

WRITINGS ON

AUSTRALIA

III.

LETTER TO LORD PELHAM

JEREMY BENTHAM

edited by

TIM CAUSER AND PHILIP SCHOFIELD

The Bentham Project 2018

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### *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. Eight volumes of the new *Collected Works*, five of correspondence, and three of writings on jurisprudence, appeared between 1968 and 1981, published by Athlone Press. Further volumes in the series since then are published by Oxford University Press. In spite of Bentham's importance as a 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. I (Athlone Press), which was the first volume of the *Collected Works* to be published.

# CONTENTS

EDITORIAL INTRODUCTION	iv
A NOTE ON THE PRESENTATION OF THE TEXT	x
SYMBOLS AND ABBREVIATIONS	xi
LETTER TO LORD PELHAM	1

## EDITORIAL INTRODUCTION

Bentham's 'Letter to Lord Pelham'<sup>1</sup> constitutes perhaps the earliest detailed critique of transportation to New South Wales by a major philosopher of punishment. Bentham arranged the work around what he identified as the 'five ends of penal justice', namely (i) example, (ii) reformation, (iii) incapacitation, (iv) compensation, and (v) economy. Drawing extensively on the recently published *Account of the English Colony in New South Wales* by David Collins, the colony's first Judge Advocate,<sup>2</sup> Bentham sought to demonstrate both that New South Wales fell short against each of the 'five ends', while his panopticon penitentiary would achieve them.

'Letter to Lord Pelham' also had a practical purpose. Along with 'Second Letter to Lord Pelham' and 'A Plea for the Constitution', it was one of the tools with which Bentham hoped to cajole the administration during 1802–3 into proceeding with the establishment of his panopticon penitentiary. In Bentham's view, from 1791 when he offered the panopticon to the Pitt administration<sup>3</sup> to June 1803 when it was effectively killed-off by the Addington administration,<sup>4</sup> his attempts to bring it to fruition had been beset by wilful delay and obstruction on the part of the administration, despite the panopticon offering potentially unrivalled benefit to the public, and despite its construction

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<sup>1</sup> Thomas Pelham (1756–1826), 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.

<sup>2</sup> On his return to Britain, David Collins (1756–1810), Deputy Judge Advocate of New South Wales 1787–96, 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. A second volume, containing a continuation of the history of the colony to 1801, was published in 1802.

<sup>3</sup> William Pitt the Younger (1759–1806), First Lord of the Treasury and Chancellor of the Exchequer 1783–1801.

<sup>4</sup> 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. In 1812 Bentham's hopes in regards to the panopticon were raised and dashed again when the administration briefly showed interest in it.

having been twice sanctioned by statute.<sup>5</sup> The delays and obstructions he had experienced had by 1803 led Bentham to conclude that the government had acted in the interests of the nobility rather than in the interests of the wider community, and to more or less accept that the panopticon would never be built. One of Bentham's responses was to begin drafting '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 between 1798 and 1801. 'A Picture of the Treasury' was a catalogue, as Bentham saw it, of the machinations and deliberate non-functioning of government at the dawn of the nineteenth century, and it was in this work that the 'Letter to Lord Pelham' originated, and subsequently enlarged upon.

Some of the manuscript drafts on which 'Letter to Lord Pelham' is based have survived. Bentham may have begun work on it as early as March 1802, but the bulk of the text was written between late May and early August 1802. The work appears to have been ready, at least in manuscript form, by 9 August 1802, when Bentham sent an outline of the work to Charles Bunbury,<sup>6</sup> indicating that the 'paper .^.^ is ready to follow at the first word. There are about 60 or 70 pages of it'.<sup>7</sup> According to this outline, the title of the work was then 'Panopticon versus New South Wales'.

In an attempt to stir the government into action regarding the panopticon, in a subsequent letter Bentham asked Bunbury to show the outline to Pelham, and 'give his Lordship to understand very distinctly, that if, within a week from this date 11<sup>th</sup> August 1802—I were not fortunate enough to receive the honour of a letter in his Lordship's hand addressed to myself', then his 'future proceedings would be built on that *declared* ground'.<sup>8</sup> In other words, Bentham was threatening to publish 'Letter to Lord Pelham', and thereby expose the failings of New South Wales, both as a colony and as a means of punishment, to public scrutiny. Pelham responded on 19 August 1802 with a promise to investigate 'what steps have been taken by the Treasury' in relation to the panopticon, and the printing of 'Letter to Lord Pelham' was thereby postponed.

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<sup>5</sup> The Penitentiary Act of 1794 had authorized the construction of a panopticon penitentiary and the Appropriation Act of 1799 had granted Bentham £36,000 towards the building of it.

<sup>6</sup> Sir Charles Thomas Bunbury (1740–1821), MP for Suffolk 1761–84, 1790–1812, had been an admirer of Bentham's panopticon penitentiary scheme since 1791.

<sup>7</sup> Bentham to Bunbury, 9 August 1802, *Correspondence (CW)*, vii. 71.

<sup>8</sup> Bentham to Bunbury, 11 August 1802, *Correspondence (CW)*, vii. 76.

Little further advance had been made in relation to the panopticon when Bentham travelled to Paris on 7 September 1802,<sup>9</sup> though upon his return to London on 2 October 1802 he learned that Bunbury had discussed the matter with Pelham, who had promised to send for Bentham once he had met with Eldon,<sup>10</sup> the Lord Chancellor, and the judges, after which he would then inform Bentham ‘what steps he intended to take in the Business of the Panopticon’.<sup>11</sup> On 4 October 1802 Bentham told Bunbury that he planned to send ‘Letter to Lord Pelham’ to the press the following day, and then to forward copies to Eldon and the judges as a matter of ‘common prudence as well as justice’, in order to guard against Pelham’s potentially prejudicial influence.<sup>12</sup> The work, which is dated 2 November 1802, was thereupon printed, and copies were sent to Eldon and the Judges on 6 November 1802.<sup>13</sup>

The text presented here is based on the version of ‘Letter to Lord Pelham’ which Bentham prepared and had printed by Wilks and Taylor of Chancery Lane in 1802, and includes Bentham’s accompanying circular ‘To the Lord Chancellor and the Judges’. ‘Letter to Lord Pelham’ was first published in 1812 as a constituent part of *Panopticon versus New South Wales*.<sup>14</sup> For this compilation Bentham dispensed with the circular and incorporated a new title page, resulting in some minor alterations to the first two pages of the text to ensure that the pagination thereafter remained consistent with that of the 1802 printing. The version of ‘Letter to Lord Pelham’ which appeared in *Panopticon versus New South Wales* was subsequently reproduced in the edition of Bentham’s works overseen by

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<sup>9</sup> Bentham travelled to Paris both for the sake of his health and to mark the publication there of *Traité de Législation Civile et Pénale*, 3 vols., Paris, 1802, the first of five major recensions of Bentham’s work produced between 1802 and 1828 by Pierre Étienne Louis Dumont (1759–1829): see Bentham to Charles Abbot, 7 September 1802, and Bentham to Charles Bunbury, 3 October 1802, *Correspondence*, vii. (CW), pp. 128, 140.

<sup>10</sup> John Scott, first earl of Eldon, Solicitor General 1788–93, Attorney General 1793–99, Chief Justice of the Common Pleas 1799–1801, Lord Chancellor 1801–6, 1807–27.

<sup>11</sup> Bunbury to Bentham, 30 September 1802, *Correspondence* (CW), vii. 137.

<sup>12</sup> Bentham to Bunbury, 3–4 October 1802, *Correspondence* (CW), vii. 143.

<sup>13</sup> Bentham to the Lord Chancellor and Judges, 6 November 1802, *Correspondence* (CW), vii. 156.

<sup>14</sup> *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*, London, 1812.

John Bowring.<sup>15</sup>

In 1804 Adrian Duquesnoy's translation of the 1802 printing into French was published in Paris as *Lettres à Lord Pelham*.<sup>16</sup> The chapter 'De la déportation à Botany-Bay', which appeared in *Théorie des Peines et des Récompenses* (1811), the second recension which Etienne Dumont prepared from Bentham's manuscripts, consisted of Dumont's summary of 'Letter to Lord Pelham'.<sup>17</sup> This chapter subsequently appeared as 'Of Transportation' in *The Rationale of Punishment* (1830), Richard Smith's translation into English of *Théorie des Peines et des Récompenses*.<sup>18</sup>

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<sup>15</sup> Bowring, iv. 173–211.

<sup>16</sup> *Lettres à Lord Pelham, Renfermant un parallele du système 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>17</sup> *Théorie des Peines et des Récompenses, Par M. Jérémie Bentham, Jurisconsulte Anglois*, 2 vols., London, 1811, i. 179–200.

<sup>18</sup> *The Rationale of Punishment by Jeremy Bentham*, ed. Richard Smith, London, 1830, pp. 327–50.

colleagues in UCL's Faculty of Laws. Dr Roscoe has provided invaluable assistance in checking the text and in researching the annotation.

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Finally, we would like to warmly 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, and the University of London Computer Centre. *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 UCL. Though this text is based on a work prepared and printed by Bentham, a survey of relevant manuscripts was required and we would like to place on record our sincere thanks to the following *Transcribe Bentham* volunteers: 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 Nunez-Miret; Olympia1988; Raizadenise; Liz Rees; Chris Riley; Lea Stern; Pilar Stewart; Megan Street; Stwblogger; Laura Terry; Keith Thompson; Truskeylm; Woundedpride.

The text presented below is a preliminary version, in that the authoritative version will appear as part of a complete edition of Bentham's *Writings on Australia* for *The Collected Works of Jeremy Bentham*, with a full Editorial Introduction, name and subject indices, and working cross-references. The volume is due to be published in 2020 by the Clarendon Press.



