

# 'The evacuation of that scene of wickedness and wretchedness': Jeremy Bentham, the panopticon and New South Wales, 1802-1803<sup>1</sup>

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The reputation of the utilitarian philosopher and reformer, Jeremy Bentham, as one of the foundational critics of convict transportation to New South Wales is well recognised.<sup>2</sup> During the nineteenth century, as John Gascoigne notes, 'the advocates and critics of transportation ... inevitably tended to couch their arguments against a Benthamite background'.<sup>3</sup> That background includes Bentham's three landmark works — two 'Letters to Lord Pelham' and 'A Plea for the Constitution'. While these were expressions of his philosophical objections to both convict transportation and the penal colony of New South Wales, they were also products of his fury at the abandonment by the British government of his panopticon penitentiary scheme. Between 1791, when Bentham offered the panopticon to the Pitt administration, and June 1803 when the scheme was effectively killed off by the Addington administration, Bentham's scheme was, in his view, undermined by wilful delay and obstruction on the part of ministers and their underlings, who privately conspired to kill the panopticon despite its construction being twice authorised by statute.<sup>4</sup> By January 1802 Bentham had more or less accepted defeat. He therefore turned to the discussion and exposure of the government's 'Pretences for relinquishment' of the panopticon, one of which was the recent 'improved State of the Colony of New South

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<sup>2</sup> In particular see R. V. Jackson's articles, cited below, as well as 'Bentham's Penal Theory in Action: The Case Against New South Wales', *Utilitas*, Vol. 1, No. 2, 1989, pp. 226–41; 'Theory and Evidence: Bentham, Collins, and the New South Wales Penal Settlement', *Australian Journal of Politics and History*, Vol. 39, No. 3, 1993, pp. 318–29.

<sup>3</sup> J. Gascoigne with P. Curthoys, *The Enlightenment and the Origins of European Australia*, Cambridge, 2002, pp. 125–126.

<sup>4</sup> The 1794 Penitentiary Act authorized the construction of a panopticon, and the Appropriation Act of 1799 granted Bentham £36,000 towards it.

Wales'.<sup>5</sup> Bentham therefore set out, not just to undermine the case for transportation and the penal colony, but to comprehensively catalogue what he considered to be the corruption and deliberate non-functioning of government at the turn of the nineteenth century.

Demoralized by his decade-long experience of lobbying the government on behalf of the panopticon, writing about New South Wales seemed to energise the otherwise gloomy Bentham, as he sensed a genuine opportunity to prevent the otherwise seemingly inevitable abandonment by the government of the panopticon. In a letter of August 1802 to his younger brother Samuel, he described how, by exposing the illegalities of the colony, he would 'have it known in every ginshop' that New South Wales was 'the true Bastile and the oppressions exercised in it some hundred times as great as those exercised in the Cold Bath Fields Bastile'.<sup>6</sup> Yet, notwithstanding his boasts, Bentham also expressed concern that the 'natural consequence' of making public his 'discoveries' about New South Wales would be the 'setting of the whole Colony in a flame' by its convict population. He therefore intended to delay showing his hand until Parliament returned in mid-November 1802, when he would lobby the government to remedy the evils he had identified, and the 'remedy I mean to try at', he warned, 'is the evacuation of that scene of wickedness and wretchedness'.<sup>7</sup>

Drawing upon Bentham's writings, correspondence and unpublished manuscripts, as well as other unpublished official and private material, this article examines the three phases of Bentham's interest in New South Wales, each correlating to key points in the panopticon campaign: first the period of May and June 1791; second, the first half of 1798, and finally the most important phase, during 1802–1803. Though historian R.V. Jackson suggested that Bentham 'waged at least three campaigns to have the colony abandoned in the

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<sup>5</sup> Bentham Papers, Box 121, Folio 262, Special Collections, University College London Library. On 'the improved State of the Colony of New South Wales', see Treasury Minute, 13 August 1800, in S. Lambert (ed.), *House of Commons Sessional Papers of the Eighteenth Century*, Vol. 118, Wilmington, 1975, p. 585.

<sup>6</sup> Bentham alluded to conditions in Coldbath Fields gaol, which were subject to a commission of inquiry in 1800. The issue dominated the campaign in Westminster during the General Election of 1802: see C. Parolin, *Radical Spaces: Venues of Popular Politics in London, 1790–c. 1845*, Canberra, 2010, pp. 49–82.

<sup>7</sup> J. Bentham to S. Bentham, c. 21 August 1802, in J. Dinwiddy (ed.), *The Correspondence of Jeremy Bentham*, Vol. 7, Oxford, 1988, p. 90.

dozen years or so after 1791', only the third phase can genuinely be described as a 'campaign'.<sup>8</sup> Jackson described 'Letters to Lord Pelham' and 'A Plea for the Constitution' as Bentham's 'last serious attempts to persuade the administration that the convict colony should be abandoned', marking the 'climax to his campaign on behalf of the panopticon', but he provided little detail of what actually transpired in the third phase.<sup>9</sup> Similarly, other historians have briefly noted that Bentham's strategy was to show the government that 'they had more to lose by allowing his documents to be published than by going ahead with Panopticon'.<sup>10</sup> But the details of the story behind Bentham's 'campaign' of 1802–1803 remain to be told. This article, by examining what Bentham sought to do with his writings on New South Wales, contributes to and complements the wider historical literature on the panopticon scheme, and in particular highlights the importance of Britain's antipodean penal colony to that story.

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Bentham's opposition to transportation dated back to at least 1778 when he wrote 'A View of the Hard Labour Bill', a clause-by-clause critique of what became the Penitentiary Act of 1779 (19 Geo.3, c.74).<sup>11</sup> Briefly discussing transportation to the American colonies (at that time suspended indefinitely, with the convict hulks introduced in 1776 as a supposedly temporary replacement), Bentham here established his general philosophical opposition to transportation, forming the kernels of arguments he later deployed against New South Wales. Starting with his famous proposition that 'all punishment in itself is evil' and only justified for the purpose of deterring further crime,<sup>12</sup> Bentham found transportation ill-conceived on a number of grounds. First, as a punishment it was fundamentally disproportionate and unbalanced.

<sup>8</sup> R. V. Jackson, 'Jeremy Bentham and the New South Wales convicts', *International Journal of Social Economics*, Vol. 25, 1998, p. 370.

<sup>9</sup> R. V. Jackson, 'Bentham v. New South Wales: The Letters to Lord Pelham', *Menzies Centre Working Papers in Australian Studies*, No. 25, 1987, p. 13.

<sup>10</sup> L. J. Hume, 'Bentham's panopticon: An administrative history', Pt. 2, *Historical Studies*, Vol. 16, No. 62, 1974, pp. 36–54. See also J. Semple, *Bentham's Prison: A Study of the Panopticon Penitentiary*, Oxford, 1993, pp. 234–235; C. Blamires, *The French Revolution and the Creation of Benthamism*, London, 2008, pp. 81–82.

<sup>11</sup> J. Bowring, *The Works of Jeremy Bentham, Published Under the Superintendence of his Executor, John Bowring*, Vol. 4, Edinburgh, 1838–43, pp. 1–36.

<sup>12</sup> J. Bentham, *An Introduction to the Principles of Morals and Legislation*, J. H. Burns and H. L. A. Hart (eds), Oxford, 1996, p. 158.

