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'Inspection, the only effective instrument of reformative management'

Bentham, surveillance, and convict recidivism in early New South Wales

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In 1802–3, Jeremy Bentham produced an extended critique of penal transportation in general, and of the colony of New South Wales in particular, in a series of public letters to the Home Secretary, Lord Pelham.¹ By that date Bentham had been advocating for the construction of panopticon penitentiaries under his management for over a decade. On this occasion his tirade was inspired by a Home Office review which found that the 'improved state' of the colony made his proposals unnecessary.² Dissenting strongly from the Home Office's position, Bentham argued that New South Wales was inferior to imprisonment, especially in a panopticon, in relation to five 'ends of penal justice'. These were: setting an 'Example' to others, 'Reformation' of the offender, preventing recidivism through 'Incapacitation', providing 'Compensation' to the victim, and ensuring 'Economy' for the state.³ In particular he stressed that 'Inspection' was 'the only effective instrument of reformative management', and he contrasted the 'frequent and regular inspection' of penitentiaries in general, perfected in his ideal panopticon, with the penal colony's 'radical incapacity of being combined with any efficient system of inspection'.⁴ In his view, the nature of convict life and labour in the distant colony made systematic surveillance impossible, not least because it depended on the rigour of private masters who were not subject to meaningful oversight.⁵ Drawing on David Collins's published

accounts of the colony, Bentham found abundant evidence that '*reformation* [was] replaced in New South Wales by *corruption*' and that this explained the persistent viciousness and criminality of the convicts.⁶ Concern about reform and recidivism was thus essential to his attack on the penal colony.⁷

These were not new arguments. Through three prior decades of writing about criminal justice, transportation and the panopticon Bentham had developed his theory that genuine reformation depended upon close surveillance of deviants who, through certainty of both punishment and reward, would reform themselves. In his view, a remote penal colony could not provide the intricate systems required to ensure that convicts were reformed by their punishment and prevented from reoffending on their release. But this careful theorizing rested on weak foundations because Bentham had not visited and did not understand the penal colony. Contemporary observers, including Bentham's chief source of evidence, David Collins, had a much more nuanced view of the challenge of reforming convicts. Drawing on this evidence, we argue that during the period Bentham was writing, the penal colony was more often perceived as an effective reformatory, with relatively low rates of recidivism, in part because the convicts were not always under surveillance.

This argument draws on recent literature on convict reform and recidivism, centred on John Braithwaite's 2001 article, 'Crime in a Convict Republic'.⁸ Braithwaite identifies a broad five stage model of the historical development of state regulation commonly adopted by sociologists and criminologists: (i) pre-state restorative justice; (ii) weak state corporal and capital punishment; (iii) strong state professional policing and penitentiaries; (iv) welfare state discipline and reform; and (v) contemporary regulatory state. He argues that convict transportation usefully troubles this schema and can help to 'de-centre the penitentiary, and indeed punishment, in the history of regulation'.⁹ He rejects Michel Foucault's emphasis on discipline as the distinctive feature of modern social control, a theory he sees as grounded in Foucault's unawareness and neglect of transportation.¹⁰ For Braithwaite, transportation was evidence of a sixth stage of regulatory development, located between the 'Bloody Code' and the penitentiary, focussed on exile as both a form of imperialism and a means of restorative justice that reintegrated convicts into a new colonial society.¹¹

A central element of Braithwaite's theoretical interpretation is the argument that the Australian colonies were effective reformatories where the 'convicts and their children turned away from a life

of crime'.¹² In contrast to American slavery, the convict system was 'more procedurally fair' and Australia (largely) avoided rebellion and revolution 'because ... convicts had hope, a stake in the future' and in general 'worked shorter hours, were better housed, better clothed, and had better access to medical care than both American slaves and free English workers'. Convicts were largely 'repeat offenders [and] probably serious recidivists' but not 'dangerous people, [nor] members of a criminal class'. Colonial conditions, especially labour shortages, caused the authorities to treat most convicts as workers, not prisoners, and incentivized them accordingly. Combined with 'high levels of reintegration [and] high levels of procedural justice', these conditions led to rapid and striking declines in crime rates in the second half of the nineteenth century. Although a significant minority of transported criminals were brutalized into greater defiance, most were sufficiently reformed to live out their lives as free citizens.¹³

Braithwaite's argument is, deliberately, a general theory of convict reform that emerged from his larger project of advocating reintegrative shaming as a means to shift contemporary criminology away from punitive punishment and towards restorative justice.¹⁴ As such it has come in for criticism from a number of historians specializing in crime and convictism who point to significant exceptions to the broad thesis, and who in some cases argue that the overall theory is wrong. Barry Godfrey and David J. Cox have compared court data from Hobart, Freemantle and Perth, rates of imprisonment in New Zealand, Australia and England, and a detailed cohort study of the convicts on the 'Last Fleet' – the *Hougoumont*, the final ship to bring convicts to Australia in 1868 – to draw a more nuanced picture of convict reform. They found that 'processes of integration had supported a general desistance from [serious] crime among the convict population' but that 'convicts did ... contribute significantly to the high levels of crimes of minor violence, minor property offences and public disorder'.¹⁵ In a recent update to this work, Godfrey explored the 'natural experiment in punishment' between 1850 and 1868 when men convicted of similar crimes could be either sent to prison in Britain or transported to Western Australia. He shows that the two cohorts were broadly comparable in severity of offences and were each subject to a progressive system of stages of punishment, culminating in the Ticket-of-Leave, which was theoretically designed to incentivize reform. He finds that '[r]e-offending was rife in both Western Australia and Britain' and suggests that 'numerous, but statistically quite small, individual examples of Australian convicts "making

good” may have blinded historians and criminologists to the reality of life for the majority of transported convicts’.¹⁶

Godfrey explicitly frames this natural experiment as a test of Bentham’s views in *Panopticon versus New South Wales*. But Bentham, had he lived to see it, would have been highly unlikely to accept that the system of imprisonment in question lived up to his panoptical ideal. More importantly for our purposes, Godfrey contrasts a radically different system of transportation to that which Bentham critiqued. The half-century between them made a great deal of difference. As Godfrey shows, convicts under assignment in Western Australia were subjected to a strict regime of surveillance by a professional police force and an efficient and practiced bureaucracy. But the penal colony Bentham attacked was of a very different time and place. Early New South Wales, in its first two decades, was a new experiment, uncertain and undeveloped, struggling to effectively monitor its residents – both free and bond – in large part due to an inability to control movement and to develop a nascent convict-information state.¹⁷ Furthermore, while Godfrey may be correct that English governments ‘paid very little attention to recidivism’ until after 1850, it is certainly not true of ‘penal theorists and proto-criminologists’, since Bentham’s panopticon was explicitly designed (in part) as a solution to that problem.¹⁸ We now turn to Bentham’s criminal justice corpus, to show how he understood the questions of recidivism and convict reform and how he applied these ideas to New South Wales.