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September 2018

## A NOTE ON THE PRESENTATION OF THE TEXT

The present edition of ‘Letter to Lord Pelham’ corresponds as closely as possible with the style and conventions, including spelling, capitalization, punctuation, and the use of italics and other devices, of the text printed in 1802. There are some minor variations: double inverted commas indicating quotations are replaced here with single inverted commas (consequently, single inverted commas usually indicating quotations within quotations are replaced with double inverted commas); the symbols used in the 1802 text to indicate Bentham’s own footnotes and subfootnotes are replaced here, respectively, with superscript letters and italicized superscript letters (editorial footnotes are indicated by superscript numerals); and some minor errors of typography and punctuation have been silently corrected. Editorial apparatus is confined to the use of square brackets to indicate editorially inserted words, accompanied where necessary by an explanatory editorial footnote.

Bentham frequently quotes from other published works, especially David Collins’s *Account of the English Colony in New South Wales*. Minor discrepancies between the original and the reproduction in the present text have not been noted, and unless otherwise noted any italicization in quotations indicates Bentham’s emphasis.

## SYMBOLS AND ABBREVIATIONS

### Symbols

[to] Word(s) editorially supplied.

### 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.

Collins D. Collins, *An account of the English colony in New South Wales: with remarks on the dispositions, customs, manners, etc. of the native inhabitants of that country*, 2 vols., London, 1798–1802.

CW This edition of *The Collected Works of Jeremy Bentham*.

HRA *Historical Records of Australia*, Series I.

HRNSW *Historical Records of New South Wales*.

OBP *Old Bailey Proceedings Online*.

TNA The National Archives of the United Kingdom, Kew.

SRNSW State Records Authority of New South Wales, Kingswood.

UC Bentham Papers in University College London Library's Special Collections. Roman numerals refer to boxes in which the papers are places, Arabic to the folios within each box.

NOTE TO TYPESETTERS: Please begin new recto.

LETTERS  
TO  
LORD PELHAM

NOTE TO TYPESETTERS: Please begin new recto. For relative size of fonts, positioning, and style of fonts, please see the hard copy, p. 000.

CIRCULAR.

*To the LORD CHANCELLOR and the JUDGES*

(COPY.)

*Queen's Square-Place, Westminster,  
6<sup>th</sup> 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,'<sup>19</sup> I take the Liberty of submitting to your Lordship the inclosed Printed Paper on that Subject, for the Reason mentioned in the Second Page,<sup>20</sup> and have the Honour to be, with all Respect,

*My Lord,*

*Your Lordship's most obedient,*

*and humble Servant,*

JEREMY BENTHAM

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<sup>19</sup> 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, *ibid.* 139.

<sup>20</sup> See p. 000 below.

NOTE TO TYPESETTERS: Please begin a new recto. Please confine the title to a single page. For relative size of fonts, positioning, and style of fonts, please the hard copy, p. 000.

*LETTER*  
TO  
LORD PELHAM,  
&c. &c. &c.

NOTE TO TYPESETTERS: Please insert short rule.

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.*

NOTE TO TYPESETTERS: Please insert short double rule. Text to begin on same page.

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.<sup>21</sup> The business of it was—to represent the

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<sup>21</sup> 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. 000 above.

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:<sup>22</sup> the second time after urgent reasons given by the Committee of Finance for the continually professed execution of it,<sup>23</sup> 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*’<sup>24</sup> (after a contract drawn and land purchased in the execution of it)<sup>25</sup> 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:<sup>26</sup>—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.<sup>27</sup> The narrative,

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<sup>22</sup> Bentham’s panopticon penitentiary scheme had been sanctioned by the Penitentiary for Convicts Act of 1794 (34 Geo. III, c. 84), which granted authority to the Lords Commissioners of 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’.

<sup>23</sup> In its Twenty-Eighth Report, in *Commons Sessional Papers of the Eighteenth Century*, cxii. 21, 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 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 Economy and Police’.

<sup>24</sup> 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 reported that he had had an interview with Henry Addington on the subject of the panopticon, in which ‘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, he again 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.

<sup>25</sup> The Millbank estate had been purchased by the Treasury in 1799 from James Cecil (1744–1823), seventh Earl and first Marquis of Salisbury, Lord Chamberlain 1783–1804, with a view to the erection of the panopticon penitentiary.

<sup>26</sup> An allusion to the minute of the meeting of the Lords Commissioners of the Treasury of 13 August 1800, giving four grounds for either the scaling down or the relinquishment of the panopticon penitentiary: see p. 000 & n. below.

<sup>27</sup> An allusion to the promises made to Belgrave and Spencer: see pp. 000 above.

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,'<sup>28</sup> 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.<sup>29</sup>

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.<sup>a</sup>

<sup>a</sup> The 'relinquishment' here in question was hypothetical, and but hypothetical in form, though hitherto it has been categorical in effect.

NOTE TO TYPESETTERS: Please insert short rule.

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<sup>b</sup> the inanity has been displayed:<sup>30</sup> 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.

<sup>b</sup> The three other grounds were, 1. Lapse of time. 2. Increase of terms, meaning

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<sup>28</sup> See p. 000 n. above.

<sup>29</sup> On 4 October 1802, Bentham informed Bunbury that he had decided to print the present 'Letter', 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. On 19 October 1802, in a letter to his friend and editor Pierre Étienne Louis Dumont (1759–1829), who produced five recensions of his writings between 1802 and 1828, 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.

<sup>30</sup> i.e. in 'A Picture of the Treasury': see UC cxxi. 190–252 (10 January–5 May 1802).



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.<sup>31</sup> 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*.<sup>32</sup>

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

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<sup>31</sup> See the Treasury Minute, 13 August 1802 (TNA, PRO T 29/76, pp. 545–6, printed in *Commons Sessional Papers* (1801) cxviii. 799, and reproduced in *Correspondence* (CW), vii. 352 n.): ‘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 appears by the enclosure transmitted by his Grace in the letter abovementioned [i.e. from King to the Lords Commissioners of the Treasury, 28 July 1802, and ‘written by direction of the Duke of Portland, on the subject of Mr. Bentham’s Memorial, respecting the necessity of an increase of charge in the terms of his Contract for erecting a Penitentiary House’], 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 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 advisable 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.’

<sup>32</sup> See pp. 000 below.

assertion, 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).<sup>c</sup>

<sup>c</sup> 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.

These four from Blackstone<sup>33</sup> and from every body: to these four I will venture to

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<sup>33</sup> Sir William Blackstone (1723–80), first Vinerian Professor of English Law at Oxford University 1758–1766, Justice of Common Pleas 1770, 1770–80, and Justice of the King's Bench 1770, was author of the famous *Commentaries on the Laws of England*, 4 vols., Oxford, 1765–9, iv. 11–12, in which he stated that

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 ever have seen any such establishment as Mr. Pitt and the Duke of Portland's 'improved Colony of New South Wales.'<sup>d</sup>

<sup>d</sup>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)<sup>34</sup> 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.<sup>35</sup>

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

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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. Blackstone did not mention compensation in this context.

<sup>34</sup> Pitt had tendered his resignation as leader of the administration on 3 February 1801. It had been accepted by George III on 5 February 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.

<sup>35</sup> The 'Treasury Minute', 13 August 1800, Long to King, 25 August 1800, and King to Long, 17 March 1801, *Commons Sessional Papers* (1801) cxviii. 79–81, each cite 'the improved State of the Colony of New South Wales' as a reason for relinquishing the panopticon penitentiary.

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 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.<sup>e</sup>

<sup>e</sup> 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.<sup>36</sup> 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.

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 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 application 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

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<sup>36</sup> 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, though here he dates his opposition to the practice to the late 1760s.

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. 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 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.<sup>f</sup>

<sup>f</sup> Number of Chaplains, at one time one, at another two.<sup>37</sup> Stations, at first but one.<sup>38</sup>  
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

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<sup>37</sup> 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).

<sup>38</sup> i.e. Sydney.

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.<sup>39</sup> 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.<sup>40</sup> 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.

In Norfolk Island how is it?<sup>41</sup> If there be a clergyman now (and I have not found that

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<sup>39</sup> 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, Woolloomooloo, Lane Cove, Hunters Hill, Kissing Point, the Field of Mars, the Northern Boundary and Ponds, Parramatta, Toongabbie, Prospect Hill, and Richmond Hill near the Hawkesbury River.

<sup>40</sup> 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 *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 Bateson, *Convict Ships*, pp. 132, 138, 145–51, 157–71, 338–9.

<sup>41</sup> Prior to the sailing of the First Fleet, Arthur Phillip (1738–1814), Governor of New South Wales 1788–93, had been instructed to 'send a small establishment' to Norfolk Island 'as soon as circumstances admit of it',

there is one) there was no such officer at least so late as on the 18th of October 1796;<sup>42</sup> though at that time the number of inhabitants was already 887.<sup>a</sup> 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.<sup>b</sup>

<sup>a</sup> I Collins, pp. 504. 508. 512. 497.<sup>43</sup>

<sup>b</sup> Ib. p. 194.<sup>44</sup>

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in order to forestall its potential occupation by the French, and to secure access to its native flax and pine trees. The British settlement at Norfolk Island was established with the arrival of H.M.S. *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 fifteen convicts and eight free persons. See Governor Phillip’s Second Commission, 25 April 1787, and Governor Phillip to Lord Sydney, 15 May 1788, *HRA*, i. 13, 20.

<sup>42</sup> 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 to New South Wales. 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, and 760n.

<sup>43</sup> According to Collins, who reached Norfolk Island on 16 October 1796 aboard the *Britannia*, the population of 887 consisted of 533 men and 354 women and children: see Collins, i. 512. At Bentham’s other references, Collins gives an account of the population which does not get to 887 (504), an account of crops and government stock (508), and the total population of New South Wales (including Norfolk Island) as 4,848 (497), as Bentham goes on to mention.

<sup>44</sup> 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, contrary to Bentham’s statement, Reverend Richard Johnson had from November 1791 to late December 1791 ‘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’, including baptisms and marriages.