Nothing could 'be more unequal than the effect which the change of country has upon men of different habits, attachments, talents, and propensities', he wrote. 'Some would have been glad to go by choice; others would sooner die'. It was an '*unexemplary*' punishment because the pain inflicted was 'unknown to the people [that is, potential domestic criminals] for whose benefit it was designed'. Transportation was expensive, occasioning 'a great waste of lives ... and great waste of money'. It only imperfectly achieved 'the purpose of *disabling* the offender from doing further mischief' since, in Bentham's view, it 'has always been easier for a man to return from transportation, than to escape from prison'. Further, transportation could not guarantee punishment or reformation because it placed convicts in a state of servitude that was subject to the 'uncertain and variable direction of a private master'.<sup>13</sup>

In short, Bentham argued that transportation was unscientific and archaic, and anything advantageous achieved by its infliction was incidental. Ultimately, in Bentham's view, punishment and reformation required a domestic system of incarceration, hard labour and close surveillance. When he first heard of the plan to establish a penal colony at 'Botany Bay' Bentham was visiting his brother Samuel in Russia during 1786.<sup>14</sup> Even at that distance, and with only the vaguest of information to hand about the government's intentions, Bentham was convinced that the days of transportation were nearly over. For even if the panopticon accommodated prisoners 'at no *greater* expense' than sending them to New South Wales, given transportation's other failings, even this 'moderate success would be sufficient to put an end to so undesirable a branch of navigation'.<sup>15</sup>

In April 1791, prompted by Sir Charles Bunbury MP and his allies in the Commons, and following reports of near-starvation conditions at Sydney, the government published the latest official accounts of New South Wales.<sup>16</sup> Bunbury, a critic of the convict colony and later the

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<sup>13</sup> Bowring, *op. cit.*, Vol. 4., pp. 6–7. Original emphasis.

<sup>14</sup> Clark to Bentham, 31 August 1786, and Wilson to Bentham, 24 September 1786, in I. R. Christie (ed.), *The Correspondence of Jeremy Bentham*, Vol. 3, London, 1971, pp. 488, 491.

<sup>15</sup> 'Panopticon Letters', in Bowring, *op. cit.*, Vol. 4, p. 58. Original emphasis.

<sup>16</sup> 'Extracts of Letters, &c—and Accounts, relative to the Settlements in New South Wales', 8 April 1791, *Commons Sessional Papers*, Vol. 82, pp. 241–58. See for example, the *Gazetteer and New Daily Advertiser*, 27 December 1790, p. 2, and *General Evening*

panopticon's most steadfast supporter, passed these accounts to Bentham (who had returned to England in February 1788). Bentham concluded that the colony was a 'scene of improvidence and extravagance' about which he was 'strongly tempted to give before the public a sketch'.<sup>17</sup> The unpublished 'New Wales' fragments may have been his abortive attempt at doing so.<sup>18</sup> In these, Bentham examined whether New South Wales should be regarded primarily as a 'mode of disposing of convicted criminals' or as a 'scheme of colonisation at large'. Very few women were transported, so as 'a Colony for the propagation of the species' New South Wales would inevitably fail.<sup>19</sup> Further, there was the question of what was to become of the convicts once their terms of servitude expired. Allowing them to return to Britain would destroy the security afforded by deporting them in the first place, but if forced to remain in the colony they would be victims of '*false banishment* for life'.<sup>20</sup> Bentham thought it an almost impossible conundrum: 'Take away the injustice and you take away the security'.<sup>21</sup> Again, the panopticon was the optimal solution. He went so far as to suggest that once it was built a fleet might set sail for Port Jackson to 're-import the whole colony at once'.<sup>22</sup>

At the same time, Bentham supplemented these views with two summative, draft resolutions, the first asserting that the colony could 'never be an object of national benefit'. It could simply never return the vast sums of expenditure required to establish and maintain it — an objection to colony-holding which Bentham maintained throughout his life. The second pointed to sexual morality. Any colony where men were 'superior in a considerable degree to the number of females can not be of any use in respect of population', for growth required 'the inhabitants live in a state of promiscuous copulation', which could hardly be considered 'conformable to the commonly [held] notions of

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*Post*, 4–6 January 1791, p. 2. News of the arrival of the 'Second Fleet' and the appalling mortality during its voyage had not reached London by this time.

<sup>17</sup> See Bentham to Bunbury, 6 May 1791 in A. Taylor Milne (ed.), *The Correspondence of Jeremy Bentham*, Vol. 4, London, 1981, pp. 277–80.

<sup>18</sup> See J. Bentham, *Writings on Australia, I: New Wales*, T. Causer and P. Schofield (eds), The Bentham Project, 2018 <discovery.ucl.ac.uk/10055295/> (23 June 2019).

<sup>19</sup> *Ibid.*, p. 3.

<sup>20</sup> 'Panopticon Postscript, Part II', in Bowring, *op. cit.*, Vol. 4, p. 170. Original emphasis.

<sup>21</sup> Bentham, *New Wales*, p. 8.

<sup>22</sup> 'Panopticon Postscript, Part II', in Bowring, *op. cit.*, Vol. 4, p. 170.

good morals'.<sup>23</sup> These resolutions neatly encapsulated the content of the 'New Wales' fragments, although like the fragments themselves there is no evidence they were circulated or pursued.

Bentham further developed his thinking on New South Wales during the first half of 1798, when he contributed, unofficially, to the preparation of the Finance Committee's report on the police and convict establishments. Having been encouraged by George Rose, the Secretary to the Treasury, he used the opportunity to gather evidence that might persuade the government finally to commit, after several years, to a site for the building of a panopticon.<sup>24</sup> The report, printed in June 1798, proved strongly critical of the existing penal establishments, and especially of New South Wales and the rocketing costs of removing prisoners there. The Committee called for an end to the delay in executing the construction of a less expensive and more beneficial panopticon. The report also proposed a parliamentary inquiry into New South Wales, wondering if the 'Security held out by the Difficulty of Return on the Part of the Convicts ... might not be purchased upon less exceptionable Terms'.<sup>25</sup> Although Bentham had no official role on the Committee, he was, as R.V. Jackson has shown, 'directly responsible for preparing most of the material on New South Wales' and 'a significant part' of his draft was incorporated into the report with little alteration. This is especially notable when it is recognised that Bentham prepared an estimate of the costs per head of transporting prisoners to New South Wales. Later, when discussing the expense of the colony in his 'Letter to Lord Pelham', Bentham appealed to the authority of the Finance Committee, but he was in fact appealing

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<sup>23</sup> Bentham, *New Wales*, p. 24. Bentham made a connected point in 'Panopticon Postscript, Part II', written around the same time, when he stated that in New South Wales there were '2,000 convicts of both sexes, and 160 soldiers (not to speak of officers,) jumbled together in one mass, and mingling like beasts'. See Bowring, *op. cit.*, Vol. 4, p. 141.

<sup>24</sup> George Spencer, second Earl Spencer, had objected to the construction of the panopticon at Battersea Rise, while Richard Grosvenor, Earl Grosvenor, and his son Robert, Viscount Belgrave, had objected to it being built at Tothill Fields. Semple, *op. cit.*, pp. 192–217, and Hume, *op. cit.*, pp. 708–721.