Bentham, inspection, and reformatory punishment

Bentham had been concerned about the problems of punishment and reform for three decades before he wrote his pamphlets attacking New South Wales.¹⁹ In manuscripts from the 1770s and 1780s he laid out a utilitarian theory of punishment, starting from the premise that all punishment ‘is an evil’.²⁰ On this basis he sought to outline the legitimate justifications for this evil, and argued that the ‘chief end’ of punishment ought to be the ‘general prevention’ of offences, but that it should also aim at the ‘incapacitation, reformation, and intimidation’ of the ‘particular delinquent’ and at ‘compensation to the party injured’.²¹ Importantly, with reference to prevention, Bentham stressed a distinction between superficial and genuine reform, criticizing punishments that ‘render those who undergo them still more vicious’:

All punishment has a certain tendency to deter from the commission of offences; but if the delinquent, after he has been punished, is only deterred by fear from the repetition of his offence, he is not reformed. Reformation implies a change of character and moral dispositions.²²

This distinction between apparent and actual reform would prove essential to his attack on New South Wales as a failed reformatory.

Genuine reform, in Bentham's analysis, was best achieved through a careful focus on the motive of the original offence, operating from the core utilitarian principle that '[p]ain and pleasure are the great springs of human action'.²³ Property crime was chiefly motivated by 'rapacity' – the 'pecuniary interest' turned to bad ends – and 'indolence' – the 'love of ease' likewise. The best means of reforming these bad motives, he said, was through 'penal labour'.²⁴ On this basis he identified only two forms of punishment capable of achieving genuine reform: imprisonment and hard labour. Prisons could only reform offenders when they successfully inspired 'penitent reflections' by combining moral and religious instruction with the use of motivating hardships, specifically 'solitude, darkness, and hard diet' which produced a 'gradual and protracted scene of suffering'.²⁵ But the general practice of imprisonment employed in England was 'directly opposed to reformation' since the 'promiscuous association of prisoners' strengthened their 'rapacious' motives, diminished moral and religious restraints, and improved their criminal skills, functioning as 'schools of vice'.²⁶ Labour was the other effective form of reformatory punishment since 'force of habit' would 'reconcile and accommodate' criminals to industriousness that they would retain when they were 'left to work at liberty and by choice'.²⁷

Even before the colony was founded or the panopticon proposed, Bentham applied this critique to transportation. In 1778 he produced a pamphlet on the recent hard labour bill (drafted in response to the suspension of convict transportation to the American colonies), arguing that the former system of transportation to America was inadequate 'for the purposes of example and reformation', and offering qualified praise and suggestions for improving the proposed system of imprisonment in penitentiaries.²⁸ Importantly, in this work he also demonstrated his earliest concern with the problem of recidivism. Praising the plan to grant convicts a certificate of good conduct (where appropriate) and a supply of clothing and money, on their release from the prison, Bentham noted that it was very difficult for released convicts to find honest work,

and that the system of certificates would, perversely, exacerbate this problem since 'the denial of such a certificate ... amounts in fact to a certificate of the contrary'.²⁹ He thus suggested that either convicts be detained until their conduct was certified, or that those without a certificate be compulsorily enlisted into the military. In manuscript writings from 1782 for 'Indirect Legislation' he expanded on these ideas, noting that many convicts 'were bred up in thieving and have no other trade' and so should be classed with other 'dishonest or suspicious' indigents and confined to institutions where they would be made to work for their keep.³⁰

These ideas about reform and recidivism were also central to his panopticon writings. Bentham argued that his 'simple idea in Architecture' and the 'inspection principle' it facilitated were applicable to 'all establishments whatsoever in which ... persons are meant to be kept under inspection', but stressed its value as a means of reforming convicts.³¹ In particular, he emphasized the provisions for ensuring solitude and promoting industriousness. In contrast to most contemporary penologists who advocated monotonous labour to encourage repentance, he proposed that prisoners be free to choose their trade and meaningfully remunerated for their work, since this would incentivize them to reform and provide them with useful skills that would discourage recidivism.³² He also expanded on his suggestions for monitoring convicts on their release. To 'ensure ... at the least expense, their good behaviour and subsistence', convicts should only be discharged into the military, or bound into service to either a 'responsible householder' or a private contractor who paid a recognizance for their good behaviour.³³ This would ensure that even if convicts were not genuinely reformed, they could not reoffend: 'be [they] ever so incorrigible, the public will have nothing to fear from [them], since, till [they have] given satisfactory proof to the contrary, [they] will not be let loose'.³⁴

Bentham's ideas continued to develop in his writings over the next decade, during which he vainly sought a government contract to build and run a panoptical penitentiary.³⁵ In drafts towards a penitentiary bill in 1794 he further elaborated his proposals for an institution to house discharged prisoners, which he now termed a metasylym. This was to be a privately run, panoptical workhouse into which released convicts, who declined to go into the military and could not find a private employer (willing to pay a bond for their good behaviour), would be discharged. The metasylym was governed by a complex (and typically Benthamite) system of bureaucratic rules

designed to prevent the possibility of recidivism. Convicts would be given an identifying tattoo on their upper arm, their records would be scrupulously maintained and circulated to relevant county and parish authorities, they would only be entitled to leave after three consecutive years of certified good behaviour, and would subsequently be required to carry a discharge certificate to avoid re-arrest as a suspected escapee.³⁶ These extreme provisions reflected the fact that the contractor of the metasyllum – Bentham proposed himself – would be responsible to the government for the conduct of prisoners under his charge and bound to pay compensation for any further crimes they committed on release.

Similar ideas were reflected in Bentham's contribution to the 1798 Select Committee on Finance, which was largely concerned with the growing expenditure on criminal justice. The two key witnesses to the Committee were Bentham himself and the police reformer, Patrick Colquhoun, a magistrate and active supporter of Bentham's panopticon plans (he also collaborated quietly with Bentham on legislation for the Thames River Police in the late 1790s).³⁷ Bentham stressed the advantages of panopticons over transportation, noting that he would 'make himself personally responsible for the reformatory Efficacy of his Management'.³⁸ The Committee suggested that this concern for the problem of recidivism was the source of the 'great and important Advantages' of the plan over transportation and recommended proceeding with the construction of panopticon penitentiaries as 'a new and less expensive mode for employing and reforming convicts'.³⁹ This view was informed by Colquhoun's observations of the persistence of recidivism in London and his fulsome endorsement of Bentham's plans.⁴⁰ Colquhoun even went so far as to claim that all the convicts who had returned from New South Wales had resumed a life of crime. If he and Bentham were to be believed, there was nothing about transportation or the convict colony that could serve any of the core ends of penal justice.