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.<sup>45</sup> In this continuation it appears, that in one of the importations of convicts from Ireland, a priest of the Catholic persuasion (Harold by name) was actually comprised.<sup>e</sup>

<sup>e</sup> II Collins, p. 293.<sup>46</sup>

If instead of this seditious, 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,<sup>d</sup> and the exigence which has given birth to so dangerous an expedient and precedent as that of volunteer associations among unreformed convicts<sup>e</sup> might never have taken place.

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<sup>45</sup> 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 p. 000 above.

<sup>46</sup> 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. 000 and 000 n. below.

<sup>d</sup> *Ib.* p. 333.<sup>47</sup>

<sup>e</sup> *Ib.* p. 303.<sup>48</sup>

Circumstances so favourable to a system of incapacity and negligence could scarce in any other case have presented themselves. 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*,<sup>49</sup> a sort of excrementitious mass, that could be projected, and accordingly was 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.<sup>50</sup> 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

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<sup>47</sup> 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.

<sup>48</sup> 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. 000 and 000 n. below.

<sup>49</sup> See Virgil (Publius Vergilius Maro), *Aeneid*, xi. 372: *nos animæ viles, inhumata infletaque turba, sternamur campis*, i.e. ‘let us, whose lives are worthless, be strewn over the fields, a mob, unburied and unwept’.

<sup>50</sup> 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).

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*,<sup>51</sup> 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*,<sup>52</sup> my pious frauds; the stock of them, I assure your Lordship, was not a scanty one. Delinquency (if —— and ——<sup>53</sup> would have given leave), delinquency in habit, in act, even in idea, would have been shut out; 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

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<sup>51</sup> i.e. ‘let it have effect to such extent as it can have effect’: a legal maxim.

<sup>52</sup> See Pliny the Elder, *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’.

<sup>53</sup> Possibly Pitt and Rose.

reward to me, not a punishment, to be as unremittingly inspected.<sup>54</sup>

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:<sup>g</sup> 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,<sup>55</sup> there had been an eye at the Treasury, capable of reading in the book of human nature.

<sup>g</sup> 1,037,230*l.* 28th Finance Report, 26th June 1798, p. 22.<sup>56</sup>

Under a system of suppression persevered in, spite of Parliamentary warnings,<sup>h</sup> for these ten years,<sup>i</sup> from what source shall the testimony 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

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<sup>54</sup> For Bentham's arrangements to encourage the public to visit the panopticon penitentiary see 'Panopticon: or, the Inspection-House', pp. 29–30 (Bowring, iv. 45–6).

<sup>55</sup> i.e. Pitt.

<sup>56</sup> In its Twenty-Eighth Report, in *Commons Sessional Papers of the Eighteenth Century*, cxii. 22, and Appendix O, 120–1, 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. 7¼d.

the testimony, in this point of view, more than doubly valuable.

<sup>h</sup> See 28th Report of the Committee of Finance, Anno 1798.<sup>57</sup>

<sup>i</sup> The last official communications, made to the House of Commons on the subject of New South Wales, bear date in 1792.<sup>58</sup>

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.<sup>59</sup> ‘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.’<sup>60</sup>

In the Preface he concludes with acknowledging himself to be ‘anxiously solicitous

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<sup>57</sup> Bentham perhaps had in mind the passage at *ibid.*, p. 28, where the Select Committee, after enumerating all 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 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’.

<sup>58</sup> See ‘Accounts and Papers Relating to Convicts on Board the Hulks, and Those Transported to New South Wales. Ordered to be printed 10<sup>th</sup> and 26<sup>th</sup> March 1792’, *Commons Papers of the Eighteenth Century* (1791–2) lxxxiii. 259–367.

<sup>59</sup> Thomas Townshend (1733–1800), first Baron and first Viscount Sydney, Paymaster General 1767–8, Secretary-at-War 1782, Home Secretary 1782–3, 1783–9, had supported the establishment of a penal colony at Botany Bay, and in 1788 the settlement at Sydney was named in honour of him.

<sup>60</sup> 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 elsewhere, are Bentham’s.

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.'<sup>61</sup> .^.^.' 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* to the public good, it may prove a valuable *nursery* to our *East India* possessions for *soldiers* and *seamen*.'<sup>62</sup> 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.'<sup>63</sup> .^.^.' 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—

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<sup>61</sup> Collins, i. p. x.

<sup>62</sup> Ibid. pp. ix–x.

<sup>63</sup> Ibid. p. viii.

*syllogizari non est ex particulari*<sup>64</sup>—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 can be reposed, appears in that country to be beyond comparison a scarcer animal than a *black swan*.<sup>65</sup> One thing the historian is clear in; that, as to all but the few *lusus naturæ*<sup>66</sup> 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.<sup>j</sup>

<sup>j</sup>I. *Improbability, 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

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<sup>64</sup> 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.

<sup>65</sup> See Juvenal (Decimus Iunius Iuvenalis), *Satires*, II. vi. 165: *rara avis in terries 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 discovered in Australia.

<sup>66</sup> i.e. ‘freaks of nature’.

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. *Improvvidence, 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,<sup>67</sup> 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 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.’<sup>68</sup>

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

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<sup>67</sup> i.e. River Hawkesbury.

<sup>68</sup> Collins’s emphasis. The regulation alluded to is at Governor Hunter to Duke of Portland, 12 November 1796, Enclosure, Government and General Orders (17 November 1795), *HRA*, i. 681–2



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.<sup>69</sup> *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,<sup>70</sup> 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.’<sup>71</sup> The indulgence consisted in the

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<sup>69</sup> See Governor Hunter to Duke of Portland, 12 November 1796, Enclosure, Government and General Orders (7 April 1796), *HRA*, i. 691.

<sup>70</sup> See Collins, i. 492–93.

<sup>71</sup> i.e. to work for wages already paid: see Francis Grose, *A Classical Dictionary of the Vulgar Tongue*, London, 1785.

being suffered to give assignments on their crops then in the ground, to save themselves from imprisonment for debt.

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,<sup>72</sup> that one hundred and seventy-nine people subsisted themselves independent of the public stores and resided in this town.<sup>73</sup> 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.’<sup>74</sup>

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<sup>72</sup> The muster in question took place at Sydney on 26 September 1795, at Parramatta and Toongabbie on 1 October 1795, and at the Hawkesbury River settlements on 3 October 1795: see Governor Hunter to Duke of Portland, 25 October 1795 and 12 November 1796, Enclosure, Government and General Order (23 September 1796), *HRA*, i. 540–1, 678.

<sup>73</sup> i.e. Sydney.

<sup>74</sup> On 23 April 1796 Thomas Hope and John Brewster were convicted at the Sydney criminal court 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,

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,<sup>75</sup> 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, 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,)<sup>76</sup> the uniform good behaviour of the convicts was still to ‘be commended.’

*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 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 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.<sup>77</sup>

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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.

<sup>75</sup> See Collins, i. 474–5.

<sup>76</sup> See Collins, i. 230.

<sup>77</sup> See pp. 000, 000 below respectively.

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.<sup>78</sup>

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.<sup>k</sup>

<sup>k</sup> 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.<sup>79</sup> Extracts, in continuation of those given from the first volume, are intended to accompany this address.<sup>80</sup>

To keep clear of all possible imputation of intrigue, I abstained purposely from every endeavour, to open any sort or communication, direct or indirect, with the respectable historian, to whose ulterior testimony I was looking forward with such well-grounded confidence.<sup>81</sup>

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 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

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<sup>78</sup> For the publication of the second volume see p. 000 n. above. A notice that the work was ‘In the Press, and speedily will be published’ appeared, for instance, in the *Morning Chronicle*, 9 March 1802.

<sup>79</sup> i.e. 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.

<sup>80</sup> See ‘Second Letter to Pelham’, p. 000 below.

<sup>81</sup> Bentham subsequently dined with Collins 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.

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;<sup>82</sup> the date of it is the 20th of May, 1799.<sup>83</sup> about 2½ years had been at that time added to the experience reported by Captain Collins.

NOTE TO TYPESETTERS: Please insert space.

'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 grab 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*

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<sup>82</sup> John Hunter (1737–1821), naval officer, Governor of New South Wales 1795–1800.

<sup>83</sup> The letter had been written by Hunter to Samuel Bentham: see BL Add. MS 33,543, fos. 36–7, reproduced in *HRNSW*, iii. 673–5.

*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.'*

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.<sup>84</sup>

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.<sup>85</sup> 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,<sup>1</sup> (as they must do there, such of them as are not in jail there)<sup>m</sup> they will remain as bad as ever; or rather, according to the estimate given of

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<sup>84</sup> 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 had congratulated him upon his appointment as Inspector-General.

<sup>85</sup> The asterisks here and below obscure references to 'M<sup>r</sup> King', i.e. John King: see the draft at UC xciv. 336<sup>v</sup> (27 March 1802).

them, as above, by the late Chief Magistrate, become still worse.

<sup>1</sup> 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.'<sup>86</sup>

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.'<sup>87</sup>

<sup>m</sup> 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.'<sup>88</sup> 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.'<sup>89</sup> 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

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<sup>86</sup> 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.

<sup>87</sup> i.e. the River Hawkesbury settlements.

<sup>88</sup> i.e. Sydney Cove.

<sup>89</sup> 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.

having served their respective sentences.<sup>90</sup> 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.’

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To crown the whole, and that nothing might be wanting that could help to demonstrate the complete inefficacy and inutility of everything that is peculiar 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.<sup>91</sup>

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

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<sup>90</sup> 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 Duke of Portland, 12 November 1796, Enclosure, Government and General Order (11 July 1796), *HRA*, i. 694–5.

<sup>91</sup> See Collins, ii. 330–1. The plan to convert the condemned colonial 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 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.



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.<sup>92</sup> The country is particularly favourable to such exhibitions. Things take fire there of themselves: {II Collins, p. 72.}<sup>93</sup> *a fortiori* with a little assistance.