<sup>25</sup> 'Twenty-Eighth Report from the Select Committee on Finance, &c—Police, including Convict Establishments', ordered to be printed 26 June 1798, *Commons Sessional Papers*, Vol. 112, pp. 21–27.

to his own calculations and estimates which were supposedly validated by their being included in the official report.<sup>26</sup>

As well as contributing to the Committee's report, during the summer of 1798 Bentham worked privately on what historian Janet Semple described as a 'shadow report' in which he 'pays off old scores' over the panopticon in pseudo-parliamentary style and language.<sup>27</sup> However, it appears from the manuscripts that no complete version of this 'shadow report' exists, and it cannot be neatly or fully distinguished from Bentham's contribution to the published report. Nevertheless, a consistent section of the 'shadow report' dealt with transportation as part of a discussion of what Bentham termed the 'chronical punishments' available in the British penal armoury.<sup>28</sup> Here, Bentham suggested that convicts sent to America had endured a 'condition susceptible of the name slavery, working by compulsion for an individual master'.<sup>29</sup> In turning to New South Wales he discarded this line of attack — though later anti-transportationists would resume it during the 1830s and 1840s — and instead rehearsed the economic arguments of the 'New Wales' fragments of 1791. Already costing £137,000 per year, and with the likelihood in future of an 'indefinite increase' in expense, the abandonment of the colony seemed 'absolutely indispensable'.<sup>30</sup> Bentham proposed that New South Wales be sold to a foreign power, or else be handed to a member of the royal family to rule over, provided they lived there.<sup>31</sup> Otherwise, it should be given over to 'the colonists to settle the business of government among themselves'.<sup>32</sup> As with his previous musings, the 'shadow report' did not leave Bentham's desk, but clearly his hostility towards the colony

<sup>26</sup> R. V. Jackson, 'Luxury in Punishment', *Australian Historical Studies*, Vol. 23, No. 90, 1988, pp. 48-55.

<sup>27</sup> Semple, *op. cit.*, pp. 207–208.

<sup>28</sup> Bentham defined 'chronical punishments' as those which were 'spread over a more or less considerable extent of *time*, and are necessarily attended with an expence [sic], which in this country will be sure to have swelled already to a very formidable pitch'. The 'chronical punishments' he examined were (i) 'simple imprisonment', (ii) 'transportation to an existing colony', (iii) confinement with hard labour in a hulk, (iv) penitentiary imprisonment, and (v) 'transportation for the purpose of hard-labour to a new Colony founded for the purpose', Bentham Papers, Box 150, Folio 336. Original emphasis. For the full discussion see Bentham Papers, Box 150, Folios 331–383.

<sup>29</sup> Bentham Papers, Box 150, Folio 342.

<sup>30</sup> Bentham Papers, Box 150, Folios 357, 360.

<sup>31</sup> Compare with the similar point made in Bentham, *New Wales*, pp. 12–13.

<sup>32</sup> Bentham Papers, Box 150, Folio 360.

had intensified in tandem with his frustrations with the lack of progress over the panopticon.

According to Bentham, his two 'Letters to Lord Pelham' approached transportation to New South Wales 'on the question of *policy*', while 'A Plea for the Constitution' dealt with the colony on 'the question of law'.<sup>33</sup> The first 'Letter to Lord Pelham' is a masterful piece of rhetoric arranged around five 'ends of penal justice': (i) example, (ii) reformation, (iii) incapacitation, (iv) compensation, and (v) economy. Against all criteria, Bentham argued, New South Wales had failed. The colony did not provide exemplary punishment because it removed offenders 'as far as possible out of the view of the aggregate mass of individuals' upon whom the deterring example was supposed to operate, unlike the panopticon which would sit in the very heart of the metropolis. Similarly, while a panopticon could subject prisoners to a state of systematic supervision, convicts in New South Wales worked 'altogether out of the habitual reach of every *inspecting eye*'.<sup>34</sup>

Expanding on his 1778 observations, Bentham further noted that the goal of reformation by transportation was pure 'make-believe'. Politicians were really only interested in removing individuals from the British Isles.<sup>35</sup> Further, sending criminals to New South Wales offered no compensation or restitution to injured parties, whereas convict labour in a panopticon might be so purposed. Bentham again condemned the expense of 'colonial-transportation', predicting that New South Wales would fail, not just because of the demographic shortcomings he had envisaged in 1791, but because it yielded no produce of value. Finally, aggravating every other flaw, '*military despotism*' had been planted in New South Wales. The colony was a 'vast conservatory of military law' odious 'to the sense of every Briton'.<sup>36</sup> Bentham's argument, brought to the fore in 'A Plea for the Constitution', was that, being unsanctioned by Parliament, the colony was illegally founded. The powers assumed by the governors had no legal basis, nor did the punishments inflicted upon individuals for violating them. Thus a 'tyranny of fourteen years' and 'an authority as

<sup>33</sup> Bentham to Abbot, 3 September 1802, in Dinwiddy (ed.), *op. cit.*, Vol. 7, p. 105. Original emphasis.

<sup>34</sup> J. Bentham, *Writings on Australia, III. Letter to Lord Pelham*, T. Causer and P. Schofield (eds), The Bentham Project, 2018, <discovery.ucl.ac.uk/10055298/> (23 June 2019), pp. 9, 10. Original emphasis.

<sup>35</sup> *Ibid.*, p. 34.

<sup>36</sup> *Ibid.*, pp. 115–16. Original emphasis.



completely autocratical as was ever exercised in Russia' existed in New South Wales.

With these texts, Bentham made himself the best-armed critic of the penal colony. This was a new and very bold tactic in his advocacy for and promotion of a panopticon. Bentham had, during the previous decade, unsuccessfully flattered, cajoled and conciliated those in power. From August 1802, however, he adopted an adversarial stance, hoping, if not to salvage the panopticon then at least to seek some revenge on those who had thwarted it. Bentham even imagined that he might bring about the impeachment of the former Home Secretary, the Duke of Portland, for having allegedly set aside the Penitentiary Acts of 1779 and 1794 upon his own authority.<sup>37</sup>

On 11 August 1802, Bentham asked Bunbury to pass to Home Secretary Thomas Pelham a two-page outline of the first 'Letter to Lord Pelham', with the full text to follow 'at the first word'. If, Bentham warned, Pelham failed to reply by 18 August 1802, then he would publish the work, revealing the government's shabby conduct towards himself as well as exposing the reality of the New South Wales penal colony.<sup>38</sup> Bentham appeared confident about the power of his arguments. He considered the 'Letter' to be a 'halter ... about their [the ministry's] necks' of a kind 'there is no example of in history: for the particular degree of its strength'.<sup>39</sup> Pelham had not replied by 17 August 1802 and Bunbury therefore sent a reminder, hoping Pelham would:

have the Goodness 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*.<sup>40</sup>

<sup>37</sup> See Bentham to Dumont, 29 August 1802, in Dinwiddy (ed.), *op. cit.*, Vol. 7, pp. 97–98.

<sup>38</sup> Bentham to Bunbury, 9 August 1802, and Bentham to Bunbury, 11 August 1802, in Dinwiddy (ed.), *op. cit.*, Vol. 7, pp. 71, 76.

<sup>39</sup> Bentham to Bunbury, 11 August 1802, in Dinwiddy (ed.), *op. cit.*, Vol. 7, p. 72.

<sup>40</sup> Bunbury to Pelham, 17 August 1802, Pelham Papers, Add. MS 33.109, Folio 376, British Library. Original emphasis.

