

Claire Wrobel

**Tim Causer, Margot Finn, Philip Schofield (eds.):
Jeremy Bentham and Australia: Convicts, Utility and Empire**

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Jeremy Bentham (1748-1832), philosopher, reformer and founder of Utilitarianism, was one of the first to object to the transportation of convicts from Britain to New South Wales, ever since the first ship of convicts reached the penal colony of Botany Bay in 1788. He developed arguments against the scheme on the basis of the first accounts available on life in the penal colony, and provided a critique of criminal transportation rooted in penal theory. As he never went to New South Wales himself, the use he made of his sources requires careful examination, which is done rigorously in several contributions to the volume under scrutiny. Because he died in 1832, the reformer did not witness the continuation of transportation and its geographical expansion – to New South Wales until 1840, to Van Diemen’s land until 1853, and to Western Australia from 1850 until 1868. Although his intuitions that the colony was doomed to fail for economic and demographic reasons and that it would emancipate itself long before the nineteenth century was over proved wrong, the arguments he developed were highly influential in the anti-transportation campaign in Britain in the 1830s and 1840s. ‘Jeremy Bentham and Australia’ offers a thorough, lucid assessment of both the reformer’s critique and its legacy.

This collection of essays is a companion to ‘Panopticon versus New South Wales and other writings on Australia’ (ed. Tim Causer and Philip Schofield, London, UCL Press, 2022), the latest volume in ‘The Collected Works of Jeremy Bentham’.¹ Since John Bowring’s edition of ‘The Works of Jeremy Bentham’ (1838-1843) does not meet current scientific standards, the Bentham Project at UCL is putting together a new and authoritative critical edition. The fourth volume of the ‘Works’ edited by Bowring included, among other texts, two letters to Lord Pelham (the then Home Secretary) as well as ‘A Plea for the Constitution’, which challenged the legality of the British venture in New South Wales. In addition to presenting these texts with the appropriate critical apparatus, ‘Panopticon versus New South Wales’ includes hitherto unpublished material which is discussed in ‘Jeremy Bentham and Australia’.

The introduction to the volume offers an overview of the contents of ‘Panopticon versus New South Wales’. It also underlines the chronological and thematic convergences between Bentham’s attack on criminal transportation and his campaign to promote his model prison, the panopticon, at home. While studies of British penal history have long focused on prisons only – and on the rise

1 <https://www.ucl.ac.uk/bentham-project/collected-works-jeremy-bentham>.

of the penitentiary throughout the nineteenth century – this collection demonstrates the necessity of thinking in terms of a “carceral archipelago”, 70) or “penal nexus”, 124). British prisons were only one element in a complex which included the hulks (prison-boats moored on the Thames), American penitentiaries, penal colonies (of which New South Wales is only an example) but also the ships used to transport convicts. As the second chapter points out, “the ship was a floating system of prison management” and, like the plantation, needs to be studied as a “site of surveillance”, 70), as has been done by Nicholas Mirzoeff² or Georgiana Banita.³

The essays are organized in four sections. The first one, on “The historical context of Bentham’s writings on Australia” highlights relevant contextual factors such as economic growth in Britain and the empire, the fiscal state, mercantilism, and greater state involvement in criminal justice in the first chapter. The latter explains that the ‘Penitentiary Acts’ and Bentham’s panopticon came a half-century too soon, which is why “transportation persisted and was a necessary step in the process of relinquishing the death penalty” (50). The second chapter questions the “great confinement thesis” put forth by Michel Foucault and shows that transportation was more cost-effective than penitentiaries. It also deconstructs the opposition set by Bentham between his panopticon and transportation to New South Wales, which actually functioned along panoptic lines of surveillance. It reminds readers that “as late as 1867, the year before the final convict vessel arrived in Western Australia, there were still only nine national penitentiaries in England and Wales”, 66) and points out that “the British penitentiary evolved in lock-step with the Australian system”, 76), concluding that, ironically, “if Bentham’s panopticon was ever constructed anywhere, it was in Australia”, 77).

The second part (“Bentham and the theory and practice of transportation to Australia”) checks his critique against historical realities. The third chapter argues that Bentham’s distinction between confinement, banishment and bondage, while of little actual influence during his lifetime, shaped the debate on the functioning of transportation later and reflected the reality of ordinary people’s experiences. Chapter four centres on Western Australia, the final Australian penal colony, and not least on the imprisonment of Indigenous Australians, who barely feature in Bentham’s writings on Australia. It highlights the limitations of Bentham’s remarks about early New South Wales, which cannot be transferred to later spaces and practices and fail to account for “the rise of a separate carceral apparatus for Indigenous Australians”, 124), which is here sketched out. The fifth chapter lays bare the flawed, tendentious approach with which Bentham drew on his sources, and suggests that in fact, New South Wales was “an effective reformatory”, 138). While Bentham claimed that convicts would not be reformed in Australia because the vast space and scattered settlements made inspection

2 Nicholas Mirzoeff: *The Right to Look: A History of Counter-Visuality*. Durham: Duke University Press 2011.

3 Georgiana Banita: “Black Futures Matter: Racial Foresight from the Slave Ship to Predictive Policing”. In: A. Brunon-Ernst, J. Gligorijevic, D. Manderson, C. Wrobel (eds): *Law, Surveillance and Humanities*. Edinburgh: Edinburgh University Press 2023, pp. 193-215.

impossible, the authors contend that it was precisely because they were not under surveillance that they could reintegrate into the new society, benefiting from the incentives to become independent and prosperous.