From its earliest origins, Bentham's critique of New South Wales was framed in terms of inspection and reform. In his published proposal for the panopticon, he noted that the early evidence of immorality in the colony demonstrated that convicts were not genuinely reforming:

2000 convicts of both sexes, and 160 soldiers ... jumbled together in one mass, and mingling like beasts: in two years, from fourteen marriages, eighty-seven births; the morals of Otaheite introduced into New Holland by the medium of Old England.⁴¹

The connection between this apparent sexual dissipation and criminal recidivism was not detailed, but Bentham proposed that the chances of reforming convicts in New South Wales were undermined by a number of factors unique to the colony.⁴² His 'Letters to Lord Pelham' expanded on this, arguing that '[d]elinquents, especially of the more criminal descriptions ... may be considered as persons of unsound mind ... [or] a sort of grown children' necessitating 'particularly close inspection ... [and] preventive coercion'.⁴³ However, convicts in New South Wales, employed in forms of agricultural labour and accommodated in private huts, were only under 'imperfect, interrupted, and accidental' inspection. Subsequently, there was 'no preventive check to [their delinquent] propensities', leading to 'those vicious habits which are regarded as the immediate sources of crimes'.⁴⁴ In particular, he noted the lack of adequate religious instruction, and the 'sinister fidelity' and '*antipathy* to Government' harboured by the convicts, which corrupted even honest men.⁴⁵

According to Bentham, the evidence of this failure to reform was abundant. He cited numerous examples of convict immorality and criminality, largely drawn from the recently published work of David Collins, now returned to England after serving eight years as the colony's chief law officer. Bentham read Collins's *Account of the English Colony in New South Wales* as an eye-witness chronicle of the 'promiscuous and unbounded association [of convicts], joined to much opportunity of sloth and to unbounded drunkenness'.⁴⁶ It appeared to him to demonstrate that New South Wales was a comprehensive failure as a reformatory, since 'the longer [convicts] stay in that scene of intended reformation, and the more they are left to themselves ... the worse they are'.⁴⁷ For Bentham, Collins's *Account* definitively proved that the colony was overwhelmed by the crimes of recidivist convicts, thus proving his theories about the necessity for close inspection to ensure reform.

Bentham and recidivism in Collins's New South Wales

However, Bentham's flawed approach to his evidence fatally undermines his claims about New South Wales. His use of Collins was selective, and his interpretation often depended on reading the *Account* against the grain. As R.V. Jackson has observed, Bentham wrote as 'an "enemy" of the convict colony ... [and his] interpretation of the evidence ... was often strained and sometimes in error'.⁴⁸ In particular, he lacked insight into Collins's position and the actual operation of the colony.

Collins was a career soldier who had travelled on the 'First Fleet' as Deputy Judge Advocate to take charge of a nascent Court of Criminal Jurisdiction and to act as a magistrate, despite the fact he had no judicial training. He was thus central to the administration of justice and discipline, in its various forms, throughout the early period of the colony's existence.⁴⁹ The first volume of the *Account* was written after his arrival home in 1797, amid a series of financial and career setbacks, and his stated aim was to document the formative 'transactions' of a bold and eclectic colonial experiment, 'penned as they occurred'.⁵⁰ It was a reputable and popular work of travel and imperial literature, marketed as an eyewitness account of the unprecedented and macabre challenges of colonizing with criminals. Following its success, a second volume, published in 1802, covered a period from September 1796 to October 1800. Collins was not a witness to the events he related in the second volume, though he claimed to have privileged access to authentic materials, principally from Governor John Hunter.⁵¹ While Bentham's first letter to Lord Pelham largely depended on Collins's eyewitness accounts in volume one, the examples relied on in the second letter were drawn from the second-hand material of volume two.⁵²

Given Collins's role in the colony, it is unsurprising that crime and its consequences feature heavily in the *Account*. He recorded the Governors' orders and reported on almost every major crime, its investigation and punishment; indeed, the term 'punish' and its variations appear almost 200 times in volume one alone. It is however the minutiae that are most impactful and that Bentham relied upon – the continuous flow of minor details about convicts not doing their work, getting drunk, showing insolence, thieving and fighting, and the number of lashes awarded on each and every occasion. The latter Collins related assiduously, if not obsessively. The detail reflected his role in the settlement and his own particular vantage point, although not everyone was impressed by the tone of the work. Later, an abridged edition of the *Account*, edited by Collins's wife, omitted much of that detail for being too 'distressing and tedious'. These changes pleased one reviewer who thought the abridgements 'relieve[d] the History of the Colony from that striking resemblance, which ... [it previously] bore to the form of a Newgate Calendar'.⁵³

Nonetheless, in the preface to the first volume, Collins recorded his intention to give 'some account of the gradual reformation of such flagitious characters' who had been written off by his countrymen as 'being past the probability of amendment'.⁵⁴ To that end, he cited

Dr Samuel Johnson's essay on the 'Different Degrees of Virtue' ('Let none too hastily conclude that all goodness is lost, though it may for a time be clouded and overwhelmed'). Collins intended to defy those bigots who could not countenance criminal reformation as a genuine phenomenon, and he reported that the colony was 'in some instances *reforming* [convict] dispositions, and in all cases rendering their *labour* and talents *conducive* to the public good'. Though he began the second volume with regrets 'that a soil of so much promise has not produced better fruit', he called for patience, prophesying that 'much may yet be effected'.⁵⁵ However, Bentham dismissed Collins's claims as the wishful thinking of a 'professed panegyrist', claiming that 'as to any evidence of [convict] reformation ... it is all of it in his [Collins's] wishes, there is none of it in his book'. Bentham was adamant that there were hundreds of recidivists for every individual who reformed.⁵⁶

There certainly is some basis for Bentham's assessment. At times Collins was quite unequivocal in his disdain for convicts and in his disbelief that any change in character was at all possible. Frequently, such sentiments grew out of moments of sheer frustration and fatigue since at times the state of affairs in early New South Wales appeared as mayhem, descending into the types of disorder and profligacy that many contemporary readers expected of a congregation of criminals in exile. On almost every page of the *Account*, convicts went missing. Stock was stolen, huts were broken into, gardens were plundered, and public stores were purloined. When the Criminal Court was convened to 'check these enormities', the combination of severe punishment and strategic mitigation did little good.⁵⁷ Characteristically, Collins was quick to blame the criminals themselves, there being 'among us some minds so habitually vicious' that no threat or incentive 'was of any weight'. No matter how severe the penalties, there seemed to be those who 'committed thefts as if they stole from principle'.⁵⁸ Attempts to shame the offenders – such as having a woman's crime painted across her frock – had little effect, for these people had 'too long been acquainted with each other in scenes of disgrace, for this kind of punishment to work much reformation among them'.⁵⁹ After one busy Criminal Court session, which was distinguished by a punishment of 800 lashes for an attempt to commit bestiality, he opined:

How unpleasing were the reflections that arose from this catalogue of criminals and their offences! No punishment however exemplary, no reward however great, could operate on the minds of these unthinking people. Equally indifferent to the pain which

the former might occasion, and the gratification that the other might afford, they blindly pursued the dictates of their vicious inclinations, to whatever they prompted; and when stopped by the arm of justice, which sometimes reached them, they endured the consequences with an hardened obstinacy and indifference that effectually checked the sensations of pity which are naturally excited by the view of human sufferings.⁶⁰

