, Coke, *The First Part of the Institutes of the Lawes of England*, London, 1628, p. 26, describing, in the context of the inheritance of real property, the first possibility of a man marrying one woman and the second possibility of his thereafter marrying a second woman.

[5] Collins describes occasions on which convicts claimed that their sentences had expired and that they should be restored to the rights and privileges of free men, but the records proving or disproving their respective cases had not been transmitted to the colony. The individuals in question were ordered to continue working for the government, and to take a ration from the public stores, until the documents had been received.

Purse: to which, having said *proper*, I am almost ashamed to add—the King's:—but in this there seems little to distinguish these from other fines. Gentlemen acted in that behalf as so many self-constituted receivers and surveyors of the Green Wax:[1] and, as other receivers and surveyors of that same sort of wax might be expected to do, kept their own secret, kept every thing, money and secret together—safe till called for. Neither indeed was the fine thus levied sufficiently public, to have any very beneficial effect in the way of *example:* but in the way of *reformation*, and in the character of a remedy applied *pro salute animæ*,[2] the effect of it could hardly have been greater if levied by the purest ecclesiastical hands, or passed on, and stored up in the regular official hive, of the Receiver and Surveyor General of His Majesty's Royal Green Wax, as aforesaid.

Question (should Robin Hood[3] ever come to life again) for the Lyceum[4] of *Robin Hood*. Which are most to blame? Gentlemen in New South Wales, who without law have shortened servitude, or gentlemen at home—who, also without law, have lengthened it?

From former titles, Your Lordship has seen that New South Wales discipline is no source of *reformation* for convicts: that, è contra, it is a source of ulterior *corruption* for convicts:—from this title Your Lordship has seen, and in a variety of very extensive instances, that it is moreover a source of corruption for *honest men*. For Government store-keepers, as per Nos. 3. and 10;[5] Superintendant, as per No. 4;[6] Stewards, as per No. 5;[7] Constables, as per No. 7;[8] Seamen in general, as per No. 8;[9] Seamen in Merchant's service, as per No. 11:[10] Clerks in the Government office, as per No. 12;[11] Soldiers, as per I Collins, 303, 455: mentioned in my former letter, p. 125–6 and 159.

Thus, and thus far, in known instances: in another way, and in unknown instances without account, the spread of the corruption may have been in an indefinite degree more extensive. To so many numerous and important classes of His Majesty's subjects as are forced or tempted to make a house-of-call of the improved colony—to

[1] The Surveyor of the Green Wax, an official in the Exchequer, was responsible for collecting so-called green wax monies, that is revenues derived from fines, amercements, forfeitures, and other debts owed to the Crown. The name of the office arose from the colour of the seals traditionally used to authenticate the estreats by which such monies were exacted. George Rose held the office from 1774 to 1797.

[2] i.e. 'for the good of his soul'.

[3] Robin Hood (*supp. fl.* late 12th–13th cent.), legendary outlaw hero, who was characterized as robbing from the rich and giving to the poor.

[4] The Lyceum was a temple, at the foot of Lycabettus Hill in Athens, which housed a school founded by the philosopher Aristotle.

[5] See pp. 201, 204 above respectively. [6] See p. 202 above.

[7] See ibid. [8] See p. 203 above. [9] See ibid.

[10] See pp. 204–5 above. [11] See pp. 205–6 above.

the King's army, to the King's navy—to seamen in private service, the nest of female convicts constitutes a constantly open school of mischief and depredation; a school, in which the arts of theft, robbery, burglary, murder, and incendiarism, are taught by a set of schoolmistresses of the very first order: of schoolmistresses, pronounced over and over again, upon the fullest experience, by the highest authorities, and most competent judges, to be '*far worse than the men*'[1]—far worse than thieves, robbers, burglarers, murderers and incendiaries.[a]

[a] In the note inserted in p. 90. (Letter I.) the following head intended for the Third, was omitted by mistake. It will be found, I believe, not less apposite in this place.

III. Soldiery corrupted by the Convicts—Closer Inspection the only Remedy.

No. 1. p. 59, 60, 61.[2] March 1789. 'He {Hunt} accused *six other soldiers* of having been concerned with him in the diabolical practice of *robbing the store, for a considerable time past, of liquor and provisions in large quantities . . . . A connection subsisted between them and some of the worst of the female convicts,* at whose huts, notwithstanding the internal regulations of their quarters, they found means to enjoy their ill acquired plunder . . . .

'On the morning of their execution, one of them declared to the clergyman who attended him, that the *like practices* had been carried on at the store *at Rose Hill* by similar means and with similar success. He named two soldiers and a convict as the persons concerned.'[3]

No. 2. p. 313, 314. Sept. 1793. 'The foundation of another barrack for officers was begun in this month. For the privates one only was yet erected; but this was not attended with any inconvenience, as all those who were not in quarters had built themselves comfortable huts between the town of Sydney and the brick-kilns. This indulgence might be attended with some convenience to the soldiers; but it had ever been considered that *soldiers could no where be so well regulated as* when living in quarters, where, *by frequent inspections* and visitings, their characters would be known and their conduct attended to. In a multiplicity of scattered huts, the eye of vigilance would with difficulty find its object, and the soldier in possession of a habitation of his own might, in a course of time, think of himself more as an independent citizen, than as a subordinate soldier.'

No. 3. p. 425.[4] Feb. 1796. 'This intercourse had been strongly prohibited by their officers; but living (as once before mentioned) in huts by themselves, it was carried on without their knowledge. Most of them were now, however, ordered into the barracks; but to give this regulation the full effect, *a high brick wall, or an inclosure of strong paling, round the barracks, was requisite; the latter* of these securities *would have been put up some time before*, had there not been a want of the labouring hands necessary to prepare and collect the materials.'[5]

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[1] See p. 185 above.

[2] Bentham's source here and for the following two passages is the first volume of Collins.

[3] On 25–6 March 1789 six marine privates, namely Richard Askew, James Baker, James Brown, Richard Dukes or Lukes, Thomas Jones, and Luke Hines or Haines, were sentenced to death for having repeatedly plundered the public storehouse, after Private Joseph Hunt turned King's evidence against them. The men were hanged on 27 March 1789. Hunt received a pardon, and in June 1789 embarked on the *Sirius* to join the marine detachment at Norfolk Island.

[4] *Recte* 455.

[5] For the order requiring soldiers to live in barracks see Governor Hunter to the Duke of Portland, 12 November 1796, Enclosure No. 1, Government and General Orders (8 February 1796), *HRA*, i. 687, and p. 126 n. above.

IX. *Main Cause of Non-reformation, Drunkenness: Universality and Incurableness of it in New South Wales.*[a]

No. 1. II Collins, p. 9.[1] 29 Nov. 1796.[2] Speaking of three capital convicts, who had been executed for robbing the public stores, and three others who on conviction of the same offence had received a conditional pardon,[3] 'It was much to be lamented,' (continues the Judge Advocate) 'that these people were not to be deterred by any example from the practice of robbing the public stores, which had of late been more frequent than heretofore, and for which there could not be admitted the shadow of an excuse; as the whole of the inhabitants of every description were at this very time on a full and liberal allowance of provisions and clothing, neither of which were in any scarcity in the settlement. But *the cause was to be found in the too great indulgence in the use of spirituous liquors*, which had obtained among them *for a considerable time past*. The different capital crimes which had lately been brought before the court of criminal judicature, together with the various petty offences that daily came under the cognizance of the magistrates, did not proceed from an insufficiency either of food or clothing; but from an inordinate desire of possessing, by any means whatsoever, those articles with which they might be able to procure spirits, "*that source—as the Governor expressed himself* in an order which he published directly after these executions—that source *of the misfortunes of all those, whom the laws of their country,* and the justice that was due to others, *had launched into eternity, surrounded with the crimes of an ill-spent life.*"'[4]

No. 2. p. 18. Jan. 1797. Speaking of the persons called *settlers* (the *expirees,* who took to farming on their own account), and of the measures taken to reduce what was looked upon as excessive in the rate of wages demanded

[a] A cause, perhaps equally efficient, is the *promiscuous aggregation:* and this, being of the very essence of the colonization system, is still more palpably incurable than the drunkenness. But as this, in the character of a matter of fact, needs no proof, it would have been misplaced, if inserted among the heads under which the evidentiary matter stands arranged.

[1] *Recte* 9–10.

[2] According to Collins, at the sitting of the Court of Criminal Judicature on 23–9 November 1796, one individual was sentenced to death for murder and seven for robbing the public stores. This was the first sitting to be conducted by Richard Atkins (1745–1820), Acting Deputy Judge Advocate of New South Wales 1796–8, 1800–2, Deputy Judge Advocate of New South Wales 1802–9.

[3] The executed convicts were Matthew McNally and Thomas Doyle, who were hanged at Parramatta, and John Lawler, who was hanged at Sydney with a soldier named Martin McEwen, on 9 or 10 December 1796, while the pardoned individuals were convicts Thomas Inville and Michael Doland and the soldier John McDouall. Doland, Doyle, Lawler, and McEwen, along with John Griffiths and Richard Elliott, were tried at the Court of Criminal Judicature on 23 November 1796 for burgling the home and storehouse of James Williamson, for which offence all but Griffiths and Elliott were convicted: for the trial see SRNSW, NRS 2700, 5/1147B (Reel 2391), pp. 419–33.

[4] For the order see Governor Hunter to the Duke of Portland, 6 July 1797, Enclosure No. 3, Government and General Orders (12 December 1796), *HRA*, ii. 70.

of them by such of their fellows as maintained themselves by serving them as labourers,[1] he goes on and observes, 'It must appear from this, that every necessary and useful regulation was suggested that could promote the convenience and advantage of these people, who being in possession of land that yielded the most ample returns, nothing but the greatest worthlessness on their part could have prevented their getting forward, and becoming men of property. That too many of them were of this description will appear evident, from its being notorious that *their crops were no sooner gathered than they were instantly disposed of for spirits*, which they purchased *at the rate of three, nay, even four pounds per gallon*, and of a spirit often lowered one fourth or more of its strength with water.'

No. 3. p. 49.[2] Sept. 1797. On the 20th of this month, 'the Deptford, a small brig, arrived from Madras with a cargo of goods, upon speculation, for the Sydney market. The spirit of trade which had for some time obtained in the colony, afforded an opening for adventurers to bring their goods to this settlement. The voyage from India was short and direct; and, from the nature of their investments, they were always certain of finding a ready sale, and an ample return upon the original invoice. But this intercourse was found to be pregnant with great evil to the colony; for, *preferring spirits to any other article that could be introduced from India, the owners never failed to make the rum of that country an essential part of every cargo* which they sent upon speculation. And, though every necessary measure was adopted to prevent *all* that arrived from being landed, yet such was the avidity with which it was sought after, that, *if not permitted, it was generally got on shore clandestinely, and very few ships carried back any of what they had brought down*. To this source might be traced *all the crimes which disgraced, and all the diseases that injured the colony*.'

No. 4. p. 71. Dec. 24, 1797. A particular anecdote, mentioned by the historiographer under this date, may serve to shew the state of public opinion among the convicts, with reference to this most prolific of all vices. 'On the eve of Christmas-day, two young men, settlers on some land midway between Sydney and Paramatta, having been *boasting* of their respective abilities in drinking, regardless of the solemnity of the time, challenged each other to a trial of their skill; on which they were so deliberately bent, that, *to prevent their being interrupted*, they retired to the skirts of a neighbouring wood with a quantity of raw spirits, which they had provided for the purpose. Their abilities, however, were not equal to their boasting; for one of them died upon the spot, and the life of the other was fast ebbing when he was taken up. Had another hour elapsed, he too must have perished, like his wretched companion.[3] They had not been able

[1] In January 1797 in response to settlers' complaints about the excessive wage demands of labourers, Hunter ordered settlers in each district to meet every three months to agree upon a 'rate of wages to laborers or others whom they have occasion to hire', and warned that anyone who subsequently violated the agreed rate would be fined: see Governor Hunter to the Duke of Portland, 6 July 1797, Enclosure No. 3, Government and General Orders (14 January 1797), *HRA*, ii. 73.

[2] *Recte* 49–50.

[3] The dead man was William Crew, who had been granted 30 acres of land on 9 December 1794.

to finish all the pernicious spirit which they had prepared, some of it remaining by them in a case-bottle when they were found.'—'To prevent their being interrupted,' not to prevent its being known, since their supposed abilities in this way were matter of '*boast*.'

No. 5. p. 80. Jan. 20, 1798. After having spoken, in p. 175,[1] of a merchant ship called *the Sydney Cove*, that had been then lately wrecked in her voyage from Bengal to New South Wales on speculation, and of the dispatch of a vessel called the Francis to bring in the crew and what could be saved of the cargo—On the 20th of January 1798, continues our author, 'the Francis returned with Captain Hamilton' {the captain of the Sydney Cove} 'from the southward. Previous to his departure for the wreck of his ship, he had informed the Governor that she had on board nearly 7000 gallons of spirits, and solicited permission to bring back a part with him in the schooner. The Governor, *ever averse to the introduction of spirituous liquors*, would certainly have resisted the application; but, it being generally known in the colony that a considerable quantity of this article had been saved from the wreck, and that the island abounded with kangaroos and birds, he conceived these circumstances not only to have conduced to *those desertions and captures of boats which had been effected*, but as likely to prove farther temptations to similar practices. He therefore determined to purchase the rum of Captain Hamilton; and, as there was none in store *for the public service, to take it on account of Government*. An agreement was accordingly entered into by the Commissary, and 3500 gallons were brought round in the Francis.'

Observations.—Quere 1st. How much more intoxication would be produced by a gallon of spirits taken on account of Government, than by ditto of ditto taken on any other account?—Quere 2d. In what degree or respect is 'the source of all the *crimes that disgraced, and all the diseases that injured the colony*,' &c. conducive to *the public service?*—Quere 3d. If, by *stolen boats* or otherwise, spirits, when landed in Providence Island[2] *by accident,* cannot be prevented from being smuggled into New South Wales, how can they, if landed on ditto, or any nearer and more convenient spot, *by design*, and for this very purpose?

No. 6. p. 133. Oct. 1798. The observation made at this time by the Governor, respecting the state of things in a spot so often mentioned as by far the most fertile of all the settlements, may serve to shew of how little avail are the most signal *geographical* advantages when counteracted by this *moral* obstacle to all industry and all happiness. 'Towards the end of the month, the Governor visited the settlers at the Hawkesbury; and, while he was there, made some useful regulations among the *sawyers*, who had *fixed their own portion of public labour*. He gave notice, that a session should be held quarterly for settling all

[1] The cross-reference in 1802 is incorrectly stated as p. 35, but the *Sydney Cove* appears at p. 9, and there not by name.

[2] A slip for 'Preservation Island', where the *Sydney Cove* had been beached in February 1797: see p. 175 & n. above.

civil concerns;[1] and made some other local arrangements, which, if attended to, would have conduced essentially to the welfare of the settlers, *whose farms he found promising plenty, but whose houses and persons wore the appearance of poverty and beggary, they converting all the produce of their farms to the unworthy purpose of purchasing a pernicious spirit that must ever keep them poor.*'

No. 7. p. 198. Feb. 1799. '*Notwithstanding the settlement had before it the serious prospect of wanting grain, and the consequent destruction of much useful stock*, it was known that several people had *erected stills*, and provided materials for the purpose of distilling spirituous liquors; a pernicious practice, *which had long been forbidden by every officer who had had the direction of the colony.* Former orders on this subject were now repeated, and persons of all descriptions were called upon to use every means in their power, in aid of the civil magistrate, to seize and destroy such stills and materials as they might find.'[2]

No. 8. p. 203. March 1799.[3] Speaking of an act of *homicide,* committed, in self-defence, by a sentinel soldier, on the person of a drunken seaman. '*This accident*' (continues the reporter) '*was the effect of intoxication*; *to which, a few days after, another victim was added*, in the person of a female, who was either the *wife or companion of* Simon Taylor, a man who had been considered as *one of the few industrious settlers* which the colony could boast of. They had both been drinking together to a great excess, and in that state they quarrelled, when the unhappy man, in a fit of madness and desperation, put an untimely end to her existence. He was immediately taken into custody, and reserved for trial.[4]

'*To this pernicious practice of drinking to excess, more of the crimes which disgraced the colony were to be ascribed than to any other cause*; and more lives were lost through this than through any other circumstance; for the settlement had ever been free from epidemical or fatal diseases. How much then was the importation of spirits to be lamented! *How much was it to be regretted, that it had become the interest of any set of people to vend them!*' {It might have been added (as your Lordship will see)—and, in one way or other, of *every* set of people without exception. As to its being *become,* so it always was from the first, and so it must be to the last.}

'*Several robberies* which at this time had been committed, *were to be imputed to the same source.*'

[1] For the order that established fixed working hours for sawyers at the Hawkesbury River settlements and directed the holding of quarterly meetings of a civil court there see Governor Hunter to the Duke of Portland, 1 May 1799, Enclosure No. 3, Government and General Orders (30 October 1798), *HRA*, ii. 359.

[2] For the order that enjoined constables and watchmen to locate and destroy illicit stills and bring to prosecution their owners see Governor Hunter to the Duke of Portland, 1 May 1799, Enclosure No. 3, Government and General Orders (28 February 1799), *HRA*, ii. 364–5. The 'former orders' were perhaps those referred to in Governor Hunter to the Duke of Portland, 3 March 1796, ibid., i. 555, where Hunter had reported that, after discovering that settlers had erected stills to produce 'a most noxious and unwholesome spirit', he had 'issued public Orders strictly prohibiting a practice so certainly ruinous to the health of the settlement' and had ordered the destruction of the stills.

[3] Collins refers to events occurring in April 1799, and not March 1799.

[4] At the Court of Criminal Judicature on 17 May 1799, Simon Taylor was convicted and sentenced to death for the murder of his wife Ann, née Smith, and was hanged on 20 May 1799. For the trial see SRNSW, NRS 2700 X905 (Reel 2651), pp. 199–208.

No. 9. p. 205.[1] April 1799. At this time a Spanish ship, having been taken by two whalers, was brought into Port Jackson; and the ship being condemned, part of her cargo was sold by auction.[2] The cargo (our author informs us in a note) 'consisted of sugar, flour, and an ardent spirit similar to the *aqua ardente* of the Brazils.'[3] 'This' 'article' (he adds) 'the Governor would *not* allow to be sold *by auction*.'

Observations.—Not by auction:—that the Governor would not allow it to be sold *at all* is not said. Quere 1. How much more intoxication would be produced by a gallon of spirits sold by auction than by ditto of ditto sold by hand?—Quere 2. What advantage is gained by keeping down the price 'of the source of all diseases and all crimes?'[4]

No. 10. p. 222. July 1799. An observation made at this time serves at once to shew the prodigious intensity of two vicious and closely allied propensities—drunkenness and sloth: so mighty the latter, nothing less than the former was able to get the better of it. 'Much' (says our historian) 'might be expected from the exertions of three hundred and fifty-five people; and the greatest advantage would have been derived from their labours, had they been less prone to dissipation and useless traffic—*a traffic which most of them entered into solely with a view to indulging themselves in their favourite propensity of drinking*.'

No. 11. p. 274.[5] 2d Dec. 1799. 'In the evening . . . the Plumier, a Spanish ship, anchored in the Cove. She was a prize to three whalers, who had taken her near Cape Corientes, on the coast of Peru.[6] Her cargo consisted chiefly of bad spirits and wine, which, on her being condemned by the Court of Vice-Admiralty as a lawful prize, were removed into the *Supply*, and an order was given out, *strictly forbidding the landing of any spirits*, wine, or even malt liquor, *until a regular permit had been first obtained*. This restriction upon wine and malt liquor was occasioned by spirituous liquors having been landed under that description.'[7]

No. 12. p. 275. 16th Dec. 'The Court of Criminal Judicature being assembled, two mates of the (ship) Walker were brought before it, and tried for using menaces to a person who had stopped their boat when attempting to land spirits without a permit; but as he had not any special authority for making the seizure, or detaining the boat, they were acquitted.'[8]

[1] *Recte* 205 n. [2] i.e. the *Nostra Senora de Bethlehem*: see p. 205 n. above.
[3] i.e. *aguardiente*, literally 'firewater'. [4] See p. 210 above. [5] *Recte* 274–5.
[6] *El Plumier* had been captured on 7 July 1799, during its journey from California to Peru, by the crews of the whalers *Barbara*, *Betsey*, and *Resolution*. On 2 December 1799 the ships reached Port Jackson. On 7 December 1799 *El Plumier* was condemned at the Vice-Admiralty Court as a prize. See Governor Hunter to the Duke of Portland, 3 January 1800, *HRA*, ii. 425–7.
[7] For the order see Government and General Orders (3 December 1799), *HRA*, ii. 594.
[8] At the Court of Criminal Judicature on 16 December 1799, George Parker and Nathaniel Marshall pleaded not guilty to a charge of 'Disobedience of His Excellency's Port Orders, [and] obstructing an Officer in his Duty and other misdemeanours'. It was alleged that Parker and Marshall had threatened to shoot John Roycroft, a former convict employed in the colony's boat crew, who had attempted to seize several casks of spirits which he believed the two men had illegally attempted to land. While the Court found that

No. 13. p. 280.[1] 11th Jan. 1800. 'Arrived the Fhynne, a small snow from Bengal, under Danish colours, which had been chartered *by the officers*[a] *of the colony, civil and military*, through the means of an agent whom they had sent thither for that purpose. *She was freighted on their account* with many articles of which they were much in want;[2] and *as more labour could be obtained for spirits* than for any other mode of payment, *an article so essential to the cultivation of their estates was not forgotten*.'[b]

No. 14. p. 291. 14th April 1800. 'The quantity of spirits at this time in the Colony occasioned *much intoxication and consequent irregularity. The settlers at the river were so lost to their own interest, as to neglect the sowing of their grounds:*[c] a circumstance which, but for the timely interference of the Governor, would have ended in their ruin. Immediately on hearing of their situation, *he forbade the sending any more spirits to that profligate corner of the Colony*,[d] as well as the retailing what had been already sent thither, under pain of the offenders being *prosecuted* for such disobedience of his orders.'[e]

No. 15. p. 299. Aug. 9, 1800. 'Toward the latter end of the month, an attempt was made, at three o'clock in the afternoon, to land without a permit 1016 gallons of wine and spirits, which were seized at the wharf by the sentinel. If the person who made this attempt had been advised to so incautious and daring a proceeding, it could only have been with a view to try the integrity of the sentinels, or the vigilance of the police.'

No. 16. p. 332.[3] Aug. 1801. 'Several ships had arrived from India, England, and America, most of which had brought, upon speculation, cargoes consisting of *wine, spirits*, tobacco, teas, sugar, hard ware, wearing apparel, &c. &c. the sale of *which was, with the Governor's approbation*, *advertised by the Commissary, and publicly sold* to all descriptions of people.'

[a] The Governor? Was he too of the number?—If not, did she sail, or was she freighted, or unloaded without his knowledge?—*What then, Sir, do you mean to accuse all these Gentlemen . . . . .?*—Not *them*—indeed, my Lord.

[b] *Dic quibus in terris*[4] . . . . Where is that Colony, which, if it were not poisoned, would be starved?—For the consequence see the next article.

[c] Drunk, they will not sow: not drunk, they will not reap. (No. 13.)

[d] A prohibition of this sort, if it could be made effectual in one place, why not in another?—if at one time, why not at another?

[e] Quere the penalty, and on what *statute* an offender would have been to be indicted?

Parker and Marshall had attempted clandestinely to land spirits, they ruled that Roycroft was not 'regularly Authorized to make any Seizure' and that his actions were 'extremely irregular and improper' and acquitted the defendants. See Governor Hunter to the Duke of Portland, 2 January 1800, Enclosure No. 2, 'The Trial of Parker and Marshall', HRA, ii. 423–4.

[1] *Recte* 280–1.

[2] The *Fhynne* or *Thynne* reached Port Jackson on 11 January 1800 with 150 tonnes of goods including cloth, sugar, tea, soap, pepper, coffee, shoes, and 9,106 gallons of rum: see Governor Hunter to the Duke of Portland, 25 September 1800, Enclosure, 'A List of Ships and Vessels which Enter'd Inwards in the Port of Port Jackson, in His Majesty's Colony of New South Wales, between the 3rd day of November, 1799, and the 13th day of May, 1800, following with the particular quantity and quality of the loading of each vessel', *HRA*, ii. 571.

[3] *Recte* 332–3.

[4] i.e. 'Tell me in what lands': see Virgil, *Eclogues*, III. 104, 106.

'It appears, that from these ships[1]

'59,294 gallons of spirits, '30,896 ditto of wines,	} had been imported,
'26,974 ditto of spirits, '8,896 ditto of wines,	} had been landed,[a]
'And, 32,320 ditto of spirits, '22,000 ditto of wines,	} had been sent away.'[b]

Observations.—I have already intimated, my Lord, that I see nothing blameworthy in the conduct maintained in this respect by gentlemen in the colony: nothing, which it is in the power of blame to set right, nothing therefore for which blame would be of any use. If, by any sacrifices or exertions of his own, it would have been in the power of any of them to have substracted any thing considerable from the sum total of the mischief, then indeed ground for blame might not have been altogether wanting—then indeed blame itself might not have been altogether without its use. But in that situation it does not appear to me that, from any such *single* exertions, any effectual benefit could have been derived: nor even from any such *joint* exertions as the nature of the case admitted of. *Manufacturing* and *importation* taken together, the exclusion of the means of drunkenness out of the improved colony, presents itself to my view, I must confess, as an achievement, now and for everlasting morally impossible.

In the first place, as to *manufacturing.*—The settlements are *spreading* themselves over the face of the country: spreading themselves wider and wider every day. It is what gentlemen wish to see them do: it is matter of triumph that they do so. It is a mark of '*improvement:*'—of that feature of improvement, which has hitherto been accepted in lieu of every other. They are not only spread, but scattered: they are so already: they will be more and more so every day. Settlers will not take up inferior land, on the mere recommendation of its vicinity to already settled land, when superior land is to be had within a certain distance. But the more extended and dispersed the lots of land are,

[a] Landed:—viz. with permissions, from which alone the quantity landed could thus have been ascertained.

[b] Sent away: i.e. *ordered* to be taken away. For the effect of such orders, see No. 3,[2] where it is said, 'if not permitted it was generally got on shore clandestinely, and very few ships carried back *any* of what they had brought down.'

[1] For the official account from which Collins took the following figures see Acting-Governor King to the Duke of Portland, 21 August 1801, Enclosure No. 1, 'Account of Spirits and Wine imported into His Majesty's Colony in New South Wales, between the 28th September, 1800, and August 21st, 1801, with the quantity sent away, and remains of that landed being lodged in His Majesty's stores, and given out as the Governor grants permits', *HRA*, iii. 131.

[2] See p. 210 above.

with their inhabitants, the more incapable they are of being kept under any given degree—under any sufficient degree of inspection; of being kept under a degree of inspection sufficient for any purpose: and of all purposes for *this*. In respect to every purpose, the deficiency of the system of inspectors—of whatsoever professions, civil and military—under whatsoever titles—is, and in the nature of the case ever must be a standing topic of complaint. For preventing the erection of stills, orders upon orders have all along been issued {See No. 7. p. 212.} But the publication of each subsequent order is a pretty sufficient evidence of the inefficacy of all preceding ones.

Next as to *importation*. Is it in the nature of things that the coast all round—the coast of a country as large as Europe—should be kept sufficiently guarded for this purpose? Would the whole navy of England be sufficient to the task? Is there so much as a Government cock boat, the expence of which, especially on such a service, is not, and very justly grudged?

When by *accident*—by shipwreck—(as per No. 5.)[1] a cargo of spirits had been landed on a neighbouring island, preventing the importation of them was found to be impracticable. Would not the difficulty have been at least as great, if *design* instead of accident had brought them there? The spot, though *comparatively near*, was *positively* a very *distant* one. In case of design, not any such distant one would be chosen—but whatever spot, in point of vicinity as well as every other circumstance, presented itself as best adapted to the purpose.

So far as to what depends on the situation, and distribution of the land: next as to the permanent interest and consequent natural disposition of its inhabitants.—Whatever regulations can ever be made for the preventing the introduction of spirits into the colony—be it by manufacture, be it by importation—there is scarce a human being in the colony—in or out of power—who has not a personal interest in the inefficacy of them:—an interest as strong as it is possible for a man to have in the inefficacy of any such fiscal regulations. Among the convicts themselves—non-expirees as well as expirees—servants as well as masters—there is scarce a man to whom this liquid poison is not dearer than life. Among all classes of persons—convicts—military officers—civil officers—not a master that, so long as any of it is to be had any where, or from any body, can get a servant to work for him on any other terms. In one case, it is true, and that as conceivable a one as any other, this common interest would not exist. Such would be the case if not so much as a single master had so much as a single drop of the poison to give. In this case their common corrupt interest would

[1] See p. 211 above.

be wanting, and the opposite virtuous common interest—the interest which all masters have in the sobriety of their servants—would take its place. But if *one* gives spirits, *all* must—or all must see their farms deserted, and their servants gone from theirs to that one. By extraordinary exertions a reduction in the quantity habitually consumed in the colony might every now and then (I doubt not) be effected: But any such reduction can never be other than temporary: for so many masters as there are (officers as well as others) who see other masters in possession of a greater quantity than they themselves can lay hold of, so many are there, who are partakers in this common corrupt interest. Upon the whole therefore, so long as the quantity of spirits in the colony is short of the full quantity which the convicts altogether are disposed to drink, so long must the virtual auction—the universal *competition* among the purchasers of the article—continue. Those who at any given period have the advantage in this respect over their neighbours, will find themselves under the constant necessity of keeping up their stock of it; keeping it up against all competitors, for the purpose of keeping up this advantage: so that the common interest in question—the interest, which men of all descriptions have in eluding all such restrictive regulations—is not merely a general and temporary interest, but a universal one, and, humanly speaking, an indefeasible and perpetual one.

With the situation of the Governor of New South Wales and his subordinates, contrast in this respect that of the Governor of a Panopticon Penitentiary House. Not a drop of forbidden liquor can be either drunk in the house, or so much as introduced into it, without being seen to be so by every body: by officers, prisoners—visitors through curiosity, visitors upon business.[1] Therefore, were transgression ever so advantageous, detection and punishment would be inevitable. But, what is still more, transgression would give no advantage. Without work, among those who can work, not so much as a morsel of bread is to be had by any body: (so that here, as elsewhere, as many as choose it may be starved) and every person, the more he works, the better he is paid: the amount of his earnings is ascertained, and he receives a quarter of it.[2] Taken in excess, fermented liquors would be directly adverse to profitable economy: taken even in moderation, they would be of no use to it.

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[1] For the restrictions on alcohol in the panopticon see 'Panopticon; or, The Inspection-House', iii. 147–8 (Bowring, iv. 153–4).

[2] For the proportion of earnings credited to panopticon inmates see pp. 143–4 n. above.

X. *Per contrà, Penitentiary System.—General Reformation, as attested in general Expressions.*—1. *During Confinement.*

No. 1. *Philadelphia*; 1793: Lownes, p. 89. 'The order in their {the prisoners'} employments; their *demeanour* towards the *officers*; *harmony* amongst each other; and their *decorum and attention*, at times appointed for *religious* worship, have been obvious, and are such as have obtained the approbation of all those who have been witnesses to it; and we trust that the impressions received in this secluded state of existence, will have a happy influence towards promoting the great object contemplated by the change of the Penal Code by the Legislature of this commonwealth.'[1]

No. 2. Philadelphia; 1795: Liancourt, p. 21.[2] 'The appearance of the prisoners has nothing of that insolence, or of that dejection, which is so striking among our own convicts in Europe. It is cold, respectful, sorrowful, and calm.'

No. 3. Philadelphia; 1796; Turnbull, p. 4.[3] 'There was such a spirit of *industry* visible on every side, and such *contentment* pervaded the countenances of all, that it was with difficulty I divested myself of the idea, that these men surely were not convicts, but accustomed to labour from their infancy.'

No. 4. ib. p. 27.[4] 'The convicts are called to their meals by the ringing of a bell. We saw the men sit down to their supper, and I do not recollect a scene more interesting. At one view we beheld about ninety fellow creatures, formerly lost, as it were, to their country and the world, now collected in one body, and observing that air of *composure* and *decency to each other*, consequent only from a long and continued practice of moral habits.'

No. 5. ib. p. 46.[5] 'After conversing with her {the *jailoress*}[6] for some time, he {a person before mentioned}[7] enquired of her, Whether there were no inconveniencies attending the institution?[8] With the greatest concern she replied, That there was one, which gave her no small degree of uneasiness: that the *debtors* in their apartments, from being able to overlook the yard of the prison, made her fear that their conversing together, swearing, &c. might *corrupt* the *morals* of *her*[9] people. You may think it strange, that *debtors should corrupt criminals*; but the case is really so, for there is certainly as much, if not more morality, among the latter than the former. And so fully convinced were the inspectors, of her apprehensions being well founded, that, to remedy the defect, they have since had the prison wall raised.'

Observations.—The sex of the keeper, compared with the nature of her office, brings to view the picture of a future golden age, as delineated by prophetic poetry. 'The wolf shall dwell with the lamb . . . . and

[1] i.e. the Penal Laws Act of 1790: see p. 167 n. above.
[2] *Recte* 21–2.
[3] *Recte* 4–5.
[4] *Recte* 27–8.
[5] *Recte* 46–7.
[6] The gaoler of Walnut Street was Mary Weed, who succeeded her husband Elijah on his death in 1793 and retained the office until her resignation in 1796.
[7] Turnbull's account of Walnut Street gaol is in the form of a letter to an unnamed friend, and the 'person before mentioned' is the friend's uncle.
[8] Turnbull 'institution.'
[9] The words '*morals*' and '*her*' are italicized in Turnbull.

a *young child* shall lead them.'[1] The paradox had already received its explanation in the same page—

'I was surprized to find a female in the first appointment, and, on enquiry, found that her husband was formerly jailor. Discharging the duties of a tender parent towards his daughter, infected with the yellow fever in 1793, he caught the disorder, and died, leaving the prisoners to regret the loss of a friend and protector, and the community that of a valuable citizen. In consideration of his faithful performance of the functions of his office, his widow was nominated to succeed him. She is exceedingly attentive and humane.'

No. 6. ib. p. 48.[2] 'Few have been known to stay in the prison the whole of the term to which they were sentenced, the *amendment* and *repentance* of many of them being so visible to the Inspectors, as to have had a claim to the Governor's clemency.'

———2. *after Liberation, as per Accounts.*

No. 7. Philadelphia; 1793: Lownes, p. 92.[3] 'Out of near 200 persons, who at different times have been recommended to, and *pardoned* by the Governor, only four have been returned: three from Philadelphia, reconvicted of larceny, and one from a neighbouring county. As several of them, thus discharged, were old offenders, there was some reason to fear, that they would not long behave as honest citizens. But, if they have returned to their old courses, they have chosen to run the *risk* of being hanged in other states, rather than encounter the *certainty* of being confined in the penitentiary cells of this. We may therefore conclude, that the plan adopted has had a good effect on these; for it is a fact well known, that many of them were heretofore frequently at the bar of public justice, and had often received the punishment of their crimes under the former laws.'

No. 8. Philadelphia; 1796: Turnbull, p. 48. 'Reconvictions are seldom heard of. Of all the convicts *condemned* for these five years past, not above 5 in 100 have been known to return.'

Observations.—Between this article, and the last preceding one, your Lordship will have observed the difference. Those of whom but 2 in the 100 proved *backsliders*, were picked men: men picked out as the best, and *pardoned*. Those of whom so many as 5 in the 100 proved backsliders, were the whole number of the '*condemned*' taken together. The *time*, which gave these 5 in 100, was moreover nearly as long again as the time which gave not quite so much as the 2 in the 100.

No. 9. New York; 1802: Eddy, p. 33. 'Under the instruction of a prisoner sentenced for life, who was a skilful shoemaker, it was matter of surprise to

[1] Isaiah 11: 6.

[2] *Recte* 49.

[3] *Recte* 92–3. The italics in the following passage are in Lownes.

observe with how much *rapidity* those who were before wholly ignorant of the trade, learned to become *excellent workmen*.'

No. 10. ib. p. 52. 'It is with no small pleasure that the inspectors have observed that a number of those who have been discharged from the prison confided to their care, have continued in habits of industry and sobriety, and bid fair to become good members of society.'

Observations.—From a literal interpretation of this passage an inference that might be drawn, is—that, though the reformed were in a certain number, the unreformed were in a number still greater. But, from the general tenor of the publication, and in particular from the two next articles of it, as here copied, it will appear evident enough that the persons here alluded to as reformed, were such alone as on that account happened in a particular manner to have attracted the notice of these their former guardians.

No. 11. ib. p. 85. In five years, ending with 1801, 'of 349 prisoners who have been discharged by expiration of sentence and pardon, 29 only, or 1-12th part, have been convicted of second offences, and of these 16 were foreigners. Of 86 pardoned, eight have been recommitted for second offences; and of these five were foreigners.'

In the recent institution at New York, your Lordship will have observed, the account of *backsliders* is not as yet quite so favourable as in Philadelphia. The difference may, it should seem, fairly enough be ascribed to a variety of peculiar difficulties which New York has had to struggle with: Statement, given by Mr. Eddy, too long to be inserted here.[1]

In respect of general remarks, circumstances would naturally give a different colour to the representations, as between Philadelphia and New York. The *Philadelphia* accounts are, the two latest of them, accounts given by strangers to strangers: the *New York*, by the leading manager to his fellow-countrymen and fellow-townsmen. In this latter case, the main object was to give economical and other arithmetical

[1] According to Eddy, *Account of the State Prison in the City of New-York*, pp. 85–7, the 'peculiar difficulties' faced by the administrators of Newgate penitentiary included an increase in the population of New York State from 340,120 in 1790 to 586,050 in 1800, and of New York City and County from 33,131 to 60,489. In addition, Eddy claimed that, despite constituting less than a twenty-eighth of New York State's entire population, almost a third of Newgate's inmates were black, which he described as 'an instructive lesson on the influence, first, of European and West-Indian emigration, and next, of negro slavery'. Eddy expected that an inquiry into the 'vast difference' in the number of crimes in New York City and the state more generally would identify the 'true causes of the most numerous classes of crimes, and the most probable means of their prevention;—such as, improvement in the management and economy of the *city prisons*, in the punishment of petty offences, and in the melioration of the laws and general police of the city, in many things, which, in their present state, have an undoubted tendency to deprave the morals of the people'.

details: it was a *compte rendu* by a trustee to his principals.[1] As to deportment, &c. of the prisoners, the persons, to whom principally the writer was addressing himself, were fellow-townsmen, who being on the spot, had eyes of their own to see with.—That, upon the whole, the chief author saw nothing to deter him from expressing himself satisfied with his work, appears from the concluding paragraph, which is as follows:—

No. 12. ib. p. 70. 'The New York State Prison will furnish a model for others, which the increase of population and growth of luxury may render necessary in the distant parts of this extensive country.[a] And, whatever may be the future condition of mankind, this institution will reflect lasting honour on the State; become a durable monument of the wisdom, justice, and humanity of its Legislators, more glorious than the most splendid achievements of conquerors or kings; and be remembered when the magnificent structures of folly and pride, with their founders, are alike exterminated and forgotten.'

Penitentiary System continued—Reformation—Particular Exemplifications—Heroic Humanity.

No. 1. Philadelphia, 1796: Turnbull, p. 91.[2] 'At the time of the yellow fever in 1793, great difficulty was found in obtaining nurses and attendants for the sick at Bush-hill hospital.[3] Recourse was had to the prison. The request was made, and the apparent danger stated to the convicts. As many offered as were wanted. They continued faithful till the dreadful scene was closed—none of them making a demand for their services till all were discharged.'

No. 2. ib. p. 48.[4] 'Some' {on the same occasion} '*at the expiration of their terms of confinement*, voluntarily offered themselves . . . . and conducted themselves with so much fidelity and tenderness, as to have had the repeated thanks of the managers.'

[a] 'Similar prisons are *already* established in *New Jersey* and *Virginia,* and others are *proposed to* be erected in *Massachusetts* and *South Carolina*.'[5]

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[1] An annual *compte rendu*, or fiscal report, had been prepared for French monarchs by their Directors-General of Finances and famously was first published by Necker for Louis XVI in 1781: see *Compte Rendu Au Roi, Par M. Necker, Directeur général des Finances. Au mois de Janvier 1781. Imprimé par ordre de Sa Majesté*, Paris, 1781.

[2] *Recte* 91–2.

[3] Bush Hill, an estate of 150 acres located about a mile outside Philadelphia, stood vacant at the outbreak of the yellow fever epidemic in July 1793 and was commandeered by the committee of the Guardians of the Poor as a hospital and quarantine station: see Matthew Carey, *A Short Account of the Malignant Fever, Lately Prevalent in Philadelphia: With a Statement of the Proceedings That Took Place on the Subject in Different Parts of the United States*, Philadelphia, 1793, pp. 25–8.

[4] *Recte* 48–9.

[5] See p. 168 n. above.

No. 3. ib. p. 92. 'Another instance of the good conduct of the prisoners during the sickness, happened among the *women*. When request was made of them to give up their *bedsteads*, for the use of the sick at the hospital, they *cheerfully offered*[1] even their *bedding* &c.—When a similar request was made to the *debtors*, they *all* refused.'[2]—Some difference, my Lord, between these women, and the women 'far worse than the men,' in New South Wales:[3] some difference between the men who serve in hospitals at the peril of their lives, and those who make bonfires of hospitals, as well as of prisons with the prisoners in them:[4]—the prisoners—their comrades—their peers—men whom, instead of burning them, they would have been ready to clasp to their bosoms, so it had been to join in mischief.

XI. *Main Cause, Sobriety: Strictness, Universality, and good Effects of it in the Penitentiary Houses.*

No. 1. Philadelphia; 1795: Liancourt, p. 19.[5] 'They' {the convict prisoners} 'are never, on any account, permitted the use of fermented liquors, not even of small beer. The prohibition of fermented drink is a standing order, *and most religiously observed*. The liveliness and animation which such liquors might induce in the workmen is only an artificial and momentary vigour; a cause of irritation, heating the blood, and destroying the effect of that temperate regimen, which is intended to alter the habit and the constitution.'

No. 2. Philadelphia; 1796: Turnbull, p. 26.[6] 'The drink of the criminals is molasses and water; spirituous liquors are forbidden, except for medical purposes, prescribed by the attending physician; and the person who sells, or suffers them to be introduced, on any other occasion, subjects himself to a penalty of five pounds: if an officer of the prison, dismission from office. The reason of this rigorous regulation arises, in the first place, from the probability of the abuse which might be made of the practice, were it once introduced; and, in the next place, from the conviction of the inspectors, that those liquors act not so powerfully in strengthening a body, doomed to more than ordinary toil and labour, as the effects of good wholesome water. That whatever cheerfulness or vigour it may produce in a labourer, it is merely temporary, and, like all high stimulatives, its operations are no sooner at an end, than the system is left enervated and fatigued.'

No. 3. New York; 1802: Eddy, p. 49. '*Many* of those who came into the prison *with constitutions greatly impaired* by excessive drinking, debauchery, and vicious habits, after being some time used to the system of temperance, order, and industry established in the prison, *have become healthy and vigorous*.'

No. 4. ib, p. 59. 'It is well known, that the greater number of crimes originate in the irregular and vicious habits produced by intoxication, and by the idle, low, and dissipated practices encouraged in taverns and tippling-houses. *There are few criminals whose gradual depravation cannot be traced to this source*.'

[1] The italics are in Turnbull.
[2] Turnbull '*all refused*'.
[3] See p. 185 above.
[4] See p. 190 above
[5] *Recte* 19–20.
[6] *Recte* 26–7.

No. 5. ib. p. 59, 60. 'By the city charter, the power of granting licences is vested in the mayor, who is the sole judge of the propriety of granting them, or of their number. *Thirty shillings* are paid *for each licence*, four-fifths of which sum goes into the city-treasury, *and the residue to the mayor.* While a revenue is derived to the corporation from these licences, it is not to be expected that there will be much solicitude to lessen their number, or to examine minutely into the merits of the applicants for them.'

Observations.—Can the degree of such solicitude be expected to be much greater, where, instead of now and then an odd five shillings to be gained by putting about the cup of intoxication, the greater part or the whole of a man's income—of the income of every man who could do any thing towards stopping it—depends upon the circulation of it?

No. 6. Philadelphia; [1795]:[1] Liancourt, p. 22.[2] 'The new regimen has .... produced a change, which is remarkably evident, even in the physician's bill, which formerly amounted to two hundred, or three hundred and twenty dollars per quarter, but at present seldom rises above forty. This enormous difference is entirely attributable to the total change of discipline, which has taken place. During the former system, the irregular government of the prison was attended with filth and drunkenness; and frequent broils produced diseases, wounds, and bruises of every kind. Under the new order, these causes of evil have ceased, the disorders are confined to colds, or such accidents as are common every where. Only two prisoners have deceased within four years, and those of the small-pox. Except in cases of contagious maladies, the sick prisoners remain in their room; in such cases, however, they are removed to a separate apartment.'

No. 7. Philadelphia; 1796: Turnbull, p. 20.[3] 'A good proof of the cleanliness of the place you have, when I mention from authority, that out of eight thousand and sixty persons, who were confined in the several apartments of the prison (the debtors jail included) from the twenty-eighth day of September 1780, to the fifth of the same month in 1790, only twelve died of natural deaths. Since the latter of these periods, the establishment of the new system of discipline has produced much better arrangements, as well in respect to the comfort and health, as to the good order and government of the prisoners. This has been evident in several instances. The physician's bill, which formerly amounted to twelve hundred and eighty dollars a year, seldom exceeds at present one hundred and sixty; and, excepting in cases of contagious diseases, not more than two prisoners have died from June 1791 to March 1795, a period of nearly four years. During the fall of 1793, when the yellow fever had extended its fatal ravages over every part of the city and suburbs of Philadelphia, we have from Mr. Carey, in his account of that calamity, that only six persons in the prison were taken sick, and sent to the hospital;[4] although the situation of jails,

[1] 1802 '1799'. [2] *Recte* 22–3. [3] *Recte* 20–1.

[4] According to Carey, *Short Account of the Malignant Fever, Lately Prevalent in Philadelphia*, p. 82, during the yellow fever epidemic in Philadelphia, there were only 'two or three instances' of sickness in Walnut Street gaol.

even under the best administration, makes them most frequently liable to the generation of contagious and other diseases. At this time, too, were confined there, by order of the French consul,[1] one hundred and six French soldiers and sailors, beside one hundred other prisoners, composed of convicts, vagrants, and criminals committed for trial.'

Observations.—From the number of the prisoners that passed through the prison within a given space of time—from the mere number alone, as compared with the number of deaths within that time, no very precise induction can be drawn: another point to be known is, what was the average duration of a prisoner's continuance there: if, for example, about half a year, viz. 180 days, this would give for the eight thousand in ten years, four hundred throughout the whole of every year: upon this number twelve in the ten years would be 1⅕ death per annum upon the four hundred.

In this parallel between the two systems, your Lordship may have observed on the part of the Penitentiary System whole heads wanting, and those very material ones. Under the head of miscellaneous crimes (given as exemplifications of depravity) a mere blank: under the head of *Incendiarism* in particular a complete one. The case is—that, among chronical punishments administering a coercive discipline, it is the peculiar glory of the Penal Colonization Plan, that under it the list of crimes keeps running on, as if no coercion at all were administered; or, if there be any difference, in rather a greater proportion under and with the benefit of this discipline, than without it. In this point, I question whether the world ever saw any thing under the name of *punishment* bearing the least resemblance to it. In the very worst ordered jail, the discipline has at any rate been sufficient to keep the prisoners out of the commission of great crimes: even the Hulks have succeeded thus far—even the worst ordered of those archetypes of our Hulks that are still to be seen upon the continent—*the Galleys.*[2] No forcible robberies are committed—no burglaries—no Churches, no Hospitals are burnt—even in the Galleys.

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[1] Antoine René Charles Mathurin, comte de Laforêt (1756–1846), French Consul-General to the United States 1788–93.

[2] Bentham perhaps had in mind the *bagne* of Toulon, consisting of decommissioned galleys moored in the harbour, which are described in Howard, *Account of the Principal Lazarettos in Europe*, pp. 54–5.

XII. Central-Inspection Principle. 1. *Escapes, for want of it, from the American Prisons, as above.*

In a method, governed by the consideration of the *ends* of penal justice, the topic of escapes seems to belong to the head of *incapacitation*—incapacitation for fresh offences. Why?—Because, under any mode of confinement, the effect of which is to prevent offences while it lasts, the effect of an escape is to break the bridle, and leave delinquency to run on again in its old course. Unfortunately, in the Penal Colony of New South Wales, the place for the topic of *escapes* is not quite so easy to be found. When a man escapes out of it, the scene indeed of his misdeeds is changed; but the multitude of them, being, during the continuance of the confinement, at the highest pitch, is not in much danger of being increased by the cessation of it. Be this as it may, the confinement of the prisoner being by the supposition a *desirable* object, an escape by which he is liberated from that confinement must,—happen where it will,—must, were it only for consistency sake, be ranked among *undesirable* ones. In the case of any other place of legal confinement—in the case of an American Penitentiary House more particularly—this character will be seen to belong to it without dispute.

Good as the Penitentiary System has proved itself, where-ever it has been established—good in every point of view—good with reference to its *end*—good *in comparison*, with reference to every other system of confinement—I have never given it as altogether perfect:—I mean in any of its existing shapes.—I have reserved to myself the submitting to Your Lordship whether, from experience as well as by reason, the addition of the *principle of central inspection* may not be regarded as calculated to add to the perfections of it. *Reformation, economy*, and *prevention of escapes—incapacitation* thereby for fresh offences resulting from escapes—in respect of every one of these objects I have ventured to state it as eminently serviceable.[1] In respect of *reformation* and *economy*, its presence having never been experienced, the loss, if any, from the want of it, is a point of which, as even the *existence*, however probable, cannot strictly speaking be demonstrated, still less can the *amount* be mathematically ascertained. In the article of *escapes*, the amount of the inconvenience from the want of it, and thence of the benefit that would result from the adoption of it, is rather more open to demonstration. A *postulate*, it is true, must even in this case be assumed:—viz. that *under the eye of a keeper*, with adequate assistance and means of defence at his

[1] See 'Letter to Lord Pelham', pp. 71–164, esp. 81–2, 138–41, and 121–2, above.

elbow, he at the same time out of the reach of assault, neither a single unarmed prisoner, nor any number of unarmed prisoners, confined in a room by bars and bolts, will so much as attempt to escape out of it. This being admitted, whatever escapes have been found actually to have taken place, from a prison unprovided with this security, may be set down as having the want of it for their cause: and to this same score may be set down, in the account of *economy*, the expence of all such *guards* whose services, in a spot exterior to the prison, have, for a given period, been kept appropriated to this purpose. After these remarks, whatever considerations are presented to view by the ensuing extracts will, I presume, find their application without much difficulty.

XIII. Inspection—*the more perfect, the more perfect the Man agement; viz. in respect of* Reformation, Incapacitation, *as to* Escapes, *and* Economy.

No. 1. Philadelphia; between 1786 and April 1790: under the *ambulatory jail-gang system,* being the first attempt at reformation. Liancourt, 1795; p. 6. 'Criminals, loaded with irons, and scattered through the streets, and along the roads, presented to the public the spectacle of vice, rather than of shame and misery; and the impossibility of watching them properly, facilitated the means of excess of drunkenness, of pillage, and of *escape*.'

Observations.—Under this system it may be inferred, that escapes actually did take place, with more or less frequency, as under such a system might naturally be expected.

No. 2. Philadelphia; 1786: Turnbull, 1796, p. 14. 'Finding at length that the perseverance of the "Society for alleviating the miseries of prisons" bid fair to an extinction of all hopes of their continuing in the same scene of confusion, with one consent they resolved on *a breach of prison*. The attempt was accordingly made on the evening of the day the new order of things had taken place. Fortunately, *few of them escaped*. {*Fifteen,* as per Liancourt, p. 31.} The jailor was immediately discharged, and since that period {to August 1796} *almost every project* for the same purpose has failed, either from the want of unanimity of the most evil disposed, the fears of those less so, or the decided disapprobation of the greatest proportion of the prisoners to any thing of the kind.'

No. 3. ib. Philadelphia; 1796: Turnbull, p. 19. 'About seven {prisoners} are in a shop, one of whom is appointed by the jailor, whose duty it is strictly to notice all offences, and who, in default of it, is punished according to the rules. For this, however, there is little or no necessity, *as they commonly work under*

the mutual inspection of each other.[a] *The keepers constantly parade among the prisoners, in the court-yards and passages.*' {viz. per Liancourt, p. 19. Turnkeys, four in number for the whole house.}

Observations.—'*Constantly parade among the prisoners;*' i.e. constantly have some of the *prisoners themselves in view:*—'*constantly in the yards and passages;*' i.e. constantly have in view *more or less* of the *space* occupied by the prisoners:—constantly; i.e. in the day time?—But in the night? have they them, *all of them*, and *all night* long, in view?—Unquestionably not: if they had, the escapes indicated by the word *almost* in No. 1. could not, humanly speaking, have taken place.

So far at least as mere inspection is concerned, the work of the *four* keepers would, in a prison upon the central inspection principle, have been performed, and much more effectually and clear of *almosts*, by a single keeper: at the same time that, on my plan, the *economy* of the concern would of itself have afforded, as well as demanded, all night long, the assistance of a number of observing eyes.

No. 4. New York; 1802: Eddy, p. 18. '*Absolute reliance ought not to be placed on the strength of any prison, let their walls be ever so well constructed. Nothing will probably prevent escapes, but the unremitting vigilance of the keepers, and a strict watch day and night.*'

No. 5 ib. p. 19. '*It would have been more secure, if all the cells and the rooms in the wings adjoining had communicated with one and the same passage*; *since the same person who watched the wings might at the same time have attended to the cells. It was, probably, owing to this defect, that the escapes were made from the cells, which might have been prevented by a suitable watch.*'

No. 6. ib. p. 37. 'When day-light disappears, *a small lamp is lighted in each room and in the halls*; *and then the assistant keepers go on watch in the halls and corridors, which command a view through grated doors of each apartment: they walk to and fro* during the night, dividing the watch between them.'

No. 7. ib. p. 29.[1] '*In consequence of some escapes*, the legislature at the last sessions authorized the Governor, or the person administering the government, to raise *a guard*, to be called "The State Prison Guard."[2] . . . . . .

'The *annual expence* of this guard will be about *seven thousand dollars,* (1575l.)[3] Though the security of the prison is of the highest consequence, since the efficacy of mild punishments depends on their certainty; yet it is probable, that an *increase of the number of keepers,* {i.e. within the prison} *and a more*

[a] The prisoners under the inspection of each other!—A pretty check that would be in New South Wales!

[1] *Recte* 29–30.

[2] For the Act of the New York State legislature instituting the State Prison Guard, passed on 30 March 1802, see *Laws of the State of New-York. Vol. III. Containing All the Acts Passed from the Revision of 1801, to the End of the 27th Session of the Legislature, 1804*, Albany, 1804, pp. 37–9.

[3] The conversion of the sum into pounds sterling has been inserted by Bentham.

perfect arrangement of them, would have been equally effectual to that security, and would create not half the additional expence of the present guard.'

Observations.—A more perfect arrangement of the apartment, viz. upon the *central-inspection* principle, would have been much more effectual, and saved the expence not only of the guard itself, but of the proposed succedaneum to it.

No. 8. ib. p. 54. '*About twenty-two of the most obdurate* criminals are kept confined, and at work in separate apartments, and are not suffered to come out, or to have any communication with other prisoners, but *are constantly watched by keepers day and night*.'

Observations.—Without the benefit of the central-inspection principle, by which the whole inhabitancy may be watched by a single keeper without effort, how severe the obligation of such vigilancy, how inordinate the expence!

That these precautions were neither unnecessary nor so much as sufficient, appears but too plainly from the account of *escapes*, as given by the same intelligent and zealous administrator, whose labours had, under the invincible disadvantage of ill-adapted architecture, been applied to the prevention of them.

TABLE

Abstracted from Eddy's Account of the *Penitentiary House* in *New York,* p. 79; showing (as far as is there exhibited) the Numbers of Prisoners received into the said Prison, and discharged from thence—by *Death, Escape, Pardon,* and *Expiration* of Sentence—in Five Years, ending 1801:—together with the Number *remaining* in Prison at the End of the Year last mentioned.

	Received.	Discharged, by				Remaining
Years		Death.	Escape.	Pardon.	Expiration.	31st Dec.
1797	121	1	1	—	—	—
1798	144	6	3	—	—	—
1799	121	9	7	—	—	—
1800	150	8	6	—	—	—
1801	157	4	8	—	—	344
Totals	693	28	25	86	210	344

From this it appears, that in the case of that prison, the number of the prisoners that have *escaped* has, within the five years in question,

been almost *equal* to the number who have *died* in it; between 1-3d and 1-4th of the number who have been discharged out of it by *pardon*; between 1-8th and 1-9th of the number discharged by *expiration* of their sentences; and between 1-27th and 1-28th of the whole number *received* into it.

If a man may be allowed to quote himself, a few observations written on the same subject on another occasion,[a] will not here be altogether out of their place. 'If in a building on this plan, any thing of disorder is supposed, it must be, because though in words, the adoption of it may have been admitted, the state of things that would be the necessary result of it, is not present to the mind. The disorder supposed is supposed to be out of sight, which, in fact, it never could be. From the want of this advantage, proceeds that anxiety, the intensity, and, at the same time, the inefficacy, of which, is apparent in every page of the *rules and orders* that one sees. "*Officers* frequently *to go into the wards*—frequently *to hear complaints—master* frequently *to go into every ward, and inspect the persons therein, on a particular* day *of the week especially*—Twice *a week the matron to inspect every part of the house—Paupers to be kept clean—Officers* frequently *to take a view of them—Paupers to come down into the dining-hall to be mustered and employed—doors to be locked, that they may not* harbour *in the wards in the day time—Nurse-children* frequently *to be visited—once a* month *at least—Apprentices* frequently *to be visited by the Messenger.*"—This, from the regulations of one of the first-rate Poor-Houses.[1]—All this an attempt—and that, probably, in a great degree, an unavailing one—to effect by great exertions, not a hundredth part of what on the central inspection plan would take place of itself, without a man's stirring from his chair.'

Being thus far engaged in self-piracy, I will e'en beg leave of Your Lordship to go so much further, as to transcribe a passage on the same subject from another work. I mean the book entitled *Panopticon:* containing an exposition of the *central-inspection* principle, with a view to the variety of different purposes to which it presented itself as applicable. The insertion may perhaps be the more pardonable, inasmuch as, though the first of the three little volumes, of which the work consists, was in 1791 reprinted, and perhaps sold in Ireland, by order of the Government of that day, yet neither that partial reimpression,

[a] Papers intituled, *Pauper Management improved:* printed in *Young's Annals*, anno 1797 and 1798.[2]

[1] The passage is not a direct quotation but Bentham's summary of 'Rules, Orders, and Regulations', in *Hints and Cautions, for the information of Churchwardens and Overseers of the Poor Of the Parishes of St. Giles in the Fields and St. George, Bloomsbury. In the County of Middlesex: and Rules, Orders, and Regulations for Maintaining, Governing, Employing, and Regulating the said Poor*, [London,] 1797, pp. 27–36.

[2] See 'Outline of a Work entitled Pauper Management Improved', *Young's Annals of Agriculture*, vol. xxx, no. clxx (1798), 89–176 at 130–1, reproduced in *Writings on the Poor Laws: Volume II*, ed. M. Quinn, Oxford, 2010 (*CW*), p. 510.

any more than the original impression, can ever have found its way *here* into the shops.[1] At the same time, not to obtrude as necessary what may perhaps be deemed superfluous, it stands dismissed to the bottom of the page.[a] [2]

[a] A collateral advantage, and on the score of frugality a very material one, is that which respects the *number* of the Inspectors requisite. If this plan required more than another, the additional number would form an objection which, were the difference to a certain degree considerable, might rise so high as to be conclusive; so far from it, a greater multitude than ever were yet lodged in one house might be inspected by a single person. For, the trouble of inspection is diminished in no less proportion than the strictness of inspection is increased.

Another very important advantage, whatever purposes the plan may be applied to, particularly where it is applied to the severest and most coercive purposes, is, that the *under* Keepers or Inspectors, the servants and subordinates of every kind, will be under the same irresistible controul with respect to the *head* Keeper or Inspector, as the prisoners or other persons to be governed are with respect to *them*. On the common plans, what means, what possibility, has the Prisoner, of appealing to the humanity of the principal for redress, against the neglect or oppression of subordinates in that rigid sphere, but the *few* opportunities which, in a crowded Prison, the most conscientious Keeper *can* afford—but the none at all which many a Keeper *thinks* fit to give them? How different would their lot be upon this plan!

In no instance could his subordinates either perform or depart from their duty, but he must know the time and degree and manner of their doing so. It presents an answer, and that a satisfactory one, to one of the most puzzling of political questions, *quis custodiet ipsos custodes?*[3] and, as the fulfilling of his, as well as their, duty would be rendered so much easier, than it can ever have been hitherto, so might, and so should, any departure from it be punished with the more inflexible severity. It is this circumstance that renders the influence of this plan not less beneficial to what is called *Liberty* than to necessary coercion; not less powerful as a controul upon subordinate power, than as a curb to delinquency; as a shield to innocence than as a scourge to guilt.

Another advantage, still operating to the same ends, is the great load of trouble and disgust, which it takes off the shoulders of those occasional Inspectors of a higher order, such as *Judges*, and other *Magistrates*, who called down to this irksome task from the superior ranks of life, cannot but feel a proportionable repugnance to the discharge of it. Think how it is with them upon the present plans, and how it still must be, upon the best plans that have been hitherto devised! The Cells or apartments, however constructed, must, if there be nine hundred of them, (as there were to have been upon the Penitentiary-House plan)[4]

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[1] As Bentham states, neither the Dublin nor the London issues of 'Panopticon; or, The Inspection-House' had been published. Bentham himself had supervised the printing of the London edition, while the printing of the Irish edition had been supervised by Robert Hobart, Chief Secretary for Ireland 1789–93, under the auspices of Sir John Parnell (1744–1801), Chancellor of the Irish Exchequer 1785–99.

[2] The extract below is taken from 'Panopticon; or, The Inspection-House', i. 28–37 (Bowring, iv. 45–7).

[3] i.e. 'who will guard the guards themselves?': see Juvenal, *Satires*, II. vi. 347–8.

[4] According to the Penitentiary Act of 1779, § 14, the proposed male penitentiary house would contain 600 convicts and the female penitentiary house 300.

What is below being read or not read, let me beg of Your Lordship to consider, whether, if the too famous prison in *Cold Bath Fields* had

be opened to the visitors, one by one. To do their business to any purpose, they must approach near to, and come almost in contact with, each inhabitant: whose situation being watched over according to no other than the loose methods of inspection at present practicable, will on that account require the more minute and troublesome investigation on the part of these occasional superintendants. By this new plan, the disgust is entirely removed, and the trouble of going into such a room as the Lodge, is no more than the trouble of going into any other.

Were *Newgate* upon this plan, all Newgate might be inspected by a quarter of an hour's visit to Mr. *Akerman*.[1]

Among the other causes of that reluctance, none at present so forcible, none so unhappily well-grounded, none which affords so natural an excuse, nor so strong a reason against accepting of any excuse, as the danger of *infection:* a circumstance, which carries death, in one of its most tremendous forms, from the seat of guilt to the seat of justice, involving in one common catastrophe the violator and the upholder of the laws. But in a spot so constructed, and under a course of discipline so insured, how should infection ever arise? or how should it continue? Against every danger of this kind, what private house of the poor, one might almost say, or even of the most opulent, can be equally secure?

Nor is the disagreeableness of the task of superintendance diminished by this plan, in a much greater degree than the efficacy of it is increased. On all others, be the superintendant's visit ever so unexpected, and his motions ever so quick, time there must always be for preparations, blinding the real state of things. Out of nine hundred Cells he can visit but one at a time, and, in the mean while, the worst of the others may be arranged, and the inhabitants threatened, and tutored how to receive him. On this plan, no sooner is the superintendant announced, than the whole scene opens instantaneously to his view.

In mentioning Inspectors and superintendants who are such by office, I must not overlook that system of Inspection, which, however little heeded, will not be the less useful and efficacious; I mean the part which individuals may be disposed to take in the business, without intending perhaps, or even without thinking of, any other effects of their visits, than the gratification of their own particular curiosity. What the Inspector's or Keeper's family are with respect to *him*, that, and more, will these spontaneous visitors be to the superintendant; assistants, deputies in so far as he is faithful, witnesses and judges, should he ever be unfaithful, to his trust. So as they are but there, what the motives were that drew them thither, is perfectly immaterial; whether the relieving of their anxieties by the affecting prospect of their respective friends and relatives thus detained in durance, or merely the satisfying that general curiosity, which an establishment on various accounts so interesting to human feelings, may naturally be expected to excite.

You see, I take for granted as a matter of course, that under the necessary regulations for preventing interruption and disturbance, the doors of these establishments will be, as, without very special reasons to the contrary, the doors of all public establishments ought to be, thrown wide open to the body of the curious at large:—the great *open committee* of the tribunal of the world. And who ever object to such publicity where it is practicable, but those whose motives for objection afford the strongest reasons for it?

