Colonizing with Convicts

The British Debate on the Australian Penal Colonies (1802—1838)

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Author: Vincent Then
Supervisor: Fredrik Thomasson
Seminar chair: Margaret Hunt
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Abstract

This thesis investigates the British debate on the two Australian penal colonies in New South Wales and Van Diemen’s Land (now Tasmania) between 1802 and 1838. The so-called transportation system to Australia was established in 1788 in order to relieve Britain of its convicts. After the American Revolution, the British authorities were no longer able to ship their prisoners over the Atlantic. Additionally, older forms of punishment, particularly the death penalty, became increasingly unpopular from the end of the 18th century onwards and replacements needed to be found. Instead of building prisons in Britain or exiling criminals to other colonies, the authorities decided to transport them to the antipodes and colonize Australia with their help, a colossal social experiment.

Transportation became a central part of the British jurisdiction during the 18th century and especially during the first half of the 19th century. Before and during the existence of the transportation system to Australia, many British people discussed the positive and negative aspects of having penal colonies. Several of them also published their opinions. This thesis analyzes the works of five different writers, who published their thoughts during the first four decades of the 19th century, and their opinions on the advantages and drawbacks of penal colonization.

Five different features were of crucial importance in the discussion on the prison colonies in Australia: exile, deterrence and punishment, reformation, economy, and colonization. These aspects appear in the writings of all the authors used in this thesis and throughout the investigated time frame. Although the discussion on penal colonization evolved during the first half of the 19th century, these elements remained stable and recurred in the arguments.

The United Kingdom witnessed a development towards a more centralized and bureaucratic state during the first half of the 19th century. This also reflected on the treatment of felons. At the beginning of the century, local power holders fought successfully against the influence the government in London might gain through the construction of state-run penitentiaries. During the following decades however, the central authority acquired an increasing amount of influence, also on penal matters. More state-owned prisons were constructed as an alternative to transportation. This thesis provides insights into the debate on different forms of punishment during the time frame 1802—1838. The main focus is on the transportation system to Australia but comparisons with the penitentiary system are also drawn.

Keywords
Punishment, Colonization, Transportation, Australia, Exile, Deterrence, Reformation, Economy
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1 Introduction

1.1 Purpose and Research Question

Drunkenness, in the “improved colony,” universal: in a panopticon penitentiary house, impossible. Religious exercise—there odious, and generally eluded: here, uneludible, and by every imaginable and becoming device rendered as inviting and interesting as possible. Profitable employment—there again odious, in a great degree eludible, and eluded as much as possible; here, uneludible again and […] by habit and universal example, easy and even agreeable.

Jeremy Bentham, British philosopher, 1802

Transportation, I have shewn is the system of crime prevention, which, if other punishments were not so frequently substituted for it, would most effectually ensure the grand object of every penal infliction.

George Arthur, Lieutenant Governor of Van Diemen's Land, 1835

These two statements are not only more than 30 years apart from each other, but they also represent two opposite opinions about the system of transportation to Australia. In this thesis, the focus will be on the penal colonies of New South Wales and Van Diemen’s Land. Before the establishment of the transportation system to Australia in 1788 and also during its existence, many people in Britain debated the arguments for and against having penal colonies. Numerous of them published their opinions in newspapers, pamphlets, or books. Especially because older forms of punishment, such as the death penalty, were increasingly seen as inappropriate towards the end of the 18th century, new methods needed to be introduced. Reformers debated different ideas, especially the building of new prisons or the increased use of transportation. A debate ensued about the best punishment for convicts. This thesis finds its place in the analysis of this discussion. The main research questions are the following:

1. What are the main aspects in the discussion about the advantages and disadvantages of having penal colonies during the time frame 1802—1838?
2. How did the debate on the penal colonies evolve during those years?
3. How was the debate influenced by developments in Britain such as the rise of the penitentiary system, the major penal alternative during the first four decades of the 19th century?
The question of how to punish criminals is essential in every society\(^1\). As John Briggs et al wrote in 1996 in their book *Crime and Punishment in England*, “[o]urs is a society obsessed with crime. According to popular myth, it confronts us in our homes and on the streets, at work and on holiday, at home and abroad. The problem of crime is one of the political issues of our day.”\(^2\) Nineteen years ago as well as today it is true that “[w]e fear crime but we also gain a vicarious pleasure from it through television series, films, crime and detective novels and through ‘true-crime’ accounts.”\(^3\)

It is always important and instructive to look at how people handled crime and punishment in the past. This could help us to understand why and how our society punishes people in the ways it does today. Some practices from the Early Modern period like fines or imprisonment have survived until today, whereas others such as whipping or the use of stocks have vanished\(^4\), at least in most countries. One of the practices that seems somewhat bizarre and unthinkable is the legal mass transportation of convicts to the other end of the world. For one thing, not many countries would probably accept prisoners of another country. Plus, the idea of our judicial system is hardly to send people as far away as possible to colonize other parts of the world. Still, the study of the British transportation system during the first half of the 19\(^{th}\) century with special regards to the Australian penal colonies sheds some light onto different ideas about punishment in the past. Furthermore, it will lead to a better understanding of our ideas concerning the same subject today.

The history of transportation to Australia is hardly an under-researched field. Especially after the Second World War, when the Australian people began to slowly face their own history and their heritage as descendants of British criminals, a plethora of books was published on the topic of the Australian penal colonies and transportation from Britain\(^5\). Pioneering studies such as Manning Clark’s *History of Australia* from 1962, L. L. Robson’s *The Convict Settlers of Australia* from 1965, A. G. L. Shaw’s *Convicts and the Colonies* from 1966, and perhaps above all Robert Hughes’ immensely influential *The Fatal Shore* from 1987 still provide invaluable insights today.

In this thesis, the focus will be on the British debate of the benefits and drawbacks of transportation to Australia. Different opinions from the first half of the 19\(^{th}\) century are being analyzed. Comparing different points of view with regard to the advantages and disadvantages of having penal colonies provides insights into Early Modern British ideas about punishment, reformation, deterrence, and colonization. In order to structure this study systematically five different categories are used, which were important in the discussion about the reasons for the

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\(^1\) Tomlinson 1981, p. 126.
\(^4\) Briggs et al 1996, p. 73.
\(^5\) Dyster 1994, pp. 77—81.
establishment of the Australian penal colonies. These five different features, namely ‘Exiling Convicts’, ‘Deterrence + Punishment’, ‘Reformation’, ‘Economy’, and ‘Colonization’, constitute the main part of the work and they are discussed with their respective positive and negative aspects in chapter four. Additionally, two chapters on punishment and transportation provide background knowledge and insights into different penal measures during the Early Modern period in Britain, and especially the 18th and 19th century. Conclusions are drawn in the fifth and final chapter.

1.2 Theory and Key Concepts

In a thesis about penal colonies, concepts about different penal features play an important role. Although not necessarily stated outright, the authors of the sources used in this work employed certain theories and argued on certain levels that were part of their time and their culture. Concepts, such as ‘punishment’, had certain connotations, which are different from the ones scholars would give them nowadays. Furthermore, these ideas drastically changed during the second half of the 18th century and the first decades of the 19th century in Britain due to major societal transformations. Thus, the writers needed to argue for their suggested way of penalizing criminals by presenting reasons different from the ones used throughout much of the Early Modern period in Britain. Nowadays, people in Western Europe who concern themselves with the ideas of punishing and reforming convicts would most probably present different arguments. Insofar, it is important to keep in mind the differences of ideas and definitions in different centuries, countries and circumstances.

Nonetheless, it is also important to work with certain ideas and concepts from the 20th and 21st century when analyzing sources. When it comes to a definition of the term punishment, Steven Sverdlik stated that “the number of papers devoted to a serious discussion of what punishment is is surprisingly small.” The meanings that can be found differ more or less widely from each other. All the same, there are certainly some definitions one can work with. The philosopher H. L. A. Hart for example wrote in 1959 that a punishment must contain the following five elements,

(i) It must involve pain or other consequences normally considered unpleasant. (ii) It must be for an offence against legal rules. (iii) It must be of an actual or supposed offender for his offence. (iv) It must be intentionally administered by human beings other than the offender. (v) It must be imposed and administered by an authority constituted by a legal system against which the offense is committed.  

6 Sverdlik 1988, p. 179.
7 Hart 1959—1960, p. 4.
For another philosopher, Richard Stanley Peters, writing in 1966, “at least three criteria of (i) intentional infliction of pain (ii) by someone in authority (iii) on a person as a consequence of a breach of rules on his part, must be satisfied if we are to call something a case of ‘punishment’”.\(^8\)

A more recent definition of legal punishment found in the *Stanford Encyclopedia of Philosophy* determines “that legal punishment involves the imposition of something that is intended to be both burdensome and reprobative, on a supposed offender for a supposed crime, by a person or body who claims the authority to do so.”\(^9\) One could certainly find and quote more definitions, but certain elements are seemingly universally agreed upon. The infliction of pain or at least something that is generally perceived of as being unpleasant is part of a punishment. Second, the offender him- or herself is to be inflicted with this measure. Third, a person or an institution with some kind of authority needs to decide on the punishment.

What becomes apparent here is that punishments can be viewed from many different angles because they involve many actors and are supposed to have different effects on these actors. The person being punished is supposed to be chastised for his or her crimes. A deterrent function from the inflicted pain or unpleasant punishment is supposed to work on the criminal as well as on people witnessing or hearing/reading etc about the destiny of the convict. The wrongdoer might also be reformed through the penalty. In addition, the authorities can use certain sentences to prove their power and to reinstate a feeling of justice into the public mind. This might be especially important for friends and family of the victim, who expect the authorities to hand down a just verdict. How these punishments are to be carried out, by whom, where, and through which exact measures was, is, and probably always will be an issue in every society.

Another important key concept for a thesis about penal colonies is ‘colonization’. In close proximity to colonization are the terms ‘colony’ and ‘colonialism’, which need some explanation as well. One should be aware of the fact that all three terms are different and that they should not be used as identical concepts. In general, according to Jürgen Osterhammel, “processes of expansion are a fundamental phenomenon of world history.”\(^10\) In his opinion,

> [a] colony is a new political organization created by invasion (conquest and/or settlement colonization) but built on pre-colonial conditions. Its alien rulers are in sustained dependence on a geographically remote ‘mother country’ or imperial center, which claims exclusive rights of ‘possession’ of the colony.\(^11\)

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\(^8\) Peters 1966, p. 268.


\(^10\) Osterhammel 1997, p. 4.

Wolfgang Reinhard writes, that “[t]he minimal content of the term ‘colony’ is thus settlement or rule, whereas the maximal content is settlement and rule.”\textsuperscript{12} While the definition of the term ‘colony’ does not seem to be much contested, the same is not true for the term ‘colonization’. As Osterhammel puts it aptly, “[c]olonization is thus a phenomenon of colossal vagueness.”\textsuperscript{13} Nevertheless, he gives some general definitions by stating, that “[c]olonization’ designates a process of territorial acquisition, ‘colony’ a particular type of sociopolitical organization, and ‘colonialism’ a system of domination.”\textsuperscript{14}

These definitions provide a starting point for further thought, namely the way in which each of the terms comes into being. Colonization is a process, something that requires action. This action might (or might not) lead to a certain form of organization, namely the installation of a colony. Colonies then might (or might not) be affected by a particular system of control—colonialism. As one can see, these three terms are independent from each other, although they can indeed form certain relationships to one another.

If the term ‘colonization’ describes a vague phenomenon, the same is even truer for the idea of ‘colonialism’. There is a myriad of different definitions. Lorenzo Veracini states the “traditional distinction between ‘colonialism’, as exercised over colonised peoples, and ‘colonization’, as exercised over a colonised land” in his book about Settler Colonialism\textsuperscript{15}, whereas Wolfgang Reinhard uses “‘colonialism’ to mean one people’s control over another people through economic, political and ideological exploitation of a development gap between the two.”\textsuperscript{16}

The historian Philip Curtin describes colonialism broadly with the “domination by people of another culture”\textsuperscript{17}. According to Osterhammel, three important features have to be added to this definition\textsuperscript{18}. First, colonialism always entails a specific relationship between a dominant society which forces its will upon another society, which is in turn manipulated according to the needs of the colonial force. Secondly, the dissimilarity between colonizer and colonized is crucial. In Osterhammel’s opinion, European colonialism almost never led to counter-acculturation. Only the European culture, or rather the culture of the colonizing country, was implemented in the colonies without any cultural transfer. The third point refers to this as well. Osterhammel states that colonialism was seen “as a contribution to a divine plan for the salvation of the

\textsuperscript{12} Reinhard 2011, p. 3.
\textsuperscript{13} Osterhammel 1997, p. 4.
\textsuperscript{14} Osterhammel 1997, p. 4.
\textsuperscript{15} Veracini 2010, p. 14.
\textsuperscript{16} Reinhard 2011, p. 1.
\textsuperscript{17} Curtin 1974, p. 23.
\textsuperscript{18} Osterhammel 1997, pp. 15—16.
pagans, as a secular mandate to ‘civilize’ the ‘barbarians’ or ‘savages,’ as a ‘white man’s burden’ that he is privileged to carry, etc.” The definition that Osterhammel arrives at goes as follows:

Colonialism is a relationship of domination between an indigenous (or forcibly imported) majority and a minority of foreign invaders. The fundamental decisions affecting the lives of the colonized people are made and implemented by the colonial rulers in pursuit of interests that are often defined in distant metropolis. Rejecting cultural compromises with the colonized population, the colonizers are convinced of their own superiority and of their ordained mandate to rule.

In this thesis, the debate on penal colonization and the treatment of convicts in Australia is analyzed. Although the destiny of the Aborigines is left out, it is important to note that the British were not settling an uninhibited land. There were skirmishes and quarrels with the aboriginal inhabitants. Insofar, the local population was important for the strategies devised by the colonial authorities. Although they were almost never mentioned in the sources used for this thesis, they constituted a force to be reckoned with. This is reflected in Reinhard’s theoretical writings on the active role of the colonized in the system of colonialism. Whereas older authors usually described this term from a predominant European vantage point, Reinhard realized that the indigenous people were active in shaping the relationship between colonizers and colonized.

However, the authors used in this thesis wrote with contempt about the Aborigines. According to Jeremy Bentham they were, “a set of brutes in human shape—the very dregs even of savage life [...] a set of living nuisances, prepared at all times for all sorts of mischief: for plundering the industrious; for quarrelling with the quarrelsome; for affording harbour to the fugitive.” Not quite as blunt but still disdainful were the remarks of George Arthur about the native inhabitants in Van Diemen’s Land. After brutally herding them together and exiling them on a small island nearby he commented that they “have been induced [...] to retire to Flinders’ island, where, under the protection of government, they are now learning, so far as may be practicable, some of the more simple arts of civilized life.”

More important to the authors than the people was certainly the land that was colonized. The quality of the settled territories was vital for agriculture and animal husbandry and thus for the survival of the settlements. In addition, some of the writers devised plans on how best to split up the land between free and bound people. What happened to the original inhabitants of these areas was only of secondary importance, if even.

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19 Osterhammel 1997, p. 16.
21 Reinhard 2011, p. 2. This idea strongly refers to one of the big debates of post-colonialism, the role of the colonized people. Unfortunately, there is no space here to portray this discussion. For references cf. Fanon 1967; Said 1978; Memmi 1991; Bhabha 1994.
22 Bentham 1843, p. 182.
23 Arthur 1835, p. 66.
1.3 Methodology

In this thesis, different widely published sources are used\(^\text{24}\). This category of source material comes with certain specific features. The writers did not compose their texts for their own private use or for only a small number of people. On the contrary, probably all of them wanted to reach as large an audience as possible. In addition, they all had agendas which they wanted to strengthen through their texts. Hence, the sources do not contain many doubts about the authors’ positions or arguments which did not serve their ends. The writers mostly presented their arguments and tried to convince their readers that their position was the right one. There were clear intentions behind the writing of their documents. Insofar, they did not present a balanced discussion in their writings but rather an appeal to implement their ideas. This means that one can not expect the presentation of strong counter arguments or different positions in the texts. Hence, the decision was made to use writers representing different standpoints with regards to the benefits of Australia as a penal colony in order to get a balanced view of this debate.

While analyzing the sources, and as a result of these readings too, five categories are used and the texts are studied according to them. These categories are ‘Exiling Convicts’, ‘Deterrence and Punishment’, ‘Reformation’, ‘Economy’, and ‘Colonization’. For one thing, these categories flowed naturally from the source material. Almost all of the authors had something to say about the positive and negative aspects of Australia as a penal colony with regards to these categories. In addition, deterrence, punishment, reformation, and incapacitation were important aspects of every penal idea or institution during the first half of the 19th century. These four features were important for the argumentation of the writers and therefore they are included in the analysis. Economy was not a direct end of penal processes but the British government could not spend an endless amount of money, even for the best of penal ideas. Insofar, the authors were eager to show that the Australian settlements were (or were not) able to survive independently from British subsidies. Some of them even tried to prove that Australia was or might become a valuable asset to the crown and produce a surplus. Last but not least, New South Wales and Van Diemen’s Land were after all colonies, and therefore the expectations associated with other colonies applied to them as well. For this reason, one last category is added which will be concerned with the opinion of the authors regarding colonizing activities and Australia.

All in all, the debate over penal colonization, which is represented through the sources, was a rather abstract one, at least in the material studied in this thesis. The discussion is carried out in big categories, not in micro-studies about the punishment and reformation of single felons.

\(^{24}\) The exception is Henry Bathurst, who probably did not intend to have his letters widely published.
The reader will not find the destiny of any single convict discussed in this thesis, because sources were chosen that were concerned with the macro developments. Insofar, this work is concerned a lot with different ideas and convictions, and less with individual destinies and experiences from the colonies. Mostly, the writers tried to support their arguments with abstract thoughts and claims, and less with numbers and figures. Sometimes, figures are presented, but the interpretation of these numbers might differ widely between the authors. Hence, the truthfulness of these claims is not verified. Rather, the aim is to analyze why and how certain ideas were presented. The writers intended to impress and convince a certain audience and therefore, it is instructive to study the arguments they presented and the way these claims were made. Although this was not always made explicit in the source material, the writers were reacting to arguments written beforehand. They were part of a bigger debate during the first decades of the 19th century, revolving around different penal ideas.

1.4 Sources

When it comes to the penal history of Australia during the 18th and 19th century, there is a plethora of sources to choose from. This topic fascinated many people in Britain. Pamphlets, tracts, speeches, and books are readily available. In this work, British opinions from the first decades of the 19th century are analyzed in order to examine ideas about the already existing settlements and their advantages and disadvantages. People writing during the last decades of the 18th century could mostly only speculate about the benefits and drawbacks of the Australian penal colonies. It took quite a few years until the first settlements were established and sufficient news had reached Britain. Of course, the authors chosen speculated about future developments and their opinions are not solely based on facts, but they could already draw conclusions from several years or decades of Australian penal history. They knew about the developments in New South Wales and/or Van Diemen’s Land and could base their ideas on past events.

After the choice was made for sources from the beginning of the 19th century, a decision was taken to use authors from different decades. The idea is to have a look at different developments over time. By choosing sources from different years, one can see how the opinions developed throughout this time frame. Naturally, the developments during these years and decades influenced the opinions of the writers. Insofar, someone writing at the beginning of the 19th century might have had a different point of view compared to someone writing in the 1830s, simply because the situation of the penal colonies was different. However, certain topics were important to all the authors. This allows for a comparison between the writers and makes it intriguing and insightful to compare their opinions on these issues.
In order to get a balanced picture, writers who were by and large in favour of having penal colonies are included as well as authors who were generally against this institution. Since they were all writing on the same or similar topics with regards to transportation to Australia, it was possible to analyze the same subject from different angles. Last but not least, authors are incorporated who had either travelled themselves to Australia or who had some influence in British politics. For some of the writers, both criteria applied. The idea behind this decision is to read the writings of people who could (and sometimes did) influence a change in the whole structure of the penal colonies. In order to achieve their goals, these writers had to argue on many different topics and levels. The works of the following authors are used as sources:

1. John Thomas Bigge (1780—1843): Bigge was an English judge and royal commissioner who travelled to Australia in 1819 by appointment of Lord Bathurst, the Secretary of State for War and the Colonies. Before, he was the chief justice of the British colony in Trinidad from 1813 to 1818. Upon his return to England, Bigge was appointed a special commissioner to examine the government of the colony of New South Wales. Under Governor Lachlan Macquarie, much had changed in Australia. Macquarie advocated the admittance of released felons into the colonial society, which caused conflicts with the free settlers. Bigge was sent to inquire into everything that concerned the management of the colony. He arrived in Sydney in September 1819. After his return to Britain, he published three reports on his trip, *The State of the Colony of New South Wales* (1822), *The Judicial Establishments of New South Wales and Van Diemen's Land* (1823), and *The State of Agriculture and Trade in the Colony of New South Wales* (1823). In this thesis, the first report into the state of the colony of New South Wales is used as a source. Bigge wrote exhaustively about the convict system of New South Wales and proposed changes in the judicial system, which were later implemented in the New South Wales Act. However, these changes were only of an embryonic nature. Bigge’s main aims were to make transportation more cost-efficient as well as to reinstate the terror of the penal colony to discourage criminals in England. After his appointment to Australia, Bigge inquired into the state of the Cape colony and other British colonies. He died in London on 20 December 1843.