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*.<sup>94</sup>

‘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: not a word more in it that bears reference to any thing that can be called *politics*.<sup>95</sup> Mere accident threw it into my hands. For authentication sake,

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<sup>92</sup> The thatched Sydney gaol burned down on the night of 11 February 1799 (Collins, ii. 197–8), while the replacement stone ‘county gaol’ cost £3,954 to construct (ibid. 331). The log gaol at Parramatta burned down either (according to ibid. 276) on 24 December 1799 or (according to Governor Hunter to Duke of Portland, 7 January 1800, *HRA*, ii. 434) on 28 December 1799.

<sup>93</sup> Collins, ii. 72–3 states 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’.

<sup>94</sup> See pp. 000-000 below.

<sup>95</sup> 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

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.<sup>n</sup>

<sup>n</sup> 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.

Such was the state of this ‘improved’ and ever improving Colony, with the benefit of at least a year’s improvements more than —— and ——<sup>96</sup> 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.<sup>97</sup> A year’s improvements more, and still —— and ——<sup>98</sup> 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

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Port Dalrymple 1804–9, and the recipient was Maria Sophia Bentham (1765–1858), the wife of Samuel Bentham. A partial copy of the letter is at BL Add. MS 33,543, fos. 423–4.

<sup>96</sup> ‘M<sup>r</sup> King and his Grace’ (John King and the Duke of Portland), according to the draft at UC cxvi. 335<sup>v</sup> (27 March 1802).

<sup>97</sup> For the possible relinquishment of the panopticon penitentiary scheme see pp. 000 & n. above.

<sup>98</sup> Again, ‘Mr King and his Duke’.

society in which, if he settled at all in that quarter of the world, he would have to settle, upon his restoration to independence.<sup>99</sup>

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 colonisation than utter solitude—a set of living nuisances, prepared at all times for all sorts of mischief;—for plundering the industrious;<sup>o</sup> for quarrelling with the quarrelsome;<sup>p</sup> for affording harbour to the fugitive.<sup>q</sup> 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.

<sup>o</sup> I Collins, 444. 458, 459.—II. 15. 31. 33. 56. 204.<sup>100</sup>

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<sup>99</sup> 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 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.

<sup>100</sup> Collins, i. 444, 458–9, ii. 15, 31, 33, 55–6, 204–5 describes 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.

<sup>p</sup> *Ib.* 30. 415.—II. 281.<sup>101</sup>

<sup>q</sup> *Ib.* 459.—II. 34. 40. 59. 299.<sup>102</sup>

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.*’<sup>103</sup>

Loud and frequent have been the complaints (nor altogether, I suppose, without

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<sup>101</sup> Collins, i. 30–1, 415–17, ii. 281–3 respectively describes the killings in May 1788 of two convicts by Indigenous Australian people from whom they had stolen 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.

<sup>102</sup> Collins, i. 458–9, ii. 34–5, 40, 59, 299–300 describes 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.

<sup>103</sup> See p. 000 above.

truth) about *inveigling* men (as it is called) to North America:<sup>104</sup> *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.<sup>105</sup>

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 dependence 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*.<sup>106</sup> Keep a man in New South Wales, or any where else out of Britain, for a given time, he will neither pick a

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<sup>104</sup> The activities of 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 making promises to workers of high wages in the colonies and their use of ‘other Arts to inveigle and draw them away’. Complaints against inveigling were still being made, for instance, in John Lind, *An Answer to the Declaration of the American Congress*, London, 1776, p. 195, and *The Times*, 18 September 1794, p. 2.

<sup>105</sup> See pp. 000 below.

<sup>106</sup> [ANNOTATION TO BE FINALIZED.]

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.*<sup>107</sup> 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,<sup>108</sup> 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.

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

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<sup>107</sup> 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'.

<sup>108</sup> i.e. Great Britain and Ireland respectively.

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,<sup>r</sup> 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 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:<sup>109</sup> 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;<sup>s</sup> 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.*'<sup>110</sup> In this Statute, the several gradations of this species of punishment, or those of them at least which are in use, are brought together:

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<sup>109</sup> Under the Transportation Act of 1784 (§ 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'.

<sup>110</sup> Bentham intended to insert Portland's letter to the Lords Commissioners of the Treasury, 14 October 1799 (reproduced at p. 000 n. below), 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 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'.

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.

<sup>r</sup> 13 and 14 ff II. c. 1. § 2. c. 12. § 23.<sup>111</sup>

<sup>s</sup> 19 G. III. c. 74.

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*. 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

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<sup>111</sup> 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 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 authorised 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.



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.<sup>t</sup>

<sup>t</sup>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 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.<sup>f</sup> 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:<sup>112</sup> 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

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<sup>112</sup> 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.

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 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.

<sup>f</sup> II Collins, p. 40.<sup>113</sup>

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')<sup>114</sup> it is moreover

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<sup>113</sup> 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'.

<sup>114</sup> See p. 000 above.

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.’<sup>115</sup>

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 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,

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<sup>115</sup> See p. 000 above.

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.

*Reformation* is a very complex object: thought and contrivance are requisite to the pursuit of it. *Local exclusion* is a very simple object; it 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 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*.<sup>116</sup>

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<sup>116</sup> The eastern coast of the continent called New Holland by the Dutch was given the name New South Wales by Captain James Cook (1728–79), explorer, during the voyage of the *Endeavour* 1768–71. Botany

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.<sup>u</sup> *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.*

<sup>u</sup> 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

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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 from Joseph Banks (1743–1820), the naturalist on Cook’s voyage, that the British government decided to found 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 a synonym, often pejorative, for New South Wales for decades.

material in *other* points of view, were mere blanks with reference to the objects professed, on *this* occasion, to be aimed at.

Setting aside law and justice, the expedient was at any rate a plausible one; and, except the revolutionary *noyades* and *fusillades*,<sup>117</sup> the Calcutta Black hole,<sup>118</sup> 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

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<sup>117</sup> 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), having been sent to Nantes by the National Convention of France 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.

<sup>118</sup> 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.

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 by any concise form of words: a description of it will be attempted a little further on.<sup>119</sup>

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.<sup>120</sup> 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

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<sup>119</sup> See p. 000 below.

<sup>120</sup> 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'.



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,)<sup>121</sup> 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.

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

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<sup>121</sup> See, for instance, *Jeremy Bentham to his Fellow Citizens of France, on Death Punishment*, London, 1831, pp. 7–10 (Bowring, i. 528–30).

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.<sup>122</sup> Physical obstacles, which rendered it impossible to him to escape and live, are

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<sup>122</sup> 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*

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 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,

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*and His Children in the Dungeon*, by Sir Joshua Reynolds (1723–92), was first exhibited at the Royal Academy in 1773.

(your Lordship has seen already)<sup>123</sup> 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*<sup>124</sup> Colonies in America to any other place ‘beyond the seas:’<sup>v</sup> 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: 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.

<sup>v</sup> 19 Geo. III. c. 74. § I.<sup>125</sup>

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<sup>123</sup> Bentham presumably has in mind the transformation of a sentence of transportation for a term of years into a sentence for life: see p. 000 above.

<sup>124</sup> i.e. ‘the place to which’ from ‘the former’.

<sup>125</sup> The Penitentiary Act of 1779 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’.

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,<sup>w</sup> a fresh Act was obtained from Parliament:<sup>x</sup> 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.<sup>126</sup> But this fresh Act, in which not a syllable was said of any of the existing Transportation Acts,<sup>127</sup> 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 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.

<sup>w</sup> 24 Geo. III. c. 56. § 1.<sup>128</sup>

<sup>x</sup> 27 Geo. III. c. 2.<sup>129</sup>

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<sup>126</sup> See ‘A Plea for the Constitution’, pp. 000 below.

<sup>127</sup> Contrary to Bentham’s statement, the New South Wales Courts Act of 1787 (§ 1) does refer to the Transportation Act of 1784, though not to any other.

<sup>128</sup> The Transportation Act of 1784 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.

<sup>129</sup> 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 continued, noting

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),<sup>130</sup> 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

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that ‘whereas it may be found necessary that a Colony and a Civil Government should be established in the Place to which Convicts shall be transported .^.^ that 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. 30–1.

<sup>130</sup> i.e. the New South Wales Courts Act of 1787.

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.<sup>131</sup>

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 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,<sup>132</sup> 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.*<sup>133</sup>

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

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<sup>131</sup> See 'Plea for the Constitution', pp. 000 below.

<sup>132</sup> 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.

<sup>133</sup> 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'.

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;<sup>134</sup> 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 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:<sup>y</sup> 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.<sup>z</sup>

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<sup>134</sup> See pp. 000 above.



<sup>y</sup> 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.<sup>135</sup> 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.

<sup>z</sup> 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,’<sup>8</sup> and that 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,<sup>h</sup> 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?<sup>136</sup> Powers obtained from Parliament for one purpose are employed for another, and that an opposite one: powers given for the institution of domestic

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<sup>135</sup> See ‘Second Letter to Pelham’, pp. 000 below.

<sup>136</sup> H.M.S. *Glatton* departed from Portsmouth on 23 September 1802 with approximately 400 convicts, 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 ‘Second Letter to Pelham’, pp. 000 below, and ‘Plea for the Constitution’, pp. 000 below.

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?

<sup>g</sup> 4 G. I. c. 11. § 1.<sup>137</sup>

<sup>h</sup> 24 G. III. sess. 2. c. 56. § 1. 13.<sup>138</sup> 28 G. III. c. 24. § 5.<sup>139</sup>

In speaking of the prolongation thus given to all these different lengths of banishment, a point I have all along been careful to keep 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

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<sup>137</sup> 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’.

<sup>138</sup> 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’.

<sup>139</sup> The Continuance of Laws Act of 1788 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.

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,<sup>140</sup> 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.<sup>aa</sup>

<sup>aa</sup> 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.

‘Such as were<sup>141</sup> desirous of returning to England were informed, that no obstacle

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<sup>140</sup> An echo of I Corinthians 15: 53–4.

<sup>141</sup> Collins ‘should be’.