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[1] Richard Akerman (*c.* 1722–92), Keeper of Newgate Prison 1754–92.

been upon any such plan, those complaints which have given so much trouble to so many Right Honourable and Honourable Gentlemen, could ever have obtruded themselves?—whether the ground for those complaints, such as it was, could ever have had existence?—whether the time of so many public men, whose labour, so much to their regret, was for so many weeks employed upon this irksome service—(men worthy of better occupations)—would not have been saved, and the peace of the metropolitan county, together with the situation of its veteran representative, have remained undisturbed?[1]

Decomposing the plan, I will now take the liberty of offering a few separate considerations, applicable to the different purposes, to which it appears capable of being applied.

A *Penitentiary-House* more particularly is, (I am sorry I must correct myself, and say was to have been) what every Prison might, and in some degree at least ought to be, designed at once as a place of *Safe Custody*, and a place of *labour.* Every such place must necessarily be, whether designed or not, an *Hospital:* a place where sickness will be found at least, whether provision be or be not made for its relief. I will consider this plan in its application to these three distinguishable purposes.

Against *escapes*, and in particular on the part of Felons of every description, as well before as after conviction, persons from the desperateness of whose situation attempts to escape are more particularly to be apprehended, it would afford, as I dare say you see already, a degree of security, which perhaps has been scarce hitherto reached by conception, much less by practice. Overpowering the guard requires an union of hands, and a concert among minds. But what union, or what concert, can there be among persons, no one of whom will have set eyes on any other from the first moment of his entrance? Undermining walls, forcing iron bars requires commonly a concert, always a length of time exempt from interruption. But who would think of beginning a work of hours and days, without any tolerable prospect of making so much as the first motion towards it unobserved?—Such attempts have been seldom made without the assistance of implements introduced by accomplices from without. But who would expose themselves even to the slightest punishment, or even to the mortification of the disappointment, without so much as a tolerable chance of escaping instantaneous detection?—Who would think of bringing in before the keeper's face, so much as a small file, or a phial of *aqua fortis*, to a person not prepared to receive any such thing, nor in a condition to make use of it? Upon all plans hitherto pursued, the thickest walls have been found occasionally unavailing; upon this plan the thinnest would be sufficient; a circumstance which must operate, in a striking degree, towards a diminution of the expence.

In this, as in every other application of the plan, you will find its lenient, not less conspicuous than its coercive tendency; insomuch that, if you were to be asked, who had most cause to wish for its adoption, you might find yourself at some loss to determine, between the malefactors themselves, and those for whose sake they are consigned to punishment.

[1] Sir Francis Burdett (1770–1844), MP for Boroughbridge 1796–1802, Middlesex 1802–4, 1805–6, Westminster 1807–37, and Wiltshire North 1837–44, led a sustained campaign of criticism into conditions at the House of Correction, Cold Bath Fields. The

At different times a sketch on the central-inspection plan has been shown to jailors:—at no time without producing an exclamation—*Ah! if my jail were like this, my task would be a safe and easy one!*

Different men, different opinions: where is the subject, my Lord, that will not display the difference?—especially when motives prompt opinions, and situations convert them into laws.

One man—upon being told of a prison, in which every prisoner was without intermission exposed to an inspecting eye—'*Then they'll all get out*,' says he.—This was one of those men whom, under the *ancien regime*, gentlemen used to send out to govern kingdoms: accordingly, so long as he reigned, he took effectual care there should be no such jail to get out of in his dominions, spite of every thing that could be said to him by subordinates.[1]

Another man, upon seeing the model of a prison round like *Ranelagh*,[2] with this difference that, excepting iron bars, and supports as in work-shops, the circumference was all glass—exclaimed immediately—*This prison will be too dark: the keepers in the middle will never be able to see their prisoners.*[3] The room it was in being none of the lightest, ocular demonstration was so far on his side. By I know not what accident, this *reason* missed being added to the *four reasons for relinquishment:*[4] though sure enough there was a time, my Lord, when they lay all together safe and snug in the same place.—Alas, my Lord! why were they ever suffered *to get out of it?—There,* there indeed *was* an *escape!*

'veteran representative' was William Mainwaring (1735–1821), banker, MP for Middlesex 1784–1802, Chairman of the Middlesex and Westminster Quarter Sessions 1781–1816, who, with the other Middlesex magistrates, sought to impede a Commission of Inquiry into the prison, which reported in November 1800 and generally vindicated Burdett's case. At the General Election of 1802 Burdett stood in Middlesex against Mainwaring and George Byng (1764–1847), MP for Newport I.o.W. 1790 and Middlesex 1790–1847. In a campaign dominated by Cold Bath Fields prison and Mainwaring's support for its Governor, Thomas Aris, Burdett was elected in second place behind Byng, though in 1804 Burdett's election was ruled invalid and he lost the subsequent by-election to Mainwaring's son, George Boulton Mainwaring (b. *c.* 1773), MP for Middlesex 1804–5, 1806.

[1] According to the extracts from 'History of the War between Jeremy Bentham and George the Third', in Bowring, xi. 96–105 at 104, the man in question was John Fane (1759–1841), tenth Earl of Westmorland, Lord Lieutenant of Ireland 1789–94, Lord Privy Seal 1798–1806, 1807–27, who made the exclamation when shown plans for the panopticon penitentiary by Sir John Parnell.

[2] The Rotunda, at the Ranelagh pleasure gardens in Chelsea, opened as a public entertainment venue in 1741. The gardens were closed in 1803 and the Rotunda demolished in 1805.

[3] According to 'History of the War between Jeremy Bentham and George the Third', Bowring, xi. 105, when Portland visited Bentham's home at Queen's Square Place to view models of the panopticon, 'scarce had he bestowed a glance upon each of the models, when the observation came from him—"Not light enough:" such was the substance of the observation, not more than twice as many the words, whatever they were'.

[4] See 'Letter to Lord Pelham', p. 73 & n. above.

Behold here again, my Lord, another Governor of kingdoms:—a task a man seems to be set down to, when he is fit for nothing else. Alas! my Lord! what a truism was the death-bed observation of Chancellor *Oxenstiern* to his son—*Nescis, mi fili, quam parvá sapientiâ mundus regitur!*[1] [a]

[a] While correcting the press, an incident occurs, from which it should seem that American prisons are not the only places of confinement, from which, when inspecting eyes are wanting, or off their station, or opposed by walls, a man may find means to make his escape.

Times, December 15th, 1802.[2] '*J. Murphy,* a convict, who made his escape from the Captivity hulk, on Wednesday se'nnight, was taken near Fareham, and lodged in the Bridewell at Gosport. He made his escape from that prison on Wednesday last, by scaling the walls, and got clear off. This is the *fourth* time he has contrived to get out of confinement since he was sentenced to transportation; once from *Newgate*, from the *hulk at Woolwich*, from the *Captivity at Portsmouth*, and from the *gaol*, as above.'

Quere 1st. How many times in the same period would this ingenious person have effected his escape, from a prison on the Panopticon plan, out of an apartment exposed night and day to the view of several pair of eyes, themselves unseen by him, and commanding the whole circle, without so much as a change of place?

Quere 2d. What obstacle, if any, did Noble Lords expect, would be exposed to any such ingenuity, in these four places of confinement, together with the rest of them, 250 or so, throughout England,[3] by the gentleman who, confining his inspection to the hulks, takes four peeps at them in a year, at £87 a peep?[4]

Quere 3d. Was it lest Noble eyes should be suspected of being constantly asleep, that subordinate eyes were commissioned to be periodically awake?

Quere 4th. When, for the single purpose of this *nominal* inspection, Parliament was called upon for a fresh Act, {42 Geo. III. c. 28. 24th March 1802.} might it not have been as well, if some shew of obedience had been paid to the two already existing Acts,[5] of which, if obeyed, *real* inspection would have been the fruit?

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[1] i.e. 'Dost thou not know, my son, with how little wisdom the world is governed?' The phrase is usually attributed to Axel Gustafsson Oxenstierna af Södermöre (1583–1654), Lord High Chancellor of Sweden 1612–54, who used it encouragingly in a letter of 1648 to his son Johan Axelsson Oxenstierna af Södermöre (1611–57), Swedish statesman and diplomat, when Johan doubted his own ability to lead the Swedish delegation at the negotiations that led to the Peace of Westphalia of 1648. For an attribution of the words to Oxiensterna see, for instance, William Seward, *Anecdotes of Distinguished Persons, chiefly of the present and two preceding centuries*, 4th edn., 4 vols., London, 1798, iii. 215. Apart from Bentham in the present work, there appears to be no reference to the words being spoken by Oxenstierna on his death-bed until later in the nineteenth century.

[2] See *The Times*, 15 December 1802, p. 4.

[3] The figure represents Bentham's estimate of the number of prisons visited by John Howard in 1779, 1782, and 1783: see p. 254 n. below.

[4] The Hulks Act of 1802 (42 Geo. III, c. 28) had provided for the appointment of an 'Inspector of any Place or Places of Confinement, either at Land or on board any Ship or Vessel', with a salary of £350 per annum. Each of the Inspector's four visits per annum would, therefore, cost about £87. Aaron Graham (*c.* 1753–1818), a stipendiary magistrate at Bow Street, was appointed as Inspector on 25 March 1802, a post he held until his resignation at the end of 1814. For Bentham's further discussion of this subject see 'Third Letter to Lord Pelham', § XIX, pp. 283–302 below.

[5] i.e. the Penitentiary Act of 1794 and the Appropriation Act of 1799.

XIV. *Fruit of the Penitentiary System, in point of* Example, *as well as* Reformation.—Decrease of Crimes.

No. 1. Philadelphia; 1793: Lownes, p. 93. 'Our *streets* now meet with no interruption from those characters that formerly rendered it dangerous to walk out of an evening. Our *roads* in the vicinity of the city, so constantly infested with robbers, are seldom disturbed by those dangerous characters. The few instances that have occurred of the latter, last fall, were soon stopped. The perpetrators proved to be *strangers*, quartered near the city, on their way to the westward.

'Our *houses, stores,* and *vessels*, so perpetually disturbed and robbed, no longer experience those alarming evils. *We lie down in peace—we sleep in security.*

'There have been but *two* instances of *burglaries* in this city and county for near *two* years. *Pickpockets*, formerly such pests to society, *are now unknown*. Not one instance has occurred of a person being convicted of this offence for two years past. The number of persons convicted at the several Courts have constantly decreased.—Thirty, and upwards, at a session, have frequently been added to the criminal list: at this time, when both City and County Courts are but a few days distant, there are but *five for trial!* Such have been our measures—such is the state of things— and such the effect. *If any one can assign other causes for them, than are here adduced*, they must have other opportunities—other means of information than I am acquainted with.'

No. 2. Philadelphia; 1796: Turnbull, p. 91. 'It appears, that since the late improvements in the Penal Code,[1] offences have diminished in a proportion of about *one half*; and when we recollect, that the first table contains the offences of the city and county of Philadelphia only, we may pronounce that they have decreased throughout the whole State nearly *two thirds*.—The two periods are equal, and the latter commences from 1791, from the new discipline not having taken place previous to that time. *The most material point gained* with respect to offences, is *the diminution of the most heinous ones*, which are still in a greater proportion. They stand in the table as follows:[2]—

	'Under the old System in the City and County.	'Under the new System in the whole State.
'Burglary,	77	16
'Robbery,	39	5
'Murder,	9	0
'Arson,	0	1
'Rape,	0	1
'Bigamy,	1	1
	Total, 126	24.'

[1] See p. 167 n. above.

[2] The first column in the following table is abstracted from 'A Table of Offences committed in the City and County of Philadelphia, from Jan. 1, 1787, to June, 1791, being a Period of the last 4 Years and 5 Months under the old Criminal System', in Turnbull, *Visit*

Observations.—This is a success indeed! a success reported at first after a trial of about two years: confirmed afterwards, as per last accounts, by a further experience of between three and four years.[1] According to the figures, the first-rate crimes reduced to less than a *fifth* of their former number: but even this degree of success, prodigious as it is, falls short of the proportion really obtained. The larger number (the 126) during the prior period is for the capital—Philadelphia—*City and County* alone:—the smaller number (the 24) during the subsequent period—the period of improvement—is for all Pennsylvania—for the whole *State*. But, in the jail of this same State, in December 1792,[a] at a time when, for the whole State, the number of Convicts of all sorts was 37, out of these 37, the number for the City and County taken together was but 24: that is, was not quite so much as two-thirds of the number for the whole State. Assuming, for supposition sake, that at the point of time in question (August 25th, 1796) the proportion was still the same, it would follow, that, at this latter point of time, out of the 24 for the whole state, no more than 16 were for the City and County:—in this later period of 5 years, no more than 16, from the same portion of territory, which in the earlier period of the same length had furnished Convicts of the same description, to the number of 126. If, instead of the 126, the number had been 128, the proportion of convicts for the latter period would have been no more than one-eighth of the number for the former:—instead of four-fifths, the decrease would have amounted to seven-eighths.

Permit me on this occasion to add, my Lord, that the difference thus produced—the distinction thus noted—between the number of first-rate crimes, and the number of crimes of a less mischievous complexion, is matter of particular satisfaction to me. It gives the *permit* of *experience* to some *speculative* and therefore contraband

[a] 3d December 1792, Bradford and Lownes, p. 108. Report of Inspectors of the prison. By the same Report, under the influence of the former system, no more than about 1 year and a half before, viz. 3d of May 1791, the number was as high as 143.

In 1791, according to the *census* for the United States, the population of the City and County was about one-eighth of that of the whole state: (as 54,391 to 434,373:)[2] the number of the criminals in the rest of the State being but 13, when of that of the City and County was 24, this gives the degree of criminality, in the *Country* situation, no more than about 1-6th of ditto in the *Town* ditto.

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to the Philadelphia Prison, p. 88, and the second column is abstracted from 'A Table of Offences committed in the State of Pennsylvania, from June, 1791, to Oct. 27, 1795, being a Period of the first four Years and five Months under the New System of Laws' in ibid., p. 89.

[1] Bentham alludes to the reforms introduced by the Penal Laws Act of 1790.

[2] These figures are given, albeit for 1790 and not 1791, in Tench Coxe, *A View of the United States of America, in a Series of Papers, Written at Various Times Between the Years 1787 and 1794*, London, 1795, p. 483.

ideas, consigned long ago to some of the useless papers I have already hinted at.[1] After the diminishing the number of crimes of all sorts and sizes taken together, another distinguishable though concomitant object should be, (so it appeared to me) by a system of due proportions as between punishments and offences, to shove down, as it were, the number of the higher crimes—to convert the higher ones, as far as can be done, into inferior ones:—which inferior ones will then be found such, to the mischief of which it is in the power of *money* to apply a cure. This done, the mischief might, with the help of a few obvious and necessary precautions, be brought within the healing influence of the principle of *insurance:* the principle applied with so much success to the reducing the quantum of suffering from various other causes. Under the head of *compensation*, I have already troubled your Lordship with a reference to the humble endeavours I had used to throw my mite into this treasury.[2] What I do *not* pretend to say, is—that against mischief from *criminality*, any more than against mischief from *fire* or *water*, the door could be altogether shut, by this means or any other: but what I fear not to say, is—that by this means the mischief from criminality—from such crimes as are committed—(not to speak of defalcations that might be made from the mass of mischief, by defalcations from the *absolute* number of crimes) might be made to undergo a degree of reduction, beyond any thing which, in this country at least, has ever yet been looked up to, as within the reach of hope. The great point is—to clear the country of those crimes, each instance of which is sufficient to awaken and keep alive, in every breast within a certain circle, the fear of boundless injury to person or property, as well as of destruction to life itself: in comparison of this wide spreading—this almost universally extending mischief—this fear of boundless injury—the sum of the mischiefs, resulting in each instance, from losses and other injuries, actually sustained by particular individuals, would be found relatively inconsiderable. From the number of these superlatively terrific crimes, seven-eighths or thereabouts appear, in the instance in question, to have actually been struck off in actual experience. In *this* or any other country, my Lord, would not the same advantage be worth purchasing at the same price?

In speaking of the *price*, it would be incorrect, I doubt, to state it as consisting of such exertions merely as would be requisite for the

[1] Bentham may have had in mind his discussion of a proportion between offences and punishments, and in particular the rule that, where two offences might be committed together, the greater offence should be subjected to a more severe punishment, in order to give the malefactor a motive to stop at the lesser, in *Traités de législation civile et pénale*, iii. 385–9.

[2] See 'Letter to Lord Pelham', pp. 135–8 above.

establishment of a Penitentiary House. Another cause, which appears to have contributed, and perhaps in at least equal degree, to the production of the effect, is—the abolition—next to a total one—of the punishment of *death*. If this be so, then to the account of exertions must be added the effort (no slight one) necessary for giving up the favourite punishment;—the punishment so dear to vengeance, hard-heartedness, prejudice, and indolence.

On this subject let the following fact speak in the first place.

No. 1. Philadelphia; 1786: Liancourt; [1795]:[1] p. 38.[2] 'In the year 1786, after the law had been passed, which abolished the punishment of death and established the new system,[3] two prisoners arrested for crimes (which, according to the antient jurisprudence, were punishable by death, and by the new one only by imprisonment) *preferred to be judged according to the ancient law*, rather than be subjected to so long and rigorous a detention; and particularly to that *solitary confinement*, which *they started from with horror, though they had never experienced its bitterness*. They were *confirmed* in this choice *by the hope of a free pardon*; an event which would have restored them to immediate freedom. One of them was not deceived in his expectations; the other suffered death.'

Observations. From this instance, my Lord, may it not be inferred—and may not an instance thus happily apposite be pronounced sufficient of itself to support the inference—that it is not merely in the way of *reformation*, but by its subserviency to the still superior end *example*, that penitentiary punishment, when well conducted, operates with so palpable an effect, in diminution of the multitude of crimes?—This same instance, is it not moreover sufficient to support the further inference, that death—which *reforms* only by annihilation, which *incapacitates* for crimes only by incapacitating for every thing—that death, of which the only recommendation is its supposed superior efficiency in the way of *example*, yields even in this point, to that which is so much superior to it in every other? Turning again to penitentiary punishment, and comparing the exemplification here given of the terror inspired by it while as yet inexperienced, with the preceding accounts, of the deportment and apparent state of mind, of the patients under and during the infliction of it, is it not, in both points of view, every thing that, for the sake of all parties, one would wish to find it? Does it not, as far as is compatible with the melancholy complexion of the case, exhibit that combination so desirable in every case—the *utile dulci?*[4]—in prospect terrible, in experience tolerable?

[1] 1802 '1796'. [2] *Recte* 30. [3] See p. 166 & n. above.

[4] See Horace, *Ars Poetica*, 343–4: *omne tulit punctum qui miscuit utile dulci, lectorem delectando pariterque monendo*, i.e. 'he has won every vote who has blended profit and pleasure, at once delighting and instructing the reader'.

Observe, my Lord, how the *separate* experiences on both sides are confirmed and crowned by this *comparative* experience. Of the *efficiency* of penitentiary punishment, the separate exemplifications have just been presenting themselves to your Lordship's view. Of the *inefficiency* of capital punishment, observations upon observations occur in the annals of the penal colony as recorded by its Chief Magistrate. At the time of execution[a]—at the time of *dissection*[b]—on a variety of other occasions, such as on all minds might have been expected to be, and on other minds would have been, impressive—the insensibility of the survivors, to the fate of their comrades and associates, is matter of surprise no less than concern to the historian who witnessed it. Confronted together, these contrasted masses of experience, consistent though unconnected, would of themselves afford a proof of no light weight in the scale of prudential conjecture:—would afford that sort and degree of proof, which of itself might appear of sufficient strength, to support a correspondent practical inference, with its correspondent *measure*. But what an accession of force is added to these separate experiments, when thus supported by a corroborative of so rare a complexion, as that which is afforded (to use the language of *Lord Bacon*) by this *conjunct* experiment![1]—the experiment I mean, in which, the two punishments being put in the opposite scales of the same balance, and in the same minds, the punishment of death is found light—the more temperate and regulated mode of punishment outweighing it.

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[a] Collins I. 392, &c.[2]

[b] Ib. 492.[3]

[1] See 'Of the Dignity and Advancement of Learning', Book V, in *The Works of Francis Bacon*, iv. 420: 'Coupling of Experiment is the link or chain of applications; when things which would be ineffectual singly are effectual in conjunction.'

[2] Collins, i. 392–3, describes the hanging of John Bevan on 6 October 1794 for the burglary of the house of William Fielder at Sydney and, despite the example that was supposed to have been given by Bevan's scheduled execution, the murder of Simon Burn by John Hill on the evening of 5 October 1794.

[3] Collins, i. 491–2, notes that when John Fenlow was executed on 8 August 1796 and his body was handed over for dissection, the surgeons had 'no sooner signified that the body was ready for inspection, than the hospital was filled with people, men, women, and children, to the number of several hundreds; none of whom appeared moved with pity for his fate, or in the least degree admonished by the sad spectacle before their eyes'.

XV. New South Wales—Economy—*Prospects as per last Accounts.*

The subject of *reformation* being thus far considered, *economy* presents the only remaining topic on which any very material lights can be thrown by the ulterior accounts. On this subject the evidence might be supposed to have been favourable, or at least less unfavourable than before, if so conspicuous a topic were passed over altogether without notice. At the outset, my intention was, to have exhibited the passages, as before, *in terminis*.[1] Frightened, however, at the mass of paper already filled, I give up the greater part of the attempt I had projected on this ground upon your Lordship's patience, confining myself for the present at least to a brief indication of the topics, with references instead of quotations.

Respecting *expence*, past or future—I mean expence to Government—The ulterior accounts afford not, to my view, any indications worth referring exclusively to that head. Two other co-ordinate heads comprize every thing that presents itself as worth mentioning:—Perpetual probability of sudden destruction—Hopelessness of a *non-convict* population:—the existence of one, a circumstance that seems all along assumed, as a condition *sine qua non* to the ultimate *success* (whatever may be understood by *success)* of the fourteen years' experiment;—assumed by the concurring opinions of the late Governor[a] and the late Chief Magistrate:[b] gentlemen, whose opinions, on this as on every other head, cannot but be as weighty in the scale of *opinion* as any observations of mine, were I to take upon me to present them in that character, would be light. As to *success*, what sort of result is to be understood by that expression is a question, for the answer to which I must beg leave to refer your Lordship to the gentlemen themselves, by whom the word, or what amounts to it, has been employed. What I myself should mean by it has, I hope, for some time been tolerably clear:—accomplishment of the several already enumerated *ends of penal justice*.[2] Be this as it may, in the notice given by this previous announcement, I claim some merit, my Lord, because, if the *results*

[a] Letter I. p. 89. [b] Collins, I. p. 235. II. 40. 100. 210.[3]

[1] For further details of the material prepared for but not used in this section see the Editorial Introduction, pp. liv–lvi above.

[2] See 'Letter to Lord Pelham', p. 74 above.

[3] Collins, i. 234–5, ii. 40, 99–100, 210, describe settlers' aversion to work and the poor quality of their labour, absconded convicts who, rather than risk the dangers of living by piracy, surrendered to the authorities, and of how, in May 1799, it seemed that 'the commission of crimes was never to cease in this settlement'.

in question be not worth regarding, the *proof* is still less so, the paper, if thus far read, is thrown by, and so much of your Lordship's time is saved.

Three main causes of famine, and destruction by famine, perpetually impending over the ever so much 'improved' Colony:—each of them adequate to the effect, according to the time. *Fire—drought—inundation:* for, so the case seems to be—there is always either too little *water* or too much. *Fire*, by the malice or phrensy of the Colonists themselves, converted alike by good or bad government into intestine enemies:[a] Fire again, by hostility of external enemies, the Native Savages, ever ready, ever able, to return evil for evil, and for good likewise:[b] Fire, even spontaneous, or, in the language of law and religion, *by the visitation of God*.[c] From all these sources together, danger of fire continually brooding over the whole Colony, and covering every acre of ground contained in it. Of *inundation*, the danger not quite so universal, being confined to the settlements on George's River, and the Hawkesbury[d]—'the only spots that present any hope of agricultural advantages:'[e]—On the other hand, what it wants in universality made up in point of certainty, grounded on the topographical features of the country, and by the very latest accounts (dated August 1801) realized to such a degree that '*many of the settlers who had farms on the banks had in despair totally abandoned them*.'[f]

[a] II Collins, 17. 69. 72. 129. 132. 197. 277.—*Supra* pp. 188, 189, 190.[1]
[b] II Collins, 15. 31, 32, 33. 40. 56. 68. 204. 209.[2]
[c] Ib. 125. 139. 199. 334.[3]
[d] Ib. 199. 289. 334.[4]
[e] Ib. 467. Lett. I. p. 86.
[f] II Collins, p. 334.

[1] i.e. items 1–7 in '§ VI. Depravity—Particular Exemplifications—Incendiarism'.

[2] Collins, ii. 15, 31–3, 40, 55–6, 65–8, 204–5, and 209 respectively describe the following incidents involving violence between settlers and Indigenous people (though they are not concerned with fire): fighting on the Hawkesbury River settlements in January 1797; reprisals in April 1797 against the Bidjigal people who, led by Pemulwuy (*c.* 1750–1802), had attacked the Northern Boundary farms; the suspicion that convict absconders in June 1797 assisted Indigenous people to raid settlers' farms; a 'severe contest' in October 1797 between two parties of Indigenous people, in which a man known as 'William and Ann' was severely injured; the spearing of a soldier in December 1797 by the Eora warrior Woollarawarre Bennelong (*c.* 1764–1813) during the trial by combat of the Cadigal man Colebee (d. *c.* 1806); the shooting of three Indigenous men in April 1799 by the seaman Henry Hacking (1750–1831), after the people of the Hunter River region prevented settlers from gathering coal; and the spearing to death of a settler on the Georges River in May 1799.

[3] Collins respectively describes occasions on which, in August 1798, December 1798, February 1799, and June 1801, high temperatures, drought, and strong winds caused fires to break out.

[4] Collins, ii. 199–201, 288–9, and 334 respectively describe flooding on the Hawkesbury River in February 1799, the Georges River in March 1800, and the Hawkesbury River in June 1801, with each inundation causing the loss of significant quantities of crops and livestock.

To these more awful scourges might be added *insect vermin;* grubs[a] and caterpillars:[b] plagues as destructive and as frequent as inundation: more and more ineludible than fire. These minor plagues indeed (it will occur) have their equivalent in other countries.—True:—but then such other countries have unplagued neighbours to draw upon for relief.

As there are years in which the crop does not amount to above a third of what it does [in][1] others,[c] hence to guard against dearth, if dearth could be guarded against, would require amply-stocked *magazines:*—receptacles, in which, over and above the ordinary provision for an ordinary year, more than two thirds of a year's crop should be kept constantly in store.[d] The quantity of land cultivated

[a] Ib. 203.[2] [b] Ib. 272.[3] [c] Ib. 136.[4]

[d] In my uninformed situation I should have found it a matter of extreme difficulty to make any thing like a tolerably correct calculation of the proportional quantity of provisions requisite to be kept in store. From this difficulty the passages in the first part of Captain Collins's history relieve me in some measure, by fixing the quantity at a two years' stock. In November 1789, this, in *fact*, was the proportion landed:[a] and, as to *opinion*, in February 1790, after near two years' experience, the same quantity '*at the least*,' was what 'the Governor, in all his dispatches, had uniformly declared the strong necessity of having in store for some time to come.'[b] The date of this opinion (it may be observed) was a time at which the proportion furnished by the Colony itself was as yet but very inconsiderable: whereas by the last accounts, the quantity furnished by the Colony within the year, appears to have been nearly, if not completely, sufficient for the consumption of the year.[5] To state the question with perfect precision would require more discussion than it were worth: but, at any rate, it

[a] Collins, I. 83.[6] [b] Ib. 97.

[1] 1803 'on'.

[2] See Collins, ii. 203–4, referring to March 1799: 'A destructive grub-worm was discovered in several parts of the cultivated ground; and at the Hawkesbury a caterpillar had commenced its ravages wherever it found any young grain just shooting out of the earth. This occasioned some delay in sowing the government ground.'

[3] According to Collins, ii. 272–3, in November 1799 the 'wheat crops . . . wore the most promising appearance, the stalks every where, particularly at the Hawkesbury, bending beneath the weight of the richest ears of corn ever beheld in this or indeed any other country'. The crops were then damaged by several days of bad weather, and when it finally 'cleared up', Collins continues, 'to increase the vexation, myriads of caterpillars were found destroying the young maize'.

[4] According to Collins, ii. 136, the harvest of December 1798 was a disappointment, 'for, owing to a most tedious and unfortunate drought during ten months, the wheat did not turn out more than one-third of what, from the quantity of ground sown with that grain, there was a reasonable expectation of its producing, had the season been moderately favourable'.

[5] According to Governor King to the Duke of Portland, 1 March 1802, *HRNSW*, iv. 715, there had been 'a most plentiful harvest for the quantity of ground sowed', and he had been able to 'issue a full ration of grain, after having eat our very last loaf before the harvest began', though he expressed concern that there might be 'a scarcity this year, from the additional numbers arrived, and those expected'. The source of Bentham's information, however, has not been traced.

[6] *Recte* 83–4.

on Government account not being yet so much as a tenth part of

does not appear that the demand for a *security-fund* of this sort is varied in any determinable proportion, by the difference respecting the *source* looked to for the supply. At the time of that calculation, the danger to be provided against was the danger of *non-arrivals:* at present, if the *internal* resources of the settlement are to be trusted to, and no more provisions are to be sent thither from *without*, the danger to be provided against is the *internal* danger—the danger composed of *non-production* on the one hand, and *destruction* on the other. The *two years*' provisions, spoken of as received in the Colony, almost two years after the arrival of the first and principal expedition, was (it should be observed) so much over and above whatever stock was at that time expected, here at home, to have been raised within the Colony. The breeding part of the live stock (it may on the other hand be observed) is a resource capable of being added to the part destined for consumption, together with the vegetable stock in store.—True;—but the live stock itself depends upon the vegetable stock:—a bad crop may reduce, and in the same proportion—the men themselves, and the cattle that should feed them.

The natural course of things seems to be—that to save the *expence*—which is the *certain* evil, and that which comes most home to gentlemen here at home—the supply should from henceforward be kept constantly deficient:—the calamity, till it happens again, being as usual regarded as impossible. Of the two rival results—on the one hand, sufficiency and thence expence—on the other hand, deficiency and thence famine—that the famine should happen now and then, to thin the ranks and lighten the budget as before, seems at any rate the most convenient result, and so far the most probable. I speak of a *moderate* famine, of the customary established scantling: for if, instead of a fourth or so,[1] the whole population were to be carried off by this or any other cause at once, this would be a sort of innovation, it might possibly make a sensation, and it seems not improbable, that the beginning the business again *de novo*—an operation requiring thought—might find somebody to object to it.

It appears already, that an apprehended scarcity, such as that which struck off 'a third of the ration' in January 1800, had not been understood to warrant the Governor in forbearing to lessen the encouragement, the influence of which was all he had to trust to for any increase in the supply. It was but the month before, that 'they were told,' (the settlers in a body) '*to prepare for the reduction that would certainly take place in the next season.*'[a] At this time there was 'not more than' *six* months' 'provisions in the store at full allowance:' for in the next month (January 1800) when the reduction of the ration took place, there was 'not more than *five:*'[b] and it was at the very moment of this declaration of scarcity, that an actual defalcation to the amount of five per cent.—an unpredicted, previous to the predicted one—was made from the price. Economy appears to have been at this time the *order of the day:* and the *order* must, humanly speaking, have come from gentlemen here at home. Men neither embrace starvation, nor any approach to it, unless forced. Is it natural, that when one Governor was not contented with less than a two years' stock, another Governor should be so well contented

[a] Collins, II. 274. 276. [b] Ib. 283.

[1] Bentham perhaps had in mind the death during the voyage of about a quarter of the convicts who had been embarked on the Second Fleet: see p. 127 n. above.

the whole quantity in culture,[a] it follows, that to make any tolerable provision against famine, two thirds of a crop, *plus* the nine-tenths of a crop, must be bought on Government account of the settlers, and a constant overplus to that same amount be kept up by the same means. Here then comes a constantly *real* necessity, for a prodigious quantity *apparently* superfluous. If the demands of this necessity are yielded to, then comes a proportionally heavy expence, and, in the natural course of things, suspicions at home in consequence, reprimands in consequence of these suspicions:—if, in consequence of these suspicions and reprimands, or otherwise, the demands of the necessity are not yielded to, then, on the other hand, comes *famine:*—nor that alone, but along with it the insufficient exertions in the way of expence, made, as heretofore, in fighting against the famine. *Beau jeu* in all this (your Lordship may perhaps observe) for opposition: if opposition were to find a glance to bestow upon such trifles, and if half a dozen thousand convicts in New South Wales were worth half the pains that have been seen to be taken about half a dozen seditionists, or supposed seditionists, in *Cold Bath Fields.*[1]—Is the necessary provision made? outcry against the *expence:*—is it withholden? then in God's own good time comes the *famine*, which, if it were the fashion to look to any such distance, would be a still better thing than the expence.

So again, about the *Chandler's shop* already spoken of.[b] Is the shop sent out thither and opened?—then again comes the expence in that shape. Are the Governor's promises on that head kept by gentlemen here, as in my instance they have been keeping their own engagements

with a five months' stock, as to take precisely that time for reducing the only encouragement men had for raising more?

Supplement to Swift's Directions to Servants[2]*—King's Upper Servants.*—If you want to shew what credit you have with your Master, and how little you care for gainsayers, take as bad a measure as you can find, bad by repugnance to its pretended object, and doubly bad on account of the expence.—Then, to shew your economy, instead of giving the measure up, starve it with the people concerned in it; which saves so much expence.

[a] Ib. p. 334. [b] Ib. 97.[3]— *Supra* p. 175.

[1] Following the passage of the Habeas Corpus Suspension Act of 1794 (34 Geo. III, c. 54), state prisoners—including United Irishmen and members of the London Corresponding Society—were imprisoned, amongst other places, in Cold Bath Fields. The most notorious of its inmates was, perhaps, Edward Despard (1751–1803), Superintendent of Honduras 1786–9, who, with six of his alleged confederates, was hanged on 21 February 1803 for plotting to assassinate George III and lead a general uprising.

[2] Jonathan Swift (1667–1745), writer, Dean of St Patrick's Cathedral, Dublin, was author of the posthumously published *Directions to Servants In General; And in particular to The Butler, Cook, Footman, Coachman, Groom, House-Steward, and Land-Steward, Porter, Dairy-Maid, Chamber-Maid, Nurse, Laundress, House-Keeper, Tutoress, or Governess*, London, 1745.

[3] *Recte* 97–8.

for these nine years? then comes the impoverishment of the settlers—the already established reason for keeping up that enormity of price,[a] by which the expence is let in, and the public money let out, at another crevice.

It would be something, if, at any expence, the security could after all be purchased: but, as the security increases on one hand, so does the danger on the other. These magazines—are they scattered over the face of the country? so many stations, so many points to guard against depredation. Are they kept together in one mass? the more comprehensive then the destruction they are exposed to suffer, from the devouring flames. Each *Caligula* (in a state of things capable of giving birth to many Caligulas,) beholds his wish thus realized:—all heads standing upon one neck, and capable of being cut off at one stroke.[1] The supposition, can it, in *that* situation, be deemed a forced one?—Even in the mild climate of the Mother Country, when symptoms of dearth break out, does not the *actual cautery* stand, in the *materia medica* of the populace, upon the list of remedies?[2]

But, not to speak of a whole stock of settlers, how should so much as a single settler, henceforward at least, ever find his way thither, without insanity on his part, or cruel treachery on the part of those who sent him?[b] No tolerably assured *source of supply,* either for accustomed comforts, or so much as necessary tools and implements:[c]—no tolerably assured *market for produce*, when raised:[d]—The chance depending in the first place upon the real wants of Government; in the next place upon the arbitrary will and pleasure of a single person, in a situation capable of making a tyrant out of a *Trajan* or

[a] 10s. per bushel, in December 1799; II Collins p. 276: in Norfolk Island 15s. in January 1799: Ib. 196.
[b] Lett. I. p. 95.
[c] Collins II. 92. 105. 114. 205. 269. 274. 305.[3]
[d] Ib. 106.[4]

[1] When the people favoured a party in opposition to him, Caligula threatened them with the words *utinam populus Romanus unam cervicem haberet*, i.e. 'I wish the Roman people had but one neck': see Suetonius, *De Vita Caesarum*, IV. xxx. 2, and Cassius Dio, *Roman History*, LIX. xiii. 6.

[2] In 1794–6 and 1799–1801, when poor harvests led to significant rises in the price of food, a large number of acts of incendiarism, commonly accompanied by anonymous written threats, were committed upon the barns and crops of farmers, most notably in south-east England.

[3] Collins, ii. 92–3, 105–6, 114, 205–6, 269, 274, 305, describe the complaints made, during 1798, 1799, and 1800, by settlers at the Hawkesbury River and at Norfolk Island of their being unable to afford to harvest their crops or purchase basic necessities. Many settlers had been forced to mortgage their crops and a number had been imprisoned for debt.

[4] Collins describes how in April 1798, despite repeated orders being issued to the storekeeper at the Hawkesbury River settlements when purchasing grain for the public stores to show favour to 'petty farmers', the trade had been monopolized by two or three 'opulent traders'. See also p. 201 above.

a *Titus*.[1] [a] Storehouses and dwelling-places, requiring *repairs every year*,[b] and, even on those terms (such is the law of the climate) not capable of being made to hold together above *ten years:*[c]—*Property* (supposing it acquired)—*property* (not to speak of *person)* incapable of being *removed*, and exposed all the time to *depredation*, as well as to so unprecedented an assemblage of the causes of *destruction* as that referred to as above:[2]—No stirring from home, without a *special licence*; an instrument to be inspected and confirmed every two or three miles, by a man who may not be to be found, or may refuse to look at it;[d]—every action of life, depending, ultimately or immediately, upon the caprice of a Governor, whose caprice is without controul, and whose whole course of government (as I propose to myself the honour of stating to your Lordship ere long)[3] is one unintermitted, howsoever excusable, violation of law. While a nich in a rock is to be had in *Nova Zembla*,[4]—I beg leave to ask, my Lord—could a man in his senses, supposing him apprized of all these circumstances, regard any otherwise than with abhorrence, the idea of becoming a settler in New South Wales?—in a country, peopled almost entirely with 'characters,' the importation of whom into any other 'community,' though it were in the smallest numbers, is compared, by the chief [Magistrate],[5] to the 'importation of the plague, or the yellow fever?'[e]

[a] Ib. 126. 269. 274. 276.[6] [b] Ib. 139.[7] [c] Ib. 135.[8]
[d] Ib. 26. 295.[9] [e] Ib. 294.[10]

[1] Both Marcus Ulpius Traianus, known as Trajan (53–117), Roman Emperor from 98, and Titus Flavius Vespasianus, known as Vespasian (9–79), Roman Emperor from 69, had a reputation for justice. The historian Flavius Eutropius, in *Breviarium Historiae Romanae*, VIII. 2–5, wrote of Trajan that, 'So much has the fame of his goodness prevailed, that it affords ground for most noble illustrations in the hands either of such as flatter, or of such as praise with sincerity', while Suetonius, in *De Vita Caesarum*, VIII, praised Vespasian for his humility, leniency, patience, and generosity.

[2] See pp. 241–2 above.

[3] See 'A Plea for the Constitution', pp. 313–94 below.

[4] i.e. Novaya Zemlya, an archipelago in the Arctic Ocean, off the north Russian coast.

[5] 1802 'Magistrates'.

[6] Collins describes measures taken by the colonial government in September 1798, and October and December 1799, to encourage the breeding of livestock, and its attempt to reduce the fixed price at which the government purchased grain from settlers.

[7] Collins describes how, during December 1798, people were employed in whitewashing and 'repairing such of the buildings as required it' and notes that such 'attention' was 'highly necessary at least once in every year, for the preservation of works'.

[8] Collins, ii. 135–6, describes the decision made, during December 1798, to pull down Government House at Parramatta after it was found to be beyond repair.

[9] Collins describes how, in March 1797 and May 1800, government orders were issued requiring all individuals, except officers, to carry a pass when travelling between districts and to present it to constables upon request. See also p. 200 above.

[10] Collins, ii. 293–4, describes a letter received in New South Wales in May 1800 from Richard Wellesley [formerly Wesley] (1760–1842), second Earl of Mornington and first Marquis Wellesley, Governor-General of Bengal 1798–1805, Foreign Secretary 1809–12, containing a list of people living in Calcutta who had travelled there from New

After the view already given of the establishment, with reference to the avowed, or at least only avowable, ends of its institution,[1] the sketch likewise given of the *eventual* probability of its destruction, would to some eyes be productive not of regret, but satisfaction: a satisfaction the more complete, the nearer that probability were looked upon as approaching to certainty. The worse the system, the more fortunate that the maintenance of it should be thus hopeless:—Once admitted, this hopelessness would ease gentlemen of the responsibility, save them the expence of thought, relieve them from the burthen of reflection and debate. Such I am inclined to think would be the effect of the picture on some eyes:—whether your Lordship's be or be not of the number, is a point altogether above the reach of the best observations, that can possibly be made from so humble an observatory as mine.

XVI. *English Hulks—and 'improved Prisons'—Topics deferred.*

After so much as has been said of the two specially contrasted systems—the system of *Penal Colonization* on the one hand—the *Penitentiary System* in its most improved realized form, as likewise in its supposed still more improved, though as yet unrealized form, on the other—a supplement of a very moderate length would suffice to complete the review of the several modifications of *chronical* punishment, that have as yet been either exemplified or proposed, among Britons and men of British race.—*Hulks* and '*Improved Prisons*,' are the heads, under one or other of which all the yet remaining matter might be comprized. Principles being already laid down, a small number of additional pages would suffice for the application of them to these two topics. At present however—considering how large the draughts are, which I have been venturing to draw already, upon a time so precious as your Lordship's—how complete the uncertainty is, to a man at my humble distance, in what proportion, if in any, this or any such draughts from any such quarter will ever be honoured;—considering with what imperturbable serenity your Lordship was pleased to view the *outline*,[2] which it has been the business of this and the former letter to fill up—how incapable it was

South Wales. Wellesley requested information as to whether any of these individuals had left Sydney before their sentences had expired, and though none had absconded, Collins exclaims, 'what community, where honesty and morality were cultivated, would not deprecate even the possibility of such characters mixing with them, with as much earnestness as a people in health would dread the importation of a plague or a yellow fever!'

[1] See 'Letter to Lord Pelham', pp. 71–164 above.

[2] i.e. the marginal contents for 'Panopticon versus New South Wales', which became the first 'Letter to Lord Pelham': see 'Correspondence, sent to Wilberforce', pp. 48–55 above.

of producing on your Lordship's part any other perceptible effect, than a philosophical reflection on the supposed frame of mind by which some other papers that accompanied it were supposed to have been produced;[1]—considering how impossible it is for me to know, or so much as to conjecture, whether the lot of convicts, or that portion of public security which depends upon the disposal of them, has ever yet been regarded, or is ever destined to be regarded, as worth a moment's thought, either by your Lordship, or by any of those other exalted persons, with whom when any thing is acted your Lordship acts;—considering how much easier in certain circumstances repose is than action, silence than justification or even excuse;—taught, by a course of nine years' experience,[2] how much superior your Lordship's situation is to every level of practical responsibility—how much inferior mine, and every public subject that has the misfortune to be connected with it, is, to every level of effectual and exigible right;—recollecting, with an emotion of not altogether uninterested sympathy, the mortification experienced by the well-bred visitor at *Mrs. Salmon's* circle,[3] whose homage to a well-dressed lady was not sufficient to procure him the return so much as of a nod;—putting all these things together, my Lord, I have determined to consult my own ease at least, whether your Lordship's be or be not connected with it, by reserving to an occasion of future contingency what little may require to be said on those other uninteresting topics above glanced at;[4]—and accordingly for the present, waiting with the necessary resignation that nod, which at one time it was said to be in your Lordship's contemplation to bestow,[5] I have the honour once more to subscribe myself,

MY LORD,

Your Lordship's most obedient and humble Servant,

JEREMY BENTHAM.

Queen's-Square-Place, Westminster,
17*th December,* 1802.

[1] For Pelham's comment on Bentham's 'frame of mind' see ibid., p. 36 above.

[2] i.e. since the passing of the Penitentiary Act of 1794.

[3] Mrs Salmon (*c.* 1670–1760), exhibitor and wax portraitist, and her husband ran a waxwork exhibition until 1710 at the Golden Ball, St Martin's-le-Grand, and from 1711 at Fleet Street. Upon her death, the exhibition was taken over by a surgeon named Clarke and in 1795 it was moved to premises on Inner Temple Lane.

[4] For 'Third Letter to Lord Pelham', dealing with the hulks and 'improved prisons', see pp. 249–302 below.

[5] In his letter to Bunbury of 19 August 1802, Pelham had promised to 'apply my mind to the subject [i.e. the panopticon prison], and endeavour to get something settled before the meeting of Parliament': see 'Correspondence, sent to Wilberforce', pp. 36–7 above.

THIRD LETTER

TO

LORD PELHAM

&c. &c. &c.

On the Hulks and the 'Improved' Prisons,

IN CONTINUATION OF

THE COMPARATIVE VIEW

OF

THE SYSTEM OF PENAL COLONIZATION

IN NEW SOUTH WALES,

AND THE

HOME PENITENTIARY SYSTEM,

Prescribed by two Acts of Parliament of the Years 1794 & 1799[1]

My Lord

My last concluded with a sort of half-promise:[2] I now proceed to the fulfillment of it, and with as much punctuality as if it had been a whole one. *Sir—you are too good* . . . Not at all, my Lord; I will be judged by the Printer, who was the person I had in view. *Indeed, Sir?—and nobody else?—So you are not read, and it is upon this supposition that you write?* Something like it, my Lord. The reader I am sure of is the Printer: the reader I am not sure of is the gentleman, if there be such a one, who, on petty occasions like the present, has it in charge to read and think for Your Lordship, or at any rate to read.[3]

On the 19th of August indeed, Your Lordship's own 'mind' was to have been 'applied to the subject'—and that '*at all events*'. On the

[1] The title is taken from the printed proof at UC cxvii. 261: for further details see the Editorial Introduction, p. lxiii above. The Acts in question were the Penitentiary Act of 1794 and the Appropriation Act of 1799.

[2] See 'Second Letter to Lord Pelham', § XVI, pp. 247–8 above.

[3] The 'gentleman' Bentham had in mind was John King, Under Secretary in the Home Office.

19th of August Your Lordship's own 'endeavours' were to have been employed to get something settled, and 'settled before the meeting of Parliament.'[1] Parliament met the 16th of November: this is the 18th of December: *magna otia cæli*[2] all the time. Yet if Mr Secretary Vansittart is to be believed, Lord Pelham is the Atlas on whose shoulders the world rests, or at least this part of it.[3] Shaken off by these superior shoulders the best that can have happened to it is, that in its fall, it should have been caught by some subordinate ones.

Already, before September was at an end, so teazing was the burr become, with all its lightness, that the time of completion was transferred, from that finite period to another infinite one. The time for 'sending to' the man was to be—not as at first before Parliament had met—but after three volumes not expecting any such reading 'had been read', and 13 personages not expecting any such conversation had been 'conversed with'.[4] This is what a Ryot in this country gets by presenting Nuzzeers to Omrahs![5] The Great Mogul, my Lord, would not have served me so. 'What can I say more?'[6]

After this explanation, confessing hibernianism, and calling in so much of fiction and inconsistency as may be necessary to my aid, I keep on making marks upon paper, just as if any such 'exalted mind'[7] as Your Lordship's were still to be applied to it: just as if any such things as reformation, economy, life, person, property, public faith, parliamentary authority, and so forth, were worth Your Lordship's notice.

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[1] See 'Correspondence, sent to Wilberforce', pp. 36–7 above.

[2] See Juvenal, *Satires*, II. vi. 394: '[You must have] plenty of leisure in the sky.'

[3] See Vansittart to Bentham, 10 September 1801, *Correspondence* (*CW*), vi. 446: 'With respect to your Convict plan, I have not yet had an opportunity of consulting with Lord Pelham, on whose decision the business must principally turn'. In Greek mythology, after the Titans were defeated in their war with the Olympian gods, Atlas was condemned by Zeus to hold up the sky for eternity.

[4] In a letter of 30 September 1802, Bunbury informed Bentham that he had seen Pelham, and 'desired he would send to you, and inform you what steps he intended to take in the Business of the Panopticon Prison: He said he would, as soon as he had read through your Books, and conversed with the chancellor, and the Judges on the Subject': see *Correspondence* (*CW*), vii. 137. The '13 personages' were, therefore, the Lord Chancellor and the twelve Justices. The 'three volumes' were 'A View of the Hard-Labour Bill', 'Panopticon; or, The Inspection-House', and 'Outline of a Work entitled Pauper Management Improved': see Bentham to Abbot, 3 October 1802, *Correspondence* (*CW*), vii. 139, and the Editorial Introduction, p. xlvi & n. above.

[5] In India, a raiyat was a peasant or tenant farmer, a nazar was a tribute given by a social inferior to a superior, and an omrah was a grandee in a Muslim court, especially that of the Mughal Emperor.

[6] See Samuel Richardson, *Clarissa. Or, the History of a Young Lady*, 7 vols., London, 1748, iv. 110, vii. 92.

[7] See, for instance, John Milton, *Paradise Regained*, I. 206.

XVII.[1] *Hulk system compared with Penitentiary and New South Wales systems.*

From the foregoing *demonstrations*—if such by curtesy at least they may be stiled—may be deduced, in the form of a *corollary*, a short estimate on the subject of the *Hulks.* In the scale of utility, the station of this system would be found, if my judgment does not deceive me, in the *midway* between that of *penitentiary* imprisonment taken without the benefit of the *panopticon* improvements, and that of *penal colonization* taken on the footing on which it stands in New South Wales. With the former it agrees, in respect of its purity from *drunkenness*, with the attendant miseries and mischiefs: with the latter, in respect of the *promiscuous aggregation*, with the universal corruption issuing from it. As a preventitive of *present* mischief—of mischief considered as commissible under and during the punishment—it may rank not much below the Penitentiary system: it stands at a prodigious height above New South Wales. On the ground of *healthiness* (meaning physical healthiness) cleared as it is from drunkenness, it may again rank not much below the penitentiary system: on the ground of *moral health*, as a school of *post-liberation* wickedness, it stands scarce at all above the level of New South Wales. In the article of *comfort*, considering the miseries of forced and crowded association, it can never come up to—it can never do otherwise than fall deplorably short of—a well-ordered Penitentiary House. In the article of *economy*, in one point of view it cannot but fall considerably short of it, since among a number of persons in that condition of life, and of those habits of mind and body, there will naturally be a considerable proportion unfit for such *outdoor*, and thence almost necessarily *heavy* work, as that which can alone be put into the hands of a body of men so *lodged*.[a]

[a] In 28th Finance Report Appendix (N. 7.) p. 114, in a Report relative to the Convicts stationed on board the Hulks at Langston and Portsmouth Harbours, during the year 1797, the concluding paragraph is in these terms: '*A great Number* of the Convicts on board the above Hulks *were rejected*, *as unfit* to proceed to *Botany Bay* at the several Transportations, and *many* received *from the Gaols* are so *emaciated by long Confinement* and Debility arising from former Debaucheries, that they are unable to work; to these add the Number necessarily employed in keeping the Ships and Wards clean, and they will amount to nearly *One Third* of the whole Number confined. *A.H. Dyne*.[2]

'London. 17th May 1798.'[3]

[1] MS 'XV'. The section number has been emended in accordance with the enumeration of 'Second Letter to Lord Pelham'.

[2] Andrew Hawes Dyne, also known as Andrew Hawes Bradley, had taken over the contract for the management of the hulks at Portsmouth following the death on 1 January 1797 of the previous contractor, his brother-in-law James Bradley.

[3] See 'An Account of the Value of the Labour of the Convicts employed on Board of the

In the comparison of the Hulk system with the Penitentiary system, the most material point of all is—that the ground on which the former system approaches to the level of the latter, is that sort of ground, in which the interest of the *individual*—the delinquent prisoner, much more than any other and more *public* interest, is concerned: I mean the absence of the means of *drunkenness*, in a situation, in which, except to the drunkard himself, little mischief would be apt to result from drunkenness. The ground, on which it sinks to the level of New South Wales, is the ground which touches, and in the tenderest part, the interest of the whole community, into which the prisoners, after the expiration of their respective terms, are one after another continually let loose. It is in a state of matured corruption, exceeded by nothing but that of New South Wales, that they are thus discharged into that society, from which, in a state of less perfect corruption, they had, in consideration of that corruption, been expelled.

To facilitate the comparison, I well beg leave to submitt[1] to Your Lordship a *Table*, in which the points of resemblance and contrast between the three systems, under some of the principal heads, are set down, side by side.

I. Penitentiary system	*II. Hulk system*	*III. N.S. Wales system*
1. Drunkenness, *none.*	1. Drunkenness, *none.*	1. Drunkenness, *universal.*
2. Association—with *one another*, select: with *strangers*, none.	2. Association—with *one another*, promiscuous: with *strangers*, none.	2. Association—*altogether promiscuous:* Convicts, one with another by thousands: with Soldiers and seamen, with each by hundreds.
3. To health, *supremely favourable:* by sobriety, cleanliness, and constancy of occupation; by mixture of light with heavy, indoor, with outdoor, work.	3. To health, *favourable* by sobriety: unfavourable by want of mixture of light with heavy work, and total want of occupation for such as are incapable of hard and outdoor work.	3. To health, *unfavourable* by drunkenness. To vitality, favourable notwithstanding, by the salubrity of the climate: setting aside experienced frequency and perpetual probability of *famine* on the spot, and *pestilence* during the passage.

Hulks at Langston and Portsmouth Harbours, during the Year 1797, so far as the same can be stated or estimated', in 'Twenty-Eighth Report on Finance', Appendix N. 7, in *Commons Sessional Papers of the Eighteenth Century* (1798), cxii. 115. All emphases in this and the following extracts are Bentham's, unless otherwise noted.

[1] Printed proof 'submit'.

I. Penitentiary system	*II. Hulk system*	*III. N.S. Wales system*
4. To comfort, for the same reasons as to health, *eminently favourable*; as also by security against uneasiness from quarrels and oppressions: saving always the salutary discomfort resulting from the necessary discipline.	4. To comfort, *eminently unfavourable*; by reason of the promiscuous aggregation in a crowded space: under exposure to uneasiness from quarrels and oppressions.	4. To comfort *supremely unfavourable*;—by the universal insecurity in respect of property; as well as in respect of uneasiness from quarrels and oppressions.
5. To reformation *eminently favourable*, in respect of the inviolable sobriety, the select aggregation, the constancy of occupation, and the subjection to inspection, more or less uninterrupted, according to the plan of architecture and management.	5. To reformation, *eminently unfavourable*, by reason of the promiscuous and unbounded association, and the ascendant naturally gained by the most corrupted characters.	5. To reformation, *supremely unfavourable*, by reason of the promiscuous and unbounded association, joined to much opportunity of sloth and to unbounded drunkenness.
6. To incapacitation for fresh offences *during* the penal term, *compleatly effectual.*	6. To incapacitation for fresh offences during the penal term, *effectual* for the most part.	6. In respect of offences during the penal term, rather *conducive* than *incapacitating.*
7. To prevention of fresh offences *after* the penal term, *eminently conducive*, in respect of example as well as reformation.	7. In respect of fresh offences after the penal term, *little preventive* in the way of *example:* rather *conducive* than preventive, by *corruption* instead of reformation.	7. In respect of fresh offences after the penal term, altogether *unpreventive* in the way of *example:* supremely *conducive*, by consummate *corruption* instead of reformation.
8. To economy, *supremely favourable*; by constancy of profitable occupation, mixture of light with heavy work, almost unlimited choice of the most profitable work, and greater or less facility of *inspection.*	8. To economy, *imperfectly favourable*; by want of light work, for the weakly, and to mix with heavy work.	8. To economy, *supremely adverse*; by the presence of every cause of expence, and the absence of every source of profit and frugality.

In this view, my Lord, Your Lordship (I am inclined to[1] think) will see some[2] ground for the opinion, that—(setting aside in the case of New South Wales the incompleat security grounded on the *illegal* part of the punishment, a security which, according to the latest accounts,[3] is in a way to be much weakened, if not given up—and of which the degree, in respect of the number of returners, depends in a great degree upon unforeseeable and uncontroulable contingencies) the Hulks, pernicious as they are, are at any rate a *less* pernicious receptacle for convicts than New South Wales: and that, if the manufacturers of *grounds for relinquishment*[4] could have been supposed for a moment to have considered themselves as responsible to God or man for the composition of their list, or for the system of conduct grounded on it, a more substantial ground might have been made out of the unimproved and unimprovable Hulks, than out of the so much improved and ever alike-improving Colony.

XVIII.[5] *Penitentiary system in England—Improved local prisons.*

So much having been said of what has been done in this way in foreign countries,[6] the omission might well seem a strange one, were nothing said of what has already been done in this way here at home.

On this subject however it would be in vain for me to attempt to speak with any distinctness and that for various reasons.

In the first place, I know not to which of the existing prisons the denomination may be applicable, nor what the number of them may amount to in the whole. In England, Wales included,[a] total number

[a] Number of those visited by Howard 257. Howard on Prison[s]. 3[d] Edit. 1784. p. 486. Table XII.[7]

[1] MS ‘am to’. The text follows the printed proof.

[2] Printed proof ‘more’.

[3] The ‘accounts’ to which Bentham refers have not been identified, though he may have had in mind the second volume of Collins.

[4] For the four ‘grounds of relinquishment’ of the panopticon scheme, including ‘the improved State of the Colony of New South Wales’ and ‘the various Improvements which have . . . taken place in the different Gaols of this Kingdom’, see ‘Letter to Lord Pelham’, p. 73 & n. above.

[5] MS ‘XVI.’ The section number has been emended in accordance with the enumeration of ‘Second Letter to Lord Pelham’.

[6] See the accounts of the penitentiaries in Philadelphia and New York in ibid., §§ III, VII, X–XIV, pp. 177–9, 196, 218–39 respectively above.

[7] See Howard, *State of the Prisons*, ‘Table XII. An Account of the Number of Prisoners in the Gaols and Prisons of England and Wales, at the Time they were visited in 1779, and 1782’, pp. 486–92. Bentham appears to have arrived at his figure of 257 by adding the 243 different prisons visited by Howard during his tours of 1779 and 1782 to a first visit to the Woolwich hulks and a second visit to thirteen London prisons in 1783.

of prisons nearer three hundred than two: prisons improved upon the penitentiary plan, between half a dozen, I should suppose, and a dozen. Your Lordship knows precisely: or at any time may know, from those connoisseurs in prisons, who are as much at home in 'improved prisons' as they are in 'improved Colonies.'[a]

2. In the next place, it is only in here and there an instance that the accounts would be accessible to me: and were they even all before me, to speak of all would require a work of itself; to dwell upon one or two only, might be a sort of injustice to the rest.

To all these 'improved' prisons, in what other respects soever improved or supposed to be improved, one feature of improvement belongs in common—*encrease of enclosed space.* In each instance, this increase has had one or more of three objects:—prevention of disease—affording working room—affording means of separation for Convicts of different descriptions: sequestration in various degrees of perfection, up to the pinnacle of penal luxury—total solitude.

Space for prevention of disease is a most indisputable improvement, wherever necessary, but an improvement that has no particular reference to penitentiary discipline. Of this salutary discipline, space for separation, space for working, may be stated as the two characteristic features, so far as architecture is concerned.

In the increase of space for separation, reformation, or rather non-increase of corruption, was the object aimed at. This object will have been compassed in a greater or less degree of perfection according to the sufficiency of the architectural means, and the use made of them in the management. As far as my opportunities of observation extended—and the enquiry was once an object to me—one great obstacle to this end appears to apply in common, and with scarce any exception that I could observe, to all these prisons: I mean the want of compleatness in the plan of separation. What matters it whether there be certain times of the day in which the raw are debarred from getting instruction from the reprobate, if there are others in which they are brought together? In the department of

[a] Note giving the account from Neild.[1]

[1] The note has not been identified, and may not have been written, but for details of Bentham's attempt to ascertain the number of improved prisons from information derived from James Neild (1744–1814), penal reformer and philanthropist, see the Editorial Introduction, pp. lxiv–lxv above. The 'improved prisons' in question were such local prisons as were constructed following the passage of the Gaols Act of 1784 (24 Geo. III, sess. 2, c. 54) and which were designed by or embodied the principles of William Blackburn, who had won a competition with a design, now lost, for the national penitentiary for male prisoners authorized by the Penitentiary Act of 1779. Though his building was never realized, Blackburn was recognized as the leading contemporary authority on prison architecture.

wholesome instruction, is a school the less a school because the boys are not always in the school room?

Separation however, even though carried to the length of solitude, is not of itself sufficient for reformation. To reformation, *occupation* is necessary: occupation, profitable or at least innocent, to fill up the mind with useful ideas or at least innocent ones, and by that repletion to exclude mischievous ones.

Inclosed space, for whatever purpose, is not to be had without expence. To pay for that expence, if work be proposed to be done, it is necessary not only that work shall be done, but done in such quantity and such quality, as to equal the expence. It is in this way that the interests of *reformation* and those of *economy* are intimately blended and connected. Work of some sort or other, profitable or not profitable in point of *economy*, is necessary for *reformation*. But the less the expence of reformation, the less it will be grudged.

Grudged?—says a voice somewhere—whether Your Lordship's or whose else I am unable to distinguish—out of all habits as I am with great men—*Grudged!* however (says the voice and in a tone of displeasure—) *and what then?—as if where reformation is at stake, expence would be grudged by any body:* as if in such a case the grudging of the *money, if it were grudged, ought to stop the issue of it!* For *corruption*, no my Lord: for that object £46 a year per head[1] has never been thought too great in Your Lordship's Office, any more than in the office underneath:[2] I mean so long as improved Colonies have been the scene. But *reformation* is another thing. As to the *ought* and the *ought not*, these are *speculative* points and may be left to *speculatists*. The *fact* is, that money for this purpose is grudged, and to such a degree grudged, as to prevent the issue of it. If such be the fact, and (Your Lordship a little farther on will see it is)[3] in the most opulent of all opulent Counties, what may it be expected to be in the rest?

Grudged or not grudged, another fact is, it must be confessed, that in some instances, many more than I should have thought, the money looked upon as necessary for this purpose has been issued and prisons built accordingly: viz: these improved prisons.[a]

Improved prisons built, and what has been the result? In respect of reformation, separation over-done, over-done in some instances to the degree of absolute solitude: in all of them, or at least almost all of

[a] Put Table from Neild.[4]

[1] i.e. the annual expense per head in 1797 for convicts transported to New South Wales: see 'Letter to Lord Pelham', p. 143 above.

[2] i.e. the Home Office and the Treasury respectively.

[3] See pp. 269–70 n. below.

[4] For a description of the table, which is at UC cxvi. 454 (26 December 1802), see the Editorial Introduction, pp. lxiv–lxv above.

them, the influence of that solitude at the same time disturbed at least, if not utterly destroyed, by regularly recurring associations.

In respect of economy, £1,000 a year perpetual rent, and for that £1,000 a year £500 neat profit (neat in other respects) produced.[1] Neat loss £50 per cent of the rent: and to produce this loss—that is to reduce the loss to this scantling, such exertions and such talents as it would be presumptuous to count upon in any future instance: at any rate in the general run of future instances. Had equal talents with equal exertions been employed upon a larger scale, instead of speeches,[2] the National debt I am inclined to think would not have weighed quite so heavy as it does.[3] Such has been the effect of '*improved prisons*' under Blackburn architecture.

I knew the man, my Lord. Raw in the business, fame sent me to him for instruction: I was in treaty with him for Ireland. *Sir* (says he) *if I work this thing for you, ordinary per centage will not pay me: let there be one building upon this principle, there will be an end of mine*.[4] The substance, my Lord; most exactly: almost the very words. The man was an artful man:—but this came out from him unawares. He was a great professor of economy: but his economy consisted in doing useless things at a cheap rate.[5]

[1] Bentham may have found this information in the work on Cold Bath Fields prison referred to at pp. 275–6 n. below, but of which no copy has been traced.

[2] i.e. the financial talents, exertions, and speeches of Pitt.

[3] According to 'Return of Amount of National Debt, 1691–1858', 19 July 1858, *Commons Sessional Papers* (1857–8), xxxiii. 39, as of 31 December 1802 the funded debt of Great Britain and Ireland was £522,231,786, while the unfunded debt was £15,421,222.

[4] In a letter of 23 January 1791 Bentham told Pitt that Blackburn, who had died in November 1790, 'was, under my direction, to have had the construction of the building, if the Irish Government had thought fit to accede to the extra demand he made for lending himself to the execution of a plan, which he foresaw and reluctantly and unwittingly, though very pointedly, acknowledged would turn his own into waste paper': see *Correspondence* (*CW*), iv. 223–4.

[5] In the margin, Bentham has noted at this point: 'Note about Adams spoiling the plan:—the cheapness the reason of its not being adopted by Architects:—Alexander's fraud.'