2. George Arthur (1784—1854): Arthur was Lieutenant Governor of Van Diemen's Land from 1823 to 1837. He served in the British army for many years, for example in Sicily and Egypt. In December 1812, Arthur was appointed assistant quartermaster-general in Jamaica. Two years later, he became superintendent and commandant of British Honduras and in 1815 he was

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25 Peel and Twomey 2011, pp. 43—44.
26 Kercher 2003, p. 583.
appointed brevet lieutenant-colonel. Arthur returned to England in 1822 and, one year later, he was appointed lieutenant-governor of Van Diemen’s Land. Although Arthur was supposed to reform the penal system in Van Diemen’s Land in order to make it more equitable, it was during his time that the island gained a strong reputation of being an especially harsh place for convicts. He improved the administration, magistracy and police in his colony. However, after he left the colony in 1837, the policies on the island were drastically changed once again. Despite his conflicts with other officials in Van Diemen’s Land and some free settlers, the authorities in Britain were satisfied with his performance. After his time in Australia, Arthur was appointed lieutenant-governor of Upper Canada in 1837. He accepted one last over-sea appointment to India from 1842—1845 and was promoted lieutenant-general in 1854. The same year, he died after a stroke on 19 September. During his time in Van Diemen’s Land, Arthur wrote a pamphlet on the Defence of Transportation in Reply to the Remarks of the Archbishop of Dublin, in his Second Letter to Earl Grey in 1835, which is analyzed in this thesis.

3. Alexander Maconochie (1787—1860): Maconochie was a Scottish naval officer, and geographer. He joined the Royal Navy in 1803 and fought in the West Indies during the Napoleonic Wars. During the wars he was promoted lieutenant and in 1815 he was raised up to the rank of commander. Already during the 1810s, he wrote some pamphlets on possible colonial enterprises in Oceania and their economic advantages. In 1830, Maconochie was appointed as secretary to the Royal Geographical Society and in 1833 he became professor of geography at University College, London. Maconochie sailed to Hobart on Van Diemen’s Land in 1836, accompanying Sir John Franklin as his private secretary. He wrote a few critical reports on behalf of the Society for the Improvement of Prison Discipline about the prison system in Van Diemen’s Land. From 1840 to 1844 he was the superintendent of the penal colony on Norfolk Island, where he attempted to put his ideas on penal reformation into practice. After his return to England, he was appointed governor of a new prison in Birmingham in 1849. However, after critical reports by a royal commission, he had to resign after only two years. Alexander Maconochie died on 25 October 1860. Altogether, his progressive notions for prison reform were very influential; particularly his idea that prisons should not only punish their inmates but positively encourage them to reform too. His publications include e.g. Australiana: Thoughts on Convict Management and other Subjects Connected with the Australian Penal Colonies from 1838, which is analyzed in this thesis.

4. Jeremy Bentham (1748—1832): Bentham was a British philosopher, jurist, and a social reformer. He wrote numerous tracts about law and jurisdiction, but he was also active in many other fields. Although he never travelled to Australia, he was knowledgeable in the field of penal colonization and compared the penal colonies with his own idea of building new prisons in Britain. In this thesis, his work *Panopticon versus New South Wales, or, the Panopticon Penitentiary System, and the Penal Colonization System, Compared* from 1802 is analyzed. Bentham was critical of colonies in general, and especially of their use for penal reasons. In particular, the Australian prison colonies were a thorn in his side. He thought that his own idea of a modern penitentiary would be much more effective in punishing and reforming criminals. Moreover, he thought it more cost-efficient. Bentham even acquired a plot for his envisaged prison in 1799 but in the end, his plans came to nothing. As an important philosopher and jurist, Bentham is regarded as the founder of modern utilitarianism. He also wrote extensively on the field of economics and connected this area with law and politics. Jeremy Bentham died on 6 June 1832.

5. Henry Bathurst, 3rd Earl Bathurst (1762—1834): Bathurst was a politician and became a lord of the Admiralty in 1783 in William Pitt’s ministry. In 1789 he was appointed a lord of the Treasury and in 1793 he became a commissioner of the Board of Control and member of the privy council. He remained in that post until the end of Pitt’s government in 1801. From 1804 until 1806 he was master of the Royal Mint and from 1807 until 1812, Bathurst served as president of the Board of Trade and again as master of the mint. In 1812, he was appointed secretary of state for war and the colonies and held that office for 15 years until 1827. In this position, he gave instructions to John Thomas Bigge before the latter travelled to New South Wales. In the printed version of Bigge’s report used in this thesis, three letters from Bathurst are included. Two are addressed to Bigge and one to Viscount Sidmouth, who was the British Home Secretary from 1812 until 1822. Since these letters hold a lot of interesting content, they are included in the source material. From 1828 until 1830 Bathurst held his last political office as lord president of the council. He died on 27 July 1834.

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2 Punishment

2.1 Means of Punishment in Early Modern Britain

The English system of law enforcement in the Early Modern period is often portrayed as being ineffective and primitive. Yet, by the end of the sixteenth century, England already had a sophisticated and many-layered system of law, with an abundance of regulations and statutes. This legal regime differed greatly between theory and practice though. One major reason for this divergence was the lack of a central police force. A centralized and effective police would not be founded until the Police Act of 1829. Until then, so called “thief-takers” were heavily relied upon. These people were basically police informers, who reported criminals for money. Additionally, from around the mid-18th until the second half of the 19th century at least 450 different ‘Associations for the Prosecution of Felons’ were established. These associations existed all over the country which portrays very well the rather local level not only of fighting crime, but also of governing the country in general. Indeed, many rural communities were against any kind of centralized police force, because they feared for their ancient rights and freedoms and did not trust the government in London.

In general, one can identify four main goals of Early Modern punishment: deterrence, retribution, ritual cleansing, and (towards the end of the period) reformation. The meaning and importance of each of the four aims changed over the decades and centuries. Nevertheless, each of them played an important part in the creation of new forms of punishment. Deterrence/example was perhaps the most important point until the mid-18th century. Punishment was usually carried out in public places. People were forced to make amends for their wrongdoings in front of the whole congregation on Sunday or were publicly disgraced on market days in the town square. However, the most striking examples of Early Modern deterrence were executions. Indeed, the hanging of people was a great spectacle, with the convict being transported to the gallows slowly through the assembled masses. Usually, there was a speech before the execution and the gallows were put in a big open space so many people could witness the destiny of criminals.

Retribution played a crucial part in the Early Modern British penal regime as well. Every crime was supposed to be answered by an appropriate and proportional punishment. Insofar, the

more terrible the crime the more terrible the punishment was supposed to be. Another important part of Early Modern punishment was ritual cleansing. By committing a crime, the offender had separated themselves from society. In order to be re-admitted into the community, he or she had to go through certain rituals to be purified from the stain of misconduct. Indeed, this idea became especially apparent in the many shaming punishments that were carried out during the Early Modern period.

Reformation, the fourth aim of punishment in Early Modern Britain, became perhaps the most important one from the middle of the 18th century onwards. Reformation did not play an important role, if one at all, up until the second half of the 18th century. However, during this century it was increasingly felt that executions were not an appropriate way of dealing with numerous crimes. Instead, many reformers pleaded for different ways of punishment, for example transportation and the incarceration of felons in new prisons. It was hoped that in a different environment or in modern jails, the prisoners could be changed through supervision, hard work and religious instruction. After their aspired transformation, the convicts could become accepted and productive members of society once again.

Jeremy Bentham, who strongly influenced the utilitarian view of penal practices, listed four main goals too, although they were slightly different. In his opinion, “Example—prevention of similar offences on the part of individuals at large […] Reformation […] Incapacitation—prevention of similar offences on the part of the same individual […] Compensation or satisfaction, viz. to be afforded to the party specially injured where there is one” were the most important goals. Bentham added one more aim, namely “Economy […] an indirect or collateral end—a mark which, though not the direct object of any such measure, ought not to be departed from to any greater distance, than the pursuit of the other direct ends shall be found to render unavoidable.” As Bentham stated, economy was not a direct end of penology. Even so, it was important for the authorities to work cost-efficiently. Economy was a significant factor and is therefore being afforded a separate chapter among the features of penal colonization in this thesis.

Until transportation and imprisonment on a large scale were introduced in penal policies, other forms of punishment were clearly preferred. Although the penal regime in Early Modern England was quite diverse and the 18th century not only marked by ‘the bloody code’ of executing people as often stated, the death sentence still played a crucial role in the penal regime of Early

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38 Foucault 1977, p. 74.
40 Bentham 1843, p. 174.
41 Bentham 1843, p. 174.
Modern Britain. This becomes apparent through the number of crimes punishable by death. At the beginning of the 17th century, around 50 transgressions were seen as capital offences, whereas 200 years later this number had risen to approximately 200. Insofar, a huge range of crimes could lead to the execution of the offender. One could be sentenced to death for posing as a gypsy, burning down a pile of straw or appearing on a high-road with a sooty face. However, despite the increasing number of crimes punishable by death, the number of death sentences actually carried out decreased during the 18th century.

This development had several reasons. One of them was the practice known as ‘benefit of clergy’, which had its origins in the Middle Ages. The Church claimed that only its own courts had the power to judge over the clergy. Since this definition included everyone who was associated with some kind of Church office, huge numbers of people could profit from ‘benefit of clergy’. In fact, by the end of the Middle Ages, every literate male could use this practice, because it was assumed that everyone who was able to read was somehow connected to the Church. Insofar, if one could prove his literacy, ‘benefit of clergy’ was granted. Only if one was sentenced to death a second time would the lay courts have the authority to carry out the verdict. Until the 18th century this practice was both tightened up and at the same time used more leniently. A few crimes, such as robbery, rape, murder or witchcraft were declared ‘non clergyable’, i.e. the offender was directly tried by a lay court. On the other hand, numerous people profited from ‘benefit of clergy’ more than once, the literacy test was abolished and women were granted the right to plead for this practice as well.

Two other important causes were the behaviour of local juries and the changing opinion in influential circles of society about the spectacle of public executions. Quite often, offenders were sentenced to lighter punishments than the original charge would have implied. Likewise, the Enlightenment of the 18th and 19th century spread more humane ideas about the general population and led many people to believe that capital punishments in general and specifically the gallows were not an appropriate way of dealing with criminals anymore. At first glance, it might seem surprising that the authorities would not intervene when their penal code was sabotaged through all the described measures. However, their greatest concern was deterrence and perhaps the number of executions was deemed appropriate enough to bring the point home to the

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43 Foucault 1977, p. 76; Rudé 1985, p. 102.
44 Hughes 1987, p. 29. Also, the definitions of the offences punishable by death were extremely narrow. Insofar, “defacing Westminster Bridge was different from defacing Fulham Bridge”, Briggs et al 1996, p. 133.
45 Hay 1975, pp. 22—23.
47 Foucault 1977, p. 73.
Moreover, pardons or lesser punishments were only granted for certain crimes. Murderers and people convicted of treason for example were still mostly put to death.

Another crucial cause for the decline of executions was the increasing usage of alternative ways of punishment. One such alternative were shaming punishments. The most important feature of these punishments was their public display. Wrongdoers were put in the pillory on market days, thrown in rivers strapped to a ducking stool with their family and friends looking on or sat in the stocks in the middle of town. These methods were so effective because society was organized differently in the 17th or 18th century than it is today. Most people lived in small communities where they knew each other well and the shame of being publicly chastised had a huge impact on someone’s life. One more alternative used by the authorities were corporal punishments. Whipping had been used for a number of crimes since the Tudor age, most notably petty larceny. During the second half of the 18th century, corporal punishment was increasingly used for offenders convicted for grand larceny as well. Insofar, it was employed as a replacement for executions. Another form of punishment with increasing importance was the levying of fines. Fines were used for minor offences, such as petty fraud or assault.

Although the punishment of crime certainly changed between the 16th and the 18th century in Britain, it was by and large stable. Towards the end of the 18th century and the beginning of the 19th century though, major changes in the penal code took place, which reflected transformations in society at large. Especially industrialization led to major developments. Britain experienced an upward trend in the population size and life standard. A growing number of people moved from the countryside, where their families might have lived for decades and centuries, to towns and cities in order to find work. The stable local communities were dissolving and were being replaced by the anonymity of the city. Money also played an increasingly important role in people’s lives. These alternations led to new patterns in crime. A growing amount of people were no longer controlled by the discipline of their small communities. They lived an anonymous life in the city, which allowed them to escape crime undetected. The authorities reacted to this development by centralizing their efforts against offenders. Slowly, the government in London took over more control from the local power holders. However, at least

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57 Foucault 1977, p. 76.
at the beginning of the 19th century, local authorities still held a lot of power and the government was dependent on their co-operation in order to be able to solve crimes.

Another interesting discussion evolved around the existence of a whole criminal class. Especially during the 19th century, it was increasingly argued that some people had crime in their nature. This was supposedly especially true for poor people. Also, delinquency was allegedly hereditary and could therefore be passed on by criminals to their children. The authorities reacted to this perceived threat of a whole class of villains by exiling felons and by introducing or expanding the police force. Its development was different in various parts of the country. In London, the Metropolitan Police Force faced the biggest increase and amount of crime. Their organization can hardly be compared to the police stations in the countryside. Nevertheless, the government in London was satisfied with diverging developments all over the country, especially because many local authorities still feared the growing influence of the central government or the Crown.

The punishment of offences changed drastically towards the end of the 18th and the beginning of the 19th century. Capital punishments were used less and less and the number of crimes punishable by death was reduced. In 1861, only four categories of offences were left. The same four categories led theoretically to the execution of the delinquent until 1957. Non-capital punishments also underwent some changes. By the beginning of the 19th century, they were divided into two large sub-categories: custodial and non custodial sentences. Many non custodial punishments were abolished during that century. The pillory went largely out of use in 1815 and the stocks were disposed of around the 1850s. Women were no longer whipped after 1820 and from 1861 onwards, the same was largely true for males over the age of 16. The two most important replacements of capital punishment were transportation and imprisonment. Both systems were used throughout the Early Modern period in Britain, but their importance increased drastically during the 18th century and especially during the 19th century.

2.2 Imprisonment in 18th and 19th Century Britain

Imprisonment was the most important penal alternative to transportation throughout the 19th century. In many ways, incarceration in jails was also the replacement of transportation from roughly the second half of the 19th century onwards. During the first centuries of the Early

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61 Hughes 1987, pp. 24—27.
64 Devereaux, 1996, p. 58.
Modern period, detention was usually only used for offenders awaiting their trial\textsuperscript{68}. Yet, already during the end of the 17\textsuperscript{th} century, an increasing number of petty felons were being sent to correction houses for a certain amount of time. Minor criminals continued to be sentenced to jail-time throughout the century. After the American colonies had been closed to British felons from the 1770s onwards, incarceration became increasingly popular as a punishment, also for more serious offences. This development did not change because of the founding of the Australian penal colonies. By 1800 imprisonment and transportation were standard penal measures in Britain, while older forms of punishments, such as executions, shaming punishments, or corporal chastisement were used less and less\textsuperscript{69}.

Already in 1779, the British Parliament had passed a Penitentiary Act which included plans to build two new state-run prisons. However, the plans came to nothing, especially because local authorities feared the growing influence of London, which would have been augmented through the construction of jails controlled by the central power-holders. Ever afraid of losing their power, the authorities in rural areas fought everything that threatened to diminish their influence. Hence, prisoners were mostly kept in county jails or hulks, old ships refitted to serve as temporary detention centres for criminals. During the end of the 18\textsuperscript{th} century, Jeremy Bentham began to make plans for his model penitentiary, the Panopticon. He envisioned a prison where the inmates would be under constant supervision and instruction. Bentham also wanted to put the convicts to work, so that the Panopticon could be a profitable enterprise. He even secured a potential building site but in the end his plans came to nothing because the authorities did not want to finance his project. However, the site, as well as some of Bentham ideas, were later used for the building of Millbank prison, the first national penitentiary, finished in 1816\textsuperscript{70}.

The passing of the Gaols Act in 1823, together with some amendments added the following year, introduced a more consistent system of prison building and management throughout the country. Fees, which had been levied by the gaolers from the inmates for everything from removing shackles, over getting access to drinking water and food, up to having a private cell, were forbidden. Different categories of prisoners were separated and health regulations introduced. Hard labour and religious instructions were institutionalised, confirming the importance of punishment and reformation in the new penitentiaries. The declining importance of transportation from the 1840s onwards highlighted the ever greater significance of prisons in Britain. Accordingly, in 1842 the second national penitentiary was opened in

\textsuperscript{68} Hirst 1983, p. 9.
\textsuperscript{69} Briggs et al 1996, pp. 69—70; Emsley 1996, p. 248; Devereaux 2006, pp. 53—54.
\textsuperscript{70} Fry 1948, pp. 47—55; Briggs et al 1996, pp. 141—142; Adelman 2011, pp. 38—46.
Pentonville. Altogether, between 1820 and 1848, 54 new prisons were constructed to house the ever growing amount of inmates.\footnote{Briggs et al 1996, pp. 142—143.}

Not only were new prisons constructed, but new methods employed as well. The best way to reform the prisoners, it was argued, was to separate them from each other. In order to achieve this, two rivalling systems were introduced, the silent and the solitary/separate system. Whereas both systems did not allow any conversations between the criminals, the solitary system also meant total isolation for the inmates. The idea was to focus the minds of the convicts only on instruction and work, in order to reform them. In the Australian colonies, these systems were also known\footnote{Maconochie 1838, pp. 66—69.} and applied. According to Alexander Maconochie, “[s]olitary confinement may be a good first step in a course of Secondary Punishment.”\footnote{Maconochie 1838, p. 68.} However, he did not think that either system would be sufficient to reform a criminal\footnote{Maconochie 1838, pp. 67—68.}. By the end of the 1850s, both systems were deemed too harsh and more positive reinforcements were used, such as rewards for good behaviour. This was in line with Maconochie’s ideas who in 1838 had already written about the convicts that “a social system of managing them to advantage is imperiously required; and the discovery of such is one of the greatest desiderata now existing in penal science.”\footnote{Maconochie 1838, p. 68.}

With the Penal Servitude Act of 1853, excellent conduct was rewarded with release on license in Britain, mirroring the ticket-of-leave system in the Australian colonies. This approach was abandoned though after a few years and harder measures introduced once more. This indecisiveness also applied to the kind of work the felons were supposed to do. During some decades, they were supposed to carry out hard, but senseless labour as a pure punishment. At other times, the authorities decided to teach them work skills to better prepare them for the outside world. Altogether, the authorities were in a constant struggle between introducing more liberal and stricter measures in the prisons throughout the 19th century.\footnote{Briggs et al 1996, pp. 143—145.}

Not only measures of punishment and reformation were hotly debated though, but also the deterrent function of penitentiaries. The relatively high sanitary standards, constant food supplies and access to medical help sometimes led critics to believe that certain people committed crimes with the intention of being incarcerated. These doubts about the deterrent effect of prisons were especially voiced during times of depression when many poor people had barely enough means to survive. During the second half of the 19th century, imprisonment became a likely sentence for many offences because of the decline of transportation and capital
punishment. Hence, jails were housing an ever increasing number of inmates throughout the century, and especially during the latter part of it.\footnote{Briggs et al 1996, p. 144.}

Almost all actions taken with regards to penal improvement during the end of the 18\textsuperscript{th} century and the first decades of the 19\textsuperscript{th} century were underpinned by one of two different lines of thought, evangelicalism and associationism. Evangelicals were influenced by a rather conservative religious interpretation. They maintained a stratified worldview and identified the great economic and demographic changes at the end of the 18\textsuperscript{th} century and the beginning of the 19\textsuperscript{th} century in Britain as the main sources for the perceived irreligion, and moral degeneration among the lower classes of society. Constant religious instruction was a major part of their program. Furthermore, they also wanted prisoners to be educated in order to prepare them for a better life outside the penitentiaries. Although pain was certainly part of their agenda, the evangelicals supported a comparably good treatment of the convicts, as long as they followed their rules.\footnote{Forsythe 1987, pp. 8—11.} Associationism on the other hand put its focus on psychology, especially the construction of humane attitudes and the impact of experiences. Philosophers such as David Hume and David Hartley directed their attention to the connection between sensations and experience. The associationists believed that felons initially had to undergo some measure of pain in order to teach them that crime was met by punishment. Afterwards, they were given rewards for good behaviour, teaching them that hard work and obedience paid off much better than breaking the rules of society. Jeremy Bentham planned to put these theories to the test in his envisaged Panopticon. He believed that with enough time, almost every criminal could be turned into a good citizen through the application of enough pain and pleasure.\footnote{Forsythe 1987, pp. 11—13.}

However, these rather reformatory plans were abandoned from the 1860s onwards. Reformation and positive reinforcement were only secondary goals after punishment and deterrence. All steps taken in the years and decades before to ease the life of convicts were scrapped, education largely abandoned, and hard labour as well as constant supervision (re)introduced. These ideas were put into practice with a new Penal Servitude Act in 1864 and the 1865 Prisons Act. Additionally, the authorities in London standardized all penitentiaries and increased the uniformity of prisoner treatment. In order to achieve this, power was taken from the local authorities and the administration of all prisons passed from the hands of the local Justices of the Peace to the central prison commissioners with the 1877 Prison Act.\footnote{Briggs et al 1996, pp. 192—193; Forsythe 1987, pp. 193—195; Willis 2005, pp. 185—202.}
3 Transportation

3.1 Transportation before Australia

Transportation was one of the main forms of punishment in Britain during the 18th century and in particular the first half of the 19th century. For decades and centuries before, the British government had sent prisoners to its colonies. This idea took shape in 1597, when under Elizabeth I “An Acte for Punyshment of Rogues, Vagabonds and Sturdy Beggars” was issued. This act allowed for the shipping of convicts away from England. From 1618 onwards this option was used and small numbers of felons were sent to the American colonies. Transportation became popular for the first time during the end of the 16th century and the first half of the 17th century, when England experienced a great population growth. This in turn led to an increase in unemployment and crime. Moreover, newly formed colonies in English possession were in ever-growing demand of manpower. Criminals were sent to the colonies in order to rid England of them and supply a cheap labour force for the new territories. However, English authorities were also anxious about losing too much of the domestic labour force. Also, they feared for the situation in the colonies, should they solely be supplied with hardened criminals.

