

WRITINGS ON
AUSTRALIA

IV.

SECOND 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.

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EDITORIAL INTRODUCTION

‘Second Letter to Lord Pelham’¹ is a continuation of Bentham’s assault, begun in ‘Letter to Lord Pelham’, upon New South Wales. Relying in the main upon the second volume of David Collins’s *Account of the English Colony in New South Wales*,² by sheer weight of example Bentham sought to demonstrate the failure of the colony as an instrument of penal policy. Moreover, Bentham sought to compare New South Wales unfavourably with penitentiaries in Philadelphia and New York—modern institutions characterized by surveillance and hard labour, and which thus constituted the closest existing approximation to the panopticon penitentiary.

On 3 December 1802 Bentham informed Charles Bunbury³ that ‘Second Letter to Lord Pelham’ was ‘on the point of coming out of the press, after an unexpected course of typographical delays’, and that it would ‘occupy upwards of 60 pages or more of 42 of which I have *proofs*’,⁴ though it does not appear to have been printed until nearer the end of the month. On 30 December 1802 Bentham learned that the copy he had given to his step-brother Charles Abbot,⁵ the Speaker of the House of Commons, had been lent by Abbot to Spencer

¹ 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.

² 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. Collins thereafter published *An Account of the English Colony in New South Wales, From its First Settlement, in January 1788, to August 1801: with Remarks on the Dispositions, Customs, Manners, &c. of the Native Inhabitants of that Country. To which are added, Some Particulars of New Zealand; compiled, by permission, from the MSS. Of Lieutenant-Governor King; and An Account of a Voyage Performed by Captain Flinders and Mr. Bass; by which the Existence of a Strait Separating Van Dieman’s Land from the Continent of New Holland was Ascertained, Vol. II*, London, 1802, which contained a continuation of the history of the colony to 1801.

³ 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.

⁴ Bentham to Bunbury, 7 December 1802, *Correspondence (CW)*, vii. 158. When printed, the ‘Second Letter to Lord Pelham’ in fact ran to 72 pages.

⁵ Charles Abbot (1757–1829), first Baron Colchester, Speaker of the House of Commons 1802–17.

Perceval,⁶ the Attorney General.⁷

The text presented here is based on the version of ‘Second Letter to Lord Pelham’ which Bentham prepared and had printed by Wilks and Taylor in 1802. It was first published, unaltered, in 1812 as a constituent part of *Panopticon versus New South Wales*,⁸ and was subsequently reproduced in the edition of Bentham’s works overseen by John Bowring.⁹ In 1804 Adrian Duquesnoy’s translation of the work into French was published in Paris in *Lettres à Lord Pelham*.¹⁰ 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, drew in part upon ‘Second Letter to Lord Pelham’.¹¹ 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*.¹²

* * *

The Bentham Committee wishes to thank the Arts and Humanities Research Council, whose

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

⁷ Bentham to Abbot, 30 December 1802, *Correspondence (CW)*, vii. 178–9. In this letter Bentham also states he had given a copy of the work only to Abbot and another ‘person well known to you’, namely Richard Clark (1739–1831), lawyer and friend of Bentham’s, Lord Mayor of London 1784, and who had been elected Chamberlain of the City of London in 1798.

⁸ *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.

⁹ Bowring, iv. 212–48.

¹⁰ *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.

¹¹ *Théorie des Peines et des Récompenses, Par M. Jérémie Bentham, Jurisconsulte Anglois*, 2 vols., London, 1811, i. 179–200.

¹² *The Rationale of Punishment by Jeremy Bentham*, ed. Richard Smith, London, 1830, pp. 327–50.

generous grant has made possible the preparation and publication of this text as part of a project entitled *Convict Australia and Utilitarianism: Jeremy Bentham's 'Writings on Australia'*. The Bentham Committee is grateful to the British Academy and University College London for their continuing support of *The Collected Works of Jeremy Bentham*.

Thanks are due to University College London Library's Special Collections for permission to publish material from its collection of the Bentham Papers.

No volume of Bentham's *Collected Works* is produced in isolation. We are grateful to Professor Margot Finn, the co-investigator on *Convict Australia and Utilitarianism*, for her support and advice. Our Bentham Project colleagues Dr Oliver Harris, Dr Michael Quinn, Dr Chris Riley, Dr Katy Roscoe, and Dr Louise Seaward have been a never-failing source of support, expertise, and encouragement, and we are grateful for the support of our colleagues in UCL's Faculty of Laws. Dr Roscoe has provided invaluable assistance in checking the text and in researching the annotation.

Grateful acknowledgment is hereby made to the authors, editors, and translators of standard reference works, such as the *Oxford Dictionary of National Biography*, the *Australian Dictionary of Biography*, and the *Loeb Classical Library*, and digital resources such as the *Old Bailey Online*, the *Digital Panopticon*, the *Dictionary of Sydney*, and the *Decisions of the Superior Courts of New South Wales, 1788–1899*, without whose scholarship the annotation of a volume such as this would hardly be feasible.

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-

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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, finalized annotation, and working cross-references. The volume is due to be published in 2020 by the Clarendon Press.

Tim Causer
Senior Research Associate, Bentham Project

Philip Schofield
General Editor, *The Collected Works of Jeremy Bentham*, and Director of the Bentham
Project

September 2018

A NOTE ON THE PRESENTATION OF THE TEXT

The present edition of ‘Second 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 sub-footnotes 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 within 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. For layout please see the hard copy, p. 000.

SECOND LETTER

TO

LORD PELHAM,

&c. &c. &c.

NOTE TO TYPESETTERS: Please insert short rule.

IN CONTINUATION OF

THE COMPARATIVE VIEW

OF

THE SYSTEM OF PENAL COLONIZATION

IN NEW SOUTH WALES,

AND THE

HOME PENITENTIARY SYSTEM,

Prescribed by two Acts of Parliament of the Years 1794 & 1799.

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

MY LORD,

I RESUME the pen. I now submit to your Lordship the promised continuation, together with the promised contrast. On the one hand, the effects of the Penal Colonization System in New

South Wales: on the other hand, the effects of the Penitentiary System in North America: the good effects of it, even in its least perfect state: subject still to those imperfections, for which the *central-inspection* principle presents, as I flatter myself your Lordship will recognize, a most complete and indisputable cure.

Before the picture of reformation, as it has shone forth in that rising quarter of the world, is begun to be displayed, a few words will be necessary for the purpose of fixing places, times, and vouchers. Permit me accordingly to convey your Lordship's attention for a moment to that scene of quondam transportation; suffer me to set it down among our ci-devant colonies;—the now happily independent (and long may they remain!) *United States*. Instruction grows there: your Lordship would not disdain it, though it were from enemies: how much longer shall it remain unprofited by, sent to us, as it has been so long ago sent to us, from relatives and friends?

It was Pennsylvania took the lead. To the talk of reformation, or at any rate to the change which presented itself under that name, the first hand was there set in 1786. In that year passed an act for a new system of punishment, under which hard labour should take place of imprisoned idleness:—labour, and that hard enough: but to be performed in public, in an ignominious garb, in irons, by men in gangs, on the roads, and even in the streets.¹³ Under this first plan, though already in use in Switzerland, and as such indicated by Howard,¹⁴ success was soon observed to fall short of expectation.^a The friends of reformation, were however not to be discouraged. An experiment of four years was on that theatre deemed a sufficient trial. Men were not there too dim-sighted to see, too careless to observe, too unfeeling to regret, too proud to confess an error, or too indolent to repair it. In 1790, after a hard fought battle, of such battles as quakers fight, and on both sides, it is confessed, an honest one—(on both sides, my Lord, what is essential to honesty, an open one) by an act of that date they set on foot another experiment—they obtained a second

¹³ The Penal Law Amendment Act of 1786 substituted a system of 'continued hard labor, publicly and disgracefully imposed .^.^ in streets of cities and towns, and upon the highways of the open country and other public works', in the place of capital and corporal punishment: see *The Statutes at Large of Pennsylvania from 1682 to 1801*, 18 vols., Harrisburg, Pennsylvania, 1896–1915, xii. 280–90 at 280–1.

¹⁴ See John Howard, *The State of the Prisons in England and Wales, with Preliminary Observations, and an Account of some Foreign Prisons and Hospitals*, 3rd edn., Warrington, 1784, pp. 125–6, for an account of prisoners doing public labour in the streets of Berne. Bentham cites the third edition at p. 000 below.

change.¹⁵ The badge of infamy was now pulled off: ‘The iron entered no longer into the afflicted soul.’¹⁶ separation, as far as means permitted, took place of promiscuous aggregation: seclusion, yet not unseen, succeeded to tumultuous publicity. This second experiment was successful, almost beyond hope: how eminently so, your Lordship will see as we advance.

NOTE TO TYPESETTERS: Please present the text in the first part of note ^a as displayed quotation.

^a Lownes, p. 76.¹⁷ ‘In the year 1776, the convention of Pennsylvania directed a reform of the penal laws, and the introduction of *public* hard labour, as a punishment for offences.¹⁸ This was attended to by the Legislature; and an essay was made in the year 1786, by a law which directed, that the convicts should be employed in cleaning the streets,

¹⁵ The Penal Laws Act of 1790 acknowledged that the Penal Law Amendment Act of 1786 had failed owing to the ‘exposure of the offenders employed at hard labor to public view and from the communication with each not being sufficiently restrained within the places of confinement’, and introduced, as a remedy, a system of ‘unremitted solitude’ in addition to hard labour, while also authorizing the construction of solitary confinement cells in the Walnut Street prison: see *Statutes at Large of Pennsylvania*, xiii. 511–28 at 511, 515.

¹⁶ See the rendition of Psalm 105: 18 in the Book of Common Prayer: ‘Whose feet they hurt in the stocks: the iron entered into his soul’.

¹⁷ See Caleb Lownes, ‘An account of the alterations and present state of the penal laws of Pennsylvania, containing also an account of the gaol and penitentiary house of Philadelphia and interior management thereof’, in William Bradford, *An enquiry how far the punishment of death is necessary in Pennsylvania, to which is added, An account of the Gaol and Penitentiary House of Philadelphia, and of the interior management thereof, by Caleb Lownes, of Philadelphia*, Philadelphia, 1793, pp. 75–91 at 76–7. Caleb Lownes (1754–1828), Quaker, ironmonger, and writer, was a founding member of the Philadelphia Society for Alleviating the Miseries of Public Prisons, a member of the board of inspectors of the Walnut Street prison 1790–9, and the prison’s first administrator. William Bradford (1755–95), lawyer and military officer, was Attorney General of Pennsylvania 1780–91 and Attorney General of the United States 1794–5.

¹⁸ The ‘Plan or Frame of Government’ of the Constitution of Pennsylvania of 28 September 1776, § 39, provided that to ‘deter more effectually from the commission of crimes by continued visible punishments of long duration, and to make sanguinary punishments less necessary; houses ought to be provided for punishing by hard labour, those who shall be convicted of crimes not capital; wherein the criminals shall be employed for the benefit of the public, or for reparation of injuries done to private persons: And all persons at proper times shall be admitted to see the prisoners at their labour’: see *The Constitution of the Common-Wealth of Pennsylvania, as Established by the General Convention Elected for that Purpose, and Held at Philadelphia, July 15th, 1776, and Continued by Adjournments to September 28, 1776*, Philadelphia, 1777, p. 16.

repairing the roads, &c. have their *heads shaved*, and be distinguished by an *infamous* habit.¹⁹ This was literally complied with, but, however well meant, was soon found to be productive of the *greatest evils*: and had a very opposite effect from what was contemplated by the framers of the law. The disorders in society, the robberies, burglaries, breaches of prison, alarms in town and country—the drunkenness, profanity and indecencies of the prisoners in the streets, must be in the memory of most. With these disorders the numbers of the criminals increased to such a degree as to alarm the community with fears, that it would be impossible to find a place either large or strong enough to hold them. The severity of the law, and disgraceful manner of executing it, led to a proportionate degree of depravity and insensibility, and every spark of morality appeared to be destroyed. The keepers were armed with swords, blunderbusses, and other weapons of destruction. The prisoners, secured by cumbrous iron collars and chains, fixed to bomb-shells. Their dress was formed with every mark of disgrace. The old and hardened offender daily in the practice of begging and insulting the inhabitants—collecting crowds of idle boys, and holding with them the most indecent and improper conversation. Thus disgracefully treated, and *heated with liquor*, they meditated, and executed, plans of escape—and when at liberty, their distress, disgrace, and fears, prompted them to violent acts, to satisfy the immediate demands of nature. Their attacks upon society were well known to be desperate, and to some they proved fatal!’

NOTE TO TYPESETTERS: End of displayed quotation. Note ^a continues below.

Observations.—In this disastrous and justly exploded, though neither unexampled, nor in every respect discommendable system, your Lordship will immediately recognize the New South Wales *jail-gangs*.²⁰ Not that the parallel reflects any thing like blame upon those who instituted them in the ‘improved’ colony. What is one man’s meat is another man’s poison. Mischief could not *but* be done by them in Philadelphia: mischief could *not* be done by them in New South Wales. In Philadelphia their department was an object

¹⁹ The Penal Law Amending Act of 1786, § 8, provided that male prisoners were to have their heads and beards ‘close shaven at least once in every week’, and were to wear clothing ‘uniform in color and make and distinguished from all others used by the good citizens of this commonwealth and also have some visible mark on the outer garment designating the nature of the crime for which [they were] sentenced, that so they may be marked out to public note as well while at their ordinary occupations as when attempting to make their escapes’: see *Statutes at Large of Pennsylvania*, xii. 284.

²⁰ See p. 000 above.

of disgust and terror to the great bulk of the passing multitude: it became notwithstanding—such is the power of example, even the example of wretchedness and infamy, over some minds—it became, in one way or other, a source of corruption to a few. In New South Wales, society was proof against both mischiefs. No eye, to which the deportment of the profligate was not much more familiar than any other: no ear, which had any unlearned wickedness to learn of them. Jet cannot be blackened: putridity cannot be corrupted.

Penitentiary houses, at present two: at Philadelphia, and New York. In that at Philadelphia, the plan of management under its present form, commencing in April 1790;²¹ the prison in New York, begun in 1796, completed in 1797:^b month not mentioned. I speak of those, from which accounts have reached us. Two others already in existence in New Jersey and Virginia:^c Two more in contemplation last year, and begun perhaps by this time—in Massachusetts and South Carolina.

^b Eddy, p. 17.²²

^c *Ibid.* p. 70.²³

Historians, four: I mention them in the order of their dates: dates are not to be despised in histories.—For the Philadelphia House, three:—1. *Lownes*, the chief projector, whose account of it comes at the end of a pamphlet on the punishment of death by his co-operator *Bradford*, then one of the Judges of the State, since deceased; date in the preface, Feb. 26,

²¹ The Philadelphia Gaol Act of 1773 authorized the construction of a new gaol at Walnut Street. Prisoners were first admitted in 1776 and were housed in large dormitories until the construction of a new block containing individual cells, as prescribed in the Penal Laws Act of 1790: see *Statutes at Large of Pennsylvania*, viii. 300–4, xii. 515.

²² See Thomas Eddy, *An Account of the state prison or Penitentiary House, in the city of New-York, by one of the inspectors of the prison*, New York, 1801, p. 17. Eddy (1758–1827), Quaker, banker, politician, and philanthropist, during 1796 assisted New York Senators Philip Schuyler (1733–1804) and Ambrose Spencer (1765–1848) in drafting the legislation providing for the construction of Newgate, the New York state penitentiary. Eddy designed the prison and served as its first agent and inspector from 1797 to 1804.

²³ According to Eddy, the state penitentiaries ‘already in existence’ were those at Trenton, New Jersey, and Richmond, Virginia, opened in 1798 and 1800 respectively, while those ‘in contemplation’ were the state penitentiaries at Charlestown, Boston, Massachusetts, and at Columbia, South Carolina.

1793:²⁴—2. The *Duke de Liancourt*, a visitor, (a veteran in the service of the prisoner and the poor;) Philadelphia printed, London reprinted, second edition, date in title-page 1796; year of visitation, from private information, 1795:^d—3. *Turnbull*, of South Carolina, (*another philanthropic visitor*) date in preface, 4th August 1796: date in title-page 1797.²⁵—For the New York House, one: *Eddy*; New York printed; date in title-page, 1801: date of Subsequent Report annexed, 9th February 1802.²⁶

^d It was in that year that it came to me in French, from the worthy author, in manuscript, and (for I know not what cause relative to the calamities of the times) under the seal of secrecy.²⁷ It was not till the next year I had the satisfaction of finding myself released from the obligation, by an advertisement announcing a translation of it in English.

The Pennsylvania House is that which, as the date itself shews, served as an example, and naturally, as far as circumstances permitted, as a model. New York follows next. Caleb Lownes took the lead in Philadelphia. Thomas Eddy followed him in New-York. In both

²⁴ According to François Alexandre Frédéric de La Rochefoucauld (1747–1827), duc de La Rochefoucauld-Liancourt, politician and social reformer, in *A comparative view of mild and sanguinary laws; and the good effects of the former, exhibited in the present economy of the prisons of Philadelphia*, 2nd edn., London, 1796 (first published anonymously as *Des prisons de Philadelphie, par un Européen*, Philadelphia, 1796), pp. 24–5, Caleb Lownes was responsible for the change in penal discipline prescribed by the Penal Laws Act of 1790, and, despite opposition from the other Pennsylvanian judges, had been assisted by William Bradford, whom he described as ‘younger than the rest, and less inclined to despair of the melioration of the human character’, and who had provided Lownes ‘with that advice which could be given only by a man well versed in the science of jurisprudence; and shared with him his hopes, his labours, and his deservings’.

²⁵ Robert James Turnbull (1775–1833), lawyer and planter, was author of *A visit to the Philadelphia prison; Being an accurate and particular Account of the Wise and Humane Administration Adopted in every Part of that Building; containing also an account of the gradual reformation, and present improved state, of the penal laws of Pennsylvania: with observations on the impolicy and injustice of capital punishments, in a letter to a friend*, Philadelphia and London, 1797.

²⁶ Bentham may have had in mind the Appendix to Eddy, *Account of the state prison in New York*, at pp. 71–94, which contains data about the penitentiary, including the prison population and financial accounts until the end of 1801, though the date given by him does not appear there.

²⁷ In July 1795 Liancourt had written to Bentham from Philadelphia, expressing his admiration for the Pennsylvanian prison system, and presenting Bentham with a copy of *Des prisons de Philadelphie*, but requesting that ‘his name may not be mentioned as the author of the remarks, lest he should awaken an attention he desires to avoid’: see *The Correspondence of Jeremy Bentham*, vol. v, ed. A.T. Milne, London, 1981 (CW), p. 145.

these men your Lordship would find, under the garb of a quaker, the head of a statesman, as well as the pen of an academic.

After this short introductory view of the transactions in North America, permit me to wait upon your Lordship back again, for a moment, to New South Wales.

Facts compose the chief matter of this supplemental address: and in how eminent a degree the general proposi[t]ions advanced in the preceding one will be found to receive confirmation from these facts, is a point I have already ventured to give intimation of.

In a track like this, history in its own order is but a labyrinth: but to this labyrinth, here as before, the *ends* of penal justice hold out a clew.²⁸

Under the head of *reformation*, replaced in New South Wales by *corruption*, I will beg leave to attend your Lordship from effects to causes; and among effects again from smaller to greater—from the lighter shades of depravity to the darker: presenting the effects in this order, lest the opposite one, though in other respects perhaps the more obvious one, should have produced the sensation of an anticlimax. In subordination, however to these *logical* principles of arrangement, the *chronological* one will have its use: it will serve all along to shew, and in an order perfectly natural, the progress of the ‘improved’ colony²⁹ from bad to worse. Matter thus pregnant cannot but give birth to a variety of observations; but these will in general be most readily apprehended, and most effectually recommended, when preceded by the particulars by which they were respectively suggested.

Our authors not having had themselves any such arrangements in their view, the matter belonging to one head will, every now and then, in the shape in which it comes from their hands, be found intermixed with matter belonging to another. This incongruity, which however is but a merely relative one, cannot always be cleared away: all that can be done with it is to point it out: this done, now and then a repetition constitutes the sum of the inconveniences.

Under each head, each picture has two sides: one for the soi-disant ‘improved’ colony,

²⁸ An allusion to the Greek myth in which Ariadne gave Theseus a clew, i.e. a ball of thread, with which he laid a trail to find his way back out of the Labyrinth after slaying the Minotaur.

²⁹ For Portland’s reference to the ‘improved’ state of New South Wales see p. 000 & n. above.

the other for those really improved countries, whose apprenticeship in the form of colonies is expired. For each feature of depravity and corruption on the one side, your Lordship will see, on the other side, according to the nature of the feature, either a blank for the absence of it, or a space filled with the opposite feature of virtue and reformation.

NOTE TO TYPESETTERS: Please insert short rule.

I. REFORMATION—*First Feature, Industry; Opposite Feature of Corruption, Sloth:—Prevalence of it in New South Wales.*

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 1. P. 23.³⁰ February 1797.³¹ ‘An extraordinary theft was committed about the middle of the month, which very forcibly marked the inherent depravity of some of these miscreants. While the miller was absent for a short time, part of the sails belonging to the mill were stolen. Now this machine was at work for the benefit of those very incorrigible vagabonds who had thus, for a time, prevented its being of use to any one, and *who, being too lazy to grind for themselves, had formerly been obliged to pay one third of their whole allowance of wheat, to have the remainder ground for them by handmills, an expence that was saved to them by bringing their corn to the public mill.*’

No. 2. P. 40. June 1797. ‘In consequence of the proclamation which was issued in the last month, one of the run-away convicts delivered himself up to a constable, and another was taken and lodged in confinement:³² they appeared to be half starved: yet their sufferings were not sufficient to prevent similar desertions from work in others, nor a repetition of the offence in themselves; such was the strong aversion which these worthless characters had to any thing that bore the name of *work*. More labour would have been performed in this country by 100

³⁰ *Recte* 23–4.

³¹ Collins refers to events occurring in March 1797, rather than February 1797. Unless otherwise noted, references are to the second volume of Collins, and the emphases are Bentham’s.

³² For the proclamation, condemning John Jeweson, Joseph Saunders, Moses Williams, and John Wilson as outlaws, see Governor Hunter to Duke of Portland, 6 July 1797, Enclosure No. 3, Government and General Orders (13 May 1797), *HRA*, ii. p. 79. Collins does not state which two of the four men surrendered themselves during June 1797, though Wilson was not one of them, as he remained at large until November 1797.

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.*'

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations. —Which 'all' (it appears as well from the nature of the case as from passage upon passage in the history) could not be much:—a fresh occasion for bringing to view that deficiency of necessary inspection, which is among the indelible features of the system of forced colonization.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 3. P. 202. March 1799. At this time, 'among other public works in hand were, the raising the walls of the new gaol, laying the upper floor of the wind-mill, and erecting the churches at Sydney and Parramatta.³³ Most of these buildings did not advance so rapidly as the necessity for them required, owing to the weakness of the public gangs; and indeed *scarcely had there ever been a thorough day's labour, such as is performed by a labouring man in England, obtained from them. They never felt themselves interested in the effect of their work, knowing that the ration from the store, whatever it might be, would be issued to them, whether they earned it or not; unlike the labouring man whose subsistence and that of his family, depends upon his exertions. For the individual who would pay them for their services with spirits, they would labour while they had strength to lift the hoe or the axe; but when government required the production of that strength, it was not forthcoming; and it was more to be wondered, that under such disadvantages so much, rather than that so little, had been done.* The convicts whose services belonged to the crown were for the most part a wretched, worthless, dissipated set, who never thought beyond the present moment; and they were for ever employed in rendering that moment as easy to themselves as their invention could enable them.'

'Of the settlers and their disposition much has been already said. The assistance and encouragement which from time to time were given them, they were not found to deserve.

³³ The foundation stones of the churches of St Philip's, Sydney and St John's, Parramatta, were laid by Governor Hunter in late 1798: see Hunter to Duke of Portland, 1 November 1798, *HRA*, ii. 237.

The greater part had originally been convicts; and it is not to be supposed, that while they continued in that state their habits were much improved. With these habits, then, they became freemen and settlers; the effect of which was, to render them insolent and presuming; and *most of them continued a dead weight upon the government, without reducing the expences of the colony.*'

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—The features of worthlessness are ascribed to them (*'the Settlers'*) in general: the non-convicts are alluded to, and are not excepted. In this view of it, the improved Colony presents the picture of a community, in which not only the corrupt members of it are not amended, but the sound members—such as had been introduced into it—are corrupted. If such be the case, there is nothing in it but what ought to have been expected. In Letter I. pages 000, 000, instances in proof of it have been already given, in speaking of the *soldiery*: and more will come to be given, under the head of *Public Functionaries*.³⁴

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 4. P. 277. Dec. 1799. 'The harvest was now begun, and constables were sent to the Hawkesbury with directions to secure every vagrant they could meet, and bring them to Sydney, unless they chose to work for the settlers, who were willing to pay them *a dollar each day and their provisions*; for at this time there were a great number of persons in that district, stiling themselves free people, who refused to labour unless they were paid the most exorbitant wages.'

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—Standing out for the best wages that could be got is no proof of sloth: it is rather a proof of that appetite for gain, which is the spur and natural concomitant to industry: but, high as the wages were, it appears there were vagrants, who preferred idleness even to such high wages.

³⁴ See p. 000 below.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 5. P. 314. August 1801. ‘Nothing has been said, in this account of the public labour, of preparing the government ground annually for seed and cropping it, or of gathering the harvest when ripe. But these must be taken into the account, as well as threshing the corn for delivery, and unloading the store-ships on their arrival; which latter work must always be completed within a limited time, pursuant to their charters. It has been said before, that it was *impossible to obtain a fair day’s work from the convicts when employed for the public*:³⁵ the weather frequently interfered with out-door business, and occasioned much to be done a second time. Under all these disadvantages, and with a turbulent, refractory body of prisoners, we are warranted in saying, on thus summing up the whole of the public labour during the last four years, that more could not have been performed; and that it is rather matter of wonder that so much had been obtained with such means.’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—Of wonder indeed! The worse the system, the greater the wonder that any given quantity of good works how small soever, should be shewn forth under it. The more irremediably bad, the more irreproachable the conduct—the more pitiable the lot—of those whose misfortune it was to have the management of it on the spot:—the more radically bad the system, the more inexcusable those at home who planned it—but, most of all, those at home who have persevered in it—its deformities all the while staring them in the face. The period is an early one for such reflections: but they accompany the idea of the improved colony from the very first glance, and never leave it till the last.

NOTE TO TYPESETTERS: Please insert short rule.

II. *Further Features of REFORMATION—Frugality and Forecast.*

Opposite Features of Corruption—Prodigality and

Improvidence:—Prevalence of them in New South Wales.

³⁵ See ‘Letter to Pelham’, p. 000 above.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 1. Page 21.³⁶ February 1797. ‘It now³⁷ appeared, that to obtain spirituous liquors, these people, the settlers, had incurred debts to so great an amount, as to preclude the most distant hope of liquidating them, except by selling their farms. Thus all their former industry must be sacrificed to discharge debts, which were contracted *for the temporary gratification of being steeped in beastly intoxication* for a certain length of time. All the cautions which had occasionally been inserted in the *public orders* against this dangerous practice,³⁸ had not proved of any advantage to those whose benefit they were intended to promote; and it was observed with concern, that several scenes of shameful imposition, which had been practised by the retail dealers in this article, were brought to light by this investigation.’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—Intermixed with the prodigality and the improvidence (your Lordship sees) comes *drunkenness*: but drunkenness comes in every where and with every thing. We shall however have a head appropriated to it.³⁹ All this reprobacy too—(is it credible?) spite of all the *public orders*—all this *good advice*, from the Governor: pearls, of which there has never been any want among these swine.⁴⁰ Of the water of these pearls, something will come to be said under the head of *Drunkenness*.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 2. Page 96.⁴¹ March 5, 1798. Speaking of the business before a court of civil

³⁶ *Recte* 21–2.

³⁷ The word ‘now’ is Bentham’s interpolation.

³⁸ One such public order seeking to regulate the colonial trade in spirits issued on 22 March 1796 exhorted magistrates and constables to locate unlicensed public houses, and warned that anyone caught running such an establishment was liable to have their house pulled down ‘as a public nuisance’: see Governor Hunter to Duke of Portland, 12 November 1796, Enclosure, Government and General Orders (22 March 1796), *HRA*, i. 690–1.

³⁹ See pp. 000 below.

⁴⁰ An echo of Matthew 7: 6.

⁴¹ *Recte* 96–7.

judicature, ‘this’ (says our author) ‘consisted chiefly of litigation, about debts contracted between the retail dealers and the settlers. As a proof to what a height this business had reached, it need only be mentioned, that an appeal was made to the Governor, in one prosecution, for a debt of £868: 16s. 10*d.*; which appeal was however withdrawn, the defendant consenting to pay the debt.’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—No small mass of property, to be amassed in such a place: but of the *source* of it, mention has been already made, under the head of *Colonies* (Letter I. p. 000.)—and of the *security* of it, more may come to be said under the head of *Economy*, towards the close of the present letter.⁴²

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 3. Page 97, 98. March 1798. ‘The Governor, having received from the settlers in each district a clear⁴³ and correct statement of their grievances and distresses,⁴⁴ informed them, that it was with real concern he beheld the effects of the meeting of each civil court, which, for the public accommodation, he from time to time had occasion to assemble. The vast load of debt with which they so frequently felt themselves burthened *through the imposition and extortion of the multitude of petty dealers*, by whom the Colony was so much troubled, with the *difficulties* under which the industrious man laboured *for want of some other mode of providing the necessaries* which he required, were grievances of which he was determined to get the better; and, as far as his situation would authorize him, he would adopt every means in his power to afford them relief. To this end he found it absolutely necessary to suppress many of those *licensed public houses* which, when first permitted, were designed

⁴² See p. 000 below.