The 'plan' in question was, of course, the panopticon plan, which had been 'spoiled' by the architect James Adam (1732–94). James Adam's brother, the architect Robert Adam (1728–92), in 1791 had won the competition for the new Edinburgh bridewell with a design inspired by Bentham's panopticon. Robert Adam had died on 3 March 1792, whereupon James Adam took over the building of the bridewell. Samuel Bentham, in a letter of 14 July 1792, having been visited by Adam on the previous day, informed Thomas Bruce (1766–1841), seventh Earl of Elgin and eleventh Earl of Kincardine, Minister in Brussels 1792–4, Minister to Prussia 1795–9, Ambassador to the Ottoman Empire 1799–1803, that owing to Adam's modifications, 'The Panopticon idea has been if not actually spoiled by him, I hope, but at least very much impaired': see *Correspondence* (*CW*), iv. 372–3 n.

For Bentham's description of the economy of his plan of construction for the panopticon penitentiary, including some comments on the expense of Blackburn's plan, see 'Panopticon; or, The Inspection-House', ii. 228–40 (Bowring, iv. 118–21).

Alexander of Abonuteichos was a contemporary of the Greek writer Lucian of Samosata (b. *c.* 120), author of *Alexander or the False Prophet*. Alexander claimed that Asclepius,

Neither by talents nor by exertions can the nature of things be changed: It is a position I have had occasion to make good elsewhere,[a] that *cæteris paribus* the neat productiveness of any branch of *profit-seeking* industry will be as the largeness of the scale on which it is conducted.

In all *receptacles* without exception (the demonstration is a strict one, and comes within the province of mathematics—yes, my Lord, even '*of arithmetic and its calculations*')[1] the greater the space contained, the less the proportion of matter required for the containing of that space. By the same powerful cause, the effect is influenced in a variety of other ways: amongst others, by diminution of the *number* and *expence* of *inspecting eyes*. If this be true of all such concerns in general, it will be more particularly true in proportion as reluctance, or unpractised awkwardness, prevail among the working hands.

Among the variety of rocks on any one of which Mr Pitt's ever memorable Poor plan[2] would have split, was that of the *smallness of the scale*.[3] Not certainly of the *tout ensemble*—that was as large as it could be—but of each component establishment, as distinguished by a separate mass of building and a separate set of officers. Had the scale been as large as that of the average of the existing Suffolk Industry Houses, the estimated expence for the

whole of South Britain would have been	£10,275,250
Do upon the proposed Panopticon plan and scale	£2,357,000
Waste being the amount of difference—waste though altogether blameless and unpreventable	£7,918,250[4]

Two thousand to a house was the number upon the Panopticon plan and scale: two hundred in round numbers upon the Suffolk scale: but

[a] Papers intituled *Pauper-management improved*, in Young's Annals, A° 1797: Chap. III. *Buildings and Ground*.[5]

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the Greek god of healing, had taken the bodily form of a snake called Glycon, of whom Alexander was the prophet, and whose oracles formed the basis of an extensive cult.

[1] See 'Letter to Lord Pelham', p. 146–7 above.

[2] See ibid., p. 146 & n. above.

[3] In 'Pauper Management Improved', Bentham noted that 'the greatness of the expence and the smallness of the produce in the existing Poor Houses, Industry Houses included' was owing to the 'smallness of the scale' of the buildings and, therefore, the number of inmates they could accommodate, and to the concomitant difficulty of finding profitable employment for the inmates by which the running costs of the institutions might be defrayed: see *Writings on the Poor Laws: II* (*CW*), pp. 344, 346, 348, 354.

[4] Bentham has taken these figures from 'Outline of a work, entitled Pauper Management Improved', *Annals of Agriculture*, vol. xxx (1798), 134 n., reproduced in *Writings on the Poor Laws: II* (*CW*), p. 512 & n.

[5] i.e. 'Outline of a Work entitled, Pauper Management Improved', Book II, Chapter III. Buildings and Land, in *Annals of Agriculture*, vol. xxx (1798), 111–36, reproduced in *Writings on the Poor Laws*: *II* (*CW*), pp. 500–14.

upon Mr Pitt's plan they would have been of all manner of smaller sizes. The eight million—the amount of the waste upon that single article—would have been frugality, in comparison of the waste aimed at by Mr Pitt.—

This upon main buildings alone.

	£
Total of the estimated part of the expence upon this plan, Main buildings, Airing grounds, and Official establishment together—Annual amount of official establishments (to match with the other expences) reduced to capital, viz. at 20 years' purchase	22,459,561[1]
Deduct expence of do on the Panopticon scale and plan	6,022,000[2]
Remains for the amount of waste on this part of the aggregate of expence upon this plan, frugal as it would have been in comparison of Mr Pitt's	16,437,561

In round numbers, sixteen millions and a half out of two-and-twenty millions and a half, the waste by having ten establishments instead of one.[3]

Wasteful as this Poor-house plan of Mr Pitt's would have been, in comparison of the Suffolk Poor-house plan, itself wasteful in comparison of the Panopticon poor-house plan, the first official plan for covering the country with microscopical poor-houses would have been frugal in comparison of a second official plan, for covering it with microscopical penitentiary houses.

Upon the scale of ten establishments instead of one, the expence (your Lordship sees) is about mid-way between three times and four times as much as it need be:—to keep clear of exaggeration, say but three times:—waste £2 out of £3. But, upon this second official plan,

[1] This figure is Bentham's estimate of the sum total projected cost (though he appears to have miscalculated slightly), for the whole of South Britain upon the 'Suffolk scale', consisting of the cost of the industry house buildings (£10,275,250), the working and airing yards (£521,666 13s. 4d.), and the salaries of the official establishment for twenty years (£583,131 5s. × 20): see 'Outline of a Work entitled, Pauper Management Improved', *Annals of Agriculture*, xxx (1798), 132–4 n., reproduced in *Writings on the Poor Laws: II* (*CW*), pp. 511–12 n. Bentham's 'Suffolk scale' was based on figures concerning nine industry houses in Suffolk extrapolated from Thomas Ruggles, *The History of the Poor; their Rights, Duties, and the Laws respecting them. In a series of letters*, 2 vols., London, 1793–4, ii. 258–84.

[2] This figure is Bentham's estimate of the sum total projected cost, for the whole of South Britain upon the panopticon scale, consisting of the industry house buildings (£2,357,000), the working and airing yards (£165,000), and salaries for the official establishment for twenty years (£175,000 × 20): see 'Outline of a work entitled, Pauper Management Improved', *Annals of Agriculture*, xxx (1798), 132–4 n., reproduced in *Writings on the Poor Laws: II* (*CW*), pp. 511–12 n.

[3] Passage A, Appendix, p. 303 below, which Bentham considered inserting in a note, appears in the draft at this point, but was crossed through by him and omitted from the copy.

there would be 257[1] instead of one: 257 such local penitentiary houses, instead of the one national one prescribed by Parliament: prescribed by Parliament seriously, and afterwards bespoke of me in sport, as fish are hooked, by the late Treasury and the Duke of Portland.[a] Two hundred and fifty-seven penitentiary establishments instead of one: say for round numbers, only 250. If then an excess to the amount of 10 houses instead of one, makes the expence three times as much as it need be, how many times as much as it need be will 240 instead of one make the expence?—Answer, seventy-two times as much:—for the ratio of 240 to one is 24 times as great as the ratio of ten to one:—24 times 3 is 72.

But the quantity of needless expence in *poor-house* architecture, upon the current plan and scale, taking the Suffolk Industry Houses for the standard,[2] is but small in comparison of what it is in *prison* architecture, taking Cold Bath Fields Prison for the standard: for of that Penitentiary House the expence was found to be about 20 times as great per head,[b] (little more or less—say for round numbers 21 times as great per head)—as in the proposed Panopticon Penitentiary House:—21 times instead of 3 times. This being assumed, the quantity of needless expence in prison architecture on the plan of 240 penitentiary houses instead of one will, instead of 72 times, be 7 times 72 times, that is 504 times, as great as it need be.

And do you mean seriously, Sir, to make me believe, or to make any body believe, or do you yourself believe, that according to any plan of

[a] M[r] Secretary Long to M[r] Bentham—Copy.
'Treasury Chambers 25 March 1800.[3]

'Sir

'Having laid before the Lords Commissioners of his Majesty's Treasury a letter from the Duke of Portland, relative to the number of Convicts which the Panopticon proposed to be erected by you is intended to accommodate, I have received their Lordship's commands to acquaint you that the proposed building of a *Panopticon* is to be calculated to accommodate *Two Thousand* persons. I am &c.'

This was in answer to a letter of mine, written more than 7 months before: viz: on the 17[th] of August 1799: asking of M[r] Long the number I was to build for, for the therein declared purpose of my making preparations accordingly.[4]

[b] The calculation was grounded on the most particular information that could be obtained from the most authentic sources. It is at Your Lordship's command at any time.[5]

[1] For this figure see p. 254 n. above.

[2] For Bentham's calculation of the expense of the Suffolk industry houses see 'Outline of a Work entitled, Pauper Management Improved', in *Writings on the Poor Laws: II* (*CW*), pp. 511–13 n.

[3] This letter is reproduced in *Correspondence* (*CW*), vi. 279. For further details see the Editorial Introduction, pp. xxvi–xxvii above.

[4] See *Correspondence* (*CW*), vi. 188–9.

[5] Bentham may have found this information concerning the House of Correction, Cold Bath Fields, which had opened in 1794, in the work cited at pp. 275–6 n. below.

mine or any predecessor of mine, an expence 504 times as great as that of your proposed penitentiary house—aye, or a half or a quarter or a tenth part of that expence will be, or in any case would have been incurred?— Most certainly not, my Lord. Of any such expence I do not take upon me to say, that it was so much as intended: though of that plan which approaches much nearer to it than of any other example which the history of public waste affords, the execution was most indubitably intended.[1] Far therefore be it from me my Lord to undertake to maintain that the execution of any such plan was ever so much as *intended:* all I can pretend to say is, that the intention of bringing about the execution of a plan of that sort was *professed:* and, for saying so, my warrant, the only warrant I pretend to have for saying so, will presently be in readiness to meet Your Lordship's eye.[2] [a]

[a] It [is] in the way of *reformation* (*reformation* as contradistinguished from *example*) that these County penitentiary houses bid fairest for being serviceable. On the ground of mere separation, indeed, I have already stated why it is that but little would be to be expected from them: the good which of itself it might be capable of doing, if steadily persevered in, being in a manner obliterated by the promiscuous associations with which it alternates.[3] It is to the *occupation* afforded that the greatest share seems due in the production of whatever degree of reformation may have been the actual result. Minds are by this means more or less diverted from those mischievous topics of conversation which in a state of idleness would be the sole resource. In the Philadelphia penitentiary-house, even without the benefit of the central inspection principle, and under a plan of separation widely different from solitude, a very considerable and salutary check appears to have been applied to the exercise of the faculty of speech and by that means to the abuse of it.[4]

It is under the head of *example* that the effects of the penitentiary discipline in these local penitentiary houses appears most difficult to investigate and appretiate. Under this head, appearances are likely to be more favourable than realities. Upon the face of the accounts, judging from the number of convictions as between period and period, a very considerable decrease in the number of convictions within that jurisdiction may have taken place without a defalcation to that same amount—without a defalcation to any amount produced in the aggregate of crimes for the kingdom at large by that same cause. Why?—because without any decrease in the *number* of crimes, the scene of them may have been changed. The persons deterred may have been deterred—not from committing crimes, but from committing crimes within the precincts of a county in which so unpleasant a mode of spending time may be the result.

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[1] i.e. Pitt's scheme, for which see p. 146 n. above.

[2] Presumably in 'A Picture of the Treasury'.

[3] See pp. 256–7 above.

[4] According to Liancourt, *Comparative View of Mild and Sanguinary Laws*, p. 19, Walnut Street gaol's male prisoners did not work in solitary cells, but 'under the mutual inspection of each other, and there are seldom more than five or six [prisoners] in one workshop'. Prisoners were forbidden from engaging in long conversations, but were 'allowed to ask assistance of each other, and to speak on the subject of their mutual wants; but not otherwise'. They were forbidden from shouting and from talking about the reasons for their detention, and when they took their meals together, 'the same silence' was 'prescribed'.

Even[1] as to the eventual amount of the expence, intended or not intended, that the *rule of three*, as above employed, should, without any further data be correctly sufficient, is more than I would undertake to

It is among the observations made by the intelligent professors and practitioners in moral therapeutics in Philadelphia, that among those to whose eyes the prospect of imprisonment under the penitentiary form includes every thing that is most terrible, the prospect of imprisonment in the ordinary form is a matter of comparative indifference.[2] In the unimproved prisons the loss of the liberty of loco-motion is almost made up for by the absence of labour, joined to the constant opportunity of congenial conversation, sweetened by the occasional enjoyment of the means of drunkenness.

On the ground of reformation, the publication of Mr Neild,[a] just fallen into my hands,[3] affords a comparison not quite so much to the advantage of England as could be wished. In Philadelphia, back sliders not more than 5 in 100 in the course of 5 years,[4] even including the pardoned, on whom the discipline with its benefits had not been tried. From Dorchester, in 14 years ending with 1801, out of 393 of both sexes, 242 only stated as being 'reclaimed'.[b] This if the whole remainder were supposed to be unreclaimed would give more than 39 in the hundred backsliders. Five in the hundred in 5 years is in each year one: 39 in 14 years is in each year almost 3. '*Found reclaimed*' however is the word: and it can scarcely be supposed but that some may have been really reclaimed without having been *found* to be so: death or change of place might be alike productive of this effect. Want of agreement in respect of the number of years, takes from the commensurability of the two cases. The comparative view thus given of them is not so accurate as it might be: but to render it so would require more words than would be paid for by the result. In this English account, this persevering zeal which could not only institute but keep on foot so troublesome a course of investigation and the candour that laid the result before the public eye are alike conspicuous. Of the difference as between the English discipline and the Philadelphia in respect of the felicity of the result, no cause more probable upon the face of it can, it should seem, be assigned, than the alternation of promiscuous association with seclusion in the one case, contrasted with the unremitted exertions made in the other case to keep inviolate such degree of separation as the architecture of the prison, unaided by the central-inspection principle, admitted of.

[a] Account of the Society for the Discharge of small debts, 1802.[5] [b] Neild, 98.[6]

[1] Passage B, Appendix, p. 303 below, reproduces the first sentence of this paragraph, which appears in the draft at this point, but which was crossed through by Bentham and omitted from the copy.

[2] Bentham perhaps had in mind Liancourt's account of the 'two prisoners' who 'preferred to be judged according to the ancient law, rather than be subjected to so long and rigorous a detention' mentioned in 'Second Letter to Lord Pelham', p. 238 above.

[3] In a letter of 23 December 1802, Bentham informed Neild that, on a recent visit to Charles Bunbury's house, he had 'found on his table your interesting book on prisons, which he said you had presented him with': see *Correspondence* (*CW*), vii. 168.

[4] See 'Second Letter to Lord Pelham', § X, p. 219 above.

[5] James Neild, *An Account of the Rise, Progress, and Present State, of the Society for the Discharge and Relief of Persons Imprisoned for Small Debts throughout England and Wales*, London, 1802.

[6] 'Upon an enquiry made into the characters of all the Dorsetshire prisoners, on charges of felony, during a period of fourteen years, it appears, that out of 393 of both sexes, there have been found 242 reclaimed, maintaining themselves by honest industry.'

answer for: I would not haggle for a few millions:[a] no, my Lord, nor for a few dozen millions. A point I can speak to with more confidence, is—that the talents which gave birth to that determination, or at any rate to the professions made of it, are the very same which the public is every day experiencing the benefit of under Your Lordship's auspices:[1] and if the check which Your Lordship is thus fortunate enough to possess, for the correction of any error that may have unintentionally attached itself to so unavoidably rough an estimate—if so powerful a security against misrepresentation be not yet sufficient, I would beg leave to refer Your Lordship to the still more resplendent talents of the late official sub-professor of political economy, whose share in the glories of M^r^ Pitt's poor plan is without dispute, and who on all agreable occasions is so fond of 'arithmetic and its calculations'.[2] Industry houses upon the gallypot scale and Penitentiary Houses upon d^o^ are so identical in principle, that (even without adverting to the vicinity between the first and the second floors of the same edifice)[3] a man may without much apprehension of error venture to state them as coming out of the same shop.

Upon the principles I have thus ventured to point to in the improved prisons in question, present or future, one drawback from the goodness of the economy—one great drawback and [that][4] an unavoidable one—is the *smallness of the scale*.[5] Another is the *shortness of the term* which, in those receptacles for petty offenders, the improved hands have to learn the business in, and afford a compensation, for the time and materials consumed without profit, during the season of primæval awkwardness.[6]

[a] In prison architecture, Blackburn's plan for Battersea Rise would perhaps not have been more than about 15 times as much as the Panopticon plan, instead of the 20 or 21 times as much as in the case of Cold Bath Fields.[7] Cold Bath Fields proved bad ground: Battersea Rise was excellent ground. But Cold Bath Fields is up and finished: and the case of Battersea Rise affords neither finish nor commencement, nor any thing but estimate.

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[1] i.e. the talents of Charles Long.

[2] i.e. George Rose.

[3] i.e. the Treasury and the Home Office respectively, who shared the Treasury Building in Whitehall.

[4] MS 'than'.

[5] See p. 260 & n. above.

[6] cf. 'Panopticon; or, The Inspection-House', i. 104–5 (Bowring, iv. 59), where Bentham notes that, in the case of remand prisoners who had no means of paying for their subsistence, 'the point then will be, to provide some sort of work for such, who not having trades of their own which they can work at, are yet willing to take work, if they can get it. If to find such work might be difficult, even in a House of Correction, on account of the shortness of the time which there may be for learning work, for the same reason it should be still more difficult, in a prison appropriated to Safe-Custody before conviction, at least in cases where, as it will sometimes happen, the commitment precedes the trial but a few days.'

[7] Bentham may have been basing his estimate of the cost of Cold Bath Fields prison on information derived from the work referred to at pp. 275–6 n. below, but of which no copy has been traced.

Under these disadvantages, together with that which results from the difference between the wages of labour, as compared with the expence of maintenance, here and in America, I should not expect to find it within the compass of human ability, though devoted exclusively to the service, to bring the improved English prisons in question upon a level in point of economy with that of Philadelphia. It is not without surprize that in some instances within my reach, Dorsetshire in particular (Oxfordshire I have but an indistinct recollection of), I have observed in how meritorious a degree these obstacles have been overcome.[1]

In these home instances the grand misfortune is, that in regard to the main object—the object with reference to which *example* and *reformation* themselves are but as means to an *end*—I mean the *decrease of crimes*—circumstances do not admit of their affording any such satisfactory proofs of efficacy as in the more favourable situation of the Philadelphia prison may be and have been afforded:—why?—because the *good* effects of the discipline of these *good* Jails are to such a degree drowned in the *bad* effects of the surrounding *bad* ones. In Pennsylvania too and in New York, the whole system of penal justice is invigorated by the abolition of capital punishment as above:[2] while in England the debility resulting from the opposite excess (by *debility* I mean the relaxation that pervades the whole system of procedure) is such as cannot be compensated in any ascertainable degree by the utmost efficacy of such local and partial improvements.

Would Your Lordship have supposed it?—It is upon the very merits—the acknowledged or at any rate the alledged merits, of the Penitentiary system, in these its less perfect forms, that the hostility to it in its more perfect form has grounded itself. So well has the system succeeded in this and that *County*, that for that very reason there is to be none for *England:* so well has it succeeded upon a *small scale*, that it is not to be suffered to shew itself upon a *large scale:*—so well have the existing prisons succeeded at an *enormous* rate of *expence*, that for that very reason

[1] In the margin, Bentham has noted at this point: 'Account of earnings from Neild.' According to Neild, *Account of the Society for the Discharge and Relief of Persons Imprisoned for Small Debts*, p. 98, debtors at Dorchester Gaol worked at hat-making, shoemaking, tailoring, carding, and spinning, with half of the profit going to the debtor, a sixth part to the gaoler 'to encourage his attention', and the remainder to the County, which 'defrays a considerable proportion of the expences of the prison'. In his accounts of Oxford Castle and Oxford City gaols, Neild (ibid., pp. 233–5) does not describe the work of prisoners.

[2] Bentham discusses the abolition of capital punishment in 'Second Letter to Lord Pelham', § XIV, pp. 238–9 above. In Pennsylvania, capital punishment had been abolished for all crimes, with the exception of 'murder in the first degree', by the Abolition of the Death Penalty Act of 1794 (see *Pennsylvania Statutes at Large*, xv. 174–81), and in the state of New York for all felonies, with the exception of treason and murder, by the Criminal Law and Prisons Act of 1796 (see *Laws of the State of New-York, comprising the Constitution, and the Acts of the Legislature, since the Revolution, from the First to the Twentieth Session, Inclusive*, 3 vols., New York, 1797, iii. 291–8).

a still better prison is not to be suffered to be built at a *tenth*, a *fifteenth* or a *twentieth* part of that expence. So peremptory was the determination to cover the country with | | prisons *unthought of by Parliament*, that it is for that very reason it was determined not to have the *one* prison, that had so long ago and so repeatedly been *prescribed by Parliament*.

The conclusion made by the patrons and organizers of the most improved of all these improved prisons has been somewhat different. Yes, my Lord: It is among the most distinguished of its rivals, that the Panopticon plan has ever found the most cordial of its well-wishers—the most generous of its supporters.

Persons who (one might almost venture to affirm) never saw the inside of a prison in their lives—persons by much too high to have ever bestowed upon any such low object any thing that [can][1] be called a *thought*—persons who are as much at home in 'improved' prisons as they are in 'improved' colonies—it is by such lovers of improvements, and by the lovers of such improvements, that the penitentiary system in its most improved form has been consigned to '*relinquishment*', and the authority that prescribed it to contempt.

It was not my original intention, my Lord, to have attempted giving Your Lordship on the present occasion any trouble on the subject of the *official letter*, to which the plan thus alluded to has been consigned: but, having gone thus far, it is become necessary for me, I fear, to transcribe a part of it at least, on pain of seeing the above statement exposed to the suspicion of being groundless, and perhaps to the charge of being unintelligible. The letter then to which the determination in question, or at any rate the expression of it, was consigned, bears date the 14th of October 1799: Signature that of the Duke of Portland,[2] at that time filling the high office Your Lordship adorns at present.[3] It is in answer to a letter to his Grace from the Treasury dated the 27th of the preceding month 'desiring to be apprized of the number of Convicts which the Panopticon .... is intended to accommodate':[4] and is the letter that constituted or at least helped to constitute the ground of the just-quoted Treasury letter, written 5 months and 8 days after the letter it was thus grounded upon,[5] and some time (but I do not exactly know how long) *after the determination had been taken by*

[1] MS 'call'.

[2] i.e. Portland to the Treasury, 14 October 1799, reproduced in *Correspondence* (*CW*), vi. 261 n.: see the Editorial Introduction, p. xxix n. above.

[3] i.e. the office of Home Secretary.

[4] See Charles Long to John King, 27 September 1799, a copy of which, docketed by Bentham, is at BL Add. MS 33,543, fo. 131.

[5] i.e. the letter from Charles Long dated 25 March 1800 (in fact 5 months and 11 days after Portland's letter to the Treasury), in which Bentham was informed that the Treasury had determined that the panopticon was to accommodate 2,000 persons: see p. 260 n. above.

Most Noble and Right Honourable persons, that no such building as it thus called upon me to make preparations for, should be erected.

After stating, in regard to the object of the Act in question (the Act of 1794 for the erection of the Panopticon Penitentiary House, requiring as well as '*authorizing*' such House or Houses to be erected) that he '*understands the object of it*' and that that object is—as to '*transportable convicts*', 'that such Penitentiary Houses should be used . . . . as receptacles for such transportable convicts as the several Gaols of the respective Counties can *not* contain' {and therefore for none that they can contain} 'from the time of their receiving sentence till an opportunity may offer for their being transported': {and therefore none but those who, as soon as ever such opportunity arrives, are to be transported.} It is after understanding this, that his Grace proceeds to the '*other*' class of Convicts mentioned in the Act as intended by it to be consigned to such Penitentiary Houses, viz: all besides transportable ones, and of these he says as follows—

'I incline to think it would be very inexpedient to remove such persons from the Country Gaols, unless the *crowded* state of those Gaols should render it *absolutely necessary:* for it would naturally tend, not only to check that *spirit of improvement* which now so *universally*[a] prevails in the several Counties, in respect of those Gaols, but would be the means of the Gaols themselves being *neglected*; *by which means* the greater part of the *prisoners* who are or hereafter may be confined in them would necessarily be sent to the *Panopticon, where the expence attending their custody must be borne by Government*,[b] instead of being defrayed by the respective *Counties*.'[c]

[a] So universally?—how universally? For an answer see further on p. | |.[1]

[b] {*by Government*} i:e: in the manner intended and prescribed by Parliament: viz: borne by the whole body of his Majesty's subjects, in the proportions adapted by Parliament to their respective faculties.

[c] {defrayed . . . . by the Counties} i:e: defrayed by an already overloaded part of his Majesty's subjects—the contributors to the Poor-Rates:—defrayed in the mode which it was the intention of Parliament to supersede—an intention declared by the provision made for transferring the burthen from the County Fund to the General National Fund, as above. Extracts from the Penitentiary Contract Act, the Act made for this single purpose, 7th July 1794, 34 G. 3. c. 84. § 1. 'Whereas . . . it will be of great public utility that a Penitentiary House or Penitentiary Houses should be built for the particular purpose of confining transportable and *other* Convicts . . . . the Commissioners of the Treasury . . . . are hereby *required*, as soon after the passing of this Act as conveniently may be . . . . to contract . . . for the erecting one or more Penitentiary House or Houses.'

ib. § 2. 'All expences attending the execution of this Act shall be defrayed in such manner as shall be agreed . . . . in such Contract:[2] or in case the same shall not be so agreed upon, then the same . . . . shall be defrayed by . . . . the Commissioners

[1] See pp. 254–5 above, rather than below. [2] Penitentiary Act 'Contract or Contracts;'.

Such (Your Lordship sees) is the treatment which Your Lordship's office gives to an Act of Parliament, when Noble Lords have '*examined and understood the object of it*'. The declared object and the sole object of this Act, is to cause a Penitentiary House or Houses one or more to be erected for the whole kingdom, for applying the Penitentiary discipline to Convicts of all descriptions. This not meeting the views of the Duke of Portland, principles are laid down by him, according to which no Convicts of any one description whatever are ever to be put into it, except in a case which is never to take place. Not a Convict is to be sent out of any one Gaol till it has been crowded to the verge of 'absolute necessity', and this is an event that is never to take place, because, before it does take place, the bare apprehension of it is to cause a roomier Gaol to be built. Parliament has one plan about these people: the Duke of Portland has another. Understanding the object of Parliament, he makes no secret of his 'inclination' to do by it what, having power so to do, he has done by it—to defeat it. Defeat the object of an Act of Parliament?—why?—because, according to the Duke of Portland, it would be very inexpedient to pursue it. It would defeat the more expedient plan which this servant of the Crown has formed for the disposal of the persons in question, in spite of Parliament, viz: 'crowd' the jails with them: those very Jails in which Parliament had, by the other of the two Acts of which he so well understands the object, declared in express terms they should not be put, but in those limited numbers which it specifies:[a]—those very

of the Treasury . . . and . . . laid before, and annually provided for by Parliament, or otherwise as Parliament shall direct.'

Extract from the General Appropriation Act, 12th July 1799, 39 G. 3. c. 114. § [22].[1] After the general enacting and appropriative words, 'And any sum or sums of money not exceeding thirty six thousand Pounds to be paid to Jeremy Bentham Esquire, for the purchase of Ground for erecting a Penitentiary House for the custody and employment of Convicts and towards the expence of erecting such Penitentiary House and the said sum be issued and paid without any fee or deduction whatsoever.'

[a] 19 G. 3. c. 74. § 26. 'In the mean time, and until such certificate shall be made as aforesaid {§ 24 certifying the National Penitentiary Houses in question to be ready}[2] it shall be lawful *for the Court* . . . . to order and adjudge such offenders, *not exceeding the numbers hereinbefore respectively limited* {§ 25}[3] to be imprisoned and kept to hard labour, *for the several terms aforesaid*,[4] in the respective Houses

[1] MS '2'.

[2] The Penitentiary Act of 1779, § 24, provided for the appointment by the Privy Council of a superintending committee, which was to 'certify . . . to the Justices of the Court of *King's Bench*, that such Houses are so fitted and completed' and ready to receive convicts.

[3] The Penitentiary Act of 1779, § 25, limited the number of convicts that might be sent each year from the various judicial circuits in England and Wales to the proposed penitentiary houses.

[4] The Penitentiary Act of 1779, § 24, provided that courts might, in lieu of transportation, order that persons convicted of petty larceny be imprisoned with hard labour in a

Jails, in which (as his Grace had been informed but the Year before by the official Report above quoted)[a] the Convicts, even without the benefit of any such 'crowding' as he consigns them to, and for terms longer than the legal terms, are '*emaciated* many' of them by '*long confinement*' and that to such a degree as to be 'unable to work' as well as 'unfit to proceed to Botany Bay', and on that account 'rejected'.

Such (Your Lordship sees) was his Grace's plan:—He was to 'crowd' the 'Country Gaols'; crowd them with Convicts forbidden by Parliament to be put there; crowd them till they were crowded to such a degree that the crowded state of them should have rendered the uncrowding of them 'absolutely necessary': and it is by this alternate crowding and uncrowding of the existing Gaols, that somebody else—any body else

of Correction or other proper Places, within each respective County; which Houses of Correction, or other proper Places, shall, *during such time*, be deemed and esteemed Penitentiary Houses, to all Intents and Purposes, within the Meaning of this Act, except only with regard to the Appointment of Officers and Servants, and other interior Regulations of such Houses directed by this Act: and when such Certificate shall be made as aforesaid, the offenders then imprisoned in such Houses of Correction, or other Places, by virtue of this Act *shall be transferred to such new erected Penitentiary Houses*, for the residue of the several Terms during which they were ordered and adjudged to be imprisoned.' Thus far the Act.

The Terms during which the Convicts may be kept to hard labour in these local Gaols are succedaneous terms, *shorter* than the transportation terms {§ 24}:[1] the *numbers* of the Convicts which may be so kept in them are carefully *limited* {§ 25}: the authority by which they may be thus ordered and adjudged to be kept is that of the *Court* only—'the Court in which they shall be convicted or any other Court held for the same place' {§ 26}. Thus saith the law:—and it is under colour of *this* law, declaring himself to 'have examined' it (though it was nothing to the purpose) and professing to 'understand' it, that the Duke, by his own sole and sovereign authority in spite of Law, keeps Convicts in these same local Gaols, for *terms equal* to their transportation; terms in *numbers* altogether *unlimited*, and in the declared view of '*crowding*' these receptacles to the verge of '*absolute necessity*', for the purpose of preventing them from being 'neglected'; forcing 'the respective Counties to defray the expences attending the custody' of these illegally obtruded inmates for the express reason, because, if this servant of the Crown, this single Lord of Parliament, were not of his own sole authority thus to impose this tax upon the already overloaded parts of his Majesty's subjects, these 'expences must' (as he phrases it) 'be borne by Government': i:e: borne by the whole body of his Majesty's subjects—borne by the fund best able to bear them—borne by the fund assigned by Parliament.

[a] supra p. | |.[2]

penitentiary house for any term not exceeding two years, men sentenced to seven years' transportation for a crime other than petty larceny might be so imprisoned for between one and five years and women for between six months and five years, and persons sentenced to fourteen years' transportation might be imprisoned for between two and seven years.

[1] MS '2'. The text follows the draft at UC cxvi. 558 (20 December 1802).

[2] See p. 251 n. above.

that chose to be put at the expence, was to be forced to erect bigger ones. What in this case is the abuse, the cure of which constitutes that '*improvement*', the 'spirit' of which his Grace is thus anxious to encourage? It is the crowded state of the existing Gaols. What is the course taken by his Grace for the cure of this abuse?—the crowding them still more. The person whose duty it is to put an end to the grievance, and who could put an end to it if he would, determines to increase it, that those who cannot be forced, and will not be forced, may *thus* be forced to remove it.[a] [1]

[a] That this plan of the Duke of Portland's for crowding Gaols and taxing Counties was not in every point of view a new one, appears from a Memorial presented by the Middlesex Justices to his Grace about 16 Months before, on the subject of the State Prisoners committed to Cold Bath Fields. The Memorial is printed at length in the '*Papers presented to the House of Commons relative to his Majesty's Prison in Cold Bath Fields*'. *Ordered to be printed 18 Dec^r^ 1800.* pp. 78, 79.[2]

'His Majesty's Justices of the Peace for the County of Middlesex . . . do . . . humbly entreat Your Grace to take into consideration the *difficulties* under which they labour; which are yet farther *encreased* by the *addition of* so great a number of *Prisoners* of the above description {State Prisoners} *to those whom the House of Correction was originally intended to receive*, and with which it is *crowded to a great degree of inconvenience* . . . .

'They also beg leave to observe, that *a very great additional expence* has been incurred, on account of Prisoners of the above description; *which expenditure, as the various Burthens upon the County Rate, are already very severely felt*, they are deeply concerned to be under the necessity of adding to the ordinary Charges of the Prison; but this Expence *the Magistrates confidently hope will be reimbursed to the County,* on a fair statement of the several Particulars.'

From the so often mentioned posterior letter of his Grace's, which I have had the honour to bring to light, information in no small degree interesting may now be derived by these same Magistrates. In May 1798 they complain of the '*crowding*' of their Gaol with Prisoners not *intended* for it, speak of inconvenience, assume (as was but natural) that the inconvenience was, as such, unintentional on the part of the Duke, and, in mentioning it in that character, conceive that the consideration thus submitted to that Noble person will,[3] in the character of a motive, give birth in his Grace's mind to a determination to grant the relief they pray for. Little did they expect to see the day, and that so early a one, in which, by a document under the Noble Duke's own signature, the '*crowding*' plan would prove to be a plan adopted deliberately by his Grace, for a special purpose, to afford a pretence for the design of defeating the object of two Acts of Parliament;[4] and that the inconvenience—an inconvenience which it was now determined to multiply and spread over all the Counties, was a result directly in the contemplation of his Grace, produced by him, or at least professed to be intended to be

[1] Passage C, Appendix, p. 304 below, which appears in the draft at this point, was crossed through by Bentham and omitted from the copy.

[2] See 'Papers Presented to the House of Commons, relating to His Majesty's Prison in Cold Bath Fields', 18 December 1800, *Commons Sessional Papers of the Eighteenth Century* (1800), cxxxii. 528–9.

[3] MS 'person's will'. The text follows the draft at UC cxvi. 560 (3 January [1803]).

[4] i.e. the Penitentiary Acts of 1779 and 1794.

And now, my Lord, without any original intention[1] on my part, Your Lordship has seen, as it were by a side glance and at an earlier period than I had proposed, the fourth and last of the four grounds of relinquishment, of the three first of which my first Letter presents a bird's eye view.[2] To do any thing like compleat justice to it would be too wide a digression from the present purpose.

Instead of these four grounds of relinquishment, for which the only apology, if they admitted of any, would be that they were never intended to transpire,[3] ousted of all these transparencies, would it not have been more manly, my Lord, and quite as safe, to have sent for

produced, on purpose, as a means of effecting or giving colour to that plan of his for setting himself above Parliament.

The '*expence*' is another subject of their complaint. They represent it as being '*very severely felt*'; and, so persuaded are they of the injustice of the proceeding by which it is thrown upon their County, that they are '*confident*' in their hopes of having it *reimbursed*—reimbursed, to wit, *by Government.* They may now see that this expence, that sat[4] so heavy upon them—the casual expence resulting from the temporary maintenance of a few State Prisoners, was but a feather in comparison of the load—the double load—so soon after destined for their backs by the same potentate: the expence of maintaining Convicts of all sorts, instead of their being maintained from the funds prescribed by Parliament, and the expence of providing another Jail or two under the pressure of the '*crowding*' produced by his Grace for this very purpose: the first, an annual expence, and according to his Grace's plan, a perpetual one: the other, an expence in the shape of money paid once for all—of capital advanced: say, to begin with, some £60,000, to £80,000 more,[5] in addition to the cost of this new established Gaol, over-crowded already to the degree of which they complain thus heavily. Little did they suspect, that an expence which to their feelings was every thing, was as nothing in the conception of this arbiter of their fate: that in the same proportion in which, in their estimate, it was encreased, it was reduced in the estimation of this Chancellor Extraordinary of the Exchequer, by whom a burthen is considered as annihilated when it is thrown upon a wrong fund.

The line of *conduct* pursued in the two cases is one thing: the *legality* of it in the two cases is another. In the particular case which gave birth to this complaint, the hardship at any rate is evident enough. How in that case the matter stood in point of *right*, it would be altogether beside the present purpose to enquire. His Grace had certainly at that time no such object as that which he found about sixteen months after—that of defeating the object of two Acts of Parliament.

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[1] MS | |. The text follows the draft at UC cxvi. 563 (n.d.)

[2] See 'Letter to Lord Pelham', p. 73 & n. above.

[3] Bentham seems to be suggesting that Long had never intended that the Treasury Minute of 13 August 1800 should be made public. See, for instance, Bentham's comment in relation to the Minute in 'A Picture of the Treasury' at UC cxxi. 270 (18 February 1802): 'M^{r} Long, as far as he was concerned, had been as careful that I should know nothing of my own destiny, as thus written in the books, as he had been to see it written there.'

[4] MS 'set'. The text follows the draft at UC cxvi. 561 (3 January [1803]).

[5] Bentham may have been basing his estimate of the cost of Cold Bath Fields prison on information derived from the work referred to at pp. 275–6 n. below, but of which no copy has been traced.

some friend to the measure, Sir Charles Bunbury for example, and given him at once a good practical substantial reason, true or false, such as a gentleman could understand?—*You see, Sir Charles, this thing can't go on, Lord such a one is against it: we have passed our words to him. His Stewards indeed, and such people say it would be a very good thing for him:*[1] *but, Sir, they know nothing at all about the matter. He says they*[2] *don't.* Had this been otherwise than satisfactory, could it ever have been less so than the sum total of these four grounds, or forty such grounds, put together?[3]

This (Your Lordship knows, or may know at any time, whether there be any thing like truth in it) would at any rate have been frank and open: but policy, the very profundity of policy, was the order of the day with his Grace.

A plot like this! a plot for getting prisons built by stratagem!—a plot for helping a thing on by stopping it! In this or any other country—in the regions even of imagination, wide as they are, is there any thing like a parallel to it to be found? Let us try, my Lord.

After this at least, who shall say that, among the robbers that render walking unsafe and the burglarers that render sleep unquiet, there may not be patriots in disgrace, who, uniting[4] the self-devotion of a *Curtius*[5] to the policy of a *Machiavel*,[6] are emulating all the while in their humble sphere, this brilliant emanation of official wisdom—this deep-laid plan of the Duke?—this deep-laid plan of the Duke slipt upon and thereby acted upon, with or without dreams about causes and consequences, by his Grace's Noble Successor?[7] Such (they may be saying to themselves) is 'the spirit of improvement which now so universally prevails' among his Majesty's Ministers in the Police department in respect not of Gaols only but of instruments of all kinds in the apparatus for the prevention of crimes—such is the energy with which the Duke of Portland determined to 'crowd the Country Gaols' for fear of 'their being neglected'.—Such is the energy with which

[1] According to Bentham, Belgrave's Land Steward Boodle and his Surveyor Porden had concluded that the panopticon penitentiary would not harm his estate: see 'Correspondence, sent to Wilberforce', p. 32 & n. above.

[2] MS 'the'. The text follows the draft at UC cxvi. 563 (n.d.)

[3] Passage D, Appendix, pp. 304–6 below, which appears in the draft at this point, was crossed through by Bentham and omitted from the copy.

[4] MS 'waiting'. The text follows the draft at UC cxvi. 565 (n.d.)

[5] According to legend, when a chasm opened in the Roman Forum in 362 BC, the soothsayers declared that it could only be closed by throwing in Rome's greatest treasure. Marcus Curtius, believing that nothing was more valuable than a brave citizen, appeared fully-armed on horseback and jumped into the abyss, which closed behind him. See Livy, *Ab urbe condita*, VII. vi. 1–6.

[6] The name of Niccolò Machiavelli (1469–1527), philosopher, politician, and diplomat, was associated with the use of intrigue and deception with a view to seizing and maintaining political power.

[7] i.e. Pelham.

Lord Pelham has forced a fifth hundred a year into the hands of the Police Magistrates.[1] Such is the energy with which, at the price of £87. 10ˢ a peep, he has determined that four peeps in a year shall be taken at the Hulks[2]— such is the 'spirit of improvement' manifested by these congenial and combined exertions that, unless a few patriots like ourselves were to help '*crowd*' the streets with robbers and the houses with burglarers, this '*spirit of improvement*' among these hitherto zealous and spirited improvers might be '*checked*' and all these their implements of improvement—super-pensioned Magistrates—Quarterly peepers at Hulks—and even '*crowded Gaols themselves*' might come to be '*neglected*'. To a plain understanding, could this ideal plan of these ideal Machiavels have been more directly repugnant to the decrease of crimes than the real plan of the real Machiavels to the diminution of the mischief and miseries[3] of prisons?—Are not support and opposition—plain dealing and deceit—truth and falsehood—right and wrong—merit and guilt—confounded and if possible rendered indistinguishable by such plans?

Had any of the professional men just spoken of professed this to be their object, would they have been less sincere in such their profession, than the Duke of Portland would have been, had he done what he has not done—condescended so much as to profess any such disposition as that of promoting the object of the Act? I mean, my Lord, the Act which was calling upon him, as it continues calling upon Your Lordship, not for obstruction, but for obedience—the Act his Grace has so well '*examined and understood the object of*'—the Act for the establishment of that Penitentiary House, which it was the object of this Letter of his to uncrowd of as many inhabitants as had been designed for it by that Act.

It is in pursuance of this plan, my Lord, that a little more than five months after, viz: on the 25th of March 1800, the Treasury, on the ground of a preparatory Letter therein spoken of as received from his Grace, wrote[4] to me to acquaint me that the 'proposed building of a Panopticon was to be calculated to accommodate 2000 persons'.[5] This, by way of answer to an humble address of mine, written on the 17th of August more than *seven* months before, in the declared view of my

[1] The Metropolitan Police Magistrates Act of 1802 (42 Geo. III, c. 76), § 9, increased the annual salaries of the Justices of the Peace attached to the London police offices from £400 to £500.

[2] Bentham divides the annual salary of £350 paid to the Inspector of Hulks, appointed under the Hulks Acts of 1802, by four, with the resulting sum representing the cost of the quarterly reports he was required to submit to Parliament: see p. 234 n. above.

[3] MS | |. The text follows the draft at UC cxvi. 565 (n.d.)

[4] MS 'write'. The text follows the draft at UC cxvi. 566 (n.d.)

[5] See Long to Bentham, 25 March 1800, *Correspondence* (*CW*), vi. 279. The 'preparatory Letter' was that of Portland to the Treasury, 14 October 1799: see pp. 265–6 above.

making preparations of an expensive nature, and begging to know for what number they were to be made.[1] Faithful to this same plan, while I was amusing myself with these preparations, together with other occupations which the same policy had provided for me,[2] the Noble and Right Honourable and Honourable Conspirators (if, by a mere figure of speech, a consultation amongst potentates about crushing worms may be thus characterized) from that time to the 18th of March 1801 conversing on the subject in confidential whispers between floor and floor:[3] consulting with one another by what words they should make Parliament believe that I had insisted on an increase of terms, spite of all I could say to the contrary: reiterating to one another the reciprocal assurances of that persevering fondness for '*improved prisons*' as well as '*improved Colonies*', the expression of which was so unexpectedly brought to light, Your Lordship and his Grace knows how.[4]

In the Panopticon system Your Lordship has been seeing a *plan*, which, because sanctioned once and again by Parliament, prescribed by an Act,[5] confirmed four years after in another Act, confirmed by £36,000 granted towards the execution of it,[6] and by £14,000 public money actually expended in it,[7] and, if his Grace's will be done, wasted upon it, was termed a '*project*', and under that name of unfounded reprobation marked out for '*relinquishment*'.[8] Would to God his Grace's more successful *plan*—for emaciating his Majesty's subjects by 'long confinement' in illegally and purposely crowded Jails, for producing Jail-Fevers in them or whatever other miseries might be the result of their being 'crowded' each of them in the degree necessary to prevent it from being 'neglected'[9]—for

[1] See Bentham to Long, 17 August 1799, *Correspondence* (*CW*), vi. 188–9.

[2] Bentham presumably had in mind his protracted negotiations for the purchase of the Millbank estate.

[3] i.e. between the Treasury and the Home Office: see p. 263 & n. above.

[4] See Charles Long to John King, 25 August 1800, and King to Long, 17 March 1801, stating the four 'grounds of relinquishment' for the panopticon scheme, which were included in papers ordered to be printed by the House of Commons: see *Commons Sessional Papers* (1801), vi. 585–7.

Passage E, Appendix, p. 306 below, which appears in the draft at this point, was crossed through by Bentham and omitted from the copy.

[5] i.e. the Penitentiary Act of 1794.

[6] i.e. by the Appropriation Act of 1799, which was passed five, and not four, years after the Act of 1794.

[7] In June 1794 a grant of £2,000 had been made to Bentham to make preparations for the panopticon, and in November 1799 the Millbank estate had been purchased from the Marquis of Salisbury for £12,000.

[8] See King to Long, 17 March 1801, in *Commons Sessional Papers* (1801), vi. 586–7, and reproduced in *Correspondence* (*CW*), vi. 382 n.: 'his Grace concurs in Opinion with their Lordships, that the Plan, if adopted at all, should be carried into Execution to a limited Extent, only by way of Experiment; but whether it will be right to relinquish the Project altogether, and allow a liberal Compensation to Mr. Bentham, for any Loss he may have sustained, is a Point which must be determined by their Lordships'.

[9] See Portland to the Treasury, 14 October 1799, p. 266 above.

exercising over his fellow subjects, by the secret will of this servant of the Crown out of sight of his royal master, that authority which, if attempted to be exercised by the master, a Hampden would have resisted with his blood[1]—would to God a plan like this, my Lord, had been but a *project!* Would to God that any considerations whatever, divine or human, religious or moral, of police or economy, of justice or mercy, or of constitutional obedience or of individual good faith, could have prevailed upon his Grace, or could prevail now upon his Noble successor, to consign such a plan to '*relinquishment*'—to that relinquishment, to which he found it more convenient to consign the Parliamentary '*project*' in which, but for him, all these mischiefs would have found a cure!

On the 11th of this instant December, in the prison belonging to the City of London—in Newgate alone, besides Debtors 211, and persons committed for trial for Felony 198, Convicts 318: of whom convicted for Transportation 283, and of them only 31 convicted in the last Session: such is the statement I have just copied from a memorandum taken by Sir Charles Bunbury.[2] Supposing these 31 to be detained by blameless necessity till disposed of according to law, there remain, for 229 kept there according to law, 252 kept there in spite of law: 252, for the maintenance of whom the City of London continues to be taxed by Your Lordship, in pursuance of the plan of finance laid down by the Duke of Portland: 252 Convicts, who, quite as much according to law, and much more according to *poetical* at least, not to say *substantial* justice, might be quartered upon Burlington House or in Stratton Street.[3] Your Lordship, smiling approbation for this twelvemonth past and I know not how much longer, as often as any parliamentary approver of a parliamentary plan of justice and reformation ventured to obtrude a hint about performance, bestowing upon it those ready-prepared smiles which Your Lordship has treasured up in store for it to be dealt out to it in regulated measure, so long as the projector lives, or till a warrant can be found for converting prudential smiles into undissembled frowns:[4]—a warrant such as the precedents of office may without much difficulty be made to furnish—'*the length of*

[1] John Hampden (1595–1643), politician, was celebrated for his opposition in the 1630s to the revival and extension of the ancient tax of ship money by Charles I (1600–49), King of England, Scotland, and Ireland from 1625, and thereby raise taxation without Parliamentary approval. The measure was eventually declared illegal by the Ship Money Act of 1640 (16 Car. I, c. 14). Having been wounded at the Battle of Chalgrove Field of 18 June 1643 fighting for the Parliamentary forces, Hampden died six days later.

[2] The copy of the memorandum has not been located.

Passage F, Appendix, p. 306 below, was intended to appear as a note, probably at this point, but was crossed through by Bentham and omitted from the copy.

[3] The London homes of Portland and Pelham respectively.

[4] For Pelham's smile see p. 287 n. below.

time' (for instance) '*that has elapsed*',[1] or the informality and intemperance displayed by animadversions such as these.

In what degree, if in any, death may in that superb and roomy Jail, spite of every relief that the attention of a humane keeper can bestow, have been the fruit of all this crowding and all this misery, it has not fallen in my way to learn. On board the Hulks, the sort of attention which his Grace and his Noble Successor have bestowed upon the subject—the attention of crowding those receptacles likewise with Convicts designed for the Penitentiary House by Parliament, has not been without its fruit: but of this fruit, sweet, I suppose, to the taste of those who cultivate it, bitter, I should have supposed, to the taste of every man who has any sense remaining either of humanity or justice, the description which has just reached me called for another station under the resumed title of the *Hulks*.[2]

Besides the abovementioned inconveniences, the plan for thus forcing the Country to fill itself with County and other local Penitentiary Houses upon the gallypot scale lies open to two objections.—One is, that the Counties (as has been already hinted) will not all of them suffer themselves to be thus forced. Another is, that even when every improvement looked to has actually been made, the advantages, even setting aside what Your Lordship has just been seeing in Chapter *economy*, sections *architecture* and *official establishment*,[3] would not be every where alike indisputable.

In proof of the latter proposition, I will beg leave to take for an example the most favourite of all these 'improved prisons': the prison in which the admirers of improved prisons would be most at home, if in any: the prison honoured by their most especial protection, and which it was their especial care should not '*become neglected*' for want of inhabitants. The prison serving for example, for proof I will beg leave to refer Your Lordship to a very recent publication from a pen which, as far as depends on intrinsic indications, prefers, though anonymous, the most irrecusable claim to confidence.[a] To

[a] The True State of the House of Correction in Cold Bath Fields &c. by a Middlesex Magistrate. 1802.[4]

[1] Lapse of time was, of course, one of the four 'grounds of relinquishment' mentioned in the Treasury Minute of 13 August 1800: see 'Letter to Lord Pelham', p. 73 & n. above.

[2] See pp. 283–302 below.

Passage G, Appendix, pp. 306–7 below, which appears in the draft at this point, was crossed through by Bentham and omitted from the copy.

[3] See pp. 230–2 n. above.

[4] i.e. *The True State of the House of Correction in Cold Bath Fields, in the County of Middlesex, and also of the New Prison, in the Parish of Clerkenwell, fairly examined. To which is subjoined, a Sketch of the real Character of Mr. Thomas Aris, Governor of the House of Correction*, London, 1802. No copies of this work have been traced. The title is taken from a notice that appeared in the *Monthly Review* (1802), xxxix. 107–8, which states that it was

Your Lordship, [if][1] such things were worth knowing, the name of the Author could scarcely, I think, be unknown: although to me, who know nothing, it remains unknown, choosing it should be [so] for the sort of reason above mentioned.

The passages in question are as follows: '*industry*, *order*, *discipline*, *subordination*, *economy*' are the points they touch upon.

Nº 1. Page 11. 'The due *employment* of the Prisoners according to law in such work as they have been accustomed to, and for which they are most fit, has been *discontinued*; and since that time there has been a gradual decline of industry, order, discipline and subordination in the Prison.'

Nº 2. Page 12. 'The only work in which it is pretended to employ the Prisoners is of picking oakum . . . . at a maximum of three pence a day in earnings.'[a]

Nº 3. Page 27. 'Supposing the Prisoners to work fairly, . . . and not to secrete, as has frequently been done, a great part of the materials, rather than be at the trouble of picking them.'[b]

Nº 4. Page 13. 'A new system of *feeding the Prisoners without the Prison*, by their relations and friends, was most unfortunately introduced.'

Nº 5. Page 15. 'The *peace and quiet* of the Prison is *utterly destroyed* by the perpetual visits of the prisoners' friends with victuals: The friends without are frequently distressed, in order to furnish the prisoners with food, and are *driven to evil practices* to procure the supply.'

Nº 6. Page 35. 'The ostensible idea was that it would save a considerable sum to the Country; *I have no reason to believe that it saves the Country a farthing*; the prisoner[2] demands his allowance, as if nothing were brought to him; and is glad to make himself friends among his fellow-prisoners, by distributing what he does not want for himself.'

Nº 7. Page 36. 'The mere work of opening the hatch at the prison gate . . . . and serving the . . . . rations through the different parts of

[a] Compare this three pence with the Philadelphia twenty pence.[3]

[b] Quere, how much would be secreted by prisoners in a Panopticon Penitentiary House, in which they need never be an instant out of sight?

printed and published by Hatchard and sold for a shilling. According to the anonymous reviewer, the author claimed to have been a member of the commission that had investigated Cold Bath Fields prison in November 1800, but that 'for particular reasons, he and some of his friends ceased to belong to it'. The work was later reviewed in the *Gentleman's Magazine* (1804), lxxiv. 950–1.

[1] MS 'is'.

[2] MS 'prisoners'. The text follows the draft at UC cxvi. 571 (24 November [1802]).

[3] See 'Second Letter to Lord Pelham', p. 177 above.

the prison would engage more than two turnkeys from morning to night, without allowing them leisure for any other employment.'[a]

N° 8. Page 26. 'If the undertaking were not unsuitable to my character and habits of life (says the worthy Magistrate) I would not hesitate to contract for the profits of the prisoners' labour, (if they were allowed to work in their respective callings, and in such other labour as is proper for prisoners,) and so pay the County £400 per annum.'[1]

Waving, though but for the moment, an observation suggested by the hypothetical offer, expressed by N° 8,[2] I come now, my Lord, to the second part of my text. Good or not good as it might be for the Counties to be forced to cover themselves with these improved prisons, so it is, they will not all of them at least suffer themselves to be thus forced. Submitting to the tax directly and actually imposed upon them, first by his Grace, and now by Your Lordship, for the maintenance of prisoners whom Parliament has ordered elsewhere—submitting to this tax, perhaps for want of having so distinct a view of the noble hands to which they are indebted for it as this disclosure will now help them to, they demur beforehand to the so much heavier as well as less directly imposed tax, also declared to be in store for them—the tax of loading them, *a la Vanbrugh*,[3] with *Blackburn* architecture. The tax for maintenance they are complaisant enough to submitt to, though not every where without a murmur, because they know not very well how to help themselves: the tax for architecture they may stand excused from loading themselves with, were it only that, in that behalf, neither his Grace's nor Your Lordship's pleasure, has ever yet, I believe, been directly signified.

For proof I betake myself once more to the worthy Magistrate: in whose testimony, *as far as it goes*, let it point what way it will, I really

[a] A specimen of the expence of the official establishments upon the plan of the improved prisons, especially when on the gallypot scale.

[1] Passage H, Appendix, p. 307 below, appears as a note in the draft at this point, but was crossed through by Bentham and omitted from the copy.

[2] Bentham returns to 'Observations on N° 8' at p. 279 below. Passage I, Appendix, pp. 307–8 below, reproduces an earlier draft of the 'Observations', which Bentham decided to omit from the text.

[3] An allusion to the ornamental and expensive Baroque architectural projects of John Vanbrugh (1664–1726), whose most famous building was Blenheim Palace, which was constructed at enormous public expense as a reward from the nation for John Churchill (1650–1722), first Duke of Marlborough, who had won the decisive Battle of Blenheim on 13 August 1704. Vanbrugh was appointed surveyor in 1705, but resigned in 1716, whereupon the building was seen through to completion in 1725 by Nicholas Hawksmoor (1662?–1736). The poet and satirist Alexander Pope (1688–1744) visited the unfinished building in 1716 and described it as 'a most expensive absurdity': see *The Works of Alexander Pope, Esq. in Nine Volumes, Complete, with Notes and Illustrations by Joseph Warton, D.D. and others*, London, 1797, viii. 251–2.

have great confidence. In his title page, as well as in his survey, the New Prison is comprized: I mean the so-called New Prison, the old and beggarly neighbour[1] of the vastly new as well as costly and courtly structure, half-prison, half-palace, in Cold Bath Fields: What he says of it is as follows—

N° 1. Page 41. 'Few places of confinement can be under worse regulation than the *New Prison* .... The arrangement of the prison itself is such, as renders it impossible to prevent its being one of the most dreadful seminaries of vice and profligacy that can be imagined.'[a]

N° 2. Pages 42, 43. 'Four years ago ... plan and estimate ... laid before the Court: the business was postponed *sine die*, under the idea, that the County rate, already burthened in a great variety of ways, would be found inadequate without great inconvenience, to the additional expenditure of £4,000. But may we not hope, if application were made, *where applications well-founded will never fail of due attention*,[b] that such relief would be obtained, as, *without adding to the burthen of the County-rate*, would enable the magistrates to carry the plan into effect.'

N° 3. Page 44. 'What then may not reasonably be expected from *one*, *who* certainly *feels*, as much as any man, *the importance of restraining vice*, *and improving morals*, to the welfare of society?'*[c] It would be

[a] In this respect, at the worst not as bad as the *Hulks:* nor yet a great deal worse than the Cold Bath Fields Prison, if it be true, as I suspect, without being able to affirm it to a certainty, that the worst and the best are together there at some times, though not at all times.

[b] What strange place can this be which the worthy Magistrate is speaking of or dreaming of?—I, who have been upon the look out for such a place for above these 8 years,[2] have never yet been able to meet with any thing like it? Is it any where about the Treasury?—any such place as the closet of any such person as the 'great person alluded to' presently after by the worthy Magistrate? Then as to foundation—what sort of a ground is it (I wonder) that '*an application*' must have to make it a '*well founded*' one?—An Act of Parliament, for example? applications have been made on such grounds month after month, year after year, to as great persons as any he can have been alluding to, and the '*attention*' shewn to them has been worse than none:—it has had every property of refusal, saving only the honesty on the one part and the quietus on the other.

[c] If what the worthy Magistrate really looks for is a person, great or otherwise, who, by what he 'feels' about 'the importance of restraining vice and improving morals', is to afford him such provision for his prisoners as shall not add to the County rates, the worthy Magistrate's own imagination (Your Lordship may venture to assure him) is the likeliest place for finding what he wants. Years ago he would have made his appearance had there been any such person in existence. An

[1] The New Prison, Clerkenwell, had been built in 1685 in order to detain prisoners who were awaiting trial but could not be accommodated in Newgate gaol.

[2] i.e. in his endeavours to build the panopticon since the passing of the Penitentiary Act of 1794.

impossible, I verily believe, to expend from the public purse four thousand pounds in any way more beneficial to the community than that which is here pointed out.'[a]

* 'This testimony, it is *humbly hoped*, will not be considered as an instance of *flattery* to the *great person* here alluded to,[1] but a declaration, the truth of which, all to whom his character is known, will readily confirm.'

Thus far the worthy Magistrate.[2] A supposition unquestionably though tacitly assumed in the hypothetical offer thus made by him, is—that on the other part some regard would be paid to the rules of common honesty; that the County would not be made bankrupt to him, as Parliament has been made to me: and that after his proposal had been accepted, his capital, with the concurrence of the acceptors, advanced upon the faith of it, and Acts of Parliament, if necessary, obtained for it, he would not have to see the execution of it set down *in petto* for the Greek calends, by any such person as the predecessor of the '*great person*' he is so afraid of flattering—not to speak of successors.

To the gentleman himself it would have seemed, that in making any such offer he knew what he was about:—but the 'great person' would have known better things. The more beneficial to the public he had, in his own view of the matter, made his terms, the more appalling the scorn with which he might have been looked down upon, by the intuitive and super-calculative wisdom of such high personages:—after learning from one great person that his terms were too high,[3]

Act of Parliament for doing all this—an establishment which, in the opinion of Parliament, would do all this—would restrain vice and improve morals without adding to the County rates—has by Parliament been ordered to be set up for above these 8 years. Whatever be the thing needful, join will to power and the thing is done. Power for this there has been all this time beyond dispute in a certain place:—Duty there has always been: full knowledge of that duty there has always been:—had *will* been in the same place, the thing would have been done years ago, and neither the worthy Magistrate, nor so many other people, would have been left at this time of day to amuse themselves with 'hopes' and 'expectations'.

[a] Here the worthy Magistrate is quite mistaken. I can tell him so upon the very best authority. Your Lordship can shew him a much more 'beneficial way' of 'expending from the public purse' the interest of double the money: desire him only to look at the next article where, instead of £4,000 once paid for correcting an abuse—he may see a still greater abuse and of exactly the same kind—and £350 a year paid for looking at it and screening it.[4]

[1] Possibly Pelham.

[2] MS orig. 'Observations on N° 8.' The text continues the discussion of the eighth quotation that was postponed at p. 277 above.

[3] For the 'Increase of Terms' as one of the four 'grounds of relinquishment' for the panopticon scheme see p. 73 n. above.

[4] i.e. the annual salary of the Inspector of Hulks: see p. 234 n. above.

he might learn from another that they were too low; or from each of them, that they were too high and too low at the same time:—and if on any other occasion he had ever been guilty of thinking for the public, this too might have been numbered among his '*flights*'.[1]

What will become of the worthy Magistrate, whose existence, to judge by the terror he seems to be in of being prosecuted for flattery, seems to depend upon the breath of the great person's nostrils? If a wish to submitt to a limited deduction from a sum of £12,000 a year for maintaining a thousand[2] prisoners creates doubts of sanity,[3] what mercy can there be for an offer to maintain 200 prisoners or thereabouts for a sum of £400 a year—not *plus* but *minus*.[4] How much longer will great persons suffer him to go about without a keeper? I see him tremblingly alive all o'er:—I see Your Lordship trembling for him in mere sympathy: I hasten to present Your Lordship with the balm of tranquillity to pour into his ear. Cold Bath Fields Prison (Your Lordship may be pleased to observe to him) is up already: it is up high in favour: and—what is beyond every thing, and without which every thing else would be as nothing—there is no Gospel-propagating Lord—no friend of the 'great person's' to steal up the back staircase and whisper in his ear—*up or not up, the spot is too near me—it must not be made use of.*[5]

Let him come forward then with his offer (I mean the worthy Magistrate). It is as[6] yet but a hypothetical one:—let him convert it into a categorical one: accepted or not by the County, he has nothing to fear from great persons, so long as he can keep himself from '*flattery*'. As to the £400 a Year, Your Lordship and he together will be able to find a use for it:—it will serve within a trifle for a place of *Inspector of Prisons*; to smell at the same nosegay with the Inspector of Hulks[7] who will

[1] Addington made the remark on Bentham's 'flights' in one of his conversations with Nepean in September 1802 in relation to Bentham's proposal to pay a fine for any subsequent offence committed by a convict who had been liberated from the proposed panopticon penitentiary: see Bentham to Abbot, 3 October 1802, and Bentham to Dumont, 19 October 1802, *Correspondence* (*CW*), vii. 139–40 and 148 respectively.

[2] MS 'a 1,000'. The text follows the draft at UC cxvi. 576 (n.d. December 1802).

[3] See the remark made by Pelham in his letter to Bunbury of 19 August 1802 regarding the 'present state of [Bentham's] mind' in 'Correspondence, sent to Wilberforce', p. 36 above.

[4] For the magistrate's offer to give £400 per annum for 'the profits of the prisoners' labour' in Cold Bath Fields prison see p. 277 above.

[5] i.e. Belgrave, who had opposed the building of the panopticon on land adjoining his estate: see p. 31 n. above.

[6] MS 'a'. The text follows the draft at UC cxvi. 577 (n.d. December 1802).

[7] An allusion to the two Kings of Brentford, who enter hand in hand at the start of Act II, Scene ii, in *The Rehearsal* (first performed in 1671), attributed to George Villiers (1628–87), second Duke of Buckingham. Although not specified in the stage directions, a tradition that the actors playing the two Kings entered smelling from the same nosegay at this point in the play, and perhaps again at their appearance in Act V, Scene i, appears

come on the carpet presently:[1]—it will serve for *otium cum dignitate*[2] to the declared *protegé* of the worthy Magistrate's, I mean the so well protected Governor:[3] a personage who, if he does not do much good to a prison by governing it, might at any rate not do much harm to it by inspecting it at a distance.

Another scrape indeed, it must be confessed, my Lord, and, at first blush at least, a still more serious one, is that which the worthy Magistrate seems to have fallen into, by asking for Jail-building money from Parliament, to ease his County from so much Poor-rate.[4] It was but t'other day, as Your Lordship has been seeing, that Acts of Parliament were broke through by great persons to shake the burthen off from government and throw it *upon* the Counties.[5] Great persons giving themselves this trouble lay the burthen on the Counties: and already he calls upon them to undo their own undoings, and get Parliament to take it off the Counties! The Counties, did I say? I beg his pardon—not all the Counties together and by a general Act—but one County only and that the richest in the kingdom,[6] and by a particular Act—by a privilegium which he wishes to see made on purpose!—A more unfortunately-timed pretension, to all appearance at least, surely was never brought forward, than this which has been thus insinuated by a gentleman who, I dare answer for him, meant nothing less than to offend times and seasons.—Ah! why did I not see that fatal page before it made its escape out of the press! No human being so insignificant, but that accident may throw in his way the means of service.