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*}<sup>142</sup> 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.}<sup>143</sup>

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*.<sup>144</sup>

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<sup>142</sup> The *Bellona* had arrived at Port Jackson on 16 January 1793, carrying stores and seventeen female convicts: see Bateson, *Convict Ships*, pp. 145–6.

<sup>143</sup> See Collins, i. 261.

<sup>144</sup> Francis Grose (1758–1814), Lieutenant-Governor of New South Wales 1789–94, granted permission for eight ex-convicts (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

‘Notwithstanding the facility with which passages from this place were procured, (very little more being required by the Master<sup>145</sup> 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.’

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 .^.^.^.^.<sup>146</sup> 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.<sup>147</sup> 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.’<sup>148</sup>

No. 2. July 1794, p. 382. ‘The Hope<sup>149</sup> sailed this month for Canton, the Master

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men had been taken ashore and summarily flogged, and the ship had sailed without them on 4 June 1793. (See Collins, i. 288–90.)

<sup>145</sup> Collins ‘masters’.

<sup>146</sup> 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.

<sup>147</sup> In October 1793 James Ruse (1759–1837), convict and farmer, the first expirée 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.

<sup>148</sup> Collins, i. 320.

<sup>149</sup> The *Hope*, an American trading ship engaged in conveying skins to China, had arrived at Port Jackson on 24 December 1792.

being suffered to take with him one man, John Pardo Watts, who had served his time of transportation.’<sup>150</sup>

No. 3. November 1794, p. 398. ‘This man {the Master of the Revolution}<sup>151</sup> 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}<sup>152</sup> 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}<sup>153</sup> that, notwithstanding so many as fifty persons, 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<sup>154</sup>.^^. 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

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<sup>150</sup> 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.

<sup>151</sup> John Locke was the Master of the *Resolution* (not the *Revolution*).

<sup>152</sup> The merchant ship *Daedalus* sailed from Port Jackson on 17 December 1794.

<sup>153</sup> The *Endeavour* and the *Fancy* both sailed from Port Jackson on 18 September 1795.

<sup>154</sup> Thomas Muir (1765–99), lawyer and political reformer, who had in August 1793 been convicted of sedition and sentenced to transportation for fourteen years, and who had arrived at Port Jackson in October 1794 on the *Surprize*. Muir absconded from New South Wales on 17 February 1796 in the *Otter*, an American fur-trader captained by Ebenezer Dorr (1762–1847).

found means to secrete themselves on board a day or two before she sailed.’<sup>155</sup>

See further, Supplement.<sup>156</sup> 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.<sup>157</sup>

Your Lordship sees below<sup>158</sup> how large, how indefinite, the number is of these exiles, that may be expected to return: the number of all descriptions: of those, whose return the Governor may have been willing to *permit*; of those, whose return the Governor may have been *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.

NOTE TO TYPESETTERS: The main text should carry on here without interruption.

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<sup>155</sup> Thanks to what Collins described as the ‘great vigilance’ of Thomas Hedley, the master of the *Ceres*, eight would-be escapees were found secreted aboard prior to its sailing in early March 1796, and were returned to the authorities.

<sup>156</sup> i.e. ‘Second Letter to Pelham’, pp. 000 below.

<sup>157</sup> See p. 000 below.

<sup>158</sup> See ‘Table of Convict Emigration’, p. 000 below.

NOTE TO TYPESETTERS: This Table should appear on a separate verso page, in landscape format. The notes should appear on a facing recto page, beginning with (1) the Bentham sub-footnotes to the Table itself, followed by (2) the longer Bentham footnote beginning ‘From the inspection of this Table’, and finishing (3) with the editorial footnotes. For layout see p. 000 of the hard copy. Please place braces around ‘Shah Hormuzear and Chesterfield’ in row no. 6, ‘Sugar Cane and Boddingtons’ in row no. 8, ‘Endeavour and Fancy’ in row no. 11, and ‘Muir and several others’ in row no. 12.

TABLE OF CONVICT EMIGRATION:

[FOR THIS TABLE PLEASE SEE THE COMPANION PDF FILE]

NOTE TO TYPESETTERS: Main text resumes below, and should follow on without interruption from the point noted above.

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.<sup>ff</sup> 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.



<sup>ff</sup> 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.<sup>159</sup> 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 will remain open: unless it should be thought fit to shut up the ports of New South Wales like those of Japan.<sup>160</sup> 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.<sup>161</sup>

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 iudicium parium suorum, vel per legem terræ.*<sup>162</sup> Violating this right by

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<sup>159</sup> 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, Pelham to Lords Commissioners of the Admiralty (9 March 1802), *HRA*, iii. 570), and on 23 September 1802 H.M.S. *Glatton* departed with convicts for Port Jackson and on 24 April 1803 H.M.S. *Calcutta* with an expeditionary force and convicts to found a new penal colony at Port Phillip (see p. 000 & n. below).

<sup>160</sup> 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, 64–75.

<sup>161</sup> See pp. 000 below.

<sup>162</sup> i.e. 'No free man shall be .^^. exiled .^^. except by the lawful judgment of his equals or by the law of the land', a truncation of clause 39 of Magna Carta: *Nullus liber homo capiatur, vel imprisonetur, aut disseisiat, aut utlagetur, aut exuletur, aut aliquo modo destruat, nec super eum ibimus, nec super eum mittemus, nisi per legale iudicium parium suorum vel per legem terre*, i.e. 'No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.'

*deeds* while it is allowed in *words*, is tearing *Magna Charta* to pieces to patch up a bad measure of police.

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.<sup>163</sup> 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.

*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

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<sup>163</sup> For the escape of nine convicts and two children from Port Jackson on 28 March 1791 see p. 000 n. above.

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.<sup>164</sup>

*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 ———<sup>165</sup> 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)<sup>166</sup> 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

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<sup>164</sup> See ‘Panopticon; or, The Inspection-House’, iii. 161 (Bowring, iv. 156): ‘I look upon escape out of a Panopticon, I have said over and over, as an event morally impossible’.

<sup>165</sup> i.e. ‘M<sup>r</sup> Pitt’, according to the draft at UC cix. 8 (21 June 1802).

<sup>166</sup> See pp. 000 above.

invigorated by inviolable temperance.<sup>167</sup>

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.<sup>168</sup> 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<sup>169</sup>—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

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<sup>167</sup> See ‘Panopticon; or, the Inspection House’, i. 50–66, iii. 91–146 (Bowring, iv. 49–52, 141–53).

<sup>168</sup> Bentham does not, in fact, appear to recommend such a course of action in his writings on the panopticon prison.

<sup>169</sup> Luke 10: 42.

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 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.<sup>170</sup>

This then was the real fruit of the establishment: to shew (to such eyes I mean, whosoever 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.<sup>171</sup> 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)<sup>172</sup> 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.<sup>gg</sup>

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<sup>170</sup> Collins, i. 383, describes the erection, in July 1794, of ‘a building, consisting of four cells for prisoners, [which] was added to the guard-house on the east side of the cove. This had 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. 000 n. above and Governor Hunter to 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. 000 & n. below). According to Collins, i. 482, during June 1796 the convicts James McManus and George Collins were recaptured after they had absconded from the gaol gang.

<sup>171</sup> Bentham presumably has in mind the sacrifice of the panopticon penitentiary to the wishes of Spencer and Belgrave not to have it built on land adjacent to their estates: see p. 000 n. above.

<sup>172</sup> See p. 000 below.

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.<sup>173</sup> 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)<sup>174</sup> has 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.

eg I Collins, p. 383.<sup>175</sup>

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,<sup>176</sup> the root of all disorder was found to

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<sup>173</sup> 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.’

<sup>174</sup> See p. 000.

<sup>175</sup> Collins reports that a replacement gaol at Sydney, built from stone, was completed in June 1801 at a cost of £3,954: see p. 000 & n. above.

<sup>176</sup> 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

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 qua non* for rendering it sufficiently steady and effective.<sup>177</sup>

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 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.<sup>hh</sup>

<sup>hh</sup> I Collins, pp. 303, 455.<sup>178</sup>

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*

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commanding officer of the Corps, namely Grose until December 1794 and subsequently Lieutenant-Colonel William Paterson.

<sup>177</sup> According to Collins, i. 313–4, in September 1793 there was then only one barrack for the soldiers 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’.

<sup>178</sup> 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. 000 n. below). Following this attack, most soldiers were ordered to live in barracks, although, 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’.

*fellow.*<sup>179</sup>

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:<sup>ii</sup> 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*.

<sup>ii</sup> See Table of Mortality, p. 000.<sup>180</sup>

*Bad enough indeed: but did not the fault lie in the Contractors?*<sup>181</sup> 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. It was the fault of —— and his man of economy, by a double title:<sup>182</sup> for having fixed upon so incurably bad a system, (sacrificing to it the so much better system they found 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

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<sup>179</sup> 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 1633–40, 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, 1705, i. 242.

<sup>180</sup> i.e. ‘Table of Convict Mortality’, p. 000 n. below.

<sup>181</sup> Contracts for the fitting out of convict ships were negotiated by the Navy Board until 1794, and thereafter 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, H.M.S. *Glutton*, which sailed on 23 September 1802, and H.M.S. *Calcutta* which sailed on 28 April 1803.

<sup>182</sup> i.e. Pitt and Rose. See the corresponding marginal content at p. 000 above: ‘The fault lay not in the Contractors but in Pitt and C<sup>o</sup> by their incapacity and inhuman negligence’.



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:<sup>183</sup>—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.<sup>184</sup>

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.<sup>185</sup>—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 carcass 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 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

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<sup>183</sup> 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* at the Cape of Good Hope. 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, and that the ships’ masters mistreated the convicts and withheld their rations, which they 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.

<sup>184</sup> For the conjunction of interest and duty see, for instance, ‘A View of the Hard Labour Bill’, pp. 26–32 (Bowring, iv. 12–13).