⁴³ Collins: ‘district, though the medium of the two gentlemen whom he sent amongst them for the purpose (the Rev. Mr. Marsden, and Mr. Arndell), a clear’. Thomas Arndell (1753–1821) was a surgeon, magistrate, and landowner.

⁴⁴ For settlers’ grievances regarding the price of commodities see Governor Hunter to Duke of Portland, 2 March 1798, Enclosure No. 1, ‘Settlers Statement to Hunter’ (19 February 1798), and Enclosure No. 2, ‘Report of the Rev. Samuel Marsden and Assistant-Surgeon Arndell’ (undated), *HRA*, ii. 136–46.

as a convenience to the labouring people; but which he now saw were the principal cause whence many had candidly confessed their ruin to have sprung.’⁴⁵

‘He wished it were possible to dissuade them from heaping such heavy debts upon themselves by the enjoyment of articles which they could do without, or by throwing away their money in purchasing, at every public auction, rags and trifles for which such exorbitant sums were exacted. He urged them, with a paternal anxiety, to consider, that their folly involved their whole families in ruin and misfortune, and conjured them to wait with patience the result of some representations which he had made to Government, as well in their behalf, as in behalf of the settlers upon Norfolk Island; by which he hoped that ere long they would have an opportunity of purchasing every European article that they might want at such a reasonable and moderate price as they, by their industry, would be very well able to afford from the produce of their labour.’⁴⁶

‘The island upon which Captain Hamilton had run his ship, and thereby prevented her sinking with them at sea, was thenceforward to be distinguished by the name of Preservation Island. From thence the colonial schooner had arrived with what remained of the property.’⁴⁷

⁴⁵ In August 1798, for instance, noting that magistrates had issued ‘far too many’ licences to retail spirits, Governor Hunter limited the number of licences issued for Sydney to eight, for Parramatta to four, and for the Hawkesbury River settlements to three: see Hunter to Portland, 20 August 1798, Enclosure, Government and General Orders (6 August 1798), *HRA*, ii. 219.

⁴⁶ In a letter of 2 March 1798 (*HRA*, ii. 135–6), for instance, Hunter sought to provide Portland with ‘the most unreserved information’ regarding the ‘heavy grievances and distresses’ of settlers across the colony since February 1798, in particular their frequent bankruptcies and the ‘extravagant prices’ charged for commodities by those who had monopolized colonial trade. Hunter reported that the Reverend Samuel Marsden and Dr Thomas Arndell had taken representations from some settlers, and that he intended to visit the various districts himself ‘to encourage the settlers to perseverance and patience until you Grace shall have pointed out the most efficient means for alleviating their distresses, and exonerating the colony of such a combination of dealers, a circumstance as truly essential to its well-being as any step that can be taken’.

⁴⁷ Captain Gavin or Guy Hamilton (d. 1798) was master of the *Sydney Cove*, which in November 1796 set out from India for Sydney laden with stores including 31,500 litres of spirits. The ship sustained serious damage during the voyage, and on 9 February 1797 Hamilton was forced to beach it at Preservation Island, off the north-east coast of Van Diemen’s Land. On 27 February 1797 seventeen members of the ship’s crew set out for Sydney in the ship’s longboat, but it was wrecked off the south-east coast of the Australian mainland. When rescued on 15 May 1797 at Port Hacking, only three of the men were still alive. On 30 May 1797 the colonial schooner *Francis* and the sloop *Eliza* sailed from Port Jackson on a salvage and rescue mission. The *Eliza* was

As soon as she was unloaded, the property was put up to sale for the benefit of the underwriters, when *the little effect of the Governor's recommendation of patience was seen, by the most enormous prices being paid for every article. The money that should have been expended in the cultivation and improvement of their farms was thus lavishly thrown away;* and it happened, fortunately enough for the underwriters, that the wheat of this last season had been received into the public granary, and immediately paid for. *Twenty-two shillings were paid at this sale for one common cup and saucer.'*

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—Besides prodigality and improvidence, more drunkenness, more good advice, as pregnant as ever with good effects. But of this in its place, as already mentioned. ‘*Imposition and extortion*’ the fruit of the ‘*multitude of the dealers*’? Say rather, of the smallness of their number. In the multitude of dealers, much more surely than of ‘*counsellors*,’ there is safety. Copies of Adam Smith⁴⁸ do not appear to have been abundant in the libraries of New South Wales.

Government to turn shop-keeper!—perhaps a necessary remedy—not improbably a costly, and therefore most certainly a formidable one.—*Away with it*, cries Adam Smith.⁴⁹ But most assuredly, among the nations whose wealth he had in view, was no such nation as New South Wales. Of this further perhaps under the head of *Economy*.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 4. page 120. July 1798. ‘The ready sale which the speculators who called here

lost in a storm on its voyage back to Sydney, though the *Francis* made two further salvage voyages to Preservation Island. See Governor Hunter to Duke of Portland, 6 July 1797, *HRA*, ii. 82, and Appendix A, ‘Narrative of the Shipwreck of Captain Hamilton and the Crew of the Sydney Cove’, *HRNSW*, iii. 757–68.

⁴⁸ i.e. Smith’s *Wealth of Nations*.

⁴⁹ Bentham perhaps had in mind Smith’s statement, at *Wealth of Nations (Glasgow Edition)*, ii. 817–18, that ‘Small republicks have sometimes derived a considerable revenue from the profit of mercantile projects. The republick of Hamburgh is said to do so from the profits of a publick wine cellar and apothecary’s shop’, but went on to comment that ‘The state cannot be a very great one of which the sovereign has leisure to carry on the trade of a wine merchant or apothecary.’

constantly found for their cargoes, together with the ruinous traffic which was carried on by means of the monopolies that existed in opposition to every order and endeavour to prevent them, would, beyond a doubt, without the establishment of a *public store* on the part of Government, keep the settlers and others in a continual state of beggary, and extremely retard the progressive improvement of the Colony.’⁵⁰

No. 5. page 198.⁵¹ Feb. 1799. ‘Presuming on the late inefficient harvest, *the Settlers* requested again to be supplied with seed-wheat from the store, but were refused. It was well known, that they sold for spirits, to the last bushel of their crop, and left their families without bread. Then they pleaded poverty and distress, and their utter inability to pay⁵² what they had borrowed. When seed has been lent them, they have not unfrequently been seen to sell it at the door of the store whence they received it!’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—Again *the Settlers*: no exception in favour of *non-convicts*.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 6. page 279.⁵³ 3d January 1800. ‘The Swallow, East India packet, anchored in the

⁵⁰ See Hunter to Portland, 25 May 1798, *HRA*, ii. 153: ‘Should my idea of a public store on the part of Government, upon an extensive plan, for the retail sale of the various articles of comfort and convenience, be adopted, the price of grain must immediately fall, and in the end operate as an encouragement to industry; but without some such measure the settlers cannot live, and far less provide for a family. The speculators who call here, and the ruinous traffic which is carried on through those monopolies, which are made in opposition to my repeated orders and endeavours to prevent, will beyond a doubt, without the interference of Government, keep the settlers, &c., in a continual state of beggary, and retard the progressive improvement of the colony.’

⁵¹ *Recte* 198–9.

⁵² Collins ‘repay’.

⁵³ *Recte* 279–80.

Cove,⁵⁴ on her way⁵⁵ to China. She had⁵⁶ on board a great variety of articles for sale, which were intended for the China market; but the master thought, and actually found, it worth his while to gratify the inhabitants, particularly the females, with a display of many elegant articles of dress from Bond Street, and other fashionable repositories of the metropolis.’

‘On the 11th the *Minerva* transport arrived from Ireland.⁵⁷ Having touched at Rio de Janeiro, she had brought many articles for sale, as well from that port as from England, most of which were much wanted by the inhabitants: but the prices required for them were such as to drain the colony of every shilling that could be got together.’⁵⁸

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—Of this already (Letter I. p. 000) in speaking of paper money, and the staple trade of this peculiar Colony.

NOTE TO TYPESETTERS: Please insert a short rule here

III. *Per contrà*—*Industry, Frugality, Forecast, in the American Penitentiary Houses.*—*I. Philadelphia House, instituted 1790.*

⁵⁴ The *Swallow* arrived at Port Jackson on 8 December 1799: see Hunter to Portland, 25 September 1800, Enclosure, ‘A List of Ships and Vessels which Enter’d Inwards in the Port of Port Jackson, in His Majesty’s Colony of New South Wales, between the 3rd day of November, 1799, and the 13th day of May, 1800, following with the particular quantity and quality of the loading of each vessel’, *HRA*, ii. 571.

⁵⁵ Collins ‘voyage’.

⁵⁶ Collins: ‘China. She brought information of the Dutch fleet in the Texel, and the surrender of the forts upon the Helder. This intelligence was announced to the settlement in a public order, and by a discharge of the cannon on the batteries. The *Swallow* on her anchoring saluted the fort, which was returned.

‘In addition to this welcome news, she had’.

The public order has not been identified, but the allusion is to the Anglo-Russian invasion of the Batavian Republic on 27 August 1799, the retreat of Batavian forces and their evacuation from the fortifications at Den Helder, and the mutiny and surrender of the Batavian fleet at the island of Texel on 30 August 1799.

⁵⁷ This sentence is a paraphrase of, rather than a direct quotation from, a passage in Collins.

⁵⁸ For the settlers’ petition to Governor Hunter, requesting his permission to purchase spirits and other goods brought to the colony by the *Minerva*, see Hunter to Duke of Portland, 15 January 1800, *HRA*, ii. 436–8.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 1. Philadelphia; 1795: Liancourt, page 14. ‘Out of his profits the prisoner is obliged to pay his board, and the price of, or in some cases a certain rent or hire for, the instruments he uses. These payments, which are necessarily determined by the current price of commodities, are fixed by the inspectors four times in every year. At present, it amounts to one sixth of a dollar for each man’s board. The *most infirm*, however, *may earn* easily *twenty pence per day*, by picking oakum; and *there are some who earn above a dollar.*’

No. 2. Philadelphia; 1796: Turnbull, page 16. ‘For each convict a separate account is kept by the jailer, charging him with his cloathing, sustenance, &c. and in which a reasonable allowance for his labour is credited. It is generally rather less than the wages of other workmen in the city. These accounts are balanced at short periods, in order that the overplus or proportion, which might be due to the prisoner, may be paid into the county treasury for safe keeping; and, once in every three months, they are audited before the inspectors. The committee of inspectors, once during the same period of time, fix the charges for the *prisoners’ maintenance*, which depend on the existing price of provisions, &c. It is now *one shilling and three pence a day for the males*, and *seven pence for the females*. There are *few who do not earn above two shillings*. The marble sawing and manufacturing of nails are the most lucrative employments followed in the prison. *Several* were pointed out to us, who earned at these occupations *above a dollar*, and *one* in particular, whose daily labour averaged *one dollar and a half.*’

No. 3. Ib. p. 48.⁵⁹ ‘Some have appropriated the proceeds of their labour, while in confinement, to the support of their families; and several, on leaving the prison, have received 40 or 50 dollars {4s. 6d.},⁶⁰ the overplus of the profits of their labour, and with this capital turned out honest and industrious members of society.’

NOTE TO TYPESETTERS: Please end displayed quotation.

⁵⁹ Recte 49.

⁶⁰ The conversion of the sum into sterling is Bentham’s interpolation.

2. *New York House; instituted 1790.*

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 4. New York; 1802: Eddy, p. 94. ‘The convicts have now become more skilful workmen, and can perform more labour, and to greater advantage, than heretofore.’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—In this more recent prison, the economy, it appears, had not yet attained to such a pitch of perfection as to afford to the public a profit equal to the expence of the convicts’ maintenance. Under the Philadelphia system, no allowance was to commence in favour of any convict, till after the estimated expence of his share in the aggregate expence of the prison, or at least the greater part of that expence, had been reimbursed. The New York institution appears to have had disadvantages of its own to struggle with, which by the last accounts were not yet overcome; but which, by the same accounts, were in a way to be overcome.⁶¹ At Philadelphia the charge against the convict appears to have been fixt at so low a rate, that from the first some surplus went into the pocket of the convict workman, the most unskilful not excepted. Whether the same policy has been pursued, and in the same degree, at New York, I have not found. I should rather expect to find, not: and in that case I am inclined to think that a little more liberality under this head might, even in the way of economy, have been attended with advantage.

Supposing this feature in the Philadelphia system to have been copied in New York, there being no surplus for the convict workman, the virtues of frugality and forecast would not in his instance find any ground to build upon.

3. *Penitentiary System: Panopticon Mode.*

⁶¹ According to Eddy, *Account of the state prison in New-York*, pp. 92–4, although calculating that by the end of 1802 the institution would have a debt of \$14,598.44, the state legislature noted that ‘there is reason to conclude .^.^ that the profits of the labour of the convicts during the year 1802, may be rendered adequate to their maintenance’, and there would remain ‘only the annual expence of the salaries of the keepers, and of the external guard, to be paid out of the public treasury’.

This spur to industry presented itself to me from the first, as a very material implement in the apparatus of reformation.⁶² In 1793, when I was arranging, with Mr. (now Sir Evan) Nepean (then Under Secretary of State under Mr. Dundas) those terms of *contract*, which without much variation were afterwards approved of at the Treasury, and are printed in the 28th Report of the Committee of Finance—on this occasion, in my accepted *proposal*, on the ground of which we were proceeding, a fourth part having been specified by me as the share I was willing to allow, at the same instant *he* happened to mention a sixth part, as the share he had thought of. Without hesitation I declined taking advantage of this facility. A fourth part (I recollected) was the share mentioned by Howard as that which, judging from his experience, he looked upon as capable of inspiring the requisite degree of *alacrity*.⁶³ It went against me to give less than what had been recommended by so approved a judge: and moreover, under my plan there was a particular reason for not falling short of that mark; since, for the fulfilment of the article relative to the *superannuation annuity*, I reserved to myself the power of retaining in my hands, as far as the half of each man's allowance: in which case the share received by him in the shape of *present* allowance, would be reduced to an eighth.⁶⁴

While yet on the road to *reformation*, the discussion of these points, though by no means unapposite to that head, has at the same time led us, though prematurely, into a corner

⁶² In 1778 in 'View of the Hard Labour Bill', p. 27 (Bowring, iv. 12), Bentham had suggested that putting convicts to work would simultaneously 'compensate the expense of the establishment' and ensure that 'the morals of the convicts may be improved by a habit of steady and well-directed industry'.

⁶³ According to John Howard, *An Account of the Principal Lazarettos in Europe; with Various Papers Relative to the Plague: Together with Further Observations on Some Foreign Prisons and Hospitals; and Additional Remarks on the Present State of Those in Great Britain and Ireland*, Warrington, 1789, p. 54 n., 'criminals will gladly work, when in prison, for one-fourth of what they could earn, were they not in confinement'.

⁶⁴ See 'Draft of a Contract between the Lords Commissioners of the Treasury and Jeremy Bentham, Esquire', Art. 14, reproduced in 'Twenty-Eighth Report from the Select Committee on Finance', Appendix F. 3., in *Commons Sessional Papers of the Eighteenth Century*, cxii. 72: 'Each of the said Convicts or Prisoners shall be allowed a Share of his Earnings, to the Amount of not less than One Fourth Part of the fair Value thereof'; and Art. 15, *ibid.*, pp. 72–3: 'A Portion of such Share or Allowance (but, unless with the Prisoner's Consent, not exceeding the Half thereof) shall be retained by the said Jeremy Bentham and his said Successors respectively, as the Consideration Money for an adequate Superannuation Annuity to be granted by the said Jeremy Bentham and his said Successors, immediately upon the Expiration of such Prisoner's Confinement, to and for the Benefit of each such Prisoner respectively, upon the principle of the Annuities granted by the Societies called Friendly Societies, for the Life of such Prisoner.'

of the field of *economy*.—Just entered upon, and that but *en passant*, and already, my Lord, what a light breaks in upon it! In the account of expence, compare this 0, or rather this *minus x*, per annum, with the *plus 46l.* of New South Wales.⁶⁵

NOTE TO TYPESETTERS: Please insert short rule.

IV. *General Depravity—Prevalence of it in New South Wales, as attested in general Expressions.*

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 1. II Collins, page 2. October 1796.⁶⁶ ‘The frequent commission of the most atrocious crimes, together with the dissipated, turbulent, and abandoned disposition of the convicts, had more than ever at this time been manifest.’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.— Practical inference, resolution to construct the two prisons above spoken of, at Sydney and Paramatta.^e

^e Supra, p. 000.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 2. *ib.* page 3. October 1796.⁶⁷ ‘Far too many of them were most incorrigibly flagitious.’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—Practical inference—forming (as above) the most incorrigible of them

⁶⁵ See ‘Letter to Pelham’, p. 000 above.

⁶⁶ Collins refers to events occurring in September 1796, and not October 1796.

⁶⁷ Collins refers to events occurring in September 1796, and not October 1796

into a *Jail Gang*. {Lett. I. p. 000.}⁶⁸

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 3. ib. page 9.⁶⁹ October 1796. ‘The morality of the Settlement’ is expressly stated as ‘a point which he (the Governor) could not venture to promise himself that *he should ever attain.*’

No. 4. ib. page 23. February 1797.⁷⁰ ‘It now⁷¹ appeared by the books’ that ‘there were at this time not less than 600 men off *the store* and *working for themselves* in the Colony: forming a vast deduction from⁷² the public strength, and adding a great many chances against the safety of private and public property as well as personal security.’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—Written confirmation of the general proposition so often repeated:—under inspection (viz. such inspection as the nature of the institution admitted of), bad enough; out of inspection, worse and worse. To ‘*working for themselves*’ might have been added—*or supposed to work.*

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 5. page 53. October 1797.⁷³ ‘At this time such’ (observes the annalist) ‘was the increase of crimes, that thrice in this month was the Court of Criminal Judicature assembled.—Offences—murder, perjury, forgery, and theft.’⁷⁴

⁶⁸ Collins, ii. 3, states that the ‘most notorious’ of the ‘incorrigibly flagitious’ were formed into a gaol gang during September 1796 and made to repair roads and bridges near Sydney.

⁶⁹ *Recte* 3.

⁷⁰ Collins refers to events occurring in March 1797, and not February 1797.

⁷¹ The word ‘now’ is Bentham’s interpolation.

⁷² Collins ‘deduction of labouring people from’.

⁷³ The following passage is Bentham’s paraphrase, rather than a direct quotation from Collins.

⁷⁴ According to Collins, ii. 53–5, the Court of Criminal Judicature, sitting on 9, 18, and 24 October 1797, heard the following cases: the acquittal, for want of evidence, of William Millar and Thomas Bevan on a charge of

No. 6. page 100. March 1798. ‘The utmost vigilance was constantly requisite to guard against robbers⁷⁵ both on land and water. It was impossible in such a community as this to have a police too strict, or to be sufficiently aware at all times of such a nest of villains. Many examples had been made; but after a few days had elapsed, they were forgotten; and every act of lenity and indulgence was found to be ruinous to the welfare and comfort of the whole. It was to be hoped, however, that the introduction, of *more of the better* and *fewer of the worst sort* of characters, would *in due time* give the balance a favourable turn.’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—This we see is the ground, weak as it is, upon which, in the expectation of the late Chief Magistrate, as in the view of the late Governor, all hope of moral improvement rests:—the not applying the Settlement to the only purpose, with reference to which it has ever been thought well of by any body.—Quere as to those ‘*worst*’ characters— if not sent to this improved Colony, what else would gentlemen wish to have done with them?—If these most intractable of characters can be disposed of with advantage at a less distance and at a less expence, might not the same economy be applied to the less intractable ones?

My language would be somewhat different.—Give me the worst in preference: the greater the difficulty, the greater the glory. If there *must* be a New South Wales, let rather the least corrupted go to New South Wales.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 7. ib. page 105. April 1798. At this time the Settlers are still spoken of as being

murdering an Indigenous boy known as Tom Rowley; the sentencing of John Morris to be ‘burned in the hand’ and imprisoned for twelve months for the manslaughter of Charles Martin; the sentencing to death, with a recommendation of mercy, of William Cherry for uttering a forged bill; the sentencing of Robert Williams to transportation to Norfolk Island for life; the sentencing of James Edwards to Norfolk Island for seven years; and the sentencing of Luke Normington, John Colley, and William Osborne to have their ears nailed to the pillory for perjuring themselves in the case of the aforementioned John Morris. For the trials see respectively SRNSW, NRS 2700 5/1147B (Reel 2391), pp. 353–4; 373–7; 369; 355–60; 365–7; and 379–85.

⁷⁵ Collins ‘robberies’.

‘certainly undeserving of the attention which they met with from the Governor.’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—The Settlers—not now, as in October 1792, ‘far too many;’⁷⁶ but *the Settlers*:—the Settlers in general. These Settlers, however, were the flower of the flock:—the class, in whose instance the possession of permanent property—a sort of landed property, such as the nature of a government completely arbitrary admitted of—together with a portion of appropriate stock, would, according to received theories, afford that sort of security for good behaviour, which it is in the power of property, in such a state of society, to give: and who, as often as the occasion recurs for mentioning them, are notwithstanding, and without any discrimination, mentioned as the worst.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 8. *ib.* page 130. October 1798. At this time (after speaking of the wilful burning of a building at *Sydney*, used as a *Church and School*,⁷⁷ (of which afterwards)⁷⁸ ‘this circumstance’ (it is observed) ‘must impress upon the mind of every one who may read this account, to what a dreadful state of profligacy the Colony had arrived; which, alarming as it was, might have been still worse, had it not been for the *Civil Police*, which fortunately had been established: for a more wicked, abandoned, and irreligious set of people had never been brought together in any part of the Colony. The hope of their amendment seemed every day to lessen.’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—No travelling without a passport, &c. &c. A sort of system of general

⁷⁶ See p. 000 above.

⁷⁷ On 1 October 1798 the church of the Reverend Richard Johnson was burned to the ground. Governor Hunter believed the arson had been carried out by a convict or convicts angry at his order of 27 August 1798 which made attendance compulsory at Sunday service. See Governor Hunter to Duke of Portland, 1 November 1798, and Governor Hunter to Duke of Portland, 1 May 1799, Government and General Order (27 August 1798), *HRA*, ii. 236–7 and 357.

⁷⁸ See p. 000 below.

imprisonment *within the rules*: a system which, having necessity for its justification, was not the less subject to endless vexations, oppressions, and abuses.⁷⁹

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 10.⁸⁰ *ib.* page 210. May 1799. *Backsliders*.—At this time mention is made of a convict (Robert Lowe), one of a number, who, for particular instances of good behaviour on ship-board, ‘had received conditional emancipation, and been allowed to provide for their own maintenance.’ *Few of these people* however (it is added) ‘*were in the end found to merit this reward and indulgence*, as their future (*i.e.* subsequent) conduct had proved.’⁸¹

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—Whatever symptoms of previous good dispositions had at any time manifested themselves among the convicts, while subject to such degree of inspection as the economical arrangements afforded, were scarce ever found capable of maintaining

⁷⁹ See p. 000 below.

⁸⁰ The text does not include a ninth item.

⁸¹ In the passage cited by Bentham, Collins has conflated two individuals. The first was Robert Lowe (b. c. 1747), who had been convicted at Derby Assizes on 31 July 1784 of receiving stolen silver plate, for which he was sentenced to fourteen years’ transportation, and who had arrived at Port Jackson aboard the *Surprize* on 1 June 1790. While employed as a government clerk in the livestock department, Lowe, together with Samuel Griffith and Christopher Dodd, was tried at the Court of Criminal Judicature on 19 May 1799 of embezzling government livestock at Parramatta. Though there was insufficient evidence on which to convict Griffith and Dodd, Lowe was convicted and sentenced to 100 lashes and one year’s hard labour in the gaol gang. For the trial see SRNSW, NRS 2700 X905 (Reel 2651), pp. 208–13.

The second individual was John Lowe (b. c. 1761), who had been convicted at the Stafford Assizes on 8 August 1787 of stealing a leather pocket-book containing bills of exchange to the value of £34 from John Sparrow, for which he was sentenced to death. His sentence had been commuted to fourteen years’ transportation, and on 8 September 1789 Lowe and twenty-four other convict artisans were embarked on the *Guardian*. On 24 December 1789 the ship had struck an iceberg around 1,300 miles off Port Elizabeth, and the floundering vessel was steered into Table Bay by its Captain Edward Riou (1762–1801) and a crew of sixty men, including most of the convicts (see p. 000 n. below). Lowe and the other surviving convicts had then been embarked on the *Surprize* when it called in at the Cape and had arrived at Port Jackson on 1 June 1790, whereupon he and thirteen others were granted conditional pardons, on Riou’s recommendation, on account of their good conduct during the accident.

themselves against the corruptive effects of the state of society there established:—a society composed of such characters, exempted from all restraints.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 11. ib. page 216.⁸² 2d July 1799. Still, the older the Settlement, the more universal the depravity, and the more authentic the evidence of it. Two men and a woman had just been hanged for a murder committed on the body of a kind and generous friend (one of the missionaries), to save the repayment of a sum of 10*l.* lent by him to his murderers.⁸³ ‘The abandoned state in which the Settlement was *at this time* (continues the annalist) cannot be better understood than by a perusal of the following orders.’ The principal mischief mentioned is the ‘late increased number of nocturnal robberies’. Assigned cause—on the part of the *Petty Constables* and *Divisional Watchmen*, either extreme negligence, or complicity with the malefactors. These subordinate magistrates were the elect among the men of property in the Colony.^f Remedies proposed—subscription for rewards, and a system of universal vigilance, commensurate to the universal insecurity.⁸⁴

^f II Collins, pages 8. 64.⁸⁵

Of these orders it is stated that ‘they seemed to have been attended with some effect;’

⁸² *Recte* 216–17.

⁸³ Thomas Jones (*c.* 1763–99), his wife Elizabeth, and William Elberry or Albury were hanged on 6 July 1799, after being convicted on 4 July 1799 of the murder of the Reverend Samuel Clode, a missionary recently arrived in Sydney from Tahiti, who had visited the Jones’s house on the evening of 2 July 1799 to collect ten pounds which he had lent them. For the trial see SRNSW, NRS 2700 X905 (Reel 2651), pp. 225–49.

⁸⁴ Collins, ii. 217–18, describes Governor Hunter’s recommendation (see Government and General Orders (2 July 1799), *HRA*, ii. 586) that the ‘chief inhabitants’ of Sydney and Parramatta consider among themselves the best way to detect robbers, whether that was by subscribing to offer rewards for their capture, or by establishing regular patrols, as a remedy to the recent increase in ‘nocturnal robberies’ and the apparent negligence of constables and watchmen in preventing them.

⁸⁵ Collins describes Governor Hunter’s orders of November 1796 and November 1797, directing the inhabitants of Sydney to elect respectable characters to serve as constables for their respective districts for the next twelve months. For the orders see Governor Hunter to Duke of Portland, 12 November 1796, Enclosure, Government and General Orders (9 November 1796), *HRA*, i. 701–2, and Governor Hunter to Duke of Portland, 20 August 1798, Enclosure, Government and General Orders (11 November 1797), *HRA*, ii. 206.

because some vagrants were taken up in consequence. The effect, however, seems not to have been very great, since a statement comes immediately after it—that still ‘alarming depredations were nightly committed upon the live-stock of individuals.’⁸⁶

No. 12. page 277.⁸⁷ December 1799. The history of this year closes with an ejaculation—‘May the annalist, whose business it may be to record, in future, the transactions of the Colony, find a pleasanter field to travel in, where his steps will not be every moment beset with murderers, robbers, and incendiaries!’⁸⁸

No. 13. page 296.⁸⁹ June 1800. Mention having been made of executions, ‘the number of robbers and sheep-stealers’ is mentioned as ‘still increasing, notwithstanding the late executions:’ whereupon comes a question—‘Can it be wondered at, that *so much profligacy prevailed in every part of the settlement?*’⁹⁰

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—Here, or hereabouts, (only four months later) concludes the regular part of the history—the part chronologically arranged.⁹¹ The intelligence by a vessel that quitted the Colony at a posterior date (August 1801) consists of nothing but a few scattered articles, mostly without distinction of date.⁹²

⁸⁶ See Collins, ii. 218–19.

⁸⁷ *Recte* 277 n.

⁸⁸ Collins ‘incendiaries.’

⁸⁹ *Recte* 296–7.

⁹⁰ Bentham conflates two distinct matters. First, ‘the late executions’ were those of two men convicted at the Court of Criminal Jurisdiction on 26 May 1800 of sheep stealing, for which they were hanged on 2 and 8 June 1800 respectively. Second, after describing how a number of inhabitants of Sydney had resisted paying their contributions towards the erection of a new gaol, Collins asks, given ‘the conduct of these people, even in a measure where their own personal interests were so essentially concerned, can it be wondered at, that so much profligacy prevailed in every part of the settlement?’. See also ‘Plea for the Constitution’, p. 000 & n. below.

⁹¹ The ‘chronologically arranged’ part of Collins’s second volume ends in October 1800.