On this untoward occasion, what is there that can be done for a gentleman, who, in the midst of his anxieties to steer clear of the rock of offence,[7] has thus run full upon it? Step in once more, my Lord, to his relief, for nothing less than a great person can effect it. The seals of the fountain of mercy are in Your Lordship's hands—grudge not a few drops from it to save this worthy gentleman. If it be in the power of virtue to give a claim to mercy, has he not virtue to command

to have evolved, and is alluded to in the following extract from 'An Occasional Prologue' written for the play by the satirist Paul Whitehead (1710–74) in 1767:

> For *Brentford*'s state, two kings could suffice,
> In ours, behold! *four Kings of Brentford* rise;
> All smelling to one nosegay's od'rous savour;
> The balmy nosegay of—the public favour.

See *The Rehearsal: with A Key, or Critical View of the Authors, and their Writings, Exposed in this Play . . . . . As Acted at the Theatres Royal, with the new Occasional Prologue, written by Paul Whitehead, Esq; On opening Covent Garden Theatre, September the 14th, 1767*, 17th edn., London, 1768, p. [3].

[1] See pp. 288–302 below.

[2] i.e. 'leisure with dignity', an echo of Cicero, *De Oratore*, I. i. and III. ii: *in otio cum dignitate esse*.

[3] Thomas Aris.

[4] See p. 278 above.

[5] See p. 266 above.

[6] i.e. Middlesex.

[7] Isaiah 8: 14; Romans 9: 33; and I Peter 2: 8.

it? His faith, his hope, his charity,[1] do they not all center in great persons?

Speak to him then, my Lord, once more:—say to him any thing that will make him easy. Shew him how right and wrong depend upon existing circumstances:—whisper to him that all this Machiavelism for throwing prisoners upon Counties was a mere *make-believe:*—satisfy him that nothing can be a matter of more profound indifference to any body than it is to great persons in what Jail, or Hulk, or improved Colony, and in what numbers, human creatures starve or poison one another, so that there be not a 'Panopticon for them to be sent to':[2]—remind him, that in the place he has in view, no offence can, by any Jail or number of Jails, improved or unimproved, be ever given to Noble Lords, whose *veto*, when they are pleased to pronounce it, is so fatal to Acts of Parliament:[3]—assure him, that neither by the one great person, nor by any other, is the purse ever taken out of the hands of Parliament, unless for a particular purpose, and to oblige a friend:[4] certify to him, that measures of this sort are disposed of, moment after moment, sometimes upon one principle, sometimes upon opposite principles, as the convenience of each moment presents them to great minds: explain to him, that when persons are approved of, and the purpose of the moment is to be served, there is no more difficulty in acting through Parliament than against Parliament, nor in tossing a burthen from the Counties upon the public, than from the public upon the Counties; that where neither engagements nor even laws can bind, much less can mere professions give any sort of trouble: and that where common honesty is not so much as an impediment, much less can consistency be a bar; announce to him in short, that though nothing is to be done for those whose trust is in law, good faith, and recognized utility, all things are possible for those whose charity knows how to choose a proper object, so long as their hopes are humble and steer clear of flattery.

If, after all this consolation, it should still occurr to him that the £4,000 is the one thing needful,[5] and that this one thing needful is still wanting, whisper again into his ear, my Lord, or say aloud to him—no matter which—(for at certain heights from whence shame as well as fear is looked down upon, concealment is without a motive) give him

[1] An echo of I Corinthians 13: 13.

[2] Bentham was perhaps echoing Portland's phrase in his letter to the Treasury, 14 October 1799, that 'the greater part of the *prisoners* who are or hereafter may be confined in [the County Gaols] would necessarily be sent to the *Panopticon*': see p. 266 above.

[3] An allusion to the failure of administration to implement the Penitentiary Acts of 1779 and 1794.

[4] An allusion to the purchase of the Millbank estate, ostensibly as a site for the panopticon penitentiary, but, according to Bentham, really to oblige Salisbury: see pp. 304–5 below.

[5] Luke 10: 42.

to understand then any how, that there are other expedients—that there are shorter and cheaper modes of disposing of prisoners, than by suffering them to remain as a load either here or elsewhere upon government, or upon the Counties: that these preferable and preferred expedients are not speculative, theoretical, flighty, utopian, ideal '*projects*',[1] but practical, practised, well-considered, well-established, official measures: that they are in full use with Noble Lords and never disapproved of by great persons: by Noble Lords and great persons, who, whether they 'feel' or do not feel exactly '*as much as any man*', feel one of them exactly as much as another, the '*importance of restraining*[2] *vice and improving morals*'[3]—a proposition he may venture to assure himself of, without danger of mistake, unless he has any surer mode of finding out feelings than by actions. Telling him all this, my Lord, bid him rely on it with more than 'humble hopes':[4] and if, after such assurances, fear still predominates, and faith still wavers, put this paper into his hand, my Lord, and point to the next article.

XIX.[5] *Hulk Mortality—Sinecure made to screen it.*

I thought I had done troubling Your Lordship about the Hulks: but fates have ordered otherwise. Accident has this moment put into my hand the interesting publication of M^r^ Neild.[6] Visit to the Hulks in March last, by the author and Sir Henry Mildmay:[7] the official screens broke through and among the results the following—

N^o^ 1. PORTSMOUTH HARBOUR; *Captivity Hulk*,[8] March 15^th^ 1802.[a] 'Many with ruptures: none with trusses: Sore legs and a number

[a] Neild's Account of Society for discharging small debts, pp. 307, 322.[9]

[1] For Bentham's complaint that the panopticon scheme had become a 'project' see pp. 273–4 above.

[2] MS 'retraining'. The text follows the draft at UC cxvi. 581 (2 January 1802).

[3] See p. 278 above.

[4] See p. 279 above.

[5] MS 'II.' The section number has been emended in accordance with the enumeration of 'Second Letter to Lord Pelham'.

[6] See p. 262 n. above.

[7] Sir Henry Paulet St John Mildmay (1764–1808), MP for Westbury 1796–1802, Winchester 1802–7, and Hampshire 1807–8.

[8] The *Captivity*, previously HMS *Monmouth*, had in October 1796 been fitted out as a hulk at Portsmouth.

[9] For Mildmay and Neild's report of their inspection of the convicts of the hulks *Captivity* at Portsmouth Harbour and *La Fortunée* at Langstone Harbour, together with an account of the diet of the *Captivity* convicts and the letter from James Chapple to Neild, 24 February 1802, mentioned below, see Neild, *Account of the Society for the Discharge and Relief of Persons Imprisoned for Small Debts*, pp. 307–22. Manuscript copies of their 'Report on the State of the Convicts in Portsmouth Harbour', dated 16 March 1802, and of their 'Report on the condition & treatment of the Convicts in Langstone Harbour', dated 18 March 1802, are at TNA, HO 42/65, fos. 109–12 and 102–7 respectively. According to the printed 'Report', Mildmay and Neild arrived at Portsmouth on 15 March 1802 and

unable to work in consequence .... Cause, according to the Surgeon—an impoverished habit and want of proper care: viz: during their confinement in the Gaols:'[1] in those Gaols which had been kept crowded by Lord Pelham contrary to law, in pursuance of the plan laid down by the Duke of Portland. Mortality, however, as yet a trifle: 'not one half' as great in proportion as on board the Langston Hulks; which see: in a twelvemonth not so much as an eight part of the whole.

Nº 2. LANGSTON HARBOUR; *La Fortuneé*,[2] March 16th 1802. 'Hospital ward ... Persons in all stages of disease and with all complaints ... intermixed together. Water penetrated into it through the floor of the quarter deck. Straw in the sacking almost reduced to powder and full of vermin. Decks extremely low: much crowded: no proper ventilation: many of the ports nailed down and could not be opened. Divine service ... a small part only of the Convicts can have access to it ... Captain never attends himself.'[3]

Deaths in 1797, nine of 600; in 1801, 120 out of 500: not quite one in four. In 1802, before the first quarter was at an end (viz. March 16th), deaths 34; though the number alive was by that time reduced to 300.[4] Number of the dead for the whole year, supposing no such visit, and the mortality continuing at the same rate, 165 out of the 300:—more than half the number of the living. Nobly done, Duke of Portland and Lord Pelham! how convenient to Mr Addington in his accounts! What a relief to the only grand grievance that presses upon most Noble minds, '*the expences attending the custody*' of these wretches '*borne by Government*.'[5]

Invalids or cripples on deck	50
Confined to their beds	11
In the Hospital Ward	11
Total invalids out of 300	72
But besides these, '20 of the worst had been recently removed'. Invalids, therefore, out of 320	92[6]

carried out both inspections on 16 March 1802. Bentham has confused the date of arrival with that of the first inspection.

[1] A paraphrase of, rather than a direct quotation from, Neild, *Account of the Society for the Discharge and Relief of Persons Imprisoned for Small Debts*, pp. 309–10.

[2] *La Fortunée*, a French frigate captured in 1779, had in October 1785 been fitted out as a hulk at Portsmouth, and in 1791 had been stationed at Langstone Harbour.

[3] A paraphrase of, rather than a quote from, Neild, *Account of the Society for the Discharge and Relief of Persons Imprisoned for Small Debts*, p. 313.

[4] See ibid., p. 315.

[5] See Portland to the Treasury, 14 October 1799, p. 266 above.

[6] The figures are taken from Neild, *Account of the Society for the Discharge and Relief of Persons Imprisoned for Small Debts*, p. 316.

All this sickness not without its consolations: 'discipline considerably improved': 'of late' no 'insurrection': 'of late none of them had been shot'.[1] Here, as in New South Wales, such is the use of famine. Among the dying, insurrection difficult:—among the dead, impossible. Erasmus sang the praise of folly:[2] who shall sing the praise of famine? To whom, if sung, shall it be dedicated? What rivalry—what generous rivalry—between Your Lordship, and the Duke of Portland—and Mr ————[3] and Mr Pitt! Who has done most to furnish materials? By famine, budgets are eased: without famine, Noble Lords could not propagate the Gospel at their ease: by famine, Noble Lords oblige their friends.[4]

Such was the state of things in a ship 'manifestly prepared' (say the Visitors) 'for our reception'.[5]

Labour and expence of inspection by Sir Henry Mildmay and Mr Neild: auspices and sufferance by Lord Pelham. What a troublesome man this Sir Henry! What a troublesome man this Mr Neild! why could not they have kept quiet!

With whom did the enquiry originate? With any of the gentlemen who, in Your Lordship's Office, by one name or another, Secretary, Under Secretary, Secretary's Law Clerk, Secretary's Law Clerk's Clerk, are so well paid for looking after these things? No, my Lord, the wretches might have been rotten, the whole hulk full of them, as, at the rate they were rotting, half of them would have been by this time, before any of these Under Omrahs would have thought of disturbing the slumbers of the Subahdar[6] by so much as a whisper about what was passing in the *Black-Hole*.[7]

If then with no one of the official persons who were so well paid for it, with whom then did the enquiry originate? Remotely and in the first

[1] A paraphrase of, rather than a direct quote from, ibid., p. 317.

[2] Desiderius Erasmus (1466–1536) was author of *Moriæ Encomium*, written in 1509 and first printed at Paris in 1511. A translation into English by Sir Thomas Chaloner (1521–65), statesman and poet, was published as *The Praise of Folie* at London in 1549.

[3] i.e. Addington, as stated in the draft at UC cxvi. 583 (20 December 1802).

[4] Allusions respectively to Belgrave's religiosity and the obstruction of the panopticon scheme to oblige Spencer and Belgrave: see pp. 31, 40–1 above.

[5] See Neild, *Account of the Society for the Discharge and Relief of Persons Imprisoned for Small Debts*, p. 312: 'Having completed our inspection of the Convicts in Portsmouth Harbour, we proceeded to carry our inquiries into the state and condition of the Hulks in Langston Harbour. We have here to regret still more, that the object of our investigation had been anticipated, as we have good reason to believe, not only from the most *respectable and undoubted authorities*, that we should have seen cause even for more severe animadversion, had not the ship been manifestly prepared for our reception.'

[6] A subedar was a governor of a region or commander of a town within the Mughal Empire.

[7] For the Black Hole of Calcutta see p. 104 n. above.

Passage J, Appendix, p. 308 below, which appears in the draft at this point, was crossed through by Bentham and omitted from the copy.

instance with a humane Jailor,[a] whose duty led him to bring Convicts to this Hulk. In the first instance with this unpaid Jailor: in the next place, with an unpaid gentleman—with a gentleman to whom, because there were unpaid gentlemen to whom such intelligence would (it was known) be as interesting, as to the so well paid gentlemen it would have been indifferent, if not worse than indifferent, the information was addressed. I speak of Mr Neild, a second Howard, who with all the zeal, with all the munificence, and more than all the gentleness of his illustrious predecessor, has spoken the word—has started noble game, and caused the mask of humanity to fall off from faces of higher rank, than those of the subordinate tyrants, whom it fell to the lot of his predecessor to hunt out of their holes.[1]

A private gentleman could point to Lord Pelham's office: it required a Member of Parliament, if not two, to force the intrenchments of it.[2] Mortality (says one of those to whom this humane Jailor's Letter had been shewn) mortality is raging in the Hulks: Sir Henry Mildmay—Mr Neild—were it but possible—would look at it. The visit not being to be prevented, nothing was left to persons in office (Gentlemen or Noble Lords, I know not exactly which) but to be delighted with it. They were delighted with it accordingly. They had heard rumours—they were alarmed—they did not know what to do about it—they did not know whom to trust—it was a happy opportunity—a real acquisition to have somebody to look into the business who was not in office . . . . An order then for two visitors to take with them[3] . . . O' no! it was not necessary—they need not trouble themselves—it should meet them there. It should

[a] Mr Chapple, Keeper of the New Prisons, Bodmin. Letter dated 5th February 1802. In less than a Year and a half ending that day, out of 10 Convicts whom he had brought there, '6 dead, the other four looking very poorly'.[a] It is on that occasion that, in regard to the whole number confined in that same Hulk, he learnt what is mentioned by Sir Henry Mildmay and Mr Neild:[b] out of 500, living at the commencement of the Year 1801, deaths 120, at the end of it.

The survivors, upon his enquiry, say they are 'half starved':—appearances speak the same thing:—Officers plump and rosy. Would this be the case, if mere pestilence without famine were the cause?—The question is not mine: to the humane and intelligent informer[4] belongs the credit of it.

[a] Neild, p. 322.[5] [b] Neild p. 315.

[1] Passage K, Appendix, pp. 308–9 below, which appears in the draft at this point, was crossed through by Bentham and omitted from the copy.

[2] One of the Members of Parliament, as Bentham goes on to state, was Mildmay.

[3] According to Neild, *Account of the Society for the Discharge and Relief of Persons Imprisoned for Small Debts*, p. 321, his and Mildmay's inspection of the hulks had been authorized by 'an order from his Majesty's Principal Secretary of State for the Home Department, directed to us'.

[4] i.e. Chapple.

[5] James Chapple's letter, which is in fact dated 24 February 1802, appears in Neild, *Account of the Society for the Discharge and Relief of Persons Imprisoned for Small Debts*, pp. 321–2.

meet them there! accordingly it did meet them there:—and why?—that every thing not fit to be seen might first be put out of sight as much as possible:—that part of the filth might be shoveled away:—that eatable food might for the moment take place of uneatable: that the plague of famine might for the time be stayed: that in the motley company there each person might have his part given him to act: that instructions might be given to one class, injunctions backed with menaces to another: that every mouth might have a padlock put to it: that a varnish of some sort or other might be put upon every object—that a mask of some sort or other might be put upon every face.

Were not these the motives? Then why was the order refused to be delivered? Why was it determined to be *sent*? Why was it that, the visit was so '*manifestly prepared for*'?[1] Why was it that, at the expence of a virtual confession of male-practice below, of connivance and protection above—of guilt in both places, the principle of *unexpected visitation*—so fundamental a principle in economics—a principle so universally recognized as such—a principle so invariably applied to practice where any thing like good management is meant—why was it that so indisputable and obvious a rule of prudence was thus openly violated, without so much as a pretence?

The visit paid, the facts ascertained, report drawn up, the result is whispered to Lord Pelham.[2] His Lordship starts out of his sleep. What does he then?—Does he change the system? Does he bethink himself of law? of engagements? of a system of unintermitted inspection? of appropriate separation and aggregation? of universal industry? Does it[3] occurr to him to transfer the [undestroyed][4] remnant from the clutches of their [destroyers][5] to the hand of a guardian already named by Parliament? of a keeper acting under thousands of eyes? of a life-insurer who would lose £50 and more by every escape—£100 and more by every death?[6] of a system and a person he had so often been reminded of by higher persons, as often discussed[7] with tokens of pretended approbation, and manufactured smiles?[8] In this way, or

[1] See p. 285 & n. above.
[2] For Mildmay and Neild's reports see p. 283 n. above.
[3] MS 'he'. The text follows the draft at UC cxvi. 588 (n.d.)
[4] MS 'undistroyed'.
[5] MS 'distroyers'.
[6] According to 'Twenty-Eighth Report on Finance', Appendix F. 3, in *Commons Sessional Papers of the Eighteenth Century* (1798), cxii. 75, Bentham would be subject to a fine of £50 should a prisoner escape from the panopticon penitentiary, 'irresistible Violence from without only excepted'. For the insurance of the lives of the inmates see 'Letter to Lord Pelham', p. 128 & n. above.
[7] MS 'who as often dismissed'. The text follows the draft at UC cxvi. 588 (n.d.)
[8] In the draft at UC cxvi. 588 (n.d.), Bentham has noted in the margin at this point: 'In Dec^{r} L^{d} P. smiled about Panopt. to Wilberforce.' For Wilberforce's conversation with Pelham in late 1801 see p. 43 n. above.

in any other way, does he make, or for a moment think of making, any the smallest change in the system of management? or rather, of destruction carried on under a pretence of management? No: he employs a gentleman to look at it.[1] Does he abate the nuisance?—No: he creates a place. A page or two and we shall see what *sort* of a place, and what the *object*, and what the *fruit* of it.

An Act is necessary. The visit is on the 16th of March, and already on the 24th the Act has passed the sceptre.[2] There is a time for all things.[3] When is the time for waking?—when a place is to be created. When is the time for sleeping? When Parliament is to be obeyed, engagements fulfilled, reformation and economy planted, pestilence and famine stayed, and a system established which puts an end to places.

The Act is passed, my Lord, and what is done by it? Matters of 'extreme and pressing necessity' are supposed; and by whom is the remedy to be applied? By '*the Justices of his Majesty's Court of King's Bench*'[4]—by a body, a most competent one while it exists, but which, for one knows not how many months out of the twelve, has no existence. In circuit time, for example, while dispersed all over England, then it is they are 'to take order' about a Hulk—to act together with hundreds of miles between them, or the mischief which is so 'extreme and pressing' is to run on its course.

Duty of the Inspector '*one visit in each quarter*': add '*at least*', item '*or oftener if occasion shall require*'. Salary carefully limited: not to exceed £350 a Year for gentleman and clerk: and that '*for all charges and expences*':[5]—£87. 10s a time for *four* times, and not a penny for a fifth! In this state of things, what is the occasion that shall *require* it? *Time* for going, if to any purpose, when *unexpected: duty* to go, if *use* were the object of it, at such *times:* penalty for the performance of such duty, trouble and costs. Suppose a call for such a visit—for the exercise of any such duty—by whom shall the call be heard?—By the Inspector? every journey he takes is a fine upon him: so much as the charge of the journey amounts to, so much of his fixed salary is eat out by it.

[1] i.e. the appointment of Aaron Graham as Inspector of the Hulks.

[2] The Hulks Act received the Royal Assent on 24 March 1802. During the Bill's Committee stage in the House of Commons on 10 March 1802, the appointment of an Inspector of Hulks, with an obligation to make quarterly reports to Parliament and with a salary of £350 per annum, had been proposed by Sylvester Douglas (1743–1823), first Baron Glenbervie, Chief Secretary for Ireland 1793–4, Lord Commissioner of the Treasury 1797–1800, Paymaster of the Forces 1801–3, Vice-President of the Board of Trade 1801–4, who noted that at Langstone Harbour, 'considerable abuses had taken place with respect to [the prisoners'] food and cloathing, and various other matters': see *Parliamentary Register* (1796–1802), xvii. 170.

[3] An echo of Ecclesiastes 3: 1.

[4] The Hulks Act of 1802, § 2, provided that 'in Matters of extreme or pressing Necessity [the Inspector] shall and may make a special Report thereof to the Justices of his Majesty's Court of King's Bench, who shall immediately take Order therein, and regulate or redress the same'.

[5] See the Hulks Act of 1802, § 2.

By whom then? By Noble Lords, or by gentlemen who are supposed to think for them?—When it was their own business, they thought nothing about the matter: let us hope so at least, and that when year after year they kept destroying men by hundreds, for want of thought. Henceforward, now that they have made it other people's business to think of it—now that they have made a pretence for themselves for not thinking of it—a pretence which they never had till now—is it now that they will begin to think of it? they of whom, upon the most favourable of all possible constructions, the best that can be said is, that they never bestowed a thought upon it before?[1]

Thus much as to *principle:* now for experience. The time is short: yet not so short, but that experience crowds into it.—Under Lord Pelham, if Remedy lingers, Abuse shews the speed which it is in the power of encouragement to produce.

The place being to be made, by whom was it to be filled? By any body that had the *will* to fulfill the duties of it? by any body who had so much as the *power*?—Alas! no:—under Lord Pelham such requisites are not required.

Had the removal of the abuse been the object, one description of persons were marked out by the nature of the case, as the persons to be *advised with* at least, about the choice. These[2] it is scarce necessary to say, were the persons from whose spontaneous and disinterested exertions knowledge of the existence of the mischief had been obtained. In that quarter appeared at any rate the fairest presumption in regard to *will*—the clearest proof of a *disposition* at least, not to grudge exertions toward the application of a remedy, howsoever that disposition might be overruled by other circumstances. From the mere circumstance of a man's having given information of a mischief, the conclusion is certainly far enough from being a necessary one, that, whether obtainable or not obtainable, he would himself be a fit person to be employed in the application of a remedy. A person so circumstanced is, however, the first person the idea of whom would naturally present itself in that view, supposing him not set aside by other specific considerations. I mean always in the eye of any official person, to whom the cure of the mischief was either the sole object or so much as the primary object in view. To a mind contemplating the subject in any such point of view, a man, in whose instance such *primâ facie* evidence of fitness had manifested itself, would naturally present himself as standing first upon the list of candidates.

[1] In the margin, Bentham has noted at this point: 'Insert here *Qui custodiet* &c.' For the passage in question see 'Second Letter to Lord Pelham', § XIV, p. 230 n. above.

[2] MS | |. The text follows the draft at UC cxvi. 590 (27 December 1802).

Principles standing thus, now as to *facts*. Of two persons *competent* in the highest degree to do the business—men above all exception—*willing* to do the business, in at least one instance (for they had done it in one instance), indication had been given by experience. Inspectors spontaneous, zealous, gratuitous; two for this one office. The place being to be made, was it offered to either of these gentlemen?—was it offered to Sir Henry Mildmay?—was it offered to Mr Neild? the negative is but too notorious. If in one of the two instances, situation in life was such as to exclude hope of acceptance, that could not be the case in the other.

Thirty years ago the indefatigable and gratuitous Agent of the Charity for the relief of debtors, travelled the first of circuits three years before even Howard had begun his.[1] I called Neild a second Howard:[2] with more propriety I might have called[3] Howard a second Neild. Howard sunk under a jail fever, Neild has survived one.[4] The exertions of Howard have long since received their quietus from above: Neild's seem but to increase with age. Two such circuits in one year adorn the annals of 1802.[5] His Honourable Colleague[6]—a Member of the legislature and not an idle one—a man standing already in full light—would derive nothing like illustration from a hand like mine.

In a station like Your Lordship's, there have been men that would have knelt to both these gentlemen rather than not have gained one of them for the office. In the instance of Mr Neild at any rate, whether he would or would not have accepted of the office would not be known, to a certainty at least, without asking: accordingly he was not asked. The experiment would have been too dangerous: it was a case not to be trifled with. Seeing how he had been occupying himself, and what he lived for, would any prudent man have answered for his non-acceptance? Year after year his active beneficence had embraced and covered the whole island:[7] who

[1] Having previously inspected prisons in France, Neild made his first inspections of British prisons in 1770. Howard's career as a penal reformer began in 1773 when, following his appointment as Sheriff of Bedfordshire, his discovery of abuses at the county gaol led him to investigate the gaols in neighbouring counties.

[2] See p. 286 above.

[3] MS 'I called'. The text follows the draft at UC cxvi. 591 (28 December 1802).

[4] Howard contracted typhus on an inspection at Kherson in Russia, where he died on 20 January 1790. Neild contracted the disease at Warwick in 1781.

[5] The first circuit was presumably that represented by the reports on the state of debtors prisons as of March 1802 that Neild published in *Account of the Society for the Discharge and Relief of Persons Imprisoned for Small Debts*, and the second by the list of prisons that Neild had visited since July 1802 and which he sent to Bentham on 27 December 1802 (see *Correspondence* (*CW*), vii. 177–8, and the Editorial Introduction, p. lxv n. above).

[6] i.e. Sir Henry Mildmay.

[7] For Neild's own account of his prison-inspection career see 'Memoir of James Neild, Esq. LL.D. (Written by Himself)', in Thomas Joseph Pettigrew, *Memoirs of the Life and Writings of the Late John Coakley Lettsom*, 3 vols., London, 1817, ii. 191–207.

could answer for his not consenting to charge himself with two or three spots. Year after year he had gone through the same sort of business gratis: who could answer for his refusal to undertake for a portion of it, for a price. Year after year he had done the same sort of business without authority: who could say that, with or without ordinary recompense, he might have accepted of that authority, the effect of which could not but be to second in such a variety of ways, his generous endeavours. Below—above—every where—authority, even though it were without power, is of use. *Below*, it commands information: *above*, it gives a claim to notice.

Were these gentlemen, or either of them, so much as consulted with on the choice?—Nor that neither. How could they have been? Under the auspices of Lord Pelham—under the administration of gentlemen on t'other side the wainscoat[1]—places are made for gentlemen, not gentlemen searched[2] out for places. Is it not so? a page or two will soon demonstrate.

Would there have been any thing wild, speculative, incongruous, so much as unaccustomed in a choice guided by considerations such as above suggested? Let us look back a little. In the case of Convicts, Howard was the first investigator of the system of abuse: Howard's was the hand first chosen for the application of the remedy: I speak of the Penitentiary establishment in its first intended shape. In a succeeding list, to known zeal in this line of service, rank afforded an additional pledge—an additional recommendation. When a second set of superintendants were to be looked out for, sought or unsought, it was destined for Lord Minto and Sir Charles Bunbury: neither Lord Minto nor Sir Charles Bunbury disdained[3] the office.[4]

Other principles of selection guide Lord Pelham. Abuse being brought to light by these intruders, busy-bodies, what was to be done? Ingenuity of one sort is not wanting: the answer was neither difficult nor tardy. What the eye does not see, the heart will not rue. Put in a sure man and give it him in charge to cover it up: the pretence for meddling will thus be taken from all such busy-bodies. Then (as Blackstone would have said) 'every thing is as it should be'.[5] By one and the same operation, abuse obtains concealment; favourites provision; Ministers patronage. By a metamorphosis as prompt as

[1] i.e. John King and other officials in the Home Office.

[2] MS 'searced'. The text follows the draft at UC cxvi. 591 (28 December 1802).

[3] MS | |. The text follows the draft at UC cxvi. 592 (28 December 1802).

[4] For the appointment under the Penitentiary Act of 1779 initially of Howard, Fothergill, and Whatley, and then of Minto, Bunbury, and Bowdler, as supervisors with the role of identifying a site on which the national penitentiaries for male and female prisoners would be built, and the eventual choice of Battersea Rise, see p. 140 n. above.

[5] See Blackstone, *Commentaries on the Laws of England*, iv. 49.

it was ingenious, out of the bitter thus cometh forth sweet.[1] The busy-bodies thought to have put an end to the abuse: they thought to have served the public: Good creatures! they are compleatly taken in—compleatly jockeyed. A new screen is bought for the abuse and the public pays for it. Lord Pelham taps the wainscoat as usual for the gentleman by whom every thing is done: by whom, whether any thing be or be not thought of or no, every thing at any rate is done.[2] The wainscoat sounds, and in comes the gentleman with a friend in his pocket for the place.[3]

That recommendation by subordinates should be taken without enquiry is natural enough, customary enough, certainly not illegal; and so far, without dispute, not culpable. In the present instance, for judging of the propriety of the recommendation, and of the views which gave it birth, two points may afford some light: the one antecedent to the appointment; the other subsequent:—the person recommended for the office, and his conduct when invested with it.

The gentleman who comes out of the pocket is without dispute the friend of the wearer of the pocket out of which he comes.—What are his other titles? To me, who neither am known nor know, he is known by nothing but a name: nor even by name shall he be spoken of by me. In matters of this kind—where public money is thus disposed of—in my estimate at least, which never looks for any thing more than human in the bulk of men—not the receiver,

[1] An echo of Judges 14: 14.

[2] i.e. John King.

[3] According to his obituary in *The Annual Biography and Obituary, For the Year 1820. Vol. IV*, London, 1820, pp. 402–22 at 403, Aaron Graham had, prior to his appointment as Inspector of Hulks in 1802, 'acquired the good opinion of those in power' thanks to his service to the colonial government in Newfoundland and on his return had been 'employed in a variety of confidential situations by government'. He had, for instance, at the behest of the Home Office, reported, with his fellow magistrate Daniel Williams, on whether the naval mutineers at Spithead and the Nore in 1797 had any connections with the London Corresponding Society, and reported on the state of the peace in Staffordshire during the winter dearth of 1800: see King to Graham and Williams, 16 June 1797, Graham and Williams's report, 24 June 1797, and Graham to King, 29 December 1800, at TNA, HO 42/41 fos. 208, 213–14, and HO 42/55 fos. 233–4 respectively.

Graham's appointment as Inspector of Hulks was not so whimsical as Bentham suggests. In February 1801 Graham had reported on the hulks for the Home Office (see his report of 17 February 1801 at TNA, HO 42/61, fos. 156–7). As a consequence of Graham's report, Portland had on 17 June 1801 laid before the Treasury proposed regulations 'for the better care and management of the Convicts confined on board the Hulks at Portsmouth and Langstone Harbours', and these were approved on 24 August 1801 (see Vansittart to King, TNA, HO 42/57, fo. 197). On 26 August 1801 Graham had, at Pelham's request, provided 'an Estimate of the Expence of my proposed Establishment for the Convict Hulks at Portsmouth and Langston', which he expected to come to £23,832 15s. 10d. (see Graham to King, TNA, HO 42/62, fos. 430–2). Though Graham was not officially appointed as Inspector of Hulks until 25 March 1802, he was present in Portsmouth in late December 1801 and reported on the fitting-out of vessels for the new system he would oversee (see, for instance, Graham to King, 9 and 10 December 1801, HO 42/62, fos. 581–2 and 584–5 respectively).

but the donor—I had almost used another word—is to blame. What is on record—what is public—may be mentioned without reserve: and it is quite sufficient for the purpose. Lord Pelham, on coming into office, finds him a Police Magistrate, at £400 a year. By one of Lord Pelham's two exertions, to this £400 is added another £100,[1] God knows why or wherefore: and for decency's sake, and because it could not be done otherwise—the whole corps of the Police—(Magistrates I mean—for as to drudges who must attend, and must understand the business, the case is different) the whole of the privileged order, indifferents and non-favourites together, share the boon with favourites. This not being yet sufficient for so much merit—for a gentleman whom the gentleman on t'other side of the wainscoat has the happiness to number among his friends—£350 a year is in this select instance added to it: and thus it is that substantial use is derived from the aërial labours of the well-meaning busy-bodies.

A gentleman, whose whole time has been bought already for the public, is thus twice over paid for it: paid under the old Act,[2] overpaid for self and C^{o} by one of these two new Acts, over paid again by the other of these two new Acts[3]—by an Act made in the same breath—an Act made for the sole and separate use of this single gentleman. Two Acts made *uno flatu*[4] for one gentleman, both of them under Lord Pelham's auspices: both of them for a friend of the gentleman on t'other side the wainscoat. One to pay a gentleman a second time for business for which, in his own estimation, as proved by the very best evidence—his own acceptance—he had been paid enough already; another to call him off from that very business, pay and over-pay still continued. One for making the worthy Magistrate receive more money; the other for making him do less service. In these two Acts we see the two signs of life exhibited by Lord Pelham during an administration of | | months:[5] two measures sanctioned each by an Act on purpose and the two acts are these. Two Acts both of them to provide for one gentleman, a gentleman already provided for in a situation always besieged by candidates: an Act to encrease his recompense, the other to reduce his service.

[1] For the Metropolitan Police Magistrates Act of 1802 see p. 272 n. above. The second 'exertion' was the Hulks Act of 1802.

[2] The Middlesex Justices Act of 1792 (32 Geo. III, c. 53) had provided for the establishment of seven police offices in the metropolitan parts of Middlesex and Surrey, in addition to the existing police office at Bow Street, and for three Justices of the Peace with an annual salary of £400 to be attached to each office.

[3] i.e. the Metropolitan Police Magistrates Act of 1802 and the Hulks Act of 1802 respectively.

[4] i.e. 'in one breath'.

[5] Bentham drafted this passage on 28 December 1802 (see UC cxvi. 593), which was almost seventeen months after Pelham had been appointed Home Secretary on 30 July 1801.

But, Sir, what ground for all this? Is there to be no end of all this malice—of all these imputations—these uncandid, these envenomed, insinuations?

My Lord, my answer is as distinct as possible. Four features—four antecedent features—betray, even of themselves, the complexion of the business.

First, the existence of such an abuse—and for such a length of time—year after year—under the very *noses*—(the term is a coarse one—under the *eyes* I should have said, had gentlemen chosen to have eyes)—of such a pyramid of official personages as those whose duty it was to prevent it.

Secondly, the neglect—a neglect too indecorous to have been manifested without cogent reasons—the compleat neglect shewn to the only persons by whom the smallest wish to see it remedied had ever been manifested.

Thirdly, the total absence of all signs of displeasure—as well towards the persons by whose immediate misconduct the mischief had been brought about, as towards the perpetually silent and motionless official spectators, by whose connivance it had been fostered:—on the contrary—

Fourthly, the positive tokens of satisfaction given, by resorting to these very patrons and protectors of the abuse, for the recommendation of the persons by whom the semblance of a remedy was to be applied. The gentleman whose duty it had been—first under the Duke of Portland, then under Your Lordship—to have prevented the abuse—(I speak of the individual abuse—the barbarity and consequent mortality) to have prevented it by drying it up in its source—I mean the whole system of Hulk confinement—the gentleman who, to avoid preventing it, set aside two Acts of Parliament, by the Letter which the Duke was ill-advised enough to give auspices and signature[1]—this gentleman, instead of preventing the abuse, nurses it:—he nurses it for months and years: he nurses the mortality for a year and a quarter, and I know not how much longer;—he nurses the source of it, under Your Lordship to this day. He nurses the abuse itself till it is ripe—ripe on the verge of universal rottenness—ripe by the rotting of the victims at a rate at which by this time they would have been more-than-half killed off—he keeps nursing it to this pitch of critical ripeness—when lo! by a misadventure, converted by his ingenuity into a lucky hit, an occasion turns up for recommending a friend to look at it:[2]—to look at it, and, on pretence of correcting it, to keep it uncorrected.

[1] i.e. John King, whom Bentham regarded as the effective author of Portland's letter to the Treasury of 14 October 1799: see pp. 265–6 above.

[2] i.e. the appointment of Graham as Inspector of Hulks in March 1802.

Thus, in an inferior hot-bed, an immature felon (I have heard it said) is nursed till he is become ripe: a felon worth but £10, till he is worth £40.[1] Those are petty profits, fit for petty hands.

£350 a year, a *douceur* for a gentleman—for the friend of the gentleman who does every thing—was not to be made up so easily: a hecatomb, and more than a hecatomb, of victims was to be sacrificed, before an offering could be raised worthy of the chosen priest, who was to stretch his hands over the altar, and make as if he were putting a period to the sacrifice.

In this place, truth compells me to acknowledge, proof that would be termed *legal* fails me: rumour—notoriety—whatsoever be the word—is in several points the only ground I can exhibit even so much as in the way of reference. I have no eye-witness to depose, that as often as a Noble Secretary has appeared to act, a gentleman on the other side the wainscoat has pulled the wires. Friendship between the gentleman who popp'd out of the pocket, and the gentleman out of whose pocket the other popped,[2] is a point not less difficult to prove, at least by the evidence of sense. The Noble Lord and the gentleman on the other side of the wainscoat could, either of them, by their evidence, put both points out of doubt. Fortunately or unfortunately, the favourite maxim about self-crimination and self-depredation, the maxim made to cover this and every thing else that ought to be disclosed, steps in and covers them:[3] so that on this occasion, as on all others, they may do exactly as they please. On these obscure and delicate points, circumstantial evidence, then, is the sole resort: and before the bar of the public at least—not to speak of other bars—circumstantial evidence is not altogether without its weight. As to one point, then, does not the same wire which at one time pulled the hand of a Noble Duke, continue to pull the hand of his Noble successor, and always in the same oblique and tortuous line? The crowding plan—the plan so distinctly chalked out by the epistle from the Upper-floor to the under[4]—is it not pursued still without deviation, pursued in full view of the effects of it, by those who to pursue it, and pursue it with full effect, have nothing to do but to do nothing? Then again as to the fair side—the amiable—the friendly side of the business—I beg leave to ask—unless for a friend, a very particular friend indeed, is it in the nature of man thus—thus compleatly—to expose himself? I say *to expose himself:* but to shew how compleat the exposure is—and that

[1] It is unclear to what Bentham is alluding.

[2] i.e. Graham and King respectively.

[3] The legal maxim *nemo tenetur seipsum accusare*, i.e. 'no one is compelled to accuse himself'.

[4] i.e. Portland's letter to the Treasury of 14 October 1799: see p. 263 & n. above.

on both sides—subsequent events will require to be called in—subsequent events which I now proceed to submitt to a pair of Noble eyes on which they will make the same impression as all preceding ones. Yes, my Lord, subsequent facts, facts notorious and in direct proof—will manifest themselves, and in doing so will point backwards, and throw day light upon *motives*.

Theory has been spoken of—now comes experience:—duty has been spoken of—now comes performance. Even upon the face of the law, the duty is meagre and inefficient: and performance falls short even of the meagre scantling so carefully chalked out and narrowed by the law. By the Act, at the commencement of every Session, this Report is to be made.[1] On the 16th of November commenced the first Session after the appointment. On the | |[2] of December the House adjourns—and no such Report has been made.[3] At the very outset, the duty is not done—no, not even that beggarly account of empty duty that has been made obligatory by the Act. When that which is made obligatory is left undone, can there be so much as a hope left for that which is left free? When that duty which is without expence is left undone, will that be done the expence of which, if repeated with a certain degree of frequency, would swallow up the only motive for acceptance?[4]

How should any Report have been made? To be reported, something must have been done: to be reported as seen, something must have been looked at. This, which is what ought to have been done, is precisely what had been left undone.

Times prescribed for inspection by this nugatory Act—(nugatory or little better had it ever been executed) times *for* inspection once a quarter: times *of* actual inspection, a blank or what is next to it.

Of the three or four Hulk stations, the only two distant ones, one at Portsmouth, the other at Langston Harbour, four miles distant from the first, are all I have as yet enquired about: but these surely are sufficient.[5] One of them is that which, but for the Bodmin Jailor and Mr Neild and Sir Henry Mildmay, might have buried all its inhabitants

[1] See the Hulks Act of 1802, § 2.

[2] Parliament was in recess from 29 December 1802 until 3 February 1803.

[3] Graham presented his first report to Parliament on 4 February 1803 (*Commons Journals* (1802–3), lviii. 124, 790–1), with Bentham being informed by a letter of the same day from James Mitchell, the Assistant Deliverer of the Vote at the House of Commons (*Correspondence* (*CW*), vii. 197).

[4] Passage L, Appendix, pp. 309–10 below, which appears in the draft at this point, was crossed through by Bentham and omitted from the copy.

[5] At the time Bentham was writing, there were hulks stationed at Portsmouth, Langstone Harbour, and Woolwich, while the hulk establishment at Plymouth had been closed down earlier in 1802.

before now:—the *La Fortunée*—the English Black Hole, now first known, but which ought to be had in everlasting remembrance.[1]

At what times or so much as time the new installed Hulk Inspector has inspected either of these Hulks, my authority has not informed me:[2] once in the three quarters instead of once in each quarter, once 'at the least', I take for granted: the pride of new-blown authority must have been weak indeed if it could not send gentlemen upon one installation progress, to sip the first sweets of office. During what space of time this quarterly Inspector of scenes of daily abomination has *never* visited them is a point I can speak to with confidence: I say, then, not these six months:[3] so far at least as an untutored answer from a man of known intelligence and trustworthiness to a simply enquiring letter, the object of which was carefully and effectually concealed, is to be depended upon, in respect of a matter of fact thus simple. *What, Sir, has not Portsmouth, then, do you wish me to understand, been visited by the Inspector of Hulks in all this time? Is it that the Police Office could not spare him?* Oh no, my Lord, the Police Office spared him without difficulty: was it possible in the nature of things that a Police Office should not have spared him, should not have spared a gentleman, to whom, by so recent a manifestation of superior pleasure, his Majesty's Secretary of State had made it a matter of duty to go elsewhere?

Yes, my Lord, there was inspection enough for Portsmouth, but there was none left for the Hulks. The gentleman, I have already said, had connections at Portsmouth: in that agreeable circumstance lay the convenience of the choice:[4] the prolific convenience which gave

[1] See pp. 284–5 above.

[2] See the anonymous letter of 26 December 1802 at p. 299 below.

[3] According to 'The Report of Aaron Graham, Esq. Inspector of Convicts in the River Thames and at Portsmouth', 4 February 1803, *Commons Journals* (1802–3), lviii. 790–1 at 790, Graham 'went immediately' to Portsmouth after his appointment on 25 March 1802. There he oversaw the fitting out of HMS *Captivity* and HMS *Portland*, and their mooring at Portsmouth and Langstone Harbours respectively, in preparation for the alteration in the hulk establishment that took place on 1 April 1802, when the government took direct oversight of the hulks, their officers, and their guards, with only the convicts' clothing and victuals being supplied by contract. Once this task had been completed, Graham 'made a Report thereof, and of all my other proceedings, to his Lordship'. He again visited the Portsmouth Hulks at the 'end of the Midsummer quarter' of 1802 and 'made another very full Report to Lord Pelham', before returning to Portsmouth at the end of September 1802. Graham acknowledged that he should have made his next visit before the end of 1802, 'but was prevented [from doing so] by indisposition, which, for several months past, has (with the exception of some short intervals) confined me to my room'. For Graham's private report to Pelham of 30 March 1802, and the returns and accounts of the Portsmouth and Langstone Harbour hulks for 1 April to 30 June 1802, see TNA, HO 42/65, fos. 78–9 and 2–56 respectively.

[4] According to *Annual Biography and Obituary, For the Year 1820*, p. 402, Graham was born and educated in Gosport, situated on the opposite side of Portsmouth Harbour from Portsmouth itself.

birth to the Act of Parliament—and through Parliament to the office. The gentleman had connections in Portsmouth: should some future Secretary be severe—in some contingent period of harsh discipline, under some Pharaoh that knew not Joseph,[1] should each quarterly visit be insisted upon, a persecuted Inspector—an Inspector driven to his duty might, under favour of that convenience, take refuge in the bosom of his friends. Persecution or no persecution, these friends were to be and were inspected at any rate; inspected in person, let what would come to the *Police:* as to the Convicts, they were inspected by proxy, and their proxies whom they were saved the trouble of appointing, were these convenient connexions.[2]

Four miles further would have brought the Inspector to the Langston Hulk:[3] a few hundred yards would have been enough to bring him to the Portsmouth Hulk:[4] humanity, official duty, recent engagement—the positive injunction of an Act of Parliament—all together could not prevail upon the gentleman for these few hundred yards.[5]

Suspicion, grounded solely upon theory, was enough to prompt enquiry, and, without disclosing the most distant hint of my object, I penned the following Letter, and got it sent to Portsmouth, to a person whose correctness was known by long experience—[6]

With the omission of an immaterial line or two, the answer was literally as follows[7]—

[1] For the story of Joseph and Pharaoh see Genesis 40–50.

[2] i.e. Graham's connections, as clarified by MS del. on the draft at UC cxvi. 599 (28 December 1802).

[3] i.e. *La Fortunée*.

[4] i.e. the *Captivity*.

[5] Passage M, Appendix, pp. 310–11 below, which appears in the draft at this point, was crossed through by Bentham and omitted from the copy.

[6] In both the draft and the copy, a space has been left for the insertion of the letter, which was addressed to Henry Peake, who was master shipwright at Portsmouth 1799–1803. The letter has not been located.

[7] The original letter, with Bentham's pencil emendations corresponding to the version inserted in the text above, written by Joseph Helby, shipwright, foreman of the Portsmouth Dockyard 1802–5, is at UC cxvi. 397:

'Portsm^{h} Dock Yard Dec^{r} 26th 1802.

'Sir,

'Agreeable to direction received from M^{r} Peake I have made the proposed inquiry and find there has been no regular inspection of Convicts either here or at Langston Harbour. M^{r} Graham not having been on board either Hulk near six months: he was at Portsm^{h} about three months since but he did not come on board the Hulk.

'I cannot find any other person visits or inspects except the Capt^{n} who has the Charge—you will have the goodness to acquaint me if this information is sufficient. I am with Compli^{mts} of the Season most truly

'yours Jos^{h} Helby.'

Portsmouth Dec^r^ 26 1802.

'Sir

'I have made the proposed enquiries and find there has been no regular Inspection of Convicts either here or at Langston Harbour. M^r^ {the nominal Inspector}[1] not having been on board either Hulk near six months: he was at Portsmouth about three months since but did not come on board the Hulk.

'I cannot find any other person visits or inspects except the Captain who has the charge.'

Such, as the Letter shews, has been the neglect. From misconduct the[2] eye turns naturally and not improperly to consequences. Strike out consequences—say that no evil consequences either have followed or are in a way to follow, every thing *almost* is as it should be.[3] The only practical inference is—that the place either ought never to have been created, or ought now to be abolished. Either it never had a use or the use it had is at an end.

But the neglect has *not* been without its consequences. I give a specimen—I can give no more. Strip them of nine-tenths of their abominations, the Hulks—Lord Pelham's Hulks—Lord Pelham's and M^r^ ————'s[4] *Black Holes*—would in this Country and at this time of day be—what Bastiles were. Complaints, like men, escape out of them now and then—escape out of them through negligence. The Letter of which the following is the extract, is from the least horrible of the two receptacles:[5] from that one, in which, upon an expected visit, some outsides were found fair: from that one which, not having [destroyed][6] so many as an eighth of its inhabitants in a year, was and perhaps is *Montpelier* to the other.[7] A letter from the Hulks! says somebody: a notable piece of evidence indeed! and by whom, pray, and to whom, written, and for what purpose? By one of the imprisoned wretches, to a friend in a situation but too similar—a prisoner in a Jail in one of the distant provinces. Not official, my Lord—not a Report this, it must be confessed. Under Your Lordship's auspices, it is not the custom for gentlemen in office to make Reports: especially when paid for it, and when Parliament has made it their duty in express words. Not official,

[1] i.e. Graham.
[2] MS 'they'. The text follows the draft at UC cxvi. 601 (31 December 1802).
[3] For Blackstone's phrase see p. 291 & n. above.
[4] Probably Addington.
[5] i.e. the *Captivity*.
[6] MS 'distroyed'.
[7] The city of Montpellier was reputed to be the healthiest and most salubrious location in France and is cited as an apt object of comparison in, for instance, [Daniel Defoe], *A Tour Thro' the whole Island of Great Britain, Divided into Circuits or Journies. Giving A Particular and Diverting Account of Whatever is Curious, and worth Observation*, 3 vols., London, 1724–7, i. 71, where Bury St Edmunds is described as 'the *Montpelier* of *Suffolk*, and perhaps of *England*'.

certainly, my Lord: gentlemen, if they did make Reports, would not complain of their own acts.

Omitting the effusions of the heart—the little tokens of remembrance—from one poor creature to another—but especially, and most carefully, omitting the names—I transcribe *verbatim* whatever bears reference to the present purpose. *Verbatim*, I say, my Lord: *literatim* not. *Spelling so quizzable, how could facts be credible?* Of this argument, the best the case admitts of—I have deprived, defrauded, gentlemen and Noble Lords. Alas, my Lord, how many hundreds of poor wretches had been in this world instead of another—had been comparatively happy—had been comparatively pure—if no worse logic than this had passed *from* gentlemen on t'other side the wainscoat, had passed upon Noble Lords?[1]

11th October 1802

'. . . I promised to write to you as soon as I came here, but could not so soon as I wished to do, for when I came here I was robbed of all my papers and pens and all that I had[a] . . . About 500 Convicts was drafted on board his Majesty's Ship Glatton for New South Wales, a five months back:[2] and I wish it had been my lot to have gone with them, for this place is a very bad one. We are *double ironed*, and work hard: and *so close shut down betwixt decks* when from work, *and so many and so close together, that we have a sad stinking place:* and what is worse, *we cannot keep ourselves clean*. The men are very lousy, *and are eat quite raw with lice:* and our *provisions are so bad, that the men break out all over sores, and look so bad and so yellow, that you would not take them to be Englishmen at all; nay you would be surprized to see them; for*

[a] He does not say by whom robbed, whether by his fellow prisoners or by their Keepers. But if not by the Keepers, but only by the prisoners, what, even on that supposition, must be the Keepers? Such care! such custody! Such crimes, such oppressions, close to them, all round them and no redress! In a Panopticon Penitentiary House could such things be? Could even the gentleman on the other side of the wainscoat find face to say as much?—to whisper as much even in the well-prepared ear of his Noble superior in Office?[3]

[1] The following letter was written by Samuel Hadfield (b. *c.* 1762), who had been convicted at the Chester assizes on 8 July 1801 of petty larceny, sentenced to seven years' transportation, and received on board the *Captivity* hulk on 18 February 1802, where he remained until his discharge on 14 July 1808: see TNA, HO 9/8, fo. 28. Bentham's copy of Hadfield's letter, 'directed to Bagot Ball Chester Castle Cheshire or Countay of Chester', is at BL Add. MS 33,543, fos. 644–5, and is docketed by Bentham: '1802 Oct. Panopt. | | on the Captivity Hulk Portsmouth to | |. Hardships. Copy by H.K. From the original in the hands of James Neild Esq^re.' H.K. was John Herbert Koe (1783–1860), who had become Bentham's secretary in about 1800.

[2] BL Add. MS 33,543, fo. 645 'a five weeks back'. HMS *Glatton* departed from Portsmouth for New South Wales on 23 September 1802 with approximately 400 convicts.

[3] i.e. John King and Pelham respectively.

I was when I came first to this place. They rob one another; and write to one another's friends to draw money of them in their names: and they served me so; and have kept me quite without money, and am without yet. I had some old Letters by me, which they robbed me of when I came here at first: but I hope to get some {i:e: money?} soon, and I think the rogues that have done it are gone to the Bay {Botany Bay}.

'Our victuals would do in quantity: but the quality is so bad, and the cooking so nasty, that nothing but clemming {starving} can force a man to eat it. We have meat for dinner one day, and bread and cheese the other: boiled barley for breakfast and burgen[1] for supper: neither good nor clean: so that they that can get things eat but little of the ship's allowance. This is a very bad place . . .[2] it is impossible to live here long.'

Well, Sir, but this correspondent of yours, who is he? None of mine, my Lord: yet not the less but the more credible in his undesigned and artless tale. Had the person written to been a person from whose interposition any the faintest hope of relief could have been conceived, motives for exaggeration at least, if not for absolute untruth, might have been imputed, and not altogether without cause. The fact is—written to a sharer though not companion in affliction, as above described, it fell by mere accident, though not without sufficient authentication, into the hands of a gentleman[3] by whose permission the copy I have (the original having been also in my hands) was obtained.

But his name, Sir?—No, my Lord: there Your Lordship will have the goodness to excuse me. I have read Don Quixote, my Lord: I will not follow his example.[4] The scourge of the tyrant shall not be brought down with redoubled force, by an interference so powerless on my part, so inefficacious, so much worse than inefficacious, elsewhere. To a Committee of the House of Commons . . . Yes, my Lord, at any time: not to his Majesty's Secretary of State, so long as Lord Pelham continues his Majesty's Secretary of State—least of all to the gentleman behind the wainscoat, so long as he continues on the other side of the wainscoat. Of frank disclosure to Lord Pelham, what could be expected to be the consequence? Let[5] experience—recent experience—speak. To the Inspector, an additional hundred a year to quicken his exertions; perhaps an Assistant or Deputy, to support him

[1] i.e. burgoo, a thick porridge or oatmeal gruel, typically served to seamen.

[2] BL Add. MS 33,543, fo. 645 'but I hear a good account of botany bay and wish that I might go soon for'.

[3] i.e. Neild.

[4] Don Quixote revealed his true name, Alonso Quixano, on his deathbed: see *Don Quixote*, ii. 384.

[5] The remainder of the copy is missing. The text follows the draft at UC cxvi. 603 (31 December 1802).

under them. As to the wretched letter-writer, an additional port-hole stopt up and the repose of office might be made secure for ever against all repetition of his impertinence.

APPENDIX.
EXCISED PASSAGES[1]

Passage A[2]

These (it must moreover be considered) were mere *pauper* establishments: the population submissive in its nature, wishing for nothing less than to escape—the infant, the aged, the infirm—passive for the greater part, even to the degree of helplessness. To the expence of these pauper establishments, prison establishments—especially upon the Blackburn plan[3]—the plan pursued, and for aught I know universally, in the main, at least, in the existing improved prisons—would have added I know not what load of further expence: for example, in solitary cells, with useless stone and iron in abundance. It would have multiplied it, and by no very small number. In the pauper department, £20 a head, for example, was the expence upon the Suffolk plan and scale, upon the numbers actually lodged, £10 a head upon the numbers capable of being lodged. In the prison department, £240 a head, or some such matter, was the expence upon the Cold-Bath Fields plan and scale, upon the numbers capable of being lodged there: I mean without departure from the plan of occasional solitude intended and pursued.

Passage B[4]

Such, or something like it, is the price, at which, to save the public the expence of the one obnoxious prison so often mentioned, it is a little more than 3 years, since a determination was professed, as Your Lordship will see presently, though I should suppose not for the first time, to force the country to fill itself with these improved prisons.[5]

[1] The Appendix contains passages that Bentham excised from the draft of 'Third Letter to Lord Pelham'. The excised passages have usually been crossed through by Bentham and thereupon omitted from the copy. Each passage has been identified by an editorially supplied letter for ease of reference. In the text of 'Third Letter to Lord Pelham' above, indication is given by an editorial footnote of the location of each passage.

[2] For the location in the draft of this passage at UC cxvi. 544 (n.d.), which Bentham considered inserting in a note, but which was crossed through by him and omitted from the copy, see p. 259 n. above.

[3] See p. 255 n. above.

[4] For the location in the draft of this passage at UC cxvi. 551 (n.d.), which was crossed through by Bentham and omitted from the copy, see p. 262 n. above.

[5] One of the four 'grounds of relinquishment' for the panopticon scheme cited in the Treasury Minute of 13 August 1800 was that there had been 'various Improvements . . . in the different Gaols of this Kingdom': see p. 73 & n. above.

Passage C[1]

Would it not have been more manly and quite as safe for his Grace to have said what certainly he has not said—'*This thing must not go on:—Lord such-a-one*[2] *thinks it will be inconvenient to him: he is one of our best friends.* He said nothing indeed for a twelvemonth together, while the ground was buying for the prison, but when bought it occurred to him that, profitable as the vicinity would be to his estate in the opinion of his agents, it would not in his own person be pleasant to him to see it made use of.

'His wish is, that the £12,000 public money that has been spent in the purchase[3] may be thrown away, together with as much more as may be necessary for indemnification. While he himself is propagating the Gospel elsewhere, he begs of me to keep on propagating immorality in New South Wales, and crowding Gaols at home with prisoners that Parliament has forbidden to put there.'[4]

Passage D[5]

Be it ever so imaginary, is it more so, or more perfectly understood to be so, understood to be so by all parties, than the notion that it was I that would not keep to my own terms? If, after this, a gentleman could have been unreasonable enough to ask for explanation, what could have been more easy?[6] 'As to what you have heard about the purchase being in hand for a whole twelvemonth, and people's looking on and not speaking till the money was paid, there may be some truth in that, but there was no help for it. My dear Sir Charles,[7] what could we have done? If the land had [not] been bought, Lord Salisbury could not have got the money: would you have had us disappoint Lord

[1] For the location in the draft of this passage at UC cxvi. 559, 564 (n.d.), which was crossed through by Bentham and omitted from the copy, see p. 269 n. above.

[2] i.e. Belgrave: see p. 280 & n. above.

[3] i.e. in purchasing the Millbank estate from the Marquis of Salisbury in November 1799.

[4] An alternative draft of this paragraph is at UC cxvi. 564 (n.d.): '"A few odd jobs must indeed be done to rid him of this nuisance, but if they were as difficult as they are easy, is such a man to be refused? The £12,000 public money must be thrown away, together with as much more as may be necessary for indemnifications. It will be impossible, he tells *me*, for him to keep on propagating the Gospel in comfort, if I do not keep on propagating immorality in New South Wales, and crowding Gaols with prisoners that Parliament has forbidden to be put there. Forbidden?—and what then? It is enough for Parliament, if its commands be 'examined and understood': Friends are not to be thus put off—*their* commands must be obey'd."'

[5] For the location in the draft of this passage at UC cxvi. 563 (n.d.), 497 (n.d. December 1802), which was crossed through by Bentham and omitted from the copy, see p. 271 n. above.

[6] In the remainder of the paragraph, Bentham imagines a statement made, probably by Portland, to Bunbury in relation to the panopticon scheme.

[7] i.e. Bunbury.

Salisbury? As to whimsicalness, if it were so, so much the better: the more whimsical the request, the more flattering the compliance. Sir: you don't know what a favourite he is you know where. Besides it is your mistake: our noble friend[1] is steady enough when he fixes: when his Agents thought he would have come in to it, he was not fixed. He is fixed enough now, I can assure you. If we were to disappoint him now, Sir Charles, do you [know] what would be the consequence? What would become of religion, I tremble but to think of. Poor man! How could he go on propagating the Gospel in any comfort, if we were to desert him, and leave off propagating immorality in New South Wales? As to crowded Jails and Jail fevers, and Hulks and starving and so forth, all this was very well in Howard, but after all, what does it signify? is it not so much money saved? and if we did not starve them or poison them, would not they die of themselves? Then again as to money thrown away: Imprest money £2,000: land £12,000: both together, it is but £14,000:[2] had we bought out the leases, that would have been another thousand:[3] but we stopped in time; and so that money was saved: had we paid it to Lord Salisbury as he proposed, he would get nothing by it, so there was no use in paying it. As to indemnification to the man, there, my dear Sir, you are quite mistaken—we talked to him about indemnification because it could not be done: we knew it could not.[4] If he had bit at this thing, he must have let go the other; so we should have had less trouble. Our disposition was to have given him a pension for life: we should have felt it as long as he lived. Ever since 1794 we have been feeling a disposition to set up his Jail:[5] we told the Committee of Finance so in 1798:[6] but always some friend or other stepped in to prevent it: we feel it as strong as ever: and we like it so well, we never intend to part with it. There are two Acts for these Gaols:[7] is there any thing in either about paying a man for not setting up one? not a single syllable. Any thing to oblige you, Sir Charles, so it were but possible: but as to a job, you know us better than to expect it.'[8]

[1] i.e. Belgrave.

[2] i.e. £2,000 granted to Bentham in June 1794 to make preparations for the panopticon prison and £12,000 for purchasing Salisbury's Millbank estate in November 1799.

[3] A Treasury Minute of 2 May 1799 had led Bentham to believe that the leases with which the Millbank estate was encumbered could be purchased for a further £1,000: see Bentham to Charles Long, 27 May 1799, *Correspondence* (*CW*), vi. 153.

[4] In the Treasury Minute of 13 August 1800, the Lords Commissioners of the Treasury stated that, in the event of the relinquishment of the panopticon prison, they should 'feel it incumbent on them to make such Compensation to Mr. Bentham as the Loss he has sustained in preparing for this Undertaking may appear to them to deserve': see *Commons Sessional Papers* (1801), vi. 585.

[5] i.e. since the Penitentiary Act of 1794.

[6] See p. 39 n. above.

[7] The Penitentiary Acts of 1779 and 1794.

[8] Bentham may have intended the following quotation and comment at UC cxvi. 565 (n.d.), which he has crossed through, to form the continuation of this passage.

Curse on all laws but those which love has made—[1]

So sang the poet once—so once may his Grace have said, whatever he may say now. There is a time for all things:[2] there is a time when friendship takes the place of love.

Passage E[3]

Are not assistance and opposition, plain dealing and deceit, truth and falshood, merit and guilt, virtue and vice, confounded and, if possible, rendered indistinguishable by such phrases?

Passage F[4]

At the time of one of Howard's visits, 16 August 1779, Debtors 51, Felons &c. (so termed) 141, of whom but 91 were Convicts and Fines (so termed) together.[a] This was in the Old prison. In the New-built prison, the quantity of room being, I suppose, inlarged, the numbers of all descriptions appear to have been encreased. On the 18th of December 1782, Debtors but 3 (this indicates an Insolvent Act),[5] Felons &c., as before, 291. On the 22d of August 1783, Debtors 113, Felons &c., as before, 224. On ye 17th of March 1787,[6] Debtors 140, Felons &c., 350. On the 26th of August 1788, Debtors 114, Felons &c., 499.[b]

Passage G[7]

And thus, without any original intention on my part, Your Lordship has seen, as it were by a side-glance, the fourth and last of the four grounds of relinquishment, of the three first of which my first letter presented Your Lordship with a bird's eye view:[8]—any closer one would be too wide a digression from the *present* purpose.

Far be it from me to say, whether his Grace[9] did or did not wish to see that which he thus professes to wish:—far be it for me to say,

[a] Howard on Prisons, pp. 213, 215. [b] Howard on Lazarettos, p. 125.

[1] Alexander Pope, 'Eloisa to Abelard', in *The Works of Mr. Alexander Pope*, London, 1717, p. 421. [2] An echo of Ecclesiastes 3: 1.

[3] For the location in the draft of this note at UC cxvi. 566 (n.d.), which was crossed through by Bentham and omitted from the copy, see p. 273 n. above.

[4] For the location in the draft of this note at UC cxvi. 499 (22 December 1802), which was crossed through by Bentham and omitted from the copy, see p. 274 n. above.

[5] The most recent 'Insolvent Act' had been the Act for the Discharge of certain Insolvent Debtors of 1781 (21 Geo. III, c. 63).

[6] The date given by Howard is, in fact, 18 March 1787.

[7] For the location in the draft of this passage at UC cxvi. 569 (11 December 1802), which was crossed through by Bentham and omitted from the copy, see p. 275 n. above.

[8] See 'Letter to Lord Pelham', p. 73 & n. above. [9] i.e. Portland.

whether his Grace did or [did] not expect to see what he thus professes to expect:—far be it from me to say, whether, in signing this letter,[1] he had or had not a thought about what he was signing:—as far be it for me to say, whether the gentleman who held the pen for his Grace[2] had or had not a thought about what he was writing. All this shall be exactly as Your Lordship pleases, and the ci-devant learned Gentleman, his Grace's and Your Lordship's writing and thinking master, please.

Passage H[3]

The offer being but an hypothetical one, I hope the author has not hurt himself by it in the estimation of a 'great person' who will come upon the carpet presently, and who he is so much afraid, would be offended if he were 'flattered'.[4]

Passage I[5]

Observations on No. 8. A supposition tacitly but certainly included in the hypothetical offer thus made by the worthy Magistrate[6] is that on the other part some regard would [be] paid to the rules of common honesty, that the County would not be made Bankrupt to him as Parliament has been to me:—and that he would not, after his capital had been advanced upon the faith of it and Acts of Parliament, if necessary, obtained for it, see the execution of it set down *in petto* for the Greek calend, by any such person as the predecessor of the great person[7] he becomes afterwards so afraid of flattering, not to speak of successors. This gentleman certainly would have thought he knew what he was about: but the great persons he is so much afraid of being accused of flattering would have known better things. The more beneficial to the public he had, in his own view of the matter, made his terms, the greater the scorn with which he would have been looked down upon by such high personages: and if, on any other occasion, he had ever been guilty of thinking for the public, this too would have been numbered among '*his flights*'.[8]

But the terms, Sir?—what say you to this gentleman's terms? not to speak of Philadelphia.—Your Lordship will have the goodness

[1] i.e. Portland's letter to the Treasury of 14 October 1799. [2] i.e. John King.

[3] For the location in the draft of this note at UC cxvi. 571 (24 November 1802), which was crossed through by Bentham and omitted from the copy, see p. 277 n. above.

[4] For the '*flattery*' of 'the *great person*' see p. 279 above.

[5] For the location in the draft of this note at UC cxvi. 492 (n.d.), which was crossed through by Bentham and omitted from the copy, see p. 277 n. above. The first two paragraphs were re-written and included in the text: see pp. 279–80 above.