In his answer of 19 August 1802, Pelham promised Bunbury that he would investigate 'what steps have been taken by the Treasury' in relation to the panopticon, before sending for Bentham, but he suggested that 'to give him any false hopes, would in the present state of his mind, produce the very worst effects'.<sup>41</sup> Bentham believed that Pelham was stalling and was irritated at the suggestions concerning his mental health. Rather, Bentham thought, it was Pelham and Prime Minister Henry Addington whose minds were disturbed, because of Bentham's serious claims about New South Wales.<sup>42</sup> In response, Bentham began marshalling his private influence. He turned first to his step-brother, Charles Abbot, then Speaker of the House of Commons, detailing an intended plan of action. That would include raising even more sensational claims about the colony of New South Wales. Bentham had, since January 1802, been drafting 'A Picture of the Treasury', an enormous, semi-autobiographical history of the panopticon scheme and of the government's mendacity in its dealings with him.<sup>43</sup> In the course of that work he had, to his own 'astonishment as well as that of my eminently learned friend', the lawyer Samuel Romilly, made six shocking 'discoveries' about New South Wales.

First and most seriously, individuals had '*collectively*, and for an indefinite time', been detained in the colony after the expiration of their sentences, 'with the evident intent of adding to the expired *legal* punishment, a *perpetual illegal one*'. This, Bentham believed, violated the 1679 Habeas Corpus Act which protected Britons against 'illegal imprisonments beyond the seas'. Second, convict sentences had been illegally extended and modified by the colonial administration, without that power having been granted by Parliament. Third, individuals sentenced to seven years' transportation and who had served upwards of five years on the hulks had nevertheless been sent to the colony and were there illegally detained after their sentences had expired. Fourth, 'whether by negligence, or (as the *repetition* would indicate) by design', paperwork concerning the length of convict sentences had not been transmitted to New South Wales, forcing many individuals to remain in servitude long after they ought to have been emancipated. Thus, 'the presumption instead of being "*in favorem libertatis*", has been *in favorem servitutis*'. Fifth, Bentham argued that the

<sup>41</sup> Pelham to Bunbury, 19 August 1802, in Dinwiddy (ed.), *op. cit.*, Vol. 7, p. 79.

<sup>42</sup> Bentham to Bunbury, 21 August 1802, in *ibid.*, p. 85.

<sup>43</sup> 'A Picture of the Treasury' was neither printed nor published, and the manuscript is distributed among several boxes of the Bentham Papers at UCL. For an account of parts of the 'Picture', see Hume, *op. cit.*, pp. 703–21, and Semple, *op. cit.*, pp. 218–53.

governors had exercised 'an absolute and illegal power of legislation' countenanced by 'persons here at home'. Finally, all colonial office-holders, from the governor down, would be 'exposed to ruin' if transportees brought legal actions against them.<sup>44</sup>

Bentham thought his findings concerning the 'illegality of the Government of New South Wales' were both shocking and dangerous. Should they become known in the colony, 'all subordination — all government there — would be at an end'. Parliamentary legislation could provide retrospective legitimacy, but the 'human misery and wickedness' of the place remained the core problem, to which Bentham told Abbot that he was not as 'insensible to human misery and wickedness'. Had he been, he said, he would have published his findings 'immediately', precipitating the destruction of the colony by its inhabitants who, 'indifferent to life and death, are ripe for insurrection at all times'.<sup>45</sup> In Bentham's view, this caution made him more scrupulous than some members of the opposition. Indeed, he indicated that he had kept his findings from them, fearing that 'for the sake of making the better attack upon Ministry, they would be glad to see N. S. Wales in a flame: and some hundreds of throats cut on both sides'. In particular, Bentham feared this information being in the hands of the radical, John Horne Tooke. Bentham thought Tooke would 'sell his soul to ten thousand devils for the satisfaction of contributing to such a scene as that of a general massacre in N. S. Wales'.<sup>46</sup>

Bentham's letter to Abbot marked a crucial moment in the story of the panopticon. Clearly Bentham believed that critique and embarrassment were key to the resurrection of his scheme. To that end, the majority of his long letter to Abbot recounted the 'long-spun and elaborate, yet always transparent treachery' of the Treasury and the Home Office during the previous decade. Bentham thought that the government had sought to ruin him, financially and reputationally, and that Addington, like Pitt, hoped to see him 'die broken-hearted, like a rat in a hole', but he refused to give him the satisfaction: as long as 'perfidy, and treachery, and oppression, and corruption, and arbitrary power, and contempt of Parliament, and the persevering

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<sup>44</sup> Bentham to Abbot, 3 September 1802, in Dinwiddy (ed.), *op. cit.*, Vol. 7, pp. 102–103. Bentham also summarised his 'discoveries' in a letter to Étienne Dumont, 29 August 1802, pp. 94–95.

<sup>45</sup> Bentham to Abbot, 3 September 1802, *ibid.*, p. 104.

<sup>46</sup> Bentham to Dumont, 29 August 1802, *ibid.*, pp. 99–100.

propagation of immorality and misery are the order of the day with him, so long as I live he will find me living to his annoyance'.<sup>47</sup> The 'Letters to Lord Pelham' and 'A Plea for the Constitution' were the means to this end.

Bentham insisted, though, that he would be cautious, taking 'care not to let any information transpire [about New South Wales] ... till Parliament is in a condition to apply a remedy'.<sup>48</sup> He asked Abbot to make quiet representations to Addington on his behalf, while warning that this would be his 'last *private* attempt, to drive into the head of Mr Addington the sense of justice' regarding the panopticon. He declared himself 'no longer *hare* but *hunter*' and 'the spirit that animates hunters is come upon me': if Abbot did not reply within ten days, Bentham would take 'irrevocable steps'. He would publish his findings about New South Wales, exposing 'all the perfidies — all the treacheries — all the oppressions — all the corruption' he had endured.<sup>49</sup> This dramatic plan was, however, abandoned within days. On 7 September 1802, Bentham hastily left London for Paris, having 'had an attack of a complaint that warns me as I tender my health (not to speak of life) to try what change of air will do for me'.<sup>50</sup> He returned to London on 3 October 1802 to find two notes from Abbot dated 7 and 17 September 1802. In these, Abbot advised that Bentham's language and proposed course of action would have been a 'probable hindrance to your own object', and therefore during his audience with Addington he had not communicated any of Bentham's 'invectives and threats'. Abbot also reported that Addington had met Sir Evan Nepean, Secretary to the Admiralty, to discuss the panopticon, and that he would do so again shortly.<sup>51</sup>

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<sup>47</sup> Bentham to Abbot, 3 September 1802, *ibid.*, pp. 108, 114.

<sup>48</sup> *Ibid.*, p. 105.

<sup>49</sup> *Ibid.*, pp. 112, 114, 115. Original emphasis.

<sup>50</sup> Bentham to Abbot, 7 September 1802, *ibid.*, p. 128. Bentham subsequently told Bunbury in early October 1802 (*ibid.*, 140) that he went to Paris 'by order of one physician (as well as to see another)', alluding in the latter instance to Dumont, who had recently published *Traité de Législation Civile et Pénale*, 3 Vols. Paris, 1802, the first of the five major recensions of Bentham's work he produced between 1802 and 1828. See E. de Champs, *Enlightenment and Utility: Bentham in French, Bentham in France*, Cambridge, 2015, pp. 155–60.