⁹² Collins, ii. 329, states that dispatches had been ‘recently received at Lord Hobart’s office [i.e. that of the Secretary of State for War and the Colonies] from New South Wales, dated in August 1801’. Though Collins does not name the vessel, it was the *Albion*, a whaler which had sailed from Port Jackson in late August 1801,

2. *General Depravity continued—Females.*

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 1. page 121. July 1798. ‘Great complaints were now made of the profligacy of the women; who, probably from having met with more indulgence, on account of their sex, than their general conduct entitled them to, were grown so idle and insolent, that they were unwilling to do any thing but nurse their children; an excuse from labour which very few were without. Were their value to be estimated by the fine children with which they had increased and multiplied the numbers in the Settlement, they certainly would have been found to deserve every care and attention as useful members of society; but their vices were too conspicuous and prominent to admit of much palliation.’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—Among these fine children, a curious enough topic of inquiry would be, How many legitimate? how many illegitimate? Another, though not quite so ascertainable, among the legitimate, How many who had for their fathers the husbands of their mothers? The managers of the ‘improved Colony’ here at home, had they received any such information, my Lord? had they used any endeavour to obtain it? were they afraid of receiving it? or was it beneath their care?^g

and reached England in late March 1802. For the dispatches in question, dated August 1801 and docketed ‘per whaler *Albion*’, see *HRA*, iii. 120–268.

⁸ It cannot have been a secret to them. In the unpublished book intitled *Panopticon*, printed in 1791, I find in 84 *on Separation, &c.* the following passage—‘Turn now to New South Wales: 2000 convicts of both sexes and 160 soldiers, not to speak of officers, jumbled together in one mass, and mingling like beasts: in two years, from 14 marriages, eighty-seven births: the morals of Otaheite introduced into New Holland by the medium of Old England.’

After this I find a reference as follows:

‘See Governor Phillip’s Account of the Settlement, 4to. 1791, pp. VIII. 67. Mr. White’s ditto, 4to. 1790, and Extracts of Letters and Accounts, printed and laid before the House of Commons, in pursuance of an Order of April 8th, 1791, p. 3.’⁹³

November 1802. I find now, my Lord, I ought to beg pardon of the beasts; since, by subsequent accounts, there have been times in which, in point of decency, as far as depends upon clothing, the four-footed race have had greatly the advantage.

Please begin displayed quotation, and continue note.

No. 1. II Collins, p. 101. March 1798. ‘Provisions .^.^ stores .^.^ 16 months since the last were received—A few⁹⁴ slops were served to the male convicts in the beginning of this month; they being *nearly naked*, and the store unable to supply them with covering.’

No. 2. ib. p. 142. January 1799. ‘The convicts in general had suffered much through want of clothing and bedding. Indeed, during the late harvest, *several gangs* were seen labouring in the fields, *as free of cloathing of any kind* as the savages of the country. This

⁹³ In ‘Panopticon; or, the Inspection-House’, iii. 90 n. (Bowring, iv. 219 n.), Bentham cites Phillip, *Voyage of Governor Phillip*, pp. viii, 67, White, *Journal*, p. 126, and Governor Phillip to Lord Sydney, 12 February 1790, in ‘Extracts of Letters, &c.—and Accounts, relative to the Settlements in New South Wales’, *Commons Sessional Papers* (1791), 241–3, at 243 (reproduced in full at *HRA*, i. 140–7). Phillip and White both record that 14 marriages were solemnized in February 1788, and Phillip subsequently reported to Sydney that, from 26 January 1788 to 12 February 1790, 87 children had been born in New South Wales. Bentham appears to overlook the fact that couples might have been married before they arrived in New South Wales, and that marriages might have been solemnized after February 1798.

⁹⁴ Collins ‘received. Public works of all kinds went on slowly; the servants of government being but few in proportion to the labour to be performed by them, and all kinds of implements bad in quality, and scarce. A few’.

had made them insolent; and anonymous letters were dropped, in which were threatenings of what would be done at the proper season.’

Please end displayed quotation and continue note.

Nakedness, and thence insolence: and the blame, my Lord, where is it?—With those who wore no cloaths because they could get none, or with those who left them without cloaths?—Suffer till you rot, suffer without complaint, no notice taken: complain, notice taken that you are insolent.—Harsh forms excepted, could not your Lordship’s recollection furnish you with something like another instance?

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 2. p. 123. August 1798. *Positively* bad in July—another month, and they are become so in the *comparative* degree:—‘the women, to their disgrace,’ (says their historian at this time) ‘were *far worse than the men.*’⁹⁵

No. 3. p. 128. October 1798.⁹⁶ In speaking of the *seamen* belonging to ‘some of the whalers that were in the harbour’—the *women* of the colony, along with the *spirits* of it, are mentioned as the two temptations so peculiarly calculated ‘*every where*’ to lead them astray.

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations. —Every where?—Yes: so far as concerns certain vices, such as idleness, prodigality and improvidence: but not every where into crimes. It is only in New South Wales that incontinence exposes a man necessarily and uniformly to the seductions of women ‘*far worse than the men*’—the men of New South Wales: i. e. far worse than a gang of robbers, burglars, murderers and incendiaries.

NOTE TO TYPESETTERS: Please begin displayed quotation.

⁹⁵ See also p. 000 below.

⁹⁶ Collins refers to events occurring in September 1798, and not October 1798.

No. 4. p. 138.⁹⁷ Nov. 1798. At this time ‘the complaints which were daily made, of the refractory and disobedient conduct of the convict women, rendered it absolutely necessary’ (it is said) ‘that some steps should be instantly taken to make them more clearly understand the nature of their situation and the duties they were liable to perform.’⁹⁸—*Semper eadem*,⁹⁹ worse and worse.

No. 5. p. 218. 3 July 1799. Bad beyond endurance. The opinion above given, is not peculiar either to the late chief magistrate writing at a distance from the colony, or to his informant on the spot.¹⁰⁰ It is proclaimed on the spot in public orders by the highest authority in the place. ‘The continual complaints which are made of the conduct of the female convicts require (says the Governor in his order of this day)¹⁰¹ the most rigid and determined discipline, with such characters, who to the disgrace of their sex are *far worse than the men*, and are generally found at the bottom of every infamous transaction that is committed in the colony.’

No. 6. p. 272. November 1799. Speaking of divine service on Sundays, ‘The women (it is said)¹⁰² were also directed to be more punctual in their appearance; for these still availed themselves of the indulgence which, as women, they had been treated with, seldom thinking themselves included in the restrictions that were laid upon others.’¹⁰³

No. 7. p. 284. February 1800. This month exhibits a particular example of the effect of such characters, not upon their fellow convicts only, but also upon the *Soldiery*. ‘One of these

⁹⁷ *Recte* 135.

⁹⁸ According to Collins, every officer or householder employing a female convict servant was required to forward their servants’ names to the judge-advocate’s office and to inform the office if they wished to dismiss a servant, and was forbidden from keeping from public labour any servants ‘but those whom they were permitted to retain’. For an official account of these measures see Governor Hunter to Duke of Portland, 1 May 1799, Enclosure No. 3, Government and General Order (7 November 1798), *HRA*, ii. 360.

⁹⁹ i.e. ‘Always the same’.

¹⁰⁰ i.e. Governor Hunter, on whose dispatches and reports Collins’s second volume was largely based: for further details see the Editorial Introduction, p. 000 above.

¹⁰¹ The parenthesis is Bentham’s interpolation. For Governor Hunter’s order see Government and General Orders (3 July 1799), *HRA*, ii. 586–7.

¹⁰² The parenthesis is Bentham’s interpolation.

¹⁰³ The paragraph from which this quotation is taken is cited in full at p. 000 below.

people, a quiet well-disposed young man, fell a victim to an attachment which he had formed with an infamous woman; who, after plundering him of every thing valuable that he possessed, turned him out of the house, to make room for another. This treatment he could not live under; and, placing the muzzle of his gun beneath his chin, he drew the trigger with his foot, and, the contents going through his neck, instantly expired.¹⁰⁴

No. 8. p. 290. April 14, 1800. It was in order to make an addition to the numbers of this sex, elsewhere the better half of the species, but in this improved colony ‘*far the worst,*’ that on this day the *Speedy* Whaler is mentioned as arriving from England, with 50 ‘female convicts;¹⁰⁵ and what were much more *welcome* and *profitable* (observes the historiographer) 832 casks of salt provisions, which enabled the Governor once more to issue a full ration.’—Profitable?—Yes:—welcomeness depends on appetites and tastes.

NOTE TO TYPESETTERS: Please end displayed quotation.

V. *General Depravity—Particular Exemplifications.*

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 1. page 4. October 1796. At this time, after speaking of ‘a murder committed by a man on the person of a woman with whom he cohabited,¹⁰⁶ ‘This (it is added) made the fifth circumstance of the kind which had occurred within the last twelve months: and so excessively abandoned were the people, that it was scarce possible to obtain sufficient proof to convict the offenders.’¹⁰⁷

¹⁰⁴ The soldier was Private John Worship, who was buried in what is now the Old Sydney Burial Ground on 1 April 1800.

¹⁰⁵ The *Speedy* had departed from England on 23 November 1799 with fifty-three female convicts on board, though three had died by the time the vessel reached Port Jackson on 15 April 1800.

¹⁰⁶ The victim was Katharine Evans, who was murdered by her husband, and was buried in what is now the Old Sydney Burial Ground on 26 October 1796.

¹⁰⁷ According to Collins, i. 486, 491, 497–8; ii. 4, in early August 1786 David Lloyd was sentenced to receive 600 lashes for the manslaughter of a sailor named John Smith; on 6 August 1796 John Fenlow was sentenced to death for the murder of his servant David Lane; during September 1796 Elizabeth Anderson and William Norman were tried for the murder of Elizabeth Williams; and during October 1796, after the discovery of the

No. 2. page 196. January 1799. A burglary committed at this time in the house of the acting commissary (the head keeper of the public stores) is no otherwise worth distinguishing, than as it shows the audacity of the delinquent, and the insecurity of those abodes and masses of property, which would naturally be the best guarded and most secure.¹⁰⁸

No. 3. p. 197. 8 January 1799.¹⁰⁹ This next page affords an occurrence, distinguished from the herd of crimes by two circumstances—the magnitude of the property stolen, and the multitude of the delinquents associated. ‘Before this court (a court held on this day) was brought *part of a nest of thieves*, who had lately stolen property to the amount of *several hundred pounds*.’¹¹⁰

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—As in the first part, so in this second, the history of the ‘improved’ and ever improving colony has for its chief ingredients a *pot pourri* of crimes. Giving, if without particular selection, any further additions to the beadroll of individual offences, I might be accused, though in another sense, of adding *piracy* to the list. Dropping all such comparative peccadillos as robbery and burglary, I will therefore commit no further trespass on the respectable historian’s well-earned rights of authorship, than by picking out the cases of

body of Simon Raven, two unnamed individuals were arrested, but ‘nothing transpired that could fix the offence upon them’.

¹⁰⁸ According to Collins, the house of Acting Commissary James Williamson (1758–1826) was burgled on the night of 24 January 1799. See also see p. 000 n. below.

¹⁰⁹ Collins refers to events occurring in February 1799, and not 8 January 1799. Bentham has confused the sitting of the Court of Criminal Judicature, for which Collins does not give a specific date, in February 1799, with the execution on 8 February 1799 of a man ‘who had been condemned to die by the last court’. This man was probably James Reece, who was convicted at the Court of Criminal Judicature on 31 January 1799 of bestiality: see SRNSW, NRS 2700 5/1147B (Reel 2651), pp. 66, 86, and NRS 2703 5/1145 (Reel 2392), p. 28.

¹¹⁰ Collins does not provide the details, but alludes to the sitting of the Court of Criminal Judicature on 14 February 1799, where Hannah Fisher was convicted of receiving stolen goods and sentenced to seven years’ transportation to Norfolk Island, Joseph Wass was convicted of receiving stolen goods and was ordered to receive 700 lashes, and Samuel Wright was convicted of burglary and sentenced to death. For the trials see SRNSW, NRS 2703 5/1145 (Reel 2392), pp. 33–4.

incendiarism, as I find them rearing their heads above the herd of ordinary crimes.

VI. *Depravity—Particular Exemplifications—Incendiarism.*

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 1. p. 17.¹¹¹ January 1797. ‘The Governor, on his return from his excursion, had the mortification of seeing a stack, containing about 800 bushels of wheat, burnt to the ground. This happened at Toongabbe,¹¹² *near which place the country was every where in flames*, and where much wheat belonging to Government was stacked.¹¹³—By the accidental vicinity of a jail-gang, and assistance bought of them by a universal pardon, other stacks were saved. Although *at this season of the year* (continues our author) *there were days, when, from the extreme heat of the atmosphere, the leaves of many culinary plants growing in the gardens have been reduced to powder*, yet there was some ground for supposing that this accident did not arise from either the heat of the weather, or the fire in the woods. *The grain that was burnt was the property of Government, and the destruction of eight hundred bushels of wheat made room for that quantity to be received into the stores from the settlers who had wheat to sell to the commissary*: there were, moreover, at this time, some ill-designing people in the country, who were known not to have much regard for the concerns of the public. An enquiry was set on foot to discover, if possible, the perpetrators of this mischief; but nothing could be made of it.’—Thus far our historian. Two other points—the impossibility of obtaining evidence, and the nature of the climate, devoting of itself the fruits of industry to the flames—will be noticed elsewhere.¹¹⁴

No. 2. p. 69.¹¹⁵ December 1797. ‘Some time in this month the house of John Mitcham, a *settler* in the district of Concord, was attacked by three villains, and set on fire, together with a stack of wheat, which he had just completed and secured against the weather. This unfortunate man was indebted about £33, which the contents of his wheat-stack would have paid off; but now, besides being very much beaten, he had the world to begin again, with a

¹¹¹ *Recte* 16–17.

¹¹² i.e. Toongabbie.

¹¹³ The following sentence is not a direct quotation from Collins, but Bentham’s paraphrase.

¹¹⁴ See pp. 000 and 000 below respectively.

¹¹⁵ *Recte* 69–70.

load of debt which this untoward accident would much increase. The man himself knew not to what cause to attribute it; and he was as ignorant who were his enemies; for two of them had blackened their faces, and to the third he was a stranger.¹¹⁶

No. 3. p. 72.¹¹⁷ December 1797. ‘The weather was now become exceeding¹¹⁸ 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.* On the east side of the town of Sydney, a fire, the effect of intoxication or carelessness, broke out among the convicts’ houses, when three of them were quickly destroyed; and three miles from the town another house was *burnt by some runaway wretches*, who, being displeased with the owner, took this diabolical method of showing it.’

No. 4. p. 129.¹¹⁹ October 1798. ‘Between 7 and 8 o’clock in the evening of this day *the Church* on the east side of the cove was discovered to be on fire. Every assistance, as far as numbers could be useful, was given, but ineffectually; for, the building being covered with thatch, which was at this time exceedingly dry and combustible, it was completely consumed in an hour.

‘This was a great loss; for, during the working-days of the week, the building was used as *a school*, in which from 150 to 200 children were educated, under the immediate inspection of Mr. Johnson, the clergyman. As it stood entirely alone, and no person was suffered to remain in it after the school hours, there was not any doubt that this atrocious act was the effect of design, and the consequence of the late order which had been given out,¹²⁰ and had been rigidly executed, enforcing attendance on divine service; and in the view of

¹¹⁶ John Mitcham was assaulted and his house and crops in the district of Concord set alight by three assailants on the night of 20 December 1797. Governor Hunter issued an order promising a conditional pardon to any convict who came forward with information leading to the capture and conviction of the arsonists. Only John Worster was ever brought to trial, but he was acquitted of arson at the court of criminal judicature on 29 December 1797. See Governor Hunter to Duke of Portland, 20 August 1798, Enclosure, Government and General Orders (22 December 1797), *HRA*, ii. 208, and for the trial see SRNSW, NRS 2700 5/1147B (Reel 2391), pp. 451–5.

¹¹⁷ *Recte* 72–3.

¹¹⁸ Collins ‘exceedingly’.

¹¹⁹ *Recte* 129–30. See also p. 000 n. above.

¹²⁰ See p. 000 n. above.

rendering, by the destruction of the building, the Sabbath a day of as little decency and sobriety as any other in the week.’

No. 5. p. 132. October 1798. ‘On the evening of the 11th, another fire happened in the town of Sydney, which, but for a great deal of care and activity, might have burnt all the houses of the east side. A row of buildings, which had been lately erected for the nurses and other persons employed about the hospital, was *set on fire*, and totally consumed. The flames very nearly reached the boat-yard, in which were many concerns of value.’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—Taken by themselves, the words ‘*was set on fire*’ suggest the idea of the wilful act of man: but, as nothing is said of rewards offered, or other endeavours used, for the discovery of the authors of the mischief, possibly this occurrence was not meant to be understood as belonging to the calendar of crimes. In the next article however, where the mischief is expressly referred to human will as its cause, the expression is the same, ‘*was set on fire*,’ and nothing is said about *reward*, any more than here.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 6. p. 197.¹²¹ January 1799.¹²² ‘On the night of the 11th, between the hours of eleven and twelve, the *public gaol* at Sydney, which cost so much labour and expence to erect, was *set on fire*, and soon completely consumed. The building was thatched, and there was not any doubt of its having been done through *design*. But, if this was the fact, it will be read with horror, that at the time, there were confined within its walls twenty prisoners, most of whom were loaded with irons, and who with difficulty were snatched from the flames. *Feeling for each other was never imputed to these miscreants; and yet, if several were engaged in the commission of a crime, they have seldom been known to betray their companions in iniquity.*’

NOTE TO TYPESETTERS: Please end displayed quotation.

¹²¹ Recte 197–8.

¹²² According to Collins, the Sydney gaol burned down on 11 February 1799, and not 11 January 1799.

Observations.—What a picture of society! The bond of connection, not sympathy but antipathy: not sympathy for one another, but antipathy to Government, the common enemy.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 7. p. 277.¹²³ December 1799.¹²⁴ ‘About ten o’clock of the night of the same day, the *log gaol* at Parramatta was wilfully and maliciously set on fire, and totally consumed. The prisoners who were confined were with difficulty snatched from the flames, but so miserably scorched, that one of them died in a few days. This building was a hundred feet in length, remarkably strong, and had been constructed with much labour and expence.

‘The *rewards* which had been formerly held out upon similar occasions were now offered to any man or woman who would come forward with evidence.’¹²⁵

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—Rewards upon rewards, and always with the same success. A feature so remarkable and characteristic may furnish matter for a separate head.

Of all crimes, those excepted which, by striking at the root of Government itself, threaten the community with the complicated and unlimitedly extensive miseries of foreign or civil war, *incendiarism* may be set down as the most pernicious. If *wilful inundation* be likewise to be excepted, it is only in the comparatively few particular situations, in which, by the removal of some barrier opposed to the force of waters, the wickedness of a rash hand may plunge an indefinitely extended tract of country, in a ruin still more extensive than can be brought upon it by the destructive power of fire.

Wide-spreading as the mischief *of the first order* is but too apt to be, the mischief of *the second order* is sure to be still more so. While individuals, in any number, may have been

¹²³ *Recte*, 276.

¹²⁴ See p. 000 n. above.

¹²⁵ For the failure of the proffered rewards to lead to the identification of a culprit see Governor Hunter to Under Secretary King, 25 September 1800, Enclosure No. 2, ‘Return of public buildings erected in New South Wales since October, 1796, exclusive of many others completely repaired or enlarged’, *HRA*, ii. 560.

involved in the actual past calamity, no individual whatever within the reach of the report, can be secure against the terror which the idea of future possible and to appearance more or less probable calamities of the like kind, cannot but inspire:—*exitium ad paucos, metus ad omnes*.¹²⁶

The *final causes*, or *generating motives*, capable of giving birth to it are prodigiously diversified. The specimen your Lordship has just been seeing is not a scanty one. *Enmity, sport, appetite for gain*, may be set down as the most common: and among these, enmity, if not the most frequent, is the most obvious.

Sport, by no means an unexampled one, is to all but the abandoned perpetrator the most horrible and terrific. From the incendiary whose hand is not put in motion but by enmity, those alone have to fear whose misfortune it is to have excited, or to stand connected in a certain way by vicinity of possession with some one who has excited, that passion in his breast. But, from the hand, in which, while spreading destruction in this its most diffusive shape, the force of the social and restraining motives has not proved a match for so pigmy a passion as mere sport—and this too a motive which requires not, as *enmity* does, any particular relation or incident to bring it into action—from the assaults of such a hand where is the individual that can call himself safe?—Who was safe under Nero?¹²⁷—Who was safe under Alexander and Thaïs when in their cups?¹²⁸

Where *appetite for gain* is the generating motive, it can only be in virtue of some

¹²⁶ i.e. ‘the destruction of the few may be a terror to all’. Bentham has adapted Cicero’s statement in *Pro Cluentio*, XLVI. 128: *Statuerunt enim ita maiores nostri, ut, si a multis esset flagitium rei militaris admissum, sortito in quosdam animadeverteretur, ut metus videlicet ad omnes, poena ad paucos, perveniret*, i.e. ‘Our forefathers decided that if any gross breach of military discipline was committed by a number of persons, it should be visited on certain individuals after the drawing of lots, with the object, clearly, that the warning might be felt by all, the punishment by a few’, and cited, for instance, in Edward Coke, *The Second Part of the Institutes of the Lawes of England*, London, 1642, p. 37, and Blackstone, *Commentaries on the Laws of England*, iv. 11.

¹²⁷ Nero Claudius Caesar (37–68), Roman Emperor from 54, notorious for his cruel and erratic behaviour.

¹²⁸ During a drinking session in 330 BC, Thaïs, an Athenian woman, is alleged to have incited Alexander the Great (356–323 BC), King of Macedonia from 336 BC, to lead his soldiers in burning down the palace of Persepolis: see Diodorus (Diodorus Siculus), *Library of History*, XVII. 72, and Plutarch (Lucius(?) Mestrius Plutarchus), *Life of Alexander*, XXXVIII. 1–4.

special relation, most commonly of the *commercial* kind, the effect of which is, to put into the hands of a particular individual a relative *profit*, derived from an event, the effect of which is, to produce, with reference to the general mass of property, a mere *loss*. Thus, in a case but too often exemplified, a man, who has insured his house for more than it is worth, may derive a profit from the destruction of it. Thus again, in a case (as per No. 1.)¹²⁹ which could in no other place have found existence so easily as in New South Wales, a man who has a commodity to sell may, without the intervention of any such source of special relation as a preceding *contract*, derive a gain from the destruction of a stock of the same sort of commodity; whether in the hands of the consumer (as in that case) or in the hands of a rival dealer.

In fact, there is scarce a propensity in human nature, that, by one accident or other, may not, in minds suitably disposed, lead to the commission of this crime. Any object, which, by thwarting this or that *propensity*, presents itself as a source of this or that *uneasiness*, or as an obstacle to this or that *pleasure*—every such object, so it be but of a nature easily subjected to the power of the devouring element, is capable of putting in action a generating motive, adequate to the production of this crime. It is in this way that not *jails* only, (as per Nos. 6. and 7.)¹³⁰ but *schools* and *churches*, (as per No. 4.)¹³¹ have found incendiaries in New South Wales.

In that privileged seat of depravity, scarce a heart that, in the vulgar motive of enmity, (not to speak of motives of mere casual occurrence) may not at any time experience a generative power, adequate to the production of this crime. In the abstract entity *Government*, each subject beholds there, not as elsewhere, a protector, but an enemy: and that ideal enemy he sees embodied, and made flesh, in the persons of as many individuals as that Government has functionaries.

Even in England, cases are not wanting, where a sort of blind malignity—a mixt propensity, compounded of sport, envy, and despair—has not only without any special provocation, but without any assignable advantage in any shape, given birth to this crime in many a deluded breast, which till that fatal moment had known no guile. In times of scarcity,

¹²⁹ See p. 000 above.

¹³⁰ See p. 000 above.

¹³¹ See p. 000 above.

destruction is the grand remedy of an unthinking populace: and, on these occasions, *fire*, the most commodious of all instruments, is seldom suffered to lie idle. But *scarcity*—simple scarcity—is not so frequent in England as *famine* itself not only has hitherto been, but (as your Lordship I believe will see) may in reason be ever expected to be, in New South Wales.

The speculation is not an idle one; since the greater the number of the motives, each adequate of itself to the production of the offence, the greater at all times the number of chances, that any given hand will, by falling within the sphere of action of some one of all these forces, be drawn into the commission of that offence. In New South Wales, incendiarism (as your Lordship sees) is produced by motives which would scarce lead to it any where else.

Motives are nothing, without *facilities*. Facilities, to a degree unexampled elsewhere, are afforded (your Lordship has seen) by the very nature of the climate: while the means of preventing the mischief, or so much as confining it within any given limits, on a soil where every blade is tinder, are not within the reach of industry or art.

On both accounts—on all accounts—this highest upon the scale of ordinary crimes—this outrage of which murder forms oftentimes but a part—this cause of ruin by which the very existence of the whole Colony—stock, subsistence, inhabitancy—is, in such a situation, at all times rendered precarious—incendiarism, in a word, has never, in any other country, been near so frequent, as it has been, and from the very nature of the case may ever be expected to be, in New South Wales.

At present it is only in a *moral point* of view that the mischief claims our notice: hereafter, under the head of *Economy*,¹³² it may be matter of enquiry, how far, amidst so many ever probable causes of destruction, of which, in such a country so inhabited, this is but one, subsistence can be regarded as tolerably secure, and whether it be worth while spending fourscore thousand pounds a year or so, in combustibles for bonfires, at such a distance?

VII. REMEDIES UNAVAILING. 1. *Spiritual.*

¹³² See pp. 000 below.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 1. p. 3.¹³³ Oct. 1796. ‘Directing his attention also toward the morality of the settlement, a point which he could not venture to promise himself that he should ever attain, he (the Governor) issued some necessary orders for enforcing attendance on divine service,¹³⁴ and had the satisfaction of seeing the Sabbath better observed than it had been for some time past. But there were some who were refractory. A fellow named Carroll, an Irishman, abused and ill treated a constable who was on his duty, ordering the people to church; saying, that he would neither obey the Clergyman nor the Governor; for which, the next day, he was properly punished.’

No. 2. p. 51. Sept. 1797. ‘A church clock having been brought to the settlement in the *Reliance*, when that ship arrived from England,¹³⁵ and no building fit for its reception having been since erected, preparations were now making for constructing a tower fit for the purpose; *to which might be added a church*, whenever at a future day the increase of labourers might enable the Governor to direct such an edifice to be built.’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—In the first place, the *ruffle*:—the shirt to follow it—one time or other, or never, as it might happen. Neither in the literal, nor therefore in the figurative sense, does *edification* appear to have been any great object with Governors, in the improved Colony, any more than with the governed. To speak candidly, why should it have been? Of what use could the externals of religion be, in a community in which the only emotions they could reasonably be expected to give rise to, were those of hatred and contempt? Better no church than to be burnt down; better no service than to be scoffed at.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 3. p. 122, 123. Aug. 1798. ‘The abandoned and dissipated disposition of most of

¹³³ *Recte* 3–4.

¹³⁴ See p. 000 n. above.

¹³⁵ H.M.S. *Reliance*, formerly the merchant ship *Prince of Wales*, arrived at Port Jackson on 7 September 1795.

those who were or had been convicts, so much to be regretted, and so often mentioned, was particularly manifest in a shameful abuse of the Sabbath, and a profane ridicule with which every thing sacred was treated. A conduct so derogatory to every christian principle had from time to time been severely reprobated; but it had now arrived at a height that called for the exertion of every advocate for morality to subdue. Observing, that, instead of employing the Sunday in the performance of those duties for which that day was set apart, it was passed in the indulgence of every abominable act of dissipation, the overseers of the different gangs were strictly ordered to see their men mustered every Sunday morning, and to attend with them at church. The superintendants and constables were to see this order complied with, and that the women (who, to their disgrace, were far worse than the men) were strictly looked after, and *made* to attend divine service regularly. And, as example might do something, the officers were not only to send a certain number of their servants, but they were also called upon, civil and military, to assist in the execution of this order; to the meaning of which, the magistrates were required in a particular degree to pay their attention, in *compelling* a due obedience thereto, by preventing the opening of the licensed public-houses during the hours of divine service, as well as any irregularity on the day appropriated to the performance thereof.’¹³⁶

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—This was ‘*compelling them to come in*’¹³⁷ with a vengeance: but to what use, or with what fruit?—Where were the *wedding garments*?¹³⁸

As to the fountains of liquid poison, if they could be sealed up—sealed up to any purpose—at church times, why not at other times, and for ever?—But as to this see *Drunkenness*.¹³⁹

NOTE TO TYPESETTERS: Please begin displayed quotation.

¹³⁶ For the order see Hunter to Portland, 1 May 1799, Enclosure No. 3, Government and General Orders (27 August 1798), *HRA*, ii. 357.

¹³⁷ See Luke 14: 23. This and the following allusion refer to the parable of the great banquet.

¹³⁸ See Matthew 22: 11.

¹³⁹ See p. 000 below.