[6] i.e. the offer of the anonymous author 'to contract for the profits of the prisoners' labour': see p. 277 above.

[7] Probably Portland, the predecessor of Pelham as Home Secretary.

[8] See p. 280 n. above.

to understand, that in the Panopticon case, the most favourite of all objections was that the terms bore too hard upon the proposer: so hard that the fulfillment of them would be impossible. This was what for years together, though always in whispers, I heard from all quarters: not a syllable to the opposite effect from any body. It was not till several years after acceptance that so much as a hint was dropped of their being too 'great':[1] and by this time, so that a ground for relinquishment could be made out of their magnitude, whether they should be objected to as too great or not great enough, or on both grounds together, was evidently become a matter of most compleat indifference to the admirers of arithmetic and its calculations.[2]

That for four hours together a man should stand upon the Pont Neuf offering five new and good crowns for a louis, and that in all that time he should not be able to pass off fifty upon those terms. He did not pass off 20. The gentlemen I had to deal with were no more to be taken in than the public at Paris upon the Pont Neuf.[3]

Passage J[4]

. . . *Hole:* in the Black Hole which, exceeded as it has been in mortality—eclipsed as it is in barbarity, as much as the barbarity of a night is eclipsed by the barbarity of months and almost years, will henceforward yield in proverbiality to Lord Pelham's and M^r^ King's and M^r^ Baldwin's Hulk: the Hulk *La Fortunée:* for such, by a horrible catachresis, happens to be the denomination of this ever memorable scene of official barbarity and negligence. Figures of rhetoric would here be thrown away: figures of arithmetic say every thing for themselves.

Passage K[5]

On this score I claim to have some merit with Your Lordship. I have not to accuse myself of any personal breaches of Your Lordship's peace.

[1] For Bentham's 'great Increase of Terms', which was one of the four 'grounds of relinquishment' for the panopticon scheme, see 'Letter to Lord Pelham', p. 73 & n. above.

[2] An allusion to George Rose: see pp. 146–7 above.

[3] Bentham has misremembered the story, related in Louis-Sébastien Mercier, *Tableau de Paris*, 12 vols., Hamburg and Neuchâtel, 1781, i. 76, of an Englishman winning a wager that he would be unable to sell a bagful of Crowns, each worth 120 sous, at 24 sous each, in the space of two hours, while walking along the Pont-Neuf.

[4] For the location in the draft of this passage at UC cxvi. 584 (27 December 1802), which was crossed through by Bentham and omitted from the copy, see p. 285 n. above. Bentham has added the following heading to this passage: 'Note. J.B.'s intercourse with L[ord] P[elham].'

[5] For the location in the draft of this passage at UC cxvi. 586 (27 December 1802), which was crossed through by Bentham and omitted from the copy, see p. 286 n. above.

For my own sake, for Your Lordship's, I have never put Your Lordship to any such trouble as that of forgetting me, or Your Lordship's porters to that of pronouncing his Lordship invisible. I was not to learn that, to ennobled guests, a poor relation is not a more unwelcome visitant than an impoverished host: impoverished by what means soever: most of all if by oppression, the continuance of which had been passed on together with the seals of office. The deluge had scarce begun to subside when I sent a dove out of the ark: the dove came fluttering back to me: but no olive-branch was in its mouth.[1] In plain English, the General, my Brother, after permission asked, and for a special purpose declared though not specified, attended on Stratton Street.[2] That Your Lordship was not at home to be seen by him, though at home, was a message brought out to him by a servant: that there ever would be a time when Your Lordship would be or might be at home was not said.

Taught by this and other tokens, when I have been troublesome to Your Lordship, it has been by proxy; and that proxy a spontaneous one. First came fair words, then fair letters: since the value of words and letters has been apparent, Sir Charles has turned Sheriff, and the new-made power[?] has vied in invisib[il]ity with John Doe and Richard Roe.[3]

Passage L[4]

I have no personal complaint against the gentleman.[5] I have not the honour of any[?] personal knowledge of him. Knowing no harm of him, except as excepted, of course I speak none. Finding him established on ground which I had purchased—to clear the ground of him, if it could be done *molliter manus* [*imposuit*],[6] is my right even by law.

A gentleman[7] whose duty it was under the Duke of Portland and Your Lordship to have prevented the abuse and who, to avoid preventing the abuse, set aside the two Acts of Parliament by the letter to which the D. of Portland was unadvised enough to give auspices and signature,[8]

[1] See Genesis 8: 11. [2] See 'Correspondence, sent to Wilberforce', p. 34 & n. above.

[3] John Doe and Richard Roe were fictitious persons who were named as parties in various legal proceedings. For Bunbury's role as intermediary between Bentham and Pelham see 'Correspondence, sent to Wilberforce', pp. 25–45 above.

[4] For the location in the draft of this passage at UC cxvi. 597 (22 December 1802), which was crossed through by Bentham and omitted from the copy, see p. 296 n. above.

[5] i.e. Aaron Graham.

[6] MS '*imponendi*', i.e. 'imposing [hands gently]' appears to be a slip. Where a person had defended his goods and possessions against an assailant, and was subsequently sued for battery, he might plead *molliter manus imposuit*, i.e. 'he laid hands upon him gently', to show that he had used justifiable force: see Blackstone, *Commentaries on the Laws of England*, iii. 120–1. [7] i.e. John King.

[8] i.e. the Penitentiary Acts of 1779 and 1794 and Portland's letter to the Treasury, 14 October 1799.

this gentleman, instead of preventing the abuse, nurses it—he nurses it for months and even years. He nurses it till it appears ripe and then comes the occasion for recommending a friend to look at it.[1] A friend, and what friend? A gentleman whose whole time had already been bought for the public and twice over paid for it: paid by one Act, overpaid by another Act—an Act made on purpose.[2] Two Acts made for one gentleman: both of them at the instance of Your Lordship's Secretary[3]—both of them under Your Lordship's auspices. One to overpay a man for business he was already paid for, which in his own estimation, as proved by the very best evidence, his own, by his acceptance, he had been paid enough already: another to call him off from that to other business, pay and overpay still continued: one for making him receive more money: another for making him do less service.

Passage M[4]

What has never been done, can not ever with perfect truth[?], nor always with perfect safety, be reported. It will not, therefore, be matter of much surprize that a Report, such as that which was so carefully provided should be made at the beginning of each Session to both Houses, should not as yet have been made to either of them.[5] The first Session, or what in effect is such, is at end, and no Report, not so much as the first, has yet been either made or thought of.[6]

When the definite peremptory duties of the Office are thus disposed of, it were an anti-climax to speak of contingent half-formed duties—duties to be performed '*at least*' and '*if need be*':[7] and if new brooms, even in the heyday of novelty, are thus far from sweeping clean, what may be expected of old brooms?

One would think there had been a wager between his Majesty's late Secretary and his present,[8] which should do most to shew his contempt for Parliament. The one takes up an Act of Parliament[9]—an act in full force—obtained by his predecessor, dashes it down, and

[1] For John King's alleged friendship with Graham see p. 298 & n. above.
[2] i.e. the Hulks Act of 1802 and the Metropolitan Police Magistrates Act of 1802.
[3] i.e. John King.
[4] For the location in the draft of this passage at UC cxvi. 599 (28 December 1802), which was crossed through by Bentham and omitted from the copy, see p. 298 n. above. Revised drafts of the second, third, and fourth paragraphs appear at UC cxvi. 501 (31 December 1802), 506 (6 January 1806), and 505 (6 January 1803) respectively.
[5] The Hulks Act of 1802 required regular reports to be made to Parliament: see pp. 272 n. and 288 n. above.
[6] For the presentation of Graham's first report see p. 296 n. above.
[7] See the Hulks Act of 1802, § 2.
[8] i.e. Portland and Pelham respectively.
[9] i.e. the Penitentiary Act of 1794.

quashes it for '*inexpediency*'.[1] The other, to serve a friend's friend, obtains an Act of Parliament of his own,[2] and in the same generous view, and in the very same year when made, sits still and sees it trampled upon before his face.[3]

The peace of Paris was an inscription that the Earl of Bute, less fortunate in his peace than M^r^ Addington,[4] chose for an epitaph on his tombstone.[5] Which of his two Acts, or both, would be L^d^ Pelham's choice? The Police Magistrate super-pensioning Act, or the Blind Inspectorship Act? Alas! talk not of separation. Parts of the same great design, each without the other would be incompleat. The verses of Bavius made not so compleat a match with Mavius.[6] We have but one Grenville Act:[7] let fame hand down to posterity the *par nobile fratrum*,[8] the two Pelham Acts.

[1] See Portland to the Treasury, 14 October 1799, p. 266 above.

[2] i.e. the Hulks Act of 1802, obtained, as Bentham alleges, to create a sinecure for King's friend Graham.

[3] An allusion to the fact that Graham had not presented a report to Parliament as required by the Act.

[4] Addington had negotiated the Treaty of Amiens of 1802 which, in the event, only temporarily ended hostilities with France.

[5] During the course of the Seven Years' War of 1756–63 Britain conquered a number of French and Spanish colonies and trading outposts, most of which were returned to France and Spain under the terms of the Treaty of Paris of 1763. These concessions contributed to the widespread unpopularity, and resignation from office on 9 April 1763, of John Stuart (1713–92), third Earl of Bute, First Lord of the Treasury 1762–3, a favourite of George III. According to Andrew Henderson, *The Life of William Augustus Duke of Cumberland. Containing a Circumstantial and Historical Account of the Times for the last Forty-four Years*, London, 1764, p. 386, during the debate upon the preliminaries of the peace treaty in the House of Lords, 'the Earl of B— very candidly owned, "that was he to die next day, he would desire no more honourable inscription on his tomb, than that he was the man to advise his Majesty to agree to the preliminary articles, which now lay before them"'.

[6] Bavius and Maevius were first century BC poetasters who incurred the contempt of Virgil (*Eclogues*, III. 90) and Horace (*Epodes*, X. 1–2).

[7] The Grenville Committees Act of 1770 (10 Geo. III, c. 16), sponsored by George Grenville (1712–70), Secretary of State for the Northern Department 1762, First Lord of the Admiralty 1762–3, leader of the administration as First Lord of the Treasury and Chancellor of the Exchequer 1763–5, provided that disputed election cases should be heard, not by the whole House of Commons as was previously the practice, but by a committee of fifteen members, thirteen of whom were chosen from a list of forty-nine selected by lot and the remaining two nominated by the parties to the dispute.

[8] i.e. 'famous pair of brothers': see Horace, *Satires*, II. iii. 243.

A
PLEA FOR THE CONSTITUTION:

SHEWING

THE ENORMITIES COMMITTED

TO THE OPPRESSION OF

BRITISH SUBJECTS,

Innocent as well as Guilty,

IN BREACH OF

MAGNA CHARTA,
THE PETITION OF RIGHT,
||
THE HABEAS CORPUS ACT,
AND THE BILL OF RIGHTS;

AS LIKEWISE OF THE

SEVERAL TRANSPORTATION ACTS;

IN AND BY

THE DESIGN, FOUNDATION AND GOVERNMENT
OF THE PENAL COLONY OF

NEW SOUTH WALES:

INCLUDING

AN INQUIRY INTO THE RIGHT OF THE CROWN
TO LEGISLATE WITHOUT PARLIAMENT
IN

TRINIDAD,

AND OTHER BRITISH COLONIES.

BY JEREMY BENTHAM, ESQ.
OF LINCOLN'S INN, BARRISTER AT LAW.

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PREFACE.

In two already printed Letters,[a] having for their direct object, not the *legality*, as here, but the *policy* of the penal colonization system, hints were given respecting the *illegalities*, which are the subject of the present sketch. At the same time the publication of them in the ordinary mode was forborne, and the circulation of them confined to a few select hands:[1] lest, before there should have been time for the application of a Parliamentary remedy, the information thus given, of the illegality of the government there, should, by any of those indirect channels which are not wholly wanting, find its way into the Colony, and be followed by any of those disorders, of which, in a community so composed, a state of known anarchy might so naturally be productive.

On that same occasion, mention was made of the case of the Ship *Glatton,* which in September or October had sailed with Convicts for New South Wales.[b] On all former occasions, the vessels in which Convicts had been conveyed had been private Vessels: the powers given by the various transportation Acts not being applicable to King's Ships.[2] The person to transport the Convicts was to be a private individual:—he was to execute the business by Contract;—and the service, to which the Convicts were to be subjected, was to be rendered exclusively either to the person so transporting them, or to some other person or persons, to whom by such contracting transporter the right to such service had been assigned. The *Glatton* is a King's Ship: the first, if I mistake not, that had ever been employed in that service. Setting aside the possible fiction of the King's Captain having been converted for this purpose into an independent contracting merchant, and the King's Governor into a character of similar description, it follows that, in point of law, neither has the Captain during the voyage, nor will the Governor have at the conclusion of it, any more power over these exiles than he would have over any other passenger. The

[a] Letters to Lord Pelham, giving a comparative view of the system of Penal Colonization in New South Wales, and the Home Penitentiary System, &c.[3]

[b] Letter I. p. 113.

[1] For the circulation of 'Letter to Lord Pelham' and 'Second Letter to Lord Pelham' see the Editorial Introduction, pp. lvii–lxi above.

[2] See 'Letter to Lord Pelham', pp. 112–13 n. above.

[3] See 'Letter to Lord Pelham', pp. 71–164 above, and 'Second Letter to Lord Pelham', pp. 165–248 above.

eventual consequences, in respect of *trespass, murder,* and so forth, are too complicated, yet at the same time too obvious, to be unfolded here.

This intimation, though from so obscure a quarter, has not been altogether without its fruit. I speak of the Transportation-facilitating Act, the Act of 43 G. III. c. 15, dated 29th December, 1802;[a] a Statute which, from its almost unexampled brevity, may, without much expense of paper, find a place at the bottom of the page.

The occasion, which called forth this manifestation of Parliamentary wisdom, was the then and still intended expedition of the Ship *Calcutta*—another King's Ship, with a similar lading—on a commission of exactly the same nature.[1]

[a] 43 G. III. c. 15, 29th December, 1802. An Act to facilitate, and render more easy, the Transportation of Offenders.[2]

'Whereas it is expedient that Provision should be made for transferring the Services of Offenders transported in His Majesty's Ships or Vessels, in Cases where no Contract is entered into, or Security given in respect of such Transportation, and that His Majesty should therefore be empowered to nominate and appoint Persons to have a Property in the Service of such Offenders .... be it enacted .... that whenever His Majesty *shall* please[3] to give Orders for the Transportation in any Ships or Vessels belonging to His Majesty of any Offender or Offenders who already have, or hereafter may be sentenced to be, transported to any Place or Places within His Majesty's Dominions beyond the Seas, it shall be lawful for His Majesty, by any Order under His Royal Sign Manual, to give, if He shall think fit, to any Person or Persons nominated and appointed for that Purpose in such Order, a Property in the Service of any such Offender or Offenders, for such Term or Terms of Life or Years, or any Part thereof respectively, for which such Offender or Offenders was or were ordered to be transported, as to His Majesty shall seem fit; and on such Nomination and Appointment, such Offender or Offenders may be delivered to the Person or Persons so nominated and appointed, without any Security being required or given for the Transportation of such Offender or Offenders; and every Person so nominated and appointed, and his or their Assigns, shall have the like Property in the Service of such Offender or Offenders, as if such Person or Persons had contracted and given Security to transport such Offender or Offenders, in the Manner required by the Act of the Twenty-fourth Year of His Majesty's Reign, intituled, *An Act for the effectual Transportation of Felons and other Offenders, and to authorise the Removal of Prisoners in certain Cases; and for other Purposes therein mentioned*,[4] or any other Law now in Force; any Thing in the said Act, or any other Act or Acts, to the contrary notwithstanding.'

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[1] On 24 April 1803 HMS *Calcutta,* along with the storeship *Ocean,* sailed from England with 307 convicts, together with an expedition, led by Lieutenant-Colonel David Collins, with a view to founding a new penal settlement at Port Phillip. The *Ocean* and *Calcutta* reached Port Phillip on 7 and 9 October 1803 respectively and a settlement was established at Sullivan Bay. Disappointed by the location, the poor quality of the land, and a shortage of fresh water, Collins abandoned the settlement and by February 1804 had relocated it to Sullivans Cove on the Derwent River in Van Diemen's Land, thereby founding Hobart Town.

[2] For further details concerning the passing of the Transportation Act of 1802 see the Editorial Introduction, pp. xlix–l above.

[3] Transportation Act of 1802 'shall be pleased'.

[4] i.e. the Transportation Act of 1784.

In this Act, the powers I had ventured to point out as necessary for the Ship that sailed without them are precisely the powers that have been provided for the Ship that is now to sail: and so far all is right. But the ship that sailed without them?—what provision is made in the Act for *her* case?—None whatever. To the case of all such Convicts as may come to be transported, at any time *subsequent* to the 29th of December,[1] the powers *are* capable of being applied: to whatever have been sent off *before* that time, they are *not* applicable. Captain Woodriff,[2] whenever he sails, will sail (I doubt not) in the character of a lawful Agent of the Crown, provided with lawful powers: but Captain Colnett[3] (to whom I beg to be understood not to impute the smallest particle of moral blame), Captain Colnett, for any warrant or protection that has been afforded him by this Act, cannot have sailed in any other character than that of a kidnapper. For the exile, confinement, and bondage of Captain Woodriff's cargo of convicts, there will doubtless be a sufficient warrant under this Act. For the confinement and bondage of Captain Colnett's cargo, there is no better warrant than there would be for the like coercion, if an equal number of his Majesty's titled subjects, swept out of a Birth-day Ball-room, were to be the objects of it. Needless *in toto*, or else insufficient by half, such, upon the face of this statement, is the dilemma, out of which, if any gentleman in a long robe, or without a robe, is able to extricate the measure, he will do good service.

The Act is simply *enactive*: it is not *declarative*. By being made declarative it might have been made virtually retrospective: but declarative clauses are seldom to be found, without an introductory escort of sometimes real but more frequently pretended '*doubts*.' Here the preceding illegality, of the powers which it was the business of *this* Act to confer, was beyond all doubt. In the personal character of the truly honourable Servant of the Crown, on whose shoulders the mechanism of this disastrous business pressed,[4] I behold with pleasure, a cause sufficient to account, for the exclusion of this, as well as all other disingenuous pretences.

Being without retrospect *in effect*, the Act is still more palpably destitute of every operation of that kind, expressed in *direct terms*. The cause of the deficiency is not less perceptible in this case than in the other. The emotion of disgust and alarm, with which an eye of

[1] i.e. the date on which the Transportation Act of 1802 received the Royal Assent.

[2] Daniel Woodriff (1756–1842), naval officer, had the command of HMS *Calcutta* on its voyage to Port Phillip.

[3] James Colnett (bap. 1753, d. 1806), naval officer and fur trader, had the command of HMS *Glatton* on its voyage to Port Phillip.

[4] i.e. Spencer Perceval, who was responsible for introducing the Bill that became the Transportation Act of 1802 into the House of Commons.

legal and constitutional sensibility could not but have shrunk on this occasion from every such retrospective glance, may be anticipated in some measure from the very title-page of this Essay, and I flatter myself will be pretty distinctly warranted as well as accounted for, by the tenor of the ensuing pages. So foul, so frightful, was the ulcer, the Surgeon durst not look it in the face.

Thus then stands the matter at this hour. The same Act, by which legality has been given to the expedition *about to sail*, confesses the illegality of that which is already on its way. A deeper probe, a broader plaster, are still necessary. A fresh Act must be passed for the Ship Glatton, or all pretence of consistency—all regard for official decency—all regard for the forms and fences of the constitution—must be disclaimed.

A

A PLEA FOR THE CONSTITUTION, &c.

§ 1. *Subject Matter—Object—Plan.*

On the ground of *natural justice,* as well as *expediency,* a view, nor that a slight or hasty one, has already been given of the penal colony.[a]

The object of the present essay is of another order: the business of it is to examine the same establishment on the ground of *positive law:* and, in so doing, to state for the consideration of such of my fellow-subjects, if such there be, by whom the constitution under which we drew our breath may be regarded as worth preserving, the injury it has received from the system of misgovernment, by which this nursery of martial law was originally planted, and ever since during a period of more than fourteen years past, has been conducted and upheld.

On the ground of *policy*, the measure had from the first presented itself to me as more than questionable:[1] years many and many, before the particular inducements, by which I was led to a closer investigation, had so unfortunately occurred to me.—On the ground of *legality*, it was not till very lately that so much as a suspicion had come across me.[2]

In a survey taken of the system pursued by the government of the colony when founded, the *laws* passed for the foundation of it would not remain long unnoticed. Astonishment flashed from the first glance. Compared with the immensity of the superstructure, the scantiness of the basis exhibited a Colossus mounted upon a straw.

[a] Letters to Lord Pelham, &c. 1803, 8vo.[3]

[1] Bentham had, for instance, expressed his opposition to transportation in 'A View of the Hard-Labour Bill', pp. 2–4, 108–9 (Bowring, iv. 6–7, 31–2), which had been printed in 1778, and in the second 'Postscript' in 'Panopticon; or, The Inspection-House', iii. 224–7 (Bowring, iv. 170), which had been written and printed in 1791.

[2] For Bentham's discovery of the illegalities involved in the government of New South Wales, probably in June 1802, see the Editorial Introduction, pp. lxxxii–lxxxiii above.

[3] See 'Letter to Lord Pelham', pp. 71–164 above, and 'Second Letter to Lord Pelham', pp. 165–248 above, both of which were printed in and dated 1802.

Such is the impression, such the discovery, if so it may be termed by anticipation, that gave birth to the scrutiny, of which the following pages are the result.

Legislative power is, and all along has been necessary, for the maintenance of government in the colony of New South Wales.—Lawful power of legislation exists not—has not at any time existed—in that colony.—Actual power of legislation has at all times been—still continues to be—exercised there.—The power thus illegally assumed, was employed, as it had been assumed, for oppressive as well as anti-constitutional purposes.—Britons, to whom their country, with the whole world besides, was open by law, have been kept in confinement in that land of exile.—Britons, free by law as Britons can be, have been kept in that land of exile in a state of bondage.—Such are the propositions which have presented themselves, and which, as such, it will be the main business of the ensuing pages to establish.

Other propositions, though distinct in the expression, and more impressive on the imagination, are not distinct in substance, being virtually included in the foregoing ones. Of what passes there for *justice*, a great, perhaps the greater part, is so much lawless violence: Magistrates are malefactors: Delinquency, which, in the conduct of the most obnoxious of the governed, is but an occasional incident—is at all times on the part of the governing class, and especially on the part of the head of that class, the order of the day. To a part, probably the greater part of the mandates issued, *resistance* is a matter of *right:* homicide, in the endeavour to subdue it, would be—has actually, if the case has occurred, been—as the law stands at present—*murder.* Not a Governor, not a Magistrate who has ever acted there, that has not exposed himself—that to this hour does not stand exposed—to prosecutions upon prosecutions, to actions upon actions, from which not even the Crown can save him, and of which ruin may be the consequence.

Connected with these propositions of dry *law*, are others in which considerations of a *moral* nature are combined with legal ones. Among the numerous, or rather innumerable manifestations of lawless power, are indeed some—and probably (let candour add) even by far the greater number, which import no moral blame: which, legality apart, import rather praise than blame, so far as praise is due to necessary prudence; and which, in a word, want nothing but *legality* to be *laudable* ones: measures, I mean, taken for the maintenance of authority and necessary subordination; measures calculated for the prevention of mischief in all its various shapes. To this division will be found to belong, more particularly, if not exclusively, the acts of the possessors of power upon the spot: measures recommended at least to them, if not absolutely forced upon them, by their providence, by their experience:

measures finding, perhaps in every instance, an *excuse*, in most, if not all instances, a justification (I mean always in a moral point of view) in the mischiefs and dangers of all kinds, with which so unexampled a state of society is encompassed.

To acts of another description no such justification, no justification at all, scarce any thing that can be termed so much as an excuse, *in foro morali*,[1] any more than *in foro legali*,[2] will perhaps, if the following view of the matter be correct, be found applicable. Such are the acts by which the punishment has been continued in *fact*, after the term, during which the *law* had authorized the infliction of it has been at an end. Of all such oppressions the guilt will be found to belong indisputably, and I hope, exclusively to men in power here at home: *indisputably*, because the exercise of such oppressions was of the essence of the system: necessary to the production of the effect, on which alone so much as a pretence to the praise of *utility* could ever have been grounded: *exclusively*, because the views promoted by such oppressions were the views of the contrivers and arch-upholders of the system, and of them alone, not of those local agents to whom the execution of it was committed; and because it was not natural, that, among professional men, whose profession is naturally understood to exempt them from the investigation of legal niceties, so much as a suspicion should have arisen, that in a system put into their hands by their official superiors, and those composing the supreme executive authority of the state, any thing should be wanting to render it conformable either to the spirit or the letter of the law; especially after the application, which on that very occasion, had been made to the legislature itself for powers, and powers obtained in consequence.[3]

Once more, it is not in the injury to individuals that we are to look for the main object of the present pages: nor yet in the so much more extensive mischief accruing to the whole body of the community, from the repugnancy of the system to every one of the *ends of penal justice*. These are the topics already handled at least, if not exhausted, elsewhere.[a] The grievance, by which alone the present representation was called forth, is of a still higher order. It consists of the wound inflicted on the whole body of the people, in what used to be felt to be the tenderest part—a wound in the vitals of that constitution, which to our forefathers at least was an object of such fond attachment, a subject of such unremitting jealousy. Over British subjects, the Agents

[a] Letters to Lord Pelham, &c.[4]

[1] i.e. 'before the moral tribunal'.
[2] i.e. 'before the legal tribunal'.
[3] i.e. in the New South Wales Courts Act of 1787.
[4] See especially 'Letter to Lord Pelham', pp. 74–163 above.

of the Crown have exercised legislative power without authority from Parliament: they have legislated not in this or that case only, but in *all* cases: they have exercised an authority as completely autocratical as was ever exercised in Russia: they have maintained a tyranny—not the once famed argumentative tyranny of forty days,[1] but a too real tyranny of fourteen years: they have exercised it, not only over this or that degraded class alone, whose ignominy may seem to have separated their lot from the common lot of their fellow-subjects, but over multitudes as free from blemish as themselves: they have exercised it for the purpose of exercising the most glaring of oppressions: for the purpose of inflicting punishment without cause upon those on whom the whole fund of just and legal punishment had already been exhausted.

The conclusions to which the investigation tends being thus announced, the proof will constitute the principal matter of the ensuing pages.

§ 2. *Power of Legislation—its Necessity in New South Wales.*

The power of *making regulations* considered as reposed in any other hands than those of the supreme authority of a state, is neither more nor less than *legislative power*, though derived from a superior power of the same kind, and acting under the controul of it.

A general right of legislation is one of those branches of power, the existence of which may be stated, without much fear of contradiction, as necessary in every political community whatsoever, old-established or new-established: necessary—if, for short spaces of time not absolutely to the very *being* of the state, yet at all times to the *well-being* of it.

In this country, during the infant and ricketty period of the constitution, the want of so important an article in the list of the powers of government was but too notoriously, as well as frequently and severely felt, in the intervals between Parliament and Parliament.

In a colony—in a new-formed community—much more in the colony in question, at the time in question—a colony not yet formed, but to be

[1] When exports of corn from Britain resumed after the expiry of a ban in August 1766, a subsequent poor harvest led to disorder, amid fears of increased prices and starvation. With Parliament having been prorogued until 11 November 1766, a Royal Proclamation was issued on 26 September 1766 to prohibit further corn exports during the interim. When on 24 November 1766 William Pitt the Elder (1708–78), first Earl of Chatham, Paymaster General 1746–55, Secretary of State for the Southern Department 1756–7, 1757–61, and leader of the administration as Lord Privy Seal 1766–8, and Charles Pratt (1714–94), first Earl Camden, Attorney General 1757–62, Chief Justice of Common Pleas 1762–6, Lord Chancellor 1766–70, were accused in the House of Commons of tyrannical behaviour and violating the Bill of Rights for having issued the Proclamation rather than recalling Parliament, Camden pleaded the necessity of the measure and in mitigation suggested that it was 'but forty days tyranny at worst'. See *Parliamentary History* (1765–71), xvi. 246–50 at 248.

formed—the existence of such a power may be pronounced altogether necessary to the very *existence* of the infant establishment.

The creation of such powers is a security, that surely was never before omitted in the case of any thing that was ever called a *colony:* never, even in the case of a colony established on the natural and ordinary footing, by a population composed principally or exclusively of free-settlers, impelled thither by the principle of social industry. How much more urgent the demand for it in the case of a population composed as in New South Wales! composed almost exclusively of such disturbed, discordant, dissocial elements!

It is a security never yet omitted, in colonies the *least remote,* in local situation, from the Mother Country. How much more indispensable in a population to be transported from Britain to the very furthest point of the globe, at a distance more than twice as great as that of the Eastern dependencies, and more than four times as great as that of the western![a]

In the act of founding *a Colony*, as distinguished from an originally independent state, two parties are necessarily concerned:—the destined *inhabitants* of the new territory, and the legal *founders* of it, their accustomed rulers, from whom they derive permission to quit their Mother Country, and assistance towards establishing themselves in this new one. But, on the part of the *founders*, as thus distinguished, unless it be the accidental contribution of pecuniary assistance, what was ever understood to be done by *the founding of a Colony*, but the conferring, on persons of certain descriptions, settled or about to settle in the territory of the Colony, the necessary assortment of the *powers of government?* an assortment of which the *power of legislation* has never been suspected, I believe, of being any thing less than a necessary ingredient.

From one source or another—from within or from without—from intrinsic authority or from extrinsic—who ever heard of the *foundation* of a state—dependent or independent—without a power in it *to make laws?* No surely: *Lucina sine concubitu*[1] is not a more palpable

[a] Speaking *of space,* I measure it here by *time:* for, of the two quantities time,—quantity of it necessary for intercourse,—is the only one of intrinsic importance with a view to practice.

[1] i.e. 'pregnancy without intercourse'. See Abraham Johnson [pseud. of Sir John Hill (*c.* 1714–75), botanist], *Lucina sine Concubitu. A Letter Humbly address'd to the Royal Society; in which Is proved by most Incontestible Evidence, drawn from Reason and Practice, that a Woman may conceive and be brought to Bed without any Commerce with Man*, London, 1750, a hoax directed at the Royal Society by Hill after he failed to be elected as a Fellow, and in which it was alleged that women could become pregnant without engaging in sexual activity, owing to the presence in the air of 'floating Animalcula', who were miniature people whom the author claimed to have captured and studied under a microscope.

absurdity, than the idea of founding a Colony without providing any legislative powers for it.

Supposing the whole mass of law existing in the Mother Country, to be transplanted in one lot into the Colony, *judicial power* might in this case be of itself, admitted to be sufficient: admitting always (what never can be admitted) that no need will ever occur for the imposition of fresh obligations. But even in the *oldest* established communities, that need is occurring every day: and surely the more *novel* the situation, the more urgent and frequent must be the demand for fresh obligations. I say *obligations:* for it is by such instruments and such alone that any provision can be made, for the unforeseeable and infinitely diversifiable train of *exigencies*, of which such a situation could not but, in point of reason, be expected to be productive.

One omission it is time I should confess, in the observation of which the reader may not improbably have been before hand with me. In speaking of the *existence* of such a power as necessary, I ought to have added, or the *belief* of its existence. To many an eye the distinction might appear an useless refinement: for without a *really existing* power of legislation, how in the nature of things (it may be asked) can the *belief* of it be produced? or if it could be, who would set about producing it, and to what end or use?—Questions pertinent enough these, but not unanswerable. The reader will soon judge.

The expedition was fitted out. It left the seat and source of regular government.[a] A Governor[1] went out with it: and with him went not out the smallest particle of legislative power, derived from the only source of legislative power—from the source, from whence other and inferior powers, (*judicial* I mean) that at the same time were sent with him, had been derived—in a word from *Parliament*.

An Act, brought in by Administration, had been obtained of Parliament to serve as a sanction for the measure: 'An Act to enable His Majesty to establish a Court of Criminal Judicature on the Eastern Coast of New South Wales and the parts adjacent.'[b] Such is the title of the Act:—no such power as that of legislation is in the title; no such power is in the Act. What powers then *are* there in the Act? Powers for creating Courts of Judicature, and no other. This was the professed business of the Act: this, the only business: the very title says as much. Powers are given by it—to do what? to create any *new rights?* to impose any *new obligations?* No such thing. Nothing

[a] 13th May, 1787. Collins, I. iii.[2]

[b] 27 Geo. III. c. 2.[3]

[1] Arthur Phillip, first Governor of New South Wales.

[2] As Collins states, this was the date on which the First Fleet departed from Portsmouth for New South Wales.

[3] i.e. the New South Wales Courts Act of 1787.

but to punish '*outrages* and *misbehaviours*.'[a] And what outrages and misbehaviours? '*such*,' (and such alone) '*as if committed in this realm would be . . . Treason or Misprision thereof, Felony or Misdemeanor*.'—'Whereas,' (says the Preamble,) 'it may be found necessary that a *Colony* and *Civil Government* should be established in the place.'. . . *To establish* a Civil Government—that a 'Civil government *should be established*,'[b] at least—established some how and by some body—was the professed object of the act. '*A Civil Government to be established*,' and no power of making *general* regulations; no power of making laws—no, not in any case whatever—is comprised in it! If, without Parliament, power could be found for legislating in all other cases, and for all other purposes, why not for the establishment of this, or any other, court of justice?

Under this provision of the law, an ordinance, suppose of the *prohibitive* class, is issued by the Governor in New South Wales. In the words above quoted, we have a standard for the validity of such ordinance. The *act prohibited* by it, is it of the number of those acts which would be '*outrages*' or '*misbehaviours*' if committed '*in this realm?*'[c] If not, then is the ordinance, by which it thus stands prohibited, illegal and void: void beyond dispute, unless the power of making laws binding '*in this realm*' belongs to the Governor of New South Wales, or some other person or persons legislating in New South Wales.

§ 3. *Legislation—how far lawful in New South Wales.*

All this while, from the time of the first landing of the first expedition, (to the time at which the historiographer of the colony took his leave of it) that is from January 1788, to September 1796, ordinances were issued by the Governor, and as it should seem by his sole authority.[1] *Instructions* were also from time to time received by him from his superiors here at home; and ordinances issued in consequence of, and

[a] *Outrages?* What a word for the basis of a system of legislation! '*Outrages*' too, as well as '*misbehaviours:*' when the import, vague and declamatory as it is, is at any rate included in *misbehaviours*.

[b] 'And whereas, it may be found necessary, that a Colony and a Civil Government should be established . . . . And that a Court of Criminal Jurisdiction should also be established . . . . . with authority to proceed in a more summary way than is used within this realm, according to the known and established laws thereof . . . .' §. 1. Preamble.[2]

[c] '*This realm?*' What realm? Of the impropriety and inexplicability of the term, notice will be taken a few pages further on.[3]

[1] See §§ 10–13, pp. 360–76 below.

[2] The quotation in the text is taken from § 1, and that in the footnote from the Preamble, of the New South Wales Courts Act of 1787.

[3] See pp. 347–8 n. below.

therefore (it may be presumed) in conformity to, these instructions.[1] And these ordinances are, not like the king's proclamations in Great Britain, mere acts of monition or other acts grounded on *pre-existing* acts of the legislature, but *original* acts of legislation, forbidding, and thereby converting into '*misbehaviours*,' a variety of acts, such as, if performed '*in this realm*,' whether in England or in Scotland, would not have been '*misbehaviours*,' would not have belonged to the class of '*misdemeanours*' or to any of those higher classes of delinquency '*(treason, misprision* thereof, or *felony)*' specified as such in the act.

This assumption of power, how shall it be accounted for? On the part of the Governor there can be little difficulty. Whatsoever were given to him for law, by his superiors at the Council Board, or the Secretary of State's office, would naturally enough, one may almost say unavoidably, be taken by this *sea captain* for law. By this sea captain: for such has been the profession and rank, of every gentleman who has ever as yet been invested with this important office.[2]

On the part of these authorities at home, some imagination or other must necessarily have been entertained about the *right*. Either that a right to confer on the Governor this power was actually existing in the authority thus assuming and exercising the power; or at least that, of the existence of such right, a *belief* would be entertained by the several parties interested: a belief, which, though it were ill-grounded and erroneous, would, so long as it continued to be entertained by all parties, have the same effect as if well-grounded and correct.

On the first supposition, they went to work *bona fide*, believing that to be *legal* which was determined to be *done*. In the other case, conscious of the illegality of the course they were pursuing, they determined to persevere in it notwithstanding; perpetual fraud trusting for its success to perpetual and universal ignorance.

Of two such opposite conceptions, which then is it that, on the face of it, carries the strongest probability of having been entertained?

The first hardly, for what is there that can be found to countenance it? Legislative power exercised by an officer of the crown, for such a course of years, without authority from Parliament! On what possible

[1] According to Collins, i. 127, for instance, the arrival of the Second Fleet in June 1790 brought 'dispatches from the secretary of state, containing, among other articles of information, instructions respecting the granting of lands and the allotting of ground in townships', whereupon corresponding instructions were 'declared in public orders'. For the instructions and the subsequent public order see W.W. Grenville to Governor Phillip, 19 June 1789, and Enclosure, 'Phillip's Instructions *re* Land Grants', *HRA*, i. 122, 124.

[2] The three permanent Governors of New South Wales up to the point at which Bentham was writing, namely Arthur Phillip, John Hunter, and Philip Gidley King, were Captains in the Royal Navy.

ground could any conception of the legality of such a system be seriously entertained?

I will make the best case for it in my power: I will ransack imagination for possible grounds.

That the supposition was, *in the whole extent of it*, without foundation, would indeed be evidently untrue. That there was and is a considerable stock of lawful power in the colony to work with, is palpable enough. That that power was of a nature to serve as a *succedaneum*, *so far as it went*, to a regular and expressly constituted legislative power, must also be admitted: manifest enough, I accordingly admit, it is, that a power of legislating over certain *persons*, and in certain *cases*, was *virtually* among the contents of it. But, in addition to all *such* persons and cases, legislation (so the fact is) has been exercised there (as indeed it required to be exercised there) over abundance of *other* persons and in abundance of *other* cases.

To shew this, I will in the first place exhibit a short survey of the stock of the colony, live and dead, persons and things, thrown into classes in this view. It will then be easy enough, and with a degree of accuracy sufficient for the purpose, to go over them, and say of each, this stands subjected, or this does not stand subjected, to the powers of all-embracing legislation, that have been exercised in New South Wales, by the sole authority of the King's governor of New South Wales.

In the course of a period of nine years and a half, comprised in the history given of the colony by its chief magistrate,[1] the inhabitants, considered in respect of their subjection to any ordinances of the governor (or of any other person or persons pretending to the exercise of legislative authority there) may be distinguished into the classes following:

1. *Officers and privates*, in the *land* branch of the king's military service, subject to orders as such under the *mutiny act*.
2. Officers and privates in the *naval* branch of the king's military service, subject to orders as such under the *articles of war*.[2]
3. Persons in the king's service in a *civil* capacity: as such, not subject either to the articles of war or the mutiny act: such as *chaplains, surgeons, superintendants, &c.*
4. Commanders and crews of *British vessels* in *private* service.
5. Commanders and crews of *foreign vessels*.
6. Convicts still in a state of legal bondage: the terms of punishment specified in their respective sentences, being as yet unexpired.

[1] i.e. Collins.

[2] Articles of War for the regulation of the armed forces were originally issued under the royal prerogative. After the Glorious Revolution of 1688–9, their issue was authorized by annual Mutiny Acts.

For distinction's sake they may be called *convicts non-emancipated de jure*, or still more shortly *non-expirees*. The reason of this distinction and the nomenclature founded on it will appear immediately.

7. *Wives*, *children*, and other relatives, if any, of non-expirees.
8. *Expirees*. Convicts emancipated *de jure: de jure* in contradistinction to *de facto*. The distinction is altogether a necessary one: for in point of fact one of the characteristic features of the establishment, and crimes of its foundation, was—that those who by law ought without exception to have been *free*, were, and were to be, in a multitude of instances *retained in bondage*.
9. Wives and children and other relatives of *expirees*.
10. *Unblemished* settlers: that is all settlers not belonging to classes 6, 7, or 8, or any of the preceding classes. In this instance, and for this purpose, the term *free settlers*—(the term employed elsewhere)—would not serve: since, if law had been the standard, classes 7, 8, and 9, would have been as *free* as these.

1, 2. With reference to the two first of these ten classes *(Army* and *Navy)* the right of legislation may pass without dispute. Conditions might be stated as requisite—limitations might be suggested—but the discussion would be superfluous. For the purpose of the argument, I suppose and admit proper measures to have been taken, and by the proper authority, to subject all persons of these two descriptions to the authority of the Governor in that behalf.

3. Over persons of the third class *(servants of the crown* in *civil* capacities) supposing power to be given to the Governor to dismiss them from their respective situations, this power operates of course as a means of *influence*, tending to produce a disposition towards a general submission to his will, howsoever signified. Setting aside this means of influence, their condition is no ways different from that of class 10*th; unblemished* settlers.

4. With reference to commanders and crews of *British vessels*, the right might also be admitted for the purpose of the argument:—though, in this instance, it appears liable to particular objections, which will be mentioned presently.

5. With respect to the commanders and crews of *foreign vessels*, the right shall, for the same purpose, pass unquestioned.

6. With respect to *non-expirees* (convicts still in a state of *legal* bondage) their legal subjection to the Governor, and consequently to all such orders as a Master in England has it in his power to issue to an indented servant, may be pronounced unimpeachable; I mean, supposing the course directed in that behalf by the act to have been

pursued;[a] and supposing the *civil* branches of the law of *England*, or of *Scotland*, or of both together, or of *Great Britain*, to have grown up in New South Wales, like so many weeds, without having been ever planted there: of which more will be said presently.[1] That the spirit of the old transportation system, which it is the professed object of the act to continue, cannot have been conformed to, I have already had occasion to explain in another place.[b] But, if the words of the act have been pursued, in the manner that will also be stated, I see nothing to hinder the power of the Governor, from having been rendered unimpeachable in relation to this class: always assuming the fulfilment of the unfulfillable conditions just mentioned.

7, 8, 9, 10. Over *expiree* convicts, their wives, children, and other dependent relatives—over the *wives*, *children*, and other dependent *relatives*, even of *convicts* themselves in a state of legal bondage—over unblemished *settlers*—the Governor neither had, nor could have had, nor without fresh authority from Parliament can ever have, any more power, (I speak always of legal power) than I have.

Over any *stores* intrusted to his care, the Governor, in his quality of agent to his Majesty—the legal proprietor of those stores, will have had the same legal power as any other proprietor any where. These stores being in a large proportion among the necessaries of life, from the proprietorship of these means of subsistence, must of course result a proportionable degree of *influence*.

But influence—*natural influence*—is one thing: *legal power* is another. To the production of an effect by influence, *consent* is necessary: special consent *precedently* given to each act, by the production of which the influence has fulfilled its purpose:—to the production of the same effect by *power* no such *consent* is necessary. Were the Governor to say to this or that man, being a man not in bondage to him—*Do such or such a piece of work, or you shall have no bread served out to you to-day*—an order *thus sanctioned* may be admitted to be legal, though without any previous authority given by Parliament for the issuing of it. But if, addressing himself to the same man, and speaking of the same piece of work, the Governor were in like manner to say (as he

[a] 24 G. III. Sess. 2. c. 56. §. 1. 13: which it may have been till of late; but could not have been in the case of the ship Glatton, which, having sailed in September or October, with about 400 convicts, without any legal power for consigning them to bondage, gave occasion for the act passed in December, by which legality has been intended to be given (and therefore I conclude, without having yet seen it, was given) to the transaction, by an *ex post facto* law. {Not given: see *Preface*.}[2]

[b] Letters to Lord Pelham, Letter i. p. 113.

[1] See § 7, pp. 346–50 below.

[2] See pp. 317–20 above.

has so often done)[1]—*Do this, or you shall be whipped*—here would be an ordinance illegal and void.

The same thing may be said of any *general* ordinance addressed to *all* persons without distinction, with or without any *special* sanction annexed to it, and whatever may have been the utility or even necessity of it:—so far as the persons bound, or otherwise affected by it in point of interest, are persons subjected by any *special legal commission*, to orders from the Governor, so far, and as to those persons, it is good and legal. Beyond this, and as to all other persons, the same ordinance is illegal and void. As for example—Orders that no persons shall for such a time go beyond such and such bounds.[a] Orders that no man shall build, or begin to build, a vessel of a size beyond such and such dimensions.[b]

I take for granted (always for the purpose of the argument) that whatever power of legislation *could* be given by the crown, to any body, to be exercised in this colony, *has* all along been given by the crown to the several successive Governors. All this notwithstanding—all this being admitted—what I maintain is that, no such authority having been given to the crown, in the only Act in question,[c] by the legislature, it was no more in the power of the crown, to confer any such power of legislation (except the limited, and not so denominated, but only *virtual* powers of legislation above excepted) on the Governor, or any other person or persons, than in mine.

[a] II. Collins 286, 295.[2]
[b] I. Coll. 159, 488. II. 53.[3]
[c] 27 G. III. c. 2.[4]

[1] According to Collins, i. 26, for instance, during April 1788 Governor Phillip ordered that, in order to prevent the spread of venereal disease in the colony, 'any man or woman having and concealing' it should receive corporal punishment and be put on short rations for six months.

[2] According to Collins, in February 1800 watchmen were ordered to detain any person, with the exception of officers, who attempted to pass their posts after ten o'clock at night unless 'they could give the counter-sign', and patrolling constables to arrest 'such improper or suspicious persons as they might meet in the town during the night', while in May 1800 all individuals, except officers, were required to carry a pass when travelling between districts and to present it upon request to a constable.

[3] Collins, i. 159, 488–9, ii. 53, describe measures taken by the colonial government to restrict the size and number of boats built in the colony with the intention of preventing convicts from absconding: in April 1791, following the escape of the group led by William Bryant in March 1791 (see 'Letter to Lord Pelham', p. 121 & n. above), it was ordered that boats built in the colony were to be no more than fourteen feet in length; in July 1796 an order requiring settlers to obtain the Governor's permission before either building or selling a boat was reissued, while all privately owned boats were to be taken to the master boat-builder, Daniel Paine, to be marked, and a register of marked boats was to be kept by Provost-Marshal Thomas Smyth; and in October 1797, following the escape of fifteen convicts from the colony, an order was issued prohibiting 'the building of a boat of any kind' without the Governor's permission, and stipulating that if any boat was left unsecured, or with its oars, rudder, masts, or sails on board at night, it was to be taken ashore and burned.

[4] i.e. the New South Wales Courts Act of 1787.

§ 4. *American, &c. Legislation no Precedent for New South Wales.*

The nature of the case not furnishing any just grounds, for the assumption of any such legislative power as has actually been exercised, I come now—(still acting under the difficulty already recognized)—I come now to fish out imaginary and possibly pretended grounds, at a venture.

True it is accordingly, certainly in general, and for aught I know without exception, and as such I shall admit it—that among all the *charters* in which the Governments in the several existing English, British, or quondam British Colonies in America, (West Indies included) have respectively had their rise, there is not one, for the granting of which any powers, previously or subsequently to the concession of it, had been obtained from parliament.

Still more clearly true it is, that even in the instance of *Georgia* (the last colony established before the revolt, established at so late a period as in the sixth year of the reign of the late King)[1] when an act of parliament was passed, having for the object of one of its clauses[a] (as declared in what may be called *a clause* in its long-winded title) the 'enabling his Majesty .... to pay .... ten thousand pounds to the trustees for establishing the colony of *Georgia*,'[2] no powers are given to the crown, any more than in any preceding or subsequent Act, for the purpose of legalizing such powers, as the crown must then recently have been creating for the government of that colony.

But, *since that period*, and *before* that of the passing of the Act for the foundation of the Colony of New South Wales,[b] this practice of

[a] 6 G. II. c. 25. § 7.[3]

[b] 1787.[4]

[1] The Royal Charter establishing the Province of Georgia was dated 9 June 1732, which was during the fifth year of the reign of George II (1683–1760), King of Great Britain and Ireland from 1727, rather than the sixth year as Bentham states.

[2] The full title of the Supply, etc. Act of 1733 is 'An Act for enabling his Majesty to apply five hundred thousand Pounds out of the Sinking Fund for the Service of the Year one thousand seven hundred and thirty-three, and for the further Disposition of the said Fund, by paying off one Million of *South-Sea* Annuities, and for enabling his Majesty out of the Monies arisen by Sale of the Lands in the Island of Saint *Christopher*, to pay the Sum of eighty thousand Pounds for the Marriage Portion of the Princess Royal, and ten thousand Pounds to the Trustees for establishing the Colony of *Georgia* in *America*, and for making good all Deficiencies and Charges by taking of Broad Pieces into the Mint, out of the Coinage Duty; and for appropriating the Supplies granted in this Session of Parliament, and for issuing to the Subdean, Treasurer and Steward of the Collegiate Church of Saint *Peter Westminster*, out of the Monies reserved for building fifty new Churches within the Cities of *London* and *Westminster* and the Suburbs thereof, and for making Provisions for the Ministers of the same, four thousand Pounds for the Repair of the said Collegiate Church, and twelve hundred Pounds for finishing the Dormitory belonging thereunto.'

[3] This clause provided for the payment of the sum of £10,000 'to the Trustees for establishing the Colony of *Georgia* in *America*, to be applied towards defraying the Charges of carrying over and settling foreign and other Protestants in the said Colony'.

[4] i.e the date of the New South Wales Courts Act.

organizing governments for British dependencies, in territories out of Great Britain, by the sole power of the Crown, may, I think, be said to have been relinquished, and virtually acknowledged to be indefensible. I mean by the precedent set, by the Act commonly called the *Quebec Act*,[a] in which, whatever was done in the way of establishing subordinate powers of *legislation*, was in *that* case, as well as in the case of *judicature*, done either by Parliament itself, or by authority therein given to the Crown by Parliament.[1]

Even in the same reign which thus gave birth to the latest instance of unparliamentary colonization, and not more than seven years after that instance, the legality of the practice appears to have been regarded as matter of *doubt* at least, by Parliament itself.[b] At this time, among the American colonies, there were many, that under the powers of legislation granted to them from the Crown, had passed Acts of their own, *restricting personal liberty* (as in New South Wales) restricting the right of departure out of the precincts of their respective territories. Acts made (says the preamble of the British Act) 'for the preventing the carrying off from the said colonies or plantations any servant or slave without the consent of the owner, or the carrying off from thence any *other person* or persons *whatsoever*, until such persons shall have taken out his ticket from the Secretary's office within such respective colony or plantation, in such manner, and under such penalties and forfeitures, as in and by the said several laws is declared and provided.' But, even at this time, so little satisfied was Parliament of the legality of the restraints thus imposed—in other words of the legality of the powers under which they were imposed—so far at least as among the persons thus legislated upon were included, viz.: 'Commanders of private ships of war, or merchant ships having letters of marque'—that in the Act, and by the clause, from the preamble of which the passage above quoted is copied, provision is made for the declared purpose of giving legality to those same laws. 'Be it *enacted*,' (says the statute) 'that all commanders (as above) *shall*, upon their going into any of those ports or harbours, *be subject*, and they are hereby determined to be subject to the several directions, provisions, penalties, and forfeitures, in and by such laws made and provided, any thing in this Act to the contrary notwithstanding.'[c]

[a] 14 G. III. c. 83. [b] 13 G. II. c. 4. § 20. No. 1740.[2]

[c] The words '*are hereby determined to be subject*,' might, if they had stood alone, have been taken for words of mere *adjudication* . . . . But before these come words of enactment '*shall* . . . . *be subject*.' From the *non obstante* clause it might again

[1] The Quebec Act of 1774, § 11, provided that the criminal law of England should continue in force in the colony, while § 12 provided for the establishment of its legislative council.

[2] i.e. the Naval Prize Act of 1740.

Among the powers actually exercised in New South Wales with or without instructions from hence, conformably or unconformably to such instructions, is that of prohibiting or 'preventing' masters of private vessels 'from carrying off persons' from the colony, without special permission from the Governor, particularizing each person permitted in each instance.[1] Upon the exercise of these powers depends the whole system of government in this penal colony: every use which any body could ever fancy it good for, or capable of being made good for. Even in America, and so early as the year 1740, the

be argued, that nothing more was meant by this provision, than to save those colonial laws from being overruled by the other provisions in the *same* statute: and therefore, that the effect of this section in it was nothing more, than to *leave* the legality of these colonial regulations upon its own bottom. But, upon examining the act it will be found, that there is not any part of it to which the provision in this section bears any specific or effectual repugnancy. It is only from some perfectly vague and inconclusive inferences that any such apprehension could arise. But it requires little acquaintance with our statute law to have observed, how ready such apprehensions are to present themselves, and how ready the draughtsman is to quiet them with the customary *non obstante* opiate. Seven years had at this time scarce elapsed,[2] since parliament, in the very act of supplying with money the embryo colony, sat still and saw the crown monopolize the supplying it with the powers of government. But at this latter period (1740) the tide it seems had already turned: and the wonder will be the less, that 34 years afterwards, when a new Constitution was to be given to *Quebec*, parliament exercised the whole authority, and took upon itself the whole management of the business.

Will it be said—the confirmation of these colonial laws was necessary, so far and so far only, as they undertook to bind *others* of his Majesty's subjects, natives of the *Mother Country*, visiting the colonies for a time only in the course of office or of trade? I answer in the words of the Court of King's Bench in a case that will presently be mentioned.[a]—Among the 'propositions, in which both sides seem to be perfectly agreed, and which indeed are too clear to be controverted' is 'The 4th, that the law and legislative government of every dominion equally affects *all* persons and property within the limits thereof; and is the rule of decision for all questions which arise there. Whoever purchases, lives, or sues there, puts himself under the law of the place. An *Englishman* in *Ireland*, the Isle of *Man*, or the *Plantations*, has no privileges distinct from the natives.' So far *Lord Mansfield*. If then these American laws were binding upon *any* body—were binding upon *Americans*, they were *already* binding upon *Englishmen*. They needed no act of parliament, to confirm them in their application to Englishmen and so forth.

[a] Campbell and Hall, Cowper's Reports, p. 208.[3]

[1] See 'Letter to Lord Pelham', p. 115 n. above.

[2] i.e. between the passing of the Supply Act of 1733 and the Naval Prize Act of 1740.

[3] Bentham goes on to quote from the unanimous opinion of the Court of King's Bench delivered by William Murray (1705–93), first Baron and first Earl of Mansfield, Chief Justice of King's Bench 1756–88, in *Campbell v. Hall* (1774), reported in Henry Cowper, *Reports of Cases Adjudged in the Court of King's Bench; from Hilary Term, the 14th of George III, 1774, to Trinity Term, the 18th of George III, 1778, (both inclusive)*, London, 1783, pp. 204–14 at 208. See also pp. 351–2 n. below.

legality of these powers was looked upon as being so *questionable* at least (to say no more) as to require for the confirmation of it the authority of Parliament. In *America* these powers were thus confirmed, and were therefore legal: but in *New South Wales* they have *not* been thus confirmed: for America is the only *place* mentioned in the act—American laws the only *'laws:'*—New South Wales has nothing in it that ever was *a law* or so much as called *a law:*—and America (God be thanked!) has no such colony in it as New South Wales.

§ 5. *Even in America, the Crown had no right to legislate without Parliament.*

Relinquished, as it has been, no otherwise than *tacitly*, if at all, (for the point is not worth arguing) if the power had been *declared* illegal, and abolished by express words, it would not have been so disposed of without very sufficient grounds. That over English subjects in England, or any where else, the King should, by himself or by others, exercise legislative power, without the concurrence of Parliament, was repugnant to the constitution, was repugnant to Magna Charta.

True it is, for aught I know, that till the reign of George the Second, till the year 1740 at least, as above, it never had been disputed or doubted of: and the train of precedents by which it has been exercised, commences with what appears as the *first charter* given to the *first colony*, in the reign of James the First,[a] in 1606, or thereabouts.

But, in the days in which the practice thus originated, the exclusive right of Parliament to legislative power was far from being defined as now. Even within the territory of England—on this, and that, and other[1] ground—the King by his *proclamations* would be legislating without parliament, and even in spite of parliament. Whatever parliament would endure to see him do, this and more he was sure to do without parliament. By monopolies, by ship-money, by dispensations of penal

[a] See Lind's Remarks on the Acts of the 13th Parliament relative to the Colonies, 1775.[2]

[1] 1803 'and, other'.

[2] John Lind, *Remarks on the Principal Acts of the Thirteenth Parliament of Great Britain. By the Author of Letters concerning the Present State of Poland. Vol. I. Containing Remarks on the Acts relating to the Colonies. With a Plan of Reconciliation*, London, 1775, pp. 86–94, describes the first Virginian Charter of 10 April 1606 granted by James VI (1566–1625), King of Scotland from 1567, and as James I, King of England and Ireland from 1603. Bentham may have had in mind the passages (pp. 90–1) in which Lind notes that, 'The king ordains that each of these colonies [i.e. the two colonies established by the Charter] shall have a *council* to govern and order *all* matters and *causes*, which may *arise* within the colony, "according to such laws, ordinances, and instructions, as shall be in that behalf given and signed with his hand, or sign manual, and pass under the privy-seal of his realm of England."'

statutes—on one pretence or another he was even *levying money* without parliament. The very existence of parliament was a matter of perpetual contingency. At all times it depended upon the King's pleasure whether there should ever be another. And so long as he could contrive to go on with existing powers, and upon existing funds, he had every thing to lose and nothing to gain, by calling to his aid any such troublesome assistance.

Even in *Lord Coke's* time,[1] had this mode of legislating without parliament been questioned in the King's Bench, it would not have stood its ground: at least if Lord Coke had at that time been in disgrace, and the decision had depended on Lord Coke.

'King Edward the Sixth[2] did incorporate' (says he)[a] 'the town of St. Alban's,[3] and granted to make ordinances, &c. They made an ordinance upon pain of imprisonment, and it was judged to be against this statute of *Magna Charta*. *So it is if such an ordinance had been contained in the patent itself.*' Thus far Lord Coke. The train of reasoning is evident. It was by the glaring illegality in the case *last* mentioned, (which is the *feigned* case) that light was thrown on the covert illegality in the former case, which was the *real* case. It was a case actually decided, decided in the Common Pleas, and reported by Lord Coke himself.[b] The decision was given in the 38th year of Elizabeth,[4] and even Elizabeth submitted to it.[c]

[a] 2d Inst. 54.[5]

[b] Coke's Reports, part 5, p. 64. Case of the Corporation of St. Alban's, called by him *Clark's Case*.[6]

[c] There was something more in this than in ordinary cases. A snake was seen, or thought to be seen, in the grass. Even in that age of general abjection[7]

[1] Sir Edward Coke (1552–1634), Chief Justice of Common Pleas 1606–13, Chief Justice of King's Bench 1613–16.

[2] Edward VI (1537–53), King of England and Ireland from 1547.

[3] The town of St Albans was incorporated on 12 May 1553, with the Corporation and its officers to consist of an annually elected mayor and ten principal burgesses.

[4] Elizabeth I (1533–1603), Queen of England and Ireland from 1558.

[5] Coke, *The Second Part of the Institutes of the Lawes of England*, p. 54.

[6] See the account of *Clark's Case* (1596) in *The Fifth Part of the Reports of Sir Edward Coke Knight*, London, 1605, p. 64. In 1596 Clark, a Burgess of St Albans, brought a charge of false imprisonment against Gape, the Mayor, who had ordered his arrest for failing to pay a contribution towards the building of the local courts. Gape's defence was that the Charter of Incorporation of St Albans had granted the burgesses the right to make ordinances, 'that they with the Assent of the Plaintiff and other Burgesses' had assessed a contribution to be paid by each townsman towards the cost of the courts, that Clark had refused to pay, and hence his imprisonment was justified. Judgment was made in Clark's favour, on the grounds that his imprisonment violated Magna Carta, c. 29 (1225) (see below), though it was also found that the Corporation could have legally inflicted a 'reasonable penalty', such as a fine, upon him.

[7] 1803 'dejection'. The text follows the erratum. For further details see the Editorial Introduction, p. ciii above.

Had the first charter that was ever granted for the foundation of an English colony (say the charter, granted in 1606, for the colonization of the tract of land then comprized under the denomination of Virginia by James the First.)[a]—Had this first charter been questioned as illegal—as contrary to the decision in the St. Alban's case[1]—in vain would it have been to have said—*This case is different:* THAT *applies to Englishmen wishing to legislate in England:* THIS *applies to Englishmen wishing to legislate in a distant, and as yet unplanted region*. To warrant any such distinction there was neither principle nor precedent. Not *principle:* because, as to hardship, if Englishmen are to be legislated upon otherwise than by parliament, how was the hardship lessened by their being in the then wilderness of America?—in a quarter of the globe, so far out of the reach of the protecting hand of Parliament? Not *precedent:* for, of an attempt to subject them to legislation in this mode, the instance in question is, by the very supposition, the first instance.

The right of thus granting away the powers of Parliament passed (it is true) unquestioned. Why? because nobody ever started up, to whom it had happened to conceive himself as being concerned in interest to question it. For, if a man went from England to live there, it was because he found it more agreeable to him to live there under those laws, than to live in England under English laws: and if at any time a man preferred English laws, England was at all times open to receive him. Whatever was the *cause*, such at least was the *effect:* the right remained unquestioned: and, remaining unquestioned, usurpation had time to cloath itself in the garb of law.

Admitting, that on any *one* mass of territory, having English owners, and not being or having passed under the dominion of any foreign power, the concurrence of the three estates is necessary to legislation,

and judicial dependence, the Judges spied it out, and took fire at it. What little constitutional blood a man could at that time find in his veins, it called up in their cheeks. *More is meant* (say they) *than meets the ear. This is an attack upon Magna Charta: that peculiar and inestimable security of Englishmen which (so often has it been broken into) has more than thirty times been confirmed.* 'Cest ordinance est encounter [lestatute][2] de Magna Charta, cap. 29. *Nullus liber homo imprisonetur.* Quel act ad estre confirm, et estably oustre 30 foits, et lassent le plaintiff ne [poit][3] alter la ley in tiel case.'[4]

[a] See Lind on the Colonies, p. 94. 1775.[5]

[1] i.e. *Clark's Case*.

[2] 1803 'lestature'.

[3] 1803 'poet'.

[4] The first English edition of *Fifth Part of the Reports of Sir Edward Coke*, p. 64, gives the following translation: 'this Ordinance is against the Statute of Magna Charta, cap. 29. No free man may be imprisoned; which Act hath been confirmed and established above thirty Times, and the Plaintiff's Assent cannot alter the Law in such case'.

[5] The page number appears to be a slip on Bentham's part. Lind's account of the first Virginian Charter is at *Remarks on the Principal Acts of the Thirteenth Parliament*, pp. 86–94, and of the second Charter of 1609 at pp. 94–9.

no reason can be given why, on any principle either of *utility* or *analogy*, it should be less necessary on any *other* spot so circumstanced. By remoteness from the natal soil—from the seat of connection and protection—the hardship of whatever is looked upon as *tyranny* is not lessened but enhanced. The sense of *liberty* (of what is meant by *liberty* in one of its thousand senses) has not been found to evaporate by expatriation in English *men*, as the sense of smell has been said to do in English dogs.[1] Of Englishmen surely it may be said, if of any men, *Cælum, non animum mutant, qui trans mare currunt*.[2]

For whom, or what, was it that the protection afforded by *Magna Charta* was intended? For the *inhabitants* of the land, or for the *soil* only?—for the flesh and blood, or only for the stocks and stones?

A lawyer, who should attempt to get rid of the application, of the case of the charter given to certain inhabitants of St. Alban's, to the case of a charter granted to certain inhabitants of other places in England, must answer boldly—*Only for the stocks and stones.—Englishmen, the moment they get out of sight of the stocks and stones of England, for whom alone Magna Charta was designed, are neither worth protecting nor worth governing.* But, unless it be on a spot, which being under foreign owners, affords a protection and a governance of its own, in what book will he find a colour for saying, that Englishmen, by being out of sight of English ground, are either out of the *protection* or out of the *governance* of an English parliament? Limited as the power of an English King is over Englishmen in England, in what book will he find that it is absolute over them every where else?

Will the portion of *consent*, of popular consent, given *in the first instance* to these charters, or the consent given *in succeeding times* to the laws made in America, in the several colonies, in consequence of these charters, will any *such* sanction be urged in proof of the original validity of a purely royal act, thus attempting to legislate over Englishmen without Parliament?

Alas! what a cloud of illusions is involved in that little word *consent*, employed, as it is but too common for it to be employed! But, without plunging into any such discussions, it is sufficient to say here, that no such *unparliamentary* consent had any weight in the *St. Alban's case*. There never could have been applied, to the law of any American assembly of succeeding times, the *actual* consent, of so great a proportion of individuals to be governed by it, as there probably was in the *St. Alban's* case. But this did not hinder the attempt made in that case, (the attempt on the part of the King, in conjunction with

[1] Bentham's source for this remark has not been identified.

[2] i.e. 'They change their clime, not their mind, who rush across the sea': see Horace, *Epistles*, I. xi. 27.

a portion of the inhabitants of that one town, to legislate, on pain of imprisonment, over the rest) from being disallowed: disallowed on the ground of its being an invasion of the rights of Parliament.