The third part ("The constitutional implications of Bentham's writings on Australia") centres on his argument that New South Wales had been illegally founded because it had been unauthorized by Parliament. Chapter 6 considers the directions in which Bentham's reflections on New South Wales took his own system. The next one traces his influence, through Romilly, on the platform to establish representative institutions in the colony. Chapter 8 addresses the puzzle created by Bentham's 1831 'Colonization Company Proposal', in which he advocated the establishment of a colony in South Australia, when he had acquired a reputation for holding anti-colonial views with texts such as 'Emancipate Your Colonies!' (written in 1792/93) and 'Rid Yourselves of Ultramarina' (written in 1822). The chapter explains that the proposal was actually consistent with Bentham's early writings on colonies and dependent on the possibility to propose an acceptable form of government for the new colony. It also exposes a central contradiction in the text: "Given that it was a fundamental principle of Bentham's utilitarianism that each person was to count for one and no one for more than one, it was, by his own standard, not only inconsistent but also morally wrong of him not to give due weight to the welfare of indigenous people", 243). The problem caused by this blind spot is tackled head on in chapter 9, which underlines the absence of Indigenous people from Bentham's works on colonization, but also from the scholarship discussing his views, and demonstrates that the erasure of Indigenous peoples is in keeping with the logic of settler colonialism.

The final part ("Bentham, the panopticon penitentiary scheme, and penal institutions and practices in Australia and Britain") puts the panopticon, and penitentiaries more generally, back at the centre of the discussion. Chapter 10 offers a case study of the Port Arthur Separate Prison and compares it to the Pentonville penitentiary built in London in 1842, claiming that the former was a "colonial Pentonville", 296). The next chapter reads the Fremantle Gaol built in the Swan River colony as a "colonial reinterpretation" of the panopticon 306), based on an examination of its formation and the factors that led to it, its location, architecture and maintenance, its role in colonial society, operation and methods of punishment. Once again, it appears that Indigenous populations received unfair treatment, being more frequently subjected to corporal punishments, and, additionally, erased from historical records, as their executions were not included in the colony's criminal statistics. Chapter 12 delves further into Bentham's comparative method, focusing on the tables that compare the penitentiary, hulks and transportation. It uncovers the influence of James Neild, and discusses the place of religion and of solitary confinement. Chapter 13 focuses on the hulks, whose use continued long into the nineteenth century, thereby attesting to the coexistence of different types of spaces of confinement throughout the same period. Bentham, who visited the hulks himself and went back to the topic in his third letter to Lord Pelham, exposed the system of corruption and patronage which presided over their creation and maintenance. Not only did the panopticon not prevail on the hulks, but the ships played a part in the scheme's failure. While

Bentham's considerations on the hulks were fruitless in terms of policy, they contain the seeds of his later denunciation of what he called "sinister interest" (here in the shape of office-holding and patronage) and of his commitment to political reform.

Taken together, the essays in this collection do an excellent job at contextualizing the panopticon and Bentham's writings on Australia, shedding light on their close connections. With the benefit of hindsight, they provide a lucid account of Bentham's argumentation, his selective use of historical sources, and errors of judgment regarding the functioning of the penal colony, as well as its economic and demographic viability. But they also show his influence over the debates regarding transportation, as his arguments were taken up both by critics and advocates. His writings set the terms of the discussion, and it may be argued that Bentham was a foundational thinker for Australia. Beyond the reformer himself, the chapters make a compelling case for expanding the scope of penal history, and considering its various components as interconnected. Penal transportation systems were indeed "bound up in global labour and colonization practices", 89). Common conceptions, such as the Foucauldian hypothesis of the dissimulation of power in the move from sovereignty to discipline, are challenged, and difficult questions, such as Bentham's failure to take into account the Indigenous population and his seemingly contradictory stance on colonialism and imperialism, are not avoided. Factors of social class, gender and indigeneity help build a differential history of Australian colonies.

With this volume, Bentham's texts on New South Wales, which were long regarded as a mere footnote to his panopticon project, get the attention they deserve, and the colonial periphery takes centre stage. One may regret that the book, which includes useful charts and illustrations, does not include a map to help readers visualize the various locations discussed. But this will not prevent this rich, thought-stimulating collection from appealing to readers interested in Bentham's life and thought, in settler colonialism and imperial history, in Australian history and more precisely in the social, legal, penal and constitutional aspects of this foundational period for Australia.

Author Bio

Claire Wrobel is Associate Professor at Paris-Panthéon-Assas Université. Her research interests include the thought of Jeremy Bentham and its reception, law and literature, and surveillance imaginaries. Recent publications have appeared in 'Law and Literature' (2020), 'Commonwealth Essays and Studies' (2021), 'Narrative and Law' (eds. M. Fludernik and F. Schäfer, 2022). She has just published her first monograph - 'Roman noir, réforme et surveillance en Angleterre (1764-1842)' - with Classiques Garnier, edited a special issue of the 'Revue d'Etudes Benthamiennes' on literature and panopticism (22, 2022) and co-edited a volume on 'Law, Surveillance and the Humanities' (Edinburgh University Press, 2023).