No. 4. p. 129.¹⁴⁰ 1st Oct. 1798. ‘Between seven and eight o’clock in the evening of this day, the *church* on the east side of the cove was discovered to be on fire. Every assistance, as far as numbers could be useful, was given, but ineffectually; for, the building being covered with thatch, which was at this time exceedingly dry and combustible, it was completely consumed in an hour.¹⁴¹

‘This was a great loss; for during the working-days of the week the building was used as a *school*, in which from 150 to 200 children were educated, under the immediate inspection of Mr. Johnson, the clergyman. As it stood entirely alone, and no person was suffered to remain in it after the school hours, there was not any doubt that this atrocious act was the effect of design, and the consequence of the late order which had been given out and had been rigidly executed, enforcing attendance on divine service; and in the view of rendering, by the destruction of the building, the Sabbath a day of as little decency and sobriety as any other in the week, The perpetrators of this mischief were, however, disappointed in their expectation; for the Governor, justly deeming this to have been the motive, and highly irritated at such a shameful act, resolved, if no convenient place could immediately be found for the performance of public worship, that, instead of Sunday being employed as each should propose to himself, the whole of the labouring gangs *should be employed on that day in erecting another building for the purpose*: it happened, however, that a large store-house was just at that time finished; and, not being immediately wanted, it was fitted up as a church; and thus not a single Sunday was lost by this wicked design.’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—*On the Sabbath all work, and no devotion*—cries the accusing angel.—Work, yes: answers the recording angel; but holy work—work in order to devotion. What a conflict between the letter and the spirit!¹⁴²—*Non in me tantas componere lites.*¹⁴³ I leave it

¹⁴⁰ *Recte* 129–30.

¹⁴¹ For the burning of Johnson’s church, see pp. 000 n., 000 n. above.

¹⁴² Bentham perhaps had in mind the commandment prohibiting labour on the Sabbath: see Exodus 20: 8–11.

¹⁴³ See Virgil (Publius Vergilius Maro), *Eclogues*, III. 108: ‘*Non nostrum inter vos tantas componere lites*’, i.e. ‘It is not for me to settle so close a contest between you.’

to the Saundersons of the age.¹⁴⁴

NOTE TO TYPESETTERS: Please end displayed quotation.

No. 5. p. 272. Nov. 1799. ‘The very little attention which had long been, and continued to be shewn to the duties of religion, and the want of that decency and respect which were due to the return of the Sabbath, were now so glaringly conspicuous, that it became *necessary to repeat the orders* which had indeed often been given upon that subject, and again to call upon every person possessed of authority, to use that authority in *compelling* the due attendance of the convicts at church, and other proper observance of the Sabbath.¹⁴⁵ The women were also directed to be more punctual in their appearance; for these still availed themselves of the indulgence which as women they had been treated with, seldom thinking themselves included in the restrictions that were laid upon others.’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—It would be an amusing sight in some respects, if it were not in other respects so melancholy an one, to see the Governor thus fighting the Dæmon of irreligion—fighting him with the same straws, with which your Lordship will behold him presently fighting the hydra of drunkenness.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 6. p. 299. Aug. 1800. ‘*As in defiance*¹⁴⁶ *of the various orders* which had been given to enforce a due attendance on Sunday at divine service, *that day still continued to be marked by a neglect of its sacred duties*, an order was again given out on the 25th, pointing out the duties of the superintendants, constables, and overseers, in this particular instance, and

¹⁴⁴ Robert Sanderson had written the textbook on logic that Bentham had studied at Oxford: see p. 000 n. above.

¹⁴⁵ For the order in question see Government and General Order (29 November 1799), *HRA*, ii. 593, and for prior orders requiring that convicts attend divine service and constables enforce the observance of the Sabbath, see Governor Hunter to Under Secretary King, 12 November 1796, Enclosure, Government and General Orders (9 November 1796), *HRA*, i. 701–2, and Hunter to Portland, 1 May 1799, Enclosure No. 3, Government and General Orders (27 August 1798), *HRA*, ii. 357.

¹⁴⁶ Collins ‘In defiance’.

assuring them, that a further neglect on their part would be followed by their dismissal from their respective situations.’¹⁴⁷

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—At this period, along with the *civil* and *military*, ends the *ecclesiastical* history of the ‘improved’ Colony. What effect has since been produced by these fresh orders succeeding to former orders, as often ‘*defied*’ as issued, may be left to conjecture;—to conjecture grounded on unvaried experience, as well as the unchangeable nature of the case.

NOTE TO TYPESETTERS: Please insert short rule here.

[2.]¹⁴⁸———*Per contra, Penitentiary System.*

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 7. *Philadelphia*, 1793. *Lownes*, p. 89. ‘Their {the prisoners} decorum and attention, at times appointed for religious worship, have been obvious, and are such as have obtained the approbation of all those who have been witnesses to it.’

NOTE TO TYPESETTERS: Please end displayed quotation.

VIII. REMEDIES UNAVAILING—*Temporal*—1. *Punishments and Rewards—Evidence unobtainable.*

This head will consist in good measure of recapitulations.

¹⁴⁷ For the ‘various orders’ requiring compulsory church attendance see Hunter to Portland, 1 May 1799, Enclosure No. 3, Government and General Orders (27 August 1798); Government and General Orders (29 November 1799); and Acting-Governor King to Portland, 28 September 1800, Enclosure No. 5, General Orders (4 October 1800), *HRA*, ii. 357, 593, 626.

¹⁴⁸ 1803 ‘2.’

No. 1. p. 4. Oct. 1796. Five murders in the year, as above page 17. No. I.¹⁴⁹ Strong presumptive proof adduced: but ‘the kind of evidence necessary to establish the offence withheld.’

No. 2. p. 69.¹⁵⁰ Dec. 1796.¹⁵¹ ‘The house and stock of a poor settler involved in debt, purposely destroyed by fire. Emancipation, with a settlement, offered, and offered in vain, for evidence.’¹⁵²

No. 3. p. 110. May 1798. ‘A fine bull calf belonging to an officer was about this time taken from the herd; and though considerable rewards were offered for the discovery of the offender, nothing transpired that could lead to it. This was a serious evil; for the care and attention of years might in one night’s time be destroyed by the villainy of a few of these lawless people.’

No. 4. p. 130. October 1798. Burning of the church and school at Sydney. Reward of £30, with emancipation, if a *non-expiree*; return to England, if an *expiree*. ‘But it was seen with concern,’ (adds the historian) ‘that *rewards and punishments alike failed in their effect.*’¹⁵³

No. 5. p. 197. Jan. 1799.¹⁵⁴ Speaking of a number of ‘*executions and punishments*’ that took place at this time, ‘it might be supposed (observes the historian) that they would have operated as a check to the commission of offences; but they appeared to be *wholly disregarded.*’

No. 6. p. 268. Oct. 1799. ‘About this time a young ox was missing from the Government stock-yard at Toongabbe, and there was every reason to suppose it had been

¹⁴⁹ See p. 000 above.

¹⁵⁰ *Recte* 69–70.

¹⁵¹ Collins refers to events occurring in December 1797, and not December 1796.

¹⁵² This paragraph is Bentham’s paraphrase of Collins’s description of the attack on the property and person of John Mitcham: see p. 000 above.

¹⁵³ See pp. 000 n., 000 n. above.

¹⁵⁴ Collins refers to events occurring in February 1799, and not January 1799. See also p. 000 n. above.

driven away and slaughtered .^.^.^ In the hope of discovering the offender, a notice was published, holding out a conditional emancipation, and permission to become a settler, to any convict for life, who would come forward with the information necessary to convict the persons concerned in this destructive kind of robbery; and an absolute emancipation, with permission to quit the colony, to any one transported only for a limited time:¹⁵⁵ but nothing was ever adduced that could lead to a discovery.’

No. 7. p. 276. Dec. 1799. Burning of the jail at Paramatta, with one of the prisoners in it.—‘Rewards, such as had formerly been held out.’—Same exertions, same success.¹⁵⁶

No. 8. p. 297. July 1800. ‘The prisoners who were left for execution at the end of the last month suffered death, two of them at Sydney on the 3d, and the third at Paramatta on the 5th of this month.¹⁵⁷ If examples of this kind could strike terror into the minds of the spectators, they certainly had not lately been without these salutary, though dreadful lessons.’

NOTE TO TYPESETTERS: Please end displayed quotation.

The inaccessibility of evidence presents two very material observations.

One is—that, in regard to the degree of profligacy prevalent in New South Wales, the criminal calendar, an alleged copy of which is, I observe, extant in print,¹⁵⁸ would, without a proper caution, be apt to give rise to false inductions, presenting the state of society under an aspect by much too favourable. If every individual offence committed, whether *prosecuted* or not, *detected* or not, were *registered* in it, no:—if the number of offences *committed* were in no greater a *ratio* there than in England, to the number of offences *prosecuted* for, no. But, in a community, in which the members are, almost to a man, in a league against Government—

¹⁵⁵ For the notice see Government and General Orders (18 October 1799), *HRA*, ii. 590–91.

¹⁵⁶ See pp. 000, 000 n. above.

¹⁵⁷ Collins does not name the three executed prisoners, though it is probable that the two individuals hanged at Sydney were William Meredith and Thomas Farr and the one hanged at Parramatta Thomas Thompson. Meredith and Farr were convicted on 27 June 1800 of various charges including forgery, escaping from custody, and stealing while at large, while Thompson was convicted on 28 June 1800 of forgery. For their trials see SRNSW, NRS 2700 X905 (Reel 2651), pp. 471–3, 475, respectively.

¹⁵⁸ Bentham appears to have been misinformed about the existence of a printed ‘criminal calendar’ for New South Wales.

where each criminal has almost as many protectors, if not accomplices, as he has neighbours, the number of crimes *on record*, be it ever so small, affords no indication of any correspondent paucity, in the number of crimes *committed*.

Some cases indeed there are, in which, though the criminal remains unprosecuted, and even undetected, the existence of the crime will commonly be known, or at least suspected, and in both cases recorded. Murder at any rate is of the number.¹⁵⁹ But in the case of a crime of the prædatory class, unless accompanied with force to the person, or violence to the habitation or its contents, the prevalence of the crime may be continual and universal, without any specific *trace* of it, and therefore without any specific *mention* of it.

The other remark respects the degree of depravity, indicated by the universality of this mutual adherence, independently of the actual crimes resulting from it. In the ordinary intercourse of life, fidelity to engagements is a virtue:—why? because in the ordinary intercourse of life, among the engagements taken, there is not one in a thousand, the execution of which is not beneficial to the community upon the whole. That feature of negative sociableness, which disposes men not to obstruct or thwart one another in their enterprizes, even this too is, as far as it goes, a virtue:—why?—because in ordinary life, among the enterprizes engaged in, great and small, there is not one in a million, the success of which is not beneficial to the community as before. But for the same reason that, in the case of innocent and beneficial engagements and enterprizes, *fidelity* and disposition to mutual adherence are *virtues*, in the case of criminal ones, they are vices. *A sort of honour may be found* (according to a proverbial saying,) *even among thieves*. Good, as an *observation*; that is, *true* in fact: but bad, if the fact be regarded with complacency, and either the thieves themselves or the society infested by them are considered as being the better for it. That honour does exist among thieves is not to be doubted: for thieves are a society to one another, and it is only by honour that any society can be kept together. But to regard such honour with complacency, to speak with reprobation of every instance of the absence of it, to speak with eulogium of every instance of the manifestation of it, is indeed a natural enough prejudice, but, in some of its consequences, a very pernicious one. Without honour, society, even among thieves, could not exist:—true: but the thing to be wished for is, that among thieves, in so far

¹⁵⁹ Bentham perhaps had in mind the role of the coroner in making enquiry concerning the manner of death when any person was ‘slain or dies suddenly’: see Blackstone, *Commentaries on the Laws of England*, i. 337.

as they are thieves, society never should exist. Of thieves, as of other men, the thing to be desired is, that they should observe the laws of honour in some cases, not observe them in others:—observe them on the occasion of their honest engagements; not observe them on the occasion of their dishonest ones: observe them in their ordinary dealings with other men; not observe them in their dealings with one another, in their capacity of thieves. By whatsoever cause produced, infidelity to criminal engagements is *repentance*: and wherein is a man the better, for being without repentance? To give birth to such infidelity—to purchase such repentance—is the object of every *reward* offered for the discovery of accomplices in crimes. To censure a man for the acceptance of any such offer—to commend him for the refusal of it—is to employ so much of the force of the popular or moral sanction, in a direction diametrically opposite to that of the action of the political sanction; diametrically opposite to the interest of society—of every society, but that of malefactors.

The application of this argument is susceptible of extensions: for example, subject to certain modifications, to the case of common *informers*. At present, let us content ourselves with applying it to the present case:—the more pertinacious and extensive this species of sinister fidelity, the more intense, and extensive, and incorrigible surely, is the depravity which it serves to indicate. If, indeed, in the case of this sinister fidelity, it were *sympathy*—sympathy on the part of the individuals as towards one another—that were in any degree the root of it, so far the inference would fail: but, over and over again, the absence of such sympathy, and that to a degree unexampled elsewhere, is attested as well by particular incidents as by general observations: the true root of this fidelity is—(so it appears throughout) not in any sympathy on their part for one another, but in their *antipathy* to Government—to the common bond by which society is held together.

—2. *Police*.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 1. p. 8. Nov. 1796. ‘The useful regulation of numbering the different houses in the town of Sydney, particularly those in the occupation of the convicts,¹⁶⁰ was followed up by

¹⁶⁰ For the regulation which instituted the numbering of houses in Sydney see Governor Hunter to Duke of Portland, 12 November 1796, Enclosure, Government and General Orders (9 November 1796), *HRA*, i. 701.

another equally serviceable, which directed the inhabitants of each of the four divisions of the town (for into that number it was portioned off) to meet, and from among themselves elect three of the most decent and respectable characters, who were to be approved by the Governor, and were to serve for the ensuing year as *watchmen*, for the purpose of enforcing a proper attention to the good order and tranquillity of their respective divisions. Many of the soldiers being allowed to occupy houses for their families in the vicinity of the barracks, the commanding officer was desired to appoint his own officer for the military division of the town, and to order them to report to him.’ For the behaviour of these watchmen, see above p. 000, where they are, stated as guilty of ‘extreme negligence, or complicity with the malefactors.’

No. 2, p. 26. March 1796. At this time, for any but officers, no travelling without a *passport*: the passport to be *inspected* in each *district* by a *constable*: penalty for being found without one, a month’s imprisonment for the first offence, arbitrary punishment in case of repetition. ‘The frequent and unrestrained passing and repassing of idle and disorderly people from one part of the colony to another, and the mischievous correspondence which was kept up by such means, was productive of great evil. To check this as much as possible, *all persons*, the officers excepted, who were travelling from one district of the settlement to another, were required to furnish themselves with a *passport*, which, on a proper application, they would obtain without any difficulty. This was *to be shewn to and inspected by the constables in each district*; and, if found without it, they were to be *imprisoned* during a month for the first offence, and *otherwise punished* if it was repeated.¹⁶¹ *But the best local arrangements were set at defiance by those hardened vagabonds, who seemed daily to increase in number and in infamy.*’ For the effect of this expedient, see the next head. No. 10. July 1799.¹⁶²

No. 3. p. 64. Dec. 1797. ‘The annual election of *constables* took place in this month. These municipal regulations were attended at least with the advantage of introducing something like a system of regularity into the settlement, than which nothing was more likely to check the relaxation which had lately prevailed in it.’ For the behaviour of these

¹⁶¹ For the order requiring the carrying of passports, see Governor Hunter to Duke of Portland, 6 July 1797, Enclosure No. 3, Government and General Orders (20 March 1797), *HRA*, ii. 76–7.

¹⁶² See p. 000 below.

constables, see the next title, No. 7.¹⁶³

No. 4. p. 197.¹⁶⁴ Jan. 1799.¹⁶⁵ ‘Were it not evident that certain punishment awaited the conviction of offenders, it might be supposed that a relaxation of the civil authority had begotten impunity; but far otherwise was the fact: *the police was vigilant, the magistrates active*, and the Governor ever anxious to support them, and with incessant diligence, endeavouring to establish good order and morality in the settlement. *But, such was the depravity of these people* from the habitual practice of vice, that they were become alike fearless of the punishments of this or of the world to come.’

NOTE TO TYPESETTERS: Please end displayed quotation.

—3. *Functionaries corrupt—Servants worthless.*

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 1. p. 60.¹⁶⁶ Nov. 1797. ‘There can scarcely be recorded a stronger instance of human depravity, than what the following circumstance, which happened in this month, exhibits. A convict, who had formerly been a school-companion with the Rev. Mr. Johnson, had been taken by that gentleman into his service, where he reposed in him the utmost confidence, and treated him with the kindest indulgence. He had not been long in his house before Mr. Johnson was informed that his servant, having taken an impression of the key of his store-room, in clay, had procured one that would fit the lock: he scarcely credited the information; but, being urged to furnish him with an opportunity, he consented that a constable should be concealed in the house, on a Sunday, when all the family, this servant excepted, would be attending divine service. The arrangement succeeded but too well. Concluding that all was safe, he applied his key, and, entering the room, was proceeding without any remorse to plunder it of such articles as he wanted; when the constable, seeing his prey within his toils, started from his concealment, and seized him in the act of taking the

¹⁶³ See p. 000 below.

¹⁶⁴ *Recte* 198.

¹⁶⁵ Collins refers to events occurring in February 1799, and not January 1799.

¹⁶⁶ *Recte* 60–1.

property.

‘Thus was this wretched being, without “one compunctious visiting of nature,”¹⁶⁷ detected in the act of injuring the man who, in the better day of his prosperity, had been the companion of his youth, and who had stretched out his hand to shelter him in the present hour of his adversity.’

No. 2. p. 104. April 1798. ‘The proprietors of this valuable article of stock’ (horses) ‘were rather unfortunate in the care of it, notwithstanding the high price which it bore. The acting commissary¹⁶⁸ lost a very fine mare, through the stupidity of an Irish servant, who put a short halter round her neck, with a running knot, by which she was strangled in the night; and information had been received of the death of two foals belonging to Government. This accident proceeded from want of proper care in those who were appointed to look after them; but *unfortunately, though they were often changed, the change was never found to be for the better.*’

No. 3. p. 105.¹⁶⁹ April 1798. ‘They’ (the settlers) ‘laboured under another evil, which was the effect of an unbounded rage for traffic, that pervaded nearly the whole settlement. The delivery of grain into the public store-houses, when opened for that purpose, was so completely monopolised, that the settlers had but few opportunities of getting the full value for their crops. A few words will place this iniquitous combination in its proper light. The settler *found himself thrust out from the granary, by a man whose greater opulence created greater influence.* He was then driven by his necessities to dispose of his grain for less than half its value. To whom did he dispose of it?¹⁷⁰ To the very man whose greater opulence enabled him to purchase it, and whose greater influence could get it received into the public store!’¹⁷¹

¹⁶⁷ An echo of *Macbeth*, I, v. 2.

¹⁶⁸ James Williamson.

¹⁶⁹ *Recte* 105–6.

¹⁷⁰ Collins ‘it!’

¹⁷¹ For complaints by settlers regarding the monopolisation of the public granary see, for instance, Governor Hunter to Duke of Portland, 5 January 1800, and Enclosure Nos. 1–3, *HRA*, ii. 427–32

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—The english of this seems to be, that those, on whom it depended to choose of whom the Governor should make these his purchases, gave the preference to those who would bribe highest.

NOTE TO TYPESETTERS: Please insert displayed quotation.

No. 4. p. 111. May 1798. ‘The deceptions and impositions which were daily in practice among the labouring part of the colony, to the great injury of the concerns of Government, rendered it highly expedient that the Governor, who had those concerns to attend to, should be assisted by trusty and active persons, in every situation where public works might be carrying on. Having made some discoveries of this nature in the department of the sawyers, he issued a public order, specifying the hours which should be employed in every branch of public labour. This had by no means been the first attempt to check the impositions of these people; but it was found, that *the private concerns of those who should superintend the various public works occupied so much of their time, that their duty was ether wholly neglected or carelessly performed.* This created such a relaxation of discipline, that *a repetition of orders and regulations* was from time to time published, to keep the labouring people constantly in mind, that they were the servants of the crown, and remind those who were appointed to look after them, that they had neglected that duty which should ever have been their first and principal consideration.’¹⁷²

No. 5. p. 134.¹⁷³ Nov. 1798. ‘An instance of the fatal effects of misguided conduct, and a too late sense of criminality, occurred in the tragical end of Nathaniel Franklyn, the Governor’s steward. This man, whom he brought from England, had the whole care and

¹⁷² According to the order in question (see Governor Hunter to Duke of Portland, 20 August 1798, Enclosure, Government and General Order (15 May 1798), *HRA*, ii. 214), it had become customary among convict sawyers to do their government labour in the mornings, and then work in the afternoons on their own account. ‘From this shameful practice’, the order continues, ‘it appears that if the [weather in] the forenoon of every day in the week shou’d prove bad no work wou’d be done by the servants of the Crown as their public duty’, whereupon convicts were directed to complete their allotted weekly task before working for their own benefit.

¹⁷³ *Recte* 134–5.

management of the Governor's domestic concerns entrusted to him. He had been repeatedly cautioned by his master against the many artful and designing acquaintances which he had formed in the town, and was pointedly desired to be aware of not suffering himself to be influenced by their opinions. It was proved that he had not had fortitude enough to withstand their solicitations, but had consented to rob the Governor to a very considerable amount, abusing the confidence he had placed in him, and making use of his name in a most iniquitous manner. Of the infamy of his conduct he was at last sensible, and, retiring into the shrubbery in the garden of the Governor's house, shot himself through the head.¹⁷⁴

No. 6. p. 138. Dec. 1798. 'On the 19th died, very suddenly, Mr. Stephenson, the store-keeper at Sydney.¹⁷⁵ As his death was not exactly in the common way, so neither had been the latter part of his life; indeed, all that part of it which he had passed in this country; for, by an upright conduct, and a faithful discharge of the duties of the office with which he had been entrusted, he secured to himself the approbation of his superiors while living, and their good name at his death.'

'Stephenson *had been emancipated for his orderly behaviour*, and to enable him to execute the office of store-keeper.'

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—If I misrecollect not, this is the *single* instance of reformation, mentioned by our historian, directly or indirectly, in the compass of the last five years—the period comprised in this his second volume.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No 7. p. 139. Dec. 1798. 'The annual election of constables recurring about this time,¹⁷⁶

¹⁷⁴ For Governor Hunter's account of the suicide of Franklyn, his 'principal servant', see Governor Hunter to Duke of Portland, 15 November 1799, *HRA*, ii. 396.

¹⁷⁵ William Stephenson had arrived at Port Jackson as a convict aboard the *Atlantic* on 20 August 1791, and held the position of storekeeper at Sydney from 13 September 1796 until his death.

¹⁷⁶ For the order requiring the election of constables in Sydney for 1799 see Governor Hunter to Duke of Portland, 1 May 1799, Government and General Order (5 December 1798), *HRA*, ii. 361.

the magistrates were desired to be very particular in their selection of the persons returned to them for that purpose, as there was reason to fear, from the frequent escapes of prisoners from the different gaols, that *the constables had been tampered with so shamefully to neglect their duty.*'

No. 8. p. 196. Jan. 1799. 'On the night of the 24th, the acting commissary's house was broken into, and robbed of articles to a considerable amount. The thieves appeared to have got in at the office window, and loosened the bricks of a partition wall; by which opening they got into the store-room, and, forcing the locks of the chests and trunks, carried away every thing that they could manage.'¹⁷⁷

'One evil among others which attended the frequent arrival of ships in the port was, the ready market which these plunderers found for disposing of their stolen goods; the seamen not hesitating to become the purchasers on leaving the place.'

No. 9. p. 210. May 1799. 'At the same court, one man, Robert Lowe, was adjudged corporal punishment, and one year's hard labour, for embezzling some of the live stock of Government, which had been entrusted to his care.¹⁷⁸ He was a free man, and had been one of the convicts who were with Captain Riou in the *Guardian* when her voyage to New South Wales was unfortunately frustrated by her striking upon an island of ice;¹⁷⁹ on account of which, and of their good conduct before and after the accident, directions had been given for their receiving conditional emancipation, and being allowed to provide for their own maintenance. *Few of these people, however, were in the end found to merit this reward and indulgence*, as their future conduct had proved; and this last act of delinquency pointed out the necessity of a free person being sent out from England, to superintend the public live stock, with such an allowance as would make him at once careful of his conduct, and faithful in the execution of his trust.'

No. 10. p. 219. July 1799. 'Still alarming depredations were nightly committed upon

¹⁷⁷ For the robbery of Acting Commissary James Williamson's house see pp. 000 & n. above.

¹⁷⁸ See p. 000 n. above.

¹⁷⁹ Edward Riou had command of the *Guardian* when it struck an iceberg around 1,300 miles off Port Elizabeth on 24 December 1789 (see p. 000 n. above). On his return to England, Riou was formally court-martialled for the loss of his vessel, but was honourably acquitted and promoted to post-captain. Riou returned to active service but was killed at the Battle of Copenhagen on 2 April 1801.

the live stock of individuals, and were doubtless effected by those *wandering pests to society; the regulations which had long since been established as a check to such an evil being wholly disregarded*. It was discovered, that hogs were stolen, and delivered on the victualling-days at the public store, without any enquiry being made, as to whose property they were, or by whom delivered, any person's name which they chose to give in being considered by the store-keeper as sufficient to authorize him to receive it, although printed vouchers for the delivery of such pork (and grain likewise) were left at the store, for the purpose of being signed by the party offering it. This certainly operated as an encouragement to the commission of these thefts; and it became necessary to order, that such persons as attended the receipt of any of these articles at the store should direct whoever delivered them to sign the voucher of the quantity received by him;¹⁸⁰ the Governor being determined never to approve of any bill laid before him for that purpose, unless the Commissary should produce the voucher, properly signed by the person in whose name such bill was made out.'

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—By '*the regulations established as a check to those wandering pests to society,*' I understand the regulations requiring *passports*, the measure above spoken of under the head of *Police: No. 2*.¹⁸¹

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 11. p. 267.¹⁸² Oct. 1799. 'A number of the public labouring servants of the crown having lately absconded from their duty, for the purpose either of living by robbery in the woods, or of getting away in some of the ships now about to sail, that none of those concerned in the concealing them might plead ignorance, public notice was given, "that any officer or man belonging to the above ships, who should be known to have countenanced or assisted the convicts above alluded to in making their escape, would be taken out of the ship, and punished with the utmost severity of the law; and as the most strict and scrupulous search would take place on board,—for every convict which should be found concealed, or suffered

¹⁸⁰ See Government and General Orders (29 August 1799), *HRA*, ii. 589.

¹⁸¹ See p. 000 above.

¹⁸² *Recte* 266–8.

to remain on board without regular permission, so many of the ship's company should be taken out and detained for daring to encourage such escape.”¹⁸³ .^.^.^.^.^.^.^.^.^.

‘On the day this order was issued, the *Hillsborough*, which was moving out of the Cove, and preparing for sea, was strictly searched; and several convicts being found on board, they were brought on shore, and each received a severe corporal punishment. One of them was excused, on condition of his declaring who the people were that had encouraged that concealment, and prepared hiding-places for them. He accordingly deposed to *two of the seamen*, who were also brought on shore, *punished*, and afterwards drummed to the wharf, and sent back to their ship. The foregoing order was then published.

‘How well it was attended to, and *what effect the punishment of the seamen and convicts produced*, were instantly seen. The *Hunter*,¹⁸⁴ preparatory to a voyage to Bengal, where she was to freight with goods for the colony, went out of the harbour. A woman, named Ann Holmes, being missing, the Governor ordered an armed boat from the *Reliance* to follow the ship, with some of the constables, and search her; with directions, if any persons were found on board who had not permission to depart, to bring her into port again. Having found the woman, the ship was brought up the harbour and secured.

‘*Several of her crew having behaved in a most insolent and mutinous manner to the officer of the Reliance*,¹⁸⁵ having armed themselves against the constables with cutlasses, and one of them having presented a musquet to the chief constable, they were secured, ordered to be punished on board their own ship, and afterwards turned on shore. But it was necessary to do something more than this; and, a criminal court being assembled for the purpose, the *master of the ship* was brought to trial, charged with aiding and abetting a female convict to make her escape from the colony. As the offence consisted in aiding a *convict*, it was requisite to prove that such was the person found on board his ship; but, upon referring to a list of the prisoners who were embarked in the *Royal Admiral*, the ship in which Ann Holmes

¹⁸³ See Government and General Orders (9 October 1799), *HRA*, ii. 590.

¹⁸⁴ The Spanish vessel *Nostra Senora de Bethlehem*, having been captured during its voyage from Lima to Guayaquil by the whalers *Cornwall* and *Kingston*, had reached Port Jackson on 24 April 1799. The ship was condemned as a prize at a Vice-Admiralty Court on 1 May 1799 and subsequently renamed the *Hunter*: see Governor Hunter to Duke of Portland, 1 May 1799, *HRA*, ii. 355–6, 730 n.

¹⁸⁵ Bookless Masley, Mate of the *Reliance*.

had been sent out to New South Wales, no specific term of transportation was found annexed to her name.¹⁸⁶ On the question then, whether the master had aided a convict in making an escape, *he was acquitted, it not being possible by any document to prove that Holmes was at that moment a convict.*¹⁸⁷ But the master was reprehensible in concealing any person whatever in his ship, and ought to have felt the awkwardness of his situation, in being brought before a court for the breach of an order expressly issued a short time before to guard him and others against the offence that he had committed.

‘When the *Hillsborough* was searched, not less than *thirty convicts* were found to have been received on board, against the orders and without the knowledge of the officers, and *secreted by the seamen*. This ship and the *Hunter*, shortly after these transactions, sailed on their respective voyages.’