<sup>185</sup> The voyage to North America from the British Isles took an average of six to eight weeks, while, from 1787 to 1800, the voyage of a convict ship to New South Wales took an average of twenty-eight weeks.

concise estimate, but which would in many instances rise to a still superior amount.<sup>186</sup>

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,<sup>187</sup> or in the slave trade, or both.<sup>jj</sup>

<sup>jj</sup> 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

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<sup>186</sup> In 'Panopticon; or, the Inspection-House', i. 71–3, Bentham proposed that the panopticon prison's contractor would, at the start of each year, be given £10 for every likely number of deaths among the prisoners and, at the end of each year, be fined £10 for every actual death, while in the revised insurance scheme outlined in 'Twenty-Eighth Report from the Select Committee on Finance', Appendix F. 3., in *Commons Sessional Papers of the Eighteenth Century*, cxii. 66–75 at 73–4, the sum had increased to £100.

<sup>187</sup> Following the high mortality rate of the Second Fleet, where the contractors were paid £17 7s. 6d. per convict embarked, a policy similar to that recommended by Bentham for the panopticon prison had in fact been adopted. 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.

on this head. So long ago as the year 1788, in the Act 28 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.<sup>188</sup> 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,<sup>189</sup> 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

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<sup>188</sup> 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 (also known as ‘Dolben’s Act’ for its proposer Sir William Dolben (1727–1814), MP for Oxford University 1768, 1780–1806 and Northamptonshire 1768–1774), which 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 rewards: 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.

<sup>189</sup> 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.

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 criminal[s] 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.

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 three years of neglect, was unfortunate enough to obtain the acceptance of Mr. Pitt.<sup>190</sup>

Before the slave-trade regulations spoken of, ‘a ship of 240 tons would frequently be crowded’ (according to Edwards,<sup>i</sup> ‘with no less than 520 slaves; which was not allowing ten inches of room to each individual. The consequence was,<sup>191</sup> 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

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<sup>190</sup> 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, *The Correspondence of Jeremy Bentham*, vol. iv, ed. A.T. Milne, London, 1981 (CW), pp. 223–4, 445–9.

<sup>191</sup> Edwards ‘The consequence of this inexcusable avarice was’.

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.<sup>192</sup>

<sup>i</sup> II Edwards, p. 121.

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 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

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<sup>192</sup> 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  $\frac{3}{4}$  per cent’ died in harbour. See Edwards, *History of the West Indies*, ii. 123–4.

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.<sup>193</sup>—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.

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. On their arrival at this land of cruel promise, the fugitives from Pestilence were received by Famine.<sup>194</sup> Those, who had escaped the 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.<sup>195</sup> 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 promised) that in 1794, out of a greater number there died but 42, and in 1795 but 20.<sup>kk</sup>

NOTE TO TYPESETTERS: The table below should form part of the Bentham footnote, but the Bentham template has not been applied. Please add a short rule above each total, as per the

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<sup>193</sup> 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).

<sup>194</sup> On 1 April 1790, for instance, during a period of severe dearth, the colony was put on short rations but, as Collins, i. 105 states, 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'.

<sup>195</sup> See Collins, i. 258.

original. Please add braces around the page references for 1791. For style and layout see p. 000 of the hard copy. The Bentham sub-footnotes to the Table follow at the end of the Bentham footnote.

<sup>kk</sup> 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.<sup>196</sup>

Year	Page	I. On the Voyage.			Page	II. In the Settlement, Died.			Child
		Shipped	Died	Landed		Males	Females	Total	
1787	50	756	33	723	—	—	—	—	
1788	—	—	—	—	50	28	13	41	9
1789 <sup>j</sup>	—	—	—	—	—	—	—	—	—
1790	114, 122	1222	278 <sup>197</sup>	944	145	123	7	130	10
1791	167, 171, 174, 175, 178, 179, 181,	2063 <sup>k</sup>	200 <sup>l</sup>	1863 <sup>198</sup>	194	155	8	163	5

<sup>196</sup> 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 10.3% of transportees in this period did not survive the voyage.

<sup>197</sup> According to Collins, i. 123, there were 277 deaths, rather than 278, during the voyages of the four convict ships which reached Port Jackson during 1790.

<sup>198</sup> 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.

1792	201, 236, 245	751 <sup>199</sup>	10 <sup>m</sup>	741? <sup>200</sup>	258	418	18	436	29
1793	261, 304, 311	321	1 <sup>n</sup>	320	332 <sup>201</sup>	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 - - -			<u>1458</u>	

NOTE TO TYPESETTERS: End of table.

NOTE TO TYPESETTERS: If point 4 below runs over two lines, please insert braces around the two lines. Please insert short rule below '297'. In points 3, 4, and 5, please make the dashes extend at regular intervals from the end of the text to the appropriate figure. For the style and layout see p. 000 of the hard copy.

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

<sup>199</sup> According to Collins, i. 201, 236, 245, a total of 747 convicts were embarked in England, rather than 751, on the three ships which reached Port Jackson during 1792.

<sup>200</sup> 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.

<sup>201</sup> See Collins, i. 331.



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.

<sup>j</sup>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 Phillip and Hunter, and Mr. Surgeon White.<sup>202</sup>

<sup>k</sup>And upwards.

<sup>l</sup>And upwards.<sup>203</sup>

<sup>m</sup>In one ship out of three: of the others nothing said.<sup>204</sup>

<sup>n</sup>In one ship out of three: none in either of the two others.<sup>205</sup>

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,

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<sup>202</sup> 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 the above works, give any precise information about the number of deaths in the colony itself during 1789.

<sup>203</sup> According to Collins, i. 182, '[u]pwards of two hundred convicts, male and female, did not reach the country' in 1791.

<sup>204</sup> i.e. the *Royal Admiral*, while the other two vessels were the *Kitty* and the *Pitt*: see Collins, i. 236, though Collins, i. 246 implies that three of the convicts on board the *Kitty* died.

<sup>205</sup> i.e. the *Sugar Cane*, while the other two vessels were the *Bellona* and the *Boddingtons*: see Collins, i. 311.

operated in effect in diminution of the whole. The 522, who by pestilence or famine perished in the voyage—these envious, because earlier victims—these superfluous wretches, had they landed, would probably, and by a 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]<sup>206</sup> or thereabouts, who actually received their quietus from that scourge.

*But (says somebody, and not implausibly) 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 stretch 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.<sup>207</sup>

The *pestilence* too—the preliminary pestilence during the voyage—will be found,

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<sup>206</sup> 1802 '639' appears to be a typographical error. The figure represents the total number of deaths in the colony given in 'Table of Convict Mortality' above.

<sup>207</sup> See pp. 000 below.

and in a very high degree, not a mere accidental and occasional concomitant, but an essential and irremovable one: for irremovable 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:<sup>208</sup> confine them, they die. Negligence, above or below, 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.’<sup>209</sup>

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<sup>208</sup> 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 supposed, planned, or actual attempts at mutiny on nine voyages, namely those of the *Scarborough* (sailed on 13 May 1787), the *Scarborough* (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 *Surprise* (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, 149–50, 165–6. The only successful mutiny occurred during the voyage of the *Lady Shore*, which was seized on the morning of 1 August 1797, not by its convicts, but by about a dozen mostly French prisoners-of-war who had been impressed into service in the New South Wales Corps. The mutineers aboard the *Lady Shore* reached Montevideo on 28 August 1797, where the mutineers were made prisoners-of-war and the convict women were distributed as servants among local families. The eventual fate of the mutineers is unknown, though one of them, Jean Baptist Prevot, was hanged in London on 23 December 1799 for the murder of Captain James Willcocks, who was mortally wounded during the mutiny. See *An Authentic Narrative of the Mutiny on Board the Ship Lady Shore; with Particulars Through Part of Brazil: in a Letter, Dated ‘Rio Janeiro, Jan. 18, 1798,’ to The Rev. John Black, Woodbridge, from Mr. John Black, One of the Surviving Officers of the Ship*, Ipswich, 1798, and Bateson, *Convict Ships*, pp. 151–7.

<sup>209</sup> See Collins, ii. 222–3: ‘On the 26<sup>th</sup> of this month [July 1799] the *Hillsborough* transport arrived from England, whence she had sailed with three hundred male convicts on board; but from the raging of a gaol

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 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.<sup>11</sup> 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

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fever, that made its appearance soon after he departure, ninety-five had died during the voyage, and six more were added to the number in a few days after they were landed.

'It was impossible that any ship could have been better fitted by Government for the accommodation of prisoners during such a voyage than was the *Hillsborough*; but, unfortunately, they brought with them, perhaps lurking in their cloathing, a disease which bade defiance to all the measures that could be taken for their comfort and convenience.'

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', either in 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.

about.<sup>mm</sup>

<sup>ll</sup> 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.’<sup>210</sup> 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.

<sup>mm</sup> ‘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.

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,<sup>211</sup> 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

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<sup>210</sup> Blackstone, *Commentaries on the Laws of England*, iv. 6. Bentham’s emphasis.

<sup>211</sup> See the discussion of compensation and satisfaction of injured parties in *Traité de législation civile et pénale*, ed. É. Dumont, 3 vols., Paris, 1802, ii. 308–79 (Bowring, i. 371–88).

be allowed to purchase the satisfaction of stealing the idea into practice.<sup>212</sup> 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.<sup>213</sup> 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: 5s.<sup>214</sup> 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*

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<sup>212</sup> 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'.

<sup>213</sup> See 'A Picture of the Treasury'.

<sup>214</sup> See p. 000 below.

*novel—novel to a degree which you yourself, Sir, have even been forward to acknowledge—the absence of it cannot, confidently 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 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:<sup>215</sup> 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: 9s. 5½d<sup>216</sup> to £.46: 7s. 0¼d. the highest rate of expence the most probable.

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<sup>215</sup> See p. 000 above.

<sup>216</sup> 'Twenty-Eighth Report from the Select Committee on Finance', in *Commons Sessional Papers of the Eighteenth Century*, cxii. 24–5: '5¾d.'