<sup>51</sup> Abbot to Bentham, 7 September 1802 and 17 September 1802, in Dinwiddy (ed.), *op. cit.*, Vol. 7, pp. 131, 134.

Abbot's warning about intemperate language is notable. Bentham had been similarly cautioned by William Wilberforce during September 1802 after he had read a series of documents and correspondence prepared by Bentham.<sup>52</sup> While acknowledging that Bentham had been ill-treated over the panopticon, Wilberforce thought the public 'would not be so forward as you may suppose' to think harshly of Addington's predecessor, William Pitt, who had governed during a period 'such as never before was witnessed in the History of this Country'. Bentham's 'ludicrous Caricature' of the former Home Secretary, the Duke of Portland, might 'excite a laugh at his Expence' [sic], but would lead the public to conclude that Bentham was motivated by revenge rather than a genuine wish to 'obtain tardy Justice for yourself, and for the public an Establishment of great Usefulness and even indispensable Necessity'.<sup>53</sup> Wilberforce wondered what Bentham wished to achieve: the 'Letter to Lord Pelham' might grant to him a reputation as 'an acute clever biting Satirist', but ridicule and intimidation could only undermine the panopticon's case. Wilberforce suggested that Bentham ought 'to adopt a diffit [sic] tone and course of Conduct', recommending that Bentham continue quietly to gather information about New South Wales and, when Parliament reconvened, Bentham's influential friends should hold a 'Council of War' to consider a way forward. If that failed to 'lay the foundations of the Panoptn' then Bentham could resume his attack.<sup>54</sup> Bentham was sceptical of this sage advice. Wilberforce's doctrine of 'passive obedience and non-resistance', he suspected, was merely to protect his

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52 Bentham to Wilberforce, 27 August 1802, *ibid.*, p. 91. This material is published for the first time as *Writings on Australia, II. History of Jeremy Bentham's dealings with Lord Pelham*, T. Causer and P. Schofield (eds), The Bentham Project, 2018, <[discovery.ucl.ac.uk/10055296/](http://discovery.ucl.ac.uk/10055296/)> (23 June 2019) The *History* consists of letters and documents dating from 12 April 1802 to 21 August 1802, centred upon correspondence exchanged between Bentham and Charles Bunbury, in the latter's role as an intermediary between Bentham and Pelham; two marginal contents sheets for 'Letter to Lord Pelham'; a private 'Introductory Note', in which Bentham set out his grievances in regard to his treatment over the panopticon; and Bentham's account of an interview about the panopticon at the Treasury on 9 July 1801. Bentham had prepared this material specifically for Wilberforce, a supporter of the panopticon scheme.

53 Wilberforce to Bentham, 3–4 September 1802, in Dinwiddy (ed.), *op. cit.*, Vol. 7, pp. 118–119.

54 *Ibid.*, pp. 118, 121–2.

own friends in government. Bentham remained convinced that the 'principle of terror' was more effective.<sup>55</sup>

In Bentham's absence abroad Bunbury had seen Pelham, who promised to send for Bentham once he had met with Lord Eldon, the Lord Chancellor, and the judges. Pelham would then inform Bentham 'what steps he intended to take in the Business of the Panopticon'.<sup>56</sup> Fearing Pelham might prejudice Eldon and the judges against him, Bentham thought it a point of 'common prudence as well as justice' to send them copies of 'Letter to Lord Pelham' as soon as possible.<sup>57</sup> He paused, however. On 1 November 1802, Romilly warned him that a part of 'A Picture of the Treasury', namely 'On the Dispensing Power of the Duke of Portland and His Confederates', which Bentham had separately prepared and asked Romilly to read, was 'in point of law, a libel on the duke'.<sup>58</sup> Though he wished to send the first 'Letter' to Eldon without 'castration or deliberation', Bentham was concerned that Romilly had thought the other work libellous. He therefore requested, on 2 November 1802, that Romilly give his legal opinion on the now-printed 'Letter to Lord Pelham'.<sup>59</sup> If Romilly did read it, he evidently found nothing to object to, as Bentham sent it unaltered to Eldon, the judges, and Pelham himself on or around 6 November 1802.<sup>60</sup> Despite Bentham's urgency in wishing to circulate it, the 'Letter to Lord Pelham' had no discernible impact. He therefore occupied himself until mid-December 1802 in finalising a 'Second Letter to Lord Pelham',<sup>61</sup> and in drafting a third, in which he alleged that Portland and Pelham had not only ignored reports of sickness, mortality and sodomy aboard the hulks, but that their polices were materially responsible for creating those conditions. Though Bentham ultimately abandoned 'Third Letter to Lord Pelham' before having it printed, he had, it seems,

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55 Bentham to Abbot, 7 September 1802, *ibid.*, p. 130.

56 Bunbury to Bentham, 30 September 1802, *ibid.*, p. 137.

57 Bentham to Bunbury, 3–4 October 1802, *ibid.*, p. 143.

58 Romilly to Bentham, 1 November 1802, *ibid.*, 154–5.

59 Bentham to Romilly, 2 November 1802, *ibid.*, 155–6.

60 Bentham to the Lord Chancellor and the Judges, 6 November 1802, Bentham to French Laurence, 18 December 1802, *ibid.*, pp. 156, 165.

61 J. Bentham, *Writings on Australia, IV. Second Letter to Lord Pelham*, T. Causer and P. Schofield (eds), The Bentham Project, 2018, <discovery.ucl.ac.uk/10055301/> (23 June 2019).

contemplated an escalation of his attack on penal policy and the ministers who guided it.<sup>62</sup>

On 11 December 1802 Bentham's attention was caught by newspaper accounts of the previous day's proceedings in the Commons, where Attorney General Spencer Perceval had introduced a bill 'for the rendering more easy the transportation of Felons'.<sup>63</sup> Bentham immediately sent Perceval a copy of 'Letter to Lord Pelham'. Perceval expressed his gratitude, but thought it irrelevant to his bill which had 'no other object but to enable his Majesty ... to employ if he should think fit, Ships of his own in their [ie the convicts'] conveyance, instead of being obliged to contract for their transportation in hired Vessels'.<sup>64</sup> Yet this was precisely *why* Bentham thought it relevant. In a footnote to the 'Letter', Bentham had argued that the transportation of convicts by H.M.S. *Glatton*, which sailed from England on 23 September 1802, was illegal because all prior Transportation Acts provided for convicts to be shipped only by private contract.<sup>65</sup> Bentham considered Perceval's Bill to be 'an *ex post facto* law'. As he put it:

By what law does the Commander of a King's ship ... take upon himself to transport Convicts? Is he made to sign a contract for the transportation of these his passengers, as an independent Merchant would be for the performance of the same service? If the formality of a contract is employed, where is the legality, if not, where is the honesty, of the practice? Powers obtained for one purpose are employed for another, and that an opposite one ... Whoever said any thing to Parliament, of this radical change, passed through Parliament [in former Transportation Acts], under cover of the identity of the words? <sup>66</sup>

Though Perceval had only received his copy of 'Letter to Lord Pelham' in mid-December 1802, a copy had been with Pelham and Eldon, and

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<sup>62</sup> J. Bentham, *Writings on Australia, V. Third Letter to Lord Pelham*, T. Causer and P. Schofield (eds), The Bentham Project, 2018, <discovery.ucl.ac.uk/10055302/>. (23 June 2019).