The number of transported felons during the end of the 16th century and first decades of the 17th century remained modest compared to the amount of convicts transported during the 18th and 19th century. Moreover, the population growth during the second half of the 17th century was by far not as steep as before. The situation changed dramatically again during the first decades of the 18th century. In 1713, peace with France left thousands of former British soldiers unemployed and prone to a life of crime. On top of that, James Stuart, ‘The Old Pretender’ attempted to establish himself as king in 1715. The authorities reacted with the introduction of the Transportation Act in the spring of 1718. The most important change was that convicts could now be sentenced directly to transportation. Before 1718, criminals received their verdict and could then be pardoned and exiled for a certain amount of years or the rest of their life from Britain. Most of them were shipped to America. Over the next six decades around 40,000 people were sent to the British colonies to work and spent their life far away from their home

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82 Alan Atkinson estimates that around 5,000 to 6,000 convicts were exiled to North America before the Transportation Act, Atkinson 1994, p. 93.
83 Ekirch 1987, pp. 7—11.
84 Ekirch 1987, pp. 13—15.
country. They were usually assigned to a free settler, for whom they had to work until they had served their time. According to Jeremy Bentham this was the crucial difference between transportation to America and transportation to New South Wales. In his opinion, an already existing society of free settlers was a lot better prepared to take on a few convicts. In America, “each convict would have to serve and be trained up in unremitting habits of unavoidable industry during his bondage.” The absence of such an industrious white free population and the number of transported criminals were supposedly two of the major drawbacks of New South Wales.

Another important transformation through the Transportation Act of 1718 concerned the process of banishing people from Britain. Before 1718, convicted felons were either supposed to arrange their own passage away from their homeland or they were transferred with occasional merchant ships to the Americas. Felons who were not able to arrange their own travel or who failed to attract the attention of merchant men sailing to America stayed in local prisons. With the introduction of the new Act this system was totally changed. The British government and particularly local authorities, who had little involvement in the banishment of convicts before 1718, were now the main actors. In order to ensure the transportation of all convicted criminals, the authorities decided to pay a subsidy for each prisoner. This funding was supposed to make sure that it was financially attractive for merchants to ship every sentenced convict away from Britain, even if they might not yield as much money as indentured servants.

The most important reason for the re-introduction and new organisation of transportation lay in the opportunity of getting rid of numerous convicts. Prisons were too small and too few to house any big number of convicts and non-capital punishment allowed convicts to return to their life of crime almost immediately after receiving their sentence. Seeing free-born Englishmen in chain-gangs hard at work was also nothing that liberal-minded people could easily digest, at least not in their home country. Additionally, it was feared that the central authorities could use state-run prisons to strengthen their grip on local communities. Therefore, transportation offered a solution to the problems the authorities experienced at the beginning of the 18th century.

Transportation became the most important punishment in the 18th century in Britain. Parliament passed 16 acts between 1720 and 1765, making various crimes punishable by

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86 Hughes 1987, p. 41. According to A. Roger Ekirch, around 50,000 convicts were transported from England, Scotland, and Ireland from 1700 until 1775; around one quarter of all immigrants from Britain to America during the 18th century were convicts, Ekirch 1987, pp. 26—27; Grubb 2000, p. 94.
87 Bentham 1843, p. 182.
88 Bentham 1843, p. 182.
90 Ekirch 1987, p. 18.
transportation. Population growth and an increasing crime rate led to inflating banishment figures throughout the 1700s\textsuperscript{92}. During wars, such as the War of the Austrian Succession between 1743 and 1748, and the Seven Years War from 1756 to 1763, figures decreased sharply. Conversely, peacetime brought unemployment, increasing crime rates, and the resumption of normal shipping schedules. Hence, more people were penalized and exiled during times of peace\textsuperscript{93}.

The sentence of transportation was dependent on various factors. The most important aspect was the crime committed by the offender. Thieves for example stood a good chance of being banished whereas murderers were still routinely executed throughout the 18\textsuperscript{th} century. Moreover, crimes associated with the expanding trade and manufacturing business, were dealt with harshly. Fraud, forgery, or coining, were usually penalized with the death sentence. Other factors than the crime itself also played an important role. Juries often influenced the outcome of trials by returning lesser verdicts in order to save someone’s life. Likewise, public opinion could affect the verdict. Judges sometimes took pity if they thought that the accused deserved it. Indeed, the impression a defendant made in front of the court was crucial. Young people stood a better chance than grown-ups, females a better one than males, first-time offenders a better one than hardened criminals. Repentance and the impeachment of other criminals were also important factors\textsuperscript{94}.

Despite its stronger involvement in the transatlantic transportation of convicts after the Transportation Act, the government still resumed a rather passive role once felons arrived aboard. To be sure, merchants were required to present certificates to prove the arrival of their cargo in America and heavy fines were imposed if they failed to do so or if certain felons were not transported. Still, once the convicts left British soil, the government had no further involvement in their destiny. The merchants who signed responsible for their transport decided on the space and provisions on the ship. Although contractors certainly had an interest in shipping the convicts as cheaply as possible, economic interests also dictated that the felons should arrive in a good state. Half-starved, disease-ridden servants certainly generated lower prices in America. On board of the ships however, not even the merchants had much influence, and the prisoners found themselves in the hands of shipmasters and their crews. Insofar, the passage over the Atlantic was different for each ship. During the first decades of the 18\textsuperscript{th} century, around 10\% of all passengers did not survive the ordeal of the transatlantic crossing. This figure dropped significantly during the latter half of that century, but approximately 5,000 people might have died altogether until the end of the convict trade between Britain and America\textsuperscript{95}.

\textsuperscript{92} Ekirch 1987, p. 22.
\textsuperscript{94} Ekirch 1987, pp. 29—42.
\textsuperscript{95} Ekirch 1987, pp. 97—108.
Although theoretically all English colonies could have received felons, the overwhelming majority were shipped to just three colonies on mainland America. At least 18 different colonies accepted British criminals, but Virginia, Maryland, and Pennsylvania received around 40,000 people between 1718 and 1775. The local officials were at times strongly opposed towards the forced immigration of so many convicts, but economic interests reigned supreme. The merchants could bring tobacco and grain back to Britain, and the settlers were always looking for skilled and also unskilled workers for their plantations. Other colonies might have been a safer place to exile convicts to, but since the British authorities did not intervene, the traders decided about where to bring their cargo. Once they arrived on American soil, the convicts were sold to colonists. Skilled convicts received the highest prices but since the demand for labour was usually high throughout the 18th century in the colonies, merchants regularly sold all of their prisoners without great difficulty.

Altogether, British authorities relied heavily upon transportation to the American colonies until the 1770s. However, around that time, the colonists voiced their dissatisfaction with the authorities in the metropolis louder and more clearly. Although transportation was not directly influenced by the non-importation movement of 1768—1770, an increasing number of colonists were against the idea of their country being used as a dumping ground for British criminals. British courts reacted by sentencing less people to banishment during the first years of the 1770s. Instead, other options, such as the west coast of Africa, were considered, without satisfying results. Despite these efforts to reduce the reliance of Britain on America as a destination for its convicts, the American Revolution was a shock for the British penal system. From spring 1775 onwards, convict ships were denied access to American waters, and soon enough, the few old and small prisons in the United Kingdom were about to overflow with inmates.

### 3.2 Transportation to Australia

Already in 1779, Joseph Banks, who had sailed with James Cook to Australia and the south Pacific around a decade earlier, suggested Botany Bay on the east coast as a new place where convicts could be sent. In 1770 Cook had mapped the eastern coast of the Australian continent and taken possession of it in the name of his monarch. Altogether, he and his crew gave a positive account of this land. They described it as vast and fertile. Furthermore, the indigenous

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97 Ekirch 1987, pp. 119—132. Bruce Kercher suspects that some merchants released unprofitable convicts already in Britain or Ireland instead of shipping them to America with the risk of being stuck with them there, Kercher 2003, p. 533.
100 Atkinson 2008, p. 33.
population seemed to be peaceful and not in the least dangerous\textsuperscript{101}. However, the British government was not impressed with Banks’ suggestion and dismissed the idea. In 1783, the scheme was once again revived by James Matra, who had also sailed to Australia in 1770 with Captain Cook. Yet, once again the suggestion was rejected by the government\textsuperscript{102}.

Instead, other destinations were tried for the British convicts after a few of them had been sent to work for the East India Company, the Royal Navy or His Majesty’s forces abroad\textsuperscript{103}. However, these numbers were by far not sufficient to ease the pressure on prisons and hulks. In 1783 and 1784, the authorities attempted to revive transportation to the American continent\textsuperscript{104}. Neither in the US, nor in British Honduras could they station their felons though\textsuperscript{105}. In the spring of 1785, the government decided to send a convict ship to the island of Leman, around 400 miles inland on the Gambia River\textsuperscript{106}. After receiving serious complaints from the settlers in this area about having to live in close proximity to criminals and a rather negative report about the climate, it was decided to abandon this idea. Instead, a new plan was made to colonize the coast of South West Africa around the Bay and River of Das Voltas. However, Das Voltas Bay and the surrounding area turned out to be inhospitable, without much water or vegetation to be found. Insofar, this plan also had to be abandoned\textsuperscript{107}.

After some attempts to try to convince Portugal and/or the Netherlands to accept British convicts\textsuperscript{108}, only one option seemed to be left – Australia. If one takes into consideration all the other alternatives considered before Botany Bay, one can easily conclude that this was the last resort for the government. Even more so because they had known about this option for a few years and received positive reports about it. Still, the idea of sending prisoners as far away from home as possible seemingly struck the authorities as an unlikely scheme. Nevertheless, after running out of other options, and being faced by an ever increasing amount of convicts in the prison hulks, the government decided to send a fleet to Australia.

On May 13, 1787, the first convict ships bound for Australia left Portsmouth. It took around eight months to finish the journey via Tenerife, Rio de Janeiro and Cape Town to Botany Bay, where they arrived on January 20, 1788\textsuperscript{109}. Altogether, 717 convicts landed at Sydney Cove with the First Fleet, together with 273 free people, mostly guard personnel and their families\textsuperscript{110}. Whereas all passengers of the First Fleet survived the ordeal of the trip, other convict transports

\textsuperscript{101} Hughes 1987, p. 54.
\textsuperscript{102} Gillen 1982, p. 744.
\textsuperscript{103} Gillen 1982, p. 745.
\textsuperscript{104} Ekirch 1984, pp. 1285—1291; Fogleman 1998, p. 61.
\textsuperscript{105} Gillen 1982, pp. 746—748.
\textsuperscript{106} Gillen 1982, pp. 748—749.
\textsuperscript{107} Gillen 1982, pp. 749—752.
\textsuperscript{108} Gillen 1982, p. 754.
\textsuperscript{109} Hughes 1987, pp. 77—83.
\textsuperscript{110} Kercher 2003, p. 542.
were not as lucky. Especially the infamous Second Fleet, also known as the ‘Death Fleet’ took a
terrible toll on its passengers. After the First Fleet had been an expensive government expedition,
the next transport was conducted by a private entrepreneur who tried to ship the prisoners as
cheaply as possible\textsuperscript{111}. Close confinement and malnutrition led to a high mortality rate.
Altogether, 277 people died during their passage to Australia in 1790, the highest recorded
number ever in one year\textsuperscript{112}. Jeremy Bentham described this drastically by writing that “the profit
which the transporter had it in his power to make by putting people to death—whether by
starving them or crowding them—this profit in both cases being left to be reaped with impunity,
and unbalanced by any profit to be got by keeping them alive”\textsuperscript{113}.

Insofar, transportation was not only a punishment that was carried out upon arrival at a
certain destination. Instead, it already penalized the prisoners during the transport. During the
19\textsuperscript{th} century, stricter measures were introduced to ensure the survival of the criminals and the
number of casualties dropped significantly, also thanks to government intervention\textsuperscript{114}. The main
idea was to punish and reform convicts, not to kill them on the way to the colonies. Moreover,
the loss of able-bodied men and women would undermine the economic capacities of the
colonies. John Thomas Bigge reported in 1822 that “[t]he transportation of convicts, as far as it
regards their health, appears to have undergone very considerable improvement”\textsuperscript{115}. George
Arthur was even of the opinion that the journey could be used to reform the felons. He wrote
that he did “not see why, in any instance, the voyage may not be made an opportunity of
eradicating evil passions— of supplying the mind with useful information— and of impressing it
with a deep sense of religion; and of the dreadful consequences of crime.”\textsuperscript{116} Arthur even referred
to a case know to him of convicts being constantly instructed during their travel to Australia\textsuperscript{117}.
Supposedly these criminals who arrived in the colonies “had undergone a most remarkable
change.”\textsuperscript{118} Nevertheless, the authorities were also interested in transporting felons as cheaply as
possible. Hence, their wellbeing and health were not of paramount importance to the responsible
organizers of shipments to Australia\textsuperscript{119}.

All in all, from 1788 to around 1868, approximately 160,000 convicted men, women, and
children were shipped from Great Britain to various parts of the Australian continent\textsuperscript{120}. Three
times as many people were exiled to Australia than to America. Around 80,000 convicts arrived

\textsuperscript{111} Coleman 2005, pp. 10—11.
\textsuperscript{112} Shaw 1966, pp. 363—368.
\textsuperscript{113} Bentham 1843, p. 196.
\textsuperscript{114} Kercher 2003, pp. 543—544.
\textsuperscript{115} Bigge 1966, p. 1.
\textsuperscript{116} Arthur 1835, p. 71.
\textsuperscript{117} Arthur 1835, pp. 71—72.
\textsuperscript{118} Arthur 1835, p. 71.
\textsuperscript{119} Coleman 2005, p. 11.
\textsuperscript{120} Hughes 1987, p. 2.
in Sydney in New South Wales between 1788 and 1840. Moreover, around 66,000 prisoners landed at Hobart in Van Diemen’s Land between 1818 and 1853 and approximately 10,000 people were sent to Freemantle in Western Australia between 1850 and 1868. Only in the late 1830s did the number of free settlers immigrating to Australia annually exceed the number of convicts being forcefully shipped to this colony every year. In 1841, approximately 20 percent of the population of New South Wales was still comprised of British and Irish convicts.

Between 1788 and 1817, almost all transported criminals were sent to New South Wales. It was not until the end of this period that the numbers increased significantly. Whereas during the first four years of transportation, around 1,000 people arrived on average every year in New South Wales, this number dropped considerably during the next years. The high amount of prisoners sent to Australia right after the establishment of the first settlements reflects the need of the British authorities to relieve their penitentiaries of the great quantity of inmates. Between 1793 and 1812, only around 370 felons per year entered New South Wales. From 1813 onwards the numbers started to increase once more. The end of the Napoleonic Wars made the sea travel easier and safer. Additionally, many soldiers returned from the continent to Britain, leading to raising amounts of unemployed people. A rise in criminal activity and more convictions added to the number of transported convicts. Between 1813 and 1817, a yearly average of more than 1,200 felons disembarked onto the shores of New South Wales, and between 1818 and 1820, this number rose to the staggering amount of almost 2,700 people per year.

From 1821 until 1826 fewer criminals were transported, on average around 1,600 per year. However, after that, transportation to New South Wales reached its peak, especially during the early 1830s. Between 1827 and 1838 more than 3,200 people arrived annually in the penal colony. Transportation to New South Wales ended in 1840 (besides one unsuccessful attempt to revive this practice in 1849) due to increased pressure especially from the local free population which no longer wanted to receive British prisoners. This was not the end of transportation to the Australian continent though. Already in 1803 and 1812, a few criminals were sent to Van Diemen’s Land. From 1818 onwards, this penal colony was to receive a steady influx of convicts every year. Nevertheless, the numbers during the first years were significantly lower than the ones noted in New South Wales. Between 1818 and 1829 around 860 people per year arrived on the island. Transportation to Van Diemen’s Land increased notably during the 1830s. From 1830 until 1840 more than 2,100 felons embarked every year on the island’s shores. On average, both

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121 Dyster 1994, p. 74.
123 Robson 1965, p. 3; Kercher 2003, p. 542.
127 Petrow 2000, p. 357.
penal colonies together accepted more than 5,000 criminals annually during the 1830s. Because New South Wales did not receive any transported criminals after 1840, the numbers sent to Van Diemen’s Land rose accordingly. Between 1841 and 1845 a staggering average of almost 3,800 people arrived every year. From 1846 until the end of transportation to Van Diemen’s Land in 1853, the numbers dropped again to around 1,800 convicts arriving each year.\textsuperscript{128}

After Van Diemen’s Land ceased to be an option because of widespread protests against the incursion of British criminals, an alternative needed to be found. Despite the growing reluctance in Britain to transport people at all and regardless of the growing influence of penitentiaries, the authorities in London still wanted to exile people. In 1850, the local authorities in the colony of Western Australia offered to receive transported felons. The colony had been established in 1829 but it did not develop well. Convicts seemed to be useful as a cheap labour force in order to create an infrastructure and boost the economy.\textsuperscript{129} The first felons arrived in Fremantle on 3 June 1850 and until 1868 around 10,000 criminals were sent to the colony.\textsuperscript{130} A great amount of people to be sure, but also a lot less than New South Wales and Van Diemen’s Land had received. In 1868, transportation to Australia stopped completely.

3.3 The Australian Penal Colonies

Until the 1950s, it was widely accepted that the main reason for sending prisoners to Australia was because all other options had failed.\textsuperscript{131} However, during the second half of the twentieth century, some historians started to look for other explanations. They believed that the British government would never have sent convicts to an almost unknown place just to dump them there.\textsuperscript{132} One reason that was given for Australia was the British dependence on foreign naval stores. Hemp, flax, and timber had to be imported from Russia and the relationship between the Tsarist Empire and Great Britain had taken a turn for the worse during the 1780s.\textsuperscript{133} To be more independent from Russian imports, the government supposedly looked for new opportunities.

Cook and Banks had written reports about the timber and flax to be found in New Zealand. Moreover, they had found pines on Norfolk Island. Indeed, supporters of the idea of an Australian settlement, like Banks and Matra, pointed out these advantages to the British government in the 1780s.\textsuperscript{134} However, one might wonder why the authorities had waited so long with their decision for Botany Bay if they had known and appreciated all this. Also, why did they

\textsuperscript{128} Shaw 1966, pp. 364—368.
\textsuperscript{129} Gibbs 2001, p. 60; Gibbs 2007, p. 58.
\textsuperscript{130} Gibbs 2001, p. 60.
\textsuperscript{131} Lewis 1988, p. 507.
\textsuperscript{132} Blainey 1968, pp. 16—33; Frost 1980, pp. 158—165.
\textsuperscript{133} Frost 1974, pp. 261—262.
\textsuperscript{134} Frost 1974, p. 262.
consider other ideas first if they thought the need for new sources of naval stores so urgent? Very
telling, none of the convicts were chosen for their crafting skills. No scientists accompanied the
expedition and no appropriate tools were taken\textsuperscript{135}. If the primary reason had indeed been to get a
new source for naval stores, why was Australia chosen and not New Zealand, with its great
supplies of flax and timber\textsuperscript{136}? Even a few years after the foundation of the colony, no serious
attempts were made to profit from these resources\textsuperscript{137}. Another explanation for the choice of
Australia might have been to replace the lost American colonies in the west with new territories
in the east. A bridgehead in Australia might be used to deny France access to India and south-
east Asia and help to control the trade routes in that region\textsuperscript{138}. However, no serious attempts
were ever undertaken to develop Botany Bay as a strategic harbour for a British fleet\textsuperscript{139}.

Hughes interpretation of these attempts to find different explanations for the decision of
using Australia as a convict colony seems plausible. In his opinion, Australian people tried
increasingly to lend dignity to their heritage after the Second World War\textsuperscript{140}. The idea of Australia
being just a dumping ground for unwanted British criminals did not sit well with the self-image of
a proud nation, especially considering that many people could trace their ancestors back to these
criminals. It is quite likely though, that this was the crucial reason. Not even the crimes most
convicts received their sentences for helped to create a better image of them. By and large, they
were sentenced for larceny, not for political reasons\textsuperscript{141}. Moreover, the things they stole were
usually not appropriate to help their families to survive. Neither did they represent a form of
resistance of honest people against cruel and despotic employers\textsuperscript{142}. In all probability, Australia
was chosen because all other suggestions were rejected.

Administratively, New South Wales covered most of the Australian continent at the
beginning of British colonization. This also included Norfolk Island, and Van Diemen’s Land,
which became a separate colony in 1825. After transportation to this island ended in 1853, its
name was changed to Tasmania in 1856\textsuperscript{143}. The western part of Australia was permanently
colonized by the British from 1829 onwards. In that year, a settlement at the Swan River was
established\textsuperscript{144}. Originally, the colony was also named after this first community. However, in 1832

\begin{thebibliography}{144}
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\item Gillen 1982, pp. 762—764.
\item Gillen 1982, pp. 759.
\item Gillen 1982, pp. 764.
\item Hughes 1987, pp. 56—57; Kociumbas 1992, p. 91; Lawrence and Davies 2011, pp. 20—21.
\item Gillen 1982, pp. 766.
\item Hughes 1987, p. 57.
\item Dyster 1994, p. 78.
\item Dyster 1994, p. 78.
\item Kercher 2003, p. 543.
\item Gibbs 2007, p. 58.
\end{thebibliography}
the name was changed to Western Australia. In 1836 the state of South Australia was carved out of New South Wales, just as the state of Victoria in 1851 and the state of Queensland in 1859. Most of the convicts were assigned upon arrival, either to work for government institutions or for free settlers, some of whom were former convicts themselves. They built almost the complete infrastructure of the colonies and worked on private farms and homesteads. According to Alexander Maconochie, the “[p]risoners are, on their first arrival in the Penal Colonies, assigned to private service at the will of a Public Board, which endeavors, as it best can, to distribute them fairly and equally among the settlers.” Since the majority of the Australian population was not free for many years, convicts also worked as overseers, in the administration or for the police. Insofar, one needs to be careful to not only identify the Australian convict experience with the extremely harsh conditions in notorious places like Port Arthur or Norfolk Island. These places were in general only for prisoners who committed further crimes in the colony. Nevertheless, they still had important functions in the running of the prison colonies. Repetitive offenders could be locked away safely for months and years under terrible conditions. Likewise, the reputation of Norfolk Island and Port Arthur worked as a deterrent for all other prisoners and probably motivated them to stay away from a life of crime in their new country. Insofar, the places of secondary punishment in Australia played an important role in everyday life for all convicts; no matter if they ever set foot into one of them or not.