No. 12. p. 331. Aug. 1801. ‘It appeared on examining the registers of the several terms of transportation of the convicts, that the *clerks*, who necessarily had had access to them, had *altered the sentences of about two hundred prisoners, receiving a gratuity from each equal to ten or twelve pounds*. This was a very serious evil; and proper steps to guard against it in future have been taken both at home and in the colony.’ Quere, Of how many hundred prisoners could the terms have been shortened by clerks in a *Penitentiary House*?

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—‘If the salt hath lost its savour, wherewith shall it be seasoned?’¹⁸⁸

At a former period, in more instances than one, the terms of the convicts, instead of an abridgment, as here, obtained a prolongation. The cause of it was—not any activity on the part of any clerks or other persons in New South Wales, but the negligence (let us hope at least that it was nothing worse than the negligence) of certain persons here at home: ship after

¹⁸⁶ Ann Holmes’s convict indent states against her name ‘No Indent or other Return’: see SRNSW, NRS1150 SZ115, p. 250.

¹⁸⁷ John or William Kingston, Master of the *Hunter*, was tried at the court of criminal judicature on 22–3 October 1799, on a charge of ‘aiding and Assisting Ann Holmes a prisoner to escape out of lawful Custody’: see SRNSW, NRS 2700 X905 (Reel 2651), pp. 363–86.

¹⁸⁸ Matthew 5: 13.

ship, convicts were sent out, and no calendar of their terms sent with them.^h In England the presumption is *in favorem libertatis*:¹⁸⁹ at the antipodes, where justice was turned topsy-turvy, it was, naturally enough, *in favorem servitutis*.¹⁹⁰ *We have no proof*—(says Government there to these convicts) *gentlemen who sent you out have given us none—of our having a right to detain you—any of you—so much as a single day: therefore, in the first instance, we detain you—all of you—for life. To each of you, we give an estate for life in banishment and, bondage: yes, for life, in the first instance, defeasible indeed, as to the bondage, by what lawyers call in England a possibility upon a possibility.*¹⁹¹ Thus it was, that in New South Wales, gentlemen of the highest ranks, with the help of gentlemen at home, tacked on, in a wholesale way, to the several legal, so many illegal portions of punishment, bondage and banishment together. In the case at present in question, gentlemen of an inferior rank, instead of tacking on illegal portions of punishment, struck off so many portions of legal punishment: not *in toto* indeed, bondage and banishment together, but bondage alone, in general at least leaving the banishment pretty much upon the same footing as they found it. Nor yet were the portions of bondage struck off freely and gratuitously, but for the valuable consideration of £10 or £12 a head: in other words, part of the bondage was thus *compounded for*, and *commuted* into a fine. The fine, it is true, did not go immediately, nor I fear was intended ever to go, if it could safely be prevented from going, into the proper reservoir for fines, the *Privy Purse*: to which, having said *proper*, I am almost ashamed to add—the King’s:—but in this there seems little to distinguish these from other fines. Gentlemen acted in that behalf as so many self-constituted receivers and surveyors of the Green Wax:¹⁹² and, as other receivers and surveyors of that same sort of wax might be expected to do, kept their own secret, kept every thing, money and secret together—safe till called for. Neither indeed was the fine thus levied sufficiently public, to have any very beneficial effect in the way of *example*: but in the way of *reformation*, and in the character of a remedy applied *pro salute*

¹⁸⁹ i.e. ‘in favour of liberty’.

¹⁹⁰ i.e. ‘in favour of servitude’.

¹⁹¹ See, for instance, Coke, *The First Part of the Institutes of the Lawes of England*, London, 1628, p. 26, describing, in the context of the inheritance of real property, the first possibility of a man marrying one woman and the second possibility of his thereafter marrying a second woman.

¹⁹² The Surveyor of the Green Wax, an official in the Exchequer, was responsible for collecting so-called green wax monies, i.e. revenues derived from fines, amercements, forfeitures, and other debts owed to the Crown. The office’s name arose from the colour of the seals traditionally used to authenticate the estreats by which such monies were exacted. George Rose held the post from 1774 to 1797.

animæ,¹⁹³ the effect of it could hardly have been greater if levied by the purest ecclesiastical hands, or passed on, and stored up in the regular official hive, of the Receiver and Surveyor General of His Majesty's Royal Green Wax, as aforesaid.

^h I Collins p. 74, II. pp. 131. 212. 267.¹⁹⁴

Question (should Robin Hood¹⁹⁵ ever come to life again) for the Lyceum¹⁹⁶ of *Robin Hood*. Which are most to blame? Gentlemen in New South Wales, who without law have shortened servitude, or gentlemen at home—who, also without law, have lengthened it?

From former titles, Your Lordship has seen that New South Wales discipline is no source of *reformation* for convicts: that, è contra, it is a source of ulterior *corruption* for convicts:—from this title Your Lordship has seen, and in a variety of very extensive instances, that it is moreover a source of corruption for *honest men*. For Government store-keepers, as per Nos. 3. and 10;¹⁹⁷ Superintendant, as per No. 4;¹⁹⁸ Stewards, as per No. 5;¹⁹⁹ Constables, as per No. 7;²⁰⁰ Seamen in general, as per No. 8;²⁰¹ Seamen in Merchant's service, as per No. 11:²⁰² Clerks in the Government office, as per No. 12;²⁰³ Soldiers, as per I Collins, 303, 455: mentioned in my former letter, p. 000 and 000.

Thus, and thus far, in known instances: in another way, and in unknown instances

¹⁹³ i.e. 'for the good of his soul'.

¹⁹⁴ Collins describes occasions on which convicts claimed that their sentences had expired and that they should be restored to the rights and privileges of free men, but the records proving or disproving their respective cases had not been transmitted to the colony. The individuals in question were ordered to continue working for the government, and to take a ration from the public stores, until the documents had been received.

¹⁹⁵ Robin Hood (*supp. fl.* late 12th–13th cent.), legendary outlaw hero, who had come to be characterized as robbing from the rich and giving to the poor.

¹⁹⁶ The Lyceum was a temple, at the foot of Lycabettus Hill in Athens, which housed a philosophical school founded by the celebrated philosopher Aristotle (384–322 BC).

¹⁹⁷ See pp. 000, 000 above respectively.

¹⁹⁸ See p. 000 above.

¹⁹⁹ See p. 000 above.

²⁰⁰ See p. 000 above.

²⁰¹ See p. 000 above.

²⁰² See p. 000 above.

²⁰³ See p. 000 above.

without account, the spread of the corruption may have been in an indefinite degree more extensive. To so many numerous and important classes of His Majesty's, subjects as are forced or tempted to make a house-of-call of the improved colony—to the King's army, to the King's navy—to seamen in private service, the nest of female convicts constitutes a constantly open school of mischief and depredation; a school, in which the arts of theft, robbery, burglary, murder, and incendiariism, are taught by a set of schoolmistresses of the very first order: of schoolmistresses, pronounced over and over again, upon the fullest experience, by the highest authorities, and most competent judges, to be '*far worse than the men*'—far worse than thieves, robbers, burglarers, murderers and incendiaries.ⁱ

NOTE TO TYPESETTERS: Please present the text in the following Bentham footnote, from 'No. 1. p. 59...' to the end, as displayed quotation.

ⁱ In the note inserted in p. 000. (Letter I.) the following head intended for the Third, was omitted by mistake. It will be found, I believe, not less apposite in this place.

III. Soldierly corrupted by the Convicts—Closer Inspection the only Remedy.

No. 1. p. 59, 60, 61.²⁰⁴ March 1789. 'He {Hunt} accused *six other soldiers* of having been concerned with him in the diabolical practices of *robbing the store, for a considerable time past, of liquor and provisions in large quantities* .^.^ . A connection subsisted between them and some of the worst of the female convicts, at whose huts, notwithstanding the internal regulations of their quarters, they found means to enjoy their ill acquired plunder .^.^ .

'On the morning of their execution, one of them declared to the clergyman who attended him, that the *like practices* had been carried on at the store *at Rose Hill* by similar means and with similar success. He named two soldiers and a convict as the persons concerned.'²⁰⁵

No. 2. p. 313, 314. Sept. 1793. 'The foundation of another barrack for officers was

²⁰⁴ Bentham's source here and for the following two passages is the first volume of Collins.

²⁰⁵ On 25–6 March 1789 six marine privates, Richard Askew, James Baker, James Brown, Richard Dukes or Lukes, Thomas Jones, and Luke Hines or Haines, were sentenced to death for having repeatedly plundered the public storehouse, after Private Joseph Hunt turned King's evidence against them. The men were hanged on 27 March 1789. Hunt received a pardon, and in June 1789 embarked on the *Sirius* for Norfolk Island, to join the marine detachment there.

begun in this month. For the privates one only was yet erected; but this was not attended with any inconvenience, as all those who were not in quarters had built themselves comfortable huts between the town of Sydney and the brick-kilns. This indulgence might be attended with some convenience to the soldiers; but it had ever been considered that *soldiers could no where be so well regulated as when living in quarters, where, by frequent inspections and visitings, their characters would be known and their conduct attended to.* In a multiplicity of scattered huts, the eye of vigilance would with difficulty find its object, and the soldier in possession of a habitation of his own might, in a course of time, think of himself more as an independent citizen, than as a subordinate soldier.’

No. 3. p. 425.²⁰⁶ Feb. 1796. ‘This intercourse had been strongly prohibited by their officers; but living (as once before mentioned) in huts by themselves, it was carried on without their knowledge. Most of them were now, however, ordered into the barracks; but to give this regulation the full effect, *a high brick wall, or an inclosure of strong paling, round the barracks, was requisite; the latter of these securities would have been put up sometime before, had there not been a want of the labouring hands necessary to prepare and collect the materials.*’²⁰⁷

IX. Main Cause of Non-reformation, Drunkenness: Universality and Incurableness of it in New South Wales.^j

^j A cause, perhaps equally efficient, is the *promiscuous aggregation*: and this, being of the very essence of the colonization system, is still more palpably incurable than the drunkenness. But as this, in the character of a matter of fact, needs no proof, it would have been misplaced, if inserted among the heads under which the evidentiary matter stands arranged.

NOTE TO TYPESETTERS: Please begin displayed quotation.

²⁰⁶ Recte 455.

²⁰⁷ For the order requiring soldiers to live in barracks see Hunter to Portland, 12 November 1796, Enclosure No. 1, Government and General Orders (8 February 1796), *HRA*, i. 687, and p. 000 n. above.

No. 1. II Collins, p. 9.²⁰⁸ 29 Nov. 1796.²⁰⁹ Speaking of three capital convicts, who had been executed for robbing the public stores, and three others who on conviction of the same offence had received a conditional pardon,²¹⁰ ‘It was much to be lamented,’ (continues the Judge Advocate) ‘that these people were not to be deterred by any example from the practice of robbing the public stores, which had of late been more frequent than heretofore, and for which there could not be admitted the shadow of an excuse; as the whole of the inhabitants of every description were at this very time on a full and liberal allowance of provisions and clothing, neither of which were in any scarcity in the settlement. But *the cause was to be found in the too great indulgence in the use of spirituous liquors*, which had obtained among them *for a considerable time past*. The different capital crimes which had lately been brought before the court of criminal judicature, together with the various petty offences that daily came under the cognizance of the magistrates, did not proceed from an insufficiency either of food or clothing; but from an inordinate desire of possessing, by any means whatsoever, those articles with which they might be able to procure spirits, “*that source—as the Governor expressed himself in an order which he published directly after these executions—that source of the misfortunes of all those, whom the laws of their country, and the justice that was due to others, had launched into eternity, surrounded with the crimes of an ill-spent life.*”²¹¹

No. 2. p. 18. Jan. 1797. Speaking of the persons called *settlers* (the *expirees*, who took to farming on their own account), and of the measures taken to reduce what was looked upon

²⁰⁸ Recte 9–10.

²⁰⁹ According to Collins, at the sitting of the Court of Criminal Judicature which began on 23 November 1796 and was adjourned on 29 November 1796, eight individuals were sentenced to death, one for murder and seven for robbing the public stores. This was the first sitting to be officiated over by Richard Atkins (1745–1820), Acting Deputy Judge Advocate of New South Wales, 1796–8, 1800–2, Deputy Judge Advocate of New South Wales 1802–9.

²¹⁰ The executed convicts were Matthew McNally and Thomas Doyle, who were hanged at Parramatta, and John Lawler, who was hanged at Sydney with a soldier named Martin McEwen, on 9 or 10 December 1796, while the pardoned individuals were convicts Thomas Inville and Michael Doland and the soldier John McDouall. Doland, Doyle, Lawler, and McEwen, along with John Griffiths and Richard Elliott, were tried at the Court of Criminal Jurisdiction on 23 November 1796 for burgling the home and storehouse of James Williamson, for which offence all but Griffiths and Elliott were convicted: for the trial see SRNSW, NRS 2700, 5/1147B (Reel 2391), pp. 419–33.

²¹¹ For the order see Hunter to Portland, 6 July 1797, Enclosure No. 3, Government and General Orders (12 December 1796), *HRA*, ii. 70.

as excessive in the rate of wages demanded of them by such of their fellows as maintained themselves by serving them as labourers,²¹² he goes on and observes, ‘It must appear from this, that every necessary and useful regulation was suggested that could promote the convenience and advantage of these people, who being in possession of land that yielded the most ample returns, nothing but the greatest worthlessness on their part could have prevented their getting forward, and becoming men of property. That too many of them were of this description will appear evident, from its being notorious that *their crops were no sooner gathered than they were instantly disposed of for spirits*, which they purchased *at the rate of three, nay, even four pounds per gallon*, and of a spirit often lowered one fourth or more of its strength with water.’

No. 3. p. 49.²¹³ Sept. 1797. On the 20th of this month, ‘the Deptford, a small brig, arrived from Madras with a cargo of goods, upon speculation, for the Sydney market. The spirit of trade which had for some time obtained in the colony, afforded an opening for adventurers to bring their goods to this settlement. The voyage from India was short and direct; and, from the nature of their investments, they were always certain of finding a ready sale, and an ample return upon the original invoice. But this intercourse was found to be pregnant with great evil to the colony; for, *preferring spirits to any other article that could be introduced from India, the owners never failed to make the rum of that country an essential part of every cargo* which they sent upon speculation. And, though every necessary measure was adopted to prevent *all* that arrived from being landed, yet such was the avidity with which it was sought after, that, *if not permitted, it was generally got on shore clandestinely, and very few ships carried back any of what they had brought down*. To this source might be traced *all the crimes which disgraced, and all the diseases that injured the colony*.’

No. 4. p. 71. Dec. 24, 1797. A particular anecdote, mentioned by the historiographer under this date, may serve to shew the state of public opinion among the convicts, with reference to this most prolific of all vices. ‘On the eve of Christmas-day, two young men,

²¹² In January 1797 in response to settlers’ complaints about the excessive wage demands of labourers, Governor Hunter ordered settlers in each district to meet every three months to agree upon a ‘rate of wages to laborers or others whom they have occasion to hire’, and warned that anyone who subsequently violated the agreed rate would be fined: see Governor Hunter to Duke of Portland, 6 July 1797, Enclosure No. 3, Government and General Orders (14 January 1797), *HRA*, ii. 73.

²¹³ *Recte* 49–50.

settlers on some land midway between Sydney and Paramatta, having been *boasting* of their respective abilities in drinking, regardless of the solemnity of the time, challenged each other to a trial of their skill; on which they were so deliberately bent, that, *to prevent their being interrupted*, they retired to the skirts of a neighbouring wood with a quantity of raw spirits, which they had provided for the purpose. Their abilities, however, were not equal to their boasting; for one of them died upon the spot, and the life of the other was fast ebbing when he was taken up. Had another hour elapsed, he too must have perished, like his wretched companion.²¹⁴ They had not been able to finish all the pernicious spirit which they had prepared, some of it remaining by them in a case-bottle when they were found.’—‘To prevent their being interrupted,’ not to prevent its being known, since their supposed abilities in this way were matter of ‘*boast*.’

No. 5. p. 80. Jan. 20, 1798. After having spoken, in p. 000,²¹⁵ of a merchant ship called *the Sydney Cove*, that had been then lately wrecked in her voyage from Bengal to New South Wales on speculation, and of the dispatch of a vessel called the *Francis* to bring in the crew and what could be saved of the cargo—On the 20th of January 1798, continues our author, ‘the *Francis* returned with Captain Hamilton {the captain of the *Sydney Cove*} from the southward. Previous to his departure for the wreck of his ship, he had informed the Governor that she had on board nearly 7000 gallons of spirits, and solicited permission to bring back a part with him in the schooner. The Governor, *ever averse to the introduction of spirituous liquors*, would certainly have resisted the application; but, it being generally known in the colony that a considerable quantity of this article had been saved from the wreck, and that the island abounded with kangaroos and birds, he conceived these circumstances not only to have conduced to *those desertions and captures of boats which had been effected*, but as likely to prove farther temptations to similar practices. He therefore determined to purchase the rum of Captain Hamilton; and, as there was none in store *for the public service, to take it on account of Government*. An agreement was accordingly entered into by the Commissary, and 3500 gallons were brought round in the *Francis*.’

²¹⁴ The dead man was William Crew, who had been granted 30 acres of land on 9 December 1794.

²¹⁵ The cross-reference in 1802 is incorrectly stated as p. 35, but the *Sydney Cove* appears at pp. 8–9, and there not by name.

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—Quere 1st. How much more intoxication would be produced by a gallon of spirits taken on account of Government, than by ditto of ditto taken on any other account?—Quere 2d. In what degree or respect is ‘the source of all the *crimes that disgraced, and all the diseases that injured the colony,*’ &c. conducive to *the public service?*—Quere 3d. If, by *stolen boats* or otherwise, spirits, when landed in Providence Island²¹⁶ *by accident,* cannot be prevented from being smuggled into New South Wales, how can they, if landed on ditto, or any nearer and more convenient spot, *by design,* and for this very purpose?

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 6. p. 133. Oct. 1798. The observation made at this time by the Governor, respecting the state of things in a spot so often mentioned as by far the most fertile of all the settlements, may serve to shew of how little avail are the most signal *geographical* advantages when counteracted by this *moral* obstacle to all industry and all happiness. ‘Towards the end of the month, the Governor visited the settlers at the Hawkesbury; and, while he was there, made some useful regulations among the *sawyers,* who had *fixed their own portion of public labour.* He gave notice, that a session should be held quarterly for settling all civil concerns;²¹⁷ and made some other local arrangements, which, if attended to, would have conduced essentially to the welfare of the settlers, *whose farms he found promising plenty, but whose houses and persons wore the appearance of poverty and beggary, they converting all the produce of their farms to the unworthy purpose of purchasing a pernicious spirit that must ever keep them poor.*’

No. 7. p. 198. Feb. 1799. ‘*Notwithstanding the settlement had before it the serious prospect of wanting grain, and the consequent destruction of much useful stock,* it was known that several people had *erected stills,* and provided materials for the purpose of distilling

²¹⁶ A slip for ‘Preservation Island’, where the *Sydney Cove* had been beached in February 1797: see p. 000 & n. above.

²¹⁷ For the order which established fixed working hours for sawyers at the Hawkesbury River settlements and directed the holding of quarterly meetings of a civil court there see Governor Hunter to Duke of Portland, 1 May 1799, Enclosure No. 3, Government and General Orders (30 October 1798), *HRA*, ii. 359.

spirituous liquors; a pernicious practice, *which had long been forbidden by every officer who had had the direction of the colony*. Former orders on this subject were now repeated, and persons of all descriptions were called upon to use every means in their power, in aid of the civil magistrate, to seize and destroy such stills and materials as they might find.’²¹⁸

No. 8. p. 203. March 1799.²¹⁹ Speaking of an act of *homicide*, committed, in self-defence, by a sentinel-soldier, on the person of a drunken seaman. ‘*This accident*’ (continues the reporter) ‘*was the effect of intoxication; to which, a few days after, another victim was added*, in the person of a female, who was either the *wife or companion of Simon Taylor*, a man who had been considered as *one of the few industrious settlers*; which the colony could boast of. They had both been drinking together to a great excess, and in that state they quarrelled, when the unhappy man, in a fit of madness and desperation, put an untimely end to her existence. He was immediately taken into custody, and reserved for trial.’²²⁰

‘*To this pernicious practice of drinking to excess, more of the crimes which disgraced the colony were to be ascribed than to any other cause*; and more lives were lost through this than through any other circumstance; for the settlement had ever been free from epidemical or fatal diseases. How much then was the importation of spirits to be lamented! *How much was it to be regretted, that it had become the interest of any set of people to vend them!*’ {It might have been added (as your Lordship will see)—and, in one way or other, of *every set of people without exception*. As to its being *become*, so it always was from the first, and so it must be to the last. }

‘*Several robberies which at this time had been committed, were to be imputed to the*

²¹⁸ For the order which enjoined constables and watchmen to locate and destroy illicit stills and bring to prosecution their owners see Hunter to Portland, 1 May 1799, Enclosure No. 3, Government and General Orders (28 February 1799), *HRA*, ii. 364–5. The ‘former orders’ were perhaps those referred to in Governor Hunter to Duke of Portland, 3 March 1796, *ibid.*, i. 555, where Hunter had reported that, after discovering that settlers had erected stills to produce ‘a most noxious and unwholesome spirit’, he had ‘issued public Orders strictly prohibiting a practice so certainly ruinous to the health of the settlement’ and had required the destruction of the stills.

²¹⁹ Collins refers to events occurring in April 1799, and not March 1799.

²²⁰ On 17 May 1799 at the Court of Criminal Judicature, Simon Taylor was convicted and sentenced to death for the murder of his wife Ann (née Smith), and was hanged on 20 May 1799. For the trial see SRNSW, NRS 2700 X905 (Reel 2651), pp. 199–208.

same source.'

No. 9. p. 205.²²¹ April 1799. At this time a Spanish ship, having been taken by two whalers, was brought into Port Jackson; and the ship being condemned, part of her cargo was sold by auction.²²² The cargo (our author informs us in a note) consisted of sugar, flour, and an ardent spirit similar to the *aqua ardente* of the Brazils.²²³ 'This' 'article' (he adds) 'the Governor would *not* allow to be sold *by auction.*'

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—*Not by auction:*—that the Governor would not allow it to be sold *at all*, is not said. Quere 1. How much more intoxication would be produced by a gallon of spirits sold by auction than by ditto of ditto sold by hand?—Quere 2. What advantage is gained by keeping down the price 'of the source of all diseases and all crimes?'²²⁴

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 10. p. 222. July 1799. An observation made at this time serves at once to shew the prodigious intensity of two vicious and closely allied propensities—drunkenness and sloth: so mighty the latter, nothing less than the former was able to get the better of it. 'Much' (says our historian) 'might be expected from the exertions of three hundred and fifty-five people; and the greatest advantage would have been derived from their labours, had they been less prone to dissipation and useless traffic—a *traffic which most of them entered into solely with a view to indulging themselves in their favourite propensity of drinking.*'

No. 11. p. 274.²²⁵ 2d Dec. 1799. 'In the evening .^.^ the Plumier, a Spanish ship, anchored in the Cove. She was a prize to three whalers, who had taken her near Cape

²²¹ *Recte* 205 n.

²²² i.e. the *Nostra Senora de Bethlehem*: see p. 000 n. above.

²²³ i.e. *aguardiente*, literally 'firewater'.

²²⁴ See p. 000 above.

²²⁵ *Recte* 274–5.

Corientes, on the coast of Peru.²²⁶ Her cargo consisted chiefly of bad spirits and wine, which, on her being condemned by the Court of Vice-Admiralty as a lawful prize, were removed into the *Supply*, and an order was given out, *strictly forbidding the landing of any spirits, wine, or even malt liquor, until a regular permit had been first obtained*. This restriction upon wine and malt liquor was occasioned by spirituous liquors having been landed under that description.²²⁷

No. 12. p. 275. 16th Dec. ‘The Court of Criminal Judicature being assembled, two mates of the (ship) Walker were brought before it, and tried for using menaces to a person who had stopped their boat when attempting to land spirits without a permit; but as he had not any special authority for making the seizure, or detaining the boat, they were acquitted.’²²⁸

No. 13. p. 280.²²⁹ 11th Jan. 1800. ‘Arrived the *Fhynne*, a small snow from Bengal, under Danish colours, which had been chartered *by the officers^k of the colony, civil and military*, through the means of an agent whom they had sent thither for that purpose. *She was freighted on their account* with many articles of which they were much in want;²³⁰ and *as*

²²⁶ *El Plumier* had been captured on 7 July 1799, during its journey from California to Peru, by the crews of the whalers *Barbara*, *Betsey*, and *Resolution*. On 2 December 1799 the ships reached Port Jackson. On 7 December 1799 *El Plumier* was condemned at the Vice-Admiralty Court as a prize: see Hunter to Portland, 3 January 1800, *HRA*, ii. 425–7.

²²⁷ For the order see Government and General Orders (3 December 1799), *HRA*, ii. 594.

²²⁸ On 16 December 1799 at the court of criminal judicature, George Parker and Nathaniel Marshall pleaded not guilty to a charge of ‘Disobedience of His Excellency’s Port Orders, [and] obstructing an Officer in his Duty and other misdemeanours’. It was alleged that Parker and Marshall had threatened to shoot John Roycroft, a former convict employed in the colony’s boat crew, who had attempted to seize several casks of spirits which he believed the two men had illegally attempted to land. While the court thought that Parker and Marshall had attempted clandestinely to land spirits, Roycroft was not ‘regularly Authorized to make any Seizure’ and his actions were ‘extremely irregular and improper’, and the defendants were acquitted. See Governor Hunter to Duke of Portland, 2 January 1800, Enclosure No. 2, ‘The Trial of Parker and Marshall’, *HRA*, ii. 423–4.

²²⁹ *Recte* 280–1.

²³⁰ The *Fhynne* or *Thynne* reached Port Jackson on 11 January 1800 with 150 tonnes of goods including cloth, sugar, tea, soap, pepper, coffee, shoes, and 9,106 gallons of rum: see Governor Hunter to Duke of Portland, 25 September 1800, Enclosure, ‘A List of Ships and Vessels which Enter’d Inwards in the Port of Port Jackson, in His Majesty’s Colony of New South Wales, between the 3rd day of November, 1799, and the 13th day of May, 1800, following with the particular quantity and quality of the loading of each vessel’, *HRA*, ii. 571.

*more labour could be obtained for spirits than for any other mode of payment, an article so essential to the cultivation of their estates was not forgotten.*¹

^k The Governor? Was he too of the number?—If not, did she sail, or was she freighted, or unloaded without his knowledge?—*What then, Sir, do you mean to accuse all these Gentlemen .^.^.^.?—Not them—indeed, my Lord.*

^l *Dic quibus in terris*²³¹ .^.^.^ . Where is that Colony, which, if it were not poisoned, would be starved?—For the consequence see the next article.

No. 14. p. 291. 14th April 1800. ‘The quantity of spirits at this time in the Colony occasioned *much intoxication and consequent irregularity. The settlers at the river were so lost to their own interest, as to neglect the sowing of their grounds:*^m a circumstance which, but for the timely interference of the Governor, would have ended in their ruin. Immediately on hearing of their situation, *he forbade the sending any more spirits to that profligate corner of the Colony,*ⁿ as well as the retailing what had been already sent thither, under pain of the offenders being *prosecuted* for such disobedience of his orders.’^o

^m Drunk, they will not sow: not drunk, they will not reap. (No. 13.)

ⁿ A prohibition of this sort, if it could be made effectual in one place, why not in another?—if at one time, why not at another?

^o Quere the penalty, and on what *statute* an offender would have been to be indicted?

No. 15. p. 299. Aug. 9, 1800. ‘Toward the latter end of the month, an attempt was made, at three o’clock in the afternoon, to land without a permit 1016 gallons of wine and spirits, which were seized at the wharf by the sentinel. If the person who made this attempt had been advised to so incautious and daring a proceeding, it could only have been with a view to try the integrity of the sentinels, or the vigilance of the police.’

No. 16. p. 332.²³² Aug. 1801. ‘Several ships had arrived from India, England, and America, most of which had brought, upon speculation, cargoes consisting of *wine, spirits, tobacco, teas, sugar, hard ware, wearing apparel, &c. &c.* the sale of *which was, with the Governor’s approbation, advertised by the Commissary, and publicly sold* to all descriptions

²³¹ i.e. ‘Say in what clime’: see Virgil, *Eclogues*, III. 104.

²³² *Recte* 332–3.

of people.’

‘It appears, that from these ships²³³

NOTE TO TYPESETTERS: Please see p. 000 of the hard copy for the layout of the following table. The table should be part of the displayed quotation.

‘59,294 gallons of spirits, ‘30,896 ditto of wines,	}	had been imported,
‘26,974 ditto of spirits, ‘8,896 ditto of wines,	}	had been landed, ^p
‘And, 32,320 ditto of spirits, ‘22,000 ditto of wines,	}	had been sent away.’ ^q

NOTE TO TYPESETTERS: Please end table and displayed quotation.

^p Landed:—viz. with permissions, from which alone the quantity landed could thus have been ascertained.