But Collins's *Account* also presents much of this recidivism – if that is what it was – as a product of the extraordinarily harsh conditions and exigencies of the fledgling settlements. Crime and ill-discipline thrived in a 'season of general distress'. Hunger served to aggravate and revive old criminal propensities, for 'while there was a vegetable to steal, there were those who would steal it'.⁶¹ And Collins was not alone in making such observations. As fellow marine officer Watkin Tench noted, 'the first step in every community, which wishes to preserve honesty, should be to set the people above want. The throes of hunger will ever prove too powerful for integrity to withstand'. The result, in early New South Wales, was 'a repetition of petty delinquencies, which no vigilance could detect, and no justice reach'.⁶² Governor Arthur Phillip summarized the situation in much the same way. There were 'very few crimes' in his colony 'but what have been committed to procure the necessaries of life'.⁶³ These eyewitnesses agreed that the travails of founding a remote colony were simply not conducive to moral regeneration. But their explanation was significantly different from the motives of 'rapacity', 'pecuniary interest' and 'indolence' which Bentham believed turned men and women into thieves.

In passages that undoubtedly piqued Bentham's interest, Collins also frequently blamed lawlessness on a lack of surveillance, notably 'the want of proper overseers' and the reliance on 'people selected among themselves' to act as figures of oversight and authority.⁶⁴ The problem of monitoring movement – what Collins called 'the impracticability of keeping the convicts within the limits prescribed for them' – was the colony's quintessential weakness and significant difference from a panopticon.⁶⁵ On this count, Collins's narrative provided Bentham ample scope for comparison and scorn. In New South Wales there were mass abscondings and attempts to exist in what historian Grace Karskens describes as the 'nefarious geographies' outside the limits of the settlements.⁶⁶ The ruthless bush and its Indigenous owners provided imperfect prison walls. But the more consistent and niggling problem lay in preventing convicts from taking small,

daily liberties unobserved. 'Frequent and regular inspection', such as Bentham demanded, was impossible.

However, the colonial authorities crafted their own solutions, including extensive (though often failed) efforts to monitor convicts through a system of certificates and passes, weekly musters and dissemination of orders through the *Sydney Gazette*.⁶⁷ The particular problem of convicts leaving their huts at night led to the first establishment of a 'night-watch' in Sydney, staffed by select convicts after the military refused to serve, and the division of the settlement into discrete patrolling districts.⁶⁸ Collins, in considerable detail, explained this expedient as a means of rehabilitating convicts, for though they might suffer the 'scorn of their fellow-prisoners', convict constables could experience 'a pride in being distinguished from their fellows, and a pride that might give birth to a returning principle of honesty'.⁶⁹ The impact of the night-watch, in both deterring crime and detecting it, was quick and pronounced, and was noted by numerous observers.⁷⁰ Indeed, Collins suggested that 'many streets in the metropolis of London were not so well guarded and watched', a comment Bentham tellingly ignored.⁷¹

Bentham's treatment of colonial policing and surveillance perfectly illustrates his selectivity and bias. Rather than evidence of efficiency, he argued that Collins's persistent references to crime demonstrated 'either extreme negligence, or complicity with the malefactors' on the part of the constables, and claimed that Collins had reported that constables 'had been *tampered with ... to neglect their duty*'.⁷² In fact, Collins simply quoted from an order issued by Governor Hunter, in which the concern was not with the constables in general but the specific negligence which had resulted in 'frequent escapes' from the Sydney gaol.⁷³ In general, Hunter shared Collins's enthusiasm for the effectiveness of his police. He reported that they had saved the colony from being 'plung'd' into a 'dreadful state of wickedness and profligacy' and that in consequence of their watchfulness 'every inhabitant can now sleep in security'.⁷⁴ The Colonial Office was also impressed, urging that Hunter standardize the collection of police reports to ensure 'the establishment of future order and regularity'.⁷⁵ Similarly, Bentham misrepresented Collins's concerns about the pass system.⁷⁶ Writing about a spate of robberies in the colony in mid-1799 and the ongoing problem of 'wandering pests', Collins opined that 'the regulations which had long since been established as a check to such an evil' were being 'wholly disregarded', a remark Bentham cited with glee.⁷⁷ But Bentham ignored Collins's previous sentence which reported that in response to Hunter's orders, 'several idle people ... were apprehended ... [and]

ordered to labour in the gaol gang'.⁷⁸ Collins's regular reporting of crimes and punishments probably owed much to the high detection and apprehension rates effected by the new constabulary.

Bentham certainly mischaracterizes Collins's assessment of colonial policing and surveillance. Collins constantly cited the constables' work in detecting and preventing crime, and described the election of constables as 'introducing something like a system of regularity' to the colony.⁷⁹ In a particularly clear example, ignored by Bentham, Collins reported concerns in February 1800 about increasing numbers of 'idle and suspicious persons' committing robberies in Sydney at night, which prompted orders for the military 'centinels on duty' to require a 'counter-sign' from those out after ten o'clock, and 'very strict' patrols by the constables, leading to the arrest of a group of 'Irish prisoners'.⁸⁰ In Collins's view, no doubt echoing his own source, there was a great 'improvement' in the organization of the 'civil police' during Governor Hunter's term which 'considerably checked the commission of robberies of every kind'.⁸¹ In contrast to Bentham, Collins had a measured and pragmatic view of colonial policing. He was well aware of the problems posed by the reliance on convicts and ex-convicts, and the difficulty of monitoring convict movements, but he also understood how effective these measures were in creating a more orderly society and reducing recidivism.⁸²

Overall, although he was neither primarily interested in the colony as a reformatory, nor easily capable of transcending the prejudices of his time and class, Collins was inclined to moments of generosity and optimism. His observations featured a certain authenticity and matter-of-factness that sets his account apart from Bentham's ideological and self-serving take on the convict colony. Although the general picture Collins painted seemed messy, at times even ugly, yet he could concede that convicts 'conducted themselves with more propriety than could have been expected from people of their description'.⁸³ Reading his *Account* gives a very different picture of the colony, and of convict recidivism, than Bentham's polemical interpretation.