What is the consent required by the constitution to give validity to a law?—The consent—not of a part surely, but of the whole. It is not the consent of that part of the King's subjects for whose exclusive advantage the law is made, that is sufficient to give validity to a law, by which others, not sharing in the benefit, are attempted to be bound: if it were, there would never be any want of consent to the worst law. Neither then, nor since, has the consent necessary to give validity to any English law, been either more or less than the consent of the two sets of trustees for the whole body of the King's subjects—the two *other* estates of Parliament.

The question is, whether the King, with the assent of a few persons named by himself, had it in his power to repeal *pro tanto* the statute called *Magna Charta?*[1] The answer is given by the Judges in the *St. Alban's* case. '*L'assent ne* [*poit*][2] *alter la ley in tiel case.*' If this be not the very best of French, better English at least cannot be desired.

To supply what is thus in contemplation of law wanting in point of *consent*, will any such topic as that of *abstract utility* be resorted to? Will it be urged, in the view of giving validity to the illegal mass of pretended law, that the *benefit* of all parties followed from it? This benefit, admitting it in its full extent, this benefit, destined to be reaped in after ages, will it give retro-active validity to an act void from the very first instant? If so, at what point of time was it that, on a sudden, and without any efficient cause, an illegal act was thus converted into a legal one?

Legality, it must be remembered, not *expediency*, not abstract utility, is the question here: to confound the two ideas would be to tear all law up by the roots. Admitted in the fullest extent, the alledged expediency would prove no more than this, viz. that, had James the First obtained, by a law of parliament, authority for the foundation of his first colony—authority for the powers conveyed by the charters, in virtue of which this colony was founded;—had the King so done—a law to that effect, if passed, *would have been* a good law: and so in regard to the several other *real* colonies, *real* charters, and correspondent *ideal* laws. But, the expediency of all these *ideal* laws, does it prove them *real* ones? does it prove that any such acts of parliament were actually passed?

When a practice is repugnant to acknowledged principles, the case of *general warrants* is sufficient to shew how little force there is in mere official precedents: however numerous the train of them, and

[1] i.e. the *Confirmatio Cartarum* of 1297.

[2] 1803 '*poet*'.

however ancient the commencement of it.[1] For the purpose of that case, a list of *general warrants* (a list of the cases in which authorities of that description had been issued by the servants of the crown) was published at the time.[a] It begins with the Restoration: not surely because there were none of any earlier date; (for such there must have been in numbers) but because it was not conceived that authorities of that kind, issued at any less constitutional period, could possess any tolerable chance of being looked upon as *good precedents*.

Prior to the issuing of the first general warrant,[2] there was no direct judicial decision against *general warrants*, as there was against legislative power exercised by the Crown without Parliament, in the case just mentioned: yet *general warrants*, spite of the number of precedents and length of the practice, could not stand their ground. Against *general warrants* there was nothing but *principle*. Against *colonization charters* there is the principle, and a direct *judgment* grounded on it. And who is there that will deny, that, in the scale of common law, a thousand unjudicial official precedents are not equal to one judicial one?

§ 6. *Nullity of Legislation in New South Wales, for want of an Assembly to consent.*

All this however is but skirmishing: matter of illustration, not of necessary argument. For, though the right of the Crown to found colonies (as the *American* colonies were founded) without Parliament, were ever so well established; a claim in that quarter to exercise or create legislative powers to be exercised over Englishmen, Scotchmen, or Irishmen, in *New South Wales*—in this *colony sui generis*—in this

[a] The documents printed in that list would not be found all of them to come within this description: but of one sort or other there are 136. The title of the book in my possession is—'*Copies taken from the Records of the King's Bench of Warrants by Secretaries of State,*' &c. 4to. 1763. No bookseller's name.

[1] The question of the legality of general warrants had been raised following the arrest in 1763 of John Wilkes (1725–97), MP for Aylesbury 1757–64 and Middlesex 1768–9, 1774–90, for seditious libel, which culminated in his expulsion from the House of Commons on 19 January 1764. The use of general warrants was effectively ended by decisions made by Mansfield, Chief Justice of King's Bench, on 18 June 1764 and 8 November 1765.

[2] The earliest general warrant listed in 'Copies taken from the Records of the Court of King's-Bench, at Westminster; The original Office-Books of the Secretaries of State, remaining in the Paper, and Secretaries of State's Offices, or from the Originals under Seal. Of Warrants issued by Secretaries of State, for seizing Persons suspected of being guilty of various Crimes, particularly, of being the Authors, Printers and Publishers of Libels, from the Restoration to the present Time. And also, Copies of several Commitments, by Secretaries of State, of Persons charged with various Crimes, during that Period', London, 1763, pp. 1–62 at 1–2, is dated 3 November 1662.

so denominated, but perfectly non-descript, and newly discovered species of colony, would not be the less unfounded.

In all the several charters, by which legislative power, whether *per se* or *per alios*,[1] was exercised by the King, there were two common features, and those most indispensable ones:—1. *Consent* on the part of the colonists, as to their subjection to such powers: [2.] *irrevocability* of the privileges granted by such charters:—irrevocability of the King's act, whereby such powers were created, or the right of creating them conferred.

The *irrevocability*, though a feature perfectly distinct from the *consent*, was a natural, and one may almost say a necessary consequence of it; or rather preliminary to it. For, what man of common prudence would have gone to embark his property and his prospects, under a form of government, in which, so long indeed as it remained unchanged, he looked upon them as safe, but at the same time without any security against its being changed at any time; changed into some unknown arbitrary form, under which every thing would go to wreck?—changed without his being heard, and at the suggestion of some Court favourite, whose object would be of course to extract plunder from the change?—Not general satire—particular history is here in view: *Elizabeth* and *James,* with their *favourites* and their *monopolies.*[2]

The irrevocability, of the sanction given by the Crown, was therefore of the very essence of the case. This attribute of it was recognized all along by the judicial power. Even in the most arbitrary times, the Crown itself never pretended that its own charters of this kind were revocable at its own pleasure. The utmost of its pretensions was—that for certain causes, these powers of subordinate government were susceptible of being forfeited: it belonged to the judicial authority in that behalf (the Court of King's Bench) to pronounce—to pronounce judicially in each case—upon the existence of any such cause of forfeiture. And in the annals of that court, and of the colonies, are contained divers instances, of prosecutions instituted on that ground, against colonial governments, and of resignations made of charters, under the apprehension of such prosecutions.[a]

[a] See Lind. Remarks on the Acts of the 13th Parliament, 1775.[3]

[1] i.e. 'for himself or for others'.

[2] The granting of monopolies to favourites had been a contentious issue during the reigns of Elizabeth I and James I, and had given rise to the Statute of Monopolies of 1624 (21 Jac. I, c. 3), which declared that 'all Monopolies, and all Commissions, Grants, Licences, Charters, and Letters Patents . . . of or for the sole buying, selling, making, working, or using of any Thing within this Realm' were 'altogether contrary to the Laws of this Realm'.

[3] Bentham may have had in mind a passage at Lind, *Remarks on the Principal Acts of*

As to consent (by which I do not mean a presumptive, constructive, fictitious, pretended general consent; but actual, direct, individual, consent); immaterial as the circumstance is in this view, under a government already formed, in a territory into the precincts of which a man has been introduced either by *birth* or *voluntary self-conveyance*—nugatory as any argument grounded upon it would be in the *ordinary* state of things—yet in a new-formed or forming government—in a new planted or about to be planted colony—every thing depends upon it: *utility*, and therefore that law, which so far, and so far only as it has utility for its basis, is any thing better than oppression and abuse, depends upon it altogether. To a man's being *born in* a country, *his* consent cannot be taken:—but to his being *conveyed to* it his consent can be taken, and, on its being taken or not, depends a Pandora's box of miseries and injuries.[1]

In New South Wales, not only was this most indispensable of all requisites to the foundation of a colony—to the establishment of legislative power in a colony, wanting—notoriously wanting—on the part of the great mass of the intended population;—but the getting rid of so troublesome a condition—the weeding it and eradicating it out of the about-to-be-new-planted colony, was the very object—the professed object—the sole professed object—of the foundation of this vast receptacle of penal suffering. If, in point of fact, it should ever acquire a title to the name of a '*colony*'—(the name bestowed upon it in the tenor of the law made for the foundation of it),[a] it could only be in so far as the persons sent thither against their wills, and having a *legal right of departing* from thence at the expiration of certain terms, should, by *irresistible power, in defiance of that right*, be kept there each to his life's end.

In common *intendment*—in common, and not merely in vulgar, but in deliberate and well-considered language—permanence of inhabitancy is acknowledged to be of the very essence of colonization. Accordingly, in the disputes that of late have arisen on the affairs of the East Indies, the language on one side is—*To do thus*

[a] 27 G. III. c. 2.[2]

the Thirteenth Parliament, pp. 43–7, distinguishing between the king issuing an original charter to a colony in his 'procuratorial capacity' and, once that charter had been 'forfeited', issuing subsequent charters in his 'subordinate legislative capacity'. In the former case, Lind argues, the charters were as 'sacred' to the courts as Acts of Parliament, whereas in the latter case, 'the courts of justice *are* judges of their [i.e. the charters'] *legality*'.

[1] In Greek mythology, Pandora was the first woman. When she opened a jar given to her by Zeus, all kinds of misery and evil escaped and flew out over the world.

[2] i.e. the New South Wales Courts Act of 1787.

or thus would be colonization:—as you tender your existence, forbear to colonize.[1]

Force *under* the law, was to plant men there: force *against* law, was to keep them there: and when under the law they were planted, it was for this very and only end and purpose—that against law they might be kept.

NOLENTES *per populos dat jura*[2] should be the royal motto, in this as purely royal, as it is daringly anti-parliamentary, colony of New South Wales.

So much as to the first-mentioned condition, *consent*—consent to habitancy and subjection. But this condition, a condition so inseparable to the foundation of every colony that is any thing better than a Bastile, being so essentially wanting to the foundation of this colony, it seems almost superfluous, to extend the observation to the other kindred condition—*irrevocability of privilege*. That which was never granted, cannot easily be revoked. So far the inhabitants—the chosen inhabitants of New South Wales—are secure enough. What was never possessed cannot be forfeited.

If common sense be not of itself convincing enough, e'en let us translate it into common law. In their day, the American Constitutions were legal ones: be it so. But *they* were by *charter: here* there is none. No charter either has ever yet been granted—or is in a way very soon to be applied for, by *the* inhabitants, or any inhabitants of New South Wales. Yet has the colony been '*founded*' I suppose:—founded as Mr. Pitt and Mr. Rose found colonies.—*No charter, no colony.* In that one technical expression, are condensed the two substantial and rational grounds of nullity:—no consent to subjection—no irrevocability of privilege.

All this while a sort of a colony there is—I am perfectly aware of it—that is, or has been supposed to be, capable of existing without

[1] The East India Company Act of 1793 (33 Geo. III, c. 52) empowered the Company to grant licences to private merchants to trade in India. Merchants continued to lobby for the further liberalization of trade to India and Bentham probably had in mind the Company's argument that to do so would result in further colonization, as merchants settled in India, and thereby 'might render it extremely difficult for this Country to maintain, in that remote Quarter, a Government sufficiently strong and energetic to contain all these Interests within their due Bounds': see 'Report of the Special Committee, to whose Consideration the Letter from Mr. Dundas was referred', dated 27 January 1801, in 'Papers presented to the House of Commons from the East India Company, and also from the Commissioners for the Affairs of India, respecting the trade between India and Europe', 15 and 18 June 1801, *Commons Sessional Papers* (1801), vii. 30.

[2] i.e. 'Unwilling to give rights to the people'. Bentham has perhaps adapted Virgil, *Georgics*, IV. 560–3: *Caesar dum magnus ad altum fulminat Euphraten bello victorque volentis per populos dat iura viamque adfectat Olympo*, i.e. 'Great Caesar thundered in war by deep Euphrates, bestowed a victor's laws on willing nations, and essayed the path to Heaven.'

charters, and in which the advisers of the Crown have accordingly been used to find themselves pretty much at their ease. I mention it, to save gentlemen the trouble of catching at the shadow of an argument. It is the sort of colony that has been obtained by *conquest:* having surrendered, with or without capitulation: having or not having, at the treaty which confirmed the cession of it, a stipulation made in favour of it: having or not having, antecedently to its surrender, a constitution of its own. All, or any of these varieties might upon occasion afford considerable *amusement* to any learned gentleman, who, along with his brief, should have acquired a taste for the Natural History of the Law of Colonies. But, as to any *practical use* for them, happily in the case of New South Wales, there is none. To the host of follies included in the circumstance of distant *possession*, this colony at least, with all its peculiarities and all its faults, has not added that vulgar and crowning folly of distant *conquest*. It is needless to enquire, what on this occasion might have been the virtue of a string of *wampum:* no wampum, nor any substitute for wampum, has either been received or given in New South Wales. When, from their immense continental island, *Benillong* and *Yem-mer-ra-wannie*[a] did us the honour to bestow a glance upon this our little one, it was in the character of private gentlemen, travelling for their amusement, or at least for our's: they signed no *treaty* with his Majesty, nor brought with them any diplomatic powers.

The flaw is an incurable one: if it were not, it would be none. No charter ever could, can now, or ever can be granted. It is not a case for charters: all the wax—all the parchment in the King's Stationary Office—all the law on all his wool-sacks—would not make one. A charter, make it of what or how you will, must have somebody to *accept* it. But a charter—a thing to keep men in New South Wales—Who is there, or who ever can there be, to accept it in New South Wales? A charter to impower a free man to lead a life of slavery, and to be flogged as often as he endeavours to escape from it![b]

Instructions and counter instructions—insinuations and counter insinuations—instructions in form, and instructions not in form;—despotism acting there *by* instructions, and *without* instructions, and *against* instructions;—all these things there may be, and will be,

[a] Collins, p. 251.[1]

[b] Letter I. to Lord Pelham, p. 118.

[1] According to Collins, i. 251, on 11 December 1792 Woollarawarre Bennelong and his Eora kinsman Yemmerrawanne or Imeerawanyee (*c.* 1775–94) 'voluntarily and cheerfully' departed Port Jackson for England aboard the *Atlantic*, along with the colony's former Governor Arthur Phillip, and arrived at Falmouth on 19 May 1793. Yemmerrawanne died of a lung infection at Eltham on 18 May 1794, while Bennelong left England in the *Reliance* on 2 March 1795 and arrived back at Port Jackson on 7 September 1795.

in abundance. But of *charters*—unless *such instructions* be called charters;—of *constitutions*—that any body that can help it will be governed by;—of any *lawful warrants,* unless from Parliament;—from the present day to the day of judgment there will be none.

No, most assuredly; no parchment, no wax, no cement is there whatever, that can patch the no-constitution of it together for a moment longer, or prevent the improved colony[1] from being converted, any day in the year, into a still worse chaos than it is. No plaister of any kind can be laid on upon this universal sore, by any other than the all-healing hand of Parliament.

If this view of the law be not just, and if the penners of the New South Wales Act[2] were not themselves sensible of its being so, wherefore apply to Parliament for powers, for the organization of a judicial establishment in that colony? Judicial power is in its nature inferior, subordinate to legislative. If the Crown had an original right to create the superior power, how can it have been without the right of creating the subordinate? If, by the American Charters, the King creates legislative powers, by the same charters he creates powers of judicature; or what comes to the same thing, confers authority for the creation of such powers.

This argument, it must be acknowledged, supposes something like consistency on the part of the penners of the Act: and of consistency what traces in it are to be found?

§ 7. *Nullity of Governor's Ordinances, for want of a Court to try Offences against them.*

One imagination more, for a last effort. With or without a declaration to that effect by the King's Governor, the laws of England, (let it be said) such as they exist at present, and such of them as are applicable to the state of things in the new colony, transport themselves in one great mass, into New South Wales. After them, transport themselves, as they came out, all subsequently manufactured masses of law, common as well as statute, such of them as are so applicable, and in as far as they are so applicable, each in an air balloon of its own making, without any body to send them out, or make it possible for them to be known, when they are arrived. Moreover, along with the first great mass, transports itself in like manner the *right of establishing courts of justice* for the trial of all offences against all such masses of *English-made law*, present and future, *as they come in*; under the single

[1] For 'the improved State of the Colony of New South Wales' as one of the four 'grounds of relinquishment' for the panopticon scheme see 'Letter to Lord Pelham', p. 73 & n. above.

[2] i.e. the New South Wales Courts Act of 1787.

condition, that the mode of procedure, in such courts, in each sort of case, shall not be different from the mode of procedure, in the same sort of case, pursued in England.—Why these conditions?—for this reason. The circumstance, that rendered the authority of Parliament necessary for the legalization of the sort of court which it has actually been employed in legalizing, is—that *that* court not calling in the assistance of a jury, though the cases are jury cases, the mode of proceeding under it is not according to the law of England.[1] Being therefore the sort of court which the King's Agent with all his powers, had not quite power enough to make, thence came the necessity of sending it out, *ready made* by the King, in pursuance of powers obtained from Parliament for the making it.

Unfounded this, a great part of it at least, in principle or in fact. But even if all the dreams in it were truths, the government of New South Wales would not, in point of legality, be one jot the better for them. These courts, made after the English pattern, serve for the trial of offences against English-made laws:—allowed: but the offences, for the trial of which, proper courts are wanted, are *not* offences against *English-made* laws. By what courts then in New South Wales, are these *Non-English* offences to be tried? Not by these supposed *New-South-Wales-made* courts, since, by the supposition, it is only for the trial of *English-made* offences that they can be made to serve. Not by the grand court, the establishment of which was the sole business of the statute: for it is to the trial of *English-made* offences that *that* court, by the express words of the statute, stands confined:—the court when 'convened' is to be 'for the trial and punishment of all such outrages and misbehaviours, as, if committed *within this realm*, would be deemed and taken, according to the laws of *this realm*, to be treason or misprision thereof, felony or misdemeanour:'—not *all* 'outrages and misbehaviours' *without exception*, but such alone as would be 'misdemeanours' and so forth, 'if committed within *this realm*.'[2]

The Governor (suppose) issues an ordinance (such as, it will be seen, he has issued in abundance) prohibiting an act, which would *not* have been either 'misdemeanour' or 'misbehaviour,' 'if committed within this realm.'[a] Admit then, that it is really in the power of the

[a] Obliged to copy from the act the words, '*this realm*,' it is impossible to avoid noticing, to what a degree even the scanty scrap of power undertaken to be created by it, is torn in tatters by these two words:—a proof how little of the mind

[1] Under the New South Wales Courts Act of 1787, verdict and judgement in the Court of Criminal Judicature was to be given by a majority of the six officers who constituted the court, except in the case of capital convictions where five officers had to concur, though no death sentence was to be put into effect until the proceedings had been approved by the Crown.

[2] See the New South Wales Courts Act of 1787, § 1.

Crown to communicate to the Governor in his individual capacity (the power he has so often exercised) the complete power of legislation. Power of *legislation* alone being thus communicated to him, power of *judicature* (except in the case of acts that would be offences

of the legislature was bestowed upon this business, and how slight any inference that can be drawn from what was *actually* done by it, to what was *intended* or in *contemplation* to be done. '*This realm*'—what realm? against the law of what realm must an act be an offence, triable under the court so constituted? Against the law of England? of Scotland? or of Great Britain, i.e. of both together?—If an act, being an offence—not against any law passed since the Union, but only against the law of England, as it stood before the Union;—if such an act be an offence triable in this court, so must an act which, though *not* an offence against the *English* law, *is* an offence against the *Scotish* law. To *point out* the confusion, is the only thing to the present purpose: to attempt to *clear it up* would take a volume.

Injuries purely *civil*, might, for aught I know, be '*misbehaviours*,' but are they '*misdemeanours?*' I mean in the legal sense of the word, according to the law of *England*. Take for example acts purely negative. *Non-payment of debts:* non-performance of contracts, &c. &c. Blackstone, at least, is as decided as possible in the *negative*. {B. IV. ch. 1.}[1] And how stands this matter under the law of *Scotland?*

England, I take for granted—England alone—was looked to as the standard of every thing that was to be done: into Scotland, not so much as the mind of our legislators had ever travelled.

Offences, involving, in the description of them, denominations *common* or *proper*—names of *places*, *persons*, and *things*—things *real*, things *incorporeal*, i.e. fictitious—such as *offices*, &c. &c., may not improbably be found to be incommissible (i.e. acts, though of like tendency, may not be *offences*, or not *punishable*) in territories where such *places, persons*, *things*, &c. are not to be found. Even in England, Burn speaks of English laws rendered in this way inexecutable:—instancing those 'which appoint an offender to be whipped by the *common hangman*—where perhaps there is no such officer.' {*Burn's Justice, Conclusion.*}[2] Instances are innumerable: I give this as most likely to be familiar. Offences punishable in England by an *Ecclesiastical Court* only—are they '*misdemeanours*' in New South Wales?

Points like these might be started, enough to fill a volume: all unresolved, and many unresolvable. The whole act is but a vast mine of nullities and *jeofails*. Found a colony out of an act like this? Build a house as well, out of a load or two of brick-bats.

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[1] See Blackstone, *Commentaries on the Laws of England*, iv. 5: 'THE distinction of public wrongs from private, of crimes and misdemesnors from civil injuries, seems principally to consist in this: that private wrongs, or civil injuries, are an infringement or privation of the civil rights which belong to individuals, considered merely as individuals; public wrongs, or crimes and misdemesnors, are a breach and violation of the public rights and duties, due to the whole community, considered as a community, in it's social aggregate capacity.'

[2] Richard Burn, *The Justice of the Peace, and Parish Officer*, 2 vols., London, 1755, ii. 573, noted that one way in which the *Statutes at Large* might be made shorter and rendered more comprehensible would be to repeal all 'statutes which are *frivolous*; that is, which possibly cannot, or probably never will be executed: such as those which appoint an offender to be whipped by the hands of the common hangman, where perhaps there is no such officer'.

'if committed in this realm') not being given to him or any body, what would he be the better for it? He has power to *create* the offence, but neither he nor any body else has any power to *punish* or *try* the offender for it, when committed. The Governor, by his *proclamations*, has power *to enact new laws*. Be it so. But has he likewise powers to create *Star Chambers*—to punish such as shall fail of obeying those proclamations? Where is the court to try any such offence?—The court created under the statute?—By the statute itself it stands precluded (as hath just been seen) from meddling with them.—A Court of King's Bench, or any other Court, to be erected by the Governor under his *instructions?*—those instructions which are to be to *this* colony, what *charters* have been to all *other* colonies?—Nor that neither.—Power or no power—instructions or no instructions—thus much seems clear enough—that, down to the time of Mr. Collins's quitting the colony in September 1796, no such court—(no court other than what has been called there a *Civil Court*,[1] in addition to the court for the erection of which special power is given by the statutes)[2]—had ever in fact been holden.[3] A court to be composed of the Governor alone, for the trying of offences created by the Governor alone?—If so, here then we have the very quintessence of despotism; too rank one should have thought, even for the meridian

[1] The establishment of a Court of Civil Judicature in New South Wales, consisting of the Judge Advocate and two 'fit and proper persons' nominated by the Governor, was authorized by the 'Charter for Establishing Courts of Civil and Criminal Jurisdiction on the Eastern Coast of New South Wales' of 2 April 1787: see *HRA*, series IV, i. 6–12 at 6. The first civil case in New South Wales was heard on 1 July 1788, a successful suit for £15 brought by the convicts Henry and Susannah Kable against Duncan Sinclair, the Master of the *Alexander*, the ship which had brought them to the colony, for the loss of property which they had given to him for safe-keeping at the start of the voyage. The Court consisted of Judge Advocate David Collins, Reverend Richard Johnson, and the surgeon John White. See *Cable v. Sinclair* (1788) *NSWSupC* 7.

[2] i.e. the Court of Criminal Judicature established by the New South Wales Courts Act of 1787.

[3] Collins does, in fact, refer to several other legal tribunals either being established or holding sessions in New South Wales before his departure in September 1796. According to Collins, i. 13, the Governor, Lieutenant-Governor, and Judge-Advocate of the colony were constituted Justices of the Peace. The first bench of magistrates sat on 19 February 1788, though the earliest sitting described by Collins himself (i. 39–40) took place during August 1788. Moreover, according to Collins, i. 13, the Governor was vested 'with authority to hold general courts-martial, and to confirm or set aside the sentence', while the commander of the troops 'had the usual power of assembling regimental or battalion courts-martial' for the trial of soldiers under his command. The earliest court-martial recorded by Collins (ibid. 302–3) took place in early August 1793 and the earliest general court-martial (ibid. 305–6) on 12 August 1793. Again according to Collins, i. 13, the Lieutenant-Governor was constituted judge of 'a vice-admiralty court for the trial of offences committed upon the high seas', although this court first sat on 20 August 1798, subsequent to Collins's departure. For the establishment of the various tribunals see 'Charter for Establishing Courts of Civil and Criminal Jurisdiction on the Eastern Coast of New South Wales', 2 April 1787, *HRA*, series IV, i. 6–12.

of New South Wales. It is Star-Chamber out-Star-chamberized: legislature and judicature confounded and lodged together, both in one and the same hand.

Is it true then, that even such a court—a court thus arbitrary—might have been created, and that without any powers from Parliament?—If so, then, (as far at least as 'misdemeanours' are concerned) there was no need of Parliament, for the establishment of the *less* arbitrary sort of court, therein established and described:—a court composed of 'the Judge Advocate . . . . together with six Officers of his Majesty's forces by Sea or Land:'[1] the Governor not sitting among them indeed; though, being the person to 'convene' the court, he possesses (as it was evidently intended he should possess) the power of choosing, on each occasion, such Members for it, as, on that occasion, he thinks himself most sure of. The conclusion is then—that in spite of all suppositions, whatever ordinances he enacts and executes are on a double ground illegal: first, because there is no law for enacting them: and again, because there is no law for executing them.

So much for *law*. In *fact*, in what set of cases the Governor makes use of this court, and in what cases he does without it, or whether any precise line is drawn between them, is more than on the face of the documents (I mean the Judge Advocate's printed journal) I should expect to be able to pronounce. As far as I have yet seen, I should suppose *no* certain line: but, in each individual case, if it seems of importance enough, the court is convened: if not, whatever be the offence—English-made, or Colony-made—the Governor does what he pleases with it, without troubling any body else, unless it be the man who is to give the lashes, or to '*pull the house down*,'[a] &c. as the case may be.

§ 8. *King's Law Servants not infallible.*

But, (says somebody) do you consider, Sir, by what authority all these acts, thus charged by you with illegality, were done?—It is not the minister alone, and *his* subordinates, that are implicated. This is not mere *Treasury* business. The acts have not only the *King's* name and signature to them, but the sanction of the whole *Council-Board*, with the opinions of this and that and t'other *great dignitary of the law* included in it.

[a] Collins, II.[2]

[1] See the New South Wales Courts Act of 1787, § 1.

[2] Bentham presumably had in mind the order to pull down the houses of any persons selling unlicensed spirits: see p. 365 n. below.

My answer is—All this makes little difference. It goes no farther than to shew, that, as for a certainty a surprize was put upon *Parliament*, so probably enough a surprize was also put upon the *Council-Board:* upon the Council-Board, including the legal learning and legal authority belonging to it. On putting the dry question of law—*Has not the Crown, without special powers from Parliament, powers to organize a constitution for a new Colony?* the answer, judging from the supposed precedents of the American Colonies, may, not very improbably, have been in the affirmative:—especially if given on slight consideration, as it naturally enough might be, in a case where no opposition was apprehended.

But, surprize, or no surprize, God be thanked, it is not in the power of the King's Counsellors,[a] to inflict upon a single Briton an atom of punishment of their own creation, much less to inflict illegal punishment upon Britons by thousands, and to make *ex post facto* penal laws by dozens, in repugnancy to so many laws of Parliament, including *Magna Charta,* and the *Bill of Rights.*[1] Let the sanctions lent to the measures be what they may—by whatever *pretences*—and from whatever *names* obtained—wholesale oppression was the object of it, wholesale oppression has been the result.

What *does* appear in point of fact, and from very high authority, is—that in matters of Colonial legislation, there has been a time—and even since the accession of his present Majesty—when his Majesty's Law-advisers in this behalf have not been altogether masters of this part of their business. So at least in the Court of *King's Bench,* in the famous *Granada* cause—the great and only adjudged case since the foundation of the first colony, that has any bearing upon this point—(*Lord Mansfield* being spokesman)—was the opinion of the *Judges.*[b]

[a] I mean *legal* power, and under the constitution, while it stands: If indeed it falls, and despotism rises in the place of it, then indeed, such power as that in question exists at any time, without difficulty: and *è converso*, if such power exists, the constitution is at an end, and despotism stands in the place of it.

[b] Campbell v. Hall. Cowper's Reports 1783.[2]

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[1] The Bill of Rights of 1689 (1 Will. & Mar., sess. 2, c. 2) specified the terms on which Prince William of Orange (1650–1702) and his wife Mary (1662–94) were offered the throne as joint sovereigns of England, Scotland, and Ireland following the removal of James II (1633–1701), King of England and Ireland and, as James VII, King of Scotland 1685–8.

[2] See *Campbell v. Hall* (1774) in Cowper, *Reports of Cases Adjudged in the Court of King's Bench*, pp. 204–14. The case turned on the legality of a duty imposed on sugar exports from Grenada by an Order-in-Council of 20 July 1764. The island had been captured by the British during the Seven Years War of 1756–63 and, according to the terms of the Treaty of Paris of 1763, the existing French laws and taxes were to remain in force until the King's pleasure was made known. In a Proclamation of 7 October 1763, George III had promised that a representative assembly would be granted to Grenada as soon as circumstances permitted, and on 9 April 1764 Robert Melville (1723–1809), soldier and botanist, had been

'The inattention of the *King's Servants*' (speaking of his Majesty's law-servants) is the circumstance to which, as the sole cause, the dispute then on the carpet is ascribed by that discerning Judge. The power of legislation, as exercised in that Colony, in the way of *taxation*, on the 20th of July 1764, by the King alone, without the concurrence of any other authority—either that of Parliament *here*, or that of an assembly of the Colony *there*—exercised on the ground of its being a CONQUERED Colony—is there supposed, though but *arguendo*, to have been in itself indisputable. But, before that day, to wit on the 7th of October 1763, these his Majesty's careless servants, not knowing or not minding what they were about, had so managed as to divest him of it: and it was after having so done, that, forgetting what they had done, they picked it up again, and in the name of their Royal Masters, exercised it as above: 'inverting' (says Lord Mansfield) 'the order in which the instruments should have passed, *and been notoriously published*, the last act' was under their management 'contradictory to, and in violation of the first:' and this is the 'inattention' spoken of. Here then was an occasion, on which, according to Lord Mansfield and the rest of the Judges in the King's Bench, his Majesty's law-servants did not know what they were about: and this occasion was—the same as that now in question—that of the making or mending a constitution for a Colony. This was in 1763 and 1764: and, forasmuch as a mistake of this sort was actually made, and by his Majesty's law-advisers, I think I may venture, from the demonstrated error of that prior time, to infer the possibility of an error on the like subject, on the part of the same description of persons, in 1786 and 1787. The arguments *ab auctoritate* and *ab impossibili*[1] being thus cleared away, the other arguments may without much rashness be trusted to their own strength.

appointed as Governor of the Ceded Islands (Grenada, the Grenadines, Tobago, Dominica, and St Vincent), with a commission to call an assembly. The sugar duty was imposed after the Proclamation announcing the calling of an assembly, but before it actually convened in 1765. James Campbell, formerly a resident of Grenada, brought a suit for £20 against William Hall, a customs officer, claiming that the sugar duty of 1764 had been imposed without the required authority of a local assembly. Judgement was given in Campbell's favour, with Chief Justice Mansfield holding that, while the King had an absolute constitutional authority over a conquered territory, the inhabitants of which became his subjects, that authority became limited once a representative assembly had been granted to the colony. By the Proclamation of 7 October 1763 promising an assembly, and the appointment of Melville as Governor with a commission to call one, Mansfield continued, the Crown had 'immediately and *irrecoverably* granted . . . that the subordinate legislation over the island should be exercised by an assembly with the consent of the governor and council'.

[1] i.e. 'from authority' and 'from impossibility'. See Coke, *First Part of the Institutes of the Lawes of England*, pp. 254 and 92 respectively.

§ 9. *Nullity of New South Wales Legislation, proved by the Granada Case.*

If any addition could be wanting, to the proof already given, of the illegality of the legislative power exercised by the sole authority of the Crown in this Colony, it might be drawn, and with full assurance, from this *Granada* case.

From the whole tenor of the argument of the court, as delivered by *Lord Mansfield*, and taken in short hand by the reporter in that case, two propositions may be deduced with full assurance.

1. That in no case had any *judicial decision* been given down to that time (1774) recognizing the right of the *Crown*, to legislate, *without Parliament*, over an English Colony; howsoever acquired, whether *by* conquest as *Granada* was[1] or *without* conquest: that therefore, as to every point not necessarily comprized in the decision given in that Granada case, the question, so far as concerns *judicial decision*, in contradistinction to *extra-judicial opinion*, remained open to that day—and from thence, it may be added, to the present. The above-mentioned decision in the *St. Alban's* case[2]—the decision disaffirming the King's right to legislate over Englishmen without Parliament—has therefore nothing to contradict it.

2. That, although by that argument, in the case of the *foreign* inhabitants of a country acquired by *conquest*, the right in question is *affirmed:* yet, in that same argument, in the case of a colony acquired in any *other* way than by conquest, it is expressly *disaffirmed:* and in particular it is disaffirmed in the case of all the several other Colonies at that time in existence.

3. On *one* condition indeed, it is, in the nonjudicial opinion relied on by that same argument, *in a certain way*, affirmed: and the condition is—that, as in those other Colonies, a share be taken by an *assembly* of the Colony in the exercise of the right. But, by the affirmance of the right, restrained as it is by this condition, the case of Mr. Pitt, in *his* exercise of it, will not be bettered. For, of any legislative *assembly* in the penal Colony of *New South Wales*, there has never been so much as a shadow.

Nor even thus, is the affirmance given to the right a distinct and *positive* one. It is only not disaffirmed, because not disputed; both parties (the Crown and the local Assembly) being alike engaged by their respective views and interests to assume it. These propositions, being of such importance, may seem to have a claim to very specific proof; such proof shall not be wanting.

Of all these propositions proof will be afforded at the same time, by

[1] 1803 '(whether . . . was)'. The brackets appear to be redundant.
[2] See pp. 337–40 above.

the two only authorities, stated as having any bearing upon the case. These are,

1. A *dictum* in 1608 by Lord Coke, Chief Justice, in his report of the famous case called *Calvin's case:* the case in which, on the accession of James the First, a right on the part of *Scotchmen* to certain privileges of *Englishmen*, was claimed and allowed.[1] 2. A *non-judicial* opinion, given in 1702[2] by two practising lawyers—one of them at least at that time a servant of the Crown. *Sir Philip Yorke* (afterwards Earl of Hardwick) and *Sir Clement Wearg*,[3] on a question relative to the right of the Crown *to tax Jamaica:* an opinion which, so far as it went to the affirmance of the right, in the case of a colony obtained by *conquest*, appears to have had for its ground, and only ground, that same ante-colonial *dictum* thrown out in *Calvin's* case.

As to what is said in Calvin's case, not applying (if to any colony) to any other than a colony acquired by *conquest* (such as New South Wales, most certainly, is not)—to scrutinize into it is a task that may here be spared.

The proposition is a mere *dictum: collateral*, and not even very perceptibly relevant, to the case in hand, the words of it, when extracted and wiped clean, as it has been very carefully by *Lord Mansfield*, from the portentous mass of absurdity and atrocity with which he found it entangled,[a] are as follows—'If a king comes to a kingdom by *conquest*,

[a] Pronouncing the laws of every infidel (i.e. non-christian) country void in the lump, and so forth: Turkey, Hindostan, and China, for example.—Whenever the Khan of the Tartars sounded his trumpet after eating his dinner, it was to allow other princes to eat theirs.[4] When this christian barbarian thus sounded his trumpet,

[1] See Edward Coke, *The Seventh Part of the Reports of Sir Edward Coke Knight*, London, 1608, pp. 1–28, reporting *Calvin's Case* or the *Case of the Postnati* (1608). James Colville, referred to in the legal record as Robert Calvin, born in Scotland in 1604, had inherited land in Shoreditch, but his claim was challenged on the grounds that, as a Scot, he was an alien and, therefore, had no legal entitlement to land in England. Coke's judgement established that the *post-nati*, Scots born after James VI of Scotland's accession to the English throne and the Union of the Crowns in March 1603, were not aliens but subjects and, therefore, had the right to inherit property in England, whereas the *ante-nati*, those born before March 1603, remained aliens. In relation to the status of subjects in the Crown's overseas territories, Coke held that if England conquered a Christian territory, the Crown had the power to alter the laws of that territory, but in the meantime the existing laws remained in force, but if England conquered a non-Christian territory, the laws of that territory were deemed to be null and void and were immediately superseded by English law.

[2] The 'non-judicial opinion' was given on 18 May 1724, rather than in 1702.

[3] Philip Yorke (1690–1764), first Earl of Hardwicke, lawyer and politician, Solicitor General 1720–4, Attorney General 1724–33, Chief Justice of King's Bench 1733–7, Lord Chancellor 1737–56, and Clement Wearg (1686–1726), Solicitor General 1724–6.

[4] See, for instance, [Charles Louis Secondat, Baron de la Brède et de Montesquieu,] *Persian Letters*, trans. Mr Ozell, 2 vols., London, 1722 (first published as *Lettres Persanes* in 1721), Letter XLII, i. 146: 'When the Cham of *Tartary* has dined, a Herald proclaims, that all the Princes of the Earth may go to dinner, if they think fit'.

he may change and alter the laws of that kingdom: but if he comes to it by title and {of} *descent*, he cannot change the laws of himself, without the consent of Parliament.'[1]

Of the opinion given by *Yorke* and *Wearg* the account given by *Lord Mansfield* is in these words:

'In the year 1722, the assembly of *Jamaica* being refractory, it was referred to Sir Philip Yorke and Sir Clement Wearg, to know what could be done, if the assembly should obstinately continue to withhold all the usual supplies. They reported thus: "If *Jamaica* was still to be considered as a *conquered island*, the *King* had a *right to levy* taxes on the inhabitants: but if it was to be considered in the *same light* as *the other colonies*, no tax could be imposed on the inhabitants, but by an *assembly of the island*, or by an act of *parliament*."'

'They considered the distinction in law as clear, and an indisputable consequence of the island's being in the one state or the other.'[2]

'In *the* one state' (says *Lord Mansfield*) 'or *the* other.' Neither did he therefore, any more than those whose opinions he was adopting, know of any *third* state. They recognized not any such state, as that of a colony acquired otherwise than by conquest, and yet capable of being legislated upon by the crown alone: by the crown without any further sanction, either that of a local assembly, or that of the supreme legislative body in the Mother Country: without any check at all upon absolute autocratic power: without the necessity of any consent, either on the part of any special deputies from that particular division of his Majesty's subjects, or on the part of the representatives of the whole.

In the case which drew this argument from Lord Mansfield, the point he was bound to determine, and which he accordingly did determine, was—that, *as matters stood*, the power of taxation, as exercised by the Crown in Granada, *was not* legal. Another point which, being at liberty to speak to it or not, he thought fit to speak to, was—that *if matters had been otherwise*, such power *would have been* legal. If, in humble imitation of such high and sincerely respected authority,

it was to prohibit other potentates from eating their dinners: at least from eating them in peace and quietness:—All infidels (he says) are perpetual enemies.[3]

[1] This is not a quotation from, but Bentham's paraphrase of, Mansfield's paraphrase of the relevant part of Coke's report of *Calvin's Case* in *Seventh Part of the Reports of Sir Edward Coke*, p. 18.

[2] See *Campbell v. Hall* (1774) in Cowper, *Reports of Cases Adjudged in the Court of King's Bench*, p. 212.

[3] See *Seventh Part of the Reports of Sir Edward Coke*, pp. 17–18: 'All Infidels are in law *perpetui inimici*, perpetuall enemies (for the law presumes not that they will bee converted, that beeing *remota potentia*, a remote possibilitie) for between them, as with the divels, whose subjects they bee, and the Christian, there is perpetuall hostilitie, and can be no peace'.

and in precisely the same view, viz. that of seeing important constitutional questions settled on the broadest and most solid grounds, it may be allowable for an obscure ex-lawyer, on this same ground, *to travel*, as the phrase is, *a little way out of the record*, I will venture to state it as a question, which notwithstanding the opinion so distinctly given by that great lawyer in the affirmative, remains still quite open, whether, even in the case of *conquest*, in any colony acquired since the Revolution, *Trinidad* for example,[1] the right of the King to legislate without Parliament—I mean without express authority from Parliament—would, *in case of dispute*, be found maintainable in law.

Over *Englishmen*, it stands expressly negatived (as already mentioned) by *Magna Charta*, and by the interpretation put upon that statute, by the judicial decision given in the *St. Alban's* case.[2]

Over *foreigners*—inhabitants found existing in a colony acquired by conquest, it would (I am much inclined to think) be regarded as negatived, as well as over *Englishmen*, by the two connected constitutional principles, recognized in the 4th and 5th articles of the *Bill of Rights:* viz. that neither *in actu* nor *in potentia*, shall a King of England have, *as such*, without the express allowance of Parliament, either a separate army of his own, or a separate purse.[3] And in this light, it appears from *Edmund Burke*[a] [4] that the Bill of Rights was most publicly (viz. in the House of Commons) and constantly, and, for any thing that appears, without contradiction, considered by *George Grenville:* himself a *lawyer*—(according to Burke, even too much of a lawyer) before he was a *Minister*:[5] and this not on the ground of *policy* merely, but of actual *law*.

[a] Speech upon American taxation, 19th April, 1774; 3d edit. 1775, p. 54.[6]

[1] The Spanish colony of Trinidad had surrendered on 17 February 1797 to a British force led by Sir Ralph Abercromby (1734–1801) and was formally ceded to Britain by the Treaty of Amiens of 1802.

[2] See pp. 337–40 above.

[3] Under the Bill of Rights of 1689, Art. 4, the monarch was prohibited from 'levying Money for and to the Use of the Crown, by Pretence of Prerogative, for other Time, and in other Manner, than the same was granted by Parliament', and under Art. 5, from raising and keeping a standing army during peacetime without the consent of Parliament.

[4] Edmund Burke (1729/30–97), statesman and politician, Paymaster General 1782–3.

[5] See Edmund Burke, *Speech of Edmund Burke, Esq. on American Taxation, April 19, 1774*, 3rd edn., London, 1775, pp. 47–8, reproduced in *The Writings and Speeches of Edmund Burke. Vol. II: Party, Parliament, and the American War: 1766–1774*, ed. P. Langford and W.B. Todd, Oxford, 1981, p. 432, stating that Grenville was 'bred to the law, which is, in my opinion, one of the first and noblest of human sciences; a science which does more to quicken and invigorate the understanding, than all the other kinds of learning put together; but it is not apt, except in persons very happily born, to open and to liberalize the mind exactly in the same proportion. Passing from that study he did not go very largely into the world; but plunged into business; I mean into the business of office; and the limited and fixed methods and forms established there.'

[6] According to Burke, *Speech on American Taxation*, p. 54, reproduced in *Writings and Speeches of Edmund Burke. Vol. II*, p. 436, Grenville 'was of opinion, which he has

Be this as it may, what is certain, is—that the question is still open, notwithstanding the decision in the *Granada* case: because in that case, though an opinion was given, affirming the right of the Crown to legislate in case of conquest, that opinion was not necessary to the decision then pronounced.

How much better for this country, as well as so many other countries, would it have been, if instead of fishing for drops of sense out of the extrajudicial ravings of Lord Coke, men of law had attended—on the one hand to the direct decision of the judicial authority, as reported, in sober though very energetic language, by the *same* God of their idolatry, in the *St. Alban's* case; on the other hand, to that of the legislative authority, as displaying itself in the *Bill of Rights!* If they had, nothing in the way of legislation would, from first to last, have been done in English-America, but *by* Parliament, or with *express* authority from Parliament. It would not then have been so much as dreamt of, that it was in the power of the King, by confederating with a part of his subjects, withdrawing themselves for this purpose to a vacant territory remote from the eye of Parliament—that it was in the power of his law-servants, by any such management, to oust Parliament of its rights: I mean its exclusive right of legislation, as established in the *St. Alban's* case. Dissension would then have been nipped in the bud: and the American war,[1] with all its miseries, and all its waste of blood and treasure on all sides, would have been saved.

Unfortunately, in the *St. Alban's* case, the scene not lying in America, nor any thought being entertained by any body about America, no such word as *America* is to be found. Of *colonies*, as little: for at that time scarce had any such idea as that of *colonization* ever presented itself to any English mind. And thus it happened, that when America came to be the order of the day with lawyers, nothing appeared in their common-place books, to guide them to that case.

What is curious enough, is—that in the very first instance of a grant of land made by a charter from the crown of England to intended settlers in America, these portions of *American ground* were declared to be put upon the same footing in point of law, as if contained within a spot of *English ground*;—the manor of *East Greenwich*.[a]—And, with

[a] 'All the lands within the precincts of the colonies (viz. between 34 and 45 degrees of latitude) were on petition to be granted by the King,' 'to be holden of the King, as of his Manor of East Greenwich, in Kent, in free and common

declared in this House an hundred times, that the Colonies could not legally grant any revenue to the Crown; and that infinite mischiefs would be the consequence of such a power'.

[1] i.e. the American War of Independence 1776–83.

the *St. Alban's* case, then comparatively a recent one, before their eyes;—with this case, one of the most prominent cases, in the most prominent of all law books, full in their teeth;—were these Crown lawyers audacious enough to make their king grant, to these inhabitants of *East Greenwich*, privileges which had already been declared illegal, not fourteen years before, when granted to the inhabitants of *St. Alban's*.[1] But the grant was of the number of those exertions of prerogative, which were not expected to come before an English court of justice, any more than they were intended for the eye of Parliament. Parliament, never for two days together sure of its own existence, had too much of its own and the whole nation's business upon its hands, to be inquisitive about a handful of obscure adventurers, who, turning their backs upon their country, betook themselves to other laws.[a]

All this, except what concerns the want of power, on the part of the servants of the Crown here in England, to legislate over Englishmen in New South Wales, and without any of those limitations, without which, or some of them, no such power had ever been exercised by any servant of the Crown of England any where else, is, as I have already observed and acknowledged, a mere work of supererogation, with reference to

soccage only, and not in capite.' *Lind.* Remarks on the Acts relating to the Colonies, p. 94.[2]

[a] Another example may help to shew the force and virtue of such exercises of regal power, in the character of *precedents*. On the 23d of March, 1609, about three years after the first Charter, a second is granted to the same Company, with additional powers. Among these is a power to any two of the Council of the Company resident in England, *to send out of England*—to send out to their Colony—'there to be proceeded against and punished, as the Governor, Deputy, or Council there shall think meet'—any persons who, after engaging in the service of the Company, and having received earnest-money, shall either have refused to go out thither, or have returned from thence.[a]

What cared these men (I mean the Crown lawyers who drew this charter) about the *St. Alban's* case, and the Court of Judicature that decided it? As little as about *Magna Charta* which it expounded: as little as their successors, who drew the *New South Wales Act*[3] for Mr. Pitt.

[a] Lind. Part II. § I. p. 100.[4]

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[1] The interval was in fact sixteen rather than fourteen years.

[2] See Lind, *Remarks on the Principal Acts of the Thirteenth Parliament*, p. 94, for the second quotation, while the first quotation is a paraphrase of a passage at pp. 88–9.

[3] i.e. the New South Wales Courts Act of 1787.

[4] Contrary to the account in Lind, *Remarks on the Principal Acts of the Thirteenth Parliament*, pp. 100–1, and followed here by Bentham, the power to compel their employees to return to the colony was not granted to the Virginia Company by the second Charter of Virginia of 23 May 1609, but by the third Charter of 12 March 1611: see *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies, Now or Heretofore Forming the United States of America*, ed. F.N. Thorpe, 7 vols., Washington, 1909, vii. 3790–802, 3802–10, for the second and third Charters respectively, with the extract from the third Charter quoted by Bentham at 3809.

New South Wales. But there are other places, with reference to which it may be not altogether so immaterial:—say *Trinidad* for example.

Mischievous as the effect of these questions might be if ill-timed, I start them without any sort of scruple. Parliament being now sitting,[1] the tendency as well as the object of them is, not to create confusion, but to prevent it. How desirable, on every account, that rights of such importance should be fixed at once upon the rock of *legislation*, instead of being left to totter upon the quick-sands of expected judicature, waiting for '*the competition of opposite analogies!*'[a] Can it be worth while, to leave so much property a prey to insecurity—so many confident expectations a prey to disappointment—for the chance of saving a little longer the stump of a rotten prerogative, and perhaps the pride of a few lawyers?

But, all collateral questions dismissed, thus, on the ground of law, stands the government of New South Wales. Over Britons or Irishmen, in or out of Great Britain and Ireland, the King, not being himself possessed of legislative power, can *confer* none. To confer it on others—those others being his instruments, placeable and displaceable by himself at any time, is exactly the same thing as to possess and exercise it himself.

The displaceable instruments of the Crown—the successive Governors of New South Wales—have, for these fourteen years past, been exercising legislative power, without any authority from Parliament: and either without any authority at all from any body, or at most without any authority but from the King: and all along they have been, as it was most fit they should be, placed and displaced at his Majesty's pleasure.

And among those, over whom legislative power has thus been exercised, have been individuals by hundreds, or, ere this, by thousands, who, so far from subjecting themselves to this power by their own *consent*, or having been subjected to it by any consent on the part of their *ancestors*, under whom they were born and bred, have all along been doing their utmost to make their *escape* out of the reach of it:[2] and this very absence of consent—the very energy and notoriety of their repugnance—is among the very grounds on which, in the most important case of all,

[a] Paley.[3]

[1] Parliament was in session from 16 November 1802 until 12 August 1803.

[2] For Bentham's discussion of reported attempts by convicts to leave New South Wales see 'Letter to Lord Pelham', pp. 113–21 above.

[3] See William Paley, *The Principles of Moral and Political Philosophy*, London, 1785, Bk. VI, Ch. 8, pp. 519–20: 'Finally, after all the certainty and rest that can be given to points of law, either by the interposition of the legislature, or the authority of precedents, one principal source of disputation will remain still, and into which indeed the greater part of legal controversies may be resolved, namely, "a competition of opposite analogies."'

that of confining to this land of bondage such as are free by law, the power thus exercised over them would, if at all, be justified.

Of two things, one. Either there is not at this moment any legal power of legislation in *New South Wales*, or there is not any legal power of legislation in *Great Britain—Magna Charta* is waste paper. If, without fresh support from Parliament, the Constitution of New South Wales stands, that of Great Britain and Ireland is no more. If, without authority from Parliament, the King can legislate over Britons and Irishmen in New South Wales, so can he in Great Britain and Ireland. If, without authority from Parliament, the King can confine to that place of exile any such quondam bondsmen, reconstituted freemen by the expiration of their legal terms of bondage, so likewise can he deal by freemen who never were in bondage. If men of either description can be thus confined *when there*, with equal right may they be *sent there*. The King is absolute: and, instead of convening Lords and Commons to Westminster Hall to join with him in making laws, may send them to have laws made upon them in New South Wales.

§ 10. *Governor's illegal Ordinances exemplified.* 1. *For Prevention of Famine.*

Thus then stands legislation there in point of *right*. In point of *fact* (I have already observed) there has not been any deficiency of it: or if there has, it has not had the deficiency in point of law, or any suspicion of such deficiency, for its cause. *Ten* classes, comprising the whole population of the colony, have already been brought to view:[1] half of them, or thereabouts, subject by law in one way or other, to a certain degree at least (for aught appears), to the Governor's legislative power: the other half, *not* thus subject to it. No traces of any such distinction in point of *right*, appear in point of *fact*. *Regardless*, or (to embrace the more probable, as well as more candid supposition) *unapprized*, of any such distinctions, he legislated *chance-medley*, upon all. The terms of each ordinance or mandate being general—addressed to all alike—no exception of this or that denomination of persons—neither *exception* nor *specification* (which is as much as to say an exception of all denominations not specified)—obedience appears to have been expected, and exacted, from all alike. *De jure* a limited monarch (though most strangely limited)—*de facto*, he was an absolute one: as indeed in the situation in which he, and every body under him, had been so unnecessarily placed, it was sometimes at least, if not always, necessary that he should be.

[1] See pp. 329–30 above.

To satisfy the reader at one and the same view, that of legislation, there was little or no *want* in *one* sense, and at the same time a most urgent and perpetual want in the *other*—that there was *plenty* of legislation, accompanied all along by a most urgent *need* of it—here follows a list of the chief *objects* or *purposes*, which the ordinances actually issued, appear to have had in view. To class a set of laws under the very heads which point out the *reasons* of them—such, if not a very ordinary mode of classification, is neither an uninstructive, nor surely an unfair one.

In the journal of the late Judge Advocate of the Colony, indications more or less distinct may be found, of a set of ordinances, of one sort or other—in number between sixty and seventy[1]—issued within a period commencing with the arrival of the first expedition on the 20th of January, 1788; and ending with the month of September, 1796: a period of not quite nine years.

Among the *objects* or *final causes* of these regulations, the following appear to have been the principal ones:

1. Security against *scarcity* and *famine*.[2]
2. Security against *depredation*, and other mischief from within.
3. Security against mischiefs from without, viz. against injuries from the *native savages*.
4. Security against accidents by *fire*.
5. Prevention of *drunkenness*.[3]
6. Enforcement of attendance on *divine worship*.
7. Prevention of *emigration*—whether on the part of *non-expirees*—of *expirees*—or *both* together without distinction.[4]

These objects were they of no moment? The mischiefs thus guarded against, was there any thing singular or unexampled in them?—any thing which to a man of ordinary forecast, legislating in England, could be expected to be invisible?

Without entering into particular examinations, thus much may be averred in general terms without error—that among these ordinances are many either altogether indispensable or indisputably useful: speaking all along of such, as, being introductory of *new law*, adapted to the particular exigencies of the spot, became *creative* of so many correspondent *offences*, such as would *not* be '*misdemeanours or felonies, treasons, or misprision thereof*,' if committed in '*this realm*;'[a]

[a] In whatever sense the words *this realm* be understood, v. supra, p. 347.

[1] Bentham has, presumably, arrived at this figure from his own research on the first volume of Collins.

[2] Bentham lists examples of the relevant ordinances at pp. 363–4 below.

[3] See § 11, pp. 364–6 below.

[4] See §§ 12–13, pp. 366–76 below.

to use the words employed by the Act,[1] in the description of the only offences, which the only Court of Justice legalized by it, received authority from it to punish.

In every instance, the stronger the necessity of each illegal ordinance, the clearer the innocence of the *local* lawgiver, if not in a *legal* point of view, at least in every other: but the more clear *his* innocence, the more flagrant the guilt of those who, sitting in the bosom of security, sent him out thus to legislate with a halter about his neck, and without legal powers! Guilty, if in their dreams they thus exposed him; how much more so if awake!

From the sort of account given of these several ordinances by the Judge Advocate (an account which had no such scrutiny as this for its object), to speak with decision, and at the same time with correctness, as to the legality of the ordinance, is not in every instance possible. In many, perhaps most instances, one and the same ordinance will have been in part illegal, in part legal: legal, in so far as it bears upon the faculties, active or even passive, of persons belonging to the classes above distinguished as legally subjected to the authority of the Governor; illegal, in as far as it bears in like manner upon persons *not* so subjected.

For shewing, by the tenor of the ordinances themselves, the urgency of the demand for legal authority for the issuing of them, and thence the guilt of those by whom it was left unsupplied, I select, out of the above seven cases, the three most prominent ones—*famine*, *drunkenness*, and *escape*.

The *absence*, coupled with the *need*, of any of the powers of government—this combination, as far as it extends, is *anarchy*. Famine and anarchy are the grand intestine foes, which all *infant* settlements have to struggle with. Each leads on and exasperates the other. From one or other, or both, many expeditions of this sort have suffered more or less severely: some have perished altogether. Such has been the case where the spot has been comparatively at next door to the source of power and supply: in *America* for example, at scarce a quarter of the distance.[2] To any considerate eye, how much more repulsive the danger in *New South Wales?*

[1] i.e. the New South Wales Courts Act of 1787, § 1.

[2] Examples of failed colonies included Roanoke, founded in 1587 but which had disappeared by 1590; the Popha or Sagadahoc colony, founded in May 1607 but abandoned a year later; Jamestown, founded in 1607 but temporarily abandoned in 1610 after the deaths by disease and starvation of between two-thirds and four-fifths of its colonists; and New Caledonia at the Gulf of Darien, founded in 1698 by the Company of Scotland, but abandoned in April 1700 after 2,000 of its 2,500 settlers had died owing to disease, food shortages, and attacks by Spanish forces, who claimed New Caledonia as part of their colony of New Granada.

This double source of destruction *ought* to have been foreseen; and with an ordinary degree of intelligence and attention *would* have been foreseen: and being foreseen, should of itself have been sufficient to *prevent* the establishment—if not of *any* colony—at least of any colony *so composed*. In a country so situated and circumstanced—of itself yielding nothing in the way of sustenance, and at that unexampled distance from the nearest country that yielded any thing—it was in the very nature of the enterprise, to deliver up the persons sent upon it, to the scourge of *famine:* it was in the very nature of the enterprise, to give birth to enormous exertions, in the way of national *expence*, in the view of protecting them against the affliction: it was in the very nature of the enterprise, that such exertions should be more or less *ineffectual*. Such was the *tendency* of it, such was the *event:* many sunk under the pressure: the remainder, for months together, stood between life and death. Death must evidently have been the general lot, had it not been for the exercise of those powers, of which the founders of the establishment *here at home* had left it destitute.

Such negligence, to give it the gentlest name, being too flagitious to be suspected, was not in that *ultima Thule* followed with those consequences, of which it *might* have been productive, in a situation communicating more freely with the centre of information. Against anarchy, a battalion of well armed soldiers, to keep in order a band of unarmed convicts—such a remedy, expensive at it is, must be allowed to be a *strong* one: continual as the apprehensions are, that it will not be strong enough.

Examples of Ordinances, having for their Object Security against *Scarcity* and *Famine.*

1. Page 23,[1] March 1788. 'Much damage .... by hogs—.... Orders given .... any *hog* caught trespassing, to be *killed* by the person who actually received any damage from it.'
2. Page 28, May 1788.—'The Governor .... directed every person in the settlement to make a *return* of what *live-stock* was in his possession—'
3. Page 98, March 1790.—'It being found that great quantities of stock were killed, an order was immediately given, to *prevent the farther destruction* of an article so essential in our present situation.'
4. Page 101, March 1790.[2]—'Damage was received from the little stock which remained alive: the owners not having wherewithal to

[1] 1803 '23d'. *Recte* 22. References are to the first volume of Collins.

[2] 1803 '27 March 1790'. Bentham appears to have confused the date when the colony was put on shorter rations, namely 27 March 1790, with a description of regulations at Rose Hill which is more generally dated March 1790.

feed them, were obliged to turn them loose to browse .... It was however ordered, that the *stock* should be *kept up during the night*, and every *damage* that could be proved to have been received during that time was to be *made good* by the owners— .... or the animals .... *forfeited*.'—

5. Page 105, between the 3d and the 7th of April, 1790.—'All *private Boats* were to be *surrendered* to the public use.' This was for fishing: a determination having been taken 'to reduce still lower what was already too low' (the ration). 'In *this* exigency, the Governor had thought it necessary to assemble all the Officers of the settlement—Civil and Military—to determine on .... measures—'
6. Page 104, between the 3d and 7th of April, 1790.—'The Lieutenant Governor .... called a Council of *all* the *naval* and *marine* officers in the settlement, when it was unanimously determined, that MARTIAL LAW should be proclaimed; that *all private stock*, poultry excepted, should be considered as the property of the State!'[1]

Of the several acts of disobedience with reference to these respective ordinances, how many are there that would have been '*misdemeanours*,' if committed in England?[2]—Scarce a single one.

The ordinances, all prudent and *expedient:*—upon the face of them, at any rate: some at least *necessary:* necessary to a degree of urgency to which even conception cannot reach in England. *Sanction*, the *physical: penalty of non-legislation*, not scarcity only but *famine*.

§ 11. *Governor's illegal Ordinances exemplified.* 2. *For Prevention of Drunkenness.*

Improvidence—indolence—helplessness—all *extensive*, as well as *intense*, to a degree scarce conceivable in this country, were the prominent features of this reformation colony, down to the time when its historiographer took his leave of it.[a] But of all these weaknesses *drunkenness* was the principal and perennial source.[b]

Prevention—any thing like *complete* prevention—being out of the question, to snatch from this vice what *could* be snatched from it of its prey, would be as important an object as it was a natural one, to a Governor legislating on that spot. But *important* is not strong enough. In *this* country *well-being* only; in that, even *being* was attached to it. Upon sobriety, depended labour: upon labour, the means of immediate

[a] Letter [II.][3] to Lord Pelham, p. 170 to 177. [b] Ib. p. 209 to 217.

[1] Collins's reference is to the imposition of martial law, not in mainland New South Wales, but at Norfolk Island: see p. 382 & n. below.

[2] See p. 348 n. above. [3] 1803 'I.' is a slip.

subsistence. In that state of things, to legislate against *drunkenness* was to legislate against *famine*. The *means* chosen might be more or less apposite; the result more or less successful. But the *endeavour* was as necessary, as *life* is necessary: and for this endeavour, the authority obtained from Parliament was as insufficient as for all the others.

Here, as in the case of *famine*, the same natural incompatibility established between the *expedient* and the *lawful:* to the Governor, the same distressing option between *legal* duty and *moral*, supposing the difference to have been present to his view.

Among the ordinances actually issued by him on this ground, it will be only by accident, if any one be found, that was not *expedient:* it will be only by accident, if any one can be found, that was not illegal. As to the *test* of illegality, it is already given.[1] To apply it to the several ordinances, article by article, would to lawyers be unnecessary, to non-lawyers tedious beyond endurance.

No. 1. Collins I. p. 175. August 1791.[2]—'Spirituous liquors . . . . Ordered that none should be *landed*, until a *permit* had been granted by the Judge Advocate: and the Provost Marshal, his assistants and two principals of the Watch, were deputed to *seize* all spirituous liquors which might be landed.'

No. 2, p. 300. July 1793.—'Spirituous liquors. Notice'[3] (by the Lieutenant Governor) 'that any person attempting to *sell* spirituous liquors without a *licence*, might rely on its being seized, *and the house of the offending parties pulled down*.'

No. 3, p. 449.[4] 18th Jan. 1796. 'The Governor forbade all persons . . . . to *distil* spirituous liquors . . . on pain of *such steps being taken for their punishment as would effectually prevent a repetition of so dangerous an offence*.'[5] 'In pursuance of these directions,' (pursues the text) 'several *stills* were found and *destroyed*.' Rather more of the mystery of despotism than of the certainty of law in the above *sanctionative* part: but, by the *practical comment*, the mystery was unravelled.

The forbidden practice is spoken of as being '*in direct disobedience to his Majesty's commands*.'[6] Here then we have one instance at least, in which the name of Majesty was profaned, for the purpose of giving

[1] See pp. 329–31 above.

[2] 1803 '28 August 1791'. Bentham appears to have confused the date when the *William and Ann* reached the colony, namely 28 August 1791, with a description of the regulation concerning spirituous liquors which is more generally dated August 1791.

[3] This phrase is not taken from Collins, but is Bentham's.

[4] *Recte* 449–50.

[5] For the order see Governor Hunter to the Duke of Portland, 12 November 1796, Enclosure, Government and General Orders (23 January 1796), *HRA*, i. 685–6.

[6] See Collins, i. 449.

an apparent sanction to these violations of law, which were found better adapted to the purposes and dispositions of Ministers, than the legal authority, which might or might *not* have been obtainable from Parliament.

No. 4, p. 483.—'Direction by the Governor .... that none of those persons who had obtained licences should presume to carry on a traffic with settlers or others who might have grain to dispose of, by *paying for such grain in spirits*.' Then, in case of contravention, comes the menace in the established mysterious style: 'their licences would immediately be recalled, and *such steps taken for their punishment, as they might be thought to deserve*.' Also that '*trading, to the extent which he found practised*, was strictly forbidden to *others*, as well as to those who had *licenced* public houses.'[1] Observations, in various shapes, present themselves: amongst others a question, how a man was to know whether he was safe or no under this law? But as to what may apply more particularly to individuals *there*, this is not a place for observations.

§ 12. *Expirees forcibly detained.*

No. 1. Collins I. p. 74.[2] July 1789. Liberty of departure, and freedom from bondage on the spot, both refused to a number of *expirees* at the same time; on the ground that no evidence, of the original commencement and length of their respective terms, was to be found.[a]

There being, for any thing that appeared, no authority for treating them as convicts, the *legal* consequence would have been, in England, and in short under any system of law but that of New South Wales,

[a] Collins I. p. 74. July 1789.—'Notwithstanding little more than two years had elapsed since our departure from England, several convicts about this time signified that the respective terms for which they had been transported had expired, and claimed to be restored to the privileges of free men. Unfortunately by some unaccountable oversight the papers necessary to ascertain these particulars had been left by the masters of the transports with their owners in England, instead of being brought out and deposited in the colony; and as, thus situated, it was equally impossible to admit or to deny the truth of their assertions, they were told to wait till accounts could be received from England; and in the mean time, by continuing to labour for the public, they would be entitled to share the public provisions in the store. This was by no means satisfactory; as it appeared they expected an assurance from the Governor of receiving some gratuity, for employing their future time and labour for the benefit of the settlement.'[3]

[1] Collins is describing events that occurred in June 1796. For the 'Direction' see Governor Hunter to the Duke of Portland, 12 November 1796, Enclosure, Government and General Orders (18 June 1796), *HRA*, i. 693.