^q Sent away: i.e. *ordered* to be taken away. For the effect of such orders, see No. 3, where it is sa[i]d, ‘if not permitted it was generally got on shore clandestinely, and very few ships carried back *any* of what they had brought down.’²³⁴

Observations.—I have already intimated, my Lord, that I see nothing blameworthy in the conduct maintained in this respect by gentlemen in the colony: nothing, which it is in the power of blame to set right, nothing therefore for which blame would be of any use. If, by

²³³ For the official account from which Collins took the following figures see Acting-Governor King to Portland, 21 August 1801, Enclosure No. 1, ‘Account of Spirits and Wine imported into His Majesty’s Colony in New South Wales, between the 28th September, 1800, and August 21st, 1801, with the quantity sent away, and remains of that landed being lodged in His Majesty’s stores, and given out as the Governor grants permits’, *HRA*, iii. 131.

²³⁴ See p. 000 above.

any sacrifices or exertions of his own, it would have been in the power of any of them to have subtracted any thing considerable from the sum total of the mischief, then indeed ground for blame might not have been altogether wanting—then indeed blame itself might not have been altogether without its use. But in that situation it does not appear to me that, from any such *single* exertions, any effectual benefit could have been derived: nor even from any such *joint* exertions as the nature of the case admitted of. *Manufacturing* and *importation* taken together, the exclusion of the means of drunkenness out of the improved colony, presents itself to my view, I must confess, as an achievement, now and for everlasting morally impossible.

In the first place, as to *manufacturing*.—The settlements are *spreading* themselves over the face of the country: spreading themselves wider and wider every day. It is what gentlemen wish to see them do: it is matter of triumph that they do so. It is a mark of ‘*improvement*’²³⁵—of that feature of improvement, which has hitherto been accepted in lieu of every other. They are not only spread, but scattered: they are so already: they will be more and more so every day. Settlers will not take up inferior land, on the mere recommendation of its vicinity to already settled land, when superior land is to be had within a certain distance. But the more extended and dispersed the lots of land are, with their inhabitants, the more incapable they are of being kept under any given degree—under any sufficient degree of inspection; of being kept under a degree of inspection sufficient for any purpose: and of all purposes for *this*. In respect to every purpose, the deficiency of the system of inspectors—of whatsoever professions, civil and military—under whatsoever titles—is, and in the nature of the case ever must be a standing topic of complaint. For preventing the erection of stills, orders upon orders have all along been issued {See No. 7. p. 000.} But the publication of each subsequent order is a pretty sufficient evidence of the inefficacy of all preceding ones.

Next as to *importation*. Is it in the nature of things that the coast all round—the coast of a country as large as Europe—should be kept sufficiently guarded for this purpose? Would the whole navy of England be sufficient to the task? Is there so much as a Government cock boat, the expence of which, especially on such a service, is not, and very justly grudged?

²³⁵ For Portland’s reference to the ‘improved colony’ as a reason for the ‘relinquishment’ of the panopticon penitentiary scheme see p. 000 n. above.

When by *accident*—by shipwreck—(as per No. 5.)²³⁶ a cargo of spirits had been landed on a neighbouring island, preventing the importation of them was found to be impracticable. Would not the difficulty have been at least as great, if *design* instead of accident had brought them there? The spot, though *comparatively near*, was *positively* a very *distant* one. In case of design, not any such distant one would be chosen—but whatever spot, in point of vicinity as well as every other circumstance, presented itself as best adapted to the purpose.

So far as to what depends on the situation, and distribution of the land: next as to the permanent interest and consequent natural disposition of its inhabitants.—Whatever regulations can ever be made for the preventing the introduction of spirits into the colony—be it by manufacture, be it by importation—there is scarce a human being in the colony—in or out of power—who has not a personal interest in the inefficacy of them—an interest as strong as it is possible for a man to have in the inefficacy of any such fiscal regulations. Among the convicts themselves—non-expirees as well as expirees—servants as well as masters—there is scarce a man to whom this liquid poison is not dearer than life. Among all classes of persons—convicts—military officers—civil officers—not a master that, so long as any of it is to be had any where, or from any body, can get a servant to work for him on any other terms. In one case, it is true, and that as conceivable a one as any other, this common interest would not exist. Such would be the case if not so much as a single master had so much as a single drop of the poison to give. In this case their common corrupt interest would be wanting, and the opposite virtuous common interest—the interest which all masters have in the sobriety of their servants—would take its place. But if *one* gives spirits, *all* must—or all must see their farms deserted, and their servants gone from theirs to that one. By extraordinary exertions a reduction in the quantity habitually consumed in the colony might every now and then (I doubt not) be effected: But any such reduction can never be other than temporary: for so many masters as there are (officers as well as others) who see other masters in possession of a greater quantity than they themselves can lay hold of, so many are there, who are partakers in this common corrupt interest. Upon the whole therefore, so long as the quantity of spirits in the colony is short of the full quantity which the convicts altogether are disposed to drink, so long must the virtual auction—the universal *competition* among the purchasers of the article—continue. Those who at any given period have the advantage in this respect over their neighbours, will find themselves under the constant necessity of keeping up

²³⁶ See p. 000 above.

their stock of it; keeping it up against all competitors, for the purpose of keeping up this advantage: so that the common interest in question—the interest, which men of all descriptions have in eluding all such restrictive regulations—is not merely a general and temporary interest, but a universal one, and, humanly speaking, an indefeasible and perpetual one.

With the situation of the Governor of New South Wales and his subordinates, contrast in this respect that of the Governor of a Panopticon Penitentiary House. Not a drop of forbidden liquor can be either drunk in the house, or so much as introduced into it, without being seen to be so, by every body: by officers, prisoners—visitors through curiosity, visitors upon business.²³⁷ Therefore, were transgression ever so advantageous, detection and punishment would be inevitable. But, what is still more, transgression would give no advantage. Without work, among those who can work, not so much as a morsel of bread is to be had by any body: (so that here, as elsewhere, as many as choose it may be starved) and every person, the more he works, the better he is paid: the amount of his earnings is ascertained, and he receives a quarter of it.²³⁸ Taken in excess, fermented liquors would be directly adverse to profitable economy: taken even in moderation, they would be of no use to it.

NOTE TO TYPESETTERS: Please insert short rule.

X. *Per contrà, Penitentiary System.—General Reformation, as attested in general Expressions.—1. During Confinement.*

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 1. *Philadelphia*; 1793: Lownes, p. 89. ‘The order in their {the prisoners’} employments; their *demeanour* towards the *officers*; *harmony* amongst each other; and their *decorum and attention*, at times appointed for *religious* worship, have been obvious, and are such as have obtained the approbation of all those who have been witnesses to it; and we trust

²³⁷ For the restrictions on alcohol in the panopticon see ‘Panopticon; or, the Inspection House’, iii. 147–8 (Bowring, iv. 153–4).

²³⁸ For the proportion of earnings credited to panopticon inmates see p. 000 & n. above.

that the impressions received in this secluded state of existence, will have a happy influence towards promoting the great object contemplated by the change of the Penal Code by the Legislature of this commonwealth.’²³⁹

No. 2. Philadelphia; 1795: Liancourt, p. 21.²⁴⁰ ‘The appearance of the prisoners has nothing of that insolence, or of that dejection, which is so striking among our own convicts in Europe. It is cold, respectful, sorrowful, and calm.’

No. 3. Philadelphia; 1796; Turnbull, p. 4.²⁴¹ ‘There was such a spirit of *industry* visible on every side, and such *contentment* pervaded the countenances of all, that it was with difficulty I divested myself of the idea, that these men surely were not convicts, but accustomed to labour from their infancy.’

No. 4. *ib.* p. 27.²⁴² ‘The convicts are called to their meals by the ringing of a bell. We saw the men sit down to their supper, and I do not recollect a scene more interesting. At one view we beheld about ninety fellow creatures, formerly lost, as it were, to their country and the world, now collected in one body, and observing that air of *composure* and *decency to each other*, consequent only from a long and continued practice of moral habits.’

No. 5. *ib.* p. 46.²⁴³ ‘After conversing with her {the *jailoress*}²⁴⁴ for some time, he {a person before mentioned}²⁴⁵ enquired of her, Whether there were no inconveniencies attending the institution?²⁴⁶ With the greatest concern she replied, That there was one, which gave her no small degree of uneasiness: that the *debtors* in their apartments, from being able to overlook the yard of the prison, made her fear that their conversing together, swearing, &c. might *corrupt* the *morals* of *her*²⁴⁷ people. You may think it strange, that *debtors should*

²³⁹ i.e. the Penal Laws Act of 1790: see p. 000 n. above.

²⁴⁰ *Recte* 21–2.

²⁴¹ *Recte* 4–5.

²⁴² *Recte* 27–8.

²⁴³ *Recte* 46–7.

²⁴⁴ Mary Weed was gaoler of Walnut Street prison from 1793, when she succeeded her husband Elijah, who died during the Philadelphia yellow fever epidemic of that year, until her resignation in 1796.

²⁴⁵ Turnbull’s account of the Walnut Street prison is in the form of a letter to an unnamed friend, and the ‘person before mentioned’ is the friend’s uncle.

²⁴⁶ Turnbull ‘institution.’

²⁴⁷ The words ‘*morals*’ and ‘*her*’ are italicized in Turnbull.

corrupt criminals; but the case is really so, for there is certainly as much, if not more morality, among the latter than the former. And so fully convinced were the inspectors, of her apprehensions being well founded, that, to remedy the defect, they have since had the prison wall raised.’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—The sex of the keeper, compared with the nature of her office, brings to view the picture of a future golden age, as delineated by prophetic poetry. ‘The wolf shall dwell with the lamb .^.^ and a *young child* shall lead them.’²⁴⁸ The paradox had already received its explanation in the same page—

NOTE TO TYPESETTERS: Please begin displayed quotation.

‘I was surprized to find a female in the first appointment, and, on enquiry, found that her husband was formerly jailor. Discharging the duties of a tender parent towards his daughter, infected with the yellow fever in 1793, he caught the disorder, and died, leaving the prisoners to regret the loss of a friend and protector, and the community that of a valuable citizen. In consideration of his faithful performance of the functions of his office, his widow was nominated to succeed him. She is exceedingly attentive and humane.’

No. 6. *ib.* p. 48.²⁴⁹ ‘Few have been known to stay in the prison the whole of the term to which they were sentenced, the *amendment* and *repentance* of many of them being so visible to the Inspectors, as to have had a claim to the Governor’s clemency.’

NOTE TO TYPESETTERS: Please end displayed quotation.

NOTE TO TYPESETTERS: Please insert short rule.

²⁴⁸ See Isaiah 11: 6.

²⁴⁹ *Recte* 49.

———2. *after Liberation, as per Accounts.*

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 7. Philadelphia; 1793: Lownes, p. 92.²⁵⁰ ‘Out of near 200 persons, who at different times have been recommended to, and *pardoned* by the Governor, only four have been returned: three from Philadelphia, reconvicted of larceny, and one from a neighbouring county. As several of them, thus discharged, were old offenders, there was some reason to fear, that they would not long behave as honest citizens. But, if they have returned to their old courses, they have chosen to run the *risk* of being hanged in other states, rather than encounter the *certainty* of being confined in the penitentiary cells of this. We may therefore conclude, that the plan adopted has had a good effect on these; for it is a fact well known, that many of them were heretofore frequently at the bar of public justice, and had often received the punishment of their crimes under the former laws.’

No. 8. Philadelphia; 1796: Turnbull, p. 48. ‘Reconvictions are seldom heard of. Of all the convicts *condemned* for these five years past, not above 5 in 100 have been known to return.’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—Between this article, and the last preceding one, your Lordship will have observed the difference. Those of whom but 2 in the 100 proved *backsliders*, were picked men: men picked out as the best, and *pardoned*. Those of whom so many as 5 in the 100 proved backsliders, were the whole number of the ‘*condemned*’ taken together. The *time*, which gave these 5 in 100, was moreover nearly as long again as the time which gave not quite so much as the 2 in the 100.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 9. New York; 1802: Eddy, p. 33. ‘Under the instruction of a prisoner sentenced for life, who was a skilful shoemaker, it was matter of surprise to observe with how much

²⁵⁰ *Recte* 92–3. The italics in the following passage are in Lownes.

rapidity those who were before wholly ignorant of the trade, learned to become *excellent workmen.*'

No. 10. ib. p. 52. 'It is with no small pleasure that the inspectors have observed that a number of those who have been discharged from the prison confided to their care, have continued in habits of industry and sobriety, and bid fair to become good members of society.'

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—From a literal interpretation of this passage an inference that might be drawn, is—that, though the reformed were in a certain number, the unreformed were in a number still greater. But, from the general tenor of the publication, and in particular from the two next articles of it, as here copied, it will appear evident enough that the persons here alluded to as reformed, were such alone as on that account happened in a particular manner to have attracted the notice of these their former guardians.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 11. ib. p. 85. In five years, ending with 1801, 'of 349 prisoners who have been discharged by expiration of sentence and pardon, 29 only, or 1-12th part, have been convicted of second offences, and of these 16 were foreigners. Of 86 pardoned, eight have been recommitted for second offences; and of these five were foreigners.'

NOTE TO TYPESETTERS: Please end displayed quotation.

In the recent institution at New York, your Lordship will have observed, the account of *backsliders* is not as yet quite so favourable as in Philadelphia. The difference may, it should seem, fairly enough be ascribed to a variety of peculiar difficulties which New York has had to struggle with: Statement, given by Mr. Eddy, too long to be inserted here.²⁵¹

²⁵¹ According to Eddy, *Account*, pp. 85–7, the 'peculiar difficulties' faced by the administrators of Newgate penitentiary included an increase in the population of New York State from 340,120 in 1790 to 586,050 in 1800, and of New York City from 33,131 to 60,489. In addition, Eddy claimed that, despite constituting less than a

In respect of general remarks, circumstances would naturally give a different colour to the representations, as between Philadelphia and New York. The *Philadelphia* accounts are, the two latest of them, accounts given by strangers to strangers: the *New York* by the leading manager to his fellow-countrymen and fellow-townsmen. In this latter case, the main object was to give economical and other arithmetical details: it was a *compte rendu* by a trustee to his principals.²⁵² As to deportment, &c. of the prisoners, the persons, to whom principally the writer was addressing himself, were fellow-townsmen, who being on the spot, had eyes of their own to see with.—That, upon the whole, the chief author saw nothing to deter him from expressing himself satisfied with his work, appears from the concluding paragraph, which is as follows:—

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 12. ib. p. 70. ‘The New York State Prison will furnish a model for others, which the increase of population and growth of luxury may render necessary in the distant parts of this extensive country.’ And, whatever may be the future condition of mankind, this institution will reflect lasting honour on the State; become a durable monument of the wisdom, justice, and humanity of its Legislators, more glorious than the most splendid achievements of conquerors or kings; and be remembered when the magnificent structures of folly and pride, with their founders, are alike exterminated and forgotten.’

NOTE TO TYPESETTERS: Please end displayed quotation.

twenty-eighth of New York State’s entire population, almost a third of Newgate’s inmates were black, ‘an instructive lesson on the influence, first, of European and West-Indian emigration, and next, of negro slavery’. Eddy expected that an inquiry into the ‘vast difference’ in the number of crimes in New York City and the state more generally would identify the ‘true causes of the most numerous classes of crimes, and the most probable means of their prevention;—such as, improvement in the management and economy of the *city prisons*, in the punishment of petty offences, and in the melioration of the laws and general police of the city, in many things, which, in their present state, have an undoubted tendency to deprave the morals of the people’.

²⁵² i.e. ‘a fiscal report’. An annual *comptes rendu* was prepared for French monarchs by their Directors-General of Finances, and famously was first published by Necker for Louis XVI in 1781: see *Compte Rendu Au Roi, Par M. Necker, Directeur général des Finances. Au mois de Janvier 1781. Imprimé par ordre de Sa Majesté*, Paris, 1781.

^r ‘Similar prisons are *already* established in *New Jersey* and *Virginia*, and others are *proposed to be erected in Massachusetts and South Carolina.*’²⁵³

NOTE TO TYPESETTERS: Please insert short rule.

*Penitentiary System continued—Reformation—Particular
Exemplifications—Heroic Humanity.*

NOTE TO TYPESETTERS: The following text should be presented as displayed quotations. Please retain the quotation marks as indicated.

No. 1. ‘Philadelphia, 1796: Turnbull, p. 91.²⁵⁴ ‘At the time of the yellow fever in 1793, great difficulty was found in obtaining nurses and attendants for the sick at Bush-hill hospital.²⁵⁵ Recourse was had to the prison. The request was made, and the apparent danger stated to the convicts. As many offered as were wanted. They continued faithful till the dreadful scene was closed—none of them making a demand for their services till all were discharged.’

No. 2. ib. p. 48.²⁵⁶ ‘Some’ {on the same occasion} *at the expiration of their terms of confinement*, voluntarily offered themselves .^.^.^ and conducted themselves with so much fidelity and tenderness, as to have had the repeated thanks of the managers.

No. 3. ib. p. 92. ‘Another instance of the good conduct of the prisoners during the sickness, happened among the *women*. When request was made of them to give up their *bedsteads*, for the use of the sick at the hospital, they *cheerfully offered*²⁵⁷ even their *bedding*

²⁵³ See p. 000 n. above.

²⁵⁴ *Recte* 91–2.

²⁵⁵ Bush Hill, an estate of 150 acres located about a mile outside Philadelphia, stood vacant at the outbreak of the yellow fever epidemic in July 1793, and was commandeered by the committee of the Guardians of the Poor as a hospital and quarantine station: see Matthew Carey, *A Short Account of the Malignant Fever, Lately Prevalent in Philadelphia: With a Statement of the Proceedings That Took Place on the Subject in Different Parts of the United States*, Philadelphia, 1793, pp. 25–8.

²⁵⁶ *Recte* 48–9.

²⁵⁷ Turnbull’s emphasis.

&c.—When a similar request was made to the *debtors*, they *all* refused.²⁵⁸—Some difference, my Lord, between these women, and the women ‘far worse than the men,’ in New South Wales:²⁵⁹ some difference between the men who serve in hospitals at the peril of their lives, and those who make bonfires of hospitals, as well as of prisons with the prisoners in them:²⁶⁰—the prisoners—their comrades—their peers—men whom, instead of burning them, they would have been ready to clasp to their bosoms, so it had been to join in mischief.

NOTE TO TYPESETTERS: Please end displayed quotation.

XI. *Main Cause, Sobriety: Strictness, Universality, and good Effects of it in the Penitentiary Houses.*

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 1. Philadelphia; 1795: Liancourt, p. 19.²⁶¹ ‘They’ {the convict prisoners} ‘are never, on any account, permitted the use of fermented liquors, not even of small beer. The prohibition of fermented drink is a standing order, *and most religiously observed*. The liveliness and animation which such liquors might induce in the workmen is only an artificial and momentary vigour; a cause of irritation, heating the blood, and destroying the effect of that temperate regimen, which is intended to alter the habit and the constitution.’

No. 2. Philadelphia; 1796: Turnbull, p. 26.²⁶² ‘The drink of the criminals is molasses and water; spirituous liquors are forbidden, except for medical purposes, prescribed by the attending physician; and the person who sells, or suffers them to be introduced, on any other occasion, subjects himself to a penalty of five pounds: if an officer of the prison, dismission from office. The reason of this rigorous regulation arises, in the first place, from the probability of the abuse which might be made of the practice, were it once introduced; and, in the next place, from the conviction of the inspectors, that those liquors act not so powerfully

²⁵⁸ Turnbull ‘*all refused*’.

²⁵⁹ See p. 000 above.

²⁶⁰ See p. 000 above

²⁶¹ *Recte* 19–20.

²⁶² *Recte* 26–7.

in strengthening a body, doomed to more than ordinary toil and labour, as the effects of good wholesome water. That whatever cheerfulness or vigour it may produce in a labourer, it is merely temporary, and, like all high stimulatives, its operations are no sooner at an end, than the system is left enervated and fatigued.’

No. 3. New York; 1802: Eddy, p. 49. ‘*Many of those who came into the prison with constitutions greatly impaired by excessive drinking, debauchery, and vicious habits, after being some time used to the system of temperance, order, and industry established in the prison, have become healthy and vigorous.*’

No. 4. *ib.*, p. 59. ‘It is well known, that the greater number of crimes originate in the irregular and vicious habits produced by intoxication, and by the idle, low, and dissipated practices encouraged in taverns and tippling-houses. *There are few criminals whose gradual depravation cannot be traced to this source.*’

No. 5. *ib.* p. 59, 60. ‘By the city charter, the power of granting licences is vested in the mayor, who is the sole judge of the propriety of granting them, or of their number. *Thirty shillings are paid for each licence, four-fifths of which sum goes into the city-treasury, and the residue to the mayor.* While a revenue is derived to the corporation from these licences, it is not to be expected that there will be much solicitude to lessen their number, or to examine minutely into the merits of the applicants for them.’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—Can the degree of such solicitude be expected to be much greater, where, instead of now and then an odd five shillings to be gained by putting about the cup of intoxication, the greater part or the whole of a man’s income—of the income of every man who could do any thing towards stopping it—depends upon the circulation of it?

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 6. Philadelphia; [1795].²⁶³ Liancourt, p. 22.²⁶⁴ ‘The new regimen has .^.^.’

²⁶³ 1802 ‘1799’.

²⁶⁴ *Recte* 22–3.

produced a change, which is remarkably evident, even in the physician's bill, which formerly amounted to two hundred, or three hundred and twenty dollars per quarter, but at present seldom rises above forty. This enormous difference is entirely attributable to the total change of discipline, which has taken place. During the former system, the irregular government of the prison was attended with filth and drunkenness; and frequent broils produced diseases, wounds, and bruises of every kind. Under the new order, these causes of evil have ceased, the disorders are confined to colds, or such accidents as are common every where. Only two prisoners have deceased within four years, and those of the small pox. Except in cases of contagious maladies, the sick prisoners remain in their room; in such cases, however, they are removed to a separate apartment.'

No. 7. Philadelphia; 1796: Turnbull, p. 20.²⁶⁵ 'A good proof of the cleanliness of the place you have, when I mention from authority, that out of eight thousand and sixty persons, who were confined in the several apartments of the prison (the debtors jail included) from the twenty-eighth day of September 1780, to the fifth of the same month in 1790, only twelve died of natural deaths. Since the latter of these periods, the establishment of the new system of discipline has produced much better arrangements, as well in respect to the comfort and health, as to the good order and government of the prisoners. This has been evident in several instances. The physician's bill, which formerly amounted to twelve hundred and eighty dollars a year, seldom exceeds at present one hundred and sixty; and, excepting in cases of contagious diseases, not more than two prisoners have died from June 1791 to March 1795, a period of nearly four years. During the fall of 1793, when the yellow fever had extended its fatal ravages over every part of the city and suburbs of Philadelphia, we have from Mr. Carey, in his account of that calamity, that only six persons in the prison were taken sick, and sent to the hospital;²⁶⁶ although the situation of jails, even under the best administration, makes them most frequently liable to the generation of contagious and other diseases. At this time, too, were confined there, by order of the French consul,²⁶⁷ one hundred and six French

²⁶⁵ *Recte* 20–1.

²⁶⁶ According to Carey, *Short Account of the Malignant Fever, Lately Prevalent in Philadelphia*, p. 82, that during the yellow fever epidemic in Philadelphia, there were only 'two or three instances' of sickness in Walnut Street prison.

²⁶⁷ Antoine René Charles Mathurin, comte de Laforêt (1756–1846), French Consul-General to the United States 1788–93.

soldiers and sailors; beside one hundred other prisoners, composed of convicts, vagrants, and criminals committed for trial.’

NOTE TO TYPESETTERS: Please end displayed quotation.

In the following paragraph, please display 1/5 as a fraction.

Observations.—From the number of the prisoners that passed through the prison within a given space of time— from the mere number alone, as compared with the number of deaths within that time, no very precise induction can be drawn: another point to be known is, what was the average duration of a prisoner’s continuance there: if, for example, about half a year, viz. 180 days, this would give for the eight thousand in ten years, four hundred throughout the whole of every year: upon this number twelve in the ten years would be 1 1/5 death per annum upon the four hundred.

In this parallel between the two systems, your Lordship may have observed on the part of the Penitentiary System whole heads wanting, and those very material ones. Under the head of miscellaneous crimes (given as exemplifications of depravity) a mere blank: under the head of *Incendiarism* in particular a complete one. The case is—that, among chonical punishments administering a coercive discipline, it is the peculiar glory of the Penal Colonization Plan, that under it the list of crimes keeps running on, as if no coercion at all were administered; or, if there be any difference, in rather a greater proportion under and with the benefit of this discipline, than without it. In this point, I question whether the world ever saw any thing under the name of *punishment* bearing the least resemblance to it. In the very worst ordered jail, the discipline has at any rate been sufficient to keep the prisoners out of the commission of great crimes: even the Hulks have succeeded thus far—even the worst ordered of those archetypes of our Hulks that are still to be seen upon the continent—the *Galleys*.²⁶⁸ No forcible robberies are committed—no burglaries—no Churches, no Hospitals are burnt—even in the Galleys.

²⁶⁸ Bentham perhaps had in mind the *bagne* of Toulon, consisting of decommissioned galleys moored in the harbour, which are described in Howard, *Account of the Principal Lazarettos in Europe*, pp. 54–5.

XII. CENTRAL—INSPECTION PRINCIPLE. 1. *Escapes, for want of it, from the American Prisons, as above.*

In a method, governed by the consideration of the *ends* of penal justice, the topic of escapes seems to belong to the head of *incapacitation*—incapacitation for fresh offences. Why?—Because, under any mode of confinement, the effect of which is to prevent offences while it lasts, the effect of an escape is to break the bridle, and leave delinquency to run on again in its old course. Unfortunately, in the Penal Colony of New South Wales, the place for the topic of *escapes* is not quite so easy to be found. When a man escapes out of it, the scene indeed of his misdeeds is changed; but the multitude of them, being, during the continuance of the confinement, at the highest pitch, is not in much danger of being increased by the cessation of it. Be this as it may, the confinement of the prisoner being by the supposition a *desirable* object, an escape by which he is liberated from that confinement must,—happen where it will,—must, were it only for consistency sake, be ranked among *undesirable* ones. In the case of any other place of legal confinement—in the case of an American Penitentiary House more particularly—this character will be seen to belong to it without dispute.

Good as the Penitentiary System has proved itself, where-ever it has been established—good in every point of view—good with reference to its *end*—good *in comparison*, with reference to every other system of confinement—I have never given it as altogether perfect:—I mean in any of its existing shapes.—I have reserved to myself the submitting to Your Lordship whether, from experience as well as by reason, the addition of the *principle of central inspection* may not be regarded as calculated to add to the perfections of it. *Reformation, economy, and prevention of escapes*—*incapacitation* thereby for fresh offences resulting from escapes—in respect of every one of these objects I have ventured to state it as eminently serviceable.²⁶⁹ In respect of *reformation* and *economy*, its presence having never been experienced, the loss, if any, from the want of it, is a point of which, as even the *existence* however probable, cannot strictly speaking be demonstrated, still less can the *amount* be mathematically ascertained. In the article of *escapes*, the amount of the

²⁶⁹ See pp. 000 above.

inconvenience from the want of it, and thence of the benefit that would result from the adoption of it, is rather more open to demonstration. A *postulate*, it is true, must even in this case be assumed:—viz. that *under the eye of a keeper*, with adequate assistance and means of defence at his elbow, he at the same time out of the reach of assault, neither a single unarmed prisoner, nor any number of unarmed prisoners, confined in a room by bars and bolts, will so much as attempt to escape out of it. This being admitted, whatever escapes have been found actually to have taken place, from a prison unprovided with this security, may be set down as having the want of it for their cause: and to this same score may be set down, in the account of *economy*, the expence of all such *guards* whose services, in a spot exterior to the prison, have, for a given period, been kept appropriated to this purpose. After these remarks, whatever considerations are presented to view by the ensuing extracts will, I presume, find their application without much difficulty.

NOTE TO TYPESETTERS: Please insert short rule.

XIII. INSPECTION—*the more perfect, the more perfect the Management; viz. in respect of Reformation, Incapacitation, as to Escapes, and Economy.*

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 1. Philadelphia; between 1786 and April 1790: under the *ambulatory jail-gang system*, being the first attempt at reformation. Liancourt, 1795; p. 6. ‘Criminals, loaded with irons, and scattered through the streets, and along the roads, presented to the public the spectacle of vice, rather than of shame and misery; and the impossibility of watching them properly, facilitated the means of excess of drunkenness, of pillage, and of *escape*.’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—Under this system it may be inferred, that escapes actually did take place, with more or less frequency, as under such a system might naturally be expected.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 2. Philadelphia; 1786: Turnbull, 1796, p. 14. ‘Finding at length that the perseverance of the “Society for alleviating the miseries of prisons” bid fair to an extinction of all hopes of their continuing in the same scene of confusion, with one consent they resolved on a *breach of prison*. The attempt was accordingly made on the evening of the day the new order of things had taken place. Fortunately, *few of them escaped*. {*Fifteen*, as per Liancourt, p. 31.} The jailor was immediately discharged, and since that period {to August 1796} *almost every project* for the same purpose has failed, either from the want of unanimity of the most evil disposed, the fears of those less so, or the decided disapprobation of the greatest proportion of the prisoners to any thing of the kind.’

No. 3. ib. Philadelphia; 1796: Turnbull, p. 19. ‘About seven {prisoners} are in a shop, one of whom is appointed by the jailor, whose duty it is strictly to notice all offences, and who, in default of it, is punished according to the rules. For this, however, there is little or no necessity, *as they commonly work under the mutual inspection of each other*.^s *The keepers constantly parade among the prisoners, in the court-yards and passages*.’ {viz. per Liancourt, p. 19. Turnkeys, four in number for the whole house.}

^s The prisoners under the inspection of each other!—A pretty check that would be in New South Wales!