<sup>63</sup> *Parliamentary Debates* (1802), Vol. 1, p. 324

<sup>64</sup> Bentham to Perceval, 11 December 1802, and Perceval to Bentham, 13 December 1802, *Correspondence*, Vol. 7, pp. 160, 161.

<sup>65</sup> Bentham, *Letter to Lord Pelham*, pp. 54–55.

<sup>66</sup> *Ibid.*, pp. 52, 54–55.

was therefore potentially circulating within the ministry, for about a month prior to that. Bentham suspected that his footnote 'may not improbably have been the occasional cause of this Bill'.<sup>67</sup> He drily remarked to Romilly that Perceval ought to be reminded of the 'coincidence between little men's *notes* and great men's *bills*'.<sup>68</sup>

Bentham perhaps had a point. A year earlier, Pelham had sent his 'Hheads of a Plan for removing and employing Convicts both in the Hulks and in Botany Bay' to most of the senior members of the administration — Lord Hobart, Secretary of State for War and the Colonies, Earl St. Vincent, the First Lord of the Admiralty, Lord Hawkesbury, Secretary of State for Foreign Affairs, as well as Eldon and Addington.<sup>69</sup> Pelham's intention was to institute regular, twice-yearly transportations in 'Ships belonging to Government and fitted up for that purpose, under the command of King's Officers', at around half the cost of contracting privately.<sup>70</sup> Pelham did not, however, indicate that this could have any legal ramifications which might require the passage of a new Transportation Act, discussing only the potential savings and likely profits to ensue from importing colonial produce on the return voyages. Pelham's plan had been approved in March 1802, when he requested the Lords Commissioners of the Admiralty prepare and fit out two vessels capable of carrying 350 to 400 convicts.<sup>71</sup> The *Glutton* had duly sailed in September 1802. So, while the government's intention to use Navy vessels had long been in contemplation, it was probably not coincidental that Pelham chose this moment to introduce a bill, hurriedly passed into law as the Transportation Act of 1802, to legalise the use of naval vessels as convict transports. He did so precisely at the time that Bentham's views on the subject were becoming known.<sup>72</sup>

<sup>67</sup> Bentham to Laurence, 18 December 1802, in Dinwiddy (ed.), *op. cit.*, Vol. 7, pp. 165.

<sup>68</sup> Bentham to Romilly, 16 December 1802, *ibid.*, pp. 162. Original emphasis.

<sup>69</sup> 'Hheads of a Plan', 13 December 1801, Home Office Correspondence (HO), HO 42/62, Folios 595–9, The National Archives (TNA), Kew. A second copy, annotated in an unknown hand, is at *ibid.*, Folios 601–606. The 'Hheads of Plan' is reproduced in *Historical Records of New South Wales*, Vol. 4, Sydney, 1896, pp. 635–638, though this reproduction gives no indication to whom it was shown.

<sup>70</sup> 'Hheads of a Plan', HO 42/62, Folio 595, TNA.

<sup>71</sup> See Hobart to King, 29 August 1802, *Historical Records of Australia*, Vol. 3, Canberra, 1915, p. 570.

<sup>72</sup> In introducing his bill Perceval may also have had in mind the forthcoming departure of HMS *Calcutta*, which sailed with convicts for Port Phillip on 28 April 1803. The Transportation Act of 1802 (43 Geo. III, c. 15) received the Royal Assent on



Towards the end of December, Bentham had his 'Second Letter to Lord Pelham' printed and sent to Bunbury, Romilly and Abbot for comment, intending to present it to Pelham on 3 January 1803.<sup>73</sup> That schedule, however, was aborted when Bentham unexpectedly learned that Abbot had lent his copy to Perceval. Bentham professed delight at having another opportunity to address the Attorney General, telling him, on 30 December 1802, that his new Transportation Act was merely like 'putting a patch upon a pimple' that was soon to become 'a foul ulcer'. The 'powers of Mr Percival [sic]', he said, 'surely might find worthier occupation in the removal of oppressions, than in helping to load or fasten the yoke'. Alluding to the debate over the Transportation Act, Bentham insisted that he had 'neither part nor privity in the trouble given to you in the *House*', though he ended his letter by warning that he had 'reason to think it will not be the last'.<sup>74</sup> Perceval forwarded Bentham's letter to Abbot, inviting him to 'commit [it] to the flames' when he had read it 'as I have no further occasion for it'. As Abbot and Wilberforce had warned, Bentham's brusqueness appeared to be working against his cause, for while Perceval conceded that the panopticon deserved 'dispassionate and attentive Consideration', he regretted that Bentham's 'Style of ... Composition' was not 'best formed to secure *dispassionate* attention'.<sup>75</sup> Clearly, Perceval and Pelham were troubled by Bentham's noisy expostulations.

On 31 December 1802, Pelham received an opinion from Sir Richard Ford, the chief police magistrate at Bow Street. Ford was a long-term opponent of the panopticon, thinking it would undoubtedly 'fall very short of the benevolent expectations of those who patronise it' (although in fact Ford clearly misunderstood key elements of the panopticon design, the revised version of which no longer included single-occupancy cells, a feature of which Ford was particularly critical). Ford was a supporter of criminal transportation which he felt offered more security to the public, rather than any scheme that

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29 December 1802, nineteen days after Perceval first introduced the bill. Pelham's plan for regular, biannual sailings of King's vessels as transports was ended when Britain declared war on France in May 1803.

<sup>73</sup> Bentham to Abbot, 30 December 1802, in Dinwiddy (ed.), *op. cit.*, Vol. 7, p. 179. Original emphasis.

<sup>74</sup> Bentham to Perceval, 30 December 1802, *ibid.*, p. 180.

<sup>75</sup> Perceval to Abbot, undated letter, *ibid.*, pp. 180–181. Original emphasis. The letter was evidently written at the end of 1802: it follows, in the archive (Abbot Papers, 30/9, Folio 33, TNA) Bentham's letter to Perceval of 30 December 1802, and ends with Perceval's 'best Compts. And Wishes of the Season' to Abbot and his family.

concentrated 'Desperate Persons' in the metropolis.<sup>76</sup> In Pelham's papers, following Ford's letter, is an unattributed and undated 'Memorandum relative to the Transportation of Convicts to New South Wales and upon Mr Bentham's Plan'.<sup>77</sup> Though admitting to having read neither of the 'Letters to Lord Pelham', the author questioned their accuracy, arguing that even if Bentham was correct about the colony's shortcomings, abandoning New South Wales was not simply akin to closing a failed prison.<sup>78</sup> Instead, the author painted a positive picture of New South Wales: despite 'enormous' initial expenditure, the colony was now self-sufficient in grain, its flocks were expanding and, since expenditure should fall over time 'the inference will be strongly in favour of the ultimate Success of the Colony'.<sup>79</sup> Meanwhile, should the panopticon be adopted at all, the author proposed that, rather than constructing a single penitentiary in London, smaller ones might be 'erected in the several Counties for the reception of the transportable Convicts of those Counties'.<sup>80</sup> This was, essentially, the position set out by the Duke of Portland as Home Secretary in October 1799, which Bentham regarded as Portland's attempt to set aside, on his own authority, the Penitentiary Acts of 1779 and 1794.<sup>81</sup>

This all boded ill for the panopticon. But importantly, these documents were passed between men of influence, all on 31 December 1802, the day after Bentham wrote to Perceval with his warning of future trouble on the matter of New South Wales. Ford had sent his opinion to Pelham, who then sent it and the anonymous memorandum to Perceval, who perused and returned them to Pelham. This flurry of activity perhaps belied a fear that Bentham's lobbying and writings could cause problems. Perceval suggested to Pelham that it was:

very desirable that the materials which should be known for the purpose of forming a correct opinion [on New South Wales] should be as easily accessible as possible, as I think no one can say that Governmt may not be called upon to take some very distinct line upon the subject in

<sup>76</sup> Ford to Pelham, 31 December 1802, Pelham Papers, Add. MS 33,110, Folios 318–319, BL.