New South Wales as an effective reformatory

Bentham did not solely rely on Collins in painting his censorious picture of the colony, but he employed a similarly selective and partial approach with his other sources. For example, he cited a private letter written by Governor John Hunter to Samuel Bentham (Jeremy's younger brother)

in May 1799, in which Hunter described the colony as ‘a good country [that] will do well’. Bentham, however, focussed instead on the Governor’s caveat that progress would be swifter if the British government were ‘prevailed upon not to overstock us with the worst description of characters’.⁸⁴ This was hardly a definitive statement of Hunter’s views on transportation and the colony. He used roughly the same language in a communication to the Home Secretary at around the same time, when deriding the colonial workforce as a means of undermining the money-making schemes of local capitalists.⁸⁵ In fact, he was less troubled by the numbers of convicts arriving than by the fact that he was not always receiving records of their sentences.⁸⁶ He was loudly scathing and resentful of Irish ‘transports’.⁸⁷ But Hunter’s greater concern was not the character of the convicts who were arriving, but the ‘turbulent conduct’ of the emancipists who were boasting that they were now ‘free men and wou’d do as they pleas’d’.⁸⁸ Otherwise, his official communications blamed the colony’s woes on a severe drought, rampaging bushfires and a small clique of elite opponents who were thwarting him at every opportunity. Nevertheless, Bentham took Hunter as a key witness to the failure of the convict colony. In a flight of rhetorical exuberance, Bentham claimed that the colony’s current state was the work of the devil and that Hunter’s testimony indicated that the colony’s only ‘chance of improvement’ was for transportation to cease.⁸⁹

Bentham’s characterization hardly represented Hunter’s views, which were formed on the ground. As with all the early governors, Hunter began his tenure in 1795 critical of his predecessors’ mistakes and confident in his own capacity to make the colony serve as an effective reformatory. Hunter in fact went to some lengths to publicize his achievements, having a number of leading citizens testify that his reforms had rescued the colony from a state of ‘riot and dissipation, and licentiousness and immorality’.⁹⁰ In a pair of despatches written a little over a year into his term, he lamented that the ‘original discipline of the colony is sadly relax’d’, due to ‘private speculation and traffic’, but hoped to restore good order through his vigorous reforms.⁹¹ By the time of his letter to Samuel Bentham in 1799, he was defending himself from anonymous charges of corruption and maladministration, and it is in this context that he privately and publicly complained about the growing numbers of ‘idle and worthless’ former convicts who refused to work and were responsible for a spate of property crimes.⁹² But reflecting on the colony with the benefit of hindsight, to the Select Committee on Transportation of 1812, he claimed that in general the convicts ‘conducted themselves very quietly and decently’, and that the

behaviour of former convict settlers was 'generally ... very correct', many of them being 'as respectable as any people who have gone from this country ... living in a handsome decent manner ... very exemplary people ... fit to serve on juries'.⁹³ Clearly Hunter's recollections were shaped by their context. Like Collins, he had concerns about a class of former convicts who he perceived as idle and inclined to crime. But his overall view of the colony was positive and at least by 1812 he was convinced that most former convicts had been successfully converted into industrious settlers.

Moving beyond the sources Bentham relied upon, there is considerable contemporary evidence for the colony as an effective reformatory. During Collins's time in New South Wales, Watkin Tench reported 'that [the convicts] behaved better than had been predicted of them – To have expected sudden and complete reformation of conduct, [was] romantic and chimerical'.⁹⁴ Similarly, Governor Arthur Phillip, who thought the best spur to reformation was the prospect of being allowed to settle on some land, opined shortly before he departed that 'the convicts in general behave better than ever could be expected'.⁹⁵ These were strained compliments, obviously, but they came close to a begrudging concession that, all things considered, the first few thousand convicts unloaded in the colony gave a reasonably good account of themselves.

Philip Gidley King, who succeeded Hunter as governor in September 1800, and was thus in charge when Bentham wrote his 'Letters to Lord Pelham', expressed a similar ambivalence about the prospects of former convicts. Reporting from Sydney on the character of the convicts, he cited a list of the punishments inflicted in 1803, not as evidence of immorality, but rather as proof that 'the morals of the inhabitants and punishment of vice is not neglected', stressing that '[the convicts] certainly are not so generally depraved as may be imagined' and emphasizing that there were 'some very good characters among them'.⁹⁶ In an overall report on the state of the colony, written at the end of 1801, he focussed more explicitly on former convicts and their reform. He noted that many 'do not quit their bad habits on resuming the condition of free men', claiming that the 'utmost licentiousness' of this class was 'notorious', although he conceded that they 'have used the most laborious exertions in clearing land'.⁹⁷ But King's main explanation for this problem was not a lack of inspection, but rather the way such ex-convict farmers had been 'hitherto oppressed' by the monopolistic practices of the spirit-trading elite. He claimed that due to his stricter regulation of this trade '[i]ndustry appears to be returning'.⁹⁸ A final report written on his departure in 1806 bore out these hopes.

King reported that the 'greater part' of the ex-convict settlers were thriving in the colony, and that their 'progress is more rapid than the free settlers', though he continued to lament a minority who 'caring but little for the morrow, content themselves with earning sufficient to procure the means of intoxication'.⁹⁹ Clearly King, like Collins, was aware of the problems of idleness and drunkenness among ex-convicts. But his overall view was a nuanced and optimistic one, and he certainly did not see the challenge of providing close inspection as a fundamental threat to convict reform.

Writing some years later in 1811, the transported forger and emancipist, David Mann, offered a similarly balanced and optimistic picture. Mann arrived in Sydney in 1800, received an absolute pardon in 1802, and sailed for London in 1809 where he published *The Present Picture of New South Wales*, both a history of the early colony and a reflection on its prospects.¹⁰⁰ He argued that by the time of Hunter's arrival crime had declined significantly because 'many of the convicts had reformed their lives, and, instead of being examples of depravity, had turned to habits of industry, and endeavoured to benefit that society on which they had formerly preyed'.¹⁰¹ Reflecting on colonial morals, he claimed that tales of convict vice were often exaggerated. In fact, Mann suggested that the reality of the new society was similar to Britain, where recidivism was discouraged by the threat of 'severe punishment', and that many former convicts had become 'striking examples of probity, industry, temperance, and virtue'.¹⁰² Arguing for the introduction of jury-trial to New South Wales, he suggested that there were 'a great many' former convicts 'whose conduct during the term of their punishment has been such as to give general satisfaction, and who have proved by their conduct that they have reformed their dispositions, corrected their principles, and are likely to become useful, and consequently valuable, members of society' who were suitable to sit on juries.¹⁰³

Like Hunter, the other witnesses to the Select Committee on Transportation of 1812 were also asked about the degree to which convicts were reformed by transportation. William Bligh, Governor of New South Wales from 1806–8, was more critical of convict conduct, claiming most convicts were 'extremely idle' and 'should be kept fully at their labour', but he also reported that some emancipists were 'equally good [as] the free settlers with respect to industry'.¹⁰⁴ William Palmer, the commissary, reported that 'the people behaved ... much better than could be expected' and that in general the colony was an effective reformatory, while Robert Campbell, a merchant and magistrate,

agreed in general that the convicts 'are reforming'.¹⁰⁵ Two convict clerks reported contradictory impressions on the effectiveness of the system. Thomas Robson, who had been transported for seven years for stealing paper from the Crown, claimed that transportation was not effective at reforming convicts, although he had spent only four years in New South Wales. On the other hand, William Richardson, who stole shoes and was transported for seven years on the 'First Fleet' (he was initially intended for Africa), claimed that convicts were 'treated with respect, according to their situations; and a great reformation took place among them; those who were the most notorious villains in this country became in that country very good members of society'.¹⁰⁶