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—‘*Constantly parade among the prisoners*.’ i.e. constantly have some of the *prisoners themselves in view*:—‘*constantly in the yards and passages*.’ i.e. constantly have in view *more or less* of the *space* occupied by the prisoners:—constantly; i.e. in the day time?—But in the night? have they them, *all of them*, and *all night* long, in view?—Unquestionably not: if they had, the escapes indicated by the word *almost* in No. 1. could not, humanly speaking, have taken place.

So far at least as mere inspection is concerned, the work of the *four* keepers would, in a prison upon the central inspection principle, have been performed, and much more effectually and clear of *almosts*, by a single keeper: at the same time that, on my plan, the *economy* of the concern would of itself have afforded, as well as demanded, all night long, the assistance of a number of observing eyes.

No. 4. New York; 1802: Eddy, p. 18. ‘*Absolute reliance ought not to be placed on the strength of any prison, let their walls be ever so well constructed. Nothing will probably prevent escapes, but the unremitting vigilance of the keepers, and a strict watch day and night.*’

No. 5 ib. p. 19. ‘*It would have been more secure, if all the cells and the rooms in the wings adjoining had communicated with one and the same passage; since the same person who watched the wings might at the same time have attended to the cells. It was, probably, owing to this defect, that the escapes were made from the cells, which might have been prevented by a suitable watch.*’

No. 6. ib. p. 37. ‘*When day-light disappears, a small lamp is lighted in each room and in the halls; and then the assistant keepers go on watch in the halls and corridors, which command a view through grated doors of each apartment: they walk to and fro during the night, dividing the watch between them.*’

No. 7. ib. p. 29.²⁷⁰ ‘*In consequence of some escapes, the legislature at the last sessions authorized the Governor, or the person administering the government, to raise a guard, to be called “The State Prison Guard.”* .^.^.^.^.^.’²⁷¹

‘*The annual expence of this guard will be about seven thousand dollars, (1575l.)*²⁷² Though the security of the prison is of the highest consequence, since the efficacy of mild punishments depends on their certainty; yet it is probable, that an *increase of the number of keepers, {i. e. within the prison} and a more perfect arrangement of them, would have been equally effectual* to that security, and would create not half the additional expence of the present guard.’

²⁷⁰ Recte 29–30.

²⁷¹ For the Act of the New York State legislature instituting the State Prison Guard, passed on 30 March 1802, see *Laws of the State of New York*, Albany, 1804, iii. 37–9.

²⁷² The conversion of the sum into pounds sterling has been inserted by Bentham.

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—A more perfect arrangement of the apartment, viz. upon the *central-inspection* principle, would have been much more effectual, and saved the expence not only of the guard itself, but of the proposed succedaneum to it.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 8. ib. p. 54. ‘*About twenty-two of the most obdurate* criminals are kept confined, and at work in separate apartments, and are not suffered to come out, or to have any communication with other prisoners, but *are constantly watched by keepers day and night.*’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—Without the benefit of the central-inspection principle, by which the whole inhabitancy may be watched by a single keeper without effort, how severe the obligation of such vigilancy, how inordinate the expence!

That these precautions were neither unnecessary nor so much as sufficient, appears but too plainly from the account of *escapes*, as given by the same intelligent and zealous administrator, whose labours had, under the invincible disadvantage of ill-adapted architecture, been applied to the prevention of them.

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TABLE.

Abstracted from Eddy’s Account of the *Penitentiary House* in *New York*, p. 79; showing (as far as is there exhibited) the Numbers of Prisoners received into the said Prison, and discharged from thence—by *Death, Escape, Pardon, and Expiration* of Sentence—in Five Years, ending 1801:—together with the Number *remaining* in Prison at the End of the Year last mentioned.

NOTE TO TYPESETTERS: Please add a brace under ‘Discharged, by’, and encompassing the four

columns below it, as indicated and short rules above each of the totals in the bottom row.
Please see page 000 of the hard copy for the layout. Please remove all of the table borders.

Years	Received.	Discharged, by				Remaining 31st Dec.
		Death.	Escape.	Pardon.	Expiration.	
1797	121	1	1	—	—	—
1798	144	6	3	—	—	—
1799	121	9	7	—	—	—
1800	150	8	6	—	—	—
1801	157	4	8	—	—	344
Totals	693	28	25	86	210	344

From this it appears, that in the case of that prison, the number of the prisoners that have *escaped* has, within the five years in question, been almost *equal* to the number who have *died* in it; between 1-3d and 1-4th of the number who have been discharged out of it by *pardon*; between 1-8th and 1-9th of the number discharged by *expiration* of their sentences; and between 1-27th and 1-28th of the whole number *received* into it.

If a man may be allowed, to quote himself, a few observations written on the same subject on another occasion,¹ will not here be altogether out of their place. ‘If in a building on this plan, any thing of disorder is supposed, it must be, because though in words, the adoption of it may have been admitted, the state of things that would be the necessary result of it, is not present to the mind. The disorder supposed is supposed to be out of sight, which, in fact, it never could be. From the want of this advantage, proceeds that anxiety, the intensity, and, at the same time, the inefficacy, of which, is apparent in every page of the *rules and orders* that one sees. “*Officers frequently to go into the wards—frequently to hear complaints—master frequently to go into every ward, and inspect the persons therein, on a particular day, of the*

week especially—Twice a week the matron to inspect every part of the house—Paupers to be kept clean—Officers frequently to take a view of them—Paupers to come down into the dining-hall to be mustered and employed—doors to be locked, that they may not harbour in the wards in the day time—Nurse-children frequently to be visited—once a month at least—Apprentices frequently to be visited by the Messenger.”—This, from the regulations of one of the first-rate Poor-Houses.²⁷³—All this an attempt—and that, probably, in a great degree, an unavailing one—to effect by great exertions, not a hundredth part of what on the central inspection plan would take place of itself, without a man’s stirring from his chair.’

‘Papers intituled, *Pauper Management improved*: printed in *Young’s Annals*, anno 1797 and 1798.²⁷⁴

Being thus far engaged in self-piracy, I will e’en beg leave of Your Lordship to go so much further, as to transcribe a passage on the same subject from another work. I mean the book entitled *Panopticon*: containing an exposition of the *central-inspection* principle, with a view to the variety of different purposes to which it presented itself as applicable. The insertion may perhaps be the more pardonable, inasmuch as, though the first of the three little volumes, of which the work consists, was in 1791 reprinted, and perhaps sold in Ireland, by order of the Government of that day, yet neither that partial reimpression, any more than the original impression, can ever have found its way *here* into the shops.²⁷⁵ At the same time, not to obtrude as necessary what may perhaps be deemed superfluous, it stands dismissed to the bottom of the page.^u ²⁷⁶

^u A collateral advantage, and on the score of frugality a very material one, is that which

²⁷³ The passage is not a direct quotation but Bentham’s summary of ‘Rules, Orders, and Regulations’, in *Hints and Cautions, for the information of Churchwardens and Overseers of the Poor Of the Parishes of St. Giles in the Fields and St. George, Bloomsbury. In the County of Middlesex: and Rules, Orders, and Regulations for Maintaining, Governing, Employing, and Regulating the said Poor*, [London], 1797 pp. 27–36.

²⁷⁴ See ‘Outline of a work entitled Pauper Management Improved’, *Young’s Annals of Agriculture*, vol. xxx, no. clxx (1798), 89–176 at 130–1, reproduced in *Writings on the Poor Laws: II (CW)*, p. 510.

²⁷⁵ As Bentham states, neither the Dublin nor the London issues of ‘Panopticon; or, the Inspection-House’, were published. Bentham himself supervised the printing of the London edition, but the printing of the Irish edition was supervised by Robert Hobart, Chief Secretary for Ireland 1789–93, under the auspices of Sir John Parnell (1744–1801), Chancellor of the Irish Exchequer 1785–99.

²⁷⁶ The extract below is taken from ‘Panopticon; or, the Inspection-House’, i. 28–37 (Bowring, iv. 45–7).

respects the *number* of the Inspectors requisite. If this plan required more than another, the additional number would form an objection which, were the difference to a certain degree considerable, might rise so high as to be conclusive; so far from it, a greater multitude than ever were yet lodged in one house might be inspected by a single person. For, the trouble of inspection is diminished in no less proportion than the strictness of inspection is increased.

Another very important advantage, whatever purposes the plan may be applied to, particularly where it is applied to the severest and most coercive purposes, is, that the *under* Keepers or Inspectors, the servants and subordinates of every kind, will be under the same irresistible controul with respect to the *head* Keeper or Inspector, as the prisoners or other persons to be governed are with respect to *them*. On the common plans, what means, what possibility, has the Prisoner, of appealing to the humanity of the principal for redress, against the neglect or oppression of subordinates in that rigid sphere, but the *few* opportunities which, in a crowded Prison, the most conscientious Keeper *can* afford—but the none at all which many a Keeper *thinks* fit to give them? How different would their lot be upon this plan!

In no instance could his subordinates either perform or depart from their duty, but he must know the time and degree and manner of their doing so. It presents an answer, and that a satisfactory one, to one of the most puzzling of political questions, *quis custodiet ipsos custodes?*²⁷⁷ and, as the fulfilling of his, as well as their, duty would be rendered so much easier, than it can ever have been hitherto, so might, and so should, any departure from it be punished with the more inflexible severity. It is this circumstance that renders the influence of this plan not less beneficial to what is called *Liberty* than to necessary coercion; not less powerful as a controul upon subordinate power, than as a curb to delinquency; as a shield to innocence than as a scourge to guilt.

Another advantage, still operating to the same ends, is the great load of trouble and disgust, which it takes off the shoulders of those occasional Inspectors of a higher order, such as *Judges*, and other *Magistrates*, who called down to this irksome task from the superior ranks of life, cannot but feel a proportionable repugnance to the discharge of it. Think how it is with them upon the present plans, and how it still must be, upon the best plans that have been hitherto devised! The Cells or apartments, however constructed, must, if there be nine hundred of them, (as there were to have been upon the Penitentiary House plan) be opened to the visitors, one by one. To do their business to any purpose,

²⁷⁷ i.e. 'who will guard the guards themselves?': see Juvenal, *Satires*, II. vi. 347–8.

they must approach near to, and come almost in contact with, each inhabitant: whose situation being watched over according to no other than the loose methods of inspection at present practicable, will on that account require the more minute and troublesome investigation on the part of these occasional superintendants. By this new plan, the disgust is entirely removed, and the trouble of going into such a room as the Lodge, is no more than the trouble of going into any other.

Were *Newgate* upon this plan, all *Newgate* might be inspected by a quarter of an hour's visit to Mr. *Akerman*.²⁷⁸

Among the other causes of that reluctance, none at present so forcible, none so unhappily well-grounded, none which affords so natural an excuse, nor so strong a reason against accepting of any excuse, as the danger of *infection*: a circumstance, which carries death, in one of its most tremendous forms, from the seat of guilt to the seat of justice, involving in one common catastrophe the violator and the upholder of the laws. But in a spot so constructed, and under a course of discipline so insured, how should infection ever arise? or how should it continue? Against every danger of this kind, what private house of the poor, one might almost say, or even of the most opulent, can be equally secure?

Nor is the disagreeableness of the task of superintendance diminished by this plan, in a much greater degree than the efficacy of it is increased. On all others, be the superintendant's visit ever so unexpected, and his motions ever so quick, time there must always be for preparations, blinding the real state of things. Out of nine hundred Cells he can visit but one at a time, and, in the mean while, the worst of the others may be arranged, and the inhabitants threatened, and tutored how to receive him. On this plan, no sooner is the superintendant announced, than the whole scene opens instantaneously to his view.

In mentioning Inspectors and superintendants who are such by office, I must not overlook that system of Inspection, which, however little heeded, will not be the less useful and efficacious; I mean the part which individuals may be disposed to take in the business, without intending perhaps, or even without thinking of, any other effects of their visits, than the gratification of their own particular curiosity. What the Inspector's or Keeper's family are with respect to *him*, that, and more, will these spontaneous visitors be to the superintendant; assistants, deputies in so far as he is faithful, witnesses and judges, should he ever be unfaithful, to his trust. So as they are but there, what the

²⁷⁸ Richard Akerman (c. 1722–92), Keeper of Newgate Prison 1754–92.

motives were that drew them thither, is perfectly immaterial; whether the relieving of their anxieties by the affecting prospect of their respective friends and relatives thus detained in durance, or merely the satisfying that general curiosity, which an establishment on various accounts so interesting to human feelings, may naturally be expected to excite.

You see, I take for granted as a matter of course, that under the necessary regulations for preventing interruption and disturbance, the doors of these establishments will be, as, without very special reasons to the contrary, the doors of all public establishments ought to be, thrown wide open to the body of the curious at large:—the great *open committee* of the tribunal of the world. And who ever object to such publicity where it is practicable, but those whose motives for objection afford the strongest reasons for it?

Decomposing the plan, I will now take the liberty of offering a few separate considerations, applicable to the different purposes, to which it appears capable of being applied.

A *Penitentiary-House* more particularly is, (I am sorry I must correct myself, and say was to have been) what every Prison might, and in some degree at least ought to be, designed at once as a place of *Safe Custody*, and a place of *labour*. Every such place must necessarily be, whether designed or not, an *Hospital*: a place where sickness will be found at least, whether provision be or be not made for its relief. I will consider this plan in its application to these three distinguishable purposes.

Against *escapes*, and in particular on the part of Felons of every description, as well before as after conviction, persons from the desperateness of whose situation attempts to escape are more particularly to be apprehended, it would afford, as I dare say you see already, a degree of security, which perhaps has been scarce hitherto reached by conception, much less by practice. Overpowering the guard requires an union of hands, and a concert among minds. But what union, or what concert, can there be among persons, no one of whom will have set eyes on any other from the first moment of his entrance? Undermining walls, forcing iron bars requires commonly a concert, always a length of time exempt from interruption. But who would think of beginning a work of hours and days, without any tolerable prospect of making so much as the first motion towards it unobserved?—Such attempts have been seldom made without the assistance of implements introduced by accomplices from without. But who would expose themselves even to the slightest punishment, or even to the mortification of the disappointment, without so much as a tolerable chance of escaping instantaneous detection?—Who would think of bringing in before the keeper's face, so much as a small file, or a phial of *aqua*

fortis, to a person not prepared to receive any such thing, nor in a condition to make use of it? Upon all plans hitherto pursued, the thickest walls have been found occasionally unavailing; upon this plan the thinnest would be sufficient; a circumstance which must operate, in a striking degree, towards a diminution of the expence.

In this, as in every other application of the plan, you will find its lenient, not less conspicuous than its coercive tendency; insomuch that, if you were to be asked, who had most cause to wish for its adoption, you might find yourself at some loss to determine, between the malefactors themselves, and these for whose sake they are consigned to punishment.

What is below being read or not read, let me beg of Your Lordship to consider, whether, if the too famous prison in *Cold Bath Fields* had been upon any such plan, those complaints which have given so much trouble to so many Right Honourable and Honourable Gentlemen, could ever have obtruded themselves?—whether the ground for those complaints, such as it was, could ever have had existence?—whether the time of so many public men, whose labour, so much to their regret, was for so many weeks employed upon this irksome service—(men worthy of better occupations)—would not have been saved, and the peace of the metropolitan county, together with the situation of its veteran representative, have remained undisturbed?²⁷⁹

At different times a sketch on the central-inspection plan has been shown to jailors:—at no time without producing an exclamation—*Ah! if my jail were like this, my task would be a safe and easy one!*

Different men, different opinions: where is the subject, my Lord, that will not display

²⁷⁹ Sir Francis Burdett (1770–1844), MP for Boroughbridge 1796–1802, Middlesex 1802–4, 1805–6, Westminster 1807–37, and Wiltshire North 1837–44, led a sustained campaign of criticism into conditions at Coldbath Fields. The ‘veteran representative’ was William Mainwaring (1735–1821), banker, MP for Middlesex 1784–1802, who, with the other Middlesex magistrates, sought to impede a Commission of Inquiry into the prison, which reported in November 1800 and generally vindicated Burdett’s case. At the General Election of 1802 Burdett stood in Middlesex against Mainwaring and George Byng (1764–1847), MP for Middlesex 1790–1847. In a campaign dominated by Coldbath Fields and Mainwaring’s support for its Governor, Thomas Aris, Burdett was elected in second place behind Byng, though in 1804 Burdett’s election was ruled invalid, and he lost the subsequent by-election to Mainwaring’s son, George Boulton Mainwaring (b. c. 1773), who held the seat until 1806.

the difference?—especially when motives prompt opinions, and situations convert them into laws.

One man—upon being told of a prison, in which every prisoner was without intermission exposed to an inspecting eye—‘*Then they’ll all get out,*’ says he.—This was one of those men whom, under the *ancien regime*, gentlemen used to send out to govern kingdoms: accordingly, so long as he reigned, he took effectual care there should be no such jail to get out of in his dominions, spite of every thing that could be said to him by subordinates.²⁸⁰

Another man, upon seeing the model of a prison round like *Ranelagh*,²⁸¹ with this difference that, excepting iron bars, and supports as in work-shops, the circumference was all glass—exclaimed immediately—*This prison will be too dark: the keepers in the middle will never be able to see their prisoners.*²⁸² The room it was in being none of the lightest, ocular demonstration was so far on his side. By I know not what accident, this *reason* missed being added to the *four reasons for relinquishment*.²⁸³ though sure enough there was a time, my Lord, when they lay all together safe and snug in the same place.—Alas, my Lord! why were they ever suffered *to get out of it?*—*There, there indeed was an escape!*

Behold here again, my Lord, another Governor of kingdoms:—a task a man seems to be set down to, when he is fit for nothing else. Alas! my Lord! what a truism was the death-bed observation of Chancellor *Oxenstiern* to his son—*Nescis mi fili quam parvâ sapientiâ*

²⁸⁰ According to the extracts from ‘History of the War between Jeremy Bentham and George the Third’, in Bowring, xi. 96–105 at 104, the man in question was John Fane, tenth Earl of Westmorland, Lord Lieutenant of Ireland 1789–94, who made the exclamation when shown plans for the panopticon penitentiary by Sir John Parnell.

²⁸¹ The Rotunda, at the Ranelagh pleasure gardens in Chelsea, opened as a public entertainment venue in 1741. The gardens were closed in 1803 and the Rotunda demolished in 1805.

²⁸² According to ‘History of the War between Jeremy Bentham and George the Third’, Bowring, xi. 105, this second man was Portland, who visited Bentham’s home at Queen’s Square Place to view models of the panopticon: ‘scarce had he bestowed a glance upon each of the models, when the observation came from him—“Not light enough:” such was the substance of the observation, not more than twice as many the words, whatever they were’.

²⁸³ See p. 000 above.

v While correcting the press, an incident occurs, from which it should seem that American prisons are not the only places of confinement, from which, when inspecting eyes are wanting, or off their station, or opposed by walls, a man may find means to make his escape.

Times, December 15th, 1802.²⁸⁵ ‘*J. Murphy*, a convict, who made his escape from the Captivity hulk, on Wednesday se’nnight, was taken near Fareham, and lodged in the Bridewell at Gosport. He made his escape from that prison on Wednesday last, by scaling the walls, and got clear off. This is the *fourth* time he has contrived to get out of confinement since he was sentenced to transportation; once from *Newgate*, from the *hulk at Woolwich*, from the *Captivity at Portsmouth*, and from the *gaol*, as above.’

Quere 1st. How many times in the same period would this ingenious person have effected his escape, from a prison on the Panopticon plan, out of an apartment exposed night and day to the view of several pair of eyes, themselves unseen by him, and commanding the whole circle, without so much as a change of place?

Quere 2d. What obstacle, if any, did Noble Lords expect, would be exposed to any such ingenuity, in these four places of confinement, together with the rest of them, 250 or so, throughout England,²⁸⁶ by the gentleman who, confining his inspection to the hulks, takes four peeps at them in a year, at £87 a peep?²⁸⁷

Quere 3d. Was it lest Noble eyes should be suspected of being constantly asleep, that

²⁸⁴ i.e. ‘Dost thou not know, my son, with how little wisdom the world is governed?’ The phrase is generally attributed to Axel Gustafsson Oxenstierna af Södermöre (1583–1654), Lord High Chancellor of Sweden 1612–54, who used it encouragingly in a letter of 1648 to his son Johan Axelsson Oxenstierna af Södermöre (1611–1657), Swedish statesman and diplomat, when Johan doubted his own ability to lead the Swedish delegation at the negotiations which led to the Peace of Westphalia of 1648. [ANNOTATION TO BE FINALIZED.]

²⁸⁵ See *The Times*, 15 December 1802, p. 4.

²⁸⁶ The figure represents Bentham’s estimate of the number of prisons visited by John Howard in 1779, 1782, and 1783: see p. 000 n. below.

²⁸⁷ the Hulks Act of 1802 (42 Geo. III c. 28) had provided for the appointment of an i.e. a quarter of the annual salary of £350 which was to be paid to the holder of the newly-created post of ‘Inspector of any Place or Places of Confinement, either at Land or on board any Ship or Vessel’, with a salary of £350 per annum. Each of the Inspector’s four visits per annum would, therefore, cost about £87. Aaron Graham (c. 1753–1818), a stipendiary magistrate at Bow Street, was appointed as Inspector on 25 March 1802, a post he held until his resignation at the end of 1814. For Bentham’s further comments on this subject see pp. 000 below.

subordinate eyes were commissioned to be periodically awake?

Quere 4th. When, for the single purpose of this *nominal* inspection, Parliament was called upon for a fresh Act, {42 Geo. III. c. 28. 24th March 1802.} might it not have been as well, if some shew of obedience had been paid to the two already existing Acts,²⁸⁸ of which, if obeyed, *real* inspection would have been the fruit?

XV. *Fruit of the Penitentiary System, in point of Example, as well as Reformation.*—DECREASE OF CRIMES.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 1. Philadelphia; 1793: Lownes, p. 93. ‘Our *streets* now meet with no interruption from those characters that formerly rendered it dangerous to walk out of an evening. Our *roads* in the vicinity of the city, so constantly infested with robbers, are seldom disturbed by those dangerous characters. The few instances that have occurred of the latter, last fall, were soon stopped. The perpetrators proved to be *strangers*, quartered near the city, on their way to the westward.’

‘Our *houses, stores, and vessels*, so perpetually disturbed and robbed, no longer experience those alarming evils. *We lie down in peace—we sleep in security.*’

‘There have been but *two* instances of *burglaries* in this city and county for near *two* years. *Pickpockets*, formerly such pests to society, *are now unknown*. Not one instance has occurred of a person being convicted of this offence for two years past. The number of persons convicted at the several Courts have constantly decreased.—Thirty, and upwards, at a session, have frequently been added to the criminal list: at this time, when both City and County Courts are but a few days distant, there are but *five for trial!* Such have been our measures—such is the state of things— and such the effect. *If any one can assign other causes for them, than are here adduced*, they must have other opportunities—other means of information than I am acquainted with.’

No. 2. Philadelphia; 1796: Turnbull, p. 91. ‘It appears, that since the late improvements

²⁸⁸ i.e. the Penitentiary Act of 1794 and the Appropriation Act of 1799.

in the Penal Code,²⁸⁹ offences have diminished in a proportion of about *one half*; and when we recollect, that the first table contains the offences of the city and county of Philadelphia only, we may pronounce that they have decreased throughout the whole State nearly *two thirds*.—The two periods are equal, and the latter commences from 1791, from the new discipline not having taken place previous to that time. *The most material point gained* with respect to offences, is *the diminution of the most heinous ones*, which are still in a greater proportion. They stand in the table as follows:²⁹⁰—

Please lay out the table below as per the hard copy, p. 000. Please remove the grid lines. Please insert evenly spaced dots between the columns. Please insert short rule above the Total in both columns. Please insert a vertical dividing line between the two column headings.

	‘Under the old System in the City and County.	‘Under the new System in the whole State.
‘Burglary,	77	16
‘Robbery,	39	5
‘Murder,	9	0
‘Arson,	0	1
‘Rape,	0	1
‘Bigamy,	1	1
	Total, 126	24.’

²⁸⁹ See p. 000 above.

²⁹⁰ The first column in the following table is abstracted from ‘A Table of Offences committed in the City and County of Philadelphia, from Jan. 1, 1787, to June, 1791, being a Period of the last 4 Years and 5 Months under the old Criminal System’, in Turnbull, *Visit*, p. 88, and the second column is abstracted from ‘A Table of Offences committed in the State of Pennsylvania, from June, 1791, to Oct. 27, 1795, being a Period of the first four Years and five Months under the New System of Laws’ in *ibid.*, p. 89.

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations.—This is a success indeed! a success reported at first after a trial of about two years: confirmed afterwards, as per last accounts, by a further experience of between three and four years.²⁹¹ According to the figures, the first-rate crimes reduced to less than a *fifth* of their former number: but even this degree of success, prodigious as it is, falls short of the proportion really obtained. The larger number (the 126) during the prior period is for the capital—Philadelphia—*City and County* alone:—the smaller number (the 24) during the subsequent period—the period of improvement—is for all Pennsylvania—for the whole *State*. But, in the jail of this same State, in December 1792,^w at a time when, for the whole State, the number of Convicts of all sorts was 37, out of these 37, the number for the City and County taken together was but 24: that is, was not quite so much as two-thirds of the number for the whole State. Assuming, for supposition sake, that at the point of time in question (August 25th, 1796) the proportion was still the same, it would follow, that, at this latter point of time, out of the 24 for the whole state, no more than 16 were for the City and County:—in this later period of 5 years, no more than 16, from the same portion of territory, which in the earlier period of the same length had furnished Convicts of the same description, to the number of 126. If, instead of the 126, the number had been 128, the proportion of convicts for the latter period would have been no more than one-eighth of the number for the former:—instead of four-fifths, the decrease would have amounted to seven-eighths.

^w 3d December 1792, Bradford and Lownes, p. 108. Report of Inspectors of the prison. By the same Report, under the influence of the former system, no more than about 1 year and a half before, viz. 3d of May 1791, the number was as high as 143.

In 1791, according to the *census* for the United States, the population of the City and County was about one-eighth of that of the whole state: (as 54,391 to 434,373:)²⁹² the number of the criminals in the rest of the State being but 13, when of that of the City and County was 24, this gives the degree of criminality, in the *Country* situation, no more

²⁹¹ Bentham alludes to the reforms introduced by the Penal Laws Act of 1790.

²⁹² These figures are given, albeit for 1790 and not 1791, in Tench Coxe, *A View of the United States of America, in a Series of Papers, Written at Various Times Between the Years 1787 and 1794*, London, 1795, p. 483.

than about 1-6th of ditto in the *Town* ditto.

Permit me on this occasion to add, my Lord, that the difference thus produced—the distinction thus noted—between the number of first-rate crimes, and the number of crimes of a less mischievous complexion, is matter of particular satisfaction to me. It gives the *permit of experience* to some *speculative* and therefore contraband ideas, consigned long ago to some of the useless papers I have already hinted at. After the diminishing the number of crimes of all sorts and sizes taken together, another distinguishable though concomitant object should be, (so it appeared to me) by a system of due proportions as between punishments and offences, to shove down, as it were, the number of the higher crimes—to convert the higher ones, as far as can be done, into inferior ones:—which inferior ones will then be found such, to the mischief of which it is in the power of *money* to apply a cure. This done, the mischief might, with the help of a few obvious and necessary precautions, be brought within the healing influence of the principle of *insurance*: the principle applied with so much success to the reducing the quantum of suffering from various other causes. Under the head of *compensation*, I have already troubled your Lordship with a reference to the humble endeavours I had used to throw my mite into this treasury.²⁹³ What I do *not* pretend to say, is—that against mischief from *criminality*, any more than against mischief from *fire* or *water*, the door could be altogether shut, by this means or any other: but what I fear not to say, is—that by this means the mischief from criminality—from such crimes as are committed—(not to speak of defalcations that might be made from the mass of mischief, by defalcations from the *absolute* number of crimes) might be made to undergo a degree of reduction, beyond any thing which, in this country at least, has ever yet been looked up to, as within the reach of hope. The great point is—to clear the country of those crimes, each instance of which is sufficient to awaken and keep alive, in every breast within a certain circle, the fear of boundless injury to person or property, as well as of destruction to life itself: in comparison of this wide spreading —this almost universally extending mischief—this fear of boundless injury—the sum of the mischiefs, resulting in each instance, from losses and other injuries, actually sustained by particular individuals, would be found relatively inconsiderable. From the number of these superlatively terrific crimes, seven-eighths or thereabouts appear, in the instance in question, to have actually been struck off in actual experience. In *this* or any other country, my Lord, would not the same advantage be

²⁹³ See p. 000 above.

worth purchasing at the same price?

In speaking of the *price*, it would be incorrect, I doubt, to state it as consisting of such exertions merely as would be requisite for the establishment of a Penitentiary House. Another cause, which appears to have contributed, and perhaps in at least equal degree, to the production of the effect, is—the abolition—next to a total one—of the punishment of *death*. If this be so, then to the account of exertions must be added the effort (no slight one) necessary for giving up the favourite punishment;—the punishment so dear to vengeance, hard-heartedness, prejudice, and indolence.

On this subject let the following fact speak in the first place.

NOTE TO TYPESETTERS: Please begin displayed quotation.