NOTE TO TYPESETTERS: Please ensure that each paragraph of the following table is encompassed by braces as indicated, and ensure that the figure on the right is centred on the point of the brace. Please centre the total, i.e. '£13 10 0' between the two short rules. For layout and style see p. 000 of the hard copy. Please remove all borders from the table.

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: <sup>mn</sup>	}	12 0 0
Expence of building and out-fitting for the intended number of a thousand, as per ditto, £.19,000. <sup>217</sup> 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: <sup>oo</sup> 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

<sup>mn</sup> 28th Finance Report, p. 71<sup>218</sup>

<sup>oo</sup> 34th G. III. c. 84, § 1.<sup>219</sup>

<sup>217</sup> See 'Twenty-Eighth Report from the Select Committee on Finance', Appendix F. 3., in *Commons Sessional Papers of the Eighteenth Century*, cxii. 75.

<sup>218</sup> *Ibid.*, p. 71.

<sup>219</sup> The Penitentiary Act of 1794 (34 Geo. III, c. 84 § 1) recounts how the Penitentiary Act of 1779 provided for the appointment of three supervisors, namely John Howard (1726–90), philanthropist and penal reformer, John Fothergill (1712–80), physician and naturalist, and George Whatley, treasurer of the Foundling

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* 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*,<sup>PP</sup> and therefore suppressed memorial of April, 1800,) have been violated in substance. True it is also, that by the compliment paid to ——<sup>220</sup> 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,<sup>221</sup> an additional expence would have been incurred: an expence, the amount 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: 10s. to about £18: 10s. 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 ——,<sup>222</sup> in spite of the most strenuous remonstrances on my part, out of compliment to, and for the accommodation of the other.

<sup>PP</sup> *Armed*, i.e. with reasons: *suppressed*, because the reasons were found

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Hospital, who were to select a site on a which a national penitentiary might be built. The supervisors had identified land at Battersea Rise, and a jury had concluded that the landowners were due a total of £6,600 compensation for its purchase.

<sup>220</sup> i.e. ‘Lord Spencer’: see the draft at UC xciv. 329<sup>v</sup> (29 May 1802).

<sup>221</sup> The supervisors appointed under the Penitentiary Act of 1779 had selected land at Battersea Rise for a national penitentiary, but 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, the owner of the land at Battersea Rise, Bentham failed to acquire a site at Hanging Wood near Woolwich, whereupon he turned his attention to Tothill Fields, Westminster.

<sup>222</sup> i.e. ‘wasted between M<sup>r</sup> 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<sup>v</sup> (29 May 1802).

troublesome.<sup>223</sup> 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: the harmless one lies very quietly upon the Treasury shelves. The distinction, by no means an uninformative one, will be explained in the course of the *narrative* by a variety of examples.<sup>224</sup>

*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.

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<sup>223</sup> For the suppressed or 'Armed' and the 'Unarmed' memorials see p. 000 n. above.

<sup>224</sup> For Bentham's account of Long's refusal to consider the 'Armed Memorial' and consequent submission of a one-page 'Unarmed Memorial' see p. 000 n. above.

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 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.*’<sup>225</sup> 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.*’<sup>226</sup> 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.

NOTE TO TYPESETTERS: Please ensure that the figures on the right are on the same line as the dots ending the paragraphs on the left. Please also ensure that the figures on the right (representing pounds, shillings, and pence) align correctly. For style and layout see pp. 000 of the hard copy. Please remove all borders from the table.

The sum expressive of the expence under this head is .^.^.^.^.^.^.^.	£186,270 <sup>227</sup>
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<sup>225</sup> 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 from the Select Committee on Finance’, Appendix O, in *Commons Sessional Papers of the Eighteenth Century*, cxii. 120–1.

<sup>226</sup> According to *ibid.*, p. 121 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’.

<sup>227</sup> In this and the following figures, Bentham has ignored the shillings and pence given in *ibid.*

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 ‘ <i>First establishment of settlement and transportation of convicts:</i> ’ 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
Which gives for the proportion of that one of the seven divisions, on which alone any saving was so much as expected, one <i>fifth</i> part of the whole. The saving expected (your Lordship will be pleased to observe) was not the saving <i>of</i> , but only a saving <i>upon</i> , 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 <sup>228</sup>	
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	9 5 0

<sup>228</sup> See ‘Twenty-Eighth Report from the Select Committee on Finance’, in *Commons Sessional Papers of the Eighteenth Century*, cxii. 25.

to .^..^..^..^..^	
Remains .^..^..^..^..^..^..^..^..^..^	37 0 0
<p>In this £37 then, your Lordship sees that quantity, <i>towards</i> 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 <i>to</i> which, even according to expectations so circumstanced, it can never be considered as susceptible, in the nature of the case, of ever being reduced.</p>	
<p>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: 10s.</p>	
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. <sup>99</sup>	

<sup>99</sup> In addition to this £46: 5s. 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:— the other three fourths would have been 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.<sup>229</sup>

<sup>229</sup> According to ‘Twenty-Eighth Report from the Select Committee on Finance’, Appendix F. 3., Arts 14–15, in *Commons Sessional Papers of the Eighteenth Century*, cxxi. 72–3, each panopticon prisoner would be allowed ‘a Share of his Earnings, to the Amount of not less than One Fourth Part of the fair Value thereof’, while the remaining three-fourths would be used to provide ‘an adequate Superannuation Annuity’ upon the prisoner’s release.

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*.<sup>230</sup> 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 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

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<sup>230</sup> See p. 000 above.

adequate attention here at home, and a very considerable increase in the total of those establishments has been the consequence.<sup>231</sup> 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*.<sup>232</sup> to form a precise calculation, would require a mass of labour and paper, disproportionate to the present purpose.

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.

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.<sup>233</sup>

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:<sup>234</sup> and, in these two harmonizing features, your Lordship beholds the *morality* of Honourable and Right

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<sup>231</sup> According to ‘Twenty-Eighth Report from the Select Committee on Finance’, Appendix O, in *Commons Sessional Papers of the Eighteenth Century*, cxii. 120–1, 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.

<sup>232</sup> 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 determinate quantities of variables. For instance, at *ibid.*, 33, while noting the difficulty of estimating the indirect tax arising from smuggling in France, he stated: ‘Je entreprendrai point de donner une évaluation positive à cet article, et je le citerai seulement ici pour *Mémoire*’.

<sup>233</sup> See p. 000 above.

<sup>234</sup> See p. 000 above.



Honourable Gentlemen, delineated to the life.

NOTE TO TYPESETTERS: Please ensure that the columns representing pounds, shillings, and pence align. For the layout and style please see p. 000 of the hard copy. Please remove all borders from the table.

	£. s. d.
The genuine expence of the discarded system was .^.^.^.^.^.^.^.^.	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

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*.<sup>235</sup>

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: 10s. that they saddle the present generation with £46: 5s.—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*—

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<sup>235</sup> Pitt introduced his ‘Bill for the better Support and Maintenance of the Poor’ into the House of Commons on 22 December 1796, but it was defeated on its second reading in February 1797: see *Commons Sessional Papers* (1796–7) ciii. 163–96. For Bentham’s comments see ‘Observations on the Poor Bill’ in *Writings on the Poor Laws, Volume I*, ed. M. Quinn, Oxford, 2001 (CW), pp. 217–63.

*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 uncondusive, 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.<sup>236</sup>

‘In *arithmetic*’ (says Mr. Rose most truly)<sup>rr</sup> ‘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 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.

<sup>rr</sup> On the Civil List 1802, p. 39.<sup>237</sup>

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  $12^{2/5}$  to about

<sup>236</sup> See p. 000 above.

<sup>237</sup> See George Rose, *Considerations on the Debt on the Civil List*, London, 1802, p. 39.

13¾ years;<sup>ss</sup> 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.

<sup>ss</sup> Appendix H. p. 81.<sup>238</sup>

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.<sup>tt</sup>

<sup>tt</sup> 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.

**NOTE TO TYPESETTERS:** Please incorporate the table below into this Bentham footnote, and please add lines as indicated. For the layout and style but please see p. 000 of the hard copy. Please remove all table borders.

	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

<sup>238</sup> See ‘Twenty-Eighth Report from the Select Committee on Finance’, Appendix H (‘Morgan’s Computation’), in *Commons Sessional Papers of the Eighteenth Century*, cxii. 81, 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. Jeremy and Samuel Bentham] and the Survivor of them worth, commencing on the 1<sup>st</sup> of September 1794, 1795, 1796, 1797, 1798, 1799, and 1800 respectively’. The estimate of 12<sup>2/5</sup> 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, for the present and the Two following Years’, while the estimate of 13¾ years purchase was if the ‘Money to be paid for the above Annuity at the Time from which it is to commence, the value of the same at Five per Cent.’

	9,724	11	10		22,429	14	2¼
Naval, p. 25,	(a)10,010	0	0		(a)10,010	0	0
					32,439	14	2¼

° Average of the whole 11 or 12 years: the separate amount of the respective years being, in the case of the naval establishment, unascertainable.

NOTE TO TYPESETTERS: End of table and of Bentham footnote.

Your Lordship has not failed to notice in its place the Lady's letter.<sup>239</sup> 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,<sup>240</sup> 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.<sup>241</sup>—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.<sup>242</sup>—Most of

<sup>239</sup> i.e. Elizabeth Paterson to Maria Sophia Bentham, p. 000 n. above.

<sup>240</sup> H.M.S. *Buffalo* sailed from Port Jackson on 21 October 1800: see *HRA*, ii. 746n.

<sup>241</sup> 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.

<sup>242</sup> 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 Portland, 28 September 1800, Enclosure No. 13, 'Papers Relating to the Irish Conspiracy', *HRA*, ii. 575–83 and 637–51 respectively.

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,<sup>243</sup> 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.'

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.<sup>uu</sup>

<sup>uu</sup> Porcupine, 10th June 1801.<sup>244</sup> '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

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<sup>243</sup> According to Acting-Governor King to Portland, 28 September 1800, and Governor Hunter to 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.