[2] *Recte* 74–5.

[3] See 'Second Letter to Lord Pelham', p. 206 & n. above.

that they should have been treated as freemen. Instead of that, they were kept in confinement and bondage there, till a time which might never happen.

The omission of the papers in question is ascribed by the historian, as by a candid interpreter it naturally would be, to 'oversight,' and the oversight is spoken of as being '*unaccountable*.' What is curious enough is—that this omission is not the only one of the same kind.[a] But, even though it were the only one, indications are not altogether wanting, such as might lead to a suspicion at least, as to the cause. In the list of convicts, with their respective terms and days of sentence, given by Governor Phillip,[b] *five* persons are named whose terms were to expire in the very month in question, July 1789. Of these there was not one, whose remaining penal term, on the day of his being *shipped* for transportation, or at least on the day of the ship's sailing, was so long as two years and three months: nor, on the day of his *landing*, more than eighteen months. Deducting, if it be but six months, for the time requisite for return, had these convicts, all of them, had a vessel in readiness for them to embark in for England, and embarked and arrived accordingly, so as to have reached England by the end of their respective terms, there would have remained no more than a twelvemonth for them to have continued, according to their respective sentences, on the spot to which they were conveyed at so heavy an expense. Is it natural, that after remaining in confinement in England for near five years out of his seven, a man should have been sent out to the antipodes with a view of his not being kept there for more than a twelvemonth? If not, then the *non inventus*, upon the documents by which their freedom would have been established, may not appear altogether so unaccountable, as without this comparison of circumstances it would naturally appear to be.

[a] See Collins, II. 22, 131, 267, 331.[1] [b] Voyage, Appendix, p. lv.[2]

[1] Collins, ii. 22, 131, 267–8, and 331 respectively describe the non-arrival of Irish convict indents in the colony by February 1797, rendering it difficult to establish whether individuals were still under sentence; the fact that the Irish convict indents had still not arrived in October 1798; the acquittal at the Court of Criminal Judicature in October 1799 of John Kingston, Master of the *Hunter*, of aiding Ann Holmes in absconding from the colony, on the grounds that it was impossible to tell from the transportation registers whether or not she was then a convict (see also p. 205 & n. above); and the discovery in August 1801 that convict clerks had been paid by other convicts to tamper with the transportation registers (see also pp. 205–6 above).

[2] Bentham's reference is to the first page of the Appendix to Phillip, *Voyage to Botany Bay*, entitled 'A List of Convicts Sent to New South Wales in 1787', which contains the names, places and dates of conviction, and sentences of those transported in the First Fleet. According to the list, the five convicts whose sentences were due to expire in July 1789 were John Carney (*c.* 1768–88), John Cullyhorn or Callaghan (*c.* 1785–*c.* 1807), Jeremiah Hurley (b. *c.* 1763), John Martin (*c.* 1757–1837), and James Ruse or Ruce, whose details are given at pp. lviii, lix, lxiii, lxvi, and lxx respectively.

What is *certain,* from Governor Phillip's list, is, that certain persons, *five* in number, were in this predicament in this same month. What appears little less so is, that the persons claiming their liberty in that same month were those *same* persons: '*conscious in their own minds* that the sentence of the law had been fulfilled on them,' are the terms employed on this occasion, in speaking of these same persons, by their ever-candid historian and judge.

What they *claimed* on this occasion was, in the first instance, *pay,* upon the footing of *freemen:* what was announced to them on this head was, that 'by continuing to *labour for the public*, they would be entitled to share the public *provisions* in the store:'—that is, be kept from starving, on condition of their being kept in *bondage*.

The supposition of an intentional suppression any where, is, it is true, no more than a bare surmise: a suspicion, given as nothing more, and which, if unfounded, may be easily disproved. In the mean time, the probability of it will not be found diminished by Nos. 6, 7, 8, 9, 10.[a]

No. 2. Collins I. 74. July 1789. It was on this same occasion, that one of the claimants in question, having in presence of his Excellency 'expressed himself disrespectfully of the Lieutenant Governor, was . . . sentenced to receive 600 lashes, and to wear irons for . . . six months.'[1] What the *words* thus punished were, does not appear: but what does appear beyond doubt, is—that if there had been no such violation of law on the one part, there would have been no such violation of respect on the other.

No. 3, p. 159. April 1791. Information given by the Governor to the convicts, 'that none would be permitted to quit the colony who had wives and children, incapable of maintaining themselves and *likely to become burthensome* to the settlement, until they had found *sufficient security* for the maintenance of such wives or children as long *as they*

[a] Quere, At what *time*, and by what *means*, and by *whom*, were these facts ascertained *at last*, for the purpose of their insertion in the above-mentioned printed list?—In the printed Voyage, the date on the title-page is 1789: the date in the dedication is the 25th of November in that year.[2] Among the materials of which the publication is composed, all the *other* articles at least were transmitted *from* New South Wales. If it was from New South Wales that *this* document was transmitted with the rest, the time of its being sent from thence must have been considerably *anterior* to the time in question. On this supposition, they must actually have been in New South Wales, at the very time when 'it was found that they were left by the masters of the transports with their owners in England.' Collins I. 74.

[1] John Cullyhorn (see p. 367 n. above) was brought before the magistrates' bench on 29 July 1789 on a charge of slandering Lieutenant-Governor Major Robert Ross.

[2] The unpaginated dedication in Phillip, *Voyage to Botany Bay*, is signed by the publisher John Stockdale (1749–1814).

might continue after them.' Considering the latitude of the discretion assumed by some of these terms, this notice may be considered as a pretty effectual embargo upon the whole married part of the community of *expirees*.

No. 4, p. 169. July 1791. Information given by the Governor to the *expirees*, that those who wished *not* to become settlers in New South Wales were '*to labour for their provisions, stipulating to work for twelve or eighteen months certain*,' and that afterwards, on condition of their entering into such engagement (is not that the meaning?) '*no obstacles would be thrown in the way of their return to England*;' but that, as to '*assistance*' for any such purpose, nobody was to *expect* it.[a] Illegal *detention*, for twelve or eighteen months, nobody was to know which, which is called '*certain:*' and this at any rate *universal:*—illegal *bondage*, for the same uncertain certainty, and equally universal. And at the end of this certainty what was to be their fate? As to the means of departure, they were to get away if they could, but they were to have no 'assistance;' as to their condition so long as they *staid* (that is, as to the greater part of them so long as they *lived*), they were to be either bond or free, as it might happen, nobody was to know any thing about the matter.—Such is legislation in the *antipodes:* such is legislation by the servants of the crown. Such is legislation without parliament.

No. 5, p. 190. 3d December, 1791. Sailed the Active and Albemarle for *India*.[1] After their departure, *expirees* were missing. 'Previous to their sailing, the Governor was aware of an intention on the part of the seamen to facilitate such their departure. He thereupon instructed the master to deliver any persons whom he might discover to be on board, *without permission* to quit the colony, as prisoners, to the Commanding Officer of the first British settlement they should touch at in India.'

[a] I cannot take upon myself to affirm with absolute certainty, whether the sense, in which the passage presented itself to me, be in all parts correct. To keep clear of misrepresentation, I here transcribe it at full length—

'The convicts, whose terms of transportation had expired, were now collected, and by the authority of the Governor informed, that such of them as wished to become settlers in this country should receive every encouragement; that those who did not, were to labour for their provisions, stipulating to work for twelve or eighteen months certain; and that in the way of such as preferred returning to England no obstacles would be thrown, provided they could procure passages from the masters of such ships as might arrive; but that they were not to expect any assistance on the part of Government to that end. The wish to return to their friends appeared to be the prevailing idea, a few only giving in their names as *settlers*, and none engaging to work for a certain time.' Collins I. 169.

[1] See 'Letter to Lord Pelham', pp. 118 & 119 n. above.

No. 6, p. 230. August 1792. 'Such {expirees} as should be desirous of returning to England were informed, that no obstacle would be thrown in *their* way, *they* being' (i.e. all of them being) 'at liberty to ship themselves on board of such vessel as would give them a passage.' Such was the intention *announced*. What was the intention at that same time *entertained?* The following words explain it:—*Now* it was that 'it was understood that a clause was to be inserted, in all future *contracts* for shipping for this country, subjecting the masters to certain penalties, on certificates being received of their having brought away any convicts *or other persons* from the settlement, without the Governor's permission: and, as it was not probable that many of them would on their return refrain from the vices or avoid the society of those companions who had been the causes of their transportation to this country, *not many could hope* to obtain the sanction of the Governor for their return.'—Not '*obtain*' it? agreed. But—not so much as '*hope*' to obtain it? Not even at the very time when it was expressly promised to them?—A promise made to *all:* and this at the very time when it was determined, that, a few only excepted, none should ever receive the benefit of it!

No. 7, p. 268.[1] 19th February, [1793].[2] *Intention executed.* Howsoever it may have been as between the intention *announced* and the intention entertained, between the intention entertained and the execution that ensued there was no repugnance. On this day sailed for Canton the Bellona. Into this ship had been received *six* persons from the settlement: *two* of them, *expirees*, *by* permission: *two* others, *expirees* also, but *without* permission: the remaining *two*, *non-expirees*. Of the *four* latter it is stated, that they had been 'secreted:' also that they were 'discovered:' 'the ship being smoked.' That they were accordingly re-landed at least, if not otherwise punished, may pretty safely be concluded, though not expressly mentioned.[3]

Of the two *non-expirees* it is stated, that 'they had not yet served the *full* period of their sentences.' From this it seems not unreasonable to conclude that this full period would have arrived, before their arrival in Great Britain. If so, then neither by their *arrival*, any more than by their *departure*, would they have gone beyond the exercise of their renovated rights.

No. 8, p. 268. [5]th[4] February, 1793. At this time the expectation 'about the clause . . . . in the charter party, for preventing ship-masters from receiving any person . . . . from the colony without the express consent and order of the Governor,' was found to be realized. The Bellona came provided with this clause. She had sailed from England on the 8th of August, 1792.

[1] *Recte* 268–9.
[2] 1803 '1792'.
[3] See 'Letter to Lord Pelham', pp. 118 & 119 n. above.
[4] 1803 '15th'.

No. 9, p. 283. 24th April, 1793. *Intention executed a second time.* Sailed the Shah Hormuzear and Chesterfield. 'But few convicts {expirees} were *allowed* to quit the colony in these ships.'[1] On a subsequent occasion, in [September][2] 1794, the number received on board the same number of ships (the Endeavour and the Fancy) had been *near* a hundred: whereof by permission, 50; without permission near 50 more. Ib. p. [429].[3]

No. 10, p. 316.[4] [13][5] October, 1793. *Intention executed a third time.* Sailed the Boddingtons and Sugar-cane for Bengal. 'From the Sugar-cane were brought up this day .... two expirees: they had got on board without permission.—Punished with 50 lashes each, and sent up to Toongabbe.'[6]

In the continuation of the history,[7] no *express* statements of detention have been met with. The historian not being at this time present in the colony, the precision exhibited in the former volume no longer presents itself in the same degree. During the latter period, the conception which it seems to be the object to present to view, is rather the removal of the restraint than the continuance of it. It is not however the less perceptible, that even at this time it was *restraint* that constituted the *general* rule, and that whatever instances of the exercise of the opposite *liberty* took place, were the result of so many *special* permissions, and constituted but so many *exceptions* to, and confirmations of, the rule.

No. 11. II. p. 11. 6th December, 1796. 'Although they every day saw that no obstacle was thrown in the way of the convict *who had got through the period of his transportation with credit and a good character,* but that he was suffered to depart with the master of any ship who would receive him, and a certificate given to him of his being a free man, yet, &c.' By this it appears as plainly, that, among *expirees* themselves, there were *some* to whom the liberty of departure was refused, as it does that there were *others* to whom it was granted.

No. 12, ib. p. 49. September 1797. 'As the masters were *seldom* refused permission to ship such as were free.' From this passage it follows that, at this time likewise, though there were but *few* instances, yet there were *some,* in which such permission was refused.

No. 13, ib. p. 45. August 1797. Sailed the Britannia and the Ganges. 'The commander of the latter[8] was *permitted* to take on board several convicts that had become free.'

[1] According to Collins, four male expirees and one female expiree departed the colony on the *Shah Hormuzear* and the *Chesterfield.*
[2] 1803 'November'.
[3] 1803 '398'.
[4] *Recte* 315–16.
[5] 1803 '2d'.
[6] See p. 115 n. above.
[7] i.e. in the second volume of Collins.
[8] Thomas Patrickson.

No. 14, p. 125.[1] September 1798. Sailed the Barwell for China. 'Her commander[2] was *allowed* to receive on board about 50 persons, who had completed their period of transportation.'

No. 15, p. 57. October 1797. 'Decreasing daily as did the number of working men in the employ of Government, yet' {at this time it is stated that} 'the Governor *could not refuse* granting *certificates* to such convicts as had served their respective terms of transportation; and no less than 125 men were at this time certified by him to be free. Most of these people had no other view in obtaining this certificate than the *enabling them* when an opportunity offered *to quit the settlement*, or following their own pursuits till that time should arrive.' *Could not refuse?* why so? He had without any difficulty refused on the former occasions, mentioned in Nos. 1, 3, 4, 5, 7, 10; what was there to prevent him now? From hence it should seem, that by this time some legal scruples had arisen, in some breast or other, either in the colony or at home: and that from thence it was, in the first place, that the granting of the certificate, *at or about* the expiration of each man's term, was regarded as in some measure *obligatory*; in the next place, that the effect of such certificate, when obtained, was to confer on the individual the liberty of departure:—a *primâ facie* liberty at any rate, though probably subject at all times to revocation by special order.

No. 16, p. 298. [July][3] 1800. 'Several certificates were granted this month, to persons who had served their terms of transportation.'

§ 13. *Expirees, during Detention, kept in a State of Bondage.*

No. 17, I. 74. July 1789. Freedom from *bondage*, refused along with liberty of *departure*, on the same ground, viz. the want of evidence of the commencement of the term of servitude. See above, Nos. 1 and 2.[4]

No. 18, I. 169. July 1791. *Expirees*, who wished *not* to become settlers in New South Wales, ordered to work there for twelve or eighteen months certain. See No. 4.[5]

No. 19, I. 208.[6] April 1792. Expirees 'become numerous.' To fourteen of them the choice of the place where they were to labour (where these *freemen* were to be *forced* to labour) is stated as an '*indulgence*.'

No. 20, I. 474. 4th [May][7] 1796. *No expiree* was now *allowed* '*to remove*

[1] *Recte* 125–6.
[2] John Cameron.
[3] 1803 'August'.
[4] See pp. 366–8 above.
[5] See p. 369 above.
[6] *Recte* 208–9.
[7] 1803 'October'.

himself without permission *from the public work*. But, notwithstanding *this had been declared in public orders*, *many withdrew* themselves . . . . on the day of their servitude ceasing.' *For this* '*they were punished, and ordered again to labour.*'[1]

No. 21, II. p. 22. February 1797. 'Several convicts, who had served their respective terms of transportation, having applied to be discharged from the victualling books of the colony, and allowed to provide for themselves, it was determined that, *once during a given time*, certificates of their having so served their several sentences should be granted to them, together with the permission they solicited.'—*Once during a given time:* i.e. once a year, once a quarter, or once a month, &c. if the sense that presents itself to me is what was meant. This being the case, the time when each man was restored to liberty, was the time—not when his *right* to it commenced—not when *law* and *justice* required that he should be restored to it—but a time which recommended itself to the imagination, by some such idea as that of *order* and *regularity:*—at any rate, by some idea or other, which in the order of importance occupied in certain conceptions a higher rank than that of *law* and *justice*. What would be the feelings of the good people in England, if, by the influence of any such love of order on the mind of a secretary of state or sheriff, prisoners were in future to be discharged from prisons *here,* not as at present, when their respective terms are up, but in gangs together, say every quarter-day? so that a man, for example, whose sentence was for a month, should, for the sake of *good order*, be kept in jail three months longer, all but a day or two, if his month happened to end a day or two after quarter-day?

No. 22, ib. II. p. 23. March 1797. 'It appeared by the *books*, in which were entered the *certificates* granted to the convicts who had again become *free* people, that there were at this time not less than 600 men off the store, and working for themselves in the colony: forming a vast deduction of labouring people from the public strength, and adding a great many chances against the safety of private and public property, as well as present security.'

Legality (let it never be out of mind) is the object of enquiry here—not abstract *expediency.* So far as *security* and *economy* were concerned, legality and expediency seem to have been in a state of perpetual repugnance. *Legality* required, that each man should be liberated from bondage, the instant the time comprized in his sentence was at an end: *expediency* (had legality been out of the question) would perhaps have required, that, in a society so constituted, he never should be

[1] See 'Letter to Lord Pelham', p. 87 n. above.

discharged at any time.[a] But, as to the contrivance for making the discharges in the lump, at fixed periods, it is not quite so apparent how *expediency* was *served* by it, as it is that *law* was *violated* by it. What a system! under which in one way or other it was impossible not to do wrong! in which *mischief* in a variety of shapes—frequently perhaps *utter destruction*—would have been the consequence of any thing like an exact conformity to the rules of *law!*

In a situation like this, the conduct of the *local powers* may on *each* occasion be, upon the whole, blameable or unblameable, as it may happen:—but the *system itself*, under which they are *obliged* to act, what can it be, otherwise than blameable—blameable in the extreme—upon *all* occasions?

In all these transactions—in all this time—is it in the nature of the case, that the system of illegal detention, such as it is, should have been carried on in the penal colony, otherwise than in consequence of, and in general in conformity to, *instructions* received from home?

Much argument does not seem necessary to prove, that the difference between punishment of this sort for a limited term and punishment of the same sort for life, was no secret to those by whom it was obliterated in practice. But by a particular fact a sort of impression will often be made, beyond any that can be made by general inference.

In September 1794, in a single page, an account is given of no fewer than sixteen convicts existing at one time (one, in from a hundred to two hundred or some such matter) in whom symptoms of reformation had been *supposed* to be discovered.[b] The supposed penitents here in question were *non-expirees:* to different individuals amongst them, different and very carefully measured degrees of indulgence were extended. To one of them (William Leach) whose 'term' under 'his sentence of transportation' had been for seven years, of which term

[a] See Letters I. and II. to Lord Pelham.[1] And, (on the occasion just mentioned (No. 21) of the expirees[2] 'who having withdrawn themselves from the public work immediately upon the expiration of their terms of legal servitude, were punished and ordered again to labour')—'they seized' (says the historian immediately after) 'the first opportunity of running away.'—'We were well convinced' (it is added) 'that by *these people* and those who harboured them' {viz. the *expiree* settlers in general} '*every theft was committed*.' I. p. 474.[3]

[b] It is almost the first discovery of the kind mentioned, and I believe quite the last: unless it be, that in the instances of the few permissions of departure granted to *expirees*, the recognition of such a change may, as far as those instances go, be supposed to be included.

[1] See pp. 71–248 above.
[2] The following quotation is, in fact, Bentham's paraphrase.
[3] *Recte* 474–5. See also 'Letter to Lord Pelham', p. 87 above.

a part only had elapsed, permission '(it is stated)' was given, 'to quit this country' (New South Wales): but clogged with the condition of his not returning to England, so long as his 'term' remained 'unexpired.'[1]

Here then, the punishment, we see, was analysed, and its constituent elements separated: the *confinement* to New South Wales, together with the species of *bondage* incident to it, was remitted: the *exile* was left, and for the whole time, in full force.

The written instruments, serving as evidences of the indulgences thus granted, are termed on the occasion, '*warrants of emancipation*:' and to these warrants the '*seal of the territory*' (it is stated) was affixed.[2] What was done on this occasion being done by so many *formal*, and of course (if any thing like a *Register* be kept there) *registered* acts, it seems difficult to suppose, but that it must have been upon INSTRUCTIONS, from Government here—Instructions in some degree correspondent in point of formality, that they were grounded. If, under any such nice distinctions and guarded limitations, power was thus given, for permitting individuals to quit the colony *before* the expiration of their respective sentences, given therefore in contemplation of the precise tenor of each law; is it supposable, that without INSTRUCTIONS equally deliberate, this large and continually increasing proportion of the population (the expirees) should have been detained as they were detained, though against law, *after* the expiration of their respective terms?

Were the Court of Common Pleas to give judgment 'in an appeal of death' they would be '*guilty of felony*'—says Hawkins, B. I. ch. 28. § 5. p. 169. 8vo. with a legion of marginal authorities for his support.[3]—*Guilty?*—why guilty?—then comes of course a *technical* reason:[a]

[a] 'Because, these courts having no more jurisdiction over these crimes than private persons, their proceedings thereon are merely *void*, and without any foundation.'

[1] According to Collins, i. 391, sixteen male prisoners received their 'warrants of emancipation' during September 1794, though he identifies only eight of them, namely: William Leach, 'who was permitted to quit this country, but not to return to England during the unexpired term of his sentence of transportation, which was for seven years'; Robert Sidaway or Sideaway (1758–1809), 'who received an unconditional pardon in consideration of his diligence, unremitting good conduct, and strict integrity in his employment for several years as the public baker of the settlement'; and Benjamin Carver, William Joyce, James Lara or Larra (1749–1839), Richard Partridge or Rice (*c*. 1759–1831), John or James Ruffler (*c*. 1759–1813), and William Waring, who each 'received a conditional pardon, or (as was the term among themselves on this occasion) were made free on the ground, to enable them to become settlers'. A conditional pardon rendered the individual in question free in New South Wales but prohibited him or her from returning to Great Britain and Ireland.

[2] See ibid.

[3] See William Hawkins, *A Treatise of the Pleas of the Crown; or a System of the Principal Matters Relating to that Subject, Digested Under Proper Heads*, 7th edn., 4 vols., London, 1795 (first published 1716–21), i. 169.

but the *rational* one, which it shades, is evident enough;—because, without what is called *mala fides*—without *criminal consciousness*—consciousness of the want of right to do what they take upon them to do—an error of that description could never, by persons of that description, be committed.[a]

[a] Exile, confinement, and bondage—inflictions perfectly distinct—are the ingredients of which (as already noted)[1] the complex punishment styled *transportation* is composed. It has been so at all times, and under both systems: though under the new system the two last-mentioned ingredients possess a degree of inflexibility, strongly contrasted with their laxity under the old. When the transportation was to America, the bondage might be bought off or begged off, in the whole or in any less proportion, by agreement with the assignee of the property in the convict's service:[2]—the bondage, which was the principal infliction of the two; and with it all the accessory accompaniments. Under the new system, neither the one nor the other is remissible, but by the act of the agent of the crown, nor therefore (regularly at least) but upon public grounds. Under the new system again, over and above the extraordinary degree of tension thus given to these two secondary branches of the punishment, the primary branch, the exile, has received a still more decided enhancement, by the addition made to the duration of it. For, supposing the *confinement* in the penal colony to be continued, as it always has been, to the legal end of each penal term (with or without the *bondage*, according to the fluctuating decision of the local despot), it follows, that under the new system, by the mere change of local situation—I mean by the substitution of the superlatively distant, and comparatively inaccessible, territory of New South Wales, to the so much nearer and more accessible coasts of British America—an addition has thus been made to the exile—an addition which can never have been so little as four months, and may have amounted to years: and in future instances may at all times amount to any number of years.

In the case of those, whose offences were prior, in point of time, to the year 1787, (the date of the Act for the foundation of this colony)[3] this addition, though by that Act rendered conformable to *law*, yet, not having any thing like necessity for its justification, could not by any Act be rendered conformable to *natural justice*.

Even in all *subsequent* instances, though the *injustice* was at an end, an addition of no small magnitude has been made, in this obscure and indirect mode, to the *severities* of the penal system. The severer the additional inflictions thus irregularly introduced, though in a manner not absolutely repugnant to law, the stricter, one should have thought, should have been the caution observed, to avoid adding, to the imputation of legal severity, the reproach of wanton and oppressive illegality and injustice. That the eyes of men in power were really more or less open to the distinctions thus confounded by their practice, is evidenced by the discriminations reported in the text.

[1] See p. 319 above.
[2] See 'Letter to Lord Pelham', pp. 98–9 above.
[3] i.e. the New South Wales Courts Act of 1787.

§ 14. *Statutes transgressed by the Legislation and Government of New South Wales.*

The acts of legislation, and other acts of government, that have been exercised in New South Wales, have thus been stated, in a general point of view, as being contrary to law. It remains to confront the several heads of transgression that have thus been manifested, with the several constitutional laws and principles of law, which in those several points have been transgressed and violated.

I. *Transgressions in Breach of the Habeas Corpus Act—Penalties thereby incurred under the said Act.*

'And *for preventing illegal imprisonment*' (says the act)[a] '*in prisons beyond the seas;* Be it further enacted .... that no subject of this realm, that now is, or hereafter shall be an inhabitant or resident of this kingdom of England .... shall or may be *sent prisoner* .... into ports, garrisons, islands or places beyond the seas, which are, or at any time hereafter shall be, within or without the dominions of his Majesty, his heirs and successors; and that every *such imprisonment* is hereby enacted and adjudged to be illegal; and that if any of the said subjects ... hereafter, shall be *so imprisoned*, every such person ... so imprisoned .... may for every such imprisonment maintain, by virtue of this act, an action or actions of false imprisonment in any of his Majesty's courts of record, against the person or persons by whom he or she shall be so committed, *detained*, imprisoned, sent prisoner, or transported, contrary to the true meaning of this act, and against all or any person or persons that shall *frame, contrive*, *write, seal or countersign*, any warrant or writing for such commitment, *detainer*, imprisonment or transportation, or shall be *advising*, aiding, or assisting in the same or any of them;[b] and the plaintiff in every such action shall have judgment to recover his treble costs besides damages, which damages so to be given shall not be less than five hundred pounds, ... and the person or persons who shall knowingly

[a] 31 C. II, c. 2. § 12.[1]

[b] To the applicability of the *Habeas Corpus Act* to the present case, the words '*sent prisoner*,' '*such imprisonment*,' and '*being so imprisoned*,' furnish an objection, which it is easy enough to see, and, from the other words of the act, not very difficult to refute. The discussion has been drawn out at length, but would be too long for the present purpose.[2]

[1] i.e. the Habeas Corpus Act of 1679.

[2] The discussion in question is at UC cxvi. 375 (22 January 1803), 376 (27 January 1803), 377–83 (22 January 1803), 384–5 (24 January 1803): for further details see the Editorial Introduction, pp. lxxxi–lxxxii above.

frame, contrive, write, seal, or *countersign* any *warrant for such* commitment, *detainer*, or transportation, or shall so commit, detain, imprison, or transport any person or persons contrary to this act, *or be any ways advising, aiding, or assisting therein*, being lawfully convicted thereof, shall be disabled from thenceforth to bear any office of trust or profit within the said realm of England: and shall incur and sustain the pains, penalties, and forfeitures .... provided ... by the statute of provision and *præmunire*, ... and shall be *incapable* of any *pardon* from the King.'

To the provisions in this clause there are two exceptions, annexed by so many immediately succeeding clauses:— one, in respect of persons, by their own agreement in writing, contracting to be transported;[a] the other in respect of persons praying to be transported;[b] as it seems they were allowed to do in some cases, as still in Scotland, to save themselves from severer punishment.[1]

There are also *at present* as many exceptions, as there are posterior statutes, authorising transportation: these exceptions, having for their extent that of the authority given in each case by each respective statute: but, forasmuch as by a statute authorising the crown to transport offenders for a term therein limited, no authority either express or implied is given to 'detain' any such offender, in any case, a moment beyond such limited time, the provisions in the *Habeas Corpus Act* remain, in the instance of every convict so detained in New South Wales, in full force and virtue.

The several *acts* and *modes of participation*, by and in which a man may be a partaker in the crime of unlawful imprisonment, are here carefully enumerated and distinguished.—As to *acts*, *commitment* is one; *detainer* is another. In the instance of the convicts, the

[a] § 13.[2] [b] § 14.[3]

[1] Though the Transportation Act of 1718, § 8, exempted Scotland from its provisions, Scottish courts had since the middle of the seventeenth century punished criminals, usually those convicted of the most serious offences, with banishment. However, unlike in England, defendants scheduled to be tried for a capital offence had the right to enter a petition to be voluntarily banished, and it is estimated that, between 1718 and 1775, around 125 of the 700 persons transported from Scotland were petitioners. Transportation had been extended to Scotland by the Transportation (Scotland) Act of 1766 (6 Geo. III, c. 32).

[2] The Habeas Corpus Act of 1679, § 13, provided that 'nothing in this Act shall extend to give Benefit to any Person who shall by Contract in Writing agree with any Merchant or Owner of any Plantation, or other Person whatsoever, to be transported to any Parts beyond the Seas, and receive Earnest upon such Agreement, although that afterwards such Person shall renounce such Contract'.

[3] The Habeas Corpus Act of 1679, § 14, provided that 'if any Person or Persons, lawfully convicted of any Felony, shall, in open Court, pray to be transported beyond the Seas, and the Court shall think fit to leave him or them in Prison for that Purpose, such Person or Persons may be transported into any Parts beyond the Seas; this Act, or any Thing therein contained to the contrary notwithstanding'.

commitment has *not* been unlawful: the *detainer* after the expiration of their respective terms has been and still is. As to *modes of participation*, the description given of them will, I believe, be found sufficiently comprehensive. To appropriate them to this or that great person, in or out of office, would at present be an useless labour. The Act has done its part: the books of the Council Board, and the Treasury—not forgetting the office of the secretary of state for the home department—these, with or without certain documents from the colony, and a little explanatory oral evidence, which need not be wanting, would do the rest.

It is almost superfluous to observe, that in intendment of law, every place, circumscribed or not by walls—every place in which, without sufficient warrant, a man is kept against his will—is, to this purpose—as for all purposes of justice it is most necessary that it should be—*a prison*.[a] If an island larger than all Europe were not to *this* purpose *a prison*, one of the two equally declared objects of the law would be defeated, and the whole text of it turned into a dead letter.

II. *Repugnancy of such Transgressions to Magna Charta, according to* Coke *and* Comyns.[1]

Thus saith *common sense:* and—what fortunately for the present purpose is much more indisputable and decisive—thus saith *Lord Coke;* whose *comment*, though the parliamentary *text* of it be of so much earlier date, is not here inapposite: since the *Habeas Corpus Act*, an Act having *Magna Charta* for its *ground-work*, has for its *object* no other than the affording an additional protection to this part of the rights, which by that sacred trumpet of the constitution had already been proclaimed. Step by step the oracles of the legal sage will be found advancing to the point, and at length coming fully home to it.

1. 'No man,' says he, 'shall be exiled or banished out of his country, that is, *Nemo perdet patriam*, no man shall lose his country, unless he be exiled according to the law of the land.'[b]
2. 'No man shall be outlawed, made an *exlex, put out of the law*, that is, *deprived of the benefit of the law*, unless he be outlawed according to the law of the land.'[c] Their time of lawful punishment being expired, the quondam convict inhabitants of New South Wales,

[a] Inst. 46. 589.[2] [b] Inst. 46.[3] [c] Ibid.

[1] John Comyns (c. 1667–1740), Baron of Exchequer 1726–36, Justice of Common Pleas 1736–8, and Chief Baron of Exchequer 1738–40.

[2] See passages 1 and 5 below respectively.

[3] See Coke, *Second Part of the Institutes of the Lawes of England*, p. 46.

by being kept there against their wills, are they not made '*to lose their country?*' and, by being thus *de facto* removed out of the reach of the remedial arm of justice, are they not '*put out of the law*,' as effectually, as if, after a wrongful judgment of outlawry pronounced against them, they had thus been deprived of the benefit of it, *ipso jure*, i.e. *false jure?*[1]

3. 'By this law[2] of the land, no man can be exiled, or banished out of his native country, but either by authority of Parliament, or in case of abjuration for felony by the common law.'[a] In the instance of each of these convicts, there is a time, for and during which, he *has* been '*exiled by authority of Parliament*;' and so far as it is only for and during this time that he is kept in New South Wales, so far there is no injury. But, after the expiration of this time, all the *rest* of the time during which he is kept there, he *is* kept 'in *exile* and in *imprisonment, without authority of Parliament*.' He would be kept in *exile*, if, with the exception of this his native country, he had the choice of the whole world. But, besides being kept in *exile*, he is kept even, in most instances, in *imprisonment*, confined as he is to the insulated, however extended, region of New South Wales.
4. 'This' (Magna Charta) '*is a beneficial law, and is construed benignly*: and therefore the King cannot send any subject of England, against his will, to serve him out of this realm; for, that would be an exile, and he should *perdere patriam*: no, he cannot be sent against his will into Ireland, to serve the King as his deputy there, because it is out of the realm of England: for, if the king might send him out of this realm to *any* place, then, under pretence of service, as ambassador, or the like, he might send him *into the furthest part of the world, which, being an exile, is prohibited* by this act.'[b] To send the meanest of these convicts to this '*furthest part of the world*,' against his will, though it were to be governor there, would thus be an offence: an offence, in the first place, against *Magna Charta*; in the next place, against the *Habeas Corpus Act*. These men, not *one* of whom Majesty itself could order to continue there, were it even to be governor there, against his will, these are the men whom, *by thousands*, his Majesty's ministers are keeping there *still* in bondage.
5. 'So it is if a felon . . . Custody of the king's officer . . . is an imprisonment in law.[c] He that is under lawful *arrest*, is said to be *in prison,* although it be *not infra parietes carceris*.'[3] [c]

[a] II. Inst. 47. [b] Ibid. [c] II. Inst. 589.

[1] i.e. 'by the operation of the law itself, i.e. false law?' [2] Coke 'the law'.
[3] i.e. 'within the walls of a prison'.

6. '*Imprisonment* doth not only extend to false *imprisonment,* and unjust, but for *detaining* of the prisoner longer than he ought *where he was at first lawfully imprisoned*.'[a]
7. 'If any man, by colour of any authority, *where he hath not any in that particular case*, arrest or *imprison* any man, or *cause him* to be arrested or imprisoned, this is against the act; *and it is most hateful, when it is done by countenance of justice*.'[1]

Had Lord Coke been a prophet as well as a lawyer, he could not have pointed more surely to the present case.[b]

III. *Transgressions in Breach of the Petition of Right,* 3 C. I. *c.* 1.[2]

In this statute, among the petitions contained in § 10, after the recital that 'commissions' had then of late been 'issued forth' 'for proceeding by martial law,' is this—'that hereafter no commissions of like nature may issue forth to any person or persons whatsoever, to be executed as aforesaid, lest by colour of them any of your Majesty's subjects be *destroyed*, or put to death contrary to the laws and franchise of the land.'

[a] II Inst. 53.

[b] 'Every restraint of the liberty of a freeman' (says the abridgment of *Chief Baron Comyns*) 'will be an imprisonment,'—'though it be in the high-street, or elsewhere, and he be *not* put into any *prison* or *house*.' Besides the authority of *Lord Coke*, as above,[3] he quotes two others (*Cro. Car.* 210; per Thorpe: Fitzh. Bar. [301]).[4] I have them not at hand, nor is it material. Comyns is a channel that *adds* to the authority of the original source, instead of weakening it. And (what, if there could be a doubt, would render his interpretation a still more apposite one than any that could have been given by Lord Coke), Comyns wrote *after* the *Habeas Corpus Act*.

They would both of them have expressed themselves more fully, though scarcely more intelligibly, if they had said—Every restraint of the liberty of loco-motion, will be an *imprisonment:* every restraint upon the liberty of loco-motion, on the part of a freeman, i.e. of a man free from such restraint by law, will be an act of *false imprisonment*.

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[1] See Coke, *Second Part of the Institutes of the Lawes of England*, p. 54.

[2] The Petition of Right of 1628.

[3] i.e. Coke, *Second Part of the Institutes of the Lawes of England*, p. 482.

[4] 1803 '310'. See John Comyns, *A Digest of the Laws of England*, 5 vols., London, 1762–7, iii. 494, citing Harbottle Grimston, *The Third Part of the Reports of Sir George Croke Kt. Late, one of the Justices of the Court of King's-Bench And formerly one of the Justices of the Court of Common-Bench, of such Select Cases As were Adjudged in the said Courts, during the first Sixteen years Reign of King Charles the First. Collected and Written in French by Himself; Revised and Published in English*, London, 1669, pp. 209–10 at 210, concerning the case of Sir Miles Hobart (1598/9–1632), MP for Marlow 1628–9, and William Strode (bap. 1594, d. 1645), MP for Bere Alston 1624–8, 1640–5, heard in 1629, in which it was resolved, 'That the Prison of the Kings Bench is not any local Prison confined only to one place, and that every place where any person is restrained of his liberty, is a Prison: As if one take Sanctuary and depart thence, he shall be said to break Prison.'

After this comes the concluding section (§ 11.), which is in these words—

'All which they most humbly pray of your most excellent Majesty as their *rights and liberties, according to the laws and statutes of this realm;* and that your Majesty would also vouchsafe to declare, that the awards, doings, and proceedings, to the prejudice of your people, in *any* of the premisses, *shall not be drawn hereafter into consequence or example;* and that your Majesty would be also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure, that *in the things aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm*, as they tender the honour of your Majesty and the prosperity of this kingdom. Quâ quidem petitione lectâ, et plenius intellectâ, per dictum Dominum Regem taliter est responsum in pleno Parliamento, viz. Soit droit fait come est desire.'[1]

In full contradiction to this statute, it appears from the Journal of the Judge Advocate, that, in April 1790, in New South Wales, by the Governor of New South Wales, martial law was actually proclaimed.[a] In the *petition of right*, the territory on which the commissions thus branded with illegality had been executed, stands described by words of no greater amplitude, indeed, than the words '*this realm*.' Of *colonies* no mention is there made:—good reason why, no such dependencies being at that time in existence.[b] But, if the principles already laid

[a] 'The Lieutenant-Governor, immediately after the loss of the Sirius, called a council of all the naval and marine officers in the settlement, when it was unanimously determined that martial law should be proclaimed; that all private stock, poultry excepted, should be considered as the property of the state; that justice should be administered by a court-martial to be composed of seven officers, four of whom were to concur in a sentence of death . . . . The day following, the troops, seamen, and convicts, being assembled, these resolutions were publicly read, and the whole confirmed their engagement of abiding by them by passing under the king's colour, which was displayed on the occasion.' Coll. I. 104.[2]

[b] Charters had been obtained, as above,[3] and in a certain degree acted upon; but any settlement, understood to be a permanent one, had scarce as yet been made.

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[1] i.e. 'Which petition having been read and more fully understood, answer was made thus in full parliament by the said lord king, to wit: Let right be done as it is petitioned.'

[2] The events referred to by Bentham took place at Norfolk Island. Collins describes the wrecking on 19 March 1790 of HMS *Sirius*, the flagship of the First Fleet, on the reef at Slaughter Bay, Norfolk Island, and the subsequent imposition of martial law by Major Robert Ross, the Lieutenant-Governor. Governor Phillip approved of Ross's course of action, reporting that he had 'directed him to continue while he thinks it necessary' (see Governor Phillip to Lord Sydney, 11 April 1790, *HRA*, i. 167–8). Martial law remained in force at Norfolk Island until early August 1790 (see Governor Phillip to W.W. Grenville, 1 March 1791, Enclosure No. 1, Lieutenant-Governor Ross to Governor Phillip (11 February 1791) ibid. 235).

[3] See p. 336 above.

down in this behalf are just, no just reason could be built on this ground, for regarding the *petition of right* as being in this point of view inapplicable to New South Wales. In the first place, what should hinder that settlement, though at the distance of the antipodes, from being considered as parcel of '*this realm?*' Not local distance: for this, as we have seen already, did not hinder the whole of the intended plantations in America from being parcel of the manor of East Greenwich.[1] In the next place, among the petitions contained in the concluding section above quoted, is this, 'that your Majesty will also vouchsafe to declare that the . . . . proceedings to the prejudice of your people in any of the premisses, shall not be drawn hereafter into consequence or *example;*' and moreover, 'that *in the things aforesaid all your officers and ministers* shall serve you according to the laws and statutes of this realm.'

On this, as on all other occasions of *necessity*, real or apparent, I impute not any moral blame to the *Governor:* moral blame might, for aught I know, have been imputable to him, had he acted otherwise.[a] *Elsewhere* however—I mean to his Majesty's 'officers and ministers' here at home—I see not how it can be that moral blame should not be imputable: I mean, if, under *constitutional* blame, *moral* be included;—if a regard for the constitution of their country—for the '*laws and statutes according to which*' they are thus pledged '*to serve*' their royal master—have any sort of place among the articles of their moral code. Amongst the documents which composed the legal armature of the Governor, was any such power as that of declaring martial law, in that nursery of despotism, included?[2] If so, then has there been, in that behalf, on their part, an open and point-blank breach made in this constitutional and hard-earned bulwark of the constitution. Again, be this as it may, when with or without precedent authority, from these his Majesty's 'officers and ministers,' martial law had *actually* been proclaimed, was information of such proceeding officially transmitted to them in consequence? That, in one way or other, at one time or other, information of this fact has come to their cognizance, is beyond

[a] In a passage in the third Institute, written without mention of the petition of right, and therefore it may be presumed before the passing of it, 'If a lieutenant' (says Lord Coke) 'or other that hath commission of martial authority, in time of peace, hang, or otherwise execute, any man by colour of martial law, this is murder; for this is against Magna Charta, cap. [29][3] . . . . and here the law implieth malice.'[4] The law and Lord Coke may imply malice as they please: in a case such as that before us, God forbid I should be malicious enough to imply it!

[1] See p. 357 & n. above.

[2] Phillip's commission as Governor of New South Wales did, in fact, grant him the power to impose martial law in time of invasion and in other times authorized by law: see 'Governor Phillip's Second Commission', 2 April 1787, *HRA*, i. 2–8 at 5.

[3] 1803 '39'. [4] See Coke, *Third Part of the Institutes of the Lawes of England*, p. 52.

dispute: if not by the next conveyance, and in the way of official correspondence (an omission not naturally to be presumed), at any rate it was received by them in 1798, through the medium of the press.[1] It is therefore at any rate with their knowledge, that the petition of right has thus been violated. On the occasion of this, any more than of so many other exercises of unconstitutional powers, have they ever condescended to apply to Parliament—I do not say for *precedent* authority—but so much as for an *ex post facto* indemnity? Not they indeed: no, not in any one of the multitude of instances, that have called for indemnity at least, if not for punishment.

IV. *Transgressions in Breach of the Declaration of Rights.*[a]

This statute, so familiar to English ears, and once at least so dear to English hearts, under the name of the *Bill of Rights*, opens with the recital of twelve heads of transgression, 'whereby the late King James the Second, by the assistance of divers evil counsellors, judges, and ministers employed by him, did endeavour to subvert . . . . the laws and liberties of this kingdom.'[2]

Of those *twelve* heads of royal transgression, of which in those days *England* had been the scene, *seven* at least present themselves, as having had their counterparts in *New South Wales:* with this difference, that, in the most material instances, the transgressions that at that time gave birth to the Revolution in this our island,[3] were but peccadillos in comparison of the enormities acted on that distant theatre. In England, the subversion was but attempted: at the antipodes it has been completed: complete in design, from the first moment; completed in the execution, so soon as occasion called for it: the subversion of English liberties having been the very object and final cause of the foundation of this English colony. The words of the clause, which it became necessary to copy, present another difference, but happily too striking a one to every loyal eye to require any further mention of it.[4]

No. 1. *Transgression the* 1*st in England.*—'By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without consent of Parliament.'[5]

[a] 1 W. III. Sess. 2. c. 2.

[1] i.e. through the first volume of Collins.
[2] See the Preamble to the Bill of Rights of 1689.
[3] i.e. the Glorious Revolution of 1688–9, which saw James II replaced on the throne by William III and Mary II.
[4] Bentham presumably means that George III was not implicated in the 'transgressions' in question.
[5] See the Bill of Rights, § 1.

Analogous transgression in New South Wales.—Exercising legislative power by the hand of the Governor there, without authority from Parliament, in an habitual train of enumerated instances, to the number of 60 or 70, or upwards, as already exemplified in § 10:[1] besides other instances not as yet specifically ascertainable. The word *analogous* requires correction. It is evident enough how inconsiderable the transgression is which consists in the mere act of *dispensation* or *suspension*, put upon here and there a law already existing, in comparison of an habitual and *positive* exercise of an illegal power of legislation, *in all cases*.

No. 2. *Transgression* 2*d in England.*—'Committing and *prosecuting* divers worthy prelates, for humbly petitioning to be excused from concurring to the said assumed power of suspending and dispensing with laws.'[2]

Analogous transgression in New South Wales.—Confining within this land of illegal bondage, and even, *without* '*prosecution*,' punishing by arbitrary power, viz. with whipping—divers persons formerly guilty, but who had been restored, in point of law, to the condition of innocent persons, by the expiration of their terms of legal punishment.[a]

No. 3. *Transgression* 3*d in England.*—'Issuing and causing to be executed, a *commission* under the Great Seal for erecting a *court* called the Court of Commissioners for ecclesiastical causes.'[3]

Analogous transgressions in New South Wales.—1. Instituting a court called a *Civil Court*, without authority from Parliament.[b]

2. Punishing divers persons, on divers occasions, in divers manners, by the single authority of the Governor, for pretended offences created by so many acts of legislative authority exercised by the Governor: For example, in some instances, by destroying stills;[c]

[a] Supra, § 12.[4] [b] Coll. I. p. 7.[5] [c] Coll. I. 450.[6]

[1] See pp. 360–4 above. [2] See the Bill of Rights, § 2.
[3] See the Bill of Rights, § 3. [4] See § 12, item 2, p. 368 & n. above.
[5] According to Collins, i. 7–8, on 9 February 1788 Phillip's commission as Governor of New South Wales was publicly read in the colony, along with the 'letters patent for establishing the courts of civil and criminal judicature in the territory'. For the establishment of the Court of Civil Judicature see p. 349 n. above.
[6] According to Collins, i. 449–50, during January 1796, 'Some individuals formed the strange design of making application to the governor for his licence to erect stills in different parts of the settlement. On inquiry it appeared, that for a considerable time past they had been in the practice of making and vending a spirit, the quality of which was of so destructive a nature, that the health of the settlement in general was much endangered.' Governor Hunter had thereupon forbidden anyone 'to distil spirituous liquors of any kind or quality'. The district constables 'were strictly enjoined to be extremely vigilant in discovering and giving information where and in whose possession any article or machine for the purpose of distilling spirits might then be, or should hereafter be erected', whereupon 'several stills were found and destroyed'. For the order in question see Governor Hunter to the Duke of Portland, 3 March 1796, *HRA*, i. 555.

pulling down houses;[a] destroying oars.[1] These, though on the mention of them presenting the appearance rather of 'outrages' committed by individuals, were among the acts done by the Governor in the exercise of these illegal powers.

No. 4. *Transgression the 4th in England.*—'Levying money to and for the use of the crown, by pretence of prerogative, for other time, and in other manner, than the same was granted in Parliament.'[2]

Analogous transgression in New South Wales.—Levying for the use of the crown a tax of 6d. per bushel on corn, and other taxes, applied towards the expense of building a jail at Sydney.[b]

No. 5. *Transgression the 7th in England.*—'Violating the freedom of election of members to serve in parliament.'[3]

Analogous transgression in New South Wales.—Legislation, exercised by the Governor alone, without authority from parliament at home, or the concurrence of any assembly, standing in the place of parliament, in New South Wales.

No. 6. *Transgression the 10th in England.*—Excessive bail '. . . required . . . to elude the benefit of the laws made for the liberty of the subject.'[4]

Analogous transgression in New South Wales.—Married men, whose terms were expired, not suffered to quit the colony, without *finding*

[a] Ib. 300, 471, 482.[5]

[b] Ib. II. 41, 214, 283, 297.[6]

[1] Bentham probably had in mind the government order of October 1797 which stated that if any boat was found to be unsecured, or left with its oars, rudder, masts, or sails on board at night, then it was to be taken ashore and burned: see p. 332 n. above.

[2] See the Bill of Rights, § 4.

[3] See the Bill of Rights, § 7.

[4] See the Bill of Rights, § 10.

[5] Collins, i. 299–300, 471, and 481–2 respectively describe the government order of July 1793, which warned that anyone attempting to sell spirits without a licence could expect the alcohol to be seized, 'and the houses of the offending parties pulled down'; the government order of April 1796, which warned that anyone who persisted in retailing spirits without a licence was liable to have their house 'pulled down as a public nuisance'; and in June 1796 the pulling down of a hut in which two 'notorious offenders' named James or Andrew McManus and George Collins were discovered after having absconded from the their gaol gang, a measure that Collins described as being intended 'to deter others (if possible) from harbouring thieves and vagabonds'.

[6] Collins, ii. 41–2, 214, 283, and 297 respectively describe the requirement in June 1797 for residents of Sydney each to provide twenty-four bundles of grass, and for civil and military officials who had been assigned convict servants each to provide fifty bundles, in order to complete the thatch roof of the new gaol; the agreement in June 1799 of the 'officers, principal inhabitants, and landholders' of Sydney to Governor Hunter's proposal that 'an assessment . . . be furnished by each, as well of money, as of labour' in order to complete several public works, most notably the new stone gaol; the raising of money in January 1800 for the still incomplete gaol 'by each person leaving in the hands of the commissary sixpence for every bushel of wheat they should put into the store'; and the report in June 1800 from the committee overseeing the construction of the new Sydney gaol, which noted that 'several persons had resisted the payment of the necessary assessments which had been ordered to defray the expenses of the building', and the issuing of orders requiring immediate payment of the assessments.

security for the maintenance of their wives and children, if left behind.[1] [a]

No. 7. *Transgression the* 11*th in England.*—'Illegal and cruel punishments inflicted.'[2]

Analogous transgression in New South Wales.—Perpetual exile, accompanied with perpetual confinement and perpetual slavery, inflicted on his Majesty's subjects, altogether without cause; whatever offences they had been convicted of, having been previously expiated by appropriate lots of punishment, marked out by law. Of the mere endeavour to escape from this combination of illegal and cruel punishments—the humble and peaceable endeavour without any thing like *force*—an additional lot of illegal punishment, illegal whipping, was the appointed consequence.[3]

Under this head the enormities imputed to James the Second were mere peccadillos, in comparison of the more palpably '*illegal*,' more '*cruel*,' and above all prodigiously more numerous enormities of the like complexion, committed under ——[4] My pen refuses to complete the sentence.[b]

[a] The reasonableness of the obligation, supposing the imposition of it had been guarded from abuse by proper checks, and warranted by law, can never amount to a justification of such an act of coercion, limited as it was by no such checks, and sanctioned by no such warrant. And whence came the pretence for imposing it? From the very act of those who, in bringing forward any such plea, must *take advantage of their own wrong*,[5] ere they could avail themselves of it. By that conjugal affection, by which these poor females were in a manner compelled to avail themselves of the means afforded them for sharing in the exile of their husbands, they were enticed into this *cage*, and, out of the *physical* bar, which *there* opposed itself to the return of the females, a legal bar was *thus* constructed, for preventing the return of both sexes, males as well as females.

[b] The most striking, of the few instances of inordinate punishment that could have been alluded to in this article of the Bill of Rights, was the whipping (certainly a most severe one) of *Titus Oates*.[6] But the crime for which Oates thus suffered was but *one*, in a system of murders of a most terrific and atrocious complexion, murder by the hand of justice,[7] though left out of that denomination

[1] See § 12, item 3, pp. 368–9 above.

[2] See the Bill of Rights, § 11.

[3] See § 12, item 2, p. 368 & n. above.

[4] The draft at UC cxvi. 356 (28 January 1803) is left blank at this point, though 'George III' is inferred.

[5] For the legal maxim that 'no man shall take advantage of his own wrong' see, for instance, Blackstone, *Commentaries on the Laws of England*, ii. 278, 321, iv. 209.

[6] Following his conviction for perjury at a trial on 8–9 May 1685, Titus Oates (1649–1705) was whipped through the streets from Aldgate to Newgate on 20 May 1685 and from Newgate to Tyburn on 22 May 1685.

[7] Thirty-five persons were tried and executed after being implicated in the so-called Popish Plot, principally fabricated by Oates, and which allegedly aimed to assassinate Charles II (1630–85), King of England, Scotland, and Ireland from 1660, and his brother James, Duke of York and future King James II, unless the latter agreed to establish a Jesuit government.

After the statement of the several heads of *transgression* by which the rights in question had been *violated*, the act proceeds to declare the *rights* themselves in thirteen articles, the first of which is in these words—'The pretended power of *suspending* laws, or the execution of laws, by regal authority, without consent of parliament, is illegal.'[1] But, if simple *suspension* or *dispensation*—(i.e. abrogation for a time in individual instances) be thus illegal, how much more flagrant must be the illegality of *positive* enactment, and that without any limitation as to the nature of the case?

In § [6],[2] after declaring the rights and liberties in question to be 'the true ancient and indubitable rights of the people of this kingdom,' the act concludes[3] with 'declaring and enacting,' that '*all officers and ministers whatsoever* shall serve their Majesties and their successors *according to the same in all times to come*.'

The wretches in question, whatever may have been their crimes, were they not—are they not still, and as truly as the very best of their betters, so many individuals of '*the people of this kingdom?*'—And thus it is then that his present Majesty, the venerable and beloved successor of the royal founders of these rights and liberties,[4] has been '*served*' by '*the officers and ministers of his time:*'—thus it is, that the '*ancient and indubitable rights,*' of this helpless and defenceless portion of his people, have been respected and protected by these his 'officers and ministers.'

in the early and dark ages of our law. It would have required the united enormities, of a dozen or a score of the most guilty among the colonists of New South Wales, to make up a mass of guilt equal to that which issued from this one murderous tongue.

In point of *illegality*, the utmost that can be alledged, against the penal inflictions thus condemned by the Bill of Rights, is an excess—on the side of severity indeed, but in the exercise of a power plainly discretionary, and having by law no specific limits: in the case of the modern system of illegal punishments, the legal portion had in every instance been marked out by the clearest limits: and it is by the palpable transgression of these limits, and by a course of contempt, as direct and pointed as it is possible to manifest, towards the repeatedly declared will of the supreme power by which these limits had been marked out, that the enormities, thus censured by the ancient constitution, have been committed in these our days.

In point of *multitude* of transgressions, for every instance of punishment, in respect of which illegality could thus have been imputed to the penal system of that time, a hundred at least might be found, of the more cruel and more palpably illegal masses of punishment, with which the administration of penal justice has thus been stained.

[1] See the Bill of Rights, § 1.
[2] 1803 '64'.
[3] The following passage is the conclusion of § 6, whereas the Act itself has a further seven sections.
[4] George III, and William III and Mary II, respectively.

[V.][1] *Transgressions in Breach of the several Transportation Acts, by which that Punishment has been appointed for limited Lengths of Time.*

It would be a double charge of the same article, to state these as so many acts of delinquency, distinct from and over and above those already referred to, in their character of transgressions against the *Habeas Corpus Act*.[2] It is by these several statutes, that the limits of legal punishment are marked out, in the several respective instances; it is in the transgression of those limits in each instance that consists the violation offered to that sacred law.

It would moreover be a waste of paper to give, by a string of references, a specific list of the several particular laws thus transgressed. It would be making so many useless transcripts, from the already existing indexes and abridgments.

In this complicated body of enormity, perspicuity requires that the distinction between the two main branches be kept in view. The one consists in the system of groundless as well as illegal punishment; the other in the system of illegal legislation and government:—the former, in the oppression exercised upon individuals; the latter, in the usurpation exercised by the servants of the crown over the authority of parliament:—the former, in the wound given to the penal branch, and through that alone to the constitutional branch of the law; the other in a system of delinquency, striking more directly against the constitutional branch. The relation of the latter system of transgression to the former, is that of a *means* to an *end:* it was for the purpose, of the oppression exercised upon individual subjects, that the authority of his Majesty in Parliament was thus usurped by his 'officers and ministers.'

One thing, in regard to the question of *law*, requires particularly to be observed: which is, that though the right of the crown to legislate in this new-founded colony, without the concurrence, either of the two other estates of the supreme legislature in the mother country, or of a subordinate assembly of states in the colony, were as clear as, I flatter myself, the contrary has been made out to be,[3] the stain of illegality would not even thus be cleared away: for, admitting, on the part of the King's Governor of New South Wales, the right of legislating to every other effect imaginable, even then no such supposition could be entertained, consistently with any sort or degree of supremacy on the part of Parliament, as that of a right of making ordinances in New South Wales, in direct repugnancy to the several acts of Parliament, by which express limitations stand annexed to the several

[1] 1803 'IV.' [2] See pp. 377–9 above. [3] See §§ 3–6, pp. 327–46 above.

lots of punishment respectively appointed by those acts. And as to the *Habeas Corpus Act*, should even the letter of that sacred charter be (as I can scarce conceive it to be) deemed not to have been violated, the violation of the spirit of it would still remain as plain and palpable, as it could have been in any of the cases, the experience of which may be supposed to have given occasion to the law.

As to every thing that concerns *motives* and *extenuations—motives* by which any of the transgressors may be supposed to have been led into transgression—extenuations that may be supposed capable of being grounded on those motives—discussions on any such topics as these, might in the present state of the business be regarded as premature. The essential subject of solicitude is the constitution: the essential operation is the healing the wound that has thus been given to it: that object being accomplished by the requisite votes and laws, every thing else may in comparison be deemed of light importance; and may without much danger be left to float upon the tide of popular and party favour. The object on no account to be lost sight of is *futurity*: that being provided for at any rate, it is a matter of little comparative moment what degree of indulgence may accompany the retrospect, which cannot altogether be omitted to be taken of the *past*. The fact of transgression declared, then would come the consideration of the censure, if any, and the deductions or set-offs to be made, on the score of motives, intentions, or past services, real or supposed, in other lines. All would be lost, the constitution would be betrayed and sacrificed, if, dazzled by the lustre that circles the head of this or that arch-delinquent, the eye of Parliament were to show itself insensible to the distinction between right and wrong, and the quality of the criminal were to be accepted as a warrant for the crime. It was not in the case of James the Second; it was not in the case of that misguided, yet most religious, though so unhappily religious, king: it saved him not from forfeiture, much less from verbal censure. It remains to be seen, whether the constitution, which, in the seventeenth century, even a king was punished and expelled for violating, is to be complimented away, and made a sacrifice of, to the pride of this or that domineering subject, in the nineteenth century: in this maturer age, in this supposed period of constitutional improvement, and more firmly established rights.

Compare the case of this immense, yet too real, because uninspectable Bastile, with that of the scene of kindred abuse in miniature,—the Home-Jail thus hyperbolized and stigmatized—in *Cold Bath Fields*. See what was the conduct of Parliament in the one case, and from thence say what it ought to be, what, if consistency be the rule, it cannot but be, in the other. Information to Parliament

of mismanagement in a prison—a lawful prison—employed as such under the law for the suspension of the Habeas Corpus Act. No principle of the constitution violated: no authority setting itself up to make ordinances repugnant to the laws, and subversive of the authority of Parliament. The alleged cause of the abuse, mal-practices on the part of a single Jailor,[1] negligence or connivance on the part of certain Magistrates, his official superiors. On this ground—on this single ground—an address is presented to his Majesty by the House of Commons for an inquiry into the management of this jail; an address presented with the express concurrence of the Chancellor of the Exchequer;[2] and a commission of inquiry is issued accordingly—issued by the Crown,[a] and executed.[b]

On the present occasion, his Majesty's subjects kept by hundreds, ere now, perhaps, by thousands, in a state of exile and bondage, without end and without cause: the four grand bulwarks of the constitution[3] all broken through, for the very purpose of this causeless and endless punishment:—the authority of Parliament treated by the servants of the Crown with a contempt already become habitual and rooted:—is the supposition so much as an endurable one, that after information thus exhibited, though it be by so obscure a hand, Parliament should sit still and silent, exactly as if nothing amiss had ever happened?

When on that occasion the motion was made for the address, the delicacy of the Chancellor of the Exchequer of that day would not suffer him to refuse his declared concurrence with it.[c] Would the supposition be so much as a decent one, that the Chancellor of the Exchequer of the present day[4] would show so little respect to the

[a] 2d Sept. 1800. Printed by H. Commons' Order dated 18th Dec. 1800.[5]
[b] Report of Commissioners, dated 1st Nov. 1800; printed as above.[6]
[c] Parliamentary Register, 22d July, 1800.[7]

[1] Thomas Aris, Governor of Cold Bath Fields prison: see pp. 232–3 n. above.
[2] William Pitt.
[3] i.e. Magna Carta, the Petition of Right, the Habeas Corpus Act, and the Bill of Rights.
[4] Henry Addington.
[5] See 'Cold Bath Fields Prison. Copy Commission of Enquiry' (issued on 2 September 1800) in 'Papers Presented to the House of Commons, relating to His Majesty's Prison in Cold Bath Fields', 18 December 1800, in *Commons Sessional Papers of the Eighteenth Century* (1800), cxxxii. 451–550 at 453–4.
[6] See 'Report from the Commissioners, appointed by Commission under the Great Seal to enquire into the State and Management of His Majesty's Prison in Cold Bath Fields, Clerkenwell.—Dated the 1st Day of November 1800', in ibid., 455–550.
[7] On 22 July 1800 Sir Francis Burdett moved for a Committee of the whole House 'to consider the state and management of the prison of Cold-bath fields', whereupon George Tierney (1761–1830), Treasurer of the Navy 1803–4, President of the Board of Control 1806–7, Master of the Mint 1827–8, proposed instead that an address be presented to the King that an inquiry be established, a proposal for which Pitt stated that he 'saw no necessity' but which he 'would not oppose': see *Parliamentary Register* (1800), iii. 494–504.

precedent thus set by his predecessor, as to refuse to the very vitals of the constitution that attention, which it was then not thought decent to refuse to the police of one of the prisons?[a]

[a] Without a thought of any application to existing circumstances, I happened but now to open the reign of Charles I., in *Hume*.[1] If prejudices of any kind be deemed imputable to that prince of historians, they will hardly be of that cast, which would dispose a man to exaggerate the mischief, resulting from a transgression of the limits, prescribed by the constitution to the power of the crown. Whether to that dispassionate, acute, and comprehensive mind, the wounds given to the constitution on the ground of the penal colony, would have presented themselves as matters of indifference—as incidents in which the body of the people have no concern—is a question, the answer to which may be read, I should suppose, without much difficulty, in the following passages:—

Vol. vi, 8vo. p. 316, anno 1637. Speaking of Ship money,[2] 'what security' (say the arguments which he exhibits as conclusive) 'what security against the further extension of this claim? . . . Wherever any difficulty shall occur, the administration, instead of endeavouring to elude or overcome it by gentle and prudent measures, will instantly represent it as a reason for infringing all antient laws and institutions: and if such maxims and such practices prevail, what has become of national liberty? What authority is left to the *Great Charter*, to the *Statutes*, and to that very *Petition of Right*, which in the present reign had been so solemnly enacted by the concurrence of the whole legislature?' So far Hume. The breach of those two constitutional safeguards constituted in those days, according to the historian, the superlative of tyranny. The *Habeas Corpus Act* and the *Bill of Rights* have since been added. To triumph over those more antient laws, the violation of which cost Charles the First his crown and life, was not enough: the violation of the Habeas Corpus Act, and the Bill of Right—a course of systematic violation persevered in for fourteen years—has accordingly been added to the triumphs of ministers in these our times.

Along with those two fundamental laws, other 'Statutes' are mentioned by the historian in general terms: and, as an aggravation of the tyranny, the *then* present reign is noted as the period that gave birth to the *Petition of Right*, one of those two fundamental laws. Statutes of inferior account, in crowds, contribute to swell the triumph obtained over law (with grief I say it) in the *now* present reign: and among them the several *transportation acts*, to which, in numbers too great for reference, this same reign has been giving birth.

Ib. p. 314, anno 1637. 'It was urged' . . . (continues the historian) 'that the plea of necessity was in vain introduced into a trial at law; since it was of the nature of necessity to abolish all law. . . . . P. 315. And as to the pretension that the king is sole judge of the necessity, what is this but to subject all the privileges of the nation to his arbitrary will and pleasure? To expect that the public will be convinced by such reasoning, must aggravate the general indignation, by adding, to violence against men's persons, and their property, so cruel a mockery of their understanding.'

Ib. p. 421, anno 1641. 'In those days,' observes the historian, 'the parliament thought'[3]—and according to him—'justly thought that the king was too eminent

[1] See David Hume, *The History of England*, 8 vols., London, 1778, vi. 199–547. The work was first published in six volumes at London between 1754 and 1762.

[2] For the dispute over the levying of ship money see p. 274 n. above.

[3] 'In those days the parliament thought' is Bentham's insertion.

a magistrate to be trusted with discretionary power, which he might so easily turn to the destruction of liberty. And in the event it has hitherto been found, that, though some sensible inconveniences arise from the maxim of adhering strictly to law, yet the advantages overbalance them, and should render the English grateful to the memory of their ancestors, who, after repeated contests, at last established that noble, though dangerous, principle.' Established it? So *they* thought (it seems) in *their* times: so Hume thought (it seems) in *his* time. In these *our* times, does that valuable principle *remain* established? Or, after having been overthrown and trampled upon for these fourteen years, is it now finally to be abandoned, and to remain lifeless and extinct for ever?