In some ways, the convicts in Australia enjoyed much greater liberties than the prisoners who had been shipped to the Americas, but in others they did not. In Australia, the inmates often had the opportunity to earn extra money in their free time. Moreover, some of them stayed in their own lodgings, even before they received their ticket of leave, which allowed them to seek paid employment and granted them certain freedoms. Theses tickets were depended on the felon’s continuous good behaviour and could be revoked at any time. The convicts were not seen as the property of their masters and could not be handled as commodities. On the other hand, the official control of the prisoners was much tighter in Australia. In this colony, the focus was much more on punishment, reform and exile than it had been in America, where people were mostly sent with the idea of exiling them. Felons in Australia did not have the opportunity to officially buy their freedom. Also, places of secondary punishment, chain gangs, and work for the government were unknown in the American colonies.

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145 For a better overview on the territorial development of Australia from 1788 until 1836 cf. Appendix.
146 Maconochie 1838, pp. 1—2.
147 Kercher 2003, p. 542.
148 Dyster 1994, p. 75.
150 Kercher 2003, p. 582.
151 Kercher 2003, p. 582.
During the first decades of the Australian colonies, the focus in dealing with the convicts was put on punishment and economic exploitation. The criminals had to conduct hard labour in order to establish a functioning economy in the new colonies. This idea was justified by the belief that hard labour was necessary to physically punish them for their wrongdoings. Reflecting the development in Britain though, the focus shifted around 1840 from punishment to reformation. Not coincidentally perhaps, the penal colonies were well established by that point so that convict labour was not necessary anymore and many free settlers protested against the influx of British felons. After transportation to New South Wales stopped in 1840, reformation was the most important point in the treatment of criminals on Van Diemen’s Land. The management of the criminals was more consistent and also included the ideas of total separation between felons, which were being tried in Britain at that time.\textsuperscript{152}

Transportation to Western Australia probably started for precisely the reasons it was abandoned for in New South Wales and Van Diemen’s Land. Whereas these two colonies did not need any forced labour for their economy in the 1840s and 1850s, Western Australia had difficulties to attract free labour and develop even a basic infrastructure. Interestingly enough, the local authorities still had enough influence to dictate certain demands. They refused to accept female convicts and only wanted young, minor offenders. These requirements reflect the function of the felons as forced labourers. Additionally, almost all attempts to discipline and reform the criminals, so important in earlier decades, had vanished in Western Australia. Arriving offenders were supposed to have completed their separate treatment in Britain. In the colony, they were usually almost immediately granted a ticket-of-leave and set to work.\textsuperscript{153}

The higher administration of the colonies was mostly determined by the governors, especially in the first years and decades after the First Fleet arrived in 1788. They could freely assign convicts as they saw fit and also had the power to pardon prisoners or set them free under a form of parole.\textsuperscript{154} Moreover, all military and colonial officials were under their command and the governors also constituted the court of appeal in civil matters. Until 1809, the judges had to obey the orders of the governors.\textsuperscript{155} These extensive tools of power lead Bruce Kercher to comment rightly that “[t]he first governors of New South Wales were as autocratically powerful as those of any other British colony at any time.”\textsuperscript{156}

\textsuperscript{152} Kercher 2003, p. 581.
\textsuperscript{153} Gibbs 2001, pp. 60—69.
\textsuperscript{154} Kercher 2003, p. 542.
\textsuperscript{155} Kercher 2003, p. 542.
\textsuperscript{156} Kercher 2003, p. 542; cf. also Ward 1976, p. 130.
4 Aspects of Penal Colonization

The authors, whose pamphlets, reports, and letters are used as sources for this thesis, were of different opinions regarding the positive and negative aspects of having a penal colony in Australia for Britain. The works of five different authors are being analyzed. The oldest source is Jeremy Bentham’s *Panopticon versus New South Wales: or, the Panopticon Penitentiary System, and the Penal Colonization System, compared*. In this pamphlet which was originally sent as a letter to the Home Secretary Lord Pelham on November 2nd 1802, Bentham compared the penal colony of New South Wales with his own project of building a new prison called the Panopticon. His sympathies were clearly with his own scheme and when contrasting the two options Bentham was convinced of its superiority over the penal colony. The version of his letter used in this thesis stems from the fourth volume of a collection called *The Works of Jeremy Bentham* published in 1843 by John Bowring.

Both John Thomas Bigge’s *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales* and the three letters by Henry Bathurst used in this thesis were published in 1966 in the *Australiana Facsimile Editions* number 68 by the Libraries Board of South Australia. In his report, which was finished by Bigge on May 6, 1822, he inquired into different aspects of the prison colony of New South Wales. His special concerns were the treatment and usage of the convicts in the colony and the reinvigoration of the deterrent effect\(^\text{157}\). Out of Bathurst’s three letters used in this thesis, two were addressed to Bigge, and both of them contained mostly instructions. However, Bathurst also voiced his own opinions, especially in the third letter which was addressed to Viscount Sidmouth. Bathurst’s primary concern was the perceived loss of deterrence of the penal colony and the possibilities of reinstating this function. The three letters are named *Copy of a Letter from Earl Bathurst, K. G. to Viscount Sidmouth* from April 23rd 1817, *Copy of a Letter from Earl Bathurst, K. G. to John Thomas Bigge, Esq.* from January 6th 1819, and *Copy of a further Letter from Earl Bathurst, K. G. to John Thomas Bigge, Esq. dated Downing-street, 6th January 1819*.

George Arthur wrote his tract on *Defence of Transportation in Reply to the Remarks of the Archbishop of Dublin, in his Second Letter to Earl Grey* in 1834. It was published one year later. As the title indicates Arthur wrote a response to the Archbishop of Dublin, Richard Whately, who had attacked the system of transportation in a letter to the Prime Minister Earl Grey in 1832. In his letter, Arthur mainly pointed out all the advantages that the transportation system in Van Diemen’s Land had in his opinion.

\(^{157}\) Macintyre 1999, pp. 54—56.
Alexander Maconochie’s *Australiana: Thoughts on Convict Management, and Other Subjects Connected with the Australian Penal Colonies* was published in 1838. The main idea expressed in his writing was the reform of the current system of convict discipline in the colonies. In Maconochie’s opinion, the system was mainly focused on punishing the felons and not enough on reforming them. He preferred a system of positive reinforcement in order to improve the character of the criminals and turn them into better people.

This whole chapter is divided into five different aspects that were of importance in connection to the system of transportation to New South Wales and Van Diemen’s Land. These five features are each sub-divided into the respective benefits and drawbacks that the authors mentioned in their works. Hence, each single point is analyzed and its importance for the debate on transportation and penal justice is investigated. The first three points, namely ‘Exiling convicts’, ‘Deterrence + Punishment’, and ‘Reformation’ were special features of penal colonies. Authorities of other British colonies did not have to worry about these aspects, unless they also received felons. Even in the latter case, the numbers were usually small and other problems were of greater importance. The last features, ‘Economy’, and ‘Colonization’ also concerned other British colonies. Hence, they are not distinct for prison colonies. Nevertheless, they were also important for this form of colony, and this importance is reflected in the sources.
4.1 Exiling Convicts

One feature that all authors stressed was the possibility of sending prisoners as far away from Britain as possible. On the one hand, this was meant to lead to the incapacitation of the criminals. In other words, felons transported to Australia could commit no further crimes in Britain. On the other hand, banishing offenders also offered a solution to the fears of overpopulation\textsuperscript{158}. Between 1801 and 1851, the British population increased from around 10,500,000 people to approximately 21,000,000 inhabitants, by all standards a huge boost\textsuperscript{159}. Likewise, the banishment of criminals meant that the authorities did not have to house them in Britain. Besides saving the expenditure for these buildings, the government did not have to deal with local authorities which were strictly against interference from the central power holders. The establishment of penal colonies in Australia did not only have advantages though. The troubles were especially connected with the loss of able-bodied men (and women) for Britain. Also, the Australian prison colonies had only limited possibilities of receiving felons, who had to endure an horrendous trip to the other end of the world, where they were exposed to an unequal treatment.

4.1.1 Advantages

Earl Bathurst, in his letter to John Thomas Bigge in 1819, reminded the latter that “these Settlements cannot be administered with the usual Reference to those general Principles of Colonial Policy, which are applicable to other Foreign Possessions of His Majesty,”\textsuperscript{160} since they were not “established with any view to Territorial or Commercial Advantages.”\textsuperscript{161} Therefore, “they must chiefly be considered as Receptacles for Offenders.”\textsuperscript{162} Although Bathurst did not write that the Australian colonies were solely founded to station prisoners there, his statement is still blunt. He did not even try to find other reasons for the establishment of these colonies, as most other authors did, but stated outright that the British government had not seen any territorial or commercial advantages in the creation of these settlements.

This could have been different 30 years after the arrival of the First Fleet in Botany Bay in 1788, but Bathurst instructed Bigge to regard the colonies mainly as a place where convicts could be shipped to. He even suggested to Bigge that if it should “appear to you, as I have too much reason to apprehend will be the Result, that the present Settlements are not capable of

\begin{itemize}
\item\textsuperscript{158} Coleman 2005, p. 23.
\item\textsuperscript{159} Lewandowski 1993, pp. 8—9.
\item\textsuperscript{160} Copy of a further Letter from Earl Bathurst to John Thomas Bigge 1966, p. 3.
\item\textsuperscript{161} Copy of a further Letter from Earl Bathurst to John Thomas Bigge 1966, p. 3.
\item\textsuperscript{162} Copy of a further Letter from Earl Bathurst to John Thomas Bigge 1966, p. 3.
\end{itemize}
undergoing any efficient Change,” then “the next Object for your Consideration will be the expediency of abandoning them altogether as Receptacles for Convicts, and forming on other parts of the Coasts, or in the Interior of the Country, distinct Establishments exclusively for the Reception and proper Employment of the Convicts.” Here, it becomes clear that Bathurst was mainly interested in shipping convicts to Australia. All other potential advantages are of subordinate importance. After around 30 years of colonization, Bathurst would have agreed to abandon all settlements in Australia if they were unable of receiving and employing convicts. Instead, he would have created new communities, if they were better suited as penal communes. Using the Australian colonies as dumping grounds for criminals, reigned supreme compared to all other possible ways of using them.

Around 15 years later, in 1834, George Arthur wrote that “His Majesty’s Government have announced their determination to break up the Hulk Establishments, and to carry into effect the sentence of Transportation more frequently than has been the practice heretofore.” During the mid-1830s, it had become even more popular than before to send prisoners to the other end of the world to colonize Australia. In Arthur’s opinion, this decision must “gratify exceedingly every individual who estimates Transportation at its real value.” Part of this value was apparently to rid Britain of its convicts, which must have been realized by everyone, who “is animated, not by the feelings of a partizan, but by a sincere attachment to the interests of England.” Most interestingly in this statement is the mention of English interests which were, in the opinion of George Arthur, closely connected to transportation. In his opinion, there was a large class of people in Britain “who cannot obtain regular employment, who, in consequence, get discontented, cease to respect themselves, fall into bad company, and gradually becoming habituated to the commission of crime, bring up their children to it, as to a trade.” This prolonged state of unemployment and poverty, “has already gone far to undermine the morality of the lower orders, by converting innocent poverty into vicious pauperism.”

It seemed only logical to Arthur that many people resorted to a life of crime in order to survive. Some of them might have been caught and imprisoned, but even this would not have helped to remedy the situation, because “[i]f the criminal be retained in England, he associates with criminals while in prison, and he returns to his former associates when released from it.” In Arthur’s opinion, jails were therefore not institutions where criminals were reformed but

163 Copy of a further Letter from Earl Bathurst to John Thomas Bigge 1966, p. 4.
164 Copy of a further Letter from Earl Bathurst to John Thomas Bigge 1966, p. 4.
165 Arthur 1835, p. 8.
166 Arthur 1835, p. 8.
168 Arthur 1835, p. 58.
169 Arthur 1835, p. 60.
170 Arthur 1835, p. 70.
rather meeting places for convicts to make new connections. Instead of punishing criminals and converting them to useful members of society, prisons were breeding new criminals and only stopped convicts from doing further mischief for a little while. Insofar, Arthur clearly saw a great advantage in “their removal from England”\textsuperscript{171}. In his opinion, “colonization, or the removal of criminals from one part of the empire to another—from a thickly to a thinly peopled tract, Transportation tends to prevent crime”\textsuperscript{172}. Of special importance was the Australian quality of being less populated than Britain. Hence, there were fewer opportunities for offenders to act against the law. Or, in Arthur’s words, sending criminals from Britain to Australia meant “transferring that part of the population which is the least able to resist the temptation to commit crime, to a situation in which this temptation will operate with less force.”\textsuperscript{173}

In Arthur’s opinion, another advantage for Britain was that “[b]y the removal of thieves from the scene of their activity, the number of the class is reduced, not only there, but as I have already shewn, universally.”\textsuperscript{174} Criminals were removed from Britain so that they could not carry out any illicit business in the future. Furthermore, the rate of unemployment was lowered by shipping convicts without any legal work to Australia so that fewer people needed to resort to a life of crime. Finally, delinquents were not as easily tempted in their new place of residence as they had been beforehand in Britain.

Alexander Maconochie who wrote about his ideas on convict management in 1838 equally agreed that “it is those who are doing ill in it, and thus shew their unfitness for it, whom it should be the care of the enlightened and philanthrophic among their countrymen advantageously to remove.”\textsuperscript{175} He justified his conclusion with the logic that “England does not want to rid herself of her good, but of her bad”\textsuperscript{176}. Once again, convicts were described as people who were either unable or unwilling to find regular employment and therefore committed crimes to support themselves and their families. In Maconochie’s opinion, it would have been a great relieve for Britain and all its honest inhabitants to get rid of these offenders. He thought that convicts should not only be sent to the existing colonies in Australia. He recommended that “in place of concentrating all transported criminals in one, or even two places, a moderate Convict establishment be attached to every suitable British Colony”\textsuperscript{177}. In Maconochie’s opinion, to concentrate all criminals in one place “would deprive all other places of the benefits to be derived from a judicious and proportionate employment of criminal labor”\textsuperscript{178}. He seemed to be of the

\textsuperscript{171} Arthur 1835, p. 66.
\textsuperscript{172} Arthur 1835, p. 101.
\textsuperscript{173} Arthur 1835, p. 101.
\textsuperscript{174} Arthur 1835, p. 103.
\textsuperscript{175} Maconochie 1838, pp. 62—63.
\textsuperscript{176} Maconochie 1838, p. 65.
\textsuperscript{177} Maconochie 1838, p. 57.
\textsuperscript{178} Maconochie 1838, p. 55.
opinion that the idea of transporting convicts was a great scheme which should have even been extended with criminals being sent to numerous British colonies.

The advantage of removing criminals and the intention behind the decision to send them to Australia was also plainly understood by Jeremy Bentham. Already in 1802, he observed, “[k]eep a man in New South Wales, or anywhere else out of Britain, for a given time: he will neither pick a pocket, nor break into a house, nor present a pistol to a passenger, on any spot of British ground within that time.”\textsuperscript{179} Although Bentham thought critically about transportation, he realized that for many individuals “how the people thus sent thither behaved while there, was a point which, so long as they did but stay there, or, at any rate, did not come back here, was not worth thinking about.”\textsuperscript{180} In his opinion, some people thought that “[t]hings not apparent, and things not existing, belong to the same account.”\textsuperscript{181} Although Bentham described this situation quite sarcastically, he might have been correct. Government was anxious at the end of the 18th century to find a new place to send its prisoners to and as long as they remained there, most people did not take a great interest in the destiny of the exiled felons.

Bentham realized that as well and commented “[d]istance, the supposed mother of security, was the virtue,”\textsuperscript{182} for which Australia was chosen. He continued to write that “[o]f this attribute it was seen to be possessed in a degree altogether beyond dispute. The moon was then, as it continues to be, inaccessible: upon earth there was no accessible spot more distant than New South Wales.”\textsuperscript{183} Especially compared to the former location for British convicts, the American colonies, Australia was better suited “because the distance was the greatest possible; means of communication already established, none”\textsuperscript{184}. Bentham summarized aptly that “[f]rom such premises, the conclusion, true or false, was obvious enough: Let a man once get there, we shall never be troubled with him any more.”\textsuperscript{185}

4.1.2 Disadvantages

Overall, Jeremy Bentham was critical of the idea of sending criminals to a prison colony. He described the felons at the beginning of the 19th century as “the very dregs of society—of men unfit to live at large in society—of men proved to be such by experience,”\textsuperscript{186}, and was troubled by

\textsuperscript{179} Bentham 1843, p. 183. \\
\textsuperscript{180} Bentham 1843, p. 183. \\
\textsuperscript{181} Bentham 1843, p. 183. \\
\textsuperscript{182} Bentham 1843, p. 186. \\
\textsuperscript{183} Bentham 1843, p. 186. \\
\textsuperscript{184} Bentham 1843, p. 186. \\
\textsuperscript{185} Bentham 1843, p. 186. \\
\textsuperscript{186} Bentham 1843, p. 182.
“the mischief they would be sure to occupy themselves with when thus let loose.”

Bentham noted that these were the people “the mass of society in this colony has hitherto been, was even meant to be, and for some generations at least would [...] continue to be composed.” He expected all kinds of trouble in Australia, because he thought the convicts were not properly supervised and because they constituted the majority on the population. For Bentham, one of the goals of every penal regime was “Incapacitation; rendering a man incapable of committing offences of the description in question any more.” However, though transported delinquents were no longer able to commit further offences in Britain, Bentham judged that “[d]epredation, though committed out of Britain, would indeed not the less be depredation.” In his opinion, to send criminals away and forget about them was a troublesome solution. He reflected that “so far as the object is attained, it is attained at the expense of justice.”

Bentham deemed the large distance between Britain and Australia and the ensuing difficulties for released felons to return to their home country as iniquitous. He remarked scornfully that “it is by authority of the law, that men by hundreds and thousands have been forced into New South Wales.” These convicts were required not only to serve their sentence in Australia but to stay “there for life, because return has, with this express view, been rendered impracticable.” In his pamphlet, Bentham wrote that “what was done in this behalf, was done by administration, by a sort of surprise, not to say fraud, upon the legislature.” In addition, he mentioned that he had found orders “addressed to men whose punishment was expired, prohibiting them from leaving the colony in express terms—orders issued in full and direct contempt of the several laws of parliament on which the punishment had been grounded.”

However, according to Bentham, many convicts still returned illegally to Britain. He wrote that “many—more, in abundance, than these politicians could have conceived—escape from this scene of intended annihilation, to afflict their mother-country a second time with their pernicious existence.” He expected this development to get even worse the longer the prison colony existed because “the longer it continues, the greater the population of it may be expected to be, and, on that and other accounts, the greater the number of vessels that touch there in a year.” He assumed that “[t]he species of delinquents, who with the greatest certainty can

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187 Bentham 1843, p. 182.
188 Bentham 1843, p. 182.
189 Bentham 1843, p. 183.
190 Bentham 1843, p. 183.
191 Bentham 1843, p. 183.
192 Bentham 1843, p. 188.
193 Bentham 1843, p. 188.
194 Bentham 1843, p. 188.
195 Bentham 1843, p. 189.
196 Bentham 1843, p. 191.
197 Bentham 1843, p. 192.
command the means of their return, are those who occupy the highest ranks in the hierarchy of criminality."\textsuperscript{198} In his planned penitentiary however, “under the new and still more powerful securities of so many sorts, superadded to the common ones,”\textsuperscript{199} the incident of an escape would be, “I have ventured to state it as, morally speaking, an impossible one.”\textsuperscript{200}

Insofar, Bentham thought that he had discovered several weaknesses of the transportation system. It was unjust, because it kept people longer in Australia than their actual sentence implied. Furthermore, the colonial authorities were unable to control all delinquents and prevent everyone from leaving. Although this seems kind of paradoxical, Bentham explained that “it is the unenterprising, and thereby the least dangerous species of malefactor, that will be most apt to stay there, for want of being able to employ with success those means of escape.”\textsuperscript{201} However, the more dangerous and ingenious offenders would find a way back to Britain exactly because of their criminal nature. Hence, the transportation system failed on two accounts. It punished the least depraved felons overly and was at the same time not able to stop the most hardened delinquents from returning to England. Bentham also detected a contradiction in the aims of the colony. On the one hand, the penal settlements had to remain isolated so that it would be harder for convicts to escape. On the other hand, trade was necessary to improve the economic situation of the colonies.

The consequence is, that the greater the use made of the colony in this or in any other way—the greater the increase of it in wealth as well as population—the greater, in a word, the degree of “improvement” it receives in all other points of view—the more incapable it becomes of answering the expectations formed of it, in regard to this its primary object—the more unfit, with reference to this the only real and substantial use that anybody has ever seen or professed to see in it.\textsuperscript{202}

One more point that Bentham raised in his pamphlet was the sea voyage to Australia. It was much longer than the trip to America had been for the convicts and many, especially during the first trips, died on the way. Even those who made it to the colonies had to spend weeks and months in deplorable conditions. Fettered under deck, with little nourishment and unsuitable clothes for such a long journey, the criminals often had to endure the abuses of the crew. Bentham commented that “the preliminary pestilence during the voyage—will be found […] not a mere accidental and occasional concomitant, but an essential and irremoveable one.”\textsuperscript{203} He stated that the dreadful conditions during the trip to the colonies were “the joint result of the

\textsuperscript{198} Bentham 1843, pp. 193—194.
\textsuperscript{199} Bentham 1843, p. 194.
\textsuperscript{200} Bentham 1843, p. 194.
\textsuperscript{201} Bentham 1843, p. 194.
\textsuperscript{202} Bentham 1843, p. 193. The one advantage that Bentham refers to is the ability to keep the felons in Australia and to prevent them from returning to Britain.
\textsuperscript{203} Bentham 1843, p. 199.
character of the passengers and the duration of the voyage.”