The Committee on Transportation was seemingly convinced by this positive testimony. They argued for an extension of the assignment system, noting that when convicts were 'removed from their former companions, and forced into habits of industry and regularity, the chance of reformation must be infinitely greater'.¹⁰⁷ They also approved of the practice of encouraging marriages and especially of granting land at the expiry of the sentence, suggesting a clear pathway to reform:

if from convicts, they became well-behaved and industrious servants, a farther possibility is opened to them of becoming prosperous and respectable settlers ... they have an opportunity of establishing themselves in independence, and by proper conduct to regain a respectable place in society.¹⁰⁸

They cited approvingly Governor Macquarie's principle that 'long-tried good conduct should lead a man back to that rank in society which he had forfeited' and that this prospect of reintegration was 'the greatest inducement ... towards the reformation of ... manners'.¹⁰⁹ In a telling analysis, directly contrary to Bentham's theory, they concluded that:

[the colony's] improvement in wealth, and the means of properly employing and reforming the convicts, are essential to the progress of each other; if the prosperity of the Colony be checked by unwholesome restrictions, the exertions and industry of the convicts cannot be advantageously called into action during their servitude, and but little inducement will be held out to them to become settlers after their emancipation.¹¹⁰

Bentham had argued that the economic growth of the colony was directly opposed to the reformation of convicts because such progress

relied on the spread of settlement, preventing efficient inspection.¹¹¹ But informed by a wider range of evidence than Bentham had access to, and not reading it through the lens of the inspection principle, the Committee on Transportation saw the opportunities provided by a growing colony as key to reforming convicts. Ironically, they concluded that what Bentham deemed genuine reform was possible in New South Wales, but precisely because it was incentivized by prosperity in the absence of inspection.

Conclusion

As we have shown, Bentham's analysis of inspection and reform in New South Wales relied on manipulated evidence. Contemporary observers of the colony, including Collins himself, were often critical of convict morals and concerned about recidivist crime, but they were also aware that many convicts were successfully transformed into settlers. They lamented the failure of inspection and the disorder it permitted, but they also believed that New South Wales was at least capable of being an effective reformatory. Bentham's polemic fitted the apparent evidence to his predetermined theory and so he found in Collins and others precisely the apparent marks of a failed system of punishment that would justify building panopticons. In fact, contemporary accounts largely support Braithwaite's view that New South Wales effectively reintegrated convicts.

Interestingly, many of Collins's critical observations about recidivism – especially those which Bentham cited – were made in relation to the ex-convict settlers who increasingly farmed the flood-plain of the Hawkesbury River. In Bentham's eyes, convicts and emancipists were pretty much one and the same. Collins repeatedly drew attention to the conduct of these Hawkesbury settlers, and while he noted that some were 'industrious and thriving', others were reported to be 'idle, vicious, given to drinking, gaming, and other such disorders as lead to poverty and ruin ... oftener employed in carousing in the fronts of their houses, than in labouring themselves, or superintending the labour of their servants in their grounds'.¹¹² Reading between the lines, what concerned Collins was the way that the relative isolation and rich soils of the Hawkesbury allowed ex-convicts independence, and self-determination; in Bentham's terms, freedom from inspection.¹¹³ As Grace Karskens observes in her study of the *People of the River*, the abundance of the soils on the flood-plain made farming easy and in consequence,

‘according to the authorities in Sydney ... the ex-convict settlers were enjoying themselves too much ... [which] defied the notion that the lot of workers was unceasing labour, time discipline and meek obeisance’.¹¹⁴ At its core, Bentham’s concern about inspection was about precisely this problem. But it is here that he most tellingly misunderstands reform: it was precisely this independence permitted to ex-convicts in early New South Wales that allowed them to reintegrate into society, or at least integrate into a new one.

Notes

- 1 These letters were written, printed and privately circulated in 1802 but only published in 1812 as Bentham 1812. We rely on the new and comprehensive editions produced by the Bentham Project, namely the three ‘Letters to Lord Pelham’ and ‘A Plea for the Constitution’ in Bentham, ed. Causer and Schofield 2022. The Editorial Introduction to that edition provides important details of their publication history.
- 2 ‘Letter to Lord Pelham’ in Bentham, ed. Causer and Schofield 2022, 73. For more on the context of this work see Semple 1993, 230–41; Causer 2019.
- 3 ‘Letter to Lord Pelham’ in Bentham, ed. Causer and Schofield 2022, 74.
- 4 ‘Letter to Lord Pelham’ in Bentham, ed. Causer and Schofield 2022, 77.
- 5 ‘Letter to Lord Pelham’ in Bentham, ed. Causer and Schofield 2022, 76–7, 101.
- 6 ‘Second Letter to Lord Pelham’ in Bentham, ed. Causer and Schofield 2022, 169–70; Collins 1798–1802. For more on Bentham’s reliance on Collins, see Jackson 1993.
- 7 We use the term recidivism advisedly since it only gained currency in the late nineteenth century. However, it is the widely accepted term in modern criminology and a similar concept, usually gathered under the label reformation, is at stake in Bentham’s writings. For the etymology see: ‘recidivist, n. and adj.’, in *OED Online* (Oxford University Press), accessed 10 July 2020, <http://www.oed.com/view/Entry/159515>. For more on the history of concern about recidivism see: Cox *et al.* 2014. For current theories of recidivism see Zara and Farrington 2016, ch. 1. For Bentham’s use of the concept (if not the term) see below.
- 8 Braithwaite 2001.
- 9 Braithwaite 2001, 12.
- 10 Braithwaite 2001, 45.
- 11 Braithwaite 2001, 47–50.
- 12 Braithwaite 2001, 19. This is not an original claim, though Braithwaite has made the argument most explicitly and has influentially framed recent debate. For earlier versions see Hughes 1988, 356–7, 587–8; Hirst 2008, 194–7; Reynolds 1969. Such claims perhaps reflect a much older concern for the reputation of Australia’s convict settlers. Earlier historians, for example, debated whether the convicts were victims of inequality and harsh justice in their homelands, or whether they were professional criminals and ‘ne’er-do-wells’. See Roberts 2007; Roberts 2008.
- 13 Braithwaite 2001, 20–5, 29, 33.
- 14 See for example: Braithwaite 1989; Braithwaite 2000; Braithwaite 2002.
- 15 Godfrey and Cox 2008.
- 16 According to Godfrey 2019, 1145, the ideological aims of the system were meaningfully different since ‘[t]he Australian system was driven by labour-need, but the British system was focused on controlling surplus labour’.
- 17 Higgs 2003.
- 18 Godfrey 2019, 1146. We would suggest that Godfrey’s claim is only really true of English governments (and only once transportation to Australia was well established) since recidivism was a regular concern in colonial New South Wales. See for example the Report of the 1835 Police Committee of the New South Wales Legislative Council which suggested

that ‘many convicts who become free by servitude or hold the indulgence of tickets of leave take possession of Crown Lands in remote Districts, and thus screened from general observation ... raise a property by committing depredations on their neighbouring flocks and herds; or by selling spirits and providing other inducements for thieving, gaming, and every species of debauchery’ (437). For the emergence of English government concern about recidivism see: Cox *et al.* 2014. For Bentham see below.