In one point indeed, at least according to the view given of it by this historian, the parallel would be found to fail. 'The imposition of Ship money, independent of the consequences,' (viz. the anti-constitutional consequences above spoken of,) 'was a great and evident advantage to the public:' viz. 'by the judicious use which the king made of the money levied by that expedient.' Ib. p. 319, anno 1637. So far as to the unconstitutional impost of *that* day. As to the anti-constitutional system of the present times, what degree of 'judiciousness' there was, either in the design of it or in the '*use*' made of it, may be seen in the Letters to Lord Pelham,[1] by any man, when conscience will permit him to look the subject in the face.

Ib. p. 360, anno 1640. 'The lawyers had declared, that *martial law* would not be exercised, except in the presence of the enemy; and because it had been found necessary to execute a mutineer, the generals thought it advisable, for their own safety, to apply for a pardon from the crown.'—So much greater was the respect paid to the constitution by the king's servants—Strafford of the number—in those days, than in these. See above.[2]

Ib. p. 319, anno [1637].[3] The cause of the unfortunate pertinacity on the part of the misguided king, and the deceitful ground on which it rested, are thus delineated: 'Though it was justly apprehended, that such precedents, if patiently submitted to, would end . . . . in the establishment of arbitrary authority; Charles dreaded no opposition from the people, who are not commonly much affected with consequences, and require some striking motive to engage them in a resistance to established government.'

Such at that time had been the *reliance*, but now follows the *result*.

Ib. p. 317,[4] anno 1637. 'Hambden, however,' (observes the historian), 'obtained by the trial the end for which he had so generously sacrificed his safety and his quiet: the *people* were roused from their lethargy, and became sensible of the danger to which their liberties were exposed. Then national questions were canvassed in every company; and the more they were examined, the more evidently did it appear to many, that liberty was totally subverted . . . slavish principles, they said, concur with illegal practices; . . . and the[5] privileges of the nation, transmitted through so many ages, secured by so many laws, and purchased by the blood of so many heroes and patriots, now lie prostrate at the feet of the monarch. What though public peace and national industry increased

[1] See pp. 67–311 above.

[2] For the imposition of martial law at Norfolk Island in 1790 see p. 382 & n. above and for the hanging of Wolloughhan and McLean at this time see 'Letter to Lord Pelham', p. 80 n. above.

[3] 1803 '1587'.

[4] *Recte* 317–18.

[5] Hume 'all the'.

the commerce and opulence of the kingdom? This advantage was temporary, and due alone, not to any encouragement given by the crown, but to the spirit of the English, the remains of their antient freedom. What though the personal character of the king, amidst all his misguided counsels, might merit indulgence, or even praise? He was but one man; and the privileges of the people, the inheritance of millions, were too valuable to be sacrificed to his prejudices and mistakes.'

Ib. p. 375, anno 1640. The jealousy of the people was roused; 'and, agreeably to the spirit of free governments,[1] no less indignation was excited by the view of a violated constitution, than by the ravages of the most enormous tyranny.' Such was the language—such the spirit—of the people of that day: such their language and their spirit, when both as yet were temperate, and had not burst forth into the wild explosions that ensued. In the case of New South Wales, *both* provocations—the '*violated constitution*,' and the '*enormous tyranny*'—go hand in hand: the tyranny, the end; the violation of the constitution, the means. What will now be the spirit of a British Parliament? What will now be the spirit of the British People? It remains to be seen in what degree, if in any, the people of this day retain the virtues of their ancestors.

They must be degenerate indeed, if they are to be lulled into any such persuasion, as that the constitution will be capable of retaining for their benefit its protecting force, after it has been made apparent, that, with ultimate impunity, it may thus be trampled upon in the most vital parts of it, for such a course of years.

FINIS.

[1] Hume 'government'.

APPENDIX.
THE BRITISH CONSTITUTION CONQUERED IN NEW SOUTH WALES.
CONTENTS AND PREFACE[1]

[1] For further details concerning this abandoned title, contents, and preface for 'A Plea for the Constitution' see the Editorial Introduction, pp. lxxxiv–lxxxv above.

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The British Constitution conquered in New South Wales

The appetite for conquest is too strong in man to be difficult in its choice, in respect either of *matter*, *mode*, or *place*. When the conquest of America was the order of the day, America was conquered in Germany,[1] as it would have been in the moon, rather than that it should not be conquered. America having since taken itself into its own hands, and[2] conquered itself within itself, much remains not of the prior conquest, unless it be the honour and glory—in which, however, was contained all the value of it.

Another enterprize of the same illustrious Chieftain, was an attempt to conquer the British Constitution in Great Britain. A legislation by King without Parliament—a '*tyranny*' without disguise or limit—was set up at once under its own name: set up for no more than '*forty days*' indeed or in the first instance but renewable *toties quoties*.[a] In those days there was a General *Mansfield*, who stood up and took upon himself the defence of the invaded territory.[3] More short lived still than the *military*, the *political* conquest did not outlive the experimental forty days.

The appetite above spoken of being so natural to the whole species, the wonder is the less, when, in any more than ordinary degree of

[a] A° 1766. On the occasion of the suspension put upon the Corn Laws, per Lords Chatham and Camden, among the indefeasible rights of the Crown, is that of suspending Acts of Parliament in all cases: subject only to the obligation of employing the word *necessity*, as in the case of Ship-money. To the objection that this is a tyranny, the answer was—*True*: *but it is but for forty days*. See Almon's *Parliamentary Register*.[4]

[1] Horace Walpole, *Memoirs of the Reign of King George the Third*, ed. D. le Marchant, 4 vols., London, 1845, i. 95–9 at 97, records the speech of Pitt the Elder, later Earl of Chatham, in the House of Commons on 13 November 1761, in which he stated that '*America had been conquered in Germany.*' While there appears to be no record of the speech in reports of debates published at the time, this statement soon became notorious, and was repeated by Pitt himself in a debate on 9 December 1762 (see *Parliamentary History* (1753–65), xxxv. 1267.

[2] The words 'taken itself into its own hands, and' have been marked by Bentham for possible deletion.

[3] For Mansfield's 'Speech in Behalf of the Constitution Against the Suspending and Dispensing Prerogative, &c.', delivered in the House of Lords on 10 December 1766, in response to Chatham's and Camden's decision to issue a Royal Proclamation rather than to recall Parliament see *Parliamentary History* (1765–71), xvi. 251–313.

[4] For the 'forty days' tyranny' see p. 324 n. above. The debate appears in *Parliamentary History* rather than *Parliamentary Register*, which was commenced in 1774 by John Almon (1737–1805), bookseller and political journalist.

strength, it is observed to be hereditary in families. The plan for the conquering of the British Constitution *proprio loco*[1] proving thus abortive, some other field was to be found for any renewal of the experiment. The more remote from observation, the more favourable to the purpose. New South Wales is at the *antipodes*. The theatre of war was transferred to New South Wales.

Upon this less brilliant but better concerted enterprize, fortune has hitherto bestowed all her smiles. The conquest made in Great Britain was abandoned as soon as made. The attack made in New South Wales found no resistance, and howsoever it may have been with the Settlement itself, the tyranny so happily planted in it has been flourishing for above these fourteen years.

Against such dominion, established as it is, '*insurrection*' may surely be said to be a *right*, if not, as some would add, 'a *duty*'.[2] *Insurrection*, *conspiracy*, *treason*, every thing of that sort is accordingly here 'compassed and imagined':[3] *treason*, not precisely against the constitution indeed, but unquestionably against the despotism so lately built upon the ruins of it: *conspiracy*, though of a somewhat new complexion, corresponding to the novelty of the domination plotted against it:—conspiracy, *in* Parliament and *by* Parliament, with the Sovereign *de jure* at the head of it: conspiracy, the fruit of which would be, to engage the constitutional Ex-King to rebel and rise upon the despot,[4] to pluck the sceptre from his grasp, and to re-ascend in his place the too long 'deserted', not to say 'abdicated', throne.[5]

[1] i.e. 'its own place'.

[2] cf. the French Declaration of the Rights of Man and of the Citizen of 1793, Art. 35: 'When the government violates the rights of the people, insurrection is, for the people and for each portion of the people, the most sacred of rights and the most indispensable of duties.'

[3] Under the Treason Act of 1351 (25 Edw. III, stat. 5, c. 3), to 'compass or imagine the Death of our Lord the King, or of our Lady his Queen, or of their eldest Son and heir' was high treason.

[4] The sovereign *de jure* and Ex-King is George III and the despot is Pitt the Younger.

[5] On 28 January 1689 the House of Commons resolved, 'That King *James* the Second, having endeavoured to subvert the Constitution of this Kingdom, by breaking the Original Contract between King and People; and, by the Advice of Jesuits, and other wicked Persons, having violated the fundamental Laws; and having withdrawn himself out of the kingdom; has abdicated the Government; and that the Throne is thereby vacant' (see *Commons Journals*, x. 14). The House of Lords, having proposed the word 'deserted', accepted the word 'abdicated' on 6 February 1689 (see *Lords Journals*, xiv. 118–19). The assertion that James II had 'abdicated' was thereupon incorporated in the Bill of Rights of 1689.

Colonization Company Proposal:

being a

Proposal for the formation of a Joint-Stock Company

by the name of the Colonization Company

on an entirely new principle

intituled the Vicinity-maximizing

or

Dispersion-preventing principle[1]

[1] The present work is Bentham's response to the National Colonization Society's 'Proposal to His Majesty's Government for Founding a Colony on the Southern Coast of Australia', London, 1831. The Provisional Committee of the Society had first met on 23 March 1830, its members having been inspired by the 'systematic colonization' plan of Edward Gibbon Wakefield (1796–1862), political theorist and promoter of colonization. In *A Statement of the Principles and Objects of a proposed National Society for the cure and prevention of pauperism, by means of Systematic Colonization*, London, 1830, it had been indicated (p. 69) that the Society would seek government approval to raise an 'Emigration Fund', derived from the sale of colonial lands, to provide free passage for 'young pauper couples', thereby reducing poor-law expenditure. In May 1831 the Society submitted a proposal to the Colonial Office to establish a colony at Gulf St Vincent on the southern coast of Australia that would be overseen by a joint-stock company. Having been requested by the Colonial Office to develop and resubmit its proposal, the Society did so in August 1831, proposing that, in return for the Company's being granted a Royal Charter, its directors would bear the entire cost of establishing the colony. On 3 August 1831 the Committee of the Society approved the printing of its revised proposal (i.e. 'Proposal for Founding a Colony on the Southern Coast of Australia'), which was submitted to the Colonial Office on 25 August 1831 (see TNA, CO 13/1, fos. 55–6). For further details see the Editorial Introduction, pp. xcv–ciii above.

Preface

Of this institution, as of every other plan undertaken by a Joint-Stock Company, the commencement and the success depend upon persons of three different descriptions: in the *first* place, the persons whom it is proposed to induce to transfer their residence from England to the distant spot in Australasia: say, in two words, the proposed Colonists; in the *next* place, the persons associating for the purpose of causing them so to do—say the proposed Founders; in the *last* place, the Constituted Authorities on whose support they will have to depend for whatsoever it can be their hope to accomplish.

In the formation of their plan, the persons originally associating must have had in view, over and above, and in subordination to, the universal end—namely, the maximization of the happiness of the persons interested—some determinate specific end or ends in view.

On this occasion, as on every other, the persons at whose hands cooperation is looked for, must, ere they could bestow it, have had inducements adequate to the production of it.

For the accomplishment of those several ends respectively, if so it happens that they are accomplished, adequate *means* must have had place and been in operation.

Those same specific ends in view or objects—those same inducements—and those same means of accomplishment or effectuation, the proposers of this Establishment proceed to submitt to the consideration of all who may feel disposed to take it into consideration.

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[1] Bentham does not appear to have carried out his intention of composing four sections for Ch. III. For further details see the Editorial Introduction, pp. c–cii above.

[2] Bentham does not appear to have written any material for Ch. VIII.

Chapter I.

Special Ends in view

1. Transferring individuals, in an unlimited multitude, from a state of indigence to a state of affluence.

2. Affording to a great part of the remaining portion of the population of the Mother Country, relief, from the pressure of a state of continually encreasing indigence, from which they can not at present be relieved, but by a continually encreasing tax imposed upon the people of all degrees *above* the lowest in the scale of opulence.

3. Affording to the relatively opulent and tax-paying portion of the people of England, *immediate* relief, more or less considerable, from this pressure.

4. Affording to them a security against all future encrease of the existing pressure: a security which will not terminate, till the Australasian Continent contains a population as dense as the European.

5. Giving to the immigrants into Australasia not merely the means of existence, as above, but through means of education, the means of *well*-being in all time to come, as well in respect of the [body],[1] as in respect of the mind.

6. Giving, in that Colony, in a correspondent degree, encrease to the market for the produce of the Mother Country: thereby, in this same Mother Country, over and above prevention of substraction from, making positive addition to, the existing stock of the *matter of wealth*.

7. Giving to those same beneficial states of things, not merely a temporary, but a permanent, not to say perpetual, existence; an existence having no other termination than that which will be produced by a density of population in the Colony equal to that which at the time in question has place in the Mother Country.

8. Giving to the Stockholders, a reasonable, and it is hoped a constantly increasing, rate of interest and profit on the capital advanced by them by the purchase of their respective shares.

[1] MS 'mind'. The emendation follows the corresponding marginal summary: 'Giving to the Settlers not merely continuance of being, but *well-being*, bodily, and through education, mental.'

Chapter II.

Means of effectuation, primary, characteristic and distinctive—the Vicinity-maximizing or Dispersion-preventing principle

§ 1. *Import and use of this term*

Understand by this principle, that according to which maximization of *vicinity* will be made as between the spot granted to and occupied by each Colonist or say *Settler*; relation had to the aggregate of the spots, granted to and occupied by the Colonists which the grant finds already in existence.

Rule 1. Choose for the subject-matter of each grant after the first, a spot contiguous to some part of the land already granted or as near to the being contiguous as the nature of the case will admitt. Such may be the words of the rule to which allusion may be considered to be made by the mention of [the] Correspondent principle, *Vicinity-maximization* or *Dispersion-preventing principle*, as above.[a]

[a] ☞ Of the principle I should expect to find the propriety incontestably established. But the proof of it has been diffused and scattered through a variety of small publications;[1] and requires (it should seem) to be condensed, and placed—the whole of it—under this one head.

More, [as] will be immediately perceived, will be found the convenience from the having for the designation and communication of a state of things on which every thing depends a locution composed of no more than three words, all of them perfectly familiar to every body, by which the idea may be called up into the mind of any body and every body in its clearest state, instead of a multitude of different and more or less lengthy sentences or broken scraps of sentences in endless variety liable to present to different persons ideas more or less different. Logically speaking, it will afford to all persons interested, a common[?] subject of *predication*.

[1] As well as the National Colonization Society's 'Proposal for Founding a Colony on the Southern Coast of Australia', Bentham might have cited *A Statement of the Principles and Objects of a Proposed National Society, for the Cure and Prevention of Pauperism, by Means of Systematic Colonization*, p. 69, where it was stated that the proposed Society would 'establish a general system of Colonization, founded on the main principles of *Selection*, *Concentration*, *and the Sale of Waste Land, for the purposes of Emigration*'. Supportive articles appeared in *The Spectator*, edited by Robert Stephen Rintoul (1787–1858), a strong supporter of Wakefield's theory of colonization: see, for instance, 'State of the Country—the Untried Remedy', vol. iii (27 March 1830), p. 9, and 'New Plan of Colonization—Misapprehensions Corrected', vol. iii (10 April 1830), p. 8.

§ 2. *Dispersion—its disad[van]tageous effects*

Dispersion bears reference to the center of government, of defensive force, and of commercial intercourse.

Of its disadvantageous effects, examples are the following.

In general, of the evil from dispersion, the magnitude is as the distance between the one object and the other.

But the distance in question is susceptible of two diversifications: viz: the distance in question may be the distance: I. of the several individuals from the seat of government, as above: II. of two or more of the individuals in question from one another.[1]

I. Of evils, springing from and proportionate to distance of the individual in question from the seat of government, examples are the following—

1. Insecurity against damage to person and property from the hostility of the uncivilized aborigines.[2]

2. Insecurity against the like from disorderly Settlers.[3]

3. Distance from the only place at which material of subsistence and materials of instruments necessary to production and communication, or say conveyance, can be obtained; obtained—whether by purchase, hire, or borrowing.

4. Distance [from][4] the only place in which means of reparation for instruments of all sorts can be obtained:—as above.

5. Distance from the only place at which value for surplus produce in any shape can be obtained.

6. Distance from the only place at which intelligence of good or evil, present, past, or future probable, from any source, can be obtained.

7. Distance from the only place at which social intercourse at large, and the various and endless comforts that depend upon it, can be obtained.

8. Distance from the only place in which, in so far as the co-operation of other persons, other than the members of one's own family, can, for any purpose, on any terms, be obtained.

9. Distance from the only place at which medical advice or assistance can be obtained.

[1] Bentham does not go on specifically to discuss this second point.

[2] In the margin, Bentham has noted at this point: 'In Van Dieman's land it has been determined absolutely to extirpate the natives.' Bentham's allusion is to the so-called 'Black War' of 1824–31, the military and para-military campaign, conducted on behalf of the colonial government, which almost annihilated the Indigenous people of Van Diemen's Land, with the survivors eventually being rounded-up and removed to the Wybalenna settlement on Flinders Island.

[3] In the margin, Bentham has noted at this point: 'So of one another.
'[A]dd—foreign aggression.'

[4] MS 'at'.

10. Distance from the only place to which, for the purpose of obtaining *return* in any shape, produce, in any shape, can be conveyed.

11. Distance from the only place in which instruction or useful information in any shape can be obtained.

12. Distance from the only place in which amusement in any shape can be obtained.

13. Impossibility of obtaining loans of money on any terms: owing to the distance from the seat of judicature; from which alone can eventually be obtained the means of procuring repayment by seizure of effects.[1]

By vicinity of the settlers to one another, the evils of all, from distance on the part of all, from the only place from which any thing needful or desirable can be obtained, will of course receive alleviation from and in proportion to the number of those between which the vicinity has place, and the degree of the vicinity as between every two of the places of abode.

[1] In the margin, Bentham has noted at this point: 'Quarrels with aborigines.'

[Chapter III.

Means of effectuation, pecuniary and quasi-pecuniary]

Original Means of effectuation—Scene, *England*.

1. Formation of a Joint-Stock Company, by the name of the Colonization Society or Colonization Company. A certain number of individuals have agreed together to constitute themselves into a Joint-Stock Company; if, for that purpose, they can obtain, at the hands of Government, the necessary powers. Name of the instrument by which these powers are granted—*a Charter*.[1]

For the formation of it, a Charter from the Crown would be necessary.

2. Name of the spot proposed, a spot discovered by Capt. Flinders and by him named *Gulph Vincent*.[2]

Capital proposed to be raised £500,000.

Disposal of it, as follows—[3]

1. Paid to Government—to be employed by Government in defraying the expence of the transportation of persons consenting to be so dealt with on condition of their being provided for a certain length of time with the means of subsistence in consideration of the labour to be by them respectively employed, under the direction and for the benefit of their respective employers £125,000

[1] For the National Colonization Society's attempts to gain a Charter for the establishment of a colony in Australia in 1830–1 see p. 401 n. above and the Editorial Introduction, p. xcvii above.

[2] On 18 July 1801 Matthew Flinders (1774–1814), naval officer and hydrographer, had sailed from Portsmouth in command of HMS *Investigator*, having been commissioned to circumnavigate and chart the coastline of the Australian continent, a task which he had completed by June 1803. On 30 June 1802 HMS *Investigator* had reached a large inlet on the southern Australian coast, which Flinders named Gulf St Vincent in honour of one of the expedition's patrons John Jervis (1735–1823), first Earl St Vincent, naval officer and politician, First Lord of the Admiralty 1801–4. See Matthew Flinders, *A Voyage to Terra Australia; undertaken for the purpose of completing the discovery of that vast country, and prosecuted in the years 1801, 1802, and 1803, in His Majesty's Ship The Investigator, and subsequently in the armed vessel Porpoise and Cumberland schooner. With an account of the Shipwreck of the Porpoise, arrival of the Cumberland at Mauritius, and imprisonment of the Commander during six years and a half in that island*, 2 vols., London, 1814, i. 178–80.

[3] Bentham's account of the disposal of the capital follows the scheme outlined in the National Colonization Society's 'Proposal for Founding a Colony on the Southern Coast of Australia', pp. 8–9.

2. To be employed in loans made to small capitalists on condition of their employing the money in the expences of making[?] settlement in the Colony, and advancing for that purpose each of them a sum equal to the sum advanced to them by the Company	£125,000
3. To be employed in means of communication of all sorts: such as Roads, by land and water, Bridges, for the purpose of giving a factitious value to all lands in contiguity with them and near vicinity, to an indefinite extent	£250,000
	500,000

Chapter IV.

Means of effectuation, incitative: to the several parties whose cooperation is necessary or would be beneficial, inducements to take the several parts respectively desirous of them

§ 1. *Inducements to Shareholders and other Contributors*

In the appellation *other Contributors* is assumed the fact, that, on the part [of] persons, in number more or less considerable, would have place a disposition to contribute to the success of a plan by which so fair a promise is made of so immense and incalculable an accession to the happiness of mankind: a disposition to contribute to it according to the measure of their respective means and inclinations; but unaccompanied with both means and inclination as to the embarking in the enterprize a quantity of capital of the magnitude of the proposed share of £50.[1]

For the inducements to this description of persons, reference may be made to the objects set down, as above, in Ch. 1. under the head of *Special ends in view.*[2]

In these same objects may likewise be seen the inducements that may naturally[?] and reasonably be regarded as operating on the minds of the [non-Stockholders],[3] every item but the concluding one—namely | |.

To the purpose of giving any tolerably correct view of the inducements belonging to this head, an indispensable operation, or say task, will be the giving what in French Accountant language is called a *Compte simulé*—in English | |.[4]

[1] According to the National Colonization Society's 'Proposal for Founding a Colony on the Southern Coast of Australia', p. 8, the capital of the joint-stock company which founded the colony would be divided into shares of £50 each.

[2] See p. 407 above.

[3] MS 'Stockholders' appears to be a slip, since Bentham goes on to refer to the eighth point in Ch. 1, p. 407 above.

[4] In the margin, an unidentified writer has noted: 'Pro-forma Accountg.' The same writer has noted (though the note appears to be misplaced) in the margin of Ch. IV, § 2, pp. 416–19 below: 'Anglicé—for Compte simulé Simulated or Proforma accountg.' According to Samuel Clarke and John Williams, *The Cyclopædia of Commerce; comprising a Code of Commercial Law, Practice, and Information*, London, 1820, unpaginated, a *compte simulé* was 'a copy of the usual charges made on the sale of goods. Also, a pro forma statement of an account sales, stating the terms on which a broker or factor will undertake to sell goods'.

To form any such document lies not within the power [of], nor in the stock of information possessed by, the author of this page. All that is in his power—for help to conception, is the presenting to view a few items by way of examples.

I. Outlay, or say Expenditure.

£. s. d.

1. Freight from London or some other English Port to the place of Settlement in Australasia at £20 per head, making £40 per couple—for Couples . . . . . .
2. Journeys for d° to the place of embarkation . . . . . .
3. Subsistence of d° (in the shape of food, in rations) from the day of landing to that day twelvemonth[a] . . . . . .
4. Bedding for d° at { } per couple . . . . . .
5. Other houshold furniture: at { } per couple . . . . . .
6. Cloathing, if any allowed[b] . . . . . .
7. Medicines . . . . . .
8. Implements of husbandry . . . . . .
9. Implements of trade[c] . . . . . .
10. Expence of the several buildings to which commencement must be given at the first landing: for example—
11. 1. Habitations for the Company's functionaries . . . .
12. 2. Warehouses for the Company's Stores . . . . . .
13. 3. Habitations, some permanent, some temporary, for Settlers without capital[d] . . . . . .
14. 4. Habitations—some permanent, some temporary, for Settlers with capital . . . . . .

[a] N.B. Expenditure on the article of drink is here regarded as waste: no where will any landing be made in which there is not good water: all fermented liquor may be regarded as a needless, and dangerous, incumbrance.

[b] If any, it may perhaps be necessary or convenient to serve it out to them before embarkation.

[c] N.B. If, for their respective profit-seeking occupations, any of them have [been][1] employed in building, such as those of Carpenter, Bricklayer, Smith, &c., their respective tools &c. will be to be carried with them: and what they have not of their own, they must be supplied with by the Company.

[d] Quere will any and what employment be given to *Tents?* to Tents, as being portable?

[1] MS 'those'.

N.B. of all work in rare or other metals, either the article ready-made or the materials must be imported with the Colonists. For the wood-work, the place of settlement will, of course, for the greatest part, if not for the whole, be trusted to.

II. Return, or say Profit from the respective sources.

I. First source of profit looked to—produce of the sale proposed to be made of lands in lots. Number of acres in a lot, 80 or thereabouts—*minimum* price per acre, 5^{s}.[1] This gives for the minimum produce of each lot, £20.

Minimum of expected interest and profit together, say 5 per Cent. Upon the capital of £500,000, a year's interest at 5 per Cent is £25,000.

Number of lots which, to produce each year's interest, must have been sold in the course of the year is 1,250.

But if, of the £500,000, one fourth part, namely £125,000, is, as proposed, lent to Settlers with capital,[2] in that case, on the supposition that the interest at which it is lent is 5 per Cent, and that interest paid without deduction, one quarter of the £25,000, the above amount of interest, namely [£6,250],[3] will be obtained otherwise than by sale of land	£ 18,750
Lots of land to be sold in a year	975
Acres of land to be sold in a year	[78,000][4]

But the £250,000 which is proposed to be laid out in the purchase of labour and materials, employed on [. . . ?] improvements such as the necessary buildings, and the means of communication—such as roads, bridges if necessary, and *Canals*, and in so far as more economical than roads; and, if necessary and economical, improvement of the *harbour*—will not be laid out—the whole of it—in the course of one year.

[1] According to the National Colonization Society's 'Proposal for Founding a Colony on the Southern Coast of Australia', p. 6, land in the colony would be 'divided into lots of not less than 80 acres each', while according to ibid., p. 8, the minimum price of land per acre would be five shillings during the first year of the colony's existence, after which it would 'be raised to 7*s*. 6*d*. per acre, and subsequently by such steps as may be found convenient, until the price demanded for land shall be that which will ensure the cultivation of all land granted'.

[2] According to ibid., p. 9, a quarter of the proposed joint-stock company's capital of £500,000 would 'be reserved for advances to small capitalists who may be disposed to settle in the colony, either on the Company's land or on land purchased of the Government'.

[3] MS '£6,500'.

[4] MS '750,000' is a miscalculation. If 975 lots of land of 80 acres each were sold, the total number of acres sold would be 78,000.

II. Second source of profit looked to—produce of the land proposed to be kept in the hands of the Company, and put into and kept in cultivation by the labour of the Settlers without Capital.

III. As to the Settlers with capital, to each of whom it is proposed somewhere to make advances equal to the half or the whole of his capital if not more than £500[1]— in this instance, might it not be of use, in addition to or in lieu of loan of capital, instead of requiring of him money for the purchase of land, to let it to him on a rent, with power to purchase it at any time, on such or such conditions?

§ 2. *Settlers without capital—their inducements*[2]

1. During the Voyage—(average length of it about 4 months) board good in quality, and ample in quantity, with lodging for the several couples, in a manner as decent and comfortable, in respect of bedding during the night, and means of exercise and recreation in the day-time, as the nature of the situation will admitt.

2. At landing, during the first year, in return for such labour as shall be required at their hands, by the Company's Managers in the Colony, provisions, in the shape of *rations*—as the phrase is in the case of soldiers. In food and drink, what will the rations consist of?[a]

3. In addition to these rations, payment in money at the rate of | | per day.

4. As to Cloathing. What, if any, will be allowed to them by the Company, and on what terms?

5. So as to Houshold furniture. What storage room will be allowed to each couple for such as they have? What will be allowed in respect of each necessary article, to such as have it not?—and on what terms?

6. To each couple, in return for labour, as above, assurance of subsistence to the same value as at first, for so long as it chooses to serve. In the case of each such couple, as soon as it can obtain any better price for its labour, it is not only the expectation, but the desire, of the Company, that it should so do.[3]

[a] In the way of drink, can there be any need or use of any thing better than sweet water? For bread, they will have Sea-biscuit of course.

[1] The sum of £500 is not mentioned in this respect in the National Colonization Society's 'Proposal for Founding a Colony on the Southern Coast of Australia'.

[2] According to ibid., pp. 5–6, settlers with capital would be able to appropriate a quantity of land proportionate to the number of labourers whom they could afford to transport from Britain to the new colony. Such labourers constitute Bentham's 'settlers without capital'.

[3] In the margin, an unidentified writer has noted: 'Algoa Bay—ruinous to all concerned, notwithstanding Government patronage.' Under a government-sponsored scheme, in April 1820 the first of around 4,000 settlers arrived at Algoa Bay, in the Eastern Cape, followed by a further 1,000 who had paid their own way. The settlement was not a success: the land

7. Assurance of being taken care of in case of illness, and being provided for during life, in case of and in proportion to the loss of capacity for labour, by loss of limb, or the use of it.

8. To each married man, assurance of being able to purchase land, upon the terms here mentioned, as soon as, out of his savings, with the addition of what, if any thing, he has carried with him, he has made up the price set upon it.

9. Minimum (but that the ordinary) price, 5^{s} per acre. Minimum quantity of land (but that the ordinary quality), 80 acres. Thence, price of the whole lot about £20.[1]

10. Assurance of finding in the stores of the Company, at the first built town in the Colony, all requisite instruments of husbandry at fixt prices.

Observations.

The Company (it is supposed) will feel no difficulty as to the engaging to find perpetual employment for all such immigrants as choose to accept it. Not to speak of Buildings, for which skilled labour will, on the part of some of the workmen, be necessary, the roads and other means of communication will at all times afford an ample demand for ordinary labour.

II. *Labourers' Ulterior inducement.* Assurance of becoming proprietors of land: namely by purchase made of it, by the savings which it will be in their power to make; out of the surplus of the wages of their labour over and above what is necessary for the purchase of the means of their subsistence.

III. Third inducement, faculty of marriage. True it is that in England they can not be prevented from giving to themselves this enjoyment. But then it is on condition of their living in a sort of imprisonment in the Workhouse. In Cottages, the Parish authorities refuse to place them. 'Starve' (they say) 'or come and live in the Workhouse.'

Preparatory Period. By the Preparatory period understand the time during which the expected Labourers are subsistent upon rations: say one year.

IV. Ulterior inducement, a certain sum of money which it is prop[osed] to give to each over and above his or her rations: this

the settlers were meant to farm, on the Zuurveld of the Albany district, was unsuited to intensive agriculture, and they faced dearth, drought, and flooding; there were relatively few farmers among their number; and the land on which they had been settled was a frontier, having been taken by the British from the Xhosa peoples during the Fourth (1811–12) and Fifth (1818–19) Xhosa Wars. As a consequence, many of the settlers abandoned their land and took up employment in Grahamstown and other Eastern Cape settlements.

[1] See p. 415 n. above.

under the expectation that it will be saved up, to be employed in the purchase of land.

No: it may be said, instead of saving up this money to purchase land, they will, in a large proportion—no one can say in how large a proportion—lay it out in the means of intoxication.

Answer. In a certain proportion, yes. But by experience, this proportion is found to be extremely small: for the purchase of land, on the part of the great majority, the appetite, instead of being deficient, is found to be rather excessive. The case is—that for the most part emigrants are not [. . .?], but young men of a [. . .?] and enterprizing turn of mind.[1]

Settlers who, in the first instance, are not to have possession any one of them of any portion of land (with the exception perhaps of his own domicile)—but are to live[?] on the wages of their labour: wages to be paid to them by employers of a certain description (of whom presently), their sole means of subsistence.

But, except in so far as a [. . .?] is at hand, in which those who have the money will be sure of obtaining in it whatsoever things there are the possession and use of which is necessary for the continuation of their existence, money is of no value.

In the first instance, therefore, and for and during a certain length of time, in exchange for a man's labour, instead of any sum of money the amount of which may be engaged to be given to them when the time is ripe for it, these labouring settlers, or say settling labourers, must have the *money's worth*: in a word, day by day, a certain allotment each of them of the several *things* regarded as necessary to subsistence: in one word—and this word the customary one—rations.

To each individual, or rather to each couple of individuals—for an essential part of the proposal is that they shall go out no otherwise than in couples, and this without children (Children being dead, or not having had time enough to be *born*)[2]—say, then, to each couple, on each day, on condition that of each day[?], a certain proportion

[1] In the text, Bentham has noted at this point: 'N.B. £16 a head the price at which Shipmen offer to export Colonists from England: £20 will be given to them. Per Wakefield, 9 Aug. 1831.' Bentham presumably alludes to a communication of some sort from Wakefield of this date.

In the margin, an unidentified writer has noted: 'Much too little.'

[2] According to the National Colonization Society's 'Proposal for Founding a Colony on the Southern Coast of Australia', p. 6, immigrants brought to the colony were to 'consist entirely of young married or marriageable persons of both sexes in equal proportions'. Bentham may have had in mind the statement that the Society would endeavour to provide free passage for 'young pauper couples' in *Statement of Principles and Objects of a proposed National Society*, p. 70, where nothing is said concerning the children of such couples, though provision is promised for the emigration and apprenticeship of orphaned or destitute children.

of the four-and-twenty hours' labour, under the direction of their respective employer and paymaster, will have been performed by them respectively, a certain set of rations in lieu of money will be delivered: the quantities of the several sorts of things to be receipted in lieu of the correspondent sum of money being settled by previous agreement.

Observations.

It seems settled, as follows:

1. No Settler in a single state is to be accepted.
2. Nor any person in a state of Childhood.[1]
3. All Settlers shall go in married couples.
4. No couple shall be allowed to take with it any Child.
5. Consequently all the couples that are sent out should be either couples who have lost their children or couples who have not been married long enough to have any.
6. All this to be understood to have place so long as couples, in sufficient number, clear of such incumbrance, can be obtained.
7. In regard to each couple that has not been married long enough to have had a child, it will be to be considered whether it will be to be accepted, if it has been married for such a length of time, that the delivery of the wife during the voyage is to be expected. In such a situation, an occurrence of this sort can not but be productive of considerable embarassment.
8. It will also be to be considered whether any couple that has been married for such or such a length of time without ever having had a child is to be accepted?
9. The sort and quality of labour which will be required at the hands of the females, will it not require to be particularized?

§ 3. *Settlers with capital in hand—their inducements*

1. To each such Settler, advances, limited to £500, to be made to an amount not exceeding that of which he himself has proved himself to be in possession and has actually in the shape of Stock located in the Colony.[2]

2. Assurance of the existence of a quantity of stock in the Warehouses of the Colony in the Metropole, composed of the instruments of husbandry.

[1] As noted above, and contrary to Bentham's statement, eligible immigrants included 'young . . . marriageable persons', while nothing is said of children.

[2] See p. 416 above.

3. So of all other articles regarded as necessary.

4. Of all these several articles, lists should be printed with a specification of the several quantities of each.

4. Of the out-goings and in-comings of each sort of article, a regular account, open to all inspectors, should be kept at an Office for this purpose in the Colony.

5. Against engrossing, adequate precautions should be carefully taken. In the Mother Country, enactments for this purpose are generally speaking needless and pernicious. Not so in a Colony, at the distance of a four months' Voyage. Buying up the whole stock of this or that article, an astute capitalist might be able to screw up the price to a most oppressive amount.

6. Moreover, by false reports, if not obviated, the requisite supply might be kept back from being sent by traders at large from the Mother Country: and by this means, in the Colony, the scarcity might be kept up and encreased.

7. Assurance of the existence of a Newspaper to be set up immediately on the landing: with such assurance as can be provided for the *liberty of the press*:—and *that*—not merely against the Governor; but also as against the Editor, supposing him to edit the paper on his own account, and without being in a state of known dependence, under the Governor. Provision against this abuse would be matter of no small difficulty, and to be rendered effectual would probably be found to require arrangements running into considerable detail.

§ 4. *Government—its inducements*

Under the head of *Special ends &c.* (as per Ch. [I])[1] have been brought to view those objects which, it may be reasonably presumed, will form no inconsiderable part of the inducements by which the accession of a portion more or less considerable of the Members of the Company will have been produced: those objects are neither more nor less than addition made to the sum of human happiness in so many distinguishable shapes. The accustomed forms of curtesy require that these same beneficial results should be considered as the objects the consideration of which will constitute so many inducements by which the several members will be led to give their concurrence to the institution: and to an extent more or less considerable, no doubt can be entertained but that this supposition will be conformable to the truth.

So far as this is the case, the inducements on the part of Government will be identical with those which have place on the part of such

[1] MS 'II'. See p. 407 above.

contributors to the expence as are not Stockholders, as also with the inducements on the part of those who are Stockholders, with the single exception of the article of profit, by which the inducements of Stockholders stand distinguished from the inducements of such contributors as are not Stockholders.

So much as to the question—what may and should be expected to be the inducements which ought to be looked to as [those] by which, if at all, the co-operation of Government [might be secured]. Now as to those which ought not. What has been said under the former of these two heads may by many be regarded as not worth the mention: not so what now comes to be said under the latter of these two heads.

That, then, which will not be among the inducements on the part of Government will be—in one word—*patronage*: which being (in the mathematical sense of the word) *given*, given as a fundamental article belonging to Ch. VI., intituled Proposed Management and Government in the Colony.[1]

On this occasion, a single word *Liberia* speaks Volumes. In the foundation of Liberia, no expence has there been to the Mother Country: no patronage for the profit of any of its rulers.[2]

Here, then, will be a test—an *experimentum crucis*—as to the ends in view by which the conduct of his Britannic Majesty's advisers in relation to the here proposed plan of colonization will have been determined: if they be those which are herein above supposed, their cooperation will not be afforded but on condition of their taking the government of the Colony, whatever it be, into their own hands: for in that way only will it be possible for them to extract from it the sweets of *patronage*: if they be those which in the case of *Liberia* had place, Government will not intermeddle with the business of Government, but leave the matter to be settled between Founders and Settlers as they can agree: as to which last mentioned state of things, see Ch. VI. Proposed Management and Government in the Colony.[3]

[1] See p. 427 below.

[2] In the margin, an unidentified writer has noted at this point: '*Felicitania. Felicia.*'

The American Colonization Society, which advocated the separation of the races, had been established by evangelicals who supported the abolition of slavery and by slaveholders fearful of the presence of freed slaves. The Society promoted manumission and funded the settlement of such freed slaves, together with other free African Americans, in West Africa. In 1821 the Society had established a private colony which in 1824 had been named Liberia.

[3] See p. 427 below.

Chapter V.

Constitution of the Company and the Colony considered in connection

§ 1. *Difficulty suggested*

Of *Government,* the all-comprehensive end in view ought to be—and is here supposed to be—the greatest happiness of all the inhabitants. Of Management, the end in view on the part of the Company, will of course be the greatest profit—or say benefit in a pecuniary shape—to the Company.

But (asks the philanthroper), between such objects, ought there to be any competition? and, on the supposition of a contrariety in any particular, is it endurable that matters should be so ordered, as that to the happiness—the interest—of a handful of comparatively rich individuals on one part of the globe, the happiness of countless and ever-encreasing multitudes on the opposite part of the globe should be sacrificed?

To this question, the answer is as follows. But for the few in question, the many, with whatsoever happiness they will have, or are susceptible of, would not be in existence: of whatsoever portion of their happiness the sacrifice is necessary to the existence of the remainder, provided there be but a remainder, at the sacrifice of this portion they need not repine: they should not, any more than does the tradesman at the price paid by him for the article of which he makes his profit.

But, the more closely the subject is looked into, the less will be seen to be the sacrifice which on this occasion it will be necessary for the inhabitants of the Colony to submitt to, or the Company to exact.

So much as to what it is to be *wished* should have place. So much as to what *ought* to have place. But now, as to what *will* have place.

Whatsoever be the capital proposed by the Shareholders to be advanced by these same Shareholders has (suppose) been advanced. But the repayment of the sum advanced, with interest for the time during which it has been advanced—this repayment, or the continuance of the interest upon it until the repayment, as above, shall have been compleated—whence is it to come?

Aye, there's the rub:[1] and this same rub—it concerns all intended Shareholders to be prepared *for*—not to say *against*.

[1] *Hamlet*, III. i. 73.

Sources of profit, as above,[1] two: 1. Sale of the lands—in each year, sale of as large a quantity of the as yet unsold land as, at a price not below the minimum pitched upon, can, within the compass of that same year, be sold. 2. Net profit on the produce of the quantity of land kept in the hands of the Company: under the management of the functionaries of the several descriptions maintained and paid by the Company in the Colony: the Company being, in this way, one great Absentee.

For and during a certain length of time, this state of things will continue itself without difficulty. But meantime like the people of Liberia, the people of New Colonia (Settlers avaunt! Say not, instead of New Colonia, Utopia!) the people of New Colonia keep governing themselves *à merveilles*. But sooner [or later]—in the Legislative Assembly of New Colonia—up springs an Honorable Member and says, 'Here are we, sitting upon our sitting parts, while the Agents of those Absentees, whom we never saw or ever shall see—whom we know nothing of, nor have any need to care about—keep transmitting to them the purchase money of those lands which are so close to ours; while we are loaded all this while with the expence of that Government but for which those same lands would be uninhabited, unoccupied and nothing worth. True it is that our government is as cheap an one as it is possible for a government to be. Still, however, something it does cost us—that is to say {£ | | }. Yes, and something it must continue to cost us, and that something, so long as our population continues to encrease, must, along with it, continue to encrease. This same annual produce of sale—why, then, should we continue to make a gift of it to those same Absentees by whom no service in return for it is rendered—instead of making payment of it to those functionaries of ours by whom it is that whatsoever public service has place is rendered.'

A Motion to this effect being made, what should hinder Honorable Assembly from adopting it and passing it into a law? and *mutatis mutandis*, the same supposition may serve for the other source of profit above alluded to—and, in a word, for all sources of profit, be there any, payable at the expence of the Colony in Australasia to the Universal Absentee in London.

From all embarassment from this source, the Colony of Liberia stands exempt: for to no Joint-Stock Company does Liberia stand indebted for her existence.

So, though owing to a different cause, does the United Company of Merchants trading to the East Indies:[2] for those same Merchants,

[1] See pp. 415–16 above.

[2] i.e. the East India Company.

with their 60 millions of subjects and 40 millions of dependents,[1] have hitherto always been, and howsoever it may be, those same subjects and dependents will always continue to be, subjects to the British Empire.

When, to this effect, news arrives at the Colonization Society's House in London, what is it that will be done? Fit out a fleet and army, to send to the Rebels in Australasia and bring them to reason? and, to that end, conquer them? Yes: would quite as soon conquered be the Moon.

§ 2. *Remedy proposed*

Thus stands the difficulty. But never does the author of these pages start a difficulty, without using his best endeav[our] towards the removal of it.

For the keeping of society together—in a word, for carrying on all the operations of government necessary to the production of that effect, a Dictatorship, to continue provisionally for a certain length of time—to terminate, say, at the end of {4} years or earlier if, of the male inhabitants, a certain number, by their signatures, join in a Petition to the Dictator to that effect—has been proposed.[2] Suppose this proposition adopted—as to this, see above Ch. V.[3] When the Dictator resigns his Office, up stands the provisional Constitution which the Company in London has ordained to be in that event, and on that occasion, in force. As to this, see above Ch. V.

The Dictator (suppose) has been named by the Company. For his reward, receivable at the expiration of his Office, he looks to a pension for life to be granted to him by the Company. The Colonial Legislature, for its existence, depends on an Act, to the validity of which the assent of the Dictator, and thereupon his abdication, is necessary. By this Act, the Legislature acknowledges a debt as owing by the whole population of the Colony, and by the Members of the Legislature, to the Company in London: for which debt, naming the

[1] According to Walter Hamilton, *A Geographical, Statistical, and Historical Description of Hindostan, and the adjacent countries*, 2 vols., London, 1820, i. p. xxxvii, there were 83 m. people under British rule in India and a further 40 m. under British allies and tributaries. The figure of 60 m. was, however, often given for the population of British India: see, for instance, T.R. Malthus, *Statements respecting the East-India College, with an Appeal to Facts, in Refutation of the Charges lately brought against it in the Court of Proprietors*, London, 1817, pp. 1, 20, 62, 99.

[2] According to the National Colonization Society's 'Proposal for Founding a Colony on the Southern Coast of Australia', pp. 16–17, 'supreme power' in the colony would be initially placed in a Governor appointed by the Crown on the nomination of the Company, but the provisional government of the Governor would end when the male population of the colony reached 10,000. No further provision was made for ending the provisional government.

[3] Both here and in the cross-reference below, Bentham may have had in mind a discussion he intended to insert in Ch. VI, p. 427 below.

amount of it, they hold themselves responsible, with interest upon it at so much per Cent, with power of redeeming it, part by part, or at any time the whole, on the reimbursement of the principal sum, with such addition as shall have been thought reasonable, and accordingly pre-appointed.

Such being the conditions, on the contemplation of which, the inhabitants of the Colony, without any exception, and of their own free choice, will have become such, it seems not too much to expect at the hands of human nature in its present state of civilization, that, from a combination of good faith and gratitude, they should voluntarily receive their accomplishment.

But, upon any comparatively extensive sacrifice of personal and particular to public and general interest—weak is that mind, deficient in information and judgment, that places an exclusive [reliance].[1] A guarantee, therefore, were it not only for the sake of public discussion, to bring to bear upon the subject the force of public opinion should be provided: and for a service thus beneficial and dignified, the Government of the Mother Country, whatsoever were the form of that same Government, might surely, without impropriety, be looked to.

Nor would such a guarantee be an empty name. Undertake the conquest of the Colony no more would this same Government—if either the members of it, or the subjects of it, were in their senses—any more than the Members of the Company. But that which it could do, and might reasonably be expected to do, is—in case of bad faith by infraction of the agreement, annoyance of the infractor's trade. Trade, in this state of things, the Colony must have—trade with Europe at least—with or without any of the other quarters of the globe one or more of them, or, of all the comforts which depend upon such trade, the population of the Colony would have to remain self-deprived.

From losses from this source, the supposed perfidious Colonies, were it not for an obvious and unexceptionable precaution and correspondent provision, [would] make their escape. Against the ships of the Mother Country, they would close their ports: to those of other nations, they would leave open those same ports. This provision is—the declaring the ports of the refractory Colony in a state of blockade: or (to speak with the unaccustomed plainness, instead of the accustomed figurativeness—the convenient and usual resort of injustice) the government of the Mother Country would send vessels of war to make prize of all such foreign vessels.

Between the Government of the Mother Country—the functionaries by whose exertions the prize was made, and the injured Company, for

[1] MS 'alliance' appears to be a slip.

compensation to whom this remedy was applied, the proceeds of the capture might be divided.

Against injury from all foreign governments and their respective subjects, the Government of every Country, by the acknowledgment of all, stands bound to apply remedy, as far as lies in its power. Against the application of the remedy here in question, no reasonable objection could accordingly be made either by the subjects of the Mother Country or by the Government or Subjects of any other State.

Chapter VI.

Company's Constitution, what

☞ See how far Constitutional Code Ch. VI. Legislature is applicable here: in particular, Legislation Committee.[1]

[1] See *Constitutional Code*, Vol. I, ed. F. Rosen and J.H. Burns, Oxford, 1983 (*CW*), Ch. VI, pp. 41–133, and in particular the 'Continuation Committee' described at § 24, pp. 67–72.

Chapter VII.

Colonial Constitution

§ 1. *What it can not be*

The [. . .?] period passed—the Dictatorship at an end—comes now the question, what shall our Colonists have for a Government?

Shall they have a King?—Alas, no. Why not? Even because it would be impossible. What is a King without a Crown? what is a Crown, without its dignity? What is such dignity made of, but the matter of wealth—say in one word, *money*? And the money—where is it to be had? where is it to be found? Alas!—no where.

Not that public happiness—not that the happiness of the whole population of the Country—compared with the happiness of a Monarch, the splendour of his Crown and its dignity, is worth a straw. But of this same dignity, the sole and indispensable matter is not to be had. Of the rejection thus put upon the Monarchical form of government, what, then, is the cause? Not choice: but impossibility: impossibility invincible. For an unlimited number of years, were the produce of the whole surplus labour of the Colony, over and above what would be absolutely necessary to keep them in a state capable of existing[?], sanctified to this one purpose, still would it remain most glaringly and deplorably insufficient.

King or no King—shall it be—shall there be a House of Lords? Alas! nor that neither. Reasons still the same. Impossibility—utter impossibility. Cause of the impossibility—not absolutely identical: still closely analogous.

House of Lords without King.—Into the head [of] no mortal who has been in admiration of matchless Constitution would any such unprecedented conceit gain entrance. No: not even the *omnium Whiggium Whiggissimus*.[1]

House of Lords without King would be moon without sun, wherewith should she be illuminated.

What can not be done must be left undone. A truism this: a maxim congenial to the wisdom of either House fit to be drawn out of a bag with the wisdom of our ancestors or the first principle of justice.[2]—Nay: or even with every principle of justice. Hear him—hear him! the well deserved reward of it.

[1] i.e. 'the most Whiggish of all Whigs'.

[2] For 'The Ancestor-Worshipper's Argument—or Chinese Argument—or Argument in the Chinese Taste' see *The Book of Fallacies*, ed. P. Schofield, Oxford, 2015 (*CW*), pp. 166–78.

§ 2. *What it may be*

Making virtue of necessity? No: not making virtue of necessity—for out of such necessity, how can any such thing as virtue be made? but making wry faces—when faces of sufficient wriness and in sufficient number have been made—as a dog to his vomit[1]—we [. . .?] to the *Chimæra* of chimæras[2]—a Commonwealth. This or nothing being the option, let us try whether we can not get the better of our disgust, and, if we succeed, sit down quietly and look the Chimæra in the face.

Louis Philippe[3]—after recognizing them in such their quality—has treated with three of these monsters at once—Anglo-American United States, Hayte and Colombia:[4] one of them composed of a parcel of blacks, one other half-and-half—half of Devil's color, half of Christian's color—a mongrel beast in the composition of which ugliness is enhanced by impurity of mixture.

Supported by the applause of the Deputies of his people—worthy offspring of his Charter[5]—Louis Philippe has just been seen treating *with* no fewer than three of them all at once. What should hinder us from treating *of* two of them—one after another.

Enter first the Constitution of the United States. In so far as a chimæra can be said to possess existence—in so far as a self-contradictory proposition can with truth be said to be a truism—this chimæra is actually in existence: and the proof is—that Louis Philippe acknowledges himself to have been yet[?] and to be in treaty with it.

True intent—that as to *happiness*—if that were a thing worth talking about, or worth so much as thinking about, no such happiness for our Colony could we hope for from that Constitution as is enjoyed by the Russians, by the Portugueze.[6] No, nor one as that which for so many centuries was enjoyed by the subjects of that Commonwealth under

[1] Proverbs 26: 11.

[2] MS alt. 'the [. . .?] Chimæra'.

[3] After the revolution of July 1830 and the overthrow of Charles X (1757–1836), King of France 1824–30, Louis Philippe I (1773–1850), Duke of Orléans, reigned as King of the French until he abdicated following the revolution of February 1848.

[4] The Franco-American Treaty of 1831 settled claims for reparations for damage done to American shipping during the course of the Napoleonic Wars; a Franco-Haitian convention was concluded on 2 April 1831 by the Haitian mission to Paris (though the Haitian government subsequently refused to ratify it); and a Provisional Convention of Friendship, Commerce, and Navigation between France and the Republic of New Granada was later concluded in Bogotá on 14 November 1832, though negotiations were underway at the time Bentham was writing.

[5] At his coronation on 9 August 1830, Louis Philippe swore to uphold the Constitutional Charter which had been imposed upon him as a condition of his becoming King of the French.

[6] Bentham's allusion may be to restrictions on press freedom under the absolute monarchies of Russia and Portugal.

which universal silence as to topics most interesting to mankind was clung to as the best and purest instrument of universal security.[1]

No: such plebeian—such vulgar—happiness as is possessed by the people of the land of Yankees (a sort of bad imitation of [. . .?]) is the sort of happiness which the population of our Colony (for so has it now been demonstrated) will be reduced to take up with. Here then is one option.

The other is—not simply a chimæra—but the very chimæra of chimæras—a shadow of a shadow.

It may be seen—the fundamental principles and substance of it may be seen—in M^r^ Bentham's Parliamentary Reform Bill, the matter of which is referred to and engrafted in Vol. I. of his Constitutional Code.[2] Of the matter in that work brought to view, to render it applicable to the circumstances of our Colony, modifications of detail will, of course, be necessary: but of these modifications, the principles will not be to seek: they will be found already there.

Look now to the two chimæras—the *actual* and the *potential*—the *actually existing* and the *potentially existing*. See what is to be said on behalf of each.

In the first place, look to the Second Chamber—in that may be seen the great bone of contention. The actual Chimæra has a Second Chamber—the Senate: the potential has none. But the United States Federal Government works well: and the Senate is part and parcel of that government: ergo the Senate works well.[3] For those who are not used to thinking, this is good Parliamentary logic: for them, the conclusion is a legitimate one.

Not having time for invention, the founders of the United States Constitution went to work by copying what they saw. In the English cons[ti]tution they beheld liberty (for by this name was Good Government christened) in her cradle.

In this cradle, instead of a *doll* was a toy called a Second Chamber—the House of Lords. Lords they would not have: for the sound was offensive to their eyes and to their ears. But a Second Chamber

[1] Bentham perhaps had in mind attempts by Roman Emperors to silence criticism. Augustus (63 BC–AD 14), first Roman Emperor, for instance, attempted to stem a flood of anonymous and pseudonymous defamatory pamphlets by outlawing them: see Suetonius, *De vita Caesarum*, II. lv.

[2] i.e. *Bentham's Radical Reform Bill, with Extracts from the Reasons*, London, 1819 (Bowring, iii. 558–97), a detailed parliamentary bill instituting universal manhood suffrage, annual parliaments, and the secret ballot, which he intended to incorporate into his Constitutional Code as the Election Code: see *Constitutional Code*, I (*CW*), Ch. VI, §§ 4–17, p. 48.

[3] For Bentham's criticism of second legislative chambers, including the adoption of the Senate in the United States Constitution, see, for instance, 'Economy as applied to Office', Ch. 14, in *First Principles preparatory to Constitutional Code*, ed. P. Schofield, Oxford, 1989 (*CW*), pp. 101–12.

presented no such cause of disgust: in their minds, with the idea of a Senate stood associated, by etymology and actual Roman history, the idea of wisdom.

Thus, then, it is as between the actual chimæra and the potential chimæra, precedent is what the actual chimæra has on its side. *Precedent* is a substitute, and to the great mass of mankind a most commodious substitute, to thought. It is like the quondam placarded *washing-machines*. It saves time: saves labour: saves every thing that a man, in particular a man without honesty, knowledge or judgment—would be glad to save.[1]

Under the guidance of precedent, led by instinct and authority, with his hands and his thoughts in his pocket, man follows man, as dog follows fox, sheep sheep, and goose goose.

Of a Second Chamber, howsoever constituted, bad effects, several and great; good effects, none: demonstrated stands this, in Bentham's Letter on this subject to his fellow-citizens of France.[2]

In the Senate—Second Chamber of the United States Federal Legislature, the Congress, to a share in Legislative power is added functions belonging to the two other departments of Government—the administrative and the judiciary.[3] Pure would be the evil—pure of all good—the effects of the share of the legislative power, if it had none in any other: by the share in the administrative, the evil is doubled; by the share in the judicial, trebled.

True it is—that to set against these evil effects in the peculiar circumstances of that federal United States, there is one good effect: namely, lessening the disadvantageous condition under which the constituencies of the smaller States are placed by the comparative smallness of the number of their representatives and consequently Votes as compared with the number of those possessed by the larger states.[4] But, to the case of our Australasian Colony, that one good

[1] Bentham no doubt had in mind something akin to the illustrated advertisement for Edward Beetham's 'Royal Patent Washing Mill', which claimed that the machines were '*so saving, that for* Five Shillings *they will wash as much as will cost* One Guinea *in the common Mode*': see the anonymous *Observations on the Utility of Patents, and on the Sentiments of Lord Kenyon Respecting that Subject. Including Free Remarks on Mr. Beetham's Patent Washing Mills; and Hints to Those Who Solicit for Patents*, London, 1791, plate between pp. 36–7.

[2] *Jeremy Bentham to his fellow-citizens of France, on Houses of Peers and Senates*, London, 1830 (Bowring, iv. 419–50). Bentham had been made an honorary citizen by the National Assembly on 26 August 1792.

[3] Bentham perhaps had in mind Article II, § 2 of the Constitution of the United States, whereby the President was required to obtain the agreement of the Senate in the making of treaties and in the appointment of various officials, including ambassadors and judges of the Supreme Court, and Article I, § 3, whereby the Senate was given the sole power to try impeachments.

[4] According to Article I, § 3 of the Constitution of the United States, each state was to elect two senators.

effect has no application. No federal Union: no such complication. Simplicity, that almost universally so desirable a property, is in the number of its attributes.

APPENDIX.
EDWARD GIBBON WAKEFIELD ON THE COLONIZATION SOCIETY'S PLAN

E. Gibbon Wakefield on the Colonization Society's Plan, 23 Aug. 1831[1]

The way to consider the question of *Profits* seems to be by ascertaining the two following points:

1st. The circumstances which give a value to land.

2nd. The degree in which it is probable those circumstances will apply to the land of this Company.

First. The value of land is created altogether by *Competition*. The degree of value depends wholly on the degree of competition. Now, on what depends the degree of competition? Plainly the degree of competition is governed *by the proportion of people to land*. This is so plain that I am unwilling to dwell on it.

Secondly. Is it probable that the degree of competition which gives considerable value will take place in this instance? The degree of Competition will depend on the proportion of people to land. Now the proportion of people to land in this Colony will be wholly governed by the *Price* which may be required by the State for all new land. Upon this point the whole Question turns. If the price of new land be such as to make the proportion of people to land as 1 to 100 acres, land generally will be of little value—if, on the contrary, a 5 times higher price render the proportion of people to land as 1 to 20 acres, land generally will bear a considerable value. It is on this account that I assert—what to those who have not reflected on the subject must look like a paradox—viz. that the profits of the Company will be high if they pay a high price for their land and low if they pay a low price. In order that Colonization, or in other words the acquisition of waste land and the conduct of Emigration for peopleing such land—should be a profitable employment of capital, it is necessary to preserve a due proportion between people and land. This can be done only by the price required for all waste land. If the price be not high enough for the due proportion of people to land, the speculation will fail—if it be high enough, the speculation must succeed.

In the above remarks nothing has been said of certain peculiar advantages which the Company will enjoy. What goes before relates

[1] The heading is in Bentham's hand. The remainder of the text is in Wakefield's hand. For further details see the Editorial Introduction, p. cii above.

to *all* purchasers of waste land—this Company will acquire its land under circumstances peculiarly favorable to profit.

1st. It will have the first choice of situation, and will of course select those spots on which *Competition*—which determines value—is likely first to arise.

2nd. On its grant will be placed the seat of government, the principal sea-port and the centre of Commerce, circumstances tending beyond all others to create *competition* for land.

3rd. It is proposed that the Company, as well as other settlers during the first year, should pay less than the due price for land. As, for example, suppose the proper price for creating a due proportion between people and land to be 1£ per acre, the Company will pay only 10/s. per acre. If so, for every 1,000 acres obtained by the Company, £500 would be spent on the immigration of young couples; whereas for all grants after the first year, twice as much per acre would be spent in immigration for every acre granted. After the first year, no land would be obtainable for less than £1 per acre—*all* land therefore would be worth that sum *at least*. If the Company's land were 200,000 acres, and they had paid but £100,000 for the grant, they might sell for at least £200,000, giving a profit *at the least* of £100,000.

On all these grounds it appears to me that the profits of the Company would be assured. But every thing depends on the State price for waste land, which will determine the number of emigrants for every square mile granted, which will regulate the proportion of people to land, which will determine the degree of competition for land, on which depends value, on which will rest the profits of the Company.

PANOPTICON VERSUS NEW SOUTH WALES (1812) COLLATION

The collation prints the variants between the 1802–3 editions of 'Letter to Lord Pelham', 'Second Letter to Lord Pelham', and 'A Plea for the Constitution', on which the present edition is based, and the 1812 published edition of *Panopticon versus New South Wales*. These variants are restricted to the 'Circular. To the Lord Chancellor and the Judges' and the first two pages of 'Letter to Lord Pelham'. It appears that the remainder of *Panopticon versus New South Wales* consisted of the pages printed in 1802–3.

69, *omits* CIRCULAR . . . JEREMY BENTHAM

71, *adds* PANOPTICON *VERSUS* NEW SOUTH WALES: OR, THE PANOPTICON PENITENTIARY SYSTEM, AND THE PENAL COLONIZATION SYSTEM, COMPARED.

CONTAINING, 1. TWO LETTERS to LORD PELHAM, SECRETARY OF STATE, Comparing the two Systems on the Ground of *Expediency*. 2. PLEA for the CONSTITUTION: Representing the *Illegalities* involved in the Penal Colonization System.—See the separate Title-Page. Anno 1803, printed: now first published.

⁂ In June, 1811, this Work, together with three others, by the same Author, relative to the Management of Convicts, or other persons maintained at the Public charge, having been laid upon the Table of the HOUSE of COMMONS Committee on Penitentiary Houses, is referred to in the Appendix to their Report, of that same date.

By JEREMY BENTHAM, of *Lincoln's-Inn*, Esq.

Sold by ROBERT BALDWIN, Paternoster-Row; and JAMES RIDGWAY, Piccadilly. Price FIVE SHILLINGS. 1812.

71, *omits*	LETTER TO LORD PELHAM, &c. &c. &c. GIVING A COMPARATIVE VIEW OF THE SYSTEM OF PENAL COLONIZATION IN NEW SOUTH WALES, AND THE HOME PENITENTIARY SYSTEM, *Prescribed by two Acts of Parliament of the Years* 1794 & 1799.
adds	*PANOPTICON* VERSUS NEW SOUTH WALES, *&c.* IN *A LETTER* TO THE RIGHT HONOURABLE THE LORD PELHAM, *&c. &c. &c.*
71, 15–16 *omits*	The business of it was—
adds	Destined
71, 18	plan, that has
71, 18	solicitation
71, 19	Parliament; (the second time,
71, 20	Committee on Finance
71, 20	it)
72, 1–3 *omits*	—to exhibit the considerations, by which the disposition at length expressed in regard to the relinquishment of the plan
adds	the history had advanced to that stage, in which for the first time a disposition to '*relinquish*' the plan,
72, 4	drawn,
72, 5–13 *omits*	it) had at length . . . conclusion, when having,
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Note. The following is a unified index that refers to the texts of all the works included in this volume, without identifying the particular work in question. Quotations from authors other than Bentham have in general not been indexed, nor has Edward Gibbon Wakefield's comment on the Colonization Society's Plan at pp. 435–6 above.

References to notes and to Bentham's text reproduced in editorial footnotes are given by means of the page number(s) followed by the letter 'n.'

The symbol 'v.' is used to indicate 'as distinct from' or 'as opposed to'. New South Wales is abbreviated to NSW.

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The present edition of *Panopticon versus New South Wales and other writings on Australia* consists of fragmentary comments headed 'New Wales', dating from 1791; a compilation of material sent to William Wilberforce in August 1802; three 'Letters to Lord Pelham' and 'A Plea for the Constitution', written in 1802–3; and 'Colonization Company Proposal', written in August 1831. Of this material, Bentham printed and published the first two 'Letters to Lord Pelham' and 'A Plea for the Constitution', but the remainder is published here for the first time. These writings, with the exception of 'Colonization Company Proposal', are intimately linked with Bentham's panopticon penitentiary scheme, which he regarded as an immeasurably superior alternative to criminal transportation, the prison hulks, and English gaols in terms of its effectiveness in achieving the ends of punishment. He argued, moreover, that there was no adequate legal basis for the authority exercised by the Governor of New South Wales. In contrast to his opposition to New South Wales, Bentham later composed 'Colonization Company Proposal' in support of a scheme proposed by the National Colonization Society to establish a colony of free settlers in southern Australia. He advocated the 'vicinity-maximizing principle', whereby plots of land would be sold in an orderly fashion radiating from the main settlement, and suggested that, within a few years, the government of the colony should be transformed into a representative democracy.

The Collected Works of Jeremy Bentham

The new critical edition of the works and correspondence of Jeremy Bentham (1748–1832) is being prepared and published under the supervision of the Bentham Committee of University College London. In spite of his importance as jurist, philosopher, and social scientist, and leader of the utilitarian reformers, the only previous edition of his works was a poorly edited and incomplete one brought out within a decade or so of his death. The overall plan and principles of this edition are set out in the General Preface to *The Correspondence of Jeremy Bentham*, vol. 1 (Athlone Press; reissued by UCL Press), which was the first volume of the *Collected Works* to be published.

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