<sup>77</sup> 'Memorandum', *ibid.*, Folios 321–31, BL. Another copy of the 'Memorandum' is at HO 42/48, Folios 170–179, TNA.

<sup>78</sup> 'Memorandum', Pelham Papers, Add. MS 33,110, Folios 325–326, BL.

<sup>79</sup> *Ibid.*, Folio 328, BL

<sup>80</sup> *Ibid.*, MS 33,110, Folios 329, BL.

<sup>81</sup> See Semple, *op. cit.*, pp. 224–225.

Parliament at a very Short notice. If therefore you, who seem to have given it much thought already, would give directions in your Office for collecting together the result of the Accounts from that Settlement, bringing them down to the latest period, I think it might be very useful.<sup>82</sup>

Such concern was fleeting. The administration was not called upon to make a statement about New South Wales. On 10 January 1803 Perceval replied politely but curtly to Bentham, implicitly requesting no further correspondence on the matter. While admitting the 'Letters' deserved 'serious and dispassionate' consideration, Perceval wished to hear from 'those who think differently from you upon the subject' before coming to his own view.<sup>83</sup> Bentham turned in frustration to Nicholas Vansittart, senior Secretary to the Treasury, begging that, after 'nine years' of 'oppression', a final decision on the panopticon be made.<sup>84</sup> There was no reply. On 25 January 1803 Bentham called at the Treasury, and after a wait of two hours was told that Vansittart 'was invisible and would be so the whole day'.<sup>85</sup> In short, Bentham was in no better position than when he had sent the outline of the first 'Letter' to Pelham in August 1802. His assault on New South Wales was slowly fizzling out. However, it was to have a final flourish, in the form of his recently completed work, 'A Plea for the Constitution'.

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Bentham had always regarded the legal dimensions of his case against New South Wales as being the key weapon in his armoury. He was irritated, for example, when copies of the 'Letters to Lord Pelham' were passed on by Samuel Parr to the leading Whig, Charles James Fox MP.<sup>86</sup> Bentham had 'purposely avoided' troubling Fox with these 'minor concerns', instead intending to have 'reserved ... his interposition for points of greater moment, such as the wound given to

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<sup>82</sup> Perceval to Pelham, 31 December 1802, HO 42/48, Folios 180–181, TNA.

<sup>83</sup> Perceval to Bentham, 10 January 1803, in Dinwiddy (ed.), *op. cit.*, Vol. 7, p. 186.

<sup>84</sup> Bentham to Vansittart, 19 January 1803, *ibid.*, p. 192.

<sup>85</sup> Bentham sarcastically remarked to Vansittart, in a letter written, but apparently not sent, when he returned home, that it appeared Vansittart's 'invisibility was perhaps an absolute one but from circumstances I could not help suspecting it to be a relative one'. See *ibid.*, p. 192.

<sup>86</sup> Parr to Bentham, 8 February 1803, and Bentham to Dumont, *ibid.*, pp. 197–198, 198–199

the constitution by the system of illegal legislation, and the violations of the Habeas Corpus Act etc'.<sup>87</sup> When first setting out his findings on New South Wales, Bentham had professed a 'whoreson kind of tenderness' for 'this old constitution of our's', and he expressed a wish to see 'punished' those who had violated it by establishing the penal colony.<sup>88</sup> Bentham sought the advice of Romilly who agreed that in founding New South Wales 'Ministers have done what is illegal' and that they had 'disregarded or violated' the constitution.<sup>89</sup> But the argument was a potentially dangerous one, as evidenced by the reaction of the work's potential publishers, Messrs Brooke and Clarke. They decided that:

On a reperusal of the Title ... it occurs to us that the Object of the Work in question is rather of political concern and very proper matter for discussion in Parliament, but does not afford any topics of legal investigation which are the peculiar objects of our business to publish.—We therefore have to request your permission to decline the favor intended to us which will be so much better placed and more acceptable in other hands.<sup>90</sup>

Brooke and Clarke seemed nervous by being associated with such a controversial and potentially libellous, even seditious, piece of work.

In early March 1803 Romilly showed the preface to the 'Plea' — or, to give the work's full name, 'A Plea for the Constitution: shewing the enormities committed to the oppression of British Subjects, innocent as well as Guilty, in breach of Magna Carta, the Habeas Corpus Act, the Petition 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' — to Perceval, who was 'shocked

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<sup>87</sup> Bentham to Dumont, 9 February 1803, *ibid.*, p. 199.

<sup>88</sup> Bentham to Dumont, 29 August 1802, *ibid.*, p. 94.

<sup>89</sup> Bentham to Romilly, 15 February 1803, *ibid.*, p. 202. Romilly was, however, sceptical of Bentham's claim that the constitution had been 'conquered' in New South Wales.

<sup>90</sup> Messrs Brooke and Clarke, 24 February 1803, *ibid.*, p. 206. E. and R. Brooke and I. Clarke were law booksellers at Bell Yard, Lincoln's Inn.

very much at the *title*'.<sup>91</sup> 'If I were disposed to interest myself', Perceval stated:

to have the Panopticon established and to have him [Bentham] placed at the head of it and I should really be glad to do it if I saw a proper Opportunity how could I recommend to a Secretary of State to place in such a Situation a Person who had written such things of him or his predecessors.<sup>92</sup>

Bentham was delighted. 'You will smile at my propensity to self delusion my dear Romilly, but ... in the language of the Attorney General *symptoms of squeaking* are discernible'. He thought Perceval 'threw out those hints about his disposition to recommend etc. in the view of quieting me till he had an opportunity of stating to his principals ... the scrapes they had got into'.<sup>93</sup> The 'Plea' and the legal arguments it contained were, in Bentham's mind, a potent weapon which might be leveraged to force Perceval into becoming the 'arbiter of my fate', as well as that of the panopticon.<sup>94</sup>

Bentham may have viewed Perceval's reaction as progress, but on 8 March 1803 Bunbury warned of the 'bad effect' were the 'Plea' seen by those 'inclined to be *hostile*' to the panopticon, and counselled that it was prudent to 'let it lye *dormant*, and *not* be seen at all, whilst your Friends are trying to assist you, and have any Hopes of success'.<sup>95</sup> Perhaps acknowledging the truth of Bunbury's caution, Bentham hurriedly told Romilly to ignore the wilder claims of his previous letter and to instead be guided by 'yr own judgmt' when impressing upon Perceval 'that there must be a *quid pro quo* — and that the pamphlets ... are not to be suppressed for any body's beautiful eyes'. Though he might recoup the £70 he had spent on printing the 'Letters' and 'Plea' by selling copies, Bentham did not wish Perceval to think that he was asking to be paid for his silence, rather that the administration 'should

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<sup>91</sup> Romilly to Bentham, 5 March 1803, *ibid.*, p. 207. Original emphasis. See J. Bentham, *Writings on Australia, VI. A Plea for the Constitution*, T. Causer and P. Schofield (eds), The Bentham Project, 2018, <discovery.ucl.ac.uk/10055304/> (23 June 2019).