- 19 Semple 1993, ch. 2. For more on the theoretical and practical context of Bentham’s work on punishment see, for example: Ignatieff 1978; McGowen 2003. For Bentham’s position in these debates see: Rodman 1968; Bedau 2004.
- 20 Bentham 1830, 1. This work was mostly drawn from Bentham’s manuscripts of the 1770s and 1780s but was originally published as a recension in French as Dumont 1811 and then retranslated by Richard Smith into English. For more detail on this publication history see Semple 1993, 2. We will use both works to illustrate Bentham’s theory of punishment prior to the proposal of the panopticon.
- 21 Bentham 1830, 20–1.
- 22 Bentham 1830, 48–9.
- 23 Bentham 1830, 19. For a more extensive discussion of motives see Bentham 1789, ch. 10. There, Bentham defined motives as things which ‘by influencing the will ... serve as a means of determining [action]’ (95) and stressed that motives were not bad in themselves but could become bad ‘on account of their tendency to produce pain, or avert pleasure’ (99).
- 24 Bentham 1789, 104, 114–15, 192–3. Bentham also stressed ‘confinement to a spare diet’ as the best means of reforming crimes motivated by ‘ill-will’ and especially by ‘an obstinate refusal ... to do something ... lawfully required’ (193).
- 25 Bentham 1830, 115–18. He specifically contrasted the ‘protracted’ suffering of these hardships with ‘acute’ suffering caused by whipping which was accordingly less reformatory. It is important to note that Bentham’s views on these auxiliary punishments changed over time: see note 31, below.
- 26 Bentham 1830, 122–8.
- 27 Bentham 1830, 163–4.
- 28 Bentham 1778, 2–4. For more on the context of this debate see: Devereaux 1999, 405–33. Bentham repeated this criticism of transportation to America in his letters to Pelham: ‘Letter to Lord Pelham’ in Bentham, ed. Causer and Schofield 2022, 99–101.
- 29 Bentham 1778, 66–7.
- 30 Bentham Papers, Special Collections, University College London Library, lxxxvii. 79, 83, 86 (hereafter UC. Roman numerals refer to the boxes in which the papers are placed, Arabic to the leaves within each box). For more on this unpublished manuscript see: Bozzo-Rey, Brunon-Ernst, and Quinn 2017.
- 31 Bentham 1791, 1–2, 35–6. In the initial panopticon ‘Letters’ of 1787 Bentham stressed the constant ‘solitude’ of prisoners in the panopticon as a reformatory advantage of his plan. But by the time he wrote the postscripts (which he had printed, along with the ‘Letters’ in 1791) he called for ‘mitigated seclusion’, arguing that isolation was only useful as a temporary measure for ‘breaking the spirit’ (141–2).
- 32 Bentham 1791, 48–9, 67–8. On the importance of industriousness to reformation see Semple 1993, 153–6.
- 33 Bentham 1791, 526–33, at 526.
- 34 Bentham 1791, 534.
- 35 For the details of Bentham’s campaign for a government contract to build a panopticon see Semple 1993, chs. 6–11.
- 36 Semple 1993, 177–87. On tattooing cf. Bentham’s earlier proposal for a universal system of identifying marks in ‘Indirect Legislation’ at UC lxxxvii. 135–6, 182–91, 193–6.
- 37 For more on Colquhoun and his ideas about police reform see Colquhoun 1797; Dodsworth, 2008; Barrie 2008.
- 38 House of Commons 1799, 82–3.
- 39 House of Commons 1799, 23–4, 27–8.
- 40 House of Commons 1799, 22–4. For Colquhoun’s evidence on recidivism see 67–9.
- 41 Bentham 1791, 424. These comments probably originated in an unpublished manuscript of 1791: see ‘New Wales’ in Bentham, ed. Causer and Schofield 2022, 3–22; Causer 2019.
- 42 Bentham 1791, 534–9. On Bentham’s understanding of the balance between liberty and

- security see Engelmann 2003. Bentham was wrong about support for emancipists in early New South Wales, on which see below.
- 43 'Letter to Lord Pelham' in Bentham, ed. Causer and Schofield 2022, 76.
- 44 'Letter to Lord Pelham' in Bentham, ed. Causer and Schofield 2022, 76–7.
- 45 'Second Letter to Lord Pelham' in Bentham, ed. Causer and Schofield 2022, 193, 199, 207. Original emphasis. Bentham was especially concerned about the lack of Catholic priests given the increasing numbers of 'malcontents from Ireland' sent to New South Wales. He noted that Collins's second volume reported the transportation of Father James Harold and regretted that 'instead of this seditionist, a loyalist [Catholic] clergyman' had not been sent. This reflected his view that religion was a 'useful defence against the ... spirit of tumultuary violence' ('Letter to Lord Pelham' in Bentham, ed. Causer and Schofield 2022, 79–80).
- 46 'Third Letter to Lord Pelham' in Bentham, ed. Causer and Schofield 2022, 253. For his evidence, drawn from Collins, see: 'Letter to Lord Pelham' in *ibid.*, 85–8; 'Second Letter to Lord Pelham' in *ibid.*, 170–7, 179–87, 209–17. In relation to colonial drunkenness and its significance for Bentham's critique see Allen 2012.
- 47 'Letter to Lord Pelham' in Bentham, ed. Causer and Schofield 2022, 85.
- 48 Jackson 1993, 326. Jackson cites a series of examples where Bentham manipulates Collins in the service of his argument (324–6).
- 49 'Collins, David (1756–1810)' in *Australian Dictionary of Biography* (hereafter *ADB*) 1966; Currey 2000.
- 50 Collins 1798–1802, vol. i. vii.
- 51 Collins 1798–1802, vol. ii. advertisement; Currey 2000, ch. 10. Barton 1889, 256–7, claimed that the second volume was effectively written by Hunter, although his view has not prevailed.
- 52 'Editorial Introduction' in Bentham, ed. Causer and Schofield 2022, xix.
- 53 'Editor's Introduction' in Collins, ed. Fletcher 1975, vol. i. xiv.
- 54 Collins 1798–1802, vol. i. vii–x.
- 55 Collins 1798–1802, vol. ii. advertisement.
- 56 'Letter to Lord Pelham' in Bentham, ed. Causer and Schofield 2022, 83–4.
- 57 Collins 1798–1802, vol. i. 9.
- 58 Collins 1798–1802, vol. i. 10, 146.
- 59 Collins 1798–1802, vol. i. 47–8.
- 60 Collins 1798–1802, vol. i. 473.
- 61 Collins 1798–1802, vol. i. 108, 111.
- 62 Tench 1793, 110.
- 63 Phillip to Dundas, 2 October 1792 in Watson ed. 1914–25, vol. i. 373.
- 64 Collins 1798–1802, vol. i. 9, 57.
- 65 Collins 1798–1802, vol. i. 57. For context, see Karskens 2005.
- 66 Karskens 2009, 280–309.
- 67 For more on the ambition and limitations of this convict information state see Allen 2021.
- 68 Allen 2020.
- 69 Collins 1798–1802, vol. i. 78–9.
- 70 Tench 1793, 33, said of 'this patrol' that 'nightly depredations became less frequent and alarming'.
- 71 Collins 1798–1802, vol. i. 85.
- 72 'Second Letter to Lord Pelham' in Bentham, ed. Causer and Schofield 2022, 83–4. Original emphasis; Collins 1798–1802, vol. ii. 139. In the same section of his letter, Bentham also drew attention to a betrayal of trust by Reverend Johnson's convict servant, ignoring the fact that this attempted theft was detected by the diligence of a constable who concealed himself during divine service to catch the offender in the act ('Second Letter to Lord Pelham' in Bentham, ed. Causer and Schofield 2022, 201; Collins 1798–1802, vol. ii, 60–1).
- 73 For more on Hunter's concerns see General Order, 5 December 1798 in Britton and Bladen eds. 1892–1901, vol. iii. 513.
- 74 Hunter to Portland, 1 November 1798 in Watson ed. 1914–25, vol. ii. 236; Hunter to Portland, 25 July 1798 in *ibid.* 170. See also: Hunter to Portland, 10 June 1797 in *ibid.* 15–16.
- 75 Portland to Hunter, 18 September 1798 in Watson ed. 1914–25, vol. ii. 226.
- 76 For the system see Government Order, 30 November 1796 in Watson ed. 1914–25, vol. ii. 69. That was an extension of an earlier order allowing constables and watchmen to 'examine