John Thomas Bigge, writing 20 years later than Bentham, was especially disapproving of the increasing amount of criminals transported to Australia. In his opinion, “the great cause of the diminished effect of transportation has arisen from the increase in the numbers transported.”

Bigge judged that the huge number of new arrivals led “to the accumulation of a great many convicts in the towns,” a situation which he was critical of. Worse, he believed that the amount of new felons “has certainly exceeded, during the period of the last three years, in New South Wales, and during that of two years in Van Dieman’s Land, the positive demands of the settlers for labour.” Altogether, he described “the uneasiness I felt at the constant arrivals of convict ships.” Too many convicts meant that there was possibly not enough work for everyone, which, in Bigge’s opinion was bad for the punishment and reformation of the criminals. Moreover, they were crowded in the towns, where temptations were plentiful and supervision difficult. Many delinquents in one place also meant a lot of mingling and perhaps the possibility of riots or escapes. Hence, if too many people were transported, the whole system in the colonies might break down.

Much like Bigge, Alexander Maconochie also criticized the number of transported convicts in the 1830s and particularly their concentration in only a few spots in the colonies. He thought that confining many criminals in one place “seems so opposed to sound principle that it could scarcely for a moment be entertained.” He further explained that “[i]t would deprive all other places of the benefits to be derived from a judicious and proportionate employment of criminal labor; and, like the Ganges turned into the husbandman’s garden, it would overwhelm the selected spot with all the evils arising from its excessive supply.” In conclusion, Maconochie painted a rather drastic picture and wrote that “to send in future all transported criminals to Van Diemen’s Land, especially if unaccompanied by a prodigious improvement, or rather radical change, in the mode of treating them there, would be shortly to make that Island a mere earthly hell.” In general, Maconochie believed that, “[i]t is a debt due by England to her Penal Colonies, that their social system shall be as little as possible deteriorated by their being made the receptacles of her banished criminals.”

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204 Bentham 1843, p. 199.
205 Bentham 1843, p. 199.
207 Bigge 1966, p. 155.
208 Bigge 1966, p. 155.
210 Maconochie 1838, p. 55.
211 Maconochie 1838, p. 55.
212 Maconochie 1838, p. 57.
213 Maconochie 1838, p. 16.
4.1.3 Summary

Altogether, the advantage of sending prisoners as far away as possible seems to be one of the most significant ones throughout the first four decades of the 19th century. As voiced by some authors, it was certainly one of the main reasons for establishing the penal colony in Australia in the first place, perhaps the crucial one. After the rebellion in the American colonies and the subsequent impossibility of shipping convicts over the Atlantic, New South Wales (and later Van Diemen’s Land) were used as a replacement. The sheer distance between Great Britain and Australia made it nearly impossible for criminals to return to their homeland, at least for the first decades after the establishment of the colony. Additionally, British authorities did not need to worry about where to house all their criminals. Prisons were old, few and very small. Instead of building new and more modern institutions, the authorities decided to send their prisoners away to colonize Australia.

However, there were also shortcomings. One relevant drawback was the limited possibility of the Australian settlements to receive felons. Although there was much work for criminals in the colonies, the demand was also not without limits. Particularly the supervision of the delinquents became a problem when too many ships arrived from Britain during the 1820s and 1830s. Moreover, the newly arrived convicts were usually crowded into the already existing towns. Here, they were sometimes free to mingle with other felons. Supervision was difficult in larger communities. During shortages of demand for labour, this situation deteriorated because the criminals had to remain for an even longer time in the larger settlements. Insofar, Bigge, Bathurst, and Maconochie were eager to find new ways of deploying the criminals and distributing them as evenly as possible throughout the different communities.

Jeremy Bentham was not only critical of the way the transported people were distributed in the colonies; he was outright against the idea of shipping people out of Britain. In his opinion, this was an unjust procedure, without benefits for anyone. The felons had to endure a cruel passage to Australia. Once arrived, they lived in deplorable circumstances that did not help with their reformation at all. Even when their sentence was over, they were not allowed to return to their home country, but had to remain in the colonies. Likewise, he believed that the most hardened criminals found ways to return despite this prohibition. Insofar, the less dangerous criminals, who might be reformed after their sentence, supposedly remained in Australia, whereas the more serious offenders returned to Britain.
4.2 Deterrence + Punishment

Two crucial factors of the penal justice system in 18th and 19th century Britain were deterrence and retribution. By finding appropriate punishments for wrongdoers, future potential offenders were supposed to be deterred from a life of crime. Since everybody was supposed to know what kind of horrific destiny awaited them if they chose to commit a crime, the authorities hoped to prevent many criminal activities. Jeremy Bentham identified deterrence or “Example—prevention of future offences by means of it”\textsuperscript{214} as his “First object”\textsuperscript{215} of penal justice. He described this function as the “prevention of similar offences on the part of individuals at large, viz. by the repulsive influence exercised on the minds of bystanders by the apprehension of similar suffering in case of similar delinquency.”\textsuperscript{216} Closely connected to the idea of deterrence was the notion of retribution, or finding an appropriate punishment for every crime. The general guideline was that the more horrific the crime the more drastic the punishment had to be. The penal colony of New South Wales was founded with the explicit notion of punishing criminals in Australia and discouraging offenders in Britain\textsuperscript{217}. Interestingly enough, although forced labour was a fundamental part of the punishment, this was seen in stark contrast to slavery. According to the first governor of New South Wales, Arthur Phillip, the explicit goal of the colony was ‘anti-slavery’\textsuperscript{218}. The means to reach these ends were highly disputed. Some of the authors thought that transportation was a just punishment that deterred others from committing transgressions. On the other hand, some believed that sending convicts to a penal colony was an unsuccessful way of punishing people. Additionally, they thought that transportation had no deterrent effect whatsoever.

4.2.1 Advantages

In 1819, Earl Bathurst identified the need to find “punishments sufficiently severe to deter others from the Commission of Crimes”\textsuperscript{219} in his letter to John Thomas Bigge. With regards to the penal colonies, Bathurst hoped that the colonial authorities would be able to “keep up in them such a system of just discipline, as may render Transportation an Object of serious Apprehension.”\textsuperscript{220} He wrote that “[h]ard Labour, moderate Food, and constant Superintendence were, and (what

\textsuperscript{214} Bentham 1843, p. 174.
\textsuperscript{215} Bentham 1843, p. 174.
\textsuperscript{216} Bentham 1843, p. 174.
\textsuperscript{217} Kercher 2003, p. 542.
\textsuperscript{218} Coleman 2005, p. 6.
\textsuperscript{219} Copy of a further Letter from Earl Bathurst to John Thomas Bigge 1966, p. 3.
\textsuperscript{220} Copy of a further Letter from Earl Bathurst to John Thomas Bigge 1966, p. 3.
was at least of as much Importance) were believed in this Country to be the inevitable consequences of a Sentence of Transportation.\textsuperscript{221} Here, one can see that Bathurst assumed that transportation had fulfilled both goals during the first years of its existence: deterrence and retribution. The convicts were punished through the hard labour and meagre nutrition and the close inspection of their supervisors. At the same time, their (believed) destiny on the other end of the world deterred people in Britain from misconduct.

Bathurst even went so far as to say that “Transportation to New South Wales answered every end of Punishment.”\textsuperscript{222} He justified this statement by claiming that transportation “operated, not very severely though always beneficially, on the Convicts themselves, the opinion of its severity in this Country was so enhanced by the distance of the Settlement and the little which was known of it, that it was an object here of peculiar Apprehension.”\textsuperscript{223} Of special interest in this phrase is the mention of the distance between Great Britain and Australia. Due to this, common people in Britain knew almost nothing about the penal colonies in Australia. All kinds of rumours about the harsh conditions for convicts could have been spread and almost no one would have been able to contradict them. According to Bathurst, there were even “instances on record, in which Convicts have expressed their desire that the Sentence of Transportation might be commuted even for the utmost Rigour of the Law.”\textsuperscript{224} Since people chose to rather be executed than transported, Bathurst arrived at the conclusion that “it is not too much to assert that the Punishment did then materially contribute to prevent the Commission of those Crimes to which it was at that time more particularly confined.”\textsuperscript{225} Once again, he made a strong connection between transportation and the deterrence from crime, especially those felonies which were supposed to be punishable by transportation.

John Thomas Bigge saw the need to separate the convicts from the free population of the colonies in order to be make their sentence a hard punishment. He proposed to split up the convicts into small groups. These “parties should be distributed in the districts that are at some distance from the towns, and that, if possible, they should not be placed nearer to any public road than three miles.”\textsuperscript{226} In these districts, Bigge wanted the felons to “be employed in the simple operation of cutting down wood, and in the subsequent one of burning it off and taking up the roots.”\textsuperscript{227} He asserted that this labour “possesses also this great advantage of effecting a separation of the convicts even in their work”\textsuperscript{228} and that “the eye, as well as the ear of the

\textsuperscript{221} Copy of a further Letter from Earl Bathurst to John Thomas Bigge 1966, p. 3.
\textsuperscript{222} Copy of a further Letter from Earl Bathurst to John Thomas Bigge 1966, p. 3.
\textsuperscript{223} Copy of a further Letter from Earl Bathurst to John Thomas Bigge 1966, p. 3.
\textsuperscript{224} Copy of a further Letter from Earl Bathurst to John Thomas Bigge 1966, p. 3.
\textsuperscript{225} Copy of a further Letter from Earl Bathurst to John Thomas Bigge 1966, p. 3.
\textsuperscript{226} Bigge 1966, p. 159.
\textsuperscript{227} Bigge 1966, p. 159.
\textsuperscript{228} Bigge 1966, p. 159.
superintendent will soon direct him to the convicts that are indolent, or are neglecting their work.” Bigge proposed that “settlements should be formed at Moreton Bay, at Port Curtis, and Port Bowen”232, quite far away from the already existing communities. To these new districts, he proposed to send “those who are now assigned, and that are the least useful to their masters, or have been guilty of any misconduct,”233 as well as “those of bad character, who in future may arrive, and whose offences have been accompanied by any peculiar circumstances of cruelty and depravity, or who have manifested inveterate habits of criminality”234. Apparently, the idea of deterrence was not only supposed to work on people in Britain, but also on the convicts in the colonies. Those who committed further crimes in Australia or who somehow drew the attention of the authorities by their bad behaviour were supposed to be further punished by an extremely hard living environment. Likewise, Bigge wrote that “[t]he settled districts of the colony, or those immediately adjoining, therefore, I should consider as providing employment for the convicts of the best character.”235.

The general disregard for criminals is apparent in the pamphlet of George Arthur as well. In his words, “criminals are not usually good labourers—but townspeople of dissolute habits.”236 A convict can not be treated as a free man because “of his mental degradation—of his antipathy to labour”237. In order to transform them into useful members of the society, “the convict, in proportion to his dissoluteness of character, must be coerced”238, to work hard and regain his place in the community. The punishment had to be rigid, because “[k]indness, or forbearance, without firmness, and the determination to be obeyed, has […] very seldom accomplished any

229 Bigge 1966, p. 159.
231 Bigge 1966, p. 164.
233 Bigge 1966, p. 163.
234 Bigge 1966, p. 163.
235 Bigge 1966, p. 163.
236 Arthur 1835, p. 20.
237 Arthur 1835, p. 20.
238 Arthur 1835, p. 21.
settler’s purpose.” Arthur also wrote that, “I do not regard Transportation solely as a mode of punishment, but as a system of crime prevention, of which penal inflictions form one of the parts Considered as a punishment calculated to act upon the fears of mankind.” He voiced his hopes that the punishment of transportation would put fear into the hearts of possible future criminals and deter them from committing any kind of illegal activity. At the end of his pamphlet, George Arthur came to the conclusion that “[t]he circumstances of England, render it impossible to make domestic punishment equally efficacious.” Evidently then, Arthur was of the opinion that transportation had many advantages over punishment in Britain and that if was preferable to any other kind of possible punishment.

Alexander Maconochie, on the other hand, did not believe that “the fear of future punishments, of which we are all more regularly reminded than of any other fear, is not, at the same time, in healthy minds a prominent, or very influential consideration.” In contrast to the other authors, he thought that the importance given to deterrence is “usually very much over-rated.” He reasoned for his opinion by writing that in general he did not “believe that the fear of punishment, or any form of physical damage, is in any case a strong sentiment in the human mind.” Maconochie illustrated his point with an interesting example, saying that “[w]e do not see that the fear of life and limb, the loss and fracture of which are the punishments, by the laws of nature, of rash exposure, makes men generally cautious.” Although he certainly had a point, it is doubtful if one can compare the fear of breaking a bone with the apprehension of being punished for a crime. Not all dangerous activities lead to a fracture. However, at least in theory, all crimes are supposed to be punished by the authorities. Nevertheless, it is certainly true that crimes were still committed even though people were transported.

4.2.2 Disadvantages

Particularly Jeremy Bentham saw no restraining function for the British population in transporting felons. He commented that “[t]he convicts and their punishment are removed by it to the antipodes, as far as possible out of the view of the aggregate mass of individuals, on whose minds it is wished that the impression should be made.” Hence, he believed that the people soon forgot about the destiny of the criminals in Australia, whose exact fate remained in any case

239 Arthur 1835, p. 36.
240 Arthur 1835, p. 100.
241 Arthur 1835, pp. 110—111.
242 Maconochie 1838, p. iii.
243 Maconochie 1838, p. iii.
244 Maconochie 1838, p. iii.
245 Maconochie 1838, p. iii.
246 Bentham 1843, p. 174.
unknown. In Bentham’s preferred system, the penitentiary, however, punishment took place on “the very spot which contains the greatest number of spectators of all descriptions, and in particular of those in whose instance there is the strongest reason for wishing that the impression may be made.”

Consequently, Bentham assumed that a prison would make a much deeper impression on the general population than the transported convicts thousand of miles away from Britain.

Even in Australia, he did not think that the punishment of the convicts was effective. In Bentham’s opinion, “[d]elinquents, especially of the more criminal descriptions, may be considered as a particular class of human beings, that, to keep them out of harm’s way, require for a continued length of time […] sharp looking after.” However, in the colonies he thought that there was “[a]t sleeping times, meal times, times of recreation, no inspection whatsoever: even at working times, none but what is imperfect, interrupted, and accidental.” Bentham compared the perceived situation in Australia with his ideas of a model penitentiary. He reflected that even “in its original state,” there would be “frequent and regular inspection; in its extraordinary and improved state, that principle of management carried to such a degree of perfection as till then had never been reached, even by imagination, much less by practice.” He imagined a prison with constant supervision, a place where the inmates would have had no time for themselves. They would have been relentlessly instructed, observed, reformed and turned into better human beings. Because of the persistent control, the prisoners would have had no time or opportunity to cause any mischief. Their minds would have been constantly focused on reformation, a state which would have helped them to become accepted members of society after their release from jail.

According to Bentham, the convicts were treated unequally in Australia. He commented that “transportation has been […] to one man, simple banishment; to another man, banishment aggravated by bondage.” He wrote ironically that this injustice was done “as if to men in general, and in particular to men of British blood, the difference between bondage and liberty were a matter not worth speaking about.” To many British people, bondage was a synonym for slavery, the evil they had fought to banish for decades. To see free-born English men in bonds was something British people could not easily stomach in the first decades of the 19th century. Even in Australia, Bentham wrote, the authorities realized after a rather short while that they needed a prison after all. In his words, “[a] jail, however, being found to be the one thing

249 Bentham 1843, p. 175.
250 Bentham 1843, p. 175.
251 Bentham 1843, p. 175.
252 Bentham 1843, p. 190.
253 Bentham 1843, p. 190.
needful—and among all countries most needful in that remotest of all accessible regions, to which delinquents were thus sent, on pretence of saving the expense of it—a jail, such as it was, was accordingly erected, as soon as it could be erected.\textsuperscript{254} Although “[t]he jail, as might have been expected—a jail built under such circumstances—was not always man-tight”\textsuperscript{255}, Bentham still judged that “it was […] better than none at all, and, with all its imperfections (whatever they were,) was still the best and ultimate dependence.”\textsuperscript{256}

Earl Bathurst stated that while at the beginning the penal colonies had fulfilled all their goals, “[m]any Circumstances however have since concurred to render the Punishment lighter in itself, to diminish the Apprehension entertained in this Country of its Severity, and to break down all proportion between the punishment and the Crimes for which it is now inflicted.”\textsuperscript{257} This had negative effects on the British penal system. On the one hand, people were not punished severely enough for their crimes. On the other hand, offenders were not apprehensive of being sentenced to transportation anymore. The deterrent effect was weakened. In fact, Bathurst wrote that “numerous applications are made from those who are sentenced to Imprisonment for Minor Transgressions that they may be allowed to participate in the Punishment to which the greatest Offenders are condemned.”\textsuperscript{258} Apparently, by 1819, convicts not only accepted their sentence but even asked to be transported to the colonies.

In his letter to Viscount Sidmouth, Bathurst explained a bit further, why, in his opinion, the sentence of transportation had deteriorated in being a strict and severe punishment. He stated that “[i]t was not long however before the Settlements were found to hold out to many Individuals inducements to become cultivators.”\textsuperscript{259} Likewise, “thirty Years' experience of the Climate and Fertility of the Soil has for some time past rendered a permission to settle in New South Wales an object of anxious solicitude to all, who were desirous of leaving their Native Country and had capital to apply to the Improvement of Land.”\textsuperscript{260} Here, the conflict between different aims of the authorities becomes noticeable again. Free settlers were necessary in Australia to employ the convicts, farm the lands and improve the economic situation of the colonies. On the other hand, the increased wealth of the colonies improved the life circumstances not only of the free population but also for the convicts. Their punishment was lessened and the deterrent effect for offenders in Britain weakened.

Like Bathurst, John Thomas Bigge also did not fail to notice the effects of the swelling number of convicts in Australia during the beginning of the 1820s for the aims of punishment.

\textsuperscript{254} Bentham 1843, p. 195.
\textsuperscript{255} Bentham 1843, p. 195.
\textsuperscript{256} Bentham 1843, p. 195.
\textsuperscript{257} Copy of a further Letter from Earl Bathurst to John Thomas Bigge 1966, p. 3.
\textsuperscript{258} Copy of a further Letter from Earl Bathurst to John Thomas Bigge 1966, p. 4.
\textsuperscript{259} Copy of a Letter from Earl Bathurst to Viscount Sidmouth 1966, p. 5.
\textsuperscript{260} Copy of a Letter from Earl Bathurst to Viscount Sidmouth 1966, p. 5.
and deterrence. He analyzed that “the great cause of the diminished effect of transportation has arisen from the increase in the numbers transported.” In order to remedy these evils, Bigge proposed to separate as completely as possible the criminals from the free population. He believed that “[t]he retirement of the useless or unemployed convicts from the settled districts to those that are more remote, will, I conceive, tend greatly to diminish the difficulties of control over those that remain.” Very interestingly, George Arthur, writing about the same problems in 1835, came to a different conclusion. He still noted that there were more and more free settlers in Australia. Yet, in contrast to the opinion of the other authors, Arthur judged that “as the free population, and the number of ticket-of-leave men have increased, the circumstances of the labourer have declined; and now, unless he be a steady, hard working man, he can obtain little more than a bare subsistence.” It seems that George Arthur was convinced that more free settlers did not mean more employment options for felons. On the contrary, he assumed that the free settlers were in direct competition with the criminals for employment. Arthur reasoned that through this competition, the convicts were forced to adapt to a different lifestyle, work hard and stay away from crime in order to make a living.

Alexander Maconochie was critical of the penal system in the colonies in general. He thought that “the labor imposed is strictly coerced, or Slave labor; and […] it is yet subject to all the discomfort and moral degradation incident to such a condition.” For Maconochie, positive reinforcement was crucial for the reformation of the convicts. They were supposed to receive a penalty for their transgressions but after that, they should be reformed. “Or, in other words, the prisoners should be punished for the past, and trained for the future, in Government employ.” In connection to this point, Maconochie was also unsympathetic to the employment of convicts by free settlers during their sentence. He stated that “[t]he masters are made headstrong, overbearing, and dissatisfied, if not otherwise bad, subjects.” Yet, he also excused the free settlers by writing that “[b]eing made slave-holders, they are subject to all the demoralization incident to such a position.” Hence, he advocated government controlled supervision of the felons. In Maconochie’s opinion, only well trained officials ought to supervise and instruct the convicts in order to ensure just punishment and fruitful reformation. For the settlers however, “naturally and necessarily their dominant object is to make the most of the labor which thus passes through their hands.” Maconochie concluded that “[w]ith all these opinions, then,

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262 Bigge 1966, p. 165.
263 Arthur 1835, p. 40.
264 Maconochie 1838, p. 2.
265 Maconochie 1838, p. 15.
266 Maconochie 1838, p. 12.
267 Maconochie 1838, p. 11.
268 Maconochie 1838, p. 11.
strong in my mind, I may perhaps regard the possibility of modifying and improving Transportation, so as to make it a suitable punishment for almost every offence.”

4.2.3 Summary

To sum up, the authors were divided over the question of the deterrent effect of the penal colonies. Particularly at the beginning of the 19th century, little was known about the colonies, so that all kinds of rumours were spread about the fate of the criminals. Since almost none of them came back to Britain, the apprehension of being transported was quite high. Apparently, some felons even asked to be executed rather than to be exiled. However, during the 1810s, the image of the prison colonies in Britain totally changed and people started to plead for transportation instead of other punishments. After Bigge’s visit to the colonies, harsher measures were introduced. During the 1820s and 1830s, the freedom of the felons deteriorated. Successive authorities swayed between putting more emphasis on deterrence or reformation and this naturally influenced the image of the penal colonies in Britain.