<sup>92</sup> Romilly to Bentham, 5 March 1803, in Dinwiddy (ed.), *op. cit.*, Vol. 7, p. 207.

<sup>93</sup> Bentham to Romilly, 7 March 1803, *ibid.*, p. 208. Original emphasis.

<sup>94</sup> *Ibid.*, p. 211.

<sup>95</sup> Bunbury to Bentham, 8 March 1803, *ibid.*, p. 214. Original emphasis.

understand ... that they are not to expect gratuitous submission on one part, while there is nothing but perfidy and oppression on the other'.<sup>96</sup>

Nothing transpired during the next couple of months regarding the 'Plea', nor with the 'posse' of supporters of the panopticon whom Bunbury proposed assembling to lobby Pelham.<sup>97</sup> On 2 May 1803 Bentham enquired of Bunbury if there were news of his 'storming party' and, given the lack of progress, wondered whether it was 'high time' that the 'Letters' and the 'Plea' were published, provided 'no good is to be got by forbearance'.<sup>98</sup> On 8 May 1803, Bunbury reported that he had seen Pelham, but ministers were 'waiting in daily Expectation of hearing whether we were to be at Peace or War' with France and would 'not talk on any other subject'.<sup>99</sup> Bunbury intended to seek out Pelham again, and told Bentham if 'his Determination is *unfavourable* you may publish your Letters when you please'.<sup>100</sup> Yet when Bunbury himself saw the 'Plea' for the first time in early June 1803 he expressed alarm:

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

If you can't write down the Colony of Thieves at Port Jackson, and annihilate it by Argument, don't crush it by Rebellion — do not, in Anger, say — *Flectere si nequeo Superos, Acheronta movebo*.<sup>101</sup>

Bentham took this to mean that he should withhold the 'Plea' but was free to publish the 'Letters'. However, Bunbury clarified that they should also be deferred 'till I have had another conversation with

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<sup>96</sup> Bentham to Romilly, 8 March 1803, *ibid.*, pp. 215–216.

<sup>97</sup> Bentham to Wilberforce, 6–7 March 1803, *ibid.*, p. 214.

<sup>98</sup> Bentham to Bunbury, 2 May 1803, *ibid.*, p. 225.

<sup>99</sup> Britain declared war on France on 18 May 1803.

<sup>100</sup> Bunbury to Bentham, 8 May 1803, in Dinwiddy (ed.), *op. cit.*, Vol. 7, pp. 225–226. Original emphasis.

<sup>101</sup> Bunbury to Bentham, 6 June 1803, *ibid.*, p. 236. (That is, 'If I am unable to bend the upper world, I will move the lower', a quotation from Virgil, *Aeneid*, Book 7, line 312). Original emphasis.

[Pelham]'.<sup>102</sup> That conversation took place on 13 June 1803. Pelham heard Bunbury's arguments in favour of the panopticon 'very patiently, and seemed to assent to several of them', but ultimately there was opposition from the judges and little likelihood that Addington would assent to the funding.<sup>103</sup> The panopticon was effectively dead, and once he came to that realization, Bentham's interest in transportation and New South Wales dissipated. The 'Letters' and the 'Plea' had failed to save the panopticon and Bentham had no further use of them, beyond publishing them in 1812 essentially unchanged as *Panopticon versus New South Wales*, along with the rest of his panopticon-related writings, when the government briefly again showed interest in his scheme.<sup>104</sup> Indeed, in March 1830, as new debates swirled around the subject of convict transportation to New South Wales — to which his views were central — the elderly Bentham appeared to have either forgotten about, or refused to recall the 'Letters' and the 'Plea'. When a bookseller, Thomas Egerton, enquired as to 'whether he has published any work on Transportation', a copy being wanted by the Home Secretary, Robert Peel,<sup>105</sup> Bentham wrote to Peel to tell him that 'no work written directly and by its title on the subject of that mode of punishment was ever published or written by me'. He acknowledged only that he had authored 'Panopticon; or, the Inspection House'. He did, however, take the opportunity to regale Peel with a typically acerbic summary of the entire, miserable panopticon affair.<sup>106</sup>

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Bentham's 'Letters to Lord Pelham' and 'A Plea for the Constitution' were products of his dilemma regarding the future of his penitentiary.

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<sup>102</sup> Bentham to Bunbury, 6 June 1803, and Bunbury to Bentham, 10 June 1803, in Dinwiddy (ed.), *op. cit.*, Vol. 7, pp. 236 and 237.

<sup>103</sup> Bunbury to Bentham, 15 June 1803, *ibid.*, p. 240.

<sup>104</sup> The two 'Letters' and the 'Plea' were reproduced in *Panopticon versus New South Wales*, London, 1812, unaltered save for a new title page and some minor changes to the text of the first two pages of the first 'Letter'. The 1812 versions of the texts were reproduced in *Bowring, op. cit.*, Vol. 4, pp. 173–284. In 1804 Adrian Duquesnoy's translation of the 'Letters' was published as *Lettres à Lord Pelham, Renfermant un parallèle [sic] du système [sic] 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*, Paris, 1804.

<sup>105</sup> Egerton to Bentham, 27 March 1830, Bentham Papers, Box 11, Folio 356.

<sup>106</sup> Bentham to Peel, 28 March 1830, Peel Papers, Add. MS 40,400, Folio 134.

He could, as he had done in the past, continue to play the humble supplicant to ministers, lobbying behind closed doors. Alternatively, he could have publically shamed the government by carrying through on his threats to publish his confrontational findings respecting New South Wales. Supplication on Bentham's part risked dragging out matters for a considerable while longer; confrontation could have brought matters to a prompt close. Bentham instead tried to steer a middle path, proving himself simultaneously aggressive and reticent. He wrote some sharply-pointed attacks on government personalities and policy, threatening to publish them if he did not get his way. He was reticent, though, in the sense that his ultimatums proved hollow. His initial enthusiasm for what was tantamount to blackmail quickly give way to indecision, as his friends and associates urged him to be cautious. That caution was understandable, given the febrile political climate. Publishing such radical and potentially subversive material could have been calamitous for his reputation and liberty. Bentham was unable to solve his dilemma, although with hindsight it appears that, during 1802 and 1803, there was no solution to be found. Whatever Bentham tried with his writings on New South Wales, the panopticon's cause was hopeless.

The 'Letters' and the 'Plea' were written to menace the government over its failure to fund the panopticon, and yet Bentham's criticisms of criminal transportation and the penal colony of New South Wales were genuine. Bentham was consistent in his long-standing view that criminal transportation was not, and could never be, a punishment which conformed to the principle of utility, a position he first articulated in 'A View of the Hard-Labour Bill' in 1778, well before either the panopticon or New South Wales were conceived of. Bentham's condemnation of existing penal policies came to the fore in his 1802-1803 writings. In this sense, therefore, we have the British government's prevarication over the panopticon scheme to thank for the creation of some of the most penetrating, insightful, and influential critiques of convict transportation.