<sup>244</sup> See *The Porcupine*, 10 June 1801, p. 3.

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.<sup>245</sup> 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.<sup>246</sup> Marks of falsehood, (it is to be observed) appear on the face 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.’<sup>247</sup> 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,

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<sup>245</sup> The title page of the second volume of Collins’ *History* refers to him 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.

<sup>246</sup> 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. 000 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 [i.e. pikes] were concealed, of which it was said that many hundreds had been fabricated. In confession he implicated several of his countrymen .^.^ but Harold was never able to fulfil his engagement of producing the weapons.^.^.^ There was evidently a design to create an 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’.

<sup>247</sup> See p. 000 n. above.

would, in any such number, have been called in to supply it.

Bell's Weekly Messenger, 3d January 1802.<sup>248</sup> '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.'<sup>249</sup> 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.<sup>250</sup> 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.

*But New South Wales (it may still be said)—New South Wales, besides being an establishment for the maintenance, employment, and 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*

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<sup>248</sup> See *Bell's Weekly Messenger*, 3 January 1802, 'Botany Bay', p. 6.

<sup>249</sup> The allusion is to the summary execution of John Wolloughan and Peter McLean at Norfolk Island on 14 December 1800 (see p. 000 n. above), though at the time of the executions Lieutenant-Governor Foveaux had the command there, and not King or Paterson.

<sup>250</sup> 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 Portland, 10 March 1801, *HRA*, iii. 15, and Bateson, *Convict Ships*, 177–8, 381.

*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.<sup>vv</sup> The supposition universally entertained—the 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.

<sup>vv</sup> 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)<sup>251</sup> in this Report, as quoted by the late Mr. Bryan Edwards in his *History of the West Indies*,<sup>p</sup> the value of British capital in these colonies is estimated all together, at £70,000,000.—At the same time

<sup>251</sup> i.e. Pitt or Rose.



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 in the home trade:<sup>g</sup> an estimate which, in the main, appears to be agreed to, and confirmed by Dr. Beeke.<sup>f</sup> 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*’<sup>252</sup> 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.

<sup>p</sup> II Edwards, p. 381, 390, B. IV. ch. iii.<sup>253</sup>

<sup>g</sup> Rose, *Brief Examination, &c.* 7th edit. 1799, Append. No. 7.<sup>254</sup>

<sup>f</sup> *On the Income-tax*: 2nd edit. 1800, p. 131.<sup>255</sup>

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<sup>252</sup> 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.

<sup>253</sup> See Edwards, *History of the West Indies*, ii. 381, 390–1, citing ‘Report of the Lords of Committee of Council on the Slave Trade’, *Commons Sessional Papers* (1789) lxx. 291, Appendix 18, ‘An Estimate of the present Value of Property in the British Sugar Colonies, as delivered by the West India Planters and Merchants’, which valued the ownership of 450,000 slaves at £22.5<sup>m.</sup>, ‘lands, buildings, utensils, mules, &c, and crop on the ground’ at £45<sup>m.</sup>, and ‘houses, &c. in the towns, the trading and coasting vessels, and their crews belonging to the islands’ at £2.5<sup>m.</sup>

<sup>254</sup> 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 the ‘sum of eighteen millions on those articles’: see *Parliamentary Debates* (1798–9) vii. 94–125 at 109.

<sup>255</sup> Henry 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

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 be 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.

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*<sup>256</sup> 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,

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per cent tax on 'the clear income from internal trade', it would be possible to raise approximately £18.1<sup>m</sup> per annum.

<sup>256</sup> i.e. 'Out of nothing, nothing comes.'

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.<sup>ww</sup>

<sup>ww</sup> II Collins, page 202,<sup>257</sup> March 1799. ‘The settlement was at this time much in want of many necessaries<sup>258</sup> 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)<sup>259</sup> 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.’

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.<sup>260</sup>

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<sup>257</sup> See Collins, ii. 202–3.

<sup>258</sup> Collins: ‘necessary articles’.

<sup>259</sup> Bentham has inserted the name of the ship, but it was in fact the *Minerva*.

<sup>260</sup> In May 1798 Governor Hunter explained that, owing to the ‘want of current specie’, it had been customary for the Commissariat officer 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 Hunter to Portland, 25 May 1798, *HRA*, ii. 148–54 at 150.

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.’<sup>261</sup> *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.

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.<sup>262</sup> 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

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<sup>261</sup> For the regulation see Government and General Orders (29 August 1799), *HRA*, ii. 589.

<sup>262</sup> Though Portland had, in April 1799, informed Governor Hunter that the *Porpoise* was to convey copper coin to New South Wales (Portland to Governor Hunter, 12 April 1799, *HRA*, ii. 341, the vessel did not arrive at Port Jackson until 7 November 1800. The delay was owing to the fact that 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* which eventually sailed for Port Jackson on 17 March 1800 was the Spanish prize formerly named the *Infanta Amelia*.

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.<sup>263</sup>

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 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

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<sup>263</sup> 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 the *Shah Hormuzear* and the *Rebecca*, that information appears at Collins i. 270 and ii. 201 respectively.

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:<sup>264</sup> 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?

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 degree, or any respect more

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<sup>264</sup> 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.

advantageous to the Mother Country, it will rest with those, to whom such prospect has manifested itself, to point it out.

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 to your Lordship a somewhat different estimate.<sup>265</sup> 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.<sup>266</sup> '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*.'<sup>xx</sup>

<sup>xx</sup> I Collins, Preface, pp. 9, 10.

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

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<sup>265</sup> See pp. 000 above.

<sup>266</sup> See p. 000 above.

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<sup>267</sup> 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 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

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<sup>267</sup> 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.



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.<sup>y</sup>

<sup>y</sup> 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 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.<sup>268</sup> 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.<sup>269</sup>

‘This mode of recruiting the regiment must have proved as disgusting to the officers,

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<sup>268</sup> i.e. the *Surprize*, which reached Port Jackson on 25 October 1794.

<sup>269</sup> 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, Draper, on 9 April 1792, was reprieved on the gallows by Prince Edward, on the condition that he enlist 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.

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)<sup>270</sup> '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.<sup>271</sup> '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 transportation.<sup>272</sup> 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

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<sup>270</sup> 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 property, 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 Portland, 10 August 1796, and Enclosure No. 1, 'Statement of the Case of John Baughan', 10 August 1796, *HRA*, i. 573–6 at 574.

<sup>271</sup> See Collins, i. 475–6.

<sup>272</sup> 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 which Bentham's rendering implies.

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-India 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 of 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],<sup>273</sup> 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!*’

Be this as it may, of this stamp (it may naturally enough he conceived) were the

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<sup>273</sup> 1802 ‘295’.

ingredients of that mass of *‘political advantage,’* ‘the prospect of which’ (our historiographer informs us) ‘was’ actually ‘presented by the plan to the patriotism of its noble originator’<sup>274</sup> (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 their colleagues on the first;<sup>275</sup> 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’*<sup>276</sup>—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.’*<sup>277</sup> 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.<sup>278</sup>

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

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<sup>274</sup> See Collins, i. pp. v–vi and pp. 000 above. Only the words ‘political advantage’ are a direct quote from Collins.

<sup>275</sup> i.e. the Home Office and the Treasury, whose offices were on the second and first floors respectively of the Treasury building in Whitehall.

<sup>276</sup> See p. 000 n. above.

<sup>277</sup> See p. 000 above.

<sup>278</sup> Bentham had been attempting to interest the administration in his annuity-note scheme: see p. 000 above.

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.<sup>279</sup>

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 conchologists—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.—So far the parallel runs, but no

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<sup>279</sup> The communication from Paterson has not been located, though around September 1797 Bentham seems to have informed Arthur Young (1741–1820), agricultural reformer and writer, editor of *Annals of Agriculture, and other useful Arts* 1784–1820, and 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 stock, prices, and land under cultivation, was published anonymously as ‘New South Wales and Norfolk Island Agriculture’, *Annals of Agriculture*, vol. xxxi (1798), pp. 397–417.

further. Employ an army here in shell-gathering?—Yes:—but he did not leave one here.<sup>280</sup>

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,<sup>zz</sup> it was said of *true glory* (I think it was—or some such vegetable) *radices agit et propagatur*.<sup>281</sup> Unhappily, in the next island to this, we have it already, though it is there (God be thanked!) but an annual plant:<sup>282</sup> 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.

<sup>zz</sup> Cicero.

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,

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<sup>280</sup> The shell-gathering incident is said to have occurred during the reign of Gaius, better known as Caligula (12–41 AD), Roman Emperor from 37, rather than that of Claudius I (10 BC–54 AD), Roman emperor from 41. In early 40 Caligula was supposed to have 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”’: see Suetonius, *De vita Caesarum*, IV. xlvi.

<sup>281</sup> See Cicero, *De officiis*, II. xliii: *Vera gloria radices agit atque etiam propagator*, i.e. ‘True glory strikes deep root and spreads its branches wide’.

<sup>282</sup> 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 the United Kingdom and Ireland, the Habeas Corpus Suspension (Ireland) Act of 1801 (41 Geo. III, c. 15).

(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—foetid 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*.

NOTE TO TYPESETTERS: Please insert short rule.

I have already mentioned (p. 000) 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.<sup>283</sup> 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 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)<sup>284</sup> 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,<sup>285</sup> 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

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<sup>283</sup> i.e. the second volume of Collins.

<sup>284</sup> See pp. 000 above.

<sup>285</sup> See p. 000 & n. above.

to a second letter,<sup>286</sup> all such supplemental matter—and for the moment, to subscribe myself thus abruptly,

NOTE TO TYPESETTERS: For the layout and style of valediction below see p. 000 of hard copy.

My Lord,

Your Lordship's most obedient

and humble Servant,

JEREMY BENTHAM.

*Queen's-Square-Place, Westminster,*

*2nd November, 1802.*

NOTE TO TYPESETTERS: Please insert short rule.

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<sup>286</sup> See pp. 000 below.