John Thomas Bigge wanted to use deterrence in the colonies as well by sending repeated offenders to the most dismal settlements and allowing only well-behaved criminals to remain close to populated areas. Jeremy Bentham thought that penal colonies were absolutely incapable of administering any useful punishment or of divulging any deterrent effect. In his opinion, people were not afraid of transportation, because it was too abstract and they usually never found out about the fate of the transported convicts. He assumed that punishment in local prisons would be much more off-putting. Bathurst, Bigge, and Maconochie were all convinced of the general usefulness of the Australian penal colonies in administering just punishment and preventing crime in Britain. However, they all thought that different aspects of the penal regime needed improvement. Especially the increasing number of delinquents in Australia during the 1820s and 1830s was seen with apprehension. The greater amount of felons made it harder to supervise all of them, punish them, and reform them. All three authors thought that only just but severe punishment would prevent criminals in Britain from committing offences and perhaps even applying to be transported to Australia. Transportation, after all, was supposed to be a severe punishment, not a sentence that offenders liked to receive.

269 Maconochie 1838, p. 60.
270 Lewis 1988, p. 509.
273 Kercher 2003, pp. 582—583.
4.3 Reformation

Reformation was one of the main objects of all penal systems during the 19th century in Britain. It was hoped that through certain measures, criminals could be reformed and integrated into society once more as useful members. Exactly which measures ought to be used to achieve this end was a question of great controversy between penal reformers. Hard work, constant supervision, and religious instruction were usually named as useful actions, but some people also had different ideas. Equally controversial was the question of where this reformation ought to take place. Some thought that Australia was the perfect spot for this, while other commentators were absolutely against prison colonies and advocated for example the building of new and modern prisons in Britain. The supporters of the Australian prison colonies frequently referred to an Enlightenment belief that a person’s environment influenced their character. A change in environment could therefore lead to an alteration in personality. The seemingly uninhibited Australian continent was seen as a perfect spot to try out new methods of reformation. While there were certain advantages of reformation in prison colonies, the authors also named numerous drawbacks.

4.3.1 Advantages

Earl Bathurst wrote positively about the options regarding prisoner reformation in Australia. In his letter to Viscount Sidmouth in 1817, he noted that “Transportation of Offenders to New South Wales appears to have answered in a very great degree the ends, for the Attainment of which it was adopted.” He explained this point by referring to “[t]he many instances of persons returning from transportation and becoming afterwards useful Members of Society” in Britain. Although people returned from the colonies, which was not particularly desired by the authorities, they did so at least as productive members of society. Instead of returning to their former life of crime, Bathurst apparently believed that these reformed convicts could take up a useful occupation in England. Additionally, he mentioned in his letter “the far more numerous Cases in which Convicts, after the expiration of their Sentences, became industrious Settlers in the Colony” in Australia. This was probably the ideal case for all supporters of transportation. The criminals were detained in Australia so that they could not commit any more crimes in their homeland. Through reformation, they became assiduous workers in Australia and helped to build

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275 Coleman 2005, p. 4.
276 Copy of a Letter from Earl Bathurst to Viscount Sidmouth 1966, p. 5.
277 Copy of a Letter from Earl Bathurst to Viscount Sidmouth 1966, p. 5.
278 Copy of a Letter from Earl Bathurst to Viscount Sidmouth 1966, p. 5.
a strong British colony. For Bathurst, these cases “are sufficient to prove the Efficacy of the System in its Infancy, as far at least as regarded the Improvement and Reform of the Offenders.”

John Thomas Bigge was similarly convinced of the salutary effects of transportation to Australia. In his opinion, it was crucial that the convicts were sent to diligent and trustworthy free settlers. He seemed to be convinced that “[t]he first distribution of the convicts affording, in my judgment, one of the most important means of their reform,” because only under the supervision of a good master could the criminals be changed. He further remarked that “the convicts who are described to have the best character […] should be sent to the large estates of the most respectable settlers, where the advantages to be derived from good character will be appreciated.” He hoped that all criminals would realize the advantages of behaving in accordance with the guidelines given by the colonial authorities. In Bigge’s words, “[t]he value of good character and good conduct will then perhaps begin to be felt, and more seriously considered than it has hitherto been in New South Wales, both by the convicts and the settlers.” One of the main points for Bigge in the process of improving the convicts was seemingly good example. He advocated that good behaviour by the criminals be rewarded with employment under a benign master. Bigge also recorded his idea on how people might be made aware that good behaviour would pay off. In his opinion, “it would much promote that object, if the names of the parties so rewarded were published in the colonial gazette.”

Another point raised by Bigge with regards to the reformation of the felons is their occupation. He believed “in the superior advantages of every kind of agricultural occupation in effecting the reform of convicts.” Therefore, he noted that “[t]he employment of the convicts in the management of sheep in New South Wales, I conceive, may be made highly conducive to their improvement and reform.” Besides hard work on these farms, the criminals would also live in the countryside which was vital for their reformation in Bigge’s opinion. He wrote that “the principle of excluding convicts from the towns is so strongly in favour of their moral improvement, that it ought not to be broken in upon.” Instead of being tempted by all the offers bigger settlements had to make, convicts were far out in the countryside, where they could not mingle with too many other criminals. This was not only true for Australia but also when one compares the situation in the colonies to a possible alternative in Britain. It would have been

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279 Copy of a Letter from Earl Bathurst to Viscount Sidmouth 1966, p. 5.
284 Bigge 1966, p. 156.
286 Bigge 1966, p. 158.
much easier for felons to escape from farms in England and return to their old life. Britain was much more populous than the Australian colonies, so that bigger towns were never far away. Moreover, convicts might find help much more easily in their homeland than in a scarcely populated country.

For George Arthur, reform was one of the main points of transportation to Australia. He reminded his readers that “it is the true interest of England, that Transportation should reform”\textsuperscript{287}. He put his main focus on hard work, which he saw as instrumental for the change of the convicts. He commented that the “habit of idleness must first be overcome, which can only be accomplished by the creation of a counter habit.”\textsuperscript{288} Arthur apparently assumed that laziness was a character trait deeply ingrained in many criminals. In order to reform the offenders, his idea was to put them to hard labour so that their idleness may be overcome and replaced with a different characteristic, industriousness. Moreover, Arthur noted that through constant instruction, “the Government has acquired in consequence a moral influence over the minds of the convicts, which alone, so satisfactory is its operation, would amply compensate for the labour that ensures it.”\textsuperscript{289} He seemingly believed that hard work and relentless supervision opened up the minds of the criminals and made them receptive for the input from the authorities. Once their minds were more amenable to input, the prisoners could be reformed.

Compared to Britain, Arthur assumed that in Australia the convicts would be transferred “to a situation in which their minds will be operated upon, by causes the very reverse of those which in England have, in so many thousand instances, converted poverty into pauperism, and gradually released the lowest class from the influence of moral restraint”\textsuperscript{290}. He further remarked that “[b]y removing criminals in this manner, they are, as it were, taken from a situation in which they acted upon others, to one in which they are themselves acted upon.”\textsuperscript{291} Once more, he stressed the importance of constant supervision and instruction for the reformation of the convicts. He noted about the criminals that “[i]t is their interest in England, to teach others crime, but here it is the interests of others to teach them industry.”\textsuperscript{292} Whereas in their home country, a life of crime was rewarding because the authorities did not have the man power to control everything, this was different in the Australian colonies.

Arthur even stated that “[t]he result of such a course in Van Diemen’s Land, has been so favourable, that of sixteen thousand men now under sentence, upwards of four thousand have

\textsuperscript{287} Arthur 1835, p. 48.
\textsuperscript{288} Arthur 1835, p. 20.
\textsuperscript{289} Arthur 1835, pp. 33—34.
\textsuperscript{290} Arthur 1835, p. 101.
\textsuperscript{291} Arthur 1835, p. 102.
\textsuperscript{292} Arthur 1835, p. 102.
never received any, even the slightest punishment, for misconduct.”

This was also because “the convict is generally taught farm labour, and he may continue, after his sentence has expired, to work in the open field in the country, a condition the most favourable of all, to perseverance in good behaviour.”

In Arthur’s opinion, field work in the countryside was another great advantage of the Australian colonies compared to England. In Britain, “the kind of labour which a convict is usually taught in a penitentiary, is the least favourable to his permanent reformation, viz.—some manufacture already overstocked with workmen, and in which he probably cannot obtain employment.” Additionally, if a felon should be so fortunate as to find an occupation, he would probably only do so “in a town, the situation of all others the most dangerous to the stability of his newly acquired habits.”

Alexander Maconochie was also convinced that good behaviour should be rewarded in order to reform the convicts and give them positive reinforcements. He recommended “that it be sought to restrain men rather by making virtue easy, and good conduct pleasant, than merely by making vice difficult, and misconduct painful.” In contrast to the other writers he was convinced of the “superiority of moral influence to physical coercion, where intelligent beings are to be controuled [sic] or guided.” Whereas most of the commentators saw physical punishment as a just and useful way to discipline the felons, Maconochie wanted to put more emphasis on their mind in order to reform the criminals. Like some of the other authors, Maconochie was also convinced that the process of reformation should take place in a prison colony, and not in a jail. In his opinion, “[t]he prisoners are all made bad men instead of good.” Also quite in concordance with many of the people who wrote before him, he urged for “instruction, moral, religious, mechanical, and agricultural, so as to fit the prisoners for constituting afterwards a good rural population.”

Apparently, almost everyone agreed that even after serving their sentence, more than farming and husbandry could not be expected from the released convicts. Though reformed, the stain of criminality would follow them their whole lives. During work as well as in all other parts of the daily lives of the delinquents, Maconochie would have “but the most stringent system of moral influence that can be devised […] to induce them to behave well, and work out their further liberation, on tickets-of-leave, by inspiring a just, confidence in their future good intentions.”

293 Arthur 1835, p. 102.
294 Arthur 1835, p. 104.
295 Arthur 1835, p. 104.
296 Arthur 1835, p. 104.
297 Maconochie 1838, p. i.
298 Maconochie 1838, p. i.
299 Maconochie 1838, p. 11.
300 Maconochie 1838, p. 18.
301 Maconochie 1838, p. 18.
4.3.2 Disadvantages

Jeremy Bentham thought that criminals lacked “those peculiar appropriate restraints, from which, had they been present, that vicious propensity might have received an efficacious check.” They needed supervision and instruction in order to overcome this propensity to commit crime. However, in Bentham’s opinion, “it is the characteristic feature of the system in question—transportation to a new planted colony—to be radically incapable of administering that corrective aid which, in the case in question, is so perfectly indispensable.” He wrote that “[o]f the several efficient causes of probable reformation to be looked out for in a colony […] not a single one could have been found existing anywhere in this newfound land.” In his penitentiary, on the other hand, the inmates would be under constant supervision. Likewise, they would receive regular religious instruction. Bentham commented that “[c]hurch attendance would there have neither been forcible nor yet eludible.” To illustrate the impossibility of escaping these teachings, he wrote that “[t]he presence of my chaplain it would have been little less possible for them to fly from, than from that of the Almighty whom he served.”

Bentham could not prove the salutary effect of his penal ideas, because no prison had been built following his ideas. However, he attacked the penal colonies and their effectiveness. Bentham had found a book written by “the professed moral historiographer of the colony, the late Judge Advocate, Captain Collins.” Although this book was supposed to show the benefits of the prison colonies, Bentham commented with regards to the felons, “as to any evidence of their reformation, here and there a white blackamoor excepted, it is all of it in his wishes—there is none of it in his book.” Furthermore, “[t]he persons spoken of as reformed, are for the most part spoken of by name: in number they would scarcely, I think, be found to exceed a score—certainly not double that number, even including the many backsliders.” According to Bentham, this proved the failure of the penal regime in the colonies, because they were at “the stage at which the reforming tendency of the discipline, had it possessed any such tendency, had had the longest time to operate.” In addition, he judged that “[t]he number of the unreformed is to that of these reformed characters, as a hundred or so to one.” Bentham summarized sarcastically that “[a] bettermost sort of rogue—a man in whom on any occasion the smallest

303 Bentham 1843, p. 175.
304 Bentham 1843, p. 186.
305 Bentham 1843, p. 176.
306 Bentham 1843, p. 176.
307 Bentham 1843, p. 178.
308 Bentham 1843, p. 176.
309 Bentham 1843, p. 178.
310 Bentham 1843, p. 178.
311 Bentham 1843, p. 178.
appears in that country to be beyond comparison a scarcer animal than a black swan.”\(^{312}\) Apparently at least during the first years after the establishment of the penal colony in New South Wales, not much moral regeneration could be noticed\(^{313}\).

Especially when compared with his own ideas of new penitentiaries, the fiasco of the penal colonies became obvious to Bentham. He stated that “[d]runkenness, in the ‘improved colony,’ universal: in a panopticon penitentiary house, impossible.”\(^ {314}\) Also, “[r]eligious exercise—there odious, and generally eluded: here, uneludible, and by every imaginable and becoming device rendered as inviting and interesting as possible.”\(^{315}\) Moreover, “[p]rofitable employment—there again odious, in a great degree eludible, and eluded as much as possible; here, uneludible again, and by diversification […] and choice, as far as choice is admissible, rendered from the first not odious, and, by habit and universal example, easy and even agreeable.”\(^{316}\) Finally, even “[a]fter emancipation, profitable employment—there not wanting indeed, but still generally irksome, because, under preceding habits, all along rendered so, by habitual sloth, drunkenness, and dissipation”\(^{317}\). Under a penitentiary system however, “certain, and in whatever shape, habit, concurring with choice, may have rendered most agreeable, to bodies and minds invigorated by inviolable temperance.”\(^{318}\) Bentham came to the conclusion that in every aspect the penitentiary system was superior to the penal colonies.

Earl Bathurst also had his doubts about the beneficial effects of Australia. In 1817, he wrote to Viscount Sidmouth that “[t]ransportation to New South Wales is becoming neither an object of Apprehension here nor the means of Reformation in the Settlement itself.”\(^{319}\) He drew the conclusion that “the Settlement must be either placed upon a footing that shall render it possible to enforce, with respect to all the Convicts, strict Discipline, Regular Labour, and constant Superintendance, or the System of unlimited Transportation to New South Wales must be abandoned.”\(^{320}\) Apparently, the authorities endorsed the idea of having penal colonies, but only as long as they functioned effectively. Bathurst was seemingly convinced that transportation should be stopped if the colonies could no longer fulfil their assignment.

For John Thomas Bigge, the work of the convicts was of crucial importance for their moral improvement. Hence, he wanted the convicts to be under the command of trustworthy settlers, who could provide useful employment and strict supervision. The person in charge of

\(^{312}\) Bentham 1843, p. 178.

\(^{313}\) Frost 1974, p. 255.

\(^{314}\) Bentham 1843, p. 194.

\(^{315}\) Bentham 1843, p. 194.

\(^{316}\) Bentham 1843, p. 194.

\(^{317}\) Bentham 1843, p. 194.

\(^{318}\) Bentham 1843, p. 194.

\(^{319}\) Copy of a Letter from Earl Bathurst to Viscount Sidmouth 1966, p. 6.

\(^{320}\) Copy of a Letter from Earl Bathurst to Viscount Sidmouth 1966, p. 5.
distributing the felons was supposed to “be appointed by the Crown”\textsuperscript{321}, because Bigge’s “principal object is to secure the performance of it from the operation or the suspicion of corrupt and partial views.”\textsuperscript{322} Apparently, Bigge felt that this change was necessary because the office was corrupted when he arrived in the colonies in 1819. Moreover, he was critical of the way convict labour on sheep farms “is conducted in Van Dieman’s Land, where, as your Lordship has seen, the convict is intrusted with a more confidential and extensive charge than he is capable of managing, and which the eye or control of his master seldom reaches”\textsuperscript{323}. Without constant control however, there could be no reformation, particularly if this imperfect administration was carried out by the criminals themselves. Even after the end of their sentence and “their return to the settled districts”\textsuperscript{324}, Bigge did not think that the convicts should be allowed, “as they hitherto have been, to partake immediately of indulgences that are quite inconsistent with a date of punishment or reform.”\textsuperscript{325} He ostensibly believed that the released felons should still be watched and not allowed to totally escape supervision, in order to ensure the lasting effects of reformation.

Alexander Maconochie was also unsatisfied with some of the measures taken to reform the convicts. He wrote in 1838 that “[t]he moral training, on the other hand, I recommend to be in employment on the roads and other public works; these, however, to be conducted very differently from what they now are.”\textsuperscript{326} Maconochie insisted that he “would have no direct punishment inflicted on them, nor any physical coercion used; but the most stringent system of moral influence that can be devised should be here brought to bear on the prisoners”\textsuperscript{327}. In his opinion, this would persuade the felons “to behave well, and work out their further liberation, on tickets-of-leave, by inspiring a just confidence in their future good intentions.”\textsuperscript{328} With these statements, it becomes clear again that Maconochie advocated positive encouragements for the reformation of the criminals. He thought that physical chastisement should only be part of their punishment, not of their reformation. Instead, he believed that the convicts should be rewarded for good behaviour and that they ought to be convinced that hard work would serve them better than crime.

\textsuperscript{321} Bigge 1966, p. 157. 
\textsuperscript{322} Bigge 1966, p. 157. 
\textsuperscript{323} Bigge 1966, p. 161. 
\textsuperscript{324} Bigge 1966, p. 175. 
\textsuperscript{325} Bigge 1966, p. 175. 
\textsuperscript{326} Maconochie 1838, p. 18. 
\textsuperscript{327} Maconochie 1838, p. 18. 
\textsuperscript{328} Maconochie 1838, p. 18.
4.3.3 Summary

Overall, the authors agreed throughout the first four decades of the 19th century that reformation should constitute a major part of the sentence the convicts had to serve, no matter where or how their punishment took place. As to the place and methods used for the reformatory process, their opinions differed widely. Whereas Jeremy Bentham favoured a prison system with constant supervision and thought that the Australian prison colonies were absolutely incapable of reforming offenders, most of the other authors preferred the use of penal colonies. The usual opinion was that the convicts ought to be separated from the free population and split up into smaller bands. This was important because the felons were not supposed to have too much contact with the free population or with other criminals. It was thought that their mingling with other people would be disadvantageous for their moral change. On the other hand, most authors still wanted the convicts to have some human contact because total separation was also seen as damaging to their reformation.

Insofar, Australia certainly had some advantages over Britain. The huge and sparsely populated colonies allowed for an easy separation of the different groups of inhabitants. It was a lot harder for felons to disappear and return to a life of crime. Newcomers in settlements were easily recognized and the Australian outback did not provide an easy environment for survival. Furthermore, the felons could not return to their families and friends to find help from them. In Britain, this risk would have been a lot higher. In addition, people in Britain were sensitive to chained road-gangs doing work in public, it reminded them too much of slavery. In densely populated England, it would have been very hard to have criminals do public work without people noticing it sooner or later. The vast Australian colonies provided a better environment for this kind of work. Since many authors thought that public work ought to be an essential part of the reformation process, Australia was better suited to this than Britain.

The authors, besides Bentham, did not find many flaws in the penal regime of the prison colonies with regards to the reformation of the criminals. Both John Thomas Bigge and Alexander Maconochie were unsatisfied with the way certain measures were conducted in Australia. However, they did not doubt the general usefulness of life in the colonies for the moral improvement of the convicts. Jeremy Bentham, on the other hand, was critical of the penal colonies. In his view, almost no one was improved by staying in Australia because the colonies did not have the necessary features. Instead of being reformed, felons remained in the same state of mind or became even worse people. He repeatedly compared the situation in Australia with a possible solution in Britain—the building of new prisons. In his opinion, penitentiaries were superior in almost every single aspect and would ensure the reformation of their inmates.
4.4 Economy

The most significant reasons for the establishment of the Australian prison colonies were certainly of a penal nature. In Australia, it was hoped that delinquents could be adequately punished and reformed. Even if they were not, at least the British authorities did not have to deal with them in their own country. However, there were also other reasons for the establishment of a penal colony in Australia. One of these was economical motivations. For one thing, transporting convicts had the advantage of saving the government the expenditure of building new and costly prisons. In general, it was clear and intended that the whole economy would be dominated by the felons at least during the first years of the colony. At the beginning of the project, government had to make huge expenditures to equip the first fleets, send them to Australia and ensure their survival in the colonies. Yet, it was hoped that after some years or decades, the colonists would not only be able to survive without help from Britain, but perhaps even produce enough commodities to be able to export them and trade with their home country or other states. Furthermore, the authorities expected to find some materials in the colonies which they could import to Britain and use for their own economy. The question if these ends were reached was highly debated and at least during the first years after its establishment, the prison colony in New South Wales performed poorly.

4.4.1 Advantages

For Jeremy Bentham, economy was “the only ground so much as hinted at—the strong and favourite ground of right honourable gentlemen:—the only one of the five objects so often mentioned that appears ever to have had any pretensions to the honour of their notice”, while the authorities decided for the establishment of a prison colony in Australia. In his opinion, the authorities believed that “the capital employed in carrying on the trade with the colony would not have yielded anything—would neither have yielded the ordinary rate of profit, nor any rate of profit at all, had it been employed elsewhere—had it been employed in any other branch of productive industry.” Insofar, Bentham sharply realized why the British government thought that the founding of a prison colony was advantageous for their economy. Personally, he was certainly of a different opinion.

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333 Bentham 1843, p. 204.
334 Bentham 1843, p. 206.
The same question was still of interest when Earl Bathurst sent his first letter to John Thomas Bigge in January 1819. He told Bigge that “[i]t will not be unimportant for you to enquire into and report upon the actual and Probable Revenues of the Colony.” Bathurst further explained that it would be Bigge’s task to estimate “whether they may be looked to hereafter as affording the means of defraying some part of the heavy expenditure annually incurred on account of New South Wales.” Apparently, the question of costs ranked high in the minds of government officials. This is also shown by a statement of Bathurst in his second letter to Bigge. He recommended that “you will have to consider, what in the first instance be the expence of the measures, which you might think yourself justified in recommending, and what may be the probable Amount of Annual Charge, which may result from their Adoption.”