No. 1. Philadelphia; 1786: Liancourt; [1795]:²⁹⁴ p. 38.²⁹⁵ ‘In the year 1786, after the law had been passed, which abolished the punishment of death and established the new system,²⁹⁶ two prisoners arrested for crimes (which, according to the antient jurisprudence, were punishable by death, and by the new one only by imprisonment) *preferred to be judged according to the ancient law*, rather than be subjected to so long and rigorous a detention; and particularly to that *solitary confinement*, which *they started from with horror, though they had never experienced its bitterness*. They were *confirmed* in this choice *by the hope of a free pardon*; an event which would have restored them to immediate freedom. One of them was not deceived in his expectations; the other suffered death.’

NOTE TO TYPESETTERS: Please end displayed quotation.

Observations. From this instance, my Lord, may it not be inferred—and may not an instance thus happily apposite be pronounced sufficient of itself to support the inference—that it is not merely in the way of *reformation*, but by its subserviency to the still superior end *example*, that penitentiary punishment, when well conducted, operates with so palpable an effect, in diminution of the multitude of crimes?—This same instance, is it not moreover

²⁹⁴ 1802 ‘1796’.

²⁹⁵ *Recte* 30.

²⁹⁶ See p. 000 above.

sufficient to support the further inference, that death—which *reforms* only by annihilation, which *incapacitates* for crimes only by incapacitating for every thing—that death, of which the only recommendation is its supposed superior efficiency in the way of *example*, yields even in this point, to that which is so much superior to it in every other? Turning again to penitentiary punishment, and comparing the exemplification here given of the terror inspired by it while as yet inexperienced, with the preceding accounts, of the deportment and apparent state of mind, of the patients under and during the infliction of it, is it not, in both points of view, every thing that, for the sake of all parties, one would wish to find it? Does it not, as far as is compatible with the melancholy complexion of the case, exhibit that combination so desirable in every case—the *utile dulci*?²⁹⁷—in prospect terrible, in experience tolerable?

Observe, my Lord, how the *separate* experiences on both sides are confirmed and crowned by this *comparative* experience. Of the *efficiency* of penitentiary punishment, the separate exemplifications have just been presenting themselves to your Lordship's view. Of the *inefficiency* of capital punishment, observations upon observations occur in the annals of the penal colony as recorded by its Chief Magistrate. At the time of execution^x—at the time of *dissection*^y—on a variety of other occasions, such as on all minds might have been expected to be, and on other minds would have been, impressive—the insensibility of the survivors, to the fate of their comrades and associates, is matter of surprise no less than concern to the historian who witnessed it. Confronted together, these contrasted masses of experience, consistent though unconnected, would of themselves afford a proof of no light weight in the scale of prudential conjecture:—would afford that sort and degree of proof, which of itself might appear of sufficient strength, to support a correspondent practical inference, with its correspondent *measure*. But what an accession of force is added to these separate experiments, when thus supported by a corroborative of so rare a complexion, as that which is afforded (to use the language of *Lord Bacon*) by this *conjunct* experiment!²⁹⁸—the

²⁹⁷ See Horace, *Ars Poetica*, 343–4: *omne tulit punctum qui miscuit utile dulci, lectorem delectando pariterque monendo*, i.e. 'he has won every vote who has blended profit and pleasure, at once delighting and instructing the reader'.

²⁹⁸ See 'Of the Dignity and Advancement of Learning', Book V, in *The Works of Francis Bacon*, ed. J. Spedding, R.L. Ellis, and D.D. Heath, 15 vols., London, 1857–74, iv. 420: 'Coupling of Experiment is the link or chain of applications; when things which would be ineffectual singly are effectual in conjunction. For example; you wish to have roses or fruit come late. It will be effected, if you pluck off the earlier buds; it will be effected likewise if you uncover the roots and expose them to the air until the middle of spring; but much more

experiment I mean, in which, the two punishments being put in the opposite scales of the same balance, and in the same minds, the punishment of death is found light—the more temperate and regulated mode of punishment outweighing it.

^x Collins I. 392, &c.²⁹⁹

^y *Ib.* 492.³⁰⁰

NOTE TO TYPESETTERS: Please insert a short rule here

XV. New South Wales—Economy — Prospects as per last Accounts.

The subject of *reformation* being thus far considered, *economy* presents the only remaining topic on which any very material lights can be thrown by the ulterior accounts. On this subject the evidence might be supposed to have been favourable, or at least less unfavourable than before, if so conspicuous a topic were passed over altogether without notice. At the outset, my intention was, to have exhibited the passages, as before, *in terminis*. Frightened, however, at the mass of paper already filled, I give up the greater part of the attempt I had projected on this ground upon your Lordship's patience, confining myself for the present at least to a brief indication of the topics, with references instead of quotations.

Respecting *expence*, past or future—I mean expence to Government—The ulterior accounts afford not, to my view, any indications worth referring exclusively to that head. Two other co-ordinate heads comprize every thing that presents itself as worth mentioning:—

if the two be coupled together. Again, ice and nitre have both of them great power of refrigeration; much more when mixed. This is indeed clear of itself. And yet there may often be a deception in it (as in all things else where axioms are wanting), if the things so coupled be such as operate in different and contrary ways. And so much for Coupling of Experiment'. Francis Bacon (1561–1626), first Baron Verulam and first Viscount St Alban, philosopher and writer, Lord Chancellor 1618–21.

²⁹⁹ Collins, i. 392–3, describes the hanging of John Bevan, on 6 October 1794, for the burglary of the house of William Fielder at Sydney, and, despite the example which was supposed to have been set by Bevan's scheduled execution, the murder of Simon Burn by John Hill on the evening of 5 October 1794.

³⁰⁰ Collins, i. 491–2, notes that when John Fenlow was executed on 8 August 1796 and his body was handed over for dissection, the surgeons had 'no sooner signified that the body was ready for inspection, than the hospital was filled with people, men, women, and children, to the number of several hundreds; none of whom appeared moved with pity for his fate, or in the least degree admonished by the sad spectacle before their eyes'.

Perpetual probability of sudden destruction—Hopelessness of a *non-convict* population:—the existence of one, a circumstance that seems all along assumed, as a condition *sine qua non* to the ultimate *success* (whatever may be understood by *success*)³⁰¹ of the fourteen years’ experiment;—assumed by the concurring opinions of the late Governor^z and the late Chief Magistrate:^{aa} gentlemen, whose opinions, on this as on every other head, cannot but be as weighty in the scale of *opinion* as any observations of mine, were I to take upon me to present them in that character, would be light. As to *success*, what sort of result is to be understood by that expression is a question, for the answer to which I must beg leave to refer your Lordship to the gentlemen themselves, by whom the word, or what amounts to it, has been employed. What I myself should mean by it has, I hope, for some time been tolerably clear:—accomplishment of the several already enumerated *ends of penal justice*.³⁰² Be this as it may, in the notice given by this previous announcement, I claim some merit, my Lord, because, if the *results* in question be not worth regarding, the *proof* is still less so, the paper, if thus far read, is thrown by, and so much of your Lordship’s time is saved.

^z Letter I. p. 000.

^{aa} Collins, I. p. 235. II. 40. 100. 210.³⁰³

Three main causes of famine, and destruction by famine, perpetually impending over the ever so much ‘improved’ Colony:—each of them adequate to the effect, according to the time. *Fire—drought—inundation*: for, so the case seems to be—there is always either too little *water* or too much. *Fire*, by the malice or phrensy of the Colonists themselves, converted alike by good or bad government into intestine enemies:^{bb} *Fire* again, by hostility of external enemies, the Native Savages, ever ready, ever able, to return evil for evil, and for good likewise:^{cc} *Fire*, even spontaneous, or, in the language of law and religion, *by the visitation of God*.^{dd} From all these sources together, danger of fire continually brooding over the whole Colony, and covering every acre of ground contained in it. Of *inundation*, the danger not quite so universal, being confined to the settlements on George’s River, and the

³⁰¹ See p. 000 above.

³⁰² See pp. 000 above.

³⁰³ Collins, i. 234–5, ii. 40, 99–100, 210 describe settlers’ aversion to work and the poor quality of their labour, absconded convicts who, rather than risk the dangers of living by piracy, surrender to the authorities, and of how, in May 1799, it seemed that ‘the commission of crimes was never to cease in this settlement’.

Hawkesbury^{ee}—the only spots that present any hope of agricultural advantages^{ff}—On the other hand, what it wants in universality made up in point of certainty, grounded on the topographical features of the country, and by the very latest accounts (dated August 1801) realized to such a degree that ‘*many of the settlers who had farms on the banks had in despair totally abandoned them.*’^{gg}

^{bb} II Collins, 17. 69. 72. 129. 132. 197. 277.—*Supra* pp. 000, 000, 000.³⁰⁴

^{cc} II Collins, 15. 31, 32, 33. 40. 56. 68. 204. 209.³⁰⁵

^{dd} *Ib.* 125. 139. 199. 334.³⁰⁶

^{ee} *Ib.* 199. 289. 334.³⁰⁷

^{ff} *Ib.* 467. Lett. I. p. 000.

^{gg} II Collins, p. 334.

To these more awful scourges might be added *insect vermin*; grubs^{hh} and caterpillars:ⁱⁱ plagues as destructive and as frequent as inundation: more and more ineludible than fire. These minor plagues indeed (it will occur) have their equivalent in other countries.—True:—but then such other countries have unplagued neighbours to draw upon for relief.

³⁰⁴ i.e. items 1–7 in ‘§ VI. Depravity—Particular Exemplifications—Incendiarism’.

³⁰⁵ Collins, ii. 15, 31–3, 40, 55–6, 65–8, 204–5, 209, respectively describes the following incidents involving violence between settlers and Indigenous Australian people (though they are not concerned with fire): fighting on the Hawkesbury River settlements in January 1797; reprisals in April 1797 against the Bidjigal people who, led by Pemulwuy (c. 1750–1802), had attacked the Northern Boundary farms; how convict absconders were, in June 1797, suspected of assisting Indigenous people raid settlers’ farms; a ‘severe contest’ in October 1797 between two parties of Indigenous people, in which a man known as ‘William and Ann’ was severely injured; the spearing of a soldier in December 1797 by the Eora warrior Bennelong (c. 1764–1813), during the trial by combat of the Cadigal man Colebee; the shooting of three Indigenous men in April 1799 by the seaman Henry Hacking (1750–1831), after the people of the Hunter River region prevented settlers from gathering coal; and the spearing to death of a settler on the Georges River in May 1799.

³⁰⁶ Collins respectively describes occasions on which, in August 1798, December 1798, February 1799, and June 1801, high temperatures, drought, and strong winds caused natural fires.

³⁰⁷ Collins, ii. 199–201, 288–9, 334, respectively describes flooding on the Hawkesbury River in February 1799, the Georges River in March 1800, and on the Hawkesbury again in June 1801, with each inundation causing the loss of significant quantities of crops and livestock.

^{hh} Ib. 203.³⁰⁸

ⁱⁱ Ib. 272.³⁰⁹

As there are years in which the crop does not amount to above a third of what it does [in]³¹⁰ others,^{jj} hence to guard against dearth, if dearth could be guarded against, would require amply stocked *magazines*:—receptacles, in which, over and above the ordinary provision for an ordinary year, more than two thirds of a year's crop should be kept constantly in store.^{kk} The quantity of land cultivated on Government account not being yet so much as a tenth part of the whole quantity in culture,^{ll} it follows, that to make any tolerable provision against famine, two thirds of a crop, *plus* the nine-tenths of a crop, must be bought on Government account of the settlers, and a constant overplus to that same amount be kept up by the same means. Here then comes a constantly *real* necessity, for a prodigious quantity *apparently* superfluous. If the demands of this necessity are yielded to, then comes a proportionally heavy expence, and, in the natural course of things, suspicions at home in consequence, reprimands in consequence of these suspicions:—if, in consequence of these suspicions and reprimands, or otherwise, the demands of the necessity are not yielded to, then, on the other hand, comes *famine*:—nor that alone, but along with it the insufficient exertions in the way of expence, made, as heretofore, in fighting against the famine. *Beau jeu* in all this (your Lordship may perhaps observe) for opposition: if opposition were to find a glance to bestow upon such trifles, and if half a dozen thousand convicts in New South Wales were worth half the pains that have been seen to be taken about half a dozen seditionists, or supposed seditionists, in *Cold Bath Fields*.³¹¹—Is the necessary provision made? outcry

³⁰⁸ See Collins, ii. 203–4, referring to March 1799: ‘A destructive grub-worm was discovered in several parts of the cultivated ground; and at the Hawkesbury a caterpillar had commenced its ravages wherever it found any young grain just shooting out of the earth. This occasioned some delay in sowing the government ground.’

³⁰⁹ According to Collins, ii. 272–3, in November 1799 the colony's wheat crops ‘wore the most promising appearance, the stalks every where, particularly at the Hawkesbury, bending beneath the weight of the richest ears of corn ever beheld in this or indeed any other country’. The crops were then damaged by several days of heavy rain and gales, and when the weather cleared, ‘to increase the vexation, myriads of caterpillars were found destroying the young maize’.

³¹⁰ 1803 ‘on’.

³¹¹ Following the passage of the Habeas Corpus Suspension Act of 1794 (34 Geo. III c. 54), state prisoners—including United Irishmen and members of the London Corresponding Society—were imprisoned, amongst other places, in Coldbath Fields. The most notorious of Coldbath Fields' inmates was, perhaps, Edward Despard

against the *expence*:—is it withholden? then in God’s own good time comes the *famine*, which, if it were the fashion to look to any such distance, would be a still better thing than the *expence*.

ii Ib. 136.³¹²

^{kk} In my uninformed situation I should have found it a matter of extreme difficulty to make any thing like a tolerably correct calculation of the proportional quantity of provisions requisite to be kept in store. From this difficulty the passages in the first part of Captain Collins’s history relieve me in some measure, by fixing the quantity at a two years’ stock. In November 1789, this, in *fact*, was the proportion landed:^a and, as to *opinion*, in February 1790, after near two years’ experience, the same quantity ‘*at the least*,’ was what ‘the Governor, in all his dispatches, had uniformly declared the strong necessity of having in store for some time to come.’^b The date of this opinion (it may be observed) was a time at which the proportion furnished by the Colony itself was as yet but very inconsiderable: whereas by the last accounts, the quantity furnished by the Colony within the year, appears to have been nearly, if not completely, sufficient for the consumption of the year.³¹³ To state the question with perfect precision, would require more discussion than it were worth: but, at any rate, it does not appear that the demand for a *security-fund* of this sort is varied in any determinable proportion, by the difference respecting the *source* looked to for the supply. At the time of that calculation, the danger to be provided against was the danger of *non-arrivals*: at present, if the *internal* resources of the settlement are to be trusted to, and no more provisions are to be sent thither from *without*, the danger to be provided against is the *internal* danger—the danger composed of *non-production* on the one hand, and *destruction* on the other. The *two years’* provisions, spoken of as received in the Colony, almost two years after the arrival of the first and principal expedition, was (it should be observed) so much over and above whatever stock, was at that time expected, here at home, to have been raised within the Colony. The breeding part of the live stock (it may on the other hand be observed) is a

(1751–1803), Superintendent of Honduras 1786–9, who, with six of his alleged confederates, was hanged on 21 February 1803 for plotting to assassinate George III and lead a general uprising.

³¹² According to Collins, ii. 136, the harvest of December 1798 was a disappointment, ‘for, owing to a most tedious and unfortunate drought during ten months, the wheat did not turn out more than one-third of what, from the quantity of ground sown with that grain, there was a reasonable expectation of its producing, had the season been moderately favourable’.

³¹³ [ANNOTATION TO BE FINALIZED.]

resource capable of being added to the part destined for consumption, together with the vegetable stock in store.—True;—but the live stock itself depends upon the vegetable stock:—a bad crop may reduce, and in the same proportion—the men themselves, and the cattle that should feed them.

The natural course of things seems to be—that to save the *expence*—which is the *certain* evil, and that which comes most home to gentlemen here at home—the supply should from henceforward be kept constantly deficient:—the calamity, till it happens again, being as usual regarded as impossible. Of the two rival results—on the one hand, sufficiency and thence expence—on the other hand, deficiency and thence famine—that the famine should happen now and then, to thin the ranks and lighten the budget as before, seems at any rate the most convenient result, and so far the most probable. I speak of a *moderate* famine, of the customary established scantling: for if, instead of a fourth or so,³¹⁴ the whole population were to be carried off by this or any other cause at once, this would be a sort of innovation, it might possibly make a sensation, and it seems not improbable, that the beginning the business again *de novo*—an operation requiring thought—might find somebody to object to it.

It appears already, that an apprehended scarcity, such as that which struck off ‘a third of the ration’ in January 1800, had not been understood to warrant the Governor in forbearing to lessen the encouragement, the influence of which was all he had to trust to for any increase in the supply. It was but the month before, that ‘they were told,’ (the settlers in a body) ‘*to prepare for the reduction that would certainly take place in the next season.*’^c At this time there was ‘not more than’ *six* months’ ‘provisions in the store at full allowance:’ for in the next month (January 1800) when the reduction of the ration took place, there was ‘not more than *five*’^d and it was at the very moment of this declaration of scarcity, that an actual defalcation to the amount of five per cent.—an unpredicted, previous to the predicted one—was made from the price. Economy appears to have been at this time the *order of the day*: and the *order* must, humanly speaking, have come from gentlemen here at home. Men neither embrace starvation, nor any approach to it, unless forced. Is it natural, that when one Governor was not contented with less than a two years’ stock, another Governor should be so well contented with a five months’ stock, as to take precisely that time for reducing the only encouragement men had for raising more?

³¹⁴ Bentham perhaps had in mind the death during the voyage of about a quarter of the convicts who embarked on the Second Fleet: see p. 000 n. above.

*Supplement to Swift's Directions to Servants*³¹⁵—*King's Upper Servants*.—If you want to shew what credit you have with your Master, and how little you care for gainsayers, take as bad a measure as you can find, bad by repugnance to its pretended object, and doubly bad on account of the expence.—Then, to shew your economy, instead of giving the measure up, starve it with the people concerned in it; which saves so much expence.

^{ll} *Ib.* p. 334.

^a Collins, I. 83.³¹⁶

^b *Ib.* 97.

^c Collins, II. 274, 276.

^d *Ib.* 283.

So again, about the *Chandler's shop* already spoken of.^{mmm} Is the shop sent out thither and opened?—then again comes the expence in that shape. Are the Governor's promises on that head kept by gentlemen here, as in my instance, they have been keeping their own engagements for these nine years? then comes the impoverishment of the settlers—the already established reason for keeping up that enormity of price,ⁿⁿⁿ by which the expence is let in, and the public money let out, at another crevice.

^{mmm} *Ib.* 97.³¹⁷—*Supra* p. 000.

ⁿⁿⁿ 10s. per bushel, in December 1799; II Collins p. 276: in Norfolk Island 15s. in January 1799: *Ib.* 196.

It would be something, if, at any expence, the security could after all be purchased: but, as the security increases on one hand, so does the danger on the other. These magazines—are they scattered over the face of the country? so many stations, so many points to guard against depredation. Are they kept together in one mass? the more comprehensive then the destruction they are exposed to suffer, from the devouring flames. Each *Caligula* (in a state

³¹⁵ Jonathan Swift (1667–1745), writer, Dean of St Patrick's Cathedral, Dublin, was author of the posthumously-published *Directions to Servants In General; And in particular to The Butler, Cook, Footman, Coachman, Groom, House-Steward, and Land-Steward, Porter, Dairy-Maid, Chamber-Maid, Nurse, Laundress, House-Keeper, Tutoress, or Governess*, London, 1745.

³¹⁶ *Recte* 83–4.

³¹⁷ *Recte* 97–8, and p. 000 above.

of things capable of giving birth to many Caligulas) beholds his wish thus realized:—all heads standing upon one neck, and capable of being cut off at one stroke.³¹⁸ The supposition, can it, in *that* situation, be deemed a forced one?—Even in the mild climate of the Mother Country, when symptoms of dearth break out, does not the *actual cautery* stand, in the *materia medica* of the populace, upon the list of remedies?³¹⁹

But, not to speak of a whole stock of settlers, how should so much as a single settler, henceforward at least, ever find his way thither, without insanity on his part, or cruel treachery on the part of those who sent him?^{oo} No tolerably assured *source of supply*, either for accustomed comforts, or so much as necessary tools and implements:^{pp}—no tolerably assured *market for produce*, when raised:^{qq}—The chance depending in the first place upon the real wants of Government; in the next place upon the arbitrary will and pleasure of a single person, in a situation capable of making a tyrant out of a *Trajan* or a *Titus*.³²⁰ ^{rr} Storehouses and dwelling-places, requiring *repairs every year*,^{ss} and, even on those terms (such is the law of the climate) not capable of being made to hold together above *ten years*:^{tt}—*Property* (supposing it acquired)—*property* (not to speak of *person*) incapable of being *removed*, and exposed all the time to *depredation*, as well as to so unprecedented an assemblage of the causes of *destruction* as that referred to as above:³²¹—No stirring from home, without a *special licence*; an instrument to be inspected and confirmed every two or three miles, by a man who may not be to be found, or may refuse to look at it;^{uu}—every action of life, depending, ultimately or immediately, upon the caprice of a Governor, whose caprice is without controul, and whose whole course of government (as I propose to myself

³¹⁸ When the people favoured a party in opposition to him, Caligula threatened them with the words *utinam populous Romanus unam cervicem haberet*, i.e. ‘I wish the Roman people had but one neck’: see Suetonius, *De Vita Caesarum*, IV. xxx. 2, and Cassius Dio, *Roman History*, LIX. xiii. 6.

³¹⁹ [ANNOTATION TO BE FINALIZED.]

³²⁰ Marcus Ulpius Traianus, known as Trajan (53–117), Emperor of Rome from 98, and Titus Flavius Vespasianus, known as Vespasian (9–79), Emperor of Rome from 69, had a reputation for justice. The historian Flavius Eutropius (*Breviarium Historiae Romanae*, VIII. 2–5) wrote of Trajan that, ‘So much has the fame of his goodness prevailed, that it affords ground for most noble illustrations in the hands either of such as flatter, or of such as praise with sincerity’, while Suetonius (*De Vita Caesarum*, VIII) praised Vespasian for his humility, leniency, patience, and generosity.

³²¹ See pp. 000 above.

the honour of stating to your Lordship ere long)³²² is one unintermitted, howsoever excusable, violation of law. While a nich in a rock is to be had in *Nova Zembla*,³²³—I beg leave to ask, my Lord—could a man in his senses, supposing him apprized of all these circumstances, regard any otherwise than with abhorrence, the idea of becoming a settler in New South Wales?—in a country, peopled almost entirely with ‘characters,’ the importation of whom into any other ‘community,’ though it were in the smallest numbers, is compared, by the chief Magistrates, to the ‘importation of the plague, or the yellow fever?’^{vv}

^{oo} Lett. I. p. 000.

^{pp} Collins II. 92. 105. 114. 205. 269. 274. 305.³²⁴

^{qq} *Ib.* 106.³²⁵

^{rr} *Ib.* 126. 269. 274. 276.³²⁶

^{ss} *Ib.* 139.³²⁷

^{tt} *Ib.* 135.³²⁸

³²² See ‘Plea for the Constitution’, pp. 000 below.

³²³ i.e. Novaya Zemlya, an archipelago in the Arctic Ocean, off the north Russian coast.

³²⁴ Collins, ii. 92–3, 105–6, 114, 205–6, 269, 274, 305, describes the complaints made, during 1798, 1799, and 1800, by settlers at the Hawkesbury River and at Norfolk Island, of their being unable to afford to harvest their crops or purchase basic necessities. Such were the debts under which many settlers laboured that they had been forced to mortgage their crops, and a number had been imprisoned for debt.

³²⁵ Collins describes how in April 1798, despite repeated orders being issued to the storekeeper at the Hawkesbury River settlements to show favour to ‘petty farmers’ when purchasing grain for the public stores, the trade had been monopolised by two or three ‘opulent traders’. See also p. 000 above.

³²⁶ Collins describes measures taken by the colonial government in September 1798, and October and December 1799, to encourage the breeding of livestock, and its attempt to reduce the fixed price at which the government purchased grain from settlers.

³²⁷ Collins describes how, during December 1798, people were employed in whitewashing and ‘repairing such of the buildings as required it’ and notes that such ‘attention’ was ‘highly necessary at least once in every year, for the preservation of works’.

³²⁸ Collins, ii. 135–6, describes the decision made, during December 1798, to pull down Government House at Parramatta after it was found to be beyond repair.

^{uu} *Ib.* 26. 295.³²⁹

^{vv} *Ib.* 294.³³⁰

After the view already given of the establishment, with reference to the avowed, or at least only avowable, ends of its institution,³³¹ the sketch likewise given of the *eventual* probability of its destruction, would to some eyes be productive not of regret, but satisfaction: a satisfaction the more complete, the nearer that probability were looked upon as approaching to certainty. The worse the system, the more fortunate that the maintenance of it should be thus hopeless:—Once admitted, this hopelessness would ease gentlemen of the responsibility, save them the expence of thought, relieve them from the burthen of reflection and debate. Such I am inclined to think would be the effect of the picture on some eyes:—whether your Lordship's be or be not of the number, is a point altogether above the reach of the best observations, that can possibly be made from so humble an observatory as mine.

XVI. English Hulks—and 'improved Prisons'—Topics deferred.

After so much as has been said of the two specially contrasted systems—the system of *Penal Colonization* on the one hand—the *Penitentiary System* in its most improved realized form, as likewise in its supposed still more improved, though as yet unrealized form, on the other—a supplement of a very moderate length would suffice to complete the review of the several modifications of *chronical* punishment, that have as yet been either exemplified or proposed, among Britons and men of British race.—*Hulks* and '*Improved Prisons*,' are the

³²⁹ Collins describes how, in March 1797 and May 1800, government orders were issued requiring all individuals, except officers, to carry a passport when travelling between districts, and to present it to constables upon request. See also p. 000 above.

³³⁰ Collins, ii. 293–4, describes a letter received in New South Wales in May 1800 from Richard Wellesley [formerly Wesley] (1760–1842), second Earl of Mornington and first Marquis Wellesley, Governor-General of Bengal 1798–1805, later Foreign Secretary 1809–12, containing a list of people living in Calcutta who had travelled there from New South Wales. Wellesley requested information as to whether any of these individuals had left Sydney before their sentences had expired, and though none were found to have absconded, Collins exclaims, 'what community, where honesty and morality were cultivated, would not deprecate even the possibility of such characters mixing with them, with as much earnestness as a people in health would dread the importation of a plague or a yellow fever!'

³³¹ See pp. 000 above.

heads, under one or other of which all the yet remaining matter might be comprized. Principles being already laid down, a small number of additional pages would suffice for the application of them to these two topics. At present however—considering how large the draughts are, which I have been venturing to draw already, upon a time so precious as your Lordship’s—how complete the uncertainty is, to a man at my humble distance, in what proportion, if in any, this or any such draughts from any such quarter will ever be honoured;—considering with what imperturbable serenity your Lordship was pleased to view the *outline*,³³² which it has been the business of this and the former letter to fill up—how incapable it was of producing on your Lordship’s part any other perceptible effect, than a philosophical reflection on the supposed frame of mind by which some other papers that accompanied it were supposed to have been produced;³³³—considering how impossible it is for me to know, or so much as to conjecture, whether the lot of convicts, or that portion of public security which depends upon the disposal of them, has ever yet been regarded, or is ever destined to be regarded, as worth a moment’s thought, either by your Lordship, or by any of those other exalted persons, with whom when any thing is acted your Lordship acts;—considering how much easier in certain circumstances repose is than action, silence than justification or even excuse;—taught, by a course of nine years’ experience,³³⁴ how much superior your Lordship’s situation is to every level of practical responsibility—how much inferior mine, and every public subject that has the misfortune to be connected with it, is, to every level of effectual and exigible right;—recollecting, with an emotion of not altogether uninterested sympathy, the mortification experienced by the well-bred visitor at *Mrs. Salmon’s* circle, whose homage to a well-dressed lady was not sufficient to procure him the return so much as of a nod;³³⁵—putting all these things together, my Lord, I have determined to consult my own ease at least, whether your Lordship’s be or be not connected with it, by reserving to an occasion of future contingency what little may require to be said on those other uninteresting topics above glanced at;³³⁶—and accordingly for the present, waiting with

³³² See pp. 000 above.

³³³ See p. 000 above for Pelham’s comment on Bentham’s ‘frame of mind’.

³³⁴ i.e. since the passing of the Penitentiary Act of 1794.

³³⁵ Mrs Salmon (c. 1670–1760), exhibitor and wax portraitist, and her husband ran a waxwork exhibition until 1710 at the Golden Ball, St Martin’s-le-Grand, and from 1711 at Fleet Street. Upon her death, the exhibition was taken over by a surgeon named Clarke, and in 1795 it moved to premises on Inner Temple Lane.

³³⁶ For Bentham’s ‘Third Letter to Pelham’ on the hulks and ‘improved prisons’ see pp. 000 below.

the necessary resignation that nod, which at one time it was said to be in your Lordship's contemplation to bestow,³³⁷ I have the honour once more to subscribe myself,

For the layout of the valediction below, please see hard copy, p. 000.

MY LORD,

Your Lordship's most obedient and humble Servant,

JEREMY BENTHAM.

Queen's Square Place, Westminster,

17th December, 1802.

³³⁷ In his letter to Bunbury of 19 August 1802, Pelham promised to 'apply my mind to the subject [i.e. the panopticon prison], and endeavour to get something settled before the meeting of Parliament': see p. 000 above.