- all male and female convicts and all suspicious persons' who appeared to be at large. Government Order, 2 October 1795 in *ibid.*, vol. i. 678. It was further extended and penalties increased a few months later: Government Order, 20 March 1797, in *ibid.*, vol. ii. 76–7.
- 77 Collins 1798–1802, vol. ii. 219. 'Second Letter to Lord Pelham' in Bentham, ed. Causer and Schofield 2022, 204.
- 78 Collins 1798–1802, vol. ii. 219.
- 79 Collins 1798–1802, vol. ii. 64.
- 80 Collins 1798–1802, vol. ii. 286.
- 81 Collins 1798–1802, vol. ii. 110.
- 82 For more on the challenges of early policing see Allen 2020.
- 83 Collins 1798–1802, vol. i. 25.
- 84 Hunter to Samuel Bentham, 20 May 1799 in Britton and Bladen eds. 1892–1901, vol. iii. 713 n., cited in 'Letter to Lord Pelham' in Bentham, ed. Causer and Schofield 2022, 89.
- 85 Hunter to Portland, 25 July 1798 in Watson ed. 1914–25, vol. ii. 166.
- 86 Hunter to Portland, 25 June 1797 in Watson ed. 1914–25, vol. ii. 31.
- 87 Hunter to Portland, 15 February 1798 in Watson ed. 1914–25, ii. 129–30.
- 88 Hunter to Portland, 20 June 1797 in Watson ed. 1914–25, vol. ii. 23.
- 89 'Letter to Lord Pelham' in Bentham, ed. Causer and Schofield 2022, 90.
- 90 Marsden to Hunter, 11 August 1798 in Watson ed. 1914–25, vol. ii. 185–8.
- 91 Hunter to Portland, 12 Nov. 1796 in Britton and Bladen eds. 1892–1901, vol. iii. 168–9, 175.
- 92 Hunter to Portland, 1 May 1799 in Britton and Bladen eds. 1892–1901, vol. iii. 666.
- 93 *Commons Sessional Papers* (1812), vol. ii. 592–4. Hunter was by this date an early advocate for introducing jury trial to the colony. In many ways, this longstanding campaign is an index of its proponents' faith in the colony's capacity for reform. For more on this issue see: Neal, *Rule of Law* 1991, ch. 7.
- 94 Tench 1793, 3.
- 95 Phillip to Grenville, 5 November 1791 in Watson ed. 1914–25, vol. i. 273.
- 96 King to Hobart, 1 March 1804 in Watson ed. 1914–25, vol. iv. 471.
- 97 'State of His Majesty's Settlements in New South Wales', 31 December 1801 in Britton and Bladen eds. 1892–1901, vol. iv. 655–6.
- 98 'State of His Majesty's Settlements in New South Wales', 31 December 1801 in Britton and Bladen eds. 1892–1901, vol. iv. 655–6.
- 99 'Present State of His Majesty's Settlements on the East Coast of New Holland, called New South Wales', Britton and Bladen eds., 1892–1901, vol. vi. 241.
- 100 Parsons, 'Mann, David Dickenson (1775–1811)', *ADB* 1967. <https://adb.anu.edu.au/biography/mann-david-dickenson-2426/text3225> [accessed 20 July 2021].
- 101 Mann 2003, 9.
- 102 Mann 2003, 51–2.
- 103 Mann 2003, 81–2.
- 104 *Commons Sessional Papers* (1812), vol. ii. 602, 618.
- 105 *Commons Sessional Papers* (1812), vol. ii. 632, 643. Two other civil officers were more ambivalent. Rev. Johnson used the question to argue for an improved Church establishment, claiming that if a clergyman with a 'proper salary' were sent out 'a great deal of good might be done' (67); Major Johnston, fresh from his court-martial, would only speak to his own servants but claimed they 'behave very well' as a result of his diligent overseer (645) but was generally sceptical about the respectability and orderliness of the colony (646).
- 106 *Commons Sessional Papers* (1812), vol. ii. 624, 628.
- 107 *Commons Sessional Papers* (1812), vol. ii. 583.
- 108 *Commons Sessional Papers* (1812), vol. ii. 584–5.
- 109 *Commons Sessional Papers* (1812), vol. ii. 585, and 685 citing: Macquarie to Castlereagh, 30 April 1810. Notably the Committee disagreed with Bligh's position that former convicts should never be permitted to 'hold places of trust and confidence' or become part of society (608).
- 110 *Commons Sessional Papers* (1812), vol. ii. 581.
- 111 'Second Letter to Lord Pelham' in Bentham, ed. Causer and Schofield 2022, 72; cf. 'Letter to Lord Pelham' in *ibid.*, 41.
- 112 Collins 1798–1802, vol. i. 393. For more examples see *ibid.*, 376, 382, 385, 387, 388, 393; vol. ii. 6, 133, 289.

113 For more on this trope of the ‘lazy and feckless’ Hawkesbury settlers see Karskens 2009, 220–1.

114 Karskens 2020, 396–7.

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