Bathurst advised Bigge to make “your Estimates as accurate as circumstances will admit.” With regards to the authorities, this accuracy was so crucial because “it will be most material for them to know, not only the means by which Transportation can be rendered an effectual Punishment for the Prevention of Crime, but also the Expence at which, as compared with other Systems of Punishment, it can be enforced.” This statement is interesting because it shows on the one hand that the administration was in favour of punishing criminals in the colonies. They were also interested in knowing the most effective ways of doing so. On the other hand, the expenses for shipping felons to Australia and keeping them there apparently concerned the authorities as well. They wanted to know how much they were expected to spend on the transportation system. In addition, they were ostensibly willing to consider other options than transportation, and wanted to be able to compare the costs of different possible solutions.

Bathurst voiced his hopes that the Australian colonies might soon be more cost-efficient in his letter to Viscount Sidmouth. He noted that “[t]his System together with the Number of Convicts, who after the Expiration of their Sentences remain with their respective Families growing up under them, has so increased the population of Free Settlers that the prosperity of the Settlement as a Colony has proportionably advanced.” Insofar, Bathurst wrote that “hopes may reasonably be entertained of its becoming perhaps at no distant period a valuable possession of the Crown.” He expected the mixture of released convicts and free settlers to advance the prosperity of the colonies. Not only were they supposed to not burden their mother country anymore, Bathurst even anticipated the colonies to become a significant part of the kingdom.

337 Copy of a further Letter from Earl Bathurst to John Thomas Bigge 1966, p. 4.
338 Copy of a further Letter from Earl Bathurst to John Thomas Bigge 1966, p. 4.
339 Copy of a further Letter from Earl Bathurst to John Thomas Bigge 1966, p. 4.
341 Copy of a Letter from Earl Bathurst to Viscount Sidmouth 1966, p. 5.
The need to reduce the costs of running the penal colonies and to find new ways of making it economically more autarkic becomes apparent in the suggestions of John Thomas Bigge from the beginning of the 1820s. One of his proposals was to create more demand for convict labour in the colonies. In order to achieve this, he “was induced, though at a late period of my stay in New South Wales, and not without some apprehensions of the consequences of the measure, to give that consent to the distillation of spirits from grain, which your Lordship had deemed necessary for its adoption.”\(^{342}\) It is remarkable that the authorities considered producing alcohol in the colonies, despite their conviction that the consumption of spirits was negative for the reformation of the felons. Convicts were probably not supposed to drink any of the produced liquor, but it would have been unrealistic to expect that they would find no way to do so. Apparently, economic reasons sometimes even trumped the necessity to punish and reform in Australia.

With regards to the labour the criminals were supposed to carry out in the colonies however, Bigge was in favour of distributing them according to their character and crime instead of their abilities. He suggested that “an useful reference may be made both to the degrees of their crimes, as well as to their capacity for labour”\(^{343}\). Yet, in Bigge’s opinion, “the first should always preponderate.”\(^{344}\) A bit further on, he wrote on the same subject that “the principle of excluding convicts from the towns is so strongly in favour of their moral improvement, that it ought not to be broken in upon by the consideration of the advantage that might accrue to the master tradesmen”\(^{345}\). In this statement, it also becomes clear that it was hard for Bigge to find the perfect balance between punishment and reformation on the one hand and economic necessities on the other hand. He was in favour of distilling spirits in order to employ delinquents but he thought that even skilled labourers should rather work in the countryside, doing simple tasks, if their criminal history was too dreadful to allow them to work in a town.

Bigge did not only consider the best methods of employing the convicts but also tried to access the value of natural resources in the colonies. With regards to timber he wrote that “there are tracts upon which the more valuable species are found, and in which the employment of the wood-cutting gangs will be beneficial in procuring an article that is always useful in the colony, and always in demand for farm buildings and fences.”\(^{346}\) Here, Bigge found a great combination of obtaining a valuable commodity and employing felons to acquire it. Additionally, he noted that “[i]t would also much encourage the employment of convicts by the settlers, in the same operation, if an exportable value could be given to any of the several species of timber that are

\(^{342}\) Bigge 1966, p. 155.
\(^{343}\) Bigge 1966, p. 157.
\(^{345}\) Bigge 1966, p. 158.
\(^{346}\) Bigge 1966, p. 160.
found in the interior of the colony”\textsuperscript{347}, and that it would be beneficial if this timber “might afford freight to the convict ships and traders on their homeward voyages either to India or to England.”\textsuperscript{348} With this statement, Bigge voiced his hopes that there might be goods in Australia worth exporting to Britain or one of its other colonies. He anticipated that the procuring of these articles might motivate free settlers to employ convicts, thereby creating a demand for felon labour and reducing government involvement.

Animal husbandry also seemed to be promising to Bigge. He recorded the possibility of finding “several large tracts of natural pasturage, that will afford the means of feeding and rearing numerous flocks of sheep”\textsuperscript{349}. Moreover, he judged that “the character of the country, the temperature of the climate, and the pasturage, may be pronounced to be highly favourable to those more delicate breeds that have hitherto attained their greatest perfection in the warmer climates of the south of Europe.”\textsuperscript{350} In this respect, the Australian colonies certainly had an advantage over Britain. Bigge praised “the value of this branch of rural industry in New South Wales, both as it regards the employment of the convicts and the saving of all expense to government in their subsistence”\textsuperscript{351}.

Alexander Maconochie did not concern himself too much with economic implications of the Australian penal colonies in 1838. He raised only one point in his paper, comparing the work carried out in a penitentiary with the labour of a convict in the colonies. In Maconochie’s opinion, “[h]is labor, too, is mostly useless in a Penitentiary,—or noxious as interfering with the ordinary labor market”\textsuperscript{352}. Therefore, Maconochie advocated the retention of the transportation system, albeit with the “possibility of modifying and improving Transportation, so as to make it a suitable punishment for almost every offence”\textsuperscript{353}.

4.4.2 Disadvantages

Jeremy Bentham was convinced that “[i]n the present instance, in the compass of ten or eleven years, it had cost, four or five years ago, upwards of a million: by this time little less, probably, than a million and a half”\textsuperscript{354}. He did not write where exactly he got this numbers from and only stated generally that “near the odd million […] might have been saved […] if antecedently to the experiment, in addition to the tongue of an orator, there had been an eye at the treasury, capable

\begin{itemize}
\item \textsuperscript{347} Bigge 1966, p. 160.
\item \textsuperscript{348} Bigge 1966, p. 160.
\item \textsuperscript{349} Bigge 1966, p. 161.
\item \textsuperscript{350} Bigge 1966, p. 161.
\item \textsuperscript{351} Bigge 1966, p. 161.
\item \textsuperscript{352} Maconochie 1838, p. 60.
\item \textsuperscript{353} Maconochie 1838, p. 60.
\item \textsuperscript{354} Bentham 1843, p. 177.
\end{itemize}
of reading in the book of human nature.”

In addition, Bentham supposed that the colonies were founded “at an expense […] from twice to four times as great as that of the system sacrificed to it”, namely the installation of new penitentiaries in Britain. In addition, Bentham did not think that the future of the Australian colonies looked bright, because there was no reason for free settlers to move “to a place which, except a part of the stock of necessaries for its own inhabitants, neither does produce, nor presents any the smallest indication of being about to produce anything that will not be at the very time produced in other places, as well as imported into Britain from other places at a much cheaper rate.”

Although Bentham assumed that the costs in Australia might decrease over time, he still reflected that “the rate of possible decrease has its limits.” In addition, he stated that “there is not any the smallest chance whatever, that within the compass of the present century the rate of expense per head in New South Wales will be reduced to a level with the rate at which […] it would have stood under the penitentiary system.”

Looking into the future, he noted that “long before the rate of expense per head, in New South Wales, is reduced so much as to the level of what it would now be under the penitentiary system, this latter expense would be reduced to nothing at all.”

Bentham was also critical towards the way imports from the colonies and exports to Australia were recorded by the authorities. He wrote that “the whole amount of the annually imported produce of the colony, figures annually on the side of national profit, without any per contra on the other side.” Moreover, “what is still worse, and, if it were not so universal, more flagrantly absurd, […] the export, by the sacrifice of which this import is obtained, is also considered as national profit: the loss, not only not deducted from the profit, but added to it.”

He concluded, “[t]hus then stands the real account of profit and loss, in respect of colonies in general:—Colonies in general yield no advantage to the mother country, because their produce is never obtained without an equivalent sacrifice, for which equal value might have been obtained elsewhere.” With regards to Australia, he deduced that “[f]rom a colony in which no import-worthy produce can be raised, no import-worthy produce therein raised can be imported.”

John Thomas Bigge was especially anxious about the constant influx of new convicts and the connected oversupply of labour during the 1810s and 1820s. This decreased the “demand for

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355 Bentham 1843, p. 177.
356 Bentham 1843, p. 195.
357 Bentham 1843, p. 182.
361 Bentham 1843, p. 206.
362 Bentham 1843, p. 206.
363 Bentham 1843, p. 206.
364 Bentham 1843, p. 207.
the produce of convict labour”, and led to many felons being unemployed. Bigge also tried to make an estimation of the value of natural resources found in the colonies. With regards to the Australian wood, he commented that “[t]he value of the timber when cut is generally very inconsiderable, as it chiefly consists of the eucalyptus or gum tree”. Bigge allowed that “[t]he species of wood that are denominated stringey bark, iron bark, blue gum, and cedar, are those which have been found to be most useful in the colony”. Yet, “from specimens lately imported into England, their value, especially that of stringey bark, is very questionable, and yet remains to be proved.”

Hence, although the species of timber might be useful for the economy in the colonies “as articles of export, I should fear the event of any competition between them and the woods of other parts of the world”. In order to promote the export of wood from Australia to Britain, he even suggested “an entire exemption from duty.”

Besides not having many valuable natural resources, the colonies also offered many difficulties with regards to animal husbandry. Writing about the establishment of farms, Bigge judged that “in the first instance, they must be accompanied by great personal sacrifices, which will increase with the number of competitors in the same occupation, and with some outlay of capital and expenditure, the returns of which will be slow and distant.” He assumed that “[i]n order to obtain the occupation of good tracts of land in the interior, for grazing sheep and cattle, it will be necessary for such persons to remove to a distance of not less than 120 or 150 miles from the sea coast.”

Hence, “[t]he cost of the transport of their wool will thus become heavy”. Bigge suggested that the duties on “the importation of wool into Great Britain from New South Wales [should] not be raised for a period of ten years, at least, from its present trifling amount of one penny per pound”. In his opinion, “the reduction of the duties that I have proposed […] and the continuance of the present low duty on the wool of New South Wales, are absolutely necessary for the preparation and production of those commodities”. It becomes clear at this point, that Bigge thought subsidies for the Australian colonies were absolutely necessary. Besides timber, he did not mention any other natural resource. Even the promising animal husbandry needed to be subsidized in order to perhaps produce a surplus in the future. Naturally, all these expenses would heavily burden the British finances.

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371 Bigge 1966, p. 162.
372 Bigge 1966, p. 162.
373 Bigge 1966, p. 162.
374 Bigge 1966, p. 162.
375 Bigge 1966, p. 163.
Additionally, the employed convicts seemed to have a rather negative influence on sheep and cattle farming. Writing about one of the farmers, Bigge commented that because of “[t]he losses occasioned by the carelessness of the convicts, even under the best superintendence, he has found to make heavy deductions from the annual increase of his flocks.”\(^{376}\) Hence, Bigge suggested that “some compensation should be made for the risks thus encountered, and that the expense incurred by the maintenance of the convicts should be relieved by the admission of the produce of their labour with as little incumbrance as possible from duties.”\(^{377}\) George Arthur also thought that convicts were a rather troublesome workforce. He commented with regards to released convicts that “[t]he expiree, notwithstanding his previous occupancy, and his having had the choice of the best lands […] fell a victim to the habits of inebriety.”\(^{378}\) Moreover, he stated that “[t]he slovenly and interrupted farming which answered his purpose when there was no competition, and the price was large, could not withstand sober industry and low prices.”\(^{379}\) It is interesting to notice here that convict labour is not seen as an asset but rather as a burden. Apparently, Bigge even assumed that the settlers ought to be compensated for the employment of felons, which would create one more source of expenditure for the authorities.

Alexander Maconochie was also generally critical of convict labour. In his opinion, “[t]he convict labor being artificially distributed, is necessarily imperfectly distributed.”\(^{380}\) Besides noting the bad distribution of labour, Maconochie also thought that convict labour itself had some disadvantages, “[b]eing coerced, the productive effect of the remainder, is half lost - through resistance.”\(^{381}\) Additionally, work carried out by criminals “is a powerful obstacle in the way of free-laboring Immigrants, who […] can only with extreme difficulty obtain permanent engagements, the masters generally hoping that they may get a prisoner assigned to them.”\(^{382}\) He concluded that “[t]he expense of the Penal Colonies is at present enormous, partly from the prevailing system of mere coercion in them,—partly from the unproductiveness of every description of labor under this system.”\(^{383}\) Maconochie stated that the expenses also resulted “partly from the crime which it directly generates,—and partly from the large police, and other public checks and establishments, which the repression and punishment of this crime render necessary.”\(^{384}\)

\(^{376}\) Bigge 1966, p. 162.
\(^{377}\) Bigge 1966, p. 162.
\(^{378}\) Arthur 1835, p. 108.
\(^{379}\) Arthur 1835, p. 108.
\(^{380}\) Maconochie 1838, p. 12.
\(^{381}\) Maconochie 1838, p. 12.
\(^{382}\) Maconochie 1838, p. 12.
\(^{383}\) Maconochie 1838, pp. 15—16.
\(^{384}\) Maconochie 1838, p. 16.
4.4.3 Summary

George Arthur and Alexander Maconochie did not include many economic aspects in their tracts, perhaps because by the 1830s, the penal colonies were economically stable enough to focus on other matters. Jeremy Bentham and John Thomas Bigge however assigned a sizable part of their pamphlets to thoughts about the financial situation of the colonies. Australia was first of all a penal colony and the transported convicts were supposed to be punished and reformed. However, the authorities also wanted the colonies to work cost-efficiently. Hence, the convicts needed to be employed in jobs that did not only punish them and change their character for the better. Their labour was also supposed to be useful for the Australian economy. Sometimes, these goals were at odds with each other. As Bigge wrote, he supported the distillation of alcohol, despite its possible disadvantageous effects on the felons. On the other hand, he wanted skilled labourers to be distributed with regards to their punishment and reformation, not according to their talents. Another point the authorities were interested in was the possible export of valuable commodities from Australia. Very telling is that only Bigge mentioned this possibility. Yet, even he only hinted at the future possibility of exporting goods from Australia. Although he seemed quite convinced that this was a real option, he did not actually mention any goods which could already be sold abroad during his visit to the colonies.

Although economic reasons were not the main point for the establishment of the colonies, they were still important for the authorities. Although the authors had different points of view about the economic sense of penal colonies, almost all of them found negative aspects with regards to the economic situation of Australia at their time. Jeremy Bentham saw almost no economical benefits in having prison colonies in general. Likewise, he thought that particularly the Australian colonies were a great inconvenience. There was no intact society which could absorb the arriving convicts, no settlers who could employ them, train them and reform them. In addition, Bentham judged that Australia had no valuable natural resources which could be exported to Britain. He assumed that sending felons to Australia was a waste of money to Britain, especially when compared with his idea of building prisons in England. John Thomas Bigge and Alexander Maconochie were both in general of the opinion that the penal colonies could be a precious asset to the kingdom. However, both thought that reforms were needed, particularly with regards to the employment of the criminals. Very telling, both made almost no mention of natural resources that could be used for trade.

Kercher 2003, p. 542.
4.5 Colonization

Besides being a place for penal punishment and reformation, where economical aspects needed to be observed, Australia was also a British colony. Hence, all expectations and hopes usually associated with colonial enterprises applied to these prison colonies as well. The authorities hoped for the incorporation of new lands and people into their empire, the spread of Christianity and the improvement of their geopolitical situation. Perhaps, the authorities hoped to erect an empire in the east to compensate the loss of the American colonies. The question if the colonization of Australia in general and the usage of convicts in that process specifically made sense was a point of contention for many people in the first decades of the 19th century.

4.5.1 Advantages

In 1802, Jeremy Bentham commented on the rather general and intangible features of colonization by letting an anonymous commentator state that “New South Wales […] is moreover a colony: and […] colonies in general are admitted to be valuable possessions.” According to Bentham, “the advantages commonly looked for in colonies” were “advantages derived from population, produce, or trade”. One of the few benefits Bentham saw in the colonization of Australia was that it “would be altogether at the command of government”. He thought so “because the distance was the greatest possible; means of communication already established, none; and such as for this purpose would be to be established, would be to be established by government itself”. Consequently, the authorities were able to control everything that was going on in the colonies, without interference from private power brokers.

The possible advantages of colonizing Australia were also central in John Thomas Bigge’s report. Earl Bathurst, in his first letter to Bigge in 1819, pointed out that “His Royal Highness is also desirous of availing himself of your presence in that Quarter in order to obtain a Report upon the variety of Topics, which have more or less Reference to the Advancement of those Settlements as Colonies of the British Empire.” So important was the idea of Australia as a colony that Bathurst instructed Bigge to “always bear in mind the possibility of an Abandonment

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388 Bentham 1843, pp. 205—206.
389 Bentham 1843, p. 208.
390 Bentham 1843, p. 208.
391 Bentham 1843, p. 186.
392 Bentham 1843, p. 186.
of the present System of Transportation so far as regards the existing Settlements.” 394. Since the structure of the colonies might be changed to make them more suitable to the general aims of colonization, Bigge was told, with regards to any measures he proposed, to “carefully distinguish how far you consider them applicable to the Settlements in their actual State, or only to that in which they would be placed in the event of the Convict part of the Population being henceforth diverted to other Stations.” 395. Insofar, one can assume that although Australia was mainly a penal colony, other ends were also pursued by the authorities in colonizing in Oceania.

John Thomas Bigge himself commented on possible international economic benefits of colonization. He wrote that in particular sheep husbandry added “an article of export to Great Britain, that is indispensable to the progress of her great staple manufacture.” 396. Moreover, Bigge assumed that while this branch of agriculture “renders her independent of foreign supplies, [it] causes no interference with the natural and most beneficial course of her own agriculture, or with the produce of her own soil.” 397. This is interesting because Bigge points out two goals. Through colonization and the production of certain commodities, Britain would be more independent from imports. This would improve her geopolitical status. Likewise, no soil in Britain needed to be used for the production of goods that could be manufactured in Australia.

With regards to certain swaths of land in the colonies he commented that “the appropriation of that place to the sole purposes of penal restraint and discipline would prevent the colonization of the fine country that lies on the banks of the River Hastings, or those of Hunter’s River and the intervening tracts.” 398. In this statement, too, it becomes clear that the authorities followed different goals. Penal discipline and reform were of utmost importance in the Australian colonies, but they were not the only aims. As Bigge wrote, it would be a waste to use fertile lands for convicts, when they could be farmed by settlers. Apparently, there were sometimes stark conflicts between different goals. In some instances goals of colonization and economy trumped penal aims.

George Arthur put his focus with regards to colonization especially on the convicts. In his opinion, “the man who bears the brand of conviction on his brow, in England, is, in the great, majority of cases, cut off from the hope of obtaining employment.” 399. However, if these people were to be transported to another part of the British Empire, they could have a fresh start and become a respected part of the colonial society. Arthur compared transportation with “the

399 Arthur 1835, pp. 38—39.
transplanting of weak plants from an exposed, to a sheltered border in the same garden." He even deduced “the important principle, that a man may continue during a long life, to be in outward character a good subject in one part of the empire, who, were he transferred to some other part of the empire, would, unavoidably become a criminal; and vice versa," and came to the conclusion that “[c]onsidered without reference to punishment, colonization with criminals, may be defined to be the removal of a portion of the population from a part of the empire, in which the inducements to commit crime surpass their powers of resistance, to another part of the same empire in which these are more nearly balanced.” Arthur apparently assumed that in particular their environment influenced the convicts. While in Britain they had little chance of ever escaping their old habits, Australia offered them a new chance. Once reformed, the felons might become useful citizens because the temptations were not as strong in the colonies as in Britain.

Writing in 1838, Alexander Maconochie put a strong focus on different forms of colonization in Australia. He noticed that “[c]olonization has of late years attracted much attention, and obtained much encouragement at home.” Therefore, “several private Companies have been formed with the view of promoting it,—one of which is settled in South Australia.” However, as Maconochie noted to his surprise, “these Companies refuse to receive prisoners, and desire to confine their efforts exclusively to the deportation of virtuous, or at least unconvicted, individuals.” With scorn, he commented that “[s]o near Penal Colonies, if they will not take prisoners regularly, they will certainly get them irregularly,—without the apparatus by which to restrain and improve them.” Just as George Arthur, Maconochie also assumed that “it is a mistake to think that good people at home will necessarily be good people abroad.”

Maconochie did not only write that colonization with prisoners was a good strategy, he even conceived of it as being superior to colonization with only free settlers. He allowed that “[y]oung and enterprising capitalists will always flock abroad. They will be accompanied by their own selected servants, probably of corresponding characters,” and reflected that “[t]hese two classes would constitute the first in all the Colonies, and transported prisoners the last.” Yet, he judged that between the convicts “under improved management, there will be found, I am persuaded, a mine of national wealth, and moral worth also, as yet almost entirely unexplored,

400 Arthur 1835, p. 62.
401 Arthur 1835, p. 62.
402 Arthur 1835, pp. 61—62.
403 Maconochie 1838, p. 61.
404 Maconochie 1838, p. 61.
405 Maconochie 1838, pp. 61—62.
406 Maconochie 1838, p. 62.
407 Maconochie 1838, p. 62.
408 Maconochie 1838, p. 63.
409 Maconochie 1838, p. 63.
and which will astonish those who have only speculatively considered the subject.”\[^{410}\] Altogether, he arrived at the conclusion about transportation that “as a means of Colonization it has scarcely less interest than as a branch of criminal law.”\[^{411}\]

This opinion of Maconochie is partly different from the other authors. Most of them pointed to the moral degeneration of criminals and assumed that even after the end of their sentence they should only be given a modest place in the colonial society. Maconochie, on the other hand, assumed that precisely because of their former life in Britain they were suited to a life as colonizers. In his opinion, their life of crime had taught them how to suffer, how to face danger, and to how live with modest means. Through the right amount of guidance, reformation, and hard work, these qualities could be harnessed by the colonial authorities. The convicts were usually not spoilt middle- or upper-class citizens, but strong labourers who were used to exertion\[^{412}\]. Insofar, Maconochie regarded them as the ideal colonizers, accompanied by some personnel, who would train them.

### 4.5.2 Disadvantages

Jeremy Bentham was not only against colonization in Australia but also against colonization in general. He wrote that “to confess the truth, I never could bring myself to see any real advantage derived by the mother country, from anything that ever bore the name of a Colony.”\[^{413}\] He explained further that “[i]t does not appear to me, that any instance ever did exist, in which any expense bestowed by government in the planting or conquering of a colony was really repaid.”\[^{414}\] In Bentham’s opinion, “[t]he goods produced by the inhabitants of such new colony cannot be had by the inhabitants of the mother country, without being paid for”\[^{415}\]. Moreover, “from other countries, or the mother country itself, goods to equal value may, without any such additional expense, as that of founding, maintaining, and protecting a colony, be had upon the same terms.”\[^{416}\] Bentham allowed that “[b]y accident, and for a time, there may indeed be, in the rate of profit obtained in dealing with the inhabitants of the new colony, a superiority with reference to the rate of profit obtained in dealing with other inhabitants of the mother country, or with the inhabitants of other states”\[^{417}\]. However, in his opinion, “such superiority is either not regarded as worth thinking about, or else tacitly assumed, and at any rate, never so

\[^{410}\] Maconochie 1838, p. 63.
\[^{411}\] Maconochie 1838, p. 65.
\[^{412}\] Maconochie 1838, p. 65.
\[^{413}\] Bentham 1843, p. 206.
\[^{414}\] Bentham 1843, p. 206.
\[^{415}\] Bentham 1843, p. 206.
\[^{416}\] Bentham 1843, p. 206.
\[^{417}\] Bentham 1843, p. 206.
much as attempted to be proved: while, on the other hand, an inferiority is at least as probable.\footnote{Bentham 1843, p. 206.} The whole idea of discovering valuable materials in colonies and exporting them to the metropolis or trading them with other countries seemed implausible to Bentham.

This judgement becomes even more apparent in Bentham’s critic of the Australian colonies. He noted that “[t]he particular colony here in question yields no advantage to the mother country, and for a reason still more simple—because it yields no produce.”\footnote{Bentham 1843, p. 206.} Bentham wrote further that “[t]he proposition relative to the unprofitableness of colonies in general is one thing; the proposition relative to the particular unprofitableness of this particular colony, is quite a different thing.”\footnote{Bentham 1843, pp. 206—207.} He concluded that “[t]he first may be consigned to the chapter of romance, by the admirers of arithmetic and its calculations: the other will remain as firm, as impregnable, as ever.”\footnote{Bentham 1843, pp. 208—209.} Bentham apparently assumed that some people might find certain advantages in having colonies in general. However, the plan to colonize Australia seemed absurd to him because it had no commodities that could be exported to Britain. Therefore, it held no advantages for the kingdom. He summarized, “[o]f any of the advantages commonly looked for in colonies (advantages derived from population, produce, or trade,) I find no specific mention.”\footnote{Bentham 1843, p. 209.}

Yet, Bentham brought up “[t]wo other supposed advantages\footnote{Bentham 1843, p. 208.}, that he had heard about, namely that Australia could serve as a training facility for British soldiers and British sailors. In Bentham’s opinion however, these arguments made no sense. He reasoned that “the nearest port in New South Wales is farther from the mother country than the farthest port in the East Indies is, farther in point of time, by a third or so of the way”\footnote{Bentham 1843, p. 208.}. Furthermore, “it is not New South Wales that is in the way to the East Indies, but the East Indies that are in the way to New South Wales”\footnote{Bentham 1843, pp. 208—209.}. Insofar, he thought that “any given number of soldiers would be rather more usefully stationed if landed at once at that port, whatever it be, of the East Indies, which at any given point of time seemed likely to afford the speediest demand for their services”\footnote{Bentham 1843, p. 209.}. The same was true in Bentham’s opinion for the seamen who should rather be stationed in the East Indies than Australia. He noted that “[w]hen the vessels that have carried out from Britain goods and passengers to New South Wales, have brought any thing home, it has been (if I am not mistaken) either from China or the East Indies”. Bentham seemed convinced that there was no good reason for stationing sailors and soldiers in the colonies. He also gave a reason as to why people thought this might be advantageous, namely “the ancient and favourite circle: a circle by which,
in defiance of logic and mathematics, political conduct is squared, and wars generated.” In his opinion, these people argued as follows, “[w]hat are colonies good for?—for nursing so vast a navy. What is so vast a navy good for?—for keeping and conquering colonies.”

Bentham allowed that there was one advantage of the Australian colonies, namely “[t]wo hundred and fifty plants, or thereabouts—two hundred and fifty new discovered plants.” However, he wrote that “for each vegetable acquired your Lordship would find, I believe, some number of human lives most miserably destroyed.” Bentham argued that it was not “altogether necessary to the gathering seeds in a country, that a colony should be planted in it.” He concluded with an interesting comparison between British colonization of Australia and the Roman conquest of the British Isles. Bentham stated that “[t]o reap the fruit of his expedition to this wild country, the Emperor employed an army, we are told, in gathering shells here. So far the parallel runs, but no further. Employ an army here in shell gathering? Yes: but he did not leave one here.” In the end of his pamphlet, Bentham reflected that “there is one plant, though it be but a metaphorical one, which has been planted in the colony, and of the planting of which, the founders of Botany Bay have the indisputable merit […] and that is—the plant of military despotism.”

Earl Bathurst was more positive about the possible benefits of the Australian colonies for Britain. One big controversial subject in Australia though was about “admitting into Society Persons, who originally came to the Settlement as Convicts.” Bathurst explained further that “[t]he Opinion, entertained by the Governor and sanctioned by The Prince Regent, has certainly been with some few exceptions, in favor of their reception at the expiration of their several Sentences upon terms of perfect Equality with the Free Settlers.” However, “the Conduct of the Governor in this respect, however approved by the Government at home, has drawn down upon him the Hostility of many persons, who hold association with Convicts under any circumstances to be a degradation.” It is interesting to note here that apparently the opinion of the authorities in Britain and in Australia was not enough to ensure the re-integration of released felons into the colonial society. Instead, they had to bargain with the unruly free settlers, who managed to defy the will of the government. Moreover, it becomes obvious that the stain of crime was not easily washed off, even through punishment and reformation. This confrontation

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427 Bentham 1843, p. 209.
428 Bentham 1843, p. 209.
430 Bentham 1843, p. 211.
431 Bentham 1843, p. 211.
432 Bentham 1843, p. 211.
433 Bentham 1843, p. 211.
could of course have been avoided if only free settlers (or only convicts) had been used for the colonization of Australia.

4.5.3 Summary

Convicts were not only sent to Australia to be punished and reformed but also to colonize. Through their work, the authorities hoped to turn the colonies into a valuable part of their empire. In Australia, new commodities could be manufactured and sent to Britain or sold to other countries. Goods, which were not suited to the British climate, might thrive in the Australian environment. Moreover, the colonies might be used as a safe harbour for the British navy. New lands were incorporated and the local population either subjected and accustomed to the British culture or ‘induced’ to move to the less fertile parts of the colonies. The felons could be used as a cheap labour force, building up the infrastructure or working on farms and plantations. Once the initial stage of colonization was over though, the authorities considered moving the criminals to less fertile areas and reserve the rich tracts of lands for free settlers so that they could continue the colonizing work.

It is instructive to note at this point that John Thomas Bigge, George Arthur, and Alexander Maconochie saw almost no disadvantages in colonization with convicts for British goals. Only Jeremy Bentham stated several drawbacks of this system. As an opponent of colonization in general, he was also no friend of colonizing with felons. In his opinion, the idea of sending criminals to the other end of the world did not have any advantages for Britain. While he was critical of colonization in general, Bentham considered Australia an especially bad spot for British settlements. He saw no valuable commodities which might be shipped to Britain or traded with other countries. Moreover, he did not think that Australia was of any geopolitical relevance. It was too far away from Britain and its other colonial possessions to make any relevant contribution to their wellbeing.

437 Arthur 1835, p. 66.
5 Conclusions

When it comes to the benefits and drawbacks of penal colonization in New South Wales and Van Diemen’s Land during the first half of the 19th century, five aspects were of paramount importance to the authors analyzed in this thesis: the forced exile of convicts, deterrence and appropriate punishments, reformation, economy, and colonization. Advantages and disadvantages could be found with regards to each of the different features discussed in the sources.

When discussing the forced exile of criminals, all the writers agreed on the logical advantage for the British state that a person who was shipped to Australia could not commit a crime in Britain whilst being in New South Wales or Van Diemen’s Land. The idea of exiling people was particularly popular during times of high unemployment and crime rates. Transportation functioned as a safety valve for the government. Potential troublemakers could be sent to Australia, where the local authorities and the free settlers were almost always in need of manpower to create an infrastructure and farm the land. Additionally, exiled felons eased the pressure on the labour market in Britain. However, some of the authors were also concerned about establishing colonies at the antipodes with the help of criminals. Although they could not commit any offences in Britain, this possibility was viable in the colonies. Especially because the criminals constituted a major part of the population, some of the authors were anxious about the destiny of the free population. New South Wales and Van Diemen’s Land were not part of Britain proper but they were still part of the Empire. Insofar, crimes committed in these places could not just simply be ignored. Additionally, the more convicts arrived in the colonies, the harder it became to control all of them and to prevent their escape and return to Britain.

The deterrent function and appropriateness of the punishments were also highly debated. These two features were in close proximity to each other because a proper punishment or suitable amount of retribution was supposed to function as a deterrent for potential future criminals. However, if the system of transportation was too lenient, or too harsh as a form of penal justice, was a bone of contention throughout the first half of the 19th century. This comes as no surprise because the question of deterrence is a subjective one. Hence, opinions on that topic are naturally biased. Nevertheless, the British government attempted to change the harshness of the transportation system from time to time in order to adjust its deterrent function. Interesting in this context are the cases mentioned by Earl Bathurst. He wrote that during the first years after the establishment of the prison colonies, some people pleaded to be executed rather than transported whereas later on, others supposedly committed crimes on purpose in
order to be exiled to Australia. This illustrates well the difficult and maybe even impossible task to create a punishment that works as a deterrent to all or at least to most potential offenders.

The reformatory function of transportation was just as disputed as the deterrent one. By the first half of the 19th century, reformation was an important aspect of every penal measure. However, the writers of the sources analyzed in this thesis had different opinions with regards to the possible improvement of convicts in Australia. Some believed that the salutary impacts of hard work, supervision, instruction, and a changed environment would alter the criminals and make useful members of society out of them, either in Australia or perhaps even in Britain. Others thought that especially supervision and instruction were not possible in an ‘open prison’ such as these penal colonies. The question then, which was in any case a theoretical one, was how best to achieve the reformation of the offenders. Did hard agricultural work under the surveillance of diligent overseers suffice for this or was it additionally necessary to isolate criminals in prisons? Should good behaviour be rewarded or only bad conduct be punished?

Not directly related to any penal measure but still important was the question of economy. Although the British authorities were willing to spend large amounts of money on the transportation of criminals, they were also eager to see the costs decline over time. Furthermore, it was hoped that perhaps through trade or the discovery of valuable materials, New South Wales and Van Diemen’s Land could become significant assets to the crown that would render imports unnecessary. However, it seems like at least during the first half of the 19th century, government had to spend a lot of money in order to supply the colonies with manpower, and equipment. Even at the beginning of the 1830s, British subsidies still represented around one quarter of the colonial income. Although a certain degree of independence was reached, there were never any substantial exports from Australia to Britain or any other part of the Empire for that matter. Few natural resources were discovered during the first decades of the 19th century. Furthermore, agriculture and animal husbandry were only starting to become profitable during the late stages of the prison colonies. Some of the authors had high hopes for the future of New South Wales and Van Diemen’s Land as valuable assets of the crown. However, during the time frame analyzed in this thesis, they did not yield many economic benefits to Britain.

The last category examined in this work is the rather abstract notion of colonization. The intangible nature becomes apparent in the comments of the authors. Although almost all of them commented on the idea of colonization, their thoughts were rather vague. Even Jeremy Bentham, who expressed a strongly negative view about colonies and colonization in the pamphlet analyzed in this thesis, considered some advantages of colonization, even in Australia, later in his life.

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439 Cain and Hopkins 1993, p. 244.
Many hopes and dreams were discussed with regards to this topic, for example the cultivation and settlement of most of the Australian continent, or the building of a large port where seaman and soldiers could be stationed and trained. However, at least during the time studied in this work, there seems to be few palpable results.

It is also instructive to note that the authors attempted to include as many aspects as possible into their works. They never solely focused on only one feature of penal colonization but tried to argue on different levels. Because their pamphlets were supposed to reach a large audience, one can assume that they chose their categories not randomly but because it was generally accepted that these features were of great importance for 19th century penology and colonization. Additionally, there are many conflicts between the different goals of penal colonization and it is highly informative to notice which aims took precedence for which author and under which circumstances. Economy for example was not one of the direct aims of penal measures undertaken in Australia and Britain, but the finances were always an important topic. If an otherwise useful penal instrument became too expensive, it was cancelled. It was also important to find the right balance between appropriate punishments, reformation and deterrence. If a punishment was too light, the deterrent function disappeared. On the other hand, it if was too hard, reformatory tendencies might be destroyed.

Just as interesting as the study of the advantages and disadvantages of penal colonization in Australia are the different categories which are mentioned in the sources. Most of the five features stated by the authors are probably still important for modern ideas about punishment. One can venture to state that deterrence, reformation, and the appropriateness of punishments are still centrepieces of every penal thought. Additionally, cost-efficiency is just as important today as it was 200 years ago. Insofar, many at least theoretical similarities might be found between punishments in the 21st century and the first half of the 19th century. In practice, there are of course also numerous differences. The one big distinction is the colonial aspect. Nowadays, states normally do not send their prisoners thousands of miles away for their punishment, although this might just be because of a lack of opportunities to do so. Be that as it may, if one ignores for a moment the fact that British convicts were penalized at the other end of the world, one might find several resemblances between penal ideology in many states today and the British ideas on the same topic 200 years ago. Also, it seems like in some ways there might be more connections between these two time frames than between the first half of the 19th century and the preceding centuries of Early Modern Britain. The death penalty or shaming punishments for example, hugely important beforehand, slowly lost their importance during the end of the 18th century and the beginning of the 19th century.
All in all, the categories used in the sources were very stable in the time frame 1802—1838. To be sure, the opinion of the authors was influenced by different events that happened before or during the time of their writings. Jeremy Bentham for example did not write about the disadvantages of too many convicts being shipped to Australia, simply because at the beginning of the 19th century, this was not an issue. In the 1820s and especially the 1830s though, it was, and this is reflected in the writings of the later authors. Reversely, the survival of the settlements was not a big issue anymore after the first few decades of penal colonization in Australia. It was mentioned by Bentham, but not by the other authors. Apart from the logical disparities entailed by the circumstances, all writers mentioned the same features that were important for the Australian penal colonies during the first four decades of the 19th century. Exile, deterrence, reformation, economy, and colonization were in general just as crucial in 1802 as in 1838. These were the five most important aspects of penal colonization during this time frame.

It would be interesting for further research to compare the results of this thesis with later decades of the 19th century. It seems like in Western Australia from 1850 onwards, different categories had more importance. A comparison with the last years of the 18th century might also be a fruitful comparison. Reformation for example was probably not as important, because the new settlements needed to be established and the survival of the settlers took precedence. Another interesting project would be to contrast British penal colonization during the first half of the 19th century with examples from other states. Last but not least, different source material might have yielded different results. This seems rather unlikely though because all the writers used in this thesis were well connected in the discussion on penal colonization during their time. They described aspects that were significant during this time frame and other authors would have probably used similar ones or the same.

During the 19th century, a bureaucratic and centralized state slowly evolved in Britain. People started to make demands on the centralized state, not the local authorities anymore, for greater democratization and equal treatment of all citizens. This also reflected on the management of convicts. Imprisonment in state-controlled jails was a symbol for the growing influence of the central authorities. Democratic ideals about equal treatment of people were not easily reconciled with the forced labour of prisoners for civilian settlers in Australia. It resembled slavery too closely. This was already echoed in the writings of Maconochie in 1838 who stated that he “would first press on the Free that they cannot, even if they would, hope long to retain the system of private assignment.”

441 Willis 2005, p. 176, p. 201.
442 Coleman 2005, p. 10.
443 Maconochie 1838, p. 80.
Domestic Slavery can be tolerated, on any pretext, within the British Dominions. Additionally, the arbitrariness of inmate management in local British prisons received growing criticism. During the second half of the 19th century, more and more state-run penitentiaries were constructed to house all British convicts and expose them to the justice of state-paid officials.

The debate on the Australian penal colonies was also influenced by the rise of the penitentiary system in Britain. Already at the beginning of the 19th century, Bentham fought for the introduction of new penitentiaries, if possible designed according to his own ideas. In his writings on New South Wales and the penitentiary, he constantly compared the two systems. During the end of the 1810s, Bathurst mentioned to Bigge that the government was considering other penal options if the Australian settlements were not able to fulfill their goals. Although he did not state outright that the authorities were thinking about prisons in Britain as an alternative, one can assume that he was referring to them. During the 1830s, the debate was affected by the development of this major penal alternative as well. Although Maconochie and especially Arthur were in favour of using prison colonies, they wrote about penitentiaries too. The advocates of the prison system gained momentum throughout the first half of the 19th century in Britain.

Likewise, an increasing amount of people started to fight against transportation. This development was also reflected in the colonies. It started during the 1830s in New South Wales, where a growing number of people fought transportation through rallies, leagues, and petitions. The settlers did not want their colony to be used as a receptacle for British prisoners anymore. Transportation was against the will of the majority of the people and insofar not reconcilable with principles of democracy and self-government. It might not be a coincidence that by the 1830s, New South Wales was well enough established to survive without forced labour. In any case, the British authorities gave in and shifted transportation away from New South Wales and towards Van Diemen’s Land, and later Western Australia. Interesting in this context is especially the case of Western Australia. Transportation to this colony only started in 1850, after an explicit request by the colonial authorities. Apparently, economic necessities in the slowly developing settlement were more important than the rights of the prisoners. In this colony, the focus was on using the convicts as a cheap labour force; reformation and punishment were either disregarded or carried out in Britain before the criminals were shipped to Australia. Nevertheless, the local authorities were able to use the diminishing influence of the British authorities in the colonies and made requests regarding the gender and the criminal history of the

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444 Maconochie 1838, p. 80.
445 Willis 2005, p. 188.
446 Gascoigne 2002, pp. 129—133.
448 Gibbs 2001, p. 60.
offenders. Only young males with minor transgressions were supposed to be exiled, another indication for the economic interests the local power holders had in the convicts.\textsuperscript{449}

During the second half of the 19\textsuperscript{th} century, transportation to Australia slowly ended because it was not seen as a suitable way of punishing people anymore. Just as transportation came into focus during the 18\textsuperscript{th} century because older modes of punishment, such as executions, were no longer deemed appropriate, it also finished because public opinion increasingly condemned it. The decentralized British state of the 18\textsuperscript{th} century and the beginning of the 19\textsuperscript{th} century relied on transportation as an elegant solution to evade conflicts with local power holders over the treatment of prisoners in local jails.\textsuperscript{450} In order to avoid these quarrels both the government in London as well as local authorities accepted more responsibility for the transported criminals. Exile to America was largely a private business. Private entrepreneurs shipped the felons and sold them in the American colonies. The state involvement in the transportation system to Australia was much larger. Although companies still took part in every aspect of the system, British officials did so too. Especially the handling of the convicts in the penal colonies was to a large extent in the hands of British officials.

This thesis does not make a final judgement on the topic of penal colonization. It is probably impossible and in any case not productive to weigh the advantages and disadvantages against each other and decide if New South Wales and Van Diemen’s Land were overall beneficial to the British state or not. Instead, the discussion around penal colonization during the first half of the 19\textsuperscript{th} century in Britain is portrayed in order to understand the importance of different penal categories during that time. The focus is not so much on concrete numbers and facts but rather on the interpretation of the opinions found in the sources. At this point, it seems unlikely that states will use their prisoners in the near future to colonize distant territories. However, it is always instructive to study how people handled topics in the past that still concern us today. An interesting case in point is the privatization of prisons in several countries around the world.\textsuperscript{451} This relates to the same problems which already concerned the authors analyzed in this thesis. Can private business with its ingrained pursuit if profits provide the same standards as the public sector with regards to imprisonment? Does the perhaps more cost-efficient handling of prisoners by the private sector justify the forfeit of the state on its monopoly on the use of force and the unequal treatment of convicts through different private protagonists? No one knows what the future of penology will bring and although this seems doubtful at this time, perhaps one day convicts will be used by governments or private entrepreneurs to settle Antarctica or distant planets.

\textsuperscript{449} Gibbs 2001, pp. 60—61.
\textsuperscript{450} Willis 2005, pp. 187—188.
\textsuperscript{451} Hart, Shleifer, and Vishny 1997, pp. 1127—1159; Shapiro 2011, pp. 5—42.
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7 Bibliography

7.1 Sources


7.2 Literature


